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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 91-022]

Citrus Canker; Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are removing the "Citrus Canker—Mexico" regulations, which prohibited or restricted the importation into the United States from Mexico of fruit and peel of citrus and citrus relatives. This action is warranted because it has been determined that the citrus canker organism (*Xanthomonas campestris* pv *citri*) does not occur in Mexico. This amendment will relieve unnecessary restrictions on the importation of any fruit or peel of citrus or citrus relatives from Mexico.

EFFECTIVE DATE: July 23, 1991.

FOR FURTHER INFORMATION CONTACT: Robert L. Griffin, Head, Permit Unit, PPQ, APHIS, USDA, room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8645.

SUPPLEMENTARY INFORMATION:

Background

Prior to the publication of this document, the "Citrus Canker—Mexico" regulations (referred to below as the regulations) regulated the importation, from Mexico into the United States, of fruit and peel of citrus and citrus relatives (fruit or peel of any genera, species, or varieties of the subfamilies Aurantioideae, Rutoideae, and Toddalioideae of the botanical family Rutaceae).

On January 11, 1991, we published in the **Federal Register** (56 FR 1122-1124, Docket No. 90-226) a proposal to remove the "Citrus Canker—Mexico" regulations. Comments on the proposed rule were required to be received on or before February 11, 1991. We received 27 comments. The comments were from U.S. State agriculture officials, representatives of U.S. citrus growers associations, and agriculture officials, citrus growers and exporters in Mexico. Twenty-four commenters supported the rule as proposed. Another commenter requested an extension of the comment period in order to obtain input from various industry members and to collect facts to be able to respond to the proposed change. Two other commenters requested further study, by the U.S. Department of Agriculture, of the proposed change based on their assertion that it has not been clearly demonstrated that citrus diseases which are known to occur in Mexico, and not in the U.S., will not adversely affect citrus fruit grown in the U.S. Specifically, they stated that "*mancha foliar*" is a potentially serious disease of citrus that does not occur in the U.S., but is known to infest limes in Mexico. According to these commenters, some experts believe that *Alternaria limicola* is resistant to desiccation and would likely be introduced into the United States from Mexico, thereby creating a threat to U.S. citrus if the chlorine dip treatment required for certain citrus grown in Mexico and imported into the United States is removed from the regulations.

As indicated in the proposed rule (at 56 FR 1122-1124), based on field observations and research over a 9-year period, USDA scientists believe that "*mancha foliar*" is not a dangerous or serious disease of citrus. In addition, foliar fungi, including "*mancha foliar*," are unlikely to be introduced into the United States via citrus fruit or peel, even if the peel is not treated. Leaves, stems, and other plant parts capable of introducing the disease are prohibited under other regulations in title 7, Code of Federal Regulations. We believe that citrus fruit from Mexico presents a negligible risk for the introduction of "*mancha foliar*" into the United States. The risk can only be associated with the potential for fruit to carry spores of the organism, not manifested as a disease, on the surface of the fruit. The potential for spores (as a surface contaminant on fruit) to provide the means for introducing the disease into the United States is statistically insignificant.

During the 9-year period of field observations and research, millions of fruit were examined in the groves and packing houses of Mexico. Groves were surveyed dozens of times, and citrus trees of every type and in every citrus growing area of Mexico have been checked and rechecked without any reports of "*mancha foliar*" being manifested on harvestable fruit. The intensity, duration, and quantity of work exceeds that necessary to document that "*mancha foliar*" does not present a plant pest risk.

Therefore, based on the rationale set forth in the proposal and in this document, we are removing Subpart—Citrus Canker—Mexico. The effect of this rule is to: (1) Allow Mexican limes to be imported into the United States from all parts of Mexico, subject only to inspection for freedom from pests; (2) allow other citrus from areas where "*mancha foliar*" occurs to be imported; and (3) remove the chlorine dip treatment previously required for fruit or peel of ethrog (*Citrus medica*), grapefruit (*Citrus paradisi*), lemon (*Citrus limon*), orange (*Citrus sinensis*), Persian lime (*Citrus latifolia*), and tangerine (*Citrus reticulata*) from areas in Mexico not designated as infested areas.

Effective Date

This is a substantive rule which relieves restrictions, and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication of this document.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

Removing the "Citrus Canker—Mexico" regulations allows any fruit or peel of citrus or citrus relatives to be imported from all areas of Mexico into the United States, subject to inspection and treatment, if required for plant pests or diseases other than citrus canker.

The Animal and Plant Health Inspection Service has determined that this regulatory change will not cause an increase in plant pest or disease risk. Therefore, no economic consequences related to increased pest infestations are expected in the United States.

An increase in U.S. imports of Mexican citrus is expected, as discussed below, with the removal of the "Citrus Canker—Mexico" regulations.

Two varieties of limes are currently produced in Mexico—the Mexican (key) lime and the Persian lime. Given strong domestic demand in Mexico for key limes, it is unlikely that U.S. imports of these limes will exceed 0.5 percent of Mexican production, or about 3 thousand metric tons. U.S. imports of Persian limes grew throughout the 1980's despite the restrictions established in 1983 under 7 CFR 319.27 *et seq.* Because most Persian limes grown in Mexico are not grown in areas designated as infested, removal of the restrictions will largely amount to removal of certification and treatment requirements. Only a modest increase (1–2 percent, or 550–1,100 metric tons) in U.S. imports of Persian limes from Mexico is expected as a result of removing these requirements.

A total of 985 farms in the U.S. produce seedless lime varieties similar to the Persian lime. U.S. fresh seedless lime production averaged 45 thousand metric tons in 1988 and 1989. There is currently no commercial production of key limes in the United States. This fruit is produced in the U.S. only as a novelty item for localized markets; no data is available regarding the number of U.S. key lime producers.

In 1988 and 1989, Persian limes from Mexico supplied approximately 54 percent of the total fresh limes available in the United States. Increases in U.S. imports of Mexican limes of 550–1,100 metric tons will increase the total U.S. supply by no more than 1 percent. No appreciable decrease in U.S. lime prices will result from this increase, and no economic impact on U.S. producers or consumers of seedless limes is expected. Imports of key limes from Mexico will supply essentially 100 percent of the key lime market in the United States as a result of the removal of 7 CFR 319.27 *et seq.* The increased availability of key limes is a gain to U.S. key lime consumers. U.S. key lime producers face increased competition, but may still be able to sell their produce in localized markets.

Mexico produces large quantities of oranges, grapefruits, and tangerines, while production of lemons and ethrog is minor. The Mexican domestic market, however, consumes most of this production, leaving less than 1 percent of the oranges and grapefruit, and 7 percent of the tangerines, for export.

The impact of removing 7 CFR 319.27 will be largely one of removing the certification and treatment requirements. No significant change in U.S. imports of oranges, grapefruits, and tangerines occurred when 7 CFR 319.27 was established in 1983. Since domestic demand for citrus in Mexico is strong, removal of the regulations will cause only very modest (1–2 percent) increases in U.S. imports of Mexican oranges, grapefruit, and tangerines.

A total of 4,998 farms in the U.S. produce grapefruits; 14,312 produce oranges; and 853 produce tangerines. U.S. production of these citrus fruits in 1988 and 1989 averaged 1,240 thousand metric tons of grapefruit, 1,845 thousand metric tons of oranges, and 140 thousand metric tons of tangerines. Mexican imports supply less than 1 percent of the total U.S. fresh supplies of oranges and grapefruits, and approximately 10 percent of the total U.S. supply of tangerines. Modest increases in U.S. imports of Mexican oranges and grapefruit will have no effect on U.S. orange and grapefruit prices, and no economic impact on U.S. orange and grapefruit producers or consumers is expected. Modest increases in U.S. imports of Mexican tangerines (1–2 percent of 130–260 metric tons) will result in less than a 0.2 percent increase in U.S. supplies during the months when tangerines normally arrive from Mexico. This small increase in supply will not cause an appreciable decrease in U.S. tangerine prices and will have little or no effect on U.S. tangerine prices or on U.S. tangerine producers or consumers.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 7 CFR Part 319

Agricultural commodities, Citrus canker, Fruit, Imports, Plants (agriculture), Plant diseases, Transportation.

PART 319—FOREIGN QUARANTINE NOTICES

Accordingly, 7 CFR part 319 is amended as follows:

1. The authority citation for 7 CFR part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c) unless otherwise noted.

§§ 319.27 through 319.27–11 [Removed and reserved]

2. "Subpart—Citrus Canker—Mexico" (7 CFR 319.27 through 319.27–11) is removed.

Done in Washington, DC, this 19th day of July 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–17514 Filed 7–22–91; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 948

[Docket No. FV–91–293]

Irish Potatoes Grown in Colorado; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 948 for the 1991–92 fiscal period. Authorization of this budget will permit the Colorado Potato Administrative Committee, San Luis Valley Office (Area 2) (committee) to incur expenses that are reasonable and necessary to administer

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This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 7 CFR Part 319

Agricultural commodities, Citrus canker, Fruit, Imports, Plants (agriculture), Plant diseases, Transportation.

PART 319—FOREIGN QUARANTINE NOTICES

Accordingly, 7 CFR part 319 is amended as follows:

1. The authority citation for 7 CFR part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c) unless otherwise noted.

§§ 319.27 through 319.27–11 [Removed and reserved]

2. "Subpart—Citrus Canker—Mexico" (7 CFR 319.27 through 319.27–11) is removed.

Done in Washington, DC, this 19th day of July 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–17514 Filed 7–22–91; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 948

[Docket No. FV-91-293]

Irish Potatoes Grown in Colorado; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 948 for the 1991–92 fiscal period. Authorization of this budget will permit the Colorado Potato Administrative Committee, San Luis Valley Office (Area 2) (committee) to incur expenses that are reasonable and necessary to administer

the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATES: September 1, 1991, through August 31, 1992.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC, 20090–6456, telephone 202–447–2431.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement No. 97 and Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 88 handlers and approximately 285 producers of potatoes in Colorado Area 2. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of Colorado Area 2 potato producers and handlers may be classified as small entities.

The committee unanimously voted at its May 16, 1991, meeting to recommend its 1991–92 budget and assessment rate to the Secretary of Agriculture for consideration.

The committee, the agency responsible for local administration of the order, consists of producers and handlers of Colorado Area 2 potatoes. These producers and handlers are familiar with the committee's needs and with the costs of goods and services in their local area and are in a position to formulate an appropriate budget. The budget was formulated and discussed at a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The recommended assessment rate was derived by dividing anticipated expenses by expected shipments of fresh Colorado Area 2 potatoes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the committee's expenses. A recommended budget and rate of assessment is usually acted upon before the season starts, and expenses are incurred on a continuous basis.

The recommended budget for the 1991–92 fiscal year of $54,270 is $3,595 more than the previous year due to increases in salaries, employees' benefits, and office expenses. In Colorado, both a State and Federal marketing order operate simultaneously. The State order authorizes promotion, including paid advertising, which the Federal order does not. Administrative expenses that are shared are divided so that 50 percent is paid under the State and 50 percent under the Federal order. All promotion and advertising expenses are financed under the State order.

The 1991–92 recommended assessment rate of $0.004 per hundredweight of potatoes is the same as last year. This rate, when applied to anticipated fresh market shipments of 12,000,000 hundredweight, will yield $48,000 in assessment revenue. An additional $6,270 from the committee's authorized reserve will result in total funds of $54,270, which will be adequate to cover budgeted expenses. The projected reserve for the end of the 1991–92 fiscal period is estimated at $38,700, which will be carried over into the next fiscal period. This amount is within the maximum permitted by the order of two fiscal period's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the **Federal Register** on June 26, 1991 (56 FR 29196). This document contained a proposal to add § 948.207 to authorize expenses and establish an assessment rate for the committee. That rule provided that interested persons could file comments through July 8, 1991. No comments were received.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 948 is hereby amended as follows.

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: Secs. 1–19, 48 Stat 31, as amended; 7 U.S.C. 601–674.

2. A new § 948.207 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 948.207 Expenses and assessment rate.

Expenses of $54,270 by the Colorado Potato Administrative Committee, San Luis Valley Office (Area 2) are authorized, and an assessment rate of $0.004 per hundredweight of assessable potatoes is established for the fiscal period ending August 31, 1992. Unexpended funds may be carried over as a reserve.

Dated: July 17, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–17457 Filed 7–22–91; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-ANE-19; Amdt. 39-7068]

Airworthiness Directives; Rolls-Royce plc (RR) GEM Mk 530 Series Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to RR GEM Mk 530 series

engines, which requires a repetitive leak check inspection of the hydromechanical fuel control unit (HMU). This AD also requires a one-time x-ray or disassembly inspection to confirm correct assembly of the HMU. This amendment is prompted by two events of significant external fuel leakage from the HMU. This condition, if not corrected, could result in a fire hazard in the engine nacelle.

DATES: Effective August 12, 1991.

Comments must be received no later than August 12, 1991.

The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Federal Register as of August 12, 1991.

ADDRESSES: Submit comments in duplicate to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–ANE–19, 12 New England Executive Park, Burlington, Massachusetts 01803–5299, or delivered in duplicate to room 311 at the above address.

Comments may be inspected at the above location between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service information may be obtained from United Technologies Corporation, Hamilton-Standard Division, Technical Publications Department, One Hamilton Road, Windsor Locks, Connecticut 06096–1010. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Diane Cook, Engine Certification Office, ANE–142, Engine and Propeller Directorate, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone (617) 273–7082.

SUPPLEMENTARY INFORMATION: Two revenue service events have occurred, where significant fuel has leaked from the HMU in the area of the electrical connector. The cause of the leakage has been determined to be incorrect assembly of the torque motor transfer tube preformed packing and backup retaining ring assembly. It has also been determined that the misassembly can occur at HMU overhaul, or at new HMU manufacture. Therefore, inclusion of the x-ray or disassembly one-time inspection, (required to be completed by December 31, 1991), in this AD, without any further public notice is substantiated as follows. The population of affected units is unknown, and timely execution and completion of this program requires initiation of the one-time inspections. Further, any delay in incorporation of the one-time inspection program may result in a very short compliance interval. In addition, based on inspection findings the compliance schedule may be subject to further modification. For the above reasons, incorporation of the one-time inspection requirement in this AD is justified in order to minimize the duration of the inspection program, prevent a very short compliance interval, and reduce the exposure of revenue service aircraft to a potentially significant engine fire hazard. This condition, if not corrected, could result in external fuel leakage from the HMU, and a fire hazard in the engine nacelle.

Since this situation is likely to exist or develop on other engines of the same type design, this AD requires repetitive visual inspection of the HMU for external fuel leakage. This AD also requires a one-time x-ray or disassembly inspection of the HMU preformed packing and backup retaining ring assembly to determine correct assembly. The repetitive inspection program is not required for HMU's determined to be assembled correctly.

Since this condition could result in a fire hazard to the aircraft, there is a need to minimize the exposure of revenue service aircraft to this unsafe condition. Therefore, safety in air transportation requires adoption of this regulation without prior notice and public comment. In addition, based on the above and the need to inspect the HMU to identify external fuel leakage and incorrect assembly as soon as practicable, a situation exists that requires the immediate adoption of this regulation. Therefore, it is found that notice and public procedure are impracticable, and good cause exists for the adoption of the amendment without public comment, and good cause exists for making this amendment effective in less than 30 days.

Although this action is in the form of a final rule, which involves an emergency and, thus, was not preceded by notice and public procedure, interested persons are invited to submit such written, data views, or arguments as they may desire regarding this AD. Communications should identify the docket number and be submitted to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–ANE–19, 12 New England Executive Park, Burlington, Massachusetts 01803–5299. All communications received by the deadline date indicated above will be considered by the Administrator, and the AD may be changed in light of the comments received.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, and Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

91–15–05—**Rolls-Royce plc:** Amendment 39–7068. Docket No. 91–ANE–19.

Applicability: Rolls-Royce plc (RR) GEM Mk 530 series engines, installed on, but not limited to, Westland 30 aircraft.

Compliance: Required as indicated, unless previously accomplished.

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The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, and Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

91–15–05—**Rolls-Royce plc:** Amendment 39–7068. Docket No. 91–ANE–19.

Applicability: Rolls-Royce plc (RR) GEM Mk 530 series engines, installed on, but not limited to, Westland 30 aircraft.

Compliance: Required as indicated, unless previously accomplished.

To prevent external fuel leakage from the hydromechanical fuel control unit (HMU) which could result in a fire hazard in the engine nacelle, accomplish the following:

(a) For engines equipped with Hamilton-Standard Model JFC118–22 HMU, part numbers 779218–3, 779218–6, 779218–9, 779218–12, excluding HMU's marked "MS090-001" adjacent to the identification plate, perform the following:

(1) Perform an HMU leak check inspection in accordance with RR Service Bulletin (SB) GEM–73–24, dated October 29, 1990, within the next 15 hours time in service after the effective date of this AD.

(2) Thereafter, reinspect the HMU daily for fuel leakage within 30 minutes of the last shut-down of the day, in accordance with RR SB GEM–73–24.

(3) Remove from service, prior to further flight, HMU's exhibiting any fuel leakage when inspected in accordance with paragraphs (a)(1) or (a)(2) of this AD.

(4) X-ray or disassemble inspect the HMU for correct assembly in accordance with the Accomplishment Instructions of Hamilton-Standard (HS) SB JFC118–22–73–10, dated November 21, 1990, at the next engine shop visit or HMU removal, or by December 31, 1991, whichever occurs first.

(5) Remove from service, prior to further flight, HMU's confirmed incorrectly assembled when inspected in accordance with paragraph (a)(4) of this AD.

(6) For HMU's determined to be correctly assembled when inspected in accordance with paragraph (a)(4) of this AD, the repetitive inspections of paragraphs (a)(1) or (a)(2) of this AD are no longer required.

(b) For the purpose of this AD, shop visit is defined as the induction of an engine into a shop for the conduct of maintenance.

(c) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(d) Upon submission of substantiating data by an owner or operator through an FAA Inspector (maintenance, avionics, or operations) as appropriate, an alternate method of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD may be approved by the Manager, Engine Certification Office, Aircraft Certification Service, Engine and Propeller Directorate, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803–5299.

The leak check inspection and the x-ray and disassembly inspection shall be done in accordance with the following documents:

Document	Page	Revision	Date
RR SB GEM–73–24.	All	Original	Oct. 29, 1990.
HS SB JFC118–22–73–10.	All	Original	Nov. 21, 1990.
Total Pages: 16.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the United Technologies Corporation, Hamilton-Standard Division, Technical Publications Department, One Hamilton Road, Windsor Locks, Connecticut 06096–1010. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, room 311, Burlington, Massachusetts, or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment (39–7068, AD 91–15–05) becomes effective August 12, 1991.

Issued in Burlington, Massachusetts, on June 21, 1991.

Jay J. Pardee,

Assistant Manager, Engine and Propeller Directorate Aircraft Certification Service.

[FR Doc. 91–17422 Filed 7–22–91; 8:45 am]

BILLING CODE 4910–13–M

Coast Guard

33 CFR Part 100

[CGD 05–91–37]

Special Local Regulations for Marine Events; Barnegat Bay Classic; Toms River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.502.

SUMMARY: This notice implements 33 CFR 100.502 for the Barnegat Bay Classic, an annual event to be held on August 24, 1991 in Barnegat Bay, between Island Beach and the mainland. These special local regulations are needed to provide for the safety of the participants and spectators on navigable waters during this event. The effect will be to restrict general navigation in the regulated area.

EFFECTIVE DATE: The regulations in 33 CFR 100.502 are effective from 9 a.m. to 5 p.m., August 24, 1991. In case of inclement weather causing the event to be postponed, the regulation will be effective from 9 a.m. to 5 p.m., August 25, 1991.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The Barnegat Bay Powerboat Racing Association, Toms River, New Jersey, submitted an application to hold the Barnegat Bay Classic in Barnegat Bay between Island Beach and the mainland. The event will consist of approximately fifty to sixty powerboats, ranging from 20 to 36 feet in length, racing on a designated course within the regulated area. Because this event is of the type contemplated by these regulations, the safety of the participants will be enhanced by the implementation of the special local regulations. Waterborne traffic should not be severely disrupted at any given time, because closure of the Intracoastal Waterway is not anticipated.

Dated: July 15, 1991.

W.T. Leland,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 91–17431 Filed 7–22–91; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD 05–91–34]

Special Local Regulations for Marine Events; Havre de Grace Powerboat Regatta, Susquehanna River, Havre de Grace, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.510.

SUMMARY: This notice implements 33 CFR 100.510 for the annual Havre de Grace Powerboat Regatta. The event will be held on the Susquehanna River, west of Garrett Island. The special local regulations are necessary to control vessel traffic in the immediate vicinity of this event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and participants.

EFFECTIVE DATES: The regulations in 33 CFR 100.510 are effective for the following periods:

11 a.m. to 7 p.m., August 10, 1991.
11 a.m. to 7 p.m., August 11, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer.

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Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The Susquehanna River Optimist Club has submitted an application to hold the annual Havre de Grace Powerboat Regatta on August 10 and 11, 1991, on the Susquehanna River, west of Garrett Island. The powerboat race will consist of approximately seventy five inboard hydroplanes, runabouts, and outboard performance crafts ranging from eight to twenty three feet in length racing around an oval course. Three to twelve boats will race at once, at speed up to 140 miles per hour. The races will last from four to five hours. Since this event is of the type contemplated by these regulations and the safety of the participants and spectators viewing this event will be enhanced by the implementation of special local regulations for the Susquehanna River, 33 CFR 100.510 will be in effect. Closure of the entire waterway is not anticipated and marine traffic will be allowed to proceed up the Susquehanna River using that portion of the waterway east of Garrett Island.

Dated: July 15, 1991.

W.T. Leland,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 91-17428 Filed 7-22-91; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD 05-91-36]

Special Local Regulations for Night in Venice Boat Parade, Ship Channel and Great Egg Waterway, Ocean City, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.504.

SUMMARY: This notice implements 33 CFR 100.504 for the Night in Venice Boat Parade, an annual event to be held on July 27, 1991 in the Ship Channel and on the Great Egg Waterway, Ocean City, New Jersey. These special local regulations are needed to provide for the safety of the participants and spectators on navigable waters during this event. The effect will be to restrict general navigation in the regulated area.

EFFECTIVE DATE: The regulations in 33 CFR 100.504 are effective from 5 p.m. to 11 p.m., July 27, 1991.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

SUPPLEMENTARY INFORMATION:

Drafting Information:

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The City of Ocean City, New Jersey, has submitted an application to hold the Night in Venice Boat Parade. The event will consist of approximately 125 vessels ranging from 12 to 55 feet in length. The parade will start at Ship Channel Buoy 4(LLNR 1160), cruise down the channel through Great Egg Waterway to Daybeacon 28(LLNR 33865), and return to Great Egg Waterway Buoy 2(LLNR 33800). Since this event is of the type contemplated by these regulations, the safety of the participants will be enhanced by the implementation of the special local regulations. Commercial traffic should not be severely disrupted at any given time, since commercial vessels will be permitted to transit the regulated area as the parade progresses.

Dated: July 15, 1991.

W.T. Leland,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 91-17429 Filed 7-22-91; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD 05-91-35]

Special Local Regulations for Marine Events; U.S. Marine Corps Insertion/Extraction Demonstration; Severn River, Annapolis, MD

AGENCY: Coast Guard DOT.

ACTION: Notice of implementation of 33 CFR 100.511.

SUMMARY: This notice implements 33 CFR 100.511 for the U.S. Marine Corps Insertion/Extraction Demonstration, an annual event to be held August 16, 1991 on the Severn River, Annapolis, Maryland. These special local regulations are needed to provide for the safety of the participants and spectators on navigable waters during this event. They will restrict general navigation in the regulated area.

EFFECTIVE DATES: The regulations in 33 CFR 100.511 are effective from 11:45 a.m. to 3:30 p.m., August 16, 1991.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, (804) 398-6204.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The U.S. Naval Academy, Annapolis, Maryland, submitted an application to hold the U.S. Marine Corps Insertion/Extraction Demonstration. The demonstration will be held in that portion of the Severn River bounded on the south by Dungan Basin and to the north by the State Route 450 Bascule Bridge. It will consist of marines parachuting from one H-46 Helicopter at various altitudes ranging from 2,500 to 10,000 feet. The marines will be lifted from the water by small craft and helicopter. Since this event is of the type contemplated by these regulations, the safety of the participants will be enhanced by the implementation of the special local regulations. Commercial traffic should not be severely disrupted.

Dated: July 15, 1991.

W.T. Leland,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 91-17430 Filed 7-22-91; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Parts 100 and 165

[CGD 91-038]

Safety and Security Zones

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

SUMMARY: This document gives notice of temporary safety zones, security zones, and local regulations. Periodically the Coast Guard must issue safety zones, security zones, and special local regulations for limited periods of time in limited areas. Safety zones are established around areas where there has been a marine casualty or when a vessel carrying a particularly hazardous

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EFFECTIVE DATES: The regulations in 33 CFR 100.511 are effective from 11:45 a.m. to 3:30 p.m., August 16, 1991.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, (804) 398–6204.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The U.S. Naval Academy, Annapolis, Maryland, submitted an application to hold the U.S. Marine Corps Insertion/Extraction Demonstration. The demonstration will be held in that portion of the Severn River bounded on the south by Dungan Basin and to the north by the State Route 450 Bascule Bridge. It will consist of marines parachuting from one H–46 Helicopter at various altitudes ranging from 2,500 to 10,000 feet. The marines will be lifted from the water by small craft and helicopter. Since this event is of the type contemplated by these regulations, the safety of the participants will be enhanced by the implementation of the special local regulations. Commercial traffic should not be severely disrupted.

Dated: July 15, 1991.

W.T. Leland,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 91–17430 Filed 7–22–91; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Parts 100 and 165

[CGD 91–038]

Safety and Security Zones

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

SUMMARY: This document gives notice of temporary safety zones, security zones, and local regulations. Periodically the Coast Guard must issue safety zones, security zones, and special local regulations for limited periods of time in limited areas. Safety zones are established around areas where there has been a marine casualty or when a vessel carrying a particularly hazardous cargo is transiting a restricted or congested area. Special local regulations are issued to assure the safety of participants and spectators of regattas and other marine events.

DATES: The following list concludes safety zones, security zones, and special local regulations that were established between April 1, 1991 and June 30, 1991 and have since been terminated. Also included are several zones established earlier but inadvertently omitted from the past published list.

ADDRESSES: The complete text of any temporary regulation may be examined at, and is available on request, from Executive Secretary, Marine Safety Council (G–LRA–2), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Don Harris, Regulatory Paralegal, Marine Safety Council at (202) 267–1477 between the hours of 8 a.m. and 3:30 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: The local Captain of the Port must be immediately responsive to the safety needs of the waters within his jurisdiction; therefore, he has been delegated the authority to issue these regulations. Since events and emergencies usually take place without advance notice or warning, timely publication of notice in the **Federal Register** is often precluded. However, the affected public is informed through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is frequently provided by Coast Guard patrol vessels enforcing the restrictions imposed in the zone to keep the public informed of the regulatory activity. Because mariners are notified by Coast Guard officials on scene prior to enforcement action, **Federal Register** notice is not required to place the special local regulation, security zone, or safety zone in effect. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To discharge this legal obligation without imposing undue expense on the public, the Coast Guard publishes a periodic list of these temporary local regulations, security zones, and safety zones. Permanent safety zones are not included in this list. Permanent zones are published in their entirety in the **Federal Register** just as any other rulemaking. Temporary zones are also published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. Non-major safety zones, special local regulations and security zones have been exempted from review under E.O. 12291 because of their emergency nature and temporary effectiveness.

The following regulations were placed in effect temporarily during the period April 1, 1991 through June 30, 1991 unless otherwise indicated.

Docket No.	Location	Type	Effective date
CGD1-91-023	Sandy Hook Channel	Security	Mar. 28, 91.
CGD1-91-025	New York Harbor	Security	Mar. 26, 91.
CGD1-91-032	Upper Bay And East River	Safety	June 10, 91
CGD1-91-033	Manhasset Bay	Safety	May 4, 91.
CGD1-91-038	Hudson River	Safety	June 2, 91.
CGD1-91-039	Jamaica Bay	Safety	May 9, 91.
CGD1-91-042	Upper Bay and East River	Safety	May 26, 91.
CGD1-91-047	Chester, Ct	Safety	June 12, 91.
CGD1-91-048	West Milford, N.J	Special	May 18, 91.
CGD1-91-050	New York, East River	Safety	May 16, 91.
CGD1-91-053	Long Island Sound	Safety	May 18, 91.
CGD1-91-064	Upper Bay of NY and NJ	Safety	June 10, 91.
CGD1-91-069	Connecticut River	Special	June 27, 91.
CGD1-91-070	Upper Hudson River	Safety	June 8, 91.
CGD1-91-072	Harvard-Yale Regatta	Special	June 1, 91.
CGD1-91-078	Castle Point	Safety	June 19, 91.
CGD1-91-096	Hudson River	Safety	June 28, 91.
CGD7-91-21	Marathon Offshore	Special	Apr. 28, 91.
CGD7-91-26	St Petersburg	Special	Apr. 7, 91.
CGD7-91-29	City of Ft. Lauderdale	Special	Apr. 20, 91.
CGD7-91-39	Savannah River	Special	June 7, 91.
CGD7-91-40	Lake Worth, ICW	Special	May 5, 91.
CGD7-91-44	Sertoma Club	Special	May 19, 91.
CGD7-91-56	Singer island Beach	Special	June 23, 91.
CGD7-91-57	Cape Canaveral	Special	June 29, 91.
CGD7-91-59	Lake Worth, Fl	Special	June 29, 91.
CGD8-91-09	Neches River	Special	Apr. 21, 91.
CGD8-91-14	Kawasaki Country	Special	June 16, 91.
COTP Baltimore 91-01	Patapsco River	Security	Apr. 17, 91.
COTP Boston 91-34	Boston Inner Harbor	Safety	May 18, 91.
COTP Charleston 91-45	Ashley River	Safety	June 10, 91.
COTP Cleveland 91-02	Cuyahoga River	Safety	June 6, 91.
COTP Corp Chris 91-01	Brownsville Ship Channel	Safety	Jan. 13, 91.
COTP Corp Chris 91-02	Corp Chris Ship Channel	Safety	Feb. 28, 91.
COTP Hampton 91-5-02	Chesapeake Bay	Safety	Apr. 20, 91.
COTP Hampton 91-5-03	Hampton River	Security	May 12, 91.
COTP Hampton 91-5-04	Norfolk Harbor Reach	Safety	May 31, 91.
COTP Hampton 91-5-05	Chesapeake Bay	Safety	June 28, 91.
COTP Houston 90-04	Simms Bayou	Safety	May 22, 90.
COTP Houston 90-05	Houston Ship Channel	Safety	June 4, 90.
COTP Houston 91-01	Houston Ship Channel	Safety	Apr. 6, 91.
COTP Huntington 91-01	Kanawha River	Safety	June 2, 91.
COTP Jack/ville 91-14	St. Johns River	Safety	Mar. 16, 91.
COTP Jack/ville 91-17	Intracoastal Waterway	Safety	Mar. 24, 91.
COTP Jack/ville 91-20	St Johns River	Safety	Mar. 28, 91.
COTP Jack/ville 91-31	St Johns River	Safety	Apr. 7, 91.
COTP Jack/ville 91-35	St Johns River	Safety	Apr. 13, 91.
COTP Jack/ville 91-38	Amelia River	Safety	May 3, 91.
COTP Jack/ville 91-49	St Johns River	Safety	May 19, 91.

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Docket No.	Location	Type	Effective date
COTP Jack/ville 91-55	St Johns River	Safety	June 2, 91.
COTP LA/LB 90-02	Ports of LA/LB	Safety	May 23, 91
COTP LA/LB 90-08	Ports of LA/LB	Safety	Apr. 23, 91.
COTP LA/LB 91-09	Ports of LA/LB	Safety	Apr. 29, 91
COTP LA/LB 91-10	Ports of LB	Safety	May 13, 91.
COTP LA/LB 91-11	Ports of LB	Safety	June 8, 91.
COTP LA/LB 91-12	Ports of LB	Safety	June 7, 91.
COTP LA/LB 91-13	Ports of LB	Safety	June 11, 91.
COTP LA/LB 91-14	Ports of LA	Safety	June 15, 91.
COTP Louisville 90-18	Louisville, KY	Safety	Dec. 31, 90
COTP Louisville 90-17	Louisville, KY	Safety	Dec 20, 90.
COTP Louisville 90-16	Louisville, KY	Safety	Dec. 10, 90
COTP Miami 91-24	Key Largo	Security	Apr. 1, 91.
COTP Miami 91-25	Upper Matecumbe	Security	Apr. 3, 91.
COTP Miami 91-37	Port Everglades	Safety	Apr. 19, 91.
COTP Miami 91-46	Miami	Security	May 17, 91.
COTP Mobile 91-01	Mobile Bay	Safety	Dec. 30, 90.
COTP Mobile 91-02	Mississippi Sound	Security	Jan. 21, 91.
COTP Mobile 91-03	Pescagoula River	Security	Mar. 16, 91.
COTP Mobile 90-05	Gulf Intracoastal	Safety	Aug. 9, 90.
COTP Mobile 90-06	Waters of the GICW	Safety	June 1, 90.
COTP Mobile 90-08	Mobile River	Safety	June 26, 90
COTP Mobile 90-14	Mississippi Sound	Safety	Aug. 4, 90.
COTP Mobile 90-16	Mobile Bay	Safety	Aug. 10, 90.
COTP Mobile 90-17	Mobile Bay	Safety	Nov. 15, 90.
COTP Morgan City	Lake Palourde	Safety	July 22, 90.
COTP New Orleans 90-04	Lower Mississippi	Safety	July 4, 90.
COTP New Orleans 90-05	Lower Mississippi	Safety	July 4, 90.
COTP New Orleans 90-06	Lower Mississippi	Security	Oct. 24, 90.
COTP New Orleans 90-07	M/V Green Island	Security	Oct. 27, 90.
COTP Paducah 91-02	Cumberland River	Safety	Apr. 9, 91.
COTP Paducah 91-03	Upper Mississippi	Safety	June 8, 91.
COTP Pittsburgh 91-01	Monongahela River	Safety	Feb. 22, 91.
COTP Pittsburgh 91-02	Ohio River	Safety	May 25, 91.
COTP Port Arthur 90-03	Port of Beaumont	Security	Aug. 25, 90.
COTP Port Arthur 90-04	Port of Port Arthur	Security	Aug. 31, 90.
COTP Port Arthur 90-05	Sabine Neches Waterway	Security	Aug. 29, 90.
COTP Portland 91-01	Columbia River	Safety	Mar. 5, 91.
COTP Portland 90-07	Coos Bay	Safety	Sept. 21, 90.
COTP Puget Sound 91-02	Puget Sound, Washington	Safety	May 11, 91.
COTP St Louis 91-01	Illinois River	Safety	Jan. 10, 91.
COTP St Louis 91-02	Illinois River	Safety	Jan. 11, 91.
COTP St Louis 91-03	Illinois River	Safety	Jan. 17, 91
COTP St Louis 91-04	Illinois River	Safety	Jan. 22, 91
COTP St Louis 91-05	Upper Mississippi	Safety	Apr. 1, 91.
COTP St Louis 91-06	Upper Mississippi	Safety	May 10, 91
COTP St Louis 91-07	Upper Mississippi	Safety	May 7, 91
COTP St Louis 91-08	Upper Mississippi	Safety	May 7, 91
COTP SF Bay 91-05	San Francisco Bay	Safety	May 4, 91.
COTP SF Bay 91-06	San Francisco Bay	Safety	June 9, 91.
COTP SF Bay 91-08	San Francisco Bay	Safety	June 14, 91
COTP San Juan 91-02	San Juan Harbor	Safety	May 19, 91
COTP Savannah 91-16	Savannah River	Safety	Apr. 9, 91.
COTP Savannah 91-23	Savannah River	Safety	Apr. 6, 91.
COTP Savannah 91-53	Savannah River	Safety	May 23, 91
COTP Tampa 91-47	Tampa Bay	Security	May 20, 91
COTP Tampa 91-51	Crystal River	Safety	May 24, 91

Dated: July 10, 1991.

D.M. Wrye,

Lieutenant Commander, USCG, Acting Executive Secretary, Marine Safety Council.

[FR Doc. 91-17247 Filed 7-22-91; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3972-3]

Reconsideration of Certain Federal RACT Rules for Illinois

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of compliance date extension (12-4-5154).

SUMMARY: Today's action announces a 60-day compliance date extension for the applicability of certain Federal rules requiring Reasonably Available Control Technology (RACT) to control the emission of volatile organic compounds (VOCs) in the Illinois portion of the Chicago ozone nonattainment area (55 FR 26814, June 29, 1990). The effectiveness of these regulations, including the applicable compliance dates, is stayed for 60 days (until August 30, 1991) for the following parties: (1) The Illinois Environmental Regulatory Group (IERG), including its member companies; (2) Allsteel, Incorporated (Allsteel); (3) Riverside Laboratories, Incorporated (Riverside); (4) the Printing Industry of Illinois/Indiana, including its member companies, and R.R. Donnelley & Sons Company; (5) Reynolds Metals Company (Reynolds); (6) General Motors Corporation (GM); (7) Stepan Company (Stepan); and (8) Duo-Fast Corporation (Duo-Fast). USEPA is issuing this compliance date extension pursuant to sections 110(c), 301(a) and 307(d)(1)(B) of the Clean Air Act (CAA), 42 U.S.C. 7410(c), 7601(a) and 7607(d)(1)(B), which allow the Agency to revise a Federal implementation plan. The Agency is not subjecting this rulemaking to notice and comment

Location	Type	Effective date
	Safety	June 2, 91.
	Safety	May 23, 91.
	Safety	Apr. 23, 91.
	Safety	Apr. 29, 91
	Safety	May 13, 91.
	Safety	June 8, 91.
	Safety	June 7, 91.
	Safety	June 11, 91.
	Safety	June 15, 91.
	Safety	Dec. 31, 90
	Safety	Dec. 20, 90.
	Safety	Dec. 10, 90
	Security	Apr. 1, 91.
nbe	Security	Apr. 3, 91.
s	Safety	Apr. 19, 91.
	Security	May 17, 91.
	Safety	Dec. 30, 90.
nd	Security	Jan. 21, 91.
ver	Security	Mar. 16, 91.
al	Safety	Aug. 9, 90.
GICW	Safety	June 1, 90.
	Safety	June 26, 90
nd	Safety	Aug. 4, 90.
	Safety	Aug. 10, 90.
	Safety	Nov. 15, 90.
	Safety	July 22, 90.
opi	Safety	July 4, 90.
opi	Safety	July 4, 90.
opi	Security	Oct. 24, 90.
and	Security	Oct. 27, 90.
ver	Safety	Apr. 9, 91.
opi	Safety	June 8, 91.
River	Safety	Feb. 22, 91.
	Safety	May 25, 91.
ont	Security	Aug. 25, 90
thur	Security	Aug. 31, 90.
Waterway	Security	Aug. 29, 90.
	Safety	Mar. 5, 91.
	Safety	Sept. 21, 90.
Washington	Safety	May 11, 91.
	Safety	Jan. 10, 91.
	Safety	Jan. 11, 91.
	Safety	Jan. 17, 91
	Safety	Jan. 22, 91
opi	Safety	Apr. 1, 91.
opi	Safety	May 10, 91
opi	Safety	May 7, 91
opi	Safety	May 7, 91
Bay	Safety	May 4, 91.
Bay	Safety	June 9, 91.
Bay	Safety	June 14, 91
or	Safety	May 19, 91
r	Safety	Apr. 9, 91.
r	Safety	Apr. 6, 91.
r	Safety	May 23, 91.
	Security	May 20, 91
	Safety	May 24, 91.

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companies; (2) Allsteel, Incorporated (Allsteel); (3) Riverside Laboratories, Incorporated (Riverside); (4) the Printing Industry of Illinois/Indiana, including its member companies, and R.R. Donnelley & Sons Company; (5) Reynolds Metals Company (Reynolds); (6) General Motors Corporation (GM); (7) Stepan Company (Stepan); and (8) Duo-Fast Corporation (Duo-Fast). USEPA is issuing this compliance date extension pursuant to sections 110(c), 301(a) and 307(d)(1)(B) of the Clean Air Act (CAA), 42 U.S.C. 7410(c), 7601(a) and 7607(d)(1)(B), which allow the Agency to revise a Federal implementation plan. The Agency is not subjecting this rulemaking to notice and comment

based on the good cause exception in the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B). Further, this compliance date extension will be immediately effective upon signature of the Administrator pursuant to the APA, 5 U.S.C. 553(d) (1) and (3) for good cause and because it relieves a restriction.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Regulation Development Branch, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6036.

SUPPLEMENTARY INFORMATION:

I. Background

On April 1, 1987, the State of Wisconsin filed a complaint in the United States District Court for the Eastern District of Wisconsin seeking that USEPA, among other actions, revise the Illinois and Indiana ozone implementation plans in conformance with section 172 (b) and (c) of the CAA (*Wisconsin* v. *Reilly*, No. 87-C-0395, E.D. Wis. Sep. 22, 1989). As a result of a court-approved settlement agreement signed by USEPA and the States of Illinois and Wisconsin on September 22, 1989, USEPA agreed to reduce emissions of VOCs, an ozone precursor, by promulgating revision to the VOC RACT rules contained in the Illinois State Implementation Plan (SIP) for ozone.

The settlement agreement set a tight deadline for the completion of the rulemaking, requiring USEPA to promulgate final revisions to correct the VOC RACT rules in the Illinois SIP by March 18, 1990. While that date was later extended to June 8, 1990, it left USEPA with little time to complete an especially demanding and complex task.[1] On June 29, 1990, USEPA promulgated final Federal rules (55 FR 26814) requiring RACT to control the emission of VOCs in six counties in the Chicago metropolitan area: Cook, DuPage, Kane, Lake, McHenry, and Will Counties.

Ten petitions for review of USEPA's June 29, 1990, revisions to the Illinois SIP were filed in and consolidated by the United States Court of Appeals for the Seventh Circuit, as a result of certain motions and court orders; five of the petitions have been severed in whole or in part from the consolidated case,[2] *Illinois Environmental Regulatory Group ("IERG"), et al.* v. *Reilly*, No. 90-2778. In addition, Reynolds, initially a petitioner, was subsequently granted intervenor status at its request.

Today's action deals with the five parties remaining in the consolidated case *IERG* v. *Reilly* (No. 90-2778), with GM; and with Duo-Fast and Stepan.[3] These parties are the only sources subject to the federally promulgated RACT rules that have suggested through a challenge to those rules that the July 1, 1991, compliance date is unreasonable (and that they, therefore, need a short extension of the compliance date), and for whom USEPA has not agreed to reconsider the rules. Hence, as to the identified rules for these parties, USEPA is extending the compliance date for 60 days, until August 30, 1991, a *de minimis* time period.

This 60-day compliance date extension is not inconsistent with the Clean Air Act Amendments of 1990 (CAAA), Public Law 101-549, 104 section 2399. The amended CAA includes a provision, section 193, 42 U.S.C. 7515, that requires areas seeking revisions to a SIP (or, as in this instance, federally promulgated revisions) to assure that the plan will achieve "equivalent" emission reductions. Equivalent reductions must occur during the same time period in which it would have been reasonable for the area to comply with the implementation plan. USEPA recognizes, however, that this may not be feasible, in all instances. As a result, under the power granted in section 301(a), of the CAA, USEPA has interpreted the statute to allow for a *de minimis* exception. *Cf. Alabama Power Co.* v. *Costle*, 636 F. 2d 323, 360 (DC Cir. 1980). In the present case, USEPA is extending the compliance date for specific sources for a minimal period.[4] The administrative burden required to produce equivalent emission reductions for the 60-day period, and for establishing those new limits through a rulemaking procedure, greatly outweighs the minimal benefit received under the present circumstance. Stated differently, since the time of extension is so limited, the equivalent reductions that could be achieved during the extension period are so minimal that they cannot justify the Agency's efforts in attempting to achieve them; therefore, the Agency is justified in allowing this *de minimis* exception from the statutory design. See *Id.*; *District of Columbia* v. *Orleans*, 406 F.2d 957, 959 (DC Cir. 1968).

II. The Compliance Date Extension

The time for complying with the rules promulgated by USEPA on June 29, 1990, as RACT to control VOC emissions in the Illinois portion of the Chicago ozone nonattainment area is extended for 60

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[1] For example, the rulemaking established regulatory requirements governing the emissions of approximately 1000 sources. In addition, USEPA reviewed approximately four linear feet of public comments prior to promulgation of the final rule.

[2] On December 7, 1990, the Court granted a joint motion for severance and deferred briefing for Minnesota Mining and Manufacturing Company (3M). 3M challenged the RACT rules as they applied to the emission of perflouro-carbons. In the final RACT rulemaking, USEPA provided that the RACT rules to the extent that they applied to those emissions, would not apply until "one year from the date USEPA acts on 3M's petition" (55 FR at 26844, 26863). USEPA has not yet taken action on that petition.

On November 2, 1990, USEPA filed a motion to hold briefing in abeyance for certain issues related to three of the petitioners: GM, Viskase Corporation and Allsteel. In that motion USEPA represented to the Court its intent to undertake an administrative stay and reconsideration for particular sources of air emissions at those petitioners' facilities. On December 7, 1990, the Court granted USEPA's motion to hold briefing in abeyance and severed the appeals for GM, Viskase and Allsteel from the consolidated action. On December 20, 1990, the Court clarified its order with regard to Allsteel, such that Allsteel's appeal remained with the consolidated actions for purposes of briefing the issues not covered by USEPA's November 2, 1990, motion (i.e., issues not related to Allsteel's adhesive lines). On January 4, 1991 (56 FR 460), USEPA announced a 3-month partial stay and reconsideration of some of the June 29, 1990, RACT rules for the General Motors, Viskase, and Allsteel. At that time, USEPA also proposed to extend the stay beyond the 3-month period, if and as necessary to complete reconsideration of the subject rules.

On March 1, 1991, the Court granted USEPA's unopposed motion for expedited severance of petitions and to hold in abeyance the briefing schedule for petitioners Duo-Fast and Stepan. USEPA is currently in the process of issuing a three-month administrative stay of the applicable rules and compliance dates pursuant to section 307(d)(7)(B) for Duo-Fast and Stepan. Moreover, the Agency will be proposing to temporarily stay the effectiveness of the applicable rules and compliance dates beyond the three months for those facilities if and as needed to complete consideration of their Petitions for Reconsideration.

[3] This 60-day compliance date extension applies to those two companies to Stepan and Duo-Fast only to the extent that USEPA does not complete its source-specific rulemaking before July 1, 1991.

[4] USEPA further notes that the original compliance period of one year was a relatively short period. Even with the sixty-day compliance date extension, the compliance period remains relatively short.

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days until August 30, 1991 for (1) IERG, including its member companies; (2) Allsteel; (3) Riverside; (4) Printing Industry of Illinois/Indiana, including its member companies, and R.R. Donnelley & Sons Company; (5) Reynolds; (6) GM; (7) Duo-Fast; and (8) Stepan.

III. Issuance of Compliance-Date Extension and Purpose

USEPA hereby issues a 60-day compliance date extension for compliance with the June 29, 1990, federally-promulgated VOC RACT rules as they pertain to the eight parties identified above. The purpose of this compliance date extension is to provide a *de minimis* amount of time that is necessary for these parties to comply with the RACT rules.

IV. Authority for Compliance-Date Extension and Reconsideration

The compliance date extension announced by this notice is being undertaken pursuant to section 307(d)(1)(B) of the CAA, 42 U.S.C. 7607(d)(1)(B). However, USEPA has determined that the good cause exception to notice-and-comment rulemaking applies.

The CAA establishes the administrative procedure for certain types of actions taken pursuant the CAA, including federally promulgated implementation plan revision actions (section 307(d), 42 U.S.C. 7607(d)). For these actions, the CAA provides a comprehensive set of procedures for rulemaking which expressly displaces the requirement to comply with many of the rulemaking provisions of the APA. One provision that still applies, however, is provision concerning exceptions from following the notice-and-comment requirement, 5 U.S.C. 553(b) (A) and (B). Under section 553(b)(B), an agency may dispense with the notice-and-comment procedure in a rulemaking upon a good cause finding that the procedure is "impracticable, unnecessary, or contrary to the public interest."

Notice and comment in the present proceeding is impracticable. It is impracticable for the Agency to provide notice and accept comment due to the imminent approach of the original compliance date. See *Council of Southern Mountains, Inc.* v. *Donovan,* 653 F. 2d 573, 581 (DC Cir. 1981). Since the deferred compliance date is for a relatively short period of time, and USEPA fully expects the new compliance date to remain in effect, USEPA may justifiably forego notice and comment. *Id.* Since the Administrator finds good cause for not providing notice and an opportunity for comment, USEPA is issuing the extension today as a final rule. Further, this compliance date extension will be immediately effective upon signature of the Administrator pursuant to the APA, 5 U.S.C. 553(d) (1) and (3) for good cause and because it relieves a restriction.

Under Executive Order 12291, this action is not "major". It has been submitted to the Office of Management and Budget for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone.

Identification of Document: 60-Day Compliance Date Extension of the June 29, 1990 federally promulgated RACT rules as they pertain to certain parties in *IERG* v. *Reilly.*

Dated: July 1, 1991.

William K. Reilly,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart O—Illinois

2. Section 52.741, is amended by adding paragraph (z)(2) to read as follows:

§ 52.741 Control strategy: Ozone control measures for Cook, Dupage, Kane, Lake, McHenry, and Will Counties.

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(z) * * *

(2) Compliance with all of 40 CFR 52.741 is stayed for 60 days (July 1, 1991 until August 30, 1991) as it pertains to the following parties; the Illinois Environmental Regulatory Group including its approximately 40 member firms; Allsteel, Incorporated; Riverside Laboratories, Incorporated; the Printing Industry of Illinois/Indiana Association including its member firms, and R.R. Donnelley & Sons Company; the rules applicable to General Motors Corporation; Reynolds Metals Company; Stepan Company; and Duo-Fast Corporation. Final compliance for these parties is extended 60 days from July 1, 1991 until August 30, 1991.

[FR Doc. 91–16491 Filed 7–22–91; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[FRL 3972-4]

Reconsideration of Certain Federal RACT Rules for Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of stay and reconsideration (IL 12–5–5133).

SUMMARY: Today's action announces a 3-month stay of certain Federal rules requiring Reasonably Available Control Technology (RACT) to control volatile organic compounds (VOCs) in the Illinois portion of the Chicago ozone nonattainment area (55 FR 26814, June 29, 1990). The effectiveness of the following rules, including the applicable compliance dates, is stayed for 3 months pending reconsideration: (1) The emission limitations and standards for miscellaneous metal parts and products coating operations only as applied to Duo-Fast Corporation's (Duo-Fast) "power driven metal fastener" manufacturing facility in Franklin Park, Illinois (55 FR at 26868–9, codified at 40 CFR 52.741(e)(1)(i)(J)), as well as the July 1, 1991, compliance date (55 FR at 26872, codified at 40 CFR 52.741(e)(5)); and (2) the emission limitations and standards for miscellaneous organic chemical manufacturing processes only as applied to Stepan Company's (Stepan) manufacturing facility near Millsdale, Illinois (55 FR at 26884, codified at 40 CFR 52.741(w)(3)), as well as the July 1, 1991, compliance date (55 FR at 26884, codified at 40 CFR 52.741(w)(4)). USEPA is issuing this stay pursuant to Clean Air Act (CAA) section 307(d)(7)(B), 42 U.S.C. 7607(d)(7)(B), which provides the Administrator with authority to stay the effectiveness of a rule during reconsideration.

Elsewhere in the Proposed Rules section of today's **Federal Register**, USEPA proposes, under CAA sections 110(c) and 301(a)(1), 42 U.S.C. 7410(c) and 7601(a)(1), to temporarily stay the effectiveness of these rules and applicable compliance dates beyond the 3 months provided by this stay, but only if and as long as necessary to complete reconsideration of the rules in question.

EFFECTIVE DATE: Effective July 23, 1991, the following rules and applicable compliance dates are stayed until October 23, 1991: (1) Emission limitations and standards for the miscellaneous metal parts and products coating operations only as applied to Duo-Fast's "power driven metal

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40 CFR Part 52

[FRL 3972–4]

Reconsideration of Certain Federal RACT Rules for Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of stay and reconsideration (IL 12–5–5133).

SUMMARY: Today's action announces a 3-month stay of certain Federal rules requiring Reasonably Available Control Technology (RACT) to control volatile organic compounds (VOCs) in the Illinois portion of the Chicago ozone nonattainment area (55 FR 26814, June 29, 1990). The effectiveness of the following rules, including the applicable compliance dates, is stayed for 3 months pending reconsideration: (1) The emission limitations and standards for miscellaneous metal parts and products coating operations only as applied to Duo-Fast Corporation's (Duo-Fast) "power driven metal fastener" manufacturing facility in Franklin Park, Illinois (55 FR at 26868–9, codified at 40 CFR 52.741(e)(1)(i)(J)), as well as the July 1, 1991, compliance date (55 FR at 26872, codified at 40 CFR 52.741(e)(5)); and (2) the emission limitations and standards for miscellaneous organic chemical manufacturing processes only as applied to Stepan Company's (Stepan) manufacturing facility near Millsdale, Illinois (55 FR at 26884, codified at 40 CFR 52.741(w)(3)), as well as the July 1, 1991, compliance date (55 FR at 26884, codified at 40 CFR 52.741(w)(4)). USEPA is issuing this stay pursuant to Clean Air Act (CAA) section 307(d)(7)(B), 42 U.S.C. 7607(d)(7)(B), which provides the Administrator with authority to stay the effectiveness of a rule during reconsideration.

Elsewhere in the Proposed Rules section of today's **Federal Register**, USEPA proposes, under CAA sections 110(c) and 301(a)(1), 42 U.S.C. 7410(c) and 7601(a)(1), to temporarily stay the effectiveness of these rules and applicable compliance dates beyond the 3 months provided by this stay, but only if and as long as necessary to complete reconsideration of the rules in question.

EFFECTIVE DATE: Effective July 23, 1991, the following rules and applicable compliance dates are stayed until October 23, 1991: (1) Emission limitations and standards for the miscellaneous metal parts and products coating operations only as applied to Duo-Fast's "power driven metal fastener" manufacturing facility in Franklin Park, Illinois (55 FR at 26868–9, to be codified at 40 CFR 52.741(e)(1)(i)(J)), as well as the July 1, 1991, compliance date (55 FR at 26872, to be codified at 40 CFR 52.741(e)(5)); and (2) the emission limitations and standards for miscellaneous organic chemical manufacturing processes only as applied to Stepan's manufacturing facility near Millsdale, Illinois (55 FR at 26884, to be codified at 40 CFR 52.741(w)(3)), as well as the July 1, 1991, compliance date (55 FR at 26884, to be codified at 40 CFR 52.741(w)(4)).

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Regulation Development Branch (5AR–26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886–6036.

SUPPLEMENTARY INFORMATION:

I. Background

On April 1, 1987, the State of Wisconsin filed a complaint in the United States District Court for the Eastern District of Wisconsin seeking that USEPA, among other actions, revise the Illinois and Indiana ozone implementation plans in conformance with section 172 (b) and (c) of the CAA (*Wisconsin* v. *Reilly*, No. 87–C–0395, E.D. Wis. Sept. 22, 1989). As a result of a Court approved settlement agreement, signed by USEPA and the States of Illinois and Wisconsin on September 22, 1989, USEPA agreed to reduce emissions of VOCs, an ozone precursor, by promulgating revisions to the VOC RACT rules contained in the Illinois State Implementation Plan (SIP) for ozone.

The settlement agreement set a tight deadline for the completion of the rulemaking, requiring USEPA to promulgate final revisions to correct the VOC RACT rules in the Illinois SIP by March 18, 1990. While that date was later extended to June 8, 1990, it left USEPA with little time to complete an especially demanding and complex task.[1] On June 29, 1990, USEPA promulgated final federal rules (55 FR 26814) requiring RACT to control the emission of VOCs in six counties in the Chicago metropolitan area: Cook, DuPage, Kane, Lake, McHenry, and Will Counties.

Subsequently, ten petitions for review of USEPA's June 29, 1990, revisions to the Illinois SIP were filed in the United States Court of Appeals for the Seventh Circuit. Duo-Fast and Stepan, the two parties directly affected by today's action, were among those filing petitions for review. On September 13, 1990, the Court, on its own motion, consolidated the ten petitions as *Illinois Environmental Regulatory Group ("IERG"), et al.* v. *Reilly*, No. 90–2778. Since then, a number of other motions have been filed with the Court. Among these is a motion USEPA filed on February 14, 1991, to expedite severance of the petitions filed by Duo-Fast and Stepan and to hold briefing in abeyance for the issues addressed in today's action. In that motion USEPA represented to the Court its intent to undertake the administrative stay and reconsideration that is the subject of the Agency action herein. In addition to filing their petitions for review in the Seventh Circuit, both of the parties directly affected by today's action have requested some form of administrative relief from the Agency. Duo-Fast filed a petition for reconsideration on November 27, 1990. Stepan requested, by letter of October 22, 1990, that USEPA reconsider its rule. After review of these parties' requests, USEPA is, by today's action, convening a proceeding for reconsideration of the rules for the reasons discussed below.

II. Rules to be Stayed and Reconsidered

Stepan and Duo-Fast have questioned whether USEPA complied with certain procedural requirements in promulgating the federal RACT rules within the time frame afforded by the settlement agreement. USEPA intends to reconsider certain rules in light of issues raised by these two petitioners, as described below.[2]

A. Duo-Fast Corporation

In Duo-Fast's November 27, 1990, petition for reconsideration, it stated that it had submitted written comments during the comment period on the proposed rule, but that USEPA had not considered those comments. However, Duo-Fast conceded that it had not submitted its comments to the individual specified in the notice of proposed rulemaking during the comment period. Because of this error, the appropriate USEPA officials were unaware that Duo-Fast had submitted written comments until several months after the final rule was promulgated. It was not until late October 1990, when counsel for Duo-Fast telephoned the USEPA counsel, that the appropriate USEPA officials became aware that Duo-Fast had attempted to file those comments. In Duo-Fast's reconsideration papers, it requested that USEPA review these misfiled comments, and reconsider the portions of the challenged rule affecting Duo-Fast in light of those comments. USEPA has determined that although Duo-Fast erred by not properly filing its comments, the comments are significant, warranting further review and response, pursuant to section 307(d)(6)(B) of the CAA. Accordingly, USEPA intends to evaluate Duo-Fast's comments and, if appropriate, to revise the emission limitations applicable to Duo-Fast's manufacturing facility in Franklin Park Illinois.

B. Stepan Company

By letter of October 22, 1990, Stepan requested that USEPA reconsider its rule as applicable to Stepan, on the basis that USEPA had not adequately responded to certain comments. More specifically, Stepan had sought to demonstrate in its comments that certain emission sources at its plant were *de minimis* and should be exempt from the proposed emissions control requirements in proposed 40 CFR 52.741(w). In response to Stepan's comments, USEPA clarified that storage tanks at the Stepan plant were exempt from 40 CFR 52.741 of the final rule. After reviewing Stepan's request for reconsideration, USEPA has concluded that Stepan's comments did not adequately reflect its position that not only its storage tanks, but also its "process vent" sources with low emission levels should be exempted from the control requirements in § 52.741(w). USEPA now intends to evaluate Stepan's comments in light of its clarified position and, if appropriate, to revise emission limitations applicable to Stepan's manufacturing facility, following the applicable notice and comment procedures of section 307(d) of the CAA. As part of that process, USEPA plans to conduct a detailed, site-specific analysis at Stepan's plant to determine the appropriate control requirements for its emissions sources.

III. Issuance of Stay

USEPA hereby issues a 3-month administrative stay of the effectiveness of the following rules, including the applicable compliance dates, promulgated as final federal rules requiring RACT to control VOCs in the Illinois portion of the Chicago ozone nonattainment area (55 FR 26814, June 29, 1990): (1) The emission limitations and standards for miscellaneous metal parts and products coating operations only as applied to Duo-Fast's "power-driven metal fastener" manufacturing

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[1] For example, the rulemaking established regulatory requirements governing the emissions of approximately 1000 sources. In addition, USEPA reviewed approximately four linear feet of public comments prior to promulgation of the final rule.

[2] By staying these rules and convening a proceeding for reconsideration, USEPA in no manner concedes that it violated any provision of the Clean Air Act or the Administrative Procedure Act.

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facility in Franklin Park, Illinois (55 FR at 26868–9, codified at 40 CFR 52.741(e)(1)(i)(J)), as well as the July 1, 1991, compliance date (55 FR at 26872, codified at 40 CFR 52.741(e)(5)); and (2) the emission limitations and standards for miscellaneous organic chemical manufacturing processes only as applied to Stepan's manufacturing facility near Millsdale, Illinois (55 FR at 26884, codified at 40 CFR 52.741(w)(3)) as well as the July 1, 1991, compliance date (55 FR at 26884, codified at 40 CFR 52.741(w)(4)). USEPA will reconsider these rules, as discussed above. If the reconsideration results in emission limitations and standards which are stricter than the existing and applicable Illinois rules, USEPA will propose a compliance period of 1 year from the date of final action on reconsideration. Note that a 1-year compliance period was the general compliance period provided in the federal RACT rules promulgated June 29, 1990 (55 FR at 26814). As a general matter, USEPA will provide an adequate period for compliance upon completion of its final action on reconsideration. In essence, USEPA will seek to ensure, as described above, that the affected parties are not unduly prejudiced by the Agency's reconsideration.

USEPA recognizes the interests of the State of Wisconsin in this matter [3] The regulatory requirements that will be stayed, pursuant to today's action, were undertaken in the context of a settlement agreement between USEPA and the States of Wisconsin and Illinois. See Background discussion above. In recognition of those obligations, USEPA will reconsider the rules in question as expeditiously as practible.

IV. Authority for Stay and Reconsideration

The administrative stay and reconsideration of the rules and associated compliance periods announced by this notice are being undertaken pursuant to section 307(d)(7)(B) of the CAA, 42 U.S.C. 7607(d)(7)(B). That provision authorizes the Administrator to stay the effectiveness of a rule for 3 months during reconsideration of the rulemaking action.

V. Proposed Additional Temporary Stay

USEPA may not be able to complete the reconsideration (including any appropriate regulatory action) of the rules stayed by this notice within the 3-month period expressly provided in section 307(d)(7)(B). If USEPA does not complete the reconsideration in this time frame then the Agency will extend temporarily the stay of the effectiveness of the emission limitations and applicable compliance dates until USEPA completes final rulemaking action upon reconsideration. In the Proposed Rules Section of today's **Federal Register**, USPEA proposes a temporary extension of the stay beyond the 3 months provided, only if and as long as necessary to complete reconsideration of the rules in question.

Under Executive Order 12291 this action is not "major". It has been submitted to the Office of Management and Budget for Review.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone.

Identification of Document: Notice of a 3-month Stay of portions of the Chicago Federal Implementation Plan as they pertain to Duo-Fast Corporation and Stepan Company.

Dated: July 1, 1991.

William K. Reilly,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40 of the Code of Federal Regulations, chapter I, part 52, subpart O is being amended as follows:

Subpart O—Illinois

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.741 is amended by adding paragraph (3) to read as follows:

§ 52.741 Control strategy: Ozone control measures for Cook, DuPage, Kane, Lake, McHenry, and Will Counties.

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(3) Compliance with the following rules are stayed from July 23, 1991 to October 23, 1991:

(i) 40 CFR 52.741(e)(1)(i)(J) and 40 CFR 52.741(e)(5) only as they apply to Duo-Fast Corporation's Franklin Park, Illinois "power-driven metal fastener" manufacturing facility, and

(ii) 40 CFR 52.741(w)(3) and (4) only as they apply to Stepan Company's miscellaneous organic chemical manufacturing processes at its manufacturing facility located near Millsdale, Illinois.

[FR Doc. 91–16492 Filed 7–22–91; 8:45 am]

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40 CFR Part 52

[FRL–3975–6]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Missouri has promulgated a regulation requiring any person responsible for a source of emission of air contaminants anywhere in the state to make or have made tests to determine the quantity and/or nature of emissions of air contaminants from the source at the request of the Director of the Missouri Department of Natural Resources. This rule broadens the authority of the director in matters of air pollution control strategies allowing the director to maintain a current emission inventory. In addition, this rule expands the capabilities of the state to enforce emission regulations.

DATES: This action will be effective September 23, 1991, unless notice is received within 30 days of publication that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the state submittal for this action are available for public inspection during normal business hours at: the Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; Missouri Department of Natural Resources, Air Pollution Control Program, Jefferson State Office Building, 205 Jefferson Street, Jefferson City, Missouri 65101; Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert J. Lambrechts at (913) 551–7846 (FTS 276–7846).

SUPPLEMENTARY INFORMATION:

Background

The promulgation of rule 10 CSR 10–6.180 gives the director authority to order sources of air contaminants to test and report their emissions. This new rule provides that the director may require any person responsible for the source of emission of air contaminants

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[3] USEPA representatives have conferred with representatives of the Wisconsin Attorney General's office regarding the possible need for USEPA to undertake reconsideration of the regulatory requirements applicable to the two parties in question here.

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[FR Doc. 91–16492 Filed 7–22–91; 8:45 am]

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40 CFR Part 52

[FRL-3975-6]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Missouri has promulgated a regulation requiring any person responsible for a source of emission of air contaminants anywhere in the state to make or have made tests to determine the quantity and/or nature of emissions of air contaminants from the source at the request of the Director of the Missouri Department of Natural Resources. This rule broadens the authority of the director in matters of air pollution control strategies allowing the director to maintain a current emission inventory. In addition, this rule expands the capabilities of the state to enforce emission regulations.

DATES: This action will be effective September 23, 1991, unless notice is received within 30 days of publication that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the state submittal for this action are available for public inspection during normal business hours at: the Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; Missouri Department of Natural Resources, Air Pollution Control Program, Jefferson State Office Building, 205 Jefferson Street, Jefferson City, Missouri 65101; Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert J. Lambrechts at (913) 551–7846 (FTS 276–7846).

SUPPLEMENTARY INFORMATION:

Background

The promulgation of rule 10 CSR 10–6.180 gives the director authority to order sources of air contaminants to test and report their emissions. This new rule provides that the director may require any person responsible for the source of emission of air contaminants to make or have made tests to determine the quantity and/or nature of emission of air contaminants from the source. The director may further specify testing methods to be used in accordance with good professional practice.

All tests are to be conducted by reputable, qualified personnel.

The state of Missouri published the proposed rule in the August 15, 1990, **Missouri Register**. Proper notice was published and a hearing was held on September 27, 1990, at a Missouri Air Conservation Commission (MACC) meeting. The MACC formally adopted this rule on November 19, 1990. The final rulemaking was submitted to EPA on March 4, 1991.

EPA Action

EPA approves Missouri's adoption of the rule providing authority to the Director to order measurements of emissions of air contaminants as meeting the requirements of section 110 of the Clean Air Act.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective September 23, 1991, unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action, and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective September 23, 1991.

Under 5 U.S.C. 605(b), the Regional Administrator certifies that this SIP revision will not have a significant impact on a substantial number of small entities. (See 46 FR 8709.)

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific, technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action by the Regional Administrator under the procedure published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225).

The Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 23, 1991. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, and Reporting and recordkeeping requirements.

Dated: June 28, 1991.

Morris Kay,

Regional Administrator.

40 CFR part 52 is amended as follows:

Subpart AA—Missouri

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1320 is amended by adding paragraph (c)(78) to read as follows:

§ 52.1320 Identification of plan.

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(c) * * *

(78) The Missouri Department of Natural Resources submitted new rule 10 CSR 10–6.180, Measurement of Emissions of Air Contaminants, on March 4, 1991.

(i) Incorporation by reference.

(A) New rule 10 CSR 10–6.180 entitled "Measurement of Emissions of Air Contaminants" published November 19, 1990, effective December 31, 1990.

[FR Doc. 91–17389 Filed 7–22–91; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[FRL-3976-4]

Approval and Promulgation of Air Quality Implementation Plans; Oklahoma; Prevention of Significant Deterioration Nitrogen Dioxide Increment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This notice approves State Implementation Plan (SIP) revisions submitted by the State of Oklahoma. These revisions adopt Prevention of Significant Deterioration (PSD) nitrogen dioxide (NO_2) increments and related requirements. The intended effect of this action is to approve revisions to the PSD program to implement the NO_2 increments in the State of Oklahoma in accordance with 40 CFR 51.166.

EFFECTIVE DATE: This action will become effective on September 23, 1991, unless notice is received by August 22, 1991, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Planning Section of the EPA Region 6, Air Programs Branch (address below). Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–A), 1445 Ross Avenue, Dallas, Texas 75202–2733
Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460
Oklahoma State Department of Health, Air Quality Service, 1000 Northeast 10th Street, Oklahoma City, Oklahoma 73152.

FOR FURTHER INFORMATION CONTACT: Robin M. Sullivan, telephone (214) 655–7214 or (FTS) 255–7214.

SUPPLEMENTARY INFORMATION:

I. Background

On October 17, 1988 (53 FR 40656), EPA promulgated regulations under section 166 of the Clean Air Act to prevent significant deterioration of air quality from emissions of nitrogen oxides. These regulations establish the maximum increase in ambient nitrogen dioxide concentrations allowed in an area above the baseline concentration. These maximum allowable increases are called "increments". The minimum Federal requirements for the PSD NO_2 increment program (effective October 17, 1989) are set forth in 40 CFR 51.166. State PSD programs must meet all of these requirements. The intended effect of these regulations is to require all applicants for major stationary sources and major modifications emitting nitrogen oxides to account for and, if necessary, to restrict emissions so as not to cause or contribute to exceedances of the increment. The Oklahoma PSD program was originally approved by EPA on August 25, 1983 (48 FR 38635).

II. Oklahoma's PSD NO_2 Increment Program

On November 14, 1990, the Governor of Oklahoma submitted revisions to Regulation 1.1 "Defining Terms Used in Oklahoma Air Pollution Control Regulations", Regulation 1.2 "Oklahoma Air Quality Standards and Increments", and Regulation 1.4 "Permits". A detailed description of these changes and EPA's evaluation of their consistency with Federal regulations is found in the accompanying technical support document, titled "Technical Support Document—State of Oklahoma Prevention of Significant Deterioration (PSD) Nitrogen Dioxide (NO_2) Increment". Copies of this document are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this notice. A summary of the amendments to Regulation 1.1, 1.2 and 1.4 follows.

Regulation 1.1 revised the definitions of Baseline Area, Baseline Concentration, Baseline Date and Net Emissions Increase to be consistent with the Federal definitions found in 40 CFR 51.166. The EPA's review of the definitions of Baseline Date and Baseline Concentration found a few minor inconsistencies with the Federal definitions. In the definition of Baseline Concentration, both in Regulation 1.1(b)(15)(B)(i) and Regulation 1.4.4(b)(13)(B)(i), the word "stationary" was omitted between the words "major" and "source". In the definition of Baseline Date, both in Regulation 1.1(b)(16)(B)(ii) and Regulation 1.4.4(b)(14)(B)(ii), the words "nitrogen oxides" were used instead of "nitrogen dioxide".

These minor inconsistencies were determined to be not operationally significant. EPA has determined that these minor inconsistencies should not delay approval of these revisions, as long as the State committed to make the necessary changes. Thus, EPA requested the State to submit a letter which: (1) Commits that the State will make the requested changes at the earliest possible date, but not later than one year from the date of receipt of EPA's request; and (2) describes the State's interpretation of the above definitions. That is, that the State interprets "major source", in this case, to mean a "major stationary source", and "nitrogen oxides", in this case, to actually mean "nitrogen dioxide", and that these definitions will be implemented as such.

On April 23, 1991, Mr. John Drake, Chief, Oklahoma Air Quality Service, sent a letter to Mr. A. Stanley Meiburg, Director, Air, Pesticides and Toxics Division, EPA Region 6, stating that the Air Quality Service (AQS) will ask the Oklahoma Air Quality Council to revise "major source" in these sections to "major stationary source" at the earliest hearing available. The AQS intends for "major source" to mean "major stationary source" as defined in Regulation 1.4.4(b)(1). The State noted that the "nitrogen oxide" discrepancy was a scrivener error, and committed to correct this error at the next printing of the regulation. This commitment letter from the State is incorporated into the SIP as "Additional Material" in today's notice.

Regulation 1.2, Table 1.2(2), adds the maximum allowable nitrogen dioxide increments (annual arithmetic means) of 2.5 $\mu g/m^3$ for Class I areas, 25 $\mu g/m^3$ for Class II areas, and 50 $\mu g/m^3$ for Class III areas.

Various changes were made to Regulation 1.4.1 and 1.4.2 related to the permitting program. These revisions were determined to be consistent with Federal requirements and, thus, approvable. Regulation 1.4.1(a) was amended to add provisions for issuance of relocation permits to portable sources, and special, temporary or research/experimental permits, and provisions for permittee requests for permit modifications. Regulation 1.4.1(b)(3)(C) adds a provision that a permit is not required for a new or modified source that proves to the Commissioner's satisfaction that, as well as the criteria that emissions of any criteria pollutant will not exceed one pound per hour and emissions of toxics will not exceed the de minimus levels, it is not subject to a New Source Performance Standard (NSPS) or National Emission Standard for Hazardous Air Pollutants (NESHAP) effective at the time. Regulation 1.4.2(a)(2)(ii) adds a definition of Minor Source. Regulation 1.4.2(c)(1) adds a provision that the permit application shall include the appropriate permit application fee. Regulation 1.4.2(c)(2) adds the provision that the supplemental data included with the application form shall include, among other things, a Best Available Control Technology (BACT) determination.

In Regulation 1.4.4(b), "Major Sources—Prevention of Significant Deterioration Requirements for Attainment Areas—Definitions", the definitions of Net Emissions Increase, Baseline Concentration, Baseline Date and Baseline Area, were revised for consistency with the Federal definitions found in 40 CFR 51.166. Regulation 1.4.4(d)(12)(B) was added; this provision exempts sources that submitted a complete permit application before February 8, 1988, from conducting NO_2 increment analysis. Regulation 1.4.4(d)(13) was revised to include nitrogen dioxide in the provisions for excluding temporary emissions from increment consumption.

EPA has evaluated the State's submittal in accordance with the Federal requirements and finds the submittal acceptable. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective September 23, 1991, unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective September 23, 1991.

Final Action

EPA is taking final action to approve the revisions to Regulation 1.1, 1.2 and 1.4 that were submitted by the Governor on November 14, 1990. These revisions adopt the PSD NO_2 increment requirements of 40 CFR 51.166.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate

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exempts sources that submitted a complete permit application before February 8, 1988, from conducting NO$_2$ increment analysis. Regulation 1.4.4(d)(13) was revised to include nitrogen dioxide in the provisions for excluding temporary emissions from increment consumption.

EPA has evaluated the State's submittal in accordance with the Federal requirements and finds the submittal acceptable. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective September 23, 1991, unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective September 23, 1991.

Final Action

EPA is taking final action to approve the revisions to Regulation 1.1, 1.2 and 1.4 that were submitted by the Governor on November 14, 1990. These revisions adopt the PSD NO$_2$ increment requirements of 40 CFR 51.166.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate

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circuit by September 23, 1991. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

The Agency has reviewed this request for revision of the federally approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the adoption of the revision by the State preceded the date of enactment.

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Note: Incorporation by reference of the State Implementation Plan for the State of Oklahoma was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: July 15, 1991.

Robert E. Layton, Jr.,

Regional Administrator.

Accordingly, 40 CFR part 52, subpart LL, is amended as follows:

Subpart LL—Oklahoma

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1920 is amended by adding paragraph (c)(41) to read as follows:

§ 52.1920 Identification of plan.

* * * * *

(c) * * *

(41) On November 14, 1990, the Governor submitted revisions to Oklahoma Air Pollution Control Regulation (Regulation) 1.1 "Defining Terms Used in Oklahoma Air Pollution Control Regulations", Regulation 1.2 "Oklahoma Air Quality Standards and Increments", and Regulation 1.4 "Permits". These regulations were adopted by the Oklahoma Air Quality Council on April 3, 1990, and by the Oklahoma Board of Health on April 12, 1990. These regulations became effective when they were signed by the Governor as emergency rules on June 4, 1990.

(i) Incorporation by reference.

(A) Revisions to Oklahoma Air Pollution Control Regulation 1.1, Regulation 1.2, and Regulation 1.4, as adopted by the Oklahoma Air Quality Council on April 3, 1990, by the Oklahoma Board of Health on April 12, 1990, and became effective on June 4, 1990: Oklahoma Air Pollution Control Regulations 1.1(b)(13), 1.1(b)(14), 1.1(b)(15), 1.1(b)(16), 1.1(b)(82)(D), 1.2—Table 1.2(2), 1.4.1(a)(1), 1.4.1(b)(3)(B), 1.4.1(b)(3)(C), 1.4.2(a)(2)(ii), 1.4.2(c), 1.4.2(h)(2), 1.4.4(b)(3)(D), 1.4.4(b)(13), 1.4.4(b)(14), 1.4.4(b)(15) and 1.4.4(d)(12), 1.4.4(d)(13)(C).

(ii) Additional material.

(A) April 23, 1991, letter from Mr. John Drake, Chief, Air Quality Service, Oklahoma State Department of Health, to Mr. A. Stanley Meiburg, Director, Air, Pesticides & Toxics Division, EPA, Region 6.

[FR Doc. 91–17390 Filed 7–22–91; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 271

[FRL 3976–9]

Indiana: Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Indiana has applied for final authorization of a revision to its authorized hazardous waste program under the Resource Conservation and Recovery Act of 1976 as amended (hereinafter "RCRA" or the "Act"). The Environmental Protection Agency (EPA) has reviewed Indiana's application and has reached a decision, subject to public review and comment, that Indiana's hazardous waste program revision satisfies all the requirements necessary to qualify for final authorization. Thus, EPA is granting final authorization to Indiana to operate its revised program, subject to authority retained by EPA under the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984, hereinafter "HSWA"). Indiana's application for program revision is available for public review and comment.

EFFECTIVE DATES: Final authorization for Indiana's application shall be effective September 23, 1991, unless EPA publishes a prior **Federal Register** action withdrawing this final rule. All comments on Indiana's final authorization must be received by 4:30 p.m. on August 22, 1991.

ADDRESSES: Copies of Indiana's program revision application are available for inspection and copying, from 8:30 a.m. to 4:30 p.m., at the following addresses: Indiana Department of Environmental Management, Hazardous Waste Management Branch, 105 South Meridian Street, Indianapolis, Indiana 46206. Contact: Michael Dalton (317) 232–8884; U.S. EPA Headquarters Library, PM211A, 401 M Street SW., Washington, DC 20460, phone (202) 382–5926; U.S. EPA Region V, Waste Management Division, Office of RCRA, 230 South Dearborn Street, Chicago, Illinois 60604. Contact: George Woods (312) 886–6134. Written comments on Indiana's application should be sent to George Woods, at the address listed below.

FOR FURTHER INFORMATION CONTACT: George Woods, Indiana Regulatory Specialist, U.S. Environmental Protection Agency Region V, Waste Management Division, Office of RCRA, Program Management Branch, Regulatory Development Section, 5HR-JCK–13, 230 South Dearborn, Chicago, Illinois 60604 (312) 886–6134, (FTS 886–6134).

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is at least equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 allow States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. A State exercising this latter option receives "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later applies for final authorization for the HSWA requirements.

In accordance with 40 CFR 271.21(a), revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260–268 and 270.

B. Indiana

Indiana initially received final authorization for its base RCRA program on January 31, 1986 (51 FR 3953–3954, January 31, 1986). Indiana received authorization for revisions to its program effective December 31, 1986

(51 FR 39752–39754, October 31, 1986), January 19, 1988 (53 FR 128–129, January 5, 1988), and September 11, 1989 (54 FR 29557–29559, July 13, 1989). On April 26, 1988, Indiana submitted a program revision application seeking authorization for an additional revision to its authorized program. Today, Indiana is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

This program revision is the result of State initiated modifications to its RCRA program regulatory authority which were made to bring certain regulations into conformity with Statutory changes enacted by the 1987 session of the Indiana General Assembly. Additionally, the Indiana Department of Environmental Management (IDEM) amended certain rules to correct deficiencies in enforcement procedures discovered during the course of enforcement activity carried out since the original rules were promulgated. The State initiated amendments included changes to administrative procedures, interim status standards, and closure.

On March 25, 1988, the Indiana Attorney General (A.G.) certified that these program revision changes did not impact the State's previous status of being "at least equivalent and no less stringent" than the parallel Federal program and, that they did not affect the IDEM's authority to implement the State's authorized RCRA program. EPA concurs with the Indiana A.G.'s certification for this program revision, and with his assessment that the changes should provide greater strength and clarity to State enforcement when dealing with interim status facilities.

EPA has reviewed Indiana's application and has made an immediate final decision, subject to public review and comment, that Indiana's hazardous waste management program revision does reflect the State's equivalency with the Federal program and satisfies all requirements necessary to qualify for final authorization. Consequently, EPA is granting final authorization to Indiana for the additional modifications to its authorized program. The public may submit written comments on EPA's immediate final decision up until August 22, 1991. Copies of Indiana's application for this program revision are available for inspection at the locations indicated in the "**ADDRESSES**" section of this notice.

Approval of Indiana's program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received, EPA will publish either (1) a withdrawal of this immediate final rule or (2) a notice containing a response to the comment which either affirms that the immediate final decision takes effect or reverses the decision.

Indiana will be authorized to carry out, in lieu of the Federal program, those provisions of the State's program which were modified and originally codified at title 320, article 4, rule 1 (320 IAC 4.1) of the Indiana Administrative Code, effective April 3, 1988. Because Indiana's hazardous waste management rules found at 320 IAC 4.1, were repealed and simultaneously recodified at title 329, article 3 (329 IAC 3) of the Indiana Administrative Code, effective July 1, 1988, the modified rules are designated herein under the recodified citations and have the 329 IAC 3 prefix. These recodified State rules are being recognized as analogous to the following provisions of the Federal program found at title 40 of the Code of Federal Regulations:

Federal requirement	Former IAC regulation	Recodified IAC regulation
40 CFR 260.11	320 IAC 4.1–1–6	329 IAC 3–1–6
40 CFR 260.10	320 IAC 4.1–1–7	329 IAC 3–1–7
40 CFR 265.1	320 IAC 4.1–15–1	329 IAC 3–15–1
40 CFR 265.112	320 IAC 4.1–21–3	329 IAC 3–21–3
40 CFR 265.147	320 IAC 4.1–22–24	329 IAC 3–22–24
40 CFR 264.151(g)	320 IAC 4.1–22–32	329 IAC 3–22–32
40 CFR 264.151(h)(2)	320 IAC 4.1–22–33.1	329 IAC 3–22–34
40 CFR 270.2	320 IAC 4.1–33–2	329 IAC 3–33–2
40 CFR 270.6	320 IAC 4.1–33–5	329 IAC 3–33–5
40 CFR 270.70	320 IAC 4.1–38–1	329 IAC 3–38–1
40 CFR 270.73	320 IAC 4.1–38–4	329 IAC 3–38–4
40 CFR 124.1	320 IAC 4.1–39–1	329 IAC 3–39–1
40 CFR 124.3	320 IAC 4.1–39–2	329 IAC 3–39–2
40 CFR 124.5	320 IAC 4.1–39–3	329 IAC 3–39–3
40 CFR 124.6	320 IAC 4.1–39–4	329 IAC 3–39–4
40 CFR 124.10	320 IAC 4.1–39–6	329 IAC 3–39–6
40 CFR 124.12	320 IAC 4.1–39–8	329 IAC 3–39–8
40 CFR 124.17	320 IAC 4.1–39–9	329 IAC 3–39–9
40 CFR 270.50	320 IAC 4.1–39–11	329 IAC 3–39–11
40 CFR 270.51	320 IAC 4.1–39–12	329 IAC 3–39–12
40 CFR 264.147	320 IAC 4.1–47–8	329 IAC 3–47–8
40 CFR 264.151	320 IAC 4.1–47–10	329 IAC 3–47–10

C. Decision

I conclude that Indiana's application for this program revision meets all the statutory and regulatory requirements established by RCRA. Accordingly, EPA grants Indiana final authorization to operate its hazardous waste program as revised. Indiana now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out the other aspects of the RCRA program. This responsibility is subject to the limitations of this program revision application and previously approved authorities. Indiana also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

D. Codification in Part 272

EPA codifies authorized State programs in part 272 of 40 CFR. The purpose of codification is to provide notice to the public of the scope of the authorized program in each State. In a future **Federal Register** notice, EPA will codify Indiana's revised hazardous waste program.

Compliance with Executive Order 12291: The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act: Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Indiana's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

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C 4.1-	329 IAC 3-21-3
C 4.1- 4	329 IAC 3-22-24
C 4.1- 2	329 IAC 3-22-32
C 4.1- 3.1	329 IAC 3-22-34
C 4.1-	329 IAC 3-33-2
C 4.1-	329 IAC 3-33-5
C 4.1-	329 IAC 3-38-1
C 4.1-	329 IAC 3-38-[illegible]
C 4.1-	329 IAC 3-39-1
C 4.1-	329 IAC 3-39-2
C 4.1-	329 IAC 3-39-3
C 4.1-	329 IAC 3-39-4
C 4.1-	329 IAC 3-39-6
C 4.1-	329 IAC 3-39-5

Federal requirement	Former IAC regulation	Recodified IAC regulation
40 CFR 124.17	320 IAC 4.1-39-9	329 IAC 3-39-[illegible]
40 CFR 270.50	320 IAC 4.1-39-11	329 IAC 3-39-11
40 CFR 270.51	320 IAC 4.1-39-12	329 IAC 3-39-12
40 CFR 264.147	320 IAC 4.1-47-8	329 IAC 3-47-[illegible]
40 CFR 264.151	320 IAC 4.1-47-10	329 IAC 3-47-10

C. Decision

I conclude that Indiana's application for this program revision meets all the statutory and regulatory requirements established by RCRA. Accordingly, EPA grants Indiana final authorization to operate its hazardous waste program as revised. Indiana now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out the other aspects of the RCRA program. This responsibility is subject to the limitations of this program revision application and previously approved authorities. Indiana also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

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Compliance with Executive Order 12291: The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act: Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Indiana's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Paperwork Reduction Act: Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a) 3006, and 7004(b) of the Solid Waste Disposal Act, as amended, (42 U.S.C. 6912(a), 6926 and 6974(b)).

Dated: November 27, 1989.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 91-17469 Filed 7-22-91; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 38

RIN 1090-AA31

Pay of U.S. Park Police; Interim Geographic Adjustments

AGENCY: Office of the Secretary, Interior.

ACTION: Final rule.

SUMMARY: The Department of the Interior (DOI) is issuing regulations on interim geographic pay adjustments for certain U.S. Park Police as authorized by section 302 of the Federal Employees Pay Comparability Act of 1990 (FEPCA) and the President's memorandum dated May 21, 1991. The regulations establish rules for applying these adjustments to U.S. Park Police officers stationed in the following Consolidated Metropolitan Statistical Areas (CMSAs): New York-Northern New Jersey-Long Island, NY-NJ-CT and San Francisco-Oakland-San Jose, CA.

EFFECTIVE DATE: This final rule is effective on the first date of the first pay period beginning on or after December 12, 1990.

FOR FURTHER INFORMATION CONTACT: Alan Coulter (202) 208-5284.

SUPPLEMENTARY INFORMATION: Section 302 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509, November 5, 1990) authorized the President, at his discretion to establish interim geographic adjustments of up to 8 percent of basic pay in one or more consolidated metropolitan statistical areas (CMSAs), primary metropolitan statistical areas (PMSAs), and/or metropolitan statistical areas (MSAs) that meet certain criteria. On December 12, 1990, the President issued Executive Order 12736, establishing interim geographic adjustments of 8 percent in three CMSAs and authorizing OPM to prescribe regulations governing the application of interim geographic adjustments to General Schedule employees, including the determination of what, if any, interim geographic adjustment shall be payable to employees receiving special salary rates.

The President's memorandum dated May 21, 1991 authorized the Secretary of the Interior to prescribe regulations establishing interim geographic pay adjustments for the U.S. Park Police consistent with the regulations and determinations prescribed under section 5(b)(1) of Executive Order 12736 of December 12, 1990.

The CMSAs in which interim geographic adjustments have been authorized by the President for U.S. Park Police are New York-Northern New Jersey-Long Island, NY-NJ-CT and San Francisco-Oakland-San Jose, CA. These CMSAs are defined as set forth below.

The New York-Northern New Jersey-Long Island, NY-NJ-CT CMSA consists of Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland, Westchester, Orange, Nassau, and Suffolk counties in New York; Bergen, Passaic, Hudson, Hunterdon, Middlesex, Somerset, Monmouth, Ocean, Essex, Morris, Sussex, and Union Counties in New Jersey; and in Connecticut—(1) The following parts of Fairfield County; the towns of Easton, Fairfield, Monroe, Stratford, Trumbull, Bethel, Brookfield, New Fairfield, Newtown, Redding, Ridgefield, Sherman, Weston, Westport, Wilton, Darien, Greenwich, New Canaan; and the cities of Bridgeport, Shelton, Danbury, Norwalk, and Stamford; (2) the towns of Beacon Falls, Oxford, and Seymour and the cities of Ansonia, Derby, and Milford in New Haven County; and (3) the towns of Bridgewater and New Milford in Litchfield county.

The San Francisco-Oakland-San Jose, CA CMSA consists of Alameda, Contra Costa, Marin, San Francisco, San Mateo, Santa Clara, Santa Cruz, Sonoma, Napa, and Solano counties.

Under the regulations, a U.S. Park Police Officer in either of the two CMSAs will be entitled to an adjustment of 8 percent as described below.

The statute provides that adjusted rates of pay will be considered basic pay for purposes of computing retirement deductions and benefits, life insurance premiums and benefits, and premium pay. The regulations provide that the adjusted rates also will be considered basic pay for the purpose of computing an employee's entitlement to severance pay. Finally, the regulations prescribe methods for deriving annual, hourly, biweekly, and daily adjusted rates of basic pay consistent with the requirements for computing rates of basic pay.

Pursuant to section 553(b) (B) and (d) (3) of title 5, United States Code, I find that request for public comment is unnecessary due to the extremely limited effect of the rule and the need to provide the U.S. Park Police interim geographic pay adjustments similar to those provided to general schedule employees in these locations. I also find that good cause exists for making this rule effective in less than 30 days. The 30-day delay in the effective date is being waived because the effective date of the adjusted rates of pay is established, pursuant to the President's May 21, 1991 memorandum, as the first pay period beginning on or after December 12, 1990.

E.O. 12291 and the Regulatory Flexibility Act

The Department of the Interior has determined this document is not a major rule as defined under E.O. 12291 and certifies that this document will not have a significant economic impact on a substantial number of small entities because it applies only to a single Federal agency and an estimated 108 employees.

Paperwork Reduction Act

This rule does not contain collections of information which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects in 43 CFR Part 38

Government employees, Wages, Administrative practice and procedure.

Accordingly, DOI is adding a new part 38 to title 43 of the Code of Federal Regulations to read as follows:

PART 38—PAY OF U.S. PARK POLICE—INTERIM GEOGRAPHIC ADJUSTMENTS

Sec.
38.1 Definitions.
38.2 Computation of hourly, daily, weekly, and biweekly adjusted rates of pay.
38.3 Administration of adjusted rates of pay.

Authority: 104 Stat. 1462.

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§ 38.1 Definitions.

In this subpart: *Adjusted annual rate of pay* means an employee's scheduled annual rate of pay multiplied by 1.08 and rounded to the nearest whole dollar, counting 50 cents and over as a whole dollar.

Employee means a U.S. Park Police officer whose official duty station is located in an interim geographic adjustment area.

Interim geographic adjustment area means any of the following Consolidated Metropolitan Statistical Areas (CMSAs) as defined by the Office of Management and Budget (OMB).

(1) New York-Northern New Jersey-Long Island, NY-NJ-CT; and

(2) San Francisco-Oakland-San Jose, CA.

Official duty station means the duty station for an employee's position of record as indicated on his or her most recent notification of personnel action.

Scheduled annual rate of pay means—

(1) The U.S. Park Police rate of basic pay for the employee's rank and step, exclusive of additional pay of any kind;

(2) A retained rate of pay, where applicable, exclusive of additional pay of any kind.

§ 38.2 Computation of hourly, daily, weekly, and biweekly adjusted rates of pay.

When it is necessary to convert the adjusted annual rate of pay to an hourly, daily, weekly, or biweekly rate, the following methods apply:

(a) To derive an hourly rate, divide the adjusted annual rate of pay by 2,087 and round to the nearest cent, counting one-half cent and over as a whole cent;

(b) To derive a daily rate, multiply the hourly rate by the number of daily hours of service required;

(c) To derive a weekly or biweekly rate, multiply the hourly rate by 40 or 80, as the case may be.

§ 38.3 Administration of adjusted rates of pay.

(a) An employee is entitled to be paid the greater of—

(1) The adjusted annual rate of pay; or

(2) His or her rate of basic pay (including a local special salary rate, where applicable), without regard to any adjustment under this section.

(b) An adjusted rate of pay is considered basic pay for purposes of computing:

(1) Retirement deductions and benefits;

(2) Life insurance premiums and benefits;

(3) Premium pay;

(4) Severance pay;

(c) When an employee's official duty station is changed from a location not in an interim geographic adjustment area to a location in an interim geographic adjustment area, payment of the adjusted rate of pay begins on the effective date of the change in official duty station.

(d) An adjusted rate of pay is paid only for those hours for which an employee is in a pay status.

(e) An adjusted rate of pay shall be adjusted as of the effective date of any change in the applicable scheduled rate of pay.

(f) Except as provided in paragraph (g) of this section, entitlement to an adjusted rate of pay under this subpart terminates on the date.

(1) An employee's official duty station is no longer located in an interim geographic adjustment area;

(2) An employee moves to a position not covered;

(3) An employee separates from Federal service; or

(4) An employee's local special salary rate exceeds his or her adjusted rate of pay.

(g) In the event of a change in the geographic area covered by a CMSA, the effective date of a change in an employee's entitlement to an adjusted rate of pay under this subpart shall be the first day of the first pay period beginning on or after the date on which a change in the definition of a CMSA is made effective.

(h) Payment of or an increase in, an adjusted rate of pay is not an equivalent increase in pay.

(i) An adjusted rate of pay is included in an employee's "total remuneration," and "straight time rate of pay," for the purpose of computations under the Fair Labor Standards Act of 1938, as amended.

(j) Termination of an adjusted rate of pay under paragraph (f) of this section is not an adverse action.

Dated: July 17, 1991.

John Schrote,

Acting Assistant Secretary—Policy, Management and Budget.

[FR Doc. 91-17444 Filed 7-22-91; 8:45 am]

BILLING CODE 4310-RJ-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1 and 73

Comparative Hearing Process for New Broadcast Applicants; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published in the **Federal Register** at 56 FR 787 (January 9, 1991) where the Commission revised its rules to expedite the comparative hearing process for new broadcast applicants in order to speed service to the public. The Commission has promulgated regulations intended to substantially reduce the time consumed in the conduct of comparative hearings and agency review in cases involving applicants for new broadcast facilities.

FOR FURTHER INFORMATION CONTACT: Martin Blumenthal, Office of General Counsel, Federal Communications Commission, (202) 254-6530.

SUPPLEMENTARY INFORMATION: In FR Doc. 91-225, published in the January 9, 1991 **Federal Register** on page 787, the following corrections are made in §§ 73.3572 and 73.3573.

1. On page 795, third column, paragraph 18 § 73.3572 is amended by adding new paragraphs (d)(1) and (d)(2) in lieu of (c)(1) and (c)(2).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 91-17339 Filed 7-22-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-43; RM-7607]

Radio Broadcasting Services; Portageville and New Madrid, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 293C2 for Channel 292A, reallots the channel from Portageville to New Madrid, Missouri, and modifies the license for Station KMIS-FM to specify New Madrid as the community of license for Channel 293C2. This action is taken in response to a petition filed by New Madrid County Broadcasting, Company. See 56 FR 9190, March 5, 1991. The coordinates for Channel 293C2 at New Madrid are 36-25-30 and 89-41-39. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 3, 1991.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 91-43, adopted July 5, 1991, and released July 17, 1991. The full text of this Commission

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List of Subjects in 47 CFR Pa

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation fo
continues to read as follows

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Ta
Allotments under Missouri, i
by removing Channel 292A,
and adding Channel 293C2, N
Madrid.

Federal Communications Comm

Andrew J. Rhodes,

Chief, Allocations Branch, Polic
Division, Mass Media Bureau.

[FR Doc. 91-17398 Filed 7-22-91;

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-7; RM-7592

Radio Broadcasting Service NM

AGENCY: Federal Communica
Commission.

ACTION: Final rule.

SUMMARY: The Commission,
request of Don R. Davis and
Pace, allots Channel 225A to
New Mexico, as the commun
local FM service. See 56 FR 4
February 6, 1991. Channel 22
allotted to Socorro in compli
the Commission's minimum c
separation requirements with
imposition of a site restrictio
coordinates North Latitude 3
West Longitude 106-53-48. M
concurrence has been receive
Socorro is located within 320
(199 miles) of the U.S.-Mexic
With this action, this procee
terminated.

DATES: Effective September 3
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will open on September 4, 19
close on October 4, 1991.

FOR FURTHER INFORMATION C
Leslie K. Shapiro, Mass Medi
(202) 634-6530.

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SUMMARY: This document corrects a final rule published in the **Federal Register** at 56 FR 787 (January 9, 1991) where the Commission revised its rules to expedite the comparative hearing process for new broadcast applicants in order to speed service to the public. The Commission has promulgated regulations intended to substantially reduce the time consumed in the conduct of comparative hearings and agency review in cases involving applicants for new broadcast facilities.

FOR FURTHER INFORMATION CONTACT: Martin Blumenthal, Office of General Counsel, Federal Communications Commission, (202) 254–6530.

SUPPLEMENTARY INFORMATION: In FR Doc. 91–225, published in the January 9, 1991 **Federal Register** on page 787, the following corrections are made in §§ 73.3572 and 73.3573.

1. On page 795, third column, paragraph 18 § 73.3572 is amended by adding new paragraphs (d)(1) and (d)(2) in lieu of (c)(1) and (c)(2).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 91–17339 Filed 7–22–91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91–43; RM–7607]

Radio Broadcasting Services; Portageville and New Madrid, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 293C2 for Channel 292A, reallots the channel from Portageville to New Madrid, Missouri, and modifies the license for Station KMIS–FM to specify New Madrid as the community of license for Channel 293C2. This action is taken in response to a petition filed by New Madrid County Broadcasting Company. See 56 FR 9190, March 5, 1991. The coordinates for Channel 293C2 at New Madrid are 36–25–30 and 89–41–39. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 3, 1991.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 91–43, adopted July 5, 1991, and released July 17, 1991. The full text of this Commission

decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street NW., Washington, DC 20036 (202) 452–1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 292A, Portageville and adding Channel 293C2, New Madrid.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–17396 Filed 7–22–91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91–7; RM–7592]

Radio Broadcasting Services; Socorro, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Don R. Davis and William H. Pace, allots Channel 225A to Socorro, New Mexico, as the community's second local FM service. See 56 FR 4784, February 6, 1991. Channel 225A can be allotted to Socorro in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates North Latitude 34–03–42 and West Longitude 106–53–48. Mexican concurrence has been received since Socorro is located within 320 kilometers (199 miles) of the U.S.-Mexican border. With this action, this proceeding is terminated.

DATES: Effective September 3, 1991. The window period for filing applications will open on September 4, 1991, and close on October 4, 1991.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91–7, adopted July 5, 1991, and released July 17, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center (202) 452–1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by adding Channel 225A at Socorro.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–17397 Filed 7–22–91; 8:45 am]

BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 508, 510 and 549

[APD 2800.12A CHGE 26]

Acquisition Regulation; Implement FAC 90–4

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) is amended to delete section 508.602, appropriate coverage is in FAR 8.602; to delete paragraph (a) of section 510.002 and make a minor editorial change to paragraph (b); to delete section 549.001, appropriate coverage of administrative cost is now in section 549.402–7; to revise section 549.402–6 to make a minor editorial change to paragraph (c) and to revise section 549.402–7 to reflect the coverage now appearing in FAR 49.402–7. The intended effect is to provide uniform procedures for contracting under the regulatory system.

EFFECTIVE DATE: July 29, 1991.

FOR FURTHER INFORMATION CONTACT: John Joyner, Office of GSA Acquisition Policy (202) 501–1224.

SUPPLEMENTARY INFORMATION:

A. Public Comments

This rule was not published in the **Federal Register** for public comment because it merely revises the GSAR to conform to the Federal Acquisition Regulation (FAR) as amended by FAC 90–4, which had already undergone the public comment process.

B. Executive Order 12291

The Director, Office of Management and Budget (OMB), by memorandum dated September 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because the proposed policy was not required to be published in the **Federal Register**.

D. Paperwork Reduction Act

This rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 48 CFR Parts 508, 510 and 549

Government procurements.

48 CFR parts 508, 510 and 549 are amended as follows:

1. The authority citation for 48 CFR parts 508, 510 and 549 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 508—REQUIRED SOURCES OF SUPPLIES AND SERVICES

508.602 [Removed]

2. Section 508.602 is removed.

PART 510—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

3. Section 510.002 is revised to read as follows:

510.002 Policy.

Consistent with the policy expressed in FAR 10.002 (c) and GSA Order ADM 8000.1A, solicitations must include specifications and purchase descriptions stated in metric units of measurement whenever metric is the accepted industry system. If metric is not the accepted industry system, the head of Central Office Services responsible for nationwide programs shall ensure that policies promoting and encouraging the

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use of soft metric, hybrid, or dual systems are developed, except when to do so would be detrimental to the program mission. Whenever possible, commercially developed metric specifications and internationally or domestically developed voluntary standards using metric measurements must be adopted. While an industry is in transition to metric, solicitations must include specifications and purchase descriptions stated in soft metric, hybrid, or dual systems, except when impractical or inefficient.

PART 549—TERMINATION OF CONTRACTS

549.001 [Removed]

4. Section 549.001 is removed.

5. Section 549.402–6 is amended by revising paragraph (c) to read as follows:

549.402–6 Repurchase against contractor's account.

* * * * *

(c) To protect the Government's rights to recover reprocurement costs, the contracting officer must document the file to explain the circumstances of any delay in the reprocurement.

6. Section 549.402–7 is amended by revising paragraphs (a) and (b)(2) to read as follows:

549.402–7 Other damages.

(a) Under the default clause, in addition to assessing reprocurement costs, the contracting officer may assess other damages, including administrative costs (e.g., salaries and fringe benefits paid to Government employees who perform work as a result of the default, preaward survey expense incurred in qualifying reprocurement contractors, and costs incurred in printing and distributing the reprocurement solicitation), if in the best interest of the Government.

(b) * * *

(1) * * *

(2) To support other incurred administrative costs (i.e., travel, per diem, printing and distribution of the repurchase contract), documents may include travel vouchers, invoices, printing requisitions, and other appropriate evidence of expenditures.

* * * * *

Dated: July 12, 1991.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 91–17404 Filed 7–22–91; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 234

[FRA Docket No. RSCG-3; Notice No. 6]

[RIN 2130—AA45]

Grade Crossing Signal System Safety

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA is today issuing a final rule requiring that railroads report instances of grade crossing signal system failures, file copies of their standards governing the maintenance, testing and inspection of grade crossing signal devices and file one-time grade crossing circuit information reports. Information submitted by railroads as a result of this rule will enable FRA to determine future steps necessary to improve grade crossing signal safety.

EFFECTIVE DATE: In accordance with the Paperwork Reduction Act of 1980, the recordkeeping and reporting requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for approval. This rule will become effective on October 1, 1991 if the recordkeeping and reporting requirements have been approved by OMB; if not, a notice will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bruce George, Office of Safety, FRA, 400 Seventh Street SW., Washington, DC 20590 (telephone 202–366–0533), or Mark Tessler, Office of Chief Counsel, FRA, 400 Seventh Street SW., Washington, DC 20590 (telephone 202–366–0628).

SUPPLEMENTARY INFORMATION:

Regulatory and Statutory Background

Section 23 of the Rail Safety Improvement Act of 1988 (Pub. L. 100–342) amended section 202 of the Federal Railroad Safety Act of 1970, 45 U.S.C. 431, by adding new subsection "q" as follows: "The Secretary shall, within one year after the date of the enactment of the Rail Safety Improvement Act of 1988, issue such rules, regulations, orders, and standards as may be necessary to ensure the safe maintenance, inspection, and testing of signal systems at railroad highway grade crossings."

On November 23, 1988, FRA published an Advance Notice of Proposed Rulemaking (ANPRM) (53 FR 47554) regarding grade crossing signal system safety. The purpose of that proceeding was to (1) determine whether Federal regulatory intervention is required to ensure adequate maintenance, inspection, and testing of signal systems and devices at railroad highway crossings, and (2) determine whether such regulations would be cost beneficial. A public hearing was held on December 19 and 20, 1988 in Washington, DC.

Based on the information developed during the proceeding, a Notice of Proposed Rulemaking (NPRM) was published on September 20, 1990 (55 FR 38707). FRA proposed regulations which would require railroads to report instances of grade crossing signal system failures (both instances in which warning systems failed to activate when a train approached and instances in which warnings activated without the presence of a train). Included in the proposal was a requirement that each railroad file with FRA copies of their standards governing the maintenance, inspection, and testing of grade crossing signal systems. A public hearing on this proposal was held in Washington, DC on November 7, 1990. The final rule issued today is the result of the above proceedings.

FRA's involvement in the issue of Federal standards on maintenance, inspection, and testing of grade crossing safety systems dates to the late 1970's. In 1976, FRA responded to an independent initiative of a joint railroad-labor management committee composed of representatives of the Communication and Signal Section (C&S Section) of the Association of American Railroads (AAR) and the Brotherhood of Railroad Signalmen (BRS) by publishing an Advance Notice of Proposed Rulemaking on June 28, 1976 (41 FR 26580). FRA reviewed accident statistics and concluded that a need for Federal standards could not be demonstrated. FRA, in its notice terminating the rulemaking (43 FR 45903), stated that "installation of more active protection devices would be much more beneficial from the standpoint of safety than a Federal Regulation requiring expenditure of additional resources to maintain and test those devices." *Id.* at 45904.

FRA conducted a second proceeding in 1984 (49 FR 24968) and performed an analysis of accident records similar to that performed in the 1970's. In both the 1976 and 1984 proceedings, the accident data indicated that far fewer than one percent of all grade crossing accidents involved allegations of warning system failures ($\frac{3}{10}$ of 1 percent and $\frac{15}{100}$ of 1 percent, respectively).

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Statutory Interpretation

Some parties, including the BRS, assert that FRA has no discretion as to whether to issue regulations regarding the maintenance, inspection, and testing of grade crossing signal systems. The BRS notes, however, that even if FRA has no such discretion, the "strength and nature of such regulations [are] left to the Secretary's discretion."

FRA has concluded that it has discretion under section 23 to determine whether and to what extent rules are necessary. The question is academic, however, since FRA is responding to section 23 with positive action, first with the rule issued today, which requires reporting of system malfunctions and filing of railroad maintenance, inspection, and testing procedures.

Second, as discussed elsewhere in this Notice, FRA is evaluating the need for proposed rules requiring specific railroad actions involving, *inter alia,* prompt response and inspection and testing of grade crossing warning systems upon report of malfunctions.

Overview

This rulemaking proceeding has focused on the issue of maintenance, inspection, and testing of grade crossing warning systems. As discussed in greater detail below, FRA has determined that a need exists for more accurate factual information in order to determine the extent of Federal involvement in establishing requirements for periodic maintenance, inspection, and testing of active crossing warning systems.

We stated in the NPRM that "[b]ecause present reporting regulations only require reporting of the operating status of warning devices when reporting accidents, FRA has no statistics regarding the frequency of grade crossing warning device failures in general [*i.e.,* where no accident occurred despite activation failures and false activations]. Nor can FRA presently determine whether a false restrictive indication was involved in a grade crossing accident." 55 FR 38709. The importance of accurate reporting by the railroads can not be overstated. Only with accurate and appropriate data can FRA determine the status of the nation's grade crossing systems.

We have previously described problems with FRA Form F 6180–57 "Rail-Highway Grade Crossing Accident/Incident Report." Block 32 of that form asks whether the crossing warning device was working at the time of the accident. The choices provided for an answer are only "yes" or "no." Testimony and comments have shown that there is confusion among many railroad employees as to how to indicate certain situations, such as when a railroad vehicle involved in the accident is not designed to shunt a track circuit and thus would not activate a warning system, or if the warning system has been disconnected for maintenance or other reasons. Indeed, we have found that some warning systems have been categorized as "not working" when, in fact, the crossings have been protected by a passive device such as crossbucks.

This would seem to indicate that the statistics FRA does have overstate the involvement of active warning devices in grade crossing accidents. However, that is only one side of the coin. Presently, if a warning system had been operating at the time of an accident but had been operating continuously for hours or even days, an affirmative response would be permissible in response to the question "Was the device operating?" on Form 6180–57. This answer, while technically correct, gives precisely the wrong impression—that the warning system was operating correctly and thus had no involvement in the accident. A major commuter railroad commented that on its system "there has not been an accident, injury or fatality attributable in whole or in part to the malfunctioning of warning devices." This is a correct statement if based solely on whether the system was operating at the time of the accident. Yet during the past three years, two accidents (involving one fatality and six injuries) occurred on that railroad in which the warning gates had been operating (*i.e.,* were in the down position) for an excessive period of time prior to the accident—45 minutes in one case, and two-and-one-half hours in the other. In those cases the malfunctioning warning systems may have been a factor in the crossing accident—a fact that FRA's accident statistics do not uniformly reflect.

The above two situations, one resulting in overreporting of grade crossing involvement in accidents, and the other resulting in underreporting, point up both the lack of reliable data and the need to expand our view as to what truly constitutes a "malfunction" in a crossing warning system.

Although a grade crossing system is operating "as intended" when it activates in a "fail-safe" manner upon the failure of a system component, it is not doing the job for which it was installed—giving a clear warning that a train is approaching and, therefore, that motorists should stay off the tracks. We will refer to this circumstance in this rule as a "false activation." The record makes clear that, if a false activation is permitted to continue for some time, some motorists will drive around the lowered gates and some of them will be injured or killed. We need to determine how often false activations occur and how often they are involved in grade crossing accidents. The rules issued today are intended to provide accurate data in this regard.

It is generally agreed that grade crossing warning systems very rarely fail to warn a motorist of an oncoming train. It appears that the few situations in which there is such a "failure to activate" are mainly due to design errors, or errors in installation or repair, rather than due to component failure. The regulations issued today will help provide reliable information regarding these instances of failure to activate.

While failure to activate is the most obviously dangerous situation concerning grade crossing warning system failure, the vast majority of malfunctioning grade crossing warning systems are "false activations" of the system. Before imposing a regulatory fix on the problem, we need to know the extent and causes of the failures.

The rules issued today are meant to address this problem. Section 234.9(b) requires reporting of instances of false activation when it is determined by the railroad that the cause of the activation was a mechanical or electrical malfunction or misadjustment. Section 234.13 is an information gathering requirement meant to provide sufficient information to FRA of the type of circuit and age of major components of each active crossing so that statistical correlation can be performed against reports of false activations and activation failures. Because reports of false activations will only be reflecting equipment malfunctions rather than activations stemming from operational causes (switching of cars within the approach circuit, maintenance work necessitating interruption of track circuits, etc.) we will be able to correlate accident experience and equipment malfunctions with types of circuits and age of equipment. We will then be better able to pinpoint the causes of crossing system failures and determine whether periodic maintenance, inspection, and testing standards, or other requirements should be required. For instance, if we find that a disproportionate number of system failures are in systems with critical components 30 years old, we are likely to take regulatory steps different than if a disproportionate number of malfunctions occur in relatively new systems on specific railroads.

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Supplemental Rulemaking

The information we will receive from the railroad industry pursuant to the rules issued today will enable us to craft better solutions to the problems of crossing device malfunctions. That is the purpose of the final rule issued today. However, FRA can take certain positive and substantive actions while we wait for data to be gathered and analyzed. Whatever the cause of false activations, it is generally accepted that they lead to credibility problems at individual crossings, and to a lesser extent, at grade crossings in general. As discussed in the NPRM, it has been argued by many parties that repeated or lengthy false activations result in the motoring public's losing faith in the warning system. Motorists then attempt to cross the railroad tracks, regardless of flashing lights and lowered gates. Indeed, many commenters advised FRA that the real danger of grade crossing malfunctions lies not with activation failures, but with false activations.

Even if we cannot at this time determine the primary cause of false activations, we can take action to reduce the risks resulting from them. Therefore, FRA is considering issuance in the near future of a Notice of Proposed Rulemaking in which we will propose rules requiring railroads to respond in a timely manner to reports of malfunctioning warning systems and to inspect and test the systems at such time. Included in the proposed rule would be further requirements designed to assure safety at the crossing pending repair of its warning system.

Discussion of Comments

Twenty-four commenters responded to the NPRM, either through testimony or by written comment. Testifying at the public hearing in Washington, DC on November 7, 1990 were representatives of the BRS, the AAR, and the American Short Line Railroad Association (ASLRA). Providing written comments were six railroads (Wisconsin Central, Inc., The New York, Susquehanna and Western Railway Corporation, Southern Pacific Transportation Company, Burlington Northern Railroad, Long Island Railroad, and Consolidated Rail Corporation), two transportation authorities (Southeastern Pennsylvania Transportation Authority and Massachusetts Bay Transportation Authority) and one industry association, the American Public Transit Association. Five state regulatory bodies commented (New York State Department of Transportation (NYSDOT), Railroad Commission of Texas, Arizona Corporation Commission, California Public Utilities Commission and the New Jersey Department of Transportation) as did the police department of the Town of Wallingford, Connecticut.

One Congressman commented on the need for grade crossing regulations in general, while eight other individuals commented in a total of five written submissions. In keeping with FRA's stated policy to consider late filed comments to the extent practicable, FRA has considered all comments submitted through January 11, 1991.

Most commenters were in favor of, or reluctantly agreed with, the need for some level of malfunction reporting. Virtually all commenters favored the filing of a railroad's maintenance, inspection, and testing procedures with FRA. A number of commenters, including the BRS, NYSDOT, and individual commenters took the position that FRA's proposal does not go far enough.

Especially compelling were comments received from seven relatives or friends of people killed in grade crossing accidents. These commenters uniformly questioned why railroad crossing warning systems are permitted to malfunction. Lauren and Larry Zeller expressed the view that "[t]he public has the right to trust the railroad's equipment * * *. How can crossings be left to remain malfunctioning, when school buses and the general public go around their gates over and over." Similarly, Hollis and Pam Crump questioned the purpose of active railroad crossing systems if people cannot rely on them. Doris Hayes questioned "why can't someone make railroads fix their gates. Who is in control of this?"

During hearings on the ANPRM in 1988, the BRS proposed that railroads be required to file their maintenance, inspection, and testing procedures with FRA for its approval. Under that proposal, FRA would enforce the railroad's own procedures. According to the BRS, a railroad's procedures would have to contain provisions for periodic testing and inspection, requirements for responding to malfunctions without undue delay, and site-distance requirements.

FRA rejected this approach in drafting the proposed rules, and we do so again in adopting the rules issued today. Some railroad procedures may be insufficiently rigorous as applied to certain types of installations. In certain other respects, the procedures of individual railroads may specify actions well in excess of minimum safety requirements.

When this proceeding began, we thought the question to be addressed was whether grade crossing accidents could be prevented and lives saved by reducing activation failures through a regime of maintenance, inspection, and testing. The record developed thus far in this proceeding shows no significant correlation among activation failures, which appear to occur extremely rarely; maintenance, inspection, and testing practices; and grade crossing accidents. In the course of this proceeding, however, we have learned that a significant problem of unknown dimension is presented by false activations. This rule will provide the data needed to determine the incidence of false activations for the first time as well as refine our data on activation failures. Those data will provide a record from which we can determine whether activation failures or false activations, or both, can be prevented by Federal standards for maintenance, inspection, and testing and, if so, what those standards should be.

Major Issues

1. Definitions

The AAR suggested that the definition of a grade crossing (section 234.5(a)) be changed to eliminate references to railroad tracks crossing private roadways. The AAR contends that railroads should not be subject to public reporting requirements at private crossings. We are retaining the requirement that reporting include occurrences at private crossings. Present accident reporting regulations at 49 CFR part 225 require reporting of accidents at these crossings. We are retaining the reference to private crossings for the same reason they are included in FRA's accident reporting rules—FRA needs to have a complete safety picture in order to make responsible regulatory decisions. Without comprehensive, reliable data, those decisions can not be made.

FRA specifically requested comments regarding the definitions of "false restrictive" and "false proceed." Not only did we receive comments about the definitions themselves, but we were also told by a number of commenters that the terms themselves should be changed. One commenter felt that the terms were so similar to railroad signalling terminology that they could lead to confusion. Among the suggested replacement terms were "unintended warning indication" and "inappropriate activation failure" in lieu of false restrictive and "warning indication failure" and "failure to activate" instead

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of false proceed. We have accepted the suggestions to clarify the terms and have determined that "false activation" rather than "false restrictive" and "activation failure" rather than "false proceed" would best denote the two conditions that will trigger the reporting process.

The AAR, ASLRA, BRS, and a number of railroads suggested changes to the proposed definitions of what are now called "false activation" and "activation failure." The proposed definition of "false activation" (false restrictive indication failure in the NPRM) referred to the activation of a warning system when no train is present. This definition generated perhaps the greatest amount of discussion, both as to the definition itself and its effect on a railroad's reporting burden (§ 234.9(b)). The AAR argued that the definition "indiscriminately groups all warning system activations within the definition, including those which are clearly not system malfunctions." This complaint was echoed by the ASLRA, and virtually every commenting railroad. They pointed out that the proposed definition included activations caused by repair and testing activities, switching moves on an approach circuit, and the presence of non-insulated track maintenance equipment. According to the AAR, even some FRA-required signal tests would cause a false activation requiring reporting.

We agree with those commenters that the definition should be narrowed to include only those activations caused by system malfunctions. We have thus changed the definition of false activation to mean "the activation of a highway-rail grade crossing warning system caused by a condition that requires correction or repair of the grade crossing warning system. (This failure indicates to the motorist that it is not safe to cross the railroad tracks when, in fact, it is safe to do so.)" The BRS and NYSDOT suggested that the definition be revised to also apply to the situation in which the warning system remains activated after a train has passed through the crossing. The definition as written includes that situation. Also included in the scope of this definition would be system activations caused by broken rails or broken track leads since the approach and island circuits are integral parts of the warning "system."

The proposed definition of activation failure ("false proceed" in the NPRM) generated varying suggestions. The BRS encouraged FRA to retain the reference to a 20-second minimum advance activation time. The AAR, however, stated that "[i]t is unreasonable to require reporting in each instance in which a warning system is not activated at least 20 seconds prior to the arrival of a train at the crossing." It is concerned that during certain operating conditions a train may stop short of a crossing, and after a period of time start off again and enter the crossing with flag protection but within less than 20 seconds of crossing system reactivation. This scenario could occur if the warning system includes motion detection or timeout circuitry. We agree with the BRS that the 20-second minimum time should be retained, and at the same time we agree with the AAR that the situation posited is not one that should be considered a false activation. Accordingly, we are revising the definition of false activation to mean "the failure of an active highway-rail grade crossing warning system to indicate the approach of a train at least 20 seconds prior to the train's arrival at the crossing, unless the crossing is otherwise protected."

2. Reports of Accidents Involving Grade Crossing Signal Failure

Commenters were generally in favor of the requirement at § 234.7 that all accidents at highway-rail grade crossings involving activation failure be reported to FRA. However, the ASLRA and the Wisconsin Central, Ltd., objected to the requirement for telephone notification. That railroad took the view that if this rule is really only for data gathering, notification within 24 hours should not be necessary. FRA's conception of data gathering is apparently broader than that of the Wisconsin Central. Activation failures are so obviously dangerous and also so rare because of the normal "fail-safe" failure mode, that FRA wants the option to inspect and investigate on site if deemed necessary. This could not be done with any slower notification system.

The AAR objected to the proposed requirement that telephone reports of such accidents include the posted highway speed limit because it would not be readily available to the railroad. We do not think determining this information would unduly burden a reporting railroad. However, because this information is not critical to FRA within the first 24 hours after an accident, and we would not want a report delayed while a railroad seeks the requested information, we have revised the final rule. The final rule thus requires the highway speed limit if known to the railroad.

The ASLRA questioned why the concept of an "impact" is apparently being introduced for the first time in accident reporting. On the contrary, FRA's accident reporting regulations at 49 CFR part 225 have for many years required reporting to FRA of any impact between railroad on-track equipment and a motor vehicle or pedestrian at a highway-rail grade crossing.

3. Grade Crossing Signal System Failure Reports

The proposal to require reporting of activation failures and false activations generated the greatest number and variety of comments from the public.

Commenters generally agreed in principle with the proposal to require reporting of each activation failure. However, SEPTA stated that it "does not believe additional regulation of grade crossings is warranted, and thus views the accumulation of data in pursuit of such regulation as unnecessary." The Wisconsin Central was also opposed to any reporting as "unduly burdensome." One commenter suggested that the 15-day reporting requirement begin to run from the time the railroad is notified of the activation failure, rather than the time period beginning to run from the date of the occurrence itself. These occurrences are so serious, and are so perceived by railroad employees and the general public, that we believe a railroad will be notified in sufficient time to report within the 15-day period.

The BRS was highly critical of FRA's proposal in that, according to the union, "the railroad would have full discretion on making the determination in each case on whether there was a[n activation failure]." The BRS claims that railroads have disregarded "independent" reports of signal malfunctions in the past and thus may do so in the future. The Railroad Commission of Texas was concerned that potential tort liability will exert pressure on railroads and railroad employees to evade reporting requirements. This rule issued today is issued pursuant to the authority of both the Federal Railroad Safety Act of 1970, as amended, and the Accidents Report Act (45 U.S.C. 38 *et seq.*). The Accident Reports Act prohibits use of monthly accident reports in any suit or action for damages. Thus, the written accident reports required in section 234.9(a) cannot be used in tort litigation, which would reduce any potential pressure to evade reporting requirements.

Without taking a position on the BRS' allegations of past railroad practices, we are confident that railroads will comply with the law. In those situations where compliance is lacking, FRA will take vigorous enforcement action, including

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where appropriate, taking action against individuals willfully violating the law.

The BRS also proposed that railroads provide follow-up reports with maintenance and accident history of that crossing. The union also proposed that the report contain reports from independent law enforcement agencies and witness statements pertaining to the operation of the crossing. Rather than require such an extensive reporting burden in each instance of activation failure, FRA will, in appropriate situations, obtain needed background information from individual railroads.

Perhaps the most controversial section of the proposed rule was § 234.9(b), which would have required a report for each false activation. State regulatory bodies had varying opinions regarding the proposed requirements. The Arizona Corporation Commission is of the opinion that failure reports are important, but it believes that collection of the reports should be the responsibility of the states in which the crossings are located. The Railroad Commission of Texas felt the rule as published in the NPRM does not go far enough in terms of the information required from the railroads. The Commission argues that source documents should be maintained to allow verification of a railroad's reports.

All commenting railroads and their three industry associations expressed the view that the false activation reporting requirements were excessively burdensome. The Wisconsin Central, for example, complained that its regular monthly inspection program would result in filing a false activation report for each crossing every month because it is the railroad's practice to perform an operating test each time the control case is entered. According to the railroad, a minimum of 731 reports would be filed each month, which according to FRA's estimate of 15 minutes needed to complete each report would cost the railroad a total of over 182 work hours to complete per month. With further centralized review and filing, a total of 231 hours per month would be needed for this large regional railroad to comply with proposed § 234.9(a). The Long Island Railroad similarly complained of the reporting burden, claiming that 1,200 hours per year would be spent complying with the proposed rule. Other railroads similarly complained of the reporting burden, all the while emphasizing that the reports would not shed much light on the issue of false activation.

As a result of these comments, and in light of suggestions made by the Texas Railroad Commission and the AAR, we have revised the definition of false activation (discussed in more detail above) to include only malfunctions of the system. This will significantly reduce the reporting burden placed on the railroads and, combined with a more comprehensive data base of the active crossing warning systems in the nation, we can more accurately assess causes of grade crossing failure and thus assess what further steps need to be taken to prevent them.

4. Sunset Provision

FRA requested comments from the public regarding limiting the reporting requirements to a finite period of time, after which the affected regulation would expire. Railroads and NYSDOT were among those commenters in favor of such a sunset provision, recommending that the requirements be imposed for one, or at most, two years. The BRS, on the other hand, is of the opinion that it is too early to put a time limit on the reporting of system failures. After a review of the comments, FRA has established a two-and-one-half year reporting period for false activation reports. We believe reports filed during this time period will provide FRA with a sufficient statistical base upon which to make informed judgments as to the operational state of grade crossing warning systems. We are declining to establish a sunset provision for reporting of activation failures and accidents involving activation failures. Activation failures are inherently dangerous to both the motoring public and to railroad employees. FRA needs to constantly monitor such failures in order to be able to take appropriate and timely remedial action.

5. Grade Crossing Signal System Information

The Texas Railroad Commission expressed the view that inadequate track circuitry may pose a more serious grade crossing hazard than either failure to activate or false activations. The Commission recommends that FRA require the filing of an inventory of track circuitry of all crossings not equipped with predictors. This would provide data which can contribute to the "policy debate about the best expenditure of funds for grade crossing improvements." FRA has thoroughly considered the comments of the Commission and the AAR's testimony to the effect that crossing systems installed 25 or 30 years ago using insulated joints and DC track circuits might contribute to the public's perception that equipment is not working properly. These older systems, which do not use motion sensors and predictors, cause the crossing warning system to be activated when a train enters the approach circuit. Lacking today's modern sensors and predictors, the system will remain activated even if a train stops in the approach circuit and will remain activated for however long the train is on the approach circuit.

In testimony, a representative of the AAR stated that "we, as railroad people, certainly can furnish the numbers of those crossings that still have that type circuitry very simply without making out all these reports because we have that information available. And any place you've got that type circuitry, the likelihood of a train having to stop within the approach is certainly there, * * * in those cases, the lights are certainly going to continue to flash until he completes movement or backs out of the circuit, one or the other. But that's available today without making those reports."

We agree with those commenters who argued that the proposed rules would not distinguish between true malfunctions and other causes of false activation. We are thus revising the final rule to include provision for a one-time report in which each railroad will provide information as to the type of circuitry and age of major components at each of its active grade crossings. Because the new section is a logical outgrowth of the proposed rule and is made in response to comments submitted in the rulemaking FRA is not initiating formal second notice and comment cycle on this provision.

Section-by-section analysis

234.1 This section states that this regulation prescribes reporting and filing requirements regarding the operation of highway-rail grade crossing warning systems.

234.3 This section states that this regulation applies to all railroads that operate on standard gage track that is part of the general railroad system of transportation. The regulation does not apply to rail rapid transit operations conducted over track that is used exclusively for that purpose and that is not part of the general railroad system of transportation.

234.5(a) Highway-rail grade crossing is a location where a public highway, road, street, or private roadway, including associated sidewalks and pathways, crosses one or more railroad tracks at grade.

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234.5(b) *False activation* is the activation of a highway-rail grade crossing warning system caused by a condition which requires correction or repair of the grade crossing warning system. False activation includes the situation in which the warning system

remains activated after a train has passed through the crossing. A false activation can be caused by a malfunctioning component of the warning system and would include broken track connections or broken rails or similar track signal components designed to activate the warning system. Excluded from this definition are activations of the warning system caused by the presence of non-insulated railroad equipment on the approach circuit of the system. Setting out of a car on an approach circuit or switching of cars on such a circuit would activate the system, but is not considered a false activation because such activation is not caused by a condition which requires correction or repair.

234.5(c) *Activation failure* is defined as the failure of an active railroad-highway crossing warning system to indicate the approach of a train at least 20 seconds prior to the train's arrival at the crossing, or to indicate the presence of a train occupying the crossing, unless the crossing is provided with an alternative means of active warning to highway users of approaching trains. If an active railroad-highway crossing system has malfunctioned and is not working properly in that it is not providing at least 20 seconds advance warning of an approaching train, the situation is an activation failure unless the crossing has been provided with an alternative means of warning highway users. Such alternative, temporary warning procedures, such as flagging a crossing, provides a warning to the motoring public. The failure of an automatic warning system to activate in such situations is not considered an activation failure. This provides a railroad with the ability to perform routine maintenance on track and other structures without having to report the situation as an activation failure. A situation in which a mechanical, electrical, or design failure causes a warning system to fail to operate would require the filing of a failure to activate report even if the railroad subsequently provides temporary means of warning highway users.

234.5(d) *Train* is defined as one or more locomotives, with or without cars.

234.7 Every impact between railroad on-track equipment and an automobile, bus, truck, motorcycle, bicycle, farm vehicle, or pedestrian at a highway-rail grade crossing that involves an activation failure must be reported to FRA within 24 hours. Each telephone report must include the following information: Name of the railroad involved; name, title, and telephone number of the individual making the report; time, date, and location of the accident; DOT–AAR Grade Crossing Identification Number of the crossing at which the accident occurred; circumstances of the accident including details of the operating status of the grade crossing warning system; number of persons killed or injured; maximum authorized train speed; and, if known, posted highway speed limit at the crossing location. This telephone report is not a substitute for other required written reports as appropriate. Every telephone report made pursuant to this section must be followed by a written report filed in accordance with § 234.9(a) of this part (reports of activation failure). A monthly report in accordance with 49 CFR 225.11 and 225.19 must be filed in accordance with those regulations which require that every highway-rail grade crossing accident/incident be reported to FRA on Form FRA F 6180.57, regardless of the extent of damages. In addition, a highway-rail grade crossing accident/incident that results in damages exceeding the damage reporting threshold (presently $6,300) must be reported to FRA on Form FRA F6180.54.

234.9(a) A railroad must report to FRA each activation failure within 15 days of its occurrence. FRA Form 6180.81 "Highway-rail Grade Crossing Warning Device Failure Report" is used for this purpose and completed in accordance with the instructions printed on the form. This form must be filed for any failure to activate—whether or not an accident has occurred at the crossing.

234.9(b) A railroad must report to FRA each false activation of a highway-rail grade crossing warning system within 30 days after expiration of the month during which the false activation occurred. FRA Form 6180.81, "Highway-rail Grade Crossing Warning Device Failure Report" is used for this purpose and is completed in accordance with the instructions printed on the form. The reporting schedule of this requirement tracks the present accident reporting scheme with which all railroads are familiar. The requirements of paragraph (b) will expire thirty months after the Office of Management and Budget approves FRA Form 6180.81.

234.11 Within six months of the effective date of this regulation, each railroad must file with the FRA one copy of its current highway-rail grade crossing maintenance, inspection, and testing rules and procedures. Every railroad commencing operations more than six months after the effective date of this regulation must file with FRA one copy of its current highway-rail grade crossing maintenance, inspection, and testing rules and procedures before commencing operations. If a railroad has no written maintenance, inspection, and testing rules and procedures, a statement to that effect must be filed with FRA. Filing with FRA is accomplished by filing the appropriate document with the FRA Regional Office for the region in which the railroad headquarters is located. Each amendment to a railroad's highway-rail grade crossing maintenance, inspection, and testing rules and procedures must be filed with FRA within 30 days after issuance.

234.13 Within six months of the effective date of this regulation, each railroad must file with the FRA information required by FRA Form F 6180.83, "Grade Crossing Signal System Information."

Regulatory Impact

E.O. 12291 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures, and is considered to be non-major under Executive Order 12291 but significant under DOT policies and procedures (44 FR 11034, February 26, 1979). The rule will not have any significant direct or indirect economic impact for the following reasons. First, its requirements apply only in the case of highway-rail grade crossing accidents involving malfunctioning warning devices or in other clearly limited situations involving malfunctioning warning devices. Second, compliance with the notification requirements should not be difficult because in some cases it is accomplished by a toll free phone call (in accident situations) and in other cases (non-accident situations), by completing a short standard form supplied by the agency. Compliance with the remainder of the rule requires providing to FRA on a one-time basis (1) a copy of a railroad's maintenance, inspection, and testing procedures and (2) a profile of a railroad's active grade crossing warning systems.

The purpose of the rule is to collect information on the extent of grade crossing warning device malfunctions. Because this information is not currently available to us, it is difficult to estimate the frequency of the events that will trigger the new reporting requirements. At this time, we expect very few events to require telephone notification or the filing of new forms. If this proves to be true, the cost to the industry for these new requirements will be insignificant. To the extent that this assumption proves to be false, the benefit of the knowledge that a significant problem exists would be substantial in that this knowledge would form the basis for corrective action. Without the proposed data collection effort, we are unable to justify regulatory action.

FRA certifies that this rule will not have a significant economic impact on a substantial number of small entities. There are no direct or indirect economic impacts for small units of government, businesses, or other organizations. State rail agencies remain free to participate in the administration of FRA's rules, but are not required to do so.

Paperwork Reduction Act

This rule contains information collection requirements. FRA is submitting these information collection requirements to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The sections that contain information collection requirements and the estimated time to fulfill each requirement are as follows:

Proposed section	Brief description	Estimated average time
234.7	Telephone notification of accident involving grade crossing signal failure.	15 minutes each.
234.9	Grade crossing signal failure report.	15 minutes each.
234.11	Filing railroad rules or statement of no rules.	One hour each railroad.
234.11	Filing amendments to railroad's rules.	20 minutes each filing.
234.13	Filing grade crossing warning system information.	20 minutes each filing.

All estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Environmental Impact

FRA has evaluated these regulations in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act and related directives. This notice meets the criteria that establish this as a non-major action for environmental purposes.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 234

Railroad safety, Highway-rail grade crossings.

Final Rule

In consideration of the foregoing, FRA amends chapter II, subtitle B of title 49, Code of Federal Regulations by adding new Part 234 as follows:

PART 234—GRADE CROSSING SIGNAL SYSTEM SAFETY

Sec.
234.1 Scope.
234.3 Application.
234.5 Definitions.
234.7 Accidents involving grade crossing signal failure.
234.9 Grade crossing signal failure reports.
234.11 Railroad rules.
234.13 Grade crossing signal system information.
234.15 Civil penalty.
234.17 Criminal penalty.
Appendix A to Part 234—Schedule of Civil Penalties

Authority: (45 U.S.C. 431, 437, and 438; 45 U.S.C. 38 and 42; and 49 CFR 1.49(f), (g), and (m).

§ 234.1 Scope.

This part prescribes reporting requirements with respect to the operation of highway-rail grade crossing warning systems.

§ 234.3 Application.

(a) Except as provided in paragraph (b) of this section, this part applies to railroads that operate on standard gage track that is part of the general railroad system of transportation.

(b) This part does not apply to rail rapid transit operations conducted over track that is used exclusively for that purpose and that is not part of the general railroad system of transportation.

§ 234.5 Definitions.

As used in this part:

(a) *Highway-rail grade crossing* means a location where a public highway, road, street, or private roadway, including associated sidewalks and pathways, crosses one or more railroad tracks at grade.

(b) *False activation* means the activation of a highway-rail grade crossing warning system caused by a condition that requires correction or repair of the grade crossing warning system. (This failure indicates to the motorist that it is not safe to cross the railroad tracks when, in fact, it is safe to do so.)

(c) *Activation failure* means the failure of an active highway-rail grade crossing warning system to indicate the approach of a train at least 20 seconds prior to the train's arrival at the crossing, or to indicate the presence of a train occupying the crossing, unless the crossing is provided with an alternative means of active warning to highway users of approaching trains. (This failure indicates to the motorist that it is safe to proceed across the railroad tracks when, in fact, it is not safe to do so.)

(d) *Train* means one or more locomotives, with or without cars.

§ 234.7 Accidents involving grade crossing signal failure.

(a) Each railroad shall report to FRA every impact between on-track railroad equipment and an automobile, bus, truck, motorcycle, bicycle, farm vehicle, or pedestrian at a highway-rail grade crossing involving activation failure. Notification shall be provided to the National Response Center within 24 hours of occurrence at (800) 424–0201. Complete reports shall thereafter be filed with FRA pursuant to § 234.9(a) of this part (false activation report) and 49 CFR 225.11 (accident/incident report).

(b) Each telephone report must state the:

(1) Name of the railroad;

(2) Name, title, and telephone number of the individual making the report;

(3) Time, date, and location of accident;

(4) U.S. DOT–AAR Grade Crossing Identification Number;

(5) Circumstances of the accident, including operating details of the grade crossing warning device;

(6) Number of persons killed or injured, if any;

(7) Maximum authorized train speed; and

(8) Posted highway speed limit, if known.

§ 234.9 Grade crossing signal system failure reports.

(a) Each railroad shall report to FRA within 15 days each activation failure of a highway-rail grade crossing warning system. FRA Form No. 6180–83, "Highway-Rail Grade Crossing Warning System Failure Report," shall be used for this purpose and completed in accordance with instructions printed on the form.

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condition that requires correction or repair of the grade crossing warning system. (This failure indicates to the motorist that it is not safe to cross the railroad tracks when, in fact, it is safe to do so.)

(c) *Activation failure* means the failure of an active highway-rail grade crossing warning system to indicate the approach of a train at least 20 seconds prior to the train's arrival at the crossing, or to indicate the presence of a train occupying the crossing, unless the crossing is provided with an alternative means of active warning to highway users of approaching trains. (This failure indicates to the motorist that it is safe to proceed across the railroad tracks when, in fact, it is not safe to do so.)

(d) *Train* means one or more locomotives, with or without cars.

§ 234.7 Accidents involving grade crossing signal failure.

(a) Each railroad shall report to FRA every impact between on-track railroad equipment and an automobile, bus, truck, motorcycle, bicycle, farm vehicle, or pedestrian at a highway-rail grade crossing involving activation failure. Notification shall be provided to the National Response Center within 24 hours of occurrence at (800) 424–0201. Complete reports shall thereafter be filed with FRA pursuant to § 234.9(a) of this part (false activation report) and 49 CFR 225.11 (accident/incident report).

(b) Each telephone report must state the:

(1) Name of the railroad;

(2) Name, title, and telephone number of the individual making the report;

(3) Time, date, and location of accident;

(4) U.S. DOT–AAR Grade Crossing Identification Number;

(5) Circumstances of the accident, including operating details of the grade crossing warning device;

(6) Number of persons killed or injured, if any;

(7) Maximum authorized train speed; and

(8) Posted highway speed limit, if known.

§ 234.9 Grade crossing signal system failure reports.

(a) Each railroad shall report to FRA within 15 days each activation failure of a highway-rail grade crossing warning system. FRA Form No. 6180–83, "Highway-Rail Grade Crossing Warning System Failure Report," shall be used for this purpose and completed in accordance with instructions printed on the form.

(b) Each railroad shall complete FRA Form No. 6180–83, "Highway-Rail Grade Crossing Warning System Report," for each false activation of a highway-rail grade crossing warning system. Each report required by this paragraph (b) shall be submitted to FRA within 30 days after expiration of the month during which the false activation occurred. The requirements of this paragraph (b) shall expire April 1, 1994.

§ 234.11 Railroad rules.

(a) Before April 1, 1992, each railroad shall file with the Associate Administrator for Safety, FRA, one copy of its current highway-rail grade crossing maintenance, inspection, and testing rules and procedures. Each railroad commencing operations after the above date shall comply with this paragraph before commencing operations.

(b) If a railroad has no written maintenance, inspection, and testing procedures, a statement to that effect shall be filed with FRA.

(c) Each amendment to a railroad's highway-rail grade crossing maintenance, inspection, and testing rules and procedures shall be filed with FRA.

§ 234.13 Grade crossing signal system information.

Before April 1, 1992 each railroad shall file with the FRA information regarding circuit type and component age for each of its active highway-rail grade crossing signal systems on its railroad. FRA Form No. 6180–87 "Highway-rail Grade Crossing Signal System Information" shall be used for this purpose and completed in accordance with instructions printed on the form.

§ 234.15 Civil penalty.

Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of up to $10,000 except that: Penalties may be assessed against individuals only for willful violations, and where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. See appendix A to this part for a schedule of civil penalties.

§ 234.17 Criminal penalty.

Whoever knowingly and willfully makes, causes to be made, or participates in making of a false entry in reports required to be filed by this part, or files a false report or other document required to be filed by this part is subject to a $5,000 fine and 2 years imprisonment as prescribed by 49 U.S.C. 522(a) and section 209(e) of the Federal Railroad Safety Act of 1970, as amended (45 U.S.C. 438(e)).

Appendix A to Part 234—Schedule of Civil Penalties

Section	Violation	Willful violation
234.7 Accidents involving grade crossing signal failure	$5,000	$7,500
234.9 Grade crossing signal system failure reports	2,500	[illegible]
234.11 Railroad rules	2,500	5,000
234.13 Grade crossing signal system information	2,500	5,000

NOTE: A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

Issued in Washington, DC, on July 16, 1991.

Gilbert E. Carmichael,

Administrator.

[FR Doc. 91–17294 Filed 7–22–91; 8:45 am]

BILLING CODE 4910–06–M

Proposed Rules

Federal Register
Vol. 56, No. 141
Tuesday, July 23, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 931

[Docket No. FV-91-412PR]

Expenses and Assessment Rate for Marketing Order Covering Fresh Bartlett Pears Grown in Oregon and Washington

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 931 for the 1991–92 fiscal period (July 1–June 30). The proposal is needed for the Northwest Fresh Bartlett Pear Marketing Committee (committee) established under M.O. 931 to incur operating expenses during the 1991–92 fiscal period and to collect funds during that period to pay those expenses. This would facilitate program operations.

DATES: Comments must be received by August 2, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, room 2525–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–475–3862.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement and Marketing Order No. 931 (7 CFR part 931) regulating the handling of fresh Bartlett pears grown in Oregon and Washington. The Bartlett pear marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 60 handlers of fresh Bartlett pears regulated under this marketing order each season and approximately 1,900 Bartlett pear producers in Washington and Oregon. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

The Bartlett pear marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable pears handled from the beginning of such year. An annual budget of expenses is prepared by the committee and submitted to the Department for approval. The members of the committee are pear handlers and producers. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The committee's budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing the anticipated expenses by expected shipments of pears (in standard boxes). Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses.

The committee met May 30, 1991, and unanimously recommended 1991–92 fiscal period expenditures of $91,062 and an assessment rate of $0.03 per standard box or equivalent of assessable pears shipped under M.O. 931. In comparison, 1990–91 fiscal period budgeted expenditures were $78,485 and the assessment rate was $0.015.

These expenditures are primarily for program administration. Most of the expenditure items are budgeted at about last year's amounts with the exception of increases in salaries, office rent, reserve for contingencies, and education and compliance. The increase for education and compliance from $500 to $5,000 is for routine handler audits necessary to determine handler compliance with program requirements.

Assessment income for the 1991–92 fiscal period is expected to total $64,783 based on shipments of 2,159,433 packed boxes of pears at $0.03 per standard box or equivalent. Other available funds include a reserve of $23,779 carried into this fiscal period, $1,000 of prior year assessments, and $1,500 in miscellaneous income, primarily from interest bearing accounts. Total funds available equal $91,062 the same as the recommended budget.

The committee also unanimously recommended that any unexpended funds or excess assessments from the 1990–91 fiscal period be placed in its reserve. The reserve is within the limits authorized under the marketing order.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not

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The assessment rate recommended by the committee is derived by dividing the anticipated expenses by expected shipments of pears (in standard boxes). Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses.

The committee met May 30, 1991, and unanimously recommended 1991–92 fiscal period expenditures of $91,062 and an assessment rate of $0.03 per standard box or equivalent of assessable pears shipped under M.O. 931. In comparison, 1990–91 fiscal period budgeted expenditures were $78,485 and the assessment rate was $0.015.

These expenditures are primarily for program administration. Most of the expenditure items are budgeted at about last year's amounts with the exception of increases in salaries, office rent, reserve for contingencies, and education and compliance. The increase for education and compliance from $500 to $5,000 is for routine handler audits necessary to determine handler compliance with program requirements.

Assessment income for the 1991–92 fiscal period is expected to total $64,783 based on shipments of 2,159,433 packed boxes of pears at $0.03 per standard box or equivalent. Other available funds include a reserve of $23,779 carried into this fiscal period, $1,000 of prior year assessments, and $1,500 in miscellaneous income, primarily from interest bearing accounts. Total funds available equal $91,062 the same as the recommended budget.

The committee also unanimously recommended that any unexpended funds or excess assessments from the 1990–91 fiscal period be placed in its reserve. The reserve is within the limits authorized under the marketing order.

While this proposed action would impose some additional costs on handlers, the costs arc in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not

have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of 10 days is appropriate because the budget and assessment rate approvals need to be expedited. The committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 931

Bartlett pears, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 931 be amended as follows:

PART 931—FRESH BARTLETT PEARS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 931 continues to read as follows:

Authority Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 931.226 is added to read as follows:

§ 931.226 Expenses and assessment rate.

Expenses of $91,062 by the Northwest Fresh Bartlett Pear Marketing Committee are authorized, and an assessment rate of $0.03 per standard box or equivalent of assessable pears is established, for the fiscal period ending June 30, 1992. Unexpended funds from the 1990–91 fiscal period may be carried over as a reserve.

Dated: July 17, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–17456 Filed 7–22–91; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 993

[FV–91–411PR]

Expenses and Assessment Rate for Dried Prunes Produced in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 993 for the 1991–92 crop year established under the marketing order for dried prunes produced in California. Funds to administer this program are derived from assessments on handlers. This action is needed in order for the marketing order committee to have sufficient funds to meet the expenses of operating the program. Expenses are incurred on a continuous basis.

DATES: Comments must be received by August 2, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, PO Box 96456, room 2525–S, Washington, DC 20090–6456. All comments should reference the docket number and date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Sonia N. Jimenez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, PO Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 475–5992.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order No. 993 (7 CFR part 993), regulating the handling of dried prunes produced in California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that the small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. This, both statutes have small entity orientation and compatibility.

There are approximately 15 handlers of prunes produced in California subject to regulation under the California prune marketing order, and approximately 1,200 producers in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of prunes handlers and producers may be classified as small entities.

The marketing order for California prunes requires that the assessment rate for a particular fiscal year shall apply to all assessable prunes handled from the beginning of such year. An annual budget of expenses is prepared by the Prune Marketing Committee (Committee) and submitted to the Department for approval. The members of the Committee are handlers and producers of regulated prunes. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local areas and are, therefore, in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of assessable prunes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. The recommended budget and assessment rate are usually acted upon by the Committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the Committee will have funds to pay its expenses.

The Committee met on June 25, 1991, and unanimously recommended 1991–92 marketing order expenditures of $290,224 and an assessment rate of $1.76 per ton of salable prunes. In comparison, 1990–91 budget expenditures were $260,736 and the assessment rate was $1.68 per ton. Assessment income for 1991–92 is estimated at $290,224 based on a crop of 164,900 salable tons. Major expenditures categories include $145,750 for salaries and wages, $122,600 for administrative expenses, and $21,874 for contingencies. The increase in administrative expenses is due to an addition to the research and development line item of $30,000 in the event a delegation needs to be sent to France during July 1992 for market development and research. Any funds not expended by the Committee during a crop year may be used, pursuant to § 993.81(c), for a period of five months subsequent to that crop year. At the end of such period, the excess funds are returned of credited to handlers.

While this proposed action would impose some additional costs on

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handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of 10 days is appropriate. Although the Board may use funds from the previous year for up to five months in the new year, Departmental approval of the expenditure categories is necessary in order for the Board to use those funds. Therefore, this action needs to be expedited.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 993 be amended as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR part 993 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.c. 601–674.

2. Section 993.342 is added to read as follows:

§ 993.342 Expenses and assessment rate.

Expenses of $290,224 by the Prune Marketing Committee are authorized, and an assessment rate payable by each handler in accordance with § 993.81 is fixed at $1.76 per ton for salable dried prunes for the 1991–92 crop year ending July 31, 1992.

Dated: July 17, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91-17458 Filed 7-22-91; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-ANE-24]

Airworthiness Directives; Pratt & Whitney Canada (PWC) PW100 Series Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain PWC PW100 series turboprop engines, which would require installation of a new or reworked fuel pump. This proposal is prompted by the determination that large torque fluctuations or torque reductions have occurred during flight due to main fuel pump input driveshaft vibration. This condition, if not corrected, could result in large engine torque variations and a subsequent aircraft asymmetric thrust condition.

DATES: Comments must be received no later than September 6, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the FAA, New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 91-ANE-24, 12 New England Executive Park, Burlington, Massachusetts 01803-5299, or deliver in duplicate to room 311 at the above address.

Comments may be inspected at the above location in room 311, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service information may be obtained from Pratt & Whitney Canada, Technical Publications Department, 1000 Marie Victorin, Longueuil, Quebec J4G 1A1, or may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Robert J. Ganley, Engine Certification Office, ANE-140, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803-5299; telephone (617) 273-7085.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the rules docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 91-ANE-24". The postcard will be date/time stamped and returned to the commenter.

Discussion

There have been several events where large torque fluctuations or torque reductions have occurred during flight. The FAA has determined that the fuel pump input drive shaft experiences torsional vibration which can induce oscillations of the main fuel control governor, which can result in the noted torque fluctuations or torque reductions This condition, if not corrected, could result in large engine torque variations and a subsequent aircraft asymmetric thrust condition.

Since this condition is likely to exist or develop on other engines of this same type design, an AD is proposed which would require installation of a new or reworked fuel pump incorporating an input drive shaft with increased torsional stiffness.

It is estimated that approximately 200 engines would be affected by this AD, that it would take approximately 5 manhours per engine to accomplish the required actions, and that the average labor cost would be $55 per manhour. The cost of required parts is estimated to be $11,500.00 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be approximately $2,355,000.00.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will roposed rulemaking

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Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 91–ANE–24". The postcard will be date/time stamped and returned to the commenter.

Discussion

There have been several events where large torque fluctuations or torque reductions have occurred during flight. The FAA has determined that the fuel pump input drive shaft experiences torsional vibration which can induce oscillations of the main fuel control governor, which can result in the noted torque fluctuations or torque reductions This condition, if not corrected, could result in large engine torque variations and a subsequent aircraft asymmetric thrust condition.

Since this condition is likely to exist or develop on other engines of this same type design, an AD is proposed which would require installation of a new or reworked fuel pump incorporating an input drive shaft with increased torsional stiffness.

It is estimated that approximately 200 engines would be affected by this AD, that it would take approximately 5 manhours per engine to accomplish the required actions, and that the average labor cost would be $55 per manhour. The cost of required parts is estimated to be $11,500.00 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be approximately $2,355,000.00.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes to amend 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

Pratt Whitney Canada: (Docket No. 91–ANE–24)

Applicability: Pratt & Whitney Canada (PWC) PW123, PW124B, PW125B and PW126A turboprop engines installed on, but not limited to, DeHavilland of Canada DHC–8 Series 300, Canadair CL–215T, Aerospatiale ATR–42 amd ATR–72, Fokker 50, and British Aerospace ATP aircraft.

Compliance is required at the next shop visit, or within 12 months from the effective date of this AD, whichever occurs first, unless already accomplished.

To prevent large engine torque variations and a subsequent aircraft asymmetric thrust condition, accomplish the following:

(a) Install a new or reworked fuel pump in accordance with the Accomplishment Instructions of PWG Service Bulletin 20946, Revision 1, dated February 18, 1991, on those engine serial numbers identified in the Effectivity paragraph of the noted service bulletin.

(b) For the purpose of this AD, shop visit is defined as the induction of an engine into a shop for the conduct of maintenance.

(c) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(d) Upon submission of substantiating data by an owner or operator through an FAA Inspector (maintenance, avionics or operations, as appropriate), an alternate method of compliance with the requirements of this AD or adjustments to the compliance schedule specified in this AD may be approved by the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803–5299.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Pratt & Whitney Canada, Technical Publications Department, 1000 Marie Victorin, Longueuil, Quebec J4G 1A1. These documents may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts.

Issued in Burlington, Massachusetts, on July 3, 1991.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR. Doc. 91–17423 Filed 7–22–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 19, 113, and 114

RIN-1515-AA22

Proposed Customs Regulations Amendments Relating to Duty-Free Stores

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule; correction; extension of comment period.

SUMMARY: The Customs Service is correcting a number of typographical errors and omissions, and extending the period of time within which comments may be submitted, with respect to the notice of proposed rulemaking on duty-free stores, which appeared in the **Federal Register** on May 17, 1991 (56 FR 22833). That document proposed to amend the Customs Regulations to designate duty-free stores as a class of Customs bonded warehouse, establish procedures for their administration, and incorporate these procedures in the Regulations, such changes being necessary to implement section 1908 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418).

DATES: Comments must be received on or before August 15, 1991.

ADDRESSES: Comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, 1301 Constitution Avenue NW., room 2119, Washington, DC 20229. All comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between 9 a.m. and 4:30 p.m. on normal business days, at the address above.

FOR FURTHER INFORMATION CONTACT: Russell Berger, Regulations and Disclosure Law Branch (202–566–8237).

SUPPLEMENTARY INFORMATION:

Background

Duty-free stores are essentially Customs bonded warehouses wherein merchandise is offered for sale to departing travelers without payment of Customs duties and taxes, on condition that the merchandise will be exported by and with them from the United States. At present, there are approximately 125 such stores operating throughout the U.S., 43 of which are on the Canadian border, 33 at the Mexican border, and 49 at U.S. international airports. Duty-free stores were first established by Customs in the late 1950's and have been administered since their inception under Customs directives, rather than under any specific law or regulation.

A document published in the **Federal Register** on May 17, 1991 (56 FR 22833) proposed to amend the Customs Regulations to include duty-free stores as a new class of Customs bonded warehouse together with specific procedures for their administration. These changes were necessary to implement section 1908 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418).

Comments on this proposed rulemaking were to have been received on or before July 16, 1991. Customs has, however, received a request from a trade association to extend this period, the association basically stating that it needs additional time to coordinate a meaningful comment with its membership. Customs believes, under the circumstances, that the request has merit. Accordingly, the period of time for the submission of comments is being extended as indicated.

In addition, the proposed rulemaking contained a number of typographical errors and omissions which are corrected as set forth below.

Corrections

1. On page 22834, column 1, line 21, under item "2", "not" is corrected to read "now".

2. In § 19.36(e), on page 22838, column 1, line 51, "form" is corrected to read "from".

3. In the second sentence of § 19.37(a), on page 22838, second column, line 18, "§ 19.39(b)" is corrected to read "§ 19.39 (a) and (b)".

4. In § 19.39(c)(4)(i), on page 22839, column 2, line 30, "not" is corrected to read "no".

5. The third sentence of the conclusory text of § 144.37(h)(2) following paragraph (vi), on page 22840, second column, line 15, which reads, "A permit file copy will be attached to the parcel containing the purchaser." is correct to read as follows:

"A permit file copy will be attached to the parcel containing the articles, and the original given to the purchaser."

6. The phrase "last date" appearing in the third sentence of the conclusory text of § 144.37(h)(3) following paragraph (vi), on page 22840, second column, line 49, is corrected by removing the word "last".

Dated: July 16, 1991.

Harvey B. Fox,

Director, Office of Regulations and Rulings.

[FR Doc. 91-17407 Filed 7-22-91; 8:45 am]

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19 CFR Part 118

Proposed Customs Regulations Amendments Concerning Centralized Examination Stations

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to add a new part to the Customs Regulations to set forth the regulatory framework for the establishment, operation and termination of Centralized Examination Stations (CES's). CES's are privately operated facilities at which imported merchandise is made available to Customs inspectors for physical examination. In recent years, the proliferation of examination sites scattered throughout a port has resulted in inspectors incurring a high level of non-productive travel time. The CES program allows Customs to better use its inspectional resources and clear higher volumes of cargo.

DATES: Comments must be received on or before September 23, 1991.

ADDRESSES: Comments (preferably in triplicate) should be addressed to and may be inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2119, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Leo Morris or Patricia Duffy, Office of Inspection and Control, 202-566-8151.

SUPPLEMENTARY INFORMATION:

Background

In recent years there has been a rapid increase in the number of Container Freight Stations (CFS), bonded warehouses, truck and rail terminals, and other indirect carriers receiving freight. The examination of this cargo has presented many logistical and staffing problems for Customs. Often these examinations sites are widely scattered throughout a port. This causes inspectors to incur a high level of non-productive travel time in order to perform regulatory compliance, classification, and valuation examinations such as securing samples, or verifying country of origin markings.

Among the many actions Customs has taken to cope with its increased work load is the development of the Centralized Examination Station program. Centralized Examination Stations (CES's) are privately operated facilities at which imported merchandise is made available to Customs inspectors for physical examination. By having as few work sites as possible Customs is able to perform more intensive examinations with better use of inspectional resources in a better work environment. Among other benefits of CES's are improved inspectional supervision, more thorough and effective examinations and guaranteed service. The CES program allows Customs to clear higher volumes of cargo with fewer resources.

There are approximately 140 CES's operating nationwide. These facilities are operated by a variety of entities including container freight station operators, transportation companies and terminal operators. Customs considers the program successful and plans to continue it. Feedback from segments of the importing community such as brokers, importers, trucking firms, shipping lines and airlines indicates overall acceptance of CES's. Many of these entities have communicated to Customs their opinions that CES's improve the examination process, provide fair service at a reasonable cost, are responsive to importer's needs and have adequate facilities that are conveniently located. Customs is interested in further comments on the degree to which CES's respond to the needs of the importing public and any specific comments for improvement.

Existing CES's have been operating under guidelines promulgated in Customs Directives, the most recent being Customs Directive 3270-05, issued August 31, 1990. In order to fully comply with the Administrative Procedure Act, Customs proposes to amend the Customs Regulations to incorporate the CES program. Existing CES's may continue business during consideration of the proposals. Upon adoption of final rules, district directors will permit CES's operating under agreements that contain a clause setting forth the duration of the operation to continue operating for the remainder of that time, subject to continued adherence to all other terms of the agreement as well. Operators that opened a CES with a commitment from Customs that they would be allowed to continue business for a specified period of time deserve to have that commitment honored. At the expiration of the agreement, the district director will use the procedures set forth in the regulations to select future CES operators.

CES's currently operating under an agreement without a time period specified will be permitted to operate after adoption of final rules only until the district director selects an operator under the regulations. Operators that commenced business without a specified time period will be eligible to submit applications under the regulations as finally adopted.

Discussion of Proposals

The regulations concerning the establishment, operation, and possible termination of CES's are being placed in new part 118.

Subpart A contains general provisions concerning CES's. Beginning with the definition of a CES, it further states that a CES may be established only when a district director determines the need for a port or area under his jurisdiction to have such a facility. His determination is announced by written bulletin posted at the customhouse. That announcement begins a 60-day period during which applications to operate a CES will be accepted. Applications must be in writing and must be submitted to the district director that made the announcement.

The subpart continues with the responsibilities a CES operator must assume, beginning with signing a written agreement with Customs in order to commence operations. The agreement will establish the length of time the CES will be allowed to operate. It is proposed that this period be from three to five years. Customs believes this period is long enough to make operators willing to invest the necessary money and resources to open a CES, but not so long as to remove the need to stay responsive to the market place in contemplation of the next selection process. However, comments on different time periods will be considered. The agreement also sets

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Subpart A contains general provisions concerning CES's. Beginning with the definition of a CES, it further states that a CES may be established only when a district director determines the need for a port or area under his jurisdiction to have such a facility. His determination is announced by written bulletin posted at the customhouse. That announcement begins a 60-day period during which applications to operate a CES will be accepted. Applications must be in writing and must be submitted to the district director that made the announcement.

The subpart continues with the responsibilities a CES operator must assume, beginning with signing a written agreement with Customs in order to commence operations. The agreement will establish the length of time the CES will be allowed to operate. It is proposed that this period be from three to five years. Customs believes this period is long enough to make operators willing to invest the necessary money and resources to open a CES, but not so long as to remove the need to stay responsive to the market place in contemplation of the next selection process. However, comments on different time periods will be considered. The agreement also sets

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forth the conditions under which the operator agrees to carry on business. In some particulars, the conditions in the agreement will be repetitions of the responsibilities of an operator set forth in the regulations. Also, due to the fact that the final selection and execution of an agreement is contingent upon the fitness of the facility to be operated as the CES, the applicant's experience in handling international cargo, as well as a background investigation of the applicant, the agreements are not transferrable. If an operator chooses to terminate operation of a CES before expiration of his agreement, Customs will, assuming the location still requires a CES, choose a new operator pursuant to the regulations.

Subpart B concerns the application process. One regulation spells out a list of particulars that must be described in the application, such as the name of the principals or corporate officers that will be responsible for operation of the CES and the security features of the site that will be CES. The district director is responsible for reviewing the applications and selecting the one or more applicant that will be allowed to operate a CES.

Subpart C concerns the movement of merchandise to a CES. Customs primary concern is that the party liable for each part of a transpiration be readily identifiable. Transportation of merchandise to a CES does not involve any new type of movement; the traditional methods of an importer moving his own goods or employing some variety of bonded mover are present in the CES situation. The subpart identifies the forms unable to request permission to move merchandise to a CES. Various scenarios of movement of merchandise are listed with the assignment of liability described as well. The subpart also includes the district director's authority to direct that a certain type of movement be used to transport merchandise to a certain CES if he has reason to so direct, *e.g.*, the need to deliver the merchandise to a Contraband Enforcement Team (CET) for intensive examination.

Subpart D concerns the revocation of an operator's selection and cancellation of the agreement to operate a CES. Causes to take such an action are separated into those causing immediate revocation and cancellation and those resulting in proposed revocation and cancellation. The district director having jurisdiction and cancellation. The district director having jurisdiction over the operator begins the process by written notice to the operator. The operator may appeal the district directors action by written notice to the Regional Commissioner having jurisdiction over the district involved, and if necessary, the Regional Commission's decision may be appealed to the Commissioner.

Comments

Before adopting these proposals, consideration will be given to any written comments timely submitted to Customs. Along with general comments concerning CES's, Customs invites comments concerning the costs and benefits of CES's. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, D.C.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) it is certified that, if adopted, the proposed amendments will not have a significant impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirments of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Drafting Information

The principal author of this document was John E. Doyle, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Management Reduction Act of 1980 (44 U.S.C. 3540 (h)). Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1515–), Washington, DC 20503, with copies to the U.S. Customs Service at the address previously specified.

The collection of information in these proposed regulations is in § 118.11 (19 CFR 118.11). The information is necessary to enable a district director to choose the best qualified applicant or applicants to operate a CES.

Estimated total annual reporting and/or recordkeeping burden: 600 hours.

Estimated average annual burden per respondent and/or recordkeeper: 2 hours.

Estimated number of respondents and/or recordkeepers: 300.

Estimated annual frequency of responses: 1.

List of Subjects in 19 CFR Part 118

Customs duties and inspection, Imports, Exports, Centralized Examination Stations.

Proposed Amendments

It is proposed to amend Chapter I of title 19, Code of Federal Regulations (19 CFR Ch. I), by adding a part 118 to read as follows:

PART 118—CENTRALIZED EXAMINATION STATIONS

Sec.
118.0 Scope.

Subpart General Provisions

118.1 Definition.
118.2 Establishment of Centralized Examination Stations.
118.3 Written agreement.
118.4 Responsibilities of a Centralized Examination Station operator.

Subpart B—Application to Establish a Centralized Examination Station

118.11 Contents of application.
118.12 Review of application.
118.13 Notification of selection or nonselection.

Subpart C—Movement of Cargo to a Centralized Examination Station

118.21 Permission to transfer cargo to CES for examination.
118.22 Assumption of liability during transfer.
118.23 Annual blanket transfer.
118.24 Designation of bonded movement and CES to be used.

Subpart D—Termination of Centralized Examination Station

118.31 Revocation of selection and cancellation of agreement to operate a Centralized Examination Station.
118.32 Notice of revocation and cancellation.
118.33 Appeal procedure.
118.34 Appeal for the Regional Commissioner's decision.

Authority: 19 U.S.C. 66, 1499, 1623, 1624.

§ 118.0 Scope.

This part sets forth regulations providing for the making of agreements

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between Customs and persons desiring to operate a Centralized Examination Station. It covers the application process, the responsibilities of the person or entity selected to be a CES operator, the CES operator's agreement, the procedures for moving merchandise to a CES for examination, the grounds and procedures for revoking an selection and cancelling an agreement or proposing to revoke and cancel, and the appeal rights following either immediate or proposed revocation and cancellation.

Subpart A—General Provisions

§ 118.1 Definition.

A Centralized Examination Station (CES) is a privately operated facility at which imported merchandise is made available to Customs inspectors for physical examination. A CES may be established in any port or any portion of a port, or any other area under the jurisdiction of a district director.

§ 118.2 Establishment of Centralized Examination Stations.

When a district director determines the need for a port to establish a CES, or an additional CES, and when the term of an existing CES is about to expire, he will announce by written bulletin posted at the customhouse that applications to operate a CES are being accepted. This bulletin will include the general criteria (see § 118.11), and any local criteria that applicants must meet. Applications will be accepted for 60 days from the date of such announcement. Applications will only be accepted in response to a district director announcement.

§ 118.3 Written agreement.

The applicant tentatively selected to operate a CES must sign a written agreement with Customs before commencing operations. Failure to execute a written agreement with Customs in a timely manner will result in the revocation of that applicant's tentative selection and the tentative selection of another applicant. In addition to the provisions described elsewhere in this part, the agreement will specify the duration of the authority to operate the CES. That duration will be not less than three years nor more than five years. Such agreements cannot be transferred, sold, inherited, or conveyed in any manner. At the expiration of the agreement, an operator wishing to reapply may do so pursuant to this Part and his application will be considered de novo.

§ 118.4 Responsibilities of Centralized Examination Station Operator.

By signing the agreement to operate a CES, an operator agrees to:

(a) Maintain the facility designated as the CES in conformity with the security standards as outlined in his approved application;

(b) Provide adequate personnel and equipment to ensure reliable service for the opening, presentation for inspection, and closing of all types of cargo designated for examination by Customs. Such service must be provided on a "first come—first served" basis;

(c) Assess service fees as outlined in the fee schedule included in the approved application and bill users directly for services rendered. The CES operator must provide 90 days notice to Customs of any proposed fee changes. In the case of a fee increase, the operator must include written justification for the increase. The district director may consider whether to allow a CES operator to use a new fee schedule. Unless so approved, the CES operator is bound by the fee schedule in his approved application;

(d) Assume responsibility for any charges or expenses incurred in connection with the operation of the CES;

(e) Maintain, at his own expense, adequate liability insurance with respect to the property within his control and with respect to persons having access to the CES;

(f) Keep current the list filed with the district director pursuant to § 118.11(f). Additions to or deletions from the list must be submitted in writing to the district director within 10 calendar days of the commencement or termination of employment;

(g) Maintain a Customs custodial bond in an amount set by the district director and further agrees to its application as a performance bond to the CES operation. The operator also agrees to increase the amount of the bond if deemed appropriate by the district director;

(h) Maintain all records connected with the operation of the CES in accordance with part 162 of this chapter and retain such records for a period of not less than five years from the date of the transaction or examination conducted pursuant to the agreement to operate the CES. Further, such records will be made available for inspection upon demand by Customs;

(i) Submit, if requested by Customs, the fingerprints of all employees involved in the CES operation.

(j) Provide office space, parking spaces, appropriate sanitary facilities, and potable water to Customs personnel at no charge or a charge of $1 per year; and

(k) Perform in accordance with any other reasonable requirements imposed by the district director.

Subpart B—Application to Establish Centralized Examination Station

§ 118.11 Contents of application.

The application to operate a CES must consist of the following and any application not providing the following information will not be considered. The responses to paragraphs (b), (c), (d), (g), (h), and (i) of this section are the criteria used to judge the applications:

(a) The name and address of the facility to be operated as the CES, the names of all principals or corporate officers, and the name and telephone number of an individual to be contacted for further information;

(b) A description of the CES's accessibility within the port or other location, and a floor plan of the facility actually dedicated to the CES operation showing bay doors, office space, exterior features, security features, and staging and work space;

(c) A schedule of fees clearly showing what the applicant will charge for each type of service;

(d) A detailed list of equipment showing the applicant can make a diverse variety of cargo available for examination in an efficient and timely manner;

(e) A copy of an approved custodial bond on Customs Form 301. If the applicant does not possess such a bond, a completed CF 301 must be included with the application which will be approved upon selection;

(f) A list of all employees involved in the CES operation giving their names, dates of birth, and social security numbers (Providing social security numbers is voluntary; however, failure to provide the number may hinder the investigation process.);

(g) Any information showing the applicant's experience in international cargo operations, and knowledge of Customs procedures and regulations, or a commitment to acquire that knowledge;

(h) Any information that relates to other commercial business activities, or relationships, or other Customs activities or relationships that are an actual or potential conflict of interest; and

(i) Any other information that the district director considers essential to the selection process based on port conditions.

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(k) Perform in accordance with any other reasonable requirements imposed by the district director.

Subpart B—Application to Establish Centralized Examination Station

§ 118.11 Contents of application.

The application to operate a CES must consist of the following and any application not providing the following information will not be considered. The responses to paragraphs (b), (c), (d), (g), (h), and (i) of this section are the criteria used to judge the applications:

(a) The name and address of the facility to be operated as the CES, the names of all principals or corporate officers, and the name and telephone number of an individual to be contacted for further information;

(b) A description of the CES's accessibility within the port or other location, and a floor plan of the facility actually dedicated to the CES operation showing bay doors, office space, exterior features, security features, and staging and work space;

(c) A schedule of fees clearly showing what the applicant will charge for each type of service;

(d) A detailed list of equipment showing the applicant can make a diverse variety of cargo available for examination in an efficient and timely manner;

(e) A copy of an approved custodial bond on Customs Form 301. If the applicant does not possess such a bond, a completed CF 301 must be included with the application which will be approved upon selection;

(f) A list of all employees involved in the CES operation giving their names, dates of birth, and social security numbers (Providing social security numbers is voluntary; however, failure to provide the number may hinder the investigation process.);

(g) Any information showing the applicant's experience in international cargo operations, and knowledge of Customs procedures and regulations, or a commitment to acquire that knowledge;

(h) Any information that relates to other commercial business activities, or relationships, or other Customs activities or relationships that are an actual or potential conflict of interest; and

(i) Any other information that the district director considers essential to the selection process based on port conditions.

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§ 118.12 Review of application.

The district director, after review of all applications, shall select the one or more applicants that will be granted authority to operate a CES. The district director will select the one or more applicants that will best meet the examination needs of the Customs Service and facilitate the movement of imported merchandise. The district director may use a CES committee made up of the importing community during the review of applications.

§ 118.13 Notification of selection or nonselection.

The applicant tentatively selected to operate a CES will be notified in writing by the district director of this tentative selection. All selections are tentative pending execution of a written agreement between Customs and the applicant. Upon execution of such written agreement, tentative selection becomes final. Applicants not selected to be CES operators will receive written notice of such fact. Such notice will state the reason or reasons for nonselection.

Subpart C—Movement of Cargo to a Centralized Examination Station

§ 118.21 Permission to transfer cargo to CES for examination.

When a shipment requires examination at a CES, Customs Form (CF) 3461, or CF 3461 (ALT) for land border cargo, or an attachment to either, may be used to request permission for such a transfer. The entry filer must write, type or stamp the following lines on the form or attachment, and must supply the information called for on the first three lines:

Containers to be transferred: _____ All or,
Container #'s _____, _____, _____
To CES ____________________
Approved by: U.S. Customs Inspector ____________________
Date ____________________

Unless the district director exercises his authority pursuant to § 118.24 of this part, the reviewing inspector will initial and date the form or attachment being used, or stamp one copy of the CF 3461 if required by the district director. A copy of this document will act as notification and authorization to the entry filer that the merchandise must be transferred to the importer-designated CES.

§ 118.22 Assumption of liability during transfer.

Customs will allow merchandise designated for examination to be transferred from the importing carrier's point of unlading or from a bonded facility, to a CES, if such transfer takes place under one of the following bonded movements:

(a) If merchandise is transferred directly to a CES from an importing carrier, the importing carrier shall remain liable under the terms of its bond for the proper safekeeping and delivery of the merchandise until it is receipted for by the CES operator.

(b) If merchandise is transferred directly from a bonded carrier's facility to a CES or is delivered directly to the CES by a bonded carrier, the bonded carrier shall remain liable under the terms of its bond for the proper safekeeping and delivery of the merchandise until it is formally receipted for by the CES operator.

(c) If containerized cargo, including excess loose cargo that is part of the containerized cargo, is transferred to a CES operator's own facility using his own vehicles, the operator shall be liable under the terms of its own custodial bond.

(d) If the importer or his agent arrange for transfer of merchandise to a CES, the importer shall assume liability under the entry bond.

§ 118.23 Annual blanket transfer.

District directors may institute an annual blanket transfer application to facilitate any of the bonded movements described in § 118.22 of this chapter.

§ 118.24 Designation of bonded movement and CES to be used.

In the event the district director deems it necessary, he may direct the type of bonded movement used to transfer merchandise to a CES, as well as designate the CES at which examination must take place.

Subpart D—Termination of Centralized Examination Station

§ 118.31 Revocation of selection and cancellation of agreement to operate a Centralized Examination Station.

(a) *Immediate revocation and cancellation.* The district director may immediately revoke the selection as operator and cancel that person or entity's operator's agreement to operate a CES if:

(1) The selection and agreement were obtained through fraud or the misstatement of a material fact; or

(2) The CES operator or an officer of a corporation which has signed an agreement to operate a CES is convicted of, or has committed acts which would constitute, a felony or a misdemeanor involving theft, smuggling, or a theft-connected crime, and the conviction resulted from, or the subject acts were in fact committed, as part of their official duties as operator or corporate officer. Any change in the employment status of a corporate officer (*e.g.*, discharge, resignation, demotion, or promotion) prior to conviction for a felony or misdemeanor involving theft, smuggling, or a theft-connected crime, resulting from an act or acts committed in their official capacity as corporate officer will not preclude application of this provision.

(b) *Proposed revocation and cancellation.* The district director may propose to revoke the selection as operator and cancel the agreement to operate a CES if:

(1) The CES operator refuses or neglects to obey any proper order of a Customs officer or any Customs order, rule, or regulation relative to the operation of a CES, or fails to operate in accordance with the terms of his agreement;

(2) The CES operator fails to retain merchandise which has been designated for examination;

(3) The CES operator does not provide secure facilities or properly safeguard merchandise within the CES;

(4) The CES operator fails to furnish a current list of names, addresses and other information required by § 118.4; or

(5) The bond required by § 118.4 is determined to be insufficient in amount or lacking sufficient sureties, and a satisfactory new bond with good and sufficient sureties is not furnished within a reasonable time.

§ 118.32 Notice of revocation and cancellation.

The district director shall immediately revoke the selection as operator and cancel the agreement to operate a CES, or propose to revoke such selection and cancel such agreement, by serving notice in writing on the operator. The notice shall be in the form of a statement specifically setting forth the grounds for revocation and cancellation or proposed revocation and cancellation and shall inform the operator of his right to appeal.

§ 118.33 Appeal procedure.

An operator wishing to appeal a revocation and cancellation or show cause why a proposed revocation and cancellation should not occur may, within 10 calendar days of receipt of the notice or proposal, file with the Regional Commissioner having jurisdiction over the district director that signed the notice or proposal a written appeal. A revocation and cancellation pursuant to § 118.31(a) of this part shall remain in effect during any appeal. The appeal shall be filed in duplicate and shall set forth the response of the CES operator

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to the statements of the district director. The Regional Commissioner shall render a decision to the operator, in writing, stating the reasons therefor, by letter mailed within 30 working days following receipt of the appeal, unless the period is extended with due notification to the operator.

§ 118.34 Appeal from the Regional Commissioner's decision.

Upon a decision by the Regional Commissioner affirming the revocation of selection and cancellation of an agreement to operate a CES, or agreeing that a proposed revocation and cancellation should occur, the operator may file with the Commissioner of Customs, in writing, a request for such additional review as the Commissioner, or his delegate, deems appropriate. This request must be received by the Commissioner within 10 calendar days of the operator's receipt of the Regional Commissioner's decision. The Commissioner, or his delegate, shall render a decision to the operator, in writing, stating the reasons therefor, by letter mailed within 30 working days following receipt of the appeal, unless this period is extended with due notification to the operator.

Michael H. Lane,

Acting Commissioner of Customs,

Approved: July 18, 1991.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 91–17445 Filed 7–22–91; 8:45 am]

BILLING CODE 4820-02-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3972-5]

Reconsideration of Certain Federal RACT Rules for Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed stay (IL 12–6–5134).

SUMMARY: In the Rules section of today's **Federal Register**, USEPA is announcing a 3-month stay and reconsideration of certain Federal rules requiring Reasonably Available Control Technology (RACT) to control volatile organic compound (VOC) emissions in the Illinois portion of the Chicago ozone nonattainment area (55 FR 26814 June 29, 1990). That action stays , the effectiveness of the following rules, including the applicable compliance dates, for three months: (1) The emission limitations and standards for miscellaneous metal parts and products coating operations only as applied to Duo-Fast Corporation's "power driven metal fastener" manufacturing facility in Franklin Park, Illinois (55 FR at 26868–9, codified at 40 CFR 52.741 (e)(1)(i)(J)), as well as the July 1, 1991, compliance date (55 FR at 26872 codified at 40 CFR 52.741 (e)(5)); and (2) the emission limitations and standards for miscellaneous organic chemical manufacturing processes only as applied to Stepan Company's manufacturing facility near Millsdale, Illinois (55 FR at 26884, codified at 40 CFR 52.741 (w)(3)), as well as the July 1, 1991, compliance date (55 FR at 26884, codified at 40 CFR 52.741 (w)(4)). USEPA is issuing that stay pursuant to Clean Air Act (CAA) section 307(d)(7)(B), 42 U.S.C. 7607 (d)(7)(B), which provides the Administrator authority to stay the effectiveness of a rule for up to 3 months during reconsideration.

This rule proposes, pursuant to CAA sections 110(c), 301(a)(1), and 307(d)(1)(B) 42 U.S.C. 7410(c), 7601(a)(1), and 7607 (d)(1)(B), to temporarily stay the effectiveness of these rules, and applicable compliance dates, beyond the 3 months expressly provided in section 307(d)(7)(B), but only if and as long as necessary to complete reconsideration (including any appropriate regulatory action) of the rules in question. Pursuant to the rulemaking procedures set forth in CAA section 307(d), 42 U.S.C. 7607(d), USEPA hereby requests public comment on this proposed temporary extension of the three-month stay.

DATES: Comments on this proposal must be received by August 22, 1991 at the address below. A public hearing, if requested, will be held in Chicago, Illinois. Requests for a hearing should be submitted to J. Elmer Bortzer by August 22, 1991 at the address below. Interested persons may call Mr. Bortzer at (312) 886–1430 to see if a hearing will be held and the date and location of any hearing. Any hearing will be strictly limited to the subject matter of this proposal, the scope of which is discussed below.

ADDRESSES: Written comments on this proposed action should be addressed to J. Elmer Bortzer, Chief, Regulation Development Section (5AR–26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604. Comments should be strictly limited to the subject matter of this proposal, the scope of which is discussed below.

Docket: Pursuant to section 307(d)(1), of the CAA, 42 U.S.C. 7607 (d)(1), this action is subject to the procedural requirements of section 307(d). Therefore, USEPA has established a public docket for this action, 5–AR–91–1, which is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at the following addresses. We recommend that you contact Randolph O. Cano before visiting the Chicago location and Gloria Butler before visiting the Washington DC location. A reasonable fee may be charged for copying.

U.S. Environmental Protection Agency, Region V, Regulation Development Branch, Twenty Sixth floor, Northeast, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6036.

U.S. Environmental Protection Agency, Docket No. 5A–91–2, Air Docket (LE–131), Room M1500, Waterside Mall, 401 M Street SW., Washington, DC 20460, (202) 245–3639.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Regulation Development Branch, U.S. Environmental Protection Agency, Region V, (312) 886–6036 and at the Chicago address indicated above.

SUPPLEMENTARY INFORMATION: Elsewhere in today's **Federal Register**, USEPA announces that, pursuant to CAA section 307(d)(7)(B), 42 U.S.C. 7607(d)(7)(B), it is convening a proceeding for reconsideration of certain Federal rules requiring RACT to control VOC emissions in the Illinois portion of the Chicago ozone nonattainment area (55 FR 26814, June 29, 1990). Readers should refer to that notice for a complete discussion of the background and rules affected.[1] In that notice, USEPA also announces a 3-month stay of those rules during reconsideration. However, USEPA may not be able to complete reconsideration (including any appropriate regulatory action) of the rules within the 3-month period expressly provided by CAA section 307(d)(7)(B). If USEPA does not complete the reconsideration in this timeframe then it will extend temporarily the stay of the emission limitations and applicable compliance dates until USEPA completes final rulemaking action upon reconsideration. By this action, USEPA proposes a temporary extension of the stay beyond the 3 months provided, only if and as long as necessary to complete reconsideration of the rules in question. If USEPA takes final action to impose this stay, the stay would extend until the effective date of USEPA's final action following reconsideration of these rules.

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[1] In that discussion and as incorporated by reference here, USEPA makes expressly clear that, by its actions today, including this proposal, USEPA in no manner concedes that it violated any provision of the CAA or Administrative Procedure Act.

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U.S. Environmental Protection Agency, Region V, Regulation Development Branch, Twenty Sixth floor, Northeast, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6036.

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FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Regulation Development Branch, U.S. Environmental Protection Agency, Region V, (312) 886–6036 and at the Chicago address indicated above.

SUPPLEMENTARY INFORMATION: Elsewhere in today's **Federal Register**, USEPA announces that, pursuant to CAA section 307(d)(7)(B), 42 U.S.C. 7607(d)(7)(B), it is convening a proceeding for reconsideration of certain Federal rules requiring RACT to control VOC emissions in the Illinois portion of the Chicago ozone nonattainment area (55 FR 26814, June 29, 1990). Readers should refer to that notice for a complete discussion of the background and rules affected.[1] In that notice, USEPA also announces a 3-month stay of those rules during reconsideration. However, USEPA may not be able to complete reconsideration (including any appropriate regulatory action) of the rules within the 3-month period expressly provided by CAA section 307(d)(7)(B). If USEPA does not complete the reconsideration in this timeframe then it will extend temporarily the stay of the emission limitations and applicable compliance dates until USEPA completes final rulemaking action upon reconsideration. By this action, USEPA proposes a temporary extension of the stay beyond the 3 months provided, only if and as long as necessary to complete reconsideration of the rules in question. If USEPA takes final action to impose this stay, the stay would extend until the effective date of USEPA's final action following reconsideration of these rules.

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[1] In that discussion and as incorporated by reference here, USEPA makes expressly clear that, by its actions today, including this proposal, USEPA in no manner concedes that it violated any provision of the CAA or Administrative Procedure Act.

By this notice USEPA hereby proposes, pursuant to CAA sections 110(c), 301(a)(1), and (307(d)(1)(B), 42 U.S.C. 7410(c), 7601(a), and 7607(d)(1)(B), a temporary administrative stay of the effectiveness of the following rules, including the applicable compliance dates, promulgated as final Federal rules requiring RACT to control VOCs in the Illinois portion of the Chicago ozone nonattainment area (55 FR 26814 June 29, 1990): (1) The emission limitations and standards for miscellaneous metal parts and products coating operations only as applied to Duo-Fast Corporation's "power driven metal fastener" manufacturing facility in Franklin Park, Illinois (55 FR at 26868–9, codified at 40 CFR 52.741(e)(1)(i)(J)), as well as the July 1, 1991, compliance date (55 FR at 26872, codified at 40 CFR 52.741 (e)(5)); and (2) the emission limitations and standards for miscellaneous organic chemical manufacturing processes only as applied to Stepan Company's manufacturing facility near Millsdale, Illinois (55 FR at 26884, codified at 40 CFR 52.741 (w)(3)), as well as the July 1, 1991, compliance date (55 FR at 26884, codified 40 CFR 52.741 (w)(4)). In turn, pursuant to the rulemaking procedures set forth in section 307(d) of the CAA, USEPA hereby requests comment on such a proposed extension.

USEPA is proposing this temporary administrative stay of the rules and associated compliance dates in order to complete reconsideration of these rules, as discussed above. USEPA intends to complete its reconsideration of the rules and, following the notice and comment procedures of section 307(d) of the CAA, take appropriate action. If the reconsideration results in emission limitations and standards which are stricter than the existing and applicable Illinois rules, USEPA will propose a compliance period of 1 year from the date of final action on reconsideration. Note that a 1-year compliance period was the general compliance period provided in the Federal RACT rules promulgated on June 29, 1990 (55 FR at 26814). As a general matter, USEPA will provide an adequate period for compliance upon completion of its final action on reconsideration. In essence, USEPA will seek to ensure that the affected parties are not unduly prejudiced by the Agency's reconsideration. Note that, like the rules themselves, any USEPA proposal regarding the appropriate compliance period would be subject to the notice and comment procedures of CAA section 307(d).

USEPA recognizes the interest of the State of Wisconsin in this matter.[2] The regulatory requirements that are affected by today's proposel were undertaken in the context of a settlement agreement between USEPA and the States of Wisconsin and Illinois. In recognition of those obligations, USEPA will reconsider rules in question as expeditiously as practicable.

Under Executive Order 12291, this action is not "major". It has been submitted to the Office of Management and Budget for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone.

Authority: 42 U.S.C. 7401–7642.

Dated: July 1, 1991.

Identification of Document: Proposed Rule indefinitely extending a stay of portions of the Chicago Federal Ozone Plan as applied to Duo-Fast Corporation and Stepan Company.

William K. Reilly,

Administrator.

[FR Doc. 91–16493 Filed 7–22–91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91–218, RM–7752]

Radio Broadcasting Services; Charleston, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Dianne Anderson requesting the substitution of Channel 291C2 for Channel 291A at Charleston, Missouri, and modification of the construction permit for Station KWKZ. The coordinates for Channel 291C2 at Charleston are 36–56–30 and 89–33–00. In accordance with § 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in the use of the higher powered channel at Charleston or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such interested parties.

DATES: Comments must be filed on or before September 9, 1991, and reply comments on or before September 24, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Anne Thomas Paxson, Borsari & Paxson, 2033 M Street, NW., suite 630, Washington, DC 20036, (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–218, adopted July 5, 1991, and released July 17, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW., Washington, DC 20036, (202) 452–1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission..

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–17400 Filed 7–22–91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91–216, RM–7742]

Radio Broadcasting Services; Camas, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by KMAS Broadcasting Corporation seeking the substitution of Channel 234C3 for Channel 234A at Camas, Washington, and the modification of its construction permit for Station KMUZ(FM) accordingly. Channel 234C3 can be allotted to Camas in compliance with the Commission's minimum distance separation requirements at the petitioner's requested site with a site restriction of 19.1 kilometers (11.9 miles) east of the community. The coordinates for Channel 234C3 at Camas are North Latitude 45-31-39 and West Longitude 122-10-17. In accordance with § 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 234C3 at Camas or require the petitioner to demonstrate the availability of an additional equivalent class channel. Since Camas is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence by the Canadian government has been requested.

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[2] USEPA representatives have conferred with representatives of the Wisconsin Attorney General's office regarding the possible need for USEPA to undertake reconsideration of the regulatory requirements affected by today's proposed action.

DATES: Comments must be filed on or before September 9, 1991, and reply comments on or before September 24, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard L. Schwary, President, KMAS Broadcasting Corporation, P.O. Box 1155, Camas, Washington 98607 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-216, adopted July 5, 1991, and released July 17, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-17401 Filed 7-22-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-217, RM-7751]

Radio Broadcasting Services; Brainerd, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Greater Minnesota Broadcasting Corporation proposing the allotment of FM Channel 278A to Brainerd, Minnesota, as that community's third FM broadcast service. The coordinates for Channel 278A at Brainerd are 46-21-36 and 94-12-06. Canadian concurrence will be requested for this allotment.

DATES: Comments must be filed on or before September 9, 1991, and reply comments on or before September 24, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: June A. Persons, Greater Minnesota Broadcasting Corporation, KVBR Building; Brainerd, Minnesota 56401 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-217, adopted July 5, 1991, and released July 17, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Docket Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street NW., Washington, DC 20036, (202) 452-1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch; Policy and Rules Division; Mass Media Bureau.

[FR Doc. 91-17398 Filed 7-22-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-163; RM-7170]

Radio Broadcasting Services; Bay St. Louis and Poplarville, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; request for supplemental information.

SUMMARY: The Commission requests supplemental information from Dowdy and Dowdy Partnership ("petitioner"), licensee of Station WZKX(FM), Channel 300C, Poplarville, Mississippi, on its proposal to reallot Channel 300C from Poplarville to Bay St. Louis, Mississippi, and modify the license of Station WZKX(FM) accordingly. See 55 FR 12391. Petitioner is requested to provide information to show that Bay St. Louis is deserving of a first local service or whether it should be credited with all of the aural services licensed to the Biloxi-

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Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch; Policy and Rules Division; Mass Media Bureau.

[FR Doc. 91-17398 Filed 7-22-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-163; RM-7170]

Radio Broadcasting Services; Bay St. Louis and Poplarville, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; request for supplemental information.

SUMMARY: The Commission requests supplemental information from Dowdy and Dowdy Partnership ("petitioner"), licensee of Station WZKX(FM), Channel 300C, Poplarville, Mississippi, on its proposal to reallot Channel 300C from Poplarville to Bay St. Louis, Mississippi, and modify the license of Station WZKX(FM) accordingly. See 55 FR 12391. Petitioner is requested to provide information to show that Bay St. Louis is deserving of a first local service or whether it should be credited with all of the aural services licensed to the Biloxi-

Gulfport, Mississippi, Urbanized Area. No additional counterproposals may be submitted since an opportunity for the filing of counterproposals has already been provided.

DATES: Comments must be filed on or before September 9, 1991 and reply comments on or before September 24, 1991.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 632-6302.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant as follows: Lawrence J. Bernard, Jr., Ward & Mendelsohn, P.C., 1100 17th Street NW., Washington, DC 20036 (Counsel for the petitioner).

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Request for Supplemental Information, MM Docket No. 90-163, adopted July 5, 1991, and released July 17, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-17399 Filed 7-22-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB

Endangered and Threatened Wildlife and Plants; Public Hearing and Extension of Public Comment Period on Proposed Threatened Status for a Plant, Sidalcea nelsoniana (Nelson's checker-mallow)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and extension of public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service), under the Endangered Species Act of 1973, as amended (Act), gives notice that a public hearing will be held on the proposed threatened status for a plant, *Sidalcea nelsoniana*. The hearing will allow all interested parties to submit oral or written comments on the proposals. In addition, the Service extends the public comment period from August 6, 1991 to August 19, 1991.

DATES: The public hearing will be held from 7 p.m. to 9 p.m. on Thursday, August 8, 1991, in McMinnville, Oregon. Comments from all interested parties must be received by August 19, 1991. any comments received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: The public hearing will be held in the McMinnville Community Center, room 203, 600 N. Evans, McMinnville, Oregon. Written comments and materials should be sent directly to Mr. Russell Peterson, Filed Supervisor, Portland Field Station, U.S. Fish and Wildlife Service, 2600 SE. 98th Avenue, Portland, Oregon 97266. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Robert L. Parenti, Botanist, Boise Field Station, U.S. Fish and Wildlife Service, 4696 Overland Road, room 576, Boise, Idaho 83705 (208/334-1816).

SUPPLEMENTARY INFORMATION:

Background

Sidalcea nelsoniana, (Nelson's checker-mallow) in the mallow family (Malvacease), is a perennial herb with pinkish-lavender to pinkish-purple flowers borne in clusters at the end of 1 to 2½ feet tall stems. The species is threatened primarily by development, habitat conversion to agricultural lands, logging, recreational activities, and construction of water impoundments. A proposed rule to list *Sidalcea nelsoniana* as a threatened species was published in the **Federal Register** on June 7, 1991 (56 FR 26373).

Section 4(b)(5)(E) of the Act, as amended (16 U.S.C. 1533(b)(5)(E)), requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. On June 25, 1991, the Service received a written request for public hearing from Jack Nicholls of McMinnville, Oregon. As a result, the Service scheduled a public hearing for August 8, 1991, from 7 p.m. to 9 p.m. in the McMinnville Community Center, room 203, 600 N. Evans, McMinnville, Oregon.

Parties wishing to make statements for the record should bring a copy of their statements to the hearing. Oral statements may be limited in length, if the number of parties present at the hearing necessitates such a limitation. there are, however, no limits to the length of written comments or materials presented at the hearing or mailed to the Service. Written comments will be given the same weight as oral comments. The comment period closes on August 19, 1991. Written comments should be submitted to the Service at the address in the **ADDRESSES** section.

Author

The primary author of this notice is Ms. Teresa A. Nichols, Portland Filed Station (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.)

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports Imports, Reporting and recordkeeping requirements, Transportation.

Dated: July 16, 1991.

William E. Martin,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service

[FR Doc. 91-17416 Filed 7-22-91; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 56, No. 141
Tuesday, July 23, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Fuzzy Bighorn (FY 93) Timber Sale, Clearwater National Forest, Clearwater County, ID; Intent To Prepare Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to document the analysis and disclose the environmental impact of proposed actions to harvest timber, build roads, and regenerate new stands of trees in Fuzzy Creek, Mill Creek, Bighorn Creek, small draingages feeding into Weitas Creek, and small drainages feeding into the North Fork of the Clearwater River between the confluence with Orogrande Creek and with Weitas Creek. The analysis area consists of approximately 6,600 acres and is located approximately 36 air miles northeast of Kamiah, Idaho (75 air miles east of Lewiston, Idaho). Portions of the proposed actions are located within the northwest corner of the 235,510 acre Bighorn-Weitas Roadless Area (#01–306).

DATES: Written comments concerning the scope of the analysis should be received on or before September 6, 1991. Public meetings are scheduled for 7 p.m. August 5, 1991 at the Kamiah Grange Hall, Route 12, Kamiah, Idaho and at 7 p.m. August 6, 1991 at the Community Center, 1424 Main St., Lewiston, Idaho.

ADDRESSES: Written comments should be sent to: Dallas Emch, District Ranger, Pierce District, Kamiah Ranger Station, P.O. Box 308, Kamiah, Idaho 83536.

FOR FURTHER INFORMATION: Specific questions about the proposed action, analysis and EIS should be directed to David Seesholtz, District NEPA Coordinator, Pierce District, Phone (208) 935–2513.

SUPPLEMENTARY INFORMATION: The Fuzzy Bighorn Timber Sale will be administered by the Pierce Ranger District of the Clearwater National Forest, Clearwater County, Idaho. Because of the potential for significant impacts resulting from the proposed action (as defined by 40 CFR 1508.27), an Environmental Impact Statement (EIS) will be prepared. The Forest Service will be the lead agency in preparation of the EIS. The EIS will tier to the Clearwater Forest Plan (September 1987), which provides the overall gudiance (Goals, Standards and Guidelines, and Management Area direction) in achieving the desired future condition for the area. The principle desired future condition for the area is to provide sustained big game forage interspersed with thermal/hiding cover while providing for sustained timber production on suitable timber lands. The Fuzzy Bighorn Timber Sale is proposed as a means of achieving the desired future condition for the area. The sale is located within five management areas. The purpose and goals for the proposed actions are specifically defined by these mangement areas and include:

Management Area E1—Provide an optimum, sustained production of wood products through harvests that fully realize site potential and result in healthy, vigorous stands. Timber production is to be cost effective and provide adequate protection of soil and water quality. Elk is to be managed based on physiological and ecological needs, primarily through limited road closures.

Management Area C3—Provide winter range and thermal cover for elk on steep breaklands with south exposures supporting suitable browse stands.

Management Area C4—Provide sufficient forage and thermal cover for existing and projected big game populations which achieving timber production outputs.

Management Area C8S—Maintain high quality wildlife and fishery objectives while producing timber from the productive Forest land. Manage for elk summer range and high fishery stream values. These objectives can be met by modifying timber practices and with restrictive road closures.

Management Area M2—Provide for the protection and enhancement of riparian dependent resources. Management activities can include timber harvest, grazing and recreation as long as these practices enhance and protect the riparian values.

The western boundary of the Fuzzy Bighorn Timber Sale starts at the confluence of the North Fork of the Clearwater River and Orogrande Creek and runs southerly along Forest Road 250 adjacent to Orogrande Creek to approximately the intersection with Forest Road 660. The southern boundary then runs easterly following ridgelines toward Cabin Point and then follows drainage features to the confluence of Bighorn Creek and Weitas Creek. The western boundary runs north adjacent to Weitas Creek to its confluence with the North Fork of the Clearwater River. The northern boundary then heads west adjacent to the North Fork of the Clearwater River to its confluence with Orogrande Creek. Approximately 5,400 acres of the 6,600 acres within the timber sale area are within the boundary of the Bighorn-Weitas Roadless Area. The geographic scope of analysis will depend upon the resource, and may require analysis beyond the timber sale boundary. For example, elk habitat effects will be analyzed basd on the Elk Habitat Unit for the area, watershed effects downstream of the project boundary will be modelled, and the effects on roadless character will include the entire Bighorn-Weitas Roadless Area (235,510 acres).

The Pierce District is currently preparing an Environmental Assessment on the proposed Orogrande Timber Sale that will involve harvesting approximately 1,000 acres of timber within the 39,000 acre analysis areas. This area is located immediately south of the Fuzzy Bighorn Analysis Area.

Preliminary issues identified as a result of internal scoping of the Fuzzy Bighorn Timber Sale include:

- The efficiency and cost-effectiveness of the timber sale.
- The productivity of timber growth on timber management lands.
- The need for alternative yarding procedures to effectively harvest steep slopes.
- The effect of any management activities on the roadless character of the Bighorn-Weitas Roadless Area.

District, Phone (208)

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- The need for alternative yarding procedures to effectively harvest steep slopes.
- The effect of any management activities on the roadless character of the Bighorn-Weitas Roadless Area.

- Management of old growth stands for viable populations of dependent species.
- Protection and enhancement of elk security cover on summer range.
- Potential effect on threatened or endangered species, particularly the gray wolf.
- The protection of watershed values as they relate to riparian zones and fish productivity.
- The protection and enhancement of visual quality.

The Forest Service is seeking information and comments from Federal, State and local agencies as well as individuals and organizations who may be interested in, or affected by, the proposed action. The Forest Service invites written comments and suggestions on the issues for the proposal and the area being analyzed. For most effective use, comments should be submitted to the Forest Service within 45 days from the date of publication of this Notice in the **Federal Register**. Information received will be used in the preparation of the Draft EIS. This preparation includes the following steps:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of issues of minor importance, or those covered by previous relevant environmental analysis.
4. Identification of reasonable alternatives to the proposed action.
5. Identification of the potential environmental effects of the alternatives.

The analysis will consider a range of alternatives developed from the key issues. One of these will be the "No Action" alternative, in which all harvest and regeneration are deferred. Other alternatives will consider various levels and locations of harvest and regeneration in response to issues and non-timber objectives.

The analysis will evaluate the environmental effects of each alternative. This analysis will be consistent with the standards and management direction outlined in the Forest Plan. The direct, indirect, and cumulative effects of each alternative will be analyzed and documented. In addition, the site specific mitigation measures for each alternative will be identified and the effectiveness of those mitigation measures will be disclosed.

Agencies and other interested publics are invited to visit with Forest Service officials at any time during the process. Two specific time periods are identified for the receipt of formal comments on the analysis. The two comment periods are: (1) During the scoping process (the next 45 days) and, (2) during the formal review period of the Draft EIS.

The Draft EIS is estimated to be filed with the Environmental Protection Agency (EPA) and be available for public review in early January 1992. At that time the EPA will publish a notice of availability of the Draft EIS in the **Federal Register**. The comment period on the Draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**. To be the most help, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points).

The Forest Service believes it is important to give reviewers notice at this early stage of several federal court decisions related to public participation in the environmental review process. First, reviewers of the draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 533 (1978). Second, environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel,* (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis, 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

The Final EIS is expected to be released March 30, 1992. The Forest Supervisor for the Clearwater National Forest who is the responsible official for the EIS will make a decision regarding this proposal considering the comments, responses, and environmental consequences discussed in the Final Environmental Impact Statement, and applicable laws, regulations, and policies. The reasons for the decision will be documented in a Record of Decision.

Dated: July 11, 1991.

Win Green,
Forest Supervisor, Clearwater National Forest.

[FR Doc. 91-17426 Filed 7-22-91; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit: Elizabeth Mathews (P323A)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531-1544), and the regulations governing endangered fish and wildlife permit (50 CFR parts 217-222).

1. *Applicant:* Elizabeth A. Mathews, University of Alaska Southeast, Department of Education, Liberal Arts and Science, 11120 Glacier Hwy., Juneau, AK 99801.
2. *Type of Permit:* Scientific research under MMPA and scientific purposes under ESA.
3. *Name and Number of Marine Mammals:* 700 humpback whales *(Megaptera novaeangliae).*
4. *Type of Take:* The applicant proposes to take by harassment up to 300 humpback whales in Hawaii and 400 in Alaska. Animals will be taken during the photo-identification studies and collection of sloughed skin after whales dive. Phase I will determine genetic relationships using sloughed skin. Phase II will evaluate the reproductive success of certain male humpback whales using a combination of photo-ID and analysis of the genetic relationship of carefully chosen individuals.
5. *Location and Date of Activity:* Activities will occur in Hawaii from November to May and in Alaska from April to October 1992.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S.

Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, Maryland 20910 within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

By appointment: Permit Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 7324, Silver Spring, Maryland 20910 (301/427–2289);

Director, Alaska Region, National Marine Fisheries Service, Fed. Bldg., 709 W. 9th Street, Juneau, Alaska 99802 (907/586–7221);

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415 (213/514–6196);

Coordinator Pacific Area Office, Southwest Region, National Marine Fisheries Service, 2570 Dole Street, Honolulu, Hawaii 96822–2396 (808/944–8831).

Dated: July 15, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91–17411 Filed 7–22–91; 8:45 am]

BILLING CODE 3510-22-M

COMMISSION ON AGRICULTURAL WORKERS

Workshops and Hearing

AGENCY: Commission on Agricultural Workers.

ACTION: Announcement of Workshops and Hearing.

SUMMARY: The Commission on Agricultural Workers will hold two workshops and a public hearing in Rochester, New York on August 20–21, 1991. The first workshop will be on farm labor contracting and will be followed by a public hearing on agricultural labor issues in the state of New York. The second workshop will be on possible regionally based foreign worker programs.

The Commission, established by the Immigration Reform and Control Act (IRCA) of 1986 under section 304 is charged with evaluating the Special Agricultural Worker (SAW) provisions of IRCA and with reviewing several specific aspects relating to the demand for and supply of agricultural labor.

The workshops and hearing will be open to the public.

DATES: August 20, Workshop (Farm Labor Contracting)—8:30 a.m.–11:30 a.m., Hearing—1 p.m.–6:30 p.m. August 21, Workshop (Regional Options for Foreign Worker Programs)—8:30 a.m.–11:30 a.m.

ADDRESSES: August 20–21—Exchange-Fairfax Room, Holiday Inn-Genesee Plaza, 120 Main Street East, Rochester, New York.

FOR FURTHER INFORMATION CONTACT: Brett Endres, telephone (202) 673–5348.

Dated: July 17, 1991.

Aaron Bodin,

Executive Director.

[FR Doc. 91–17446 Filed 7–22–91; 8:45 am]

BILLING CODE 6820-62-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Exemption of Quota and Visa Requirements for Certain Textile Products from the United Mexican States

July 17, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs exempting certain products from quota and visa requirements.

EFFECTIVE DATE: August 1, 1991.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A notice was published in the **Federal Register** on May 31, 1990 (55 FR 22058) requesting comment on the proposed elimination of quota and visa requirements for textile products which are sent from the United States to Mexico for laundering.

Effective August 1, 1991, textile products which are used or visibly worn and are sent from the United States to Mexico for laundering and then returned to the United States will be exempt from quota and visa requirements. This action only exempts those textile articles classified under 9802.00.50 of the Harmonized Tariff Schedule. However, new textile articles which are subjected to laundering and all textile articles, either which are subjected to dry cleaning, bleaching, stone-washing, acid washing, or permapressing shall remain subject to existing quotas and visa requirements.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 17, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on August 22, 1988, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive establishes export visa and certification requirements for certain cotton, wool, and man-made fiber textiles and textile products, produced or manufactured in Mexico.

Effective on August 1, 1991, textile products which are used or visibly worn and are sent from the United States to Mexico for laundering and then returned to the United States will be exempt from quota and visa requirements. This action only exempts those articles classified under 9802.00.50 of the Harmonized Tariff Schedule. Shipments of the above-mentioned textile articles which are imported to the United States prior to August 1, 1991 after being laundered in Mexico shall remains subject to existing quota and visa requirments.

New textile articles which are subjected to laundering and all textile articles, which are subjected to dry cleaning, bleaching, stone-washing, acid-washing or permapressing shall remain subject to existing quota and visa requirments.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91–17418 Filed 7–22–91; 8:45 am]

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Auggie D. Tantillo,

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Committee for the Implementation of Textile Agreements

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Sincerely,
Auggie D. Tantillo,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91–17418 Filed 7–22–91; 8:15 am]

BILLING CODE 3510-DR-F

Request for Public Comments on Bilateral Textile Consultations With the Philippines

July 17, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: July 24, 1991.

FOR FURTHER INFORMATION CONTACT: Kim-Bang Nguyen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535–6735. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On June 28, 1991, under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Agreement of March 4, 1987, as amended, between the Governments of the United States and the Philippines, the United States Government requested consultations with the Government of the Philippines with respect to women's and girls' coats in Category 835.

The purpose of this notice is to advise the public that, pending agreement on a mutually satisfactory solution concerning Category 835, the Government of the United States has decided to control imports during the prorated period which began on June 28, 1991 and extends through September 25, 1991.

If no solution is agreed upon in consultations between the two governments, CITA, pursuant to the agreement, may later establish a specific limit for the entry and withdrawal from warehouse for consumption of textile products in Category 835, produced or manufactured in the Philippines and exported during the prorated period beginning on September 26, 1991 and extending through December 31, 1991, of not less than 5,659 dozen.

A summary market statement concerning Category 835 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 835, under the agreement with the Government of the Philippines, or to comment on domestic production or availability of products included in Category 835, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Category 835. Should such a solution be reached in consultations with the Government of the Philippines, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—Philippines

Category 835—Women's and Girls' Silk-Blend and Non-Cotton Vegetable Fiber Coats

June 1991

Import Situation and Conclusion

U.S. imports of women's and girls' silk blend and non-cotton vegetable fiber coats, Category 835, from the Philippines, reached 17,747 dozen in the year ending March 1991, more than two and a half times the 6,776 dozen imported during the same period a year earlier. In the first three months of 1991, imports of Category 835 from the Philippines reached 15,903 dozen, almost three and a half times the 4,614 dozen imported during the first three months of 1990, and nearly two and a half times Philippines' total 1989 Category 835 exports to the United States.

The imports of women's and girls' coats in Category 835 are of silk blend and non-cotton vegetable fiber, and compete directly with domestically produced cotton and man-made fiber women's and girls' coats (Category 335/635). The U.S. market for cotton and man-made fiber women's and girls' coats is being disrupted by imports. The sharp and substantial increase in Category 835 imports from the Philippines is causing a real risk of disruption in the U.S. market for cotton and man-made fiber women's and girls' coats.

U.S. Production, Import Penetration and Market Share

U.S. production of cotton and man-made fiber women's and girls' coats, Category 335/635, dropped 42 percent between 1987 and 1990, falling from 6,724 thousand dozen in 1987, to 3,908 thousand dozen in 1990. The ratio of imports to domestic production in Category 335/635 increased to 193 percent in 1990, up 95 percentage points from the 98 percent in 1987. The domestic manufacturers' share of this market fell from 50 percent in 1987 to 34 percent in 1990, a decline of 16 percentage points.

U.S. imports of silk-blend and non-cotton vegetable fiber women's and girls' coats, Category 835, surged in 1991 reaching 208,504 dozen in January-March 1991, 91 percent above the January-March 1990 level and 94 percent of the total 1990 level. The surge in 1991 caused the year-ending March 1991 imports to increase by 71 percent over the year-ending March 1990 level.

When imports of the directly competitive Category 835 are included in the market analysis, the import to production ratio increases by an average of 5 percentage points and the U.S. manufacturers' share of the market decreases by one percentage point. If Category 835 imports continue to increase at the January-March 1991 rate, the import to production ratio can be expected to increase by an additional 16 percentage points in 1991. Also, the domestic manufacturers' share of the U.S. market would decline by additional percentage points in 1991.

Duty-Paid Value and U.S. Producers' Price

Virtually all of Category 835 imports from the Philippines during the year ending in March 1991 entered under HTSUSA number 6204.39.4060—women's and girls' suit-type jackets and blazers of non-cotton vegetable fibers. These garments entered the U.S. at landed duty-paid values below U.S. producers' prices for directly competing cotton and man-made fiber garments.

Committee for the Implementation of Textile Agreements

July 17, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Textile Agreement of March 4, 1987, as amended, between the Governments of the United States and the Philippines; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 24, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of textile products in Category 835, produced or manufactured in the Philippines and exported during the period beginning on June 28, 1991 and extending through September 25, 1991, in excess of 6,211 dozen.[1]

Textile products in Category 835 which have been exported to the United States on and after January 1, 1991 shall remain subject to the Group II limit established in the directive dated December 12, 1990 for the period January 1, 1991 through December 31, 1991.

Textile products in Category 835 which have been exported to the United States prior to June 28, 1991 shall not be subject to the ninety-day limit established in this directive.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Auggie D. Tantillo,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91–17417 Filed 7–22–91; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: DoD FAR Supplement—part 215, Contracting by Negotiation; part 237, Service Contracting; part 252.237–XXX, Uncompensated Overtime; and part 252.237–XXX Identification of Uncompensated Overtime.

Type of Request: Expedited Submission—Approval Date Requested: August 2, 1991.

Average Burden Hours/Minutes Per Response: 30 minutes.

Responses Per Respondent: 5.

Number of Respondents: 350.

Annual Responses: 1,750.

Needs and Uses: Section 834 of the Fiscal Year 1991 Department of Defense (DoD) Authorization Act (Pub. L. 101–510) requires the Secretary of Defense to establish criteria to ensure that proposals for contracts for professional and technical services are evaluated on a basis which does not encourage contractors to propose mandatory uncompensated overtime for professional and technical employees. Pursuant to this requirement, DoD proposes to require offerors to identify any hours in excess of 40 hours per week included in their proposal or subcontractor's proposal.

Affected Public: Businesses or other for-profit; and small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: July 18, 1991.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–17440 Filed 7–22–91; 8:45 am]

BILLING CODE 3810–01–M

Office of the Secretary

Manual for Courts-Martial; Proposed Amendments

ACTION: Notice of proposed amendments.

SUMMARY: The Department of Defense is considering recommending changes to the Manual for Courts-Martial, United States, 1984, Executive Order No. 12473, as amended by Executive Order Nos. 12484, 12550, 12586, 12708, and 12767. The proposed changes are part of the 1991 annual review required by the Manual for Courts-Martial and DoD directive 5500.17, "Review of the Manual for Courts-Martial," January 23, 1985.

The proposed changes reflected in this notice would amend the following rules in part II (Rules for Courts-Martial): R.C.M. 405, Pretrial investigation; R.C.M. 905, Motions generally; R.C.M. 1003, Punishments; R.C.M. 1004, Capital cases; R.C.M. 1102, Post-trial sessions; R.C.M. 1105, Matters submitted by the accused; R.C.M. 1106, Recommendation of the staff judge advocate or legal officer. The proposed changes would also amend the following rules in part III (Military Rules of Evidence): M.R.E. 305, Warnings and righs; M.R.E. 314, Searches not requiring probably cause. The proposed changes would also amend the following paragraphs of Part IV (Punitive Articles); Para. 44e—Article 119 (Manslaughter)—Maximum punishment; Para. 45e—Article 120 (Rape and carnal knowledge)—Maximum punishment; Para. 51e—Article 125 (Sodomy)—Maximum punishment; Para. 85e—Article 134 (Homicide, negligent)—Maximum punishment.

The proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, "Preparation and Processing of Legislation, Executive Orders, Proclamations, and Reports and Comments Thereon," May 21, 1964, and do not constitute the official position of the Department of Defense, the Military Departments, or any other government agency.

This notice is provided in accordance with DoD Directive 5500.17, "Review of the Manual for Courts-Martial," January 23, 1985. This notice is intended only to improve the internal management of the federal government. It is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

ADDRESS: Copies of the proposed changes, and the accompanying Discussion and Analysis, may be

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[1] The limit has not been adjusted to account for any imports exported after June 27, 1991.

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d 7–22–91; 8:45 am]

Office of the Secretary

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The proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, "Preparation and Processing of Legislation, Executive Orders, Proclamations, and Reports and Comments Thereon," May 21, 1964, and do not constitute the official position of the Department of Defense, the Military Departments, or any other government agency.

This notice is provided in accordance with DoD Directive 5500.17, "Review of the Manual for Courts-Martial," January 23, 1985. This notice is intended only to improve the internal management of the federal government. It is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

ADDRESS: Copies of the proposed changes, and the accompanying Discussion and Analysis, may be examined at Headquarters, United States Air Force, Office of The Judge Advocate General, Military Justice Division (JAJM), Bldg. 5683, Bolling Air Force Base, Washington, DC 20332–6128. A copy of the proposed changes and accompanying Discussion and Analysis may be obtained by mail upon request from the foregoing address, ATTN: Major John E. Petrow.

DATE: Comments on the proposed changes must be received not later than October 7, 1991, for consideration by the Joint Service Committee on Military Justice.

FOR FURTHER INFORMATION CONTACT: Major John E. Petrow, (202) 767–1539.

Dated: July 18, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–17439 Filed 7–22–91; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

Advisory Council on Education Statistics; Meeting

AGENCY: Advisory Council on Education Statistics, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Education Statistics. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE AND TIME: September 5, 1991, 9 a.m.–4:30 p.m. and September 6, 1991, 9 a.m.–Noon.

ADDRESS: 555 New Jersey Avenue, NW., room 326, Washington, DC 20208.

FOR FURTHER INFORMATION CONTACT: Suellen Mauchamer, Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue, room 400E, Washington, DC 20208-7575, telephone: (202) 219–1839.

SUPPLEMENTARY INFORMATION: The Advisory Council on Education Statistics (ACES) is established under section 406(c)(1) of the Education Amendments of 1974, Public Law 93–380. The Council is established to review general policies for the operation of the National Center for Education Statistics (NCES) in the Office of Educational Research and Improvement and is responsible for advising on standards to insure that statistics and analyses disseminated by NCES are of high quality and are not subject to political influence. The meeting of the Council is open to the public.

The proposed agenda includes the following:

- NCES Role in Policy Relevant Analysis
- Updates on NCES Activities in Support of the National Education Goals, American Achievement Tests, AMERICA 2000, Education Indicators Panel
- Data Confidentiality
- Forthcoming Elementary and Secondary Education Statistics
- Student Right to Know
- Work in Progress: Statistical Standards
- Council Business

Records are kept of all Council proceedings and are available for public inspection at the Office of the Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue NW., room 400E, Washington, DC 20208–7575.

Dated: July 17, 1991.

Bruno V. Manno,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 91–17471 Filed 7–22–91; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Agency Information Collection Extensions

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Department of Energy (DOE) has submitted the following six public information collection packages to the Office of Management and Budget (OMB) for renewal under the Paperwork Reduction Act of 1980, Public Law No. 96–511. The packages cover management and procurement collections of information principally from Departmental management and operating contractors, and the public. The information is used by Departmental management to exercise management oversight as to the implementation of applicable statutory and contractual requirements and obligations. The listing for each package contains the following information: (1) Title of the information collection package; (2) current OMB control number; (3) type of respondents; (4) estimated number of responses; (5) estimated total burden hours, including recordkeeping hours, required to provide the information; (6) purpose; and (7) number of collections.

DATES AND ADDRESSES: Comments regarding the information collection packages should be submitted to the OMB Desk Officer at the following address not later than August 22, 1991. Mr. Ron Minsk, DOE Desk Officer, Office of Management and Budget (OIRA), room 3001, New Executive Office Building, Washington, DC 20503, (202) 395–3084.

FOR FURTHER INFORMATION OF RELEVANT MATERIALS CONTACT: Ronald L. Shores, Information Management Support Division (AD–241), Department of Energy, Washington, DC 20585, (301) 353–6956.

Package title: Construction and Project Management
Current OMB no.: 1910–0200
Type of respondents: DOE management and operating contractors
Estimated number of responses: 12,818
Estimated total burden hours: 392,036

Purpose: This information is required by the Departemnt to assure that Project Management resources and requirements are managed efficiently and effectively, and to exercise management oversight over DOE management and operating contractors. The package contains 25 information and/or recordkeeping requirements.

Package title: Personal Property
Current OMB no.: 1910–1000
Type of respondents: DOE management and operating contractors.
Estimated number of responses: 3,777
Estimated total burden hours: 215,397

Purpose: This information is required by the Department to assure that Personal Property resources and requiremewnts are managed efficiently and effectively, and to exercise management oversight over DOE management and operating contractors. The package contains 29 information and/or recordkeeping requirements.

Package title: Power Marketing Administrations
Current OMB no.: 1910–1200
Type of respondents: Public and private utilities, and the general public .
Estimated number of responses: 13,328
Estimated total burden hours: 247,888

Purpose: This information is required by the Department to assure that Power Marketing resources and requirements are managed efficiently and effectively, amd exercise oversight over public and private utilities, and the general public. The package contains 23 information and/or recordkeeping requirments.

Package title: Program Management
Current OMB no.: 1910–1400
Type of respondents: DOE management and operating contractors
Estimated number of responses: 35,244

Estimated total burden hours: 133,456

Purpose: This information is required by the Department to assure that Program Management resources and requirements are managed efficiently and effectively, and to exercise management oversight over DOE management and operating contractors. The package contains 60 information and/or recordkeeping requirements.

Package title: Real Property
Current OMB no.: 1910–1600
Type of respondents: DOE management and operating contractors.
Estimated number of responses: 865
Estimated total burden hours: 49,475

Purpose: This information is required by the Department to assure that Real Property resources and requirements are managed efficiently and effectively, and to exercise management oversight over DOE management and operating contractors. The package contains 10 information and/or recordkeeping requirements.

Package title: Travel
Current OMB no.: 1910–2100
Type of respondents: DOE management and operating contractors.
Estimated number of responses: 12,997
Estimated total burden hours: 32,221

Purpose: This information is required by the Department to assure that travel resources and requirements are managed efficiently and effectively, and to exercise management oversight over DOE management and operating contractors. The package contains 11 information and/or recordkeeping requirements.

Issued in Washington, DC, on July 16, 1991.

John J. Nettles, Jr.,
Director of Administration and Human Resource Management.

[FR Doc. 91–17476 Filed 7–22–91; 8:45 am]

BILLING CODE 6450–01–M

Determination of Noncompetitive Financial Assistance

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE announces that pursuant to 10 CFR 600.7(b)(2) it intends to renew on a noncompetitive basis a grant to Jackson State University (JSU) as the lead institution on behalf of a consortium involving JSU, Ana G. Mendez Educational Foundation (AGMEF), and Lawrence Berkeley Laboratory (LBL) of the University of California to improve the research and instructional programs in mathematics, natural science, and computer science at JSU and the three institutions of higher education which comprise the AGMEF—the University of Turabo, Metropolitan University, and the Puerto Rico Junior College. The grant renewal will continue the project through May 31, 1992. The estimated amount is $1,665,000.

PROCUREMENT REQUEST NUMBER: 05–91ER75274.001.

PROJECT SCOPE: The grant renewal is to continue a collaborative research and manpower development effort between JSU and AGMEF in response to Congressional direction included in the conference report on the Energy and Water Development Appropriation Act of 1991. Eligibility for this award is, therefore, restricted to JSU.

FOR FURTHER INFORMATION CONTACT: Gregory A. Mills, Energy Programs Division, U.S. Department of Energy, Oak Ridge, Tennessee 37831–8614, (615) 576–0951.

Issued in Oak Ridge, Tennessee, on July 12, 1991.

Peter D. Dayton,
Director, Procurement and Contracts Division, Oak Ridge Operations.

[FR Doc. 91–17477 Filed 7–22–91; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. GP91–11–000]

Harry C. Boggs v. Columbia Gas Transmission Corp.; Complaint

July 15, 1991.

Take notice that on July 8, 1991, Harry C. Boggs (Complainant) filed a complaint against Columbia Gas Transmission Corporation (Columbia) requesting the Commission to establish procedures for resolving a dispute concerning the price of and payments for natural gas purchased by Columbia from complainant from various wells located in Braxton, Calhoun and Roane Counties, West Virginia. Complainant states that Columbia has implemented unilateral billing adjustments to recover alleged overpayments to Complainant and argues, among other things, that the amount of refunds owed by Complainant to Columbia is in dispute, that Columbia's method of adjustment (withholding payment until all claimed principal and interest are recovered) is excessive and onerous, that since the overpayments were caused by Columbia, Complainant should not be required to pay interest, and that Columbia has, as part of its billing adjustment procedure, withheld payment for deregulated gas. Complainant requests the Commission to direct Columbia to cease application of its unilateral billing adjustment, to pay complainant the amount due (but withheld) for May 1991 deliveries, and to establish a hearing, technical conference or other procedure to resolve the factual disputes between the parties as to the calculation of refunds owed.

Columbia shall respond to the complaint no later than August 12, 1991. Any person wishing to do so may also file comments concerning the complaint. All comments should be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should be filed no later than August 12, 1991. Commentors will not automatically become parties to the proceeding. To become a party it is necessary to file a petition to intervene pursuant to section 214 of the Commission's regulations. Petitions to intervene shall be filed no later than August 12, 1991.

Lois D. Cashell,
Secretary.

[FR Doc. 91–17406 Filed 7–22–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF87–249–003]

L'Energia, Limited Partnership Inc.; Amendment to Filing

July 19, 1991.

On July 5, 1991, L'Energia, Limited Partnership Inc., tendered for filing an amendment to its filing in this docket.

The amendment provides additional information pertaining to the ownership structure of the limited partnership.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 14 days after the date of publication of this notice in the **Federal Register** and must be served on the Applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91–17554 Filed 7–22–91; 8:45 am]

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Columbia shall respond to the complaint no later than August 12, 1991. Any person wishing to do so may also file comments concerning the complaint. All comments should be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should be filed no later than August 12, 1991. Commentors will not automatically become parties to the proceeding. To become a party it is necessary to file a petition to intervene pursuant to section 214 of the Commission's regulations. Petitions to intervene shall be filed no later than August 12, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 91–17406 Filed 7–22–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF87–249–003]

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Lois D. Cashell,

Secretary.

[FR Doc. 91–17554 Filed 7–22–91; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for the disbursement of $48,000,000, plus accrued interest, obtained by the DOE under the terms of a consent order entered into with Enron Corp. These procedures cover the following subsidiaries of Enron Corp.: UPG, Inc.; Northern Propane Gas Company; and Florida Hydrocarbons Company. The OHA has determined that the funds will be distributed in accordance with the DOE's special refund procedures, 10 CFR part 205, subpart V, and in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges.

DATES AND ADDRESSES: Applications for Refund submitted for a portion of the funds allocated to the refined products pool must be filed in duplicate, postmarked no later than April 30, 1992. Applications should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All Applications for Refund from the refined product pool should display a reference to case number KEF–0116.

Applications for Refund from the crude oil pool should be clearly labeled "Application for Crude Oil Refund" and should be mailed to subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Applications for Refund from the crude oil pool must be filed in duplicate and postmarked no later than June 30, 1992. Any party who has previously filed in Application for Refund in crude oil proceedings should not file another Application for Refund from the crude oil pool. The previous crude oil Application will be deemed filed in all crude oil proceedings as the procedures are finalized.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave. SW., Washington, DC 20595, (202) 586–2390.

SUPPLEMENTARY INFORMATION:

In accordance with § 205.282(c) of the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute $48,000,000 that has been remitted by Enron Corp. to the DOE to settle possible violations of the federal petroleum price and allocation regulations. These procedures cover the following Enron Corp. subsidiaries: UPG, Inc., Northern Propane Gas Company and Florida Hydrocarbons Company. The DOE is currently holding the funds in an interest bearing account pending distribution.

The OHA has decided to divide the funds into a refined products pool and a crude oil pool. The OHA will distribute these funds in accordance with the DOE's subpart V refund procedures, and in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986). Applications for Refund from the refined product pool will be accepted from customers who purchased controlled refined petroleum products from the covered entities during the refund period. Applications for Refund from the refined product pool must be postmarked no later than April 30, 1992 to meet the filing deadline.

Applications for refund from the crude oil pool of funds must be postmarked no later than June 30, 1992. As we stated in the Decision, any party who has previously submitted a refund Application in the crude oil refund proceedings should not file another Application for Refund in the crude oil proceedings. That previous Application will be deemed filed in all crude oil proceedings as the procedures are finalized.

Dated: July 10, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of firm: Enron Corp.
Date of filing: September 14, 1988.
Case number: KEF–0116.

On September 14, 1988, the Economic Regulatory Administration (ERA) filed a Petition with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) requested that the OHA formulate and implement procedures for distributing funds obtained through the settlement of enforcement proceedings between Enron Corp. (Enron) and the DOE. 10 CFR, Part 205, subpart V. On April 10, 1990, the OHA issued a Proposed Decision and Order (PD&O) that tentatively set forth procedures for the disbursement of the Consent Order funds. 55 Fed. Reg. 15006 (April 20, 1990). We established a 30 day period for the submission of comments regarding the proposed procedures. We received a number of comments. The present Decision will address these comments and set forth final procedures for the distribution of the Enron Consent Order funds.

I. Background

Enron was a "refiner", "reseller", "retailer", "gas plant operator" and "gas plant owner" as those terms are defined in 10 CFR 212.31 and 212.162. Enron was therefore subject to the Mandatory Petroleum Price and Allocation Regulations set forth at 10 CFR parts 211 and 212. Enron is the result of a 1985 merger between Internorth, Inc. and Houston Natural Gas Corp. During the period January 1, 1973 through January 27, 1981, Enron engaged in, among other things, the sale, refining and processing of natural gas liquids (NGLs) and natural gas liquid products (NGLPs). An ERA audit of Enron records revealed possible violations of the Mandatory Petroleum Price Regulations, 10 CFR part 212, subparts E and K, in certain sales of Enron's NGLs and NGLPs during the period September 1973 through October 1978 (the audit period). Consequently, the ERA issued a Proposed Remedial Order (PRO) to Enron on September 1, 1987, alleging that Enron committed pricing violations in its sales of NGLs and NGLPs during the audit period.[1]

In order to settle all claims between Enron and the DOE, the two parties entered into a Consent Order (the Consent Order) that resolves all matters relating to Enron's compliance with the federal petroleum price and allocation regulations during the period January 1, 1973 through January 27, 1981 (the Consent Order period). The Consent Order became final on July 27, 1988. Execution of the Consent Order is neither an admission by Enron nor a finding by the DOE of any violation by Enron of any statute or regulation. Consent Order at ¶ 503.

Under the terms of the Consent Order, Enron deposited $48,000,000 into an interest-bearing escrow account maintained by the Department of the Treasury for ultimate distribution by the DOE. These monies ($48,000,000) were paid in full on August 26, 1988. This Decision and Order sets forth the OHA's plan for distributing these funds to qualified purchasers of Enron's covered products.

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[1] These alleged violations were committed by UPG Inc., a wholly owned subsidiary of Enron's predecessor, Internorth, Inc.

II. Summary of Proposed Refund Procedures

As we indicated in the PD&O, the Enron Consent Order provides for a global settlement. Therefore, the Consent Order resolves all alleged and potential regulatory violations of the regulations governing both crude oil and refined petroleum products. The Consent Order provides no guidance regarding the allocation of the funds between crude oil and refined products. Nevertheless, based upon the global language of the Consent Order, we proposed to divide the Consent Order fund into two pools. We proposed to put $9,600,000 in a crude oil pool, and $38,400,000 in a refined product pool. We proposed to distribute the Enron crude oil monies in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 Fed. Reg. 27899 (August 4, 1986), using the procedures described in *New York Petroleum, Inc.*, 18 DOE ¶ 85,435 (1988).

The PD&O also outlined procedures under which purchasers of Enron's refined covered products could apply for refunds. In order to permit applicants to make refund claims without incurring disproportionate costs as well as to allow the OHA to equitably and efficiently consider those claims, we set forth a number of presumptions pertaining to both aspects of the refund procedures.

First, we presumed that the alleged refined product overcharges were spread evenly over all of Enron's sales of refined covered products during the Consent Order period. We therefore proposed that an applicant's potential refund generally should be computed by multiplying the per-gallon refund amount by the number of gallons of Enron's refined covered products that the claimant purchased during the Consent Order period. The resulting figure is referred to as the claimant's "volumetric share" of the Enron Consent Order funds. Because an applicant may have been overcharged by more than the volumetric amount, we proposed that an applicant could rebut the volumetic refund presumption by showing that it sustained a greater amount of overcharge.

Because it is potentially difficult, time-consuming, and expensive to demonstrate that one was forced to absorb any overcharges by Enron, we proposed to adopt a number of presumptions concerning injury. We proposed that resellers and retailers claiming refunds of $10,000 or less, end-users, agricultural cooperatives, and certain types of regulated firms would be presumed injured by Enron's alleged overcharges. We proposed that refiners, resellers and retailers seeking refunds greater than $10,000 could receive a maximum refund of $50,000 based upon 60 percent of their volumetric share without having to prove injury. We also proposed to presume that claimants who made only spot purchases from Enron were not injured and must rebut that presumption to receive a refund. We stated that applicants not covered by one of these injury presumptions would be required to demonstrate that they were forced to absorb any overcharge by Enron in order to receive their full volumetric shares of the Enron Consent Order funds.

III. Comments on the Proposed Decision and Order

As we stated earlier, the PD&O was published in the **Federal Register** on April 20, 1990, and comments on the proposed procedures were solicited. 55 FR 15006 (April 20, 1990). We received a number of comments on the proposed procedures. We will address the comments and any changes made to the PD&O below.

A. Whether Sales by Certain Entities in the Enron Family Should be Covered Under the Present Refund Procedures

Michael O'N. Barron, Attorney for H.C. Oil Company, Home Petroleum Corporation, Liquid Petroleum Corporation, NGL Supply, Inc. and Glenn B. Eddy, assignee of G.A. Eddy & Sons, Inc., has filed comments concerning the Enron entities that should be covered by this refund proceeding. Mr. Barron argues that because of several prior Consent Orders, the OHA should not have included all of Enron's subsidiary firms as covered entities for purposes of this refund proceeding. Vanguard Petroleum Corporation (Vanguard) concurs with Mr. Barron's comments on this matter. The effect of Mr. Barron's suggested adjustment would be to limit eligibility for refunds and raise the volumetric refund amount.

The present Consent Order defines "Enron" to include Enron and all of its subsidiaries, affiliates (including the acts of such companies before they were subsidiaries or affiliates), prior subsidiaries, predecessors, successors in interest and their petroleum-related activities. Consent Order at ¶ 203. The following is a list of the Enron entities that made sales of controlled refined products to unrelated third parties: (1) The Houston Natural Gas Corp. "group"—HNG Petrochemicals, Inc., HNG Propane Company, HNG Products Company, Florida Hydrocarbons Company (acquired from Continental Resources Company in 1984) (2) The Internorth "group"—P&O Falco, Inc. (Falco), UPG, Inc., Northern Propane Gas Company (Northern Propane). Under normal circumstances, based upon the Consent Order's broad definition of Enron, customers that purchased covered products from the entities listed above would be eligible to claim a refund in this proceeding for purchases made during the Consent Order period. However, several Consent Orders have previously settled the potential liability of certain Enron entities. We do not believe that any portion of the funds collected for the current proceeding were in settlement of these previously covered violations. These entities have already been absolved of their liability for sales of certain covered refined products and the DOE has conducted refund proceedings pursuant to these prior Consent Orders. These prior proceedings gave the customers of these entities an opportunity to apply for refunds. Therefore, it would be inappropriate to allocate any of the funds collected in this proceeding to those entities' sales.

In 1985, UPG, Inc. entered into a Consent Order with the DOE in settlement of all of the then pending and potential administrative claims and disputes concerning Falco's compliance with the federal petroleum price and allocation regulations during the period from August 1, 1973 through January 27, 1981. On October 1, 1986, the OHA issued a decision and order implementing procedures for the distribution of the Consent Order funds collected in settlement of Falco's potential liability to the purchasers of Falco's refined petroleum products. *UPG, Inc.*, 15 DOE ¶ 85,002 (1986).

In 1981 Houston Natural Gas Corporation (Houston Natural Gas) entered into a Consent Order that settled the claims and disputes between it (including all of its subsidiaries and divisions at the time the Consent Order was entered: HNG Petrochemicals, Inc.; HNG Propane Company; HNG Products Company) and the DOE regarding the pricing of all controlled refined products during the period from September 1, 1973 through January 27, 1981. On August 10, 1984, the OHA issued a decision and order implementing procedures for the distribution of the Consent Order funds collected from Houston Natural Gas. *Texas Oil & Gas Corp.*, 12 DOE ¶85,069 at 88,214 (1984) (*Texas*).

Therefore, the customers of Falco and the customers of the Houston Natural Gas entities covered by the 1981 Consent Order have had an opportunity to receive a refund for their purchases from those entities. For this reason, the OHA finds that these entities should not be covered by the present refund procedures. Accordingly, we will deduct the volumes of products sold by these entities from our calculation of the volumetric refund amount.

Additionally, on May 18, 1977, the DOE issued a Notice of Probable Violation (NOPV) to Florida Gas Company (later to become Continental Resources Company) and its subsidiary Florida Hydrocarbons Company (Florida Hydrocarbons). In December 1979, Continental Resources Company entered into a Consent Order with the DOE in settlement of the NOPV and all issues pertaining to its compliance with the federal petroleum price regulations and the prices charged in the sale of covered products during the period from August 19, 1973 through August 31, 1979. On August 10, 1984, the OHA issued a decision and order establishing procedures for the distribution of the Continental Resources Company Consent Order funds to purchasers of Florida Hydrocarbons' covered products during the period from August 19, 1973 through August 31, 1979. *Texas,* 12 DOE at 88,221. Therefore, Florida Hydrocarbons' customers have had an opportunity to receive a refund on the covered products purchased up to August 31, 1979. Under these circumstances, the OHA believes that only covered products sold by Florida Hydrocarbons between September 1, 1979 and January 27, 1981 should be covered in the present refund proceeding. Accordingly, we will adjust the volumetric refund amount to reflect the fact that Florida Hydrocarbons' sales are only covered during the period from September 1, 1979 through January 27, 1981.

Because of these prior settlements, we have determined that only UPG, Inc.'s and Northern Propane's sales of controlled refined products should be fully covered by the present proceeding. We have also determined that Florida Hydrocarbons' sales should be covered for the period from September 1, 1979 through January 27, 1981. Accordingly, we will eliminate the sales volumes of HNG Petrochemicals, Inc., HNG Propane Company, HNG Products Company and Falco from our calculations of the volumetric refund amount. We will also reduce the sales volume of Florida Hydrocarbons to reflect that its sales are only covered during the period from September 1, 1979 through January 27, 1981.

B. Whether the OHA should Allocate 20 Percent of the Consent Order funds to the Crude Oil Pool

The Consent Order settles:

> All civil and administrative claims and disputes, whether or not heretofore asserted, between the DOE, * * *, and Enron, * * *, relating to Enron's compliance with the federal petroleum price and allocation regulations, * * *, during the period January 1, 1973 through January 27, 1981 * * *.

Consent Order at ¶ 101. The phrase federal petroleum price and allocation regulations is defined by the Consent Order as:

> All statutory requirements and administrative regulations and orders regarding the pricing and allocation of crude oil and refined petroleum products, including the entitlements and mandatory oil imports programs administered by the DOE. The federal petroleum price and allocations regulations include (without limitation) the pricing, allocation, reporting, certification, and recordkeeping requirements imposed by or under the Economic Stabilization Act of 1970, the Emergency Petroleum Allocation Act of 1973, the Federal Energy Administration Act of 1974, Presidential Proclamation 3279, all applicable DOE regulations codified in 6 CFR parts 130 and 150 and 10 CFR parts 205, 210, 211, 212 and 213, and all rules, rulings, guidelines, interpretations, clarifications, manuals, decisions, orders, notices, forms, and subpoenas relating to the pricing and allocation of petroleum products. The provisions of 10 CFR 205.199J and the definitions under the federal petroleum price and allocations regulations shall apply to this Consent Order, except to the extent inconsistent herewith.

Consent Order at ¶ 203. This language was intended to cover any violations by Enron of the regulations governing crude oil as well as refined products. The Consent Order does not, however, give the OHA any guidance regarding the proper allocation of the Consent Order funds between refined products and crude oil. The Proposed Consent Order does state that "[t]he major regulatory areas of disputes[sic] between ERA and Enron concerned reallocation of costs permitted under the regulations, the proper computation of the May 15, 1973 weighted average sales price for one of its propane classes of purchaser, and the applicability of 10 CFR, subpart K, to a portion of Enron's sales of NGL's and NGLP's. 53 FR 22701 at 22702 (June 17, 1988). Because the major areas of dispute concerned Enron's compliance with the regulations as they applied to its NGLs and NGLPs operations, the OHA proposed allocating 80 percent, $38,400,000 plus accrued interest, of the Consent Order funds to a refined product pool and 20 percent, $9,600,000 plus accrued interest, of the Consent Order funds to a crude oil pool.

Three commentators have objected to our proposed allocation of 20 percent of the Consent Order funds to a crude oil pool. Mr. Barron objects to the proposed allocation on the following grounds: (1) Sales of crude oil by the Internorth group or Houston Natural Gas group have been covered by prior Consent Orders; and (2) the $9,600,000 allocated to the crude oil pool bears no reasonable relation to the volume of crude oil products resold. Vanguard believes that the allocation may be overstated and unjustified based upon Mr. Barron's comments. Eric T. Small of Energy Refunds, Inc. believes that the allocation is in error, because he has no evidence that the Enron entities made any sales of condensate.

We do not believe that Mr. Barron has properly characterized the nature of the prior Consent Orders with the Enron entities. Mr. Barron states that neither Northern Propane, UPG, Inc. nor the Houston Natural Gas group were producers or resellers of crude oil. He states that, based upon the evidence, the only Enron entity that could have resold crude oil is Falco. *UPG, Inc.,* 15 DOE at 88,005. He believes that certain other Enron entities may have sold condensate.

We do not agree with Mr. Barron's assertion that only Falco sold crude oil. The 1981 Houston Natural Gas Consent Order states that it did not cover certain first sales of crude oil. Therefore, it is at least likely that one of the Houston Natural Gas entities covered by that Consent Order sold crude oil. Additionally, in 1981, Internorth entered into a Consent Order with the DOE that covered sales of condensate by Internorth entities. The Internorth Consent Order specifically states that it does not cover the resale of crude oil. Accordingly, we believe that at least one Internorth entity resold crude oil. With regard to Mr. Small's comments, it appears clear that the Enron entities sold condensate We do, however, agree with Mr. Small that the 1981 Consent Order with Internorth resolves the issue regarding the Internorth entities' sales of condensate.

As we stated in section III.A above, Falco entered into a Consent Order in 1985. That 1985 Consent Order purported to cover crude oil as well as refined product violations. Therefore, we believe that the DOE Enron would not have considered Falco refined product or crude oil violations when they entered into the present Consent

Order. Just as we decided that Falco's refined products should not be covered in this proceeding, we have decided that its potential crude oil violations should not be covered.

Accordingly, we agree that certain areas of potential liability for crude oil violations by the Enron entities have been resolved. Nevertheless, we do not agree that none of the Consent Order funds should be allocated to a crude oil pool. We believe that there are certain areas of crude oil activity where the Enron entities could have been potentially liable prior to the execution of the present Consent Order.

Because much of the Enron entities' potential liability for crude oil violations has been resolved by prior Consent Orders, we have, however, decided that it is appropriate to reduce the amount of the Consent Order fund allocated to the crude oil pool. Accordingly, based upon our experience in these matters, we believe that it is reasonable to reduce the allocation from 20 percent of the Consent Order funds to 10 percent.

C. Comments Concerning the Spot Purchaser Presumption of Non-Injury

Several commentators have also objected to our proposal to adopt the rebuttable presumption that spot purchasers, resellers or retailers that made only sporadic "spot" purchases from Enron, were not injured by their purchases from Enron. We have consistently determined that spot purchasers tend to have considerable discretion in where and when to make purchases and therefore would not have made spot market purchases from a firm at increased prices unless they were able to pass through the full price of the purchases to their own customers. The OHA has utilized this spot purchaser presumption of non-injury in numerous special refund proceedings. *E.g., Sauvage Gas Co.,* 17 DOE ¶ 85,304 (1988) (*Sauvage*). Mr. Barron and Mr. Small do not want the presumption applied in this proceeding.[2]

Mr. Barron asserts that the definition of a spot purchaser is impermissibly vague and the standards for rebuttal are discriminatory and unreasonable. He believes that the application of the presumption in prior proceedings has been inconsistent and arbitrary. Accordingly, he urges the OHA to abandon the presumption. Alternatively, Mr. Barron suggests that the OHA tailor guidelines for this proceeding in accordance with the circumstances of Enron, its market and customers.

The OHA does not agree with Mr. Barron's characterization of the OHA's spot purchaser presumption. Mr. Barron has made, and the OHA has addressed, these same objections to the spot purchaser presumption in a Motion for Reconsideration filed in another proceeding. *Sauvage Gas Co./NGL Supply, Inc.,* 19 DOE ¶ 85,622 (1989) (*Supply*).

Mr. Barron asserts that the spot purchaser presumption is impermissibly vague. The term spot purchase is commonly used and understood in the petroleum industry to mean a contract for the purchase and sale of petroleum products on a short term basis. *Id.* at 89,142. The OHA has interpreted the term spot purchaser to mean any firm that purchased significant volumes of covered products from a supplier on a sporadic or isolated basis outside of a long term supply obligation. *Id.* Although the determination whether an applicant is a spot purchaser is made on a case-by-case basis, the term is sufficiently well defined to allow applicants to understand the theoretical basis of the presumption. The OHA examines the circumstances of each case to make an initial determination whether the applicant's purchases were likely to have been spot purchases. Where it appears likely that an applicant's purchases were spot purchases, the applicant is generally notified of our tentative conclusion and offered an opportunity to show either that it was not a spot purchaser or that it was injured by its spot purchases. Since this analysis focuses on the fundamental refund issue, *viz.,* whether the applicant was injured, there is no merit to the claim that it is based on an impermissibly vague definition. For this reason, the OHA rejected Mr. Barron's argument in *Supply* that the spot purchaser presumption is impermissibly vague. *Id.* at 89,143.

Mr. Barron also argues that the OHA's required proof for a rebuttal is discriminatory and unreasonable. He cites the two elements that spot purchasers have shown in prior proceedings to rebut the presumption. These elements are: (1) The spot purchases were made to maintain supplies to base period customers; and (2) the spot purchaser was forced by market conditions to resell the product at a loss. *E.g., Saber Energy, Inc./Mobil Oil Corp.,* 14 DOE ¶ 85, 170 (1986). Mr. Barron is erroneously asserting that the OHA requires a spot purchaser to prove those elements to rebut the presumption. We stated in *Supply* that those two elements "are not the only grounds for rebutting the spot purchaser presumption. Any convincing evidence establishing that a spot purchaser was in fact injured by the alleged overcharges of a consent order firm would suffice to rebut the presumption." *Supply,* 19 DOE at 89,141 N.2.

Finally, we reject Mr. Barron's suggestion that we establish specific guidelines to determine whether a purchaser is a spot purchaser. Mr. Barron believes that the OHA may apply the presumption inconsistently and arbitrarily in this proceeding if we do not establish specific guidelines. Mr. Barron is simply stating his unsubstantiated opinion. He does not cite to any cases as examples of how the OHA has applied the presumption inconsistently or arbitrarily in prior proceedings. In *Supply,* in response to Mr. Barron's unsupported assertion that the OHA has inconsistently applied the spot purchaser presumption, we stated that "the determination of whether a[sic] individual's purchases from a particular supplier are spot purchases is a question of fact and therefore must be made on a case-by-case basis." *Id.* at 89,143.

As support for his suggestion, Mr. Barron explains that in 1978, because of DOE regulations, UPG, Inc. stopped selling NGLs to its affiliate Northern Propane. Up to that time, Northern Propane had been purchasing approximately 300 million gallons of NGLs per year from UPG, Inc. In 1979 and 1980, UPG, Inc. sold the NGLs that had been going to Northern Propane directly to independent retailers. Mr. Barron asserts that these retailers are not spot purchasers. He is concerned, however, that their claims will be denied as spot purchases. Mr. Barron submitted a letter that he received from Chalmer Jaynes, a former executive with Skelgas, in support of his position that these retailers were not spot purchasers. Letter from Chalmer Jaynes to Michael O'N. Barron (September 13, 1989). Mr. Jaynes describes various circumstances under which a firm in the propane industry might make purchases that, in his opinion, are not spot purchases even though they might appear to be. However, there is nothing in Mr. Barron's comments or Mr. Jaynes' letter that convinces us to abandon the case-by-case method in this proceeding. Under the case-by-case method, we consider the circumstances under which a claimant made its purchases and any information submitted by an applicant that might aid our determination concerning whether its purchases were

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[2] Vanguard simply urges that the presumption be applied "in an equitable and non-arbitrary manner." Vanguard, however, does not make any specific arguments that we can address. Nevertheless, we can assure Vanguard that we will apply the presumption in an equitable and non-arbitrary manner.

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spot purchases. We believe that the case-by-case method is the appropriate way to evaluate the circumstances of each claimant that made purchases in 1979 and 1980 only.

Mr. Small does not believe that the spot purchaser presumption should be applied in this proceeding because "in the NGL business large amounts are purchased at one time and stored until needed for demand." This statement is his sole reason for the elimination of the spot purchaser presumption from this proceeding. In response to Mr. Small's comment, it will suffice to state that we will make a determination on a case-by-case basis.

We have reviewed all of the comments that we received regarding the spot purchaser presumption. The comments do not present any legal or factual arguments that convince us to eliminate the presumption from the present proceeding. Nor do the comments convince us that we should alter either the way that we determine whether an applicant is a spot purchaser or the way that we determine whether a spot purchaser was injured. Accordingly, the spot purchaser presumption will be applied on a case-by-case basis in this proceeding in accordance with OHA precedent.

D. Comments Concerning the Small Claims and Mid-Range Presumptions of Injury

Both Mr. Small and Mr. Barron have filed comments regarding the proposed $10,000 maximum small claims refund and the 60 percent mid-range presumption of injury. For the reasons discussed below, we have determined that we will adopt these presumptions as proposed.

Mr. Small and Mr. Barron both concur with our proposal to adopt a $10,000 maximum refund under the small claims presumption of injury. In many prior proceedings, we established a small claims maximum of $5,000. *E.g., Gulf Oil Corp.*, 16 DOE ¶ 85,381 (1987). However, the volumetric factor of $.004323 estimated for the Enron PD&O is significantly higher than in most proceedings. Therefore, we recognized in the PD&O that the allocable share of many small retailers, resellers and refiners who would typically qualify for a refund at or below the usual small claims amount of $5,000 will be well above that amount in this proceeding. In several recent proceedings that had relatively high volumetric factors, we determined that it was appropriate to adopt a $10,000 small claims maximum. *E.g., Quintana Energy Corp.*, 21 DOE ¶ 85,032 (1991) (*Quintana*). In *Quintana*, we found that because the volumetric factor of $.001575 was relatively high, it would increase the number of firms, especially very small firms, that would be faced with the burden of making a detailed showing of injury in order to receive their full allocable share. *ID.* at 88,115. We determined that that would increase the burden on this Office because of the need to analyze more detailed injury showings and would thus slow down the evaluation of claims. Since we were faced with the same considerations in the present proceeding, we proposed a $10,000 maximum small claims refund in the PD&O.

As we discussed above, we have determined that it is appropriate to make certain changes to the PD&O that will have the effect of further increasing the volumetric refund amount in this proceeding. We have reduced the volume of covered product by excluding certain Enron entities from coverage by this proceeding. We have also increased the amount allocated to the refined products pool by reducing the portion of the Consent Order funds allocated to a crude oil pool. Since these changes to the PD&O have further increased the volumetric refund amount, we have determined that it is appropriate to adopt the small claims maximum of $10,000 as proposed. We will discuss the requirements for receiving a small claims refund below.

Mr. Small also concurs with our proposed 60 percent mid-range presumption of injury. Mr. Barron concurs with our proposal to adopt a 60 percent mid-range presumption, however, he suggests that we increase the maximum principal refund allowed under the presumption. Under the proposed 60 percent mid-range presumption, in lieu of making a detailed demonstration of injury, an applicant that claims a refund greater than $10,000 can elect to receive the greater of $10,000 or 60 percent of its allocable share for a maximum refund of $50,000. Mr. Barron suggests that the OHA increase the maxium principal refund to at least $75,000 to reflect increases in the consumer price index since 1973.

The use of the mid-range presumption reflects our conviction that large claimants were likely to have experienced some injury as a result of the alleged overcharges. In other proceedings involving NGLs and NGLPs, we determined that a 60 percent presumption for the mid-range purchasers of NGLs and NGLPs accurately reflected the amount of their injury as a result of their purchases of those products. *Sauvage*, 17 DOE ¶ 85,304; see also *Suburban Propane Gas Corp.*, 16 DOE ¶ 85,382 (1987). In those proceedings, we also established a $50,000 maximum principal refund under the mid-range presumption of injury. Because almost all of Enron's sales of covered products were of NGLs and NGLPs, we have determined that it is appropriate to adopt 60 percent as the mid-range injury presumption in this proceeding.

The OHA does not, however, believe that it is necessary to increase the maximum principal refund under the mid-range presumption above $50,000. The mid-range presumption serves dual purposes. It allows larger claimants to receive a reasonable level of compensation for the loss they likely suffered without having to incur the burden and expense of making a detailed demonstration of injury. The presumption also makes the refund process more efficient by relieving the OHA of the burden of analyzing a large number of cases making detailed demonstrations of injury. *E.g., Quintana Energy Corp.*, 21 DOE ¶ 85,032 (1990). If a large claimant does not believe that the mid-range presumption provides adequate compensation for its actual level of injury, it has the option of making a detailed demonstration of injury. The OHA believes that any claimant seeking a refund exceeding the $50,000 mid-range maximum should have the resources and incentive to make a detailed demonstration of injury. Regarding the second purpose for the mid-range presumption, Mr. Barron does not suggest, and the OHA has no reason to believe, that maintaining the $50,000 mid-range maximum will cause the OHA to be overburdened by large claimants making detailed demonstrations of injury. To increase the maximum mid-range refund above $50,000 will simply allow large claimants to receive very sizable refunds by simply providing their purchase volumes from Enron. There is nothing in Subpart V or our procedures that warrants such a result. Accordingly, we will adopt a $50,000 maximum principal refund for the mid-range presumption of injury. We will discuss the requirements for receiving a mid-range refund below.

E. The Presumption of Injury for Regulated Firms and Cooperatives

The Northern Illinois Gas Company (NIGC) has filed a comment concerning the proposed presumption for Regulated firms and Cooperatives (Cooperative presumption). Under the Cooperative presumption, in order to receive a full volumetric refund, a regulated firm or cooperative need only establish its purchase volume and certify that it will notify its regulatory body or membership group of the receipt of the refund and that it will pass the full amount of the refund granted by the OHA through to its customers or members. NIGC filed its comment to express its support of the Cooperative presumption and urges the OHA to adopt the presumption in our final Decision and Order. The OHA has received no comments that object to the adoption of the presumption. Our experience in prior proceedings has convinced us that the Cooperative presumption provides an equitable means of refunding overcharges passed on by regulated firms and cooperatives to their customers or members. Accordingly, we are adopting the Cooperative presumption in this proceeding as proposed. We will discuss requirements for filing a claim under the Cooperative presumption below.

F. The Covered Period

The Consent Order settles all matters relating to Enron's compliance with the federal petroleum regulations during the period from January 1, 1973 through January 27, 1981. Consent Order at ¶ I. In the PD&O, we proposed that claims be made for refined products purchased from January 1, 1973 through the relevant date of decontrol for the product claimed. However, we have determined that price controls on Enron's sales of petroleum products would have begun on June 13, 1973, the effective date of the Cost of Living Council Freeze Regulations, 38 FR 15768 (June 15, 1973). Accordingly, no claim can be made for purchases of Enron products made prior to June 13, 1973. We will eliminate Enron's sales made prior to June 13, 1973 from our calculations of the volumetric refund amount.

IV. Refund Procedures

A. Distribution of the Enron Crude Oil Funds

The Enron crude oil monies, $4,800,000, plus interest, will be disbursed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges (MSRP), 51 FR 27899 (August 4, 1986). The process which the OHA will use to evaluate claims for crude oil refund monies will be modeled after the process the OHA has used in subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. See *Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986) (*Mountain Fuel*).[3] Up to 20 per cent of those funds, $960,000, will be distributed to injured parties in the DOE's subpart V crude oil refund proceeding. Refunds to eligible claimants in that proceeding will be based on a per-gallon refund amount derived by dividing the sum of all crude oil overcharge monies in escrow by the total U.S. consumption of petroleum products during the period of federal petroleum price controls.[4] The principal volumetric refund amount associated with the Enron crude oil funds in $0.000002375 per gallon. We have established a filing deadline of June 30, 1992 for filing an Application for Refund from the crude oil funds. *Quintana Energy Corp.*, 21 DOE ¶ 85,032 (1991).[5] Any party that has previously submitted an Application for Refund in the crude oil refund proceedings need not file another Application.

Under the terms of the MSRP, 80 percent of the Enron crude oil funds, $3,840,000, plus interest, as well as any portion of the above-mentioned 20 per cent reserve which is not distributed, will be divided equally between the states and federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. *E.g.*, *id.* at 88,116.

B. Eligibility for Refunds From the Refined Products Funds

To the extent that it is possible, the settlement amount of $43,200,000, plus accrued interest, will be distributed to purchasers of covered Enron NGLs, NGLPs and other covered refined products who can show that they were injured by Enron's pricing practices during the period June 13, 1973 through January 27, 1981 (the refund period).[6]

C. Calculation of Refund Amount

We are adopting a volumetric method to apportion the Enron escrow account. Under this volumetric refund approach, a claimant's allocable share of the refined products pool is equal to the number of gallons of covered products purchased during the refund period times a per-gallon refund amount. We will derive the volumetric figure (per-gallon refund amount) by dividing the $43,200,000 received from Enron for refined product violations by the total volume of covered products sold by the firm during the regulatory period. This yields a volumetric refund amount of $.00601 per gallon, exclusive of interest.[7] This method is based upon the presumption that the alleged overcharges were spread equally over all gallons of covered products sold by Enron during the regulatory period. *E.g.*, *American Pacific International, Inc.*, 14 DOE ¶ 85,158 at 88,293 (1886) (*API*).[8]

Under the volumetric approach, a successful claimant is eligible to receive a refund equal to the number of gallons of covered products that it purchased from the covered Enron entitles during the period June 13, 1973 through the appropriate date of decontrol of each product, multiplied by the per-gallon volumetric amount for this proceeding. In addition, each successful claimant will receive a pro rata portion of the interest that has accrued on the Enron funds since the date of remittance.

As in previous cases, we will establish a minimum amount of $15 for refund claims. *E.g.*, *Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982).

1. Showing of Injury

Each claimant will be required to document its purchases of Enron's covered products during the refund period. In addition, we will require an applicant to demonstrate that it was injured by the alleged overcharges. In

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[3] Shortly after issuance of the MSRP, the OHA announced its intention to apply the MSRP in all subpart V proceedings involving alleged crude oil violations and solicited comments concerning the refund procedures. 51 FR 29689 (August 20, 1986). On April 10, 1987, the OHA issued a Notice analyzing the comments and setting forth final procedures regarding applications for crude oil refunds. 52 FR 11737 (April 10, 1987).

[4] It is estimated that 2,020,997,335,000 gallons of petroleum products were consumed in the United States during the period August 1973 through January 1981. *Mountain Fuel*, 14 DOE at 88,868 n. 4. (1986).

[5] It is the policy of the DOE to pay all crude oil refund claims filed before June 30, 1992, at the rate of $.0008 per gallon. However, while we anticipate that applicants that filed their claims by June 30, 1988, will receive a supplemental refund payment, we will decide in the future whether claimants that filed later Applications should receive additional refunds. *E.g.*, *Hebrew Rehabilitation Center for the Aged*, 21 DOE ¶ 85,148 (1991).

[6] Applicants are only eligible to receive refunds based upon covered products purchased from the beginning of the refund period until the last date that the particular product claimed was subject to price controls. Therefore, an applicant will not be eligible to receive a refund based upon butane and natural gasoline purchased after December 31, 1979, or ethane purchased after March 31, 1974, because these products were decontrolled after those dates. *E.g.*, *Gulf Oil Corp./E.I. du Pont de Nemours*, 14 DOE ¶ 85.027 (1986).

[7] To compute this figure, we estimated that Enron sold a total of 7,186,265,624 gallons of covered products during the period from June 13, 1973 through January 27, 1981.

[8] Nevertheless, we realize that the impact on an individual claimant may have been greater than the volumetric amount. Therefore, the volumetric presumption will be rebuttable, and we will allow a claimant to submit evidence detailing the specific overcharges that it incurred in order to be eligible for a larger refund. *E.g.*, *Standard Oil Co./Army and Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984).

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C. Calculation of Refund Amount

We are adopting a volumetric method to apportion the Enron escrow account. Under this volumetric refund approach, a claimant's allocable share of the refined products pool is equal to the number of gallons of covered products purchased during the refund period times a per-gallon refund amount. We will derive the volumetric figure (per-gallon refund amount) by dividing the $43,200,000 received from Enron for refined product violations by the total volume of covered products sold by the firm during the regulatory period. This yields a volumetric refund amount of $.00601 per gallon, exclusive of interest.[7] This method is based upon the presumption that the alleged overcharges were spread equally over all gallons of covered products sold by Enron during the regulatory period. *E.g.*, *American Pacific International, Inc.*, 14 DOE ¶ 85,158 at 88,293 (1886) (*API*).[8]

Under the volumetric approach, a successful claimant is eligible to receive a refund equal to the number of gallons of covered products that it purchased from the covered Enron entitles during the period June 13, 1973 through the appropriate date of decontrol of each product, multiplied by the per-gallon volumetric amount for this proceeding. In addition, each successful claimant will receive a pro rata portion of the interest that has accrued on the Enron funds since the date of remittance.

As in previous cases, we will establish a minimum amount of $15 for refund claims. *E.g.*, *Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982).

1. Showing of Injury

Each claimant will be required to document its purchases of Enron's covered products during the refund period. In addition, we will require an applicant to demonstrate that it was injured by the alleged overcharges. In

order to demonstrate that it did not subsequently raise its prices and thereby recover the increased costs associated with Enron's alleged overcharges, a claimant will have to show that it maintained banks of unrecovered product costs. We are willing to accept information establishing with reasonable likelihood that a claimant had banks. *Seminole Refining, Inc.*, 12 DOE ¶ 85,188 (1985); see also *Bayou State Oil Corp.*, 12 DOE ¶ 85,197 (1985). In order to demonstrate injury, a claimant must also show that market conditions would not permit it to pass through those increased costs to its customers. *E.g.*, *API* at 88,295.

2. Small Claims Presumption

We are also adopting a presumption that resellers, retailers and refiners seeking volumetric refunds of $10,000 or less were injured by Enron's pricing practices. *E.g.*, *Texaco Inc.*, 20 DOE ¶ 85,147 (1990). Under the small claims presumption, an applicant seeking a total refund of $10,000 or less will not be required to make a detailed demonstration of injury. Such an applicant need only document its purchase volume of Enron covered products.

3. Mid-Range Presumption

In lieu of making a detailed showing of injury, a reseller, retailer or refiner claimant whose allocable share of the Consent Order funds for purchases of Enron's refined products exceeds $10,000 may elect to receive as its refund the larger of $10,000 or 60 percent of its allocable share up to $50,000. Accordingly, a claimant in this group will only be required to provide documentation of its purchase volumes of Enron's covered products in order to be eligible to receive a refund of 60 percent of its allocable share up to $50,000. *E.g.*, *Sauvage*, 17 DOE ¶ 85,304.

4. End-Users

We are adopting the presumption that end-users, *i.e.*, ultimate consumers, whose businesses are unrelated to the petroleum industry, were injured by Enron's alleged overcharges. *Marion Corp.*, 12 DOE ¶ 85,014 (1984); *see also Thornton Oil Corp.*, 12 DOE ¶ 85,112 (1984). Therefore, end-users of Enron covered products need only document their purchase volumes to make a sufficient showing of injury and receive their full allocable shares.

5. Regulated Firms and Cooperatives

Claimants whose prices for goods and services are regulated by a government agency (such as a public utility), or by the terms of a cooperative agreement, need only submit documentation of purchase volumes used by them or, in the case of cooperatives, sold to their members in order to receive a full volumetric refund. However, regulated firms or cooperatives will be required to certify that they will pass any refund on to their customers or member-customers, provide us with a full explanation of how they plan to accomplish the restitution, and certify that they will notify the appropriate regulatory body or membership group of their receipt of the refund. *Marathon Petroleum Co.*, 14 DOE ¶ 85,269 at 88,515 (1986); see also *Office of Special Council*, 9 DOE ¶ 82,538 at 85,203 (1982). We will not require a public utility seeking a refund of $10,000 or less to submit the above referenced certifications and explanation. Sales of covered products by cooperatives to non-members will be treated in the same manner as sales by other resellers or retailers.

6. Indirect Purchasers

Firms that made indirect purchases of covered Enron products during the refund period may also apply for refunds. If an applicant did not purchase directly from Enron, but believes that covered products it purchased from another firm were originally purchased from Enron, the applicant must establish its basis for that belief and identify the reseller from whom the products were purchased. Indirect purchasers who either fall within a class of applicant whose injury is presumed, or who can prove injury, may be eligible for a refund if the reseller of covered Enron products passed through Enron's alleged overcharges to its own customers. *E.g.*, *Dorchester Gas Corp.*, 14 DOE ¶ 85,240 at 88,451–52 (1986).

7. Spot Purchasers

We are adopting the rebuttable presumption that a claimant who made only spot purchases from Enron was not injured as a result of those purchases. A claimant is a spot purchaser if it made only sporadic purchases of significant volumes of covered Enron products. Accordingly, in order to receive a refund, a spot purchaser claimant must rebut the spot purchaser presumption by submitting specific and detailed evidence to establish the extent to which it was injured as a result of its spot purchases from Enron. *E.g.*, *Sauvage*, 17 DOE ¶ 85,304.

8. Applicants Seeking Refunds Based on Allocation Claims

We also recognize that, while the Consent Order makes no mention of known allocation violations, we may receive claims alleging Enron's failure to furnish petroleum products that it was obliged to supply under the DOE allocation regulations that became effective in January 1974. See 10 CFR part 211. Such claims could be based on the Consent Order's broad language regarding the matters settled. See section III.B. above. Any such application will be evaluated with reference to the standards set forth in subpart V implementation decisions such as *Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,220 (1982), the refund application cases such as *Mobil Oil Corp./Reynolds Industries, Inc.*, 17 DOE ¶ 85,608 (1988), *Marathon Petroleum Corp./Research Fuels, Inc.*, 17 DOE ¶ 85,575 (1989). These standards generally require an allocation claimant to demonstrate the existence of a supplier/purchaser relationship with the Consent Order firm and the likelihood that the Consent Order firm failed to furnish petroleum products that it was obliged to supply to the claimant under 10 CFR part 211. In addition, the claimant should provide evidence that it sought redress from the alleged allocation violation. Finally, the claimant must establish that it was injured and document the extent of the injury.

In our evaluation of whether allocation claims meet these standards, we will consider various factors. For example, we will seek to obtain as much information as possible about the Agency's treatment of complaints made to it by the claimant. We will also look at any affirmative defenses that Enron may have had to the alleged allocation violation. *E.g.*, *id.* In assessing an allocation claimant's injury, we will evaluate the effect of the alleged allocation violation on its entire business operations with particular reference to the amount of product that it received from suppliers other than Enron. In determining the amount of an allocation refund, we will utilize any information that may be available regarding the amount of Enron allocation violations in general and regarding the specific allocation violation alleged by the claimants. Finally, since the Enron Consent Order reflects a negotiated compromise of the issues involved in an enforcement proceeding against Enron, as well as potential unknown violations, and the Consent Order amount is therefore less than Enron's potential liability, we will pro rate any allocation refunds that would otherwise be disproportionately large in relation to the Consent Order fund. *Cf. Amtel, Inc./Whitco, Inc.*, 19 DOE ¶ 85,319 (1989).

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[7] To compute this figure, we estimated that Enron sold a total of 7,186,265,624 gallons of covered products during the period from June 13, 1973 through January 27, 1981.

[8] Nevertheless, we realize that the impact on an individual claimant may have been greater than the volumetric amount. Therefore, the volumetric presumption will be rebuttable, and we will allow a claimant to submit evidence detailing the specific overcharges that it incurred in order to be eligible for a larger refund. *E.g.*, *Standard Oil Co./Army and Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984).

V. General Refund Application Requirements for the Refined Products Pool

Pursuant to 10 CFR 205.283, we will now accept Applications for Refund from individuals and firms that purchased controlled refined petroleum products sold by Enron during the period between June 13, 1973, until the product claimed was decontrolled. There is no specific application form that must be used. However, the following information should be included in all Applications for Refund:

(1) The name of the Consent Order firm, Enron Corp., the case number (KEF-0116) and the applicant's name should be prominently displayed on the first page.

(2) The name, title, and telephone number of a person who may be contacted for additional information concerning the Application.

(3) The use(s) of the covered Enron refined product(s) by the applicant, *i.e.*, reseller, retailer, refiner, end-user, public utility or cooperative.

(4) Monthly schedules of the applicant's purchases of each type of refined petroleum product that it purchased from UPG, Inc. and Northern Propane Gas Company from June 13, 1973, or from Florida Hydrocarbons Company from September 1, 1979, until the product was decontrolled must be submitted. The applicant should indicate the name of its supplier and the delivery location. The applicant should indicate the name of its supplier and the delivery location. The applicant should indicate the source of this volume information. Monthly schedules should be based upon actual, contemporaneous business records. If such records are not available, the applicant may submit estimates provided that those estimates are reasonable and the estimation methodology is explained in detail.

(5) If the applicant was an indirect purchaser, it should submit the name, address and telephone number of its immediate supplier and indicate why it believes that the covered product was originally sold by a covered Enron entity.

(6) If the applicant is a reseller, retailer or refiner whose volumetric share exceeds $10,000, it must indicate whether it elects to receive its maximum refund under the presumptions of injury. If it does not elect a presumption of injury, it must submit a detailed showing that it was injured by a covered Enron entity's pricing practices. See section IV.C.1.

(7) A statement whether the applicant or a related firm has filed, or authorized any individual to file on its behalf, any other Application for Refund in the Enron proceeding, and if so, an explanation of the circumstances surrounding that filing or authorization.

(8) A statement whether the applicant was in any way affiliated with Enron. If so, the applicant should explain the nature of the affiliation.

(9) A statement whether there has been any change in ownership of the entity that purchased the covered Enron products at any time during or after the refund period. If so, the name and address of the current (or former) owner should be provided.

(10) A statement of whether the applicant is or has been involved as a party in any DOE or private section 210 enforcement actions. If these actions have been terminated, the applicant should describe the action and its current status. The applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of the Application for Refund. See 10 CFR 205.9(d).

(11) The following signed statement:

I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001.

All Applications for Refund must be filed in duplicate and must be filed no later than April 30, 1992. A copy of each Application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585. Any applicant that believes that its Application contains confidential information must so indicate on the first page of the Application and must submit two additional copies of its Application from which the material alleged to be confidential has been deleted, together with a statement specifying has been deleted, together with a statement specifying why the information is privileged or confidential. All Applications should be sent to: Enron Corp., Refund Proceeding, Case No. KEF-0116, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

VI. Distribution of Refunds Remaining After Consideration of All Refined Product Refund Applications

In the event that money remains after after all meritorious refund Applications have been processed, the funds in the Enron refined products escrow account will be disbursed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA). 15 U.S.C.A. 4501-4507 (West Supp. 1991).

It is therefore ordered that:

(1) Applications for Refund from the funds remitted to the Department of Energy by Enron Corp. pursuant to the Consent Order finalized on July 27, 1988, may now be filed.

(2) Applications for Refund from the Enron Corp. refined product pool must be postmarked no later than April 30, 1992.

(3) Applications for refund from the Enron Corp. crude oil pool must be postmarked no later than June 30, 1992 and filed pursuant to the procedures established in *Petrol Products, Inc.*, 20 DOE ¶ 85,436 (1990).

(4) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller, Department of Energy, shall take all steps necessary to transfer $4,800,000, plus accrued interest, from the Enron Corp. subaccount, Account Number 730V00221Z, pursuant to Paragraphs (5), (6), and (7) of this Decision.

(5) The Director of Special Accounts and Payroll shall transfer $1,920,000, plus accrued interest, of the funds obtained pursuant to paragraph (4) above, into the subaccount denominated "Crude Tracking-States," Number 999DOE003W.

(6) The Director of Special Accounts and Payroll shall transfer $1,920,000, plus accrued interest, of the funds obtained pursuant to paragraph (4) above, into the subaccount denominated "Crude Tracking-Federal," Number 999DOE002W.

(7) The Director of Special Accounts and Payroll shall transfer $960,000, plus accrued interest, of the funds obtained pursuant to paragraph (4) above, into the subaccount denominated "Crude Tracking-Claimants 4," Number 999DOE010Z.

Dated: July 10, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 91-17478 Filed 7-22-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3977-3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before August 22, 1991.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

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Dated: July 10, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 91–17478 Filed 7–22–91; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3977-3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before August 22, 1991.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: Discharge Monitoring Report ICR #0229.06).

Abstract: Information collection for the Discharge Monitoring Report is related to the monitoring and reporting requirements of the National Pollutant Discharge Elimination System, which covers point source discharges of pollutants to surface waters. Section 402 of the Clean Water Act authorizes the issuing of NPDES permits in order to ensure compliance with the Act's pollution control provisions, including Best Available Treatment Economically Achievable (BAT) guidelines, water quality standards, and pretreatment requirements.

All point source dischargers of waters into U.S. waters must have an NPDES permit specifying effluent limitations. Conditions on the NPDES permits require sampling, analysis, and reporting to the permit authority, which can be an EPA Region or one of the 39 delegated States. Permit limits and requirements vary considerably based on differences in categories of facilities, the nature and size of discharges, and the receiving waters. Furthermore, some States have requirements stemming from their own regulations, and delegated States administering NPDES programs have some flexibility in setting monitoring and reporting requirements beyond those imposed by EPA.

Nonetheless, all permits include requirements involving pollutant parameters to be sampled and analyzed, sampling and analysis frequency, sampling location, and reporting frequency. In spite of the variation in monitoring and reporting requirements between permittees, EPA requires permittees to submit most of their data in a standardized format so as to facilitate review. Permittees generally use the Discharge Monitoring Report (DMR) form. Permittees may use supplemental forms where their permitting authority requires monitoring other than effluent monitoring.

EPA Regions and the delegated States use the information submitted in the DMRs in order to set appropriate permit limits and conditions and then to evaluate permittees' compliance with their permit limits.

EPA may also use DMR data as a basis for developing future effluent guidelines. In addition, permit authorities may use the data for revising permit requirements or for conducting compliance activities. Furthermore, citizens' groups may make use of DMR data to monitor compliance of dischargers.

The total burden of the DMR collection is 16,080,000 hours, which is roughly a 1.5 million hour increase over the previously approved total. This primarily reflects the inclusion of storm water monitoring in this package and an increase in monitoring for toxic pollutants. The total cost of this collection to respondents is $247,446,845.

Burden Statement: The average burden imposed by the Discharge Monitoring Report is 15.96 hours per response. This figure includes the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: All facilities discharging wastewater.

Estimated No. of respondents: 170,721.

Estimated total annual burden on respondents: 16,080,000 hours.

Frequency of collection: Monthly, quarterly, semi-annually, annually.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Matt Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: July 17, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 91–17467 Filed 7–22–91; 8:45 am]

BILLING CODE 6560–50–M

[FRL-3977-2]

An Invitation for Preproposals for the Environmental Education and Training Program: Correction Notice

The notice about the Invitation for Preproposals for the Environmental Education and Training Program (published July 2, 1991 at (56 FR 30444) neglected to include the names and addresses of the EPA Regional Environmental Education Coordinators at the end of the notice. They are:

Region 1—Cleo Pizana, JFK Federal Building, Boston, MA 02203, (617) 565–3115
Region 2—Terry Ippolito, 26 Federal Plaza, New York, NY 10278, (212) 264–2980
Region 3—Bonnie Smith, 841 Chestnut Street, 3C100, Philadelphia, PA 19107, (215) 597–9800
Region 4—Alice Crosby, 345 Courtland Street, NE., Atlanta, GA 30365, (404) 347–4727
Region 5—Margaret McCue, 230 South Dearborn Street, Chicago, IL 60604, (312) 353–2000
Region 6—Sandy Sevier, 1445 Ross Avenue, Dallas, TX 75202, (214) 655–6444
Region 7—Rowena Michaels, 726 Minnesota Avenue Kandas City, KS 66101, (913) 551–7003
Region 8—Cece Forget, One Denver Place, 999 18th Street, Suite 500, Denver, CO 80202–2405
Region 9—Virginia Donahue, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1305
Region 10—Mary Neilson, 1200 Sixth Avenue, Seattle, WA 98101, (206) 442–1200.

Specific questions about the Education and Training Program can be directed to: Mr. George Walker (A107), Office of Environmental Education, Environmental Protection Agency, 401 M Street, Washington, DC SW., 20460, (202) 382–4484.

Michael O'Reilly,

Acting Director.

[FR Doc. 91–17466 Filed 7–22–91; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–140151; FRL–3933–9]

Access to Confidential Business Information by Computer Resource Management, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Computer Resource Management, Inc. (CRM), of Herndon, Virginia, for access to information which has been submitted to EPA under section 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than August 2, 1991.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, TSCA Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under contract number 68–01–0026, contractor

Computer Resource Management, Inc. (CRM), of 950 Herndon Parkway, suite 360, Herndon, VA 22070–5500, will assist the Office of Toxic Substances (OTS) in performing quality control of data reported under the 1990 update of the Toxic Substances Control Act (TSCA) Inventory.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–01–0026, CRM will require access to CBI submitted to EPA under section 8 of TSCA to perform successfully the duties specified under the contract. CRM personnel will be given access to information submitted to EPA under section 8 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under section 8 of TSCA that EPA may provide CRM access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and at CRM's facility.

CRM has been authorized access to TSCA CBI at its facility at 2110–C Gallows Rd., Vienna, Virginia, under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. EPA has approved CRM's security plan and has performed the required inspection of its facility and has found the facility to be in compliance with the manual. Upon completing review of the CBI materials, CRM will return all transferred materials to EPA. Clearance for access to TSCA CBI under this contract may continue until December 31, 1991.

CRM personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: July 15, 1991.

George A. Bonina,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 91–17468 Filed 7–22–91; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

Lykes/ICL Discussions and Cooperative; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of such agreement at the Washington, DC. Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 217–011324–003.

Title: Transpacific Space Utilization Agreement.

Parties: TWRA Conference Parties.

American President Lines, Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line.
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Liner System, Ltd.
Nippon Yusen Kaisha, Ltd.
Sea-Land Service, Inc.

Independent Carrier Parties

Evergreen Marine Corporation
Hyundai Merchant Marine Co., Ltd.
Orient Overseas Container Line
Hanjin Shipping Co., Ltd.
Transportacion Maritima Mexicana, S.A. (Mexican Line)

Synopsis: The proposed amendment would add Yang Ming Lines as an independent carrier party to the Agreement. The parties have requested a shortened review period.

Agreement No.: 203–011338.

Title: Lykes/ICL Discussion and Cooperative Working Agreement.

Parties:

Independent Container Line, Ltd.
Lykes Bros. Steamship Co., Inc.

Synopsis: The proposed Agreement would authorize the parties to meet, discuss, exchange information and reach consensus on matters in the trade between U.S. Atlantic and Gulf Coast ports and points and Northern Europe and the Mediterranean. Adherence to any agreement reached by the parties is voluntary.

Dated: July 17, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–17395 Filed 7–22–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Country Bancorporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 12, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Country Bancorporation, Crawfordsville, Iowa; formerly named Walker Bancshares Corporation, to acquire 100 percent of the voting shares of Peoples Trust and Savings Bank, Riverside, Iowa; Crawfordsville Insurance Agency, Inc., Crawfordsville, Iowa, and thereby indirectly acquire Peoples Savings Bank, Crawfordsville, Iowa; and Center Point Banshares Corp., Crawfordsville, Iowa, and thereby indirectly acquire Iowa State Bank and Trust Company, Center Point, Iowa.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. United Missouri Bancshares, Inc., Kansas City, Missouri; to acquire 100 percent of the voting shares of National Bank of the West, Colorado Springs, Colorado.

C. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

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7–22–91; 8:45 am]

FEDERAL RESERVE SYSTEM

Country Bancorporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

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Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 12, 1991.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Country Bancorporation, Crawfordsville, Iowa; formerly named Walker Bancshares Corporation, to acquire 100 percent of the voting shares of Peoples Trust and Savings Bank, Riverside, Iowa; Crawfordsville Insurance Agency, Inc., Crawfordsville, Iowa, and thereby indirectly acquire Peoples Savings Bank, Crawfordsville, Iowa; and Center Point Banshares Corp., Crawfordsville, Iowa, and thereby indirectly acquire Iowa State Bank and Trust Company, Center Point, Iowa.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. United Missouri Bancshares, Inc., Kansas City, Missouri; to acquire 100 percent of the voting shares of National Bank of the West, Colorado Springs, Colorado.

C. **Federal Reserve Bank of San Francisco** (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. FNB Bancorp, Los Angeles, California; to become a bank holding company by acquiring 100 percent of the voting shares of Founders National Bank of Los Angeles, Los Angeles, California.

Board of Governors of the Federal Reserve System, July 17, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-17412 Filed 7-22-91; 8:45 am]

BILLING CODE 6210-01-F

First Chicago Corporation; Notice of Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 12, 1991.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Chicago Corporation, Chicago, Illinois, and Gary-Wheaton Corporation, Wheaton, Illinois; to engage *de novo* through its subsidiary, G-W Life Insurance Company, Wheaton, Illinois, in reinsurance of credit life and credit disability insurance that is directly related to extensions of credit by all of the subsidiary banks of First Chicago Corporation.

Board of Governors of the Federal Reserve System, July 17, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-17413 Filed 7-22-91; 8:45 am]

BILLING CODE 6210-01-F

Todd M. Langenfeld, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 12, 1991.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Todd M. Langenfeld, Earling, Iowa; to acquire an additional 13.42 percent of the voting shares of J. Carl H. Bancorporation, Earling, Iowa, as the result of a stock redemption for a total of 34.57 percent, and thereby indirectly acquire Farmers Trust and Savings Bank, Earling, Iowa.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Patricia A. Garney, Kansas City, Missouri; to acquire 26 percent, and Charles A. Garney, Kansas City, Missouri, to acquire 24 percent of the voting shares of NKC Bancshares, Inc., North Kansas City, Missouri, and thereby indirectly acquire Norbank, North Kansas City, Missouri.

Board of Governors of the Federal Reserve System, July 17, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-17414 Filed 7-22-91; 8:45 am]

BILLING CODE 6210-01-F

Stearns Financial Services, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 91-13920) published at page 27,020 of the issue for Wednesday, June 12, 1991.

Under the Federal Reserve Bank of Minneapolis, the entry for Stearns Financial Services, Inc. is amended to read as follows:

A. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President), 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Stearns Financial Services, Inc., Albany, Minnesota; to acquire 89.6 percent of the voting shares of National Bank of Canby, Canby, Minnesota. In connection with this application, Applicant also proposes to engage in general insurance agency activities in a place that has a population not exceeding 5,000 pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y.

Comments on this application must be received byAugust 6, 1991.

Board of Governors of the Federal Reserve System, July 16, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-17405 Filed 7-22-91; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[Docket No. 9227]

Kinney Drugs, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a pharmaceutical firm from organizing or

entering into any agreement among pharmacy firms to withdraw from or refuse to enter into a third-party payer prescription drug plan; for ten years, from stating or communicating to any pharmacy firm the intent to enter into or refuse to enter into any third-party payer prescription drug plan; and for eight years, from providing comments or advice to any pharmacist or pharmacy firm on the desirability or appropriateness of entering into or refusing to enter into any third-party payer prescription drug plan.

DATES: Complaint issued April 19, 1989. Order issued July 1, 1991.[1]

FOR FURTHER INFORMATION CONTACT: Karen Bokat, FTC/S-3308, Washington, DC 20580. (202) 326-2912.

SUPPLEMENTARY INFORMATION: On Tuesday, March 26, 1991, there was published in the **Federal Register**, 56 FR 12534, a proposed consent agreement with analysis In the Matter of Chain Pharmacy Association of New York State, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 91-17447 Filed 7-22-91; 8:45 am]

BILLING CODE 6750-01-M

[Docket 9227]

James E. Krahulec; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, Mr. Krahulec from organizing or entering into any agreement with any pharmacy firms to boycott, withdraw from or refuse to enter into a third-party payer prescription drug plan; for ten years, from organizing, sponsoring, or attending a meeting of pharmacy firms at which persons make any statements concerning the pharmacy firm's intent to enter into or refuse to enter into any third-party payer prescription drug plan; for ten years, from communicating to any pharmacy firm, other than Mr. Krahulec's employer, any information concerning any pharmacy firm's intention to enter into or refuse to enter into any third-party payer prescription drug plan; and for eight years, from providing comments or advice to any pharmacist or pharmacy firm on the desirability or appropriateness of entering into or refusing to enter into any third-party payer prescription drug plan.

DATES: Complaint issued April 19, 1989. Order issued July 1, 1991.[1]

FOR FURTHER INFORMATION CONTACT: Karen Bokat, FTC/S-3308, Washington, DC 20580. (202) 326-2912.

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Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 91-17448 Filed 7-22-91; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPMR D-227]

Public Buildings and Space

July 11, 1991.

To: Heads of Federal agencies.

Subject: Incentives to Federal employees' use of public transportation.

1. *Purpose.* This bulletin provides guidance to agencies and departments on the provisions of Public Law 101-509, title IV—General Provisions, section 629, 104 Stat. 1478 (1990) regarding participation by Federal agencies in State or local government programs designed to encourage the use of public transportation by providing reduced cost incentives to employees.

2. *Effective date:* July 23, 1991.

3. *Expiration date.* This bulletin expires on December 31, 1993.

4. *Authority.* This guidance is issued pursuant to GSA's authority under Executive Order 12191, Federal Facility Ridesharing Program, February 1, 1980, and Federal Property Management Regulation 101-6.3, Ridesharing, 41 CFR 101-6.3.

5. *Background.* (a) As a general rule, the Federal Government cannot subsidize an employee's cost of commuting to or from work. Section 629(a), title IV-General Provisions, of Public Law 101-509 constitutes a specific statutory exception to this general rule by providing that Federal agencies "may participate in any program established by a State or local government that encourages employees to use public transportation. Such programs may involve the sale of discounted transit passes or other incentives that reduce the cost to the employee of using public transportation." The provisions of section 629 are repealed effective December 31, 1993.

(b) Section 629(d) states that: "No later than June 30, 1993, the General Accounting Office shall conduct a study and submit a report on the implementation of programs under subsection (a) and the employees (including information of the employing agencies and rates of pay of such employees) who have participated in such programs."

6. *Guidance.* (a) Public Law 101-509, title IV—General Provisions, Section 629, 104 Stat. 1478 (1990) is permissive in nature by allowing, but not mandating, Federal agencies' participation in State or local government programs

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[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

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GENERAL SERVICES ADMINISTRATION

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6. *Guidance.* (a) Public Law 101–509, title IV—General Provisions, Section 629, 104 Stat. 1478 (1990) is permissive in nature by allowing, but not mandating, Federal agencies' participation in State or local government programs

(including, for example, those sponsored by transit districts, authorities, etc., created by a State or local government) designed to encourage the use of public transportation. Participation may be as general as participating in State or local government sponsored events promoting the use of public transportation or as specific as providing reduced cost incentives to the employee.

(b) Participating Federal agencies which choose to offer reduced cost incentives to their employees may use appropriated funds, if otherwise available, to subsidize all or a portion of Federal employees' public transportation costs.

(c) Federal agencies which elect to participate in the program should develop and establish internal procedures to implement this law. At a minimum, data should be kept to reflect the number of passes, tokens, vouchers, etc., issued to employees, the grade level of participating employees, and the funds expended in the program.

(d) Procedures should be established to include safeguards that preclude any improprieties in the use of Federal funds and limit program participation to eligible Federal employees.

(e) Agencies implementing the provisions of this Bulletin should consult, as appropriate, with their respective labor organizations.

William C. Coleman,

Commissioner, Public Buildings Service.

[FR Doc. 91–17392 Filed 7–22–91; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C. appendix 2), announcement is made of the following advisory subcommittees scheduled to meet during the months of July and August 1991:

Name: Secondary and Tertiary Prevention of Stroke Patient Outcome Research Team Advisory Subcommittee.

Date and Time: July 24, 1991, 10 a.m.

Place: Parklawn Building, room 18–15, 5600 Fishers Lane, Rockville, Maryland.

Meeting will be closed to the public.

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Name: Congestive Heart Failure Patient Outcome Research Team Advisory Subcommittee.

Date and Time: July 25, 1991, 10 a.m.

Place: Parklawn Building, room 18–15, 5600 Fishers Lane, Rockville, Maryland.

Meeting will be closed to the public.

* * * * *

Name: Chronic Obstructive Pulmonary Disease Patient Outcome Research Team Advisory Subcommittee.

Date and Time: August 5, 1991, 10 a.m.

Place: Parklawn Building, room 18–15, 5600 Fishers Lane, Rockville, Maryland.

Meeting will be closed to the public.

Purpose: Each Subcommittee's charge is to provide, on behalf of the Health Care Policy and Research Contracts Review Committee, advice and recommendations to the Secretary and to the Administrator, Agency for Health Care Policy and Research (AHCPR), regarding the scientific and technical merit of contract proposals submitted in response to specific Requests for Proposals. These contracts are designed to: (a) Identify and explain practice variations in the diagnosis, treatment, and management of specified clinical conditions and analyze these in terms of relative patient outcomes, resource use, and remaining scientific uncertainties; (b) develop recommendations regarding effective treatment and mangement of specified clinical conditions; (c) disseminate project findings and recommendations to practitioners and the public, in accordance with a scientific plan; and (d) evaluate the effectiveness of the dissemination in terms of measurable change in patient outcomes, practice patterns, public knowledge and attitudes, and/or resource use.

Agenda: The session of each Subcommittee will be devoted to the technical review and evaluation of contract proposals submitted in response to specific Requests for Proposals. The Administrator, AHCPR, has made a formal determination that these meetings will not be open to the public. This is necessary to protect the free exchange of views and avoid undue interference with Committee and Department operations, and safeguard confidencial proprietary information and personal information concerning individuals associated with the proposals that may be revealed during the sessions. This is in accordance with section 10(d) of the Federal Advisory Committee Act, U.S.C. appendix 2, Department regulations, 45 CFR 11.5(a)(6), and procurement regulations, 48 CFR 315.604(d).

Anyone wishing to obtain information regarding these meetings should contact Ms. Lori Donovan, Contract Liaison, Agency for Health Care Policy and Research, room 18–15, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Agenda items are subject to change as priorities dictate.

Note: Due to unforeseen circumstances, arrangements for the July 24 and July 25 meetings were delayed so that more timely notification was not possible.

J. Jarrett Clinton,

Administrator.

[FR Doc. 91–17419 Filed 7–22–91; 8:45 am]

BILLING CODE 4160-90-M

Food and Drug Administration

[Docket No. 91F–0198]

Mitsui Petrochemical Industries, Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Mitsui Petrochemical Industries, Ltd., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of ethylene/1,3-phenylene oxyethylene isophthalate/terephthalate copolymer in blends with polyethylene terephthalate in contact with foods.

FOR FURTHER INFORMATION CONTACT: Gillian Robert-Baldo, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 1B4236) has been filed by Mitsui Petrochemical Industries, Ltd., Kasumigaseki Bldg., P.O. Box 90, 2–5 Kasumigaseki 3-chome, Chiyoda-ku, Tokyo 100, Japan, proposing that the food additive regulations be amended to provide for the safe use of ethylene/1,3-phenylene oxyethylene isophthalate/terephthalate copolymer in blends with polyethylene terephthalate in contact with foods.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: July 15, 1991.

Douglas L. Archer,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91–17420 Filed 7–22–91; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

VOL 56 SS 141 JL 23 1991 UMI

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting:

Minneapolis District Office, chaired by Donald Aird, Jr., Public Affairs Specialist. The topics to be discussed are food labeling proposals: mandatory ingredient labeling, percent labeling for fruit and vegetable juice, and nutrition labeling for the top 20 fruits, vegetables, and seafoods.

DATES: Monday, July 29, 1991, 10 a.m. to 11:30 a.m.

ADDRESSES: Concordia College, IVERS South Science, rm. 386, Moorhead, MN 56560.

FOR FURTHER INFORMATION CONTACT: Donald W. Aird, Jr., Public Affairs Specialist, Food and Drug Administration, 240 Hennepin Ave., Minneapolis, MN 55401, 612-334-4100.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: July 17, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-17388 Filed 7-22-91; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[BPD-741-N]

Medicare and Medicaid Programs; ICD-9-CM Coordination and Maintenance Committee Meeting

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the next meeting of the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD-9-CM) Coordination and Maintenance Committee. The public is invited to participate in the discussion of the topic areas.

DATES: The meeting will be held on Thursday, August 1, and Friday, August 2, 1991, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held in rooms 503A and 529A, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Laura Green (301) 966-9364.

SUPPLEMENTARY INFORMATION: The ICD-9-CM is the clinical modification of the World Health Organization's International Classification of Diseases, Ninth Revision. It is the coding system required for use by hospitals and other health care facilities in reporting both diagnoses and surgical procedures for Medicare, Medicaid and all other health-related Deparment of Health and Human Services programs. The work of the ICD-9-CM Coordination and Maintenance Committee will allow this coding system to continue to be an appropriate reporting tool for use in Federal programs.

The Committee is composed entirely of representatives of various Federal agencies interested in the International Classification of Diseases (ICD) and its modification, updating and use of Federal programs. It is co-chaired by the National Center for Health Statistics (NCHS) and the Health Care Financing Administration (HCFA).

The Committee holds public meetings to present proposed coding changes and other educational issues. The meetings provide an opportunity for input concerning these issues to representatives of organizations active in medical coding as well as physicians, medical record administrators, and other members of the public. The Committee encourages the public to participate in these meetings. After considering the comments presented at the public meetings, the Committee makes recommendations concerning the proposed changes to the Director of NCHS and the Administrator of HCFA for their approval.

The Committee will hold a public meeting on August 1 and 2, 1991. At this meeting, the Committee will discuss: The proposed revisions to the format and structure of volume 3 of ICD-9-CM beginning with the cardiovascular chapter; Hartmann procedure; removal of extrauterine pregnancy; hip replacement with previous removal of prothesis; postnecrotic cirrhosis, hepatitis B surface antigen negative; maxillofacial anomalies; candidal esophagitis and enteritis; diabetes mellitus with hyperosmolar coma; hyperostosis/hyperexostosis; addenda; and other topics.

Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program.

Dated: July 9, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 91-17438 Filed 7-22-91; 8:45 am]

BILLING CODE 4120-01-M

National Institutes of Health

Workshop; Opportunities for Research on Women's Health

Notice is hereby given that the Task Force on Opportunities for Research on Women's Health, a subcommittee of the Advisory Committee to the Director, NIH, will convene a workshop on Opportunities for Research on Women's Health on September 4, 5, and 6, 1991, at Marriott's Hunt Valley Inn in Hunt Valley, Maryland. The workshop will be held in public session. On Wednesday, September 4, the workshop will begin at 8 a.m. and end at 4:30 p.m.; on Thursday, September 5, the workshop will begin at 8 a.m. and end at 5 p.m.; and on Friday, September 6, the workshop will begin at 8 a.m. and end at 12:30 p.m.

Approximately 120 invited experts in the fields of basic and clinical sciences, ethics, economics, and the law, with particular knowledge of issues related to women's health research, will be asked to propose a comprehensive biomedical research agenda for women's health for the coming decade and beyond. The workshop will assess the current status of research on women's health, identify scietific opportunities and gaps in research, and recommend approaches and options to take advantage of the most promising of these opportunities for research on women's health. Invited participants will address diseases, disorders, and conditions as they affect women in each of the stages of the life span and will also serve on cross-cutting science panels.

At the conclusion of their work, the Task Force and the workshop participants will provide a report and a series of recommendations to the Advisory Committee to the Director, NIH.

On June 12 and 13, in preparation for the September workshop, members of the Task Force heard testimony in a public meeting from individuals representing organizations with an interest in research issues related to women's health within the mandate of the National Institutes of Health. This testimony will be considered as the Task Force formulates the final agenda for the September workshop and will assist in determining priority areas. Specifics of the June 12-13 meeting were announced in the **Federal Register** (56 FR 12207) on March 22, 1991.

Comments and questions related to the proposed workshop should be addressed to Dr. Judith H. LaRosa, National Institutes of Health, Office of Research on Women's Health, Building 1, room 201, 9000 Rockville Pike,

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National Institutes of Health

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Comments and questions related to the proposed workshop should be addressed to Dr. Judith H. LaRosa, National Institutes of Health, Office of Research on Women's Health, Building 1, room 201, 9000 Rockville Pike,

Bethesda, Maryland 20892, (301) 402–1770.

Dated: July 12, 1991.

William F. Raub,

National Institutes of Health.

[FR Doc. 91–17461 Filed 7–22–91; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistance Secretary for Housing—Federal Housing Commissioner

[Docket No. D–91–954; FR–3077–D–01]

Redelegation of Authority

AGENCY: Office of the Assistance Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: This Notice redelegates to Regional Administrators the Authority of the Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner to approve plans of action submitted by owners, pursuant to 24 CFR part 248, which implements the Emergency Low Income Housing Preservation Act, title II of the Housing and Community Development Act of 1987 (the "1987 Act") and the Low Income Housing Preservation and Resident Homeownership Act of 1990, title VI of the National Affordable Housing Act (the "1990 Act"). Regional Administrators may then, at their option, redelegate this authority to Field Office Managers or, in the case of combined regional and field offices, Regional Administrators may redelegate this authority to Regional Directors of Housing.

EFFECTIVE DATE: July 16, 1991.

FOR FURTHER INFORMATION CONTACT: Kevin J. East, Chief, Affordable Housing Branch, Office of Multifamily Housing Preservation and Property Disposition, Department of Housing and Urban Development, 451 7th Street, SW., room 6176, Washington, DC 20410, (202) 708–2300.

SUPPLEMENTARY INFORMATION: The 1987 Act and the 1990 Act require owners of eligible low income housing who intend to prepay the mortgage, terminate the mortgage insurance contract, accept incentives in exchange for extending the low income affordability restrictions, or transfer the project to a qualified purchaser, to submit a plan of action providing for such prepayment, termination, extension, or transfer. Section 225 of the 1987 Act and sections 218, 222 and 226 of the 1990 Act provide the Secretary with the authority to approve plans of action subject to the criteria set forth therein. The authority to approve plans of action also includes the incidental authority to issue notice of deficiency letters, preliminary approvals of plans of action, and final approvals of plans of action. The authority to approve plans of action, however, does not include the authority to issue final approval of plans of action prior to receipt of confirmation of assignment of subsidy funds, where such funds are part of the plan of action.

Under a delegation of authority published in the **Federal Register** at 54 FR 22033 on May 22, 1989, the Secretary of Housing and Urban Development delegated to the Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner "the authority of the Secretary of Housing and Urban Development with respect to the multifamily programs and functions," including but not limited to the implementation of title II of the National Housing Act. This delegation of authority encompasses the authority to approve plans of action pursuant to the 1987 Act and the 1990 Act.

Under this redelegation, the Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner hereby redelegate the authority, as set forth in title II of the 1987 Act and title VI of the 1990 Act, to approve plans of action, submitted by owners of eligible low income housing who intend to prepay the mortgage, terminate the mortgage insurance contract, accept incentives in exchange for extending the low income affordability restrictions, or transfer the project to a qualified purchaser, to Regional Administrators. The authority to approve plans of action also includes the incidental authority to issue notice of deficiency letters, preliminary approvals of plans of action, and final approvals of plans of action. The authority to approve plans of action, however, does not include the authority to issue final approval of plans of action prior to receipt of confirmation of assignment of subsidy funds, where such funds are part of the plan of action. Regional Administrators may then, at their option, redelegate this authority to Field Office Managers or, in the case of combined regional and field offices, Regional Administrators may redelegate this authority to Regional Directors of Housing.

Authority: Sec. 7(d), Department of Housing and Urban Development Act (42 USC 3535(d)).

Dated: July 16, 1991.

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 91–17473 Filed 7–22–91; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–964–4230–15; F–21905–27]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(e) and 22(j) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(e) and 1621(j), will be issued to Doyon, Limited for approximately 5,720 acres. The lands involved are in the vicinity of Forty-Mile National Wild and Scenic River Corridor, Alaska.

Fairbanks Meridian, Alaska

T. 4 S., R. 32 E. (Unsurveyed)

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Fairbanks Daily News-Miner. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until August 22, 1991 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Barbara S. Knudsen,

Lead Land Law Examiner, Branch of Doyon/Northwest Adjudication.

[FR Doc. 91–17415 Filed 7–22–91; 8:45 am]

BILLING CODE 4310–JA–M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget; Paperwork Reduction Project (1010–0044); Washington, DC 20503, telephone (202) 395–7340, with copies to John V. Mirabella; Acting Chief, Engineering and Standards Branch; Engineering and Technology Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817.

Title: Application for Permit to Drill, Form MMS–331C.

OMB approval number: 1010–0044.

Abstract: Respondents submit Form MMS–331C to the Minerals Management Service's (MMS) District Supervisors to be evaluated and approved or disapproved for the adequacy of the equipment, materials, and/or procedures which the lessee plans to use to safely perform drilling, well-completion, well-workover, and well-abandonment operations.

This form is necessary to enable MMS to ensure safety of Operations; protection of the human, marine, and coastal environments; conservation of the natural resources in the Outer Continental Shelf (OCS); prevention of waste; and protection of correlative rights with respect to oil, gas, and sulphur operations in the OCS.

Bureau form number: Form MMS–331C.

Frequency: On occasion.

Description of respondents: OCS oil, gas, and sulphur lessees.

Estimated completion time: .5 hour.

Annual responses: 1,130.

Annual burden hours: 565.

Bureau Clearance Officer: Dorothy Christopher, (703) 787–1239.

Dated: June 18, 1991.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 91–17393 Filed 7–22–91; 8:45 am]

BILLING CODE 4310-MR-M

Bureau of Reclamation

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer, code D–7920, U.S. Bureau of Reclamation, P.O. Box 25007, Denver, CO 80225, telephone 303–236–6769; and the Office of Management and Budget, Paperwork Reduction Project (1006–0005), Washington, DC 20503, telephone 202–395–7340.

Title: Acreage Limitation—Bureau of Reclamation Rules and Regulation, 43 CFR part 429.

OMB approval number: 1006–0005.

Abstract: The proposed information collection requires certain landholders to complete forms demonstrating their compliance with the acreage limitation provisions of Reclamation law. The forms establish each landholder's status with respect to landownership limitation, full cost pricing thresholds, lease requirements, and other provision of Reclamation law.

Bureau Form Numbers: 7–2179 through 7–2181, 7–2183 and 7–2184; 7–2180EZ; 7–2187 through 7–2189; 7–2178; 7–2190 and 7–2191; 7–2190EZ; 7–2193 and 7–2194; 7–2197 through 7–2199.

Frequency: Annually, and when landholding changes occur.

Description of Respondents: Owners and lessees of land on Federal Reclamation projects.

Estimated Completion Time: 0.31 hour.

Annual Responses: 42,920.

Annual Burden Hours: 13,305.

Bureau Clearance Officer: Robert A. López, 303–236–6769.

Dated: July 2, 1991.

Murlin Coffey,

Chief, Supply and Services Division, Bureau of Reclamation.

[FR Doc. 91–17409 Filed 7–22–91; 8:45 am]

BILLING CODE 4310-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Advisory Council on Employee Welfare and Pension Benefit Plans; Announcement of Vacancies Request for Nominations

Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA) 88 Stat. 895, 29 U.S.C. 1142, provides for the establishment of an "Advisory Council on Employee Welfare and Pension Benefit Plans" (The Council) which is to consist of 15 members to be appointed by the Secretary of Labor (the Secretary) as follows: Three representatives of employee organizations (at least one of whom shall be representative of an organization whose members are participants in a multiemployer plan); three representatives of employers (at least one of whom shall be representative of employers maintaining or contributing to multiemployer plans); one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management, and accounting; and three representatives from the general public (one of whom shall be a person representing those receiving benefits from a pension plan). Not more than eight members of the Council shall be members of the same political party.

Members shall be persons qualified to appraise the programs instituted under ERISA. Appointments are for terms of three years.

The prescribed duties of the Council are to advise the Secretary with respect to the carrying out of her functions under ERISA, and to submit to the Secretary, or their designee, recommendations with respect thereto.

The Council will meet at least four times each year, and recommendations of the Council to the Secretary will be included in the Secretary's annual report to the Congress on ERISA.

The terms of five members of the council expire on Thursday, November 14, 1991. The groups or fields represented are as follows: Employee organizations (multiemployer), actuarial counseling, investment counseling, employers, and the general public.

Accordingly, notice is hereby given that any person or organization desiring to recommend one or more individuals for appointment to the ERISA Advisory Council on Employee Welfare and Pension Benefit plans to represent any of the groups or fields specified in the preceding paragraph, may submit ion

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DEPARTMENT OF LABOR

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recommendations to, Attention: William E. Morrow, Executive Secretary, ERISA Advisory Council, Frances Perkin Building, U.S. Department of Labor, 200 Constitution Avenue, NW., suite N–5677, Washington, DC 20210. Recommendations must be delivered or mailed on or before September 12, 1991. Recommendations may be in the form of a letter, resolution or petition, signed by the person making the recommendation or, in the case of a recommendation by an organization, by an authorized representative of the organization. Each recommendation should identify the candidate by name, occupation or position, telephone number and address. It should also include a brief description of the candidate's qualifications, the group or field which he or she would represent for the purposes of section 512 of ERISA, the candidate's political party affiliation, and whether the candidate is available and would accept.

Signed at Washington, DC, this 18th day of July 1991.

David George Ball,

Assistant Secretary of Labor for Pension and Welfare Benefit Programs.

[FR Doc. 91–17455 Filed 7–22–91; 8:45 am]

BILLING CODE 4510–29–M

Employment and Training Administration

[TA–W–25,699]

Barclay Sportswear, Inc, Waterville, NY; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 22, 1991 in response to a worker petition which was filed on behalf of workers at Barclay Sportswear, Inc, Waterville, New York.

An active certification covering the petitioning group of workers remains in effect (TA–W–25,610). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 10th day of July 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91–17453 Filed 7–22–91; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–25,011]

Russell-Newman, Inc. Seymour, TX, TA–W–25,011A Engineering Dept. Russell-Newman, Denton, TX, and TA–W–25,011B Engineering Dept. Russell-Newman, Cisco, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 28, 1990, applicable to all workers of Russell-Newman, Inc., Seymour, Texas. The notice was published in the **Federal Register** on January 17, 1991 (56 FR 1625).

At the request of the State Agency the Department reviewed the subject certification. The company provided new information showing that the Production Engineering Departments at Denton and Cisco, Texas were closed because of reduced demand for their services from the Seymour plant. Both Engineering Departments substantially supported the Seymour plant. The amended notice applicable to TA–W–25,011 is hereby issued as follows:

> "All workers of Russell-Newman, Inc., Seymour, Texas and all workers of Russell-Newman's Engineering Departments in Denton, Texas and Cisco, Texas who became totally or partially separated from employment on or after October 18, 1989 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 12th day of July 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91–17450 Filed 7–22–91; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 2, 1991.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 2, 1991.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 8th day of July 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Adronics/Elrob Mfg. Corp. (Wkrs)	Cedar Grove, NJ	07/08/91	06/19/91	26,017	Radio, TV's, Auto Antennas, Etc.
AFG Industries, Inc. ABGWI	Cinnaminson, NJ	07/08/91	06/24/91	26,018	Flat Glass.
Barclay Sportswear (Wkrs)	Booneville, NY	07/08/91	06/25/91	26,019	Knit Sweaters.
Beach-Nut Nutrition Corp. BCTWU	Canajoharie, NY	07/08/91	06/20/91	26,020	Baby Food and Cereal.
Beech-Nut Nutrition Corp. BCTWU	Fort Plain, NY	07/08/91	06/20/91	26,021	Baby Food and Cereal.
Bentley Coal Co. (Wkrs)	Coalton, WV	07/08/91	06/26/91	26,022	Coal.

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APPENDIX—Continued

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Bergen Cable Technologies, Inc. (Wkrs)	Lodi, NJ	07/08/91	06/19/91	26,023	Cable Assemblies.
Capri Coat Corp. ILGWU	Clifton, NJ	07/08/91	06/24/91	26,024	Ladies Coats.
Columbia River Log Scaling (Wkrs)	Eugene, OR	07/08/91	06/11/91	26,025	Log Scaling and Grading.
Crisa Corp (Wkrs)	Laredo, TX	07/08/91	06/24/91	26,026	Glassware.
Dallas Showroom (CO)	Dallas, Tx	07/08/91	06/23/91	26,027	Ladies' Sportswear.
Electroloy Co. (CO)	Hatfield, PA	07/08/91	06/24/91	26,028	Spot Welding Tips.
Esselte Letraset Mfg. Corp. (Wkrs)	Moonachie, NJ	07/08/91	06/07/91	26,029	Art Supplies.
Esselte Pendaflex Corp. (OEIU)	Parsippany, NJ	07/08/91	06/17/91	26,030	Art Supplies.
Federal Sportswear ILGWU	Federalsburg, MD	07/08/91	06/24/91	26.031	Ladies Sportswear.
Formitex, Inc. (IUE)	Columbus, OH	07/08/91	06/27/91	26,032	Wall Units.
Hansley Industries, Inc. (Wkrs)	New York, NY	07/08/91	05/17/91	26,033	Sportswear.
Heritage Resources, Inc. (Wkrs)	Dallas, TX	07/08/91	06/12/91	26,034	Oil and Gas.
J&M Cut & Sew, Inc. ACTWU	Gratz, PA	07/08/91	06/26/91	26,035	Ladies Sportswear.
Jen/Chris (Wkrs)	New York, NY	07/08/91	06/24/91	26.036	Ladies Dresses.
Leisure Wear Incl (Wkrs)	Frankford, MO	07/08/91	06/21/91	26,037	Jogging Pants.
Leisure Wear Inc. (Wkrs)	Vandalia, MA	07/08/91	06/21/91	26,038	Jogging Pants.
Natale Cutting Services, Inc. ILGWU	Bloomfield, NJ	07/08/91	06/21/91	26,039	Sportswear.
Nationwide Data Systems, Inc. (Wkrs)	Wilkes-Barre, PA	07/08/91	06/24/91	26,040	Data Entry.
Nerco Oil & Gas, Inc. (Wkrs)	Vancouver, WA	07/08/91	06/24/91	26,041	Oil and Gas.
Output Technology Corp. (Wkrs)	Spokane, WA	07/08/91	06/10/91	26,042	Computer Printers.
Prophency Corporation (Wkrs)	Dallas, TX	07/08/91	06/23/91	26,043	Ladies' Sportswear.
R.J.M.J., Inc. (Wkrs)	New York, NY	07/08/91	06/14/91	26,044	Sportswear.
Rhone-Poulene, Inc. (ICWU)	St. Louis, MO	07/08/91	10/15/90	26,045	Salicylic Acid.
Ringier America, Inc. (Wkrs)	Olathe, KS	07/08/91	06/21/91	26,046	Books.
Russel Drilling Co. (Wkrs)	Harvey, ND	07/08/91	06/24/91	26,047	Oil and Gas.
Signal Apparel Co., Inc. ILGWU	Chattanooga, TN	07/08/91	06/23/91	26,048	Knitwear.
Sunbeam/Oster Housewares Co. (Wkrs)	Milwaukee, WI	07/08/91	06/06/91	26,049	Kitchen Appliance.
Timesavers, Inc. (Wkrs)	Minneapolis, MN	07/08/91	06/20/91	26,0501	Belt Sanders.
Tri-State Retail Systems, Inc. (Wkrs)	Rochester, NY	07/08/91	06/18/91	26,051	Sale Business Systems.
Tri-State Retail Systems, Inc. (Wkrs)	Amherst, NY	07/08/91	06/18/91	26.052	Sale Business Systems.
Tri-State Retail Systems, Inc. (Wkrs)	Troy, NY	07/08/91	06/18/91	26,053	Sale Business Ssytems.
Walter Cutting, Inc. ILGWU	Newark, NJ	07/08/91	06/24/91	26,054	Childrens' Dresses.
Waterbury Companies, Inc. (Wkrs)	Biddeford, ME	07/08/91	06/20/91	26,055	Plastic Parts for Electrical Appliances.
Westinghouse Electric Corp. (Wkrs)	Pittsburgh, PA	07/08/91	06/20/91	26,056	Process Controls for Factories.

[FR Doc. 91–17450 Filed 7–22–91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,485]

Wolf Bros. New York, NY; Negative Determination Regarding Application for Reconsideration

By applications dated May 28 and May 31, 1991, Local 174 and a petitioner requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on April 24, 1991 and published in the **Federal Register** on May 10, 1991 (56 FR 21689).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The workers produced persian lamb coats and jackets.

The union claims that employment in the fur industry has declined since 1950 and that the annual income for fur workers has also declined. Its also claimed that the Department's customer survey should have considered competing import purchases during the relevant period.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. The "contributed importantly" test is generally demonstrated through a survey of the firm's declining customers. The Department's survey of the major declining customers of the subject firm revealed that they did not import persian lamb coats and jackets during the relevant periods.

The survey's customer comments indicated that the fur coat and jacket market is characterized more by aesthetics, style and popularity and that lamb coats and jackets are not at the same end of the scale as sable, mink and fox coats and jackets.

Further, the Department sees no useful purpose in using 1950 as a benchmark for determining whether the Group Eligibility Requirements of the Trade Act are met. Section 223(b)(1) of the Act does not permit the certification of a worker whose separation occurred more than one year prior to the date of the petition. Therefore, the Department looks for declines in employment, sales or production and increases in imports in the period applicable to the petition—in this case 1990 compared to the immediately preceding year. Also, a decline in income is not a worker group requirement for certification.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 10th day of July 1991.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91–17452 Filed 7–22–91; 8:45 am]

BILLING CODE 4510-30-M

Continued

	Date received	Date of petition	Petition No.	Articles produced
	07/08/91	06/19/91	26,023	Cable Assemblies.
	07/08/91	06/24/91	26,024	Ladies Coats.
	07/08/91	06/11/91	26,025	Log Scaling and Grading.
	07/08/91	06/24/91	26,026	Glassware.
	07/08/91	06/23/91	26,027	Ladies' Sportswear.
	07/08/91	06/24/91	26,028	Spot Welding Tips.
	07/08/91	06/07/91	26,029	Art Supplies.
	07/08/91	06/17/91	26,030	Art Supplies.
	07/08/91	06/24/91	26,031	Ladies Sportswear.
	07/08/91	06/27/91	26,032	Wall Units.
	07/08/91	05/17/91	26,033	Sportswear.
	07/08/91	06/12/91	26,034	Oil and Gas.
	07/08/91	06/26/91	26,035	Ladies Sportswear.
	07/08/91	06/24/91	26,036	Ladies Dresses.
	07/08/91	06/21/91	26,037	Jogging Pants.
	07/08/91	06/21/91	26,038	Jogging Pants.
	07/08/91	06/21/91	26,039	Sportswear.
	07/08/91	06/24/91	26,040	Data Entry.
	07/08/91	06/24/91	26,041	Oil and Gas.
	07/08/91	06/10/91	26,042	Computer Printers.
	07/08/91	06/23/91	26,043	Ladies' Sportswear.
	07/08/91	06/14/91	26,044	Sportswear.
	07/08/91	10/15/90	26,045	Salicylic Acid.
	07/08/91	06/21/91	26,046	Books.
	07/08/91	06/24/91	26,047	Oil and Gas.
	07/08/91	06/23/91	26,048	Knitwear.
	07/08/91	06/06/91	26,049	Kitchen Appliance.
	07/08/91	06/20/91	26,0501	Belt Sanders.
	07/08/91	06/18/91	26,051	Sale Business Systems.
	07/08/91	06/18/91	26,052	Sale Business Systems.
	07/08/91	06/18/91	26,053	Sale Business Ssytems.
	07/08/91	06/24/91	26,054	Childrens' Dresses.
	07/08/91	06/20/91	26,055	Plastic Parts for Electrical Appliances.
	07/08/91	06/20/91	26,056	Process Controls for Factories.

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Eligibility Requirements of the Trade Act are met. Section 223(b)(1) of the Act does not permit the certification of a worker whose separation occurred more than one year prior to the date of the petition. Therefore, the Department looks for declines in employment, sales or production and increases in imports in the period applicable to the petition—in this case 1990 compared to the immediately preceding year. Also, a decline in income is not a worker group requirement for certification.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 10th day of July 1991.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91–17452 Filed 7–22–91; 8:45 am]

BILLING CODE 4510–30–M

Attestations Filed by Facilities Using Nonimmigrant Aliens as Registered Nurses

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities which plan on employing nonimmigrant alien nurses. These organizations have attestations on file with DOL for that purpose.

ADDRESSES: Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the Immigration Nursing Relief Act Public Disclosure Room, U.S. Employment Service, Employment and Training Administration, Department of Labor, room N4456, 200 Constitution Avenue, NW., Washington, DC 20210.

Any complaints regarding a particular attestation or a facility's activites under that attestation, shall be filed with a local office of the Wage an Hour Division of the Employment Standards Administration, U.S. Department of Labor. The address of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, room S3502, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Regarding the Attestation Process

The Employment and Training Administration has established a voice-mail service for the H–1A nurse attestation process. Call Telephone Number: 202–535–0643 (this is not a toll-free number). At that number, a caller can:

(1) Listen to general information on the attestation process for H–1A nurses;

(2) Request a copy of the Department of Labor's regulations (20 CFR part 655, subparts D and E, and 29 CFR part 504, subparts D and E) for the attestation process for H–1A nurses, including a copy of the attestation form (form ETA 9029) and the instructions to the form;

(3) Listen to information on H–1A attestations filed within the preceding 30 days;

(4) Listen to information pertaining to public examination of H–1A attestations filed with the Department of Labor;

(5) Listen to information on filing a complaint with respect to a health care facility's H–1A attestation (however, see the telephone number regarding complaints, set forth below); and

(6) Request to speak to a Department of Labor employee regarding questions not answered by Nos. (1) through (4) above.

Regarding the Complaint Process

Questions regarding the complaint process for the H–1A nurse attestation program shall be made to the Chief, Farm Labor Program, Wage and Hour Division. Telephone: 202–523–7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H–1A visa petitions for bringing nonimmigrant registered nurses to the United States. 26 U.S.C. 1101(a)(15)(H)(i)(a) and 1181(m). The regulations implementing the nursing attestation program are at 20 CFR part 655 and 29 CFR part 504, 55 FR 50500 (December 6, 1990). The Employment and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing.

The list of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staffs. If U.S. registered nurses or other persons wish to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities' chief executive officers also are listed, to aid public inquiries. In addition, attestations and supporting short explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the **"ADDRESSES"** section of this notice.

Signed at Washington, DC, this 15th day of July 1991.

Robert A. Schaerfl,

Director, United States Employment Service

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS

[06/01/91 to 06/30/91]

CEO-Name/Facility Name/Address	ST.	Approval Date
Mr. Jim E. Bushmiaer, Stuttgart Memorial Hospital, Route 1, Stuttgart, AR 72160, 501–673–3511.	AR	06/07/91
Ms. Mary Harmann Harrison, Saint Luke's Medical Center, 1800 E. Van Buren, Phoenix, AZ 85006, 602–251–8400.	AZ	06/20/91
Ms. Sharon Y. Bailey, Bailey's Specialty Nurses, Inc., 1600 Florida Ave. STE 220, Hemet, CA 92344, 714–652–1950.	CA	06/07/91
Mr. Charles E. Kraus, San Bernardino Community Hosp, 1805 Medical Center Drive, San Bernardino, CA 92411, 714–887–6333.	CA	06/07/91
Mr. William L. Summers, Patton State Hospital, 3102 E. Highland Avenue, Patton, CA 92369, 714–862–8121.	CA	06/13/91
Ms. Sheila G. Manderson, Kaiser Fnd. Hosp.—Richmond, 1330 Cutting Blvd., Richmond, CA 94804, 415–231–4600.	CA	06/13/91
Mr. Herbert G. Needman, Temple Community Hospital, 235 North Hoover Street, Los Angeles, CA 90004, 213–382–7252.	CA	06/13/91
Frank Nachtman, Marshall Hospital, Marshall Way, Placerville CA 95667, 916–622–1441.	CA	06/20/91
Mr. David S. Wanger, Sierra View District Hospital, 465 W. Putnam Ave., Porterville, CA 93257, 209–784–1110.	CA	06/20/91
Sister E. Joseph Keaveney, St. Francis Medical Ctr., 3630 E. Imperial Highway, Lynwood, CA 90262, 213–603–6085.	CA	06/20/91
Mr. Suwaran Brar, White Cap Nursing Agency, Inc., 2500 Marconi Avenue, Sacramento, CA 95821, 916–484–0144.	CA	06/26/91
Mr. James L. Ash, Santa Barbara Cottage Hosp., Pueblo at Bath Streets, Santa Barbara, CA 93102, 805–682–7111.	CA	06/26/91
Mr. Frederico P. Garcia, Jr., Int'l Nursing Home Care, Ser., 10717 Camino Ruiz, Suite 219, San Diego, CA 92126, 619–695–8774.	CA	06/26/91
Mr. David Hiatt, Brier Oak Terrace Care Ctr., 5154 Sunset Blvd., Los Angeles, CA 90027, 213–663–3951.	CA	06/26/91
Mr. Govind S. Karki, Millbrae Nursing Home, Inc., 33 Mateo Avenue, Millbrae, CA 94030, 415–583–8937.	CA	06/26/91
Mr. Bernard J. Herman, Mercy Hospital, Bakersfield, P.O. Box 119, Bakersfield, CA 93302, 805–328–5580.	CA	06/26/91

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS—Continued

[06/01/91 to 06/30/91]

CEO-Name/Facility Name/ Address	ST.	Approval Date
Mr. Thomas Fitz, Palms of Pasadena Hospital, 1501 Pasadena Avenue South, St. Petersburg, FL 33707, 813-381-1000.	FL	06/06/91
Mr. Paul E. Metts, Shands Teaching Hosp. & Clinic, Box J-303, JHMHC, Gainesville, FL 32610, 904-395-0321.	FL	06/13/91
Mr. R. Anderson Roberts, United States Med. Staffing C, 1500 N.W. 49th Street, Ft. Lauderdale, FL 33309, 305-772-9722.	FL	06/20/91
Mr. Victor J. Maya, Kendall Regional Medical Cent, 11750 Bird Road, Miami, FL 33175, 305-223-3000.	FL	06/20/91
Mr. Brent Marstellar, Sun Coast Hospital, 2025 Indian Rocks Road, Largo, FL 34644, 813-586-7106.	FL	06/20/91
Mr. Barry Gold, JFK Medical Center, 5301 S. Congress Ave., Lake Worth, FL 33460, 407-642-3729.	FL	06/20/91
Ms. JoAnn Batcheller, Miami Heart Institute, 4701 Meridian Avenue, Miami Beach, FL 33140, 305-674-3060.	FL	06/20/91
Mr. Edward A. Dauer, Florida Medical Center Hospit, 5000 W. Oakland Park Blvd., Fort Lauderdale, FL 33313, 305-735-6000.	FL	06/26/91
Mr. Duncan Moore, Tallahassee Memorial Reg'l Me, Magnolia Dr. & Miccosukee Rd., Tallahassee, FL 32308, 904-681-5250.	FL	06/26/91
Mr. Frank V. Sacco, Memorial Hospital, 3501 Johnson Street, Hollywood, FL 33021, 305-987-2000.	FL	06/26/91
Ms. Lorna Mamielson, Health Quest/Regents Park, 6363 Verde Trail, Boca Raton, FL 33433, 407-483-9282.	FL	06/26/91
Mr. Joseph G. Brum, Henry General Hospital, 1133 Hudson Bridge Road, Stockbridge, GA 30281, 404-389-2286.	GA	06/20/91
Mr. Bernard L. Brown, Kennestone Reg'l Health Care, 677 Church Street, Marietta, GA 30060, 404-426-3161.	GA	06/24/91
Mr. Hulett Sumlin, Piedmont Hospital, 1968 Peachtree Rd NW, Atlanta, GA 30309, 404-350-2222.	GA	06/26/91
Mr. William Dimas, Lee Manor Health Care Residen, 1301 Lee Street, Des Plaines, IL 60018, 708-827-9450.	IL	06/18/91
Mr. Sam Gorenstein, Metro. Nursing Ctr. of Elmwood, 7733 W. Grand Avenue, Elmwood Park, IL, 708-452-9200.	IL	06/20/91
Mr. Wendell P. Monyak, Bohemian Home for the Aged, 5061 North Pulaski Road, Chicago, IL 60630, 312-588-1220.	IL	06/20/91
Mr. Morris Esformes, Kankakee Terrace, 100 Belle Aire, Bourbonnais, IL 60914, 815-939-0910.	IL	06/20/91
Mr. Harold Lederman, Windsor Manor Nursing and Reh, 10426 S. Roberts Road, Palos Hills, Illinois 60465, 708-598-3460.	IL	06/20/91
Mr. Ronald Spaeth, Highland Park Hospital, 718 Glenview Avenue, Highland Park, IL 60035, 708-480-3777.	IL	06/25/91
Ms. Myron P. Nidetz, North Central Dialysis Ctrs., 55 East Washington Street, Chicago, IL 60602, 312-332-6832.	IL	06/26/91
Mr. Morris Esformes, Bourbonnais Terrace, 133 Mohawk Drive, Bourbonnais, IL 60914, 815-937-4790.	IL	06/26/91
Mr. Robert Nataupsky, Woodstock Residence, Inc., 309 McHenry Avenue, Woodstock, IL 60098, 815-338-1700.	IL	06/26/91
Mr. Morris Esformes, The Terrace Nursing Home, Inc, 1615 Sunset Avenue, Waukegan, IL 60087, 708-244-6700.	IL	6/26/91
Mr. Morris Esformes, Joliet, Terrace, 2230 McDonough, Joliet, IL 60436, 815-729-3801.	IL	06/26/91
Mr. S. James Biltz, HCA Wesley Medical Center, 550 N. Hillside, Wichita, KS 67214, 316-688-2468.	KS	06/13/91
Mr. Robert M. Krieger, Humana Hospital—Suburban, 4001 Dutchman's Lane, Louisville, KY 40207, 502-893-1235.	KY	06/13/91
Mr. Abe Treshinsky, Eastwood Pines Nursing Home, Eastwood Circle, Gardner, MA 01440, 508-632-8776.	MA	06/20/91
Ms. Wendy LaBate, Melrose Care Center, 40 Martin St., Elrose, MA 02176, 617-665-7050.	MA	06/26/91
Mr. Maurice I. May, Hebrew Rehab. Ctr. for Aged, 1200 Centre Street, Roslindale, MA 02131, 617-325-8000.	MA	06/26/91
Mr. Ronald Marx, Leland Memorial Hospital, 4409 East/West Highway, Riverdale, MD 20737, 301-891-5652.	MD	06/13/91
Mr. James J. Xinis, Calvert Memorial Hospital, 100 Hospital Road, Prince Frederick, MD 20678, 301-535-8120.	MD	06/20/91
Mr. B. Stanley Cohen, Sinai Hosp. of Baltimore, Inc, 2401 Belvedere Ave., Baltimore, MD 21215, 301-578-5673.	MD	06/26/91
Mr. Patrick F. Mutch, Greater Laurel Beltsville Hos, Dimensions Health Corp., Laurel, MD 20707, 301-497-7905.	MD	06/26/91
Mr. Ike Iwu, Nightingale's Inc., Franklin Business Center, Minneapolis, Minnesota 55404, 612-872-1156.	MN	06/20/91
Mr. Charles Lindstrom, Saint Luke's Hospital, 4400 Wornall Road, Kansas City, MO 64111, 816-932-3600.	MO	06/13/91
Mr. Morris Esformes, Creve Coeur Healthcare, Inc., 12705 Olive St. RD., Creve Coeur, MO 63141, 314-434-8361.	MO	06/20/91
Mr. Morris Esformes, Romona Villa Healthcare Ctr., 8575 N. Cosada Dr., Kansas City, MO 64154, 816-436-8575.	MO	06/20/91
Mr. Morris Esformes, Colonial Health Care, 894 Laland, University City, MO 63130, 314-726-4767.	MO	06/20/91
Mr. Morris Esformes, North Shore Conval. Ctr., 610 Prigge Road, St. Louis, MO 63138, 314-741-9393.	MO	06/20/91
Mr. Morris Esformes, Cedars Health Care, 6400 the Cedars Court, Cedar Hills, MO 63016, 314-285-1777.	MO	06/20/91
Mrs. Vickey Goc, Holmes Lake Manor, Mid America Care Centers, Inc., Lincoln, NE 68506, 402-489-7175.	NE	06/25/91
Mr. Jonathan M. Metsch, Greenville, Hospital, 1825 Kennedy Boulevard, Jersey City, NJ 07305, 201-547-6100.	NJ	06/07/91
Mr. William B. Calvin, Eastern Pines Convalescent Ce, 29 N. Vermont Ave., Atlantic City, NJ 08401, 609-344-8900.	NJ	06/13/91
Mr. Warren E. Gager, William B. Kesslor Mem. Hosp., 600 South White Horse Pike, Hammonton, NJ 08037, 609-561-6700.	NJ	06/13/91
Ms. Martha R. Zeltner, Cranford Hall Nursing Home, 600 Lincoln Pk E., Cranford, NJ 07016, 908-276-7100.	NJ	06/20/91
Mr. Joseph Sherber, Kimball Medical Center, 600 River Avenue, Lakewood, NJ 08701, 908-370-7405.	NJ	06/26/91
Mr. David F. Graham, Medford Conval. & Nur. Ctr., 185 Tuckerton Rd., Medford, NJ 08055, 609-983-8500.	NJ	06/26/91
Mr. Thomas Schember, St. Mary Hospital, Franciscan Health System of NJ, Inc., Hoboken, NJ 07030, 201-714-8900.	NJ	06/26/91
Ms. Lynn C. O'Connor, Buttonwood Hosp. of Burlington, County Route 530, New Lisbon, NJ 08064, 609-726-7000.	NJ	06/27/91
Ms. Tamara W. Moreland, Eastern Shore Nursing & Conva, 1419 Rt. 9 N., Cape May Court House, NJ 08210, 609-465-2260.	NJ	06/28/91

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS—Continued

[06/01/91 to 06/30/91]

CEO-Name/Facility Name/Address	ST.	Approval Date
Mr. Ike Iwu, Nightingale's Inc., Franklin Business Center, Minneapolis, Minnesota 55404, 612-872-1156.	MN	06/20/91
Mr. Charles Lindstrom, Saint Luke's Hospital, 4400 Wornall Road, Kansas City, MO 64111, 816-932-3600.	MO	06/13/91
Mr. Morris Esformes, Creve Coeur Healthcare, Inc., 12705 Olive St. RD., Creve Coeur, MO 63141, 314-434-8361.	MO	06/20/91
Mr. Morris Esformes, Romona Villa Healthcare Ctr., 8575 N. Cosada Dr., Kansas City, MO 64154, 816-436-8575.	MO	06/20/91
Mr. Morris Esformes, Colonial Health Care, 894 Laland, University City, MO 63130, 314-726-4767.	MO	06/20/91
Mr. Morris Esformes, North Shore Conval. Ctr., 610 Prigge Road, St. Louis, MO 63138, 314-741-9393.	MO	06/20/91
Mr. Morris Esformes, Cedars Health Care, 6400 the Cedars Court, Cedar Hills, MO 63016, 314-285-1777.	MO	06/20/91
Mrs. Vickey Goc, Holmes Lake Manor, Mid America Care Centers, Inc., Lincoln, NE 68506, 402-489-7175.	NE	06/25/91
Mr. Jonathan M. Metsch, Greenville, Hospital, 1825 Kennedy Boulevard, Jersey City, NJ 07305, 201-547-6100.	NJ	06/07/91
Mr. William B. Calvin, Eastern Pines Convalescent Ce, 29 N. Vermont Ave., Atlantic City, NJ 08401, 609-344-8900.	NJ	06/13/91
Mr. Warren E. Gager, William B. Kesslor Mem. Hosp., 600 South White Horse Pike, Hammonton, NJ 08037, 609-561-6700.	NJ	06/13/91
Ms. Martha R. Zeltner, Cranford Hall Nursing Home, 600 Lincoln Pk E., Cranford, NJ 07016, 908-276-7100.	NJ	06/20/91
Mr. Joseph Sherber, Kimball Medical Center, 600 River Avenue, Lakewood, NJ 08701, 908-370-7405.	NJ	06/26/91
Mr. David F. Graham, Medford Conval. & Nur. Ctr., 185 Tuckerton Rd., Medford, NJ 08055, 609-983-8500.	NJ	06/26/91
Mr. Thomas Schember, St. Mary Hospital, Franciscan Health System of NJ, Inc., Hoboken, NJ 07030, 201-714-8900.	NJ	06/26/91
Ms. Lynn C. O'Connor, Buttonwood Hosp. of Burlington, County Route 530, New Lisbon, NJ 08064, 609-726-7000.	NJ	06/27/91
Ms. Tamara W. Moreland, Eastern Shore Nursing & Conva, 1419 Rt. 9 N., Cape May Court House, NJ 08210, 609-465-2260.	NJ	06/28/91

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS—Continued

[06/01/91 to 06/30/91]

CEO-Name/Facility Name/Address	ST.	Approval Date
Ms. Martha R. Zeltner, Cranford Hall Nursing Home, 600 Lincoln Pk E., Cranford, NJ 07016, 908-276-7100.	NJ	06/20/91
Mr. Joseph Sherber, Kimball Medical Center, 600 River Avenue, Lakewood, NJ 08701, 908-370-7405.	NJ	06/26/91
Mr. David F. Graham, Medford Conval. & Nur. Ctr., 185 Tuckerton Rd., Medford, NJ 08055, 609-983-8500.	NJ	06/26/91
Mr. Thomas Schember, St. Mary Hospital, Franciscan Health System of NJ, Inc., Hoboken, NJ 07030, 201-714-8900.	NJ	06/26/91
Ms. Lynn C. O'Connor, Buttonwood Hosp. of Burlington, County Route 530, New Lisbon, NJ 08064, 609-726-7000.	NJ	06/27/91
Ms. Tamara W. Moreland, Eastern Shore Nursing & Conva, 1419 Rt. 9 N., Cape May Court House, NJ 08210, 609-465-2260.	NJ	06/28/91
Mr. Consuelo Vaca, Nurse Care Registry, Inc., 25-31 30th Road, Astoria, NY 11102, 718-204-8585.	NY	06/07/91
Mr. Patrick Michael Kane, St. Patrick's Home, 66 Van Cortlandt Park, South, Bronx, NY 10463, 215-519-2800.	NY	06/13/91
Mr. Frank N. Liguori, Olsten Health Care Services, The Olsten Corporation d/b/a, Smithtown, NY 11787, 516-366-1900.	NY	06/20/91
Mr. Ronald T. Mullahey, Vassar Brothers Hospital, Reade Place, Poughkeepsie, NY 12601, 914-437-3017.	NY	06/26/91
Mr. David Fridkin, Hempstead Gen'l Hosp. Med. Ct, 800 Front Street, Hempstead, NY 11551, 516-560-1236.	NY	06/27/91
Mr. Erie D. Chapman III, Riverside Methodist Hospital, 3535 Olentangy River Rd., Columbus, OH 43214, 614-261-5165.	OH	06/13/91
Mr. John F. Mirabito, Wilson Memorial Hospital, 915 W. Michigan St., Sidney, OH 45365, 513-498-2311.	OH	06/13/91
Ms. Sharon L. Reynolds, Northland Terrace, Inc., 5700 Karl Rd., Columbus, OH 43229, 614-846-5420.	OH	06/26/91
Ms. Thalia H. Munoz, Starr County Hosp. District, DB Starr County Memorial Hosp., Rio Grande City, TX 78582, 512-487-5561.	TX	06/07/91
Mr. Rex C. McRae, Arlington Mem. Hospital Found, 800 W. Randol Mill Road, Arlington, TX 76012, 817-548-6160.	TX	06/13/91
Mr. William A. Gregory, Diagnostic Center Hospital, 6447 Main Street, Houston, TX 77030, 713-790-0790.	TX	06/13/91
Mr. Paul Crafts, AMI—Park Plaza Hosp., 1313 Hermann Drive, Houston, TX 77004, 713-527-5092.	TX	06/26/91
Mr. David M. Collins, Humana Hospital—Abilene, 6250 Hwy 83-83 at Antilley Rd., Abilene, TX 79606, 915-691-2430.	TX	06/28/91
Mr. Jim Salyer, Memorial Hospital System North, 1635 North Loop West, Houston, TX 77008, 713-867-3300.	TX	06/28/91
Mr. Bill Hyslop, Memorial Hospital System South, 11800 Astoria Blvd., Houston, TX 77089, 713-929-6195.	TX	06/28/91
Mr. Edward Myers, Memorial Hospital System SW, 7600 Beechnut, Houston, TX 77074, 713-776-5525.	TX	06/28/91
Ms. Nancy A. Kulas, Northgate Rehabilitation Cent, Beverly Enterprises—Calif., Inc., Seattle, WA 98133, 916-635-3806.	WA	06/07/91
Ms. Nancy A. Kulas, Pinehurst Park Terrace, Beverly Enterprises—Calif., Inc., Seattle, WA 98155, 916-635-3806.	WA	06/07/91
Total Attestations		90

[FR Doc. 91-17449 Filed 7-22-91; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Utah State Standards; Approval

Background

Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667), (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On January 10, 1973, notice was published in the **Federal Register** (38 FR 1178) of the approval of the Utah State Plan and the adoption of subpart E to part 1952 containing the decision. Utah was granted final approval on section 18(e) of the Act on July 16, 1985. By law (section 63-46a-16 Utah Code), the Utah Administrative Rulemaking Procedure is the authorized compilation of the administrative law of Utah and "shall be received in all the courts, and by all the judges, public officers, commissioners, and departments of the State government as evidence of the administrative law of the State of Utah * * *. Under the old standards adoption process, the Utah State plan provides for the Adoption of State Standards in the following manner:

1. Advisory Committee recommendation.
2. Publication in newspapers of general/major circulation with a 30-day waiting period for public comment and hearings.
3. Commission order adopting and designating an effective date.
4. Division of Administrative Rules, State Archivist Building certifies and publishes copies of the Rules and Regulations.

OSHA regulations (29 CFR 1953.22 and .23) require that States respond to the adoption of new or revised permanent Federal Standards by State promulgation of comparable standards within six months of OSHA publication in the **Federal Register**, and within 30 days for emergency temporary standards. Although adopted State Standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in part 1953, they are enforceable by the State prior to Federal review and approval.

The Utah Occupational Safety and Health Division revised its Administrative Rulemaking Act (chapter 46a, title 63, Utah annotated, 1953) which became effective on April 29, 1985. On May 6, 1985, a State Plan Supplement was submitted to the Occupational Safety and Health Administration (OSHA) for approval and publication in the **Federal Register**. The plan supplement was published in the **Federal Register** (53 FR 43688) on October 28, 1988. The supplement provides for adoption of Federal standards by reference through the publication of standards in the Utah State Digest. Utah now adopts Federal OSHA standards by reference using the OSHA numbering system.

By letter dated February 7, 1991, from Douglas J. McVey, Administrator, Industrial Commission of Utah, Utah Occupational Safety and Health Division, to Byron R. Chadwick, OSHA Regional Administrator, the State submitted written statements along with copies of the Utah State Digest, to verify the adoption of standards by reference from the Code of Federal Regulations. The adoption by reference standards actions occurred as follows:

1. The Utah Occupational Safety and Health Administration on July 1, 1989, published for adoption by reference, 29 CFR 1910.21 through 1910.1200 of the revised as of July 1, 1988, edition, and 29 CFR 1926.20 through 29 CFR 1926.1050 of the revised as of July 1, 1987, edition. The State Standard became effective on August 1, 1989.

2. The Utah Occupational Safety and Health Division on March 15, 1990, published for adoption by reference the revised as of July 1, 1988, edition of 29 CFR part 1910 and 29 CFR part 1926; the new Federal Standard, Control of Hazardous Energy Source (Lockout/Tagout), Final Rule of 29 CFR 1910.147 as published in 54 FR 36643; and, the new Federal Standard, Excavations, Final Rule of 29 CFR 1926.650, 651, 652 and appendix A–F as published in 54 FR 45894. The effective date of the State Standards was April 15, 1990.

3. The Utah Occupational Safety and Health Division adopted by reference on June 1, 1990, the new Federal Standard, Occupational Exposures to Hazardous Chemical in Laboratories; Final Rule of 29 CFR 1910.1450 as published in 55 FR 3300. The effective date of the State Standard was July 1, 1990.

4. The Utah Occupational Safety and Health Division adopted by reference on January 1, 1991, the revised as of July 1, 1990, editions 29 CFR part 1910 (General Industry) and 29 CFR part 1926 (Construction) standards. The State Standards became effective on February 1, 1991.

5. The Utah Occupational Safety and Health Division adopted by reference on May 25, 1991, the new Federal Standard, Electrical Safety-Related Work Practices; Final Rule of 29 CFR part 1910 as published in 55 FR 31984. The effective date of the State Standard is July 15, 1991.

Decision

The statement of incorporation of the aforementioned Federal Standards by reference has been printed in the Utah Administrative 1990 Code. The code contains the statement of the incorporation of Federal Standards by reference as compiled by the Occupational Safety and Health Division of the Industrial Commission of Utah. Copies of the Utah Administrative Code have been reviewed and verified at the Regional Office. OSHA has determined that the Federal Standards incorporated by reference from 29 CFR part 1910 and 29 CFR part 1926 are identical to Federal Standards with no differences and therefore approves the Utah Standards.

Location of Supplement for Inspection and Copying

A copy of the standards along with the approved plan may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, room 1576 Federal Office Building, 1961 Stout Street, Denver, Colorado 80294; Utah State Industrial Commission, UOSH Offices at 160 East 300 South, Salt Lake City, Utah 84151; and the Director, Federal-State Operations, Room N3700, 200 Constitution Avenue, NW, Washington, DC 20210.

Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures, or show any other good cause consistent with applicable laws, to expedite the review process. The Assistant Secretary finds that good cause exists for not publishing the supplements to the Utah State Plan as a proposed change and makes the Regional Administrator's approval effective upon publication for the following reason(s): The Standards were adopted in accordance with the procedural requirements of State law and further public participation would be repetitious. This decision is effective July 23, 1991.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667)).

Signed at Denver, Colo., this 17th day of June 1991.

Byron R. Chadwick,

Regional Administrator, VIII.

[FR Doc. 91–17454 Filed 7–22–91; 8:45 am]

BILLING CODE 4510–26–M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

President's Council of Advisors on Science and Technology (PCAST); Panel on Science and Technology and National Security

The Panel on Science and Technology and National Security of the President's Council of Advisors on Science and Technology (PCAST) will meet on August 5–6, 1991. The meeting will begin at 9 a.m. in Conference Room 476, Old Executive Office Building, 17th Street and Pennsylvania Avenue, NW., Washington, DC.

The purpose of the Panel is to advise the Council on matters involving science and technology and national security.

Proposed Agenda

1. Briefing of the Panel on problems of national security by the Office of Science and Technology Policy and the National Security Council.

2. Briefing of the Panel on problems of national security by the Department of Defense.

All sessions will be closed to the public.

The briefings on the national security issues necessarily will involve discussion of materials that are formally classified in the interest of national defense or for foreign policy reasons. The meeting will be closed to the public pursuant to 5 U.S.C. 552b(c)(1), (2), and (9)(B).

Dated: July 16, 1991.

Kenneth P. Yale,

Chief of Staff, Office of Science and Technology Policy.

[FR Doc. 91–17425 Filed 7–22–91; 8:45 am]

BILLING CODE 3170–01–M

POSTAL RATE COMMISSION

[Docket No. A91–8; Order No. 892]

Angus, Minnesota 56712 (Mildred Stroble, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

July 17, 1991.

Name of Affected Post Office: Angus, Minnesota 56712.

Name(s) of Petitioner(s): Mildred Stroble.

Type of Determination: Consolidation.

Date of Filing of Appeal Papers: July 15, 1991.

Categories of Issues Apparently Raised:

1. Effect on postal services (39 U.S.C. 404(b)(2)(C)).

2. Effect on employees (39 U.S.C. 404(b)(2)(D)).

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule (39 U.S.C. 404(b)(5)), the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

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Dated: July 16, 1991.

Kenneth P. Yale,

Chief of Staff, Office of Science and Technology Policy.

[FR Doc. 91–17425 Filed 7–22–91; 8:45 am]

BILLING CODE 3170-01-M

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The Commission orders:

(A) The record in this appeal shall be filed on or before July 30, 1991.

(B) The Secretary shall publish this notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

Augustus, Minnesota 56712

July 15, 1991—Filling of Petition.
July 17, 1991—Notice and Order of Filing of Appeal.
August 9, 1991.—Last day of filing of petitions to intervene (see 39 CFR 3001.111(b)).
August 19, 1991—Petitioner's Participant Statement or Initial Brief (see 39 CFR 3001.115 (a) and (b)).
September 10, 1991—Postal Service Answering Brief (see 39 CFR 3001.115(c)).
September 25, 1991—Petitioner's Reply Brief should Petitioners choose to file one (see 39 CFR 3001.115(d)).
October 2, 1991—Deadline for motions by any party requesting oral argument. The Commisson will schedule oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings (see 39 CFR 3001.116).
November 12, 1991—Expiration of 120-day decisional schedule (see 39 U.S.C. 404(b)(5)).

[FR Doc. 91–17391 Filed 7–22–91; 8:45 am]

BILLING CODE 7710-FW-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for hearing; Midwest Stock Exchange, Inc.

July 17, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Digicon, Inc.
  Common Stock, $.01 Par Value (File No. 7–7086)
Marvel Entertainment Group, Inc.
  Common Stock, $.01 Par Value (File No. 7–7087)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 7, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available, to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–17462 Filed 7–22–91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

July 17, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Calgon Carbon Corp.
  Common Stock, $.01 Par Value (File No. 7–7082)
Escagenetics Corp.
  Common Stock, $.0001 Par Value (File No. 7–7083)
Fisher Price, Inc.
  Common Stock, $.01 Par Value (File No. 7–7084)
Total Canada Oil & Gas Ltd.
  Common Stock, No Par Value (File No. 7–7085)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 7, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–17463 Filed 7–22–91;8:45am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

July 17, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Marvel Entertainment Group, Inc.
  Common Stock, $0.01 Par Value (File No. 7–7088)
Telecom Corporation of New Zealand, Ltd.
  American Depository Shares (File No. 7–7089)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 7, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–17464 Filed 7–22–91; 8:45 am]

BILLING CODE 8010-01-M

VOL 56 SS 141 JL 23 1991 UMI

Issuer Delisting; Application To Withdraw From Listing and Registration; Spaghetti Warehouse, Inc., Common Stock, $0.01 Par Value (File No. 1-10291)

July 17, 1991.

Spaghetti Warehouse, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

Effective at the opening of business on June 27, 1991, the Company's common stock commenced trading on the New York Stock Exchange ("NYSE"). In making the decision to withdraw its common stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the NYSE and Amex. The Company does not see any particular advantage in the dual trading of its common stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before August 7, 1991, submit by letter to the Secretary of the Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-17465 Filed 7-22-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 1434]

Determination To Waive the Transfer of Foreign Assistance Funds Under the Fishermen's Protective Act

Pursuant to the authority vested in me by Executive Order 11772, I hereby certify that it is in the national interest not to transfer to the account established in the Treasury pursuant to section 7(c) of the Fishermen's Protective Act (22 U.S.C. 1977(c)) or to the Fishermen's Protective Fund established by section 9 of the Fishermen's Protective Act (22 U.S.C. 1979) funds from the Foreign Assistance Act of 1961, as amended, programmed for Mexico or any funds which might be programmed for Mexico, in the amount of $53,384.53. This is the amount of previously unreported payments and certifications made prior to March 31, 1991 which have been reimbursed by the Secretary of State for fishing boat seizures by Mexico in accordance with section 3 of the Fisherman's Protective Act.

This determination, which satisfies the requirements of section 5(b) of the Fishermen's Protective Act (22 U.S.C. 1975(b)), shall be reported to the Congress immediately and shall be published in the **Federal Register**.

Dated: July 5, 1991.

James A. Baker, III,

Secretary of State.

[FR Doc. 91-17394 Filed 7-22-91; 8:45 am]

BILLING CODE 4710-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-91-28]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 12, 1991.

ADDRESSES: Send comments on any petition in triplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. ________, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mr. C. Nick Spithas, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9683.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on July 16, 1991.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 18114.

Petitioner: Federal Express Corporation.

Sections of the FAR Affected: 14 CFR 121.547, 121.583.

Description of Relief Sought: To renew Exemption No. 2600G which allows Federal Express Corporation to carry reporters, photographers, or journalists aboard its Boeing B-747 aircraft without complying with the passenger carrying requirements of FAR part 121. Exemption No. 2600G expires November 30, 1991.

Docket No.: 26578.

Petitioner: American Airlines.

Sections of the FAR Affected: 14 CFR part 43.

Description of Relief Sought: To permit American Airlines, Inc., to utilize non-certificated personnel, both ground

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Issued in Washington, DC, on July 16, 1991.

Denise Donohue Hall,

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Petitions for Exemption

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Sections of the FAR Affected: 14 CFR 121.547, 121.583.

Description of Relief Sought: To renew Exemption No. 2600G which allows Federal Express Corporation to carry reporters, photographers, or journalists aboard its Boeing B-747 aircraft without complying with the passenger carrying requirements of FAR part 121. Exemption No. 2600G expires November 30, 1991.

Docket No.: 26578.

Petitioner: American Airlines.

Sections of the FAR Affected: 14 CFR part 43.

Description of Relief Sought: To permit American Airlines, Inc., to utilize non-certificated personnel, both ground and flight, to replace spent passenger reading bulbs.

Docket No.: 26590.

Petitioner: SIMCON Training Centers.

Sections of the FAR Affected: 14 CFR 61.58(b)(1).

Description of Relief Sought: To allow SIMCON Training Centers to use a pilot ground trainer to meet the requirements of § 61.57(e)(2) to conduct both flight reviews and instrument competency checks during a training cycle.

Docket No.: 26591.

Petitioner: Mountain Bird Inc., dba Salmon Air Taxi and Challis Aviation.

Sections of the FAR Affected: 14 CFR 43.3(g).

Description of Relief Sought: To allow Mountain Bird Inc., dba Salmon Air Taxi and Challis Aviation pilots to remove/install passenger seats in aircraft under part 135.

Docket No.: 26592.

Petitioner: Philadelphia Jet Service.

Sections of the FAR Affected: 14 CFR 135.165(b).

Description of Relief Sought: To allow Philadelphia Jet Service to operate its HS125-700A aircraft in extended overwater operations with a single high-frequency communications system.

Dispositions of Petitions

Docket No.: 26217.

Petitioner: Purdue University.

Sections of the FAR Affected: 14 CFR 61.151(a), 61.155(b)(2).

Description of Relief Sought/Disposition: To allow Purdue students who are 21 years or older and have only a minimum of 250 hours total time, to take the FAA Airline Transport Pilot (ATP) or Dispatcher written tests, without complying with the 23 years old and 1,500 flight hours required by the regulations.

DENIAL, July 3, 1991, Exemption No. 5329

Docket No.: 25652.

Petitioner: Cochise Community College.

Sections of the FAR Affected: 14 CFR part 141, appendix H, paragraph (3)(c)(1) and (3)

Description of Relief Sought/Disposition: To allow students to enroll in the Airplane Certification Course prior to the students completing the flight portion of the Commerical Pilot-Airplane Certification/Instrument-Airplane Rating Course and prior to enrollment in an airplane instructor rating course.

GRANT, July 9, 1991, Exemption No. 5330

[FR Doc. 91-17424 Filed 7-22-91; 8:45 am)

BILLING CODE 4910-13-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "Circa 1492: Art in the Age of Exploration" (see list[1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art, Washington, DC, beginning on or about October 12, 1991, to on or about January 12, 1992, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Alberto J. Mora,

General Counsel.

[FR Doc. 91-17563 Filed 7-22-91; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) the title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont, NW., Washington, DC 20420 (202) 233-3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before August 22, 1991.

Dated: July 17, 1991.

By direction of the Secretary.

Frank E. Lalley,

Associate Deputy, Assistance Secretary for Information Resources Policies and Oversight.

Extension

1. Notice of Default and Intention to Foreclose, VA Form 26-6850a
2. The form is used by holders of guaranteed or insured loans to notify VA of a loan that is in defaut by reason of nonpayment of installments.
3. Businesses or other for-profit
4. 32,355 hours
5. 20 minutes
6. On occasion
7. 97,064 responses.

[FR Doc. 91-17479 Filed 7-22-91; 8:45 am]

BILLING CODE 8320-01-M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

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[1] A copy of this list may be obtained by contracting Ms. Lorie J. Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202/619-6975, and the address is U.S. Information Agency, 301 Fourth Street, SW., room 700, Washington, DC 20547.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before August 22, 1991.

Dated: July 18, 1991.

By direction of the Secretary.

Frank E. Lalley,

Associate Deputy, Assistance Secretary for Information Resources Policies and Oversight.

New Collection

1. VA MATIC Change, VA Form 29–0165
2. The form is used by the insured to request VA to change the account number and/or financial institution from which a VA MATIC deduction was previously authorized.
3. Individuals or households
4. 1,250 hours
5. 15 minutes
6. On occasion
7. 5,000 respondents

Extension

1. Manufactured Home Appraisal Report, VA Form 26–8712
2. The form is used by VA fee and staff appraisers to establish the reasonable value of used manufactured home units proposed for financing and in the event of foreclosure, to ascertain the value of units for resale purposes.
3. Individuals or households; Businesses or other for-profit, Small businesses or organizations
4. The actual annual reporting hours is 6,300. However, the requirement for appraisal reports is a common practice in the housing industry, one hour is requested for reporting purposes.
5. 1½ hours
6. On occasion
7. 4,200 responses.

[FR Doc. 91–17480 Filed 7–22–91; 8:45 am]

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5. 1½ hours
6. On occasion
7. 4,200 responses.

[FR Doc. 91–17480 Filed 7–22–91; 8:45 am]

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Sunshine Act Meetings

Federal Register
Vol. 56, No. 141
Tuesday, July 23, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NO. 91–17286.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, July 25, 1991 at 10:00 a.m.

CHANGE IN MEETING: The following item has been added to the agenda.

Final audit report on Jack Kemp for President and the Kemp/Dannemeyer and Victory '88 Joint Fundraising Committee

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 376–3155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 91–17574 Filed 7–19–91; 12:31 pm]

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BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, July 29, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals regarding a Federal Reserve Bank's building requirements.
2. Federal Reserve Bank and Branch director appointments.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 19, 1991.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 91–17619 Filed 7–19–91; 3:42 pm]

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Tuesday
July 23, 1991

Part II

Office of Government Ethics

5 CFR Part 2635

Standards of Ethical Conduct for Employees of the Executive Branch; Proposed Rule

VOL 56
ISS 141
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OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2635

RIN 3209-AA04

Standards of Ethical Conduct for Employees of the Executive Branch

AGENCY: Office of Government Ethics.

ACTION: Proposed rule.

SUMMARY: The Office of Government Ethics proposes to issue uniform standards of ethical conduct for officers and employees of the executive branch of the Federal Government (hereinafter, Government) that will supersede most of subparts A, B and C of 5 CFR part 735 and agency regulations issued thereunder, as well as 5 CFR 2635.101 of the Office of Government Ethics regulations. The new standards issued by the Office of Government Ethics will be published at revised 5 CFR part 2635, consistent with the earlier transfer and redesignation of other Office of Government Ethics regulations. See 54 **Federal Register** 50229–50231 (December 5, 1989).

The proposed rule establishes standards relating to the receipt of gifts, whether from prohibited sources, because of official position, or between employees. It establishes standards for dealing with the employee's own and other financial interests that conflict with the performance of an employee's official duties. These include disqualification requirements that apply when a matter to which the employee is assigned affects a person with whom he is seeking employment. In addition to standards relating to use of official position and time, Government property, and nonpublic information, it establishes specific standards for application to outside activities in which an employee may participate, including fundraising and outside employment.

DATES: Comments by agencies and the public are invited and are due September 20, 1991.

ADDRESSES: Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917, Attention Ms. Wilcox.

FOR FURTHER INFORMATION CONTACT: Leslie Wilcox or Julie Loring, Office of Government Ethics, telephone (202/FTS) 523–5757, FAX (202/FTS) 523–6325.

SUPPLEMENTARY INFORMATION:

SUBSTANTIVE DISCUSSION, TABLE OF CONTENTS

I. Summary of Legal Background
II. General Provisions
III. Gifts from Outside Sources
IV. Gifts between Employees
V. Conflicting Financial Interests
VI. Impartiality in Performing Official Duties
VII. Seeking Other Employment
VIII. Misuse of Position
IX. Outside Activities
X. Revocation by OPM of Superseded Portions of 5 CFR Part 735 and by OGE of Current 5 CFR 2635.101
XI. Matters of Regulatory Procedure

I. Summary of Legal Background

Since 1965, officers and employees of the executive branch (employees) have been subject to individual agency regulations setting forth standards of conduct. Underlying standards common to all existing executive department and agency regulations are contained in parts I and II of Executive Order 11222 of May 8, 1965, as amended, and are implemented by Office of Personnel Management regulations at 5 CFR part 735, subparts A–C.

Consistent with the decentralized regulatory scheme established by the 1965 Executive order, subpart A of 5 CFR part 735 required each executive agency to issue regulations implementing part 735 and prescribing additional standards of ethical conduct appropriate to its particular functions and activities, including exceptions to the restrictions on solicitation or acceptance of gifts from prohibited sources.

In early 1989, as part of a comprehensive review of the ethics laws applicable to all three branches of Government, the President's Commission on Federal Ethics Law Reform recommended that the standards of conduct be updated and that the Office of Government Ethics (OGE) be given authority to issue uniform regulations applicable to all agencies within the executive branch. Thereafter, on April 12, 1989, President Bush issued Executive Order 12674 revoking the 1965 Executive order. Executive Order 12674 was modified by Executive Order 12731, October 17, 1990. The modified Executive order is hereinafter referred to as Executive Order 12674.

Section 201(a) of the new Executive order authorizes OGE, in consultation with the Attorney General and the Office of Personnel Management, to issue regulations that "establish a single, comprehensive, and clear set of executive-branch standards of conduct that shall be objective, reasonable, and enforceable." Section 201(c) of the new Executive order further authorizes OGE, with the concurrence of the Attorney General, to issue regulations interpreting 18 U.S.C. 207–209.

Part I of Executive Order 12674 incorporates most of the concepts contained in the 1965 Executive order and imposes additional standards, including a prohibition in Section 102 on receipt of outside earned income by Presidential appointees to full-time noncareer positions. Under the Executive order, special Government employees are subject to the same basic principles of ethical conduct that apply to other executive branch employees.

Section 502(a) of Executive Order 12674 provides that, except insofar as irreconcilable with its provisions, regulations issued under the 1965 Executive order shall remain in effect until properly amended, modified, or revoked. Under this savings provision, individual agency regulations remain in effect until the uniform regulations, which are the subject of this notice, take effect. Because existing standards cannot be reconciled with the prohibition on receipt of outside earned income applicable to Presidential appointees to full-time noncareer positions, that provision became effective on April 12, 1989.

As did its predecessor, Executive Order 12674 prohibits employees from soliciting or accepting gifts from specified categories of persons. Title III of the Ethics Reform Act of 1989 amended title 5 of the U.S. Code to add a new section 7353 which contains virtually identical language restricting the solicitation or acceptance of gifts. In its statutory form, this prohibition applies to personnel in all three branches of Government. It authorizes OGE to issue implementing regulations for the executive branch, including "reasonable exceptions as may be appropriate." Thus, the draft regulations contained in subpart B of the proposed rule implement 5 U.S.C. 7353 as well as Section 101(d) of Executive Order 12674.

Under current part 735 and § 2635.101 of 5 CFR and implementing agency regulations, employees are prohibited from giving gifts to official superiors and from accepting gifts from employees receiving less pay than themselves. This prohibition at 5 CFR 735.202(d) is based on the longstanding statutory prohibition against gifts to superiors at 5 U.S.C. 7351. The Ethics Reform Act of 1989 amended section 7351 to give OGE authority to issue implementing regulations applicable to employees of the executive branch. These are contained in subpart C of the proposed rule.

Title VI of the Ethics Reform Act of 1989 added three other provisions that impact directly upon the outside activities of employees, other than special Government employees. One prohibits receipt of honoraria (payment for an appearance, speech, or article) by any individual while serving as an

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Title VI of the Ethics Reform Act of 1989 added three other provisions that impact directly upon the outside activities of employees, other than special Government employees. One prohibits receipt of honoraria (payment for an appearance, speech, or article) by any individual while serving as an

officer or employee. Another limits receipt of outside earned income by certain noncareer employees paid at or above the basic rate for a position above GS–15. The third prohibits those same noncareer employees from engaging in certain outside employment activities. These three provisions are implemented by 5 CFR part 2636, which was issued by OGE as an interim rule at 56 FR 1721–1730 (January 7, 1991). Relevant provisions of that interim rule are cross-referenced in the outside activities provisions at subpart H of this proposed rule to ensure the review of relevant regulations by covered noncareer employees and by other employees who wish to receive compensation for an appearance, speech, or article.

This proposed rule is published by the Office of Government Ethics (OGE) in consultation with the Department of Justice and the Office of Personnel Management pursuant to Section 201(a) and (c) of Executive Order 12674 of April 12, 1989, as modified by E.O. 12731 of October 17, 1990, and authorities contained in titles I and IV of the Ethics in Government Act of 1978, Public Law 95–521, October 26, 1978, as amended, 5 U.S.C. appendixes III and IV, and 5 U.S.C. 7351(d)(1) and 7353(b)(1) as added by the Ethics Reform Act of 1989, Public Law 101–194, November 30, 1989, as amended. Formerly a part of the Office of Personnel Management, the Office of Government Ethics became a separate executive branch agency on October 1, 1989 pursuant to Sections 3 and 10 of the 1988 OGE reauthorization legislation, Public Law 100–598. Hence, OGE is issuing this proposed rule as revised part 2635 in OGE's chapter XVI of 5 CFR.

II. General Provisions

Subpart A of the proposed rule includes initial sections setting forth the basic obligation of public service and definitions that apply throughout the subpart.

Section 2635.101 of subpart A, as drafted, restates the principles of ethical conduct set forth at section 101 of Executive Order 12674 and the obligation to adhere to the standards set forth in the proposed rule and supplemental agency regulations. With the exception of paragraphs (b)(4), (b)(6) and (b)(14), the general principles set forth in § 2635.101(b) are restated verbatim from Executive Order 12674. These principles and the conflict of interest statutes contained in Chapter 11 of title 18 of the United States Code are the basis for the more specific standards set forth in subsequent subparts of the proposed rule. The final sentence of § 2635.101(b) would require employees to apply the principles of ethical conduct in determining whether conduct not otherwise addressed in the proposed rule is proper.

The three paragraphs contained in proposed § 2635.101(b) that are not restated verbatim from Executive Order 12674 warrant specific comment. Paragraph (b)(4) is reworded simply to clarify that subpart B contains the applicable exceptions referred to in section 101(d) of Executive Order 12674. The other two paragraphs are reworded to amplify the meaning of the respective principles.

Section 2635.101(b)(6), as proposed, would add a knowledge standard to the principle at section 101(f) of Executive Order 12674 that employees "shall make no unauthorized commitments or promises of any kind purporting to bind the Government." The knowledge requirement is proposed because employees frequently deal with complex laws and regulations and must make decisions that fall within the gray areas of those authorities. An employee who acts in good faith and without knowledge that he or she is exceeding official authority will not be found to have violated the standards of ethical conduct simply because his or her judgment proves faulty.

The first sentence of proposed § 2635.101(b)(14) is a verbatim restatement of the principle at section 101(n) of Executive Order 12674 that employees shall try to avoid any action that creates an appearance that they are violating the law or the standards set forth in the proposed rule. This appearance standard is one of long standing, derived from the 1965 Executive order. An additional sentence has been added to § 2635.101(b)(14) to reflect case law and longstanding practice, both of which temper the appearance standard by reference to the perspective of a reasonable person with knowledge of the relevant facts. This is intended to ensure that the conduct of employees is judged by a standard of reasonableness.

Section 2635.101(c) is proposed to caution employees that there are conflict of interest statutes that must be considered in conjunction with the standards of ethical conduct in determining whether particular conduct is appropriate. Synopses of the basic conflict of interest statutes at chapter 11 of title 18 of the U.S. Code are contained in relevant portions of the proposed rule and references to these and other generally applicable statutes are included in subpart I of the proposed rule.

While the definitions set forth in § 2635.102 of the proposed rule are largely self-explanatory, the term agency designee warrants specific comment. The proposed rule includes provisions that require the agency designee to make certain determinations or authorize certain conduct. Because the proposed rule is intended for broad application throughout the entire executive branch, OGE has not undertaken to identify which employees within the various agencies should be delegated those responsibilities. Their designation is left to the individual agencies. Most agencies will find it advantageous to designate a number of individuals as agency designees and there is nothing in the proposed rule that limits designations to individuals who are agency ethics officials. Many agencies will find it appropriate to designate supervisors as agency designees for determinations and authorizations affecting their subordinates.

Consistent with the definition of the term employee at section 503(b) of Executive Order 12674, proposed § 2635.103 clarifies that the proposed rule would not apply to enlisted members of the uniformed services. It would, however, apply to officers of the uniformed services. For employees detailed within the Federal Government for periods in excess of 30 days, proposed § 2635.104(a) would provide guidance intended to reconcile any differences in the nonstatutory ethical standards that may exist between agencies or between branches of the Government. And proposed § 2635.104(b) would give designated agency ethics officials authority to exempt from the gift standards in proposed subpart B those employees detailed for more than 6 months to international organizations or to State or local governments under statutory authorities, such as 5 U.S.C. 3343 and 3371. This exemption authority would be limited to cases in which the organization or governmental entity to which the employee is detailed has its own written gift standards.

Proposed § 2635.104(c) would eliminate any differences in ethical standards that might result from application of different supplemental agency regulations to employees posted overseas. While posted abroad, most employees of civilian agencies and some uniformed officers are subject to the direction, coordination and supervision of the Chiefs of the United States Mission. With the exception of those detailed to international organizations, all others posted abroad are under the

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command of the United States area military commander. The proposed section would subject those so attached to the respective supplemental agency regulations of the Department of State or the Department of Defense. Others while abroad, including most employees in a temporary duty travel status, would remain subject to the supplemental agency regulations of their respective employing agencies. The Office of the Legal Adviser, Department of State, has advised that the proposed section would enable the Department of State to use its own supplemental agency regulation in combination with the Department's gift acceptance statute to ensure consistency in the conduct of Federal personnel attached to the mission.

As proposed, subpart A contains authority for agencies to issue regulations supplementing the proposed rule. Other than as contemplated by proposed §§ 2635.203(a), 2635.403(a) and 2635.803, most agencies should not find it necessary to issue supplemental agency regulations. However, OGE recognizes that some agencies will need to augment the proposed rule with standards tailored to their operations. As proposed, § 2635.105 would provide a means by which the uniform regulations may be supplemented by agency-specific regulations consistent with the purposes and format of the proposed rule.

Pursuant to section 301(a) of Executive Order 12674, supplemental agency regulations become effective only upon concurrence by and joint issuance with OGE and publication at agency expense in title 5 of the Code of Federal Regulations. Under proposed § 2635.105(c) agencies may, without issuing a supplemental regulation, delegate authority to agency designees and establish certain procedures necessary to comply with the uniform regulations. Agencies are also free to issue handbooks or similar aids to explain the standards contained in the proposed rule and to issue regulations under authorities other than the Executive order. In the past, some agency standards of conduct have included regulatory provisions that derive from authorities other than Executive Order 11222, such as regulations implementing the Hatch Act. In anticipation of the issuance of this proposed rule as a final regulation, agencies should consult with OGE concerning their authority to preserve any such regulatory provisions.

Section 2635.106 of the proposed rule gives general guidance on disciplinary and corrective action and incorporates the concept set forth in section 504 of Executive Order 12674 that the standards issued under the Executive order are not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person. Thus, as noted regarding complaints of discrimination, nothing in the proposed rule makes OGE or an agency ethics official an alternate forum for adjudicating or deciding matters for which other procedures are established.

Section 2635.107 of the proposed rule explains that employees may obtain guidance from agency ethics officials regarding their particular responsibilities under the standards of ethical conduct. It provides assurance that those who obtain and follow that guidance will not be subject to disciplinary action. Although it cannot provide this degree of assurance when the conduct involved violates a criminal statute, it reflects the longstanding practice of the Department of Justice in selecting cases for prosecution to take into consideration an employee's good faith reliance on the advice of agency ethics officials.

III. Gifts From Outside Sources

Subpart B of the proposed rule implements 5 U.S.C. 7353, as added by the Ethics Reform Act of 1989, and section 101(d) of Executive Order 12674. Both provide that an employee shall not solicit or accept gifts from certain (prohibited) sources unless permitted by a regulatory exception. The Executive order and the statute both augment the list of prohibited sources contained in the 1965 Executive order by adding a fourth category—any person or entity seeking official action from the employee's agency.

Section 2635.202(a) of subpart B, as drafted, would prohibit an employee from soliciting or accepting a gift from a prohibited source or a gift given because of the employee's official position, unless the item is excluded from the definition of a gift or falls within one of the exceptions in proposed § 2635.204. While this may appear to expand the scope of the gift prohibitions presently contained in 5 CFR 735.202(a), it reflects OGE's longstanding interpretation of the current requirement at 5 CFR 735.201(a) that an employee avoid any action which might result in or create the appearance of using public office for private gain. This prohibition continues to apply under section 101(g) of Executive Order 12674, as restated at § 2635.101(b)(7) of the proposed rule. Accepting a gift offered because of one's official position creates an appearance of using public office for private gain.

Section 2635.202(b), as drafted, explains the relationship between the standards set forth in proposed subpart B and 18 U.S.C. 201(c)(1)(B). Frequently referred to as the illegal gratuities statute, section 201(c)(1)(B) makes it a crime for a public official "otherwise than as provided by law for the proper discharge of official duty" to demand, seek, receive, accept or agree to receive or accept anything of value "for or because of any official act performed or to be performed by such official or person." As drafted, the language of § 2635.202(b) reflects congressional intent that the acceptance of a gift in accordance with the exceptions and other standards set forth in subpart B will not subject an employee to prosecution for violation of the illegal gratuities statute. Congressional Record for November 16, 1989, at page H8758. By cross-reference to § 2635.202(c)(1) of the proposed rule, § 2635.202(b) balances that purpose with the statutory proviso at 5 U.S.C. 7353(b)(1)(B) that an employee may not accept a gift, even pursuant to a regulatory exception, in return for being influenced in the performance of any official act. While such a gift, if corruptly sought or accepted, would constitute a bribe prosecutable under 18 U.S.C. 201(b)(2)(A), the language of § 2635.202(b) preserves the possibility of prosecution under the illegal gratuities statute where the element of corruption cannot be established.

Section 2635.202(c), as drafted, sets forth five limitations on the use of the exceptions contained in § 2635.204, other than § 2635.204(h). The first reflects the statutory proviso at 5 U.S.C. 7353(b)(1)(B) that a gift may not be accepted in return for being influenced in the performance of an official act. The second makes it clear that any gift that is coerced is improper notwithstanding that it otherwise would come within one of the proposed exceptions at § 2635.204. And the fifth makes it clear that, except as provided in proposed § 2635.202(b), subpart B does not sanction the solicitation or acceptance of any gift that would violate a statute. For clarification, paragraph (5) of the section includes synopses of 18 U.S.C. 201(b), 18 U.S.C. 209 and 41 U.S.C. 423(b)(2).

The limitations in paragraphs (3) and (4) of § 2635.202(c) are derived from the principles of ethical conduct restated at §§ 2635.101 (b)(7) and (b)(8). The acceptance of gifts on a recurring or frequent basis, whether from the same or different sources, gives rise to an appearance of use of public office for private gain. And there are circumstances under which an employee

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Section 2635.202(b), as drafted, explains the relationship between the standards set forth in proposed subpart B and 18 U.S.C. 201(c)(1)(B). Frequently referred to as the illegal gratuities statute, section 201(c)(1)(B) makes it a crime for a public official "otherwise than as provided by law for the proper discharge of official duty" to demand, seek, receive, accept or agree to receive or accept anything of value "for or because of any official act performed or to be performed by such official or person." As drafted, the language of § 2635.202(b) reflects congressional intent that the acceptance of a gift in accordance with the exceptions and other standards set forth in subpart B will not subject an employee to prosecution for violation of the illegal gratuities statute. Congressional Record for November 16, 1989, at page H8758. By cross-reference to § 2635.202(c)(1) of the proposed rule, § 2635.202(b) balances that purpose with the statutory proviso at 5 U.S.C. 7353(b)(1)(B) that an employee may not accept a gift, even pursuant to a regulatory exception, in return for being influenced in the performance of any official act. While such a gift, if corruptly sought or accepted, would constitute a bribe prosecutable under 18 U.S.C. 201(b)(2)(A), the language of § 2635.202(b) preserves the possibility of prosecution under the illegal gratuities statute where the element of corruption cannot be established.

Section 2635.202(c), as drafted, sets forth five limitations on the use of the exceptions contained in § 2635.204, other than § 2635.204(h). The first reflects the statutory proviso at 5 U.S.C. 7353(b)(1)(B) that a gift may not be accepted in return for being influenced in the performance of an official act. The second makes it clear that any gift that is coerced is improper notwithstanding that it otherwise would come within one of the proposed exceptions at § 2635.204. And the fifth makes it clear that, except as provided in proposed § 2635.202(b), subpart B does not sanction the solicitation or acceptance of any gift that would violate a statute. For clarification, paragraph (5) of the section includes synopses of 18 U.S.C. 201(b), 18 U.S.C. 209 and 41 U.S.C. 423(b)(2).

The limitations in paragraphs (3) and (4) of § 2635.202(c) are derived from the principles of ethical conduct restated at §§ 2635.101 (b)(7) and (b)(8). The acceptance of gifts on a recurring or frequent basis, whether from the same or different sources, gives rise to an appearance of use of public office for private gain. And there are circumstances under which an employee

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should decline even an unsolicited gift that falls within the gift exceptions to avoid an appearance of loss of impartiality. While these proposed limitations may appear to leave employees vulnerable to criticism for accepting gifts that fall within the gift exceptions, OGE believes it is inappropriate to authorize the *de minimis* gift exception discussed below without requiring employees to exercise a degree of judgment in accepting and declining gifts.

Section 2635.203 of the proposed rule contains six definitions applicable to subpart B. One of the more significant is the definition of the term prohibited source at § 2635.203(d). While the first four paragraphs of § 2635.203(d) merely restate language in the statute and Executive Order 12674, the fifth is an application of those definitions to certain organizations whose members are prohibited sources. The extension of the prohibited source definition to include an organization, the majority of whose members are themselves prohibited sources, is consistent with OGE informal advisory opinion 84 × 5 issued May 1, 1984 and amended August 24, 1984, as published in The Informal Advisory Letters and Memoranda and Formal Opinions of the United States Office of Government Ethics (1979–1988).

As contemplated by Executive Order 12674 and 5 U.S.C. 7353, the proposed definition of the term gift at § 2635.203(b) is expansive. Minor differences between the language of Executive Order 12674 and the statute have been reconciled by adopting the language from the Executive order which limits the definition of a gift to anything of monetary value. The proposed definition includes seven specific exclusions. Some, such as the exclusions for loans from financial institutions, broadly available commercial discounts, and rewards and prizes parallel exceptions currently found in the model regulations at 5 CFR 735.202(b) and in most agency standards of conduct regulations. One effect of treating these as exclusions from the definition of a gift, rather than as exceptions under proposed § 2635.204, is to permit employees to accept these items without regard to the appearance limitations at proposed § 2635.202(c).

Greeting cards, plaques, certificates, trophies, and similar items which have only nominal intrinsic value are excluded from the proposed definition of the term gift to enable employees to accept such items without having to consider whether their market value falls within the *de minimis* exception at § 2635.204(a). Plaques and certificates are frequently presented to an employee in a public forum. Because they are ordinarily engraved, embossed or otherwise adorned with the employee's name, they ordinarily are of value to no one other than the employee and the declination of such items causes needless discomfort to both the employee and the donor. A plaque or trophy which is itself an art object or utilitarian item, such as a clock, or which incorporates materials of significant value would not come within this exclusion.

The exclusions for anything "paid for by the Government or secured by the Government under Government contract" and for items "accepted by the Government under specific statutory authority" are intended simply to clarify that items provided to the employee by the Government are not gifts from outside sources and, thus, are not covered by subpart B.

The proposed definition of the term agency at § 2635.203(a) warrants comment. For use throughout the proposed rule, the term agency is defined at proposed § 2635.102(a) to have the meaning set forth in 5 U.S.C. 105. That definition incorporates the definition at 5 U.S.C. 101 of executive departments. Thus, the agency of an employee of the Department of the Army is the entire Department of Defense and, as to that Army employee, a Navy contractor is a prohibited source. For purposes of subpart B, proposed section 2635.203(a) gives the fourteen departments authority, by supplemental agency regulation, to designate agencies within the department as separate agencies. Thus, for example, the Department of Defense could establish the Army, Navy and Air Force as separate agencies for purposes of subpart B. This designation would not be effective, for example, as to the Secretaries of the three services or to any Department level employee.

Section 2635.204, as proposed, sets forth exceptions to the basic prohibition against solicitation or acceptance of a gift from a prohibited source or given because of official position. Under present 5 CFR 735.202 and 2635.101, as well as agency standards of conduct regulations currently in effect, the gift exceptions are narrowly drawn. For example, they have permitted acceptance of promotional items of nominal value and food and refreshments of nominal value on infrequent occasions in the course of a luncheon or dinner meeting. While the limited nature of these exceptions has ensured that employees do not accept gifts in circumstances that would subject them to criticism, the exceptions have themselves been a source of criticism. Many have complained that the exceptions are so overly technical and difficult to apply to specific situations that they tend to trivialize agency ethics programs.

One of the more significant features of the draft rule is the proposal at § 2635.204(a) to adopt a *de minimis* exception which would allow employees to accept unsolicited gifts having an aggregate market value of $25 or less per occasion. Within any calendar year, an employee could not use this particular exception to accept gifts with an aggregate market value in excess of $100 from any single source. This *de minimis* exception has the virtue of establishing a standard that can be easily understood and applied to any gift situation. While it represents a significant departure from prior gift rules applicable to executive branch employees, OGE believes it is a reasonable and simple standard that reduces the need for employees to become aware of a number of technical exceptions dealing with specific situations.

The underlying statute, 5 U.S.C. 7353, was added by the Ethics Reform Act of 1989 and applies to individuals serving in all three branches of Government. Titles VIII and IX of the Reform Act concurrently amended the rules of the House of Representatives and Senate to create a $75 *de minimis* exception applicable to Members, as well as to employees, of both houses of Congress. The rules of the House of Representatives allow the acceptance of gifts with a fair market value of $75 or less from prohibited sources. The Senate rules allow acceptance of gifts less than $75. While the rules of both houses restrict the aggregate amount Members and employees may accept from any single source, gifts within the *de minimis* amount established for the respective house are disregarded in determining the aggregate value of gifts received from a single source. Unlike the legislative branch rules, § 2635.204(a) of this proposed rule for the executive branch would require the aggregation of every *de minimis* gift, whatever its value, received from a single source for purposes of applying the annual $100 aggregate limitation.

Section 2635.204(b), as proposed, is similar to the exception for gifts from friends and relatives that has long been permitted under most agency standards of conduct regulations currently in effect.

Section 2635.204(c) is a proposed new exception that is necessary to accommodate the expansion of the basic gift prohibitions to cover gifts given because of an employee's official position. Under this section, an employee could accept certain benefits or discounts even though they are available because of his or her status as a Federal employee. Opportunities available to the general public or to all Government employees or all uniformed personnel are excluded from the proposed definition of a gift at § 2635.203(b)(2) of this subpart. The exception at proposed § 2635.204(c) is addressed to discounts and other benefits offered to a more limited class. Where such an offer is extended by someone other than a prohibited source to a class encompassing a smaller group of Federal employees, such as a discount offered to all employees of a particular agency, the offer may be accepted if its availability is not limited in a manner that discriminates on the basis of rank, rate of pay, or type of official responsibility. For example, this exception would not permit the acceptance of a discounted membership rate offered only to employees of an agency who are members of the Senior Executive Service. It would, however, permit a discount offered by someone other than a prohibited source to all employees of an agency or to all employees of an agency in a particular city or county.

Section 2635.204(d)(1), as proposed, would allow employees to accept certain awards for public service or individual achievement. Many such awards are given for accomplishments that relate to an employee's official responsibilities and, thus, in the absence of this exception, would be prohibited by § 2635.202(a)(2), even when bestowed by someone other than a prohibited source. The exception allows an employee to accept such an award, other than cash or an investment interest, having a market value of $200 or less when given by someone other than a person whose interests may be substantially affected by the performance or nonperformance of the employee's official duties. Other awards given by such persons, including any award of cash or any noncash award worth more than $200 may be accepted when approved in writing by an agency ethics official in accordance with the standards specified. Regardless of the value of other gifts given in connection with the award, meals and entertainment for the employee and for members of his or her family at any event at which presentation or recognition takes place may be accepted. Such acceptance is not limited to meals and entertainment extended to members of the employee's immediate family. Acceptance would be appropriate, for example, if there is a family relationship in the nature of that encompassed by the definition of a relative at 5 U.S.C. app. 109(16). When approved in writing by an agency ethics official in accordance with the standards specified in § 2635.204(d)(2), employees also may accept honorary degrees and personal tributes, as well as meals and entertainment for themselves and their families at the event at which the presentation or tribute takes place.

Section 2635.204(e), as proposed, contains three exceptions that relate to the outside business and employment relationships of employees and their spouses. Under Executive Order 12674, special Government employees are subject to the same basic principles of ethical conduct that apply to regular employees. Because special Government employees serve the Government only temporarily, often on an intermittent basis, it is expected that many will have other employment and business relationships. The proposed exception at § 2635.204(e)(2) is intended to ensure that the gift prohibitions do not interfere with proper non-Federal employment and business pursuits of special Government employees. Proposed § 2635.204(e)(1) would create a similar exception for benefits which result from the business or employment relationships of any employee's spouse. Section 2635.204(e)(3), as proposed, covers employees seeking employment with prohibited sources. After the employee has complied with the disqualification requirements of subpart F of the proposed rule, the employee may accept transportation, entertainment or any similar gift customarily provided by the prospective employer in connection with its conduct of employment discussions.

Section 2635.204(f) relating to gifts from political organizations is proposed to ensure that the standards of conduct do not hamper the political activities of the relatively small class of higher-level employees who are exempt from the Hatch Act restrictions. It is limited to items provided by political organizations. While these organizations ordinarily will not be prohibited sources, invitations to speak or attend political fundraising events may be extended to these employees because of the positions they hold with the Federal Government.

Where attendance is determined to be in the interest of the agency, proposed § 2635.204(g) would allow an employee to accept a sponsor's offer of all or part of a gift of free attendance at widely-attended gatherings concerning subjects of mutual interest to a number of parties that the employee attends on his own time and at events at which the employee is a speaker or panel participant. Where the employee's acceptance of free attendance is authorized, proposed § 2635.204(g)(5) would provide limited authority for attendance by an accompanying spouse. The limitation proposed at § 2635.204(g)(4) regarding the source of funds used to finance the employee's attendance is added to ensure that the invitation is from the sponsor of the event and that a nominal sponsor is not used to disguise an invitation from another source.

With an exception for days on which the employee is invited to serve as a speaker or panel participant, proposed § 2635.204(g)(2) would require a written determination by the agency designee that the employee's attendance at the event is in the interest of the Government. If the sponsor has interests that would be substantially affected by performance of the employee's duties, that determination must include an appearance analysis. The fact that an employee is invited to serve as a speaker on one of several days of an event does not necessarily permit the employee's acceptance of waiver of the attendance fee for the entire event. Without a written determination of agency interest, the employee may only accept free attendance at substantive portions of the event that take place on the day he or she speaks. Even though a sponsor offers free attendance at an entire event, speakers and others should only be authorized to accept free attendance at those portions of the event that are in the agency's interest.

The exception for widely-attended gatherings at § 2635.204(g)(1)(ii) is one that has been incorporated into the standards of conduct regulations of many agencies. While these events are often sponsored by associations, the exception is not limited to events for which there is an association or other group sponsor. The exception for speakers and panel participants at § 2635.204(g)(1)(i) merely recognizes what has become customary practice—individuals invited as speakers are frequently invited to participate without charge in portions or all of the events at which they are speaking.

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Section 2635.204(h), as proposed, is applicable only to gifts to the President or Vice President and to members of their families. The President and Vice President are not subject to the Standards of Ethical Conduct for Government Officers and Employees imposed by Executive Order 12674. With the exception of 18 U.S.C. 201, they are not subject to the conflict of interest statutes of Chapter II of title 18 of the United States Code. However, 5 U.S.C. 7353, added by the Ethics Reform Act, adopted a broad definition of the term employee that, for the first time, results in the gift prohibitions being made applicable to individuals holding elected positions in all three branches of Government, including the President and Vice President.

The ceremonial and other public duties of the President and Vice President make it impractical to subject them to standards that require an analysis of every gift offered. They are required to file an SF 278 public financial disclosure statement listing gifts aggregating $100 or more from any one source ($250 or more in the case of gifts or reimbursements of transportation, lodgings, food or entertainment). They need not aggregate gifts of $75 or less. In the case of an elected official of the stature of the President or Vice President whose personal conduct is closely scrutinized by the public and the press, this requirement for public disclosure provides sufficient restraint on their acceptance of gifts. To the extent that it does not permit scrutiny of gifts worth less than the amount that triggers the reporting requirement, it is tantamount to an extension to the President and Vice President of an exception not unlike the $75 *de minimis* exception applicable to Members of Congress. OGE anticipates that, as their predecessors have done in the past, the President and Vice President and their successors will establish their own discretionary standards for acceptance of gifts.

Paragraphs (i) and (j) of § 2635.204, as proposed, are crossreferences. The former refers employees to additional exceptions, if any, contained in applicable agency supplemental regulations. Section 2635.204(j) is a reference to additional authorities under which employees may accept gifts; it is not, itself, authority to accept any gift.

Section 2635.205 of the proposed rule deals with the proper disposition of gifts that cannot be accepted, and makes it clear that an employee has a responsibility to return or pay for such gifts. However, perishable gifts, such as food or flowers, may be given to charity or may be used or consumed when shared with others within the recipient's office.

Upon final adoption of the proposed rule, the temporary OGE and Office of Personnel Management rule at 5 CFR 2635.101 continuing the effectiveness of existing agency gift restrictions and exceptions will be revoked. See 54 FR 53310–53311 (December 28, 1989) and the discussion at part X of this preamble, below.

IV. Gifts Between Employees

Subpart C of the proposed rule is intended to supersede 5 CFR 735.202(d), which implements the statutory prohibitions in 5 U.S.C. 7351, Gifts to Superiors. The amendment to that statute by the Ethics Reform Act of 1989 brings the penalties for improper gifts into line with those for violation of the standards of ethical conduct and gives OGE authority to issue implementing regulations applicable to officers and employees of the executive branch.

Because of the statutory definition of the term employee in 5 U.S.C. 7351, the statute does not apply to officers of the uniformed services. In exercising its general rulemaking authority under Executive Order 12674 and title IV of the Ethics in Government Act, OGE nevertheless has determined that the prohibitions on gifts between employees should be applied to officers of the uniformed services to avoid issues of misuse of public office and lack of impartiality that arise when gifts are accepted by superiors from their subordinates. Thus, as a matter of regulation, subpart C of the proposed rule would extend to officers of the uniformed services the same prohibitions as are contained in 5 U.S.C. 7351.

As drafted, proposed § 2635.302(a)(1) amplifies the statutory prohibitions against giving or soliciting for gifts to superiors by adding the phrase directly or indirectly to ensure that the prohibitions are not circumvented by gifts given by the subordinate's family members or by others at the behest of the subordinate. The term indirectly is defined at proposed § 2635.303(b). Proposed § 2635.302(a)(2) amplifies the statutory prohibition against soliciting contributions for gifts to superiors to make it clear that the prohibition applies regardless of whether the gift is solicited for an individual who is the superior of the employee making the solicitation or of the employee from whom a contribution is sought.

Proposed § 2635.302(b) amplifies the statutory language prohibiting any employee from accepting a gift from an employee receiving less pay by adding the phrase "directly or indirectly" to ensure that the prohibition is not circumvented by gifts to family members or to persons designated by the employee receiving the greater amount of pay. For this purpose, the term indirectly is defined at proposed § 2635.303(b) by cross-reference to the definition of that term in subpart B, Gifts from Outside Sources. The statutory prohibition on acceptance of gifts does not precisely mirror the restrictions on giving gifts to superiors. It is broader in scope, prohibiting gifts from any employee receiving less pay, regardless of whether there is a superior-subordinate relationship between donor and recipient. Proposed § 2635.302(b) addresses the unnecessarily broad reach of this prohibition by permitting gifts based on a personal relationship where there is no superior-subordinate relationship between donor and recipient.

Proposed § 2635.302(c) provides that, notwithstanding any exception at proposed § 2635.304, an official superior shall not coerce the offering of a gift from a subordinate.

The definitions of the terms gift and market value in proposed § 2635.303 (a) and (c) include cross-references to the definitions of those terms in subpart B, Gifts from Outside Sources. The definitions have been amplified, however, to ensure that the statutory prohibitions do not interfere with carpool and other mutual arrangements in which there is a proportionate sharing of the expense or effort between employees. The proposed definition of official superior at § 2635.303(d) is drafted to make clear that an employee may have more than one official superior and that individuals in the supervisory chain who direct or evaluate and, thus, supervise the employee's immediate and other superiors are also official superiors of the employee.

The phrase voluntary contribution is defined at proposed § 2635.303(f) to ensure that no employee is coerced to contribute toward even a modest gift for an official superior. Although employees may be given the opportunity to contribute to gifts for superiors, the amount of any contribution they may wish to make is to be left entirely to their discretion. An employee soliciting contributions may suggest an amount to be contributed or may respond to an employee's inquiry regarding an appropriate amount to be contributed if it is made clear that the employee whose contribution is sought is free to contribute less or nothing at all. The definition accommodates the frequent practice of organized luncheons or receptions to honor employees upon special occasions, such as retirement. It

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specifically provides that an employee who freely chooses to pay a proportionate share of the total cost in order to attend such an event will be deemed to have made a voluntary contribution.

The proposed rule would create three categories of exceptions to the prohibitions of § 2635.302 (a) and (b). The first is a set of general exceptions at proposed § 2635.304(a) which can be used on an occasional basis, including any occasion on which gifts are traditionally given or exchanged. The statute contemplates that the implementing regulations include an exception for occasions on which gifts are traditionally given or exchanged. After considering a separate exception based on a *de minimis* amount for occasions such as Christmas and birthdays, OGE concluded that an across-the-board $10 *de minimis* exception to be used occasionally and on occasions marked by the exchange or giving of gifts would cause the least confusion. Proposed § 2635.304(a)(1), thus, includes an exception for items with an aggregate market value of $10 or less per occasion.

The three exceptions at § 2635.304 (a)(2) through (a)(4) are proposed to ensure that the subordinate-superior relationship is a comfortable one that allows for an appropriate degree of social interaction. The exception for food and refreshments shared in the office among several employees is intended to permit all members of an office to participate in the modest social events that are common throughout the Government. The exception for personal hospitality provided at the employee's residence is included to reflect current practice. While the statutory prohibition against gifts to superiors is one of long standing, it ordinarily has not been applied to prohibit a subordinate from occasionally inviting a superior to share in a meal at the subordinate's residence or to require a superior's exclusion from a party given in the subordinate's home. The exception at proposed § 2635.304(a)(4) is intended to cover gifts, sometimes referred to as hostess gifts, given by the recipient of personal hospitality. Under this exception, an employee invited to dinner at the home of his official superior may bring a bottle of wine, even though its market value exceeds $10. The proposed exception at § 2635.304(a)(5) is included to ensure that the limitations on gifts between employees do not interfere with the Government's voluntary leave transfer program.

The second category of exceptions for special, infrequent occasions proposed at § 2635.304(b) is similar to the current exception at 5 CFR 735.202(d) for voluntary gifts of nominal value "made on a special occasion such as marriage, illness, or retirement." Consistent with current practice, proposed § 2635.304(b) allows gifts in recognition of infrequently occurring occasions of personal significance and upon occasions such as retirement, resignation or transfer that terminate the superior-subordinate relationship. Gifts on such occasions are not limited to any particular amount, but must be appropriate to the occasion.

The third set of exceptions at proposed § 2635.304(c) specifies those occasions or items for which voluntary contributions may be solicited or made. They are limited to the special, infrequent occasions described in the preceding paragraph and to contributions for food and refreshments to be shared in the office among several employees. Thus, an employee could not solicit contributions from fellow employees for a birthday present for his or her official superior but could give an individual gift worth $10 or could solicit contributions to buy a cake to be shared within the office in celebration of that occasion.

V. Conflicting Financial Interests

Subpart D of the proposed rule contains two sets of standards addressing the problem of financial interests that, in the absence of some remedial step on the employee's part, would conflict with the duties he or she performs for the Government. The standards at proposed § 2635.402 are based on 18 U.S.C. 208(a); the standards at proposed § 2635.403 are required by the principle of ethical conduct restated at proposed § 2635.101(b)(2) of this part. Pending the issuance of more extensive regulations interpreting 18 U.S.C. 208(a), proposed § 2635.402 is included here as necessary to give meaning and context to proposed § 2635.403 and to the impartiality provisions of subpart E, as well as to the provisions of subparts F and H applicable, respectively, to seeking other employment and outside activities.

Proposed § 2635.402 is a restatement of 18 U.S.C. 208(a), amplified to reflect current interpretation of the law and to set forth guidance on means (disqualification, waiver, and divestiture) for avoiding a violation of the statute. The statute prohibits self-dealing by Federal employees. More specifically, it prohibits an employee from participating personally and substantially in any particular matter which, to the employee's knowledge, will affect the employee's own financial interest or that of:

> The employee's spouse, minor child, or general partner;
> Any person the employee serves as officer, director, trustee, general partner or employee; or
> Any person with whom the employee is negotiating for or has an arrangement concerning prospective employment.

While 18 U.S.C. 208(a) prohibits an employee from participating in a particular matter affecting the financial interests of a person with whom he or she is negotiating for or has an arrangement concerning future employment, that particular application of the statute is addressed in subpart F, Seeking Other Employment. There it is combined with standards that impose a similar disqualification obligation upon employees who have taken action to seek employment that falls short of negotiations.

Interests other than the employee's own that are attributed to him or her under 18 U.S.C. 208(a) are referred to as imputed interests and are defined as such in proposed § 2635.402(b)(2). The statutory prohibition at § 2635.402 has been amplified by the phrase direct and predictable to describe the effect on an employee's own or an imputed interest that will require disqualification or other action to avoid a statutory violation. The definition of the phrase personal and substantial is derived from existing regulations at 5 CFR 2637.201(d) issued under the prior version of the post-employment statute, 18 U.S.C. 207, which still applies to those who left Government before January 1, 1991.

The proposed explanation at § 2635.402(c) of the disqualification obligation imposed by the statute warrants specific comment. For most employees to accomplish disqualification, the section imposes no requirement beyond nonparticipation in the matter which affects his or her own or an imputed financial interest. However, depending upon his or her particular duties, it may be necessary for an employee to notify a supervisor of the interest that creates a conflict in order to avoid assignments that would result in violation of the statute.

Unless the individual employee is specifically asked to file a written statement by an agency ethics official or is required to provide evidence of compliance with a recusal requirement contained in an ethics agreement, no requirement for a written disqualification statement is proposed. The statute does not require any formality beyond nonparticipation. A possible regulatory requirement for

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Interests other than the employee's own that are attributed to him or her under 18 U.S.C. 208(a) are referred to as imputed interests and are defined as such in proposed § 2635.402(b)(2). The statutory prohibition at § 2635.402 has been amplified by the phrase direct and predictable to describe the effect on an employee's own or an imputed interest that will require disqualification or other action to avoid a statutory violation. The definition of the phrase personal and substantial is derived from existing regulations at 5 CFR 2637.201(d) issued under the prior version of the post-employment statute, 18 U.S.C. 207, which still applies to those who left Government before January 1, 1991.

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Unless the individual employee is specifically asked to file a written statement by an agency ethics official or is required to provide evidence of compliance with a recusal requirement contained in an ethics agreement, no requirement for a written disqualification statement is proposed. The statute does not require any formality beyond nonparticipation. A possible regulatory requirement for

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notice and written disqualification statements was rejected as unnecessarily burdensome. Most employees can avoid conflicts by properly arranging their assignments with a supervisor. It is often prudent and never inappropriate for an employee to file a written disqualification statement. The proposed regulation includes language and a related example that should cause an employee to consider whether the particular nature of an assignment or of the interest affected makes it prudent to create a written record of the disqualification and, in any given case, an agency ethics official has authority to request a written disqualification statement. However, a written disqualification statement will not protect an employee from prosecution under 18 U.S.C. 208(a) if, in the absence of a waiver, he or she participates personally and substantially in a particular matter affecting his or her own or an imputed financial interest.

Proposed § 2635.402(d) restates the criteria in 18 U.S.C. 208(b) which must be met before a waiver may be issued permitting an employee to participate in a matter from which he or she is otherwise disqualified. OGE will soon be issuing regulatory waivers permitted by 18 U.S.C. 208(b)(2). Pending issuance of those waivers, regulatory waivers issued by agencies under 18 U.S.C. 208(b)(2) in effect prior to November 30, 1989 (the date of amendment of the statute by the Ethics Reform Act) continue to apply.

Violation of 18 U.S.C. 208(a) can always be avoided by selling or otherwise disposing of the interest that would otherwise be affected by performance of the employee's duties. Thus, proposed § 2635.402(e) provides that an employee may voluntarily divest the conflicting interest or, in accordance with proposed § 2635.403, may be required to sell or otherwise divest a particular interest.

Proposed § 2635.402(f) is simply practical advice that an employee should share with a superior enough information about potential conflicts to avoid assignments from which he or she will be disqualified by 18 U.S.C. 208(a).

Proposed § 2635.403 implements the principle restated at § 2635.101(b)(2) of this part that employees shall not hold financial interests that conflict with the conscientious performance of duty. The proposed implementation is necessarily brief. One goal of Executive Order 12674 is a uniform regulation that can be used by executive branch agencies with little further implementation. The area of financial interests, however, is one in which further implementation by some agencies will be necessary. Whether a financial interest conflicts with performance of a particular employee's duties is a determination that ordinarily must be made on an agency-by-agency or case-by-case basis.

Section 2635.403, as proposed, provides that an employee shall not acquire or hold a financial interest that he or she is prohibited from holding by statute, by agency regulation, or by reason of a determination that the holding of such interest would materially impair the employee's ability to perform the duties of his or her position or adversely affect accomplishment of the agency's mission. The reference to statutory prohibitions serves as a caution to employees that they may be subject to agency-specific statutes that prohibit them from holding specified interests. For example, 42 U.S.C. 7211 prohibits supervisory employees of the Department of Energy from having any pecuniary interest in an energy concern.

Section 2635.403(a) is proposed authority under which agencies may, by supplemental agency regulation, prohibit all agency employees or any category of agency employees from acquiring or holding particular financial interests. An agency regulatory prohibition must be based on a determination that the acquisition or holding of such financial interests could give rise to questions concerning the impartiality and objectivity with which agency programs are administered. Proposed § 2635.403(b) provides authority for agencies to direct an employee to sell or to otherwise divest financial interests that will require disqualification from matters so central or critical to the performance of his or her official duties that the employee's ability to perform the duties of the Government position would be materially impaired. It also provides authority to direct divestiture where the employee's holding of an interest would adversely affect accomplishment of the agency's mission because the employee's services cannot be readily replaced.

For purposes of proposed § 2635.403 (a) and (b), the term financial interest is not limited to interests that would require disqualification under 18 U.S.C. 208(a). For example, it would be appropriate for an agency that regulates banks to prohibit its employees from obtaining loans from regulated banks even though the employee's obligation to repay the loan would not be affected by any agency matter affecting the bank. Except as provided in § 2635.402(c)(2), it is limited, however, to interests owned by the employee or imputed to the employee and over which he or she has control. Since disciplinary action would be unlikely to be successful against an employee whose spouse refused to sell stock that was entirely the spouse's own personal property, interests such as these, over which the employee does not have control, are beyond the reach of proposed § 2635.403 (a) and (b). This is true even though the spouse's continued holding of the stock would, under 18 U.S.C. 208(a), preclude the employee from performing particular duties.

Proposed § 2635.403(c)(2) is intended to address certain interests imputed to the employee over which he or she does not have control, including the financial holdings of a person the employee serves as officer, director, trustee, general partner or employee. It would treat as the employee's own financial interest his or her service with the entity, regardless of whether the employee receives compensation for that service. Unlike the financial holdings of the entity, over which he or she may have little or no control, an employee does have control over whether he or she serves as its officer, director, trustee, general partner or employee. By virtue of this definition, an agency would have authority to direct an employee's resignation from a position as a director of a corporation whose interests conflict with the performance of his or her official duties even though the employee may not have control over the affected corporate interest. It is sufficient that the employee can resign his directorship.

VI. Impartiality in Performing Official Duties

Subpart E implements the ethical principles restated at § 2635.101(b)(8) of this proposed rule that an employee shall act impartially and not give preferential treatment to any private organization or individual. To the extent that an employee's lack of impartiality in the performance of official duties might inure or appear to inure to his or her own benefit or to the benefit of certain other persons, the subpart implements the principles restated at § 2635.101(b)(7) and (b)(14) that an employee shall not use public office for private gain and shall endeavor to avoid even an appearance of violating these ethical principles.

Proposed § 2635.502 is addressed to the troublesome area commonly referred to as appearance problems. Most, though not all, appearance problems arise when, because of some personal or business relationship, an employee can be viewed as failing to act impartially in the performance of his or her official duties. The proposed section would provide a flexible standard for addressing those assignments that would cause a reasonable person to question an employee's impartiality, either because the matter affects the financial interests of a member of the employee's household or because a person with whom the employee shares a particular personal or business relationship is a party to the matter. Proposed § 2635.502(b)(1) identifies as covered relationships to be taken into consideration for this purpose five categories of personal relationships. Questions of lack of impartiality tend to arise when employees participate in matters that affect the financial interests of those with whom they have relationships that fall within these five categories.

Matters such as general rulemaking and legislation tend to raise fewer concerns about an employee's impartiality than do matters to which there are specific parties and, thus, proposed § 2635.502 uses the concept of particular matters involving specific parties found in the post-employment statute, 18 U.S.C. 207, to pinpoint the most significant appearance problems. Notwithstanding the section's use of this concept and its focus on specified relationships, questions about an employee's impartiality can arise from any number of interests or relationships an employee might have and in connection with his or her participation in matters that do not necessarily involve specific parties. Proposed § 2635.502 therefore provides that an employee should use the process set forth in that section when circumstances other than those specifically described raise questions about his or her impartiality in the performance of official duties.

Under current 5 CFR 735.201a(d), employees have long been obligated to act impartially and to avoid even the appearance of loss of impartiality. However, they have not been provided a specific mechanism to resolve difficult issues of whether, in particular circumstances, a possible appearance of loss of impartiality is so significant that it should disqualify them from participation in particular matters. The proposed rule would provide employees with a means to ensure that their conduct will not be found, as a matter of hindsight, to have been improper. The disqualification procedures are similar to those proposed for dealing with disqualifying financial interests under subpart D.

In those cases that do not involve a financial interest that would be disqualifying as a matter of law under 18 U.S.C. 208(a), proposed § 2536.502(d) would place responsibility for the necessary authorization with the agency designee. As proposed, this section would require the agency designee to determine whether the Government's need for the employee's participation in a particular matter outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations. The benefit of this procedure is twofold. Once the threshhold determination has been made by the employee, it allows the agency to determine whether a potential appearance problem is or is not so significant as to be disqualifying in a particular matter, and it relieves the employee of responsibility for the ultimate decision regarding the propriety of his involvement in a matter under circumstances where his judgment is likely to be questioned. It is intended to give the agency broad discretion, including the discretion to direct an employee's participation in a matter from which the employee has disqualified himself or herself on the basis of his or her assessment of the appearance implications. In explaining the relationship between proposed subpart E and proposed subparts D and F, the note following § 2635.501 states that a waiver granted under the authority of 18 U.S.C. 208(b) will always permit the employee's participation in a matter covered by that waiver.

Section 2635.502(b)(1)(i) excludes from consideration under the more flexible standards in 2635.502 an employee's participation in matters affecting the interest of a person with whom he or she is seeking employment. An employee who is seeking employment with a person affected by the performance of his official duties must comply instead with subpart F, Seeking Other Employment.

As proposed, § 2635.503 is a two-year disqualification requirement that applies to an employee who receives an extraordinary severance or other payment in excess of $10,000 from a former employer prior to entering Federal service. It does not apply to any payment, regardless of amount, made pursuant to the former employer's established compensation or benefits plan. For this purpose, the term former employer is broadly defined to include any person the employee served as an officer, director, trustee, partner, agent, attorney, consultant, contractor, or employee.

Prior to the holding of the Supreme Court in *Crandon* v. *U.S.*, 110 S. Ct. 997 (1990), an extraordinary payment of the type described in proposed § 2635.503 was thought to be precluded as an illegal supplementation of salary in violation of 18 U.S.C. 209. The Supreme Court held, however, that such payments received prior to entering on duty do not violate this statute. Nevertheless, an extraordinary payment from a former employer received prior to beginning Federal service raises a legitimate concern, and thus an appearance, that the employee may not act impartially in particular matters to which the former employer is a party or represents a party. The disqualification requirement that would be imposed by § 2635.503 is intended to address those appearance issues.

In the absence of a statutory waiver, an employee who retains a financial interest in a former employer, as through continued participation in its retirement plan, will be required by 18 U.S.C. 208(a) and proposed § 2635.402 of this part to disqualify himself or herself from particular matters affecting the former employer where the particular matters would thereby affect his or her own financial interest. Proposed § 2635.503 would not impact upon that obligation. Rather, it would impose an additional disqualification requirement, triggered by the receipt of an extraordinary payment, that applies regardless of whether the employee severed all financial ties with the former employer upon entering Federal service.

VII. Seeking Other Employment

Subpart F of the proposed rule contains a disqualification requirement applicable when an employee seeks employment with a person whose financial interests otherwise would be affected by performance or nonperformance of the employee's official duties. It implements the principle restated at § 2635.101(b)(10) of this proposed rule that an employee shall not engage in seeking or negotiating for employment that conflicts with his or her official Government duties and responsibilities.

The proposed subpart combines standards imposed by criminal statute with standards imposed by Executive Order 12674. In part, it implements 18 U.S.C. 208(a) which requires an employee's disqualification from participation in any particular matter affecting the financial interests of a person with whom he or she is negotiating or has any arrangement concerning prospective employment. Beyond this statutory requirement, it addresses the issues of lack of impartiality that require disqualification from any particular matter that affects the financial interests of a prospective

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employer, even though the employee's actions to seek employment may fall short of actually negotiating for employment. Differences between the statutory and nonstatutory standards account for different waiver and authorization standards applicable depending upon whether the employee has or has not begun negotiating for employment.

The disqualification obligation applicable when seeking employment is set forth in proposed § 2635.604. It includes a requirement to take necessary steps to effect disqualification before beginning to seek employment if an employee wishes to initiate employment contacts with a person whose financial interests he or she knows will otherwise be directly affected by a particular matter to which he or she is assigned. Where the prospective employer initiates the contacts, or where an employee's assignment to a matter affecting the financial interests of a prospective employer occurs after the employee has begun seeking employment, disqualification must be accomplished in time to ensure that the employee does not participate in a matter affecting his or her prospective employer. At proposed § 2635.602, the note makes it clear that the subpart would impose no obligation upon an employee who is seeking employment with a person whose financial interests would not be affected by the performance or nonperformance of his or her official duties. That section also contains cross-references to pertinent regulations dealing with outside employment, post-employment, and interviews.

The proposed definition of the phrase seeking employment at § 2635.603(b) is fundamental to the structure of the subpart. It encompasses both the statutory concept of negotiating for employment and the concept found in the Executive order of conduct, short of negotiating, that constitutes seeking employment. The phrase prospective employer is generally defined at proposed § 2635.603(c) as any person with whom the employee is seeking employment. The proposed definition of employment at § 2635.603(a) makes it clear that the term encompasses contractual and other business relationships if they involve the provision of personal services by the employee. It also serves to exclude from the coverage of subpart F instances in which employment is sought with the Federal Government. Issues of lack of impartiality that may arise when an employee is seeking other Federal employment are to be addressed under subpart E, Impartiality in Performing Official Duties.

The phrase seeking employment is defined in terms of a beginning and ending point. Under the proposed definition at § 2635.603(b)(1), employment contacts initiated by the employee, as through the mailing of a resume, will mark the point at which the employee has begun seeking employment. For an employee, other than a special Government employee, the only exception is for a communication made for the sole purpose of requesting a job application. Where the initial employment contact is made by someone other than the employee, any response by an employee, other than rejection, will mark the point at which the employee has begun seeking employment. Although seeking employment will ordinarily have begun with an initial contact by the employee or the prospective employer, bilateral negotiations concerning prospective employment always constitute seeking employment. Based on case law interpreting 18 U.S.C. 208(a), the term negotiating is defined at proposed § 2635.603(b)(1) as any discussion or communication with another person mutually conducted with a view toward reaching an agreement regarding possible employment with that person. Any communication that might occur after an initial contact that constitutes seeking employment has taken place and before the onset of negotiations also constitutes seeking employment. The proposed definition of the term prospective employer at § 2635.603(c) includes standards intended to preclude an employee or a prospective employer from circumventing the requirements of subpart F by interposing an agent, such as an employment search firm, for the purpose of making employment contacts or conducting employment negotiations.

Under the proposed definition at § 2635.603(b)(2)(i), most employees who have begun seeking employment will no longer be seeking employment when either party rejects the employment possibility and all discussions of possible employment have terminated. Where the only employment contact consists of the employee's unilateral submission of an unsolicited resume or employment proposal, in the absence of a response from the recipient indicating an interest in employment discussions, proposed § 2635.603(b)(2)(ii) would treat the employee as nevertheless seeking employment for a period of 2 months from dispatch of the resume or proposal. Earlier communication of a rejection by the recipient of the resume or proposal would, at that time, terminate seeking employment with that particular prospective employer.

Under proposed § 2635.603(b)(1)(ii)(B), a special Government employee would not be deemed to have begun seeking employment with the recipient of his or her unsolicited resume or other employment proposal if the recipient's financial interests would be affected by the performance of the special Government employee's official duties only as part of an industry or other broadly-defined class. Under this exception, the special Government employee would be deemed to have begun seeking employment upon receipt of any response indicating an interest in discussion of the unsolicited resume or employment proposal and would, at that time, become subject to the disqualification requirement at proposed § 2635.604. This exception for unsolicited resumes and other employment proposals would not extend to unilateral efforts to obtain employment with a person affected uniquely or distinctly by performance of the special Government employee's official duties. The less restrictive standard for special Government employees is proposed in recognition of the fact that they serve the Government only on an intermittent or temporary basis and are expected to maintain other employment and business relationships.

The disqualification requirement imposed by proposed subpart F is not absolute. Where an employee is negotiating concerning prospective employment, proposed § 2635.605(a) provides that the employee's participation in a particular matter affecting the financial interests of his or her prospective employer may be permitted on the basis of a waiver granted under the explicit authority and standards contained in 18 U.S.C. 208(b) Where the employee has not yet begun to negotiate, proposed § 2635.605(b) would provide for use of the authority at § 2635.502(d) to permit participation in a matter from which the employee otherwise would be disqualified. This two-part authority is a necessary consequence of combining disqualification requirements that arise from a statute and from the ethical principles into a single subpart.

As with those disqualifications required by subpart D, Conflicting Financial Interests, and subpart E, Impartiality in Performing Official Duties, proposed § 2635.604 provides that disqualification required when seeking employment is accomplished by nonparticipation in the matter that affects the prospective employer's financial interests. Under proposed § 2635.604(b), a written disqualification statement is not required unless requested by an agency ethics official or unless the employee is required to provide evidence of compliance with a recusal requirement imposed by an ethics agreement. However, the proposed regulations contain examples illustrating circumstances in which it may be prudent for an employee to reduce the fact of his or her disqualification to written form to create a record that he or she has acted properly. A written disqualification statement will not protect an employee who has in fact participated in a matter from which he or she is disqualified by subpart F.

Proposed § 2635.606(a) reflects the requirement of 18 U.S.C. 208(a) for an employee's disqualification throughout any period that the employee has an arrangement concerning future employment or while he or she is in fact employed. Proposed § 2635.606(b) is intended to give the agency flexibility to require an employee's disqualification from matters affecting a person with whom he or she has sought employment, even after employment negotiations have been terminated unsuccessfully, if there is reason to be concerned that the employee's participation may appear to be less than wholly impartial.

VIII. Misuse of Position

In subpart G, the proposed rule would consolidate four of the principles of ethical conduct that are directed at preventing misuse of public office. The prohibitions against use of public office for private gain, improper use of nonpublic information and misuse of Government property found in the principles of ethical conduct restated at proposed § 2635.101(b)(7), (b)(3) and (b)(9) of this part are similar to the prohibitions currently found respectively in 5 CFR 735.201a(a), 735.205 and 735.206. The fourth, relating to use of official time, implements the principle restated at proposed § 2635.101(b)(5) which requires employees to put forth honest effort in the performance of their duties.

Consistent with past interpretations of the current provision at 5 CFR 735.201a(a), proposed § 2635.702 would make it clear that the prohibition against use of public office for private gain is not limited in its application to cases in which the gain accrues to the employee personally, but extends to those cases in which the gain accrues to someone with whom the employee has a significant relationship. There are numerous situations in which questions of use of public office for private gain can arise. In the past, there has been little regulatory language interpreting this particular standard. Section 2635.702 (a) through (e), as proposed, provides standards that illustrate some of the more common situations in which issues of use of public office for private gain are likely to arise. Proposed § 2635.702(d), which serves primarily as a cross-reference to subpart E, points out that situations involving use of public office for private gain can arise in the performance of an employee's official duties as well as in connection with outside activities. As noted in the introductory language of the section, these standards are not intended to limit application of the broad principle that employees shall not use public office for private gain. In fact, many of the standards applicable to outside activities under subpart H of the proposed rule are derived from the principle that employees shall not use public office for private gain.

Proposed § 2635.703 prohibits the use of nonpublic information to further any private interest, whether the interest is the employee's own or that of another. To ensure that this prohibition does not interfere with the proper performance of an employee's official duties, the section also includes language limiting its application to "knowing" unauthorized disclosures. A disclosure that is inadvertent or made under a mistake as to the applicable law may violate another law governing its disclosure, but would not violate the standards of ethical conduct.

Under proposed § 2635.704, employees have a duty to protect and conserve Government property and may not use Government property or allow its use for other than authorized purposes. Under this section, the term Government property is defined broadly. Beyond the Government's ownership and leasehold interests in real and personal property, it extends to Government records as well as to any right or other intangible interest acquired with Government funds, including the right to direct the services of contractor personnel.

As proposed, § 2635.705 is a logical corollary to the preceding three sections. Consistent with the underlying principle restated at proposed § 2635.101(b)(5) of this part, this section provides that official time, whether the employee's own or that of subordinates, is to be used only in an honest effort to perform official duties. An employee who appropriately devotes his official time to the performance of his official duties does not violate the standards of ethical conduct because that performance is unsatisfactory. There are other remedies for dealing with inadequacies in employee performance. For employees not under a leave system, § 2635.705(a) would impose a duty to expend an honest effort and to devote a reasonable proportion of their time to the performance of their official duties.

IX. Outside Activities

Subpart H of the proposed rule contains standards that implement a number of provisions contained in Executive Order 12674, including the outside earned income prohibition applicable to Presidential appointees to full-time noncareer positions. In addition, it is intended to serve as a guide to ethics-related statutes or standards not contained in part 2635 that should be taken into account by an employee who wishes to engage in outside employment or other outside activities.

Proposed § 2635.801(b) is a listing of the more specific standards set forth in the subpart. Proposed § 2635.801(c) cautions employees that their outside activities also must comply with requirements set forth in other subparts of the proposed rule. For example, even though the obligation is not specifically restated in proposed subpart H, outside employment will require disqualification, under proposed subpart D, from participation in particular matters affecting the financial interests of an employer. And, in accordance with proposed subpart G, an employee may not use his or her official position, nonpublic information, Government property, or official time to perform or further outside activities.

As drafted, § 2635.801(c) also cautions employees that, in connection with their outside activities, they may need to consider statutes that are not implemented in proposed part 2635. The subsection contains brief synopses of the bribery, illegal gratuities, and supplementation of Federal salary statutes, and of the two representation statutes, contained in title 18 of the U.S. Code. Because of the frequency with which issues relating to political activities and employment by foreign governments arise, it also contains specific references to the Hatch Act and to the Emoluments Clause of the Constitution. In addition, it provides cross-references to regulations contained in 5 CFR part 2636 which implement the honorarium prohibition, and the outside employment restrictions applicable to certain noncareer employees. These portions of part 2636 are cross-referenced again in §§ 2635.807 and 2635.804 dealing

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respectively with teaching, speaking and writing and with the outside earned income limitations applicable to certain noncareer employees.

Section 2635.802 is drafted specifically to implement the general principle restated at proposed § 2635.101(b)(10) that employees shall not engage in outside employment or activities that conflict with their official Government duties. It provides that an employee shall not engage in outside employment or any other outside activity that is prohibited by statute or by a supplemental agency regulation or that, by reason of the conflicting financial interest standards set forth in proposed subpart D or the impartiality standard in subpart E, would require disqualification from matters so central or critical to performance of the employee's official duties that the outside activity would impair the employee's ability to perform the duties of the position.

The principle underlying proposed § 2635.802 is similar to that now contained in 5 CFR 735.203(a) which includes examples of activities not compatible with the full and proper discharge of an employee's official duties. These include, as illustrations of incompatible activities, the acceptance of any item of monetary value under circumstances that would create an appearance of a conflict of interest and outside employment which tends to impair the employee's mental or physical capacity to perform his or her official duties. As a result of this formulation of the predecessor principle, the concept of incompatible activities has expanded so that any outside activity that involves a violation of any statutory or regulatory provision has come to be referred to as an incompatible activity.

As compared to existing § 735.203(a), the proposed rule narrows the concept of conflicting outside employment and activities. The consequence of this narrowing is not to sanction outside activities that result in or involve a violation of some other law or standard. Rather, the employee will be found to have violated that other law or standard. For example, proposed § 2635.807 contains provisions that prohibit the receipt of compensation for speaking where the invitation to engage in the activity has been extended to the employee because of his or her official position. An outside speaking activity for which an employee receives compensation in violation of this provision is treated, under proposed subpart H, as a violation of § 2635.807 and not as conflicting outside employment under § 2635.802. Similarly, an employee who uses agency photocopy equipment to reproduce a flier to advertise her tax preparation business has violated the provisions of proposed § 2635.704 relating to the use of Government property.

The proposed subpart does not itself prohibit any particular form of outside employment. Under proposed § 2635.403(a), an agency may issue a supplemental agency regulation that prohibits or restricts the acquisition or holding of a financial interest. Under the definition of the term financial interest at § 2635.403(c), an agency has authority to prohibit certain employment and other relationships if it determines that the existence of such relationships on the part of its employees would cause a reasonable person to question the impartiality and objectivity with which agency programs are administered. For example, the Internal Revenue Service could, by supplemental agency regulation, prohibit all employees from engaging in tax preparation for compensation. Pending the issuance of any such supplemental agency regulation, the note following proposed § 2635.403(a) would continue for one year any such agency prohibition now in effect.

In drafting the proposed regulations pertaining to outside employment and activities, OGE gave consideration to a requirement that all employees obtain advance approval to engage in outside employment. Although a number of agencies currently have requirements for advance approval, many do not. To ensure that it is not unnecessarily intrusive, any such regulation drafted for application to all executive branch employees would have to include so many exceptions and qualifications that it would be cumbersome to interpret and administer. In most cases, outside employment should be permitted unless, under the standards proposed in § 2635.802, it conflicts with performance of the employee's duties. Where outside employment involves a violation of some other provision of this part or a statute or regulation referenced in this part, that violation should be addressed. OGE determined that the disqualification obligation imposed on employees under proposed subparts D and E, coupled with requirements for financial disclosure, would serve to identify and address those employment relationships that are troublesome when considered in light of the employee's official responsibilities. Therefore, proposed § 2635.803 would permit agencies to impose requirements for prior approval for outside employment or activities by agency supplemental regulation. Pending the issuance of any such supplemental regulation, the note following that section would continue for one year any such agency requirement now in effect.

As drafted, § 2635.804(a) would implement section 102 of Executive Order 12674 which prohibits the receipt of outside earned income by full-time Presidential appointees to noncareer positions. Although more restrictive, this prohibition is similar to the 15 percent limitation on outside earned income applicable to certain noncareer employees under title VI of the Ethics Reform Act, which is implemented by OGE regulations at 5 CFR 2636.301 through 2636.304. For consistency, proposed § 2635.804(c)(1) would adopt the definition of outside earned income used for purposes of the 15 percent limitation under 5 CFR 2636.303(b).

Section 2635.805 is proposed as a logical extension of the statutory prohibitions on certain representational activities at 18 U.S.C. 203 and 205, both of which are referenced in proposed § 2635.801(c). Even when paid for by a party to the proceeding, service as an expert witness might not involve a representational act prohibited by either statute. Although such conduct may fall outside the scope of the criminal statutes, an employee should not place himself or herself in a position of serving as an expert witness, with or without compensation, for a party to a proceeding in which United States is a party or has a direct and substantial interest, unless authorized as in the interest of the Government. This is particularly egregious conduct when the employee's expertise relates to his or her official duties. In qualifying as an expert witness, the employee will be called upon to state his or her qualifications, including the fact of Federal employment. Where the fact of that employment tends to be persuasive, the employee's statement of his or her qualifications is likely to result in use of the employee's public office for the private gain of the party on whose behalf he or she is called to testify. Where compensation is received, that use of his or her public office may also result in the employee's personal gain.

The proposed prohibition at § 2635.805 applies differently to special Government employees in recognition of their particular status and of the fact that they frequently are employed by the Government because they possess a particular expertise. With two exceptions, special Government employees who serve 60 days or less in a period of 365 consecutive days would be restricted from serving as expert witnesses only in particular matters in which they have participated personally and substantially, either as an employee or as a special Government employee. For those who serve more than 60 days, the restriction would extend also to those proceedings in which their employing agency is a party or has a direct and substantial interest. Regardless of the number of days they serve, certain special Government employees whose Federal positions give them particular stature would be restricted to the same extent as those who serve for more than 60 days. These would include special Government employees who are appointed by the President or who are commissioners on commissions established by statute.

Section 2635.805 is not proposed as a blanket prohibition. It allows for service as an expert witness when that service is in the interest of the Government. And it does not prohibit service as an expert witness when directed as part of the employee's duties under applicable agency housekeeping regulations. Moreover, nothing in the standards of ethical conduct prohibits an employee from serving as a fact witness when subpoenaed by an appropriate authority.

Proposed § 2635.806 is included by way of clarification for the many employees who are members of or serve as officers of professional associations. Where participation in the activities of such associations tends to enhance the skills and abilities they use in the course of Federal employment, there is a perception on the part of some employees that involvement in these activities is part and parcel of their Federal employment. Unless participation is specifically authorized as part of their official duties, it is not. These organizations are entities separate from the Federal Government. Under 18 U.S.C. 208(a) and the proposed standards at § 2635.402 of this part, those who serve as officers of professional and other organizations may not participate in their official governmental capacities in particular matters affecting the financial interests of the organizations. Further, as set forth in proposed subpart G, they may not use their Government positions, official time, nonpublic information, or Government property to fulfill their responsibilities with the private organization. Section 2635.806 would make it clear that such activities are personal, while at the same time reflecting the current practice, endorsed by the Office of Personnel Management for career development, of permitting employees to attend substantive programs or presentations offered by these organizations when their attendance is in the interest of the Government.

Section 2635.807(a) of the proposed rule contains a restriction on receipt of compensation for teaching, speaking, and writing that relates to the employee's official duties. As required by 18 U.S.C. 209, this section, by virtue of the definition in paragraph (a)(1)(i), prohibits receipt of compensation when the activity is performed as part of the employee's official duties. Based on the prohibitions against use of public office for private gain and misuse of nonpublic information, the definition also serves to prohibit receipt of compensation in cases where the invitation to engage in the teaching, speaking, or writing activity is extended because of the employee's official position or by a person whose interests are affected by performance or nonperformance of the employee's official duties, or when the information conveyed through such activity is nonpublic information.

The portion of the definition at proposed § 2635.807(a)(1)(i)(E) is less obvious and warrants additional comment. Under current 5 CFR 735.203(c), certain Presidential appointees have long been prohibited from receiving compensation for any "consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs, or operations of his agency." Because a standard of this nature is appropriate to ensure that public office is not used by any employee for private gain, proposed § 2635.807 would apply to all employees a similar standard that prohibits the receipt of compensation for teaching, speaking or writing where the subject matter focuses specifically on the employee's official duties or on the responsibilities, programs, or operations of the employee's agency. This is consistent in concept with the standards that have applied to outside speaking and writing under informal advisory opinions 84 x 5, cited above, and 85 x 18 issued October 28, 1985, as published in the Informal Advisory Letters and Memoranda and Formal Opinions of the United States Office of Government Ethics (1979–1988).

For noncareer employees within the meaning of 5 CFR 2636.303(a), subject matter falls within the prohibition if it deals in significant part with the general subject matter area, industry, or economic sector affected by agency programs and operations. For special Government employees, there must be a specific relationship to their particular Government duties before the prohibition on receipt of compensation applies. For other employees, this definition contemplates a specific relationship between the subject matter and either their particular duties or the responsibilities, programs or operations of the employing agency. The compensation prohibition applies only where the activity deals in significant part with such matters. Thus, an employee would not be prohibited from receiving compensation for a speech that deals largely with other matters and touches only incidentally on agency responsibilities, programs or operations.

Even though the subject matter of the course focuses on agency responsibilities, programs or operation, and notwithstanding that his or her official position may contribute to the employee's attractiveness as a teacher of the particular course, § 2635.807(a)(2) would permit the receipt of compensation for teaching certain courses when sponsored and funded by a Federal, State or local government, or when offered as part of the regularly established curriculum of an institution of higher education or of an elementary or secondary school. This limited exception for teaching is similar to the exceptions to the honorarium prohibition carved out by the definition of the term honorarium at 5 CFR 2636.203(a) (8) and (9). It recognizes the contribution Federal employees can and should make to education in their fields of expertise under circumstances where there is little possibility that they or those who secure their teaching services will unfairly benefit from their government positions.

For purposes of § 2635.807, the proposed definition of the term "compensation" at paragraph (a)(1)(ii) is broader than either that included in the honorarium regulations at 5 CFR 2636.203(a) or the outside earned income provisions at 5 CFR 2636.303(b). It includes, for example, travel reimbursements that are excluded from the statutory definition of outside earned income contained in proposed § 2635.804. This distinction is intended. For example, when an employee's speech relates to his or her official duties, personal acceptance of transportation and hotel accommodations in connection with the speech is as inappropriate as is acceptance of an honorarium or any other form of compensation. There is specific authority, such as 5 U.S.C. 4111 and 31 U.S.C. 1353, under which an agency may accept or authorize acceptance of travel expenses in connection with activities, such as speaking, that relate to the employee's official duties.

Consistent with OGE opinions, proposed § 2635.807(b) prohibits an employee who is engaged in outside teaching, speaking or writing in a personal capacity from using his or her official title or position, regardless of whether compensation is to be received for the activity. To the extent that it enhances the employee's opportunities or furthers the interests of the employer, sponsor or publisher, use of the employee's official title or position creates at least an appearance of use of public office for private gain and may inappropriately suggest Federal endorsement or sanction of the activity. The proposed regulation includes exceptions for appropriate reference to an employee's title or position as part of biographical information or, when coupled with an appropriate disclaimer, in connection with scholarly articles published in recognized scientific or professional journals. Proposed § 2635.807(c) requires employees to comply with any requirements for approval of content imposed by their agencies.

Proposed § 2635.808 sets forth standards designed to ensure that employees do not use their official positions to further the fundraising interests of any organization, unless specifically permitted by law or regulation. The fact that an entity is a charitable organization does not warrant a departure from the principle that an employee shall not use his or her public office to further a private interest. This issue is most likely to arise when the employee holds a position of high visibility, such as a cabinet-level office. Officials who hold these positions often receive requests to serve as sponsors for or to host fundraising events for nonprofit organizations. Because they cannot honor every such request, their decisions to host or otherwise participate in particular events are likely to result in the appearance of preferential treatment for those whose invitations they accept. Section 2535.808(c)(2) would prohibit officials who serve in Executive Level I and II positions, and certain White House personnel paid at Executive Level II, from engaging in fundraising activities, even in a personal capacity, unless they engaged in fundraising for the particular entity prior to appointment to a covered Government position or are personally and actively involved in the affairs of the organization. Even when those conditions are met, high-level officials covered by proposed § 2635.808(c)(2) would nevertheless be required to comply with the conditions that would be imposed by proposed § 2635.808(c)(1) upon all employees wishing to engage in fundraising in their personal capacities.

Subject to the special rules imposed on very senior officials, employees would be free, under proposed § 2635.808(c)(1), to engage in fundraising in a personal capacity provided they do not personally solicit funds or other support from subordinates or prohibited sources, use their official title, position or authority in connection with fundraising, or engage in other prohibited conduct, such as use of Government property or time to further the fundraising activity. Fundraising in an official capacity is limited by § 2635.808(b) to activities such as the Combined Federal Campaign that are specifically permitted by statute, executive order or regulation. The proposed definitions at § 2635.808 (a)(2) and (a)(3) would ensure that employees may continue to speak in an official capacity at appropriate events even though a particular event may also serve a fundraising purpose. The content of any such speech must relate to the employee's official duties and the employee may not, in the course of the speech or otherwise at the event, solicit donations or other support for the organization.

Proposed § 2635.809 implements the principle restated at § 2635.101(b)(12) of this proposed rule that employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those imposed by law, such as Federal, State and local taxes. The proposed implementation is similar to the current rule at 5 CFR 735.207.

X. Revocation by OPM of Superseded Portions of 5 CFR Part 735 and by OGE of Current 5 CFR 2635.101

When, following notice and comment, the proposed rule is issued as a final rule and takes effect, § 2635.101 will be superseded by the Office of Government Ethics' new 5 CFR part 2635. At that time, the Office of Personnel Management will simultaneously revoke all but § 735.106 of subparts A through C of current part 735 of 5 CFR and will issue a regulation addressing the prohibitions relating to gambling, betting, and lotteries currently found at 5 CFR 735.208.

XI. Matters of Regulatory Procedure

Administrative Procedure Act

Interested persons are invited to submit written comments to OGE on this proposed regulation, to be received on or before September 20, 1991. The comments will be carefully considered and any appropriate changes will be made to the regulation as proposed before a final rule is adopted and published by OGE in the **Federal Register.**

E.O. 12291, Federal Regulation

As Director of the Office of Government Ethics, I have determined that this is not a major rule as defined under section 1(b) of Executive Order 12291.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have significant economic impact on a substantial number of small entities because it affects only Federal employees.

Paperwork Reduction Act

As Director of the Office of Government Ethics, I have determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget thereunder.

List of Subjects in 5 CFR Part 2635

Conflict of interests, Executive Branch Standards of Conduct, Government employees.

Approved: July 16, 1991.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble and pursuant to its authorities under the Ethics in Government Act of 1978, as amended by the Ethics Reform Act of 1989, and under Executive Order 12674, as modified by E.O. 12731, the Office of Government Ethics proposes to amend title 5, chapter XVI, subchapter B of the Code of Federal Regulations by revising part 2635 to read as follows:

PART 2635—STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EXECUTIVE BRANCH

Subpart A—General Provisions

Sec.
2635.101 Basic obligation of public service.
2635.102 Definitions.
2635.103 Applicability to members of the uniformed services.
2635.104 Applicability to employees on detail or serving overseas.
2635.105 Supplemental agency regulations.
2635.106 Disciplinary and corrective action.
2635.107 Ethics advice.

Subpart B—Gifts from Outside Sources

Sec.
2635.201 Overview.
2635.202 General Standards.
2635.203 Definitions.
2635.204 Exceptions.
2635.205 Proper disposition of prohibited gifts.

Subpart C—Gifts between Employees

2635.301 Overview.
2635.302 General standards.
2635.303 Definitions.
2635.304 Exceptions.

Subpart D—Conflicting Financial Interests

2635.401 Overview.
2635.402 Disqualifying financial interests.
2635.403 Prohibited financial interests.

Subpart E—Impartiality in Performing Official Duties

2635.501 Overview.
2635.502 Personal and business relationships.
2635.503 Extraordinary payments from former employers.

Subpart F—Seeking Other Employment

2635.601 Overview.
2635.602 Applicability and related considerations.
2635.603 Definitions.
2635.604 Disqualification while seeking employment.
2635.605 Waiver or authorization permitting participation while seeking employment.
2635.606 Disqualification upon conclusion of employment negotiations.

Subpart G—Misuse of Position

2635.701 Overview.
2635.702 Use of public office for private gain.
2635.703 Use of nonpublic information.
2635.704 Use of Government property.
2635.705 Use of official time.

Subpart H—Outside Activities

2635.801 Overview.
2635.802 Conflicting outside employment and activities.
2635.803 Prior approval for outside employment and activities.
2635.804 Outside earned income limitations applicable to certain Presidential appointees and other noncareer employees.
2635.805 Service as an expert witness.
2635.806 Participation in professional associations.
2635.807 Teaching, speaking, and writing.
2635.808 Fundraising activities.
2635.809 Just financial obligations.

Subpart I—Related Statutory Authorities

2635.901 General.
2635.902 Related statutes.

Authority: 5 U.S.C. 7351, 7353; 5 U.S.C. App.; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

Subpart A—General Provisions

§ 2635.101 Basic obligation of public service.

(a) *Public service is a public trust.* Each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain. To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each employee shall respect and adhere to the principles of ethical conduct set forth in this section, as well as the implementing standards contained in this part and in supplemental agency regulations.

(b) *General principles.* The following general principles form the basis for the standards contained in this part.

(1) Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.

(2) Employees shall not hold financial interests that conflict with the conscientious performance of duty.

(3) Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.

(4) An employee shall not, except as permitted by subpart B of this part, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.

(5) Employees shall put forth honest effort in the performance of their duties.

(6) Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.

(7) Employees shall not use public office for private gain.

(8) Employees shall act impartially and not give preferential treatment to any private organization or individual.

(9) Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.

(10) Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.

(11) Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.

(12) Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those—such as Federal, State, or local taxes—that are imposed by law.

(13) Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.

(14) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts. Where a situation is not covered by the standards set forth in this part, employees shall apply the principles set forth in this section in determining whether their conduct is proper.

(c) *Related statutes.* In addition to the standards of ethical conduct set forth in this part, there are conflict of interest statutes that prohibit certain conduct. Criminal conflict of interest statutes of general applicability to all employees, 18 U.S.C. 201, 203, 205, 208, and 209, are summarized in the appropriate subparts of this part and must be taken into consideration in determining whether conduct is proper. Citations to other generally applicable statutes relating to employee conduct are set forth in subpart I and employees are further cautioned that there may be additional statutory and regulatory restrictions applicable to them as employees of their specific agencies. Because an employee is considered to be on notice of the requirements of any statute, an employee should not rely upon any description or synopsis of a statutory restriction, but should refer to the statute itself and obtain the advice of an agency ethics official as needed.

§ 2635.102 Definitions.

The definitions listed below are used throughout this part. Additional definitions appear in the subparts or sections of subparts to which they apply. For purposes of this part:

(a) *Agency* means an executive agency as defined in 5 U.S.C. 105 and the Postal Service and the Postal Rate Commission. It does not include the General Accounting Office or the Government of the District of Columbia.

(b) *Agency designee* refers to any employee who, by agency regulation, instruction, or other issuance, has been delegated authority to make any determination, give any approval, or take any other action required or permitted with respect to another al Provisions

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(14) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts. Where a situation is not covered by the standards set forth in this part, employees shall apply the principles set forth in this section in determining whether their conduct is proper.

(c) *Related statutes.* In addition to the standards of ethical conduct set forth in this part, there are conflict of interest statutes that prohibit certain conduct. Criminal conflict of interest statutes of general applicability to all employees, 18 U.S.C. 201, 203, 205, 208, and 209, are summarized in the appropriate subparts of this part and must be taken into consideration in determining whether conduct is proper. Citations to other generally applicable statutes relating to employee conduct are set forth in subpart I and employees are further cautioned that there may be additional statutory and regulatory restrictions applicable to them as employees of their specific agencies. Because an employee is considered to be on notice of the requirements of any statute, an employee should not rely upon any description or synopsis of a statutory restriction, but should refer to the statute itself and obtain the advice of an agency ethics official as needed.

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(b) *Agency designee* refers to any employee who, by agency regulation, instruction, or other issuance, has been delegated authority to make any determination, give any approval, or take any other action required or permitted with respect to another

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employee by this part. An agency may delegate these authorities to any number of agency designees necessary to ensure that determinations are made, approvals are given, and other actions are taken in a timely and responsible manner. Any provision that requires a determination, approval, or other action by the agency designee shall, where the conduct in issue is that of the agency head, be deemed to require that such determination, approval or action be made or taken by the agency head in consultation with the designated agency ethics official.

(c) *Agency ethics official* refers to the designated agency ethics official or the alternate designated agency ethics official and to any deputy ethics official, described in § 2638.204 of this subchapter, who has been delegated authority to assist in carrying out the responsibilities of the designated agency ethics official.

(d) *Agency programs or operations* refers to any program or function carried out or performed by an agency, whether pursuant to statute, executive order, or regulation.

(e) *Corrective action* includes any action necessary to remedy a past violation or prevent a continuing violation of this part, including but not limited to restitution, change of assignment, recusal, divestiture, termination of an activity, waiver, the creation of a qualified or diversified blind trust, or counseling.

(f) *Designated agency ethics official* refers to the official designated under § 2638.201 of this subchapter.

(g) *Disciplinary action* includes those disciplinary actions provided for by Office of Personnel Management regulations and instructions implementing provisions of title 5 of the United States Code or provided for in comparable provisions applicable to employees not subject to title 5, including but not limited to reprimand, suspension, demotion, and removal.

(h) *Employee* means any officer or employee of an agency, including a special Government employee. It includes officers but not enlisted members of the uniformed services. For purposes other than subparts B and C of this part, it does not include the President or Vice President. Status as an employee is unaffected by pay or leave status or, in the case of a special Government employee, by the fact that the individual does not perform official duties on a given day.

(i) *Head of an agency* means, in the case of an agency headed by more than one person, the chair or comparable member of such agency.

(j) *He, his,* and *him* include she, hers and her.

(k) *Person* means an individual, corporation and subsidiaries it controls, company, association, firm, partnership, society, joint stock company, or any other organization or institution, including any officer, employee, or agent of such person or entity. For purposes of this part, a corporation will be deemed to control a subsidiary if it owns 25 percent or more of the subsidiary's equity or otherwise controls the management or policies of the subsidiary. The term is all-inclusive and applies to commercial ventures and nonprofit organizations as well as to foreign, State, and local governments, including the Government of the District of Columbia. It does not include any agency or other entity of the Federal Government or any officer or employee thereof when acting in his official capacity on behalf of that agency or entity.

(l) *Special Government employee* means those executive branch officers or employees specified in 18 U.S.C. 202(a). A special Government employee is retained, designated, appointed, or employed to perform temporary duties either on a full-time or intermittent basis, with or without compensation, for a period not to exceed 130 days during any consecutive 365-day period.

(m) *Supplemental agency regulation* means a regulation issued pursuant to § 2635.105 of this subpart.

§ 2635.103 Applicability to members of the uniformed services.

The provisions of this part, except this section, are not applicable to enlisted members of the uniformed services. Each agency with jurisdiction over enlisted members of the uniformed services shall issue regulations defining the ethical conduct obligations of enlisted members under its jurisdiction. Those regulations shall be consistent with Executive Order 12674, April 12, 1989, as modified, and may prescribe the full range of statutory and regulatory sanctions, including those available under the Uniform Code of Military Justice, for failure to comply with such regulations.

§ 2635.104 Applicability to employees on detail or serving overseas.

(a) *Details to other Federal entities.* An employee on detail, including a uniformed officer on assignment, from his employing agency to another agency for a period in excess of 30 days shall be subject to any supplemental agency regulation of the agency to which he is detailed rather than to any supplemental agency regulation of his employing agency. An employee detailed to the legislative or judicial branch for a period in excess of 30 days shall be subject to the ethical standards of the branch or entity to which detailed. For the duration of any such detail to the legislative or judicial branch, the employee remains subject to the conflict of interest statutes in title 18 of the United States Code, but shall not be subject to the provisions of this part, except this section, or to any supplemental agency regulation of his employing agency.

(b) *Details to non-Federal entities.* Except to the extent exempted in writing pursuant to this paragraph, an employee detailed to a nonFederal entity remains subject to this part and to any supplemental agency regulation of his employing agency. When an employee is detailed pursuant to statutory authority to an international organization or to a State or local government for a period in excess of six months, the designated agency ethics official may grant a written exemption from subpart B of this part based on his determination that the entity has adopted written ethical standards covering solicitation and acceptance of gifts which will apply to the employee during the detail and which will be appropriate given the purpose of the detail.

(c) *Assignments overseas.* (1) An employee serving overseas who is subject to the direction, coordination and supervision of the chief of mission shall be subject to the supplemental agency regulations of the Department of State rather than to any supplemental agency regulations of his employing agency if it is other than the Department of State.

(2) An employee serving overseas who is subject to the command of the United States area military commander shall be subject to the supplemental agency regulations of the Department of Defense rather than to any supplemental agency regulations of his employing agency if it is other than the Department of Defense.

(3) Any employee, other than an employee described in paragraphs (c) (1) and (2) of this section, who is assigned to perform duty overseas shall remain subject to any supplemental agency regulations of his employing agency.

§ 2635.105 Supplemental agency regulations.

In addition to the regulations set forth in this part, an employee shall comply with any supplemental agency regulations issued by his employing agency under this section.

(a) An agency that wishes to supplement this part shall prepare and submit to the Office of Government Ethics, for its concurrence and joint issuance, any agency regulations that supplement the regulations contained in this part. Supplemental agency regulations which the agency determines are necessary and appropriate, in view of its programs and operations, to fulfill the purposes of this part shall be:

(1) In the form of an addendum to the regulations in this part; and

(2) In addition to the substantive provisions of this part.

(b) After concurrence by the Office of Government Ethics, the agency shall submit its supplemental agency regulations to the **Federal Register** for publication and codification at the expense of the agency in title 5 of the Code of Federal Regulations. Supplemental agency regulations issued under this section are effective only after concurrence and co-signature by the Office of Government Ethics and publication in the **Federal Register**.

(c) This section applies to any supplemental agency regulations or amendments thereof issued under this part. It does not apply to:

(1) A handbook or other issuance intended merely as an explanation of the standards contained in this part or in supplemental agency regulations;

(2) An instruction or other issuance the purpose of which is to:

(i) Delegate to an agency designee authority to make any determination, give any approval or take any other action required or permitted by this part or by supplemental agency regulations; or

(ii) Establish internal agency procedures for documenting or processing any determination, approval or other action required or permitted by this part or by supplemental agency regulations, or for retaining any such documentation; or

(3) Regulations or instructions that an agency has authority, independent of this part, to issue, such as regulations implementing an agency's gift acceptance statute, protecting categories of nonpublic information or establishing standards for use of Government vehicles. Where the content of any such regulations or instructions was included in the agency's standards of conduct regulations issued pursuant to Executive Order 11222 and the Office of Government Ethics concurs that they need not be issued as part of an agency's supplemental agency regulations, those regulations or instructions may be promulgated separately from the agency's supplemental agency regulations.

§ 2635.106 Disciplinary and corrective action.

(a) Except as provided in § 2635.107, a violation of this part or of supplemental agency regulations may be cause for appropriate corrective or disciplinary action which may be in addition to any penalty prescribed by law. Officers of the uniformed services shall continue to be subject to the Uniform Code of Military Justice for a violation of this part or of supplemental agency regulations.

(b) It is the responsibility of the employing agency to initiate disciplinary or corrective action in appropriate cases. However, corrective action may be ordered or disciplinary action recommended by the Director of the Office of Government Ethics under the procedures at part 2638 of this subchapter.

(c) A violation of this part or of supplemental agency regulations, as such, does not create any right or benefit, substantive or procedural, enforceable at law by any person against the United States, its agencies, its officers or employees, or any other person. Thus, for example, an individual who alleges that an employee has failed to adhere to laws and regulations that provide equal opportunity regardless of race, color, religion, sex, national origin, age, or handicap is required to follow applicable statutory and regulatory procedures, including those of the Equal Employment Opportunity Commission.

§ 2635.107 Ethics advice.

(a) As required by § 2638.201 of this subchapter, each agency has a designated agency ethics official who, on the agency's behalf, is responsible for coordinating and managing the agency's ethics program. The designated agency ethics official has authority under § 2638.204 of this subchapter to delegate certain responsibilities, including that of providing ethics counseling, to one or more deputy ethics officials.

(b) Employees who have questions about the application of this part or any supplemental agency regulations to particular situations should seek advice from an agency ethics official. Disciplinary action for violating this part or any supplemental agency regulations will not be taken against an employee who has engaged in conduct in compliance with the advice of an agency ethics official, provided that the employee, in seeking such advice, has made full disclosure of all relevant circumstances. Where the employee's conduct violates a criminal statute, reliance on the advice of an agency ethics official cannot ensure that the employee will not be prosecuted under that statute. However, good faith reliance on the advice of an agency ethics official is a factor taken into account by the Department of Justice in the selection of cases for prosecution. Disclosures made by an employee to an agency ethics official are not protected by an attorney-client privilege.

Subpart B—Gifts From Outside Sources

§ 2635.201 Overview.

This subpart contains standards that prohibit an employee from soliciting or accepting any gift from a prohibited source or given because of the employee's official position unless the item is excluded from the definition of a gift or falls within one of the exceptions set forth in this subpart.

§ 2635.202 General standards.

(a) *General prohibitions.* Except as provided in this subpart, an employee shall not, directly or indirectly, solicit or accept a gift:

(1) From a prohibited source; or

(2) Given because of the employee's official position.

(b) *Relationship to illegal gratuities statute.* Unless accepted in violation of paragraph (c)(1) of this section, a gift accepted under the standards set forth in this subpart shall not constitute an illegal gratuity otherwise prohibited by 18 U.S.C. 201(c)(1)(B).

(c) *Limitations on use of exceptions.* Notwithstanding any exception provided in this subpart, other than § 2635.204(h), an employee shall not:

(1) Accept a gift in return for being influenced in the performance of an official act;

(2) Coerce the offering of a gift;

(3) Accept a gift from a person who has interests that may be substantially affected by the performance or nonperformance of the employee's official duties under circumstances where the timing and nature of the gift would cause a reasonable person to question the employee's impartiality in the matter affecting that person;

Example 1: An employee of the Department of Housing and Urban Development is an appraiser inspecting a building to determine whether HUD will insure a mortgage loan made by a private lender. She should decline the building owner's offer of a bottle of wine. Even though its market value is less than $25 and, thus, within the exception at § 2635.204(a) of this subpart for gifts of $25 or less, acceptance of the gift offered in conjunction with the inspection would cause a reasonable person to question the

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(b) *Relationship to illegal gratuities statute.* Unless accepted in violation of paragraph (c)(1) of this section, a gift accepted under the standards set forth in this subpart shall not constitute an illegal gratuity otherwise prohibited by 18 U.S.C. 201(c)(1)(B).

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(1) Accept a gift in return for being influenced in the performance of an official act;

(2) Coerce the offering of a gift;

(3) Accept a gift from a person who has interests that may be substantially affected by the performance or nonperformance of the employee's official duties under circumstances where the timing and nature of the gift would cause a reasonable person to question the employee's impartiality in the matter affecting that person;

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employee's impartiality in carrying out her inspectional duties. On the other hand, the appraiser's acceptance of the customary courtesy of a cup of coffee and a donut would be proper.

(4) Accept gifts from the same or different sources on a basis so frequent as to raise an appearance of use of public office for private gain; or

Example 1: A purchasing agent for a Veterans Administration hospital routinely deals with representatives of pharmaceutical manufacturers who provide information about new company products. Because of his crowded calendar, the purchasing agent on one occasion offered to meet with a representative during his lunch hour and the representative arrived at the employee's office bringing a pastrami sandwich and a soft drink so that the employee would not miss lunch. At the end of the meeting the representative stated that he would like to set up lunch meetings on a monthly basis for which he would provide the meal. Even though the market value of each of the lunches to be provided would be less than $6 and, thus, well within the exception at § 2635.204(a) of this subpart for gifts of $25 or less, the purchasing agent should decline since his acceptance of these modest gifts on a recurring basis would be so frequent as to raise an appearance that he used his position to subsidize his lunches.

(5) Accept a gift in violation of any statute. Relevant statutes applicable to all employees include:

(i) 18 U.S.C. 201(b), which prohibits a public official from seeking, accepting, or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act or for being induced to take or omit to take any action in violation of his official duty. As used in 18 U.S.C. 201(b), the term "public official" is broadly construed and includes special Government employees as well as all other Government officials.

(ii) 18 U.S.C. 209, which prohibits an employee, other than a special Government employee, from receiving any salary or any contribution to or supplementation of salary from any source other than the United States as compensation for services as a Government employee. The statute contains several specific exceptions to this general prohibition, including an exception for contributions made from the treasury of a State, county, or municipality.

(iii) 41 U.S.C. 423(b)(2), which prohibits a procurement official from seeking, accepting, or agreeing to receive any money, gratuity, or other thing of value from any officer, employee, representative, agent, or consultant of a competing contractor during the conduct of a Federal agency procurement. Implementing regulations, including exceptions to the gift prohibition, are contained in subpart 3.104 of the Federal Acquisition Regulation.

§ 2635.203 Definitions.

For purposes of this subpart, the following definitions shall apply:

(a) *Agency* has the meaning set forth in § 2635.102(a) of this part. However, for purposes of this subpart, an executive department, as defined in 5 U.S.C. 101, may, by supplemental agency regulation, designate as a separate agency any component of that department which the department determines exercises distinct and separate functions. No such designation shall be effective as to the head of any such separate agency or as to department-level employees.

(b) *Gift* includes any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

It does not include:

(1) Loans from banks and other financial institutions on terms generally available to the public;

(2) Opportunities and benefits, including favorable rates and commercial discounts, available to the public or to a class consisting of all Government employees or all uniformed military personnel, whether or not restricted on the basis of geographic considerations;

(3) Rewards and prizes given to competitors in contests or events, including random drawings, which are unrelated to the employee's official duties and open to the public or to a broadly defined class;

(4) Greeting cards and items with little intrinsic value, such as plaques, certificates, and trophies which are intended solely for presentation;

(5) Anything which is paid for by the Government or secured by the Government under Government contract;

Note: Some airlines encourage those purchasing tickets to join programs that award free flights and other benefits to frequent fliers. Any such benefit earned on the basis of Government-financed travel belongs to the agency rather than to the employee and may be accepted only insofar as provided under 41 CFR 301–1.6(b).

(6) Any gift accepted by the Government under specific statutory authority, including:

(i) Travel, subsistence, and related expenses accepted by an agency under the authority of 31 U.S.C. 1353 in connection with an employee's attendance at a meeting or similar function relating to his official duties which takes place away from his duty station. The agency's acceptance must be in accordance with the implementing regulations at 41 CFR part 304–1; and

(ii) Other gifts provided in-kind which have been accepted by an agency under its agency gift acceptance statute; or

(7) Anything for which market value is paid by the employee.

(c) *Market value* means the retail cost the employee would incur to purchase the gift. An employee who cannot ascertain the market value of a gift may estimate its market value by reference to the retail cost of similar items of like quality. The market value of a gift of a ticket entitling the holder to food, refreshments, entertainment, or any other benefit shall be the face value of the ticket.

Example 1: An employee who has been given an acrylic paperweight embedded with the corporate logo of a prohibited source may determine its market value based on her observation that a comparable acrylic paperweight, not embedded with a logo, generally sells for about $20.

Example 2: A prohibited source has offered an employee a ticket to a charitable event consisting of a cocktail reception to be followed by an evening of chamber music. Even though the food, refreshments, and entertainment provided at the event may be worth only $20, the market value of the ticket is its $250 face value.

(d) *Prohibited source* means any person who:

(1) Is seeking official action by the employee's agency;

(2) Does business or seeks to do business with the employee's agency;

(3) Conducts activities regulated by the employee's agency;

(4) Has interests that may be substantially affected by performance or nonperformance of the employee's official duties; or

(5) Is an organization a majority of whose members are described in paragraphs (d) (1) through (4) of this section.

(e) A gift is solicited or accepted because of the employee's official position if it would not have been solicited, offered, or given had the employee not held his position as a Federal employee.

Example 1: Where free season tickets are offered by an opera guild to all members of the Cabinet, the gift is offered because of their official positions.

(f) A gift which is solicited or accepted indirectly includes a gift:

(1) Given with the employee's knowledge and acquiescence to his parent, sibling, spouse, child, or dependent relative because of that person's relationship to the employee, or

(2) Given to any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the employee, except as permitted for the disposition of perishable items by § 2635.205(a)(2) of this subpart or for payments made to charitable organizations in lieu of honoraria under § 2636.204 of this subchapter.

Example 1: An employee who must decline a gift of a personal computer pursuant to this subpart may not suggest that the gift be given instead to one of five charitable organizations whose names are provided by the employee.

§ 2635.204 Exceptions.

The prohibitions set forth in § 2635.202(a) of this subpart do not apply to a gift accepted under the circumstances described in paragraphs (a) through (j) of this section.

(a) *Gifts of $25 or less.* An employee may accept unsolicited gifts having an aggregate market value of $25 or less per occasion, provided that the aggregate market value of individual gifts received from any one person under the authority of this paragraph shall not exceed $100 in a calendar year. This exception does not apply to gifts of cash or of investment interests such as stock, bonds, or certificates of deposit. Where the market value of a gift or the aggregate market value of gifts offered on any single occasion exceeds $25, the employee may not pay the excess value over $25 in order to accept that portion of the gift or those gifts worth $25. Where the aggregate value of tangible items offered on a single occasion exceeds $25, the employee may decline any distinct and separate item in order to accept those items aggregating $25 or less.

Example 1: An employee of the Securities and Exchange Commission and his spouse have been invited by a representative of a regulated entity to a Broadway play, tickets to which have a face value of $30. The aggregate market value of the gifts offered on this single occasion is $60, $35 more than the $25 amount that may be accepted for a single event or presentation. The employee may not accept the evening of entertainment. He and his spouse may attend the play only if he pays the full $60 value of the two tickets.

Example 2: An employee of the Defense Mapping Agency has been invited by an association of cartographers to speak about his agency's role in the evolution of missile technolgy. At the conclusion of his speech, the association presents the employee a framed map with a market value of $18 and a book about the history of cartography with a market value of $20. The employee may accept the map or the book, but not both, since the aggregate value of these two tangible items exceeds $25.

Example 3: An employee of the Department of the Army is serving as a member of a team evaluating a claim submitted by an Army contractor under its contract to supply 20,000 portable generators. Just as the team is about to make its recommendation regarding the amount for which the Army should settle the claim, the contractor sends the employee a golf shirt worth $25. Although the market value of the shirt does not exceed $25, the employee should not accept the gift because of the limitation in § 2635.202(c)(3) of this subpart. The timing and nature of the gift are such that the employee's acceptance would cause a reasonable person to question the employee's impartiality in carrying out his duties as a member of the claims evaluation team.

Example 4: The Army's plant representative assigned to duty at a facility operated by an Army contractor may accept the contractor's gift of a magazine subscription worth $20.

Example 5: On four occasions during the calendar year, an employee of the Defense Logistics Agency was given gifts worth $10 each by four employees of a corporation that is a DLA contractor. For purposes of applying the yearly $100 limitation on gifts of $25 or less from any one person, the four gifts must be aggregated because a *person* is defined at § 2635.102(k) of this part to mean not only the corporate entity, but its officers and employees as well. However, for purposes of applying the $100 limitation, the employee would not have to include the value of a birthday present received from his cousin, who is employed by the same corporation, since he can accept the birthday present under the exception at § 2635.204(b) of this subpart for gifts based on a personal relationship.

Example 6: Under the authority of 31 U.S.C. 1353 for agencies to accept payments from non-Federal sources in connection with attendance at certain meetings or similar functions, the Environmental Protection Agency has accepted an association's gift of travel expenses and conference fees for an employee of its Office of Radiation Programs to attend an international conference on "The Chernobyl Experience." While at the conference, the employee may accept a gift of $25 or less from the association or from another person attending the conference even though it was not approved in advance by the EPA. Although 31 U.S.C. 1353 is the only authority under which an agency may accept gifts from certain nonFederal sources in connection with its employees' attendance at such functions, a gift of $25 or less accepted under § 2635.204(a) of this subpart is a gift to the employee rather than to his employing agency.

(b) *Gifts based on a personal relationship.* An employee may accept a gift given under circumstances which make it clear that the gift is motivated by a family relationship or personal friendship rather than the position of the employee. Relevant factors in making such a determination include the history of the relationship and whether the family member or friend personally pays for the gift.

Example 1: An employee of the Federal Deposit Insurance Corporation has been dating a secretary employed by a member bank. For Secretary's Week, the bank has given each secretary 2 tickets to an off-Broadway musical review and has urged each to invite a family member or friend to share the evening of entertainment. Under the circumstances, the FDIC employee may accept his girlfriend's invitation to the theater. Even though the tickets were initially purchased by the member bank, they were given without reservation to the secretary to use as she wished, and her invitation to the employee was motivated by their personal friendship.

Example 2: Three partners in a law firm that handles corporate mergers have invited an employee of the Federal Trade Commission to join them in a golf tournament at a private club at the firm's expense. The entry free is $500 per foursome. The employee cannot accept the gift of one-quarter of the entry fee even though he and the three partners have developed an amicable relationship as a result of the firm's dealings with the FTC. As evidenced in part by the fact that the fees are to be paid by the firm, it is not a personal friendship but a business relationship that is the motivation behind the partners' gift.

(c) *Discounts and similar benefits.* An employee may accept unsolicited opportunities and benefits, including favorable rates and commercial discounts, offered to a limited class of persons if the offer is extended:

(1) By a person who is not a prohibited source: and

(2) To a class that is not defined in a manner that specifically discriminates among Government employees on the basis of employment rank, rate of pay, or type of official responsibility.

Example 1: An employee of the U.S. Information Agency may accept a discount of $100 on a set of four tires offered by a local merchant to all members of an agency credit union. The merchant is not a prohibited source and the discount is offered because she is a member of the credit union, to which any employee of the agency can belong.

Example 2: An Assistant Secretary may not accept a local country club's offer to all members of Department Secretariats which includes a waiver of its $5,000 membership initiation fee. Even though the country club is not a prohibited source, the offer, extended because of the employee's official position and targeted to a narrow class of Federal employees, discriminates on the basis of rank.

(d) *Awards and honorary degrees.* (1) An employee may accept gifts, other

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Example 2: Three partners in a law firm that handles corporate mergers have invited an employee of the Federal Trade Commission to join them in a golf tournament at a private club at the firm's expense. The entry free is $500 per foursome. The employee cannot accept the gift of one-quarter of the entry fee even though he and the three partners have developed an amicable relationship as a result of the firm's dealings with the FTC. As evidenced in part by the fact that the fees are to be paid by the firm, it is not a personal friendship but a business relationship that is the motivation behind the partners' gift.

(c) *Discounts and similar benefits.* An employee may accept unsolicited opportunities and benefits, including favorable rates and commercial discounts, offered to a limited class of persons if the offer is extended:

(1) By a person who is not a prohibited source: and

(2) To a class that is not defined in a manner that specifically discriminates among Government employees on the basis of employment rank, rate of pay, or type of official responsibility.

Example 1: An employee of the U.S. Information Agency may accept a discount of $100 on a set of four tires offered by a local merchant to all members of an agency credit union. The merchant is not a prohibited source and the discount is offered because she is a member of the credit union, to which any employee of the agency can belong.

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(d) *Awards and honorary degrees.* (1) An employee may accept gifts, other

than cash or an investment interest, with an aggregate market value of $200 or less if such gifts are a bona fide award or incident to a bona fide award that is given for meritorious public service or achievement by a person who does not have interests that may be substantially affected by the performance or nonperformance of the employee's official duties or by an association or other organization the majority of whose members do not have such interests. Other gifts offered by such persons as awards or incidents of awards that are given for these purposes, including awards of cash or investment interests, may be accepted upon a written determination by an agency ethics official that the award meets the following criteria:

(i) The award is made as part of an established program of recognition under which awards are made on a periodic basis. An established program is one under which awards have been made on a regular basis or which is funded, wholly or in part, to ensure its continuation on a regular basis;

(ii) Individuals other than Federal employees are eligible for the award; and

(iii) Selection of the award recipient is made pursuant to specific written standards.

(2) An employee may accept an honorary degree from an institution of higher education as defined at 20 U.S.C. 1141(a) based on a written determination by an agency ethics official that acceptance will not create an appearance of loss of impartiality or use of public office for private gain.

(3) An employee who may accept an award, honorary degree, or personal tribute pursuant to paragraphs (d) (1) or (2) of this section may also accept meals and entertainment given to him and to members of his family at the event at which the presentation takes place.

Example 1: Based on a determination by an agency ethics official that the prize meets the criteria set forth in § 2635.204(d)(1) of this subpart, an employee of the National Institutes of Health may accept the Nobel Prize for Medicine, including the cash award which accompanies the prize, even though the prize was conferred on the basis of laboratory work performed at NIH.

Example 2: Prestigious University wishes to give an honorary degree to the Secretary of Labor. The Secretary may accept the honorary degree only if an agency ethics official determines in writing that her acceptance will not create an appearance of loss of impartiality or use of public office for private gain.

Example 3: A Department of State official selected by a nonprofit organization as recipient of its award for distinguished service in the interest of world peace may, together with his mother, wife, and children, attend the awards ceremony dinner and accept a crystal bowl worth $200 presented during the ceremony.

(e) *Gifts based on outside business or employment relationships.* An employee may accept meals, lodgings, transportation, and other benefits:

(1) Resulting from the business or employment activities of an employee's spouse when it is clear that such benefits have not been offered or enhanced because of the employee's official position;

Example 1: A Department of Agriculture employee whose husband is a computer programmer employed by an Agriculture Department contractor may attend the company's annual retreat for all of its employees and their families held at a resort facility. However, under § 2635.502 of this part, the employee may be disqualified from performing official duties affecting her husband's employer.

Example 2: Where the spouses of other clerical personnel have not been invited, an employee of the Defense Contract Audit Agency whose wife is a clerical worker at a defense contractor may not attend the contractor's annual retreat in Hawaii for corporate officers and members of the board of directors, even though his wife received a special invitation for herself and her spouse.

(2) Resulting, if he is a special Government employee, from his outside business or employment activities when it is clear that such benefits have not been offered or enhanced because of his official status; or

Example 1: The members of an Army Corps of Engineers environmental advisory committee that meets 6 times per year are special Government employees. A member who has a consulting business may accept an invitation to a $50 dinner from her corporate client, an Army construction contractor, unless, for example, the invitation was extended in order to discuss the activities of the committee.

(3) Customarily provided by a prospective employer in connection with bona fide employment discussions. If the prospective employer has interests that could be affected by performance or nonperformance of the employee's duties, acceptance is permitted only if the employee first has complied with the disqualification requirements of subpart F of this part applicable when seeking employment.

Example 1: An employee of the Federal Communications Commission with responsibility for drafting regulations affecting the communications industry wishes to apply for a job opening with a television network. Once she has properly disqualified herself from further work on the regulations as required by subpart F of this part, she may enter into employment discussions with the network and accept the network's offer to pay for her airfare, hotel, and meals in connection with an interview trip.

(f) *Gifts from a political organization.* An employee who is exempt under 5 U.S.C. 7324(d) from the Hatch Act prohibitions against active participation in political management or political campaigns may accept meals, lodgings, transportation and other benefits, including free attendance at events, when provided, in connection with such active participation, by a political organization described in 26 U.S.C. 527(e). Any other employee, such as a security officer, whose official duties require him to accompany an exempt employee to a political event may accept meals, free attendance, and entertainment provided at the event by such a political organization.

Example 1: The Secretary of the Department of Health and Human Services is exempt from the noted Hatch Act restrictions. He may accept an airline ticket and hotel accommodations furnished by the campaign committee of a candidate for the United States Senate in order to give a speech in support of the candidate.

(g) *Speaking engagements and widely-attended gatherings.* (1) When an employee's participation in all or part of an event is determined to be in the interest of the employing agency because it will further agency programs or operations, an employer may accept an unsolicited gift of free attendance at all or appropriate parts of the event provided by the sponsor of:

(i) An event in which the employee is to participate as a speaker or panel participant; or

(ii) A widely-attended gathering concerning a subject of mutual interest to a number of parties that the employee will attend on his own time. A gathering is widely attended if, for example, it is open to members from throughout a given industry or profession or if those in attendance represent various sectors of the economy.

(2) *Determination of agency interest.* The official assignment of an employee to participate as a speaker or panel member shall constitute the necessary determination that it is in the agency's interest of the employee to participate in any part of the event that takes place on the day he will speak or serve on the panel and that involves the presentation or exchange of information. In all other cases, the determination of agency interest shall be made in writing by the agency designee. If the sponsor is a person who has interests that may be substantially affected by the performance or nonperformance of the employee's official duties, or an association or organization the majority

of whose members have such interests, the employee's participation may be determined to be in the interest of the agency only where there is a written finding by the agency designee that the agency's interest in the employee's participation in the event outweighs concern that acceptance of the gift of free attendance may or may reasonably appear to improperly influence the employee in the performance of his official duties. Relevant factors that should be considered by the agency designee include the importance of the event to the agency, the nature and sensitivity of any pending matter affecting the interests of the sponsor of the event, the significance of the employee's role in any such matter, the purpose of the event, the identity of other expected participants, and the monetary value of the gift of free attendance.

(3) *Free attendance.* For purposes of paragraph (g)(1) of this section, a gift of free attendance may include waiver of all or part of a conference or other fee or the provision of food, refreshments, entertainment, instruction, and materials furnished to all attendees as an integral part of the event. It does not include travel expenses, lodgings, entertainment collateral to the event, or meals taken other than in a group setting with all other attendees.

(4) *Cost provided by sponsor of event.* The cost of the employee's attendance will not be considered to be provided by the sponsor where a person other than the sponsor designates the employee to be invited and bears the cost of the employee's attendance through a contribution or other payment intended to facilitate that employee's attendance. Payment of dues or a similar assessment to a sponsoring association or other organization does not constitute a payment intended to facilitate a particular employee's attendance.

(5) *Accompanying spouse.* When an employee is a speaker or panel participant or when his participation in an event is determined by the agency designee to be in the interest of the agency, the agency designee may authorize attendance by an accompanying spouse at all or part of the event based on a determination that others in attendance at the event will generally be accompanied by spouses.

Example 1: An aerospace industry association that is a prohibited source sponsors a seminar for which it charges a fee of $100. An Air Force contractor pays $500 to the association so that the association can extend free invitations to 5 Air Force officials designated by the contractor. The Air Force officials may not attend. Because the contractor specified the invitees and bears the cost of their attendance, the gift of free attendance is considered to be provided by the company and not the sponsoring association. Had the contractor paid $500 to the association in order that it might invite any 5 Federal employees, an Air Force official to whom the sponsoring association has extended one of the 5 invitations could attend if his participation were determined to be in the interest of the agency.

Example 2: An employee of the Department of the Treasury authorized to participate in a panel discussion of economic issues as part of a 1-day conference may accept the sponsor's waiver of the conference fee. Under the separate authority of § 2635.204(a) of this subpart, he may accept a token of appreciation for his speech having a market value of $25 or less.

Example 3: An employee of the Department of the Interior authorized to speak on the first day of a 4-day conference on endangered species may accept the sponsor's waiver of the conference fee for the first day of the conference. However, he may be authorized to accept the sponsor's waiver of the conference fee for any of the 3 remaining days of the conference, and to use official time to attend, only if his participation in the activities to take place on those days is determined by the agency designee to be in the interest of the agency.

(h) *Gifts to the President or Vice President.* Because of considerations relating to the conduct of their offices, including those of protocol and etiquette, the President or the Vice President may accept any gift on his own behalf or on behalf of any family member, provided that such acceptance does not violate §§ 2635.202(c) (1) or (2) of this subpart, 18 U.S.C. 201(b) or 201(c)(3), or the Constitution of the United States.

(i) *Gifts authorized by supplemental agency regulation.* An employee may accept any gift the acceptance of which is specifically authorized by a supplemental agency regulation.

(j) *Gifts accepted under specific statutory authority.* The prohibitions on acceptance of gifts from outside sources contained in this subpart do not apply to any item, receipt of which is specifically authorized by statute. Gifts which may be received by an employee under the authority of specific statutes include, but are not limited to:

(1) Free attendance, course or meeting materials, transportation, lodgings, food and refreshments or reimbursements therefor incident to training or meetings when accepted by the employee under the authority of 5 U.S.C. 4111 from an organization with tax-exempt status under 26 U.S.C. 501(c)(3). The employee's acceptance must be approved by the agency in accordance with §§ 410.701 through 410.706 of this title; or

Note: Section 501(c)(3) of title 26 of the United States Code is authority for tax-exempt treatment of a limited class of nonprofit organizations, including those organized and operated for charitable, religious or educational purposes. Many nonprofit organizations are not exempt from taxation under this section.

(2) Gifts from a foreign government or international organization, or its representative, when accepted by the employee under the authority of the Foreign Gifts and Decorations Act, 5 U.S.C. 7342. As a condition of acceptance, an employee must comply with requirements imposed by the agency's regulations implementing that Act.

§ 2635.205 Proper disposition of prohibited gifts.

(a) an employee who has received a gift that cannot be accepted under this subpart shall, unless the gift is accepted by an agency acting under specific statutory authority:

(1) Return any tangible item to the donor or pay the donor its market value. An employee who cannot ascertain the actual market value of an item may estimate its market value by reference to the retail cost of similar items of like quality. See § 2635.203(c) of this subpart.

Example 1: To avoid public embarrassment to the seminar sponsor, an employee of the National Park Service did not decline a barometer worth $200 given at the conclusion of his speech on Federal lands policy. The employee must either return the barometer or promptly reimburse the sponsor $200.

(2) When it is not practical to return a tangible item because it is perishable, the item may, at the discretion of the employee's supervisor or an agency ethics official, be given to an appropriate charity, shared within the recipient's office, or destroyed.

Example 1: With approval by the recipient's supervisor, a floral arrangement sent by a disability claimant to a helpful employee of the Social Security Administration may be placed in the office's reception area.

(3) For any entertainment, favor, service, benefit or other intangible, reimburse the donor the market value. Subsequent reciprocation by the employee does not constitute reimbursement.

Example 1: A Department of Defense employee wishes to attend a charitable event to which he has been offered a $300 ticket by a prohibited source. Although his attendance is not in the interest of the agency under § 2635.204(g) of this subpart, he may attend if he reimburses the donor the $300 face value of the ticket.

(4) Dispose of gifts from foreign governments or international organizations in accordance with 41

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(4) Dispose of gifts from foreign governments or international organizations in accordance with 41

CFR part 101–49, and dispose of materials received in conjunction with official travel in accordance with 41 CFR 101–25.103.

(b) An agency may authorize disposition or return of gifts at Government expense. Employees may use penalty mail to forward reimbursements required or permitted by this section.

(c) An employee who, on his own initiative, promptly complies with the requirements of this section will not be deemed to have improperly accepted an unsolicited gift. An employee who promptly consults his agency ethics official to determine whether acceptance of an unsolicited gift is proper and who returns the gift upon the advice of the ethics official will be considered to have complied with the requirements of this section on his own initiative.

Subpart C—Gifts Between Employees

§ 2635.301 Overview.

This subpart contains standards that prohibit an employee from giving, donating to, or soliciting contributions for, a gift to an official superior and from accepting a gift from an employee receiving less pay than himself, unless the item is excluded from the definition of a gift or falls within one of the exceptions set forth in this subpart.

§ 2635.302 General standards.

(a) *Gifts to superiors.* Except as provided in this subpart, an employee may not:

(1) Directly or indirectly, give a gift to or make a donation toward a gift for an official superior; or

(2) Solicit a contribution from another employee for a gift to either his own or the other employee's official superior.

(b) *Gifts from employees receiving less pay.* Except as provided in this subpart, an employee may not, directly or indirectly, accept a gift from an employee receiving less pay than himself unless:

(1) The two employees are not in a subordinate-official superior relationship; and

(2) There is a personal relationship between the two employees that would justify the gift.

(c) *Limitation on use of exceptions.* Notwithstanding any exception provided in this subpart, an official superior shall not coerce the offering of a gift from a subordinate.

§ 2635.303 Definitions.

For purposes of this subpart the following definitions shall apply:

(a) *Gift* has the meaning set forth in § 2635.203(b) of this part. For purposes of that definition an employee will be deemed to have paid market value for any benefit received as a result of his participation in any carpool or other such mutual arrangement involving another employee or other employees if he bears his fair proportion of the expense or effort involved.

(b) *Indirectly,* for purposes of § 2635.302(b) of this subpart, has the meaning set forth in § 2635.203(f) of this part. For purposes of § 2635.302(a) of this subpart, it includes a gift:

(1) Given with the employee's knowledge and acquiescence by his parent, sibling, spouse, child, or dependent relative; or

(2) Given by a person other than the employee under circumstances where the employee has promised or agreed to reimburse that person or to give that person something of value in exchange for giving the gift.

(c) Subject to paragraph (a) of this section, *market value* has the meaning set forth in § 2635.203(c) of this part.

(d) *Official superior* means any other employee, other than the President and the Vice President, including but not limited to an immediate supervisor, whose official responsibilities include directing or evaluating the performance of the employee's official duties or those of any other official superior of the employee. For purposes of this subpart, an employee is considered to be the subordinate of any of his official superiors.

(e) *Solicit* means to request contributions by personal communication or by general announcement.

(f) *Voluntary contribution* means a contribution given freely, without pressure or coercion. A contribution is not voluntary unless it is made in an amount determined by the contributing employee, except that where an amount for a gift is included in the cost for a luncheon, reception, or similar event, an employee who freely chooses to pay a proportionate share of the total cost in order to attend will be deemed to have made a voluntary contribution. Except in the case of contributions for a luncheon, reception, or similar event, a statement that an employee may choose to contribute less or not at all shall accompany any recommendation of an amount to be contributed for a gift to an official superior.

Example 1: A supervisory employee of the Agency for International Development has just been reassigned from Washington, DC to Kabul, Afghanistan. As a farewell party, 12 of her subordinates have decided to take her out to lunch at the Khyber Repast. It is understood that each will pay for his own meal and that the cost of the supervisor's lunch will be divided equally among the twelve. Even though the amount they will contribute is not determined until the supervisor orders lunch, the contribution made by those who chose to participate in the farewell lunch is voluntary.

§ 2635.304 Exceptions.

The prohibitions set forth in § 2635.302 (a) and (b) of this subpart do not apply to a gift given or accepted under the circumstances described in paragraphs (a) or (b) of this section. A contribution or the solicitation of a contribution that would otherwise violate the prohibitions set forth in § 2635.302 (a) and (b) of this subpart may only be made in accordance with paragraph (c) of this section.

(a) *General exceptions.* On an occasional basis, including any occasion on which gifts are traditionally given or exchanged, the following may be given to an official superior or accepted from a subordinate or other employee receiving less pay:

(1) Items with an aggregate market value of $10 or less per occasion;

(2) Items such as food and refreshments to be shared in the office among several employees;

(3) Personal hospitality provided at a residence;

(4) Items given in connection with the receipt of personal hospitality if of a type customarily given on such occasions; and

(5) Leave transferred under subpart I of part 630 of this title, unless obtained in violation of § 630.912 of that subpart.

Example 1: Upon returning to work following a vacation at the beach, a claims examiner with the Department of Veterans Affairs may give his supervisor, and his supervisor may accept, a bag of saltwater taffy purchased on the boardwalk for $8.

Example 2: An employee of the Federal Deposit Insurance Corporation whose bank examination responsibilities require frequent travel may not bring her supervisor, and her supervisor may not accept, souvenir coffee mugs from each of the cities she visits in the course of performing her duties, even though each of the mugs costs less than $5. Gifts given on this basis are not occasional.

Example 3: The Secretary of Labor has invited the agency's General Counsel to a dinner party at his home. The General Counsel may bring a bottle of wine to the dinner party and the Secretary may accept this customary hostess gift from his subordinate, even though its cost is in excess of $10.

Example 4: For Christmas, a secretary may give his supervisor, and the supervisor may accept, a poinsettia plant purchased for $10 or less. The secretary may also invite his supervisor to a Christmas party in his home and the supervisor may attend.

(b) *Special, infrequent occasions.* A gift appropriate to the occasion may be given to an official superior or accepted from a subordinate or other employee receiving less pay:

(1) In recognition of infrequently occurring occasions of personal significance such as marriage, illness, or the birth or adoption of a child; or

(2) Upon occasions that terminate a subordinate-official superior relationship, such as retirement, resignation, or transfer.

Example 1: The administrative assistant to the personnel director of the Tennessee Valley Authority may send a $30 floral arrangement to the personnel director who is in the hospital recovering from surgery. The personnel director may accept the gift.

Example 2: A chemist employed by the Food and Drug Administration has been invited to the wedding of the lab director who is his official superior. He may give the lab director and his bride, and they may accept, a place setting in the couple's selected china pattern purchased for $70.

(c) *Voluntary contributions.* An employee may solicit voluntary contributions of nominal amounts from fellow employees for a gift to an official superior and an employee may make a voluntary contribution of a nominal amount to a gift to an official superior:

(1) On a special, infrequent occasion as described in paragraph (b) of this section; or

(2) On an occasional basis, for items such as food and refreshments to be shared in the office among several employees.

An employee may accept such gifts to which a subordinate or other employee receiving less pay than himself has contributed.

Example 1: To mark the occasion of his retirement, members of the immediate staff of the Under Secretary of the Army would like to give him a party and provide him with a gift certificate. They may distribute an announcement of the party and include a nominal amount for a retirement gift in the fee for the party.

Example 2: The General Counsel of the National Endowment for the Arts may not collect contributions for a Christmas gift for the Chairman. Because Christmas occurs annually, it is not an infrequently occurring occasion of personal significance.

Example 3: Subordinates may not take up a collection for a gift to an official superior on the occasion of the superior's swearing in or promotion to a higher grade position within the supervisory chain of that organization. These are not events that mark the termination of the subordinate-official superior relationship, nor are they events of personal significance within the meaning of § 2635.304(b) of this subpart. However, subordinates may take up a collection and employees may contribute $3 each to buy refreshments to be consumed by everyone in the immediate office to mark either such occasion.

Example 4: Subordinates may each contribute a nominal amount to a fund to give a gift to an official superior upon the occasion of that superior's transfer or promotion to a position outside the organization.

Example 5: An Assistant Secretary at the Department of the Interior is getting married. His secretary has decided that a microwave oven would be a nice gift from his staff and has informed each of the Assistant Secretary's subordinates that they should contribute $5 for the gift. Her method of collection is improper. Although she may recommend a $5 contribution, the recommendation must be coupled with a statement that the employee whose contribution is solicited is free to contribute less or nothing at all.

Subpart D—Conflicting Financial Interests

§ 2635.401 Overview.

This subpart contains two provisions relating to financial interests. One is a disqualification requirement and the other is a prohibition on acquiring or continuing to hold specific financial interests. An employee may acquire or hold any financial interest not prohibited by § 2635.403 of this subpart. Notwithstanding that his acquisition or holding of a particular interest is proper, an employee is prohibited in accordance with § 2635.402 of this subpart from participating in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him has a financial interest, if the particular matter will have a direct and predictable effect on that interest.

§ 2635.402 Disqualifying financial interests.

(a) *Statutory prohibition.* An employee is prohibited by criminal statute, 18 U.S.C. 208(a), from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him under this statute has a financial interest, if the particular matter will have a direct and predictable effect on that interest.

Note: Standards applicable when seeking non-Federal employment are contained in subpart F of this part and, if followed, will ensure that an employee does not violate 18 U.S.C. 208(a) or this section when he is negotiating for or has an arrangement concerning future employment. In all other cases where the employee's participation would violate 18 U.S.C. 208(a), an employee shall disqualify himself from participation in the matter in accordance with paragraph (c) of this section or obtain a waiver, as described in paragraph (d) of this section.

(b) *Definitions.* For purposes of this section, the following definitions shall apply:

(1) *Direct and predictable effect.* (i) A particular matter will have a *direct* effect on a financial interest for purposes of this subpart if there is a close causal link between any decision or action to be taken in the matter and any expected effect on the financial interest. An effect may be direct even though it does not occur immediately. A matter will not have a direct effect on a financial interest, however, if the chain of causation is attenuated or is contingent upon the occurrence of events that are speculative or that are independent of, and unrelated to, the matter. A matter that has an effect on a financial interest only as a consequence of its effects on the general economy does not have a direct effect within the meaning of this subpart.

(ii) A matter will have a *predictable* effect for purposes of this subpart if there is a real, as opposed to a slight or speculative, possibility that the matter will affect the financial interest. It is not necessary, however, that the magnitude of the gain or loss be known.

Note: If a particular matter involves a specific party or parties, the matter will generally only have a direct and predictable effect, for purposes of this subpart, on a financial interest of the employee in or with a party. There may, however, be some situations in which, under the above standards, a particular matter will have a direct and predictable effect on an employee's financial interests in or with a nonparty. For example, if a party is a corporation, a particular matter may also have a direct and predictable effect on an employee's stock in an affiliate, parent, or subsidiary of that party. Similarly, the disposition of a protest against the award of a contract to a particular company may also have a direct and predictable effect on the employee's stock in another company listed as a subcontractor in the proposal of one of the competing offerors.

(2) *Imputed interests.* For purposes of 18 U.S.C. 208(a) and this subpart, the financial interests of the following persons are treated as if they were the employee's own interests:

(i) The employee's spouse;

(ii) The employee's minor child;

(iii) The employee's general partner;

(iv) An organization or entity which the employee serves as officer, director, trustee, general partner or employee; and

(v) A person with whom the employee is negotiating for or has an arrangement concerning prospective employment. (Employees who are seeking other employment should refer to and comply with the standards in subpart F of this part).

(3) *Particular matter.* The term *particular matter* encompasses only

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Note: If a particular matter involves a specific party or parties, the matter will generally only have a direct and predictable effect, for purposes of this subpart, on a financial interest of the employee in or with a party. There may, however, be some situations in which, under the above standards, a particular matter will have a direct and predictable effect on an employee's financial interests in or with a nonparty. For example, if a party is a corporation, a particular matter may also have a direct and predictable effect on an employee's stock in an affiliate, parent, or subsidiary of that party. Similarly, the disposition of a protest against the award of a contract to a particular company may also have a direct and predictable effect on the employee's stock in another company listed as a subcontractor in the proposal of one of the competing offerors.

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(ii) The employee's minor child;

(iii) The employee's general partner;

(iv) An organization or entity which the employee serves as officer, director, trustee, general partner or employee; and

(v) A person with whom the employee is negotiating for or has an arrangement concerning prospective employment. (Employees who are seeking other employment should refer to and comply with the standards in subpart F of this part).

(3) *Particular matter.* The term *particular matter* encompasses only

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matters that involve deliberation, decision, or action that is focused upon the interests or specific persons, or a discrete and identifiable class of persons. Such a matter is covered by this subpart even though it does not involve formal parties and may include governmental action such as legislation or policy making that is narrowly focused on the interests of such a discrete and identifiable class of persons. The term *particular matter,* however, does not extend to the consideration or adoption of broad policy options that are directed to the interests of a large and diverse group of persons. The particular matters covered by this subpart include a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, or arrest.

(4) *Personal and substantial.* To participate *personally* means to participate directly. It includes the direct and active supervision of the participation of a subordinate in the matter. To participate *substantially* means that the employee's involvement is of material significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter. Personal and substantial participation may occur when, for example, an employee participates through decision, approval, disapproval, recommendation, investigation, or the rendering of advice in a particular matter.

(c) *Disqualification.* Unless the employee is authorized to participate in the particular matter by virtue of a waiver described in paragraph (d) of this section or because the interest has been divested in accordance with paragraph (e) of this section, the employee shall disqualify himself from participating in a particular matter in which, to his knowledge, he or a person whose interests are imputed to him has a financial interest, if the particular matter will have a direct and predictable effect on that interest.

(1) *Documentation of disqualification.* Disqualification is accomplished by not participating in the particular matter. An employee need not file a written disqualification statement unless he is required by part 2634 of this chapter to file written evidence of compliance with an ethics agreement with the Office of Government Ethics or is asked by an agency ethics official to file a written disqualification statement. However, an employee may elect to create a record of his actions by providing written notice to a supervisor.

(2) *Notification to coworkers.* An employee who is not authorized to determine or to make his own assignments may, as a practical matter, need to notify his supervisor (or other person responsible for his assignments) of the disqualifying financial interest in order to permit the supervisor to make arrangements to fulfill the agency's responsibility in the matter. Appropriate oral or written notification of the employee's disqualification may be made to coworkers by the employee or a supervisor to ensure that the employee is not involved in a matter from which he is disqualified.

Example 1: A newly wed Army employee is negotiating an on-going procurement of amphibious landing equipment. He has just learned that his bride is the beneficiary of a family trust that holds 100 shares of stock in one for the offerors. Because this financial interest of his spouse is imputed to him for purposes of 18 U.S.C. 208(a), he cannot continue to participate in the procurement. Because he has already participated in the matter, the employee may wish to file a written disqualification statement with the person who assigned him to the procurement in order to create a written record that he withdrew from participation immediately upon learning of his imputed financial interest in the matter.

Example 2: An Assistant Secretary of the Department of the Interior owns recreational property that borders on land which is being considered for annexation to a national park. Annexation would increase the value of her vacation property and, thus, she is disqualified from participating in any way in the Department's deliberations or decisions regarding the annexation. Because she is responsible for determining which matters she will work on, she may accomplish her disqualification merely by ensuring that she does not participate in the matter. Because of the level of her position, however, the Assistant Secretary may, as a matter of prudence, wish to establish a record that she has acted properly by providing a written disqualification statement to an official superior and by providing written notification of the disqualification to subordinates to ensure that they do not raise or discuss with her any issues related to the annexation.

(d) *Waiver of disqualification.* An employee who would otherwise be disqualified by 18 U.S.C. 208(a) may be permitted to participate in a particular matter where the otherwise disqualifying financial interest is the subject of a regulatory or individual waiver described in this paragraph, or results from certain Indian birthrights as described in 18 U.S.C. 208(b)(4).

(1) *Regulatory waivers.* Under 18 U.S.C. 208(b)(2), regulatory waivers of general applicability may be issued by the Office of Government Ethics based on its determination that particular interests are too remote or too inconsequential to affect the integrity of the services of the employees to whom the waiver apply. Pending issuance of superseding regulatory waivers under this authority, agency regulatory waivers issued under 18 U.S.C. 208(b)(2) as in effect prior to November 30, 1989, continue to apply.

(2) *Individual waivers.* An individual waiver enabling the employee to participate in a particular matter may be issued under 18 U.S.C. 208(b)(1) if, in advance of the employee's participation:

(i) The employee:

(A) Advises the Government official responsible for the employee's appointment (or other Government official to whom authority to issue such a waiver for the employee has been delegated) about the nature and circumstances of the particular matter; and

(B) Makes full disclosure to such official of the nature and extent of the disqualifying financial interest; and

(ii) Such official determines, in writing, that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from each employee.

(3) *Federal advisory committee member waivers.* An individual waiver may be issued under 18 U.S.C. 208(b)(3) to a special Government employee serving on, or under consideration for appointment to, an advisory committee within the meaning of the Federal Advisory Committee Act if the Government official responsible for the employee's appointment (or other Government official to whom authority to issue such a waiver for the employee has been delegated):

(i) Reviews the financial disclosure report filed by the special Government employee pursuant to the Ethics in Government Act of 1978; and

(ii) Certifies in writing that the need for the individual's services outweighs the potential for a conflict of interest created by the disqualifying financial interest.

When practicable, an official is required to consult formally or informally with the Office of Government Ethics prior to granting a waiver referred to in paragraphs (d)(2) or (3) of this section. A copy of each such waiver is to be forwarded to the Director of the Office of Government Ethics.

(e) *Divestiture of a disqualifying financial interest.* Upon sale or other divestiture of the asset or other interest that causes his disqualification from participation in a particular matter, 18 U.S.C. 208(a) and paragraph (c) of this section will no longer prohibit the employee's participation in the matter.

(1) *Voluntary divestiture.* An employee who would otherwise be

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disqualified from participation in a particular matter may voluntarily sell or otherwise divest himself of the interest that causes the disqualification.

(2) *Directed divestiture.* An employee may be required to sell or otherwise divest himself of the disqualifying financial interest if his continued holding of that interest is prohibited by statute or by agency supplemental regulation issued in accordance with § 2635.403(a) of this subpart, or if the agency determines in accordance with § 2635.403(b) of this subpart that a substantial conflict exists between the financial interest and the employee's duties or accomplishments of the agency's mission.

An employee who is directed to divest an interest may be eligible to defer the tax consequences of divestiture under subpart J of part 2634 of this subchapter. An employee who voluntarily divests before obtaining a certificate of divestiture will not be eligible for this special tax treatment.

(f) *Official duties that give rise to potential conflicts.* Where an employee's official duties create a substantial likelihood that the employee may be assigned to a particular matter from which he is disqualified, the employee should, as a matter of prudence, advise his supervisor or other person responsible for his assignments of that potential so that conflicting assignments can be avoided, consistent with the agency's needs.

§ 2635.403 Prohibited financial interests.

An employee shall not acquire or hold any financial interest that he is prohibited from acquiring or holding by statute, by agency regulation issued in accordance with paragraph (a) of this section or by reason of an agency determination of substantial conflict under paragraph (b) of this section.

Note: There is no statute of Government-wide applicability prohibiting employees from holding or acquiring any financial interest. Statutory restrictions, if any, are contained in agency statutes.

(a) *Agency regulation prohibiting certain financial interests.* An agency may, by supplemental agency regulation, prohibit or restrict the acquisition or holding of a financial interest or a class of financial interests by agency employees, or any category of agency employees, based on the agency's determination that the acquisition or holding of such financial interests would cause a reasonable person to question the impartiality and objectivity with which agency programs are administered.

Note: Any prohibition on acquiring or holding a specific financial interest contained in an agency regulation, instruction or other issuance in effect prior to the effective date of this part shall, for employees of that agency, constitute a prohibited financial interest for purposes of this paragraph for one year after the effective date of this part or until issuance of an agency supplemental regulation, whichever occurs first.

(b) *Agency determination of substantial conflict.* An agency may prohibit or restrict an individual employee from acquiring or holding a financial interest or a class of financial interests based upon the agency's determination that the holding of such interest or interests will:

(1) Require the employee's disqualification from matters so central or critical to the performance of his official duties that the employee's ability to perform the duties of his position would be materially impaired; or

(2) Adversely affect the efficient accomplishment of the agency's mission because another employee cannot be readily assigned to perform work from which the employee would be disqualified by reason of the financial interest.

Example 1: An Air Force employee who owns stock in a major aircraft engine manufacturer is being considered for promotion to a position that involves responsibility for development of a new fighter airplane. Because engineering and other decisions about the Air Force's requirements for the fighter necessarily impact upon the nation's several engine manufacturers, the employee could not, by virtue of 18 U.S.C. 208(a), perform these significant duties of the position while retaining his stock in the company. The agency can require the employee to sell his stock as a condition of being selected for the position.

(c) *Definition of financial interest.* (1) Except as provided in paragraph (c)(2) of this section, the term *financial interest* is limited to financial interests that are owned by the employee or that are both imputed to the employee under § 2635.402(b)(2) of this subpart and controlled by the employee. However, the term is not limited to only those financial interests that would be disqualifying under 18 U.S.C. 208(a) and § 2635.402 of this subpart. The term includes any current or contingent ownership, equity, or security interest in real or personal property or a business and may include an indebtedness or compensated employment relationship. It thus includes, for example, interests in the nature of stocks, bonds, partnership interests, fee and leasehold interests, mineral and other property rights, deeds of trust, and liens, and extends to any right to purchase or acquire any such interest, such as a stock option or commodity future. It does not include a future interest created by someone other than the employee, his spouse, or dependent child or any right as a beneficiary of an estate that has not been settled.

Example 1: A regulatory agency wishes to issue a supplemental agency regulation to prohibit employees from acquiring stock or bonds in regulated entities. Because an employee will generally not control his spouse's independent investments, the agency may not prohibit the independent acquisition of such stock or bonds by an employee's spouse. However, because a spouse's financial interests are imputed to the employee under 18 U.S.C. 208(a), a spouse's holding of stock in a regulated entity may result in the employee's disqualification from particular duties or other appropriate administrative remedies.

(2) The term *financial interest* includes service, with or without compensation, as an officer, director, trustee, general partner or employee of any person, including a nonprofit entity, whose financial interests are imputed to the employee under § 2635.402(b)(2)(iii) or (iv) or this subpart.

Example 1: Because the Foundation for Preservation of Wild Horses routinely comments on all rulemaking affecting the use of Federal grasslands, the Bureau of Land Management may require that an employee resign from his uncompensated position as Vice President of the Foundation as a condition of his promotion to a policy-level position with the Bureau.

(d) *Reasonable period to divest or terminate.* Whenever an agency directs divestiture of a financial interest under paragraph (a) or (b) of this section, the employee shall be given a reasonable period of time, considering the nature of his particular duties and the nature and marketability of the interest, within which to comply with the agency's direction. Except in cases of unusual hardship, as determined by the agency, a reasonable period shall not exceed 90 days from the date divestiture is first directed. However, as long as the employee continues to hold the financial interest, he remains subject to any restrictions imposed by this subpart.

(e) *Eligibility for special tax treatment.* An employee required to sell or otherwise divest a financial interest may be eligible to defer the tax consequences of divestiture under subpart J of part 2634 of this subchapter.

Subpart E—Impartiality in Performing Official Duties

§ 2635.501 Overview.

(a) This subpart contains two provisions intended to ensure that an

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Example 1: A regulatory agency wishes to issue a supplemental agency regulation to prohibit employees from acquiring stock or bonds in regulated entities. Because an employee will generally not control his spouse's independent investments, the agency may not prohibit the independent acquisition of such stock or bonds by an employee's spouse. However, because a spouse's financial interests are imputed to the employee under 18 U.S.C. 208(a), a spouse's holding of stock in a regulated entity may result in the employee's disqualification from particular duties or other appropriate administrative remedies.

(2) The term *financial interest* includes service, with or without compensation, as an officer, director, trustee, general partner or employee of any person, including a nonprofit entity, whose financial interests are imputed to the employee under § 2635.402(b)(2)(iii) or (iv) or this subpart.

Example 1: Because the Foundation for Preservation of Wild Horses routinely comments on all rulemaking affecting the use of Federal grasslands, the Bureau of Land Management may require that an employee resign from his uncompensated position as Vice President of the Foundation as a condition of his promotion to a policy-level position with the Bureau.

(d) *Reasonable period to divest or terminate.* Whenever an agency directs divestiture of a financial interest under paragraph (a) or (b) of this section, the employee shall be given a reasonable period of time, considering the nature of his particular duties and the nature and marketability of the interest, within which to comply with the agency's direction. Except in cases of unusual hardship, as determined by the agency, a reasonable period shall not exceed 90 days from the date divestiture is first directed. However, as long as the employee continues to hold the financial interest, he remains subject to any restrictions imposed by this subpart.

(e) *Eligibility for special tax treatment.* An employee required to sell or otherwise divest a financial interest may be eligible to defer the tax consequences of divestiture under subpart J of part 2634 of this subchapter.

Subpart E—Impartiality in Performing Official Duties

§ 2635.501 Overview.

(a) This subpart contains two provisions intended to ensure that an

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employee takes appropriate steps to avoid an appearance of loss of impartiality in the performance of his official duties. Under § 2635.502 of this subpart, unless he receives prior authorization, an employee should not participate in a particular matter involving specific parties which he knows is likely to affect the financial interests of a member of his household, or in which he knows a person with whom he has a covered relationship is or represents a party, if a reasonable person with knowledge of the relevant facts would question his impartiality in the matter. An employee who is concerned that other circumstances would raise a question regarding his impartiality should use the process described in § 2635.502 of this subpart to determine whether he should or should not participate in a particular matter.

(b) Under § 2635.503 of this subpart, an employee who has received an extraordinary severance or other payment from a former employer prior to entering Government service is subject, in the absence of a waiver, to a two-year period of disqualification from participation in particular matters in which that former employer is or represents a party.

Note: Questions regarding impartiality necessarily arise when an employee's official duties impact upon the employee's own financial interests or those of certain other persons, such as the employee's spouse or minor child. An employee is prohibited by criminal statute, 18 U.S.C. 208(a), from participating personally and substantially in an official capacity in any particular matter on which, to his knowledge, he, his spouse, general partner or minor child has a financial interest, if the particular matter will have a direct and predictable effect on that interest. The statutory prohibition also extends to an employee's participation in a particular matter in which, to his knowledge, an organization in which the employee is serving as officer, director, trustee, general partner or employee, or with whom he is negotiating or has an arrangement concerning prospective employment has a financial interest. Where the employee's participation in a particular matter would affect any one of these financial interests, the standards set forth in subparts D or F of this part apply and only a statutory waiver, as described respectively in §§ 2635.402(d) and 2635.605(a) of this part, will enable the employee to participate in that matter. The authorization procedures in § 2635.502(d) of this subpart may not be used to authorize an employee's participation in any such matter. The granting of a statutory waiver will be deemed to constitute a determination that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of agency programs and operations.

§ 2635.502 Personal and business relationships.

(a) *Consideration of appearances by the employee.* Where an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his household, or that a person with whom he has a covered relationship is or represents a party to such matter, and where the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has informed the agency designee of the appearance problem and received authorization from the agency designee in accordance with paragraph (d) of this section.

(1) In considering whether a relationship would cause a reasonable person to question his impartiality, an employee may seek the assistance of his supervisor, an agency ethics official or the agency designee.

(2) An employee who is concerned that circumstances other than those specifically described in this section would raise a question regarding his impartiality should use the process described in this section to determine whether he should or should not participate in a particular matter.

(b) *Definitions.* For purposes of this section:

(1) An employee has a *covered relationship* with:

(i) A person, other than a prospective employer described in § 2635.603(c) of this part, with whom the employee has or seeks a business, contractual or other financial relationship that involves other than a routine consumer transaction;

Note: An employee who is seeking employment within the meaning of § 2635.603 of this part shall comply with subpart F of this part rather than with this section.

(ii) A person who is a member of the employee's household, or who is a relative with whom the employee has a close personal relationship;

(iii) A person for whom the employee's spouse, parent or dependent child is, to the employee's knowledge, serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee;

(iv) Any person for whom the employee has, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee; or

(v) An organization, other than a political party described in 26 U.S.C. 527(e), in which the employee is an active participant. Participation is active if, for example, it involves service as an official of the organization or in a capacity similar to that of a committee or subcommittee chairperson, or participation in directing the activities of the organization. In other cases, significant time devoted to promoting specific programs of the organization, including coordination of fundraising efforts, is an indication of active participation. Payment of dues or the donation or solicitation of financial support does not, in itself, constitute active participation.

(2) *Direct and predictable effect* has the meaning set forth in § 2635.402(b)(1) of this part.

(3) *Particular matter involving specific parties* has the meaning set forth in § 2637.102(a)(7) of this subchapter.

Example 1: An employee of the General Services Administration has made an offer to purchase a restaurant owned by a local developer. The developer has submitted an offer in response to a GSA solicitation for lease of office space. Under the circumstances, she would be correct in concluding that a reasonable person would be likely to question her impartiality if she were to participate in evaluating that developer's or its competitor's lease proposal.

Example 2: An employee of the Department of Labor is providing technical assistance in drafting occupational safety and health legislation that will affect all employers of 5 or more persons. His wife is employed as an administrative assistant by a large corporation that will incur additional costs if the proposed legislation is enacted. Because the legislation is not a particular matter involving specific parties, the employee may continue to work on the legislation and need not be concerned that his wife's employment with an affected corporation would raise a question concerning his impartiality.

Example 3: An employee of the Defense Logistics Agency who has responsibilities for testing avionics being produced by an Air Force contractor has just learned that his sister-in-law has accepted employment as an engineer with the contractor's parent corporation. The employee should readily conclude that, under the circumstances, a reasonable person would not be likely to question his impartiality if he were to continue to perform his test and evaluation responsibilities.

Example 4: An engineer has just resigned from her position as vice president of an electronics company in order to accept employment with the Federal Aviation Administration in a position involving procurement responsibilities. Although the employee did not receive an extraordinary payment in connection with her resignation and has severed all financial ties with the firm, under the circumstances she would be correct in concluding that her former service as an officer of the company would be likely to cause a reasonable person to question her impartiality if she were to participate in the administration of a DOT contract for which the firm is a first-tier subcontractor.

Example 5: An employee of the Internal Revenue Service is a member of a private organization whose purpose is to restore a Victorian-era railroad station and she chairs its annual fundraising drive. Under the circumstances the employee would be correct in concluding that her active membership in the organization would be likely to cause a reasonable person to question her impartiality if she were to participate in an IRS determination regarding the tax-exempt status of the organization.

(c) *Determination by agency designee.* Where he has information concerning a potential appearance problem arising from the financial interest of a member of the employee's household in a particular matter involving specific parties, or from the role in such matter of a person with whom the employee has a covered relationship, the agency designee may make an independent determination as to whether a reasonable person with knowledge of the relevant facts would be likely to question the employee's impartiality in the matter. Ordinarily, the agency designee's determination will be initiated by information provided by the employee pursuant to paragraph (a) of this section. However, at any time, including after the employee has disqualified himself from participation in a matter pursuant to paragraph (e) of this section, the agency designee may make this determination on his own initiative or when requested by the employee's supervisor or any other person responsible for the employee's assignment.

(1) If the agency designee determines that the employee's impartiality is likely to be questioned, he shall then determine, in accordance with paragraph (d) of this section, whether the employee should be authorized to participate in the matter. Where the agency designee determines that the employee's participation should not be authorized, the employee will be disqualified from participation in the matter in accordance with paragraph (e) of this section.

(2) If the agency designee determines that the employee's impartiality is not likely to be questioned, he may advise the employee, including an employee who has reached a contrary conclusion under paragraph (a) of this section, that the employee's participation in the matter would be proper.

(d) *Authorization by agency designee.* Where an employee's participation in a particular matter involving specific parties would not violate 18 U.S.C. 208(a), but would raise a question in the mind of a reasonable person about his impartiality, the agency designee may authorize the employee to participate in the matter based on a determination, made in light of all relevant circumstances, that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations. Factors which may be taken into consideration include:

(1) The nature of the relationship involved;

(2) The effect that resolution of the matter would have upon the financial interests of the person involved in the relationship;

(3) The nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;

(4) The sensitivity of the matter;

(5) The difficulty of reassigning the matter to another employee; and

(6) Adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

Authorization by the agency designee should, at the agency designee's discretion, be documented in writing. An employee who has been authorized to participate in a particular matter involving specific parties may not thereafter disqualify himself from participation in the matter on the basis of an appearance problem involving the same circumstances that have been considered by the agency designee.

Example 1: The Deputy Director of Personnel for the Department of the Treasury and an attorney with the Department's Office of General Counsel are general partners in a real estate partnership. The Deputy Director advises his supervisor, the Director of Personnel, of the relationship upon being assigned to a selection panel for a position for which his partner has applied. If selected, the partner would receive a substantial increase in salary. The Director must appoint another person to replace the Deputy Director on the selection panel. The agency designee cannot authorize the Deputy Director to participate on the panel under the authority of this section since the Deputy Director is prohibited by criminal statute, 18 U.S.C. 208(a), from participating in a particular matter affecting the financial interest of a person who is his general partner. See § 2635.402 of this part.

Example 2: A new employee of the Securities and Exchange Commission is assigned to an investigation of insider trading by the brokerage house where she had recently been employed. Because of the sensitivity of the investigation, the agency designee may be unable to conclude that the Government's interest in the employee's participation in the investigation outweighs the concern that a reasonable person may question the integrity of the investigation, even though the employee has severed all financial ties with the company. Based on consideration of all relevant circumstances, the agency designee might determine, however, that it is in the interest of the Government for the employee to pass on a routine filing by the particular brokerage house.

Example 3: An Internal Revenue Service employee involved in a long and complex tax audit is advised by her son that he has just accepted an entry-level management position with a corporation whose taxes are the subject of the audit. Because the audit is essentially complete and because the employee is the only one with an intimate knowledge of the case, the agency designee might determine, after considering all relevant circumstances, that it is in the Government's interest for the employee to complete the audit, which is subject to additional levels of review.

(e) *Disqualification.* Unless the employee is authorized to participate in the matter under paragraph (d) of this section, an employee shall not participate in a particular matter involving specific parties when he or the agency designee has concluded, in accordance with paragraph (a) or (c) of this section, that the financial interest of a member of the employee's household, or the role of a person with whom he has a covered relationship, is likely to raise a question in the mind of a reasonable person about his impartiality.

(1) *Documentation of disqualification.* Disqualification is accomplished by not participating in the matter. An employee need not file a written disqualification statement unless he is required by part 2634 of this chapter to file written evidence of compliance with an ethics agreement with the Office of Government Ethics or is specifically asked by an agency ethics official to file a written disqualification statement. However, an employee may elect to create a record of his actions by providing written notice to a supervisor.

(2) *Notification to coworkers.* An employee who is not authorized to determine or to make his own assignments may, as a practical matter, need to notify his supervisor (or other person responsible for his assignments) of the relationship that gives rise to the obligation of disqualification in order to permit the supervisor to make arrangements to fulfill the agency's responsibility in the matter or to give or seek authorization to permit the employee's participation pursuant to paragraph (d) of this section. Appropriate oral or written notification of the employee's disqualification may be made to coworkers by the employee

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Example 3: An Internal Revenue Service employee involved in a long and complex tax audit is advised by her son that he has just accepted an entry-level management position with a corporation whose taxes are the subject of the audit. Because the audit is essentially complete and because the employee is the only one with an intimate knowledge of the case, the agency designee might determine, after considering all relevant circumstances, that it is in the Government's interest for the employee to complete the audit, which is subject to additional levels of review.

(e) *Disqualification.* Unless the employee is authorized to participate in the matter under paragraph (d) of this section, an employee shall not participate in a particular matter involving specific parties when he or the agency designee has concluded, in accordance with paragraph (a) or (c) of this section, that the financial interest of a member of the employee's household, or the role of a person with whom he has a covered relationship, is likely to raise a question in the mind of a reasonable person about his impartiality.

(1) *Documentation of disqualification.* Disqualification is accomplished by not participating in the matter. An employee need not file a written disqualification statement unless he is required by part 2634 of this chapter to file written evidence of compliance with an ethics agreement with the Office of Government Ethics or is specifically asked by an agency ethics official to file a written disqualification statement. However, an employee may elect to create a record of his actions by providing written notice to a supervisor.

(2) *Notification to coworkers.* An employee who is not authorized to determine or to make his own assignments may, as a practical matter, need to notify his supervisor (or other person responsible for his assignments) of the relationship that gives rise to the obligation of disqualification in order to permit the supervisor to make arrangements to fulfill the agency's responsibility in the matter or to give or seek authorization to permit the employee's participation pursuant to paragraph (d) of this section. Appropriate oral or written notification of the employee's disqualification may be made to coworkers by the employee

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or a supervisor to ensure that the employee is not involved in a particular matter involving specific parties from which he is disqualified.

(f) *Relevant considerations.* An employee's reputation for honesty and integrity is not a relevant consideration for purposes of any determination required by this section.

§ 2635.503 Extraordinary payments from former employers.

(a) *Disqualification requirement.* Except as provided in paragraph (c) of this section, an employee shall be disqualified for two years from participating in any particular matter in which a former employer is a party or represents a party if he received an extraordinary payment from that person prior to entering Government service. The two-year period of disqualification begins to run on the date that the extraordinary payment is received.

Example 1: Following his confirmation hearings and one month before his scheduled swearing in, a nominee to the position of Assistant Secretary of a department received an extraordinary payment from his employer. For one year and 11 months after his swearing in, the Assistant Secretary may not participate in any particular matter to which his former employer is a party.

Example 2: An employee received an extraordinary payment from her former employer, a coal mine operator, prior to entering on duty with the Department of the Interior. She may not participate in a determination regarding her former employer's obligation to reclaim a particular mining site, because her former employer is a party to the matter. However, she may help to draft reclamation legislation affecting all coal mining operations because this legislation does not involve any parties.

(b) *Definitions.* For purposes of this section, the following definitions shall apply:

(1) *Extraordinary payment* means any item, including cash or an investment interest, with a value in excess of $10,000, which is paid:

(i) On the basis of a determination made after it became known to the former employer that the individual was being considered for or had accepted a Government position; and

(ii) Other than pursuant to the former employer's established compensation, partnership, or benefits program. A compensation, partnership, or benefits program will be deemed an established program if it is contained in bylaws, a contract or other written form, or if there is a history of similar payments made to others not entering into Federal service.

Example 1: Upon being nominated for a position as an ambassador, the vice president of a small corporation announced his intention to resign his vice presidency upon confirmation. Upon his resignation, the corporation voted to give him a gratuitous payment of $50,000, in recognition of his service as a corporate officer, in addition to the regular severance payment provided for by the corporate bylaws. The regular severance payment is not an extraordinary payment. The gratuitous payment of $50,000 is an extraordinary payment, since the corporation had not made similar payments to other departing officers.

(2) *Former employer* includes any person which the employee served as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee.

(c) *Waiver of disqualification.* The disqualification requirement of this section may be waived based on a finding that the amount of the payment was not so substantial as to cause a reasonable person to question the employee's ability to act impartially in a matter in which the former employer is or represents a party. The waiver shall be in writing and may be given only by the head of the agency or, where the recipient of the payment is the head of the agency, by the President or his designee. Waiver authority may be delegated by agency heads to any person who has been delegated authority to issue individual waivers under 18 U.S.C. 208(b) for the employee who is the recipient of the extraordinary payment.

Subpart F—Seeking Other Employment

§ 2635.601 Overview.

This subpart contains a disqualification requirement that applies to employees when seeking employment with persons who otherwise would be affected by the performance or nonperformance of the employees' official duties. Specifically, it addresses the requirement of 18 U.S.C. 208(a) that an employee disqualify himself from participation in any particular matter that will have a direct and predictable effect on the financial interests of a person "with whom he is negotiating or has any arrangement concerning prospective employment." Beyond this statutory requirement, it also addresses the issues of lack of impartiality that require disqualification from particular matters affecting the financial interests of a prospective employer when an employee's actions in seeking employment fall short of actual employment negotiations.

§ 2635.602 Applicability and related considerations.

To ensure that he does not violate 18 U.S.C. 208(a) or the principles of ethical conduct contained in § 2635.101(b) of this part, an employee who is seeking employment or who has an arrangement concerning prospective employment shall comply with the applicable disqualification requirements of §§ 2635.604 and 2635.606 of this subpart if the employee's official duties would affect the financial interests of a prospective employer or of a person with whom he has an arrangement concerning prospective employment. Compliance with this subpart also will ensure that the employee does not violate subpart D or E of this part.

Note: An employee who is seeking employment with a person whose financial interests are not affected by the performance of nonperformance of his official duties has no obligation under this subpart. An employee may, however, be subject to other statutes which impose restrictions on employment contacts or discussions, such as 41 U.S.C. 423(b)(1), applicable to procurement officials, and 10 U.S.C. 2397a, applicable to certain employees of the Department of Defense.

(a) *Related employment restrictions*—(1) *Outside employment while a Federal employee.* An employee who is contemplating outside employment to be undertaken concurrently with his Federal employment must abide by any limitations applicable to his outside activities under subparts G and H of this part. He must also comply with any disqualification requirement that may be applicable under subpart D of this part as a result of his outside employment activities.

(2) *Post-employment restrictions.* An employee who is contemplating employment to be undertaken following the termination of his Federal employment should consult an agency ethics official to obtain advice regarding any post-employment restrictions that may be applicable. Regulations implementing the Government-wide post-employment statute, 18 U.S.C. 207, are contained in parts 2637 and 2641 of this subchapter. Employees are cautioned that they may be subject to additional statutory restrictions on their post-employment activities.

(b) *Interview trips and entertainment.* Where a prospective employer who is a prohibited source as defined in § 2635.203(d) of this part offers to reimburse an employee's travel expenses, or provide other reasonable amenities, incident to employment discussions, the employee may accept such amenities only in accordance with the gift standards in subpart B of this part.

§ 2635.603 Definitions.

For purposes of this subpart:

(a) *Employment* means any form of non-Federal employment or business relationship involving the provision of personal services by the employee, whether to be undertaken at the same time as or subsequent to Federal employment. It includes but is not limited to personal services as an officer, director, employee, agent, consultant, general partner, or trustee.

Example 1: An employee of the Bureau of Indian Affairs who has announced her intention to retire is approached by tribal representatives concerning a possible consulting contract with the tribe. The independent contractual relationship the tribe wishes to negotiate is employment for purposes of this subpart.

Example 2: An employee of the Department of Health and Human Services is invited to a meeting with officials of a corporation to discuss the possibility of his serving as a member of the corporation's board of directors. Service as a member of the board of directors constitutes employment for purposes of this subpart.

(b) An employee is *seeking employment* once he has begun seeking employment within the meaning of paragraph (b)(1) of this section and until he is no longer seeking employment within the meaning of paragraph (b)(2) of this section.

(1) An employee has begun seeking employment if he has directly or indirectly:

(i) Engaged in negotiations for employment with any person. For these purposes, as for 18 U.S.C. 208(a), the term *negotiations* means discussion or communication with another person, or such person's agent or intermediary, mutually conducted with a view toward reaching an agreement regarding possible employment with that person. The term is not limited to discussions of specific terms and conditions of employment in specific position;

(ii) Made an unsolicited communication to any person, or such person's agent or intermediary, regarding possible employment with that person. However, the employee has not begun seeking employment if that communication was:

(A) For the sole purpose of requesting a job application; or

(B) By a special Government employee for the purpose of submitting a resume or other employment proposal to a person affected by the performance or nonperformance of the employee's duties only as part of an industry or other discrete class. The special Government employee will be considered to have begun seeking employment upon receipt of any response indicating an interest in employment discussions; or

(iii) Made a response other than rejection to an unsolicited communication from any person, or such person's agent or intermediary, regarding possible employment with that person.

(2) An employee is no longer seeking employment when:

(i) The employee or the prospective employer rejects the possibility of employment and all discussions of possible employment have terminated; or

(ii) Two months have transpired after the employee's dispatch of an unsolicited resume or employment proposal, provided the employee has received no indication of interest in employment discussions from the prospective employer.

(3) For purposes of this definition, a response that defers discussions until the foreseeable future does not constitute rejection of an unsolicited employment overture, proposal, or resume nor rejection of a prospective employment possibility.

Example 1: An employee of the Health Care Financing Administration is complimented on her work by an official of a State Health Department who asks her to call if she is ever interested in leaving Federal service. The employee explains to the State official that she is very happy with her job at HCFA and is not interested in another job. She thanks him for his compliment regarding her work and adds that she'll remember his interest if she ever decides to leave the Government. The employee has rejected the unsolicited employment overture and has not begun seeking employment.

Example 2: The employee in the preceding example responds by stating that she cannot discuss future employment while she is working on a project affecting the State's health care funding but would like to discuss employment with the State when the project is completed. Because the employee has merely deferred employment discussions until the foreseeable future, she has begun seeking employment with the State Health Department.

Example 3: An employee of the Defense Contract Audit Agency is auditing the overhead accounts of an Army contractor. While at the contractor's headquarters, the head of the contractor's accounting division tells the employee that his division is thinking about hiring another accountant and asks whether the employee might be interested in leaving DCAA. The DCAA employee says he is interested in knowing what kind of work would be involved. They discuss the duties of the position the accounting division would like to fill and the DCAA employee's qualifications for the position. They do not discuss salary. The head of the division explains that he has not yet received authorization to fill the particular position and will get back to the employee when he obtains the necessary approval for additional staffing. The employee and the contractor's official have engaged in negotiations regarding possible employment. The employee has begun seeking employment with the Army contractor.

Example 4: An employee of the Occupational Safety and Health Administration helping to draft safety standards applicable to the textile industry has mailed his resume to 25 textile manufacturers. He has begun seeking employment with all twenty-five. If he does not receive a response from any of the resume recipients indicating an interest in employment discussions, the employee will be seeking employment with each resume recipient for 2 months from the date the particular resume was dispatched. However, if he withdraws his application from any recipient or if he is notified within the 2-month period that his resume has been rejected by that recipient, he will no longer be seeking employment with that particular person as of the date he makes such withdrawal or receives such notification.

Example 5: A special Government employee of the Federal Deposit Insurance Corporation assisting in drafting rules applicable to all member banks mails an unsolicited letter to a member bank offering her services as a contract consultant. She has not begun seeking employment with the bank until she receives some response indicating an interest in discussing her employment proposal. A letter merely acknowledging receipt of the proposal is not an indication of interest in employment discussions.

(c) *Prospective employer* means any person with whom the employee is seeking employment. Where contacts that constitute seeking employment are made by or with an agent or other intermediary, the term prospective employer includes:

(1) A person who uses that agent or other intermediary for the purpose of seeking to establish an employment relationship with the employee if the agent identifies the prospective employer to the employee; and

(2) A person contacted by the employee's agent or other intermediary for the purpose of seeking to establish an employment relationship if the agent identifies the prospective employer to the employee.

Example 1: An employee of the Federal Aviation Administration has overall responsibility for airport safety inspections in a three-state area. She has retained an employment search firm to help her find another job. The search firm has just reported to the FAA employee that it has given her resume to and had promising discussions with two airport authorities within her jurisdiction. Even though the employee has not personally had employment discussions with either, each airport authority is her prospective employer. She began seeking employment with each upon learning its identity and that it has been given her resume.

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(2) A person contacted by the employee's agent or other intermediary for the purpose of seeking to establish an employment relationship if the agent identifies the prospective employer to the employee.

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(d) *Direct and predictable effect* and *particular matter* have the respective meanings set forth in § 2635.402(b) (1) and (3) of this part.

§ 2635.604 Disqualification while seeking employment.

(a) *Obligation to disqualify.* Unless the employee's participation is authorized in accordance with § 2635.605 of this subpart, the employee shall not participate in a particular matter that, to his knowledge, has a direct and predictable effect on the financial interests of a prospective employer with whom he is negotiating for employment within the meaning of § 2635.603(b) of this subpart. An employee who wishes to initiate employment contacts with a person whose financial interests he knows will be directly affected by a particular matter to which he is assigned shall take steps necessary to effect such disqualification before beginning to seek employment with that person.

(b) *Documentation of disqualification.* Disqualification is accomplished by not participating in the particular matter. An employee need not file a written disqualification statement unless he is required by part 2634 of this chapter to file written evidence of compliance with an ethics agreement with the Office of Government Ethics or is specifically asked by an agency ethics official to file a written disqualification statement. However, an employee may elect to create a record of his actions by providing written notice to a supervisor.

(c) *Notification to coworkers.* An employee who is not authorized to determine or to make his own assignments may, as a practical matter, need to notify his supervisor (or other person responsible for his assignments) of the disqualifying financial interest in order to permit the supervisor to make arrangements to fulfill the agency's responsibility in the matter. Appropriate oral or written notification of the employee's disqualification may be made to coworkers by the employee or a supervisor to ensure that the employee is not involved in a matter from which he is disqualified.

Example 1: An employee of the Department of Veterans Affairs is participating in the audit of a contract for laboratory support services. Before sending his resume to a lab which is a subcontractor under the VA contract, the employee should disqualify himself from participation in the audit. Since he cannot withdraw from participation in the contract audit without the approval of his supervisor, he will have to disclose his intentions to his supervisor in order to have his work assignment changed.

Example 2: An employee of the Food and Drug Administration is contacted in writing by a pharmaceutical company concerning possible employment with the company. The employee is actively involved in formulating recommendations to improve particular testing procedures that would directly affect the company. Before making a response that is not a rejection, the employee should disqualify himself from further participation in formulating testing procedures. Where he has authority to ask his colleague to assume his responsibility in the matter, he may accomplish his disqualification by transferring the work to that coworker. However, to ensure that his colleague and others with whom he had been working on the recommendations do not seek his advice regarding testing or otherwise involve him in the matter, it may be necessary for him to advise those individuals of his disqualification.

Example 3: The General Counsel of a regulatory agency wishes to engage in discussions regarding possible employment as corporate counsel of a regulated entity. Matters directly affecting the financial interests of the regulated entity are pending within the Office of General Counsel, but the General Counsel will not be called upon to act in any such matter because signature authority for that particular class of matters has been delegated to an Assistant General Counsel. Because the General Counsel is responsible for assigning work within the Office of General Counsel, he can in fact accomplish his disqualification by simply avoiding any involvement in matters affecting the regulated entity. However, because it is likely to be assumed by others that the General Counsel is involved in all matters within the cognizance of the Office of General Counsel, he may, as a matter of prudence, wish to file a written disqualification statement with the Commissioners of the regulatory agency and provide his subordinates with written notification of his disqualification, or he may be specifically asked by an agency ethics official to file a written disqualification statement.

Example 4: A scientist is employed by the National Science foundation as a special Government employee to serve on a panel that reviews grant applications to fund research relating to deterioration of the ozone layer. She is discussing possible employment as a member of the faculty of a university that several years earlier received an NSF grant to study the effect of fluorocarbons, but has no grant application pending. As long as the university does not submit a new application for the panel's review, the employee would not have to take any action to effect disqualification.

(d) *Agency determination of substantial conflict.* Where the agency determines that the employee's action in seeking employment with a particular person will require his disqualification from matters so central or critical to the performance of his official duties that the employee's ability to perform the duties of his position would be materially impaired, the agency may allow or direct the employee to take annual leave or leave without pay while seeking employment, or may take other appropriate administrative action.

§ 2635.605 Waiver or authorization permitting participation while seeking employment.

(a) *Waiver.* Where, as defined in § 2635.603(b)(1)(i) of this subpart, an employee is engaged in discussions that constitute employment negotiations for purposes of 18 U.S.C. 208(a), the employee may participate in a particular matter that has a direct and predictable effect on the financial interests of a prospective employer only after receiving a written waiver issued under the authority of 18 U.S.C. 208(b)(1) or (b)(3). These waivers are described in § 2635.402(d) of this part.

Example 1: An employee of the Department of Agriculture has had two telephone conversations with an orange grower regarding possible employment. They have discussed the employee's qualifications for a particular position with the grower, but have not yet discussed salary or other specific terms of employment. The employee is negotiating for employment within the meaning of 18 U.S.C. 208(a) and § 2635.603(b)(1)(i) of this subpart. In the absence of a written waiver issued under 18 U.S.C. 208(b)(1), she may not take official action on a complaint filed by a competitor alleging that the grower has shipped oranges in violation of applicable quotas.

(b) *Authorization by agency designee.* Where an employee is seeking employment within the meaning of § 2635.603(b)(1) (ii) or (iii) of this subpart, a reasonable person would be likely to question his impartiality if he were to participate in a particular matter that has a direct and predictable effect on the financial interests of any such prospective employer. The employee may participate in such matters only where the agency designee has authorized his participation in accordance with the standards set forth in § 2635.502(d) of this part.

Example 1: Within the past month, an employee of the Education Department mailed her resume to a university. She is thus seeking employment with the university within the meaning of § 2635.603(b)(1)(ii) of this subpart even though she has received no reply. In the absence of specific authorization by the agency designee in accordance with § 2635.502(d), she may not participate in an assignment to review a grant application submitted by the university.

§ 2635.606 Disqualification upon conclusion of employment negotiations.

(a) *Offer accepted.* An employee who has sought and accepted employment shall be disqualified from taking official action in a particular matter that has a direct and predictable effect on the financial interests of the person by whom he is employed or with whom he has an arrangement concerning future employment, unless authorized to participate in the matter by a written waiver issued under the authority of 18 U.S.C. 208 (b)(1) or (b)(3). These waivers are described in § 2635.402(d) of this part.

Example 1: A military officer has accepted a job with a defense contractor to begin in 6 months, after his retirement from military service. During the period that he remains with the Government, the officer may not participate in the administration of a contract with that particular defense contractor unless he has received a written waiver under the authority of 18 U.S.C. 208(b)(1).

(b) *Offer rejected or not made.* The agency designee for the purpose of § 2635.502(c) of this part may, in an appropriate case, determine that an employee not covered by the preceding paragraph who has sought but is no longer seeking employment nevertheless shall be subject to a period of disqualification upon the conclusion of employment negotiations. Any such determination shall be based on a consideration of all relevant factors, including those listed in § 2635.502(d) of this part, and a determination that the concern that a reasonable person may question the integrity of the agency's decisionmaking process outweighs the Government's interest in the employee's participation in the matter.

Example 1: An employee of the Securities and Exchange Commission was relieved of responsibility for an investigation of a broker-dealer while seeking employment with the law firm representing the broker-dealer in that matter. The firm did not offer her the partnership position she sought. Even though she is no longer seeking employment with the firm, she may continue to be disqualified from participating in the investigation based on a determination by the agency designee that the concern that a reasonable person might question whether, in view of the history of the employment negotiations, she could act impartially if the matter outweighs the Government's interest in her participation.

Subpart G—Misuse of Position

§ 2635.701 Overview.

This subpart contains provisions relating to the proper use of official time and authority, and of information and resources to which an employee has access because of his Federal employment. This subpart sets forth standards relating to:

(a) Use of public office for private gain;

(b) Use of nonpublic information;

(c) Use of Government property; and

(d) Use of official time.

§ 2635.702 Use of public office for private gain.

An employee shall not use his public office for his own private gain or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity, including nonprofit organizations of which the employee is an officer or member, and persons with whom the employee has or seeks employment or business relations. The specific prohibitions set forth in paragraphs (a) through (d) of this section apply this general principle, but are not intended to be exclusive or to limit the application of this section.

(a) *Inducement or coercion of benefits.* An employee shall not use or permit the use of his Government position or title or any authority with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

Example 1: Offering to pursue a relative's consumer complaint over a household appliance, an employee of the Securities and Exchange Commission called the general counsel of the manufacturer and, in the course of discussing the problem, stated that he worked at the SEC and was responsible for reviewing the company's filings. The employee violated the prohibition against use of public office for private gain by invoking his official authority in an attempt to influence action to benefit his relative.

Example 2: An employee of the Department of Commerce was asked by a friend to determine why his firm's export license had not yet been granted by another office within the Department of Commerce. At a department-level staff meeting, the employee raised as a matter for official inquiry the delay in approval of the particular license and asked that the particular license be expedited. The official used her public office in an attempt to benefit her friend and, in acting as her friend's agent for the purpose of pursuing the export license with the Department of Commerce, also violated 18 U.S.C. 205.

(b) *Appearance of governmental sanction.* Except as otherwise provided in this part, an employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that could reasonably be construed to imply that his agency or the Government sanctions or endorses his personal activities or those of another. When teaching, speaking, or writing in a personal capacity, he may refer to his official title or position only as permitted by § 2635.807(b) of this part. He may sign a letter of recommendation using his official title only in response to a request for an employment recommendation or character reference based upon personal knowledge of the ability or character of an individual with whom he has dealt in the course of Federal employment or whom he is recommending for Federal employment.

Example 1: An employee of the Department of the Treasury who is asked to provide a letter of recommendation for a former subordinate on his staff may provide the recommendation using official stationery and may sign the letter using his official title. If, however, the request is for the recommendation of a personal friend with whom he has not dealt in the Government, the employee should not use official stationery or sign the letter of recommendation using his official title, unless the recommendation is for Federal employment. In writing the letter of recommendation for his personal friend, it may be appropriate for the employee to refer to his official position in the body of the letter.

(c) *Endorsements.* Except in furtherance of statutory authority to promote products, services or enterprises, an employee shall not use or permit the use of his Government position or title or any authority associated with his public office to endorse any product, service, or enterprise.

Example 1: A Commissioner of the Consumer Product Safety Commission may not appear in a television commercial in which she endorses an electrical appliance produced by her former employer, stating that it has been found by the CPSC to be safe for residential use.

Example 2: A Foreign Commercial Service officer from the Department of Commerce is asked by a United States telecommunications company to meet with representatives of the Government of Spain, which is in the process of procuring telecommunications services and equipment. The company is bidding against five European companies and the statutory mission of the Department of Commerce includes assisting the export activities of U.S. companies. As part of his official duties, the Foreign Commercial Service officer may meet with Spanish officials and explain the advantages of procuring from the United States company.

Example 3: An employee of the National Aeronautics and Space Administration who works on weekends as an automobile salesman cannot be featured in a television commercial that advertises the opportunity to buy a car from a "real astronaut."

(d) *Performance of official duties affecting a private interest.* To ensure that the performance of his official duties does not give rise to an appearance of use of public office for private gain or of giving preferential treatment, an employee whose duties would affect the financial interests of

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(d) *Performance of official duties affecting a private interest.* To ensure that the performance of his official duties does not give rise to an appearance of use of public office for private gain or of giving preferential treatment, an employee whose duties would affect the financial interests of

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certain persons with whom he has significant relationships shall comply with any applicable requirements of § 2635.502 of this part.

(e) *Use of ranks and terms of address.* Nothing in this section prohibits an employee who is ordinarily addressed using a general term of address, such as "The Honorable", or a rank, such as a military or ambassadorial rank, from using that term of address or rank in connection with a personal activity.

§ 2635.703 Use of nonpublic information.

(a) *Prohibition.* An employee shall not engage in a financial transaction using nonpublic information, nor allow the improper use of nonpublic information to further his own private interest or that of another, whether through advice, recommendation, or by knowing unauthorized disclosure.

(b) *Definition of nonpublic information.* For purposes of this section, *nonpublic information* is information that the employee gains by reason of Federal employment and that he knows or reasonably should know has not been made available to the general public. It includes information that he knows or reasonably should know:

(1) Is routinely exempt from disclosure under 5 U.S.C. 552 or otherwise protected from disclosure by statute or executive order;

(2) Is designated as confidential by an agency; or

(3) Has not actually been disseminated to the general public and is not authorized to be made available to the public on request.

Example 1: A Navy employee learns in the course of her duties that a small corporation will be awarded a Navy contract for electrical test equipment. She may not take any action to purchase stock in the corporation or its suppliers and she may not advise friends or relatives to do so until after public announcement of the award. Such actions could violate insider trading laws as well as this section.

Example 2: A General Services Administration employee involved in evaluating proposals for a construction contract cannot disclose the terms of a competing proposal to a friend employed by a company bidding on the work. Prior to award of the contract, bid or proposal information is nonpublic information specifically protected by 41 U.S.C. 423.

Example 3: An employee is a member of a source selection team assigned to review the proposals submitted by several companies in response to an Army solicitation for spare parts. As a member of the evaluation team, the employee has access to proprietary information regarding the production methods of Alpha Corporation, one of the competitors. He may not use that information to assist Beta Company in drafting a proposal to compete for a Navy spare parts contract. Parts 3, 14 and 15 of the Federal Acquisition Regulation restrict the release of information related to procurements and other contractor information that must be protected under 18 U.S.C. 1905 and 41 U.S.C. 423.

Example 4: An employee of the Nuclear Regulatory Commission inadvertently includes a document that is exempt from disclosure with a group of documents released in response to a Freedom of Information Act request. Regardless of whether the document is used improperly, the employee's disclosure does not violate this section because it was not a knowing unauthorized disclosure made for the purpose of furthering a private interest.

Example 5: An employee of the Army Corps of Engineers is actively involved in the activities of an organization whose goals relate to protection of the environment. The employee may not, other than as permitted by agency procedures, give the organization or a newspaper reporter nonpublic information about long-range plans to build a particular dam.

§ 2635.704 Use of Government property.

(a) *Standard.* An employee has a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes.

(b) *Definitions.* For purposes of this section:

(1) *Government property* includes any form of real or personal property in which the Government has an ownership, leasehold, or other property interest as well as any right or other intangible interest that is purchased with Government funds, including the services of contractor personnel. The term includes office supplies, telephone and other telecommunications equipment and services, the Government mails, automated data processing capabilities, printing and reproduction facilities, Government records, and Government vehicles.

(2) *Authorized purposes* are only those purposes authorized by law or regulation for the performance of official duty. In the absence of such authority, an employee's use of Government property for any purpose unrelated to the performance of his official duties is improper. However, on his own time, provided such use does not inconvenience the agency, an employee:

(i) May occasionally use microfiche and printed library and general reference materials; and

(ii) May be authorized by his supervisor to use microfiche and printed library and general reference materials and word processing equipment for purposes of professional development where there is a negligible cost to the Government.

Example 1: Under regulations of the General Services Administration at 41 CFR 201–38.007–1, an employee may use the Government telephones to make a brief local call to her daughter's day care center or to make a commercial long distance call charged to her personal calling card.

Example 2: An employee of the Defense Contract Audit Agency is taking a night course on cost accounting as part of a masters degree program. She may be authorized by the supervisor to use the agency's library and her office word processor during nonduty hours to research and write a paper required for the course.

Example 3: An employee of the Commodity Futures Trading Commission whose office computer gives him access to a commercial service providing information for investors may not use that service for personal investment research.

§ 2634.705 Use of Official Time.

(a) *Use of an employee's own time.* An employee shall not use official time other than in an honest effort to perform official duties. An employee not under a leave system, including a Presidential appointee exempted under 5 U.S.C. 6301(2), has an obligation to expend an honest effort and a reasonable proportion of his time in the performance of official duties.

(b) *Use of a subordinate's time.* An employee shall not direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties.

Example 1: An employee of the Department of Housing and Urban Development may not ask his secretary to type his personal correspondence during duty hours. Further, directing or coercing a subordinate to perform such activities during nonduty hours constitutes an improper use of public office for private gain in violation of § 2635.702(a) or this subpart. Where the arrangement is entirely voluntary and appropriate compensation is paid, the secretary may type the correspondence at home on her own time.

Subpart H—Outside Activities

§ 2635.801 Overview.

(a) This subpart contains provisions relating to outside employment, outside activities and personal financial obligations of employees. Several of these provisions apply to uncompensated as well as to compensated outside activities.

(b) An employee who wishes to engage in outside employment or other outside activities must comply with all relevant provisions of this subpart, including, when applicable:

(1) The prohibition on outside employment or any other outside activity that conflicts with the employee's official duties;

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(2) Any agency-specific requirement for prior approval of outside employment or activities;

(3) The limitations on receipt of outside earned income by certain Presidential appointees and other noncareer employees;

(4) The limitations on paid and unpaid service as an expert witness;

(5) The limitations on participation in professional organizations;

(6) The limitations on paid and unpaid teaching, speaking, and writing; and

(7) The limitations on fundraising activities.

(c) Outside employment and other outside activities of employees must also comply with applicable requirements set forth in other subparts of this part and with applicable statutes and regulations. Relevant provisions of law, many of which are listed in subpart I of this part, may include:

(1) 18 U.S.C. 201(b), which prohibits a public official from seeking, accepting or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act or for being induced to take or omit to take any action in violation of his official duty.

(2) 18 U.S.C. 201(c), which prohibits a public official, otherwise than as provided by law for the proper discharge of official duty, from seeking, accepting, or agreeing to receive or accept anything of value for or because of any official act.

(3) 18 U.S.C. 203(a), which prohibits an employee from seeking, accepting, or agreeing to receive or accept compensation for any representational services, rendered personally or by another, in relation to any particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, or other specified entity of the United States. This statute contains several exceptions, as well as standards for special Government employees that limit the scope of the restriction.

(4) 18 U.S.C. 205, which prohibits an employee, whether or not for compensation, from acting as agent or attorney for anyone in a claim against the United States or from acting as agent or attorney for anyone, before any department, agency, or other specified entity of the United States, in any particular matter in which the United States is a party or has a direct and substantial interest. It also prohibits receipt of any gratuity, or any share of or interest in a claim against the United States, in consideration for assisting in the prosecution of such claim. This statute contains several exceptions, as well as standards for special Government employees that limit the scope of the restrictions.

(5) 18 U.S.C. 209, which prohibits an employee, other than a special Government employee, from receiving any salary or any contribution to or supplementation of salary from any source other than the United States as compensation for services as a Government employee. The statute contains several exceptions that limit its applicability.

(6) The Emoluments Clause of the United States Constitution, article I, section 9, clause 8, which prohibits an employee from accepting any gift, office, title or emolument, including salary or compensation, from any foreign government except as authorized by Congress. In addition, 18 U.S.C. 219 generally prohibits any employee from acting as an agent of a foreign principal, including a foreign government, corporation or person, if the employee would be required to register as a foreign agent under 22 U.S.C. 611 *et seq.*

(7) The Hatch Act, 5 U.S.C. 7321 through 7328, which prohibits most employees from engaging in certain partisan political activities.

(8) The honorarium prohibition, 5 U.S.C. App., which prohibits an employee, other than a special Government employee, from receiving any compensation for an appearance, speech or article. Implementing regulations are contained in §§ 2636.201 through 2636.205 of this subchapter.

(9) The limitations on outside employment, 5 U.S.C. App., which prohibit a covered noncareer employee's receipt of compensation for specified activities and provide that he shall not allow his name to be used by any firm or other entity which provides professional services involving a fiduciary relationship. Implementing regulations are contained in §§ 2636.305 through 2636.307 of this subchapter.

§ 2635.802 Conflicting outside employment and activities.

An employee shall not engage in outside employment or any other outside activity that conflicts with his official duties. An activity conflicts with an employee's official duties:

(a) If it is prohibited by statute or by an agency supplemental regulation; or

(b) If, under the standards set forth in §§ 2635.402 and 2635.502 of this part, it would require the employee's disqualification from matters so central or critical to the performance of his official duties that the employee's ability to perform the duties of his position would be materially impaired.

Employees are cautioned that even though an outside activity may not be prohibited under this section, it may nevertheless require the employee to disqualify himself from participation in certain particular matters under either subpart D or subpart E of this part.

Example 1: An employee of the Environmental Protection Agency has just been promoted. His principal duty in his new position is to write regulations relating to the disposal of hazardous waste. The employee may not continue to serve as president of a nonprofit environmental organization that routinely submits comments on such regulations. His service as an officer would require his disqualification from duties critical to the performance of his official duties on a basis so frequent as to materially impair his ability to perform the duties of his position.

§ 2635.803 Prior approval for outside employment and activities.

Where required by agency supplemental regulation, an employee shall obtain prior approval before engaging in outside employment or activities. Where it is desirable for the purpose of administering its ethics program, an agency may, by supplemental regulation, require employees or any category of employees to obtain prior approval before engaging in any or specific types of outside employment or activities.

Note: Any requirement for prior approval of employment or activities contained in any agency regulation, instruction, or other issuance in effect prior to the effective date of this part shall constitute a requirement for prior approval for purposes of this section for one year after the effective date of this part or until issuance of an agency supplemental regulation, whichever occurs first.

§ 2635.804 Outside earned income limitations applicable to certain Presidential appointees and other noncareer employees.

(a) *Presidential appointees to full-time noncareer positions.* A Presidential appointee to a full-time noncareer position shall not receive any outside earned income for outside employment, or for any other outside activity, performed during that Presidential appointment. This limitation does not apply to any outside earned income received for outside employment, or for any other outside activity, carried out in satisfaction of the employee's obligation under a contract entered into prior to April 12, 1989.

(b) *Covered noncareer employees.* Covered noncareer employees, as defined in § 2636.303(a) of this subchapter, may not, in any calendar year, receive outside earned income attributable to that calendar year which exceeds 15 percent of the annual rate of basic pay for level II of the Executive

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Example 1: An employee of the Environmental Protection Agency has just been promoted. His principal duty in his new position is to write regulations relating to the disposal of hazardous waste. The employee may not continue to serve as president of a nonprofit environmental organization that routinely submits comments on such regulations. His service as an officer would require his disqualification from duties critical to the performance of his official duties on a basis so frequent as to materially impair his ability to perform the duties of his position.

§ 2635.803 Prior approval for outside employment and activities.

Where required by agency supplemental regulation, an employee shall obtain prior approval before engaging in outside employment or activities. Where it is desirable for the purpose of administering its ethics program, an agency may, by supplemental regulation, require employees or any category of employees to obtain prior approval before engaging in any or specific types of outside employment or activities.

Note: Any requirement for prior approval of employment or activities contained in any agency regulation, instruction, or other issuance in effect prior to the effective date of this part shall constitute a requirement for prior approval for purposes of this section for one year after the effective date of this part or until issuance of an agency supplemental regulation, whichever occurs first.

§ 2635.804 Outside earned income limitations applicable to certain Presidential appointees and other noncareer employees.

(a) *Presidential appointees to full-time noncareer positions.* A Presidential appointee to a full-time noncareer position shall not receive any outside earned income for outside employment, or for any other outside activity, performed during that Presidential appointment. This limitation does not apply to any outside earned income received for outside employment, or for any other outside activity, carried out in satisfaction of the employee's obligation under a contract entered into prior to April 12, 1989.

(b) *Covered noncareer employees.* Covered noncareer employees, as defined in § 2636.303(a) of this subchapter, may not, in any calendar year, receive outside earned income attributable to that calendar year which exceeds 15 percent of the annual rate of basic pay for level II of the Executive

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Schedule under 5 U.S.C. 5313, as in effect on January 1 of such calendar year. Employees should consult the regulations implementing this limitation, which are contained in §§ 2636.301 through 2636.304 of this subchapter.

Note: In addition to the 15 percent limitation on outside earned income, covered noncareer employees are prohibited from receiving any compensation for: practicing a profession which involves a fiduciary relationship; affiliating with or being employed by a firm or other entity which provides professional services involving a fiduciary relationship; serving as an officer or member of the board of any association, corporation or other entity; or teaching without prior approval. Implementing regulations are contained in §§ 2636.305 through 2636.307 of this subchapter.

(c) *Definitions.* For purpose of this section:

(1) *Outside earned income* has the meaning set forth in § 2636.303(b) of this subchapter, except that paragraph (b)(8) of that section shall not apply.

(2) *Presidential appointee to a full-time noncareer position* means any employee who is appointed by the President to a full-time position described in 5 U.S.C. 5312 through 5317 or to a position that, by statute or as a matter of practice, is filled by presidential appointment, other than:

(i) A position filed under the authority of 3 U.S.C. 105 or 3 U.S.C. 107(a) for which the rate of basic pay is less than that for GS–9, step 1 of the General Schedule;

(ii) A position, within a White House operating unit, that is designated as not normally subject to change as a result of a Presidential transition;

(iii) A position within the uniformed services; or

(iv) A position held by a member of the foreign service which does not require advice and consent of the Senate.

Example 1: A career Department of Justice employee who is detailed to a policymaking position in the White House Office that is ordinarily filled by a noncareer employee is not a Presidential appointee to a full-time noncareer position.

Example 2: A Department of Energy employee appointed under § 213.3301 of this title to a Schedule C position is appointed by the agency and, thus, is not a presidential appointee to a full-time noncareer position.

§ 2635.805 Service as an expert witness.

(a) *Restriction.* An employee shall not serve as an expert witness, with or without compensation, in any proceeding before a court or agency of the United States in which the United States is a party or has a direct and substantial interest, unless the employee's participation is authorized by the agency under paragraph (c) of this section as in the interest of the Government. Except as provided in paragraph (b) of this section, this restriction shall only apply to a special Government employee if he has participated as an employee or special Government employee in the particular proceeding or in the particular matter that is the subject of the proceeding.

(b) *Additional restriction applicable in certain special Government employees.* (1) In addition to the restriction described in paragraph (a) of this section, a special Government employee described in paragraph (b)(2) of this section shall not serve as an expert witness, with or without compensation, in any proceeding before a court or agency of the United States in which his employing agency is a party or has a direct and substantial interest, unless the employee's participation is authorized by the agency under paragraph (c) of this section as in the interest of the Government.

(2) The restriction in paragraph (b)(1) of this section shall apply to a special Government employee who:

(i) Is appointed by the President;

(ii) Serves on a commission established by statute; or

(iii) has served or is expected to serve for more than 60 days in a period of 365 consecutive days.

(c) *Authorization to serve as an expert witness.* Authorization to serve as an expert witness may be given by the designated agency ethics official of the agency in which the employee serves when, after consultation with the agency representing the Government in the proceeding or, if the Government is not a party, with the agency with the most direct and substantial interest in the matter, the designated agency ethics official determines that the employee's service as an expert witness is in the interest of the Government.

§ 2635.806 Participation in professional associations.

Employees are encouraged to participate in the activities of professional associations and similar entities organized to enhance the skills and abilities of their members. Employees may participate through membership in, and may serve as officers of, such organizations subject to the limitations contained in this part and consistent with paragraphs (a) through (c) of this section. Nothing in this section prohibits an agency from designating an employee to serve in his official capacity as its official liaison to a particular organization in which the agency has a specific interest.

(a) *Participation in substantive programs.* An employee may use official time to attend or otherwise to participate in a substantive program sponsored by a professional association or similar organization when authorized by his supervisor on the basis of a determination that the substantive content of the program relates to the performance of the employee's official duties and that the employee's participation is in the interest of the Government.

(b) *Participation in internal or business affairs.* Unless an employee is specifically authorized by statute, executive order or regulation to serve in an official capacity as an officer of a professional association or similar organization, he may not use official time to administer the internal affairs of any such organization or to carry out its business affairs, or to attend or to participate in meetings or events that primarily serve those purposes. Nothing in this paragraph prohibits an employee from using official time to participate in a substantive program that he is authorized to attend under paragraph (a) of this section if only a small portion of the program is devoted to the internal or business affairs of the organization, or from occasionally using a Government telephone for the conduct of organizational affairs if such use is consistent with the requirements of 41 CFR 201.38.007–1.

(c) *Conflict of interest considerations.* An employee who is not simply a member but who serves, other than in his official capacity, as an officer, director, trustee or employee of a professional association or similar organization is prohibited, in accordance with 18 U.S.C. 208(a) and the standards set forth in subpart D of this part, from participating in his official capacity in any particular matter that has a direct and predictable effect on a financial interest of that organization.

Example 1: An attorney with the Defense Logistics Agency is treasurer of the Federal Bar Association and serves on the association's election committee. She may not use DLA wordprocessing or photocopy equipment nor the Government mails to produce and mail bills for association dues or ballots for the election of officers.

Example 2: An accountant employed by the Defense Contract Audit Agency is a member of the Association of Government Accountants. She has been directed by her supervisor to participate in a panel discussion of cost accounting principles to take place at a seminar sponsored by the association. Because she is authorized to participate in her official capacity, she may participate on official time and use her title in connection with the panel presentation. In addition, she may use her office word processor to prepare her remarks as a panel member.

Example 3: An attorney employed by the Department of Housing and Urban Development serves as an officer of her local bar association. While she must take annual leave to attend a meeting of the association's officers or to run the internal affairs of the association, she may be authorized to use official time to attend an association meeting on problems of the homeless where her participation is determined to be related to her official duties and in the interest of the Government. To improve her professional skills, she may also be authorized to use official time to attend a seminar on professional conduct sponsored by the association. In the absence of a waiver issued under 18 U.S.C. 208(b), however, she may not direct a subordinate to speak at a seminar sponsored by the association for which an attendance fee is to be charged nor could she sign a training form obligating HUD funds to pay the fee for a subordinate to attend the seminar.

§ 2635.807 Teaching, speaking, and writing.

(a) *Compensation for teaching, speaking or writing.* Except as permitted by paragraph (a)(2) of this section, an employee, including a special Government employee, shall not receive compensation from any source other than the Government for teaching, speaking, or writing that relates to the employee's official duties.

(1) *Definitions.* For purposes of this paragraph:

(i) Teaching, speaking, or writing *relates to the employee's official duties* if:

(A) The activity is undertaken as part of the employee's official duties;

(B) The invitation to engage in the activity was extended to the employee because of his official position;

(C) The invitation to engage in the activity was extended to the employee, directly or indirectly, by a person who has interests that may be substantially affected by performance or nonperformance of the employee's official duties;

(D) The information conveyed through the activity draws substantially on ideas or official data that are nonpublic information as defined in § 2635.703(b) of this part; or

(E) The subject matter focuses specifically on the employee's official duties or on the responsibilities, programs, or operations of the employee's agency. A subject matter focuses specifically on agency responsibilities, programs, or operations if:

(1) In the case of a noncareer employee as defined in § 2636.303(a) of this subchapter, it deals in significant part with the general subject matter area, industry, or economic sector primarily affected by the programs and operations of his agency;

(2) In the case of a special Government employee, it deals in significant part with particular matters to which he is or has been assigned as a special Government employee; or

(3) In the case of any other employee, it deals in significant part with particular matters to which he is or has been assigned as an employee of the agency, or with any planned or announced policy of the agency, or with any program or operation of the agency.

Any component of a department designated as a separate agency under § 2635.203(a) of this part shall be considered a separate agency for purposes of this paragraph. No such designation shall be effective as to the head of any such separate agency or as to department-level employees.

Example 1: On his own time, a National Highway Traffic Safety Administration employee prepares a consumer's guide to purchasing a safe automobile that focuses on automobile crash worthiness statistics gathered and made public by NHTSA. He may not receive royalties or any other form of compensation for the guide. The guide focuses specifically on responsibilities and programs of NHTSA.

Example 2: A consultant is employed as a special Government employee by the Department of State for the purpose of providing advice and assistance in multilateral treaty negotiations relating to scientific research on the continent of Antarctica. A speech given by the special Government employee on the subject of scientific advances stemming from research in the Antarctic is not related to his official duties. However, a speech on the status of the treaty negotiations would be related to his official duties. He may receive compensation for the former, but not for the latter. (Note that special Government employees are not subject to the honorarium prohibition on receipt of compensation for speeches, which is implemented in §§ 2636.201 through 2636.205 of this subchapter).

Example 3: A philosophical article on theories of sentencing in felony cases written by a noncareer Senior Executive Service employee of the Department of Justice would be related to his official duties.

(ii) *Compensation* includes any form of consideration, remuneration or income, including royalties, given for or in connection with the employee's teaching, speaking or writing activities. Unless accepted under specific statutory authority, such as 31 U.S.C. 1353, 5 U.S.C. 4111, or an agency gift acceptance statute, it includes transportation, lodgings and meals, whether provided in kind, by purchase of a ticket, by payment in advance or by reimbursement after the expense has been incurred. It does not include:

(A) Items offered by any source that could be accepted from a prohibited source under subpart B of this subpart;

(B) Meals or other incidents of attendance such as waiver of attendance fees or course materials furnished as part of the event at which the teaching or speaking takes place; or

(C) Copies of books or of publications containing articles, reprints of articles, tapes of speeches, and similar items that provide a record of the teaching, speaking, or writing activity.

(iii) *Receive* means that there is actual or constructive receipt of the compensation by the employee so that the employee has the right to exercise dominion and control over the compensation and to direct its subsequent use. Compensation received by an employee includes compensation which is:

(A) Paid to another person, including a charitable organization, on the basis of designation, recommendation, or other specification by the employee; or

(B) Paid with the employee's knowledge and acquiescence to his parent, sibling, spouse, child, or dependent relative.

(2) *Exception for teaching certain courses.* Notwithstanding that the activity would relate to his official duties under paragraphs (a)(1)(i) (B) or (E) of this section, an employee may accept compensation for teaching a course requiring multiple presentions by the employee if the course is offered as part of:

(i) The regularly established curriculum of:

(A) An institution of higher education as defined at 20 U.S.C. 1141(a);

(B) An elementary school as defined at 20 U.S.C. 2891(8); or

(C) A secondary school as defined at 20 U.S.C. 2891(21); or

(ii) A program of education or training sponsored and funded by the Federal government or by a State or local government which is not offered by an entity described in paragraph (a)(2)(i) of this section.

Example 1: An employee of the Cost Accounting Standards Board who teaches an advanced accounting course as part of the regular business school curriculum of an accredited university may receive compensation for teaching the course even though one or more of the twenty classes comprising the course deals with cost accounting principles applicable to contracts with the Government. Moreover, his receipt of a salary or other compensation for teaching this course does not violate the honorarium prohibition on receipt of compensation for any speech, which is

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(A) Items offered by any source that could be accepted from a prohibited source under subpart B of this subpart;

(B) Meals or other incidents of attendance such as waiver of attendance fees or course materials furnished as part of the event at which the teaching or speaking takes place; or

(C) Copies of books or of publications containing articles, reprints of articles, tapes of speeches, and similar items that provide a record of the teaching, speaking, or writing activity.

(iii) *Receive* means that there is actual or constructive receipt of the compensation by the employee so that the employee has the right to exercise dominion and control over the compensation and to direct its subsequent use. Compensation received by an employee includes compensation which is:

(A) Paid to another person, including a charitable organization, on the basis of designation, recommendation, or other specification by the employee; or

(B) Paid with the employee's knowledge and acquiescence to his parent, sibling, spouse, child, or dependent relative.

(2) *Exception for teaching certain courses.* Notwithstanding that the activity would relate to his official duties under paragraphs (a)(1)(i) (B) or (E) of this section, an employee may accept compensation for teaching a course requiring multiple presentions by the employee if the course is offered as part of:

(i) The regularly established curriculum of:

(A) An institution of higher education as defined at 20 U.S.C. 1141(a);

(B) An elementary school as defined at 20 U.S.C. 2891(8); or

(C) A secondary school as defined at 20 U.S.C. 2891(21); or

(ii) A program of education or training sponsored and funded by the Federal government or by a State or local government which is not offered by an entity described in paragraph (a)(2)(i) of this section.

Example 1: An employee of the Cost Accounting Standards Board who teaches an advanced accounting course as part of the regular business school curriculum of an accredited university may receive compensation for teaching the course even though one or more of the twenty classes comprising the course deals with cost accounting principles applicable to contracts with the Government. Moreover, his receipt of a salary or other compensation for teaching this course does not violate the honorarium prohibition on receipt of compensation for any speech, which is

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implemented in §§ 2636.201 through 2636.205 of this subchapter.

(3) *Relationship to other limitations on receipt of compensation.* The compensation prohibition contained in this section is in addition to any other limitation on receipt of compensation set forth in this subchapter, including:

(i) The honorarium prohibition on receipt of compensation for an appearance, speech, or article, which is implemented in §§ 2636.201 through 2636.205 of this subchapter;

(ii) The requirement contained in § 2636.307 of this subchapter that covered noncareer employees obtain advance authorization before engaging in teaching for compensation; and

(iii) The prohibitions and limitations in § 2636.804 of this subchapter on receipt of outside earned income applicable to certain Presidential appointees and to other covered noncareer employees.

Example 1: A personnel specialist employed by the Department of Labor has been asked by the publisher of a magazine to write an article on his hobby of collecting arrowheads. Even though the subject matter is unrelated to his official duties, he may not accept the publisher's offer of $200 for the article. Because the compensation offered is for an article, its receipt would violate the honorarium prohibition contained in §§ 2636.201 through 2636.205 of this subchapter.

(b) *Reference to official position.* An employee who is engaged in teaching, speaking, or writing as outside employment or as an outside activity shall not use or permit the use of his official title or position to identify him in connection with his teaching, speaking, or writing activity or to promote any book, seminar, course, program, or similar undertaking, except that:

(1) An employee may include or permit the inclusion of his title or position as one of several biographical details when such information is given to identify him in connection with his teaching, speaking, or writing, provided that his title or position is given no more prominence than other significant biographical details;

(2) An employee may use, or permit the use of, his title or position in connection with a scholarly article published in a recognized scientific or professional journal, provided that on the page where his title or position appears, there is a disclaimer satisfactory to the agency stating that the views expressed in the article do not necessarily represent the views of the agency or the United States; and

(3) An employee who is ordinarily addressed using a general term of address, such as "The Honorable," or a rank, such as a military or ambassadorial rank may use, or permit the use of, that term of address or rank in connection with his teaching, speaking, or writing.

Example 1: A meteorologist employed with the National Oceanic and Atmospheric Administration is asked by a local university to teach a graduate course on hurricanes. The university may include the meteorologist's Government title and position together with other information about his education and previous employment in course materials setting forth biographical data of all teachers involved in the graduate program. However, his title or position may not be used to promote the course, for example, by featuring the meteorologist's Government title, Senior Meteorologist, NOAA, in bold type under his name. In contrast, his title may be used in this manner when the meteorologist is authorized by NOAA to speak in his official capacity.

Example 2: A doctor recently employed by the Centers for Disease Control has written a paper based on his earlier independent research into cell structures. Incident to the paper's publication in the Journal of the American Medical Association, the doctor may be given credit for the paper, as Dr. M. Wellbeing, Associate Director, Centers for Disease Control, provided that the first page of the article also contains a disclaimer, concurred in by the Center, indicating that the paper is the result of the doctor's independent research and does not represent the findings of the Centers for Disease Control.

(c) *Approval of content.* An employee shall comply with any requirement for advance agency review, clearance, or approval of the content of any speech, book, article or similar product.

§ 2635.808 Fundraising activities.

An employee may engage in fundraising only in accordance with paragraphs (b) and (c) of this section.

(a) *Definitions.* For purposes of this section:

(1) *Fundraising* means the raising of funds for a nonprofit organization, other than a political organization as defined in 26 U.S.C. 527(e), through:

(i) Solicitation of funds or sale of items; or

(ii) Participation in the conduct of an event by an employee where any portion of the cost of attendance or participation may be taken as a charitable tax deduction by a person incurring that cost.

(2) *Participation in the conduct of an event* means active and visible participation in the promotion, production, or presentation of the event and includes serving as honorary chairperson, sitting at a head table during the event, and standing in a reception line. The term does not include mere attendance at an event provided that, to the employee's knowledge, his attendance is not used by the nonprofit organization to promote the event. While the term generally includes any public speaking during the event, it does not include the delivery of an official speech as defined in paragraph (a)(3) of this section or any seating or other participation appropriate to the delivery of such a speech.

Note: This section does not prohibit fundraising for political parties. However, there are statutory restrictions that apply to political fundraising. Employees, other than those exempt under 5 U.S.C. 7324(d), are prohibited by the Hatch Act, 5 U.S.C. 7321 through 7328, from soliciting or collecting contributions or other funds for a partisan political purpose or in connection with a partisan election. In addition, employees are prohibited by 18 U.S.C. 602 from soliciting contributions for any political purpose from other employees.

Example 1: The Secretary of Transportation has been asked to serve as master of ceremonies for an All-Star Gala. Tickets to the event cost $150 and are tax deductible as a charitable donation, with proceeds to be donated to a local hospital. By serving as master of ceremonies, the Secretary would be participating in fundraising.

Example 2: A nonprofit organization is sponsoring a golf tournament to raise funds for underprivileged children. The Secretary of the Navy may not enter the tournament with the understanding that the organization intends to attract participants by offering other entrants the opportunity, in exchange for a donation in the form of an entry fee, to spend the day playing 18 holes of golf in a foursome with the Secretary of the Navy. He could, however, pay an entry fee and play in the golf tournament on the same basis as any other entrant, even though his attendance might add prestige to the event. The former constitutes fundraising; the latter does not.

(3) *Official speech* means a speech given by an employee in his official capacity on a subject matter that relates to his official duties, provided that the employee's agency has determined that the event at which the speech is to be given provides an appropriate forum for the dissemination of the information to be presented and provided that the employee does not request donations or other support for the nonprofit organization. Subject matter relates to an employee's official duties if it focuses specifically on the employee's official duties, on the responsibilities, programs, or operations of the employee's agency as described in § 2635.807(a)(1)(i)(E) of this subpart, or on matters of Administration policy on which the employee has been authorized to speak.

Example 1: A nonprofit organization that raises funds for cancer research has organized a seminar and has invited the

Director of the National Cancer Institute to speak on recent findings by the Institute relating to the treatment of lung cancer. Where the Director determines that the seminar provides an appropriate forum for the dissemination of the information to be presented, the giving of that speech in his official capacity does not constitute fundraising, even though a portion of the attendance fee charged for the seminar may be taken as a charitable deduction by an attendee. The Director would be engaged in fundraising, however, if he were to conclude his official speech with a request for contributions to the nonprofit organization.

Example 2. The Secretary of Labor is invited to speak at a banquet honoring a distinguished labor leader, the proceeds of which will benefit a non-profit organization that assists homeless families. She devotes a major portion of her speech to the Administration's Points of Light Program, an effort to encourage citizens to volunteer their time to help solve serious social problems. Because she is authorized to speak on Administration policy, her remarks at the banquet are an official speech. However, the Secretary would be engaged in fundraising if she were to conclude her official speech with a request for donations to the nonprofit organization.

Example 3: A charitable organization is sponsoring a 2-day tennis tournament at a country club in the Washington, DC area to raise funds for recreational programs for learning disabled children. The organization has invited the Secretary of Education to give a speech on Federally funded special education programs at the awards dinner to be held at the conclusion of the tournament and a determination has been made that the dinner is an appropriate forum for the particular speech. The Secretary may speak at the dinner and, under § 2635.204(g) of this part, he may partake of the meal provided to him at the dinner. However, under subpart B of this part, he may not accept the charitable organization's offer to waive the $1,000 entry fee to allow him to play in the tournament in the absence of a determination of agency interest.

(4) *Personally solicit* means to request or otherwise encourage donations or other support either through person-to-person contact or through the use of one's name or identity in correspondence or by others. It does not include the solicitation of funds through the media or through either oral remarks, or the contemporaneous dispatch of like items of mass-produced correspondence, if such remarks or correspondence are addressed to a group consisting of many persons, unless it is known to the employee that the solicitation is targeted at subordinates or at persons who are prohibited sources within the meaning of § 2635.203(d) of this part. It does not include behind-the-scenes assistance in the solicitation of funds, such as drafting correspondence, stuffing envelopes, or accounting for contributions.

Example 1: An employee of the Department of Energy who signs a letter soliciting funds for a local private school does not "personally solicit" funds when 500 copies of the letter, which makes no mention of his DOE position and title, are mailed to members of the local community, even though some individuals who are employed by Department of Energy contractors may receive the letter.

(b) *Fundraising in an official capacity.* An employee shall not participate in fundraising in his official capacity unless specifically authorized by statute, executive order or regulation. For purposes of this paragraph, an employee participates in fundraising in an official capacity when the fundraising is conducted as part of his official duties or involves the use of his Government title, position, or authority.

Example 1: Because participation in his official capacity is specifically authorized under part 950 of this title, the Secretary of the Army may sign a memorandum to all Army personnel encouraging them to donate to the Combined Federal Campaign.

Example 2: During an official visit to a homeless shelter, the Secretary of Health and Human Services praises the volunteers whose efforts keep the shelter open and members of the community who provide funding. She expresses her view that the world would be a better place in which to live if every American volunteered a few hours a week and supported the charities in his local community. Her remarks are reported in the press and, as a result of media recognition, contributions to this and other homeless shelters increase. She has not engaged in "fundraising" within the meaning of this section. General remarks of this nature and in this context do not constitute solicitation of funds for a nonprofit organization.

(c) *Fundraising in a personal capacity.* An employee may engage in fundraising in his personal capacity only in accordance with paragraphs (c)(1) and (2) of this section.

(1) An employee who engages in fundraising in a personal capacity shall not:

(i) Personally solicit funds or other support from a subordinate or from any person:

(A) Known to an employee, other than a special Government employee, to be a prohibited source within the meaning of § 2635.203(d) of this part; or

(B) Known to a special Government employee to be a prohibited source within the meaning of § 2635.203(d)(4) of this part that is a person whose interests may be substantially affected by performance or nonperformance of his official duties.

(ii) Use or permit the use of his official title, position or any authority associated with his public office to further the fundraising effort, except that an employee who is ordinarily addressed using a general term of address, such "The Honorable," or a rank, such as a military or ambassadorial rank, may use or permit the use of that term of address or rank for such purposes; or

(iii) Engage in any action that would otherwise violate this part.

Example 1: An employee of the Merit Systems Protection Board may not use the agency's photocopier to reproduce fundraising literature for her son's private school. Such use of the photocopier would violate the standards at § 2635.704 of this part regarding use of Government property.

Example 2: An Assistant Attorney General may not sign a letter soliciting funds for a homeless shelter as "John Doe, Assistant Attorney General." He also may not sign a letter with just his signature, "John Doe," soliciting funds from a prohibited source, unless the letter is one of many identical, mass-produced letters addressed to a large group where the solicitation is not known to him to be targeted at persons who are either prohibited sources or subordinates.

Example 3: A Navy Admiral who is the head of his church's building committee may be introduced to the congregation as "Admiral Davey Jones" when he talks about the need for more building funds. The use of his military rank to identify him is not the improper use of his title or position. The addition of his title, "Judge Advocate General of the Navy," would be improper.

(2) An employee holding a position described in 5 U.S.C. 5312 or 5313 or in 3 U.S.C. 105(a)(2)(A) or 106(a)(1)(A) may not engage in fundraising activities in a personal capacity on behalf of an organization unless:

(i) He is personally and actively involved in the affairs of the organization in a manner that involves the use of his personal time; or

(ii) Prior to his appointment to a covered position, he had engaged in fundraising activities on behalf of the organization.

Example 1: The chairman of the Council of Economic Advisers is an active participant in the local alumni chapter of her alma mater. She serves on a committee that arranges speakers for the monthly alumni chapter meetings and, recently, she has participated in a program to encourage promising high school seniors to apply for college scholarships sponsored by the local chapter. Subject to the conditions in § 2635.808(c)(1) of this subpart, she may serve in her personal capacity as chairperson of a dinner to raise funds for the chapter's scholarship program and she may sign the invitation addressed to all area alumni using her name, but not her official title.

Example 2: Prior to his confirmation, the Secretary of the Interior had authorized a charitable organization that raises funds for leukemia research to list his name as one of the 10 sponsors of a fundraising gala held at

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an employee who is ordinarily addressed using a general term of address, such "The Honorable," or a rank, such as a military or ambassadorial rank, may use or permit the use of that term of address or rank for such purposes; or

(iii) Engage in any action that would otherwise violate this part.

Example 1: An employee of the Merit Systems Protection Board may not use the agency's photocopier to reproduce fundraising literature for her son's private school. Such use of the photocopier would violate the standards at § 2635.704 of this part regarding use of Government property.

Example 2: An Assistant Attorney General may not sign a letter soliciting funds for a homeless shelter as "John Doe, Assistant Attorney General." He also may not sign a letter with just his signature, "John Doe," soliciting funds from a prohibited source, unless the letter is one of many identical, mass-produced letters addressed to a large group where the solicitation is not known to him to be targeted at persons who are either prohibited sources or subordinates.

Example 3: A Navy Admiral who is the head of his church's building committee may be introduced to the congregation as "Admiral Davey Jones" when he talks about the need for more building funds. The use of his military rank to identify him is not the improper use of his title or position. The addition of his title, "Judge Advocate General of the Navy," would be improper.

(2) An employee holding a position described in 5 U.S.C. 5312 or 5313 or in 3 U.S.C. 105(a)(2)(A) or 106(a)(1)(A) may not engage in fundraising activities in a personal capacity on behalf of an organization unless:

(i) He is personally and actively involved in the affairs of the organization in a manner that involves the use of his personal time; or

(ii) Prior to his appointment to a covered position, he had engaged in fundraising activities on behalf of the organization.

Example 1: The chairman of the Council of Economic Advisers is an active participant in the local alumni chapter of her alma mater. She serves on a committee that arranges speakers for the monthly alumni chapter meetings and, recently, she has participated in a program to encourage promising high school seniors to apply for college scholarships sponsored by the local chapter. Subject to the conditions in § 2635.808(c)(1) of this subpart, she may serve in her personal capacity as chairperson of a dinner to raise funds for the chapter's scholarship program and she may sign the invitation addressed to all area alumni using her name, but not her official title.

Example 2: Prior to his confirmation, the Secretary of the Interior had authorized a charitable organization that raises funds for leukemia research to list his name as one of the 10 sponsors of a fundraising gala held at

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the Kennedy Center, he attended the gala but has not otherwise participated in the affairs of the organization. Although his participation in the affairs of the organization has not been personal and active, he may authorize the charitable organization to list his name as a sponsor of this year's fundraising gala since he had engaged in fundraising for the organization prior to confirmation. He may not permit them to use his official title.

§ 2635.809 Just financial obligations.

Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those such as Federal, State, or local taxes that are imposed by law. For purposes of this section, a *just financial obligation* includes any financial obligation acknowledged by the employee or reduced to judgment by a court. *In good faith* means an honest intention to fulfill any just financial obligation in a timely manner. In the event of a dispute between an employee and an alleged creditor, this section does not require an agency to determine the validity or amount of the disputed debt or to collect a debt on the alleged creditor's behalf.

Subpart I—Related Statutory Authorities

§ 2635.901 General.

In addition to the standards of ethical conduct set forth in subparts A through H of this part, there are a number of statutes that establish standards to which an employee's conduct must conform. The list set forth in § 2635.902 of this subpart references some of the more significant of those statutes. It is not comprehensive and includes only references to statutes of general applicability. While it includes references to several of the basic conflict of interest statutes whose standards are set forth in more detail throughout this part, it does not include references to statutes of more limited applicability, such as statutes that apply only to officers and employees of the Department of Defense.

§ 2635.902 Related statutes.

(a) The prohibition against solicitation or receipt of bribes (18 U.S.C. 201(b)).

(b) The prohibition against or receipt of illegal gratuities (18 U.S.C. 201(c)).

(c) The prohibition against seeking or receiving compensation for certain representational services before the Government (18 U.S.C. 203).

(d) The prohibition against assisting in the prosecution of claims against the Government or acting as agent or attorney before the Government (18 U.S.C. 205).

(e) The post-employment restrictions applicable to former employees (18 U.S.C. 207, with implementing regulations at parts 2637 and 2641 of this subchapter).

(f) The post-employment restrictions applicable to former procurement officials (41 U.S.C. 423(f)).

(g) The prohibition against participating in matters affecting an employee's own financial interests or the financial interests of other specified persons or organizations (18 U.S.C. 208).

(h) The prohibition on a procurement official's negotiating for employment with competing contractors (41 U.S.C. 423(b)(1)).

(i) The prohibition against receiving salary or any contribution to or supplementation of salary as compensation for Government service from a source other than the United States (18 U.S.C. 209).

(j) The prohibition against gifts to superiors (5 U.S.C. 7351).

(k) The prohibition against solicitation or receipt of gifts from specified prohibited sources (5 U.S.C. 7353).

(l) The prohibition against solicitation or receipt of gifts from competing contractors (41 U.S.C. 423(b)(2)).

(m) The Code of Ethics for Government Service (Pub. L. 96–303, 94 Stat. 855).

(n) The prohibitions against certain political activities (5 U.S.C. 7321 *et seq.* and 18 U.S.C. 602, 603, 606 and 607).

(o) The prohibitions against disloyalty and striking (5 U.S.C. 7311 and 18 U.S.C. 1918).

(p) The prohibition against employment of a member of a Communist organization (50 U.S.C. 784).

(q) The prohibition against acting as the agent of a foreign principal required to register under the Foreign Agents Registration Act (18 U.S.C. 219).

(r) The prohibition against employment of a person convicted of participating in or promoting a riot or civil disorder (5 U.S.C. 7313).

(s) The prohibition against employment of an individual who habitually uses intoxicating beverages to excess (5 U.S.C. 7352).

(t) The prohibition against misuse of a Government vehicle (31 U.S.C. 1344).

(u) The prohibition against misuse of the franking privilege (18 U.S.C. 1719).

(v) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(w) The prohibition against concealing, mutilating or destroying a public record (18 U.S.C. 2071).

(x) The prohibition against counterfeiting or forging transportation requests (18 U.S.C. 508).

(y) The prohibitions against disclosure of classified information (18 U.S.C. 798 and 50 U.S.C. 783(b)).

(z) The prohibition against disclosure of proprietary information and certain other information of a confidential nature (18 U.S.C. 1905).

(aa) The prohibition against unauthorized disclosure of certain procurement sensitive information, including proprietary or source selection information (41 U.S.C. 423(b)(3) and (d)).

(bb) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(cc) The prohibition against certain personnel practices (5 U.S.C. 2302).

(dd) The prohibition against interference with civil service examinations (18 U.S.C. 1917).

(ee) The prohibition against participation in the appointment or promotion of relatives (5 U.S.C. 3110).

(ff) The prohibition against solicitation or acceptance of anything of value to obtain public office for another (18 U.S.C. 211).

(gg) The prohibition against conspiracy to commit an offense against or to defraud the United States (18 U.S.C. 371).

(hh) The prohibition against embezzlement or conversion of Government money or property (18 U.S.C. 641).

(ii) The prohibition against failing to account for public money (18 U.S.C. 643).

(jj) The prohibition against embezzlement of the money or property of another person that is in the possession of an employee by reason of his employment (18 U.S.C. 654).

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Tuesday
July 23, 1991

Part III

Department of Education

Research in Education of Individuals With Disabilities Program; Notice

DEPARTMENT OF EDUCATION

Research in Education of Individuals With Disabilities Program

AGENCY: Department of Education.

ACTION: Notice of final funding priority.

SUMMARY: The Secretary announces a final funding priority for fiscal year 1991 for the Research in Education of Individuals with Disabilities Program. This program is administered by the Office of Special Education Programs. The Secretary announces this priority to ensure effective use of program funds and to direct funds to an area of identified need during fiscal year 1991.

EFFECTIVE DATE: This priority takes effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of this priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW. (Switzer Building, room 3095—M/S 2313–2640), Washington, DC 20202. Telephone: (202) 732–1099. (TDD (202) 732–6153).

SUPPLEMENTARY INFORMATION: The Research in Education of Individuals with Disabilities Program, (20 U.S.C. 1441–1443), provides support for advancing and improving the knowledge base and improving the practice of professionals, parents, and others providing early intervention, special education, and related services, including professionals who work with children and youth with disabilities in regular education environments, to provide those children effective instruction and enable them to learn successfully. This priority provides support for one or more centers designed to organize, synthesize, and disseminate current knowledge relating to children with attention deficit disorder as required by the Education of the Handicapped Act Amendments of 1990. The Conference report accompanying the Department's 1991 appropriations bill expressed the intent that these centers help educators, researchers, and parents to respond to the needs of children with attention deficit disorder (ADD). The intended effect of this priority is to provide access to current research knowledge in two specific areas by providing assistance to organize, synthesize, and disseminate information related to the needs of children with attention deficit disorder (ADD). This priority is part of a response to the 1990 amendments. In addition to this priority, support will also be provided through ongoing contracts to identify promising regular and special education efforts to respond to the educational needs of children with ADD, and to provide a national forum for disseminating this information to professionals and parent organizations.

Because the Department's authority to obligate these funds will expire on September 30, 1991, cooperative agreements will no longer be specified as the type of award.

This priority is in addition to the final priorities previously published in the **Federal Register** on May 7, 1991 for the Research in Education of Individuals with Disabilities Program (56 FR 21226).

Analysis of Comments and Changes

In response to the Secretary's invitation to comment in the Notice of Proposed Funding priorities, published on April 9, 1991 (56 FR 14432), four comments were received. One commenter was strongly supportive of the proposed priority as written. The other three commenters, although generally supportive, raised several concerns. An analysis of the comments on the proposed priorities follows.

Comment: One commenter was concerned that these projects not "reinvent the wheel" given the limited amount of funding available, and the current existence of information on ADD and its relation to public education.

Discussion: The Secretary agrees with the commenter on the existence of a significant body of information. The intent of the centers is to make that information accessible to the public, parents, and teachers involved with children and youth with ADD. These centers are designed to disseminate existing knowledge consistent with the commenters' concern not to "reinvent the wheel."

Changes: None.

Comment: One commenter was concerned that most of the available "research" knowledge of ADD and "researchers" are in psychology and medicine, and not in education in general nor special education in particular. The commenter felt that research has mainly been done from the "perspective of clinical treatments and medical regimes", and not from an educational perspective. The commenter suggested that, in order to reinforce the educational perspective, the priority should use the terms "field educators and educational researchers" instead of "educators and researchers," and that perhaps some of the centers should focus on educational research or that some of the center directors should be educational researchers.

Discussion: The Secretary believes that to limit project staff or personnel according to their disciplinary training or professional affiliation would be overly prescriptive, and not supported by either the statute or the regulations. In addition, the selection criteria that will be used to evaluate applications under this competition provide for the peer reviewers to evaluate the "quality of key personnel" proposed by the project. This selection criterion requires reviewers to consider experience and training in fields related to the objectives of the project, as well as other evidence the applicant provides.

Changes: None.

Comment: One commenter was concerned about the perceived order of activities as outlined by the proposed priority. The commenter felt that educators, researchers, and parents needed to provide input on specific information needs before the identification of critical issues.

Discussion: As written, the priority provides that "Identifying and prioritizing critical issues must be based on those having the greatest promise for assisting educators, researchers, and parents to respond to the *needs* of children with ADD" (emphasis added). The Secretary believes that, as written, the priority provides for "information needs" to drive the identification of critical issues.

Changes: None.

Comment: One commenter suggested that the assessment centers include the integration of newly proposed assessment criteria for the ADD population, and a critical review of the empirical data supporting various assessment instruments. The commenter also stated that there are no pathognomonic or highly specific tests that can be used alone to establish the diagnosis of ADD.

Discussion: The Secretary notes that the intent of the priority is to synthesize current knowledge on assessment which includes classification and criteria techniques and systems, and reliable and valid instrumentation. The psychometric properties of assessment instruments will be addressed in the synthesis.

Changes: None.

Comment: One commenter suggested that, with respect to assessment centers, the outcome of this effort should be to integrate current and future assessment tools into a comprehensive evaluation model that could be used in school settings.

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focus on educational research or that some of the center directors should be educational researchers.

Discussion: The Secretary believes that to limit project staff or personnel according to their disciplinary training or professional affiliation would be overly prescriptive, and not supported by either the statute or the regulations. In addition, the selection criteria that will be used to evaluate applications under this competition provide for the peer reviewers to evaluate the "quality of key personnel" proposed by the project. This selection criterion requires reviewers to consider experience and training in fields related to the objectives of the project, as well as other evidence the applicant provides.

Changes: None.

Comment: One commenter was concerned about the perceived order of activities as outlined by the proposed priority. The commenter felt that educators, researchers, and parents needed to provide input on specific information needs before the identification of critical issues.

Discussion: As written, the priority provides that "Identifying and prioritizing critical issues must be based on those having the greatest promise for assisting educators, researchers, and parents to respond to the *needs* of children with ADD" (emphasis added). The Secretary believes that, as written, the priority provides for "information needs" to drive the identification of critical issues.

Changes: None.

Comment: One commenter suggested that the assessment centers include the integration of newly proposed assessment criteria for the ADD population, and a critical review of the empirical data supporting various assessment instruments. The commenter also stated that there are no pathognomonic or highly specific tests that can be used alone to establish the diagnosis of ADD.

Discussion: The Secretary notes that the intent of the priority is to synthesize current knowledge on assessment which includes classification and criteria techniques and systems, and reliable and valid instrumentation. The psychometric properties of assessment instruments will be addressed in the synthesis.

Changes: None.

Comment: One commenter suggested that, with respect to assessment centers, the outcome of this effort should be to integrate current and future assessment tools into a comprehensive evaluation model that could be used in school settings.

Discussion: The Secretary believes that the priority, as written, provides for capturing the existing knowledge and for the review of current assessment instruments that will assist and provide direction for future improvements.

Changes: None.

Comment: One commenter suggested that the intervention centers emphasize integrating the family, educational, and medical perspectives so that comprehensive multi-modality forms of treatment are considered.

Discussion: The Department, in addition to these centers, is funding separate synthesis activities through a contract that will involve these centers to achieve the integration of family, educational, and medical perspectives.

Changes: None.

Comment: One commenter suggested examining the accuracy of data reported by school nurses and teachers, particularly in regard to medical interventions, and the exploration of academic and nonacademic interventions.

Discussion: The Secretary believes that the priority, as written, provides for the centers to look at the full range of interventions being used to meet the needs of students with ADD.

Changes: None.

Priority: The Secretary establishes the following priority for the Research in Education of Individuals with Disabilities Program, CFDA No. 84.023. In accordance with the Education Department General Administrative Regulations (EDGAR, 34 CFR 75.105(c)(3)), the Secretary gives an absolute preference under this program to applications that respond to the following priority. The Secretary proposes to select for funding only those applications proposing projects that meet this priority.

Priority: Centers for Organizing and Analyzing the Research Knowledge Base for Children With Attention Deficit Disorder (CFDA 84.023)

Issue

Section 641(f)(1) of the Individuals with Disabilities Education Act (IDEA), as retitled and amended by the 1990 amendments to the Education of the Handicapped Act, requires the Secretary to establish one or more centers to organize, synthesize, and disseminate current knowledge relating to children with Attention Deficit Disorder (ADD). This current knowledge must be designed to help educators, researchers, and parents respond to the educational needs of students with ADD.

During the reauthorization process, parents and advocates for children with ADD identified access to the current research knowledge base as one of the problems in meeting the needs of their children in school.

Purpose

The purpose of this priority is to organize, synthesize, and disseminate the current knowledge base related to either: (a) Assessment and identification of, or (b) interventions for, children with ADD. This priority will support up to four awards for up to 18 months. These four centers—two for each topic area—must organize and analyze research findings; design, format, and prepare syntheses; and disseminate information to assist educators, researchers, and parents to respond to the educational needs of these children. These centers shall serve as central focal points for making current knowledge accessible to national professional and parent organizations. This information is expected to increase the awareness of educators, researchers, and parents of the current knowledge related to the assessment and identification of, and interventions for responding to, the educational needs of children with ADD. These centers shall have demonstrated knowledge concerning the disorder; proven effectiveness in performing tasks comparable to the ones specified in this priority; and the ability to conduct projects, communicate with intended consumers of information, and maintain the necessary communication with national, regional, State, and local agencies.

Activities

Each Center shall develop a procedure for, and obtain input from, educators, researchers, and parents for identifying the most critical issues related to either: (a) Assessment and identification, or (b) interventions. These critical issues must provide the focal points for organizing the current research knowledge base and designing syntheses. Identifying and prioritizing critical issues must be based on those having the greatest promise for assisting educators, researchers, and parents to respond to the needs of children with ADD. For purposes of illustration only, critical issues related to assessment and identification might be: Measurement technology for appropriately identifying children with ADD in need of assistance in regular education or in special education; or typologies of educational needs and corresponding estimates of numbers of children with ADD. Similarly, for purposes of illustration, critical issues related to interventions might be: Effective education interventions in regular classrooms for responding to the needs of children with ADD; or the nature of curricula and instructional accommodations, adaptations, and modifications needed to respond to the educational needs of children with ADD.

Designing and formatting syntheses. The critical issues must provide the focus for synthesizing the current research findings. Input must also be obtained from educators, researchers, and parents related to their specific information needs related to each issue. In addition, procedures must be developed and implemented for obtaining feedback from these audiences on the design and format for preparing each of their syntheses. The syntheses must consistently address the characteristics and educational needs of children with ADD relevant to the literature being synthesized.

Organize and analyze current research base. Each center must develop and implement procedures for identifying and obtaining current research findings relevant to each critical issue identified for their topic focus. This information must be organized consistent with the critical issues identified for each topic focus, and need for this information by educators, researchers, and parents. The analyses of this information must address implications for professional personnel practice and preparation, service delivery, and future knowledge development and use agendas for responding to the needs of children with ADD.

National dissemination and exchange forum. Each center must cooperate with the Department in conducting a national forum. The national forum will be held during the 15th month of the award in Washington, DC. Forum participants will include representatives of national organizations representing educators, researchers, parents, and other parties having significant responsibilities and interests in responding to the educational needs of children with ADD. The centers will be responsible for presenting their syntheses and implications. The Forum participants will discuss the centers' syntheses and strength of research support related to implications. The centers shall revise their syntheses taking into account the comments received from forum participants.

Coordination. Each center must coordinate with the other centers funded under this priority, and other projects identified by the Secretary that are engaged in relevant activities for achieving the intent of section 641(f)(1) of the Act. The Department will convene the centers to review their critical issues prior to the centers conducting their respective syntheses. All projects funded relevant to section 641(f)(1) will be convened at the national forum. Each center must budget for participation in these two activities.

Dissemination activities. Each center shall make its syntheses available to relevant national, professional, and parent organizations. The centers shall develop and implement procedures during these activities to assure that information products are prepared that have the greatest potential for use by these organizations in their existing communication systems and member networks.

Program Authority: 20 U.S.C. 1441–1443.

(Catalog of Federal Domestic Assistance Number 84.023, Research in Education of Individuals with Disabilities Program)

Dated: July 12, 1991.

Lamar Alexander,

Secretary of Education.

[FR Doc. 91–17408 Filed 7–22–91; 8:45 am]

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federal register

Tuesday
July 23, 1991

Part IV

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 31, et al.

Federal Acquisition Regulation (FAR), Contract Air Fares; Proposed Rule

VOL 56 SS 141 JL 23 1991 UMI

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 31, 51, and 52

[FAR Case 91-36]

Federal Acquisition Regulation; Contract Air Fares

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering an amendment to add subpart 51.3, Contractor Use of Government Discount Air Passenger Transportation Fares, and a new clause at 52.251-XX, Government Discount Air Passenger Transportation Fares. The coverage and clause permit contractor personnel traveling under certain Government contracts to use the same discount air fares available to Federal employees traveling at Government expense. A corresponding change to the cost principle at 31.205-46, Travel costs, limits the contractor's recovery of travel costs to the discount air fare provided for in the new subpart. These changes implement the requirements of section 833 of the Department of Defense Authorization Act for Fiscal Year 1989 (Pub. L. 100-456).

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before September 23, 1991, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4041, Washington, DC 20405.

Please cite FAR Case 91-36 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501-3775 in reference to this FAR case. For general information, contact Ms. Beverly Fayson, FAR Secretariat, room 4041, GS Building, Washington, DC, 20405 (202) 501-4755. Please cite FAR Case 91-36.

SUPPLEMENTARY INFORMATION:

A. Background

The Department of Defense Authorization Act for Fiscal Year 1989, Public Law 100-456, section 833, Air Travel Expenses of Defense Contractor Personnel, requires the General Services Administration to negotiate agreements with airlines to permit certain contractor personnel traveling solely in the performance of Government contracts to receive the same discount air fares Government employees receive when traveling at Government expense. This statute also requires the issuance of regulatory guidance within 120 days after GSA negotiates the first discount air fares contract for contractor personnel. These changes are proposed in compliance with this statute.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the proposed changes should not have a significant administrative impact on a substantial number of small entities. These rates will be readily available through a standard travel agent network already utilized by small entities. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. However, comments from small entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAR Case 91-36) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Parts 31, 51, and 52

Government procurement; Contract air fares.

Dated: July 12, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR parts 31, 51, and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 31, 51, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.205-46 is amended by revising paragraph (d) and the first sentence in paragraph (e)(2) to read as follows:

31.205-46 Travel costs.

* * * * *

(d)(1) Air fare costs, charged as a direct cost to a contract, in excess of the discounted fares established for a primary contract air carrier under a General Services Administration (GSA) contract (see 51.3), are not allowable if—

(i) The discounted rate was available to the contractor, and

(ii) Travel could have reasonably been performed under the conditions required by the air carrier to qualify for such rate.

(2) If there is no GSA contract as discussed in paragraph (d)(1) of this subsection, air fare costs in excess of the lowest customary standard, coach, or equivalent air fare offered during normal business hours are unallowable.

(3) The air fares in paragraphs (d)(1) and (d)(2) of this subsection need not be used when such accommodations require circuitous routing, require travel during unreasonable hours, excessively prolong travel, result in increased cost that would offset transportation savings, are not reasonably adequate for the physical or medical needs of the traveler, or are not reasonably available to meet mission requirements. However, in order for air fare costs in excess of the standard air fare to be allowable, the applicable condition(s) set forth above must be justified by the contractor. Any travel costs associated with the use of Government discount air fares (e.g., commuting expenses to and from the airport) shall be taken into consideration when determining the applicable air fare under paragraphs (d)(1) and (d)(2) of this subsection.

(e) * * *

(2) The costs of travel by contractor-owned, -leased, or -chartered aircraft are limited to the air fare described in paragraph (d) of this subsection for the flight destination unless travel by such aircraft is specifically required by contract specification, term, or condition, or a higher amount is approved by the contracting officer. * * *

* * * * *

PART 51—USE OF GOVERNMENT SOURCES BY CONTRACTORS

3. The table of contents for subpart 51.3, consisting of §§ 51.300 through 51.306, is added to read as follows:

Subpart 51.3—Contractor Use of Government Discount Air Passenger Transportation Fares

Sec.

51.300 Scope of subpart.
51.301 Definitions.
51.302 Policy.
51.303 General.

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31.205-46 Travel costs.

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(d)(1) Air fare costs, charged as a direct cost to a contract, in excess of the discounted fares established for a primary contract air carrier under a General Services Administration (GSA) contract (see 51.3), are not allowable if—

(i) The discounted rate was available to the contractor, and

(ii) Travel could have reasonably been performed under the conditions required by the air carrier to qualify for such rate.

(2) If there is no GSA contract as discussed in paragraph (d)(1) of this subsection, air fare costs in excess of the lowest customary standard, coach, or equivalent air fare offered during normal business hours are unallowable.

(3) The air fares in paragraphs (d)(1) and (d)(2) of this subsection need not be used when such accommodations require circuitous routing, require travel during unreasonable hours, excessively prolong travel, result in increased cost that would offset transportation savings, are not reasonably adequate for the physical or medical needs of the traveler, or are not reasonably available to meet mission requirements. However, in order for air fare costs in excess of the standard air fare to be allowable, the applicable condition(s) set forth above must be justified by the contractor. Any travel costs associated with the use of Government discount air fares (e.g., commuting expenses to and from the airport) shall be taken into consideration when determining the applicable air fare under paragraphs (d)(1) and (d)(2) of this subsection.

(e) * * *

(2) The costs of travel by contractor-owned, -leased, or -chartered aircraft are limited to the air fare described in paragraph (d) of this subsection for the flight destination unless travel by such aircraft is specifically required by contract specification, term, or condition, or a higher amount is approved by the contracting officer. * * *

* * * * *

PART 51—USE OF GOVERNMENT SOURCES BY CONTRACTORS

3. The table of contents for subpart 51.3, consisting of §§ 51.300 through 51.306, is added to read as follows:

Subpart 51.3—Contractor Use of Government Discount Air Passenger Transportation Fares

Sec.
51.300 Scope of subpart.
51.301 Definitions.
51.302 Policy.
51.303 General.

Sec.
51.304 Contractor use of contract air carriers.
51.305 Procedures.
51.306 Contract clause.

4. Subpart 51.3, consisting of §§ 51.300 through 51.306, is added to read as follows:

Subpart 51.3—Contractor Use of Government Discount Air Passenger Transportation Fares

51.300 Scope of subpart.

This subpart establishes policies and procedures concerning contractor use of Government discount air fares (refer to section 833 of the Department of Defense Authorization Act for Fiscal Year 1989, Pub. L. 100-456).

51.301 Definitions.

Contract air carrier, as used in this subpart, means a commercial air passenger carrier that has a contract with the General Services Administration to provide air passenger services at discount air passenger transportation fares to Government employees and, when agreed to by the carrier, eligible contractors traveling on official Government business.

Eligible contractor, as used in this subpart, means a contractor performing under a Government contract (other than a firm-fixed price contract) requiring air travel by an employee of the contractor, the cost of which will be charged as a direct cost to the contract.

Primary contract air carrier, as used in this subpart, means: (1) The only contract air carrier listed in the Federal Travel Directory that provides service for a specific city-pair, or (2) the contract air carrier offering a fare lower than any other contract air carrier for the same specific city-pair.

51.302 Policy.

It is the policy of the Federal Government to reimburse eligible contractors for air travel in amounts not to exceed the fares available to Federal employees if a contract negotiated between GSA and the air carrier states that the air carrier will allow authorized eligible contractors to utilize the carrier's services at those air fares. Contractors shall be reimbursed for air travel as provided in 31.205-46(d).

51.303 General.

The General Services Administration negotiates contracts with air carriers for transportation of passengers between specific cities. The primary purpose of the contracts is to provide economical air transportation to Federal employees traveling on official Government business.

51.304 Contractor use of contract air carriers.

(a) Certain of the GSA contracts referenced in 51.302 contain terms that permit eligible contractors to purchase contract fares when traveling on official Government business. These contract air carriers are listed in the Federal Travel Directory (FTD), which is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 under Stock Number ISSN 0278-0941.

(b) There is no mandatory requirement for eligible contractors to utilize contract air carriers. Nevertheless, if eligible contractors do not use the contract air carriers, the cost principle in 31.205-46, places limits on the amount of allowable costs for this travel, unless one of the following exceptions applies:

(1) Space or scheduled flights are not available in time to accomplish the purpose of travel, or use of contract service would require the traveler to incur unnecessary overnight lodging costs which would increase the total cost of the trip;

(2) The air carrier flight schedule is inconsistent with explicit company travel policies, where applicable, to schedule travel during normal working hours; or

(3) A non-contract carrier offers a lower fare available to the general public, the use of which will result in a lower total trip cost to the contractor, to include the combined costs of transportation, lodging, meals, and related expenses.

(c) In cities with multiple airports for which contracts have not been awarded on an airport basis, use of a fare in excess of the one offered by the primary contractor must be justified based on one of the exceptions in this section, not on the basis of the convenience of one airport over another to the traveler.

51.305 Procedures.

Some contract air carriers require an agency letter of identification in order for eligible contractors to obtain the reduced air fares. These air carriers are identified in the FTD. The contracting officer shall provide an agency letter of identification, substantially as set forth below, when requested by the contractor. The contracting officer shall complete all information in the letter except that required to be completed by the contractor.

Agency Letter of Identification Required for Eligible Contractor Use of GSA Contract Discount Air Fares

(To be typed on agency official letterhead)

To: GSA Contract Airline

Subject: Official Travel of Government Contractor

The bearer of this letter, identified below, is an employee of (COMPANY NAME), which is under contract to this agency under contract (CONTRACT NUMBER), working directly on the performance of the contract. During the period of the contract (GIVE DATES), the employee will be traveling in performance of the contract. The employee is thereby eligible and authorized to use the GSA contract discount air fares if you have extended such fares to Government contractors in accordance with your city-pairs contract with the General Services Administration. (See contractor authorization below).

____

____

____

(Signature, title and telephone number of the contracting officer)

____

(Dated signed)

Contractor employee authorized to use GSA contract discount air fares: (To be completed by the contractor)

____

____

____

(Signature, title and telephone number of authorized contractor representative)

____

(Date signed)

Note: Various discount travel rates are available to eligible Government Contractors only at the option of the vendor under contract and/or agreement with the General Services Administration. The Federal Travel Directory identifies those vendors which have agreed to extend discount contract air fares to Government contractors. Detailed information and procedures should be obtained directly from the Federal contracting agency.

(End of letter)

51.306 Contract clause.

The contracting officer shall insert the clause at 52.251-XX, Government Discount Air Passenger Transportation Fares, in solicitations and contracts when any one of the following situations is contemplated:

(a) A cost-reimbursement contract involving air travel by contractor employees.

(b) A fixed-price contract that provides for cost-reimbursement of air travel by contractor employees.

(c) A fixed-price incentive contract involving reimbursable air travel by contractor employees.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 52.251-XX is added to read as follows:

52.251-XX Government Discount Air Passenger Transportation Fares.

As prescribed in 51.306, insert the following clause:

Government Discount Air Passenger Transportation Fares (Date)

(a) *Definition—Contract air carrier*, as used in this clause, means a commercial air passenger carrier that has a contract with the General Services Administration to provide air passenger services at discount air passenger transportation fares to Government employees and, when agreed to by the carrier, eligible contractors traveling on official Government business.

(b) The Contractor may use the discount air fares to the extent authorized under the GSA contracts as referenced in the Federal Travel Directory (available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, under Stock Number ISSN: 0278-0941). However, if eligible Contractors do not use the contract air carriers, the cost principle in FAR 31.205-46 places a limit on the amount of allowable costs for this travel.

(c) The contract air carrier may require an agency letter of identification in order for Contractors to obtain reduced air fares. The Contractor shall request such agency letter of identification from the Contracting Officer. Duplication of the authorization letter by the Contractor is authorized.

(d) The Contractor shall retain all records of authorized employee travel generated in performance of this contract in accordance with FAR 4.7.

(e) Nothing in this clause shall authorize transportation or services which are not otherwise reimbursable under this contract.

(End of clause)

[FR Doc. 91-17403 Filed 7-22-91; 8:45 am]

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(d) The Contractor shall retain all records of authorized employee travel generated in performance of this contract in accordance with FAR 4.7.

(e) Nothing in this clause shall authorize transportation or services which are not otherwise reimbursable under this contract.

(End of clause)

[FR Doc. 91-17403 Filed 7-22-91; 8:45 am]

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federal register

Tuesday
July 23, 1991

Part V

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 15 and 52

Federal Acquisition Regulation (FAR), Make or Buy Decisions; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 15 and 52

[FAR Case 91-34]

Federal Acquisition Regulation; Make or Buy Decisions

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering amending the Federal Acquisition Regulation (FAR) at sections 15.705 through 15.708 and the provision at 52.215-18 to permit the contracting officer to request additional data, list the factors for evaluation on the make or buy program, and provide the dollar threshold for items to be included in the program.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before September 23, 1991, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4041, Washington, DC 20405.

Please cite FAR Case 91-34 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501-3856 in reference to this FAR case. For general information, contact Ms. Beverly Fayson, FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAR Case 91-34.

SUPPLEMENTARY INFORMATION

A. Background

The recommended proposed rule is a result of the Defense Management Review and originated with the Regulatory Relief Task Force. The proposed language was deleted from the Defense Federal Acquisition Regulations Supplement (DFARS) and is recommended for insertion in the FAR because it is applicable to all Federal buying activities.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because make or buy plans only apply to contracts over $5 million which are generally awarded to large businesses. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite 5 U.S.C 601, *et seq.* (FAR Case 91-34) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Parts 15 and 52:

Government procurement; Make or buy decisions.

Dated:

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR parts 15 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 15 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 15—CONTRACTING BY NEGOTIATION

15.705 [Removed]

2. Section 15.705 is removed.

3. Section 15.706 is redesignated as new 15.705 and paragraph (a) is revised to read as follows:

15.705 Evaluation, negotiation, and agreement.

(a) Contracting officers shall evaluate and negotiate proposed make-or-buy programs as soon as practicable after their receipt and before contract award. If the program is to be incorporated in the contract (see 15.706) and the design status of the product being acquired does not permit accurate precontract identification of major items or work efforts, the contracting officer shall notify the prospective contractor in writing that these items or efforts, when identifiable, shall be added to the program pursuant to the clause at 52.215-21, Changes or Additions to Make-or-Buy Program.

* * * * *

4. Section 15.707 is redesignated as 15.706.

15.707 [Redesignated]

5. Section 15.708 is redesignated as new 15.707 and amended by revising the section heading, adding paragraph (a), and designating the existing text as paragraph (b) to read as follows:

15.707 Solicitation provision and contract clause.

(a) When prospective contractors are required to submit proposed make-or-buy programs (see 15.703), the solicitation shall include the provisions at 52.215-XX, Make-or-Buy Program.

(1) The contracting officer shall insert in paragraph (b)(1) of the provision an appropriate dollar figure in accordance with 15.704.

(2) The contracting officer shall insert in paragraph (b)(8) of the provision any additional information required.

(3) The contracting officer shall insert in paragraph (c) of the provision a description of the factors to be used in evaluating the proposed program, or an appropriate reference to Section M of the solicitation. Examples of factors are listed in 15.705(d).

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Section 52.215-21 is amended by revising the introductory text to read as follows:

52.215-21 Changes or additions to make-or-buy program.

As prescribed in 15.707(b), insert the following clause:

* * * * *

7. Section 52.215-XX is added to read as follows:

52.215-XX Make-or-Buy Program.

As prescribed in 15.707(a), insert the following provision:

Make or Buy Program (Date)

(a) Definitions. *Buy item,* as used in this provision, means an item or work effort to be produced or performed by a subcontractor.

Make item, as used in this provision, means an item or work effort to be produced or performed by the prime Contractor or its affiliates, subsidiaries, or divisions.

Make-or-buy program, as used in this provision, means that part of a Contractor's written plan for a contract identifying (1) those major items to be produced or work efforts to be performed in the prime

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52.215–21, Changes or Additions to Make-or-Buy Program.

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4. Section 15.707 is redesignated as 15.706.

15.707 [Redesignated]

5. Section 15.708 is redesignated as new 15.707 and amended by revising the section heading, adding paragraph (a), and designating the existing text as paragraph (b) to read as follows:

15.707 Solicitation provision and contract clause.

(a) When prospective contractors are required to submit proposed make-or-buy programs (see 15.703), the solicitation shall include the provisions at 52.215–XX, Make-or-Buy Program.

(1) The contracting officer shall insert in paragraph (b)(1) of the provision an appropriate dollar figure in accordance with 15.704.

(2) The contracting officer shall insert in paragraph (b)(8) of the provision any additional information required.

(3) The contracting officer shall insert in paragraph (c) of the provision a description of the factors to be used in evaluating the proposed program, or an appropriate reference to Section M of the solicitation. Examples of factors are listed in 15.705(d).

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Section 52.215–21 is amended by revising the introductory text to read as follows:

52.215–21 Changes or additions to make-or-buy program.

As prescribed in 15.707(b), insert the following clause:

* * * * *

7. Section 52.215–XX is added to read as follows:

52.215–XX Make-or-Buy Program.

As prescribed in 15.707(a), insert the following provision:

Make or Buy Program (Date)

(a) Definitions. *Buy item,* as used in this provision, means an item or work effort to be produced or performed by a subcontractor.

Make item, as used in this provision, means an item or work effort to be produced or performed by the prime Contractor or its affiliates, subsidiaries, or divisions.

Make-or-buy program, as used in this provision, means that part of a Contractor's written plan for a contract identifying (1) those major items to be produced or work efforts to be performed in the prime

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Contractor's facilities; and (2) those to be subcontracted.

(b) The offeror shall submit with its proposal, a written make-or-buy program covering the proposed procurement, supported by the following information:

(1) A description of each major item or work effort. The program should not include items or work efforts estimated to cost less than $______.

(2) Categorization of each major item or work effort as "must make", "must buy", or "can either make or buy".

(3) For each item or work effort categorized as "can either make or buy" a proposal either to "make" or to "buy".

(4) Reasons for (i) categorizing items and work efforts as "must make" or "must buy" and (ii) proposing to "make" or to "buy" those categorized as "can either make or buy". The reasons must include the consideration given to the evaluation factors described in paragraph (c) herein and be in sufficient detail to permit evaluation.

(5) Designation of the plant or division proposed to make each item or perform each work effort and a statement as to whether the existing or proposed new facility is in or near a labor surplus area.

(6) Identification of proposed subcontractors, if known, and their location and size status.

(7) Any recommendations to defer make-or-buy decisions when categorization of some items or work efforts is impracticable at the time of submission.

(8) In addition, the following information shall be included in the offeror's make or buy program:

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(c) The following factors shall be used to evaluate the proposed make-or-buy program:

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(d) The Government reserves the right to review and agree on the Contractor's make-or-buy program when necessary to ensure (1) negotiation of reasonable contract prices, (2) satisfactory performance, or (3) implementation of socioeconomic policies.

(End of provision)

[FR Doc. 91–17402 Filed 7–22–91; 8:45 am]

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Tuesday
July 23, 1991

Part VI

Department of the Interior

Bureau of Land Management

43 CFR Parts 5460 and 5470
Sales Administration: Contract Modification—Extension—Assignment; Interim Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 5460 and 5470

RIN 1004-AB56

[WO-230-02-6310-24 1A]

Sales Administration: Contract Modification—Extension—Assignment

AGENCY: Bureau of Land Management, Interior.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends provisions of existing regulations in 43 CFR part 5470—Contract Administration—Modification—Assignment. The existing regulations are being amended to provide more fairness and flexibility in granting timber sale contract extensions when unusual circumstances beyond the control of a purchaser prevent completion of the contract by the expiration date. The rule provides the contracting officer authority to extend the time for cutting and removal on timber sale contracts without reappraisal in some specific situations.

DATES: Effective July 23, 1991. Comments will be accepted until September 23, 1991. Comments received or postmarked after this date may not be considered in the decisionmaking process on the issuance of the final rule.

ADDRESSES: Inquiries or suggestions should be sent to: Director (140), Bureau of Land Management, 1849 C Street NW., Washington, DC 20240. Comments will be available for public review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Richard Bird, (202) 653-8864.

SUPPLEMENTARY INFORMATION: The Department of the Interior has determined that the existing regulations on timber sale contract extensions are not flexible enough to deal with certain situations. The average length of timber sale contracts has decreased and the average size of timber sales has increased. Also, there are many factors outside the timber purchaser's control that limit the operating time on a contract. These include court injunctions, weather conditions, fire closures, and actions taken by the Federal government to protect cultural and biological resources. Under the current regulations, there are no provisions to extend timber contracts, without reappraisal, when delays are caused by any of the above factors. This interim rule is intended to provide more fairness and flexibility in granting timber sale contract extensions, without reappraisal, because of unusual circumstances that are beyond the control of the purchaser.

A proposed rule was published on July 3, 1990 (55 FR 27477). The purpose of this proposal was to allow contract extensions up to 30 days of operating time without reappraisal when the delay of harvest was due to extreme weather conditions or fire closures imposed by State agencies. After the proposed rule was published, the northern spotted owl was listed under the Endangered Species Act. This listing imposed another limitation on the opportunity to harvest timber within the contract period. It has made it necessary for the BLM to suspend operations on many previously executed timber sale contracts while conferences on the sales were held with the Fish and Wildlife Service (FWS) to determine the impact these sales might have on the spotted owl. These delays will in some cases make it impossible for the purchaser to complete cutting and removal in the time specified in the timber sale contract.

Under the procedures set forth in the current regulations, the Bureau of Land Management (BLM) cannot extend the time for cutting and removal on these contracts without reappraisal. There has been a rapidly rising market for stumpage in the last two years. Therefore, reappraisal of these timber sale contracts would cause the price for the timber to increase significantly. In effect, the purchaser would be penalized for not completing the contracts on time when he was prevented from doing so by the Government. This would likely result in lawsuits against the Government by companies whose expectations under timber sale contracts were frustrated.

Because of the additional delay resulting from the spotted owl listing and the public comments received on the proposed rule, the BLM expanded the proposed rule to address other delays caused by actions of the Federal Government. A reproposed rule was issued to allow the public an opportunity to comment on the changes from the original proposed rule. The reproposed rule was published in the **Federal Register** on June 25, 1991 (56 FR 28850–28852). The comment period was limited to 10 days because several timber contracts are scheduled to expire and performance has been impossible through no fault of the timber purchasers. Some commenters on the reproposed rule have indicated that they believe more time is needed for public review and comment. Because of the need to extend timber contracts that will expire between July 22 and September 30, 1991, and to prevent penalizing purchasers for circumstances beyond their control, an interim rule is being issued to take effect upon publication but allow the public an additional 60 days to comment after the effective date. All comments received within the prescribed time will be considered in the decisionmaking process on the issuance of the final rule.

The BLM received eight letters containing comments on the reproposed rule. Six letters were from associations, one from a law firm, and one from a manufacturing firm. The specific comments contained in these letters and the responses to the comments are listed below:

1. One comment stated that extensions for "acts of God" should be allowed for periods exceeding one year. The comment recommended that the final rule contain specific language that allows the Secretary of the Interior to grant longer extensions for extraordinary situations. The reproposed rule provided for additional extensions to be granted upon written request of the purchaser and this provision is found in the last sentence of § 5473.4(a) in the interim rule.

2. Two comments suggested that § 5473.4(a) be amended to include a provision for extensions of over 30 days without reappraisal when delay was caused by flood, landslide, or other "acts of God". BLM considers it is reasonable to permit only one 30-day extension without reappraisal as provided for under § 5473.4(b). The BLM views "acts of God" as risks of doing business that should be considered in the cost of doing business when bidding on timber sales. This rule is intended to provide protection to the purchaser from certain unanticipated actions taken by the Government or caused by actions of the Government. This suggestion was not adopted.

3. A comment suggested including cases where BLM requests operations be delayed due to a request from a political office of State, local, or Federal Government. BLM does not have any authority to require a purchaser to delay timber operations due to a request from a political office and, therefore, would not require a purchaser to delay his operations on the basis of such a request. This suggestion was not adopted for inclusion in the interim rule.

4. A comment suggested that delays caused by any closure by a State or local government, not just fire closures, should be considered as justification for

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The BLM received eight letters containing comments on the reproposed rule. Six letters were from associations, one from a law firm, and one from a manufacturing firm. The specific comments contained in these letters and the responses to the comments are listed below:

1. One comment stated that extensions for "acts of God" should be allowed for periods exceeding one year. The comment recommended that the final rule contain specific language that allows the Secretary of the Interior to grant longer extensions for extraordinary situations. The reproposed rule provided for additional extensions to be granted upon written request of the purchaser and this provision is found in the last sentence of § 5473.4(a) in the interim rule.

2. Two comments suggested that § 5473.4(a) be amended to include a provision for extensions of over 30 days without reappraisal when delay was caused by flood, landslide, or other "acts of God". BLM considers it is reasonable to permit only one 30-day extension without reappraisal as provided for under § 5473.4(b). The BLM views "acts of God" as risks of doing business that should be considered in the cost of doing business when bidding on timber sales. This rule is intended to provide protection to the purchaser from certain unanticipated actions taken by the Government or caused by actions of the Government. This suggestion was not adopted.

3. A comment suggested including cases where BLM requests operations be delayed due to a request from a political office of State, local, or Federal Government. BLM does not have any authority to require a purchaser to delay timber operations due to a request from a political office and, therefore, would not require a purchaser to delay his operations on the basis of such a request. This suggestion was not adopted for inclusion in the interim rule.

4. A comment suggested that delays caused by any closure by a State or local government, not just fire closures, should be considered as justification for

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an extension without reappraisal. It is unlikely that any closure other than for fire would be imposed by a State or local government that would delay harvest of timber from Federal lands. This suggestion was not adopted.

5. A comment suggested that, in the case of a delay caused or requested by the Government, it should not be the purchaser's responsibility to request an extension and an extension should be automatically awarded. It is not the intention of this rule to automatically grant an extension for every delay that was caused by the Government's actions. There are various types of delays caused by the Government that would be of short duration and would not seriously affect the purchaser's ability to complete the contract in the time allowed in the contract for completion. Timber sale contracts usually allow more than adequate time for completion and a short delay should not prevent completion in the allotted time. This interim rule is intended to provide a means for allowing additional time in those cases where there is an extraordinary need for such additional time. The purchaser is in the best position to determine whether such a need exists and to communicate such need to the BLM. This suggestion was not adopted.

6. Two comments pointed out that § 5473.4(b) was unclear as to what conditions must be met in order for the contracting officer to grant an extension without reappraisal. This section was revised to clarify that the conditions listed in the first sentence of § 5473.4(a) would apply.

7. One comment suggested that the last sentence of § 5473.4(b) be deleted because it is or could be interpreted to be unduly restrictive. This is true in part and the sentence has been revised to clarify that only one extension would be granted without reappraisal under § 5473.4(b).

8. One comment recommended that the last sentence of § 5473.4(b) be removed because purchasers can be faced with numerous but totally unrelated delays in the completion of sales, all of which justify an extension of under 30 days without reappraisal. Another comment stated that an additional 30 days without reappraisal is not enough time to offset significant short-term delays. Incidental delays are considered in determining the amount of time needed to complete a contract and for most timber operations, contract extensions are not considered until the end of the contract term after the purchaser has made a good faith effort to complete the contract within the time allotted. BLM considers it is reasonable to permit only one 30-day extension without reappraisal.

9. Two comments suggested that a new subparagraph be added to § 5473.4(c) to read: "(6) Other Delay Caused or Requested by the United States or Any State or Local Government Agency". One comment suggested that both state and local agencies be referenced in § 5473.4(a). The reproposed rule covered all situations that the BLM believes are likely to occur and place an undue burden on the purchaser because of the requirement for reappraisal upon granting an extension. The language suggested by this comment would be too broad and would tend to make the rule vague and subject to variation in interpretation. The suggestion was not adopted.

10. Two comments suggested that the requirement that the purchaser show a good faith effort to perform the contract in order to qualify for an extension under § 5474.4(c) may be an unduly high standard and inappropriate in some circumstances. For example, when an injunction is issued shortly after a contract is awarded, it may be difficult if not impossible for a purchaser to prove that a good faith effort has been made to perform the contract. The standard for a good faith effort on the part of the purchaser is reasonable. The time that a purchaser has had to perform will be considered by the contracting officer in determining whether a good faith effort has been made. A purchaser will not be expected to perform any more than what the average prudent operator would be expected to perform in a like time period. The suggestion was not adopted.

11. One comment recommended that § 5473.4(c)(5) be broadened to include restricted hours of operation imposed by State fire protection agencies. Restricted hours of operation are normally applied during the fire season and are considered in the time necessary to cut and remove timber. This recommendation was not adopted.

12. Two comments were received concerning the existing provision for extending green timber sale contracts for harvesting an extensive amount of salvage timber resulting from natural or manmade causes. One comment stated that allowing a timber purchaser an extension on a green timber sale in order to operate on a salvage sale provides the purchaser with a windfall that might not be in the public interest. Additionally, one comment recommended that § 5473.4(e) be dropped because it allows salvage volume to be added to an existing contract after the environmental analysis and public review has been completed. It is necessary to redirect harvesting operations into salvage timber in order to recover such timber before it is lost to decay, insects, or disease, or before it causes insect or disease infestations of nearby green timber. This section of the regulations does not grant authority to add additional salvage volume to an existing timber sale. Such volume can only be added by modifying the timber sale contract. All timber contracts and any modifications thereof must comply with the National Environmental Policy Act, the Council of Environmental Quality regulations, and the environmental policies and procedures of the Department of the Interior and the BLM. Therefore, no change from the current regulations was proposed.

13. A comment suggested that extensions on green timber sales should be granted for harvesting salvage timber from any lands, not just Federal lands, and that the proposal should provide an explicit waiver of reappraisal for such extensions. There is adequate logging capacity on private lands so that any necessary salvage operations could be accomplished by redirecting logging activity from green timber to salvage timber. Therefore, this suggestion was not adopted.

14. A comment stated that the reproposed rule does not provide a legally acceptable process for approving requests for contract extensions in that it vests undue discretion in the contracting officer, limits the agency's opportunity to evaluate requests, and precludes meaningful public review. A contracting officer regularly makes decisions involving timber sale contracts and is the appropriate person to make judgments on the merits of an application for extension. Requests for contract extensions are handled by the agency as procedural matters and are not open for public comment.

15. Four comments stated that the 10-day comment period was too short to give the public an adequate opportunity to review and comment on the reproposed rule. Another comment requested that the proposed rule be republished with a 30-day comment period or that a 30-day extension of time be granted to review the proposal. The comment period was set at 10 days in order to allow for public review and yet implement new regulations that would provide for the extension of several timber contracts, without reappraisal. These contracts were delayed because of the requirement for the BLM to consult with the Fish and Wildlife Service concerning the effects that

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timber harvesting would have on the northern spotted owl. The legal action involving the spotted owl has the unintended effect of making it impossible for some contractors to perform their contracts within the contract period. Because these contracts will expire between July 22 and September 30, 1991, which in all fairness should be extended, without reappraisal, to prevent penalizing purchasers for circumstances beyond their control, an interim rule is being adopted that will take effect upon publication but still allow the public to submit comments 60 days after the effective date. All comments received will be considered in the decisionmaking process on the issuance of the final rule.

The interim rule published today incorporates many changes suggested in response to the original proposed rule, as well as changes suggested on the reproposed rule. Editorial changes have been adopted to make the regulations more clear. The rule provides that an extension may be granted for time lost as a result of: (1) Additional requirements incorporated in contract modifications requested by the Government; (2) delays necessitated by the requirements for consultation with the FWS under the Endangered Species Act; (3) reviews for cultural resource values; (4) court injunctions obtained by parties outside the contract; or (5) fire closures imposed by State agencies. The extensions will provide additional time, during the operating season, equal to time lost as a result of these reasons. The extensions referred to above will be granted without reappraisal.

The rule also provides that short extensions of up to 30 days of operating time may be granted without reappraisal, if the cause for delay in cutting or removal was beyond the control of the purchaser and was without his fault or negligence.

It is hereby determined under 5 U.S.C. 553(d)(3) that good cause exists to make this interim rule effective immediately, because 4 contracts for purchase of Federal timber will require reappraisal upon extension if the effective date is delayed. Given the current economic situation in the timber industry, the purchasers, which entered and performed under the contracts in good faith, would have to make a substantial financial outlay to extend the reappraised contracts, performance of which has been delayed because of consultation required by the Endangered Species Act, and not by any dereliction of performance on the part of the purchasers. Moreover, the rule is predominately procedural and merely permits contracts in force to be completed in accordance with the reasonable expectations of the parties.

The principal author of this interim rule is Richard Bird of the Division of Forestry, assisted by the staff of the Division of Legislation and Regulatory Management, BLM.

It is hereby determined that this interim rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule, and under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that it will not have a significant economic impact on a substantial number of small entities. Additionally, as required by Executive Order 12630, the Department has determined that the rule will not cause a taking of private property.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 43 CFR 5460

Forests and forest products, Government contracts, Public lands.

List of Subjects in 43 CFR 5470

Forests and forest products, Government contracts, Public lands.

For the reasons stated above, and under the authorities cited below, parts 5460 and 5470 of Group 5000, subchapter E, chapter II of title 43 of the Code of Federal Regulations are amended as set forth below:

PART 5460—SALES ADMINISTRATION [AMENDED]

1. The authority citation for part 5460 is revised to read:

Authority: 30 U.S.C. 601 *et seq.*, 43 U.S.C. 1181e.

§ 5463.1 [Amended]

2. Section 5463.1 is amended by removing the phrase "§§ 5463.2 and 5473.1" at the end of the section and replacing it with the term "Subpart 5473".

§ 5463.2 [Removed]

3. Section 5463.2 is removed.

PART 5470—CONTRACT MODIFICATION—EXTENSION—ASSIGNMENT

4. The authority citation for Part 5470 is revised to read:

Authority: 30 U.S.C. 601 *et seq.*, 43 U.S.C. 1181e.

5. Section 5473.1 is revised to read as follows:

§ 5473.1 Application.

In order to be considered, written requests for extension shall be delivered to the appropriate BLM office prior to the expiration of the time for cutting and removal.

6. Section 5473.4 is revised to read as follows:

§ 5473.4 Approval of request.

(a) If the purchaser shows that his delay in cutting or removal was due to causes beyond his control and without his fault or negligence, the contracting officer may grant an extension of time, upon written request of the purchaser. Such extension shall not exceed one year, and shall require a reappraisal if the delay was not imposed by the United States or any State government agency under paragraph (c) of this section. Market fluctuations are not cause for consideration of contract extensions. Additional extensions may be granted upon written request of the purchaser.

(b) Notwithstanding the provisions of paragraph (a) of this section requiring reappraisal if the delay was not imposed by the United States or any State government under paragraph (c) of this section, the contracting officer may grant an extension of time without reappraisal, not to exceed 30 days of operating time, if the conditions set out in the first sentence of paragraph (a) of this section are met. No additional extensions may be granted without reappraisal under the provisions of this paragraph.

(c) On a showing satisfactory to the contracting officer that a good faith effort was made to fulfill the contract prior to any delaying event listed in this paragraph, the contracting officer may grant, without reappraisal, an extension of time not to exceed that necessary to provide an additional amount of operating time equal to operating time lost as a result of:

(1) Additional contract requirements incorporated in contract modifications requested by the Government;

(2) Delays necessitated by the requirements for consultation with the U.S. Fish and Wildlife Service under the Endangered Species Act;

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PART 5470—CONTRACT MODIFICATION—EXTENSION—ASSIGNMENT

4. The authority citation for Part 5470 is revised to read:

Authority: 30 U.S.C. 601 *et seq.*, 43 U.S.C. 1181e.

5. Section 5473.1 is revised to read as follows:

§ 5473.1 Application.

In order to be considered, written requests for extension shall be delivered to the appropriate BLM office prior to the expiration of the time for cutting and removal.

6. Section 5473.4 is revised to read as follows:

§ 5473.4 Approval of request.

(a) If the purchaser shows that his delay in cutting or removal was due to causes beyond his control and without his fault or negligence, the contracting officer may grant an extension of time, upon written request of the purchaser. Such extension shall not exceed one year, and shall require a reappraisal if the delay was not imposed by the United States or any State government agency under paragraph (c) of this section. Market fluctuations are not cause for consideration of contract extensions. Additional extensions may be granted upon written request of the purchaser.

(b) Notwithstanding the provisions of paragraph (a) of this section requiring reappraisal if the delay was not imposed by the United States or any State government under paragraph (c) of this section, the contracting officer may grant an extension of time without reappraisal, not to exceed 30 days of operating time, if the conditions set out in the first sentence of paragraph (a) of this section are met. No additional extensions may be granted without reappraisal under the provisions of this paragraph.

(c) On a showing satisfactory to the contracting officer that a good faith effort was made to fulfill the contract prior to any delaying event listed in this paragraph, the contracting officer may grant, without reappraisal, an extension of time not to exceed that necessary to provide an additional amount of operating time equal to operating time lost as a result of:

(1) Additional contract requirements incorporated in contract modifications requested by the Government;

(2) Delays necessitated by the requirements for consultation with the U.S. Fish and Wildlife Service under the Endangered Species Act;

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(3) Reviews for cultural resource values;

(4) Court injunctions obtained by parties outside the contract; or

(5) Closure of operations by State fire protection agencies due to fire danger.

(d) As used in this section, "operating time" means a period of time during the operating season, and "operating season" means the time of the year in which operations of the type required to complete the contract are normally conducted in the location encompassing the subject timber sale, or the time of the year specified in the timber sale contract when such operations are permitted.

(e) Upon written request of the purchaser, the State Director may extend a contract to harvest green timber to allow that purchaser to harvest, as salvage from Federal lands, timber that has been damaged by fire or other natural or man-made disaster. The duration of the extension shall not exceed the time necessary to meet the salvage objectives. The State Director may also waive reappraisal for such extension.

3. Section 5473.4–1 is amended by revising paragraph (a) to read as follows:

§ 5473.4–1 Reappraisal.

(a) If an extension is granted under § 5473.4(a), reappraisal by the contracting officer of the material sold will be in accordance with this section.

* * * * *

Dated: July 19, 1991.

Peter W. Niebauer,

Acting Assistant Secretary of the Interior.

[FR Doc. 91–17643 Filed 7–22–91; 8:45 am]

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Part VII

The President

Presidential Determination No. 91-45—Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

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Title 3—

Th President

[FR Doc. 90-17640
Filed 7-19-91; 4:57 pm]
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Presidential Documents

Title 3—

The President

Presidential Determination No. 91-45 of July 8, 1991

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), I hereby determine that it is important to the national interest that $7,000,000 be made available from the U.S. Emergency Refugee and Migration Assistance Fund (Emergency Fund) to meet the unexpected and urgent needs of refugees and other displaced persons in the Western Sahara. A total of $7,000,000 will be contributed to the United Nations High Commissioner for its activities in the Western Sahara.

You are authorized and directed to inform the appropriate committees of the Congress of this determination and the obligation of funds under this authority, and to publish this determination in the **Federal Register**.

George Bush

[FR Doc. 90-17640
Filed 7-19-91; 4:57 pm]
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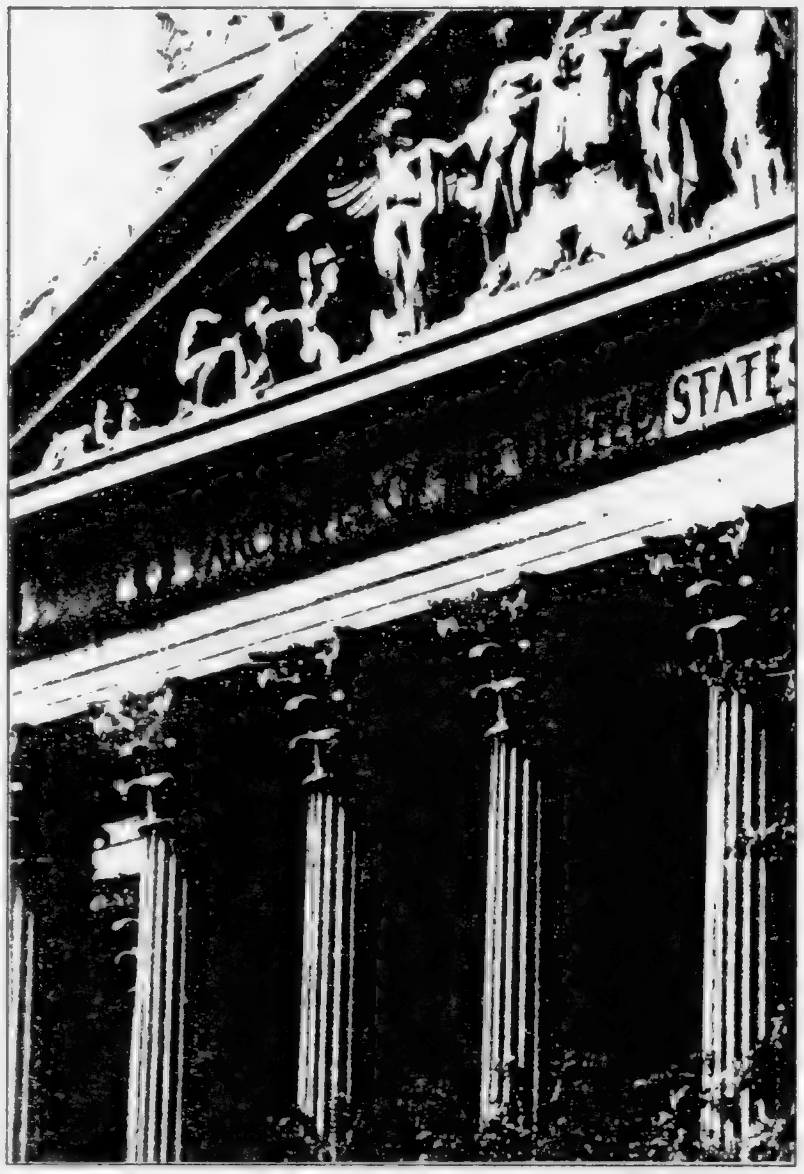

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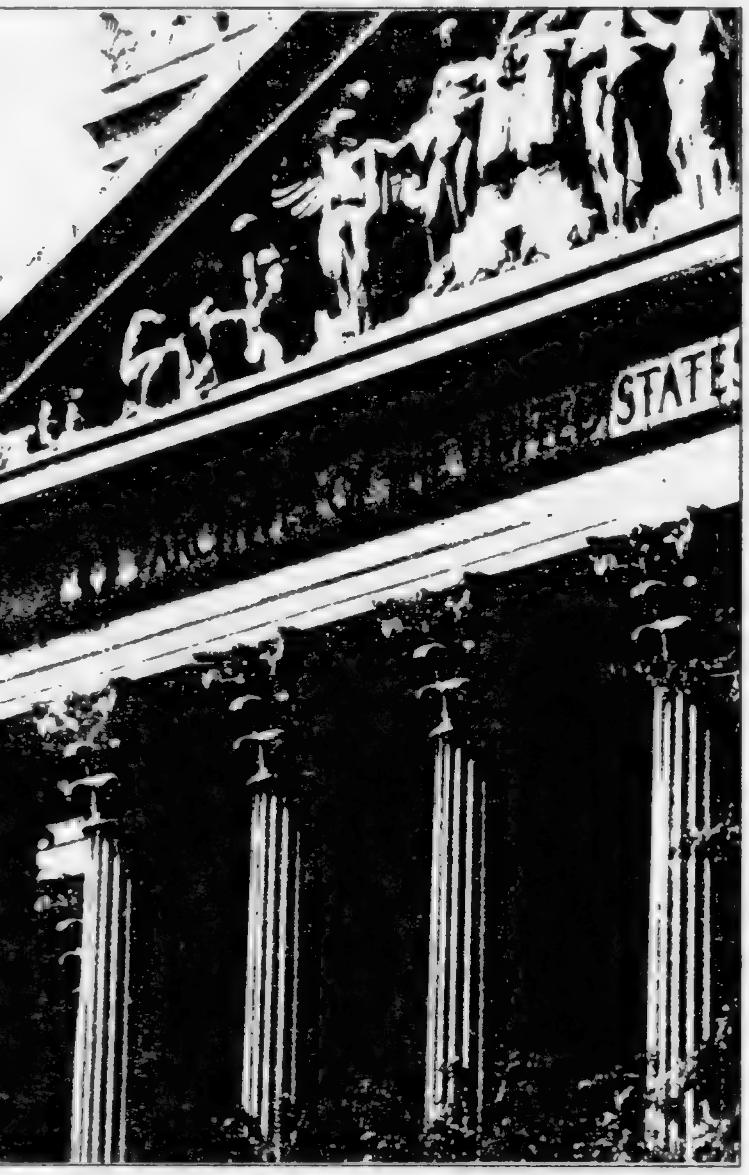

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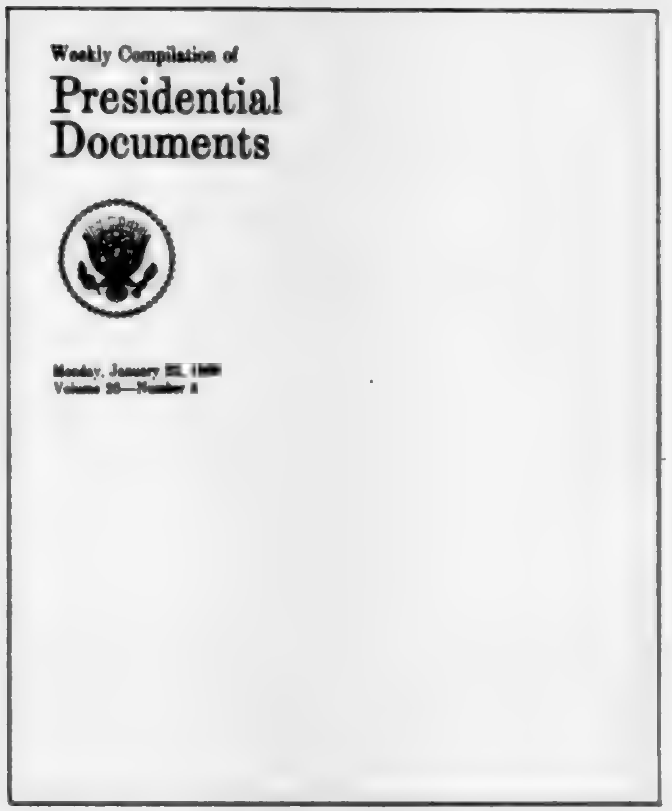
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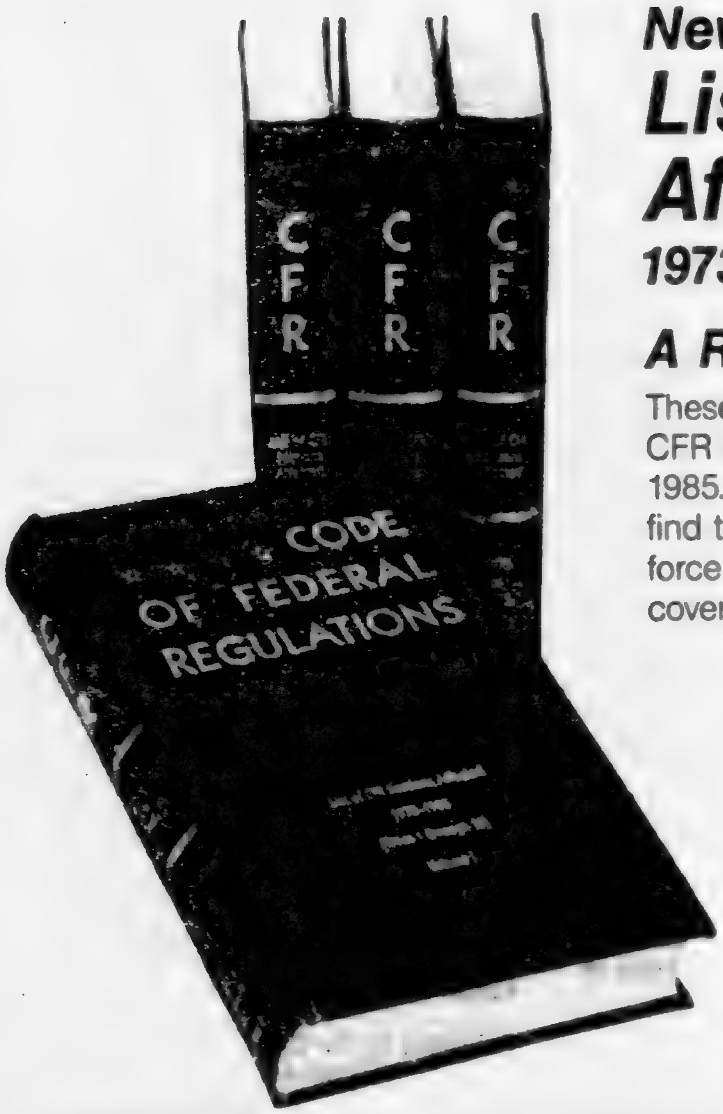

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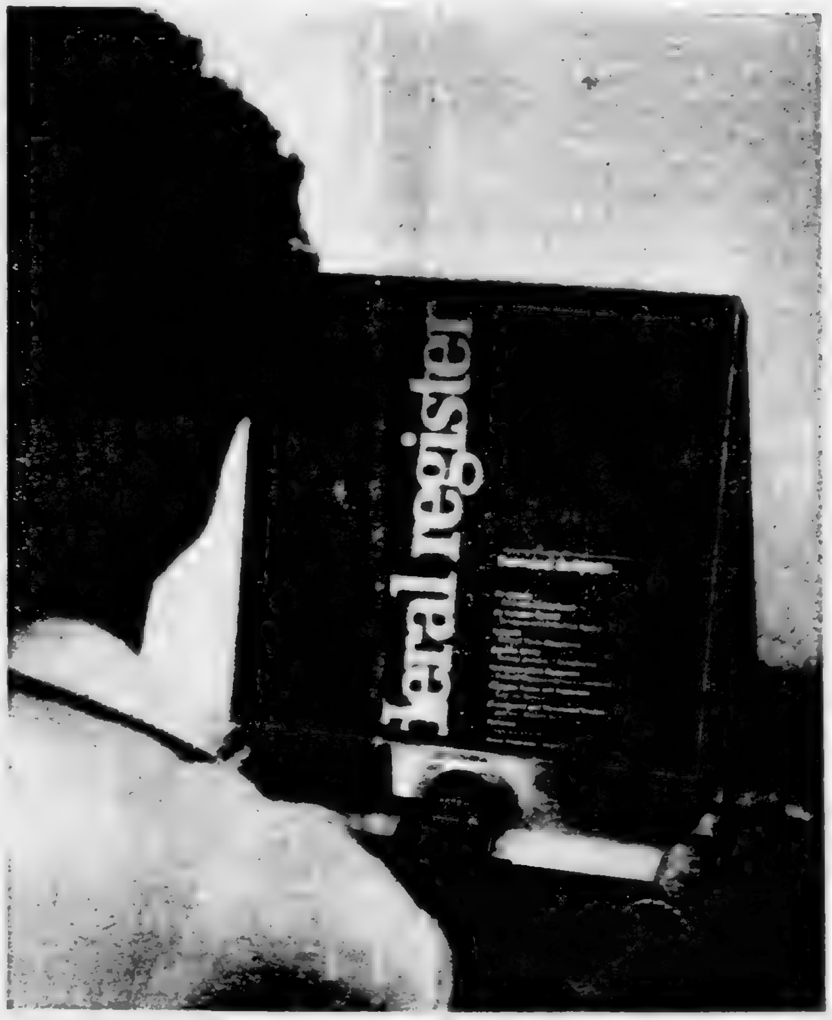

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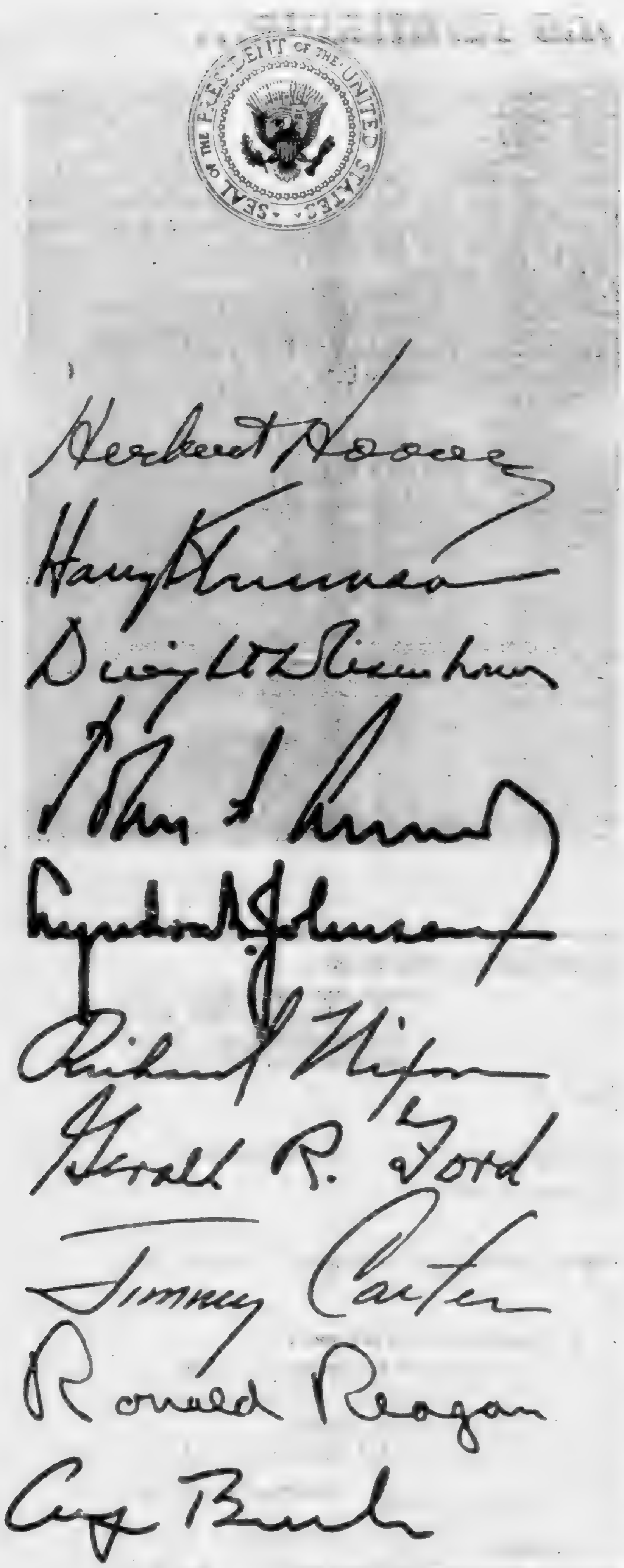
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Reader Aids

Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

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Title 3—

The President

[FR Doc. 91-17675
Filed 7-22-91; 11:58 am]
Billing code 3195-01-M

Federal Register
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Presidential Documents

Title 3—

The President

Presidential Determination No. 91-46 of July 13, 1991

Assistance to Jordan Under Chapter 4 of Part II of the Foreign Assistance Act of 1961

Memorandum for the Secretary of State

By virtue of the authority vested in me by section 502(c) of the Dire Emergency Supplemental Appropriations for Consequences of Operation Desert Shield/Desert Storm, Food Stamps, Unemployment Compensation Administration, Veterans Compensation and Pensions, and Other Urgent Needs Act of 1991 (Public Law 102-27), I hereby determine and certify that furnishing assistance under chapter 4 of part II of the Foreign Assistance Act of 1961, as amended, to Jordan would be beneficial to the peace process in the Middle East.

In addition, by virtue of the authority vested in me by section 586D of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991 (Public Law 101-513), I hereby determine and certify that assistance for Jordan under chapter 4 of part II of the Foreign Assistance Act of 1961, as amended, is in the national interest of the United States.

You are authorized and directed to notify the Congress of this determination and to publish it the **Federal Register**.

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ADMINISTRATIVE CONFE
THE UNITED STATES

1 CFR Part 305

Recommendations of the
Administrative Conferenc
Administrative Practice an

AGENCY: Administrative Co
the United States.

ACTION: Recommendations.

SUMMARY: The Administrat
Conference of the United St
six recommendations at its
Plenary Session addressing
agency cooperation with fo
government regulators; (2)
administrative procedure a
review in export control pr
the Social Security represe
program; (4) the National V
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Recommendations of the
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published in full text in the
Register upon adoption. Co
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continuing interest, are pub
Code of Federal Regulation
305).

DATES: These recommendat
adopted June 13–14, 1991 a
July 16, 1991.

FOR FURTHER INFORMATION
Cari Votava, Information O

Rules and Regulations

Federal Register
Vol. 56, No. 142
Wednesday, July 24, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Part 305

Recommendations of the Administrative Conference Regarding Administrative Practice and Procedure

AGENCY: Administrative Conference of the United States.

ACTION: Recommendations.

SUMMARY: The Administrative Conference of the United States adopted six recommendations at its Forty-Third Plenary Session addressing: (1) Federal agency cooperation with foreign government regulators; (2) administrative procedure and judicial review in export control proceedings; (3) the Social Security representative payee program; (4) the National Vaccine Injury Compensation Program; (5) the use of rulemaking by the National Labor Relations Board; and (6) the supervision of government-sponsored enterprises.

The Administrative Conference of the United States is a federal agency established to study the efficiency, adequacy, and fairness of the administrative procedures used by federal agencies in carrying out administrative programs, and to make recommendations for improvements.

Recommendations of the Administrative Conference are published in full text in the Federal Register upon adoption. Complete lists of recommendations, together with the texts of those deemed to be of continuing interest, are published in the *Code of Federal Regulations* (1 CFR Part 305).

DATES: These recommendations were adopted June 13–14, 1991 and issued July 16, 1991.

FOR FURTHER INFORMATION CONTACT: Carl Votava, Information Officer, or Jeffrey S. Lubbers, Research Director (202–254–7020).

SUPPLEMENTARY INFORMATION: The Administrative Conference of the United States was established by the Administrative Conference Act, 5 U.S.C. 571–576. The Conference studies the efficiency, adequacy, and fairness of the administrative procedures used by federal agencies in carrying out administrative programs, and makes recommendations for improvements to the agencies, collectively or individually, and to the President, Congress, and the Judicial Conference of the United States (5 U.S.C. 574(1)).

At the Forty-Third Plenary Session, held June 13–14, 1991, the Assembly of the Administrative Conference of the United States adopted six recommendations.

Recommendation 91–1, Federal Agency Cooperation with Foreign Government Regulators, endorses greater agency efforts to cooperate with regulators in foreign countries. This cooperation may be through the exchange of information about regulation, the sharing of research and development and other resources, or by the adoption of compatible approaches to common problems of regulation and enforcement. While encouraging greater cooperation, the Recommendation recognizes that many factors will determine whether, to what extent, and in what form an agency should engage in such cooperation.

Recommendation 91–2, Fair Administrative Procedure and Judicial Review in Commerce Department Export Control Proceedings, urges Congress to repeal the provision in the Export Administration Act that exempts export controls proceedings conducted by the Commerce Department from the administrative process and judicial review provisions of the Administrative Procedure Act. Removing the APA exemption would open export controls proceedings to increased public participation and greater judicial scrutiny, while existing military and foreign affairs exemptions would continue to apply as necessary to protect the executive branch's ability to conduct foreign policy and protect national security. The recommendation also proposes several additional changes to relevant procedures, including the consolidation of judicial review of all Commerce Department export control actions in the Court of Appeals for the Federal Circuit, the elimination of *de novo* judicial review of Commerce Department civil penalty determinations under the Export Administration Act, and provision by the Commerce Department of adequate written explanations for adverse licensing and classification decisions.

Recommendation 91–3, The Social Security Representative Payee Program, addresses a number of issues raised by the program the Social Security Administration administers to pay to "representative payees" the benefits of beneficiaries not capable of managing their own benefits. The Conference recommends, among other things, that SSA issue rules after notice and comment concerning a number of substantive standards, that it make changes in the procedures it uses to determine whether to appoint a representative payee, and that it allow appeals of decisions concerning whether beneficiary funds have been misused by a representative payee. The Conference recommends that Congress authorize SSA to use administrative adjudication to require repayment by representative payees of misused beneficiary funds and to impose civil monetary penalties.

Recommendation 91–4, The National Vaccine Injury Compensation Program, recommends steps to alleviate problems in the administration of the National Vaccine Injury Compensation Program. The program was established to reduce the burden and uncertainty of court litigation for dealing with claims of vaccine-related injury and to stabilize the supply and price of vaccines. Claims are decided by the United States Claims Court following initial determinations made by special masters to the Court. The Conference suggests ways to improve administration of the program, including greater articulation of standards for eligibility and awards and solutions to the temporary backlog of filings from people claiming pre-Act injuries.

Recommendation 91–5, Facilitating the Use of Rulemaking by the National Labor Relations Board, urges the Board to continue to use rulemaking in appropriate situations to establish national policy. In addition to recommending general adherence to the APA's notice-and-comment procedures, the Conference requests Congress to amend the National Labor Relations Act to provide for preenforcement review of final Board rules in a single court of appeals, and to preclude review at the enforcement stage of the procedures employed in the rulemaking and the adequacy of support for the rule in the administrative record. The recommendation also identifies certain factors that should commend rulemaking to the Board.

Recommendation 91-6, Improving the Supervision of the Safety and Soundness of Government-Sponsored Enterprises, addresses the appropriate level of regulatory oversight of government-sponsored enterprises (federally-chartered, private financial institutions with specialized, nationwide lending powers). The Recommendation states that each GSE should have a federal agency responsible for overseeing the safety and soundness of its activities, and that the oversight agency should be given adequate funding and powers to do the job. The Conference does not recommend a particular oversight structure, a topic which is addressed in recent report by the Department of the Treasury, the General Accounting Office, and the Congressional Budget Office. However, the Conference recommends that federal oversight agencies should only become involved in management issues when a GSE's risk profile is significant and, then, only as necessary to protect the financial integrity of the institution.

The full texts of the recommendations are set out below. The recommendations will be transmitted to the affected agencies and, if so directed, to the Congress of the United States. The Administrative Conference has advisory powers only, and the decision on whether to implement the recommendations must be made by each body to which the various recommendations are directed.

The transcript of the Plenary Session will be available for public inspection at the Conference's offices at suite 500, 2120 L Street NW., Washington, DC.

List of Subjects in 1 CFR Parts 305

Administrative practice and procedure.

PART 305—RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1. The authority citation for Part 305 continues to read as follows:

Authority: 5 U.S.C. 571-576.

2. The table of contents to part 305 of title 1 CFR is amended to add the following new sections:

Sec.

305.91-1 Federal Agency Cooperation with Foreign Government Regulators (Recommendation No. 91-1).
305.91-2 Fair Administrative Procedure and Judicial Review in Commerce Department Export Control Proceedings (Recommendation No. 91-2).
305.91-3 The Social Security Representative Payee Program (Recommendation No. 91-3).
305.91-4 The National Vaccine Injury Compensation Program (Recommendation No. 91-4).
305.91-5 Facilitating the Use of Rulemaking by the National Labor Relations Board (Recommendation No. 91-5).
305.91-6 Improving the Supervision of the Safety and Soundness of Government-Sponsored Enterprises (Recommendation No. 91-6).

3. New §§ 305.91-1 through 305.91-6 are added to part 305, to read as follows:

§ 305.91-1 Federal Agency Cooperation with Foreign Government Regulators (Recommendation No. 91-1).

If American administrative agencies could ever afford to engage in regulatory activities without regard to the policies and practices of administrative agencies abroad, the character and pace of world developments suggest that that era has come to a close. The substantive problems facing agencies have parallels, to a greater or lesser extent, in the problems facing those agencies' counterparts in foreign countries. The policies and procedures developed by governments abroad are likely to be of interest and benefit to American regulators, and those developed here may be of utility abroad.

The case for international regulatory cooperation does not, however, rest entirely on the exchange of information about the current regulatory landscape. As the experience of certain agencies engaged in international regulatory dialogue demonstrates, there still remain regulatory problems to be identified and solutions, both to new and existing problems, to be found. Particularly in areas of fast-changing technology or fast-evolving standards and expectations, regulatory bodies may find that they actually need, or can profitably share, the resources of other governments in addressing common problems of regulation and enforcement. In their continuous efforts at improving their performance, agencies have become increasingly aware that contemporary regulation often entails a powerful research and development burden whose sharing may be in all regulators' best interests.

Regulatory cooperation with foreign counterparts will also produce advantages for regulated interests and for those affected by those interests. Regulated entities generally prefer an orderly regulatory environment, and more particularly one marked by a high degree of commonality among the standards imposed by public authorities in the various markets they serve. Costs of compliance are most obvious when different countries impose mutually inconsistent standards on business products or practices, particularly where the latter by their nature are international in scope. However, even where national standards are not mutually inconsistent, or business products or practices are not inherently international in scope, the cumulative effect of differences in regulatory standards may impose substantial and, in some cases, unjustified burdens. In addition, consumers and other affected persons have an interest in the maintenance of reasonably common protective standards. The internationalization of business has put the need for this kind of environment on an international scale. It accordingly points in the direction of greater and more deliberate intergovernmentalism in regulatory matters than one generally associates with American administrative processes.

American agencies generally have not developed consistent practices in their efforts at international regulatory cooperation. Such cooperation may, in fact, take a wide variety of forms, from the casual and unsystematic sharing of information at one extreme, to a firm commitment to concerted regulatory action at the other. In between fall a number of different patterns, such as regular consultations, reciprocal participation in foreign agency rulemaking, and various forms of joint study, research and rule development. Since harmonization does not necessarily entail uniformity, but simply a net reduction in regulatory inconsistencies and differences, even harmonization is a matter of degree.

As the following recommendation seeks to make clear, agencies are not all similarly situated with respect to the opportunities for, and advantages of, regulatory cooperation. The functions and regulatory objectives of a particular agency, its past experience in such cooperation, and the feasibility of reliance on a foreign counterpart's technical administrative, or regulatory resources are among the factors determining whether, to what extent, and in what form that agency should engage in such cooperation and pursue regulatory harmonization. Moreover, an agency is likely to be more comfortable in initially experimenting with international cooperation on a limited basis by selected means rather than in developing at once a comprehensive, systematic program of cooperation. Nevertheless, agencies may usefully consider this recommendation, which is based in part on the practice and experience of one agency, the Federal Aviation Administration, that has consciously engaged in forms of concerted activity with counterpart agencies abroad. This case study is of particular interest because the FAA's practice of intergovernmentalism includes, but also goes beyond, cooperation in rulemaking as such to include a certain amount of cooperation in more routine aspects of administration. While this recommendation does not address international assistance in enforcement as such, it recognizes that an increased commonality of substantive standards does tend to increase opportunities for mutual assistance in the enforcement realm.

Of course, care should be taken that the spirit of compromise and mutual consideration that ought to characterize intergovernmental activities not adversely

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American agencies generally have not developed consistent practices in their efforts at international regulatory cooperation. Such cooperation may, in fact, take a wide variety of forms, from the casual and unsystematic sharing of information at one extreme, to a firm commitment to concerted regulatory action at the other. In between fall a number of different patterns, such as regular consultations, reciprocal participation in foreign agency rulemaking, and various forms of joint study, research and rule development. Since harmonization does not necessarily entail uniformity, but simply a net reduction in regulatory inconsistencies and differences, even harmonization is a matter of degree.

As the following recommendation seeks to make clear, agencies are not all similarly situated with respect to the opportunities for, and advantages of, regulatory cooperation. The functions and regulatory objectives of a particular agency, its past experience in such cooperation, and the feasibility of reliance on a foreign counterpart's technical administrative, or regulatory resources are among the factors determining whether, to what extent, and in what form that agency should engage in such cooperation and pursue regulatory harmonization. Moreover, an agency is likely to be more comfortable in initially experimenting with international cooperation on a limited basis by selected means rather than in developing at once a comprehensive, systematic program of cooperation. Nevertheless, agencies may usefully consider this recommendation, which is based in part on the practice and experience of one agency, the Federal Aviation Administration, that has consciously engaged in forms of concerted activity with counterpart agencies abroad. This case study is of particular interest because the FAA's practice of intergovernmentalism includes, but also goes beyond, cooperation in rulemaking as such to include a certain amount of cooperation in more routine aspects of administration. While this recommendation does not address international assistance in enforcement as such, it recognizes that an increased commonality of substantive standards does tend to increase opportunities for mutual assistance in the enforcement realm.

Of course, care should be taken that the spirit of compromise and mutual consideration that ought to characterize intergovernmental activities not adversely

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affect the integrity of the regulatory process. It is important that agencies observe the procedural statutes under which they ordinarily operate, and that their processes remain open to public scrutiny and participation. Nor will it do, either in reality or in appearance, for the regulatory standards an agency ultimately adopts to be the product, pure and simple, of intergovernmental negotiations. American agencies and their foreign counterparts work under statutory mandates, which must remain the touchstone so far as the substance of regulatory action is concerned. The zone of compromise within which an agency may then operate in the interest of collegiality with decisionmakers of other nations is necessarily uncertain but necessarily limited. Within that zone, however, international regulatory cooperation has a significant, possibly even a leading, role to play.

Recommendation

1. Each agency should inform itself of the existence of foreign (including regional and international) regulatory bodies [1] whose activities may relate to the mission of that agency.

2. Each agency should determine whether and to what extent regulatory cooperation with one or more foreign regulatory bodies is appropriate. Desirable forms of cooperation may include the simple exchange of information, coordination of regulatory objectives, consultation in advance of rulemaking, and reciprocal participation in rulemaking processes. Apart from general considerations of cost and staffing, factors to be considered in deciding the importance and intensity of the cooperative effort to be made, the forms of cooperation to adopt, and the geographic range of foreign regulatory bodies with which to cooperate, include:

a. The extent to which the participating regulatory agencies share common regulatory objectives;

b. The importance of commonality, and therefore international harmonization,[2] in the development of regulatory policy in the particular field;

c. The extent to which the capabilities of foreign regulatory bodies justify the agency's reliance on their technical, regulatory and administrative resources;

d. The opportunities that international regulatory cooperation presents for improvement in the enforcement and administration of the agency's program (as, for example, through mutual recognition of tests, inspections and certifications or through mutual assistance in information gathering and other forms of assistance);

e. The presence of existing bilateral or multilateral international frameworks for addressing common regulatory concerns;

f. The receptivity of a given foreign regulatory body to meaningful participation by American regulatory and private interests in its policymaking processes; and

g. In appropriate consultation with the Department of State, the foreign policy of the United States.

3. Even when an agency concludes that the factors set out in paragraph 2 do not counsel substantial regulatory cooperation with foreign governments, it should nevertheless explore the possibilities of international cooperation in enforcement, including mutual assistance in information gathering and, where appropriate, reliance upon foreign tests, inspections, and certifications.

4. When an agency concludes that it has a pronounced interest in cooperation with foreign regulatory bodies, it should consider adopting various modes of cooperation with those agencies, including:

a. The establishment of common regulatory agendas;

b. The systematic exchange of information about present and proposed foreign regulation;

c. Concerted efforts to reduce differences between the agency's rules and those adopted by foreign government regulators where those differences are not justified;

d. The creation of joint technical or working groups to conduct joint research and development and to identify common solutions to regulatory problems (for example, through parallel notices of proposed rulemaking);

e. The establishment of joint administrative teams to draft common procedures and enforcement policies;

f. The mutual recognition of foreign agency tests, inspections and certifications, to the extent that the American agency is satisfied that foreign regulatory bodies have sufficient expertise and employ comparable standards; and

g. The holding of periodic bilateral or multilateral meetings to assess the effectiveness of past cooperative efforts and to chart future ones.

5. a. When engaging in international regulatory cooperation, an agency should ensure that it does so in a manner consistent with national statutes and international engagements.

b. An agency engaging in international regulatory cooperation should also be alert to the possibility that foreign regulatory bodies may have different regulatory objectives, particularly where a government-owned or controlled enterprise is involved.

6. To promote acceptance of and compliance with the measures that result from its cooperation with foreign regulatory bodies, an agency should enlist the support and participation of other affected agencies, regulated interests, public interest groups, and other affected domestic interests, as follows:

a. Where appropriate, agencies should, so far as considerations of time and international relations permit, afford affected private and public interests timely notice of any formal system of collaboration with foreign regulatory bodies that exists and an opportunity where reasonable to participate and comment on decisionmaking under such system.

b. The agency should, where appropriate, also encourage the establishment of working relations between domestic interests and their foreign counterparts, including manufacturers, other trade and industry interests, and consumer and other public interest groups.

c. The agency should assemble an interagency advisory group, consisting of the Department of State and other affected agencies such as the Departments of Commerce and Defense and the U.S. Trade Representative's Office, if one does not exist. Each member agency of an advisory group should, without prejudice to its independent decisionmaking, both inform that group about the nature and extent of its concerted activities with foreign regulatory bodies relevant to the purposes of the group and seek that group's advice. In addition, the Chairman of the Administrative Conference should convene a meeting of the heads of interested agencies to discuss the need for establishing a permanent, government-wide mechanism for organizing, promoting, and monitoring international regulatory cooperation on the part of American agencies.

7. Agencies should, consistent with their statutory mandate and the public interest, give sympathetic consideration to petitions by private and public interest groups for proposed rulemaking that contemplate the reduction of differences between agency rules and the rules adopted by foreign government regulators, where those differences are not justified.

8. a. Once an agency has a program of international regulatory cooperation with a foreign regulatory body, it should

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[1] Throughout this recommendation, the term "foreign regulatory bodies" includes, where appropriate, also regional and international regulatory bodies.

[2] Harmonization does not necessarily imply regulatory uniformity. It implies a reduction in the differences (including but not limited to inconsistencies) among the regulatory standards of different jurisdictions.

routinely advise that body before initiating proposed rulemaking, and should seek to engage that body's participation in the rulemaking process.

b. Conversely, the agency should see to it that it is informed of initiatives by those foreign regulatory bodies and ensure that its views are considered by those bodies early in the conduct of their rulemaking procedures.

c. Where, following joint rule development efforts, an agency ultimately proposes a rule that differs from the rule proposed by the foreign counterpart, it should specify the difference in its notice of proposed rulemaking and request that it be specified in any corresponding foreign notice.

9. An agency should adopt reasonable measures to facilitate communication of views by foreign regulatory bodies on proposed rules.

10. While international consultations of the sort described in this recommendation do not appear to necessitate any radical departure from an agency's ordinary practices in compliance with applicable procedural satutes,[3] an agency engaged in such consultations should make reasonable efforts to ensure that affected interests are aware of them. For example, when an agency substantially relies on those consultations in its rulemaking (or where foreign government rules, practices or views have otherwise substantially influenced the agency's proposals), it should describe both the fact and the substance of those consultations in its notices of proposed rulemaking, rulemaking records and statements of basis and purpose under the Administrative Procedure Act. Where the objective of harmonizing American and foreign agency rules has had a significant influence on the shape of the rule, that fact also should be acknowledged.

11. An agency that engages in systematic exchanges of information and consultation with foreign regulatory bodies should seek to ensure that domestic interests do not suffer competitive disadvantage from the release of valuable information by those bodies to foreign private interests. This may require that the agency seek to reach agreement with its foreign counterparts concerning the conditions under which information will be disclosed.

12. While harmonization of standards with foreign regulatory bodies may be a legitimate objective of any agency whose activities affect transnational interests or transactions (and therefore may appropriately influence the rulemaking outcome), it should be pursued within the overall framework of the agency's statutory mandate and with due regard for the interests that Congress intended the agency to promote. Accordingly, agencies should ensure that any accord informally reached through international regulatory cooperation is genuinely subject to reexamination and reconsideration in the course of the rulemaking process.

§ 305.91-2 Fair Administrative Procedure and Judicial Review in Commerce Department Export Control Proceedings (Recommendation No. 91-2).

The Export Administration Act (EAA), 50 U.S.C. App 2401–2420, authorizes the Commerce Department to restrict exports of goods and technology from the United States in the interests of national security, foreign policy objectives, and preservation of this country's access to commodities in short supply. It is the principal element in a scheme of export controls that emerged after World War II to serve three ends: reduction of the domestic impact of worldwide postwar shortages of critical goods, priority allocation of resources to rebuild Europe under the Marshall Plan, and restriction of the access of Eastern Bloc nations to technology useful for military purposes. Over the years, restricting access to useful technology has become the primary goal of the EAA, although the countries against which those restrictions are directed have changed from time to time in the light of shifting political considerations.

The EAA has an international aspect. The United States works with its allies through a coordinating committee on multilateral export controls (CoCom) to identify commodities that should be controlled as well as countries that should be the targets of various export controls. Using the lists thus generated, the Commerce Department is responsible, under the EAA, for a licensing scheme involving three different categories of licenses: (1) General licenses, which are applicable to most export transactions and permit them to occur without specific license applications; (2) individual validated licenses, which the agency grants or denies based on factors including concerns about the ostensible and the possible uses of the commodity, opposition from the Department of Defense or State to the proposed export, available information about the end-user, and policy determinations about the destination country; and (3) special licenses, such as distribution licenses and project licenses, that allow particular exporters to make multiple exports of certain types without applying for an individual license for each export. The Export Administration Act also contains provisions prohibiting participation in unsanctioned foreign boycotts and authorizes the Commerce Department both to make rules to carry out its provisions and to enforce its provisions, including the antiboycott provisions.

The EAA includes a provision explicitly exempting the Department's activities from the administrative process and judicial review provisions of the Administrative Procedure Act. As a result, administrative licensing decisions are final and unreviewable; agency rules implementing the EAA are subject neither to judicial review nor to the notice-and-comment requirements of 5 U.S.C. 553, although, in the latter respect, Congress has said that "to the extent practicable, all regulations imposing controls on exports * * * (should) be issued in proposed form with meaningful opportunity for public comment before taking effect." 50 U.S.C. App. 2412(b). Enforcement decisions are less affected by the exemption, as statutory amendments in recent years have imposed the formal hearing requirements of 5 U.S.C. 556–57 on administrative enforcement proceedings and have authorized judicial review of enforcement decisions according to APA standards.

Because of the broad APA exemption, the Commerce Department has implemented the EAA with relatively little judicial scrutiny. It has had little incentive to provide generally accessible explanations for its actions. The EAA requires that license denials be accompanied by a written statement including, *inter alia*, a statement of the statutory basis for the denial; in practice, however, this statutory requirement has often been met in a minimal and uninformative way. Exporters have often been frustrated in their attempts to learn the reasons for negative licensing decisions or to predict the outcome of future license applications; they have also been without recourse to challenge Commerce Department actions as arbitrary or contrary to statute. Because legislation to reenact and amend the EAA is now pending,[1] reexamination of the APA exemption is timely.

The APA exemption dates back to passage of the first comprehensive export control legislation in 1949. At that time, Congress cited two reasons for the broad exemption: first, the legislation was seen as temporary, essentially an extension of emergency war measures, and second, it was closely related to foreign policy and national security concerns.

After more than 40 years, the export program gives no indication of being "temporary," albeit sunset dates in the various export control statutes have necessitated several extensions and reenactments. Changes in the statute incident to reenactment and evolving policy at the Commerce Department have gradually

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[3] See, e.g., *Federal Communications Commission v. ITT World Communications, Inc.*, 466 U.S. 463 (1984) (international consultative processes leading to informal policy understandings are not covered by Government in the Sunshine Act); *Public Citizen v. United States Department of Justice*, 109 S. Ct. 2558 (1989); *Food Chemical News v. Young*, 900 F. 2d 328 (D.C. Cir. 1990); *Center for Auto Safety v. Federal Highway Administration*, No. C.A. 89–1045 (D.D.C. Oct. 12, 1990) (groups not formed by the Executive Branch are not "utilized" committees within the meaning of FACA).

[1] The Act expired on September 30, 1990; the export controls program continues in effect, however, by Executive Order issued under authority of the International Emergency Economic Powers Act, 50 U.S.C. 1702. Executive Order 12730, September 30, 1990. Legislation to extend the export controls program was passed by Congress in 1990 but pocket vetoed by the President.

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The EAA includes a provision explicitly exempting the Department's activities from the administrative process and judicial review provisions of the Administrative Procedure Act. As a result, administrative licensing decisions are final and unreviewable; agency rules implementing the EAA are subject neither to judicial review nor to the notice-and-comment requirements of 5 U.S.C. 553, although, in the latter respect, Congress has said that "to the extent practicable, all regulations imposing controls on exports * * * (should) be issued in proposed form with meaningful opportunity for public comment before taking effect." 50 U.S.C. App. 2412(b). Enforcement decisions are less affected by the exemption, as statutory amendments in recent years have imposed the formal hearing requirements of 5 U.S.C. 556–57 on administrative enforcement proceedings and have authorized judicial review of enforcement decisions according to APA standards.

Because of the broad APA exemption, the Commerce Department has implemented the EAA with relatively little judicial scrutiny. It has had little incentive to provide generally accessible explanations for its actions. The EAA requires that license denials be accompanied by a written statement including, *inter alia*, a statement of the statutory basis for the denial; in practice, however, this statutory requirement has often been met in a minimal and uninformative way. Exporters have often been frustrated in their attempts to learn the reasons for negative licensing decisions or to predict the outcome of future license applications; they have also been without recourse to challenge Commerce Department actions as arbitrary or contrary to statute. Because legislation to reenact and amend the EAA is now pending,[1] reexamination of the APA exemption is timely.

The APA exemption dates back to passage of the first comprehensive export control legislation in 1949. At that time, Congress cited two reasons for the broad exemption: first, the legislation was seen as temporary, essentially an extension of emergency war measures, and second, it was closely related to foreign policy and national security concerns.

After more than 40 years, the export program gives no indication of being "temporary," albeit sunset dates in the various export control statutes have necessitated several extensions and reenactments. Changes in the statute incident to reenactment and evolving policy at the Commerce Department have gradually

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[1] The Act expired on September 30, 1990; the export controls program continues in effect, however, by Executive Order issued under authority of the International Emergency Economic Powers Act, 50 U.S.C. 1702. Executive Order 12730, September 30, 1990. Legislation to extend the export controls program was passed by Congress in 1990 but pocket vetoed by the President.

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increased access to information about the Department's actions and public participation in policymaking. Legislation to reenact the export controls program, passed in 1990 but subjected to a pocket veto by the President, would also have provided for limited judicial review of licensing decisions. But these measures still leave the relevant procedures well short of APA standards. And the need for such a broad exemption from APA provisions based on foreign policy and national security considerations is not at all clear. Much of the business conducted by the Commerce Department under the EAA is similar to that conducted by other regulatory agencies, and the interests at stake for potential exporters are similar to those of regulated entities under other licensing schemes. The agency can expect to benefit from public input in the rulemaking process just as other agencies do. Moreover, the APA includes specific exemptions from its rulemaking and formal adjudication provisions for agencies' military and foreign affairs functions, which would be available to reduce the required level of agency process when necessary,[2] as well as an exception to its judicial review provisions for action "committed to agency discretion by law." Other international trade and export control statutes, which presumably have foreign affairs implications, have operated successfully within this framework.

Increased availability of judicial review would help to ensure that the Department complies with applicable statutory standards and maintains a reasonable level of quality control in its decisionmaking under the EAA. While the presence of military and foreign affairs considerations will impel a reviewing court to give the Commerce Department great latitude to exercise its discretion, a court could usefully review many legal and factual issues under traditional APA standards without interfering with the executive branch's ability to conduct foreign policy or protect national security.

The Administrative Conference concludes, therefore, that the APA exemption is unnecessary and should be repealed. This conclusion is in accord with that of a recent National Academy of Sciences study on export controls, which also urges repeal of the APA exemption.[3] While the exemption repeal is the heart of this recommendation, the Conference also believes that various additional actions by Congress or the Commerce Department would be useful to enhance the benefits of making the APA applicable. These are explained briefly below.

Judicial review: Although the Conference believes that, as a general matter, judicial review of Commerce Department actions under the standards of the Administrative Procedure Act is entirely appropriate, control of exports nevertheless remains a sensitive area. Thus, it is important to structure judicial review in a manner that will minimize the burdens on the conduct of foreign policy and national security affairs. Direct review in the court of appeals is appropriate here because of the policy considerations involved, because there are not likely to be large numbers of appeals, and because, in the case of rulemaking, the public interest will require prompt, authoritative determinations of a rule's validity. See ACUS Recommendation 75–3, The Choice of Forum for Judicial Review of Administrative Action.[4] Consolidation of review of all export control matters in a single court of appeals would preserve uniformity in statutory interpretation and enable the court to develop expertise in the subject matter. Because it already enjoys some expertise in international trade and technological issues and is likely, based on its experience with many types of litigation involving the federal government, to be sensitive to the government's legitimate need for discretion in implementing export controls as well as to the interests of private parties, the Court of Appeals for the Federal Circuit is the most appropriate court for assignment of this responsibility.

Informal adjudications: Under the APA, Commerce Department action on individual license applications should be treated as informal adjudication. While formal hearing proceedings are used to make decisions in some licensing programs administered by other agencies, there is no indication that such procedures are required here, and the high volume and time sensitivity of export license applications favor retention of the existing informal approach.

Another category of Commerce Department action handled informally is requests for advice as to the proper classification of a commodity. These requests permit an exporter to seek guidance concerning the appropriate category for an item on the list of controlled commodities (because different categories entail different export restrictions) and may be made at an exporter's option; such requests are appropriately treated as informal agency adjudication under the APA.

The Commerce Department should increase exporters' access to information about the decisions it makes in these informal adjudications. Clear statements of the agency's reasons for classifying exports in particular categories or denying licenses will both help exporters to determine how to proceed and provide a record for judicial review of the Department's action. Publication of those licensing and classification decisions that may have precedential value (along with a statement of the reasons for them) will benefit both agency and exporters by bringing a greater measure of predictability to the licensing process.

A special problem arises when license denials turn on classified information. The government has a strong interest in protecting the substance and sources of such information from disclosure, but, without access to the information that forms the basis for a license denial, it can be almost impossible for the exporter to evaluate whether the agency action is correct and to challenge the denial on administrative or judicial review. Steps should be taken to ensure that exporters (or their counsel) have the maximum feasible access to the information supporting the license denial and that agency staff claims that undisclosed classified information supports a denial are carefully scrutinized on administrative review.

Formal adjudications: Current statutory provisions already make enforcement proceedings under the EAA (including both export control and antiboycott enforcement proceedings) formal adjudications by specifically applying sections 556 and 557 of the APA to those proceedings. Deletion of the general exemption from the APA would leave these procedures unchanged. To facilitate the consolidation of judicial review in one court and to conform to generally sound practice respecting administrative sanctions,[5] the Administrative Conference recommends one change in these enforcement procedures: that *de novo* district court penalty collection proceedings be eliminated in favor of on-the-record review in the Court of Appeals for the Federal Circuit, and that the Commerce Department have authority to collect its own civil penalties once the opportunity for judicial review has passed. Under this approach, failure to pay a penalty after it has become final and unappealable, or after the reviewing court has entered final judgment in favor of the agency, would result in a collection action in federal district court in which the validity and appropriateness of the order imposing the penalty would not be reviewable. This change would also have the effect of mooting a current controversy about whether the conduct of administrative enforcement proceedings tolls the 5-year statute of limitations for commencement of a district court action to collect a civil penalty.

The Commerce Department imposes sanctions without the benefit of formal adjudicatory procedures through the issuance of temporary denial orders and the suspension or revocation of licenses without notice or hearing under 15 CFR 770.3(b). Under the EAA, the Department may issue temporary denial orders denying exporting authority without notice where necessary to prevent an imminent violation of the EAA. Licenses may be suspended or revoked under Commerce Department regulations whenever the Office of Export Licensing believes that the terms and conditions of the licenses are not being followed, or when required to implement a change in regulatory policy.

Because these actions are taken to prevent imminent or continuing violations of the EAA, the Conference recognizes that the Commerce Department may need to take unilateral action. Nevertheless, when the circumstances requiring the action are individual to an exporter or a commodity and not, for example, related to an abrupt change in a destination country's status, exporters should be afforded a full opportunity to defend themselves in post-denial formal hearings. Existing procedures for temporary denial orders provide for prompt post-denial review, although with a full formal hearing; these existing procedures may offer a valuable avenue for seeking emergency relief from a denial order, but a full-scale administrative hearing should be available at the request of the party subject to the denial order. Concomitantly, judicial review of temporary denial orders, now governed solely by an arbitrary and capricious standard, should include substantial evidence review. At present, unilateral license suspensions are reviewable only through an informal agency process like that afforded license denials, and not at all in court. Because of their impact on existing economic relationships, the Administrative Conference believes suspensions grounded in the unique circumstances of a particular exporter or validated license should be followed by full formal procedures at the licensee's request.

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[2] The Administrative Conference has previously recommended that the military and foreign affairs exemption from APA rulemaking requirements be restricted to apply only where there is a need for secrecy in the interest of national defense or foreign policy. ACUS Recommendation 73–5, *Elimination of the "Military or Foreign Affairs Function" Exemption from APA Rulemaking Requirements*, 1 CFR 305.73–5 (1991).

[3] Panel on the Future Design and Implementation of U.S. National Security Export Controls, Finding Common Ground: U.S. Export Controls in a Changed Global Environment (National Academy Press 1991).

[4] 1 CFR 305.75–3 (1990).

[5] See ACUS Recommendation 72–6, *Civil Money Penalties as a Sanction*, 1 CFR 305.72–6 (1991); ACUS Recommendation 79–3, *Agency Assessment and Mitigation of Civil Money Penalties*, 1 CFR 305.79–3 (1991).

Rulemaking: Once brought under the APA, Commerce Department rulemaking under the Export Administration Act would still be subject to the military and foreign affairs exception to notice-and-comment procedures; not every rulemaking under EAA necessarily falls within the terms of that exception, but some do. In recommending that the APA apply to export control proceedings, the recent National Academy of Sciences study proposed that section 13(b) of the EAA be retained, to reflect Congress' belief that military and foreign affairs considerations do not require that all EAA rulemakings fit the APA exemption and to encourage the Department to exercise some restraint in applying the exemption. The Conference endorses this recommendation.

The Conference also recommends that "foreign availability determinations," not specifically designated as rulemaking under the EAA, be so treated by the Commerce Department whenever possible. Under the Act, exports that would otherwise be restricted are permitted when the product involved is already available to the end-user from a foreign source. These determinations may often affect many potential exporters, rather than just one, and provision of an opportunity for public comment before making such a determination will enable Commerce to get a clearer picture of the relevant considerations. The Conference's recommendation, however, acknowledges that foreign availability determinations may sometimes initially arise in the context of license determinations where time is of the essence; in such cases, public comment might be solicited after the determination rather than before.

Recommendation

1. *Repeal of APA exemption.* Congress should repeal section 13(a) of the Export Administration Act, which exempts functions exercised under that Act from the administrative process and judicial review provisions of the Administrative Procedure Act (5 U.S.C. 551, 553–559, 701–706).

2. *Judicial review.* Congress should amend the Export Administration Act to provide for judicial review in a single forum, the United States Court of Appeals for the Federal Circuit, of all Commerce Department actions (including the imposition of civil penalties) under the Act that are reviewable by the standards of APA section 706.

3. *Informal adjudications.* Requests for proper classification of proposed exports and applications for validated licenses or reexport authorizations are appropriately treated as informal adjudications under the APA. The Department of Commerce should make the following improvements in the applicable procedures:

a. Whenever the Commerce Department initially denies a license application or responds to a classification request by placing the item in a category different from that proposed by the requester, it should provide sufficient written explanation for its decisions to enable applicants to understand the basis on which decisions have been reached and to pursue internal appeals.

b. Review by the Secretary or the Secretary's delegate of staff decisions on classification requests or license applications should be available on request of the applicant. To the extent possible, the decision on review at the secretarial level should be in detail sufficient to permit others to evaluate its precedential value. The Commerce Department should publish and index these decisions in an appropriate manner, together with other decisions on requests for classification and individual license applications that have possible precedential value and any general written guidance on classification issues.

c. To eliminate a duplicative review procedure, Congress should repeal section 13(e) of the Export Administration Act, which provides for limited appeals of license denials through an administrative law judge hearing process.

d. When a license application has been denied, or has been the subject of negative consideration or recommendations under section 10(f)(2) of the Export Administration Act, based on classified information, the Commerce Department should adopt procedures to permit the maximum disclosure of such information consistent with national security and foreign policy (including, where appropriate, disclosure to the applicant or applicant's counsel under protective order). On administrative appeal of any license denial based on undisclosed classified information, the Secretary (or the Secretary's delegate) should personally review the classified information and certify that it is properly classified and supports the action taken.

4. *Formal adjudications.* a. Congress should amend the Export Administration Act to provide the right to a prompt post-denial (or post-suspension) hearing on the record, subject to the formal adjudication provisions of the Administrative Procedure Act, for parties subject (1) To unilateral Commerce Department decisions to suspend or revoke validated licenses when the suspension or revocation turns on the specific circumstances of a particular exporter or commodity, or (2) to temporary denial orders under section 13(d) of the Export Administration Act. Congress should establish appropriate deadlines for the conduct of such hearings.

b. The Commerce Department should, to the extent possible, limit the scope of unilateral license suspensions and temporary denial orders to the circumstances posing a threat of violation of the Export Administration Act.

c. Congress should amend the civil penalty provisions of 50 U.S.C. App. 2410 and 2412 to eliminate the requirement of *de novo* proceedings in federal district court and provide instead that any assessment of civil penalties is final, subject to judicial review under 5 U.S.C. 706 in the Court of Appeals for the Federal Circuit; a civil penalty assessment that survives judicial review or becomes final without judicial review should be enforceable by the agency in a summary collection action in federal district court.[6]

5. *Rulemaking.* a. Although the military and foreign affairs exemption of section 553 of the APA will be available to the Department of Commerce for some of its rulemaking under the Export Administration Act, the Conference supports the recent recommendation of the National Academy of Sciences that Congress should retain section 13(b) of the Export Administration Act. That section, which exhorts the Department to provide "meaningful opportunity for public comment" in departmental rulemaking "to the extent practicable," plainly expresses a congressional understanding that not all departmental rulemaking falls within the appropriate bounds of the military and foreign affairs exemption,[7] and thus

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[6] See ACUS Recommendation 72–6, supra n. 4.

[7] Cf. ACUS Recommendation 73–5, supra n. 2

appropriately encourages the Department to exercise restraint in its application.

b. To the extent feasible, the Department of Commerce should treat foreign availability determinations under sections 5(f)(1) and 5(f)(2) of the Export Administration Act as rulemaking within the terms of section 553 of the APA. Where, for reasons of time or other considerations, such determinations must be made in the context of decisions on individual license applications, the Department should publish the determination made with an invitation for public comment respecting related future determinations.

§ 305.91-3 The Social Security Representative Payee Program (Recommendation No. 91-3).

As part of the Social Security program, Congress has authorized the Social Security Administration (SSA) to pay certain beneficiaries' benefits to other persons or organizations where the Secretary determines that payment to such a "representative payee" would be in the interest of the beneficiary.[1] SSA currently pays about $20 billion annually in social security benefits to representative payees of more than 4 million (or about 10%) beneficiaries. Because the program has been the subject of some concern and litigation, SSA asked the Administrative Conference of the United States to study certain procedural aspects of the representative payee program. While the study was underway, Congress addressed some of the procedural issues as part of the Omnibus Budget Reconciliation Act of 1990 (OBRA), Public Law 101-508, § 5015.

A. *Rulemaking.* The representative payee program operates under a statute that for the most part paints program requirements with a broad brush. SSA has some regulations, but many of the operating instructions are found in the Program Operating Manual System (POMS), the agency's internal operating manual. There are a number of issues the Conference believes should be the subject of regulations, either because they are not adequately addressed anywhere, or because they should be addressed in regulations rather than only in the POMS. These issues are discussed below. This recommendation contains specific suggestions for modifying the procedures for appointing representative payees (see section B, below). For a number of other issues, involving the establishment of program criteria, the Conference takes no position on the content of the rules, but recommends that the issues be addressed in the context of notice-and-comment rulemaking.

First, there currently exists no clear standard for when a representative payee should be appointed in a particular case. The Social Security Act provides that "(i)f the Secretary determines that the interest of any individual under this title would be served thereby, certification of payment of such individual's benefit under this title may be made * * * (to a representative payee)."[2] The Act does not contain any standard for determining when appointment of a representative payee is in the beneficiary's interest. Current SSA regulations provide only that a representative payee will be appointed when "due to a mental or physical condition or due to * * * youth," a beneficiary is "not able to manage or direct the management of" his or her own benefits.[3] The regulations neither indicate what constitutes an inability to manage benefits, nor what mental or physical condition must be found. This lack of a standard requires SSA personnel to make largely discretionary decisions that are difficult to challenge individually or to evaluate programmatically.

While the Administrative Conference takes no position on what the substance of a standard for representative payee appointment should be, it believes that the promulgation of a more detailed standard through rulemaking is important to promote the appearance and reality of fairness and consistency in operation of the representative payee program.[4]

Second, concerns have been raised that persons interested in gaining access to beneficiary funds may provoke SSA action to appoint a representative payee without sufficient factual basis. Thus, a standard should be developed for a minimum amount of evidence necessary to trigger the initiation of procedures that could result in the appointment of a representative payee.

Third, the Conference recommends that SSA promulgate clarifying rules relating to eligibility to serve as a representative payee, including a method for determining priorities where there are competing applicants for such payee status. Although SSA has some internal guidelines for selecting appropriate representative payees, the Conference believes that such issues should be addressed in regulations, to provide public participation in their development and to provide easier access to their contents.

Finally, the question of SSA's responsibility to monitor representative payee performance has been a subject of concern. Alhough a court has ruled that the Constitution's due process clause requires annual accounting by all representative payees,[5] the decision's continued applicability is not clear.[6] The Social Security Act currently requires annual accounting by representative payees, except certain institutions.[7] Congress in the OBRA amendments expressly required SSA to study more stringent monitoring of "high risk" payees (e.g., representative payees who are not related to the beneficiary or who are creditors). SSA should undertake rulemaking to promulgate procedures for monitoring representative payee performance in a manner that will be both effective and efficient.[8]

B. *Procedures*—1. *Current procedures.* When SSA receives information that a particular beneficary may need a representative payee, it seeks to gather evidence with which to determine whether the beneficiary is incapable of managing his or her own benefits.[9] If SSA decides that the beneficiary is incapable, its first step is to select a representative payee. SSA then sends what is called an "advance notice" to the beneficiary, informing the beneficiary that he or she has been found incapable of managing benefits and that SSA intends to appoint the named representative payee. The beneficiary is allowed 10 days to respond to SSA and provide additional facts. This is often the first notice that the beneficiary receives that appointment of a representative payee is being contemplated. If, after receiving any further information, SSA confirms its decision, it sends the beneficiary notice of its "initial decision," which is implemented immediately. The beneficiary may seek "reconsideration" from SSA, following which the beneficiary is entitled to a hearing before an administrative law judge and appeal to the Appeals Council.

Under these current procedures, the beneficiary generally is provided no notice that SSA is considering appointing a representative payee until the agency has already preliminary decided that one is necessary and has selected a candidate. The "advance notice" does not explain the basis for the decision to appoint a representative payee. Nor is the beneficiary given an opportunity to meet with SSA face-to-face before a representative payee decision is implemented. While the present procedures appear to satisfy constitutional minima, considerations of efficiency, fairness and appearance of fairness suggest certain modifications to these procedures.

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[1] The term "beneficiary" as used in this recommendation refers to those receiving benefits under both title II (old age survivors and disability benefits) and title XVI (supplemental security income payments). Those receiving benefits under this latter program are technically referred to as "recipients."

[2] 42 U.S.C. 405(j)(1) (Title II). For title XVI, the provisions are comparable. See 42 U.S.C. 1383(a)(2)(A).

[3] 20 CFR 404.2001, 416.601 (1990).

[4] Among the issues that might be addressed are how the specific standard should balance interests in beneficiary autonomy versus government beneficence, what factors should be considered in determining whether a beneficiary's interest would be served by appointing a payee, what should constitute inability to manage benefits, and who should be the decisionmaker (e.g., the states in guardianship proceedings, the state disability determination services, or trained agency lay or medical staff). Any rule setting a standard for appointing a representative payee should also address the question of what types of evidence are either appropriate or necessary in making the determination.

SSA should also itself carefully consider the education levels and other qualifications of agency officials making determinations on representative payee status, to ensure that such decisionmakers have the necessary skills to apply whatever standard is developed.

[5] *Jordan* v. *Schweiker*, 744 F.2d 1397 (10th Cir. 1984); Jordan v. Bowen, 808 F.2d 733 (10th Cir. 1987).

[6] The *Jordan* case was a class action, certified in 1980. The court held that the Constitution required annual accounting for all payees. The impact of time on the class, as well as the impact of subsequent legislation, raises some questions concerning the case's current applicability.

[7] 42 U.S.C. 405(j)(3).

[8] Such a rulemaking could address such issues as what type of information is needed to make decisions, how often it should be reported or collected, whether different requirements should apply to different types of payees, and what SSA will do with the information it obtains in terms of its internal use and public availability.

[9] Such evidence may include state adjudications of incompetence, a physician's opinion that a beneficiary is unable to manage benefits, or lay evidence to that effect.

2. *Conference recommendations.* The Conference recommends several changes in the process, that, consistent with its other recommendations involving the Social Security program, encourage increased procedural safeguards at the beginning of the process in order to maximize correct decisions in the early stages and lessen the need for additional proceedings.[10] The Conference recommends that SSA notify a beneficiary as soon as the threshold for initiating action, discussed above, is met, offering the beneficiary an opportunity to have an informal face-to-face interview with an SSA claims representative. To the extent practicable, the notice (and all other notices) should be designed to be understandable to the beneficiary, taking into consideration information already in the file (e.g., what language the beneficiary understands).[11] The notice should also inform the beneficiary that appointment of a representative payee is being considered, describe the standard for and basic reason(s) why it is being considered, ask for all relevant information concerning the need for and selection of a representative payee, and ask the beneficiary to suggest a possible candidate. SSA should also notify the beneficiary of any person(s) it knows to be under consideration as a representative payee.

If, after completing its investigation, SSA decides to appoint a representative payee, it should notify the beneficiary of this determination, informing him or her of the right to review the evidence and appeal.[12] The determination then would be implemented, after which appeal to an ALJ and the Appeals Council would be available, as it is now. These procedures would eliminate the current opportunity for "reconsideration" that is provided after implementation but before the ALJ hearing.

The rationale for these recommended procedures is that a beneficiary should have notice and the opportunity to respond concerning his or her alleged inability to manage benefits before the SSA has made a de facto determination that a representative payee is required and who that payee should be. The ability to manage benefits is not always strictly a medical determination; it may well involve consideration of observed behavior. Thus, it is likely that a decisionmaker who has had an opportunity to see and talk with the beneficiary will often make a more accurate determination of the need for a representative payee.[13] The Conference believes that, as in the disability adjudication itself, procedures that encourage as complete a record as early in the process as possible offer significant advantages that far outweigh any short-term costs occasioned by adding an earlier notice and opportunity for a face-to-face meeting. Not only will early notice to beneficiaries and an opportunity for personal contact with SSA allow beneficiaries to provide any relevant information that they have at a predecisional level, it may also give them more confidence in the process, thus resulting in fewer appeals at later stages. Moreover, as noted above, the opportunity for "reconsideration" that is currently provided after implementation but before the ALJ hearing would no longer be required.

Under current procedures, beneficiaries are permitted to have assistance, by attorneys or non-attorneys, in disputes over representative payee status. However, because of the lack of formal procedures until late in the process and, more important, the lack of an "award" out of which to pay attorneys, there has been little attorney or lay assistance involvement in this program. It would thus be especially useful for SSA to develop and provide beneficiaries with information about legal assistance and other relevant organizations that may be available in their areas.[14]

In situations where someone applies to replace a representative payee, both the payee and the beneficiary should be given notice of the possible replacement. Both should be given an opportunity to file comments and to meet informally with SSA officials. If the representative payee is replaced, the beneficiary (but not the payee) should have the right to appeal the determination.

Although a beneficiary in representative payee status may apply to have such status terminated, no procedure currently exists for reexamining the need for a representative payee on any periodic basis. Because there are certain types of beneficiaries for whom a representative payee is less likely to be needed permanently (e.g., stroke victims, persons with reactive depression), it is in the interests of both the agency and beneficiaries to reassess periodically the need for representative payees for such individuals. Thus, the Conference recommends that SSA attempt to determine which, if any, types of beneficiaries in representative payee status ought to have their status periodically reevaluated and provide a method for doing so.

C. *Misuse of funds and restitution*—1. *Current practice.* Currently, determinations by SSA that beneficiary funds have been misused are not appealable. This means that neither the beneficiary nor the representative payee may challenge such determinations. Moreover, SSA does not currently have an effective mechanism for requiring payees who misuse beneficiary funds to return such funds to beneficiaries.[15] SSA currently has only the options of referring cases to the Department of Justice for criminal prosecution or requesting the representative payee to return funds. Most cases are too small to warrant Justice Department action, and SSA has no authority to force a representative payee to pay restitution.

2. *Conference recommendations.* Beneficiaries should be permitted to appeal an administrative determination that their benefits have not been used properly.[16] Representative payees should also be permitted to appeal misuse determinations. Although they have no right to payee status, a determination that they have misused funds will be entered into a data bank, will prevent them from being appointed as a representative payee in the future, and may have other negative ramifications. These consequences suggest that more process may be due. ACUS recommends that a determination of whether representative payee misuse of beneficiary funds has occurred be considered an "initial determination," which triggers the right to reconsideration and, if necessary, a subsequent ALJ hearing.

The Administrative Conference also recommends that Congress authorize an administrative remedy that would allow SSA to (1) require representative payees who have misused beneficiary funds to pay restitution, and (2) impose civil monetary penalties on such payees. Such authority would enable SSA to address the problem without burdening the courts.[17]

The OBRA amendments made clear that, where SSA's negligent failure to investigate or monitor a representative payee results in misuse of benfits, SSA must make restitution to the beneficiary for any such benefits, and then may seek repayment from the payee.[18] The negative impact on a beneficiary caused by misuse of his or her benefits, however, is independent of whether any SSA negligence was involved. Congress should authorize research on the scope, causes and effects of representative payee misuse of benefits, and methods to ease the resulting burden on beneficiaries, including the use of loss underwriting arrangements.

D. *Other issues.* When this study was undertaken, the issue of SSA's need to

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[10] See, e.g., Recommendation No. 90–4, "The Social Security Disability Program Appeals Process: Supplementary Recommendation," 1 CFR 305.90–4.

[11] The expectation is that there would be several form notices with the clearest practicable wording in different languages, normal and large type sizes, and perhaps braile.

[12] OBRA amendments require such notice. See 42 U.S.C. 405(j)(2)(E); 1631(a)(2)(B)(x)–(xii).

[13] The Administrative Conference has recommended that face-to-face meetings be available in the context of medical disability determinations. Recommendation 89–10, "Improved Use of Medical Personnel in Social Security Disability Determinations," 1 CFR 305.89–10.

[14] The Conference has encouraged the use of nonlawyers in agency proceedings. See Recommendation 86–1, "Nonlawyer Assistance and Representation," 1 CFR 305.86–1.

[15] In cases where SSA has been negligent in investigating or monitoring representative payees, SSA must make restitution to the beneficiary. OBRA 5105(c).

[16] Beneficiaries do have the right to use state court remedies.

[17] See Recommendation 72–6, "Civil Money Penalties as a Sanction," 1 CFR 305.72–6; Recommendation 79–3, "Agency Assessment and Mitigation of Civil Money Penalties," 1 CFR 305.79–3. The Program Fraud Civil Remedies Act, 31 U.S.C. 3801, authorizes the imposition of administrative civil penalties for false claims against the government and for certain types of false statements. However, it is not clear whether this Act would apply to representative payee actions, and in any even, it does not provide a remedy of restitution.

[18] OBRA 5105(c)(1), to be codified at 42 U.S.C. 405(j)(5).

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effective mechanism for requiring payees who misuse beneficiary funds to return such funds to beneficiaries.[15] SSA currently has only the options of referring cases to the Department of Justice for criminal prosecution or requesting the representative payee to return funds. Most cases are too small to warrant Justice Department action, and SSA has no authority to force a representative payee to pay restitution.

2. *Conference recommendations.* Beneficiaries should be permitted to appeal an administrative determination that their benefits have not been used properly.[16] Representative payees should also be permitted to appeal misuse determinations. Although they have no right to payee status, a determination that they have misused funds will be entered into a data bank, will prevent them from being appointed as a representative payee in the future, and may have other negative ramifications. These consequences suggest that more process may be due. ACUS recommends that a determination of whether representative payee misuse of beneficiary funds has occurred be considered an "initial determination," which triggers the right to reconsideration and, if necessary, a subsequent ALJ hearing.

The Administrative Conference also recommends that Congress authorize an administrative remedy that would allow SSA to (1) require representative payees who have misused beneficiary funds to pay restitution, and (2) impose civil monetary penalties on such payees. Such authority would enable SSA to address the problem without burdening the courts.[17]

The OBRA amendments made clear that, where SSA's negligent failure to investigate or monitor a representative payee results in misuse of benfits, SSA must make restitution to the beneficiary for any such benefits, and then may seek repayment from the payee.[18] The negative impact on a beneficiary caused by misuse of his or her benefits, however, is independent of whether any SSA negligence was involved. Congress should authorize research on the scope, causes and effects of representative payee misuse of benefits, and methods to ease the resulting burden on beneficiaries, including the use of loss underwriting arrangements.

D. *Other issues.* When this study was undertaken, the issue of SSA's need to

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in Social Security
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Nonlawyer Assistance and
05.86–1.

[15] In cases where SSA has been negligent in investigating or monitoring representative payees, SSA must make restitution to the beneficiary. OBRA 5105(c).

[16] Beneficiaries do have the right to use state court remedies.

[17] See Recommendation 72–6, "Civil Money Penalties as a Sanction," 1 CFR 305.72–6; Recommendation 79–3, "Agency Assessment and Mitigation of Civil Money Penalties," 1 CFR 305.79–3. The Program Fraud Civil Remedies Act, 31 U.S.C. 3801, authorizes the imposition of administrative civil penalties for false claims against the government and for certain types of false statements. However, it is not clear whether this Act would apply to representative payee actions, and in any even, it does not provide a remedy of restitution.

[18] OBRA 5105(c)(1), to be codifie l at 42 U.S.C. 405(j)(5).

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investigate representative payees before their appointment was of major concern. The recent OBRA amendments, however, require SSA to undertake certain investigations of potential representative payees. For the present, those steps would appear to be adequate, but, after sufficient time has passed, their effectiveness should be reevaluated.

In the past, where SSA has determined that a representative payee is required, but has not found a suitable candidate, SSA has suspended benefit payments until a payee could be found, at which time the withheld payments would be released to that payee. In the OBRA amendments, Congress authorized SSA to suspend payments for no more than 30 days, where direct payment would substantially harm the beneficiary. However, where the beneficiary is legally incompetent, under the age of 15, or a drug addict or alcoholic, there is no time limit on the suspension of benefits. The Conference believes that SSA should study the impacts of the indefinite suspension of benefits on beneficiaries in these groups, with the objective of making legislative recommendations to Congress if the study suggests that time limits should exist for all classes of beneficiaries or that suspension should not permitted at all.

In many cases, finding an appropriate representative payee is a significant problem. SSA should take steps to ease its burden by widening the pool of potential representative payees, and by periodically seeking input from beneficiaries. It would be useful for SSA to ask beneficiaries, at the time that they apply for benefits and periodically thereafter, to designate a person whom, at that time, they would prefer to serve as a representative payee, should one become necessary. While such a designation would not bind the agency, in many cases, the designation of someone whom the beneficiary thought was appropriate could make the selection process easier for SSA and make the beneficiary more comfortable with the representative payee. SSA also should develop lists of national, regional and local organizations that could serve as representative payees on a volunteer basis, and evaluate carefully the performance of these and compensated or reimbursed representative payees.[19]

Recommendation

1. The Social Security Administration (SSA) should devleop and promulgate by regulations criteria for deciding the following issues:

(a) Whether apppointment of a representative payee should be made;

(b) What evidence constitutes a threshold for initiating procedures that could result in appointment of a representative payee;

(c) Who is eligible for appointment as a representative payee and whether the existing priorities among categories of payees should be modified, including which payee should be selected when there are competing payee applicants from the same category of payee; and

(d) How payee performance should be monitored and evaluated.

2. SSA should amend its procedures for appointing representative payees for beneficiaries [20] aged 15 and above as follows:

(a) At such time as the threshold described in ¶1(a)(ii) is met, SSA should send a notice to the beneficiary that, to the extent practicable, is in language designed to be understandable to the beneficiary. This notice should contain the following information:

(i) That representative payee status is being considered;

(ii) A description of the standard for appointment of representative payee;

(iii) A request that the beneficiary provide all information relevant to the need for and selection of a payee;

(iv) An offer for the beneficiary to meet in an informal face-to-face interview with an SSA representative;

(v) The names of any person(s) known by the agency to be under consideration as a representative payee, and a request for suggestions for possible representative payees, should one be determined necessary; and

(vi) A statement that the beneficiary may be assisted by an attorney or other person, and a list of legal aid and other relevant resources available in the area.

(b) If, after completion of the above procedures, a determination is made to appoint a representative payee, the beneficiary should be notified of the basis for that determination, the name of the payee, and the beneficiary's appeal rights. These should include the right to an administrative law judge hearing and review by the Appeals Council, but the currently provided "reconsideration" stage that precedes the ALJ hearing could be eliminated upon implementation of this recommendation.

(c) Direct payment should continue to the beneficiary until a representative payee appointment is effective.

3. Where a person applies to replace an existing representative payee, SSA should give notice to the beneficiary and to the existing payee. The notice to the beneficiary and to the payee should offer them the opportunity to meet in an informal face-to-face interview with an SSA official and to provide any relevant information, in writing or orally. If the existing payee is replaced, the beneficiary should be notified of the replacement and of his or her right to an ALJ hearing on the decision and review by the Appeals Council.

4. SSA should attempt to determine which, if any, type of beneficiaries in representative payee status are most likely to regain their ability to manage or direct the management of their own benefits, and provide a method for periodic reevaluations of their need for a representative payee.

5. SSA should amend its regulations to provide that a decision on whether beneficiary funds have been misused by representative payees should be considered an "initial determination" appealable by either the beneficiary or the representative payee.

6. SSA should take the following steps to facilitate the search for approprate representative payees:

(a) At the time of application for benefits and periodically thereafter, request beneficiaries to identify their current choice of a representative payee who could be considered for the position, after appropriate investigation, in the event that one may be required in the future.

(b) Identify and use national, regional and local organizations that offer representative payee services on a volunteer basis and evaluate their performance in light of other representative payees.

(c) Evaluate the need for further use of organizations that serve as representative payees on a reimbursed or compensated basis.

(d) To the extent possible, make referrals to social welfare agencies or take other appropriate action to ensure that beneficiaries for whom representative payees are not available are not harmed by the absence of the social security benefits.

7. Congress should authorize SSA to use administrative adjudications to require representative payees who have misused beneficiary funds to pay restitution and to impose civil monetary penalties on such payees.

8. Congress should authorize research on the scope, causes and effects of representative payee misuse of benefits, and methods to ease the resulting burden on beneficiaries, including the use of loss underwriting arrangements.

9. SSA should develop data and study the effect on beneficiaries of suspending benefits when a representative payee is not available, with the objective of making recommendations on whether there should be time limits on suspension of payments for all categories of beneficiaries or whether

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[19] Congress has authorized the use of reimbursed representative payees on a very limited basis OBRA of 1990. Pub.L. 101–508. sec. 5105(a)(3).

[20] The term "beneficiary" as used in this recommendation refers to those receiving benefits under both Title II (old age survivors and disability benefits) and Title XVI (supplemental security income payments) of the Social Security Act. Those receiving benefits under this latter program are technically referred to as "recipients"

suspensions should not be permitted at all.

§ 305.91-4 The National Vaccine Injury Compensation Program (Recommendation No. 91-4).

The National Vaccine Injury Compensation Program (the Program), sections 2110 *et seq.* of the Public Health Service Act, codified at 42 U.S.C. 300aa-10 *et seq.*, is a federal compensation system for permanent injuries and deaths resulting from vaccines to prevent seven infectious diseases of childhood (diphtheria, tetanus, whooping cough, measles, mumps, rubella, and polio). State laws generally require that children be immunized against such diseases for school entry.

The Program, which became effective October 1, 1988, is unique among federal benefit programs in its organizational structure and decisionmaking processes. It was intended to provide an alternative to the tort system for dealing with claims of vaccine-related injury, awarding compensation quickly, fairly, and efficiently. It was also intended to contribute to improving immunization rates, stabilizing the supply and price of vaccines, encouraging new and improved vaccines, and reducing the burden and uncertainty of litigation.

Decisionmaking authority is vested in the United States Claims Court. Claimants submit petitions for compensation to the Claims Court, and bear the burden of proving both entitlement and the losses and expenses to be compensated. The Secretary of Health and Human Services (HHS) is designated as respondent. The National Vaccine Injury Compensation Program Office in HHS (the Program Office) acts on behalf of the Secretary and may oppose compensation in individual cases. The vaccine manufacturer and whoever administered the vaccine are not involved as a party to the proceedings.

Two procedural innovations in the Program are especially noteworthy. First, determinations of eligibility and the amounts of compensation are made by special masters employed by the Claims Court. Under current procedures, the special master issues a judgment that is final unless review by a Claims Court judge is requested by either claimant or respondent. Further review is available in the United States Court of Appeals for the Federal Circuit.

Second, the Act contains a Vaccine Injury Table, which defines the injuries compensable under the Program. This was a policy decision by Congress, intended to avoid controversy over what disabilities were in fact caused by vaccines and to expedite decisions on claims by eliminating difficult, time-consuming disputes over causation in individual cases.[1] Nevertheless, disputes over whether particular injuries qualify for compensation have sometimes proved time-consuming, even though the Table is accompanied by "Qualifications and Aids to Interpretation." Moreover, in cases of injury, determining the amount of compensation can be difficult and time-consuming because of the need to take into account the net present value of actual unreimbursable expenses for medical, rehabilitative, and custodial care, actual and anticipated lost earnings, and actual and projected pain and suffering. Paragraphs 2, 3, and 4 address these issues by suggesting that Congress consider whether further clarification would be appropriate, and by recommending development of guidelines that may be used by the Claims Court and the parties. Paragraph 5 suggests study of ways to minimize transaction costs in administering awards under the Program.

The Department of Justice has recently taken steps to speed the processing of vaccine cases by increasing the Assistant Attorney General's settlement authority and modifying its settlement review and approval procedures.[2] Paragraph 6 encourages continued review of the appropriate level of such authority.

No one administrative agency is charged with the duty of interpreting the enabling legislation or issuing general regulations. The Advisory Commission on Childhood Vaccines is empowered to advise the Secretary of HHS on Program implementation. The Secretary may revise the Vaccine Injury Table, but has no authority to impose decisionmaking rules on the United States Claims Court. The Secretary was also required to develop and disseminate vaccine information materials, including a summary of the availability of the Program, not later than December 22, 1988.[3]

Claimants may seek compensation under the Program regardles of when the injury occurred. However, the starting date of the Program, October 1, 1988, serves as a line of demarcation between two somewhat different sets of rules and remedies. Claims based on immunizations prior to that date—"retrospective cases"—may not have received an award based on a judgment or settlement in a civil action. Awards in retrospective cases are paid out of a limited fund specially authorized by Congress.

For injuries arising from immunizations on or after October 1, 1988—"prospective cases"—no civil action may be filed unless the claimant has filed a claim under the Program and received and rejected a determination under it. For such cases, the Program is a "first resort," but not an exclusive source of compensation. Awards for prospective cases are paid from the Vaccine Injury Compensation Trust Fund supported by a tax on covered vaccine sales. The Act tolls the statute of limitations governing the civil action until a final judgment is issued on the petition. This tolling provision was intended to preserve a petitioner's right to commence a civil action after the petitioner has exhausted the remedies under the Act. However, because the petitioner has 90 days to accept or reject a final judgment by the Claims Court or the Court of Appeals, the immediate end to the tolling upon final judgment might operate to extinguish an unwary petitioner's right to commence a civil action. Paragraph 7 would remedy this anomaly.

Under the Act, as amended, a final deadline of January 31, 1991, was set for filing claims in retrospective cases. More than 3000 cases were filed in the 5 months preceding this deadline, the vast majority of them retrospective. The large number of filings during this period has created an unusual burden on the Program that can be expected to dissipate in the next few years, as a more regular pattern of filing claims develops. However, a special response, as suggested in paragraph 8, is warranted to ease the temporary burden of deciding these petitions. Measures suggested include a temporary increase in staffing, with funding to support the additional positions.[4] Paragraph 9 is intended to address the possibility that there will be sufficient funding due to the substantial number of retrospective cases that have been filed; under the statute the Program would cease to be in effect if there are insufficient funds to pay all of the claims payable for 180 days.

The Claims Court has used teleconferencing successfully in connection with the Program. Congress may find it useful to study this experience and to consider the possible use of the technique in other proceedings.

Finally, we note that section 2117 of the Act grants the Trust Fund the right of subrogation for compensation paid under the Program. The Departments of Health and Human Services and Justice should continue to be alert to appropriate opportunities to pursue this course.

Recommendation

1. The National Vaccine Injury Compensation Program Office in the Department of Health and Human Services, in consultation with the Advisory Commission on Childhood Vaccines, should continue to explore additional effective ways and take appropriate steps to disseminate information nationally about the Program, including eligibility and documentation requirements and filing deadlines for petitions, to ensure that affected persons are aware of the available legal remedies and to help them identify necessary supporting information.

2. To simplify the process of determining eligibility, Congress should

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[1] The Act also allows for compensation if a petitioner can prove that an injury was actually caused by a covered vaccine, even if the specific injury is not listed in the Table.

[2] See 56 FR 8923 (March 4, 1991).

[3] A proposal was published at 54 FR 9180 (March 3, 1989), but the final version has not been published as of the date of this recommendation.

[4] Congress should consider the effects on the Program if money in the Vaccine Injury Compensation Trust Fund is used for this purpose. Currently, section 6601(r) of the Omnibus Budget Reconcilation Act of 1989, Pub. Law No. 101-239, 103 Stat. 2293, authorizes separate appropriations of funds to HHS, Justice and the Claims Court (for FY 1990 and 1991) from the Trust Fund.

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examine whether further clarification is needed of the "Qualifications and Aids to Interpretation" applicable to the Vaccine Injury Table, which are set forth in section 2114(b) of the Act to explain the symptoms and conditions to be considered evidence of an injury described in the Table.[5]

3. The Advisory Commission on Childhood Vaccines should develop uniform guidelines, such as discount rates for the value of medical and other services to be purchased in future years, for calculating the net present value of specific elements of compensation to be awarded to petitioners. Such guidelines may be used to compute the amount of awards promptly and consistently in similar cases. The guidelines should be reviewed at least annually to ensure that they remain consistent with reasonable estimates of future economic performance.

4. The Advisory Commission on Childhood Vaccines should also consider developing guidelines for the total amount of compensation payable and, where appropriate, for individual elements of compensation, in light of evolving case law and experience with the alternative dispute resolution process used by the Claims Court. The guidelines should provide for appropriate variations on the basis of age, severity of injury, intensity of services, and other relevant factors. The guidelines should present a range of values in each category, with flexible ceilings and floors, to accommodate special circumstances.

5. The Department of Health and Human Services and the Advisory Commission on Childhood Vaccines should study the current use of brokers to provide structured settlements, and should explore alternatives that will decrease transaction costs that result in reducing the funds available for awards to plaintiffs.

6. The Department of Justice should continue to examine the appropriate level of approval authority and dollar limit for settling vaccine injury cases, taking into account the magnitude of awards actually made under the Program, to reduce delay in obtaining final approvals.

7. Congress should amend section 2116(c) of the Act to stay the statute of limitations governing civil actions for personal injuries arising out of a vaccination covered by the Act until the date that the petitioner files an election, or is deemed to file an election, pursuant to section 2121 of the Act, accepting or refusing to accept the judgment.

8. Congress should take the following steps to reduce the burdens placed upon the Program by large fluctuations in the numbers of petitions filed:

(a) Congress should delete section 2121(b)(2) of the Act, as added by the Vaccine and Immunization Amendments of 1990, which withdraws jurisdiction over any petition that is not decided within the time required by the Act.

(b) Congress should amend section 2112(d)(3) of the Act, as amended by the Vaccine and Immunization Amendments of 1990, to permit the chief special master to extend the time for deciding petitions filed in retrospective cases for up to 2 years, in addition to the 240-day time limit plus all other extensions and suspensions currently permitted, when the chief special master determines that the number of filings and resulting work load require such action in the interest of justice.

(c) Congress should amend section 2112(c)(1) of the Act to increase substantially the authorized maximum number of special masters to handle the temporary burden of decisionmaking in retrospective cases. Congress should also authorize additional funds for a limited time period to support these positions, as well as increased staffing needed within the Program Office and the Department of Justice.

9. Congress should address the potential consequences if there were to be insufficient funding for the Program, in view of section 323(b) of Public Law 99–660, 100 Stat. 3784, which provides that the Program shall cease to be in effect if there are insufficient funds to pay all of the claims payable for 180 days.

10. Congress should extend the January 1, 1992 deadline for the Secretary of Health and Human Services to report the results of the evaluation of the Program required by section 6601(t) of the Omnibus Budget Reconciliation Act of 1989, Public Law No. 101–239, 103 Stat. 2293, until the temporary burden of retrospective cases in substantially reduced, because inclusion of information with respect to these cases is essential to a useful evaluation of the Program.

§ 305.91–5 Facilitating the Use of Rulemaking by the National Labor Relations Board (Recommendation No. 91–5).

The National Labor Relations Board (the Board) has formulated policy almost exclusively through the process of administrative adjudication despite having been granted both rulemaking and adjudicatory power in its statutory charter more than half a century ago. Even as rulemaking eclipsed adjudication as the preferred method of policymaking among major federal agencies, the Board steadfastly relief upon the quasi-judicial approach.

The appropriateness of agency discretion to choose between rulemaking and adjudication to determine policy has been widely acknowledged. In the last several decades, however, the use of rulemaking in major federal agencies has grown and a body of commentary and judicial opinion has encouraged and approved this trend. Agency power to use rulemaking authority to resolve by general principle issues that recur in adjudicatory hearings has been broadly asserted and approved. Gains in administrative efficiency through the use of rules have been frequently seen as outweighing the benefits of incremental policymaking through case-by-case consideration. Controversy, then, has centered on the Board's insistence on adjudication as virtually the only means for the development of policy and on the practical implications this has had for the Board's accomplishment of its regulatory mission.

The type of decisionmaking engaged in by the Board has implications for the type of data gathered by the Board and the openness of policymaking. Policy formulated in the context of case-by-case adjudication is based solely upon the argument and evidence that the parties to the proceeding offer. Rulemaking, however, offers broader opportunity for public participation and more meaningful notice to affected parties of potential changes in regulatory standards.

In addition, the choice between rulemaking and adjudication may affect the clarity and stability of the particular policy involved. In general, rulemaking provides greater clarity in the identification of a decision as a policy choice and requires that agency policy not be changed without a process focused on the policy choice. Where bright line rules are helpful and feasible, this may be an important consideration. Rulemaking also can resolve more efficiently important policy choices that would require a series of adjudications over a long period of time; thus, it can promote efficient enforcement of agency policy. Moreover, rulemaking enables the Board to set its policymaking agenda internally and directly with a view toward enforcement needs, rather than depending on the issues presented in cases that parties choose to press.

Despite its historical reluctance to formulate policy through rulemaking, the Board announced in 1987 its intention to initiate a rulemaking proceeding to determine bargaining units in health care facilities.[1] The Board's choice of this subject for its first major substantive rulemaking is inextricably intertwined with the agency's struggle with it for almost 15 years. The Board gave two rationales for its decision to use rulemaking. First, the Board believed that there would be value in obtaining from affected parties empirical data on the effect on labor relations of unit configuration in the health care industry. Second, the Board acknowledged the longstanding criticism of its reluctance to use rulemaking as a policymaking vehicle and concluded that rulemaking, though perhaps time consuming at the outset, might prove valuable over the long-term in terms of the predictability and efficiency of determinations of viable bargaining units in the health care industry.

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[5] Congress may also wish to consider any relevant information from the studies performed by the Institute of Medicine of the National Academy of Sciences pursuant to Pub. L. 99–660, 100 Stat. 3779, 312.313.

[1] 52 FR 25.142 (1987).

While the notice-and-comment procedures of § 553 of the APA require only an opportunity for written comments on the proposed rule, the Board decided to hold four public hearings around the country to receive oral and writtem comments, and to permit limited cross-examination. The Board provided for greater public participation than was strictly required because it desired to assure affected persons that there would be the fullest opportunity to participate as the Board undertook a new method of policy formulation. In addition, the Board was concerned that without oral testimony and cross-examination, it would receive (through written comments) only the kind of legal arguments that it traditionally heard in adjudications. A final rule was adopted on April 21, 1989. Judicial review was sought by the American Hospital Association (on the grounds that the rule exceeded the Board's statutory authority, the Board was required by statute to make unit determinations on a case-by-case basis, and that the rule was arbitrary and capricious).[2] The Supreme Court ultimately upheld the rule.

The Conference has examined the Board's "experiment" with rulemaking. Putting aside the particular legal issues yet unresolved in the "test" case before the courts, it seems clear that the proceeding accomplished the major putative purposes of rulemaking. First, the Board accumulated and utilized an enormous volume of empirical data that had not been available to it in previous adjudications. Second, the process provided a degree of openness and broad-scale participation unmatched by traditional Board proceedings (even in those few adjudications where amici are invited to an oral argument). Third, the product of the rulemaking is a model of clarity as expression of policy in an area historically marked by excessive subtlety and complexity. Finally, the rule, if upheld, promises a degree of stability for a policy area that had been overwhelmed by change.

It cannot be said, however, that the Board's choice to use rulemaking represents a broad new commitment to formulating national labor policy by this means. This rulemaking was an exercise in pragmatism—a thorough, careful, and productive administrative response to a particular set of circumstances. Nevertheless, the rulemaking gives the Board experience upon which it can build. This recommendation, while recognizing that the Board will justifiably continue to make policy through adjudication, suggests steps to facilitate further rulemaking by the Board. These steps include publishing standard rulemaking procedures, identifying subjects that are appropriate for rulemaking, and amending the National Labor Relations Act to include a provision that (following previous Conference recommendations) specifies an appropriate procedure for judicial review of Board rules.

Recommendation

1. The National Labor Relations Board should supplement its practice of policymaking through case-by-case adjudication by continuing to use its general rulemaking authority in appropriate situations.

2. To facilitate the rulemaking process, the Board should take the following steps:

(a) Rulemaking Procedures

The Board should publish rulemaking procedures that conform to the informal rulemaking procedures of the Administrative Procedure Act. These procedures should not require oral hearings or other procedures in addition to notice and the opportunity for comment, as a general matter, although such additional procedures may be useful for particular rulemakings.[3]

(b) Idenfication of Subjects for Rulemaking

To assist the Board in identifying manageable and timely subjects for which rulemaking might be appropriate, it should consider, among others, the following factors:

(i) The need for submissions and information, including empirical data, beyond that normally available through adjudication.

(ii) The value of participation by affected persons beyond the parties likely to participate in adjudication, with particular attention to possible reliance on prior policy and the breadth of impact of a new policy.

(iii) The need to establish policy promptly in new areas of responsibility or for new enforcement initiatives.

(iv) The opportunity for stabilizing policy in the particular subject area.

(v) The likelihood that future litigation and enforcement costs may be lessened if a readily applicable rule is developed.

(vi) The need to achieve control over the subject and timing of policy review and development.

(c) Existing law

The Board should develop a policy to govern situations in which the subject of a proposed rule has already been the focus of consideration in prior adjudicatory proceedings. The Board should seek to anticipate enforcement issues that may arise during the pendency of the rulemaking and possible judicial review. During the pendency of a rulemaking, the Board and its independent General Counsel ordinarily should continue to act under its body of precedent, but they should be prepared to depart from precedent in individual cases where the application of such precedent would be unfair or inefficient.

3. Congress should amend the National Labor Relations Act to confine preenforcement review of final Board rules to a single proceeding. Review should be authorized in the appropriate court of appeals.[4] This authorization should include a reasonable time limit on the seeking of preenforcement review and preclude judicial review of rules at the enforcement state concerning issues relating to whether (a) the procedures employed in the rulemaking were adequate, or (b) there was adequate support for the rule in the administrative record.[5]

§ 305.91-6 Improving the Supervision of the Safety and Soundness of Government-Sponsored Enterprises (Recommendation No. 91-6).

The federal government has established and chartered numerous "government-sponsored enterprises" [1] (GSEs) to facilitate the flow of credit to certain categories of borrowers, such as homebuyers, farmers and students. GSEs do this by raising funds in the capital markets to make or purchase loans or by guaranteeing securities based on pools of loans. GSEs share many attributes of private companies: they are privately owned, sell stock, are generally profit-making institutions, and are exempt from federal civil service, procurement and appropriations restrictions. However, they also share many characteristics of public institutions. They

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[2] The U.S. District Court for the Northern District of Illinois found the rule unlawful and granted a permanent injunction against its enforcement. The U.S. Court of Appeals for the Seventh Circuit reversed the district court decision. The Supreme Court granted certiorari and issued an unanimous decision upholding the Board rule and recognizing the Board's broad rulemaking powers under 6 of the National Labor Relations Act. See 111 S. Ct. 539 (1991).

[3] See ACUS Recommendation 76-3, "Procedures in Addition to Notice and the Opportunity for Comment in Informal Rulemaking," 1 CFR 305.76-3 (1990).

[4] See ACUS Recommendation 75-3, "The Choice of Forum for Judicial Review of Adminstrative Action," 1 CFR 305.75-3 (1990).

[5] This is not meant to limit parties' ability, at the enforcement stage, to challenge a rule as arbitrary and capricious as applied. See ACUS Recommendation 82-7, "Judicial Review of Rules in Enforcement Proceedings," 1 CFR 305.82-7 (1990).

[1] A Government-sponsored enterprise is a privately owned, federally-chartered financial institution with nationwide scope and specialized lending powers that benefits from an implicit federal guarantee to enhance its ability to borrow money. See Stanton, *Administrative and Legal Aspects of Federal Supervision of Safety and Soundness of Government Sponsored Enterprises*, Report to the Administrative Conference (May 1991) at 3 [hereinafter, Stanton Report].

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The Board should develop a policy to govern situations in which the subject of a proposed rule has already been the focus of consideration in prior adjudicatory proceedings. The Board should seek to anticipate enforcement issues that may arise during the pendency of the rulemaking and possible judicial review. During the pendency of a rulemaking, the Board and its independent General Counsel ordinarily should continue to act under its body of precedent, but they should be prepared to depart from precedent in individual cases where the application of such precedent would be unfair or inefficient.

3. Congress should amend the National Labor Relations Act to confine preenforcement review of final Board rules to a single proceeding. Review should be authorized in the appropriate court of appeals.[4] This authorization should include a reasonable time limit on the seeking of preenforcement review and preclude judicial review of rules at the enforcement state concerning issues relating to whether (a) the procedures employed in the rulemaking were adequate, or (b) there was adequate support for the rule in the administrative record.[5]

§ 305.91–6 Improving the Supervision of the Safety and Soundness of Government-Sponsored Enterprises (Recommendation No. 91–6).

The federal government has established and chartered numerous "government-sponsored enterprises" [1] (GSEs) to facilitate the flow of credit to certain categories of borrowers, such as homebuyers, farmers and students. GSEs do this by raising funds in the capital markets to make or purchase loans or by guaranteeing securities based on pools of loans. GSEs share many attributes of private companies: they are privately owned, sell stock, are generally profit-making institutions, and are exempt from federal civil service, procurement and appropriations restrictions. However, they also share many characteristics of public institutions. They

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endation 76-3, "Procedures
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ulemaking." 1 CFR 305.76-3

[4] See ACUS Recommendation 75-3, "The Choice of Forum for Judicial Review of Adminstrative Action," 1 CFR 305.75-3 (1990).

[5] This is not meant to limit parties' ability, at the enforcement stage, to challenge a rule as arbitrary and capricious as applied. See ACUS Recommendation 82-7, "Judicial Review of Rules in Enforcement Proceedings," 1 CFR 305.82-7 (1990).

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usually have some government-appointed directors on their boards; they have charters that preempt some state laws and exempt them from many taxes; and, for many of them, the federal Treasury is statutorily authorized to invest in stated amounts of their securities. Moreover, their obligations and mortgage-backed securities are implicitly (but not explicitly) guaranteed by the federal government, thus raising the value of these securities while creating at least some risk for the taxpayers by virtue of the implicit guarantees of almost one trillion dollars in the aggregate.

In July 1989, the Administrative Conference began a study of the structures and procedures employed by the government to oversee the safety and soundness of these institutions.[2] During the pendency of the study, numerous other legislative and executive branch studies of the operations of the GSEs have been completed.[3] The Conference has been informed by all of these studies in its consideration of this recommendation and it recognizes the desirability of the current examination of these institutions. In so saying, the Conference wishes to make clear that it implies no special concern about the financial condition of any of these entities—indeed, the studies concluded that they pose no imminent financial threat. But in the past some GSEs have encountered financial difficulties, and concerns have been raised about the capital adequacy of some GSEs and their possible vulnerability to economic downturns. Accordingly, it is prudent to ensure that adequate federal supervisory mechanisms are in place before, rather than after, they might be needed.

Issues of Supervisory Agency Organization and Procedure

At present, three federal agencies are responsible for overseeing the major GSEs: The Farm Credit Administration (which supervises the Farm Credit System and the Federal Agricultural Mortgage Corporation (Farmer Mac)), the newly-created Federal Housing Finance Board (which oversees the Federal Home Loan Bank System), and the Department of Housing and Urban Development (which oversees the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac)). One major GSE, the Student Loan Marketing Association (Sallie Mae), has no overseer.

The general consensus among the various studies of GSEs is that additional oversight of GSE risk-taking and capital levels is needed. With respect to regulatory organization or procedure, the studies recognize the need for a better system of monitoring to ensure that the federal government obtains timely information on the risks undertaken by GSEs. They also urge that each GSE be subject to effective federal supervision, including appropriate enforcement authority, and generally recommend the primacy of safety and soundness regulation over program regulation. Indeed, the General Accounting Office has suggested the centralization of the financial supervision of all enterprises in a single (existing or new) agency.[4]

Although the Conference does not have an opinion on what would constitute the optimum structure,[5] it does feel strongly that however the regulatory authority is organized, the agency or agencies should be given adequate supervisory authority and enforcement tools to do the job. Several of the studies reference the bank regulatory model as a suitable starting point for designing an effective system of government oversight.[6] If the banking regulatory model were applied, some modifications would be appropriate. Most importantly, for those GSEs with low risk profiles, a less intrusive, more streamlined oversight process would be appropriate—including assessment of management quality and operations risk and use of computerized financial models to examine credit and interest rate risk. Because capital would be adequate and risks low, the supervisory agency would not become involved in management decisions of the GSE.

At least several of the GSEs would seem to be likely candidates for such streamlined oversight. As an institution's risk profile worsened, however, or if factors develop that prevent effective use of this process, then more intensive financial examination might be invoked. If an institution's risk profile worsened even further, then appropriate enforcement powers, including the authority to issue capital directives and cease-and-desist orders, would be available. Similarly, the supervisory agency would have authority to reorganize the affairs of a failing institution and thereby reduce the chance that losses might be compounded.

It would be helpful for the GSEs as well as the public to have a better sense of the applicable supervisory objectives and standards as they develop. Thus, the supervisory agencies should promulgate such guidelines through notice-and-comment rulemaking.

The Conference recognizes that GSEs are undergoing the study and scrutiny their importance warrants. This recommendation is an attempt to add a procedural, comparative framework to executive and legislative proposals for strengthening their oversight.

Recommendation

The Conference recommends that the following principles should apply to federal supervision of safety and soundness of government-sponsored enterprises (GSEs):

1. *Institutional capacity.* Each GSE should be supervised for safety and soundness by a federal agency. Any federal agency responsible for supervising safety and soundness of one or more GSEs should be funded so that it is capable of overseeing the activities of often large institutions involving great numbers of often complex transactions.

2. *Administrative authority and enforcement powers.* A federal agency responsible for supervising GSE safety and soundness should have the express authority to (a) Examine financial condition (including collecting such financial information as may be desirable) and risk-taking by the institution, (b) set and enforce effective risk-related and minimum capital requirements, (c) enforce necessary safety and soundness measures with cease-and-desist orders and other enforcement powers available to financial regulators, and (d) reorganize the affairs of a failing institution.

3. *Supervision.* A federal agency responsible for supervising GSE safety and soundness should obtain prompt and timely information and develop and maintain risk ratings of each GSE it supervises. Only if an institution's risk profile is significant should the agency extend its involvement to management issues, as necessary to protect the financial integrity of the GSE.

4. *Promulgation of guidelines.* A federal agency responsible for supervising GSE safety and soundness should, to the extent feasible, develop guidelines for invoking its supervisory and enforcement powers. These guidelines should be promulgated through notice-and-comment rulemaking.

Dated: July 16, 1991.

Jeffrey S. Lubbers,
Research Director.

[FR Doc. 91–17316 Filed 7–23–91; 8:45 am]

BILLING CODE 6110-01-M

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[2] Stanton Report, *supra* note 1.

[3] Congressional Budget Office, *Controlling the Risks of Government-Sponsored Enterprises* (April 1991); General Accounting Office, *Government-Sponsored Enterprises—The Government's Exposure to Risks*, (GAO/GCD—90–97) (August 1990); General Accounting Office, *Government-Sponsored Enterprises: A Framework for Limiting the Government's Exposure to Risks* (GAO/GCD—91–90, May 1991); Office of Management and Budget, *Budget of the United States Fiscal Year 1991*, Chapter VI, pp. 231–255; Treasury Department, *Report of the Secretary of the Treasury on Government-Sponsored Enterprises* (May 1990); Treasury Department *Report of the Secretary of the Treasury on Government-Sponsored Enterprises* (April 1991).

[4] 1990 GAO report, *supra* note 2 at 107, and 1991 GAO report at 4, 47–57.

[5] The Conference wishes to emphasize that the GSEs studied are not fungible entities. Each has its own particular characteristics, and any regulatory scheme should be implemented with this in mind.

[6] See, e.g., the 1990 GAO report, *supra* note 2 at 4, 104, and the 1991 Treasury report, *supra* note 2 at 10. Congress has already provided that the Farm Credit System is supervised by an agency with the institutional capabilities and range of administrative authority and enforcement powers available to bank regulators.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

[DA-90-013]

United States Standards for Grades of Dry Sweetcream Buttermilk

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the United States Standards for Grades of Dry Sweetcream Buttermilk. In addition to redesignating this product as dry buttermilk, the final rule expands the scope of the current standards by including criteria which evaluate the quality of dry buttermilk product. The final rule also broadens the application of these standards, to more clearly reflect current industry processing practices and marketing needs, by providing for buttermilk derived from the churning of butter obtained from a variety of cream sources. These changes were initiated at the request of the American Dairy Products Institute.

EFFECTIVE DATE: August 23, 1991.

FOR FURTHER INFORMATION CONTACT: Roland S. Golden, Dairy Products Marketing Specialist, USDA/AMS/Dairy Division, room 2750-S, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-7473.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as a "non-major" rule under the criteria contained therein.

The final rule also has been reviewed in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The Administrator, Agricultural Marketing Service, has determined that these revisions will not have a significant economic impact on a substantial number of small entities because use of the standards is voluntary and these revisions will not increase costs to those utilizing the standards.

USDA grade standards are voluntary standards that are developed pursuant to the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) to facilitate the marketing process. Such standards for dairy products identify the degree of quality in the various products. Quality in general refers to usefulness, desirability, and value of the product—its marketability as a commodity.

Manufacturers of dairy products are free to choose whether or not to use these grade standards. When products are officially graded, the USDA regulations and standards governing the grading of manufactured or processed dairy products are used. These regulations also require a charge for the grading service provided by USDA.

In accordance with the United States Department of Agriculture policy for regulatory review, the Dairy Standardization Branch conducted a review of the United States Standards for Grades of Dry Sweetcream Buttermilk and the Department's Specification for Dry Buttermilk Product. The objective of the review was to obtain both current and historical information relating to an industry proposal to revise the current standards for dry sweetcream buttermilk and to formalize quality grade standards for dry buttermilk product.

The review involved the collection and evaluation of information from the Department's Dairy Grading Branch and representatives of the American Dairy Products Institute. It was determined that the current definition for dry buttermilk requires that the liquid buttermilk be derived from the churning of butter made entirely from sweet cream. Buttermilk derived from the churning of butter which contains cream from sources other than sweet cream are specifically excluded in the USDA grade standards. Current industry practices, however, utilize cream from a variety of sources in the manufacture of butter. These sources include cream separated from whole milk, cream separated from whey, which is a co-product of the cheese making process, and cultured cream, which encourages the proliferation of lactic-acid-producing bacteria to provide a cultured flavor in butter. Buttermilk obtained from these sources may be further processed into dry buttermilk and dry buttermilk product.

The final rule provides a broader definition of dry buttermilk, changes the nomenclature of dry sweetcream buttermilk to dry buttermilk, and expands the scope of the standards to incorporate quality criteria for dry buttermilk product eligible for USDA grading service.

The primary property which differentiates the value and usability of dry buttermilk and dry buttermilk product is the protein content. The final rule establishes a minimum protein content for dry buttermilk. To achieve this minimum, the dry buttermilk must be obtained from a cream source which has a composition sufficiently high in protein to meet the minimum requirement.

The final rule also incorporates quality criteria for dry buttermilk product. Dry buttermilk product is considered to be a commodity of lesser economic value and may be obtained from a cream source which has a variable protein content. The resulting dry product will not meet the minimum protein content for dry buttermilk.

Corollary changes are also provided in part 58, subpart B, entitled General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service, to conform the definitions of dry buttermilk and dry buttermilk product set forth therein with the United States Standards for Grades of Dry Buttermilk and Dry Buttermilk Product.

Public Comments

On February 7, 1991, the Department published a proposed rule (56 FR 4951) to revise the United States Standards for Grades of Dry Sweetcream Buttermilk and amend the General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service. The public comment period closed April 8, 1991. USDA received three comments on the proposal. Comments were received from one industry trade association, one user of dry sweetcream buttermilk, and one supplier of dry sweetcream buttermilk.

Discussion of Comments

1. The American Dairy Products Institute (ADPI), a national trade association representing the processed dairy products industry, supported the proposed rule. However, ADPI requested the incorporation of labelling requirements identifying the minimum protein content of dry buttermilk product. ADPI felt this information was useful to the end-user since the protein content of the product may vary considerably and contributes significantly to the functionality of the product.

The Department recognizes and agrees with ADPI that the protein content of buttermilk product is a significant factor in determining functionality and value. The Department supports and encourages efforts by the industry to provide guidance concerning labelling which will promote a clear understanding of the product's functionality and value in the marketplace. However, USDA dairy grade standards are designed to establish quality criteria and are not designed to establish labelling requirements. Therefore, no changes have been made in the final rule to address labelling concerns.

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2. Comments in opposition to the proposed rule were submitted by a user of dry sweetcream buttermilk and a supplier of dry sweetcream buttermilk. They claimed that by deleting the term "sweetcream" from the current standard, the proposal would permit the protein content of dry buttermilk product (less than 30 percent) to be increased through the addition of ingredients and marketed as dry buttermilk (minimum protein content of 30 percent).

The Department agrees that the addition of ingredients to increase the protein content should not be permitted and that the protein content should be established solely by the quality and composition of the cream used in the buttermaking process. The definitions contained in the standard which define dry buttermilk and dry buttermilk product, as set forth in the proposed rule and as adopted herein, prohibit the addition of ingredients which would alter the protein content. Therefore, the Department believes that the concerns raised are adequately addressed.

List of Subjects in 7 CFR Part 58

Dairy products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 58 is amended as follows:

PART 58—[AMENDED]

1. The authority citation for 7 CFR part 58 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627, unless otherwise noted.

2. In subpart B, § 58.205, paragraph (d) is revised and paragraph (e) is added to read as follows:

§ 58.205 Meaning of words.

* * * * *

(d) *Dry buttermilk.* The product resulting from drying liquid buttermilk that was derived from the churning of butter and pasteurized prior to condensing at a temperature of 161 °F for 15 seconds or its equivalent in bacterial destruction. Dry buttermilk shall have a protein content of not less than 30.0 percent. Dry buttermilk shall not contain nor be derived from nonfat dry milk, dry whey, or products other than buttermilk, and shall not contain any added preservative, neutralizing agent, or other chemical.

(e) *Dry buttermilk product.* The product resulting from drying liquid buttermilk that was derived from the churning of butter and pasteurized prior to condensing at a temperature of 161 °F for 15 seconds or its equivalent in bacterial destruction. Dry buttermilk product has a protein content less than 30.0 percent. Dry buttermilk product shall not contain nor be derived from nonfat dry milk, dry whey, or products other than buttermilk, and shall not contain any added preservative, neutralizing agent, or other chemical.

3. In subpart B, § 58.234 is revised to read as follows:

§ 58.234 Buttermilk.

Buttermilk for drying as dry buttermilk or dry buttermilk product shall be fresh and derived from the churning of butter, with or without the addition of harmless lactic culture. No preservative, neutralizing agent or other chemical may be added. Fluid buttermilk, unless cultured, shall be held at 45 °F or lower unless processed within 2 hours.

4. In subpart B, § 58.236 is amended by revising paragraph (a)(2) to read as follows:

§ 58.236 Pasteurization and heat treatment.

* * * * *

(a) * * *

(2) All buttermilk to be used in the manufacture of dry buttermilk or dry buttermilk product shall be pasteurized prior to condensing at a temperature of 161 °F for 15 seconds or its equivalent in bacterial destruction.

* * * * *

5. In subpart B, § 58.251 is revised to read as follows:

§ 58.251 Dry buttermilk and dry buttermilk product.

The quality requirements for dry buttermilk or dry buttermilk product bearing an official identification shall be in accordance with the U.S. Standards for Grades of Dry Buttermilk and Dry Buttermilk Product.

6. Subpart Q—United States Standards for Grades of Dry Sweetcream Buttermilk is revised to read as follows:

Subpart Q—United States Standards for Grades of Dry Buttermilk and Dry Buttermilk Product[1]

Definitions

Sec.
58.2651 Dry buttermilk and dry buttermilk product.

U.S. Grades

58.2652 Nomenclature of U.S. grades.
58.2653 Basis for determination of U.S. grades.
58.2654 Specifications for U.S. grades.
58.2655 U.S. grade not assignable.
58.2656 Test methods.

Explanation of Terms

58.2657 Explanation of terms.

Subpart Q—United States Standards for Grades of Dry Buttermilk and Dry Buttermilk Product

Authority: Agricultural Marketing Act of 1946, Secs. 203 and 205, 60 Stat. 1087, as amended, and 1090, as amended; 7 U.S.C. 1622 and 1624.

Definitions

§ 58.2651 Dry buttermilk and dry buttermilk product.

(a) *Dry buttermilk* (made by the spray process or the atmospheric roller process) is the product resulting from drying liquid buttermilk that was derived from the churning of butter and pasteurized prior to condensing at a temperature of 161°F for 15 seconds or its equivalent in bacterial destruction. Dry buttermilk shall have a protein content of not less than 30.0 percent. Dry buttermilk shall not contain nor be derived from nonfat dry milk, dry whey, or products other than buttermilk, and shall not contain any added preservative, neutralizing agent, or other chemical.

(b) *Dry buttermilk product* (made by the spray process or the atmospheric roller process) is the product resulting from drying liquid buttermilk that was derived from the churning of butter and was pasteurized prior to condensing at a temperature of 161°F for 15 seconds or its equivalent in bacterial destruction. Dry buttermilk product has a protein content less than 30.0 percent. Dry buttermilk product shall not contain nor be derived from nonfat dry milk, dry whey, or products other than buttermilk, and shall not contain any added preservative, neutralizing agent, or other chemical.

U.S. Grades

§ 58.2652 Nomenclature of U.S. grades.

The nomenclature of U.S. grades is as follows:

(a) U.S. Extra.

(b) U.S. Standard.

§ 58.2653 Basis for determination of U.S. grades.

(a) The U.S. grades of dry buttermilk and dry buttermilk product are determined on the basis of flavor, physical appearance, bacterial estimate on the basis of standard plate count, milkfat, moisture, scorched particles, solubility index, titratable acidity, and protein content.

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[1] Compliance with these standards does not excuse failure to comply with provisions of the Federal Food, Drug, and Cosmetic Act.

(b) The final U.S. grade shall be established on the basis of the lowest rating of any one of the quality characteristics.

§ 58.2654 Specifications for U.S. grades.

(a) *U.S. Extra Grade.* U.S. Extra Grade dry buttermilk and U.S. Extra Grade dry buttermilk product shall conform to the following requirements (See Tables I, II, III, and IV of this section):

(1) *Flavor (applies to the reconstituted product).* Shall be sweet and pleasing, and has no unnatural or offensive flavors.

(2) *Physical appearance.* Shall possess a uniform cream to light brown color, be free from lumps except those that readily break up with slight pressure, and be practically free from visible dark particles.

(3) *Bacterial estimate.* Not more than 50,000 per gram standard plate count.

(4) *Milkfat content.* Not less than 4.5 percent.

(5) *Moisture content.* Not more than 4.0 percent.

(6) *Scorched particle content.* Not more than 15.0 mg. for spray process and 22.5 mg. for roller process.

(7) *Solubility index.* Not more than 1.25 ml. for spray process and 15.0 ml. for roller process.

(8) *Titratable acidity.* Not less than 0.10 percent nor more than 0.18 percent.

(9) *Protein content (dry buttermilk only).* Not less than 30.0 percent.

(10) *Protein content (dry buttermilk product only).* Less than 30.0 percent.

(b) *U.S. Standard Grade.* U.S. Standard Grade dry buttermilk and U.S. Standard Grade dry buttermilk product shall conform to the following requirements (See Tables I, II, III, and IV of this section):

(1) *Flavor (applies to the reconstituted product).* Should possess a fairly pleasing flavor, but may possess slight, unnatural flavors and has no offensive flavors.

(2) *Physical appearance.* Shall possess a uniform cream to light brown color, be free from lumps except those that readily break up with moderate pressure, and be reasonably free from visible dark particles.

(3) *Bacterial estimate.* Not more than 200,000 per gram standard plate count.

(4) *Milkfat content.* Not less than 4.5 percent.

(5) *Moisture content.* Not more than 5.0 percent.

(6) *Scorched particle content.* Not more than 22.5 mg. for spray process and 32.5 mg. for roller process.

(7) *Solubility index.* Not more than 2.0 ml. for spray process and 15.0 ml. for roller process.

(8) *Titratable acidity.* Not less than 0.10 percent nor more than 0.20 percent.

(9) *Protein content (dry buttermilk only).* Not less than 30.0 percent.

(10) *Protein content (dry buttermilk product only).* Less than 30.0 percent.

TABLE I.—CLASSIFICATION OF FLAVOR

Flavor characteristics	U.S. extra grade	U.S. standard grade
Unnatural	None	Slight.
Offensive	None	None.

TABLE II.—CLASSIFICATION OF PHYSICAL APPEARANCE

Physical appearance characteristics	U.S. extra grade	U.S. standard grade
Lumpy	Slight	Moderate.
Visible dark particles.	Practically free	Reasonably free.

TABLE III.—CLASSIFICATION ACCORDING TO LABORATORY ANALYSIS

Laboratory tests	U.S. extra grade	U.S. standard grade
Bacterial estimate:		
Standard plate count per gram (Max.)	50,000	200,000
Milkfat content:		
Percent (Min.)	4.5	4.5
Moisture content:		
Percent (Max.)	4.0	5.0
Scorched particle content: mg.		
Spray process (Max.)	15.0	22.5
Roller process (Max.)	22.5	32.5
Solubility index: ml.		
Spray process (Max.)	1.25	2.0
Roller process (Max.)	15.0	15.0
Titratable acidity:		
Percent	0.10–0.18	0.10–0.20

TABLE IV.—CLASSIFICATION ACCORDING TO PROTEIN

Product	U.S. extra grade	U.S. standard grade
Dry Buttermilk:		
Percent (Min.)	30.0	30.0
Dry Buttermilk Product		
Percent (Less than)	30.0	30.0

§ 58.2655 U.S. grade not assignable.

Dry buttermilk or dry buttermilk product shall not be assigned a U.S. grade for one or more of the following reasons:

(a) Fails to meet or exceeds the requirements for U.S. Standard Grade.

(b) Is produced in a plant found on inspection to be using unsatisfactory manufacturing practices, equipment, or facilities, or to be operating under unsanitary plant conditions.

(c) Is produced in a plant which is not USDA approved.

§ 58.2656 Test methods.

All required tests shall be performed in accordance with "Instructions for Resident Grading Quality Control Service Programs and Laboratory Analysis," DA Instruction No. 918–RL, Dairy Grading Branch, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20090–6456; and "Official Methods of Analysis of the Association of Official Analytical Chemists," 15th Ed. or latest revision.

Explanation of Terms

§ 58.2657 Explanation of terms.

(a) *With respect to flavor:*

(1) *Slight.* Detectable only upon critical examination.

(2) *Offensive.* Those that are obnoxious and cause displeasure when tasted or smelled.

(3) *Unnatural.* Those that are abnormal to the characteristic flavor of the product.

(b) *With respect to physical appearance:*

(1) *Practically free.* Present only upon very critical examination.

(2) *Reasonably free.* Present only upon critical examination.

(3) *Slight pressure.* Only sufficient pressure to disintegrate the lumps readily.

(4) *Moderate pressure.* Only enough pressure to disintegrate the lumps easily.

(5) *Lumpy.* Loss of powdery consistency but not caked into hard chunks.

(6) *Visible dark particles.* The presence of scorched or discolored specks.

Signed at Washington, DC, on July 18, 1991.

Daniel Haley,
Administrator.

[FR Doc. 91–17459 Filed 7–23–91; 8:45 am]

BILLING CODE 3410–02–M

Food and Nutrition Service

7 CFR Part 245

[Amendment 28]

Determination of Eligibility for Free and Reduced Price Meals and Free Milk in Schools; Free and Reduced Price Eligibility Criteria

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations governing the reporting of a social security number and household income information on the application for free and reduced price meals under the National School Lunch Program and School Breakfast Program, and for free milk under the Special Milk Program. Under this final rule, the Application for free and reduced price benefits must contain the social security number of the adult household member who signs the application. In lieu of providing a social security number, the adult household member who signs the application may indicate that he or she does not possess one. Households will no longer have the option of providing the social security number of the primary wage earner. Social security numbers of all adult household members will continue to be required if the application is selected for verification of eligibility information. When reporting household income, households will no longer be required to indicate how often individual income amounts are received; rather, households will only be required to indicate the amount and the source of income each household member received during the month prior to application. The determining official will total individual income amounts to calculate the household's total current income. This rule will not affect the application procedures for households who are categorically eligible for free benefits. This rule reflects comments received on the interim rule published on May 9, 1990 (55 FR 19237), which implemented certain requirements of the Child Nutrition and WIC Reauthorization Act of 1989, Public Law 101–147, and is intended to further reduce paperwork and to facilitate eligibility determinations for free and reduced price meals and free milk by simplifying the application requirements for both households and school officials.

DATES: This rule is effective July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, room 1007, Alexandria, Virginia 22302, or by telephone (703) 756–3620.

SUPPLEMENTARY INFORMATION:

Classification

This final rule has been reviewed by the Assistant Secretary for Food and Consumer Services under Executive Order 12291 and has been classified as not major because it does not meet any of the three criteria identified under the Executive order. This action will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions. Furthermore, it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This final rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The Administrator of the Food and Nutrition Service has certified that this rule will not have a significant adverse economic impact on a substantial number of small entities.

The reporting and recordkeeping burdens concerning the collection of social security numbers and the reporting of income information have been approved by the Office of Management and Budget (OMB). The social security numbers and income reporting burdens, as specified in the interim rule (55 FR 19237), were submitted to Office of Management and Budget (OMB) for their review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). These burdens were approved by OMB on June 18, 1990. This final rule further simplifies the application requirements by clarifying the requirement for a social security number and the listing of income but makes no appreciable change in burdens. The information collections under 7 CFR part 245 have been approved under OMB No. 0584–0026 through June 30, 1993.

This final rule affects the School Breakfast Program, National School Lunch Program and Special Milk Program, which are listed in the Catalog of Federal Domestic Assistance under Nos. 10.553, 10.555 and 10.556, respectively. These programs are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, 48 FR 29112, June 24, 1983.)

Background

On May 9, 1990, the Department published an interim regulation (55 FR 19237–19240) which affected the collection of social security numbers and the calculation of total household income on the applications for free and reduced price meals and free milk for the child nutrition programs. The interim rule implemented sections 202(b)(2) (A) and (B)(i) of the Child Nutrition and WIC Reauthorization Act of 1969, Public Law 101–147, enacted November 10, 1989. Comments on these provisions were solicited through January 1, 1991. The Department established a lengthy comment period to give State agencies and school food authorities an opportunity to gain operational experience with the interim application requirements prior to commenting on the rule.

The Department received 27 comments on the interim rule. All comments were supportive of their intent of the regulation, which was to reduce paperwork burdens and facilitate eligibility determinations. However, many of these commenters advised that the revisions to the free and reduced price applications for school meal and free milk benefits resulting from implementation of the interim rule requirements actually increased paperwork and/or caused confusion among applicants. This final rule responds to commenter concerns. The Department would like to thank all commenters for taking the time to give the Department the benefit of their experiences and perceptions. A discussion of the commenters and the Department's response to the comments follows.

Social Security Numbers

Section 202(b)(2)(A) of Public Law 101–147 amended section 9(d)(1) of the National School Lunch Act (42 U.S.C. 1758(d)(1)) to require that the member of the household who executes the application include the social security number of the parent or guardian who is the primary wage earner responsible for the care of the child for whom the application is made, or the number of another appropriate adult household member, as determined by the Secretary. Additionally, the law requires that the household provide the social security numbers of all adult household members if the application is selected for verification of eligibility. The law only affects households establishing their eligibility for benefits based on household size and income information. Households who are categorically eligible for free meals or milk by virtue of receiving food stamps or AFDC benefits were not affected.

In response to section 202(b)(2)(A), the interim rule amended 7 CFR 245.2(a–4) and 245.6(a) to require that a completed application include the social security number of either the parent or guardian who is the primary wage earner or the adult household member who signs the application. The rule further stipulated that, if neither household member has a social security number, the household must indicate that fact in lieu of providing a number. Additionally, as mandated by section 202(b)(2)(A), § 245.6a(a)(2) of the interim rule required that social security numbers of all adult household members be provided if the household is selected for verification of eligibility. The interim rule also made related changes to the prototype Privacy Act Statement in § 245.6(a)(2) and required school food authorities to provide notice under the Privacy Act to those households selected for verification of eligibility under § 245.6a(a)(2).

Seventeen commenters specifically addressed the issue of the social security number requirement. Although nine commenters believed that requiring only one social security number, rather than the social security numbers for all adults in the household, is a step in the right direction, four commenters recommended that the collection of the social security number on the application be eliminated completely on the grounds that the collection of social security numbers is only procedural and the numbers are of no practical use to determining officials. Another commenter recommended retaining the previous requirement that the application contain the social security number of each adult household member. This commenter argued that under the current interim rule, the determining official has to decide whether the proper social security number has been provided and that it is easier to obtain social security numbers when households apply for benefits rather than at the time of verification of household eligibility. Four commenters believed that the Department should designate the household member whose social security number should be included on the application. These commenters believed that providing households an option complicates, rather than simplifies, the application process. One commenter recommended that the social security number requirement be limited to the primary wage earner, since there is no significance in having the social security number of an individual without income. Another commenter believed that requiring that a complete application contain either the social security number of the parent or guardian who is the primary wage earner or that of the adult household member who signs the application needs to be clarified. According to this commenter, the provision could lead to "technical approval errors." This commenter suggested that since the signature of any adult household member should be a sufficient deterrent for which this requirement is intended, the Department should only require the social security number of any adult household member. Similarly, another commenter suggested that the social security number of the adult signing the application should be the only one required on the application, because applicants may not understand what "primary wage earner" means. Finally, seven commenters addressed the collection of social security numbers for households selected for verification of eligibility. These commenters believe that it complicates the verification process and is contrary to reducing paperwork burdens.

In response to suggestions that the social security number requirement be totally eliminated from both the application and verification requirements, the Department reminds commenters that section 202(b)(2)(a) of Public Law 101–147 specifically amended section 9(d)(1) of the National School Lunch Act to require the social security number of either the parent or guardian who is the primary wage earner or another appropriate adult household member, as designated by the Secretary, on the application. This requirement is a condition of eligibility for free and reduced price meals and free milk. Section 202(b)(2)(A) further requires that the social security numbers of all adults in the household be provided at the time of verification. Thus, in accordance with the law, the free and reduced price application must contain a social security number, and social security numbers must be obtained for all adult household members if the household is selected for verification.

In accordance with the discretion afforded to the Secretary in designating the household member required to provide a social security number, the interim regulation allowed households the option of providing either the social security number of the parent or guardian who is the primary wage earner or that of the adult household member who signs the application. The Department believed this would provide households with maximum flexibility in complying with the social security number requirement. It was the goal of the Department to simplify the application process while maintaining program integrity. However, commenters on the interim rule, as well as other State and school officials who have informally advised the Department of their experiences with the application process for the 1990–1991 School Year, believe that providing households with this option actually results in a complication rather than a simplification of the application procedures and adds to the paperwork and administrative burdens.

After considering these comments, the Department has decided that eliminating the option of providing the social security number of the primary wage earner would simplify completion of the application by households, while maintaining the integrity of the program. As pointed out by one commenter, *any* adult household member is permitted to complete and sign the application. Thus, even with eliminating the option, the household is still afforded the opportunity of having *any* adult household member sign the application, including the primary wage earner. Flexibility is, therefore, not compromised because the household continues to be vested with the option of selecting which adult household member it wishes to sign the application and render his or her social security number, or an indication that he or she does not possess one. In signing the application, the household member is attesting to the completeness and correctness of the information submitted by the household to obtain Federal benefits and acknowledging that he/she is aware of the penalties for misrepresentation of information. This change, therefore, will not result in any reduction in program accountability. Consequently, this final rulemaking amends §§ 245.2(a–4) and 245.6(a) to require that a completed application include the social security number of the adult household member who signs the application. This final rule also makes appropriate changes to the Privacy Act Statement contained in § 245.6(a)(1) to reflect this change.

One commenter addressed the prototype Privacy Act Statements contained in §§ 245.6(a)(1) and 245.6a(a)(2)(i). This commenter believed that the information provided to households is too extensive. Section 7(b) of the Privacy Act of 1974 (Pub. L. 93–579, 5 U.S.C. 552a note) requires Federal, State or local government agencies which request an individual to disclose his/her social security number must be informed (1) whether that disclosure is mandatory or voluntary, (2) by what statutory authority or other authority each number is solicited, and (3) what uses will be made of the number. The Department's prototype Privacy Act Statement fulfilling these criteria has been incorporated into §§ 245.6(a)(1) and 245.6a(a)(2) of the regulations governing free and reduced price eligibility and has been included in the Department's prototype free and reduced price application. The Department emphasizes that this statement is a prototype statement designed to be used by all States and school food authorities. In addressing the third criterion, uses that may be made of applicants' social security numbers, the Department attempted to include all conceivable uses that a school food authority may make of the social security number. State agencies and school food authorities may, if they wish, alter the prototype Privacy Act statement to reflect the manner in which individual social security numbers may be used. Indeed, the prototype Privacy Act statement must be altered if the State or the local school food authority contemplates using the social security numbers in a manner not envisioned on the prototype. It is the responsibility of State agencies and school food authorities to ensure that the Privacy Act Statement they use does, in fact, comply with all Privacy Act requirements. The Department continues to recommend that State agencies and school food authorities consult with their legal counsel in this area.

Income Information

Section 202(b)(2)(B)(i) of Public Law 101–147 amended section 9(d)(2)(A) of the National School Lunch Act (42 U.S.C. 1758(d)(2)(A)) to require that households provide appropriate documents relating to the income of the household so that the local school officials may calculate total household income to determine eligibility for free and reduced price benefits. The interim regulation amended § 245.2(a-3) to redefine "current income" to mean income received during the month prior to application and to remove the reference to annualization of income. Additionally, the interim regulation provided that, when the prior month's income does not accurately reflect the household's annual rate of income, eligibility shall be based on the household's projected annual income.

Only one commenter addressed the revised definition of "current income." This commenter concurred with defining income as income received during the prior month, because this approach is less cumbersome that annualizing income. Therefore, this final rule adopts, without change, the definition of "current income" as stated in the interim rule.

The interim rule also amended §§ 245.2(a–4) and 245.6(a) to eliminate the requirement that households provide a total monthly income figure on the application. The interim regulation required households to list the income received by each member during the prior month identified by the source of the income (such as earnings from work, payments from welfare or retirement pensions), and the frequency with which each member received the income (such as weekly, every 2 weeks, monthly, etc). Section 245.6(b) of the interim rule specified that it is the responsibility of the determining official to use the individual income information provided by the household to calculate the household's total monthly income when making an eligibility determination.

Ten commenters specifically addressed the issue of income information on the free and reduced price application. The majority of these commenters supported eliminating the requirement that households provide a total income figure on the free and reduced price application. As one commenter noted, the total household income is usually calculated by the determining official so there is no need to have the household also total its income. This observation corresponds to the comments of other State and local officials, including those that served on a task force convened by the Department in 1989 for the purpose of simplifying and clarifying the application process. It should be noted, however, that one commenter opposed the elimination of the requirment that households provide a total income figure because calculating total income adds to the determing official's paperwork.

Section 202(b)(2)(B)(i) of Public Law 101–147 mandated that the Department require households to submit to the local school food authority appropriate documentation of household income to enable the school food authority to calculate the total household income when making free and reduced price eligibility determinations. Sections 245.2(a–4) and 245.6(a) reflect this intent that the total income calculation is to be performed by the school food authority rather than the applicant household. Moreover, the Department believes that school officials are less likely than households to calculate total household income incorrectly, and, as a result, the determination process should be less confusing than in the past. Therefore, this final regulation retains the interim rule's elimination of the requirement that the household provide a total income figure on the application.

To enable school officials to calculate total monthly income, § 245.2(a–4) of the interim rule required that, in addition to listing income by individual and source, the household must indicate the frequency with which income is received. The intent was to relieve the household of the burdens associated with converting individual income amounts to a monthly figure and to ensure that school officials had sufficient information to determine total household income.

The Department received five comments on reporting the source and frequency of income. One commenter suggested that only the income of the parent or guardian be collected, not income for the entire household, since it is the parent or guardian who is responsible for the child. However, section 9(b)(3) of the National School Lunch Act makes any child from a household whose income is at or below the applicable family size income level of the income eligibility guidelines set forth under section 9(b)(1) eligible for a free or reduced price lunch. This provision requires that eligibility be determined on the basis of the income status of the entire household, which is consistent with the treatment of income in other Federal assistance programs.

Two commenters disapproved of requiring households to indicate the source of income, such as wages, welfare payments, etc., because households do not complete that portion of the application correctly or have difficulty identifying sources of income. The requirement that households identify the source of individual income amounts is not a new requirement. Households have been required to indicate the source of income amounts and the individual who receives them since 1984. The pilot study, Income Verification Pilot Project, conducted by the Department to identify procedures to reduce fraud and abuse in the school nutrition programs found that an application which requests income by source and by household member significantly reduces misreporting. The majority of households that complete income information on the application have become accustomed to indicating income by individual and source and do not have a problem completing this portion of the application. The Department has had no indication that requiring income by source causes widespread problems. For this reason and because the Department believes requiring income by source reduces misreporting, this rule continues to require the reporting of income by source.

Four commenters disapprove of requiring households to indicate the frequency with which each household member received each source of income. These commenters advised that many households either did not complete the frequency portion of the income grid on the 1990–1991 free and reduced price application or misinterpreted the requirement. In either case, requesting households to report how often they receive each source of income complicates the application process. One of these commenters added that requesting households to indicate how often income is received implies steady income, which is not the case for many low income households. This commenter and one other commenter recommended retaining the previous requirement for monthly income amounts on the free and reduced price application. Another commenter recommended asking for yearly income as reported to the Internal Revenue Service.

The Department has also received many similar comments from State and local program administrators concerning the prototype application for free and reduced price meals that the Department issued in the Spring of 1990. Like the commenters on the interim regulation, these administrators believed that requiring households to report how often they receive income actually had the effect of complicating the application process for both households and school determining officials. When households misinterpreted this requirement and completed the application incorrectly, which happened with some frequency, school officials had to resolve the discrepancies, thereby delaying the approval process and adding a burden. These administrators also agreed with commenters that many low income households do not have a steady source of income and/or have erratic work schedules.

The interim rule required households to indicate the frequency of income because the Department believed that many low income households experience difficulty in computing monthly income. Consequently, the Department considered that school officials would be in the best position to compute total household income using the amount and frequency of income reported by the households. However, the Department recognizes the practical difficulties reported by people using the new system. The Department also agrees that it is reasonable to ask households to assess their own circumstances when completing their applications and that households which receive income sporadically are in a better position than the determining official to determine how much income is received monthly. For these reasons, the Department is removing the requirement that households report the frequency with which they receive income. Rather, § 245.6(a) of this final rule will require only that households report their income identified by source so that the school official can calculate the households's total current income as prescribed by § 245.6(b). The Department believes that the removal of the frequency requirement will ensure that needy children are not denied access to the Program while reducing the burden on local school officials.

In response to the commenter who suggested that eligibility be determined on the basis of yearly income as reported to the Internal Revenue Service, income reported on income tax forms is old information and may not be a good indicator of the household's current circumstances.

Summary

Under § 245.6(a), the adult household member who signs the application must include his/her social security number on the application for free and reduced price benefits or indicate that he/she does not possess a number. Households must also report on the application the income received, identified by the household member who received the income and the source of the income. Pursuant to § 245.6(b), the information is used by the determining official to calculate the household's current income. The definition of "current income" under § 245.2(a–3) is adopted from the interim rule without change. Current income is income received during the month prior to application. If the prior month's income does not accurately reflect the household's annual income, households must use their projected annual household income. The interim rule verification provisions in section 245.6a are adopted without change.

Technical amendment

On July 17, 1991, the Department published a final rule, Coordinated Review Effort, at 56 FR 32920. This rule inadvertently removed a sentence from § 245.6(b) which allows school officials to verify the information provided by households on the application. Today's rule corrects that error by adding this sentence back into the regulations, verbatim. However, the sentence, "School food authorities may seek verification of the information on the application," has been moved to a more appropriate section, § 245.6a(a) Verification requirements.

List of Subjects in 7 CFR Part 245

Food assistance programs, Grant programs-social programs, National school lunch program, School breakfast program, Special milk program, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 7 CFR part 245 which was published at 55 FR 19237 on May 9, 1990, is adopted as a final rule with the following change:

PART 245—DETERMINING ELIGIBILITY FOR FREE AND REDUCED PRICE MEALS AND FREE MILK IN SCHOOLS

1. The authority citation for part 245 continues to read as follows:

Authority: Secs. 3, 4, and 10, 60 Stat. 885, 886, 889, as amended (42 U.S.C. 1772, 1773, 1779); secs. 2–12, 60 Stat. 230, as amended (42 U.S.C. 1751–60).

2. In § 245.2 Definitions, paragraphs (a–4) introductory text, and paragraphs (a–4) (1) through (4) is amended by are revised; to read as follows:

§ 245.2 Definitions.

* * * * *

(a–4) *Documentation* means the completion of the following information on a free and reduced price application:

(1) names of all household members;

(2) income received by each household member, identified by source of the income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, and social security and other cash income);

(3) the signature of an adult household member; and

(4) the social security number of the adult household member who signs the application or an indication that he/she does not possess a social security number.

* * * * *

3. § 245.6 is amended as follows:

a. The introductory text of paragraph (a) is revised after the second sentence;

b. Paragraph (a)(1) is amended by removing the first four sentences and adding two new sentences in their place; and

c. Paragraph (b) is amended by removing the words "and frequency" in the third sentence.

The revision and addition read as follows:

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verbatim. However, the sentence, "School food authorities may seek verification of the information on the application," has been moved to a more appropriate section, § 245.6a(a) Verification requirements.

List of Subjects in 7 CFR Part 245

Food assistance programs, Grant programs-social programs, National school lunch program, School breakfast program, Special milk program, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 7 CFR part 245 which was published at 55 FR 19237 on May 9, 1990, is adopted as a final rule with the following change:

PART 245—DETERMINING ELIGIBILITY FOR FREE AND REDUCED PRICE MEALS AND FREE MILK IN SCHOOLS

1. The authority citation for part 245 continues to read as follows:

Authority: Secs. 3, 4, and 10, 80 Stat. 885, 886, 889, as amended (42 U.S.C. 1772, 1773, 1779); secs. 2–12, 60 Stat. 230, as amended (42 U.S.C. 1751–60).

2. In § 245.2 Definitions, paragraphs (a–4) introductory text, and paragraphs (a–4) (1) through (4) is amended by are revised; to read as follows:

§ 245.2 Definitions.

* * * * *

(a–4) *Documentation* means the completion of the following information on a free and reduced price application:

(1) names of all household members;

(2) income received by each household member, identified by source of the income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, and social security and other cash income);

(3) the signature of an adult household member; and

(4) the social security number of the adult household member who signs the application or an indication that he/she does not possess a social security number.

* * * * *

3. § 245.6 is amended as follows:

a. The introductory text of paragraph (a) is revised after the second sentence;

b. Paragraph (a)(1) is amended by removing the first four sentences and adding two new sentences in their place; and

c. Paragraph (b) is amended by removing the words "and frequency" in the third sentence.

The revision and addition read as follows:

§ 245.6 Application for free and reduced price meals and free milk.

(a) * * * The information requested on the application with respect to the current income of the household shall be limited to the income received by each member identified by the household member who received the income, and the source of the income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, social security and other cash income). Other cash income includes cash amounts received or withdrawn from any source, including savings, investments, trust accounts, and other resources which are available for payment of the price of a child's meals or milk. Additionally, the application shall require applicants to provide the names of all household members and the social security number of the adult household member who signs the application. In lieu of a social security number, the household may indicate the adult household member who signs the application does not possess a social security number. However, if application is being made for a child who is a member of a food stamp household or an AFDC assistance unit, the application shall enable the household to provide the appropriate food stamp or AFDC case number in lieu of names of all household members, household income information and social security number. The application shall also contain substantially the following statements:

(1) Section 9 of the National School Lunch Act requires that, unless your child's food stamp or AFDC case number is provided, you must include the social security number of the adult household member signing the application or indicate that the household member signing the application does not have social security number. Provision of a social security number is not mandatory, but if a social security number is not given or an indication is not made that the signer does not have such a number, the application cannot be approved.

* * * * *

4. In § 245.6a, a new sentence is added to the beginning of paragraph (a) introductory text to read as follows:

§ 245.6a Verification requirements.

(a) * * * School officials may seek verification of the information on the application.

* * * * *

Dated: July 17, 1991.

Betty Jo Nelsen,

Administrator, Food and Nutrition Service.

[FR Doc. 91–17520 Filed 7–23–91; 8:45 am]

BILLING CODE 3410-30-M

Farmers Home Administration

7 CFR Part 1951

Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Farmer Programs

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration amends its regulations to clarify the actions to be taken by the agency, when the borrower received loan servicing and was later determined not eligible. This amendment is necessary because the present regulations do not clearly address unauthorized loan servicing assistance. The intended effect of this action is to provide a procedure whereby field officers can service loans when unauthorized loan servicing was granted.

EFFECTIVE DATE: July 24, 1991.

FOR FURTHER INFORMATION CONTACT: Charles W. Thompson, Farmer Programs Loan Servicing and Property Management Division, FmHA, USDA, room 5441–S, 14th and Independence Ave. SW., Washington, DC 20250. Telephone (202) 475–4011.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be exempt from those requirements because it has no impact on FmHA borrowers or other members of the public and it involves only internal Agency management. It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comments notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking since it involves only internal Agency management and publication for comment is unnecessary. Specifically, the procedures are only being clarified to aid the field staff in servicing accounts that have received unauthorized loan servicing under subpart S of 7 CFR part 1951.

Intergovernmental Consultation

For the reasons set forth in the final rule related to notice 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Emergency Loans, Farm Operation Loans, and Farm Ownership Loans are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with state and local officials.

The Soil and Water Loan program is subject to the provisions of Executive Order 12372 and subpart J of part 1940.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.416—Soil and Water Loans

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that the final action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Discussion

The regulations governing unauthorized assistance are contained in 7 CFR part 1951 subpart L. However, unauthorized loan servicing assistance is not clearly covered in this subpart.

An Office of Inspector General (OIG) audit, number 046673–5–SF(3), identified numerous errors committed by the agency in reviewing and processing borrower applications for restructuring of delinquent debt. OIG recommended that the Office of General Counsel (OGC) provide guidance to the agency on corrective actions in these cases.

OGC recognized that errors in loan servicing applications may have originated with the agency, the borrower, or a third party. Therefore, each case would have to be considered separately.

This rule clarification gives guidance to the agency on corrective actions as recommended by OGC. An important recommendation was that if the Government's best interest was to continue with the borrower, then the borrower could be serviced under 7 CFR part 1951 subpart S.

Very little change is needed in the text of the regulation because most of the language already exists. All that is needed is to include a definition of unauthorized loan servicing, and references to it, in the appropriate places, in the regulation. Therefore, unauthorized loan servicing assistance will be treated in the same manner as unauthorized loan making.

List of Subjects in 7 CFR Part 1951

Loan programs—Housing and Community development, Rent subsidies, Subsidies.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for part 1951, continues to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, and 7 CFR 2.70.

Subpart L—Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Farmer Programs

2. Section 1951.552 is amended by revising paragraph (g) to read as follows:

§ 1951.552 Definitions.

* * * * *

(g) *Unauthorized Assistance.* Any loan, primary loan servicing action, including Net Recovery Buyout, or interest subsidy received for which there was no authorization, for which the borrower was not eligible, or which was obligated from the wrong appropriation or fund. An unauthorized interest subsidy is a benefit received through a loan that was made at a lower interest rate than that to which the borrower was entitled, whether the incorrect interest rate was selected erroneously by the approval official, or the documents were prepared in error.

3. Section 1951.561 is amended by revising the introductory text of paragraph (a)(1) to read as follows:

§ 1951.561 Servicing options in lieu of liquidation or legal action.

* * * * *

(a) * * *

(1) *Entire loan, or loan servicing unauthorized.* When the entire loan, or all or a portion of primary loan servicing, is determined to be unauthorized because the borrower was not eligible, or because the loan or primary loan servicing was approved for unauthorized purposes, the following alternatives will be considered in the order listed:

* * * * *

Dated: June 27, 1991.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 91–17565 Filed 7–23–91; 8:45 am]

BILLING CODE 3410-07-M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 91–034]

Horses From Canada

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning the importation of horses from Canada to (1) no longer require USDA veterinary port inspection for horses coming into the United States from Canada under temporary Customs authorization for a period not to exceed 30 days from the date the health certificate for the horse is issued and to allow the use of the certificate each time the animal is imported into the United States, at any Customs land border port designated for horses from Canada, during the 30-day period; and (2) to permit horses of United States origin that enter Canada under an export health certificate valid for a period of 30 days from the date of issue, to re-enter the United States an unlimited number of times during the 30-day period, without USDA veterinary port inspection, at any Customs land border port of entry designated for animals from Canada, when accompanied by the original export health certificate under which they were permitted entry into Canada. These actions are warranted because they will reduce unnecessary restrictions on the importation of horses and reduce transportation costs without causing a significant increase in the risk of introducing communicable animal diseases.

EFFECTIVE DATE: August 23, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. Samuel Richeson, Senior Staff Veterinarian, VS, APHIS, USDA, room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8144.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92, referred to below as the regulations, govern the importation into the United States of specified animals and animal products, including horses from Canada, to prevent the introduction into the United States of various animal diseases.

On December 28, 1990, we published in the **Federal Register** (55 FR 53310–53312, Docket No. 90–068), a proposal to amend § 92.317(a) to no longer require inspection of horses imported from Canada under temporary Customs authorization, for a stay not to exceed 30 days from the date of issue of the certificate, and to allow the certificate issued to be valid for multiple importations into the United States throughout the 30-day period. We also proposed to amend § 92.317(b) to allow horses of United States origin to be imported into Canada under an export health certificate which would be valid for 30 days from the date of issue and, during the 30-day period, allow unlimited re-entries into the United States without inspection, through any U.S. Customs land border port designated for the entry of animals from Canada.

Comments on the proposed rule were required to be received on or before February 26, 1991. We received 17 comments. Twelve comments were in favor of the proposed rule. They indicated that adopting the proposal as a final rule would benefit individuals crossing the border with animals used in their hobbies or sporting events, making it more convenient and cost effective by allowing them to cross the border freely within the 30-day period.

Three commenters supported the proposed rule but recommended that the term "health certificate" be changed to "certificate of veterinary inspection." These organizations stated concerns in the veterinary community about signing statements that imply a warranty as to the "health" of an animal. Therefore, they would prefer that the certificate be titled "certificate of veterinary inspection." They asserted that this title would more accurately describe the true nature of the document and the medical examination on which it is based. We do not feel that there is sufficient cause at this time to change the term. "Health certificate" is understood by members of the veterinary community and the public to reflect that the animal has been inspected.

One commenter supported the proposed rule but requested that we go one step further and go to a "passport"

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RMATION CONTACT:
on, Senior Staff
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SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92, referred to below as the regulations, govern the importation into the United States of specified animals and animal products, including horses from Canada, to prevent the introduction into the United States of various animal diseases.

On December 28, 1990, we published in the **Federal Register** (55 FR 53310-53312, Docket No. 90-069), a proposal to amend § 92.317(a) to no longer require inspection of horses imported from Canada under temporary Customs authorization, for a stay not to exceed 30 days from the date of issue of the certificate, and to allow the certificate issued to be valid for multiple importations into the United States throughout the 30-day period. We also proposed to amend § 92.317(b) to allow horses of United States origin to be imported into Canada under an export health certificate which would be valid for 30 days from the date of issue and, during the 30-day period, allow unlimited re-entries into the United States without inspection, through any U.S. Customs land border port designated for the entry of animals from Canada.

Comments on the proposed rule were required to be received on or before February 26, 1991. We received 17 comments. Twelve comments were in favor of the proposed rule. They indicated that adopting the proposal as a final rule would benefit individuals crossing the border with animals used in their hobbies or sporting events, making it more convenient and cost effective by allowing them to cross the border freely within the 30-day period.

Three commenters supported the proposed rule but recommended that the term "health certificate" be changed to "certificate of veterinary inspection." These organizations stated concerns in the veterinary community about signing statements that imply a warranty as to the "health" of an animal. Therefore, they would prefer that the certificate be titled "certificate of veterinary inspection." They asserted that this title would more accurately describe the true nature of the document and the medical examination on which it is based. We do not feel that there is sufficient cause at this time to change the term. "Health certificate" is understood by members of the veterinary community and the public to reflect that the animal has been inspected.

One commenter supported the proposed rule but requested that we go one step further and go to a "passport" system, a document that would be valid for a set period of time agreed upon by both the U.S. and Canada, and that could be renewed in either country. The document would allow movement between the U.S. and Canada without requiring requalification by veterinary inspection. We will consider the possibility of a "passport" system with the Canadian government, and any amendments to that effect would be the subject of a future rulemaking.

The final commenter was concerned that persons moving horses across the border for more than a 30-day period could claim to be moving under the 30-day provision and thus avoid inspection. The commenter suggests removal of the 30-day certificate provision or the use of some procedures to ensure that horses moved across the border for more than 30 days are inspected. We plan to clearly identify those horses that are exempt from the port inspection requirement. The health certificate will indicate whether the horses are entering on a temporary (30-day) or permanent basis. This will prevent false claims to temporary status and will facilitate our ability to track individuals and to verify compliance with the 30-day certificate.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million, will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule affects Canadian and U.S. importers and shippers of horses. Most of these businesses would be considered small entities. This rule will reduce the number of times the animal has to be requalified by veterinary inspection for movement and would result in a reduction of transportation costs. This change will increase efficiency and convenience of import operations. Based on the experience of APHIS inspectors over the last five years, we do not anticipate any significant change in the number of horses moving between the United States and Canada as a result of this rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS, INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, 9 CFR part 92 is amended as follows:

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622, 19 U.S.C. 1306, 21 U.S.C. 102-105, 111, 134a, 134b, 134c, 134d, 134f, and 135, 31 U.S.C. 9701, 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 92.317 is amended as follows:

a. In paragraph (a), that portion of the sentence immediately following *"And provided, further,"* is removed, and in its place a new proviso is added, and

b. Paragraph (b) is revised.

The amendments read as follows:

§ 92.317 Horses from Canada.

(a) * * * That USDA veterinary port inspection is not required for horses imported from Canada under temporary Customs authorization for a period of 30 days from the date of issue of the certificate and the certificate issued is valid for an unlimited number of importations into the United States during the 30-day period.

(b) Horses of United States origin that are imported into Canada under an export health certificate valid for a period of 30 days from the date of issue may re-enter the United States an unlimited number of times during the 30-day period, without USDA veterinary port inspection, at any Custom land border port of entry designated for animals from Canada, if accompanied by the original export health certificate under which they were permitted entry into Canada.

* * * * *

Done in Washington, DC, this 19th day of July 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-17510 Filed 7-23-91; 8:45 am]

BILLING CODE 3410-14-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-CE-17-AD; Amendment 39-7070; AD 91-15-07]

Airworthiness Directives; Schempp-Hirth Cirrus and Cirrus VTC Sailplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Schempp-Hirth Cirrus and Cirrus VTC sailplanes. This action requires (1) Replacing the 8mm elevator drive tube with a round bar; (2) determining the elevator moments and weights; and (3) removing the tail parachute from operation and installing a mass balance on the elevator if the moments and weights exceed the published criteria. Reports confirmed that several of the affected sailplanes have experienced tail flutter. The actions specified by this AD are intended to prevent possible loss of control of the sailplane.

DATES: Effective September 1, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 1, 1991.

ADDRESSES: Schempp-Hirth Technical Note No. 265-6, dated April 27, 1982, that is discussed in this AD may be obtained from Schempp-Hirth Flugzeugbau GmbH, Postfach 1443, D-7312 Kirchheim, Federal Republic of Germany. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Carl Mittag, Program Manager, Brussels Aircraft Certification Office, Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone 322.513.38.30 extension 2710; or Mr. Herman Belderok, Project Officer, Small Airplane Directorate, Aircraft Certification Service, FAA, 601 E. 12th Street, Kansas City, Missouri 64106; Telephone (816) 426–6932; Facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Schempp-Hirth Cirrus and Cirrus VTC sailplanes was published in the **Federal Register** on March 21, 1991 (56 FR 11977). The action proposed (1) Replacing the 8mm elevator drive tube with a round bar; (2) Determining the elevator moments and weights; and (3) Removing the tail parachute from operation and installing a mass balance on the elevator if the moments and weights exceed the published criteria. All of these actions would be performed in accordance with Schempp-Hirth Technical Note No. 265–6, dated April 27, 1982.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost of the public.

The FAA was determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. These minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA has determined that calendar time is the most desirable method of compliance for this AD action because yearly operational times vary throughout the fleet. For example, one owner/operator might utilize the sailplane 10 hours in one month, while another may not utilize the sailplane 10 hours in one year. To maintain continuity and avoid inadvertent grounding of the affected sailplanes, compliance based upon calendar time is used.

It is estimated that 21 sailplanes in the U.S. registry will be affected by this AD, that it will take approximately 20 hours per sailplane to accomplish the required actions, and that the average labor rate is approximately $55 an hour. Parts cost approximately $70 per sailplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $24,570.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

AD 91–15–07 Schempp-Hirth: Amendment 39–7070; Docket No. 91–CE–17–AD.

Applicability: Cirrus and Cirrus VTC sailplanes (serial numbers 1 through 183, with or without a Y suffix), certificated in any category.

Compliance: Required within the next 30 calendar days after the effective date of this AD, unless already accomplished.

To prevent tail flutter that could result in complete loss of control of the sailplane, accomplish the following:

(a) Replace the 8mm diameter drive tube on the elevator drive lever with a round bar in accordance with drawing Cirrus No. 30.011/1—Elevator Drive Axle of Schempp-Hirth Technical Note No. 265–6, dated April 27, 1982.

(b) Determine the elevator hinge moments and weights using the criteria on page 27 of the Cirrus service manual. If the moments and weights exceed the published criteria, prior to further flight, accomplish the following:

(1) Remove the tail parachute from operation and perform the requirements in Action 3, a) through d), of Schempp-Hirth Technical Note No. 265–6, dated April 27, 1982.

(2) Install a mass balance on the elevator in accordance with drawing Cirrus No. 30.001/1—Elevator mass balance of Schempp-Hirth Technical Note No. 265–6, dated April 27, 1982.

Note: Although not required by this AD, the pages referenced by Action 3 e) and Action 5 of Schempp-Hirth Technical Note No. 265–6, dated April 27, 1982, should be incorporated into the service manual.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office.

(d) The inspections and replacements required by this AD shall be done in accordance with Schempp-Hirth Technical Note No. 265–6, dated April 27, 1982, which incorporates the following pages:

Pages	Revision level	Date
1 through 4	Original	April 27, 1982.
Cirrus No. 30.001/1, as referenced on page 2 of Technical Note 265–6.	Attachment	Undated.
Cirrus No. 30.011/1, as referenced on page 1 of Technical Note 265–6.	Attachment	Undated.
Page 27 of the Schempp-Hirth Cirrus Service Manual.	Attachment	August, 1982.

(The attachments listed in the above table are sent by the manufacturer as part of Technical Note 265–6). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Schempp-Hirth Flugzeugbau GmbH, Postfach 1443, D–7312 Kirchheim, Federal Republic of Germany. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW.; room 8401, Washington, DC. This amendment becomes effective on September 1, 1991.

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14 CFR Part 39

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the Cirrus service manual. If the moments and weights exceed the published criteria, prior to further flight, accomplish the following:

(1) Remove the tail parachute from operation and perform the requirements in Action 3, a) through d), of Schempp-Hirth Technical Note No. 265–6, dated April 27, 1982.

(2) Install a mass balance on the elevator in accordance with drawing Cirrus No. 30.001/1—Elevator mass balance of Schempp-Hirth Technical Note No. 265–6, dated April 27, 1982.

Note: Although not required by this AD, the pages referenced by Action 3 e) and Action 5 of Schempp-Hirth Technical Note No. 265–6, dated April 27, 1982, should be incorporated into the service manual.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office.

(d) The inspections and replacements required by this AD shall be done in accordance with Schempp-Hirth Technical Note No. 265–6, dated April 27, 1982, which incorporates the following pages:

Pages	Revision level	Date
1 through 4	Original	April 27, 1982.
Cirrus No. 30.001/1, as referenced on page 2 of Technical Note 265–6.	Attachment	Undated.
Cirrus No. 30.011/1, as referenced on page 1 of Technical Note 265–6.	Attachment	Undated.
Page 27 of the Schempp-Hirth Cirrus Service Manual.	Attachment	August, 1982.

(The attachments listed in the above table are sent by the manufacturer as part of Technical Note 265–6). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Schempp-Hirth Flugzeugbau GmbH, Postfach 1443, D–7312 Kirchheim, Federal Republic of Germany. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW.; room 8401, Washington, DC. This amendment becomes effective on September 1, 1991.

Issued in Kansas City, Missouri, on June 26, 1991.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–17524 Filed 7–23–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 75

[Airspace Docket No. 90–ASO–24]

Alteration of Jet Route J–151

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of Jet Route J–151 by extending the route from Vulcan, AL, to Cross City, FL. This extension enhances the transition phase of flight from high altitude to the low-altitude airway structure over the Tallahassee, FL, very high frequency omnidirectional radio range. This action reduces en route delays and reduces controller workload.

EFFECTIVE DATE: 0901 u.t.c., September 19, 1991.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On February 8, 1991, the FAA proposed to amend part 75 of the Federal Aviation Regulations (14 CFR part 75) to alter the description of Jet Route J–151 by extending that route from Vulcan, AL, direct to Cross City, FL (56 FR 05165). The addition of this route segment improves the traffic flow while in transition from the terminal area. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes which include removal of the proposed dogleg and making the jet route direct, this amendment is the same as that proposed in the notice. Section 75.100 of part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The Rule

This amendment to part 75 of the Federal Aviation Regulations alters the description of Jet Route J–151 by extending the route from Vulcan, AL, to Cross City, FL. This extension enhances the transition phases of flight from high altitude to the low-altitude airway structure over the Tallahassee, FL, very high frequency omnidirectional radio range. This action reduces en route delays and reduces controller workload.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 75 of the Federal Aviation Regulations (14 CFR part 75) is amended, as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for part 75 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J–151 [Amended]

By removing the words "From Vulcan, AL, via" and substituting the words "From Cross City, FL; Vulcan, AL;"

Issued in Washington, DC, on July 16, 1991.

Jerry W. Ball,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 91–17525 Filed 7–23–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 75

[Airspace Docket No. 91–AGL–1]

Alteration of Jet Route J–522; MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendent alters the description of Jet Route J–522 located in the vicinity of Traverse City, MI. The realignment eliminates the dogleg between Traverse City and Toronto, ON, Canada, thereby improving navigation between those facilities. This action enhances flight operation in the area.

EFFECTIVE DATE: 0901 u.t.c., September 19, 1991.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On March 14, 1991, the FAA proposed to amend part 75 of the Federal Aviation Regulations (14 CFR part 75) to realign a segment of Jet Route J–522 between Traverse City, MI, and Toronto, ON, Canada (56 FR 10843). The realignment eliminates a dogleg to the north, thereby saving fuel and improving navigation along the course line. This action enhances flight operations in the area. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 75.100 of part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The Rule

This amendment to part 75 of the Federal Aviation Regulations alters the description of Jet Route J–522 located in the vicinity of Traverse City, MI. The realignment eliminates the dogleg between Traverse City and Toronto, ON, Canada, thereby improving navigation between those facilities. This action enhances flight operation in the area.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 75 of the Federal Aviation Regulations (14 CFR part 75) is amended, as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for part 75 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J–522 [Revised]

From Green Bay, WI; Traverse City, MI: Au Sable, MI; Toronto, ON, Canada; INT Toronto 099° and Hancock, NY, 302° radials; Hancock; to Kingston, NY. The airspace within Canada is excluded.

Issued in Washington, DC, on July 16, 1991.

Jerry W. Ball,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 91–17526 Filed 7–23–91; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–3977–1]

Indiana: Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Indiana has applied for final authorization of a revision to its authorized hazardous waste program under the Resource Conservation and Recovery Act of 1976 as amended (hereinafter "RCRA" or the "Act"). The Environmental Protection Agency (EPA) has reviewed Indiana's application and has reached a decision, subject to public review and comment, that Indiana's hazardous waste program revision satisfies all the requirements necessary to qualify for final authorization. Thus, EPA is granting final authorization to Indiana to operate its revised program, subject to authority retained by EPA under the Hazardous and Solid Waste Amendments of 1984 (Public Law 98–616, November 8, 1984, hereinafter "HSWA").

DATES: Final authorization for Indiana's application shall be effective September 23, 1991 unless EPA publishes a prior **Federal Register** action withdrawing this final rule. All comments on Indiana's Final authorization must be received by 4:30 p.m. on August 23, 1991.

ADDRESSES: Copies of Indiana's program revision application are available from 8:30 a.m., to 4:30 p.m., at the following addresses for inspection and copying: Indiana Department of Environmental Management, Hazardous Waste Management Branch, 105 South Meridian Street, Indianapolis, Indiana 46206, Contact: Michael Dalton, (317) 232–8884; U.S. EPA Headquarters Library, PM211A, 401 M Street SW., Washington, DC 20460, Phone: (202) 382–5926; U.S. EPA Region V, Waste Management Division, Office of RCRA, 230 South Dearborn Street, Chicago, Illinois 60604, Contact: George Woods (312) 886–6134. Written comments on Indiana's application should be sent to George Woods, at the address listed below.

FOR FURTHER INFORMATION CONTACT: George Woods, Indiana Regulatory Specialist, U.S. Environmental Protection Agency Region V, Waste Management Division, Office of RCRA, Program Management Branch, Regulatory Development Section, 5HR–JCK–13, 230 South Dearborn, Chicago, Illinois 60604, (312) 886–6134, [FTS 886–6134].

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is at least equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 allow States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. A State exercising this latter option receives "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later applies for final authorization for the HSWA requirements.

In accordance with part 271, § 271.21(a) of Title 40 of the Code of Federal Regulations (40 CFR 271.21(a)), revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260–268 and 270.

B. Indiana

Indiana initially received final authorization for its base RCRA program on January 31, 1986, (51 FR 3953–3954, January 31, 1986). Indiana received authorization for revisions to its program on December 31, 1986, (51 FR 39752–39754, October 31, 1986), January 19, 1988, (53 FR 128–129, January 5, 1988), and on September 11, 1989, 54 FR 29557–29559, July 13, 1989). On July 13, 1988, Indiana submitted a program revision application seeking approval for an additional revision to its authorized program. This program revision is due to an Indiana Legislative Services Agency requirement that the Indiana Department of Environmental Management (IDEM) recodify its hazardous waste management rules. The IDEM became the state Agency responsible for administering the authorized RCRA hazardous waste management program in Indiana as of April 1, 1986. Those rules that were codified at title 320 of the Indiana Administrative Code, Article 4.1 (320 IAC 4.1) were recodified at title 329 of the Indiana Administrative Code, Article 3 (329 IAC 3). This program revision reflects the recodified rules that became effective June 30, 1988. No substantive changes were made to the text of the rules themselves, only the proper citations of the rules were changed. The recodified rules effectively continue the original 320 IAC 4.1 rules and in no way alter the State's regulatory and statutory equivalence to the Federal RCRA program. On July 22, 1988, the Indiana Attorney General certified that the recodification of nal rule.

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: George Woods
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Indiana's hazardous waste management rules does not affect the IDEM's authority to implement the State's authorized RCRA program.

EPA has reviewed Indiana's application and has made an immediate final decision, subject to public review and comment, that Indiana's hazardous waste management program revision does reflect the State's equivalency with the Federal program and satisfies all the requirements necessary to qualify for Federal authorization. Consequently, EPA is granting final authorization to Indiana for its additional program revision. The public may submit written comments on EPA's immediate final decision up until August 23, 1991. Copies of Indiana's application for this program revision are available for inspection at the locations indicated in the "**ADDRESSES**" section of this notice.

Approval of Indiana's program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received, EPA will publish either (1) a withdrawal of this immediate final rule or (2) a notice containing a response to the comment which either affirms that the immediate final decision takes effect or reverses the decision.

Indiana will be authorized to carry out, in lieu of the Federal program, those provisions of the State's program which were recodified at title 329 of the Indiana Administrative Code, Article 3, and which are analogous to the following Resource Conservation and Recovery Act rules found at title 40 of the Code of Federal Regulations:

Federal provision	Recodified IAC provision	Former IAC provision
40 CFR 124.1	329 IAC 3-39-1	320 IAC 4.1-39-1
40 CFR 124.3	329 IAC 3-39-2	320 IAC 4.1-39-2
40 CFR 124.5	329 IAC 3-39-3	320 IAC 4.1-39-3
40 CFR 124.6	329 IAC 3-39-4	320 IAC 4.1-39-4
40 CFR 124.8	329 IAC 3-39-5	320 IAC 4.1-39-5
40 CFR 124.10	329 IAC 3-39-6	320 IAC 4.1-39-6
40 CFR 124.11	329 IAC 3-39-7	320 IAC 4.1-39-7
40 CFR 124.12	329 IAC 3-39-8	320 IAC 4.1-39-8
40 CFR 124.17	329 IAC 3-39-9	320 IAC 4.1-39-9
40 CFR 260.3	329 IAC 3-1-3	320 IAC 4.1-1-3
40 CFR 260.10	329 IAC 3-1-7	320 IAC 4.1-1-7
40 CFR 260.11	329 IAC 3-1-6	320 IAC 4.1-1-6
40 CFR 260.20	329 IAC 3-1-5	320 IAC 4.1-1-5
40 CFR 260.22	329 IAC 3-1-4	320 IAC 4.1-1-4
40 CFR 260.30	329 IAC 3-1-8	320 IAC 4.1-1-8
40 CFR 260.31	329 IAC 3-1-9	320 IAC 4.1-1-9
40 CFR 260.32	329 IAC 3-1-10	320 IAC 4.1-1-10
40 CFR 260.33	329 IAC 3-1-11	320 IAC 4.1-1-11
40 CFR 260.40	329 IAC 3-1-12	320 IAC 4.1-1-12
40 CFR 260.41	329 IAC 3-1-13	320 IAC 4.1-1-13
40 CFR 261.1	329 IAC 3-3-1	320 IAC 4.1-3-1
40 CFR 261.2	329 IAC 3-3-2	320 IAC 4.1-3-2
40 CFR 261.3	329 IAC 3-3-3	320 IAC 4.1-3-3
40 CFR 261.4	329 IAC 3-3-4	320 IAC 4.1-3-4
40 CFR 261.5	329 IAC 3-3-5	320 IAC 4.1-3-5
40 CFR 261.6	329 IAC 3-3-6	320 IAC 4.1-3-6
40 CFR 261.7	329 IAC 3-3-7	320 IAC 4.1-3-7
40 CFR 261.10	329 IAC 3-4-1	320 IAC 4.1-4-1
40 CFR 261.11	329 IAC 3-4-2	320 IAC 4.1-4-2
40 CFR 261.20	329 IAC 3-5-1	320 IAC 4.1-5-1
40 CFR 261.21	329 IAC 3-5-2	320 IAC 4.1-5-2
40 CFR 261.22	329 IAC 3-5-3	320 IAC 4.1-5-3
40 CFR 261.23	329 IAC 3-5-4	320 IAC 4.1-5-4
40 CFR 261.24	329 IAC 3-5-5	320 IAC 4.1-5-5
40 CFR 261.30	329 IAC 3-6-1	320 IAC 4.1-6-1
40 CFR 261.31	329 IAC 3-6-2	320 IAC 4.1-6-2
40 CFR 261.32	329 IAC 3-6-3	320 IAC 4.1-6-3
40 CFR 261.33	329 IAC 3-6-4	320 IAC 4.1-6-4
40 CFR 261.—Appendix I	329 IAC 3-6-5	320 IAC 4.1-6-5
40 CFR 261.—Appendix II	329 IAC 3-6-6	320 IAC 4.1-6-6
40 CFR 261.—Appendix III	329 IAC 3-6-7	320 IAC 4.1-6-7
40 CFR 261.—Appendix VII	329 IAC 3-6-8	320 IAC 4.1-6-8
40 CFR 261.—Appendix VIII	329 IAC 3-6-9	320 IAC 4.1-6-9
40 CFR 261.—Appendix X	329 IAC 3-6-10	320 IAC 4.1-6-9.1
40 CFR 262.10	329 IAC 3-7-1	320 IAC 4.1-7-1
40 CFR 262.11	329 IAC 3-7-2	320 IAC 4.1-7-2
40 CFR 262.12	329 IAC 3-7-3	320 IAC 4.1-7-3
40 CFR 262.20	329 IAC 3-8-1	320 IAC 4.1-8-1
40 CFR 262.21	329 IAC 3-8-2	320 IAC 4.1-8-2
40 CFR 262.22	329 IAC 3-8-3	320 IAC 4.1-8-3
40 CFR 262.23	329 IAC 3-8-4	320 IAC 4.1-8-4
40 CFR 262.30	329 IAC 3-9-1	320 IAC 4.1-9-1

Federal provision	Recodified IAC provision	Former IAC provision
40 CFR 262.31	329 IAC 3-9-2	320 IAC 4.1-9-2
40 CFR 262.32	329 IAC 3-9-3	320 IAC 4.1-9-3
40 CFR 262.33	329 IAC 3-9-4	320 IAC 4.1-9-4
40 CFR 262.34	329 IAC 3-9-5	320 IAC 4.1-9-5
40 CFR 262.40	329 IAC 3-10-1	320 IAC 4.1-10-1
40 CFR 262.41	329 IAC 3-10-2	320 IAC 4.1-10-2
40 CFR 262.42	329 IAC 3-10-3	320 IAC 4.1-10-3
40 CFR 262.43	329 IAC 3-10-4	320 IAC 4.1-10-4
40 CFR 262.44	329 IAC 3-10-5	320 IAC 4.1-10-5
40 CFR 262.50	329 IAC 3-11-1	320 IAC 4.1-11-1
40 CFR 262.51	329 IAC 3-11-2	320 IAC 4.1-11-2
40 CFR 262.—	329 IAC 3-14-3	320 IAC 4.1-14-3
Appendix: UNIFORM HAZARDOUS WASTE MANIFEST and INSTRUCTIONS		
40 CFR 263.10	329 IAC 3-12-1	320 IAC 4.1-12-1
40 CFR 263.11	329 IAC 3-12-2	320 IAC 4.1-12-2
40 CFR 263.12	329 IAC 3-12-3	320 IAC 4.1-12-3
40 CFR 263.20	329 IAC 3-13-1	320 IAC 4.1-13-1
40 CFR 263.21	329 IAC 3-13-2	320 IAC 4.1-13-2
40 CFR 263.22	329 IAC 3-13-3	320 IAC 4.1-13-3
40 CFR 263.30	329 IAC 3-14-1	320 IAC 4.1-14-1
40 CFR 263.31	329 IAC 3-14-2	320 IAC 4.1-14-2
40 CFR 264.1	329 IAC 3-40-1	320 IAC 4.1-40-1
40 CFR 264.3	329 IAC 3-40-2	320 IAC 4.1-40-2
40 CFR 264.4	329 IAC 3-40-3	320 IAC 4.1-40-3
40 CFR 264.10	329 IAC 3-41-1	320 IAC 4.1-41-1
40 CFR 264.11	329 IAC 3-41-2	320 IAC 4.1-41-2
40 CFR 264.12	329 IAC 3-41-3	320 IAC 4.1-41-3
40 CFR 264.13	329 IAC 3-41-4	320 IAC 4.1-41-4
40 CFR 264.14	329 IAC 3-41-5	320 IAC 4.1-41-5
40 CFR 264.15	329 IAC 3-41-6	320 IAC 4.1-41-6
40 CFR 264.16	329 IAC 3-41-7	320 IAC 4.1-41-7
40 CFR 264.17	329 IAC 3-41-8	320 IAC 4.1-41-8
40 CFR 264.18	329 IAC 3-41-9	320 IAC 4.1-41-9
40 CFR 264.30	329 IAC 3-42-1	320 IAC 4.1-42-1
40 CFR 264.31	329 IAC 3-42-2	320 IAC 4.1-42-2
40 CFR 264.32	329 IAC 3-42-3	320 IAC 4.1-42-3
40 CFR 264.33	329 IAC 3-42-4	320 IAC 4.1-42-4
40 CFR 264.34	329 IAC 3-42-5	320 IAC 4.1-42-5
40 CFR 264.35	329 IAC 3-42-6	320 IAC 4.1-42-6
40 CFR 264.37	329 IAC 3-42-7	320 IAC 4.1-42-7
40 CFR 264.50	329 IAC 3-43-1	320 IAC 4.1-43-1
40 CFR 264.51	329 IAC 3-43-2	320 IAC 4.1-43-2
40 CFR 264.52	329 IAC 3-43-3	320 IAC 4.1-43-3
40 CFR 264.53	329 IAC 3-43-4	320 IAC 4.1-43-4
40 CFR 264.54	329 IAC 3-43-5	320 IAC 4.1-43-5
40 CFR 264.55	329 IAC 3-43-6	320 IAC 4.1-43-6
40 CFR 264.56	329 IAC 3-43-7	320 IAC 4.1-43-7
40 CFR 264.70	329 IAC 3-44-1	320 IAC 4.1-44-1
40 CFR 264.71	329 IAC 3-44-2	320 IAC 4.1-44-2
40 CFR 264.72	329 IAC 3-44-3	320 IAC 4.1-44-3
40 CFR 264.73	329 IAC 3-44-4	320 IAC 4.1-44-4
40 CFR 264.74	329 IAC 3-44-5	320 IAC 4.1-44-5
40 CFR 264.75	329 IAC 3-44-6	320 IAC 4.1-44-6
40 CFR 264.76	329 IAC 3-44-7	320 IAC 4.1-44-7
40 CFR 264.77	329 IAC 3-44-8	320 IAC 4.1-44-8
40 CFR 264.90	329 IAC 3-45-1	320 IAC 4.1-45-1
40 CFR 264.91	329 IAC 3-45-2	320 IAC 4.1-45-2
40 CFR 264.92	329 IAC 3-45-3	320 IAC 4.1-45-3
40 CFR 264.93	329 IAC 3-45-4	320 IAC 4.1-45-4
40 CFR 264.94	329 IAC 3-45-5	320 IAC 4.1-45-5
40 CFR 264.95	329 IAC 3-45-6	320 IAC 4.1-45-6
40 CFR 264.96	329 IAC 3-45-7	320 IAC 4.1-45-7
40 CFR 264.97	329 IAC 3-45-8	320 IAC 4.1-45-8
40 CFR 264.98	329 IAC 3-45-9	320 IAC 4.1-45-9
40 CFR 264.99	329 IAC 3-45-10	320 IAC 4.1-45-10
40 CFR 264.100	329 IAC 3-45-11	320 IAC 4.1-45-11
40 CFR 264.101	329 IAC 3-45-12	320 IAC 4.1-45-12
40 CFR 264.110	329 IAC 3-46-1	320 IAC 4.1-46-1
40 CFR 264.111	329 IAC 3-46-2	320 IAC 4.1-46-2
40 CFR 264.112	329 IAC 3-46-3	320 IAC 4.1-46-3
40 CFR 264.113	329 IAC 3-46-4	320 IAC 4.1-46-4
40 CFR 264.114	329 IAC 3-46-5	320 IAC 4.1-46-5
40 CFR 264.115	329 IAC 3-46-6	320 IAC 4.1-46-6
40 CFR 264.116	329 IAC 3-46-7	320 IAC 4.1-46-6.5
40 CFR 264.117	329 IAC 3-46-8	320 IAC 4.1-46-7
40 CFR 264.118	329 IAC 3-46-9	320 IAC 4.1-46-8
40 CFR 264.119	329 IAC 3-46-10	320 IAC 4.1-46-9
40 CFR 264.120	329 IAC 3-46-11	320 IAC 4.1-46-10
40 CFR 264.140	329 IAC 3-47-1	320 IAC 4.1-47-1

Recodified IAC provision	Former IAC provision
3-9-2	320 IAC 4.1-9-2
3-9-3	320 IAC 4.1-9-3
3-9-4	320 IAC 4.1-9-4
3-9-5	320 IAC 4.1-9-5
3-10-1	320 IAC 4.1-10-1
3-10-2	320 IAC 4.1-10-2
3-10-3	320 IAC 4.1-10-3
3-10-4	320 IAC 4.1-10-4
3-10-5	320 IAC 4.1-10-5
3-11-1	320 IAC 4.1-11-1
3-11-2	320 IAC 4.1-11-2
3-14-3	320 IAC 4.1-14-3
3-12-1	320 IAC 4.1-12-1
3-12-2	320 IAC 4.1-12-2
3-12-3	320 IAC 4.1-12-3
3-13-1	320 IAC 4.1-13-1
3-13-2	320 IAC 4.1-13-2
3-13-3	320 IAC 4.1-13-3
3-14-1	320 IAC 4.1-14-1
3-14-2	320 IAC 4.1-14-2
3-40-1	320 IAC 4.1-40-1
3-40-2	320 IAC 4.1-40-2
3-40-3	320 IAC 4.1-40-3
3-41-1	320 IAC 4.1-41-1
3-41-2	320 IAC 4.1-41-2
3-41-3	320 IAC 4.1-41-3
3-41-4	320 IAC 4.1-41-4
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3-41-9	320 IAC 4.1-41-9
3-42-1	320 IAC 4.1-42-1
3-42-2	320 IAC 4.1-42-2
3-42-3	320 IAC 4.1-42-3
3-42-4	320 IAC 4.1-42-4
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3-43-3	320 IAC 4.1-43-3
3-43-4	320 IAC 4.1-43-4
3-43-5	320 IAC 4.1-43-5
3-43-6	320 IAC 4.1-43-6
3-43-7	320 IAC 4.1-43-7
3-44-1	320 IAC 4.1-44-1
3-44-2	320 IAC 4.1-44-2
3-44-3	320 IAC 4.1-44-3
3-44-4	320 IAC 4.1-44-4
3-44-5	320 IAC 4.1-44-5
3-44-6	320 IAC 4.1-44-6
3-44-7	320 IAC 4.1-44-7
3-44-8	320 IAC 4.1-44-8
-45-1	320 IAC 4.1-45-1
-45-2	320 IAC 4.1-45-2
-45-3	320 IAC 4.1-45-3
-45-4	320 IAC 4.1-45-4
-45-5	320 IAC 4.1-45-5
-45-6	320 IAC 4.1-45-6
-45-7	320 IAC 4.1-45-7
-45-8	320 IAC 4.1-45-8
-45-9	320 IAC 4.1-45-9
-45-10	320 IAC 4.1-45-10
-45-11	320 IAC 4.1-45-11
-45-12	320 IAC 4.1-45-12
-46-1	320 IAC 4.1-46-1
-46-2	320 IAC 4.1-46-2
-46-3	320 IAC 4.1-46-3
-46-4	320 IAC 4.1-46-4
-46-5	320 IAC 4.1-46-5
-46-6	320 IAC 4.1-46-6
-46-7	320 IAC 4.1-46-6.5
-46-8	320 IAC 4.1-46-7
-46-9	320 IAC 4.1-46-8
-46-10	320 IAC 4.1-46-9
-46-11	320 IAC 4.1-46-10
-47-1	320 IAC 4.1-47-1

Federal provision	Recodified IAC provision	Former IAC provision
40 CFR 264.141	329 IAC 3-47-2	320 IAC 4.1-47-2
40 CFR 264.142	329 IAC 3-47-3	320 IAC 4.1-47-3
40 CFR 264.143	329 IAC 3-47-4	320 IAC 4.1-47-4
40 CFR 264.144	329 IAC 3-47-5	320 IAC 4.1-47-5
40 CFR 264.145	329 IAC 3-47-6	320 IAC 4.1-47-6
40 CFR 264.146	329 IAC 3-47-7	320 IAC 4.1-47-7
40 CFR 264.147	329 IAC 3-47-8	320 IAC 4.1-47-8
40 CFR 264.148	329 IAC 3-47-9	320 IAC 4.1-47-9
40 CFR 264.151	329 IAC 3-47-10	320 IAC 4.1-47-10
40 CFR 264.151(a)	329 IAC 3-22-26	320 IAC 4.1-22-26
40 CFR 264.151(b)	329 IAC 3-22-27	320 IAC 4.1-22-27
40 CFR 264.151(c)	329 IAC 3-22-28	320 IAC 4.1-22-28
40 CFR 264.151(d)	329 IAC 3-22-29	320 IAC 4.1-22-29
40 CFR 264.151(e)	329 IAC 3-22-30	320 IAC 4.1-22-30
40 CFR 264.151(f)	329 IAC 3-22-31	320 IAC 4.1-22-31
40 CFR 264.151(g)	329 IAC 3-22-32	320 IAC 4.1-22-32
40 CFR 264.151(h)(1)	329 IAC 3-22-33	320 IAC 4.1-22-33
40 CFR 264.151(h)(2)	329 IAC 3-22-34	320 IAC 4.1-22-33.1
40 CFR 264.151(i)	329 IAC 3-22-35	320 IAC 4.1-22-34
40 CFR 264.151(j)	329 IAC 3-22-36	320 IAC 4.1-22-35
40 CFR 264.170	329 IAC 3-48-1	320 IAC 4.1-48-1
40 CFR 264.171	329 IAC 3-48-2	320 IAC 4.1-48-2
40 CFR 264.172	329 IAC 3-48-3	320 IAC 4.1-48-3
40 CFR 264.173	329 IAC 3-48-4	320 IAC 4.1-48-4
40 CFR 264.174	329 IAC 3-48-5	320 IAC 4.1-48-5
40 CFR 264.175	329 IAC 3-48-6	320 IAC 4.1-48-6
40 CFR 264.176	329 IAC 3-48-7	320 IAC 4.1-48-7
40 CFR 264.177	329 IAC 3-48-8	320 IAC 4.1-48-8
40 CFR 264.178	329 IAC 3-48-9	320 IAC 4.1-48-9
40 CFR 264.190	329 IAC 3-49-1	320 IAC 4.1-49-1
40 CFR 264.191	329 IAC 3-49-2	320 IAC 4.1-49-2
40 CFR 264.192	329 IAC 3-49-3	320 IAC 4.1-49-3
40 CFR 264.193	329 IAC 3-49-4	320 IAC 4.1-49-3.5
40 CFR 264.194	329 IAC 3-49-5	320 IAC 4.1-49-4
40 CFR 264.195	329 IAC 3-49-6	320 IAC 4.1-49-4.5
40 CFR 264.196	329 IAC 3-49-7	320 IAC 4.1-49-4.6
40 CFR 264.197	329 IAC 3-49-8	320 IAC 4.1-49-5
40 CFR 264.198	329 IAC 3-49-9	320 IAC 4.1-49-6
40 CFR 264.199	329 IAC 3-49-10	320 IAC 4.1-49-7
40 CFR 264.220	329 IAC 3-50-1	320 IAC 4.1-50-1
40 CFR 264.221	329 IAC 3-50-2	320 IAC 4.1-50-2
40 CFR 264.226	329 IAC 3-50-3	320 IAC 4.1-50-4
40 CFR 264.227	329 IAC 3-50-4	320 IAC 4.1-50-5
40 CFR 264.228	329 IAC 3-50-5	320 IAC 4.1-50-6
40 CFR 264.229	329 IAC 3-50-6	320 IAC 4.1-50-7
40 CFR 264.230	329 IAC 3-50-7	320 IAC 4.1-50-8
40 CFR 264.231	329 IAC 3-50-8	320 IAC 4.1-50-9
40 CFR 264.250	329 IAC 3-51-1	320 IAC 4.1-51-1
40 CFR 264.251	329 IAC 3-51-2	320 IAC 4.1-51-2
40 CFR 264.254	329 IAC 3-51-3	320 IAC 4.1-51-5
40 CFR 264.256	329 IAC 3-51-4	320 IAC 4.1-51-6
40 CFR 264.257	329 IAC 3-51-5	320 IAC 4.1-51-7
40 CFR 264.258	329 IAC 3-51-6	320 IAC 4.1-51-8
40 CFR 264.259	329 IAC 3-51-7	320 IAC 4.1-51-9
40 CFR 264.270	329 IAC 3-52-1	320 IAC 4.1-52-1
40 CFR 264.271	329 IAC 3-52-2	320 IAC 4.1-52-2
40 CFR 264.272	329 IAC 3-52-3	320 IAC 4.1-52-3
40 CFR 264.273	329 IAC 3-52-4	320 IAC 4.1-52-4
40 CFR 264.276	329 IAC 3-52-5	320 IAC 4.1-52-5
40 CFR 264.278	329 IAC 3-52-6	320 IAC 4.1-52-6
40 CFR 264.279	329 IAC 3-52-7	320 IAC 4.1-52-7
40 CFR 264.280	329 IAC 3-52-8	320 IAC 4.1-52-8
40 CFR 264.281	329 IAC 3-52-9	320 IAC 4.1-52-9
40 CFR 264 282	329 IAC 3-52-10	320 IAC 4.1-52-10
40 CFR 264.283	329 IAC 3-52-11	320 IAC 4.1-52-11
40 CFR 264.300	329 IAC 3-53-1	320 IAC 4.1-53-1
40 CFR 264.301	329 IAC 3-53-2	320 IAC 4.1-53-2
40 CFR 264.303	329 IAC 3-53-3	320 IAC 4.1-53-4
40 CFR 264.309	329 IAC 3-53-4	320 IAC 4.1-53-5
40 CFR 264.310	329 IAC 3-53-5	320 IAC 4.1-53-6
40 CFR 264.312	329 IAC 3-53-6	320 IAC 4.1-53-7
40 CFR 264.313	329 IAC 3-53-7	320 IAC 4.1-53-8
40 CFR 264.314	329 IAC 3-53-8	320 IAC 4.1-53-9
40 CFR 264.315	329 IAC 3-53-9	320 IAC 4.1-53-10
40 CFR 264.316	329 IAC 3-53-10	320 IAC 4.1-53-11
40 CFR 264.317	329 IAC 3-53-11	320 IAC 4.1-53-12
40 CFR 264 340	329 IAC 3-54-1	320 IAC 4.1-54-1
40 CFR 264.341	329 IAC 3-54-2	320 IAC 4.1-54-2
40 CFR 264.342	329 IAC 3-54-3	320 IAC 4.1-54-3
40 CFR 264.343	329 IAC 3-54-4	320 IAC 4.1-54-4
40 CFR 264.344	329 IAC 3-54-5	320 IAC 4.1-54-5
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40 CFR 264.351	329 IAC 3-54-8	320 IAC 4.1-54-8
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40 CFR 264.—— **Appendix VI**	329 IAC 3-32-6	320 IAC 4.1-32-6
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40 CFR 265.11	329 IAC 3-16-2	320 IAC 4.1-16-2
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40 CFR 265.13	329 IAC 3-16-4	320 IAC 4.1-16-4
40 CFR 265.14	329 IAC 3-16-5	320 IAC 4.1-16-5
40 CFR 265.15	329 IAC 3-16-6	320 IAC 4.1-16-6
40 CFR 265.16	329 IAC 3-16-7	320 IAC 4.1-16-7
40 CFR 265.17	329 IAC 3-16-8	320 IAC 4.1-16-8
40 CFR 265.18	329 IAC 3-16-9	320 IAC 4.1-16-9
40 CFR 265.30	329 IAC 3-17-1	320 IAC 4.1-17-1
40 CFR 265.31	329 IAC 3-17-2	320 IAC 4.1-17-2
40 CFR 265.32	329 IAC 3-17-3	320 IAC 4.1-17-3
40 CFR 265.33	329 IAC 3-17-4	320 IAC 4.1-17-4
40 CFR 265.34	329 IAC 3-17-5	320 IAC 4.1-17-5
40 CFR 265.35	329 IAC 3-17-6	320 IAC 4.1-17-6
40 CFR 265.37	329 IAC 3-17-7	320 IAC 4.1-17-7
40 CFR 265.50	329 IAC 3-18-1	320 IAC 4.1-18-1
40 CFR 265.51	329 IAC 3-18-2	320 IAC 4.1-18-2
40 CFR 265.52	329 IAC 3-18-3	320 IAC 4.1-18-3
40 CFR 265.53	329 IAC 3-18-4	320 IAC 4.1-18-4
40 CFR 265.54	329 IAC 3-18-5	320 IAC 4.1-18-5
40 CFR 265.55	329 IAC 3-18-6	320 IAC 4.1-18-6
40 CFR 265.56	329 IAC 3-18-7	320 IAC 4.1-18-7
40 CFR 265.70	329 IAC 3-19-1	320 IAC 4.1-19-1
40 CFR 265.71	329 IAC 3-19-2	320 IAC 4.1-19-2
40 CFR 265.72	329 IAC 3-19-3	320 IAC 4.1-19-3
40 CFR 265.73	329 IAC 3-19-4	320 IAC 4.1-19-4
40 CFR 265.74	329 IAC 3-19-5	320 IAC 4.1-19-5
40 CFR 265.75	329 IAC 3-19-6	320 IAC 4.1-19-6
40 CFR 265.76	329 IAC 3-19-7	320 IAC 4.1-19-7
40 CFR 265.77	329 IAC 3-19-8	320 IAC 4.1-19-8
40 CFR 265.90	329 IAC 3-20-1	320 IAC 4.1-20-1
40 CFR 265.91	329 IAC 3-20-2	320 IAC 4.1-20-2
40 CFR 265.92	329 IAC 3-20-3	320 IAC 4.1-20-3
40 CFR 265.93	329 IAC 3-20-4	320 IAC 4.1-20-4
40 CFR 265.94	329 IAC 3-20-5	320 IAC 4.1-20-5
40 CFR 265.110	329 IAC 3-21-1	320 IAC 4.1-21-1
40 CFR 265.111	329 IAC 3-21-2	320 IAC 4.1-21-2
40 CFR 265.112	329 IAC 3-21-3	320 IAC 4.1-21-3
40 CFR 265.113	329 IAC 3-21-4	320 IAC 4.1-21-4
40 CFR 265.114	329 IAC 3-21-5	320 IAC 4.1-21-5
40 CFR 265.115	329 IAC 3-21-6	320 IAC 4.1-21-6
40 CFR 265.116	329 IAC 3-21-7	320 IAC 4.1-21-6.5
40 CFR 265.117	329 IAC 3-21-8	320 IAC 4.1-21-7
40 CFR 265.118	329 IAC 3-21-9	320 IAC 4.1-21-8
40 CFR 265.119	329 IAC 3-21-10	320 IAC 4.1-21-9
40 CFR 265.120	329 IAC 3-21-11	320 IAC 4.1-21-10
40 CFR 265.140	329 IAC 3-22-1	320 IAC 4.1-22-1
40 CFR 265.141	329 IAC 3-22-2	320 IAC 4.1-22-2
40 CFR 265.142	329 IAC 3-22-3	320 IAC 4.1-22-3
40 CFR 265.143	329 IAC 3-22-4	320 IAC 4.1-22-4
40 CFR 265.143(a)	329 IAC 3-22-5	320 IAC 4.1-22-5
40 CFR 265.143(b)	329 IAC 3-22-6	320 IAC 4.1-22-6
40 CFR 265.143(c)	329 IAC 3-22-7	320 IAC 4.1-22-7
40 CFR 265.143(d)	329 IAC 3-22-8	320 IAC 4.1-22-8
40 CFR 265.143(e)	329 IAC 3-22-9	320 IAC 4.1-22-9
40 CFR 265.143(f)	329 IAC 3-22-10	320 IAC 4.1-22-10
40 CFR 265.143(g)	329 IAC 3-22-11	320 IAC 4.1-22-11
40 CFR 265.143(h)	329 IAC 3-22-12	320 IAC 4.1-22-12
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40 CFR 265.145	329 IAC 3-22-14	320 IAC 4.1-22-14
40 CFR 265.145(a)	329 IAC 3-22-15	320 IAC 4.1-22-15
40 CFR 265.145(b)	329 IAC 3-22-16	320 IAC 4.1-22-16
40 CFR 265.145(c)	329 IAC 3-22-17	320 IAC 4.1-22-17
40 CFR 265.145(d)	329 IAC 3-22-18	320 IAC 4.1-22-18
40 CFR 265.145(e)	329 IAC 3-22-19	320 IAC 4.1-22-19
40 CFR 265.145(f)	329 IAC 3-22-20	320 IAC 4.1-22-20

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-54-8	320 IAC 4.1-54-8
-32-2	320 IAC 4.1-32-2
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-32-5	320 IAC 4.1-32-5
-32-6	320 IAC 4.1-32-6
-15-1	320 IAC 4.1-15-1
-15-2	320 IAC 4.1-15-2
-16-1	320 IAC 4.1-16-1
-16-2	320 IAC 4.1-16-2
-16-3	320 IAC 4.1-16-3
-16-4	320 IAC 4.1-16-4
-16-5	320 IAC 4.1-16-5
-16-6	320 IAC 4.1-16-6
-16-7	320 IAC 4.1-16-7
-16-8	320 IAC 4.1-16-8
-16-9	320 IAC 4.1-16-9
-17-1	320 IAC 4.1-17-1
-17-2	320 IAC 4.1-17-2
-17-3	320 IAC 4.1-17-3
-17-4	320 IAC 4.1-17-4
-17-5	320 IAC 4.1-17-5
-17-6	320 IAC 4.1-17-6
17-7	320 IAC 4.1-17-7
18-1	320 IAC 4.1-18-1
18-2	320 IAC 4.1-18-2
18-3	320 IAC 4.1-18-3
18-4	320 IAC 4.1-18-4
18-5	320 IAC 4.1-18-5
18-6	320 IAC 4.1-18-6
18-7	320 IAC 4.1-18-7
19-1	320 IAC 4.1-19-1
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19-3	320 IAC 4.1-19-3
19-4	320 IAC 4.1-19-4
19-5	320 IAC 4.1-19-5
19-6	320 IAC 4.1-19-6
19-7	320 IAC 4.1-19-7
19-8	320 IAC 4.1-19-8
20-1	320 IAC 4.1-20-1
20-2	320 IAC 4.1-20-2
20-3	320 IAC 4.1-20-3
20-4	320 IAC 4.1-20-4
20-5	320 IAC 4.1-20-5
21-1	320 IAC 4.1-21-1
21-2	320 IAC 4.1-21-2
21-3	320 IAC 4.1-21-3
21-4	320 IAC 4.1-21-4
21-5	320 IAC 4.1-21-5
21-6	320 IAC 4.1-21-6
21-7	320 IAC 4.1-21-6.5
21-8	320 IAC 4.1-21-7
21-9	320 IAC 4.1-21-8
21-10	320 IAC 4.1-21-9
21-11	320 IAC 4.1-21-10
22-1	320 IAC 4.1-22-1
22-2	320 IAC 4.1-22-2
22-3	320 IAC 4.1-22-3
22-4	320 IAC 4.1-22-4
22-5	320 IAC 4.1-22-5
22-6	320 IAC 4.1-22-6
22-7	320 IAC 4.1-22-7
22-8	320 IAC 4.1-22-8
22-9	320 IAC 4.1-22-9
22-10	320 IAC 4.1-22-10
22-11	320 IAC 4.1-22-11
22-12	320 IAC 4.1-22-12
22-13	320 IAC 4.1-22-13
22-14	320 IAC 4.1-22-14
22-15	320 IAC 4.1-22-15
22-16	320 IAC 4.1-22-16
22-17	320 IAC 4.1-22-17
22-18	320 IAC 4.1-22-18
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40 CFR 265.145(h)	329 IAC 3-22-22	320 IAC 4.1-22-22
40 CFR 265.146	329 IAC 3-22-23	320 IAC 4.1-22-23
40 CFR 265.147	329 IAC 3-22-24	320 IAC 4.1-22-24
40 CFR 265.148	329 IAC 3-22-25	320 IAC 4.1-22-25
40 CFR 265.170	329 IAC 3-23-1	320 IAC 4.1-23-1
40 CFR 265.171	329 IAC 3-23-2	320 IAC 4.1-23-2
40 CFR 265.172	329 IAC 3-23-3	320 IAC 4.1-23-3
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40 CFR 265.174	329 IAC 3-23-5	320 IAC 4.1-23-5
40 CFR 265.176	329 IAC 3-23-6	320 IAC 4.1-23-6
40 CFR 265.177	329 IAC 3-23-7	320 IAC 4.1-23-7
40 CFR 265.190	329 IAC 3-24-1	320 IAC 4.1-24-1
40 CFR 265.191	329 IAC 3-24-2	320 IAC 4.1-24-1.5
40 CFR 265.192	329 IAC 3-24-3	320 IAC 4.1-24-2
40 CFR 265.193	329 IAC 3-24-4	320 IAC 4.1-24-3
40 CFR 265.194	329 IAC 3-24-5	320 IAC 4.1-24-4
40 CFR 265.195	329 IAC 3-24-6	320 IAC 4.1-24-4.5
40 CFR 265.196	329 IAC 3-24-7	320 IAC 4.1-24-4.6
40 CFR 265.197	329 IAC 3-24-8	320 IAC 4.1-24-5
40 CFR 265.198	329 IAC 3-24-9	320 IAC 4.1-24-6
40 CFR 265.199	329 IAC 3-24-10	320 IAC 4.1-24-7
40 CFR 265.200	329 IAC 3-24-11	320 IAC 4.1-24-8
40 CFR 265.201	329 IAC 3-24-12	320 IAC 4.1-24-9
40 CFR 265.220	329 IAC 3-25-1	320 IAC 4.1-25-1
40 CFR 265.221	329 IAC 3-25-2	320 IAC 4.1-25-1.5
40 CFR 265.222	329 IAC 3-25-3	320 IAC 4.1-25-2
40 CFR 265.223	329 IAC 3-25-4	320 IAC 4.1-25-3
40 CFR 265.225	329 IAC 3-25-5	320 IAC 4.1-25-4
40 CFR 265.226	329 IAC 3-25-6	320 IAC 4.1-25-5
40 CFR 265.228	329 IAC 3-25-7	320 IAC 4.1-25-6
40 CFR 265.229	329 IAC 3-25-8	320 IAC 4.1-25-7
40 CFR 265.230	329 IAC 3-25-9	320 IAC 4.1-25-8
40 CFR 265.250	329 IAC 3-26-1	320 IAC 4.1-26-1
40 CFR 265.251	329 IAC 3-26-2	320 IAC 4.1-26-2
40 CFR 265.252	329 IAC 3-26-3	320 IAC 4.1-26-3
40 CFR 265.253	329 IAC 3-26-4	320 IAC 4.1-26-4
40 CFR 265.254	329 IAC 3-26-5	320 IAC 4.1-26-4.5
40 CFR 265.256	329 IAC 3-26-6	320 IAC 4.1-26-5
40 CFR 265.257	329 IAC 3-26-7	320 IAC 4.1-26-6
40 CFR 265.258	329 IAC 3-26-8	320 IAC 4.1-26-7
40 CFR 265.270	329 IAC 3-27-1	320 IAC 4.1-27-1
40 CFR 265.272	329 IAC 3-27-2	320 IAC 4.1-27-2
40 CFR 265.273	329 IAC 3-27-3	320 IAC 4.1-27-3
40 CFR 265.276	329 IAC 3-27-4	320 IAC 4.1-27-4
40 CFR 265.278	329 IAC 3-27-5	320 IAC 4.1-27-5
40 CFR 265.279	329 IAC 3-27-6	320 IAC 4.1-27-6
40 CFR 265.280	329 IAC 3-27-7	320 IAC 4.1-27-7
40 CFR 265.281	329 IAC 3-27-8	320 IAC 4.1-27-8
40 CFR 265.282	329 IAC 3-27-9	320 IAC 4.1-27-9
40 CFR 265.300	329 IAC 3-28-1	320 IAC 4.1-28-1
40 CFR 265.301	329 IAC 3-28-2	320 IAC 4.1-28-1.5
40 CFR 265.302	329 IAC 3-28-3	320 IAC 4.1-28-2
40 CFR 265.309	329 IAC 3-28-4	320 IAC 4.1-28-3
40 CFR 265.310	329 IAC 3-28-5	320 IAC 4.1-28-4
40 CFR 265.312	329 IAC 3-28-6	320 IAC 4.1-28-5
40 CFR 265.313	329 IAC 3-28-7	320 IAC 4.1-28-6
40 CFR 265.314	329 IAC 3-28-8	320 IAC 4.1-28-7
40 CFR 265.315	329 IAC 3-28-9	320 IAC 4.1-28-8
40 CFR 265.316	329 IAC 3-28-10	320 IAC 4.1-28-9
40 CFR 265.340	329 IAC 3-29-1	320 IAC 4.1-29-1
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40 CFR 265.345	329 IAC 3-29-3	320 IAC 4.1-29-3
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40 CFR 266.23	329 IAC 3-57-4	320 IAC 4.1-32.5-4
40 CFR 266.30	329 IAC 3-57-5	320 IAC 4.1-32.5-5
40 CFR 266.31	329 IAC 3-57-6	320 IAC 4.1-32.5-6
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40 CFR 266.34	329 IAC 3-57-9	320 IAC 4.1-32.5-9
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40 CFR 266.41	329 IAC 3-57-12	320 IAC 4.1-32.5-12
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40 CFR 266.70	329 IAC 3-57-16	320 IAC 4.1-32.5-16
40 CFR 266.80	329 IAC 3-57-17	320 IAC 4.1-32.5-17
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40 CFR 270.2	329 IAC 3-33-2	320 IAC 4.1-33-2
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40 CFR 270.5	329 IAC 3-33-4	320 IAC 4.1-33-4
40 CFR 270.6	329 IAC 3-33-5	320 IAC 4.1-33-5
40 CFR 270.10	329 IAC 3-34-1	320 IAC 4.1-34-1
40 CFR 270.11	329 IAC 3-34-2	320 IAC 4.1-34-2
40 CFR 270.12	329 IAC 3-34-3	320 IAC 4.1-34-3
40 CFR 270.13	329 IAC 3-34-4	320 IAC 4.1-34-4
40 CFR 270.14	329 IAC 3-34-5	320 IAC 4.1-34-5
40 CFR 270.15	329 IAC 3-34-6	320 IAC 4.1-34-6
40 CFR 270.16	329 IAC 3-34-7	320 IAC 4.1-34-7
40 CFR 270.17	329 IAC 3-34-8	320 IAC 4.1-34-8
40 CFR 270.18	329 IAC 3-34-9	320 IAC 4.1-34-9
40 CFR 270.19	329 IAC 3-34-10	320 IAC 4.1-34-10
40 CFR 270.20	329 IAC 3-34-11	320 IAC 4.1-34-11
40 CFR 270.21	329 IAC 3-34-12	320 IAC 4.1-34-12
40 CFR 270.30	329 IAC 3-35-1	320 IAC 4.1-35-1
40 CFR 270.31	329 IAC 3-35-2	320 IAC 4.1-35-2
40 CFR 270.32	329 IAC 3-35-3	320 IAC 4.1-35-3
40 CFR 270.33	329 IAC 3-35-4	320 IAC 4.1-35-4
40 CFR 270.40	329 IAC 3-36-1	320 IAC 4.1-36-1
40 CFR 270.41	329 IAC 3-36-2	320 IAC 4.1-36-2
40 CFR 270.42	329 IAC 3-36-3	320 IAC 4.1-36-3
40 CFR 270.43	329 IAC 3-36-4	320 IAC 4.1-36-4
40 CFR 270.50	329 IAC 3-39-11	320 IAC 4.1-39-11
40 CFR 270.51	329 IAC 3-39-12	320 IAC 4.1-39-12
40 CFR 270.60	329 IAC 3-37-1	320 IAC 4.1-37-1
40 CFR 270.61	329 IAC 3-37-2	320 IAC 4.1-37-2
40 CFR 270.62	329 IAC 3-37-3	320 IAC 4.1-37-3
40 CFR 270.63	329 IAC 3-37-4	320 IAC 4.1-37-4
40 CFR 270.65	329 IAC 3-37-6	320 IAC 4.1-37-6
40 CFR 270.70	329 IAC 3-38-1	320 IAC 4.1-38-1
40 CFR 270.71	329 IAC 3-38-2	320 IAC 4.1-38-2
40 CFR 270.72	329 IAC 3-38-3	320 IAC 4.1-38-3
40 CFR 270.73	329 IAC 3-38-4	320 IAC 4.1-38-4

C. Decision

I conclude that Indiana's application for this program revision meets all the statutory and regulatory requirements established by RCRA. Accordingly, EPA grants Indiana final authorization to operate its hazardous waste program as revised. Indiana now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out the other aspects of the RCRA program. This responsibility is subject to the limitations of this program revision application and previously approved authorities. Indiana also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

D. Codification in Part 272

EPA codifies authorized State programs in part 272 of 40 CFR. The purpose of codification is to provide notice to the public of the scope of the authorized program in each State. In a future **Federal Register** notice, EPA will codify Indiana's revised hazardous waste program.

Compliance with Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Indiana's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a) 3006, and 7004(b) of the Solid Waste Disposal Act, as amended, (42 U.S.C. 6912(a), 6926 and 6974(b)).

Dated: February 8, 1990.

Robert Springer,

Acting Regional Administrator.

[FR Doc. 91-17470 Filed 7-23-91; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-5

[FPMR Amdt. A-49]

Miscellaneous Changes

AGENCY: General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: GSA published a proposed rule (December 1, 1989, 54 FR 49777) on prescribing the methods by which the General Services Administration provides for the establishment of centralized services in Federal buildings occupied by a number of executive agencies. GSA adopted recommended changes to provide printing and photocopying services in multi-occupant Federal buildings or complexes.

EFFECTIVE DATE: July 24, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Johnny Young, Reproduction Services Division Director (202-566-1961).

SUPPLEMENTARY INFORMATION: GSA has determined that this is not a major rule for the purpose of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR 101-5

Government property management.

PART 101-5—CENTRALIZED SERVICES IN FEDERAL BUILDINGS

1. The authority citation for part 101-5 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

2. Part 101-5 is retitled to read as follows:

PART 101-5—CENTRALIZED SERVICES IN FEDERAL BUILDINGS AND COMPLEXES

3. Section 101-5.000 is revised to read as follows:

§ 101-5.000 Scope of part.

This part prescribes the methods by which the General Services Administration provides for establishment of centralized services in Federal buildings or complexes occupied by a number of executive agencies.

Subpart 101-5.1—General

4. Section 101-5.101 is revised to read as follows:

§ 101-5.101 Applicability.

The regulations in this part apply to all executive agencies which occupy space in or are prospective occupants of multi-occupant Federal buildings located in the United States. In appropriate circumstances, the centralized services provided pursuant to this part are extended to agencies occupying other Federal buildings in the same geographical area. For purposes of this part, reference to Federal buildings may be deemed to include, when appropriate, leased buildings or specific leased space in a commercial building under the control of GSA.

5. Section 101-5.102 is revised to read as follows:

§ 101-5.102 Definitions.

(a) *Centralized services* means those central supporting and administrative services and facilities provided to occupying agencies in Federal buildings or nearby locations in lieu of each agency providing the same services or facilities for its own use. This includes those common administrative services provided by a Cooperative Administrative Support Unit (CASU). It does not include such common building features as cafeterias, blind stands, loading platforms, auditoriums, incinerators, or similar facilities. Excluded are interagency fleet management centers established pursuant to Public Law 766, 83d Congress, and covered by part 101-39 of this chapter.

(b) *Occupying agency* means any Federal agency assigned space in a building or complex for which GSA has oversight of, or responsibility for the functions of operation and maintenance in addition to space assignment.

(c) *Cooperative Administrative Support Unit (CASU)* means an organized mechanism for providing administrative services for agencies in multi-tenant federally occupied buildings.

6. Section 101-5.104-1 is revised to read as follows:

§ 101-5.104-1 General.

GSA is currently providing various centralized services to Federal agencies in such fields as office and storage space, supplies and materials, communications, records management, transportation services, and printing and reprographics. Other centralized CASU's may be providing supporting services or activities such as health units, use of training devices and facilities, pistol ranges, and central facilities for receipt and dispatch of mail. Consolidation and sharing is frequently feasible with resulting economies in personnel, equipment, and space. Opportunities to effect economies through planned consolidation of such services occur particularly during the design stage of the construction of new Federal buildings, or the renovations to existing buildings. Opportunities may also occur as a result of needs assessments jointly conducted by local agencies.

7. Section 101–5.104–2 is amended by revising paragraph (b) as follows:

§ 101–5.104–2 Basis for determining economic feasibility.

* * * * *

(b) In the absence of standard data on which a determination of economic feasibility can be based, or where such data must be supplemented by additional factual information, a formal feasibility study may be made by GSA or a CASU workgroup, in coordination with local agencies to be involved, prior to a final determination to proceed with the furnishing of a centralized service. Generally, a formal feasibility study will be made only if provision of the proposed centralized service would involve the pooling of staff, equipment, and space which occupying agencies otherwise would be required to use in providing the service for themselves. Examples of centralized services which may require formal studies include printing and duplicating plants and similar facilities.

* * * * *

8. Section 101–5.104–3 is amended by revising paragraph (a) as follows:

§ 101–5.104–3 Data requirements for feasibility studies.

(a) The data requirements for feasibility studies may vary from program to program, but shall be standard within any single program. Such data shall disclose the costs resulting from provisions of the service on a centralized basis as compared to the same service provided separately by each occupying agency, including the costs of personnel assigned to provide the service, comparative space needs, equipment use, and any other pertinent factors.

* * * * *

9. Section 101–5.105 is amended by revising paragraph (a) to read as follows:

§ 101–5.105 Operation of the centralized facility.

(a) GSA will continually appraise the operation of centralized facilities to insure their continued justification in terms of economy and efficiency. Centralized services provided pursuant to the regulation may be discontinued or curtailed if no actual savings or operating improvements are realized after a minimum operating period of one year. Occupying agencies will be consulted regarding the timing of curtailment or discontinuance of any centralized services and the heads of such agencies notified at least 120 days in advance of each action.

* * * * *

10. Section 101–5.106 is amended by revising paragraph (a) and paragraph (b) to read as follows:

§ 101–5.106 Agency committees.

(a) *Establishment.* An occupying agency committee will be established by GSA if one does not exist, to assist the occupying agency, or such other agency as may be responsible, in the cooperative use of the centralized services, as defined in 101–5.102(a), provided in a Federal building. Generally, such a committee will be established when the problems of administration and coordination necessitate a formal method of consultation and discussion among occupying agencies.

(b) *Membership.* Each occupying agency of a Federal building is entitled to membership on an agency committee. The chairperson of each such committee shall be a GSA employee designated by the appropriate GSA Regional Administrator, except when another agency had been designated to administer the centralized service. In this instance, the chairperson shall be an employee of such other agency as designated by competent authority within that agency.

* * * * *

11. Subpart 101–5.2 is retitled to read as follows:

Subpart 101–5.2—Centralized Field Reproduction Services

12. The Table of Contents for Subpart 101–5.2 is amended by revising three entries to read as follows:

Sec.

101–5.202 Types of centralized field reproduction services
101–5.203 Economic feasibility of centralized field reproduction services
101–5.205–3 Action prior to operation of facilities

13. Section 101–5.200 is revised to read as follows:

§ 101–5.200 Scope of subpart.

This subpart states general guidelines and procedures for the establishment and operation of centralized field printing, duplicating, and photocopying services on a reimbursable basis. These services may be provided in multi-occupant leased and/or government-owned buildings.

14. Section 101–5.202 is retitled and amended by revising paragraph (a) to read as follows:

§ 101–5.202 Types of centralized field reproduction services.

(a) Services will include offset reproduction, electronic publishing, photocopying, distribution, bindery services, and other closely related services as requested or required.

* * * * *

15. Section 101–5.203 is retitled to read as follows:

§ 101–5.203 Economic feasibility of centralized field reproduction services.

16. Section 101–5.203–1 is revised to read as follows:

§ 101–5.203–1 Scheduling of feasibility studies.

(a) Based on the available data on the proposed size, location, number of agencies scheduled for occupancy, and other factors pertinent to a proposed new or acquired Federal building, GSA may determine whether to provide for a centralized field reproduction facility in the space directive covering the new building. A feasibility study thereafter will be scheduled and coordinated with the Federal building program of the Public Buildings Service, GSA, and the occupying agencies to occur during the period following development of the prospectus and before development of final working drawings for the space directive. The final decision to provide centralized field reproduction services in a new or acquired Federal building will be subject to subsequent determination by the GSA Administrator based upon results of the formal feasibility study. Agencies wishing not to participate may do so by requesting an exception from the appropriate GSA Regional Administrator.

(b) Feasibility studies may be initiated by GSA and coordinated with occupying agencies in existing Federal buildings. Such studies will be conducted in accordance with the rules prescribed in 101–5.203.

17. Section 101–5.203–2 is revised to read as follows:

§ 101–5.203–2 Notification of feasibility studies.

The Administrator of General Services, or his authorized designee, will give at least 30 days notice to the head of each executive agency that would be served by a proposed centralized field reproduction facility in accordance with 101–5.104–4, and will request the designation of agency representatives, as provided in 101–5.104–5.

18. Section 101–5.203–5 is revised to read as follows:

§ 101–5.203–5 Uniform space allowances.

The space requirements for printing, duplicating, photocopying, and related equipment under individual agency use as compared with use in a centralized

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18. Section 101–5.203–5 is revised to read as follows:

§ 101–5.203–5 Uniform space allowances.

The space requirements for printing, duplicating, photocopying, and related equipment under individual agency use as compared with use in a centralized facility will be based upon uniform space allowances applied equally under both conditions.

19. Section 101–5.203–6 is amended by revising paragraph (a), paragraph (c) and paragraph (d) to read as follows:

§ 101–5.203–6 Pooling of equipment and personnel.

(a) In establishing centralized reproduction facilities in Federal buildings or complexes, GSA's regional office will make arrangements with participating agencies for the transfer of duplicating and related equipment for the centralized plant. Equipment for which there is no foreseeable need in the centralized plant will not be transferred to the plant but will be disposed of or transferred by the owning agency out of the centralized plant. Copy processing machines, as provided in paragraph (b) of this section, as well as reproduction, addressing, and automatic-copy processing equipment used in bona fide systems applications may be retained by mutual agreement with user agencies.

* * * * *

(c) Personnel devoting over 50 percent of time to the duplicating activities of the affected agency will be identified for transfer to the operating agency upon establishment of a centralized plant, in accordance with the Office of Personnel Management regulations relating to the transfer of functions. Agencies will transfer personnel ceiling to the operating agency for employees so transferred. In the event of later disestablishment of the centralized facility or substantial reduction in operations thereof, personnel ceiling will be returned to the agencies from which originally received.

(d) Exceptions to pooling of equipment to meet the individual agency programmatic need, special physical security needs, confidentiality requirements, and/or certain quality standards will be made available to occupant agencies when use of such equipment is justified. Each agency must provide justification for approval of the GSA regional printing and distribution activity before acquiring space and/or electrical service from the building's manager. Otherwise, as agreed by the user agencies, GSA will not make available space for duplicating equipment, or provide other support services for such equipment in Federal buildings where use of that equipment would duplicate the services provided by the centralized services plant.

20. Section 101–5.203–7 is revised to read as follows:

§ 101–5.203–7 Determination of feasibility.

The Administrator of General Services will determine the economic feasibility of each proposed centralized field reproduction facility in accordance with 101–5.104–7. The Director of the Office of Management and Budget and the head of each affected agency will be advised of the Administrator's determination to establish a centralized facility.

21. Section 101–5.204 is retitled to read as follows:

§ 101–5.204 Operation of centralized field reproduction facilities.

22. Section 101–5.204–1 is revised to read as follows:

§ 101–5.204–1 Continuity of service.

Each new centralized field reproduction facility will be established in sufficient time to assure occupants moving into the building that there will be no interruption of duplicating services in support of their program activities.

23. Section 101–5.204–2 is revised to read as follows:

§ 101–5.204–2 Announcement of centralized services.

The appropriate GSA regional office will announce the availability of a centralized field reproduction facility approximately 90 days in advance of its activation, including:

(a) The date service will be available;

(b) The services which will be furnished, including technical assistance on reproduction problems;

(c) A current price schedule;

(d) Procedures for obtaining service; and

(e) Billing procedures.

24. Section 101–5.204–3 is revised to read as follows:

§ 101–5.204–3 Appraisal of operations.

(a) The appropriate GSA regional office will appraise continually the operation of each centralized field reproduction facility. Proposals to expand, modify, or discontinue a centralized activity shall be made to the Director, Reproduction Services Division, in the Central Office, and must be supported by all pertinent information.

(b) The Administrator of General Services will give a minimum of 120 days notice to the heads of agencies concerned before any action to curtail or discontinue centralized services is taken.

25. Section 101–5.205–1 is revised to read as follows:

§ 101–5.205–1 General.

The Administrator of General Services, in accordance with 101–5.105(b), may designate an agency other than GSA to operate a centralized field reproduction facility. Such designation will be made only by mutual agreement with the agency head concerned.

26. Section 101–5.205–2 is revised to read as follows:

§ 101–5.205–2 Prerequisites to designation of other agencies.

The following conditions are to be met by an agency designated by GSA to operate a centralized field reproduction facility:

(a) Generally, prices changed to Government agencies using the centralized field facility should be no higher than those specified on the currently effective nationwide uniform General Services Administration Reproduction Services Price Schedule. In special circumstances, deviations from the Price Schedule may be developed jointly by GSA and the designated agency.

(b) The designated agency shall accept responsibility for implementing the determination of the Administrator of General Services to establish a centralized reproduction facility, issued in accordance with 101–5.104–7 and 101–5.203–7, including the provisions for transfer of excess equipment and ⅛⅛⅛⅛⅛⅛⅛other procedures and conditions specified in that determination. Necessary deviations from the determination may be developed jointly by GSA and the designated agency.

27. Section 101–5.205–3 is retitled and amended by revising the introductory paragraph, paragraph (a) and paragraph (c) to read as follows:

§ 101–5.205–3 Actions prior to operation of facilities.

The following actions are to be taken by an agency designated by GSA to operate a centralized field reproduction facility prior to operations of such a facility:

(a) The designated agency shall assist the appropriate GSA regional office in the determination of firm space needs, including any special requirements. Space needs will be furnished by the GSA regional Administrative Services Division, Printing and Distribution Branch, before forwarding it to the Public Buildings Service, GSA, for preparation of final working drawings in the Federal building where the plant is to be located.

* * * * *

(c) After coordination with the designated operating agency to obtain its current price schedule, procedures for obtaining service, and billing procedures, GSA will announce the availability of the centralized field reproduction facility in the manner prescribed in 101–5.204–2.

28. Section 101–5.205–4 is revised to read as follows:

§ 101–5.205–4 Plant inspections and customer evaluations.

Periodic facility inspections and customer evaluations will be performed jointly by GSA and the designated agency in order to appraise the continuing effectiveness of the centralized facility.

Dated: June 3, 1991.

Richard G. Austin,

Administrator of General Services.

[FR Doc. 91–17548 Filed 7–23–91; 8:45 am]

BILLING CODE 6820–61–M

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41 CFR Part 101–40

[FPMR Temp. Reg. G–54]

Use of Contractor for Express Small Package Transportation

AGENCY: Federal Supply Services, GSA.

ACTION: Temporary regulation.

SUMMARY: This regulation mandates the use of the new contract by Federal civilian executive agencies when next day express small package transportation is required. The regulation also contains a description of the services provided and an appendix listing the rates and accessorial charges. The information is provided because a new contract was awarded containing additional services and a new rate schedule. This regulation is necessary to provide the Government user with information concerning the provisions of the contract.

DATES: *Effective date:* January 15, 1991. *Expiration date:* January 14, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Hugh Pollon, Transportation Management Division, 703–557–8084.

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101–40

Freight, Government property, Moving of household goods, Office relocations, Transportation.

The authority citation for part 101–40 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

In 41 CFR chapter 101, the following temporary regulation is added to the appendix at the end of subchapter G to read as follows:

GENERAL SERVICES ADMINISTRATION

Washington, DC 20405

Federal Property Management Regulations

Temporary Regulation G–54

To: Heads of Federal agencies.

Subject: Use of contractor for express small package transportation.

July 9, 1991.

1. *Purpose.* This regulation prescribes policies and procedures applicable to Federal civilian agencies and departments when next day express small package transportation service is required. In addition, this regulation identifies the new contractor and the new contract rates effective January 15, 1991.

2. *Effective date.* This regulation is effective January 15, 1991.

3. *Expiration date.* This regulation expires January 14, 1992, unless sooner canceled, revised, or extended.

4. *Background.* Under subsection 201(a) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 481(a)), the General Services Administration (GSA) is responsible for prescribing policies and procedures.that are advantageous to the Government in terms of economy, efficiency, or service, regarding program activities in the area of transportation and traffic management. Accordingly, GSA has entered into a contract with Federal Express (FedEx) for the transportation of express small packages from, to, and between specified locations in the United States (including Alaska and Hawaii) and Puerto Rico, where the contractor or its agent presently provides or will provide next day service. In consideration of the contract rates listed in attachment A.and to the extent provided in this regulation, the Government has agreed to place all its transportation requirements for express small package service with the contractor.

5. *Scope.* a. This regulation is mandatory for all civilian executive agencies pursuant to subsection 201(a) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 481(a)), and also may be used by (1) The Department of Defense, (2) the legislative and judicial branches of the U.S. Government, and (3) cost-reimbursable contractors of the Government.

b. Next day express small package transportation is premium transportation. Therefore, agencies and other qualified users shall make prudent use of services available under the contract. When next day service is not required to accomplish an agency's mission, other less costly methods of transportation shall be used.

6. *Definitions.* a. *Additional service* means other agency-required services beyond the basic service but still within the scope of the contract. Such additional services are: Saturday pickup service, Saturday delivery service, dangerous goods service, collect on delivery service, excess declared value, address correction, rebill, no/invalid account number on airbill, hold for agency pickup, and attempted delivery. The contractor will only provide holiday pickup service and holiday delivery service within the 48 contiguous United States and the District of Columbia. Activities requesting holiday service must make prior arrangements with the Federal Express Government Sales Office, Greenbelt, Maryland, before this service will be provided.

b. *Agency* means any ordering activity (including cost-reimbursable contractors) authorized to obtain contractor services at the contract rate.

c. *Basic service* means pickup and next business day delivery (including desk pickup and desk delivery) between the hours of 8 a.m. and 6 p.m. (local time) for pickup and 8 a.m. and 5 p.m. (local time) for delivery, Monday through Friday, except holidays.

d. *Commercial form* means a commercial uniform straight bill of lading, a commercial express receipt, or any other commercial instrument constituting a contract of carriage subject to the terms and conditions set forth in Standard Form 1103, U.S. Government Bill of Lading. (See 41 CFR 101–41.302–3.)

e. *Commercial forms and procedures* means a provision whereby shipments are made using commercial forms and commercial billing procedures instead of Government Bills of Lading (SF 1103) and their related billing procedures. (See 41 CFR 101–41.304–2.)

f. *Contract rate* means a shipment charge listed in attachment A.

g. *Contractor* means Federal Express as awardee listed in attachment A.

h. *Express small package shipment* means a single package or multiple packages as defined below containing general commodities except:

(1) Cash, currency, and collectible stamps and coins;

(2) Live animals, including birds, reptiles, and fish;

(3) Corpses, or parts thereof, cremated or disinterred remains;

(4) Shipments which require the contractor to obtain a Federal, State, or local license for their transportation;

(5) Shipments which may cause damage or delay to equipment, to personnel, or to other shipments;

(6) Lottery tickets or gambling devices;

(7) FM–04 Class 8 Corrosives;

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the legislative and judicial branches of the U.S. Government, and (3) cost-reimbursable contractors of the Government.

b. Next day express small package transportation is premium transportation. Therefore, agencies and other qualified users shall make prudent use of services available under the contract. When next day service is not required to accomplish an agency's mission, other less costly methods of transportation shall be used.

6. *Definitions.* a. *Additional service* means other agency-required services beyond the basic service but still within the scope of the contract. Such additional services are: Saturday pickup service, Saturday delivery service, dangerous goods service, collect on delivery service, excess declared value, address correction, rebill, no/invalid account number on airbill, hold for agency pickup, and attempted delivery. The contractor will only provide holiday pickup service and holiday delivery service within the 48 contiguous United States and the District of Columbia. Activities requesting holiday service must make prior arrangements with the Federal Express Government Sales Office, Greenbelt, Maryland, before this service will be provided.

b. *Agency* means any ordering activity (including cost-reimbursable contractors) authorized to obtain contractor services at the contract rate.

c. *Basic service* means pickup and next business day delivery (including desk pickup and desk delivery) between the hours of 8 a.m. and 6 p.m. (local time) for pickup and 8 a.m. and 5 p.m. (local time) for delivery, Monday through Friday, except holidays.

d. *Commercial form* means a commercial uniform straight bill of lading, a commercial express receipt, or any other commercial instrument constituting a contract of carriage subject to the terms and conditions set forth in Standard Form 1103, U.S. Government Bill of Lading. (See 41 CFR 101–41.302–3.)

e. *Commercial forms and procedures* means a provision whereby shipments are made using commercial forms and commercial billing procedures instead of Government Bills of Lading (SF 1103) and their related billing procedures. (See 41 CFR 101–41.304–2.)

f. *Contract rate* means a shipment charge listed in attachment A.

g. *Contractor* means Federal Express as awardee listed in attachment A.

h. *Express small package shipment* means a single package or multiple packages as defined below containing general commodities except:

(1) Cash, currency, and collectible stamps and coins;

(2) Live animals, including birds, reptiles, and fish;

(3) Corpses, or parts thereof, cremated or disinterred remains;

(4) Shipments which require the contractor to obtain a Federal, State, or local license for their transportation;

(5) Shipments which may cause damage or delay to equipment, to personnel, or to other shipments;

(6) Lottery tickets or gambling devices;

(7) FM–04 Class 8 Corrosives;

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(8) Shipments whose carriage is prohibited by law;

(9) Fireworks (Explosive Class C, Common Fireworks) unless prior written approval is obtained from the contractor;

(10) Used hypodermic needles and/or syringes or medical wastes;

(11) Any other article which the contractor prohibits its commercial customers from shipping (See Federal Express U.S. Government Service Guide and Federal Express Worldwide Service Guide); and

(12) Letters, unless adhering to the criteria established by the U.S. Postal Service as specified in subpar. 7a, below.

i. *Geographical areas* means locations lying wholly or partially within cities, towns, and communities identified by the U.S. Postal Service national five-digit ZIP code in the contractor's service guide or analogous listing.

j. *Holiday* means a Federal holiday.

k. *Multiple package* means an express small package shipment where:

(1) No single package in the shipment exceeds 70 pounds;

(2) No single package in the shipment is greater than 108 inches in length and girth combined;

(3) The aggregate weight does not exceed 150 pounds;

(4) All packages are listed on the same airbill;

(5) All packages are tendered to the contractor at the same time by the same consignor and are destined for the same consignee; and

(6) The total transportation charges do not exceed $250.00 per shipment.

1. *Single package* means an express small package shipment where:

(1) The package does not exceed 70 pounds; and

(2) Is not greater than 108 inches in length and girth combined.

(7) *Applicability.* a. The scope of the express small package contract does not include "letters"; i.e., routine first class mail, as defined in U.S. Postal Service Regulations, 39 CFR 310.1 (Private Express Statutes) unless the letters are "extremely urgent." "Letter" is generally defined as "a message directed to a specific person or address and recorded in or on a tangible object." (See 39 CFR 310.1 for specific exclusions from the definition.)

(1) If the value or usefulness of a letter would be lost or greatly diminished if the letter were not delivered under the following conditions, then the letter is considered "extremely urgent" and may be shipped by the contractor under the express small package contract:

(a) Where the letter is dispatched within 50 miles of the intended destination, delivery must be completed within 6 hours or by the close of the addressee's normal business hours on the date of dispatch, whichever is later, except that letters dispatched after noon and before midnight must be delivered by 10 a.m. of the addressee's next business day;

(b) For all other letters, delivery must be completed within 12 hours or by noon of the addressee's next business day;

(c) Agencies shall ensure that all outside covers or containers of letters are prominently marked with the words "Extremely Urgent" or "Private Carriage Authorized by Postal Regulations (39 CFR 320.6)." In addition, each outside cover shall show the names and addresses of the contractor, the sender, and the addressee; or

(d) The determination that a letter or letters meet the extreme urgency provisions of 39 CFR 320.6 shall be made by the responsible sending office. If such letters are sent to an agency mail room for pickup by the contractor rather than being picked up at the sending office, the sending office shall ensure that such letters are marked clearly with the legend "Extremely Urgent" or "Private Carriage Authorized by Postal Regulations (39 CFR 320.6)."

(2) It is conclusively presumed that a letter is "extremely urgent" if the amount paid for carriage under the contract is at least $3 or twice the applicable U.S. postage for First-Class Mail (including priority mail), whichever is greater. If a single shipment consists of a number of letters that are picked up together at a single origin for shipment to a single destination, postage may be computed as though the shipment constitutes a single letter. For other types of charges, a bona fide estimate of the average number of letters or shipments may be divided into the charge.

(3) In addition to the exception for shipping extremely urgent letters, data processing materials may be shipped as an express small package if the data processing materials are conveyed (a) To a data processing center, if carriage is completed within 12 hours or by noon of the addressee's next business day and if data processing work is commenced on such materials within 36 hours of their receipt at the center; or (b) back from the data processing center to the address of the office originating the incoming materials, if carriage is completed within 12 hours or by noon of the addressee's next business day and if data processing work was commenced on the incoming materials within 36 hours of their receipt at the center. (See 39 CFR 320.2.)

(4) For further guidance with respect to shipments of letters, including data processing materials, see U.S. Postal Service Regulations at 39 CFR parts 310 and 320, or call the U.S. Postal Service, Law Department, General Administrative Law Division at (202) 268–2971.

b. The provisions of this regulation apply only when agencies subject to this regulation are using commercial forms and procedures.

c. To the extent cost-reimbursable contractors are authorized by an agency to ship under this regulation and are reimbursed the transportation costs as direct allowable costs, the contract rates and services apply to cost-reimbursable contractors. To obtain contract rates and services, a cost-reimbursable contractor must provide FedEx a written authorization from the Government contracting officer designating the contract(s) under which the cost-reimbursable contractor is authorized to obtain rates and services.

d. The contractor will not impose any rates or charges for services under this contract which are higher than those published in its commercial tariffs and/or service guides for services available to the general public.

e. The contract rate does not apply for local pickup and delivery between locations in the metropolitan area of any city, town, or community.

8. *Contractor responsibilities.* a. In consideration of payment for services provided at the contract rates, the contractor will furnish:

(1) Basic service (see subpar. 6c);

(2) Additional service, when requested by the ordering activity in writing on the airbill or when otherwise applicable (see subpar. 6a);

(3) Delivery service for "Extremely Urgent" letters (see par. 7);

(4) Pickup service on the same day pickup is requested (see subpar. 12a); and

(5) Delivery service on the next business day, Monday through Friday (excluding holidays) following receipt from the shipper. Next day delivery service will not apply when delivery is delayed due to acts of God, the public enemy, the authority of law, or the negligent act or default of the consignor (shipper) or consignee (receiver).

b. Packages not delivered on the next day as prescribed in subpar. 8a(5) shall be transported free of charge.

9. *Payment responsibilities.* a. Payment by Government agencies for contractor services are subject to the Prompt Payment Act of 1982, as amended. Agencies will normally pay the contractor within 30 calendar days from receipt of a proper invoice.

b. At the option of the agency, and with concurrence of the contractor, the use of automated electronic billing and payment systems, or other sophisticated methods to simplify the verification and control process, may be separately arranged and established by agreement between the Government agency and the contractor.

c. Agencies shall instruct their cost-reimbursable contractors shipping under this regulation to ensure that the commercial document bears a proper "bill to" address and appropriate account reference(s) to facilitate the prompt processing and payment of the contractor's invoice by the due date.

10. *Deliquent payments and service suspension.* a. The contractor is authorized to suspend service to any account if:

(1) The delinquent amounts are undisputed and overdue more than 90 calendar days;

(2) The contractor notified the account holder in writing 60 calendar days after billing that the account is overdue and will be suspended if not settled within 30 calendar days; and

(3) The contractor simultaneously furnishes the appropriate GSA zone office a copy of the written delinquency notice.

b. Within 5 calendar days of suspension of service, the contractor will send a list of agency accounts which have been suspended to the contracting officer and simultaneously to the appropriate GSA zone office. Only those ordering activities within an agency which are identified as separate accounts and are delinquent will be suspended. All ordering activities within an agency will not be suspended. Contractors will restore service to a suspended activity within 5 calendar days of the agency's payment of the outstanding bills over 90 days.

c. When a question arises concerning the proper amount of charges for services rendered (e.g., improper billing, failure to post payments, erroneous charges, etc.), agencies shall give notice of the defect to the contractor's billing office in writing within 7 days after receipt of the invoice, pursuant to 31 U.S.C. 3903 and OMB Circular A-125 (Revised), which implement the Prompt Payment Act of 1982, as amended.

d. Any dispute as to the proper amount of charges for services rendered shall be referred to the contracting officer for resolution. No suspension shall be permitted where such disputes exist if an agency has paid the undisputed billings.

11. *Shipment weight and charge for multiple packages.* Rates applicable under this regulation will be assessed on the total weight of each shipment moving at one time from one consignor to one consignee. For example, if four packages weigh one pound each, the applicable charge of the shipment will be computed at the rate applicable to one 4-pound package.

12. *Agency procedures for obtaining service.* a. Picking service as noted in subpar. 6c may be ordered on an as-needed basis. In most instances, the contractor can provide pickup service within one hour of the original pickup request. However, agencies should provide the contractor with as much advance pickup notice as possible to assure a timely pickup. For repetitive shipments, agencies may arrange with the contractor to install "lock boxes" and/or furnish regular pickup service at specified times on specified days to meet the shipper's requirements. Agencies should arrange such security clearances and passes as may be necessary to enable the contractor to perform pickup services in a timely fashion in accordance with agency procedures.

b. When and where practicable, agencies shall minimize transportation and administrative costs by consolidating into one shipment packages moving at one time from one consignor to one consignee.

c. Agencies shall determine the weight of each shipment and have the weight indicated on the appropriate commercial form. The total weight of a shipment shall be rounded to the next whole pound. Shipments weighing less than 8 ounces shipped in a Letter Pak shall be shown as Letter Pak and shipments weighing over 8 ounces but less than 1 pound shall be shown as weighing 1 pound.

d. When the Government requires additional services (such as Saturday pickup service, Saturday delivery service, holiday pickup service, holiday delivery service, dangerous goods service, collect on delivery service, and excess declared value), an agency shall request these services in writing on the airbill.

e. Where the Government requires special services beyond the scope of the contract (such as escorted courier services, heavyweight service, international service), an agency will have the option either to purchase these services from the contractor or another carrier.

f. Agencies shall provide the contractor with a billing address at the time an agency account is established. To ensure that billings are directed to the proper paying office and subsequent payments are credited, agencies may establish a centralized payment system or clearly identify individual shipping activities/accounts to which billings are to be directed.

g. When an agency uses a purchase order (PO), blanket purchase agreement (BPA), or other simplified procedure as permitted by title 48, Code of Federal Regulations, Subpart 13.2, to order service with the contractor, such instruments should provide the following information:

(1) Name of contractor;
(2) Account number(s);
(3) GSA contract number GS-00F-13300;
(4) Purchase order number;
(5) "Bill to" address;
(6) Term of the BPA/PO; and
(7) Total dollar value authorized under the BPA/PO.

Some agencies may require more than one account number per ordering activity if they wish to differentiate billing of different type shipments.

h. The contractor's Government coordinator may be contacted to establish accounts or resolve service issues.

13. *Contractor performance.* The performance of contractor responsibilities as specified in par. 8 is essential to meet the objectives for which the express small package contract and these regulations were developed. Agency accounts using this contract should notify their agency Contracting Officer's Representative (COR), in writing, when the contractor fails to meet its contractual responsibilities. If the agency COR is unable to resolve the problem with the contractor, then the problem should be referred to the Contracting Officer's Technical Representative (COTR), GSA Transportation Management Division (FBX), Washington, DC 20406.

14. *Comments.* Comments and recommendations concerning use of this program or implementing regulations may be submitted to the General Services Administration, Transportation Management Division (FBX), Washington, DC 20406.

Richard G. Austin,

Administrator of General Services.

FEDERAL EXPRESS CONTRACT SERVICE RATES

[Continental U.S., Alaska, Hawaii, and Puerto Rico]

Weight (lbs.)	Price
FedEx Letter Pak (up to 8 oz.)	$3.75
1	3.99
2	3.99
3	3.99
4	4.80
5	5.61
6	6.42
7	7.23
8	8.04
9	8.85
10	9.66
11	10.47
12	11.28
13	12.09
14	12.90
15	13.71
16	14.35
17	14.99

FEDERAL EXPRESS CONTRACT SERVICE RATES—Continued

[Continental U.S., Alaska, Hawaii, and Puerto Rico]

Weight (lbs.)	Price
18	15.63
19	16.27
20	16.91
21	17.55
22	18.19
23	18.83
24	19.47
25	20.11
26	20.75
27	21.39
28	22.03
29	22.67
30	23.31
31	23.95
32	24.59
33	25.23
34	25.87
35	26.51
36	27.15
37	27.79
38	28.43
39	29.07
40	29.71
41	30.35
42	30.99
43	31.63
44	32.27
45	32.91
46	33.55
47	34.19
48	34.83
49	35.47
50	36.11
51	36.75
52	37.39
53	38.03
54	38.67
55	39.31
56	39.95
57	40.59
58	41.23
59	41.87
60	42.51
61	43.15
62	43.79
63	44.43
64	45.07
65	45.71
66	46.35
67	46.99
68	47.63
69	48.27
70	48.91
71	49.55
72	50.19
73	50.83
74	51.47
75	52.11
76	52.75
77	53.39
78	54.03
79	54.67
80	55.31
81	55.95
82	56.59
83	57.23
84	57.87
85	58.51
86	59.15
87	59.79
88	60.43
89	61.07
90	61.71
91	62.35
92	62.99
93	63.63
94	64.27

FEDERAL EXPRESS CONTRACT SERVICE RATES—Continued

[Continental U.S., Alaska, Hawaii, and Puerto Rico]

Weight (lbs.)	Price
95	64.91
96	65.55
97	66.19
98	66.83
99	67.47
100	68.11
101	68.75
102	69.39
103	70.03
104	70.67
105	71.31
106	71.95
107	72.59
108	73.23
109	73.87
110	74.51
111	75.15
112	75.79
113	76.43
114	77.07
115	77.71
116	78.35
117	78.99
118	79.63
119	80.27
120	80.91
121	81.55
122	82.19
123	82.83
124	83.47
125	84.11
126	84.75
127	85.39
128	86.03
129	86.67
130	87.31
131	87.95
132	88.59
133	89.23
134	89.87
135	90.51
136	91.15
137	91.79
138	92.43
139	93.07
140	93.71
141	94.35
142	94.99
143	95.63
144	96.27
145	96.91
146	97.55
147	98.19
148	98.83
149	99.47
150	100.11

FEDERAL EXPRESS ADDITIONAL CONTRACT SERVICE RATES

	Per shipment
Saturday pickup service	$3.50
Saturday delivery service	3.50
Holiday pickup service[1]	3.50
Holiday delivery service[1]	3.50
Dangerous goods service	5.00
Collect on delivery service	5.00
Address correction	3.00
Rebill	3.00
No/invalid account number on airbill	5.00
Excess declared value	([2])

[1] Activities requesting holiday service must make prior arrangements with the Federal Express Government Sales Office, Greenbelt, Maryland, before this service will be provided.

[2] 0.30 per $100.00 or part thereof of declared value over the greater of $250.00 or $9.07/lb. per package. Maximum declared value per package $25,000.

[FR Doc. 91-17547 Filed 7-23-91; 8:45 am]

BILLING CODE 6820-24-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 61 and 69

[CC Docket Nos. 89-79, 87-313, FCC 91-186]

Creation of Access Charge Subelements for Open Network Architecture and Policy and Rules Concerning Rates for Dominant Carriers

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule.

SUMMARY: The Commission amends its part 69 access charge rules to enable the Bell Operating Companies (BOCs) and other local exchange carriers (LECs) desiring to implement Open Network Architecture (ONA) to offer unbundled ONA services. The Commission also modifies the interim pricing test for new services adopted in the LEC Price Cap Reconsideration Order to provide carriers with additional pricing flexibility. The showing for LEC rates for new services may now include a demonstration that the service is especially risky. LECs will also be allowed to justify non-uniform allocation of overheads. In addition, the Commission requires that the existing feature groups offered by the BOCs be eliminated after a transition period. The Commission expects these actions to stimulate the introduction of innovative new enhanced services.

EFFECTIVE DATE: August 23, 1991.

FOR FURTHER INFORMATION CONTACT: Mark S. Nadel, Common Carrier Bureau, (202) 632-6363.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

Public reporting burden for the collections of information is estimated to average 258.13 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden, to the Federal Communications Commission, Office of Managing Director, Paperwork Reduction Project (3060-0298), Washington, DC 20554 and to the Office of Management and Budget, Paperwork Reduction Project (3060-0298), Washington, DC 20503.

Background

CC Docket 89-79: Notice of Proposed Rulemaking, Amendments of part 69 of the Commission's rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, CC Docket 89-79. *Adopted:* March 30, 1989. *Released:* May 9, 1989. 54 FR 20873 (May 15, 1988).

CC Docket No. 87-313: Notice of Proposed Rulemaking. Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313. *Adopted:* August 4, 1987. *Released:* August 21, 1987. 52 FR 33962 (Sept. 9, 1987). By the Commission. Further Notice of Proposed Rulemaking, CC Docket No. 87-313. *Adopted:* May 12, 1988. *Released:* May 23, 1988. 53 FR 22356 (June 15, 1988). By the Commission. Supplemental Notice of Proposed Rulemaking, CC Docket No. 87-313. *Adopted:* March 8, 1990. *Released:* March 12, 1990. 55 FR 12526 (Apr. 4, 1990). By the Commission. Second Report and Order, CC Docket No. 87-313. *Adopted:* September 19, 1990. *Released:* October 4, 1990. 55 FR 42375 (Oct. 19, 1990). By the Commission. Commissioner Duggan concurring in part and dissenting in part and issuing a separate statement. Order on Reconsideration, CC Docket No. 87-313, *Adopted:* April 9, 1991. *Released:* April 17, 1991. 56 FR 21612 (May 10, 1991). By the Commission.

Summary of Report and Order and Order on Further Reconsideration

This is a summary of the Commission's Report and Order and Supplemental Notice of Proposed Rulemaking in Amendments of part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, CC Docket No. 89-79 and Order on Further Reconsideration in Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313; FCC 91-186, *Adopted:* June 13, 1991 and *Released:* July 11, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M St., NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1411 21st St., NW, Washington, DC 20037.

The Commission has amended its part 69 access charge rules to enable the Bell Operating Companies (BOCs), and other local exchange carriers (LECs) desiring to implement Open Network Architecture (ONA), to offer unbundled ONA services. This represents another major step towards the creation of an unbundled ONA environment, which should promote efficient and innovative use of the network by enhanced service providers. The BOCs must file tariffs on or before November 1, 1991, on 90 days' notice, to provide the initial ONA offerings.

The Commission also modified the interim pricing test for new services adopted in the LEC Price Cap Reconsideration Order. The modified test continues to provide protection against excessive new service prices by requiring price cap LECs to provide cost studies for all new service prices, including those of their initial basic service elements (BSEs) and basic serving arrangements (BSAs). However, the Commission modified the pricing rules to give price cap LECs some additional flexibility.

As part of the implementation of ONA, the Commission ordered the BOCs to replace existing feature groups with BSE features and functions and the underlying BSA access arrangements. However, because interexchange carriers (IXCs) said they would need time to adjust their ordering and billing systems to handle such a modification, the Commission provided a transaction period during which the feature groups will continue to be available alongside the unbundled BSEs and BSAs. This will promote the timely implementation of ONA, while avoiding unnecessary disruptions to IXCs.

The BOCs will tariff all BSEs listed in approved ONA plans and will be permitted to tariff additional BSEs approved under an expedited review process. In addition, BOCs will tariff one trunkside and one lineside switched access BSA and a number of special access BSAs. BOCs that wish to offer additional switched access BSAs will be required to obtain waivers of the Commission's part 69 rules.

With respect to the cost showing for "new" services introduced by price cap LECs, the Commission said it will require the submission of cost studies, as in the interim approach of the LEC Price Cap Reconsideration Order. While LECs will be required to set their rates based on reasonable, consistent costing methodologies, they will be given the opportunity to select those methodologies, to justify reasonable non-uniform overhead loadings, and to seek higher returns on investment commensurate with the risks they assume. To address concerns that LECs might discriminate against ESPs that compete with LEC enhanced service operations, the Commission required the LECs to identify BSEs that will be used by LEC enhanced service operations.

Once initial BSA/BSE prices become effective and adequate historical data have been generated, the services will be brought under price caps, subject to an additional disclosure requirement. The order does not modify the price cap bands and baskets, but establishes new rules requiring the BOCs to report the percentage of the demand for each BSE that their own usage represents, thereby revealing any discriminatory pricing patterns. This represents a relatively unburdensome way of constraining the ability of a BOC to raise the price of the BSEs used by its competitors while lowering the price of the BSEs used by the BOC enhanced service operators.

The Commission retained, in its current form, the enhanced service provider (ESP) exemption for interstate access charges. It denied as unnecessary, in light of the adoption of the ONA pricing rules today, requests by Ameritech and Southwestern Bell for waivers of the part 69 access charge rules.

List of Subjects in 47 CFR parts 61 and 69

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Amendments to the Code of Federal Regulations

Title 47 of the CFR, parts 61 and 69 are amended as follows:

PART 61—TARIFFS

1. The authority citation for part 61 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply sec. 203, 48 Stat. 1070; 47 U.S.C. 203.

2. Section 61.49 is amended by adding a new paragraph (h) to read as follows:

§ 61.49 Supporting information to be submitted with letters of transmittal for tariffs of carriers subject to price cap regulation.

* * * * *

(h) Each tariff filing by a local exchange carrier that introduces a new service that will later be included in a basket must also be accompanied by

(1) The following, including complete explanations of the bases for the estimates.

(i) A study containing a projection of costs for a representative 12 month period; and

(ii) Estimates of the effect of the new tariff on the traffic and revenues from the service to which the new tariff applies, the carrier's other service classifications, and the carrier's overall traffic and revenues. These estimates must include the projected effects on the traffic and revenues for the same representative 12 month period used in paragraph (h)(1)(i) of this section.

(2) Working papers and statistical data.

(i) Concurrently with the filing of any tariff change or tariff filing for a service not previously offered, the Chief, Tariff Review Branch must be provided two sets of working papers containing the information underlying the data supplied in response to paragraph (h)(1) of this section, and a clear explanation of how the working papers relate to that information.

(ii) All statistical studies must be submitted and supported in the form prescribed in § 1.363 of the Commission's rules.

PART 69—ACCESS CHARGES

1. The authority citation for part 69 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

2. Section 69.2 is amended by adding the following new paragraph (mm) to read as follows:

§ 69.2 Definitions.

* * * * *

(mm) *Basic Service Elements* are optional unbundled features that enhanced service providers may require or find useful in the provision of enhanced services, as defined in Amendments of part 69 of the Commission's rules relating to the Creation of Access Charge Subelements for Open Network Architecture, Report and Order, 6 FCC Rcd ________, CC Docket No. 89–79, FCC 91–186 (1991).

3. Section 69.4 is amended by revising paragraph (b) to read as follows:

§ 69.4 Charges to be filed.

* * * * *

(b) Except as provided in subpart C of this part, in §§ 69.4 (c) and (d), and in § 69.118, the carrier's carrier charges for access service filed with this Commission shall include charges for each of the following elements:

(1) Limited pay telephone;

(2) Carrier common line;

ead loadings, and to
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enhanced service
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SEs that will be used
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(i) A study containing a projection of costs for a representative 12 month period; and

(ii) Estimates of the effect of the new tariff on the traffic and revenues from the service to which the new tariff applies, the carrier's other service classifications, and the carrier's overall traffic and revenues. These estimates must include the projected effects on the traffic and revenues for the same representative 12 month period used in paragraph (h)(1)(i) of this section.

(2) Working papers and statistical data.

(i) Concurrently with the filing of any tariff change or tariff filing for a service not previously offered, the Chief, Tariff Review Branch must be provided two sets of working papers containing the information underlying the data supplied in response to paragraph (h)(1) of this section, and a clear explanation of how the working papers relate to that information.

(ii) All statistical studies must be submitted and supported in the form prescribed in § 1.363 of the Commission's rules.

PART 69—ACCESS CHARGES

1. The authority citation for part 69 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

2. Section 69.2 is amended by adding the following new paragraph (mm) to read as follows:

§ 69.2 Definitions.

* * * * *

(mm) *Basic Service Elements* are optional unbundled features that enhanced service providers may require or find useful in the provision of enhanced services, as defined in Amendments of part 69 of the Commission's rules relating to the Creation of Access Charge Subelements for Open Network Architecture, Report and Order, 6 FCC Rcd ______, CC Docket No. 89–79, FCC 91–186 (1991).

3. Section 69.4 is amended by revising paragraph (b) to read as follows:

§ 69.4 Charges to be filed.

* * * * *

(b) Except as provided in subpart C of this part, in §§ 69.4 (c) and (d), and in § 69.118, the carrier's carrier charges for access service filed with this Commission shall include charges for each of the following elements:

(1) Limited pay telephone;
(2) Carrier common line;

(3) Local switching;
(4) Information;
(5) Common transport;
(6) Dedicated transport; and
(7) Special access.

* * * * *

4. Section 69.106 is amended by revising paragraph (a) to read as follows:

§ 69.106 Local switching.

(a) Except as provided in § 69.118, charges that are expressed in dollars and cents per access minute of use shall be accessed upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign services.

* * * * *

5. Section 69.107 is amended by revising paragraphs (a) and (b) to read as follows:

§ 69.107 Equal access.

(a) A monthly charge that is expressed in dollars and cents either per Feature Group D trunk, per presubscribed equal access line, or per trunk line that is receiving from a local exchange switch service that is substantially equivalent to the access provided for MTS or WATS, shall be assessed by telephone companies that implement an Equal Access element as provided in § 69.4(d) upon all interexchange carriers for either the interstate and foreign Feature Group D access service trunks the interexchange carriers uses, the interstate and foreign access service trunk lines receiving service substantially equivalent to the access provided for MTS or WATS from a local exchange switch, or the presubscribed equal access lines the carrier serves.

(b) A monthly charge per Feature Group D trunk or per trunk line that is receiving from a local exchange switch service that is substantially equivalent to the access provided for MTS or WATS shall be computed by dividing the projected annual revenue requirement for the Equal Access element by twelve times the projected annual average number of the total of interstate and foreign Feature Group D access service trunks and interstate and foreign access service trunk lines receiving service substantially equivalent to the access provided for MTS or WATS from a local exchange switch.

* * * * *

6. Section 69.109 is amended by revising paragraph (b) to read as follows:

§ 69.109 Information.

* * * * *

(b) Except as provided in § 69.118, if such connections are maintained exclusively by carriers that offer MTS, the projected annual revenue requirement for the Information element shall be divided by 12 to compute the monthly assessment to such carriers.

* * * * *

7. Section 69.111 is amended by revising paragraph (a) to read as follows:

§ 69.111 Common transport.

(a) Except as provided in § 69.118, a charge that is expressed in dollars and cents per access minute shall be accessed upon all interexchange carriers that use

(1) Switching or transmission facilities that are apportioned to the Common Transport element for purposes of apportioning net investment, or

(2) Equivalent facilities offered by carriers subject to price cap regulation as the term is defined in § 61.3(v) of this chapter.

* * * * *

8. Section 69.112 is amended by revising paragraph (b) introductory text to read as follows:

§ 69.112 Dedicated transport.

* * * * *

(b) Appropriate subelements shall be established for the use of interface arrangements. Except as provided in § 69.118, charges for such subelements shall be assessed and computed as follows:

* * * * *

9. Section 69.113 is amended by revising paragraph (a) and adding a new paragraph (e) to read as follows:

§ 69.113 Non-premium charges for MTS–WATS equivalent services.

(a) Charges that are computed in accordance with this section shall be assessed upon interexchange carriers or other persons that receive access that is not deemed to be premium access (as this term is defined in § 69.105(b)(1)) in lieu of carrier charges that are computed in accordance with §§ 69.105, 69.106, 69.111, 69.112 and 69.118.

* * * * *

(e) The non-premium charge for any BSEs in transport or local switching shall be computed by multiplying the premium charge for the corresponding BSEs by .45.

10. New § 69.118 is added to read as follows:

§ 69.118 Traffic sensitive switched services.

Notwithstanding §§ 69.4(b), 69.106, 69.109, 69.111, and 69.112, telephone companies subject to the BOC ONA Order, 4 Fcd Rcd 1 (1988), shall, and other telephone companies may, establish approved Basic Service Elements as provided in amendments of part 69 of the Commission's rules relating to the Creation of Access Charge Subelements for Open Network Architecture, Report and Order, 6 FCC Rcd ______, CC Docket No. 89–79, FCC 91–186 (1991). Telephone companies shall take into account revenues from the relevant Basic Service Element or Elements in computing rates for the Local Switching, Common Transport, Dedicated Transport, and/or Information elements.

11. New § 69.119 is added to read as follows:

§ 69.119 Basic service element expedited approval process.

The rules for filing comments and reply comments on requests for expedited approval of new basic service elements are those indicated in § 1.45 of the rules, except as specified otherwise.

12. Section 69.205 is amended by revising paragraph (a) to read as follows:

§ 69.205 Transitional premium charges.

(a) Charges that are computed in accordance with this section shall be asessed upon interexchange carriers or other persons that receive premium access in lieu of carrier charges that are computed in accordance with §§ 69.106, 69.111, 69.112, and 69.118 of this part if any carrier or other person does not receive premium access, as this term is defined in § 69.105.

* * * * *

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 91–17340 Filed 7–23–91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

48 CFR Part 352

Acquisition Regulation; Publication

AGENCY: Department of Health and Human Services (HHS).

ACTION: Interim rule with request for comments.

SUMMARY: The Department of Health and Human Services is amending its acquisition regulation (HHSAR), Title 48, Code of Federal Regulations, Chapter 3, to add a contract clause which will be

included in all solicitations and resultant contracts.

DATES: *Effective Date:* July 24, 1991. *Comment Date:* Comments may be submitted to the Department at the address shown below on or before September 9, 1991.

ADDRESSES: Interested parties should submit typed comments to: Division of Acquisition Policy, Department of Health and Human Services—room 513 D, 200 Independence Avenue, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Mr. Ed Lanham, at the above address, (202) 245–8890.

SUPPLEMENTARY INFORMATION: The Department is amending its acquisition regulation to add a contract clause to be included in all solicitations and resultant contracts. The clause, title "Publications and Publicity," has been determined to be necessary to allow publication of work accomplished under a departmental contract while requiring that the contractor acknowledge that the publication does not necessarily reflect the views of the Department, nor does it imply endorsement by the Department. The Department has determined it is essential to put the referenced clause into effect immediately; however, the Department also recognizes that imposing a clause on its contractor community should not be done on a unilateral basis. Hence, the Department is seeking comments concerning the clause, and will consider any and all comments received by the due date in formulating the finalization of the rule.

The Department of Health and Human Services certifies this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.); therefore, no regulatory flexibility statement has been prepared. Furthermore, this document does not contain information collection requirements needing approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

The provisions of this regulation are issued under 5 U.S.C. 301; 40 U.S.C. 486(c).

List of Subjects in 48 CFR Part 352

Government procurement.

Accordingly, the Department of Health and Human Services amends 48 CFR chapter 3 as set forth below.

Dated: July 18, 1991

Terrence J. Tycban,

Director, Office of Acquisition and Grants Management.

As indicated in the preamble, chapter 3 of title 48 Code of Federal Regulations is amended as shown.

1. The authority citation for part 352 continues to read as follows:

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

PART 352—[AMENDED]

Subpart 352.2 [Amended]

2. Subpart 352.2 is amended by adding section 352.270–6 as follows:

352.270–6 Publication and publicity.

Insert the following clause in all solicitations and resultant contracts.

Publications and Publicity (JUL 1991)

(a) Unless otherwise specified in this contract, the Contractor is encouraged to publish, and make available through accepted channels, the results of its work under this contract. A copy of each article submitted by the Contractor for publication shall be promptly sent to the Project Officer. The Contractor shall also inform the Project Officer when the article or other publication is published, and furnish a copy of it as finally published.

(b) The Contractor shall include in any publication resulting from work performed under this contract a disclaimer reading as follows:

The content of this publication does not necessarily reflect the views or policies of the Department of Health and Human Services, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government.

(End of Clause)

[FR Doc. 91–17506 Filed 7–23–91; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF TRANSPORTATION

49 CFR Part 40

Announcement of Drug Testing Conference on Urine Specimen Collection

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of conferences on urine specimen collection procedures for DOT regulated drug testing.

SUMMARY: The Department of Transportation (DOT) is sponsoring three training conferences on urine specimen collection procedures required in the DOT drug testing regulations. This notice should not be confused with a previous notice of two conferences on consortia-operated drug testing programs which appeared in the **Federal Register** on July 3, 1991 (30513). This notice concerns the dates, locations, agenda, and registration information for the specimen collection conferences.

DATES: The conference will be held in three cities, Baltimore, MD, Houston, TX; and St. Louis, MO. The Houston conference will be held September 19, 1991; the St. Louis conference is scheduled for September 24, 1991 and the Baltimore conference is October 2, 1991.

FOR FURTHER INFORMATION CONTACT: RII, Inc., 1010 Wayne Avenue, suite 300, Silver Spring, MD 20910 Phone: (301) 565–4048.

SUPPLEMENTARY INFORMATION: In November 1988, the Department of Transportation published regulations requiring drug testing programs in the aviation, maritime, railroad, mass transit, pipeline, and motor carrier industries. Employers in these industries should have begun drug testing no later than December 1990. Procedures required for specimen collection, drug testing, and review and interpretation of test results, are prescribed in 49 CFR part 40 (54 FR 49854). The Department recognizes that the required specimen collection procedures are complex and may seem cumbersome. Therefore, the DOT is providing this opportunity for specific training regarding the procedures.

The specimen collection conferences are designed to provide specific information and training to personnel who collect and process urine specimens. The conference agenda will include a thorough review of the collection procedures, to include maintaining security and integrity of the specimen and documenting the collection process on the custody and control form. The conference format will provide for "hands on" training in the correct implementation of procedures outlined in 49 CFR part 40.

The conferences will provide a forum for discussing the DOT drug testing rules as they apply to the specimen collection process. Special circumstances and "problem collections" will be presented and discussed. The conferences are designed for participants who are directly involved in specimen collection. The emphasis is on procedure not policy development. Participation is appropriate for clinic, hospital, laboratory, or other employees who serve as collection site persons. Again, these conferences should not be confused with the conference on consortia-operated drug testing programs which will be held during the first two weeks of September in quisition and Grants

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The conferences will provide a forum for discussing the DOT drug testing rules as they apply to the specimen collection process. Special circumstances and "problem collections" will be presented and discussed. The conferences are designed for participants who are directly involved in specimen collection. The emphasis is on procedure not policy development. Participation is appropriate for clinic, hospital, laboratory, or other employees who serve as collection site persons. Again, these conferences should not be confused with the conference on consortia-operated drug testing programs which will be held during the first two weeks of September in

Washington, DC and Denver, CO. The consortia conferences are planned to provide information about implementation of the DOT drug rules using consortia operations. The specimen collection conferences are designed as training sessions to improve the basic understanding and skill of collection site personnel.

The conferences will be one day in length. Due to the "hands on" nature of the training event, each conference is limited to 150 participants. Registration will be accepted on a first come-first served basis. The conference registration fee will be $25 per person. All conference attendees are responsible for their own travel, lodging, and incidental expenses. We request that specimen collection facilities and regulated employers limit participation to no more than two attendees. Training materials suitable for on-site education/training of collection site personnel will be available.

For registration materials and information, you should contact RII, Inc., 1010 Wayne Avenue, suite 300, Silver Spring, MD 20910 Phone: (301) 565–4048, Fax: (301) 587–4138.

Robert A. Knisely,

Special Assistant to the Secretary and Director for Drug Enforcement and Program Compliance, U.S. Department of Transportation.

[FR Doc. 91–17507 Filed 7–23–91; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

[Docket No. 910512-1160]

Reef Fish Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: The Secretary of Commerce (Secretary) changes the commercial quota and total allowable catch (TAC) for red snapper in the Gulf of Mexico reef fish fishery in accordance with the framework procedure of the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), as amended. This notice establishes for red snapper an annual commercial quota of 2.04 million pounds. Coupled with the retention of the existing 7-fish recreational bag limit, this results in a TAC for 1991 of 4.0 million pounds. The intended effect is to protect the overfished red snapper resource while still allowing catches by important recreational and commercial fisheries that are dependent on red snapper.

EFFECTIVE DATE: August 23, 1991.

FOR FURTHER INFORMATION CONTACT: Robert A. Sadler, 813–893–3722.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP prepared and amended by the Gulf of Mexico Fishery Management Council (Council), and its implementing regulations at 50 CFR part 641, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

In accordance with the framework procedure of the FMP, the Council recommended and NOAA published a proposed rule to implement a TAC for red snapper of 4.0 million pounds by (1) establishing a commercial quota of 2.04 million pounds; and (2) retaining the 7-fish recreational bag limit (56 FR 23044, May 20, 1991). The proposed rule described the framework procedure and explained the rationale for the proposed TAC and commercial quota. They are not repeated here.

Comments and Responses

Comment: A sportfishing association objected to the proposed 4.0-million-pound TAC for red snapper. The overfished status of the resource, partially due to large numbers of juvenile red snapper incidentally caught in shrimp trawls, was cited as justification for a more conservative allocation. The commenter also objected to the target year of 2007 proposed under amendment 3 for rebuilding the red snapper resource, suggesting that the rebuilding schedule be extended only to 2001.

Response: The Council's proposal responds to NMFS analyses and public testimony indicating that the 7-fish bag limit, along with the 13-inch minimum size limit, for red snapper reduced recreational fishing mortality significantly more than the 20 percent targeted under amendment 1. The Council also was presented resource survey recruitment indices showing increases for the last 3 years, suggesting that the resource is recovering, or that shrimp trawl bycatch may be having less of an effect on the red snapper population than had been perceived previously. However, wide confidence limits in the indices over the last 3 years, and especially in 1990, restrict their reliability. Nonetheless, these data, coupled with recovery dates projected by the computer model, suggest that immediate reductions in TAC of the magnitude formerly anticipated may not be necessary. In response, the Council selected a 4.0-million-pound TAC, a reduction of 1.1 million pounds from the 1990 TAC. NOAA supports this adjustment as another step in a series that will further reduce red snapper fishing mortality while maintaining the economic structure of the fishery and associated industries.

This rule adjusts the allowable catch of red snapper. It does not address the target date for recovery of the reef fish resource, including red snapper, and does not address the incidental catch of juvenile red snapper in the shrimp fishery. Therefore, the rebuilding schedule and the problem of incidental catch are outside the scope of this rule. Under amendment 3, the Council proposed an extension of the target date from January 1, 2000, to January 1, 2007, as a more reasonable timeframe for rebuilding the red snapper resource. During the 45-day comment period on amendment 3, no comments were received on the proposed extension. The Secretary approved amendment 3 on June 5, 1991. Reduction of the incidental catch of red snapper in the shrimp trawl fishery is limited by the 1990 amendment to the Magnuson Act (Pub. L. 101–627), which prohibits gear restrictions to reduce incidental catch in the shrimp fishery until 1994. However, reduction of red snapper incidental catch in the shrimp fishery is expected to be the subject of a future amendment to the FMP.

Comment: A commercial fishing organization generally supported the proposed TAC and suggested that a program designed to limit entry into the red snapper fishery be considered.

Response: A system that would distribute the allowable catch to certain participants in the fishery is outside the scope of this rule. The Council may develop a management program to restrict access to the reef fish fishery, possibly similar to that envisioned by the commenter. Such a program, if submitted by the Council, will be thoroughly reviewed for consistency with the Magnuson Act and made available for public comment at the appropriate time.

Comment: One Council member submitted a minority report objecting to the proposed TAC and commercial quota on the grounds that the status of the resource dictates a more conservative management approach. The minority report recommended rejection of the Council proposal, followed by implementation by the Secretary of a 3.6-million-pound TAC, 1.84-million-pound commercial quota, and 5-fish bag limit.

Response: The minority proposal offers only a 10 percent reduction in the Council's proposed TAC and, therefore, would be of limited value in restoring the resource at a faster rate. Furthermore, disapproval of the current proposal and subsequent preparation of a rule by the Secretary would delay implementation of any conservation measures until late in the fishing year. The FMP provides a 3-year window for a series of TACs to be set at levels above those projected for the stock to recover fully by the target year (i.e., by 2007). Accordingly, NOAA supports the adjustment, the first in the 3-year timeframe starting in 1991, which minimizes short-term social and economic impacts while continuing the rebuilding program.

The Regional Director, Southeast Region, NMFS, concurs that the Council's recommended commercial quota for red snapper is necessary to protect the resource and finds that it is consistent with the goals and objectives of the FMP, as amended. In addition, NOAA finds that it is consistent with the Magnuson Act and other applicable law. Accordingly, the Council's recommended red snapper commercial quota is implemented for the fishing year that commenced January 1, 1991.

Other Matters

This action is authorized by the FMP and complies with E.O. 12291.

List of Subjects in 50 CFR Part 641

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 18, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 641 is amended as follows:

PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 641 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 641.25, paragraph (a) is revised to read as follows:

§ 641.25 Commercial quotas.

* * * * *

(a) Red snapper—2.04 million pounds.

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[FR Doc. 91-17505 Filed 7-18-91; 4:41 pm]

BILLING CODE 3510-22-M

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50 CFR Part 651

[Docket No. 901246-1100]

RIN 0648-AC88

Northeast Multispecies Fishery; Correction

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; correction.

SUMMARY: NOAA issues this document to correct the final rule to implement Amendment 4 to the Fishery Management Plan for the Northeast Multispecies Fishery (FMP) published May 31, 1991 (56 FR 24724, corrected by 56 FR 26774, June 11, 1991, and by 56 FR 27786, June 17, 1991). As originally submitted by the New England Fishery Management Council (Council), Amendment 4 required that vessels fishing with trawl nets for yellowtail flounder in the Southern New England yellowtail area use a 5½ inch (13.97 cm) minimum mesh. The amendment qualified this requirement by making it applicable only to at least 75 meshes counted from the terminus of the net. However, through an oversight, the draft regulations implementing Amendment 4 as submitted to NMFS did not include the 75-mesh qualification. Neither the proposed nor the final regulations corrected this oversight. Therefore, this document is being issued to correct the inconsistency between Amendment 4 and the implementing regulations.

EFFECTIVE DATE: June 27, 1991.

FOR FURTHER INFORMATION CONTACT: Jack Terrill (NMFS, Resource Policy Analyst), 508-281-9252.

SUPPLEMENTARY INFORMATION: One of the measures approved in Amendment 4 and implemented by the final rule is a 5½ inch (13.97 cm) minimum mesh size in the Southern New England Yellowtail Area (§ 651.20(a)(3)). The implementing regulations currently require that the minimum mesh size apply throughout the entire net. However, the measure had originally been proposed by the Council as applying only to at least the last 75 meshes of the net. This was presented as the preferred alternative to the public for comment at several hearings and was approved by the Council for inclusion in Amendment 4. The preamble to the proposed rule (56 FR 979, January 10, 1991) correctly included the qualification that the minimum mesh would apply to 75 meshes from the end of the net in trawl nets. However, through an oversight, the amendatory language in the proposed rule to revise § 651.21 did not reflect this qualification. No public comments were received on the measure or the discrepancy between Amendment 4 and the proposed amendatory language during the public comment period on the proposed rule. The final rule also failed to include the clarifying language, that the minimum mesh size requirement applies to at least the last 75 meshes forward of the terminus of the net. The publication of the final rule and the subsequent notification to the industry prompted questions by the industry on the specifics of the mesh-size requirement. A review of the proposed rule and the amendment determined that an error had occurred in the amendatory language of the proposed and final rules.

Failure to implement this correction immediately would result in a regulatory requirement that is an unnecessary and an unintended economic burden contrary to the public interest. This correction will correctly implement 5½ inch (13.97 cm) minimum mesh requirement for at least 75 meshes from the terminus of the trawl net.

In rule document 91-12894, beginning on page 24724, in the issue of May 31, 1991, make the following corrections.

PART 651—[CORRECTED]

§ 651.20 [Amended]

1. On page 24727, in the third column, § 651.20(b) should read as follows: (b) *Trawl nets.*—(1) *Diamond mesh.* (i) Except as provided for in §§ 651.20(b)(3), 651.20(d), and 651.22, the minimum mesh size for any trawl net, including midwater trawls or Scottish seine, used by a vessel fishing in the mesh are described in paragraphs (a)(1) and (a)(2) of this section, is 5½ inches (13.97 cm) throughout the entire net.

(ii) The minimum mesh size for any trawl net, including midwater trawls or Scottish seine, used by a vessel fishing in the mesh are described in paragraph (a)(3) of this section, is 5½ inches (13.97 cm) for at least 75 continuous meshes forward of the terminus of the net.

* * * * *

Dated: July 18, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 91-17559 Filed 7-23-91; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 672

[Docket No. 901184-1042]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

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received on the measure or the discrepancy between Amendment 4 and the proposed amendatory language during the public comment period on the proposed rule. The final rule also failed to include the clarifying language, that the minimum mesh size requirement applies to at least the last 75 meshes forward of the terminus of the net. The publication of the final rule and the subsequent notification to the industry prompted questions by the industry on the specifics of the mesh-size requirement. A review of the proposed rule and the amendment determined that an error had occurred in the amendatory language of the proposed and final rules.

Failure to implement this correction immediately would result in a regulatory requirement that is an unnecessary and an unintended economic burden contrary to the public interest. This correction will correctly implement 5½ inch (13.97 cm) minimum mesh requirement for at least 75 meshes from the terminus of the trawl net.

In rule document 91-12894, beginning on page 24724, in the issue of May 31, 1991, make the following corrections.

PART 651—[CORRECTED]

§ 651.20 [Amended]

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(ii) The minimum mesh size for any trawl net, including midwater trawls or Scottish seine, used by a vessel fishing in the mesh are described in paragraph (a)(3) of this section, is 5½ inches (13.97 cm) for at least 75 continuous meshes forward of the terminus of the net.

* * * * *

Dated: July 18, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 91-17559 Filed 7-23-91; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 672

[Docket No. 901184-1042]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director of the Alaska Region, NMFS (Regional Director), has determined that the total allowable catch (TAC) specified for pollock in the third quarter of 1991 for the Central pollock subarea of the Gulf of Alaska soon will be reached. The Regional Director is establishing a directed fishing allowance and the directed fishery for pollock in that subarea is closed. This action is necessary to prevent the TAC of pollock in the Central pollock subarea for the third quarter from being exceeded. The intent of this action is to ensure optimum use of groundfish while conserving pollock stocks.

DATES: Effective 12 noon, A.l.t., July 20, 1991, through 24:00 midnight, A.l.t., September 29, 1991.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone within the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and is implemented by regulations appearing at 50 CFR 611.92 and parts 620 and 672.

The amount of a species or species group apportioned to a fishery is TAC, as stated in § 672.20(c)(1). Under § 672.20(a)(2)(v), the TAC for pollock in the Western and Central Regulatory Areas is apportioned equally to the Western pollock subarea (combined regulatory areas 61 and 62) and the Central pollock subarea (regulatory area 63). Each apportionment is divided equally into four quarterly reporting periods of the fishing year. The announcement of initial harvest specifications for pollock for the 1991 fishing year established a TAC of pollock for the Central pollock subarea as 50,000 metric tons (mt) or, for each quarter, 12,500 mt plus or minus that quarter's proportional share of over or under harvest from prior quarters (56 FR 28112; June 19, 1991). The cumulative amount of pollock available for harvest for the Central pollock subarea through the third quarter of 1991 is 36,065 mt.

Under § 672.20(c)(2), the Regional Director has determined that the catch of pollock in the Central pollock subarea will reach 35,165 mt by July 20, 1991. The remaining 900 mt of pollock will be necessary for bycatch to support remaining groundfish fisheries in the Central pollock subarea during the third quarter.

With this action the Regional Director is establishing a directed fishing allowance of 35,165 mt, and is prohibiting directed fishing for pollock in the Central pollock subarea of the Gulf of Alaska for the remainder of the third quarter.

Under § 672.20(g)(3), during the effective dates of this action, vessels fishing in the Central pollock subarea (regulatory area 63) may not retain, at any particular time during a trip, pollock in an amount equal to or greater than 20 percent of the amount of all other fish species retained at the same time by the vessel during the same trip.

Classification

This action is taken under 50 CFR 672.20 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 19, 1991.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-17558 Filed 7-19-91; 2:58 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 142
Wednesday, July 24, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS No. 1436-91]

Aliens in Religious Occupations (R Nonimmigrants)

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule implements provisions of section 209 of the Immigration Act of 1990, Public Law 101–649, November 29, 1990, by providing procedures for admission to the United States of nonimmigrant religious workers under section 101(a)(15)(R) of the Immigration and Nationality Act (Act). This rule will conform Immigration and Naturalization Service (Service) policy as it relates to this classification, and clarify for the general public and religious organizations requirements for classification, admission, and maintenance of status.

DATES: Written comments must be submitted on or before August 23, 1991.

ADDRESSES: Please submit written comments, in triplicate, to Records Systems Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., room 5304, Washington, DC 20536. To ensure proper handling, please reference the INS number 1436–91 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Edward H. Skerrett, Senior Immigration Examiner, or Carla J. Hengerer, Immigration Examiner, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., room 7122, Washington, DC 20536, telephone (202) 514–3946.

SUPPLEMENTARY INFORMATION: Section 101(a)(15) of the Immigration and Nationality Act has been amended by the Immigration Act of 1990 with the addition of a nonimmigrant classification for religious workers. This marks the first time such workers have had a specific nonimmigrant classification available to them. Prior to this legislation, aliens seeking entry as religious workers were admitted in existing nonimmigrant categories such as B–1 Visitor for Business, H Temporary Worker, or L–1 Intracompany Transferee.

Section 209 of Public Law 101–649 requires that the religious worker must have been, for at least the two years immediately preceding the time of application for admission, a member of a religious denomination having a bonafide religious organization in the United States. The alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of the religious denomination; or, at the religious organization's request, to work for the religious organization in a professional capacity, or to work in a religious vocation or occupation for the religious organization, or a bonafide organization which is affiliated with the religious denomination and which is exempt from taxation as a religious organization described in section 501(c)(3) of the Internal Revenue Code of 1986.

There is no requirement, as there is in the provision for the immigrant religious worker, that the nonimmigrant religious worker has been carrying on such vocation of minister, professional work, or other work continuously for at least the two-year period immediately preceding the time of application for admission.

Proposed Changes in 8 CFR 214.2

Paragraph (r)(1) of these regulations contains a restatement of the basic statutory requirements for classification as a religious worker.

Paragraph (r)(2) contains definitions of terms used within the proposed regulation.

Paragraph (r)(3) provides initial evidence requirements. There is no prior petition, labor certification, or prior approval required. An alien seeking classification as a religious worker would make application directly to a United States consular officer or, if visa exempt, to an immigration officer at a United States port of entry. A certificate showing that the religious organization in the United States for which the alien would be providing services is tax exempt in accordance with section 501(c)(3) of the Internal Revenue Code of 1986, as it applies to religious organizations, would be required. Additionally, the alien would be required to provide a letter from an authorized official of the religious organization in the United States. That letter would include statements regarding the affiliation between the religious organization in the United States and abroad; the duration of the alien's membership in the religious denomination; authorization to function as a minister, attainment of a baccalaureate degree, or relation of the work to be done to a religious vocation or occupation; arrangements for remuneration for services; and the name and exact location of the organizational unit for which the alien will be providing services.

An initial admission period of three years is authorized in paragraph (r)(4) for the principal alien, spouse, and unmarried children under the age of 21. Also, the Form I–94 Arrival-Departure Record of the principal alien will be endorsed with the name and location of the organizational unit of the religious organization for which the services will be provided. The admission symbol for a religious worker will be R–1; the admission symbol for a spouse or children will be R–2.

Although a petition is not required for initial visa issuance or admission, paragraph (r)(5) provides that the organizational unit of the religious organization employing the alien shall file a petition on Form I–129, Petition for Nonimmigrant Worker, to extend the alien's stay. An extension of stay may be authorized for a period of up to two years. The religious worker's total period of stay in the United States may not exceed five years. The petition must be accompanied by a letter from an authorized official of the religious denomination confirming the worker's continuing eligibility for R–1 classification.

Prior to the worker changing or adding an employer within the religious denomination, the new or additional organizational unit must file an I–129 petition with the Service for such change or addition. This requirement is contained in paragraph (r)(6).

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showing that the religious organization in the United States for which the alien would be providing services is tax exempt in accordance with section 501(c)(3) of the Internal Revenue Code of 1986, as it applies to religious organizations, would be required. Additionally, the alien would be required to provide a letter from an authorized official of the religious organization in the United States. That letter would include statements regarding the affiliation between the religious organization in the United States and abroad; the duration of the alien's membership in the religious denomination; authorization to function as a minister, attainment of a baccalaureate degree, or relation of the work to be done to a religious vocation or occupation; arrangements for remuneration for services; and the name and exact location of the organizational unit for which the alien will be providing services.

An initial admission period of three years is authorized in paragraph (r)(4) for the principal alien, spouse, and unmarried children under the age of 21. Also, the Form I-94 Arrival-Departure Record of the principal alien will be endorsed with the name and location of the organizational unit of the religious organization for which the services will be provided. The admission symbol for a religious worker will be R-1; the admission symbol for a spouse or children will be R-2.

Although a petition is not required for initial visa issuance or admission, paragraph (r)(5) provides that the organizational unit of the religious organization employing the alien shall file a petition on Form I-129, Petition for Nonimmigrant Worker, to extend the alien's stay. An extension of stay may be authorized for a period of up to two years. The religious worker's total period of stay in the United States may not exceed five years. The petition must be accompanied by a letter from an authorized official of the religious denomination confirming the worker's continuing eligibility for R-1 classification.

Prior to the worker changing or adding an employer within the religious denomination, the new or additional organizational unit must file an I-129 petition with the Service for such change or addition. This requirement is contained in paragraph (r)(6).

A religious worker who has remained in the United States in R nonimmigrant status for five years will not be readmitted to the United States in that classification unless he/she has resided and been physically present outside the United States, except for brief visits for business or pleasure, for the immediate prior year. This limitation on admission is found in paragraph (r)(7).

Paragraph (r)(8) contains a provision relating to the spouses and unmarried minor children of religious workers and specifically precludes them from accepting employment while in the United States in R-2 nonimmigrant status.

In accordance with 5 U.S.C. 605(b), the Commissioner or the Immigration and Naturalization Service certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

This rule is not a major rule within the meaning of section (1)(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

This rule contains information collection requirements which have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The OMB control numbers for these collections are contained in 8 CFR 299.5.

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, Aliens, Authority delegation (Government agencies), Employment, Organization and functions, (Government agencies), Passports and visas.

Accordingly, part 214 of chapter I of title 8 of the Code of Federal Regulations will be amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1186a, and 8 CFR part 2.

2. Section 214.2 is amended by adding a new paragraph (r) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(r) *Religious workers*—(1) *General.* Under section 101(a)(15)(R) of the Act, an alien who, for at least the two (2) years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit religious organization in the United States, may be admitted temporarily to the United States to carry on the activities of a religious worker for a period not to exceed five (5) years. The alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of the religious denomination; or, at the request of the religious organization, to work for the religious organization in a professional capacity, or to work in a religious vocation or occupation for the religious organization, or a bona fide organization which is affiliated with the religious denomination and which is exempt from taxation as a religious organization described in section 501(c)(3) of the Internal Revenue Code of 1986.

(2) *Definitions.* As used in this section:

Bona fide nonprofit religious organization in the United States means an organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, as it relates to religious organizations.

Bona fide organization which is affiliated with the religious denomination means an organization which is closely associated with the religious denomination in a subordinate or dependent position and which is exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, as it relates to religious organizations.

Minister means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. The term does not include a lay preacher not authorized to perform such duties.

Professional capacity means an activity in a religious vocation or occupation for which the minimum of a United States baccalaureate degree (or a foreign equivalent degree) is required.

Religious denomination means a religious group or community of believers having some form of ecclesiastical government, a recognized creed and form of worship, a formal code of doctrine and discipline, religious services and ceremonies, established places of religious worship, and religious congregations.

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, and clerks.

Religious vocation means a calling to religious life as evidenced by the taking of vows. Examples of individuals with a religious vocation include, but are not limited to nuns, monks, and religious brothers and sisters.

(3) *Initial evidence.* An alien seeking classification as a religious worker shall present to a United States consular officer, or, if visa exempt, to an immigration officer at a United States port of entry, documentation which establishes to the satisfaction of the consular or immigration officer that the alien will be providing services to a bona fide nonprofit religious organization in the United States or to an affiliated religious organization as defined in paragraph (r)(2) of this section, and that the alien meets the criteria to perform such services. This documentation shall be in the form of a letter from an authorized official of the specific organizational unit of the religious organization which will be employing or engaging the alien's services in the United States and which, if required, will be maintaining the religious worker's form I-9, Employment Eligibility Verification Form. (Form I-9 would be maintained by an organizational unit of the religious organization if the organizational unit is either paying the alien a salary or otherwise remunerating the alien in exchange for services rendered.) This letter must be accompanied by a tax exempt certificate showing that the organization is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations. Additional documentation in the form of diplomas, degrees, financial statements, certificates of ordination, or any other documentation as deemed necessary by the examining officer may be required. No prior petition, labor certification, or prior approval shall be required. The letter from the authorized official shall establish:

(i) That the religious denomination has a bona fide nonprofit religious organization in the United States;

(ii) If the alien's religious membership was maintained, in whole or in part, outside the United States, that the foreign and United States religious organizations belong to the same religious denomination;

(iii) That, immediately prior to the application for the nonimmigrant visa or application for admission to the United States, the alien has the required two (2) years of membership in the religious denomination;

(iv) If the alien is a minister, that the alien has authorization to conduct religious worship for that denomination and to perform other duties usually performed by authorized members of the clergy of that denomination, including a detailed description of those authorized duties;

(v) If the alien is a religious professional, that at least a baccalaureate is required for entry into the religious profession;

(vi) If the alien is to work in another religious vocation or occupation, that the alien is qualified in the religious vocation or occupation (including, but not limited to, establishing that the alien is a monk, nun or religious brother, or that the type of work to be done relates to a traditional religious function);

(vii) If the alien is to work in a non-ministerial or nonprofessional capacity for a bona fide religious organization at the request of an organization which is affiliated with the religious organization, how the affiliation exists;

(viii) The arrangements made for remuneration for services to be rendered by the alien, including amount and source of salary, a description of any other types of remuneration to be received including housing, food and clothing, and any other benefits to which a monetary value may be affixed, and a statement as to whether such remuneration shall be in exchange for services rendered; and

(ix) The name and location of the specific organizational unit of the religious organization for which the alien will be providing services within the United States.

(4) *Initial admission.* The initial admission of a religious worker, spouse, and unmarried children under 21 years of age shall not exceed three (3) years. A Form I–94 Arrival-Departure Record shall be provided for every alien who qualifies for admission as an R nonimmigrant and, in the case of a principal alien, the Form I–94 shall be endorsed with the name and location of the specific organizational unit for which the alien will be providing services within the United States. The admission symbol for the religious worker shall be R–1; the admission symbol for the worker's spouse and children shall be R–2.

(5) *Extension of stay.* The organizational unit of the religious denomination employing the nonimmigrant religious worker admitted under this section shall use Form I–129, Petition for Nonimmigrant Worker, along with the appropriate fee, to extend the stay of the worker. The petition shall be filed at the Service Center having jurisdiction over the place of employment. An extension of stay may be authorized for a period of up to two (2) years. The worker's total period of stay may not exceed five (5) years. The petition must be accompanied by evidence in the form of a letter from an authorized official of the organizational unit confirming the worker's continuing eligibility for classification as an R–1 nonimmigrant.

(6) *Change of employers.* A different or additional organizational unit of the religious denomination seeking to employ a religious worker admitted under this section shall file Form I–129 with the appropriate fee. The petition shall be filed with the Service Center having jurisdiction over the place of employment. The petition must be supported by evidence that the alien will still be classifiable as a religious worker in accordance with this section. Any unauthorized change to a new religious organizational unit will constitute a failure to maintain status within the meaning of section 241(a)(1)(C)(i) of the Act.

(7) *Limitation on stay.* An alien who has spent five (5) years in the United States under section 101(a)(15)(R) of the Act may not be readmitted to the United States under the R visa classification unless the alien has resided and been physically present outside the United States, except for brief visits for business or pleasure, for the immediate prior year. Such visits do not interrupt the one year abroad, but do not count toward fulfillment of that requirement.

(8) *Spouse and children.* The spouse and unmarried minor children of the religious worker are entitled to the same nonimmigrant classification and length of stay as the religious worker, if the religious worker will be employed and residing primarily in the United States, and if the spouse and unmarried minor children are accompanying or following to join the religious worker in the United States. Neither the spouse nor any child may accept employment while in the United States in R–2 nonimmigrant status.

Dated: March 26, 1991.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 91–17491 Filed 7–23–91; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[IA–51–91]

RIN 1545–AP80

Authority of the Secretary of Agriculture To Require Employer Identification Numbers From Retail Food Stores and Wholesale Food Concerns for Purposes of the Food Stamp Act of 1977

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the authority of the Secretary of Agriculture to require retail food stores and wholesale food concerns to furnish employer identification numbers for purposes of administering the Food Stamp Act of 1977. The authority to solicit employer identification numbers was conferred upon the Secretary of Agriculture by section 1735(c) of the Food, Agriculture, Conservation, and Trade Act of 1990.

DATES: Written comments must be received by August 23, 1991. A public hearing will be held on Friday, August 30, 1991, at 10 a.m. Requests to speak and outlines of oral comments must be received by Friday, August 16, 1991. See notice of hearing published elsewhere in this issue of the **Federal Register**.

ADDRESSES: Send comments to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (IA–51–91), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Lisa J. Byun of the Office of Assistant Chief Counsel (Income Tax & Accounting), Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:IT&A:4) or telephone 202–566–5985 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Regulations on Procedure and Administration (26 CFR part 301) to provide rules under section 6109 of the Internal Revenue Code of 1986, as amended by section 1735(c) of the Food, Agriculture, Conservation, and Trade Act of 1990, Public Law 101–624, 104 Stat. 3359 (November 28, 1990) ("1990 Act").

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DEPARTMENT OF THE TREASURY

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SUPPLEMENTARY INFORMATION:

Background

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Explanation of Provision

Section 1735(c) of the 1990 Act added a new subsection (f) to section 6109 of the internal Revenue Code of 1986 (Code) to authorize the Secretary of Agriculture to require retail food stores and wholesale food concerns to furnish employer identification numbers for purposes of administering section 9 of the Food Stamp Act of 1977 (7 U.S.C. 2018) (relating to the determination of the qualifications of applicants under the Food Stamp Act).

These proposed regulations only relate to the amendments made by section 1735(c) of the 1990 Act. They do not relate to the amendments made by section 2201(d) of the 1990 Act which added another subsection (f) to section 6109 of the Code (concerning access to employer identification numbers by the Federal Crop Insurance Corporation for purposes of the Federal Crop Insurance Act).

Section 6109(f)

Section 6109(f)(1) of the Code provides that the Secretary of Agriculture may require each applicant retail store or wholesale food concern to furnish its employer identification number (EIN), but only for purposes of establishing and maintaining a list of the names and EINs of retail stores and wholesale food concerns for use in determining whether an applicant firm has been previously sanctioned or convicted under section 12 or 15 of the Food Stamp Act. The Secretary of Agriculture may use this determination of sanctions and convictions in administering section 9 of the Food Stamp Act of 1977. Because the only retail stores that may participate in the food stamp program are retail food stores, § 301.6109–2(a) refers to "retail food stores."

Section 6109(f)(2) provides that the Secretary of Agriculture must restrict access to the EINS only to officers and employees of the United States whose duties or responsibilities require access for the administration or enforcement of the Food Stamp Act of 1977.

Section 6109(f)(2) further provides that the Secretary of Agriculture must provide any additional safeguards that the Secretary of the Treasury determines to be necessary or appropriate to protect the confidentiality of the EINs. This requirement is reflected in § 301.6109–2(c)(2) of the proposed regulations. Section 301.6109–2(c)(2) also provides that the Secretary of Agriculture may provide for any additional safeguards to protect the confidentiality of the EINs so long as these safeguards are consistent with any safeguards determined by the Secretary of the Treasury to be necessary or appropriate.

Section 6109(f)(3) provides that no officer or employee of the United States (including former officers and employees) who has or had access to an EIN obtained or maintained by the Secretary of Agriculture pursuant to section 6109(f)(1) may make any unauthorized disclosure of any such EIN in any manner. This requirement is reflected in § 301.6109–2(d) of the proposed regulations.

Section 6109(f)(4) provides that (a) the sanctions under sections 7213(a) (1), (2), and (3) of the Code apply to any unauthorized, willful disclosure of EINs to any person in the same manner and to the same extent as those sections apply with respect to unauthorized disclosures of return and returns information, and (b) the sanction under section 7213(a)(4) applies to any willful solicitation of EINs in the same manner and to the same extent that section 7213(a)(4) applies with respect to willful solicitation of returns or return information. The sanctions for unauthorized, willful disclosure of EINs and for willful solicitation of EINs are set forth in § 301.6109–2(e) of the proposed regulations.

These regulations are proposed to be effective the first day of the first month beginning at least 120 days after these proposed regulations are published as final regulations.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are timely submitted (preferably an original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. The Treasury Department expects to issue final regulations on this matter as soon as possible. Written comments must be received by August 23, 1991. A public hearing will be held beginning at 10 a.m. on August 30, 1991. Requests to appear at the public hearing and outlines of oral comments must be received by August 16, 1991. See notice of hearing published elsewhere in this issue of the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Lisa J. Byun, Office of the Assistant Chief Counsel (Income Tax & Accounting), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

Proposed Amendments to the Regulations

Accordingly, it is proposed to amend part 301 of title 26 of the Code of Federal Regulations as follows.

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority for part 301 continues to read in part:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.6109–2 is added to read as follows.

§ 301.6109–2 Authority of the Secretary of Agriculture to collect employer identification numbers for purposes of the Food Stamp Act of 1977.

(a) *In general.* The Secretary of Agriculture may require each applicant retail food store or wholesale food concern to furnish its employer identification number in connection with the administration of section 9 of the Food Stamp Act of 1977 (7 U.S.C. 2018) (relating to the determination of the qualifications of applicants under the Food Stamp Act).

(b) *Limited purpose.* The Secretary of Agriculture may have access to the employer identification numbers obtained pursuant to paragraph (a) of this section, but only for the purpose of establishing and maintaining a list of the names and employer identification numbers of the stores and concerns for use in determining those applicants who have been previously sanctioned or convicted under section 12 or 15 of the Food Stamp Act of 1977 (7 U.S.C. 2021 or 2024). The Secretary of Agriculture may use this determination of sanctions and convictions in administering section 9 of the Food Stamp Act of 1977.

(c) *Safeguards*—(1) *Restrictions on access to employer identification numbers.* The persons permitted access to employer identification numbers obtained pursuant to paragraph (a) of this section are officers and employees of the United States whose duties or responsibilities require access to the employer identification numbers for the administrations or enforcement of the Food Stamp Act of 1977.

(2) *Other safeguards.* The Secretary of Agriculture must provide for any additional safeguards that the Secretary of the Treasury determines to be necessary or appropriate to protect the confidentiality of the employer identification numbers. The Secretary of Agriculture may also provide for any additional safeguards to protect the confidentiality of employer identification numbers so long as these safeguards are consistent with any safeguards determined by the Secretary of the Treasury to be necessary or appropriate.

(d) *Confidentiality and disclosure of employer identification numbers.* Employer identification numbers obtained pursuant to paragraph (a) of this section are confidential. No officer or employee of the United States who has or had access to any such employer identification number may disclose that number in any manner, except to persons described in paragraph (c) of this section. For purposes of this paragraph (d), the term "officer or employee" includes a former officer or employee.

(e) *Sanctions*—(1) *Unauthorized, willful disclosure of employer identification numbers.* Sections 7213(a) (1), (2) and (3) apply with respect to the unauthorized, willful disclosure to any person of employer identification numbers that are maintained by the Secretary of Agriculture pursuant to this section in the same manner and to the same extent as sections 7213(a) (1), (2) and (3) apply with respect to unauthorized disclosures of returns and return information described in those sections.

(2) *Willful solicitation of employer identification numbers.* Section 7213(a)(4) applies with respect to the willful offer of any item of material value in exchange for any employer identification number maintained by the Secretary of Agriculture pursuant to this section in the same manner and to the same extent as section 7213(a)(4) applies with respect to offers (in exchange for any return or return information) described in that section.

(f) *Delegation.* All references in this section to the Secretary of Agriculture are references to the Secretary of Agriculture or his delegate.

(g) *Effective date.* The provisions of this section are effective on the first day of the first month beginning at least 120 days after [Insert date final regulations are published in the **Federal Register**].

Fred T. Goldberg, Jr.

Commissioner of Internal Revenue.

[FR Doc. 91-17508 Filed 7-23-91; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 301

[IA-51-91]

RIN 1545-AP60

Authority of the Secretary of Agriculture To Require Employer Identification Numbers From Retail Food Stores and Wholesale Food Concerns for Purposes of the Food Stamp Act of 1977; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of public hearing on proposed regulations relating to the authority of the Secretary of Agriculture to require retail food stores and wholesale food concerns to furnish employer identification numbers for purposes of administering the Food Stamp Act of 1977.

DATES: The public hearing will be held on Friday, August 30, 1991, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Friday, August 16, 1991.

ADDRESSES: The public hearing will be held in room 2615, Second floor, 2600 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (IA-51-91), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-377-9236 or (202) 566-3935 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 1361 of the Internal Revenue Code of 1986. The proposed regulations appear elsewhere in this issue of the **Federal Register**.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Friday, August 16, 1991, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91-17509 Filed 7-23-91; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 172

[OPP-250085, FRL-3886-6]

Notification to Secretary of Agriculture of a Proposed Regulation On Microbial Pesticides; Experimental Use Permits and Notifications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification to the Secretary of Agriculture.

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Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91-17509 Filed 7-23-91; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 172

[OPP-250085, FRL-3886-6]

Notification to Secretary of Agriculture of a Proposed Regulation On Microbial Pesticides; Experimental Use Permits and Notifications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification to the Secretary of Agriculture.

SUMMARY: Notice is given that the Administrator of EPA has forwarded to the Secretary of Agriculture a proposed regulation under section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The proposed rule amends the experimental use permit regulations. The document also proposes to implement a screening procedure that requires notification before initiation of small-scale testing of certain microbial pesticides. This action is required by section 25(a)(2)(A) of FIFRA, as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Frederick Betz, Environmental Fate and Effects Division (H7507C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 728A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-9307).

SUPPLEMENTARY INFORMATION: Section 25(a)(2)(A) of FIFRA provides that the Administrator shall provide the Secretary of Agriculture with a copy of any proposed regulation at least 60 days prior to signing it for publication in the **Federal Register**. If the Secretary comments in writing regarding the proposed regulation within 30 days after receiving it, the Administrator shall issue for publication in the **Federal Register**, with the proposed regulation, the comments of the Secretary, if requested by the Secretary, and the response of the Administrator concerning the Secretary's comments. If the Secretary does not comment in writing within 30 days after receiving the proposed regulation, the Administrator may sign the proposed regulation for publication in the **Federal Register** anytime after the 30-day period. As required by FIFRA section 25(a)(3), a copy of this proposed regulation has been forwarded to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

As required by FIFRA section 25(d), a copy of this proposed regulation has also been forwarded to the Scientific Advisory Panel.

Authority: 7 U.S.C. 136 et seq.

Dated: July 15, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 91-17595 Filed 7-23-91; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 61 and 69

[Docket Nos. 89-79, 87-313, FCC 91-186]

Creation of Access Charge Subelements for Open Network Architecture and Policy and Rules Concerning Rates for Dominant Carriers

AGENCY: Federal Communications Commission (FCC).

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on the pricing rules that should apply to price cap local exchange carriers (LECs) with respect to the rates they charge for future unbundled ONA elements that qualify as restructured services under price cap rules. Unless the current rules are modified, price cap LECs would be required to make the showing for restructured services, and demonstrate that the restructured service continues to comply with the price cap index and applicable banding rules. The Commission seeks to determine whether this showing is sufficient to ensure that the ONA element prices are reasonable.

DATES: Comments must be filed by August 26, 1991. Reply comments are due by September 25, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Mark S. Nadel, Common Carrier Bureau, (202) 632-6363.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The following collection of information contained in this proposed rule has been submitted to the Office of Management and Budget for review under Section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3504(h)). Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1114 21st St., NW., Washington, DC 20036. Persons wishing to comment on this collection of information should direct their comments to Jonas Neihardt, (202) 395-4814, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503. A copy of any comments filed with the Office of Management and Budget should also be sent to the following address at the Commission: Federal Communications Commission, Office of Managing Director, Paperwork Reduction Project, Washington, DC 20554. For further information contact Judy Boley, 202-632-7513.

Title: Part 61—Tariffs (Other Than Tariff Review Plan).

OMB Number: 3060-0298.

Respondents: Businesses.

Frequency of Response: On Occasion.

Estimated Annual Burden: 696,950.

Needs and Uses: This rulemaking will consider whether additional cost support is required by regulators to help insure that LECs do not partake in price discrimination. If it is adopted, the additional support would be used by regulators to permit them to make more effective evaluations of the relative prices of various price cap LEC ONA services, so as to ensure that rates are reasonable.

Background

CC Docket No. 89-79: Notice of Proposed Rulemaking, Amendments of part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, CC Docket No. 89-79. *Adopted:* March 30, 1989. *Released:* May 9, 1989. 54 FR 20873 (May 15, 1988).

CC Docket No. 87-313: Notice of Proposed Rulemaking, Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313. *Adopted:* August 4, 1987. *Released:* August 21, 1987. 52 FR 33962 (Sept. 9, 1987). By the Commission. Further Notice of Proposed Rulemaking, CC Docket No. 87-313. *Adopted:* May 12, 1988. *Released:* May 23, 1988. 53 FR 22356 (June 15, 1988). By the Commission. Supplemental Notice of Proposed Rulemaking, CC Docket No. 87-313. *Adopted:* March 8, 1990. *Released:* March 12, 1990. 55 FR 12526 (Apr. 4, 1990). By the Commission. Second Report and Order, CC Docket No. 87-313. *Adopted:* September 9, 1990. *Released:* October 4, 1990. 55 FR 42375 (Oct. 19, 1990). By the Commission. Commissioner Duggan concurring in part and dissenting in part and issuing a separate statement. Order on Reconsideration, CC Docket No. 87-313, *Adopted:* April 9, 1991. *Released:* April 17, 1991. 56 FR 21612 (May 10, 1991). By the Commission.

Summary of Supplemental Notice of Proposed Rulemaking

This is a summary of the Commission's Supplemental Notice of Proposed Rulemaking in Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, CC Docket No. 89-79 and Order on Further Reconsideration in

Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87–313; FCC 91–186, Adopted: June 13, 1991 and Released: July 11, 1991. The full texts of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M St., NW., Washington, DC. The complete text of this Supplemental Notice may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1114 21st St., NW., Washington, DC 20036.

The Supplemental Notice solicits comment on whether the existing price cap rules for restructured services should be supplemented with additional rules directed at the increased danger of discrimination inherent in Open Network Architecture (ONA) services. The public is asked to comment on whether local exchange carriers should be required to make the cost showings required for new services when they introduce restructured ONA services. Alternatively, price cap LECs would only be subject to the normal constraints of the restructured services test. Any cost showings submitted by the LECs will be used by the Commission to determine the reasonableness of rates.

With respect to the cost showing for "new" services introduced by price cap LECs, the Commission said it will require the submission of cost studies, as in the interim approach of the LEC Price Cap Reconsideration Order. While LECs will be required to set their rates based on a reasonable, consistent costing methodology, they will be given the opportunity to select that methodology, to justify reasonable non-uniform overhead loadings, and to seek higher returns on investment commensurate with the risks they assume. To address concerns that LECs would discriminate against ESPs that compete with LEC enhanced service operations, the Commission required the LECs to identify BSEs that will be used by LEC enhanced service operations.

List of Subjects in 47 CFR Parts 61 and 69

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 91–17341 Filed 7–23–91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 33

[FAR Case 91–41]

General Accounting Office Protest Costs; Correction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule; correction.

SUMMARY: At 55 FR 28652, June 21, 1991, a proposed rule was published amending Federal Acquisition Regulation (FAR) 33.104 to provide that, pending a judicial resolution of the constitutionality of 31 U.S.C. 3554(c), the General Accounting Office's awards of contract protest costs will be treated as advisory recommendations. The Regulatory Flexibility Act section of that proposed rule is being corrected to present a summary of the Initial Regulatory Flexibility Analysis.

FOR FURTHER INFORMATION CONTACT: Ms. Jeritta Parnell at (202) 501–3856 in reference to this correction. For general information, contact Ms. Beverly Fayson, FAR Secretariat, room 4041, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAR Case 91–41.

SUPPLEMENTARY INFORMATION:

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B. Regulatory Flexibility Act

The proposed changes to FAR part 33 may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the proposed rule, if implemented, may impose different requirements on both Federal agencies and contractors when GAO recommends award of protest costs. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and is summarized as follows:

FAR part 33 is being revised to clarify the General Accounting Office's (GAO) authority to award bid protest costs and attorney fees. FAR 33.104(g) is amended to provide that GAO awards of bid protest costs and attorney fees are to be treated as recommendations to the agency. FAR 33.104(h) is revised to provide that an agency may pay protest costs as a result of a GAO recommendation, but such payments may be subject to recoupment if 31 U.S.C. 3554(c) is judicially determined to be unconstitutional. The proposed changes arose as a result of a recommendation from the Department of Justice (DOJ) to revise FAR 33.104 (g) and (h) in anticipation of constitutional litigation. DOJ has determined that the current FAR coverage implements an unconstitutional statute, 31 U.S.C. 3554(c). DOJ has advised that the award of protest costs and attorney fees by GAO is unconstitutional because it violates the separation of powers doctrine. Therefore, DOJ is seeking a declaratory judgment that the provision is unconstitutional and the Comptroller General has no authority to order Executive branch agencies to pay attorney fees and protest costs to successful bid protesters. Pending a judicial determination, agencies may continue to pay protest costs out of funds available for the acquisition of services or supplies. The proposed rule would apply to all small businesses that contract with the Federal Government and which might protest to the GAO. It is not possible to estimate the number of small business entities that may be impacted by the proposed rule.

A copy of the IRFA has been submitted to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments from small entities concerning the affected FAR subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite FAR case 91–41 in correspondence.

* * * * *

Dated: July 19, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

[FR Doc. 91–17641 Filed 7–22–91; 10:06 am]

BILLING CODE 6820-34-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants: Finding on Petition to Reclassify the Grizzly Bear in the North Cascades Area as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the 12-

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Dated: July 19, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

[FR Doc. 91–17641 Filed 7–22–91; 10:06 am]

BILLING CODE 6820-34-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants: Finding on Petition to Reclassify the Grizzly Bear in the North Cascades Area as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the 12-month finding for a petition to amend the List of Endangered and Threatened Wildlife and Plants. These findings must be made within 1 year of either the date of receipt of such a petition or of a previous positive finding. The Service finds that the petition to reclassify the North Cascades population of the grizzly bear as endangered is warranted but precluded.

DATES: The finding announced in this notice was made in June 21, 1991.

ADDRESSES: Questions or comments concerning this finding should be sent to Dr. Christopher Servheen, Grizzly Bear Recovery Coordinator, U.S. Fish and Wildlife Service, NS 312, University of Montana, Missoula, Montana 59812, telephone 406/329–3223. The petition's finding and supporting data are available at the above address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Dr. Christopher Servheen (see **ADDRESSES** above).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended in 1982 (16 U.S.C. 1531 et seq.), requires that, for any petition to revise the List of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information, a finding be made on the merits within 12 months of the date of receipt of the petition.

The Service received and made a positive 90-day finding and initiated a status review (55 FR 32103–32104) on the following petition:

A petition dated March 13, 1990, was received from The Humane Society of the United States, Greater Ecosystem Alliance, North Cascades Audubon Society, Kittitas Audubon Society, Pilchuck Audubon Society, Skagit Alpine Club, North Cascades Conservation Council, and Carol Rae Smith on March 14, 1990. The petition requested the Service to reclassify the grizzly bear (*Ursus arctos horribilis*) in the North Cascades area of Washington State from threatened to endangered.

The petitioners submitted information that there is a very small grizzly bear population remaining in the North Cascades area. They also indicated that a range of threats exist to the survival of the remaining small population of bears from road construction, land management activities, livestock grazing, land development, and inadequate support from management agencies. The petitioners further indicated that the present population of grizzly bears in the North Cascades area may number fewer than 10–20 animals. They also questioned the numbers and genetic viability of the grizzly bear population on the Canadian side of the United States-Canadian border adjacent to the range of the population in the North Cascades.

As a result of the **Federal Register** notice, 20 letters were received by the Service with general comments on the petition. Only one, a letter from a British Columbia Ministry of Environment wildlife biologist, contained new biological information on the grizzly bear. He reports that a small population of grizzly bears, probably less than 10, occurs in an isolated population north and adjacent to the Washington Cascades.

The grizzly bear in the North Cascades is presently listed as threatened. As such, the grizzly bear receives all the normal protection afforded a listed species by the Endangered Species Act. Section 7 (Consultation) and section 9 (Prohibited Acts) fully apply. The Grizzly Bear Recovery Plan, approved in 1982, provides guidance for recovery of the species.

To advance North Cascades grizzly bear conservation, a special Interagency Grizzly Bear Work Group was formed and is working under the direction of the Northwest Ecosystem Grizzly Bear Management Subcommittee of the Interagency Grizzly Bear Committee. This Work Group embarked on a 5-year hibitat evaluation and grizzly bear verification study which will be completed in 1991. The habitat evaluation effort involves: (1) Mapping of the major habitat components in the area using LANDSAT and Geographic Information Systems techniques; (2) delineation of the presence, abundance, and diversity of grizzly bear foods; (3) delineation of spring, summer, and fall denning habitat based on the habitat mapping and food data; (4) evaluation of the extent, quality, and accessibility of spring range; and (5) delineation of human activities such as roads, habitation, timber harvest, and recreation in the area. Based on this information, a technical review team of biologists will assess the value of the available habitat and the suitability of the area to support a viable grizzly bear population. The recommendation of this technical review team will be the basis for a decision on whether to attempt to recover grizzly bears in the North Cascades. The evaluation by the technical review team is scheduled to be completed in late 1991 and presented to the Interagency Grizzly Bear Committee at their fall 1991 meeting.

Reference is made in the petition to the grizzly bear population in the North Cascades being a separate subspecies of the brown bear, specifically *Ursus arctos stikeenensis*. This subspeciation is based on the classification of Hall (1984). The Service rejects the implication that the grizzly bears of the North Cascades are a distinct subspecies based on the analysis of Rausch (1963). Rausch (1963) found that for North American brown bears, based on measurements of condylobasal length, "formal recognition of segments of intergrading populations of brown bears at the subspecific level is not justified" except for the reproductively isolated populations on Kodiak-Afognak-Shuyak Islands, Alaska. Rausch (1963) further stated that *Ursus arctos horribilis* be used for brown bears over "the greater parts of the range of the species in North America" and the Service holds with this opinion.

The Service agrees with the statements in the petition that the number of grizzly bears in the North Cascades is small. Although no credible estimate can be made of the actual numbers of bears in this area, the population is so small that very few credible sights or signs have been documented in this area in the past 5 years.

The North Cascades population may be isolated from contiguous populations in Canada. R.D. Forbes, a wildlife biologist for the Ministry of Environment, Province of British Columbia, stated in a letter to Dr. Christopher Servheen dated August 13, 1990, that "healthy grizzly populations located to the north and northwest are effectively precluded from immigrating to the ecosystem by immigration barriers presented by high density human populations or extensive development not compatible to grizzly occurrence * * *." The Service thus agrees with the statements of the petitioners that the North Cascades grizzly bear population may be isolated from other North American populations.

Section 4(b)(3)(B) of the Endangered Species Act requires that the Service make one of the following 12-month findings on each petition presenting substantial information: (i) The petitioned action is not warranted; (ii) the petitioned action is warranted and will be proposed promptly; or (iii) the petitioned action is warranted but precluded by other efforts to revise the lists, and expeditious progress is being made in listing and delisting species. Section 4(b)(3)(B)(ii) requires that petitions for which the action requested is found to be warranted will be promptly published in the **Federal Register** along with a general notice and complete text of a proposed regulation to implement such action.

The Service finds that changing the listing of the North Cascades population of grizzly bears from threatened to endangered is warranted but precluded at this time. The Service is expeditiously working on listing a backlog of species having a higher priority of needing protection of the Endangered Species Act. This finding will be re-evaluated after the habitat evaluation work is completed and the Interagency Grizzly Bear Committee has deliberated the results. In the meantime the grizzly bear in the North Cascades remains listed as threatened and retains full protection under the Endangered Species Act.

References Cited

Hall, E.R. 1984. Geographic variation among brown and grizzly bears (*Ursus arctos*) in North America. Special Publication of the Museum of Natural History, University of Kansas, No. 13, 16 pp.

Rausch, R.L. 1963. Geographic variation in size in North American brown bears, *Ursus arctos L.*, as indicated by condylobasal length. Can. J. Zool. 41:33–45.

Author

This notice was prepared by Dr. Christopher Servheen (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended. (16 U.S.C. 1531–1544).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: July 9, 1991.

Richard N. Smith,

Director, Fish and Wildlife Service.

[FR Doc. 91–17516 Filed 7–23–91; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 23

Changes To Be Proposed in Appendices to the Endangered Species Convention

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Request for information.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or Convention) regulates international trade in certain animal and plant species, which are listed in the appendices of this treaty. The United States, as a Party to CITES, may propose amendments to the appendices for consideration by the other Parties.

This notice invites comments and information from the public on species that have been identified as candidates for U.S. proposals to amend Appendix I or II at the next biennial meeting of Party nations. The meeting is scheduled for March 2–13, 1992, in Kyoto, Japan.

DATES: The Service will consider all comments received September 6, 1991, on proposals described in this notice.

ADDRESSES: Please send correspondence concerning this notice to Chief, Office of Scientific Authority; room 725, Arlington Square Building; U.S. Fish and Wildlife Service; Washington, DC 20240. Fax number (703) 358–2202. Express and messenger-delivered mail should be addressed to the Office of Scientific Authority; room 750, 4401 North Fairfax Drive; Arlington, Virginia 22203. Comments and other information received will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at the Arlington, Virginia address.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, at the above address, telephone (703) 358–1708 (or FTS 921–1708).

SUPPLEMENTARY INFORMATION: In its previous notice on this subject (56 FR 4965; February 7, 1991) the U.S. Fish and Wildlife Service (Service) requested information on plant and animal species that might lead the Service to prepare proposals to amend the listings under CITES for consideration at the next regular meeting of the Conference of the Parties (COP8). That notice described the provisions of CITES for listing species in the appendices and set forth information requirements for proposals. The present notice announces the proposals received, explains why the Service does not intend to consider certain proposals, and describes those proposals that will receive further consideration prior to deciding whether to submit any of these proposals to the CITES Secretariat by the October 4, 1991, deadline.

The Service received more proposals for species changes to CITES appendices than in recent years before other meetings of the Conference of the Parties, and in addition, has reason to develop certain other proposals on its own initiatives. Therefore, in deciding which proposals to consider further, the Service generally focused on native species, and those species for which the information indicating possible threat to the species is most complete, and for which the threat appears to be most severe.

The Service continues to consider submitting proposals on the following species: Painted stork (as possible listing in appendix II pursuant to article II.2b); Goffin's cockatoo, blue-streaked lory, and blue-fronted amazon (transfer each to appendix I); Goliath frog (list in appendix I or II); box turtle and wood turtle (appendix II); paddlefish (appendix I or II); blue-fin tuna (appendix II); unionids (from I to II and add others to II); American mahogany (appendix II); Venus fly-trap (appendix II); Montezuma quail (remove from appendix II); San Diego horned lizard (remove from appendix II); Mexican bobcat (remove from appendix I); pronghorns (present as geographic listing), northern elephant seal (remove from appendix II); *Turbinicarpus* spp. (clarify listing), Queen conch (add to appendix II); commoner lignum vitae (add to appendix II); and scarlet macaw (register captive breeding facility). Additional information on each of these possible proposals is presented in a later section, and information sought is discussed.

The Service for reasons presented above and discussed later, does not intend to submit proposals for the whip-tailed wallaby, hippopotamus, American black bear, Ducorp's cockatoo, red-vented cockatoo, gray-cheeked parakeet, red-masked conure, ploceids, fringillids, emberizids, estrildids, file snakes, bog turtle, blue shark, requiem sharks, hammerhead sharks, three *Ariocarpus* cacti, trilliums, Brazilian rosewood, North Andean walnut, and several Central American tree species.

Proposals Which the Service Does Not Plan To Submit

The Humane Society of the United States proposed that the whip-tailed wallaby be included in appendix II of CITES. The population was estimated to be about 900,000 animals in 1987–1988, sustains a commercial harvest with recent quotas at about 5.5 percent of population, and has recovered from drought periods. The Humane Society of the United States and the International Wildlife Coalition requested the Service to propose listing the hippopotamus in appendix I and II, respectively, although no draft proposal or trade statistics were submitted.

The World Wildlife Fund-U.S. requested the Service to submit a proposal to list the American black bear on appendix II under the provisions of Article II, paragraph 2(b) of the Convention (similarity of appearance), and the Humane Society of the United

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States requested the Service to propose this species on appendix II. The proponents believe that listing the American black bear will, by requiring CITES documents on any shipments of bear parts, remove the possibility of Asian bear parts being traded under the guise of undocumented parts from American black bears. However, the Service believes this concern can be addressed in other ways.

The black bear is widespread throughout Alaska, Canada, and the continental United States (32 States, and 9 Canadian Provinces and 2 Territories). The annual legal sport-harvest is 41,000–42,000 animals. Illegal take exists in the form of poaching for parts and/or meat. While there is no quantitative estimate of the overall take, the Service does not believe that the level of take jeopardizes the survival of the species. Trade of parts from legally harvested bears is permitted in several U.S. States and Canadian Provinces/Territories.

The Service recognizes the desirability of CITES documentation on exports to Asian countries, and supports the action taken by Canadian CITES authorities to list the American black bear in appendix III. The Service understands that such a listing was requested by the government of Japan. This listing will enable the Canadian government to issue CITES export documents for any black bear, its parts or products, except a full hide with claws attached or skull. This exemption by Canada will avoid the need to issue CITES permits for sport-hunted trophies; trade in these specimens is not viewed as any threat to Asian black bears. The parts sought for the Asian trade are gall bladders, and to a lesser extent the claws and teeth for jewelry.

In the United States, the Lacey Act makes it a federal violation to export wildlife specimens taken in violation of State laws. With the appendix III listing by Canada, the United States will be required to issue documents identifying the United States as the country of export, except for the parts exempted from the listing by Canada. For movement of other legally taken specimens between the United States and Canada, the CITES authorities in these two countries are considering accepting State hunting permits as country of origin declarations. However, for exports to other countries, the Service intends to require a CITES certificate issued by the Office of Management Authority. Furthermore, the Service intends to emphasize to Asian countries importing bear parts that CITES responsibilities include enforcement of the requirement for export permits or country of origin certificates, and that the American black bear listing is intended to provide additional protection to the endangered Asiatic black bear populations. If the Service receives substantial evidence that the present appendix III listing will not accomplish its intended purpose, the Service may reconsider an appendix II (similarity of appearance) proposal for this species. Finally, the Service's Forensic Laboratory has developed techniques to distinguish between the gall bladders of bears and those of other species, and is developing techniques to distinguish them between the various bear species.

The International Wildlife Coalition requested that the United States propose transferring the Ducorp's cockatoo (*Cacatua ducorpsii*), red-vented cockatoo (*C. haematuropygia*), gray-cheeked parakeet (*Brotogeris pyrrhopterus*), and red-masked conure (*Aratinga erythrogenys*) from appendix II to appendix I. This request for listing the first two species was based largely on their similarity of appearance to Goffin's cockatoo that they proposed, and which the Service has agreed to consider for inclusion in appendix I. The Service believes that the similarity of appearance issue is adequately addressed by the present appendix II listing of those other species.

In 1987, the CITES Parties accepted the report of the Working Group on Significant Trade in Appendix II Species. This Working Group sought to assess the effects of trade on appendix II animal species traded in numbers greater that 100 specimens per year. The result of this effort was the development of three lists of species: Those that were likely to be detrimentally impacted by trade (C1 species), those for which the information available was not sufficient to determine whether the current level of trade was detrimental (C2 species), and those that were not being detrimentally impacted by trade (C3 species). Actions have been taken by the Parties individually or collectively to address the detrimental impact of trade in most C1 species. It was expected that studies would be conducted to further assess the effect of trade on the biological status of C2 species, but very few studies have been initiated.

The Ducorp's cockatoo, the red-vented cockatoo, the gray-cheeked parakeet and the red-masked conure were not included in the C1, C2 or C3 lists. The request to propose the gray-cheeked parakeet and the red-masked conure was accompanied by complete proposals indicating a high volume of trade. However, this information by itself does not indicate that the trade is detrimental to the survival of the species, and it is not anticipated that new information on population status can be available, reviewed and included in a proposal, if appropriate, in time for submission to the CITES Secretariat.

The International Wildlife Coalition and the Humane Society of the United States requested the listing of the avian families Emberizidae, Estrildidae, Fringillidae, and Ploceidae on appendix II of CITES. Approximately 200,000 finches are, according to the proponent, imported into the United States annually without proper identification as to species. This proposal to list the above four families includes approximately 126 genera and 663 species of passerine birds. Even though the Service recognizes that trade may be detrimental to the survival of a few of the species, the Service does not believe that listing all families of finches to address this concern for some species is appropriate at this time. Insufficient information was presented to justify proposals for individual species.

The New York Zoological Society provided a proposal to transfer the bog turtle (*Clemmys muhlenbergii*) from appendix II to appendix I. The species has been listed to CITES appendix II since 1975 and reported international trade has been virtually non-existent. Nevertheless, the Service opposed removal of the species from appendix II at the meeting of the Parties in 1987, because of the probability of trade. Although the biological information on this species would otherwise appear sufficient to warrant its transfer to appendix I, trade has been very limited. There have been only four specimens reported as legal exports from the United States during the last 3 years. The Service is reviewing the original export declaration forms to determine if any of the specimens recorded as *Chemmys* spp. (an average of less than 200 annually for the last 3 years) were *Clemmys muhlenbergii*, but without further documentation of international trade, the Service does not believe that it can justify a proposal to transfer this species to appendix I.

TRAFFIC USA asked the Service to propose adding the genus *Acrochordus* (file snakes) to appendix II of CITES. *Acrochordus* is a widely distributed genus, ranging from the Indian subcontinent throughout Southeast Asia, and as far east as the Solomon Islands and Australia. There are three species of *Acrochordus* (*A. arafurae, A. Granulatus,* and *A. javanicus*), of which at least *A. granulatus* and *A. javanicus* are hunted primarily for the snakeskin market. The information provided indicates a high-volume of trade, but does not address the possible threat to the species. The Service believes that the appropriateness of such a proposal should be considered by a range State, and has provided the information to the Asian Regional representative to the Animals Committee and to the Australian Scientific and Management Authorities.

The National Audubon Society requested the Service to consider listing the blue shark (*Prionase glauca*), requiem sharks (*Carcharinus* spp.), and hammerhead sharks (*Sphyrna* spp.) in either appendix II or III of CITES. The request provided only limited information, and the Service does not intend to propose these taxa.

At the fourth meeting of the CITES Plants Committee in April 1991, the Netherlands asked the United States to consider submitting a proposal to transfer from appendix II to appendix I the species of the genus *Ariocarpus* (living-rock cacti) that are not already in appendix I. The six known species in the genus mostly occur in Mexico; the appendix II species are *A. fissuratus* (*A. f.* var. *fissuratus* extends into Texas), *A. kotschoubeyanus*, and *A. retusus*. Since the Plants Committee meeting, Mexico has acceded to CITES. The United States, recognizing that now it is appropriate for Mexico to take the lead in considering the proposal drafted by the Netherlands, has sent the proposal to Mexico and has so informed both governments.

At the recent meeting of the Plants Committee, the Natural Resources Defense Council (NRDC) provided trade information on some species of *Trillium* (wake-robins) a genus which occurs in North America and eastern Asia. This was referred to the United States for consideration; in doing so, the Committee recognized that additional information would be needed to determine whether a proposal for the genus (or some species) might be warranted. The Service has not been in a position to undertake the additional work in light of other more immediate work priorities, and will not consider developing a proposal for COP8.

The NRDC also provided information on *Dalbergia nigra* (Brazilian rosewood) at the Plants Committee meeting, and this was referred to the United States for consideration. TRAFFIC USA recently informed the Service that Brazil now has a presidential decree restricting exploitation of plants in its remaining Atlantic forests. The Service therefore believes it most appropriate that Brazil consider whether to propose to include the Brazilian rosewood in appendix II or I, and the Service has transmitted the available information to the Brazilian Scientific and Management Authorities.

The NRDC provided information on *Juglans neotropica* (North Andean walnut), which occurs from Venezuela to Peru, at the recent meeting of the Plants Committee. This was referred to the United States for consideration; in doing so, the Committee recognized that additional information would be needed to determine whether a proposal might be warranted. Furthermore, NRDC has provided the Service with some information on 11 other localized neotropical walnut (*Juglans*) species. The Service has not been in a position to undertaken the additional work in light of other more immediate work priorities, and will not consider developing a proposal for any of these species for COP8.

At the Seventh Meeting of the Conference of the Parties (COP7), the Plants Group recommended to Committee I that eight 10-year review species of trees should be resubmitted for delisting at COP8, if in the meantime no data or evidence of international trade (especially from the range States) became known. The eight species are *Caryocar costaricensis* (Costa Rica and Panama), *Quercus copeyensis* (Costa Rica and Panama), *Vantanea barbourii* (Costa Rica), *Oreomunnea pterocarpa* (= *Engelhardia pterocarpa*) (Costa Rica), *Cynometra hemitomophylla* (Costa Rica and Honduras), *Tachigali vesicolor* (Costa Rica to Colombia), *Platymiscium pleiostachyum* (Central America), and *Batocarpus costaricensis* (Costa Rica to Peru). At COP7, the 10-year review delisting proposal for *Caryocar costaricensis* was submitted by the United States, and the others by Switzerland (assisting the Plants Committee). The Service has not attempted to collect new data and information adequate to warrant any new proposals, but is seeking information and data as to whether *Batocarpus costaricensis* is correctly listed.

Proposals Which the Service May Submit

The following proposals were received and will be considered for possible submission as proposed amendments to the CITES. The Service seeks additional comments and information to assist it in making a decision whether to submit these proposed amendments.

1. Painted stork (Mycteria leucocephala)

The American Association of Zoological Parks and Aquariums (AAZPA) requested listing of the painted stork in appendix II due to its similarity of appearance [Article II.2(b)] in juvenile plumage to juvenile milky storks (*Mycteria cinerea*), which is listed in appendix I. The intent of this proposal is to protect *M. cinerea* by regulating commercial trade in *M. leucocephala*. The milky stork was listed in appendix I at COP6 because populations were severely reduced and only one breeding population existed. The additional protection to be provided by listing the painted stork appears to be warranted. The painted stork is still widespread throughout India and Sri Lanka, although throughout the rest of its range (Burma, Bangladesh, Thailand, Malaysia, and Vietnam), it is rare. The only potential area of overlap with the milk stork is in Peninsular Malaysia, but the milky stork population on this peninsula totals less than 150 individuals and if breeding were to occur any loss of individuals would be detrimental to the survival of the species. The only known international market for either species is for public exhibition. Twice in the past four years, birds have been imported into the United States ostensibly as juvenile *M. leucocephala*, when in fact these birds were *M. cinerea*. Therefore, it is likely that these birds were illegally exported from the country of origin. The Service seeks information on trade in either of these species.

2. Psittacines (Parrots, Parakeets, Macaws, Lories)

The International Wildlife Coalition requested that the Service propose transferring the Goffin's cockatoo (*Cacatua goffini*) and the blue-streaked lory (*Eos reticulata*) from appendix II to appendix I. This request was accompanied by complete species proposals. The Humane Society of the United States requested that the United States support proposals to place Goffin's cockatoo (*C. goffini*), and the blue-fronted Amazon (*Amazona aestiva*), in appendix I of CITES.

In 1987, the blue-fronted Amazon, the Goffin's cockatoo, and the blue-streaked lory were identified by the CITES Parties as species for which the volume of trade may be detrimental to the survival of the species (two as C2 species and a C1 species deserving further study, respectively). Although CITES-supported studies have not been conducted to determine whether the trade is detrimental, trade has remained high and other information may be available to indicate that these species should be considered for transfer to appendix I. The Service seeks any

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information on the status of these species.

3. Goliath frog (Conraua goliath)

The Service received a proposal from Dr. Christina M. Richards and Dr. Victor H. Hutchinson to list the Goliath frog in appendix I of CITES. The species is sparsely distributed in coastal rain forests in the Republic of Cameroon, Equatorial Guinea, and Gabon. It is reported that its habitat is rapidly being destroyed by the clearing of rain forests and construction of dams. The species is extremely difficult to maintain in captivity, but being the world's largest frog, has generated interest by animal dealers. The species is listed as vulnerable in the "1988 World Checklist of Threatened Amphibians and Reptiles," published by the Nature Conservancy Council, and the Service is considering proposing the species for listing as threatened under the Endangered Species Act (Act). While the Service is not yet sure that the information will support an appendix I listing, it is concerned that a complete review should be had on this proposal before any lesser classification is determined.

4. Testudines (Turtles)

The New York Zoological Society provided proposals to add the genus *Terrapene* (box turtles) to appendix II while retaining *T. coahuila* (aquatic box turtle) in appendix I, and to add *Clemmys insculpta* (weed turtle) to appendix II.

The genus *Terrapene* is comprised of four species (*T. carolina, T. coahuila, T. nelsoni,* and *T. ornata*) with 11 recognized subspecies, of which *T. coahuila* is already listed in appendix I. *Terrapene nelsoni* has a very small and fragmented range. It has been reported from widely disjunct, high-altitude localities on the west coast of Mexico. *Terrapene ornata* ranges over large sections of the midwestern United States and the Great Plains, from Texas north to southern South Dakota and eastward to Indiana. The most widely distributed species, *T. carolina,* is found from Canada to Mexico. Several studies document declines in *T. carolina* in various locations, but it is especially widespread and other populations may not be threatened.

Box turtles are long-lived, taking 10–20 years to reach sexual maturity, and loss of adults from a population can have a significant effect on the status of the population. The turtles have many causes of mortality, and development has increasingly fragmented their habitat. The sale of *T. carolina* and *T. ornata* is restricted in several States, but dealers still regularly advertise them for sale. It is reported that between 8,000 and 14,000 *T. carolina* are exported annually, but the exact number is not known. Trade in this species is reported to have increased since the ban on importation of Mediterranean tortoises into Europe.

The wood turtle (*Clemmys insculpta*) ranges from Nova Scotia west to Minnesota and Iowa, and south to Virginia. Next to tortoises, this is the most terrestrial of native turtles. Few attempts have been made to quantify wood turtle populations. They appear to be largely restricted to river and stream bottoms and associated shore-lines and floodplain habitats. Habitat loss and fragmentation are the most serious threats to this species. There are anecdotal reports that wood turtles are becoming scarce or are now extirpated in many places where stable populations once existed, but additional quantitative information is needed.

The species frequently appears on reptile dealer price lists, and prices for adult specimens vary from $35 to as much as $95 apiece. Wood turtles are reportedly desired by European terrarium hobbyists, but trade information is limited. The species is protected by State laws in several States within its range, and stronger enforcement in the United States seems appropriate. The Service solicits additional information on international trade and population status, in order to make its final decision on whether to propose the species for either Appendix.

5. Paddlefish (Polyodon spathula)

Region 6 of the U.S. Fish and Wildlife Service prepared a proposal for adding the paddlefish to appendix I of CITES. Paddlefish were historically abundant in most of the large rivers of the Mississippi River drainage; specifically noted were such rivers as the Missouri, the Ohio, the Tennessee, the Cumberland, the White, the Arkansas, and the Red. Paddlefish also were considered abundant in many of the Gulf slope river drainages in Texas, Louisiana, Mississippi, and Alabama. Around the turn of the century, relict populations occurred in Lake Erie and other of the Great Lakes, and paddlefish were known to exist in Ontario, Canada. They have been extirpated from Canada, the Great Lakes, and some of the peripheral range States such as New York, Pennsylvania, Maryland, and North Carolina. The peripheral range of the species has continued to decline since the turn of the century. Today, even though paddlefish still occur in 22 States, only remnant populations remain in many of the major river systems and their tributaries where the species once was considered to be abundant:

Paddlefish are highly mobile and live up to 30 years. Males reach sexual maturity at 7 to 9 years and females at 10 to 12 years of age. Cumulative impacts associated with alteration of habitats and contaminants, and overexploitation have had overall adverse effects on populations. Commercial exploitation also has been a major factor affecting its populations in several major river systems. At least nine States still allow commercial harvest of paddlefish, while it is fully protected (no sport or commercial fishing) in Texas (as endangered) Louisiana, Alabama, Minnesota, and Wisconsin (as threatened). Commercial harvest can rapidly deplete adult paddlefish stocks; the commercial catch has varied depending on the demand for roe and smoked flesh. Demand and price for roe (caviar) purportedly continued to increase during the 1980's. The current volume of roe entering trade internationally is unknown, in part because export forms are not required for fishery products, and because U.S. Customs reporting documentation does not require exporters to distinguish between roe from paddlefish and other fish species. The Service therefore, is considering proposing the paddlefish for appendix I or II, and seeks information on the effect of trade on this species, especially any data on the volume of its roe being exported.

6. Bluefin tuna (Thunnus thynnus)

The Service received a draft proposal from the National Audubon Society to list the bluefin tuna in appendix I of CITES. The species is found on both sides of the Atlantic Ocean and in the eastern Pacific Ocean. In the western Atlantic, it ranges from Labrador to Brazil. and in the eastern Atlantic, from the North Sea to western North Africa. In the eastern Pacific, it occurs from Shelikof Strait, Alaska to southern Baja California, Mexico. Bluefins attain sizes well over 1,000 pounds and live to 30 or more years. Western Atlantic bluefins spawn in the Gulf of Mexico, the Caribbean, and off the straits of Florida; eastern Atlantic bluefins spawn in the Mediterranean.

Since 1970, the western Atlantic population of this species has declined significantly. According to the proposal, the population index for 10–30 year-old breeding fish shows a decline of nearly 95 percent, while fishing pressure has purportedly intensified 2,200 percent. In 1986, Japan imported nearly 5,200 metric tons of bluefin tuna overall, including more than half of the U.S. catch.

Management of the Atlantic bluefin tuna falls under the responsibility of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The harvest quota for the western Atlantic population was set at 2,660 metric tons for 1991. The mean annual catch from the western Atlantic averaged about 9,190 metric tons in the early 1960's. The harvest quota for the western Atlantic population has been set at 2,660 metric tons since 1983. According to the proposal, catches in the eastern Atlantic averaged 20,900 metric tons between 1960 and 1962, and 5,400 in 1987 to 1989. In 1981, purse seining for bluefin tuna was generally banned in Canadian and U.S. waters. The National Marine Fisheries Service (NMFS) published a proposed rule (56 FR 10227; March 11, 1991) to limit harvest of bluefins especially in the Gulf of Mexico, to prevent the angling sector from exceeding its annual quota, thus ensuring that the United States fulfills its obligations under the ICCAT agreement. Since establishment of recent ICCAT quotas, there is some evidence that school fish and medium size fish may have increased in recent years.

The National Marine Fisheries Service reviewed the CITES proposal and recommended adding the western Atlantic population to appendix II, in part recognizing that a status review is being carried out by ICCAT. The U.S. Fish and Wildlife Service (Service) recognizes that CITES Article XIV limits the effectiveness of a listing in appendix II. Nevertheless, the Service perceives a benefit from the limited additional reporting and documentation requirements. The Service is considering submitting a proposal to list the entire species on appendix II, including the western Atlantic population due to its serious decline and listing the other populations for look-alike reasons. The Service, therefore, solicits any additional trade figures or statistics concerning this species.

7. Freshwater or Pearly Mussels (Family Unionidae)

At the Sixth Meeting of the Conference of the Parties in 1987, the Ten-Year Review Committee Chairman withdrew a proposal to remove several species of Unionidae from the CITES appendices, with the understanding that the United States would review the need for the listings. The Service contracted with the World Conservation Union (IUCN) Trade Specialist Group to assist in defining the geographical extent of harvest of the listed species (both under CITES and the Endangered Species Act) and in assessing the trade in these U.S. freshwater mussels.

The bivalve mollusc family Unionidae (pearly mussels or naiads) is one of the most diverse mollusc families in North America. Their geographic distribution is widespread; naiads are found in most of the major river drainages in the Southeast and Midwest, including the Upper Mississippi drainage system, and as far west as Oklahoma and Texas.

The Trade Specialist Group recommended that the Service propose listing the family Unionidae in appendix II, coupled with the transfer from appendix I to appendix II of the 26 taxa presently in appendix I. Of the 297 North American Unionid taxa currently recognized, 13 are believed to be extinct; 35 are listed as endangered under the Act with an additional 68 as candidates for listing, and 32 are included in the CITES appendices.

At the turn of the century, naiads were heavily harvested for the pearl button industry. The advent of plastic buttons resulted in a decline in this industry, but the development of pearl aquaculture by the Japanese in the 1950's again renewed commercial harvest. Numerous environmental changes (impoundments, channelization, siltation, and contamination) and extensive commercial exploitation have contributed to the gradual degradation of this valuable natural resource.

In April 1990, the IUCN Trade Specialist Group submitted an interim report on the trade in U.S. freshwater Unionid mussels to the Service. Currently about 5,000 metric tons of raw shells are being exported annually to Asian countries for the cultured pearl industry. This commercial trade may have a detrimental effect on the survival of some species, and there is the likelihood of taking protected species in the course of commercial harvesting. Dominant species recorded in the trade are: *Amblema plicata, Fusconaia ebena, Megalonaias neruosa, Pleurobema cordatum, Quadrula quadrula,* and *Q. pustulos*, none of which are listed in CITES or under the Endangered Species Act. Several listed species have been recorded in trade: *Conradilla caelata, Fusconaia cuneolus, Lampsilis brevicula,* and *Unio nicklineana*, and there is some indication that trade may shift to include other protected species. Due to the volume of trade, the likelihood of incidental take of listed species, the possibility of species being traded under incorrect names, and the general degradation of this resource, the Service is considering proposing all unionids for inclusion in CITES appendix II. Any additional information on status or trade is requested.

8. American mahogany (Swietenia spp.)

At the April 1991, fourth meeting of the CITES Plants Committee, the NRDC provided information on *Swietenia* species and the participants inquired whether the United States would consider proposing for appendix II those species of the genus that are not already in appendix II; TRAFFIC USA has also requested that the Service submit such a proposal. The three known species in the genus are native to the neotropics. *Swietenia humilis* (Pacific Coast mahogany) occurs in Mexico and Central American and is listed in appendix II, and no exclusion of parts has been proposed. The unlisted species are *S. macrophylla* (bigleaf mahogany), which occurs from South America to Mexico; and *S. mahagoni* (Caribbean mahogany), which occurs in the Caribbean, extending to southern Florida. Considered as natural hybrids are: in the Caribbean, *S. aubrevilleana* (seemingly *S. mahagoni* crossed with *S. macrophylla*), and in Costa Rica, *S. macrophylla* crossed with *S. humilis*. *Swietenia* species and hybrids also are in cultivation (and may be locally naturalized); some are grown ornamentally and/or for silviculture. *Swietenia macrophylla* and *S. mahagoni* are cultivated with limited success in plantations through the tropics both in the New and Old Worlds.

Demand for the timber and its products has been strong for many decades and this demand is not met from cultivated sources. Wood of *S. mahagoni* has been preferred, to the extent that its natural populations are considered to be severely genetically eroded, with the species existing mainly as only shrubs or small trees. Even in very remote areas (especially in South America), *S. macrophylla* is selectively sought and removed for commercial markets.

The United States recognizes that these are valuable species of timber trees that produce what is regarded as premier cabinet woods. Additional efforts are underway to obtain details from countries where the species are native. If the information continues to support a proposal to list the rest of the genus of appendix II, it probably would apply only to specimens (including natural hybrids) from the neotropics. For *S. macrophylla*, it probably would apply only to timber, lumber, and primary products (including logs, wood in the rough, sawn wood, veneer sheets, and plywood). However, for *S. mahagoni*, it appears necessary to regulate all timber,

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lumber. and primary products, as well as wood that for the first time has been extensively worked into the secondary or final product.

9. Venus fly-trap (Dionaea muscipula)

At the recent meeting of the Plants Committee, participants from the United Kingdom in particular requested the United States to consider listing *Dionaea muscipula* in appendix II. The species occurs mostly in North Carolina, and also in South Carolina, and is extensively available through the nursery trade. Throughout the past decade especially, the species may have declined significantly. The State of North Carolina is presently conducting a thorough field survey, and TRAFFIC USA has initiated a study to determine the extent of the trade in specimens of wild origin compared with those that are artificially propagated. Sufficient status and trade data may become available before this October's deadline for submission of proposals to indicate whether a proposal should be submitted.

10. Ten-Year Review Species of Animals

At past CITES Animals Committee meetings, the chairman requested information from the Service on certain CITIES species occurring both in Mexico and the United States. The species of particular interest are as follows: (1) Harlequin or Montezuma quail (*Cyrtonyx montezumae montezumae* and *C. m. mearnsi*); (2) the San Diego horned lizard (*Phrynosoma coronatum blainvillii*); (3) pronghorns (*Antilocapra americana*); and (4) the Mexican bobcat (*Felis rufa escuinapae*). The Service was asked to determine the extent that these species enter trade and whether they continue to merit inclusion in the appendices, as well as to review the taxonomy of these species. The Service is in the process of determining whether a nomenclatural or geographical listing would provide the most appropriate listing for these species of concern. The Service has consulted with the Government of Mexico on several of these issues. The European countries are especially concerned that their port inspectors cannot correctly identify the various subspecies that are entering trade.

Harlequin quail (*Cyrtonyx montezumae*) are widespread, occurring throughout east and central Arizona, central New Mexico, west Texas and across the south-central uplands of Mexico from Guerrero to Veracruz. The ranges of the subspecies (*C. m. montezumae and C. m. mearnsi*) are somewhat demarcated on a north-south axis, with *mearnsi* north of the Sierra Madre Occidental and *montezumae* occupying the southern slopes in Jalisco, but extending to Atlantic drainages in Pueblo and Veracruz. There is a question as to whether they are valid subspecies, and also it appears that there is little documented trade in the species. The United States may submit a proposal to remove these two taxa from the CITES appendices. The Service would appreciate any comments on this issue.

There are five recognized subspecies of coastal horned lizards (*Phrynosoma coronatum*) occurring in California and Mexico, with only the San Diego horned lizard (*P. c. blainvillii*) being listed in appendix II of CITES. There has been no recorded trade in this subspecies since its listing in 1975, and the take of specimens of this species is prohibited under California law. The United States may propose either removing this subspecies from appendix II or listing the other subspecies on appendix II for look-alike reasons. The latter action would remove the burden of identifying the different subspecies by custom agents in importing countries, and place responsibility for proper identification of specimens and correct documentation by the issuance of export permits for all subspecies on the exporting country. The Service is not sure whether this added permit burden is warranted, and would appreciate comments.

At the Animals Committee meeting held in Australia (November 1990), it was recommended that the United States consider listing all pronghorns (*Antilocapra americana*) in the appendices since it is difficult to distinguish between the subspecies (*A. a. mexicana*, listed on appendix II; *A. a. peninsularis* and *A. a. sonoriensis*, both in appendix I, and the unlisted subspecies (*A. a. americana* and *A. a. oregona*). Both *A. a. peninsularis* and *A. a. sonoriensis* are protected under the U.S. Endangered Species Act, but the principal range of these endangered species is in Mexico. Although there is some possibility that the listed subspecies might enter trade, there is no evidence that they have been traded in the past; and the Service does not want to add the unnecessary burden of issuing permits for specimens of the nonthreatened, unlisted subspecies. Therefore, the United States may propose to remove the pronghorn populations in the United States from the appendices, and retain the more endangered populations in Mexico on appendix II or I.

Presently all subspecies of bobcats [*Felis*(= *Lynx*) *rufus*] are listed in appendix II of CITES as look-alikes, except for the Mexican bobcat (*Felis rufus escuinapae*) which is listed in appendix I. The number of subspecies of bobcats described to date comprise few realistically distinguishable taxa. Several subspecies of bobcats are recognized as existing in Mexico and their characters and ranges overlap with *escuinapae*. Based on present information, the United States intends to propose downlisting *escuinapae* from appendix I to II.

The National Marine Fisheries Service has requested the Fish and Wildlife Service (Service) to propose removing the northern elephant seal (*Mirounga angustirostis*) from appendix II. The northern elephant seal has reoccupied almost all of its historic breeding range and breed from Isla Naividad, Baja California, north to the Farallon Islands off San Francisco. Utilization is restricted to a very few specimens taken under scientific or display permits issued pursuant to the Marine Mammal Protection Act, and a few incidentally taken in fisheries. The species is also protected under recently adopted Mexican law. While parts and products of the northern elephant seal are difficult to distinguish between those of the southern elephant seal (*Mirounga leonina*), which would remain listed in appendix II, harvesting of the southern elephant seal ceased in 1961 and there is no known international trade in this species.

11. Turbinicarpus spp.

In 1983, the six recognized species of the Mexican cactus genus *Turbinicarpus* were transferred from appendix II to appendix I. Although the genus was mentioned in the proposal, the COP4 Annex listed the six species. Although it seems that the intent of the original proposal was to transfer the entire genus to appendix I, some might contend that newly described species are not included in the listing.

The Service is considering submitting a proposal to clarify the existing listing so that all species in the genus are clearly included in appendix I. Doing so will ease identification problems and so help to protect the six named species, and will include newly described taxa, which are rare, as well as those in the genus that may be discovered in the future.

The Service seeks additional status and trade information on all of the 10-year review species and comments on the other suggested proposals to change the appendices.

12. Proposals Related to the SPAW Protocol

Certain species are being considered for listing on CITES appendix II in order that obligations of the United States under the Protocol for Specially Protected Areas and Wildlife (SPAW) of the Cartagena Convention can be met. The Cartagena Convention was created through the impetus of the Regional Seas Programme of the United Nations Environment Programme. The Convention is a regional agreement for the protection and development of the marine environment. The SPAW Protocol area includes the marine environment of the Gulf of Mexico, the Caribbean Sea and the adjacent area of the Atlantic Ocean south of 30 degrees north latitude and north of the northern rim of South America, and such related terrestrial areas as each Party defines. Obligations to protect or manage species on the Annexes include the ability to regulate trade. The Parties at the SPAW Meeting of Plenipotentiaries in June 1991 agreed to regulate international trade through implementation of CITES. There are certain species included in the SPAW Annexes for which there exist adequate protection and management provisions in the United States, but for which trade involving the United States may exist but not be regulated.

In the **Federal Register** of March 21, 1991 (56 FR 12026), the Service issued a notice identifying plant and animal species proposed for protection or management under the SPAW Protocol. These species were included in the initial Annexes by the Parties at the SPAW Meeting of Plenipotentiaries. For these, international cooperation in regulating trade is expected.

The Service is considering a proposal to list the Queen conch (*Strombus gigas*), which is listed on Annex III of SPAW, to be added to appendix II of CITES. Currently, it is listed in *The IUCN Invertebrate Red Data Book* as a commercially threatened species. Although it is not threatened with extinction, most or all of its populations are threatened as a sustainable commercial resource, or may become so, unless their harvest is regulated.

The species is found in Bermuda, southeast Florida, throughout the Caribbean, and in the southern Gulf of Mexico, Panama, Belize, Colombia and Venezuela. Conch are found in sea-grass beds, usually preferring shallow water. The Queen conch is readily distinguished from the other five species of *Strombus* by its large size (over 2.5 kg) and the deep pink color of its aperture. Queen conches enter shallow waters to breed during the summer months and each female lays several spawn masses per season which may contain as many as 500,000 eggs.

Conch has long been an important part of the diet of Caribbean peoples. In all Caribbean countries, heavy fishing pressure for local use and the export market has severely depleted stocks in areas close to island population centers and fishing villages. In the lower Florida Keys, adult specimens are now rarely found. Conch mariculture projects are now underway in several countries. Some areas isolated from human settlement still contain healthy populations and do not appear to be overfished. Export consists of edible conch (fresh and dried) and whole shells. The Service is now soliciting comments on the proposed listing along with any trade and/or status information.

Guaiacum officinale (commoner lignum vitae) also has been listed in Annex III of the SPAW Protocol. The Service is considering proposing this species for inclusion in appendix II of CITES, in part so that the United States can meet its obligations under the SPAW Protocol to regulate trade. The species is native in the Bahamas, Greater Antilles and Lesser Antilles (including Puerto Rico and the U.S. Virgin Islands), and Venezuela and Colombia. The species is cultivated to a limited extent. This species is considered much depleted because of past exploitation. The Service seeks information to show whether there is now international trade either in its resinous wood or (for medicinal use) in its wood-extract. *Guaiacum sanctum* (holywood lignum vitae) is presently listed in appendix II of CITES.

13. Bred-In-Captivity

Pursuant to resolution Conf. 6.21, captive breeding operations seeking to register their facility for a appendix I species for commercial purposes for the first time must have the listing approved by a two-thirds majority vote of the CITES Parties. Subsequently, in resolution Conf. 7.10, the Parties recommended factors to be addressed in any proposal to register a facility in accordance with Conf. 6.21. The Service received a proposal for registration of Parrot Jungle and Gardens, Inc., and the Avicultural Breeding and Research Center, as commercial captive breeding operations for the scarlet (*Ara macao*).

The scarlet macaw has the widest distribution of any macaw, ranging from eastern Mexico, south through Central America to Colombia, and east of the Andes from the Guianas and Trinidad south to eastern Peru, Santa Cruz in Bolivia, and the northern Mato Grosso in Brazil. There are no accurate population estimates available, but according to some individuals large stable populations still exist in the Amazon region.

The scarlet macaw was listed in appendix I of CITES in 1985, but it is not listed under the Act or in the lists of threatened species established by the IUCN and International Council for Bird Preservation. *Ara macao* is widely kept and bred in captivity throughout the world, but most frequently in the United States.

The initial founder stock at Parrot Jungle and Gardens was imported in 1936, was first bred in 1945, and has been bred in the collection essentially to the F5 generation, although because of back breeding to wild caught specimens, few truly F2 generation captive bred birds have been produced. Of the 70 birds currently in the collection, at least 36 were captive born. Parrot Jungle has formed a breeding consortium with the Avicultural Breeding and Research Center. The current breeding stocks at these two sites include about 140 birds. Due to the large number of birds available in the United States for breeding stock (at least 176 pairs) and the large number in captivity (approximately 600), augmentation from the wild does not appear necessary at this time, and programs to minimize inbreeding can be developed.

It appears that the Parrot Jungle facility may qualify for registration as the first captive breeding operation for the scarlet macaw. The Service solicits any additional information on trade in the species, and other U.S. facilities that are breeding scarlet macaws in captivity.

Future Actions

The Service will consider all available information in deciding which proposals warrant consideration by the Parties. The U.S. proposals must be submitted to the CITES Secretariat by October 4, 1991, for consideration at the March 1992 meeting of the Conference of the Parties in Kyoto, Japan. After this date, the Service will publish a further **Federal Register** notice to announce its decisions on the potential proposals discussed above. Persons having current biological or trade information about the species being considered are invited to contact the Service's Office of Scientific Authority at the above address.

This notice was prepared by Drs. Richard M. Mitchell, Bruce MacBryde, and Charles W. Dane, Office of Scientific Authority, under the authority of the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*

List of Subjects in 50 CFR Pa

Endangered and threatene
Exports, Imports, Treaties.

Dated: July 18, 1991.

Richard N. Smith,

Deputy Director.

[FR Doc. 91-17583 Filed 7-23-91;

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List of Subjects in 50 CFR Part 23

Endangered and threatened species, Exports, Imports, Treaties.

Dated: July 18, 1991.

Richard N. Smith,

Deputy Director.

[FR Doc. 91-17583 Filed 7-23-91; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 56, No. 142
Wednesday, July 24, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Regulations Model Rules Working Group Public Meetings

This notice of committee meetings is given pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463). Attendance at each meeting is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least one day in advance. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after each meeting. Minutes of the meeting will be available on request.

Committee on Regulation

Date: Thursday, August 8, 1991.
Time: 2:00 p.m. to 5:00 p.m.
Location: Administrative Conference, 2120 L Street NW., suite 500, Washington, DC (Library, 5th floor).
Contact: David M. Pritzker, (202) 254-7020.
Agenda: The Committee will meet to continue discussion of possible recommendations on procedures in antidumping and countervailing duty cases, based on a study by Professors John H. Jackson, University of Michigan Law School, and William J. Davey, University of Illinois at Urbana-Champaign.

Committee on Regulation

Date: Friday, August 9, 1991.
Time: 9:30 a.m. to 12:30 p.m..
Location: Administrative Conference, 2120 L Street NW., suite 500, Washington, DC (Library, 5th floor).
Contact: David M. Pritzker, (202) 254-7020.
Agenda: The Committee will meet to discuss a draft report and possible recommendations concerning federal noise abatement regulation. The draft report was prepared for the Administrative Conference by Professor Sidney A. Shapiro, University of Kansas School of Law, and Dr. Alice Suter, Alice Suter and Associates, Cincinnati, Ohio.

Working Group on Model Rules

Date: Friday, September 6, 1991.
Time: 12 noon—2:00 p.m.
Location: Administrative Conference, 2120 L Street NW., suite 500, Washington, DC (Library, 5th floor).
Contact: Gary J. Edles, (202) 254–7020.
Agenda: The Committee will meet as part of an ongoing effort to develop model rules of practice and procedure which can be used by Federal agencies in formal adjudications.

Dated: July 19, 1991.

Michael W. Bowers,
Deputy Research Director.

[FR Doc. 91–17628 Filed 7–23–91; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 91-100]

Receipt of Permit Application for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an application for a permit to release a genetically engineered organism into the environment is being reviewed by the Animal and Plant Health Inspection Service. The application has been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: A copy of the application referenced in this notice, with any confidential business information deleted, is available for public inspection in room 1141, South Building, United States Department of Agriculture, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. You may obtain a copy of this document by writing to the person listed under "**FOR FURTHER INFORMATION CONTACT.**"

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Program Specialist, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permits, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 (301) 436–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plants Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) in the United States, certain genetically engineered organisms are products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following application for a permit to release a genetically engineered organism into the environment:

Application No.	Applicant	Date Received	Organism	Field Test Location
91-168-01	Calgene, Incorporated	06-17-91	Rapeseed plants genetically engineered to express an oil modification gene and a kanamycin resistance gene.	Baker, Sumter, and Tift Counties, Georgia.

Done in Washington, DC, this 8th day of July 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-17511 Filed 7-23-91; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Boulder Tony Timber Sale and Other Projects, Siuslaw National Forest, Tillamook County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) for a set of proposals to implement the Boulder Tony Timber Sale and other resource management projects on the Hebo District, Siuslaw National Forest. The purpose of the EIS will be to develop and evaluate a range of alternatives for timber harvest, development of associated road systems, and implementation of other related projects. Projects would be implemented in accordance with direction in the 1990 Siuslaw National Forest Land and Resource Management Plan (Forest Plan), which provides the overall guidance for management of the area. The proposed projects would be implemented during fiscal year 1994 on the Hebo Ranger District.

The proposed projects are located within a planning area located approximately five miles southeast of Beaver, Oregon, on the Hebo Ranger District, Siuslaw National Forest. A portion of this planning area is in the Hebo 1-A Roadless Area described in appendix C of the Forest Plan Final EIS. The Forest Service invites written comments and suggestions on the scope of the environmental analysis. In addition, the agency gives notice of the environmental analysis and decision-making process that will occur so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope and implementation of this proposal must be submitted by October 1, 1991.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Ed Oram, District Ranger, Hebo Ranger District, P.O. Box 324, Hebo, Oregon, 97122.

FOR FURTHER INFORMATION: Direct questions about the proposed action and EIS to Scott Wells, Environmental Coordinator, Hebo Ranger District, P.O. Box 324, Hebo, Oregon, 97122; phone (503) 392-3161.

SUPPLEMENTARY INFORMATION: The purpose of the proposed actions is to implement management direction and projects identified in the Forest Plan. Therefore, the Boulder Tony EIS will be tiered to the Forest Plan which provides goals, objectives, standards and guidelines for the various land allocations on the national forest. The Forest Plan designated most of the lands in the project planning area as Management Area 15, which is primarily managed for timber production while maintaining or enhancing wildlife and fish habitat, soil and water resources and dispersed recreation. A small portion of the planning area is designated as Management Area 1, which is managed to protect and enhance Oregon silverspot butterfly habitat.

The proposed actions are derived from following two key elements in the Forest Plan:

1. Proposed Timber Sale and Associated Roads (Timber Sale Schedule, appendix A of the Forest Plan)

—The Boulder Tony Timber Sale would harvest approximately 9.9 million board feet (MMBF) from approximately 305 acres. Approximately 3.8 miles of road construction would be needed to access the timber. Skyline and other cable yarding systems would be used to harvest the timber. Stands proposed for harvest are located in Sections 1, 2, 3, 10, 11, and 12 in Township 4 South, Range 9 West, Williamette Meridian. The proposed Timber Sale is a composite of the Boulder Tony Timber Sale and a portion of the Boulder Rubble Timber Sale, both of which are listed in appendix A of the Forest Plan. The Environmental Assessments for those Timber Sales will be re-examined and the results documented in the draft EIS.

2. Wildlife and Fish Habitat Enhancement (Resource Schedule, appendix B of the Forest Plan)

—Stream habitat improvements for anadromous and resident fish.

—Meadow improvement projects for big game habitat enhancement.

The analysis will consider a range of alternatives. Along with the proposed actions, the analysis will consider a no-action alternative.

Public participation will be especially important at several points during the analysis, beginning with the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies and other individuals or organizations who may be interested in or affected by the proposed projects. This input will be used in preparation of the draft EIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying major issues to be analyzed in depth.
3. Identifying issues which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives based on themes which will be derived from issues recognized during scoping activities.
5. Identifying potential environmental effects of this project and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.
7. Notifying interested publics of opportunities to participate through meetings, personal contacts, or written comment. Keeping the public informed through the media and/or written material (i.e. newsletters, correspondence, etc.).

Public involvement meetings will be held. Actual dates, times and place of meetings will be announced in the Tillamook Headlight-Herald and Corvallis Gazette-Times newspapers.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by June 1992. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. EPA will publish a Notice of Availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice of this early stage of public participation and of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could have been raised at the draft stage may be waived or dismissed by the court if not raised until after completion of the final EIS. *City of Angoon* v. *Hodel*, 803

F.2d. 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in these proposed actions participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

To be most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merit of the alternatives discussed (see Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

The final EIS is scheduled to be completed by June 1993. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal. The Forest Service is the lead agency. Wendy Herrett is the responsible official. As the responsible official, she will decide which, if any, of the proposed projects will be implemented. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR Part 217).

Dated: July 12, 1991.

Robert Gale,

Acting Forest Supervisor.

[FR Doc. 91–17579 Filed 7–23–91; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the District of Columbia Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that an emergency briefing and planning meeting of the District of Columbia Advisory Committee to the Commission was convened at 10 a.m. and adjourned at 5 p.m., on Wednesday, May 15, 1991, at the Gavan Center, Shrine of the Sacred Heart, 16th and Park Road NW., Washington, DC 20009. The purpose of the emergency meeting was to obtain information from Hispanic community leaders, members of the public and government officials in connection with the recent incidents in the Mt. Pleasant area of Washington, DC. Participants were asked to address the questions: "Are civil rights complaints emerging from recent civil disturbances in Mt. Pleasant and neighboring areas. How should the District of Columbia Advisory Committee to the Commission and the Commission respond?"

The meeting was conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 19, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91–17570 Filed 7–23–91; 8:45 am]

BILLING CODE 6335-01-M

Agenda and Public Meeting of the Illinois Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Illinois Advisory Committee to the Commission will be held from 9 a.m. until 3 p.m. on Friday, August 16, 1991, at the Midland Hotel, 172 W. Adams St., Chicago, Illinois 60603. The purpose of this meeting is to discuss current issues, meet Midwestern Regional Staff and plan future activities.

Persons desiring additional information should contact Faye Lyon, Committee Chairperson at (815) 965–9595 or Constance M. Davis, Regional Director of the Midwestern Regional Office, U.S. Commission on Civil Rights, at (312) 353–8311. Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the schedule date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 19, 1991.

Carol Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91–17571 Filed 7–23–91; 8:45 am]

BILLING CODE 6335-01-M

Agenda and Public Meeting of the Indiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Indiana Advisory Committee to the Commission will be held from 9 a.m. until 5 p.m. on Thursday, August 8, 1991, at the Indiana Youth Institute, 333 N. Alabama, suite 300, Indianapolis, Indiana 46204. The purpose of this meeting is to gather information on the extent of hate crime in Indiana.

Persons desiring additional information should contact Committee Chairperson, Hollis E. Hughes, at (219) 293–9305 or Constance M. Davis, Regional Director of the Midwestern Regional Office, U.S. Commission on Civil Rights, at (312) 353–8311. Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 19, 1991.

Carol Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91–17572 Filed 7–23–91; 8:45 am]

BILLING CODE 6335-01-M

Agenda and Public Meeting of the Indiana Advisory Committee

Pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, notice is hereby given that the meeting of the Indiana Advisory Committee to the Commission, previously announced in the **Federal Register** on July 19, 1991 (56 FR 33245), FR Doc. 91–17143, to convene at 6 p.m. until 9 p.m. on Wednesday, August 7, 1991, at the Indiana University School of Law/Indianapolis, 735 W. New York, has been relocated to the Indiana Youth Institute, 333 N. Alabama, suite 300, Indianapolis, Indiana 46204. The purpose of this meeting is to meet Regional staff, orient members, plan future activities, and refresh SAC members of the hate crime project.

Persons desiring additional information should contact Committee Chairperson, Hollis E. Hughes, at (219) 293–9305 or Constance Davis, Director of the Midwestern Regional Office, at (312) 353–8311. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 19, 1991.

Carol Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91–17573 Filed 7–23–91; 8:45 am]

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The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 19, 1991.

Carol Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91-17572 Filed 7-23-91; 8:45 am]

BILLING CODE 6335-01-M

Agenda and Public Meeting of the Indiana Advisory Committee

Pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, notice is hereby given that the meeting of the Indiana Advisory Committee to the Commission, previously announced in the **Federal Register** on July 19, 1991 (56 FR 33245), FR Doc. 91-17143, to convene at 6 p.m. until 9 p.m. on Wednesday, August 7, 1991, at the Indiana University School of Law/Indianapolis, 735 W. New York, has been relocated to the Indiana Youth Institute, 333 N. Alabama, suite 300, Indianapolis, Indiana 46204. The purpose of this meeting is to meet Regional staff, orient members, plan future activities, and refresh SAC members of the hate crime project.

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The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 19, 1991.

Carol Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91-17573 Filed 7-23-91; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-122-812]

Initiation of Antidumping Duty Investigation: Steel Wire Rope From Canada

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: July 24, 1991.

FOR FURTHER INFORMATION CONTACT: Michael Ready, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–2613.

Initiation

The Petition

On June 28, 1991, the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers filed with the Department of Commerce (the Department) an antidumping duty petition on behalf of the United States Industry producing steel wire rope. In accordance with 19 CFR 353.12, the petitioner alleges that imports of steel wire rope from Canada are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, the U.S. industry. Petitioner amended its petition on July 11, 15, and 16, 1991.

The petitioner has stated that it has standing to file the petition because it is an interested party, as defined in 19 CFR 353.2(k), and because it has filed the petition on behalf of the U.S. industry producing steel wire rope. If any interested party, as described in 19 CFR 353.2(k) (3), (4), (5), or (6), wishes to register support for, or opposition to, this investigation, please file written notification with the Assistant Secretary for Import Administration.

United States Price and Foreign Market Value

Petitioner based its calculation of United States Price (USP) for Wire Rope Industries Ltd. (WRI) on price quotes from a Minnesota-based distributor of WRI products. Deductions were made for the estimated distributor's markup, foreign and U.S. inland freight, and U.S. customs duty and merchandise processing fee. Petitioner based its calculation of USP for Wrignts Canadian Ropes Ltd. (Wrights) on Wrights' price quotes. and price list to distributors in California and Oregon. Deductions were made for estimated foreign and U.S. customs duty and merchandise processing fee. Petitioner added to the U.S. selling price of both companies the amount of the Canadian federal sales tax that would have been collected if the merchandise had not been exported.

Petitioner based Foreign Market Value on the Western Canadian price list (applicable west of Ontario) of WRI and Wrights. Deductions from list price were made for discounts the petitioner believes are granted to western Canada distributors and for freight charges. An addition was made for the amount of Canadian federal sales tax that was added to each U.S. selling price.

Based on the above comparisons, petitioner calculated margins ranging from 2.69 to 90.96 percent.

Initiation of Investigation

Under 19 CFR 353.13(a), the Department must determine, within 20 days after the petition is filed, whether the petition properly alleges the basis on which an antidumping duty may be imposed under section 731 of the Act, and whether the petition contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on steel wire rope from Canada and find that it meets the requirements of 19 CFR 353.13(a). Therefore, we are initiating an antidumping duty investigation to determine whether imports of steel wire rope from Canada are being, or are likely to be, sold in the United States at less than fair value.

In accordance with 19 CFR 353.13(b) we are notifying the International Trade Commission (ITC) of this action.

Any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19.CFR 353.14.

Scope of Investigation

The product covered in this investigation is carbon steel wire rope. "Steel wire rope" encompasses ropes, cables and cordage of iron or carbon steel (i.e., other than stainless steel), other than stranded wire, not fitted with fittings or made up into articles, and not made up of brass plated wire. The three types of steel wire rope covered by this petition include bright, galvanized, and coated (textile, plastic) steel wire rope. Swaged (compacted) wire rope is also included within the scope of this investigation. Steel wire rope is currently classified under subheading 7312.10.9030, 7312.10.9060 and 7312.10.9090 of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Preliminary Determination by ITC

The ITC will determine by August 12, 1991, whether there is a reasonable indication that imports of steel wire rope from Canada are materially injuring, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated. If affirmative, the Department will make its preliminary determination on or before December 5, 1991, unless the investigation is terminated pursuant to 19 CFR 353.17 or the preliminary determination is extended pursuant to 19 CFR 353.15.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: July 18, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-17586 Filed 7-23-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-423-077]

Sugar from Belgium; Determination Not To Revoke Antidumping Duty Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke antidumping duty finding.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty finding on sugar from Belgium.

EFFECTIVE DATE: July 24, 1991.

FOR FURTHER INFORMATION CONTACT: Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5255.

SUPPLEMENTARY INFORMATION: On June 6, 1991 the Department of Commerce ("the Department") published in the **Federal Register** (56 FR 26052) its intent to revoke the antidumping duty finding on sugar from Belgium (44 FR 33878, June 13, 1979). The Department may revoke a finding if the Secretary concludes that the finding is no longer of interest parties. We had not received a request for an administrative review of this finding for the last four consecutive annual anniversary months and therefore published a notice of intent to revoke pursuant to 353.25(d)(4) of the Department's regulations (19 CFR 353.25(d)(4).

On June 27, 1991, the petitioner, Florida Sugar Marketing and Terminal Association, Inc. objected to our intent to revoke the finding. On June 28, 1991, the U.S. Beet Sugar Association and the U.S. Cane Sugar Refiners' Association, interested parties, also objected to our intent to revoke the finding. Therefore, we no longer intend to revoke the finding.

Dated: July 15, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-17587 Filed 7-23-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-427-078]

Sugar From France; Determination Not To Revoke Antidumping Duty Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke antidumping duty finding.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty finding on sugar from France.

EFFECTIVE DATE: July 24, 1991.

For further information contact Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION: On June 6, 1991 the Department of Commerce ("the Department") published in the **Federal Register** (56 FR 26052) its intent to revoke the antidumping duty finding on sugar from France (44 FR 33878, June 13, 1979). The Department may revoke a finding if the Secretary concludes that the finding is no longer of interest to parties. We had not received a request for an administrative review of this finding for the last four consecutive annual anniversary months and therefore published a notice of intent to revoke pursuant to 353.25(d)(4) of the Department's regulations (19 CFR 353.25(d)(4).

On June 27, 1991, the petitioner Florida Sugar Marketing Association, Inc. objected to our intent to revoke the finding. On June 28, 1991, the U.S. Beet Sugar Association and the U.S. Cane Sugar Refiners' Association, interested parties, also objected to our intent to revoke the finding. Therefore, we no longer intend to revoke the finding.

Dated: July 15, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-17588 Filed 7-23-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-428-082]

Sugar From Germany; Determination Not To Revoke Antidumping Duty Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke antidumping duty finding.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty finding on sugar from Germany.

EFFECTIVE DATE: July 24, 1991.

For further information contact Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION: On June 6, 1991 the Department of Commerce ("The Department") published in the **Federal Register** (56 FR 26053) its intent to revoke the antidumping duty finding on sugar from Germany (44 FR 33878, June 13, 1979). The Department may revoke a finding if the Secretary concludes that the finding is no longer of interest to the parties. We had not received a request for an administrative review of this finding for the last four consecutive annual anniversary months and therefore published a notice of intent to revoke pursuant to 353.25(d)(4) of the Department's regulations (19 CFR 353.25(d)(4).

June 27, 1991, the petitioner Florida Sugar Marketing Association, Inc. objected to our intent to revoke the finding. On June 28, 1991, the U.S. Beet Sugar Association and the U.S. Cane Sugar Refiners' Association, interested parties, also objected to our intent to revoke the finding. Therefore, we no longer intend to revoke the finding.

Dated: July 15, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-17589 Filed 7-23-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-331-601]

Certain Fresh Cut Flowers From Ecuador; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On June 6, 1991, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on certain fresh cut flowers from Ecuador. We have now completed that review and determine the total bounty or grant to be zero for five companies and 1.12 percent *ad valorem* for all other companies during the period January 1, 1989 through December 31, 1989.

EFFECTIVE DATE: July 24, 1991.

FOR FURTHER INFORMATION CONTACT: Elizabeth Levy or Michael Rollin, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On June 6, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 26062) the preliminary results of its administrative review of the countervailing duty order on certain fresh cut flowers from Ecuador (52 FR 1361; January 13, 1987). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of Ecuadorian fresh cut miniature (spray) carnations, standard carnations, standard chrysanthemums and pompon chrysanthemums. This merchandise is currently classifiable under items 0603.10.30, 0603.10.70 and 0603.10.80 of the Harmonized Tariff Schedule (HTS). Daisies are excluded from the scope of the countervailing duty order. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1989 through December 31, 1989 and nine programs: (1) Short-term FOPEX export credit; (2) long-term FOPEX export credit; (3) Fund for the Development of Exportable Production;

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[C-331-601]

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On June 6, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 26062) the preliminary results of its administrative review of the countervailing duty order on certain fresh cut flowers from Ecuador (52 FR 1361; January 13, 1987). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of Ecuadorian fresh cut miniature (spray) carnations, standard carnations, standard chrysanthemums and pompon chrysanthemums. This merchandise is currently classifiable under items 0603.10.30, 0603.10.70 and 0603.10.80 of the Harmonized Tariff Schedule (HTS). Daisies are excluded from the scope of the countervailing duty order. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1989 through December 31, 1989 and nine programs: (1) Short-term FOPEX export credit; (2) long-term FOPEX export credit; (3) Fund for the Development of Exportable Production; (4) short-term FDEP loans; (5) tax deductions for new investment; (6) tax holidays; (7) tax exemptions for transfer of real estate; (8) sales and income tax exemptions; and (9) government refinancing of private debt.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

Final Results of Review

As a result of our review, we determine the total bounty or grant to be zero for Flores Del Ecuador, S.A.; Flores La Antonia, S.A.; Floricola, S.A.; Quito Flores, S.A.; and Victor Guala Salazar; and 1.12 percent *ad valorem* for all other companies during the period January 1, 1989 through December 31, 1989.

Therefore, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from Flores Del Ecuador, S.A., Flores La Antonia, S.A., Floricola, S.A., Quito Flores, S.A., and Victor Guala Salazar and to assess countervailing duties of 1.12 percent of the f.o.b. invoice price on shipments of this merchandise from all other firms entered, or withdrawn from warehouse, for consumption on or after January 1, 1989 and exported on or before December 31, 1989.

The Department will also instruct the Customs Service to waive cash deposits of estimated countervailing duties on shipments of this merchandise from Flores Del Ecuador, S.A., Flores La Antonia, S.A., Floricola, S.A., Quito Flores, S.A., and Victor Guala Salazar, and to collect a cash deposit of 1.12 percent of the f.o.b. invoice price on shipments from all other firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: July 18, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-17590 Filed 7-23-91; 8:45 am]

BILLING CODE 3510-DS-M

Technology Administration

Patent Licensing Regulations Revision; Meetings

Time and Date: July 31, 1991 at 2 p.m.

Place: Herbert C. Hoover Building, 14th and Constitution Avenues, NW., Washington, DC, room 4830.

Status: Open to the public.

Matters to be Considered: The revision of the government-wide patent licensing regulations in 37 CFR part 404, the licensing of foreign patents owned by the Government in 37 CFR part 102, foreign protection of Government inventions in 37 CFR part 101, and domestic rights in Government employee inventions in 37 CFR part 501.

Contact Person for More Information: Joseph P. Allen, Director of the Office of Technology Commercialization, 202-377-8100.

Deborah L. Wince-Smith,

Assistant Secretary for Technology Policy.

[FR Doc. 91-17593 Filed 7-23-91; 8:45 am]

BILLING CODE 3510-18-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Malaysia

July 16, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: July 25, 1991.

FOR FURTHER INFORMATION CONTACT: Kim-Bang Nguyen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6496. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 347/348 and 647/648 are being reduced to account for carryforward used in 1990.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 49875, published on November 30, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 18, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 26, 1990, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 1991 and extends through December 31, 1991.

Effective on July 25, 1991, you are directed to amend further the directive dated November 26, 1990 to decrease the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Malaysia:

Category	Adjusted twelve-month limit [1]
347/348	285,917 dozen.
647/648	1,102,270 dozen of which not more than 794,371 dozen shall be in Category 647-K [2] and not more than 794,371 dozen shall be in Category 648-K [3].

[1] The limits have not been adjusted to account for any imports exported after December 31, 1990.

[2] Category 647-K: only HTS numbers 6103.23.0040, 6103.23.0045, 6103.29.1020, 6103.20.1030, 6103.43.1520, 6103.43.1540, 6103.43.1550, 6103.43.1570, 6103.49.1020, 6103.49.1060, 6103.49.3014, 6112.12.0050, 6112.19.1050, 6112.20 1060 and 6113.00.0044.

[3] Category 648-K: only HTS numbers 6104.23.0032, 6104.23.0034, 6104.29.1030, 6104.29.1040, 6104.29.2038, 6104.63.2010, 6104.63.2025, 6104.63.2030, 6104.63.2060, 6104.69 2030, 6104.69.2060, 6104.69.3026, 6112.12.0060, 6112.19.1060, 6112.20.1070, 6113.00.0052 and 6117.90.0048.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-17532 Filed 7-23-91; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Taiwan

July 18, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 25, 1991.

FOR FURTHER INFORMATION CONTACT: Kim-Bang Nguyen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-8791. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing, special shift and carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 50862, published on December 11, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 18, 1991.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 5, 1990, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 1991 and extends through December 31, 1991.

Effective on July 25, 1991, you are directed to amend the directive dated December 5, 1990 to adjust the limits for the following categories, as provided under the terms of the bilateral agreement, effected by exchange of notes dated August 21, 1990 and September 28, 1990:

Category	Adjusted twelve-month limit [1]
Sublevels in Group I	
225/317/326	33,764,738 square meters.
314	24,917,821 square meters.
361	1,234,698 numbers.
611	2,540,117 square meters.
Sublevels in Group II	
336	121,436 dozen.
338/339	776,274 dozen.
340	1,222,221 dozen.
342	244,853 dozen.
347/348	1,288,567 dozen.
359-C/659-C [2]	1,534,104 kilograms.
359-H/659-H [3]	4,770,279 kilograms.
433	13,654 dozen.
435	19,773 dozen.
442	38,565 dozen.
443	46,414 numbers.
444	116,825 numbers.
447/448	18,812 dozen.
633/634/635	1,594,154 dozen of which not more than 959,317 dozen shall be in Categories 633/634 and not more than 809,791 dozen shall be in Category 635.
636	335,045 dozen.
638/639	6,851,155 dozen.
640	2,085,180 dozen of which not more than 1,361,080 dozen shall be in Category 640-Y [4].
642	699,237 dozen.
644	1,134,906 numbers.
647/648	5,544,935 dozen.
659-S [5]	1,902,708 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1990.

[2] Category 359-C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659-C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 359-H: only HTS numbers 6505.90.1540 and 6505.90.2060; Category 659-H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[4] Category 640-Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[5] Category 659-S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-17533 Filed 7-23-91; 8:45 am]

BILLING CODE 3510-DR-F

Announcement of Import Restraint Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in Uruguay

July 18, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: July 25, 1991.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In exchange of notes dated June 20 and July 3, 1991, the Governments of the United States and Uruguay agreed to extend their current bilateral agreement to extend through June 30, 1992.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the period July 1, 1991 through June 30, 1992.

A copy of the current bilateral agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State (202) 647-3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see

Treasury, Washington, DC

er: This directive amends,
the directive issued to
1990, by the Chairman,
nplementation of Textile
rective concerns imports
ool, man-made fiber, silk
etable fiber textiles and
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d during the twelve-
began on January 1, 1991
December 31, 1991.
5, 1991, you are directed
ve dated December 5,
its for the following
led under the terms of the
effected by exchange of
21, 1990 and September

djusted twelve-month limit ¹

64,738 square meters.
17,821 square meters.
4,698 numbers.
0,117 square meters.

436 dozen.
274 dozen.
2,221 dozen.
853 dozen.
8,567 dozen.
4,104 kilograms.
0,279 kilograms.
54 dozen.
73 dozen.
65 dozen.
14 numbers.
825 numbers.
12 dozen.
4,154 dozen of which not
ore than 959,317 dozen
all be in Categories 633/634
d not more than 809,791
zen shall be in Category
5.
045 dozen.
1,155 dozen.
5,180 dozen of which not
ore than 1,361,080 dozen
all be in Category 640–Y ⁴.
237 dozen.
4,906 numbers.
4,935 dozen.
2,708 kilograms.

een adjusted to account for
r December 31, 1990.
only HTS numbers
49.3034, 6104.62.1020,
20.0048, 6114.20.0052,
42.2090, 6204.62.2010,
025 and 6211.42.0010; Cat-
S numbers 6103.23.0055,
49.2000, 6103.49.3038,
69.1000, 6104.69.3014,
30.3054, 6203.43.2010,
49.1010, 6203.49.1090,
69.1010, 6210.10.4015,
017 and 6211.43.0010.
only HTS numbers
.90.2060; Category 659–H:
02.00.9030, 6504.00.9015,
90.5090, 6505.90.6090,
0.6090.
only HTS numbers
2020, 6205.30.2050 and
only HTS numbers
31.0020, 6112.41.0010,

6112.41.0020,6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91–17533 Filed 7–23–91; 8:45 am]

BILLING CODE 3510-DR-F

Announcement of Import Restraint Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in Uruguay

July 18, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: July 25, 1991.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–5810. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In exchange of notes dated June 20 and July 3, 1991, the Governments of the United States and Uruguay agreed to extend their current bilateral agreement to extend through June 30, 1992.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the period July 1, 1991 through June 30, 1992.

A copy of the current bilateral agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State (202) 647–3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see

Federal Register notice 55 FR 50756, published on December 10, 1990).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 18, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton and Wool Textile Agreement, effected by exchange of notes dated December 30, 1983 and January 23, 1984, as amended and extended, between the Governments of the United States and Uruguay; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 25, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and wool textile products in the following categories, produced or manufactured in Uruguay and exported during the twelve-month period beginning on July 1, 1991 and extending through June 30, 1992, in excess of the following levels of restraint:

Category	Twelve-month restraint limit ¹
334	98,259 dozen.
335	84,586 dozen.
410	2,686,740 square meters of which not more than 1,535,281 square meters shall be in Category 410–A ² and not more than 2,473,507 square meters shall be in Category 410–B ³
433	16,043 dozen.
434	23,934 dozen.
435	48,337 dozen.
442	34,193 dozen.

[1] The limits have not been adjusted to account for any imports exported after June 30, 1991.

[2] Category 410-A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.9000, 5111.30.9000, 5111.90.3000, 5111.90.9000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[3] Category 410-B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.2030, 5112.11.2060, 5112.19.9010, 5112.19.9020, 5112.19.9030, 5112.19.9040, 5112.19.9050, 5112.19.9060, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.9010, 5112.90.9090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

Monitoring data for the aforementioned categories shall be retained and charged to the limits set forth in this directive.

Imports charged to these category limits for the period July 1, 1990 through June 30, 1991 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and Uruguay.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91–17531 Filed 7–23–91; 8:45 am]

BILLING CODE 3510-DR-F

Overshipment and Transshipment Charges for Cotton Towels Produced and Manufactured in Pakistan

July 19, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs charging imports of overshipments and transshipments.

EFFECTIVE DATE: July 26, 1991.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to an agreement, effected by exchange of letters dated October 6 and 7, 1988, between the Governments of the United States and Pakistan, the United States Government is charging 159,867 kilograms to the current limit for cotton towels in Category 369–S. These are overshipment charges for 1989 and 1990 and combined overshipment and transshipment charges for 1991.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 53 FR 18331, published on May 23, 1988; and 55 FR 53322, published on December 28, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 19, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: To facilitate implementation of the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated May 20, 1987 and June 11, 1987, as amended, between the Governments of the United States and Pakistan, and pursuant to the exchange of notes dated October 6 and October 7, 1988 concerning the charging of overshipments and transshipments, I request that, effective on July 26, 1991, you charge 159,867 kilograms to the current limit established in the directive dated December 24, 1990 for cotton textile products in Category 369–S [1], produced or manufactured in Pakistan.

This letter will be published in the **Federal Register**.

Sincerely,

Auggie D. Tantillo

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91–17584 Filed 7–23–91; 8:45 am]

BILLING CODE 3510-DR-F

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[1] Category 369–S: only HTS number 6307 10.2005.

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[FAR Case 91-32]

Corrections to OMB Clearance Requests

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Corrections to OMB notices.

1. At 56 FR 31391, July 10, 1991, a request to review and approve a new information collection requirement concerning Superseding Part Numbers and Superseding Parts was published. In the third column, under **SUPPLEMENTARY INFORMATION**, the Purpose is corrected to read as set forth below:

A. Purpose

The Federal Acquisition Regulation (FAR), section 10.004, permits the use of purchase descriptions, subject to certain limitations, when authorized by FAR 10.006 or when no applicable specification exists. When acquiring items identified only by manufacturer's name and part number, it is necessary to (a) Provide a means for offerors to identify part numbers that are obsolete or otherwise incorrect and (b) describe the documentation an offeror must submit to support the change. The information provided by offerors enables the Government to validate the part number change and update the requirements data and solicitation accordingly.

2. At 56 FR 31392, July 10, 1991, a request to review and approve a new information collection requirement concerning Brand Name or Equal purchase descriptions was published. In the first column, the first line should read (FAR Case 91-32), and under **SUPPLEMENTARY INFORMATION**, the Purpose is corrected to read as set forth below:

A. Purpose

The Federal Acquisition Regulation (FAR), section 10.004, (a) permits the use of "brand name or equal" purchase descriptions when an adequate specification or more detailed description cannot feasibly be made available by any means other than inspection and analysis in time for the acquisition under consideration, and (b) states that agencies should provide detailed guidance and necessary clauses for use by contracting activities when using this technique. To provide a means for firms to offer "equal" products, the provision identifies the information that must be furnished with the offer to enable the Government to determine that the "equal" product is acceptable. The provision requires this information provided by offerors enables the Government to determine whether the "equal" product is acceptable.

Dated: July 17, 1991.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 91-17546 Filed 7-23-91; 8:45 am]

BILLING CODE 6820-34-M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44. Chapter 35)

Title, Applicable form, and Applicable Control Number: DOD FAR Supplement, part 227, Patents, Data and Copyrights; No form; Control Number 0704-0240.

Type of Request: Expedited Submission—Approved date Requested: August 15, 1991.

Average Burden Hours/Minutes per Response: 79.471 Hours.

Responses Per Respondent: 1.

Number of Respondents: 16,560.

Annual Burden Hours: 2,307,240.

Annual Responses: 16,560.

Needs and Uses: This request concerns information collection and recordkeeping requirements related to Technical Data, Software Copyrights and Contracts.

Affected Public: Businesses or other for-profit and Small Businesses.

Frequency: On Occasion.

Respondents Obligation: Required to obtain or retain a benefit.

Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DOD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Davis Highway, suite 1204, Arlington, Virginia, 22202-4302.

Dated: July 19, 1991.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-17544 Filed 7-23-91; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Defense Environmental Response Task Force; Opportunity to Comment

AGENCY: Office of the Assistant Secretary of Defense (Production and Logistics), DOD.

ACTION: Notice of Opportunity to Comment.

SUMMARY: Notice is hereby given that the Defense Environmental Response Task Force will leave its record open for written public comment until July 31, 1991. The purpose of the Task Force is to consider issues related to the improvement of interagency coordination of environmental response actions at military installations scheduled for closure pursuant to Public Law 100-526. The Task Force is also considering consolidation and streamlining of current practices with respect to such actions and consider recommendations regarding changes to existing laws, regulations, and administrative policies.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Doxey, Task Force Executive Director, Office of the Deputy Assistant Secretary of Defense (Environment), room 206, 400 Army Navy Drive, Arlington, Virginia, 22202-2884; telephone (703) 695-7007.

Dated: July 19, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense

[FR Doc. 91-17545 Filed 7-23-91; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers; Department of The Army

Intent To Prepare Draft Environmental Impact Statement (DEIS) for Construction of Variable Width Levee Setbacks and/or Other Measures To Control Sediment and Flooding in the Abiaca Creek Watershed, Leflore County, MI

AGENCY: U.S. Army Corps of Engineers, Vicksburg District, DOD.

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Davis Highway, suite 1204, Arlington, Virginia, 22202-4302.

Dated: July 19, 1991.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-17544 Filed 7-23-91; 8:45 am]

BILLING CODE 3810-01-M

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ACTION: Notice of Opportunity to Comment.

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Dated: July 19, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense

[FR Doc. 91-17545 Filed 7-23-91; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers; Department of The Army

Intent To Prepare Draft Environmental Impact Statement (DEIS) for Construction of Variable Width Levee Setbacks and/or Other Measures To Control Sediment and Flooding in the Abiaca Creek Watershed, Leflore County, MI

AGENCY: U.S. Army Corps of Engineers, Vicksburg District, DOD.

ACTION: Notice of intent.

SUMMARY: The purpose of the proposed action is to reduce flooding and severe sedimentation problems in lands adjacent to the Abiaca Creek and the Mathews Brake National Wildlife Refuge into which the creek flows.

FOR FURTHER INFORMATION CONTACT: Mr. Wendell L. King, Vicksburg District Corps of Engineers, ATTN: CELMK-PD-Q, 3513 I-20 Frontage Road, Vicksburg, Mississippi 39180-5191.

EFFECTIVE DATE: July 24, 1991.

SUPPLEMENTARY INFORMATION: 1. The proposed Abiaca Creek sediment and flood control measures are components of the Demonstration Erosion Control Project, which were initially authorized by Public Law 98-8, "The Emergency Jobs Appropriation Act of 1983." Public Law 98-50, "The Energy and Water Development Appropriation Act for Fiscal Year 1984," directed joint effort by the U.S. Army Corps of Engineers and the U.S. Department of Agriculture, Soil Conservation Service, for the foothill areas of the Yazoo Basin.

2. A range of alternatives to include, but not limited to, the following will be considered: No action; control of gravel mine operations in the hills; construction of a leveed floodway; and construction of a hill line dam.

3. a. A scoping meeting is tentatively scheduled to be held at 7 p.m. on 31 July 1991 in the city of Greenwood, Mississippi, at the Youth Center. Public notices will be published to inform the general public.

b. Significant issues tentatively identified include bottom-land hardwoods/wetlands, waterfowl, fisheries, water quality, endangered species, cultural resources, socioeconomic conditions, etc. Additional environmental requirements may be identified during the scoping process.

c. The Soil Conservation Service, Environmental Protection Agency, U.S. Fish and Wildlife Service, and the Mississippi Department of Wildlife, Fisheries, and Parks will be invited to participate as cooperating agencies.

4. A DEIS will be available for review by the public during FY 92.

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 91-17489 Filed 7-23-91; 8:45 am]

BILLING CODE 3710-PO-M

DEPARTMENT OF EDUCATION

[CFDA No. 246A and 246B]

Rehabilitation Training: Rehabilitation Short-Term Training; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1991

Purpose of Program: This program is designed for the support of special seminars, institutes, workshops, and other short-term courses in technical matters relating to the delivery of vocational, medical, social, and psychological rehabilitation services.

Eligible Applicants: State agencies and other public or nonprofit agencies and organizations, including institutions of higher education, are eligible for assistance under the Rehabilitation Short-Term Training Program.

Deadline for Transmittal of Applications: August 23, 1991.

Deadline for Intergovernmental Review: September 2, 1991.

Applications Available: July 24, 1991.

Available Funds: $400,000.

Estimated Average Size of Awards: $200,000.

Specific information regarding the estimated range of awards and number of awards appears on the chart in this notice.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 385 and 390.

It is the policy of the Department of Education not to solicit applications before the publication of final priorities. However, in this case it is essential to solicit applications on the basis of the notice of proposed priorities as published in the **Federal Register** on May 13, 1991 (56 FR 22084) and as amended in response to public comments, because the Department's authority to obligate these funds will expire on September 30, 1991.

In response to the Secretary's notice of proposed priorities, 20 parties submitted comments. The following is a summary of the changes that are expected to be made in the final priorities based upon public comments.

Priority 1—Rehabilitation Short-Term Training—Implementation of the Americans With Disabilities Act (ADA)

One commenter suggested that the training include a focus on the legislative and philosophic history of the independent living and civil rights movement for people with disabilities. Other commenters suggested that the training include a focus on the independent living philosophy and the attitudinal variables that prompted the passage of the ADA.

The Secretary agrees that it is important for the training to include a focus on the legislative and philosophic history of the independent living and civil rights movement for people with disabilities. This will provide background regarding the impetus for the ADA. A change is expected in the final priority to require that the training include information on the legislative and philosophic history of the independent living and civil rights movement for people with disabilities.

A commenter suggested the the priority include the requirement that persons with disabilities be involved in the development of this training. The Secretary agrees that the involvement of persons with disabilities in the development and provision of this training is an important factor. A change is expected in the final priority to require that individuals with disabilities be involved in the development and delivery of training under this priority.

One commenter suggested that it is confusing to require that the training address the legal and professional liabilities of vocational rehabilitation and independent living professionals in the provision of services and information regarding compliance with the requirements of the ADA. The Secretary agrees that this requirement may be confusing and misinterpreted. The intent was to provide training on the limits imposed by the ADA regarding the disclosure of information to a potential employer about an individual's disability. This information can be provided under the general training regarding the ADA and its implementing regulations. It is expected that this requirement will be eliminated in the final priority.

Three commenters suggested that the audience for this training be expanded to include employers and trainers of employer personnel, and that the training address employers' skills in hiring, accommodating, and supervising employees with disabilities. Another commenter suggested that the intended audience include personnel from independent living centers. Other comments were received relating to the inclusion of personnel from rehabilitation facilities in the training audience.

Rehabilitation Short-Term Training funds can only be used to train personnel that provide vocational, medical, social, and psychological rehabilitation services. The U.S. Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Justice (DOJ) are required to train and provide technical assistance to employers on the employment-related and public accommodation provisions of the ADA. In addition, the National Institute on Disability and Rehabilitation Research (NIDRR) is planning training for employers on the ADA. This priority requires that the short-term training be coordinated with the ADA-related training to be funded by NIDRR. The training audience includes personnel from independent living centers, rehabilitation facilities, and other community-based rehabilitation programs. No changes are expected in the final priority based upon these comments.

One commenter suggested that the training be conducted in a specific State since out-of-State travel may not be possible. Another commenter suggested that the training include a "network" approach so that national organizations can replicate the training for State chapters. A third commenter suggested that the project include a specific dissemination plan for the course material and outline. One commenter disagreed with the "train-the-trainer" approach and suggested that the priority include training of direct service providers and individuals with disabilities. The same commenters suggested that the training be competency-based and that participants be required to demonstrate their mastery in all training areas.

The intent of the priority is a "train-the-trainer" approach so that the training can be replicated at the State and local levels. The Secretary believes that this approach is the most effective mechanism given the limited amount of funds available for this project. While the training may be conducted in one central location, training materials must be made available for dissemination to undergraduate and graduate rehabilitation education programs and in-service and post-employment training programs funded under the Rehabilitation Act (Act) of 1973, as amended, for replication. A specific dissemination plan is not needed as the Department will disseminate the course material and outline to State vocational rehabilitation in-service programs, regional rehabilitation continuing education programs, and certain long-term training projects funded under section 304 of the Act. While no changes are expected to be made to the priority concerning competency-based training, all projects under the priority will be required to submit an evaluation plan to assess the effectiveness of their training. In addition, it is expected that the final priority will be revised to more clearly state that the project must produce a course outline and sample course materials for replication purposess.

A commenter suggested that the training on skills needed to assist employers in complying with the ADA include information on the use of rehabilitation technology and that the training focus on the capacities of individuals with disabilities. The Secretary agrees that the training can be enhanced by the inclusion of information or rehabilitation technology and the assessment of the capabilities of individuals with disabilities. Two changes are expected in the final priority. First, it is expected that the training must provide rehabilitation professionals with skills in the use of rehabilitation technology to assist employers in complying with the provisions of the ADA. Secondly, the training will be expected to provide vocational rehabilitation and independent living professionals with skills to assess the capacities, as well as the functional limitations, of individuals with disabilities in order to better assist employers to comply with the ADA.

One commenter suggested that the training provide information on the application of the ADA to specific disability groups. The training is intended to be national in scope. The inclusion of a focus on a specific disability group or groups would limit the applicability of this training at the national level. No changes are expected in the final priority in response to these comments.

A commenter suggested that the priority include the requirement that the project develop and disseminate a listing of resources for trainees and others to utilize in the provision of technical assistance on the ADA. Both the EEOC and the DOJ are required to produce technical assistance manuals and other resource materials under section 506 of the ADA. The Department is working with both of these Federal agencies in the development of the resource materials that will become available to the public shortly after the publication of final regulations implementing the ADA. Including the development of resource listings in this priority would be a duplication of the requirement under the ADA. No changes are expected in the final priority in response to this comment.

Priority 2—Rehabilitation Short-Term Training—Improving the Competency of Vocational Rehabilitation Counselors in Marketing of Vocational Rehabilitation Services, Providing Job Placement, and Assessing a Client's Job Skills That May Be Transferred to Other Occupational Opportunities

One commenter suggested the elimination of this priority. Another commenter suggested that this priority be replaced with one that focuses on rehabilitation technology. The 1989 National Survey of Personnel Shortages and Training Needs in Vocational Rehabilitation by Pelavin Associates substantiates the need for this type of training for vocational rehabilitation counselors. In addition, several other comments received on the proposed priority noted the need for this type of training. The Secretary funds other long-term training projects that provide training at both the pre-service and post-employment levels regarding rehabilitation engineering and technology services. No change is expected in this priority based upon these comments.

Several commenters suggested increasing the emphasis on marketing and encouraging employers to hire people with disabilities. One commenter suggested that the training include outreach to business and industry, the development of brochures and videos, and efforts to improve the placement skills of vocational rehabilitation counselors. The Secretary believes that the priority includes sufficient emphasis on the use of marketing strategies to increase competitive employment opportunities for individuals with disabilities. The priority is sufficiently broad to allow a project to address the areas suggested regarding outreach, materials development, and placement skills. No changes are expected in the final priority in response to these comments.

One commenter suggested that the priority conflicts with the intent of the ADA by supporting training to match an individual's skills with employer demands. The Secretary believes that matching an individual's skills with employer demands is consistent with a marketing approach to job development and job placement and does not conflict with the tenets of the ADA. As stated in the priority, marketing strategies have proven to be quite successful in assisting individuals with disabilities to access competitive employment opportunities. No change is expected in the final priority in response to this comment.

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One commenter suggested a regional-oriented training focus. Other commenters suggested revisions in the intended training audience to include rehabilitation facility personnel and upper management personnel. The priority does not specify the geographic focus of the training. Projects can address national, regional, State, or local areas. However, the priority requires that a manual and training protocol be developed so that the training can be replicated in other locations. The training is intended for vocational rehabilitation counselors and other rehabilitation professionals. This intended training audience is broad enough to include facility personnel and upper management personnel. No changes are expected in the final priority in response to these comments.

Two commenters have suggested that the proposed training is too ambitious and cannot be addressed in a short-term training format. On the other hand, several other commenters supported the short-term training approach. The Secretary believes that the short-term training approach is appropriate to upgrade the skills of vocational rehabilitation counselors and other personnel involved in the placement of individuals with disabilities into competitive employment. The Secretary also funds long-term training projects that provide more intensive skill development in the areas of job development and job placement services for individuals with disabilities. No changes are expected in the final priorities based upon these comments.

One commenter suggested that the training provide information that is tailored to the special needs of certain disability groups. The Secretary does not support focusing on a specific disability group or groups for this training. Marketing strategies and the assessment of job skills are generic in nature and should not be limited to a specific disability group or groups. No change is expected in the final priority in response to this comment.

A commenter suggested that the Department develop innovative projects grants for replication of model programs that incorporate a marketing strategy. The Rehabilitation Short-Term Training program cannot be used to fund projects that provide direct services. The Secretary funds other categories of grants that provide direct services to individuals with disabilities. The Department has also identified exemplary programs and projects that increase competitive employment opportunities for individuals with disabilities and has disseminated information on these exemplary programs to encourage replication in other locations. No change is expected in the final priority in response to this comment.

Applicants should base their applications on the proposed priorities, with the expected changes noted above. If additional changes are made in the final priorities, applicants will be given the opportunity to revise or resubmit their applications.

For Applications or Information Contact: Bruce Rose, U.S. Department of Education, 400 Maryland Avenue SW., room 3332, Switzer Building, Washington, DC 20202–2649. To request an application, call (202) 732–1351; to receive further information, call (202) 732–1325; deaf and hearing impaired individuals may call the Federal Dual Party Relay Service on 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 29 U.S.C. 774.

Dated: July 22, 1991

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

CFDA No.	Priority areas	Estimated range of awards	Estimated No. of awards
84.246A	Implementation of the Americans with Disabilities Act	$175,000–$200,000	1
84.246B	Improving the Competency of VR Counselors in Marketing of VR Services, Providing Job Placement, and Assessing a Client's Job Skills That May be Transferred to Other Occupational Opportunities.	$175,000–$200,000	1

[FR Doc. 91–17710 Filed 7–23–91; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Determination of Noncompetitive Financial Assistance

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: DOE announces that pursuant to 10 CFR 600.14(f), it proposes to make a Financial Assistance Award based on an unsolicited application under Financial Assistance Award No. DE–FG05–91DF70060 to Virginia Polytechnic Institute and State University, Blacksburg, Virginia, to provide research and development of tools, methods and rules for managing cooperation for continuous performance improvement in government program offices. The period of performance for the initial award will be for one year with an estimated value of $2,000,000 and the total estimated project cost will be $12,500,000 over a five year period. The Financial Assistance Award is sponsored by the Office of Management Support, Defense Programs.

PROJECT SCOPE: The grantee will expand the body of organizational and management systems knowledge through comprehensive study of a model government program office. The thesis of this research program is that through the theory of the control loop, the application of the rules and methods of the hypothesized structured management process to the organizational units to be studied will yield an understanding of a set of tools and methods for avoiding the unexpected interruptions to orderly work flow. The research program proposed will contribute to the body of organizational and management systems knowledge available to the public to enhance the effectiveness and competitiveness of both public and private organization. Virginia Polytechnic Institute and State University has developed and exclusive capability for dealing with the improvement of organizational and management effectiveness both through its prior experience and through tools and methods developed under prior similar efforts. This project represents a unique idea for which a competitive solicitation would be inappropriate. Eligibility for a proposed noncompetitive award is, therefore, restricted to Virginia Polytechnic Institute and State University.

FOR FURTHER INFORMATION CONTACT: William C. Heard, Director, Training and Staff Development Division, Defense Programs, DP–543 Washington, DC 20585, (301) 353–3612.

Issued in Oak Ridge, TN, on July 16, 1991.

Peter D. Dayton,

Director, Procurement and Contracts Division, USDOE Field Office, Oak Ridge (OR).

[FR Doc. 91-17578 Filed 7-23-91; 8:45 am]

BILLING CODE 6450-01-M

DOE Response to Recommendation 91-3 of the Defense Nuclear Facilities Safety Board Concerning the Operational Readiness Review of the Waste Isolation Pilot Plant (WIPP).

AGENCY: Department of Energy.

ACTION: Notice of request for public comment.

SUMMARY: Pursuant to section 312(d) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286(d), the Department of Energy (DOE) hereby publishes notice of a response of the Secretary of Energy (Secretary) to Recommendation 91-3 of the Defense Nuclear Facilities Safety Board, published in the **Federal Register** on May 1, 1991, concerning the need for an independent and comprehensive readiness review prior to initiation of the Test Phase at the Waste Isolation Pilot Plant (WIPP).

DATES: Comments, data, views, or arguments concerning the Secretary's response are due on or before August 23, 1991.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Thomas Elsasser, Team Leader, at the WIPP site on 505-885-7275 or at DOE Headquarters on 202-586-2979.

Dated: July 18, 1991.

Paul Grimm,

Deputy Director, Office of Environmental Restoration and Waste Management.

The Honorable John T. Conway, Chairman
Defense Nuclear Facilities Safety Board, suite 700, 625 Indiana Avenue NW.,
Washington, DC 20004

June 5, 1991.

Dear Mr. Conway: This responds to your April 26, 1991, letter in which you issued Recommendation 91-3 regarding the need for the Department of Energy (DOE) to conduct a comprehensive and independent readiness review of the Waste Isolation Pilot Plant (WIPP) prior to initiation of the test phase.

As you know from the briefing by Mr. Leo P. Duffy to the Board on May 1, 1991, the Department, through its Office of Environmental Restoration and Waste Management (EM), is aggressively pursuing a comprehensive and independent Operational Readiness Review (EM-ORR) at WIPP. The review team began work on-site on May 6, 1991.

The Department accepts the Board's comments and recommendations and is taking action to comply with the Board's direction as part of ongoing readiness review activities. The EM-ORR will be performed after completion of the contractor's readiness review, except for integrated readiness testing of bin handling. This testing by the contractor has not been completed because certain bin system auxiliary equipment is still arriving on-site. Once installed, this equipment will be tested and the contractor's readiness review can be completed. Since this activity is a limiting item for the beginning of the test phase, the EM-ORR will overlap portions of the contractor's review; however, the EM-ORR will not be completed until after the contractor's readiness review is finished.

As stated in the Final Safety Analysis Report (FSAR), the WIPP facility does not have any systems that meet the definition of "Safety Systems" as required by DOE Order 6430.1A. There are, however, certain systems that are important to safe waste handling operations, some of which have Operational Safety Requirements (OSRs) and Limiting Conditions for Operations (LCOs) associated with them. The EM-ORR team proposes to perform examination of records and verification of as-built drawings for these systems that are important to safe waste handling operations.

I appreciate the time you have devoted to this effort, which included a May 20, 1991, presentation on the status of the EM-ORR effort, and your comments on a preliminary draft of our Implementation Plan. Our next opportunity to brief the Board on the status of the EM-ORR should occur shortly after I issue Revision 8 to my draft Decision Plan for the WIPP, which I expect to do on or about June 10, 1991.

Sincerely,

James D. Watkins,

Admiral, U.S. Navy (Retired).

[FR Doc. 91-17577 Filed 7-23-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER91-307-000, et al.]

Tampa Electric Co., et al., Electric Rate, Small Power Production, and Interlocking Directorate Filings

July 17, 1991.

Take notice that the following filings have been made with the Commission:

1. Tampa Electric Co.

[Docket No. ER91-307-000]

Take notice that on July 9, 1991, Tampa Electric Company (Tampa Electric) tendered for filing an amended Service Schedule B (Scheduled/Short-Term Firm Interchange Service) under the existing contract for interchange service between Tampa Electric and the City of Tallahassee, Florida (Tallahassee). Tampa Electric states that the amended service schedule supersedes the Service Schedule B tendered initially in this docket.

Tampa Electric proposes an effective date of September 1, 1990, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Tallahassee and the Florida Public Service Commission.

Comment date: August 1, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Chambers Congeneration Limited Partnership

[Docket No. QF87-433-001]

On June 28, 1991, Chambers Congeneration Limited Partnership (Applicant) of 7475 Wisconsin Avenue, suite 1000, Bethesda, Maryland 20814-3422, submitted for filing an application for recertification of a facility as a qualifying congeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed 253.79 MW topping-cycle congeneration facility will be located at the E.I. du Pont de Nemours & Company, Inc. plant in Carneys Point, New Jersey. The facility will consist of two conventional boilers and an extraction/condensing steam turbine generator. The original certification was issued August 31, 1987, Bechtel Development Company, 40 FERC ¶ 62,256. The instant recertification is requested due to changes in the design and ownership of the facility.

Comment date: August 23, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Washington Water Power Co.

[Docket No. ER91-538-000]

Take notice that on July 10, 1991, Washington Water Power Company (WWP) tendered for filing Amendatory Agreement No. 3 executed by the parties as of August 1, 1991, to the Pacific Northwest Coordination Agreement dated September 15, 1964.

WWP states that Amendatory Agreement No. 3 modifies the primary agreement to change the contract year from a July 1 through June 30 year to an August 1 through July 31 year.

Comment date: August 1, 1991, in accordance with Standard Paragraph E at the end of this notice.

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iled 7–23–91; 8:45 am]

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ctorate Filings

t the following filings
with the Commission:

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t on July 9, 1991,
ompany (Tampa
for filing an amended
B (Scheduled/Short-Term Firm Interchange Service) under the existing contract for interchange service between Tampa Electric and the City of Tallahassee, Florida (Tallahassee). Tampa Electric states that the amended service schedule supersedes the Service Schedule B tendered initially in this docket.

Tampa Electric proposes an effective date of September 1, 1990, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Tallahassee and the Florida Public Service Commission.

Comment date: August 1, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Chambers Congeneration Limited Partnership

[Docket No. QF87–433–001]

On June 28, 1991, Chambers Congeneration Limited Partnership (Applicant) of 7475 Wisconsin Avenue, suite 1000, Bethesda, Maryland 20814–3422, submitted for filing an application for recertification of a facility as a qualifying congeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed 253.79 MW topping-cycle congeneration facility will be located at the E.I. du Pont de Nemours & Company, Inc. plant in Carneys Point, New Jersey. The facility will consist of two conventional boilers and an extraction/condensing steam turbine generator. The original certification was issued August 31, 1987, Bechtel Development Company, 40 FERC ¶ 62,256. The instant recertification is requested due to changes in the design and ownership of the facility.

Comment date: August 23, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Washington Water Power Co.

[Docket No. ER91–538–000]

Take notice that on July 10, 1991, Washington Water Power Company (WWP) tendered for filing Amendatory Agreement No. 3 executed by the parties as of August 1, 1991, to the Pacific Northwest Coordination Agreement dated September 15, 1964.

WWP states that Amendatory Agreement No. 3 modifies the primary agreement to change the contract year from a July 1 through June 30 year to an August 1 through July 31 year.

Comment date: August 1, 1991, in accordance with Standard Paragraph E at the end of this notice.

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4. West Texas Utilities Co.

[Docket No. ER91–539–000]

Take notice that on July 10, 1991, West Texas Utilities Company (WTU) tendered for filing an Agreement between WTU and Texas Utilities Electric Company for the Construction and Interconnection of Transmission Facilities. The agreement amends the long-standing Interconnection Agreement between WTU and TUEC in order to provide for the construction and operation of an additional transmission connection, a 138 kV line betwen WTU's Barilla Switching Station and TUEC's Permian Basin Generating Station. Each party will pay the costs of construction and maintenance for its respective portion of the new transmission line.

WTU requests an effective date of March 1, 1992 and, accordingly, seeks waiver of the Commission's notice requirements to permit waiver of the Commission's notice requirements to permit filing more than 120 days before the requested effective date. Copies of the filing were served upon TUEC and the Public Utility Commission of Texas.

Comment date: August 1, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. United Illuminating Co.

Docket Nos. ER91–265–000 and ER91–266–000]

Take notice that on July 10, 1991, United Illuminating Company (UI) tendered for filing additional support information for UI's rate filing in the above-referenced dockets.

Comment date: July 31, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. Central Hudson Gas & Electric

[Docket No. ER91–541–000]

Take notice that Central Hudson Gas & Electric Corporation (Central Hudson) on July 5, 1991, tendered for filing as a rate schedule an executed agreement dated May 31, 1991 between Central Hudson and the Dutchess County Utility Service Agency (Agency). The Rate Schedule provides for the distribution of Hydroelectric Energy purchased from the New York Power Authority by the Agency to certain electric customers located within the service territory of Central Hudson within the boundaries of County of Dutchess New York. Because the Rate Schedule has an effective date prior to the expiration of the 60 day notice period under 18 CFR § 35.31(a), Central Hudson accordingly requests that such 60 day notice requirement be waived and that the Rate schedule become effective on July 1, 1991.

Copies of the filing were mailed to the Agency and the Public Service Commission of the State of New York.

Comment Date: August 1, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. Montclair Cogeneration Project Associates Limited Partnership

[Docket No. QF91–182–000]

On July 10, 1991, Montclair Cogeneration Project Associates Limited Partnership of 255 Main St., Hartford, Connecticut 06106, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Upper Montclair, New Jersey. The facility will consist of a combustion turbine generator and a supplementary fired heat recovery boiler (HRB). Steam recovered from the HRB will be utilized on the campus of Montclair State College. The net electric power production capacity of the facility will be approximately 4 MW. The combustion turbine fuel will be natural gas.

Comment date: August 23, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91–17502 File 7–23–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. QF91–67–000, et al.]

Zond Victory Garden Phase IV, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Zond Victory Garden Phase IV Development Corp. and ESI VG Limited Partnership

[Docket No. QF91–67–000]

July 15, 1991.

On July 11, 1991, Victory Garden Phase IV Development Corporation and ESI VG Limited Partnership tendered for filing an amendment to their filing in this docket.

The amendment provides additional information relating to ownership of the facility.

Comment date: August 7, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Zond Sky River Development Corp. and ESI Sky River Limited Partnership

[Docket No. QF91–59–000]

July 15, 1991.

On July 11, 1991, Zond Sky River Wind Development Corporation and ESI Sky River Limited Partnership tendered for filing an amendment to their filing in this docket.

The amendment provides additional information relating to ownership of the facility.

Comment date: August 7, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Boston Edison Co.

[Docket No. ER91–525–000]

July 16, 1991.

Take notice that on July 1, 1991, Boston Edison Company (Edison) tendered for filing a supplemental exhibit A to a Service Agreement for Cambridge Electric Light Company (Cambridge), under its FERC Electric Tariff, Original volume No. IV, Non-Fi Transmission Service (the Tariff). The exhibit A specifies the amount and duration of transmission service required by Cambridge under the Tariff.

Edison requests waiver of the Commission's notice requirements to permit the exhibit A to become effective as of the commencement date of the transaction to which it relates, May 1, 1991.

Edison states that it has served the filing on Cambridge and the Massachusetts Department of Public Utilities.

Comment date: July 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. Duke Power Co.

[Docket No. ER91–527–000]

July 16, 1991.

Take notice that on June 17, 1991, Duke Power Company (Duke) tendered for filing a Contract for Short Term Power Transactions between Cajun Electric Power Cooperative, Inc. and Duke Power Company (Agreement). Duke asks that the sixty (60) day notice requirement be waived so that the Agreement may be permitted to become effective on June 6, 1991.

Comment date: July 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Arizona Public Service Company

[Docket No ER91–522–000]

July 16, 1991.

Take notice that on July 1, 1991, Arizona Public Service Company tendered for filing amendments to rate schedule exhibits affecting estimating, contract, or maximum demands in the following FPC/FERC Rate Schedules:

FPC/FERC No.	Customer	Exhibit Name
52	Papago Tribal Utility Authority.	Exhibit I.
58	Wellton-Mohawk Irrigation and Drainage District.	Exhibit B.
59	Arizona Power Authority	Exhibit "B".
65	Colorado River Indian Irrigation Project.	Exhibit A.
66	San Carlos Indian Irrigation Project.	Exhibit A.
120	Southern California Edison Company.	Exhibit B.
126	Electrical District No. 6	Exhibit "II".
128	Electrical District No. 7	Exhibit "II".
140	Electrical District No. 8	Exhibit "II".
141	Aguila Irrigation District	Exhibit "II".
142	McMullen Valley Water Conservation and Drainage District.	Exhibit "II".
143	Tonopah Irrigation District.	Exhibit "II".
149	Citizens Utilities Company.	Exhibit B.
153	Harquahala Valley Power District.	Exhibit "II".
155	Buckeye Water Conservation and Drainage District.	Exhibit "II".
158	Roosevelt Drainage District.	Exhibit "II".
161	Papago Tribal Utility Authority.	Exhibit B.
168	Maricopa County Municipal Water Conservation District No. 1.	Exhibit "II".

No changes from the currently effective Wholesale Power or Transmission rate levels are proposed herein. No new facilities are required to provide these services.

A copy of this filing has been served on the above customers, the California Public Utilities Commission and the Arizona Corporation Commission.

Comment date: July 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. Cambridge Electric Light Co.

[Docket No. ER91–507–000]

July 16, 1991.

Take notice that on June 27, 1991, Cambridge Electric Light Company (Cambridge) tendered for filing a fully-executed Service Agreement between itself and the Town of Belmont, Massachusetts embodying the terms of the settlement agreement approved by the Commission in a letter order dated December 6, 1990.

Comment date: July 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the approporiate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–17504 Filed 7–23–91; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 7802–005]

Natural Energy Resources Co.; Intent To Prepare an Environmental Impact Statement and Conduct Scoping Meetings

July 18, 1991

The staff of the Federal Energy Regulatory Commission (staff) has determined that issuance of a license for the construction and operation of the proposed Rocky Point Pumped Storage Hydroelectric Project, FERC No. 7802–005, on the Taylor River in Gunnison and Chaffee Counties, Colorado, would constitute a major federal action significantly affecting the quality of the human environment. Therefore, the staff intends to prepare an environmental impact statement (EIS) on the proposed project in accordance with the National Environmental Policy Act. The staff's EIS will consider both site specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

The scoping process will provide public forums to determine the scope and the significant issues that should be analyzed in depth in the EIS. The times and locations of these scoping meetings and public hearings will be announced in a subsequent public notice.

For further information, please contact the FERC EIS Coordinator, Kathleen Sherman at (202) 219–2834.

Lois D. Cashell,

Secretary.

[FR Doc. 91–17553 Filed 7–23–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP91–2448–000, et al.]

Florida Gas Transmission Co., et al.; Natural Gas Certificate Filings

July 17, 1991.

Take notice that the following filings have been made with the Commission:

1. Florida Gas Transmission Co.

[Docket No. CP91–2448–000]

Take notice that on July 15, 1991, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP91–2448–000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA) requesting abandonment authority and a certificate of public convenience and necessity necessary for FGT to implement changes and to reflect a major restructuring of services on FGT's system, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Because of the interrelationship between the changes in rates sought in Docket No. RP91–187–000,[1] FGT requests that the Commission consolidate this certificate filing in Docket No. CP91–2448–000 with Docket No. RP91–187–000. FGT states that it submitted these two filings, in part, to make FGT's transportation and sales services comparable in a manner consistent with FGT's role as both a merchant and open access transporter

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[1] Notice by publication in the **Federal Register** on July 11, 1991 (56 FR 31634).

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: July 30, 1991, in
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reement approved by
in a letter order dated
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Standard Paragraph E
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on file with the
are available for public

Filed 7-23-91; 8:45 am]

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Resources Co.; Intent
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Conduct Scoping

Federal Energy
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Point Pumped Storage
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r River in Gunnison
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constitute a major federal action significantly affecting the quality of the human environment. Therefore, the staff intends to prepare an environmental impact statement (EIS) on the proposed project in accordance with the National Environmental Policy Act. The staff's EIS will consider both site specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

The scoping process will provide public forums to determine the scope and the significant issues that should be analyzed in depth in the EIS. The times and locations of these scoping meetings and public hearings will be announced in a subsequent public notice.

For further information, please contact the FERC EIS Coordinator, Kathleen Sherman at (202) 219-2834.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17553 Filed 7-23-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-2448-000, et al.]

Florida Gas Transmission Co., et al.; Natural Gas Certificate Filings

July 17, 1991.

Take notice that the following filings have been made with the Commission:

1. Florida Gas Transmission Co.

[Docket No. CP91-2448-000]

Take notice that on July 15, 1991, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP91-2448-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA) requesting abandonment authority and a certificate of public convenience and necessity necessary for FGT to implement changes and to reflect a major restructuring of services on FGT's system, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Because of the interrelationship between the changes in rates sought in Docket No. RP91-187-000,[1] FGT requests that the Commission consolidate this certificate filing in Docket No. CP91-2448-000 with Docket No. RP91-187-000. FGT states that it submitted these two filings, in part, to make FGT's transportation and sales services comparable in a manner consistent with FGT's role as both a merchant and open access transporter

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[1] Notice by publication in the Federal Register on July 11, 1991 (56 FR 31634).

and to more fully comport with the Commission's stated objectives in the Commission's Rate Design Policy Statement.[2]

In Docket No. CP91-2448-000, FGT requests the necessary authorizations to implement the following changes on its system:

(1) To make available, on a not unduly discriminatory basis and as an extension of its current pipeline system, FGT's firm capacity on third-party pipelines by amending FGT's blanket certificate of public convenience and necessity issued under Subpart G of Part 284 of the Commission's Regulations;

(2) To permit (a) temporary relinquishments by firm sales and transportation customers of their capacity to any other customers each month pursuant to Section 13 of the General Terms and Conditions, effective the following month (with receipt of a credit equal to 75 percent of applicable demand charges) and (b) the permanent relinquishment of firm services for any other firm service;

(3) To require (a) nomination and scheduling of firm, preferred, and interruptible sales services, including a requirement that FGT nominate and schedule receipts of system supplies on a daily basis, and (b) assessment of penalties for deliveries below and/or in excess of four (4) percent of daily scheduled quantities;

(4) To implement a new Rate Schedule OPF-1 to provide off peak firm transportation services into the state of Florida during the months of November through March in order to complement services under existing Rate Schedule WPPS during the same months;

(5) To permit allocation of preferred, primary, and interruptible services through use of an experimental bidding program that allocates, each month, the available interruptible capacity between preferred, primary, and interruptible services based on rate bids for such services prior to the beginning of each month;

(6) To implement experimental procedures to share the savings and/or additional costs that FGT may occur over the three (3) years by adjusting automatically FGT's firm sales and transportation rates to reflect changes in certain specified indices and provide a "variance based incentive mechanism" for regular capital additions to sustain and maintain its system;

(7) To permit (a) the implementation of a new in-line transfer point at Compressor Station No. 8, (b) the collection of a two-cent administrative fee from all upstream interruptible transporters using the in-line transfer points in lieu of the applicable rate under Rate Schedule ITS-1, and the collection of transportation rate under Rate Schedules FTS-1 and PTS-1, as well as, any applicable fuel charges from downstream transporters utilizing any in-line transfer points, (c) the utilization by downstream firm transporters of in-line transfer points without surrendering firm receipt point capacity, (d) the continuation of the proportional access methodology, and (e) the scheduling of transportation services delivering gas to an in-line transfer point based on the priority of the transportation service agreement taking delivery;

(8) To implement an Account No. 858 cost tracker; and

(9) To recover producer demand charges on an "as billed" basis through the granting of a permanent waiver of § 154.305(b)(1) of the Commission's Regulations.

Comment date: July 29, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. U-T Offshore System

[Docket No. CP91-2468-000]

Take notice that on July 12, 1991, U-T Offshore System (U-TOS), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP91-2468-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Williams Gas Marketing Company, a marketer, under the blanket certificate issued by the Commission's Order No. 509 corresponding to the rates, terms and conditions filed in Docket No. RP89-99-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

U-TOS states that, pursuant to an agreement dated April 1, 1991, under its Rate Schedule IT, it proposes to transport up to 50,000 Mcf per day of natural gas. U-TOS indicates that the gas would be transported from Offshore Louisiana, and would be redelivered in Louisiana. U-TOS further indicates that it would transport 50,000 Mcf on an average day and 18,250,000 Mcf annually.

U-TOS advises that service under § 284.223(a) commenced May 17, 1991, as reported in Docket No. ST91-8936-000.

Comment date: September 3, 1991, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

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[2] See Interstate Natural Gas Pipeline Rate Design, 47 FERC ¶ 61,295 *order on reh'g*, 48 FERC ¶ 61,122.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17501 Filed 7-23-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-2415-000, et al.]

United Gas Pipe Line Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. United Gas Pipe Line Co.

[Docket No. CP91-2415-000]

July 15, 1991.

Take notice that on July 8, 1991, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP91-2415-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) to construct and operate a 1-inch sales tap and related facilities in Rankin County, Mississippi, under United's blanket certificate issued in Docket No. CP82-430-000 pursuant to section 7 of the Natural Gas Act, all as more fully detailed in the application which is on file with the Commission and open to public inspection.

United proposes to install the tap and related facilities for the sale of natural gas to Willmut Gas and Oil Company (Willmut) for commercial use. It is stated that United was authorized in Docket No. G-478 to provide all of Willmut's natural gas requirements for residential and commercial use in its East Jackson billing area, pursuant to the terms of United's Rate Schedule G. It is explained that deliveries to Willmut through the proposed tap would total 38 Mcf on a peak day and 6,000 Mcf on an annual basis and that such deliveries would be within Willmut's current entitlement from United.

It is explained that the construction and operation of the tap can be accomplished without detriment to United's other customers. It is stated that United would be reimbursed for the cost of installing the facilities by Willmut.

Comment date: August 29, 1991, in accordance with Standard Paragraph G at the end of this notice.

2. Tennessee Gas Pipeline Co.

[Docket Nos. CP91-2430-000, CP91-2431-000, CP91-2432-000]

July 15, 1991.

Take notice that on July 10, 1991, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under its blanket certificate issued in Docket No. CP87-115-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Tennessee and is summarized in the attached appendix.

Comment date: August 29, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Dth	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2430-000 (7-10-91)	Pennzoil Gas Marketing Company (Marketer).	35,000 35,000 12,775,000	OLA, LA, TX	MS, AL, WV, KY	1-21-88,[2] IT, Interruptible.	ST91-9375-000, 6-25-91.
CP91-2431-000 (7-10-91)	Endevco Marketing Company (Marketer).	10,000 10,000 3,650,000	OLA, LA, PA, TX, NY, MS.	PA, WV, NY, OH	7-14-88,[2] IT, Interruptible.	ST91-9407-000, 6-25-91.
CP91-2432-000 (7-10-91)	Transamerican Natural Gas Corporation (Producer).	50,000 50,000 18,250,000	LA, TX, MS	Various	8-25-87,[2] IT, Interruptible.	ST91-9408-000, 7-1-91.

[1] Offshore Louisiana is shown as OLA.

[2] As amended.

3. Texas Gas Transmission Corp., et al

Docket Nos. CP91-2440-000, CP91-2441-000, CP91-2442-000, CP91-2443-000, CP91-2444-000, CP91-2445-000, CP91-2446-000

July 15, 1991.

Take notice that on July 10, 1991, Texas Gas Transmission Corporation, 3800 Frederica Street, Owensboro, Kentucky 42301, and United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77251-1478, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued in Docket No. CP88-686-000 and Docket No. CP88-6-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: August 29, 1991, in accordance with Standard Paragraph G at the end of this notice.

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[2] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2440-000 (7-10-91)	PPG Industries, Inc.	800 526 124,800	Various	IN	1-28-91, IT, Interruptible.	ST91-9128-000 6-18-91
CP91-2441-000 (7-10-91)	North Canadian Marketing Corp.	100,000 100,000 36,500,000	Various	OH, KY	5-8-91, IT, Interruptible.	ST91-9129-000 6-15-91
CP91-2442-000 (7-10-91)	Transco Energy Marketing Co.	50,000 10,000 3,650,000	OLA	OLA	4-25-91, IT, Interruptible.	ST91-9127-000 6-14-91
CP91-2443-000 (7-10-91)	Hadson Gas Systems, Inc.	100,000 100,000 36,500,000	Various	LA	5-30-91, IT, Interruptible.	ST91-9024-000 6-2-91
CP91-2444-000 (7-10-91)	Red River Gas Co. (Marketer).	1,030 1,030 375,950	TX, LA	LA	3-8-91, ITS, Interruptible.	ST91-9057-000 6-1-91
CP91-2445-000 (7-10-91)	Unocal Exploration Corp. (Producer).	25,750 25,750 9,398,750	TX	OTX	7-16-90, ITS, Interruptible.	ST91-9060-000 6-1-91
CP91-2446-000 (7-10-91)	Production Gathering Co. (Marketer).	10,300 10,300 3,759,500	LA, TX, MS	LA, TX, MS	5-23-91, ITS, Interruptible.	ST91-9059-000 6-1-91

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

4. Transcontinental Gas Pipe Line Corp.

[Docket No. CP91-2419-000]

July 15, 1991.

Take notice that on July 8, 1991, Transcontinental Gas Pipe Line Corporation, (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP91-2419-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations for authorization to expand an existing delivery point in order to accommodate natural gas deliveries to Public Service Electric and Gas Company (PSE&G), an existing sales, transportation and storage customer, under Transco's blanket certificate issued in Docket No. CP82-426-000 pursuant to section 7 of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco states that PSE&G has requested that Transco expand its delivery point at Piles Creek, Union County, New Jersey (Piles Creek M&R), so that PSE&G may receive all authorized services at this point. It is stated that the Piles Creek M&R was constructed and placed in service on October 3, 1985, for 80,000 Mcf per day pursuant to section 311 of the Natural Gas Policy Act (NGPA). It is stated that since that time, deliveries at Piles Creek M&R increased to 142,705 Mcf per day. Transco states that it requested authorization in its application filed in Docket No. CP90-687 to render service at the Piles Creek M&R pursuant to NGA section 7(c) and that such service was certificated by the Commission on June 11, 1991.

Transco states that PSE&G now desires that Transco expand the Piles Creek M&R so that it would have a capacity of 362,250 Dth per day of natural gas. Transco requests the removal of any restrictions that limit the permissible service for any part of the capacity at such delivery point to NGPA section 311 service.

Transco states that it has agreed to replace three existing eight-inch meter tubes and two existing eight-inch regulators with four ten-inch meter tubes and two 16-inch regulators. It is indicated that the proposed expansion of the Piles Creek M&R would be used by PSE&G to receive up to 350,000 Mcf per day of gas from Transco through a combination of services and that such services would be provided in accordance with Transco's Delivery Point Entitlement Settlement filed on March 4, 1991, in Docket No. CP89-484.

Transco states that PSE&G's total transportation and sales service entitlement would not be altered from its current level of 417,749 Mcf per day. Transco states that it would have sufficient system delivery flexibility to accomplish deliveries at the Piles Creek M&R without detriment or disadvantage to Transco's other existing customers. It is indicated that PSE&G would require service at the Piles Creek M&R by November of 1991.

Comment date: August 29, 1991, in accordance with Standard Paragraph G at the end of this notice.

5. Iroquois Gas Transmission System, L.P.

[Docket No. CP91-2417-000]

July 15, 1991.

Take notice that on July 8, 1991, Iroquois Gas Transmission System, L.P. (Iroquois), One Corporate Drive, suite 606, Shelton, Connecticut 06484, filed in Docket No. CP91-2417-000 a request pursuant to §§ 157.205 and 284.211 of the Commission's Regulations for authorization to construct five sales taps on portions of its pipeline, under its blanket certificates issued in Docket Nos. CP89-634-000 and CP89-634-001 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Iroquois has stated that the taps have been requested by St. Lawrence Gas Company, Inc. (St. Lawrence), L&J Energy Systems, Inc. (L&J), Northeast Utilities (NU) and Long Island Lighting Company (LILCO), collectively referred to as shippers and those parties would bear the initial expense of the taps. Iroquois has noted that LILCO has executed a transportation agreement with Iroquois and that L&J has executed a precedent agreement to a gas transportation contract. It is also noted that although St. Lawrence and NU have not yet executed transportation contracts with Iroquois, they anticipate doing so in the near future.

Comment date: August 29, 1991, in accordance with Standard Paragraph G at the end of this notice.

6. Panhandle Eastern Pipe Line Co.

[Docket No. CP91-2416-000]

July 15, 1991.

Take notice that on July 8, 1991, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP91-2416-000 a request pursuant to §§ 157.205 and 157.212 of the

Commission's Regulations for authorization to add an existing delivery point to the sales service agreement between Panhandle and Citizens Gas Fuel Company (Citizens) under Panhandle's blanket certificate issued in Docket No. CP83–83–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle requests authorization to add the existing Michon—River Rouge delivery meter to the sales service agreement with Citizens dated June 27, 1991. It is stated that the sales service to Citizens is provided pursuant to Panhandle's Rate Schedule G–1. Panhandle does not propose to increase the volumes delivered pursuant to this agreement or to construct any facilities. Panhandle states that at no time would the volumes delivered at all of the delivery points in this agreement exceed 15,420 Mcf per day.

Comment date: August 29, 1991, in acordance with Standard Paragraph G at the end of this notice.

7. High Island Offshore System

[Docket No. CP91–2457–000]

July 16, 1991.

Take notice that on July 11, 1991, High Island Offshore System (HIOS), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP91–2457–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Williams Gas Marketing Company, a marketer, under the blanket certificate issued by the Commission's Order No. 509 corresponding to the rates, terms and conditions filed in Docket No. RP89–82–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

HIOS states that, pursuant to an agreement dated March 1, 1991, under its Rate Schedule IT, it proposes to transport up to 50,000 Mcf per day of natural gas. HIOS indicates that the gas would be transported from Offshore Louisiana, and Offshore Texas, and would be redelivered in Offshore Louisiana, and Offshore Texas. HIOS further indicates that it would transport 50,000 Mcf on an average day and 18,250,000 Mcf annually.

HIOS advises that service under § 284.223(a) commenced May 17, 1991, as reported in Docket No. ST91–8794–000.

Comment date: August 29, 1991, in accordance with Standard Paragraph G at the end of this notice.

8. Eastern Shore Natural Gas Co.

[Docket No. CP91–2454–000]

July 16, 1991.

Take notice that on July 11, 1991, Eastern Shore Natural Gas Company (Eastern Shore), Post Office Box 615, Dover, Delaware, 19903, filed in Docket No. CP91–2454–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to add a new delivery point to Chesapeake Utilities Corporation Chesapeake), an existing customer, under its blanket certificate issued in Docket No. CP83–40–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request for authorization on file with the Commission and open for public inspection.

Eastern Shore states that it proposes to construct and operate a sales tap in Kent County, Delaware, to serve Delaware Division of Chesapeake Utilities Corporation (Delaware Division), a local distribution Company. The estimated daily peak and annual quantities would be 68 MMBtu and 4,522 MMBtu, respectively.

Comment date: August 30, 1991, in accordance with Standard Paragraph G at the end of this notice.

9. Granite State Gas Transmission, Inc.

[Docket No. CP91–2373–000]

July 16, 1991.

Take notice that on July 1, 1991, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581 filed an application pursuant to section 7(c) of the Natural Gas Act and part 157 of the Commission's Regulations, for a certificate of public convenience and necessity authorizing an incremental increase in the certificated amount of its firm daily sales for resale to its two affiliated distribution company customers, Bay State Gas Company (Bay State) and Northern Utilities, Inc. (Northern Utilities), all as more fully set forth in the application on file with the Commission and open to public inspection.

According to Granite State, it currently purchases its firm natural gas supplies from Tennessee, Algonquin, Boundary Gas, Inc., and Shell Canada Limited. With these supplies, Granite State is currently authorized to provide firm daily sales for resale deliveries of 103,145 Dth to Bay State and 24,818 Dth to Northern Utilities.

In this application, Granite State requests authority to increase its firm daily sales for resale deliveries to Bay State by 5,231 Dth (a total of 108,376 Dth) and to Northern Utilities by 805 Dth (a total of 25,623 Dth). Granite State states that it has recently concluded negotiating a Gas Sales Agreement with Direct Energy Marketing, Inc. (Direct Energy), a producer-marketer of Canadian natural gas, for the purchase of up to 6,036 MMBtu per day of Canadian natural gas on a firm basis for a fifteen (15) year period. The Direct Energy purchases will become an added increment to Granite State's system supply.

Granite State states that the natural gas underlying the Gas Sales Agreement will be produced in the Province of Alberta, Canada, and that Direct Energy has made the necessary transportation arrangements in Canada for the transportation of the gas from Alberta to a delivery point to Granite State on the U.S.-Canadian border near Highwater, Quebec. Granite State further states that the deliveries of the gas at the border will be received into an 18-inch pipeline that it has leased and converted to natural gas service pursuant to the certificate issued to it in Docket No. CP87–39–000 (the Portland Pipeline Project.)[3] The leased pipeline extends from the border to a connection with Granite State's owned pipeline near Portland, Maine.

Granite State says that Direct Energy will bill Granite State on a demand and commodity basis for the gas delivered at the border. The demand charge to be paid by Granite State is equal to the demand charges incurred by Direct Energy for the firm transportation services on Nova, TransCanada, GMI and SCLQ for the delivery of the gas to the Highwater delivery point to Granite State. The commodity charge to be paid by Granite State is the aggregate of the cost of the gas (the energy charge), the commodity charges incurred by Direct Energy for the transportation services, plus 10 cents in Canadian currency. Granite State says that the 10 cent portion of the commodity charge is the charge approved by the NEB which is payable with respect to gas transported on TransCanada to amortize certain obligations similar to the take-or-pay settlements common in the domestic natural gas.

Granite State notes that if deliveries of gas under the Gas Sales Agreement were made in April 1991, the demand charge would have been $1.104 U.S. per MMBtu and the commodity charge would have been $1.484 U.S. per MMBtu. The 100% load factor price for the gas delivered at the border would have been $2.588 per MMBtu.

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[3] 40 FERC ¶ 61,165 (1987).

Granite State states that it will passthrough the purchase price of the gas through its Purchased Gas Cost Adjustment procedures, established in Article 19 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1. After the issuance of the certificate requested in this application, Granite State states that it intends to request permission to revise the proposed rates to reflect the effect of the new supply on throughput and billing determinants. Granite State states that the demand charge for the purchases from Direct Energy will be subject to the reclassification procedure mandated by Opinion Nos. 256 and 256–A. Granite State states that it is currently complying with the reclassification procedures in connection with its purchases of Canadian gas through the medium of Boundary Gas, Inc., and the purchases directly from Shell.

Granite State states that no additional facilities are required to accept delivery of the gas from Direct Energy at the border or to transport it and deliver the increase in daily contract demands to Bay State and Northern Illinois.

Granite State further states that Direct Energy has aggregated the gas supply underlying the Gas Sales Agreement for export and sale to another purchaser and the National Energy Board (NEB) issued Direct Energy License No. GL–132 authorizing the export. Granite State states that Direct Energy intends to commence deliveries under a short term export license from the NEB and apply to the NEB for redesignation of the export point at Highwater, Quebec, under License No. GL–132. Granite State states that it intends to apply to the Department of Energy, Office of Fossil Fuels for approval to import the gas under section 3 of the Natural Gas Act. Pending approval of the purchase on a long-term basis, Granite State states that it has authority under a blanket authorization to commence receiving deliveries.

Comment date: August 6, 1991, in accordance with Standard Paragraph F at the end of this notice.

10. United Gas Pipe Line Co., Northern Natural Gas Co.

[Docket Nos. CP91–2459–000, CP91–2460–000, CP91–2461–000, CP91–2462–000, CP91–2463–000, CP91–2464–000]

July 16, 1991.

Take notice that on July 12, 1991, United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77251–1478, and Northern Natural Gas Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to Sections 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued in Docket No. CP88–6–000 and Docket No. CP86–435–000, respectively, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket number of the 120-day transactions under Section 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: August 30, 1991, in accordance with Standard Paragraph G at the end of this notice.

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[4] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91–2459–000 (7–12–91)	Sonat Marketing Company (Marketer).	25,750 25,750 9,398,750	LA, MS	LA, MS	2–27–86,[2] Interruptible.	ST91–8890–000, 5–23–91.
CP91–2460–000 (7–12–91)	The Polaris Pipeline Corporation (Marketer).	51,500 51,500 18,797,500	LA, TX	LA	12–9–87,[2] ITS, Interruptible.	ST91–9383–000, 6–17–91.
CP91–2461–000 (7–12–91)	The Polaris Pipeline Corporation (Marketer).	25,750 25,750 9,398,750	LA, TX	TX, LA	10–1–87,[2] Interruptible.	ST91–9386–000, 6–17–91.
CP91–2462–000 (7–12–91)	Brooklyn Interstate Natural Gas Corp. (Marketer).	68,457 66,343 [3]32,286,805	OTX, OLA	OLA	6–1–91, IT–1, Interruptible.	ST91–9229–000, 6–1–91.
CP91–2463–000 (7–12–91)	NGC Transportation, Inc. (Marketer).	68,457 66,343 [3]32,286,805	OTX, OLA	OLA, LA	6–1–91, IT–1, Interruptible.	ST91–9229–000, 6–1–91.
CP91–2464–000 (7–12–91)	Cibola Corporation (Marketer).	50,000 37,500 18,250,000	Various	TX	6–1–91, T–1, Interruptible.	ST91–9238–000, 6–1–91.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[2] As amended.
[3] These quantities are in Mcf.

11. Transcontinental Gas Pipe Line Corp.

[Docket No. CP91–2429–000]

July 16, 1991.

Take notice that on July 10, 1991, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, pursuant to section 7 of the Natural Gas Act (NGA), requested authority to operate certain facilities which were constructed under section 311 of the Natural Gas Policy Act of 1978 (Section 311), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that in 1987, Transco constructed two facilities in order to provide firm transportation service of up to 100,000 Mcf per day (Mcfd) of natural gas for delivery to Alabama Gas Corporation (Alagasco). These facilities consist of:

(1) A 42-inch diameter pipeline loop extending 15.27 miles along Transco's existing mainline in Alabama (Mainline Loop). The Mainline Loop begins near Butler, Alabama and runs east, all within Choctaw County, Alabama.

(2) A compressor consisting of one 3,700 horsepower centrifugal compressor unit at Transco's Compressor Station No. 90 (Mainline Compressor), all in Marengo County, Alabama. The Mainline Compressor is located at the termination point of the Mainline Loop.

Transco states that it constructed the Mainline Loop and Mainline Compressor pursuant to Section 311 on behalf of Alagasco. In a Show Cause Order issued July 28, 1989, in Docket No. IN89–1–001, the Commission questioned whether the facilities were validly constructed pursuant to Section 311 and whether Transco's continued operation of the facilities violated Section 311. Transco states that the issues were resolved by a Stipulation and Agreement (S&A) executed on May 29, 1991 by Transco and the Enforcement Staff of the Commission in Docket No. RP88–68–000, et al., IN89–1–000 and IN89–1–001. Transco states that the S&A required it to file this application within 30 days of a final Commission order.

Transco states that the sole purpose of the facilities was, and is, to provide firm transportation of gas through a limited portion of Transco's mainline system for the benefit of Alagasco, which is a local distribution company serving markets in Alabama. Transco asserts that all of its mainline is subject to call under firm arrangements and that the Mainline Loop and Mainline Compressor created capacity needed to make firm deliveries to Alagasco.

Accordingly, Transco states that it is filing this application pursuant to the requirements of the S&A to convert the subject facilities to operation under section 7(c) of the NGA. Transco asserts that conversion of these facilities will serve the public interest by (1) dispelling any uncertainty concerning the regulatory status of the facilities, and (2) authorizing the firm mainline capacity provided by the facilities to be available for utilization by shippers for the transportation of all gas and thus not be limited to section 311 transportation restrictions.

Comment date: August 6, 1991, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraph

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules and Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission of its designee on this filing if no motion to intervene is filed with the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 285.214) a motion to intervene or notice of intervention and Pusuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91–17503 Filed 7–23–91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD91–07917T, Oklahoma-9]

State of Oklahoma; Determination Designating Tight Formation

July 17, 1991.

Take notice that on July 15, 1991, the Oklahoma Corporation Commission for the State of Oklahoma (Oklahoma) submitted the above—referenced notice of determination to the Commission, pursuant to § 271.703(c)(3) of the Commission's regulations, that the Atoka Formation, located in portions of Latimer and LeFlore Counties, Oklahoma, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The notice of determination covers the following areas: All of T.4N. and T.5N., R.21E. through R.27E. (inclusive); all of T.6N., R.25E. through R.27E. (inclusive); and all of sections 19–36 in T.6N., R.23E. and R.24E., located in Latimer and LeFlore Counties, Oklahoma. The notice of determination also contains Oklahoma's findings that the referenced portions of the Atoka Formation meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR, §§ 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 91–17492 Filed 7–23–91; 8:45 am]

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Lois D. Cashell,

Secretary.

[FR Doc. 91-17503 Filed 7-23-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD91-07917T, Oklahoma-9]

State of Oklahoma; Determination Designating Tight Formation

July 17, 1991.

Take notice that on July 15, 1991, the Oklahoma Corporation Commission for the State of Oklahoma (Oklahoma) submitted the above—referenced notice of determination to the Commission, pursuant to § 271.703(c)(3) of the Commission's regulations, that the Atoka Formation, located in portions of Latimer and LeFlore Counties, Oklahoma, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The notice of determination covers the following areas: All of T.4N. and T.5N., R.21E. through R.27E. (inclusive); all of T.6N., R.25E. through R.27E. (inclusive); and all of sections 19-36 in T.6N., R.23E. and R.24E., located in Latimer and LeFlore Counties, Oklahoma. The notice of determination also contains Oklahoma's findings that the referenced portions of the Atoka Formation meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR, §§ 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17492 Filed 7-23-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD91-07894T, Texas-3 Addition 8]

State of Texas; Determination Designating Tight Formation

July 17, 1991.

Take notice that on July 11, 1991, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination to the Commission, pursuant to § 271.703(c)(3) of the Commission's regulations, that the Cisco-Canyon Formation underlying the Sugg Ranch (Canyon) and Horwood (Canyon) Fields, in Sterling County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The notice of determination covers approximately 19,720 acres located in the western part of Sterling County, and consists of the following surveys: Moses Herrin Survey #6, AbST. 87; S.T. Stone Survey #2; W.A. Keenan Survey #1; H & TC RR. Co., Blk 7, sections 1-4, 13-16, 18, 20-23, 26-29, and 36-39; and Ann Morrison Survey #8, AbST. 695. The notice of determination also contains Texas' findings that the referenced portion of the Cisco-Canyon Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR, §§ 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17493 Filed 7-23-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD91-07895T, West Virginia-7]

State of West Virginia; Determination Designating Tight Formation

July 17, 1991.

Take notice that on July 11, 1991, the Oil and Gas Section of the Division of Energy, within the Department of Commerce, Labor and Environmental Resources, for the State of West Virginia (West Virginia), submitted the above-referenced notice of determination to the Commission, pursuant to § 271.703(c)(3) of the Commission's regulations, that the Maxton (or Maxon) Sandstone in portions of Fayette, Mercer, Raleigh, and Summers Counties, West Virginia, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The Maxton Sandstone consists of three successive sandstone bundles, the Upper and Middle Maxton Sands within the Hinton Formation, and the Lower Maxton Sand within the Bluefield Formation. Geographically, the notice of determination covers a roughly rectangular area in the southern part of West Virginia, consisting of the following eight quadrangles: Athens, Beckley, Crab Orchard, Flat Top, Matoaka, Odd, Prince, and Shady Springs (minus certain excluded areas). The notice of determinaton also contains West Virginia's findings that the referenced portion of the Maxton Sandstone meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR, §§ 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17494 Filed 7-23-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-3-28-002]

Panhandle Eastern Pipe Line Co; Proposed Changes in FERC Gas Tariff

July 17, 1991.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on July 10; 1991 tendered for filing proposed changes to its FERC Gas Tariff, Original Volume No. 1. The proposed effective date of these tariff sheets is June 1, 1991.

Panhandle states that on May 31, 1991, the Federal Energy Regulatory Commission issued a Letter Order accepting Alternate Tariff Sheets referenced in appendix B of the Quarterly PGA filing to be effective June 1, 1991. The proposed tariff sheets reflect changes to correct the pagination of the alternate tariff sheets referenced in appendix B of the Quarterly PGA filing.

Copies of this letter and enclosure are being served on all parties to this proceeding and interested state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 24, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17495 Filed 7-23-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP90-2154-000, et al. (Phrase I/Rates)]

Texas Eastern Transmission Corp.; Informal Settlement Conference

July 17, 1991.

Take notice that, at the request of Texas Eastern Transmission Corporation, a conference will be convened in this proceeding on July 25, 1991, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the issues in the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Dennis H. Melvin (202) 208-0042 or Arnold H. Meltz (202) 208-0737.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17499 Filed 7-23-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP90-910-003]

United Gas Pipe Line Co.; Proposed Changes in FERC Gas Tariff

July 17, 1991.

Take notice that on July 10, 1991, United Gas Pipeline Company ("United"), Post Office Box 1478, Houston, Texas 77251-1478, tendered for filing the following tariff sheet as part of its FERC Gas Tariff, to be effective on November 1, 1989:

Original Volume No. 2

First Revised Sheet No. 1459

United states that the proposed tariff sheet reflects the cancellation of Rate Schedule X-122 in United's existing FERC Gas Tariff Volume No. 2. United states further that it filed to abandon the exchange related transportation of natural gas for Tennessee Gas Pipeline Company in Docket No. CP90-910-000 on March 5, 1990, and the abandonment was approved by a Commission order issued on October 29, 1990.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, on or before July 24, 1991, and in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Any person desiring to become a party must petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17496 Filed 7-23-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP90-910-004]

United Gas Pipe Line Co.; Proposed Changes in FERC Gas Tariff

July 17, 1991.

Take notice that on July 10, 1991, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77251-1478, tendered for filing the following tariff sheet as part of its FERC Gas Tariff, to be effective on November 1, 1990:

Original Volume No. 2

First Revised Sheet No. 1372

United states that the proposed tariff sheet reflects the cancellation of Rate Schedule X-117 in United's existing FERC Gas Tariff Volume No. 2. United states further that it filed to abandon the exchange related transportation of natural gas for Tennessee Gas Pipeline Company in Docket No. CP90-910-000 on March 5, 1990, and the abandonment was approved by a Commission order issued on October 29, 1990.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, on or before July 24, 1991, and in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Any person desiring to become a party must petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17497 Filed 7-23-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP90-910-005]

United Gas Pipe Line Co.; Proposed Changes in FERC Gas Tariff

July 17, 1991.

Take notice that on July 10, 1991, United Gas Pipeline Company ("United"), Post Office Box 1478, Houston, Texas 77251-1478, tendered for filing the following tariff sheet as part of its FERC Gas Tariff, to be effective on April 1, 1990:

Original Volume No. 2

Third Revised Sheet No. 540

United states that the proposed tariff sheet reflects the cancellation of Rate Schedule X-60 in United's existing FERC Gas Tariff Volume No. 2. United states further that it filed to abandon the exchange related transportation of natural gas for Tennessee Gas Pipeline Company in Docket No. CP90-910-000 on March 5, 1990, and the abandonment was approved by a Commission order issued on October 29, 1990.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, on or before July 24, 1991, and in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Any person desiring to become a party must petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17497 Filed 7-23-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP91-2466-000]

Windward Energy & Marketing Co. v. Pacific Gas Transmission and Pacific Gas & Electric Co.; Complaint and Request for Cease and Desist Order

July 16, 1991.

Take notice that on July 12, 1991, Windward Energy & Marketing Company (Windward), 1214 East 33rd Street, Tulsa, Oklahoma 74105, filed in Docket No. CP91-2466-000 a complaint against Pacific Gas Transmission Company (PGT) and Pacific Gas & Electric Company (PG&E) and a request for a Commission order requiring PGT and PG&E to cease and desist from performing interstate transportation and the brokering of interstate transportation capacity until they have received Commission authorization to do so under section 7 of the Natural Gas Act, all as more fully set forth in the complaint and request for a cease and desist order which is on file with the Commission and open for public inspection.

Windward states that PGT has sought Commission authorization in Docket No. CP90-1031-001 for approval of a transportation assignment program or capacity brokering program for its firm transportation customers. It is indicated that to date the Commission has not approved the program. Windward also states that PG&E has entered into a settlement agreement dated March 22, 1991, on file with the Public Utilities Commission of the State of California (CPUC) addressing, among other things, capacity-brokering issues. It is indicated that to date the CPUC has not approved this settlement.

Windward indicates that PG&E has apparently recognized that requisite CPUC and Commission action may not occur so that Commission-sanctioned capacity brokering can occur on the PGT system in the near future. Windward alleges that PG&E has initiated its own plan, its "Customer-Identified Gas Program" (program), to broker its interstate pipeline capacity on PGT and its other pipeline supplier to be become effective on August 1, 1991, and would be effectuated without Commission authorization and on terms established and controlled by PG&E without regard for the Commission's policies or pronouncements as to capacity brokering. Windward argues that the new program is a sham intended for the purpose of circumventing Commission jurisdiction and policies. It is indicated that the plan is not available to producers or marketers that desire to move gas into PG&E's market area utilizing PGT.

Windward alleges that the PG&E program is facially unlawful as an unauthorized, unregulated capacity-brokering scheme and is inconsistent with the Commission's established principles for capacity brokering. It is also argued that it permits PG&E to use priority access to interstate sales service on PGT to its own advantage with respect to its intrastate markets. In addition, it is argued that the plan is a

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market segmentation program undertaken in substantial part to provide take-or-pay relief for an affiliate and involves an improper utilization of PGT-s PGA mechanism. Windward concludes that the plan is contrary to the requirements of section 4 of the Natural Gas Act and the Commission should prohibits its implementation.

Windward argues that the Commission should issue an interim cease and desist order in advance of August 1, 1991, and that after having received the answers of PGT and PG&E, it permanently prohibits them from engaging in the alleged unlawful conduct until such time as the Commission has issued a capacity-brokering order and PGT and PG&E have agreed to follow its terms.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before August 15, 1991, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Answers to the complaint shall be due on or before August 15, 1991.

Lois D. Cashell,
Secretary.

[FR Doc. 91-17500 Filed 7-23-91; 8:45 am]
BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the implementation of procedures for the disbursement of $8,907,350.36 (plus accrued interest) obtained by the DOE from Seneca Oil Company (Case No. LEF-0025), West Texas Marketing Corporation (Case No. LEF-0026), Grace Petroleum Corporation (Case No. LEF-0027) and Thums Long Beach Company (Case No. LEF-0028). The DOE has determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986).

DATES AND ADDRESSES: Applications for Refund submitted pursuant to this Decision must be filed in duplicate, postmarked no later than June 30, 1992, and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Any party that has previously submitted a refund application in crude oil proceedings should not file another application; that application will be deemed filed in all crude oil proceedings as the procedures are finalized.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-2390.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute $8,907,350.36 plus interest obtained from Seneca Oil Company, West Texas Marketing Corporation, Grace Petroleum Corporation and Thums Long Beach Company. The funds are being held in interest-bearing escrow accounts pending distribution by the DOE.

The DOE has decided to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986). Under the Modified Policy, crude oil overcharge monies are divided among the states, the federal government, and injured purchasers of refined products. Refunds to the states will be distributed in proportion to each state's consumption of petroleum products during the period of price controls. Refunds to eligible purchasers will be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

As the Decision and Order indicates, Applications for Refund must be filed in duplicate by June 30, 1992, and should be sent to the address set forth at the beginning of this notice. The information which claimants should include in their applications is explained in the Decision, which immediately follows. Any claimant which has already filed a crude oil refund application need not fi again.

Dated: July 17, 1991.

George B. Breznay
Director, Office of Hearings and Appeals.

Names of Firms: Seneca Oil Company, West Texas Marketing Corporation, Grace Petroleum Corporation, Thums Long Beach Company
Date of Filing: March 5, 1991
Case Numbers: LEF-0025, LEF-0026, LEF-0027, LEF-0028

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

On March 5, 1991, the ERA filed Petitions for the Implementation of Special Refund Procedures for crude oil overcharge funds obtained from Seneca Oil Company (Seneca) (Case No. LEF-0025), West Texas Marketing Corporation (West Texas) (Case No. LEF-0026), Grace Petroleum Corporation (Grace) (Case No. LEF-0027) and Thums Long Beach Company (Thums) (Case No. LEF-0028). These four firms remitted a total of $8,907,350.36 to the DOE,[1] which deposited the funds in interest-bearing accounts maintained at the Department of the Treasury. The funds paid by Seneca, West Texas and Grace were in settlement of enforcement proceedings brought by the ERA which alleged that the firms had violated the DOE regulations regarding the production or resale of crude oil. The funds received from Thums represent revenues that exceeded recoupable allowed expenses for projects qualifying under the Tertiary Incentive Program, 10 CFR 212.78.[2] An additional $518,120.68 has accrued in interest on these four escrow accounts as of June 28, 1991.[3] This Decision and Order establishes the OHA's procedures for distributing those funds.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 CFR part 205, subpart V. The subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see Office of Enforcement, 9 DOE ¶ 82,508 (1981), and Office of Enforcement, 8 DOE ¶ 82,597 (1981). We have considered the ERA's request to implement Subpart V procedures with respect to the monies received from these four firms and have determined that such procedures are appropriate.

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[1] Seneca, a crude oil producer, remitted $1,943,945.36 (Consent Order No. 999C90019W). West Texas, a crude oil reseller, remitted $5,000,000 (Consent Order No. 650X90314W). Grace, a crude oil producer, remitted $269,098 (Consent Order No. T00T00006W). Thums, a crude oil producer, remitted $1,694,307 (Consent Order No. T00T00005W).

[2] These funds represent restitution for crude oil sales made at higher prices than would otherwise have been permissible if the projects had not qualified under § 212.78. Since the effect of those higher prices was spread throughout the country, it is appropriate to combine these funds with crude oil overcharge funds.

[3] As of June 28, 1991, accrued interest on each of the escrow accounts is as follows: Seneca, $69,031.09; West Texas, $268,519.76; Grace, $19,386.93; Thums, $161,182.90.

I. Background

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 Fed. Reg. 27899 (August 4, 1986) (the MSRP). The MSRP, issued as a result of a court-approved Settlement Agreement in In re: The Department of Energy Stripper Well Exemption Litigation, M.D.L. No. 378 (D. Kan. 1986) (the Stripper Well Agreement), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to twenty percent of these crude oil overcharge funds will be reserved to satisfy valid claims by injured purchasers of petroleum products. Eighty percent of the funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and the federal government for indirect restitution.

Shortly after the issuance of the MSRP, the OHA issued an Order that announced its intention to apply the Modified Policy in all Subpart V proceedings involving alleged crude oil violations. Order Implementing the MSRP, 51 Fed. Reg. 29689 (August 20, 1986). In that Order, the OHA solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings. On April 6, 1987, the OHA issued a Notice analyzing the numerous comments and setting forth generalized procedures to assist claimants that file refund applications for crude oil moneys under the Subpart V regulations. 52 FR 11737 (April 10, 1987) (the April Notice).

The OHA has applied these procedures in numerous cases since the April Notice, i.e., *New York Petroleum, Inc.*, 18 DOE ¶ 85,435 (1988) (*NYP*); Shell Oil Co., 17 DOE ¶ 85,204 (1988), Ernest A. Allerkamp, 17 DOE ¶ 85,079 (1988) (*Allerkamp*), and the procedures have been approved by the United States District Court for the District of Kansas as well as the Temporary Emergency Court of Appeals (TECA). In the case In re: The Department of Energy Stripper Well Exemption Litigation, various states filed a Motion with the United States District Court for the District of Kansas, claiming that the OHA violated the Stripper Well Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. In re: The Department of Energy Stripper Well Exemption Litigation, 671 F. Supp. 1318 (D. Kan. 1987), *aff'd*, 857 F.2d 1481 (Temp. Emer. Ct. App. 1988). On August 17, 1987, Judge Theis issued an Opinion and Order denying the states' Motion in its entirety. The court concluded that the Stripper Well Agreement "does not bar [the] OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." *Id.* at 1323. The court also ruled that, as specified in the April Notice, the OHA could calculate refunds based on a portion of the M.D.L. 378 overcharges. *Id.* at 1323–24.

II. The Proposed Decision and Order

On April 26, 1991, the OHA issued a Proposed Decision and Order (PD&O) establishing tentative procedures to distribute the alleged crude oil violation amounts obtained from Seneca, West Texas, Grace and Thums. 56 FR 20221 (May 2, 1991). The OHA tentatively concluded that the funds should be distributed in accordance with the MSRP and the April Notice. Pursuant to the MSRP, the OHA proposed to reserve initially twenty percent of the crude oil violation funds for direct restitution to applicants who claim that they were injured by the alleged crude oil violations. The remaining eighty percent of the funds would be distributed to the states and the federal government for indirect restitution. After all valid claims have been paid, any remaining funds in the claim reserve would also be divided between the states and the federal government. The federal government's share ultimately would be deposited into the general fund of the Treasury of the United States.

In the PD&O, the OHA proposed to require applicants for refund to document their purchase volumes of petroleum products during the period of price controls and to prove that they were injured by the alleged crude oil overcharges. The PD&O stated that end-users of petroleum products whose businesses are unrelated to the petroleum industry are presumed to have absorbed the crude oil overcharges, and need not submit any further proof of injury to receive a refund. The OHA also proposed to calculate refunds on the basis of a volumetric refund amount, as described in the April Notice. The PD&O provided a period for 30 days from the date of its publication in the **Federal Register** in which comments could be filed regarding the tentative distribution process. More than 30 days have elapsed and the OHA has received comments from only one party concerning the proposed procedures for the distribution of the Seneca, West Texas, Grace and Thums funds.

III. Discussion of the Comments Received

A. The 20 Percent Reserve

In response to the PD&O, the OHA received comments from Philip P. Kalodner as counsel for six electric utilities, 14 foreign-flag shipping companies, and four pulp and paper manufacturers. Mr. Kalodner's clients have all filed Applications for Refund in the Subpart V crude oil proceeding. In his comments, Kalodner contends that the 20 percent reserve for claimants will be insufficient "to enable OHA to distribute the 'volumetric' which it has determined is due." Kalodner comments at 3. Kalodner further asserts that the "OHA should either reverse its adoption of the 20% limitation, or if it believes it cannot do [sic] without the approval of Judge Theis, it should seek such approval." *Id.* at 5.

Kalodner has advanced similar arguments on numerous previous occasions, both before the OHA and the courts, and has been rebuffed at each juncture. Both the OHA and the courts have indicated that the Stripper Well Agreement permits the OHA to reserve no more than 20 percent of alleged crude oil violation amounts for direct refunds to injured claimants. See e.g., *Getty Oil* v. *Department of Energy* (*Getty II*), 117 F.R.D. 540 (D. Del. 1988), reprinted in 3 Fed. Energy Guidelines ¶ 26,611; A. Tarricone, Inc., 15 DOE ¶ 85,495 at 88,893 (1987) (*Tarricone*); NYP, 18 DOE at 88,701. Moreover, the OHA has noted that "there is absolutely no evidence to support Kalodner's assertion that the 20 percent reserve will be insufficient to pay claimants." Amorient Petroleum Co., 18 DOE ¶ 85,595 at 88,977 (1989). We also have rejected Kalodner's contention that the DOE gave assurances as to the precise level of restitution that would be afforded to claimants from the crude oil overcharge funds. *Id.* at 88,976.

Kalodner and representatives of other applicants were permitted to file briefs with the United States District Court for the District of Delaware as *amici curiae* in Getty II. In their submissions to the court, *amici* raised the same contentions concerning the claims reserve as Kalodner has advanced in this proceeding. The district court rejected these contentions in all regards, stating:

> Rewriting the Stripper Well Agreement, as amici suggest, to provide an unlimited portion of the fund for an individual claims process would harm the true victim of the overcharges, the consuming public. Immediate indirect restitution of 80% of the funds would assure that the bulk of the money would presently benefit all citizens in an equitable manner. . . . At this late date, all parties would best be served by the equitable compromise of paying 80% of the fund out immediately while retaining the remaining 20% for individual claimants. This remedy avoids further administrative delay, costs, and confusion.

Getty II, reprinted in 3 Fed. Energy Guidelines at 26,693 (citation omitted). We agree with the district court and once again reject Kalodner's claims to the contrary.

B. The $.0008 Per Gallon Volumetric

Kalodner also asserts that, in light of the OHA's refusal to reserve more than 20% of the crude oil monies for direct reserve more than 20% of the crude oil monies for direct restitution, "any determination to make awards to late filing claimants * * * will reduce the amounts available for distribution to first pool claimants such as these commenters." Kalodner comments at 5. Accordingly, Kalodner objects to the OHA's policy of paying claimants who file Subpart V crude oil refund applications before June 30, 1992 at the rate of $.0008 per gallon. Kalodner refers to a number of deadlines established by the OHA for various crude oil refund "pools" and argues that an applicant "meeting a pool deadline is entitiled to recover from subsequent pools without filing an additional application, but of course

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B. The $.0008 Per Gallon Volumetric

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necessarily not from preceding pools, since any such retroactive recovery would make meaningless the pool deadline concept." *Id.* at 6. Therefore, Kalodner argues that only those applicants who filed before October 31, 1989 should receive a volumetric refund of $.0008 per gallon and that applicants filing after that date should receive refunds based on mere fractions of that volumetric. Kalodner claims that "OHA is encouraging the filing by those who ignored three prior deadlines . . . and [should] revert to its pool claim deadline concept which has been the essential principle of the claims process for almost five years." *Id.* at 10–11.

We decline to follow Mr. Kalodner's recommendations. The essential principle of the Subpart V crude oil proceeding is not, as Kalodner argues, the "pool claim deadline concept," but rather the principle of restitution. All purchasers of covered products during the crude oil price control period were affected in equal measure by the overcharges. Therefore, we believe that it would be inequitable to preclude any applicants who file before the June 30, 1992 deadline from receiving the $.0008 per gallon volumetric. We also believe that Kalodner is adopting an unduly harsh position when he characterizes later filing applicants as "ignoring" deadlines. Many of these applicants are schools, hospitals and small businesses which did not learn of the existence of this proceeding until recently. The OHA does not wish to penalize these equally eligible applicants for lacking the resources or knowledge that large applicants, such as those represented by Kalodner, possess; the OHA's Subpart V crude oil proceeding is equitable in nature.

IV. The Refund Procedures

A. Refund Claims

The OHA has concluded that the $8,907,350.36 remitted by Seneca, West Texas, Grace and Thums, plus the interest that has accrued on that amount, should be distributed in accordance with the crude oil refund procedures discussed above. We have decided to reserve the full twenty percent of the alleged crude oil violation amount, or $1,781,470.07 plus interest, for direct refunds to claimants, in order to insure that sufficient funds will be available for refunds to injured parties.

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in Subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. *E.g.*, Mountain Fuel Supply Co., 14 DOE ¶ 85,475 (1986) (Mountain Fuel). As in non-crude oil cases, applicants will be required to document their purchase volumes and prove that they were injured as a result of the alleged violations. Following Subpart V precedent, reasonable estimates of purchase volumes may be submitted. E.g., Greater Richmond Transit Co., 15 DOE ¶ 85,028 at 88,050 (1986). Generally, it is not necessary for applicants to identify their suppliers of petroleum products in order to receive a refund. Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations are presumed to have been injured by any alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond the volume of petroleum products purchased during the period of price controls. *E.g.*, Tarricone, 15 DOE at 88,893–96. However, the end-user presumption of injury can be rebutted by evidence which establishes that the specific end-user in question was not injured by the crude oil overcharges. E.g., Berry Holding Co., 16 DOE ¶ 85,405 at 88,797 (1987). If an interested party submits evidence that is sufficient to cast serious doubt on the end-user presumption, the applicant will be required to produce further evidence of injury. E.g., NYP, 18 DOE at 88,701–03. The United States District Court for the District of Kansas recently upheld the OHA's position that generalized evidence does not suffice to rebut the end-user presumption. If an interested party wishes to rebut the end-user presumption, it must present evidence relevant to the specific factual situation of the applicant. In re: The Department of Energy Stripper Well Exemption Litigation, 746 F. Supp. 1446 (D. Kan. 1990).

Reseller and retailer claimants must submit detailed evidence of injury, and may not rely on the presumptions of injury utilized in refund cases involving refined petroleum products. They can, however, use econometric evidence of the type employed in the OHA Report to the District Court in the Stripper Well Litigation, reprinted in 6 Fed. Energy Guidelines ¶ 90,507. Applicants who executed and submitted a valid waiver pursuant to one of the escrows established in the Stripper Well Agreement have waived their rights to apply for crude oil refunds under Subpart V. *Mid-America Dairymen, Inc.* v. *Herrington*, 878 F. 2d 1448 (Temp. Emer. Ct. App. 1989); accord, Boise Cascade Corp., 18 DOE ¶ 85,970(1989).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the alleged crude oil violation amounts involved in this determination ($8,907,350.36) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). Mountain Fuel, 14 DOE at 88,868. This yields a volumetric refund amount of $0.0000044 per gallon.

As we stated in previous Decisions, a crude oil refund applicant will be required to submit only one application for crude oil overcharge funds. E.g., Allerkamp, 17 DOE at 88,176. Any party that has previously submitted a refund application in the crude oil refund proceedings need not file another application. That previously filed application will be deemed to be filed in all crude oil proceedings as the procedures are finalized. The deadline for filing an Application for Refund for crude oil implementation orders issued since January 18, 1991 is June 30, 1992. Quintana Energy Corp., 21 DOE ¶ 85,032 (1991). It is the policy of the DOE to pay all crude oil refund claims filed before June 30, 1992 at the rate of $.0008 per gallon. However, while we anticipate that applicants which filed their claims by June 30, 1988 will receive a supplemental refund payment, we will decide in the future whether claimants that filed later Applications should receive additional refunds. To apply for a refund, a claimant should submit an Application for Refund. Although an applicant need not use any special application form to apply for a crude oil refund, a suggested form has been prepared by the OHA and may be obtained by sending a written request to: Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Each crude oil Application for Refund should contain the type of information specified by the OHA in past decisions. See Texaco Inc., 19 DOE ¶ 85,200 at 88,374, corrected, 19 DOE ¶ 85,236 (1989); Hood Goldsberry, 18 DOE ¶ 85,902 at 89,477–78 (1989); Wickett Refining Co., 18 DOE ¶ 85,659 at 89,081–82 (1989).

B. Payments to the States and Federal Government

Under the terms of the MSRP, the remaining eighty percent of the alleged crude oil violation amounts subject to this Decision, or $7,125,880.28, plus interest, should be disbursed in equal shares to the states and the federal government for indirect restitution. Accordingly, we will direct the DOE's Office of the Controller to segregate the $7,125,880.28, plus interest, available for disbursement to the states and the federal government and transfer one-half of that amount, or $3,562,940.14, plus interest, into an interest-bearing subaccount for the states, and one-half, or $3,562,940.14, plus interest, to an interest bearing subaccount for the federal government. At an appropriate time in the future, we will issue a Decision and Order directing the DOE's Office of the Controller to make the appropriate disbursements to the individual states. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Agreement.

It Is Therefore Ordered That:

(1) Applications for Refund from the alleged crude oil overcharge funds remitted by Seneca Oil Company, West Texas Marketing Corporation, Grace Petroleum Corporation and Thums Long Beach Company may now be filed.

(2) All Applications submitted pursuant to paragraph (1) above must be filed in duplicate and postmarked no later than June 30, 1992.

(3) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller, Department of Energy, shall take all steps necessary to transfer $8,907,350.36 (plus interest) from the Seneca Oil Company, West Texas Marketing Corporation, Grace Petroleum Corporation

and Thums Long Beach Company subaccounts, Account Numbers 999C90019W, 650X90314W, T00T00006W and T00T00005W, pursuant to Paragraphs (4), (5), and (6) of this decision.

(4) The Director of Special Accounts and Payroll shall transfer $3,562,940.14 (plus interest) of the funds obtained pursuant to paragraph (3) above, into the subaccount denominated "Crude Tracking—States," Number 999DOE003W.

(5) The Director of Special Accounts and Payroll shall transfer $3,562,940.14 (plus interest) of the funds obtained pursuant to paragraph (3) above, into the subaccount denominated "Crude Tracking—Federal," Number 999DOE002W.

(6) The Director of Special Accounts and Payroll shall transfer $1,781,470.07 (plus interest) of the funds obtained pursuant to paragraph (3) above, into the subaccount denominated "Crude Tracking—Claimants 4," Number 999DOE0010Z.

Dated: July 17, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 91-17575 Filed 7-23-91; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $305,000, plus accrued interest, that Reinauer Petroleum Co. remitted to the DOE pursuant to a Consent Order executed on April 26, 1988. The funds will be distributed in accordance with the DOE's special refund procedures, 10 CFR part 205, subpart V.

DATES AND ADDRESSES: Applications for Refund from the Reinauer escrow fund must be filed in duplicate and must be received by January 31, 1992. All applications for Refund from this escrow fund should display a conspicuous reference to Case Number KEF-0110, and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Richard T. Tedrow, Deputy Director, Marc H. Favreau, Staff Analyst, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-8018 (Tedrow), (202) 586-6602 (Favreau).

SUPPLEMENTARY INFORMATION: In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision sets forth the procedures that the DOE has formulated to distribute monies that have been remitted by Reinauer Petroleum Co. to the DOE to settle alleged pricing violations with respect to the firm's sales of motor gasoline. The DOE is currently holding $305,000 in an interest-bearing escrow account pending distribution.

Applications for Refund will now be accepted provided they are filed in duplicate and received no later than January 31, 1992, and should be sent to the address set forth at the beginning of this notice. All applications received will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except Federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: July 17, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

Name of Firm: Reinauer Petroleum Co.
Date of Filing: June 20, 1988
Case Number: KEF-0110

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the Mandatory Petroleum Price and Allocation Regulations. See 10 CFR part 205, subpart V. On June 20, 1988, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a Consent Order entered into with Reinauer Petroleum Co. (Reinauer).

I. Background

Reinauer was a "reseller" of motor gasoline as that term was defined in 10 CFR 212.31, located in Hackensack, New Jersey. A DOE audit of Reinauer's records revealed possible violations of the Mandatory Petroleum Price Regulations. 10 CFR part 212, subpart F. Specifically, the audit revealed that between April 1, 1979 and September 30, 1979, Reinauer may have violated the DOE's pricing regulations with respect to its sales of motor gasoline.

In order to resolve its potential civil liabilities arising from the ERA's audit, Reinauer entered into a Consent Order with the DOE on April 26, 1988. The Consent Order refers to ERA's allegations of overcharges, but does not find that any violations occurred. In addition, the Consent Order states that Reinauer does not admit any such violations. Under the terms of the Consent Order, Reinauer was required to deposit $305,000 into an escrow account for ultimate distribution by the DOE. On May 4, 1988, Reinauer made a full payment of $305,000. This Decision and Order concerns the procedures for the distribution of the funds in the Reinauer escrow account.

On November 19, 1990, the OHA issued a Proposed Decision and Order (PD&O) setting forth tentative procedures under which firms and individuals who purchased Reinauer refined petroleum products during the consent order period could apply for refunds from the Reinauer consent order fund. In order to give notice to all affected parties, a copy of the PD&O was published in the **Federal Register** and comments regarding the proposed refund procedures were solicited. 55 FR 49113 (November 26, 1990). We received no comments concerning the proposed refund procedures for Reinauer. Therefore, we will adopt the procedures in the PD&O as final procedures for the distribution of the Reinauer escrow account.

II. Final Refund Procedures

A. Calculation of Refund Amounts

The first step in the refund process is the calculation of an applicant's potential refund. In order to determine the potential refunds for these purchasers, we will adopt the presumption that the alleged overcharges were dispersed equally in all of Reinauer's sales of refined petroleum products during the consent order period. In accordance with this presumption, refunds are made on a pro-rata or volumetric basis. In the absence of better information, a volumetric refund is appropriate because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

The volumetric refund presumption is rebuttable. The impact on an individual claimant may have been greater than its potential refund calculated using the volumetric methodology. Accordingly, a claimant may submit evidence detailing the specific alleged overcharge that it incurred in order to be eligible for a larger refund. See Standard Oil Co. (Indiana)/Army and Air Force Exchange Service, 12 DOE ¶ 85,015 (1984).

Under the volumetric approach, an eligible claimant will receive a refund equal to the number of gallons of motor gasoline that it purchased from Reinauer during the period April 1, 1979 through September 30, 1979, multiplied by a volumetric factor of $0.03584 per gallon.[1] In addition, each successful claimant will receive a pro-rata portion of the interest that has accrued on the Reinauer funds since the date of remittance.

As in previous cases, only claims for at least $15 in principal will be processed. This minimum has been adopted in refined product refund proceedings because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those instances. See, *e.g.*, Mobil Oil Corp., 13 DOE ¶ 85,339 (1985); see also 10 CFR § 205.286(b). If an applicant's potential refund is calculated using the volumetric methodology, it must have purchased at least

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[1] We computed the volumetric factor by dividing the $305,000 received from Reinauer by the total volume of covered products sold by the firm during the consent order period (8,509,229 gallons).

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405 gallons of Reinauer motor gasoline in order for its claim to be considered.

B. Presumptions Concerning Injury

Our experience indicates that the use of certain presumptions concerning injury permits claimants to participate in the refund process without incurring inordinate expense, and ensures that refund claims are evaluated in the most efficient manner possible See, *e.g.*, Marathon Petroleum Company, 14 DOE ¶ 85,269 (1986 (Marathon). Presumptions in refund cases are specifically authorized by the applicable DOE procedural regulations at 10 CFR 205.282(e). Accordingly, we will adopt the presumptions set forth below.

1. End Users

First, in accordance with prior Subpart V proceedings, we will presume that end users, *i.e.*, ultimate consumers of Reinauer motor gasoline whose businesses are unrelated to the petroleum industry, were injured by the firm's alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the alleged overcharges this group would be beyond the scope of a special refund proceeding. See Marion Corp, 12 DOE ¶85,014 (1984) and cases cited therein. Therefore, end users need only document their purchase volumes of Reinauer motor gasoline to demonstrate that they were injured by the alleged overcharges.

2. Regulated Firms and Cooperatives

Second, public utilities, agricultural cooperatives, and other firms whose prices are regulated by government agencies or cooperative agreements do not have to submit detailed proof of injury. Such firms routinely would have passed through price increases to their customers. Likewise, their customers would share the benefits of cost decreases resulting from refunds. See, e.g., Office of Special Counsel, 9 DOE ¶82,538 (1982); Office of Special Council, 9 DOE ¶82,545 at 85,244 (1982). Such firms applying for refunds should certify that they will pass through any refund receiving to their customers and should explain how they will alert the appropriate regulatory body or membership group to monies received. Purchases by cooperatives that were subsequently resold to nonmembers will not be covered by this presumption.

3. Reseller and Retailer Small Claims

Third, we will presume that a reseller or a retailer seeking a refund of $10,000 or less, excluding accrued interest, was injured by Reinauer's pricing practices. In many prior cases we have established a small claims threshold of $5,000. In the present case, however, in order to minimize the burden upon individual applicants and this Office, we have established the small claims threshold at $10,000. This determination is based on a number of considerations. In this proceeding, the volumetric factor is significantly higher than the amount in most other proceedings. As a result, the allocable share of many small retailers and resellers who would typically qualify for a refund at or below the small claims threshold will be well above $5,000. If we were to keep the small claims threshold at $5,000 in this case, it would significantly increase the number of firms, especially very small firms, that would be faced with the burden of making a detailed showing of injury in order to receive their allocable share. It would also very significantly increase the burden on this Office because of the need to analyze many more detailed injury showings and would thus slow down the evaluation of claims. Therefore, in order to minimize these burdens we have established a greater small claims threshold of $10,000. See Texaco Inc., 20 DOE ¶85,147 (1990). Retailer and reseller claimants whose allocable share is $10,000 or less will be presumed injured and therefore need not provide a further demonstration of injury in order to receive their full allocable share. Therefore, a small claimant must only document the volumes of motor gasoline it purchased from Reinauer in order to demonstrate injury. See Texas Oil & Gas Corp., 12 DOE ¶ 85,069 at 88,210 (1984).

4. Spot Purchasers

Fourth, resellers and retailers that were spot purchasers of Reinauer motor gasoline, *i.e.*, firms that made only sporadic, discretionary purchases, are presumed not to have been injured, and consequently, generally will be ineligible for refunds. The basis for this presumption is that a spot purchaser tended to have considerable disretion as to where and when to make a purchase, and therefore,would not have made a purchase unless it was able to recover the full amount of its purchase price from its customers, including any alleged overcharges included in its costs. See Vickers at 85,396–7. A spot purchaser can rebut this presumption by demonstrating that its base period supply obligation limited its discretion in making the purchases and that it resold the product at a loss that was not subsequently recouped. See e.g., Saber Energy, Inc./Mobil Oil Corp., 14 DOE ¶ 85,170 (1986).

5. Consignees

Finally, we will presume that consignees of Reinauer motor gasoline were not injured by the firm's alleged pricing violations. See e.g., Jay Oil Co., 16 DOE ¶ 85,147 (1987). A consignee agent is an entity that sold products pursuant to an agreement whereby its supplier established the prices to be charged by the consignee and compensated the consignee with a fixed commission based upon the volume of products that it sold. A consignee may rebut the presumption of non-injury by demonstrating that its sales volumes and corresponding commission revenues declined due to the alleged uncompetitiveness of Reinauer's pricing practices. See Gulf Oil Corp/C.F. Canter Oil Co., 13 DOE ¶ 85,388 at 88,962 (1986).

C. Allocation Claims

We may also receive claims based upon Reinauer's alleged failure to furnish petroleum products that it was obliged to supply under that DOE allocation regulations. See 10 CFR part 211. Any such applications will be evaluated with reference to the standards set forth in cases such as Standard Oil Company (Indiana), 10 DOE ¶ 85,048, and OKC Corp./Town & Country Markets, Inc., 12 DOE ¶ 85,094 (1984). These standards generally require an allocation claimant to demonstrate the existence of a supplier/purchaser relationship with the consent order firm and the likelihood that the consent order firm failed to furnish petroleum products that it was obliged to supply to the claimant under 10 CFR part 211. In addition, the claimant should provide evidence that it had contemporaneously notified the DOE or otherwise sought redress from the alleged allocation violation. Finally, the claimant must establish that it was injured and document the extent of the injury.

D. Non-Presumption Demonstrations of Injury

A reseller or retailer that claims a refund in excess of $10,000 will be required to demonstrate its injury. There are two aspects to such a demonstration. First, a firm is required to provide a monthly schedule of its banks of unrecouped increased products costs for each grade of motor gasoline that it purchased from Reinauer. Cost banks should cover the period April 1, 1979, through September 30, 1979. If a firm no longer has records of contemporaneously calculated cost banks for a particular grade of motor gasoline, it may approximate those banks by submitting the following information regarding its purchases of that product from all of its suppliers.

(1) The weighted average gross profit margin that the firm received for the product on May 15, 1973.

(2) A monthly schedule of the weighted average gross profit margins that it received for the product during the period, April 1, 1979, through September 30, 1979; and

(3) A monthly schedule of the firm's purchase or sales volumes of the products during the period, April 1, 1979, through September 30, 1979.

The existence of banks of unrecovered increased product costs that exceed an applicant's potential refund is only the first part of an injury demonstration. A firm must also show that market conditions forced it to absorb the alleged overcharges. Generally, we will infer this to be true if the prices the applicant paid Reinauer were higher than average market prices for the same level of distribution. Accordingly, a claimant attempting to demonstrate injury should submit a monthly schedule of the weighted average prices that it paid Reinauere for each grade of motor gasoline during the period April 1, 1979 through September 30,1979.

If a reseller or retailer that is eligible for a refund in excess of $10,000 does not submit cost bank and purchase price information described above, it can still apply for a refund of $10,000 plus accrued interest, using the small claims presumption. If, however, a firm provides the above-mentioned data and we subsequently conclude that the firm should receive a refund of less than the $10,000 small claims threshold. the firm cannot opt for a full $10,000 refund.

E. Distribution of Remaining Funds

In the event that money remains after all meritorious refund applicants have been processed, the funds in the Reinauer escrow account will be disbursed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA). 15 U.S.C.A. 4501–4507 (West Supp. 1989).

III. General Refund Application Requirements

Pursuant to 10 CFR 205.283, we will now accept Applications for Refund from individuals and firms that purchased refined petroleum products from Reinauer between April 1, 1979 and September 30, 1979. No "class claims" on behalf of groups of applicants will be permitted. There is no specific application form that must be used. All Applications for Refund should include the following information:

(1) A conspicuous reference to Case Number KEF–0110 and the name and address of the applicant during the period for which the claim is filed, as well as the name to whom the refund check should be made out and the address to which the check should be sent;

(2) The name, title, address and telephone number of a person who may be contacted by OHA for additional information concerning the Application;

(3) The manner in which the applicant used the Reinauer petroleum products, *i.e.*, whether it was a reseller, retailer, consignee, end-user, etc.;

(4) For each refined covered product, a monthly schedule of the number of gallons that the applicant purchased from Reinauer during the April 1, 1979, through September 30, 1979 refund period. If the claimant elects to rely on the DOE's records of his purchases, it need not submit a monthly schedule of purchases. If a claimant was an indirect purchaser of Reinauer refined covered products, it must also submit the name of its immediate supplier.

(5) All relevant material necessary to support its claim in accordance with the injury presumptions and requirements outlined above;

(6) If the applicant was or is in any way affiliated with Reinauer, an explanation of the nature of that affiliation.

(7) The form of business, whether it was a corporation, a partnership or a sole proprietorship.

(8) The dates of ownership including the month and year. The applicant must also submit a statement as to whether there has been a change in ownership of the applicant's firm during or since the refund period. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must inform OHA of any change in status while its Application for Refund is pending. See 10 CFR 205.9(d);

(9) A statement as to whether the applicant is or has been involved in any DOE enforcement proceedings or private actions filed under section 210 of the Economic Stabilization Act. If these actions have been concluded, the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must inform OHA of any change in status while its Application for Refund is pending. See 10 CFR 205.9(d);

(10) A statement as to whether the applicant or a related firm has filed any other Application for Refund in the Reinauer proceeding;

(11) A statement as to whether the claimant or a related firm has authorized any other individual(s) to file an Application for Refund on the claimant's behalf in the Reinauer proceeding; and

(12) The following statement signed by the applicant or a responsible official of the business or organization claiming the refund: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal Government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001."

Applications for Refund should be sent to: Reinauer Refund Proceeding, Case No. KEF–0110, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

All applications must be filed in duplicate and must be postmarked by January 31, 1992. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals. Any applicant that believes that its application contains confidential information must submit two additional copies of its application from which the confidential information has been deleted, together with a statement specifying why the information is confidential.

It Is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by Reinauer Petroleum Company pursuant to the Consent Order finalized on April 26, 1988, may now be filed.

(2) All applications must be postmarked by January 31, 1992.

(3) This is a final order of the Department of Energy.

Dated: July 17, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 91–17576 Filed 7–23–91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

Acid Rain Advisory Committee; Subcommittee on No_x; Open Meeting

SUMMARY: In August of 1990, the U.S. Environmental Protection Agency gave notice of the establishment of an Acid Rain Advisory Committee (ARAC) which would provide advice to the Agency on issues related to the development and implementation of the requirements of the acid deposition control title of the Clean Air Act Amendments of 1990.

Four ARAC subcommittees (Allowance Trading and Tracking, Permits and Technology, Emissions Monitoring, and Energy Conservation and Renewables) were created at the first ARAC meeting to help address related issues.

At its July 15–16 meeting, ARAC established a Subcommittee on NO_x to provide advice on issues related to the development of regulations for reducing NO_x emissions from certain types of existing coal-fired boilers at electric power plants. Specifically, this subcommittee will focus on issues related to NO_x emissions from tangentially-fired boilers and dry bottom wall-fired boilers affected in Phase I of Title IV of the Clean Air Act Amendments of 1990.

OPEN MEETING DATES AND ADDITIONAL INFORMATION: Notice is hereby given that the ARAC Subcommittee on NO_x will hold its first open meeting from 9 a.m. to 5 p.m. on July 31 and August 1 and from 9 a.m. to 12 noon on August 2 at the Ramada Renaissance Hotel, Washington, Dulles, 13869 Park Center Road, Herndon, VA 22071 (703) 478–2900. The meeting is being called on short notice because of the recent ARAC approval of the establishment of the NO_x Subcommittee and the need to expeditiously address related issues. The meeting agenda is likely to include a discussion of general requirements of the Act, definitions of low NO_x burner technology, emission rates specified in the legislation, procedures for emissions averaging of affected units, procedures and conditions for extension applications, and alternate emission limitation procedures.

INSPECTION OF COMMITTEE DOCUMENTS: All documents for this meeting including a more detailed meeting agenda will be publicly available in limited numbers at the meeting. Thereafter, these documents will be available in EPA Air Docket Number A–90 in room 1500 of EPA headquarters, 401 M Street SW., Washington, DC. Hours of inspection are 8:30 a.m. to 12 noon and 1:30 to 3:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Concerning the Subcommittee on NO_x or its activities, contact Doris Price, at (202) 475–9400; fax (202) (252–0892), or by mail at USEPA, Acid Rain Division (ANR 445), Office of Air and Radiation, Washington, DC 20460.

Dated: July 19, 1991.

Brian J. McLean,

Acting Director, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation.

[FR Doc. 91–17594 Filed 7–23–91; 8:45 am]

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At its July 15–16 meeting, ARAC established a Subcommittee on NO$_x$ to provide advice on issues related to the development of regulations for reducing NO$_x$ emissions from certain types of existing coal-fired boilers at electric power plants. Specifically, this subcommittee will focus on issues related to NO$_x$ emissions from tangentially-fired boilers and dry bottom wall-fired boilers affected in Phase I of Title IV of the Clean Air Act Amendments of 1990.

OPEN MEETING DATES AND ADDITIONAL INFORMATION: Notice is hereby given that the ARAC Subcommittee on NO$_x$ will hold its first open meeting from 9 a.m. to 5 p.m. on July 31 and August 1 and from 9 a.m. to 12 noon on August 2 at the Ramada Renaissance Hotel, Washington, Dulles, 13869 Park Center Road, Herndon, VA 22071 (703) 478–2900. The meeting is being called on short notice because of the recent ARAC approval of the establishment of the NO$_x$ Subcommittee and the need to expeditiously address related issues. The meeting agenda is likely to include a discussion of general requirements of the Act, definitions of low NO$_x$ burner technology, emission rates specified in the legislation, procedures for emissions averaging of affected units, procedures and conditions for extension applications, and alternate emission limitation procedures.

INSPECTION OF COMMITTEE DOCUMENTS: All documents for this meeting including a more detailed meeting agenda will be publicly available in limited numbers at the meeting. Thereafter, these documents will be available in EPA Air Docket Number A–90 in room 1500 of EPA headquarters, 401 M Street SW., Washington, DC. Hours of inspection are 8:30 a.m. to 12 noon and 1:30 to 3:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Concerning the Subcommittee on NO$_x$ or its activities, contact Doris Price, at (202) 475–9400; fax (202) (252–0892), or by mail at USEPA, Acid Rain Division (ANR 445), Office of Air and Radiation, Washington, DC 20460.

Dated: July 19, 1991.

Brian J. McLean,

Acting Director, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation.

[FR Doc. 91–17594 Filed 7–23–91; 8:45 am]

BILLING CODE 6560-50-M

[FRL–3977–7]

Public Meeting; Chesapeake Executive Council August 6, 1991.

Location: Governor's Residence, 2035 North Front Street, Harrisburg, Pennsylvania 17102, 11:30 a.m.: Public Meeting.

Presentation of Advisory Committee Reports: Scientific and Technical Committee, Dr. Joseph Mihursky, Chair; Citizen Advisory Committee, Ms. Mary Roe Walkup, Chair; and Local Government Advisory Committee, Ms. Anna Long, Chair.

Recognition Awards

Keynote Remarks: William K. Reilly, Administrator, EPA, Chairman, Chesapeake Executive Council; Review of Progress and Announcement of New Themes.

Signing Ceremony

Remarks From Other Executive Council Members: Delegate W. Tayloe Murphy, Chair, Chesapeake Bay Commission; Governor William Donald Schaefer, Maryland; Governor Lawrence Douglas Wilder, Virginia; Mayor Sharon Pratt Dixon, Washington, DC; and Governor Robert P. Casey, Pennsylvania.

1:00 p.m.: Concluding Remarks.
1:05 p.m.: Press Availability.
1:30 p.m.: Conclusion of Press Availability.

For further information about the public meeting, contact Gail Tindal, Chesapeake Bay Public Affairs, at 215–597–6911.

Jon Capacasa,

Acting Director, Chesapeake Bay Program.

[FR Doc. 91–17598 Filed 7–23–91; 8:45 am]

BILLING CODE 6560-50-M

[FRL–3977–5]

Administrative Order on Consent Pursuant to Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act; Spiegelberg Site

AGENCY: United States Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: In accordance with the requirements of section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (CERCLA), notice is hereby given of a proposed Administrative Order on Consent under section 122(h) concerning the Spiegelberg Site in Livingston County, Michigan. The proposed Consent Agreement requires the transporter, Alfred E. Pearson, to pay $60,000 of the past costs incurred by U.S. EPA at the Spiegelberg Site. U.S. EPA will attempt to negotiate the settlement of the unrecovered costs with the remaining responsible parties.

DATES: Comments must be received on or before August 23, 1991.

ADDRESSES: Comments should be addressed to the U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois, 60604, and should refer to: In the Matter of the Spiegelberg Site.

FOR FURTHER INFORMATION CONTACT: Mary McAuliffe (5–CS–TUB–3), Office of Regional Counsel, U.S. EPA, Region V, 230 Dearborn Street, Chicago, Illinois 60604, (312) 886–6237.

Notice of section 122(h) Administrative Settlement: In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, notice is hereby given that on or about May 3, 1991, a proposed administrative settlement was agreed to by Alfred E. Pearson. The proposed settlement requires Alfred Pearson to pay the United States $60,000 toward its past costs related to the Spiegelberg Site.

U.S. EPA is entering into this agreement under the authority of section 122(h) and 107 of CERCLA. Section 122(h) authorizes administrative settlement of a claim under section 107. Where total response costs incurred by the United States for the facility concerned exceed $500,000 (excluding interest), the Attorney General of the United States must also approve the settlement. As response costs incurred in this case exceed $500,000, the Attorney General has approved this settlement.

Under the terms of the settlement, Alfred E. Pearson will pay the full amount within 30 days of the effective date of the agreement. In return, the U.S. EPA covenants not to sue Alfred E. Pearson regarding claims available to the United States under section 107 of CERCLA relating to the Spiegelberg Site.

A copy of the proposed Administrative Agreement may be obtained in person or by mail from the Office of Regional Counsel, United States Environmental Protection Agency, Region V, (5CS–TUB–3), 230 South Dearborn Street, Chicago, Illinois 60604.

Authority: The Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 9601–9675.

Dated: July 11, 1991.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 91–17561 Filed 7–23–91; 8:45 am]

BILLING CODE 6560-50-M

[OPTS–44573; FRL 3936–5]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on methyl ethyl ketoxime (MEKO) (CAS No. 96–29–7), submitted pursuant to a final test rule under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received.

I. Test Data Submissions

Test data for MEKO were submitted by Industrial Health Foundation, Inc., pursuant to a test rule at 40 CFR 799.2700. They were received by EPA on July 3, 1991. The submission describes a subchronic neurotoxicity study in rats. Health effects testing is required by this test rule. This chemical is sold primarily as a nonreactive antiskinning agent in alkyd surface coating and paints. It is also used as a blocking agent for isocyanates and siloxanes. EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS–44573). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket

Office, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: July 15, 1991.

Charles M. Auer,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 91-17597 Filed 7-23-91; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted To Office of Management and Budget for Review

July 19, 1991.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street NW., Washington, DC 20036, (202) 452-1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB number: 3060-0073

Title: Application for and Certification of Overtime Service Involving Inspection of Ship Radio Equipment

Form number: FCC Form 808

Action: Extension

Respondents: Businesses or other for-profit (including small businesses)

Frequency of response: On occasion

Estimated annual burden: 200 responses; .084 hours average burden per response; 17 hours total annual burden.

Needs and uses: The FCC Form 808 is used to request an overtime inspection of compulsory shipboard radio equipment pursuant to 47 CFR 80.59(e). The information requested certifies that the overtime service was requested and performed. If this form is not completed, the U.S. Government will not be reimbursed the overtime monies that was paid to the employee. The affected public are businesses whose vessels require inspection of radio equipment outside normal business hours.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 91-17601 Filed 7-23-91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Pacific Maritime Association Assessment; Filing and Effective Date of Agreement

The Federal Maritime Commission hereby gives notice that on July 12, 1991, the following agreement was filed with the Commission pursuant to section 5(d) of the Shipping Act of 1984 and was considered effective that date to the extent that it constitutes an assessment agreement as described in section 3(3) of the Shipping Act of 1984.

Agreement No: 224-000084-003.

Title: Pacific Maritime Association Assessment Agreement.

Parties: Members of the Pacific Maritime Association.

Synopsis: The Agreement amends the basic agreement concerning assessments paid to the International Longshoremen's and Warehousemen's Union and Pacific Maritime Association employee benefit costs. The Agreement defines the term "man-hours" as used in the basic agreement.

Dated: July 18, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-17486 Filed 7-23-91; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed; Port Authority of New York and New Jersey/Zim American Israeli Shipping Co., Inc. Terminal Agreement

The Federal Maritime Commission hereby givens notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200549.

Title: Port Authority of New York and New Jersey/Zim American Israeli Shipping Co., Inc. Terminal Agreement.

Parties: Port Authority of New York and New Jersey (Port) Zim American Israeli Shipping Co., Inc. (Zim).

Synopsis: The Agreement, filed July 12, 1991, provides for: the Port to pay Zim $25 per import and $50 per export container with cargo loaded/unloaded from a vessel at the Port and shipped by rail to or from points more than 260 miles from the Port, subject to rail freight bills or waybills issued on or after January 1, 1991. The term of the Agreement will expire December 31, 1991.

Agreement No.: 224-200546.

Title: Port Authority of New York and New Jersey/American President Lines, Ltd. Terminal Agreement.

Parties: Port Authority of New York and New Jersey (Port) American President Ltd. (APL)

Synopsis: The Agreement, filed July 12, 1991, provides for: the Port to pay APL $25 per import and $50 per export container with cargo loaded/unloaded from a vessel at the Port and shipped by rail to or from points more than 260 miles from the Port, subject to rail freight bills or waybills issued on or after January 1, 1991. The term of the Agreement will expire December 31, 1991.

Agreement No.: 224-200547.

Title: Port Authority of New York and New Jersey/Empresa Naviera Santa Marine Terminal Agreement

Parties: Port Authority of New York and New Jersey (Port) Empresa Naviera Santa (ENS)

Synopsis: The Agreement, filed July 12, 1991, provides for: the Port to pay ENS $25 per import and $50 per export container with cargo loaded/unloaded from a vessel at the Port and shipped by rail to or from points more than 260 miles from the Port, subject to rail freights bills or waybills issued on or after January 1, 1991. The term of the Agreement will expire December 31, 1991.

By Order of the Federal Maritime Commission.

Dated: July 18, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91-17488 Filed 7-23-91; 8:45 am]

BILLING CODE 6730-01-M

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Agreement No.: 224-200549.

Title: Port Authority of New York and New Jersey/Zim American Israeli Shipping Co., Inc. Terminal Agreement.

Parties: Port Authority of New York and New Jersey (Port) Zim American Israeli Shipping Co., Inc. (Zim).

Synopsis: The Agreement, filed July 12, 1991, provides for: the Port to pay Zim $25 per import and $50 per export container with cargo loaded/unloaded from a vessel at the Port and shipped by rail to or from points more than 260 miles from the Port, subject to rail freight bills or waybills issued on or after January 1, 1991. The term of the Agreement will expire December 31, 1991.

Agreement No.: 224-200546.

Title: Port Authority of New York and New Jersey/American President Lines, Ltd. Terminal Agreement.

Parties: Port Authority of New York and New Jersey (Port) American President Ltd. (APL)

Synopsis: The Agreement, filed July 12, 1991, provides for: the Port to pay APL $25 per import and $50 per export container with cargo loaded/unloaded from a vessel at the Port and shipped by rail to or from points more than 260 miles from the Port, subject to rail freight bills or waybills issued on or after January 1, 1991. The term of the Agreement will expire December 31, 1991.

Agreement No.: 224-200547.

Title: Port Authority of New York and New Jersey/Empresa Naviera Santa Marine Terminal Agreement

Parties: Port Authority of New York and New Jersey (Port) Empresa Naviera Santa (ENS)

Synopsis: The Agreement, filed July 12, 1991, provides for: the Port to pay ENS $25 per import and $50 per export container with cargo loaded/unloaded from a vessel at the Port and shipped by rail to or from points more than 260 miles from the Port, subject to rail freights bills or waybills issued on or after January 1, 1991. The term of the Agreement will expire December 31, 1991.

By Order of the Federal Maritime Commission.

Dated: July 18, 1991.

Joseph C. Polking,
Secretary.

[FR Doc. 91-17488 Filed 7-23-91; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed; Tampa Port Authority, Apollo Stevedoring Co., Inc., Manine Terminal Agreement

The Federal Maritime Commisson hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in §§ 560.602 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No: 224-200548.

Title: Tampa Port Authority/Apollo Stevedoring Co., Inc. Marine Terminal Agreement.

Parties: Tampa Port Authority (Authority) Apollo Stevedoring Co., Inc. (Apollo).

Filing party: Mr. Harold E. Welch, Director of Traffic, Tampa Port Authority, P.O. Box 2192, 811 Wynkoop Road, Tampa, Florida 33601

Synopsis: The Agreement, filed july 12, 1991, provides for Apollo to lease from the Authority approximately 2,200 sq. ft. of land a Hookers Point, located in Hillsborough County, Florida. The term of the lease shall be month-to-month and monthly rental shall be $300.00. The Authority will provide two or three offices located in the southern end of Building No. 1, which Apollo is securing necessary permits for the modular office to be placed on the leased premises.

By Order of the Federal Maritime Commission.

Dated: July 18, 1991.

Joseph C. Polking,
Secretary.

[FR Doc. 91-17487 Filed 7-23-91; 8:45 am]

BILLING CODE 6730-01-M

Wilhelmsen Lines AS, et al; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 203-011222-002.

Title: Wilhelmsen/Lief Hoegh Discussion Agreement.

Parties: Wilhelmsen Lines AS, Lief Hoegh & Co., A/S.

Synopsis: The proposed amendment would (1) permit any ocean common carrier serving the trade to become a party to the Agreement; (2) add Waterman Steamship Corporation as a party to the Agreement; (3) change the name of the Agreement to Wilhelmsen/Lief Hoegh/Waterman Discussion Agreement and (4) make other nonsubstantive changes. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: July 19,1991.

Joseph C. Polking,
Secretary.

[FR Doc. 91-17534 Filed 7-23-91; 8:45 am]

BILLING CODE 6730-01-M

Organization and Functions; Domestic Regulation Bureau, C.O. 1, Amdt. No. 15

The following delegations of authority are made to the Director, Bureau of Domestic Regulation, by amending Commission Order 1, section 9, as revised, Specific Authorities Delegated to the Director, Bureau of Domestic Regulation by adding subsections 9.13 and 9.14 to read as follows:

9.13 Authority contained in 46 CFR parts 580 and 583 to cancel the tariffs of NVOCCs who fail to file a surety bond or, if required, designate an agent for receipt of process, or whose surety bond or agent designation is cancelled.

9.14 Authority contained in 46 CFR part 582 to cancel the tariff of any common carrier who fails to file an anti-rebate certification.

Dated: July 18, 1991.

Christopher L. Koch,
Chairman.

[FR Doc. 91 17591 Filed 7-23-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of May 14, 1991

In accordance with § 217.5 of its rules regarding availability of information, there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on May 14, 1991.[1] The Directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting provides mixed signals regarding the course of economic activity, which had weakened appreciably further earlier in the year. Following sharp decreases in previous months, total nonfarm payroll employment fell somewhat further in April; the civilian unemployment rate edged down to 6.6 percent. Industrial output changed little in April after declining markedly in earlier months. Retail sales were about unchanged in April and are now indicated to have risen somewhat in March. Advance indicators continue to point to weakness in business fixed investment in coming months. Housing starts were down in March, partly offsetting a sizable advance in February, but sales of new and existing homes continued to rise. The nominal U.S. merchandise trade deficit declined in February and its January-February rate was considerably below the average rate in the fourth quarter. Producer and consumer prices were little changed over March and April, partly reflecting further reductions in energy prices.

Short-term interest rates have declined since the Committee meeting on March 26, while bond yields have changed little. The Board of Governors approved a reduction in the discount rate from 6 to 5-1/2 percent on April 30. The trade-weighted value of the dollar in terms of the other G-10 currencies showed little change on balance over the intermeeting period.

Growth of M2 and M3 weakened in April; for the year thus far, expansion of M2 has been at the midpoint of the Committee's range, while growth of M3 has been in the upper half of its range.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability, promote a resumption of sustainable growth in output, and contribute to an improved pattern of international transactions. In furtherance of these objectives, the Committee at its meeting in February established ranges for growth of M2 and M3 of 2-1/2 to 6-1/2 percent and 1 to 5 percent; respectively, measured from the fourth quarter of 1990 to the fourth quarter of 1991. The monitoring range for growth of total domestic nonfinancial debt was set at 4-1/2 to 8-1/2 percent for the year. With regard to M3, the Committee anticipated that the ongoing restructuring of thrift depository institutions would continue to depress its growth relative to spending and total credit. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

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[1] Copies of the Record of policy actions of the Committee for the meeting of May 14, 1991, are available upon request to The Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. Depending upon progress toward price stability, trends in economic activity, the behavior of the monetary aggregates, and developments in foreign exchange and domestic financial markets, somewhat greater reserve restraint or somewhat lesser reserve restraint might be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with growth of M2 and M3 over the period from March through June at annual rates of about 4 and 2 percent, respectively.

By order of the Federal Open Market Committee, July 17, 1991.

Normand Bernard,

Deputy Secretary, Federal Open Market Committee.

[FR Doc. 91-17530 Filed 7-23-91; 8:45 am]

BILLING CODE 6210-01-F

Bank Management Group, Ltd., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 13, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Bank Management Group, Ltd., Manchester, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of First Winthrop Bancorporation, Inc., Winthrop, Iowa, and thereby indirectly acquire Peoples State Bank, Winthrop, Iowa.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Timberline Bancshares, Inc., Yreka, California; to become a bank holding company by acquiring 100 percent of the voting shares of Timberline Community Bank, Yreka, California.

Board of Governors of the Federal Reserve System, July 19, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-17620 Filed 7-23-91; 8:45 am]

BILLING CODE 6210-01-F

Oren L. Benton; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than August 13, 1991.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Oren L. Benton, Aurora, Colorado; to acquire 90 percent of the voting shares of The Professional Bank, Englewood, Colorado.

Board of Governors of the Federal Reserve System, July 19, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-17621 Filed 7-23-91; 8:45 am]

BILLING CODE 6210-01-F

Magna Group, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the

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Bank of Kansas
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925 Grand Avenue, Kansas City, Missouri 64198:

1. Oren L. Benton, Aurora, Colorado; to acquire 90 percent of the voting shares of The Professional Bank, Englewood, Colorado.

Board of Governors of the Federal Reserve System, July 18, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-17621 Filed 7-23-91; 8:45 am]

BILLING CODE 6210-01-F

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Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 13, 1991.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Magna Group, Inc., Belleville, Illinois, and Magna Acquisition Corporation, St. Louis, Missouri; to acquire 100 percent of the voting shares of Landmark Bancshares Corporation, St. Louis, Missouri, and thereby indirectly acquire Landmark Bank, Clayton, Missouri; Landmark Bank of Kansas City, Kansas City, Missouri; Landmark KCI Bank, Kansas City, Missouri; Landmark Bank of St. Charles County, St. Charles, Missouri; Landmark Bank of Southwest Missouri, Ozark, Missouri; Landmark Bank of Carbondale, Carbondale, Illinois; Landmark Bank of Illinois, Fairview Heights, Illinois; Landmark Bank of Madison County, Highland, Illinois; Landmark Bank of Madison County, Highland, Illinois; Landmark Bank of Washington County, N.A., Nashville, Illinois; and Landmark Bank of Randolph County, Sparta, Illinois. In connection with this acquisition, Magna Acquisition Corporation has applied to become a bank holding company.

In connection with this application, Magna Group, Inc., Belleville, Illinois, proposes to acquire Landmark BVI Limited, St. Louis, Missouri, and thereby engage in credit insurance sales and underwriting, all of which will be directly related to extensions of credit by Applicant or any of its subsidiaries, and will be limited to assuring repayment of the outstanding balance due on such extensions of credit in the event of the death, disability or involuntary unemployment of the repsective debtor pursuant to § 225.25(b)(8); and Landmark Trust Company, Fairview Heights, Illinois, and thereby engage in performing fiduciary, agency and custodial functions and activities that may be performed by a trust company pursuant to § 225.25(b)(3) of the Board's Regulation Y

Board of Governors of the Federal Reserve System, July 19, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-17622 Filed 7-23-91; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[File No. 891 0088]

Nippon Sheet Glass Company, Ltd., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the respondents, suppliers of polished wired glass, for a period of ten years, to obtain prior Commission approval before engaging any other entity in North America in any joint marketing or distribution agreement that would involve selling to customers in the United States.

DATES: Comments must be received on or before September 23, 1991.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: James Egan, Jr. or Robert Doyle, Jr., FTC/S–2308, Washington, DC 20580. (202) 326–2682.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules and Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

[File No. 891–0088]

In the matter of Nippon Sheet Glass Co., Ltd., a corporation, NSG Holding USA, Inc., a corporation, Pilkington PLC, a corporation, and Libbey-Owens-Ford Co., a corporation.

The Federal Trade Commission (the "Commission"), having initiated an investigation of the acquisition of certain stock or voting securities of Libbey-Owens-Ford Co. ("LOF"), a subsidiary of Pilkington plc ("Pilkington"), by NSG Holding USA, Inc. ("NSG–USA"), a subsidiary of Nippon Sheet Glass Company, Ltd. ("Nippon"), pursuant to a Common Stock Purchase Agreement, and proposed respondents having been furnished with a copy of a draft complaint that, if issued by the Commission, would charge proposed respondents with violations of the Federal Trade Commission Act and the Clayton Act, and it now appearing that Nippon, NSG–USA, Pilkington and LOF are willing to enter into an agreement containing an order to cease and desist from certain acts:

It is hereby agreed by and between Nippon, NSG–USA, Pilkington and LOF, by their duly authorized officers and their attorneys, and counsel for the Commission that:

1. Proposed respondent Nippon is a corporation organized under the laws of Japan, with its executive offices at 5–11, Doshomacho 3-chome, Chuo-Ku, Osaka, Japan.

2. Proposed respondent NSG–USA, a wholly owned subsidiary of proposed respondent Nippon, is a corporation organized and existing under the laws of Delaware, with its principal place of business at 1209 Orange Street, Wilmington, Delaware 19801.

3. Proposed respondent Pilkington is a corporation organized under the laws of England, with its executive offices at Prescot Road, St. Helens, Merseyside, England WA10 3TT.

4. Proposed respondent LOF, a subsidiary of proposed respondent Pilkington, is a corporation organized and existing under the laws of Delaware, with its principal place of business at 811 Madison Avenue, Toledo, Ohio 43695.

5. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

6. Proposed respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise challenge or contest the validity of the order entered pursuant to this agreement; and

d. All rights under the Equal Access to Justice Act.

7. This agreement shall not become a part of the public record unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either

withdraw its acceptance of this agreement and so notify proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

8. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

9. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to the proposed respondents, (1) Issue a complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public with respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents or to their counsel shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

10. Proposed respondents have read the order contemplated hereby. Proposed respondents understant that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

11. For purposes of securing compliance with the order contemplated hereby, each respondent agrees to designate an agent in the United States to accept service and that delivery by the U.S. Postal Service to it or such designated agent shall constitute service. By this agreement, each respondent agrees that its undersigned counsel is designated and shall serve as such agent for such service until the respondent notifies the Commission of a new designated agent.

Order

For purposes of this Order the following definitions shall apply:

1. "Nippon" means respondent Nippon Sheet Glass Company, Ltd., as well as its officers, employees, agents, divisions, subsidiaries (including but not limited to NSG–USA), successors, assigns, and the officers, employees, and agents of Nippon's divisions, subsidiaries, successors and assigns. LOF shall not be treated as a subsidiary of Nippon for purposes of this Order.

2. "NSG–USA" means respondent NSG Holding USA, Inc., as well as its officers, employees, agents, divisions, subsidiaries, sucessors, assigns, and the officers, employees, and agents of NSG–USA's divisions, subsidiaries, successors and assigns.

3. "Pilkington" means respondent Pilkington plc, as well as its officers, employees, agents, divisions, subsidiaries (including but not limited to LOF), successors, assigns, and the officers, employees and agents of Pilkington's divisions, subsidiaries, successors and assigns.

4. "LOF" means respondent Libbey-Owens-Ford Co., as well as its officers, employees, agents, divisions, subsidiaries, successors, assigns, and the officers, employees and agents of LOF's divisions, subsidiaries, successors and assigns.

5. "Wired glass" means any flat glass containing wire netting.

I

It is ordered that for a period of ten (10) years from the date this Order becomes final, respondent Nippon and respondent Pilkington, directly or indirectly, or through any corporate or other device including respondent LOF, shall cease and desist, without the prior approval of the Federal Trade Commission, from engaging together in North America in any marketing or manufacturing joint venture, corporate or non-corporate, or joint distribution agreement, to sell wired glass, directly or indirectly, to customers located in the United States.

II

It is further ordered that within ten (10) days after the date this Order becomes final, respondent Nippon and respondent Pilkington shall each distribute a copy of this Order to its current directors and corporate officers at the level of the parent company, and to the directors and officers of each subsidiary involved in the manufacture or sale of wired glass.

III

It is further ordered that within thirty (30) days after the date this Order becomes final, and at such other times as the Commission or its staff may require, each respondent shall submit to the Commission a verified report setting forth in detail the manner and form in which it has complied with this Order.

IV

It is further ordered that for the purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request by the Commission or its staff and on reasonable notice to any respondent made to its principal office, such respondent shall permit duly authorized representatives of the Commission:

A. Reasonable access during respondent's office hours, in the presence of counsel, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of respondent relating to any matters contained in this Order, for inspection and copying; and

B. An opportunity, subject to respondent's reasonable convenience, to interview, in the presence of counsel, officers or employees of respondent regarding such matters.

V

It is further ordered that each respondent shall notify the Commission at least thirty (30) days prior to any change in respondent which may affect compliance with the obligations arising out of this Order, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Nippon Sheet Glass Company, Ltd. ("Nippon"), Nippon's wholly owned subsidiary NSG Holding USA, Inc. ("NSG–USA"), Pilkington plc ("Pilkington"), and Libbey-Ownes-Ford Co. ("LOF"), now jointly owned by Pilkington and Nippon.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by

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The proposed consent order has been placed on the public recoru for sixty (60) days for reception of comments by

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interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The proposed complaint alleges that Nippon's acquisition of 20% of the voting securities of LOF, which allowed both Nippon and Pilkington to distribute polished wired glass in North America through LOF, violates section 5 of the Federal Trade Commission Act and section 7 of the Clayton Act.

The proposed consent order requires, for a period of ten years, prior Commission approval before Nippon and Pilkington may engage in North America in any joint marketing or distribution agreement that would involve selling directly or indirectly to customers in the United States. Thus, under the terms of the proposed consent order, Nippon and Pilkington will remain independent suppliers of polished wired glass to the United States.

The proposed order requires that within thirty (30) days of the date the order becomes final respondents submit a report to the Commission verifying their compliance with the provisions of the order, and provides that additional compliance reports may be required.

The Commission anticipates that the effect of the proposed order will be to maintain the opportunity for unrestrained trade in the market for polished wired glass in the United States.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 91–17521 Filed 7–23–91; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Health; Statement of Organization, Functions and Delegations of Authority

Part H, Public Health Service (PHS), Chapter HA (Office of the Assistant Secretary for Health) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (42 FR 61318, December 2, 1977, as amended most recently at 55 FR 29272, July 18, 1990), is amended to reflect the establishment of an Office of Women's Health (HAW) within the Office of the Assistant Secretary for Health. The new office is being established to support the work of a PHS Coordinating Committee on Women's Health Issues and to provide a focus for carrying out activities associated with the Committee and women's health issues.

Office of the Assistant Secretary for Health

Under Part H, Chapter HA, Office of the Assistant Secretary for Health, Section HA–10, Organization, following the title *National Vaccine Program Office (HA2),* add *20. Office on Women's Health (HAW).*

Under Section HA–20, Functions, following the title and statement for the *Division of PHS Budget (HAU44),* add the following title and statement:

Office on Women's Health (HAW). The Executive Director and staff provide support to the PHS Coordinating Committee on Women's Health Issues which has responsibility to: (1) Serve as a focal point within PHS to coordinate the continuing implementation of recommendations of the report of the PHS Task Force on Women's Health Issues in the context of the health objectives for the year 2000; (2) serve as a locus with the PHS to identify changing needs, recommend new studies, and to assess new challenges to the health of women; (3) coordinate the programmatic aspects of the PHS agencies in regard to issues related to women's health; (4) assure liaison with relevant offices in the OASH including the Office of Minority Health; and (5) assess the opportunities for women in assuming leadership positions in the Public Health Service.

Dated: July 17, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91–17599 Filed 7–23–91; 8:45 am]

BILLING CODE 4160-17-M

Food and Drug Administration

Advisory Committee; Meeting

AGENCY: Food and drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administraon (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

Orthopedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. August 16, 1991, 8 a.m., First Floor Conference Rm., Piccard Bldg., 1390 Piccard Dr., Rockville, MD.

Type of meeting and contact person. Open public hearing, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 10 a.m.; closed presentation of data, 10 a.m. to 10:40 a.m.; open committee discussion, 10:40 a.m. to 11:40 a.m.; closed presentation of data, 11:40 a.m. to 11:50 a.m.; open committee discussion, 1:30 p.m. to 2:30 p.m.; closed presentation of data, 2:30 p.m. to 2:40 p.m.; Marie A. Schroeder, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1036.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before August 9, 1991, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss premarket approval applications for an uncemented porous metal-coated unicompartmental knee prosthesis, a bone void filler device, and an anterior cruciate ligament augmentation prosthesis.

Closed presentation of data. The committee may discuss trade secret or confidential commercial information regarding materials, design, and/or manufacturing information for the above premarket approval applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, Rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clincal test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative session to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: July 17, 1991.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 91-17522 Filed 7-23-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-050-4712-12]

Recreation Area; Yuma Rules of Conduct and Supplementary Rules of Yuma District, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Designation of developed recreation area and establishment of supplementary rules.

SUMMARY: The following area is designated a developed recreation site for the purpose of applying the rules of conduct contained in 43 CFR 8365.2:

District	Area	Type	Approximate Size	Location
Yuma	Paradise Cove Boat Ramp	Boat Launching/Picnic	35 acres	Sec. 28, lots 2, 5, and 6, portion of S½S½, T. 16 S., R. 22 E. SBM, Arizona

In addition to the regulations contained in 43 CFR 8365.2, the following supplementary rules will apply to the developed recreation site listed above:

a. Discharge, use, or possession of fireworks is prohibited.

b. Consumption of alcoholic beverages is prohibited.

c. Motor vehicles and operators must be licensed for highway use.

d. Glass containers are prohibited.

e. Overnight camping is prohibited.

f. Area is closed except for boat launching from 9:00 p.m. to 6:00 a.m.

g. Maximum speed limit of 5 miles per hour.

h. Ground fires are prohibited.

i. Discharge of weapons is prohibited.

EFFECTIVE DATE: August 1, 1991.

FOR FURTHER INFORMATION CONTACT: Walt Tegge, Outdoor Recreation Planner, Yuma Resource Area, 3150 Winsor Avenue, Yuma, Arizona 85365, 602-726-6300.

SUPPLEMENTARY INFORMATION: This area has been developed to provide for boat launching on the lower end of the Colorado River. This site was selected using criteria developed during the management planning process and an environmental assessment was completed for the site location. The area is also a popular picnic and swimming area.

The supplementary rules are designed to provide for public safety and welfare and to protect natural resources

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Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clincal test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative session to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: July 17, 1991.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 91-17522 Filed 7-23-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-050-4712-12]

Recreation Area; Yuma Rules of Conduct and Supplementary Rules of Yuma District, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Designation of developed recreation area and establishment of supplementary rules.

SUMMARY: The following area is designated a developed recreation site for the purpose of applying the rules of conduct contained in 43 CFR 8365.2:

Type	Approximate Size	Location
ing/Picnic	35 acres	Sec. 28, lots 2, 5, and 6, portion of S½S½, T. 16 S., R. 22 E. SBM, Arizona

except for boat
p.m. to 6:00 a.m.
d limit of 5 miles per

e prohibited.
eapons is prohibited.
gust 1, 1991.
MATION CONTACT:
or Recreation
ource Area, 3150
ma, Arizona 85365,

SUPPLEMENTARY INFORMATION: This area has been developed to provide for boat launching on the lower end of the Colorado River. This site was selected using criteria developed during the management planning process and an environmental assessment was completed for the site location. The area is also a popular picnic and swimming area.

The supplementary rules are designed to provide for public safety and welfare and to protect natural resources

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The authority for establishing supplementary rules is contained in CFR title 43, chapter II 8365.1-6. These rules will be available in each local office having jurisdiction over the lands, sites, or facilities affected. Violations of supplementary rules are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

Dated: July 15, 1991.

Herman L. Kast,

District Manager.

[FR Doc. 91-17551 Filed 7-23-91; 8:45 am]

BILLING CODE 4310-32-M

Bureau of Land Management

[G-010-4332-10/G1-0112]

Rio Puerco Resource Area, NM; Revised Environmental Assessment for the Chain of Craters Wilderness Study Area

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of the Revised Environmental Assessment for the Chain of Craters Wilderness Study Area.

SUMMARY: In accordance with section 501 of Public Law 100-255, the Bureau of Land Management has prepared a Revised Environmental Assessment (EA) for the Chain of Craters Wilderness Study (WSA).

DATES: Written comments should be directed to the Bureau of Land Management, Area Manager, Rio Puerco Resource Area, 435 Montano NE., Albuquerque, New Mexico, 87107. Written comments must be received by close of business on September 18, 1991.

ADDRESS: Copies of the Revised EA are available upon request from the Area Manager, Bureau of Land Management, Rio Puerco Resource Area, 435 Montano NE., Albuquerque, New Mexico, 87107.

FOR FURTHER INFORMATION CONTACT: Katherine Walter, Outdoor Recreation Planner, Rio Puerco Resource Area, 435 Montano NE., Albuquerque, New Mexico 87107, (505) 761-8704.

SUPPLEMENTARY INFORMATION: The purpose of this assessment is to conclude the wilderness study process for the Chain of Craters, and to determine the suitability or nonsuitability of this WSA for recommended inclusion in the National Wilderness Preservation System. Alternatives evaluated include a no wilderness alternative (proposed action) and an all wilderness alternative. The Chain of Craters Revised EA should be used in conjunction with the Draft and Final El Malpais National Conservation Area General Management Plans. A limited number of copies of both plans are still available from the Bureau of Land Management at the above address. Following completion of the public participation process, public comments and a Chain of Craters Wilderness Study Report will be submitted to the Secretary of the Interior and reported to the President. The recommendation is scheduled to be sent to the President by December 1991.

Correction: A correction to **Federal Register** Notice, Vol. 56, No. 41, Friday, March 1, 1991. The correction should read: a Revised EA will be prepared for the Chain of Craters Wilderness Study Area which is contained in the El Malpais National Conservation Area.

Patricia McLean,

Associate District Manager.

[FR Doc. 91-17725 Filed 7-23-91; 8:45 am]

BILLING CODE 4310-FB-M

[CA-060-01-5101-09-B016]

Cajon Pipeline, Proposed Heated Crude Oil Pipeline, San Bernardino County and Los Angeles County, CA; Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management, California Desert District, will be co-directing the preparation of a joint Federal-State Environmental Impact Statement/Environmental Impact Report (EIS/R) with the City of Adelanto, to be prepared by a third party contractor, on the impacts of a proposed crude oil pipeline and appurtenant facilities, the Cajon Pipeline Project. This proposed Project will traverse public and private lands in San Bernardino and Los Angeles Counties in southern California.

DATES: Written comments will be accepted until August 20, 1991. In addition, public scoping meetings will be held at:

August 13, 1991	7 p.m.	City of Pomona, Council Chambers, 505 S. Gary, Pomona, CA.
August 14, 1991	7 p.m.	Carson Community Center, Multi-purpose Room 111, 801 E. Carson Ave, Carson, CA.
August 15, 1991	7 p.m.	Adelanto City Hall, 11600 Airbase Rd., Adelanto, CA,

ADDRESSES: Comments should be sent to the District Manager, Bureau of Land Management, 6221 Box Springs Blvd., Riverside, CA 92507-0714 attn: Cajon Pipeline Project.

FOR FURTHER INFORMATION CONTACT: Stephen L. Johnson, Special Projects Manager, California Desert District Office, 6221 Box Springs Blvd, Riverside CA 92507-0714; phone (714) 653-2363.

SUPPLEMENTARY INFORMATION: Discoveries in the Santa Barbara Channel, off the coast of California along the Outer Continental Shelf (OCS), and on-shore through thermal enhanced oil recovery in the San Joaquin Valley (SJV), have yielded significant new reserves of heavy, high sulphur crude oil. As a result of these discoveries and the desire of producers to transport this heavy crude to the Los Angeles Basin refineries, a heated pipeline system capable of handling this crude in its "neat" state is needed. Currently heavy crude transportation to the Los Angeles Basin is by marine tanker, unit train of by proprietary pipelines. Even if the OCS and SJV heavy crude crude oils did not require heating, there is not sufficient existing pipeline capacity to handle all of the required volumes. However, heavy crude does require the addition of heat to allow it to be efficiently pumped through pipelines, and no heated common carrier pipeline exists today into the Los Angeles Basin.

In order to alleviate the transportation problems, the Cajon Pipeline Company (Cajon), has filed an application with Bureau of Land Management, proposing to construct a new a 126-mile, twenty (20) inch diameter insulated pipeline to transport heavy crude oil from the San Joaquin Valley and the Santa Barbara County area to the Los Angeles Basin. This pipeline will originate at the All American Pipeline's 12-Gauge Heater Station, which is approximately 27 miles west of Barstow, California, and terminate at the GATX crude oil terminal in Carson, California. The pipeline is being designed to transport 150,000 barrels per day (BPD) of heavy crude oil to the GATX terminal which is presently connected to 13 refineries in the Los Angeles Basin that are currently equipped to process heavy crude.

The Bureau of Land Management's scoping process for the EIS will include: (1) Identification of issues to be addressed; (2) identification of viable alternatives; and (3) notifying interested groups, individuals and agencies so that additional information concerning these issues can be obtained. The scoping process will consist of a news release announcing the start of the EIS process and letters of invitation to participate in the scoping process. Potential issues include, but are not limited to, air quality, land use, wildlife, seismology and hydrology.

Dated: July 17, 1991.

Gerald E. Hillier,

District Manager.

[FR Doc. 91-17517 Filed 7-23-91; 8:45 am]

BILLING CODE 4310-40-M

[CA-010-01-4311-10]

Management Framework Plan Amendment Nevada County, CA

AGENCY: Bureau of Land Management, Bakersfield District Office, Interior.

ACTION: Notice of Sierra Management Framework Plan amendment by the Folsom Resource Area, California.

SUMMARY: The Bureau of Land Management proposes designating 1,388 acres of public land on the North San Juan Ridge, Nevada County, California, as an Area of Critical Environmental Concern (ACEC), pursuant to the authority in the Federal Land Policy and Management Act of 1976 (sec. 202).

SUPPLEMENTARY INFORMATION: These public lands, known as the Inimim Forest, are managed under a cooperative stewardship program agreement between the Yuba Watershed Institute, the Timber Framers Guild of North America, and the Bureau of Land Management. The Yuba Watershed Institute submitted a community-generated proposal and request to the Bureau of Land Management to provide increased management attention and protection for the historic, cultural, botanical, fish and wildlife values of the area through ACEC designation. Analysis by the Bureau of Land Management confirms the importance and relevance of the environmental resources of the area, and supports designation of the Inimim Forest as an ACEC.

DATES: Comments and recommendations will be received for a period of 30 days from publication of this notice in the **Federal Register**. Interested parties may request a copy of the environmental assessment on or before 45 days from the date of this notice. Comments on the environmental assessment should be submitted within 105 days from publication of this notice.

FOR COMMENTS AND FURTHER INFORMATION CONTACT: District Manager c/o Area Manager, Folsom Resource Area, 63 Natoma Street, Folsom, California 95630.

Dated: July 16, 1991.

D.K. Swickard,

Area Manager.

[FR Doc. 91-17549 Filed 7-23-91; 8:45 am]

BILLING CODE 4310-84-M

[CA-010-01-4212-13, CACA 28113]

Realty Action: Acquisition of Land by Exchange; 25-Year Renewable Lease to the State of California Wildlife Conservation Board, CA

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The following described land is being considered for acquisition, through exchange, and lease under sections 206 and 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716, 43 U.S.C. 1732)

Offered Private Land

A parcel of land located in Section 21, Township 5 North, Range 5 East, Mount Diablo Meridian, Sacramento County, California, more particularly described as follows:

From the Northeast corner of Section 21, Township 5 North, Range 5 East, Mount Diablo Meridian, South 43°41′05″ West 4895.57 feet to the Point of Beginning; thence from the Point of Beginning South 80°53′34″ East 464.34 feet to a point; thence South 23°50′42″ East 196.04 feet to a point; thence South 22°47′24″ West 88.29 feet to a point; thence South 36°56′31″ West 113.48 feet to a point; then South 05°53′17″ West 116.31 feet to a point; thence South 02°37′42″ East 161.60 feet to a point; thence North 49°24′11″ West 685.07 feet to a point; thence North 19°13′38″ East 271.35 feet to the Point of Beginning.

The parcel of land to which this description applies contains 5.63 acres, more or less.

The above described parcel would be acquired from the Nature Conservancy (TNC) to provide the site for a Visitors Center at the Consumnes River Preserve, a cooperative conservation effort between Bureau of Land Mangement (BLM), Ducks Unlimited and TNC, dedicated to the preservation and restoration of the native communities found along the river corridor, including valley oak and wetland habitats. The Visitors Center would be jointly funded and developed by the BLM, TNC, and the State of California Wildlife Conservation Board (WCB).

Following transfer of title to the United States, the 5.63-acrea site would be leased to WCB to administratively enable the appropriation of available funds from WCB for construction of the facility. Operation and maintenance of the center would meet the terms of the lease and the center would be managed according to the Consumnes River Preserve Management Plan.

SUPPLEMENTARY INFORMATION: Acquisition and lease of the subject 5.63-acre parcel would make it possible to construct a visitor center on the periphery of the preserve using funds available for the WCB. The center would serve as the main visitor gathering place, providing parking, picnic tables, restrooms, drinking fountain, interpretive displays and brochures, a canoe-launch area, trailhead access, a docent center, and staff offices. The building site would be located off Franklin Road on an existing pad, providing excellent access and visibility. While there would be expansive views of the preserve from the center, it is removed from the primary roosting areas to avoid unnecessary disturbance to sensitive species.

Acquisition of the parcel would be at fair market value under the "TNC/BLM Statewide Exchange Pooling Agreement." The public lands conveyed to TNC to balance the Pooling Agreement accounts have been or will be identified in Notices of Realty Action published in the Federal Register as required by 43 CFR 2201.1

FOR ADDITIONAL INFORMATION: Contact Dean Decker, (916) 985-4474 or at the address below.

ADDRESSES: For a period of 45 days from publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, c/o Area Manager, Folsom Resource Area, 63 Natoma Street, Folsom, CA 95630.

Dated: July 15, 1991.

D.K. Swickard,

Area Manager.

[FR Doc. 91-17552 Filed 7-23-91; 8:45 am]

BILLING CODE 4310-40-M

[ID-943-5700; IDI-26437]

Issuance of Disclaimer of Interest to Lands; ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of issuance of disclaimer of interest in lands in Idaho.

SUMMARY: The United States of America, pursuant to the provisions of section 315 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1745), proposes to disclaim and release all interest to James F. Matheson, the owner of record, for the following described property, to wit:

91.

iled 7-23-91; 8:45 am]

13, CACA 28113]

quisition of Land by
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according to the Consumnes River Preserve Management Plan.

SUPPLEMENTARY INFORMATION: Acquisition and lease of the subject 5.63-acre parcel would make it possible to construct a visitor center on the periphery of the preserve using funds available for the WCB. The center would serve as the main visitor gathering place, providing parking, picnic tables, restrooms, drinking fountain, interpretive displays and brochures, a canoe-launch area, trailhead access, a docent center, and staff offices. The building site would be located off Franklin Road on an existing pad, providing excellent access and visibility. While there would be expansive views of the preserve from the center, it is removed from the primary roosting areas to avoid unnecessary disturbance to sensitive species.

Acquisition of the parcel would be at fair market value under the "TNC/BLM Statewide Exchange Pooling Agreement." The public lands conveyed to TNC to balance the Pooling Agreement accounts have been or will be identified in Notices of Realty Action published in the Federal Register as required by 43 CFR 2201.1

FOR ADDITIONAL INFORMATION: Contact Dean Decker, (916) 985-4474 or at the address below.

ADDRESSES: For a period of 45 days from publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, c/o Area Manager, Folsom Resource Area, 63 Natoma Street, Folsom, CA 95630.

Dated: July 15, 1991.

D.K. Swickard,

Area Manager.

[FR Doc. 91-17552 Filed 7-23-91; 8:45 am]

BILLING CODE 4310-40-M

[ID-943-5700; IDI-26437]

Issuance of Disclaimer of Interest to Lands; ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of issuance of disclaimer of interest in lands in Idaho.

SUMMARY: The United States of America, pursuant to the provisions of section 315 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1745), proposes to disclaim and release all interest to James F. Matheson, the owner of record, for the following described property, to wit:

Boise Meridian

T. 51 N., R. 5 W.,

All land south and westerly of lot 7, sec. 6, and that portion fronting the SE¼SW¼ of sec. 6, where the meander line of lot 1, sec. 7, intersects the line between secs. 6 and 7, between the original meander line as shown on the plat of survey approved July 23, 1881, by the Bureau of Land Management and the mean high water line of Hauser Lake.

The official records and the original public land survey of the Bureau of Land Management show that the land described above lies between the original surveyed meander line and the mean high water line of Hauser Lake. There has been no gross error or fraud found in the original survey. The land, therefore, is not public land; and the application by James F. Matheson, the adjoining landowner, for a disclaimer by the United States as to this land will be approved if no valid objections are received. This action will clear a cloud on the title of the applicant's land.

DATES: Comments or protests to this action should be received by October 22, 1991.

ADDRESSES: Comments or protests must be filed with: State Director (943), Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, at the above address, or (208) 384-3163, or Scott Forssell, 1808 North Third Street, Coeur d'Alene, Idaho 83814, or (208) 769-5000.

Dated: July 15, 1991

Jerry L. Kidd,

Deputy State Director for Operations.

[FR Doc. 91-17550 Filed 7-23-91; 8:45 am]

BILLING CODE 4310-GG-M

[AZ-942-01-4730-12]

Arizona State Office; Filing of Plats of Survey

1. The plats of survey of the following described lands were officially filed in the Arizona State Office, Phoenix, Arizona, on the dates indicated:

A plat, (in 5 sheets), representing a dependent resurvey of a portion of the east boundary, (Fifth Guide Meridian West), the south, west and north boundaries, a portion of the subdivisional lines and certain mineral surveys, and the subdivision of selected sections and metes-and-bounds surveys in Township 19 North, Range 19 West, Gila and Salt River Meridian, Arizona, was accepted March 28, 1991, and was officially filed April 1, 1991.

A plat, representing the subdivision of a portion of Parcel A, and an informative traverse within the San Ignacio del Babocomarie Private Land Grant through Townships 20 and 21 South, Ranges 18 and 19 East, Gila and Salt River Meridian, Arizona, was accepted June 20, 1991, and was officially filed June 25, 1991.

These plats were prepared at the request of the Bureau of Land Management, Phoenix District Office.

A plat, representing a dependent resurvey of a portion of the north boundary, and subdivisional lines, and a survey of subdivisions in section 4, Township 14 North, Range 5 East, Gila and Salt River Meridian, Arizona, was accepted April 1, 1991, and was officially filed April 8, 1991.

This plat was prepared at the request of the Forest Service, Coconino National Forest.

A plat, (in two sheets), representing a dependent resurvey of portions of the San Rafael Del Valle Land Grant, a portion of the north boundary, a portion of the east boundary, and subdivisional lines, and the subdivision of selected sections in Township 22 South, Range 21 East, Gila and Salt River Meridian, Arizona, was accepted May 9, 1991, and was officially filed May 16, 1991.

A plat, (in two sheets), representing a dependent resurvey of portions of Camp Goodwin Military Reservation, (abandoned), of the north boundary, of the subdivisional lines, the east boundary of the San Carlos Indian Reservation, and the subdivision of selected section in Townships 5 South, Range 22 East, Gila and Salt River Meridian, Arizona, was accepted June 11, 1991, and was officially filed June 20, 1991.

A plat, representing the dependent resurvey of the south boundary, Fort Thomas Military Reservation, (abandoned), portions of the west boundary and subdivisional lines in Township 4 South, Range 23 East, Gila and Salt River Meridian, Arizona, was accepted June 11, 1991, and was officially filed June 20, 1991.

A plat, (in two sheets), representing a dependent resurvey of portions of Camp Goodwin Military Reservation, (abandoned), of the west boundary, of the north boundary, of the subdivisional lines, and the subdivisions of selected sections in Township 5 South, Range 23 East, Gila and Salt River Meridian, Arizona, was accepted June 11, 1991, and was officially filed June 20, 1991.

These plats were prepared at the request of the Bureau of Land Management, Safford District Office.

A supplemental plat, showing a subdivision of original lots 4 and 7, section 21, Township 8 North, Range 29 East, Gila and Salt River Meridian, Arizona, was accepted May 16, 1991, and was officially filed May 23, 1991.

A plat, (in three sheets), representing a dependent resurvey of a portion of the Arizona-New Mexico State Line, the dependent resurvey of portions of the north and south boundaries and subdivisional lines, and a survey of subdivisions in section 2, 21, 22, and 27, Township 7 North, Range 31 East, Gila and Salt River Meridian, Arizona, was accpeted June 6, 1991, and was officially filed June 13, 1991.

These plats were prepared at the request of the Forest Service Regional Office, Albuquerque, New Mexico.

A plat, representing a metes-and-bounds survey of lot 2, in partially surveyed section 14, Township 12 North, Range 10 East, Gila and Salt River Meridian, Arizona, was accepted June 7, 1991, and was officially filed June 13, 1991.

This plat was prepared at the request of the Forest Service, Tonto National Forest and by the Federal Land Exchange, Inc.

2. These plats will immediately become the basic records for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

3. All inquiries relating to these lands should be sent to the Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

James P. Kelly,

Chief, Branch of Cadastral Survey.

[FR Doc. 91-17489 Filed 7-23-91; 8:45 am]

BILLING CODE 4310-32-M

National Park Service

Concession Contract Negotiations; Dune Climb Refreshment Stand

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession permit with Dune Climb Refreshment Stand authorizing it to continue to provide refreshments, handcrafts, merchandise, and souvenirs facilities and services for the public at Sleeping Bear Dunes National Lakeshore, Michigan, for a period of five (5) years from January 1, 1991 through December 31, 1995.

EFFECTIVE DATE: September 23, 1991.

ADDRESSES: Interested parties should contact the Superintendent, Sleeping Bear Dunes National Lakeshore, Box 277, 9922 Front St., Empire, Michigan

49630, for information as to the requirements of the proposed permit.

SUPPLEMENTARY INFORMATION: This permit renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed it's obligations to the satisfaction of the Secretary under an existing permit which expires by limitation of time on December 31, 1990, and therefore pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: July 17, 1991.

Don H. Castleberry,

Regional Director, Midwest Region.

[FR Doc. 91-17580 Filed 7-23-91; 8:45 am]

BILLING CODE 4310-70-M

Concession Contract Negotiations; Service America Corp.

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession contract with Service America Corporation authorizing it to continue to provide for the operation of vending machines for the sale of canned soft drinks facilities and services for the public of Jefferson National Expansion Memorial National Historic Site, Missouri, for a period of five (5) years from April 1, 1991, through March 31, 1991.

EFFECTIVE DATE: September 23, 1991.

ADDRESSES: Interested parties should contact the Superintendent, Jefferson National Expansion Memorial National Historic Site, 11 North Fourth Street, St. Louis, Missouri, 63102 for information as to the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This contract has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed it's obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on March 31, 1991, and therefore, pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals recieved as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: July 16, 1991.

Don. H. Castleberry,

Regional Director, Midwest Region.

[FR Doc. 91-17581 Filed 7-23-91; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 13, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by August 8, 1991.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Yavapai County

Childs—Irving Hydroelectric Facilities, From E. bank of Verde R. NE. to Stehr Lake and along Fossil Cr., Coconino/Tonto NF, Camp Verde vicinity, 91001023

ARKANSAS

Mississippi County

Eaker Site, Address Restricted, Blytheville vicinity, 91001048

COLORADO

La Plata County

La Plata County Fairgrounds, 2500 Main Ave., Durango, 91001031

CONNECTICUT

Hartford County

Garvan—Carroll Historic District (East Hartford MPS), Roughly bounded by S. Prospect, Chapel and Main Sts. and I-84, East Hartford, 91001049

FLORIDA

Lee County

Edison, Thomas, Winter Estate, 2350 McGregor Blvd., Fort Myers, 91001044

LOUISIANA

Quachita Parish

Rawls Cabin, 223 Charlie Rawls Rd., West Monroe vicinity, 91001047

St. Landry Parish

Mouton House, 261 N. Liberty St., Opelousas, 91001045

West Baton Rouge Parish

Aillet House (Louisiana's French Creole Architecture MPS), 845 N. Jefferson Ave., Port Allen, 91001046

MINNESOTA

St. Louis County

Hibbing Disposal Plant, 1300 E. 23rd St., Hibbing, 91001022

MISSOURI

Henry County

Anheuser—Busch Brewing Association Building, 203 W. Franklin St., Clinton, 91001030

NEW YORK

Cattaraugus County

Ellicottville Historic District, Roughly bounded by Elizabeth, Monroe, Martha and Adams Sts., Ellicottville, 91001028

Franklin County

Duane Methodist Episcopal Church, NY 26 E of jct. with Kenny Rd., Duane, 91001027

Tompkins County

West Dryden Methodist Episcopal Church, Jct. of W. Dryden and Sheldon Rds., Dryden, 91001029

PUERTO RICO

Humacao Municipality

Algodones 2 (12VPr2-204), Address Restricted, Barrio Puerto Diablo, Vieques, 91001037

Algodones 3 (12VPr2-205), Address Restricted, Barrio Puerto Diablo, Vieques, 91001038

Algodones 6 (12VPr2-229), Address Restricted, Barrio Puerto Diablo, Vieques, 91001032

Camp Garcia (Campo Asilo) 3 (12VPr2-164), Address Restricted, Barrio Puerto Ferro, Vieques, 91001041

Le Pistolet (12VPr2-168), Address Restricted, Barrio Punta Arenas, Vieques, 91001040

Llave 13 (12VPr2-175), Address Restricted, Barrio Llave, Vieques, 91001036

Loma Jalova 3 (12VPr2-219), Address Restricted, Barrio Puerto Diablo, Vieques, 91001034

Monte Largo 2 (12VPr2-172), Address Restricted, Barrio Puerto Diablo, Vieques, 91001042

Playa Grande 9 (12VPr2-212), Address Restricted, Barrio Llave, Vieques, 91001035

Ventana 4 (12VPr2-171), Address Restricted, Barrio Punta Arenas, Vieques, 91001039

FLORIDA

Lee County

Edison, Thomas, Winter Estate, 2350 McGregor Blvd., Fort Myers, 91001044

LOUISIANA

Quachita Parish

Rawls Cabin, 223 Charlie Rawls Rd., West Monroe vicinity, 91001047

St. Landry Parish

Mouton House, 261 N. Liberty St., Opelousas, 91001045

West Baton Rouge Parish

Aillet House (Louisiana's French Creole Architecture MPS), 845 N. Jefferson Ave., Port Allen, 91001046

MINNESOTA

St. Louis County

Hibbing Disposal Plant, 1300 E. 23rd St., Hibbing, 91001022

MISSOURI

Henry County

Anheuser—Busch Brewing Association Building, 203 W. Franklin St., Clinton, 91001030

NEW YORK

Cattaraugus County

Ellicottville Historic District, Roughly bounded by Elizabeth, Monroe, Martha and Adams Sts., Ellicottville, 91001028

Franklin County

Duane Methodist Episcopal Church, NY 26 E of jct. with Kenny Rd., Duane, 91001027

Tompkins County

West Dryden Methodist Episcopal Church, Jct. of W. Dryden and Sheldon Rds., Dryden, 91001029

PUERTO RICO

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Algodones 2 (12VPr2–204), Address Restricted, Barrio Puerto Diablo, Vieques, 91001037

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Camp Garcia (Campo Asilo) 3 (12VPr2–164), Address Restricted, Barrio Puerto Ferro, Vieques, 91001041

Le Pistolet (12VPr2–168), Address Restricted, Barrio Punta Arenas, Vieques, 91001040

Llave 13 (12VPr2–175), Address Restricted, Barrio Llave, Vieques, 91001036

Loma Jalova 3 (12VPr2–219), Address Restricted, Barrio Puerto Diablo, Vieques, 91001034

Monte Largo 2 (12VPr2–172), Address Restricted, Barrio Puerto Diablo, Vieques, 91001042

Playa Grande 9 (12VPr2–212), Address Restricted, Barrio Llave, Vieques, 91001035

Ventana 4 (12VPr2–171), Address Restricted, Barrio Punta Arenas, Vieques, 91001039

Yanuel 8 (12VPr2–173), Address Restricted, Barrio Puerto Diablo, Vieques, 91001043

Yanuel 9 (12VPr2–220), Address Restricted, Barrio Puerto Diablo, Vieques, 91001033

Rhode Island

Bristol County

St. Matthew's Episcopal Church, 5 Chapel Rd., Barrington, 91001024

Providence County

Brown, Morris, House, 317 Rochambeau Ave.; Providence, 91001025

WYOMING

Fremont County

Diamond A. Ranch (Pioneer Ranches/Farms in Fremont County MPS), Off US 26/287 NE of Whiskey Mtn., Dubois vicinity, 91001026

A proposed move is being considered for the following property:

SOUTH CAROLINA

Williamsburg County

Gamble House, W of Nesmith off SC 502, Nesmith vicinity, 78002535.

[FR Doc. 91–17582 Filed 7–23–91; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF LABOR

Office of the Secretary

Office of the Administrative Law Judges; Notice of New Address

The Office of the Administrative Law Judges wishes to announce that on or about August 17, 1991 it shall be moving to new offices at the Tech World complex next to the DC Convention Center. The new address will be: Office of Administrative Law Judges, U.S. Department of Labor, 800 K Street, NW., suite 400, Washington, DC 20001–8002, Telephone: (202) 633–0330, (after August 17, 1991).

Interested parties and litigants are advised to use the new address for all correspondence and legal pleadings on or after August 17, 1991.

The Department of Labor is in the process of amending its regulations in the Code of Federal Regulations (CFRs) to reflect this new address.

For Further Information Contact: P.J. Jacoby, Director, Office of Program Operations; current telephone number: (202) 653–5052.

Signed at Washington, DC this 17th day of July, 1991.

John Vittone,

Deputy Chief Administrative Law Judge.

[FR Doc. 91–17555 Filed 7–23–91; 8:45 am]

BILLING CODE 4510-20-M

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Barko Hydraulics, et al.

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of June and July 1991.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–25,770; Barko Hydraulics, Superior, WI

TA–W–25,812; Plyfiber Container Corp., Raritan, NJ

TA–W–25,760; Union City Body Co., Inc, Union City, IN

TA–W–25,821; Sinteris Magnetics Corp., Grand Haven, MI

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA–W–25,698; Andritz Sprout-Bauer, Muncy, PA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–25,826; Vending Services, Inc., Eau Claire, WI

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–25,908; Tom Henry Chevrolet, Bakerstown, PA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–25,644; Digital Equipment Corp., Phoenix, AZ

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–25,815; Robert E. Derecktor of Rhode Island, Inc., Middletown, RI

U.S. imports of yachts and pleasure boats declined absolutely in 1989 compared to 1988 and declined absolutely in the first three quarters of 1990 compared to the same period in 1989.

TA–W–25,822; Thorngate Uniforms, Inc., Norristown, PA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–25,668 & TA–W–25,669; Electric Mobility Corp., Westville & Sewell, NJ

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–25,670; Frame One Corp. of America, Roanoke, VA

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–25,778; Kelsey-Hayes, Milford, MT

The investigation revealed that criterion (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification.

Affirmative Determinations

TA–W–25,733; Atron/High Q, Pellston, MI

A certification was issued covering all workers separated on or after April 10, 1990.

TA–W–25,741; Columbia Footwear Corp., Hazleton, PA

A certification was issued covering all workers separated on or after April 19, 1990.

TA–W–25,802 and TA–W–25,803; Gerger Childrenswear, Inc., Easley, SC and Liberty, SC

A certification was issued covering all workers separated on or after May 3, 1990.

TA–W–25,791; AT & T Network Systems Microelectronics Group, Radford, VA

A certification was issued covering all workers separated on or after June 13, 1991.

TA–W–25,745; General Safety Corp., St. Clair Shoes, MI

A certification was issued covering all workers separated on or after October 1, 1990.

TA–W–25,825; U.S. Shoe Corp.,-Osgood Plant, Osgood, IN

A certification was issued covering all workers separated on or after April 22, 1990.

TA–W–25,795; Capital Tackle, Inc., Vancouver, WA

A certification was issued covering all workers separated on or after April 26, 1990 and before June 1, 1991.

TA–W–25,766; Allied Signal Bendix, Green Island, NY

A certification was issued covering all workers separated on or after April 29, 1990.

TA–W–25,530; Dexter Shoe Co., Dexter, ME

A certification was issued covering all workers separated on or after February 14, 1990.

TA–W–25,735; C & D Sportswear, Inc., Scranton, PA

A certification was issued covering all workers separated on or after April 19, 1990 and before March 31, 1991.

TA–W–25,807; ITT Hancock, Williamston, MI

A certification was issued covering all workers separated on or after May 6, 1990.

TA–W–25,761 & TA–W–25,762; Washington Apparel Group, Inc., D/B/A Dee Cee Apparel, Franklin, KY and McMinnville, TN

A certification was issued covering all workers separated on or after April 9, 1990.

TA–W–25,763 & TA–W–25,764; Washington, Apparel Group, Inc., D/B/A Dee Cee Apparel, Glasgow, KY and Cave City, KY

A certification was issued covering all workers separated on or after April 9, 1990.

TA–W–25,849; Olympic Luggage Corp., Kane, PA

A certification was issued covering all workers separated on or after May 20, 1990.

I hereby certify that the aforementioned determinations were issued during the months of June and July, 1991. Copies of these determinations are available for inspection in room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: July 16, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91–17557 Filed 7–23–91; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–25, 727, TA–W–25, 727A, TA–W–25, 727B]

Weather Tamer, Inc., Columbia, TN, Chattanooga, TN, New York, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 6, 1991, applicable to all workers of Weather Tamer, Inc., Columbia, Tennessee. The notice was published in the **Federal Register** on June 21, 1991 (56 FR 28577).

The Department is amending the certification to include the corporate offices located in Chattanooga, Tennessee and New York, New York. Weather Tamer has three plants which produce children's outerwear. Workers at the other plants in Centerville, Tennessee (TA–W–25,695) and Athens, Alabama (TA–W–25,333) are currently certified for trade adjustment assistance.

The amended notice applicable to the above subject firm is hereby issued as follows:

> All workers of Weather Tamer, Inc., Columbia, Tennessee and the corporate offices in Chattanooga, Tennessee and New York, New York who became totally or partially separated from employment on or after April 1, 1990 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 12th day of July 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91–17556 Filed 7–23–91; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL FOUNDATION OF THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted by August 23, 1991.

ADDRESSES: Send comments to Mr. Dan Chenok, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503; (202–395–7316). In addition, copies of such comments may be sent to Mr. Murray R. Welsh, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401).

FOR FURTHER INFORMATION CONTACT: Mr. Murray R. Welsh, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a new collection of information. This entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Survey of Public Participation in the Arts (SPPA)

Frequency of collection: Annually

Respondents: Individuals or households

Use: The SPPA will provide measures of participation in the arts for various subgroups of the population, data on the extent of live participation versus through the media (TV or radio), information on future demand for arts participation, and data on current and prior training in the arts. This

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ed 7–23–91; 8:45 am]

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NATIONAL FOUNDATION OF THE ARTS AND THE HUMANITIES

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Title: Survey of Public Participation in the Arts (SPPA)

Frequency of collection: Annually

Respondents: Individuals or households

Use: The SPPA will provide measures of participation in the arts for various subgroups of the population, data on the extent of live participation versus through the media (TV or radio), information on future demand for arts participation, and data on current and prior training in the arts. This

information will be used by policymakers and art administrators at the national, regional, state, and local level to study the patterns in participation across the various population subgroups and to examine changes over time.

Estimated number of respondents: 21,000

Average burden hours per response: .187

Total estimated burden: 3,932

Murray R. Welsh,

Director, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 91–17523 Filed 7–23–91; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Possible Safety Impacts of Economic Performance Incentives: Final Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Final policy statement.

SUMMARY: This statement presents the final policy of the Nuclear Regulatory Commission (NRC) with respect to the possible safety impacts of economic performance incentive (EPI) programs established by State commissions regulating electric utilities. The policy statement (1) Contains a discussion of the possible effect of the policies and actions of State regulatory bodies, emphasizing that these actions can have either a positive or negative effect on public health and safety; (2) reflects the Commission's concern that certain forms of economic performance incentive (EPI) regulation may adversely affect the operation of nuclear plants and the public health and safety; (3) specifically identifies those methods that are of particular concern (e.g. the use of sharp thresholds, the measurement of performance over very short time intervals, the lack of "null zones," and inappropriate reliance on systematic assessment of licensee performance (SALP) scores or other performance indicators; (4) indicates that the NRC will continue to monitor the application of EPIs and performance criteria to nuclear power plant operations; and (5) urges licensees and State regulatory commissions to inform the NRC of EPI programs that are being considered for application to NRC licensees.

EFFECTIVE DATE: This policy statement becomes effective July 24, 1991.

FOR FURTHER INFORMATION CONTACT: Anthony T. Gody, Sr., Chief, Policy Development and Technical Support Branch, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Telephone: (301) 492–1254.

SUPPLEMENTARY INFORMATION: In exercising their jurisdiction over the economics of the generation of electricity, a number of State regulatory commissions and the Federal Energy Regulatory Commission (FERC) have established economic performance incentive (EPI) programs for electric power plants. Although some programs have existed unchanged for a number of years, others have been substantially modified or are newly established. They can significantly help to improve the economic performance of electric power plants. They can also affect the safety of nuclear power plants. The NRC monitors and evaluates these incentive programs to determine the effect that they may have on the safe operation of nuclear power reactors.

After reviewing the information on EPI programs established by State regulatory commissions that regulate the economic returns of utilities operating nuclear power plants, the Commission decided that it should set forth its views in a Commission Policy Statement on the manner in which such programs could affect safety.

Summary of Comments

On October 26,1990, the NRC published the draft policy statement, "Possible Safety Impacts of Economic Performance Incentives," in the Federal Register (55 FR 43231). The NRC received 37 comments: 14 from State public utility commissions, 12 from utility licensees or law firms representing utility licensees, and 11 from public interest groups, trade associations, non-affiliated individuals, or governmental bodies other than public utility commissions.

Most of the commenters believed that the NRC should provide advice but not endorse any specific EPI program. They indicated that the NRC should monitor the effectiveness of EPI programs but should not interfere in the proceedings of State public utility commissions. Almost all of the commenters also indicated that the NRC, the utilities, and the State utility commissions should continue to communicate with one another. Many of the utilities or their representatives that commented stated that the NRC should discourage the use of EPIs in the absence of evidence that they promote safety. Further, a number of utility commenters indicated that the SALP scores and other performance indicators should not be used for assessing penalties. In addition, certain commenters stated that regulators should not use the results of root-cause and self-assessment analysis to determine if costs should be disallowed. In separate correspondence, one utility informed the Commission of its concerns that State regulators had used the utility's voluntary corrective actions to justify a disallowance. Certain commenters also believed that the NRC should evaluate the manner in which specific EPA programs either benefit or hinder safety but should not endorse specific types of programs. Finally, some commenters suggested that the Policy Statement should be more specific by stating, for example, the difference between a long-term performance measure and a short-term performance measure.

Most of the State public utility commissions that commented indicated that rational incentive programs do not adversely affect the operation of nuclear power plants and thus do not adversely affect public halth and safety. Many of the States that commented indicated that they do not use any of the criteria of concern to the NRC, such as sharp thresholds, short term performance measures, or SALP scores. The State utility commission for New York stated that it does not penalize or reward utilities for operating at or close to the industry's average capacity factors. However, it imposes penalties and rewards on a sliding scale for deviations from the target factors. The State utility commission for North Carolina stated that it establishes targets based on long-term averages of nuclear capacity factors for testing the efficiency of nuclear plant generation. It does not automatically impose penalties for not meeting these targets if a utility can show that its nuclear operations were prudent. The State public utility commissions generally indicated that States cannot legally be precluded nor should be precluded from adopting performance standards that encourage utilities to both economically and safely operate nuclear power plants.

The public advocacy group, Massachusetts Public Interest Research Group (MASSPIRG) provided a substantial amount of comments. It was a major participant in the settlement agreement that resulted in the Massachusetts performance incentive plan for the Boston Edison Company relating to the Pilgrim Nuclear Plant. MASSPIRG generally supported the objectives of the draft Policy Statement and desired to work with NRC in identifying superior alternative indicators for use in EPA plans.

MASSPIRG indicated that the Massachusetts plan was of necessity in confidence because it was a part of a larger settlement with the Boston Edison Company. MASSPIRG stated that it understood the concerns that the NRC had previously expressed relating to the use of SALP scores and performance indicators. However, in developing the plan for the Boston Edison Company, MASSPIRG used expert consultants and searched for indicators that could correlate with long-run economic performance, correspond with recurrent Pilgrim problems, encourage the timely maintenance of equipment, and provide early indications of problems that would lead to long-run economic and safety performance. MASSPIRG also looked for indicators that were easy to evaluate and use in an incentive system and would cover a broad range of plant activities and systems.

The Pacific Gas and Electric Company (PG&E) provided many comments on the manner in which the comprehensive performance-based ratemaking settlement approved in 1988 by the California Public Utilities Commission (CPUC) for the Diablo Canyon Nuclear Power Plant provides long-term incentives to improve the reliability of the Diablo Canyon plant. The settlement, which will be in effect for 28 years, provides a number of incentives to PG&E to improve the reliability and safety of plant operations. PG&E assumes risks associated with equipment failures, prolonged outages, and new regulatory requirements for the entire 28 year period of the settlement. This program provides PG&E with an economic incentive to ensure that the plant operates well over many years. The Diablo Canyon settlement does not rely on short-term performance measurements with sharp thresholds and does not use SALP scores—features that the NRC has identified that may adversely affect the public health and safety.

NRC Response to Comments

Many of the comments related to the role of the NRC in EPI programs. The NRC certainly agrees that economic regulatory agencies should be the groups to develop and approve EPIs. However, the NRC reviews matters that raise safety concerns at licensed facilities. The NRC deals with safety issues regardless of the source of the concern.

The commenters provided a number of suggestions for changing the Policy Statement, particularly to more clearly specify certain issues. The NRC believes this should not be done. A wide variety of acceptable EPI programs could be devised. Because rate regulatory agencies and licensees are more familiar with economic regulatory options than is the NRC, they are more capable of devising plans to meet these regulatory objectives. It is the position of the NRC that the Policy Statement provides sufficient guidance on safety issues for the parties to use in developing or improving EPI programs.

Some licensees commented that the NRC should allow licensees to voluntarily report to it on EPI programs. These licensees also indicated that the NRC should not require licensees to evaluate or analyze information. However, the NRC believes that some EPI programs clearly could be of major safety concern, and that the NRC must obtain sufficient information to properly conduct its regulatory responsibility.

Certain commenters also stated that confidential negotiations may be necessary under certain circumstances to develop EPI programs because other regulatory matters are also involved. While the NRC concedes that such negotiations may be necessary, it is unlikely that the program developed must be withheld from the NRC until after final adoption. The NRC is issuing the Policy Statement to improve communications with agencies having economic regulatory responsibilities of nuclear power plants.

After carefully considering all the comments on the draft Policy Statement, the NRC has decided to issue the final Policy Statement with little change from the draft Policy Statement.

Statement of Policy

Potential Impacts

The NRC recognizes that the existing programs very considerably from State to State and that the plans are not easily classified, especially as to the effect that they may have on the safe operation of plants. However, certain general characteristics of programs can be evaluated and found to have an effect on safety that is either desirable (or at least neutral) or undesirable.

A desirable plan provides incentives to make reasonable improvements in operation and maintenance that result in long-term improvement in the reliability of the reactor, the main generator, and their support sytems. An undesirable plan provides incentives to operate a facility that could have safety problems or to start up before it is fully ready, merely to meet an operational goal.

A desirable EPI program rewards a utility for having sound operations and maintenance programs and for correcting recurrent or predictable failures or other problems that could lead to an operational transient, an unplanned plant outage, or a derating. Such an incentive is desirable because a well run plant and the prompt correction of problems enhance safety. Unanticipated transients and shutdowns challenge operators and safety systems and, although with a low probability, could initiate a more serious event.

Economic performance incentives can encourage a utility's operational organization to improve its performance, which can help to improve both safety and economic performance. However, current safety and economic requirements also provide utilities with incentives to operate safe plants.

The current influence of incentive plans on reactor safety is believed to be small. However, the Commission's concern with incentive plans is that, in the interest of real or perceived short-term economic benefit, the utility might hurry work, take short cuts, or delay a shutdown for maintenance in order to meet a deadline, a cost limitation, or other incentive plan factor.

Therefore, an incentive program could directly or indirectly encourage the utility to maximize measured performance in the short term at the expense of plant safety (public health and safety). By keeping a reactor on line when it should be taken down for preventive or corrective maintenance and by using shortcuts or compressed work schedules to minimize down time, the licensee could decrease the margin of safety.

Adverse Effects on Plant Operation and Public Health and Safety

Some specific features of incentive plans now used by some States could adversely affect public health and safety. These features are (1) Sharp thresholds between rewards and penalties (or between penalties and null zones, or rewards and null zones) and (2) performance measurements that have short time intervals. The NRC believes that these features should not be allowed to prompt licensees to operate a plant when it should be shut down for safety reasons.

A sharp threshold is a situation in which a licensee narrowly misses a target capacity factor and must bear a large part or all of the resulting replacement power costs. By creating a sharp threshold in its incentive program, a State could prompt a licensee to continue to operate a plant to achieve a target capacity factor in order to avoid the large replacement power cost or to earn a substantial reward. This type of incentive could divert attention from safe plant operation. To minimize these effects, States should consider

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unplanned plant outage, or a derating. Such an incentive is desirable because a well run plant and the prompt correction of problems enhance safety. Unanticipated transients and shutdowns challenge operators and safety systems and, although with a low probability, could initiate a more serious event.

Economic performance incentives can encourage a utility's operational organization to improve its performance, which can help to improve both safety and economic performance. However, current safety and economic requirements also provide utilities with incentives to operate safe plants.

The current influence of incentive plans on reactor safety is believed to be small. However, the Commission's concern with incentive plans is that, in the interest of real or perceived short-term economic benefit, the utility might hurry work, take short cuts, or delay a shutdown for maintenance in order to meet a deadline, a cost limitation, or other incentive plan factor.

Therefore, an incentive program could directly or indirectly encourage the utility to maximize measured performance in the short term at the expense of plant safety (public health and safety). By keeping a reactor on line when it should be taken down for preventive or corrective maintenance and by using shortcuts or compressed work schedules to minimize down time, the licensee could decrease the margin of safety.

Adverse Effects on Plant Operation and Public Health and Safety

Some specific features of incentive plans now used by some States could adversely affect public health and safety. These features are (1) Sharp thresholds between rewards and penalties (or between penalties and null zones, or rewards and null zones) and (2) performance measurements that have short time intervals. The NRC believes that these features should not be allowed to prompt licensees to operate a plant when it should be shut down for safety reasons.

A sharp threshold is a situation in which a licensee narrowly misses a target capacity factor and must bear a large part or all of the resulting replacement power costs. By creating a sharp threshold in its incentive program, a State could prompt a licensee to continue to operate a plant to achieve a target capacity factor in order to avoid the large replacement power cost or to earn a substantial reward. This type of incentive could divert attention from safe plant operation. To minimize these effects, States should consider incorporating a reasonably broad null zone of acceptable performance in which no rewards or penalties are imposed.

Performance measurements for short-term intervals would encourage the licensee to focus on a short term target or performance goals such as a higher capacity factor or availability factor. This target could become the primary focus, diverting attention from long-term goals of reliability and operational safety. In contrast, performance measurements for long-term intervals would prompt the utility to follow sound maintenance and operational practices to improve operating performance. For example, an incentive program could include a three or four year period with a rolling average capacity factor evaluation period and could account for other factors such as refueling outages, inclement weather and other periodic events. Short-term measurements tend to make safety and economic goals conflict with each other, while long-term measurements tend to make the two goals complementary.

Other Special Features or Ratemaking Actions That Cause NRC Concern.

The Commission is also concerned about undue reliance on NRC's SALP ratings in EPI programs and about any State public utility commission's undue reliance on a utility's corrective actions following an incident to justify the disallowance of costs related to the incident.

Sharp thresholds and short-term performance measures coupled with substantial reliance on NRC's SALP ratings can adversely affect safety and present several major concerns. First, the NRC's SALP ratings assist the NRC and licensees in identifying trends and areas of performance that should receive a more detailed assessment, in assessing the safety of the performance at individual facilities, and in communicating to the licensee. Therefore, these ratings address selected areas of licensee activity, but do not necessarily cover all significant performance areas. Further, the scores and ratings are not based on absolute quantitative considerations, and therefore produce numerical scores that are of limited significance. The NRC expects licensees to focus on the facts in the SALP report, the issues identified, and the apparent root causes of problems. By determining financial rewards or punishments for the licensee based on SALP, the State may cause the licensee to focus on improving the numerical scores instead of addressing the underlying issues, where the focus should be. If the issues identified in SALP reports are obscured by concerns over the financial consequences incurred as a result of those ratings, the process may not achieve the desired objective and may instead prompt a licensee to take corrective actions that produce rapid results rather than taking those that yield the highest increase in safety in the long term. Undue emphasis on performance indicators in an incentive program could prompt a license to improve the scores by taking inappropriate actions rather than by identifying and correcting underlying safety conditions.[1]

The Commission is also concerned about State public utility commission ratemaking actions that might be interpreted as penalizing a utility for improving its own procedures or methods of operation. For example, where a State public utility commission observes that a utility has modified its procedures following an incident, infers from the utility's actions that the original procedures must have been inadequate, and then disallows certain costs on the basis of such assumed inadequacies, the utility will have a strong disincentive voluntarily to enhance or improve its operations and procedures in the future. Such State public utility commission action can discourage utilities from making needed improvements in procedures and operations and, thus, can be detrimental to the long-term safety of operation.

Continued NRC Monitoring Program

The NRC will periodically survey FERC and State regulatory commissions that regulate the utility rates of power reactors to identify any new programs or substantial changes in existing programs and to ascertain how the programs have been implemented, and to determine if large penalties have been imposed.

We will update the survey annually. We will periodically assess the frequency of the surveys to determine the need to adjust the schedule.

Licensees and Utility Commissions Urged To Inform NRC of Program Initiatives

The NRC needs to be informed of EPI programs that are being planned by State regulatory commissions and that can affect safety. Information on these programs enables the Commission to judge not only whether they could adversely affect safety but also whether they could enhance safety. A number of commenters supported certain features of an EPI program. The Commission has reviewed these features and believes State Public Utility Commissions (PUCs) may want to consider these features in establishing programs that prompt licensees to both economically and safely operate nuclear power plants. These features include (1) capacity factor targets based upon industry's average performance to account for problems throughout the industry, (2) equal opportunities for rewards and penalties, (3) the "banking" of superior performance to offset lower performance, and (4) using performance measures of the entire system instead of those for a specific unit. Frequently, the States develop these programs in coordination with regulated utilities. Therefore, the NRC will request by generic letter that licensees report whenever these commissions develop or substantially revise EPIs. The NRC also will ask FERC and the State utility regulatory commissions to discuss with the NRC initiatives to impose or change an EPI program that applies to an NRC licensee. The NRC will take these actions in order to gain information on the principal features of the program so that the NRC can assess the extent to which the program will affect plant safety. Further, by a generic letter, the NRC will request licensees to report the rewards and penalties assessed through these programs as they occur. A free exchange of information between the NRC and the agencies with economic jurisdiction over nuclear utilities will help the NRC and those agencies to work together to achieve the goals of the safe and economic operation of nuclear power plants.

Dated at Rockville, Maryland, this 18th day of July 1991.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 91-17484 Filed 7-23-91; 8:45 am]

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[1] For further information on existing economic incentive programs and the possible effect of such programs on nuclear safety, see NUREG/CR-4911, Incentive Regulation of Nuclear Power Plants by State Regulators, 1991. Copies of NUREG/CR-4911 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for public inspection or copying at the NRC Public Document Room, 2120 L Street, NW, Washington, DC.

[Docket No. 50-213]

Connecticut Yankee Atomic Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-61, issued to Connecticut Yankee Atomic Power Company (CYAPCO, the licensee), for operation of the Haddam Neck Plant, located in Middlesex County, Connecticut.

Environmental Assessment

Identification of Proposed Action

The proposed amendment will revise Technical Specification (TS) Section 5.6.1.1, "Spent Fuel" and add Technical Specification 5.6.1.2, "New Fuel." The Technical Specification changes will allow for the storage of zircaloy clad fuel in the new and spent fuel storage racks. The proposed action is in accordance with the licensee's amendment request dated March 4, 1991.

The Need for the Proposed Action

During the upcoming refueling for Cycle 17 CYAPCO will begin to use zircaloy clad fuel instead of stainless steel clad fuel. The plant needs this TS change to store fresh and irradiated zircaloy clad fuel in the new and spent fuel storage racks.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TS. The current analysis considers the storage of Zircaloy-4 clad fuel assemblies in both the new and spent fuel racks. The staff has reviewed the methods and models for this analysis and has determined that they are acceptable. The criticality analysis considered various accident conditions. All appropriate biases and uncertainties were included in the design basis analysis for preventing criticality outside the reactor. Based on the review of the analysis the staff has concluded that the Haddam Neck Plant meets the design basis criteria for preventing criticality outside the reactor, that there is a 95 percent probability at a 95 percent confidence level that the effective multiplication factor of the fuel assembly will be no greater than 0.95 when fully moderated by unborated water and no greater than 0.98 when moderated by reduced hydrogenous material. The TS change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed TS amendment.

With regard to potential non-radiological impacts, the proposed amendment involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed amendment, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the amendment would be to deny the amendment request. Such action would not enhance the protection of the environment and would result in unjustified cost to the licensee.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for Haddam Neck.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this proposed action, see the licensee's letter dated March 4, 1991. This letter is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Russell Library, 123 Broad Street, Middletown, Connecticut 06547.

Dated at Rockville, Maryland, this 17th day of July 1991.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-17528 Filed 7-23-91; 8:45 am]

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[Docket No. 50-333]

Power Authority of the State of New York; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.71, "Maintenance of records, making of reports," subsection (e)(4), and certain requirements of 10 CFR 50.54, "Conditions of licenses," subsection (a)(3), to the Power Authority of the State of New York (PASNY/licensee) for the James A. FitzPatrick Nuclear Power Plant, located at the licensee's site in Oswego County, New York.

Environmental Assessment

Identification of Proposed Action

The licensee would be exempted from the requirements of 10 CFR 50.71, subsection (e)(4), to the extent that a one-time extension for submitting the annual update of the FSAR would be granted from the currently required submittal date of July 22, 1991, to January 22, 1992, which is a six-month extension. The licensee would also be exempted from the requirements of 10 CFR 50.54, subsection (a)(3) to the extent that a one-time extension for submitting annual changes to the quality assurance program description contained in the FSAR would be granted from the currently required submittal date of July 22, 1991, to January 22, 1992, which is a six-month extension. All future FSAR updates and quality assurance program description changes will be submitted on an annual basis by the July 22 date.

The Need for the Proposed Action

The current licensing workload for the FitzPatrick plant, in addition to difficulties in finding qualified personnel to fill an abnormally high number of vacancies in licensing engineering positions, have contributed to the need for exemption from 10 CFR 50.71(e)(4) and 10 CFR 50.54(a)(3). Furthermore, additional time is necessary to ensure that extensive improvements, designed to enhance the quality and clarity of the FSAR, are incorporated into the next update. These improvements include the complete revision of chapter 14, "Safety

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For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-17528 Filed 7-23-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-333]

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Environmental Assessment

Identification of Proposed Action

The licensee would be exempted from the requirements of 10 CFR 50.71, subsection (e)(4), to the extent that a one-time extension for submitting the annual update of the FSAR would be granted from the currently required submittal date of July 22, 1991, to January 22, 1992, which is a six-month extension. The licensee would also be exempted from the requirements of 10 CFR 50.54, subsection (a)(3) to the extent that a one-time extension for submitting annual changes to the quality assurance program description contained in the FSAR would be granted from the currently required submittal date of July 22, 1991, to January 22, 1992, which is a six-month extension. All future FSAR updates and quality assurance program description changes will be submitted on an annual basis by the July 22 date.

The Need for the Proposed Action

The current licensing workload for the FitzPatrick plant, in addition to difficulties in finding qualified personnel to fill an abnormally high number of vacancies in licensing engineering positions, have contributed to the need for exemption from 10 CFR 50.71(e)(4) and 10 CFR 50.54(a)(3). Furthermore, additional time is necessary to ensure that extensive improvements, designed to enhance the quality and clarity of the FSAR, are incorporated into the next update. These improvements include the complete revision of chapter 14, "Safety Analysis," and the upgrading of many FSAR system drawings.

The licensing workload for the FitzPatrick plan includes the following issues:

1. Individual Plant Evaluation (Generic Letter 88-20).
2. Mark I Containment Hardened Vent.
3. Service Water System Evaluation (Generic Letter 89-13).
4. Station Blackout Analysis.
5. ATWS Rule diversity.
6. Motor Operated Valve Operability (Generic Letter 88-10).
7. Thermal Hydraulic Stability.
8. Intergranular Stress Corrosion Cracking (Generic Letter 88-01).
9. Spent Fuel Pool Expansion.
10. Licensing Actions Required for Refueling.
11. Power Update.
12. 24-Month Operating Cycle.

The stated licensing activities are important to the continued safe and efficient operation of the FitzPatrick plant and have therefore received priority over the annual updates of the FSAR and the quality assurance program description contained in the FSAR, which are administrative requirements.

An increased burden on the FitzPatrick licensing staff has resulted from difficulties in finding qualified personnel to fill an abnormally high number of vacancies in licensing engineering positions. The licensee has made every effort to fill these vacancies as soon as they occurred. In spite of this, vacancies to date in 1991 have exceeded one-third of the authorized licensing engineering positions. The licensee has initiated corrective actions to compensate for this shortage of qualified personnel by hiring three contract engineers and two summer interns. These additional personnel should have a positive impact on the efforts to reduce the current FitzPatrick licensing workload.

Schedular exemption is also requested to provide additional time to complete a total revision of FSAR chapter 14, "Safety Analysis," and to facilitate other FSAR improvements. The objective of the safety analyses in chapter 14 of the FSAR is to evaluate the ability of the plant to mitigate the consequences of a postulated accident without undue hazard to the health and safety of the public. The revisions to this chapter will result in the following improvements:

1. The transient response figures will be enlarged for legibility and to make them more suitable for licensed operator training.
2. The transient and accident analyses for the fuel reloads will be added.
3. The existing (Cycle 1) analyses will be retained since they are the original licensing basis of the FitzPatrick plant.
4. The format will be revised to facilitate updates required by futher reload cores.

Another FSAR improvement which requires additional time to implement is the replacement of many of the FSAR flow diagrams with new drawings which are consistent with current computer generated Operating Procedure (OP) and Process and Instrument (P&ID) drawings. The new OP, P&ID, and FSAR drawings incorporate differing levels of detail overlaid on a common base drawing using computer aided drafting techniques. This improves the consistency of all major plant drawing used for plant operator training.

It was determined that additional time would be required by the FitzPatrick licensing staff to prepare the annual update to the FSAR and the annual changes to the quality assurance program description contained in chapter 17 of the FSAR. The additional six months would provide the licensee with the time required to perform a detailed review of the revisions, and ensure that the updated FSAR is correct, complete and of higher quality.

Environmental Impact of the Proposed Action

The proposed exemption constitutes a six-month delay in the annual update of the FSAR and the annual changes to the quality assurance program description contained in chapter 17 of the FSAR. The requested exemption is temporary and is necessary to allow a detailed review of the updated material to be conducted. This detailed review will assure a more complete and correct FSAR. The additional time will also allow inclusion of the extenive revisions to chapter 14 and the improved FSAR system drawings.

The licensee has made a good faith effort to comply with the regulations by initiating corrective actions, both short-term and long/term, to improve its submittals and ensure that similar exemptions will not be necessary in the future. Therefore, the exemption would only provide temporary relief from the applicable regulations.

Based on the considerations discussed above, the staff concludes that granting the proposed exemption will not increase the probability of an accident and will not result in any post-accident radiological releases significantly in excess of those previously determined for James A. FitzPatrick Nuclear Power Plant. The proposed exemption would not otherwise affect radiological plant effluents, nor result in any significant occupational exposure. In addition, the exemption does not affect non-radiological plant effluents and has no other environmental impact.

Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Since the Commission has concluded there are no measurable environmental impacts associated with the proposed exemption, any alternatives with equal or grater environmental impact need not be evaluated. The principal alternative to the exemption would be to require rigid compliance with the schedular requirements of 10 CFR 50.71(e)(4) for the FSAR update and 10 CFR 50.54(a)(3) for the QA program description changes. Such action would not enhance the protection of the environmental and could result in an unsatisfactory submittal lacking all the required information specified in the regulations.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement for the James A. FitzPatrick Nuclear Power Plant," dated March 1973.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's submittal that supports the proposed exemption discussed above. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing envornmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee's letters dated June 28, 1991, and July 12 1991. These letters are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York.

Dated at Rockville, Maryland, this 18th day of July 1991.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I-I, Division of Reactor Projects–I/II, Office of Nuclear Reactor Regulations.

[FR Doc. 91-17529 Filed 7-23-91; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Extreme External Phenomena; Meeting

The ACRS Subcommittee on Extreme External Phenomena will hold a meeting on August 7, 1991, room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance. The agenda for the subject meeting shall be as follows:

Wednesday, August 7, 1991—8:30 a.m. until the conclusion of business

The Subcommittee will discuss the results of the Diablo Canyon Long-Term Seismic Program.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the meeting, the Subcommittee, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, the nuclear industry, their respective consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Elpidio G. Igne (telephone 301/492-8192) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: July 15, 1991.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 91-7485 Filed 7-23-91; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Advanced Reactor Designs; Meeting

The Subcommittee on Advanced Reactor Designs will hold a meeting on August 6, 1991, room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: Tuesday, August 6, 1991—8:30 a.m. until the conclusion of business.

The Subcommittee will review the modular high-temperature gas cooled reactor (MHTGR) and the power reactor innovative small module (PRISM) designs sponsored by DOE.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of NRC staff, their consultants, Department of Energy and their contractors, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Medhat El-Zeftawy (telephone 301/492-9901) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: July 16, 1991.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 91-17527 Filed 7-23-91; 8:45 am]

BILLING CODE 7590-01-M

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from July 1, 1991 through July 12, 1991. The last biweekly notice was published on July 10, 1991 (56 FR 31427).

Notice Of Consideration Of Issuance Of Amendment To Facility Operating License And Proposed No Significant Hazards Consideration Determination And Opportunity For Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be

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Dated: July 16, 1991.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 91-17527 Filed 7-23-91; 8:45 am]

BILLING CODE 7590-01-M

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The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be

considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, D.C. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 23, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to **(Project Director)**: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, D.C., and at the local public document room for the particular facility involved.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: April 8, 1991

Description of amendment request: The proposed amendment will change the following sections of the Technical Specifications:

a. 3/4.1.3, Movable Control Assemblies,
b. 3/4.3.1, Table 4.3-1,
c. 3/4.5.1, ECCS Subsystems—Tavg Greater Than or Equal to 350° F and Table 4.5-1,
d. 3/4.7.6, Fire Suppression Systems,
e. 3/4.7.9, Feedwater Isolation Valves and Table 3.7-6,
f. 3/4.9.2, Instrumentation,
g. 3/4.9.4, Containment Building Penetrations,
h. 3/4.9.8, Residual Heat Removal and Coolant Recirculation
i. 3/4.10.2, Physics Test, and
j. BASES—3/4.7.6, Fire Suppression Systems and BASES— 3/4.9.4, Containment Building Penetrations

These changes are corrections to *Amendment No.* 125 and are administrative in nature.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

SURVEILLANCE REQUIREMENT 4.1.3.1 and 4.1.3.2 on page 3/4 1-19 have been renumbered to 4.1.3.1.1 and 4.1.3.1.2 respectively for consistency and to avoid confusion with SURVEILLANCE REQUIREMENT 4.1.3.2 on page 3/4 1-21.

SURVEILLANCE REQUIREMENT 4.5.1.f(1) has had the word "and" added between the words "automatic" and "manual" to clarify the intent of the requirement.

Nomenclature changes to the fire protection section (Technical Specification 3/4.7.6) are proposed to provide consistency between the PMMS, station procedures, system drawings and technical specifications.

These proposed changes are administrative in nature and do not affect the intent of the Technical Specifications. There are no failure modes associated with the changes nor are any design basis accidents impacted by the changes.

The proposed change to TABLE NOTATION (2) makes the Technical Specifications consistent with the new nuclear instrumentation system (NIS) hardware and Technical Specifications that were approved in *Amendment No.* 125. The old NIS associated with Note 2 in Table 4.3-1 had overpower trips set at 25%, 74% and 109% rated power. The new NIS has trips set at 19, 29, 39, 49, 59, 69, 79, 89, 99, and 109% rated power. The accident analyses assume that the overpower trip is recalibrated to be within 9% of the steady state power level prior to event initiation. Removing the 16, 65 and 100% exceptions does not change the analyses' assumptions since these were required for the old NIS. The proposed change still requires an overpower trip within 9% and a daily calorimetric measurement to be performed. Thus, the proposed change does not impact the consequences or probability of the Main Steam Line Break, Control Rod Ejection, Excess Steam Flow, Control Rod Withdrawal and Isolated or Idled Loop Startup Accidents.

The ECCS is not affected by the proposed changes. TABLE 4.5-1 contains valves that receive an SIAS following a LOCA and must be tested to verify that they actuate to their correct position. Valve LD-TV-230 is being removed from this table since it receives a high containment pressure signal rather than an SIAS and is tested as a containment isolation valve under Technical Specification 4.6.3. Since this valve is tested by another Technical Specification, testing under Technical Specification 4.5.1 is redundant and unnecessary. Valves SW-MOV-1 and 2 are being added to TABLE 4.5-1 to reflect a recent modification which causes these valves to close on an SIAS following a LOCA. Testing these valves provides greater assurance that they will be able to perform these safety functions. Since these proposed changes do not affect the ECCS, it is able to perform its safety functions. Thus, these proposed changes do not impact the consequences or probability of a previously analyzed accident.

The proposed change adds ACTION statement "c" to LCO 3.7.9 to allow 3 loop operation when a main feedwater isolation motor operated valve (MOV) is inoperable, provided the MOV or its associated downstream manual isolation valve is closed. The list of manual isolation valves has been added to TABLE 3.7-6. The proposed change to allow 3 loop operation when a main feedwater isolation MOV is inoperable does not impact the Main Steam Line Break and Steam Generator Tube Rupture accident analyses. These accidents have been analyzed for 3 loop operation. Thus, this proposed change does not impact the consequences or probability of these design basis accidents.

The proposed change to Technical Specification 3/4.9.2 revises the current ACTION statement "a" and makes it "b" and a new ACTION statement "a" is added. The addition of an ACTION statement, to suspend core alterations is the required NIS is inoperable, will ensure that the monitors are available to detect an accident during fuel movement. Thus, there is no impact on the consequences or probability of a fuel handling accident.

The proposed change to require a minimum number of bolts to hold the equipment hatch door in the closed position during core alterations ensures that the containment boundary will be maintained. The 18 bolts are required to be torqued to withstand the stress on the hatch following a loss of the decay heat removal (DHR) system in conjunction with the effect of a safe shutdown earthquake (SSE). This will ensure that the hatch door is closed and secured making the containment a leak tight barrier. Thus, the consequences or probability of a fuel handling accident will not be impacted since the containment barrier will be intact.

The proposed change to SURs 4.9.8.1 and 4.9.8.2.1 deletes the requirement that the RHR flowrate be at least 2000 gpm. This change is being proposed because cooling flowrate requirements are a function of time from shutdown and cooling water temperature. RHR flowrates of 2000 gpm, especially during the winter, could cause excessive cooling of the RCS. Also, during midloop operations, high flowrates could result in vortexing and air entrainment in the RHR pump suction which could disable the pump. Removing this requirement will not impact the consequences of a loss of DHR because the Technical Specification definition of MODE 6 requires the average reactor coolant temperature to be below 140° F and therefore adequate cooling will be maintained by adjusting the flowrate appropriately. In addition, removing this requirement will not impact the consequences of a fuel handling accident.

The proposed change to the reactor trip setpoint in LCO 3.10.2(b) from 23% to 19% of RATED THERMAL POWER makes the setpoint consistent with the new NIS. As discussed above, the new NIS was previously reviewed and approved in Amendment No. Lowering the trip setpoint does not negatively impact the consequences or probability of the Main Steam Line Break, Control Rod Ejection, Excess Steam Flow, Control Rod Withdrawal and Isolated or Idled Loop Startup Accidents.

For these reasons, the proposed changes do not increase the probability or consequences of any accident previously analyzed.

2. Create the possibility of a new or different kind of accident from that previously analyzed.

The renumbering of SUR "4.1.3.1" and "4.1.3.2" to "4.1.3.1.1" and "4.1.3.1.2" respectively will maintain consistency and avoid confusion with SUR 4.1.3.2.

Replacing the word "adjustment" with "skewed" and deleting the words ". . .at power levels other than 16%, 65%, and 100% RATED THERMAL POWER" are considered editorial changes and provide consistency with new overpower trip setpoints.

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The proposed change to require a minimum number of bolts to hold the equipment hatch door in the closed position during core alterations ensures that the containment boundary will be maintained. The 18 bolts are required to be torqued to withstand the stress on the hatch following a loss of the decay heat removal (DHR) system in conjunction with the effect of a safe shutdown earthquake (SSE). This will ensure that the hatch door is closed and secured making the containment a leak tight barrier. Thus, the consequences or probability of a fuel handling accident will not be impacted since the containment barrier will be intact.

The proposed change to SURs 4.9.8.1 and 4.9.8.2.1 deletes the requirement that the RHR flowrate be at least 2000 gpm. This change is being proposed because cooling flowrate requirements are a function of time from shutdown and cooling water temperature. RHR flowrates of 2000 gpm, especially during the winter, could cause excessive cooling of the RCS. Also, during midloop operations, high flowrates could result in vortexing and air entrainment in the RHR pump suction which could disable the pump. Removing this requirement will not impact the consequences of a loss of DHR because the Technical Specification definition of MODE 6 requires the average reactor coolant temperature to be below 140° F and therefore adequate cooling will be maintained by adjusting the flowrate appropriately. In addition, removing this requirement will not impact the consequences of a fuel handling accident.

The proposed change to the reactor trip setpoint in LCO 3.10.2(b) from 23% to 19% of RATED THERMAL POWER makes the setpoint consistent with the new NIS. As discussed above, the new NIS was previously reviewed and approved in Amendment No. Lowering the trip setpoint does not negatively impact the consequences or probability of the Main Steam Line Break, Control Rod Ejection, Excess Steam Flow, Control Rod Withdrawal and Isolated or Idled Loop Startup Accidents.

For these reasons, the proposed changes do not increase the probability or consequences of any accident previously analyzed.

2. Create the possibility of a new or different kind of accident from that previously analyzed.

The renumbering of SUR "4.1.3.1" and "4.1.3.2" to "4.1.3.1.1" and "4.1.3.1.2" respectively will maintain consistency and avoid confusion with SUR 4.1.3.2.

Replacing the word "adjustment" with "skewed" and deleting the words "...at power levels other than 16%, 65%, and 100% RATED THERMAL POWER" are considered editorial changes and provide consistency with new overpower trip setpoints.

The addition of the word "and" is editorial in nature and intended to clarify the requirement of SUR 4.5.1.f(1).

Removal of valve LD-TV-230 from TABLE 4.5-1 alleviates redundancy of testing and addition of valves SW-MOV-1 and 2 reflects a completed modification.

All proposed changes to the fire suppression systems section provide nomenclature consistency between the PMMS, station procedures, system drawings, and technical specifications.

Addition of an action statement to Section 3/4.9.2 corrects an oversight when the Haddam Neck Plant converted to the W STS format.

Changing the minimum number of bolts required to hold the containment equipment hatch door from 16 to 18 supports both normal and mid-loop refueling operation. This change is consistent with W STS.

Deletion of the minimum 2000 gpm flow requirement in MODE 6 reflects the fact that the specific RHR flow required to remove decay heat is variable, dependent on season, time after shutdown, and previous operating history.

Changing the percent of RATED THERMAL POWER from 23% to 19% provides consistency with the overpower trip setpoints approved by

Amendment No. 125 to the Haddam Neck Plant Technical Specifications.

Changes to the BASES section for fire suppression systems and containment building penetrations provide for clarification of the proposed changes already stated.

There are no new failure modes associated with any of the proposed changes. There are no changes in the way the plant is operated or in the operation of equipment credited in the design basis accidents. Therefore, the potential for an unanalyzed accident is not created.

3. Involve a significant reduction in the margin of safety.

The intent of the Technical Specifications for the proposed changes remains unchanged. The proposed changes will not impact any protective boundary and do not affect the consequences of any accident previously analyzed. Therefore, there is no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: July 12, 1991

Description of amendment request: Connecticut Yankee Atomic Power Company (CYAPCO) has proposed for Cycle 16, a one-time exception to the 10 CFR Part 50, Appendix J Type B and C test requirements as specified in Technical Specification 4.6.1.2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability of occurrence or consequences of an accident previously analyzed. The current leakage condition of the containment extrapolated from the integrated leak rate test of July 7, 1990 has a margin of 72% below the conservative safety limit of 0.75 La and 79% below the design leakage La. No operations are known to have occurred which would suggest a significant degradation of this estimate. There are no design basis accidents adversely affected due to this change.

2. Create the possibility of a new or different kind of accident from any previously analyzed. Containment isolation features limit the consequences of any accident. The addition of 2 to 4 months to the test schedule should have no impact on this. Since there [are] no changes in the way the plant is operated, the potential for an unanalyzed accident is not created. No new failure modes are introduced.

3. Involve a significant reduction in a margin of safety. As discussed above, the containment leakage determined within 18 months of the proposed 4-month testing interval extension provides reasonable assurance of a significant margin below the conservative safety limit. Also, since the change does not affect the consequences of any accident previously analyzed, there is no reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Entergy Operations, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: February 22, 1991, as supplemented May 24, 1991

Description of amendment request: The amendment would change the Technical Specifications by increasing the required minimum usable fuel oil in the diesel generator fuel oil storage tanks from 57,200 to 62,000 gallons for each of the Division I and the Division II tanks, and from 39,000 to 41,200 gallons for the Division III tank.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. No significant increase in the probability or consequences of an accident previously evaluated results from this change.

The Technical Specifications specify a minimum fuel oil inventory to ensure that the diesel generators will be able to maintain power to the necessary components and systems for at least seven days following a design basis accident. The seven day period complies with the requirements of ANSI N195-1976 and should provide adequate time for core recovery, accident mitigation and the recovery of alternate power sources or a replenishment of the fuel oil inventory. The proposed Technical Specification change ensures that the minimum usable fuel oil volume specified in the Technical Specifications meets the seven day supply requirement of the diesel generators. The proposed change complies with the guidance of Regulatory Guide 1.137 and ANSI N195-1976.

In providing compliance with regulatory guidance and ensuring the fuel oil supply requirements of the diesel generators are met, this change would not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. This change would not create the possibility of a new or different kind of accident from any previously analysed.

Accident analyses which incorporate diesel generator operability and availability assume that the emergency generator will support the requisite loads. The proposed Technical Specification change ensures that an adequate fuel oil inventory will be available to support the requisite loads for seven days.

Therefore, the requested revisions will not create the possibility of a new or different accident from any previously analyzed.

3. This change would not involve a significant reduction in the margin of safety.

This change will not alter the margin of safety currently realized by our implementation of the existing Technical Specifications. As indicated in Table I above, the minimum total fuel oil volume that is presently allowed in the Divisions I and II tanks is 65,386 gallons. This value bounds the new minimum total volume of 64,890 gallons. In addition, the minimum total fuel oil volume currently allowed for Division III 44,134 gallons. This proposed change to the Technical Specifications only redefines the values calculated for the usable and unusable fuel oil volumes. The proposed change does not alter the availability, operability, or surveillance requirements for the diesel generators.

Therefore, the proposed change will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's amendment request and analysis of the issue of no significant hazards consideration. The staff does not agree with the licensee's conclusion in paragraph 3 of its analysis that the increase in required minimum quantity of usable fuel oil for the diesel generators would not alter the margin of safety. The increased quantity of fuel oil would be obtained by decreasing the minimum level of oil in the tanks thus reducing the available net pump suction head for the submerged oil transfer pumps from 1 foot - 4 inches to 4 inches. The manufacturer of the pumps has recommended that for continuous operation, the minimum required fluid level is 4 inches above the centerline of the pump suction pipe and flange. The inside diameter of the horizontal suction pipe and flange is 1 inch thus providing 3.5 inches of fluid above the suction inlet. The staff concludes that there would be a decrease in the margin of safety but that it is not significant because the new minimum fluid level would meet the pump manufacturer's recommendation. Based on the staff's review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., 12th Floor, Washington, DC 20005-3502

NRC Project Director: Theodore R. Quay

Entergy Operations, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: June 25, 1991

Description of amendment request: The proposed amendment would allow a one time extension of the required test interval for Overall Integrated Leakage Rate Tests (ILRT) (Type A tests) as specified in TS 4.6.1.2.a. The amendment would also delete the TS 4.5.1.2.a requirement coupling the third Type A test to the plant shutdown for the 10-year Inservice Inspection (ISI) outage. The submittal also requests an exemption from 10 CFR Part 50 Appendix J which requires the performance of the third Type A leak test during the shutdown for the 10-year plant inservice inspections required by Section 50.55a.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. No significant increase in the probability or consequences of an accident previously evaluated results from this change.

a. The proposed extension of the surveillance interval does not increase the chances of an accident occurring. Containment integrity is related only to the mitigation of accident consequences, and containment leakage is not the precursor to any analyzed event. Regarding accident consequences, extension of the interval will not affect the containment's ability to maintain leakage below that assumed in the safety analyses. The previous Type A tests were completed successfully, and there have been no plant modifications since the last test (other than those requiring Type B or C testing) which would directly affect the test results. Type B and C testing of individual penetrations has been satisfactory, and there have been no pressure or temperature excursions in the containment which could have adversely affected containment integrity. There is no change to the testing methodology or acceptance criteria. No plant modifications which could degrade the ability of the containment to maintain leakage within the assumptions of the safety analyses are associated with this change, nor are any planned.

b. The proposed decoupling of the Appendix J Type A tests from the 10-year ISI outage also does not affect the probability of an accident occuring or the consequences of any analyzed event. The coupling of the ILRT to the ISI is not due to any known technical requirements, and does not enhance the purpose of the Type A test or provide additional assurance of containment integrity above the already being demonstrated. This coupling is not assumed in any safety analysis.

c. Thus, the proposed revision will not significantly increase the probability or consequences of any accident previously evaluated.

2. The change would not create the possibility of a new or different kind of accident from any previously analyzed.

a. The proposed one-time extension of the test frequency does not affect the ILRT methodology or acceptance criteria nor does it alter the physical containment structure or boundary in any way. There is no addition or removal of plant hardware or any changes to test methodology. No new plant operating modes are being introduced. Results of previous Appendix J test remain well below allowable limits, and there have been no plant modification since the last tests which could affect these results.

b. The decoupling of Appendix J testing from the 10-year ISI outage does not impose any new requirements on plant operation or testing. The test methods, hardware, and acceptance criteria remain unchanged. There is no identified safety significance associated with the coupling of the two test/inspection programs during the same refueling outage.

c. Therefore, the proposed changes to the Type A test interval will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. This change would not involve a significant reduction in the margin of safety.

a. Safety margin is established through the GGNS [Grand Gulf Nuclear Station] safety analyses as reflected in the TS Limiting Conditions for Operation. Containment leak rates assumed in the safety analyses are not increased by the proposed changes to the surveillance interval. The acceptance criteria which must be met to verify that leak rates remain within the assumed values are also not changed. Although the test frequency is relaxed for the one-time extension, no plant modifications have been made which would invalidate past leak test results confirming acceptable containment integrity. Further, no such modifications are planned. Appendix J testing and ISI are unrelated with respect to any safety margin, and decoupling of these two programs from the same outage in no way reduces the margin of safety associated with either program.

b. Thus, this change will not involve a significant reduction in the margin of safety.

Based on the above evaluation, Entergy Operations, Inc. has concluded that operation in accordance with the proposed amendment involves no significant hazards considerations.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., 12th Floor, Washington, DC 20005-3502

NRC Project Director: Theodore R. Quay

Entergy Operations, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: June 26, 1991

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previous Appendix J test remain well below allowable limits, and there have been no plant modification since the last tests which could affect these results.

b. The decoupling of Appendix J testing from the 10-year ISI outage does not impose any new requirements on plant operation or testing. The test methods, hardware, and acceptance criteria remain unchanged. There is no identified safety significance associated with the coupling of the two test/inspection programs during the same refueling outage.

c. Therefore, the proposed changes to the Type A test interval will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. This change would not involve a significant reduction in the margin of safety.

a. Safety margin is established through the GGNS [Grand Gulf Nuclear Station] safety analyses as reflected in the TS Limiting Conditions for Operation. Containment leak rates assumed in the safety analyses are not increased by the proposed changes to the surveillance interval. The acceptance criteria which must be met to verify that leak rates remain within the assumed values are also not changed. Although the test frequency is relaxed for the one-time extension, no plant modifications have been made which would invalidate past leak test results confirming acceptable containment integrity. Further, no such modifications are planned. Appendix J testing and ISI are unrelated with respect to any safety margin, and decoupling of these two programs from the same outage in no way reduces the margin of safety associated with either program.

b. Thus, this change will not involve a significant reduction in the margin of safety.

Based on the above evaluation, Entergy Operations, Inc. has concluded that operation in accordance with the proposed amendment involves no significant hazards considerations.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., 12th Floor, Washington, DC 20005-3502

NRC Project Director: Theodore R. Quay

Entergy Operations, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: June 26, 1991

Description of amendment request: This license amendment request proposes to revise Grand Gulf Nuclear Station (GGNS) Technical Specifications (TS) 3/4.3.2, 3/4.3.3, 3/4.3.6 and associated Bases to increase the surveillance test intervals (STIs) and allowed outage times (AOTs) for certain instrumentation associated with the reactor protection system, the Emergency Core Cooling Systems (ECCS), and the isolation actuation system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

a. No significant increase in the probability or consequences of an accident previously evaluated results from this change.

The proposed TS changes increase the STIs and AOTs for actuation instrumentation supporting ECCS, the CRBF [Control Rod Block Function], and isolation functions. There are no physical changes in any of the affected systems themselves. Regarding the probability of malfunction of equipment, Topical Reports prepared by GE [General Electric] showed that for the ECCS, there is a small increase in the unavailability of the water injection function which may result in a slight increase in the consequences of previously evaluated accidents which rely upon ECCS for mitigation. This increase in unavailability was judged acceptable by GE. The NRC, in its review of the Topical Reports ..., concurred with this conclusion. The changes proposed are consistent with these SERs [Safety Evaluation Reports] ... with one addition. The additional change is bounded by the analyses ... detailed in this amendment request.

Further, given the resulting reduction in test related plant scrams and test induced wearout of equipment, the net effect of these changes represent a net improvement to overall plant safety.

Therefore, there is no increase in the probability or consequences of a previously evaluated accident due to the proposed changes.

b. This change would not create the possibility of a new or different kind of accident from any previously analyzed.

Neither the design nor the functional operation of the affected instrumentation is being changed. The proposed changes only involve a change in the STIs and AOTs. These changes will not impact the function of monitoring system variables over their anticipated ranges for normal operation, anticipated operational occurrences, or accident conditions.

As stated ..., reliability is not degraded by the proposed changes.

The proposed changes do not introduce any new modes of plant operation, make any physical changes, or alter any operational setpoints.

Therefore, the possibility of a new or different kind of accident from any previously evaluated is not created.

c. This change would not involve a significant reduction in the margin of safety.

The proposed changes do not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined. The impact of reduced testing, other than as addressed above, is to allow a longer time interval over which instrument uncertainties (e.g., drift) may act. The current affected instrumentation setpoints already account for the effects of drift and include a sufficient allowance to tolerate extensions of the STIs. Implementation of the proposed changes is expected to result in an overall improvement in safety, as follows:

i. Reduced testing will result in fewer inadvertent reactor trips, less frequent actuation of ESF components, and less frequent distraction of operations personnel.

ii. Improvements in the effectiveness of the operating staff in monitoring and controlling plant operation will be realized. This is due to less frequent distraction of the operators to attend to instrumentation testing.

iii. Longer repair times associated with increased AOTs will lead to higher quality repairs and improved reliability.

Based on the above evaluation, Entergy Operations, Inc. has concluded that operation in accordance with the proposed amendment involves no significant hazards considerations.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., 12th Floor, Washington, DC 20005-3502

NRC Project Director: Theodore R. Quay

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: June 13, 1991

Description of amendment request: The proposed amendment would change the method of pH control for the water in the reactor building emergency sump after a postulated loss-of-coolant accident. The change would delete the specification for a sodium hydroxide spray additive and add a specification for the use of trisodium phosphate dodecahydrate as the chemical for pH control. The change would affect Technical Specification (TS) 3.6.2.2 and TS Bases 3/4.6.2.2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change will not significantly increase the probability of an accident previously evaluated because the pH of the water in the emergency sump is being adjusted with trisodium phosphate dodecahydrate (TSP-C) rather than sodium hydroxide (NaOH) to be within a range that will reduce the potential for elemental iodine re-evolution and long-term stress corrosion during the recirculation mode of E[mergency] C[ore] C[ooling] S[ystem] operation. The use of a plain borated water spray rather than a sodium hydroxide-borated water mixture in the containment spray during the initial phases of a loss-of-coolant accident will not increase the consequences of an accident previously evaluated since research has shown that elemental iodine can be washed from the atmosphere with borated water[.] and stress corrosion from the boric acid is not a factor in the short term.

2. The proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated because the function of the TSP-C is the same as NaOH. The TSP-C will act as a buffering agent to raise the pH of the water in the containment emergency sump to at least 7.0 before the recirculation phase of the post-LOCA actions begins. TSP-C does not create a personnel safety hazard in its handling as does NaOH.

3. The proposed change will not involve a significant reduction in the margin of safety. The TSP-C will buffer the sump water sufficiently to assure that the resulting mixture pH is at least 7.0. A pH at this level will be effective in reducing the potential for iodine re-evolution during the recirculation phase of the accident and preventing long-term stress corrosion.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629

Attorney for licensee: A. H. Stephens, General Counsel, Florida Power Corporation, MAC - A5D, P. O. Box 14042, St. Petersburg, Florida 33733

NRC Project Director: Herbert N. Berkow

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: June 20, 1991

Description of amendment request: The proposed amendment would provide an alternative method for determining the intervals for the visual inspection of snubbers. The proposed alternative method is consistent with guidance provided by Generic Letter 90-09, "Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Action."

Current Technical Specification (TS) 4.7.9.1(a) would be replaced by new specifications a, b and c regarding Category, Visual Inspections and Visual Inspection Acceptance Criteria, respectively. Current TS 4.7.9.1(b) does not apply to the Crystal River snubber system, and the requirement of TS 4.7.9.1(c) already exists in TS 4.0.5.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change will not significantly increase the probability or consequences of an accident previously evaluated because the existing snubber operability requirements will remain intact. The operability continues to be maintained by visual and functional testing. The functional testing will continue to be performed in accordance with ASME Section XI requirements. Visual inspections will provide additional confidence in snubber operability.

2. The proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated because the change will not alter plant configuration or change parameters governing normal plant operation. Snubber operability will continue to be maintained by visual and functional testing.

3. The proposed change will not involve a significant reduction to the margin of safety because the snubber system will continue to be fully capable of performing its intended safety function. The alternate visual inspection schedule maintains the same confidence level of snubber operability as the existing schedule.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629

Attorney for licensee: A. H. Stephens, General Counsel, Florida Power Corporation, MAC - A5D, P. O. Box 14042, St. Petersburg, Florida 33733

NRC Project Director: Herbert N. Berkow

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: June 20, 1991

Description of amendment request: The proposed amendment would add a footnote to Technical Specification (TS) 4.6.1.2(d) to extend (one-time only) the interval for Type B and C leakage testing from 24 to approximately 27 months. The reason for the proposal is the extended duration of the current fuel cycle.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change will not significantly increase the probability or consequences of an accident previously evaluated because the additional time between surveillances will not substantially increase the leak rate of the penetrations and valves to be tested. The total leak rate is expected to remain below the allowable value of 0.6 La. Previous testing results have been within ten percent of that value.

2. The proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated because the change will not alter plant configuration or change parameters governing normal plant operation. The extended period for the surveillance will not cause a significant increase of the leakage rates of systems and components penetrating primary containment.

3. The proposed change will not involve a significant reduction to the margin of safety because no changes are being made to the way the facility is being operated. The leakage rate will not significantly increase due to the three-month extended period. The allowable leakage rates defined in the technical specifications remain the same.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629

Attorney for licensee: A. H. Stephens, General Counsel, Florida Power Corporation, MAC - A5D, P. O. Box 14042, St. Petersburg, Florida 33733

NRC Project Director: Herbert N. Berkow

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: June 25, 1991

Description of amendment request: The proposed amendment would add a footnote to the channel calibration surveillance requirement for the following instrumentation functions:

1. Reactor Protection System, "RCS Outlet Temperature - High"
2. Remote Shutdown Monitoring, "Reactor Coolant Temperature - Th"
3. Post-Accident Monitoring, "Reactor Coolant Outlet Temperature"

The footnote would allow a one-time extension of the surveillance interval for performing a channel calibration of these instrument functions until Refuel 8. Refuel 8 is currently scheduled for April 30, 1992 to June 25, 1992. Without the extension, the channel calibration of these instrument functions would be required no later than April 1992. This amendment affects the following portions of the Technical Specifications (TS): TS 4.3.1.1.1, Table 4.3-1 Functional Unit 3; TS 4.3.3.5, Table 4.3.6 Instrument 2; and TS 4.3.3.6, Table 4.3-7 Instrument 4.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

[T]he proposed change will not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated. The instrument functions addressed by this change are not assumed as the primary means of mitigating any design basis accidents for Crystal River Unit 3. The instruments will continue to perform consistent with design assumptions for the functions assumed to be provided.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change does not alter the manner in which the [T]echnical [S]pecification surveillance is performed. The change only affects the next performance date for the surveillance.

3. Involve a significant reduction in the margin of safety because the instruments will continue to be fully capable of performing their design basis functions.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629

Attorney for licensee: A. H. Stephens, General Counsel, Florida Power Corporation, MAC - A5D, P. O. Box 14042, St. Petersburg, Florida 33733

NRC Project Director: Herbert N. Berkow

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendment request: June 21, 1991

Description of amendment request: The proposed amendments would revise Technical Specification 4.7.2.b to permit verification of the heat exchanger surveillance curves by performing component cooling water (CCW) heat exchanger performance tests with an average reactor coolant system temperature of at least 547° F and prior to entering Mode 2. The test results would more accurately reflect the heat exchanger performance under the proposed conditions and the heat exchanger performance would be confirmed prior to reactor criticality.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment[s] would not involve a significant increase in the probability or consequences of an accident previously evaluated.

[These] change[s] [do] not revise any minimum equipment requirements nor any plant operating parameters. CCW heat exchanger performance monitoring will continue to assure CCW system operability. Prior to the performance of the heat exchanger performance test, the satisfactory performance every 12 hours of the surveillance described in Technical Specification 4.7.2.a verifies the CCW system's capability to remove the design basis heat loads. Verification of CCW heat exchanger performance prior to entry into mode 2 ensures that sufficient cooling capacity is available for continued operation of safety-related equipment during accident conditions as described in the F[inal] S[afety] A[nalysis] R[eport]. Therefore, the proposed change does not affect the probability or consequences of accidents previously analyzed.

2. Operation of the facility in accordance with the proposed amendment[s] would not create the possibility of a new or different kind of accident from any accident previously evaluated.

No new types of equipment are added by [these] change[s]. The proposed change[s] [introduce] no changes in operation or new modes of operation. The ability of the CCW system to provide the appropriate heat removal capability is maintained.

3. Operation of the facility in accordance with the proposed amendment[s] would not involve a significant reduction in a margin of safety.

CCW heat exchanger performance upon entry into mode 4 is confirmed by verifying that the I[ntake] C[ooling] W[ater] temperature is below the limits identified by heat exchanger performance curves based on historical post-cleaning data. By performing heat exchanger performance tests prior to entry into mode 2, CCW operability and satisfactory heat exchanger performance is confirmed prior to reactor criticality. Prior to the performance of the heat exchanger performance test, the satisfactory performance every 12 hours of the surveillance described in Technical Specification 4.7.2.a verifies the CCW system's capability to remove the design basis heat loads. Based on the above, the proposed amendment[s] [do] not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzer, P.C., 1615 L Street, N.W., Washington, D.C. 20036

NRC Project Director: Herbert N. Berkow

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendment request: July 2, 1991

Description of amendment request: The proposed amendments would revise the Turkey Point Technical Specifications (TS) to reflect results from the pre-operational testing of the new battery chargers which were installed as part of the Emergency Power System (EPS) Enhancement Project. During the pre-operational testing phase, the licensee determined that under low load conditions, the battery chargers will not consistently share load within 10% of their rating. The Turkey Point DC bus system consists of four DC buses shared between the two units. With one unit in Modes 5 or 6, one or more of the DC buses may have reduced load and the associated battery chargers may not be sharing the load within 10%.

The proposed amendments would revise the surveillance requirement for the battery chargers to require verification of load carrying capability for each battery charger instead of determining consistent load sharing. These changes affect TS 4.8.2.1.a.2 and TS Bases 3/4.8.1, 3/4.8.2, and 3/4.8.3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

[O]peration in accordance with the proposed amendment[s] would not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change[s] [do] not revise or alter the minimum equipment requirements nor any plant operating parameters. The revised surveillance requirement relating to the battery chargers during two chargers per D.C. bus operation, will ensure the ability to verify battery charger operability. Battery charger load sharing is not required for the safety related function of the chargers for Turkey Point and verification of charger current and voltage is a more appropriate determination of battery charger operability. Deleting the requirement for battery charger load sharing within 10% does not alter the capability to detect any battery charger failures which would prevent the performance of its safety related function. [These] change[s] [do] not affect assumptions contained in plant safety analyses or the physical design of the plant, nor do they affect Technical Specifications that preserve safety analysis assumptions. Therefore, the proposed change[s] [do] not affect the probability or consequences of accidents previously analyzed.

(2) create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change[s] [do] not involve the addition of any new type of equipment or create any new modes or changes in operation. Battery charger load sharing is not required for the safety related function of the chargers for Turkey Point and verification of charger current and voltage is a more appropriate determination of battery charger operability. Deleting the requirement for battery charger load sharing within 10% does not alter the capability to detect any battery charger failures which would prevent the performance of its safety related function.

The proposed change[s] [ensure] the ability of the battery chargers to provide the appropriate charging capability and [ensure] that the operability requirements of TS 3.8.2.1 are met. [These] change[s] [do] not affect any safety analysis assumptions, or physical modifications to the facility. Therefore, the proposed change[s] [do] not create the possibility of a new or different kind of accident.

(3) involve a significant reduction in a margin of safety.

The proposed change[s] [present] a revised method to verify or demonstrate[,] as appropriate, that the battery chargers are operating correctly. This method ensures the operability requirements of TS 3.8.2.1 are met, without compromising the safety margin defined in, and maintained by, the Technical Specifications. Therefore, the proposed amendment[s] [do] not involve a significant reduction in the margin of safety.

Based on the above, FPL has determined that the proposed amendment request does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the probability of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety; and therefore does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzer, P.C., 1615 L Street, N.W., Washington, D.C. 20036

NRC Project Director: Herbert N. Berkow

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: December 13, 1990

Description of amendment request: The amendment would revise the Operating License and Technical Specifications by replacing the existing license condition on fire protection with the standard license condition and removing unnecessary fire protection requirements from the Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1). This proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This proposed amendment does not affect the substance of the Fire Protection Program at the DAEC. System operability requirements, compensatory (remedial) actions, inspection/testing requirements, fire brigade staffing and reporting requirements will remain as before but are located in the DAEC Updated FSAR, with the exception of the fire brigade staffing requirement excluding two members of the shift crew. An FSAR change has been prepared which stipulates that two members of the shift crew are excluded from fire brigade manning. This FSAR change has been implemented at the DAEC, and will be included with our annual FSAR update required by 10 CFR 50.71(e) in June 1991.

The configuration and operation of fire protection systems at the DAEC are unchanged by this proposed amendment. Institution of the standard license condition will ensure that proposed changes to the Fire Protection Program, as described in the Updated FSAR, are reviewed against the criteria contained in 10 CFR 50.59 to determine whether an unreviewed safety question exists prior to implementing such changes. In effect, changes to the DAEC Fire Protection Program may be made without prior NRC approval only if the change does not adversely affect the ability of the DAEC to achieve and maintain safe shutdown in the event of a fire. The additional Technical Specification requirements assigning the review of the DAEC Fire Protection Program and implementing procedures to the Operations committee reinforce current Fire Protection Program policy at the DAEC.

2). This proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

This proposed amendment does not affect the substance of the Fire Protection Program at the DAEC. System operability requirements, compensatory (remedial) actions, inspection/testing requirements, fire brigade staffing and reporting requirements will remain as before. The bases for fire protection as defined by the DAEC Fire Hazards Analysis will not change as a result of this proposed license amendment. This proposed amendment relates to the acceptability of administrative relocation of DAEC's Fire Protection Program requirements from Technical Specifications to the FSAR. No new or different kinds of fire hazards not previously considered by the Fire Hazards Analysis are created by the administrative changes that would be implemented by the proposed amendment. Institution of the standard license condition will ensure that proposed changes to the Fire Protection Program are reviewed against the criteria contained in 10 CFR 50.59 to determine whether an unreviewed safety question exists prior to implementing such changes. The additional Technical Specification requirements reinforce current Fire Protection Program policy at the DAEC.

3). This proposed amendment does not involve a significant reduction in the margin of safety. This proposed amendment does not affect the substance of the Fire Protection Program at the DAEC. System operability requirements, compensatory (remedial) actions, inspection/testing requirements, fire brigade staffing and reporting requirements will remain as before. The configuration and operation of fire protection systems at the DAEC are unchanged by this proposed amendment. Changes to the DAEC Fire Protection Program will be controlled by the standard license condition, administrative Technical Specifications and prior review under 10 CFR 50.59. The required review of proposed changes under 10 CFR 50.59 will ensure that the ability to achieve and maintain safe shutdown in the event of a fire is not adversely affected and the margin of safety is not reduced when evaluated against the bases contained in the Updated FSAR.

Since the function and substance of DAEC's Fire Protection Program have not changed and adequate controls to ensure that changes to the program are made under 10 CFR 50.59, the probability or consequences of an accident previously evaluated is not significantly increased, no new or different kinds of accidents are introduced, and the existing margin of safety is not significantly reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, N.W., Washington, D.C. 20036.

NRC Project Director: John N. Hannon.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: February 22, 1991, supplemented with additional information June 14, 1991.

Description of amendment request: The amendment would revise the flow and discharge pressure requirements for annual fire pump Surveillance Requirement 4.13.B.1.e. In addition, it would revise the Bases for Section 3.13 to include a reference to safety-related equipment and delete excessive detail regarding pump sizing criteria.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1) The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed values for the fire pump flow rate and discharge pressure requirements accurately reflect the pump requirements for the worst-case system demand as set forth in Branch Technical Position APCSB 9.5-1 and

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amendment. Changes to the DAEC Fire Protection Program will be controlled by the standard license condition, administrative Technical Specifications and prior review under 10 CFR 50.59. The required review of proposed changes under 10 CFR 50.59 will ensure that the ability to achieve and maintain safe shutdown in the event of a fire is not adversely affected and the margin of safety is not reduced when evaluated against the bases contained in the Updated FSAR.

Since the function and substance of DAEC's Fire Protection Program have not changed and adequate controls to ensure that changes to the program are made under 10 CFR 50.59, the probability or consequences of an accident previously evaluated is not significantly increased, no new or different kinds of accidents are introduced, and the existing margin of safety is not significantly reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, N.W., Washington, D.C. 20036.

NRC Project Director: John N. Hannon.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: February 22, 1991, supplemented with additional information June 14, 1991.

Description of amendment request: The amendment would revise the flow and discharge pressure requirements for annual fire pump Surveillance Requirement 4.13.B.1.e. In addition, it would revise the Bases for Section 3.13 to include a reference to safety-related equipment and delete excessive detail regarding pump sizing criteria.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1) The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed values for the fire pump flow rate and discharge pressure requirements accurately reflect the pump requirements for the worst-case system demand as set forth in Branch Technical Position APCSB 9.5-1 and

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involve no change in the interpretation of the industry standards of these requirements.

The proposed pump performance requirements reflect a modification to the Fire Protection System installed in January, 1991, and information gained from a thorough review of the current system configuration. This modification was installed in accordance with approved design standards and significantly reduced the head losses associated with Sprinkler System 4. This allows the fire pumps to supply the required pressure and flow rate for Sprinkler System 4 at a lower pump discharge pressure, well within the operating limits of either fire pump.

The proposed changes to the Bases for Section 3.13 are administrative and do not involve any increase in the probability or consequences of an accident previously evaluated.

2) The proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

The revision to the annual fire pump Surveillance Requirements reflects the flow rate and discharge pressure necessary to supply the worst-case system demand and does not create the potential for any accidents not previously evaluated.

The proposed changes to the Bases for Section 3.13 are administrative and do not create the possibility of a new or different kind of accident from any previously evaluated.

3) The proposed amendment does not involve a significant reduction in the margin of safety.

The revision of the annual fire pump Surveillance Requirements reflects the flow rate and discharge pressure necessary to supply the worst-case system demand and does not involve a reduction in the margin of safety.

The proposed changes to the Bases for Section 3.13 are administrative and do not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, N.W., Washington, D.C. 20036.

NRC Project Director: John N. Hannon.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: June 25, 1991

Description of amendment request: The proposed amendment would revise the Millstone Unit 3 visual inspection surveillance requirements (Technical Specifications 4.7.10.a and 4.7.10.b) and acceptance criteria (Technical Specification 4.7.10.c) associated with seismic sway arresters (snubbers).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant hazards consideration because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed changes incorporate the alternate schedule for visual inspection of the snubbers recommended by the NRC in GL 90-09. As determined by the Staff, this alternate schedule for visual inspections maintains the same confidence level as the existing schedule. In addition, the ACTIONS required by the existing technical specifications as a result of finding snubbers inoperable remain the same. The change to the Technical Specification Index has no impact on the consequences or the probability of an accident previously analyzed. Therefore, the proposed changes do not affect the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed changes do not affect any plant operations, the potential for an unanalyzed accident is not created, and no new failure modes are introduced. The proposed changes will not affect the operability of the snubbers to perform their intended function during normal or accident conditions.

3. Involve a significant reduction in the margin of safety.

As stated in GL 90-09, the alternate schedule for visual inspections maintains the same confidence level as the existing schedule. In addition, the proposed changes do not affect any of the Actions specified in technical specifications which result from identification of inoperable snubbers. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: May 23, 1991

Description of amendment request: The proposed amendments would relocate the procedural details of the current Radiological Effluent Technical Specifications (RETS) to other licensee controlled documents (the Radiological Monitoring and Controls Program and the Process Control Program), in accordance with the recommendations of NRC Generic Letter 89-01.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

These proposed actions simplify the RETS, meet the regulatory requirements for radioactive effluents and radiological environmental monitoring, and implement the recommendations of GL 89-01 and the Commission's Interim Policy Statement on TS Improvements. The proposed changes are administrative in nature, should result in improved administrative practices, and do not affect plant operations.

Therefore, the proposed changes to not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes are administrative in nature, do not require physical alteration to any plant system, and cause no change in the method by which any safety-related system performs its function.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in the margin of safety?

The proposed changes to not alter the basic regulatory requirements and do not affect any safety analyses. The relocated RETS will continue to provide adequate controls for radioactive effluent releases and for radiological environmental monitoring activities pursuant to applicable regulatory requirements.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Attorney for licensee: Richard F. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120

NRC Project Director: James E. Dyer

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: June 12, 1991

Description of amendment request: This amendment request incorporates into Section 4.2.1 of the Environmental Protection Plan, Appendix B of the Hope Creek Generating Station license, the aquatic monitoring requirements to minimize the impact of the station operation on sea turtles.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. This change only extends the monitoring period, enhances and documents monitoring and reporting activities, and educates the monitoring personnel in sea turtle identification and resuscitation procedures.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not make any physical changes to the plant or changes in parameters governing normal plant operation. Therefore, the changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed changes involve increased monitoring, documentation and administrative procedures and do not degrade the existing margin of safety. Therefore, these changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Walter R. Butler

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: June 20, 1991

Description of amendment request: The proposed amendments modify Technical Specification section 3.5.1, surveillance requirement 4.5.1.c. The current surveillance requires verification that power to the safety injection accumulator isolation valves is disconnected by removal of the breaker from the circuit. The control power lockout switches were recently modified to provide the necessary protection against single active failure, thus removal of the breaker from the circuit is unnecessary.

The proposed amendment also modifies the applicability of surveillance requirement 4.5.1.c to agree with the applicability of the specification. The specification is applicable when plant pressure is above 1000 psig and the surveillance requirement is applicable whenever plant pressure is above 2000 psig. This change will make the surveillance requirement applicable whenever plant pressure is above 1000 psig.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

a. The proposed deletion of the surveillance requirement to remove the breaker from the circuit for the safety injection accumulator isolation valves would not affect the accident analysis. The control power lockout switches provide protection against a single active failure and two operator actions would be required to close the valve. Therefore, [it] would not increase the probability or consequences of a previously analyzed accident.

b. The proposed change is an administrative change to correct an apparent typographical error. Therefore, it would not increase the probability or consequences of a previously analyzed accident.

2. Create the possibility of a new or different kind of accident.

a. The control power lockout switches protect against a single active failure and two operator actions would be required to close the valve. Deletion of the requirement to remove the breaker from the circuit will not introduce any new failure modes. Therefore, there can be no impact on plant response to the point where a different accident is created.

b. The proposed change is an administrative change to correct an apparent typographical error. Therefore, there can be no impact on plant response to the point where a different accident is created.

3. Involve a significant reduction in a margin of safety.

a. The control power lockout switch will provide the protection currently being provided by removing the breaker from the circuit. The proposed change will delete the requirement to remove the breaker from the circuit, but will still require verification of the power lockout switch position every 31 days when reactor coolant system pressure is greater than 1000 psig. Therefore, there is no reduction in any margin of safety.

b. The proposed change is an administrative change to correct an apparent typographical error. Therefore, there can be no reduction in any margin to safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C., 20005-3502

NRC Project Director: Walter R. Butler

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: February 15, 1991 as supplemented by letter dated March 26, 1991.

Description of amendment request: The proposed amendment would revise the pressure-temperature (P-T) limits for the reactor coolant system, in the Ginna Technical Specifications, during heatup, cooldown, leak test, and criticality. The revised P-T limits were developed by the licensee to comply with the NRC position on radiation embrittlement of reactor vessel materials and its effect on plant operations, outlined in Regulatory

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2. Create the possibility of a new or different kind of accident.

a. The control power lockout switches protect against a single active failure and two operator actions would be required to close the valve. Deletion of the requirement to remove the breaker from the circuit will not introduce any new failure modes. Therefore, there can be no impact on plant response to the point where a different accident is created.

b. The proposed change is an administrative change to correct an apparent typographical error. Therefore, there can be no impact on plant response to the point where a different accident is created.

3. Involve a significant reduction in a margin of safety.

a. The control power lockout switch will provide the protection currently being provided by removing the breaker from the circuit. The proposed change will delete the requirement to remove the breaker from the circuit, but will still require verification of the power lockout switch position every 31 days when reactor coolant system pressure is greater than 1000 psig. Therefore, there is no reduction in any margin of safety.

b. The proposed change is an administrative change to correct an apparent typographical error. Therefore, there can be no reduction in any margin to safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C., 20005-3502

NRC Project Director: Walter R. Butler

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: February 15, 1991 as supplemented by letter dated March 26, 1991.

Description of amendment request: The proposed amendment would revise the pressure-temperature (P-T) limits for the reactor coolant system, in the Ginna Technical Specifications, during heatup, cooldown, leak test, and criticality. The revised P-T limits were developed by the licensee to comply with the NRC position on radiation embrittlement of reactor vessel materials and its effect on plant operations, outlined in Regulatory

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Guide (RG) 1.99, Revision 2, and Generic Letter 88-11 guidance. The revised P-T limits also considered a re-evaluation of the low temperature overpressurization protection system (LTOPS) setpoint.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

These changes to the Technical Specifications, in accordance with 10 CFR 50.91, have been evaluated to determine if the operation of the facility in accordance with the proposed Amendment would:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

3) Involve a significant reduction in the margin of safety.

Re-calculation of heatup/cooldown limits using approved NRC methodology does not increase the probability or consequences of an accident. New limits generated from approved methodology do not reduce the margin of safety.

Deletion of education material that is more appropriately documented outside of Technical Specification does not effect the probability consequences, or margin of safety of an accident. Neither does it cause a different type accident.

Reducing the LTOPS setpoint protects the Appendix G limits and prevents RHR overpressurization. A setpoint reduction reduces the consequences of an overpressurization event because mitigation is initiated earlier. This results in a smaller challenge to the RHR system and reduces the probability of failure. Reducing the LTOPS setpoint does not cause a different kind of accident. Since existing acceptance criteria are still met there is no reduction in a margin of safety.

Additional restrictions ensure no single inadvertent operator action will result in mass injection due to SI. The LTOPS setpoint based on possible mass injection and heat injection cases is adjusted to meet existing acceptance criteria. Therefore, the consequences or probability of an accident are not increased, a new accident is not created or is a margin of safety reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610

Attorney for licensee: Nicholas S. Reynolds, Bishop, Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005

NRC Acting Project Director: Susan Shankman

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendment requests: June 28, 1991

Description of amendment requests: The proposed amendments will revise Technical Specifications 3/4.5.2, "ECCS Subsystems - T_{avg} Greater Than or Equal to 350° F" and 3/4.6.3 "Containment Isolation Valves." A surveillance requirement to verify the position of the containment emergency sump isolation valves and the emergency core cooling pump and containment spray pump mini-flow valves every twelve hours is being added to Technical Specification 3/4.5.2. Valve alignment clarification is added to 3/4.6.3 for the containment emergency sump valves listed in Table 3.6-1 and addressed by the surveillance being added to 3/4.5.2. An Action is being added to 3/4.5.2 to invoke Technical Specification 3/4.6.1.1 in the event containment integrity is breached.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The required valve positions are not being changed. The system is being operated as designed. No physical changes are being made to the plant. The addition of a technical specification to require verification of valve positions will not involve any increase in the probability or consequences of an accident previously evaluated. Since this technical specification will decrease the potential for valve misalignment the probability or consequences of an accident previously evaluated will be decreased.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The required valve positions are not being changed. The system is being operated as designed. No physical changes are being made to the plant. The addition of a technical specification to require verification of valve positions will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in margin of safety?

The required valve positions are not being changed. The system is being operated as designed. No physical changes are being made to the plant. The addition of a technical specification to require verification of valve positions will not involve any reduction in a margin of safety. This technical specification will decrease the potential for valve misalignment and will strengthen the operators' ability to maintain the current margin of safety.

The NRC staff has reviewed the licensees' analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713

Attorney for licensee: James A. Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770

NRC Project Director: James E. Dyer

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: September 14, 1990, as supplemented March 15, 1991.

Description of amendment request: The proposed changes would revise the Technical Specifications (TS) for the Perry Nuclear Power Plant, Unit 1, to provide new reactor vessel pressure-temperature limits, recalculated using the formulas of NRC Regulatory Guide 1.99, Revision 2, as requested by NRC Generic Letter (GL) 88-11. In addition, the proposed changes would remove the reactor vessel material surveillance program withdrawal schedule from the TSs and would relocate the schedule in the Perry Updated Safety Analysis Report (USAR) in accordance with NRC GL 91-01. Associated changes to the Bases are also proposed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

The proposed changes do not involve a significant increase in the probability or consequences of a previously evaluated accident, because the revised pressure-temperature limit curves are determined in accordance with 10 CFR

Part 50, Appendices G and H, using the conservative methods described in NRC Generic Letter 88-11 and NRC Regulatory Guide 1.99, Revision 2. These revised curves will establish equivalent or more conservative limits on reactor vessel pressure as a function of temperature during the first 8 years of effective full power operation. The relocation of the surveillance capsule withdrawal schedule from the TS to the USAR in accordance with GL 91-01, is a purely administrative change; NRC prior approval is still necessary for any change to the schedule itself.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes do not involve any changes to plant components nor do they introduce any new modes of operation. The plant will be operated within the revised operating pressure limits, which will be determined in a more conservative manner. The relocation of the surveillance capsule withdrawal schedule is an administrative change that will have no effect on previous accident analyses.

The proposed changes do not involve a significant reduction in the margin of safety because the revised pressure-temperature limits conservatively account for reactor vessel irradiation embrittlement and are based on the latest NRC guidelines in Regulatory Guide 1.99, Revision 2, along with actual neutron fluence data obtained for Perry Unit 1. The relocation of the surveillance capsule withdrawal schedule is an administrative change only. Therefore, the existing margin of safety will be maintained.

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: May 10, 1991

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Section 6.0, "Administrative Controls," for the Davis-Besse Nuclear Power Station (DBNPS) to add flexibility and allow changes in the composition of the Station Review Board. In addition, some position titles within TS 6.0 would be revised to reflect organizational changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

Toledo Edison has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the DBNPS Unit Number 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no initiators or assumptions for a previously evaluated accident are affected by these proposed changes to TS 6.0.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because no initiators or assumptions for a previously evaluated accident are affected by these proposed changes to TS 6.0.

2a. Not create the possibility of a new kind of accident previously evaluated because no accident initiators are created. No new hardware changes are being made, no new testing is being created and no new operating manipulations are being created by these proposed changes to TS 6.0.

2b. Not create the possibility of a different kind of accident from any accident previously evaluated because no accident initiators are created. No changes in hardware, testing, or plant manipulations are being created by these proposed changes to TS 6.0.

3. Not involve a significant reduction in a margin of safety because the Station Review Board will continue to be composed of experienced, onsite supervisory personnel with expertise in the disciplines of plant operations, maintenance, planning, radiological controls, engineering and quality assurance. The other proposed changes are strictly administrative in nature.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Project Director: John N. Hannon

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: May 9, 1991, as supplemented by letter dated June 26, 1991.

Description of amendment request: This request proposes amendments to the Kewaunee Nuclear Power Plant (KNPP) Technical Specifications to satisfy commitments made by the licensee regarding NRC Generic Letter 90-06. This letter deals with Generic Issue 70 and Generic Issue 94, which focus on power-operated relief valve and block valve reliability and additional low-temperature overpressure protection. The proposed amendments include restrictions on the restart of an inactive reactor coolant pump, limiting conditions for operation of the pressurizer power-operated relief valves (PORVs) and associated block valves, and operability requirements of the low-temperature overpressure protection (LTOP) system. Administrative changes are also proposed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(a) Reactor coolant pump starting prohibitions

The proposed change was reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed change will not:

1) involve a significant increase in the probability or consequences of an accident previously evaluated.

Low-temperature overpressure protection (LTOP) is required in pressurized water reactors to provide protection against brittle failure of the reactor pressure vessel. The design basis of the KNPP LTOP system assumes that the maximum temperature difference between the secondary side heat sink and the reactor coolant system cold leg will be less than or equal to 100° F when a reactor coolant pump is started. This proposed TS provides an additional administrative control to ensure that the design basis of the LTOP system is satisfied. Consequently, this proposed TS provides increased assurance that the KNPP Appendix G pressure-temperature limits (Figure TS 3.1-2) will not be exceeded due to an energy input event. Therefore, this proposed change does not increase the probability or consequences of an accident previously evaluated.

2) create the possibility of a new or different type of accident from an accident previously evaluated.

A new or different kind of accident from those previously evaluated will not be created by this TS change. The proposed TS

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Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: May 9, 1991, as supplemented by letter dated June 26, 1991.

Description of amendment request: This request proposes amendments to the Kewaunee Nuclear Power Plant (KNPP) Technical Specifications to satisfy commitments made by the licensee regarding NRC Generic Letter 90-06. This letter deals with Generic Issue 70 and Generic Issue 94, which focus on power-operated relief valve and block valve reliability and additional low-temperature overpressure protection. The proposed amendments include restrictions on the restart of an inactive reactor coolant pump, limiting conditions for operation of the pressurizer power-operated relief valves (PORVs) and associated block valves, and operability requirements of the low-temperature overpressure protection (LTOP) system. Administrative changes are also proposed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(a) Reactor coolant pump starting prohibitions

The proposed change was reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed change will not:

1) involve a significant increase in the probability or consequences of an accident previously evaluated.

Low-temperature overpressure protection (LTOP) is required in pressurized water reactors to provide protection against brittle failure of the reactor pressure vessel. The design basis of the KNPP LTOP system assumes that the maximum temperature difference between the secondary side heat sink and the reactor coolant system cold leg will be less than or equal to 100° F when a reactor coolant pump is started. This proposed TS provides an additional administrative control to ensure that the design basis of the LTOP system is satisfied. Consequently, this proposed TS provides increased assurance that the KNPP Appendix G pressure-temperature limits (Figure TS 3.1-2) will not be exceeded due to an energy input event. Therefore, this proposed change does not increase the probability or consequences of an accident previously evaluated.

2) create the possibility of a new or different type of accident from an accident previously evaluated.

A new or different kind of accident from those previously evaluated will not be created by this TS change. The proposed TS

is for the purpose of providing an additional administrative restriction to assure that the design basis of the KNPP LTOP system is met. Therefore, the proposed TS change would not allow the KNPP to operate outside of its design basis.

3) involve a significant reduction in the margin of safety.

This proposed TS change will not reduce the margin of safety. Rather, the proposed change provides an additional administrative control to ensure plant operation remains within the design basis of the LTOP system. Consequently, the likelihood of the KNPP experiencing a pressure transient due to an energy input event that challenges the LTOP system and the Appendix G pressure/temperature limits is reduced.

(b) Modifications to the limiting conditions for operation of the pressurizer PORVs and associated block valves

The proposed changes were reviewed in accordance with the provisions of 10 CFR 50.92 and it has been determined that no significant hazards exist. The proposed changes will not:

1) involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of an accident previously evaluated will not be increased by this TS change. The accident of interest is a design-basis steam generator tube rupture (SGTR). The probability of a SGTR will not be increased as a result of providing an additional administrative control to ensure the availability of the pressurizer PORVs and block valves.

In addition, the consequences of an accident previously evaluated will not be increased by this TS change. The proposed change provides increased assurance that the pressurizer PORVs and block valves will be available to assist in the mitigation of a SGTR and thus limit the consequences of a SGTR.

2) create the possibility of a new or different kind of accident from an accident previously evaluated.

A new or different kind of accident from those previously evaluated will not be created by this TS change. The proposed TS is for the purpose of providing reasonable assurance that the pressurizer PORVs and block valves are available when called upon to perform a function. Ensuring the available of the PORVs and block valves will not alter the plant configuration, or plant performance.

3) involve a significant reduction in the margin of safety.

The margin of safety will not be reduced by this change to the Technical Specifications. This TS change increases the assurance that the pressurizer PORVs and block valves will be available when called upon to perform a function. Therefore, plant safety is enhanced and the risk to the health and safety of the public is reduced.

(c) Operability requirements of the LTOP system

The proposed changes were reviewed in accordance with the provisions of 10 CFR 50.92 and it has been determined that no significant hazards exist. The proposed changes will not:

1) involve a significant increase in the probability or consequences of an accident previously evaluated.

Low-temperature overpressure protection (LTOP) is required in pressurized water reactors to provide protection against brittle failure of the reactor pressure vessel. This proposed TS provides additional administrative assurance that LTOP will be available to mitigate a pressure transient event. The proposed TS is consistent with the design basis of the LTOP system. Consequently, this proposed TS provides increased assurance that the KNPP Appendix G pressure/temperature limits will not be exceeded during an overpressure event. Therefore, this proposed change will not increase the probability or consequences of an accident previously evaluated.

2) create the possibility of a new or different type of accident from an accident previously evaluated.

A new or different kind of accident from those previously evaluated will not be created by this TS change. The proposed TS is for the purpose of providing additional administrative assurance that LTOP will be available at the KNPP. The proposed TS is consistent with current plant practice regarding LTOP and will not alter the plant configuration or performance.

3) involve a significant reduction in the margin of safety. This proposed TS change will not reduce the margin of safety. Rather, the proposed TS change provides an additional administrative control to ensure LTOP availability. Consequently, the likelihood of a pressure transient exceeding the KNPP Appendix G pressure/temperature limits at low temperatures is reduced.

(d) Administrative changes

This proposed amendment includes administrative changes as a result of the conversion of Section 3.1 to the Word Perfect format, and are necessary to correct minor typographical errors and format inconsistencies. They do not change the intent of the Technical Specification or decrease WPSC's management support or involvement in activities at the Kewaunee Plant.

Therefore, the proposed changes pose no significant hazards for the following reasons:

1) The proposed changes will not result in a significant increase in the probability of occurrence of consequences of an accident.

2) The proposed changes will not create the possibility of a new or different kind of accident from any previously analyzed.

3) The proposed changes will not involve a significant decrease in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: David Baker, Esq., Foley and Lardner, P. O. Box 2193 Orlando, Florida 31082.

NRC Project Director: John N. Hannon.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendments request: April 24, 1991

Description of amendments request: Technical Specification 15.3.4, "Steam and Power Conversion System," would be revised by changing specification A.4. to require a minimum of 13,000 gallons of water per operating unit in the condensate storage tank when the reactor coolant is heated above 350° F and the reactor is to be taken critical. The current specification requires 10,000 gallons of water per operating unit.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

The amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The volume of condensate is pertinent during accident scenarios involving a demand for auxiliary feedwater and notably during a station blackout. The volume of water in storage does not affect the probability of an accident but potentially affects the consequences.

The proposed change increases the required water inventory in the condensate storage tanks. The increased inventory provides the operator with additional time in which to take action. Maintaining a greater water volume also provides the capability to remove a greater quantity of decay heat prior to additional operator action being required. The additional margin may serve to reduce the overall accident consequences.

The amendment does not create the possibility of a new or different kind of accident from any previously evaluated. The required minimum inventory in the condensate storage tanks is increased. However, there is no change to the design or operation of the auxiliary feedwater system or to any other plant system or component. Therefore, no new or different accident scenario resulting from this proposed amendment can be postulated.

The proposed amendment does not result in a significant reduction in a margin of safety. In fact, as noted above, providing the greater inventory of water in the condensate storage tanks provides the operator with additional time to respond to the accident and with additional heat removal capability. These tend to increase a margin of safety.

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Project Director: John N. Hannon.

Previously Published Notices Of Consideration Of Issuance Of Amendments To Operating Licenses And Proposed No Significant Hazards Consideration Determination And Opportunity For Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: November 19, 1990 as supplemented April 1, 1991, May 20, 1991 and June 14, 1991.

Brief description of amendment request: The proposed amendments would increase the enrichment of Westinghouse Standard and Vantage 5H fuel that can be stored in the new fuel storage racks, the spent fuel pool or placed in the reactor core. Date of publication of individual notice in **Federal Register:** June 28, 1991 (56 FR 29732)

Expiration date of individual notice: July 29, 1991

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Notice Of Issuance Of Amendment To Facility Operating License

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, 50-529, and 50-530, Palo Verde Nuclear Generating Station, Units 1, 2 and 3, Maricopa County, Arizona

Date of application for amendment: October 11, 1990

Brief description of amendment: These amendments eliminate typographical errors, provide clarification, and improve consistency in the Technical Specifications for Palo Verde Nuclear Generating Station (PVNGS) Units 1, 2, and 3.

Date of issuance: June 27, 1991

Effective date: June 27, 1991

Amendment No.: Unit 1: No. 54; Unit 2: No. 39 and Unit 3: No. 27

Facility Operating License No. NPF-41, No. NPF-51, and No. NPF-74: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 17, 1991 (56 FR 15638) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 27, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: November 7, 1990, and supplemented on May 20, 1991.

Brief description of amendments: The amendments modify Technical Specifications (TS) action statements of 3.8.1.2, 3.8.2.2, 3.8.2.4, and 3.9.4 in relation to the limiting condition for operation (LCO) requirements for the A.C. electrical power sources, A.C. electrical busses, D.C. electrical equipment and busses, and the containment penetrations. The requirement to establish containment integrity is replaced with the requirement to suspend all operations relative to: core alterations, positive reactivity changes, the movement of irradiated fuel, and the movement of heavy loads over irradiated fuel. The change also requires that containment penetration closure, as identified in TS 3.9.4, be established within 8-hours and corrective actions be initiated immediately to restore the minimum A.C. electrical power sources, A.C. electrical busses and, D.C. electrical equipment and busses. The requirements of TS 3.9.4 are modified to be consistant with the above action *f individual notice:*

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Arizona Public Service Company, et al., Docket Nos. STN 50-528, 50-529, and 50-530, Palo Verde Nuclear Generating Station, Units 1, 2 and 3, Maricopa County, Arizona

Date of application for amendment: October 11, 1990

Brief description of amendment: These amendments eliminate typographical errors, provide clarification, and improve consistency in the Technical Specifications for Palo Verde Nuclear Generating Station (PVNGS) Units 1, 2, and 3.

Date of issuance: June 27, 1991

Effective date: June 27, 1991

Amendment No.: Unit 1: No. 54; Unit 2: No. 39 and Unit 3: No. 27

Facility Operating License No. NPF-41, No. NPF-51, and No. NPF-74: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 17, 1991 (56 FR 15638) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 27, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: November 7, 1990, and supplemented on May 20, 1991.

Brief description of amendments: The amendments modify Technical Specifications (TS) action statements of 3.8.1.2, 3.8.2.2, 3.8.2.4, and 3.9.4 in relation to the limiting condition for operation (LCO) requirements for the A.C. electrical power sources, A.C. electrical busses, D.C. electrical equipment and busses, and the containment penetrations. The requirement to establish containment integrity is replaced with the requirement to suspend all operations relative to: core alterations, positive reactivity changes, the movement of irradiated fuel, and the movement of heavy loads over irradiated fuel. The change also requires that containment penetration closure, as identified in TS 3.9.4, be established within 8-hours and corrective actions be initiated immediately to restore the minimum A.C. electrical power sources, A.C. electrical busses and, D.C. electrical equipment and busses. The requirements of TS 3.9.4 are modified to be consistant with the above action statements and the applicable TS Bases sections are also modified to reflect the proposed changes.

The May 20, 1991, letter provided clarifying information and did not change the initial proposed no significant hazards consideration determination.

Date of issuance: June 27, 1991

Effective date: June 27, 1991

Amendment Nos.: 155 and 135

Facility Operating License Nos. DPR-53 and DPR-69. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 9, 1991 (56 FR 890) The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated June 27, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: April 2, 1991

Brief description of amendments: The amendments modify the Technical Specifications (TS) Definitions, Section 1.8, Item 1.8.3, and the TS Surveillance Requirements, Section 4.6.1.1.b. Section 1.8 defines when containment integrity exists, Item 1.8.3 defines the conditions the containment air locks must meet to assure containment integrity, and Section 4.6.1.1.b specifies the required surveillances of the air locks to assure containment integrity. The changes remove the existing requirement that the air locks be operable, in both the TS definitions and surveillance sections, and replace it with the requirement that the air locks be in compliance with the requirements of TS Section 3.6.1.3. Section 3.6.1.3 provides the limiting conditions of operation (LCO), applicable modes, and actions to be taken (including the allowed out-of service times for repairs) when the air locks are inoperable prior to requiring a unit to shutdown.

Date of issuance: July 1, 1991

Effective date: July 1, 1991

Amendment Nos.: 156 and 136

Facility Operating License Nos. DPR-53 and DPR-69. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 29, 1991 (56 FR 24205) The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated July 1, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: January 22, 1991

Brief description of amendment: This amendment revises the Technical Specifications to eliminate the setdown requirements for the Average Power Range Monitor (APRM) flow referenced rod block and scram lines and changes the Rod Block Monitor (RBM) rod block set points from flow-biased to power-dependent. The revisions will enhance plant availability by facilitating more rapid power ascension.

Date of issuance: July 1, 1991

Effective date: July 1, 1991

Amendment No.: 138

Facility Operating License No. DPR-35: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** March 20, 1991 (56 FR 11771) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 5, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: January 15, 1991

Brief description of amendment: The amendment revises numerous Technical Specifications (TS) in support of the realignment of some of Carolina Power & Light Company's (CP&L's) organizational structure. CP&L has created a Nuclear Assessment Department (NAD) to assume the functions and responsibilities for (1) administering CP&L's independent review program for nuclear facilities that was provided by the Corporate Nuclear Safety Section (CNSS), and (2) auditing of the unit activity provided by the Quality Assurance Services Section of the Corporate Quality Assurance Department.

Date of issuance: July 8, 1991

Effective date: July 8, 1991

Amendment No. 26

Facility Operating License No. NPF-63. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** March 6, 1991 (56 FR 9376) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 8, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station Units 1 and 2, Lake County, Illinois

Date of application for amendments: May 9, 1991

Brief description of amendments: The amendments revised Technical Specification 4.0.2 and the associated bases to delete the 3.25 limit on extension of surveillance intervals.

Date of issuance: July 2, 1991

Effective date: July 2, 1991

Amendment Nos.: 124 and 113

Facility Operating License Nos. DPR-39 and DPR-48. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 29, 1991 (56 FR 24208) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 2, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station Units 1 and 2, Lake County, Illinois

Date of application for amendments: April 25, 1990

Brief description of amendments: The amendments revise the Technical Specifications to correct inconsistencies in the Reactor Vessel Toughness tables.

Date of issuance: July 10, 1991

Effective date: July 10, 1991

Amendment Nos.: 125 and 114

Facility Operating License Nos. DPR-39 and DPR-48. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 11, 1990 (55 FR 28473) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 10, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: March 22, 1991

Brief description of amendment: The amendment will amend Table 4.0-1, "Augmented Inservice Inspection Program," Technical Specification 4.0.6 to reflect the addition of another weld location on a feedwater line.

Date of Issuance: June 27, 1991

Effective date: June 27, 1991

Amendment No.: 139

Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 1, 1991 (56 FR 20030) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated June 27, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: April 18, 1991

Brief description of amendment: The amendment will change Section 1.10, definition of E-bar - Average Disintegration Energy, by deleting Tritium as an isotope to be used in the calculation of E-bar.

Date of Issuance: July 1, 1991

Effective date: July 1, 1991

Amendment No.: 140

Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 29, 1991 (56 FR 24208) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated July 1, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: June 14, 1991

Brief description of amendment: The amendment would replace footnotes (a) and (b) to Table 3.3-2, Item 6.a with new footnotes (c) and (d) and add new note "d" to Table 3.3-2, Items 3.a.1 and 3.a.2, to allow the feedwater isolation system to be defeated during surveillance testing and that the Limiting Condition for Operation is only applicable when the feedwater isolation system is in the automatic mode.

Date of Issuance: July 3, 1991

Effective date: July 3, 1991

Amendment No.: 141

Facility Operating License No. DPR-61. Amendment revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: Yes (56 FR 28423 dated June 20, 1991). The notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by July 22, 1991, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment. The Commission's related evaluation of the amendment and final no significant hazards consideration determination is contained in a Safety Evaluation dated July 3, 1991.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: April 16, 1991

Brief description of amendments: The amendments are a one-time only change to enable replacement of the existing 125 volt DC battery cells with new cells.

Date of issuance: July 1, 1991

Effective date: July 1, 1991

Amendment Nos.: 121 and 103

Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: May 15, 1991 (56 FR 22463) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 1, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Entergy Operations, Inc., Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Unit Nos. 1 and 2, Pope County, Arkansas

Date of amendment request: April 18, 1991

Brief description of amendments: The amendments revised the format of the Semiannual Radioactive Effluent Release Report from Regulatory Guide 1.21, Revision 0, Appendix A to Regulatory Guide 1.21, Revision 1.

Date of issuance: July 5, 1991

Effective date: 30 days from the date of issuance.

Amendment Nos.: 148 and 120

Facility Operating License Nos. DPR-51 and NPF-6. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: May 29, 1991 (56 FR 24208) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 5, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: April 18, 1991

Brief description of amendment: The amendment revised the list of radioactive material sources in Technical Specification (TS) 4.14 subject to the 18-month periodic leak test by deleting the four area radiation monitor sources located inside the reactor building from TS 4.14.

Date of issuance: July 5, 1991

Effective date: 30 days from the date of issuance.

Amendment No.: 149

Facility Operating License No. DPR-51. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 15, 1991 (56 FR 22464) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 5, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Mississippi Power & Light Company, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: April 10, 1991, as revised June 17, 1991

Brief description of amendment: The amendment altered Technical Specification 4.7.4 Surveillance Requirements to incorporate snubber population size as a factor in determining the time interval between visual inspections of snubbers. In addition, references to snubbers connected to a common hydraulic fluid reservior were deleted.

Date of issuance: July 8, 1991

Effective date: July 8, 1991

Amendment No: 78

Facility Operating License No. NPF-29. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** May 15, 1991 (56 FR 22468) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 8, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy, Center, Linn County, Iowa

Date of application for amendment: December 14, 1990

Brief description of amendment: The amendment revised Section 4.7.D.1.c of the Technical Specifications by deleting the requirement for a weekly partial closure and reopening of the main steam line isolation valves, and corrected an error in the first footnote of Table 3.7-3.

Date of issuance: July 12, 1991

Effective date: July 12, 1991

Amendment No.: 171

Facility Operating License No. DPR-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 6, 1991 (56 FR 26167) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 12, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street S. E., Cedar Rapids, Iowa 52401.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: August 31, 1989, as supplemented by letter dated June 7, 1991.

Brief description of amendment: The amendment changed the expiration date for the Cooper Nuclear Station

Facility Operating License No. DPR-46 from June 4, 2008 to January 18, 2014. This extends the duration of the license to 40 years from the date of issuance of the operating license.

Date of issuance: July 5, 1991

Effective date: July 5, 1991

Amendment No.: 143

Facility Operating License No. DPR-46. Amendment revised the Facility Operating License.

Date of initial notice in **Federal Register:** November 15, 1989 (54 FR 47607) The additional information contained in the June 7, 1991, letter was clarifying in nature and thus was within the scope of the initial notice and did not affect the NRC staff's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 5, 1991. No siginificant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California *Date of application amendments:* September 11, 1990 (Reference LAR 90-09)

Brief description of amendments: These amendments revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant Unit Nos. 1 and 2 to clarify the requirement that two redundant steam supply sources are needed for the turbine-driven auxiliary feedwater (AFW) pump to be operable and to remove the differential pressure values from the surveillance requirements for the AFW pumps and perform the testing pursuant to TS 4.0.5.

Date of issuance: June 27, 1991

Effective date: June 27, 1991

Amendment Nos.: Unit 1: No. 62; Unit 2: No. 61

Facility Operating License Nos. DPR-80 and DPR-82: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 14, 1990 (55 FR 47575) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 27, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California *Date of application amendments:* October 18, 1990

Brief description of amendments: These amendments revise the combined Technical Specifications (TS) for Diablo Canyon Power Plant Unit Nos. 1 and 2. The change allows the determination of Quadrant Power Tilt Ratio by either a full incore flux map or by symmetric flux thimbles measurement in the event that a single power range channel becomes inoperable above 75 percent rated thermal power. The existing TS permit only the use of the four pairs of symmetric core thimbles in this situation.

Date of issuance: June 26, 1991

Effective date: June 26, 1991

Amendment Nos.: Unit 1: No. 63; Unit 2: No. 62

Facility Operating License Nos. DPR-80 and DPR-82: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 14, 1990 (55 FR 47576) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 26, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: February 28, 1990 (Reference LAR 90-03)

Brief description of amendments: The amendments revised the combined Technical Specifications for the Diablo Canyon Power Plant Unit Nos. 1 and 2 by adding TS 3/4.7.1.6 and the associated Bases to assure operability of the steam generator 10 percent atmospheric dump valves for mitigation of a steam generator tube rupture accident.

Date of issuance: June 27, 1991
Effective date: June 27, 1991
Amendment Nos.: Unit 1: No. 64; Unit 2: No. 63

Facility Operating License Nos. DPR-80 and DPR-82: Amendments changed the Technical Specifications.

Date of initial notice in **Federal Register:** March 21, 1990 (55 FR 10543) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 27, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: April 12, 1991

Brief description of amendments: The amendment revised the visual inspection portion of Specification 4.7.4 and the associated Bases as suggested in NRC Generic Letter 90-09.

Date of issuance: June 28, 1991
Effective date: June 28, 1991
Amendment Nos.: 113 and 82

Facility Operating License Nos. NPF-14 and NPF-22. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 1, 1991 (56 FR 20042) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 28, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Philadelphia Electric Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: March 28, 1991

Brief description of amendments: The amendments modified the reactor pressure vessel pressure-temperature limits and removed the schedule in the technical specifications for withdrawal of material specimens as suggested by NRC Generic Letter 91-01.

Date of issuance: June 27, 1991
Effective date: June 27, 1991
Amendments Nos.: 162 and 164

Facility Operating License Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 1, 1991 (56 FR 20042) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 27, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Philadelphia Electric Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: November 22, 1989

Brief description of amendments: The amendments revised the Technical Specifications to incorporate a Surveillance Requirement for the safety grade pneumatic supply to the containment purge/vent valve inflatable seals.

Date of issuance: July 3, 1991
Effective date: July 3, 1991
Amendments Nos.: 163 and 165

Facility Operating License Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 15, 1991 (56 FR 22473) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 3, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Philadelphia Electric Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket No. 50-278, Peach Bottom Atomic Power Station, Unit No. 3, York County, Pennsylvania

Date of application for amendment: June 14, 1991

Brief description of amendments: The amendment changed Section 3.3.B.1 and 4.3.B.1 of Peach Bottom, Unit 3 Technical Specifications to allow operation of control rod 38-23, uncoupled from its drive, for the remainder of Cycle 8, which is to be completed before October 30, 1991. The amendment specifies conditions under which Rod 38-23 may be operated and modifies existing surveillance requirements to verify rod position by use of neutron instrumentation.

Date of issuance: July 10, 1991
Effective date: July 10, 1991
Amendment No.: 166

Facility Operating License No. DPR-56: Amendment revised the Technical Specifications. Public comments requested as to proposed significant hazards consideration: Yes (56 FR 28935 dated June 25, 1991). That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by July 25, 1991. The notice indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 10, 1991.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: April 15, 1991

Brief description of amendment: The amendment revises the TSs to conform to the NRC staff position on Inservice Inspection (ISI) in Generic Letter (GL) 88-01, "NRC Position on IGSCC in BWR Austenitic Stainless Steel Piping."

*Date of issuance:*July 1, 1991
*Effective date:*July 1, 1991
*Amendment No.:*170

Facility Operating License No. DPR-59: Amendment revised the Technical Specification.

Date of initial notice in **Federal Register:** May 29, 1991 (56 FR 24215) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 1, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: June 21, 1990

Brief description of amendment: The amendment reduces the Residual Heat Removal pump flow rate surveillance acceptance criteria from 9900 gpm to 8910 gpm. This change allows more accurate and repeatable inservice testing by eliminating problems inherent in testing the pumps near runout flow conditions. The amendment also removes an out-of-date 14-day LCO approved only for cycle 9 by TS

Amendment No. 153.

*Date of issuance:*July 1, 1991

*Effective date:*July 1, 1991

*Amendment No.:*171

Facility Operating License No. DPR-59: Amendment revised the Technical Specification.

Date of initial notice in **Federal Register:** August 8, 1990 (55 FR 32330) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 1, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: Two letters, both dated April 3, 1991

Brief description of amendments: These amendments corrected administrative errors in technical specifications.

Date of issuance: July 1, 1991

Effective date: For both units as of the date of issuance, to be implemented within 60 days from the date of issuance.

Amendment Nos. 127 and 106

Facility Operating License Nos. DPR-70 and DPR-75. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 29, 1991 (56 FR 24218) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 1, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: October 26, 1990, as supplemented April 15, 1991

Brief description of amendment: The amendment changes the Technical Specifications to allow the deletion of two valves from Table 3.8-2, the addition of twelve valves to Table 3.8-2, the rearrangement of Table 3.8-2 into alphanumeric order, and the updating of twelve valve designations and functions. In addition, surveillance test requirements for valves whose overloads are not bypassed will be added, and surveillance test requirements for circuitry not used at V. C. Summer Nuclear Station will be deleted.

Date of issuance: July 1, 1991.

Effective date: July 1, 1991.

Amendment No.: 102

Facility Operating License No. NPF-12. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** January 9, 1991 (56 FR 896) The April 15, 1991, supplement to the proposed amendment did not affect the staff's finding of no significant hazards considerations. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 1, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of application for amendments: August 1, 1990

Brief description of amendments: These amendments revise the frequency of the surveillance for the outside recirculation spray and containment spray weight-loaded check valves from once every 18 months to every refueling outage.

Date of issuance: July 8, 1991

Effective date: July 8, 1991

Amendment Nos. 158 & 157

Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 26, 1990 (55 FR 53078) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 8, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: March 5, 1991

Brief description of amendment: The amendment revises Section 6.0 of the Wolf Creek Technical Specifications to reflect an organizational change and various title changes in the Wolf Creek Nuclear Operating Corporation.

Date of Issuance: June 27, 1991

Effective date: June 27, 1991

Amendment No.: 45

Facility Operating License No. NPF-42. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 3, 1991 (56 FR 13672) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 27, 1991.

No significant hazards consideration comments received: No. Local Public Document Room Locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: March 20, 1991

Brief description of amendment: The amendment revises Technical Specification 3.1.3.2 and its associated Bases to add a new Action Statement to address the situation where more than one digital rod position indicator per control rod bank may be inoperable. The new Action Statement would avoid unnecessary plant shutdowns per Technical Specification 3.0.3, yet is consistent with the overall protection provided by related Technical Specifications. Additionally, a revision to Technical Specification 3.1.3.1 corrects an erroneous reference.

Date of Issuance: June 27, 1991

Effective date: June 27, 1991

Amendment No.: 46

Facility Operating License No. NPF-42. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 1, 1991 (56 FR 20047) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 27, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room Locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621.

Dated at Rockville, Maryland, this 17th day of July 1991.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation

[Doc. 91-16427 Filed 7-23-91; 8:45 am]

BILLING CODE 7590-01-D

[Docket No. 50-322-OLA-2; ASLBP No. 91-631-OLA-2 (Possession Only License)]

Order; Changing Location of Prehearing Conference

July 17, 1991.

In the Matter of Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1)

For good cause shown, the July 12, 1991 unopposed joint motion of Scientists and Engineers for Secure Energy, Inc. and Shoreham-Wading River Central School District to move the location of the July 30, 1991 prehearing conference from Hauppauge, New York to the Washington, DC area is hereby granted.

The prehearing conference scheduled for July 30, 1991, at Hauppauge, New York is cancelled. Instead, the prehearing conference will be held on July 30, 1991, beginning at 9:30 a.m., in the Nuclear Regulatory Commission Hearing Room, 5th Floor, 4350 East West Highway, Bethesda, Maryland.

In a July 15, 1991 response to the motion, Long Island Lighting Company proposed to cancel a July 23, 1991 prehearing conference in Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), Docket No. 50-322-OLA, and to reschedule it on the same day as the subject prehearing conference. This proposal was opposed by movants. The proposal was not regarded as relevant to the motion to change the location of the July 30, 1991 prehearing conference and was not considered by the Licensing Board in deciding the motion.

It is so ordered.

For the Atomic Safety and Licensing Board.

Bethesda, Maryland, July 17, 1991.

Morton B. Margulies,

Chairman, Administrative Law Judge.

[FR Doc. 91-17483 Filed 7-23-91; 8:45 am]

BILLING CODE 7590-01-M

THE PRESIDENT'S EDUCATION POLICY ADVISORY COMMITTEE

Meeting

AGENCY: The President's Education Policy Advisory Committee.

ACTION: Notice of meeting.

SUMMARY: The President's Education Policy Advisory Committee was established under Executive Order 12687 and signed by the President of the United States on August 15, 1989.

Tentative Agenda

Items: The tentative agenda for the meeting will include a discussion of suggestions for presidential education-related activities ideas for parental and business involvement in education.

Dates: The ninth meeting is scheduled for Monday, July 29, 1991, from 1:30 to 4 p.m.

Address: The meeting will be held at the Old Executive Office Building, room 180, Washington, DC.

Attendance: Please contact Rae Nelson at the White House Office of Policy Development to indicate attendance or for further information. The phone number is (202) 456-7777. For clearance purposes, please call no less than twenty-four hours in advance. Please provide over the phone, your social security number, date of birth, and name as read on your driver's license. When entering the building, you will be required to show picture identification.

July 18, 1991.

Roger B. Porter,

Assistant to the President for Economic and Domestic Policy.

[FR Doc. 91-17618 Filed 7-23-91; 8:45 am]

BILLING CODE 3127-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 81-850]

Application and Opportunity for Hearing: Steelville Telephone Exchange, Inc.

July 18, 1991.

Notice is hereby given that Steelville Telephone Exchange, Inc. has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") for an order of exemption from the registration requirements of section 12(g) of the 1934 Act.

For a detailed statement of the information presented, all persons are referred to the application which is on file at the offices of the Commission in the Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

Notice is further given that any interested person, not later than August 13, 1991, may submit to the Commission in writing the person's views or any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which the person desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof. At any time after that date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-17562 Filed 7-23-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974: Systems of Records; Parking Permit Application File and Vanpool Application File and Parking Permit Management System

The Department of Transportation herewith publishes a notice relating to the proposed amendment of two systems of records maintained in connection with application for parking permit in its Washington, DC garages.

Any person or agency may submit written comments on the proposed amendment of the systems to Fred Fillman, Chief, Transportation and Parking Section (M-443.3), Office of the Secretary, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Comments to be considered must be received by August 15, 1991.

If no comments are received, the proposed change will become effective on the above-mentioned date. If comments are received, the comments will be considered and where adopted,

and, July 17, 1991.
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Filed 7–23–91; 8:45 am]
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Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof. At any time after that date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–17562 Filed 7–23–91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974: Systems of Records; Parking Permit Application File and Vanpool Application File and Parking Permit Management System

The Department of Transportation herewith publishes a notice relating to the proposed amendment of two systems of records maintained in connection with application for parking permit in its Washington, DC garages.

Any person or agency may submit written comments on the proposed amendment of the systems to Fred Fillman, Chief, Transportation and Parking Section (M–443.3), Office of the Secretary, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Comments to be considered must be received by August 15, 1991.

If no comments are received, the proposed change will become effective on the above-mentioned date. If comments are received, the comments will be considered and where adopted,

the document will be republished with the changes.

Issued in Washington, D.C. July 15, 1991.

Melissa J. Allen,

Deputy Assistant Secretary for Administration

Narrative Statement for Department of Transportation Office of the Secretary

The Department of Transportation (DOT), on behalf of the Office of the Secretary (OST), proposes to amend two existing systems of records, "Parking Permit Application File and Vanpool Application File." DOT/OST 024 and "Parking Permit Management System," DOT/OST 025, established under the Privacy Act of 1974. These systems contain information on individuals applying for parking privileges in Washington, DC parking garages.

The purposes of this notice is to amend the two systems by including, as a routine use of the information contained in each system, matching of applicants for the purpose of creating or adding to carpools and vanpools and the distribution of information concerning applications by individuals to other Federal agencies as part of a matching program designed to expose fraudulent applications. Under certain circumstances the release of this information to other Federal agencies will create a valuable deterrent effect on individuals fraudulently appearing on more than one carpool or vanpool application in the Washington, D.C. area. This will give Parking Management Officers in the area information they need to help prevent carpool and vanpool permits being issued to individuals that do not have the required number of riders to qualify for a permit.

Most of the information in the systems is provided voluntarily by individuals filling out DOT Form 1700.9, "Official Parking Application" which has a Privacy Act Disclosure printed on it. The information will be used in accordance with the stated routine uses and will not unduly impact individual privacy rights.

Information in these systems may be processed in both hard copy and computerized environments. A description of the steps taken to safeguard these records is given under the appropriate heading in the attached copy of the system notice for each system prepared for publication in the **Federal Register.**

The purpose of this report is to comply with Office of Management and Budget Circular A–130, Appendix 1, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985.

Systems of record

DOT/OST 024

SYSTEM NAME:

Parking Permit Application Files and Vanpool Application Files.

SYSTEM LOCATION:

Department of Transportation, Office of the Secretary (OST), Parking Management Office, M–443.3, 400 Seventh Street, SW., Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DOT parking permit holders (Washington, DC), DOT carpool members (Washington, DC), and DOT vanpool applicants (Washington, DC).

CATEGORIES OF RECORDS IN THE SYSTEM:

Parking permit application forms and vanpool application forms.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The following routine uses apply:

- In an effort to match people for carpools or vanpools.
- To determine criteria for permit issuance.
- To update data as changes occur.
- To record garage violations.
- For periodic review or revalidation.
- As part of a program designed to expose fraudulent applications. (This is not a computer matching program as stated in the Computer Matching and Privacy Protection Act of 1988 because it is a routine administrative match using Federal personnel records (5 USC 552a(8)(b)(v)(I)).
- See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 USC 552a(b)(12).

Disclosures may be made from this system to consumer reporting agencies (collecting on behalf of the U.S. Government) as defined in the Fair Credit Reporting Act (15 USC 1681a(f)) or the Federal Claims Collection Act of 1982 (31 USC 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in lockable visible edge file in a security locked workroom.

RETRIEVABILITY:

Parking permit application forms are indexed sequentially by permit number; vanpool applications are alphabetical by name and organized for retrieval by "home cell" numbers for areas.

SAFEGUARDS:

Records maintained in lockable files within the Parking Management Office. Printout of carpool listing used in matching program has name, agency, DOT permit number, and work telephone number only.

RETENTION AND DISPOSAL:

Records cards are retained for 3 years locally, sent to the Federal Records Center for 2 more years, and then destroyed.

SYSTEM MANAGER AND ADDRESS:

Chief, Transportation and Parking Section, M443.3, U.S. Department of Transportation, Office of the Secretary, 400 Seventh Street, SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Individual may review own data upon presentation of valid DOT ID card.

RECORD ACCESS PROCEDURE:

Same as Notification Procedure.

CONTESTING RECORD PROCEDURES:

Apply to System Manager.

RECORD SOURCE CATEGORIES:

Information obtained from applications submitted by individual and from notifications from other agencies in the matching program.

Systems of record

DOT/OST 025

SYSTEM NAME:

Parking Permit Management System.

SYSTEM LOCATION:

Department of Transportation, Office of the Secretary (OST), Parking Management Office, M–443.3, 400 Seventh Street, SW., Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DOT parking permit holders and DOT carpool members (Washington, DC).

CATEGORIES OF RECORDS IN THE SYSTEM:

Status record of carpool permits, member record of carpools, and carpool location listings.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The following routine uses apply:

- Used for ADP report and listing production.

- Used by the Parking Management Office for system administration.
- Location listings are for use in forming and enlarging carpools and are used by the general public.
- Carpool listing printouts are furnished to other Federal Parking Management offices in a program designed to expose fraudulent applications. (This is not a computer matching program as stated in the Computer Matching and Privacy Protection Act of 1988 because it is a routine administrative match using Federal personnel records (5 USC 552a(a)(8)(b)(v)(I)).
- Prefatory Statement of General Routine Uses applies.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 USC 552a(b)(12).

Disclosures may be made from this system to consumer reporting agencies (collecting on behalf of the U.S. Government) as defined in the Fair Credit Reporting Act (15 USC 1681a(f)) or the Federal Claims Collection Act of 1982 (31 USC 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Must enter password to access data. Password known only to Parking Management Office personnel.

RETRIEVABILITY:

Indexed sequentially by permit number.

SAFEGUARDS:

Parking Management Office personnel have only access to general files through data password. The carpool location list is available for general public use, but is secured in the Parking Management Office. Printout of carpool listing used in matching program has name, agency, DOT permit number, and work telephone number only.

RETENTION AND DISPOSAL:

Data is deleted from ADP files when individual leaves the system. Record copies of monthly reports and listings are retained locally for 3 years, forwarded to the Federal Records Center for 2 more years, then destroyed.

SYSTEM MANAGER AND ADDRESS:

Chief, Transportation and Parking Section, M443.3, U.S. Department of Transportation, Office of the Secretary, 400 Seventh Street, SW., Washington, DC 20590.

NOTIFICATION PROCEDURES:

Individual may review own data upon presentation of valid DOT ID card.

RECORD ACCESS PROCEDURES:

Same as Notification Procedure.

CONTESTING RECORD PROCEDURES:

Apply to System Manager.

RECORD SOURCE CATEGORIES:

Information obtained from applications submitted by individual and from notifications from other Federal agencies in the matching program.

[FR Doc. 91-17569 Filed 7-23-91; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

UMTA Section 3 and 9 Grant Obligations

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation and Related Agencies Appropriations Act, 1991, Public Law 101-516, signed into law by President George Bush on November 5, 1990, contained a provision requiring the Urban Mass Transportation Administration to publish an announcement in the **Federal Register** every 30 days of grants obligated pursuant to sections 3 and 9 of the Urban Mass Transportation Act of 1964, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant. This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT: Janet Lynn Sahaj, Chief, Resource Management Division, Office of Capital and Formula Assistance, Department of Transportation, Urban Mass Transportation Administrtion, Office of Grants Management, 400 Seventh Street, SW., room 9301, Washington, DC 20590 (202) 366-2053.

SUPPLEMENTARY INFORMATION: The section 3 program was established by the Urban Mass Transportation Act of 1964 to provide capital assistance to eligible recipients in urban areas. Funding for this program is distributed on a discretionary basis. The section 9 formula program was established by the Surface Transportation Assistance Act of 1982. Funds appropriated to this program are allocated on a formula basis to provide capital and operating assistance in urbanized areas. Pursuant to the statute UMTA reports the following grant information:

SECTION 3 GRANTS

Transit Property	Grant No.	Grant amount	Obligation date
City of Tucson, Tucson, AZ	AZ-03-0016-00	$3,000,000	05/31/91
Bay Area Rapid Transit District, San Francisco-Oakland, CA	CA-03-0355-00	2,841,000	06/18/91
City of Port Collins, Port Collins, CO	CO-03-0047-00	326,000	06/27/91
Housatonic Area Regional Transit, Danbury, CT.-N.Y	CT-03-0079-00	1,650,000	06/14/91
Iowa Department of Transportation, Iowa	IA-03-0065-00	250,665	05/31/91
Chicago Transit Authority, Chicago, IL-Northwestern IN	IL-03-0158-00	13,387,719	05/10/91
Lowell Regional Transit Authority, Lowell, MA	MA-03-0162-00	2,860,002	06/05/91
Franklin Regional Transit Authority, Greenfield, MA	MA-03-0163-00	97,302	06/05/91
Southeastern Regional Transit Authority, New Bedford, MA	MA-03-0173-00	914,967	06/05/91
City of Lincoln, Lincoln, Nebraska	NE-03-0025-00	38,025	05/31/91
City of Roswell, Roswell, New Mexico	NM-03-0010-00	1,650,000	04/22/91
Metropolitan Transportation Authority, New York, N.Y.-Northeastern N.J	NY-03-0265-00	102,182,250	06/30/91
Regional Transportation Commission, Reno, NV	NV-03-0006-00	3,056,175	06/18/91
Greater Cleveland Regional Transit Authority, Cleveland, OH	OH-03-0113-00	6,750,000	06/04/91
Greater Cleveland Regional Transit Authority, Cleveland, OH	OH-03-0115-00	15,959,700	07/08/91
City of Charleston, Charleston, S.C	SC-03-0007-00	518,712	07/02/91
Vermont Agency of Transportation, Montpelier, VT	VT-03-0013-00	324,762	06/07/91

SECTION 3 GRANTS—Continued

Transit Property	Grant No.	Grant amount	Obligation date
West Virginia Department of Administration, West Virginia	WV-03-0020-00	3,425,986	06/18/91

SECTION 9 GRANTS

Transit Property	Grant No.	Grant amount	Obligation date
Orange County Transit District, Los Angeles-Long Beach, CA	CA-90-X426-00	$15,135,200	04/01/91
Metropolitan Transit Development Board, San Diego, CA	CA-90-X435-00	7,942,693	04/05/91
Delaware River Port Authority, Philadelphia, PA.-N.J	NJ-90-X032-00	2,550,568	05/16/91
Centre Area Transportation Authority, State College, PA	PA-90-X208-00	380,597	05/21/91

Issued on July 17, 1991.

Brian W. Clymer,

Administrator.

[FR Doc. 91-127475 Filed 7-23-91; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1991—Rev., Supp. No. 1]

Surety Companies Acceptable on Federal Bonds; Contractor's Bonding and Insurance Co.

The above mentioned company was listed in 56 FR 30139, July 1, 1991, as a surety company acceptable on Federal bonds. Federal bond-approving officers are hereby notified that Contractor's Bonding and Insurance Company is required by State law to conduct business in the State of California as CBIC Bonding and Insurance Company.

Federal bond-approving officers should annotate their reference copies of Treasury Circular 570, 1991 Revision, to indicate that CBIC Bonding and Insurance Company is acceptable on Federal bonds in the State of California.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 287-3921 or (202) 874-6850 (effec. July 27, 1991).

Dated: July 1, 1991.

Charles F. Schwan, III,

Director, Funds Management Division.

[FR Doc. 91-17515 Filed 7-23-91; 8:45 am]

BILLING CODE 4810-35-M

Office of Thrift Supervision

Danbury Federal Savings and Loan Association; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Danbury Federal Savings and Loan Association, Danbury, Connecticut, on July 12, 1991.

Dated: July 18, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-17535 Filed 7-23-91; 8:45 am]

BILLING CODE 6720-01-M

Fidelity Federal Savings and Loan Association; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Fidelity Federal Savings and Loan Association, Austin, Texas, on July 12, 1991.

Dated: July 18, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-17536 Filed 7-23-91; 8:45 am]

BILLING CODE 6720-01-M

Monycor Federal Savings Bank, Barron, WI; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Monycor Federal Savings Bank, Barron, Wisconsin, on July 12, 1991.

Dated: July 18, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-17537 Filed 7-23-91; 8:45 am]

BILLING CODE 6720-01-M

Pan American Savings Bank San Mateo, CA; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corpoation as sole Receiver for Pan American Savings Bank, San Mateo, California, on July 12, 1991.

Dated: July 18, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-17538 Filed 7-23-91; 8:45 am]

BILLING CODE 6720-01-M

Surety Federal Savings and Loan Association, F.A.; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Surety Federal Savings and Loan Association, F.A., Morganton North Carolina, on July 9, 1991.

Dated: July 18, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-17539 Filed 7-23-91; 8:45 am]

BILLING CODE 6720-01-M

Danbury Savings and Loan Association, Inc.; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(C) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Danbury Savings and Loan Association, Inc., Danbury Connecticut, OTS No. 0350, on July 12, 1991.

Dated: July 18, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-17540 Filed 7-23-91; 8:45 am]

BILLING CODE 6720-01-M

Fidelity Savings–Austin, F.A; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Fidelity Savings–Austin, F.A., Austin, Texas, OTS No. 8018, on July 12, 1991.

Dated: July 18, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-17541 Filed 7-23-91; 8:45 am]

BILLING CODE 6720-01-M

Monycor Savings Bank, A Federal Savings Bank, Barron, WI; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Monycor Savings Bank, a Federal Savings Bank, OTS Number 3236, on July 12, 1991.

Dated: July 18, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-17542 Filed 7-23-91; 8:45 am]

BILLING CODE 6720-01-M

Surety Federal Savings and Loan Association, FSA; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Surety Federal Savings and Loan Association, FSA., Morganton, North Carolina, OTS No. 8459 on July 9, 1991.

Dated: July 18, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-17543 Filed 7-23-91; 8:45 am]

BILLING CODE 6720-01-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "Seurat" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the temporary exhibition or display of the listed exhibit objects at The Metropolitan Museum of Art, New York, New York, beginning on or about September 24, 1991, to on or about January 12, 1992, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: July 17, 1991.

Alberto J. Mora,

General Counsel.

[FR Doc. 91-17564 Filed 7-23-91; 8:45 am]

BILLING CODE 8230-01-M

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[1] A copy of this list may be obtained by contacting Ms. Lorie J. Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202-619-6975, and the address is U.S. Information Agency, 301 Fourth Street SW., room 700, Washington, DC 20547.

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UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "Seurat" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the temporary exhibition or display of the listed exhibit objects at The Metropolitan Museum of Art, New York, New York, beginning on or about September 24, 1991, to on or about January 12, 1992, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: July 17, 1991.

Alberto J. Mora,

General Counsel.

[FR Doc. 91-17564 Filed 7-23-91; 8:45 am]

BILLING CODE 8230-01-M

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[1] A copy of this list may be obtained by contacting Ms. Lorie J. Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202-619-6975, and the address is U.S. Information Agency, 301 Fourth Street SW., room 700, Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 56, No. 142
Wednesday, July 24, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

July 18, 1991.

TIME AND DATE: 2:00 p.m. Tuesday, July 23, 1991.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTER TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Drummond Company, Inc.*, Docket No. SE 91-10-R. (Issues include whether the judge erred in vacating an unwarrantable failure finding of a citation issues under Section 104(d)(1) of the Mine Act, 30 U.S.C. § 814(d)(1), alleging a violation of 30 CFR § 75.400).

It was determined by a unanimous vote of Commissioners that a meeting be held on this item and that no earlier announcement of the meeting was possible.

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653-5629/(202) 708-9300 for TDD Relay 1-800-877-8339 for Toll Free.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 91-17726 Filed 7-22-91; 3:15 pm]

BILLING CODE 6735-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meetings

TIME AND DATE: 9:15 a.m., Tuesday, July 30, 1991.

PLACE: Filene Board Room, 7th Floor, 1776 G Street NW., Washington, DC 20456.

STATUS: Open.

MATTER TO BE CONSIDERED:

1. Final Rule: Part 747, Administrative Actions, Adjudicative Hearings, Rules of Practice and Procedure, and Investigations.

RECESS: 9:25 a.m.

TIME AND DATE: 9:30 a.m., Tuesday, July 30, 1991.

PLACE: Filene Board Room, 7th Floor, 1776 G Street NW., Washington, DC 20456.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Administrative Action under Section 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
3. Administrative Action under Sections 208 and 307 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
4. Administrative Action under Sections 206, 208, and 307 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
5. Administrative Actions under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
6. Application for Federal Insurance. Closed pursuant to exemptions (8) and (9)(A)(ii).
7. Appeal of Denial of Insurance. Closed pursuant to exemptions (6), (8), and (9)(B).
8. NCUA's Budget FY 92 and FY 93. Closed pursuant to exemptions (2) and (9)(B).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682-9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 91-17711 Filed 7-22-91; 1:43 pm]

BILLING CODE 7535-01-M

NATIONAL SCIENCE BOARD

DATE AND TIME:

August 9, 1991, 9:45 a.m. Open Session
August 9, 1991, 8:30 a.m. Closed Session

PLACE: National Science Foundation, 1800 G Street NW., room 540, Washington, DC 20550.

STATUS:

Part of this meeting will be open to the public.
Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Friday, August 9, 1991

Closed Session (8:30 a.m.–9:45 a.m.)

1. Minutes—June 1991 Meeting.
2. NSB and NSF Staff Nominees.
3. Future NSF Budgets.
4. Grants and Contracts.

Friday, August 9, 1991

Open Session (9:45 a.m.–12:00 Noon)

5. Chairman's Report.
6. Minutes—June 1991 Meeting.
7. Director's Report.
8. Overview of NSF Environmental Sciences Activities.
9. Other Business.

Thomas Ubois,

Executive Officer.

[FR Doc. 91-17698 Filed 7-22-91; 1:42 pm]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of July 22, 29, August 5, and 12, 1991.

PLACE: Commissoners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of July 22

Thursday, July 25

1:30 p.m.
  Periodic Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting)
3:00 p.m.
  Affirmation/Discussion and Vote (Public Meeting)
  a. Amendment to Fitness-for-Duty Rule

Friday, July 26

10:00 a.m.
  Briefing by NRC Staff on Recommendations Regarding Yankee Rowe Pressure Vessel Embrittlement Issues (Public Meeting)

Week of July 29—Tentative

Tuesday, July 30

10:00 a.m.
  Briefing on International Nuclear Reactor Safety (Closed—Ex. 1)

Wednesday, July 31

2:30 p.m.
  Affirmation/Discussion and Vote (Public Meeting)
  a. Commission Decision Regarding Yankee Rowe Reactor Vessel (Tentative)

Thursday, August 1

3:30 p.m.
  Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of August 5—Tentative

Monday, August 5

10:00 a.m.
  Briefing on AEOD Programs (Public Meeting)
11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

3:00 p.m.

Discussion of Pending Investigations (Closed —Ex. 5 and 7)

Week of August 12—Tentative

Friday, August 16

10:00 a.m.

Briefing on Uncertaintieis in Implementing the EPA HLW Standards (Public Meeting)

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings Call (Recording)—(301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

Dated: July 19, 1991.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 91–17668 Filed 7–22–91; 1:41 pm]

BILLING CODE 7590-01-M

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To Verify the Status of Meetings Call (Recording)—(301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

Dated: July 19, 1991.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 91-17668 Filed 7-22-91; 1:41 pm]

BILLING CODE 7590-01-M

Wednesday
July 24, 1991

Part II

Department of the Interior

Minerals Management Service

Outer Continental Shelf; Chukchi Sea; Oil and Gas Lease Sale 126 and Notice of Leasing Systems, Sale 126

4310-MR

United States
Department of the Interior
Minerals Management Service

Outer Continental Shelf
Chukchi Sea
Oil and Gas Lease Sale 126

1. Authority. This Notice is published pursuant to the Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331-1356 (1988)), and the regulations issued thereunder (30 CFR Part 256).

2. Filing of Bids. Sealed bids will be received by the Regional Director (RD), Alaska OCS Region, Minerals Management Service (MMS), 949 E. 36th Avenue, Room 544, Anchorage, Alaska 99508-4302. Bids may be delivered in person to that address during normal business hours (8 a.m. to 4 p.m.) until the Bid Submission Deadline at 10 a.m., August 27, 1991. All times cited in this Notice refer to Alaska Standard Time (a.s.t.) which is the local time in the area. Bids will not be accepted the day of Bid Opening, August 28, 1991. Bids received by the RD later than the time and date specified above will be returned unopened to the bidders. Bids may not be modified or withdrawn unless a written modification or written withdrawal request is received by the RD prior to 10 a.m. August 27, 1991. Bid Opening Time will be 9 a.m. on August 28, 1991, at the Egan Civic and Convention Center, 555 West 5th Avenue, Anchorage, Alaska. All bids must be submitted and will be considered in accordance with applicable regulations including 30 CFR Part 256. The list of restricted joint bidders which applies to this sale appeared in the Federal Register on April 4, 1991, at 56 FR 13842.

3. Method of Bidding. A separate signed bid in a sealed envelope labeled "Sealed Bid for Oil and Gas Lease Sale 126, Chukchi Sea (Official Protraction Diagram (OPD) number(s), OPD name(s), and block number(s)), not to be opened until 9 a.m., a.s.t., August 28, 1991," must be submitted for each block or prescribed bidding unit bid upon. The company qualification number should also appear on the envelope. For example, a label would read as follows: "Sealed Bid for Oil & Gas Lease Sale 126, NS 3-7, block 228, not to be opened until 9 a.m., August 28, 1991, ABC Oil Inc. No. Y0234." For those blocks which must be bid upon as a bidding unit (see paragraph 12), it is recommended that all numbers of blocks and OPD's comprising the bidding unit appear on the sealed envelope. A suggested bid form appears in 30 CFR Part 256, Appendix A. In addition, the total amount bid must be in whole dollar amounts (no cents). Bidders must submit with each bid one-fifth of the cash bonus, in cash or by cashier's check, bank draft, or certified check, payable to the order of the U.S. Department of the Interior--Minerals Management Service. The company qualification number should also appear on the check or draft together with OPD and block identification. No bid for less than all of the unleased portions of a block or bidding unit as described in paragraph 12 will be considered. Bidders are advised to use the description "All the Unleased Federal Portion" for those blocks having only portions currently available for leasing.

All documents must be executed in conformance with signatory authorizations on file. Partnerships also need to submit or have on file in the Alaska OCS Region office a list of signatories authorized to bind the partnership. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places after the decimal point, e.g., 33.33333 percent. Other documents may be required of bidders under 30 CFR 256.46. Bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

4. Bidding System. All bids submitted at this sale must provide for a cash bonus in the amount of $62 or more per hectare or fraction thereof. All leases awarded will provide for a yearly rental payment of $8 per hectare or fraction thereof. All leases will provide for a minimum royalty of $8 per hectare or fraction thereof. The bidding system applied for this sale will be cash bonus with a 1/8-fixed royalty rate.

5. Equal Opportunity. Each bidder must qualify for the sale by submitting prior to the Bid Submission Deadline stated in paragraph 2, the certification required by 41 CFR 60-1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form MMS-2033 (June 1985), and the Affirmative Action Form, Form MMS 2032 (June 1985). See the Affirmative Action paragraph under "Information to Lessees" ITL No. (i).

6. Bid Opening. Bid opening will begin at the times stated in paragraph 2. The public opening and reading of the bids is for the sole purpose of publicly announcing bids received, and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight on the day of bid opening, that bid will be returned unopened to the bidder as soon thereafter as possible.

7. Deposit of Payment. Any cash, cashier's checks, certified checks, or bank drafts submitted with a bid may be deposited by the Government in an interest-bearing account in the U.S Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. Withdrawal of Blocks. The United States reserves the right to withdraw any block from this sale prior to issuance of a written acceptance of a bid for the block.

9. Acceptance, Rejection, or Return of Bids. The United States reserves the right to reject any and all bids. In any case, no bid will be accepted, and no lease for any block or bidding unit will be awarded to any bidder, unless:

(a) the bidder has complied with all requirements of this Notice and applicable regulations;

(b) the bid is the highest valid bid; and

(c) the amount of the bid has been determined to be adequate by the authorized officer.

No bonus bid will be considered for acceptance unless it provides for a cash bonus in the amount of $62 or more per hectare or fraction thereof. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, and other applicable regulations may be returned to the person submitting that bid by the authorized officer and not considered for acceptance.

10. Successful Bidders. Each person who has submitted a bid accepted by the authorized officer will be required to execute copies of the lease, pay the balance of the cash bonus bid together with the first year's annual rental for each lease issued, by electronic funds transfer (EFT) in accordance with the requirements of 30 CFR 218.155. The Federal Reserve Bank of New York must receive the EFT payment no later than noon, Eastern Standard Time, on the eleventh business day after receipt of the notice of bid acceptance. The term "business day" is defined as a day on which the Alaska OCS Region office is open for business. Successful bidders must satisfy the bonding requirements of 30 CFR 256, Subpart I.

11. Official Protraction Diagrams (OPD's). Blocks or portions of blocks offered for lease may be located on the following OPD's which may be purchased from the Alaska OCS Region office for $2 each:

Outer Continental Shelf Official Protraction Diagrams:

NS 2-8	(revised 5/2/89)
NS 3-7	(approved 7/14/81)
NS 3-8	(approved 1/21/81)
NR 2-2	Tison (revised 5/2/89)
NR 2-4	Studds (revised 5/2/89)
NR 3-1	Karo (revised 8/22/86)
NR 3-2	(approved 10/12/77)
NR 3-3	(revised 12/16/85)
NR 2-6	Chukchi Sea (revised 10/26/87)
NR 3-4	Solivik Island (revised 12/16/85)
NR 4-3	Wainwright (revised 12/16/85)
NR 3-5	Point Lay West (revised 9/14/87)

12. Description of the Areas Offered for Bids. The lease sale area offered for bids is listed by OPD. Two categories of blocks may appear under each OPD listed: (1) whole or partial blocks, and/or (2) blocks which comprise bidding units.

For whole or partial blocks, each block must be bid on separately. Hectares for whole or partial blocks listed in this paragraph may be found on the appropriate OPD.

For bidding units, each bidding unit must be bid on separately and must include all blocks within the unit. The entire bidding unit is listed in this Notice under the OPD where the first partial block is located. When part of the bidding unit is located on an adjacent OPD, the appropriate OPD number will be listed (i.e., 661, (NS 3-7)).

The following blocks or portions of blocks are offered for bids:

Official Protraction Diagram NS 2-8 (revised May 2, 1989)

(1) **WHOLE and PARTIAL BLOCKS:**

15-20
59-65
103-109
147-153
191-197
235-241
279-285
323-329
367-372
411-416
455-459
499-505
543-549
587-593
631-637
675-681
719-725
763-769
807-813
851-857
895-901
940-946
984-988

(2) **BIDDING UNITS:**

Blocks	Hectares	Total Hectares
14	406.55	
58	328.60	
102	250.67	
146	172.76	
190	94.86	
234	20.08	1273.52
21	1078.85	
2 (NS 3-7)	1078.85	
		2157.70
682	503.27	
661 (NS 3-7)	503.27	
726	618.28	
705 (NS 3-7)	618.28	
		2243.10
770	733.26	
749 (NS 3-7)	733.26	
		1466.52
814	848.21	
793 (NS 3-7)	848.21	
		1696.42
858	963.13	
837 (NS 3-7)	963.13	
		1926.26
902	1078.03	
881 (NS 3-7)	1078.03	
		2156.06
939	1077.42	
983	999.86	
		2077.28

Official Protraction Diagram NS 3-7 (approved July 14, 1981)

(1) **WHOLE and PARTIAL BLOCKS:**

3-22
46-66
90-110
134-154
178-198
222-226
228
230-242
266-270
272
274-286

310-313
316
318-330
354
357
360
362-374
395
402-418
442-443
446-462

486-487
490-506
532-550
576-586
588-594
619-629
632-638
663-673
675-682
706-716
718-726

750-770
794-814
838-858
882-902
925-937
940-946
970-972
976-981
984-990

Official Protraction Diagram NS 3-8 (approved January 21, 1981)

(1) **WHOLE and PARTIAL BLOCKS:**

1-21
45-65
89-109
133-153
177-197
221-241
265-279
282-285
309-329

353-373
397-417
441-461
485-505
529-549
573-593
617-637
661-681
705-725

749-752
755-769
793-796
798-813
837-840
842-856
881-901
925-930
933-938

940-944
946
969-973
977-981
985-988
990

(2) **BIDDING UNITS:**

Blocks	Hectares	Total Hectares
506	43.88	
550	158.07	
594	273.17	
638	388.23	
682	503.27	
726	618.28	
		1984.90
770	733.26	
814	848.21	
		1581.47

Official Protraction Diagram NR 2-2, Tison (revised May 2, 1989)

(1) **WHOLE and PARTIAL BLOCKS:**

16-20
60-64
104-107
110
148-154
192-198

236-242
280-286
324-330
368-374
412-418
456-462

500-506
545-550
588-594
632-638
676-682
720-726

764-770
808-815
852-859
896-903
940-947
984-991

(2) **BIDDING UNITS:**

Blocks	Hectares	Total Hectares
15	922.31	
59	844.79	
		1767.10
103	764.28	
147	689.79	
191	612.32	
		2066.39
235	534.87	
279	457.44	
323	380.03	
367	302.64	
411	225.27	
455	147.91	
499	70.58	
		2118.74
543	6.59	
544	2290.68	
		2297.27
375	38.10	
353 (NR 3-1)	38.10	
419	150.60	
397 (NR 3-1)	150.60	
463	265.13	
441 (NR 3-1)	265.13	
507	379.63	
485 (NR 3-1)	379.63	
		1666.92
551	494.10	
529 (NR 3-1)	494.10	
595	608.55	
573 (NR 3-1)	608.55	
		2205.30
639	722.96	
617 (NR 3-1)	722.96	
		1445.92
683	837.34	
661 (NR 3-1)	837.34	
		1674.68

Blocks	Hectares	Total Hectares
727	951.70	
705 (NR 3-1)	951.70	
		1903.40
771	1066.03	
749 (NR 3-1)	1066.03	
		2132.06

Official Protraction Diagram NR 2-4, Studds (revised May 2, 1989)

(1) **WHOLE and PARTIAL BLOCKS:**

8-15
52-59
96-103
140-147
185-190
229-234
273-279
317-323
361-367
405-411
449-455
493-499
537-543
581-587
625-631
669-675
713-720
757-764
801-808
846-852
889-896
933-940
977-984

(2) **BIDDING UNITS:**

Blocks	Hectares	Total Hectares
184	1139.92	
228	1062.92	
		2202.84
272	985.95	
316	908.99	
		1894.94
280	131.64	
265 (NR 3-3)	131.64	
324	245.58	
309 (NR 3-3)	245.58	
368	359.49	
353 (NR 3-3)	359.49	
		1473.42

Blocks	Hectares	Total Hectares
360	832.05	
404	755.14	
448	678.24	
		2265.43
412	473.37	
397 (NR 3-3)	473.37	
456	587.22	
441 (NR 3-3)	587.22	
		2121.18
492	601.37	
536	524.51	
580	447.68	
624	370.87	
668	294.07	
		2238.50
500	701.04	
485 (NR 3-3)	701.04	
		1402.08
544	814.83	
529 (NR 3-3)	814.83	
		1629.66
588	928.59	
573 (NR 3-3)	928.59	
		1857.18
632	1042.32	
617 (NR 3-3)	1042.32	
		2084.64
676	1156.02	
661 (NR 3-3)	1156.02	
		2312.04
712	217.30	
756	140.55	
800	[illegible]	
		421.67
844	4.23	
845	2286.88	
		2291.11

Official Protraction Diagram NR 3-1, Karo (revised August 22, 1986)

(1) **WHOLE and PARTIAL BLOCKS:**

3-5
9-16
20-23
46-58
64-67
90-92
95-101
109-111
134-135
142-145
147-148
152-155
178-179
186-199
222-223
229-243
266-287
310-321
323-331
354
357-364
367-375
398
401-408
411-419
442-444
446-452
455-456
459-463
486-496
498-499
504-507
530-540
549-551
574-583
586-587
593-595
618-627
630
637-639
662-663
665-671
674
679-683
706-707
709-714
722-727
750-752
754-758
765-771
793-795
798-800
803-804
808-815
837-839
841-844
846-847
851-853
857-859
881-887
890-903
925-931
933-947
969-974
976
979-991

Official Protraction Diagram NR 3-2, (approved October 12, 1977)

(1) **WHOLE and PARTIAL BLOCKS:**

1-6
8-15
18-20
22
45-61
64-66
89-104
107-110
133-142
144-148
152-154
177-186
188-193
196-198
221-229
232-242
265-273
276-286
309-317
319-330
353-374
397-418
441-462
485-506
529-550
573-584
587-594
617-626
632-636
638
661-670
677-680
682
705-714
722-724
749-758
.65-769
793-802
809-813
815
837-846
852-859
881-903
925-947
969-991

(2) **BIDDING UNITS:**

Blocks	Hectares	Total Hectares
639	722.96	
683	837.34	
		1560.30
727	951.70	
771	1066.03	
		2017.73

Official Protraction Diagram NR 3-3 (revised December 16, 1985)

(1) **WHOLE and PARTIAL BLOCKS:**

2-7
11-24
46-51
55
57-64
90-95
98
100-106
134-142
144-150
178-185
187-194
223-238
266-284
310-319
321-328
354-372
376
398-405
407-416
420
442-460
486-508
530-552
574-596
618-640
662-684
705-728
749-772
793-816
837-860
881-904
925-948
969-992

(2) **BIDDING UNITS:**

Blocks	Hectares	Total Hectares
221	24.45	
222	2297.22	
		2321.67

Official Protraction Diagram NR 2-6, Chukchi Sea (revised October 26, 1987)

(1) **WHOLE and PARTIAL BLOCKS:**

17-24
61-68
105-111
149-156
193-200
237-244
281-288
325-332
369-376
413-420
457-464
502-508
546-552
590-597
634-641
678-685
722-727
766-770
810-813
854-855
898

(2) **BIDDING UNITS:**

Blocks		Hectares	Total Hectares
112		2282.78	
113		8.54	
			2291.32
157		100.67	
134	(NR 3-5)	100.67	
201		214.00	
178	(NR 3-5)	214.00	
245		327.29	
222	(NR 3-5)	327.29	
289		440.56	
266	(NR 3-5)	440.56	
			2165.04
333		553.79	
310	(NR 3-5)	553.79	
			1107.58
377		666.99	
354	(NR 3-5)	666.99	
			1333.98
421		780.16	
398	(NR 3-5)	780.16	
			1560.32
465		893.30	
442	(NR 3-5)	893.30	
			1786.60
501		1142.98	
545		1066.61	
			2209.59
509		1006.41	
486	(NR 3-5)	1006.41	
			2012.82
553		1119.48	
530	(NR 3-5)	1119.48	
			2238.96
589		990.26	
633		913.93	
			1904.19

Blocks	Hectares	Total Hectares
677	837.62	
721	761.34	
765	685.07	
		2284.03
809	608.83	
853	532.61	
897	456.41	
		1597.85

Official Protraction Diagram NR 3-4, Solivik Island (revised December 16, 1985)

(1) **WHOLE and PARTIAL BLOCKS:**

1-6
8
10-23
45-50
52-67
89-111
134-155
178-199
221-242
265-283
309-326
353-369
397-411
441-453
485-496
529-538
573-580
617-623
661-666
705-709
749-752
793-795
837-838
881

Official Protraction Diagram NR 4-3, Wainwright (revised December 16, 1985)

(1) **WHOLE and PARTIAL BLOCKS:**

2-11
46-53
90-95
134-136
178

Official Protraction Diagram NR 3-5, Point Lay West (revised September 14, 1987)

(1) **WHOLE and PARTIAL BLOCKS:**

3-24
47-67
92-110
135-153
179-196
223-239
267-281
311-323
355-366
399-408
443-450
487-492
531-534
574-577
618-619

(2) **BIDDING UNITS:**

Blocks	Hectares	Total Hectares
90	8.54	
91	2282.78	
		2291.32

13. **Lease Terms and Stipulations.**

Nothing in this Notice affects or diminishes the applicability of Federal law to or on the OCS nor extends State law to or on the OCS.

(a) Leases resulting from this sale will have an initial term of ten (10) years. Leases will be issued on Form MMS-2005 (March 1986). Copies of the lease form are available from the Regional Supervisor, Leasing & Environment, Alaska OCS Region, at the first address stated in paragraph 2.

(b) The following stipulations will apply to each lease resulting from this sale unless otherwise indicated.

Stipulation No. 1--Protection of Archaeological Resources

(a) "Archaeological resource" means any prehistoric or historic district, site, building, structure, or object (including shipwrecks); such term includes artifacts, records, and remains which are related to such a district, site, building, structure, or object (16 U.S.C. 470w(5)). "Operations" means any drilling, mining, or construction, or placement of any structure for exploration, development, or production of the lease.

(b) If the Regional Supervisor, Field Operations (RSFO), believes an archaeological resource may exist in the lease area, the RSFO will notify the lessee in writing. The lessee shall then comply with subparagraphs (1) through (3).

(1) Prior to commencing any operations, the lessee shall prepare a report, as specified by the RSFO, to determine the potential existence of any archaeological resource that may be affected by operations. The report, prepared by an archaeologist and a geophysicist, shall be based on an assessment of data from remote-sensing surveys and of other pertinent archaeological and environmental information. The lessee shall submit this report to the RSFO for review.

(2) If the evidence suggests that an archaeological resource may be present, the lessee shall either:

(i) Locate the site of any operation so as not to adversely affect the area where the archaeological resource may be; or

(ii) Establish to the satisfaction of the RSFO that an archaeological resource does not exist or will not be adversely affected by operations. This shall be done by further archaeological investigation, conducted by an archaeologist and a geophysicist, using survey equipment and techniques deemed necessary by the RSFO. A report on the investigation shall be submitted to the RSFO for review.

(3) If the RSFO determines that an archaeological resource is likely to be present in the lease area and may be adversely affected by operations, the RSFO will notify the lessee immediately. The lessee shall take no action that may adversely affect the archaeological resource until the RSFO has told the lessee how to protect it.

(c) If the lessee discovers any archaeological resource while conducting operations in the lease area, the lessee shall report the discovery immediately to the RSFO. The lessee shall make every reasonable effort to preserve the archaeological resource until the RSFO has told the lessee how to protect it.

Stipulation No. 2--Protection of Biological Resources

If biological populations or habitats that may require additional protection are identified in the lease area by the Regional Supervisor, Field Operations (RSFO), the RSFO may require the lessee to conduct biological surveys to determine the extent and composition of such biological populations or habitats. The RSFO shall give written notification to the lessee of the RSFO's decision to require such surveys.

Based on any surveys which the RSFO may require of the lessee or on other information available to the RSFO on special biological resources, the RSFO may require the lessee to:

(1) Relocate the site of operations;

(2) Establish to the satisfaction of the RSFO, on the basis of a site-specific survey, either that such operations will not have a significant adverse effect upon the resource identified or that a special biological resource does not exist;

(3) Operate during those periods of time, as established by the RSFO, that do not adversely affect the biological resources; and/or

(4) Modify operations to ensure that significant biological populations or habitats deserving protection are not adversely affected.

If any area of biological significance should be discovered during the conduct of any operations on the lease, the lessee shall immediately report such findings to the RSFO and make every reasonable effort to preserve and protect the biological resource from damage until the RSFO has given the lessee direction with respect to its protection.

The lessee shall submit all data obtained in the course of biological surveys to the RSFO with the locational information for drilling or other activity. The lessee may take no action that might affect the biological populations or habitats surveyed until the RSFO provides written directions to the lessee with regard to permissible actions.

Stipulation No. 3--Orientation Program

The lessee shall include in any exploration or development and production plans submitted under 30 CFR 250.33 and 250.34 a proposed orientation program for all personnel involved in exploration or development and production activities (including personnel of the lessee's agents, contractors, and subcontractors) for review and approval by the Regional Supervisor, Field Operations. The program shall be designed in sufficient detail to inform individuals working on the project of specific types of environmental, social, and cultural concerns which relate to the sale and adjacent areas. The program shall be formulated by qualified instructors experienced in each pertinent field of study and shall employ effective methods to ensure that personnel are informed of archaeological and biological resources and habitats, including endangered species, fisheries, bird colonies, and marine mammals, and to ensure that personnel understand the importance of not disturbing archaeological resources and of avoidance and nonharassment of wildlife resources. The program shall also be designed to increase the sensitivity and understanding of personnel to community values, customs, and lifestyles in areas in which such personnel will be operating. The orientation program shall also include information concerning avoidance of conflicts with subsistence activities. The program also shall include presentations and information about all pertinent lease sale stipulations and information to lessees provisions.

The program shall be attended at least once a year by all personnel involved in onsite exploration or development and production activities (including personnel of the lessee's agents, contractors, and subcontractors) and all supervisory and managerial personnel involved in lease activities of the lessee and its agents, contractors, and subcontractors.

The lessee shall maintain a record of all personnel who attend the program. This record shall include the name and date(s) of attendance of each attendee and shall be kept onsite for so long as the site is active, not to exceed 5 years.

Stipulation No. 4--Transportation of Hydrocarbons

Pipelines will be required: (a) if pipeline rights-of-way can be determined and obtained; (b) if laying such pipelines is technologically feasible and environmentally preferable; and (c) if, in the opinion of the lessor, pipelines can be laid without net social loss, taking into account any incremental costs of pipelines over alternative methods of transportation and any incremental benefits in the form of increased environmental protection or reduced multiple-use conflicts. The lessor specifically reserves the right to require that any pipeline used for transporting production to shore be placed in certain designated management areas. In selecting the means of transportation, consideration will be given to any recommendation of the Regional Technical Working Group, or other similar advisory groups with participation of Federal, State, and local governments and industry.

Following the development of sufficient pipeline capacity, no crude oil production will be transported by surface vessel from offshore production sites, except in the case of emergency. Determinations as to emergency conditions and appropriate responses to these conditions will be made by the Regional Supervisor, Field Operations.

Stipulation No. 5--Subsistence Whaling and Other Subsistence Activities

All exploration and development and production operations shall be conducted in a manner that minimizes any potential for conflict between oil and gas industry and subsistence activities, particularly the subsistence bowhead whale hunt.

Prior to submitting an exploration plan or development and production plan to the lessor for activities proposed during the bowhead whale migration period, the lessee shall contact potentially affected subsistence whaling communities, such as Wainwright, Barrow, Point Hope, and Point Lay, and the Alaska Eskimo Whaling Commission (AEWC) to discuss potential conflicts with the siting, timing, and methods of proposed operations. Through this consultation, the lessee shall make reasonable

efforts to assure that exploration, development, and production activities are compatible with whaling and other subsistence hunting activities and will not result in undue interference with subsistence harvests.

A discussion of resolutions reached during this consultation process and any unresolved conflicts shall be included in the exploration plan or the development and production plan. In particular, the lessee shall show in the plan how mobilization of the drilling unit and crew and supply boat routes will be scheduled and located to minimize conflicts with subsistence activities. Communities, individuals, and other entities who were involved in the consultation shall be identified in the plan. The lessee shall notify the Regional Supervisor, Field Operations, of all complaints received from subsistence hunters during operations and of steps taken to resolve such complaints.

The lessee shall send a copy of the exploration plan or development and production plan to the potentially affected whaling communities and the AEWC at the same time they are submitted to the lessor to allow concurrent review and comment as part of the lessor's plan approval process.

Subsistence whaling activities occur generally during the following period:

April to June: Barrow whalers use lead systems off Point Barrow and west of Barrow in the Chukchi Sea. Wainwright whalers use lead systems between Wainwright and Peard Bay. Point Hope and Point Lay whalers use the lead systems south of Point Hope.

Stipulation No. 6--Oil-Spill-Response Preparedness

Lessees must be prepared to respond to oil spills, which includes training of personnel for familiarization with response equipment and strategies, and conducting drills to demonstrate readiness. Prior to approval of exploration or development and production plans, lessees shall submit for review and approval Oil-Spill-Contingency Plans (OSCP's) in accordance with 30 CFR 250.42. The OSCP must address all aspects of oil-spill-response readiness, including an analysis of potential spills and spill-response strategies, type, location and availability of appropriate oil-spill equipment, and response times and equipment capability for the proposed activities. The plan must also address response drills and training requirements. The lessee shall conduct drills under realistic conditions, without endangering the safety of personnel, to the extent necessary to demonstrate continued readiness and response capability for appropriate environmental conditions: e.g., solid ice, open water, and broken ice conditions. For production operation, drills shall be conducted at least semiannually. Additional drills will be required if drilling operations continue into new seasonal environmental conditions. Drills shall include deployment of onsite response equipment, and additional equipment available from a cooperative or other sources identified in the OSCP, to the extent necessary to demonstrate adequate response preparedness for the type, location, and scope of proposed activities and anticipated environmental conditions.

14. Information to Lessees.

(a) Information on Bird and Marine Mammal Protection

Lessees are advised that during the conduct of all activities related to leases issued as a result of this sale, the lessee and its agents, contractors, and subcontractors will be subject to the following laws, among others, the provisions of the Marine Mammal Protection Act (MMPA) of 1972, as amended (16 U.S.C. 1361 et seq.); the Endangered Species Act (ESA), as amended (16 U.S.C. 1531 et seq.); and applicable International Treaties.

Lessees and their contractors should be aware that disturbance of wildlife could be determined to constitute harm or harassment and thereby be in violation of existing laws and treaties. With respect to endangered species and marine mammals, disturbance could be determined to constitute a "taking" situation. Under the ESA, the term "take" is defined to mean "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in such conduct." Under the MMPA, "take" means "harass, hunt, capture, collect, or kill or attempt to harass, hunt, capture, or kill any marine mammal." Violations under these Acts and applicable Treaties may be reported to the National Marine Fisheries Service (NMFS) or the U.S. Fish and Wildlife Service (FWS), as appropriate.

Incidental taking of marine mammals and endangered and threatened species is allowed only when the statutory requirements of the MMPA and/or the ESA are met. Section 101(a)(5) of the MMPA allows for the taking of small numbers of marine mammals incidental to a specified activity within a specified geographical area. Section 7(b)(4) of the ESA allows for the incidental taking of endangered and threatened species under certain circumstances. If a marine mammal species is listed as endangered or threatened under the ESA, the requirements of both the MMPA and the ESA must be met before the incidental take can be allowed.

Under the MMPA, the NMFS is responsible for species of the order Cetacea (whales and dolphins) and the suborder Pinnipedia (seals and sea lions) except walrus; the FWS is responsible in Alaskan waters for polar bears, sea otters, and walrus. Procedural regulations implementing the provisions of the MMPA are found at 50 CFR 18.27 for FWS, and at 50 CFR Part 228 for NMFS.

Lessees are advised that specific regulations must be applied for and in place and the Letters of Authorization must be obtained by those proposing the activity to allow the incidental take of marine mammals whether or not they are endangered or threatened. The regulatory process may require one year or longer.

Of particular concern is disturbance at major wildlife concentration areas, including bird colonies, marine mammal haulout and breeding areas, and wildlife refuges and parks. Maps depicting major wildlife concentration areas in the lease area are available from the Regional Supervisor, Field Operations. Lessees are also encouraged to confer with the FWS and NMFS in planning transportation routes between support bases and leaseholdings.

Behavioral disturbance of most birds and mammals found in or near the lease area would be unlikely if aircraft and vessels maintain at least a 1-mile horizontal distance and aircraft maintain at least a 1,500-foot vertical distance above known or observed wildlife concentration areas, such as bird colonies and marine mammal haulout and breeding areas.

For the protection of endangered whales and marine mammals throughout the lease area, it is recommended that all aircraft operators maintain a minimum 1,500-foot altitude when in transit between support bases and exploration sites. Lessees and their contractors are encouraged to minimize or reroute trips to and from the leasehold by aircraft and vessels when endangered whales are likely to be in the area. Human safety should take precedence at all times over these recommendations.

(b) Information on Areas of Special Biological and Cultural Sensitivity

Lessees are advised that certain areas are especially valuable for their concentrations of marine birds, marine mammals, fishes, or other biological resources or cultural resources. Identified areas and time periods of special biological and cultural sensitivity include the spring lead system from April through July, the area from Icy Cape to the northern boundary of the sale Notarea east of 162°W. longitude, Peard Bay, Ledyard Bay, Kasegaluk Lagoon, and the open water within 12 miles of the major bird colonies of Cape Lisburne and Cape Thompson. These areas are among areas of special biological and cultural sensitivity to be considered in the oil-spill-contingency plan required by 30 CFR 250.42. Lessees are advised that they have the primary responsibility for identifying these areas in their oil-spill contingency plans and for providing specific protective measures. Additional areas of special biological and cultural sensitivity may be identified during review of exploration plans and development and production plans.

Consideration should be given in oil-spill-contingency plans as to whether use of dispersants is an appropriate defense in the vicinity of an area of special biological and cultural sensitivity. Lessees are advised that prior approval must be obtained before dispersants are used.

(c) Information on Arctic Peregrine Falcon

Lessees are advised that the arctic peregrine falcon (Falco peregrinus tundrius) is listed as threatened by the U.S. Department of the Interior and is protected by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

Peregrines are generally present in Alaska from mid-April to mid-September and are most disturbed by human activities in the vicinity of nest sites. The conduct of Outer Continental Shelf exploration or development and production activities will not conflict with arctic peregrine falcons if onshore facilities are located away from known nest sites. The lessee should contact the FWS for information on locations of known nest sites of peregrine falcons. Aircraft should maintain at least a 1-mile horizontal and 1,500-foot vertical distance from known or potential peregrine nest sites to avoid conflict.

Lessees are advised that the FWS will review exploration plans and development and production plans submitted by lessees to the MMS. The FWS review may determine that certain restrictions could apply to further protect arctic peregrine falcon habitats. Lessees and affected operators should establish regular communication with MMS and FWS. Human safety should take precedence at all times over these recommendations.

(d) Information on Chukchi Sea Biological Task Force

Lessees are advised that in the enforcement of the Protection of Biological Resources stipulation, the Regional Supervisor, Field Operations (RSFO), will consider recommendations from the Chukchi Sea Biological Task Force (BTF), composed of designated representatives of the Minerals Management Service, Fish and Wildlife Service, National Marine Fisheries Service, and Environmental Protection Agency. Personnel from the State of Alaska and local communities are invited and encouraged to participate in the proceedings of the BTF. The RSFO will consult with the Chukchi Sea BTF on the conduct of biological surveys by lessees and the appropriate course of action after surveys have been conducted.

(e) Information on Coastal Zone Management

Lessees are advised that the Alaska Coastal Management Program (ACMP) may contain policies and standards that are relevant to

exploration and development and production activities associated with leases resulting from this sale.

In addition, the North Slope Borough Coastal Management Program has been incorporated into the ACMP and contains more specific policies related to transportation corridors; energy facility siting; geologic hazards; and protection of subsistence areas and resources, habitats, and historic or prehistoric resources.

Relevant policies are applicable to ACMP consistency reviews of postlease activities. Lessees are encouraged to consult and coordinate early with those involved in coastal management review.

(f) Information on Endangered Whales and MMS Monitoring Program

Lessees are advised that the MMS intends to continue its areawide endangered whale monitoring program in the Chukchi Sea during exploration activities. The program will gather information on whale distribution and abundance patterns and will provide the RSFO with additional assistance to determine the extent, if any, of adverse effects to the species.

The MMS will perform a National Environmental Policy Act review for each proposed exploration plan and development and production plan, including an assessment of cumulative effects of noise on endangered whales. Should the review conclude that activities described in the plan will be a threat of serious, irreparable, or immediate harm to the species, the Regional Supervisor, Field Operations (RSFO), will require that activities be modified, or otherwise mitigated before such activities would be approved.

Lessees are further advised that the RSFO has the authority and intends to limit or suspend any operations, including preliminary activities, as defined under 30 CFR 250.31, on a lease whenever bowhead whales are subject to a threat of serious, irreparable, or immediate harm to the species. Should the information obtained from MMS or lessees' monitoring programs indicate that there is a threat of serious, irreparable, or immediate harm to the species, the RSFO will require the lessee to suspend operations causing such effects, in accordance with 30 CFR 250.10. Any such suspensions may be terminated when the RSFO determines that circumstances which justified the ordering of suspension no longer exist. Notice to Lessees No. 86-2 specifies performance standards for preliminary activities.

Incidental taking of marine mammals and endangered and threatened species is allowed only when the statutory requirements of the MMPA and/or the ESA are met. Section 101(a)(5) of the MMPA allows for the taking of small numbers of marine mammals incidental to a specified activity within a specified geographical area. Section 7(b)(4) of the ESA allows for the incidental taking of endangered and threatened species under certain circumstances. If a marine mammal species is listed as endangered or threatened under the ESA, the requirements of both the MMPA and the ESA must be met before the incidental take can be allowed.

Information regarding endangered whales will be reviewed annually by the MMS in consultation with the NMFS and the State of Alaska until it is determined that annual reviews are no longer necessary. The sources of information include: the MMS monitoring program; pertinent results of the MMS environmental studies; and other applicable information. The purpose of the review will be to determine whether existing mitigating measures adequately protect the endangered whales. Should the review indicate the threat of serious, irreparable, or immediate harm to the species, the MMS will take action to protect the species, including the possible imposition of a seasonal drilling restriction, or other restrictions if appropriate.

(g) Information on Oil-Spill-Cleanup Capability

Exploratory drilling, testing, and other downhole activities may be prohibited in broken ice conditions unless the lessee demonstrates to the RSFO the capability to detect, contain, clean up, and dispose of spilled oil in broken ice. The adequacy of such oil-spill response capability will be determined within the context of Best Available and Safest Technologies requirements and will be considered at the time the oil-spill-contingency plans are reviewed. The adequacy of these plans will be determined by the RSFO prior to approval of exploration or development and production plans.

(h) Archaeological Resources

Lessees are advised that information indicates that prehistoric archaeological resources may exist in the sale area and the RSFO intends to invoke subparagraphs (1) through (3) of Stipulation No. 1--Protection of Archaeological Resources, for the following blocks:

OPD	Blocks
NR 2-4	52-55, 96-100, 140-144, 184-187, 228-231, 272-277, 316-321, 360-365, 404-409, 448-453, 492-496, 536-540, 580-583, 624-628, 668-671, 712-715, 756-758, 800-802, 844-846, 889-891, 933-934, 977-978
NR 2-6	17-18, 61-62
NR 3-1	287, 328, 331, 371-372, 418-419, 459-460, 462-463, 504, 593-595, 637-639, 681-683, 725-727, 769-770, 947, 990-991

OPD	Blocks
NR 3-2	14-15, 58-60, 139-140, 181-184, 221-227, 265-270, 309-313, 353-356, 397, 573, 661, 727, 768-769, 771, 811-813, 815, 837-838, 855-857, 881-882, 899-900, 925-926, 928-929, 940-941, 969-973, 983-985
NR 3-3	23-24, 193-194, 234-238, 277-281, 321-324, 367-368, 947-948, 989-992
NR 3-4	1-5, 14-17, 45-49, 57-62, 89-93, 100-106, 110-111, 134-137, 144-151, 153-155, 178-181, 188-189, 193-195, 197-199, 221-224, 231-242, 266-267, 271-283, 314-326, 361-369, 404, 407-411, 447-448, 450-453, 493-496, 537-538, 580, 623, 666, 709, 752, 795, 838, 881
NR 3-5	22-24, 65-67, 108-110, 153, 195-196, 238-239
NR 4-3	47-48, 52-53, 90-95, 134-136, 178
NS 3-8	586-589, 629-634, 671-682, 713-726, 755-770, 798-814, 843-856, 889-901, 935, 981, 985-988, 990

In accordance with Sale 126 lease stipulation No.1, lessees will be given written notification regarding the requirements for implementing the stipulation to ensure protection of resources which may exist in the lease sale area. This listing of blocks may be modified at any time when additional information becomes available.

(i) Affirmative Action Requirements

Revision of Department of Labor regulations on affirmative action requirements for Government contractors (including lessees) has been deferred, pending review of those regulations (see Federal Register of August 25, 1981, at 46 FR 42865 and 42968). Should changes become effective at any time before the issuance of leases resulting from this sale, section 18 of the lease form (Form MMS-2005, March 1986) would be deleted from leases resulting from this sale. In addition, existing stocks of the affirmative action forms contain language that would be superseded by revised regulations at 41 CFR 60-1.5(a)(1) and 60-1.7(a)(1). Submission of Form MMS-2032 (June 1985) and Form MMS-2033 (June 1985) will not invalidate an otherwise acceptable bid, and the revised regulations' requirements will be deemed to be part of the existing affirmative action forms.

(j) Navigation Safety

Operations on some of the blocks offered for lease may be restricted by designation of fairways, precautionary zones, anchorages, safety zones, or traffic separation schemes established by the U.S. Coast Guard pursuant to the Ports and Waterways Safety Act (33 U.S.C. 1221 et seq.), as amended. U.S. Army Corps of Engineers permits are required for construction of any artificial islands, installations, and other devices permanently or temporarily attached to the seabed located on the OCS in accordance with section 4(e) of the OCS Lands Act, as amended.

(k) Offshore Pipelines

Lessees are advised that the Department of the Interior and the Department of Transportation have entered into a Memorandum of Understanding, dated May 6, 1976, concerning the design, installation, operation, and maintenance of offshore pipelines. Bidders should consult both Departments for regulations applicable to offshore pipelines.

(l) State Review of Exploration Plans and Associated Oil-Spill-Contingency Plans

The State of Alaska has advised the Minerals Management Service (MMS) that, to the extent State regulations for oil-spill-contingency plans (OSCP's) are more restrictive than MMS regulations, the State will review Outer Continental Shelf plans and associated OSCP's through the consistency review process for consistency with the State standards. In addition, the contingency plans will be reviewed for use of best available and safest technology, under 30 CFR 250.22, and coordination with State and regional coastal management plans during the consistency review of individual proposals on a case-by-case basis.

(m) Availability of Bowhead Whales for Subsistence Hunting Activities

Lessees are advised that the National Marine Fisheries Service (NMFS) issued final rule (55 FR 29207 dated July 18, 1990) authorizing an incidental nonlethal take (by harassment) of six species of marine mammals (bowhead, gray, and beluga whales and bearded, ringed, and spotted seals) in the Chukchi and Beaufort Seas from 1990-1995 by individuals who are conducting prelease and postlease oil and gas exploratory activities. These regulations prohibit the take of any marine mammal in the spring lead system used by bowhead whales in the Chukchi Sea. Incidental takes of bowhead whales are allowed only if Letters of Authorization (LOA's) are obtained from the NMFS pursuant to these regulations. In issuing an LOA, the NMFS must determine

that proposed activities will not have an unmitigable adverse effect on the availability of the bowhead whale to meet subsistence needs by causing whales to abandon or avoid hunting areas, directly displacing subsistence users, or placing physical barriers between whales and subsistence users.

Lessees are also advised that, in reviewing proposed exploration plans which propose activities during the bowhead whale migration, the Minerals Management Service (MMS) will conduct an environmental review of the potential effects of the activities, including cumulative effects of multiple or simultaneous operations, on the availability of the bowhead whale for subsistence use. The MMS may limit or require operations be modified if they could result in significant effects on the availability of the bowhead whale for subsistence use.

(n) Polar Bear Interaction

Lessees are advised that polar bears may be present in the area of operations, particularly during the solid-ice period. Lessees should conduct their activities in a manner which will limit potential encounters and interaction between lease operations and polar bears. The U.S. Fish and Wildlife Service (USFWS) is responsible for the protection of polar bears under the provisions of the Marine Mammal Protection Act of 1972, as amended. Lessees are advised to contact the USFWS regarding proposed operations and actions which might be taken to minimize interaction with polar bears.

Lessees are reminded of the provisions of the 30 CFR 250.40 regulations which prohibit discharges of pollutants into offshore waters. Trash, waste, or other debris which might attract polar bears or be harmful to polar bears should be properly stored and disposed of to minimize attraction of, or encounters with, polar bears.

Jennifer A. Salisbury
Acting Director, Minerals Management Service

Jennifer A. Salisbury

Richard Roldan
Deputy Assistant Secretary - Land and Minerals Management

JUL 18 1991
Date

Richard Roldan

[FR Doc. 91-17518 Filed 7-23-91; 8:45 am]

BILLING CODE 4310-MR-C

Billing Code: 4310-MR

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf
Chukchi Sea

Notice of Leasing Systems, Sale 126

Section 8(a)(8) (43 U.S.C. 1337(a)(8)) of the Outer Continental Shelf Lands Act (OCSLA) requires that, at least 30 days before any lease sale, a Notice be submitted to the Congress and published in the Federal Register:

1. identifying the bidding systems to be used and the reasons for such use; and

2. designating the tracts to be offered under each bidding system and the reasons for such designation.

This Notice is published pursuant to these requirements.

1. Bidding system to be used. In the Outer Continental Shelf (OCS) Sale 126, blocks will be offered under the following bidding system as authorized by section 8(a)(1) (43 U.S.C. 1337(a)(1): bonus bidding with a fixed 12 1/2-percent royalty.

a. Bonus Bidding with a 12 1/2-Percent Royalty. This system is authorized by section (8)(a)(1)(A) of the OCSLA. It has been chosen for all blocks proposed for the Chukchi Sea (Sale 126) because these blocks are expected to have high exploration, development, and production costs.

The Department of the Interior analyses indicate that the minimum economically developable discovery on a block in such high-cost areas under a 12 1/2-percent royalty system would be less than for the same blocks under a 16 2/3-percent royalty system. In addition, the lower royalty rate system is expected to encourage more rapid production and higher economic profits. It is not anticipated, however, that the larger cash bonus bid associated with a lower royalty rate will significantly reduce competition, since the higher costs for exploration and development are the primary constraints to competition.

2. Designation of Blocks. All blocks in this lease sale will be offered under a 12 1/2-percent royalty system because that system is most appropriate to the resource levels and costs expected in this sale area.

Jennifer A. Salisbury
ACTING Director, Minerals Management Service
Jennifer A. Salisbury

Approved:

Richard Roldan
Deputy Assistant Secretary - Land and Minerals Management
Richard Roldan

JUL 18 1991

[FR Doc. 91-17519 Filed 7-23-91; 8:45 am]
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Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 157

Notice of Construction, Alteration, Activation, and Deactivation of Airports; Final Rule With Request for Comments

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 157

[Docket No. 25708, Amendment No. 157-6]

RIN: 2120-AE20

Notice of Construction, Alteration, Activation, and Deactivation of Airports

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action revises a previous amendment to this part before the effective date of that amendment: (1) By deleting a requirement for operators to provide the FAA with notice prior to establishing an airport located within a specified distance from another airport, or prior to establishing a heliport located in a residential, business, or industrial area; (2) by excluding from the notice requirements of this part those proponents who intend to use, on an intermittent basis for less than one year, a site that is not an established airport; and (3) by clarifying that telephone notice for situations involving an emergency public service or an unreasonable hardship arising from a delay due to the 90-day advance notice requirement should be directed to the appropriate Airports District/Field Office or Regional Office. This action is expected to eliminate any potential reading of an agency regulation which may suggest that notice would be required in situations where such notice is not needed or intended.

DATES: Effective date: August 30, 1991. Comments received on or before November 21, 1991 will be considered.

ADDRESSES: Send comments in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 25708, 800 Independence Avenue SW., Washington, DC 20591; or deliver comments to: Federal Aviation Administration, Rules Docket, Room 915-G, 800 Independence Avenue SW., Washington, DC 20591. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Richard K. Kagehiro, Airspace and Obstruction Evaluation Branch, ATP-240, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 26 -3075.

SUPPLEMENTARY INFORMATION:

Comments Invited

Even though this rule is final, interested persons are invited to submit written data, views, or arguments pertinent to the issues addressed by this amendment. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions. Communications should identify the regulatory docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25708." The postcard will be date/time stamped and returned to the commenter. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments.

Availability of Document

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-200, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Requests must identify the docket number.

Background

On August 27, 1990, the FAA published Amendment No. 157-4 which revised certain notice requirements associated with the construction, alteration, activation, and deactivation of airports (55 FR 34994). Amendment No. 157-4 was based on comments to a Notice of Proposed Rulemaking published on October 4, 1988 (Docket No. 25708, Notice No. 88-15; 53 FR 39062). Specifically, Amendment No. 157-4: (1) Provides for a notice requirement for the establishment of, or a change to, a traffic pattern; (2) clarifies the notice requirement for certain changes in the status of airport use designation; (3) defines the term "private use of public lands or waters"; (4) eliminates the term "personal use" as an airport use designation; (5) provides for an FAA determination void date; (6) reduces the time from 30 to 15 days that an airport proponent must notify the FAA of the completion of an airport project; (7) clarifies the scope of part 157 to include consideration of the safety of persons and property on the surface, and states that an FAA determination is not based on any environmental or land-use compatibility issue; (8) incorporates certain editorial changes to simplify and clarify Part 157; and (9) establishes a reporting requirement for certain airports and landing areas. The original effective date of Amendment No. 157-4 was February 27, 1991.

After publication of Amendment No. 157-4 (August 27, 1990) and before the original effective date of Amendment No. 157-4 (February 27, 1991), the FAA received comments from aviation organizations and operators regarding the revised notice requirement for temporary airports and landing areas. The majority of these commenters believed that prior notice would be required for a limited number of aircraft landings at a site that is not an established airport but is located within a certain distance from another airport or located in a residential, business, or industrial area. Based on those comments, the FAA reviewed Amendment No. 157-4 and concluded that the provisions of § 157.1, Applicability (as revised by Amendment No. 157-4), may suggest that an operator who conducts a limited number of landings and takeoffs at a site that is not an established airport has, in effect, established a new airport. Such an interpretation, while not the FAA's intent, would imply that the operator would have been required to notify the FAA at least 90 days in advance of any such landing. The FAA believed that the potential misunderstanding of the revised § 157.1 was created, in part, because of the difference in the wording and form of § 157.1 as proposed in Notice No. 88-15 and as it appeared in Amendment No. 157-4.

On February 28, 1991, the FAA delayed the effective date of Amendment No. 157-4 to August 30, 1991 (Amendment No. 157-5; 56 FR 8674) to eliminate any potential reading of an agency regulation that suggests that notice is required in situations where such notice is not needed or intended. The FAA stated that the delay was necessary to provide time for review and possible revision of the provisions involved to reduce the possibility of misunderstanding.

FAA Response

This amendment responds to comments regarding the revised notice requirements for certain temporary airports and landing areas. This action does not affect any other revision to Part 157 resulting from Amendment No. 157-4.

The FAA, in Amendment No. 157-4, had intended to establish a notice requirement for those operators establishing airports in proximity to

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FAA Response

This amendment responds to comments regarding the revised notice requirements for certain temporary airports and landing areas. This action does not affect any other revision to Part 157 resulting from Amendment No. 157–4.

The FAA, in Amendment No. 157–4, had intended to establish a notice requirement for those operators establishing airports in proximity to

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other airports or located in residential, business, or industrial areas. Such notice provides the FAA with an opportunity to conduct an aeronautical study of an airport proposal and to determine the effects of that proposal on neighboring airports, on existing or contemplated traffic patterns at neighboring airports, and on the existing airspace environment and projected FAA programs. Further, the FAA would have the opportunity to study the effects that existing or proposed manmade objects and natural objects within the affected area would have on the airport proposal.

However, the FAA recognizes that there may be a number of reasons for multiple operations to a site with no intent to establish an airport within the meaning of part 157. For example, medical, firefighting, law enforcement, construction, logging, and agricultural functions may require repeated flights to and from an accident, incident, construction, or other temporary landing site. Additionally, certain construction, agricultural, and logging functions may not require the continuous use of a site over the course of the project but would instead involve occasional and infrequent return visits to the site. Because the notice requirements of this part currently exclude only those proponents who use or intend to use a site for less than 30 consecutive days, proponents who must use a site on an intermittent basis, for a period in excess of 30 days, are required to provide 90-days advance notice. Such notice would be required in a situation involving two operations to the same site when the return visit is conducted 30 or more days after the first operation. The FAA believes that the majority of such operations would not require or result in the establishment of an airport nor constitute an intent to establish an airport.

Currently, an operator who conducts no more than 10 operations a day at a site that is not intended to be used for more than 30 consecutive days, is not required to provide notice under part 157. For the purposes of this part, the FAA considers one operation to consist of both the flight to the site and the associated departure from that site. Ten operations therefore, would consist of 10 landings and 10 associated takeoffs.

The FAA acknowledges that § 157.1 (as revised by Amendment No. 157–4, effective August 30, 1991) may suggest that notice would be required in any situation involving an aircraft landing at a site that is located in a residential, business, or industrial area or a site within a certain distance from another airport. Such a notice requirement would result in hundreds of notices a day from aircraft operators conducting routine construction, logging, agricultural, or law enforcement operations to and from sites that are not, nor intended to be, established airports. Accordingly, the FAA is amending the language and form of § 157.1 (as revised by Amendment No. 157–4) to correspond with the current language of this section and as proposed in Notice 88–15. This revision is intended to minimize the possibility of different interpretations and eliminate the suggestion of a notice requirement where no such requirement is needed or intended. Further, the FAA is excluding those proponents who intend to use a site on an intermittent basis for less than one year. For the purposes of this part, the term "intermittent use of a site" is defined as the use of a site for no more than 3 days in one week and at which no more than 10 operations will be conducted in any one day. The FAA continues to believe that the current threshold of 10 operations a day is a reasonable limit above which the number of operations may begin to have an effect on the operation at neighboring airports. The FAA believes that those functions involving a level of activity in excess of 10 operations a day warrant closer examination by the FAA for appropriate consideration of the potential impact to adjacent airspace users. The FAA also considers a limit of 3 days a week as a reasonable indicator of the intermittent use of a site as opposed to the use of a site for 5 or more days a week as being representative of the continuous use of a site.

Section 157.5 (as revised by Amendment No. 157–4) provides that an operator must submit notice of intent to establish a new airport, FAA Form 7480–1, at least 90 days before work is to begin. However, § 157.5(b)(1) provides that in situations involving public service, public health, or public safety emergencies, or when delay would result in an unreasonable hardship, an operator may provide notice to the FAA by telephone or any other expeditious means. If operations have ceased and the site is not intended to be used again, the operator is not required subsequently to submit written notice to the FAA on Form 7480–1.

The FAA is clarifying § 157.5 (as revised by Amendment No. 157–4) by explaining that operators providing telephone notification in accordance with § 157.5(b)(1) should contact the appropriate FAA Airport District/Field Office or Regional Office as soon as practicable. Amendment No. 157–4 did not identify the appropriate FAA office to contact by telephone.

The Rule

This action revises a previous amendment to this part (Amendment No. 157–4) which will become effective on August 30, 1991. To eliminate the possibility of misinterpretation of agency rulemaking, the FAA is revising § 157.1 (as revised by Amendment No. 157–4) to provide that an airport at which flight operations will be conducted under visual flight rules (VFR), and will be used for less than 30 days with no more than 10 operations a day, is excluded from the notice requirements of part 157, regardless of where that airport is located. Additionally, proponents who use or intend to use a site that is not an established airport on an intermittent basis (no more than 3 days in a week and for no more than 10 operations a day) are excluded from the notice requirement. Section 157.5 is also being revised to specify the appropriate FAA office to be notified by telephone for situations involving an emergency public service or an unreasonable hardship to the operator.

This action only affects those changes to Part 157 (resulting from Amendment No. 157–4) which involve the revised notice requirements for certain airports and landing areas. The other changes to Part 157 resulting from Amendment No. 157–4 are not affected by this action and will become effective on August 30, 1991. To reflect the correct and intended verbiage of part 157 as a result of Amendment No. 157–4 and this action, the FAA is printing part 157 in its entirety.

Effective Date

This amendment is adopted as a final rule to clarify the intent of an agency regulation and to ensure that the public will not be unnecessarily inconvenienced by an apparent requirement for notice which the agency did not intend and does not require. The revision of part 157 was previously proposed for public comment, and extensive public comments were received on the issues addressed in this amendment. Accordingly, I find that further notice and delay in the clarification of an agency regulation are unnecessary and contrary to the public interest, and that this amendment is excepted from the general notice and comment requirements pursuant to 5 U.S.C. 553(b). For the same reasons, and because this amendment relieves a restriction, I find that good cause exists for making the amendment effective coincident with the August 30 effective date of Amendment No. 157–4.

Requests for Comments

Comments are requested on the specific issues addressed by this amendment, particularly on the clarifying language of revised § 157.1; Applicability. The FAA received approximately 60 comments regarding the notice requirement for the establishment of airports located in proximity to another airport and for the establishment of heliports located in residential, business, and industrial areas. The FAA is requesting additional comments to provide all interested and affected parties with an opportunity to express their views and opinions on this matter. Issues relating to the notice requirement for a change to, or the establishment of an airport traffic pattern; the elimination of the term "personal use" as an airport use designation; the provision for FAA determination void dates; and other changes resulting from Amendment No. 157–4 have been the subject of notice and comment proceedings, and this request for comments does not represent a reopening or reconsideration of these issues.

Economic Evaluation

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each proposed change outweigh potential costs. Accordingly, the FAA has examined the economics of this proposal in an effort to identify and quantify benefits and costs. As a result of that examination, the agency has determined that benefits are positive, but minimal, and costs are negligible.

This rule relieves the public from an unintended and unnecessary notice requirement which would have resulted in the absence of this action. In particular, this rule will relieve certain airport proponents from the burden of a 90-day notice requirement prior to the establishment of an airport located within a specified distance from another airport, the establishment of a heliport located in a residential, business, or industrial area; or the intermittent use of a site for less than one year. The FAA has determined that this rule does not impose additional cost burdens on the public or on the FAA and is, in fact, cost relieving.

An analysis of the economic impact of the changes to Part 157 resulting from Amendment No. 157–4 appears in the preamble discussion to that amendment (55 FR 34994; August 27, 1990). This clarification of regulatory requirements does not affect that analysis. Because there is no impact resulting from this rule, and this rule is relieving in nature, the FAA has not performed a further regulatory evaluation.

International Trade Impact Statement

This rule will not impose a competitive disadvantage to either U.S. air carriers doing business abroad or foreign air carriers doing business in the United States. This assessment is based on the fact that this rule will have no impact on either U.S. or foreign air carriers.

Federalism Implications

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

This action clarifies an agency regulation and does not change any reporting requirement associated with part 157.

Conclusion

For the reasons discussed in the preamble, and based on the regulatory analysis contained in the preamble to Amendment No. 157–4, the FAA has determined that this regulation is not major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, the FAA certifies that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 157

Airports, Aviation safety.

The Amendment

For the reasons set forth above, 14 CFR part 157 of the Code of Federal Regulations is amended by revising it to read as follows:

PART 157—NOTICE OF CONSTRUCTION, ALTERATION, ACTIVATION, AND DEACTIVATION OF AIRPORTS

Sec.
157.1 Applicability.
157.2 Definition of terms.
157.3 Projects requiring notice.
157.5 Notice of intent.
157.7 FAA determinations.
157.9 Notice of completion.

Authority: Secs. 309, 313(a), 314, 72 Stat. 751; 49 U.S.C. 1350, 1354(a), 1355.

§ 157.1 Applicability.

This part applies to persons proposing to construct, alter, activate, or deactivate a civil or joint-use (civil/military) airport or to alter the status or use of such an airport. Requirements for persons to notify the Administrator concerning certain airport activities are prescribed in this part. This part does not apply to projects involving:

(a) An airport subject to conditions of a Federal agreement that requires an approved current airport layout plan to be on file with the Federal Aviation Administration; or

(b) An airport at which flight operations will be conducted under visual flight rules (VFR) and which is used or intended to be used for a period of less than 30 consecutive days with no more than 10 operations per day.

(c) The intermittent use of a site that is not an established airport, which is used or intended to be used for less than one year and at which flight operations will be conducted only under VFR. For the purposes of this part, *intermittent use of a site* means:

(1) The site is used or is intended to be used for no more than 3 days in any one week; and

(2) No more than 10 operations will be conducted in any one day at that site.

§ 157.2 Definition of terms.

For the purpose of this part:

Airport means any airport, heliport, helistop, vertiport, gliderport, seaplane base, ultralight flightpark, manned balloon launching facility, or other aircraft landing or takeoff area.

Heliport means any landing or takeoff area intended for use by helicopters or other rotary wing type aircraft capable of vertical takeoff and landing profiles.

Private use means available for use by the owner only or by the owner and other persons authorized by the owner.

Private use of public lands means that the landing and takeoff area of the proposed airport is publicly owned and the proponent is a non-government entity, regardless of whether that landing and takeoff area is on land or on

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CFR Part 157

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PART 157—NOTICE OF CONSTRUCTION, ALTERATION, ACTIVATION, AND DEACTIVATION OF AIRPORTS

Sec.
157.1 Applicability.
157.2 Definition of terms.
157.3 Projects requiring notice.
157.5 Notice of intent.
157.7 FAA determinations.
157.9 Notice of completion.

Authority: Secs. 309, 313(a), 314, 72 Stat. 751; 49 U.S.C. 1350, 1354(a), 1355.

§ 157.1 Applicability.

This part applies to persons proposing to construct, alter, activate, or deactivate a civil or joint-use (civil/military) airport or to alter the status or use of such an airport. Requirements for persons to notify the Administrator concerning certain airport activities are prescribed in this part. This part does not apply to projects involving:

(a) An airport subject to conditions of a Federal agreement that requires an approved current airport layout plan to be on file with the Federal Aviation Administration; or

(b) An airport at which flight operations will be conducted under visual flight rules (VFR) and which is used or intended to be used for a period of less than 30 consecutive days with no more than 10 operations per day.

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Heliport means any landing or takeoff area intended for use by helicopters or other rotary wing type aircraft capable of vertical takeoff and landing profiles.

Private use means available for use by the owner only or by the owner and other persons authorized by the owner.

Private use of public lands means that the landing and takeoff area of the proposed airport is publicly owned and the proponent is a non-government entity, regardless of whether that landing and takeoff area is on land or on

water and whether the controlling entity be local, State, or Federal Government.

Public use means available for use by the general public without a requirement for prior approval of the owner or operator.

Traffic pattern means the traffic flow that is prescribed for aircraft landing or taking off from an airport, including departure and arrival procedures utilized within a 5-mile radius of the airport for ingress, egress, and noise abatement.

§ 157.3 Projects requiring notice.

Each person who intends to do any of the following shall notify the Administrator in the manner prescribed in § 157.5:

(a) Construct or otherwise establish a new airport or activate an airport.

(b) Construct, realign, alter, or activate any runway or other aircraft landing or takeoff area of an airport.

(c) Deactivate, discontinue using, or abandon an airport or any landing or takeoff area of an airport for a period of one year or more.

(d) Construct, realign, alter, activate, deactivate, abandon, or discontinue using a taxiway associated with a landing or takeoff area on a public-use airport.

(e) Change the status of an airport from private use to public use or from public use to another status.

(f) Change any traffic pattern or traffic pattern altitude or direction.

(g) Change status from IFR to VFR or VFR to IFR.

§ 157.5 Notice of intent.

(a) Notice shall be submitted on FAA Form 7480–1, copies of which may be obtained from an FAA Airport District/Field Office or Regional Office, to one of those offices and shall be submitted at least—

(1) in the cases prescribed in paragraphs (a) through (d) of § 157.3, 90 days in advance of the day that work is to begin; or

(2) in the cases prescribed in paragraphs (e) through (g) of § 157.3, 90 days in advance of the planned implementation date.

(b) Notwithstanding paragraph (a) of this section—

(1) in an emergency involving essential public service, public health, or public safety or when the delay arising from the 90-day advance notice requirement would result in an unreasonable hardship, a proponent may provide notice to the appropriate FAA Airport District/Field Office or Regional Office by telephone or other expeditious means as soon as practicable in lieu of submitting FAA Form 7480–1. However, the proponent shall provide full notice, through the submission of FAA Form 7480–1, when otherwise requested or required by the FAA.

(2) notice concerning the deactivation, discontinued use, or abandonment of an airport, an airport landing or takeoff area, or associated taxiway may be submitted by letter. Prior notice is not required; except that a 30-day prior notice is required when an established instrument approach procedure is involved or when the affected property is subject to any agreement with the United States requiring that it be maintained and operated as a public-use airport.

§ 157.7 FAA determinations.

(a) The FAA will conduct an aeronautical study of an airport proposal and, after consultations with interested persons, as appropriate, issue a determination to the proponent and advise those concerned of the FAA determination. The FAA will consider matters such as the effects the proposed action would have on existing or contemplated traffic patterns of neighboring airports; the effects the proposed action would have on the existing airspace structure and projected programs of the FAA; and the effects that existing or proposed manmade objects (on file with the FAA) and natural objects within the affected area would have on the airport proposal. While determinations consider the effects of the proposed action on the safe and efficient use of airspace by aircraft and the safety of persons and property on the ground, the determinations are only advisory. Except for an objectionable determination, each determination will contain a determination-void date to facilitate efficient planning of the use of the navigable airspace. A determination does not relieve the proponent of responsibility for compliance with any local law, ordinance or regulation, or state or other Federal regulation. Aeronautical studies and determinations will not consider environmental or land use compatibility impacts.

(b) An airport determination issued under this part will be one of the following:

(1) *No objection.*

(2) *Conditional.* A conditional determination will identify the objectionable aspects of a project or action and specify the conditions which must be met and sustained to preclude an objectionable determination.

(3) *Objectionable.* An objectionable determination will specify the FAA's reasons for issuing such a determination.

(c) *Determination void date.* All work or action for which notice is required by this sub-part must be completed by the determination void date. Unless otherwise extended, revised, or terminated, an FAA determination becomes invalid on the day specified as the determination void date. Interested persons may, at least 15 days in advance of the determination void date, petition the FAA official who issued the determination to:

(1) Revise the determination based on new facts that change the basis on which it was made; or

(2) Extend the determination void date. Determinations will be furnished to the proponent, aviation officials of the state concerned, and, when appropriate, local political bodies and other interested persons.

§ 157.9 Notice of completion.

Within 15 days after completion of any airport project covered by this part, the proponent of such project shall notify the FAA Airport District Office or Regional Office by submission of FAA Form 5010–5 or by letter. A copy of FAA Form 5010–5 will be provided with the FAA determination.

Issued in Washington, DC on July 19, 1991.

James B. Busey,

Administrator.

[FR Doc. 91–17568 Filed 7–23–91; 8:45 am]

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Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Temporary Flight Restrictions; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 26605; Notice No. 91-14]

RIN 2120-AD-55

Temporary Flight Restrictions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: The FAA proposes to require the operator of an aircraft used in conducting authorized news-gathering operations in an area covered by temporary flight restrictions to contact the official in charge of the on-scene emergency response activities for the purpose of obtaining information about current and forecasted disaster relief aircraft activities. Adoption of this proposal would reduce the potential for traffic conflicts and disruption of relief operations. This proposal would increase the level of safety afforded aircraft used in conducting rescue or disaster relief operations.

DATES: Comments must be received on or before September 23, 1991.

ADDRESSES: Comments on this proposal may be mailed or delivered in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 26605, 800 Independence Avenue SW., Washington, DC 20591. Comments may be examined in the Rules Docket, Room 915, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. William M. Mosley, Air Traffic Rules Branch, ATP-230, Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-9251.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the proposed rulemaking procedures by submitting such written data, views, or arguments as they may desire. Comments are invited that provide the factual basis supporting the views and suggestions presented relating to the environmental, energy, or economic impacts that may result from adoption of the proposals contained in this notice. Communications should identify the regulatory docket number or notice number and be submitted in duplicate to the address above. All communications received on or before the closing date for comments will be considered by the Administrator before taking further action on the proposed revisions to the rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons before and after the closing date for comments. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No." The postcard will be date/time stamped, and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-200, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the docket number and/or notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Currently, when temporary flight restrictions are established under § 91.137(a)(2) to provide for the safety of aircraft conducting rescue or disaster relief operations, aircraft carrying properly accredited newspeople may enter the prescribed area without prior approval after filing a flight plan. However, the pilot of such an aircraft must operate above the altitude(s) being used by rescue or disaster relief aircraft. The process by which a pilot determines which altitudes are in use is not prescribed by the current regulation. Therefore, a pilot may determine such altitudes by requesting the information directly from the rescue or disaster relief aircraft on an appropriate two-way radio frequency, by observation, or by other methods. The information obtained using these methods may be valid for only a short time, or inaccurate.

For example, in the case of temporary flight restrictions established for a forest fire being fought by aircraft dropping fire retardants, a pilot of an aircraft carrying newspeople visually determines the presence of rescue or disaster relief aircraft, and will often overlook the fact that there may be air tankers holding outside the operations area prior to entering the area to drop fire retardants. The official in charge of on-scene activities is the logical source for accurate information concerning the aircraft operating in the operations area and can generally be reached via two-way radio communications.

Recently, situations involving aircraft carrying newspeople and emergency response aircraft in areas covered by temporary flight restrictions have occurred. For example, the U.S. Department of the Interior and the Forest Service have indicated that aircraft carrying accredited newspeople have been observed on several occasions operating below the altitudes being used by rescue or disaster relief aircraft. Specifically, on July 10, 1989, during fire suppression in Meadow Valley, Washington (Bertha Fire Helibase), a Bell 206 Helicopter was observed heading toward the fire scene, flying at approximately 50 feet above ground level (AGL), directly over the helibase. Temporary flight restrictions were in effect over the area. Due to the unknown position of the intruding helicopter, fire suppression activities were temporarily suspended. Another incident occurred on June 29, 1989, near Sunflower, Arizona, over mountainous terrain at 4,300 feet mean sea level. A fire had been reported out of control and temporary flight restrictions were in effect for the area. An air tanker had just made a drop and was climbing out of the mountain canyon when a Robertson R-22 Helicopter was observed flying up the canyon at or near the same altitude, approximately 700 feet AGL. The tanker was required to increase the rate of climb in order to avoid the helicopter. Subsequently, the intruding helicopter landed at the firebase heliport. The pilot of the intruding helicopter was under contract to a news service. After landing, the pilot was informed of the temporary flight restrictions and the potentially hazardous situation that he had created for himself, his passengers and the crew of the air tanker. At no time prior to landing at the heliport did the pilot of the intruding helicopter make contact with the official in charge of on-scene activities.

The FAA has determined that such incidents demonstrate the need for stricter control of news-gathering operations using aircraft. Such control would be facilitated by having the news-gathering aircraft operate within the parameters established by the on-scene emergency response official. When a

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The FAA has determined that such incidents demonstrate the need for stricter control of news-gathering operations using aircraft. Such control would be facilitated by having the news-gathering aircraft operate within the parameters established by the on-scene emergency response official. When a

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temporary flight restriction is issued through the notice to airman (NOTAM) system, information containing the person in charge of the emergency, the appropriate phone number, and the FAA coordination facility are in the NOTAM. Further, this contact would result in an appropriate air-to-air or air-to-ground radio frequency being given to the aircraft operator. Failure to obtain pertinent information from the official in charge of on-scene emergency response activities and remain clear of the routes, altitudes, and operating areas identified within the temporary flight restriction area would be a violation of § 91.137.

The Proposal

The FAA is proposing to revise § 91.137(c)(5) to require: (1) All pilots of aircraft carrying properly accredited newspeople to first contact the official in charge of on-scene emergency response activities to ascertain the routes, altitudes, and operating areas in use by disaster relief aircraft; and (2) that the aircraft be operated clear of all disaster relief aircraft operations identified by the official in charge.

Regulatory Evaluation Summary

This section summarizes the full regulatory evaluation prepared by the FAA. The full regulatory evaluation provides more detailed analysis of the economic consequences of this proposed regulatory action. This summary and the full evaluation quantify, to the extent practicable, estimated costs to the private sector, consumers, Federal, State and local governments, as well as anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if the potential benefits to society for each regulatory change outweigh potential costs. This Order also requires the preparation of a Regulatory Impact Analysis of all major rules except those responding to emergency situations or other narrowly defined exigencies. A major rule is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, a significant adverse effect on competition, or is highly controversial.

The FAA has determined that this proposal is not major as defined in the Executive Order; therefore, a full regulatory analysis that includes the identification and evaluation of cost reducing alternatives to the proposal has not been prepared. Instead, the agency has prepared a more concise document termed a regulatory evaluation that analyzes only this proposal without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains an initial regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (RFA) and an international trade impact assessment. If more detailed economic information than is contained in this summary is desired, the reader is referred to the full regulatory evaluation contained in the docket.

Costs

The FAA estimates the total monetary costs of the proposed rule to be zero. However, there would be some negligible qualitative costs in the form of inconvenience to operators of aircraft used for news-gathering. These costs are discussed below.

For the FAA, or any government or private authority that acts as the official in charge of emergency relief aircraft operations, the proposed rule would not impose any additional administrative costs for either personnel or equipment. Any additional operations workload generated by the proposed rule would be absorbed by current personnel and equipment resources.

For aircraft operators, the proposed rule would not impose any additional equipment or operating costs. Potential equipment costs would be the acquisition of two-way radio equipment in order to contact the official in charge. Potentially affected aircraft would be air taxis or aircraft owned by news-gathering organizations. However, these aircraft routinely operate in airspace that requires two-way radio communication. Thus, the FAA assumes that these types of aircraft are already equipped with two-way radios. Operators of aircraft conducting authorized news-gathering operations could incur qualitative costs in the form of inconvenience. This would be the result of having to contact the official in charge of the emergency in addition to filing a flight plan with air traffic control. However, the FAA contends that the inconvenience of having to contact the official in charge would be negligible.

Benefits

The proposed rule is expected to accrue potential benefits primarily in the form of enhanced aviation safety to emergency response aircraft and news-gathering aircraft. These benefits are discussed below.

Safety benefits would take the form of a reduced risk in casualty losses (namely, aviation fatalities and property damage) resulting from a lowered likelihood of midair collisions. Of course, the FAA does not know with certainty to what extent the proposal would help in preventing midair collisions. In addition, the FAA cannot predict with a reliable degree of certainty the frequency and magnitude of casualty loss resulting from a midair collision because it represents a random event.

The potentially disastrous incidents described in the background section of this notice posed an unnecessary and unwarranted diminution in the margin of safety of areas under temporary flight restrictions. By not contacting the official in charge, these pilots left themselves unaware of emergency air traffic information that was pertinent to not only their safety, but to the safety of fire fighters in the air and on the ground. The FAA contends that requiring aircraft operators conducting authorized news-gathering operations to contact the official in charge would increase their awareness of the emergency operations being conducted in the area. This increased awareness and information would increase safety by lowering the likelihood of a midair collision between news-gathering and emergency aircraft. Forest fires and other crisis situations in which emergency aircraft must operate are potentially dangerous enough without the added potential of colliding with news-gathering aircraft. This proposal would also increase efficiency by lowering the likelihood of emergency operations being suspended due to unidentified aircraft operating in the area.

Conclusion

The estimated dollar cost of this proposal is zero because there would be no costs incurred to acquire additional equipment or to hire personnel on the part of the FAA, the emergency relief authority, or aircraft operators. In qualitative terms, the proposed rule would impose negligible costs in the form of the inconvenience of news-gathering aircraft operators having to contact the official in charge. The potential benefits of this proposal would be the enhanced safety of requiring aircraft operators to be more aware of emergency relief aircraft traffic and other advisory information. This information is necessary to navigate safely within an area of temporary flight restrictions and would reduce the likelihood of a midair collision. This proposed action would also generate benefits in the form of an increased efficiency in emergency operations. On balance, the FAA firmly believes that the proposed rule is cost-beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules that may have a significant economic impact on a substantial number of small entities. The small entities that could be potentially affected by the implementation of this proposed rule are unscheduled operators of aircraft for hire, such as air taxi operators owning nine or fewer aircraft.

Only air taxi operators and aircraft operated by news-gathering organizations without two-way radios would be affected by this proposed amendment. However, the FAA assumes that all potentially affected aircraft already are equipped with two-way radios. This assumption is based on the fact that these aircraft must routinely operate in airspace that requires two-way communications with air traffic control. Therefore, the FAA certifies that this proposed amendment would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The proposed amendment would neither have an effect on the sale of foreign aviation products or services in the United States, nor have an effect on the sale of U.S. products or services in foreign countries. This is because the proposed amendment would neither impose costs on aircraft operators nor on aircraft manufacturers (U.S. or foreign) that would result in a competitive disadvantage to either.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291. In addition, the FAA certifies that this proposal, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). An initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "**FOR FURTHER INFORMATION CONTACT**."

List of Subjects in 14 CFR Part 91

Aircraft, Airmen, Airports, Air traffic control, Aviation safety, Noise control, Temporary flight restrictions.

The Proposed Amendment

For the reasons set forth in the preamble, the FAA proposes to amend part 91 of the Federal Aviation Regulations (14 CFR part 91) as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 31(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. Section 91.137(c)(5) is revised to read as follows:

§ 91.137 Temporary flight restrictions.

* * * * *

(c) * * *

(5) The aircraft is carrying properly accredited newspersons; and:

(i) Prior to entering the area identified in the NOTAM, the pilot in command files a flight plan with the appropriate FAA or ATC facility specified in the NOTAM; and contacts the official in charge of on-scene emergency response activities for the purpose of obtaining information about current and forecasted disaster relief aircraft routes, altitudes, and operating areas; and

(ii) After entering the area identified in the NOTAM, the pilot in command remains clear of the routes, altitudes, and operating areas identified by the official in charge or which otherwise appear to be used by disaster relief aircraft.

* * * * *

Issued in Washington, DC, on July 18, 1991.

Jerry W. Ball,

Acting Director Air Traffic Rules and Procedures Service.

[FR Doc. 91–17567 Filed 7–23–91; 8:45 am]

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Issued in Washington, DC, on July 18, 1991.

Jerry W. Ball,

Acting Director Air Traffic Rules and Procedures Service.

[FR Doc. 91–17567 Filed 7–23–91; 8:45 am]

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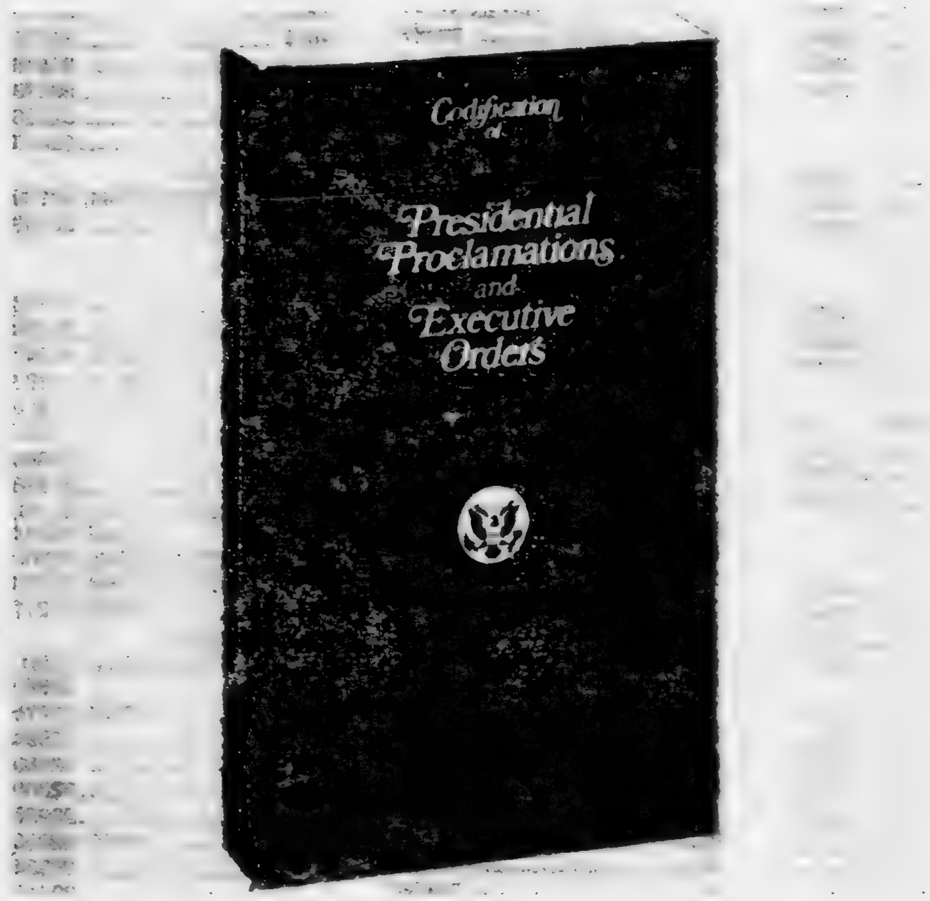

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DEPARTMENT OF AGRICULT

Agricultural Marketing Servic

7 CFR Part 29

TB-91-003

RIN 0581-AA19

Tobacco Inspection; Fees and
for Inspection and Grading of
Imported Tobacco

AGENCY: Agricultural Marketin
Service, USDA.

ACTION: Final rule.

SUMMARY: The Tobacco Adjust
of 1983, as amended, requires t
Secretary of Agriculture to fix
collect fees and charges for ins
testing and grading of all tobac
offered for importation into the
States, except cigar and orienta
tobacco. This rule will change t
fee charge from cents per poun
per kilogram. This change will
the billing procedures.

EFFECTIVE DATE: September 1, 1

FOR FURTHER INFORMATION CON
Ernest L. Price, Director, Tobac
Division, AMS, USDA, room 50
Building, P.O. Box 96456, Wash
DC 20090-6456. Telephone—(20
2567.

SUPPLEMENTARY INFORMATION:
hereby given that the Departme
amending the regulations gover
inspection of imported tobacco
changing the user fee charge fro
per pound to cents per kilogram
proposed rule was published in
Federal Register on April 18, 19
15845). The proposed rule woul
the fees and charges for inspect
testing and grading of imported
from cents per pound to cents p
kilogram. Interested persons we
30 days to submit comments. N
comments were received.

Rules and Regulations

Federal Register
Vol. 56, No. 143
Thursday, July 25, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

TB–91–003

RIN 0581–AA19

Tobacco Inspection; Fees and Charges for Inspection and Grading of Imported Tobacco

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Tobacco Adjustment Act of 1983, as amended, requires the Secretary of Agriculture to fix and collect fees and charges for inspection, testing and grading of all tobacco offered for importation into the United States, except cigar and oriental tobacco. This rule will change the user fee charge from cents per pound to cents per kilogram. This change will simplify the billing procedures.

EFFECTIVE DATE: September 1, 1991.

FOR FURTHER INFORMATION CONTACT: Ernest L. Price, Director, Tobacco Division, AMS, USDA, room 502 Annex Building, P.O. Box 96456, Washington, DC 20090–6456. Telephone—(202) 447–2567.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department is amending the regulations governing the inspection of imported tobacco by changing the user fee charge from cents per pound to cents per kilogram. A proposed rule was published in the **Federal Register** on April 18, 1991 (56 FR 15845). The proposed rule would change the fees and charges for inspection, testing and grading of imported tobacco from cents per pound to cents per kilogram. Interested persons were given 30 days to submit comments. No comments were received.

This action is needed to simplify the billing procedures for the collection of fees charged for inspection, grading, and testing of tobacco imported into the United States. The U.S. Customs Service requires importers to report weight in kilograms. This requires a conversion to be made from kilograms to pounds. Basing the rate on kilograms would eliminate the need for conversion with its potential for errors.

The current fee of $.0045 per pound for inspection of imported tobacco will be changed to $.0099 per kilogram. The current fee of $.0035 per pound for sampling, testing, and certification of imported tobacco will be changed to $.0077 per kilogram. Also, the current additional fee of $.0035 per pound for testing imported tobacco not accompanied by a certification that it is free of prohibited pesticide residues will be changed to $.0077 per kilogram. The authority for this proposed regulation is contained in the Tobacco Adjustment Act of 1983, as amended (7 U.S.C. 511r).

This rule has been reviewed under the Regulatory Flexibility Act (5 U.S.C. *et seq.*). The Administrator, Agricultural Marketing Service, has determined that the rule would not have a significant economic impact on a substantial number of small entities. The rule would not substantially affect the normal movement of the commodity in the marketplace.

This rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "nonmajor" rule because it does not meet any of the criteria established for major rules under the Executive Order.

List of Subjects in 7 CFR Part 29

Administrative practice and procedure, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping requirements, Tobacco.

For the reasons set forth in the preamble, the regulations in 7 CFR part 29 are amended as follows:

PART 29—[AMENDED]

1. The authority citation for subpart B of 7 CFR part 29 continues to read as follows:

Authority: 7 U.S.C. 511m and 511r.

2. Section 29.500 is revised to read as follows:

§ 29.500 Fees and charges for inspection and testing of imported tobacco.

(a) The fee for inspection of imported tobacco is $.0099 per kilogram and shall be paid by the importer. This inspection fee applies to all tobacco imported into the United States except as provided in § 29.400. Fees for services rendered shall be remitted by check or draft in accordance with a statement issued by the Director, and shall be made payable to "Agricultural Marketing Service."

(b) The fee for sampling, testing, and certification of imported flue-cured and burley tobacco for prohibited pesticide residues is $.0077 per kilogram and shall be paid by the importer.

(c) The fee for testing imported flue-cured and burley tobacco not accompanied by a certification that it is free of prohibited pesticide residues shall be an additional $.0077 per kilogram. The minimum fee assessed pursuant to this paragraph shall be $162.00 per lot. Fees for services rendered shall be remitted by check or draft in accordance with a statement issued by the Director, and shall be made payable to "Agricultural Marketing Service."

Dated: July 10, 1991.

Daniel Haley,
Administrator.

[FR Doc. 91–17602 Filed 7–24–91; 8:45 am]

BILLING CODE 3410–02–M

Agricultural Marketing Service

7 CFR Part 928

[Docket No. FV–91–292FR]

Expenses and Assessment Rate for the Marketing Order Covering Papayas Grown in Hawaii

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final Rule.

SUMMARY: This final rule approves a budget of expenditures and establishes an assessment rate for the 1991–92 fiscal year (July 1–June 30) under Marketing Order No. 928. This action authorizes the Papaya Administrative Committee (PAC) established under this order to incur expenses and collect assessments from handlers to pay those expenses.

This action will enable the PAC to perform its duties and the marketing order to operate.

EFFECTIVE DATE: July 1, 1991, through June 30, 1992.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 475–3918.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 928 (7 CFR part 928) regulating the handling of papayas grown in Hawaii. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 120 handlers of Hawaiian papayas subject to regulations under the marketing order covering papayas grown in Hawaii and about 345 papaya producers in Hawaii. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. the majority of the handlers and producers may be classified as small entities.

This marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year shall apply to all assessable papayas handled from the beginning of such year. An annual budget of expenses is prepared by the PAC and submitted to the Department for approval. The PAC members are handlers and producers of Hawaiian papayas. They are familiar with the PAC's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the PAC is derived by dividing anticipated expenses by the expected pounds of assessable papayas shipped. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the PAC's expected expenses. The annual budget and assessment rate are usually acted upon by the PAC shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the PAC will have funds to pay its expenses.

The proposed rule concerning the 1991–92 budget was published in the **Federal Register** (56 FR 29195, June 26, 1991). Comments on the proposed rule were invited from interested persons until July 8, 1991. No comments were received.

The PAC met on May 2, 1991, and recommended a 1991–92 budget with expenditures of $746,650 and an assessment rate of $0.0085 per pound of assessable papayas shipped. The vote on the 1991–92 budget was nine in favor and two opposed. The two members who voted against the recommendation did so because they wanted a lower budget and assessment rate.

The 1991–92 budget of $746,650 is generally similar in size and scope to the 1990–91 approved budget of $827,837, except for reductions of $50,000 research and $20,000 in travel.

The 1991–92 budget contains $336,650 for program administration, $400,000 for advertising and promotion, and $10,000 for research and development. Budgeted expenditures for 1990–91 were $367,837 for program administration, $400,000 for advertising and promotion, and $60,000 for research and development. The 1991–92 advertising, promotion, and research projects will be submitted for approval as soon as the 1991–92 budget is approved.

PAC income for 1991–92 is expected to amount to $748,660. Assessment income is estimated at $467,500, based on projected shipments of 55,000,000 pounds of assessable papayas. Other income includes $200,000 in promotional grants from the Hawaii Department of Agriculture, $63,360 from the USDA's Foreign Agricultural Service, $7,800 from the Japan Inspection Program, and $10,000 from miscellaneous sources including interest. Projected 1991–92 income over expenses ($2,010) would be placed in the PAC's operating reserve. The operating reserve, which is projected to amount to $49,235 on July 1, 1991, is well within the amount authorized under the marketing order.

While this action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This final rule adds a new § 928.221 under this marketing order, based on the PAC's recommendations and other information.

After consideration of all relevant matter presented, the information and recommendations submitted by the PAC, and other available information, it is found that this action will tend to effectuate the declared policy of the Act

Pursuant to 5 U.S.C. 533, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because approval of the expenses and assessment rate must be expedited. This marketing order's fiscal year began on July 1, 1991. The PAC needs authorization to incur expenses and sufficient funds to pay its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 928

Marketing agreements, Papayas, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 928 is amended as follows:

PART 928—PAPAYAS GROWN IN HAWAII

1. The authority citation for 7 CFR part 928 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 928.221 is added to read as follows:

Note: This action will not appear in the Code of Federal Regulations.

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While this action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This final rule adds a new § 928.221 under this marketing order, based on the PAC's recommendations and other information.

After consideration of all relevant matter presented, the information and recommendations submitted by the PAC, and other available information, it is found that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 533, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because approval of the expenses and assessment rate must be expedited. This marketing order's fiscal year began on July 1, 1991. The PAC needs authorization to incur expenses and sufficient funds to pay its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 928

Marketing agreements, Papayas, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 928 is amended as follows:

PART 928—PAPAYAS GROWN IN HAWAII

1. The authority citation for 7 CFR part 928 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 928.221 is added to read as follows:

Note: This action will not appear in the Code of Federal Regulations.

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§ 928.221 Expenses and assessment rate.

Expenses of $746,650 by the Papaya Administrative Committee are authorized, and an assessment rate of $0.0085 per pound of assessable papayas is established for the fiscal year ending June 30, 1992. Any unexpended funds from the 1991–92 fiscal year may be carried over as a reserve.

Dated: July 22, 1991.

William J. Doyle,

Director, Fruit and Vegetable Division.

[FR Doc. 91–17712 Filed 7–24–91; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 506 and 563

[No. 91–154]

RIN 1550–AA26

Transactions With Affiliates and Subsidiaries Loans to One Borrower Limitations

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (the "OTS"), pursuant to and in accordance with sections 4(a), 10(d) and 11 of the Home Owners' Loan Act (HOLA), as added by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Public Law No. 101–73, 103 Stat. 183, is amending its regulations pertaining to transactions between savings associations and their subsidiaries and affiliates. The amendments (i) define and clarify the applicability to thrifts of the limitations and prohibitions specified in sections 23A and 23B of the Federal Reserve Act (FRA), 12 U.S.C. 371c and 371c–1, (ii) clarify the additional limitations imposed on savings association transactions with affiliates pursuant to section 11 of the HOLA, and (iii) pursuant to section 11(a)(4) of the HOLA, impose certain additional regulatory restrictions and safeguards in connection with the application of sections 23A and 23B to transactions between savings associations and their subsidiaries and affiliates. The rule is structured as a comprehensive set of restrictions and prohibitions, rather than as piecemeal supplements to sections 23A and 23B, because of the pervasive and often complex nature of the differences between the application of those sections, on the one hand, and the more stringent treatment provided for savings associations under section 11 of the HOLA and certain provisions of this rule, on the other hand.

In addition, the OTS, pursuant to and in accordance with sections 3(b), 4(a) and 5(u) of the HOLA, is amending its regulations pertaining to loans-to-one-borrower limitations. The first amendment, relating to the scope of the rule, is necessitated by revisions made today to the final transactions-with-affiliates rule. The second amendment merely clarifies the operation of section 5(u)(2)(A)(i) of the HOLA.

EFFECTIVE DATE: August 26, 1991.

FOR FURTHER INFORMATION CONTACT: Aline J. Henderson, Staff Attorney, Corporate and Securities Division (202) 906–7308; V. Gerard Comizio, Senior Associate Chief Counsel/Director, Corporate and Securities Division (202) 906–6411; Julie L. Williams, Senior Deputy Chief Counsel (202) 906–6459; C. Dawn Causey, Attorney, Office of Enforcement (202) 906–7157; Michael P. Scott, Program Manager, Affiliates Policy, Supervision Policy (202) 906–5748; or Kevin L. Petrasic, Assistant Chief Counsel (202) 906–6452; Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: Section 11 of the HOLA, 12 U.S.C. 1468, added by the FIRREA, provides that "[s]ections 23A and 23B of the FRA shall apply to every savings association in the same manner and to the same extent as if the savings association were a member bank [as defined in such Act] * * *" [1] In addition, however, this general parity with banks is made subject to several important differences.

First, a savings association may not make any loan or extension of credit to any affiliate unless that affiliate is engaged only in activities described in section 10(c)(2)(F)(i) of the HOLA, i.e., permissible bank holding company activities.[2] Next, a savings association also is barred from entering into any transaction of the type described in section 23A(b)(7)(B) of the FRA, *i.e.*, investing in the securities of an affiliate, other than with respect to shares of a subsidiary of the association.[3] Finally, the so-called "sister bank" exemption from the quantitative limitations of section 23A, which is available to 80 percent commonly-controlled banks pursuant to section 23A(d)(1), generally is not available to "sister thrifts" until January 1, 1995.[4] The exemption is available on a limited basis, however, for transactions between banks and thrifts that are "sisters" in the same bank and thrift holding company, where the thrift is at least 80 percent owned by the same company that also controls a bank, provided every savings association and every bank owned by such company complies with all applicable capital requirements on a fully phased-in basis and without reliance on goodwill.[5]

In addition to the above-referenced limitations and those imposed under sections 23A and 23B, section 11 provides that the OTS may impose such additional restrictions on any transaction between any savings association and any affiliate as the Director determines to be necessary to protect the safety and soundness of the association.[6] The OTS also has broad additional authority to promulgate regulations to ensure the safe and sound operations of savings associations pursuant to section 4 of the HOLA.

For purposes of applying the provisions of sections 23A and 23B of the FRA to savings associations, section 11 of the HOLA provides that an "affiliate" of a savings association includes any company that would be an "affiliate," as defined in section 23A, of such savings association if such association were a "member bank." [7]

Finally, section 11 also provides that the OTS has authority to enforce sections 23A and 23B (and 22(h)) [8] of the FRA as they apply to thrifts.[9] Violations of these sections are subject to penalties that range from $5,000 per day for "first tier" offenses, up to the lesser of $1 million or 1 percent of the association's assets for "third tier" violations.[10]

The discussion of the final rule and related matters below is divided into the following sections:

I. Background
II. Summary of Comments
  A. Treatment of Subsidiaries
  B. Section 23A Calculations
  C. Recordkeeping and Notice Requirements
  D. Expansion of the Definition of "Covered Transaction"

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[1] 12 U.S.C. 1468(a)(1).

[2] 12 U.S.C. 1468(a)(1)(A).

[3] 12 U.S.C. 1468(a)(1)(B).

[4] 12 U.S.C. 1468(a)(2)(B).

[5] 12 U.S.C. 1468(a)(2)(A).

[6] 12 U.S.C. 1468(a)(4).

[7] 12 U.S.C. 1468(a)(3).

[8] New section 11 of the HOLA also provides that section 22(h) of the FRA, covering extensions of credit to executive officers, directors, and principal shareholders of a bank, is applicable to savings associations in the same manner and to the same extent as if the savings association were a "member bank." The OTS is reviewing the scope of these provisions and the existing OTS "Conflicts Rules" and will determine if an additional rulemaking project to integrate the two is appropriate.

[9] 12 U.S.C. 1468(c).

[10] 12 U.S.C. 1828(j) (4) and (5).

- III. Changes to the Proposed Rule
  - A. Treatment of Subsidiaries
  - B. Definition of "Affiliate"
  - C. Section 23A Calculations—Definition of "Capital Stock and Surplus"
  - D. Section 23A Calculations—Deduction of Loan Write-Offs and Write-Downs
  - E. Section 23A Exemptions
  - F. Attribution of Activities and Transactions Among Affiliates
  - G. Recordkeeping and Notice Provisions
  - H. Revision to OTS's Conflicts Rules
- IV. Modifications to the Loans-to-One-Borrower Rule
  - A. Coverage
  - B. Other Technical Amendments

I. Background

On March 27, 1990, the OTS issued a proposal to apply sections 23A and 23B to savings associations, to incorporate extensive changes in terminology to reflect the application of those provisions to savings associations, and to implement the various special provisions of section 11 that are uniquely applicable to thrifts. Moreover, pursuant to the OTS's authority under section 11(a)(4), the proposal in certain respects differed from, and was more stringent than, the statutory provisions of sections 23A and 23B. See 55 FR 11311 (March 27, 1990).

In many respects, the final rule is similar to the rule as proposed in March 1990.[11] However, in response to comments received, the proposal has been revised in certain critical aspects, discussed below, most notably with regard to the determination reflected in the final rule generally not to treat subsidiaries of thrifts as "affiliates." The rule is effective August 26, 1991.

II. Summary of Comments

The OTS received a total of 84 comment letters from 80 different commenters. Those who submitted comments included: 60 savings associations and related companies; 12 trade associations; 8 law firms; 2 state regulators; one public interest group and one United States Senator.

A. Treatment of Subsidiaries

Virtually all commenters vigorously objected to the treatment of certain subsidiaries of savings associations as "affiliates." According to the proposal, a "subsidiary" of a savings association would be defined as a company that (i) is engaged exclusively in activities permissible for a Federal association, (ii) is controlled by the savings association, and (iii) the voting stock of which is eligible to be held only by savings associations. Any savings association's subsidiary not meeting the three-pronged definitional standard ("nonconforming subsidiary") would have been an "affiliate" of its parent association under the proposal and would have been subject to the various restrictions imposed on transactions with affiliates by sections 23A and 23B of the FRA as applied and augmented by section 11(a) of the HOLA.

The OTS specifically solicited comments on whether the proposed approach would be too restrictive on the operations of thrifts and what activities might be adversely affected. Only two commenters favored this approach; the remaining eight-two expressed strong disapproval. The OTS also indicated that it was considering four alternative approaches to the proposed treatment of subsidiaries and sought comments on the merits and deficiencies of each.

The general opposition to the proposed treatment of subsidiaries followed four lines of argument: (i) The OTS lacks statutory authority to broaden the definition of affiliate; (ii) the expansion of the "affiliate" definition runs counter to an explicit congressional intent in enacting the FIRREA generally to establish parity between banks and thrifts in the affiliate transactions area; (iii) the proposed treatment of subsidiaries constitutes an unwarranted departure from the overall statutory scheme established in FIRREA for insulating thrifts from the potentially risky activities of their subsidiaries and is inconsistent with existing regulatory restraints; and (iv) the limitation on dealings with subsidiaries engaged in historically profitable and desirable activities will result in undue economic harm. Commenters argued that it would cause dislocations including outright divestitures, further devalue the thrift charter, and hamper the efforts of the Resolution Trust Corporation to dispose of ailing thrifts. Upon review of these arguments, the OTS has determined that some have substantial merit and, as discussed at part III.A below, has revised the final rule to eliminate the proposed special treatment of nonconforming subsidiaries.

B. Section 23A Calculations

Although no commenters disputed the OTS's proposed approach to calculating outstanding covered transactions, various commenters opposed the inclusion of all covered transactions entered into and executed prior to August 9, 1989, in the overall calculation. The opposition was generally grounded in what was perceived to be an unfair retroactive imposition of a statutory restriction made applicable to thrifts only upon the date of enactment of FIRREA. Particular concerns were expressed regarding the effect of including transactions with nonconforming subsidiaries that would be deemed "affiliates" under the proposal. Commenters requested that the OTS grandfather or otherwise discount transactions entered into prior to the enactment of FIRREA.

In the interests of safety and soundness, the OTS has determined that institutions should strive to achieve compliance with the limitations of section 23A as soon as feasible, and that transactions entered into prior to the enactment of FIRREA, if they would otherwise be deemed to be outstanding covered transactions, should be included in calculating an association's covered transactions. In the event this results in an association's covered transactions with any single affiliate, or with all affiliates in the aggregate, exceeding the applicable limits of section 23A, the OTS expects the association to take steps that are reasonably practicable to reduce its covered transactions to permissible levels. OTS will not deem pre-FIRREA transactions to be violations of section 23A, but an association may not enter into new covered transactions unless and until its existing covered transactions are reduced below permissible limits, and then, only to the extent allowable under section 23A. In addition, renewals or extensions of all loans (including pre-FIRREA loans) must conform to the transactions-with-affiliates limitations of section 23A and section 11 of the HOLA if such renewal or extension was made on or after the date of enactment of FIRREA. The OTS believes this issue should be significantly more manageable for associations given the decision not to treat nonconforming subsidiaries as "affiliates" as was originally proposed.

In a related issue, a number of commenters took issue with the OTS's statement that the term "capital stock and surplus" refers to "tangible capital" for purposes of measuring compliance with the quantitative limitations of section 23A. These commenters observed, among other things, that this position was contrary to current banking regulatory practices which, for example, allow goodwill to be counted for purposes of the term "capital stock and surplus" within the meaning of section 23A.

Banks carry significantly less goodwill than do thrifts, however, and thus, in practice, this has not been an important issue in the implementation of section 23A by the other banking regulators. Given the OTS's concern with allowing goodwill to be fully counted for

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[11] 55 FR 11317–11318 (March 27, 1990).

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In the interests of safety and soundness, the OTS has determined that institutions should strive to achieve compliance with the limitations of section 23A as soon as feasible, and that transactions entered into prior to the enactment of FIRREA, if they would otherwise be deemed to be outstanding covered transactions, should be included in calculating an association's covered transactions. In the event this results in an association's covered transactions with any single affiliate, or with all affiliates in the aggregate, exceeding the applicable limits of section 23A, the OTS expects the association to take steps that are reasonably practicable to reduce its covered transactions to permissible levels. OTS will not deem pre-FIRREA transactions to be violations of section 23A, but an association may not enter into new covered transactions unless and until its existing covered transactions are reduced below permissible limits, and then, only to the extent allowable under section 23A. In addition, renewals or extensions of all loans (including pre-FIRREA loans) must conform to the transactions-with-affiliates limitations of section 23A and section 11 of the HOLA if such renewal or extension was made on or after the date of enactment of FIRREA. The OTS believes this issue should be significantly more manageable for associations given the decision not to treat nonconforming subsidiaries as "affiliates" as was originally proposed.

In a related issue, a number of commenters took issue with the OTS's statement that the term "capital stock and surplus" refers to "tangible capital" for purposes of measuring compliance with the quantitative limitations of section 23A. These commenters observed, among other things, that this position was contrary to current banking regulatory practices which, for example, allow goodwill to be counted for purposes of the term "capital stock and surplus" within the meaning of section 23A.

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purposes of measuring compliance with quantitative limits and in recognition of the congressionally provided phased-out allowance of supervisory goodwill in capital calculations by thrifts, the OTS has decided to revise the final rule to permit the inclusion of goodwill, to the extent it is includible in capital under the OTS's capital rules.

C. Recordkeeping and Notice Requirements

A substantial number of commenters opposed the recordkeeping requirements in the proposal on the grounds that these requirements would be expensive, administratively burdensome and duplicative of existing record maintenance procedures. The OTS believes the procedures proposed should be followed as a matter of sound business practices in order for institutions to monitor their own compliance with applicable regulations. These measures also are necessary to enable the OTS to monitor effectively savings associations' compliance with transactions-with-affiliates requirements, and to provide sufficient information for the OTS to be able to determine whether prior notification of transactions should be required or whether any entity should be deemed an "affiliate" of the thrift. The OTS has revised the proposal in two respects in this area, however, discussed below at part III.G.

D. Expansion of the Definition of "Covered Transaction"

In the preamble to the proposed rule, the OTS sought comments on expanding the definition of "covered transactions" "to include the payment of money to an affiliate under contract, lease, or otherwise (*e.g.*, pursuant to management contracts, etc.)." [12] Commenters uniformly rejected this approach, noting that such transactions are already subject to the "arms-length" requirements of section 23B of the FRA,[13] as incorporated in 12 CFR 563.42(a) of the proposal. These commenters also noted that banks were not subject to any comparable rule. The final rule accordingly does not expand the scope of what constitutes a "covered transaction."

III. Changes to the Proposed Rule

A. Treatment of Subsidiaries

Under the proposal, any savings association subsidiary that is not exclusively engaged in activities permissible for a Federal association generally would have been treated as an "affiliate" subject to the limitations and prohibitions of sections 23A and 23B. Those subsidiaries engaged only in activities permissible for a Federal savings association would have been treated as part of the parent thrift for purposes of transactions with affiliates controls, provided that the thrift controlled the subsidiary and the voting stock of such subsidiary was eligible to be held only by a savings association.

The OTS has reconsidered this issue and the final rule excludes all subsidiaries of savings associations from treatment as "affiliates," except to the extent that subsidiaries may be deemed "affiliates" under § 563.41(b)(1)(v) and (2)(i).[14] The OTS is persuaded that subsidiaries of thrifts should not be treated differently from bank subsidiaries with regard to the basic scheme of transactions-with-affiliates controls applicable to them. This treatment concentrates transactions-with-affiliates restrictions on the risk of diversion of an association's financial resources to affiliates. Other FIRREA safeguards are sufficient to protect savings associations adequately against the risks presented by the activities of their subsidiaries. These risk-related safeguards include capital standards, service corporation investment limitations and new provisions of the Federal Deposit Insurance Act (FDIA) that govern establishment of, and activities conducted by, subsidiaries of savings associations. This regulation is also amending the loans-to-one-borrower regulation to require that loans by controlled subsidiaries be aggregated with the loans of the parent thrift to outside borrowers in order to address concentration risk.

The rule retains an additional provision that on a case-by-case basis the OTS may deem any entity, including an association's subsidiary, to be an "affiliate." An entity can be deemed an "affiliate" if its relationship to the association, or the nature or amount of its activities, its condition or the condition of its parent thrift, or other supervisory reasons, warrant such treatment in order to protect the safety and soundness of the savings association.

In addition to the above-noted changes, OTS is adopting as the definition of "subsidiary" for transactions-with-affiliates and loans-to-one borrower [15] purposes a modified version of the definition of the term "subsidiary" set forth in OTS's capital rules.[16] The capital rule definition, which includes an expansive list of entities in which a savings association holds a 5 percent or greater interest, serves as a useful starting point in crafting a definition of the term for other purposes. OTS is modifying that basic definition for transactions-with-affiliates and loans-to-one-borrower purposes, however, to provide that only "subsidiaries" that are controlled by a savings association will be "subsidiaries" within the meanings of those two rules.

As specified in today's final transactions-with-affiliates rule, the determination of whether a savings association is deemed to "control" a company will include the determinations of control set forth at 12 CFR part 574. As a result, companies in which a savings association owns less than a 10 percent interest will not be deemed "subsidiaries" for loans-to-one-borrower or transactions-with-affiliates purposes; whether companies in which a savings association owns a 10 percent or greater interest are "subsidiaries" will be determined in accordance with part 574 rules.

B. Definition of "Affiliate"

The OTS has revised the definition of "affiliate" in the final rule to include within such term any company in which the majority of its directors, partners or trustees constitute a majority of the persons holding any such office with the savings association or any company that controls the savings association. This action has been taken in response to inquiries the OTS has received to make clear that a company that is a partnership [17] can be an affiliate, and is consistent with the position taken by the staff of the Federal Reserve Board (the FRB) on this issue.

The final rule also clarifies that companies that would be considered "affiliates" but for the fact that they are "subsidiaries" will nonetheless be treated as "affiliates" pursuant to new § 563.41(b)(2)(i) as revised, unless the OTS determines that such treatment is not warranted. For example, a company that is controlled directly by both a savings association and the savings association's holding company (e.g., other than through the savings association) will be deemed an "affiliate" rather than a "subsidiary" under the final rule. The OTS has concluded that this treatment is necessary for reasons of safety and soundness.

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[12] 55 FR at 11318.

[13] See 12 U.S.C. 371c-1(a).

[14] The notice provisions of § 563.41(e) have also been revised to reflect this change.

[15] The "Scope" section of OTS's loans-to-one-borrower rule, as revised today, incorporates the definition of "subsidiary" set forth in today's transactions-with-affiliates final rule.

[16] See 12 CFR 567.1(dd).

[17] The definition of the term "company" in both the final rule and section 23A includes a "partnership." See 12 U.S.C. 371c(b)(6) and today's rule, § 563.41(b)(6).

C. Section 23A Calculations—Definition of "Capital Stock and Surplus"

Under section 23A, the aggregate amount of "covered transactions" between a savings association (and its subsidiaries) and its affiliates is subject to quantitative limits, expressed as percentages of the association's "capital stock and surplus." The proposal noted that, with respect to the application of these quantitative limits to savings associations, the term "capital stock and surplus" refers in large measure to "tangible" capital. As noted above, a number of commenters argued that this position was contrary to current banking regulatory practices. The OTS recognizes that the FRB does not specifically exlude goodwill from the definition of "capital stock and surplus," but also notes that banks carry relatively little goodwill compared to thrifts. Accordingly, the OTS has concluded that it would be appropriate, and not inconsistent with safety and soundness considerations, for savings associations to include goodwill in their computations of "capital stock and surplus," but only to the extent that "supervisory goodwill" is includible in core capital through January 1, 1995, under the OTS's capital regulations.

D. Section 23A Calculations—Deduction of Loan Write-Offs and Write-Downs

The proposal included a provision at § 563.41(b)(8)(i)(B) that prohibited the deduction of write-offs or write-downs from a savings association's "aggregate amount of covered transactions." The OTS has determined that, while such a deduction generally may be appropriate, the question of deduction of losses may raise considerations unique to individual institutions that should be addressed on a case-by-case basis by Regional Directors. Accordingly, the final rule omits this provision.

E. Section 23A Exemptions

Section 23A(d) outlines a variety of exemptions from the restrictions and collateralization requirements imposed by section 23A (a) and (c). These transactions outlined in section 23A(d) are generally not, of course, exempt from low-quality asset restrictions and must be on terms consistent with safe and sound banking practices.

Three of these exemptions involve transactions between affiliated "banks." New section 11(a)(2)(B) of the HOLA denies the availability of the first such exemption, the "sister bank exemption," to most affiliated savings associations until January 1, 1995. The OTS has considered whether the other two exemptions, sections 23A (d)(2) and (d)(6), should be available to affiliated thrifts on the same terms that they are available to affiliated banks. Section 23A(d)(2) provides an exemption for making deposits in an affiliated "bank" in the ordinary course of business, subject to FRB (or OTS) restrictions.[18] Section 23A(d)(6) exempts the purchase of loans on a nonrecourse basis from affiliated "banks."[19]

The OTS has concluded that these exemptions should be available to affiliated savings associations, consistent with the mandate of section 11(a)(1) of the HOLA that, with certain exceptions, savings associations are to be regarded as member banks for purposes of section 23A and 23B. To the extent that a savings association is to be treated as a "member bank," it must, as a matter of logic, also be a "bank."[20] While the statute expressly withholds such "bank" status for purposes of the "sister bank" exemption and section 23B, it does not deny "bank" treatment to savings associations in other contexts. In view of the fact that the articulated congressional purpose for applying the FRA transactions-with-affiliates provisions to savings associations was to "establis[h] a uniform approach to regulating transactions with affiliates,"[21] the OTS believes that, except where Congress has provided otherwise, savings associations should be treated as "banks" for all purposes under section 23A.[22] Accordingly, transactions of the kinds described in sections 23A(d)(2) and (d)(6) undertaken between affiliated savings associations will be eligible for the same exemptions from section 23A restrictions as they would if conducted by affiliated banks.[23]

F. Attribution of Activities and Transactions Among Affiliates.

Although not specifically discussed in the proposed regulation, the OTS believes that the issue of attribution of activities and transactions among affiliates needs to be clarified. The issue of attribution of transactions arises in the context of both the quantitative restrictions of section 23A and in connection with prohibitions contained in section 11(a)(1)(A) of the HOLA.

With regard to the quantitative limits, the OTS has considered whether, for purposes of calculating a savings association's "aggregate amount of covered transactions" with any single affiliate, the dollar amount of transactions between the savings association and subsidiaries of that affiliate should be imputed to the "parent" affiliate. The OTS has concluded that such attribution is appropriate and necessary to avoid circumvention of the 10 percent limit on transactions with a particular affiliate imposed by section 23A.

Many savings and loan holding company structures are complex and are composed of a number of companies that may have several tiers of subsidiaries. Section 23A'S quantitative limits are designed to curb not only transactions with affiliates as a group, but also large transactions with a single affiliate. Without an attribution rule, a savings association seeking to avoid the 10 percent limit could simply structure separate transactions with each of an affiliate and its controlled subsidiaries (up to the 20 percent aggregate limit), which transactions, because of the parent affiliate's control, would inure to the benefit of the parent affiliate.[24] Structured transactions of this nature would effectively concentrate the risks inherent in affiliated transactions[25] in a single affiliate, rather than spread the risks among various affiliates.

Accordingly, in computing the amount of transactions that are attributable to an affiliate, a savings association must include the amounts of all transactions it conducts with subsidiaries controlled, directly or indirectly, by such affiliate. This aggregation will not apply, however, to attribute to any controlling holding company of a savings association in the structure the transactions of all its subsidiaries. Nor will the amounts of transactions be imputed from a parent affiliate to subsidiaries of an affiliate. Thus, if a thrift engages in separate transactions

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[18] 12 U.S.C. 371c(d)(2).

[19] 12 U.S.C. 371c(d)(6).

[20] Op. Chief Counsel (Nov. 1, 1990).

[21] H.R. Rep. No. 222 at 408.

[22] As in the case of the "sister bank" exemption, section 11 of the HOLA specifies that savings associations will not be treated as "banks" for purposes of section 23B until January 1, 1995.

[23] See supra note 20.

[24] Such a result is clearly disfavored by section 23A. See 12 U.S.C. 371c(a)(2).

[25] Some of these risks were described by the FRB staff in proposals, prepared at the request of congressional banking committees, that formed the basis for 1982 amendments to section 23A. Risks included transactions "designed either to rescue a financially troubled affiliate or to 'drain' a bank for the benefit of an affiliate." See letter from Paul A. Volcker to the Hon. Jake Garn (Oct. 2, 1981), Appendix B, "A Discussion of Amendments to Section 23A of the Federal Reserve Act Proposed by the Board of Governors of the Federal Reserve System" at 6.

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With regard to the quantitative limits, the OTS has considered whether, for purposes of calculating a savings association's "aggregate amount of covered transactions" with any single affiliate, the dollar amount of transactions between the savings association and subsidiaries of that affiliate should be imputed to the "parent" affiliate. The OTS has concluded that such attribution is appropriate and necessary to avoid circumvention of the 10 percent limit on transactions with a particular affiliate imposed by section 23A.

Many savings and loan holding company structures are complex and are composed of a number of companies that may have several tiers of subsidiaries. Section 23A'S quantitative limits are designed to curb not only transactions with affiliates as a group, but also large transactions with a single affiliate. Without an attribution rule, a savings association seeking to avoid the 10 percent limit could simply structure separate transactions with each of an affiliate and its controlled subsidiaries (up to the 20 percent aggregate limit), which transactions, because of the parent affiliate's control, would inure to the benefit of the parent affiliate.[24] Structured transactions of this nature would effectively concentrate the risks inherent in affiliated transactions[25] in a single affiliate, rather than spread the risks among various affiliates.

Accordingly, in computing the amount of transactions that are attributable to an affiliate, a savings association must include the amounts of all transactions it conducts with subsidiaries controlled, directly or indirectly, by such affiliate. This aggregation will not apply, however, to attribute to any controlling holding company of a savings association in the structure the transactions of all its subsidiaries. Nor will the amounts of transactions be imputed from a parent affiliate to subsidiaries of an affiliate. Thus, if a thrift engages in separate transactions

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Nov. 1, 1990).

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until January 1, 1995.

[24] Such a result is clearly disfavored by section 23A. See 12 U.S.C. 371c(a)(2).

[25] Some of these risks were described by the FRB staff in proposals, prepared at the request of congressional banking committees, that formed the basis for 1982 amendments to section 23A. Risks included transactions "designed either to rescue a financially troubled affiliate or to 'drain' a bank for the benefit of an affiliate." See letter from Paul A. Volcker to the Hon. Jake Garn (Oct. 2, 1981), Appendix B, "A Discussion of Amendments to Section 23A of the Federal Reserve Act Proposed by the Board of Governors of the Federal Reserve System" at 6.

with an affiliate and a subsidiary of that affiliate, the combined dollar amounts of those two transactions will be attributable to the parent affiliate, but only the dollar amount of the transaction with the affiliate's subsidiary will be attributed to the subsidiary for purposes of calculating the thrift's 10 percent limit with that affiliate.[26]

The question of attribution of activities also arises in connection with the application of section 11(a)(1)(A) of the HOLA, which prohibits loans and extensions of credit to "any affiliate unless that affiliate is engaged only in activities (permissible for bank holding companies)." For purposes of this provision, the OTS has considered whether the activities of subsidiaries of an affiliate should be attributed to that affiliate. In other words, the issue is whether a savings association would be barred from extending credit to an affiliate that directly engages only in activities permissible for bank holding companies but that owns subsidiaries engaged in activities not permissible for bank holding companies, such as real estate development. The OTS has determined that, in the case of affiliates that are not savings associations,[27] such activities will be imputed to each parent affiliate in a vertical ownership chain, up to but not including a controlling holding company in the corporate structure. However, as in the case of attribution of dollar amounts, discussed above, activities will not be attributed downward to subsidiaries of an affiliate.

G. Recordkeeping and Notice Provisions

The OTS has revised paragraph (e)(2)(ii) of the recordkeeping provisions found at § 563.41 slightly to broaden the circumstances under which the OTS may require prior notification by a savings association and its subsidiaries of transactions with the association's affiliates and subsidiaries. The revisions reflect additional conditions under which greater scrutiny of transactions with affiliates may be needed.

In addition, the OTS has revised the recordkeeping provisions to require that savings associations' records reflect that transactions subject to new § 563.42 comply with all requirements prescribed therein and that extensions of credit made by savings associations to affiliates are permissible under new section 11(a)(1)(A) of the HOLA. The OTS believes these additions are necessary for the same reasons discussed above in part II.C. regarding recordkeeping requirements imposed pursuant to new § 563.41.

H. Revision to OTS's Conflicts Rules

The OTS has revised paragraph (a) of § 563.43 of the Conflicts Rules to make clear that transactions subject to new § 563.41 are not subject to the restrictions outlined in § 563.43. OTS does not intend that savings associations be subject to prior approval requirements and other restrictions pursuant to newly-revised § 563.43 for transactions subject to the quantitative and qualitative limitations of § 563.41. Transactions subject to new § 563.42 that are not also subject to § 563.41, however, will continue to be subject to revised § 563.43 to the same extent that they were previously subject to § 563.41(b) prior to this final rule.

IV. Modifications to the Loans-to-One-Borrower Rule

A. Coverage

On July 10, 1990, the OTS issued a final loans-to-one-borrower (LTOB) rule.[28] The "Scope" section of that rule, § 563.93(a), provided that the LTOB limits would apply to all loans and extensions of credit made by savings associations and their operating subsidiaries, but that such limits did not apply to loans made by a savings association to its "operating subsidiaries," as defined in the LTOB rule, or to its subsidiaries or affiliates, as defined in OTS's transactions-with-affiliates rules.

The preamble to the final LTOB rule explained that it was not OTS's intention that both the LTOB and transactions-with-affiliates limitations apply to transactions between a savings association and a subsidiary under its control, and provided notice that revisions to the definitions of the terms "subsidiary" and "affiliate" in the final transactions-with-affiliates rule might necessitate revisions to the term "operating subsidiary" in the LTOB rule as well.[29] The OTS is now eliminating the "operating subsidiary" concept from the final transactions-with-affiliates rule and the LTOB rule and, accordingly, now revises the "Scope" section of the LTOB rule to preserve the complementary operation of the two rules. In addition, the OTS is removing the term "operating subsidiary" (and the associated control determinations) from the LTOB rule.

As a result of this change, controlled subsidiaries of an association, as determined under new § 563.41, will essentially be treated as part of the association for LTOB purposes; that is, loans by these controlled subsidiaries to nonaffiliated borrowers will be aggregated with the loans of the parent thrift for purposes of LTOB limitations. The LTOB rule will not be applicable to loans from an association to its controlled subsidiaries or affiliates. On the other hand, loans to noncontrolled subsidiaries by the parent thrift and its controlled subsidiaries will be subject to LTOB limits directly and loans by these noncontrolled subsidiaries will not be aggregated with the loans of the parent thrift for LTOB purposes.

This revision applies to loans made by a savings association and its controlled subsidiaries that were made prior to the effective date of the revision, as well as to loans made after such date. OTS would not deem loans made by a savings association or its controlled subsidiaries before the effective date of this revision to be violations of LTOB limits, however, if such loans, when aggregated with other loans to the same borrower, exceed LTOB limits solely as a result of this revision. For purposes of computing the aggregate dollar amount of loans made to any one borrower, a savings association must now include the amount(s) of loans made by all its controlled subsidiaries to that borrower, and may not advance any new funds after the effective date to a borrower unless and until its existing loans (and those of its controlled subsidiaries) to that borrower are brought within the section 5200 lending limits, and then, only to the extent allowable under § 563.93.

As in the case of outstanding loans that had been subject to pre-FIRREA lending limits prior to enactment of FIRREA, a renewal of a loan made by a controlled subsidiary that was not an "operating subsidiary" under the July rule will generally not be viewed as the equivalent of a new loan at the time of renewal or extension for LTOB purposes, *Provided*: (1) No new funds are advanced by the association or its subsidiaries to the borrower; and (2) a new borrower is not substituted for the original obligor.[30] Rather, prior to renewal or extension of such a loan, the association must make every effort to bring the loan into conformance with LTOB lending limits. If these efforts are unsuccessful, then the loan may be renewed or extended as a "nonconforming loan."

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[26] It should be noted, however, that although attibution will not run down an affiliate-controlled chain, this "upward" attribution rule may still bar a thrift from engaging in covered transactions with an affiliate's subsidiary, even though the thrift has not reached its quantitative limit with respect to that particular affiliate's subsidiary. This is because the amount of additional covered transactions with that affiliate's subsidiary would be imputed up to its parent affiliate, causing the parent affiliate (though not its subsidiary) to be "overlimit." Accordingly, if a thrift has reached its quantitative transactional limit with respect to a particular affiliate, it will not be able to engage in new transactions with that affiliate or its subsidiaries until its reduces the overall amount of covered transactions with the entire affiliate chain.

[27] Op. Chief Counsel Nov. 13, 1990).

[28] 55 FR 28144 (July 10, 1990).

[29] See 55 FR at 28151.

B. Other Technical Amendments

The OTS is today providing a technical revision to the § 563.93 lending limitations in an effort to prevent any potential confusion as to the appropriate use of the $500,000 exception to the general lending limitation set forth under § 563.93(d)(1). As the OTS clearly noted in issuing the final loans-to-one-borrower rule in July 1990,[31] the loans-to-one-borrower regulation was promulgated under section 5(u) of the HOLA, as amended by section 301 of FIRREA.[32] In addition to providing that section 5200 of the Revised Statutes (the national bank lending limitations [33] shall apply to savings associations in the same manner and to the same extent as it applies to national banks, FIRREA amended the HOLA to provide expressly that, notwithstanding the application of the section 5200 limitations, loans could be made for any purpose not to exceed $500,000 (the "$500,000 Special Rule").[34]

Today's technical amendment is intended to clarify that, as provided in the statute, the $500,000 Special Rule is intended as an alternate ceiling to the aggregate section 5200 limitations. Section 5200 provides both a 15 percent general limitation and a 10 percent limitation for loans secured by readily marketable collateral. Thus, as an alternate ceiling, the $500,000 Special Rule does not enable an association to make a $500,000 loan to a borrower and additional loans up to 10 percent of unimpaired capital and surplus if secured by readily marketable collateral. Just as the $500,000 Special Rule is not in addition to the 15 percent general limitation, the Special Rule is not, nor was it intended to be, in addition to the 10 percent limitation for loans secured by readily marketable collateral. Today's revision makes this statutory requirement clearer.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is certified that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Act Analysis is not required.

Executive Order 12291

The OTS has determined that this rule does not constitute a "major rule" and, therefore, does not require the preparation of a regulatory impact analysis.

Paperwork Reduction Act

The collection of information contained in this final rule was previously approved by the Office of Management and Budget ("OMB") in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3504(h). As described in the preamble and the rule, the collection of information in this final rule has been modified from that which appeared in the proposed rule. As so modified, the collection of information has been approved by OMB in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3507, under OMB control number 1550-0011.

The estimated average burden associated with the collection of information is 2 hours per respondent and 4 hours per recordkeeper. Comments concerning the accuracy of these estimates should be directed to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, DC 20503, with copies to the Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

List of Subjects

12 CFR Part 506

Reporting and recordkeeping requirements.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Reporting and recordkeeping requirements, Savings associations, Surety bonds.

Accordingly, the OTS hereby amends parts 506 and 563, subchapters A and D, chapter V, title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER A—ORGANIZATION AND PROCEDURES

PART 506—INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 506 continues to read as follows:

Authority: Sec. 2(a), 94 Stat. 2812, as amended (44 U.S.C. 3501 *et seq.*), 5 CFR 1320.7.

2. Section 506.1 is amended by adding three new entries to the table in paragraph (b) to read as follows:

§ 506.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

12 CFR part or section where identified and described	Current OMB control no.
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563.41(e)	1550-0011
563.42(e)	1550-0011
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563.134	1550-0059
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SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 563—OPERATIONS

3. The authority citation for part 563 continues to read as follows:

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 11, as added by sec. 301, 103 Stat. 342 (12 U.S.C. 1468); sec. 18, 64 Stat. 891, as amended by sec. 321, 103 Stat. 267 (12 U.S.C. 1828); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); sec. 202, 87 Stat. 982, as amended (42 U.S.C. 4106).

§ 563.41 [Amended]

4. Section 563.41 is amended by redesignating paragraphs (b) and (c) as new paragraphs (e) and (f), respectively, of § 563.43 and § 563.41 is removed.

5. § 563.43 is amended by revising the section heading paragraph (a) to read as follows:

§ 563.43 Restrictions on loans, other investments, and real and personal property transactions involving affiliated persons.

(a) *Scope of section.* Sections 10 and 11 of the Home Owners' Loan Act, as amended ("HOLA") (12 U.S.C. 1467a and 1468), and the Office's regulations thereunder, shall exclusively govern transactions between a savings association and such association's affiliates, as defined in section 11 of the HOLA. All other transactions between a savings association and its affiliated persons shall be subject to the provisions of this section.

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6. New § 563.41 is added to read as follows:

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[30] See 55 FR at 28157.

[31] See 55 FR at 28144.

[32] 12 U.S.C. 1464(u).

[33] 12 U.S.C. 84.

[34] See "Implementation of the Special Rules Provisions," 55 FR at 28152.

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§ 563.41 [Amended]

4. Section 563.41 is amended by redesignating paragraphs (b) and (c) as new paragraphs (e) and (f), respectively, of § 563.43 and § 563.41 is removed.

5. § 563.43 is amended by revising the section heading paragraph (a) to read as follows:

§ 563.43 Restrictions on loans, other investments, and real and personal property transactions involving affiliated persons.

(a) *Scope of section.* Sections 10 and 11 of the Home Owners' Loan Act, as amended ("HOLA") (12 U.S.C. 1467a and 1468), and the Office's regulations thereunder, shall exclusively govern transactions between a savings association and such association's affiliates, as defined in section 11 of the HOLA. All other transactions between a savings association and its affiliated persons shall be subject to the provisions of this section.

* * * * *

6. New § 563.41 is added to read as follows:

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§ 563.41 Loans and other transactions with affiliates and subsidiaries.

(a) *Restrictions on transactions with affiliates and subsidiaries.* A savings association and its subsidiaries may engage in a covered transaction with an affiliate only if the transaction is permissible under section 23A of the Federal Reserve Act, 12 U.S.C. 371c, and the additional restrictions set forth in this section, as follows:

(1) A savings association and its subsidiaries may engage in a covered transaction with an affiliate only if:

(i) In the case of any affiliate, the aggregate amount of covered transactions of the savings association and its subsidiaries shall not exceed 10 per centum of the capital stock and surplus of the savings association; and

(ii) In the case of all affiliates, the aggregate amount of covered transactions of the savings association and its subsidiaries shall not exceed 20 per centum of the capital stock and surplus of the savings association;

(2) For purposes of paragraph (a)(1) of this section, any transaction by a savings association or its subsidiaries with any person shall be deemed to be a transaction with an affiliate to the extent that proceeds of the transaction are used for the benefit of, or transferred to, that affiliate;

(3) No loan or extension of credit may be made by a savings association or its subsidiaries to any affiliate unless such affiliate is engaged solely in activities described in section 10(c)(2)(F)(i) of the Home Owners' Loan Act, 12 U.S.C. 1467a(c)(2)(F)(i), as defined in 12 CFR 584.2-2;

(4) A savings association and its subsidiaries may not purchase or invest in the securities of any affiliate other than with respect to shares of a subsidiary which, for purposes of this paragraph (a)(4), shall include a bank and a savings association;

(5) A savings association and its subsidiaries may not purchase a low-quality asset from an affiliate unless the association or such subsidiary, pursuant to an independent credit evaluation, committed itself to purchase the asset prior to the time the asset was acquired by the affiliate; and

(6) Any covered transactions and any transactions exempt under paragraph (d) of this section and section 23A(d) of the Federal Reserve Act, 12 U.S.C. 371c(d), between a savings association or its subsidiaries and an affiliate shall be on terms and conditions that are consistent with safe and sound banking practices.

(b) *Definitions.* For the purpose of this section:

(1) The term *affiliate* with respect to a savings association means:

(i) Any company that controls the savings association and any other company that is controlled by the company that controls the savings association;

(ii) A bank or savings association subsidiary of the savings association;

(iii) Any company:

(A) That is controlled directly or indirectly, by a trust or otherwise, by or for the benefit of shareholders who beneficially or otherwise control, directly or indirectly, by trust or otherwise, the savings association or any company that controls the savings association; or

(B) In which a majority of its directors, partners or trustees constitute a majority of the persons holding any such office with the savings association or any company that controls the savings association;

(iv)(A) Any company, including a real estate investment trust, that is sponsored and advised on a contractual basis by the savings association or any subsidiary or affiliate of the savings association; or

(B) Any investment company with respect to which a savings association or any affiliate thereof is an investment adviser as defined in section 2(a)(20) of the Investment Company Act of 1940, 15 U.S.C. 80a-2(a)(2); and

(v) Any company:

(A) That the Office or the Board of Governors of the Federal Reserve System determines by regulation or order to have a relationship with the savings association or any subsidiary or affiliate of the savings association such that covered transactions by the savings association or its subsidiary with that company may be affected by the relationship to the detriment of the savings association or its subsidiary; or

(B) That the Office determines presents a risk to the safety or soundness of the savings association, based on the nature of the activities conducted by the company, amount of transactions with the savings associations or its subsidiaries, financial condition of the compnay or its parent savings association, or other supervisory factors;

(2) The following shall not be considered to be an affiliate:

(i) Any company, other than a bank or savings association, that is a subsidiary of a savings association, unless a determination is made by the Board of Governors of the Federal Reserve System under section 23A(b)(1)(E) of the Federal Reserve Act, 12 U.S.C. 371c(b)(1)(E), or by the Office under § 563.41(b)(1)(v), not to exclude the subsidiary company from the definition of affiliate and, provided that any company that would be an affiliate under paragraph (b)(1) of this section but for the fact that it is a subsidiary of a savings association, shall nonetheless be deemed to be an affiliate unless the Office determines to exclude such company from the definition of affiliate;

(ii) Any company engaged solely in holding the premises of the savings association;

(iii) Any company engaged solely in conducting a safe deposit business;

(iv) Any company engaged solely in holding obligations of the United States or its agencies or obligations fully guaranteed by the United States or its agencies as to principal and interest; and

(v) Any company where control results from the exercise of rights arising out of a bona fide debt previously contracted, but only for the period of time specifically authorized under applicable State or Federal law or regulation or, in the absence of a law or regulation, for a period of two years from the date of the exercise of those rights, subject, upon application, to authorization by the Office for good cause shown of extensions of time for not more than one year at a time, but extensions in the aggregate shall not exceed three years;

(3)(i) A company or shareholder shall be deemed to have control over another company if:

(A) The company or shareholder, directly or indirectly, or acting through one or more other persons owns, controls, or has power to vote 25 per centum or more of any class of voting securities of the other company;

(B) The company or shareholder would be deemed to control the company under § 574.4(a) of this chapter, or presumed to control the company under § 574.4(b) of this chapter, and in the latter case, control has not been rebutted; and

(ii) Notwithstanding any other provision of this section, no company shall be deemed to own or control another company by virtue of its ownership or control of shares in a fiduciary capacity, except as provided in paragraph (b)(1)(iii) of this section;

(4) The term *subsidiary*, with respect to a specified savings association, means a "subsidiary," as that term is defined at § 567.1(dd) of this subchapter, that is controlled, directly or indirectly, by the savings association;

(5) The term *savings association* has the same meaning as that term is defined at § 583.21 of this chapter; and the term *bank* includes a state bank,

national bank, banking association, or trust company;

(6) The term *company* means a corporation, partnership, business trust, association, or similar organization and, unless specifically excluded, the term "company" includes a "savings association" and a "bank";

(7) The term *covered transaction* means with respect to an affiliate of a savings association:

(i) A loan or extension of credit to the affiliate;

(ii) A purchase of assets, including assets subject to an agreement to repurchase, from the affiliate, except purchases of real and personal property that may be specifically exempted by the Board of Governors of the Federal Reserve System by order or regulation;

(iii) The acceptance of securities issued by the affiliate as collateral security for a loan or extension of credit to any person or company; or

(iv) The issuance of a guarantee, acceptance, or letter of credit, including an endorsement or standby letter of credit, on behalf of an affiliate;

(8) The term *aggregate amount of covered transactions* means the amount of the covered transactions about to be engaged in added to the current amount of all outstanding covered transactions. For this purpose, the outstanding balance of any credits extended to an affiliate shall be added to the value of any asset acquired from the affiliate (or all affiliates), as reflected on the financial records of the savings association or its subsidiaries, subject to the following conditions:

(i) With respect to a loan or extension of credit made by the savings association or its subsidiaries, any principal amount that has been amortized may be deducted from the *aggregate amount of covered transactions;*

(ii) With respect to a purchase of assets by the savings association or its subsidiaries:

(A) Any amounts of depreciation that have been deducted from the cost of an asset for federal income tax purposes by the purchaser may be deducted from the *aggregate amount of covered transactions;* and

(B) Upon the sale of an asset that was previously purchased in a covered transaction, the *aggregate amount of covered transactions* shall be reduced by an amount equal to the purchase price of the asset at the time of the covered transaction less depreciation subsequently taken and previously deducted from the *aggregate amount of covered transactions;*

(9) The term *securities* means stocks, bonds, debentures, notes, and other similar obligations;

(10) The term *low-quality asset* means an asset that falls in any one or more of the following categories:

(i) An asset classified as *substandard, doubtful,* or *loss* or treated as *other loans especially mentioned* in the most recent report of examination or inspection of an affiliate prepared by either a Federal or State supervisory agency;

(ii) An asset in a nonaccrual status;

(iii) An asset on which principal or interest payments are more than thirty days past due; or

(iv) An asset whose terms have been renegotiated or compromised due to the deteriorating financial condition of the obligor.

(c) *Collateral for certain transactions with affiliates.* (1) Each loan or extension of credit to, or guarantee, acceptance, or letter of credit issued on behalf of, an affiliate by a savings association or its subsidiary shall be secured at the time of the transaction by collateral having a market value equal to:

(i) 100 per centum of the amount of the loan or extension or credit, guarantee, acceptance, or letter of credit, if the collateral is composed of:

(A) Obligations of the United States or its agencies;

(B) Obligations fully guaranteed by the United States or its agencies as to principal and interest;

(C) Notes, drafts, bills of exchange or bankers' acceptances that are eligible for rediscount or purchase by a Federal Home Loan Bank or Federal Reserve Bank; or

(D) A segregated, earmarked deposit account with the savings associations;

(ii) 110 per centum of the amount of the loan or extension of credit, guarantee, acceptance, or letter of credit if the collateral is composed of obligations of any State or political subdivision of any State;

(iii) 120 per centum of the amount of the loan or extension of credit, guarantee, acceptance, or letter of credit if the collateral is composed of other debt instruments, including receivables; or

(iv) 130 per centum of the amount of the loan or extension of credit, guarantee, acceptance, or letter of credit if the collateral is composed of stock, leases, or other real or personal property.

(2) any such collateral that is subsequently retired or amortized shall be replaced by additional eligible collateral where needed to keep the percentage of the collateral value relative to the amount of the outstanding loan or extension of credit, guarantee, acceptance, or letter of credit equal to the minimum percentage required at the inception of the transaction.

(3) A low-quality asset shall not be acceptable as collateral for a loan or extension of credit to, or guarantee, acceptance, or letter of credit issued on behalf of, an affiliate.

(4) The securities issued by an affiliate of the savings association shall not be acceptable as collateral for a loan or extension of credit to, or guarantee, acceptance, or letter of credit issued on behalf of, that affiliate or any other affiliate of the savings association.

(5) The collateral requirements of this paragraph shall not be applicable to an acceptance that is already fully secured either by attached documents or by other property having an ascertainable market value that is involved in the transaction.

(d) *Exemptions.* The provisions of this section, except paragraph (a)(6) of this section, shall not be applicable to the following transactions by a savings association:

(1) Any transaction, subject to the prohibition contained in paragraph (a)(5) of this section, with another savings association or bank that is at least 80 percent owned by the same bank and savings association holding company that owns the savings association, if every savings association and every bank owned by the holding company complies with all applicable capital requirements on a fully phased-in basis and without reliance on goodwill; and

(2) After January 1, 1995, any transaction, subject to the prohibition contained in paragraph (a)(5) of this section with a savings association or a bank:

(i) That controls 80 per centum or more of the voting shares of the savings association;

(ii) In which the savings association controls 80 per centum or more of the voting shares; or

(iii) In which 80 per centum or more of the voting shares are controlled by the company that controls 80 per centum or more of the voting shares of the savings association;

(3) Making deposits in an affiliated bank, affiliated savings association or affiliated foreign bank in the ordinary course of correspondent business, subject to any restrictions that the Office or the Board of Governors of the Federal Reserve System may prescribe by regulation or order;

(4) Giving immediate credit to an affiliate for uncollected items received in the ordinary course of business;

(5) Subject to paragraph (A)(3) of this section, making a loan or extension of credit to, or issuing a guarantee, acceptance, or letter of credit on behalf of, an affiliate, if such loan, extension of credit, guarantee, acceptance, or letter of credit is fully secured by:

(i) Obligations of the United States or its agencies;

(ii) Obligations fully guaranteed by the United States or its agencies as to principal and interest; or

(iii) A segregated, earmarked deposit account with the savings association;

(6) Purchasing assets having a readily identifiable and publicly available market quotation and purchased at that market quotation or, subject to the prohibition contained in paragraph (a)(5) of this section, purchasing loans on a nonrecourse basis from affiliated banks or savings associations; and

(7) Purchasing from an affiliate a loan or extension of credit that was originated by the savings association and sold to the affiliate subject to a repurchase agreement or with recourse.

(e) *Recordkeeping and notice requirements.* (1) With respect to all transactions between a savings association and its subsidiaries and the association's affiliates or between a savings association and an unaffiliated party to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, an affiliate, the association shall make and retain records that reflect those transactions in reasonable detail. The association's records shall, at a minimum:

(i) Identify the affiliate;

(ii) Indicate the dollar amount of the transaction and reflect that the amount is within the applicable quantitative limitations specified in this section or that the transaction is not subject to those limitations;

(iii) Indicate whether the transaction involves a low-quality asset as that term is defined in paragraph (b)(10) of this section;

(iv) Indicate the type and amount of any collateral involved in the transaction and that such collateral complies in all respects with the requirements of this section or that the transaction is not subject to those limitations;

(v) With respect to any transaction subject to § 563.42 of this part, demonstrate that the terms and circumstances of the transaction comply with the standards set forth therein;

(vi) Reflect that loans and extensions of credit made to affiliates comply with paragraph (a)(3) of this section; and

(vii) Be readily accessible for examination and other supervisory purposes.

(2) Notwithstanding paragraphs (a) through (d) of this section, and except with respect to transactions of the type described in 12 CFR 250.250, the Office may require prior notification by a savings association and its subsidiaries of any and all transactions with any or all of the association's affiliates or subsidiaries under the following circumstances:

(i) A de novo savings association that commenced operations or an association or holding company thereof that has been the subject of an application or notice under part 574 of this chapter that was approved during the preceding two year period; and

(ii) A savings association that:

(A) Has a composite rating of 4 or 5 under the MACRO Rating System;

(B) Is not meeting all of its current regulatory capital requirements;

(C) Has entered into a consent to merge, a supervisory agreement or cease and desist order during the preceding two year period, or is subject to a formal enforcement proceeding; or

(D) That the Office determines is otherwise the subject of generalized or specific supervisory concern or that requires more than normal supervision because of its financial condition, past practices or other factors, and the Office specifies the basis or bases for this concern in the written notice sent to the institution.

(iii) Upon receipt of written notice from the Office identifying one or more of the circumstances described in paragraph (e)(2)(ii) of this section and stating that the Office has determined that prior notification by a savings association will be required pursuant to this paragraph, the association shall provide, no later than 30 days prior to entering into any transaction for which prior notification has been required, written notice containing a full description of the proposed transaction. If no objections are raised by the Office during such 30 day period, the association or its subsidiaries may proceed with the proposed transaction.

7. Section 563.42 is added to read as follows:

§ 563.42 Additional standards applicable to transactions with affiliates and subsidiaries.

(a) *General.* A savings association and its subsidiaries may engage in a transaction with an affiliate only if the transaction is permissible under section 23B of the Federal Reserve Act, 12 U.S.C. 371c–1, and the additional restrictions set forth in this section, as follows:

(1) *Standards.* A savings association and its subsidiaries may engage in any of the transactions described in paragraph (a)(2) of this section only:

(i) On terms and under circumstances, including credit standards, that are substantially the same, or at least as favorable to the association or its subsidiary, as those prevailing at the time for comparable transactions with or involving nonaffiliated companies; or

(ii) In the absence of comparable transactions, on terms and under circumstances, including credit standards, that in good faith would be offered to, or would apply to, nonaffiliated companies;

(2) *Transactions covered.* Paragraph (a)(1) of this section applies to the following:

(i) Any covered transaction with an affiliate;

(ii) The sale of securities or other assets to an affiliate, including assets subject to an agreement to repurchase;

(iii) The payment of money or the furnishing of services to an affiliate under contract, lease, or otherwise;

(iv) Any transaction in which an affiliate acts as an agent or broker or receives a fee for its services to the savings association or to any other person;

(v) Any transaction or series of transactions with a third party:

(A) If an affiliate has a financial interest in the third party; or

(B) If an affiliate is a participant in the transaction or series of transactions;

(3) *Transactions that benefit an affiliate.* For the purpose of this section, any transaction by a savings association or its subsidiaries with any person shall be deemed to be a transaction with an affiliate if any of the proceeds of the transaction are used for the benefit of, or transferred to, that affiliate.

(b) *Prohibited transactions.*—(1) *General.* A savings association and its subsidiaries:

(i) Shall not purchase as fiduciary any securities or other assets from any affiliate unless the purchase is permitted:

(A) Under the instrument creating the fiduciary relationship;

(B) By court order; or

(C) By law of the jurisdiction governing the fiduciary relationship; and

(ii) Whether acting as principal or fiduciary, shall not knowingly purchase or otherwise acquire, during the existence of any underwriting or selling syndicate, any security if a principal underwriter of that security is an affiliate of the association.

(2) *Exception.* Paragraph (b)(1)(ii) of this section shall not apply if the purchase or acquisition of securities has been approved, before the securities are

initially offered for sale to the public, by a majority of the directors of the savings association who are not officers or employees of the association or any affiliate thereof.

(c) *Advertising restriction.* A savings association and its subsidiaries and any affiliate of a savings association shall not publish any advertisement or enter into any agreement stating or suggesting that the association shall in any way be responsible for the obligations of its affiliates.

(d) *Definitions.* For the purpose of this section:

(1) The terms *affiliate, bank, covered transaction, savings association* and *subsidiary* have the meaning given to each term in § 563.41 of this part, (but the term *affiliate* does not include any company described in paragraph (b)(2) of § 563.41, any bank, any savings association in a structure qualifying under § 563.41(d)(1) of this part or, after January 1, 1995, any savings association).

(2) The term *security* has the meaning given to that term in section 3(a)(10) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(10); and

(3) The term *principal underwriter* means any underwriter who, in connection with a primary distribution of securities:

(i) Is in privity of contract with the issuer or an affiliated person of the issuer;

(ii) Acting alone or in concert with one or more other persons, initiates or directs the formation of an underwriting syndicate; or

(iii) Is allowed a rate of gross commission, spread, or other profit greater than the rate allowed another underwriter participating in the distribution.

(e) *Recordkeeping requirements.* With respect to all transactions subject to this section between a savings association and its subsidiaries and the association's affiliates or between a savings association and an unaffiliated party to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, an affiliate, the association shall make and retain records, that reflect those transactions in reasonable detail. The association's records shall, at a minimum, include the information required by § 563.41(e)(1)(v) of this part.

8. Section 563.93 is amended by revising paragraphs (a) and (d)(1) to read as set forth below; by removing paragraphs (b)(3) and (b)(7); by redesignating paragraphs (b)(4), (b)(5), (b)(6), and (b)(8) through (b)(13) as paragraphs (b)(3), (b)(4), (b)(5), and (b)(6) through (b)(11), respectively; and by amending paragraph (f)(2) by removing the words "operating subsidiary" wherever they appear and by inserting in lieu thereof, the word "subsidiary," respectively:

§ 563.93 Lending limitations.

(a) *Scope.* This section applies to all loans and extensions of credit made by a savings association and its subsidiaries. This section does not apply to loans made by a savings association to its subsidiaries or to its affiliates. The terms *subsidiary* and *affiliate* have the same meanings as those terms are defined in § 563.41 of this part.

* * * * *

(d) *Exceptions to the general limitation*—(1) *$500,000 exception.* If a savings association's aggregate lending limitation calculated under paragraphs (c)(1) and (c)(2) of this section is less than $500,000, notwithstanding this aggregate limitation in paragraphs (c)(1) and (c)(2) of this section, such savings association may have total loans and extensions of credit, for any purpose, to one borrower outstanding at one time not to exceed $500,000.

* * * * *

Dated: March 11, 1991.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 91-17472 Filed 7-24-91; 8:45 am]

BILLING CODE 6720-01-M

RESOLUTION TRUST CORPORATION

12 CFR Part 1680

RIN 3205-AA10

Office of the Inspector General; Disclosure of Information Regulations

AGENCY: Resolution Trust Corporation.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of the Inspector General ("OIG") of the Resolution Trust Corporation ("RTC") is adopting an interim rule for the processing of requests to the OIG for information pursuant to the Freedom of Information Act. The interim rule would also implement the Freedom of Information Reform Act of 1986 which requires agencies to publish a schedule of fees to be charged and procedures to be followed in processing requests for records and requests for waiver or reduction of fees under the Freedom of Information Act.

DATES: This interim rule is effective July 25, 1991. Comments must be received by September 23, 1991.

ADDRESSES: Comments must be sent to: John J. Adair, Inspector General, Resolution Trust Corporation, Office of Inspector General, 801 17th Street NW.—room 726, Washington, DC 20434-0001.

FOR FURTHER INFORMATION CONTACT: Patricia M. Black, Counsel to the Inspector General, (202) 416-4312 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Discussion of Interim Rule

A. Background

On March 26, 1991 the Board of Directors of the Resolution Trust Corporation adopted a Resolution authorizing the Inspector General to promulgate policies and regulations necessary to release information pursuant to the Freedom of Information Act. This rule sets forth the procedures to be used in requesting information from the RTC OIG, the fees to be charged requestors, and the procedures for requesting waiver of fees under the Freedom of Information Act.

B. Requests for Information

The rule provides that all requests for OIG records should be sent to the OIG in Washington. The request must reasonably describe the desired record. The rule also publishes the addresses of RTC public information centers where many documents may be directly obtained by the public.

C. Initial and Final Decisions

The rule delegates to the Assistant Inspectors General the authority to make initial determinations concerning requests for release of information. In addition, Regional Inspectors General for Audit may release completed audit reports issued by that region. Final decisions on appeal will be made by the Inspector General or Deputy Inspector General.

D. Exemption from Disclosure

The rule recites the statutory bases for exemption from disclosure and provides that any reasonably segregable portion of a record shall be produced, as provided by the Freedom of Information Act.

E. Fees and Fee Waivers

The rule conforms with the Uniform Freedom of Information Act Fee Schedule and Guidelines published by the Office of Management and Budget on March 27, 1987 (52 FR 10012). Because the rule follows these guidelines, the fee schedule differs from that presently being used by the

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remainder of RTC, which is following regulations promulgated by the Federal Deposit Insurance Corporation prior to the date of the guidelines. However, the rule does reflect the fee schedule which the RTC is expected to adopt when it issues its regulations in the near future. Copies will be provided at $.20 per page, and requestors will be charged $12.50 per hour for clerical time and $30.00 per hour for professional time for searches. Computer time will be charged at the actual direct cost of providing the service.

The rule also sets forth factors to be considered in determining whether to waive or reduce fees. Requests for waivers or reduction must be in writing and address the six factors.

Request for Public Comment

The RTC OIG is seeking comments on all aspects of the interim rule. Comments will be carefully reviewed for purposes of developing final regulations.

Administrative Procedure Act

The RTC OIG is adopting this regulation as an interim final rule effective upon publication in the **Federal Register** without the usual notice-and-comment period or delayed effective date as provided for in the Administrative Procedure Act, 5 U.S.C. 553. These requirements may be waived for "good cause."

All RTC Freedom of Information Act requests are presently addressed by the Office of the Executive Secretary. However, in order to ensure that the confidentiality of any informant is protected, that sensitive information relating to ongoing audits and investigations is protected from premature disclosure, and that the appearance of a lack of independence on the part of the OIG is prevented, the OIG must have the authority to control release of its files. The high level of public scrutiny of the work of the RTC lends particular emphasis to the need to ensure that any employee or member of the public who desires the confidentiality provided for under the Inspector General Act (5 U.S.C. app.) will in fact be protected to the full extent of that law. While the current system has not resulted in any disclosure of the identity of such a person, or any other inappropriate disclosure of information outside of the OIG, there is a need to remove even the perception that such a disclosure could happen. Therefore, this rule, which would remove management of RTC from the process of releasing OIG records, must be effective immediately.

In addition, the substance of much of the rule, including those portions concerning method and timing of release of records, exemption from release of records, and fees to be charged requestors are largely dictated by statute or by OMB regulations promulgated pursuant to statute and already subject to public comment. In the case of these portions of the rule, the need for public comment is reduced since the OIG has little discretion in adopting these provisions.

Therefore, the benefits to the public in adopting the interim regulations outweigh any harm from the delay in seeking public comment.

Regulatory Flexibility Act

The undersigned hereby certifies that the interim regulations, and any final regulations that may be adopted following comment on the interim regulations, are not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 12 CFR Part 1680

Freedom of information, Production and disclosure of information.

For the reasons set out in the preamble, the RTC–OIG adds part 1680 to title 12, chapter XVI of the Code of Federal Regulations as follows:

PART 1680—OFFICE OF THE INSPECTOR GENERAL; DISCLOSURE OF INFORMATION

Sec.

1680.1 Purpose and scope.
1680.2 Definitions.
1680.3 Requests for records.
1680.4 Initial response.
1680.5 Obtaining publicly available information.
1680.6 Exemptions from disclosure.
1680.7 Records produced upon request when reasonably described.
1680.8 Fees.
1680.9 Fees to be charged—categories of requesters.
1680.10 Review of records, charges for unsuccessful searches, aggregating requests and waiving or reducing fees.
1680.11 Charges for interest; utilization of Debt Collection Act.
1680.12 Advance payments.
1680.13 Time limitations.
1680.14 Authority to release records or copies.
1680.15 Authority to deny requests for records and form of denial.
1680.16 Effect of denial of request.
1680.17 Appeals from denials of initial request.

Authority: 5 U.S.C. 552; 5 U.S.C. App.; 12 U.S.C. 1441a(b).

§ 1680.1 Purpose and scope.

(a) This part contains the regulations of the Office of the Inspector General of the Resolution Trust Corporation ("RTC") which implement the Freedom of Information Act, as amended (5 U.S.C. 522). This part also informs the public how to request records and information from the Office of the Inspector General and explains the appeal procedure that may be used if a request is denied.

(b) Regulations governing disclosure of information by all offices within the RTC other than the Office of the Inspector General are published in part 309 of this title.

§ 1680.2 Definitions.

(a) *Inspector General* means the Inspector General or Deputy Inspector General of the Resolution Trust Corporation (RTC).

(b) *Office of the Inspector General* means Office of the Inspector General of the RTC.

(c) *Person* includes corporations and organizations as well as individuals.

(d) *Record* includes records, files, documents, reports, correspondence, books, and accounts, or any portion thereof.

(e) *Request* means a written request for records made pursuant to the Freedom of Information Act and this part.

(f) *RTC* means Resolution Trust Corporation.

§ 1680.3 Requests for records.

(a) A request for Office of Inspector General records must be made in writing. The request should be addressed to: Office of the Inspector General, Resolution Trust Corporation, 801 17th Street, NW., Washington, DC 20434–0001.

(b) Each request must reasonably describe the desired record including the name, subject matter, and file number or date, where possible, so that the record may be identified and located. The request should include the name, address and telephone number of the requester. In order to enable the Office of the Inspector General to comply with the time limitations set forth in § 1680.13, both the envelope containing a written request and the letter itself should clearly indicate that the letter is a Freedom of Information Act request.

(c) The request must be accompanied by the fee or an offer to pay the fee as determined in §§ 1680.8 and 1680.9. At its discretion, the Office of the Inspector General may require advance payment in accordance with § 1680.12.

(d) Copies of available records will be produced as promptly as possible. Copying service will be limited to not more than one copy of any single page.

Records which are published, available at the public information centers noted in § 1680.5, or otherwise available for sale, will not be reproduced.

§ 1680.4 Initial response.

The initial response to approve or deny a request will be made by one of the following individuals: Assistant Inspector General for Audit; Assistant Inspector General for Investigation; Assistant Inspector General for Quality Assurance and Oversight; Assistant Inspector General for Policy, Planning and Resources; or their designees. In addition, for completed audit reports issued by Regional Inspector General offices, the issuing Regional Inspector General for Audit ("RIGA") may release the completed report.

§ 1680.5 Obtaining publicly available information.

A listing of certain **Federal Register** publications and publicly available information is set forth in 12 CFR part 309. In addition to the information centers listed there, the Resolution Trust Corporation maintains the following information centers:

Headquarters, 801 17th Street NW., Washington, DC 20434–0001.

Southwest Region, 3500 Maple Avenue, Dallas, Texas 75219.

North Central Region, 7400 West 110th Street, Overland Park, Kansas 66210–2346.

Eastern Region, 245 Peachtree Center Avenue NE., Atlanta, Georgia 30303.

Western Region, 1225 17th Street—suite 3200, Denver, Colorado 80202.

§ 1680.6 Exemptions from disclosure.

The Office of the Inspector General will produce reasonably described records for which it receives a request under § 1680.3, except for those records exempt from production under section 552(b) of the Freedom of Information Act. The classes of records falling within the exemptions are those pertaining to matters that are:

(a) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy, and are in fact properly classified pursuant to such Executive Order;

(b) Related solely to the internal personnel rules and practices of the RTC;

(c) Specifically exempted from disclosure by statute, provided that such statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(d) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the RTC;

(f) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(g) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(1) Could reasonably be expected to interfere with enforcement proceedings;

(2) Would deprive a person of a right to a fair trial or an impartial adjudication;

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(4) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(5) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(6) Could reasonably be expected to endanger the life or physical safety of any individual;

(h) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the RTC or any agency responsible for the regulation or supervision of financial institutions; or

(i) Geological and geophysical information and data, including maps concerning wells.

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions that are exempt under this section.

§ 1680.7 Records produced upon request when reasonably described.

(a) When a request is made which reasonably describes a record of the Office of the Inspector General which has been stored in the National Archives or other record center of the General Services Administration, the record will be requested by the Office of the Inspector General if it otherwise would be available under this part.

(b) Reasonable effort will be made to make a record in use by the staff of the Office of the Inspector General available when requested if it otherwise would be available under this part, but availability will be deferred to the extent necessary to avoid significant interference with the business of the Office of the Inspector General.

§ 1680.8 Fees.

(a) *Copies of records.* Requestors will be charged $0.20 per page for copies of documents up to 11″×14″. For copies prepared by computer, such as tapes or printouts, requestors will be charged the actual cost, including operator time, of production of the copy. For other methods of reproduction or duplication, the requestor will be charged the actual direct cost of producing the document(s)

(b) *Manual searches for records.* Wherever feasible, the requestor will be charged at the salary rate(s) (i.e. basic rate of pay plus 16 percent) of the employee(s) making the search. However, where a homogeneous class of personnel is used exclusively in a search (e.g. all administrative/clerical, or all professional/executive), the requestor will be charged $12.50 per hour for clerical time and $30.00 per hour for professional time. Charges for search time less than full hour will be billed by five-minute segments.

(c) *Computer searches for records.* The requestor will be charged at the actual direct cost of providing the service. This will include the cost of operating the central processing unit for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and operator/programmer salary apportionable to the search.

(d) *Contract services.* The Office of the Inspector General may contract with private sector sources to locate, reproduce and disseminate records in response to FOIA requests when that is the most efficient and least costly method. When doing so, however, the Office of the Inspector General will ensure that the ultimate cost to the requester is no greater than it would be if the Office of the Inspector General itself had performed these tasks. In no case will there be contracted out responsibilities which the FOIA provides that an Agency alone may discharge, such as determining the applicability of an exemption, or determine whether to waive or reduce fees.

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(e) *Restrictions on assessing fees.* With the exception of requesters seeking documents for commercial use, the first 100 pages of duplication and the first two hours of search time will be provided without charge. For non-commercial use requesters, the Office of the Inspector General will not begin to assess fees until after the free search and reproduction have been provided. No charge will be assessed non-commercial use requesters when the search time and reproduction costs, over and above the free search time and reproduction allocation, totals no more than $5.00. "Search time" in this context is based on manual search. To apply this term to searches made by computer, the Office of the Inspector General will determine the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. When the cost of the search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search, i.e. the operator, the Office of the Inspector General will begin assessing charges for computer search.

(f) *Payment of fees.* Payment of fees under this Part shall be made in cash or by U.S. money order or by certified bank check payable to the Treasurer of the United States.

(g) *Definitions.* As used in this part:

(1) *Direct costs* means those expenditures actually incurred in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(2) *Search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Such activity is distinguished from review of material in order to determine whether the material is exempt from disclosure.

(3) *Duplication* means the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others.

(4) *Review* means the process of examining a document located in response to a request to determine whether any portion of it may be withheld, excising portions to be withheld and otherwise preparing the document for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

§ 1680.9 Fees to be charged—categories of requesters.

There are four categories of FOIA requesters: Commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters. Specific levels of fees are prescribed for each of these categories.

(a) *Commercial use requesters.* (1) The Office of the Inspector General will assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating records sought for commercial use. Commercial use requesters are not entitled to free search time or free pages of reproduction of documents.

(2) *Commercial use* refers to a request from, or on behalf of, one who seeks information for a use or purpose that furthers the commercial, trade, or profit interest of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the Office of the Inspector General must determine the use to which a requester will put the documents requested. Moreover, where there is reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the Office of the Inspector General will seek additional clarification before assigning the request to a specific category.

(b) *Educational and non-commercial scientific institution requesters.* (1) The Office of the Inspector General will provide documents to educational and non-commercial scientific institutions for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought for furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research.

(2) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(3) *Non-commercial scientific institution* means an institution that is not operated on a "commercial" basis as that term is referenced in § 1680.9(a) and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(c) *Requesters who are representatives of the news media.* (1) The Office of the Inspector General will provide documents to representatives of the news media for the cost of reproduction alone, excluding charges of the first 100 pages. In reference to this class of requester, a request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use.

(2) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the Office of the Inspector General may also look to the past publication record of a requester in making this determination.

(d) *All other requesters.* The Office of the Inspector General will charge requesters who do not fit into any of the categories above fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Requests from individuals for records about themselves filed in Office of Inspector General systems of records will be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for reproduction.

§ 1680.10 Review of records, charges for unsuccessful searches, aggregating requests and waiving or reducing fees.

(a) *Review of records.* Only requesters who are seeking documents for commercial use may be charged for the time spent reviewing records to determine whether they are exempt from mandatory disclosure. Charges may be assessed only for the initial review; i.e., the review undertaken the first time the Office of the Inspector General analyzes the applicability of a specific exemption to a particular record or portion of a record. The Office of the Inspector General will not charge for review at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The cost for such a subsequent review would be properly assessable. Review time will be assessed at the same rates established for search time in § 1680.8.

(b) *Charges for unsuccessful searches.* Generally no charge for search time will be assessed when the records requested are not found or when the records located are withheld as exempt. However, if the requester has been notified or the estimated cost of the search time and has been advised specifically that the requested records may not exist or may be withheld as exempt, fees shall be charged.

(c) *Aggregating requests.* A requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When the Office of the Inspector General reasonably believes that a requester or group of requesters acting in concert is attempting to evade the assessment of fees, it may aggregate any such requests and charge accordingly.

(d) *Waiving or reducing fees.* The Office of the Inspector General shall furnish documents without charge or at reduced charge if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. The official authorized to grant access to records may waive or reduce the applicable fee where requested in writing. The determination not to waive or reduce the fee will be subject to administrative review as provided in § 1680.17 after the decision on the request for access has been made. Six factors shall be used in determining whether the requirements for a fee waiver or reduction are met. Each request for a waiver or reduction in fees must provide information addressing the six factors. The factors are as follows:

(1) *The subject of the request.* Whether the subject of the requested records concerns "the operations or activities of the government";

(2) *The informative value of the information to be disclosed.* Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;

(3) *The contribution to an understanding of the subject by the general public likely to result from disclosure.* Whether disclosure of the requested information will contribute to "public understanding";

(4) *The significance of the contribution to public understanding.* Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities;

(5) *The existence and magnitude of a commercial interest.* Whether the requester has a commercial interest that would be furthered by the requested disclosure; and if so

(6) *The primary interest in disclosure.* Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

§ 1680.11 Charges for interest; utilization of Debt Collection Act.

(a) *Charging interest.* The Office of the Inspector General will begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the billing was sent. A fee payment received by the Office of the Inspector General, even if not processed, will suffice to stay the accrual of interest. Interest will be at the rate prescribed in section 3717 of title 31 U.S.C. and will accrue from the date of the billing.

(b) *Use of the Debt Collection Act of 1982.* When a requester has failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing), the Office of the Inspector General may, under the authority of the Debt Collection Act, use consumer reporting agencies and collection agencies, where appropriate, to recover the indebtedness owed.

§ 1680.12 Advance payments.

(a) The Office of the Inspector General may not require a requester to make an advance payment, i.e., payment before work is commenced or continued on a request, unless:

(1) The Office of the Inspector General estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250. In that event, the Office of the Inspector General will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of a requester with no history of payment; or

(2) Where a requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing), the Office of the Inspector General may require the requester to pay the full amount owed or demonstrate that the fees have in fact, been paid, and to make an advance payment of the full amount of the estimated fee before the Office of the Inspector General begins to process a new request or a pending request from that requester.

(b) When the Office of the Inspector General acts under paragraph (a)(1) or (a)(2) of this section, the administrative time limits prescribed in the FOIA, 5 U.S.C. 552(a)(6), (i.e., 10 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after the fee payments described above have been received.

(c) Where it is anticipated that either the duplication fee individually, the search fee individually, or a combination of the two exceeds $25.00 over and above the free search time and duplication costs, where applicable, and the requesting party has not indicated in advance a willingness to pay such anticipated fee, the requesting party shall be promptly informed of the amount of the anticipated fee or such portion thereof as can readily be estimated. The notification shall offer the requesting party the opportunity to confer for the purpose of reformulating the request so as to meet that party's needs at a reduced cost.

§ 1680.13 Time limitations.

(a) Upon receipt of a request for records, the Assistant Inspector General for RIGA listed in § 1680.4, as appropriate, will determine within ten working days whether to grant the request. The appropriate Assistant Inspector General or RIGA will notify the requester immediately in writing of the determination, and, if the

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(2) Where a requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing), the Office of the Inspector General may require the requester to pay the full amount owed or demonstrate that the fees have in fact, been paid, and to make an advance payment of the full amount of the estimated fee before the Office of the Inspector General begins to process a new request or a pending request from that requester.

(b) When the Office of the Inspector General acts under paragraph (a)(1) or (a)(2) of this section, the administrative time limits prescribed in the FOIA, 5 U.S.C. 552(a)(6), (i.e., 10 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after the fee payments described above have been received.

(c) Where it is anticipated that either the duplication fee individually, the search fee individually, or a combination of the two exceeds $25.00 over and above the free search time and duplication costs, where applicable, and the requesting party has not indicated in advance a willingness to pay such anticipated fee, the requesting party shall be promptly informed of the amount of the anticipated fee or such portion thereof as can readily be estimated. The notification shall offer the requesting party the opportunity to confer for the purpose of reformulating the request so as to meet that party's needs at a reduced cost.

§ 1680.13 Time limitations.

(a) Upon receipt of a request for records, the Assistant Inspector General for RIGA listed in § 1680.4, as appropriate, will determine within ten working days whether to grant the request. The appropriate Assistant Inspector General or RIGA will notify the requester immediately in writing of the determination, and, if the

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determination is to deny all or a portion of the request, the reasons for the determination and the right of the person to appeal an adverse determination to the Inspector General of the RTC.

(b) The time of receipt for processing a request is the time it is received by the appropriate office for review. If a request is misdirected by the requester, the Office of the Inspector General or RTC official who receives the request will promptly refer it to the appropriate office. The time allowed for response will not begin to run until receipt by the appropriate office.

(c) A determination with respect to an appeal of an initial denial to the Inspector General under § 1680.17 will be made within 20 working days after receipt and will be communicated immediately to the person requesting review.

(d) If the Office of Inspector General grants the request for records, the records will be made available promptly to the requester.

(e) In unusual circumstances as specified in this paragraph, the time limits prescribed in this section may be extended. Any extension will be in writing to the requester and will include reasons for the extension and the date on which the disposition of the request will be sent. No extension will be for more than ten working days. As used in this paragraph, "unusual circumstances" means (but only to the extent necessary for the proper processing of the particular request) that there is a need:

(1) To search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; or

(2) To search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) For consultation, which shall be conducted with all practicable speed, with another office having a substantial interest in the determination of the request or among two or more offices of the Office of the Inspector General having a substantial interest in the subject matter of the request.

(f) Review of requests may be discontinued until:

(1) Appropriate advance payment is received;

(2) Agreement to bear estimated costs is received; or

(3) A determination is made on a request for waiver or reduction of fees.

§ 1680.14 Authority to release records or copies.

Any Assistant Inspector General listed in § 1680.4, or designee, is authorized to release any record (or copy) pertaining to activities for which he or she has primary responsibility, unless disclosure is clearly inappropriate under this part. Any RIGA listed in § 1680.4 may release completed audit reports issued by that RIGA. Records for which another officer has primary responsibility may not be released by an authorized person without the consent of the officer or his or her designee.

§ 1680.15 Authority to deny requests for records and form of denial.

The Assistant Inspectors General described in § 1680.4, or designee, may deny a request for a record. Any denial will:

(a) Be in writing;

(b) State simply the reasons for the denial;

(c) State that the denial may be appealed to the Inspector General;

(d) Set forth the steps for appealing consistent with § 1680.17; and

(e) Be signed by the Assistant Inspector General responsible for the denial.

§ 1680.16 Effect of denial of request.

Denial of a request shall terminate the authority of the Assistant Inspector General to released or disclose the requested record, which thereafter may not be made available except with express authorization of the Inspector General.

§ 1680.17 Appeals from denials of initial requests.

(a) A person whose initial request for records under this Part has been denied, either in part or in whole, has the right to appeal the denial to the Inspector General within 30 business days of the issuance of the written denial.

(b) Appeals of initial denials must be in writing, addressed to the Office of the Inspector General, Resolution Trust Corporation, 801 17th Street, NW., Washington, DC 20434-0001, and shall contain the following:

(1) A copy of the initial request;

(2) A copy of the written denial issued under § 1680.15; and

(3) A statement of the circumstances, reasons, additional relevant information or arguments advanced in support of disclosure of the documents requested.

(c) The Inspector General will issue a written determination within 20 business days after receipt of the appeal by the Office of the Inspector General unless extended pursuant to § 1680.13(e). This determination will constitute final agency action. The Inspector General will obtain the concurrence of the Counsel to the Inspector General with respect to determinations concerning information, records, or other documents developed or originated by the Office of the Inspector General. The Inspector General will obtain the concurrence of the RTC Special Council with respect to determinations concerning other records.

(d) The time of receipt for processing of an appeal is the time it is received by the Inspector General of the RTC. If the appeal is misdirected by the requester and is received by one other than the Inspector General, the RTC official who receives the appeal will forward it promptly to the Inspector General at the time of receipt. The time allowed for response will not begin to run until receipt by the Inspector General.

(e) Where the determination is to deny the appeal, in whole or in part, the determination shall cite the exemption relied upon to support the denial and shall inform the appealing requestor of the right to judicial review of the denial under the Freedom of Information Act (5 U.S.C. 552).

Dated at Washington, DC, this 19th day of July, 1991.

Office of the Inspector General.

John J. Adair,

Inspector General, Resolution Trust Corporation.

[FR Doc. 91-17697 Filed 7-24-91; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-46-AD; Amendment 39-7077; AD 91-15-13]

Airworthiness Directives; Boeing Model 767 Series Airplanes.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which requires modification of the inboard edges of the rub strip on the inboard spoilers. This amendment is prompted by reports of overwing escape slides damaged by contacting sharp corners on the inboard spoilers. This condition, if not corrected, could render the overwing escape slides

unusable in the event of an emergency evacuation.

DATES: Effective August 29, 1991. The incorporation by reference of certain publications listed in the regulations.is approved by the Director of the **Federal Register** as of August 29, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Jayson B. Claar, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 277-2784. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 767 series airplanes, which requires modification of the inboard edges of the rub strip on the inboard spoilers, was published in the **Federal Register** on March 22, 1991 (56 FR 12130).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters expressed objection to the modification being mandated by an airworthiness directive (AD). The commenters based their objections on several reasons: First, in all three occurrences of reported damage, the slides were judged by Boeing to be usable for evacuation, since a slide is usable even with one of its two chambers deflated; this contradicts the FAA's conclusion, as stated in the preamble to the notice, that the subject slides would be rendered unusable should the slides be damaged through contact with the inboard spoilers. Second, these commenters pointed out that there have been no reports of failures of the slides occurring on in-service airplanes. Third, Boeing did not issue the related service bulletin as an "alert" service bulletin, thus suggesting that the problem was not of such a critical nature that would warrant the issuance of an AD.

The FAA does not concur with the commenters' objections. The overwing slide is a twin tube design and loss of one tube will not affect the airholding ability of the other tube. During the development of the overwing slide, the slide manufacturer demonstrated that one person per lane could safely traverse the slide with one tube deflated; however, the slide was not demonstrated to meet the evacuation rate required to evacuate the airplane. This is considered by the FAA to be an unsafe condition. There have been three occurrences (on two airplanes) of the slide being damaged by sharp corners on the inboard spoilers, and the FAA has determined this condition is likely to occur on airplanes that were delivered prior to the elimination of the sharp edges during production at Boeing. Finally, regardless of the status assigned to a service bulletin by the manufacturer (whether "alert" or otherwise), the FAA reviews all service bulletins to determine if an unsafe condition exists and if the condition is likely to occur in other airplanes in the fleet. In this case, the FAA has determined that an unsafe condition exists and that the condition is likely to exist on other airplanes of the same type design.

Since the issuance of the NPRM, the FAA has reviewed and approved Boeing Service Bulletin 767-27-0104, Revision 1, dated May 30, 1991. This issue revises the "Background" and "Reason" paragraphs, makes reference to the Notice, and updates the effectivity to reflect the changes in airplane operators, but does not change the number of airplanes affected. The final rule has been revised to allow operators to use either the original issue or Revision 1 of the service bulletin as the appropriate service information source.

After careful reivew of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither significantly increase the economic burden on any operator nor increase the scope of the rule.

There are approximately 298 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 111 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $24,420.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-15-13. Boeing: Amendment 39-7077. Docket No. 91-NM-46-AD.

Applicability: Model 767 series airplanes, as listed in Boeing Service Bulletin 767-27-0104, dated November 15, 1990, certificated in any category.

Compliance: Required within the next 9 months after the effective date of this AD, unless previously accomplished.

To prevent the overwing escape slides from being damaged by sharp corners on the inboard edges of the rub strip on the inboard spoilers, accomplish the following:

A. Modify the inboard edges of the rub strip on the inboard spoilers in accordance with Boeing Service Bulletin 767-27-0104, dated November 15, 1990, or Revision 1, dated May 30, 1991.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager,

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For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91–15–13. Boeing: Amendment 39–7077. Docket No. 91–NM–46–AD.

Applicability: Model 767 series airplanes, as listed in Boeing Service Bulletin 767–27–0104, dated November 15, 1990, certificated in any category.

Compliance: Required within the next 9 months after the effective date of this AD, unless previously accomplished.

To prevent the overwing escape slides from being damaged by sharp corners on the inboard edges of the rub strip on the inboard spoilers, accomplish the following:

A. Modify the inboard edges of the rub strip on the inboard spoilers in accordance with Boeing Service Bulletin 767–27–0104, dated November 15, 1990, or Revision 1, dated May 30, 1991.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager,

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Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

D. The modification shall be done in accordance with Boeing Service Bulletin 767–27–0104, dated November 15, 1990, or Revision 1, dated May 30, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment (39–7077, AD 91–15–13) becomes effective August 29, 1991.

Issued in Renton, Washington, on July 8, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–17652 Filed 7–24–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 771 and 774

[Docket No. 910762–1162]

Establishment of General License SAFEGUARDS

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration is amending the Export Administration Regulations (EAR) by establishing a new General License designated SAFEGUARDS. General License SAFEGUARDS authorizes exports of commodities to the International Atomic Energy Agency (IAEA) or the European Atomic Energy Commission (Euratom), for international safeguards use. This rule also allows permissive reexports of commodities by IAEA or Euratom for international safeguards use, provided that IAEA or Euratom maintains control of or otherwise safeguards the commodities and recovers the commodities when they become obsolete, are no longer required, or are replaced by other eligible commodities.

DATES: This rule is effective July 25, 1991.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, telephone: (202) 377–2440.

SUPPLEMENTARY INFORMATION:

Background Information

The International Atomic Energy Agency (IAEA) and the European Atomic Energy Community (Euratom) are international agencies that establish and administer safeguards designed to ensure that special nuclear materials and other related nuclear facilities, services, and information are not diverted from peaceful purposes to military purposes.

Rulemaking Requirements and Invitation to Comment

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule does not contain a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a foreign and military affairs function of the United States. This rule does not impose a new control. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Parts 771 and 774

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 771 and 774 of the Export Administration Regulations (15 CFR parts 730 through 799) are amended as follows:

1. The authority citations for parts 771 and 774 are revised to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by; E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et. seq.*); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990); E.O. 12735 of November 16, 1991 (55 FR 48587, November 20, 1990).

PART 771—AMENDED

2. A new § 771.26 is added to read as follows:

§ 771.26 General license SAFEGUARDS; international safeguards.

(a) *Scope.* A general license designated SAFEGUARDS is established subject to the provisions of § 771.26, authorizing exports to the International Atomic Energy Agency (IAEA) and the European Atomic Energy Community (Euratom) as follows:

(1) Commodities consigned to the International Atomic Energy Agency (IAEA) at its headquarters in Vienna, or field offices in Toronto, Ontario, Canada or Tokyo, Japan for official international safeguards use. The IAEA is an international organization that establishes and administers safeguards designed to ensure that special nuclear materials and other related nuclear facilities, services, and information are not diverted from peaceful purposes to military purposes.

(2) Commodities consigned to the European Atomic Energy Community (Euratom) Safeguards Directorate in Luxembourg, Luxembourg for official international safeguards use. Euratom is an international organization of European countries with headquarters in Luxembourg, Luxembourg. Euratom establishes and administers safeguards designed to ensure that special nuclear materials and other related nuclear facilities, services, and information are not diverted from peaceful purposes to military purposes.

(3) Commodities consigned to IAEA or Euratom may be reexported to any country for IAEA or Euratom international safeguards use provided

that IAEA or Euratom maintains control of or otherwise safeguards the commodities and returns the commodities to the locations described in paragraphs (a)(1) and (a)(2) of this section when they become obsolete, are no longer required, or are replaced.

(4) Commodity shipments may be made by commercial companies under direct contract with IAEA or Euratom, or by Department of Energy National Laboratories as directed by the Department of State or the Department of Energy.

(5) The monitoring functions of IAEA and Euratom are not subject to the restrictions on prohibited nuclear activities described in § 771.2(c)(7).

(6) When commodities originally consigned to IAEA or Euratom are no longer in IAEA or Euratom official safeguards use, such commodities may only be disposed of in accordance with the Export Administration Regulations (15 CFR parts 730 through 799).

(b) *Exclusions.* No supercomputers may be exported under this general license.

PART 774—AMENDED

3. Section 774.2 is amended by adding a new paragraph (l) to read as follows:

§ 774.2 Permissive reexports.[2]

* * * * *

(l) Reexports of eligible commodities made by the International Atomic Energy Agency (IAEA) or the European Atomic Energy Commission (Euratom) for official international safeguard use, subject to the provisions of § 771.26 of this subchapter.

Dated: July 19, 1991.

Michael P. Galvin,

Assistant Secretary for Export Administration.

[FR Doc. 91-17585 Filed 7-24-91; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09-91-16]

Special Local Regulations; Hammond Offshore Classic, Southern Lake Michigan, Calumet and Indiana Harbors, Hammond, IN

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: Special Local Regulations are being adopted for the Hammond Offshore Classic. This event will be held in the Calumet and Indiana Harbors, Hammond, IN, on the 10th of August 1991, from 10 a.m. (c.d.s.t.) until 3 p.m. (c.d.s.t.). These regulations are needed to provide for the safety of life and property on navigable waters during this event.

EFFECTIVE DATE: These regulations will become effective from 10 a.m. (c.d.s.t.) until 3 p.m. (c.d.s.t.) on the 10th of August 1991.

FOR FURTHER INFORMATION CONTACT: Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, Search and Rescue Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199-2060 (216) 522-4420.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received until 21 June 1991, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of these regulations are Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, project officer, Search and Rescue Branch and M. Eric Reeves, Lieutenant Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Hammond Offshore Classic will be conducted in the Calumet and Indiana Harbors on the 10th of August 1991, with an alternate date of 11 August 1991 if the weather is inclement on the 10th of August 1991. This event will have an estimated forty to fifty, 24 to 40 foot, offshore power boats racing in a closed course that will draw an unusually large number of spectator craft in the area, which could pose hazards to navigation in the area. Any vessel desiring to transit the regulated area may do so only with the prior approval of the Coast Guard Patrol Commander (Officer in Charge, U.S. Coast Guard Station Calumet Harbor, IL.).

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because of the short duration of these regulations, their economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary.

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 would be amended to add a temporary § 100.35-T0916 to read as follows:

§ 100.35—T0916 Hammond Offshore Classic, Southern Lake Michigan, Calumet and Indiana Harbors, Hammond, IN.

(a) *Regulated Area.* That portion of the Calument and Indiana Harbors enclosed by a line running from shore at position 41 degrees 43 minutes 30 seconds North, 087 degrees 31 minutes 24 seconds West, then eastward to the Harbor Breakwater South End Light (LLNR 18785), thence northward to position 41 degrees 45 minutes North, 087 degrees 28 minutes 54 seconds West, then due east to position 41 degrees 45 minutes North, 087 degrees 24 minutes 24 seconds West, thence due south to position 41 degrees 41 minutes North, 087 degrees 24 minutes 24 seconds West, then westward to position 41 degrees 41 minutes 12 seconds North, 087 degrees 26 minutes 45 seconds West, thence to

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[2] See § 774.9 for effect on foreign laws.

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FORMATION CONTACT:
t, Marine Science
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strict, 1240 East 9th
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INFORMATION: In
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Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because of the short duration of these regulations, their economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary.

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 would be amended to add a temporary § 100.35–T0916 to read as follows:

§ 100.35—T0916 Hammond Offshore Classic, Southern Lake Michigan, Calumet and Indiana Harbors, Hammond, IN.

(a) *Regulated Area.* That portion of the Calument and Indiana Harbors enclosed by a line running from shore at position 41 degrees 43 minutes 30 seconds North, 087 degrees 31 minutes 24 seconds West, then eastward to the Harbor Breakwater South End Light (LLNR 18785), thence northward to position 41 degrees 45 minutes North, 087 degrees 28 minutes 54 seconds West, then due east to position 41 degrees 45 minutes North, 087 degrees 24 minutes 24 seconds West, thence due south to position 41 degrees 41 minutes North, 087 degrees 24 minutes 24 seconds West, then westward to position 41 degrees 41 minutes 12 seconds North, 087 degrees 26 minutes 45 seconds West, thence to shore at position 41 degrees 42 minutes North, 087 degrees 30 minutes 15 seconds West, then in a northwest direction along the shoreline to origin at position 41 degrees 43 minutes 30 seconds North, 087 degrees 31 minutes 24 seconds West.

(b) *Special Local Regulations.* (1) The Coast Guard will be regulating vessel navigation and anchorage in the above area from 10 a.m. (c.d.s.t.) until 3 p.m. (c.d.s.t.) on the 10th of August 1991. All vessels except authorized participants in the event are prohibited in this area during the regulated time, except when expressly authorized by the Coast Guard Patrol Commander. When determined appropriate by the Coast Guard Patrol Commander, racing shall be suspended to provide for the passage of all commercial vessels of over 1,000 gross tons. When determined appropriate by the Coast Guard Patrol Commander, commercial vessel traffic of 1,000 gross tons or less and recreational vessels will periodically be permitted to transit through the regulated area in between race heats and during breaks, as activity permits. Commercial vessel traffic of 1,000 gross tons or less will receive priority passage. (2) If the weather on the 10th of August 1991 is inclement, the powerboat race and the period for the applicability of the regulated area will be postponed until 10 a.m. (c.d.s.t.) until 3 p.m. (c.d.s.t.) on the 11th of August 1991. If postponed, notice will be given on the 10th of August 1991 over the U.S. Coast Guard Radio Net.

(3) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Any vessel approval of the Patrol Commander and when so directed by that officer. All vessels transiting the area with the approval of the Coast Guard Patrol Commander, will be operated at bare steerageway, and will exercise a high degree of caution in the area.

(4) The Patrol Commander may direct the achoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in explusion from the area, citation for failure to comply, or both.

(5) The Patrol Commander may establish vessel size and speed limitations, and operating conditions.

(6) The Patrol may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(7) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

Dated: July 15, 1991.

G.A. Penington,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 91–17603 Filed 7–25–91; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 7516]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATE: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, Federal Center Plaza, 500 C Street SW., room 417, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR part 59 *et. seq.*). Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate (FIRM). The date of the FIRM if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazzard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impractical and unnecesary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance with the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region I—Regular Conversions				
Massachusetts:				
Becket, town of, Berkshire County	250018	Mar. 8, 1977, Emerg; Aug. 5, 1991, Reg; Aug. 5, 1991, Susp.	Aug. 5, 1991	Aug. 5, 1991.
Savoy, town of, Berkshire County	250040	Feb. 21, 1975, Emerg; Aug. 5, 1991, Reg; Aug. 5, 1991, Susp.	Aug. 5, 1991	Do.
Sandwich, town of, Barnstable County	250012	Dec. 29, 1972, Emerg; Aug. 5, 1991, Reg; Aug. 5, 1991, Susp.	Aug. 5, 1991	Do.
Maine:				
Berwick, town of, York County	230144	July 26, 1988, Emerg; Aug. 5, 1991, Reg; Aug. 5, 1991, Susp.	Aug. 5, 1991	Do.
Glenburn, town of, Penobscot County	230105	July 15, 1975, Emerg; Aug. 5, 1991, Reg; Aug. 5, 1991, Susp.	Aug. 5, 1991	Do.
Livermore Falls, town of, Androscoggin County.	230006	Apr. 23, 1975, Emerg; Aug. 5, 1991, Reg; Aug. 5, 1991, Susp.	Aug. 5, 1991	Do.
Machiasport, town of, Washington County	230141	May 7, 1975, Emerg; Aug. 5, 1991, Reg; Aug. 5, 1991, Susp.	Aug. 5, 1991	Do.
Vermont: Bethel, town of, Windsor County	200143	Nov. 1, 1974, Emerg; Aug. 5, 1991, Reg; Aug. 5, 1991, Susp.	Aug. 5, 1991	Do.
Region II				
New Jersey: Dover, township of, Ocean County	345293	Oct. 23, 1970, Emerg; Mar. 24, 1972, Reg; Aug. 5, 1991, Susp.	Aug. 5, 1991	Do.
New York:				
Harrison, town of, Westchester County	360912	Feb. 2, 1973, Emerg; Mar. 15, 1982, Reg; Aug. 5, 1991, Susp.	Aug. 5, 1991	Do.
Southport, town of, Chemung County	360156	Mar. 2, 1973, Emerg; May 1, 1980, Reg; Aug. 5, 1991, Susp.	Aug. 5, 1991	Do.
Region III				
Pennsylvania:				
Scrubgrass, township of, Venango County	422542	Feb. 24, 1977, Emerg; Aug. 5, 1991, Reg; Aug. 5, 1991, Susp.	Aug. 5, 1991	Do.
Shinglehouse, borough of Potter County	420764	Dec. 16, 1975, Emerg; Aug. 5, 1991, Reg; Aug. 5, 1991, Susp.	Aug. 5, 1991	Do.
Region VI				
Arkansas: Pulaski County, unincorporated areas	050179	Mar. 6, 1979, Emerg; July 16, 1981, Reg; Aug. 5, 1991, Susp.	Aug. 5, 1991	Do.
Region V—Regular Conversions				
Ohio:				
Delphos, city of, Allen County	390005	July 25, 1975, Emerg; Aug. 5, 1991, Reg; Aug. 19, 1991, Susp;.	Aug. 5, 1991	Aug. 19, 1991.
Monroe, village of, Butler County	390042	Aug. 18, 1975, Emerg; Aug. 5, 1991, Reg; Aug. 19, 1991, Susp;.	Aug. 5, 1991	Do.
Pickerington village of, Fairfield County	390162	July 11, 1975, Emerg; Aug. 5, 1991, Reg; Aug. 19, 1991, Susp;.	Aug. 5, 1991	Do.
Salineville, village of, Columbiana County	390628	Mar. 21, 1978, Emerg; Aug. 5, 1991, Reg; Aug. 19, 1991, Susp;.	Aug. 5, 1991	Do.
Wisconsin:				
Oneida County, unincorporated areas	550579	June 10, 1979, Emerg; Aug. 5, 1991, Reg; Aug. 19, 1991, Susp;.	Aug. 5, 1991	Do.
Rhinelander, town of, Oneida County	550301	Mar. 25, 1975, Emerg; Aug. 5, 1991, Reg; Aug. 19, 1991, Susp;.	Aug. 5, 1991	Do.
Sturgeon Bay, city of, Door County	550111	May 13, 1975, Emerg; Aug. 5, 1991, Reg; Aug. 19, 1991, Susp;.	Aug. 5, 1991	Do.

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List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

ive dates of authorization/cancellation of ale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
1977, Emerg; Aug. 5, 1991, Reg; Aug. 5, Susp.	Aug. 5, 1991	Aug. 5, 1991.
1975, Emerg; Aug. 5, 1991, Reg; Aug. 5, Susp.	Aug. 5, 1991	Do.
, 1972, Emerg; Aug. 5, 1991, Reg; Aug. 5, Susp.	Aug. 5, 1991	Do.
1988, Emerg; Aug. 5, 1991, Reg; Aug. 5, Susp.	Aug. 5, 1991	Do.
1975, Emerg; Aug. 5, 1991, Reg; Aug. 5, Susp.	Aug. 5, 1991	Do.
1975, Emerg; Aug. 5, 1991, Reg; Aug. 5, Susp.	Aug. 5, 1991	Do.
1975, Emerg; Aug. 5, 1991, Reg; Aug. 5, Susp.	Aug. 5, 1991	Do.
1974, Emerg; Aug. 5, 1991, Reg; Aug. 5, Susp.	Aug. 5, 1991	Do.
1970, Emerg; Mar. 24, 1972, Reg; Aug. 5, Susp.	Aug. 5, 1991	Do.
1973, Emerg; Mar. 15, 1982, Reg; Aug. 5, Susp.	Aug. 5, 1991	Do.
1973, Emerg; May 1, 1980, Reg; Aug. 5, Susp.	Aug. 5, 1991	Do.
1977, Emerg; Aug. 5, 1991, Reg; Aug. 5, Susp.	Aug. 5, 1991	Do.
1975, Emerg; Aug. 5, 1991, Reg; Aug. 5, Susp.	Aug. 5, 1991	Do.
1979, Emerg; July 16, 1981, Reg; Aug. 5, Susp.	Aug. 5, 1991	Do.
1975, Emerg; Aug. 5, 1991, Reg; Aug. 19, Susp;.	Aug. 5, 1991	Aug. 19, 1991.
1975, Emerg; Aug. 5, 1991, Reg; Aug. 19, Susp;.	Aug. 5, 1991	Do.
1975, Emerg; Aug. 5, 1991, Reg; Aug. 19, Susp;.	Aug. 5, 1991	Do.
1978, Emerg; Aug. 5, 1991, Reg; Aug. 19, Susp;.	Aug. 5, 1991	Do.
, 1979, Emerg; Aug. 5, 1991, Reg; Aug. 91, Susp;.	Aug. 5, 1991	Do.
1975, Emerg; Aug. 5, 1991, Reg; Aug. 19, Susp;.	Aug. 5, 1991	Do.
1975, Emerg; Aug. 5, 1991, Reg; Aug. 19, Susp;.	Aug. 5, 1991	Do.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region VII				
Kansas:				
Cherokee County, unincorporated areas	200044	May 10, 1985, Emerg; Aug. 5, 1991, Reg; Aug. 19, 1991, Susp;.	Aug. 5, 1991	Do.
Cowley County, unincorporated areas	200563	Feb 26, 1979, Emerg; Aug. 5, 1991, Reg; Aug. 19, 1991, Susp;.	Aug. 5, 1991	Do.
Region I				
Maine:				
Houlton, town of, Aroostock County	230021	Aug. 2, 1974, Emerg; Aug. 19, 1991, Reg; Aug. 19, 1991, Susp;.	Aug. 19, 1991	Do.
Granville, town of, Addison County	500003	Aug. 29, 1986, Emerg; Aug. 19, 1991, Reg; Aug. 19, 1991, Susp;.	Aug. 19, 1991	Do.
Hancock, town of, Addison County	500005	Oct. 17, 1975, Emerg; Sept. 27, 1985, Reg; Aug. 19, 1991, Susp;.	Aug. 19, 1991	Do.
Region II				
New York:				
Freedom, town of, Cattaraugus County	360074	Aug. 22, 1975, Emerg; May 25, 1984, Reg; Aug. 19, 1991, Susp;.	Aug. 19, 1991	Do.
Mamakating, town of, Sullivan County	360826	Oct. 6, 1976, Emerg; Sept. 24, 1984, Reg; Aug. 19, 1991, Susp;.	Aug. 19, 1991	Do.
Pennsylvania:				
Armash, township of, Mifflin County	421879	Feb. 6, 1976, Emerg; Aug. 19, 1991, Reg; Aug. 19, 1991, Susp;.	Aug. 19, 1991	Do.
Austin, borough of, Potter County	420760	July 9, 1975, Emerg; Aug. 5, 1991, Reg; Aug. 19, 1991, Susp;.	Aug. 19, 1991	Do.
Region III				
Pennsylvania:				
Brown, township of, Mifflin County	420683	Aug. 16, 1974, Emerg; Aug. 19, 1991, Reg; Aug. 19, 1991, Susp.	Aug. 19, 1991	Do.
Hawley, borough of, Wayne County	420863	July 16, 1974, Emerg; Aug. 19, 1991, Reg; Aug. 19, 1991, Susp.	Aug. 19, 1991	Do.
Jackson, township of, Venango County	422535	Mar. 8, 1977, Emerg; Aug. 19, 1991, Reg; Aug. 19, 1991, Susp.	Aug. 19, 1991	Do.
Osceola, township of, Tioga County	421182	Mar. 18, 1975, Emerg; Aug. 19, 1991, Reg; Aug. 19, 1991, Susp.	Aug. 19, 1991	Do.
Pike, township of, Potter County	421983	July 11, 1975, Emerg; Aug. 19, 1991, Reg; Aug. 19, 1991, Susp.	Aug. 19, 1991	Do.
Roulette, township of, Potter County	421986	Sept. 1, 1976, Emerg; Aug. 19, 1991, Reg; Aug. 19, 1991, Susp.	Aug. 19, 1991	Do.
Sadsbury, township of, Crawford County	422396	Aug. 6, 1975, Emerg; Aug. 19, 1991, Reg; Aug. 19, 1991, Susp.	Aug. 19, 1991	Do.
Sharon, township of, Potter County	421987	Oct. 6, 1975, Emerg; Aug. 19, 1991, Reg; Aug. 19, 1991, Susp.	Aug. 19, 1991	Do.
Shippingport, borough of, Beaver County	420117	Mar. 8, 1977, Emerg; Aug. 19, 1991, Reg; Aug. 19, 1991, Susp.	Aug. 19, 1991	Do.
Sterling, township of, Wayne County	422175	May 13, 1975, Emerg; Dec. 3, 1982, Reg; Aug. 19, 1991, Susp.	Aug. 19, 1991	Do.
Sweden, township of, Potter County	421989,	Oct. 9, 1974, Emerg; Aug. 19, 1991, Reg; Aug. 19, 1991, Susp.	Aug. 19, 1991	Do.
Valley, township of, Montour County	421924	Aug. 21, 1974, Emerg; Aug. 19, 1991, Reg; Aug. 19, 1991, Susp.	Aug. 19, 1991	Do.
Virginia:				
Isle of Wight County, unincorporated areas	510303	May 20, 1975, Emerg; Aug. 19, 1991, Reg; Aug. 19, 1991, Susp.	Aug. 19, 1991	Do.
Page County, unincorporated areas	510109	Oct. 16, 1974, Emerg; Aug. 19, 1991, Reg; Aug. 19, 1991, Susp.	Aug. 19, 1991	Do.
Region IV				
Alabama: Guntersville, city of, Marshall County	010311	May 5, 1975, Emerg; Aug. 19, 1991, Reg; Aug. 19, 1991, Susp.	Aug. 19, 1991	Do.
Region V				
Wisconsin:				
Arcadia, city of, Trempealeau County	550439	Sept. 30, 1975, Emerg; Aug. 19, 1991, Reg; Aug. 19, 1991, Susp.	Aug. 19, 1991	Do.
Bloomer, city of, Chippewa County	550042	Mar. 20 1975, Emerg; Aug. 19, 1991, Reg; Aug. 19, 1991, Susp.	Aug. 19, 1991	Aug. 19, 1991.
Illinois:				
Pontoon Beach, village of, Madison County	170447	Sept. 5 1975, Emerg; July. 16, 1980, Reg; Aug. 19, 1991, Susp.	Feb. 5, 1982	Do.
Region VI				
Arkansas:				
Ashdown, city of, Little River County	050129	Apr. 14, 1975, Emerg; Aug. 3, 1982, Reg; Aug. 19, 1991, Susp.	Aug. 19, 1991	Do.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region IX				
California:				
Grass Valley, city of, Nevada County	060211	Dec. 11, 1975, Emerg; Sept. 30, 1980, Reg; Aug. 19, 1991, Susp.	Aug. 19, 1991	Do.

Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Issued: July 18, 1992.

C.M. "Bud" Şchauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91–17681 Field 7–21–91; 8:45 am]

BILLING CODE 6718-21-M

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44 CFR Part 65

[Docket No. FEMA-7029]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATES: These modified base flood elevations are currently in effect and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which he can request through the community that the Administrator reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2754.

SUPPLEMENTARY INFORMATION: Numerous changes made in the base (100-year) flood elevations on the FIRMs for each community make it administratively infeasible to publish, in this notice, all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are made available for inspection.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 206 of the flood Disaster Protection Act of 1973 (Pub. L. 93–234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 65.4.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management measures required by 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical revisions made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, floodplains.

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

§ 65.4 [Amended]

2. Section 65.4 is amended by adding, in alphabetic sequence, new entries to the table.

State and County	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Coconino	City of Flagstaff	Apr. 12, 1991, Apr. 19, 1991 *Arizona Daily Sun.*	The Honorable Christopher Bavasi, Mayor, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, Arizona 86001.	Apr. 4, 1991	040020 B
California: Sacramento	City of Sacramento	July 10, 1991, July 17, 1991, *Sacremento Bee.*	The Honorable Anne Rudin, Mayor, City of Sacramento, 915 I Street, Sacramento, California 95814.	July 2, 1991	060266

State and County	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California: Sacramento	Unincorporated areas	July 10, 1991, July 17, 1991 *Sacramento Bee.*	Mr. Douglas Fraleigh, Director, Sacramento County Department of Public Works, 827 Seventh Street, room 301, Sacramento, California 95814.	July 2, 1991	060262

Issued: July 16, 1991.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91-17682 Filed 7-24-91; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations will be used in calculating flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and ninety (90) days have elapsed since that publication. The Administrator has resolved any appeals resulting from this notification.

Numerous changes made in the base (100-year) flood elevations on the FIRMs for each community make it administratively infeasible to publish, in this notice, all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are made available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical revisions made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, floodplains.

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

§ 65.4 [Amended]

2. Section 65.4 is amended by adding, in alphabetic sequence, new entries to the table.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Indiana: Hendricks (Docket No. FEMA-7018).	Town of Plainfield	Mar. 14, 1991, Mar. 21, 1991, *Plainfield Messenger.*	The Honorable Richard A. Carluci, Town Manager, Town of Plainfield, 206 West Main Street, Plainfield, Indiana 46168-0065.	Mar. 1, 1991	180089
Indiana: Hendricks (Docket No. FEMA-7018).	Unincorporated areas	Mar. 14, 1991, Mar. 21, 1991, *The Republican.*	The Honorable Hursel Disney, Chairman, Hendricks County Board of County Commissioners, P.O. Box 97, Danville, Indiana 46122.	Mar. 1, 1991	180415

Issued: July 16, 1991.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91-17683 Filed 7-24-91; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

DATES: The date of issuance of the revised Flood Insurance Rate Map (FIRM) showing modified base flood elevations for the community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and an opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided. The proposed modified elevations were also published in the **Federal Register**. The Administrator has resolved any appeals resulting from these notifications.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR part 67.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies, for reasons set out in the proposed rule, that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, floodplains.

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited for each community.

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD) modified
ARKANSAS	
Searcy (City), White County (FEMA Docket No. 7017)	
Gin Creek:	
Approximately 0.09 mile downstream of Wood Lane	*263
Approximately 0.33 mile upstream of Sawmill Road	[illegible]
Gin Creek Tributary No. 1:	
At confluence with Gin Creek	*264
Approximately 0.30 mile upstream of Julner Drive	*300
Maps available for inspection at the City Hall, 300 West Arch Avenue, Searcy, Arkansas.	
OKLAHOMA	
Comanche (City), Stephens County (FEMA Docket No. 7001)	
Cow Creek (Lower Reach):	
Approximately 1,400 feet upstream of Oklahoma, Kansas, Texas Railroad	*977
Approximately 1.1 miles upstream of confluence of Salt Creek	[illegible]
Maps available for inspection at the City hall, 115 North 2nd Street, Comanche, Oklahoma.	
Stephens County (Unincorporated Areas) (FEMA Docket No. 7001)	
Cow Creek (Lower Reach):	
Approximately 400 feet downstream of Oklahoma, Kansas, Texas Railroad	*971
Approximately 1.1 miles upstream of confluence of Salt Creek	[illegible]
Salt Creek:	
Approximately 1,200 feet upstream of Church Avenue	*1,000
Approximately 1,550 feet upstream of Church Avenue	*1,002
Maps available for inspection at the Stephens County Courthouse, Duncan, Oklahoma.	

Issued: July 16, 1991.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91-17684 Filed 7-24-91; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 80

[DA 91-820]

Maritime Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rules; editorial amendments.

SUMMARY: This order amends the rules to correct various provisions regarding the high frequency (HF) maritime channels between 4000-27500 kHz allocated to the maritime mobile service. It corrects coast station radiotelegraphy frequencies adopted by Commission in Report and Order, PR Docket No. 90-133 (FCC 91-17, 6 FCC Rcd 786 (1991), 56 FR 09897 (March 8, 1991)). It also reinstates two provisions regarding Alaska fixed stations that had been erroneously dropped from recent editions of the Rules.

EFFECTIVE DATE: July 25, 1991.

FOR FURTHER INFORMATION CONTACT: Kathryn S. Hosford, Special Services Division, Private Radio Bureau, Federal Communications Commission, Washington, DC 20554; or telephone (202) 632-7197.

SUPPLEMENTARY INFORMATION: The following Order, DA 91-820, was adopted on June 28, 1991, and released July 2, 1991, by delegated authority of the Chief, Private Radio Bureau.

List of Subjects in 47 CFR Part 80

Coast stations, Marine safety, Radio, Ship stations, Telegraph, Telephone.

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n 44 CFR Part 67

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l as follows:

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d base flood elevations
he communities listed
s at selected locations
ty are shown.
s and owners of real
ouraged to review the
ance Study and FIRM
ddress cited for each

ng and location	# Depth in feet above ground. *Elevation in feet (NGVD) modified
NSAS	
nty (FEMA Docket No. 7)	
e downstream of Wood	*263
e upstream of Sawmill	*[illegible]
Creek	*264
le upstream of Juiner	*300
ection at the City Hall, Searcy, Arkansas.	
OMA	
hens County (FEMA o. 7001)	
):	
et upstream of Oklaho- ailroad	*977
upstream of confluence	*983
ection at the City hall, Comanche, Oklahoma.	
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ncorporated Areas) t No. 7001)	
):	
downstream of Oklaho- ailroad	*971

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD) modified
Approximately 1.1 miles upstream of confluence of Salt Creek	*[illegible]
Salt Creek:	
Approximately 1,200 feet upstream of Church Avenue	*1,000
Approximately 1,550 feet upstream of Church Avenue	*1,002
Maps available for inspection at the Stephens County Courthouse, Duncan, Oklahoma.	

Issued: July 16, 1991.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91-17684 Filed 7-24-91; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 80

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Maritime Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rules; editorial amendments.

SUMMARY: This order amends the rules to correct various provisions regarding the high frequency (HF) maritime channels between 4000–27500 kHz allocated to the maritime mobile service. It corrects coast station radiotelegraphy frequencies adopted by Commission in Report and Order, PR Docket No. 90–133 (FCC 91–17, 6 FCC Rcd 786 (1991), 56 FR 09897 (March 8, 1991)). It also reinstates two provisions regarding Alaska fixed stations that had been erroneously dropped from recent editions of the Rules.

EFFECTIVE DATE: July 25, 1991.

FOR FURTHER INFORMATION CONTACT: Kathryn S. Hosford, Special Services Division, Private Radio Bureau, Federal Communications Commission, Washington, DC 20554; or telephone (202) 632–7197.

SUPPLEMENTARY INFORMATION: The following Order, DA 91–820, was adopted on June 28, 1991, and released July 2, 1991, by delegated authority of the Chief, Private Radio Bureau.

List of Subjects in 47 CFR Part 80

Coast stations, Marine safety, Radio, Ship stations, Telegraph, Telephone.

In the matter of editorial amendments of part 80 of the Commission's rules regarding revision of the high frequency (HF) channels for the maritime mobile service.

Order

Adopted: June 28, 1991.

Released: July 2, 1991.

By the Chief, Private Radio Bureau:

1. On January 30, 1991, the Commission released a report and order that substantially revised the channeling plans in the high frequency (HF) bands between 4000–27500 kHz allocated exclusively to the maritime mobile service.[1] These changes were due to revisions adopted by the Final Acts of the World Administrative Radio Conference for Mobile Services, Geneva, 1987. Since that time certain changes have come to light that need to be corrected. These changes are summarized herein.

2. In March 1991, after the report and order was released, the International Frequency Registration Board (IFRB) indicated replacement frequencies for Morse code telegraphy for coast stations that differed from those adopted by the Commission in 47 CFR 80.357(b). We have corrected the Rules to list the frequencies specified by the IFRB.[2]

3. While making changes to Part 80, we also are making two other corrections at this time: (1) Add new footnote 2 to the frequency 5167.5 kHz that is listed in the table of 47 CFR 80.373(i) and (2) add frequency 5164.5 kHz to the table in 47 CFR 80.387(b). These changes reinstate provisions that had been dropped erroneously during recent publications of the Rules.

4. Because the rule amendments adopted herein are nonsubstantive in nature, the notice and comment procedures and the 30 day effective date provisions of section 553 of the Administrative Procedure Act, 5 U.S.C. 553, need not be complied with. Authority for this action is contained in § 0.331(a)(1) of the Commission's Rules, 47 CFR 0.331(a)(1).

5. Accordingly, part 80 is amended as set forth below effective upon publication in the **Federal Register**.

6. Regarding questions on matters in this document, contact Kathryn S. Hosford at 202-632-7197.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

Rule Changes

Part 80 of title 47 of the Code of Federal Regulations is amended as follows:

PART 80—[AMENDED]

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. Section 80.357 is amended by revising paragraph (b)(1) and the entries listed in columns entitled 16 MHz and 22 MHz of paragraph (b)(1) in their entirety to read as follows;

§ 80.357 Morse code working frequencies.

* * * * *

(b) *Coast station frequencies*—(1) *Frequencies in the 100–27500 kHz band.* The following table describes the working carrier frequencies in the 100–27500 kHz band which are assignable to coast stations located in the designated geographical areas. The exclusive maritime mobile HF bands listed in the table contained in § 80.363(b) of this part are also available for assignment to public coast stations for A1A or J2A radiotelegraphy following coordination with government users.

Area	Coast Morse working frequencies (kHz)								
	100–160 kHz	405–525 kHz	2 MHz	4 MHz	6 MHz	8 MHz	12 MHz	16 MHz	22 MHz
Central Pacific								17016.8 17026.0 [illegible]	
				* * *					22479.0 22515.0 22557.0 22581.5
South Pacific								17064.8 [illegible] 17220.5	
									22467.0 22593.5
Gulf of Mexico								17117.6 17170.4 17172.4 17230.1	
									22467.0 [illegible] 22686.5 [illegible]
Great Lakes									

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[1] Report and Order, PR Docket No. 90–133, FCC 91–17, 6 FCC Rcd 786 (1991).

[2] We also added those Morse code telegraphy frequencies that are currently licensed to coast stations but are not shown in the present Rules. For the bands affected by the IFRB changes, this will make the Rules more accurate.

Area	Coast Morse working frequencies (kHz)								
	100–160 kHz	405–525 kHz	2 MHz	4 MHz	6 MHz	8 MHz	12 MHz	16 MHz	22 MHz
Hawaii								16978.4	22509.0
Puerto Rico									
North Atlantic								16933.2	
								16968.8	
								16973.6	
								16997.6	
								17021.6	
								17093.6	
								16904.9	
									22465.0
									22503.0
									22521.0
									22599.5
									22640.0
									22658.0
Central Atlantic								16916.5	22588.5
South Atlantic								16918.8	22503.0
								17093.6	22575.5
								17160.8	
								17170.4	
								17239.7	
North Pacific								17007.2	22539.0
Alaska									

3. Section 80.373 is amended by revising paragraph (i) to read as follows:

§ 80.373 Private communications frequencies.

* * * * *

(i) *Frequencies in the 1600–5450 kHz band for private communications in Alaska.* The following simplex frequencies are available for assignment to private fixed stations located in the State of Alaska for radiotelephony communications with ship stations. These simplex frequencies are available for use by authorized ship stations for radiotelephony communications with private fixed stations located in the State of Alaska.

Private communications in Alaska Carrier frequencies (kHz)

1619.0	2382.0	2563.0
1622.0	2419.0	2566.0
1643.0	2422.0	2590.0
1646.0	2427.0	2616.0
1649.0	2430.0	3258.0
1652.0	2447.0	[1] 3261.0
1705.0	2450.0	4366.0
1709.0	2479.0	4369.0
1712.0	2482.0	4396.0
2003.0	2506.0	4402.0
2006.0	2509.0	4420.0
2115.0	2512.0	4423.0
2118.0	2535.0	[2] 5167.5
2379.0	2538.0	

[1] Ship stations must limit use of 3261.0 kHz to communications over distances which cannot be reached by the use of frequency below 2700 kHz or above 156.000 MHz.

[2] The frequency 5167.5 kHz is available for emergency communications in Alaska. Peak envelope power of stations operating on this frequency must not exceed 150 watts. When a station in Alaska is authorized to use 5167.5 kHz, such station may also use this frequency for calling and listening for the purpose of establishing communications.

* * * * *

4. Section 80.387 is amended by revising paragraph (b) to read as follows:

§ 80.387 Frequencies for Alaska fixed stations.

* * * * *

(b) *Alaska-private fixed station frequencies:*

Carrier frequencies (kHz)

1643.0	2430.0	2773.0
1646.0	2447.0	3164.5
1649.0	2450.0	3183.0
1652.0	2463.0	3196.0
1657.0	2466.0	3201.0
1660.0 [1]	2471.0	3258.0
1705.0	2479.0	3261.0
1709.0	2482.0	3303.0
1712.0	2506.0	3365.0
2003.0	2509.0	4035.0
2006.0	2512.0	5164.5
2115.0	2535.0	[3] 5167.5
2118.0	2538.0	5204.5
2253.0	2563.0	[2] 6948.5
2400.0	2566.0	[2] 7368.5
2419.0	2601.0	8067.0
2422.0	2616.0	8070.0
2427.0	2691.0	[2] 11437.0
		[2] 11601.5

[1] Use of 1660.0 kHz must be coordinated to protect radiolocation on adjacent channels.

[2] Peak envelope power must not exceed 1 kW for radiotelephony. Teleprinter use is authorized.

[3] The frequency 5167.5 kHz is available for emergency communications in Alaska. 'Peak envelope power of stations operating on this frequency must not exceed 150 watts. When a station in Alaska is authorized to use 5167.5 kHz, such station may also use this frequency for calling and listening for the purpose of establishing communications.

* * * * *

[FR Doc. 91–17600 Filed 7–24–91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Part 225

Department of Defense Federal Acquisition Regulation Supplement; Offset Administrative Costs

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

Coast Morse working frequencies (kHz)								
100–160 kHz	405–525 kHz	2 MHz	4 MHz	6 MHz	8 MHz	12 MHz	16 MHz	22 MHz
...	...	...	...	...	...	...	16978.4	22509.0
...	...	...	...	...	...	...	...	...
...	...	...	...	...	...	...	16933.2 16966.6 16973.6 16997.6 17021.6 17093.6 16904.9	
							...	22465.0 22503.0 22521.0 22599.5 22640.0 22658.0
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								...
...	...	...	...	...	...	...	16916.5	22588.5
							...	...
...	...	...	...	...	...	...	16918.8 17093.6 17160.8 17170.4 17239.7	22503.0 22575.5 ... ...
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...	...	...	...	...	...	...	17007.2	22539.0
...	...	...	...	...	...	...	...	...

2538.0	...

mit use of 3261.0 kHz to
stances which cannot be
equency below 2700 kHz or

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(b) to read as

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uencies (kHz)

2430.0	2773.0
2447.0	3164.5
2450.0	3183.0
2463.0	3196.0
2466.0	3201.0
2471.0	3258.0
2479.0	3261.0
2482.0	3303.0
2506.0	3365.0
2509.0	4035.0
2512.0	5164.5
2535.0	[3] 5167.5

2118.0	2538.0	5204.5
2253.0	2563.0	[2] 6948.5
2400.0	2566.0	[2] 7368.5
2419.0	2601.0	8067.0
2422.0	2616.0	8070.0
2427.0	2691.0	[2] 11437.0
...	...	[2] 11601.5

[1] Use of 1660.0 kHz must be coordinated to protect radiolocation on adjacent channels.

[2] Peak envelope power must not exceed 1 kW for radiotelephony. Teleprinter use is authorized.

[3] The frequency 5167.5 kHz is available for emergency communications in Alaska. [1]Peak envelope power of stations operating on this frequency must not exceed 150 watts. When a station in Alaska is authorized to use 5167.5 kHz, such station may also use this frequency for calling and listening for the purpose of establishing communications.

* * * * *

[FR Doc. 91–17600 Filed 7–24–91; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Part 225

Department of Defense Federal Acquisition Regulation Supplement; Offset Administrative Costs

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Defense Acquisition Regulations (DAR) Council has revised the Defense FAR Supplement to permit defense contractors to recover offset administrative costs from foreign governments under Foreign Military Sales (FMS) contracts. This revision was effective July 15, 1991, upon issuance of Departmental Letter 91–015.

DATES: *Effective Date:* July 15, 1991.

Comment Date: Comments on the interim rule should be submitted in writing to the address shown below on or before August 26, 1991, to be considered in the formulation of the final rule. Please cite DAR Case 91–008 in all correspondence related to this issue.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, attn: Mrs. Alyce Sullivan, DAR Council, OUSD(A), The Pentagon, Washington, DC 20301–3000.

FOR FURTHER INFORMATION CONTACT: Mrs. Alyce Sullivan, DAR Council (703) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Determination To Issue Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this regulation as an interim rule to allow contractors to recover reasonable business expenses for offset administrative costs from foreign customers under FMS contracts. However, pursuant to Public Law 98–577 and FAR 1.501, public comments received in response to this notice will be considered in formulating the final rule.

B. Background

The Defense Policy Advisory Committee on Trade (DPACT) recommended making costs associated with the administration of offset agreements between contractors and foreign governments allowable costs. Presently only offset costs associated with a DoD-approved offset agreement are allowable, a circumstance which occurs very infrequently.

As revised, in cases where the foreign purchaser requires offsets against a defense sale through Foreign Military Sales, the Letters of Offer and Acceptance (LOAs) may state that the price of contracts awarded in support of the LOA may include administrative costs associated with implementing the foreign purchaser's offset agreement with the contractor. The LOAs should also note that the U.S. Government assumes no obligation to administer or satisfy the offset requirement or to bear any of the associated costs.

Estimated costs associated with offset agreements must be included in FMS pricing information provided to foreign governments, prior to submittal of the LOA. Examples of offset administrative costs are included in the DFARS revisions.

C. Regulatory Flexibility Act

The DFARS revisions are not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 60 *et seq.* because it is not anticipated that small businesses would have offset agreements with foreign governments. A Regulatory Flexibility analysis has not been prepared. However, comments from small entities will be considered in formulating the final rule.

D. Paperwork Reduction Act

The rule does not impose reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 225

Government procurement.

Claudia L. Naugle,
Executive Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 225 is amended as follows:

1. The authority citation for 48 CFR part 225 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

PART 225—FOREIGN ACQUISITION

225.7304 [Amended]

2. Section 225.7304(c)(1)(iii) is revised to read as follows:

* * * * *

(c) * * *

(1) * * *

(iii) Offset administrative costs.

(A) A U.S. defense contractor may recover, under an FMS contract, costs incurred to implement specific requirements of its offset agreement with a foreign government or international organization if the FMS Letter of Offer and Acceptance (LOA) contains a note that:

(*1*) Specifically addresses offsets;

(*2*) Advises foreign governments that the price of contracts awarded in support of the LOA may include administrative costs associated with implementing the foreign purchaser's offset agreement with the contractor; and

(*3*) Includes a statement that the U.S. Government assumes no obligation to satisfy or administer the offset requirement or to bear any of the associated costs.

(B) Offset administrative costs must be reasonable and readily identifiable. Estimated offset administrative costs must be included in FMS pricing information provided to the foreign government as early as possible, but prior to submittal of the LOA.

(C) Examples of offset administrative costs are:

(*1*) In-house and/or purchased: organizational, administrative and technical support, including offset staffing; quality assurance, manufacturing, purchasing support; data acquisition; proposal, transaction and report preparation; broker/trading services; legal support; and similar support activities;

(*2*) Off-shore operation for technical representative and consultant activities, office operations, customer and industry interface, capability surveys;

(*3*) Marketing assistance and related technical assistance, transfer of technical information and related training;

(*4*) Employee travel and subsistence costs; and

(*5*) Taxes and duties.

* * * * *

[FR Doc. 91–17613 Filed 7–24–91; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 910498–1098]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment.

SUMMARY: NOAA announces a change in the fishing days per calendar week for the recreational fishery in the exclusive economic zone (EEZ) from Humbug Mountain, Oregon, to Horse Mountain, California. In accordance with the preseason notice of 1991 management measures, this fishery has been closed Tuesday and Wednesday of each week. The Director, Northwest Region, NMFS (Regional Director) has determined that due to high catch rates of chinook salmon, this fishery should be closed Monday through Thursday of each week effective 0001 hours local time, July 23, 1991, with the exception that on September 2, 1991 (Labor Day) the fishery will be open. This action is necessary to conform to the preseason notice of 1991 management measures and is intended to ensure conservation of chinook salmon.

DATES: *Effective:* Modification of the recreational fishing week to close Monday through Thursday in the EEZ from Humbug Mountain, Oregon, to Horse Mountain, California is effective at 0001 hours local time, July 23, 1991, with the exception that on September 2, 1991 (Labor Day) the fishery will be open. Actual notice to affected fishermen was given prior to that time through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.20, 661.21, and 661.23 (as amended May 1, 1989). *Comments:* Public comments are invited until August 5, 1991.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115–0070; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, California 90731–7415. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: Joe Scordino at 206–526–6140, or Rodney R. McInnis at 213–514–6199.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries are published at 50 CFR part 661. In its emergency interim rule and preseason notice of 1991 management measures (56 FR 21311, May 8, 1991), NOAA announced that the 1991 recreational fishery from Humbug Mountain, Oregon, to Horse Mountain, California, will open on May 25 and continue through September 30, with Tuesday and Wednesday of each week being closed. NOAA also announced that "Additional days of the week may be closed inseason if the expected catch through the scheduled season closure exceeds 20,000 chinook based on STT [Salmon Technical Team] evaluation on or about July 10."

Based on the best available information on July 10, the recreational catch is estimated to be about 13,000 chinook salmon through July 11. If the current season structure were to continue through the scheduled season closing date of September 30, the total recreational catch is projected to be about 33,000 chinook salmon. A two-fifths reduction in the recreational fishing week for the remainder of the season, from five days to three days open per calendar week, is expected to dampen catch rates and keep the total catch close to the 20,000 chinook guideline. Concern was expressed that recreational fishermen be provided full fishing opportunity during the Labor Day weekend. Therefore, the recreational fishery from Humbug Mountain, Oregon, to Horse Mountain, California, will be closed Monday through Thursday of each week effective 0001 hours local time, July 23, 1991, with the exception that on September 2, 1991 (Labor Day) the fishery will be open. Inseason modification in the recreational fishing days per calendar week is authorized by regulations at § 661.21(b)(1)(iii).

In accordance with the revised inseason notice procedures of 50 CFR 661.20, 661.21, and 661.23, actual notice to fishermen of this action was given prior to the time listed above by telephone hotline number (206) 526–6667 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 KHz.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Oregon Department of Fish and Wildlife, and the California Department of Fish and Game regarding this action affecting the recreational fishery from Humbug Mountain, Oregon, to Horse Mountain, California. The states of Oregon and California will manage the recreational fishery in State waters adjacent to this area of the EEZ in accordance with this action. This notice does not apply to other fisheries that may be operating in other areas.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted until August 5, 1991.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 19, 1991.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–17606 Filed 7–19–91; 2:58 pm]

BILLING CODE 3510-22-M

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50 CFR Part 661

[Docket No. 910498–1098]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closures.

SUMMARY: NOAA announces the closure of the commercial salmon fishery for all salmon species in the exclusive economic zone (EEZ) from Cascade Head, Oregon, to the U.S.-Mexico border at midnight, July 11, 1991, to ensure that the coho salmon ceiling for the subarea south of Cascade Head is not exceeded; regularly scheduled commercial fisheries from Cascade Head, Oregon, to the U.S.-Mexico border are reopened for all salmon species except coho salmon at 0001 hours July 12, 1991. The Director, Northwest Region, NMFS (Regional Director), determined that the subarea catch ceiling for coho salmon would be reached, and the fishery for all salmon species should be closed at midnight, July 11. NOAA also announces the closure of the commercial salmon fishery for all salmon species in the EEZ from Cape Falcon to Cascade Head, Oregon, at midnight, July 14, 1991, to ensure that the overall coho salmon quota for the area south of Cape Falcon is not exceeded; the regularly scheduled commercial fishery in this subarea is reopened for all salmon species except coho salmon at 0001 hours July 15, 1991. The Regional Director determined that the overall catch quota for coho salmon would be reached, and the fishery for all salmon species should be closed at midnight, July 14. These actions are necessary to conform to the preseason notice of 1991 management measures and are intended to ensure conservation of coho salmon.

As announced in the preseason notice of 1991 management measures, a separate catch quota of 5,000 coho salmon has been reserved preseason for the commercial fishery from Horse Mountain, California, to the U.S.-Mexico border, which will be available upon attainment of the overall catch quota or the subarea catch ceiling for coho salmon minus the 5,000 deduction. The Regional Director has determined that the 5,000 coho salmon reserve will not be made available immediately, so that the commercial fishery in the subarea from Horse Mountain to Point Arena, California, which does not open until August 1, 1991, may have a portion of its season open for all salmon species. Timing of the availability of the 5,000

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50 CFR Part 661

[Docket No. 910498-1098]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closures.

SUMMARY: NOAA announces the closure of the commercial salmon fishery for all salmon species in the exclusive economic zone (EEZ) from Cascade Head, Oregon, to the U.S.-Mexico border at midnight, July 11, 1991, to ensure that the coho salmon ceiling for the subarea south of Cascade Head is not exceeded; regularly scheduled commercial fisheries from Cascade Head, Oregon, to the U.S.-Mexico border are reopened for all salmon species except coho salmon at 0001 hours July 12, 1991. The Director, Northwest Region, NMFS (Regional Director), determined that the subarea catch ceiling for coho salmon would be reached, and the fishery for all salmon species should be closed at midnight, July 11. NOAA also announces the closure of the commercial salmon fishery for all salmon species in the EEZ from Cape Falcon to Cascade Head, Oregon, at midnight, July 14, 1991, to ensure that the overall coho salmon quota for the area south of Cape Falcon is not exceeded; the regularly scheduled commercial fishery in this subarea is reopened for all salmon species except coho salmon at 0001 hours July 15, 1991. The Regional Director determined that the overall catch quota for coho salmon would be reached, and the fishery for all salmon species should be closed at midnight, July 14. These actions are necessary to conform to the preseason notice of 1991 management measures and are intended to ensure conservation of coho salmon.

As announced in the preseason notice of 1991 management measures, a separate catch quota of 5,000 coho salmon has been reserved preseason for the commercial fishery from Horse Mountain, California, to the U.S.-Mexico border, which will be available upon attainment of the overall catch quota or the subarea catch ceiling for coho salmon minus the 5,000 deduction. The Regional Director has determined that the 5,000 coho salmon reserve will not be made available immediately, so that the commercial fishery in the subarea from Horse Mountain to Point Arena, California, which does not open until August 1, 1991, may have a portion of its season open for all salmon species. Timing of the availability of the 5,000 coho salmon reserve will be announced at a later date.

DATES: *Effective:* Closure of the EEZ from Cascade Head, Oregon, to the U.S.-Mexico border to commercial fishing for all salmon species was effective at 2400 hours local time, July 11, 1991. Regularly scheduled commercial fisheries in this subarea reopened for all salmon species except coho salmon effective at 0001 hours local time, July 12, 1991. Closure of the EEZ from Cape Falcon to Cascade Head, Oregon, to commercial fishing for all salmon species was effective at 2400 hours local time, July 14, 1991. Regularly scheduled commercial fisheries in this subarea reopened for all salmon species except coho salmon effective at 0001 hours local time, July 15, 1991. Actual notice to affected fishermen was given prior to those times thorugh a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.20, 661.21, and 661.23 (as amended May 1, 1989). Comments: Public comments are invited until August 8, 1991.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, CA 90731–7415. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: Joe Scordino at 206–526–6140, or Rodney R. McInnis at 213–514–6199.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR part 661 specify at § 661.21(a)(1) that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by notice issued under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached.

In its emergency interim rule and preseason notice of 1991 management measures (56 FR 21311, May 8, 1991), NOAA announced that the 1991 commercial fishery from Cape Falcon, Oregon, to the U.S.-Mexico border is limited to an overall combined catch and hooking mortality impact of 390,000 coho and an overall catch quota of 361,000 coho salmon. Within this overall catch quota, there is a subarea catch ceiling that allows a harvest of no more than 271,000 coho salmon south of Cascade Head, Oregon. A separate catch quota of 5,000 coho salmon was reserved preseason for the commercial fishery from Horse Mountain, California, to the U.S.-Mexico border, which will be available upon attainment of the overall catch quota or the subarea catch ceiling minus the 5,000 deduction, which effectively reduces the overall catch quota to 356,000 coho salmon and the subarea catch ceiling to 266,000 coho salmon prior to release of the 5,000 coho salmon reserve.

According to the best available information on July 10, the commercial fishery catch south of Cascade Head, Oregon, was projected to reach the subarea catch ceiling of 266,000 coho salmon by midnight, July 11. Therefore, commercial salmon fishing from Cascade Head, Oregon, to the U.S.-Mexico border, was closed effective 2400 hours local time, July 11. In accordance with the preseason notice of 1991 management measures (Table 1 at 56 FR 21319), regularly scheduled commercial fisheries from Cascade Heads, Oregon, to the U.S.-Mexico border, reopened for all salmon species except coho salmon effective 0001 hours local time, July 12, 1991.

Furthermore, according to the best available information on July 12, the commercial fishery catch south of Cape Falcon, Oregon, was projected to reach the overall catch quota of 356,000 coho salmon by midnight, July 14. Therefore, commerical salmon fishing from Cape Falcon to Cascade Head, Oregon, was closed effective 2400 hours local time, July 14. In accordance with the preseason notice of 1991 management measures, the regularly scheduled commercial fishery from Cape Falcon to Cascade Head, Oregon, reopened for all salmon species except coho salmon effective 0001 hours local time, July 15, 1991.

As stated above, the separate catch quota of 5,000 coho salmon, which has been reserved preseason for the commerical fishery from Horse Mountain, California, to the U.S.-Mexico border, will become available upon attainment of the overall catch quota or the subarea catch ceiling for coho salmon minus the 5,000 deduction. The Regional Director has determined that the 5,000 coho salmon reserve will not be made available immediately, so that the commercial fishery in the subarea from Horse Mountain to Point Area, California, which does not open until August 1, 1991, may have a portion of its season open for all salmon species. Timing of the availability of the 5,000 coho salmon reserve will be announced at a later date.

In accordance with the revised inseason notice procedures of 50 CFR 661.20, 661.21, and 661.23, actual notice to fishermen of these closures was given prior to the times listed above by telephone hotline number (206) 526–6667 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 KHz.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Oregon Department of Fish and Wildlife, and the California Department of Fish and Game regarding these actions affecting the commercial fishery from Cape Falcon, Oregon, to the U.S.-Mexico border. The States of Oregon and California will manage the commercial fisheries in state waters adjacent to these areas of the EEZ in accordance with this federal action. This notice does not apply to other fisheries that may be operating in other areas.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted until August 8, 1991.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 19, 1991.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–17609 Filed 7–24–91; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 143
Thursday, July 25, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[FV-91-403PR]

Expenses and Assessment Rate for Almonds Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule authorizes expenditures and establishes an assessment rate for the 1991–92 crop year under the marketing agreement and order for California almonds. Funds to administer this program are derived from assessments on handlers. This action is needed in order for the Almond Board of California (Board), which is responsible for local administration of the order, to have sufficient funds to meet the expenses of operating the program. An annual budget of expenses is prepared by the Board and submitted to the U.S. Department of Agriculture (Department) for approval.

DATES: Comments must be received by August 5, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Sonia N. Jimenez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 475–5992.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement and Order No. 981 (7 CFR part 981), both as amended, regulating the handling of almonds grown in California. This order is effective under Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 110 handlers of California almonds and there are approximately 7,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of almond handlers and producers may be classified as small entities.

The marketing order tor California almonds requires that the assessment rate for a particular crop year shall apply to all assessable almonds handled from the beginning of such year. An annual budget of expenses is prepared by the Board and submitted to the Department for approval. The members of the Board are handlers and producers of regulated almonds. They are familiar with the Board's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Board is derived by dividing anticipated expenses by expected shipments of assessable almonds. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Board's expected expenses. The recommended budget and rate of assessment are acted upon by the Board before the season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the Board will have funds to pay its expenses.

The Board met on June 13, 1991, and unanimously recommended 1991–92 marketing order program expenditures of $11,540,095 and an assessment rate for the 1991–92 crop year of 2.25 cents per pound (kernelweight basis). The board also unanimously recommended that handlers should be eligible to receive credit for their own marketing promotion activities for up to 1.75 cents of the 2.25-cent-per-pound assessment rate.

The 2.25-cent-per-pound 1991–92 recommended assessment rate compares with an actual 1990–91 assessment rate of 2.77 cents per pound. The advertising portion of the assessment rate has been 2.5 cents per pound since 1979. The decrease to 1.75 cents per pound is because the current Board favors more generic advertising and promotion conducted by the board as opposed to creditable brand advertising conducted by individual handlers. The .5-cent-per-pound non-creditable portion of the total assessment, which handlers must pay to the Board, is .23 cent per pound higher than the .27-cent-per-pound 1991–91 assessment rate. The higher rate is needed to cover increased personnel costs for compliance and promotional activities. Revenues are expected to be $2,596,250 from administrative assessments ($1,601,250 from 1991–92 and $995,000 from 1990–91), $800,000 from advertising assessments, $35,000 from interests and $330,000 from the sale of generic packages for a total of $3,761,250.

Projected expenses of $11,540,095 for 1991–92 compare with 1990–91 budgeted expenses of $18,946,254. Major budget categories for the 1991–92 almond crop

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year are $1,974,000 for public relations, $1,158,500 for general administration, $413,095 for production research, $70,000 for crop estimation, and $100,000 for an econometric study. Comparable actual expenditures for the 1990–91 almond crop year were $1,575,675, $957,600, $393,179, and $119,800, respectively. No econometric study was conducted last year. The increase in the general administration category included $100,000 for a management study to identify new areas for the Board to direct its efforts and to possibly restructure its management, as well as additional funds to audit each handler every year.

Administrative expenditures are expected to total $4,061,306. Total revenue to meet these expenses is projected to be $3,761,250 plus a cash carry-in from 1990–91 of $300,056. The remaining $7,472,500 of proposed 1991–92 expenses is the estimated amount which handlers are expected to spend on their own marketing promotion activities based on a projected 1991–92 marketable California almond production of 427 million pounds. This figure also assumes that all handlers receive full credit against their 1.75 cents per pound creditable assessment obligation. Unexpected funds from 1991–92 may be carried over to cover expenses during the first four months of the 1991–93 crop year.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of 10 days is appropriate because the budget and assessment rate approval for the program needs to be expedited. Although the board may use funds from the previous year for up to four months in the new crop year, Departmental approval of the expenditure categories is necessary in order for the Board to use those funds.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is proposed to be amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674. [This section will not be published in annual Code of Federal Regulations.]

2. Section 981.338 is added to read as follows:

§ 981.338 Expenses and assessment rate.

Expenses of $11,540,095 by the Almond Board of California are authorized for the crop year ending on June 30, 1992. An assessment rate for that crop year payable by each handler in accordance with § 981.81 is fixed at 2.25 cents per pound of almonds (kernelweight basis) less any amount credited pursuant to section 981.41, but not to exceed 1.75 cents per pound of almonds (kernelweight basis).

Dated: July 22, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–17713 Filed 7–24–91; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 61

[Docket No. PRM–61–1]

Sierra Club of North Carolina; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition, as amended, for rulemaking submitted by the Sierra Club of North Carolina (PRM–61–1). The petition and amendment requested that the NRC amend its regulations in 10 CFR part 61 to permit the licensing of a zero-release low-level radioactive waste disposal facility within the saturated zone. The NRC is denying the petition for the following reasons: (1) The design of a zero-release engineered facility for extremely long time periods is beyond the current level of demonstrated technology known to the NRC staff, and (2) the existing rule allows for saturated zone disposal under a specific hydrologic condition, however, the effort to develop regulations for enhanced engineered saturated zone disposal, under a broad range of hydrologic conditions, would be significant and the NRC is not aware of interest in this type of disposal by State authorities.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and the NRC's letter to the petitioner are available for public inspection or copying in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark Haisfield, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3877.

SUPPLEMENTARY INFORMATION:

The Petition

On April 12, 1990 (55 FR 13797), the Nuclear Regulatory Commission published notice of receipt of a petition for rulemaking by the Sierra Club of North Carolina, and on June 7, 1990 (55 FR 23206), the NRC published a subsequent amendment to the original petition for rulemaking. The petition and amendment requested that the Commission amend 10 CFR part 61 to adopt regulations that would permit the design and construction of a zero-release low-level radioactive waste disposal facility entirely below the 100 year seasonal water table. The petitioner asserts that amended regulations are necessary in order for the General Assembly of North Carolina to consider a waiver of a North Carolina statute which requires that the bottom of a low-level waste facility be at least seven feet above the seasonal high water table.

North Carolina, which is an Agreement State under section 274b of the Atomic Energy Act, is required to impose standards which are equivalent, to the extent practicable, to those issued by the NRC. Therefore, the North Carolina Radiation Protection Commission, which determines appropriate regulations for radiation protection and has a licensing role for a low-level radioactive waste disposal facility, must meet the requirements of 10 CFR part 61, subparts C and D. The petitioner states that until the NRC acts favorably in regard to this petition, the North Carolina Radiation Protection Commission will be unable to approve rules for saturated zone siting and zero-release technology. The petitioner asserts that without amended NRC regulations, the North Carolina Low-Level Radioactive Waste Management Authority cannot undertake to consider a site and technology which could not be considered licensable by the Radiation Protection Commission.

According to the petitioner, neither the Radiation Protection Commission nor the Management Authority can recommend to the Joint Selection Committee on the Management of Low-Level Radioactive Waste that the General Assembly of North Carolina waive the provision of the statute which requires placing the bottom of a facility at least seven feet above the seasonal high water table. The petitioner provided a sample design for a LLW vault which he asserted would be immune to water infiltration over long time periods, and therefore, disposal could be safely accomplished within the saturated zone. Petitioner asserts that current NRC and North Carolina regulations preclude much of the state as potential LLW sites due to high water tables throughout the state.

The petitioner believes the performance objectives for low-level radioactive waste disposal facilities can best be realized by a finding that water impermeable vaults in the saturated zone meet the requirement that diffusion be the predominant mechanism of radioactivity transport from disposed low-level radioactive waste. Further, the petitioner offers that three levels of water impermeable containment (vault, overpack, and high integrity container) provide a credible basis for developing regulations for a disposal facility designed for zero-release.

The petitioner states that the NRC, by a timely action permitting disposal facility placement in the saturated zone, providing that specified siting and design requirements are met, will facilitate corresponding changes in the governing statutes and in the rules of the North Carolina Radiation Protection Commission. The petitioner asserts that the changes are required if the North Carolina Low-Level Radioactive Waste Management Authority is to consider and authorize a contractor to site, design and construct a zero-release, saturated zone located, inadvertent intruder protected, disposal facility for the Southeast Compact by the planned startup date of January 1, 1993.

In the amendment to the original petition, the petitioner provided new and relevant information regarding polymer and concrete technology. The petitioner requested that the Commission consider the new information on polymer concrete technology as an alternative means for realizing the objective of the original petition.

Public Comments on the Petition

The notices of filing of petition and amendment for rulemaking in the **Federal Register** invited interested persons to submit written comments concerning the petition. The NRC received 14 comment letters in response to the original petition and the amendment. Two comment letters were received from States, three from private organizations, two from associated industries or their representatives, one from a utility, and six from private individuals. The commenters generally focussed on the two main elements of the petition—burial within the saturated zone and use of a zero release structure.

One commenter supported the concept of burial within the saturated zone. The commenter, from another state, agreed that this concept allows far more of the state to be potentially analyzed as a disposal site. Eleven commenters opposed burial within the saturated zone. The commenters stated that this type of disposal is non-conservative and not supportable. As indicated in the reasons for denial, NRC agreed with the commenters that the current level of technology cannot support a rule change allowing saturated zone burial, unless the exception in § 61.50(a)(7) can be demonstrated.

Two of the commenters liked the goal of a zero release structure. However, they felt that there is too much uncertainty in the long-term performance of a zero release structure to warrant burial in the saturated zone. As indicated in the reasons for denial, NRC believes that the design of a zero-release engineered facility for extremely long time periods is beyond the current level of demonstrated technology known to the NRC staff. Two commenters opposed a zero release rule. One commenter referenced the Environmental Impact Statement (EIS) in support of 10 CFR part 61. The commenter noted that in the EIS, the NRC concluded that zero release is not necessary to adequately protect public health and safety. This commenter also stated that the petitioner has not provided adequate evidence to warrant any changes to the existing position, and NRC agrees with this comment.

Reasons for Denial

The NRC is denying the petition, as amended, for the following reasons:

1. The concept of a zero release engineered facility in perpetuity is beyond the current level of demonstrated technology known to the NRC staff.

2. To NRC's knowledge, States' authorities have not shown an interest in placing a LLW site within the saturated zone.

The NRC agrees with the petitioner that there have been significant advances in concrete type structures and materials. Many states are planning to propose the use of concrete structures for LLW disposal facilities. The NRC will continue to support research into the use of engineered structures to enhance the performance of LLW disposal facilities. The NRC is also conducting research to assess the performance of concrete structures in the saturated and unsaturated zones.

The following discussion more fully explains the reasons for denying the petition.

1. The design concept highlights the use of fiber-reinforced, polymer concrete in the vault structure as a major means of ensuring that the structure would remain virtually hermetically sealed for an indefinitely long period of time. It is true that such concretes have performed well in the field for periods of time on the order of a decade or so. This experience has not been sufficient, however, to enable the staff to conclude that there is reasonable assurance that a structure constructed of these materials would remain almost entirely sealed for centuries. The lack of demonstrated performance, or a credible basis, for extrapolating from short term studies with the proposed fiber-reinforced polymer concrete would make it very difficult, if not impossible, to support a finding in a hearing that there is reasonable assurance for long-term containment of the low-level radioactive waste in the hermetically sealed vault structure. The staff is supported by NRC consultants from the U.S. Army Corps of Engineers and the National Institute of Standards and Technology to recognizing the uncertainties that are inherent in the long-term performance of the proposed fiber-reinforced polymer concrete.

Another major source of uncertainty in the proposed design concept is potential leakage at construction joints and the locations where the vault roof would meet the vault walls. Conventional water stops for concrete structures are not expected to last for more than about 50 years. Even with improved materials or methods of construction at the joints, it is not clear that the proposed design would ensure zero leakage over extended periods of time. Thus, it is the staff's opinion that preventing leakage at joints for a submerged vault structure for centuries would present a design and construction problem that could be insurmountable.

In summary, the capacity to design for zero-release has not been demonstrated. The NRC believes that structural stability can be assured for long-periods of time even with conventional construction materials. It is quite

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In summary, the capacity to design for zero-release has not been demonstrated. The NRC believes that structural stability can be assured for long-periods of time even with conventional construction materials. It is quite another matter, however, to expect that a concrete structure alone (even one constructed of "improved" materials) would ensure zero-release by remaining hermetically sealed for centuries. Ultimately, the sealing of the "constructed stagnant saturated zone" could fail and leakage develop which, even under small hydraulic gradients, would result in flow and transport of radionuclides. Thus, the NRC concludes that the proposed design concept would not provide reasonable assurance of zero-release.

2. The development of regulations meeting the requirements of the petitioner would be extremely difficult. The concept upon which 10 CFR part 61 is based is that the very slow release of radionuclides that meet regulatory requirements is acceptable. Therefore, designing a perpetual facility for "zero release" might require NRC to develop an entirely new regulation. Research would be required to determine not only the feasibility of the concept, but that practical implementation is possible. This type of research would be costly, time consuming, and uncertain because extrapolation over long time periods from relatively short time periods of data is at best an educated guess.

To NRC's knowledge, no State indicated that it would give serious consideration to an engineered structure within the saturated zone during the development of 10 CFR part 61. Therefore, because of the uncertainty that regulations could be developed, and if developed, whether any States would seriously consider this type of proposal, the NRC believes that using limited resources in an attempt to meet petitioners proposal would not be appropriate.

Dated at Rockville, Maryland this 11th day of July 1991.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 91–17696 Filed 7–24–91; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF STATE

Bureau of Politico-Military Affairs

22 CFR Part 121

[Public Notice 1428]

Amendments to the International Traffic in Arms Regulations (ITAR)

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations implementing section 38 of the Arms Export Control Act, which governs the export of defense articles and defense services. Specifically, it would enumerate the types of vessels of war and special naval equipment controlled under the United States Munitions List (USML). This proposed rule is intended to reduce the burden on munitions exporters by eliminating most support and service craft and floating dry docks from the USML.

DATES: Comments must be submitted on or before August 26, 1991.

ADDRESSES: Written comments should be sent to: LCDR Nelson R. Hines, PM/DTC, SA–6, room 228, Department of State, Washington, DC 20520, or sent by facsimile to (703) 875–6647. Public comments will be made available for public inspection.

FOR FURTHER INFORMATION CONTACT: LCDR Nelson R. Hines, Office of Defense Trade Controls, Department of State (703–875–6644).

SUPPLEMENTARY INFORMATION: On November 16, 1990, the President signed Executive Order 12735 on Chemical and Biological Weapons Proliferation and directed various other export control measures. The measures directed by the President include the following:

> By June 1, 1991, the United States will remove from the U.S. Munitions List all items contained on the CoCom dual-use list unless significant U.S. national security interests would be jeopardized. (Memorandum of Disapproval of H.R. 4653, 26 Weekly Compilation of Presidential Documents 1839).

In implementation of the President's directive of November 16, 1990, regarding the United States Munitions List (USML), the Department of State has proposed comprehensive changes to the USML, which is part of the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130). The ITAR implements section 38 of the Arms Export Control Act (22 U.S.C. 2778). The proposed rule that follows amends § 121.15 which enumerates vessels of war and special naval equipment. In implementation of the President's directive, the Department reviewed, in whole or in part, COCOM IL's 1416, 1425, 1431, 1391, 1312, 1371, 1370, 1099 and 1091, and determined that the only overlap between the USML and the COCOM Industrial List is IL 1425 for floating docks. The Department determines further that the following items no longer require control under the ITAR and will be removed from the USML and delisted from § 121.15 of the ITAR: Fleet support ships (submarine rescue ships will remain on the USML for significant national security interests), yard tugs, yard tankers, yard lighters, floating dry docks, icebreakers, Coast Guard oceanography vessels, buoy tenders, Coast Guard tugs and light ships. They will be under the regulatory control of the Department of Commerce. Prior to publication of a final **Federal Register** notice concerning vessels of war, the Department of Commerce will establish the appropriate Export Control Commodity Numbers (ECCN) for the above listed items.

Additionally, this amendment would revise and update the description of vessels of war to clarify which naval vessels are covered by the USML and require export approval under the ITAR.

Finally, this amendment eliminates the use of military designators of the vessels in most sub-paragraphs and uses them in other sub-paragraphs as examples only; they are not to be viewed as all-inclusive.

The Department of State believes category VI of the USML does not control any commodity currently on the Commodity Control List, nor is it is the intention of the Department to control such commodities in the future unless significant national security interests would be jeopardized.

It is the intent of the Department that this proposed rule change shall continue coverage on the USML of items specially designed, modified, or configured for military application or items justified for retention by significant national security interests. It is not the intent of the Department in the future to impose controls on dual-use items which are not controlled by the COCOM IL unless significant national security interests would be jeopardized. The Department particularly welcomes comments from the exporting community addressing any current overlap which we have not identified.

This amendment involves a foreign affairs function of the United States and thus is excluded from the major rule procedures of Executive Order 12291 (46 FR 13193) and the procedures of 5 U.S.C. 553 and 554. Nevertheless, this amendment is being published as a proposed rule in order to provide the public with an opportunity to comment and provide advice and suggestions regarding the proposal. The period for submission of comments will close 30 days after publication of this proposed rule. In addition, this proposed rule affects collection of information subject to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), and will serve to reduce the burden on exporters on that respect. The relevant information collection is to be reviewed by the

Office of Management and Budget under control no. 1405–0013.

List of Subjects in 22 CFR Part 121

Arms and munitions, Exports.

Accordingly, for the reasons set forth in the preamble, it is proposed that title 22, chapter I, subchapter M (consisting of parts 120 through 130) of the Code of Federal Regulation, be amended as set forth below:

PART 121—THE UNITED STATES MUNITIONS LIST

1. The authority citation for part 121 continues to read as follows:

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

2. Section 121.15 "Vessels of war and special naval equipment": is revised to read as follows:

§ 121.15 Vessels of war and special naval equipment.

Vessels of war means vessels, waterborne or submersible, designed, modified, or equipped for military purposes, including vessels described as developmental, "demilitarized" or decommissioned. Vessels of war in Category VI, whether developmental, "demilitarized" and/or decommissioned or not, include, but are not limited to, the following:

(a) *Combatant vessels*—(1) *Warships (including nuclear-powered versions):*

(i) Aircraft carriers.

(ii) Battleships.

(iii) Cruisers.

(iv) Destroyers.

(v) Frigates.

(vi) Submarines.

(2) *Other combatants.*

(i) Patrol Combatants (e.g., including but not limited to PHM).

(ii) Amphibious Aircraft/Landing Craft Carriers.

(iii) Amphibious Materiel/Landing Craft Carriers.

(iv) Amphibious Command Ships.

(v) Mine Warfare Ships.

(vi) Cost Guard Cutters (i.e. WHEC's and WMEC's).

(b) Auxiliaries—(1) *Combat Logistics Support.*

(i) Underway Replenishment Ships.

(ii) Surface Vessel and Submarine Tender/Repair Ships.

(2) *Support Ships.*

(i) Submarine Rescue Ships.

(ii) Other Auxiliaries (e.g., including but not limited to: AGDS, AGF, AGM, AGS, AGOR, AGOS, AH, AP, ARC, ARL, AVB, AVM, AVT).

(c) *Combatant Craft*— (1) *Patrol Craft.*

(i) Coastal Patrol Combatants.

(ii) River, Roadstead Craft (including swimmer delivery craft).

(iii) Coast Guard Patrol Craft.

(2) *Amphibious Warfare Craft.*

(i) Landing Craft (e.g., including but not limited to: LCAC, LCM, LCPL, LCU, LWT, SLWT).

(ii) Special Warfare Craft (e.g., including but not limited to: LSSC, MSSC, SDV, SWCL, SWCM).

(3) *Mine Warfare Craft.*

(i) Mine countermeasures Craft (e.g., including but not limited to: MCT, MSB).

(d) *Support and Service Vessels.* (1) Miscellaneous (e.g., including but not limited to: APL, DSRV, DSV, IX, WIX, NR, YFRT, YHLC, YP, YR, YRB, YRDH, YRDM, YRR, YSD).

Dated: April 26, 1991.

Charles A. Duelfer,

Director, Center for Defense Trade, Bureau of Politico-Military Affairs.

Editoral Note: This document was received by the Office of the Federal Register on July 18, 1991.

[FR Doc. 91–17432 Filed 7–24–91; 8:45 am]

BILLING CODE 4710–25–M

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22 CFR Part 121

[Public Notice 1429]

Amendments to the International Traffic in Arms Regulations (ITAR), Category V. Explosives Propellants and Incendiary Agents

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: Section 121.12 of the ITAR defines military explosives covered under Category V. The proposed change would modify ITAR Category V, "Military Explosives", § 121.12, by using the list of chemicals in the COCOM International Munitions List (IML) Category 8 "Military Explosives and Fuels, as the basis for the USML Category V. In modifying the items covered by Category V to agree with the COCOM IML Category 8, a list has been established which would standardize U.S. export administration procedures with those of our COCOM partners. In this instance, the COCOM IML is considered to be a list which more accurately reflects the current state of the art in this technology area.

DATES: Comments must be submitted on or before August 26, 1991.

ADDRESSES: Written comments should be sent to: Terry L. Davis, U.S. Department of State, Office of Defense Trade Controls, SA–6, rm. 228, Washington, DC. 20522–0602, fax# 703–875–6647.

FOR FURTHER INFORMATION CONTACT: Terry L. Davis, U.S. Department of State, Office of Defense Trade Controls, tel. 703 875–6644.

SUPPLEMENTARY INFORMATION: On November 16, 1990, the President signed Executive Order 12735 on Chemical and Biological Weapons Proliferation and directed various other export control measures. The measures directed by the President include the following:

> By June 1, 1991, the United States will remove from the U.S. Munitions List all items contained on the CoCom dual-use list unless significant U.S. national security interests would be jeopardized (Memorandum of Disapproval of H.R. 4653, 26 Weekly Compilation of Presidential Documents 1839).

In implementation of the President's directive of November 16, 1990, regarding the U.S. Munitions List (USML), the Department of State has proposed comprehensive changes to the USML, which is part of the International Traffic In Arms Regulations (ITAR) (22 CFR parts 120 through 130). The ITAR implements section 38 of the Arms Export Control Act (22 U.S.C. 2778). The proposed rule that follows amends § 121.12 of the ITAR.

It is the intent of the Department that this proposed rule change shall continue coverage on the USML of items specially designed, modified, or configured for military application or items justified for retention by significant national security interests. It is not the intent of the Department in the future to impose controls on dual-use items which are not controlled by the COCOM IL unless significant national security interests would be jeopardized. The Department particularly welcomes comments from the exporting community addressing any current overlap which we have not identified.

The Department reviewed ILs 1601, 1715 and 1746(a) including the Core List proposal and found no overlap with the USML. The review then focused primarily on redrafting Category V so that it would be consistent with the COCOM International Munitions List (IML) 8. The Department of State believes Category V of the USML does not control any commodity currently on the Commodity Control List, nor is it the intention of the Department to control such commodities in the future unless significant national security interests would be jeopardized.

As a result of the review directed by the President, the following explosives, which have been removed from the IML, are being removed from the USML and moved to the jurisdiction of the Department of Commerce, pending the

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Davis, U.S.
, Office of Defense
-6, rm. 228,
522-0602, fax# 703-

FOR FURTHER INFORMATION CONTACT: Terry L. Davis, U.S. Department of State, Office of Defense Trade Controls, tel. 703 875-6644.

SUPPLEMENTARY INFORMATION: On November 16, 1990, the President signed Executive Order 12735 on Chemical and Biological Weapons Proliferation and directed various other export control measures. The measures directed by the President include the following:

> By June 1, 1991, the United States will remove from the U.S. Munitions List all items contained on the CoCom dual-use list unless significant U.S. national security interests would be jeopardized (Memorandum of Disapproval of H.R. 4653, 26 Weekly Compilation of Presidential Documents 1839).

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It is the intent of the Department that this proposed rule change shall continue coverage on the USML of items specially designed, modified, or configured for military application or items justified for retention by significant national security interests. It is not the intent of the Department in the future to impose controls on dual-use items which are not controlled by the COCOM IL unless significant national security interests would be jeopardized. The Department particularly welcomes comments from the exporting community addressing any current overlap which we have not identified.

The Department reviewed ILs 1601, 1715 and 1746(a) including the Core List proposal and found no overlap with the USML. The review then focused primarily on redrafting Category V so that it would be consistent with the COCOM International Munitions List (IML) 8. The Department of State believes Category V of the USML does not control any commodity currently on the Commodity Control List, nor is it the intention of the Department to control such commodities in the future unless significant national security interests would be jeopardized.

As a result of the review directed by the President, the following explosives, which have been removed from the IML, are being removed from the USML and moved to the jurisdiction of the Department of Commerce, pending the

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imposition of controls under section 6 of the Export Administration Act, "Foreign Policy Controls for Antiterrorism and Regional Stability": ammonium picrate, black powder made with potassium nitrate or sodium nitrate, ethylenedinitramine, hexanitrodiphenylamine, nitrostarch, tetranitronaphthalene, trinitroanisol, trinitronaphthanine, and trinitroxylene.

New paragraphs identifying the following explosives, additives and stabilisers are being added to the USML:

—Any metal fuels or alloys of metal fuels identified in paragraph (b) of § 121.12, encapsulated with any other metals or alloys in the same paragraph;
—Perchlorates, chlorates and chromates composited with powdered metal or other high energy fuel components;
—NQ;
—With the exception of chlorinetrifluoride, compounds composed of fluorine and one or more of the following: other halogens, oxygen, nitrogen;
—Carboranes, decaborane, pentaborane and derivatives;
—HMX;
—Octogen, octogene;
—HNS, DATB, TATB, TAGN;
—Titanium subhydride of stiochiometry TiH 0.65-1.68;
—DNGU, DINGU, TNGU, SORGYL, TACOT, DIPAM, PYX, NTO or ONTA;
—CP, BNCP, ADNBF, CL-14, K-6 or Keto RDX, K-55 or keto bicyclic HMX;
—TNAZ, TNAD, CL-20 or HNIW, chlathrates of CL-20; polynitrocubane with more than four nitro groups;
—SR-12, NMMO, AMMO, TEPAN, TEPANOL;
—Cyanoethylated polyamine adducted with glycidol;
—FPF-1, FPF-3;
—Polyglycidylnitrate;
—1, 2, 4,-trihydroxybutane;
—1, 3, 5-trichlorobenzene;
—BCMO;
—Low (less than 10,000) molecular weight, alcohol-functionalised, poly(epichloroyhdrin) and (epichlorhydrindiol);
—Propylimine:
—1, 3, 5, 7,-tetraacetyl-1, 3, 5, 7-tetraazacyclooctane;
—Binitroazetidine-t-butyl salt;
—HBIW, TAIW;
—1, 4, 5, 8-tetraazadecalin;
—Protech.

The only addition to the USML of an item not currently on the IML is the military grade of the binder Hydroxy-terminated Polybutadiene (HTPB). During round 2 negiotiations of CoCom Core List #2 "Materials and Processes", it was agreed that the military grade of HTPB (defined as a hydroxyl value of less than 0.77 meg/q, a viscosity at 30 degrees C of less than 47 poise, and a functionality of 2.28) should be placed on the CoCom IML. The commercial grade of HTPB will continue to be subject to the jurisdiction of the Department of Commerce under controls imposed by the Missile Technology Control Regime.

This amendment involves a foreign affairs function of the United States and thus is excluded from the major rule procedures of Executive Order 12291 (46 FR 13193) and the procedures of 5 U.S.C. 553 and 554. Nevertheless, it is being published as a proposed rule in order to provide the public with an opportunity to comment and provide advice and suggestions regarding the proposal. The period for submission of comments will close August 26, 1991. In addition, this rule affects collection of information subject to the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.), and will serve to reduce the burden on exporters in that respect. The relevant information collection is to be reviewed by the Office of Management and Budget under control no. 1405-0013.

List of Subjects in 22 CFR Part 121

Arms and munitions, Exports.

Accordingly, for the reason set forth in the preamble, it is proposed that title 22, chapter I, subchapter M (consisiting of parts 120 through 130) of the Code of Federal Regulations, be amended as set forth below:

PART 121—[AMENDED]

1. The authority citation for part 121 continues to read as follows:

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

§ 121.1 [Amended]

2. Section 121.1, Category V Explosives, Propellants, and Incendiary Agents is amended to remove the word "and" and add after Incendiary Agents "and their Constituents".

3. Section 121.12, "Military Explosives", revised to read as follows:

§ 121.12 Military explosives.

(a) Military Explosives in Category V are military explosives or energetic materials consisting of high explosives, propellants or low explosives, pyrotechnics and high energy solid or liquid fuels, including aircraft fuels specially formulated for military purposes. Military explosives are solid, liquid or gaseous substances or mixtures of substances which, in their application as primary, booster or main charges in warheads, demolition and other military applications, are required to detonate. Military explosives, military propellants and military pyrotechnics in Category V include substances or mixtures containing any of the following:

(1) Spherical aluminium powder with particles of uniform diameters of less than 500 microns and aluminium content of 97% or greater;

(2) Metal fuels in particle sizes of uniform diameter less than 500 microns whether spherical, atomized, spheroidal, flaked or ground, consisting of 97% or more of any of the following: Zirconium, boron, magnesium and alloys of these; beryllium;

(3) Any of the foregoing metals or alloys of paragraph (b) of this section, encapsulated with any other metals or alloys in paragraph (b) of this section;

(4) Perchlorates, chlorates and chromates composited with powdered metal or other high energy fuel components;

(5) Nitroglycerin;

(6) Trinitrophenylmenthylnitramine (TETRYL);

(7) Trinitrotoluene (TNT);

(8) Nitroguanidine (NQ);

(9) With the exception of chlorinetrifluoride, compounds composed of fluorine and one or more of the following: other halogens, oxygen, nitrogen;

(10) Carboranes; decaborane; pentaborane and derivatives;

(11) Cyclotetramethylenetetranitramine (HMX); octahydro-1.3,5,7-tetranitro-1,3,5,7-tetrazine; 1,3,5,7-tetranitro-1,3,5,7-tetraza-cyclooctane; (octogen, octogene);

(12) Hexanitrostilbene (HNS);

(13) Diaminotrinitrobenzene (DATB);

(14) Triaminotrinitronbenzene (TATB);

(15) Triaminoguanidinenitrate (TAGN);

(16) Titanium subhydride of stiochiometry TiH 0.65-1.68;

(17) Dinitroglycoluril (DNGU, DINGU); tetranitroglycoluril TNGU, SORGUYL);

(18) Tetranitrobenzotriazolobenzotriazole (TACOT);

(19) Diaminohexanitrobiphenyl (DIPAM);

(20) Picrylaminodinitropyridine (PYX);

(21) 3-nitro-1,2,4-triazol-5-one (NTO or ONTA);

(22) Hydrazine in concentrations of 70% or more; hydrazine nitrate; hydrazine perchlorates; unsymmetrical dimethyl hydrazine; monomethyl hydrazine; symmetrical dimethyl hydrazine;

(23) Ammonium perchlorate;

(24) 2-(5-cyanotetrazolato) penta amminecobalt (III) perchlorate (CP);

(25) trans-bis (5-nitrotetrazolato) penta amminecobalt (III) perchlorate (or BNCP);

(26) 7-amino 4,6-dinitrobenzofurazane-1-oxide (ADNBF); amino dinitrobenzofuroxan;

(27) 5,7-diamino-4,6-dinitrobenzofurazane-1-oxide, (CL–14 or diaminodinitrobenzofuroxan);

(28) 2,4,6-trinitro-2,4,6-triaza-cyclohexanone (K–6 or keto-RDX);

(29) 2,4,6,8-tetranitro-2,4,6,8-tetraaza-bicyclo (3,3,0)-octanone-3(tetranitrosemiglycoluril, K–55, or ketobicyclic HMX);

(30) 1,1,3-trinitroazetidine (TNAZ);

(31) 1,4,5,8-tetranitro-1, 4,5,8-tetraazadecalim (TNAD);

(32) Hexanitrohexaazaisowurtzitane (CL–20 or NNIW; and chlathrates of CL–20);

(33) Polynitrocubane with more than four nitro groups;

(34) Ammonium dinitramide (or SR–12);

(35) Cyclotrimethylentrinitramine (RDX); cyclonite; T4; hexahydro- 1,3,5-trinitro-1,3,5-triazine; 1,3,5–trinitro-1,3, 5–triaza-cyclohexane; hexogen, hexogene;

(36) Hydroxylammonium nitrate (HAN); hydroxylammonium perchlorate (HAP);

(37) Pentaerythritol Tetranitrate (PETN)

(38) Hydroxy terminated Polybutadiene (HTPB) with a hydroxyl value of less than 0.77 meg/g, a viscosity at 30 degrees C of less than 47 poise, and a functionality of 2.28, and Hydroxy terminated Polybutadiene (HTPB) with ferrocene additives such as butacene;

(b) "Additives" include the following:

(1) Glycidylazide Polymer (GAP) and its derivatives;

(2) Polycyanodifluoroaminoethyleneoxide (PCDE);

(3) Butanetrioltrinitrate (BTTN);

(4) Bis-2-fluoro-2,2-dinitroethylformal (FEFO);

(5) Butadienenitrileoxide (BNO);

(6) Catocene, N-butyl-ferrocene and other ferrocene derivatives;

(7) Bis(2, 2-dinitropropyl) formal and acetal;

(8) 3-nitraza-1,5-pentane diisocyanate;

(9) Energetic monomers, plasticisers and polymers containing nitro, azido, nitrate, nitraza or difluroamino groups;

(10) 1,2,3-Tris [1,2-bis(difluoroamino)ethoxy] propane; Tris vinoxy propane adduct, (TVOPA);

(11) Bisazidomethyloxetane (BAMO) and its polymers;

(12) Nitratomethylmethyloxetane (NMMO) Azidomethylmethyloxetane (AMMO);

(13) Polynitroorthocarbonates;

(14) Tetraethylenepentamine-acrylonitrile (TEPAN); cyanoethylated polyamine;

(15) Tetraethylenepentamineacrylonitrile-glycidol (TEPANOL); cyanoethylated polymine adducted with glycidol;

(16) Polyfunctional aziridine amides with isophthalic, trimesic (BITA or butylene imine trimesamide), isoyanuric, or trimethyladipic backbone structures and 2-methyl or 2-ethyl substitutions on the aziridine ring;

(17) Basic copper salicylate; lead salicylate;

(18) Lead beta resorcylate;

(19) Lead stannate, lead maleate, lead citrate;

(20) Tris-1-(2-methyl)aziridinyl phosphine oxide (MAPO) and its derivatives;

(21) Organo-metallic coupling agents, specifically: Neopentyl (diallyl) oxy, tri [dioctyl] phosphato titanate titanium IV, 2,2[bis 2-propenolatomethyl, butanolato or tris [dioctyl] phosphato[0], or LICA 12); Titanium IV, [(2-propenolato-1)methyl, n-propanolatemethyl] butanolato[1, tris(dioctyl)pyrophosphato, KR3538; Titanium IV, [(2-propenolato-1)methyl, n-propanolatemethyl] butanolato[1, tris(dioyctyl)phosphato, or KR3512;

(22) FPF-1 (poly-[2,2,3,3,4,4-septafluoro pentane-2,5-diolformal]);

(23) FPF–3 (poly-[z,4,4,5,5,6, 6-heptafluoro-2-trifluoromethyl-3-oxaheptane–1, 7-diolformal]);

(24) Polyglycidylnitrate.

(c) "Precursors" include the following:

(1) Guanidine nitrate;

(2) 1,2,4-trihydroxybutane (1,2,4-butanetriol);

(3) 1,3,5-trichlorobenzene;

(4) Polynitroorthocarbonates;

(5) Bischloromethyloxetane (BCMO);

(6) Low (less than 10,000) molecular weight, alcohol-functionalised, poly(ephichlorohydrin); poly(ephichlorhydrindiol);

(7) Propylimine;

(8) 1,3,5,6,-tetraacetyl-1,3,5,7-tetraaza-cyclooctane;

(9) Dinitroazetidine-t-butyl salt;

(10) Hexabenzylhexaazaisowurtzitane (HBIW);

(11) Tetraacetyldibenzylhexaazaiso-wurtzitane (TAIW);

(12) 1,4,5,8-tetraazadecalin.

(d) Stabilisers include the following:

(1) N-Methyl-p-nitroaniline;

(2) Protech TM

(e) Any substance, mixture or fabricated explosive charge, as follows:

(1) Any explosive with a detonation velocity greater than 8,700 m/s or a detonation pressure greater than 340 kilobars;

(2) Other organic high explosives yielding detonation pressures of 250 kilobars or greater that will remain stable at temperatures of 523 K (250 degrees C) or higher for periods of 5 minutes or longer;

(3) Any other UN Class 1.1 solid propellant with a theoretical specific impulse (under standard conditions) greater than 250 seconds for aluminised compositions;

(4) Any UN Class 1.3 solid propellant with a theoretical specific impulse greater than 230 seconds for non-halogenised, 250 seconds for non-metallised and 266 seconds for metallised compositions;

(5) "Composite" propellants using polymerized inert or active bonding materials, muddled and cast in one place, with specific impulse of 230 seconds or a combustion rate exceeding 12mm/s;

(6) All fuels capable of releasing energy equal to or more than 40 MJ/Kg;

(7) Fuels or propellants for ramjets or rocket-ramjets;

(8) Any other explosive, propellant or pyrotechnic that can sustain a steady-state burning rate greater than 38mm per second under standard conditions of 68.9 bar (1,000 PSI) pressure and 21 degrees Celsis;

(9) Any other gun propellants having a force constant greater than 1,200 kJ/kg;

(10) Elastomer modified cast double based propellants (EMCDB) with extensibility at maximum stress greater than 5% at 233 K or (−40 degrees C).

Dated: April 26, 1991.

Charles A. Duelfer,

Director, Center for Defense Trade Bureau of Politico-Military Affairs.

Editorial Note: This document was received by the Office of the Federal Register on July 18, 1991.

[FR Doc. 91–17433 Filed 7–24–91; 8:45 am]

BILLING CODE 4710-25-M

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22 CFR Part 121

[Docket No. 1430]

Amendments to the International Traffic in Arms Regulations (ITAR)

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations implementing section 38 of the Arms Export Control Act, which governs the export of defense articles and defense services. Specifically, it would revise and clarify

epentamine-
N); cyanoethylated

amineacrylonitrile-
L); cyanoethylated
with glycidol;
al aziridine amides
imesic (BITA or
esamide), isoyanuric,
backbone structures
ethyl substitutions on

salicylate; lead

sorcylate;
te, lead maleate, lead

hyl)aziridinyl
MAPO) and its

allic coupling agents,
ntyl (diallyl) oxy, tri
titanate titanium IV,
tomethyl, butanolato
sphato[0], or LICA
2-propenolato-
olatemethyl]

osphato, KR3538;
penolato-1)methyl,
yl] butanolato[1,
hato, or KR3512;
2,2,3,3,4,4-septafluoro
mal]);
[z,4,4,5,5,6, 6-
oromethyl-3-
olformal]);
nitrate.
nclude the following:
rate;
xybutane (1,2,4-

benzene;
ocarbonates;
hyloxetane (BCMO);
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indiol);

cetyl-1,3,5,7-tetraaza-

ne-t-butyl salt;
exaazaisowurtzitane

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;
zadecalin.
clude the following;
troaniline;

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e with a detonation
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(2) Other organic high explosives yielding detonation pressures of 250 kilobars or greater that will remain stable at temperatures of 523 K (250 degrees C) or higher for periods of 5 minutes or longer;

(3) Any other UN Class 1.1 solid propellant with a theoretical specific impulse (under standard conditions) greater than 250 seconds for aluminised compositions;

(4) Any UN Class 1.3 solid propellant with a theoretical specific impulse greater than 230 seconds for non-halogenised, 250 seconds for non-metallised and 266 seconds for metallised compositions;

(5) "Composite" propellants using polymerized inert or active bonding materials, muddled and cast in one place, with specific impulse of 230 seconds or a combustion rate exceeding 12mm/s;

(6) All fuels capable of releasing energy equal to or more than 40 MJ/Kg;

(7) Fuels or propellants for ramjets or rocket-ramjets;

(8) Any other explosive, propellant or pyrotechnic that can sustain a steady-state burning rate greater than 38mm per second under standard conditions of 68.9 bar (1,000 PSI) pressure and 21 degrees Celsis;

(9) Any other gun propellants having a force constant greater than 1,200 kJ/kg;

(10) Elastomer modified cast double based propellants (EMCDB) with extensibility at maximum stress greater than 5% at 233 K or (−40 degrees C).

Dated: April 26, 1991.

Charles A. Duelfer,

Director, Center for Defense Trade Bureau of Politico-Military Affairs.

Editorial Note: This document was received by the Office of the Federal Register on July 18, 1991.

[FR Doc. 91–17433 Filed 7–24–91; 8:45 am]

BILLING CODE 4710-25-M

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22 CFR Part 121

[Docket No. 1430]

Amendments to the International Traffic in Arms Regulations (ITAR)

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations implementing section 38 of the Arms Export Control Act, which governs the export of defense articles and defense services. Specifically, it would revise and clarify Category XI (Military and Space Electronics) of the United States Munitions List (USML). This proposed rule is intended to reduce the burden on munitions exporters by reducing the necessity for commodity jurisdiction procedures that could arise from proposed exporters of articles under Category XI, as currently written.

DATES: Comments must be submitted on or before August 26, 1991.

ADDRESSES: Written comments should be sent to: Mr. Martin O'Mara, Office of Defense Trade Controls, Department of State, Washington, DC 20520. Public comments will be made available for public inspection.

FOR FURTHER INFORMATION CONTACT: Mr. Martin O'Mara, Office of Defense Trade Controls, Department of State, (703–875–6644).

SUPPLEMENTARY INFORMATION: On November 16, 1990, the President signed Executive Order 12735 on Chemical and Biological Weapons Proliferation and directed various other export control measures. The measures directed by the President include the following:

> By June 1,1991, the United States will remove from the U.S. Munitions List all items contained on the CoCom dual-use list unless significant U.S. national security interests would be jeopardized. (Memorandum of Disapproval of H.R. 4653, 26 Weekly Compilation of Presidential Documents 1839).

In implementation of the President's directive of November 16, 1990, regarding the United States Munitions List (USML), the Department of State has proposed comprehensive changes to the USML, which is part of the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130). The ITAR implements section 38 of the Arms Export Control Act (22 U.S.C. 2778). The proposed rule that follows amends section 121, Category XI of the ITAR which defines military and space electronics controlled by the USML.

It is the intent of the Department that this proposed rule change shall continue coverage on the USML of items specially designed, modified, or configured for military application or items justified for retention by significant national security interests. It is not the intent of the Department in the future to impose controls on dual-use items which are not controlled by the COCOM IL unless significant national security interests would be jeopardized. The Department particularly welcomes comments from the exporting community addressing any current overlap which we have not identified.

In implementation of the President's directive, the Department reviewed, in whole or in part, COCOM ILs 1501(a)(b) and (c), 1510, 1517, 1522, 1526, 1529, 1531, 1533, 1537, 1558, 1564, 1565, 1566, 1567, 1572, 1574, 1584, and 1746. In the area of military training equipment, the Department examined eight dual-use items (ILs 1746, 1522, 1529, 1531, 1533, 1537, 1565 and 1566), and found no overlap. With regard to military electronics, the Department reviewed sixteen COCOM ILs. The Department found no overlaps in the following ILs: 1501(a) (b), 1510, 1517, 1518, 1529, 1531, 1533, 1537, 1558, 1564, 1565, 1567, 1572, 1574, and 1584. The Department determined that the one item which does overlap no longer requires control under the ITAR and will be removed from the USML: IL 1526 (armored coaxial cable). The Department of State believes Category XI as described in this **Federal Register** notice does not control any commodity currently on the Commodity Control List, nor is it the intention of the Department to control such commodities in the future unless significant national security interests would be jeopardized.

This amendment additionally revises Category XI of the USML to remove space electronics from this category, change the coverage of semiconductor devices, delete coverage of armored coaxial cable as noted above, and clarify the coverage of the military electronic articles remaining. Related amendments contained in other **Federal Register** notices will create a new Category for Space, including electronics, and address coverage of the items currently in Category XI(c).

This amendment involves a foreign affairs function of the United States and thus is excluded from the major rule procedures of Executive Order 12291 (46 FR 13193) and the procedures of 5 U.S.C. 553 and 554. Nevertheless, this amendment is being published as a proposed rule in order to provide the public with an opportunity to comment and provide advice and suggestions regarding the proposal. The period for submission of comments will close August 26, 1991. In addition, this rule affects collection of information subject to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), and will serve to reduce the burden on exporters in that respect. The relevant information collection is to be reviewed by the Office of Management and Budget under control no. 1405–0013.

List of subjects in 22 CFR Part 121

Arms and munitions, Exports.

Accordingly, for the reasons set forth in the preamble, it is proposed that title 22, chapter I, subchapter M (consisting of parts 120 through 130) of the Code of Federal Regulations, be amended as set forth below:

PART 121—THE UNITED STATES MUNITIONS LIST

1. The authority citation for part 121 continues to read as follows:

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

§ 121.1 [Amended]

2. In § 121.1, in "Category XI—Military and Space Electronics" paragraph (a) is revised to read as follows:

Category XI—Military and Space Electronics

(a) Electronic equipment not included in Category XII of the Munitions List which is specifically designed, modified or configured for military application. This equipment includes but is not limited to:

(1) Underwater sound equipment to include active and passive detection, identification, tracking, and weapons control equipment.

*(2) Underwater acoustic active and passive countermeasures and counter-countermeasures.

(3) Radar systems, with capabilities such [illegible]

*(i) Search,

*(ii) Acquisition,

*(iii) Tracking,

*(iv) Moving target indication

*(v) Imaging radar systems, and

*(vi) Any ground air traffic control radar which is specifically designed or modified for military application.

*(4) Electronic Combat equipment, such as:

(i) Active and passive countermeasures,

(ii) Active and passive counter-countermeasures, and

(iii) Radios (including transceivers) specifically designed or modified to interfere with other communication devices or transmissions.

*(5) Command, control and communications systems to include radios (transceivers), navigation, and identification equipment.

(6) Computers specifically designed or developed for military application and any computer specifically modified for use with any defense article in any category of the U.S. Munitions List.

(7) Any experimental or developmental electronic equipment specifically designed or modified for military application or specifically designed or modified for use with military system.

(8) Semiconductor devices that are specifically designed or modified for military application.

* * * * *

3. In § 121.1, Category XI, paragraph (b) is removed in its entirety.

4. In § 121.1, Category XI, paragraph (c) is designated as new paragraph (b).

5. In § 121.1, Category XI, paragraph (d) has been designated as the new paragraph (a)(8) (above).

6. In § 121.1, Category XI, paragraph (e) is designated as new paragraph (c). Newly redesignated paragraph (c) is revised and paragraph (d) is added to read as follows:

* * * * *

(c) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for use with the equipment in paragraphs (a) and (b) of this category, except for such items as are in normal commercial use.

(d) Technical data (as defined in § 120.21) and defense services (as defined in § 120.8) directly related to the defense articles enumerated in paragraphs (a) through (c) of this category. (see § 125.4 for exemptions.) Technical data directly related to any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated as SME.

Dated: April 26, 1991.

Charles A. Duelfer,

Director, Center for Defense Trade, Bureau of Politico-Military Affairs.

Editorial Note: This document was received by the Office of the Federal Register on July 18, 1991.

[FR Doc. 91-17434 Filed 7-24-91; 8:45 am]

BILLING CODE 4710-25-M

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22 CFR Part 121

[Public Notice 1431]

Amendments to the International Traffic in Arms Regulations (ITAR), Category IV, Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs and Mines

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: In identifying the overlap between the COCOM IL and the USML, space launch vehicles and ablative materials were identified. Both of these will be addressed in other Federal Register notices. This notice clarifies and rewrites items identified under ITAR § 121.5, "Apparatus and Devices Under Category IV (c)". The proposed rule would modify § 121.5 to specify coverage of transporters, cranes and specialized handling equipment, including robot and robot controllers, for articles (a) and (b) of this category. Thermal batteries are also covered under this section.

DATES: Comments must be submitted on or before August 26, 1991.

ADDRESSES: Written comments should be sent to: Terry L. Davis, Office of Defense Trade Controls, U.S. Department of State, SA-6, rm. 228, Washington, DC 20522-0602, fax #703-875-6647. Public comments will be available for public inspection.

FOR FURTHER INFORMATION CONTACT: Terry L. Davis, Office of Defense Trade Controls, Department of State (703 875-6644).

SUPPLEMENTARY INFORMATION: On November 16, 1990, the President signed Executive Order 12735 on Chemical and Biological Weapons Proliferation and directed various other export control measures. The measures directed by the President include the following:

> By June 1, 1991, the United States will remove from the U.S. munitions list all items contained on the CoCom dual-use list unless significant U.S. national security interests would be jeopardized. (Memorandum of Disapproval of H.R. 4653, 26 Weekly Compilation of Presidential Documents 1839).

In implementation of the President's directive of November 16, 1990 regarding the United States Munitions List (USML), the Department of State has proposed comprehensive changes to the USML, which is part of the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130). The ITAR implements section 38 of the Arms Export Control Act (22 U.S.C. 2778).

It is the intent of the Department that this proposed rule change shall continue coverage on the USML of items specially designed, modified, or configured for military application or items justified for retention by significant national security interests. It is not the intent of the Department in the future to impose controls on dual-use items which are not controlled by the COCOM IL unless significant national security interests would be jeopardized. The Department particularly welcomes comments from the exporting community addressing any current overlap which we have not identified.

No items will be deleted from the USML and no items currently on the COCOM IL will be retained on the USML. The proposed rule that follows amends § 121.5 of the ITAR to specify coverage of thermal batteries, transporters, cranes and specialized handling equipment, including robots and robot controllers, for articles (a) and (b) of Category IV. The Department of State believes Category IV of the USML does not control any commodity currently on the Commodity Control List, nor is it the intention of the Department to control such commodities in the future unless significant national security interests would be jeopardized.

The Department reviewed ILs 1465 (a) and (b), 1391, 1205, 1733, and 1763 and found two areas of overlap with articles related to spacecraft/launch vehicles and carbon-carbon metal matrix. A decision was made to transfer issues related to launch vehicles (IL 1465 (a)) to the space working group. The working group also transferred review of IL 1763 for carbon-carbon structures which are continuously reinforced in three or more directions to the working group handling coverage of auxiliary military equipment.

This amendment involves a foreign affairs function of the United States and thus is excluded from the major rule procedures of Executive Order 12291 (46 FR 13193) and the procedures of 5 U.S.C. 553 and 554. Nevertheless, it is being published as a proposed rule in order to provide the public with an opportunity to comment and provide advice and suggestions regarding the proposal. The period for submission of comments will close August 26, 1991. In addition, this rule affects collection of information subject to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), and will serve to reduce the burden on exporters in that respect. The relevant information collection is to be reviewed by the Office of Management and Budget under control no. 1405-0013.

List of Subjects in 22 CFR Part 121

Arms and munitions, Exports.

Accordingly, for the reasons set forth in the preamble, it is proposed that title 22, chapter I, subchapter M (consisting of parts 120 through 130) of the Code of Federal Regulations, be amended as set forth below:

PART 121—THE UNITED STATES MUNITIONS LIST

1. The authority citation for part 121 continues to read as follows:

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

2. Section 121.5, "Apparatus and Devices Under Category IV(c)" should be revised to read as follows:

§ 121.5 Apparatus and devices under Category IV(c).

Category IV includes but is not limited to the following:

(a) Fuzes and components specifically designed, modified or configured for items listed in that category, bomb racks and shackles, bomb shackle release units, bomb ejectors, torpedo tubes, torpedo and guided missile boosters, guidance system equipment and parts, launching racks and projectors, pistols (exploders), igniters, fuze arming devices, intervalometers, thermal batteries including but not limited to the following electrochemistry systems: Lithium aluminum/

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20522–0602, fax #703–
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found two areas of overlap with articles related to spacecraft/launch vehicles and carbon-carbon metal matrix. A decision was made to transfer issues related to launch vehicles (IL 1465 (a)) to the space working group. The working group also transferred review of IL 1763 for carbon-carbon structures which are continuously reinforced in three or more directions to the working group handling coverage of auxiliary military equipment.

This amendment involves a foreign affairs function of the United States and thus is excluded from the major rule procedures of Executive Order 12291 (46 FR 13193) and the procedures of 5 U.S.C. 553 and 554. Nevertheless, it is being published as a proposed rule in order to provide the public with an opportunity to comment and provide advice and suggestions regarding the proposal. The period for submission of comments will close August 26, 1991. In addition, this rule affects collection of information subject to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), and will serve to reduce the burden on exporters in that respect. The relevant information collection is to be reviewed by the Office of Management and Budget under control no. 1405–0013.

List of Subjects in 22 CFR Part 121

Arms and munitions, Exports.

Accordingly, for the reasons set forth in the preamble, it is proposed that title 22, chapter I, subchapter M (consisting of parts 120 through 130) of the Code of Federal Regulations, be amended as set forth below:

PART 121—THE UNITED STATES MUNITIONS LIST

1. The authority citation for part 121 continues to read as follows:

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

2. Section 121.5, "Apparatus and Devices Under Category IV(c)" should be revised to read as follows:

§ 121.5 Apparatus and devices under Category IV(c).

Category IV includes but is not limited to the following:

(a) Fuzes and components specifically designed, modified or configured for items listed in that category, bomb racks and shackles, bomb shackle release units, bomb ejectors, torpedo tubes, torpedo and guided missile boosters, guidance system equipment and parts, launching racks and projectors, pistols (exploders), igniters, fuze arming devices, intervalometers, thermal batteries including but not limited to the following electrochemistry systems: Lithium aluminum/iron disulfide, calcium/calcium chromate and calcium/potassium dichromate, hardened missile launching facilities, guided missile launchers and specialized handling equipment, including transporters, cranes and lifts designed to handle articles in paragraphs (a) and (b) of this category for preparation and launch from fixed and mobile sites;

(b) The equipment in this category includes: Robots, robot controllers, robot end-effectors having any of the following characteristics:

(1) Specially designed for military applications;

(2) Incorporating means of protecting hydraulic lines against externally induced punctures caused by ballistic fragments (e.g., incorporating self-sealing lines) and designed to use hydraulic fluids with flash points higher than 839K (566 degrees C);

(3) Operable at altitudes exceeding 30,000 meters; or

(4) Specially designed or rated for operating in an electromagnetic pulse (EMP) environment.

Dated: April 26, 1991.

Charles A. Duelfer,

Director, Center for Defense Trade, Bureau of Politico-Military Affairs.

Editorial Note: This document was received by the Office of the Federal Register on July 18, 1991.

[FR Doc. 91–17435 Filed 7–24–91; 8:45 am]

BILLING CODE 4710-25-M

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22 CFR Part 121

[Public Notice 1432]

Amendments to the International Traffic in Arms Regulations (ITAR)

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations implementing section 38 of the Arms Export Control Act, which governs the export of defense articles and defense services. Specifically, it would revise the coverage of articles under Category XX. This proposed rule is intended to reduce the burden on munitions exporters by eliminating the coverage of non-military submersible vessels.

DATES: Comments must be submitted on or before August 26, 1991.

ADDRESSES: Written comments should be sent to: LCDR Nelson R. Hines, PM/DTC, SA–6 room 228, Department of State Washington, DC 20520, or send by facsimile to (703) 875–6647. Public comments will be made available for public inspection.

FOR FURTHER INFORMATION CONTACT: LCDR Nelson R. Hines, Office of Defense Trade Controls, Department of State (703) 875–6644.

SUPPLEMENTARY INFORMATION: On November 16, 1990, the President signed Executive Order 12735 on Chemical and Biological Weapons Proliferation and directed various other export control measures. The measures directed by the President include the following:

> By June 1, 1991, the United States will remove from the U.S. Munitions List all items contained on the CoCom dual-use list unless significant U.S. national security interests would be jeopardized. (Memorandum of Disapproval of H.R. 4653, 26 Weekly Compilation of Presidential Documents 1839).

In implementation of the President's directive of November 16, 1990, regarding the United States Munitions List (USML), the Department of State has proposed comprehensive changes to the USML, which is part of the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130). The ITAR implements section 38 of the Arms Export Control Act (22 U.S.C. 2778).

It is the intent of the Department that this proposed rule change shall continue coverage on the USML of items specially designed, modified, or configured for military application or items justified for retention by significant national security interests. It is not the intent of the Department in the future to impose controls on dual-use items which are not controlled by the COCOM IL unless significant national security interests would be jeopardized. The Department particularly welcomes comments from the exporting community addressing any current overlap which we have not identified.

The Department reviewed, in whole or in part, COCOM IL's 1417, 1418 and 1526. The following overlap with COCOM IL 1418 and Core Category 6 was found: Deep submergence vehicles capable of operating at depths exceeding 1,000 meters. The Department determines that such commercial vehicles may be removed from the USML. The Department of State believes Category XX of the USML does not control any commodity currently on the Commodity Control List, nor is it the intention of the Department to control such commodities in the future unless significant national security interests would be jeopardized. The proposed rule that follows amends § 121.1, Category XX of the ITAR which defines submersible vessels, oceanographic and associated equipment controlled under the USML. This amendment would: (1) Remove from USML control commerical submersible vessel capable of operating down to, and exceeding 1,000 feet; (2) revise the language covering the articles under paragraph (a); (3) rewrite paragraph (b) to cover military swimmer delivery vehicles and delete the current language in order to remove non-military submersibles and their related technical data; (4) delete the language defining the articles covered by paragraph (c) and renumber paragraph (d) as paragraph (c); (5) add new paragraph (d) for related technical data and defense services which are currently covered under Categories XVIII and XIX. It is the intent of the Department of State to establish foreign policy controls for certain of these commercial submersible vehicles.

This amendment involves a foreign affairs function of the United States and thus is excluded from the major rule procedures of Executive Order 12291 (46 FR 13193) and the procedures of 5 U.S.C. 553 and 554. Nevertheless, this amendment is being published as a proposed rule in order to provide the public with an opportunity to comment and provide advice and suggestions regarding the proposal. The period for submission of comments will close 30 days after publication of this proposed rule. In addition, this proposed rule affects collection of information subject to the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.), and will serve to reduce the burden on exporters in that respect. The relevant information collection is to be reviewed by the Office of Management and Budget under control no. 1405–0013

List of Subjects in 22 CFR Part 121

Arms and munitions, Exports.

Accordingly, for the reasons set forth in the preamble, it is proposed that title 22, chapter I, subchapter M (consisting of parts 120 through 130) of the Code of Federal Regulations, be amended as set forth below:

PART 121—THE UNITED STATES MUNITIONS LIST

1. The authority citation for part 121 continues to read as follows:

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

§ 121.1 [Amended]

2. In § 121.1, Category XX, is revised to read as follows:

Category XX—Submersible Vessels, Oceanographic and Associated Equipment

*(a) Submersible vessels, manned or unmanned, tethered or untethered, designed or modified for military purposes, or powered by nuclear propulsion plants.

*(b) Swimmer delivery vehicles designed or modified for military purposes.

(c) Equipment, components, parts, accessories, and attachments specifically designed or modified for any of the articles in paragraph (a) and (b) of this category.

(d) Technical data (as defined in § 120.21) and defense service (as defined in § 120.8) directly related to the defense articles enumerated in paragraphs (a) through (d) of this category. (See § 125.4 for exemptions.) Technical data directly related to any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated as SME.

Dated: April 26, 1991.

Charles A. Duelfer,

Director, Center for Defense Trade, Bureau of Politico-Military Affairs.

Editorial note: This document was received by the Office of the Federal Register on July 18, 1991.

[FR Doc. 91–17436 Filed 7–24–91; 8:45 am]

BILLING CODE 4710–25–M

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22 CFR Part 121

[Public Notice 1433]

International Traffic in Arms Regulations

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: This notice is to advise exporters of defense articles and defense services that the Department of State reviewed Category IX (Military Training Equipment), and Category XVI (Nuclear Weapons Design and Test Equipment), of the United States Munitions List (USML), which is part of the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130) and found no overlap. The ITAR implements section 38 of the Arms Export control Act (22 U.S.C. 2778). Also, it will serve to elicit any comments regarding the Department's review of these two categories.

DATES: Comments must be submitted on or before August 26, 1991.

ADDRESSES: Written comments should be sent to: Rose Marie H. Biancaniello, Chief, Arms Licensing Division, U.S. Department of State, Office of Defense Trade Controls, SA–6, Rm. 200, Washington, DC 20522–0602, fax # 703–875–6647.

FOR FURTHER INFORMATION CONTACT: Rose Marie H. Biancaniello, U.S. Department of State, Office of Defense Trade Controls, tel. 703 875–6644.

SUPPLEMENTARY INFORMATION: On November 16, 1990, the President signed Executive Order 12735 on Chemical and Biological Weapons Proliferation and directed various other export control measures. The measures directed by the President include the following:

> By June 1, 1991, the United States will remove from the U.S. Munitions List all items contained on the CoCom dual-use list unless significant U.S. national security interests would be jeopardized (Memorandum of Disapproval of H.R. 4653, 26 Weekly Compilation of Presidential Documents 1839).

In carrying out this directive, the Departments of State, Commerce and Defense reviewed, in whole or in part, COCOM ILs 1746, 1522, 1529, 1531, 1533, 1537, 1565, and 1566 for military electronics and ILs 1091, 1099, 1312, 1370, 1371, 1391 and 1522 for nuclear weapons design and test equipment. In implementation of the President's directive of November 16, 1990, the Department of State identified no overlap of either military training equipment or nuclear weapons design and test equipment. The Department of State believes Categories IX and XVI of the USML do not control any commodity currently on the Commodity Control List, nor is it the intention of the Department to control such commodities in the future unless significant national security interests would be jeopardized.

It is the intent of the Department that this review would result in the continuing coverage on the USML of items specially designed, modified, or configured for military application or items justified for retention by significant national security interests. It is not the intent of the Department to impose controls on dual-use items which are not controlled by the COCOM IL. Such dual-use items are generally enumerated in the Commodity Control List (15 CFR part 799 et seq.) as ending with any letter other than "A" (e.g., 6599G or 6598F). Public comments to clarify the proposed rule and the possible transfer or retention of COCOM IL items on the USML are welcome.

This notice involves a foreign affairs function of the United States and thus is excluded from the major rule procedures of Executive Order 12291 (46 FR 13193) and the procedures of Executive Order 12291 (46 FR 13193) and the procedures of 5 U.S.C. 553 and 554. Nevertheless, it is being published as a proposed rule in order to provide the public with an opportunity to comment and provide advice and suggestions. The period for submission of comments will close August 26, 1991. In addition, this rule affects collection of information subject to the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.), and will serve to reduce the burden on exporters in that respect. The relevant information collection is to be reviewed by the Office of Management and Budget under control no. 1405–0013.

Dated: April 29, 1991.

Charles A. Duelfer,

Director, Center for Defense Trade, Bureau of Politico-Military Affairs.

Editorial Note: This document was received by the Office of the Federal Register on July 18, 1991.

[FR Doc. 91–17437 Filed 7–24–91; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[Co–002–88]

RIN 1545–AL41

Consolidated Return Regulations; Modification of Rules Relating to the Applicability of Other Provisions of Law in the Context of the Consolidated Return Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under section 1502 of the Internal Revenue Code of 1986, as amended, providing that section 304 will not apply to acquisitions of the stock of a corporation by one member of a consolidated group from another member and providing special restoration rules for deferred gain that results on an acquisition of the stock of a subsidiary member of a consolidated group by one member from another member.

DATES: Written comments and requests for a public hearing must be received by September 23, 1991.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, attention CC:CORP:T:R (CO–002–88), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Brendan O'Hara at telephone (202) 566–2455 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed revisions to § 1.1502–80 of Income Tax Regulations (26 CFR part 1) under section 1502 of the Internal Revenue Code of 1986, as amended.

Section 1.1502–80 currently provides that section 304 applies for any consolidated return year. The regulations added by this document state that section 304 does not apply for

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Dated: April 29, 1991.

Charles A. Duelfer,

Director, Center for Defense Trade, Bureau of Politico-Military Affairs.

Editorial Note: This document was received by the Office of the Federal Register on July 18, 1991.

[FR Doc. 91-17437 Filed 7-24-91; 8:45 am]

BILLING CODE 4710-25-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[Co-002-88]

RIN 1545-AL41

Consolidated Return Regulations; Modification of Rules Relating to the Applicability of Other Provisions of Law in the Context of the Consolidated Return Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under section 1502 of the Internal Revenue Code of 1986, as amended, providing that section 304 will not apply to acquisitions of the stock of a corporation by one member of a consolidated group from another member and providing special restoration rules for deferred gain that results on an acquisition of the stock of a subsidiary member of a consolidated group by one member from another member.

DATES: Written comments and requests for a public hearing must be received by September 23, 1991.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, attention CC:CORP:T:R (CO-002-88), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Brendan O'Hara at telephone (202) 566-2455 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed revisions to § 1.1502-80 of Income Tax Regulations (26 CFR part 1) under section 1502 of the Internal Revenue Code of 1986, as amended.

Section 1.1502-80 currently provides that section 304 applies for any consolidated return year. The regulations added by this document state that section 304 does not apply for

a consolidated return year to any acquisition of stock of a corporation in an intercompany transaction (defined in § 1.1502-13 (a)(1)).

Section 304 applies to certain acquisitions by one corporation of the stock of a related corporation. Under section 304, the seller treats the receipt of consideration for the stock either as a sale or exchange or as a distribution with respect to stock (which may be a dividend).

Under the consolidated return regulations, a dividend, including one arising under section 304, is eliminated from income. Section 1.1502-14(a). Absent section 304(b)(4), a dividend arising under section 304 may result in inappropriate adjustments to basis in the stock of the transferor and other corporations in the group. Section 304(b)(4) applies to prevent that result but could require complex basis and earnings and profits adjustments.

The Internal Revenue Service has concluded that the purposes of section 304(b)(4) can be realized, and the complex basis and earnings and profits adjustments avoided, if section 304 does not apply to an acquisition of stock by one member from another.

This document also contains proposed revisions to § 1.1502-13T to provide a rule parallel to that contained in § 1.1502-14T (c), relating to the restoration of deferred gain resulting from the distribution of stock of a subsidiary by one member of a consolidated group to another member.

Explanation of Provisions

The proposed regulations would amend § 1.1502-80 to provide that an acquisition of stock of a corporation by one member of a consolidated group from another member is not subject to section 304. These transfers of stock between members will be treated, to the extent provided in § 1.1502-13, as deferred intercompany transactions.

The proposed regulations also would amend § 1.1502-13T to add rules similar to those provided in § 1.1502-14T (c) (which restores deferred gain on distributed stock) that will apply to deferred gain arising in an intercompany transaction that is a sale or exchange of stock of a subsidiary.

If the stock of a controlled foreign corporation is sold or exchanged in an intercompany transaction, any gain on the sale or exchange will be deferred under § 1.1502-13, and section 1248 will apply as described in Rev. Rul. 87-96, 1987-2 C.B. 209. The Internal Revenue Service solicits comments on whether there are appropriate alternatives to the trigger rules described in Rev. Rul. 87-96.

This regulation is proposed to apply to an acquisition of stock of a corporation in an intercompany transaction occurring on or after July 24, 1991. The proposed regulation does not affect the application of section 304(b)(4) to section 304 transfers not addressed by the proposed regulation. Section 304(b)(4) continues to require appropriate adjustments to basis and earnings and profits in such cases.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553 (b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805 (f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of the rules on small business.

Comments and Public Hearing

Before adopting these proposed regulations as final regulations, consideration will be given to any written comments that are submitted (perferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be held upon written request to the Internal Revenue Service by any person who also submits written comments. If a public hearing is held, notice of the time, place and date will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is John N. Geracimos of the Office of Assistant Chief Counsel (Corporate), Internal Revenue Service. Other personnel from the Service and the Treasury Department also participated in their development.

List of Subjects in 26 CFR 1.1502-12 through 1.1502-100

Income taxes.

Proposed Amendments to the Regulations

Accordingly, the proposed amendments to 26 CFR chapter I, subchapter A, part 1 are as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1986.

Paragraph 1. The authority citation for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * Sections 1.1502-13T and 1.1502-80 also issued under 26 U.S.C. 1502.

Par. 2. In § 1.1502-13T, paragraph (o) is revised and paragraph (p) is added to read as follows:

§ 1.1502-13T Temporary regulations for certain intercompany transactions.

* * * * *

(o) *Restoration of deferred gain on stock of a member*—(1) *Restoration rule.* For purposes of this section and § 1.1502-13, gain deferred with respect to an acquisition of stock of a subsidiary in an intercompany transaction shall be taken into account—

(i) Upon a disposition (as defined in § 1.1502-19 (b) (2)) of the stock of the subsidiary in an amount equal to the amount that would have created or increased the excess loss account if the adjustment to basis (or excess loss account) of the stock of the subsidiary resulting from the acquisition had not occurred, or

(ii) Following a disposition (as defined in § 1.1502-19(b)(2)), to the extent distributions with respect to any stock owned by a member would exceed the basis of such stock if the adjustment to the basis of the stock resulting from the acquisition had not occurred.

(2) *Effective date.* This paragraph (o) applies to acquisitions of stock of a subsidiary in an intercompany transaction occurring on or after July 24, 1991.

(p) *References.* A reference in this part to § 1.1502-13 is treated as including a reference to this section.

Par. 3. Section 1.1502-80 is revised as follows:

§ 1.1502-80 Applicability of Other Provisions of Law.

(a) *In general.* The Code, or other law, shall be applicable to the group to the extent the regulations do not exclude its application. Thus, for example, in a transaction to which section 381 (a) applies, the acquiring corporation will succeed to the tax attributes described in section 381(c). Furthermore, sections 269 and 482 apply for any consolidated year. Section 304 applies except as provided in paragraph (b) of this section.

(b) *Non-applicability of section 304* Section 304 does not apply to any acquisition of stock of a corporation in an intercompany transaction occurring on or after July 24, 1991.

Fred T. Goldberg, Jr.

Commissioner of Internal Revenue.

[FR Doc. 91-17605 Filed 7-24-91; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR part 117

[CCGD5-91-30]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Elizabeth River, Southern Branch, Chesapeake, VA

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard is issuing a supplemental proposed rule for the operation of the Jordan drawbridge across the Southern Branch of the Elizabeth River, mile 2.8, in Chesapeake, Virginia, to allow commercial vessels carrying liquefied flammable gas passage through the bridge during the morning and evening rush hours. The supplemental proposed rule will include a requirement that commercial vessels with drafts of 22 feet or greater give a 6-hour advance notice for passage through the drawbridge during peak traffic hours. The proposed changes to these regulations are, to the extent practical and feasible, intended to provide for regularly scheduled drawbridge openings to help reduce motor vehicle traffic delays and congestion on the roads and highways linked by this drawbridge.

DATES: Comments must be received on September 9, 1991.

ADDRESSES: Comments should be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004. The comments and other materials referenced in this notice will be available for inspection and copying at the above address, room 507, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Comments may be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398-6222.

SUPPLEMENTARY INFORMATION: On July 27, 1990, the Coast Guard published a proposed rule (55 FR 30723) to evaluate bridge opening retrictions during the morning and evening rush hours for the Jordan Bridge. The Commander, Fifth Coast Guard District also published the proposed rule as a public notice on August 2, 1990. Interested persons were given until September 10, 1990, to comment on the proposed rule that was published in the **Federal Register**. The comment period for the public notice also ended September 10, 1990. A supplemental public notice was issued on August 23, 1990, extending the comment period which ended October 10, 1990. This supplementary proposed rule exempts commercial vessels with drafts of 22 feet or greater from rush hour restrictions provided they give at least 6 hours advance notice for a bridge lift. Liquefied flammable gas (LFG) carriers are also being exempted from the rush hour restrictions and will be able to pass through the bridge anytime without providing a 6-hour advance notice. Imposition of the 6-hour advance notice requirement will provide motorists with an opportunity to learn about scheduled bridge openings by radio broadcasts and any other means established by the bridge owner.

Public comments are requested on the deep draft vessel exemption and liquefied flammable gas carrier provision and the 6-hour advance notice to ensure that this proposal is both reasonable and workable. Persons wishing to comment may do so by submitting written comments to the office listed under "**ADDRESSES**" in this preamble. Persons submitting comments should include their names and addresses, identify the bridge and give reasons for the comments. The Commander, Fifth Coast Guard District, will evaluate all communications received and determine a final course of action on this supplemental proposal. This rule may be changed based on comments received.

Drafting Information: The drafters of this notice are Linda L. Gilliam, project officer, and LT Monica L. Lombardi, project attorney.

Discussion of Proposed Regulations: The International Federation of Professional and Technical Engineers, Local No. 10, requested that the regulations for the drawbridge across the Southern Branch of the Elizabeth River at mile 2.8 in Chesapeake, Virginia, be amended to restrict openings during the peak highway traffic hours to help reduce traffic congestion, but remain open on signal during the rest of the time. The proposed change would have closed the Jordan Bridge to commercial, recreational, and public vessels, Monday through Friday, except Federal holidays, from 6:30 a.m. to 7:30 a.m. and from 3:30 p.m. to 5 p.m. A provision that allows the draw to open on signal at all times for vessels in distress was made a part of the proposal. The supplemental proposal includes the above with an additional provision which provides commercial deep draft vessels with 22 feet or greater access through the bridge during the morning and evening rush hours, provided they give a 6-hour advance notice of their arrival and liquefied flammable gas carriers access through the bridge anytime with no restrictions. The decision to allow deep draft vessels access through the Jordan Bridge during peak traffic hours was based on these vessels requiring high tide to transit upstream from the bridge to commercial marine terminals where the channel depths are reduced to as much as 27 feet. Due to the hazards involved in shipping flammable gas, it was decided to allow LFG vessels access through the bridge during anytime of the day.

As a result of the proposed rule that was published in the **Federal Register** (55 FR 30723) and the public notice issued on August 7, 1990, written comments were received from the maritime community and the monitoring public. The comments from motorists were all in favor of the proposed restrictions during peak traffic hours since elimination of draw openings during these hours would help reduce traffic disruption, delays, congestion and minor accidents. The comments from the commercial maritime industry were opposed to restricting the drawbridge based on economic impact concerns, safety and deep-draft vessel navigation requirements. The Marine Safety Office, Hampton Roads, commented in their memorandum dated October 9, 1990, that liquefied flammable gas carriers should be allowed passage through the Jordan Bridge anytime with no restrictions due to the need of establishing safety zones and the risk and hazard involved in transporting a loaded LFG vessel.

In deciding the issues in cases, consideration was given to all views. However, it is felt that the need of motorists who use the bridge, the requirements of deep draft vessels needing to transit upstream at high tide and the safe movement of liquefied flammable gas vessels warrant special consideration. The Coast Guard feels that imposition of this proposed rule will not create an undue hardship on other commercial interests who do not use deep-draft vessels or LFG vessels in their operations, since these companies can plan most of their vessel transits around the restricted hours of operation. While they may be inconvenienced, they will not suffer the same hardships as

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deep-draft commercial vessels or LFG vessels.

Federalism Assessment: This notice has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule will not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Evaluation: These proposed regulations are considered to be non-major under Executive Order 12291 and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of the proposed regulation on commercial navigation or on any industries that depend on waterborne transportation should be minimal. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certified that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Environmental Impact: This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g.5 of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations: In consideration of the foregoing, the Coast Guard proposed to amend part 117 of title 33, Code of Federal Regulations to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g)

2. In Section 117.997 paragraph (a) is revised to read as follows:

§ 117.997 Atlantic Intracoastal Waterway, Southern Branch of the Elizabeth River to the Albemarle and Chesapeake Canal.

(a) The draw of the Jordan (S337) bridge, mile 2.8, in Chesapeake shall open on signal, except:

(1) From 6:30 a.m. to 7:30 a.m. and from 3:30 p.m. to 5 p.m., Monday through Friday, except Federal holidays.

(2) From 6:30 a.m. to 7:30 a.m. and from 3:30 p.m. to 5 p.m., Monday through Friday, except Federal holidays;

(i) Shall open for commercial vessels with a draft of 22 feel or more, provided 6 hours advance notice has been given to the Jordan Bridge Office at (804) 545–4695.

(ii) Shall open on signal at any time for a vessel in distress and commercial vessels carrying (LFG).

* * * * *

Dated: July 10, 1991.

H. B. Gehring,

Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District Acting.

[FR Doc. 91–17604 Filed 7–24–91; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPTS-50577D; FRL-3935-3]

Aromatic Diamines; Extension of Comment Period for Proposed Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: EPA is extending the comment period for a proposed significant new use rule (SNUR) for two aromatic diamines, P–86–501 and P–86–503. As initially published in the **Federal Register** of March 28, 1991 (55 FR 12880) and May 8, 1991 (56 FR 21351), the comments were to be received on or before June 26, 1991. One commenter, who is engaging in commercial activities with one of these substances, requested additional time to complete the generation of data to be included in its response. EPA is therefore extending the comment period in order to give all interested persons time to comment fully.

DATES: Written comments must be submitted to EPA by August 26, 1991.

ADDRESSES: Since some comments may contain confidential business information (CBI), all comments should be sent in triplicate to: TSCA Document Receipt Office (TS–790), Office of Toxic Substances, Environmental Protection Agency, rm. E–105, 401 M St., SW., Washington, DC 20460. Each comment must include the docket control number OPTS–50577D. Nonconfidential versions of comments on this rule will be placed in the rulemaking record and will be available for public inspection.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, rm. E–543–B, 401 M St., SW., Washington, DC 20460, telephone (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: This extension of time will allow one commenter who is engaged in commercial activities with P–86–503 to complete the development of data regarding the role of impurities in the toxicity of P–86–503 and to provide additional information on the structure activity correlations for aromatic diamines. The data will be used to support the comments concerning the proposed SNUR.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: July 17, 1991.

Joseph A. Carra,

Acting Director, Office of Toxic Substances.

[FR Doc. 91–17693 Filed 7–24–91; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-7030]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed modified base (100-year) flood elevations listed below for selected locations in the nation. The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of modified base flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state of regional entities. These proposed modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance coverage on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed modified flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with minimum Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, floodplains.

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/Town/County	Flooding Source	Location	# Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Arkansas	Paragould, city, Greene County.	Eight Mile Creek	Approximately 1.2 river miles downstream of U.S. Route 412.	None	*261
			Approximately 500 feet upstream of South Spring Grove Street.	None	*324
		Loggy Creek	Approximately 100 feet upstream of confluence with Eight Mile Creek.	*287	*285
			Approximately .7 mile upstream of confluence with Eight Mile Creek.	*288	*287
		Tributary No. 1	At confluence with Eight Mile Creek	None	*293
			At downstream side of Honeysuckle Road	None	*322
		Tributary No. 2	At confluence with Eight Mile Creek	None	*314
			Upstream side of Maxwell Street	None	*335
		Tributary No. 3	At confluence with Eight Mile Creek	None	*295
			Approximately 1.2 river miles upstream of Bo Gift Road.	None	*332
Maps available for inspection at the City Hall, 221 West Court Street, Paragould, Arkansas.					
Send comments to The Honorable Charles R. Partlow, Mayor of the City of Paragould, Greene County, 221 West Court Street, Paragould, Arkansas 72450.					
Connecticut	Ansonia, city, New Haven County.	Beaver Brook	Approximately 620 feet upstream of confluence with Naugatuck River.	None	*26
			At downstream side of Quillinan Reservoir Dam.	None	*127
		Whitemare Brook	At confluence with Beaver Brook	None	*96
			Approximately 1,000 feet upstream of Doyle Drive.	None	*398
Maps available for inspection at the Town Clerk's Office, 253 Main Street, Ansonia, Connecticut.					
Send comments to The Honorable Thomas P. Clifford, III, Mayor of the City of Ansonia, New Haven County, 253 Main Street, Ansonia, Connecticut 06401.					
Connecticut	Cromwell, town, Middlesex County.	Mattabassett River	Approximately 105 feet upstream of State Route 72.	*25	*26
			At upstream corporate limits	None	*30
Maps available for inspection at the Office of Public Works, 41 West Street, Cromwell, Connecticut.					
Send comments to Ms. Mary Amenta, First Selectman of the Town of Cromwell, Middlesex County, 41 West Street, Cromwell, Connecticut 06416-0189.					
Oklahoma	Tulsa County, unincorporated areas	Nichols Creek	At downstream corporate limits	None	*717
			At upstream corporate limits	None	*726
		Rolling Meadows Creek	At corporate limits	None	*727
			Approximately 1,625 feet upstream of corporate limits.	None	*739
Maps available for inspection at the County Engineer's Office, 500 South Denver, Tulsa, Oklahoma.					
Send comments to Mr. Lewis Harris, Chairman of the Tulsa County Board of Commissioners, 500 South Denver, Tulsa, Oklahoma 24103.					
Texas	Jasper, city, Jasper County.	Trotti Brook	At downstream corporate limits	None	*207

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/Town/County	Flooding Source	Location	# Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 900 feet upstream of Munson Street on west side river.	None	*241

Maps available for inspection at the City Hall, 272 East Lamar, Jasper, Texas.

Send comments to The Honorable Frank Lindsey, Jr., Mayor of the City of Jasper, Jasper County, 272 East Lamar, P.O. Box 1170, Jasper, Texas 75951.

Issued: July 16, 1991.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administation.

[FR Doc. 91-17685 Filed 7-24-91; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 685

Pelagic Fisheries of the Western Pacific Region

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of a fishery management plan amendment and request for comments.

SUMMARY: NOAA issues this notice that the Western Pacific Fishery Management Council (Council) has submitted Amendment 4 to its Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP) for Secretarial review, and is requesting comments from the public. Copies of Amendment 4 may be obtained from the Council at the address below.

DATES: Comments on the amendment should be submitted on or before September 16, 1991.

ADDRESSES: All comments should be sent to E.C. Fullerton, Regional Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731. Copies of the amendment are available from the Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813 (808) 541-1974.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Fisheries Management Division, Southwest Region, NMFS, Terminal Island, California (213) 514-6660; or Alvin Katekaru, Southwest Region, NMFS, Pacific Area Office, Honolulu, Hawaii (808) 955-8831.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*) requires that each Regional Fishery Management Council submit any fishery management plan or amendment it prepares to the Secretary of Commerce (Secretary) for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary, upon receiving a plan or amendment, immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider all public comments in determining whether to approve the plan or amendment.

Amendment 4 proposes to continue for two and one-half years a moratorium on the issuance of permits for new entrants to the longline fishery for management unit species based in Hawaii. This moratorium was implemented by emergency rule (56 FR 14866, April 12, 1991) and was subsequently modified and extended (56 FR 28718, June 24, 1991). Amendment 4 makes no change in the permit eligibility criteria or permit transferability provisions of the emergency rule; however, it does contain the following new provisions: prospective permit applicants would be required to submit applications within 90 days of implementation of the amendment, a new information collection requirement would be established for limited entry permit applicants to clarify applicants eligibility criteria, and a procedure may be provided for future implementation by rulemaking of a requirement for longline vessels to obtain, install, and make operational, automatic vessel tracking system devices if the Council proposes and the Southwest Regional Director, NMFS, agrees that the system should be implemented. The emergency rule will expire on October 10, 1991, and the Council proposes that the effective date of the amendment coincide with the expiration of the emergency rule.

An environmental assessment was prepared in association with the emergency rule, and a draft regulatory impact review is incorporated in Amendment 4, which can be obtained from the Council (see **ADDRESSES**). Proposed regulations to implement Amendment 4 are scheduled to be filed at the Office of the Federal Register within 15 days.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 19, 1991.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-17608 Filed 7-24-91; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 56, No. 143
Thursday, July 25, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

July 19, 1991.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection;

(2) Title of the information collection;

(3) Form number(s), if applicable;

(4) How often the information is requested;

(5) Who will be required or asked to report;

(6) An estimate of the number of responses;

(7) An estimate of the total number of hours needed to provide the information;

(8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Revision

- *Food and Nutrition Service*

7 CFR part 245—Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools—Reporting/Recordkeeping Annually; Biennially; Triennial; Recordkeeping State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 5,218,285 responses; 819,839 hours.

Marian Stroud (703) 756–3607.

New Collection

- *Food and Nutrition Service*

Evaluation of the San Diego Food Stamp Cash-out Demonstration Evaluation of the Alabama Avenues to Self-Sufficiency Through Employment & Training Services (ASSETS) Demonstration. One time only.

Businesses or other for-profit; Small businesses or organizations; 555 responses; 278 hours.

Boyd Kowal (703) 756–3115.

- *Food and Nutrition Service*

7 CFR part 210—National School Lunch Program—Addendum 1 Recordkeeping; Monthly; Quarterly Annually; Biennially; State or local governments; Federal agencies or employees; Non-profit institutions; 375 responses; 5,633 hours.

Marian Stroud (703) 756–3607.

New Collection (Emergency)

- *Food Safety and Inspection Service*

Survey of Meat and Poultry Establishments Nutrition Label Information.

One time survey.

Businesses or other for-profit; Small businesses or organizations; 350 responses; 350 hours.

Roy Purdie, Jr. (202) 447–5372.

- *Food Safety and Inspection Service*

Regulations Governing Meat Inspection—Addendum 1 Recordkeeping; On occasion.

Businesses or other for-profit; Small businesses or organizations; 25 responses; 31 hours.

Roy Purdie, Jr. (202) 447–5372.

Extension

- *Agricultural Marketing Service*

Fresh Peaches Grown in Georgia Marketing Order No. 918.

On Occasion.

Farms; Businesses or other for-profit; Small businesses or organizations; 62 responses; 10 hours.

Thomas Tichenor (202) 475–5464.

- *Agricultural Marketing Service*

Irish Potatoes Grown in Modoc and Siskiyou Counties, California, and in All Counties in Oregon Except Malheur County—Marketing Agreement and Order No. 947.

Recordkeeping; On Occasion; Weekly; Monthly; Annually; every 6 years.

Farms; Businesses or other for-profit; 2,726 responses; 313 hours.

William N. Wise (503) 238–7500.

- *Agricultural Marketing Service*

Grapes Grown in a Designated Area of Southeastern California, Marketing Order No. 925.

On occasion; Annually; Every six years.

Farms; Businesses or other for-profit; Small businesses or organizations; 836 responses; 40 hours.

Kenneth Johnson (202) 447–5331.

Donald E. Hulcher,
Deputy Departmental Clearance Officer.

[FR Doc. 91–17634 Filed 7–24–91; 8:45 am]

BILLING CODE 3410-01-M

Packers and Stockyards Administration

Proposed Posting of Stockyards

The Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in section 302 of the Packers and Stockyards Act (7 U.S.C. 202), and should be made subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*)

CT–104—M & M Sales, Ledyard, Connecticut
DE–101—Dill's Auction Service, Wyoming, Delaware
GA–211—Thomson Stock & Auction Barn, Inc., Thomson, Georgia
MO–271—Lockwood Livestock Auction, Inc., Lockwood, Missouri
NC–162—Walking Acres Auction, Plymouth, North Carolina

Pursuant to the authority under section 302 of the Act, notice is hereby given that it is proposed to designate the stockyards named above as posted stockyards subject to the provisions of the Act as provided in section 302 thereof.

Any person who wishes to submit written data, views or arguments concerning the proposed designation may do so by filing them with the Director, Livestock Marketing Division,

285 responses;
) 756–3607.
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County—Marketing Agreement and Order No. 947.

Recordkeeping; On Occasion; Weekly; Monthly; Annually; every 6 years.

Farms; Businesses or other for-profit; 2,726 responses; 313 hours.

William N. Wise (503) 238–7500.

- *Agricultural Marketing Service*

Grapes Grown in a Designated Area of Southeastern California, Marketing Order No. 925.

On occasion; Annually; Every six years.

Farms; Businesses or other for-profit; Small businesses or organizations; 836 responses; 40 hours.

Kenneth Johnson (202) 447–5331.

Donald E. Hulcher,

Deputy Departmental Clearance Officer.

[FR Doc. 91–17634 Filed 7–24–91; 8:45 am]

BILLING CODE 3410–01–M

Packers and Stockyards Administration

Proposed Posting of Stockyards

The Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in section 302 of the Packers and Stockyards Act (7 U.S.C. 202), and should be made subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*)

CT–104—M & M Sales, Ledyard, Connecticut
DE–101—Dill's Auction Service, Wyoming, Delaware
GA–211—Thomson Stock & Auction Barn, Inc., Thomson, Georgia
MO–271—Lockwood Livestock Auction, Inc., Lockwood, Missouri
NC–162—Walking Acres Auction, Plymouth, North Carolina

Pursuant to the authority under section 302 of the Act, notice is hereby given that it is proposed to designate the stockyards named above as posted stockyards subject to the provisions of the Act as provided in section 302 thereof.

Any person who wishes to submit written data, views or arguments concerning the proposed designation may do so by filing them with the Director, Livestock Marketing Division,

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Packers and Stockyards Administration, room 3408–South Building, United States Department of Agriculture, Washington, DC 20250, by August 6, 1991.

All written submissions made pursuant to this notice will be made available for public inspection in the office of the Director of the Livestock Marketing Division during normal business hours.

Done at Washington, DC this 19th day of July, 1991.

Harold W. Davis,

Director, Livestock Marketing Division.

[FR Doc. 91–17633 Filed 7–24–91; 8:45 am]

BILLING CODE 3410–KD–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Intent To Evaluate State Coastal Management Programs

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management.

ACTION: Notice of intent to evaluate.

SUMMARY: The National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management (OCRM), announces its intent to evaluate the performance of the following state coastal management programs (CMPs) and National Estuarine Research Reserve (NERR): The New Jersey CMP; the Alaska CMP; Commonwealth of the Northern Mariana Islands CMP; and the Waquoit Bay (Massachusetts) NERR.

Evaluations of coastal management programs and estuarine reserves will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972 (CZMA), as amended. The CZMA requires a continuing review of the performance of coastal states with respect to coastal management and the operation and management of NERRs. Evaluation of a CMP includes detailed findings regarding the extent to which a state has implemented and enforced the management program approved by the Secretary of Commerce, addressed the coastal management needs identified in section 303(2)(A) through (K), and adhered to the terms of financial assistance awards funded under the CZMA. Evaluation of an estuarine reserve requires detailed findings on a state's implementation of the federally approved NERR management plan, and adherence to the terms of financial assistance awards funded under the CZMA. These reviews include a site visit, consideration of public comments, and consultations with interested Federal, state, and local agencies and members of the public. A public meeting(s) is held as part of the site visit.

Notice is hereby given of the dates of the site visit for each evaluation, and the date, local time, and location of a public meeting(s) during the site visit:

(1) Alaska Coastal Management Program, September 11–20, 1991. The public meeting will be held Tuesday, September 17, 1991, 7 p.m., at the Loussac Public Library, 3600 Denali Street, Anchorage, Alaska.

(2) New Jersey Coastal Management Program, September 16–20, 1991. Public meetings will be held Tuesday, September 17, 1991, 7 p.m., at the State Office Building, 1510 Hooper Avenue, Toms River; and Thursday, September 19, 1991, at the Old Courthouse Building, Route 9, Cape May, New Jersey.

(3) Commonwealth of the Northern Mariana Islands Coastal Management Program, September 16–20, 1991. The public meeting will be held Wednesday, September 18, 1991, 6:30 p.m., at the Garapan Elementary School, Saipan.

(4) Waquoit Bay (Massachusetts) NERR, September 23–27, 1991. The public meeting will be held Tuesday, September 24, 1991, 7 p.m., at the Reserve, 149 Waquoit Highway, Waquoit, Massachusetts

The respective states will issue notice of the public meeting(s) in local newspapers at least 45 days prior to being held.

Copies of the state's most recent performance report, as well as OCRM's notification and supplemental request letter to the state, are available upon request from OCRM. Written comments from interested parties regarding each of these programs are encouraged at this time. Public comment will be accepted until seven days after the site visit. When the final evaluation findings are completed, OCRM will place a notice in the **Federal Register** announcing their availability.

FOR FURTHER INFORMATION OR TO DIRECT COMMENTS, CONTACT: Vickie Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1825 Connecticut Avenue, N.W., Washington, DC 20235, (202) 673–5100.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: July 19, 1991.

Virginia K. Tippie,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 91–17706 Filed 7–24–91; 8:45 am]

BILLING CODE 3510–08–M

Evaluation Findings for State Coastal Management Programs

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management.

ACTION: Notice of availability of evaluation findings.

SUMMARY: Notice is hereby given of the availability of the evaluation findings for the Washington, South Carolina, and Hawaii coastal management programs. Section 312 of the Coastal Zone Management Act of 1972 (CZMA), as amended, requires a continuing review of the performance of coastal states with respect to coastal management. The states evaluated were found to be implementing and enforcing their approved coastal management programs, addressing the national coastal management objectives identified in CZMA section 303(2) (A)–(K), and adhering to the programmatic terms of their financial assistance awards. Satisfactory progress was made in performing award tasks, meeting special award conditions, and accomplishing significant improvement objectives. Copies of these findings may be obtained upon request from : Vickie Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1825 Connecticut Avenue, NW., Washington, DC 20235, (202) 673–5100.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: July 19, 1991.

Virginia K. Tippie,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 91–17707 Filed 7–24–91; 8:45 am]

BILLING CODE 3510–08–M

Mid-Atlantic Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold public hearings to allow for input on

Amendment 2 to the Fishery Management Plan for the Summer Flounder Fishery (FMP).

DATES: Written Comments will be accepted until August 21, 1991. See "**SUPPLEMENTARY INFORMATION**" for dates, times, and locations of hearings.

ADDRESSES: Send comments to: John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, Delaware 19901.

FOR FURTHER INFORMATION CONTACT: John C. Bryson, (302) 674–2331.

SUPPLEMENTARY INFORMATION: Amendment 2 to the FMP is intended to reduce overfishing in the summer flounder (*Paralichthys dentatus*) fishery pursuant to the Magnuson Fishery Conservation and Management Act of 1976 (Magnuson Act). The management unit is summer flounder in U.S. waters in the western Atlantic Ocean from the southern border of North Carolina northward to the U.S.-Canadian border and remains unchanged. The objectives of the FMP are:

1. Reduce fishing mortality in the summer flounder fishery to assure that overfishing does not occur;
2. Reduce fishing mortality on immature summer flounder to increase spawning stock biomass;
3. Improve the yield from the fishery;
4. Promote compatible management regulations between State and Federal jurisdictions;
5. Promote uniform and effective enforcement of regulations; and
6. Minimize regulations to achieve the management objectives stated above.

The FMP is a joint effort in planning with Atlantic States Marine Fisheries Commission (ASMFC), the States, and the Council.

Permits, Fees, and Reports

The requirement that commercial vessels and party and charter boats obtain annual permits would be continued. In addition, dealers must obtain annual permits. NMFS may charge for the permits as authorized by section 303(b) (1) of the Magnuson Act.

Persons may buy summer flounder at the point of landing only by a vessel that has a commercial moratorium permit issued pursuant to this FMP.

Commercial fishing vessel operators and dealers must submit weekly reports to NMFS. Charter and party boat operators must submit monthly reports to NMFS.

Moratorium on Entry of Additional Commercial Vessels and Party and Charter Boats

A vessel is eligible for a moratorium permit if it meets any of the following criteria: (1) The vessel landed and sold summer flounder or operated as a party or charter boat in the management unit for summer flounder between January 26, 1989, and January 26, 1990; or (2) the vessel was under construction for, or was being rerigged for, use in the directed fishery for summer flounder on January 26, 1990, and provided the vessel is participating in the summer flounder fishery prior to implementation of Amendment 2; or (3) the vessel is replacing a vessel of substantially similar harvesting capacity, which involuntarily left the summer flounder fishery during the moratorium, and both the entering and replaced vessels are owned by the same person. "Substantially similar harvesting capacity" means the same gross registered tons (GRT) and vessel registered length for commercial vessels and, in addition to the two preceding criteria, the same passenger carrying capacity for party and charter boats.

During the moratorium period, vessels that are judged unseaworthy by the Coast Guard for reasons other than lack of maintenance may be replaced by a vessel with the same GRT and vessel registered length for commercial vessels and, in addition to the two preceding criteria, the same passenger carrying capacity for party and charter boats.

Operators of party or charter boats may obtain a party or charter boat moratorium permit if (1) they can document the boat operated as a party or charter boat (carried fishermen for a fee) from a port in the management unit (Maine through North Carolina) between January 26, 1989, and January 26, 1990; and (2) they attest (through a sworn statement) that the boat participated in the summer flounder fishery while operating as a party or charter boat.

The moratorium would terminate at the end of the fifth year following implementation unless extended by an amendment to the FMP. The moratorium may be replaced at any time by an amendment to the FMP establishing an alternative limited entry system.

The moratorium would apply to all party and charter boats, as well as to all commercial vessels. However, a party and charter boat permit is not a license to sell summer flounder as is a commercial permit.

Summer Flounder FMP Monitoring Committee.

The Summer Flounder Monitoring Committee (Committee) would be made up of staff representatives of the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils, the ASMFC, the Northeast Regional Office of NMFS, the Northeast Fisheries Center, and the Southeast Fisheries Center. The Executive Director of the Councils, or his designee, would chair the Committee. The Committee would review annually the best data available including, but not limited to, commercial and recreational catch/landing statistics, current estimates of fishing mortality, stock status, the most recent estimates of recruitment VPA results, target mortality levels, beneficial impacts of size/mesh regulations, as well as the level of noncompliance by fishermen of States and recommend to the Council and ASMFC Board commercial (annual quota, minimum fish size, and minimum mesh size) and recreational (possession and size limits and seasonal closures) measures designed to assure that the target mortality level is not exceeded. The Committee would also review the gear used to catch summer flounder to determine whether gear, other than otter trawls, needs to be regulated to help assure attainment of the fishing mortality rate target and propose such regulations as appropriate. The Director, Northeast Region, NMFS (Regional Director) would publish this proposal for public comment in the **Federal Register.** Following the review period, the Regional Director would set the final quota and other management measure adjustments for the year.

Commerical Management Measures

Commercial quota. The annual commercial quota would be set at a range of between 0 and the maximum allowed by the adopted fishing mortality rate reduction strategy. All landings by any vessel that has a commercial moratorium permit (permit to sell) would count against the quota, whether the summer flounder are caught with an otter trawl, a scallop dredge, hook and line, or any other gear. If the vessel does not have a commercial moratorium permit, the fish may not be sold and the recreational rules on size, possession, and season apply. Quotas would be distributed to the States based on their share of commercial landings for the period 1980–1989 minus any landings in that State in excess of the previous year's quota. The annual commercial quota would be based on the

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recommendations of the Committee to the Council and ASMFC Board. The Council and ASMFC Board would consider those recommendations and submit their recommendations to the Regional Director and the ASMFC. The Regional Director and the ASMFC would set the commercial quota annually. The commercial quota in 1992 would be a maximum of 11 million pounds assuming a minimum mesh size of 5.5 inches (13.97 cm), a minimum commercial fish size of 13 inches total length (TL) (33.2 cm), and a minimum recreational fish size of 14 inches TL.

It would be the responsibility of each State to assure that its quota is not exceeded. Each State must submit to the Council and Regional Director a plan setting forth the means by which the State will manage the quota, size limit, and mesh regulation. The Regional Director may prohibit taking summer flounder in the exclusive economic zone (EEZ) by fishermen of any State not in compliance with this FMP. The Regional Director would close the commercial fishery for summer flounder in the EEZ if the commercial fisheries for summer flounder have been closed in all coastal States.

Commercial fish size limitations. It would be illegal to possess summer flounder less than 13 inches TL (33.2 cm). It would be also illegal to possess parts of summer flounder less than 13 inches (33.2 cm) to the point of landing. The minimum fish size may be changed annually, if appropriate.

Minimum mesh requirement. Vessels using otter trawls may only fish with 5.5 inches (13.97 cm) minimum diamond mesh or 6 inches (15.24 cm) minimum square mesh, inside measure, applied throughout the cod end for at least 75 continuous meshes forward of the terminus of the net may take more than 100 pounds of summer flounder during the first year following FMP implementation. In the second and subsequent years, the minimum mesh size would apply throughout the entire net. Mesh would be allowed to be larger than the minimum size, but it could be no smaller than the minimum size. If the fish are landed in a State that has a larger minimum net mesh size, the State limit would prevail. States with minimum mesh regulations larger than those established in this FMP would be encouraged to maintain them.

Only nets of at least the legal size would be allowed on boats taking summer flounder. Any combination of mesh or liners that effectively decreases the mesh below the minimum size would be prohibited. Otter trawl vessels retaining more than 100 pounds of summer flounder may not have any net, or any piece of net not meeting the mesh size requirements, on board.

All summer flounder on vessels fishing with a mesh smaller than the legal minimum size must have any summer flounder on board boxed in a manner that facilitates enforcement personnel knowing whether the vessel has enough (100 pounds or more) summer flounder on board to meet the minimum mesh size cirterion. Any unboxed summer flounder on board a vessel fishing with a net smaller than the legal minimum would be considered a violation of this FMP. A box holds 100 pounds of summer flounder and is approximately 36 inches (91.44 cm) long, 15 inches (38.1 cm) wide, and 12 inches (30.48 cm) high (approximately 3.75 cubic feet).

The minimum net mesh size could be changed annually, if appropriate, following the Committee process. Based on recommendations of the Committee and Council, the Regional Director, by regulatory amendment, would implement regulations on gear other than otter trawls to achieve discards of summer flounder equivalent to the discards with otter trawls given the minimum net mesh requirements.

Recreational Fishery Measures

The recreational fishery throughout the management unit would be managed through a framework system that provides for an annual evaluation of possession limits, size limits, and seasonal closures. Clearly, within limits, there are various combinations of possession limits and seasons for a given size limit that would attain the fishing mortality rate target for a particular year. The length and timing of a seasonal closure are primary determinants in this consideration. Given the preceding and given a 14 inch (35.56 cm) minimum recreational fish size (whole fish or parts thereof), five optional possession limit and season combinations for the first year of FMP operation have been identified as follows:

(1) A 3-fish possession limit and no closed fishing season;

(2) A 5-fish possession limit and a fishing season from June 1 through December 31;

(3) A 6-fish possession limit and a fishing season from May 15 through September 30;

(4) A 7-fish possession limit and a fishing season from June 15 through December 31; or

(5) A 10-fish possession limit and a fishing season from July 1 through December 31.

The Council wishes comments on these optional ways of implementing this alternative.

On vessels with several passengers, the number of summer flounder contained on the vessel may not exceed the possession limit multiplied by the number of people aboard the vessel.

It is the responsibility of each State to assure that it implements measures compatible with the FMP. The Regional Director may prohibit landing summer flounder in the EEZ by recreational vessels (party, charter, and private boats) of any State not in compliance with this FMP. If the inaction of one or more States leads the Regional Director to conclude that the FMP will be adversely affected, he may close the entire EEZ to summer flounder fishing.

All hearings will begin at 7 p.m., except the New York hearings, which will begin at 7:30 p.m. The hearings will be tape recorded with tapes filed as the official transcript of the hearing:

The public hearings are scheduled as follows:

1. Monday, July 29, 1991—Kingsborough Community College, 2001 Oriental Blvd., Brooklyn, New York;
2. Monday, July 29, 1991—Quality Inn Lake Wright, 6280 Northampton Blvd., Norfolk, Virginia.
3. Tuesday, July 30, 1991—Holiday Inn Riverhead, Grand Ballroom Exit 72, LI Expressway & Rt. 25, Riverhead, LI, New York;
4. Tuesday, July 30, 1991—Elizabethan Inn, Raleigh Room, Routes 64 & 264, Manteo, North Carolina;
5. Wednesday, July 31, 1991—Seaport Inn, Route 6, Fairhaven, Massachusetts;
6. Wednesday, July 31, 1991—Carteret Comm. College, Joselyn Aud., 3505 Arendell Street, Morehead City, North Carolina;
7. Thursday, August 1, 1991—Dutch Inn, Great Island Road, Galilee, Rhode Island;
8. Thursday, August 1, 1991—Holiday Inn, Delaware Room, Rt. 11, Box 226, Salisbury, Maryland;
9. Tuesday, August 6, 1991—Cape May Extension Office, Dennisville Road, Cape May Court House, New Jersey; and
10. Tuesday, August, 1991—Wall Township Fire Hall, West Atlantic Avenue at Rt. 34, Wall, New Jersey.

Dated: July 19, 1991.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management; National Marine Fisheries Service.

[FR Doc. 91–17607 Filed 7–24–91; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Licensing information may be obtained by writing to: National Technical Information Service, Center for Utilization of Federal Technology—Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151. All patent applications may be purchased, specifying the serial number listed below, by writing NTIS, 5285 Port Royal Road, Springfield, Virginia 22161 or by telephoning the NTIS Sales Desk at (703) 487-4650. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Patent Licensing Specialist, Center for the Utilization of Federal Technology.

Department of Health and Human Services

7-279,584 (5,010,080) Use of Heterocyclic Amides to Inhibit Tumor Metastasis.

7-292,814 (4,994,370 Improved DNA Amplification Technique.

7-358,073 (5,021,450) New Class of Compounds Having a Variable Spectrum of Activities for Capsaicin-Like Responses, Compositions and Uses Thereof.

7-358,517 Human Cell Lines of Epithelial Lung Adenocarcinoma Origin, Human Proteins and Methods.

7-620,413 A Model for Designing Drugs Targeted Against HIV-1 Protease.

7-628,002 Derivatized Tris-Catechol Chelating Agents (for preparing radioactive conjugates for cancer diagnosis or therapy).

7-636,712 Immortalized Human Cell Lines (bronchial and mesothelial epithelial cells).

7-637,145 Therapeutic Application of an Anti-Invasion Compound (use of amino-1,2,3 triazoles for treating solid metastatic tumors).

7-638,512 A Method for In Vivo Recombination and Mutagenesis (using PCR).

7-642,971 Hepatic Growth Factor Receptor is the Met Proto-Oncogene.

7-654,971 Muscarinic Receptor Fusion Proteins and Subtype-Specific Antisera.

7-669,023 Increasing The Therapeutic Efficiency of Macrophage-Targeted Therapeutic Agents By Up-Regulating the Mannose Lectin on Macrophages (for Gaucher's disease).

7-670,605 A Simple Rapid and Reliable Method for Detecting Toxigenic Clostridium Difficile With Specificity (using PCR).

7-670,791 Expression of Influenza A and B Nucleoprotein [Antigens] in Baculovirus.

7-674,852 A Vaccine Against Hepatitis A.

7-678,828 Hepatitis A Virus Vaccine.

7-683,434 Recombinant HIV-1 Integrase DNA and Monoclonal Antibodies.

7-683,967 Method For Screening An Agent For Its Ability To Prevent Cell Transformation.

7-685,072 Method for Evaluating Contributions of Extrinsic and Intrinsic Coagulation Factors to a Factor Xa Assay.

7-685,408 Novel Reference Influenza Viruses and Antiviral Drug Susceptibility Methods (antiviral drug screening).

7-686,827 Method For Detecting Aqueous Flare and CMF Retinitis In HIV Patients.

7-687,526 Identification of a new Human Ehrlichia Species From A Patient Suffering From Ehrlichiosis.

7-691,191 Isolation of Macrophage Migration Inhibition Factor From Ocular Lens And DNA Which Encodes The Factor.

7-691,728 Novel Baculovirus Expression Vectors and Recombinant Antigens for Detecting Type-Specific Antibodies to Herpes Simplex Virus.

7-691,857 Rabies Virus N Protein Prepared From Baculovirus Expression System.

7-691,895 Dust Emissions Control Mechanism for Hand Sanders.

7-707,136 Oncoimmunins.

Department of Agriculture

7-192,084 (5,021,343) Method for Producing Trichothecenes.

7-212,641 (5,023,182) Novel Virus Composition to Protect Agricultural Commodities from Insects.

7-325,184 (5,021,076) Enhancement of Nitrogen Fixation with Bradyhizobium Japonicm Mutants.

7-450,192 (5,019,403) Coatings for Substrates Inclusing High Moisture Edible Substrates.

7-579,896 Recombinant ACC Synthase.

7-677,716 Method to Decrease Cortisol Secretion by Feeding Melengesterol Acetate.

7-695,167 Species-Specific DNA-DNA Hybridization Probe Prepared Using Chromosome Size DNA.

7-697,549 Sequential Oxidative and Reductive Bleaching and Dyeing in a Multicomponent Single Liquor System.

7-705,417 Anionically Dyeable Smooth-Dry Crosslinked Cellulosic Material Created by Treatment of Cellulose with Trifunctional or Tetrafunctional Quaternary Ammonium Compounds.

[FR Doc. 91-17614 Filed 7-24-91; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in the Republic of Korea

July 22, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: July 29, 1991.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-8041. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being reduced for carryforward used during the previous agreement period.

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7–579,896 Recombinant ACC Synthase.
7–677,716 Method to Decrease Cortisol Secretion by Feeding Melengesterol Acetate.
7–695,167 Species-Specific DNA–DNA Hybridization Probe Prepared Using Chromosome Size DNA.
7–697,549 Sequential Oxidative and Reductive Bleaching and Dyeing in a Multicomponent Single Liquor System.
7–705,417 Anionically Dyeable Smooth-Dry Crosslinked Cellulosic Material Created by Treatment of Cellulose with Trifunctional or Tetrafunctional Quaternary Ammonium Compounds.

[FR Doc. 91–17614 Filed 7–24–91; 8:45 am]

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Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being reduced for carryforward used during the previous agreement period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 51754, published on December 17, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 22, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 4, 1990, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, and man-made fiber textiles and textile products, produced or manufactured in the Republic of Korea and exported during the twelve-month period which began on January 1, 1991 and extends through December 31, 1991.

Effective on July 29, 1991, you are directed to amend further the directive dated December 4, 1990 to decrease the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Republic of Korea:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
200	376,234 kilograms.
625/626/627/628/629.	13,080,776 square meters.
Levels in Group II	
435	32,235 dozen.
444	50,247 numbers.
632	1,328,976 dozen pairs.
633/634/635	1,326,737 dozen of which not more than 150,450 dozen shall be in Category 633 and not more than 558,178 dozen shall be in Category 635.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1990.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91–17661 Filed 7–24–91; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Department of the Army

Record of Decision; Chemical Stockpile Disposal Program

AGENCY: Department of the Army, DOD.

ACTION: Availability of Record of Decision (ROD).

SUMMARY: This announces the availability of the Record of Decision regarding the destruction of the stockpile of lethal unitary chemical agents and munitions stored at the Anniston Army Depot (ANAD), Alabama. The Army has decided to construct and operate a full-scale disposal facility at ANAD using the Johnston Atoll Chemical Agent Disposal System (JACADS) reverse assembly and incineration technology.

SUPPLEMENTARY INFORMATION: Title 14, part B, section 1412 of Public Law 99–145 and subsequent legislation requires destruction of the U.S. stockpile of lethal unitary chemical agents and munitions by April 1997. To implement the Congressional directive, the Department of Army conducted a programmatic environmental review consistent with the National Environmental Policy Act and governing Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508). A Final Programmatic Environmental Impact Statement (FPEIS) was issued in January 1988.

The FPEIS addressed five alternatives: (1) Continued storage of the stocks at their present locations; (2) on-site disposal of the stocks at their present storage locations; (3) relocation of the stocks to regional disposal centers at Anniston Army Depot, Alabama, and Tooele Army Depot (TEAD), Utah, for destruction; (4) relocation of the stocks to a national disposal center at TEAD for destruction; and (5) relocation of the inventories at some specific sites to alternative sites, with the remainder destroyed at their present storage locations. The FPEIS identified the on-site disposal option as the environmentally preferred alternative and concluded that the stockpile of chemical agents and munitions stored in the continental U.S. can be destryoed in a safe, environmentally acceptable manner.

In its programmatic Record of Decision (53 FR 5816, February 26, 1988), the Department of Army selected on-site incineration as its preferred alternative. In making that decision, the Army noted that environmental impacts, including the hazards and risk analyses presented in the FPEIS, were a contributing but not determining factor in the decision. Other factors considered included the feasibility and effectiveness of emergency response measures, vulnerability to terrorism and sabotage, and logistical complexity. In addition, incineration was endorsed by the National Research Council as the best and safest means of destroying these lethal chemical agents.

Subsequent to issuance of the FPEIS and the attendant Record of Decision, the Army gave further consideration to the validity of the programmatic decision for on-site disposal of the ANAD stockpile in a Phase I Environmental Report, issued in February 1990. The report used recently collected site-specific data to examine the suitability of on-site disposal of agents and munitions stored at ANAD. The report also examined resource data for the ANAD vicinity to determine whether significant resources are present that could affect implementation of on-site disposal at ANAD. No new or unique site-specific information was found that would change or contradict the conclusions of the FPEIS for ANAD.

On April 13, 1990, the findings and conclusions of the Phase I Environmental Report and an independent review (which concurred with the findings of the report) were certified to Congress. After the submission of certification, the Army initiated the preparation of the Final Environmental Impact Statement (EIS) for the Disposal of Chemical Agents and Munitions Stored at ANAD. As presented in the Final EIS, the Department of Army's proposed action is to implement the programmatic decision of on-site destruction of the lethal unitary chemical agents and munitions stockpiled at the ANAD. This action entails construction and operation of a destruction facility based on the JACADS incineration technology and experience. The alternatives considered in the site-specific EIS, based on the information and conclusions presented in the Programmatic EIS and the Phase I reports, included on-site locations for the destruction facility and the "no action" alternative of indefinite storage of the ANAD stockpile. Because of the Congressional directive to destroy the stockpile and hazards associated with continued storage, the "no action" alternative is not a viable long-term option.

The ROD selects the site located at the north central portion of the depot, near the northwest corner of the existing chemical munitions storage area for the construction of the chemical disposal facility at ANAD. This site was both the Army preferred site and the environmentally preferred alternative because it best meets the criteria of safety to the off-post communities, minimizes the transportation distance from the storage area, minimizes exposure to potential earthquakes, and minimizes interferences with other activities at the Depot. Construction of the disposal facility is expected in late 1992 or early 1993 and construction will take about 31 months to complete.

The Army will adopt all practicable means to avoid or minimize environmental harm from the alternative selected. Measures to mitigate both the likelihood and consequence of severe accidents will be incorporated in the facility design and operating procedures as delineated in the Final EIS for Anniston. A major program is also under way to enhance emergency preparedeness at ANAD and contiguous areas. The program is intended to mitigate the human health impacts of catastrophic accidents from both storage and disposal operations.

Before operations begin, a four-month design and procurement verification period will be included in the program to incorporate changes resulting from the JACADS program. Prior to toxic operations, there will be a period of preoperational checkout, training, and integrated systems operation under mock conditions with simulant munitions (without agent). All state and federal regulations will be complied with before and during disposal operations. Once toxic agent operations are initiated, destruction of the stockpile is expected to take approximately 38 months based on a 24-hour day, five-day per week schedule.

CONCLUSION: The Department of Army has weighed the costs, benefits, schedule, and environmental impacts in its decision to destroy the stockpile of lethal unitary chemical agents and munitions stored at ANAD. Through this analysis, the Department of Army has selected construction and operation of a JACADS-type reverse assembly and incineration facility at ANAD. This alternative is the best choice from a public health and environmental perspective.

Interested individuals may obtain copies of the Record of Decision by contacting the Program Manager for Chemical Demilitarization, Attn: SAIL-PMI (Ms. Marilyn Tischbin), Aberdeen Proving Ground, Maryland 21010-5401.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I, L&E).

[FR Doc. 91-17684 Filed 7-24-91; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested parties are invited to submit comments on or before August 26, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above.

Dated: July 19, 1991.

Mary P. Liggett,

Acting Director, Office of Information Resources Management.

Office of Postsecondary Education

Type of Review: Extension.

Title: Certification of Projects Costs for College Facilities Programs.

Frequency: One time only.

Affected Public: Non-profit institutions.

Reporting Burden:

Reponses: 50.

Burden Hours: 50.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: Institutions of higher education that have participated under the College Facilities Program are required to submit information on the costs incurred during project construction.

[FR Doc. 91-17635 Filed 7-24-91; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No: 84.004C]

Desegregation of Public Education Program for State Educational Agencies; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1992

Purpose of Program: To enable State educational agencies (SEAs) to provide technical assistance and training, at the request of school boards and other responsible governmental agencies, on issues related to race, sex, and national origin desegregation of public schools.

Eligible Applicants: SEAs that either (1) do not have an award under the Desegregation of Public Education Program; or (2) have a Desegregation of Public Education Program award with a one-year project period that expires on June 30, 1992 are eligible under this announcement. SEAs that are eligible for noncompeting continuation awards will receive separate information at a later date about procedures for submitting applications for continuation awards.

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Filed 7–24–91; 8:45 am]
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ORMATION CONTACT:
02) 708–5174.

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Dated: July 19, 1991.

Mary P. Liggett,

Acting Director, Office of Information Resources Management.

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  Reponses: 50.
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  Recordkeepers: 0.
  Burden Hours: 0.

Abstract: Institutions of higher education that have participated under the College Facilities Program are required to submit information on the costs incurred during project construction.

[FR Doc. 91–17635 Filed 7–24–91; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No: 84.004C]

Desegregation of Public Education Program for State Educational Agencies; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1992

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Eligible Applicants: SEAs that either (1) do not have an award under the Desegregation of Public Education Program; or (2) have a Desegregation of Public Education Program award with a one-year project period that expires on June 30, 1992 are eligible under this announcement. SEAs that are eligible for noncompeting continuation awards will receive separate information at a later date about procedures for submitting applications for continuation awards.

Deadline for Transmittal of Applications: October 30, 1991.

Deadline for Intergovernmental Review: December 29, 1991.

Applications Available: August 30, 1991.

Available Funds: The Administration has requested $14,133,000 for grants to SEAs, of which approximately $812,000 is expected to be available for new awards. However, the actual level of funding is contingent upon final Congressional action. The Department is publishing this notice in order to give potential applicants adequate time to prepare applications.

Estimated Range of Awards: $80,000 to $55,000.

Estimated Average Size of Awards: $270,667.

Estimated Number of Awards: 3.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 2 years.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, and 86, except that 34 CFR 75.200 through 75.217 (relating to the evaluation and competitive review of grants) do not apply to grants awarded under 34 CFR part 271; and (b) The regulations for this program in 34 CFR parts 270 and 271.

For Applications or Information Contact: Sylvia Wright, U.S. Department of Education, 400 Maryland Avenue SW., room 2059, Washington, DC 20202–6246. Telephone: (202) 401–0358. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 42 U.S.C. 2000c–2000c–2, 2000c–5.

Dated: July 18, 1991.

John T. MacDonald,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 91–17709 Filed 7–24–91; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Environmental Restoration and Waste Management

Draft Request for Proposal; Invitation for Public Comment

AGENCY: Office of Environmental Restoration and Waste Management, Department of Energy.

ACTION: Request for comments on draft Request for Proposal (RFP) number DE–RPO6–910R21972, Environmental Restoration Management Contractor (ERMC) at the Feed Materials Production Center (FMPC).

SUMMARY: The U.S. Department of Energy (DOE) invites comments concerning this draft RFP.

Note: Proposals should not be submitted in response to this draft RFP but to the final RFP which will be issued at a later date.

Any comments regarding the ERMC concept, the practicality of this draft RFP or contract provisions, and suggestions or improvements and their application to the work at Fernald will be considered in the preparation of the final RFP. The Department is also interested in comments and ideas on the nature and overall structure of the relationship between the DOE and the ERMC that should be established through any contract awarded from such an RFP.

In implementing a new contracting strategy, the DOE is seeking unique and innovative approaches to the management, technical implementation, and cost control of environmental restoration (ER) activities, including new performance-based incentives to reward the contractor. The ERMC will be the prime contractor at the FMPC, responsible for management of the cleanup of the FMPC and the RMI Titanium Company Extrusion Plant (RMI) site at Ashtabula, Ohio. The ERMC's principal responsibility will be ER assessment and remediation. It will also be responsible for decontamination and decommissioning activities, and base program activities such as waste management, safe shutdown, environmental monitoring, and utilities operation.

The Statement of Work (SOW) is set forth in Section J of the draft RFP. The SOW envisions the ERMC as the overall Manager of the ER program. The ERMC will have the option of performing the Remedial Investigations/Feasibility Studies and/or base program activities, either with its own forces or by subcontracting.

Notification of the intention to release the draft RFP for comment was published in the Commerce Business Daily (CBD) on April 30, 1991 and May 8, 1991. Those who have responded to the CBD announcements will not need to send another request.

FOR FURTHER INFORMATION CONTACT: Persons interested in providing comments may obtain a copy of the draft RFP by writing to: U.S. Department of Energy, DOE Field Office, Oak Ridge, Attn: Barbara J. Jackson, 200 Administration Road, P.O. Box 2001, Oak Ridge, TN 37831–8758.

DATES: Comments must be received not later than August 30, 1991. Comments received after this date may not be considered.

Berton J. Roth,

Acting Director, Office of Procurement, Assistance and Program Management.

[FR Doc. 91–17716 Filed 7–24–91; 8:45 am]

BILLING CODE 6450–01–M

Finding of No Significant Impact (FONSI); Radioisotope Heat Source Fuel Processing and Fabrication

AGENCY: Department of Energy.

ACTION: Finding of no significant impact.

SUMMARY: DOE has prepared an Environmental Assessment (EA), DOE/EA–0534, for radioisotope heat source fuel processing and fabrication involving existing facilities at the Savannah River Site (SRS) near Aiken, South Carolina and the Los Alamos National Laboratory (LANL) near Los Alamos, New Mexico. The proposed action is needed to provide Radioisotope Thermoelectric Generators (RTG) to support the National Aeronautics and Space Administration's (NASA) CRAF and Cassini Missions. Based on the analysis in the EA, DOE has determined that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 *et seq*. Therefore, an Environmental Impact Statement is not required.

FOR FURTHER INFORMATION CONTACT: Single copies of the EA (DOE/EA–0534) are available from: Mr. Edward Mastal, U.S. Department of Energy, Office of Special Applications, Mail Stop NE–53, Washington, DC 20545, phone: (301) 353–4362.

For further information on the NEPA process, contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight, U.S. Department of Energy, Washington, DC 20585, phone: (202) 586–4600.

PROPOSED ACTION: The proposed action is for the U.S. Department of Energy (DOE) to operate existing plutonium–238 (Pu-238) processing facilities at the Savannah River Site (SRS), and fabricate a limited quantity of Pu-238 heat source units at an existing Pu-238 research and development facility at the Los Alamos National Laboratory (LANL). The proposed action includes facilities used in the Pu-238 fuel processing and fabrication from the point at which existing inventories of Pu-238 oxide can be dissolved and re-blended at SRS to the point at which the fabricated Pu-238 fuels forms are shipped from LANL for final integration into end-use system components. The purpose of the proposed action is to enable DOE to provide the required supplies of Pu-238 fuel in a fabricated form to support NASA's near-term CRAF/Cassini missions. The proposed action would be accomplished in two stages, involving specific facilities as follows:

- *Stage I:* Conducted within the existing SRS processing facilities in the 221-HB-Line located in the H-Area Canyon Building, including the Scrap Recovery Facility and the Plutonium Oxide Facility. The facilities would be used to re-blend existing inventories of Pu-238 into a uniform blend suitable for use.
- *Stage II:* Conducted within the existing LANL Plutonium Handling Facility Building 4 (PF–4) at Technical Area 55 (TA–55). This facility would be used to fabricate Pu-238 oxide into iridium-clad capsules used in the General Purpose Heat Source (GPHS) Radioisotope Thermoelectric Generator (RTG) and into Light-Weight Radioisotope Heater Units (LWRHUs). This work would be undertaken during the time period of approximately 1991 through 1994 in support of the next two NASA near-term missions. The required facility space, most of the equipment, and personnel are currently available for Pu-238 fabrication. Comparable work has been previously performed in this facility.

ALTERNATIVES: Three alternatives are identified in the EA as follows:

- *Fabrication Alternatives:* An alternative to using the PF–4 facility at LANL to satisfy Pu-238 fabrication needs is to use the Plutonium Fuel Form (PuFF) Facility located in F-Area Building 235 at SRS. However, the PuFF Facility needs refurbishment that would require at least several years to complete, and could not meet the near-term requirements to satisfy Pu-238 application needs.
- *Construct New Building and Facility:* An alternative that could potentially meet the need for Pu-238 fabrication and achieve the purpose of DOE's proposed action is the construction of a new building and facilities to replace, rather than refurbish, the existing Building 235–F and the PuFF facility that it houses. However, this could not be accomplished within the time frame needed to satisfy Pu-238 application requirements.
- *No Action:* In accordance with NEPA, the "no action" alternative is included to provide a baseline condition from which to evaluate the potential environmental impact of the proposed action. This alternative, by definition, would consist of DOE taking no action to operate the subject facilities to produce the Pu-238 fuel forms. It would result in a failure to meet both the purpose of and the need for the proposed action.
- *Other Alternatives:* None of the alternatives considered to the proposed action would provide Pu-238 in sufficient quantity and fabricated form on a schedule that would allow DOE to satisfy Pu-238 requirements for near-term NASA space missions. The action proposed in this EA will enable NASA to consider all alternatives for the CRAF/Cassini missions.

ENVIRONMENTAL IMPACTS: The EA analyzes for both RTG fuel processing (Stage I) at SRS, and fabrication (Stage II) at LANL, the environmental impacts on land use, on-site population, cultural and historical resources, transportation, air quality, water quality, radiation doses to the public and workers, vegetation, wildlife, and floodplains and wetlands. Both routine activities and potential accidents are considered. The impacts are compared to overall activities at SRS and LANL.

The proposed action is not expected to result in any land use impacts at SRS or LANL, as all required buildings and structures exist. Most of the personnel required for operations are currently employed at SRS and LANL. Thus, socioeconomic and traffic impacts are expected to be small. The proposed action is not expected to affect any sensitive areas such as floodplains, wetlands, habitats of State or Federally listed threatened or endangered species, sole-source aquifers, or cultural resources. Waste management and radiological impacts associated with the proposed actions at SRS and LANL are described below:

- *Stage I:* The projected annual volumes of transuranic (TRU) waste and low-level radioactive waste (LLW) to be generated at SRS resulting from facility operations as part of the proposed action represent less than 8 and 1.3 percent, respectively, of the TRU waste and LLW generated at SRS on an annual (1988) basis. Existing TRU and LLW waste management facilities at SRS were designed to handle wastes generated by all SRS facilities, including the operation of the HB-Line; therefore, there will be no additional burden on existing waste handling capacity by implementation of the proposed action at SRS. Any hazardous or radioactive-mixed wastes associated with operations will be handled in accordance with Resource Conservation and Recovery Act (RCRA) guidelines.

Radiological doses to the offsite population for all SRS 1988 atmospheric releases have been estimated to be 21 person-rem and 4.6E–04 rem to the offsite maximally-exposed individual. The proposed action will result in a conservatively estimated offsite does increase of less than 1 percent. The overall radiological doses to the offsite population would be well within those specified by DOE Orders (less than 0.1 rem) and EPA Clean Air Act and Safe Drinking Water Act standards (less than 0.01 rem and 0.004 rem, respectively). For comparison, the doses from natural background radiation and all other non-SRS sources to the offsite population living within an 80 kilometer radius of SRS are 165,000 person-rem per year, and the doses to an individual living in the SRS regional area is 0.3 rem per year.

Exposure of operating personnel to radiation during normal operations will be monitored as part of the SRS health physics program. Normal operating procedures require that operating personnel wear dosimeters, which measure the radiation exposure received while on the SRS. Individual worker exposures would be limited to, and maintained below, 3 rem per year.

All nonreactor nuclear facilities associated with the processing of Pu–238 at SRS have been analyzed to identify potential accidents and abnormal events, and their consequences to SRS personnel and the public. Abnormal events include those events, such as certain maintenance and changeout operations, that do not occur on a continuous basis during normal operations. The potential for radioactivity releases due to abnormal events at the Scrap Recovery Facility involve low-energy events. Process equipment leaks, transfer errors, overflows, and spills were found to be the major contributors to risk, with a combined expected frequency of 0.2.1 per year. These accidents could result in a dose to the maximally-exposed individual of 7.6E–03 rem. The doses to the onsite population would be 17 person-rem and to the offsite population, 62 person-rem. For the Plutonium Oxide Facility, a low-energy accident with a failure of both HEPA filters was determined to be the largest contributor to risk, with an expected frequency of 6.0E–02 per year. This scenario could result in a dose to the maximally-exposed individual of 2.7E–04 rem. The doses to the onsite population would be 0.6 person-rem and to the offsite population, 2.1 person-rem.

- *Stage II:* Radiological liquid wastes produced from the proposed action at LANL would be treated at the Radioactive Liquid Waste Treatment Plant. The project would increase the liquid flow into the facility by less than 0.0001 percent and the plutonium by about 3 percent. The discharges remain onsite and would not contaminate offsite waters or the deep potable aquifer. The proposed action would increase the amount of TRU waste generated at LANL by approximately 4 percent. Any hazardous or radioactive-mixed waste associated with operations will be handled in accordance with RCRA guidelines.

Radiological dose to the offsite population living within 80-kilometers of LANL from all 1989 LANL releases has been estimated to be 3.1 person-rem and the dose to the offsite individual nearest the location of the proposed action is 0.0001 rem. The proposed action would result in an estimated offsite dose increase of less than 0.00002 percent. The overall radiological doses to this offsite population is maintained well within those specified by DOE Orders (less than 0.1 rem) and EPA Clean Air Act and Safe Drinking Water Act standards (less than 0.01 rem and 0.004 rem, respectively). For comparison, the doses from natural background radiation and all other non-LANL sources to the offsite population living within 80 kilometers of LANL is 68,200 person-rem per year and the doses to an individual living within the region is 0.34 rem per year. Personnel working with this project in PF–4 will be included in the health physics monitoring program maintained at TA–55. Although all work will be performed in extensively shielded glove boxes, some of the energetic decay products penetrate the shielding and cause some exposure to the workers. Individual worker exposures are limited to and maintained below 3 rem per year.

For the proposed action, accident scenarios that could cause radioactive material to be released into the work area in PF–4 and the environment are evaluated that describe a high-probability, low-consequence event (airborne release from contaminated equipment) and a low-probability, high-consequence event (fire that breaches the glove box line) to represent the range of credible accidents. During routine maintenance of contaminated equipment, glove box window change, or waste bag-out, a handling error could occur and plutonium-238 could be released into the PF–4 laboratory. The maintenance-related accidental release could cause an individual who happened to be at the Pajarito Road site boundary, 200 meters away, to receive a dose of 2.3E–11. The dose to the population living within 80 kilometers of LANL would be 2.8E–07 person-rem. The fire breach scenario considers a fire in one of the glove boxes. The probability of this type of accident is estimated to be 1E–04 to 1E–06 per year; such an accident has never occurred in PF–4. When conservative assumptions are used, the fire-related release could cause an individual at the site boundary to receive a dose of 0.37 rem. The dose to the population living within 80 kilometers of LANL would be 4.7 person-rem.

The protection of the public and transport workers from hazards associated with the shipment of the Pu–238 is achieved by a combination of limitations on the contents, the package design, and the method of shipment. All of these aspects are regulated at the Federal level by the Department of Transportation (DOT). In addition, certain aspects, such as limitations on gross weight of trucks, are regulated by the States. The certified packages are designed to remain leak-tight under normal conditions of transport. The packages are also designed to provide sufficient radiation shielding under normal conditions. All shipments will be made according to DOT standards which limit the dose rate at the surface of the transportation container to 0.2 rem per hour.

However, the actual dose rates to personnel in any normally occupied position in the transport vehicle will not exceed 0.002 rem per hour. The certified packages are designed to minimize any leakage of material in accident situations. Prototypes of certified shipping packages must survive an extensive postulated accident test sequence consisting of impact, puncture, and fire testing, as well as an immersion test in water. Packages designed to carry Pu–238 must be shown to have a post-accident leak-rate not exceeding 0.003 Curies per week. In addition, the packages are designed to maintain adequate radiation shielding under accident conditions.

DETERMINATION: Based on the analysis in the EA, the proposed RTG processing at SRS and fabrication of fueled source units at LANL as RTG components and LWRHUs do not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, U.S.C. 4321 et seq.

Therefore, an Environmental Impact Statement is not required.

Issued this 19th day of July, 1991.

Paul L. Ziemer,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 91–17717 Filed 7–24–91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP88–312–008]

Natural Gas Pipeline Company of America; Sale of Natural Gas

July 12, 1991.

Take notice that on May 2, 1991, Natural Gas Pipeline Company of America (Natural), 701 East Lombard Street, Lombard, Illinois, 60148–5072, submitted the following information regarding the sale of natural gas to be made to an affiliate under Natural's Rate Schedule IS–1, pursuant to the authorization granted by order in Docket Nos. CP88–312–000 and CP88–312–002, issued December 20, 1988, and June 7, 1989, respectively (45 FERC 61,465 and 47 FERC 61,334).

(1) Name of Buyer: MidCon Marketing Corporation (MCM).

(2) Location of Buyer: Lombard, Illinois.

(3) Affiliation between Natural and Buyer: Natural is a subsidiary of MidCon Corp (MidCon). Both MidCon and MCM are subsidiaries of Occidental Petroleum Corporation.

(4) Term of Sale: June 1, 1991, through 1, 1991, and month to month thereafter.

(5) Estimated Total and Maximum Daily Quantities: Daily Quantity: 50,000 MMBtu. Estimated Total: 18,250,000 MMBtu.

(6) Maximum sales rate: $2.0975 per MMBtu. Minimum sales rate: $1.5179 per MMBtu. Rate to be charged during billing period: $1.60 per MMBtu.

Any interested party desiring to make any protest with reference to this sale of natural gas should file with the Federal Energy Regulatory Commission, Washington, DC 20426, within 30 days after issuance of the instant notice by the Commission, pursuant to the orders of December 20, 1988, and June 7, 1989. If no protest, the proposed sale may continue until the underlying contract expires. If a protest is filed, Natural may sell gas for 120 from the date of commencement of service or until a termination order is ordered, whichever is earlier.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17625 Filed 7-24-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP91-33-005 and RP91-35-002]

ANR Pipeline Co.; Report of Refunds

July 19, 1991.

Take notice that the ANR Pipeline Company (ANR) on June 18, 1991, tendered for filing with the Federal Energy Regulatory Commission (Commission) its Report of Refunds summarizing the refund made to gas sales customers on May 24, 1991, pursuant to a May 10, 1991, Commission order approving ANR's Stipulation and Agreement dated February 12, 1991, and a settlement issued March 1, 1991, in Docket Nos. RP91-33-000 and RP91-35-000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such protests should be filed on or before July 26, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to the proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17629 Filed 7-24-91; 8:45 am]

BILLING CODE 6717-01-M

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 19, 1991.

Take notice that Columbia Gas Transmission Corporation (Columbia) on July 11, 1991, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective August 1, 1991.

Substitute First Revised Sub Eleventh Revised Sheet No. 26
Substitute First Revised Sub Eleventh Revised Sheet No. 26A
Substitute First Revised Sub Eleventh Revised Sheet No. 26B

Columbia states that the instant filing is being made to correct certain minor clerical errors on the above listed tariff sheets, and that the total effective rates do not change as a result of the corrections.

Columbia states that copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure. All such motions or protests should be filed on or before July 26, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17630 Filed 7-24-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-160-001]

Columbia Gulf Transmission Co.; Compliance Filing

July 19, 1991.

Take notice that on July 12, 1991, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing copies of workpapers which show the allocation factors and how Columbia Gulf allocates its total system costs to each zone, and the detail of each zone's cost of service, in compliance with Ordering Paragraph (j) of the Commission's suspension order issued June 28, 1991.

Copies of this filing were served upon Columbia Gulf's jurisdictional customers, interested State Commissioners, and upon each of the parties set forth on the official service list in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's rules of practice and procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before July 26, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17626 Filed 7-24-91; 8:45 am]

BILLING CODE 6717-01

Florida Gas Transmission Co.; Petition for Limited Waiver

July 19, 1991.

Take notice that on July 15, 1991, Florida Gas Transmission Company (FGT) filed a petition for a limited waiver of §§ 154.302(j) and 157.202(b)(4) of the Commission's regulations. FGT requests that the Commission grant FGT a limited waiver of §§ 154.302(j) and 157.202(b)(4) of the Commission's regulations for a one-year period beyond October 15, 1991, the expiration date of the existing waiver granted by letter order dated October 10, 1990.

FGT states that such waiver would permit FGT to include in its purchased gas adjustment filings the flow through of costs of liquid gas and liquified natural gas (LNG) that FGT may purchase to maintain competitively-priced service on the FGT system.

FGT states that granting the requested waiver will enable its customers to benefit from the lower weighted average cost of gas and the accompanying benefits of maintaining a high load profile on the FGT system. FGT states that granting the requested waiver is in the public interest.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before July 26, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

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Lois D. Cashell,

Secretary.

[FR Doc. 91-17626 Filed 7-24-91; 8:45 am]

BILLING CODE 6717-01

Florida Gas Transmission Co.; Petition for Limited Waiver

July 19, 1991.

Take notice that on July 15, 1991, Florida Gas Transmission Company (FGT) filed a petition for a limited waiver of §§ 154.302(j) and 157.202(b)(4) of the Commission's regulations. FGT requests that the Commission grant FGT a limited waiver of §§ 154.302(j) and 157.202(b)(4) of the Commission's regulations for a one-year period beyond October 15, 1991, the expiration date of the existing waiver granted by letter order dated October 10, 1990.

FGT states that such waiver would permit FGT to include in its purchased gas adjustment filings the flow through of costs of liquid gas and liquified natural gas (LNG) that FGT may purchase to maintain competitively-priced service on the FGT system.

FGT states that granting the requested waiver will enable its customers to benefit from the lower weighted average cost of gas and the accompanying benefits of maintaining a high load profile on the FGT system. FGT states that granting the requested waiver is in the public interest.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before July 26, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17631 Filed 7-24-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-4-46-000]

Kentucky West Virginia Gas Co.; Proposed Change in FERC Gas Tariff

July 19, 1991.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on July 15, 1991, resubmitted for filing with the Federal Energy Regulatory Commission (Commission) a quarterly PGA filing, which includes Thirtieth revised sheet No. 41 to its FERC Gas Tariff, Second Revised Volume No. 1, to become effective August 1, 1991. Kentucky West states that the revised tariff sheet reflects a decrease from Kentucky West's last scheduled purchased gas adjustment filing of $.2835 in the average cost of purchased gas, resulting in a Weighted Average Cost of Gas of $1.0691, and a Deferred Gas Cost Adjustment of ($.0443) in accordance with the Federal Energy Regulatory Commission's regulations.

Kentucky West states that effective August 1, 1991, pursuant to its obligations under various gas purchase contracts, it has specified a total price that it will pay of $1.0501 per dth, inclusive of all taxes and any other production-related cost add-ons.

Kentucky West requests that the Commission waive its 30-day notice requirement, pursuant to § 154.51 of the Commission's regulations, to allow this resubmitted filing to become effective August 1, 1991, as originally proposed.

Kentucky West states that a copy of its filing has been served upon each of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's rules of practice and procedure. All such motions or protests should be filed on or before July 26, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17632 Filed 7-24-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-198-000]

United Gas Pipe Line Co.; Proposed Changes in FERC Gas Tariff

July 19, 1991.

Take notice that United Gas Pipe Line Company (United) on July 16, 1991 tendered for filing as part of its Second Revised Volume No. 1 FERC Gas Tariff, fourteen copies each of the following tariff sheets which United proposes to be effective on:

Tariff Sheet and Effective Date

Third Revised Sheet No. 4J—01-01-88
Second Revised Sheet No. 4J.1—01-01-88
Second Revised Sheet No. 4J.2—01-01-88
Second Revised Sheet No. 4J.3—01-01-88
Second Revised Sheet No. 4J.4—01-01-88
Second Revised Sheet No. 4J.5—01-01-88
Fourth Revised Sheet No. 4J—11-01-88
Third Revised Sheet No. 4J.1—11-01-88
Third Revised Sheet No. 4J.2—11-01-88
Third Revised Sheet No. 4J.3—11-01-88
Third Revised Sheet No. 4J.4—11-01-88
Fifth Revised Sheet No. 4J—04-01-89
Fourth Revised Sheet No. 4J.1—04-01-89
Fourth Revised Sheet No. 4J.2—04-01-89
Fourth Revised Sheet No. 4J.3—04-01-89
Fourth Revised Sheet No. 4J.4—04-01-89
Sixth Revised Sheet No. 4J—04-01-90
Fifth Revised Sheet No. 4J.1—04-01-90
Fifth Revised Sheet No. 4J.2—04-01-90
Fifth Revised Sheet No. 4J.3—04-01-90
Fifth Revised Sheet No. 4J.4—04-01-90
Third Revised Sheet No. 4L—04-01-90
Seventh Revised Sheet No. 4J—08-15-91
Sixth Revised Sheet No. 4J.1—08-15-91
Sixth Revised Sheet No. 4J.2—08-15-91
Sixth Revised Sheet No. 4J.3—08-15-91
Sixth Revised Sheet No. 4J.4—08-15-91
Third Revised Sheet No. 4J.5—08-15-91
Third Revised Sheet No. 4J.6—08-15-91
Third Revised Sheet No. 4J.7—08-15-91
Original Sheet No. 4J.8—08-15-91
Original Sheet No. 4J.9—08-15-91
Original Sheet No. 4J.10—08-15-91
Original Sheet No. 4J.11—08-15-91

The above referenced tariff sheets are being submitted to implement a revised allocation methodology for recovery of United's Take-or-Pay buyout buydown costs pursuant to Commission Order Nos. 528 and 528A, and in response to the Commission's order in Docket No. RP85-209-028, *et al.*, in which the Commission rejected the Take-or-Pay provisions of United's settlement agreement.

United states that copies of the filing were served upon all of its sales customers, interested State Commissions and each person listed on the official service list compiled by the Secretary in these proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street NE., Washington DC 20426 by July 30, 1991, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate actions to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to be come a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17627 Filed 7-24-91; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-00109; FRL-3935-7]

Forum on State and Tribal Toxics Action (FOSTTA); Coordinating Committee and Teams; Open Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Coordinating Committee and the four Teams of the Forum on State and Tribal Toxics Action (FOSTTA) will hold meetings at the times and places listed below in this notice. The meetings are open to the public.

DATES: The meetings are scheduled as follows:

1. The Coordinating Committee and all the Teams will hold a meeting September 9 and 10.
2. The Teams will meet September 9 from 8:30 a.m. to 5 p.m. and September 10 from 8:30 a.m. to noon.
3. The 33/50 Team will meet separately July 28 from 7:30 p.m. to 9:30 p.m. and July 29 from 8 a.m. to 4:15 p.m.
4. The State Enhancement/Decentralization Team will meet separately July 29 from 8:30 a.m. to 5 p.m. and July 30 from 8:30 a.m. to noon.
5. The TRI Team will meet separately August 5 from 8 a.m to 6 p.m. and August 6 from 8 a.m. to 1:30 p.m.

ADDRESSES: The meetings scheduled for September 9 and 10 will be held at: The Holiday Inn, 480 King St., Alexandria VA. For location sites for the other meetings, contact Curtis Fox at the telephone number listed below.

FOR FURTHER INFORMATION CONTACT: By mail: Curtis Fox, Office of Compliance Monitoring (EN-342), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, or Sarah Hammond, Office of Toxic Substances (TS-799), at the same address. By telephone: Curtis Fox can be reached at (202) 475-8318 and Sarah Hammond at (202) 382-7258.

SUPPLEMENTARY INFORMATION: FOSTTA, a group of State toxics environmental managers, is intended to foster the exchange of toxics-related program and enforcement information among the States and between the States and U.S. EPA's Office of Pesticides and Toxic Substances (OPTS). FOSTTA currently consists of the four issue-specific Teams listed above, and the Coordinating Committee, which manages the Teams.

Dated: July 19, 1991.

Michael M. Stahl,

Director, Office of Compliance Monitoring.

[FR Doc. 91-17694 Filed 7-24-91; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

Type: Extension of 3067-0031.

Title: Federal Crime Insurance Program.

Abstract: Homeowners, tenants, and business owners use the following FEMA forms to obtain affordable crime insurance under the federally-subsidized Federal Crime Insurance Program: FEMA Form 81-12, Application for Residential Crime Insurance Policy, and FEMA Form 81-14, Application for Commercial Crime Insurance Policy. Insureds are required to submit FEMA Form 81-46, Crime Insurance Sworn Statement and Proof of Loss, to be paid for financial losses from burglary and robbery. They also use FEMA Form 81-51, Policy Change Request, to request changes to their policies. Currently, Federal crime insurance is available in the following States or jurisdictions: Alabama, California, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Kansas, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Tennessee, and the Virgin Islands.

Type of Respondents: Individuals, Non-profit institutions, or other for-profit, Non-profit institutions, and Small businesses or organizations..

Estimate of Total Annual Reporting and Recordkeeping Burden: 3,405 Hours.

Number of Respondents: 5,482.

Estimated Average Burden Hours Per Response: .66 Hours.

Frequency of Response: Other.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Borror (202) 646-2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: The FEMA Clearance Officer at the above address; and to Gary Waxman (202) 395-7340, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503 within four weeks of this notice.

Dated: July 8, 1991.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 91-17672 Filed 7-24-91; 8:45 am]

BILLING CODE 6718-01-M

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

Type: Revision of 3067-0120.

Title: Implementation of Coastal Barrier Resources Act.

Abstract: Section II of the Coastal Barrier Resources Act, Public Law 97-348, as amended by Public Law 101-591, prohibits the sale of National Flood Insurance Program (NFIP) policies for buildings which have been newly constructed or substantially improved on undeveloped coastal barriers on or after October 1, 1983. The information required by title 44 of the Code of Federal Regulations, § 71.4, is used by FEMA to determine that a building which is located on a designated coastal barrier and for which application for flood insurance is being made, is neither new construction or substantial improvement, and is therefore, eligible for NFIP coverage.

Type of Respondents: Individuals and households, State or local governments, farms, businesses or other for-profit, federal agencies or employees, non-profit institutions, and small businesses or organizations.

Estimate of Total Annual Reporting and Recordkeeping Burden: 75.

Number of Respondents: 50.

Estimated Average Burden Hours Per Response: 1.5 Hours.

Frequency of Response: One-time, upon application for flood insurance.

Copies of the above information collection requirement and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Borror (202) 646-2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: The FEMA Clearance Officer at the above address; and to Gary Waxman (202) 395-7340, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503 within four weeks of this notice.

Dated: July 5, 1991.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 91-17673 Filed 7-24-91; 8:45 am]

BILLING CODE 6718-01-M

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

Type: New collection.

Title: Mortgage Portfolio Protection Program.

Abstract: The Mortgage Portfolio Protection Program (MPPP) is a mechanism by which lending institutions, mortgage servicing companies and others servicing mortgage loan portfolios can bring their mortgage loan portfolios into compliance with the flood insurance purchase requirements of the Flood Disaster Protection Act of 1973. Implementation of the various requirements of the MPPP should result in mortgagors, following receipt of notification of the need for flood insurance, showing evidence of such a policy or purchasing the necessary coverage through their local insurance agent or appropriate Write Your Own (WYO) company. It is intended that flood insurance policies be written under the MPPP only as a last resort, and only on mortgages whose mortgagors have failed to respond to the various notifications required by the program.

Type of Respondents: Individuals or households, State or local governments, farms, businesses or other for-profit, federal agencies or employees, non-profit institutions, and small businesses or organizations.

Estimate of Total Annual Reporting and Recordkeeping Burden: 507,263 Hours.

Number of Respondents: 1,000,526.

Estimated Average of Recordkeeping and Reporting Burden Hours Per Response: An estimated range of 120–640 man hours for WYO companies to set up an initial operation under the MPPP; an average of .5 hours per lender to sign an agreement with a WYO company to participate in the program; an average of .5 hours per WYO company to send notices to each mortgagor (3 notices at 10 minutes per notice); and an average of .5 hours for each mortgagor to respond to the notices and ask any questions.

Frequency of Response: One-Time.

Copies of the above information collection requirement and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Borror (202) 646–2624, 500 C Street, SW., Washington, DC 20472.

A small number of insurance companies were contacted to get estimates of the burden imposed by the MPPP guidelines. Because of the absence of experience by the WYO companies, lenders, and mortgagors in working with the MPPP guidelines, these estimates for such recordkeeping and reporting may be inaccurate; therefore, public comment is requested to assist FEMA under the Paperwork Reduction Act in accurately estimating the burden of this information collection. Specifically, comments are requested on (1) predictions from the insurance industry, in particular the WYO companies, of the estimated number of companies that will be participating in the MPPP, (2) an estimate of the number of policies lenders have in their portfolios that would be affected by the MPPP, and (3) an estimate of the amount of time required of mortgagors to respond to the notices they receive.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: The FEMA Clearance Officer at the above address; and to Gary Waxman (202) 395–7340, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503 within four weeks of this notice.

Dated: July 5, 1991.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 91–17674 Filed 7–24–91; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-911-DR]

Iowa; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa (FEMA–911–DR), dated July 12, 1991, and related determination.

DATES: July 17, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: The notice of a major disaster for the State of Iowa, dated July 12, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 12, 1991:

The counties of Black Hawk, Emmet, Johnson, and Tama for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91–17676 Filed 7–24–91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-911-DR]

Iowa; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa (FEMA–911–DR), dated July 12, 1991, and related determination.

DATES: July 15, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3614.

NOTICE: The notice of major disaster for the State of Iowa, dated July 12, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 12, 1991:

Cass County for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Acting Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91–17677 Filed 7–24–91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-911-DR]

Iowa; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Iowa (FEMA–911–DR), dated July 12, 1991, and related determinations.

DATES: July 12, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: Notice is hereby given that, in a letter dated July 12, 1991, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Public Law 93–288, as amended by Public Law 100–707), as follows:

> I have determined that the damage in certain areas of the State of Iowa, resulting from severe storms and flooding on June 1–15, 1991, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Iowa.
>
> In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.
>
> You are authorized to provide Individual Assistance and Public Assistance in the designated area. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided

under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive order 12148, I hereby appoint S. Richard Mellinger of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Iowa to have been affected adversely by this declared major disaster:

The counties of Bremer, Butler, Chickasaw, Clayton, Fayette, Marshall, and Story for Individual Assistance and Public Assistance; and Kossuth County for Individual Assistance Only.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

[FR Doc. 91-17678 Filed 7-24-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-906-DR]

Mississippi; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice to a major disaster for the State of Mississippi (FEMA-906-DR), dated May 17, 1991, and related determinations.

DATED: July 18, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Mississippi, dated May 17, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 17, 1991:

Alcorn County for Public Assistance (previously designated for Individual Assistance); and Benton County for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91-17679 Filed 7-24-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-910-DR]

Tennessee; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee (FEMA-910-DR), dated June 21, 1991, and related determinations.

DATED: July 12, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Tennessee, dated June 21, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 21, 1991:

Cheatham County for Public Assistance.

(Catalog of Federal Domestic Assistance no. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91-17680 Filed 7-24-91; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Maryland Port Administration, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200550.

Title: Maryland Port Administration/The Terminal Corporation Marine Terminal Agreement.

Parties: Maryland Port Administration (MPA) The Terminal Corporation (TTC).

Synopsis: The Agreement, filed July 17, 1991, provides TTC with the lease of a certain parcel of land with buildings and improvements situated in the North Locust Point Marine Terminal for a term of three years. TTC will pay to MPA a monthly rent of $2,261.67.

Agreement Nos.: 224-004177-007 through 224-004177-017.

Title: Port of Seattle/Stevedoring Services of America Terminal Agreement.

Parties: Port of Seattle Stevedoring Services of America.

Synopsis: Agreement Nos. 224-004177-007 through 224-004177-017 provide for: Postponing the parties' rental negotiation and renegotiation arbitration dates specified in paragraph 3(c) of the basic agreement, as amended, to allow additional time to conclude negotiations; certain interim rental rates to continue to be billed pending agreement upon and billing of the new rental rates; the effective date of the renegotiated rent to be no later than January 1, 1990, or to apply retroactively (if necessary) to January 1, 1990 as stipulated in the agreement; and, certain interest payments to apply to any underpayment or over-payment of the new rent for the period beginning January 1, 1990, until the renegotiated rental rates are agreed upon and paid.

Dated: July 19, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-17660 Filed 7-24-91; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 91-31]

Actions To Address Adverse Conditions Affecting United States Carriers in the United States/People's Republic of China Trade; Notice and Order of Investigation

Upon publication of this Notice and Order in the **Federal Register**, the Federal Maritime Commission ("Commission") initiates an investigation of shipping conditions in the United States/People's Republic of

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Parties: Port of Seattle Stevedoring Services of America.

Synopsis: Agreement Nos. 224-004177-007 through 224-004177-017 provide for: Postponing the parties' rental negotiation and renegotiation arbitration dates specified in paragraph 3(c) of the basic agreement, as amended, to allow additional time to conclude negotiations; certain interim rental rates to continue to be billed pending agreement upon and billing of the new rental rates; the effective date of the renegotiated rent to be no later than January 1, 1990, or to apply retroactively (if necessary) to January 1, 1990 as stipulated in the agreement; and, certain interest payments to apply to any underpayment or over-payment of the new rent for the period beginning January 1, 1990, until the renegotiated rental rates are agreed upon and paid.

Dated: July 19, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,
Secretary.

[FR Doc. 91-17660 Filed 7-24-91; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 91-31]

Actions To Address Adverse Conditions Affecting United States Carriers in the United States/People's Republic of China Trade; Notice and Order of Investigation

Upon publication of this Notice and Order in the **Federal Register**, the Federal Maritime Commission ("Commission") initiates an investigation of shipping conditions in the United States/People's Republic of

China Trade ("U.S./PRC Trade" or "PRC Trade") under the Foreign Shipping Practices Act of 1988 ("FSPA"), 46 U.S.C. app. 1710a. This investigation seeks to determine whether conditions exist in the PRC Trade which adversely affect the operations of United States carriers and which do not exist for People's Republic of China ("PRC") carriers in the United States ("U.S.").

On January 29, 1991, the Commission issued an Order directed to the two United States carriers [1] and two PRC carriers [2] which serve the U.S./PRC Trade. By simultaneous **Federal Register** Notice, the Commission solicited relevant information from interested persons. These actions resulted from allegations and information made available to the Commission concerning five subject matter areas affecting commercial operations of U.S. carriers in the PRC, as follows:

1. *Full branch office status.* It was reported that U.S. carriers' representative offices in the PRC are precluded from conducting normal business activities, such as soliciting and booking cargo, issuing bills of lading, collecting freight charges, and contracting for handling and ancillary services.

2. *Recognition of carriers' tarriffs.* U.S. carriers allegedly are precluded from assessing their lawful tariff rates, and from effecting rate increases deemed necessary to their efficient operation in the PRC Trade.

3. *Port service issues.* It was reported that U.S. carriers are not permitted to select, own or operate dockside facilities and equipment, or to control terminal services, and that U.S. carriers are charged exorbitant rates for port calls.

4. *Intermodal and related services.* U.S. carriers allegedly cannot own or operate trucking services, inland CY and CFS terminals, conduct warehousing activities, or provide services as a dockside agency.

5. *"Doing business" costs.* It was alleged that U.S. carriers are assessed disproportionately high charges in the course of their business operations in the PRC or are assessed discriminatory charges vis-a-vis PRC carriers.

To determine the accuracy of these allegations and to obtain additional relevant information, the Commission sought evidence regarding, *inter alia*, attempts by U.S. carriers to persuade the PRC to ease these restrictive practices and the PRC responses to such efforts; the existence and financial or operational effect of any disadvantage or adversity suffered by U.S. carriers as a result of these PRC policies or practices; and the existence or lack of comparable restrictions on PRC carriers in their activities in the PRC and in the United States. In response to the Order, affidavits, documents and memoranda were submitted by the named PRC and U.S. carriers.[3] Comments responding to the **Federal Register** Notice were submitted by the Shipbuilders Council of America, Craig B. Simonsen, and the Asia North American Eastbound Rate Agreement ("ANERA").

These responses and comments provided substantial information with respect to the issues raised in the Order. Based on a review of that information, the following summarizes the current status of PRC restrictive practices:

Full Branch Office Status

1. In April 1986, the PRC enacted the Law of the People's Republic of China on Wholly Foreign-Owned Enterprises. Article 5 of the Rules for the Implementation of the Law of the People's Republic of China on Wholly Foreign-Owned Enterprises restricts the establishment of wholly foreign-owned enterprises in the businesses of traffic and transportation.

2. As a result of the law on wholly foreign-owned enterprises and its related rules, the only two means by which a foreign carrier can operate in the PRC on a long term basis are (a) the resident representative office and (b) joint ventures between foreign carriers and a PRC partner operating under the supervision of PRC authorities.

3. In October 1980, the PRC State Council promulgated Interim Regulations of the People's Republic of China Concerning the Control of Resident Offices of Foreign Enterprises ("Interim Regulations"). Article 2 states that no foreign enterprise is allowed to start business activities in the PRC unless the registration procedure is completed and approval is granted by PRC authorities. Maritime shipping operators must apply to the PRC Ministry of Communications, under Article 4 of the Interim Regulations.

4. In March 1983, the State Administration for Industry and Commerce promulgated the Procedures of the State Administration for Industry and Commerce for the Registration and Administration of Resident Representative Offices of Foreign Enterprises (the "Procedures"). Article 3 provides that resident representative offices of foreign enterprises in the PRC shall conduct "indirect business operations" only.

5. Article 15 of the Procedures provides that the State Administration for Industry and Commerce may assess a penalty of not more than 20,000 yuan for representative offices which engage in direct business operations.

6. In July 1979, the National People's Congress of the PRC promulgated the Law of the People's Republic of China on Joint Ventures Using Chinese and Foreign Investment. Article 1 of the law permits foreign companies to form joint ventures in the PRC with PRC companies. Under Article 3, joint ventures must apply to the Foreign Investment Commission of the People's Republic of China for authorization of the agreements and contracts concluded between the parties. The joint venture also shall register with the State Administration for Industry and Commerce in order to be licensed prior to operation.

7. Joint ventures must be managed in cooperation with a PRC partner. As the PRC company remains under direct supervision of PRC governmental authorities, the foreign carrier's control over day-to-day operations of the joint venture is necessarily restricted. Article 6 of the law provides that the chairman of the board of directors of the joint venture shall be appointed by the PRC company.

8. As a result of PRC restrictions on the activities of branch offices, U.S. carriers must employ PRC-controlled agents in order to conduct their business activities, such as signing contracts, issuing bills of lading and cargo reservation documents, and collecting freight charges. The only PRC companies providing such agency services are SINOTRANS and China Ocean Shipping Agency ("PENAVICO").

9. In addition to its status as ocean common carrier and shipping agent in the PRC Trade, SINOTRANS is a PRC freight forwarder and feeder vessel operator. SINOTRANS is subordinate to the Ministry of Foreign Economic Relations and Trade. PENAVICO is a subsidiary of COSCO, which is a direct competitor of the U.S. carriers. PENAVICO is subordinate to the Ministry of Communications.

10. U.S. carriers are unable to directly control carrier costs and activities in the PRC due to PRC restrictions on direct business operations. As a result, U.S. carriers are unable to control issuance

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[1] American President Lines, Ltd. ("APL") and Sea-Land Service, Inc. ("Sea-Land").

[2] China Ocean Shipping Co. ("COSCO") and China National Foreign Trade Transportation Corp. ("SINOTRANS").

[3] APL, Sea-Land and COSCO submitted their responses under claim of confidentiality, as permitted under 46 CFR Part 588. SINOTRANS submitted a two-page, unverified response without assertion of confidential treatment. COSCO subsequently withdrew its claim of confidentiality.

of bills of lading to prevent inaccurate or improper issuance of carrier documents, and are subjected to limits on the use of U.S. feeder vessels and to significantly higher costs of utilizing PRC feeder vessels. In addition, U.S. carriers are subjected to paying charges for agency fees and services which are significantly higher than the costs of performing their own agency and documentation activities, and are denied the opportunity to develop more cost-efficient options for performing agency functions.

11. Similar restrictions on branch office activities do not exist for PRC carriers doing business in the United States.

Recognition of Carriers' Tariffs

1. In May 1990, the PRC Ministry of Communications enacted the Regulations Governing the Management of International Liner Shipping (the "Regulations"). Article 9 of the Regulations provides that all agency work for international shipping companies shall be performed by shipping agencies approved by the Ministry of Communications.

2. In 1990, the PRC also promulgated the Provisions on the Administration of Shipping Agencies for International Ocean Going Ships (the "Provisions"). Article 4 of the Provisions provides that only those shipping agencies approved by the Ministry of Communications are permitted to engage in shipping agency business in the PRC. As the only shipping agencies approved in the PRC, PENAVICO and SINOTRANS operate as state monopolies under PRC law.

3. Article 8 of the Provisions states that the Ministry of Communications can define the scope of the business of a shipping agency. Within that scope, the functions to be fulfilled by a shipping agency are:

(1) Attending to the procedure for ship's entry into and departure from port. Arranging ship's berthing and loading/unloading;

(2) Arranging custom formalities for ship, cargo and container;

(3) Arranging forwarding, transshipment and multi-modal transportation of cargo and container;

(4) Signing bills of lading, contracts of affreightment and despatch/demurrage agreements when authorized by shipowner or master of a ship;

(5) Attending to passenger's international sea passage;

(6) Canvassing cargo and booking shipping space for shippers;

(7) Arranging for maritime salvage and attending to cases of marine accident and claims;

(8) Collecting and effecting payment for the entrusting party and settling of accounts;

(9) Other shipping agency business and services.

4. COSCO states that, of the above, only those functions of executing carrier bills of lading and cargo reservation documents, and collection of ocean freight rates and charges must be performed by PRC shipping agents. It appears, however, that all of the above functions are within the scope of business of a shipping agency, as defined by the Ministry of Communications, and U.S. carrier principals are therefore precluded from conducting such activities.

5. Shipping agencies are required to be a "legal person" of a state-operated enterprise of the People's Republic of China. As a state-operated enterprise under PRC law, COSCO can establish, own and operate subsidiaries for the performance of shipping agency functions. U.S. carriers must contract with PRC companies for the performance of these direct business activities.

6. Article 12 of the Provisions provides that shipping agencies must apply the uniform rates for dues and charges set by the Ministry of Communications.

7. It is the practice of SINOTRANS and PENAVICO that U.S. carriers' tariffs be maintained at a level no higher than those published by the Far East Enterprising Co. (H.K.), Ltd. ("FARENCO"). FARENCO acts as the Hong Kong agent for SINOTRANS, and is believed to be a subsidiary of SINOTRANS.

8. SINOTRANS and PENAVICO use their control over the authentication of bills of lading to book and rate cargo contrary to the U.S. carriers' tariffs.

9. SINOTRANS and PENAVICO use their control over collection of ocean freight money to assess and collect freight at less than the rates and charges established by the U.S. carriers in their tariffs.[4]

10. Similar restrictions on recognition and observance of carriers' tariffs in the United States/PRC Trade do not exist for PRC carriers doing business in the United States.

Port Service Issues[5]

(a) Port handling charges:

1. In December 1990, the PRC State Council promulgated the Rules on Control of International Ocean Shipping of Containers (the "Rules on Container Shipping"). Article 20 of the Rules on Container Shipping provides that fees for ocean shipping of international containers and other fees should be charged in accordance with transport prices and rates stipulated by the PRC.

2. Article 32 of the Rules on Container Shipping states that violations of the Rules and state decrees concerning transport fees are subject to punishment by PRC authorities.

3. In March 1990, the Ministry of Communications issued Regulations Governing Collection of Port Dues and Charges on Ocean Going Vessels Engaged in International Trade and on Imported or Exported Cargoes, which publish a single set of charges for the use of port, terminal or other facilities and equipment applicable to PRC and foreign carriers. Nevertheless, U.S. carriers operating their own feeder vessels to PRC ports are assessed higher charges for the same port services than PRC carriers.

4. COSCO states that the higher port charge for U.S. feeder vessels "compensates" for harbor and energy taxes and contributions. However, U.S. carriers are exempt from harbor and energy taxes and levies under PRC law.

5. Port charges in the United States are not comparable to PRC port charges inasmuch as U.S. port charges are not based on the flag of the vessel being served.

(b) Feeder service:

6. SINOTRANS, COSCO and other PRC vessel operators provide feeder vessel service between Hong Kong and the PRC ports of Dalian, Qinhuangdao, Xingang, Shanghai, Zhangjiagang, Ninbo, Qingdao, Fuzhou, Nantong, and Nanjing. PRC carriers do not provide

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[4] Section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. app. § 1709(a)(1), makes it a prohibited act for any person to obtain or attempt to obtain ocean transportation for property at less than the rates or charges that would otherwise be applicable. the Commission does not intend, however, to address questions of possible Shipping Act violations by these PRC shipping agents on behalf of PRC shippers in the context of the current FSPA proceeding.

[5] The Commission's Order of January 29, 1991 sought, *inter alia*, information concerning the existence and effect of PRC laws restricting the ownership and operation of dockside terminals and terminal handling equipment. Review of the carriers' responses to the Order confirms the existence of PRC laws, rules and regulations restricting the establishment of terminals in the PRC by wholly foreign-owned enterprises. The U.S. carriers make the point, however, that elimination of other major trade restrictions facing the U.S. carriers are seminal to their decisions to construct or operate PRC terminals. Accordingly, the Commission has determined not to address this latter issue in the present FSPA proceeding. The Commission will consider taking action under the FSPA or Section 19 of the Merchant Marine Act, 1920, 46 U.S.C. app. § 876, should it later appear that PRC restrictions on terminals and terminal equipment are adversely affecting U.S. carriers.

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Port Service Issues [6]

(a) Port handling charges:

1. In December 1990, the PRC State Council promulgated the Rules on Control of International Ocean Shipping of Containers (the "Rules on Container Shipping"). Article 20 of the Rules on Container Shipping provides that fees for ocean shipping of international containers and other fees should be charged in accordance with transport prices and rates stipulated by the PRC.

2. Article 32 of the Rules on Container Shipping states that violations of the Rules and state decrees concerning transport fees are subject to punishment by PRC authorities.

3. In March 1990, the Ministry of Communications issued Regulations Governing Collection of Port Dues and Charges on Ocean Going Vessels Engaged in International Trade and on Imported or Exported Cargoes, which publish a single set of charges for the use of port, terminal or other facilities and equipment applicable to PRC and foreign carriers. Nevertheless, U.S. carriers operating their own feeder vessels to PRC ports are assessed higher charges for the same port services than PRC carriers.

4. COSCO states that the higher port charge for U.S. feeder vessels "compensates" for harbor and energy taxes and contributions. However, U.S. carriers are exempt from harbor and energy taxes and levies under PRC law.

5. Port charges in the United States are not comparable to PRC port charges inasmuch as U.S. port charges are not based on the flag of the vessel being served.

(b) Feeder service:

6. SINOTRANS, COSCO and other PRC vessel operators provide feeder vessel service between Hong Kong and the PRC ports of Dalian, Qinhuangdao, Xingang, Shanghai, Zhangjiagang, Ninbo, Qingdao, Fuzhou, Nantong, and Nanjing. PRC carriers do not provide feeder service between Hong Kong and the PRC ports of Xiamen, Chiwan and Whampoa. U.S. feeder services operate between the latter ports.

7. SINOTRANS and PENAVICO, through their control of cargo reservation and issuance of bills of lading, deny export cargo to U.S. feeder vessels, thereby denying U.S. carriers' feeder vessels the opportunity to serve PRC ports other than Xiamen, Chiwan and Whampoa.

8. SINOTRANS and PENAVICO assess U.S. carriers charges for utilizing PRC feeder vessels which are significantly higher than would be the costs of furnishing the same service by U.S. feeder vessel.

9. U.S. laws do not impose restrictions on the ability of PRC carriers to own or operate feeder services between U.S. and foreign ports comparable to PRC restrictions on U.S. carriers.

Intermodal and Related Services

1. PRC laws restrict U.S. carriers from ownership and operation of (a) trucking services for intermodal transport of their own containers, (b) inland CY and CFS terminals, and (c) related warehousing activities.

2. Article 7 of the Rules on Control of International Ocean Shipping of Containers provides that proposals for transshipment and transport stations must be examined and ratified by provincial, autonomous regional, or municipal transport governing authorities.

3. As a state-operated enterprise under PRC law, COSCO can establish, own and operate subsidiaries for the performance of inland terminal CY, CFS and warehousing operations.

4. U.S. carriers must contract with PRC companies for the performance of these business activities. As a result, U.S. carriers are subjected to charges for such services which are significantly higher than the costs of performing their own trucking, CY, CFS and related warehousing activities, and are denied the opportunity to develop more cost-efficient options for performing these business activities.

5. Sea-Land applied to PRC authorities for a trucking license on behalf of Orient Trucking Limited, a subsidiary of Sea-Land, to permit it to operate within Guangdong and Fujian provinces, adjacent to Hong Kong. No response has been provided to the application by PRC authorities.

6. U.S. laws do not restrict PRC carriers from owning or operating trucking services or inland terminal facilities.

"Doing Business" Costs

1. SINOTRANS and PENAVICO utilize their monopoly control over shipping agency functions in the PRC to assess charges which, for U.S. carriers, are excessively high or discriminatorily applied vis-a-vis PRC carriers. U.S. carriers are denied the opportunity to develop more cost-efficient options for performing agency functions.

2. Among the excessive charges imposed by PRC agents on U.S. carriers are cargo "stuffing charges", loading incentives to achieve higher container capacity utilization, booking commissions, and documentation costs.

3. U.S. laws do not restrict PRC carriers from contracting for shipping agency functions, or from performing agency and documentation services with respect to the PRC carrier's own cargo.

Based on all the foregoing information, it appears that the practices of the PRC Government, PRC carriers and persons in the PRC providing maritime-related services result in the existence of conditions that adversely affect the operations of U.S. carriers in the U.S. oceanborne trade and that such conditions do not exist for PRC carriers in the United States.

Accordingly, the Commission institutes this investigation under the FSPA to determine whether U.S. carriers have been or will be adversely affected by the PRC laws, practices and policies described above, whether remedial action is required, and, if so, what those remedies should be.

In particular, the Commission directs the parties to address the five major issues as more fully described above: (1) Full branch office status; (2) Recognition of carriers' tariffs; (3) Port service issues; (4) Intermodal and related services; and (5) "Doing business" costs. Additional factual issues that are believed to be relevant to the Commission's examination of these PRC practices under the standards of the FSPA may be raised by any party as well. When facts are asserted, those facts should be set forth in detail in affidavits of knowledgeable persons and should include any documentary evidence in support of such affidavits.

Proceedings under the FSPA are conducted within the framework of statutorily-imposed deadlines. Once initiated, the Commission must complete an investigation and render a decision within 120 days unless certain factors warrant a 90-day extension. Because of these time constraints, the proceeding will be limited to two rounds of simultaneous submissions by all parties. There will be an initial filing and a reply filing. Moreover, because of the time constraints, the proceeding will be conducted on the basis of written submissions only, without oral evidentiary hearings and without discovery. Any motions filed will not alter the deadlines established by the procedural schedule set forth below. In its discretion, the Commission may withhold ruling on such motions until a final order.

Any person seeking to participate as an intervenor must file its submissions in accordance with the procedural schedule established below. Moreover, any person interested in participating as an intervenor must file a notice of intention to intervene with the Commission's Secretary and serve such notice on all parties. The purpose of this notice is to ensure that intervenors will be served by all participating parties. The filing of a notice of intention to intervene, however, does not obligate a party to file a written affidavit or memorandum.

Now therefore, it is ordered, That pursuant to section 10002(b) of the Foreign Shipping Practices Act of 1988, the Commission hereby initiates an investigation to determine whether any laws, rules, regulations, policies or practices of the PRC Government, or any practices of PRC carriers or other persons providing maritime or maritime-related services in the PRC result in the existence of conditions that adversely affect U.S. carriers and do not exist for PRC carriers in the United States and, if such adverse conditions are found to exist, what shall be an appropriate remedy or remedies;

It is further ordered, That China Ocean Shipping Company and China National Foreign Trade Transportation Corp. are each named PRC carrier parties in this proceeding;

It is further ordered, That American President Lines, Ltd. and Sea-Land Service, Inc. are each named United States carrier parties in this proceeding;

It is further ordered, That the Commission's Bureau of Hearing Counsel is made a party to this proceeding;

It is further ordered, That any person interested in participating in this proceeding shall file a notice of intention to participate as an intervenor with the Commission's Secretary by August 14, 1991;

It is further ordered, That such interested persons shall participate in this proceeding in accordance with the filing schedule set forth below;

It is further ordered, That the proceeding shall include oral argument in the discretion of the Commission;

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[6] The Commission's Order of January 29, 1991 sought, *inter alia*, information concerning the existence and effect of PRC laws restricting the ownership and operation of dockside terminals and terminal handling equipment. Review of the carriers' responses to the Order confirms the existence of PRC laws, rules and regulations restricting the establishment of terminals in the PRC by wholly foreign-owned enterprises. The U.S. carriers make the point, however, that elimination of other major trade restrictions facing the U.S. carriers are seminal to their decisions to construct or operate PRC terminals. Accordingly, the Commission has determined not to address this latter issue in the present FSPA proceeding. The Commission will consider taking action under the FSPA or Section 19 of the Merchant Marine Act, 1920, 46 U.S.C. app. § 876, should it later appear that PRC restrictions on terminals and terminal equipment are adversely affecting U.S. carriers.

It is further ordered, That this proceeding is limited to the submission of affidavits of fact and memoranda of law;

It is further ordered, That the responses to the Commission's January 29, 1991 Order that were filed by the two U.S. carrier parties and the two PRC carrier parties and all comments filed in response to the simultaneous **Federal Register** notice shall be made part of the record herein. If any party wishes a portion of those prior responses to be protected from public disclosure, that party shall file a motion requesting such protection by August 5, 1991 and shall identify the specific portions for which such protection is sought, and shall explain in detail why such protection is necessary;

It is further ordered, That this notice and Order of Investigation be published in the **Federal Register**, and that a copy thereof be served upon the PRC carrier parties and the United States carrier parties;

It is further ordered, That this proceeding shall be conducted in accordance with the Commission's Rules in 46 CFR part 588;

It is further ordered, That all documents submitted by any party of record in this proceeding shall be filed in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, as well as being mailed directly to all parties of record;

It is further ordered, That all initial affidavits and memoranda of law shall be filed no later than August 26, 1991;

It is further ordered, That all reply affidavits and memoranda of law shall be filed no later than September 24, 1991; and

Finally, it is ordered, That pursuant to the terms of the Foreign Shipping Practices Act of 1988 and the Commission's Rules in Part 588, a decision by the Commission in this proceeding shall be issued by November 22, 1991.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-17718 Filed 7-24-91; 8:45 am]

BILLING CODE 6730-01-M

GENERAL SERVICES ADMINISTRATION

Information Collection Activities Under Office of Management and Budget Review

AGENCY: Federal Supply Service (FBP), GSA.

SUMMARY: The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090-0014, Transfer Order Surplus Personal Property/Continuation Sheet. The form is used by nonprofit agencies to request donations of surplus property.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, room 3235, NEOB, Washington, DC 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Street NW., Washington, DC 20405.

Annual Reporting Burden:

Respondents: 50,000; annual responses: 1; average hours per response: 0.30; burden hours: 15,000.

FOR FURTHER INFORMATION CONTACT: Audrey L. Harris, (703) 557-1234. Copy of Proposal: May be obtained from the Information Collection Management Branch (CAIR), 7102, GSA Building, 18th & F Street NW., Washington, DC 20405, by telephoning (202) 501-2691, or by faxing your request to (202) 501-2727.

DATES: July 15, 1991.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 91-17653 Filed 7-24-91; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Availability of Funds for Grants for Native Hawaiian Health Centers

AGENCY: Health Resources and Services Administration.

ACTION: Notice of available funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces the availability of approximately $2.3 million in fiscal year (FY) 1991 for grants to qualified entities, including Native Hawaiian Health Centers, Native Hawaiian organizations, or public or nonprofit private health entities to provide comprehensive health promotion, disease prevention, and primary health services to Native Hawaiians. These grants will be awarded under the provisions of Public Law 100-579, The Native Hawaiian Health Care Act of 1988. Up to nine grants may be awarded at a funding level ranging from $250,000 to $600,000 annually depending on the number of persons targeted to be reached by the programs and the comprehensiveness of the programs. The project period will be for three years.

The entities to whom grants may be awarded are as follows:

(1) Two entities serving individuals on Kaua'i, from which individuals on Ni'ihau shall also be served;

(2) Two entities serving individuals on O'ahu;

(3) One entity serving individuals on Moloka'i, from which individuals on Lana'i shall also be served;

(4) Two entities serving individuals on Maui;

(5) Two entities serving individuals on Hawai'i.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. This program is related to the priority area of Clinical Preventive Services and Educational Community-Based Programs. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report: Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (telephone 202 783-3238).

ADDRESSES: Application kits (Form PHS 5161-1, as approved by the Office of Management and Budget under control number 0937-0189), may be obtained from and completed applications should be mailed to: Ms. Linda Gash, Grants Management Officer (GMO), Office of Grants Management, Region IX-PHS, 50 United Nations Plaza, San Francisco, California 94102. The GMO can also provide assistance on business management issues.

DUE DATE: The deadline date for receipt of applications by the GMO will be August 26, 1991. Applications shall be considered as meeting the deadline if they are either: (1) Received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for submission to the review committee. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted as proof of timely mailing. Private metered postmarks shall not be acceptable as proofs of timely mailing. Applications that do not meet the deadline date will not be considered for funding and will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: For further program information and technical assistance please contact Mr. David Callagy, U.S. Public Health Service representative in Hawaii,

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FOR FURTHER INFORMATION CONTACT: For further program information and technical assistance please contact Mr. David Callagy, U.S. Public Health Service representative in Hawaii,

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University of Hawaii, School of Public Health, 1960 East-West Road, Honolulu, Hawaii 96822. His telephone number is (808) 956–8914.

ELIGIBLE APPLICANTS: An entity qualifies to apply if it is (1) A Native Hawaiian health center; (2) a native Hawaiian organization; or (3) a public or nonprofit private health provider.

Native Hawaiian health centers are entities which (1) are organized under the laws of the State of Hawaii; (2) provide or arrange for health care services through practitioners licensed by the State of Hawaii, where licensure requirements are applicable; (3) are public or nonprofit private entities; and (4) have Native Hawaiian health practitioners significantly participating in the planning, management, monitoring, and evaluation of health services.

Native Hawaiian organizations are entities which (1) Serve the interests of Native Hawaiians; (2) are (a) recongized by Papa Ola Lokahi for the purpose of planning, conducting, or administering programs (or portions of programs) authorized under the Native Hawaiian Health Care Act of 1988 for the benefit of Native Hawaiians, and (b) certified by Papa Ola Lokahi as having the qualifications and capacity to provide the services, and meet the requirements of the contracts the organizations enter into with, or grants the organizations receive from, the Secretary under the Native Hawaiian Health Care Act; (3) have Native Hawaiian health practitioners significantly participating in the planning, management, monitoring, and evaluation of the health services; and (4) are public or nonprofit private entities.

Note: The term "Papa Ola Lokahi" means an organization composed of E Ola Mau; the Office of Hawaiian Affairs of the State of Hawaii; Alu Like Inc.; the University of Hawaii; and the Office of Hawaiian Health of the Hawaii State Department of Health.

SUPPLEMENTARY INFORMATION: Funding under this grant program is intended to elevate the health status of Native Hawaiians living in Hawaii by providing primary health care and health education to create changes within the health care system that will address the health needs of the Native Hawaiians. The services of these programs will be developed around outreach and referral components and will attempt to integrate tarditional health healer concepts with western medicine so that existing barriers to health care can be removed. It is anticipated that the primary care and health promotion and disease prevention components will be integrated into one system of care and that the existing health resources of the community will be used to the greatest extent possible.

PROJECT REQUIREMENTS: Recipients of funds under the Native Hawaiian Health Centers program are required to provide the following services:

(1) Outreach services to inform Native Hawaiians of the availability of health services;

(2) Education in health promotion and disease prevention of the Native Hawaiian population by (wherever possible) Native Hawaiian health care practitioners, community outreach workers, counselors, and cultural educators;

(3) Services of physicians, physicians' assistants, or nursse practitioners;

(4) Immunizations;

(5) Prevention and control of diabetes, high blood pressure, and otitis media;

(6) Pregnancy and infant care; and

(7) Improvement of nutrition.

In addition to the mandatory services listed above, the following services may be provided:

(1) Identification, treatment, control, and reduction of the incidence of preventable illnesses and conditions endemic to Native Hawaiians;

(2) Collection of data related to the prevention of diseases and illnesses among Native Hawaiians; and

(3) Other health promotion disease prevention, and primary health services.

USE OF FUNDS: Grants may not be awarded unless the entity agrees that it will make available, directly or through donations to the entity, non-Federal contributions toward such costs in an amount equal to but not less than $1 for each $3 of Federal funds provided. Non-Federal contributions may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government or services assisted or subsidized to any significant extent by the Federal Government may not be included in determining the amount of such non-Federal contributions. This requirement may be waived if the entity is a nonprofit private entity, and if the Secretary determines, in consultation with Papa Ola Lokahi, that it is not feasible for the entity to comply with the requirement. Grant funds may not be used to pay for (1) inpatient services; (2) cash payments to intended recipients of health services; or (3) purchasing or improving real property (other than minor remodeling of existing improvements to real property) or to purchase major medical equipment. The entity may not expend more than 10 percent of amounts received under the grant for administering the grant. Other requirements and limitations are set forth in Public Law 100–579.

CRITERIA FOR EVALUATING APPLICATIONS: An objective review of applications for grant support will consider the adequacy of the following with reference to the provisions of the Native Hawaiian Health Care Act and the strategy for the Comprehensive Health Care Plan for Native Hawaiians established by Papa Ola Lokahi:

(1) Assessment of Community need;
(2) Program of proposed services;
(3) Management and staffing plan;
(4) Budget;
(5) Evaluation plan.

Priority consideration will be given to Native Hawaiian health centers and Native Hawaiian organizations, and, to the extent possible, those applications whose health promotion and disease prevention services are provided through Native Hawaiian health centers.

OTHER GRANT INFORMATION: The grant program to provide Native Hawaiian Health Centers has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs by appropriate health planning agencies, as implemented by regulations at 45 CFR part 100. Executive Order 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC) as early as possible to alert them to prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline for new and competing awards. The granting agency does not guarantee to accommodate or explain its response to State process recommendations it receives after that data. A current list of SPOCs is included in the application kit.

(See Part 148 Intergovernmental Review of PHS Programs under Executive Order 12372 and 45 CFR part 100 for a description of the review process and requirements.)

Grants will be administered in accordance with Department of Health and Human Services Regulations in 45

CFR part 74 and are subject to the provisions of the Public Health Service Grants Policy Statement.

The OMB Catalog of Federal Domestic Assistance number for this program is 93.932.

Dated: June 11, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91-17648 Filed 7-24-91; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-030-91-4212-24]

Temporary Closure of Public Lands; Washoe County, NV

SUMMARY: The Carson City District Manager announces the temporary closure of selected public lands under his administration. This action is being taken to provide for public safety during the 1991 Reno National Championship Air Races.

EFFECTIVE DATES: September 9 through September 15, 1991.

FOR FURTHER INFORMATION CONTACT: James M. Phillips, Lahontan Resource Area Manager, Carson City District, 1535 Hot Springs Road, suite 300, Carson City, Nevada 89706. Telephone (702) 885-6000.

SUPPLEMENTARY INFORMATION: This closure applies to all the public, on foot or in vehicles. The public lands affected by this closure are described as follows:

Mt. Diablo Meridian

T. 21 N., R. 19 E.,
  Sec. 8, N½NE¼, SE¼NE¼ and E½SE¼.
  Sec. 16, N½ and SW¼.

Aggregating approximately 680 acres.

The above restrictions do not apply to emergency or law enforcement personnel or event officials. The authority for this closure is 43 CFR 8364.1. Persons who violate this closure order are subject to arrest and, upon conviction, may be fined not more than $1,000 and/or imprisoned for not more than 12 months.

A map of the closed area is posted in the Carson City District Office of the Bureau of Land Management.

Dated this 12th day of July, 1991.

James W. Elliott,

District Manager.

[FR Doc. 91-17617 Filed 7-24-91; 8:45 am]

BILLING CODE 4310-HC-M

[CA-010-01-3110-10-B002; CA 28381]

Exchange of Public and Private Lands in San Luis Obispo County, CA; Notice of Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—CA 28381.

SUMMARY: The following described public land has been determined to be suitable for exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

Mt. Diablo Meridian, California

T. 29S., R. 14E.
  Sec. 25, S½SW¼, W½SE¼.
  160 acres—(parcel #5).
T. 30S., R. 14E.
  Sec. 13, Lots 4 & 6.
  99.25 acres—(parcel #13).
  Sec. 14, Lots 1 & 2.
  98.64 acres—(parcel #13).

All mineral rights on the subject public land will be exchanged, along with the surface rights. In exchange for this public land, the Bureau of Land Management (BLM) will acquire an equal value of lands from the Nature Conservancy (TNC) in the Carrizo Plain Natural Area. These lands will be purchased by TNC from willing sellers, will be somewhere within the following sections, and will include surface rights only:

Mt. Diablo Meridian, California

T. 30S., R. 20E.
  Sec. 19 to 22, 25 to 31, and 34 to 36.
T. 30S., R. 21E.
  Sec. 23 to 36.
T. 30S., R. 22E.
  Sec. 31.
T. 31S., R. 20E.
  Sec. 1 to 3, 10 to 13, 15, 17, and 20 to 25.
T. 31S., R. 21E.
  Sec. 1 to 4, 6, 7, 10 to 25, 27 to 29, and 32 to 36.
T. 31S., R. 22E.
  Sec. 3, 6, 7, and 17 to 21.
T. 32S., R. 20E.
  Sec. 19, 26, and 27.
T. 32S., R. 21E.
  Sec. 1 to 5, and 10 to 13.
T. 32S., R. 22E.
  Sec. 6, 7, 16, 19, to 22, 27, to 33, 35, and 36.

San Bernardino Meridian, California

T. 12N., R. 27W.
  Sec. 35.
T. 12N., R. 26W.
  Sec. 31, and 33 to 36.
T. 12N., R. 25W.
  Sec. 31 to 33, and 36.
T. 11N., R. 27W.
  Sec. 1 to 4, and 10 to 14.
T. 11N., R. 26W.
  Sec. 1 to 18, 20 to 25, and 36.
T. 11N., R. 25W.
  Sec. 3, 6, and 7 to 35.
T. 11N., R. 24W.
  Sec. 18 to 20 and 29 to 32.
T. 10N., R. 26W.
  Sec. 11 and 12.
T. 10N., R. 25W.
  Sec. 1 to 3, 7, 8, 12, and 16.

SUPPLEMENTARY INFORMATION: Lands transferred from the United States will be offered for purchase to adjacent landowners by The Nature Conservancy. Lands transferred from the United States will reserve a right-of-way for ditches or canals constructed by the authority of the United States, under the Act of August 30, 1890 (43 U.S.C. 945). Parcel #5 will also be subject to an electric transmission line right-of-way (#S034527) maintained by the Pacific Gas and Electric Company. Publication of this notice in the **Federal Register** segregates the subject public land from the operation of the public land laws and the mining laws, except for mineral leasing. The segregative effect will end upon issuance of patent or two years from the date of publication in the **Federal Register**, whichever occurs first.

The purpose of the exchange is to acquire a portion of the private lands in the Carrizo Plain Natural Area. This Area will promote the conservation of threatened and endangered species, and preserve a representative sample of the historic southern San Joaquin Valley flora and fauna. The ultimate goal for the Natural Area is to acquire approximately 155,000 acres of private land. A secondary purpose of the exchange is to consolidate the BLM lands and reduce the number of scattered, isolated BLM parcels that are different to manage. The public interest will be well served by completing the exchange. Interested parties may submit comments to the Area Manager at the following address until September 9, 1991. For further information contact: Bureau of Land Mangement, Caliente Resource Area, Attn: Dan Vaughn, 4301 Rosedale Highway, Bakersfield, CA 93308; (805) 861-4236.

Dated: June 27, 1991.

Glen A. Carpenter,

Caliente Resource Area Manager.

[FR Doc. 91-16053 Filed 7-24-91; 8:45 am]

BILLING CODE 4310-40-M

[G-010-G1-0119-4212-14; NMNM 85628]

A Direct Sale of Public Land to Rio Arriba County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

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  Sec. 18 to 20 and 29 to 32.
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Dated: June 27, 1991.

Glen A. Carpenter,

Caliente Resource Area Manager.

[FR Doc. 91–16053 Filed 7–24–91; 8:45 am]

BILLING CODE 4310-40-M

[G–010–G1–0119–4212–14; NMNM 85628]

A Direct Sale of Public Land to Rio Arriba County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following public land has been found suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713) and at no less than the estimated fair market value. The land will not be offered for sale until at least 60 days after the date of this notice.

New Mexico Principal Meridian, New Mexico

T. 22 N. R. 8 E.,
  Tract A, within the Sebastian Martin Land Grant.

The subject public land contains 3.05 acres and will be sold to Rio Arriba County for a waste transfer site. As stated in the Federal Land Policy and Management Act (Pub. L. 94–579 October 21, 1976) this action is consistent with the Land Ownership Adjustment as stated under page 2–14 of the Resource Management Plan dated October 1988, in that it will serve the public interest and would have no adverse effect on any other resource. The disposal is consistent with State and local goverment programs, plans, and applicable regulations.

FOR FURTHER INFORMATION CONTACT: Lora Yonemoto at the Bureau of Land Management (BLM), Taos Resource Area Office, 224 Cruz Alta Road, Taos, New Mexico 87571, or at (505) 758–8851 (FTS) 479–8801.

ADDRESSES: Comments should be sent to District Manager, Bureau of Land Management, Albuquerque District Office, 435 Montano NE., Albuquerque, New Mexico 87107.

EFFECTIVE DATE: Interested parties may submit comments on the direct sale on or before September 9, 1991.

SUPPLEMENTARY INFORMATION: The direct sale will be subject to:

1. A reservation to the United States of a right-of-way thereon for ditches or canals constructed by the authority of the United States in accordance with the Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at this BLM office.

Publication of this notice in the **Federal Register** will segregate the public land from appropriations under the public land laws including the mining laws but not mineral leasing laws. This segregation will terminate upon the issuance of a patent or 270 days from date of publication of this notice in the **Federal Register** or upon publication of notice of termination.

Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: July 16, 1991.

Robert Dale,

District Manager.

[FR Doc. 91–17650 Filed 7–24–91; 8:45 am]

BILLING CODE 4310-FB-M

[NM-940-01-4730-12]

Filing of Plats of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below have been officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico.

New Mexico Principal Meridian, New Mexico

T. 13 N., R. 9 W., Accepted June 3, 1991, for Group 846 NM.
T. 23 N., R. 12 W., Accepted June 5, 1991, for Group 850 NM.
T. 8 N., R. 6 W., Accepted May 29, 1991, for Group 866 NM.
T. 10 N., R. 9 W., Accepted June 3, 1991, for Group 888 NM.
T. 11 N., R. 2 E., Accepted June 21, 1991, for Group 887 NM.
T. 10 N., R. 2 E., Accepted June 21, 1991, for Group 887 NM.
T. 24 S., R. 25 E., Accepted June 21, 1991, for Group 875 NM.

Supplemental Plats

T. 16 S., R. 10 E., Accepted May 30, 1991.
T. 15 N., R. 7 E., Accepted May 24, 1991.

The above-listed plats represent dependent resurveys, survey and subdivision.

These plats will be in the files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504–1449. Copies may be obtained upon payment of $2.50 per sheet.

Dated: July 16, 1991.

John P. Bennett,

Chief, Cadastral Survey.

[FR Doc. 91–17647 Filed 7–24–91; 8:45 am]

BILLING CODE 4310-FB-M

[WY-930-01-4214-10; WYW 116382]

Termination of Proposed Withdrawal of Land; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the segregative effect of a proposed withdrawal by the Department of Agriculture, U.S. Forest Service, on 9,538.99 acres of National Forest System land for the protection of the Clark's Fork Canyon Area. This action withdrew the land from location and entry under the United States mining laws. However, the land remains withdrawn to location and entry under the United States mining laws by virtue of its recent designation as a wild river under the Wild and Scenic Rivers Act (16 U.S.C. 1271–1287).

EFFECTIVE DATE: August 26, 1991.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, Wyoming State Office, 2515 Warren Avenue, Cheyenne, Wyoming 82001, (307) 775–6115.

SUPPLEMENTARY INFORMATION: On August 7, 1989, a notice of proposed withdrawal of land for the Department of Agriculture was published in the **Federal Register**, 54 FR 32432 (1989). The purpose of the application was to protect the Clark's Fork Canyon Area until Congress acted upon a recommendation to include the land in the National Wild and Scenic River System. Congress recently designated portions of the Clark's Fork River as a wild river under the Wild and Scenic Rivers Act, and this has eliminated the need for this proposed withdrawal.

The segregative effect of the proposed withdrawal is hereby terminated on the following described land:

Sixth Principal Meridian, Wyoming

Shoshone National Forest

T. 55 N., R. 104 W.,
  Sec. 3, N½ lot 3, lot 4;
  Sec. 4, lot 1, N½ lot 2.
T. 56 N., R. 104 W.,
  Sec. 12, S½SW¼SW¼, SE¼SW¼, S½N½SE¼, S½SE¼;
  Sec. 13, N½NE¼, SW¼NE¼, NW¼, N½SW¼, SW¼SW¼, W½SE¼SW¼;
  Sec. 14, E½NE¼NE¼, SE¼NE¼, SE¼;
  Sec. 19, W½NW¼, SE¼NW¼, SW¼, SW¼NE¼SE¼, W½SE¼, SE¼SE¼;
  Sec. 20, SW¼SW¼SW¼;
  Sec. 23, NE¼, E½E½NW¼, E½NE¼SW¼, SE¼SW¼, SE¼;
  Sec. 24, NW¼NW¼, S½SW¼NW¼;
  Sec. 26, N½NE¼, SW¼NE¼, W½SE¼NE¼, E½NW¼, E½SW¼NW¼, SW¼, NW¼SE¼, W½SW¼SE¼;
  Sec. 27, E½NE¼SE¼, SE¼SE¼;
  Sec. 29, SW¼SW¼NE¼, SW¼NE¼NW¼, W½NW¼, SE¼NW¼, SW¼, W½NW¼SE¼, SE¼NW¼SE¼, SW¼SE¼, W½SE¼SE¼, SE¼SE¼SE¼;
  Sec. 30, NE¼, NE¼NW¼, NE¼SE¼;
  Sec. 32, NE¼, NE¼NW¼, N½NW¼NW¼, N½SE¼NW¼, NE¼SE¼, N½NW¼SE¼;
  Sec. 33, SW¼NE¼, S½SE¼NE¼, S½N½NW¼, S½NW¼, N½SW¼, N½SW¼SW¼, SE¼SW¼, SE¼;

Sec. 34, NE¼NE¼, S½NW¼NE¼, S½NE¼, S½SW¼NW¼, SE¼NW¼, SW¼, N½SE¼, SW¼SE¼, N½SE¼SE¼;
Sec. 35, W½NE¼NW¼, W½NW¼, W½SE¼NW¼, N½NW¼SW¼.
T. 56 N., R. 105 W.,
Sec. 3, S½NW¼NW¼, S½N½NW¼NW¼, S½NW¼, SW¼, W½NE¼SE¼, NW¼SE¼, S½SE¼;
Sec. 4, NE¼, N½NW¼, N½SW¼NW¼, SE¼NW¼, NE¼SE¼, N½SE¼SE¼;
Sec. 5, N½NE¼, SW¼NE¼, N½SE¼NE¼, NW¼, N½NW¼SW¼;
Sec. 6, NE¼NE¼, S½NW¼NE¼, S½N½NW¼NE¼, S½NW¼, N½S½, N½SW¼SW¼, SW¼SW¼SW¼, W½SE¼SW¼SW¼, N½SW¼SE¼, except that portion within HES 49;
Sec. 10, NE¼, NE¼NW¼, N½NW¼NW¼, NE¼SE¼;
Sec. 11, W½SW¼NE¼, NW¼, SW¼, W½SE¼, SE¼SE¼;
Sec. 12, SW¼SW¼;
Sec. 13, W½NE¼NW¼, W½NW¼, SE¼NW¼, SW¼, W½NW¼SE¼, SW¼SE¼, W½SE¼SE¼;
Sec. 14, N½NE¼, E½SW¼NE¼, SE¼NE¼, NE¼NW¼, E½NW¼NW¼, NE¼SE¼, N½SE¼SE¼;
Sec. 24, NE¼, N½NW¼, SE¼NW¼, N½SE¼, SE¼SE¼.
T. 56 N., R. 106 W.,
Sec. 1, S½SW¼NE¼, SE¼NE¼, S½ except that portion within HES 49;
Sec. 2, S½;
Sec. 3, lots 3–7, 9–12, NE¼SW¼, SE¼;
Sec. 4, lots 1–2, 7–10, except those portions of HES 40 and HES 177;
Sec. 10, N½NE¼NE¼;
Sec. 11, N½NE¼, NE¼NW¼, N½NW¼NW¼;
Sec. 12, N¼N¼N¼.
T. 57 N., R. 105 W.,
Sec. 34, S½SE¼;
Sec. 35, S½SW¼.

The area described contains 9,538.99 acres in Park County.

Dated: July 17, 1991.

David J. Walter,

Acting State Director, Wyoming.

[FR Doc. 91–17646 Filed 7–24–91; 8:45 am]

BILLING CODE 4310–22–M

Fish and Wildlife Service

Draft Recovery Plan for the American Burying Beetle for Review and Comment; Availability

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft American Burying Beetle Recovery Plan. This species occurs in two widely separated populations on public and private lands in Rhode Island and Oklahoma. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft Recovery Plan must be received on or before September 5 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft Recovery Plan may obtain a copy from the Northeast Regional Office, U.S. Fish and Wildlife Service, One Gateway Center, suite 700, Newton Corner, Massachusetts 02158 (617/965–5100 ext. 316) or the New England Field Office, U.S. Fish and Wildlife Service; 22 Bridge Street, Ralph Pill Marketplace, 4th Floor, Concord, New Hampshire 03301–4901 (603/225–1467). Comments on the plan should be addressed to Michael Amaral at the New England Field Office at the above address. The plan is available for public inspection, by appointment, during normal business hours at the above addresses.

FOR FURTHER INFORMATION CONTACT: Michael Amaral (see Addresses).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare Recovery Plans for most of the listed species native to the United States. Recovery Plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of Recovery Plans for listed species unless such a Plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during Recovery Plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will also take these comments into account in the course of implementing Recovery Plans.

The document submitted for review is the draft American Burying Beetle (*Nicrophorus americanus*) Recovery Plan. This carrion beetle, once widely distributed throughout temperate eastern North America, now consists of fewer than 1,000 individuals in two widely separated natural populations: A stable population on Block Island, off the coast of Rhode Island, and a marginal population in eastern Oklahoma. In addition, two laboratory colonies are being maintained for purposes of research and propagation, and in 1990 and 1991, about 100 American burying beetles were reintroduced to historical habitat on Penikese Island, Massachusetts. Based on the drastic decline and extirpation of the species over nearly its entire historical range, the American burying beetle was listed as federally endangered in July of 1989.

The species requires carrion of a certain size for reproductive purposes, and the primary threat to its continued existence appears to be lack of available carrion along with competition from other species for limited carrion resources. The American burying beetle formerly occurred on a variety of habitat types in 35 states and three Canadian provinces. Considering this broad geographic range, it is probable that vegetation and soil structures *per se* are not necessaryily limiting for the species, as long as suitable conditions exist for carcass burial.

The recovery objective is to reduce the immediacy of the threat of extinction by stabilizing the two extant populations, and to increase the species' chances for recovery by establishing at least 14 additional populations throughout its former geographic range. This will be accomplished through protecting the managing extant populations, maintaining captive populations and conducting reintroduction efforts, searching for additional populations, research, and implementing information and education programs. If the recovery objective is met, reclassification of the American burying beetle to threatened status will be considered.

This Recovery Plan is being submitted for technical/agency review. After consideration of comments received during the review period, the plan will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the Recovery Plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 19, 1991.

Nancy M. Kaufman,

Acting Regional Director.

[FR Doc. 91-17657 Filed 7-24-91; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT 697819,

Applicant: USFWS, Regional Director, Region 4, Atlanta, GA.

The applicant requests amendment of their current permit to include take of the whooping crane (*Grus americana*) for the purpose of scientific research and enhancement of propagation or survival of the species as prescribed by Service recovery documents.

PRT 690696,

Applicant: USFWS, Regional Director, Region 2, Albuquerque, NM.

The applicant requests amendment to their current permit to include import of live hatchlings and older age classes of the following sea turtles: olive ridley (*Lepidochelys olivacea*), hawksbill (*Eretmochelys imbricata*), loggerhead (*Caretta caretta*), leatherback (*Dermochelys coriacea*), and green sea turtle (*Chelonia mydas*) from Mexico and worldwide sources for the purpose of scientific research and enhancement of propagation or survival of the species.

PRT 758815,

Applicant: International Animal Exchange, Ferndale, MI.

The applicant requests a permit to import from Chile 9 male and 10 female captive hatched Darwin's rhea (*Pterocnemia pennata pennata*) and sell in interstate commerce to the following U.S. zoos: Cincinnati Zoo, Cleveland Metroparks Zoo, National Zoological Park, Roger Williams Park Zoo, Oklahoma City Zoo, and Reid Park Zoo for the purpose of enhancement of propagation and survival of the species.

PRT 759401,

Applicant: National Marine Fisheries Service, La Jolla, CA.

The applicant requests a permit to import one dead specimen of totoaba (*Cynoscion macdonaldi*) for the purpose of scientific study. Specimen was collected by gillnet fishermen of Guaymas, Mexico. Specimen's muscle tissue will be studied by isoelectric focusing for species identification.

PRT 704930,

Applicant: USFWS, Regional Director, Region 6, Denver, CO.

The applicant requests amendment of their current permit to include take of the Uncompahgre fritillary butterfly (*Boloria acrocnema*) for the purpose of scientific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45-4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358-2104); FAX: (703/358-2281).

Dated: July 22, 1991.

Maggie Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 91-17667 Filed 7-24-91; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget; Paperwork Reduction Project (1010-0077); Washington, DC 20503, telephone (202) 395-7340, with copies to John V. Mirabella; Acting Chief, Engineering and Standards Branch; Engineering and Technology Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070-4817.

Title: Notice of Intent/Report of Well Abandonment, Form MMS-332.

OMB approval number: 1010-0077.

Abstract: Respondents submit Form MMS-332 to the Minerals Management Service's (MMS) District Supervisors to be evaluated and approved or disapproved for the adequacy of the equipment, materials, and/or procedures which the lessee plans to use during the conduct of well-abandonment operations, including temporary abandonments where the wellbore will be re-entered and completed or permanently abandoned.

Bureau form number: Form MMS-332.

Frequency: On occasion.

Description of respondents: Outer Continental Shelf, oil, gas, and sulphur lessees.

Estimated completion time: .5 hour.

Annual responses: 1,650.

Annual burden hours: 825.

Bureau Clearance Officer: Dorothy Christopher, (703) 787-1239.

Dated: June 18, 1991.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 91-17645 Filed 7-24-91; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Public Information Collection Requirement Submitted to OMB for Review

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than ten days after publication. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, Fred D. Allen (703) 875-1573, MS/AS/ISS, room 1209B, SA-14, Washington, DC 20523-1413.

Date Submitted: July 10, 1991.

Submitting Agency: Agency for International Development.

OMB Number: 0412-0011.

Form Number: A.I.D. 1010-2.

Type of Submission: Reinstatement.

Title: Application for Assistance—American Schools and Hospitals Abroad.

Purpose: A.I.D. finances grant assistance to U.S. founders or sponsors who apply for grant assistance from ASHA on behalf of their institutions overseas. ASHA is a competitive grant program. The office of ASHA is charged with judging which applicants may be eligible for consideration and receive what amounts of funding for what purposes. To aide in such determination, the Office of ASHA has established guidelines as the basis for deciding upon the eligibility of the applicants and the resolution on annual grant awards. These guidelines are published in the Federal Register, Doc. 79-36221.

Annual Reporting Burden: Respondents: 85; annual responses: 1; average hours per response: 12; burden hours: 1,020.

Reviewer: Marshall Mills (202) 395-7340, Office of Management and Budget, room 3201, New Executive Office Building, Washington, DC 20503.

Dated: July 11, 1991.

Elizabeth Baltimore,

Information Support Services Division.

[FR Doc. 91-17615 Filed 7-24-91; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31897]

The Central Railroad Co. of Indiana; Acquisition and Operation Exemption; Lines of Consolidated Rail Corp.

The Central Railroad Company of Indiana (CRI), a non-carrier, has filed a notice of exemption to acquire and operate: (1) 85.4 miles of rail line between Cincinnati, OH and Shelbyville, IN owned by Consolidated Rail Corporation (Conrail); and (2) 76.3 miles of overhead trackage rights between Shelbyville and Frankfort, IN over lines owned by Conrail.[1] The lines to be purchased are described as follows: *Shelbyville Secondary Track*—MP 0.0 in Cincinnati to MP 81.0 in Shelbyville; *Lawrenceburg Industrial Track*—MP 22.4 at Lawrenceburg Junction to MP 28.3 at Lawrenceburg; *Greensburg Industrial Track*—MP 222.4 to MP 223.6 in Greensburg; and *Westport Industrial Track*—MP 223.7 to MP 225.0 in Greensburg. The trackage rights are: *Shelbyville Secondary Track*—MP 81.0 in Shelbyville to MP 109.3 in Indianapolis; *St. Louis Line*—MP 0.0 to MP 1.1 in Indianapolis; *Crawfordsville Secondary Track*—MP 0.7 in Indianapolis to MP 12.6 at Clermont; and *Logansport Secondary Track*—MP 0.0 at Clermont to MP 35.5 at Frankfort.[2]

The transaction is related to an exemption petition filed concurrently in Finance Docket No. 31896, *Central Properties, Inc.—Control—The Central R. Co. of Indianapolis and The Central R. Co. of Indiana.* In that proceeding, Central Properties, Inc., seeks an exemption to acquire common control of CRI and an existing Class III rail carrier. CRI expects to consummate its acquisition from Conrail within 10 days after the Commission serves a decision in the related control proceeding, or on August 1, 1991, whichever is later.

Any comments must be filed with the Commission and served on: Carl M. Miller, 2270 Lake Avenue, Suite 270, Fort Wayne, IN 46805.

CRI must preserve intact all sites and structures 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470.[3]

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: July 17, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-17704 Filed 7-24-91; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31536]

Greenwood Island Terminal Railroad, Jackson County, MS

AGENCY: Interstate Commerce Commission.

ACTION: Notice of availability of environmental assessment.

SUMMARY: The Jackson County Port Authority, doing business as the Greenwood Island Terminal Railroad, petitioned the Interstate Commerce Commission (Commission) for exemption authority to construct a 2.3 mile rail line in Pascagoula, Mississippi. The proposed line would link a planned bulk cargo terminal on Greenwood Island, near Pascagoula, with an existing CSX Transportation, Inc. (CSXT) branch line and CSXT's Mobile, AL to New Orleans, LA mainline. The purpose of the proposed construction is to provide the proposed bulk cargo terminal with rail linkage to CSXT and the national rail system. This petition was conditionally granted in Finance Docket No. 31536 in a decision served August 24, 1990, subject to completion of the Commission's environmental review and a further decision.

The Commission has prepared its environmental assessment which concludes that the proposed action, subject to the recommended conditions, will not significantly affect either the quality of the human environment or the conservation of energy resources. The Commission will consider any comment to the conclusions reached in the environmental assessment before rendering a final decision in this proceeding.

DATES: Written comments must be filed by August 25, 1991.

ADDRESSES: Send an original and 10 copies of comments referring to Finance Docket No. 31536, Jackson County Port Authority d/d/a Greenwood Island Terminal Railroad, Jackson County, Mississippi, to:

(1) Section of Energy and Environment, room 3219, Interstate Commerce Commission, Washington, DC 20423, to the attention of Phillis Johnson-Ball, and one copy of the comments to:

(2) Petitioner's representative: John D. Heffner; 1700 K Street NW., suite 1107; Washington, DC 20006

FOR FURTHER INFORMATION CONTACT: Phillis Johnson-Ball (202) 275-7659 or Elaine K. Kaiser, Chief, Section of Energy and Environment (202) 275-0804. (TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION: Copies of the Environmental Assessment may be obtained from the Section of Energy and Environment, Office of Economics, room 3219, Interstate Commerce Commission, Washington, DC 20423. Telephone (202) 275-7684. Assistance for the hearing impaired is available through TDD Services at (202) 275-1721.

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[1] CRI estimates that its annual operating revenue will fall within the level of a Class III railroad.

[2] It appears that CRI's mileage description of the involved rail properties does not coincide with the total miles of line and trackage rights it indicated it will acquire from Conrail. CRI should notify this office if there is a discrepancy in its line description or mileage figures. If so, a corrected notice will be published.

[3] CRI certifies that it has identified to the appropriate State Historic Preservation Officer all sites and structures 50 years old or older that will be subject to the transaction.

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The Commission has prepared its environmental assessment which concludes that the proposed action, subject to the recommended conditions, will not significantly affect either the quality of the human environment or the conservation of energy resources. The Commission will consider any comment to the conclusions reached in the environmental assessment before rendering a final decision in this proceeding.

DATES: Written comments must be filed by August 25, 1991.

ADDRESSES: Send an original and 10 copies of comments referring to Finance Docket No. 31536, Jackson County Port Authority d/d/a Greenwood Island Terminal Railroad, Jackson County, Mississippi, to:

(1) Section of Energy and Environment, room 3219, Interstate Commerce Commission, Washington, DC 20423, to the attention of Phillis Johnson-Ball, and one copy of the comments to:

(2) Petitioner's representative: John D. Heffner; 1700 K Street NW., suite 1107; Washington, DC 20006

FOR FURTHER INFORMATION CONTACT: Phillis Johnson-Ball (202) 275–7659 or Elaine K. Kaiser, Chief, Section of Energy and Environment (202) 275–0804. (TDD for hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION: Copies of the Environmental Assessment may be obtained from the Section of Energy and Environment, Office of Economics, room 3219, Interstate Commerce Commission, Washington, DC 20423. Telephone (202) 275–7684. Assistance for the hearing impaired is available through TDD Services at (202) 275–1721.

By the Commission, Howard K. Face, Director, Office of Economics.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–17703 Filed 7–24–91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree

In accordance with section 122 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622, and the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a complaint styled *United States* v. *Kem-pest Site* (E.D. Mo.) 90–11–2–500 was filed in the United States District Court for the Eastern District of Missouri on July 11, 1991, and, simultaneously, a consent decree was lodged with the Court in settlement of the allegations in the complaint. This consent decree settles the government's claims in the complaint pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. 9606, 9607, for injunctive relief to abate an imminent and substantial endangerment to the public health, welfare or the environment because of actual or threatened releases of hazardous substances from a facility, and for the recovery of response costs incurred by the United States with respect to a facility located northeast of Cape Girardeau, Missouri known as the "Kem-pest Laboratories, Inc." The complaint alleged, among other things, that the defendant is a person who owned or operated a facility at which hazardous substances were disposed of, and that the United States has incurred and will continue to incur response costs in response to the release or threat of release of hazardous substances from the Site.

The proposed consent decree provides that defendants will pay to the United States $440,000 and will consent to a CERCLA lien on the Site. The proposed settlement also contains a waiver of future liability based on defendants' ability to pay.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. All comments should refer to *United States* v. *Kem-pest Site* (E.D. Mo.) D.J. Ref. 90–11–2–500.

The proposed consent decree may be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004, 202–347–7829. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $5 (25 cents per page reproduction costs) payable to Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91–17656 Filed 7–24–91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree; United States v. Watkins-Johnson Co.

In accordance with Departmental Policy, 28 CFR 50.7, and pursuant to section 122(d)(2)(B) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(d)(2)(B), notice is hereby given that a Consent Decree in *United States* v. *Watkins-Johnson Company,* Civil Action No. C 92 20423 SW (N.D. Cal.), was lodged with the United States District Court for the Northern District of California on July 16, 1991. This action was brought under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607. The Consent Decree provides that defendant Watkins-Johnson Company will clean up the Watkins-Johnson Superfund Site as required by the Record of Decision issued by the U.S. Environmental Protection Agency on June 29, 1990, pay $150,000 of the past response costs incurred by the U.S. Environmental Protection Agency, and pay all future response and oversight costs incurred by the U.S. Environmental Protection Agency.

For thirty (30) days from the date of publication of this notice, the Department of Justice will receive written comments relating to the Consent Decree from persons who are not parties to the action. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Watkins-Johnson Company.*, D.O.J. Ref. No. 90–11–3–729.

The Consent Decree may be examined at the Office of the United States Attorney, Northern District of California, U.S. Courthouse, 450 Golden Gate Avenue, San Francisco, California 94102 and at the Region IX office of the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105.

A copy of the Consent Decree also may be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004, telephone number (202) 347–2072. A copy of the Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center. The proposed Consent Decree package consists of a 76 page consent decree and 57 pages of appendices. Please specify in the request whether or not appendices are requested. A request for a copy of the proposed Consent Decree with appendices shall be accompanied by a check in the amount of $33.25 (25 cents per page reproduction charge) payable to "Consent Decree Library." A request for a copy of the proposed Consent Decree without appendices should be accompanied by a check in the amount of $19.00 to "Consent Decree Library."

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91–17654 Filed 7–24–91; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—Cable Television Laboratories, Inc./Nexus Engineering Corp./General Instrument Corp.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Cable Television Laboratories, Inc. ("CableLabs"), Nexus Engineering Corp. ("NEXUS") and General Instrument Corporation ("GI") on June 27, 1991, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to this agreement and (2) the nature and objectives of this agreement. The notification was filed for the purpose of invoking the protections of section 4 of the Act, which limit the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the identities of the parties to this agreement and the general areas of planned activity are given below.

The current parties are the following:

Cable Television Laboratories, Inc., 1050 Walnut Street, Suite 500, Boulder, Colorado 80302

Nexus Engineering Corp., 7000 Lougheed Highway, Burnaby, British Columbia, Canada

General Instrument Corporation, 2200 Byberry Road, Hatboro, Pennsylvania 19040

The area of planned activity is cooperation in the development of interface concepts between personal communications networks and cable system networks, including the exchange of information related to the functions and architecture of personal communications networks and cooperation in the conduct of radio frequency tests in connection with experimental personal communications networks licenses issued by the FCC.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91–17655 Filed 7–24–91; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Benefits Review Board; New Address

The Benefits Review Board announces that effective August 5, 1991, the Board's operation will be moved to a new location in the Tech World complex next to the DC Convention Center. The new address and phone numbers, effective August 5, 1991, will be:

Benefits Review Board, U.S. Department of Labor, 800 K Street, NW., Suite 500, Washington, DC 20001–8001.

General Information/Case Inquiries—(202) 633–7500.

Executive Counsel/Clerk of the Board—(202) 633–7503.

Interested parties and appellants are hereby notified of the new address and phone numbers for all matters filed with the Board and for all inquiries concerning any matter before the Board on or after August 5, 1991.

The Department of Labor is in the process of amending its regulations in the *Code of Federal Regulations* to reflect this new address at 20 CFR 801.303, 802.204.

FOR FURTHER INFORMATION CONTACT: Lisa L. Lahrman, Executive Counsel, Clerk of the Board at (202) 653–5060 through August 2, 1991; (202) 633–7503 on or after August 5, 1991.

Signed this 18th day of July, 1991.

Betty J. Stage,

Chairman of the Board, Chief Administrative Appeals.

[FR Doc. 91–17682 Filed 7–24–91; 8:45 am]

BILLING CODE 4510–23–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Opera-Musical Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Opera-Musical Theater Advisory Panel (Professional Companies "B" Section) to the National Council on the Arts will be held on August 15–16, 1991 from 9 a.m.–9 p.m. and August 17 from 9 a.m.–6 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 17 from 3:30 p.m.–6 p.m. The topic will be policy discussion.

The remaining portions of this meeting on August 15–16 from 9 a.m.–9 p.m. and August 17 from 9 a.m.–3:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 5, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6), and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–17701 Filed 7–24–91; 8:45 am]

BILLING CODE 7537–01–M

Opera-Musical Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Opera-Musical Theater Advisory Panel (Professional Companies "A" Section) to the National Council on the Arts will be held on August 12–13, 1991 from 9 a.m.–9 p.m. and August 14 from 9 a.m.–6 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 14 from 3:30 p.m.–6 p.m. The topic will be policy discussion.

The remaining portions of this meeting on August 12–13 from 9 a.m.–9 p.m. and August 14 from 9 a.m.–3:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 5, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6), and (9)(B) of section 552b of title 5, United States Code.

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Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–17701 Filed 7–24–91; 8:45 am]

BILLING CODE 7537-01-M

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Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–17702 Filed 7–24–91; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit application received under the Antarctic Conservation Act of 1973, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by August 26, 1991. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357–7817.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The application received is as follows:

1. *Applicant:* Mark Chappell, Biology Department, University of California, Riverside, CA 92521.

Activity for which permit requested. Taking, import into USA. The applicant is conducting research on reproductive effort and foraging activity in Adelie penguins. He requests permission to band a total of 500 birds (200 adults, 300 chicks). In addition, he requests permission to sacrifice for tissue sampling up to 10 injured birds. Other studies involve 50 chicks to be examined in laboratory studies of metabolic rates, salt and water balance, and nitrogen excretion. These chicks would be returned to the colonies unharmed after the experiments. Time-depth recorders would be temporarily attached to 50 adult birds to study diving behavior. Doubly-labeled water studies of 75 adults and 30 chicks would be performed. These specimens would be returned unharmed after the experiments. Other experiments involve measurement of total body water. A maximum of 25 chicks would be sacrificed for experiments on osmoregulation, energy utilization and material budgets. The applicant also requests permission to import tissue samples, blood and other body fluids to the US for further analysis.

Location: Vicinity of Palmer station, Antarctica.

Dates: October 1991–April 1992.

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 91–17636 Filed 7–24–91; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Education and Human Resources; Committee of Visitors; Notice of Meeting

The National Science Foundation announces the following meeting:

Name: Committee of Visitors Review of the Teacher Preparation Program.

Date and Time: August 15, 1991; 1 to 5 p.m. August 16, 1991; 8 a.m. to 5 p.m.

Place: Room 638A, 1800 G Street, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Miriam Levia or Ms. Lois Nicholson, Program Directors, Room 638, National Science Foundation, Washington, D.C. 20550, telephone (202) 357–7069.

Purpose of Meeting: To provide oversight review of the Teacher Preparation Program within the Division of Teacher Preparation and Enhancement.

Agenda: To carry out Committee of Visitors (COV) review including examination of decisions on proposals, reviewer comments, and other privileged materials.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would improperly be disclosed.

Dated: July 22, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–17700 Filed 7–24–91; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Education and Human Resources: Committee of Visitors; Notice of Meeting

The National Science Foundation announces the following meeting:

Name: Committee of Visitors Review of the Minority Research Centers of Excellence (MRCE) Program

Date and Time: August 14–15, 1991; 8 a.m. to 5 p.m.

Place: Room 1243, 1800 G Street NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Ms. Griselio P. Moranda, Program Analyst or Dr. Roosevelt Calbert, Section head, Division of Human Resource Development, Room 1225, National Science Foundation, Washington, DC 20550 Telephone (202) 357–7552

Purpose of Meeting: To provide oversight review of the Minority Research Centers of Excellence (MRCE) Program within the Division of Human Resource Development.

Agenda: To carry out Committee of Visitors (COV) review including examination of decisions on proposals, reviewer comments, and other privileged materials.

Reasons for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would improperly be disclosed.

Dated: July 22, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–17699 Filed 7–24–91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, of the ACNW, and the ACNW Working Groups the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published June 20, 1991 (56 FR 28420). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS full Committee and ACNW meetings designated by an asterisk (*) will be closed in whole or in part to the public. ACRS full Committee and ACNW meetings begin at 8:30 a.m. and ACRS Subcommittee and ACNW Working Group meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS full Committee and ACNW meetings, and when ACRS Subcommittee and ACNW Working Group meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the August 1991 ACRS and ACNW full Committee meetings can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committees (telephone: 301/492–4600 (recording) or 301/492–7288, Attn: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., Eastern Time.

ACRS Subcommittee Meetings

AC/DC Power Systems Reliability, July 30, 1991, Bethesda, MD. The Subcommittee will discuss the implementation status of the station blackout rule for current operating plants.

AC/DC Power Systems Reliability, July 31, 1991, Bethesda, MD. The Subcommittee will discuss adoption of the N+2 concept for systems which are actuated to perform safety functions for future nuclear plants (GE, *W*, CE and EPRI).

Advanced Reactor Designs, August 6, 1991, Bethesda, MD. The Subcommittee will review the modular high-temperature gas cooled reactor (MHTGR) and the power reactor innovative small module (PRISM) designs sponsored by DOE.

Extreme External Phenomena, August 7, 1991, Bethesda, MD. The Subcommittee will discuss the results of the Diablo Canyon Long-Term Seismic Reevaluation Program.

Instrumentation and Control Systems, August 29, 1991, Bethesda, MD. The Subcommittee will discuss EPRI's reactor set-point methodology for future designs and the Transient Response Implementing Plan (TRIP) procedures.

Advanced Pressurized Water Reactors, September 4, 1991, Bethesda, MD. The Subcommittee will continue its review of the CE System 80+ Standard Plant with a detailed look at the NUPLEX 80+ Advanced Instrumentation and Control System design and the Probabilistic Risk Assessment as applied to this new design.

Improved Light Water Reactors, September 17, 1991, Bethesda, MD. The Subcommittee will review draft safety evaluation reports corresponding to Chapters 1 and 10 of the EPRI's Requirements Document for Evolutionary Designs.

Advanced Boiling Water Reactors, September 18, 1991, Bethesda, MD. The Subcommittee will review draft safety evaluation reports corresponding to Chapters 1, 2, 3, 4, 5, 6, and 17 of the GE Standard Safety Analysis Report.

Severe Accidents, October 24–25, 1991, Bethesda, MD. The Subcommittee will discuss elements of the Severe Accident Research Program.

Regional Programs, November 13–14, 1991 (tentative), NRC Region V Office, Walnut Creek, CA. The Subcommittee will discuss the activities of the NRC Region V Office.

Thermal Hydraulic Phenomena, Date to be determined (Fall, tentative), Bethesda, MD. The Subcommittee will continue its review of the NRC staff program to address the issue of interfacing systems LOCAs.

Joint Thermal Hydraulic Phenomena and Core Performance, Date to be determined, Bethesda, MD. The Subcommittee will continue its review of the issues pertaining to BWR core power stability.

Thermal Hydraulic Phenomena, Date to be determined, Bethesda, MD. The Subcommittee will review the status of the application of the Code Scaling, Applicability, and Uncertainty (CSAU) Evaluation Methodology to a small-break LOCA calculation for a B&W plant.

Regulatory Activities, Date to be determined, Bethesda, MD. The Subcommittee will review the proposed final resolution of Generic Safety Issue-113, "Dynamic Qualification Testing of Large Bore Hydraulic Snubbers."

Occupational and Environmental Protection Systems (tentative), Date to be determined, Bethesda, MD. The Subcommittee will review certain regulatory guides related to the implementation of the revised 10 CFR part 20 rule.

Systematic Assessment of Experience, Date to be determined, Bethesda, MD. The Subcommittee will discuss the safety significance of the lessons learned from the operating experience with solenoid-operated valves (SOVs). Also, it will discuss the comments received from the Nuclear Utility Group on Equipment Qualification regarding the AEOD's findings on SOV problems at U.S. nuclear power plants.

Thermal Hydraulic Phenomena, Date to be determined, Los Alamos, NM. The Subcommittee will review the documentation associated with the TRAC–PF1/MOD2 code version.

ACRS Full Committee Meetings

376th ACRS Meeting, August 8–10, 1991, Bethesda, MD. Items are tentatively scheduled.

A. *Reactor Operating Experience (Open)*—Briefing and discussion of events and incidents that have occurred at nuclear facilities, including the recent loss of off-site power event at the Vermont Yankee Nuclear Power Station. Representatives of the NRC staff and the industry will participate, as appropriate.

B. *NRC Safety Research Program (Open)*—Discussion of the scope and nature of a proposed report to the Commission on the NRC safety research program.

C. *Diablo Canyon Nuclear Power Station (Open)*—Review and report on the results of the long-term seismic reevaluation program for this nuclear station. Representatives of the licensee and the NRC staff will participate, as appropriate. A Committee report may result from this session.

D. *Nuclear Power Plant Operator Requalification Program (Open)*—Briefing and discussion regarding the impact of symptom-based operating procedures on the requalification of nuclear power plant licensed operators.

E. *ACRS Plans for the Review of Evolutionary and Advanced Reactor Plants (Open)*—Discussion of plans and procedures for conduct of ACRS reviews of the evolutionary and advanced LMR designs, including the GE ABWR design.

F. *NRC Regulatory Impact Survey (Open)*—Review and report on the NRC staff's proposed corrective actions resulting from the NRC regulatory impact survey (SECY–91–172, Regulatory Impact Survey Report, Final). Representatives of the NRC staff and the nuclear industry will participate, as appropriate. A Committee report may result from this session.

G. *San Onofre Nuclear Generating Station Unit No. 1 (Open)*—Review and report on the proposed conversion of a

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Thermal Hydraulic Phenomena, Date to be determined, Los Alamos, NM. The Subcommittee will review the documentation associated with the TRAC–PF1/MOD2 code version.

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G. *San Onofre Nuclear Generating Station Unit No. 1 (Open)*—Review and report on the proposed conversion of a provisional operating license to a full-term operating license for this nuclear unit. Representatives of the NRC staff and the licensee will participate, as appropriate. A Committee report may result from this session.

H. *Station Blackout Rule (Open)*—Briefing and discussion regarding the status of implementation of the Station Blackout Rule. Representatives of the NRC staff and the nuclear industry will participate, as appropriate. A Committee report may result from this session.

I. *AC/DC Power Systems Reliability (Open)*—Briefing and discussion regarding adoption of the "N+2" concept for systems which are actuated to perform safety functions for future plants. Representatives of the NRC staff and the nuclear industry will participate, as appropriate. A Committee report may result from this session.

J. *Key Technical Issues for Future Nuclear Plants (Open)*—Discussion of items in need of early resolution with respect to future nuclear power plant designs and a proposed course of action to address them.

K. *ACRS Subcommittee and Members Activities (Open)*—Reports about and discussion regarding the status of designated Subcommittee activities. Also, discussion regarding activities of individual Committee members.

L. *Anticipated Committee Activities (Open)*—Discussion of anticipated ACRS Subcommittee activities, items proposed for consideration by the full Committee, and administrative matters related to the conduct of Committee business.

M. *Proposed Reports to NRC (Open)*—Discussion of proposed reports to the NRC regarding items considered during this meeting.

N. *Miscellaneous (Open)*—Complete discussion of items that were not completed during previous ACRS meetings as time and availability of information permit, including the proposed resolution of Generic Issue-130, Essential Service Water System Failures at Multi-Unit Sites.

377th ACRS Meeting—September 5–7, 1991—Agenda to be announced.

378th ACRS Meeting—October 10–12, 1991—Agenda to be announced.

ACNW Full Committee and Working Group Meetings

34th ACNW Meeting, August 28–29, 1991, Bethesda, MD. Items are tentatively scheduled.

A. The State of Nevada will be invited to present a summary and discussion of the State's review and comments on DOE's Site Characterization Plan and related Study Plans.

B. DOE will be invited to present a summary and discussion of the DOE responses to comments by EPA, NRC, and the State of Nevada on the Yucca Mountain Site Characterization Plan.

C. The NMSS HLW staff will present the results of the review of DOE's responses to the NRC staff's Site Characterization Analysis.

D. The NMSS HLW proactive program will be presented. This involves planned rulemakings, guidelines, and technical positions in support of the HLW program.

E. Discuss anticipated and proposed Committee activities, future meeting agenda, administrative, and organizational matters, as appropriate. Also, discuss matters and specific issues that were not completed during previous meetings as time and availability of information permit.

35th ACNW Meeting, September 25–27, 1991—Agenda to be announced.

36th ACNW Meeting, October 23–24, 1991—Agenda to be announced.

37th ACNW Meeting, November 20–21, 1991—Agenda to be announced.

38th ACNW Meeting, December 18–19, 1991—Agenda to be announced.

ACNW Working Group on Preparation of Regulatory Guides for Implementing Revisions to 10 CFR part 20, August 20–22, 1991, Bethesda, MD—Postponed.

ACNW Working Group on NRC staff Computer Modeling and Performance Assessment Capabilities in High-Level Waste, September 11–13, 1991. The Working Group will review the NRC staff's capabilities to make independent evaluations of licensee proposals with respect to the performance of high-level radioactive waste disposal facilities. Emphasis will be placed on computer capabilities involving modeling, documentation, verification and validation.

ACNW Working Group on Geologic Dating, October 22, 1991, Bethesda, MD—Postponed.

ACNW Working Group on Residual Contamination Clean-up Criteria, October 25, 1991, Bethesda, MD. The Working Group will review the clean-up criteria for unrestricted use of contaminated sites that have been, or were at one time, under AEC or NRC license. The NRC staff is in the process of determining acceptable levels for uranium- and thorium- contaminated soils and structures to be released for unrestricted use.

ACNW Working Group on the Impact of Long-Range Climate Change in the Area of the Southern Basin and Range, November 19, 1991, Bethesda, MD. The Working Group will review the potential long-range climate changes and their impact on performance assessments of a proposed high-level repository.

ACNW Working Group on Post-Closure Monitoring, November 22, 1991, Bethesda, MD. The Working Group will review the potential problems and possible limitations associated with the post-closure monitoring of a proposed high-level waste repository. The potential utilization of non-invasive methods for the attainment of such a capability as well as the duration of such monitoring, and significance and impact of results will also be considered.

ACNW Working Group on Inadvertant Human Intrusion Related to the Presence of Natural Resources at a High-Level Waste Site, December 17, 1991, Bethesda, MD. The Working Group will review the methodologies for assessment of the potential for natural resources at a proposed high-level waste site.

ACNW Working Group on NRC staff Computer Modeling and Performance Assessment Capabilities in Low-Level Waste, Date to be determined, Bethesda, MD.

Dated: July 19, 1991.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 91–17669 Filed 7–24–91; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Incorporated

July 19, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Ambac, Inc.
  Common Stock, $0.01 Par Value (File No. 7–7090)
Banyan Mortgage Investment Fund
  Common Stock, $0.01 Par Value (File No. 7–7091)
Calgon Carbon Corp.
  Common Stock, $0.01 Par Value (File No. 7–7092)
Continental Medical Systems, Inc.
  Common Stock, $0.01 Par Value (File No. 7–7093)
Fisher Price, Inc.
  Common Stock, $0.01 Par Value (File No. 7–7094)

Fruehauf Trailer Corp.
  Common Stock, $0.01 Par Value (File No. 7–7095)
Harley-Davidson, Inc.
  Common Stock, $0.01 Par Value (File No. 7–7096)
International Specialty Products, Inc.
  Common Stock, $0.01 Par Value (File No. 7–7097)
Mutual Risk Management, Ltd.
  Common Stock, $0.01 Par Value (File No. 7–7098)
Nuveen Quality Income Municipal Fund, Inc.
  Common Stock, $0.01 Par Value (File No. 7–7099)
Ruddick Corp.
  Common Stock, $1.00 Par Value (File No. 7–7100)
Spaghetti Warehouse, Inc.
  Common Stock, $0.01 Par Value (File No. 7–7101)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 9, 1991, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authroity.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–17623 Filed 7–24–91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

July 19, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Telecom Corporation of New Zealand Limited
  American Depositary Shares (each representing 20 Ordinary Shares, NZ $1.00 Par value) (File No. 7–7102)
Barr Laboratories, Inc.
  Common Stock, $.01 Par Value (File No. 7–7103)
Enquirer/Star Group, Inc.
  Common Stock, $.001 Par Value (File No. 7–7104)
Escagenetics Corporation
  Common Stock $.0001 Par Value (File No. 7–7105)
Exel, Inc.
  Ordinary Shares $.001 Par Value (File No. 7–7106)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 9, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–17624 Filed 7–24–91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–29451; File No. SR–NASD–91–18]

Self-Regulatory Organizations; Filing of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Suspension and Cancellation of Associated Person's Registration as a Result of Failure to Pay Dues, Fees, or Assessments Charged by the Association

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 4, 1991 [1], the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of section 19(b)(1) under the Act, the NASD is herewith filing a proposed rule change to Article VI, Sections 3 and 4 of the NASD By-Laws. The NASD proposes to amend its By-Laws to provide for the suspension or cancellation of the registration of an associated person in the event of non-payment of fees, dues, or assessments. Below is the text of the proposed rule change. Proposed new language is italicized.

Article VI

Dues, Assessments and Other Charges

* * * * *

Suspension or Cancellation of Membership or Registration for Non-Payment of Dues

Sec. 3. The Corporation after fifteen (15) days notice in writing, may suspend or cancel the membership of any member or the registration of any person in arrears in the payment of any fees, dues, assessments or other charges or for failure to furnish any information or reports requested pursuant to section 2 of this Article.

Reinstatement of Membership or Registration

Sec. 4. Any membership or registration suspended or canceled under this Article may be reinstated by the Corporation upon such terms and conditions as it shall deem just; provided, however, that any applicant for reinstatement of membership or registration shall possess the qualifications required for membership or registration in the Corporation.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

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[1] On July 12, 1991, the NASD filed Amendment No. 1 to the proposed rule change, in response to a request of the Commission staff. Amendment No. 1 clarifies the language of the proposal.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Article VI of By-Laws provides the Board of Governors with the authority to charge fees, dues and assessments to members, issuers, and persons using facilities and systems operated or controlled by the NASD. Many of these fees are described in Schedule A of the NASD By-Laws and include such things as examination fees, annual assessments, and fees for filing various documents with the NASD. Section 3 of Article VI of the By-Laws currently authorizes the NASD, after providing written notice pursuant to article VI of the Code of Procedure, to suspend or cancel the membership of any member which fails to pay any fees, dues, assessments or other charges. Failure to pay forum fees associated with the arbitration process operated by the NASD may result in the suspension or cancellation of a firm's membership. Section 3, however, does not apply to associated persons who fail to pay fees, dues, or assessments.

While section 2 of Article V of the Rules of Fair Practice authorizes the NASD, after providing written notice, to revoke the registration of an associated person who has failed to pay any fine or cost imposed in connection with disciplinary proceedings or proceedings conducted under the Code of Procedure, no provision of the NASD's By-Laws, Rules of Fair Practice, Code of Arbitration Procedure, or Code of Procedure provides for the suspension or cancellation of an associated person's registration for the failure to pay arbitration forum fees. Moreover, the number of associated persons who fail to pay forum fees is increasing.[2]

The language of the rule change, although proposed primarily to permit the Association, after providing fifteen days notice, in writing, to suspend or cancel the registration of any individual who remains delinquent in the payment of arbitration forum fees, is sufficiently broad to encompass other instances in which associated persons have failed to pay fees, dues, assessments or other charges owed for the use of facilities or systems operated or controlled by the NASD. The NASD, therefore, believes that this rule change is warranted to protect the integrity of the arbitration process and the marketplace, and to provide uniformity in the treatment of associated persons failing to pay fees.

The NASD believes that the proposed rule change is consistent with the provisions of sections 15A(b)(6), (b)(7), and (b)(8) of the Act. Pursuant to section 15A(b)(6), the proposed rule change will assist in removing impediments to and perfecting the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. Sections 15A(b)(7) and (b)(8) require that the rules of a national securities association include provisions to assure that members and persons associated with members be appropriately and fairly disciplined for violations of any provision of the Act, the rules and regulations promulgated thereunder, the MSRB Rules, or the Association's Rules. The proposed change will conform the treatment of associated persons in arrears in the payment of any dues, fees, or other charges with the existing standard of treatment of associated persons who fail to pay fines and costs in connection with disciplinary and other proceedings held pursuant to the Code of Procedure.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by August 15, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority 17 CFR 200.30-3(a)(12).

Dated: July 17, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-17688 Filed 7-24-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29444; File No. SR-NSCC-91-03]

July 16, 1991

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Revising Standards for Approved Issuers of Letters of Credit for Clearing Fund Purposes

On April 17, 1991, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposed rule change will modify NSCC's rules relating to the standards by which NSCC approves issuers of letters of credit used for clearing fund purposes. Notice of the proposal was published in the **Federal Register** on May 13, 1991.[2] No comments were received. As discussed below, the Commission is approving NSCC's proposal.

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[2] On May 7, 1991, in File No. SR-NASD-90-62, the commission approved a new Section 41(g) to the NASD's code of Arbitration Procedure. See Securities Exchange Act Release No. 29166 (May 7, 1991), 56 FR 22029 (May 13, 1991). The new section provides that fees and assessments imposed by arbitrators under Sections 43 and 44 of the code are immediately payable upon receipt of the award.

I. Description

The proposed rule change will modify NSCC's standards by which they approve letters of credit used for clearing fund purposes. These standards, which have basically not been changed since they were adopted in 1980, seek to ensure the creditworthiness and liquidity of the issuing financial institution. The new standards are proposed to go into effect, promptly upon Commission approval of this proposed rule change.[3]

NSCC's rules require members to contribute deposits to the clearing fund, in an amount based in large part upon the member's use of the clearance facilities. As much as 70% of a member's required deposits may be collaterized using letters of credit that are issued by an NSCC approved lender.[4]

NSCC's proposed standards for clearing fund letter of credit issuers would include both size and credit rating criteria. Under the proposed rules, to qualify as an issuing bank, any foreign or domestic bank must have:

> (1) either (a) $300 million in total shareholders' equity and a short-term obligations rating of not less than A–2 or P–2, or (b) $150 million in total shareholders' equity and a short-term obligations rating of not less than A–1 or P–1, *and* (2) its letters of credit be able to be readily pledged by NSCC, pursuant to a line of credit arrangement establishment by NSCC as collateral to obtain credit in an amount equal to at least 80 percent of stated value.

The relevant short-term ratings are those for the unsecured, uninsured, unguaranteed short-term obligations of the issuing bank, and not of its parent holding company. In addition, a bank may not be approved as a letter of credit issuer if one of its short-term obligations ratings is lower than A–2 or P–2. A "split" rating of A–2/P–3 or P–2/A–3 will not be acceptable.[5] The maximum maturity for a letter of credit issued for clearing fund purposes will remain one year under the proposed rule change.[6]

NSCC will require each issuing bank to confirm periodically that it complies with the applicable capital standards established by each of its regulatory authorities.[7] NSCC will also subscribe to a financial reporting service, such as Moody's or Standard and Poor's, for periodical reports on each issuer. Also, any foreign bank, acting through a branch or agency in the United States, may not be approved as a letter of credit issuer unless a sufficient guarantee or performance of such branch or agency is received by NSCC from such bank.

II. Discussion

The Commission believes that NSCC's proposal is consistent with the Act, and in particular section 17A of the Act. Specifically, the Commission believes NSCC's proposal "promotes the prompt and accurate clearance and settlement of securities transactions" and assures "the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible." [8]

The proposal helps to ensure that the letters of credit which members can deposit with NSCC (in partial satisfaction of their clearing fund contribution requirements) are issued by sufficiently creditworthy and liquid financial institutions to maintain the clearing fund's own creditworthiness and liquidity. The creditworthiness of the clearing fund helps to assure that NSCC will be able to meet its obligations, including trade netting guarantees, on a timely basis even if more than one member defaults on its obligations to NSCC.

The new issuer standards will help to ensure the liquidity of NSCC's clearing fund and NSCC's ability to meet sudden or unanticipated requirements for cash to address, for example, a pending member default. The additional requirement that letters of credit must be acceptable as collateral to NSCC's line of credit banks further this goal. By requiring both a minimum size and a minimum credit rating by Standard and Poor's or Moody's these new standards avoid the potential problems of requiring only one of these criteria for approval as the prior standards did.[9] As

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[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 29159 (May 3, 1991), 56 FR 22030.

[3] Upon the new standards taking effect, NSCC will notify each approved issuer of the new standards and mail to each of them a proposed Letter of Credit Issuer Agreement ("Agreement"), requiring compliance with these new standards. Each such issuer will then have ninety days to execute the Agreement, stating compliance with these new standards. Failure to execute this Agreement, in a form satisfactory to NSCC will prevent an issuer from being approved.

Thereafter NSCC will notify each member that has posted as clearing fund collateral a letter of credit from an issuer that does not meet these new standards (and which the Board of Directors has not specifically exempted from compliance with the new standards) that it must replace such letter of credit, within a time period that will be no more than 60 days from such notice, with either a letter of credit from an approved issuer or other eligible collateral. See letter from Jeffrey Ingber, Associate General Counsel NSCC to Ester Saverson, Branch Chief, Division of Market Regulation, Commission, dated July 9, 1991.

As of April 17, 1991, one letter of credit issuer had a P–3 short-term rating from Moody's and the other approved issuer had no short term credit rating. As of that date NSCC had only two letters of credit on deposit from the latter letter of credit issuer, with an approximate face value of $1 million.

Within ninety days of the date of this order, if either or these issuers, respectively, has not met these new issuer standards, and the Board of Directors of NSCC has not specifically exempted such issuer from these new standards, outstanding letters of credit issued by either of these non-qualifying issuers., respectively, will no longer be accepted by NSCC as collateral for clearing fund purposes.

[5] A–1, A–2, A–3 and P–1, P–2, P–3 are credit ratings issued, respectively, by Standard and Poor's Corporation and Moody's Investor Service, Inc., to recommend the creditworthiness of various financial institutions with regard to certain financial obligations. These agencies may look at many factors, including profitability, capital, asset quality, liquidity and management before assigning a rating to the obligations of a financial institution.

[6] The proposal would not change three other requirements. First, NSCC will not accept a letter of credit issued by an approved issuer, if, as a result more than 20% of NSCC's clearing fund will consist of letters of credit from such issuer. Second, NSCC's Board of Directors will retain the authority in its discretion, to determine that a particular issuer, because of circumstances specific to that issuer, may not either begin or continue to issue letters of credit used for clearing fund purposes, even if such issuer otherwise qualifies as an issuer under the proposed standards. Third, the Board of Directors will continue to have the authority to accept letters of credit issued by banks that do not meet the new standards, provided the letters of credit issued by such banks do not exceed one-half of 1% of the total clearing fund deposits of all participants.

[7] Among the provisions of the Letter of Credit Issuer Agreement will be an affirmative obligation on the part of each issuer to promptly inform NSCC if such issuer fails in any way to comply with the new issuer standards. Each issuer will also have to supply NSCC with quarterly and annual financial statements so NSCC can examine each issuer's creditworthiness. Telephone conversation between Jeff Ingber, Attorney, NSCC, and Jack Drogin, Attorney, Commission (July 1, 1991).

[8] Section 17A(b)(3)(F) of the Act, 15 U.S.C. 78q–1(b)(3)(F).

[9] Under the prior standards, a domestically chartered bank must either: (1) Be permitted to lend at least $10 million to any individual participant of NSCC, in accordance with applicable state or federal law; or (2) have either an A–1 commercial paper rating (by Standard and Poor's Corporation) or a P–1 commercial paper rating by (by Moody's Investor Service, Inc.). The board of NSCC could still permit a domestically chartered bank which failed to meet either of these standards to issue approved letter of credit, but the total amount of letters of credit issued by such bank could not exceed one-half of 1% of the total clearing fund deposits of all participants.

A United States branch of a foreign bank, one organized under the laws of a foreign country, could also issue approved letters of credit under the prior rules, if: (1) such bank had an A–1 or P–1 rating for letters of credit issued to support commercial paper or similar short term obligations; or (2) such bank's parent had worldwide consolidated bank assets exceeding $1 billion. If such foreign bank did not meet either of these standards, the board of NSCC could permit it to issue approved letters of credit pursuant to such conditions as the board might decide. The total amount of letters of credit issued by such bank could not exceed one-half of 1% of the total clearing fund deposits of all participants.

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II. Discussion

The Commission believes that NSCC's proposal is consistent with the Act, and in particular section 17A of the Act. Specifically, the Commission believes NSCC's proposal "promotes the prompt and accurate clearance and settlement of securities transactions" and assures "the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible." [8]

The proposal helps to ensure that the letters of credit which members can deposit with NSCC (in partial satisfaction of their clearing fund contribution requirements) are issued by sufficiently creditworthy and liquid financial institutions to maintain the clearing fund's own creditworthiness and liquidity. The creditworthiness of the clearing fund helps to assure that NSCC will be able to meet its obligations, including trade netting guarantees, on a timely basis even if more than one member defaults on its obligations to NSCC.

The new issuer standards will help to ensure the liquidity of NSCC's clearing fund and NSCC's ability to meet sudden or unanticipated requirements for cash to address, for example, a pending member default. The additional requirement that letters of credit must be acceptable as collateral to NSCC's line of credit banks further this goal. By requiring both a minimum size and a minimum credit rating by Standard and Poor's or Moody's these new standards avoid the potential problems of requiring only one of these criteria for approval as the prior standards did.[9] As

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[9] Under the prior standards, a domestically chartered bank must either: (1) Be permitted to lend at least $10 million to any individual participant of NSCC, in accordance with applicable state or federal law; or (2) have either an A–1 commercial paper rating (by Standard and Poor's Corporation) or a P–1 commercial paper rating by (by Moody's Investor Service, Inc.). The board of NSCC could still permit a domestically chartered bank which failed to meet either of these standards to issue approved letter of credit, but the total amount of letters of credit issued by such bank could not exceed one-half of 1% of the total clearing fund deposits of all participants.

A United States branch of a foreign bank, one organized under the laws of a foreign country, could also issue approved letters of credit under the prior rules, if: (1) such bank had an A–1 or P–1 rating for letters of credit issued to support commercial paper or similar short term obligations; or (2) such bank's parent had worldwide consolidated bank assets exceeding $1 billion. If such foreign bank did not meet either of these standards, the board of NSCC could permit it to issue approved letters of credit pursuant to such conditions as the board might decide. The total amount of letters of credit issued by such bank could not exceed one-half of 1% of the total clearing fund deposits of all participants.

compared with the prior standards, these new standards are significantly more stringent.[10]

The $300 million equity/top two short-term obligations rating standard would ensure that only a domestic bank that is among roughly the 100 largest banks in the United States and that has a strong short-term obligations rating would be eligible to be approved as a letter of credit issuer. The alternative $150 million equity/top short-term obligations rating would allow roughly the 200 largest banks with a top short-term obligations rating to be approved letter of credit issuers. This allows for substantial competition among letter of credit issuers.

NSCC's Board of Directors will continue to have discretion to accept a letter of credit issued by a bank that does not meet either of these standards. To limit NSCC's exposure, however, the letters of credit issued by any such bank cannot exceed ½ of 1% of the total clearing fund deposits of all participants.

III. Conclusion

For the reasons stated above, the Commission finds that the proposed rule change is consistent with section 17A of the Act.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–NSCC–91–03) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 91–17691 Filed 7–24–91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–29445; File No. SR–OCC–91–12]

Self-Regulatory Organization; The Options Clearing Corp.; Proposed Rule Change Relating to Modification of the Short Option Adjustment

July 17, 1991.

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b), notice is hereby given that on June 20, 1991, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self–Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would modify the short option adjustment included within OCC's margin.

II. Self–Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to modify the "short option adjustment" contained in OCC's margin system (the Theoretical Intermarket Margin System ("TIMS")) as reflected in OCC Rule 601 for equity options and Rule 602 for non-equity options.

Background

OCC requires its clearing members to adjust their margin deposits with OCC in the morning on every business day, pursuant to calculations performed by OCC overnight. OCC imposes a margin requirement on short positions in each clearing member's account, and gives margin credit in respect of unsegregated long positions.[1] Under TIMS, the margin requirement or credit for positions in a "class group" (a "class group" consists of all put and call options [2] relating to the same underlying interest) in a given clearing member account is equal to the liquidating value of those positions, based on premium levels at the close of trading on the preceding trading day, increased (in the case of a negative liquidating value) or decreased (in the case of a positive liquidating value) by the additional margin amount for that class group.

TIMS calculates additional margin amounts utilizing options price theory. TIMS first calculates the theoretical liquidating value for the positions in each class group assuming either an increase or decrease in the market value of the underlying asset in an amount equal to the applicable "margin interval," which is the maximum one-day price movement in the underlying asset that OCC desires to protect against.[3] Margin intervals are determined separately for each underlying interest and each margin interval is adjusted for volatility in the market for the underlying interest.

TIMS then selects the theoretical liquidating that represents the greatest decrease (where the actual liquidating value if positive) or increase (where the actual liquidating value is negative) in liquidating value compared with the actual liquidating value based on the premium levels at the close of trading on the preceding day. The difference between that theoretical liquidating value and actual liquidating value is the additional margin amount for that class group, unless the class group is subject to the short option adjustment.

For net short positions [4] in deep out-of-the-money options, little or no change in value would be predicted given a chance in value of the underlying interest equal to the applicable margin interval, and TIMS would calculate additional margin amounts zero or close to zero. Volatile markets, however, may cause such positions to become in-the-money or nearly so, thereby creating increased risk to OCC. OCC protects against such risk by incorporating into the additional margin calculation of TIMS a margin cushion, known as the short option adjustment, in respect of such positions. The short option adjustment is described in Rule 601(c)(1)(C)(1) for equity options and Rule 602(c)(1)(ii)(C)(1) for non-equity options.

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[10] The National Bank Act, 12 U.S.C. 84(a), for example, limits loans by federally chartered banks to 10% of the unimpaired capital and unimpaired surplus of the banking association if fully secured, or 15% of the unimpaired capital and unimpaired surplus of the banking association if not fully secured.

[1] A long position is "unsegregated" for OCC's purposes if OCC has a lien on the position, *i.e.*, has recourse to the value of the position in the event that the clearing members does not perform an obligation to OCC. Long positions in firm accounts and market-maker accounts are unsegregated. Long positions in the clearing member's customers' accounts are unsegregated only if the clearing member submits instructions to that effect in accordance with Rule 611.

[2] In the case of Rule 602, a class group also consists of market futures which are subject to margin at OCC because of a cross margining program with a commodity exchange, and, upon the Commission's approval of File No. SR–OCC–91–05, Index Participations ("IPs") relating to the same underlying interest.

[3] TIMS also calculates the theoretical liquidating value for the positions in each class group assuming an increase or decrease in the market value of the underlying asset such that the market value equals any exercise price falling between the market value plus the margin interval and the market value minus the margin interval, since some combinations of positions can present a greater net theoretical liquidating value at any of these intermediate values than at either of the endpoint values

[4] A "net" position in an option series in an account is the position resulting from offsetting the gross unsegregated long position in that series against the gross short position in that series. After netting, an account will reflect a net short position, a net long position or a flat position (if the gross unsegregated long position equals the gross short position) for each series of options held in the account.

The short option adjustment currently calculates a minimum additional margin amount for all net short positions in deep out-of-the-money options. That additional margin amount is equal to 25% of the applicable margin interval, multiplied by the number of contracts and the applicable unit of trading. The short option adjustment component of additional margin is activated only if the calculated additional margin requirement for an option series is less than 25% of the applicable margin interval.

Effect of the Short Option Adjustment

Following an analysis of its experiences in the October 1987 Market Break and other internal reviews of TIMS, OCC has concluded that the current short option adjustment requires clearing members to deposit margin in excess of the risk presented by certain net short positions in deep out-of-the-money options.

This over-collateralization occurs because the current short option adjustment does not account for spreads between net long and short positions on the same underlying interest. That is, it does not attempt to match net short positions with the net long positions which substantially reduce, or eliminate, the risk of such net short positions. When paired, the positions offset one another, in that as the risk created by the net short positions increases, the value of the long positions also increases. The paired positions therefore pose little or no risk to OCC.[5] Because the short option adjustment does not recognize these paired contracts, margin on the positions is calculated as if they were "unpaired" or "naked." Accordingly, the additional margin required of clearing members for these positions is in excess of their net risk.

Modified Short Option Adjustment

To eliminate this over-collateralization, OCC proposes to revise the short option adjustment logic of TIMS so that it recognizes spreads between net long and short contracts on the same underlying security or interest. Accordingly, TIMS would be modified so that the short option adjustment would "pair" all net long contracts relating to an underlying interest against all net short contracts relating to the same underlying interest on a contract for contract basis. Should any net short positions remain after this process, the number of remaining net short option contracts would be subject to the short option adjustment.[6]

To determine which contracts would be subject to the short option adjustment, OCC would select that number from all net short contracts for which TIMS (in the absence of the short option adjustment) calculates the lowest amount of additional margin, thereby resulting in greater risked-based margin coverage in respect of such unpaired, net short option contracts. Accordingly, this selection process will ensure that the short option adjustment is applied in a manner which most effectively protects OCC.

As is currently the case, the modified short option adjustment would be applied only if the calculated additional margin requirement for a short option is less than 25 percent of the margin interval. The modified short option adjustment would continue to use the formula that is currently employed to determine the amount of the adjustment for those contracts that are subject to the adjustment.

The proposed rule change is consistent with section 17A of the Act, because it furthers the public interest by eliminating the over-margining of certain short positions in deep out-of-the-money options, where the risk of such positions is offset by long positions in the same class group. Thereby, an impediment to market liquidity will be removed, without reducing OCC's protection with respect to truly "naked" short positions in deep out-of-the-money options.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited by OCC with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principle office of OCC. All submissions should refer to File No. SR-OCC-91-12 and should be submitted by August 15, 1991.

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[5] A pair consisting of a net short position and a net long position will pose no risk to OCC if the exercise price of the short position is higher (in the case of calls) or lower (in the case of puts) than the exercise price of the long position. Conversely, a pair consisting of a net short position and a net long position will pose a risk to OCC consisting of the difference between the exercise prices of the short position and long position is lower (in the case of calls) or higher (in the case of puts) than the exercise price of the long position. However, this risk is of a relatively small magnitude and not open-ended—*i.e.*, cannot be greater than the difference between the two exercise prices times the applicable unit of trading or index multiplier and the number of contracts. OCC is satisfied that its existing back-up system is capable of absorbing this relatively small risk without any short option adjustment.

[6] For purposes of Rule 602, commodity options and futures held in cross-margin accounts, market-baskets, and (upon approval by the Commission of File No. SR-OCC-91-05), IPs also would be included in such contract spreading. Specifically, long calls, futures, commodity calls, market baskets and IPs would be netted against short calls and commodity calls. Long puts and commodity puts and short futures, market baskets and IPs would be netted against short puts and commodity puts. Those net short options which remain after such netting would be subject to the short option adjustment.

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III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principle office of OCC. All submissions should refer to File No. SR-OCC-91-12 and should be submitted by August 15, 1991.

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For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-17687 Filed 7-24-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18240; File No. 811-5859]

F&G Life Variable Annuity Account

July 17, 1991.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: F&G Life Variable Annuity Account.

RELEVANT 1940 ACT SECTIONS: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on May 24, 1991.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the Commission by 5:30 p.m., on August 12, 1991. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the Commission, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC 450 5th Street, NW., Washington, DC 20549. Applicant, 6225 Smith Avenue, Baltimore, Maryland 21209.

FOR FURTHER INFORMATION CONTACT: Michael V. Wible, Staff Attorney, at (202) 272-2026, or Nancy M. Rappa, Senior Attorney, at (202) 272-2060 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicant's Representations

1. The Applicant, organized as a unit investment trust, is a separate investment account of Fidelity and Guaranty Life Insurance Company ("F&G Life") established under the insurance laws of the State of Maryland.

2. The Applicant filed a notice of registration under the 1940 Act and a Form N-4 registration statement on September 18, 1989. The registration statement pertains to units of interest under F&G Life's variable annuity policies ("Policies"), which were funded through the Applicant. The registration statement became effective on January 4, 1990 and the initial public offering commenced on January 24, 1990.

3. Sales of the Policies were lower and the costs per Policy owner of offering and maintaining the Policies were higher than originally anticipated by F&G Life. As a result, the Applicant's assets did not increase as anticipated and expense ratios of the U.S. Eagle Fund, Inc., the designated investment medium of the Applicant, did not decline. This made the Policies less advantageous from the standpoint of both F&G Life and Policy owners.

4. Accordingly, sales of new Policies were suspended on January 31, 1991, and, pursuant to authorization granted by the Maryland Insurance Department, F&G Life stopped accepting premium payments under the Policies on March 14, 1991. F&G Life mailed to all Policy owners a letter, dated March 14, 1991, that described the various alternatives available to Policy owners. The alternatives described in each form of the letter were identical in all material respects, except to the extent necessary to distinguish for tax purposes between non-qualified, IRA and other qualified Policy owners for tax purposes. The second option, as described below, was not available to qualified plan Policy owners, other than IRA Policy owners.

5. The first option allowed each Policy owner to replace his or her Policy with either a single premium or flexible premium deferred fixed annuity ("Fixed Annuity") issued by F&G Life, having a specified account value equal to the account value of his or her Policy on the date of the replacement, plus, after a full year from the date of issue of the new policy, a retention bonus. In addition, Policy owners who had invested in the General Account Options under the Policy were guaranteed at least the same interest rate return if they selected the F&G Life single premium deferred Fixed Annuity by April 18, 1991. The second option allowed each Policy owner to replace his or her Policy for a different deferred annuity issued by F&G Life or another insurance company. The third option allowed Policy owners to cash out their policies for a cash payment equal to the value of the Policies as of the date of surrender. Under all three options, F&G Life waived the applicable 6% Surrender and Withdrawal Charge, state premium tax deduction, and other Policy fees and charges which otherwise would have applied upon surrender.

6. All Policy owners accepted one of the three options and all replacements and cash-outs were effected as of May 9, 1991. As a result of the replacements and cash-outs, F&G Life's obligations under the Policies were terminated, and Applicant's assets were no longer legally required to be held by the Applicant. Accordingly, F&G Life will cause these assets to be transferred to its general account. These assets, which are attributable to the initial capitalization (or earnings thereon) provided by F&G Life, consist of shares of the U.S. Eagle Fund, Inc., the designated investment medium of the Applicant.

7. The Applicant has one security holder, F&G Life, the depositor of the Applicant, as of the date of filing of this application. The Applicant has no known debts or other outstanding liabilities, and the Applicant is not a party to any known litigation or administrative proceedings.

8. The Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding up of its affairs.

9. All expenses incurred and to be incurred in connection with the liquidation of Applicant and deregistration under the securities laws have been borne by F&G Life. Each Policy owner received, pursuant to the alternatives described above, an F&G Life Fixed Annuity or a different deferred annuity with an account value, or an amount of cash, that was equal to the cash value of his or her Policy on the date of replacement or surrender, respectively.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-17689 Filed 7-24-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18241; File No. 811-4874]

F&G Life Variable Life Account

July 17, 1991.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: F&G Life Variable Life Account.

RELEVANT 1940 ACT SECTIONS: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on May 24, 1991.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the Commission by 5:30 p.m., on August 12, 1991. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the Commission, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 6225 Smith Avenue, Baltimore, Maryland 21209.

FOR FURTHER INFORMATION CONTACT: Michael V. Wible, Staff Attorney, at (202) 272-2026, or Nancy M. Rappa, Senior Attorney, at (202) 272-2060 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicant's Representations

1. The Applicant, registered as a unit investment trust under the 1940 Act, is a separate investment account of Fidelity and Guaranty Life Insurance Company ("F&G Life"). On October 16, 1986, the Applicant filed a notice of registration and a Form N-8B-2 registration statement under the 1940 Act, and a registration statement on Form S-6 under the Securities Act of 1933 (the "1933 Act"). The 1933 Act registration statement was declared on June 10, 1987. The registration statement pertains to units of interest ("Units") under the variable policies ("Policies") that were to have been issued by F&G Life and funded through the Applicant.

2. On May 6, 1987, F&G Life allocated $4,000,000 from its general account to the Applicant to facilitate the commencement of Applicant's operations. In October 1987, F&G Life invested an additional $7,000,000 in the Applicant.

3. There has been no public offering of the Policies and no sales of any classes of Units thereunder.

4. On November 22, 1989 all of Applicant's assets, which consisted entirely of capitalization (or earnings thereon) provided by F&G Life, were transferred to the general account of F&G Life in connection with the suspension of Applicant's operations and the subsequent winding up of Applicant's affairs. The Applicant, therefore, has no assets and on intention of acquiring any assets in the future.

5. The Applicant has not, within the past 18 months, transferred any of its assets to a separate trust. The Applicant has no security holders and no known debts or other outstanding liabilities, and is not a party to any known litigation or administrative proceeding.

6. The Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding up of its affairs.

7. All expenses incurred and to be incurred in connection with the winding up of Applicant's affairs and deregistration under the securities laws will be borne by F&G Life.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-17692 Filed 7-24-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18242; File No. 811-4872]

U.S. Eagle Fund, Inc.

July 17, 1991.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: U.S. Eagle Fund, Inc.

RELEVANT 1940 ACT SECTIONS: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on May 24, 1991.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the Commission by 5:30 p.m., on August 12, 1991. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the Commission, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 6225 Smith Avenue, Baltimore, Maryland 21209.

FOR FURTHER INFORMATION CONTACT: Michael V. Wible, Staff Attorney, at (202) 272-2026, or Nancy M. Rappa, Senior Attorney, at (202) 272-2060 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicant's Representations

1. The Applicant is an open-end management investment company, registered under the 1940 Act. The Applicant filed a notice of registration under the 1940 Act and a Form N-1A registration statement on October 16, 1988.

2. The registration statement pertains to the Applicant's shares of common stock, which were offered and sold only to F&G Life Variable Annuity Account ("Separate Account") in connection with flexible premium deferred variable annuity policies ("Policies") which were funded through the Applicant and which were issued by Fidelity and Guaranty Life Insurance Company ("F&G Life").

3. The Applicant's registration statement under the Securities Act of 1933 was declared effective by the Commission on June 10, 1987. The public offering of the Policies and all classes of Applicant's shares in connection therewith commenced on January 24, 1990. However, sales of the Policies were lower and the costs per Policy owner of offering and maintaining the Policies were higher than originally anticipated by F&G Life. As a result, the Applicant's assets did not increase as anticipated and expense ratios did not decline. This made the Policies less advantageous from the standpoint of both F&G Life and Policy owners.

4. Accordingly, sales of new Policies were suspended on January 31, 1991, and, pursuant to authorization granted by the Maryland Insurance Department, F&G Life stopped accepting premium

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ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 6225 Smith Avenue, Baltimore, Maryland 21209.

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SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicant's Representations

1. The Applicant is an open-end management investment company, registered under the 1940 Act. The Applicant filed a notice of registration under the 1940 Act and a Form N-1A registration statement on October 16, 1986.

2. The registration statement pertains to the Applicant's shares of common stock, which were offered and sold only to F&G Life Variable Annuity Account ("Separate Account") in connection with flexible premium deferred variable annuity policies ("Policies") which were funded through the Applicant and which were issued by Fidelity and Guaranty Life Insurance Company ("F&G Life").

3. The Applicant's registration statement under the Securities Act of 1933 was declared effective by the Commission on June 10, 1987. The public offering of the Policies and all classes of Applicant's shares in connection therewith commenced on January 24, 1990. However, sales of the Policies were lower and the costs per Policy owner of offering and maintaining the Policies were higher than originally anticipated by F&G Life. As a result, the Applicant's assets did not increase as anticipated and expense ratios did not decline. This made the Policies less advantageous from the standpoint of both F&G Life and Policy owners.

4. Accordingly, sales of new Policies were suspended on January 31, 1991, and, pursuant to authorization granted by the Maryland Insurance Department, F&G Life stopped accepting premium

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payments under the Policies on March 14, 1991. F&G Life mailed to all Policy owners a letter, dated March 14, 1991, that described the various alternatives available to Policy owners. The alternatives described in each form of the letter were identical in all material respects, except to the extent necessary to distinguish for tax purposes between non-qualified, IRA and other qualified Policy owners. The second option, as described below, was not available to qualified plan Policy owners, other than IRA Policy owners.

5. The first option allowed each Policy owner to replace his or her Policy with either a single premium or flexible premium deferred fixed annuity ("Fixed Annuity") issued by F&G Life, having a specified account value equal to the account value of his or her Policy on the date of the replacement, plus, after a full year from the date of issue of the new policy, a retention bonus. In addition, Policy owners who had invested in the General Account Options under the Policy were guaranteed at least the same interest rate return if they selected the F&G Life single premium deferred Fixed Annuity by April 18, 1991. The second option allowed each Policy owner to replace his or her Policy for a different deferred annuity issued by F&G Life or another insurance company. The third option allowed Policy owners to cash out their Policies for a cash payment equal to the value of the Policies as of the date of surrender. Under all three options, F&G Life waived the applicable 6% Surrender and Withdrawal Charge, state premium tax deduction, and other Policy fees and charges which otherwise would have applied upon surrender.

6. All Policy owners accepted one of the available options and all replacements and cash-outs were effected as of May 9, 1991. Following the issuance of the new fixed policies and cash-outs, all of the outstanding shares of the Applicant were attributable to the initial capitalization (or earnings thereof) provided by F&G Life, through its Separate Account. Accordingly, all of the Applicant's remaining assets will be distributed to F&G Life in connection with the winding-up of Applicant's affairs. The distribution of assets was accomplished by means of a merger, under the laws of the state of Maryland, of the Applicant into F&G Life, as a result of which all of the Applicant's assets were transferred to the general account of F&G Life. No purchase price was paid in connection with such distribution of assets and no brokerage commissions were paid.

7. The Applicant has one security holder, the Separate Account, at the date of filing this application. The Applicant has no known debts or other outstanding liabilities (other than certain immaterial liabilities to be paid by the date of the merger or to be assumed by F&G Life), and is not a party to any known litigation or administrative proceedings.

8. Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

9. All expenses incurred and to be incurred in connection with the winding-up of the Applicant's affairs have been borne and will be borne by F&G Life. Each Policy owner received, pursuant to the alternatives described above, an F&G Life Fixed Annuity, or an amount of cash, equal to the value of his or her Policy on the date of replacement or surrender, respectively, without the imposition of any charges applicable to surrender.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-17690 Filed 7-24-91; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

FJC Growth Capital Corporation (License No. 04/04-5254); Issuance of a Small Business Investment Company License

On July 24, 1990, a notice was published in the **Federal Register** (Vol. 55, No. 142 FR 30071) stating that an application has been filed by FJC Growth Capital, Corporation with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing Small Business Investment Companies (13 CFR 107.102 (1989)) for a license as a Small Business Investment Company.

Interested parties were given until close of business Friday, August 24, 1990, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(d) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 04/04-5254 on March 7, 1991, to FJC Growth Capital, Corporation to operate as a Small Business Investment Company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 16, 1991.

Bernard Kulik,

Associate Administrator for Investment.

[FR Doc. 91-17670 Filed 7-24-91; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2515]

Iowa (and Contiguous Counties in Minnesota and Wisconsin); Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on July 12, 1991, I find that the Counties of Bremer, Butler, Chickasaw, Clayton, Fayette, Kossuth, Marshall, and Story in the State of Iowa constitute a disaster area as a result of damages caused by severe storms and flooding which occurred June 1-15, 1991. Applications for loans for physical damage may be filed until the close of business on September 11, 1991, and for loans for economic injury until the close of business on April 13, 1992, at the address listed: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155, or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous counties of Allamakee, Black Hawk, Boone, Buchanan, Cerro Gordo, Delaware, Dubuque, Emmet, Floyd, Franklin, Grundy, Hamilton, Hancock, Hardin, Howard, Humboldt, Jasper, Mitchell, Palo Alto, Pocahontas, Polk, Poweshiek, Tama, Winnebago, Winneshiek, and Wright in the State of Iowa; Faribault and Martin Counties in the State of Minnesota; and Crawford and Grant Counties in the State of Wisconsin may be filed until the specified date at the above location.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	9.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 251506 and for economic injury the numbers are 734200 for Iowa; 734300 for Minnesota; and 734400 for Wisconsin.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 15, 1991.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91-17671 Filed 7-24-91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1435]

Delegation of Authority No. 145-7

Pursuant to title XVII of the National Defense Authorization Act for Fiscal Year 1991, Nov. 5, 1990, Public Law 101-510, and the related Memorandum Delegation of Authority of June 25, 1991, section 1(a) of State Department Delegation of Authority No. 145 of February 4, 1980, 45 FR 11655, as amended, is hereby further amended by adding at the end thereof the following new subsection:

(6) The functions conferred on the Secretary of State by title XVII of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510) and all functions conferred on the President by the Act to the extent that such functions were delegated to the Secretary of State pursuant to the Memorandum Delegation of Authority of June 25, 1991.

Dated: July 1, 1991.

James A. Baker, III,

Secretary of State.

[FR Doc. 91-17616 Filed 7-24-91; 8:45 am]

BILLING CODE 4710-10-M

DEPARTMENT OF TRANSPORTATION

Order Instituting the U.S.-Italy Service Proceeding

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Institution of the U.S.-Italy Service Proceeding, Order 91-7-28, Docket 47654.

SUMMARY: Under a 1990 Memorandum of Understanding between the United States and Italy, as amended on July 3, 1991, the United States may designate a fourth U.S. carrier to provide scheduled combination service between the United States (except from New York or Chicago) and Rome and Milan, Italy, for services commencing April 1, 1992. The route does not provide for beyond or intermediate services. In addition, during the first year of service, the designated carrier may operate a total of six weekly frequencies if using aircraft with more than 300 seats. if aircraft with 300 or fewer seats are used, the designated carrier may operate a total of seven weekly frequencies. During the second year of service the designated carrier may operate seven weekly frequencies regardless of the type aircraft used.

In view of this new route opportunity, the Department has decided to institute the U.S.-Italy Service Proceeding to select one primary and one backup carrier to serve the U.S.-Italy market. The order invites certificate applications from all U.S. carriers interested in providing the available service. The Department has also decided to set this case for an oral evidentiary proceeding before an Administrative Law Judge. Consistent with the Department's efforts to streamline the carrier selection process, the Department's order requires that the Administrative Law Judge serve his Recommended Decision no later than December 6, 1991.

DATES: Applications for U.S.-Italy authority, motions to consolidate, petitions for leave to intervene, and petitions for reconsideration of Order 19-7-28 should be filed by August 5, 1991. Answers should be filed by August 12, 1991.

ADDRESSES: Applications, motions to consolidate, petitions for leave to intervene and petitions for reconsideration should be filed in Docket 47654, addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street SW., room 4107, Washington, DC 20590, as well as on Mr. Robert Goldner, room 9216, at the above address.

Dated: July 22, 1991.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 91-17721 Filed 7-24-91; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: July 19, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt

OMB Number: 1535-0009.
Form Number: PD F 1851.
Type of Review: Reinstatement.
Title: Request for Reissue of United States Savings Bonds/Notes in the Name of Trustee of Personal Trust Estate.
Description: Form 1851 is used to request reissue of savings bonds/notes in the name(s) of the trustee(s) of a personal trust estate.
Respondents: Individuals or households
Estimated Number of Respondents: 55,000.
Estimated Burden Hours Per Response: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 13,750 hours.

OMB Number: 1535-0015.
Form Number: PD F 1022.
Type of Review: Reinstatement.
Title: Report/Application for Relief on Account of Loss, Theft or Destruction of United States Bearer Securities (Organizations).
Description: Form 1022 is needed and required by the Bureau in order to obtain compensation for lost, stolen, or destroyed bearer securities. It is usually executed by parties that purchased, were holding in safekeeping/custody or are entitled to bearer securities and these securities are no longer in their possession.
Respondents: State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents: 100.
Estimated Burden Hours Per Response: 55 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 92 hours.

OMB Number: 1535-0016.
Form Number: PD F 1022-1.
Type of Review: Reinstatement.
Title: Report/Application for Relief on Account of Loss, Theft, or Destruction of United States Bearer Securities (Individuals).
Description: Form 1022-1 is needed and required by the Bureau in order to

obtain compensation for lost, stolen, or destroyed bearer securities. It is usually executed by parties that purchased, were given, or entitled to bearer securities and these securities are no longer in their possession.

Respondents: Individuals or households.
Estimated Number of Respondents: 100.
Estimated Burden Hours Per Response: 55 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 92 hours.

OMB Number: 1535–0025.
Form Number: PD F 3360.
Type of Review: Reinstatement.
Title: Request for Reissue of United States Savings Bonds/Notes in the Name of a Person or Persons Other Than the Owner (Including Legal Guardian, Custodian for a Minor Under a Statute, etc.).
Description: Form 3360 is used by the owner of Savings Bonds/Notes to request reissue in the name of another person.
Respondents: Individuals or households.
Estimated Number of Respondents: 50,000.
Estimated Burden Hours Per Response: 10 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 8,350 hours.

OMB Number: 1535–0032.
Form Number: PD F 3565.
Type of Review: Reinstatement.
Title: Application for Disposition of Retirement Plan and/or Individual Retirement Bonds Without Administration of Deceased Owner's Estate.
Description: Form 3565 is used by heirs of deceased owners of Retirement Plan and/or Individual Retirement savings bonds to request disposition of the bonds when no beneficiaries are designated.
Respondents: Individuals or households.
Estimated Number of Respondents: 50.
Estimated Burden Hours Per Response: 20 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 17 hours.

OMB Number: 1535–0055.
Form Number: PD F 1050.
Type of Review: Reinstatement.
Title: Creditor's Consent to Disposition of United States Securities and Related Checks Without Administration of Deceased Owner's Estate.
Description: Form 1050 is used to obtain a creditor's consent to dispose of savings bonds/notes in settlement of a deceased owner's estate without administration.
Respondents: Individuals or households.
Estimated Number of Respondents: 3,000.
Estimated Burden Hours Per Response: 6 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 300 hours.
Clearance Officer: Rita DeNagy (202) 447–1315, Bureau of the Public Debt, room 137, DEP Annex, 300 13th Street, SW., Washington, DC 20239–0001.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.

[FR Doc. 91–17665 Filed 7–24–91; 8:45 am]

BILLING CODE 4810-40-M

Public Information Collection Requirements Submitted to OMB for Review

Date: July 19, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer Listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Comptroller of the Currency

OMB Number: 1557–0120.
Form Number: None.
Type of Review: Extension.
Title: (MA)—Securities Offering Disclosure Rules.
Description: The information is needed by the general public to make informed investment decisions. The affected public consists of national banks that issue securities.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 155.
Estimated Burden Hours Per Response: 9 hours, 48 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,515 hours.
Clearance Officer: John Ference (202) 874–5090, Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.
OMB Reviewer: Gary Waxman (202) 395–7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.

[FR Doc. 91–17666 Filed 7–24–91; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF VETERANS AFFAIRS

Cooperative Studies Evaluation Committee; Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act) as amended, by section 5(c) of Public Law 94–409 that a meeting of the Cooperative Studies Evaluation Committee will be held at the Lenox Hotel, 710 Boylston Street, Boston, Massachusetts on October 9 and 10, 1991. The session on October 9 is scheduled to begin at 7:30 a.m. and end at 6 p.m. and on October 10 from 7:30 a.m. to 3:30 p.m. The meeting will be for the purpose of reviewing six new clinical trials, three in cardiovascular disease prevention and treatment, one in abdominal aneurysm surgery, one in colon cancer, one in alcoholic liver disease and the progress of one on-going study on chronic post traumatic stress disorder. The Committee advises the Director, Medical Research Service, through the Chief of the Cooperative Studies Program on the relevance and feasibility of the studies, the adequacy of the protocols, and the scientific validity and propriety of technical details, including protection of human subjects.

The meeting will be open to the public up to the seating capacity of the room from 7:30 a.m. to 8 a.m. on both days to discuss the general status of the program. To assure adequate accommodations, those who plan to attend should contact Dr. Ping Huang, Coordinator, Cooperative Studies Evaluation Committee, Department of Veterans Affairs, Washington, DC (202–535–7154), prior to October 2, 1991.

The meeting will be closed from 8 a.m. to 6 p.m. on October 9 and from 8 a.m. to 3:30 p.m. on October 10, for consideration of specific proposals in accordance with provisions set forth in section 10(d) of Public Law 92–463, as amended by section 5(c) of Public Law 94–409, and 5 U.S.C. 552b(c)(6). During this portion of the meeting, discussions and recommendations will deal with qualifications of personnel conducting the studies, staff and consultant critiques of research protocols, and similar documents, and the medical records of patients who are study subjects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dated: July 15, 1991.

By Direction of the Secretary.

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 91-17715 Filed 7-24-91; 8:45 am]

BILLING CODE 8320-01

Sunshine Act Meetings

Federal Register
Vol. 56, No. 143
Thursday, July 25, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION:

DATE AND TIME: Tuesday, July 30, 1991, 10:00 a.m.

PLACE: 999 E Street NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 376-3155.

Delores Harris,
Administrative Assistant, Office of the Secretariat.

[FR Doc. 91-17758 Filed 7-23-91; 10:49 am]

BILLING CODE 6715-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, July 31, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 23, 1991.

William W. Wiles,
Secretary of the Board.

[FR Doc. 91-17853 Filed 7-23-91; 10:50 am]

BILLING CODE 6210-01-M

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federal register

Thursday
July 25, 1991

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Guidelines for Designation of Consortia in the HOME Investment Partnerships Program; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-3285; FR-3091-N-01]

Guidelines for Designation of Consortia in the HOME Investment Partnerships Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of procedures for designating consortia: HOME investment partnerships program.

SUMMARY: The purpose of this notice is to provide guidance to HUD Field Offices and localities on the procedures for designation of units of local government to participate as consortia in the HOME Investment Partnerships Program. The HOME Program is authorized by Title II—Investment in Affordable Housing or HOME Investment Partnerships Act—of the Cranston-Gonzalez National Affordable Housing Act.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Director, Rehabilitation Management Division, room 7162, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410-7000; telephone (202) 708-2470. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 755-2565. (These are not toll-free numbers).

DATES: For consideration of an allocation of HOME funds in FY 1992, consortia requests must be received in the applicable HUD Field Office by August 1, 1991. Consortia requests which are approved by the HUD Field Offices must be submitted to HUD Headquarters by September 1, 1991 to be considered for funding in FY 1992.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in this notice have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3054(h)), and assigned OMB control number 2501-0013. HUD will not issue a specific form for the consortium agreement; units of local government may develop their own agreements according to the instructions described below.

Statutory Provisions

Section 216(2) of the National Affordable Housing Act provides that a consortium of geographically contiguous units of general local government can be considered to be a unit of general local government for purposes of the HOME Investment Partnerships Act if the Secretary determines that the consortium (a) has sufficient authority and administrative capability to carry out the purposes of the Act on behalf of its member jurisdictions and (b) will, according to a written certification by the State, direct its activities to the alleviation of housing problems within the State.

In the discussion of the basic HOME formula for allocating funds, section 217(b)(3) of the Act states that the Secretary shall allocate funds available for formula allocations to units of general local government that, as of the end of the previous fiscal year, qualified as metropolitan cities (as defined at section 102(a)(4) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(4)); urban counties (as defined at section 102(a)(6) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(6)); and approved consortia of units of general local government. Thus, HUD will provide allocations of funds by formula to units of general local government that, as of the end of the previous fiscal year, are metropolitan cities, urban counties, or consortia approved for the HOME Program.

Eligibility for Forming a Consortium

Units of general local government that are geographically contiguous may form a consortium for purposes of receiving an allocation and participating in the HOME Program. To be considered geographically contiguous, localities must share a boundary at more than a point. A river or other body of water may separate the localities, but if there is transportation access (e.g., bridges), they would be considered contiguous. The units of general local government forming a consortium may be cities or urban counties that would be eligible, individually, to become participating jurisdictions in the HOME Program, or other units of local government. However, a unit of local government that is included in an urban county may be part of a consortium only through the urban county, regardless of whether the urban county receives a formula allocation.

Procedures Localities Must Follow for Designation as a Consortium

At least 60 days before the start of Federal fiscal year 1992 (that is, by August 1, 1991) and by March 31 for all subsequent Federal fiscal years, a consortium of geographically contiguous units of general local government must notify the HUD Field Office of its intention to be considered a consortium for the HOME Program, and must submit to the HUD Field Office:

1. A written certification by the State that the consortium will direct its activities to the alleviation of housing problems within the State and

Note: The State certification may be signed by whoever has the authority to make the certification; it may be the Governor or his/her designee.

2. A legally binding cooperation agreement that the consortium has executed among its members:

(a) Agreeing to cooperate to undertake or to assist in undertaking housing assistance activities for the HOME Investment Partnerships Program;

(b) Authorizing one member unit of general local government to act in a representative capacity for all member units of general local government for the purposes of the HOME Program;

(c) Providing that the representative member (also referred to as the lead entity) assumes overall responsibility for ensuring that the consortium's Home Program is carried out in compliance with the requirements of the program, including requirements concerning a Comprehensive Housing Affordability Strategy;

Note: The agreement must *not* contain a provision for veto or other restriction that would allow any party to the agreement to obstruct the implementation of the approved Comprehensive Housing Affordability Strategy.

(d) Accompanied by authorizing resolutions from the governing body of each member unit of local government, or other acceptable evidence that the chief executive officer is authorized to sign the agreement.

(e) Signed by the chief executive officer of each member unit of local government;

Note: If an urban county is part of the consortium, only the county (not all the members of the urban county) signs the consortium agreement.

(f) Containing, or accompanied by, a statement from the lead entity's counsel that the terms and provisions of the agreement are fully authorized under State and local law and that the agreement provides full legal authority for the consortium to undertake or assist in undertaking housing assistant activities for the HOME Investment Partnerships Program;

(g) Containing a provision requiring each party to the agreement to affirmatively further fair housing; and

(h) Stating that term of the agreement covers the period necessary to carry out all activities that will be funded from funds awarded for three Federal fiscal years and that the units of general local government which join the consortium are required to remain in the consortium for the entire period, unless one of the member units of local government is an urban county. (For a consortium that includes an urban county, the initial agreement must coincide with the balance of the urban county cooperation agreement and therefore may be less than three years funding.)

Note: The agreement cannot contain a provision for termination or withdrawal by any party to the agreement.

Joint Grant Agreements

The Community Development Block Grant (CDBG) Program regulations at 24 CFR 570.308 allow for any urban county, and any metropolitan city located in whole or in part within that county, to submit a joint request to HUD to approve the inclusion of the metropolitan city as part of the urban county for purposes of planning and implementing a joint community development and housing program. Each metropolitan city and urban county submitting a joint request must also have executed a cooperation agreement to undertake or to assist in the undertaking of essential community development and housing activities. Such agreement is hereafter referred to as a "joint grant agreement."

For the CDBG Program, upon HUD's approval of the joint request and cooperation agreement, the metropolitan city will be considered a part of the urban county for purposes of program planning and implementation and will be treated the same as any other unit of general local government which is part of the urban county.

Localities that have joint grant agreements for the CDBG Program may wish to be considered a consortium for the HOME Program. Since such localities are not actually part of an urban county, if they wish to be considered a consortium for the HOME Program, they must follow the procedures outlined above and submit the required documentation 60 days before the start of FY 1992 (and by March 31 for any subsequent year) for designation as a "consortium."

Comprehensive Housing Affordability Strategy

To receive FY 1992 HOME funds and to become a participating jurisdiction in the HOME Program, a jurisdiction must submit a Comprehensive Housing Affordability Strategy (CHAS) which describes its five-year strategy for addressing housing, homeless and supportive housing needs (see section 105 of title I and section 216(5) of title II of the National Affordable Housing Act and 24 CFR part 91). Since a consortium is considered a unit of local government for purposes of receiving an allocation and participating in the HOME Program, the consortium would be required to submit a CHAS for the localities making up the consortium. When two or more jurisdictions form a consortium for the purpose of receiving a formula allocation under the HOME Program, the consortium must, as a condition of funding, submit a single CHAS that covers the entire geographic area encompassed by that consortium. Where a consortium includes one or more CDBG entitlement grantees, any such grantee need not submit an individual CHAS (for the CDGB Program) in addition to the consortium's CHAS, provided the necessary parts of the consortium's CHAS are broken down by CDBG entitlement, as required by CHAS guidelines.

If joint grant agreement participants form a consortium for the HOME Program, the CHAS submitted by the urban county for the CDBG Program pursuant to a joint grant agreement (in which the metropolitan City is treated as a locality which is a party to the urban County Cooperation Agreement) would also be appropriate for the HOME consortium, since the localities would be the same.

Consortium Cooperation Agreement

The consortium cooperation agreemeent will generally be for three years, and the localities that form a consortium for the HOME Program will be required to remain in the consortium for three Federal fiscal years. However, for a consortium that includes an urban county, the initial agreement may be for less than three years to coincide with the balance of the urban county cooperation agreement. New localities may be added during the period of the consortium cooperation agreement, but once in as a member of the consortium, a locality may not opt out until the period of the consortium cooperation agreement is over. A consortium is not to be a temporary convenience for a locality that cannot make the funding threshold on its own. Those localities that join a consortium should see it as a long-term commitment. If localities expect to be eligible for a formula allocation on their own, they may not wish to be tied to the consortium for three years. Accordingly, localities should consider carefully whether they wish to be part of a consortium.

Once HUD approves a consortium, HUD will consider the consortium as a unit of general local government for purposes of the HOME Program for three Federal fiscal years, or for the term of the agreement. If any new units of local government join the consortium, the consortium must notify HUD so that the new members may be added in for the balance of the three-year period. To be included as part of the consortium for a particular fiscal year, the consortium must notify the appropriate HUD Field Office of any additions by March 31 of the preceding year, and must provide to HUD a copy of the authorizing resolution from the new member's governing body and an amendment to the consortium cooperation agreement signed by the chief executive officer of the lead entity and the chief executive officer of the new unit of local government, adding the new unit of local government as a member of the consortium. Any change in the make-up of the consortium should then be reported by the HUD Field or Regional Office to the Data Systems and Statistics Division, CPD, HUD Headquarters, with a copy to the Office of Urban Rehabilitation, CPD, HUD Headquarters, by April 30, to allow sufficient time for data to be assembled so that the change can be reflected in the next fiscal year's allocation of HOME funds.

In future years, HUD Field Offices should review the status of consortia and if there are consortia agreements whose terms are ending at the end of the fiscal year, Field Offices should notify the lead entity of each such consortium to advise them that if they wish to continue to be considered a consortium for the HOME Program, they must sign a new consortium cooperation agreement and provide a copy, along with the other documentation described in this notice, by March 31 of the renewal year. Renewal of the consortium in this manner will result in a new three-year consortium agreement.

HUD Action

Within one week of publication of this notice, and by March 1 of subsequent years, if there are localities that have joint grant agreements that are not participating as consortia in the HOME Program, HUD Field Offices are to send the lead community for the joint grant agreement (which would be an urban county) a letter asking whether the communities wish to be considered a consortium for the HOME Program. If communities having a joint grant agreement for the CDBG Program wish to be considered a consortium for the

HOME Program, they would follow the procedures outlined above.

For any consortium request for the HOME Program received by August 1 of this year and by March 31 of subsequent years, the HUD Field Office will review the documentation to determine whether the consortium is made up of geographically contiguous units of general local government and whether the consortium has sufficient legal authority and administrative capability to carry out the purposes of the HOME Program on behalf of its member jurisdictions. (Requests received after August 1, 1991 for an allocation of HOME funds in FY 1992 will not be considered for funding until FY 1993.)

Legal Authority

Regional or Field Office Counsel should review each consortium's request to determine if the consortium has sufficient legal authority to carry out the HOME Program. Further guidance to HUD Regional and Field Office Counsel will be provided by the Office of the General Counsel.

Administrative Capacity

If the consortium includes a metropolitan city or an urban county as the lead entity, the consortium would be considered to have sufficient administrative capability unless it includes as its administrative capability to carry out the purposes of the HOME Program. If the consortium does not include a metropolitan city or an urban county, but the lead member or an existing public agency has relevant experience (e.g., successful experience in administering a CDBG or Rental Rehabilitation Program), the consortium could also be considered to have sufficient administrative capability to carry out the HOME Program. On the other hand, a newly created public agency established to administer the HOME Program for a consortium would not be viewed as having sufficient administrative capability unless it includes as its administrator(s) a person or persons with relevant experience in successfully administering programs similar to the HOME Program, such as the CDBG or Rental Rehabilitation Programs.

If the HUD Field Office is satisfied that the consortium meets the requirements for the HOME Program and has the relevant experience, legal authority and administrative capability to carry out the HOME Program, it will approve the consortium request.

The HUD Field Office is to submit to the Data Systems and Statistics Division, CPD, HUD Headquarters, with a copy to the Office of Urban Rehabilitation, CPD, by September 1, 1991 for FY 1992 consideration and by April 30 for each subsequent year, a list of each approved consortium indicating the members of the consortium and the locality that has been designated to act in a representative capacity for all member units of local government. HUD will make every effort to accommodate consortia requests received by August 1, 1991 for the FY 1992 HOME allocations. However, where consortia include areas that are not CDBG entitlements, it may be a problem to assemble data in time to allocate funds for FY 1992. If funds are available for allocation, the Department will not delay allocation of the funds to allow time to assemble data for CDBG non-entitlement members of consortia.

A consortium's status as a unit of general local government for purposes of the HOME Program continues for three Federal fiscal years.

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, room 10276, 451 Seventh Street SW., Washington, DC 20410-0500.

Authority: Title II, sections 216 and 217, of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101-625); section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 19, 1991.

Anna Kondratas,

Assistant Secretary for Community Planning and Development.

[FR Doc. 91-17638 Filed 7-24-91; 8:45 am]

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Dated: July 19, 1991.

Anna Kondratas,

Assistant Secretary for Community Planning and Development.

[FR Doc. 91-17638 Filed 7-24-91; 8:45 am]

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federal register

Thursday
July 25, 1991

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

NOFA for HUD-Administered State Rental Rehabilitation Programs; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-3284; FR-3089-N-01]

NOFA for HUD-Administered State Rental Rehabilitation Programs for Fiscal Year 1991 and Deadlines for Submission of Program Descriptions

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding availability for fiscal year 1991 and deadlines for submitting program descriptions for HUD-administered State rental rehabilitation programs.

DATES: Program Descriptions should be addressed to the CPD Division Director and must be submitted to the appropriate HUD Field Office by 4 p.m., local time, on or before August 26, 1991.

SUMMARY: This NOFA announces allocations of Rental Rehabilitation Program grant funds available by competition to units of local government in States which have chosen not to administer the Rental Rehabilitation Program in Fiscal Year 1991. It also announces the dates by which Program Descriptions must be submitted to HUD for these localities to be considered for grants, and it describes the application process and the selection criteria for these grants.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Director, Rehabilitation Management Division, room 7162, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC, 20410-7000; telephone (202) 708-2470. Hearing- or Speech-impaired individuals may call HUD's TDD number (202) 755-2565. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements for the Rental Rehabilitation Program have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and assigned the control number 2506-0080.

I. Purpose and Substantive Description

(a) Authority

The Rental Rehabilitation Program (RRP) is authorized by section 17 of the United States Housing Act of 1937 (42 U.S.C. 1437o), as amended, hereafter referred to as section 17. The program regulations are published at 24 CFR part 511. The program provides grant funds to States and units of general local government for the rehabilitation of privately owned real property to be used for primarily residential rental purposes. A statutorily based formula establishes the amount of grants available to most cities having a population of 50,000 or more, urban counties, consortia of units of general local government having a combined population of 50,000 or more, and to all States and the Commonwealth of Puerto Rico. However, a State may elect to have HUD administer its allocation for a particular Federal fiscal year. This NOFA announces the funds available by competition to units of general local government in all States which have elected to have HUD administer their RRP allocations for FY 1991.

Under 24 CFR 511.52, if a State elects not to administer its allocation for any fiscal year, the responsible HUD Field Office will make grants to units of general local government located within the State, for use in a local Rental Rehabilitation Program.

(b) Allocation Amounts

The following are the States that have chosen not to administer the RRP for FY 1991 and the amount of funds available by competition to units of general local government in each State:

State	Funds available
Arkansas	$342,000
California	1,689,000
Florida	572,000
Hawaii	38,000
Nevada	51,000
North Dakota	76,000
Oregon	279,000
Total	3,045,000

(c) Eligibility

Eligible applicants are units of general local government that do not receive formula allocations under 24 CFR 511.31(a), and that are located in States that chose not to administer the RRP (see preceding section (b)). Applicants which were eligible for a formula allocation under 24 CFR 511.31(b), but not 511.31(a), and which did not accept such allocations are also eligible to participate in a HUD-Administered Program. The units of general local government which were eligible for formula allocations under 24 CFR 511.31(b) are listed in appendix C to the NOFA for Formula Allocations for the Rental Rehabilitation Program for Fiscal Year 1991 and Deadlines for Submission of Program Descriptions, at 56 FR 21574, published on May 9, 1991. FY 1991 RRP funds under a HUD-Administered State Program may not be used in any portion of any otherwise eligible jurisdiction which is also an area eligible for assistance under title V of the Housing Act of 1949 (administered by the Farmers Home Administration (FmHA)). Further, units of general local government which are totally title V-eligible are not eligible to apply for FY 1991 RRP funds.

(d) Selection Criteria/Ranking Factors

Appendix A to this NOFA describes the selection criteria and ranking factors for Field Offices to use in choosing grantees from among those that submit Program Descriptions pursuant to § 511.20 which are determined to be otherwise satisfactory pursuant to § 511.21(b) of the regulations.

The selection system is designed to select among such otherwise approvable Program Descriptions as required by § 511.52 of the program regulations. The factors that will be used to rank the applications are (1) need, (2) past performance in housing and community development activities, (3) program administration, and (4) quality and impact of the proposed program. Appendix A sets out the weight and relative importance of the factors.

II. Application Process

The Program Description is the application for the Rental Rehabilitation Program.

To be considered for a grant in a HUD-Administered State Program, units of general local government must submit a Program Description to the appropriate HUD Field Office, as required by § 511.52 of the program regulations. For all HUD-Administered State programs for FY 1991, units of general local government wishing to participate in the program must submit a Program Description by August 26, 1991. The Program Description should be submitted to the Director of the Community Planning and Development (CPD) Division in the applicable HUD Field Office, not later than 4 p.m. local time on the stated date. Field Offices are being advised to stamp each program description with the actual date and time of receipt. The details on selection criteria and application processing, including how to apply and how selections will be made, are contained in Chapter 6 (HUD-Administered Programs) and appendix 6-1 (Review Process Statement for HUD-Administered Rental Rehabilitation Program for Small Cities) of the Rental

Rehabilitation Program Handbook (HB 7360.01). However, so that the selection criteria and factors for award are available to all eligible applicants, HUD is publishing portions of the Review Process Statement for HUD Administered Rental Rehabiliation Program for Small Cities as appendix A to this NOFA.

III. Checklist of Application Submission Requirements

The elements to be contained in the Program Description and the certifications to be submitted with the Program Description are stated in appendix A to this NOFA.

IV. Corrections to Deficient Applications

Applicants will only be permitted to correct those deficiencies determined to be technical, i.e., those that do not change the substance of the application, e.g., a missing certification, or missing signature. Applicants will be required to cure any such deficiency within 14 days from the date of HUD's written notice to the applicant of the problem(s). Deficiencies determined to be substantive may not be corrected. Such incurable deficiencies include those which affect the relative ranking of applications under the selection critieria.

V. Compliance with Section 102 of the Department of Housing and Urban Development Reform Act of 1989

On March 14, 1991, the Department published in the **Federal Register** a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (24 CFR part 12, 56 FR 11032). Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by the Department.

Since HUD makes assistance under the HUD-Administered State Rental Rehabilitation available on a competitive basis, part 12 requires HUD to:

—Ensure that documentation and other information regarding each application submitted to the Department are sufficient to indicate the basis upon which assistance was provided or denied. HUD must make this material available for public inspection for a five-year period. (§ 12.14(b)) HUD will provide further guidance on how this material may be accessed in a later notice to be published in the **Federal Register**.

—A notice will be published in the **Federal Register** indicating the recipients of the assistance made available under this NOFA.

VI. Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, room 10276, 451 Seventh street SW., Washington, DC 20410–0500.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA does not have Federalism implications and, thus, is not subject to review under this Order. This NOFA does not alter the established roles of State and local governments in the administration of the Rental Rehabilitation Program.

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this NOFA does not have potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order.

The Catalog of Federal Domestic Assistance program number is 14.230, Rental Housing Rehabilitation.

Authority: Section 17, United States Housing Act of 1937, 42 U.S.C. 1437o; Section 7(d), Department of Housing and Urban Development Act 42 U.S.C. 3535(d).

Dated July 19, 1991.

Anna Kondratas,

Assistant Secretary for Community Planning and Development.

Appendix A—Section I, Program Description for Localities Participating in a HUD-Administered State Rental Rehabilitation Program for Small Cities

Program Description requirements for localities participating through a State-wide competition are very similar to Program Description requirements for localities receiving direct allocations of Rental Rehabilitation Program funds by formula. Of the following requirements, the parts that are underlined are additional items that are needed for competitively evaluating the Program Descriptions pursuant to section 511.52(b). Otherwise, the requirements are the same as stated in section 511.20(b) and(c) of the program regulations, except for the addition of the certification regarding lobbying (See item 10.g of this section I).

HUD Field staff will be available to answer questions from potential applicants concerning their Program Descriptions. However, once the application has been submitted for evaluation, the applicant will not be given an opportunity to revise its Program Description except for technical corrections (those that do not change the substance of the application or affect its relative ranking, e.g., a missing certification, or missing signature).

To be considered for funding for FY 1991, an applicant must submit a Program Description, which must be received in the HUD Field Offices by 4 p.m. local time, August 26, 1991, which includes Standard Form 424 signed by its Chief Executive Officer or his or her designee and a narrative statement organized as follows:

1. *Program Activities.* A description of the applicant's proposed Rental Rehabilitation Program, consisting of (a) the activities the applicant proposes to undertake for the fiscal year, (b) *a description of why a Rental Rehabilitation Program is needed, and (c) a management plan for the operation of the program, which indicates the staff who will be working on the Rental Rehabilitation Program, their experience in rehabilitation, and the amount of their time that will be spent on the Rental Rehabilitation Program.*

2. *Neighborhood Selection.* The Program Description shall identify the neighborhood(s) in which assisted activities are to be carried out and provide information, for each neighborhood, to indicate compliance with the requirements of §§ 511.10 (c)(1) and (c)(2), including:

(a) A map indicating the boundaries of each neighborhood, or a description of the boundaries of each neighborhood;

(b) Median income of the neighborhood; and

(c) Current rent levels in the neighborhood; and a statement as to whether standard units are generally affordable to lower income families and the likelihood of their continued affordability for lower income families for the next five years.

Where the neighborhoods in which assisted activities are to be carried out are known at the time of submission of the Program Description, the applicant will indicate the evidence (such as recent market studies and analysis for the neighborhoods) upon which compliance with the requirements of section 511.10(c) is based. Where the neighborhoods are not known at that time, the applicant will indicate the type of neighborhood selection guidelines or other means it will use to ensure compliance with these requirements.

3. *Lower-Income Benefit.* A description of how the applicant intends to ensure that the applicable percentage of rental rehabilitation grant amounts will be used for the benefit of lower-income families, as specified in section 511.10(a). The description will indicate how the grantee plans to achieve the specified level of lower-income benefit.

4. *Use of Rental Rehabilitation Grants for Housing for Families.* A description of the applicant's plan to ensure that an equitable share of rental rehabilitation grant amounts will be used to assist in the provision of housing designed for occupancy by families with children, particularly families requiring three or more bedrooms. The applicant will describe how it plans to give priority to projects containing three or more bedroom

units. If applicable, the applicant will include an explanation of why it proposes to use less than 70 percent of its rental rehabilitation grant for the rehabilitation of units containing two or more bedrooms, as prescribed in section 511.10(b) (1) and (2). Such explanation shall include the citation of any local seismic standard ordinance.

5. *Selection of Proposals.* A statement of the procedures and standards that will govern the selection of proposals by the applicant. These procedures and standards must take into account:

a. The extent to which the proposal represents the efficient use of rental rehabilitation grant amounts;

b. The extent to which the proposal will minimize displacement of lower income tenants in accordance with the displacement and tenant assistance policy in § 511.14; and

c. The extent to which the dwelling units involved will be adequately maintained and operated with rents at the level proposed. This may consist of a description of plans for requiring a sufficient equity interest, risk, or other involvement in selected projects by private investors and lenders to ensure appropriate incentives to maintain and operate units after rehabilitation.

d. The extent to which priority is to be given to the selection of projects with units that are occupied by very low-income families before rehabilitation that do not meet the applicant's rehabilitation standards adopted pursuant to 24 CFR 511.10(e) and also to projects that will result in dwelling units that are to be made readily accessible to and usable by individuals with handicaps. (See 24 CFR 511.10(g)).

6. *Financial Feasibility.* Evidence demonstrating the financial feasibility of the proposed Rental Rehabilitation Program, including the availability of non-Federal governmental and private resources. Where the applicant has not identified specific projects at the time of submission of the Program Description, the evidence will consist of the applicant's plans to ensure its program's financial feasibility, including plans to obtain non-Federal resources.

7. *Neighborhood Preservation.* An estimate of the effect of the proposed Rental Rehabilitation Program on neighborhood preservation.

8. *Schedule for Committing Rental Rehabilitation Grant Amounts.* A quarterly schedule that demonstrates the applicant's plan to commit to specific local projects its rental rehabilitation grant for the fiscal year for which funding is sought. This schedule must at a minimum show that at least 50 percent of the total grant amount will be so committed within 9 months and 100 percent will be so committed within 12 months, after the date of HUD's execution of the grant agreement.

For this Program Description, the applicant should submit a schedule based on the amount of Rental Rehabilitation grant funds requested in Item 15 of this section. A revised schedule may be required if the applicant's program is approved for an amount different from the amount requested.

9. *Nondiscrimination and Equal Opportunity.* A statement of policy and procedures to be followed by the applicant to meet the requirements for affirmative marketing of units in rehabilitated projects as required in section 511.13(b).

This element must address each of the five (5) affirmative marketing procedures stated in section 511.13(b)(1) and describe how these affirmative marketing procedures will be achieved.

10. *Applicant's Organizational Structure.* The name, address, and telephone number of the agency and contact person responsible for administering the Rental Rehabilitation Program. *A description of the staff and dollar resources applicant will use to administer the program.*

11. *PHA Participation.* a. A Memorandum of Understanding (MOU) signed by the unit of general local government and the appropriate PHA in accordance with 24 CFR 511.40, if possible. If the PHA has not agreed to an MOU, the unit of general local government must include a statement describing its timetable for executing a MOU in accordance with 24 CFR 511.40 prior to commitment of grant amounts to specific projects, or, in the alternative, how it will meet the affordability and relocation requirements of the RRP without the use of section 8 resources.

b. If applicable, the name, address, and telephone number of the PHA contact person.

12. *High Cost.* If applicable, an explanation of why higher average per dwelling unit rental rehabilitation grant amounts for projects are proposed, as provided in section 511.11(e)(2)(ii).

13. *Amount of Rental Rehabilitation Grant Funds Requested. A statement by the applicant indicating the amount of rental rehabilitation grant funds requested for the fiscal year.*

14. *A Statement of The Applicant's Recent Past Rehabilitation Activities. This should include the number of units/properties rehabilitated, the source of funds, and the amount of public funds spent for the rehabilitation for each of the last 3 years. In addition, the applicant should briefly address each of the items listed under Factor 2 of the competitive selection factors in Section II–B below.*

5. *Certifications.* The applicant shall certify that:

a. The submission of the Program Description is authorized under State and local law (as applicable), and the applicant possesses the legal authority to carry out the Rental Rehabilitation Program described therein, in accordance with 24 CFR part 511;

b. Its Rental Rehabilitation Program was developed after consultation with the public and its Program Description has been made available to the public;

c. If applicable, its lower-income benefit standard should be reduced to 70 percent as provided by 24 CFR 511.10(a)(2); this certification will be accompanied by an explanation of the reasons why this reduced benefit standard is necessary, as provided in 24 CFR 511.10(a)(2).

d. It will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, implementing regulations at 49 CFR 24 part and the requirements of 24 CFR 511.14 which include adoption of a written tenant assistance policy.

e. It will conduct and administer its Rental Rehabilitation Program in accordance with the requirements of 24 CFR 511.

f. It will comply with the drug-free workplace requirements in accordance with 24 CFR part 24, subpart F.

g. If applicable, it will comply with the certification and disclosure requirements regarding lobbying at 24 CFR part 87. (Potential grantees should refer to 55 FR 6736 (February 26, 1990) or 24 CFR part 87 for the language for the certification and disclosure, which are contained in appendix A and appendix B to part 87, respectively.

Section II—The Selection System

A Program Description submitted for the HUD-Administered Rental Rehabilitation Program for Small Cities is evaluated in two stages. First, the HUD Field Office must determine the Program Description's acceptability under the criteria listed in section 511.21(a) of the Rental Rehabilitation Program regulations. Second, the Field Office must competitively rank the Program Descriptions pursuant to section 511.52(b) of the regulations and this RPS. Each Field Office shall apply a consistent approach to ranking all applications received in a particular fiscal year.

The following describes the two-stage review process for HUD-Administered Small Cities Program Descriptions:

A. Threshold Review

1. Was Program Description received within the time period established, including any extension that was granted by HUD?

2. Does Program Description contain evidence sufficient (on the basis of the Description or otherwise) to support each of its required elements?

—Does the Program Description address each of the required elements listed in section 511.20(b) and section I of this appendix?

—Is there sufficient information to support each required element?

—Are required certifications included (as required by section 511.20(c) of the Program Regulations and section I, Item 15 of this appendix)?

Note: If Program Description indicates that applicable percentage of lower-income benefit is 70 percent, appropriate certification should be included and the Program Description should contain the reasons necessary to support the reduction to 70 percent.

3. If applicable, has an acceptable Annual Performance Report (APR) for the preceding program year been received from the applicant? If not applicable, answer N.A.

4. Has the Housing Division advised that a participating Public Housing Agency's (PHA's) application for section 8 resources would be approvable, or in the alternative, has the community demonstrated that it can meet the affordability and relocation requirements of the RRP without section 8 resources?

If the answer to any of the above questions is no, the program description should not be approved.

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A. Threshold Review

1. Was Program Description received within the time period established, including any extension that was granted by HUD?

2. Does Program Description contain evidence sufficient (on the basis of the Description or otherwise) to support each of its required elements?

—Does the Program Description address each of the required elements listed in section 511.20(b) and section I of this appendix?

—Is there sufficient information to support each required element?

—Are required certifications included (as required by section 511.20(c) of the Program Regulations and section I, Item 15 of this appendix)?

Note: If Program Description indicates that applicable percentage of lower-income benefit is 70 percent, appropriate certification should be included and the Program Description should contain the reasons necessary to support the reduction to 70 percent.

3. If applicable, has an acceptable Annual Performance Report (APR) for the preceding program year been received from the applicant? If not applicable, answer N.A.

4. Has the Housing Division advised that a participating Public Housing Agency's (PHA's) application for section 8 resources would be approvable, or in the alternative, has the community demonstrated that it can meet the affordability and relocation requirements of the RRP without section 8 resources?

If the answer to any of the above questions is no, the program description should not be approved.

B. Competitive Factors and Points

Factor 1. Need: (Data to be supplied by HUD)—200 points
- a. Rental Households in Poverty
- b. Poverty Rental Households in Pre-1940 Structures
- c. Rental Households with One of Four Problems:
  - (1) High rent cost,
  - (2) Overcrowding,
  - (3) Incomplete kitchen facilities, or
  - (4) Incomplete plumbing

Factor 2. Past Performance in Housing and Community Development Activities—100 points
- a. Rate of fund commitment for recent CDBG rehabilitation activities, if applicable: (20)
- b. The promotion of fair housing and equal opportunity in its housing and community development activities: (20)
- c. The quality of work accomplished through the CDBG rehabilitation activities: (20)
- d. The lack of audit findings, serious monitoring findings, and/or litigation against the community for housing and community development activities: (20)
- e. Extent to which past rehabilitation activities demonstrate a specific capacity to administer the Rental Rehabilitation Program: (20)

Factor 3. Program Administration—150 points
- a. Quality of management plan and organizational structure: (100)
- b. The readiness and ability of a PHA to administer vouchers and certificates in support of the locality's RRP or in the alternative a means of administering other resources to meet the affordability and relocation requirements: (50)

Factor 4. Quality and Impact of Proposed Program—150 points
- a. The extent to which the description of the applicant's program activities indicates an understanding of the program goals: (20)
- b. The likelihood that the applicant's selection of neighborhoods, or guidelines for selecting neighborhoods, will result in neighborhoods with rents affordable to lower-income families and neighborhoods where the median income is equal to or less than 80 percent of the median income for the area: (30)
- c. Reasonableness of the applicant's description for achieving lower-income benefit: (20)
- d. Extent to which applicant gives priority for rehabilitating units suitable for large families with children, particularly families requiring three or more bedrooms: (20)
- e. Adequacy of description of how priority is to be given to the rehabilitation of units which are substandard and occupied by very low-income families and adequacy of description of how priority is to be given to the rehabilitation of units accessible to and usable by individuals with handicaps: (20)
- f. Reasonableness of applicant's schedule for implementing its Rental Rehabilitation Program: (20)
- g. Extent to which applicant's proposed procedures for affirmative marketing indicate an understanding of fair housing objectives; appear to be adequate for informing eligible persons about the rehabilitated housing regardless of race, color, religion, sex or national origin; and include a method for assessing the results of actions taken by the grantee, (recipient) and owner: (20)

Applicant's Score (Total of Factors 1, 2, 3 and 4 above) ________

Total Points Possible: 600

C. Evaluation of Competitive Factors

Based on the evaluation of competitive factors, an applicant will be given points from zero (0) to the maximum points possible for each factor, as indicated in the preceding section.

Factor 1—Need Factor

The Bureau of the Census supplies the data for the need factors which account for 200 points. These factors are the same that are used to allocate Rental Rehabilitation Program funds to localities receiving a direct formula allocation and reflect the need for assistance under the Rental Rehabilitation Program.

Factor 2—Past Performance Factor

The Field Office may give up to 100 points based on the applicant's past performance in community development and housing programs. The applicant's statement in response to Item 14 in the Program Description should be considered as well as the Field Office's knowledge of the applicant's past performance. In evaluating the applicant's performance, the following will be considered:

a. The rate of fund commitment for recent CDBG property rehabilitation activity: The extent to which the applicant's productivity in its rehabilitation program has been satisfactory and rehabilitation projects have been completed in a reasonable time.

b. The promotion of fair housing and equal opportunity: The extent to which the applicant has promoted fair housing and equal opportunity in its housing and community development programs. The reviewer will consider the applicant's performance with respect to nondiscrimination in providing benefits, affirmatively furthering fair housing, use of minority and women-owned businesses and employment of women and minorities. Staff will consider any recent monitoring and compliance review conclusions and any related court findings/consent decrees.

c. The quality of work accomplished through the locality's CDBG program: The extent to which good quality work has been performed. Field Office staff monitoring the locality's rehabilitation program have found quality work and also the lack of complaints from recipients of CDBG rehabilitation assistance.

d. The lack of (1) audit findings, (2) serious monitoring findings, and/or (3) litigation against the community for its housing and community development activities.

e. Extent to which past rehabilitation activities demonstrate a specific capacity to administer the Rental Rehabilitation Program: Field staff should consider whether the locality's past experience would help it to ru a Rental Rehabilitation Program, such as previous experience in the Rental Rehabilitation Program. For localities that have participated previously in the Rental Rehabilitation Program:

—Whether market rents of 80 percent or more of the units rehabilitated in the program are affordable to lower-income families (at or below published section 8 FMRs or HUD-approved community-wide exception rents).

—Whether the program has met the statutory priority for providing housing for large families, (extent to which rental rehabilitation grant amounts are used to rehabilitate units containing two or more bedrooms and three or more bedrooms).

—Whether the program has met the priority of rehabilitating substandard units occupied by very low-income families and also for projects that will be made readily accessible to and useable by individuals with handicaps.

—Extent to which more than 80 percent of the units have market rents affordable to lower-income families.

—Extent to which gross amount of public funds (as determined by HUD) used for rehabilitation per unit have been minimized and the extent to which the amount of public subsidy funds as a percentage of rehabilitation costs have been minimized.

—Extent of grantee management efficiency, based upon such measures as average cost of administration per unit assisted, average project processing time, quality and timeliness of reports, and other measures indicating sound program management.

—Extent to which rental rehabilitation grant amounts have been committed to specific projects and projects have been completed.

Factor 3—Program Administration Factor

a. Quality of Management Plan and Organizational Structure

Does the locality's management plan indicate a sufficient commitment of staff time and expertise to run a successful Rental Rehabilitation Program? Does the locality's management plan identify specific staff, their qualifications and what their responsibilities will be in the program? What has been the experience of the staff in previous housing and/or community development programs? Is the organization likely to work? In assigning points to this component of the Program Administration Factor, the Field Office staff will rely not only on what is stated in the locality's management plan, but also on their knowledge of the locality's present administrative capacity to administer housing and community development programs.

A good indication of the locality's continuing capacity to administer a Rental Rehabilitation Program is the locality's satisfactory past participation in the Rental Rehabilitation Program.

The Field Office will award up to 100 points for this component of the Program Administration Factor.

b. Availability of a PHA to Administer Section 8, or Alternative

Has the PHA developed an MOU with a PHA or submitted a schedule concerning its plans to do so? In the latter case, is there a letter of commitment from the PHA? If a PHA is not available, has the applicant described how it will handle tenant assistance and relocation requirements and has it identified the resources it will use? If the applicant has demonstrated the ability to adequately assist tenants either through a PHA or by an acceptable alternative, it should be awarded 50 points. If the applicant's proposal in this regard is not completely satisfactory, the Field Office should award no or fewer points depending on how significantly deficient the applicant's proposal is on this factor.

If the applicant receives less than a combined total of 150 points for the Past Performance and Program Administration Factors, it is doubtful that the applicant has the capacity to run a successful Rental Rehabilitation Program.

Factor 4—Quality and Impact of Proposed Program Factor

The Field Office will review the Program Description from each applicant and give either all, some, or none of the points for each of the seven questions pertaining to the quality of the application. Each application should be judged individually and the points given should reflect how well each applicant responds to the application requirements. All applications, however, should be evaluated in a consistent manner.

Completing the Evaluation of Applications and Allocating Funds

After the points are given for the four factors, the Field Office will total the points for each applicant and rank the applicants from high to low. Those Program Descriptions which do not meet the threshold review criteria in Section II–A above will not be included in the ranking.

A score of 400 or more should generally be considered acceptable and should receive funding. If the total funds available are sufficient to fund all the top applications, or those receiving a score of 400 or more, they should all receive funding.

If there are sufficient funds available to approve all applications that receive at least 300 points, the Field Office may consider funding those applications. Field Offices should not fund an application that receives fewer than 300 points, except where extenuating circumstances warrant. However, before allocating funds to the approvable applicants, Field Offices should consider the reasonableness of each approvable applicant's request for Rental Rehabilitation grant funds relative to the needs of other approvable applicants. Field Offices may reduce the requested amount if it is determined unreasonable.

If the funds available to the State (or Field Office jurisdiction part of a State) are not sufficient to fund all approvable applications, the Field Office may cut back the funds in one of several ways, such as:

(1) Giving the best application or applications their total request if those requests are considered reasonable and reducing funds to those receiving fewer points.

(2) Reducing every approvable applicant's request proportionately down to a fixed threshold.

(3) Starting at the top of the list and providing funding to as many of the localities (provided their funding requests are reasonable) as the total funds available would allow.

(4) If two or more applicants receive the same number of points in the evaluation system, the Field Office will consider the needs for a Rental Rehabilitation Program as indicated by Factor 1. If funds are available to fund only one of the applicants, the one with the greater need will be funded.

Chapter 6 (HUD-Administered Programs) and section IV of exhibit 6–1 of the Rental Rehabilitation Program Handbook (7360.01) provide a further explanation of the competitive factors and how HUD will review otherwise approvable Program Descriptions received in response to this NOFA, except as modified by this NOFA. Persons interested in obtaining this explanation may contact the Community Planning and Development Division in the nearest HUD Field Office or the Rehabilitation Management Division of the HUD Central Office cited at the beginning of this NOFA.

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requests are considered reasonable and reducing funds to those receiving fewer points.

(2) Reducing every approvable applicant's request proportionately down to a fixed threshold.

(3) Starting at the top of the list and providing funding to as many of the localities (provided their funding requests are reasonable) as the total funds available would allow.

(4) If two or more applicants receive the same number of points in the evaluation system, the Field Office will consider the needs for a Rental Rehabilitation Program as indicated by Factor 1. If funds are available to fund only one of the applicants, the one with the greater need will be funded.

Chapter 6 (HUD-Administered Programs) and section IV of exhibit 6-1 of the Rental Rehabilitation Program Handbook (7360.01) provide a further explanation of the competitive factors and how HUD will review otherwise approvable Program Descriptions received in response to this NOFA, except as modified by this NOFA. Persons interested in obtaining this explanation may contact the Community Planning and Development Division in the nearest HUD Field Office or the Rehabilitation Management Division of the HUD Central Office cited at the beginning of this NOFA.

[FR Doc. 91-17639 Filed 7-24-91; 8:45 am]

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federal register

Thursday
July 25, 1991

Part IV

Nuclear Regulatory Commission

10 CFR Parts 2 and 35

Quality Management Program and Misadministrations; Final Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 35

RIN 3150-AC65

Quality Management Program and Misadministrations

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending regulations governing therapeutic administrations of byproduct material and certain uses of radioactive sodium iodide to require implementation of a quality management program to provide high confidence that the byproduct material or radiation from byproduct material will be administered as directed by an authorized user physician. The Commission believes this performance-based amendment will result in enhanced patient safety in a cost-effective manner while allowing the flexibility necessary to minimize intrusion into medical judgments. This amendment also modifies the notification, reporting, and recordkeeping requirements related to the quality management program and misadministrations.

EFFECTIVE DATE: January 27, 1992.

FOR FURTHER INFORMATION CONTACT: Dr. Anthony N. Tse, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3797.

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I. Byproduct Material in Medicine

Use of Byproduct Material

Since 1946, growth in the medical applications of radioisotopes has been very rapid as their usefulness has become more apparent in diagnosis, therapy, and medical research. Current medical procedures employ a number of radioisotopes in a wide variety of chemical and physical forms. Nuclear medicine procedures for diagnostic and therapeutic applications involve the internal administration of radiolabeled tracers. Administration of the radiolabeled tracers, known as radiopharmaceuticals, may be performed by intravenous injection, inhalation, or oral ingestion. Diagnostic nuclear medicine in most cases involves imaging agents used for the delineation and localization of organ tissues by scintigraphy (e.g., technetium-99m hydroxymethylene diphosphonate used as a bone-seeking radiopharmaceutical). Organ function may be determined by quantifying the accumulation of radiopharmaceuticals in organs of interest (e.g., iodine-131 uptake studies used to assess thyroid function). Therapeutic nuclear medicine may use various radiopharmaceuticals for the treatment of disease by selective absorption or concentration (e.g., iodine-131 used to treat thyroid cancer). Other therapeutic applications may involve the use of radiopharmaceuticals in colloidal suspensions for the treatment of malignant tumors (e.g., phosphate-32 infusion for treatment of peritoneal or pleural effusions associated with malignant tumors).

Since the early 1900s, radiation therapy has become one of the major modalities of treatment in the management of neoplastic disease, generally referred to as cancer. Radiation therapy may also be used as a palliative agent in the medical treatment process. The objective of conventional radiation therapy using a teletherapy sealed source is to deliver a precisely measured dose of radiation to a defined tumor volume. This is usually accomplished by delivering a dose in daily increments over several weeks. External beam radiation therapy has evolved using innovative technology that has led to the development of the gamma stereotactic radiosurgery device used for treatment of precisely defined intracranial targets (e.g., brain tumors and arteriovenous malformations).

Brachytherapy uses a variety of smaller sealed sources for localized treatment of cancer. Typically the sealed sources are either inserted in a cavity (e.g., cesium-137 sources used for intracavitary treatment of cervical cancer) or implanted in tissue (e.g., iodine-125 seeds used for interstitial treatment of prostate cancer). Various remote afterloading devices have been developed for low, medium, and high dose rate brachytherapy treatments.

State and Federal Regulations

Byproduct material or radiation from byproduct material is regulated by either State or Federal laws. Twenty-eight states, known as Agreement States, have entered into an agreement with the NRC to regulate the use of byproduct material (as authorized by section 274 of the Atomic Energy Act). These States issue licenses and currently regulate about 4,000 institutions, e.g., hospitals, clinics, or physicians in private practice.

The NRC regulates the administration of byproduct material or radiation from byproduct material in 22 States, the District of Columbia, the Commonwealth of Puerto Rico, and various territories of the United States and has licensed 2,000 civilian and military hospitals and clinics.

II. NRC's Regulatory Program

NRC's Policy

In a policy statement published on February 9, 1979 (44 FR 8242), entitled "Regulation of the Medical Uses of Radioisotopes; Statement of General Policy," the NRC stated:

(1) The NRC will continue to regulate the medical uses of radioisotopes as necessary to provide for the radiation safety of workers and the general public.

(2) The NRC will regulate the radiation safety of patients where justified by the risk to patients and where voluntary standards, or compliance with these standards, are inadequate.

(3) The NRC will minimize intrusion into medical judgments affecting patients and into other areas traditionally considered to be a part of the practice of medicine.

The NRC has the authority to regulate the medical use of byproduct material or radiation from byproduct material to protect the health and safety of patients, but also recognizes that physicians have the primary responsibility for the protection of their patients. NRC regulations are predicated on the assumption that properly trained and adequately informed physicians will make decisions that are in the best interest of their patients.

NRC's Responsibilities

The NRC distinguishes between the unavoidable risks attendant in purposefully prescribed and properly

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NRC's Responsibilities

The NRC distinguishes between the unavoidable risks attendant in purposefully prescribed and properly performed clinical procedures and the unacceptable risks of improper or careless use. The NRC is responsible, as part of its public health and safety charge, to establish and enforce regulations that protect the public from risks of improper procedures or careless use.

Misadministration Reports

The NRC has analyzed therapy misadministrations, abnormal occurrences, and diagnostic misadministrations in the therapy range over the period of November 1980 through December 1990 for the NRC licensees. The results of the analysis for events that occurred from November 1980 through December 1988 were summarized in the preamble to the proposed rule published January 16, 1990 (55 FR 1439). The events that occurred in 1989 and 1990 were similar to the events from the earlier years except that the number of therapy events in 1990 was approximately double the average number of therapy events for the previous years. Table 1 provides a brief description of the therapy misadministrations, abnormal occurrences, and diagnostic misadministrations involving iodine that occurred in 1989 and 1990. Although some of the events listed in the table may have caused direct harm to the patients, the overall significance of these events is that they indicate a breakdown in the licensee's program for ensuring that byproduct material or radiation is administered as directed by the authorized user. It has been assumed that a proportional number of such occurrences has also taken place in the Agreement States although the data base is not yet complete.

The causes of these misadministrations and/or abnormal occurrences may be characterized by insufficient supervision, deficient procedures or failure to follow procedures, inattention to detail, and inadequate training.

These factors are often significant in causing or contributing to misadministrations or abnormal occurrences. The purpose of this rulemaking is to address these factors by requiring each applicable part 35 licensee to establish and implement a quality management program. Thus, each licensee will be required to have and implement procedures to ensure that the byproduct material or radiation from byproduct material is administered as directed by the authorized user physician. Improved training of personnel who handle and administer byproduct material can also reduce mistakes. However, this rulemaking does not address training; the need for training initiatives will be considered by NRC in the future.

TABLE 1.—MISADMINISTRATIONS, ABNORMAL OCCURRENCES, AND OTHER EVENTS

Date	Licensee	ST	Description
NRC LICENSEES—1989 Teletherapy			
01/23	Abbott Northwestern Hospital [1]	MN	Wrong Treatment Site: Adm 250 rads to wrong thigh due to improper marking.
03/09	Kennebec Valley Med Ctr [1]	ME	Wrong Patient: Adm 100 rads to brain.
03/27	Indiana Univ School of Medicine [1]	IN	Wrong Treatment Site: Adm 9 fractions of 300 rads each to the wrong hip due to marking.
07/24	Worcester City Hospital [1]	MA	Wrong Patient: Adm 250 rads to spine.
Brachytherapy			
01/23	Yale New Haven Hospital	CT	Wrong Dose: Adm 1000 rads, Rx 500 rads, due to wrong decay factor.
01/31	St. Luke's Hospital	MO	Wrong Dose: 56% underdose due to wrong source strength.
09/19	Med Ctr of Delaware	DE	Wrong Dose: Adm 1731 rads, Rx 3091 rads.
10/25	Children's Hospital	MA	Wrong Dose: Adm 3952 rads, Rx 4534 rads.
11/30	Yale New Haven Hospital	CT	Wrong Radioisotope: Adm 500 rads, Rx 2500 rads.
Nuclear Medicine—Exceeding Diagnostic Range			
03/14	New England Med Ctr [1]	MA	Wrong Radiopharmaceutical: Adm 5 mCi I-131, Rx 1 mCi I-123.
05/23	Abbott Northwestern Hospital [1]	MN	Wrong Radiopharmaceutical: Adm 3 mCi I-131, Rx 300 μCi I-123.
10/18	Mayo Foundation [1]	MN	Wrong Dosage: Adm 1 mCi I-131, Rx 100 μCi I-131.
11/30	Kuakini Medical Center [1]	HI	Wrong Patient: Adm 9 mCi I-131.
Nuclear Medicine—Diagnostic Range or Involving Iodine			
02/09	Warminister Central Hospital	PA	Wrong Patient: Adm 175 μCi I-131 hippuran.
02/28	Milwaukee County Med Center	WI	Wrong Patient: Adm 50 μCi I-131 hippuran.
02/28	Washington Hospital Center	DC	Wrong Patient: Adm 155 μCi I-131 hippuran.
03/20	Christian Hospital	MO	Wrong Patient: Adm 17 μCi I-131 sodium iodide.
04/03	VA Medical Center	FL	Wrong Radiopharmaceutical: Adm 0.33 mCi I-131 hippuran, Rx 5.29 mCi Tc-99m MAA.
05/15	Hershey Medical Center	PA	Wrong Radiopharmaceutical: Adm 0.5 mCi I-131 MIBG, Rx 0.5 mCi I-131 NP-59.
07/89	Montefiore Hospital	PA	Wrong Dosage: Adm 24 μCi I-131, Rx 12 μCi I-131.
NRC LICENSEES—1990 Teletherapy			
02/08	Cleveland Clinic [1]	OH	Wrong Dose: Adm 3 fractions of 278 rads each, Rx 2 fractions.
02/16	Washington Hospital Ctr [1]	DC	Wrong Patient: Adm 45 rads to lung.
02/19	Geisinger Medical Center	PA	Wrong Dose: Adm 4200 rads, Rx 3000 rads due to 4 additional fractions.
03/12	Muskogee Reg Med Ctr [1]	OK	Wrong Treatment Site: Adm 2160 rads.
03/16	Riverside Reg Med Ctr [1]	VA	Wrong Patient: Adm 296 rads to brain.
03/19	St. Mary's Med Ctr [1]	MI	Wrong Treatment Site: Adm 250 rads.
04/20	St. Luke's Hospital	OH	Wrong Dose: Adm 4619 rads, Rx 5304 rads.
05/07	Indiana Univ School of Medicine	IN	Wrong Dose: Adm 1800 rads, Rx 1350 rads due to misinterpreting the prescription.
06/22	St. Luke's Hospital [1]	OH	Wrong Treatment Site: Adm 178 rads.
09/14	Presbyterian Hospital	PA	Wrong Dose: Adm 5225 rads, Rx 4500 rads due to 4 additional fractions.

TABLE 1.—MISADMINISTRATIONS, ABNORMAL OCCURRENCES, AND OTHER EVENTS—Continued

Date	Licensee	ST	Description
	Brachytherapy		
01/17	Monongahela Valley Hospital [1]	PA	Failure to Detect Dislodged Source: One dislodged cesium-137 source irradiated the patient's leg.
02/02	Ball Memorial Hospital [1]	IN	Wrong Treatment Site: Adm 1500 rads, sealed source in wrong location.
02/07	University of Wisconsin [1]	WI	Wrong Dose: Adm 4120 rads, Rx 3240 rads due to wrong input to the computer.
03/15	University of Wisconsin [1]	WI	Wrong Treatment Site: Adm 400 rads due to wrong input to the computer.
03/16	John F. Kennedy Hospital [1]	NJ	Failure to Detect Dislodged Source: Source dislodged and the patient's face irradiated 1032 rads.
03/21	Parkview Mem Hospital	IN	Failure to Detect Dislodged Source: Applicator pulled out by the patient, the patient's legs irradiated 623 rads.
03/90–05/90	St. Mary Med Ctr, Gary and Hobart [1]	IN	Pattern of Wrong Doses: Entire brachytherapy operations were investigated and suspended.
08/29	Univ of Cincinnati [1]	OH	Wrong Treatment Site: Most seeds were implanted outside the prostate.
09/17	Cooper Medical Center	NJ	Wrong Dose: Adm 1464 rads, Rx 3000 rads due to wrong treatment plan.
	Nuclear Medicine—Exceeding Diagnostic Range		
04/17	St. Francis Med Ctr	PA	Wrong Dosage: Adm 56 mCi I-131, Rx 50 μCi I-131.
05/14	Overlook Hospital [1]	NJ	Wrong Radiopharmaceutical: Adm 1.4 mCi I-131, Rx 300 μCi I-123.
06/04	Valley Hospital	NJ	Wrong Dosage: Adm 4.51 mCi Sr-89, Rx 3.54 mCi Sr-89.
06/04	Valley Hospital	NJ	Wrong Dosage: Adm 4.02 mCi Sr-89, Rx 2.87 mCi Sr-89.
06/05	Mercy Memorial Med Ctr [1]	MI	Wrong Dosage: Adm 4.3 mCi I-131, Rx 50 μCi I-131.
06/19	Tripler Army Medical Center [1]	HI	Unintended Dose to Nursing Infant: An infant received dose from mother's milk due to 4.89 mCi I-131 adm to mother; infant thyroid ablated.
07/10	North County Hospital	VT	Unintended Dose to Fetus: A pregnant patient adm 15 μCi I-131; failed to ask if pregnant.
07/10	St. Vincent Med Ctr	PA	Wrong Dosage: Adm 110.1 mCi I-131, Rx 100 mCi I-131.
07/19	Brigham and Women's Hospital	MA	Wrong Dosage: Adm 180 mCi Dy-165, Rx 270 mCi Dy-165.
07/27	North Detroit General Hospital [1]	MI	Fraudulent Studies: Old imaging films submitted for current patients resulting in excess doses for repeated studies.
08/01	Frankford Hospital	PA	Wrong Dosage: Adm 20 mCi I-131, Rx 14 mCi I-131.
09/22	West Shore Hospital [1]	MI	Wrong Dosage: Adm 175 mCi Tc-99m, Rx 8 mCi Tc-99m.
10/15	William Beaumont Hospital [1]	MI	Wrong Dosage: Adm 315 mCi I-131, Rx 175 mCi I-131.
11/26	VA Medical Center [1]	CA	Wrong Radiopharmaceutical: Adm 168 mCi Tc-99m, Rx 5 mCi In-111.
	Nuclear Medicine—Diagnostic Range or Involving Iodine		
02/01	VA Edward Hines Jr. Medical Center	IL	Wrong Radiopharmaceutical: Adm 0.716 mCi I-131 Hippuran, Rx 3.5 mCi Tl-201.
02/05	VA Medical Center	CA	Wrong Radiopharmaceutical: Adm 1 mCi I-131 Iodochole, Rx 1 mCi I-131 MIBG.
03/20	Cleveland Clinic	OH	Wrong Dosage: Adm 130 μCi I-131, Rx 100 μCi I-131.
03/30	Downriver X-ray and Nuclear Diagnostics	MI	Wrong Dosage: Adm 100 μCi I-131, Rx 16 μCi I-131.
03/90	Davis Mem Hospital	WV	Wrong Dosage: Patients received 50% less dosage of I-131 than prescribed.
04/30	Johnson Willis Hospital	VA	Wrong Patient: Adm 9 μCi I-131 sodium iodide.
05/04	Central Plains Clinic	SD	Wrong Radiopharmaceutical: Adm 0.01 mCi I-125 Albumin, Rx 25 mCi Tc-99m.
08/07	Copley Hospital [1]	VT	Wrong Dosage: Adm 112 μCi I-131, Rx 10 μCi I-131.
09/05	Mansfield Gen Hospital	OH	Wrong Radiopharmaceutical: Adm I-123, Rx I-131.
09/13	West Park Hospital	WY	Wrong Dosage: Adm 0.0068 mCi 1-131, Rx 1 mCi I-131.
10/30	Dept of Vet Affairs Medical Center	FL	Wrong Patient: Adm 0.282 mCi I-131 Hippuran.
12/05	Jersey Shore Hospital	PA	Wrong Radiopharmaceutical: Adm I-125 HSA, Rx Tc-99m UGA.
12/12	Jersey Shore Hospital	PA	Wrong Radiopharmaceutical: Adm I-125 HSA, Rx Tc-99m UGA.

[1] Misadministrations designated as abnormal occurrences.

Voluntary Initiatives

The NRC is aware of voluntary initiatives to improve quality assurance (QA). Examples include "Patterns of Care," a study managed by the American College of Radiology (ACR), "Quality Assurance Program in Radiation Oncology," prepared by ACR, and "Physical Aspects of Quality Assurance in Radiation Therapy," prepared by the American Association of Physicists in Medicine (AAPM).

The NRC encourages voluntary initiatives by the industry to develop consensus standards and will consider endorsing these standards in its regulatory guidance at an appropriate time. However, because these voluntary standards may not be adopted by all licensees, voluntary programs alone are not sufficient to ensure that the byproduct material will be administered as directed by the authorized user. Consequently, the NRC has determined that there is a need for this final rule.

Earlier NRC Efforts

On October 2, 1987 (52 FR 36942), the NRC published a proposed rule that would have required its part 35 licensees to implement some specific basic QA practices to reduce the number of mistakes in the therapeutic administration of radiopharmaceuticals or radiation from byproduct material and the administration of radioactive iodine. Public comments received on the proposed rule indicated that, although these proposed QA practices might reduce the number of mistakes, the imposition of prescriptive requirements might not afford sufficient flexibility for all licensees. Public comments, including recommendations from the NRC's Advisory Committee on the Medical Uses of Isotopes (ACMUI), suggested that a performance-based rule should be promulgated, rather than a prescriptive rule. The ACMUI also suggested that a pilot program would be useful to determine the licensees' ability to meet a proposed rule, to assess its impact, and to determine how to minimize its impact without decreasing its effectiveness. Furthermore, the ACMUI stated that, under existing NRC regulations, the definition of the term "misadministration" is unclear and that the related reporting requirements are confusing.

Subsequently, the NRC decided to develop a performance-based rule and a regulatory guide and, as a part of the same rulemaking, to review the term "misadministration," its scope and related reporting requirements. In addition, the NRC also decided to conduct a pilot program.

III. Publication of the Proposed Rule and Discussion of Related NRC Activities

The Proposed Rule

The NRC published proposed amendments to 10 CFR part 35 in the **Federal Register** on January 16, 1990 (55 FR 1439) and provided a 90-day public comment period. The proposed rule contained amendments that would require part 35 licensees to establish and implement a basic QA program. It also contained proposed modifications to the definition of "misadministration" and the associated reporting and recordkeeping requirements.

To collect additional information about the proposed rule from NRC and Agreement State licensees, the NRC conducted a pilot program. Also, the NRC conducted public workshops with professional associations, the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), the Agreement States, and met with the NRC's ACMUI to obtain additional comments on the proposed rule. These workshops were open to the public, and prior notice was given through **Federal Register** announcements. Brief discussions of these activities are presented below.

The Pilot Program

The pilot program was conducted to provide a real-world test of the proposed rule in licensee hospitals and clinics and to gain insights beyond those generally obtained from the public comment process. Three basic questions were of interest:

(1) Can licensees develop QA programs to meet the objectives of the proposed rule following a performance-based approach using the regulatory guide or any other guidance of their choice?

(2) If NRC reviewed a licensee's written QA program, would the NRC agree that the program meets the objectives of the proposed rule?

(3) If NRC visited a licensee's hospital or clinic, would the NRC agree that the implemented program meets the objectives of the proposed rule?

Also, after the licensees had tested the proposed rule, the NRC wanted to learn from licensees if they had problems with the proposed rule and their recommendations on how the rule should be revised in order to minimize its cost and clarify its objectives without decreasing its effectiveness.

Based on the principles of acceptance sampling, the plan was to invite a group of 72 volunteer licensees that represent the U.S. population of part 35 type licensees. The total was divided into 24 NRC and 48 Agreement State volunteers because there are approximately twice as many Agreement State licensees as there are NRC licensees. Groups were defined using the five NRC regions and the 28 Agreement States. The number of volunteers invited from each group was in proportion to the number of licensees in that group. Also, it was desirable to have the volunteers represent specific licensee characteristics within each group, as well as possible, considering the number of volunteers randomly selected from that group. The specific licensee characteristics were class of licensee (i.e., teletherapy, brachytherapy, radiopharmaceutical therapy, and diagnostic nuclear medicine), type of facility (i.e., private or nonprivate), size of facility (i.e., small—up to 250 beds, or large—over 250 beds), and facility location (i.e., urban within a U.S. Bureau of Census Standard Metropolitan Statistical Area, or rural—otherwise).

Letters inviting participation in the pilot program were sent to a total of 185 licensees. Seventy-six institutions volunteered (27 NRC and 49 Agreement State licensees).

Five one-day workshops were held, one in each NRC region, to explain the overall process of the pilot program and to discuss the proposed rule and draft regulatory guide. Following these workshops, the volunteers developed QA programs that conformed to § 35.35 or amended their existing QA programs to meet the objectives of proposed § 35.35. The volunteers also conducted any necessary training in preparation for their trial use of the § 35.35-type QA programs. During a 60-day period from mid-May to mid-July 1990, the volunteers used their § 35.35-type QA programs for their administrations of byproduct material or radiation from byproduct material.

To address the first two questions stated above, the NRC evaluated each volunteer's written § 35.35-type QA program to determine whether it met the proposed objectives. To address the third question stated above, the NRC visited the hospitals or clinics of 18 (12 NRC and 6 Agreement State) volunteers to determine whether their § 35.35-type QA programs, as implemented, met the proposed objectives. These site visits were conducted during the 60-day trial use period.

At the end of the pilot program, five two-day workshops were held, one in each NRC region except Region V, to learn about the volunteers' experiences in using their § 35.35-type QA programs and to discuss the volunteers' problems with and recommendations on how to revise the proposed rule and draft regulatory guide. Prior to these workshops, each volunteer was asked to complete a written questionnaire as an evaluation of the proposed rule and draft regulatory guide. There were 64 volunteers (23 NRC licensees and 41 Agreement State licensees) who actually participated in all aspects of the pilot program. The following is a summary of the lessons learned from the pilot program.

(1) Licensees can develop acceptable QA programs under a performance-based approach.

(2) The licensees' programs, as written, did meet most of the proposed § 35.35 objectives, even without benefit of an iterative process (e.g., questions and revisions) as occurs during licensing.

(3) The licensees' programs as actually implemented were found during the 18 site visits to be more complete than the written programs in meeting the proposed § 35.35 objectives. Some programs completely met the objectives.

(4) Most licensees already had an existing QA program because of JCAHO or a professional society; thus, neither the incremental work nor the cost involved to meet the proposed § 35.35 objectives were substantial.

(5) Proposed § 35.35 objective number 1 to "ensure that the medical use is indicated for the patient's medical condition" and objective number 4 to "ensure that the responsible individuals understand the directions provided by the authorized user" should be deleted, but the other six objectives should be retained.

(6) The word "errors" in § 35.35(a) should be replaced with a term to specifically describe what is to be prevented.

(7) To avoid confusion in the thousands of hospitals that are already accredited by JCAHO, the NRC should use a term other than "quality assurance."

(8) The term "written directive" should be used instead of "prescription" to avoid confusion with existing medical practices.

(9) The sentence structure should be simplified by stating multiple requirements or criteria in lists, i.e., (a), (b), and (c).

(10) A required "written referral" for diagnostic procedures would be unnecessarily costly.

(11) The patient should be redundantly identified.

(12) The "annual comprehensive audit" should be replaced with an annual program review based on a random sample of patient administrations.

(13) The reporting requirements of proposed §§ 35.33 and 35.34 should be simplified.

(14) The reporting threshold criteria of an organ dose of 2 rems and a whole body dose of 0.5 rem should be modified because these criteria are exceeded during most routine diagnostic procedures.

(15) The procedure should be retained that allows the licensee to handle "events," i.e., mistakes that exceed a relatively low threshold, within its institution without reporting to NRC; events exceeding a higher threshold should be reported to NRC (or the applicable Agreement State).

A NUREG/CR report summarizing the pilot program is under preparation and will be published in the near future.

Public Workshops

ACNP and SNM

The NRC conducted a public workshop with representatives of the American College of Nuclear Physicians (ACNP) and the Society of Nuclear Medicine (SNM) in Rockville, Maryland, on July 23, 1990. The proposed QA rule was compared with the current JCAHO Standards and with a JCAHO-type QA program for one hospital to determine if equivalence existed. It was concluded that the proposed QA rule is comparable to the JCAHO Standards. The ACNP and SNM provided various questions, comments, and recommendations regarding the proposed rule. Most fundamentally, ACNP and SNM representatives questioned the need for the rule and whether additional NRC requirements would contribute to reducing the number of misadministrations. The major ACNP-SNM recommendations are:

(1) Withdraw the proposed QA rule.

(2) Endorse the JCAHO accreditation process and allow NRC licensees to comply with JCAHO requirements in lieu of the proposed QA rule for diagnostic nuclear medicine administrations.

AAPM, ACMP, ACR, AES, and ASTRO

On November 19 and December 15, 1990, the NRC conducted public workshops with representatives of the American Association of Physicists in Medicine (AAPM), American College of Medical Physics (ACMP), American College of Radiology (ACR), American Endocurietherapy Society (AES), and American Society for Therapeutic Radiology and Oncology (ASTRO) in Reston, Virginia. The proposed QA rule, definitions, reporting requirements, and regulatory guide were discussed on a line-by-line basis. Numerous suggestions were provided by the representatives of each professional association. Their major recommendations are:

(1) Do not use the title "Quality Assurance Program" to avoid confusion with the existing JCAHO programs.

(2) Do not use the term "misadministration."

(3) Use "calculated" administered dose for teletherapy and brachytherapy.

(4) Increase the range of tolerance between calculated administered dose and prescribed dose in teletherapy and brachytherapy.

(5) Use "written directive" instead of "prescription."

(6) Remove the word ensure from the beginning of each proposed objective.

(7) Do not use the word prevent because it sounds too absolute.

(8) Allow events (i.e., mistakes that exceed a relatively low threshold) to be handled within the institution.

The JCAHO

The staff conducted a public workshop with the JCAHO in Chicago, Illinois, on December 17, 1990. The common elements of the proposed QA rule and JCAHO requirements were discussed. The staff attempted to determine if the NRC regulation, licensing, and inspection processes are equivalent to the JCAHO standards, accreditation, and survey processes. Based on this workshop, the NRC staff concluded the following:

(1) The JCAHO standards are nearly equivalent to the diagnostic components of the proposed QA rule with only minor modifications required to achieve equivalence.

(2) The JCAHO does not perform a licensing review prior to a facility survey; therefore, no equivalence exists with the NRC licensing process. However, the JCAHO awards accreditation only after a facility survey.

(3) The JCAHO survey process is partially equivalent to the NRC inspection process with the significant difference being the amount of time spent in the specific departments; that is, in most cases the NRC spends considerably more time.

Overall, although the JCAHO accreditation applies to the entire hospital and the NRC license would only apply to the radiation therapy and nuclear medicine departments, the two processes have similar objectives.

The Agreement States

The NRC conducted public workshops with representatives of the Agreement States on March 14, 1990, December 18 and 19, 1990, and February 7 and 8, 1991. The workshops were held in Rockville, Maryland; Irving, Texas; and San Mateo, California, respectively. The following Agreement States were represented at one or more of the workshops: Alabama, Arkansas, California, Illinois, Louisiana, Maryland, New York, Rhode Island, Texas, Utah, and Washington. A representative from the City of New York also attended two workshops. The Agreement States that provided written comments that were incorporated into the record during the San Mateo, California, workshop were Alabama, Kentucky, Nebraska, North Dakota, Oregon, and Utah. The proposed QA rule (and subsequent draft revisions), definitions, reporting requirements, and regulatory guide were discussed. The Agreement States provided line-by-line recommendations. The major recommendations provided by the representatives are:

(1) All administrations of byproduct material or radiation from byproduct material should be approved by the authorized user prior to administration.

(2) Do not use the title "Basic Quality Assurance Program" to avoid confusion with the JCAHO program.

(3) Revise the proposed dose threshold levels for "events" and "misadministrations."

(4) The rule, definitions, and reporting requirements should be revised based on recommendations from the ACMUI on January 14 and 15, 1991, and should be republished for public comment.

(5) The proposed regulations should not be a matter of compatibility for Agreement States.

(6) If the proposed regulations are required to be adopted by the Agreement States, then compatibility requirements should be established at no higher than Division 3.

The ACMUI

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(1) All administrations of byproduct material or radiation from byproduct material should be approved by the authorized user prior to administration.

(2) Do not use the title "Basic Quality Assurance Program" to avoid confusion with the JCAHO program.

(3) Revise the proposed dose threshold levels for "events" and "misadministrations."

(4) The rule, definitions, and reporting requirements should be revised based on recommendations from the ACMUI on January 14 and 15, 1991, and should be republished for public comment.

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and 15, 1991, in Alexandria, Virginia. The ACMUI is an advisory body, currently composed of physicians, medical physicists, a radiopharmacist, and a technologist, established for advising the NRC staff on matters involving the administration of byproduct material and radiation from byproduct material. The ACMUI devoted one and a half days to a line-by-line discussion of the draft final rule, reporting requirements, and associated definitions. The NRC staff also met with a Subcommittee of the ACMUI in a public workshop on March 26, 1991, in St. Louis, Missouri, to discuss the same topics. The major ACMUI recommendations on the draft final rule as of March 1991 are:

(1) Do not include diagnostic components and associated definitions in the final rule.

(2) Retain the therapy components and the use of a "written directive."

(3) Do not use the word "prevention" because it sounds too absolute.

(4) Do not include any assessment of the patient's pregnancy and nursing status in the objectives of the final rule.

(5) Use the term "reportable event" instead of "misadministration."

(6) Add a dose threshold criterion for reporting diagnostic events, such as the dose to the patient exceeds 5 rems effective dose equivalent.

(7) Do not include "unintended dosage to an embryo or fetus or to a nursing infant" as criteria for a reportable event.

(8) Change the time period for patient notification of a reportable event from 24 hours to 15 days to allow adequate time to calculate the actual dose delivered in complex situations.

(9) Retain the requirements for therapy events to be evaluated and responded to within the licensee's institution.

(10) Delete the requirement to notify the referring physician in the case of a reportable event.

(11) Allow the report to the patient to be a summary description of the event in language that the patient can understand rather than a copy of the technical report sent to the NRC.

(12) Allow the licensee to make modifications to maximize the program's efficiency and require a copy of the modifications to be provided to the NRC Regional Office within 30 days.

At its meeting on May 10, 1991, the ACMUI recommended that no quality management or quality assurance rule on medical use of any kind is needed or appropriate.

Public Comments and NRC Responses

About 3,000 copies of the notice of the proposed rulemaking as published in the **Federal Register** (January 16, 1990; 55 FR 1439) were mailed in January 1990 to all applicable licensees under 10 CFR part 35, Agreement State and Non-Agreement State agencies, professional associations, and other interested groups.

The NRC received 79 comment letters from many different sources in response to the proposed rule. In terms of the types of organizations, there were 52 comment letters from hospitals and clinics, 12 from professional associations, 6 from Agreement State or local government agencies (1 letter contained comments from 5 Agreement States), 3 from pharmacies, and 6 from individuals. In terms of professions, the tally is 32 from physicists or technologists, 26 from physicians, 8 from pharmacists, and 13 others. Forty-seven letters (60 percent) opposed the proposed rule. Twenty-eight letters (35 percent) did not specifically indicate support or opposition for the rule, but did suggest modifications. Four letters (5 percent) supported the rule.

General categories of public comments and NRC's responses are presented below. In Section IV entitled "Discussion of Final Rule Text," modifications of the proposed rule that are due, in part, to specific public comments are indicated. Some comment letters also addressed items in the draft regulatory guide. The comments on the regulatory guide will not be discussed here, but they were considered during the preparation of the final regulatory guide.

(1) Many commenters stated that the quality assurance rule represents an unwarranted intrusion into the practice of medicine. They stated that the NRC should concentrate its efforts on radiation protection.

Response. The NRC agrees that any intrusion into medical judgments affecting patients should be minimized. The purpose of the rule, however, is not to limit the authorized user, but to ensure that the licensee establishes procedures to control the administration of byproduct material or radiation from byproduct material. The rule concentrates on the question of whether each administration of byproduct material by the healthcare workers, upon whom the authorized user depends, is, in fact, administered as directed by the authorized user. The NRC recognizes that radiation therapy is a dynamic process and that the authorized user has the right and the responsibility to modify a previously written directive, prior to continuing treatment, depending upon the progress of the patient. The NRC believes that requiring a licensee to ensure that the process of administering byproduct material is conducted as directed by the authorized user is directly related to the radiation protection of the patient and does not constitute an unwarranted intrusion into medical judgments.

The Commission notes that similar comments were raised by members of the medical community on the Commission's original proposed misadministration reporting rule published for comment on July 7, 1978 (43 FR 29297). For the reasons stated in the notice that accompanied the final misadministration rule on May 14, 1980 (45 FR 31701), the Commission believed that these requirements were justified to identify the causes of misadministrations in order to correct them and prevent their recurrence. This view was consistent with the conclusions of a review performed by the General Accounting Office (EMD–79–16; January 1979), which stated:

> "In our view, requiring medical licensees to report misadministrations to NRC is not an intrusion into medical practice. This is clearly consistent with NRC regulatory responsibilities and a necessary part of an effective nuclear medicine regulatory program. Without this kind of feedback on incidents affecting the public health and safety, NRC cannot be sure it is adequately regulating the possession and use of nuclear materials in medical practice.

The Commission reaffirms these conclusions in promulgating the requirements in today's notice and notes that, contrary to the views expressed a decade ago on the potential impacts of the misadministration requirements, experience with these requirements to date has not shown the reporting and notification requirements to be a problem or an unreasonable burden on the regulated community.

(2) Some commenters stated that the proposed rule would have little effect on reducing the reported mistakes. Almost all commenters supported the goal of reducing mistakes and stated that most facilities already have good quality assurance programs. In fact, some commenters pointed out that the frequency of reported mistakes is already small and that the proposed rule could not substantially reduce that frequency.

Response. The NRC has analyzed the reported mistakes involving byproduct material since 1980. The results of the analyses suggest that the major causes are insufficient supervision, deficient procedures or failure to follow procedures, inadequate training, or inattention to details. Although the rate has been very low, the number of reported mistakes in therapeutic administrations in 1990 was almost double the average number for previous years.

As stated in the NRC's Policy Statement on Medical Uses of Radioisotopes, the risk to the patient can be significant for mistakes involving all therapeutic and certain diagnostic procedures. Therefore, the licensees should make every effort to prevent mistakes in therapeutic administrations. The NRC believes that after a licensee implements the quality management (QM) program, most mistakes will be detected and corrected, thus minimizing the occurrence of misadministrations. (See comment 6 regarding the use of the term "quality management program," instead of "quality assurance program.") Therefore, to ensure adequate patient safety it is necessary for the NRC to require licensees to implement a QM program sufficient to ensure that the byproduct material or radiation from byproduct material is administered as directed by the authorized user.

The NRC realizes that it is impossible to prevent all mistakes, but believes that licensees should do their best to avoid them. The rule will emphasize the importance of a QM program and the need for each worker to participate in the program.

(3) Many commenters stated that the cost of implementing the proposed rule would be high with little potential for a corresponding reduction in mistakes. Thus, the commenters stated that the implementation of the proposed rule cannot be justified.

Response. In light of the public comments, lessons learned from the pilot program, and recommendations from the professional associations and the ACMUI, the proposed rule has been modified significantly to reduce cost without significantly reducing the level of protection. The proposed requirements that would have had minimal impact on risk have been eliminated to make the final rule more cost effective (e.g., deleting the diagnostic components of the proposed rule). Considering that several proposed provisions or actions have been eliminated, i.e., written diagnostic referrals, diagnostic events, specific investigations by the Radiation Safety Officer, and reports to licensee management on diagnostic events, as well as the adoption of other suggestions and the performance-based approach, the NRC believes that the cost effectiveness of the final rule has been optimized. Also, refer to the response to comment 2, above.

(4) Many commenters stated that the dose to patients from mistakes in diagnostic nuclear medicine administrations, except those procedures involving either sodium iodide I–125 or I–131, would not result in any measurable effect to the patient. They suggested that the requirements on the low-risk diagnostic procedures be eliminated.

Response. The NRC agrees with this comment and believes that the diagnostic use of radiopharmaceuticals is, in most cases, an area of relatively low radiation risk to patients. The ACMUI also advised the NRC that the diagnostic components should be eliminated from the final rule on the basis of cost versus benefit considerations. Thus, the QM portion of the final rule does not contain any diagnostic components for low risk radiopharmaceuticals. However, the final rule retains reporting requirements for deviations that exceed specific dose thresholds and requirements for higher risk radiopharmaceutical administrations, such as either sodium iodide I–125 or I–131 in quantities greater than 30 microcuries.

(5) Many commenters stated that the JCAHO and other professional associations, such as the ACR and the AAPM, are committed to quality assurance in medicine. They further stated that because these organizations have developed quality assurance programs to be used as voluntary standards and that many medical facilities are already using these programs, this rule is unnecessary. Also, commenters suggested that the NRC should consult with these organizations in the development of the rule and should permit the use of the voluntary standards in place of the rule to avoid duplicate efforts.

Response. Since the standards developed by professional associations are voluntary and since not all healthcare facilities are accredited by JCAHO, there is no guarantee that all licensee facilities will have a QM program. This rule is designed to ensure that each applicable licensee will implement a QM program. It is possible that the NRC may endorse one or more of the voluntary standards in regulatory guides in the future.

In response to the second suggestion, as discussed in Section III of this Supplementary Information, the NRC did meet with JCAHO and seven professional associations in 1990 and discussed ways to improve the proposed rule. Moreover, many of their suggestions were incorporated into the final rule.

In response to the third suggestion, since this is a performance-based rule, a licensee using a voluntary program may not need to replace its existing program, rather only supplement it, thereby ensuring that the objectives of the rule are being met. Thus, the use of a performance-based rule is intended to eliminate duplicate efforts. During the pilot program, the volunteers were asked about their existing QA programs and the amount of incremental work or cost required by the proposed rule. The volunteers responded that they were already meeting most of the objectives in the proposed rule as part of their existing QA programs. Thus, the incremental burden on most volunteers appears to be small, and that is expected to be the case in general for the typical licensee.

(6) Many commenters stated that the term "quality assurance" should not be used in this rule. Quality assurance, as used in all departments of a hospital, is a program to ensure that high quality medical care is provided to the patients. In a nuclear medicine or a radiation oncology department, quality assurance means responsiveness to perceived care needs, degree of symptom relief, degree to which the care is the technical state of the art, efficient use of funds available, appropriate use of health care resources, etc., as well as administering the byproduct material as directed by the authorized user. The commenters recommended that a different term be used in this rule to indicate that this rule addresses only the delivery process of administering byproduct material.

Response. The NRC agrees with this comment. The term "quality assurance" has the wrong connotation because under JCAHO it applies to the entire hospital. Since this rule addresses only the process of administering byproduct material, the term "quality management program" is used in the final rule to preserve the quality concept and avoid confusion with the existing "quality assurance" concept. The term quality management (QM) program will be used in subsequent discussions.

(7) Some commenters responded to the NRC's question, stated in the **Federal Register** notice, concerning the proper use of the term "misadministration," that it should be reserved for the most serious incidents such as overexposures resulting in death or serious injury. The commenters further stated that "misadministration" has a negative connotation that implies willful or gross negligence on the part of the physician and other hospital workers. Terms such as events, unscheduled events, incidents, or deviations were suggested as preferred replacements.

Response. The NRC disagrees with this comment. The term "misadministration" correctly conveys that a mistake in the administration of byproduct material or radiation has occurred. It is neither pejorative, nor does it connote wrongdoing or malpractice, merely that byproduct material or radiation from byproduct material has, for whatever reason, not been administered as directed by the authorized user. Therefore, the term "misadministration" and its definition, modified as indicated in response to comments (8) and (9) below, have been retained.

(8) Some commenters stated that the proposed definitions of diagnostic misadministrations, therapy misadministrations, diagnostic events, and therapy events and the associated reporting requirements are overly complex and thus confusing. The commenters recommended that these definitions be simplified.

Response. The NRC agrees with this comment. Based on the lessons learned from the pilot program, suggestions made by the professional associations, the ACMUI, and the Agreement States, the terminology was simplified by (a) using only two terms, "recordable events" and "misadministration," and (b) moving the definition of all terms to § 35.2. (The terms recordable event and misadministration, as defined therein, will be used in subsequent discussions of this final amendment.)

(9) Many commenters stated that the proposed (and current) dose thresholds, i.e., an organ dose greater than 2 rems or a whole body dose greater than 0.5 rem, are too restrictive for determining whether to submit a report to the NRC. The commenters stated that at these dose levels, there are no biological effects to the patient. They further stated that many commonly used nuclear medicine diagnostic procedures routinely produce doses to nontarget organs in the range of two to eight rems. Clearly, these routine procedures should not constitute misadministrations.

Response. The NRC agrees that routine doses from diagnostic procedures represent a small amount of risk to the patient. Similar comments were made by professional societies and the ACMUI. Further, the ACMUI recommended a whole body threshold of 5 rems effective dose equivalent. Based on lessons learned from the pilot program, and the recommendations from public comments and the ACMUI, the organ threshold of 50 rems dose equivalent and a whole body threshold of 5 rems effective dose equivalent were adopted as thresholds for identifying misadministrations. These levels correspond to a threshold well below the onset of acute, clinically detectable adverse effects that may be caused by exposure to ionizing radiation (refer to NCRP Commentary No. 7, "Misadministration of Radioactive Byproduct Material—Scientific Background," National Council on Radiation Protection and Measurements, Bethesda, Maryland, July, 1991). Also, these levels correspond to the annual dose limits in the new 10 CFR part 20 for occupational workers which are thresholds for reporting overexposures to the NRC. Therefore, the Commission believes that applying these same thresholds to reporting of exposures to patients in excess of what was intended in diagnostic administrations is reasonable.

(10) Many commenters stated that the occurrence of a misadministration may not necessarily be an indication of an inadequate QM program. The commenters stated that, in fact, the identification of misadministrations could be viewed as evidence of a good QM program. Based on the "Patterns of Care Study," those hospitals with superior personnel and facilities had the highest cure rates. Why would one conclude that the hospitals with the lowest cure rates have adequate monitoring programs to detect misadministrations or have adequate QM programs? In particular, facilities that never report misadministrations may not have adequate QM programs for the detection of those misadministrations. Thus, it is not necessarily correct to associate good QM programs with no misadministrations or to associate inadequate QM programs with the occurrence of a misadministration. Furthermore, the commenters stated that the rule may discourage licensees from reporting misadministrations.

Response. The NRC agrees that the occurrence of a misadministration may not necessarily be evidence of inadequate QM. However, for example, either a case of gross negligence or a case of multiple misadministrations could be considered a lack of sufficient licensee management attention in implementing its QM program. With regard to reporting misadministrations, the Commission encourages licensees to promptly identify and report safety problems as reflected in the current enforcement policy. Furthermore, because the NRC wants to encourage and support licensee initiative for self-identification and correction of problems, the NRC may exercise enforcement discretion if certain conditions are met (refer to section G of appendix C, 10 CFR part 2).

(11) Some commenters questioned whether the NRC has enough qualified personnel to inspect QM programs in the licensees' hospitals, clinics, or private practice offices.

Response. In recent years, the NRC has increased its recruitment of personnel who have experience and knowledge either in nuclear medicine or in radiation therapy. Inspectors will be trained in all aspects of the rule and the regulatory guide and will be provided with specific inspection guidance. Accordingly, the NRC believes that it has enough qualified inspectors to conduct adequate inspections associated with this rule.

IV. Discussion of Final Rule Text

This section discusses the final rule text and the modifications made to the proposed rule. Throughout the following discussion, referring to the text of the final regulations may aid in understanding the specific points of this discussion.

Part 2—Rules of Practice for Domestic Licensing Proceedings

Appendix C. General Statement of Policy and Procedure for NRC Enforcement Actions

As stated in the proposed rule notice, the Commission views the occurrence of misadministrations as a subject of concern in the medical use of byproduct material and, in certain circumstances, may subject the licensee to enforcement action. Supplement VI of appendix C was modified by amending current examples dealing with misadministrations and adding specific examples of violations of the QM program. The examples added to part 2 of the final amendment are essentially the same as in Section V, "Enforcement," of the proposed amendment with the following modifications:

(1) At Severity Level III, the term "misadministration" is used to replace two proposed terms, "diagnostic misadministrations" and "therapy misadministrations."

(2) At Severity Level III, the example "failure to conduct adequate audits of a QM program or take prompt corrective actions for deficiencies identified through each audit" is moved to Severity Level IV. Also, the phrase "annual review" is used instead of the proposed word audit to conform to the rule language in the final amendment.

(3) At Severity Level IV, "failure to keep records" is added as an example.

Part 35—Medical Use of Byproduct Material

Section 35.2 Definitions

To consolidate the definitions, all definitions were moved to § 35.2. Based on the public comments, lessons learned from the pilot program, and recommendations from ACMUI, the following proposed definitions have been deleted from the final rule: Basic Quality Assurance, Diagnostic Event, and Diagnostic Referral. The other definitions were adopted with some modifications and are discussed in alphabetical order.

Diagnostic Clinical Procedures Manual. This definition has been modified as follows:

(1) The word "diagnostic" was added to clarify that this term only applies to diagnostic procedures.

(2) The proposed phrase "in a single binder" was deleted to permit the use of multiple binders.

Misadministration. The term "misadministration" as used in proposed § 35.2 and described in proposed §§ 35.33(b) and 35.34(b) has been retained. Table 2 provides a summary of the mistakes captured by the terms "misadministration" and "recordable event," although the requirements themselves should be consulted for the precise definitions of these terms.

TABLE 2.—MISTAKES CAPTURED BY THE TERMS "RECORDABLE EVENT" AND "MISADMINISTRATION"

Procedure	Recordable event	Misadministration
All Diagnostic Radiopharmaceuticals (including <30 µCi NaI, I-125 or I-131).	....	● Wrong patient, radiopharm, route, or dosage *and* ● Dose >5 rem Effective Dose Equivalent or 50 rem to organ.
Sodium Iodide Radiopharmaceuticals (where >30 µCi NaI I-125 or I-131).	● Admin dosage differs by >10% prescr dosage *and* >15 µCi. ● W/o written directive ● W/o daily dosage record	● Wrong patient ● Wrong radiopharm ● Admin dosage differs by >20% prescr dosage *and* >30 µCi.
Therapeutic Radiopharmaceuticals	● Admin dosage differs by >10% prescr dosage ● W/o written directive ● W/o daily dosage record	● Wrong patient ● Wrong radiopharm ● Wrong route of admin ● Admin dosage differs by >20% prescr dosage.
Teletherapy	● Calculated weekly dose 15% >prescr dose ● W/o written directive ● W/o daily dose record	● Wrong patient ● Wrong mode of treatment ● Wrong treatment site ● Calculated weekly dose 30% >prescr dose ● Calculated total dose differs by >20% total precr dose ● If <3 fractions, calc total dose differs by >10% total prescr dose.
Brachytherapy	● Calc dose differs by >10% prescr dose ● W/o written directive ● W/o daily dose record	● Wrong patient ● Wrong radioisotope ● Wrong treatment site ● Leaking sources ● Failure to remove sources for a temporary implant ● Calculated admin dose differs by >20% prescr dose.
Gamma Stereotactic Radiosurgery	● W/o written directive ● W/o daily dose record	● Wrong patient ● Wrong treatment site ● Calculated total admin dose differs by >10% total prescr dose.

Six categories of misadministrations are defined in the final amendment. Paragraphs (2), (3), (4), (5) and a part of paragraph (1) replace therapy misadministration as proposed in § 35.34(b). Paragraph (6) and a part of paragraph (1) replace diagnostic misadministration as proposed in § 35.33(b).

Each category of misadministration under this definition is discussed here in the same sequence as it appears in the definition of misadministration in § 35.2 of the final rule.

(1) This paragraph applies to any administration of quantities greater than 30 microcuries of either sodium iodide I-125 or I-131. Paragraph (1)(i) is essentially the same as the corresponding items in proposed § 35.34(b)(1). However, the phrases "wrong target organ" and "wrong route of administration" were deleted because the thyroid is the only target organ for sodium iodide and it concentrates in the thyroid regardless of the route of administration. Paragraph (1)(ii) is the same as proposed § 35.34(b)(2) with two modifications. First, the threshold is now 20 percent, instead of 10 percent. Recall that if the administered dosage differs from the prescribed dosage by more than 10 percent, a recordable event has occurred that the licensee is required to respond to internally within the institution. Since the licensee is detecting these smaller deviations and taking the appropriate actions, these events do not need to be reported to NRC. However, larger deviations that exceed 20 percent are required to be reported because they could possibly indicate a deficiency in the QM program, not because they necessarily indicate a significant risk to the patient. For these reasons, the threshold was increased to 20 percent.

Secondly, an additional threshold of 30 microcuries is added. If the difference between the administered dosage and the prescribed dosage is 30 microcuries or less, it is not reported even if the difference exceeds 20 percent. This additional threshold was added to avoid the unnecessary work associated with the generation of reports on events with small differences and that pose relatively minor risks to the patients.

(2) This paragraph applies to any therapeutic radiopharmaceutical administration except those involving sodium iodide I–125 or I–131. Paragraph (2)(i) is the same as the corresponding items in proposed § 35.34(b)(1). The phrase "wrong target organ" was deleted because the

radiopharmaceutical (i.e., the correct chemical compound) and the route of administration determine the distribution of byproduct material among the organs or tissues, including the target organ. For example, a frequently used therapeutic radiopharmaceutical and route are sodium phosphate P–32 given intravenously, which is preferentially taken up by the target organ, the skeleton. The only way the wrong organ could be targeted is if the wrong radiopharmaceutical or route of administration were used. Both of these errors are already included in the definition of a misadministration. Thus, the wrong target organ is redundant.

Paragraph (2)(ii) is the same as proposed § 35.34(b)(2), with the exception that the threshold is now 20 percent for the same reasons discussed above, in category (1) of misadministration.

(3) This paragraph applies to gamma stereotactic radiosurgery and replaces a part of proposed § § 35.34(b)(1) and 35.34(b)(3). Paragraph (3)(i) is essentially the same as in proposed § 35.34(b)(1) with the exception that the phrase "wrong sealed source" was deleted because the device used for this type of procedure contains only cobalt-60 sources.

Paragraph (3)(ii) is the same as proposed § 35.34(b)(3)(i). The threshold of 10 percent for the total dose was retained because a large radiation dose is administered during the procedure, and therefore, deviations greater than 10 percent may have greater safety significance and need to be reported to NRC and promptly addressed by the licensee.

(4) This paragraph applies to teletherapy and it replaces proposed § 35.34(b)(3) and a part of § 35.34(b)(1). Paragraph (4)(i) is essentially the same as in proposed § 35.34(b)(1), but uses the phrase "wrong mode of treatment," rather than "wrong sealed source." This change is intended to clarify that teletherapy misadministrations capture the use of the wrong sealed source, as well as such events as a patient receiving cobalt-60 teletherapy when linear accelerator therapy was prescribed.

Paragraphs (4)(ii) through (4)(iv) replace proposed § 35.34(b)(3). The phrase "calculated administered dose" replaces the proposed phrase "administered dose" to clarify that a measured dose is not expected.

Paragraph (4)(ii) applies to teletherapy treatments with three or fewer fractions. It is the same as proposed § 35.34(b)(3)(i). The threshold of 10 percent for the total dose was retained because these procedures involve larger radiation doses per fraction than procedures with more than three fractions, and thus deviations greater than 10 percent may have greater safety significance. For example, a hemi-body teletherapy treatment might involve three fractional doses of 400 rads each fraction. One undesirable complication of a substantial overdose (e.g., 50 percent greater than the prescribed dose) for this treatment might be radiation pneumonitis or even death. Therefore, such events need to be promptly reported to the NRC and addressed by the licensee.

Paragraph (4)(iii) replaces proposed § 35.34(b)(3)(ii), with the exceptions of (a) the phrase "weekly dose" is used instead of "fractional dose" and (b) the phrase "30 percent greater than the weekly prescribed dose" is used instead of "greater than twice or less than one-half of the prescribed fractional dose." These changes allow a weekly comparison with the prescribed dose because many excellent therapy departments currently utilize a weekly chart check and the ACR recommends a weekly check. Recall that if the weekly administered dose exceeds the weekly prescribed dose by more than 15 percent, a recordable event has occurred, which the licensee will respond to internally to the institution. Since the licensee should be detecting the smaller weekly deviations and taking appropriate actions, calculated weekly administered doses that are 30 percent greater than the weekly prescribed doses will be reported because they could possibly indicate a deficiency in the QM program, which could be of greater safety significance, rather than because they necessarily indicate a risk to the patient. However, calculated weekly administered doses that are less than the weekly prescribed doses will not be reported because the criteria for the total doses capture significant deviations.

Paragraph (4)(iv) is the same as proposed § 35.34(b)(3)(i), with the exception that the threshold is now 20 percent. Since the licensee is monitoring weekly dose deviations and taking appropriate actions, a deviation from a total prescribed dose that exceeds 20 percent will be reported because it could possibly indicate a deficiency in the QM program, which could be of greater safety significance, rather than because it necessarily indicates a significant risk to the patient.

(5) This paragraph applies to brachytherapy and it replaces proposed § 35.34 (b)(4), (b)(5), and part of § 35.34(b)(1). Paragraph (5)(i) is the same as in proposed § 35.34(b)(1) with the following two modifications: (a) The phrase "wrong radioisotope" replaces the phrase "wrong sealed source" and (b) a parenthetical note for permanent implants was added to clarify the intent. "Radioisotope" is a more specific term than "sealed source." For permanent implants, the intent is to exclude from the determination of the wrong treatment site seeds that were implanted in the correct site but migrated outside that site.

Paragraphs (5)(ii) and (5)(iii) are essentially the same as proposed § 35.34(b)(4). The phrase "one or more sealed sources that are not removed upon completion of the procedure" was used in (5)(iii) instead of the proposed phrase "is lost or is unrecoverable during the brachytherapy treatment," to clarify the intent. The phrase "is lost or is unrecoverable" produced confusion among the pilot program volunteers, whereas, the phrase "is not removed upon completion" is clear and was recommended by the professional associations.

Paragraph (5)(iv) is the same as proposed § 35.34(b)(5) except that the phrase "calculated administered dose" was used instead of "administered dose" to clarify that a measured dose is not expected.

Note that, as specified in the definition of prescribed dose for brachytherapy, providing the total source strength and exposure time may be an alternative to providing the total dose. However, this alternative does not apply to high-dose-rate remote afterloading devices because the total dose must be specified prior to beginning the treatment.

(6) This paragraph applies to any diagnostic administration of a radiopharmaceutical other than sodium iodide I–125 or I–131, in quantities greater than 30 microcuries. This type of misadministration is similar to the diagnostic misadministrations in proposed §§ 35.33(b) and 35.33(d). However, there are several differences:

(a) The phrase "wrong organ" in proposed § 35.33(b)(1) was deleted because the radiopharmaceutical (i.e., the correct chemical compound) and the route of administration determine the distribution of byproduct material among the organs or tissues, including the target organ as described previously for "recordable event."

(b) The thresholds for reporting in proposed § 35.33(d), "a whole body dose greater than 0.5 rem or an organ dose greater than 2 rems," were changed to "an effective dose equivalent of 5 rems or a dose equivalent of 50 rems to any individual organ" in the final amendment. Both the public comments and the ACMUI recommendations suggested that the dose thresholds used for reporting should correspond to some kind of biological significance. These thresholds are well below the dose levels that would cause some harmful or detrimental deterministic effect as opposed to a stochastic effect. These thresholds correspond to the annual dose limits in the new 10 CFR part 20 for occupational workers, which are thresholds for reporting overexposure to the NRC.

(c) The phrase "if it involved the use of byproduct material not authorized for medical use in the license" in proposed § 35.33(d) was deleted because it is unnecessary. Under current regulations at 10 CFR 35.13, licensees are required to amend their licenses prior to using any byproduct material not authorized by their licenses; and at § 30.41(c), the licensee transferring the byproduct material must verify that the transferee is authorized by license to receive the type, form, and quantity of byproduct material to be transferred.

(d) The phrase "administration of a dosage differing by at least fivefold from the prescribed dosage" in proposed § 35.33(d) was replaced by dose thresholds for the same reasons as discussed in item (b) above.

Prescribed dosage. This definition has been modified as follows:

(1) The proposed phrase "before administration of the radiopharmaceutical" was deleted because it is part of the definition of "written directive;" thus, it is redundant.

(2) The proposed word "prescription" was replaced by "written directive." The reasons for the change are provided under the discussion of written directive.

(3) The proposed phrase "if the procedure is performed pursuant to a diagnostic referral" was deleted. A new phrase, "or in any appropriate record in accordance with the directions of authorized user for diagnostic procedures," was added to clarify that an authorized user may direct any diagnostic procedure that was not included in or departs from the diagnostic clinical procedures manual as long as the prescribed dosage is documented in an appropriate record.

Prescribed dose. This definition has been modified as follows:

(1) Gamma stereotactic radiosurgery was added to this definition. Although this type of procedure may be considered to be a single fraction teletherapy procedure, it is listed separately from teletherapy to allow for the differences between the two.

(2) The phrase "as documented in the written directive" was used to clarify where the actual prescribed dose is recorded.

(3) For brachytherapy, the phrase "the total source strength and exposure time" was used to specify an alternative way of defining the total dose. This phrase also calls attention to the importance of the exposure time. For temporary implants, after the sealed sources have been implanted and the appropriate calculations performed, administering the correct prescribed dose becomes a matter of removing the sealed sources on time (e.g., after 48 hours).

Recordable event. The term "recordable event" replaces "therapy event" as defined in proposed § 35.34(a). The term "recordable event" is used to indicate that a record and not a report is required. A recordable event is evaluated by the licensee pursuant to § 35.32(c) of the final amendment. The phrase "any therapeutic medical use not authorized by the license" in proposed § 35.34(a)(4) was deleted, because under current regulations at 10 CFR 35.13, the licensee is required to amend its license prior to using any byproduct material not authorized by its license; and at 10 CFR 30.41(c), the licensee transferring the byproduct material must verify that the transferee is authorized by license for the receipt of the type, form, and quantity of byproduct material to be transferred.

Each type of recordable event under this definition is discussed in the same sequence as it appears in the definition of recordable event in § 35.2 of the final rule:

(1) The phrase "written directive" was used to replace "prescription." Also, the phrase "a prior review of the patient's case by an authorized user or a physician under the supervision of an authorized user," in proposed § 35.34(a)(1), was deleted because if an authorized user signed the written directive, the phrase is not necessary.

(2) This type of recordable event, without daily recording, is essentially the same as published in the proposed rule with only minor editorial changes.

(3) This type of recordable event, in which dosage differs by more than 10 percent, applies to any administration of quantities greater than 30 microcuries of either sodium iodide I–125 or I–131. This recordable event is the same as in proposed § 35.34(b)(2) but with an additional threshold of 15 microcuries; i.e., if the difference between the administered dosage and the prescribed dosage is 15 microcuries or less, it is not a recordable event even if the difference exceeds 10 percent. This threshold was added to avoid unnecessary work because of the generation of recordable events caused by small differences (e.g., if the prescribed dosage is 35 microcuries, and the administered dosage is 40 microcuries, the difference exceeds 10 percent but does not exceed 15 microcuries; thus, it is not a recordable event).

(4) This type of recordable event, in which dosage differs by more than 10 percent, applies to radiopharmaceutical therapy, other than sodium iodide I–125 or I–131, and it is the same as in proposed § 35.34(b)(2). Thus, if the administered dosage differs from the prescribed dosage by more than 10 percent, it is a recordable event. If the difference exceeds 20 percent, it is handled as a misadministration.

(5) This type of recordable event, a wrong radiation dose, applies to teletherapy and is similar to the proposed § 35.34(a)(3) with the following modifications:

(a) The phrase "calculated weekly dose" was used to replace "fractional dose" to allow a weekly comparison with the prescribed dose because many therapy departments currently utilize a weekly chart check and the ACR recommends a weekly check;

(b) The word "calculated" was added to the weekly dose to clarify that a measured dose is not expected; and

(c) The dose threshold was decreased to 15 percent of the weekly prescribed dose instead of the proposed 20 percent of fractional dose to be less than the misadministration threshold for the total administered dose.

(6) This type of recordable event, also a wrong radiation dose, applies to brachytherapy and parallels item (5) above. If the calculated administered dose differs from the prescribed dose by more than 10 percent, it is a recordable event. If the difference exceeds 20 percent, it is handled as a misadministration. As previously discussed under the definition of prescribed dose for brachytherapy, the total source strength and exposure time may be used as an alternative to the total dose, except for the high-dose-rate remote afterloading devices. For a temporary implant of 48 hours, given that the total source strength has been implanted and is therefore a fixed value, a recordable event has occurred if the sealed sources are not removed within plus or minus 4.8 hours from 48 hours.

Written directive. This term replaces the word "prescription" as defined in proposed § 35.2. Based on the lessons learned from the pilot program and suggestions made by the professional associations, the Agreement States, the ACMUI, and the public comments, the term "written directive" should be used to avoid any potential confusion with existing medical practices or the commonly used definition of prescription.

In the introductory paragraph, the proposed phrase "or a physician under the supervision of an authorized user" was deleted because such supervision is already allowed under the current § 35.25 entitled "Supervision." Thus, this phrase was redundant and unnecessary. Also in the same paragraph, the phrase "administration of byproduct material" replaces the phrase "medical use," and the phrase "prior to the administration of byproduct material or radiation from byproduct material except as specified in paragraph (6) of this definition" was added to clarify the intent that the written directive must be prepared prior to the administration of a radiopharmaceutical or radiation.

Paragraph (1) applies to any administration of quantities greater than 30 microcuries of either sodium iodide I–125 or I–131. This paragraph is essentially the same as paragraph (b) under the proposed definition of prescription, with the exception that the phrases "the radioisotope" and "physical form, chemical form, and route of administration" were deleted. These phrases are unnecessary because after specifying either sodium iodide I–125 or I–131, specifying the radioisotope and the chemical form would be redundant. The route of administration is not necessary because sodium iodide will always concentrate in the thyroid, regardless of the route.

Paragraph (2) applies to any therapeutic administration of a radiopharmaceutical, other than sodium iodide I–125 or I–131. This paragraph is essentially the same as paragraph (b) under the proposed definition of prescription, with the exception that it uses the phrase "the radiopharmaceutical" instead of the phrase "the radioisotope, physical form, and chemical form," because the word "radiopharmaceutical" includes the radioisotope and the chemical form. The physical form is not necessary because the route of administration must be specified.

Paragraph (3) applies to gamma stereotactic radiosurgery. This definition was separated from teletherapy in order to specify the unique types of information that need to be included in a written directive for this procedure.

Paragraph (4) applies to teletherapy procedures. This paragraph is the same as paragraph (c) in the proposed definition of prescription with the following modifications: (a) The phrase "dose per fraction" replaces the phrase "number of fractions" to emphasize the dose to be delivered in a single fraction and (b) the phrase "overall treatment period" was added to emphasize that the treatments will end after the specified number of weeks, unless the treatment period is revised by the authorized user prior to continuing.

Paragraph (5) applies to brachytherapy using high-dose-rate remote afterloading devices. This definition was separated from other brachytherapy procedures because of the need for the written directive to specify the total dose, along with other parameters, before administration of the radiation because the time period for exposure is very short when compared with other types of brachytherapy.

Paragraph (6) applies to brachytherapy procedures other than those specified in paragraph (5) above. This paragraph is essentially the same as paragraph (d) in the proposed definition of prescription. This paragraph requires the authorized user to specify, before implantation, the radioisotope, the source strengths, and the number of sources, but does not require the total dose because detailed calculations are required to determine the total dose after the sources are implanted. However, following implantation but before completion of the procedure, the authorized user must specify, among other parameters, the total source strength and exposure time. If the authorized user prefers, the total dose may be used instead of the total source strength and exposure time. This change, using total source strength and exposure time, provides an easy way of specifying the total dose and simplifies the determination of a misadministration. Since the total source strength is fixed when the sources are implanted, delivering the prescribed dose is a matter of using the correct (i.e., prescribed) exposure time. In other words, after implanting the correct sources, the exposure time (and total dose) will be correct if the sources are removed at the right time.

Section 35.8 Information Collection Requirements: OMB Approval

Paragraph (b) of this section was modified by adding § 35.32 to the list of sections that contain information collection requirements.

Section 35.25 Supervision

This section was not in the proposed rule. It is not necessary to publish this revision for public comment because the revisions are conformatory in nature. In the revised § 35.25(a)(1), the phrase "and in the licensee's written quality management program" was added to require each licensee to instruct the supervised individual in the procedures of the quality management program. Also in the revised § 35.25(a)(2), the phrase "follow the written radiation safety and quality management procedures established by the licensee" replaces the phrase "follow the procedures established by the Radiation Safety Officer" to clarify that the procedures in both the radiation safety programs and in the quality management program will be established by the licensee and must be followed by the supervised individual. Replacing the phrase "the Radiation Safety Officer" with the phrase "the licensee" is essentially no change since the Radiation Safety Officer is employed by the licensee and the licensee can delegate responsibilities.

Section 35.32 Quality Management Program

This section was renamed. NRC use of the term "quality assurance" led to some misunderstanding because under JCAHO's accreditation programs it applies to the entire hospital. Since this rule addresses only the delivery process of administering byproduct material or radiation from byproduct material, a new title, "Quality Management Program," is used in the final rule to preserve the quality concept and avoid any confusion or interference with the thousands of existing JCAHO quality assurance programs. Also, this section was designated as § 35.32 instead of the proposed designation § 35.35. This redesignation locates this section in front of § 35.33 and establishes a logical sequence. This section is very similar to the proposed § 35.35 with the following modifications.

In § 35.32(a), the phrase "to provide high confidence that the byproduct material or radiation from byproduct material will be administered as directed by the authorized user" replaces the proposed phrases "to prevent, detect, and correct the cause of errors in medical use" and "errors in medical use will be prevented." This modification states the objective of the QM program in a positive manner rather than a negative manner. Also, this modification was made in response to many public comments and workshop recommendations that the word "error" is too broad, and that the proposed language implies that all errors must be prevented. Also in the same paragraph, the phrase "as applicable" was added to clarify that this section is applicable only to those part 35 licensees who perform procedures for which a written directive is required.

The following proposed objectives were deleted in response to public comments and workshop recommendations:

(a) The proposed objective 1 "ensure that any medical use is indicated for the patient's medical condition" was deleted because it is not necessary. When directing the administration of byproduct material, it is already part of the authorized user's responsibility as a physician to ensure that the administration is indicated for the patient's medical condition. Further, the objectives of the QM program can nevertheless be achieved because the authorized user is required to sign a written directive prior to the administration.

(b) The proposed objective 3 became unnecessary after the diagnostic components of the QM program for most radiopharmaceuticals were deleted (as discussed previously).

(c) The proposed objective 4 was deleted because logically it would be unnecessary if the required condition of proposed objective 5 was met.

Public comments and workshop recommendations suggested that each objective should not start with the word "ensure" because trying to ensure that each objective is achieved has the same connotation as preventing all errors. In this manner, the word "ensure" produced unnecessary frustration. Thus, the word "ensure" was deleted from each objective in the final rule. Also, as discussed previously, the phrase "written directive" replaces the proposed word "prescription."

Each objective retained in the final rule is discussed below.

(1) Objective 1 is essentially the same as the proposed objective 2 except that: (a) The phrase "prior to each administration" replaces the proposed phrase "prior to any medical use" to clarify the intent to narrowly focus on the delivery to the patient of the byproduct material or radiation, (b) the different types of therapy procedures, including gamma stereotactic radiosurgery, were listed separately for ease of understanding, and (c) the phrase "sodium iodide" was added to exclude all other iodine compounds such as iodohippurate, which delivers a much smaller radiation dose to the thyroid as compared to an equal radiopharmaceutical dosage of sodium iodide.

Although many commenters questioned the need for requiring a written directive for diagnostic procedures involving quantities greater than 30 microcuries of either sodium iodide I–125 or I–131, the final rule retains this provision. The purpose of this provision is to put the authorized user in direct control of ordering and delivering a dosage greater than 30 microcuries of either sodium iodide I–125 or I–131. This dosage would deliver about 50 rems dose equivalent to the thyroid. However, in the reported mistakes of administration, there have been several cases of a technologist misinterpreting the referring physician's request, not checking with the authorized user, and administering millicurie amounts of sodium iodide I–131 instead of the requested microcurie amounts. Inadvertent administration of millicurie quantities of I–131 can cause significant adverse effects to the patient, such as ablating the thyroid gland or impairing its proper function. If the requirement for a written directive had been in effect at that time, a technologist could not administer a dosage greater than 30 microcuries of either sodium iodide I–125 or I–131 without a written directive dated and signed by the authorized user, and thus these events would probably have been prevented.

(2) Objective 2 is essentially the same as proposed objective 6 with the following modifications: (a) The phrase "by more than one method" was added to clarify the intent (e.g., ask the patient's name and also ask the patient for any one of the following: birth date, address, social security number and confirm this by comparing it with corresponding information in the patient's record; or check the name on the patient's ID bracelet; or ask for the patient's signature), (b) the proposed phrase "or the diagnostic referral" was deleted to conform with the removal of the diagnostic components.

(3) Objective 3 is essentially the same as the proposed objective 8 with the exception of using the phrase "final plans of treatment and related calculations" instead of the proposed phrase "treatment planning." The phrase "treatment planning" is not static and is often thought of as a continuing activity of the authorized user as the patient progresses. Also, the professional associations (e.g., ACR) stated that, initially, there may be several alternative plans of treatment, and following a discussion between the physicist or dosimetrist and the authorized user, a final plan of treatment would be selected and used. Thus, the change was necessary to avoid confusion as to which plan needed to be in accordance with the written directive. Also, gamma stereotactic radiosurgery was added to conform with similar changes, as discussed previously.

(4) Objective 4 is the same as the proposed objective 5 with the exception that the proposed phrase "or a diagnostic referral and clinical procedures manual" was deleted to conform with the removal of the diagnostic components.

(5) Objective 5 is essentially the same as the proposed objective 7 with the following modifications: (a) The phrase "and appropriate action is taken" was added to clarify the intent to have appropriate action taken after the unintended deviations are identified based on a recommendation from the pilot program participants and (b) the proposed phrase "or a diagnostic referral and clinical procedures manual" was deleted to conform to the removal of the diagnostic components.

Section 35.32(b) is essentially the same as proposed § 35.35(b) with the following modifications:

Section 35.32(b)(1) is the same as the first sentence of the proposed § 35.35(b)(1) except for the following changes: (a) The word "review" replaces the proposed phrase "comprehensive audit" to use a term more understandable to licensees based on lessons learned from the pilot programand (b) the phrase "including, since the last review, an evaluation of (i) a representative sample of patient administrations, (ii) all recordable events, and (iii) all misadministrations" was added to clarify the content of the review based on lessons learned from the pilot program.

Section 35.32(b)(2) is the same as the second sentence of the proposed § 35.35(b)(1) except for the following changes: (a) The word "licensee" replaces the proposed phrase "licensee's management" to simplify the final rule language, and (b) the phrase "if required, make modifications to meet the objectives of paragraph (a) of this section" replaces the proposed phrase "promptly implement modifications within 30 days that will prevent the recurrence of errors in medical use" to give the responsibility to the licensee for determining whether or when modifications are needed. This is in keeping with a performance-based approach.

Section 35.32(b)(3) is the same as the last sentence of proposed § 35.35(b)(1) with the exception of using the phrase "review, including the evaluations and findings of the review" instead of the proposed phrase "audit and management evaluation" to conform to the changes made in § 35.32 (b)(1) and (b)(2) and to use terms more understandable to licensees.

Section 35.32(c) replaces the proposed § 35.34(c) and a part of § 35.34(f)(2) pertaining to therapy events. Many commenters and participants in the pilot program stated that the proposed recordkeeping and reporting requirements were too complicated and confusing. In the final rule, proposed requirements related to diagnostic events were eliminated following recommendations of the ACMUI, and the term "recordable event" replaces the proposed term "therapy event." If a recordable event occurs, the final rule allows the licensee to respond to that event within the institution, much like proposed § 35.34(a), but without requiring that a report be written to licensee management. The proposed requirements in §§ 35.34(c) and 35.34(f)(2) for therapy events were greatly simplified and consolidated in this paragraph to reduce the level of detail and avoid unnecessarily burdensome costs based on lessons learned from the pilot program.

The modifications are (a) the word "licensee" replaces the proposed phrases "Radiation Safety Officer" and "the licensee management" to provide flexibility for the licensee to determine the appropriate personnel to investigate the cause or take corrective action, (b) the phrase "assembling the relevant facts including the cause" replaced the proposed phrase "promptly investigate the cause" to reduce the emphasis on the speed of the investigation, and (c) the recordkeeping requirement was consolidated and simplified. The record retention period was shortened to three years; the proposed ten years is not necessary based on the current inspection frequency.

Many commenters asked about the meaning of the phrase "in an auditable form." The phrase means that the licensee must be able to produce a legible record, or copy of the record, within a reasonable period of time upon request by an NRC inspector. The records may be maintained in any location or by any means, including electronic or microfiche.

Section 35.32(d) is the same as § 35.34(f)(1) with the exception that two paragraphs are separated for clarity.

Section 35.32(e) is a simplified version of the proposed § 35.35(b)(2). In response to lessons learned from the pilot program and recommendations from the professional associations, the Agreement States, and the ACMUI, the final rule allows the licensee to modify its QM program to increase the efficiency of the program, i.e., the licensee may change its QM program provided the effectiveness of the QM program is not decreased. For example, suppose the licensee were conducting a monthly review of the QM program pursuant to § 35.32(b), but subsequently decided to review the QM program twice a year. Other changes are (a) the time period for submitting the program modifications to NRC was extended to 30 days from the proposed 15 days to allow more time to prepare the submission and (b) the proposed sentence related to NRC's prior approval of program modifications was deleted because this requirement is no longer necessary. Following the submittal of the program modifications, the NRC has the option of stopping the licensee from continuing to use the modified program if the NRC determines that the modifications would decrease the effectiveness of the program, or the option of obtaining more information, if required.

Section 35.32(f)(1) is the same as proposed § 35.35(c)(1) with the exception that the phrase "as applicable" was added to clarify that some Part 35 licensees will not be subject to this provision, i.e., those licensees administering byproduct material for which a written directive is not required.

Section 35.32(f)(2) is essentially the same as the proposed § 35.35(c)(2) with the following modifications: (a) The proposed phrase "designed in accordance with this section" was deleted because it is unnecessary, and (b) a new phrase, "along with a copy of the program," was added to require existing licensees to submit a copy of their program to the NRC on or before the effective date of the rule. Having a copy of the program will facilitate any inspections conducted prior to a license renewal date. The proposed § 35.35(c)(3) was unnecessary and was deleted because of the requirement to submit a copy of the QM program to the NRC.

Section 35.33 Notifications, Reports, and Records of Misadministrations

This section replaces the proposed § 35.33 (d) through (f) and § 35.34 (d) through (g). The final rule language was greatly simplified as compared to the proposed rule. The definitions of misadministration and recordable event were moved to § 35.2 and the two proposed sections §§ 35.33 and 35.34 were consolidated into a single section; thus, duplicative language was avoided.

Section 35.33(a) specifies the actions that a licensee must take when a misadministration is discovered and is essentially the same as the combination of the proposed § 35.33(d) and § 35.34(d) with certain modifications. The requirement to notify the referring physician was retained because the NRC expects that the authorized user and the referring physician would jointly decide whether and how to inform the patient.

For clarity, § 35.33(a) was divided into four parts. Each part is discussed below.

Section 35.33(a)(1) requires that the licensee notify the NRC by telephone. Two modifications were made to the proposed requirement. The phrase "the NRC Operations Center no later than the next calendar day" replaces the proposed phrase "the appropriate NRC Regional Office listed in Appendix D of 10 CFR Part 20 no later than the next Federal Government working day." During weekends or on holidays, the NRC Regional Offices are closed, but the NRC Operational Center remains open. Thus, by reporting to the NRC Operations Center, a licensee may make telephone notifications any calendar day and facilitate a timely and appropriate response from NRC.

Secondly, for misadministrations involving certain diagnostic dosages and radiopharmaceuticals, a notification requirement was added. The NRC believes that these occurrences warrant a telephone notification to the NRC because the definition of this type of misadministration requires that dose thresholds be exceeded, i.e., thresholds of 5 rems effective dose equivalent or 50 rems dose equivalent to any individual organ, as a result of one of four specific types of mistakes. The telephone notification will allow NRC to promptly take any necessary actions based on the circumstances, e.g., dispatch an inspector or consultant or notify other licensees of potential generic problems.

Section 35.33(a)(2) requires that the licensee submit a written report to the NRC. This requirement is the same as proposed with the exception that the phrase "and if the patient was informed, what information was provided to the patient" was added to complement the changes in § 35.33(a)(4) about furnishing a report in writing to the patient.

Section 35.33(a)(3) requires that the licensee notify the patient. This requirement is the same as the proposed requirement. Patients need to be promptly informed when a misadministration occurs so that they, in consultation with their personal physician, are allowed to make timely decisions regarding remedial and prospective health care. However, the licensee still has the responsibility to provide appropriate medical care to the patient, including any necessary remedial care as a result of the misadministration. To serve as a reminder for licensees, the phrase "including any necessary remedial care as a result of the misadministration" was added after the phrase "any appropriate medical care" to the last sentence of § 35.33(a)(3).

Next-day notification of NRC was also retained because NRC needs to be informed promptly to take necessary actions. Examples of these actions include alerting other licensees or equipment manufacturers of a generic problem to prevent similar events, ensuring that the licensee takes corrective actions to prevent recurrence, and dispatching NRC inspectors or consultants, if warranted, to assess the facts surrounding the misadministration.

Section 35.33(a)(4) requires that the licensee furnish a written report to the patient if the patient was previously notified. This requirement is the same as proposed with the exception of allowing, as an alternative, a brief description of both the event and the consequences, as they may affect the patient, to be furnished to the patient.

Section 35.33(b) requires that the licensee keep records of each misadministration. This requirement is the same as § 35.34(f)(2) with the exception that the record retention period was reduced to 5 years from the proposed 10 years to reduce licensees' costs because a 5-year retention period is adequate for inspection purposes given that the current inspection frequency is less than 5 years.

Some commenters stated that there appeared to be an inconsistency between § 35.33(b) and § 35.33(a)(2). Section 35.33(a)(2) states that the report must not include the patient's name or other information that could lead to identification of the patient, but this paragraph states that the record must contain the patient's name. There is no inconsistency because the written report submitted to the NRC, as required by § 35.33(a)(2), could be released to the public if requested under the Freedom of Information Act. Thus, in order to protect the privacy of the patient, it would not be appropriate for this report to include the patient's name. On the other hand, the record required under § 35.33(b) is maintained at the licensee's facility, thus, the patient's name must be included since the relevant records are maintained according to the patient's name or identification number, e.g., social security number.

Section 35.33(c) is the same as proposed § 35.34(g) except for a minor editorial change.

V. Implementation Plan and Agreement State Compatibility

The effective date of this amendment will be January 27, 1992. On or before the effective date, each applicable part 35 licensee must implement the QM program and submit to the NRC a copy of the program and a written certification that the program has been implemented. After the effective date, each application for a new license or renewal under part 35, as applicable, will have to include a QM program as part of the application. The final guide, Regulatory Guide 8.33, "Quality Management Program," provides guidance on how to develop an acceptable QM program. On the effective date, part 35 licensees will be subject to the revised recordkeeping and reporting requirements of this amendment.

Because this amendment has safety significance for the Agreement State licensees as well as the NRC licensees, this final amendment is an item of compatibility for the Agreement States. All definitions contained in this rulemaking are Division 1 items of compatibility. The definitions contained in this rulemaking must be the same for all NRC and Agreement State licensees so that consistency will be maintained for the events reported quarterly to the Congress. Also, in order to have any meaningful analysis of the data from misadministrations, the criteria for what is to be reported needs to be consistent across all NRC and Agreement State licensees. Agreement States may require additional events to be recorded or reported (e.g., misadministrations involving accelerator-produced radioactive material that is not licensed by the NRC).

Additionally, the Commission believes that §§ 35.32 and 35.33 should be Division 2 items of compatibility because the QM programs required by the rule are necessary to ensure adequate protection of the public health and safety. The Agreement States regulate machine-produced radiation, naturally occurring and accelerator-produced radioactive material, as well as byproduct material; thus, the QM programs of their licensees need to be multi-purpose, of broader scope, and not limited to byproduct material considerations in order to cover the diagnostic and therapeutic modalities not regulated by the NRC (e.g., x-ray, and LINAC). Thus, the Agreement States will be allowed to establish QM requirements that are more stringent than NRC's requirements, but not less stringent. In accordance with existing NRC policy, the Commission expects the Agreement States to implement these new requirements by January 25, 1995. However, under the existing NRC Agreements, each Agreement State has the authority to implement the QM program by license conditions prior to establishing a regulation within the required 3-year period.

Although the Agreement States recommended that the revised final rule should be republished for public comment, this action is not necessary because the final rule is generally consistent with the scope of the proposed rule and does not pose any incremental burdens, and because the changes made to the rule are responsive to the extensive public comments and workshops that are part of the public record for this rulemaking. The proposed rule contained provisions for both diagnostic and therapeutic administrations of byproduct material or radiation from byproduct material. The scope of the final rule has been reduced by eliminating the provisions for most diagnostic administrations while retaining the other proposed provisions for therapeutic administrations and any administrations of quantities greater than 30 microcuries of either sodium iodide I–125 or I–131. Therefore, since in the proposed rule the public was given notice and an opportunity for comment on all the provisions that remain in the final rule, there is no need to republish those provisions.

VI. Administrative Statements

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this final amendment is not a major Federal action significantly affecting the quality of the human environment, and therefore an environmental impact statement is not required. The amendment requires each applicable NRC licensee to implement a quality management program to provide high confidence that the byproduct material or radiation from byproduct material will be administered as directed by the authorized user physician. This performance-based amendment will result in enhanced patient safety in a cost-effective manner while allowing the flexibility necessary to minimize intrusion into medical judgments. This amendment also modifies the notification, reporting, and recordkeeping requirements related to the QM program and misadministrations.

The implementation of a QM program will help ensure that the byproduct material will be administered as directed by the authorized user physician and, thus, will likely reduce unnecessary radiation exposures. It is expected that there will be no increase in radiation exposure to the public or to the environment beyond the exposures currently resulting from delivering the byproduct material or radiation from byproduct material to the patient. The environmental assessment and finding of no significant impact on which this determination is based is available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and the finding of no significant impact are available from Dr. Tse (see **FOR FURTHER INFORMATION CONTACT** heading).

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget approval number 3150–0010.

Public reporting burden for this collection of information is estimated to be 6,920 hours per year (for 3,300 applicable NRC and Agreement State licensees), or an average of about 2 hours per year per licensee, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Reports Management Branch (MNBB–7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019, (3150–0010), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Commission has prepared a regulatory analysis for the final amendment. The analysis examines the benefits and impacts considered by the NRC. The regulatory analysis is available for inspection at the NRC Public Document Room at 2120 L Street NW. (Lower Level), Washington, DC. Single copies are available from Dr. Tse (see **FOR FURTHER INFORMATION CONTACT** heading).

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this amendment will not have a significant economic impact on a substantial number of small entities. The amendment affects about 1,100 NRC licensed institutions under 10 CFR part 35. Of these, about 150 are issued to physicians in private practice. Under the size standards adopted by the NRC (50 FR 50241; December 9, 1985), some of these licensees could be considered "small entities" for purposes of the Regulatory Flexibility Act (average gross annual receipts do not exceed $3.5 million for an institution and do not exceed $1 million for a private practice physician). The number of licensees that would fall into the small entity category is estimated to be a very small percentage of the total number of licensees and does not constitute a substantial number for purposes of the Regulatory Flexibility Act.

The amendment requires each applicable NRC licensee to implement a QM program to provide high confidence that the byproduct material or radiation from byproduct material will be administered as directed by the authorized user physician. This performance-based amendment will result in enhanced patient safety in a cost-effective manner while allowing the flexibility necessary to minimize intrusion into medical judgments. This amendment also modifies the notification, reporting, and recordkeeping requirements related to the QM program and misadministrations.

The Commission believes that most licensees currently have a QA program based on voluntary standards established by JCAHO and professional associations. Since this amendment is a performance-based rule, a licensee using a voluntary program may not need to replace its existing program, rather only supplement it, thereby ensuring that the objectives of the rule are being met. Furthermore, all licensees under 10 CFR part 35 or similar Agreement State regulations are currently subject to the existing reporting and recordkeeping requirements which, except for certain clarifications, are not significantly different from the reporting and recordkeeping requirements in the final amendment. Therefore, there should not be a significant economic impact on these small entities. (See the Regulatory Analysis for the anticipated economic impact of this regulation on licensees.)

Backfit Analysis

The NRC has determined that the backfit analysis is not required for this final amendment, because the backfit rule, 10 CFR 50.109, applies only to new requirements for power reactors (50 FR 38097, September 20, 1985). However, as noted above, the NRC has prepared a regulatory analysis examining the benefits and impacts of the final amendment.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 35

Byproduct material, Criminal penalty, Drugs, Health facilities, Health professions, Incorporation by reference, Medical devices, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements.

Text of Final Regulations

Under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1954, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 2 and 35.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub L.

85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99–240, 99 Stat. 1842 (42 U.S.C. 2021b et seq.).

2. In appendix C to part 2, supplement VI, paragraph C.7. is removed; paragraph C.8. is redesignated as C.7.; paragraphs A.4., B.3. and D.4. are added; and paragraphs C.6. and D.3 are revised to read as follows:

Appendix C to Part 2—General Statement of Policy and Procedure for NRC Enforcement Actions

*   *   *   *   *

Supplement VI—Severity Categories

Fuel Cycle and Materials Operations

A. * * *

4. Failure to follow the procedures of the quality management program, required by § 35.32, that results in a death or serious injury (e.g., substantial organ impairment) to a patient.

B. * * *

3. Failure to follow the procedures of the quality management program, required by § 35.32, that results in substantial overexposure (e.g., 50 percent greater than the prescribed dose) to a patient.

C. * * *

6. Substantial failure to implement the quality management program as required by § 35.32; failure to follow the procedures of the quality management program that results in a misadministration; or failure to report a misadministration.

D. * * *

3. Failure to follow the procedures of the quality management program, or failure to conduct the annual review or failure to take corrective actions as required by § 35.32; or

4. Failure to keep the records required by §§ 35.32 or 35.33.

*   *   *   *   *

PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

3. The authority citation for part 35 is revised to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 35.11, 35.13, 35.20 (a) and (b), 35.21 (a) and (b), 35.22, 35.23, 35.25, 35.27 (a), (c) and (d), 35.31(a), 35.32(a), 35.49, 35.50 (a)–(d), 35.51 (a)–(c), 35.53 (a)–(b), 35.59 (a)–(c), (e)(1), (g) and (h), 35.60, 35.61, 35.70 (a)–(f), 35.75, 35.80 (a)–(e), 35.90, 35.92(a), 35.120, 35.200 (b) and (c), 35.204 (a) and (b), 35.205, 35.220, 35.300, 35.310(a), 35.315, 35.320, 35.400, 35.404(a), 35.406 (a) and (c), 35.410(a), 35.415, 35.420, 35.500, 35.520, 35.605, 35.606, 35.610 (a) and (b), 35.615, 35.620, 35.630 (a) and (b), 35.632 (a)–(f), 35.634 (a)–(e), 35.636 (a) and (b), 35.641 (a) and (b), 35.643 (a) and (b), 35.645 (a) and (b), 35.900, 35.910, 35.920, 35.930, 35.932, 35.934, 35.940, 35.941, 35.950, 35.960, 35.961, 35.970, and 35.971 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 35.14, 35.21(b), 35.22(b), 35.23(b), 35.27 (a) and (c), 35.29(b), 35.32 (b)–(f), 35.33 (a)–(b), 35.36(b) 35.50(e), 35.51(d), 35.53(c), 35.59 (d) and (e)(2), 35.59 (g) and (i), 35.70(g), 35.80(f), 35.92(b), 35.200(c), 35.204(c), 35.300(b), 35.310(b), 35.315(b), 35.404(b), 35.406 (b) and (d), 35.410(b), 35.415(b), 35.610(c), 35.615(d)(4), 35.630(c), 35.632(g), 35.634(f), 35.636(c), 35.641(c), 35.643(c), 35.645, and 35.647(c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

4. In Subpart A—General Information, § 35.2, the term misadministration is revised; and the terms diagnostic clinical procedures manual, prescribed dosage, prescribed dose, recordable event, and written directive are added in alphabetical order:

§ 35.2 Definitions.

*   *   *   *   *

Diagnostic clinical procedures manual means a collection of written procedures that describes each method (and other instructions and precautions) by which the licensee performs diagnostic clinical procedures; where each diagnostic clinical procedure has been approved by the authorized user and includes the radiopharmaceutical, dosage, and route of administration.

*   *   *   *   *

Misadministration means the administration of:

(1) A radiopharmaceutical dosage greater than 30 microcuries of either sodium iodide I–125 or I–131:

(i) Involving the wrong patient or wrong radiopharmaceutical, or

(ii) When both the administered dosage differs from the prescribed dosage by more than 20 percent of the prescribed dosage and the difference between the administered dosage and prescribed dosage exceeds 30 microcuries.

(2) A therapeutic radiopharmaceutical dosage, other than sodium iodide I–125 or I–131:

(i) Involving the wrong patient, wrong radiopharmaceutical, or wrong route of administration; or

(ii) When the administered dosage differs from the prescribed dosage by more than 20 percent of the prescribed dosage.

(3) A gamma stereotactic radiosurgery radiation dose:

(i) Involving the wrong patient or wrong treatment site; or

(ii) When the calculated total administered dose differs from the total prescribed dose by more than 10 percent of the total prescribed dose.

(4) A teletherapy radiation dose:

(i) Involving the wrong patient, wrong mode of treatment, or wrong treatment site;

(ii) When the treatment consists of three or fewer fractions and the calculated total administered dose differs from the total prescribed dose by more than 10 percent of the total prescribed dose;

(iii) When the calculated weekly administered dose is 30 percent greater than the weekly prescribed dose; or

(iv) When the calculated total administered dose differs from the total prescribed dose by more than 20 percent of the total prescribed dose.

(5) A brachytherapy radiation dose:

(i) Involving the wrong patient, wrong radioisotope, or wrong treatment site (excluding, for permanent implants, seeds that were implanted in the correct site but migrated outside the treatment site);

(ii) Involving a sealed source that is leaking;

(iii) When, for a temporary implant, one or more sealed sources are not removed upon completion of the procedure; or

(iv) When the calculated administered dose differs from the prescribed dose by more than 20 percent of the prescribed dose.

(6) A diagnostic radiopharmaceutical dosage, other than quantities greater than 30 microcuries of either sodium iodide I–125 or I–131, both:

(i) Involving the wrong patient, wrong radiopharmaceutical, wrong route of administration, or when the administered dosage differs from the prescribed dosage; and

(ii) When the dose to the patient exceeds 5 rems effective dose equivalent or 50 rems dose equivalent to any individual organ.

*   *   *   *   *

Prescribed dosage means the quantity of radiopharmaceutical activity as documented:

(1) In a written directive; or

(2) Either in the diagnostic clinical procedures manual or in any appropriate record in accordance with the directions of the authorized user for diagnostic procedures.

Prescribed dose means

(1) For gamma stereotactic radiosurgery, the total dose as documented in the written directive;

(2) For teletherapy, the total dose and dose per fraction as documented in the written directive; or

(3) For brachytherapy, either the total source strength and exposure time or the

total dose, as documented in the written directive.

* * * * *

Recordable event means the administration of:

(1) A radiopharmaceutical or radiation without a written directive where a written directive is required;

(2) A radiopharmaceutical or radiation where a written directive is required without daily recording of each administered radiopharmaceutical dosage or radiation dose in the appropriate record;

(3) A radiopharmaceutical dosage greater than 30 microcuries of either sodium iodide I–125 or I–131 when both:

(i) The administered dosage differs from the prescribed dosage by more than 10 percent of the prescribed dosage, and

(ii) The difference between the administered dosage and prescribed dosage exceeds 15 microcuries;

(4) A therapeutic radiopharmaceutical dosage, other than sodium iodide I–125 or I–131, when the administered dosage differs from the prescribed dosage by more than 10 percent of the prescribed dosage;

(5) A teletherapy radiation dose when the calculated weekly administered dose is 15 percent greater than the weekly prescribed dose; or

(6) A brachytherapy radiation dose when the calculated administered dose differs from the prescribed dose by more than 10 percent of the prescribed dose.

* * * * *

Written directive means an order in writing for a specific patient, dated and signed by an authorized user prior to the administration of a radiopharmaceutical or radiation, except as specified in paragraph (6) of this definition, containing the following information:

(1) For any administration of quantities greater than 30 microcuries of either sodium iodide I–125 or I–131: the dosage;

(2) For a therapeutic administration of a radiopharmaceutical other than sodium iodide I–125 or I–131: the radiopharmaceutical, dosage, and route of administration;

(3) For gamma stereotactic radiosurgery: target coordinates, collimator size, plug pattern, and total dose;

(4) For teletherapy: the total dose, dose per fraction, treatment site, and overall treatment period;

(5) For high-dose-rate remote afterloading brachytherapy: the radioisotope, treatment site, and total dose; or

(6) For all other brachytherapy:

(i) Prior to implantation: the radioisotope, number of sources, and source strengths; and

(ii) After implantation but prior to completion of the procedure: the radioisotope, treatment site, and total source strength and exposure time (or, equivalently, the total dose).

5. In Subpart A—General Information, § 35.8, paragraph (b) is revised to read as follows:

§ 35.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 35.12, 35.13, 35.14, 35.21, 35.22, 35.23, 35.27, 35.29, 35.31, 35.32, 35.33, 35.50, 35.51, 35.53, 35.59, 35.60, 35.61, 35.70, 35.80, 35.92, 35.204, 35.205, 35.310, 35.315, 35.404, 35.406, 35.410, 35.415, 35.606, 35.610, 35.615, 35.630, 35.632, 35.634, 35.636, 35.641, 35.643, 35.645, and 35.647.

* * * * *

6. In Subpart B—General Administrative Requirements, § 35.25, paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 35.25 Supervision.

(a) * * *

(1) Instruct the supervised individual in the principles of radiation safety appropriate to that individual's use of byproduct material and in the licensee's written quality management program;

(2) Require the supervised individual to follow the instructions of the supervising authorized user, follow the written radiation safety and quality management procedures established by the licensee, and comply with the regulations of this chapter and the license conditions with respect to the use of byproduct material; and

* * * * *

7. In Subpart B—General Administrative Requirements, § 35.32 is added to read as follows:

§ 35.32 Quality management program.

(a) Each applicant or licensee under this part, as applicable, shall establish and maintain a written quality management program to provide high confidence that byproduct material or radiation from byproduct material will be administered as directed by the authorized user. The quality management program must include written policies and procedures to meet the following specific objectives:

(1) That, prior to administration, a written directive [1] is prepared for:

(i) Any teletherapy radiation dose;

(ii) Any gamma stereotactic radiosurgery radiation dose;

(iii) Any brachytherapy radiation dose;

(iv) Any administration of quantities greater than 30 microcuries of either sodium iodide I–125 or I–131; or

(v) Any therapeutic administration of a radiopharmaceutical, other than sodium iodide I–125 or I–131;

(2) That, prior to each administration, the patient's identity is verified by more than one method as the individual named in the written directive;

(3) That final plans of treatment and related calculations for brachytherapy, teletherapy, and gamma stereotactic radiosurgery are in accordance with the respective written directives;

(4) That each administration is in accordance with the written directive; and

(5) That any unintended deviation from the written directive is identified and evaluated, and appropriate action is taken.

(b) The licensee shall:

(1) Develop procedures for and conduct a review of the quality management program including, since the last review, an evaluation of:

(i) A representative sample of patient administrations,

(ii) All recordable events, and

(iii) All misadministrations

to verify compliance with all aspects of the quality management program; these reviews shall be conducted at intervals no greater than 12 months;

(2) Evaluate each of these reviews to determine the effectiveness of the quality management program and, if required, make modifications to meet the objectives of paragraph (a) of this section; and

(3) Retain records of each review, including the evaluations and findings of

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[1] If, because of the patient's condition, a delay in order to provide a written revision to an existing written directive would jeopardize the patient's health, an oral revision to an existing written directive will be acceptable, provided that the oral revision is documented immediately in the patient's record and a revised written directive is signed by the authorized user within 48 hours of the oral revision.

Also, a written revision to an existing written directive may be made for any diagnostic or therapeutic procedure provided that the revision is dated and signed by an authorized user prior to the administration of the radiopharmaceutical dosage, the brachytherapy dose, the gamma stereotactic radiosurgery dose, the teletherapy dose, or the next teletherapy fractional dose.

If, because of the emergent nature of the patient's condition, a delay in order to provide a written directive would jeopardize the patient's health, an oral directive will be acceptable, provided that the information contained in the oral directive is documented immediately in the patient's record and a written directive is prepared within 24 hours of the oral directive.

the review, in an auditable form for three years.

(c) The licensee shall evaluate and respond, within 30 days after discovery of the recordable event, to each recordable event by:

(1) Assembling the relevant facts including the cause;

(2) Identifying what, if any, corrective action is required to prevent recurrence; and

(3) Retaining a record, in an auditable form, for three years, of the relevant facts and what corrective action, if any, was taken.

(d) The licensee shall retain:

(1) Each written directive; and

(2) A record of each administered radiation dose or radiopharmaceutical dosage where a written directive is required in paragraph (a)(1) above, in an auditable form, for three years after the date of administration.

(e) The licensee may make modifications to the quality management program to increase the program's efficiency provided the program's effectiveness is not decreased. The licensee shall furnish the modification to the appropriate NRC Regional Office within 30 days after the modification has been made.

(f)(1) Each applicant for a new license, as applicable, shall submit to the appropriate NRC Regional Office in accordance with 10 CFR 30.6 a quality management program as part of the application for a license and implement the program upon issuance of the license by the NRC.

(2) Each existing licensee, as applicable, shall submit to the appropriate NRC Regional Office in accordance with 10 CFR 30.6 by January 27, 1992 a written certification that the quality management program has been implemented along with a copy of the program.

8. In Subpart B—General Administrative Requirements, § 35.33 is revised to read as follows:

§ 35.33 Notifications, reports, and records of misadministrations.

(a) For a misadministration:

(1) The licensee shall notify by telephone the NRC Operations Center[2] no later than the next calendar day after discovery of the misadministration.

(2) The licensee shall submit a written report to the appropriate NRC Regional Office listed in 10 CFR 30.6 within 15 days after discovery of the misadministration. The written report must include the licensee's name; the prescribing physician's name; a brief description of the event; why the event occurred; the effect on the patient; what improvements are needed to prevent recurrence; actions taken to prevent recurrence; whether the licensee notified the patient, or the patient's responsible relative or guardian (this person will be subsequently referred to as "the patient" in this section), and if not, why not, and if the patient was notified, what information was provided to the patient. The report must not include the patient's name or other information that could lead to identification of the patient.

(3) The licensee shall notify the referring physician and also notify the patient of the misadministration no later than 24 hours after its discovery, unless the referring physician personally informs the licensee either that he will inform the patient or that, based on medical judgment, telling the patient would be harmful. The licensee is not required to notify the patient without first consulting the referring physician. If the referring physician or patient cannot be reached within 24 hours, the licensee shall notify the patient as soon as possible thereafter. The licensee may not delay any appropriate medical care for the patient, including any necessary remedial care as a result of the misadministration, because of any delay in notification.

(4) If the patient was notified, the licensee shall also furnish, within 15 days after discovery of the misadministration, a written report to the patient by sending either:

(i) A copy of the report that was submitted to the NRC; or

(ii) A brief description of both the event and the consequences as they may affect the patient, provided a statement is included that the report submitted to the NRC can be obtained from the licensee.

(b) Each licensee shall retain a record of each misadministration for five years. The record must contain the names of all individuals involved (including the prescribing physician, allied health personnel, the patient, and the patient's referring physician), the patient's social security number or identification number if one has been assigned, a brief description of the misadministration, why it occurred, the effect on the patient, what improvements are needed to prevent recurrence, and the actions taken to prevent recurrence.

(c) Aside from the notification requirement, nothing in this section affects any rights or duties of licensees and physicians in relation to each other, patients, or the patient's responsible relatives or guardians.

Dated at Rockville, Maryland, this 3rd day of July 1991.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 91-16321 Filed 7-24-91; 8:45 am]

BILLING CODE 7590-01-M

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[2] The commercial telephone number of the NRC Operations Center is (301) 951-0550.

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shall notify the patient as soon as possible thereafter. The licensee may not delay any appropriate medical care for the patient, including any necessary remedial care as a result of the misadministration, because of any delay in notification.

(4) If the patient was notified, the licensee shall also furnish, within 15 days after discovery of the misadministration, a written report to the patient by sending either:

(i) A copy of the report that was submitted to the NRC; or

(ii) A brief description of both the event and the consequences as they may affect the patient, provided a statement is included that the report submitted to the NRC can be obtained from the licensee.

(b) Each licensee shall retain a record of each misadministration for five years. The record must contain the names of all individuals involved (including the prescribing physician, allied health personnel, the patient, and the patient's referring physician), the patient's social security number or identification number if one has been assigned, a brief description of the misadministration, why it occurred, the effect on the patient, what improvements are needed to prevent recurrence, and the actions taken to prevent recurrence.

(c) Aside from the notification requirement, nothing in this section affects any rights or duties of licensees and physicians in relation to each other, patients, or the patient's responsible relatives or guardians.

Dated at Rockville, Maryland, this 3rd day of July 1991.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 91-16321 Filed 7-24-91; 8:45 am]

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Thursday
July 25, 1991

Part V

Federal Election Commission

11 CFR Parts 102 and 113
Use of Excess Funds; Final Rules

FEDERAL ELECTION COMMISSION

[Notice 1991-12]

11 CFR Parts 102 and 113

Use of Excess Funds

AGENCY: Federal Election Commission.

ACTION: Final rules and transmittal of regulations to Congress.

SUMMARY: The Commission has revised its regulations at 11 CFR 102.3, 113.1 and 113.2(d), regarding disposition of excess campaign or donated funds by Members of Congress, to implement the Ethics Reform Act of 1989, Public Law 101–194. The Ethics Reform Act amended section 313 of the Federal Election Campaign Act ("FECA" or "the Act"), codified at 2 U.S.C. 439a, to prohibit any Member of Congress who serves in the 103d or a later Congress from converting excess campaign or donated funds to personal use as of the first day of such service. Those Members who held office on January 8, 1980, who formerly could convert unlimited amounts of excess funds to personal use, may now convert only the amount on hand as of November 30, 1989, the date of enactment of the Ethics Reform Act. Further information is provided in the supplementary information which follows.

DATES: Further action, including the announcement of an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d). A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463 (202) 376–5690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is publishing today the final text of revisions to its regulations at 11 CFR 102.3, 113.1, and 113.2, regarding the disposition of excess campaign or donated funds.

On April 24, 1991, the Commission issued a Notice of Proposed Rulemaking (NPRM) in which it sought comments on proposed revisions to these regulations. 55 FR 18777. One written comment was received in response to the notice.

Section 438(d) of title 2, United States Code, requires that any rule or regulation prescribed by the Commission to carry out the provisions of title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on July 19, 1991.

Explanation and Justification

The Federal Election Campaign Act Amendment of 1979, Public Law 96–187, amended 2 U.S.C. 439a, regarding the disposition of excess campaign or donated funds. The 1979 amendment prohibited any candidate or Member of Congress not in office on January 8, 1980, from converting any such funds to personal use, other than to defray ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office. Funds not used for this purpose may be contributed to any tax-exempt charitable organization or used for any other lawful purpose, including unlimited transfers to any national, State, or local committee of any political party.

The Ethics Reform Act of 1989, Public Law 101–194, further amended this section to prohibit any Member of Congress who serves in the 103d or a later Congress from converting excess campaign or donated funds to personal use as of the first date of such service. (The 103d Congress will convene on January 3, 1993.) Also, a Member of Congress who held office on January 8, 1980, can now convert to personal use only the "unobligated balance" of campaign or donated funds as of the date of enactment of the Ethics Reform Act, November 30, 1989.

These rules amend 11 CFR 102.3, 113.1 and 113.2, to reflect the new statutory limits on conversion of excess funds to personal use. They provide two alternative methods for grandfathered Members to compute the "unobligated balance" which is eligible for such conversion. Under the first alternative, qualified Members who choose to convert no more than the value of their cash assets as of November 30, 1989, may do so by simply reporting this action. The second alternative authorizes Members to convert nonliquid committee assets held on that date (or a cash amount equal to the value of such assets) to personal use, provided that new reporting requirements are met. The new rules are consistent with Advisory Opinion 1990–26, in which the Commission permitted the November 1989 value of a computer owned by a grandfathered Member's authorized committee to be included in the balance eligible for conversion under certain conditions.

One comment was received on this rulemaking. The Internal Revenue Service found no conflict between this proposal and the Internal Revenue Code or the regulations promulgated under it.

Part 102—Registration, Organization, and Recordkeeping by Political Committees

Section 102.3—Termination of Registration

All terminating committees are required to report how residual funds will be used. 11 CFR 102.3(a). New paragraph (a)(2) adds a requirement that authorized committees of non-grandfathered Members include in their termination reports a statement signed by the committee's treasurer, stating that no noncash committee assets will be converted to personal use. This section also requires terminating committees of grandfathered Members to comply with the new provisions of § 113.2 before converting funds to personal use.

Part 113—Excess Campaign Funds and Funds Donated to Support Federal Officeholder Activities

Section 113.1—Definitions

New paragraph 113.1(f) defines the term "qualified Member" for the purpose of converting excess funds to personal use under new 11 CFR 113.2(e). The definition includes all individuals who served as a Senator or Representative in, or Delegate or Resident Commissioner to, Congress, on January 8, 1980.

Section 113.2 Use of Funds

Paragraph (d) has been amended to delete the phrase stating that grandfathered Members may convert unlimited amounts of excess funds to personal use. This paragraph now states that no excess funds may be converted to personal use except as set forth in paragraph (e), below.

Paragraph (e) allows qualified Members to convert to personal use no more than the unobligated balance in their campaign accounts as of November 30, 1989. The two alternatives they may use in computing this balance are set forth at paragraphs (e)(1) (i) and (ii).

The first alternative, found at paragraph (e)(1)(i), is available to qualified members who choose to convert no more than the value of their committee's cash assets on November 30, 1989, to personal use. (While the remainder of this discussion uses the singular "committee," it applies to all authorized committees, if a Member has more than one such committee.) To compute the value of its net cash assets, the committee first calculates its cash on hand on November 30, 1989, as defined

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Part 102—Registration, Organization, and Recordkeeping by Political Committees

Section 102.3—Termination of Registration

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Part 113—Excess Campaign Funds and Funds Donated to Support Federal Officeholder Activities

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New paragraph 113.1(f) defines the term "qualified Member" for the purpose of converting excess funds to personal use under new 11 CFR 113.2(e). The definition includes all individuals who served as a Senator or Representative in, or Delegate or Resident Commissioner to, Congress, on January 8, 1980.

Section 113.2 Use of Funds

Paragraph (d) has been amended to delete the phrase stating that grandfathered Members may convert unlimited amounts of excess funds to personal use. This paragraph now states that no excess funds may be converted to personal use except as set forth in paragraph (e), below.

Paragraph (e) allows qualified Members to convert to personal use no more than the unobligated balance in their campaign accounts as of November 30, 1989. The two alternatives they may use in computing this balance are set forth at paragraphs (e)(1) (i) and (ii).

The first alternative, found at paragraph (e)(1)(i), is available to qualified members who choose to convert no more than the value of their committee's cash assets on November 30, 1989, to personal use. (While the remainder of this discussion uses the singular "committee," it applies to all authorized committees, if a Member has more than one such committee.) To compute the value of its net cash assets, the committee first calculates its cash on hand on November 30, 1989, as defined

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in 11 CFR 104.3(a)(1), and then subtracts its debts and obligations on that date. The § 104.3(a)(1) definition includes currency; the balance on deposit in banks, savings and loan institutions, and other depository institutions; travelers' checks owned by the committee; certificates of deposit, treasury bills and any other committee investments valued at cost.

A qualified Member who chooses this alternative also has the option of converting noncash campaign assets to personal use, by counting the fair market value of each item so converted against the total unobligated (cash) balance. For example, if the authorized committee's cash assets on November 30, 1989, totaled $10,000, and the committee owns two vehicles, each with a fair market value of $5,000, the Member may convert to personal use either the $10,000; the two vehicles; or $5,000 and one vehicle.

The second alternative, set forth at paragraph (e)(1)(ii), permits qualified Members to add the value of unliquidated committee assets and receivables as of November 30, 1989, to the unobligated balance, if certain requirements are met. Unliquidated committee assets in this context include noncash assets previously purchased by the committee, such as vehicles, computers, and office equipment. The term also includes other assets received as in-kind contributions on or before November 30, 1989, but not liquidated until a later reporting period, such as contributions of stocks, bonds, and art objects.

To take advantage of this higher limit, a Member must file a separate Memo Entry Schedule A as an amendment to the 1989 year end report (covering July 1 through December 31, 1989). This memo Schedule A must itemize each converted asset, giving the date of acquisition, its fair market value as of November 30, 1989, and a brief narrative description explaining how the asset's value was ascertained. In addition, the committee must disclose the disposition made of each such asset, including its fair market value at the date of sale or other disposition. This should be disclosed in the committee's termination report unless the asset was sold or distributed during an earlier period and included in the report covering that period.

Commission regulations use the term "usual and normal charge for such goods" when discussing the valuation of "in kind" contributions. 11 CFR 100.7(a)(1)(iii)(B). The Commission has incorporated this approach in its Advisory Opinions dealing with the sale of campaign assets. See Advisory Opinions 1985–1 and 1986–14. The regulation follows this same approach in determining whether an asset has been sold for its fair market value.

Members who choose this second alternative may also treat committee receivables as other assets and include them in the unobligated balance which is eligible for conversion. Given the need to ascertain a definite amount, these receivables may only include those debts and loans reported as owed to the committee as of November 30, 1989, and itemized on the committee's year end report for 1989—provided that such receivables are actually collected by the committee prior to its termination. In addition, committee receivables in the form of vendor credits or deposit refunds may be included in calculating the unobligated balance. These types of receivables must be itemized on Schedule C or D of the committee's 1989 year end report or in an amendment thereto, in order to be included.

The Commission emphasizes that the more complicated procedures must be followed only by Members who wish to convert to personal use more than the value of their net cash assets on November 30, 1989. Those choosing to convert no more than the cash balance may simply report this action, no matter how great the value of their non-cash assets or how large the committee's other receivables on that date. However, the disposition of these other assets and receivables still must be reported.

To illustrate, assume that a Member's potential unobligated balance on November 30, 1989, consisted of $80,000 in cash assets and $20,000 in nonliquid assets, for a total of $100,000. If the Member chooses to convert more than $80,000 to personal use, he or she must follow the nonliquid asset procedures for the amount over $80,000. However, if the Member chooses to convert to personal use no more than $80,000, the simpler cash asset procedures can be followed. These procedures could be used, for example, if the Member chooses to convert $50,000 to personal use and donate the remaining $50,000 to charity or to a political party committee, or to use it in any other manner consistent with 2 U.S.C. 439a and 11 CFR 113.2 (a), (b), and (c).

The Commission sought comments in the NPRM on whether this rule should limit conversion to liquid assets, a limitation seemingly implied by the statutory use of the term "unobligated *balance*" (emphasis added). The Ethics Reform Act's legislative history is silent on this point, in that the Senate debate (the only substantive discussion of this provision in the Act's legislative history) focused on the ability to use excess funds, rather than on what constitutes excess funds. See 135 Cong. Rec. S 15966–71 (daily ed., Nov. 17, 1989).

However, the Commission has previously construed "excess funds" to include nonliquid committee assets. In Advisory Opinion 1981–11, the Commission held that the term "excess campaign funds" can include noncash items—in that case a mailing list—determined by the candidate to be no longer needed to defray committee expenses. See also Advisory Opinion 1984–50 (same reasoning applied to political art). Each of these Advisory Opinions allowed a candidate to transfer the item(s) in question from the candidate's principal campaign committee to a national party committee under the "excess funds" provision of 2 U.S.C. 439a. In addition, in Advisory Opinion 1982–33, the Commission permitted a retired Senator to convert a car owned by his principal campaign committee to his personal use, in addition to the committee's cash assets. This regulation follows this approach.

This section also provides that if the unobligated balance subsequently drops below its November 30, 1989, level, it may be restored back to that level, and the full amount converted to personal use. This approach is consistent with the statutory language, which in pertinent part provides: "The amendment [prohibiting personal use] shall apply . . . to the use of . . . amounts totaling *more than the amount* [of] . . . the unobligated balance on hand on [November 30, 1989]" (Pub. L. 101–194, § 504(b), 103 Stat. 1755) (emphasis added).

The section permits proceeds from the sale of noncash assets (those obtained both before and after November 30, 1989) to be used to restore an account whose balance has fallen below its November 30, 1989, level, back up to that level. For such sales to be valid, the Member must show that the seller received no more than the fair market value for the asset as of the date of the sale. Committee receivables other than debts and loans, e.g., interest income, and refunded rent and utility deposits, may also be used for this purpose.

Thus, for example, if a Member's unobligated balance on November 30, 1989, was $50,000, but it later dropped to $25,000, subsequent lawfully received contributions and other committee income could be used to restore it to the $50,000 level. The full unobligated balance of $50,000 could still be converted to personal use, despite its post-November 1989 shrinkage.

Under either alternative, if noncash assets are sold or other moneys received in amounts which would bring the unobligated balance above its November 30, 1989, level, these additional sums may not be converted to personal use. Rather, they must be used for the other purposes set forth in 2 U.S.C. 439a and 11 CFR 113.2 (a), (b), and (c).

Thus, the Commission stresses that, using this same example, no more than $50,000 could ever be converted to personal use. If the Member converted $10,000 of the original $50,000 to personal use and the balance later dropped to $25,000, the balance that could later be restored for personal use conversion would be reduced to $40,000 ($50,000 less the $10,000 which had already been converted). Any additional amounts would have to be used for the other purposes set forth in 2 U.S.C. 439a and 11 CFR 113.2 (a), (b), and (c).

The Commission recognizes that some Members may already have converted some portion of their November 30, 1989, unobligated balance to personal use. Any such amounts count as drawdowns on the ceiling eligible for conversion. For example, a Member whose November 30, 1989, unobligated balance was $50,000, who has already converted $10,000 to personal use, is now limited to $40,000 in future conversions.

Finally, the Commission notes that there is no time limit for qualified Members who do not serve in the 103rd or a later Congress who want to convert their unobligated balance to personal use. The only limitation is of that amount, i.e., the converted amount may not exceed the November 30, 1989, unobligated balance.

New paragraph 113.2(f) clarifies that nothing in 11 CFR part 113 is intended to supersede other Federal laws, outside the Commission's jurisdiction, which also regulate the use of campaign or donated funds. See, e.g., newly enacted 2 U.S.C. 59e(d), Public Law 101–520, § 310(d)(Nov. 5, 1990), which prohibits the use of any funds which are not specifically appropriated for Members' official expenses from being used to defray such expenses. In addition, relevant state laws may affect whether a particular type of personal use qualifies as a "lawful purpose" under section 439a, and are therefore not superseded.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The attached rules do not have a significant economic impact on a substantial number of small entities. The basis of this certification is that the rules reflect statutory amendments to the Federal Election Campaign Act concerning the disposition of excess campaign and donated funds. This does not impose a significant economic burden because any small entities affected are already required to comply with the Act's requirements in this area.

List of Subjects

11 CFR Part 102

Political committees and parties, Reporting and recordkeeping requirements, Campaign funds.

11 CFR Part 113

Campaign funds, Political candidates, Elections.

For the reasons set out in the preamble, subchapter A, chapter I of title 11 of the Code of Federal Regulations is amended as follows:

PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)

1. The authority citation for part 102 continues to read as follows:

Authority: 2 U.S.C. 432, 433, 438(a)(8), 441d.

2. Part 102 is amended by redesignating paragraph (a) of § 102.3 as paragraph (a)(1), and by adding paragraph (a)(2) to read as follows:

§ 102.3. Termination of registration (2 U.S.C. 433(d)(1)).

(a) * * *

(2) An authorized committee of a qualified Member, as defined at 11 CFR 113.1(f), shall comply with the requirements of 11 CFR 113.2 before any excess funds are converted to such Member's personal use. All other authorized committees shall include in their termination reports a statement signed by the treasurer, stating that no noncash committee assets will be converted to personal use.

* * * * *

PART 113—EXCESS CAMPAIGN FUNDS AND FUNDS DONATED TO SUPPORT FEDERAL OFFICEHOLDER ACTIVITIES (2 U.S.C. 439a)

3. The authority citation for part 113 continues to read as follows:

Authority: 2 U.S.C. 432(h), 438(a)(8), 439a, 441a.

4. Paragraph (f) is added to § 113.1, to read as follows:

§ 113.1 Definitions (2 U.S.C. 439a)

* * * * *

(f) *Qualified Member.* "Qualified Member" means an individual who was serving as a Senator or Representative in, or Delegate or Resident Commissioner to, Congress, on January 8, 1980.

5. Paragraph (d) is revised and paragraphs (e) and (f) are added to section 1132 to read as follows:

§ 113.2 Use of funds (2 U.S.C. 439a)

* * * * *

(d) May be used for any other lawful purpose, except that, other than as set forth in paragraph (e) of this section, no such amounts may be converted by any person to any personal use, other than: to defray any ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office, or to repay to a candidate any loan the proceeds of which were used in connection with his or her campaign.

(e)(1) Except as limited by paragraph (e)(5) of this section, a qualified Member who serves in the 102d or an earlier Congress may convert to personal use no more than the unobligated balance of excess funds as of November 30, 1989. This unobligated balance shall be calculated under either paragraph (e)(1)(i) or (ii) of this section.

(i) *Cash assets.* The Member may convert any excess campaign or donated funds in an amount up to the Member's authorized committee(s)' cash on hand, determined under 11 CFR 104.3(a)(1), as of November 30, 1989, less the committee(s)' total outstanding debts as of that date.

(ii) *Cash Plus Nonliquid Assets.*

(A) The Member may convert unliquidated committee assets held by his or her authorized committee(s) on November 30, 1989; or the value of such assets may be added to the value of the committee(s)' cash assets under paragraph (e)(1)(i) of this section to determine the amount which is eligible for conversion. In either case, prior to conversion, the committee shall amend its 1989 year end reports to indicate, as memo entries to Schedule A, the assets to be converted. These amendments shall list each asset, give its date of acquisition, its fair market value as of November 30, 1989, and a brief narrative description of how this value was ascertained. The committee shall also disclose the disposition made of each such asset, including its fair market value on the date of sale or other disposition, in its termination report, unless the asset was sold or otherwise disposed of during an earlier period and included in the report covering that period.

(B) The Member may add the value of debts and loans reported as owed to the Member's authorized committee(s) as of November 30, 1989, and itemized on the committee(s)' year end reports for 1989,

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5. Paragraph (d) is revised and paragraphs (e) and (f) are added to section 1132 to read as follows:

§ 113.2 Use of funds (2 U.S.C. 439a)

* * * * *

(d) May be used for any other lawful purpose, except that, other than as set forth in paragraph (e) of this section, no such amounts may be converted by any person to any personal use, other than: to defray any ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office, or to repay to a candidate any loan the proceeds of which were used in connection with his or her campaign.

(e)(1) Except as limited by paragraph (e)(5) of this section, a qualified Member who serves in the 102d or an earlier Congress may convert to personal use no more than the unobligated balance of excess funds as of November 30, 1989. This unobligated balance shall be calculated under either paragraph (e)(1)(i) or (ii) of this section.

(i) *Cash assets.* The Member may convert any excess campaign or donated funds in an amount up to the Member's authorized committee(s)' cash on hand, determined under 11 CFR 104.3(a)(1), as of November 30, 1989, less the committee(s)' total outstanding debts as of that date.

(ii) *Cash Plus Nonliquid Assets.*

(A) The Member may convert unliquidated committee assets held by his or her authorized committee(s) on November 30, 1989; or the value of such assets may be added to the value of the committee(s)' cash assets under paragraph (e)(1)(i) of this section to determine the amount which is eligible for conversion. In either case, prior to conversion, the committee shall amend its 1989 year end reports to indicate, as memo entries to Schedule A, the assets to be converted. These amendments shall list each asset, give its date of acquisition, its fair market value as of November 30, 1989, and a brief narrative description of how this value was ascertained. The committee shall also disclose the disposition made of each such asset, including its fair market value on the date of sale or other disposition, in its termination report, unless the asset was sold or otherwise disposed of during an earlier period and included in the report covering that period.

(B) The Member may add the value of debts and loans reported as owed to the Member's authorized committee(s) as of November 30, 1989, and itemized on the committee(s)' year end reports for 1989,

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to the unobligated balance, provided that such receivables are actually collected by the committee(s) prior to their termination.

(C) The Member may add to the unobligated balance the value of vendor credits and deposit refunds to which authorized campaign committee(s) are entitled, if these receivables are itemized on Schedule C or D of the committee(s)' 1989 year end reports or in amendment(s) thereto.

(2) If the unobligated balance subsequently falls below its November 30, 1989, level, a qualified Member may use contributions lawfully received or other lawful committee income received after that date to restore the account up to that level.

(3) A qualified Member may convert committee assets which were not held on November 30, 1989, to personal use; however, the fair market value of such assets at the time of conversion shall be counted against the unobligated balance.

(4) Under no circumstances may an amount greater than the unobligated balance on November 30, 1989, be converted to personal use. Should money from subsequent contributions, other committee income, and/or the sale of campaign assets exceed the amount needed to restore the unobligated balance to its November 30, 1989, level, such additional funds shall not be converted to personal use but may be used for the purposes set forth in paragraphs (a), (b), and (c) of this section.

(5) *103d Congress or later Congress:* A qualified Member who serves in the 103d Congress or a later Congress may not convert to personal use any excess campaign or donated funds, as of the first day of such service.

(f) Nothing in this section modifies or supersedes other Federal statutory restrictions or relevant State laws which may apply to the use of excess campaign or donated funds by candidates or Federal officeholders.

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Dated: July 19, 1991.

John Warren McGarry,

Chairman, Federal Election Commission.

[FR Doc. 91–17612 Filed 7–24–91; 8:45 am]

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Part VI

Federal Election Commission

11 CFR Parts 9034, 9036, and 9037

Matching Fund Submission and Certification Procedures for Presidential Primary Candidates; Final Rule

FEDERAL ELECTION COMMISSION

[NOTICE 1991-13]

11 CFR PARTS 9034, 9036, and 9037

Matching Fund Submission and Certification Procedures for Presidential Primary Candidates

AGENCY: Federal Election Commission.

ACTION: Final rule and transmittal of regulations to Congress.

SUMMARY: The Commission has revised its regulations setting forth procedures for matching fund submissions by Presidential primary candidates. 11 CFR 9034.1, 9034.5, 9036.2, 9036.4, 9036.5, 9036.6, 9037.1 and 9037.2. The changes are necessitated by the Department of the Treasury's recent promulgation of new rules regarding payments to candidates, which were adopted to address the possible shortage in the Presidential Election Campaign Fund. See 26 CFR parts 701 and 702, 56 FR 21596 (May 10, 1991). The principal changes to the Commission's rules involve monthly submission and certification dates for all candidates, as well as the elimination of letter requests and holdback procedures. Further information on these revisions is provided in the supplementary information which follows.

DATES: Further action, including the announcement of an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 26 U.S.C. 9039(c). A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 376–5690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is publishing today the final text of revisions to its regulations at 11 CFR 9034.1, 9034.5, 9036.2, 9036.4, 9036.5, 9036.6, 9037.1 and 9037.2 regarding matching fund submission and certification procedures for publicly-funded Presidential primary candidates. On June 26, 1991, the Commission issued a Notice of Proposed Rulemaking (NPRM) in which it sought comments on proposed revisions to three regulations. 56 FR 29372. One written comment was received from the Internal Revenue Service.

Section 9039(c) of title 26, United States Code, requires that any rules or regulations prescribed by the Commission to carry out the provisions of title 26 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on July 19, 1991.

Explanation and Justification

In response to a projected shortfall in the amount of federal funds in the Presidential Election Campaign Fund for the 1992 presidential election cycle, the Department of the Treasury has recently issued new rules regarding payments from the Fund. See 26 CFR parts 701 and 702, 56 FR 21596 (May 10, 1991). The priorities established by the public financing statutes indicate that a shortfall will affect the availability of matching funds for primary candidates before it affects the financing of general election candidates or nominating conventions. See 26 U.S.C. 9006(c), 9008(a) and 9037. Accordingly, the new Treasury Department rules set aside funds for the nominating conventions and general election candidates prior to depositing funds in the Presidential Primary Matching Payment Account. 26 CFR 701.9006–1 and 701.9037–1. If a shortage of primary funds occurs in a particular month, the Treasury Department regulations set forth a formula for determining the amount each candidate will receive as partial payment and the amount that will be treated as certified for the next month. 26 CFR 702.9037–2. In addition, the new Treasury Department rules change the dates on which federal payments will be made to primary election candidates. For 1992 Presidential primaries, candidates will receive federal payments on a once-a-month basis. 26 CFR 702.9037–2. All candidates will be paid on the same day each month. In previous election cycles, payments were made several times each month.

The changes in the timing of matching fund payments have necessitated corresponding changes to the Commission's certification procedures so that all certifications are made on the same date each month after the beginning of the matching payment period. Given the need for adequate time to review matching fund submissions prior to certification, the Commission expects to set monthly deadlines for receipt of all matching fund submissions near the beginning of each month. In addition, the Commission has recently decided, during limited periods of time, to reject matching fund submissions where the initial sampling indicates a projected dollar value of nonmatchable contributions of more than 15% of the amount requested. These changes are explained in more detail below.

In the event that the projected shortfall does not occur, the Commission sought clarification of whether the Treasury Department intended to return to its previous practice of making payments throughout the month as matching fund certifications are received. The Commission also sought comment as to whether it would be feasible for the Commission and campaign committees to return to the former matching fund submission and certification procedures, either before or during the matching payment period. The Internal Revenue Service's position, as stated in the comment, is that even if there is no shortfall, the new Treasury regulations specify the procedures that will be followed. Thus, the Internal Revenue Service found no conflict between the Commission's proposed rules and the Internal Revenue Code and the regulations thereunder. Consequently, the Commission has decided to adopt the proposed changes to its matching fund submission and certification procedures.

1. Submission Procedures

In previous election cycles, the Commission scheduled candidates to make matching fund submissions on the second and fourth Monday of each month after the beginning of the matching payment period. Resubmissions were scheduled for the first and third Monday. The Commission is now changing the submission schedule so that all candidates will make once-a-month submissions and resubmissions on the same date. On the last two submission dates in the year before the election year and on each submission date after the beginning of the matching payment period, the candidate will be limited to making one submission, and either one resubmission under § 9036.5 or one corrected submission under § 9036.2(c) or (d)(2). The Commission will publish the list of the monthly submission dates and notify the candidates once the Treasury Department has established the payment schedule. Please note that the new monthly submission dates will not affect threshold submissions, which candidates may still make at any time. The monthly submission dates also will not apply to resubmissions made within the five day period for correcting a submission that either failed to meet the good order requirements or that had a high rate of nonmatchable contributions. See revised 11 CFR 9036.4(a), as discussed below.

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One consequence of establishing a single submission date each month is that all submissions will need to be full submissions. Thus, 11 CFR 9036.2(b)(2) is being revised to delete the current letter request procedures. In the event of a shortage, this will help to ensure that candidates are paid only the amount to which they are entitled. In addition, 11 CFR 9036.6 is being revised to indicate that the last date for first-time submissions for all candidates is the first Monday in March of the year following the election year. In the past, a candidate's last submission date was either the last Monday in February or the second Monday in March, depending on the candidate's submission schedule.

2. Certification Procedures and Holdback Procedures

The revised rules which follow also change the timing of the Commission's certification of additional payments. Under the previous rules set forth at 11 CFR 9036.2(c)(1), during the Presidential election year, the Commission certified an amount within 5 business days using a holdback procedure. Any additional amount was then certified in either 20 or 25 business days, depending upon the projected dollar value of nonmatchable contributions. These provisions are being revised by eliminating the 5, 20, and 25 day periods, and also by eliminating the use of holdback procedures to determine the amount to be certified to the Secretary of the Treasury. See Federal Election Commission's Guideline for Presentation In Good Order. If a shortfall occurs, the elimination of the holdback procedures is necessary to ensure that the amount certified does not exceed the candidate's entitlement, as determined under the Commission's review procedures. Please note that the order of paragraphs (c) and (d) in § 9036.2 is also being reversed to follow a more logical chronological format.

Under renumbered § 9036.2(d)(1), certifications based on additional submissions after the beginning of the matching payment period will be made at least once a month on the same day for all candidates. Revised § 9036.2(d)(2) indicates that the once-a-month certification dates also apply to submissions after the candidate's date of ineligibility. Section 9036.5(d) is also being amended to provide that certifications of all resubmitted contributions will be made on the same monthly certification dates. In the past, the Commission had certified resubmitted contributions within 15 business days. However, these changes do not affect the timing of certifications of additional submissions that are filed in the year before the Presidential election year. See renumbered 11 CFR 9036.2(c).

3. Commission Review of Submissions

The attached rules at 11 CFR 9036.4 contemplate the continuation of the Commission's previous procedures for reviewing matching fund submissions, with the following modifications. First, committees will be granted five business days, instead of three, to correct submissions that have been rejected from review because they failed to meet the Commission's good order requirements. Section 9036.4(a) is also being revised to indicate that if the matching fund submission is corrected in the five day time period, it will be processed before the next regularly scheduled submission date, and the Commission's certification will be made on the certification date for the original submission. However, if a corrected submission is made after the five day period, it will be reviewed as if received on the next regularly scheduled submission date after it is submitted.

4. High Error Rates

Recently, the Commission decided that during limited periods of time, it will use a new procedure of rejecting matching fund submissions from review in cases where the projected dollar value of the nonmatchable contributions exceeded 15% of the amount requested. Please note, however, that the new rejection policy does not apply to submissions made on the last submission date in the year preceding the Presidential election year, or to submissions made during the Presidential election year before the candidate's date of ineligibility. At other times when the new policy is in operation, the entire submission will be returned to the committee for corrective action before any amount is certified for payment. If the committee is able to correct the submission and resubmit it within five business days, it will be reviewed before the next regularly scheduled submission date and an amount will be certified on the certification date for the original submission. However, if the resubmission is made after the five day period, it will be reviewed after the next regularly scheduled submission date, and an amount will be certified on the next regularly scheduled certification date. Corrected submissions may not contain new or additional contributions that were not previously submitted for matching. Similarly, under 11 CFR 9036.5(c)(5), resubmissions may not contain new or additional contributions that were not previously submitted. Submissions are not considered to be corrected until the projected dollar value of nonmatchable contributions has been reduced to 15% of the amount requested or less. The new policy is reflected in 11 CFR 9036.2 (c) and (d), and 9036.4(a) which follow.

5. Treasury Department Regulations

The final rules which follow add to §§ 9034.1(a), 9037.1 and 9037.2 cross-references to the new Treasury Department regulations. The added language alerts the reader to the possibility that a matching fund certification may not result in full payment by the Treasury Department in the event of a shortage of funds in the Presidential Primary Matching Payment Account. The Treasury Department has established a formula to determine the amount each candidate will receive as a partial payment and the amount that will be treated as certified for payment in the following month.

6. Revised Certifications

The revised rules address another new issue presented by the potential shortfall in the matching payment account. In the event of a shortage of public funds, one consequence of the new Treasury Department regulations could be over a month's delay between certification and payment of all certified matching funds. After a candidate's date of ineligibility, the current regulations require the candidate to have net outstanding campaign obligations as of the date of payment. 11 CFR 9034.1(b). The 1983 Explanation and Justification of this provision indicates that if "the candidate's financial position changed between the date of his or her submission for matching funds and the date of payment, reducing the candidate's net outstanding campaign obligations, that candidate's entitlement would be reduced accordingly." Explanation and Justification of Presidential Primary Matching Fund Rules, 48 FR 5227 (Feb. 4, 1983). In a shortfall situation where there is a longer time period between submission date and payment date, the financial status of a candidate's committee may change significantly. For example, the candidate may wish to raise additional private contributions to pay the debts listed on the NOCO statement more promptly, thereby reducing or possibly eliminating the amount of qualified debt remaining. Consequently, the Commission is adding language at 11 CFR 9034.5(f) that requires all candidates who have not been paid the full amount certified after their dates of ineligibility to submit updated NOCO statements shortly before the next payment date so that the Commission may revise the previous certifications, when necessary. The candidates and the Secretary of the Treasury will be promptly notified of any revised certifications under 11 CFR 9036.4(c)(2).

Certification of no Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The attached final rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that few, if any, small entities are affected by these rules.

List of Subjects

11 CFR Part 9034

Campaign funds, Elections, Political candidates.

11 CFR Part 9036

Administrative practice and procedure, Campaign funds, Political candidates.

11 CFR Part 9037

Campaign funds, Political candidates.

For the reasons set out in the preamble, subchapter F, chapter I of title 11 of the Code of Federal Regulations is amended as follows:

PART 9034—ENTITLEMENTS

1. The authority citation for part 9034 continues to read as follows:

Authority: 26 U.S.C. 9034 and 9039(b).

2. 11 CFR part 9034 is amended by revising paragraph (a) of § 9034.1 to read as follows:

§ 9034.1 Candidate entitlements.

(a) A candidate who has been notified by the Commission under 11 CFR 9036.1 that he or she has successfully satisfied eligibility and certification requirements is entitled to receive payments under 26 U.S.C. 9037 and 11 CFR part 9037 in an amount equal to the amount of each matchable campaign contribution received by the candidate, except that a candidate who has become ineligible under 11 CFR 9033.5 may not receive further matching payments regardless of the date of deposit of the underlying contributions if he or she has no net outstanding campaign obligations as defined in 11 CFR 9034.5. See also 26 CFR parts 701 and 702 regarding payments by the Department of the Treasury.

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3. 11 CFR part 9034 is amended by revising paragraph (f) of § 9034.5 to read as follows:

§ 9034.5 Net outstanding campaign obligations.

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(f)(1) The candidate shall submit a revised statement of net outstanding campaign obligations with each submission for matching fund payments filed after the candidate's date of ineligibility. The revised statement shall reflect the financial status of the campaign as of the close of business on the last business day preceding the date of submission for matching funds. The revised statement shall also contain a brief explanation of each change in the committee's assets and obligations from the previous statement.

(2) After the candidate's date of ineligibility, if the candidate does not receive the entire amount of matching funds on a regularly scheduled payment date due to a shortfall in the matching payment account, the candidate shall also submit a revised statement of net outstanding campaign obligations. The revised statement shall be filed on a date to be determined and published by the Commission which will be before the next regularly scheduled payment date.

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PART 9036—REVIEW OF SUBMISSION AND CERTIFICATION OF PAYMENTS BY COMMISSION

4. The authority citation for part 9036 continues to read as follows:

Authority: 26 U.S.C. 9036 and 9039(b).

5. 11 CFR part 9036 is amended by revising § 9036.2 to read as follows:

§ 9036.2 Additional submissions for matching fund payments.

(a) *Time for submission of additional submissions.* The candidate may submit additional submissions for payments to the Commission on dates to be determined and published by the Commission. On the last two submission dates in the year prior to the election year and on each submission date after the beginning of the matching payment period, the candidate may not make more than one additional submission, and either one resubmission under 11 CFR 9036.5 or one corrected submission under 11 CFR 9036.2(c) or (d)(2), as appropriate.

(b) *Format for additional submissions.* The candidate may obtain additional matching fund payments subsequent to the Commission's threshold certification and payment of primary matching funds to the candidate by filing an additional submission for payment. All additional submissions for payments filed by the candidate shall be made in accordance with the Federal Election Commission's Guideline for Presentation in Good Order.

(1) The first submission for matching funds following the candidate's threshold submission shall contain all the matchable contributions included in the threshold submission and any additional contributions to be submitted for matching in that submission. This submission shall contain all the information required for the threshold submission except that:

(i) The candidate is not required to resubmit the candidate agreement and certifications of 11 CFR 9033.1 and 9033.2;

(ii) The candidate is required to submit an alphabetical list of contributors, but not segregated by State as required in the threshold submission;

(iii) The candidate is required to submit a listing, alphabetical by contributor, of all checks returned unpaid, but not segregated by State as required in the threshold submission;

(iv) The candidate is required to submit a listing, in alphabetical order by contributor, of all contributions refunded to the contributor but not segregated by State as required in the threshold submission.

(v) The occupation and employer's name need not be disclosed on the contributor list for individuals whose aggregate contributions exceed $200 in the calendar year, but such information is subject to the recordkeeping and reporting requirements of 2 U.S.C. 432(c)(3), 434(b)(3)(A) and 11 CFR 102.9(a)(2), 104.3(a)(4)(i); and

(vi) The photocopies of each check or written instrument and of supporting documentation shall either be alphabetized and referenced to copies of the relevant deposit slip, but not segregated by State as required in the threshold submission; or such photocopies may be batched in deposits of 50 contributions or less and cross-referenced by deposit number and sequence number within each deposit on the contributor list.

(2) Following the first submission under 11 CFR 9036.2(b)(1), candidates may request additional matching funds on dates prescribed by the Commission by making a full submission as required under 11 CFR 9036.2(b)(1). The amount requested for matching may include contributions received up to the last business day preceding the date of the request.

(c) *Additional submissions submitted in non-Presidential election year.* The

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(i) The candidate is not required to resubmit the candidate agreement and certifications of 11 CFR 9033.1 and 9033.2;

(ii) The candidate is required to submit an alphabetical list of contributors, but not segregated by State as required in the threshold submission;

(iii) The candidate is required to submit a listing, alphabetical by contributor, of all checks returned unpaid, but not segregated by State as required in the threshold submission;

(iv) The candidate is required to submit a listing, in alphabetical order by contributor, of all contributions refunded to the contributor but not segregated by State as required in the threshold submission.

(v) The occupation and employer's name need not be disclosed on the contributor list for individuals whose aggregate contributions exceed $200 in the calendar year, but such information is subject to the recordkeeping and reporting requirements of 2 U.S.C. 432(c)(3), 434(b)(3)(A) and 11 CFR 102.9(a)(2), 104.3(a)(4)(i); and

(vi) The photocopies of each check or written instrument and of supporting documentation shall either be alphabetized and referenced to copies of the relevant deposit slip, but not segregated by State as required in the threshold submission; or such photocopies may be batched in deposits of 50 contributions or less and cross-referenced by deposit number and sequence number within each deposit on the contributor list.

(2) Following the first submission, under 11 CFR 9036.2(b)(1), candidates may request additional matching funds on dates prescribed by the Commission by making a full submission as required under 11 CFR 9036.2(b)(1). The amount requested for matching may include contributions received up to the last business day preceding the date of the request.

(c) *Additional submissions submitted in non-Presidential election year.* The

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candidate may submit additional contributions for review during the year preceding the presidential election year; however, the amount of each submission made during this period must exceed $50,000. Additional submissions filed by a candidate in a non-Presidential election year will not result in payment of matching funds to the candidate until after January 1 of the Presidential election year. If the projected dollar value of the nonmatchable contributions exceeds 15% of the amount requested, the procedures described in 11 CFR 9036.2(d)(2) shall apply, unless the submission was made on the last submission date in December of the year before the Presidential election year.

(d) *Certification of additional payments by Commission.* (1) When a candidate who is eligible under 11 CFR 9033.4 submits an additional submission for payment in the Presidential election year, and before the candidate's date of ineligibility, the Commission will review the additional submission and will certify to the Secretary at least once a month on dates to be determined and published by the Commission, an amount to which the candidate is entitled in accordance with 11 CFR 9034.1(b). See 11 CFR 9036.4 for Commission procedures for certification of additional payments.

(2) After a candidate's date of ineligibility, the Commission will review each additional submission and resubmission, and will certify to the Secretary, at least once a month on dates to be determined and published by the Commission, and amount to which the ineligible candidate is entitled in accordance with 11 CFR 9034.1(b), unless the projected dollar value of the nonmatchable contributions contained in the submission or resubmission exceeds 15% of the amount requested. In the latter case, the Commission will return the additional submission or resubmission to the candidate and request that it be corrected, unless the resubmission was made on the last date for resubmissions in September of the year following the Presidential election year. Corrected submissions and resubmissions will be reviewed by the Commission in accordance with 11 CFR 9036.4 and 9036.5. Submissions and resubmissions will not be considered to be corrected unless the projected dollar value of nonmatchable contributions has been reduced to no more than 15% of the amount requested.

6. 11 CFR Part 9036 is amended by revising § 9036.4 to read as follows:

§ 9036.4 Commission review of submissions.

(a) *Non-acceptance of submission for review of matchability.* (1) The Commission will make an initial review of each submission made under 11 CFR Part 9036 to determine if it substantially meets the format requirements of 11 CFR 9036.1(b) and 9036.2(b) and the Federal Election Commission's Guideline for Presentation in Good Order. If the Commission determines that a submission does not substantially meet these requirements, it will not review the matchability of the contributions contained therein.

(2) For submissions made in the year before the Presidential election year (other than submissions made on the last submission date in that year), and submissions made after the candidate's date of ineligibility, the Commission will stop reviewing the submission once the projected dollar value of nonmatchable contributions exceeds 15% of the amount requested, as provided in 11 CFR 9036.2 (c) or (d), as applicable.

(3) Under either paragraphs (a)(1) or (a)(2) of this section, the Commission will return the submission to the candidate and request that it be corrected in accordance with the applicable requirements. If the candidate makes a corrected submission within 5 business days after the Commission's return of the original, the Commission will review the corrected submission prior to the next regularly scheduled submission date, and will certify to the Secretary the amount to which the candidate is entitled on the regularly scheduled certification date for the original submission. Corrected submissions made after this five-day period will be reviewed subsequent to the next regularly scheduled submission date, and the Commission will certify to the Secretary the amount to which the candidate is entitled on the next regularly scheduled certification date. Each corrected submission shall only contain contributions previously submitted for matching in the returned submission and no new or additional contributions.

(b) *Acceptance of submission for review of matchability.* If the Commission determines that a submission made under 11 CFR part 9036 satisfies the requirements of 11 CFR 9036.1(b) and 9036.2 (b), (c) and (d), and the Federal Election Commission's Guideline for Presentation in Good Order, it will review the matchability of the contributions contained therein. The Commission, in conducting its review, may utilize statistical sampling techniques. Based on the results of its review, the Commission may calculate a matchable amount for the submission which is less than the amount requested by the candidate. If the Commission certifies for payment to the Secretary an amount that is less than the amount requested by the candidate in a particular submission, or reduces the amount of a subsequent certification to the Secretary by adjusting a previous certification made under 11 CFR 9036.2(c)(1), the Commission will notify the candidate in writing of the following:

(1) The amount of the difference between the amount requested and the amount to be certified by the Commission;

(2) The amount of each contribution and the corresponding contributor's name for each contribution that the Commission has rejected as nonmatchable and the reason that it is not matchable; or if statistical sampling is used, the estimated amount of contributions by type and the reason for rejection;

(3) The amount of contributions that have been determined to be matchable and that the Commission will certify to the Secretary for payment; and

(4) A statement that the candidate may supply the Commission with additional documentation or other information in the resubmission of any rejected contribution under 11 CFR 9036.5 in order to show that a rejected contribution is matchable under 11 CFR 9034.2.

(c) *Adjustment of amount to be certified by Commission.* (1) The candidate shall notify the Commission as soon as possible if the candidate or the candidate's authorized committee(s) has knowledge that a contribution submitted for matching does not qualify under 11 CFR 9034.2 as a matchable contribution, such as a check returned to the committee for insufficient funds or a contribution that has been refunded, so that the Commission may properly adjust the amount to be certified for payment.

(2) After the candidate's date of ineligibility, if the candidate does not receive the entire amount of matching funds on a regularly scheduled payment date due to a shortfall in the matching payment account, prior to each subsequent payment date on which the candidate receives payments from any previous certification, the Commission may revise the amount previously certified for payment pursuant to 11 CFR 9034.5(f). The Commission will promptly notify the Secretary and the candidate of any revision to the amount certified.

(d) *Commission audit of submissions.* The Commission may determine, for the reasons stated in 11 CFR Part 9039, that an audit and examination of contributions submitted for matching payment is warranted. The audit and examination shall be conducted in accordance with the procedures of 11 CFR part 9039.

7. 11 CFR part 9036 is amended by revising paragraph (d) of § 9036.5 to read as follows:

§ 9036.5 Resubmissions.

* * * * *

(d) *Certification of resubmitted contributions.* Contributions that the Commission determines to be matchable will be certified to the Secretary at least once a month on dates to be determined and published by the Commission. If the candidate chooses to request the specific contributions rejected for matching pursuant to 11 CFR 9036.5(a)(2), the amount certified shall equal only the matchable amount of the particular contribution that meets the standards on resubmission, rather than the amount projected as being nonmatchable based on that contribution due to the sampling techniques used in reviewing the original submission.

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8. 11 CFR part 9036 is amended by revising § 9036.6 to read as follows:

§ 9036.6 Continuation of certification.

Candidates who have received matching funds and who are eligible to continue to receive such funds may continue to submit additional submissions for payment to the Commission on dates specified in the Federal Election Commission's Guideline for Presentation in Good Order. The last date for first-time submissions will be the first Monday in March of the year following the election. No contribution will be matched if it is submitted after the last submission date, regardless of the date the contribution was deposited.

PART 9037—PAYMENTS

9. The authority citation for part 9037 continues to read as follows:

Authority: 26 U.S.C. 9037 and 9039(b).

10. 11 CFR part 9037 is amended by revising section 9037.1 to read as follows:

§ 9037.1 Payments of Presidential primary matching funds.

Upon receipt of a written certification from the Commission, but not before the beginning of the matching payment period, the Secretary will promptly transfer the amount certified from the matching payment account to the candidate. A matching fund certification may not result in full payment by the Secretary in the case of a shortfall in the matching payment account. See 26 CFR 702.9037–1 and 702.9037–2.

11. 11 CFR part 9037 is amended by revising § 9037.2 to read as follows:

§ 9037.2 Equitable distribution of funds.

In making such transfers to candidates of the same political party, the Secretary will seek to achieve an equitable distribution of funds available in the matching payment account, and the Secretary will take into account, in seeking to achieve an equitable distribution of funds available in the matching payment account, the sequence in which such certifications are received. See 26 CFR 702.9037–2(c) regarding partial payments to candidates in the case of a shortfall in the matching payment account.

Dated: July 19, 1991.

John Warren McGarry,

Chairman, Federal Election Committee.

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Dated: July 19, 1991.

John Warren McGarry,

Chairman, Federal Election Committee.

[FR Doc. 91–17611 Filed 7–24–91; 8:45 am]

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federal register

Thursday
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Part VII

Department of Education

Office of Special Education and Rehabilitative Services; Notice Inviting Applications for New Awards Under the Program for Children and Youth With Serious Emotional Disturbance

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Notice Inviting Applications for New Awards Under the Program for Children and Youth With Serious Emotional Disturbance for Fiscal Year 1991

[CFDA No.: 84.237]

PURPOSE: To support projects, including research projects, for the purpose of improving special education and related services to children and youth with serious emotional disturbance, and demonstration projects to provide services for children and youth with serious emotional disturbance.

ELIGIBLE APPLICANTS: The eligible applicants for Priority 1 "Analyzing the Professional Knowledge Base for Students with Serious Emotional Disturbance" are institutions of higher education, State and local educational agencies, and other appropriate public and private nonprofit institutions or agencies.

The eligible applicants for Priority 2 "Designing and Implementing a Comprehensive System of Education and Support for Children with Serious Emotional Disturbance" are local educational agencies in collaboration with mental health entities.

APPLICABLE REGULATIONS: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) when published in final form the notice of proposed priorities and selection criteria.

It is the policy of the Department of Education not to solicit applications before the publication of final priorities. However, in this case it is essential to solicit applications on the basis of the notice of proposed priorities and selection criteria as published in the **Federal Register** on June 19, 1991 (56 FR 28278), because the Department's authority to obligate these funds will expire on September 30, 1991.

The public comment period for the notice of proposed priorities and selection criteria ended on July 19, 1991. No comments were received. Applicants are advised to submit their applications based on the priorities and selection criteria as proposed. If any other changes are made in the final priorities or selection criteria, applicants will be provided the opportunity to amend or resubmit their applications.

Note: The Department is not bound by any estimates in this notice.

APPLICATIONS AVAILABLE: July 25, 1991.

PROGRAM FOR CHILDREN AND YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE (APPLICATION NOTICES FOR FISCAL YEAR 1991)

Title & CFDA No.	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds	Estimated size of award(s)	Estimated number of awards	Project period in months
Analyzing the professional knowledge base for students with serious emotional disturbance (CFDA 84.237A1).	Aug. 26, 1991	Sep. 5, 1991	$300,000	$150,000 [1] per year	2	Up to 24
Designing and implementing a comprehensive system of education and support for children with serious emotional disturbance (CFDA 84.237B1).	Aug. 26, 1991	Sep. 5, 1991	$1,500,000	$150,000 [2] for 18 mo.	10 [2]	Up to 48

[1] Amount listed is the estimated funding level for the first 12 months of the project(s). It is anticipated that the funding level for the following year will be the same.

[2] Amounts listed for both the funding level and the number of projects are estimates for the first 18 months of the projects (or Phase 1 as described in the priority). It is estimated that only three projects will be funded in Phase 2 at a level not to exceed $300,000 for up to 30 months.

FOR APPLICATIONS OR INFORMATION CONTACT: Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW. (Switzer Building, room 3524—M/s/2640), Washington, DC 20202. Telephone: (202) 732–1099. (TDD: (202) 732–6153.)

Program Authority: 20 U.S.C. 1426.

Dated: July 22, 1991.

Michael E. Vader,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 91–17708 Filed 7–24–91; 8:45 am]

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Note: The Department is not bound by any estimates in this notice.

APPLICATIONS AVAILABLE: July 25, 1991.

AL DISTURBANCE (APPLICATION NOTICES FOR FISCAL YEAR 1991)

e for ental review	Available funds	Estimated size of award(s)	Estimated number of awards	Project period in months
	$300,000	$150,000 [1] per year	2	Up to 24.
	$1,500,000	$150,000 [2] for 18 mo.	10 [2]	Up to 48.

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estimates for the first 18 months of the projects (or Phase 1 as described in the
not to exceed $300,000 for up to 30 months.

Vashington, DC
02) 732–1099. (TDD:

20 U.S.C. 1426.

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Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 91–17708 Filed 7–24–91; 8:45 am]

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federal register

Thursday
July 25, 1991

Part VIII

Proclamation 6316—Korean War Veterans Remembrance Week, 1991

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Title 3—

The President

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Thursday, July 25, 1991

Presidential Documents

Title 3—

The President

Proclamation 6316 of July 23, 1991

Korean War Veterans Remembrance Week, 1991

By the President of the United States of America

A Proclamation

In 1950, while Americans were still enjoying a sense of pride and relief following the Allied victory in World War II, our Nation suddenly became engaged in another great struggle for freedom. On June 25 of that year, communist forces of the North launched a ruthless attack against the free Republic of Korea. The United Nations swiftly condemned the invasion and formed the UN Command to repel the aggressor. America's Armed Forces, many of whom had just served during World War II, joined with those of 17 other nations in the ensuing conflict. Forty years before the international effort to liberate Kuwait, these courageous individuals demonstrated the power of collective resolve in the face of lawless aggression.

Addressing the American troops serving in Korea, President Truman declared: "You will go down in history as the first army to fight under a flag of a world organization in the defense of human freedom . . . . Victory may be in your hands, but you are winning a greater thing than military victory, for you are vindicating the idea of freedom under international law." By the time a cease-fire was negotiated at Panmunjom on July 27, 1953, more than 54,000 American servicemen had died to defend the lives and liberty of others. Some 103,000 were wounded, and today 8,000 are still listed as missing in action. This week, we honor our Nation's Korean War veterans and remember in prayer those heroes who made the ultimate sacrifice at places such as Inchon, the Pusan Perimeter, and the Chosin Reservoir.

Veterans of the Korean War can take pride in their legacy. These heroes and their fallen comrades not only helped to restore the freedom of South Korea but also won a decisive victory for the ideals of liberty and self-determination. Today there is hope for peace and reconciliation on the Korean Peninsula, and in just a few months the Republic of Korea will take its rightful place as a member of the United Nations. These promising developments are a monument to each of the brave and selfless Americans and other UN forces who fought in Korea four decades ago for the sake of peace and freedom.

In grateful recognition of our Nation's Korean War veterans, the Congress, by House Joint Resolution 255, has designated the week beginning July 21, 1991, as "Korean War Veterans Remembrance Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week beginning July 21, 1991, as Korean War Veterans Remembrance Week. I urge all Americans to observe this week with appropriate programs, ceremonies, and activities in honor of the Nation's Korean War veterans. I also ask all Federal departments and agencies, organizations, and individuals to fly the flag of the United States at half-staff on July 27, 1991, in honor of those Americans who died as a result of their service in Korea.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of July, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and sixteenth.

Bush

[FR Doc. 91-17933
Filed 7-24-91; 1:21 pm]
Billing code 3195-01-M

EREOF, I have hereunto set my hand this twenty-third day
r of our Lord nineteen hundred and ninety-one, and of the
he United States of America the two hundred and sixteenth.

Bush

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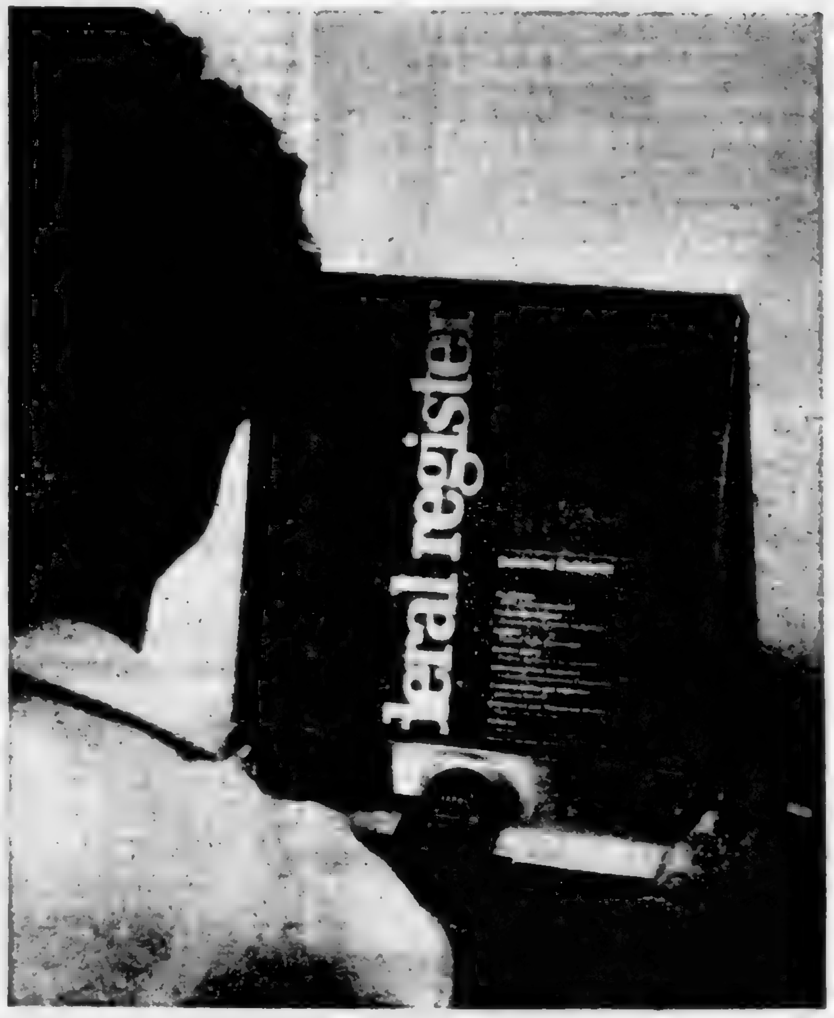

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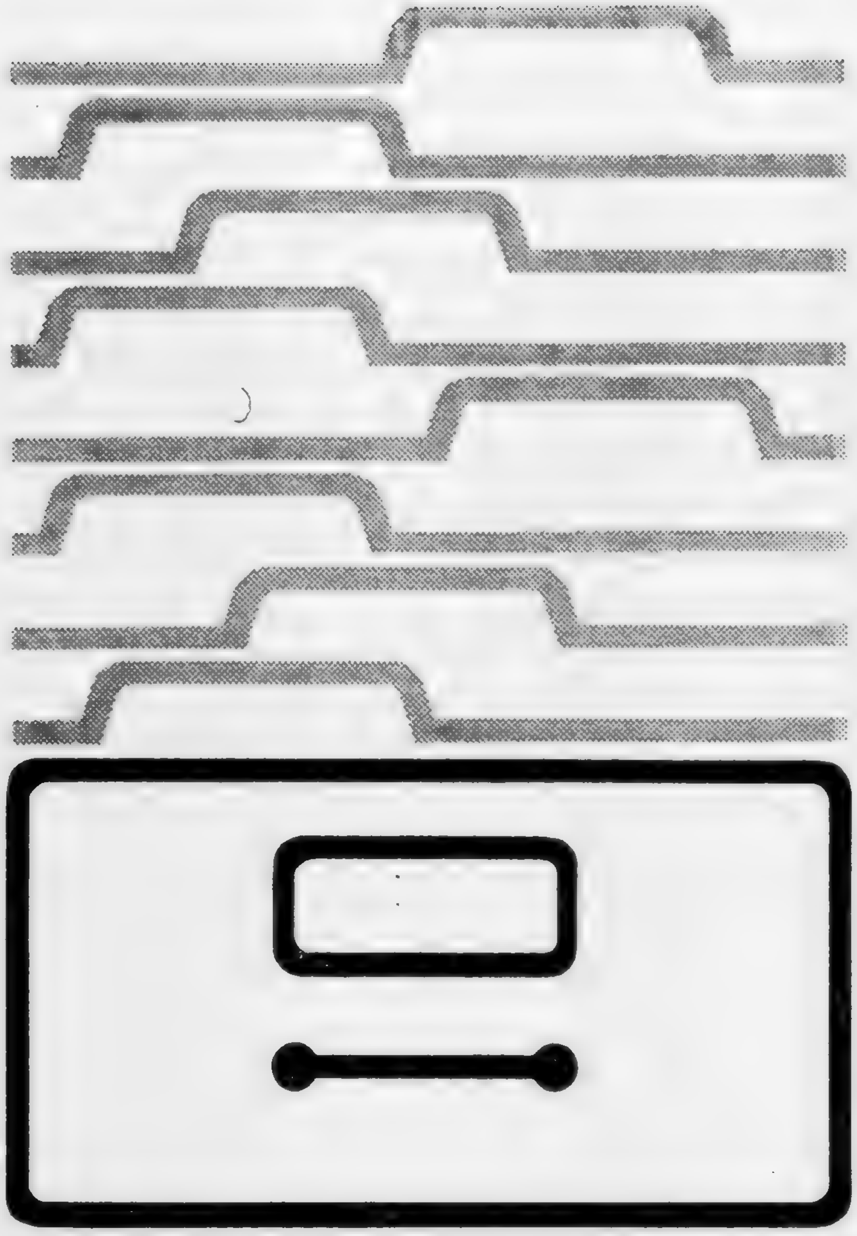

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Rules and Reg

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The Code of Federal Regulation
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Prices of new books are listed
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DEPARTMENT OF AGRICULT

Animal and Plant Health Insp
Service

9 CFR Part 78

[Docket No. 91-103]

Brucellosis in Cattle; State an
Classifications

AGENCY: Animal and Plant Hea
Inspection Service, USDA.

ACTION: Affirmation of interim

SUMMARY: We are affirming wi
change an interim rule that am
brucellosis regulations concern
interstate movement of cattle b
changing the classification of I
from Class Free to Class A. We
determined that Indiana no lon
the standards for Class Free st
meets the standards for Class A
The rule affirmed by this actio
certain restrictions on the inter
movement of cattle from India

EFFECTIVE DATE: August 26, 199

FOR FURTHER INFORMATION CO
Dr. John D. Kopec, Senior Staff
Veterinarian, Cattle Diseases a
Surveillance Staff, VS, APHIS,
room 729, Federal Building, 650
Road, Hyattsville, MD 20782, 3
6188.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective A
1991, and published in the **Fede**
Register on April 29, 1991 (56 F
19547, Docket Number 90-216),
amended the brucellosis regula
CFR part 78 that provide a syst
classifying States or portions o
according to the rate of brucell
infection present, and the gene
effectiveness of a brucellosis c
and eradication program. We r

Rules and Regulations

Federal Register
Vol. 56, No. 144
Friday, July 26, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 91-103]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Indiana from Class Free to Class A. We have determined that Indiana no longer meets the standards for Class Free status, but meets the standards for Class A status. The rule affirmed by this action imposed certain restrictions on the interstate movement of cattle from Indiana.

EFFECTIVE DATE: August 26, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. John D. Kopec, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6188.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective April 23, 1991, and published in the **Federal Register** on April 29, 1991 (56 FR 19545-19547, Docket Number 90-216), we amended the brucellosis regulations in 9 CFR part 78 that provide a system for classifying States or portions of States according to the rate of brucella infection present, and the general effectiveness of a brucellosis control and eradication program. We removed Indiana from the list of Class Free States or areas in § 78.41(a) and added it to the list of Class A States or areas in § 78.41(b).

Comments on the interim rule were required to be received on or before June 28, 1991. We did not receive any comments. The facts presented in the interim rule still provide a basis for this rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the brucellosis status of Indiana from Class Free to Class A increases certain testing and other requirements governing the interstate movement of cattle from Indiana. However, testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by this change. Cattle from certified brucellosis free herds are not affected by this change.

The group affected by this action will be herd owners in Indiana, as well as buyers and importers of Indiana cattle.

There are an estimated 37,000 cattle herds in Indiana that potentially would be affected by this rule, 98 percent of which are owned by small entities. Most of these herds are not certified-free. Test-eligible cattle offered for sale from other than certified-free herds must have a negative test under Class A status regulations. Based on experience, we estimate that approximately 47,000 test-eligible cattle will be tested annually. The average cost of testing cattle for brucellosis is approximately $7.00 per animal. If the total cost of testing is equally distributed among all herds in Indiana, this classification change would cost less than $9 per herd. Therefore, we have determined that changing Indiana's brucellosis status will not significantly affect market patterns.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule amending 9 CFR 78.41 (a) and (b) that was published at 56 FR 19545-19547 on April 29, 1991.

Authority: 21 U.S.C. 111-114a-1, 114g, 115, 117, 120, 121, 123-126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 23rd day of July 1991.

James W. Glosser,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-17775 Filed 7-25-91; 8:45 am]

BILLING CODE 3410-01-M

9 CFR Part 166

[Docket No. 91-070]

Swine Health Inspection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended that Swine Health Protection regulations by: (1) Removing Delaware, Maryland, and Texas from the list of States that have primary enforcement responsibility under the Swine Health Protection Act, and (2) adding Maryland and Texas to the list of States that do not have primary enforcement responsibility under the Swine Health Protection Act but, under cooperative agreements with the Animal and Plant Health Inspection Service, issue licenses to persons desiring to operate a treatment facility for garbage that is to be treated and fed to swine. We took these actions at the request of Delaware, Maryland, and Texas, and pursuant to the Swine Health Protection Act. These actions will help ensure that requirements under the Swine Health Protection Act for the feeding of garbage to swine are enforced in Delaware, Maryland, and Texas, thereby helping to prevent the dissemination of certain swine diseases.

EFFECTIVE DATE: August 26, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. Delorias M. Lenard, Veterinary Medical Officer, Swine Diseases Staff, VS, APHIS, USDA, room 736–A, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–7767.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the **Federal Register** and effective February 25, 1991 (56 FR 7554–7555, Docket Number 90–120), we amended the Swine Health Protection regulations in 9 CFR part 166 by (1) removing Delaware, Maryland, and Texas from the list of States that have primary enforcement responsibility under the Swine Health Protection Act, and (2) adding Maryland and Texas to the list of States that do not have primary enforcement responsibility under the Swine Health Protection Act but, under cooperative agreements with the Animal and Plant Health Inspection Service, issue licenses to persons desiring to operate a treatment facility for garbage that is to be treated and fed to swine.

Comments on the interim rule were required to be received on or before April 26, 1991. We did not receive any comments. The facts presented in the interim rule still provide a basis for this rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing that rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Almost all persons who operate facilities for the treatment of garbage to be fed to swine or who allow the feeding of garbage to swine are considered small entities.

Delaware has no licensed garbage feeders; therefore, removing Delaware from the list of States that have primary enforcement responsibility under the Act will have no impact on any small entities in that State.

Maryland has one licensed garbage feeder and Texas has approximatley 440, but these entities should experience no economic impact as a result of this action. The Maryland and Texas law regarding the feeding of garbage to swine is essentially identical to Federal law, and the switch from State to Federal primary enforcement responsibility in Maryland and Texas has had no significant economic impact on the business operations of garbage feeders in those States.

The change in enforcement responsibility resulted in an increase in the level of enforcement activity in Delaware, Maryland, and Texas. However, a review of our records indicates that the switch from State to Federal primary enforcement responsibility has resulted in no appreciable change in the number of garbage feeding violations encountered in these States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 166

African swine fever, Animal disease, Foot-and-mouth disease, Garbage, Hog cholera, Hogs, Reporting and recordkeeping requirements, Swine vesicular disease, Vesicular exanthema of swine.

PART 166—SWINE HEALTH PROTECTION

Accordingly, we are adopting as a final rule, without change, the interim rule amending 9 CFR 166.15 that was published at 56 FR 7554–7555 on February 25, 1991.

Authority: 7 U.S.C. 3802, 3803, 3804, 3808, 3809, 3811; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 23rd day of July 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–17774 Filed 7–25–91; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90–NM–293–AD; Amdt. 39–7085; AD 91–09–16 R1]

Airworthiness Directives; Aerospatiale Model ATR42–300 and ATR42–320 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment rescinds Airworthiness Directive (AD) 91–09–16, Amendment 39–6985, applicable to certain Aerospatiale Model ATR42–300 and ATR42–320 series airplanes, which requires the installation of a reinforcing plate on Stringer 14 at Frame 25. This

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Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 166

African swine fever, Animal disease, Foot-and-mouth disease, Garbage, Hog cholera, Hogs, Reporting and recordkeeping requirements, Swine vesicular disease, Vesicular exanthema of swine.

PART 166—SWINE HEALTH PROTECTION

Accordingly, we are adopting as a final rule, without change, the interim rule amending 9 CFR 166.15 that was published at 56 FR 7554–7555 on February 25, 1991.

Authority: 7 U.S.C. 3802, 3803, 3804, 3808, 3809, 3811; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 23rd day of July 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–17774 Filed 7–25–91; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90–NM–293–AD; Amdt. 39–7085; AD 91–09–16 R1]

Airworthiness Directives; Aerospatiale Model ATR42–300 and ATR42–320 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment rescinds Airworthiness Directive (AD) 91–09–16, Amendment 39–6985, applicable to certain Aerospatiale Model ATR42–300 and ATR42–320 series airplanes, which requires the installation of a reinforcing plate on Stringer 14 at Frame 25. This installation is intended to prevent damage due to potential fatigue identified in the area of Frame 25 in the main landing gear bay area. Since issuance of that AD, the FAA has been advised that the addressed unsafe condition applies to the area at Stringer 15 rather than Stringer 14.

EFFECTIVE DATE: July 26, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Woodford Boyce, Standardization Branch, ANM–113; telephone (206) 227–2137. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: On April 16, 1991, the FAA issued AD 91–09–16, Amendment 39–6985 (56 FR 19254, April 26, 1991), applicable to certain Aerospatiale Model ATR42–300 and ATR42–320 series airplanes, which requires the installation of a reinforcing plate on Stringer 14 at Frame 25. That action was prompted by fatigue testing conducted by the manufacturer which identified fatigue damage in the landing gear bay area in line with Frame 25. This condition, if not corrected, could result in collapse of the main landing gear.

Since issuance of that AD, the manufacturer has advised the FAA that the addressed unsafe condition applies to the area of Frame 25 at Stringer 15, rather than at Stringer 14, as was cited in the AD. The reinforcement plate should be installed at Stringer 15, rather than Stringer 14.

Since an unsafe condition does not exist in regard to Stringer 14, the FAA has determined that it is necessary to rescind AD 91–09–16 in order to prevent operators from performing an unnecessary modification of Stringer 14. The FAA intends to follow this action with additional rulemaking action to address the unsafe condition as it relates to Stringer 15.

Since this action rescinds an unnecessary modification, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the rescission may be made effective upon publication in the **Federal Register**.

The Rescission

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–6985 as follows:

91–09–16 R1 Aerospatiale. Amendment 39–6985 as rescinded by Amendment 39–7085. Docket No. 90–NM–293–AD.

Applicability: Model ATR42–300 and ATR42–320 series airplanes, Serial Numbers 3 through 151, certificated in any category.

This amendment (39–7085, AD 91–09–16 R1) is effective July 26, 1991.

Issued in Renton, Washington, on July 10, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–17767 Filed 7–25–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–29–AD; Amendment 39–7088; AD 91–15–23]

Airworthiness Directives; Aerospatiale Model Nord 262A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Aerospatiale Model Nord 262A series airplanes, which requires repetitive visual and eddy current inspections to detect corrosion and damage to the fuselage skin panel junctions, and repair, if necessary. This amendment is prompted by reports of corrosion found on in-service airplanes in the fuselage skin panel lap joints. This condition, if not corrected, could result in reduced structural integrity of the fuselage.

EFFECTIVE DATE: August 26, 1991.

ADDRESSES: The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM–113; telephone (206) 227–2140. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain Aerospatiale Model Nord 262A series airplanes, which requires repetitive visual and eddy current inspections to detect corrosion and damage to the fuselage skin panel junctions, and repair, if necessary, was published in the **Federal Register** on March 21, 1991 (56 FR 11972).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

Since issuance of the notice, Aerospatiale has issued Revision 1 to N262-Fregate Service Bulletin 53–34, dated March 24, 1991, which clarifies the procedures for inspection of fuselage skin panel junctions. Aerospatiale has also issued Revision 1 to N262-Fregate Service Bulletin 53–35, dated March 24, 1991, which specifies additional reference materials, and provides additional clarification to accomplish the procedures for preventive and curative measures to be applied at the fuselage skin panel junctions. The FAA has revised the final rule to reflect the latest revisions of these service bulletins as the appropriate source of service information.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator, nor increase the scope of the AD.

It is estimated that 14 airplanes of U.S. registry would be affected by this AD, that it would take approximately 30 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $23,100.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the rules docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91–15–23. Aerospatiale: Amendment 39–7088. Docket No. 91–NM–29–AD

Applicability: Model Nord 262A series airplanes, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent reduced structural integrity of the fuselage, accomplish the following:

A. For airplanes which are 20 years old or more since new as of the effective date of this AD: Within 2 years after the effective date of this AD, perform internal and external detailed visual inspections and a low frequency eddy current inspection of the fuselage skin panel junctions, in accordance with Aerospatiale N262-Fregate Service Bulletin 53–34, Revision 1, dated March 24, 1991.

B. For airplanes which are less than 20 years old since new as of the effective date of this AD: Within 4 years after the effective date of this AD, perform internal and external detailed visual inspections and a low frequency eddy current inspection of the fuselage skin panel junctions, in accordance with Aerospatiale N262-Fregate Service Bulletin 53–34, Revision 1, dated March 24, 1991.

C. If no corrosion is found as a result of the inspections required by paragraph A. or B. of this AD, accomplish the following:

1. At intervals not to exceed one year, perform an external visual inspection of the fuselage from Frame N to Frame 27, in accordance with Aerospatiale N262-Fregate Service Bulletin 53–34, Revision 1, dated March 24, 1991.

2. At intervals not to exceed 2 years, perform an internal visual inspection from Frame N to Frame 27, in accordance with Aerospatiale N262-Fregate Service Bulletin 53–34, Revision 1, dated March 24, 1991.

3. At intervals not to exceed 6 years, accomplish the following:

a. Non-Pressurized Area: Perform internal and external detailed visual inspections of the circumferential and longitudinal skin panel junction from Frame N to Frame J and from Frame 21 to Frame 27, in accordance with the Accomplishment Instructions, paragraph 2C(3)A of Aerospatiale N262-Fregate Service Bulletin 53–34, Revision 1, dated March 24, 1991.

b. Pressurized Area: Perform internal and external detailed visual inspections of the circumferential and longitudinal fuselage skin panel junctions in accordance with the Accomplishment Instructions, paragraph 2C(3)A of Aerospatiale N262-Fregate Service Bulletin 53–34, Revision 1, dated March 24, 1991.

D. If corrosion is found as a result of the inspections required by paragraph A., B., or C. of this AD, and the corrosion depth is equal to or less than 30 microns, accomplish one of the following:

1. Perform external visual inspections at intervals not to exceed one year, and low frequency eddy current inspections at intervals not to exceed 2 years, in accordance with Aerospatiale N262-Fregate Service Bulletin 53–34, Revision 1, dated March 24, 1991; or

2. Prior to further flight, repair in accordance with Scheme No. 1 (Preventative Measure Procedure without Removal of Panels) specified in Aerospatiale N262-Fregate Service Bulletin 53–35, Revision 1, dated March 24, 1991. Thereafter, repeat the visual and low frequency eddy current inspections at intervals not to exceed 6 years, in accordance with Aerospatiale N262-Fregate Service Bulletin 53–34, Revision 1, dated March 24, 1991; or

3. Prior to further flight, repair in accordance with Scheme No. 2 (Curative Measures Procedures with Removal of Panels) specified in Aerospatiale N262-Fregate Service Bulletin 53–35, Revision 1, dated March 24, 1991. This constitutes terminating action for the repetitive inspections of that area required by this AD.

E. If corrosion is found as a result of the inspections required by paragraph A., B., or C. of this AD, and the corrosion depth is more than 30 microns but less than or equal to 100 microns, accomplish one of the following:

1. Prior to further flight, repair in accordance with Scheme No. 1 (Preventative Measure Procedure without Removal of Panels) specified in Aerospatiale N262-Fregate Service Bulletin 53–35, Revision 1, dated March 24, 1991. Thereafter, repeat the visual and low frequency eddy current inspections at intervals not to exceed 2 years, in accordance with Aerospatiale N262-Fregate Service Bulletin 53–34, Revision 1, dated March 24, 1991.

2. Prior to further flight, repair in accordance with Scheme No. 2 (Curative Measures Procedures with Removal of Panels) specified in Aerospatiale N262-Fregate Service Bulletin 53–35, Revision 1, dated March 24, 1991. This constitutes terminating action for the repetitive inspections for that area required by this AD.

F. If corrosion is found as a result of the inspections required by paragraph A., B., or C. of this AD, and the corrosion depth is more than 100 microns, prior to further flight, repair in accordance with Scheme No. 2 (Curative Measures Procedures with Removal of Panels) specified in Aerospatiale N262-Fregate Service Bulletin 53–35, Revision 1, dated March 24, 1991. This constitutes terminating action for the repetitive inspections of that area required by this AD.

G. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

H. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment (39–7088, AD 91–15–23) becomes effective August 26, 1991.

Issued in Renton, Washington, on July 12, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–17769 Filed 7–25–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–CE–08–AD; Amendment 39–7084; AD 91–15–20]

Airworthiness Directives; Beech Models 95–C55, C55A, D55, D55A, E55, E55A, 58, and 58A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Beech Models 95–C55, C55A, D55, D55A, E55, E55A, 58, and 58A airplanes. This action requires periodic inspections for cracks in the engine mounts. There have been reports of cracked engine mounts on the affected airplanes. The actions specified by this AD are intended to detect cracked engine mounts and prevent severe engine vibration and possible

Fregate Service Bulletin
ated March 24, 1991.
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etin 53–35, Revision 1,
1. Thereafter, repeat the
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rea required by this AD.

F. If corrosion is found as a result of the inspections required by paragraph A., B., or C. of this AD, and the corrosion depth is more than 100 microns, prior to further flight, repair in accordance with Scheme No. 2 (Curative Measures Procedures with Removal of Panels) specified in Aerospatiale N262-Fregate Service Bulletin 53–35, Revision 1, dated March 24, 1991. This constitutes terminating action for the repetitive inspections of that area required by this AD.

G. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

H. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment (39–7088, AD 91–15–23) becomes effective August 26, 1991.

Issued in Renton, Washington, on July 12, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–17769 Filed 7–25–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–CE–08–AD; Amendment 39–7084; AD 91–15–20]

Airworthiness Directives; Beech Models 95–C55, C55A, D55, D55A, E55, E55A, 58, and 58A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Beech Models 95–C55, C55A, D55, D55A, E55, E55A, 58, and 58A airplanes. This action requires periodic inspections for cracks in the engine mounts. There have been reports of cracked engine mounts on the affected airplanes. The actions specified by this AD are intended to detect cracked engine mounts and prevent severe engine vibration and possible separation of the engine from the airplane.

DATES: Effective September 3, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of September 3, 1991.

ADDRESSES: Beech Service Bulletin No. 2362, Revision 1, dated February 1991, and Beech Kit 58–9007–1S that are discussed in this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. The service information may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Engler, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4409.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Beech Models 95–C55, C55A, D55, D55A, E55, E55A, 58, and 58A airplanes was published in the **Federal Register** on March 14, 1991 (56 FR 10837). The action proposed inspections of each engine mount for cracks, and, if found cracked, either installation of Beech Kit 58–9007–1S or replacement with a new engine installation of Beech Kit 58–9007–1S or replacement with a new engine mount (part number 96–910010–67) in accordance with the instructions in Beech Service Bulletin (SB) No. 2362, Revision 1, dated February 1991.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

The commenter stated that the initial compliance time of 100 hours time-in-service (TIS) is contrary to Beech SB No. 2362, which specifies the inspection when the airplane accumulates 600 hours TIS, and that service history on engine mount cracking does not support the 100-hour TIS requirement. The FAA has evaluated the initial compliance time and has determined that the 100-hour TIS compliance time should be changed to read "upon the accumulation of 600 hours TIS or within the next 100 hours TIS after the effective date, whichever occurs later". This concurs with the instructions in Beech SB 2362, and does not inadvertently ground airplanes that have accumulated over 600 hours TIS.

Paragraph (a) of the proposed AD would require both visual and dye penetrant inspections. The commenter stated that this too was contrary to Beech SB 2362, which requires only a visual inspection and specifies that the dye penetrant inspection is optional to confirm cracks. The FAA concurs that only the visual inspection should be required and has revised the AD accordingly. Since the FAA has no way of enforcing optional inspections, the AD is currently written does not require dye penetrant inspections.

The commenter recommended that paragraph (a)(2)(ii) of the AD read "* * * replace the cracked engine mount * * *" instead of "* * * remove and replace the cracked engine mount * * *" because the engine mount was already removed. The FAA concurs since paragraph (a)(2) already requires the removal of the engine mount.

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the remarks discussed above and minor editorial corrections. These comments and minor corrections will not change the intent of the AD nor add any additional burden upon the public than was already proposed.

It is estimated that 2,812 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 4 hours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $618,640.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034 February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

AD 91–15–20 Beech: Amendment 39–7084; Docket No. 91–CE–08–AD.

Applicability: Models 95–C55, 95–C55A, D55, D55A, E55, and E55A airplanes (serial number (S/N) TC350, and S/N TE–1 through TE–1201), and Models 58 and 58A airplanes (S/N TH–1 through TH–1610), certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To prevent severe engine vibration and possible separation of the engine from the airplane caused by cracked engine mounts, accomplish the following:

(a) Upon the accumulation of 600 hours time-in-service (TIS) or within 100 hours TIS after the effective date of this AD, whichever occurs later, inspect each engine mount in accordance with the instructions in Beech Service Bulletin (SB) No. 2362, Revision 1, dated February 1991.

(1) If no cracks are found, repeat the inspection on each engine mount thereafter at intervals not to exceed 100 hours TIS.

(2) If a crack is found on an engine mount, prior to further flight, remove the engine from the affected engine mount, remove the mount from the airplane, and magnetic particle inspect the engine mount to determine the length of the crack in accordance with the instructions in Beech SB No. 2362, Revision 1, dated February 1991.

(i) If the length of the crack is .52 inches (true) or less, repair and reinforce the engine mount using Beech Kit 58–9007–1S in accordance with the instructions in Beech SB 2362, Revision 1, dated February 1991.

(ii) If the length of the crack is greater than .52 inches (true), replace the cracked engine mount with a part number (P/N) 96–910010–67 engine mount in accordance with the instructions in Beech SB No. 2362, Revision 1, dated February 1991.

(3) The repetitive inspections specified in paragraph (a)(1) of this AD may be terminated on an engine mount that has been repaired and reinforced with Beech Kit 58–9007–1S or if a P/N 96–910010–67 engine mount has been installed.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

(d) The inspections, modifications, and replacements required by this AD shall be done in accordance with Beech Service Bulletin No. 2382, Revision 1, dated February 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

This amendment becomes effective on September 3, 1991.

Issued in Kansas City, Missouri, on July 10, 1991.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-17768 Filed 7-25-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-ANE-21; Amendment 39-7079]

Airworthiness Directives; E.I. DuPont de Nemours & Co., TSO-C116 Crewmember Protective Breathing Equipment Model 4566M37B-042N

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to E.I. DuPont de Nemours & Co. TSO-C116 Crewmember Protective Breathing Equipment (CPBE) Model 4566M37B-042N, which requires modification to the DuPont CPBE Model 4566M37B-042N. This amendment is prompted by field service reports indicating that the Velcro strips affixed to the barrier pouch become attached to the Nomex felt bracket liner rendering the pouch difficult to remove from the bracket. This condition, if not corrected, could result in the failure of a crewmember to remove the pouch from the bracket in case of a fire.

DATES: Effective August 15, 1991.

Comments must be received no later than August 26, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 15, 1991.

ADDRESSES: Submit comments in duplicate to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-ANE-21, 12 New England Executive Park, Burlington, Massachusetts 01803-5299, or deliver in duplicate to room 311 at the above address.

Comments may be inspected at the above location between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service information may be obtained from E.I. DuPont de Nemours & Co., P.O. Box 791, 505 Blue Ball Road Elkton, MD 21921. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Mr. D. Kramar, Aerospace Engineer, Systems and Equipment Branch, ANE-173, New York Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581-1145; telephone (516) 791-6427.

SUPPLEMENTARY INFORMATION: This amendment is prompted by field service reports and manufacturer tests which indicate that the Velcro strips affixed to the barrier pouch become attached to the Nomex felt bracket liner rendering the pouch difficult to remove from the bracket. This condition, if not corrected, could result in the failure of a crewmember to remove the pouch from the bracket in case of a fire.

The FAA has reviewed and approved the technical contents of E.I. DuPont de Nemours & Co. Service Bulletin 002, dated February 5, 1991, which provides instructions for modification of the existing pouch by removal of the Velcro strips and shims, and replacement with new left and right side spacers.

Since this situation is likely to exist or develop on other CPBE of the same TSO approved design, this AD requires modification of the DuPont CPBE, Model 4566M37B-042N, in accordance with the service bulletin previously described.

Since this condition may result in failure of a crewmember to remove the CPBE needed to fight a fire and/or function in a smoked filled environment there is a need to complete CPBE modification with minimum delay. Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Although this action is in the form of a final rule, which involves an emergency and, thus, was not preceded by notice and public procedure, interested persons are invited to submit such written data, views, or arguments as they may desire regarding this AD. Communications should identify the docket number and be submitted to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-ANE-21, 12 New England Executive Park, Burlington, Massachusetts 01803-5299. All communications received by the deadline date indicated above will be considered by the Administrator, and the AD may be changed in light of the comments received.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, and Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

91–15–15 E.I. DuPont de Nemours & Company: (Amendment 39–7079. Docket No. 91–ANE–21.)

Applicability: E.I. DuPont de Nemours & Co., TSO–C116 Crewmember Protective Breathing Equipment Model 4566M37B–042N, with serial numbers below S/N V9100000, installed on, but not limited to transport category aircraft.

Compliance: Required as indicated, unless previously accomplished.

To prevent the failure of a crewmember to remove the pouch from the bracket in case of a fire, accomplish the following:

(a) Remove the Velcro Strips and insert new left and right spacers in accordance with Paragraph 2, Procedure Instructions, of E.I. DuPont de Nemours & Co., Service Bulletin 002, dated February 5, 1991.

(b) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(c) Upon submission of substantiating data by an owner or operator through an FAA Inspector (maintenance, avionics, or operations, as appropriate), and alternate method of compliance with the requirements of this AD or adjustments to the compliance specified in this AD may be approved by the Manager, New York Aircraft Certification Office, 181 South Franklin Ave., Valley Stream, New York, 11581–1145.

(d) The modifications shall be done in accordance with the following E.I. DuPont de Nemours & Co. Service Bulletin No. 002:

Page No.	Issue	Date
1–5	Original	February 5, 1991.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from E.I. DuPont de Nemours & Co., P.O. Box 791, 505 Blue Ball Road, Elkton, Maryland 21921. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts, or New York Aircraft Certification Office, 181 South Franklin Ave., Valley Stream, New York, or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This agreement (39–7079, AD 91–15–15) becomes effective August 15, 1991.

Issued in Burlington, Massachusetts, on July 3, 1991.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 91–17735 Filed 7–25–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 91–AGL–5]

Transition Area Establishment; Harbor Springs, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to establish the Harbor Springs, MI, transition area. A VOR–A Standard Instrument Approach Procedure (SIAP) has been developed to serve Harbor Springs Airport. The SIAP is predicated on the Pellston VORTAC. This action lowers the base of controlled airspace from 1200 to 700 feet above the surface in the vicinity of the airport. The intended effect is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace. Concurrent with the SIAP publication, the operating status of the airport will change from visual flight rules (VFR) to instrument flight rules (IFR).

EFFECTIVE DATE: 0901 u.t.c., September 19, 1991.

FOR FURTHER INFORMATION CONTACT: Angeline Perri, Air Traffic Division, System Management Branch, Airspace Section, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7571.

SUPPLEMENTARY INFORMATION:

History

On Friday, June 7, 1991, the Federal Aviation Administration (FAA) proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a transition area airpsace near Harbor Springs, MI (56 FR 26355).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes a transition area airspace near Harbor Springs, MI. The transition area is being established to accommodate a new VOR–A SIAP to Harbor Springs Airport, Harbor Springs, MI. This action lowers the base of controlled airspace from 1200 to 700 feet above the surface in the vicinity of Harbor Springs Airport. Concurrent with the SIAP publication the operating status of the airport will change from VFR to IFR.

The development of a new SIAP requires that the FAA alter the designated airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, Transaction areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Harbor Springs, MI [New]

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Harbor Springs Airport (lat.45°25'29"N., long. 84°54'34"W.); excluding that airspace within the Pellston, MI, control zone and transition area.

Issued in Des Plaines, Illinois on July 18, 1991.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 91-17770 Filed 7-25-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 73

[Airspace Docket No. 90-ANM-10]

Establishment of Temporary Restricted Area R-3203D Boise, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes temporary Restricted Area R-3203D Boise, ID, for the period August 3-17, 1991. The temporary restricted area is established adjacent to an existing Restricted Area R-3203A Boise, ID, to provide essential ground maneuvering space to meet Idaho National Guard annual training requirements.

EFFECTIVE DATE: August 3, 1991.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Military Operations Program Office (ATM-420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-7686.

SUPPLEMENTARY INFORMATION:

History

On June 7, 1991, the FAA proposed to amend part 73 of the Federal Aviation Regulations (14 CFR part 73) to establish temporary Restricted Area R-3203D Boise, ID, for the period August 3-17, 1991 (56 FR 26356). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 73.32 of part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The Rule

This amendment to part 73 of the Federal Aviation Regulations establishes temporary Restricted Area R-3203D Boise, ID, adjacent to the existing Restricted Area R-3203A, in order to provide additional ground maneuvering space needed by the Idaho Army National Guard in conducting its annual training program. The restricted area will be in effect only for the period August 3-17, 1991. All artillery firing will be directed into the existing Artillery Impact Area located approximately in the center of Restricted Area R-3203A. The temporary restricted area is needed to provide protected airspace to contain the projectiles during flight between the surface firing point and entry into the existing Restricted Area R-3203A.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

In consideration of the need to allow the Idaho National Guard to use the subject area for their August 3-17 training mission and the safety need to restrict the operation of aircraft through this area during that time period, the FAA finds good cause, pursuant to 5 U.S.C. 553(d), for making this amendment effective in less than 30 days in order to promote the safe and efficient handling of air traffic in the area.

Environmental Review

The temporary restricted area will be in effect only from August 3 to August 17, 1991. The temporary restricted area will prohibit the flight of nonparticipating aircraft through the area, but will not direct nonparticipating aircraft to operate in any set or established route outside the restricted area. The National Guard Bureau and the Idaho National Guard (Guard) completed a Final Environmental Impact Statement on the Orchard Training Area Facilities and examined the environmental effects associated with the type of activity taking place within the restricted area. The National Guard determined that none of the impacts of the actions occurring within the restricted area will significantly affect the environment. Finding that the firing points in the temporary restricted area will be farther from nesting areas, that the projectiles will be fired into existing artillery impact areas, and that noise impacts will be no greater than that currently caused by the existing firing points inside the restricted area, the National Guard determined that all of the possible environmental impacts of the temporary restricted area were addressed in the Final Environmental Impact Statement.

On the basis of the environmental documentation developed by the National Guard, and the FAA's review of the ATC procedures in effect in the area before and after adoption of the temporary restricted area, the FAA finds that there will be no significant impact on the environment as a result of this action.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 73 of the Federal Aviation Regulations (14 CFR part 73) is amended, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.32 [Amended]

2. Section 73.32 is amended as follows:

R-3203D Boise, ID [New]

Boundaries. Beginning at lat. 43°14'00"N., long. 116°16'30"W.; to lat. 43°17'51"N., long. 116°16'25"W.; to lat. 43°19'02"N., long. 116°14'45"W.; to lat. 43°19'02"N., long. 116°06'36"W.; to lat. 43°15'39"N., long. 116°00'39"W.; to lat. 43°15'00"N., long. 116°01'00"W.; to lat. 43°17'00"N., long. 116°05'00"W.; to lat. 43°17'00"N., long. 116°12'00"W.; thence to point of beginning.

Altitudes. Surface to 10,000 feet MSL.

Times of use. As scheduled by NOTAM 24 hours in advance for the period August 3-17,

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established route outside the restricted area. The National Guard Bureau and the Idaho National Guard (Guard) completed a Final Environmental Impact Statement on the Orchard Training Area Facilities and examined the environmental effects associated with the type of activity taking place within the restricted area. The National Guard determined that none of the impacts of the actions occurring within the restricted area will significantly affect the environment. Finding that the firing points in the temporary restricted area will be farther from nesting areas, that the projectiles will be fired into existing artillery impact areas, and that noise impacts will be no greater than that currently caused by the existing firing points inside the restricted area, the National Guard determined that all of the possible environmental impacts of the temporary restricted area were addressed in the Final Environmental Impact Statement.

On the basis of the environmental documentation developed by the National Guard, and the FAA's review of the ATC procedures in effect in the area before and after adoption of the temporary restricted area, the FAA finds that there will be no significant impact on the environment as a result of this action.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 73 of the Federal Aviation Regulations (14 CFR part 73) is amended, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 73.32 [Amended]

2. Section 73.32 is amended as follows:

R–3203D Boise, ID [New]

Boundaries. Beginning at lat. 43°14'00"N., long. 116°16'30"W.; to lat. 43°17'51"N., long. 116°16'25"W.; to lat. 43°19'02"N., long. 116°14'45"W.; to lat. 43°19'02"N., long. 116°06'36"W.; to lat. 43°15'39"N., long. 116°00'39"W.; to lat. 43°15'00"N., long. 116°01'00"W.; to lat. 43°17'00"N., long. 116°05'00"W.; to lat. 43°17'00"N., long. 116°12'00"W.; thence to point of beginning.

Altitudes. Surface to 10,000 feet MSL.

Times of use. As scheduled by NOTAM 24 hours in advance for the period August 3–17, 1991, only. Restricted area is terminated after 2359 hours local time on August 17, 1991.

Controlling agency. FAA, Salt Lake City ARTCC.

Using agency. Army National Guard, Orchard, ID.

Issued in Washington, DC, on July 22, 1991.

Jerry W. Ball,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 91–17771 Filed 7–25–91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

U.S. Customs Service

19 CFR Part 4

[T.D. 91–63]

Addition of Luxembourg to the List of Nations Entitled to Special Tonnage Tax Exemption

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: Pursuant to information provided by the Department of State, the Customs Service has found that Luxembourg does not impose discriminating duties of tonnage or imposts upon vessels belonging to citizens of the U.S., and that, accordingly, vessels of Luxembourg are exempt from special tonnage taxes and light money in ports of the United States. This amendment adds Luxembourg to the list of nations whose vessels are exempt from the payment of any higher tonnage duties than are applicable to vessels of the U.S. and from the payment of light money.

EFFECTIVE DATE: The reciprocal privileges for vessels registered in the Luxembourg became effective on January 1, 1991. This amendment is effective July 26, 1991.

FOR FURTHER INFORMATION CONTACT: Barbara E. Whiting, Carrier Rulings Branch. (202–566–5706).

SUPPLEMENTARY INFORMATION:

Background

Generally, the United States imposes regular and special tonnage taxes, and a duty of a specified amount per ton, called "light money", on all foreign vessels which enter United States ports (46 U.S.C. App. 121, 128). However, vessels of a foreign nation may be exempted from the payment of special tonnage taxes and light money upon presentation of satisfactory proof that no discriminatory duties of tonnage or impost are imposed by that foreign nation on U.S. vessels or their cargoes (46 U.S.C. App. 141).

Section 4.22, Customs Regulations (19 CFR 4.22), lists those nations whose vessels have been found to be exempt from the payment of any higher tonnage duties than are applicable to vessels of the U.S. and from the payment of light money. The authority to amend this section of the Customs Regulations has been delegated to the Chief, Regulations and Disclosure Law Branch.

Finding

On the basis of the information received from the Department of State regarding the absence of discriminatory duties of tonnage or impost imposed on U.S. vessels in the ports of Luxembourg, the Customs Service has determined that vessels of Luxembourg are exempt from the payment of the special tonnage tax and light money, effective January 1, 1991, and that the Customs Regulations should be amended accordingly.

Inapplicability of Public Notice and Delayed Effective Date Requirements, the Regulatory Flexibility Act and Executive Order 12291

Because this amendment merely implements a statutory requirement and confers a benefit upon the public, pursuant to 5 U.S.C. 553(b)(3)(B), notice and public procedure thereon are unnecessary; further, for the same reason, good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d) (1) and (3). Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This amendment does not meet the criteria for a "major rule" as defined in E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 4

Customs duties and inspection, Cargo vessels, Maritime carriers, Vessels.

Amendment to the Regulations

Accordingly, part 4 of the Customs Regulations (19 CFR part 4) is amended as follows:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The authority for part 4 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624; and 46 U.S.C. App. 3;

* * * * *

§ 4.22 also issued under 46 U.S.C. App. 121, 128, 141;

* * * * *

§ 4.22 [Amended]

2. Section 4.22 is amended by inserting "Luxembourg" in appropriate alphabetical order.

Dated: July 18, 1991.

Kathryn C. Peterson,

Chief, Regulations and Disclosure Law Branch.

[FR Doc. 91–17659 Filed 7–25–91; 8:45 am]

BILLING CODE 4820-02-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 22 and 94

[GEN Docket 82-243; FCC 91-191]

Service and Technical Rules for Government and Non-Government Fixed Service Usage of the Frequency Bands 932-935 MHz and 941-944 MHz

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends parts 22 and 94 of the Commission's Rules to limit the number of applications a party can file in the 900 MHz Government/Non-government fixed service for point-to-multipoint channels in a particular market and also maintains existing lottery procedures for these channels. The Third Report and Order portion of this document was initiated by the Fourth Notice of Proposed Rule Making in this proceeding which, in turn, was in response to a petition for reconsideration filed by the Utilities Telecommunications Council; the Memorandum Opinion and Order portion was initiated by a petition for reconsideration filed by Mr. Dennis C. Brown and Mr. Robert H. Schwaninger, Jr. The effect of the Third Report and Order is to preclude parties from filing multiple applications for the purpose of increasing their chances in any lottery held to select licensees, and the effect of the Memorandum Opinion and Order is to keep the lottery procedure as equitable as possible.

EFFECTIVE DATE: August 30, 1991.

FOR FURTHER INFORMATION CONTACT: Tom Mooring (202) 653-8114.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Report and Order/Memorandum Opinion and Order adopted June 17, 1991, and released July 16, 1991. The full text of Commission decisions are available for inspection and copying during regular business hours in the FCC Dockets Branch (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's duplication contractor, Downtown Copy Center, (202) 452-1422, 1114 21st Street NW., Washington, DC 20036.

Summary of Third Report and Order/Memorandum Opinion and Order

1. In November 1984, the Commission adopted a First Report and Order in this proceeding (50 FR 4650; February 1, 1985) that allocated the 932–935/941–944 MHz bands for a co-primary Government and Non-government fixed service. This item was followed by a February 1989 Second Report and Order (54 FR 10326; March 13, 1989) that designated the 932–932.5/941/941.5 MHz bands for point-to-multipoint use and a March 1990 Memorandum Opinion and Order (55 FR 10461; March 21, 1990) that clarified the frequency assignment and coordination procedures to be used. A reconsideration petition to the Memorandum Opinion and Order was filed by Dennis C. Brown and Robert H. Schwaninger, Jr. (Brown and Schwaninger).

2. In October 1990, the Commission adopted a Fourth Notice of Proposed Rule Making (Fourth Notice, 55 FR 42736; October 23, 1990) that proposed rules to limit the number of applications a party can file for point-to-multipoint channels in a geographic area. Specifically, the Commission proposed that common carrier (part 22) applicants be prohibited from identifying the same base station in multiple applications and that private radio (part 94) applicants be limited to one channel or channel pair within a 25-mile radius of each master station. The Commission also proposed, however, that an applicant having a legitimate need for more than a single point-to-multipoint channel or channel pair in a particular market should not be precluded from applying for multiple facilities. Further, the Commission stated that the differing nature of point-to-multipoint uses under parts 22 and 94 of the Commission's Rules requires separate rules for each service.

3. Commenting parties generally agreed with the proposals in the Fourth Notice, but some contended that the proposed rules favored private users while other contended that the proposed rules favored common carriers. Based on a review of the record in this proceeding, the Commission adopts the proposed rules with minor amendment. The Commission believes that the legitimate needs of point-to-multipoint users will exceed the number of available channels in many areas. Therefore, allowing multiple applications to be filed for the same point-to-multipoint requirement would add to the number of applications that could not be granted, would place a large administrative burden on the Commission, and would result in inefficiencies and delayed service to the public. More importantly, permitting multiple applications for these channels would also unfairly provide an advantage to fee-exempt entities and applicants with substantial financial resources. Therefore, the Commission finds that the filing of multiple applications by applicants solely to improve their chances of receiving a channel in a lottery should be prohibited.

4. The Commission also finds that the proposed rules do not generally favor one group of applicants over another. The technical parameters associated with part 94 operations are designed to provide licensees with service areas of approximately 25 miles, within which they can serve many remote sites. Part 22 operations, on the other hand, are generally designed to serve a limited number of designated base stations. However, the Commission finds that the rules proposed for part 94 applicants require some modification so that the proposed prohibition of multiple applications will not be frustrated. To eliminate part 94 multiple applications that are not adequately justified would necessitate review by Commission staff of all such applications prior to a lottery. The Commission finds that such a process would complicate and delay the lottery process in order to provide a limited number of eligible users increased flexibilities. Therefore, during the initial filing period, part 94 applicants will not be permitted to apply for stations within 25 miles of each other. However, these applicants will be allowed to file for additional stations during subsequent phases of licensing consistent with existing policies governing the assignment of frequencies.

5. Several commenters also requested that the Commission clarify how an application for a license under either part 22 or part 94 will be affected by applications/operations in other bands. Specifically, they asked whether applications for point-to-multipoint channels in the 932–932.5/941–941.5 MHz bands will be considered separately from applications for the 928/952 MHz point-to-multipoint channels, and whether an entity holding an existing 928/952 MHz license will be required to provide a full justification when applying for a 932–932.5/941–941.5 MHz station at the time transmitter site or in the same area.

6. The Commission finds that, consistent with current policy, applications in other bands will be taken into consideration when an application for the 932–932.5/941–941.5 MHz bands is processed. This does not mean that the Commission will not consider and grant, if appropriate, an application that is filed to upgrade an existing operation. However, it is important that the appropriate justification for such an application be included.

7. Commenters also inquired as to whether an applicant can apply under both part 22 and part 94 for use of point-to-multipoint channels in the same area for different communications needs. The Commission will consider only those applications for the same type of service, *i.e.*, common carrier or private, when evaluating whether an application is duplicative. Entities having requirements for both common carrier and private systems will be permitted to apply for channels under both parts 22 and 94.

8. In April 1990, Brown and Schwaninger filed the reconsideration petition referenced in paragraph 1, *supra*. In this filing, Brown and Schwaninger suggested that the Commission should not conduct a nationwide lottery to award point-to-multipoint licenses in the 932–932.5 MHz and 941–941.5 MHz bands and proposed, instead, that the Commission use a computerized frequency assignment method that would begin at a randomly selected corner of the contiguous United States and generate assignments to satisfy applications for stations in each geographical area. This program also would identify cases in which applications are mutually exclusive. Brown and Schwaninger further proposed that applicants not be permitted to specify a desired frequency and that mutual exclusivity be defined as multiple applications for the same site selected for frequency assignment by the computer program.

9. The Commission has carefully evaluated Brown and Schwaninger's computer program to determine whether it could be of assistance in assigning the 932–932.5 and 941–941.5 MHz bands

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6. The Commission finds that, consistent with current policy, applications in other bands will be taken into consideration when an application for the 932–932.5/941–941.5 MHz bands is processed. This does not mean that the Commission will not consider and grant, if appropriate, an application that is filed to upgrade an existing operation. However, it is important that the appropriate justification for such an application be included.

7. Commenters also inquired as to whether an applicant can apply under both part 22 and part 94 for use of point-to-multipoint channels in the same area for different communications needs. The Commission will consider only those applications for the same type of service, *i.e.*, common carrier or private, when evaluating whether an application is duplicative. Entities having requirements for both common carrier and private systems will be permitted to apply for channels under both parts 22 and 94.

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9. The Commission has carefully evaluated Brown and Schwaninger's computer program to determine whether it could be of assistance in assigning the 932–932.5 and 941–941.5 MHz bands more efficiently and equitably. It does not appear that their program would be more spectrally efficient than the Commission's proposed method of making assignments. Further, the Commission believes that Brown and Schwaninger's proposal is such a major change from the current assignment process and from the method proposed in the Fourth Notice that a full proceeding, including an adequate notice and comment period, would be required before the Commission could adopt their proposal. The Commission believes that this would unnecessarily delay implementation of service on the 932/941 MHz point-to-multipoint frequencies. Therefore, the Commission will assign point-to-multipoint channels as set forth in the Memorandum Opinion and Order and is denying Brown and Schwaninger's petition for partial reconsideration.

Ordering Clauses

10. Authority for this rule making is contained in sections 4(i), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 303(c), 303(f), 303(g) and 303(r).

11. Accordingly, *It is Ordered*, That parts 22 and 94 of the Commission's Rules, 47 CFR parts 22 and 94, are amended as specified in the Rule Changes, below, effective August 30, 1991. *It is Further Ordered*, That the petition for reconsideration filed by Mr. Dennis C. Brown and Mr. Robert H. Schwaninger, Jr. is Denied.

12. *It is Further Ordered*, That this proceeding is terminated.

List of Subjects

47 CFR Part 22

Communications common carriers; radio.

47 CFR Part 94

Private operational-fixed microwave service, Radio.

Rule Changes

13. Parts 22 and 94 of title 47 of the Code of Federal Regulations are amended as follows:

PART 22—PUBLIC MOBILE SERVICES

14. The authority citation in part 22 continues to read:

Authority: 47 U.S.C. 154, 303, unless otherwise noted.

15. Section 22.501 is amended by revising paragraph (g)(1) introductory text to read as follows:

§ 22.501 Frequencies.

* * * * *

(g)(1) The frequencies listed in this paragraph are available for control stations utilized within a multiple address system that requires the use of at least four simultaneously operated base stations operated on the same frequency assignment. These frequencies will be assigned only when there are four or more control station, on the same frequency listed on the application for license. For purpose of this four base station limitation, base stations proposed to be controlled in the 932–932.5/941–941.5 MHz bands in any multiple address control application filed pursuant to this paragraph cannot be listed in, or counted towards, the four base requirement of any other pending application for the 932–932.5/941–941.5 MHz bands. The frequencies may be used in paired or unpaired configurations. When paired, the higher frequency will be used by the control/relay station, and the lower frequency will be used by the control station.

* * * * *

PART 94—PRIVATE OPERATIONAL-FIXED MICROWAVE SERVICE

16. The authority citation for part 94 continues to read:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

17. Section 94.15 is amended by revising paragraph (g) to read as follows:

§ 94.15 Policy governing the assignment of frequencies.

* * * * *

(g) Except as provided in paragraph (h) of this section, applicants requiring multiple transmit frequencies employed on separate paths from a single station location will not normally be authorized more than four of the transmit frequencies available in the band. Further, master and remote stations using frequencies listed in § 94.65(a)(1) of this part will not normally be authorized more than four (12.5 kHz) frequencies or frequency pairs. During the initial filing window for the 932–932.5/941–941.5 MHz bands:

(1) An applicant may not apply for a frequency or frequency pair within a 25 mile radius of any location for which it has concurrently applied;

(2) Further, no party may have an ownership interest, direct or indirect, in two or more pending applications proposing sites within 25 miles of each other.

* * * * *

18. In § 94.73, the table in paragraph (a) is amended by removing footnote one, redesignating footnotes 2 through 8 as 1 through 7, and revising the first sentence in redesignated footnote two to read as follows:

§ 94.73 Power limitations.

(a) * * *

[2] For multiple address operations, see § 94.65(a)(1)(v). * * *

* * * * *

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 91–17421 Filed 7–25–91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB52

Endangered and Threatened Wildlife and Plants; Endangered Status for the Plant Xyris Tennesseensis (Tennessee Yellow-Eyed Grass)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines a plant, *Xyris tennesseensis* (Tennessee yellow-eyed grass), to be an endangered species under the authority contained in the Endangered Species Act (Act) of 1973, as amended. *Xyris tennesseensis* is currently believed extant at only seven sites—five in Tennessee and one each in Alabama and Georgia. All sites occupy less than an acre in area. Three populations have been lost and four of the remaining populations have declined in recent years from habitat modification associated with agricultural and silvicultural uses, road construction/maintenance, over-collecting and succession. This action will extend the Act's protection to *Xyris tennesseensis*.

EFFECTIVE DATE: August 26, 1991.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Jackson, Mississippi, Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, suite A, Jackson, Mississippi 39213.

FOR FURTHER INFORMATION CONTACT: Cary Norquist at the above address (601/965–4900 or FTS 490–4900).

SUPPLEMENTARY INFORMATION:

Background

Xyris tennesseensis, a species of yellow-eyed grass in the family

Xyridaceae, is a perennial which ranges from 7 to 10 decimeters (2.3 to 3.3 feet) in height. Plants typically occur in clumps where they arise from fleshy bulbous bases. Leaves are basal, the outermost scale-like, the larger ones linear, twisted, deep green and 14 to 45 centimeters (cm) (5.5 to 17.7 inches) long. The inflorescence consists of brown conelike spikes, 1 to 1.5 cm (0.4 to 0.6 inch) in length, which occur singly at the tips of long slender stalks from 30 to 70 cm (12 to 28 inches) long. The flowers, which are pale yellow in color and 4.5 millimeters (mm) (0.2 inch) long, unfold in the late morning and wither by mid-afternoon. Fruits are thin walled capsules containing numerous seeds 0.5 to 0.6 mm (0.02 inch) in length. Flowering occurs from August through September (Kral 1978, 1983, 1990).

Xyris tennesseensis superficially resembles *X. torta*, one of the few xyrids with which it is sympatric. However, *X. torta* differs in its strongly ribbed leaves and more curved and ciliate (rather than lacerate) lateral sepals. Taxonomically, *Xyris tennesseensis* is closest to the *X. difformis* complex. In that complex, the leaves are flatter than fanlike, bases are non-bulbous and their seed sculpture is different (Kral 1983, 1990).

Kral (1978) described *X. tennesseensis* during the course of a study on Xyridaceae, based on an examination of a 1945 specimen (identified as *Xyris caroliniana*) from Lewis County, Tennessee, and more recent collections from that County and northwest Georgia. Extensive surveys were conducted for this species during the 1988 and 1989 field seasons (Kral 1990). Three of the original sites no longer supported populations of this *Xyris* and only one new population was located. Currently, only seven populations are known to be extant, consisting of five sites in Lewis County, Tennessee, and one site each in Bartow County, Georgia, and Franklin County, Alabama. These isolated remnants are located over three different physiographic provinces, the Cumberland Plateau of Alabama, the Western Highland Rim of Tennessee and the Valley and Ridge Province of Georgia (Kral 1990).

Xyris tennesseensis occurs in seep-slopes, springy meadows or on the banks of gravelly shallows of small streams. As with all *Xyris*, the habitat is open or thinly wooded and the soils are moist to wet year-round. However, this species differs from other *Xyris* in being found in areas where calcareous rocks are at or near the soil surface. Thus, its soils are circumneutral to basic instead of acidic. Common associates include ferns and fern allies such as *Osmunda, Thelypteris palustris* and *Lycopodium appressum;* grasses such as *Leersia oryzoides, Panicum* and *Andropogon;* and sedges such as *Scirpus atrovirens, Eleocharis, Cyperus, Rhynchospora caduca* and *R. capitellata. Juncus* is common with *J. brachycephalus* being a constant associate. Dominant dicots are *Phlox glaberrima, Lysimachia lanceolata, Solidago patula, Rudbeckia fulgida umbrosa, Eupatorim perfoliatum* and *Parnassia grandiflora* (in Tennessee). Woody vegetation on the border of seeps or along streambanks include *Alnus, Salix, Sambucus, Cornus,* and *Cephalanthus.* The surrounding forest consist of upland species common to the oak-hickory, oak-pine or oak-juniper type (Kral 1983, 1990).

Population size ranges from a few dozen plants at one site to thousands of individuals at two sites. Most sites support populations of a few hundred plants and each site occupies less than an acre in area. Most populations are located on private land; however, plants extend onto State maintained highway right-of-way in Alabama and onto National Park Service land (Natchez Trace Parkway) in Lewis County, Tennessee.

Of 10 historically known populations, 3 populations have been lost and 4 of the remaining are declining from threats associated with highway construction/right-of-way maintenance; modification or destruction of habitat for agricultural usage; over-collecting; or the encroachment of woody plants.

Federal actions involving *Xyris tennesseensis* began with the December 15, 1980, publication of a notice of review for native plants in the **Federal Register** (45 FR 82480). *Xyris tennesseensis* was included in this notice as a category 1 species. Category 1 comprises taxa for which the Service presently has sufficient biological information to support their being proposed to be listed as endangered or threatened species. On November 28, 1983, the Service published a supplement to the notice of review for native plants in the **Federal Register** (48 FR 53640); the plant notice was again revised on September 27, 1985 (50 FR 39526) and on February 21, 1990 (55 FR 6184). *Xyris tennesseensis* was included as a category 2 species in the 1983 supplement and the revised notices. Category 2 species are those for which listing as endangered or threatened species may be warranted but for which substantial data on biological vulnerability and threats are not currently known or on file to support a proposed rule. The Service contracted a status survey for this species in 1988. Field surveys were conducted during 1988 and 1989. A final report was received and approved by the Service in the spring of 1990. This report (Kral 1990) and other information support the listing. The data demonstrate a limited distribution and continuing threats to the species. On February 15, 1991, the Service published a proposal (56 FR 6341) to list *Xyris tennesseensis* as an endangered species.

Summary of Comments and Recommendations

In the February 15, 1991, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices, inviting public comment, were published in the *Daily Tribune News,* Cartersville, Georgia, on February 28, 1991; the *Lewis County Herald,* Hohenwald, Tennessee, on February 28, 1991; and the *Franklin County Times,* Russellville, Alabama, on March 3, 1991.

Two comments were received, including one from a Federal agency (Tennessee Valley Authority) and one from an individual. Both were in support of the proposal.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Xyris tennesseensis* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Xyris tennesseensis* Kral (Tennessee yellow-eyed grass) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Xyris tennesseensis* has been and continues to be threatened by the destruction or adverse modification of its habitat. In surveying potential habitat for additional populations, Kral (1990) noted that similar habitat had been impacted or lost due to agricultural or silvicultural practices. Many of the larger stream bottoms, which were once seep

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Field surveys were conducted during 1988 and 1989. A final report was received and approved by the Service in the spring of 1990. This report (Kral 1990) and other information support the listing. The data demonstrate a limited distribution and continuing threats to the species. On February 15, 1991, the Service published a proposal (56 FR 6341) to list *Xyris tennesseensis* as an endangered species.

Summary of Comments and Recommendations

In the February 15, 1991, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices, inviting public comment, were published in the *Daily Tribune News*, Cartersville, Georgia, on February 28, 1991; the *Lewis County Herald*, Hohenwald, Tennessee, on February 28, 1991; and the *Franklin County Times*, Russellville, Alabama, on March 3, 1991.

Two comments were received, including one from a Federal agency (Tennessee Valley Authority) and one from an individual. Both were in support of the proposal.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Xyris tennesseensis* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Xyris tennesseensis* Kral (Tennessee yellow-eyed grass) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Xyris tennesseensis* has been and continues to be threatened by the destruction or adverse modification of its habitat. In surveying potential habitat for additional populations, Kral (1990) noted that similar habitat had been impacted or lost due to agricultural or silvicultural practices. Many of the larger stream bottoms, which were once seep

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meadows and springs, have been dammed for ponds, drained and converted to pasture or row-crops, or developed for housing. A site in Gordon County, Georgia, that once supported a population of this *Xyris* is now a soybean field (Kral 1990). Other areas surveyed had been adversely affected by timber operations. As discussed in the "Background" section of this rule, this *Xyris* is dependent on small, clean, spring-fed headwater streams or associated seeps. Timbering upslope leads to increased erosion, deposition into the seeps and water quality degradation of the watershed (Kral 1990). Heavy equipment, in association with logging, would damage individual plants and drain the habitat if operated directly in the seeps.

Habitat for the Alabama population has been disturbed by timbering and gravel quarrying (for use in the adjacent highway). Since 1982, the number of plants at this site have significantly declined (from 100's to less than 100) due to these disturbances and the use of herbicides in right-of-way maintenance. Highway construction caused the destruction of a second population in Georgia (Bartow County). Three other populations are located near roads and are potentially threatened by road improvement measures.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* This species is not known to be in commercial trade. Over-collecting (presumably for scientific purposes) has resulted in a significant decline for one population in Tennessee (Kral 1990).

C. *Disease or predation.* None apparent.

D. *The inadequacy of existing regulatory mechanisms.* This *Xyris* is considered endangered in all the States where it occurs; however, it is currently afforded legal protection in only one State (Tennessee). Tennessee legislation (Rare Plant Protection and Conservation Act of 1985) prohibits taking without the permission of the landowner and regulates commercial sale and export. Plants which are listed, or proposed for listing in Georgia, automatically come under the protection provided by the Wildflower Preservation Act of 1973 (T. Patrick, Georgia Heritage Program, pers. comm., 1990). This legislation prohibits taking of plants from public lands (without a permit) and regulates the sale and transport of plants within the State. Neither of these statutes provide protection against habitat destruction, which is the principal threat. The Tennessee Department of Conservation and Tennessee Nature Conservancy have several voluntary protection agreements with landowners. These agreements, while very useful in protecting the plants, have no legal authority. The Act would strengthen existing protection, provide additional protection and encourage active management for *Xyris tennesseensis* (see "Available Conservation Measures").

E. *Other natural or manmade factors affecting its continued existence.* This species is vulnerable due to the small number of populations, the limited amount of area each population occupies and its specialized habitat requirements (see "Background" section). *Xyris tennesseensis* occurs in habitat which is "open" and is vulnerable to overcrowding and shade associated with woody plant encroachment. Furthermore, open wet areas are essential for successful germination (Kral 1988). In Lewis County, Tennessee, one population has been lost and a second is declining from the increased competition with succession (Kral 1990). While succession is a slow and natural process, it poses a threat to this species due to the small number of populations and limited amount of suitable habitat remaining. Proper management planning is needed to address this aspect of the species' biology.

This species is vulnerable to diversion of seep or ground water. Kral (1990) noted that water tables are dropping throughout the area, resulting in the loss of many of the seeps and springheads.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Xyris tennesseensis* as endangered. Only seven populations remain (each occupies less than an acre of area, four have declined, and all are in need of long-term management; thus, a classification of endangered is appropriate. An endangered species, as defined by the Act, is threatened with extinction throughout all or a significant portion of its range. Critical habitat is not being designated for reasons discussed in the following section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determine to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species. As discussed under Factor B in the Summary of Factors Affecting the Species, *Xyris tennesseensis* has been impacted by over-collecting and publicity surrounding its listing could exacerbate the threat of taking. Taking is an activity difficult to enforce against and only regulated by the Act with respect to plants in cases of (1) removal and reduction to possession of endangered plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying in knowing violation of any State law or regulation, including State criminal trespass law. Publication of critical habitat descriptions and maps would make *Xyris tennesseensis* more vulnerable and increase enforcement problems. All involved parties, including State and Federal agencies and principal landowners, have been nofified of the location and importance of protecting this species' habitat. Protection of this species' habitat will be addressed through the recovery process and through the Section 7 jeopardy standard. Therefore, it would not now be prudent to determine critical habitat for *Xyris tennesseensis*.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

A portion of one population extends onto National Park Service (NPS) land. the Tennessee Department of Conservation has an agreement with NPS to protect this population. The Environmental Protection Agency will consider this species relative to pesticide (herbicide) registration. The Federal Highway Administration will consider this species in relation to those highway maintenance projects which are federally funded. Currently, no activities to be authorized, funded, or carried out by Federal agencies that would affect *Xyris tennesseensis* are anticipated.

The act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, will apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the Untied States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any state law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances.

It is anticipated that few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, room 432, Arlington, Virginia 22203 (703/358–2104).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Kral, R. 1978. A new species of *Xyris* (sect. *Xyris*) from Tennessee and northwestern Georgia. Rhodora 80 (823) : 444–447.

Kral, R. 1983. *Xyris tennesseensis*. *In*: A report on some rare, threatened, or endangered forest-related vascular plants of the South, Vol. 1:166–169. USDA Forest Service, Technical Publication R8-TP 2.

Kral, R. 1988. A preliminary report on *Xyris tennesseensis*. Unpublished report submitted to U.S. Fish and Wildlife Service, Jackson, Mississippi. 6 pp.

Kral, R. 1990. A status report on *Xyris Tennesseensis*. Unpublished report submitted to U.S. Fish and Wildlife Service, Jackson, Mississippi. 22 pp.

Author

The primary author of this final rule is Cary Norquist (see **ADDRESSES** section) 601/965–4900 or FTS 490–4900.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding in alphabetical order the family Xyridaceae, and the following entry to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	*
Xyridaceae—Yellow-eyed grass family:						
Xyris tennesseensis	Tennessee yellow-eyed grass	U.S.A. (AL, GA, TN)	E	430	NA	NA

Dated: June 26, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91–17759 Filed 7–25–91; 8:45 am]

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Historic range	Status	When listed	Critical habitat	Special rules
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Proposed Rules

Federal Register
Vol. 56, No. 144
Friday, July 26, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 91-ASO-17]

Proposed Establishment of Transition Area, Port Gibson, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: Airspace Docket No. 91–ASO–14 was erroneously assigned to the subject notice of proposed rulemaking published in the **Federal Register** on July 8, 1991, Volume 56, page 30883. The correct Airspace Docket No. for the Proposed Establishment of the Port Gibson, MS, Transition Area is 91–ASO–17.

Issued in East Point, Georgia, on July 17, 1991.

Don Cass,

Acting Manager, Air Traffic Div., Southern Region.

[FR Doc. 91–17772 Filed 7–25–91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 91-ANM-10]

Proposed Establishment of Transition Area; Sun River, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a transition area to provide controlled airspace for the new VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) approach to the Sun River Airport, Sun River, Oregon. The transition area would segregate aircraft operating in visual flight rules (VFR) conditions from those operating under instrument flight rules (IFR). The area would be depicted on aeronautical charts to provide references for pilots.

DATES: Comments must be received on or before September 3, 1991.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Docket No. 91–ANM–10, 1601 Lind Avenue, SW., Renton, WA 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM–535, Federal Aviation Administration, Docket No. 91–ANM–10, 1601 Lind Avenue SW., Renton, WA 98055–4056, telephone: (206) 227–2535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91–ANM–10." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington 98055–4056 both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA proposes an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to provide controlled airspace for instrument flight rules procedures for the new VOR/DME approach to the Sun River Airport. The intent is to segregate aircraft operating in visual flight rules conditions from those operating under instrument flight rules. The area would be depicted on appropriate aeronautical charts so that pilots may circumnavigate the area or comply with instrument flight rules procedures. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Sun River, Oregon [New]. That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Sun River, OR Airport (lat. 43°52′30″ N., Long. 121°27′06″ W.), and within 4 miles each side of the Redmond, OR VORTAC (lat. 44°15′11″ N., long. 121°18′09″ W.) 197° radial extending from the 7-mile radius to 10 miles north of the Sun River Airport.

Issued in Seattle, Washington, on June 28, 1991.

Helen M. Parks,

Assistant Manager, Air Traffic Division.

[FR Doc. 91–17773 Filed 7–25–91; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[OPTS–400057; FRL–3928–4]

Sulfuric Acid; Toxic Chemical Release Reporting; Community Right-To-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is granting a petition to modify the listing for sulfuric acid on the list of toxic chemicals subject to section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). Specifically, EPA is proposing to delete nonaerosol forms of sulfuric acid from the list of toxic chemicals subject to section 313. The proposal to delete non-aerosol forms of sulfuric acid is based on EPA's review of the available data on health and environmental effects of sulfuric acid. EPA has concluded that these forms of sulfuric acid cannot reasonably be anticipated to cause adverse effects to human health or the environment under normal exposure scenarios.

DATES: Written comments must be submitted on or before September 24, 1991.

ADDRESSES: Written comments must be submitted in triplicate to: OTS Docket Clerk, TSCA Public Docket Office (TS–793), Environmental Protection Agency, Rm. NE–G004, 401 M St., SW., Washington, DC 20460, Attention: Docket Control Number OPTS–400057.

FOR FURTHER INFORMATION CONTACT: Maria J. Doa, Petitions Coordinator, Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop OS–120, 401 M St., SW., Washington, DC 20460, Toll free: 800–535–0202, Toll number: 703–920–9877.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

This proposal is issued under sections 313(d) and (e)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (Pub. L. 99–499). EPCRA is also referred to as title III of the Superfund Amendments and Reauthorization Act of 1986.

B. Background

Section 313 of EPCRA requires certain facilities manufacturing, processing or otherwise using toxic chemicals to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities also must report pollution prevention and recycling data for such chemicals, pursuant to section 7 of the Pollution Prevention Act (section 6607 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508). Section 313 establishes an initial list of toxic chemicals that is comprised of more than 300 chemicals and 20 chemical categories. Any person may petition EPA to add chemicals to or delete chemicals from the list.

EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for submitting petitions. EPA must respond to petitions within 180 days either by initiating a rulemaking or by publishing an explanation of why the petition is denied. On May 23, 1991 (56 FR 23703), EPA published guidance regarding the recommended content of petitions to delete individual members of the section 313 metal compound categories.

II. Description of Petition

On December 24, 1990, EPA received a petition from the Environmental Policy Center on behalf of American Cyanamid to qualify the listing of sulfuric acid by requiring release reporting only for sulfuric acid aerosols and deleting other forms of sulfuric acid from the list of chemicals under section 313. At the request of the submitter, the statutory timeframe for response was suspended for 21 days. The present statutory deadline for EPA's response is July 13, 1991. American Cyanamid maintains that non-aerosol forms of sulfuric acid do not meet the statutory criteria for acute, chronic, or environmental effects under normal exposure scenarios. For the purposes of this proposal, EPA considers the term aerosol to cover any generation of airborne sulfuric acid, whether in the form of aerosols (including mists, vapors, gas, or fog) and without regard to particle size.

III. EPA's Technical Review of Sulfuric Acid

The technical review of the petition to delete sulfuric acid includes an analysis of the chemistry, health and environmental effects, production and use, environmental release, and exposure hazards known for the substance.

A. Chemistry

Sulfuric acid is a clear, colorless, odorless, oily liquid. In addition to being a strong acid, sulfuric acid is a strong oxidizing agent and therefore extremely corrosive. Sulfuric acid is very reactive with a variety of organic compounds. It is known to be flammable on contact with various organic materials such as chlorates, carbides, fulminates and picrates. Contact of sulfuric acid with metals can be explosive and produces sulfur dioxide and hydrogen gas. Sulfuric acid has a strong affinity for water, and will abstract it from air and organic materials with evolution of heat.

The method of manufacture is known as the contact process. This method essentially involves combustion of elemental sulfur, yielding sulfur dioxide; which is catalytically converted to sulfur trioxide. Reaction of the latter substance with water provides sulfuric acid with evolution of heat.

B. Toxicological Evaluation

Information on the health and environmental effects of sulfuric acid was obtained from the following sources: a 1984 EPA document entitled *Health Effects Assessment for Sulfuric Acid*, a 1989 EPA document entitled *An Acid Aerosols Issue Paper; Health*

Effects and Aerometrics, a 1987 EPA document entitled *Drinking Water Criteria Document for Sulfate*, studies found in the literature, and studies submitted by the petitioner.

Toxicological data on sulfuric acid were reviewed for evidence indicating acute and chronic toxicity, carcinogenicity, mutagenicity, reproductive toxicity, developmental toxicity, and environmental effects.

1. *Acute toxicity*. Sulfuric acid is a strongly acidic, corrosive substance, and is acutely toxic to all human tissue. The extent of tissue damage is dependent upon concentration and duration of exposure, and can range from a mild, transient irritation, to corrosion, chemical burn, and, in extreme and isolated cases, death. In 10 percent concentration, mild corneal injury was produced in rabbits; while a 1 percent solution failed to produce permanent ocular damage in rabbits, and was only slightly to non-irritating upon dermal exposure after 48 hours.

Reported cases of toxicity from ingested sulfuric acid were of an unusual origin, from either suicide attempts or accidental ingestion of sulfuric acid-containing products. Although toxicity in these cases is often severe, exposures of this type do not occur during normal use of sulfuric acid.

2. *Chronic toxicity*. Limited data on long-term human exposure to sulfuric acid with respect to occupational settings are available. Recent studies suggest that sulfuric acid aerosols at levels as low as 0.02 to 0.04 mg/m^3 may cause significant effects on lung function in humans. Effects noted include increased risk of chronic bronchitis in smokers and reduced tracheobronchial clearance rate. Other studies suggest that sulfuric acid at concentrations as low as 0.04 mg/m^3 may act synergistically with copollutants such as ozone, NO_2, and metal particulates in causing decreased pulmonary diffusing capacity and bronchial hypersensitivity. These effects are presumably attributable to the acidic and oxidative properties of sulfuric acid, and are therefore pH and concentration dependent. It should be noted that ambient atmospheric concentrations of sulfuric acid are typically 100 to 1,000-fold lower than concentrations known to have significant adverse effects.

The health effects of mixtures of sulfuric acid in aerosols is an area of toxicology which, to date, has not been thoroughly explored. However, environmental acid aerosol mixtures have been the subject of many epidemiological studies and have been implicated in causing and exacerbating a variety of respiratory ailments.

EPA has recently proposed to set a maximum contaminant level goal (MCLG) of 400 to 500 mg/liter of sulfate ions in drinking water (40 CFR part 141). The only adverse effects noted from exposure to higher levels (630 to 1,150 mg/liter) of sulfate are diarrhea and dehydration; infants being more sensitive than adults.

3. *Carcinogenicity*. Several epidemiological studies have suggested an association between occupational exposure to sulfuric acid aerosols and respiratory cancers such as laryngeal cancer. Several animal studies failed to show any relationship between exposure to sulfuric acid aerosols and respiratory cancers. There are no human or animal data indicating that solution forms of sulfuric acid are carcinogenic.

4. *Mutagenicity*. There is no evidence to conclude that sulfuric acid may reasonably be anticipated to cause heritable genetic mutations. Only one study was found which examined mutagenicity of sulfuric acid; it reported that sulfuric acid was not mutagenic to bacteria when tested at 0.002 to 0.005 percent concentrations.

5. *Reproductive and developmental toxicity*. Pertinent data regarding reproductive dysfunctions or developmental disorders could not be located in the literature. Consequently, there is no basis on which to conclude that sulfuric acid may reasonably be expected to cause serious or irreversible reproductive and/or developmental effects.

6. *Environmental effects*. Adverse environmental effects from sulfuric acid result from acidification. Available data indicate that the lethality of sulfuric acid to fresh water organisms occurs at pH 5 or lower. Egg laying ceased at pH 5, and the viability of eggs in one study was reduced by 50 percent at pH 6.5. Studies have shown that soil acidification below pH 5.5 results in large increases in liberated aluminum ions with a corresponding reduction in soil nitrification: soil nitrate (a plant nutrient) decreases, while soil ammonia (a plant toxicant) increases. Thus, although potential ecotoxicity from sulfate ions is negligible, prolonged exposure of terrestrial or aquatic environments to acidic conditions can be expected to produce adverse effects by releasing toxic cations, e.g., metals. Once mobilized, these materials can produce indirect toxicological effects.

C. Use, Release, and Exposure

1. *Production and use*. Sulfuric acid is the largest volume industrial chemical produced in the United States and in the world. The United States produced over 79 billion pounds of sulfuric acid in 1989. Industrial utilization of sulfuric acid in the United States is estimated to be 84.8 billion pounds in 1991.

2. *Release and exposure*. The principal pathways for the release of sulfuric acid to the environment include air emissions, wastewater discharges, and underground injection of dilute solutions. The latter process constitutes the major method of disposal for this chemical.

It is estimated that 85 percent of the sulfuric acid present in the atmosphere worldwide results from the oxidation of SO_2 followed by reaction with atmospheric water. The presence of SO_2 in the atmosphere is largely due to coal burning and oil refining. It is estimated that direct sulfuric acid emissions from the manufacture and processing of sulfuric acid account for less than 5 percent of atmospheric sulfuric acid.

Under Clean Air Act regulations in 40 CFR part 60 subpart H, EPA regulates sulfuric acid air releases from sulfuric acid production in relation to the amount of acid manufactured; there is allowed to be no more than 0.075 Kg of sulfuric acid released per metric ton produced. Under the Clean Water Act, parameters such as pH may be subject to both technology-based and water quality-based limitations. The technology-based limitations are either derived from nationally applicable effluent guidelines or pretreatment standards (many of which limit pH to a range of 6.0 to 9.0) or are based on (1) The permit writer's "Best Professional Judgement" if there is no applicable guideline for a direct discharge or (2) local pretreatment requirements. Water quality based limitations generally would be established to ensure that applicable water quality standards are attained and maintained. Dischargers are typically subject to monitoring provisions under which permittees are to report discharges of controlled parameters.

Release of sulfuric acid solutions at or above pH 6 is not expected to result in adverse environmental effects. Under its section 313 reporting guidance, acid solutions with a pH of 6 or greater are considered by EPA as neutral, and as a result facilities are to report releases of these solutions to surface waters as zero.

In the case of underground injection, regulations promulgated under the Underground Injection Control (UIC) Program of the Safe Drinking Water Act (SDWA) specify that deep industrial waste disposal occurs in either Class I or Class V Wells. The standards, requirements and the permitting process for the design, operation, monitoring, and closure of Class I Wells were designed to prevent contamination of underground sources of drinking water (USDW).

In addition to controls under the SDWA, regulations issued under the Resource Conservation and Recovery Act (RCRA) (40 CFR part 148) allow underground injection into a Class I Well of aqueous wastes with a pH of 2 or less only if the waste is the subject of a successful "no migration" petition. This petition must demonstrate that there will be no migration of hazardous constituents for as long as the waste remains hazardous. The petition must also show that the injected fluid will not migrate within 10,000 years. There is currently no evidence which indicates that underground injection of sulfuric acid by Class I Wells would result in adverse environmental effects.

Injection of hazardous waste into shallow injection wells is prohibited under RCRA section 3020 and the UIC program of the SDWA (40 CFR 144.13). The disposal of nonhazardous industrial waste, such as treated sulfuric acid, into shallow injection wells is the subject of the Agency's current Class V rulemaking proceedings. In the interim, such wells are still subject to the prohibition in section 1422 of the SDWA against any injection which may endanger a drinking water source, as defined in section 1421(d)(2).

Total on-site land releases into surface impoundments of sulfuric acid during 1988 was 5,348,114 pounds, or 2.8 percent of all on-site releases. Total off-site land releases during 1988 were 14,625,618 pounds, or 13.2 percent of all off-site releases. Regulations promulgated under RCRA at 40 CFR 261.22 provide that aqueous wastes that exhibit a pH of less than or equal to 2 are hazardous wastes. Land disposal of such wastes may take place only after pH adjustment above 2 or a successful "no migration" petition.

IV. Precedents for Modified Listings

There are precedents for qualified chemical listings under EPCRA section 313. The original list established by Congress contained a number of qualified listings including: aluminum (fume or dust), ammonium nitrate (solution), asbestos (friable), yellow or white phosphorus, vanadium (fume or dust), and zinc (fume or dust). Also, EPA recently qualified the aluminum oxide listing by exempting non-fibrous forms of aluminum oxide from the reporting requirements so that only fibrous aluminum oxide is subject to reporting (40 CFR part 372). EPA found that there was no evidence that non-fibrous forms of aluminum oxide cause adverse human health or environmental effects as specified under section 313. The decision to retain fibrous forms of aluminum oxide was based on evidence that exposure to fibrous forms of this chemical can reasonably be anticipated to cause cancer in humans.

V. Rationale for Proposed Modification of the Sulfuric Acid Listing

Sulfuric acid aerosols meet the toxicity criteria of section 313(d)(2). EPA's decision to delete non-aerosol forms of sulfuric acid is based on the Agency's evaluation of sulfuric acid's toxicity and the levels of sulfuric acid exposure to which humans and the environment may be subject. The non-aerosol forms of sulfuric acid are acutely toxic at a low pH; however, there is no information to indicate that non-aerosol forms of sulfuric acid present a health or environmental risk under ordinary exposure scenarios. The Agency believes that there is no evidence that non-aerosol sulfuric acid releases cause adverse effects to human health or the environment under ordinary exposure scenarios. The substance's toxic properties are dependent upon concentration and duration of exposure. Only under aberrant conditions of exposure (i.e., spills onto the skin, deliberate ingestion) do solutions of sulfuric acid pose a potentially serious health hazard.

EPA does not believe that non-aerosol forms of sulfuric acid meet the statutory criteria of section 313(d)(2)(A) regarding acute human health effects; specifically, that the "chemical is known to cause or can reasonably be anticipated to cause significant adverse human health effects at concentration levels that are reasonably likely to exist beyond facility boundaries as a result of continuous or frequently recurring releases." EPA's review of the toxicity and exposure information indicates that although sulfuric acid is acutely toxic it is unlikely that persons will be exposed to acutely toxic concentration levels beyond facility boundaries as "a result of continuous or frequently recurring releases."

Also, EPA does not believe that non-aerosol forms of sulfuric acid meet the chronic toxicity listing criteria in section (d)(2)(B) because the chemical in its non-aerosol forms is not known to cause nor can reasonably be anticipated to cause chronic health effects. The environmental listing criteria also are not met because the non-aerosol forms of sulfuric acid are not known to cause nor can be reasonably anticipated to cause a significant adverse effect on the environment of sufficient seriousness to warrant release reporting.

Additionally, other statutory mechanisms exist by which information on spills of sulfuric acid will be made available to the public. For example, sulfuric acid is a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

Releases of 1,000 pounds or more of sulfuric acid must be reported to the National Response Center under CERCLA section 103. CERCLA section 103 requires that the person in charge of a facility or vessel immediately report a release of a reportable quantity or more of sulfuric acid (other than a federally permitted release) to the National Response Center. This section also provides a reduced reporting requirement for releases determined to be "continuous" and "stable in quantity and rate" (July 24, 1990, 55 FR 30166). Releases of 1,000 pounds or more also must be reported to State and local authorities under EPCRA section 304. EPCRA section 304 requires the owner or operator of a facility to immediately report to the State emergency response commission and the local emergency planning committee when there is a release of a CERCLA hazardous substance requiring a report under CERCLA section 103(a) or when there is a release of one pound or more of a non-CERCLA Extremely Hazardous Substance (EHS). This section does not apply to any release which results in exposure to persons solely within the site on which a facility is located.

Deleting non-aerosol forms of sulfuric acid from the section 313 list will not result in any significant reduction in the information now available to the public concerning spills of sulfuric acid. Since reporting of spills under section 313 is only required to be submitted to EPA as part of an overall annual release number, no direct and immediate notice to the public of such an accidental release or spill of sulfuric acid is available through section 313 reports or through the Toxics Release Inventory (TRI) data base, i.e., only annual release figures are available.

In addition, data on storage of sulfuric acid for emergency planning purposes are already being collected at the local level. Under sections 311 and 312 of EPCRA, facilities are required to submit lists and inventories of chemicals on-site to local emergency planning committees to help them plan for emergencies and inform the public about the types of chemicals being handled in their communities.

Therefore, EPA proposes to modify the listing for sulfuric acid by deleting non-aerosol forms of sulfuric acid. EPA's proposal to delete non-aerosol forms of sulfuric acid from the section 313 list is not meant to suggest that the Agency considers sulfuric acid to be a "safe" chemical. Rather, this proposed action reflects the fact that non-aerosol forms of the chemical do not meet the toxicity criteria set forth in section 313.

Currently, most facilities base their threshold determinations for reporting under section 313 on the amounts of sulfuric acid in solution form manufactured, processed, or otherwise used. For purposes of threshold determinations of sulfuric acid (acid aerosols) for reporting under section 313, a facility should consider any generation of airborne sulfuric acid as manufacture, whether in the form of aerosols (including mists, vapors, gas, or fog) and without regard to particle size. The quantity of airborne sulfuric acid manufactured, not the amount released, would be compared with the 25,000 pound threshold. Generation of airborne sulfuric acid is expected to occur from, but is not limited to: production or processing of sulfur trioxide (SO_3), due to the extremely rapid reaction of sulfur trioxide with atmospheric water within the process or facility, production or processing of solutions of sulfuric acid, and volatilization or vaporization of sulfuric acid from manufacture or processing.

VI. Rulemaking Record

The record supporting this decision is contained in docket control number OPTS-400057. All documents, including an index of the docket, are available to the public in the TSCA Public Docket Office from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA Public Docket Office is located at EPA Headquarters, rm. NE-G004, 401 M St., SW., Washington, DC 20460.

VII. Request for Public Comment

EPA requests comment on this proposal to delete non-aerosol forms of sulfuric acid from the listing of toxic chemicals under EPCRA section 313. All comments must be submitted on or before September 24, 1991.

VIII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore, requires a Regulatory Impact Analysis. EPA has determined that this is not a "major rule" because it will not have an effect on the economy of $100 million or more.

This proposed rule would decrease the impact of the section 313 reporting requirements on covered facilities and would result in cost-savings to industry, EPA, and the States. Therefore, this is a minor rule under Executive Order 12291.

This proposed rule was submitted to the Office of Management and Budget (OMB) under Executive Order 12291.

The current number of sites reporting releases of sulfuric acid is 5,347. Of these, 2,772 reported for sulfuric acid but reported no releases in aerosol form. Thus under the proposed rule these sites would no longer report. Also, the economic analysis estimated that of the 2,575 reporting sites that reported air releases, 1,069 to 2,128 sites would no longer be required to report depending on their treatment efficiency of stack emissions because they would no longer meet the threshold for reporting. Thus the decrease in the number of reporting sites attributable to the rulemaking is estimated at between 3,841 (2,772 + 1,069) and 4,900 (2,772 + 2,128). The estimated cost savings to industry changing the listing is estimated at $1,267 per year per reporting facility that no longer is required to report. The cost saving to EPA is $72 per facility per report. The lower bound estimate of the total annual savings for industry and EPA from the partial delisting of sulfuric acid is $5,143,099. The upper bound estimate is $6,561,100 in savings annually.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980, the Agency must conduct a small business analysis to determine whether a substantial number of small entities will be significantly affected by a proposed rule. Because the proposed rule results in cost savings to facilities, the Agency certifies that small entities will not be significantly affected by the proposed rule.

C. Paperwork Reduction Act

This proposed rule does not have any information collection requirements under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 372

Chemicals, Community right-to-know, Environmental protection, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: July 15, 1991.

Victor J. Kimm,

Acting Assistant Administrator, Office of Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 372 be amended as follows:

1. The authority citation for part 372 would continue to read as follows:

Authority: 42 U.S.C. 11013 and 11023.

§ 372.65 [Amended]

2. In § 372.65(a) and (b) are amended by changing the entry for sulfuric acid to read "Sulfuric acid (acid aerosols)" under paragraph (a) and for CAS number entry 7664–93–9 under paragraph (b).

[FR Doc. 91–17596 Filed 7–25–91; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 61 and 69

[CC Docket No. 91-141; FCC 91-159]

Expanded Interconnection With Local Telephone Company Facilities

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission initiated a notice of proposed rulemaking and notice of inquiry to consider removing barriers that currently impede the development of greater competition in the provision of interstate access transmission facilities. In light of changing technological and market conditions, the Commission proposes to require that the Tier 1 local telephone companies offer expanded opportunities for interconnection with their networks for the provision of interstate special access service. The Commission also begins an inquiry into expanded interconnection for the provision of interstate switched transport service.

DATES: Comments are to be filed by August 6, 1991, and replies are to be filed by September 5, 1991.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Douglas Slotten (202) 632–9342, or Claudia Pabo (202) 632–4047, Policy and Program Planning Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: The collection of information contained in this proposed rule has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3504(h). Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center (202) 452–1422, 1114 21st St., NW., Washington, DC 20036. Persons wishing to comment on this collection of information should direct their comments to Jonas Neihardt (202) 395–4814, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503. A copy of any comments filed with the Office of Management and Budget should also be sent to the following address at the Commission: Federal Communications Commission, Office of Managing Director, Paperwork Reduction Project (3060–0298), Washington, DC 20554. For further information contact Judy Boley, 202–632–7513.

OMB Number: 3060–0298.

Title: Part 61—Tariffs (Other than Tariff Review Plan); Part 69—Access Charges.

Action: Proposed revision.

Respondents: Businesses or other for-profit.

Frequency of Response: On occasion.

Estimated Annual Burden: 1015 respondents; 2.67 responses per respondent; 258.13 hours per response; 696,950 hours total annual burden.

Needs and Uses: In this rulemaking, the Commission proposes requiring additional cost support and creation of a new price cap sub-index for services used by interconnecting parties to ensure that LECs offer expanded interconnection services at just, reasonable, and non-discriminatory rates. If this proposal is adopted, the additional cost support and the new price cap sub-index would be used by regulators to evaluate the lawfulness of the rates for expanded interconnection services.

Summary of Notice of Proposed Rulemaking and Notice of Inquiry

This is a summary of the commission's notice of proposed rulemaking and notice of inquiry in CC Docket No. 91–141, adopted May 9, 1991, released June 6, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20037, (202) 452–1422.

In major metropolitan areas, competitive access providers (CAPS) currently compete with the local exchange carriers (LECs) in the provision of special access connections between customer premises and interexchange carrier points of presence (POPs). The Commission's current special access rate structure, however, effectively precludes CAPs or other interested parties from interconnecting with a local exchange carrier (LEC) to provide a portion of a special access line with the LEC providing the remainder. In light of recent technological and economic changes, the Commission tentatively concludes that expanded opportunities for third-party interconnection with LEC facilities for the provision of interstate special access services, with its likely increase in competition, will produce significant benefits for consumers that will outweigh any potential costs. The Commission invites interested persons to comment on this conclusion.

The Commission tentatively concludes that it should establish minimum criteria for the implementation of expanded interconnection for interstate special access. The Commission states that these minimum criteria can be met by either physical or virtual collocation arrangements as each carrier chooses. In proposing to allow the LECs to satisfy their interconnection obligations through virtual collocation meeting the minimum requirements proposed here, the Commission hopes to achieve the major benefits of physical collocation while still permitting the LECs a viable choice between physical and virtual collocation.

The Commission tentatively concludes that an interconnecting party must be willing to interconnect its facilities with those of the LEC within one-eighth mile of a LEC central office in order to qualify for expanded interconnection. The Commission also tentatively concludes that an interconnecting party should have the ability to monitor and control its own circuits terminating in the LEC central office under virtual collocation arrangements. Additionally, the Commission tentatively concludes that under a virtual collocation approach, a LEC should be under an obligation reasonably to make available central office electronic equipment designated by the interconnector. The Commission invites comment on the proposed minimum terms and conditions for interconnection. The Commission also seeks comments on whether it should specify additional minimum interconnection criteria for either physical or virtual collocation. The Commission also asks for comment on the requirements that should apply to LECs implementing expanded interconnection on a voluntary basis. In addition, the Commission requests that parties address the use of these standards to govern the interconnection with LEC facilities of transmission systems using non-fiber optic technology.

Finally, the Commission seeks comment on the treatment of proprietary equipment protocols used by interconnection equipment the LECs use to meet the needs of interconnecting parties. The Commission proposes that expanded interconnection for interstate special access be made available to all third parties, regardless of their possible classification as interexchange carriers (IXCs), end users, or CAPs, for example. The Commission also tentatively concludes that its proposed expanded interconnection rules should apply to all Tier 1 LECs (those with annual regulated revenues of over $100 million annually). The Commission seeks comment on these proposals.

The Commission tentatively concludes that it should adopt a new special access rate structure to accommodate expanded interconnection for interstate special access, and it seeks comment on alternatives for restructuring special access recurring charges to reflect virtual and physical collocation. Although the Commission tentatively concludes that changes in the current rate structure for non-recurring charges are not necessary, the Commission requests that interested parties address this issue. In addition, the Commission seeks comment on the pricing of central office equipment and the recovery of maintenance costs for central office equipment dedicated to serving interconnecting parties under a virtual collocation approach.

Under physical collocation, the LEC would also impose rental charges for the use of central office, vaulting, and riser space, as well as associated support services by interconnecting parties. The Commission requests that interested parties address the benefits and drawbacks of using tariffs or individual contracts for defining the lease rates and terms as well as the proper regulatory classification of such offerings under the Communications Act.

State plans for expanded interconnection include an element that is sometimes described as a "contribution" element to be paid to the LEC by interconnecting parties. Such a mechanism could be used with either physical or virtual collocation. While the Commission states that the need for a contribution element is unclear, particularly in the context of interstate special access, it invites interested parties to comment on whether such an element is necessary to alleviate any hardships caused by changes resulting from expanded interconnection.

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The Commission proposes that the LECs be required to implement expanded interconnection for DS1 and DS3 services as soon as possible after adoption of an order in this proceeding. In the case of other special access services, the Commission proposes to allow the LECs to implement the new rate structure changes for each of the four price cap special access service categories upon receipt of a request for expanded interconnection for the provision of one or more services in the category.

The Commission observes that, with the advent of competition, the LECs may need added rate structure flexibility to compete for special access traffic. At the same time, the Commission may wish to proscribe certain possible forms of competitive response by the LECs on the ground that they do not represent fair competition. Accordingly, the Commission believes that it may be appropriate to consider whether to establish new guidelines for review of LEC rate structure responses to competition, such as volume discounts, or distance-sensitive pricing of connection charges, channel termination charges, or their equivalents. The Commission also seeks comment on whether guidelines should be developed for review of any LEC proposals to increase channel termination charges for the connection from the customer premise to the end office and to reduce rates for the connection between the LEC end office and the IXC POP or other customer designated termination point.

Although price cap standards for rate review generally provide necessary protection, the Commission tentatively concludes that the initial charges for rate elements implementing expanded interconnection for the provision of special access by price cap LECs should be subject to special scrutiny insofar as they apply to interconnecting parties, many of whom are the LEC's competitors. The Commission tentatively concludes that the initial rates for the new elements to be paid by interconnecting parties should be reviewed not only under the existing price cap rules, but also pursuant to additional standards adopted in this proceeding. The Commission tentatively concludes that the price cap LECs should be required to justify the initial rate levels tariff elements implementing expanded interconnection used by their competitors, whether deemed new or restructured services under price caps. In particular, the Commission proposed that the LECs be required to describe how they determined the direct costs of providing expanded interconnection service and explain the overhead loadings used in rate development. In addition, the Commission proposes to require justification of the initial price level of any "contribution" element. The Commission also proposes to apply this level of scrutiny, insofar as feasible, to price cap LECs that voluntarily offer expanded interconnection for the provision of interstate special access. At the same time, the Commission invites interested parties to consider options for providing the protections necessary in these circumstances through pricing regulation.

The Commission proposes that ongoing changes in special access rates for price cap carriers be subject to a price ceiling for a separate subindex of the services used by interconnecting parties, i.e., connection charges and special central office service charges. The Commission proposes that pricing flexibility for this rate element group be limited to annual increases of two percent relative to the percentage change in the price cap index for the special access service basket. Under this proposal, the connection and special central office service charges would also be included in the four special access service groups for purposes of applying the banding restrictions applicable to those groupings. The Commission proposes that the price of any "contribution" element be set at a specified level, and thereafter subject to change only through further order or recalculation pursuant to a prescribed formula. The Commission does not propose to change the rate bands applicable to the LECs' DS1 or DS3 offerings at this time. The Commission seeks comment on these proposals. The Commission seeks comment on the proper standards for review of the initial prices and subsequent price changes for the rate elements implementing expanded interconnection offered by rate of return LECs.

The Commission tentatively concludes that increased competition in the provision of interstate special access services will not have significant undesirable collateral effects. The Commission believes that authorizing expanded interconnection for interstate special access will not have adverse separations effects on the states. The Commission does not anticipate that expanded special access competition will have an adverse effect on rates for other LEC services, either. The Commission also noted state concerns that expanded interstate access competition would deprive states of authority over the development of intrastate access competition. The Commission invited interested parties to comment on these issues.

Summary of Notice of Inquiry

As a second step in the Commission's initiative to remove barriers to entry, thereby fostering the development of competition in the provision of interstate access facilities and services, the Commission instituted a notice of inquiry concerning the competitive provision of interstate switched transport service. This action will permit the Commission to gather additional information before determining whether to proceed with a proposal for expanded interconnection to permit the competitive provision of interstate switched transport service.

The Commission generally notes that parties should assume that the requirements for expanded interconnection for the provision of switched transport would parallel those for special access, and seeks comment on these issues.

The Commission notes that if expanded interconnection were to be adopted for switched transport, CAPs presumably would charge a cost-based flat rate for dedicated transport that could be more attractive to high-volume interstate access users than the current usage-based LEC switched transport rates. The Commission seeks comment on possible LEC responses to CAP flat rate pricing in the event of expanded interconnection for the provision of this service. The Commission also seeks comment on the need for a contribution element in connection with expanded interconnection for switched transport.

In addition, the Commission requests that interested parties address the possible effects of expanded interstate switched transport interconnection on universal service as a result of jurisdictional cost shifts, the ability of the states to enforce their own regulations, and subsidy issues. The Commission specifically seeks comment on the areas in which subsidies are perceived to exist, the magnitude of such subsidies, and the potential effect of increased access competition on these subsidies.

Ex Parte Rules

1. This is a non-restricted notice and comment rulemaking proceeding. See generally § 1.1206(a) of the Commission's rules, 47 CFR 1.1206(a), for rules governing permissible *ex parte* contacts.

Regulatory Flexibility Requirements

2. Pursuant to the Regulatory Flexibility Act, the Commission certifies that the proposals made in this proceeding will not have a significant economic impact on a substantial number of small entities, and that the Regulatory Flexibility Act is, therefore, not applicable to this proceeding.

Ordering Clauses

3. Accordingly, *it is ordered,* That Notice is hereby given of the proposed regulatory changes in interconnection for the provision of interstate special access described above, and that comment is invited on these proposals.

4. *It is further ordered,* That a notice of inquiry is instituted concerning the regulatory changes in interconnection for the provision of interstate switched transport described above, and that comment is invited on these proposals.[1]

5. *It is further ordered,* That the Petition for Rulemaking filed by MFS is granted to the extent indicated herein. The Petition for Declaratory Ruling filed by Teleport is also granted to the extent indicated herein.

List of Subjects in 47 CFR Part 61 and 69

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 91–17826 Filed 7–25–91; 8:45 am]

BILLING CODE 6712-01-M

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[1] These actions are taken pursuant to sections 1, 4(i) and (j), 201–205, 218, 220, and 403 of the Communications Act as amended, 47 U.S.C. 151, 154 (i) & (j), 201–205, 218, 220, and 403.

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47 CFR Parts 73 and 76

[MM Docket No. 91–168, DA 91–907]

Radio Broadcast and Television Broadcast Services; Codification of the Commission's Political Programming Policies

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This action extends the time for filing comments and reply comments to the notice of proposed rule making (notice) in MM Docket No. 91–168, 56 FR 30526 (July 3, 1991). The notice seeks comment on a variety of issues concerning political programming obligations under the Communications Act. The National Association of Broadcasters and other interested parties requested the extension of time. Based on the complexity of the matters raised in the notice in this proceeding, we find the requested extension of time warranted.

DATES: Comments are now due on August 9, 1991, and reply comments are now due on August 23, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Milton O. Gross, Mass Media Bureau, (202) 632–7586.

SUPPLEMENTARY INFORMATION:

Order

Adopted: July 18, 1991.

Released: July 19, 1991.

By the Chief, Mass Media Bureau:

1. The National Association of Broadcasters and other interested parties request an extension of the time within which to file comments in the above captioned proceeding.[1] Comments are now scheduled to be filed on July 26, 1991, and reply comments are scheduled to be filed on August 14, 1991. Based on the complexity of the matters raised in the notice in this proceeding, the petitioners request that the time for filing comments be extended until August 9, 1991, and the reply comment date be extended until August 23, 1991.

2. Petitioners have shown good cause for this brief extension of time that will prolong the comment period in this proceeding by only 9 days. See 47 CFR 1.46.

3. Accordingly, *It Is Ordered,* That, Pursuant to authority delegated to the Chief, Mass Media Bureau in 47 CFR 0.283, the time for filing comments and reply comments in this proceeding are extended to August 9, 1991, and August 23, 1991, respectively.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 91–17766 Filed 7–25–91; 8:45 am]

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[1] In addition to the National Association of Broadcasters, the parties joining this request are: Allbritton Communications Company; American Family Broadcast Group, Inc.; Association of Independent Television Stations; CBS, Inc.; the Law Firm of Dow Lohnes & Albertson; the Law Firm of Fisher Wayland Cooper & Leader; the Law Firm of Fletcher Heald & Hildreth; Fox Television Stations, Inc.; and National Broadcasting Company, Inc.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB66

Endangered and Threatened Wildlife and Plants; Proposal To List the Sensitive Joint-Vetch (Aeschynomene Virginica) as a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: *Aeschynomene virginica* is an annual legume that can grow up to six feet tall and has yellow, pea-type flowers growing in racemes on short lateral branches. It requires the unique growing conditions occurring along segments of river systems that are close enough to the coast to be influenced by tidal action, yet far enough upstream to consist of fresh or slightly brackish water. The present distribution of *A. virginica* includes New Jersey (two populations), Maryland (one population), Virginia (six populations) and North Carolina (two populations). The joint-vetch has been extirpated from Pennsylvania and Delaware. Habitat alteration is the primary threat to the species' continued existence. Many of the sites where the species occurred historically have been dredged, filled or bulkheaded. Extant sites are potentially threatened by a proposed highway expansion and a proposed electricity generating plant in New Jersey, by several proposed residential developments and water supply projects in Virginia, as well as by other factors related to increased population growth, including road construction, commercial development, water pollution, and bank erosion from motorboat traffic.

DATES: Comments from all interested parties must be received by September 24, 1991. Public hearing requests must be received by September 9, 1991.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Annapolis Field Office, U.S. Fish and Wildlife Service, 1825 Virginia Street, Annapolis, MD 21401. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Jacobs at the above address, telephone (301) 269–5448.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB66

Endangered and Threatened Wildlife and Plants; Proposal To List the Sensitive Joint-Vetch (Aeschynomene Virginica) as a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: *Aeschynomene virginica* is an annual legume that can grow up to six feet tall and has yellow, pea-type flowers growing in racemes on short lateral branches. It requires the unique growing conditions occurring along segments of river systems that are close enough to the coast to be influenced by tidal action, yet far enough upstream to consist of fresh or slightly brackish water. The present distribution of *A. virginica* includes New Jersey (two populations), Maryland (one population), Virginia (six populations) and North Carolina (two populations). The joint-vetch has been extirpated from Pennsylvania and Delaware. Habitat alteration is the primary threat to the species' continued existence. Many of the sites where the species occurred historically have been dredged, filled or bulkheaded. Extant sites are potentially threatened by a proposed highway expansion and a proposed electricity generating plant in New Jersey, by several proposed residential developments and water supply projects in Virginia, as well as by other factors related to increased population growth, including road construction, commercial development, water pollution, and bank erosion from motorboat traffic.

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FOR FURTHER INFORMATION CONTACT: Ms. Judy Jacobs at the above address, telephone (301) 269-5448.

SUPPLEMENTARY INFORMATION:

Background

A rare and specialized ecological community type occurs a short distance upstream of where certain rivers in the coastal plain of the eastern United States meet the sea. Referred to as freshwater tidal marshes, these communities are close enough to the coast to be influenced by tidal fluctuations, yet far enough upstream to consist of fresh or only slightly brackish water. Plants that grow in this environment are subjected to a cycle of twice-daily flooding that most plants cannot tolerate. The sensitive joint-vetch (*Aeschynomene virginica*) is a plant of such freshwater tidal communities.

A. virginica is an annual legume (family Fabaceae) that attains a height of 1 to 2 meters (3-6 feet) in a single growing season. The stems are single, sometimes branching near the top. Leaves are even-pinnate, 2-12 centimeters (0.8-4.8 inches) long, with entire, gland-dotted leaflets. The irregular, legume-type flowers are about 1 cm (0.4 inch) across, yellow, streaked with red, and grow in racemes (elongated inflorescences with stalked flowers). The fruit is a loment with 6-10 segments, turning dark brown when ripe. Flowering begins late July and continues through September. Fruits are produced simultaneously from July to late October. Some observations indicate that seedlings may germinate only in "flotsam" (plant material) that has been deposited on the riverbank (Bruederle and Davison 1984).

Aeschynomene virginica has been confused with other members of the genus, particularly *A. indica,* which is an introduced, weedy species, common in wet agricultural areas from North Carolina to Florida, west to Texas and Arkansas. Another introduced member of this genus, *A. rudis,* has also been confused with *A. virginica.* This confusion has resulted in references to *virginica* in numerous week science publications (e.g. Boyette *et al.* 1979; Hackett and Murray 1986). The situation was clarified by Carulli and Fairbrothers (1988), who showed the three species to be distinguishable based on electrophoretic analysis of allozyme variation. Previous studies had also indicated the morphological distinctiveness of *A. virginica.* In her monograph of the genus, Rudd (1955) distinguishes *A. virginica* from *A. indica* based on the sizes of the fruit stipes and the flowers. Numerous other authors, including Fernald (1939), Gleason and Cronquist (1963) and Radford *et al.* (1964) have recognized the taxonomic validity of *A. virginica.* The recently published *Vascular Flora of the Southeastern United States: Volume 3* (Isley 1990) clearly distinguishes these three species of *Aeschynomene.*

At present, the sensitive joint-vetch is extant in New Jersey, Maryland, Virginia and North Carolina. The plant's status in North Carolina merits special comment. During the mid-1980's, status survey work in North Carolina (Leonard 1985) revealed that the species was no longer extant at any of the five historic localities. Potential visible causes of population loss included commercial and housing developments, realignment of a highway, habitat conversion to a public beach, and competition from weedy species. In the course of survey work, six new occurrences of *A. virginica* were found, two in or adjacent to cornfields and the remainder in roadside ditches. These new populations, however, have not proven to be stable. Three disappeared the year following their discovery, and another population has since disappeared. As of the summer of 1990, *A. virginica* is known to be extant in North Carolina only in two ditches connected to Lake Mattamuskeet, in Hyde County. Intensive fieldwork in North Carolina's estuarine freshwater tidal marshes during the 1990 field season revealed no new joint-vetch populations (A. Weakley, North Carolina Heritage Program, pers. comm., 1990).

The currently known distribution of the species is as follows: New Jersey: one small population (+ 50 individuals) on Wading Greek in Burlington County and one large population (+ 2000 on the Manumuskin River in Cumberland County. The latter site, representing one of the few remaining examples of pristine freshwater tidal marsh habitat in the State and containing the largest known viable *Aeschynomene virginica* population, has been acquired by The Nature Conservancy. New Jersey historic records for *A. virginica* occur in Atlantic, Camden, Cape May, and Salem Counties. Additional potential habitat along the Mullica and Murice River Systems remains to be checked for the presence of jointvetch populations. Maryland: one population of about 200 individuals on Manokin Creek, in Somerset County; historic records from Anne Arundel, Calvert, Charles, Prince Georges and Wicomico Counties. All historic records have been recently field-checked. North Carolina: As Stated above, *A. virginica* was known as of the summer of 1990 from two ditches in Hyde County. The plant also occurred historically in Beaufort and Craven Counties. Virginia: This is the stronghold of the species' current distribution. It occurs in six populations along four major river systems, as follows: (1) A population of about 40 individuals along the Potomac River in Stafford County; (2) an extensive population consisting of seven sub-populations along approximately 25 miles of the Rappahannock River in King George, Essex, Richmond and Westmoreland Counties; (3) a large population consisting of five sub-populations along an approximate 15-mile stretch of the Mattaponi River, a tributary of the York in Kind and Queen and King William Counties; (4) five subpopulations along a 15-mile section of the Pamunkey River, another tributary of the York (King William and New Kent Counties); (5) a population of about 50 plants on the Chickahominy River, a tributary of the James River, in Charles City and James City Counties; and (6) a tiny population of some eight plants along the mainstem of the James River, in Charles City County. The species is apparently extirpated from its type locality further downstream on the Rappahannock in Middlesex County. Historic records also exist for Prince George and Surry Counties, along the James River. The historic range of the species also included Delaware, (New Castle County), where it was last observed in 1899, and Pennsylvania (Delaware County), where it was last seen in 1891.

Federal government actions on this species began on December 15, 1980, when the Service published in the **Federal Register** a revised Notice of Review for Native Plants (45 FR 82480). *Aeschynomene virginica* was included in that notice as Category 2 species. Category 2 includes those taxa for which proposing to list as endangered or threatened species is possibly appropriate, but for which substantial data on biological vulnerability and threats are not currently available to support proposed rules. On November 28, 1983, the Service published in the **Federal Register** a supplement to the Notice of Review for Native Plants (48 FR 53640); updated plant notices have been published on September 27, 1985 (50 FR 39526) and February 21, 1990 (55 FR 6184). *A. virginica* was included in these revisions as a Category 2 species.

In 1985 the Service contracted with The Nature Conservancy's Eastern Regional Office to conduct status survey work on *A. virginica* and several other Federal candidate species. Their report (Rawinski and Cassin 1986) indicated that sufficient information did not exist at that time to support listing *A. virginica* as endangered or threatened. They recommended retention of this species in Category 2. Since this report was submitted, four known occurrences of the species in North Carolina have disappeared, taxonomic uncertainties have been resolved, further surveys of potential habitat have been conducted, and threats to the species' continued existence have intensified sufficiently to support a listing as threatened.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Aeschynomene virginica* (L.) B.S.P. (sensitive joint-vetch) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The extirpation of the sensitive joint-vetch from Delaware and Pennsylvania and its elimination from many sites in other states can be directly attributed to anthropogenic habitat destruction. Many of the marshes where it occurred historically have been dredged and/or filled and the riverbanks bulkheaded or stabilized with riprap. This is most evident in historic locations around Philadelphia (Bruederle and Davison 1984). Other sources of potential or actual habitat destruction include impoundments and water withdrawal projects, road construction, commercial and residential development, and resultant pollution and sedimentation.

The remaining stronghold of *A. virginica* is in Virginia, along the relatively narrow band of freshwater tidal sections of several river systems on the coastal plain. These river sections are quite pristine, given their proximity to the major metropolitan areas of Washington, D.C. and Richmond, Virginia. As the suburbs associated with these cities expand, the impacts to these river sections from residential and commercial development, shoreline stabilization activities, point and non-point source discharges, recreational use, water development projects, and sedimentation from building and road construction, are all expected to increase greatly.

Certain of these factors are known to be harmful to *Aeschynomene virginica*; others require further study to determine their effects. Shoreline stabilization, as in placement of riprap, can destroy the species' habitat directly. Increased motorboat traffic is known to be detrimental to freshwater tidal systems (A.E. Schuyler, Philadelphia Academy of Natural Sciences, pers. comm., 1989). In addition to direct toxic effects from fuel leaks, the wave action from boat wakes can rapidly erode the mudflats and banks where the joint-vetch grows. Along narrower river sections, the wake from a single boat may affect both shorelines simultaneously.

Sedimentation could affect *A. virginica* by inhibiting germination, smothering seedlings and/or promoting the invasion of weedy species. Sipple (1990) notes that sedimentation of the Patuxent River in Maryland has allowed the common reed (*Phragmites australis*) to extend its range, displacing much of the wild rice (*Zizania aquatica*) that occurred historically along this river. Establishment of *Phragmites* or other invasive species could be especially detrimental to *A. virginica*, which has evolved to thrive in an environment with little competition from other plants.

Two specific projects could threaten New Jersey's large population of *A. virginica*. One is the extension of a major highway, which is proposed to cross the Manumuskin River in the vicinity of the population. The plants and their habitat could be destroyed directly, during the construction process, or indirectly, through input of sediments, road salt, or petrochemicals. The other project is a coal-powered electric generating facility, proposed to be located less than a mile upstream from the population. There is concern that the disposal of by-products from this facility could degrade the plants' habitat.

Maryland's one known joint-vetch population is located along Manokin Creek, adjacent to a major highway. In addition to being vulnerable to various pollutants associated with the road, the population is flanked by invasive weeds, including *Phragmites australis* and multflora rose (*Rosa multiflora*).

In Virginia, most of the potential threats facing *Aeschynomene virgnica* and its habitat are associated with population growth. Within the Chesapeake Bay watershed, Virginia's population is projected to increase by 32% by the year 2020, a rate nearly twice that predicted for Maryland (19%) and four times that for Pennsylvania (8%) (Year 2020 Panel 1988). In areas local to the occurrence of *Aeschynomene virginica*, growth rates may be even greater. Over the past ten years the human population of King William County near the Mattaponi River joint-vetch population has grown more than 60 per cent (Oberg 1990), and this growth rate is projected to continue.

Residential development associated with this population increase is becoming evident. In early 1991, a 200-acre subdivision was completed in eastern King and Queen County. This development includes a boat launch and pier on the Mattaponi. In the western part of the county, efforts are underway to secure the necessary zoning for a 500-acre development, which would include river access, an 18-hole golf course and other amenities. Without careful planning, such developments are likely incompatible with the continued existence of *Aeschynomene virginica*. The plants' habitat can be destroyed by the construction of piers and dredging of boat slips or other recreational purposes. Additionally, water quality degradation in streams harboring *A. virginica* can result from uncontrolled runoff of pesticides, fertilizers, and other chemicals used on golf courses, lawns and gardens. Increased sewage effluent in the area may result in increased nutrient loading or pollution of local stream systems.

Development pressures of great magnitude are also found close to the Washington, DC area. In 1987, a 1000-acre development was proposed on the Widewater Peninsula, a finger of land in Stafford County, Virginia, that harbors the sole known Potomac River occurrence of *Aeschynomene virginica*. The original proposal called for over 3150 dwellings, a conference center, golf course, air strip, stores, offices, a 1000-slip marina and industrial uses. This proposal required a rezoning, which was rejected. However, several alternative planned developments have been proposed, and the current intended land use of this area is for relatively high intensity waterfront development, which, without careful planning, may not be compatible with the continued existence of *A. virginica*.

In addition to expanded residential development, the population increase in Virginia will be accompanied by an increased demand for potable water. Tidal freshwater river systems are the source of freshwater in closest proximity to coastal communities and the obvious choice for obtaining this necessary commodity. The construction of Walker's Dam has already eliminated the tidal influence on a significant portion of the Chickahominy River, perhaps destroying joint-vetch habitat in the process.

Currently, the Newport News Waterworks projects a water deficit of 35 million gallons per day (mgd) by the year 2040. The utility is beginning to evaluate numerous water supply options, three of which could potentially affect *A. virginica* habitat. First is the withdrawal of 40 mgd from the James River above Richmond. A second alternative would involve a pump over from the Pamunkey and Chickahominy Rivers (a 40 mgd withdrawal rate is proposed for each river). A third alternative calls for a maximum 75 mgd withdrawal from the Mattaponi River (B. Gladden, TNC, Charlottesville, VA, pers. comm., 1991).

Spotsylvania County has projected that it will need to increase its capacity to provide potable water by 1995. The County has applied for a permit to withdraw some 8.2 mgd from Po Creek (a tributary of the Mattaponi River). Stafford and Spotsylvania Counties and the City of Fredericksburg are also discussing a 24 mgd withdrawal from the Rappahannock River at Fredericksburg.

Hanover County, Virginia, proposes to begin operating a reservoir for public water supply to the Mechanicsville-Chickahominy area by the end of this century. The reservoir would be created by constructing a cross-stream impoundment on Crump Creek, a tributary to the Pamunkey River. The implementation of this proposal would include a 25 mgd withdrawal from the Pamunkey River.

The effects of these proposed water supply projects on *A. virginica* are very likely to be detrimental and clearly need to be evaluated, both on a local and a regional basis. The withdrawal of large amounts of freshwater could raise the salinity of the marsh systems occupied by the joint-vetch, possibly beyond the species' tolerance limits. Certain other key plant and animal species in this community type could also succumb, with unknown impacts to the system as a whole. Salinity changes might also promote the invasion of weedy plant species that could readily out-compete the joint-vetch.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

A. virginica has not been a target for collection, since it grows in a specialized habitat and would not survive under normal garden conditions. The plant has been collected in the past for scientific study. The increased visibility of the species as a result of the publication of this proposed rule might increase the perceived value of specimens to collectors.

C. Disease or Predation

Observations in North Carolina have indicated severe depredation of seeds by tobacco budworms and corn earworms (Leonard 1985). It is unlikely that these predators would prove to be a problem in other populations throughout the species' range, as they would not occur in typical wetland habitat.

D. The Inadequacy of Existing Regulatory Mechanisms

The sensitive joint-vetch is listed as endangered by the States of Maryland, New Jersey, and North Carolina, but is afforded no legal protection in Virginia. The Maryland Threatened and Endangered Species regulations (COMAR 08.03.08) prohibit taking of endangered plant species from State property except by special permit, and further prohibit taking from private property without the written permission of the landowner. However, these regulations do not prohibit alteration of the habitat in which these species occur. Protection of habitat is afforded *Aeschynomene* under Maryland's Critical Areas legislation. COMAR 14.15.09 prohibits any activity that may adversely affect any endangered or threatened species or its habitat within 100 feet of the upper limit to a tidal wetland. The joint-vetch is afforded legal protection in North Carolina by North Carolina general statutes § 106–202.122, 106–202.19 (CUN.SUP.1985), which prohibit interstate trade without a permit, prohibit taking without written permission of landowners, and provide for monitoring and management of state-listed species. However, this legislation provides no habitat protection for listed species. In Virginia, the State with the greatest number of populations of *A. virginica*, there is no protection. Even if the species were listed under Virginia's Endangered Plant and Insect Species Act (title 3.1, chapter 39), it would be protected from take, but destruction or alteration of its habitat would be unregulated. In these States, listing under the Endangered Species Act would provide additional protection particularly for the habitat of *A. virginica*. In New Jersey, numerous laws pertain to the protection of endangered plants. The New Jersey Endangered Plant Species List Act (NJ SA 13:1B–15.151–158) merely provides for the creation of a list of rare plants and offers no protection from take or habitat alteration. However, other State laws provide substantial protection. One New Jersey population occurs within the area protected by the Pinelands Protection Act (NJ AC 7:50–6.24), which prohibits any development that would adversely affect the survival of any local population of an endangered or threatened species. The regulations governing the Coastal Area Facility Review Act (N.J.S.A. 13:19–1 *et seq.*) state that habitat for endangered and threatened species on Federal or State lists or under active consideration for inclusion on either list will be considered "special areas". Development in these areas is prohibited unless it can be shown that the rare species' habitat would not be adversely affected. The population protected under the Pinelands legislation also falls within the area covered by this Act. The New Jersey Freshwater Wetlands Protection Act (N.J.S.A. 13:9B–1 *et seq.*) prohibits regulated activities from jeopardizing threatened or endangered species or adversely modifying their historic or documented habitat, but this protection extends only to Federally listed plants. Therefore, Federal listing would activate this law on behalf of New Jersey's other known (and much larger) population of *A. virginica*.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Whether due to causes mentioned under Factor A or to other as yet unidentified threats, the extent of *Aeschynomene virginica* along river systems in Virginia is contracting. On both the Rappahannock and the James Rivers, *Aeschynomene virginica* was collected historically some 10 miles further upstream and downstream than it is currently known to exist. It remains on only one section of the Chickahominy River, where it once had a much broader distribution, as noted from historical collections (T. Wieboldt, VPI&SU Herbarium, pers. comm., 1990).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Aeschynomene virginica* as threatened. The species is not in immediate danger of extinction, due primarily to its current distribution along six river systems in Virginia. However, the best available data indicate that it qualifies as a threatened species, based on the projected outlook for human population increase and associated commercial and suburban development, demand for water, and increased human use along these river systems. Increased development has proven to be detrimental to *A. virginica* and its specialized habitat, as indicated by the species' extirpation from two States and numerous counties in the States where it is yet extant.

Critical Habitat

Section 4(a)(3) of the Act as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. As discussed under Factor B in the Summary of Factors Affecting the Species, *Aeschynomene virginica* is threatened by taking, an activity difficult to enforce against and only regulated by the Act with respect to plants in cases of (1) removal and reduction to possession of listed plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying in knowing violation of any State law or regulation, including State criminal trespass law. Such provisions are difficult to enforce, and publication of critical habitat descriptions and maps would make the joint-vetch more vulnerable and increase enforcement problems. All involved parties and principal landowners have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will be addressed through the recovery possess and through the section 7 jeopardy standard. Therefore, it would not now be prudent to determine critical habitat for this species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation action by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Because *A. virginica* occurs in wetland habitat, many projects potentially affecting it would be within the permitting authority of the U.S. Army Corps of Engineers. The water supply and development projects mentioned under Factor A are among such projects.

The listing of this plant also brings sections 5 and 6 of the Endangered Species Act into full effect on its behalf. Section 5 authorizes the acquisition of lands for the purpose of conserving endangered and threatened species. Pursuant to section 6, the Service may grant funds to affected states for management actions aiding the protection and recovery of the species.

Listing sensitive joint-vetch as threatened provides for development of a recovery plan. Such a plan will bring together State, Federal, and private efforts for conservation of the species. The plan will establish an administrative framework, sanctioned by the Act, for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan will also set recovery priorities and estimate the cost of various studies or other tasks necessary to accomplish them. It will assign appropriate functions to each agency and a time frame within which to complete them. It may also identify specific areas that need to be monitored and possibly managed for the conservation of the species.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general prohibitions and exceptions that apply to all threatened plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71 apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. In addition, for listed plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of listed plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances.

It is anticipated that few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, room 432, 4401 N. Fairfax Dr., Arlington, VA 22203–3507, (703/358–2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the

Annapolis Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Year 2020 Panel. 1988. Population Growth and Development in the Chesapeake Bay Watershed to the Year 2020. Report to the Chesapeake Executive Council, in compliance with Chesapeake Bay Agreement of 1987. Council on the Environment, Richmond, VA.

Author

The primary author of this proposed rule is Judy Jacobs, Annapolis Field Office, U.S. Fish and Wildlife Service, 1825 Virginia Street, Annapolis, Maryland 21401 (301) 269–5448.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter 1, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Fabaceae to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Fabaceae—Bean family:						
*	*	*	*	*	*	*
Aeschynomene virginica	Sensitive joint-vetch	U.S.A (DE, MD, NC, NJ, PA, VA)	T		NA	NA.
*	*	*	*	*	*	*

Dated: July 2, 1991.

Richard N. Smith,

Acting, Director, Fish and Wildlife Service.

[FR Doc. 91–17760 Filed 7–25–91; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 56, No. 144
Friday, July 26, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 91-107]

Availability of Environmental Assessments and Findings of No Significant Impact Relative to Issuance of Permits to Field Test Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that five environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The assessments provide a basis for the conclusion that the field testing of these genetically engineered organisms will not present a risk of the introduction or dissemination of a plant pest and will not have a significant impact on the quality of the human environment. Based on these findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Program Specialist, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessments and findings of no significant impact, write Clayton Givens at this same address. The documents should be requested under the permit numbers listed below.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced into the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environment impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing the permit applications, APHIS assessed the impact on the environment of releasing the organisms under the conditions described in the permit applications. APHIS concluded that the issuance of the permits listed below will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment.

The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of the following permits to allow the field testing of genetically engineered organisms:

Permit Number	Permittee	Date Issued	Organism	Field Test Location
91-094-01 (renewal of 90-032-01 issued on 05-08-90).	Monsanto Agricultural Company	06-25-91	Potato plants genetically engineered to express the viral coat proteins from potato virus X (PVX), potato virus Y (PVY), and/or potato leaf roll virus (PLRV).	Benton County, Washington.
91-105-01	Pioneer Hi-Bred International, Incorporated.	06-27-91	Corn plants genetically to express a phosphinothricin bialaphos herbicide tolerance gene and two marker genes.	Polk County, Iowa.
91-100-01	Ciba-Geigy Biotechnology Research	06-28-91	Corn plants genetically engineered to express two marker genes	Molokai, Hawaii.
91-129-01	Holden's Foundation Seeds, Incorporated.	07-01-91	Corn plants genetically engineered to express a phosphinotricin-N-acetyltransferase (PAT) gene to confer tolerance to the herbicide glufosinate.	Iowa County, Iowa.
91-115-01	U.S. Department of Agriculture, Agricultural Research Service.	07-08-91	Tobacco plants genetically engineered to express the beet curly top virus (BCTV) capsid protein and two marker genes.	Benton County, Washington.

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1509), (3) USDA Regulations Implementing NEPA (7 CFR part lb), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC, this 23rd day of July 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–17776 Filed 7–25–91; 8:45 am]

BILLING CODE 3410-34-M

Soil Conservation Service

Chunky River Watershed, MS

AGENCY: Soil Conservation Service, U.S.D.A.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U. S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for Chunky River Watershed, Newton and Neshoba Counties, Mississippi.

FOR FURTHER INFORMATION CONTACT: L. Pete Heard, State Conservationist, Soil Conservation Service, suite 1321, A.H. McCoy Federal Building, 100 West Capitol Street, Jackson, Mississippi 39269, telephone 601–965–5205.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, L. Pete Heard, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a supplemental plan for the purpose of reducing flood damages to urban areas along Newton Creek and its Tributary No. 2. The planned works of improvement consist of 0.8 mile of channel modifications which includes channel enlargement.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting L. Pete Heard.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

"(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)"

Dated: July 18, 1991.

L. Pete Heard,

State Conservationist

[FR Doc. 91–17727 Filed 7–25–91; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: International Trade Administration.

Title: Foreign Buyer Program: Application, Exhibitor Data, and Evaluation.

Form Numbers: Agency—ITA–426P, OMB—0625–0151.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 7,330 respondents; 1,335 reporting hours.

Average Hours Per Response: ITA–4014P—10 minutes; ITA–4015P—10 minutes; ITA–4102P—3 hours, 10 minutes.

Needs and Uses: The International Trade Administration (ITA) runs the Foreign Buyer Program (FBP) to encourage foreign buyers to attend selected domestic trade shows in high export potential industries and to facilitate contact between U.S. exhibitors and foreign visitors. The application is the vehicle used by a potential show organizer to provide (1) his experience, (2) ability to meet the special conditions of the Foreign Buyer Program and (3) information about the domestic trade show such as number of U.S. exhibitors and percentage of net exhibit space occupied by U.S. companies vis-a-vis non-U.S. exhibitors. The exhibitor data form is completed by U.S. exhibitors participating in a FBP domestic trade show and used to list the firm and its product in an Export Interest Directory which is distributed worldwide for use by Foreign Commercial Officers in recruiting delegations of foreign buyers to attend the show. The exhibitor evaluation is sent to U.S. exhibitors after the show to determine the results of ITA's efforts to bring together foreign buyers and U.S. firms.

Affected Public: Businesses or other for profit; small businesses or organizations.

Frequency: On occasion; annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, room 5327, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208 New Executive Office Building, Washington, DC 20503.

Dated: July 22, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91–17750 Filed 7–25–91; 8:45 am]

BILLING CODE 3510-CW-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: International Trade Administration.

Title: Marketing Data Form.

Form Numbers: Agency—ITA–466P; OMB—0625–0047.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 2,300 respondents; 1,725 reporting hours.

Average Hours per Response: 45 minutes.

Needs and Uses: The Marketing Data Form (MDF) is sent to participants along with other materials necessary to participate in an ITA trade exhibition, trade mission or Matchmaker. The MDF provides information necessary to produce export promotion brochures and directories and to arrange appointments and prospect calls on behalf of the participants with key prospective buyers, agents, distributors or government officials. Specific information is also requested in terms of the participants' objectives regarding agents, distributors, joint prospective agents, e.g., physical facilities, technical capabilities, financial strength, staff, representation of complementary lines, etc.

Affected Public: Businesses or other for profit; small businesses or organizations.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, room 5327, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 22, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91–17751 Filed 7–25–91; 8:45 am]

BILLING CODE 3510–CN–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C Chapter 35).

Agency: International Trade Administration.

Title: COMMERCIAL NEWS USA/Export Product Promotion.

Form Numbers: Agency—ITA–4063P, OMB–0625–0061.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 2,200 respondents; 917 reporting hours.

Average Hours Per Response: 25 minutes.

Needs and Uses: The International Trade Administration (ITA) publishes the COMMERCIAL NEWS USA (CNUSA) which promotes U.S. products available for export in overseas markets. The application form is the vehicle used (1) by U.S. manufacturers, service firms, and publishers of trade and technical literature to provide information on products which they want promoted overseas; (2) to determine if the products meet program criteria, and (3) to request results of each company's publicity in CNUSA one year after publication.

Affected Public: Businesses or other for profit; small businesses or organizations.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, room 5327, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208 New Executive Office Building, Washington, DC 20503.

Dated: July 22, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91–17752 Filed 7–25–91; 8:45 am]

BILLING CODE 3510–CW–M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Patent and Trademark Office.

Title: Trademark Processing.

Form Number: OMB Number: 0651–0009.

Type of Request: Extension.

Burden: 116,000 respondents; 29,000 reporting hours. Average time is 15 minutes.

Needs and Uses: Information provided by individuals and corporations is used by the Patent and Trademark Office to determine eligibility for trademark/service mark registration. The registration of a mark provides certain benefits to the holder. It allows access to the Federal court system and serves as public notice of the registrant's rights under trademark law.

Affected Public: Businesses, industries, and small businesses.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain a benefit.

OMB Desk Officer: Maya A. Bernstein 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–3271, Department of Commerce, room 5327, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maya A. Bernstein, OMB Desk Officer, room 3235, New Executive Office Building, Washington, DC 20503.

Dated: July 22, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91–17753 Filed 7–25–91; 8:45 am]

BILLING CODE 3510–CW–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Economic Analysis.

Title: Benchmark Survey of Selected Services Transactions With Unaffiliated Foreign Persons—1991.

Form Number: Agency—BE–20; OMB—0608–0058.

Type of Request: Reinstatement of a previously approved collection for which approval has expired.

Burden: 1,000 respondents; 13,200 reporting hours.

Average Hours per Response: 13.2 hours.

Needs and Uses: This survey will obtain universe data on transactions in selected services between U.S. and unaffiliated foreign persons in 1991. The data from the survey will provide benchmarks for deriving current universe estimates of such transactions from sample data collected in subsequent years. The information gathered is needed to support U.S. trade policy initiatives, including trade negotiations, and to compile the U.S. balance of payments and the national income and product accounts.

Affected Public: Businesses, government agencies, or other institutions engaging in international transactions in the covered services.

Frequency: Quinquennial.

Respondent's Obligation: Mandatory.

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OMB Desk Officer: Maya A. Bernstein 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–3271, Department of Commerce, room 5327, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maya A. Bernstein, OMB Desk Officer, room 3235, New Executive Office Building, Washington, DC 20503.

Dated: July 22, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91–17753 Filed 7–25–91; 8:45 am]

BILLING CODE 3510-CW-M

Agency Form Under Review by the Office of Management and Budget (OMB)

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Affected Public: Businesses, government agencies, or other institutions engaging in international transactions in the covered services.

Frequency: Quinquennial.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–3271, Department of Commerce, room H5327, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 23, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91–17754 Filed 7–25–91; 8:45 am]

BILLING CODE 3510-CW-M

Foreign-Trade Zones Board

[Order No. 528]

Resolution and Order Approving With Restriction the Application of the Canaveral Port Authority for a Special-Purpose Subzone at the Machinery Components Manufacturing Facility of Flite Technology, Inc., in Cocoa, FL

Proceedings of the Foreign-Trade Zones Board, Washington, DC

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Canaveral Port Authority, grantee of FTZ 136, filed with the Foreign-Trade Zones Board (the Board) on June 19, 1990, requesting special-purpose subzone status for the machinery components manufacturing plant or Flite Technology, Inc., located in Cocoa, Florida, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the FTZ Board's regulations would be satisfied, and that the proposal would be in the public interest if full zone benefits were approved for export manufacturing only, approves the application subject to the restriction requiring Flite Technology to elect privileged-foreign status on all merchandise admitted to the subzone.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish a Foreign-Trade Subzone in Cocoa, Florida

Whereas, By an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, The Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, The Canaveral Port Authority, Grantee of Foreign-Trade Zone No. 136, has made application (filed June 19, 1990, FTZ Docket 23–90, 55 FR 26224, 06–27–90) in due and proper form to the Board for authority to establish a special-purpose subzone at the Flite Technology, Inc., plant in Cocoa, Florida;

Whereas, Notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, The Board has found that the requirements of the Act and the Board's regulations would be satisfied and that the proposal would be in the public interest if approval were given subject to the restriction in the resolution accompanying this action;

Now, therefore, In accordance with the application filed June 19, 1990, the Board hereby authorizes the establishment of a subzone at the Flite Technology, Inc., plant in Cocoa, Florida, designated on the records of the Board as Foreign-Trade Subzone 136A, at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the regulations issued thereunder, to the restriction in the resolution accompanying this action, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, The Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC, this 19th day of July 1991, pursuant to Order of the Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

Eric I. Garfinkel,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alterantes Foreign-Trade Zones Board.

[FR Doc. 91–17805 Filed 7–25–91; 8:45 am]

BILLING CODE 3510-DS-M

[Docket 39–91]

Application for Extension for Subzone 23B, CPS Corp. (Formerly Greater Buffalo Press) Ink Plant, Chautauqua County, NY

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the County of Erie, New York, grantee of Foreign-Trade Zone 23, requesting an extension of authority for Subzone 23B at the ink manufacturing plant of CPS Corporation (CPS) located in the town of Dunkirk, Chautauqua County, New York. (CPS is the former ink manufacturing division of Greater Buffalo Press, Inc. (GBP)). The application was formally filed on July 2, 1991.

Subzone 23B was approved with restrictions in 1986 (Board Order 332, 51 FR 18468, 5/20/86). The approval covered an existing plant in Sheridan, New York, and the Dunkirk site to which the plant was to be relocated (this occurred in 1988). The authorization was for a five-year period from activation (to 8–25–91), subject to extension. Approval was also subject to restrictions requiring the election of privileged foreign status (19 CFR 146.41) on pigments used in the production of ink sold to domestic printing plants not affiliated with GBP and on ink produced in excess of 21 million pounds annually.

In August 1989, Sullivan Graphics, Inc. purchased both the ink manufacturing (CPS) and printing divisions of GBP. In December 1989, Sullivan sold the ink manufacturing division to INX International, Inc. which operates CPS as a subsidiary corporation.

The grantee, on behalf of CPS, now requests an indefinite extension of authority and removal of the restriction regarding production levels. Now that the Dunkirk plant is active, CPS has closed the Sheridan facility and has not included it in its extension request. Also, there is no request for removal of the restriction limiting shipments to affiliated plants. Of the nine original plants authorized to receive shipments of ink made under full zone benefits, there remain seven in operation (operated by Sullivan Graphics). these are the plants to which shipments would continue.

The CPS ink facility consists of an ink production plant on Middle Road and a warehouse on Rt. 5, in the Town of Dunkirk. The plant produces color inks primarily for Sullivan Graphics's high-speed comic and commercial newspaper supplement printing operations in the U.S. and Canada. It sources pigments from abroad.

Zone procedures exempt CPS from Customs duty payments on pigments and related chemicals used in ink that is reexported. On sales to Sullivan Graphics's domestic plants (6 of the 7 noted above), CPS can choose the duty rate that applies to ink (1.8%). Most foreign pigments used by CPS have a duty rate of 20 percent. The application indicates that the savings will continue to help maintain CPS's competitiveness with Canadian production.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli, (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Victor G. Weeren, Assistant Regional Commissioner, U.S. Customs Service, Northeast Region, suite 801, 10 Causeway Street, Boston, Massachusetts 02222–1056; and Colonel Hugh F. Boyd III, District Engineer, U.S. Army Engineer District Buffalo, 1776 Niagara Street, Buffalo, New York 14207–3199.

The FTZ Board plans to temporarily extend subzone status for CPS subject to the restrictions of Board Order 332 for a period of six months, during which this review would be concluded.

Comments concerning the application are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before September 9, 1991.

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th and Pennsylvania Avenue NW., Washington, DC 20230.

Dated: July 19, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91–17806 Filed 7–25–91; 8:45 am]

BILLING CODE 3510–05–M

[Docket No. 41–91]

Application for Expansion for Subzone 57A, IBM Information Processing Equipment Plant, Charlotte, NC

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the North Carolina Department of Economic and Community Development (NCDECD), grantee of FTZ Subzone 57A, at the information processing equipment manufacturing plant of International Business Machines Corporation (IBM), located in Charlotte, North Carolina, requesting to expand the subzone and the scope of manufacturing authority. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and regulations of the Board (15 CFR part 400). It was formally filed on July 8, 1991.

Subzone 57A was approved in 1986 for the manufacture of printers, electronic banking equipment and electronic assemblies (Board Order 323, 51 FR 3356, 1/27/86). It was activated under subzone procedures during 1987, and is seeking this expansion authority prior to reactivation. The plant (4,500 employees) is used to produce a wider range of information processing equipment and components, and IBM requests that its subzone authority be extended to include the new activity, as well as planned activity. The plant's produce lines now include printed circuit boards, electronic logic cards, special-purpose information processing equipment for the financial industry, bar code readers, modems, microcode loaded diskettes, and physical and chemical analysis computers.

Foreign materials account for some 18 percent of the value of the finished equipment and components including monitors, keyboards, cathode ray tubes, dot matrix printers, magnetic disk drives, power supplies, modems, testers, magnetic disks and diskettes, resistors, capacitors, transistors, printed circuits, switching apparatus and connectors, electronic integrated circuits, wire and cable, insulators and fittings, fuses, certain articles of plastic and rubber, fasteners, hangars, screws, bolts, and bearings. Certain components and subassemblies produced at the Charlotte plant are shipped to other IBM plants, and some 25 percent of the finished equipment is exported.

Zone procedures would exempt IBM from Customs duty payments on foreign parts that are used in production for export. On its domestic sales, it would be able to choose the duty rates that apply to finished products (0.0 to 10.0 percent, averaging 4.9 percent). The duty rates on the foreign components range from 0.0 to 14.0 percent. The application indicates that the savings will help improve the plant's international competitiveness.

The application also requests authority to expand the subzone to include sites for three related operations (proposed sites 2, 3, and 4) in the Charlotte area which perform contract services for IBM related to manufacturing at its Charlotte plant: *Site 2* (4 acres)—warehousing, testing and pre-assembly facility operated by Atlantic Design Company, 5020 W.T. Harris Boulevard, Mecklenburg County, 4 miles north of Charlotte; *Site 3* (23 acres)—warehousing, testing and assembly/manufacturing facility operated by Taltronics Corporation, 404 Armour Street, Davidson, Mecklenburg County, some 14 miles north of Charlotte; and, *Site 4* (18 acres)—warehousing, testing, and production-related facility operated by Atlantic Design Company, 5601 Wilkinson Boulevard, Charlotte, north of the Douglas Municipal Airport.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Howard Cooperman, Regional Director, Inspection and Control, U.S. Customs Service, Southeast Region, 909 SE. First Avenue. Miami, Florida 33131–2595; and

Colonel W. Scott Tulloch, District Engineer, U.S. Army Engineer District Wilmington, P.O. Box 1890, Wilmington, NC 28402–1890.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before September 12, 1991.

A copy of the application is available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, P.O. Box 19369, 1825 Crossbeam Road, Charlotte, NC 28219.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, room 3716, Washington, DC 20230.

Dated: July 19, 1991.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 91–17807 Filed 7–25–91; 8:45 am]

BILLING CODE 3510-DS-M

[Docket 40–91]

Application for Subzone, IBM Information Processing Equipment Plant, Raleigh/Durham, NC

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Triangle J Council of Governments, grantee of FTZ 93, requesting special-purpose subzone status for the information processing equipment manufacturing complex of International Business Machines Corporation (IBM) in the Raleigh/Durham, North Carolina, area. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the board (15 CFR part 400). It was formally filed on July 8, 1991.

IBM is an international producer and distributor of information processing equipment and systems with annual sales of some $63 billion.

The proposed subzone involves a main manufacturing facility and five related facilities (total, 807 acres): *Site 1* (688 acres)—main manufacturing and distribution, Research Triangle Park (RTP), southeast of Durham in Durham County; *Site 2* (15 acres)—remanufacturing and storage, IBM Building 646, South Miami Boulevard, RTP; *Site 3* (18 acres)—raw material storage, IBM Buildings 644 and 654, Alexander and Wreck Drives, RTP; *Site 4* (15 acres)—manufacturing and administration, 2520 Yonkers Road, IBM Building 602, Raleigh; *Site 5* (10 acres)—research and development, 3808 Six Forks Road, IBM Building 051, Raleigh; *Site 6* (61 acres)—finished product storage, operated by Triangle North American under contract to IBM, Tri-Center Buildings III/IV, V and VI, Tricenter Boulevard and Northeast Creek Parkway, RTP.

The facilities employ 13,000 persons and are used primarily for the research and manufacture of IBM's Communications System Line of Business Products, including Personal System/1 and Personal System/2 computers, communications controllers and multiplexers, modems, token-ring networks, supermarket and retail store systems, harsh environment computers, special project computers, display and monitors, ASCII terminals, Entry systems monitors, and miscellaneous parts. Up to 40 percent of the components for these products are sourced abroad including hard and floppy disk drive units, printed circuit boards and assemblies, monitors, mouse units, keyboards, cathode ray tubes, dot matrix printers, power supplies, parts and assemblies for automatic banking machines, electric motors, generators, transformers, resistors, transistors, switching apparatus, electronic integrated circuits and microassemblies, magnetic disks and diskettes, wire and cable, insulators and fittings, optical fibers, lasers, fans, battery packs, fasteners, hangers, screws, bolts, valves, bushings, bearings, and certain articles of plastic and rubber. Certain components produced at the Raleigh/Durham plants are shipped to other IBM plants, and some 12 percent of the finished computer equipment is exported.

Zone procedures would exempt IMB from Customs duty payments on foreign parts that are used in production for export. On its domestic sales, it would be able to choose the duty rates that apply to finished products (0.0 to 10.0 percent, averaging 4.9 percent). The duty rates on foreign components range from 0.0 to 14.0 percent. The application indicates that savings from zone procedures will help improve the international competitiveness of the company's U.S. plants.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Howard Cooperman, Regional Director, Inspection and Control, U.S. Customs Service, Southeast Region, 909 SE. First Avenue, Miami, Florida, 33131–2595; and Colonel W. Scott Tulloch, District Engineer, U.S. Army Engineer District Wilmington, P.O. Box 1890, Wilmington, NC 28402–1890.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before September 12, 1991.

A copy of the application is available for public inspection at each of the following locations:

Office of the District Director, U.S. Department of Commerce, 203 Federal Building, 324 W. Market Street, P.O. Box 1950, Greensboro, NC 27402.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., room 3716, Washington, DC 20230.

Dated: July 19, 1991.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 91–7808 Filed 7–25–91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-583-505]

Oil Country Tubular Goods From Taiwan; Determination Not To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Determination not to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty order on oil country tubular goods from Taiwan.

EFFECTIVE DATE: July 26, 1991.

FOR FURTHER INFORMATION CONTACT: Barbara Victor or Thomas Futtner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–3814.

SUPPLEMENTARY INFORMATION:

Background

On June 6, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 26052) its intent to revoke the antidumping duty order on oil country tubular goods from Taiwan (51 FR 22098, June 18, 1986). The Department may revoke an order if the Secretary concludes that the order is no longer of interest to interested parties. We did not receive a request for administrative review of the order for the last four consecutive annual anniversary months and, therefore, published a notice of intent to revoke the order pursuant to 19 CFR 353.25(d)(4).

On June 18, 1991, the Lone Star Steel Company and CF&I Steel Corporation, the petitioners, objected to our intent to revoke the order. On June 24, 1991, North Star Steel Company, a domestic producer, also objected to our intent to revoke. Therefore, we no longer intend to revoke the order.

Dated: July 19, 1991.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 91-17809 Filed 7-25-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-028]

Roller Chain, Other Than Bicycle, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative reviews.

SUMMARY: In response to requests from interested parties, the Department of Commerce has conducted administrative reviews of the antidumping duty order on roller chain, other than bicycle, from Japan. The reviews cover nine manufacturer/trading companies of the subject merchandise to the United States and the periods April 1, 1983 through March 31, 1984 and April 1, 1984 through March 31, 1985. We preliminarily determine dumping margins to range from 0.02 percent to 8.70 percent for the period April 1, 1983 through March 31, 1984 and 0.33 percent to 9.01 percent for the period April 1, 1984 through March 31, 1985. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: July 26, 1991.

FOR FURTHER INFORMATION CONTACT: Randall Edwards, Kelly Parkhill, or Michael Rollin, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On April 12, 1973, a dumping finding with respect to roller chain, other than bicycle, from Japan was published in the **Federal Register**, as Treasury Decision 73-100 (38 FR 9226). On August 12, 1985, the Department of Commerce (the Department) published in the **Federal Register** (50 FR 32556), a notice outlining the procedures for requesting administrative reviews of this and other findings and orders covering periods between 1983 and 1985. The Department received timely requests from the petitioner and/or respondents concerned with the roller chain findings and initiated reviews on July 9, 1986 (51 FR 24883). Since that time, the petitioner and several respondents have withdrawn some of their requests for review. The remaining companies covered by this notice of preliminary results of administrative reviews for the periods April 1, 1983 through March 31, 1984 and April 1, 1984 through March 31, 1985, are: Caddy Corporation of America (Caddy); Hitachi Metals Techno, Ltd. and Hitachi Maxco, Ltd. (Hitachi); Izumi Chain Manufacturing Co., Ltd. (Izumi); Kaga Kogyo K.K. (Kaga); Kaga/APC; Pulton Chain Co., Inc. (Pulton); Pulton/HIC; Pulton/I&OC; and Takasago RK Excel Co., Ltd. (Takasago). The Department has now conducted these reviews in accordance with section 751 of the Tariff Act of 1930, as amended ("the Tariff Act").

Scope of Review

Imports covered by these reviews are shipments of roller chain, other than bicycle, from Japan. The term "roller chain, other than bicycle" as used in these reviews includes chain, with or without attachments, whether or not plated or coated, and whether or not manufactured to American or British standards, which is used for power transmission and/or conveyance. Such chain consists of a series of alternately assembled roller links and pin links in which the pins articulate inside the bushings and the rollers are free to turn on the bushings. Pins and bushings are press fit in their respective link plates. Chain may be single strand, having one row of roller links, or multiple strand, having more than one row of roller links. The center plates are located between the strands of roller links. Such chain may be either single or double pitch and may be used as power transmission or conveyor chain.

The reviews also cover leaf chain, which consists of a series of link plates alternately assembled with pins in such a way that the joint is free to articulate between adjoining pitchers. The reviews further cover chain model numbers 25 and 35. From 1983 through 1985, roller chain, other than bicycle, was classified under item numbers ranging from 652.1300 through 652.3800 of the Tariff Schedules of the United States Annotated (TSUSA). This product is currently classified under item numbers 7315.11.00 through 7315.12.00 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS categories are provided for convenience and customs purposes. The written description remains dispositive.

These reviews cover the above nine manufacturers/exporters of roller chain, other than bicycle, from Japan to the United States for the periods April 1, 1983 through March 31, 1984 and April 1, 1984 through March 31, 1985.

Preliminary Results of Reviews

The Department calculated a foreign market value (FMV) based on packed, delivered prices to unrelated wholesalers and original equipment manufacturers in Japan, in accordance with section 773(a)(1)(A) of the Tariff Act. In consideration of the significant volume of home market sales, the format in which the data were submitted, the age of these reviews, and the ability of the respondents to collect supplemental information we calculated a single annual FMV for each model on a weighted-average basis, in accordance with section 777A of the Tariff Act. To ensure the representatives of the annual weighted-average FMV for each model, we compared the monthly weighted-average home market price (and in some cases each home market sale) during the period of review with the annual weighted-average home market price for that model, and determined that the prices for each model did not vary meaningfully from the annual weighted-average. Therefore, the Department considered the annual weighted-average FMV to be representative of the transactions under consideration, and it was used throughout these reviews.

A. Caddy Corporation of America

Caddy Corporation has requested a review of a one-time sale of Tsubakimoto chain to Caddy Corporation of America. The company claims that its Japanese subsidiary, Caddy Japan, was incorrectly listed as the seller/exporter for dumping duty deposit purposes. According to the company, the Department should have treated this transaction as a sale by Tsubakimoto.

The Department has determined that Tsubakimoto knew that the chain it sold Caddy Corporation was to be

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These reviews cover the above nine manufacturers/exporters of roller chain, other than bicycle, from Japan to the United States for the periods April 1, 1983 through March 31, 1984 and April 1, 1984 through March 31, 1985.

Preliminary Results of Reviews

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A. Caddy Corporation of America

Caddy Corporation has requested a review of a one-time sale of Tsubakimoto chain to Caddy Corporation of America. The company claims that its Japanese subsidiary, Caddy Japan, was incorrectly listed as the seller/exporter for dumping duty deposit purposes. According to the company, the Department should have treated this transaction as a sale by Tsubakimoto.

The Department has determined that Tsubakimoto knew that the chain it sold Caddy Corporation was to be

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incorporated into a food tray conveyor system in the United States. Tsubakimoto sold the chain to Rockaway Trading Company (Far East) Ltd. (Caddy Corporation's related trading company) which exported the chain directly to Caddy Corporation of America. Since Tsubakimoto knew at the time of the sale that its chain was destined for export to the United States, the sale should be treated as a sale by Tsubakimoto, not a sale by Caddy Corporation. The order on roller chain from Japan was revoked with regard to Tsubakimoto effective September 1, 1983 (54 33259, August 14, 1989). As such, we preliminarily determine that this sale by Tsubakimoto to Caddy Corporation was subsequent to the revocation and thus not subject to this administrative review.

B. Hitachi Metals Techno, Ltd. and Hitachi Maxco, Ltd.

United States Price

As provided for in section 772(b) of the Tarrif Act, we used purchase price to represent the United States price for certain sales by Hitachi because the merchandise was sold to unrelated parties prior to importation into the United States. For all other sales, where the merchandise was sold to unrelated purchasers after importation into the United States, we used exporter's sales price (ESP), as provided for in section 772(c) of the Tariff Act.

We calculated the purchase price and ESP based on packed, duty paid, delivered prices to unrelated purchasers in the United States. For purchase price and ESP transactions, we made deductions, where appropriate, for foreign brokerage, wharfage, ocean freight, marine insurance, U.S. duty, U.S. freight and brokerage. We disagreed with Hitachi's calculation methodology of using gross unit prices to determine these expenses. Where appropriate, we recalculated the above expenses using unit prices adjusted for discounts.

For ESP transactions, in accordance with section 772(e)(2) of the Tariff Act, we made additional deductions, where appropriate, for credit expenses and indirect selling expenses. We also recalculated the above expenses using unit prices adjusted for discounts.

Foreign Market Value

In accordance with section 773(a)(1)(A) of the Tariff Act, we calculated the FMV based on packed prices to unrelated customers in Japan.

For comparisons involving ESP sales, we added U.S. commissions to the FMV and subtracted home market indirect selling expenses up to the amount of the U.S. commission.

For comparisons involving ESP sales, we deducted home market indirect selling expenses. This deduction for indirect selling expenses was capped by the amount of indirect selling expenses and commissions incurred in the U.S. market, in accordance with 19 CFR 353.56.

In instances where there were no sales of identical or similar merchandise in the home market, we used constructed value with which to compare merchandise sold in the United States. We used cost of manufacturing information furnished by Hitachi and added the statutory 10 percent minimum for selling, general and administrative costs and the statutory 8 percent minimum for profit as defined in section 773(e)(1)(B) of the Tariff Act. For those sales where we could not construct a value, we have used the weighted-average margin calculated for Hitachi for the appropriate review period as the best information available.

C. Izumi Chain Manufacturing Co., Ltd.

Izumi provided an inadequate questionnaire response, and subsequently declined to respond to the supplemental questionnaire and deficiency letter, or to participate further in the reviews. The deficiencies in Izumi's responses effectively preclude our ability to calculate margins using Izumi's submitted data.

The Department used the best information available in accordance with section 776(c) of the Tariff Act. Consistent with our past practice and policy, when a respondent fails or refuses to respond, we use the higher of (a) the highest calculated rate for any firm with shipments during the period of review, or (b) that firm's own last rate. Izumi's own last rate was 0 percent, and was published on May 13, 1987 (52 FR 18004). Accordingly, as best information available, the Department used the highest rate calculated for another firm with shipments during the period.

For the 1983–1984 review period, we used the 8.70 percent rate from Kaga Kogyo, as BIA. For the 1984–1985 review period, we used the 9.01 percent rate from Takasago, as BIA.

D. Kaga Kogyo K.K. and Kaga/APC

United States Price

In calculating United States price, the Department used purchase price as defined in section 772(b) of the Tariff Act. Kaga made sales during the review period to APC, an unrelated Japanese trading company. As provided under section 772(b) of the Tariff Act, we used purchase price for all sales to APC because Kaga knew at the time of the sale to APC that the ultimate destination of the merchandise was the United States.

We made deductions, where appropriate, for foreign inland freight, packing and credit expenses. We recalculated foreign inland freight and packing expenses using other data submitted by respondent as the best information available because Kaga did not provide sufficient information to support its allocation methodology, and because no other information was available.

Foreign Market Value

In accordance with section 773(a)(1)(A) of the Tariff Act, we calculated the foreign market value based on packed prices to unrelated customers in Japan. We made deductions to the foreign market value for inland freight expenses. We also made circumstance of sale adjustments, where appropriate, for differences in credit and adjusted for differences in packing in accordance with 19 CFR 353.56,

For sales that could not be matched with an FMV, as best information available, we used a weighted-average margin calculated for Kaga for the appropriate review period.

E. Pulton Chain Co., Inc., Pulton/HIC, and Pulton/I&OC of Japan Co., Ltd.

United States Price

In calculating United States price, the Department used purchase price as defined in section 772(b) of the Tariff Act. Purchase price was based on the packed, delivered prices to unrelated purchasers in the United States. Pulton also made sales during the review period to HIC and I&OC, unrelated Japanese trading companies. As provided under section 772(b) of the Tariff Act, we used purchase price for all sales to HIC and I&OC because Pulton knew at the time of the sale to the Japanese trading company that the ultimate destination of the merchandise was the United States. We made deductions, where appropriate, for brokerage and handling, foreign inland freight, ocean freight, and marine insurance. We recalculated foreign inland freight expense using data submitted by Pulton as the best information available because Pulton did not provide sufficient information to support its allocation methodology.

Foreign Market Value

In accordance with section 773(a)(1)(A) of the Tariff Act, we calculated the FMV based on packed, delivered prices to unrelated customers in Japan. We made deductions to the FMV for inland freight. We also made circumstances of sale adjustments, where appropriate, for differences in credit and adjusted for differences in packing.

In instances where there were no sales of identical merchandise in the home market with which to compare merchandise sold to the United States, we calculated a weighted-average FMV for sales of identical chain to unrelated companies in third countries because we had no information to enable us to determine whether other models sold in the home market were sufficiently similar to permit comparison, and because of the age of the reviews, we had insufficient information available to calculate constructed value. We made deductions to the FMV for brokerage and handling, inland freight and marine insurance. We also made circumstance of sale adjustments, where appropriate, for differences in credit and adjusted for differences in packing.

For those products sold in the United States for which there where no identical matches using third country sales and for which Pulton was able to provide cost of production data, we calculated FMV based on constructed value as provided for in section 773(e) of the Tariff Act. Constructed value includes the cost of materials and fabrication of the merchandise, plus general expenses, profit and packing. For material, direct labor and overhead, the Department used the respondent's data. Some of these figures were adjusted using respondent's data to coincide with sales value information submitted on a per foot basis. Actual selling, general and administrative costs were used because these amounts exceeded the statutory minimum of 10 percent as defined in section 773(e)(1)(B) of the Tariff Act. For profit, we used the statutory minimum of 8 percent as defined in section 773(e)(1)(B) of the Tariff Act. We added the respondent's per unit amount of packing recalculated on a per foot basis to arrive at total constructed value.

For the remaining products in which third country sales or constructed value could not be used, we used as best information available a weighted average margin calculated for Pulton for the appropriate review period.

We did not review Pulton/HIC in the 1984/85 review period because HIC withdrew its request for review and there was no request by the petitioner to review such sales from this period.

F. Takasago RK Excel Co., Ltd.

United States Price

In calculating United States price, the Department used purchase price was defined in section 772(b) of the Tariff Act. Purchase price was based on the packed, delivered, prices to unrelated purchasers in the United States. Takasago also made sales during the review period to Central Industries and Hitachi, unrelated Japanese trading companies. As provided under section 772(b) of the Tariff Act, we used Takasago's price to Central and Hitachi as purchase price because Takasago knew at the time of the sale to these Japanese trading companies that the ultimate destination of the merchandise was the United States. We reallocated foreign inland freight and insurance expenses using data submitted by the respondent as the best information available because respondent did not provide sufficient information to support its calculation methodology. Allocation percentages for these expenses were calculated by dividing total freight and insurance expenses by total sales. These expenses were then deducted from the U.S. price.

Takasago failed to provide packing expenses for each U.S. sale made during the review periods. From the narrative description in Takasago's response, we determined that there was a cost differential between packing expenses for products sold in the United States and in the home market. Therefore, we determined packing expense from a cost of production information sheet submitted by Takasago regarding packing expenses for certain chain exported to the United States. Where we had no packing expense information for certain types of chain, we determined a weighted-average packing expense from the cost of production information as the best information available and deducted the expense from the U.S. price.

Foreign Market Value

In accordance with section 773(a)(1)(A) of the Tariff Act, we calculated the FMV based on packed delivered prices to unrelated customers in the home market. We corrected foreign inland freight and insurance expenses using data submitted by the respondent as the best information available because respondent did not provide sufficient information to support its calculation methodology. Allocation percentages for these expenses were calculated by dividing total freight and insurance expenses by total sales. These expenses were then deducted from the home market price. Further, Takasago failed to provide the Department with sufficient information about packing expenses it incurred on home market sales. The Department, therefore, made no deductions for packing expenses in the home market.

We added U.S. commissions to the FMV and subtracted home market indirect selling expenses up to the amount of the U.S. commission.

In instances where there were no sales of identical or similar merchandise in the home market with which to compare merchandise sold in the United States, we used the following hierarchy to calculate FMV: (1) The domestic price list used by domestic sellers of Takasago chain, with appropriate adjustments; (2) constructed value; and (3) the weighted-average dumping margin calculated for this company during the appropriate period of review as the best information available.

Currency Conversion

In accordance with 19 CFR 353.60, we used the official exchange rate in effect on the appropriate dates for determining FMV. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Preliminary Results of the Review

As a result of our review, we preliminarily determine the margins to be:

Manfacturer/exporter	Margin percent	
	04/01/83–03/31/84	04/01/84–03/31/85
Caddy Corporation of America	NA	[1] NA
Hitachi Metals Techno, Ltd. and Hitachi Maxco, Ltd	2.01	7.67
Izumi Chain Manufacturing Co	8.70	9.01
Kaga Kogyo K.K	8.70	.41
Kaga/APC	8.70	.41
Pulton Chain Co., Inc	0.02	.29
Pulton/HIC	0.02	NA
Pulton/I&OC	0.02	.29
Takasago RK Excel Co., Ltd	1.46	9.01

[1] Caddy's one-time sale is actually a sale by Tsubakimoto, a company for which the effective date of revocation of the antidumping order was prior to these review periods.

The Department will issue appraisement instructions concerning each manufacturer/exporter directly to the Customs Service upon completion of these administrative reviews.

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We added U.S. commissions to the FMV and subtracted home market indirect selling expenses up to the amount of the U.S. commission.

In instances where there were no sales of identical or similar merchandise in the home market with which to compare merchandise sold in the United States, we used the following hierarchy to calculate FMV: (1) The domestic price list used by domestic sellers of Takasago chain, with appropriate adjustments; (2) constructed value; and (3) the weighted-average dumping margin calculated for this company during the appropriate period of review as the best information available.

Currency Conversion

In accordance with 19 CFR 353.60, we used the official exchange rate in effect on the appropriate dates for determining FMV. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Preliminary Results of the Review

As a result of our review, we preliminarily determine the margins to be:

Manfacturer/exporter	Margin percent	
	04/01/83–03/31/84	04/01/84–03/31/85
Caddy Corporation of America	NA	[1] NA
Hitachi Metals Techno, Ltd. and Hitachi Maxco, Ltd	2.01	7.67
Izumi Chain Manufacturing Co	8.70	9.01
Kaga Kogyo K.K	8.70	.41
Kaga/APC	8.70	.41
Pulton Chain Co., Inc	0.02	.29
Pulton/HIC	0.02	NA
Pulton/I&OC	0.02	.29
Takasago RK Excel Co., Ltd	1.46	9.01

[1] Caddy's one-time sale is actually a sale by Tsubakimoto, a company for which the effective date of revocation of the antidumping order was prior to these review periods.

The Department will issue appraisement instructions concerning each manufacturer/exporter directly to the Customs Service upon completion of these administrative reviews.

Because the Department has already completed and published the final results of reviews for subsequent, intervening review periods, the dumping margins determined in these reviews will have no impact on the current cash deposit rates. As provided by section 751(a)(1) of the Tariff Act, the Customs Service shall continue to require a cash deposit based on each firm's most recent administrative review period. For any future entries of this merchandise from a new producer and/or exporter, not covered in these or prior administrative reviews, and who is unrelated to any previously reviewed firms, a cash deposit of estimated antidumping duties, equal to the highest non-BIA rate for any firm with shipments during the most recently completed review period, shall be required.

Public Comment

Parties to the proceeding may request disclosure within five days and interested parties may request a hearing not later than ten days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted no later than seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 353.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than ten days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 353.38(c), are due.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 19, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–17810 Filed 7–25–91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-015]

Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration/International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative reviews.

SUMMARY: On April 3, 1991, and April 16, 1991, the Department of Commerce published the preliminary results of its administrative reviews of the antidumping finding on television receivers, monochrome and color, from Japan. The reviews cover one manufacturer/exporter of this merchandise to the United States, Matsushita Electric Industrial Company, Ltd., and the periods August 19, 1983 through March 31, 1984, April 1, 1984 through February 28, 1985, and March 1, 1985 through February 28, 1986.

We gave interested parties an opportunity to comment on our preliminary results. No public hearing was held.

After analyzing the comments received, we have determined not to revise the preliminary results of these reviews. The final margins are 1.71 percent, 1.47 percent, and 11.52 percent, respectively.

EFFECTIVE DATE: July 26, 1991.

FOR FURTHER INFORMATION CONTACT: David S. Levy or Melissa G. Skinner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–3601, or 377–4851, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 3, 1991, and April 16, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 13620 and 56 FR 15328) the preliminary results of its administrative reviews of the antidumping finding on television receivers, monochrome and color, from Japan (36 FR 4597, March 10, 1971). We now have completed these administrative reviews in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of the Reviews

Imports covered by the reviews are shipments of television receivers, monochrome and color, from Japan. Television receivers include, but are not limited to, units known as projection television, receiver monitors, and kits (containing all parts necessary to receive a broadcast television signal and produce a video image). Not included are certain monitors not capable of receiving a broadcast signal, certain combination units, and certain subassemblies not containing the components essential for receiving a broadcast television signal and producing a video image. During the review periods, television receivers, monochrome and color, were classifiable under item numbers 684.9230, 684.9232, 684.9234, 684.9236, 684.9238, 684.9240, 684.9245, 684.9246, 684.9248, 684.9250, 684.9252, 684.9253, 684.9255, 684.9256, 684.9258, 684.9262, 684.9263, and 684.9655 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under item numbers 8528.10.80 and 8528.20.00 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive.

These reviews cover one manufacturer/exporter to the United States of Japanese televisions, Matsushita Electric Industrial Company, Ltd. (Matsushita), and the periods August 19, 1983 through March 31, 1984, April 1, 1984 through February 28, 1985, and March 1, 1985 through February 28, 1986.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received case briefs and rebuttal comments from Zenith Electronics Corporation (Zenith), and Matsushita. Although Matsushita has originally requested that a public hearing be held on the preliminary results of these reviews, the requests were subsequently withdrawn and no hearing was held.

Comment 1: Zenith states that the Department unlawfully treated Japanese commodity taxes rebated or not collected by reason of exportation of the merchandise. According to Zenith, the Department added the full amount of the commodity tax to United States Price (USP), and made a circumstance-of-sale (COS) adjustment to foreign market value (FMV) for the difference between the Japanese and U.S. commodity taxes. Zenith argues that the Court of International Trade (CIT), in *Zenith Electronics Corp.* v. *United States*, 755 F. Supp. 397 (1990) (as clarified by the Court Order dated February 20, 1991), ruled that the Department must cap the amount of commodity tax added to USP at the amount of tax included in FMV, and that the Department is forbidden from neutralizing the commodity tax adjustment to USP by making a COS adjustment to FMV for differences in commodity taxes.

Matsushita responds that Zenith's comments are irrelevant because they do not address the calculations actually made by the Department, and that the Department's treatment of commodity taxes is in accordance with law because it properly ensures that dumping margins are not artificially influenced by differences between the Japanese and U.S. commodity taxes.

Department's Position: We do not agree with the CIT in *Zenith*, but have not had an opportunity to appeal the issue on its merits. We agree that the amount of commodity tax forgiven by reason of the exportation of televisions to the United States must be added to USP under the statute and may not exceed the amount included in the home market price. However, because we believe that dumping margins should be neither inflated nor deflated by differences between the Japanese commodity taxes and constructed commodity taxes applied to USP, we do not agree with the CIT's position on adjustments for differences in commodity taxes. After calculating the commodity tax and adding it to USP, we make an adjustment to FMV for the difference in commodity taxes by deducting the Japanese commodity tax from FMV and replacing it with the constructed U.S. commodity tax. This method ensures that the amount of commodity tax added to USP does not exceed the amount of commodity tax included in the home market price, and that dumping margins are not artificially influenced by differences in commodity taxes. See our response to Comment 22 in Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Reviews (56 FR 5396, 5397, February 11, 1991).

Comment 2: Zenith argues that the Department failed to account for the savings realized by Matsushita as a result of delayed payment of home market discounts, rebates, and selling expense accounts payable. According to Zenith, if Matsushita does not disburse funds immediately after incurring an obligation to pay a particular expense, it earns interest income on those funds until it actually pays for the expense. As a result, Zenith argues that the true measure of Matsushita's selling expenses is not the amount paid by Matsushita, but the amount of the payment less the savings realized by delayed payment of the expense. Accordingly, Zenith argues that the Department should reduce Matsushita's home market selling expenses by the amount of any interest earnable as a result of delayed payment of those expenses.

Matsushita responds that the Department has repeatedly considered, and rejected, this argument. Matsushita asserts that the antidumping law and regulations require that adjustments to price must be measured by a respondent's actual expenses. Moreover, Matsushita argues that its actual interest expenses, as reported in its questionnaire responses, already reflect the savings realized by delayed payment of selling expenses because these interest expenses would be higher if the company paid its outstanding obligations on a more current basis.

Department's Position: We disagree with Zenith. We avoid imputing expenses or costs when a company quantifies and documents its actual expenses, and when the company's quantification accurately reflects the expense to the seller. Since we determined that Matsushita accurately quantified its home market selling expenses, and that Matsushita's claims accurately reflected those expenses, we have not reduced them by the amount of any savings realized as a result of delayed payment. See our response to Comment 2 in Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Review (54 FR 13918, April 6, 1989).

Comment 3: Zenith argues that the Department should deduct antidumping-related legal expenses from exporter's sales price (ESP). According to Zenith, these expenses are selling expenses because they are incurred as a result of a respondent's selling the merchandise under review in the United States at prices below FMV. Moreover, Zenith argues that there is no basis for retaining legal expenses incurred as a result of an antidumping proceeding in ESP when all other legal expenses incurred by a foreign company's U.S. subsidiary are deducted from ESP.

Matsushita responds that the Department has repeatedly ruled that legal expenses incurred as a result of an antidumping proceeding are not selling expenses, and that the CIT, in *Daewoo Electronics Co.* v. *United States,* 712 F. Supp. 931, 974 (1989), upheld the Department's position on the grounds that the deduction of antidumping-related legal expenses from ESP would create artificial dumping margins.

Department's Position: We disagree with Zenith. As we have stated in previous reviews of this finding, we do not consider legal expenses incurred in defending against an allegation of dumping to be expenses incurred in selling the merchandise in the United States. As a result, we have not deducted these expenses from ESP in these final results. See our response to Comment 4 in Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Review (54 FR 13919, April 6, 1989).

Comment 4: Zenith argues that the Department should deduct payments of estimated antidumping duties, and any expenses related to such payments, from USP. According to Zenith, these items should be deducted from USP along with the estimated ordinary duties paid, because the statute specifically requires that "United States import duties" be deducted from USP.

Matsushita replies that estimated antidumping duty payments are not actual expenses, but provisional deposits. Moreover, Matsushita notes that both the Department and the CIT previously have rejected Zenith's arguments on this issue.

Department's Position: We disagree with Zenith. As we have stated in previous reviews of this finding, we believe that using estimated amounts of antidumping duties in our calculations would result in inaccurate margins. In addition, we do not consider payments of estimated antidumping duties to be expenses related to the sales under review. As a result, we have not deducted them from USP in these final results. See our response to Comment 5 in Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Review (54 FR 13919, April 6, 1989).

Comment 5: Zenith contends that the Department erroneously offset the full amount of commissions in the United States with home market indirect selling expenses. According to Zenith, commissions compensate the recipient for both direct and indirect selling expenses incurred on behalf of the respondent. As a result, Zenith argues that offsetting the full amount of the commission provides excessive compensation for the indirect selling expenses contained therein. Additionally, because FMV has already been adjusted for direct selling expenses, Zenith claims that an offset for the full amount of the commission negates the deduction from USP of the direct expense portion of the commission.

Matsushita responds that the statute clearly states that the Department

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previous reviews of this finding, we do not consider legal expenses incurred in defending against an allegation of dumping to be expenses incurred in selling the merchandise in the United States. As a result, we have not deducted these expenses from ESP in these final results. See our response to Comment 4 in Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Review (54 FR 13919, April 6, 1989).

Comment 4: Zenith argues that the Department should deduct payments of estimated antidumping duties, and any expenses related to such payments, from USP. According to Zenith, these items should be deducted from USP along with the estimated ordinary duties paid, because the statute specifically requires that "United States import duties" be deducted from USP.

Matsushita replies that estimated antidumping duty payments are not actual expenses, but provisional deposits. Moreover, Matsushita notes that both the Department and the CIT previously have rejected Zenith's arguments on this issue.

Department's Position: We disagree with Zenith. As we have stated in previous reviews of this finding, we believe that using estimated amounts of antidumping duties in our calculations would result in inaccurate margins. In addition, we do not consider payments of estimated antidumping duties to be expenses related to the sales under review. As a result, we have not deducted them from USP in these final results. See our response to Comment 5 in Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Review (54 FR 13919, April 6, 1989).

Comment 5: Zenith contends that the Department erroneously offset the full amount of commissions in the United States with home market indirect selling expenses. According to Zenith, commissions compensate the recipient for both direct and indirect selling expenses incurred on behalf of the respondent. As a result, Zenith argues that offsetting the full amount of the commission provides excessive compensation for the indirect selling expenses contained therein. Additionally, because FMV has already been adjusted for direct selling expenses, Zenith claims that an offset for the full amount of the commission negates the deduction from USP of the direct expense portion of the commission.

Matsushita responds that the statute clearly states that the Department

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should include the total amount of commissions paid in the ESP offset cap, and that there is no legal or factual basis for dividing commissions into direct and indirect expenses.

Department's Position: We disagree with Zenith. When commissions are paid in one market but not in the other, 19 CFR 353.56(b)(1) requires us to offset the commission with other selling expenses incurred in the other market. We do not interpret our regulations as requiring us to limit the offset to a specific portion of the expenses of the commissionaire. As a result, we have offset the full amount of the U.S. commissions in these final results. See our response to Comment 6 in Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Review (54 FR 13919, April 6, 1989).

Comment 6: Zenith asserts that the Department may have improperly used home market indirect expenses that are not selling expenses as an offset to U.S. indirect selling expenses. Zenith states that the Department should require an affirmative demonstration from Matsushita that all home market indirect expenses that it claimed as ESP offsets are actually selling expenses, and not general and administrative expenses.

Matsushita responds that it has already described the nature of the home market indirect expenses that it claimed as an ESP offset as well as their relationship to the selling of televisions in Japan, and that the Department has verified the accuracy of Matsushita's submissions on numerous occasions.

Department's Position: We disagree with Zenith. As we have stated in previous reviews of this case, the pool of indirect selling expenses in the home market should include those expenses that are similar to the expenses incurred by the U.S. subsidiary, whose function it is to sell the merchandise. We do not interpret our regulations as requiring that indirect selling expenses in the home market be limited to selling expenses in sales offices, and as excluding general and administrative expenses incurred by those offices. As a result, we believe it was appropriate for Matsushita to include certain general expenses associated with selling televisions in its home market indirect selling expense claim. Moreover, we verified the accuracy of Matsushita's questionnaire responses. Therefore, we believe that Matsushita did not overstate its home market indirect selling expenses, and we have used all these expenses in calculating the ESP offset for these final results. See our response to Comment 3 in Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Review (54 FR 13919, April 6, 1989).

Comment 7: Zenith contends that the Department erroneously excluded discounts, rebates, and the commodity tax from its constructed value (CV) calculations. According to Zenith, these items must be included among the "general expenses" component of CV because the statute requires that those general expenses encompass what is usually reflected in sales. Because Matsushita acknowledges that discounts, rebates, and commodity taxes are included in the selling price of the merchandise, and because the Department routinely adjusts for these items under its authority to adjust for differences in circumstances of sale, Zenith argues that they are "general expenses" as defined in the statute, and should, therefore, be included in CV .

Matsushita responds that the Department considers discounts and rebates to be adjustments to price rather than selling expenses, and that the statute does not provide for the inclusion of commodity taxes in the calculation of CV.

Department's Position: We disagree with Zenith. As we have stated in previous reviews of this case, we do not consider discounts and rebates to be selling expenses; as Matsushita correctly states, we consider discounts and rebates to be adjustments to price. We also agree with Matsushita that the statute does not provide for the inclusion of commodity taxes in our CV calculations. As a result, we have not included discounts, rebates, and the commodity tax in our CV calculations for these final results. See our response to Comment 20 in Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Review (56 FR 5396, February 11, 1991).

Comment 8: Matsushita objects to the Department's decision to initiate these administrative reviews without ruling in a timely manner on Matsushita's December 18, 1981, request for revocation of the antidumping finding on televisions.

Zenith replies that the Department rejected this argument during the previous reviews of Matsushita, and should do so again in the current reviews.

Department's Position: We disagree with Matsushita. During our previous reviews of Matsushita, we found dumping margins for the partial fifth and eighth administrative reviews, and determined that there was a likelihood of resumed dumping if the finding were to be revoked. Based on these analyses, we determined not to revoke the antidumping finding with respect to Matsushita. Thus, contrary to Matsushita's assertions, we did rule on its revocation request before initiating the current reviews. As a result, we believe that Matsushita's objections regarding the validity of these reviews are inaccurate and inappropriate. See our response to Comment 75 in Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Review (54 FR 13927, April 6, 1989).

Comment 9: Matsushita objects to the Department's decision to abandon the "traditional methodologies" that it was using at the time the Government entered into the 1980 settlement agreements with respondents in these proceedings.

Zenith responds that the Department should reject this argument as it did in the previous reviews of Matsushita.

Department's Position: We disagree with Matsushita. As we stated in the previous reviews of Matsushita, the 1980 settlement agreement did not constitute a commitment by the Department to use a particular method of calculating dumping margins. As a result, we have not employed the "traditional methodology" that was in use at the time of the settlement agreement in these final results. See our response to Comment 66 in Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Review (54 FR 13926, April 6, 1989).

Comment 10: Matsushita argues that the Department's exclusion of "other" overhead costs from the calculation of the adjustment for differences in the physical characteristics of the merchandise constitutes an unwarranted departure from past practice. According to Matsushita, its method of calculating adjustments for differences in the physical characteristics using materials, labor, and variable and other overhead was accepted by the Department in all previous reviews, and was never challenged by any other party. In addition, Matsushita claims that because its other overhead costs are allocated according to its direct labor costs, these costs are actually variable costs that should be included in the calculation of adjustments for differences in merchandise.

Zenith supports the Department's method of calculating this adjustment, stating that the overhead portion of the adjustment should be limited to variable overhead costs because, by definition, these are the only overhead costs that vary according to physical differences in merchandise. Zenith argues further that the inclusion of indirect factory overhead in the calculation would nullify the exclusion of indirect expenses from COS adjustments.

Department's Position: We disagree with Matsushita. Our longstanding practice has been to calculate adjustments for differences in the physical characteristics of merchandise using materials, labor, and variable factory overhead only. We have, to the best of our knowledge, consistently used this method in all previous reviews of this case, including those pertaining to Matsushita. To the extent that there has been any deviation from this practice, it was inadvertent, and was never intended to be deliberate departure from the practice described above.

We agree with Zenith that only variable costs should be used in the calculation of adjustments for differences in merchandise because, by definition, the magnitude of these costs changes according to the physical characteristics of the merchandise. Although fixed factory overhead may be allocated using a variable measure such as direct labor, the fixed overhead costs themselves do not vary according to production, and, therefore, do not reflect differences in the physical characteristics of the merchandise. Accordingly, we have not included fixed overhead costs in our calculation of adjustments for differences in merchandise for these final results.

Final Results of the Reviews

After analyzing the comments received, we have determined not to revise our preliminary results for Matsushita. Accordingly, we determine the margins to be:

Manufacturer	Review No.	Period of review	Margin (percent)
Matsushita	5	06/19/83–03/31/84	1.71
	6	04/01/84–02/28/85	1.47
	7	03/01/85–02/28/86	11.85

The Department will instruct the U.S. Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties of 35.40 percent will be required for Matsushita; this is Matsushita's rate from the eleventh administrative review. For shipments of this merchandise manufactured by Funai Electric, Fujitsu General, Ltd., Hitachi, Ltd., Mitsubishi Electric Corporation, NEC, Sanyo Electric Company, Ltd. Seiko Epson Corporation, Sharp Corporation, Toshiba, or Victor Corporation of Japan, the cash deposit rate will continue to be the same as the rates published in the final results of the last administrative reviews of these firms (56 FR 5392, February 11, 1991).

For all other manufacturers/exporters of this merchandise, a cash deposit of estimated antidumping duties of 38.28 percent shall be required. This is the highest non-BIA (best information available) rate for the most current review for any firm in this case (56 FR 16069, April 19, 1991). These deposit requirements will be effective for all shipments of Japanese television receivers, monochrome or color, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these administrative reviews.

These administrative reviews and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: June 28, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-17812 Filed 7-25-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-15]

Television Receivers, Monochrome and Color, from Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On April 26, 1991, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on television receivers, monochrome and color, from Japan. The review covers two manufacturers/exporters of this merchandise to the United States, Casio Computer Company, Ltd., and Citizen Watch Company, Ltd., and the period March 1,1989 through February 28, 1990.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received and the correction of certain clerical errors, we have changed the final results from those presented in our preliminary results of review.

EFFECTIVE DATE: July 26, 1991.

FOR FURTHER INFORMATION CONTACT: Karin Price or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2923.

SUPPLEMENTARY INFORMATION:

Background

On April 26, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 19347) the preliminary results of its administrative review of the antidumping finding on television receivers, monochrome and color, from Japan (36 FR 4597, March 10, 1971). The Department has now completed that review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of the Review

Imports covered by this review are shipments of television receiving sets, monochrome and color, from Japan. Television receiving sets include, but are not limited to units known as projection televisions, receiver monitors, and kits (containing all parts necessary to receive a broadcast television signal and produce a video image). Not included are certain monitors not capable of receiving a broadcast signal, certain combination units, and certain subassemblies not containing the components essential for receiving a broadcast television signal and producing a video image. During the review period, television receiving sets, monochrome and color, were

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as direct labor, the fixed overhead costs themselves do not vary according to production, and, therefore, do not reflect differences in the physical characteristics of the merchandise. Accordingly, we have not included fixed overhead costs in our calculation of adjustments for differences in merchandise for these final results.

Final Results of the Reviews

After analyzing the comments received, we have determined not to revise our preliminary results for Matsushita. Accordingly, we determine the margins to be:

Review No.	Period of review	Margin (percent)
5	06/19/83–03/31/84	1.71
6	04/01/84–02/28/85	1.47
7	03/01/85–02/28/86	11.85

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EFFECTIVE DATE: July 26, 1991.

FOR FURTHER INFORMATION CONTACT: Karin Price or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–2923.

SUPPLEMENTARY INFORMATION:

Background

On April 26, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 19347) the preliminary results of its administrative review of the antidumping finding on television receivers, monochrome and color, from Japan (36 FR 4597, March 10, 1971). The Department has now completed that review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of the Review

Imports covered by this review are shipments of television receiving sets, monochrome and color, from Japan. Television receiving sets include, but are not limited to units known as projection televisions, receiver monitors, and kits (containing all parts necessary to receive a broadcast television signal and produce a video image). Not included are certain monitors not capable of receiving a broadcast signal, certain combination units, and certain subassemblies not containing the components essential for receiving a broadcast television signal and producing a video image. During the review period, television receiving sets, monochrome and color, were

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classifiable under Harmonized Tariff Schedule (HTS) item numbers 8528.10.80 and 8528.20.00. The HTS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive.

This review covers two manufacturers/exporters of Japanese television receivers, monochrome and color, Casio Computer Company, Ltd. (Casio), and Citizen Watch Company, Ltd. (Citizen), and the period March 1, 1989 through February 28, 1990.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received written comments form Zenith Electronics Corporation (Zenith), Casio and citizen. No public hearing was requested.

Comment 1

Zenith contends that the wrong variable is used in the section of Casio's and Citizen's computer programs that removes the sales sold at prices below the cost of production (COP) from the home market database. Zenith claims that the programming excludes sales below cost from the home market database when the below cost sales for the entire home market database are between 10 and 90 percent of total home market sales. Zenith states that the program should instead exclude below cost sales on a model-specific basis, that is, when the below cost sales of a particular model are between 10 and 90 percent of all of that model's sales.

Casio and Citizens respond that Zenith's argument is without merit since the programming indicates that the Department has correctly removed sales below cost from the home market database on a model-specific basis. Accordingly, they claim there is no need for programming changes.

Department's Position

We agree with Zenith and have corrected this error.

Comment 2

Zenith argues that Casio's U.S. sales which have a "negative United States price" are not "manipulated correctly" because a negative percentage dumping margin is calculated for these sales. Zenith contends that these sales actually have a positive dumping margin.

Casio replies that the negative percentage margin calculated for the individual sales for which there is a negative United States price (U.S. price) has no effect on the margin calculations. Casio contends that the absolute margin, not the percentage margin, is used in the dumping margin calculation.

Department's Position

Certain sales had negative U.S. prices because, for these sales, adjustments to U.S. price exceeded the sales price. Although the negative U.S. price caused the computer program to show these sales as having a negative percentage margin, we agree with Zenith that these sales, in fact, have a positive dumping margin. We note that the percentage margin calculated for each sale is for informational purposes only, and has no effect on the final margin calculations because the weighted-average margin is calculated by dividing total dumping duties due by total U.S. price for all sales, not by averaging the percentage margins for each sale.

Comment 3

Zenith states that the Department unlawfully treated Japanese commodity and consumption taxes rebated or not collected by reason of exportation of the merchandise. According to Zenith, the Department added the full amount of the tax to U.S. price, and made a circumstance-of-sale (COS) adjustment to FMV for the difference between the amount of Japanese and U.S. tax. Zenith argues that the Court of International Trade (CIT) in *Zenith Electronics Corp.* v. *United States*, 755 F. Supp. 397 (1990) (as clarified by the Court order dated February 20, 1991) (*Zenith*) and in *Daewoo Electronics Co.* v. *United States*, 712 F. Supp. 931 (1989) (*Daewoo*), ruled that the Department must cap the amount of commodity or consumption tax added to U.S. price at the amount of tax added to FMV, and that the Department is forbidden from neutralizing the tax adjustment to U.S. price making a COS adjustment to FMV for differences in taxes. Moreover, the Department is required to measure the amount of commodity and consumption tax passed through to home market purchasers. Zenith also claims that the Department used an erroneously high tax base for determining the amount of commodity and consumption tax forgiven upon exportation, arguing that the Department should use the export price, not the resale price in the United States, as the tax base.

Casio replies that, with regard to consumption taxes, Zenith's comments are irrelevant because they do not address the calculations actually made by the Department. Casio contends that, with regard to commodity taxes, the Department correctly calculated the tax based on the constructed ex-factory price, the same tax base as that used for home market sales, and followed longstanding practice in the treatment of the commodity tax, by adding the tax to U.S. price and making an adjustment to FMV for the differences between home market and U.S. taxes.

Citizen responds that the Department followed a well-established policy that the addition to U.S. price for taxes not be limited by the amount of tax in home market price. Citizen replies that the Department has repeatedly rejected Zenith's argument that the tax base for determining the amount of tax forgiven upon exportation should be the export price, and argues that the Department should determine that the appropriate tax base is the price to the first unrelated party in the United States.

Department's Position

We do not agree with the CIT in *Zenith* or *Daewoo*, but have not had an opportunity to appeal the issue on its merits. Consistent with our longstanding practice, we have not attempted to measure the amount of tax "passed-through" to customers in the home market. We do not agree that the statutory language limiting the amount of adjustment to the amount of tax "added to or included in the price" of color televisions (CTVs) in the home market requires the Department to measure the incidence of tax.

Because we believe that dumping margins should neither be inflated nor defaulted by differences between Japanese taxes and constructed taxes applied to U.S. price, we do not agree with the CIT's position on adjustments for differences in commodity taxes. After calculating the amount of commodity and consumption tax and adding it to U.S. price, we make an adjustment to FMV for the differences in taxes by deducting the Japanese consumption and commodity tax from FMV and replacing it with the constructed U.S. commodity and consumption tax. This method has the same effect on the absolute margin calculated as would capping the amount of U.S. tax added to U.S. price. See our response to Comment 1 in Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Review (56 FR 12702, March 27, 1991) and our response to Comment 4 in Color Television Receivers, Except for Video Monitors, from Taiwan; Final Results of Antidumping Duty Administrative Review (56 FR 31380, July 10, 1991).

We disagree with Zenith that the amount of both commodity and consumption tax forgiven upon exportation should be calculated on the basis of the export price. The tax base used for determining the amount of tax which the Japanese taxing authorities would have imposed on exports of the merchandise to the United States is the price which in analogous to the home market tax base. The tax base used to calculate the commodity tax was the constructed ex-factory price, the tax base comparable to that used in the home market. With regard to the consumption tax, which went into effect on April 1, 1989, the Department has determined that the price to the first unrelated party in the United States is comparable to the price on which the merchandise is taxed in the home market, the sales price.

Comment 4

Zenith argues that the Department failed to account for savings realized by Casio and Citizen as a result of delayed payment of home market discounts, rebates, and selling expenses accounts payable. According to Zenith, if Casio and Citizen do not disburse funds immediately after incurring an obligation to pay a particular expense, they earn interest income on those funds until the expense is actually paid. As a result, Zenith argues, the true measure of Casio's and Citizen's selling expenses is not the amount paid, but the amount of the payment less the savings realized by delayed payment. Accordingly, Zenith argues that the Department should reduce Casio's and Citizen's home market selling expenses by the amount of any interest earnable as a result of delayed payment of those expenses.

Casio and Citizen respond that the Department has repeatedly considered, and rejected, this argument. Casio further asserts that it is the Department's practice to make all adjustments to price on the basis of verifiable, actual costs where such data have been presented, that any savings in interest expenses due to delayed payment are taken into account in setting the payment terms for discounts and rebates, and that Zenith is not prejudiced by this practice since the method is used for both home market and U.S. sales. Casio also claims that even if Zenith were correct, the Department and respondent would spend enormous energy in determining trivial issues related to these secondary transactions.

Department's Position

We disagree with Zenith. We avoid imputing expenses or costs when a company quantifies or documents its actual expenses, and when the company's quantification accurately reflects the expense to the seller. Since we have determined that Casio and Citizen accurately quantified their home market selling expenses, and that their claims accurately reflected these expenses, we have not reduced them by the amount of any savings realized as a result of delayed payment. See our response to Comment 2 in Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Reviews (54 FR 13918, April 6, 1989).

Comment 5

Zenith argues that the Department should deduct antidumping-related legal expenses from exporter's sales price (ESP). According to Zenith, these expenses are selling expenses because they are incurred as a result of a respondent selling the merchandise under review in the United States at prices below FMV. Moreover, Zenith argues that there is no basis for retaining in ESP legal expenses incurred as a result of an antidumping proceeding when all other legal expenses incurred by a foreign company's U.S. subsidiary are deducted from ESP.

Casio and Citizen respond that the Department has repeatedly determined that antidumping-related legal expenses are not expenses incurred in selling the merchandise in the United States. They also assert that deducting these legal fees as expenses would discriminate against those exporters who seek legal counsel in an antidumping proceeding.

Department Position

We disagree with Zenith. As we have stated in previous reviews of this finding, and of the antidumping duty orders on color television receivers from the Republic of Korea and color television receivers from Taiwan, we do not consider legal expenses incurred in defending against an allegation of dumping to be expenses incurred in selling the merchandise in the United States. As a result, we have not deducted these expenses from ESP in these final results. Also, see our response to Comment 4 in Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Reviews (54 FR 13919, April 6, 1989). We note, moreover, that whereas Zenith criticized the Department in *Comment 3* for failing to follow the CIT opinion in *Zenith,* in this instance, it is urging the Department to disregard the CIT opinion regarding this issue in *Daewoo.*

Comment 6

Zenith argues that the Department should deduct from U.S. price payments of estimated antidumping duties, and any expenses related to such payments. According to Zenith, these items should be deducted from U.S. price along with the estimated ordinary duties paid, because the statute specifically requires that "United States import duties" be deducted from U.S. price.

Casio and Citizen both note that the Department has repeatedly rejected Zenith's argument. Casio also replies that the Department's policy of not deducting deposits of estimated antidumping duties from U.S. price was upheld in the CIT ruling in *P.Q. Corporation* v. *United States*, 652 F. Supp. 724, 737 (1987).

Department's Position

We disagree with Zenith. As we have stated in previous reviews of this finding, we believe that using estimated amounts of antidumping duties in our calculations would result in inaccurate margins. We do not consider payments of estimated antidumping duties to be expenses related to the sales of the merchandise under consideration for this review period. Further, given the possibility that these estimated duties could vary significantly from duties that may be assessed, we do not consider them to be "expenses" within the meaning of section 772(d)(2)(A) of the Tariff Act for purposes of determining U.S. price. Finally, estimated duties and duties assessed are paid by the importer, which is in some cases unrelated to the party whose sales are under review. As a result, we have not deducted them from U.S. price in these final results. See our response to Comment 5 in Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Reviews (54 FR 13919, April 6, 1989), our response to comment 6 in Color Television Receivers from the Republic of Korea; Final Results of Antidumping Administrative Review (56 FR 12703, 12704, March 27, 1991), and our response to Comment 8 in Color Television Receivers, Except for Video Monitors, from Taiwan; Final Results of Antidumping Administrative Review (56 FR 31380, July 10, 1991).

Comment 7

Zenith contends that the Department erroneously treated selling commissions in the United States as though they consisted entirely of indirect selling expenses. According to Zenith, commissions compensate the recipient for both direct and indirect selling expenses incurred on behalf of the respondent. Zenith argues that, since FMV has already been adjusted for direct selling expenses, an offset to FMV

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comprised of indirect selling expenses up to the full amount of the U.S. commission overcompensates for the indirect portion of the commission and effectively negates the deduction from U.S. price of the direct expense portion of the commission.

Casio responds that Zenith's suggestion is contrary to the Department's regulations at 19 CFR 353.56(b), which provides for a commission offset of indirect selling expenses for the full amount of the commission paid. Citizen points out that this argument has been rejected by the Department previously when a commission is paid in one market but not in the other.

Department's Position

We disagree with Zenith. Section 353.56(b)(1) of our regulations requires us to make an adjustment for situations in which a commission is paid in one market but not in the other market. That adjustment is limited to "the amount of the other selling expenses" allowed in the other market. We do not interpret this regulation as requiring us to limit the offset to a specific portion of the expenses of the commissionaire. Indeed, it is not necessary to examine how the recipient of the commissions spends the money because, to the seller, such monies represent direct expenses incurred as a result of that particular sale. As a result, we have offset the full amount of the U.S. commissions in these final results. See our response to Comment 6 in Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Reviews (54 FR 13919, April 6, 1989), our response to Comment 9 in Color Television Receivers, Except for Video Monitors, from Taiwan; Final Results of Antidumping Duty Administrative Review (56 FR 31381, July 10, 1991), and our response to comment 7 in Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Review (56 FR 12704, March 27, 1991).

Comment 8

Zenith asserts that the Department may have improperly used home market indirect expenses that are not selling expenses as an offset to U.S. indirect selling expenses. Zenith states that the Department should require an affirmative demonstration from Casio and Citizen that all home market indirect expenses they have claimed as ESP offset are actually selling expenses, and not general and administrative expenses.

Citizen responds that it followed the Department's practice in preparing its indirect selling expense data. Casio claims that it provided sufficient evidence to demonstrate that the reported home market selling expenses are selling expenses and do not include non-selling expenses.

Department's Position

We disagree with Zenith. As we have stated in previous reviews of this case, the pool of indirect selling expenses in the home market should include those expenses which are similar to the expenses incurred by the U.S. subsidiary, whose function it is to sell merchandise. We do not interpret our regulations as requiring that indirect selling expenses in the home market be limited to selling expenses in sales offices, and as excluding general and administrative expenses incurred by those offices. Accordingly, the equivalent home market expenses are those which are incurred by the home market selling division in support of the home market sales effort and which include certain general expenses associated with selling. Therefore, we believe that Casio and Citizen did not overstate their home market selling expenses, and we have used all these expenses in calculating the ESP offset for these final results. See our response to Comment 3 in Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Reviews (54 FR 13919, April 6, 1989) and our response to Comment 4 in Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Review (56 FR 12703, March 27, 1991).

Comment 9

Zenith contends that it is unclear whether constructed value (CV) does or does not include discounts, rebates, or commodity and consumption taxes. According to Zenith, these items must be included among the "general expenses" component of CV because the statute requires that these general expenses encompass what is usually reflected in sales. Because Casio and Citizen acknowledge that discounts, rebates, and commodity and consumption taxes are included in the selling price of the merchandise, and because the Department routinely adjusts for these items under its authority to adjust for differences in circumstances of sales, Zenith argues that they are "general expenses" as defined in the statute, and should, therefore, be included in CV.

Citizen replies that the Department correctly excluded these items from its calculation of CV, because it is the Department's practice to calculate CV on the basis of the books and records of the foreign producer, and Citizen does not treat discounts, rebates, or taxes as expenses in its books or records

Department's Position

We disagree with Zenith that these expenses should be included in CV. As we have stated in previous reviews, we do not consider discounts and rebates to be selling expenses; we consider them to be adjustments to price. Pursuant to the statute, the Department constructs an ex-factory value which consists of the sum of cost of manufacture (COM), general expenses (i.e., selling, general, and administrative expenses), profit on home market sales, and the cost of packing the merchandise for shipment to the United States. In order to make an apples-to-apples comparison of this surrogate FMV to U.S. price, all taxes, rebates, and discounts are removed from U.S. price, and no tax is added thereto. As a result, we have not included discounts, rebates, and commodity or consumption taxes in our calculations of CV for these final results. See our response to Comment 20 in Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Reviews (56 FR 5396, February 11, 1991), and our response to Comment 9 in Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Review (56 FR 12704, 12705, March 27, 1991).

We do note, however, that in our preliminarily results, commodity and consumption taxes were included in our calculations of FMV when FMV was based on CV. This has been corrected for the purposes of these final results.

Comment 10

Casio claims that its packing labor and materials expenses for home market shipments are included in COM. Thus, Casio argues that the Department should deduct these packing expenses from the COP in determining whether the home market sales are sold at prices which are below the COP.

Zenith objects to the submission of this information on the part of Casio. Zenith responds that the time for the submission of such information is past, and therefore, the Department should not accept this data.

Department's Position

We disagree with Casio. As Casio admits in its brief, the Department did not deduct these expenses from COP because we were not aware that these packing expenses were included in COM. Since this information was submitted to the Department after the preliminary results were published, it has not been considered for these final results. Accordingly, the Department has not deducted packing expenses from COP for the purposes of determining which sales were sold below cost.

Comment 11

Citizen argues that, for CTV COP, the Department should base Citizen's net financial expenses on the calculation originally submitted by the company in its questionnaire response. According to Citizen, this calculation, which was based solely on Citizen's non-consolidated interest income and expense, provides the most accurate measure of the company's actual CTV financing costs during the period of review.

Citizen further argues that, if the Department decides no to use Citizen's submitted financing expense calculation, then it should determine the company's net financing costs using the net interest expense incurred by only those entities that were related to Citizen are involved in CTV production during the period of review. Citizen maintains that the Department should not base the company's borrowing costs on the net interest expense incurred by Citizen's consolidated group of companies.

Finally, Citizen contends that, in revising Citizen's financing costs for the preliminary results in review, the Department erred in applying its own methodology to certain of the company's financial figures. Specifically, Citizen claims that to correctly calculate short-term interest income to offset total interest expense, the Department should have considered not only interest accruing from short-term marketable securities, but also that from cash and cash deposits. Citizen also claims that the Department's financing expense calculation should have included dividends from marketable securities as an offset to interest expense.

Department Position

We disagree with Citizen. In rejecting Citizen's claim that the Department should accept the company's non-consolidated financing expense calculation, we followed our well-established practice of deriving net financing costs based on the borrowing experience of the consolidated group of companies. See Antifriction Bearings and Parts Thereof from the Federal Republic of Germany (54 FR 18992, May 3, 1989), Certain Small Business Telephone Systems and Subassemblies from Korea (54 FR 31980, August 3, 1989), Sweaters Wholly or in Chief Weight of Man-Made Fiber from Hong Kong (55 FR 30743, July 27, 1990), and Titanium Sponge from Japan (55 FR 42227, October 18, 1990). The Department has followed this practice even in those cases involving consolidated groups whose member companies manufacture a variety of diverse products. Our practice is based on the fact that the group's parent company, because of its controlling interest, has the power to decide the capital structure of each member company within the group is generally best reflected at the group's consolidated level.

We based our revised net financing expense calculation on information obtained from Citizen's consolidated financial statements. Following our usual practice, we reduced the consolidated group's interest expense by the amount of interest income earned from the group's short-term investments of working capital. Because Citizen did not provide an analysis of its consolidated short and long-term interest income, as the best information available, we estimated short-term interest income by multiplying the consolidated group's total interest income by the ratio of the group's short-term invested assets to the balance of its total invested assets.

Although Citizen maintains that the Department should have considered the company's cash and deposits to be short-term invested assets, the information available from the record did not indicate what portion, if any, of the company's cash balance was invested in interest bearing deposit accounts. Consequently, we conservatively excluded these balances from our calculation.

Regarding Citizen's claim that the Department should have considered the company's dividend income in calculating net financial expense, the Department generally does not allow dividends earned as an offset to total interest expense unless there is evidence that dividend income was earned from short-term investments of the company's working capital. See Small Business Telephone Systems from Korea (54 FR 53141, December 27, 1989) and Television Receivers, Monochrome and Color, from Japan (54 FR 13917, April 6, 1989) In this case, there is no evidence to this effect. Consequently, we did not consider this income in our recalculation of Citizen's financing expense.

Comment 12

Citizen argues that the Department should correct its adjustment for differences in merchandise to reflect the correct variable COM for its home market models. The correct variable COM of its home market models should be based on a fixed/variable overhead split identical to that of the U.S. models, which were manufactured at the same production facility as their home market models. Citizen argues that the Department should use the variable overhead information in its April 15, 1991 submission, which was submitted in accordance with the Department's instructions.

Zenith objects to the submission of this new information on the part of Citizen. Zenith argues that the time for such submissions is past, and that the Department should reject this data.

Department's Position

We agree with Citizen. The Department agreed to allow Citizen to submit the variable overhead information for the record of this review (see memorandum from Karin Price to the file dated April 12, 1991), and it was received by the date established by the Department, before the preliminary results were published. This data has been used in the calculations of the variable COM of home market models, and the corrected difference in merchandise adjustments were made for the purposes of these final results of review.

Comment 13

Citizen argues that the Department should include in its analysis all merchandise sold within the period of review, not only merchandise shipped during the period of review. Citizen points out that the questionnaire requires respondents to report all purchase price (PP) and ESP sales made during the period of review. Therefore, according to Citizen, the Department must include all sales made during the period of review in its analysis in order to calculate and assess duties on all shipments.

Zenith replies that the Department has the discretion to establish reasonable cutoffs where all units sold during the period of review are not shipped during the same period of review. Zenith contends that those units not shipped during the period of review will be covered by the following review.

Department's Position

We disagree with Citizen. Section 353.22(b) of the Commerce regulations allows the Department discretion to

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Zenith replies that the Department has the discretion to establish reasonable cutoffs where all units sold during the period of review are not shipped during the same period of review. Zenith contends that those units not shipped during the period of review will be covered by the following review.

Department's Position

We disagree with Citizen. Section 353.22(b) of the Commerce regulations allows the Department discretion to cover in its review "entries, exports, or sales of merchandise during the 12 months immediately preceding the most recent anniversary month." We have determined that PP sales shipped outside the period of this review will not be analyzed. Instead, in its review of the subsequent period (March 1, 1990 through February 28, 1991), the Department will review any sales which are not covered during this review because they were not shipped during the current review period.

Comment 14

Citizen argues that the Department should exclude from its analysis those U.S. sales of returned, second quality merchandise. Citizen argues that the expenses associated with the original sales have already been reported as part of its warranty expense, and that analyzing these sales would serve to double-count the expenses attributable to these transactions. Moreover, Citizen contends that the Department has already determined in previous cases that it is not reasonable to include in its analysis lower quality products sold at reduced prices. As evidence of this, Citizen cites Generic Cephalexin Capsules from Canada; Final Determination of Sales at Less than Fair Value (54 FR 26823, June 26, 1989). Therefore, Citizen claims that the Department should treat the cost of these sales as a warranty expense in accordance with Citizen's questionnaire response. If the Department decides that these sales should be analyzed, Citizen argues that a weighted-average rate for all other sales should be applied to these models.

Zenith responds that, in reviewing an existing antidumping duty order, the Department analyzes all U.S. sales unless the review has been deemed appropriate for sampling. Zenith points out that Citizen is relying on a final determination of sales at less than fair value (LTFV) for validation of its suggestion that these sales should be excluded from the analysis. Zenith contends that, in making LTFV determinations, the Department has historically not analyzed all sales.

Zenith also argues that the Department should reject Citizen's suggestion that reviewing these sales would constitute a double-counting of expenses attributable to these transactions, because the expenses originally incurred to sell the merchandise cannot be equated with the reduced price received in the second sale. Zenith also claims that Citizen's suggestion that the expense of the original sale is included in the warranty expense indicates that the Department has been led by Citizen incorrectly to apportion those expenses over sales of all merchandise, when they should have been attributed only to merchandise identified by Citizen as having been sold in second-quality transactions.

Department's Position

We agree with Citizen that these sales should be excluded from the analysis. The original sales of merchandise which is returned, refurbished, and resold are included on the U.S. sales database. Accordingly, the Department will not review two different sales of the same merchandise. Contrary to what Citizen's comment implies, there were no warranty expenses reported for the original sales. For the purposes of these final results, the expenses associated with the second sales of the merchandise have been allocated to the other sales of the applicable models and deducted from U.S. price.

Comment 15

Citizen claims that the Department should correct certain clerical errors in its computer programs for the final results. Citizen contends that in both the PP and ESP programs, the Department unnecessarily merged the COP data twice, unnecessarily merged the below cost home market data twice, unnecessarily input the values for the differences in merchandise twice, and applied the consumption tax adjustment on the basis of the date of sale, rather than the date of shipment.

Department's Position

We agree in part. The Department's computer programs did merge the COP data and below cost home market data twice, and input the values for differences in merchandise twice. We have made the appropriate corrections for these final results. However, we note that none of these errors had an effect on the results of the program.

We disagree that the consumption tax, which went into effect on April 1, 1989, should be applied on the basis of the date of shipment. Citizen did not adequately explain the reasons it advocates using the date of shipment instead of the date of sale to determine to which sales the consumption tax, which went into effect on April 1, 1989, should apply. Moreover, the tax is calculated as a percentage of the selling price. Accordingly, the Department has used the date of sale for calculating the consumption tax for these final results.

Final Results of the Review

As a result of our review, we have determined the margins to be:

Manufacturer/Exporter	Period of review	Margin (percent)
Casio Computer Company, Ltd.	03/01/89–02/28/90	0.497
Citizen Watch Company, Ltd.	03/01/89–02/28/90	17.07

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between U.S. price and FMV may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated dumping duties based on the above margin will be required for Citizen. Since the margin for Casio is less than 0.5 percent and, therefore, *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of antidumping duties on entries from Casio. For all other exporters/manufacturers not related to Casio or Citizen, or any previously reviewed firm, a cash deposit of 17.07 percent shall be required. These deposit requirements and waiver will be effective for all shipments of Japanese television receivers, monochrome and color, entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22 (1990).

Dated: July 18, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–17811 Filed 7–25–91; 8:45 am]

BILLING CODE 3510-DS-M

[Application No. 86–A0008]

Export Trade Certificates of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of issuance of an Amended Export Trade Certification of Review.

SUMMARY: The Department of Commerce, has issued an amendment to the Export Trade Certificate of Review granted to Streamline Shippers Association, Inc. Notice of issuance of the Certificate was published in the **Federal Register** on December 23, 1986 (51 FR 45928).

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing title III are found at 15 CFR part 325 (1990) (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 86–00008 was issued to Streamline Shippers Association, Inc. (SSA) on December 17, 1986. Notice of issuance of the Certificate was published in the **Federal Register** on December 23, 1986 (51 FR 45928).

SSA has amended its Certificate to clarify the "forwarder services" it will offer and to revise its classes of members. These revisions require the following changes in its Certificate:

(1) Revision of part (c) of Export Trade to read as follows:

Transportation Services (As They Relate to the Export of Products) include: Overseas freight transportation; inland freight transportation to a U.S. export terminal, port, or gateway; packing and crating; leasing of transportation equipment and facilities; terminal or port storage; wharfage and handling; forwarder services (including, but not limited to, preparing and/or processing export declarations, preparing or processing delivery orders or dock receipts, preparing, processing, or issuing bills of lading, preparing or processing consular documents or arranging for their certification, preparing and/or sending advance notifications of shipments or other documents to banks, shippers or consignees, as required); insurance; warehousing; foreign exchange; financing and financial services; export sale and trade documentation and services; overseas distribution; paying or charging commissions; marketing; advertising; communication and processing of foreign orders; accounting; clerical services; consulting; customs services; feasibility studies; investment services; legal services; management services; and translation services.

(2) Revision of part 7(c) of the Export Trade Activities and Methods of Operation as follows:

(c) SSA shall have four classes of SSA Members: (1) Regular members; (2) NVOCC members; (3) transportation members; and (4) shippers' association members, and may prescribe the eligibility requirements for each class of member;

(3) Addition of the following definitions to clarify certain terms in revised part 7(c):

Regular members include any firm, or affiliate thereof, engaged in a business other than transportation in the course of which such entity ships or receives cargo in interstate, intrastate, or foreign commerce.

NVOCC members include any non-vessel operating common carrier under the Shipping Act of 1984, and which shall maintain a tariff on file with the Federal Maritime Commission and post a surety bond as required by regulations of the Federal Maritime Commission.

Transportation members include any firm, or affiliate thereof, engaged primarily in the transportation business as an intermediary, direct carrier, or service organization.

Shippers' association members include any shippers' association, provided that for purposes of foreign commerce only, such shippers' association must maintain a list containing the names of its members and compliance data if any such member shall be a non-vessel operating common carrier as defined in the Shipping Act of 1984.

EFFECTIVE DATE: April 22, 1991.

A copy of the amended Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, room 4102, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

Dated: July 22, 1991.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 91–17804 Filed 7–25–91; 8:45 am]

BILLING CODE 3510-DR-M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 90–198R. *Applicant:* Research Foundation of SUNY at Albany, AD–335, 1400 Washington Avenue, Albany, NY 12222. *Instrument:* Infrared Neon Gas Laser. *Manufacturer:* MPB Technologies Inc., Canada notice of this resubmitted application was published in the **Federal Register** of December 11, 1990.

Docket Number: 90–231R. *Applicant:* Oregon State University, College of Oceanography, Oc Administrative Building 104, Corvallis, OR 97331–5503. *Instrument:* Noble Gas Mass Spectrometer, Model 215–50. *Manufacturer:* Mass Analyzer Products, Ltd., United Kingdom. Original notice of this resubmitted application was published in the **Federal Register** of February 1, 1991.

Docket Number: 91–092. *Applicant:* University of Illinois at Urbana-Champaign, Purchasing Division, 506 South Wright Street, Urbana, IL 61801. *Instrument:* Portable Differential Spectrometer/Scintillometer, Model GRS–500. *Manufacturer:* Scientrex, Canada. *Intended Use:* The instrument will be used to detect the total counts of low level gamma ray radiation of sandstones, limestones and shales. *Application Received by Commissioner of Customs:* June 19, 1991.

Docket Number: 91–096. *Applicant:* Hamilton College, College Hill Road, Clinton, NY 13323. *Instrument:* Electron Microscope, Model JEM 1200EXII/SEG/DP/DP. *Manufacturer:* JEOL Ltd., Japan. *Intended use:* The instrument will be used to study the ultrastructure of various tissues, microbes and viruses to ascertain basic information on insulin secretion from endocrine pancreas and gut and also to provide important insights into the evolution of vertebrate

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gastro-entero-pancreatic system. In addition, the instrument will be used for teaching purposes in the courses Biol 349 (TEM), Biol 336 (Cell Biology) and Biol 550 (Senior Research). *Application Received by Commissioner of Customs:* June 20, 1991.

Docket Number: 91-097R. *Applicant:* Northeast Missouri State University, Science, Kirksville, MO 63501 *Instrument:* SF-41 Stopped Flow Sample Handling Unit with SU-40A Spectrophotometer Unit. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* A single organic radical reagent, tri(tert-butylpehnyl)methyl radical, will be used to abstract hydrogen atoms from a benzylic site on a series of aromatic hydrocarbons. Specific organic compounds to be examined will first include those whose C-H bond dissociation energies are known and then include related compounds with various added substitutents. The instrument will be used in the courses Chemistry 441 (Chemistry Research I), Chemistry 442 (Chemistry Research II) and Chemistry 443 (Chemistry Research III) which involve individual study and laboratory research. *Application Received by Commissioner of Customs:* June 21, 1991

Docket Number: 91-098. *Applicant:* Princeton University, Molecular Biology Department, Lewis Thomas Labs, Washington Road, Princeton, NJ 08544 *Instrument:* 60 SM1 Stereomicroscopes with Filter Sets. *Manufacturer:* Oriental Scientific Instruments, China *Intended Use:* The instrument will be used for the study of living organisms, including drosophila and nematode embryos. The experiments involve living embryos which are very fragile, to give students a clearer understanding of development in animals, the role of certain products of gene expression at certain key periods in an organism's life, and the effects of mutation on these normal processes. In addition, the instrument will be used for educational purposes in Molecular Biology courses. *Application Received by Commissioner of Customs:* June 26, 1991.

Docket Number: 91-099. *Applicant:* Wayne State University, School of Medicine, Gordon Scott Hall, 540 E. Canfield Avenue, Detroit, MI 48201. *Instrument:* Organ Baths and Field Stimulating Electrodes. *Manufacturer:* Hugo Sachs Electronik, West Germany *Intended Use:* The instrument will be used to study the effects of Ethanol and its metabolites on muscle mechanics to determine the mechanism of action of these compounds in alcohol-induced cardiac dysfunction. In addition, the instrument will be used in a course of basic graduate physiology to instruct graduate and nursing students in the mechanisms of cardiovascular function. *Application Received by Commissioner of Customs:* June 26, 1991.

Docket Number: 91-101. *Applicant:* USDA, ARS, W-321 Turner Hall, 1102 S. Goodwin, Urbana, IL 61801. *Instrument:* Chlorophyll Fluorometer, Model PAM 101. *Manufacturer:* Heinz Walz, Germany. *Intended Use:* The instrument will be used for studies of photosynthetic membranes isolated from plants to determine the factors that control rate and efficiency of light-driven electron transfer reactions in photosynthesis. *Application Received by Commissioner of Customs:* July 2, 1991.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91-17813 Filed 7-25-91; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments; University of California, San Diego, et al.

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 91-001. *Applicant:* University of California, San Diego, La Jolla, CA 92093. *Instrument:* Rotating Anode X-Ray Generator, Model RU-200H. *Manufacturer:* Rigaku Corporation, Japan. *Intended Use:* See notice at 56 FR 4971, February 7, 1991. *Reasons:* The foreign instrument provides a small focal spot of 0.5 x 5.0 mm and a beam power of 12 kW. *Advice Submitted by:* National Institutes of Health, May 30, 1991.

Docket Number: 91-003. *Applicant:* Indiana University-Purdue University at Indianapolis, Indianapolis, IN 46202. *Instrument:* Stopped-Flow Spectrofluorimeter, Model SF-51 with SHU-51 Sample Handling Unit. *Manufacturer:* Hi-Tech, United Kingdom. *Intended use:* See notice at 56 FR 4972, February 7, 1991. *Reasons:* The foreign instrument provides a dead time less than 1.0 ms. *Advice Submitted by:* National Institutes of Health, May 30, 1991.

Docket Number: 91-004. *Applicant:* Xavier University of Louisiana, New Orleans, LA 70125. *Instrument:* Organ Bath and Accessories. *Manufacturer:* Hugo Sachs Elektronik, West Germany. *Intended Use:* See notice at 56 FR 4972, February 7, 1991. *Reason:* The foreign instrument provides muscle support, bath circulation, temperature control and 4-organ capacity for studies of muscle contractility. *Advice Submitted by:* National Institutes of Health, May 30, 1991.

Docket Number: 91-006. *Applicant:* National Institute of Standards and Technology, Gaithersburg, MD 20899. *Instrument:* Excimer Multigas Laser, Model LPX 205i. *Manufacturer:* Lambda Physik, GmbH, West Germany. *Intended Use:* See notice at 56 FR 4972, February 7, 1991. *Reasons:* The foreign instrument provides an energy output of 400 mJ at 50 Hz and 308 nm (XeC1) and a gas lifetime of 10 million shots without halogen injection. *Advice Submitted by:* National Institutes of Health, May 30, 1991.

Docket Number: 91-007. *Applicant:* Rutgers, The State University of New Jersey, Piscataway, NJ 08855-0909. *Instrument:* Iris IR Eye-Tracker System, Model 6500. *Manufacturer:* Skalar Medical, The Netherlands. *Intended Use:* See notice at 56 FR 4972, February 7, 1991. *Reasons:* The foreign instrument provides infrared detection of eye movements with a resolution of 2.0 minutes of arc and with a bandwidth from DC to 200 Hz. *Advice Submitted by:* National Institutes of Health, May 30 1991.

Docket Number: 91-009. *Applicant:* National Institute of Standards and Technology, Gaithersburg, MD 20899. *Instrument:* Neutron Area Detector for Small Angle Neutron Scattering. *Manufacturer:* CERCA, France. *Intended Use:* See notice at 56 FR 8184, February 27, 1991. *Reasons:* The foreign instrument provides a spatial resolution (pixel size) of 10 x 10 mm^2 and a counting rate of 10/second per pixel. *Advice Submitted by:* National Institutes of Health, May 30, 1991.

The National Institutes of Health advises that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91–17814 Filed 7–25–91; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments; University of California, et al

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 91–010. *Applicant:* University of California Berkeley, CA 94720. *Instrument:* Stopped-flow Spectrofluorimeter, Model SF.17. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. *Intended Use:* See notice at 56 FR 8184, February 27, 1991. *Reasons:* The foreign instrument provides sub-millisecond dead time and requires a sample of only 25 ml per reactant per shot. Advice Submitted by: National Institutes of Health, May 30, 1991.

Docket Number: 91–017. *Applicant:* Mt. Sinai School of Medicine of the City University of New York, New York, NY 10029. *Instrument:* Fluorescence Lifetime Spectrometer, Model 5000. *Manufacturer:* IBH Consultants Ltd., United Kingdom. *Intended Use:* See notice at 56 FR 8185, February 27, 1991. *Reasons:* The foreign instrument provides time-resolved single photon counting capability with a resolution of 1.0 ns. *Advice Submitted by:* National Institutes of Health, May 30, 1991.

Docket Number: 90–019. *Applicant:* Vanderbilt University School of Medicine, Nashville, TN 37232–0615. *Instrument:* Volume Controller for Microinjections. *Manufacturer:* Singer, United Kingdom. *Intended Use:* See notice at 56 FR 11545, March 19, 1991. *Reasons:* The foreign instrument provides 3-dimensional movement using a single control handle shaped and used like a pencil for injections of thousandths of a microliter. *Advice Submitted by:* National Institutes of Health, May 30, 1991.

Docket Number: 91–023. *Applicant:* Duke University Medical Center, Durham, NC 27710. *Instrument:* Flashlamp System JML–E for Photolysis Experiments. *Manufacturer:* Optische und elektronische Gerate Dr. Rapp, West Germany, *Intended Use:* See notice at 56 FR 11546, March 19, 1991. *Reasons:* The foreign instrument provides focusing optics and pulse shaping optimized for initiating contractile events in muscle fibers. *Advice submitted by:* National Institutes of Health, May 30, 1991.

The National Institutes of Health advises that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91–17815 Filed 7–25–91; 8:45 am]

BILLING CODE 3510-DS-M

Disposition of Application for Duty-Free Entry of Scientific Instrument; Yale University

Processing of Docket Number 89–102 (See notice at 54 FR 13727) has been discontinued. The U.S. Customs Service has ruled that the instrument is general purpose data processing equipment and is therefore ineligible for duty-free entry under section 9810.00.60 of the Harmonized Tariff Schedule of the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91–17816 Filed 7–25–91; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing the blind or other severely handicapped.

EFFECTIVE DATE: August 26, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On May 10, 24 and June 7, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (56 FR 21664, 23876 and 26395) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodities and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Strap, Webbing, 5340–00–784–0118, (Remaining Government Requirement).
Perforator, Paper 7520–00–139–3942, 7520–00–163–2563.

Services

Commissary Shelf Stocking, Custodial and Warehousing, Travis Air Force Base, California.
Commissary Shelf Stocking, Custodial and Warehousing, Patrick Air Force Base, Florida.
Janitorial/Custodial, Post Exchange, Building 50004, Fort Hood, Texas.

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EFFECTIVE DATE: August 26, 1991.

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I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

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Perforator, Paper 7520–00–139–3942, 7520–00–163–2563.

Services

Commissary Shelf Stocking, Custodial and Warehousing, Travis Air Force Base, California.

Commissary Shelf Stocking, Custodial and Warehousing, Patrick Air Force Base, Florida.

Janitorial/Custodial, Post Exchange, Building 50004, Fort Hood, Texas.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 91–17764 Filed 7–25–91; 8:45 am]

BILLING CODE 6820–33–M

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and a service to be furnished by nonprofit agencies employing the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 26, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and service listed below from nonprofit agencies employing the blind or other severely handicapped.

It is proposed to add the following commodity and service to the Procurement List:

Commodity

Pallet, Material Handling, 3990–00–NSH–0067 40" x 48", (Requirements of the Naval Supply Center, Jacksonville, FL).

Service

Janitorial/Custodial, Lock and Dam 19, Keokuk, Iowa.

Beverly L. Milkman,

Executive Director.

[FR Doc. 91–17765 Filed 7–25–91; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Medical Information Questionnaire, DIS FL–14a OMB Control No. 0704–0206.

Type of Request: Reinstatement.

Average Burden Hours/Minutes Per Response: 0.6 hours.

Responses Per Respondent: 1.

Number of Respondents: 15,206.

Annual Burden Hours: 9,123.6.

Annual Responses: 15,206.

Needs and Uses: The DIS FL 14–a is used to obtain medical information during the conduct of personnel security investigations.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: July 23, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–17778 Filed 7–25–91; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of forthcoming meetings of the National Assessment Governing Board and its committees. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the open portions of the meeting.

DATES: August 1, 2, and 3, 1991.

TIMES: August 1, 1991—Achievement Levels Committee—3 p.m. to 4:30 p.m. (closed); Reporting and Dissemination Committee and Subject Area Committee #2 (Math and Science)—4:30 p.m. to 6:30 p.m. (open); Executive Committee—7 p.m.—10 p.m. (open). August 2, 1991—National Assessment Governing Board—8:30 a.m. to 12 p.m. (open); 12 p.m. to 2 p.m. (closed); 2 p.m. to 5:30 p.m. (open). August 3, 1991—Full Board—8:30 a.m. until adjournment, approximately, 1:30 p.m. (open).

LOCATION: Ritz-Carlton Hotel, 2100 Massachusetts Avenue, NW., Washington, DC 20008.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Director, National Assessment Governing Board, U.S. Department of Education, 1100 L Street, NW., suite 7322, Washington, DC, 20005–4013.

TELEPHONE: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board (NAGB) is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Act (NAEP Improvement Act), title III–C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297); (20 U.S.C. 1221e–1).

The Board is established to advise the Commissioner of the National Center for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparison. On August 1, three committees of the Board will be in session. The Achievement Levels Committee will meet in closed session from 3 p.m. until 4:30 p.m. to review and discuss the draft report of the achievement levels for the 1990 Mathematics Assessment. The draft report is still undergoing technical review and analysis and there is a significant possibility that the data may be incorrect or incomplete. The premature disclosure of this information would likely frustrate implementation of proposed agency action. Such matters are protected by 5 U.S.C. 552b(c)(9)(B). Two committees, the Reporting and Dissemination and the Subject Area No. 2 (Math and Science) will meet in open session between 4:30 p.m. and 6:30 p.m.

The Reporting and Dissemination Committee will review and revise the NAGB policy on reporting and disseminating assessment results. The Subject Area Committee #2 (Math and Science) will review and prepare a recommendation for approving the format for the 1994 Science Assessment. Between 7 p.m. and 10 p.m. the Executive Committee will convene to hear progress reports on achievement levels; contract procurement for assessment of U.S. History, and Geography, and achievement levels setting for reading, writing, and math; plans for the science consensus.

The meeting of the full Board will begin on Friday, August 2, at 8:30 a.m. At 8:45 a.m., there will be a report from the Executive Director. During the period 9 a.m. to noon; the Humanities Committee will meet to review and revise the NAGB policy on reporting and disseminating assessment results; the Design and Analysis Committee will meet to review and formulate recommendations for the approval of the 1991 science assessment; and the full Board will meet to discuss the proposed individualized use of NAEP. From 12 noon to 2 p.m., the Board meeting will close to the public to allow the Board to review two draft NAEP reports. One report will present the 1990 NAEP results in terms of achievement levels. The other report will present NAEP trend data from assessments in math, reading, science, and writing. Both reports are undergoing technical review and analysis and there is a significant possibility that the data contained in each report may be incorrect or incomplete. Further, premature disclosure of these data may be misleading and could have serious consequences for third parties, whose performance could be misinterpreted, leading to decisions being taken by the Department and/or others, that would be based on incomplete, confusing, or erroneous inferences being drawn. Such matters are protected by exemption 9(B) of section 552b(c) of title 5 U.S.C. The closed portion of the meeting will be closed under the authority of 10(d) of the Federal Advisory Committee Act 5 U.S.C. 552b(c). During the period from 2 p.m. until completion of business, the Board will hear briefings on the work of the National Council on Education Standards and Testing; National Education Goals Panel; SCANS Project; 1994 Science Consensus; and NAEP reauthorization issues. On August 3, the full Board will meet from 8:30 a.m. until adjournment, approximately 1:30 p.m. The proposed agenda for this portion of the meeting includes a briefing on NAEP activities; presentation of NAGB committee reports; and Board organization and election of officers.

A summary of the activities at the closed sessions and related matters, which are informative to the public and consistent with the policy of 5 U.S.C. 552b, will be available to the public within 14 days after the meeting. Records are kept of all Board proceedings and are available for public inspection at the Department of Education, National Assessment Governing Board, 1100 L Street, NW., suite 7322, Washington, DC, from 8:30 a.m. to 5 p.m.

The public is being given less than fifteen days notice of this meeting because of the difficulties encountered in scheduling a meeting of the participants who are essential to the actions described in this notice.

Dated: July 23, 1991.

Bruno V. Manno,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 91-17849 Filed 7-25-91; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Floodplain and Wetlands Involvement Notification for Two Separate Actions Involving the Department of Energy Uranium Mill Tailings Remedial Action Project Site Adjacent to Gunnison, CO

AGENCY: U.S. Department of Energy.

ACTION: Notice of floodplain and wetlands involvement.

SUMMARY: The U.S. Department of Energy (DOE) proposes two separate actions that are related to the DOE Gunnison Uranium Mill Tailings Remedial Action (UMTRA) Project site, an inactive uranium milling site adjacent to Gunnison, Golorado. The first proposed action is to provide a public water supply system to residents downgradient of the UMTRA Project site in an area where some wells have been contaminated with releases from uranium mill tailings. The second proposed action is to remove the source of contamination from the UMTRA Project site. Both actions could involve the disturbance of floodplain or wetland areas along the Gunnison River or Tomichi Creek.

Additional information and figures depicting all potentially disturbed floodplain or wetland areas for the proposed remedial action and proposed water supply pipeline are available from DOE at the first address shown below.

DATES: Any comments are due on or before August 12, 1991.

ADDRESSES: Send comments to: Mark Matthews, Project Manager, Uranium Mill Tailings Remedial Action Project Office, U.S. Department of Energy, 5301 Central Avenue, NW., Suite 1720, Albuquerque, New Mexico 87108.

For further information on floodplain and wetlands environmental review requirements contact: Carol M. Borgstrom, Director, Office of NEPA Oversight, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION:

I. Provision of Public Supply System.

Studies to characterize the contaminated plume associated with the Gunnison UMTRA Project site found that potential health risks may exist from the continued use of contaminated groundwater at 22 wells downgradient of the site. There are potential noncarcinogenic health risks from uranium mill tailings including heavy metal contamination (in particular uranium, manganese, cadmium, antimony, and lead) and potential carcinogenic health risks from radiological contamination from uranium and its decay products. DOE proposes to provide a public water system to the affected or potentially affected areas by pipeline. The proposed route for the water pipeline is 5 miles long. The pipeline would be buried adjacent to or beneath existing roads at a depth of 7 feet. Surface disturbance would be confined to ther areas within the road rights-of-way. The pipeline would have litle or no impact on the 100-year floodplain of the Gunnison River. Five buried crossings of the Gunnison River are proposed; each crossing is on a different fork of the river and would require a coffer dam to allow for burial of the pipeline. Wetland areas are present adjacent to roads; potential wetland disturbance is anticipated to total between 1 and 10 acres. All disturbance to wetlands would be temporary, and there is no anticipated net loss to wetlands.

Construction of the pipeline is anticipated to take 6 months. The draft and final Environmental Assessments

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Additional information and figures depicting all potentially disturbed floodplain or wetland areas for the proposed remedial action and proposed water supply pipeline are available from DOE at the first address shown below.

DATES: Any comments are due on or before August 12, 1991.

ADDRESSES: Send comments to: Mark Matthews, Project Manager, Uranium Mill Tailings Remedial Action Project Office, U.S. Department of Energy, 5301 Central Avenue, NW., Suite 1720, Albuquerque, New Mexico 87108.

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SUPPLEMENTARY INFORMATION:

I. Provision of Public Supply System.

Studies to characterize the contaminated plume associated with the Gunnison UMTRA Project site found that potential health risks may exist from the continued use of contaminated groundwater at 22 wells downgradient of the site. There are potential noncarcinogenic health risks from uranium mill tailings including heavy metal contamination (in particular uranium, manganese, cadmium, antimony, and lead) and potential carcinogenic health risks from radiological contamination from uranium and its decay products. DOE proposes to provide a public water system to the affected or potentially affected areas by pipeline. The proposed route for the water pipeline is 5 miles long. The pipeline would be buried adjacent to or beneath existing roads at a depth of 7 feet. Surface disturbance would be confined to ther areas within the road rights-of-way. The pipeline would have litle or no impact on the 100-year floodplain of the Gunnison River. Five buried crossings of the Gunnison River are proposed; each crossing is on a different fork of the river and would require a coffer dam to allow for burial of the pipeline. Wetland areas are present adjacent to roads; potential wetland disturbance is anticipated to total between 1 and 10 acres. All disturbance to wetlands would be temporary, and there is no anticipated net loss to wetlands.

Construction of the pipeline is anticipated to take 6 months. The draft and final Environmental Assessments

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on this proposed action will contain a floodplain/wetlands assessment that demonstrates compliance with the floodplain/wetlands environmental review requirements of 10 CFR part 1022. The construction of the proposed water supply system woud begin in 1991, and completion is anticipated within one year.

II. Remedial Action

DOE proposes to stabilize and control uranium mill tailings and other non-hazardous materials associated with the UMTRA Project site. The remedial action must comply with the standards promulgated by the U.S. Environmental Protection Agency (40 CFR part 192) as required by the Uranium Mill Tailings Radiation Control Act of 1978 (Pub. L. 95–604). The proposed remedial action would consist of removing uranium mill tailings from the UMTRA Project site and other properties contaminated with uranium mill tailings from the site and disposing of the tailings in a remote location. Neither the UMTRA Project mill tailings site nor the proposed disposal site is within the 100-year floodplain, and no wetlands areas would be disturbed. However, the proposed haul route between the UMTRA Proejct mill tailings site and the disposal site would cross undisturbed wetland areas, and a small portion of the proposed route is within the 100-year floodplain of Tomichi Creek, a tributary to the Gunnison River. All floodplain/wetlands disturbance would be temporary. Wetlands could be disturbed for up to 3 years, after which they would be reclaimed; there would be no anticipated net loss of wetlands. In accordance with DOE regulations for compliance with the floodplain/wetlands environmental review requirements (10 CFR part 1022), DOE will prepare a floodplain/wetlands assessment to be attached to the environmental assessment of the proposed action. Remedial action is proposed to begin in the early spring of 1992.

Leo P. Duffy,

Director, Office of Environmental Restoration and Waste Management.

[FR Doc. 91–17719 Filed 7–25–91; 8:45 am]

BILLING CODE 6450-01-M

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for cooperation between the Government of the United States of America and the Government of Sweden concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/SW(EU)–150, for the transfer of one fuel element containing 287.32 grams of uranium, enriched to 92.97 percent in the isotope uranium-235, from France to Sweden for use in the R-2 research reactor.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC on July 22, 1991.

Richard H. Williamson,

Associate Deputy Assistant Secretary for International Affairs.

[FR Doc. 91–17800 Filed 7–25–91; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of the Republic of Indonesia concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/IE(EU)–8, for the transfer from Germany to Indonesia of 1,020 grams of uranium, enriched to 93.3 percent in the isotope uranium-235, for use as targets for radioisotope production.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC on July 22, 1991.

Richard H. Williamson,

Associate Deputy Assistant Secretary for International Affairs.

[FR Doc. 91–17801 Filed 7–25–91; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Canada concerning Civil Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of the Republic of Korea concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/KO(CA)–1, for the transfer of 258.50 kilograms of uranium, enriched to 19.75 percent in the isotope uranium-235, from Canada to the Republic of Korea, for use as fuel in the Korean Multi-purpose research reactor.

n accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC on July 22, 1991.

Richard H. Williamson,

Associate Deputy Assistant Secretary for International Affairs.

[FR Doc. 91–17798 Filed 7–25–91; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community

(EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval for the transfer of 1.4 grams of uranium, enriched to 10.4 percent in the isotope uranium-235 and containing less than one percent uranium-233, and 1.6 grams of neptunium. These materials are contained in reference materials, and are to be transferred from Belgium to Czechoslovakia for use in reactor dosimetry at new power reactors which are under construction.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC on July 22, 1991.

Richard H. Williamson,

Associate Deputy Assistant Secretary for International Affairs.

[FR Doc. 91-17799 Filed 7-25-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER91-537-000, et al.]

Washington Water Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

July 18, 1991.

Take notice that the following filings have been made with the Commission:

1. Washington Water Power Company

[Docket No. ER91-537-000]

Take notice that on July 8, 1991, Washington Water Power Company tendered for filing a Notice of Termination of the following Agreements:

Other party	Type of agreement	FERC No.	Termination date
Puget Sound Power & Light.	Firm Capacity and Energy.	150	6/30/91
Pend Oreille County PUD.	Standby Energy.	[illegible]	6/30/91
Pend Oreille County PUD.	Exchange of Capacity and Energy.	163	7/1/91

Comment date: August 1, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. GWF Power Systems, L.P.

[Docket No. QF86-138-004]

On June 25, 1991, GWF Power Systems, L.P. (Applicant) of 225 Lennon Lane, Suite 120, Walnut Creek, California, 94596, filed an application for recertification of a facility as a qualifying cogeneration facility pursuant to 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle cogeneration facility will be located in Hanford, Kings County, California, and will consist of a fluidized bed boiler and an extraction/condensing steam turbine-generator (STG). Steam recovered from the STG will be used by Pirelli-Armstrong Tire Company for curing tires. Petroleum coke will be used as a boiler fuel. The installation began in November of 1988 and was completed in 1990.

The initial certification was issued on November 2, 1988, 45 FERC 61,187 (1988). The instant recertification is requested to reflect a change in the boiler fuel from coal to petroleum coke and natural gas, an increase in the net electric output to 25.44 MW and a decrease in the useful thermal output. In addition, the ownership of the facility has been transferred to the Applicant. Applicant is a Delaware limited partnership. The general partners are GWF Power Systems Company, Inc., CEA, GWF, Inc. (CEA GWF), a wholly-owned subsidiary of CEA USA, Inc. (CEA), and Harbert GWF, Inc, (Harbert GWF), a wholly owned subsidiary of Harbert Cogen, Inc, (Harbert Cogen). The limited partners are CEA and Harbert Cogen. CEA, GWF and CEA are subsidiaries of Public Service Enterprise Group Incorporated, an electric utility.

Comment date: August 26, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Washington Water Power Company

[Docket No. ER91-543-000]

Take notice that on July 15, 1991, The Washington Water Power Company (WWP) tendered for filing the annual contract rate for the period April 1, 1991 through March 31, 1992 under the 15-Year Purchase and Sale Agreement with Puget Sound Power & Light Company.

Comment date: August 1, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. Niagara Mohawk Power Corporation

[Docket No. ER91-542-000]

Take notice that Niagara Mohawk Power Corporation (Niagara Mohawk) on July 15, 1991, tendered for filing an agreement between Niagara Mohawk and The United Illuminating Company dated September 1, 1989.

The September 1, 1989 agreement is to provide for the sale by Niagara Mohawk Power Corporation of peaking capacity and related energy to The United Illuminating Company. The terms of this agreement and the period during which the purchase of peaking capacity can occur shall commence on September 1, 1989 and shall continue until October 31, 1989.

Copies of this filing were served upon The United Illuminating Company and the New York State Public Service Commission.

Comment date: August 1, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Washington Water Power Company

[Docket No. ER91-534-000]

Take notice that on July 8, 1991, Washington Water Power Company (WWP), tendered for filing a Capacity and Energy Sale Agreement between WWP and Sierra Pacific Power Company. WWP requests that the Commission (a) accept the Agreement for filing, effective as of July 1, 1991, and (b) grant a waiver of notice pursuant to 18 CFR 35.11, to allow the filing of the Agreement less than 60 days prior to the date on which service under the Agreement is to commence.

A copy of the filing was served upon Sierra Pacific Power Company.

Comment date: August 1, 1991, in accordance with Standard Paragraph E end of this notice.

6. Illinois Power Company

[Docket No. ER91-535-000]

Take notice that Illinois Power Company on July 8, 1991, tendered for filing Addenda which increase IP's demand rate ceilings for (1) Limited Term Power to "up to" $27.08 per KW-Month, (2) Short Term Power to "up to" $6.25 per KW-Week ("up to" $1.25 per KW-Day), (3) Short Term Non-Firm to "up to" $5.50 per KW-Week ("up to" $1.10 per KW-Day), and (4) Non-Displacement and Term Power to "up to" 6.9 cents per kWH. The purpose of the Addenda are to update the peak demand rates for voluntary sales to reflect the cost of the most recent major generating unit placed in service on IP's System. The addenda also provide for a uniform emergency rate of $100/MWH.

Copies of the filing were served upon the Illinois Commerce Commission and the appropriate utilities interconnected with IP.

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Copies of this filing were served upon The United Illuminating Company and the New York State Public Service Commission.

Comment date: August 1, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Washington Water Power Company

[Docket No. ER91–534–000]

Take notice that on July 8, 1991, Washington Water Power Company (WWP), tendered for filing a Capacity and Energy Sale Agreement between WWP and Sierra Pacific Power Company. WWP requests that the Commission (a) accept the Agreement for filing, effective as of July 1, 1991, and (b) grant a waiver of notice pursuant to 18 CFR 35.11, to allow the filing of the Agreement less than 60 days prior to the date on which service under the Agreement is to commence.

A copy of the filing was served upon Sierra Pacific Power Company.

Comment date: August 1, 1991, in accordance with Standard Paragraph E end of this notice.

6. Illinois Power Company

[Docket No. ER91–535–000]

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Copies of the filing were served upon the Illinois Commerce Commission and the appropriate utilities interconnected with IP.

Comment date: August 1, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91–17739 Filed 7–25–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP91–2476–000, et al.]

Northwest Pipeline Corp., et al; Natural Gas Certificate Filings

July 18, 1991

Take notice that the following filings have been made with the Commission:

1. Northwest Pipeline Corporation

[Docket No. CP91–2476–000]

Take notice that on July 15, 1991, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP91–2476–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) to construct and operate measuring and regulating facilities for a delivery point in Pierce County, Washington, for a transportation service for Development Associates, Inc. (DA), under Northwest's blanket certificate issued in Docket No. CP82–433–000 pursuant to Section 7 of the Natural Gas Act, all as more fully detailed in the application which is on file with the Commission and open to public inspection.

Specifically, Northwest proposes to construct and operate the meter for the delivery of up to 5,160 MMBtu equivalent of natural gas on a peak day to DA, which will sell the gas to the Boeing Company, which is constructing a new aircraft plant using natural gas for boiler fuel and heating. Northwest states that it received prior notice authorization from the Commission for a firm transportation service for DA in Docket No. CP91–106–000. It is stated that deliveries using the proposed meter would be within DA's existing entitlement from Northwest and would have no significant impact on Northwest's peak day deliveries.

Comment date: September 3, 1991, in accordance with Standard Paragraph G at the end of this notice.

2. Columbia Gulf Transmission Company, et al.

[Docket Nos. CP91–2488–000, CP91–2489–000, CP91–2491–000, CP91–2492–000]

Take notice that Applicants filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued to Applicants pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Mcf	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket start up date
CP91–2488–000 (7–16–91)	Chevron U.S.A., Inc. (Producer).	30,000 24,000 [2] 8,760,000	OLA	LA	6–6–88, ITS–2, Interruptible.	ST91–9372–000 4–1–91
CP91–2489–000 (7–16–91)	Enron Gas Marketing, Inc. (Marketer).	50,000 50,000 18,250,000	OLA, OTX, LA, IL, TN, TX.	TN	5–30–86,[3] PT, Interruptible.	ST91–9010–000 5–22–91
CP91–2490–000 (7–16–91)	Stellar Gas Company (Marketer).	10,000 10,000 3,650,000	OTX	OTX	5–28–91, PT, Interruptible.	ST91–9114–000 6–1–91
CP91–2491–000 (7–16–91)	Shell Offshore Inc. (Producer).	30,000 30,000 10,950,000	OLA	LA	5–16–91, PT, Interruptible.	ST91–9244–000 6–1–91
CP91–2492–000 (7–17–91)	Aquila Energy Marketing Corporation (Marketer).	1,000,000 1,000,000 [4] 365,000,000	Various	Various	4–13–89,[3] IT, Interruptible.	ST91–9462–000 7–2–91

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[2] Columbia Gulf's quantities are in MMBtu.
[3] As amended.
[4] Tennessee's quantities are in dekatherms.

Applicant's address	Blanket docket
Columbia Gulf Transmission Company, P.O. Box 683, Houston, Texas 77001	CP86–239–000
Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77252	CP87–115–000
Trunkline Gas Company, P.O. Box 1642, Houston, Texas 77251–1642	CP86–585–000

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[1] These prior notice requests are not consolidated.I11Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under Section 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached Appendix A. Applicants' addresses and transportation blanket certificates are shown in the attached Appendix B.I11*Comment date:* September 3, 1991, in accordance with Standard Paragraph G at the end of this notice.

3. El Paso Natural Gas Company, et al.

[Docket Nos. CP91–2447–000, CP91–2450–000, CP91–2452–000, CP91–2453–000]

Take notice that Applicants filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued to Applicants pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached Appendix A. Applicants' addresses and transportation blanket certificates are shown in the attached appendix. B.

Comment date: September 3, 1991, in accordance with Standard Paragraph G at the end of this notice.

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[2] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual dt equivalent	Receipt points [1]	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91–2447–000 (7–11–91)	GasMark, Inc. (Marketer).	[2] 8,034 5,150 1,879,750	Various	AZ	5–24–91, T–1, Interruptible.	ST91–9032 6–1–91
CP91–2450–000 (7–11–91)	Western Natural Gas and Transmission (Marketer).	[3] 4,000 1,000 365,000	CO, WY	CO	3–1–91, TI–1, Interruptible.	ST91–9391 6–10–91
CP91–2452–000 (7–11–91)	Eastex Gas Transmission (Intrastate Pipeline).	20,000 20,000 7,300,000	OLA	LA	4–27–87, IT, Interruptible.	ST91–9387 6–28–91
CP91–2453–000 (7–11–91)	Kerr-McGee Corporation (Producer).	185,000 185,000 67,525,000	OLA, OTX, LA, TX, AL, MS	LA, TX, AL, MS, WV, PA.	4–30–88, IT, Interruptible.	ST91–9406 7–1–91

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[2] Measured in MMBtu equivalent.
[3] Measured in Mcf.

Applicant's address	Blanket docket
Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs, Colorado 80944.	CP86–589, et al.
El Paso Natural Gas Company, P.O. Box 1492, El Paso, Texas 79978.	CP88–433–000.
Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77252.	CP87–115–000.

4. Northwest Pipeline Corporation

[Docket No. CP91–2456–000]

Take notice that on July 11, 1991, Northwest Pipeline Corporation (Northwest) 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP91–2456–000, a request pursuant to §§ 157.205, 157.211(b) and 157.216(b) of the Commissions Regulations and Northwest's blanket certificate issued in Docket No. CP82–433–000 pursuant to section 7 of the Natural Gas Act (NGA) for authorization to abandon certain metering facilities at the existing Sedro Woolley Meter Station in Skagit County, Washington and to construct and operate upgraded metering facilities at the Sedro Woolley Meter Station in order to enable both Northwest and the receiving party, Cascade Natural Gas Corporation (Cascade), to accommodate requests for additional transportation service to Texaco, Inc. (Texaco) and other end-users served by Cascade, all a more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest states that the Sedro Woolley Meter Station is located in Skagit County, Washington, at milepost 1447.66 on Northwest's mainline. The existing Sedro Woolley Meter Station consists of an eight-inch tap on Northwest's 26-inch mainline and a four-inch tap of Northwest's 30-inch mainline loop, an eight-inch turbine meter and a ten-inch orifice meter run, a monitor regulation run consisting of four-inch regulators, and appurtenances. The existing Sedro Woolly Meter Station has a maximum design delivery capacity of approximately 338,000 therms per day.

Northwest further states that Cascade is Northwest's only customer for firm service at the Sedro Woolley Meter Station and that Northwest has an existing firm obligation to deliver up to 267,315 therms per day to Cascade at the Sedro Woolley Station, under sales, transportation and storage agreements. In addition to the firm service to Cascade, the station is used for interruptible transportation service to Cascade and others, including Texaco. Cascade has requested Northwest to provide additional delivery capacity at the Sedro Woolley delivery point to facilitate the transportation of additional gas which will be requested by Texaco and other shippers to serve the new March Point Cogeneration facility being constructed and other new requirements. The March Point Cogeneration facility is a new 140 megawatt cogeneration facility at Texaco's Puget Sound refinery in Anacortes, Washington, downstream of the Sedro Woolley delivery meter served by Cascade which will require up to 330,000 therms per day.

Northwest states that under its proposal it will remove the existing four-inch monitor regulation run (consisting of four-inch regulators), the ten-inch orifice meter, and associated appurtenances and will replace those facilities with a six-inch monitor regulation run (consisting of four six-inch regulators), a twelve-inch turbine meter, and associated appurtenances. The existing eight-inch turbine meter will remain in place. The upgraded Sedro Woolley Meter Station will have a design capacity of approximately 1,004,000 therms per day and the total estimated cost of the upgrading the

Sedro Woolley Meter Station is approximately $493,290. Northwest further states that pursuant to the facilities reimbursement provisions of Northwest's Rate Schedule FT-1 Northwest will install and pay for the upgraded Sedro Woolley facilities, since the estimated revenues associated with the incremental load projected to result from service to the new March Point Cogeneration facility exceeds the cost-of-service for the meter upgrade.

Comment date: September 3, 1991, in accordance with Standard Paragraph G at the end of this notice.

5. Northwest Pipeline Corporation

[Docket No. CP91-2455-000]

Take notice that on July 11, 1991, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158-0900, filed in Docket No. CP91-2455-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon an interruptible gathering and transportation service for Southwest Gas Corporation (Southwest), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest states that it is requesting approval to abandon the interruptible gathering and transportation service it provided for Southwest pursuant to Northwest's Rate Schedule X-49 of its FERC Gas Tariff, Original Volume No. 2 and a certificate issued in Docket No. CP78-380, as amended. Northwest indicates that no service has been provided under Rate Schedule X-49 since 1985. Northwest states that by letter dated May 28, 1991, it notified Southwest that pursuant to the terms of the gathering and transportation agreement that it was reducing the delivery volumes under the agreement to zero for priority purposes, and effectively terminating its contractual obligation to make deliveries for Southwest under Rate Schedule X-49.

Northwest indicates that in the May 28, 1991, letter, it has offered Southwest replacement non-jurisdictional gathering contracts and blanket transportation contracts at the same previous maximum contract volumes. Northwest also states that it does not propose the abandonment of any facilities with this proposal.

Comment date: August 8, 1991, in accordance with Standard Paragraph F at the end of the notice.

6. K N Energy, Inc., et al.

[Docket Nos. CP91-2470-000, CP91-2471-000, CP91-2472-000, CP91-2473-000, CP91-2475-000]

Take notice that on July 15, 1991, K N Energy, Inc., P.O. Box 281304, Lakewood, CO 80228-8304, and Tennessee Gas Pipelne Company, P.O. Box 2511, Houston, Texas 77252, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued in Docket No. CP89-1043-000 and Docket No. CP87-115-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[8]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: September 3, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Shipper name (type)	Peak day, average day annual Mcf	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2470-000 (7-15-91)	GPC Marketing Company (Marketer).	6,000 6,000 2,190,000	CO, KS, NB, WY	CO, KS, WY	5-24-91, IT-1, IT-2, IT-3, Interruptible.	ST91-9206-000 6-1-91
CP91-2471-000 (7-15-91)	John Brown E&C, Inc. (Shipper).	8,000 8,000 2,920,000	CO, KS, NB, WY	WY	5-1-91, IT-1, IT-2, IT-3, Interruptible.	ST91-9211-000 6-1-91
CP91-2472-000 (7-15-91)	Hiland Partners (Shipper).	5,000 5,000 1,825,000	WY	WY	5-31-91, IT-1, IT-2, IT-3, Interruptible.	ST91-9209-000 6-1-91
CP91-2473-000 (7-15-91)	Exxon Corporation (Producer).	55,000 50,959 18,600,000	CO, KS, NB, WY	CO, KS and WY	5-8-91, IT-1, IT-2, IT-3, Interruptible.	ST91-9382-000 5-31-91
CP91-2475-000 (7-15-91)	Kerr-McGee Corporation (Producer).	380,000 380,000 [1] 138,700,000	Off LA, On LA, Off TX, MS.	PA, AL, MS, LA, TX, WV, TN, OH, KN, NY, NJ.	3-24-88, as amended, IT, Interruptible.	ST91-9418-000 7-1-91

[1] Tennessee's quantities are in dekatherms.

7. Algonquin Gas Transmission Company

[Docket No. CP89-661-005]

Take notice that on July 10, 1991, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed an amendment in Docket No. CP89-661-005 to a pending amendment in said docket for a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act for authorization to perform new transportation services, to transfer into this filing facilities necessary to perform the subject transportation that have been previously certificated by the Commission in other Algonquin filings, and to construct and operate facilities necessary to perform the subject transportation, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Specifically, Algonquin seeks authorization to provide firm transportation service of up to 13,828 MMBtu per day on behalf of Dartmouth Power Associates (Dartmouth) and up to 3,948 MMBtu per day on behalf of

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[8] These prior notice requests are not consolidated.

Colonial Gas Company (Colonial). In order to effectuate this transportation service, Algonquin intends to construct and operate, at an estimated cost of $6.6 million, the following facilities:

(1) An additional 2.5 miles of 12-inch pipeline loop on Algonquin's E-1 system from the Browning Road Meter Station in Norwich, Connecticut to the Salem Turnpike Meter Station in Norwich, Connecticut.[4]

(2) An additional 1.5 miles of 20-inch pipeline loop on Algonquin's G-6 system from Plymouth, Massachusetts to the Bourne Meter Station in the towns of Plymouth and Bourne, Massachusetts.[4]

(3) A meter station on Algonquin's G-3 system at Dartmouth, Massachusetts.

The estimated cost of the facilities is $6.6 million. Algonquin expects to finance these facilities in a manner similar to its current capitalization structure as filed in Docket No. RP90-22-000 (Debt, 49.18%; Equity, 50.82%), subject to change to reflect the most advantageous market conditions available at the time the financing is actually undertaken.

Algonquin intends to perform the instant transportation service pursuant to Rate Schedule AFT-2 which is pending in Docket No. CP89-661-004. Rate Schedule AFT-2 is designed to recover the cost of service associated with the incremental facilities required to render the proposed service through a one-part demand charge.

Comment date: August 8, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

8. Panhandle Eastern Pipe Line Company

[Docket No. CP91-2465-000]

Take notice that on July 12, 1991, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP91-2465-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to reassign volumes at the Elwood delivery point on Indiana Gas Company's sales agreement dated October 26, 1990, under Panhandle's blanket certificate issued in Docket No. CP83-83-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle states that it inadvertently omitted this request from the application filed in Docket No. CP91-595-000. Panhandle further states that no increase in volumes is proposed and that at no time shall the aggregate volumes delivered on a single day to all the delivery points in Article 3 of the sales agreement exceed 240,030 Mcf.

Comment date: September 3, 1991, in accordance with Standard Paragraph G at the end of this notice.

9. Columbia Gulf Transmission Company and Transcontinental Gas Pipe Line Corporation

[Docket No. CP91-2467-000, CP91-2469-000]

Take notice that Columbia Gulf Transmission Company, 3805 West Alabama, Houston, Texas 77027, and Transcontinental Gas Pipe Line Corporation, P.O. Box 1396, Houston, Texas 77251, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP86-239-000 and Docket No. CP88-328-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[5]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: September 3, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMbtu	Receipt points [1]	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2467-000 (7-12-91)	Enron Gas Marketing, Inc. (Marketer).	20,000 16,000 7,300,000	OLA, LA	LA	FTS-2, Firm	ST91-2294 6-13-91
CP91-2469-000 (7-12-91)	Citizens Gas Supply Corporation (Marketer).	100,000 50,000 18,250,000	Various	Various	IT, Interruptible	ST91-8697 9-21-90

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this

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[4] These items, when combined with adjoining pipeline looping that has been moved to Docket No. CP89-661-004, total the mileage that has already been approved in Phase III of the Niagara Import Point Projects, Tennessee Gas Pipeline Company, 52 FERC ¶ 61,257.

[5] These prior notice requests are not consolidated.

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9. Columbia Gulf Transmission Company and Transcontinental Gas Pipe Line Corporation

[Docket No. CP91–2467–000, CP91–2469–000]

Take notice that Columbia Gulf Transmission Company, 3805 West Alabama, Houston, Texas 77027, and Transcontinental Gas Pipe Line Corporation, P.O. Box 1396, Houston, Texas 77251, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP86–239–000 and Docket No. CP88–328–000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[5]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: September 3, 1991, in accordance with Standard Paragraph G at the end of this notice.

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[5] These prior notice requests are not consolidated.

ipt points ¹	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
	LA	FTS–2, Firm	ST91–2294 6–13–91
	Various	IT, Interruptible	ST91–8697 9–21–90

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intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this

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ruling if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91–17740 Filed 7–25–91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP-91-2496-000, et al.]

Trunkline Gas Co., et al.; Natural Gas Certificate Filings

July 19, 1991.

Take notice that the following filing have been made with the Commission:

1. Trunkline Gas Company

[Docket No.'s CP91–2496–000, CP91–2497–000, CP91–2498–000, CP91–2499–000, CP91–2500–000, CP91–2501–000]

Take notice that on July 17, 1991, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under its blanket certificate issued in Docket No. CP86–586–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Trunkline and is summarized in the attached appendix.

Comment date: September 3, 1991, in accordance with Standard Paragraph G at the end of this notice.

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[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Mcf	Receipt ¹ points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91–2496–000 (7–17–91)	Exxon Corporation (producer).	50,000 50,000 18,250,000	OLA	LA	Apr. 22, 1991, PT, interruptible.	ST91–9242–000 6–01–91
CP91–2497–000 (7–17–91)	Polaris Corporation (marketer).	50,000 50,000 18,250,000	TX, IL, LA, TN, OLA, OTX.	IN	May 30, 1991, PT, interruptible.	ST91–9120–000 6–01–91
CP91–2498–000 (7–17–91)	Exxon Corporation (producer).	25,000 25,000 9,125,000	OLA, IL, LA, TN, TX, OLA, OTX.	LA	Apr. 15, 1991, PT, interruptible.	ST91–9243–000 6–01–91
CP91–2499–000 (7–17–91)	Panhandle Trading Company (marketer).	15,000 15,000 5,475,000	TX, IL, LA, TN, OLA, OTX.	TN	May 24, 1991, PT, interruptible.	ST91–9119–000 6–01–91
CP91–2500–000 (7–17–91)	Panhandle Trading Company (marketer).	5,000 5,000 1,825,000	TX, IL, LA, TN, OLA, OTX.	TN	May 24, 1991, PT, interruptible.	ST91–9118–000 6–01–91
CP91–2501–000 (7–17–91)	Vesta Energy Company (marketer).	5,000 5,000 1,825,000	LA, IL, TN, TX, OLA, OTX.	IL	May 17, 1991, PT, interruptible.	ST91–9116–000 6–01–91

¹ Offshore Louisana and offshore Texas are shown as OLA and OTX.

2. Northwest Pipeline Corporation

[Docket No.'s CP91–2484–000, CP91–2485–000, CP91–2486–000, CP91–2487–000]

Take notice that Applicant filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certificate pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: September 3, 1991, in accordance with Standard Paragraph G at the end of this notice.

Applicant: Northwest Pipeline Corporation, 295 Chipeta Way, Salt Lake City, UT 84108.

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[2] These prior notice requests are not consolidated.

Blanket Certificate Issued in Docket No.: CP86–578–000.

Docket No. (date filed)	Shipper name (type shipper)	Peak day, avg, annual	Points of		Start up date, rate schedule	Related dockets [2]
			Receipt	Delivery		
CP91–2484–000 (07–16–91)	Southwest Gas Corp.—Northern California (LDC).	7,668 2,368 864,461	CO, WY, WA	ID	06–01–91, TF–1	ST91–9342–000
CP91–2485–000 (07–16–91)	CP National Corp. (LDC).	11,373 4,959 1,810,000	CO, WY, WA	ID	06–01–91, TF–1	ST91–9341–000
CP91–2486–000 (07–16–91)	Sierra Pacific Power Co. (LDC).	61,696 26,427 9,645,683	CO, WY, WA	ID	06–01–91, TF–1	ST91–9339–000
CP91–2487–000 (07–16–91)	Southwest Gas Corp.—Northern Nevada (LDC).	42,826 17,564 6,410,946	CO, WY, WA	ID	06–01–91, TF–1	ST91–9340–000

[1] Quantities are shown in MMBtu unless otherwise indicated.

[2] If an ST docket is shown, 120-day transportation service was reported in it.

3. Natural Gas Pipeline Company of America

[Docket Nos. CP91–2434–000, CP91–2435–000, CP91–2436–000, CP91–2437–000, CP91–2438–000, CP91–2439–000]

Take notice that on July 10, 1991, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authoriztion to transport natural gas on behalf of shippers under its blanket certificate issued in Docket No. CP86–582–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Natural and is summarized in the attached appendix.

Comment date: September 3, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91–2434–000 (7–10–91)	Phibro Energy, Inc. (Marketer).	50,000 30,000 10,950,000	Various	Offshore LA & TX, LA, TX, OK, IL, CO.	4–24–91, ITS, Interruptible.	ST91–8793–000 5–1–91
CP91–2435–000 (7–10–91)	Hadson Gas Systems, Inc. (Marketer).	100,000 50,000 18,250,000	Various	Offshore LA & TX, LA, TX, OK, IL, IA, CO, NM.	4–25–91, ITS, Interruptible.	ST91–8792–000 5–1–91
CP91–2436–000 (7–10–91)	Industrial Energy Applications, Inc. (Marketer).	20,000 60,000 21,900,000	Various	Offshore LA & TX, LA, TX, OK, IL, IA, CO, NM	4–4–91, ITS, Interruptible.	ST91–8841–000 5–1–91
CP91–2437–000 (7–10–91)	Tenaska Marketing Ventures (Marketer).	5,000 2,500 912,500	Various	Offshore LA & TX, LA, TX, OK, IL, IA, CO, NM.	4–22–91, ITS, Interruptible.	ST91–8840–000 5–1–91
CP91–2438–000 (7–10–91)	Owens-Illinois Glass Container, Inc. (Marketer).	1,000 1,000 365,000	Various	IL	5–1–91, FTS, Firm	ST91–8860–000 5–1–91
CP91–2439–000 (7–10–91)	Green Valley Chemical Corporation (End-User).	3,800 3,800 1,387,000	Various	IA	11–12–90, FTS, Firm.	ST91–8723–000 5–1–91

4. Trunkline Gas Company; Northern Natural Gas Company

[Docket No's. CP91–2502–000, CP91–2503–000, CP91–2504–000, CP91–2505–000, CP91–2506–000]

Take notice that on July 17, 1991, Trunkline Gas Company, P.O. Box 1642, Houston, Texas 77251–1642, and Northern Natural Gas Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued in Docket No. CP86–586–000 and Docket No. CP86–435–000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

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[3] These prior notice requests are not consolidated.

[4] These prior notice requests are not consolidated.

Comment date: September 3, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Mcf	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2502-000 (7-17-81)	Sun Refining and marketing Company (End-user).	30,000, 5,000, 10,950,000	OLA, OTX, LA, IL, TN, TX	IL	6-20-89, PT Interruptible.	ST91-9126-000 6-1-91
CP91-2503-000 (7-17-91)	Dishop Pipeline Corporation (Intrastate Pipeline).	20,000, 20,000, 7,300,000	OLA, OTX, TX, IL, LA, TN	IN	5-24-91, PT Interruptible.	ST91-9117-000 6-1-91
CP91-2504-000 (7-17-91)	TEX/CON Gas Marketing Company (Marketer).	50,000, 50,000, 18,250,000	OLA, OTX, IN, IL, LA, TN, TX	OH	2-22-91, PT, Interruptible.	ST91-9175-000 6-1-91
CP91-2505-000 (7-17-91)	Marathon Oil Company (Producer).	4,000, 4,000, 1,460 000	OLA, OTX, IL, LA, TN, TX	IL	6-1-91, PT, Firm	ST91-9115-000 6-1-91
CP91-2506-000 (7-17-91)	Helmerich & Payne Energy Services, Inc. (Producer).	30,000, 22,500, 10,950,000 [2]	Various	Various	6-12-91, IT-1, Interruptible.	ST91-9471-000 6-12-91

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

[2] Northern's quantities are in MMBtu.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17741 Filed 7-25-91; 8:45 am]

BILLING CODE 6717-01-M

Change of Name or Address Filings

July 19, 1991.

Parties to a proceeding who want to notify the Commission and other parties of a change of name or address for a person listed on an official service list are directed to provide this notification in a letter which is separate from any pleading which is being filed with the Commission. Under 18 CFR 385.2010(c)(2), such notice must also be served on all parties to all relevant dockets. The notification of the change should include a list of docket numbers for all proceedings whose records must be corrected to reflect this change. Providing this notice by separate letter and providing a list of relevant docket numbers will allow the Commission to take note of such changes promptly and to update its records accordingly. Only an original of the letter and one copy will be required for filing. The copy will be returned to the filer to confirm the changes were made.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17738 Filed 7-25-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. PL91-2-000]

Pipeline Rates: Gathering; Interstate Natural Gas Pipeline Rate Design, Policy Statement With Respect to the Recovery of Gathering Costs

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler, Jerry J. Langdon and Branko Terzic.

Issued July 22, 1991.

An issue concerning the recovery of gathering costs has arisen in several litigated cases currently pending before the Commission. In particular, the question is whether the Commission will use the same test to determine the cost of service and rate design treatment applicable to gathering facilities as it uses to determine whether the Commission has certificate jurisdiction over these facilities. In this policy statement the Commission is providing guidance to the parties on the Commission's current view as to the relationship of the tests used to make these three decisions.

In litigated cases,[1] the parties' concern with the categorization of facilities as either gathering or transmission is a result of the four step process that the Commission has traditionally used to design rates. In the first step ("functionalization"), the pipeline's costs are divided between its major operations or functions, such as transmission, production, and storage. In the second step ("classification"), the costs for each function are classified as either fixed (that do not vary with the volume of gas moved) or variable, and then are further classified as demand or commodity costs, depending upon the type of rate design method used. The third step ("allocation") is to apportion the cost of service between the pipeline's services (jurisdictional and nonjurisdictional) and among its classes of customers or zones. The fourth step ("rate design"), involves the determination of the unit rates for each service provided under the pipeline's rate schedules. Since the Commission has traditionally allowed pipelines to recover gathering costs only in the commodity rate, a pipeline had to show in step one that the function of the facilities in question was transmission in order to recovery through a demand charge any of the costs arising from those facilities.

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[1] The form of recovery of gathering costs is an issue in the initial decisions issued in Trunkline Gas Company, 41 FERC ¶ 63,011 (1987), and Northwest Pipeline Corporation, 53 FERC ¶ 63,024 (1990). This issued also arises in the context of contested settlements filed by Panhandle Eastern Pipe Line Company on July 5, 1990, in Docket No. RP87-103-000, and by Williams Natural Gas Company on July 9, 1990, in Docket No. RP89-183-000. This issue also was originally present in the Colorado Interstate Gas Company (CIG) proceeding in Docket No. RP90-69-000. However, CIG has recently filed a settlement which seeks to resolve this issue.

It is unnecessary to have a rate policy concerning gathering/production area facilities turn on jurisdictional considerations since under sections 4 and 5 of the Natural Gas Act the Commission has jurisdiction over rates and charges "collected by any natural-gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission," [2] including the costs of pipeline facilities that might be gathering under section 1(b) of the Act. In fact, section 5(b) specifically authorizes the Commission to ascertain the cost of "the production or transportation of natural gas by a natural-gas company in cases where the Commission has no authority to establish a rate governing the transportation or sale of such natural gas." [3] Thus, designing the method of cost recovery for facilities used in connection with jurisdictional service need not turn on whether the facilities are gathering or transmission under section 1(b) of the Act and thus subject to certificate and abandonment requirements of section 7 of the Act.[4] For these reasons, the jurisdictional tests set out in Farmland Industries, Inc.[5] will no longer control the rate treatment for a pipeline's gathering or production area facilities.[6]

However, there continues to be a need to categorize a pipeline's facilities in a rate case in order to determine the applicable depreciation rate and other elements of the cost of service for a particular facility that will be allowed in the rates for jurisdictional service.[7] The Commission will functionalize the facility as either gathering or transmission as it has always done.[8] For example, since the expected life of the reserves attached to the facility is the most relevant factor for determining the depreciation rate, the Commission in a rate case will continue to functionalize the facility as gathering or transmission by examining whether it serves only a localized source of supply or a broader regional source of supply. In functionalizing the facility as gathering or transmission, the Commission may also consider pattern of usage and physical factors incorporated in the modified Farmland jurisdictional test such as size and configuration of the facilities, although the conclusion may not be the same.

The Commission hereby gives notice that it intends to apply the principle established in this policy statement in future proceedings involving the recovery of gathering costs. Thus, in litigating cases, parties should not argue whether particular facilities are gathering or transmission under modified Farmland on the assumption that this determination will control the rate treatment accorded those facilities. Rather, parties should consider what rate treatment should be applied to gathering facilities to further the objectives of the Commission's rate design policies. If a party proposes that the costs of particular gathering facilities should be recovered by a method different than the historical one, that party should prepare a record that shows the impact of the proposed change on the pipeline's customers.[9] Any person that wants to comment on this statement of policy may file a request for rehearing under 18 CFR 385.713.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 91–17742 Filed 7–25–91; 8:45 am]

BILLING CODE 6717-01-M

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[2] 15 U.S.C. 717d(a) (emphasis added).

[3] 15 U.S.C. 717d(b).

[4] See Northern Natural Gas Company, 43 FERC ¶ 61,473 (1988), *reh'g denied,* 44 FERC ¶ 61,384 (1988); *affirmed,* 929 F.2d 1261 (8th Cir. 1991), *petition for cert. filed* (July 2, 1991) (No. 91–14).

[5] 23 FERC ¶ 61,063 (1983). In Farmland, the Commission held that, for purposes of determining whether a particular facility is exempt from the Commission's jurisdiction under section 1(b) of the Natural Gas Act, the ultimate test of how a facility should be classified is whether the primary function of the facility is transportation or gathering. The Commission then listed five factors that it would consider in determining the primary function of the facility: (1) The diameter and length of the facility; (2) the location of compressors and processing plants; (3) the extension of the facility beyond the central point in the field; (4) the location of wells along all or part of the facility; and (5) the geographical configuration of the system.

[6] The Commission will no longer use the Farmland tests for rate design purposes as those tests are currently structured. In the context of the remand required by the court in *EP Operating Co.* v. *FERC,* 876 F.2d 46 (5th Cir. 1989), the Commission has reformulated those tests as applied to questions of jurisdiction. Amerada Hess Corporation, *et al.,* 52 FERC ¶ 61,268 (1990).

[7] The depreciation expense is the major element of the cost of service that is affected by the functionalization of facilities as gathering or transmission. Other elements of the cost of service that are affected by the functionalization are the allocation of administrative and general costs, and of taxes other than income taxes, between gathering and transmission.

[8] The Uniform System of Accounts requires facilities to be functionalized as either "gathering" or "transmission."

[9] See Interstate Natural Gas Pipeline Rate Design, *et al.,* 47 FERC ¶ 61,295 at 62,015 (1989).

Office of Conservation and Renewable Energy

[Case No. F-033]

Energy Conservation Program for Consumer Products; Application for Interim Waiver and Petition for Waiver of Furnace Test Procedures From Armstrong Air Conditioning, Inc.

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to Armstrong Air Conditioning, Inc. (Armstrong) from the existing Department of Energy (DOE) test procedures for furnaces regarding blower time delay for the company's EG8G gas furnace.

Today's notice also publishes a "Petition for Waiver" from Armstrong. Armstrong's Petition for Waiver requests DOE to grant relief from the DOE test procedures relating to the blower time delay specification. Armstrong seeks to test using a blower delay time of 30 seconds for its EG8G gas furnace instead of the specified 1.5-minute delay between burner on-time and blower on-time. DOE is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than August 26, 1991.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Case No. F-033, Mail Stop CE-90, room 6B-025, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-3012.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-43, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-41, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA),

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7-25-91; 8:45 am]

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Office of Conservation and Renewable Energy

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SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public 100-357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist the consumer in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The interim waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On December 14, 1990, Armstrong filed an Application for an Interim Waiver regarding blower time delay. Armstrong's Application seeks an Interim Waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Armstrong requests that allowance to test using a 30-second blower time delay when testing its EG8G gas furnace. Armstrong states that the 30-second delay is indicative of how these furnaces actually operate. Such a delay results in an energy savings of approximately 0.6 percent. Since current DOE test procedures do not address this variable blower time delay, Armstrong asks that the Interim Waiver be granted.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, and 55 FR 3253, January 31, 1990; Trane Company, 54 FR 19226, May 4, 1989, and 55 FR 41589, October 12, 1990; DMO Industries, 55 FR 4004, February 6, 1990; Heil-Quaker Corporation, 55 FR 13184, April 9, 1990; Carrier Corporation, 55 FR 13182, April 9, 1990; Amana Refrigeration Inc., 56 FR 853, January 9, 1991; Armstrong Air Conditioning, Inc., 56 FR 10553, March 13, 1991; and Snyder General Corporation, 56 FR 14511, April 10, 1991. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Armstrong an Interim Waiver for its EG8G series of gas furnaces. Pursuant to paragraph (e) of § 430.27 of the Code of Federal Regulations, the following letter granting the Application for Interim Waiver to Armstrong Air Conditioning Inc., was issued.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirely. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

Issued in Washington, DC, July 22, 1991.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

December 14, 1990

United States Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585

Gentlemen: This is a petition for waiver and petition for interim waiver submitted pursuant to 10 CFR 430.27. Waiver is requested from the Furnace test procedure found at appendix N to subpart B of part 430.

The test procedure requires a 1.5 minute delay between burner on and blower on. Armstrong is requesting authorization to use a 30 second delay instead of 1.5 minutes. Armstrong is manufacturing a series of induced draft furnaces which include the EG8G Horizontal Gas furnaces used for residential installations.

Maximum energy efficiency is achieved by fixed timing controls installed in the EG8G series that activate the circulating air blower 30 seconds after the burner is on.

Under the appendix N procedures, the vent gas temperature climbs at a faster rate than it would with a 30 second blower on time, allowing energy to be lost out the vent system. This waste of energy would not occur in actual operation. If this petition is granted, the true blower on time delay would be used in the calculations. Proposed ASHRAE Standard 103-1988 paragraph 9.5.1.2.2 specifically advances the use of timed blower operation.

The current test procedures does not give Armstrong credit for the energy savings which average approximately .6 percentage points on our A.F.U.E. test results.

Current prescribed test procedures prohibit Armstrong from taking credit for the saved energy, thus providing inaccurate comparative data.

Armstrong has been granted a waiver permitting the 20 second blower on time to be used in efficiency calculations for our Ultra series furnaces (Case Number-F-014) dated October 1985.

Several other manufacturers of furnaces have been granted a waiver to permit calculations based on timed blower operation.

Confidential comparative test data is available to you upon your request.

Sincerely,

ARMSTRONG AIR CONDITIONING INC.,

Bruce R. Maike,

Vice President Product Engineering.

JULY 22, 1991.

Mr. Bruce R. Maike
Vice President Product Engineering,
Armstrong Air-Conditioning, Inc., 421 Monroe Street, Bellevue, Ohio 44811

Dear Mr. Maike: This is in response to your December 14, 1990, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedures for furnaces regarding blower time delay for the Armstrong Air Conditioning Inc. (Armstrong) EG8G gas furnace.

Previous waivers for timed blower delay control have been granted by DOE to Coleman Company, 50 F.R. 2710, January 18, 1985; Magic Chef Company, 50 F.R. 41553, October 11, 1985; Rheem Manufacturing Company, 53 F.R. 48574, December 1, 1988, and 55 F.R. 3253, January 31, 1990; Trane Company, 54 F.R. 19226, May 4, 1989, and 55 F.R. 41589, October 12, 1990; DMO Industries, 55 F.R. 4004, February 6, 1990; Heil-Quaker

Corporation, 55 F.R. 13184, April 9, 1990; Carrier Corporation, 55 F.R. 13182, April 9, 1990; Amana Refrigeration Inc., 56 F.R. 853, January 9, 1991; Armstrong Air Conditioning, Inc., 56 F.R. 10553, March 13, 1991; and Snyder General Corporation, 56 F.R. 14511, April 10, 1991.

Armstrong's Application for Interim Waiver does not provide sufficient information to evaluate what, if any economic impact or competitive disadvantage Armstrong will likely experience absent a favorable determination on its application. However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having agreed a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on the comparable basis.

Therefore, Armstrong's Application for an Interim Wavier from the DOE test procedures for its EG&G gas furnace regarding blower time delay is granted.

Armstrong shall be permitted to test its line of EG&G gas furnace on the basis of the test procedures specified in 10 CFR part 430, Subpart B, Appendix N, with the modification set forth below.

(i) Section 3.0 in Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5-minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5-minutes (t-), unless: (1) the furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5-minutes, in which case the fan control shall be permitted to start the blower, or (3) the delay time results it the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe with ± 0.01 inch of water gauge of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Wavier may be revoked or modified at any time upon a determination that the factual basis underlying the application is correct.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Wavier, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Sincerely,

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 91–17803 Filed 7–25–91; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 91–23–NG]

Puget Sound Power & Light Co.; Order Granting Authorization to Import Canadian Natural Gas and Granting Intervention

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting authorization to import Canadian natural gas and granting intervention.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Puget Sound Power & Light Company (Puget) authorization to import up to 50 Bcf of natural gas over two-years beginning with the date of first import.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 22, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–17802 Filed 7–25–91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 3978–1]

Proposed Settlement; "Top-Down" BACT Litigation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act ("Act"), notice is hereby given of a proposed settlement of the following cases: *American Paper Inst.* v. *Reilly,* No. 90–1364 (D.C. Cir.); and *American Paper Inst.* v. *Reilly,* No. 89–1428 and consolidated case (D.C. Cir.); *American Paper Inst.* v. *Reilly,* No. 89–2030 (D.D.C.). (The proposed settlement also addresses an administrative petition filed with EPA by the Utility Air Regulatory Group.) These cases involved challenges to the "top-down" process for determining best available control technology under the prevention of significant deterioration provisions of the Clear Air Act, 42 U.S.C. 7475.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement from persons who were not named as parties to the litigation in question. EPA or the Department of Justice may withhold or withdraw consent to the proposed settlement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

A copy of the settlement has been lodged with the Clerks of the United States Court of Appeals for the District of Columbia Circuit and the United States District Court for the District of Columbia. Copies of the settlement are also available from Jill E. Grant, Air and Radiation Division (LE–132A), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 245–4149. Written comments should be sent to Jill E. Grant at the above address and must be submitted on or before August 26, 1991.

Dated: July 15, 1991.

E. Donald Elliott,

Assistant Administrator and General Counsel.

[FR Doc. 91–17795 Filed 7–25–91; 8:45 am]

BILLING CODE 6560-50-M

[ER–FRL–3978–6]

Environmental Impact Statements; Availability

Responsible Agency

Office of Federal Activities, General Information, (202) 382–5073 or (202) 382–5075. Availability of Environmental Impact Statements filed July 15, 1991 through July 19, 1991 pursuant to 40 CFR 1506.9.

EIS No. 910232, Draft EIS, BLM, CA

Eagle Mountain Class III Nonhazardous Solid Waste Landfill Project and Specific Plan, Federal Land

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PROTECTION

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American Paper Inst. v. *Reilly*, No. 90-1364 (D.C. Cir.); and *American Paper Inst.* v. *Reilly*, No. 89-1428 and consolidated case (D.C. Cir.); *American Paper Inst.* v. *Reilly*, No. 89-2030 (D.D.C.). (The proposed settlement also addresses an administrative petition filed with EPA by the Utility Air Regulatory Group.) These cases involved challenges to the "top-down" process for determining best available control technology under the prevention of significant deterioration provisions of the Clear Air Act, 42 U.S.C. 7475.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement from persons who were not named as parties to the litigation in question. EPA or the Department of Justice may withhold or withdraw consent to the proposed settlement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

A copy of the settlement has been lodged with the Clerks of the United States Court of Appeals for the District of Columbia Circuit and the United States District Court for the District of Columbia. Copies of the settlement are also available from Jill E. Grant, Air and Radiation Division (LE-132A), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 245-4149. Written comments should be sent to Jill E. Grant at the above address and must be submitted on or before August 26, 1991.

Dated: July 15, 1991.

E. Donald Elliott,

Assistant Administrator and General Counsel.

[FR Doc. 91-17795 Filed 7-25-91; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3978-6]

Environmental Impact Statements; Availability

Responsible Agency

Office of Federal Activities, General Information, (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements filed July 15, 1991 through July 19, 1991 pursuant to 40 CFR 1506.9.

EIS No. 910232, Draft EIS, BLM, CA

Eagle Mountain Class III Nonhazardous Solid Waste Landfill Project and Specific Plan, Federal Land

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Exchange, Right-of-Way Approval, section 404 permit, Riverside County, CA. Due: September 24, 1991, Contract: Marianne Wetzel, (619) 323-4421.

EIS No. 910233, Final EIS, FHW, IL

FAP 302 (formerly FAP 407)/IL-336 Construction, US 24 at Quincy to US 136 at Carthage, funding and section 404 permit, Adams and Hancock Counties, IL. Due: August 26, 1991. Contact: Jay W. Miller, (217) 492-4600.

EIS No. 910234, Final EIS, AFS, CA

Kings River Special Management Area (SMA), South Fork, Middle Fork, Kings Wild and Scenic Rivers Development and Management, Implementation Plan, Sierra and Sequoia National Forests, King Rivers Ranger and Hume Lake Ranger Districts, Fresno County, CA. Due: August 26, 1991. Contact: Wallace McCray, (209) 487-5155.

EIS No. 910235, Final EIS, AFS, CO

Divide Creek Unit Coal-Bed Methane Project, Continued Development, Leasing, section 404 permit, White River National Forest, Garfield and Mesa Counties, CO. Due: September 3, 1991. Contact: Gary Osier, (303) 945-2521.

EIS No. 910236, Draft EIS, AFS, WA

Calypso Planning Area (commonly called Bourbon Roadless Area) Timber Sales, Implementation, Wind River Ranger District, Gifford Pinchot National Park, Skamania County, WA. Due: September 9, 1991. Contact: Karl Buermeyer, (509) 427-5645.

EIS No. 910237, Final EIS, AFS, MT

East Fortine Timber Sales and Road Construction, Implementation, Kootenai National Forest, Fortine Ranger District, Lincoln County, MT. Due: August 26, 1991. Contact: Thomas Puchlerz, (406) 882-4551.

EIS No. 910238, Draft, AFS, NB

Bessey Nursery Pest Control Management Plan, Implementation, Nebraska National Forest, Rocky Mountain Region, Thomas County, NB. Due: September 9, 1991. Contact: Sally Campbell, (503) 326-7755.

EIS No. 910239, Draft EIS, AFS, CO, KS, CO

Pike and San Isabel National Forests/Comanche and Cimarron National Grasslands Oil and Gas Exploration and Development, Leasing, Several Counties, CO and KS. Due: September 9, 1991. Contact: Ms. Logan Lee, (719) 545-8737.

EIS No. 910240, Final EIS, CDB, NY

Rochester City School Districts Carthage School #8 Replacement Project, Construction and Operation, New Information, CDB Grant, City of Rochester, Monroe County, NY. Due: August 26, 1991. Contact: Robert Barrows, (716) 428-6924.

Amended Notices

EIS No. 910176, Draft EIS, SFW, CA

Stone Lakes National Wildlife Refuge Management Plan, Land Acquisition and Easement, Possible COE section 10 and 404 permits, Central Valley, Sacramento County, CA. Due: September 1, 1991. Contact: Peter Jerome, (916) 978-4420.

Published FR 06-07-91—Review period extended.

EIS No. 910201, Draft EIS, FAA, AZ

Phoenix Sky Harbor International Airport Master Plan Update Improvements, Runway 8L/26R Extension, Funding, City of Phoenix, Maricopa County, AZ. Due: September 19, 1991. Contact: David Kessler, (213) 297-1534.

Published FR 06-21-911—Review period extended.

Dated: July 23, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91-17796 Filed 7-25-91; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3978-7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 8, 1991 through July 12, 1991 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 5, 1991 (56 FR 14096).

Draft EISs

ERP No. D-AFS-L61192-AK Rating LO

Crystal Mountain Communication Site, Designation/Nondesignation, Tongass National Forest, Stikine Area, AK.

Summary

EPA has no objections to the proposed project. However, it cannot be conclusively demonstrated that exposure of the population to radio frequency radiation is without risk. Commitment should be made to exclude the public, by fencing and posting any areas which could exceed American National Standards Institute guideline levels.

ERP No. D-AFS-L65146-ID Rating EC2

Van Camp Timber Sales and Winter Range Improvements, Road Construction/Reconstruction, Implementation, Clearwater National Forest, Lochsa Ranger District, Idaho County, ID.

Summary

EPA has environmental concerns that are based on the potential for adverse air quality effects on a mandatory Class I airshed. Additional information is needed to describe project monitoring, the effectiveness of proposed mitigation measures, and describe the effects of the project on biodiversity.

ERP No. D-COE-E32074-KY Rating EC2

Lower Cumberland and Tennessee Rivers Navigation Improvements, Kentucky Lock Addition, Implementation, Nashville District, Marshall and Livington Counties, KY.

Summary

EPA has environmental concerns regarding the potential loss of two species of endangered mussels due to direct construction activities and losses resulting from indirect causes attendant to operating the new lock. Additional information is requested in the final EIS on this wetland and mitigation, and other issues.

ERP No. D-USA-K11047-00 Rating EC2

Fort Wingate Depot and Navajo Depot Activity Closures, Realignment of Umatilla Depot Activity with transfers to Hawthorne Army Ammunition Plant, Mineral County, NV; McKinley County, NM; Coconino County, AZ; Morrow and Umatilla Counties, OR.

Summary

EPA urged the Army to consider the preparation of EISs for future base reuse plans, to consider transferring lands with existing natural resource values to resource agencies such as the Fish and Wildlife Service, and to include Federal and State agencies in the base reuse planning process due to the complex hazardous waste cleanup problems that exist at many defense bases. EPA noted that base closure and realignment actions should not interfere with the assessment and remediation of hazardous substances contamination at the facilities.

ERP No. DS-COE-E34010-MS Rating EC2

Arkabutla, Enid, Grenda and Sardis Lake, Operation and Maintenance, Channel Restoration on the Tallatchie River and Yalobusha River, MS.

Summary

EPA has environmental concerns about the long-term consequences of this action in terms of its flood control effectiveness and its impact on existing wetland functions within the project reaches.

FINAL EISs

ERP No. F-AFS-L61183-WA

White Pass Ski Area Expansion, Special Use Permit, Wenatchee and Gifford Pinchot National Forests, Lewis and Yakima Counties, WA.

Summary

EPA has no objections to the proposed action.

ERP No. F-BLM-K00001-00

Ward Valley Low-Level Radioactive Waste Disposal Facility, Site Selection, Construction and Operation, Funding and Right-of-Way Grants, San Bernardino County, CA.

Summary

EPA commended BLM and the California Health Department for modifying the vadose zone monitoring plan at the site. EPA requested that the Record of Decision contain a commitment to work with State agencies having jurisdiction over groundwater and air quality as well as with the U.S. Fish and Wildlife Service, and for BLM to work with generators of low level radioactive waste to reduce the volume of waste.

ERP No. F-BLM-K67011-NV

Betze Open Pit Gold Mine Expansion, Implementation, Elko and Eureka Counties, NV.

Summary

EPA noted that the final EIS adequately addressed the concerns which EPA raised on the draft EIS.

ERP No. F-MMS-L02018-AK

Navarin Basin Outer Continental Shelf (OCS) Oil and Gas Sale No. 107, Leasing, Bering Sea, AK.

Summary

EPA continues to have environmental concerns with the proposed action due to the uncertainty about the long-term disturbance effects (during development and production) on endangered right whales, Stellar sea lions, and Northern fur seals. The proposed action includes lease tracks in the vicinity of feeding areas for right whales and rookery and haul-out areas for Stellar sea lions.

ERP No. F-SCS-K36099-CA

McCoy Wash Watershed, Flood Prevention Plan, Implementation, section 404 permit, Riverside County, CA.

Summary

Review of the final EIS was not deemed necessary. No formal letter was sent to the agency.

REGULATIONS

ERP No. R-DOI-A20028-00

43 CFR part 11; Natural Resource Damage Assessments, Revision (56 FR 19752).

Summary

EPA considers the revisions of the rule an improvement of previously promulgated regulations. Several minor suggestions were offered to further improve the proposed rule.

Dated: July 23, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91-17707 Filed 7-25-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Brazil, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212-010027-031.

Title: Brazil/U.S. Atlantic Coast Agreement.

Parties:

Companhia de Navegacao Lloyd Brasileiro,
Companhia de Navegacao Maritima Netumar,
Companhia Maritima Nacional,
American Transport Lines, Inc.,
Empresa Lineas Maritimas Argentinas, S.A.,
A. Bottacchi S.A. de Navegacion C.F.I.I.

Synopsis: The proposed amendment would add provisions to the Agreement permitting space chartering between or among the parties and cooperation in the rationalization of sailings. It would also permit any party to withdraw effective October 1, 1991, by giving 30 days' prior notice.

Agreement No.: 207-011339.

Title: Empremar/MSC Agreement.

Parties:

Mediterranean Shipping Co., S.A.
Empremar S.A.

Synopsis: The proposed Agreement would authorize the parties to operate a joint service and pool profits in the trade between U.S. Atlantic and Gulf Coast ports and ports and points in Columbia, Ecuador, Peru and Chile; and intransit cargo to Bolivia via ports in Peru or Chile.

Dated: July 22, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-17758 Filed 7-25-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Garwin Bancorporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 14, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Garwin Bancorporation, Garwin, Iowa; to acquire Garwin Insurance Agency, Garwin, Iowa, and thereby engage in operating a general insurance agency in a town with a population of less than 5,000 pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 22, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-17748 Filed 7-25-91; 8:45 am]

BILLING CODE 6210-01-F

Midland Financial Corporation; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than August 14, 1991.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Midland Financial Corporation, Newton, Kansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of Midland National Bank, Newton, Kansas.

Board of Governors of the Federal Reserve System, July 22, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-17749 Filed 7-25-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Forms Submitted to the Office of Management and Budget for Clearance

The Administration for Children and Families' will publish on Fridays information collection packages submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). Following is the package submitted to OMB since the last publication.

(For a copy of the package, call the FSA, Report Clearance Officer 202–401–5604)

Corrective Action Plan—0970–0027—Corrective Action Plans are a structured way for State agencies to plan, implement and evaluate corrective actions designed to reduce payment errors. The Office of Family Assistance reviews these plans to see whether they are sufficient and recommends additions and adjustments. Respondents: state and local governments, non-profit institutions; Number of Respondents: 13; Frequency of Response: summary from individual/case evaluation; Estimated Average Burden per Response: 160 hours; Estimated Annual Burden: 2,080 hours.

OMB Desk Officer: Laura Oliven.

Written comments and recommendations for the proposed information collection should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3201, 725 17th Street NW., Washington, DC 20503.

Dated: July 12, 1991.

Naomi B. Marr,

Associate Administrator, Office of Management and Information Systems.

[FR Doc. 91–17755 Filed 7–25–91; 8:45 am]

BILLING CODE 4150-04-M

Alcohol, Drug Abuse, and Mental Health Administration

Suspension of a Laboratory Which No Longer Meets Minimum Standards to Engage in Urine Drug Testing for Federal Agencies

AGENCY: National Institute on Drug Abuse, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services routinely publishes in the **Federal Register** a list of laboratories currently certified to meet standards of subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11986) dated April 11, 1988. This notice informs the public that, effective July 23, 1991, the following laboratory's certification is suspended: Harris Medical Laboratory, P. O. Box 2981, 1401 Pennsylvania Avenue, Fort Worth, TX 76104, 817-878-5600

FOR FURTHER INFORMATION CONTACT: Drug Testing Section, Division of Applied Research, National Institute on Drug Abuse, Room 9–A–53, Telephone: 301–443–6014, 5600 Fishers Lane, Rockville, Maryland 20857.

Charles R. Schuster,

Director, National Institute on Drug Abuse.

[FR Doc. 91–17906 Filed 7–25–91; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 91N–0280]

Drug Export; Human T-Lymphotropic Virus Type I (HTLA-I)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Genetic Systems Corporation has

filed an application requesting approval for the export of the biological product Human T-Lymphotropic Virus, Type I (HTLV-I) to France.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Carl J. Chancey, Center for Biologics Evaluation and Research (HFB–124), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8191.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Genetic Systems Corporation, 6565 185th Avenue NE, Redmond, WA 98052, has filed an application requesting approval for the export of the biological product Human T-Lymphotropic Virus, Type I (HTLV-I) to France. The Human T-Lymphotropic Virus, Type I (HTLV-I) is an Enzyme Immunoassay (EIA) for the detection of circulating antibodies to Human T-Lymphotropic Virus, Type 1 (HTLV-1) in human serum or plasma. The application was received and filed in the Center for Biologics Evaluation and Research on June 18, 1991, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by August 5, 1991, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (section 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: July 18, 1991.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 91–17822 Filed 7–25–91; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 91N–0282]

Drug Export; Kenacort A–10 & A–40

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Bristol-Myers Squibb Company has filed an application requesting approval for the export of the human drug Kenacort to Japan.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Thomas J. Schall, Division of Drug Labeling Compliance (HFD–313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Bristol-Myers Squibb Company, P.O. Box 4000, Princeton, NJ 08543–4000, has filed an application requesting approval for the export of the drug Kenacort to Japan. This drug product is used in the treatment of allergies, dermatoses, and arthritides or other connective tissue disorders. The application was received and filed in the Center for Drug Evaluation and Research on July 3, 1991, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by August 5, 1991, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: July 19, 1991.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 91–17821 Filed 7–25–91; 8:45 am]

BILLING CODE 4160–01–M

Indian Health Service

Tribal Management Grant Program for American Indians/Alaska Natives: Technical Assistance Workshop Announcement.

AGENCY: Indian Health Service, HHS.

ACTION: Notice of technical assistance workshops for prospective IHS grantees.

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Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by August 5, 1991, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: July 19, 1991.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 91–17821 Filed 7–25–91; 8:45 am]

BILLING CODE 4160-01-M

Indian Health Service

Tribal Management Grant Program for American Indians/Alaska Natives: Technical Assistance Workshop Announcement.

AGENCY: Indian Health Service, HHS.

ACTION: Notice of technical assistance workshops for prospective IHS grantees.

SUMMARY: The Indian Health Service (IHS) announces that technical assistance workshops for the Tribal Management Grant Program to include grant proposal writing will be conducted for American Indian/Alaska Native Tribal Organizations as defined by Public Law 93–638, as amended.

DATES: Technical assistance workshops are scheduled for October 22–24, 1991, in Anchorage, Alaska; November 19–21, 1991, in Phoenix, Arizona; December 4–6, 1991, in Minneapolis, Minnesota; and December 10–12, 1991 in Oklahoma City, Oklahoma.

FOR FURTHER REGISTRATION INFORMATION CONTACT: Beulah Bowman, Director, Division of Community Services, Office of Tribal Activities, Parklawn Building, room 6A–05, 5600 Fishers Lane, Rockville, Maryland 20857 (301) 443–6840; M. Kay Carpentier, Grants Management Officer, Division of Acquisition and Grants Operations, Twinbrook Building, suite 605, 12300 Twinbrook Parkway, Rockville, Maryland 20852 (301) 443–5204. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Office of Tribal Activities, Division of Community Services and the Division of Acquisition and Grants Operations, Grants Management Branch, will provide potential applicants an opportunity to receive technical assistance for Tribal Management including participation in grant writing workshops to assist applicants in developing and submitting competitive proposals. The purpose is to: (a) Establish communication between the IHS and the applicants, (b) determine the applicants eligibility, and (c) to provide technical assistance to increase the ability of an applicant to successfully compete. Applicants will prepare preapplications for constructive review and feedback during the workshop.

Dated: July 18, 1991.

Everett R. Rhoades,

Assistant Surgeon General, Director.

[FR Doc. 91–17720 Filed 7–25–91; 8:45 am]

BILLING CODE 4160-16-M

National Institutes of Health

National Cancer Institute; Notice of Meeting (Cancer Clinical Investigation Review Committee)

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Cancer Clinical Investigation Review Committee, National Cancer Institute, National Institutes of Health, August 1–2, 1991, Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

This meeting will be open to the public on August 1 from 1 p.m. to 1:30 p.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)6, title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public on August 1 from 1:30 p.m. to recess and on August 2 from 8 a.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Carole Frank, Committee Management Officer, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892, (301–496–5708), will provide a summary of meeting and a roster of committee members upon request.

Dr. Manuel Torres-Anjel, Scientific Review Administrator, Cancer Clinical Investigation Review Committee, 5333 Westbard Avenue, room 834, Bethesda, Maryland 20816, (301–496–7481), will furnish substantive program information.

This meeting notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control).

Dated: July 22, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91–17920 Filed 7–25–91; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

National Institutes of Health; Statement of Organization, Functions and Delegations of Authority

Part H, chapter HN (National Institutes of Health) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 56 FR 26418–9, June 7, 1991), is amended to reflect the following changes within the National Center for Human Genome Research (NCHGR): (1) Correct the Standard Administrative Code of the National Center for Human Genome Research; and (2) establish the following NCHGR substructure: (a) Office of the director (HN41); (b) Office of Administrative Management (HN412); (c) Office of Human Genome Communications (HN413); (d) Office of Scientific Review (HN414), (e) Research Grants Branch (HN42); and (f) Research Centers Branch (HN43). The NCHGR is a newly established Center of the NIH, and the formal establishment of its substructure clearly defines the function of each organizational component as it relates to the mission of the Center.

Section HN–B, Organization and Functions is amended as follows:

(1) Under the heading *National Center for Human Genome Research (HN3)*, change the Standard Administrative Code *(HN3)* to *(HN4)*:

(2) Under the heading *National Center for Human Genome Research (HN4)*, insert the following:

Office of the Director (HN41). (1) Plans, directs, and coordinates the development and progress of the Center programs; (2) develops major policy and program decisions based on an evaluation of the status of support and accomplishments of the Center program areas; (3) coordinates grant review and program management activities; (4) plans and organizes conferences and workshops; and (5) communicates with the scientific community and coordinates activities with other private and government agencies.

Office of Administrative Management (HN412). (1) Advises the Director, Deputy Director, and senior Center staff on administrative matters; (2) supervises and directs the planning and execution of the Center's budget and financial management operations and the administrative activities of the Center, including personnel and staffing, the purchase and maintenance of equipment and supplies, and the acquisition and management of space; (3) interprets, analyzes, and implements administrative orders and management activities affecting the mission of the Center; (4) directs and coordinates the Center's grants and contracts management and committee management functions; (5) develops, implements, and supervises the program planning and evaluation activities of the NCHGR by initiating and conducting a wide variety of analytical studies that provide a rational basis for key policy and program decisions; (6) analyzes and tracks legislation and assists in preparation of Congressional testimony for the Director; and (7) has broad responsibility for the supervision of computer related activities of the NCHGR, as well as the design, implementation, and day-to-day operation of an automated data processing system.

Office of Human Genome Communications (HN413). (1) Develops a broad communications program aimed at disseminating information about the NCHGR Human Genome Project; (2) prepares reports, publications, press releases, exhibits, education programs, and responds to inquiries from the press, lay organizations, the general public, and scientists about the research programs and policies of the NCHGR; (3) works with grapic arts on the design and production of art for exhibits and publications, including the Five-Year Plan; and (4) develops and maintains mailing lists using computer databases for mass mailings of press releases and other announcements.

Office of Scientific Review (HN414). (1) Plans and administers scientific review activities, including the organization and management of Initial Review Groups (IRGs), constituted to review NCHGR's extramural grants, cooperative agreements, and contract proposals; (2) performs initial scientific and administrative review of research, research center, program project, conference, and research training grant applications, cooperative agreements, and contracts; (3) plans and directs site-visits and meetings of IRGs; (4) establishes review criteria and standards for the IRGs and provides technical leadership to the review process; and (5) prepares summary statements and provides pertinent information concerning the review of applications to Council.

Research Grants Branch (HN42). (1) Manages and directs an extramural research grants program including the Center's portfolio of individual-initiated research grants, program project grants, post doctoral fellowships, research training grants, special initiatives such as special courses and instrumentation supplements, and research contracts; (2) conducts and administers a program dealing with the ethical, legal, and social aspects of the Human Genome Program; (3) collaborates with joint NIH/DOE working groups on relevant program priorities; (4) analyzes national research efforts on the Human Genome Program and makes recommendations to assist the National Advisory Council for Human Genome Research or other advisory committees or groups appointed regarding: (a) Decisions about new or continuing areas of program emphasis, and (b) the relative scientific merit of applications; (5) develops pay plan for applications, coordinates and develops reports on program content, budget activities, and priorities in Branch; (6) advises universities, other centers of research, and professional and lay organizations about research needs and requirements of the Human Genome Program.

Research Centers Branch (HN43). (1) Plans and directs an extramural program for the establishment and support of human genome research centers: These multi-disciplinary centers will bring together investigators from diverse scientific backgrounds to collaborate on specific aspects of the Human Genome Program; (2) provides technical advice on scientific and programmatic management of human genome research center grants, and related cooperative agreements and research contracts; (3) administers large-scale DNA sequencing RO1s; (4) presents human genome research center grant applications, new initiatives, and other pertinent matters to the National Advisory Council for Human Genome Research and translates the recommendations of the Council into appropriate action; (5) evaluates recommendations of the Study Section and other review committees within the program area, and serves as the focal point for all contacts with the applicant institution, principal investigator, and any other appropriate persons or organizations having any role or special information in this program area; and (6) provides guidance and direction in the review and evaluation of grant, cooperative agreement, and contract supported human genome research centers to determine whether support should be continued at the level and within the time period approved.

Dated: May 2, 1991.

Bernadine Healy,

Director, NIH.

[FR Doc. 91-17777 Filed 7-25-91; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-1917; FR-2934-N-36]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, Room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR Part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

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7–25–91; 8:45 am]

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Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *U.S. Air Force:* Bob Menke, USAF, Bolling AFB, SAF–MIIR, Washington, DC 20332–5000; (202) 767–6235; *U.S. Army:* Robert Conte, Dept. of the Army, Military Facilities, DAEN–ZCI–P; Rm. 1E671, Pentagon, Washington, DC 20310–2600; (202) 693–4583; *GSA:* Ronald Rice, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 501–0067; *Dept. of Interior:* Lola D. Knight, Property Management Specialist, Dept. of Interior, 1849 C St. NW., Mailstop 5512–MIB, Washington, DC 20240; (202) 208–4080. (These are not toll-free numbers.)

Dated: July 19, 1991.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 07/26/91

Suitable/Available Properties

Buildings (by State)

Alabama

Bldg. T05020—Fort Rucker
3rd Avenue
Fort Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 219120108
Status: Unutilized
Comment: 2500 sq. ft., one story, possible asbestos, off-site use only.

Bldg. T08901—Fort Rucker
7th Avenue
Fort Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 219120109
Status: Unutilized
Comment: 2350 sq. ft., one story, possible asbestos, needs rehab, off-site use only.

Bldg. T08902—Fort Rucker
7th Avenue
Fort Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 219120110
Status: Unutilized
Comment: 3663 sq. ft., one story, possible asbestos, needs rehab, off-site use only.

Bldg. T08903—Fort Rucker
7th Avenue
Fort Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 219120111
Status: Unutilized
Comment: 3404 sq. ft., one story, possible asbestos, needs rehab, off-site use only.

Bldg. T08917—Fort Rucker
Corner of Division Road & 7th Avenue
Fort Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 219120112
Status: Unutilized
Comment: 16004 sq. ft., two story, possible asbestos, needs rehab.

Arizona

Bldg. T67208
U.S. Army Intelligence Center
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120113
Status: Unutilized
Comment: 2546 sq. ft., one story wood, most recent use—storage.

Bldg. T70224
U.S. Army Intelligence Center
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120149
Status: Unutilized
Comment: 1252 sq. ft., one story wood; most recent use Administrative.

Guam

Harmon VOR site (Portion) (AJKZ)
Municipality of Dededo
Dededo Co: Guam GU 96912–
Location:
Approx. 12 miles southwest of Anderson AFB proper.
Landholding Agency: Air Force
Property Number: 189120234
Status: Unutilized
Comment: 550 sq. ft. bldg., needs rehab on 82 acres.

Texas

Bldg. T–340—Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219120102
Status: Unutilized
Comment: 2284 sq. ft., one story wood bldg., potential utilities, presence of asbestos.

Bldg. T–341 Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219120103
Status: Unutilized
Comment: 2284 sq. ft., one story wood bldg., potential utilities, presence of asbestos.

Bldg. 456—Fort Bliss
456 Pershing Road
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219120115
Status: Unutilized
Comment: 1770 sq. ft., one story, most recent use—Youth center; off-site use only.

Bldg. 468—Fort Bliss
468 Shannon Road
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219120116
Status: Unutilized
Comment: 3540 sq. ft., two story wood frame; presence of friable asbestos in boiler room; most recent use—barracks; off-site use only.

Bldg. 469—Fort Bliss
469 Shannon Road
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219120117
Status: Unutilized
Comment: 3540 sq. ft., two story wood frame presence of friable asbestos; most recent use—barracks; off-site use only.

Bldg. 478—Fort Bliss
478 Doniphan Road
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219120118
Status: Unutilized
Comment: 3540 sq. ft., two story wood frame; presence of friable asbestos; most recent use—barracks; off-site use only.

Bldg. 479—Fort Bliss, Tex.
479 Doniphan Road

El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219120119
Status: Unutilized
Comment: 3540 sq. ft., two story wood frame; presence of friable asbestos; most recent use—barracks; off-site use only.

Bldg. 4202—Fort Bliss, Tex.
4202 Access Road
Logan Heights
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219120120
Status: Unutilized
Comment: 2100 sq. ft., one story, needs rehab; most recent use dental clinic; off-site use only.

Bldg. 4308—Fort Bliss, Tex.
4308 Link Road
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219120121
Status: Unutilized
Comment: 4106 sq. ft., one story wood frame; needs rehab; most recent use—Skill Development Center; off-site use only.

Bldg. 4348—Fort Bliss, Tex.
4348 Leo Drive
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219120122
Status: Unutilized
Comment: 1829 sq. ft., one story wood frame; most recent use vehicle maintenance shop; off-site use only.

Bldg. 4349—Fort Bliss, Tex.
4349 Leo Drive
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219120123
Status: Unutilized
Comment: 1829 sq. ft., one story wood frame; most recent use vehicle maintenance shop; off-site use only.

Bldg. 4745—Fort Bliss, Tex.
4745 Grinder Avenue
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219120124
Status: Unutilized
Comment: 873 sq. ft., one story wood frame; most recent use Company Headquarters Bldg; off-site use only.

Bldg. 4747—Fort Bliss, Tex.
4747 Grinder Avenue
Logan Heights
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219120125
Status: Unutilized
Comment: 488 net sq. ft., one story, needs major rehab; off-site use only.

Bldg. 4749—Fort Bliss, Tex.
4749 Gatchell Avenue
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219120126
Status: Unutilized
Comment: 873 net sq. ft., one story; most recent use—storage; off-site use only.

Bldg. 4752—Fort Bliss, Tex.
4752 Grinder Avenue
Logan Heights
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219120127
Status: Unutilized
Comment: 2169 sq. ft., one story wood frame; limited utilities; most recent use—storage; off-site use only.

Bldg. 4758—Fort Bliss, Tex.
4758 Grinder Avenue
Logan Heights
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219120128
Status: Unutilized
Comment: 915 sq. ft., one story wood frame; most recent use day room; off-site use only.

Bldg. 4761—Fort Bliss, Tex.
4761 Logan Heights
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219120129
Status: Unutilized
Comment: 915 sq. ft., one story wood frame; most recent use Administrative; off-site use only.

Bldg. 4781—Fort Bliss, Tex.
4781 Burgin Street
Logan Heights
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219120130
Status: Unutilized
Comment: 1266 sq. ft., one story wood frame; presence of friable asbestos; most recent use—sales store; off-site use only.

Bldg. 4783—Fort Bliss, Tex. 4783 Burgin Street
Logan Heights
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219120131
Status: Unutilized
Comment: 873 sq. ft., one story wood frame; possible asbestos; most recent use—Day room; off-site use only.

Bldg. 4818
Fort Bliss
4818 Gatchell Avenue
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219120132
Status: Unutilized
Comment: 873 sq. ft., one story wood frame; presence of friable asbestos; most recent use—Day room; off-site use only.

Bldg. 4820—Fort Bliss, Tex.
4820 Hohenthal Avenue
Logan Heights
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219120133
Status: Unutilized
Comment: 873 sq. ft., one story wood frame; possible asbestos; most recent use—Day room; off-site use only.

Bldg. 4825—Fort Bliss, Tex.
4825 Hohenthal Ave.
El Paso Co; El Paso TX 79916–
Landholding Agency: Army
Property Number: 219120134
Status: Unutilized
Comment: 2169 sq. ft., one story wood frame; most recent use—General storage; off-site use only.

Bldg. 4828—Fort Bliss, Tex.
4828 Gatchell Avenue
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219120135
Status: Unutilized
Comment: 915 sq. ft., one story wood frame; presence of friable asbestos, in boiler room; most recent use—Day room; off-site use only.

Bldg. 4829—Fort Bliss, Tex.
4829 Gatchell Avenue
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219120136
Status: Unutilized
Comment: 915 sq. ft., one story wood frame; most recent use—General storage; off-site use only.

Bldg. 4837—Fort Bliss, Tex.
4837 Gatchell Avenue
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219120137
Status: Unutilized
Comment: 1770 sq. ft., one story wood frame; presence of friable asbestos in boiler room; most recent use—Instruction bldg.; off-site use only.

Bldg. 4839—Fort Bliss, Tex.
4839 Burgin Street
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219120138
Status: Unutilized
Comment: 873 sq. ft., one story wood frame; presence of friable asbestos in boiler room; most recent use—Day room; off-site use only.

Bldg. 4867—Fort Bliss, Tex.
4867 Burgin Street
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219120139
Status: Unutilized
Comment: 2169 sq. ft., one story wood frame; presence of friable asbestos in boiler room; most recent use—Instruction bldg.; off-site use only.

Bldg. 4868—Fort Bliss, Tex.
4868 Burgin Street
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219120140
Status: Unutilized
Comment: 873 sq. ft., one story wood frame; most recent use—Day room; off-site use only.

Bldg. 4875—Fort Bliss, Tex.
4875 Burgin Street
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219120141
Status: Unutilized
Comment: 2169 sq. ft., one story wood frame; presence of friable asbestos; most recent use—storage; off-site use only.

Bldg. 4877—Fort Bliss, Tex.
4877 Burgin Street
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219120142
Status: Unutilized
Comment: 873 sq. ft., one story wood frame; possible friable asbestos; most recent use—Day room; off-site use only.

Bldg. 4921—Fort Bliss, Tex.
4921 Ketcham Avenue
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219120143
Status: Unutilized
Comment: 1381 sq. ft., one story wood frame: possible friable asbestos; most recent use—Day room; off-site use only.

Bldg. 4925—Fort Bliss, Tex.
4925 Ketcham Avenue
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219120144
Status: Unutilized
Comment: 2169 sq. ft., one story wood frame: limited utilities; possible friable asbestos; most recent use—storage; off-site use only.

Bldg. 4938—Fort Bliss, Tex.
4938 Burgin Street
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219120145
Status: Unutilized
Comment: 1770 sq. ft., one story wood frame: possible friable asbestos; most recent use—storage; off-site use only; limited utilities.

Bldg. 4940—Fort Bliss, Tex.
4940 Burgin Street
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219120146
Status: Unutilized
Comment: 1792 sq. ft., one story wood frame: possible friable asbestos; most recent use—storage; off-site use only; limited utilities.

Bldg. 11190—Fort Bliss, Tex.
11190 SGT E. Churchill Street
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219120147
Status: Unutilized
Comment: 600 sq. ft., one story wood frame: limited utilities; needs rehab; most recent use—storage; off-site use only.

Bldg. 11191—Fort Bliss, Tex.
11191 SGT E. Churchill Street
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219120148
Status: Unutilized
Comment: 1140 sq. ft., one story wood frame: limited utilities; most recent use—storage; off-site use only.

Virginia

Bldg. #43—Admin. Gen Purp Bldg.
Fort Myer
Washington Avenue
Fort Myer Co: Arlington VA 22211–
Landholding Agency: Army
Property Number: 219120100
Status: Unutilized
Comment: 1341 sq. ft., two story, brick/wood siding, needs major rehab, possible asbestos, off-site use only.

Bldg. #46—Admin. Gen Purp Bldg.
Fort Myer
Washington Avenue
Fort Myer Co: Arlington VA 22211–
Landholding Agency: Army
Property Number: 219120101
Status: Unutilized
Comment: 2666 sq. ft., two story brick/partial wood shingles, needs major rehab, off-site use only.

Suitable/Unavailable Properties

Buildings (by State)

Texas

Facilitiy 237—Carswell AFB
301 Roaring Springs Road
Fort Worth Co: Tarrant TX 76127–
Landholding Agency: Air Force
Property Number: 189120235
Status: Unutilized
Comment: 1285 sq. ft., wood shingles, one story, most recent use—residential, needs rehab

Bldg. T–342 Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219120104
Status: Unutilized
Comment: 2284 sq. ft., one story wood bldg., presence of asbestos.

Bldg. T–1185 Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219120105
Status: Unutilized
Comment: 4720 sq. ft., two story wood bldg., potential utilities, needs rehab, presence of asbestos.

Bldg. S–2586 Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219120106
Status: Unutilized
Comment: 19436 sq. ft., two story wood/stucco bldg., potential utilities, needs rehab.

Bldg. T–2589—Fort Sam Houston
San Antonio Co: Bexas TX 78234–5000
Landholding Agency: Army
Property Number: 219120107
Status: Unutilized
Comment: 15360 sq. ft., two stop wood bldg., needs rehab.

Bldg. 809 Fort Hood
20th Street and Central Avenue
Fort Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219120114
Status: Unutilized
Comment: 4779 sq. ft., two story wooden structure, needs major rehab, no latrine facilities.

Unsuitable Properties

Buildings (by State)

Illinois

Former Martin L. King Center
3312 West Grenshaw Avenue
Chicago Co: Cook IL 60624–
Landholding Agency: GSA
Property Number: 549130005
Status: Excess
Reason:
Other
Comment: extensive deterioration
GSA Number: 2(R)–F–IL–691

Washington

Bldg. #36—Stehekin District
Company Creek Road
Stehekin Co: Chelan WA 98852–
Landholding Agency: Interior
Property Number: 619130001
Status: Unutilized
Reason:
Other
Comment: extensive deterioration

Bldg. 689—Comfort Station
Olympic Hot Springs Wilderness Backcountry
Port Angeles Co: Clallam, WA 98362–6798
Landholding Agency: Interior
Property Number: 619130002
Status: Excess
Reason:
Other
Comment: extensive deterioration

Bldg. 252—Storage Shed
Olympic Hot Springs Wilderness Backcountry
Port Angeles Co: Clallam WA 98362–6798
Landholding Agency: Interior
Property Number: 619130003
Status: Excess
Reason:
Other
Comment: extensive deterioration

[FR Doc. 91–17637 Filed 7–25–91; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–060–01–5440–10–ZBBB]

Availability of Draft Environmental Impact Statement and Report for the Proposed Eagle Mountain Landfill, Riverside County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with section 102 of the National Environmental Policy Act of 1969, a joint Draft Environmental Impact Statement and Report (EIS/EIR) has been prepared by the Bureau of Land Management and County of Riverside, California for the proposed Eagle Mountain Landfill. The EIS/EIR describes and analyzes four alternatives including the proposed project. Mine Reclamation Corporation has proposed to utilize the Kaiser Steel Resources, Inc., Eagle Mountain Mine site in Riverside County, California, and an associated railroad spur for a Class III waste disposal facility. The site would also be used for the storage of recyclable materials, rail and equipment maintenance, landfill gas recovery and utilization, flare/energy recovery, leachate processing, wastewater treatment, the continuance and/or expansion of the existing residential and commercial land uses, and the expansion of the Return-to-Custody facility (California Department of Corrections). The proposal includes a land exchange and application for a

right-of-way with the BLM and a Specific Plan Amendment with the County. The EIS/EIR analyzes the effects of the proposed action and alternatives on such environmental issues as desert tortoise, air and water quality, visual and cultural resources, and public safety.

Public reading copies are available for review at the following libraries:

BLM Library, Service Center, Denver, CO
California State Library, Government Publications, Sacramento, CA
Coachella Branch Library, Coachella, CA
Desert Hot Springs Branch Library, Desert Hot Springs, CA
Indio Branch Library, Indio, CA
Lake Tamarisk Branch Library, Desert Center, CA
Los Angeles Public Library, Fifth St., Los Angeles, CA
Los Angeles Public Library, Spring St., Los Angeles, CA
Palm Desert Branch Library, Palm Desert, CA
Palm Springs Library Center, Palm Springs, CA
Palo Verde Valley District Library, Blythe, CA
Central Library, Seventh St., Riverside, CA
San Bernardino County Library, Joshua Tree, CA
San Bernardino County Library, Adobe Rd, Yucca Valley, CA
San Bernardino County Library, 29 Palms Hwy, Yucca Valley, CA
San Bernardino Public Library, West 6th St., San Bernardino, CA
UC Riverside Library, Government Publications, Riverside, CA

Copies are also available for review at the following BLM and County offices:

Bureau of Land Management, Palm Springs-South Coast RA, 400 S. Farrell Dr., Suite B-205, Palm Springs, CA 92262
(As of mid-August, the new address will be: Palm Springs-South Coast RA, 63–500 Garnet Ave., P.O. Box 2000, N. Palm Springs, CA 92258–2000)
Bureau of Land Management, CA Desert District Office, 6221 Box Springs Blvd., Riverside, CA 92507–0714
Bureau of Land Management, California State Office, Federal Office Bldg., 2800 Cottage Way, Rm. E–2841, Sacramento, CA 95825
Riverside County, Planning Dept., County Admin. Office, 4080 Lemon St., 9th Flr., Riverside, CA 92501–3651
Riverside County Planning Dept., Bermuda Dunes Office, 79733 Country Club Dr., Bermuda Dunes, CA 92201.

DATES FOR PUBLIC HEARINGS AND COMMENTS: Public hearings will be held on the following dates: 7 p.m. on Tuesday, August 27, 1991, at Palm Desert City Hall, 73510 Fred Waring Dr., Palm Desert, CA 92260 (619–346–0611) and 7 p.m. on Wednesday, August 28, 1991, at Lake Tamarisk Recreation Center, 26251 Parkview Dr., Desert Center, CA 92239 (619–227–3203).

Comments concerning the adequacy of this document will be considered in preparation of the Final EIS/EIR. A sixty (60) day comment period has been established for this document. Written comments on this document will be accepted through September 24, 1991, and should be addressed to: Bureau of Land Management, Palm Springs-South Coast Resource Area, Attn: Marianne Wetzel, 63–500 Garnet Ave., P.O. Box 2000, N. Palm Springs, CA 92258–2000.

Dated: July 10, 1991.

Alan Stein,

Acting District Manager.

[FR Doc. 91–16973 Filed 7–25–91; 8:45 am]

BILLING CODE 4310-40-M

[CA–010–01–4320–02]

Bakersfield District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Bakersfield District Grazing Advisory Board meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463) and the Federal Land Policy and Management Act (Pub. L 94–579) that the Bakersfield District Grazing Advisory Board will meet Wednesday August 21, 1991 from 10 am to 3 pm in room 335 of the Federal Building, 800 Truxtun Ave., Bakersfield, California.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include discussion of FY 91 project accomplishments, FY 92 planned projects, and allotment management planning in the District.

The meeting is open to the public. Interested persons may make oral statements, or file written statements for consideration by the Board, Anyone wishing to make an oral statement must notify, in writing, the Bakersfield District Manager (Bureau of Land Management, 800 Truxtun Ave., room 311, Bakersfield, CA 93301) by August 19, 1991.

Summary minutes of the meeting will be maintained in the Bakersfield District Office, and will be available for inspection, during business hours, within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Holden Brink, Natural Resource Specialist, Bureau of Land Management, 800 Truxtun Ave., room 311, Bakersfield, CA 93301 or phone (805) 861–4230.

H. Edward Lynch,

Associate District Manager.

[FR Doc. 91–17729 Filed 7–25–91; 8:45 am]

BILLING CODE 4310-84-M

[CO–050–4830–12]

Canon City District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with Public Law 94–579 that the Canon City District Advisory Council (DAC) Meeting will be held Thursday, August 15, 1991, 1:30 p.m. to 4:30 p.m. and Friday, August 16, 1991, 10 a.m. to 2:30 p.m., at the Canon City District Office, 3170 East Main, Canon City, Colorado.

The meeting agenda will include:

1. A tour of the Garden Park Fossil Area.
2. A workshop on the Arkansas River Wild and Scenic River Study.
3. Public presentations to the council (open invitation).

The meeting is open to the public. Persons interested may make oral presentations to the council at 11:30 a.m., August 16, or they may file written statements for the council's consideration. The District Manager may limit the length of oral presentations depending on the number of people wishing to speak.

ADDRESSES: Anyone wishing to make an oral or written presentation to the council should notify the District Manager, Bureau of Land Management, P.O. Box 2200, 3170 East Main, Canon City, Colorado 81215–2200, by August 15, 1991.

FOR FURTHER INFORMATION CONTACT: Ken Smith (719) 275–0631.

SUPPLEMENTARY INFORMATION: Summary of minutes of the meeting will be available for public inspection and reproduction during regular working hours at the District Office approximately 30 days following the meeting.

Donnie R. Sparks,

District Manager.

[FR Doc. 91–17730 Filed 7–25–91; 8:45 am]

BILLING CODE 4310-JB-M

g dates: 7 p.m. on
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ll, 73510 Fred Waring Dr.,
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Filed 7-25-91; 8:45 am]

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ORMATION CONTACT:
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Specialist, Bureau of Land Management, 800 Truxtun Ave., room 311, Bakersfield, CA 93301 or phone (805) 861-4230.

H. Edward Lynch,

Associate District Manager.

[FR Doc. 91-17729 Filed 7-25-91; 8:45 am]

BILLING CODE 4310-04-M

[CO-050-4830-12]

Canon City District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with Public Law 94-579 that the Canon City District Advisory Council (DAC) Meeting will be held Thursday, August 15, 1991, 1:30 p.m. to 4:30 p.m. and Friday, August 16, 1991, 10 a.m. to 2:30 p.m., at the Canon City District Office, 3170 East Main, Canon City, Colorado.

The meeting agenda will include:

1. A tour of the Garden Park Fossil Area.
2. A workshop on the Arkansas River Wild and Scenic River Study.
3. Public presentations to the council (open invitation).

The meeting is open to the public. Persons interested may make oral presentations to the council at 11:30 a.m., August 16, or they may file written statements for the council's consideration. The District Manager may limit the length of oral presentations depending on the number of people wishing to speak.

ADDRESSES: Anyone wishing to make an oral or written presentation to the council should notify the District Manager, Bureau of Land Management, P.O. Box 2200, 3170 East Main, Canon City, Colorado 81215-2200, by August 15, 1991.

FOR FURTHER INFORMATION CONTACT: Ken Smith (719) 275-0631.

SUPPLEMENTARY INFORMATION: Summary of minutes of the meeting will be available for public inspection and reproduction during regular working hours at the District Office approximately 30 days following the meeting.

Donnie R. Sparks,

District Manager.

[FR Doc. 91-17730 Filed 7-25-91; 8:45 am]

BILLING CODE 4310-JB-M

(CA-010-4212-13; CACA 26305)

Realty Action; Exchange of Public Land in Placer County, CA; Correction

To notice document 91-14081, page 27267, issue of Thursday, June 13, 1991, in the second column, add the following to the end of the summary:

The subject public land is hereby segregated from settlement, location and entry under the public land laws and mining laws for a period of two years; the two year segregation will expire on June 13, 1993.

D.K. Swickard,

Area Manager.

[FR Doc. 91-17731 Filed 7-25-91; 8:45 am]

BILLING CODE 4310-40-M

[MT-020-4120-06]

Montana; Resource Management Plan Amendment

AGENCY: Bureau of Land Management, Miles City District Office, Interior.

ACTION: Notice of intent to prepare a resource management plan amendment to change the unsuitability criteria designation of Federal coal lands in Big Horn County, Montana.

SUMMARY: A Resource Management Plan (RMP) Amendment/Environmental Assessment will be prepared on a proposal to change the unsuitability criteria designation on certain Federal coal lands in and around the Spring Creek Coal Company's (SCCC) mine in Big Horn County, Montana.

The Powder River RMP identified portions of Federal coal lands in T. 8 S., R. 39 E., sections 22, 23, 26 and 27 as unsuitable for mining because of a golden eagle nest (criterion 11) and overlapped mule deer/antelope winter range (criterion 15). SCCC has requested consideration of a proposal to disturb a portion of these lands for the purpose of expanding its mining operations.

The golden eagle nest was destroyed by natural causes approximately seven years ago and the eagles have since relocated their nest some three miles distant. The U.S. Fish and Wildlife Service has been consulted and has no objections to removing the unsuitability criterion designation (11) for this site.

There are 880 acres of overlapped mule deer/antelope winter range. The lands involved are scattered parcels of Federal surface/Federal minerals; however, the majority of these lands are private surface/Federal minerals. SCCC is the private surface owner. Their proposal is to disturb a total of 228 acres of the winter range of which only 20 acres would be mined. The additional disturbance would be for associated mining operations such as backsloping for reclamation purposes and haul roads. This disturbance may be considerably less, depending upon the final reclamation plan.

Montana Department of Fish, Wildlife, and Parks (MDFW&P); Montana Department of State Lands (MDSL); and SCCC representatives have met and agreed in principle that these lands can be changed from "unsuitable for mining" to "suitable for mining with stipulations."

Mitigation measures agreed upon by all parties involved the establishment of a rest-rotation grazing system and a hunter access program on SCCC private lands in and around the mine to realize management goals of keeping wildlife populations in balance with available forage. They also agreed to develop a satisfactory reclamation plan on any lands disturbed or mined as part of the mitigation plan agreement. SCCC, Montana DFWP, and Montana DSL are currently working on an acceptable agreement and have petitioned BLM to redesignate these lands as "suitable for mining with stipulations" contingent upon development of a final mitigation and reclamation plan.

DATES: On or before August 26, 1991, interested parties may comment on this proposal.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Attn: Bill Matthews, Powder River Resource Area, Miles City Plaza, Miles City, Montana 59301, Phone: (406) 232-7000.

Dated: July 17, 1991.

Sandra E. Sacher,

Acting District Manager, Miles City District.

[FR Doc. 91-17732 Filed 7-25-91; 8:45 am]

BILLING CODE 4310-DN-M

[UT-040-01-4410-08]

Intent To Conduct Further Planning

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of intent to do further planning for the Revised Dixie Resource Management Plan (RMP), Dixie Resource Area, Cedar City District, Utah.

SUMMARY: The Cedar City District, BLM, announces its intent to conduct further planning for the Dixie Resource Area. This further planning process will focus on the identification of off-highway vehicle (OHV) use areas, oil and gas leasing categories, desert tortoise protection, protection of other threatened and endangered species, Areas of Critical Environmental Concern (ACECs), wild and scenic rivers, riparian protection, and the resultant impacts on livestock grazing and locatable minerals development. A revised Draft RMP/Environmental Impact Statement (EIS) and a revised Proposed RMP/EIS will be prepared for approximately 628,165 acres of public land located in Washington County, Utah.

SUPPLEMENTARY INFORMATION: The planning issues previously developed as a result of the November 14, 1986, **Federal Register** Notice (Vol. 51, No. 220) will remain unchanged. Briefly, they are to determine (1) the most appropriate use for those public lands in Washington County where rapid urban development is generating problems with the management of natural resources: (2) future management of outdoor recreation on public lands; and (3) how proposed water storage projects will influence natural resource management.

The preliminary planning criteria have been modified to reflect additional public concern provided by those commenting on the 1989 Draft Dixie RMP/EIS and the 1980 Proposed Dixie RMP/EIS. The modified preliminary planning criteria for the revised Dixie RMP/EIS will include the following:

1. All criteria listed in the 1989 Draft Dixie RMP/EIS will be utilized.

2. The following items will be added to the 1989 criteria:

a. Minerals—identify land not suitable for mineral development.

b. Mineral Materials Management—determine if commercial sales of decorative rock and petrified wood will be made.

c. Lands—identify those lands or interest in lands suitable for disposal by exchange only. Identify potential communication sites.

d. Grazing Management—identify major impacts to livestock grazing from resource decisions proposed in the plan. Review the 1982 grazing decisions.

e. ACECs—determine which lands meet relevance and importance criteria for designation as an ACEC. Develop management prescriptions for all proposed ACECs.

f. Recreation—identify areas and trails suitable for use by recreational OHVs. Lands inventoried through the Recreation Opportunity Spectrum (ROS) system as primitive or semi-primitive nonmotorized will be closed to all OHV uses. Identify lands suitable for recreational management in support of Zion National Park or other attractions.

g. Soil, Water, and Air Management—identify proposed reservoir sites identified by the Washington County

Water Conservancy District, and major proposed municipal water development projects including wells and support facilities. Identify varying levels of protection based on riparian values.

h. Endangered Species—identify the goals and objectives of the rangewide plan for the desert tortoise.

Table 1 lists those areas that have been nominated and found potentially suitable for designation as an ACEC. Additional ACEC nominations may be made by the public and other agencies. They must be accompanied by descriptive materials, maps, and evidence of the relevance and importance of the values or hazards involved.

TABLE 1.—NOMINATED AREAS OF CRITICAL ENVIRONMENTAL CONCERN DETERMINED POTENTIALLY SUITABLE FOR DESIGNATION

Area name	Critical concerns
Red Bluff	Endangered plant species (Dwarf bear poppy); Colorado River salinity control (saline soils).
Warner Ridge	Endangered plant species (Dwarf bear poppy, Siler cactus) Colorado River salinity control (saline soils); riparian system; candidate animal species (spotted bat).
Santa Clara River	Riparian system; cultural resources (Virgin Gunlock Section Anasazi and Paiute riverine sites); wildlife habitat; candidate fish species (Virgin River spinedace).
Santa Clara River	Riparian system; cultural resources (Virgin Landhill Section Anasazi and Paiute riverine sites); wildlife habitat; candidate fish species (Virgin River spinedace); petroglyphs.
Lower Virgin River	Riparian systems; endangered fish (Woundfin minnow); endangered fish (Virgin River chub); cultural resources (Virgin Anasazi riverine sites); wildlife habitat.
Little Creek Mountain	Cultural resources (Virgin Anasazi upland sites).
Canaan Mountain	National scenic resource (Colorado Plateau).
Red Mountain	National scenic resource (Colorado Plateau/Great Basin Variation).
Beaver Dam Slope	Threatened animal species (desert tortoise); Natural Landmark and Desert Woodbury.
City Creek	Threatened animal species (desert tortoise); community watershed.
Upper Beaver Dam Wash	Riparian values, fisheries, water quality.

The revised Draft Dixie RMP/EIS will modify the off-road vehicle (ORV) designations established in 1980 Federal Register, Vol. 45, No. 188). The proposed modifications will be incorporated into the alternatives considered in the RMP.

The Dixie Resource Area will be inventoried to identify all river segments eligible for potential designation as a wild and scenic river. Three river segments have already been determined to be eligible. These river segments are portions of Deep Creek, the North Fork of the Virgin River, and the Virgin River Gorge section of the Beaver Dam Mountains Wilderness Area. All three segments are classified as wild. Additional river segments believed to be eligible may be identified for inventory by writing to the address included in this notice.

Four preliminary alternatives have been developed for evaluation in the revised Draft Dixie RMP/EIS:

Alternative A

Continue with the present MFP and current management situation; respond to controversies as they occur with plan amendments.

Alternative B

Analyze opportunities to dispose of all tracts identified by local and State planning interests which are not mandated by regulations for public retention; initiate sale and disposal of all parcels meeting the FLPMA criteria (Sec. 203) and the requirements for other disposal. The balance of the resource programs would be managed under the current management situation.

Alternative C

Refine each program to reflect the current management situation and regulations and develop an RMP based on anticipation of population and development trends to Fiscal Year 2000 integrated with the principles of multiple use prescribed in FLPMA.

Alternative D

Utilize public input to develop a revised conservation/multiple-use approach for management of the Dixie Resource Area.

SUPPLEMENTARY INFORMATION: The public will be notified of this further planning by selected mailings, news releases, public meetings, and Federal Register Notices. Opportunities for public review of documents will be announced at appropriate stages of the planning process. Documents relevant to the planning process are available from the address below.

FOR FURTHER INFORMATION CONTACT: David Everett, Team Leader, BLM, 225 North Bluff Street, St. George, Utah 84770, telephone (801) 673–4654.

Dated: July 17, 1991.

James M. Parker,

State Director.

[FR Doc. 91–17744 Filed 7–25–91; 8:45 am]

BILLING CODE 4310-DQ-M

Bureau of Reclamation

Realty Actions; Sales, Leases, Etc.; Arizona

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of realty action, competitive sale of public land.

SUMMARY: The following described land has been identified for disposal under the Act of February 2, 1911, (36 Stat. 895, 43 U.S.C. 374). The Bureau of Reclamation (Reclamation) will accept bids on the following land and will reject any bids, written or oral, for less than $66,000, the appraised fair market value.

DATE OF SALE: September 26, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Seale, Realty Specialist, Bureau of Reclamation, PO Box 9980, Phoenix, Arizona 85068, 602–870–6733 or FTS 765–1733.

Land Identified for Disposal as Follows

Tract No. APO–SRP–EH–3—Two parcels of land, to be sold as one, in Section twenty-three (23), Township Three (3) North, Range One (1) East, Gila and Salt River Meridian, Maricopa County, Arizona, containing a combined area of 1.65 acres, more or less, and being more particularly and separately described as follows as Parcel One and Parcel Two. A more complete legal description may be obtained from the local Reclamation office referenced above.

Parcel One—All that area as described in that certain Quitclaim Deed from J.B. Davis and Fannie H. Davis, his wife, to the United States of America recorded July 24, 1922, in Book 169 of Deeds, page 7, records of Maricopa County, Arizona.

Parcel Two—All that area as described in that certain Quitclaim Deed from Elizabeth H. Cook and Ernest E. Cook, her husband, to the United States of America recorded February 17, 1941, in Book 356 of Deeds, page 20, records of Maricopa County, Arizona.

The land will be offered for sale through the competitive bidding process. The sale will be held at the Bureau of Reclamation, Arizona Projects Office, PO Box 9980, 23636 North Seventh Street, Phoenix, Arizona 85068 on September 26, 1991.

Registration of qualified bidders will begin at 9 a.m. Bid opening will be at 10 a.m., at which time, sealed bids will be opened and oral bids will be accepted. Sealed bids will be received at the foregoing address until 4 p.m., September 25, 1991. Reclamation may accept or reject any or all offers; or withdraw any land or interest in land for sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with the Act of February 2, 1911, (36 Stat. 895, 43 U.S.C. 374) or other applicable laws.

The sale of the land is consistent with Reclamation land use planning, and it is determined that the public interest will be best served by offering these lands for sale; the parcel listed and platted is offered for sale "as is" and "where is."

Resource clearances consistent with the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*) requirements have been completed and approved and can be viewed at the Bureau of Reclamation, Arizona Projects Office, 23636 North Seventh Street, Phoenix, Arizona 85024.

The deed issued for the parcel sold will be subject to rights-of-way for ditches and canals constructed by the authority of the United States in accordance with the Act of August 30, 1890, (26 Stat. 391, 86 U.S.C. 945) and reservations for public road and utility easements identified by the City of Peoria and the County of Maricopa. This land sale will be for the surface estate only.

For a period of 45 days from the date of this notice, interested parties may submit comments to the Regional Director, Lower Colorado Region, Bureau of Reclamation, PO Box 427, Boulder City, Nevada 89005. Any adverse comments will be evaluated by the Regional Director who may vacate or modify this Notice of Realty Action and issue a final determination. In the absence of any action by the Regional Director, this Notice of Realty Action will become final determination of the Department of the Interior.

In compliance with the Federal Property Management Regulations, 114S–47.304–8, and Interior Property Management Regulations, 114.47.304–51, the successful bidder will be required to sign a certificate to the effect that "the bid was arrived at by the bidder or offeror independently and was tendered without collusion with any other bidder or offeror."

Dated: July 19, 1991.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 91–17745 Filed 7–25–91; 8:45 am]

BILLING CODE 4310-09-M

Fish and Wildlife Service

Extension of Comment Period for Public Review of the Draft Environmental Impact Statement (DEIS) for the Proposed Stone Lakes National Wildlife Refuge

AGENCIES: U.S. Department of the Interior, U.S. Fish and Wildlife Service

ACTION: Extension of comment period.

SUMMARY: This notice advises the public that the comment period for public review and comment of the draft Environmental Impact Statement on the feasibility of establishing a National Wildlife Refuge on or near Stone Lakes in south Sacramento County, California, is extended to September 1, 1991.

DATES: Written comments should be received by September 1, 1991.

ADDRESS WRITTEN COMMENTS TO: Peter J. Jerome, U.S. Fish and Wildlife Service, 2233 Watt Avenue, suite 375, Sacramento, California 95825–0509, telephone: (916) 978–4420.

Copies of the Executive Summary of the DEIS have been sent to all agencies and individuals who participated in the scoping process and to all others who have already requested copies. Copies of the full DEIS are available for review at several locations within the Sacramento metropolitan area including most local public libraries.

Dated: July 17, 1991.

Don Weathers,

Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 91–17658 Filed 7–25–91; 8:45 am]

BILLING CODE 4310-55-M

Taking of Walruses and Polar Bears in the Chukchi Sea, Alaska, Incidental to Oil and Gas Exploration

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Fish and Wildlife Service (Service) has issued a Letter of Authorization (LOA) that will allow the incidental, but not intentional, take of small numbers of walruses and polar bears during open water exploration for oil and gas in the Chukchi Sea adjacent to the coast of Alaska.

DATES: The LOA is effective from June 28, 1991, to December 31, 1991.

ADDRESSES: The LOA is available for public inspection upon request in the following Service offices: Marine Mammals Management, 4230 University Drive, suite 310, Anchorage, Alaska 99508, and Division of Fish and Wildlife Management Assistance, 4401 North Fairfax Drive, Arlington Square, room 840, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Jon Nickles, Marine Mammals Management, Fish and Wildlife Service, 4230 University Drive, suite 310, Anchorage, Alaska 99508, telephone (907) 561–1239.

SUPPLEMENTARY INFORMATION: Notice is being given that on June 28, 1991, the Service issued a LOA that allows the incidental, but not intentional, take of small numbers of walruses and polar bears during open water oil and gas exploration in the Chukchi Sea adjacent to the coast of Alaska. The LOA was issued under the authority of section 101(a)(5) of the Marine Mammal Protection Act (MMPA), regulations at 50 CFR 18.27, and recently issued regulations at 50 CFR part 18, Subpart I—Taking of Marine Mammals Incidental to Oil and Gas Exploration Activities in Alaska.

The LOA was issued to Shell Western E & P Inc., P.O. Box 576, Houston, Texas, 77001. It is valid for Calendar Year 1991 and is subject to the provisions of the MMPA and the above identified regulations in 50 CFR part 18.

Issuance of the LOA is based on findings that the total taking will have a negligible impact on walrus and polar bear species, and will not have an unmitigable adverse impact on the availability of these species for subsistence uses by Alaskan Natives.

Dated: July 16, 1991.

John F. Turner,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 91–17728 Filed 7–25–91; 8:45 am]

BILLING CODE 4310-55-M

INTERSTATE COMMERCE COMMISSION

Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A.1. Parent corporation and address of principal office:

Phelps Dodge Corporation, New York, NY 10022.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

Phelps Dodge Refining Corporation, (New York).
Phelps Dodge Industries, Inc., (Delaware).
Phelps Dodge Sales Company, Inc., (Delaware).
Western Nuclear, Inc., (Delaware).
Phelps Dodge Mercantile Company, (Arizona).
Tucson Cornelia & Gila Bend Railroad, (Arizona).
Ajo Improvement Co., (Arizona).
Morenci Water & Electric Co., (Arizona).
Pacific Western Land Co., (California).
Hudson International Conductors, (New York).
Accuride Corp., (Delaware).
Columbian Chemicals Co., (Delaware).
Hudson Wire Co., d/b/a Hudson International Conductors, (New York).
Phelps Dodge Morenci, Inc., (Delaware).
Burro Chief Copper Co., (Delaware).
Phelps Dodge International Corp., (Delaware).

B.1. Parent corporation and address of principal office:

Sammons Enterprises, Inc., 300 Crescent Court, suite 700, Dallas, TX 75201.

2. Wholly-owned subsidiaries which will participate in the operations, and States of incorporation:

(i) Mt. Valley Spring Co., State of Incorporation: Arkansas.
(ii) Diamond Water, Inc. State of Incorporation: Arkansas.
(iii) Water Lines, Inc. State of Incorporation: Arkansas.
(iv) Carolina Mountain Spring Water Company, Inc. State of Incorporation: North Carolina.

C.1. The parent corporation and address of principle office:

Waste System Inc., Group, 13701 S. Kostner, Crestwood Illinois 60445.

2. Wholly-owned subsidiaries which will participate in the operations and states of incorporation:

Waste System Inc. Group, State of Incorporation Illinois.
X L Disposal Corp., State of Incorporation Illinois.
Industrial Fuels & Resources Marketing Corp., State of Incorporation Illinois.
Industrial Fuels & Resources of Indiana, State of Incorporation Indiana.
Industrial Fuels & Resources of Missouri, State of Incorporation Missouri.
Chemical Services Corp., State of Incorporation Illinois.
Community Landfill Corp., State of Incorporation Illinois.
Best Environmental Corp., State of Incorporation Illinois.
Crest Disposal Corp., State of Incorporation Illinois.

Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 91-17782 Filed 7-25-91; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31896]

Central Properties, Inc.—Control—the Central Railroad Co. of Indianapolis and the Central Railroad Co. of Indiana

AGENCY: Interstate Commerce Commission.

ACTION: Exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 11343, *et seq.*, Central Properties, Incorporated's acquisition of common control of the Central Railroad Company of Indianapolis and the Central Railroad Company of Indiana, subject to standard labor protective conditions.

DATES: The exemption will be effective on August 15, 1991. Petitions for reconsiderations must be filed by August 15, 1991.

ADDRESSES: Send pleadings referring to Finance Docket No. 31896 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioners' representative: Carl M. Miller, 2270 Lake Avenue, suite 270, Fort Wayne, IN 46805.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired (202) 275-1721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of that decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275-1721.]

Decided: July 19, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald. Commissioner Simmons dissented in part with a separate expression.

Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 91-17781 Filed 7-25-91; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 388X)]

CSX Transportation, Inc.; Abandonment Exemption in Lewis and Harrison Counties, WV

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon its 6.49-mile line of railroad between milepost 16.21, at McWhorter, and milepost 22.70, at Jackson's Mill, in Lewis and Harrison Counties, WV.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on August 25, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1]

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[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

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Simmons dissented in part with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-17781 Filed 7-25-91; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 388X)]

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As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on August 25, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by August 5, 1991.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by August 15, 1991, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Karen Anne Koster, 500 Water Street J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by July 31, 1991. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: July 12, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-17705 Filed 7-25-91; 8:45 am]

BILLING CODE 7035-01-M

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[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on June 24, 1991, proposed Consent Decrees in *United States* v. *City of Phenix City, Alabama and CIC Insulation Company, Inc.* were submitted for lodging with the Federal District Court for the Middle District of Alabama. The United States filed this action pursuant to section 113(b) of the Clean Air Act, 42 U.S.C. 7413(b), for alleged violations of the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for asbestos. The complaint alleges that the defendants violated section 112 (c) and (e), and 113(b) of the Act, 42 U.S.C. 7412 (c), and (e), and 7413(b) and the asbestos NESHAP work practice standards requiring that asbestos be adequately wet, 40 CFR 61.147 (e)(1), during the renovation of the City Hall and Annex Building of Phenix City, Alabama. The Decrees require the defendants to pay a civil penalty totaling $7,500 for a one day violation and obligate the defendants to comply with the asbestos NESHAP, 40 CFR 61.147(e)(1).

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decrees. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *City of Phenix City, Alabama and CIC Insulation Company, Inc., DJ # 90-5-2-1-1433.*

The proposed Consent Decrees may be examined at any of the following offices: (1) The United States Attorney for the Middle District of Alabama, 500 Federal Building and Courthouse, 15 Lee Street, Montgomery, Alabama; (2) the U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, Atlanta, Georgia; and (3) the Environmental Enforcement Section, Environment & Natural Resources Division, U.S. Department of Justice, 10th & Pennsylvania Avenue, NW., Washington, DC. Copies of the proposed Decrees may be obtained by mail from the Environmental Enforcement Section of the Department of Justice, Environment and Natural Resources Division, P.O. Box 7611, Benjamin Franklin Station, Washington, DC 20044-7611, or in person at the Environmental Enforcement Section Document Center, 1333 F Street, suite 600, NW., Washington, DC. Any request for a copy of the proposed Consent Decrees should be accompanied by a check for copying costs totalling $3.00 ($0.25 per page) payable to "Consent Decree Library."

Richard B. Stewart,

Environment & Natural Resources Division, Assistant Attorney General.

[FR Doc. 91-17738 Filed 7-25-91; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Max's Distributors Corp.; Revocation of Registration

On May 3, 1991, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Max's Distributors Corporation (Max's Distributors) of 1325 NW. 93rd Court, Unit B-109, Miami, Florida 33172, proposing to revoke its DEA Certificate of Registration, RM0153560, and deny any pending applications for renewal of such registration as a distributor under 21 U.S.C. 823(e). The Order to Show Cause alleged that its continued registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(e) and 824(a)(4).

The Order to Show Cause was sent to Max's Distributors by registered mail. More than thirty days have passed since the Order to Show Cause was received by Max's Distributors and the Drug Enforcement Administration has received no response thereto. Pursuant to 21 CFR 1301.54(a) and 1301.54(d), Max's Distributors is deemed to have waived its opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that Max's Distributors is registered with the Drug Enforcement Administration as a distributor of controlled substances in Schedule III, IIIN, IV and V. An investigation of the firm revealed that between July 28, 1990 and February 18, 1991, Max's Distributors ordered approximately 1,240,000 dosage units of Schedule III through V controlled substances.

During a DEA inspection, initiated on February 6, 1991, Maximiliano Dedieu, the president and only corporate officer of Max's Distributors, provided the investigators with 31 customer files, claiming that these were all of his customers. A further review revealed that the DEA numbers listed on the invoices for 22 of the customers were issued to pharmacies other than those listed on the invoices. In addition, 17 of the addresses listed for the pharmacies on the invoices did not physically exist.

An accountability audit was conducted of selected controlled substances covering the period July 19, 1990 through February 6, 1991. The audit revealed shortages of approximately 841,700 dosage units and overages of approximately 30,900 dosage units.

On March 19, 1991, DEA Special Agents observed Maximiliano Dedieu delivering 7,000 dosage units of glutethimide and 7,000 dosage units of acetaminophen with codeine to a laundromat. The combination of glutethimide and acetaminophen with codeine is popular with drug abusers as a heroin substitute.

On March 29, 1991, Maximiliano Dedieu was indicted in the United States District Court for the Southern District of Florida and charged with six counts of illegal distribution of controlled substances in violation of 21 U.S.C. 841(a)(1), one count of furnishing false or fraudulent information in violation of 21 U.S.C. 843(a)(4), and one count of knowingly and intentionally failing to keep a record in violation of 21 U.S.C. 843(a)(5).

The Administrator may revoke a DEA Certificate of Registration and deny any application for such registration if he determines that the continued registration of the registrant would be inconsistent with the public interest. 21 U.S.C. 823(f) and 824(a)(4). Pursuant to 21 U.S.C. 823(f), the Administrator considers the following factors in determining the public interest:

(1) The recommendation of the appropriate State licensing or disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

It is well established that these factors are to be considered in the disjunctive, i.e., the Administrator may properly rely on any one or a combination of factors, and give each factor the weight he deems appropriate. See, *Henry J. Schwarz, Jr., M.D.*, Docket No. 88–42, 54 FR 16422 (1989); *Neveille H. Williams, D.D.S.*, Docket No. 87–47, 53 FR 23465 (1988); *David E. Trawick, D.D.S.*, Docket No. 86–69, 53 FR 5326 (1988).

Based on the evidence in the investigative file, the Administrator concludes that there is more than ample evidence to support a finding that the continued registration of Max's Distributors would be inconsistent with the public interest. No evidence of explanation or mitigating circumstances has been offered by Max's Distributors. Therefore, the Administrator concludes that Max's Distributors' DEA registration must be revoked.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, RM0153560, previously issued to Max's Distributors Corporation, be, and it hereby is, revoked, and any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective August 26, 1991.

Dated: July 22, 1991

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 91–17762 Filed 7–25–91; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 90–38]

Vincent A. Sundry, D.O., Denial of Application

On April 16, 1990, the Deputy-Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Vincent A. Sundry, D.O. (Respondent) of 1730 Alternate 19 South, suite A, Tarpon Springs, Florida 34689, proposing to deny his pending application for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's registration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f).

Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held in Washington, DC on September 10, 1990. On April 23, 1991, Judge Bittner issued her opinion and recommended ruling, findings of fact, conclusions of law and decision. No exceptions were filed to Judge Bittner's opinion and recommended ruling and on June 10, 1991, the record was transmitted to the Administrator. The Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon the findings of fact and conclusions of law as hereinafter set forth.

The administrative law judge found that on or about October 25, 1972, in the United States District Court for the Western District of Pennsylvania, Respondent was convicted of four counts of illicit sale and distribution of amphetamine, felony offenses relating to controlled substances. On or about December 14, 1972, in the United States District court for the Western District of Pennsylvania, Respondent was also convicted of two counts of willfully and knowingly failing to make an income tax return in violation of 26 U.S.C. 7203. On or about April 27, 1981, in the United States District Court for the District of Kansas, Respondent was convicted of acquiring and obtaining possession of Schedule II non-narcotic controlled substances to be distributed and dispensed in violation of 21 U.S.C. 841(a)(1), felony offenses relating to controlled substances. At the same time, Respondent was convicted of 12 counts of causing controlled substances to be distributed and dispensed unlawfully by writing prescriptions in names other than those of the actual recipients of the prescriptions. As a result of these convictions, Respondent served about 45 days in Federal prison.

In 1982, Respondent applied for a DEA registration at an address in Florida. An Order to Show Cause was issued by DEA proposing to deny that application. Respondent requested a hearing which was ultimately scheduled for February 17, 1983, in Tampa, Florida. Government counsel appeared at the hearing, however Respondent's counsel failed to show up. Thereafter, on September 19, 1983, the then-Acting Administrator denied Respondent's application in a final order published in the **Federal Register**, Volume 48, at page 43415 on September 23, 1983.

In October 1982, while Respondent's 1982 application for registration was pending, the Pinellas County, Florida, Sheriff's Office initiated an investigation of Respondent's controlled substance handling practices after receiving information that Respondent was writing prescriptions for controlled substances without being registered by DEA. The investigation revealed that Respondent did, in fact, write prescriptions for controlled substances for various individuals knowing that he was not registered with DEA and, therefore, not authorized to write such prescriptions. As a result of this investigation, Respondent was convicted in a Florida State court on or about August 24, 1983, after pleading *nolo contendere* to thirteen counts of sale or delivery of controlled substances in violation of the Florida Comprehensive Drug Abuse Prevention and Control Act, felony offenses relating to controlled substances.

Respondent then submitted two applications for registration with DEA, one dated November 28, 1986, and the other dated February 26, 1987. A hearing

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Respondent then submitted two applications for registration with DEA, one dated November 28, 1986, and the other dated February 26, 1987. A hearing

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was held regarding these applications, during which, Respondent, assisted by counsel, called numerous witnesses who testified that they were very satisfied with the care and treatment Respondent provided them. Thereafter, on May 16, 1988, the Administrator of the Drug Enforcement Administration denied Respondent's applications for registration in a final order published in the **Federal Register**, Volume 53, at page 17257.

Subsequently, in July 1989, Respondent submitted the application for registration which is the subject of these proceedings. At the hearing in this matter, Respondent testified that he needed his DEA registration in order to obtain hospital privileges. In addition, Respondent offered into evidence a letter from the Florida Department of Professional Regulations, Board of Osteopathic Medical Examiners indicating that in October 1987, the Board voted to allow Respondent to apply to the Drug Enforcement Administration for a DEA Certificate of Registration.

The Administrator may deny an application for a DEA Certificate of Registration if he determines that the registration would be inconsistent with the public interest. Pursuant to 21 U.S.C. 823(f), "[i]n determining the public interest, the following factors will be considered:

(1) The recommendation of the appropriate State licensing board or disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety."

It is well established that these factors are to be considered in the disjunctive, i.e., the Administrator may properly rely on any one or a combination of factors, and give each factor the weight he deems appropriate. See, *Henry J. Schwarz, Jr., M.D.*, Docket No. 88–42, 54 Fed. Reg. 16422 (1989); *Neveille H. Williams, D.D.S.*, Docket No. 87–47, 53 Fed. Reg. 23465 (1988); *David E. Trawick, D.D.S.*, Docket No. 86–69, 53 Fed. Reg. 5326 (1988).

The administrative law judge concluded that the record clearly establishes that Respondent has repeatedly abused the authority granted by his DEA registration. Respondent contends, however, that since the Government did not introduce any new evidence regarding his unsuitability for a DEA registration since the previous hearing in 1987, he should be trusted with a DEA registration. The administrative law judge disagreed and recommended that Respondent's application for registration should be denied.

Respondent contends that he "is much older and wiser and recommitted to staying within the bounds of proper procedure." Respondent also testified that he would "quit practice" if he ever thought he "couldn't be trusted." The administrative law judge concluded that Respondent's assertions are not persuasive given his history of serious mishandling of controlled substances. In addition, Judge Bittner concluded that Respondent does not appear to be conversant with current regulations regarding the handling of controlled substances, and although he has not handled controlled substances in some years, his lack of knowledge of proper controlled substance handling is a further indication that he is not able at the present time to carry out the responsibilities of a DEA registrant.

The administrative law judge recognized that a DEA registration may be a necessary condition for obtaining hospital privileges, however, DEA does not register individuals to enable them to obtain hospital privileges. Registrations under the Controlled Substances Act are issued for one purpose—to enable the registrant to lawfully handle controlled substances.

Respondent's three felony convictions relating to controlled substances and his failure to demonstrate that he would use controlled substances more responsibly in the future, led the administrative law judge to conclude that Respondent's registration would not be in the public interest, and to recommend that Respondent's application for such registration should be denied. The Administrator adopts the opinion and recommended ruling, findings of fact, conclusions of law and decision of the administrative law judge in its entirety.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b), hereby orders that the application for registration, executed on July 21, 1989, by Vincent A. Sundry, D.O., be, and it hereby is, denied. This order is effective July 26, 1991.

Dated: July 22, 1991.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 91–17701 Filed 7–25–91; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of ours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., room N-1301, Washington, DC 20210. Comments should also be sent to the Office of

Information and Regulatory Affairs, Attn: OMB Desk Office for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3208, Washington, DC 20503 (telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Employment Standards Administration

FECA Medical Report Forms 1215–0103; CA 16B; 17B; 20; 20A; 1090; 1302; 1303; 1305; 1306; 1314; 1316; 1331; 1332; and OWCP–5.

As needed.

Businesses or other for profit.

466,950 respondents; 175,697 total hours; .08–.75 hrs. per response; 14 forms.

Information obtained through the use of FECA Medical Report Forms is necessary to determine whether or not a federal employee who has filed a claim under the Federal Employees' Compensation Act (FECA), is entitled to compensation.

Assistant Secretary for Veterans' Employment and Training

Implementing Regulations for Veterans' Employment and Programs under Title IV, Part C of the Job Training Partnership Act 1293–0001.

Other (at time of application for grant).

State or local governments; non-profit institutions 50 responses; 1,600. Average hours per response 32 hours. The information is needed as the basis upon which the cost-effectiveness of the program proposed by the grant application will be evaluated. It is the primary focus of the application for funding used for approving or denying the application for funds under Title IV–C of JTPA.

Employment and Training Administration

Overpayment Detection/Recovery Activities.

1205–0173; ETA 227.

Quarterly

State or local governments.

53 respondents; 7,240 total hours; 10 hrs. per response; 1 form.

100 hrs. (One-Time only burden).

The Secretary has interpreted applicable section of Federal laws, to require States to have reasonable provisions in their State UI laws that concern the prevention, detection and recovery of benefit overpayments caused by willful misrepresentation or errors by claimants or others. This report provides an accounting of the types and amounts of such overpayments and serves as a useful management tool for monitoring overall UI program integrity.

Extension

Mine Safety and Health Administration

Application for Use of Nonpermissible Explosives and Nonpermissible Shotfiring Units.

1219–0025.

On occasion.

Businesses or other for profit; small businesses or organizations.

75 applications; 1 hour per response; 75 total burden hours.

Provides a procedure by which a coal mine operator may apply for and get a permit to use nonpermissible explosives and shotfiring.

Employment and Training Administration

Senior Community Service Employment Program; Program Report and Grant Package.

1205–0040; ETAs 5–163, 5140, 8705; SFs 424&424A, 269.

Form No.	Affected public	Respondents	Frequency	Average time per response
ETA 5–163	State/Local govt.	67	1	40 hrs.
ETA 5140	do	67	4	8 hrs.
ETA 8705	do	67	1	12 hrs.
Posting	do	67	1	2 hrs. 59 min.
SF 424 & 424A	do	67	1	5 hrs.
SF 269	do	67	4	8 hrs.
5,493 total hours *				
(* This total does not include 2479 hrs. for Standard Form activity).				

The four forms included in this package are needed to manage the Senior Community Service Employment Program (SCSEP). These documents are the sources of Program plans, performance data and resource allocation. They form the basis for the award of funds, Federal oversite and reports.

Mine Safety and Health Administration

Qualified Person, Explosives and Blasting.

1219–0106.

On occasion.

Businesses or other for profit; small businesses or organizations 50 responses per year; 0.08 minutes per response.

Requires that blasting in underground coal mines be performed by a qualified person or a person working in the presence of and under the direction of a qualified person. Persons wishing to become qualified by MSHA contact the District Manager and arrange for a demonstration of ability. An MSHA inspector will observe the applicant during normal mining practices, therefore, no burden has been calculated for this function. The burden would be limited to a brief telephone call requesting that the person be qualified to use explosives. MSHA estimates that the telephone call would be no more than 5 minutes (0.08 hour) in duration. It is anticipated that MSHA will receive approximately 50 applications per year.

Signed at Washington, DC this 23rd day of July, 1991.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 91–17791 Filed 7–25–91; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are

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240 total hours; 10 hrs.
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State UI laws that

concern the prevention, detection and recovery of benefit overpayments caused by willful misrepresentation or errors by claimants or others. This report provides an accounting of the types and amounts of such overpayments and serves as a useful management tool for monitoring overall UI program integrity.

Extension

Mine Safety and Health Administration

Application for Use of Nonpermissible Explosives and Nonpermissible Shot-firing Units.
1219–0025.
On occasion.
Businesses or other for profit; small businesses or organizations.
75 applications; 1 hour per response; 75 total burden hours.

Provides a procedure by which a coal mine operator may apply for and get a permit to use nonpermissible explosives and shotfiring.

Employment and Training Administration

Senior Community Service Employment Program; Program Report and Grant Package.
1205–0040; ETAs 5–163, 5140, 8705; SFs 424&424A, 269.

Affected public	Respondents	Frequency	Average time per response
ovt.	67	1	40 hrs.
	67	4	8 hrs.
	67	1	12 hrs.
	67	1	2 hrs. 59 min.
	67	1	5 hrs.
	67	4	8 hrs.

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Signed at Washington, DC this 23rd day of July, 1991.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 91–17791 Filed 7–25–91; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are

based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Alabama AL91–27(Feb. 22, 1991).	p. 53, p. 54.
District of Columbia DC91–1(Feb. 22, 1991).	p. 79, pp. 80–90.
Florida:	
FL91–17(Feb. 22, 1991)..	p. 141, pp. 142–144.
FL91–48(Feb. 22, 1991)..	p. 218c, p. 218c.
Georgia GA91–3(Feb. 22, 1991).	p. 223, pp. 224–228.
Massachusetts MA91–1(Feb. 22, 1991).	p. 421, pp. 422–438.
New York:	
NY91–2(Feb. 22, 1991)...	p. 777, pp. 778–796b,
NY91–5(Feb. 22, 1991)...	p. 817, pp. 818–825.
NY91–11(Feb. 22, 1991).	p. 885, pp. 886–892.
NY91–14(Feb. 22, 1991).	p. 911, pp. 912–914.
NY91–15(Feb. 22, 1991).	p. 915, pp. 916–920b.

Volume II

Alabama AL91–27(Feb. 22, 1991).	p. 1, p. 2.
Indiana:	
IN91–1(Feb. 22, 1991)....	p. 243, pp. 245–247.
IN91–2(Feb. 22, 1991)....	p. 259, pp. 264–265.
IN91–6(Feb. 22, 1991)....	p. 315, pp. 316–334b.
Kansas:	
KS91–6(Feb. 22, 1991)...	p. 360, pp. 364–365.
KS91–8(Feb. 22, 1991)...	p. 373, pp. 375–380.
Michigan:	
MI91–3(Feb. 22, 1991)...	p. 477, pp. 478–490b.
MI91–7(Feb. 22, 1991)...	p. 515.
Minnesota MN91–7(Feb. 22, 1991).	p. 587, pp. 588–606b.
Ohio OH91–1(Feb. 22, 1991).	p. 809, pp. 810–820b.
Wisconsin WI91–4(Feb. 22, 1991).	p. 1209, pp. 1210–1211.

Volume III

Montana MT91–5(Feb. 22, 1991).	p. 271, p. 272.
Oregon OR91–1(Feb. 22, 1991).	p. 371, pp. 372–388.
Washington WA91–5(Feb. 22, 1991).	p. 495, pp. 496–498a.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 19th day of July, 1991.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 91–17663 Filed 7–25–91; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

[TA–W–25,640]

CAC Microcircuits, Inc., Mt. Carmel, IL; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at CAC Microcircuits, Incorporated, Mt.

Carmel, Illinois. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-25,640; CAC Microcircuits, Incorporated, Mt. Carmel, Illinois (July 16, 1991).

Signed at Washington, DC this 17th day of July, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-17786 Filed 7-25-91; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance; Carborundum Abrasives Co. et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 5, 1991.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 5, 1991.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 15th day of July 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm	Location	Date received	Date of petition	Petition No.	Articles produced
Carborundum Abrasives Co. (OCAW)	Niagara Falls, NY	07/15/91	07/02/91	26,057	Sand paper.
Center Tool and Machine (wkrs)	Cheboygan, MI	07/15/91	07/01/91	26,058	Automatic feeder systems for ford.
Dietzgen Corp. (wkrs)	El Paso, TX	07/15/91	06/28/91	26,059	Blue print copiers.
Edwards-Warren Tire Co. (URW)	Bloomington, IL	07/15/91	06/27/91	26,060	Earth moving tires.
Federal Deposit Insurance Corp. (wkrs)	Midland, TX	07/15/91	07/01/91	26,061	Government insurance for money.
General Dynamics (wkrs)	Fort Worth, TX	07/15/91	06/29/91	26,062	Aircraft wiring harnesses.
General Motors Corp., CPC (UAW)	Tarrytown, NY	07/15/91	07/03/91	26,063	Van assembly.
Hi-Tech Manufacturing (wkrs)	Longmont, CO	07/15/91	06/20/91	26,064	Flex-leads, spin motors.
International Boiler Works Co. (wkrs)	East Stroudsburg, PA	07/15/91	07/01/91	26,065	Power boilers.
Jerrold Communications (Co)	Tucson, AZ	07/15/91	06/03/91	26,066	Cable TV electronics products.
John B. Harris, Inc. (UMWA)	Lewisburgh, WV	07/15/91	06/18/91	26,067	Metallurgical coal.
Johnson Controls, Inc. (wkrs)	Erie, PA	07/15/91	07/02/91	26,068	Plastic radiator end tanks.
K and G Manufacturing (wkrs)	Faribault, MN	07/15/91	06/05/91	26,069	Carriages.
Louisiana Garment Co. (wkrs)	Louisiana, MO	07/15/91	07/02/91	26,070	Jackets, shorts, lingerie, shirts.
Nice Specialty Bearings (USWA)	Kulpsville, PA	07/15/91	06/18/91	26,071	Ball bearings for automobiles.
Occidental Chemical (wkrs)	Columbia, TN	07/15/91	07/03/91	26,072	Phosphorus.
Ogden Services, Inc. (wkrs)	Oklahoma City, OK	07/15/91	07/02/91	26,073	Tires.
Olin Chemicals Joliet (OCWA)	Joliet, IL	07/15/91	07/01/91	26,074	Phosphates.
Oryx Energy Co. (Co.)	Dallas, TX	07/15/91	06/26/91	26,075	Crude oil, gas exploration.
Oryx Energy Co, Gulf Coast Prod. (Co)	Houston, TX	07/15/91	06/26/91	26,076	Crude oil and gas exploration.
Oryx Energy Co, Mid Continent Prod. (Co)	Oklahoma City, OK	07/15/91	06/26/91	26,077	Crude oil and gas exploration.
Oryx Energy Co, Southwestern Prod. (Co)	Midland, TX	07/15/91	06/26/91	26,078	Crude oil and gas exploration.
Seagate Technology (wkrs)	Bloomington, MN	07/15/91	06/14/91	26,079	Hard disc drive.
Sensus Technologies, Inc. (USWA)	Uniontown, PA	07/15/91	07/05/91	26,080	Sealed regisers, water meters.
Teledyne Pittsburgh Tool Steel Wire (USWA)	Monaca, PA	07/15/91	06/12/91	26,081	Hexagon steel and other shapes.
Triumph Machine Corp. (USWA)	Hackettstown, NJ	07/15/91	06/28/91	26,082	Highway mowing equipment.
Union Metal, Eastern Division (USWA)	East Stroudsburg, PA	07/15/91	07/05/91	26,083	Steel metal light poles.
Unocal Corp, Energy Mining Div. (Co)	Parachute, CO	07/15/91	07/03/91	26,084	Crude oil.
USX Corp., Clairton Works (USWA)	Clairton, PA	07/15/91	07/02/91	26,085	Coke.
Wire Rope Corp. of America (wkrs)	Kansas City, MO	07/15/91	06/17/91	26,086	Steel wire and cable.
Woodings-Verona Tool Works (wkrs)	Verona, PA	07/15/91	06/26/91	26,087	Hand tools.
Woodings-Verona Tool Works (wkrs)	Columbiana, OH	07/15/91	06/26/91	26,088	Hand tools.
Woodings-Verona Tool Works (wkrs)	Falls City, NE	07/15/91	06/26/91	26,089	Hand tools.

[FR Doc. 91-17785 Filed 7-25-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24, 702]

Tektronix, Inc., Visual Systems Group, Wilsonville, OR and Operating at Various Locations in the Following States

TA-W-24,702A—Alabama
TA-W-24,702B—Alaska
TA-W-24,702C—Arizona
TA-W-24,702D—California
TA-W-24,702E—Colorado
TA-W-24,702F—Connecticut
TA-W-24,702G—Florida
TA-W-24,702H—Georgia
TA-W-24,702I—Illinois
TA-W-24,702J—Indiana

under section 221(a)
1974 ("the Act") and
appendix to this
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any other persons
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investigations may
ring, provided such

request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 5, 1991.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 5, 1991.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 15th day of July 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

ENDIX

s ed	Date of petition	Petition No.	Articles produced
5/91	07/02/91	26,057	Sand paper.
5/91	07/01/91	26,058	Automatic feeder systems for ford.
5/91	06/28/91	26,059	Blue print copiers.
5/91	06/27/91	26,060	Earth moving tires.
5/91	07/01/91	26,061	Government insurance for money.
5/91	06/29/91	26,062	Aircraft wiring harnesses.
5/91	07/03/91	26,063	Van assembly.
5/91	06/20/91	26,064	Flex-leads, spin motors.
5/91	07/01/91	26,065	Power boilers.
5/91	06/03/91	26,066	Cable TV electronics products.
5/91	06/18/91	26,067	Metallurgical coal.
5/91	07/02/91	26,068	Plastic radiator end tanks.
5/91	06/05/91	26,069	Carriages.
5/91	07/02/91	26,070	Jackets, shorts, lingerie, shirts.
5/91	06/18/91	26,071	Ball bearings for automobiles.
5/91	07/03/91	26,072	Phosphorus.
5/91	07/02/91	26,073	Tires.
5/91	07/01/91	26,074	Phosphates.
5/91	06/26/91	26,075	Crude oil, gas exploration.
5/91	06/26/91	26,076	Crude oil and gas exploration.
5/91	06/26/91	26,077	Crude oil and gas exploration.
5/91	06/26/91	26,078	Crude oil and gas exploration.
5/91	06/14/91	26,079	Hard disc drive.
5/91	07/05/91	26,080	Sealed regisers, water meters.
5/91	06/12/91	26,081	Hexagon steel and other shapes.
5/91	06/28/91	26,082	Highway mowing equipment.
5/91	07/05/91	26,083	Steel metal light poles.
5/91	07/03/91	26,084	Crude oil.
5/91	07/02/91	26,085	Coke.
5/91	06/17/91	26,086	Steel wire and cable.
5/91	06/26/91	26,087	Hand tools.
5/91	06/26/91	26,088	Hand tools.
5/91	06/26/91	26,089	Hand tools.

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TA-W-24,702C—Arizona
TA-W-24,702D—California
TA-W-24,702E—Colorado
TA-W-24,702F—Connecticut
TA-W-24,702G—Florida
TA-W-24,702H—Georgia
TA-W-24,702I—Illinois
TA-W-24,702J—Indiana

TA-W-24,702K—Maryland
TA-W-24,702L—Massachusetts
TA-W-24,702M—Maine
TA-W-24,702N—Michigan
TA-W-24,702O—Minnesota
TA-W-24,702P—Missouri
TA-W-24,702Q—New Jersey
TA-W-24,702R—New Mexico
TA-W-24,702S—New York
TA-W-24,702T—North Carolina
TA-W-24,702U—Ohio
TA-W-24,702V—Oklahoma
TA-W-24,702W—Oregon (except Wilsonville)
TA-W-24,702X—Pennsylvania
TA-W-24,702Y—Tennessee
TA-W-24,702Z—Texas
TA-W-24,702AA—Utah
TA-W-24,702AB—Virginia
TA-W-24,702AC—Washington
TA-W-24,702AD—Washington, DC
TA-W-24,702AE—Wisconsin
TA-W-24,702AF—Rhode Island

Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 31, 1990 applicable to all workers of the Visual Systems Group of Tektronix, Inc., Wilsonville, Oregon. The certification notice was published in the **Federal Register** on November 14, 1990 (55 FR 47550). The certification was subsequently amended on February 21, 1991 to reflect the correct worker group. The amended certification was published in the **Federal Register** on March 5, 1991 (56 FR 9236).

At the request of the State Agency, the Department reviewed the amended certification. New information from the company indicates that the State of Rhode Island was not included in the certification. The intent of the certification is to cover all workers of the Visual Systems Group of Tektronix, Inc. who were adversely affected by increased imports of articles like or directly competitive with work stations and network display terminals. The amended notice applicable to TA-W-24,702 is hereby issued as follows:

> All workers of Tektronix, Inc., Visual Systems Group, Wilsonville, Oregon and in locations in the following States of Alabama, Alaska, Arizona, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Massachusetts, Maryland, Maine, Michigan, Minnesota, Missouri, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon (except Wilsonville) Pennsylvania, Tennessee, Texas, Utah, Virginia, Washington, Washington, DC, Wisconsin and Rhode Island who became totally or partially separated from employment on or after July 21, 1989 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 19th day of July 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-17790 Filed 7-25-91; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program Extended Benefits; Ending of Extended Benefit Period in the State of West Virginia

This notice announces the ending of the Extended Benefit Period in the State of West Virginia, effective on July 13, 1991.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. Under the Extended Benefit Program, individuals who have exhausted their rights to regular unemployment benefits (UI) under permanent State (and Federal) unemployment compensation laws may be eligible, during an extended benefit period, to receive up to 13 weeks of extended unemployment benefits, at the same weekly rate of benefits as previously received under the State law. The Federal-State Extended Unemployment Compensation Act is implemented by State unemployment compensation laws and by part 615 of title 20 of the Code of Federal Regulations (20 CFR part 615).

Extended Benefits are payable in a State during an Extended Benefit Period which is triggered "on" when the rate of insured unemployment in the State reached the State trigger rate set in the Act and the State law. During an Extended Benefit Period, individuals are eligible for a maximum of up to 13 weeks of benefits, but the total of Extended Benefits and regular benefits together may not exceed 39 weeks.

The Act and the State unemployment compensation laws also provide that an Extended Benefit Period in a State will trigger "off" when the rate of insured unemployment in the State is no longer at the trigger rate set in the law. A benefit period actually terminates at the end of the third week after the week for which there is an off indicator, but not less than 13 weeks after the benefit period began.

An Extended Benefit Period commenced in the State of West Virginia on April 14, 1991, and has now triggered off.

Determination of an "off" Indicator

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State for the period consisting of the week ending on June 22, 1991, and the immediately preceding twelve weeks, fell below the State trigger rate, so that for that week there was an "off" indicator in the State.

Therefore, the Extended Benefit Period in the State terminated with the week ending July 13, 1991.

Information for Claimants

The State employment security agency will furnish a written notice to each individual who is filing claims for Extended Benefits of the ending of the Extended Benefit Period and its effect on the individual's right to Extended Benefits, 20 CFR 615.13(c)(4).

Persons who wish information about their rights to Extended Benefits in the State named above would contact the nearest State employment service office in their locality.

Signed at Washington, DC on July 19, 1991.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 91-17784 Filed 7-25-91; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program Extended Benefits; Ending of Extended Benefit Period in the State of Vermont

This notice announces the ending of the Extended Benefit Period in the State of Vermont, effective on July 13, 1991.

Background

The Federal-State Expended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. Under the Extended Benefit Program, individuals who have exhausted their rights to regular unemployment benefits (UI) under permanent State (and Federal) unemployment compensation laws may be eligible, during an extended benefit period, to receive up to 13 weeks of expended unemployment benefits, at the same weekly rate of benefits as previously received under the State law. The Federal-State Extended Unemployment Compensation Act is implemented by State unemployment compensation laws and by part 615 of title 20 of the code of Federal Regulations (20 CFR part 615).

Extended Benefits are payable in a State during an Extended Benefit Period which is triggered "on" when the rate of insured unemployment in the State reached the State trigger rate set in the Act and the State law. During an Extended Benefit Period, individuals are eligible for a maximum of up to 13 weeks of benefits, but the total of Extended Benefits and regular benefits together may not exceed 39 weeks.

The Act and the State unemployment compensation laws also provide that an Extended Benefit Period in a State will trigger "off" when the rate of insured unemployment in the State is no longer at the trigger rate set in the law. A benefit period actually terminates at the end of the third week after the week for which there is an off indicator, but not less than 13 weeks after the benefit period began.

An Extended Benefit Period commenced in the State of Vermont on March 17, 1991, and has now triggered off.

Determination of an "off" Indicator

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State for the period consisting of the week ending on June 22, 1991, and the immediately preceding twelve weeks, fell below the State trigger rate, so that for that week there was an "off" indicator in the State.

Therefore, the Extended Benefit Period in the State terminated with the week ending July 13, 1991.

Information for Claimants

The State employment security agency will furnish a written notice to each individual who is filing claims for Extended benefits of the ending of the Extended Benefit Period and its effect on the individual's right to Extended Benefits, 20 CFR 615.13(c)(4).

Persons who wish information about their rights to Extended Benefits in the State named above would contract the nearest State employment service office in their locality.

Signed at Washington, DC on July 19, 1991.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 91–17783 Filed 7–25–91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,489]

Cooper Industries, Inc., Bussmann Division, Bristol, CT; Negative Determination Regarding Application for Reconsideration

By an application dated May 31, 1991, Local 260 of the International Union of Electrical Workers (IUE) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on April 26, 1991 and published in the **Federal Register** on May 21, 1991 (56 FR 23301).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims that Bussmann began transferring production from Bristol to foreign sources beginning in 1989 and that the Department's survey of customers was flawed because Bussmann is importing articles. Its also claimed that the decline in U.S. imports was not an absolute decrease since the U.S. market was also experiencing a similar reduction.

The Bristol plant produced power fuses and high speed fuses. Bristol closed on March 28, 1991. Sales and production of power fuses at Bristol increased in 1990 compared to 1989 while high speed fuses were discontinued and replaced by another product produced at Ellisville, Missouri.

During the period from April 10, 1989 to March 28, 1991 the preponderant share of Bristol's production was transferred to other domestic corporate facilities while a small amount was transferred to Mexico—affecting less than (5) five percent of the plant work force. Workers were not separately identifiable by product. Accordingly, there is no basis for a worker group certification.

With respect to the union's claim concerning reducers and semi-trons, the reducers were transferred to Goldsboro in early 1989 and semi-trons to Denmark in April, 1989. These production transfers would not form a basis for a worker group certification since they either were domestic transfers or occurred more than one year prior to the date of the worker petition. Section 223(b)(1) of the Trade Act does not permit the certification of workers laid off more than one year prior to the date of the petition.

Also, other findings obtained during the investigation show that box covers, switches, adapters and receptacle products were never made in Bristol.

The Department's denial was not based on an absolute decline in U.S. imports of fuses in the first six months of 1990 compared to the same period in 1989 but on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. This test is generally demonstrated through a survey of the workers' firm's customers. The Department's survey of Bussmann's major declining customers shows that none imported fuses during the relevant period. Also, company imports are not part of the customer survey but are obtained directly from the company.

According to company officials, there is a negative impact on the domestic demand for U.S. fuses because of imported machinery which is designed to different standards and does not use U.L. power fuses. The courts, however, have ruled in the Bedell case, *United Shoe Workers of America, AFL–CIO* v. *Bedell,* 506 F2d (DC Circ. 1974) that this type of foreign competition would not serve as a basis for trade adjustment assistance i.e., the finished article (imported machinery) is not like or directly competitive with the component article (fuses).

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 18th day of July 1991.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91–17787 Filed 7–25–91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,545]

F-Dyne Electronics, Inc., Bridgeport, CT; Negative Determination Regarding Application for Reconsideration

By an application dated June 13, 1991, Local #299 of the United Electrical Workers (UE) requested administrative

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Also, other findings obtained during the investigation show that box covers, switches, adapters and receptacle products were never made in Bristol.

The Department's denial was not based on an absolute decline in U.S. imports of fuses in the first six months of 1990 compared to the same period in 1989 but on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. This test is generally demonstrated through a survey of the workers' firm's customers. The Department's survey of Bussmann's major declining customers shows that none imported fuses during the relevant period. Also, company imports are not part of the customer survey but are obtained directly from the company.

According to company officials, there is a negative impact on the domestic demand for U.S. fuses because of imported machinery which is designed to different standards and does not use U.L. power fuses. The courts, however, have ruled in the Bedell case, *United Shoe Workers of America, AFL–CIO* v. *Bedell,* 506 F2d (DC Circ. 1974) that this type of foreign competition would not serve as a basis for trade adjustment assistance i.e., the finished article (imported machinery) is not like or directly competitive with the component article (fuses).

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 18th day of July 1991.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91–17787 Filed 7–25–91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,545]

F-Dyne Electronics, Inc., Bridgeport, CT; Negative Determination Regarding Application for Reconsideration

By an application dated June 13, 1991, Local #299 of the United Electrical Workers (UE) requested administrative

reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on May 14, 1991 and published in the **Federal Register** on May 30, 1991 (56 FR 24414).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The workers produced film capacitors. The plant ceased operations in May, 1991.

The union claims that competition from off-shore firms has substantially contributed to the inability of the F–Dyne to make a profit. Its also claimed that the union was never notified of the investigation.

With respect to the union's claims, the Department did contact the union petitioner as soon as the investigation was instituted. Also, the inability to make a profit is not a worker group criterion for certification.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers. The Department's survey showed that none of the surveyed customers imported capacitors during the relevant period.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 16th day of July 1991.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91–17788 Filed 7–25–91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,608]

Rockwell International Corp. T/A Division, New Castle, PA; Affirmative Determination Regarding Application for Reconsideration

On June 24, 1991 members of the United Steelworkers Local #4194 met in Washington, DC with the Director of the Office of Trade Adjustment Assistance. The union submitted written information and requested administrative reconsideration of the Department of Labor's notice of negative determination for workers of the subject firm. The negative determination was issued on June 21, 1991 and published in the **Federal Register** on June 28, 1991 (56 FR 29717).

The union claims that the company foreign sourced several of its components. The transfer of production and company import issues were not addressed in the Department's denial notice.

Conclusion

After careful review of the application, I conclude that the claims are of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 16th day of July 1991.

Robert O. Deslongchamps

Director, Office of Legislation & Actuarial Services Unemployment Insurance Service.

[FR Doc. 91–17789 Filed 7–25–91; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME

AGENCY: National Commission on Acquired Immune Deficiency Syndrome.

ACTION: Notice of hearing.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463 as amended, the National Commission on Acquired Immune Deficiency Syndrome announces the forthcoming meeting.

DATE AND TIME: Wednesday, August 7, 1991 8:30 a.m. to 5 p.m. Thursday, August 8, 1991 8:30 a.m. to 5 p.m.

PLACE: Old Colony Inn, 625 First Street, Alexandria, VA.

TYPE OF EVENT: Open.

FOR FURTHER INFORMATION CONTACT: Maureen Byrnes, Executive Director, The National Commission on Acquired Immune Deficiency Syndrome, 1730 K Street, NW., suite 815, Washington, DC 20006 (202) 254–5125. Records shall be kept on all Commission proceedings and shall be available for public inspection at this address.

AGENDA: Discussion of Commission's Comprehensive Report, third year plans and other Commission Business.

Interpreting services are available for deaf people. Please call our TDD number (202) 254–3816 to request services no later than August 1, 1991.

Dated: July 22, 1991.

Maureen Byrnes,

Executive Director.

[FR Doc. 91–17745 Filed 7–25–91; 8:45 am]

BILLING CODE 6820-CN-M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrence Report; Section 208 Report Submitted to the Congress

Notice is hereby given that pursuant to the requirements of section 208 of the Energy Reorganization Act of 1974, as amended, the Nuclear Regulatory Commission (NRC) has published and issued another periodic report to Congress on abnormal occurrences (NUREG–0090, Vol. 14, No. 1).

Under the Energy Reorganization Act of 1974, which created the NRC, an abnormal occurrence is defined as "an unscheduled incident or event that the Commission (NRC) determines is significant from the standpoint of public health or safety." The NRC has made a determination, based on criteria published in the **Federal Register** (42 FR 10950) on February 24, 1977, that events involving an actual loss or significant reduction in the degree of protection against radioactive properties of source, special nuclear, and by-product material are abnormal occurrences.

The report to Congress is for the first calendar quarter of 1991. The report identifies the occurrences or events that the Commission determined to be significant and reportable; the remedial actions that were undertaken are also described.

The report discusses six abnormal occurrences, none of which involved a nuclear power plant. Five of the events occurred at NRC-licensed facilities: One involved a significant degradation of plant safety at a nuclear fuel cycle facility, one involved a medical diagnostic misadministration, and three involved medical therapy misadministration. An Agreement State (Arizona) reported one abnormal occurrence that involved medical therapy misadministrations.

A copy of the report is available for public inspection and/or copying at the NRC Public Document Room, 2120 L Street, NW., (Lower Level), Washington DC 20555, or at any of the nuclear power plant Local Public Document Rooms throughout the country.

Copies of NUREG–0090, Vol. 14, No. 1 (or any of the previous reports in this series), may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082. A year's subscription to the NUREG–0090 series publication, which consists of four issues, is also available.

Copies of the report may also be purchased from the National Technical Information Service, Springfield, VA 22161.

Dated at Rockville, MD this 22nd day of July 1991.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 91–17780 Filed 7–25–91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 70–143]

Environmental Assessment, Finding of No Significant Impact and Notice of Opportunity for Hearing Related to Amendment of Materials License No. SNM–124 Nuclear Fuel Services, Inc. Erwin, TN

The United States Nuclear Regulatory Commission (NRC) is considering issuing an amendment of Materials License SNM–124, held by Nuclear Fuel Services, Inc. (NFS), to authorize removal of radioactively contaminated sediments from the three on-site surface impoundments, dewatering to less than 0.5 percent free-standing water, packaging, compaction, and shipment for disposal of the filter cake at a licensed low-level radioactive waste disposal facility, as a necessary step toward decontamination of the NFS site to levels acceptable for eventual decommissioning and release for unrestricted use.

Introduction

By letter dated November 17, 1989, NFS requested authorization to decommission three impoundments, designated Impoundments 1, 2, and 3, in accordance with the Decommissioning Plan for Three Waste Water Impoundments dated November 1989. NFS proposed to remove the radioactively contaminated sediments as well as three to six inches of subsoil in order to reduce any potential adverse effects which the contamination may have on the health and safety of the general public and the environment. In response to the staff's request for additional information dated March 25, 1991, NFS submitted a revised part 1 dated May 1991 to the two-part Plan. The NRC staff reviewed NFS's request and prepared its Safety Evaluation Report (SER), dated July 1991, "Safety Evaluation Report, Amendment Application Dated May 7, 1991, Re: Decommissioning Plan for Three Waste Water Surface Impoundments."

Contamination in the sediments is recognized as a cause of groundwater quality deterioration. Even though removal of the sediments will help improve groundwater quality in the long-term, the sediment removal process potentially could further deteriorate the already contaminated groundwater in the short-term. Accordingly, pursuant to 10 CFR 51.21, the NRC has prepared this EA.

Background

Between 1957 and 1978, three unlined impoundments were used to retain liquid wastes generated from operations associated with the production of nuclear fuels at the NFS plant in Erwin, Tennessee. Figure 2 and Table 1 of the SER summarizes the discharges to the impoundments during the period of their operation. The three impoundments, which were constructed between 1957 and 1963, were excavated to depths of approximately four feet and enclosed by low earthen berms. Use of the impoundments was discontinued in 1978 when operation of the NFS waste water treatment plant was initiated. The impoundments primarily contain sediments two to six feet thick contaminated with radioactive materials (uranium and thorium) as well as trace levels of other materials associated with the production of nuclear fuels. A site plan of NFS is shown in Figure 1 of the SER. Table 2 of the SER provides the estimated radionuclide concentrations and inventories in the impoundment sediment. Analysis of sampled sediment in accordance with the Environmental Protection Agency's (EPA) Toxicity Characteristic Leaching Procedure (TCLP) showed that two non-radiological contaminants, cadmium and tetrachloroethylene, exceeded the limits in some regions of the sediments in Impoundments 1 and 2.

The total volume of sediments in the three impoundments is estimated to be approximately 86,000 cubic feet (2,500 cubic meters). Average sediment densities are estimated to be 1.22, 1.45 and 1.42 grams per cubic centimeter for Impoundments 1, 2 and 3, respectively. The average depths of the sediments contained in Impoundments 1, 2 and 3 are estimated to be 40, 27 and 36 inches, respectively.

The Proposed Action

The proposed action is an amendment to License No. SNM–124 to authorize NFS to (1) remove the radioactively contaminated sediments and three to six inches of subsoil from the impoundments by slurry pumping; (2) dewater the sediments using a filter press equipped with membrane plates; (3) initially return the water from the dewatering operation to the impoundments; (4) package the dewatered sediments in 55-gallon drums; (5) compact the drummed sediments to eliminate packaging voids; (6) ship the packaged sediment for burial at a licensed disposal facility; and (7) after sediment removal, treat the water remaining in the impoundments so that it can be discharged to the surface water system in accordance with NFS's modified National Pollution Discharge Elimination System (NPDES) permit requirements. At least one additional impoundment volume of water from each impoundment, infiltrating into the impoundments from the surrounding aquifer during and after the treatment process, will also be treated and discharged. Figure 2 of the SER presents a simplified process flow diagram.

Figures 3 and 4 of the SER respectively provide a layout of the sediment processing equipment and plant proposed by NFS to be used in the decontamination of the impoundments. Operational work will be performed under Decommissioning Work Procedures (DWP) and special health and safety procedures, which are approved by the NFS Safety and Safeguards Review (SSR) Council.

Sediment excavation will be accomplished with a floating dredge. The dredge will be fitted with a horizontal cutter/auger on the pump suction, to provide a cutting action into the sediments and to cause the solids to enter the pump and transport piping.

The sediments will be directed through a shredding operation to remove large objects which may be entrained in the dredge discharge, then transported to the sediment mixing tanks. Sediments and contaminants will be contained in pressure piping throughout the processing operations. This piping will be encased within outer pipes where it crosses Banner Spring Branch to preclude contamination of the branch if a pipe rupture occurs. Connections will be minimized in this area.

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The Proposed Action

The proposed action is an amendment to License No. SNM–124 to authorize NFS to (1) remove the radioactively contaminated sediments and three to six inches of subsoil from the impoundments by slurry pumping; (2) dewater the sediments using a filter press equipped with membrane plates; (3) initially return the water from the dewatering operation to the impoundments; (4) package the dewatered sediments in 55-gallon drums; (5) compact the drummed sediments to eliminate packaging voids; (6) ship the packaged sediment for burial at a licensed disposal facility; and (7) after sediment removal, treat the water remaining in the impoundments so that it can be discharged to the surface water system in accordance with NFS's modified National Pollution Discharge Elimination System (NPDES) permit requirements. At least one additional impoundment volume of water from each impoundment, infiltrating into the impoundments from the surrounding aquifer during and after the treatment process, will also be treated and discharged. Figure 2 of the SER presents a simplified process flow diagram.

Figures 3 and 4 of the SER respectively provide a layout of the sediment processing equipment and plant proposed by NFS to be used in the decontamination of the impoundments. Operational work will be performed under Decommissioning Work Procedures (DWP) and special health and safety procedures, which are approved by the NFS Safety and Safeguards Review (SSR) Council.

Sediment excavation will be accomplished with a floating dredge. The dredge will be fitted with a horizontal cutter/auger on the pump suction, to provide a cutting action into the sediments and to cause the solids to enter the pump and transport piping.

The sediments will be directed through a shredding operation to remove large objects which may be entrained in the dredge discharge, then transported to the sediment mixing tanks. Sediments and contaminants will be contained in pressure piping throughout the processing operations. This piping will be encased within outer pipes where it crosses Banner Spring Branch to preclude contamination of the branch if a pipe rupture occurs. Connections will be minimized in this area.

Sediments will be fed into one of two 10,000-gallon cone bottom sediment reaction tanks. Sediments will be pumped at the average 10 percent by weight solids loading. Once in the tank, the sediments will be allowed to settle for several hours.

After settling, samples will be taken to verify the sediments/supernate interface, supernate will be decanted and returned to the impoundments and the sediment transferred to the filter press. Solids loading at this point is estimated to be approximately 20 to 25 percent by weight.

A 100 cubic foot filter press will be used for dewatering. Sediment will be fed into the filter press using a pneumatically operated diaphragm pump. Filter cake moisture will be maintained at or below 35 to 40 weight percent. As the press is opened, the filter cake will drop from the plates to the conveyor running the length of the filter press, which moves the cake to the end of the filter press and into 55-gallon drums positioned at the discharge of the conveyer. Based on results obtained from the sediment dewatering pilot project, the filter cake densities of sediments extracted from Impoundments 1, 2 and 3 were estimated by NFS to be 1.79, 1.87 and 2.05 grams per cubic centimeter, respectively.

Each 55-gallon drum will be manually filled, with as many voids as possible removed prior to compaction. Drum extensions will be utilized to allow overfilling prior to compaction. The amount of sediment in each drum will be maintained at about 750 pounds (340 kilograms), since the weight limit for each packaged drum is 800 pounds (363 kilograms).

Compaction will be performed on site using a drum contents compactor equipped with high-efficiency exhaust ventilation control. Compaction will be performed prior to the drum survey station.

Each drum will be surveyed and released for shipment off site as "Radioactive, Low Specific Activity." The average amounts of fissile material (uranium-235) contained in each drum were estimated to be 63, 33 and 98 grams for dry sediment (0% moisture content) from Impoundments 1, 2 and 3, respectively. The actual average uranium-235 amounts would be less than the values estimated, since the dewatered filter cake would have a relatively high moisture content when packaged. Transportation to the burial site will be via standard tractor-trailer modes on an "exclusive use" basis. Each shipment will contain about 48 drums and be limited to a maximum weight of 40,000 pounds (18,000 kilograms). Over two hundred shipments could result from the processing of contaminated sediment and soil from all three impoundments. Burial will be at a licensed disposal facility.

As the sediments are removed and processed, sufficient water is required to maintain flotation of the dredge; therefore, filtrate will be returned to the impoundments or further processed through the new Waste Water Treatment System (WWTS). The licensee states that return of the filtrate to the impoundments will stabilize the hydraulic balance with the surrounding aquifer, thus minimizing the influx of groundwater. This action will also minimize the total quantity of water requiring treatment during the remediation effort. The final design of the WWTS will be determined as based upon requirements of the modified NPDES permit and results of the filtrate treatability studies. After removal of the sediments, the remaining water will be processed for discharge. At least one additional impoundment volume of infiltrating groundwater will also be treated and discharged, in order to back-flush some contamination out of the groundwater.

Filtrate will be stored in the filtrate storage tanks until a sufficient quantity has been collected for analysis and discharge. Filtrate will be measured for total alpha and beta activities and other constituents set forth in the modified NPDES permit. Only if analysis indicates that the filtrate meets the permit requirements, will it be discharged to the Nolichuky River. If not, then it will be either stored in the tanks prior to treatment or pumped back into the impoundments.

The equipment used in the remediation effort is intended for reuse after completion of this project. All major equipment items will be disassembled, surveyed, and decontaminated to unrestricted use levels or disposed of as radioactive waste.

NFS will assure that all packages and shipments are made according to requirements of the Department of Transportation (DOT) and the NRC contained in title 49, Code of Federal Regulations, part 173 (49 CFR part 173) and 10 CFR part 71 respectively. NPS will also assure that packaging conforms to the standards established by the licensed disposal facility.

Need for Proposed Action

Radioactively contaminated sediment in the impoundments has been and is a source of local groundwater contamination. If allowed to remain under current conditions, with a portion of the sediment lying below the water table, it will in all likelihood continue to deteriorate the groundwater. Because of the quantities, small volubility limits and large half-lives of the radio-nuclides contained in the sediment, this deterioration could be expected to last for hundreds if not thousands of years. Even though in the short-term, sediment removal activities may cause the local groundwater to worsen, in the long-term sediment removal will help improve the groundwater quality. In addition, due to its high content of insoluble thorium-232, which has a half life of oven ten billion years, the sediment will also continue to pose a direct gamma exposure hazard. Therefore, removal for the sediment from the impoundments will reduce any potential adverse effects on the health and safety of NFS employees, the general public and the environment. Sediment removal is also a necessary step toward decontamination of the site to levels acceptable for eventual decommissioning and release for unrestricted use.

Alternatives to the Proposed Action

The following general categories were identified by NFS's consultant EcoTek as potentially applicable to the remediation of the three NFS surface impoundments:

—In Situ Remediation
—Excavate and Contain On Site
—Excavate and Bury Off Site
—Recover and Recycle
—No Action

In situ remedial actions would involve processes that physically confine or immobilize the impoundment sediments in place. The sediments in this case would be rendered less vulnerable to disturbances, such as rainwater infiltration or animal contact. Therefore, the potential for the formation and migration of leachate or the transport of contaminants by biota and/or airborne mechanisms would be greatly reduced. A perpetual case program would have to be implemented with this option.

Excavation and containment on site would involve the excavation, dewatering and packaging of the impoundment sediment and placement in an engineered containment facility constructed on NFS property. This option would require implementation of a continuing monitoring program. Removal of the sediment would preclude additional formation and migration of leachate in the impoundment area, and placement of radioactive materials in engineered vaults would assure long-term containment.

Excavation and burial off site would involve the excavation, dewatering, packaging and shipping of impoundment sediment to an off-site burial facility. Removal of the sediment would preclude additional formation and migration of leachate at the site and containment of radioactive contaminants associated with the sediments would no longer be a concern.

Recovery and recycle would involve the excavation, dewatering, and processing of impoundment sediments to separate and concentrate radioactive constituents for recycling. The associated waste would be treated for either on-site or off-site burial at a chemical landfill if residual activity permitted. This alternative also results in removal of the sediment providing the environmental benefits of the above options and would also provide for resource recovery, thus potentially resulting in economic benefits.

The specific remediation technologies identified as potentially applicable to the NFS surface impoundments included:

—In Situ Remediation

  "No Action"—Impermeable Cover Only, In situ Vitrification, In situ Stabilization, Impermeable Cover With Slurry Wall.

—Excavate and Contain on Site

  Above Grade Containment Cell, Below Grade Containment Cell.

—Excavate and Bury Off Site

  A Licensed Disposal Facility.

—Recover and Recycle

  Chemical Separation.

Within each alternative technology there exists a number of processing options. For example, several of the alternatives require the sediment to be excavated. Excavation of the sediment could be accomplished by several methods including slurry pumping by floating dredge, extraction by dewatering bucket drag line or dewatering of the surrounding aquifer with pumping wells followed by extraction by clam shell, backhoe or other excavation device. Also, some of these process options are applicable to more than one alternative technology. For example, sediment excavation is required for the excavate and contain onsite, excavate and bury off site and recover and recycle alternative technologies. This formed a complex interconnecting decision path.

Each remedial action alternative identified as applicable and proven was evaluated by EcoTek in more detail. Five factors were used to evaluate the alternatives:

—Regulatory Acceptability

—Technical Feasibility

—Employee, Public and Environmental Safety

—Economic Feasibility

—Required Implementation Time

The remedial action alternatives were qualitatively ranked in each of the five identified categories and relative to each other. Designations of high (3), moderate (2), and low (1) were used to assign degree of compliance with the intent and spirit of the category. These differences are subtle and subjective. This process eliminated those alternatives which did not provide adequate protection to the employees, public and the environment, and those that cannot be implemented at the site. Each of the identified factors were given equal weight with respect to each other, although a low ranking in regulatory acceptability was given extra weight.

The evaluation of regulatory acceptability involved the identification of NRC and State of Tennessee guidelines and regulations applicable to the situation followed by determining the level of compliance with each applicable requirement.

The evaluation of technical feasibility involved determining the success of similar techniques and methods in similar remediation efforts as described in applicable technical engineering and waste management documents and the availability of local and regional vendors to supply necessary services and/or equipment.

The evaluation of employee, public and environmental safety involved the qualitative, and where possible, the quantitative assessment of probable impact associated with each remedial action. Items examined included external and internal radiation exposure, environmental impact of a process upset and the danger from the construction and process machinery.

If an alternative technology or process option was eliminated due to other concerns, a cost analysis was not performed. The quantification of cost associated with each feasible option was based on best available information provided by applicable engineering documents and information provided by vendors followed by a comparison to other options. These costs include capital costs and operational costs as much as possible.

The evaluation of required implementation time involved the quantification of time required to implement each alternative based on best available information provided by applicable engineering documents and vendor information followed by a comparison to other options.

The results of the remediation alternatives evaluation conducted by NFS's consultant EcoTek clearly identified the most effective, safe and environmentally sound action to be excavation and burial off site.

The staff has reviewed the licensee's evaluation of alternatives and concluded that the licensee's choice is adequately protective of health, safety and environment, and that none of the alternatives is obviously superior, taking cost-effectiveness into consideration.

Environmental Impacts of the Proposed Action

Groundwater Releases

Description of the Hydrogeologic System

Groundwater beneath the impoundments area occurs in the unconsolidated deposits and the consolidated Rome Formation. Groundwater within the unconsolidated deposits occurs under unconfined conditions; this aquifer represents the uppermost aquifer at the site. The unconsolidated deposits consist of clays, silts, sands, and gravels. Movement of water is primarily within the sand and gravel units, toward the southwest and west. The water table is generally 3 to 9 feet below land surface.

Groundwater within the Rome Formation occurs under weak artesian conditions. The Rome Formation is comprised of shales, siltstones, sandstones and carbonate rocks; however, the carbonate rocks re generally not present at the NFS site.

Groundwater flows within the two aquifers are generally separated by shale deposits within the Rome Formation. Flow between the two aquifers can either be downward or upward depending upon the location at the site. Further characterization is needed to better define the interaction between these two aquifers. However, the results of the characterization would not require the sediment removal process or the groundwater monitoring program to be altered.

Fine-grained sediments and organic detritus at the base of the impoundments tend to impede water moving out of the impoundments; as a result water levels within the impoundments area are mounded.

Groundwater Contamination

Characterization of the sediment within the impoundments has identified radionuclides, heavy metals, and organic chemicals. Radionuclides detected are listed in Table 2 of the SER. The principal isotopes detected are U-234 and Th-232.

Contaminants within the impoundments have resulted in

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Contaminants within the impoundments have resulted in

contamination of the uppermost aquifer at the site. Constituents detected within the groundwater include nitrates, metals, organic chemicals, and radionuclides. Nitrate and mercury were detected at concentrations above the EPA drinking water standards. In addition, gross alpha and combined radium concentrations measured in the groundwater exceeded EPA maximum concentration limits for drinking water. Gross alpha concentrations exceed the EPA limit by several orders of magnitude in the area immediately surrounding the impoundments. Isotopic analyses of groundwater samples detected uranium, radium, technetium, thorium, plutonium, and americium. U-234 accounts for most of the radiochemical contamination within the groundwater.

Additional characterization is needed to delineate the full lateral and vertical extent of the contamination plume. Based upon the current level of characterization, which is considered adequate for the proposed action, the contamination plume does not extend beyond the site boundary.

NFS has determined that the closest down-gradient groundwater user to the site is over five miles away. This assessment is based upon a literature review, instead of an actual field survey. The closest houses hear the site are several thousand feet away from the delineated contamination plume; therefore, eve if these houses have private wells, it is unlikely that they would be currently affected by contamination from the impoundments.

Impacts From the Sediment Removal Operation

The contaminated sediments are acting as a source of groundwater contamination; thus removal of the sediments, in the long run, should help to improve the groundwater quality. Once the source of contamination is removed, natural flushing and recharge will dilute contaminants within the groundwater. Since several contaminants greatly exceed the EPA maximum concentration limit, it is likely that several contaminant concentrations will remain above EPA limits even with dilution.

During sediment removal, it is possible that the groundwater quality may be slightly worsened. Removal of sediments lining the impoundments will very likely improve the degree of interconnection between the impoundment water and the groundwater. In addition, the stirring action of the dredge will likely release some contaminants absorbed onto the sediment particles. The stirring action will also likely change the pH and redox potential within the impoundments which may cause some contaminants to be redissolved into solution. NFS has estimated that additional significant groundwater deterioration could occur within a distance of 50 feet of the impoundments. Even if this estimate is incorrect, it is extremely unlikely that this additional groundwater contamination will adversely affect down-gradient groundwater users since they are located so far away.

NFS has proposed to monitor the groundwater of the uppermost aquifer during sediment removal to detect groundwater quality deterioration. Under the proposed monitoring plan, 14 monitoring wells (surrounding the impoundments) will be sampled monthly to determine total alpha and total beta activities. Control charts will be developed and used to determine when a trend in worsening water quality is occurring. NFS's proposed monitoring plan is designed to indicate when a worsening trend in conditions is occurring as distinguished from a short-term negative fluctuation.

If it is determined that the groundwater quality is worsening, NFS has proposed a contingency plan which may include the following actions:

1. Maximizing the dewatering to reduce the hydraulic gradient between the impoundments and the groundwater.
2. Altering the dredging operation to reduce the disturbance within the impoundment.

In summary, since the groundwater in the uppermost aquifer is already contaminated, with several contaminants being well above the EPA safe drinking water standards, it is unlikely that the sediment removal itself will pose a significant additional impact to the groundwater.

Surface Water Releases

Filtrate generated by the dewatering of wet sediments will either be pumped back into the impoundments or discharged to the Nolichucky River. Prior to discharge, the filtrate will be stored in the filtrate storage tanks until a sufficient quantity is collected for analysis. Filtrate will be measured for total alpha and beta and other constituents set forth in the modified NPDES permit. Only if analysis indicates that the filtrate meets the permit requirements, will it be discharged to the Nolichuky River. If not, then it will be either stored in the tanks prior to treatment or pumped back into the impoundments.

Filtrate will be treated in the new Waste Water Treatment System (WWTS). The final design of the WWTS will be determined based upon requirements of the modified NPDES permit and results of the filtrate treatability studies. After removal of the sediments the remaining water will be processed for discharge. At least one additional impoundment volume of infiltrating groundwater will also be treated and discharged, in order to back-flush some contamination out of the groundwater.

Atmospheric Releases

Because the sediment extraction, dewatering and packaging operations will be carried out under wet conditions, resuspension of sediments is not likely. Lack of airborne particulates will be verified with stationary air samplers inside the dewatering facility and a perimeter air sampler in the impoundment area.

Transportation

Transportation of sediment packaged in 55 gallon drums to the burial site will be via standard tractor-trailer modes on an "exclusive use" basis. Each shipment will contain about 48 drums and be limited to a maximum weight of 40,000 pounds (18,000 kilograms). Over two hundred shipments could result from processing the contaminated sediment and soil from all three impoundments over about a 2-year period.

External gamma exposure rates were estimated for 55 gallon drums containing average concentrations of compacted impoundment sediments packaged for shipment. A 55-gallon sphere was used as a model to estimate the exposure rates. Gamma attenuation due to the steel wall of the drum was not accounted for. Filter press product densities estimated to be 1.79, 1.87 and 2.05 grams per cubic centimeter for sediments from Impoundments 1, 2 and 3, respectively, were used. The external gamma exposure rates at the surface of, and at one meter from the sphere containing packaged sediments from Impoundments 1, 2 and 3 were calculated to be 9.85 and 0.48, 10.1 and 0.49, and 17.4 and 0.85 milliroentgen per hour, respectively. These are within the transportation dose limits of 200 millirem per hour at the surface of the package and 10 millirem per hour at a distance of one meter from the package as specified in 49 CFR 173.441.

The potential for routine transportation impacts has been previously analyzed for the shipment of "Radioactive, Low Specific Activity" materials if packaged in accordance with DOT regulations. Assessment of the radiological impacts of transportation for routes of similar length and nature, as may be utilized in this remediation effort, is described in a DOE report entitled, "Environmental Assessment of the Proposed Low-Level Waste Processing and Shipment System." These studies show that the shipments result in insignificant impacts to the cargo handlers, truck drivers and persons living along the route.

Although a remote possibility, a transportation accident could result in a spill due to a breach of a container. However, the material is in a form (dewatered solid) that could be recovered with a minimal loss to the environment and is of such low activity that the recovery operations would result in minimal exposure to the clean-up personnel or the general public.

Accident Analysis

A Safety Hazards Analysis (SHA) was conducted by the NFS safety function. The principal criteria applicable to the evaluation included, but were not necessarily limited to, fire protection, radiological safety, containment, confinement, and nuclear criticality prevention.

All process equipment, with the exception of the floating pump and the transfer piping, will be enclosed in such a manner that the major portion of any incidental leaks or spills, including tank overflow, will drain back into Impoundment 3.

If the volume of water in Impoundment 3 approaches maximum capacity, water will be transferred to Impoundment 1 or 2 until sufficient freeboard exists in Impoundment 3. Due to the low pressures involved and suitable pressure relief devices, a catastrophic failure, such as pipe or tank rupture, is considered unlikely.

In order to preclude the possibility of contaminating Banner Spring Branch, the sediment transfer and filtrate return piping in the area of the crossing will be encased in steel casing and connections will be minimized by NFS.

In accordance with the existing License, the NFS fire protection program consists of fire prevention, emergency equipment for fires and fixed systems for fire protection.

The potential for fire in the work area is considered minimal. Very few combustibles exist in the work area. Smoking is not permitted in the work area. The most likely source of ignition is from an electrical malfunction; fire extinguishers suitable for these types of fires will be located by NFS within the work area and onboard the floating dredge. The Plant Emergency Fire Brigade has received training in preventing situations where fires might be started and in responding to emergency situations.

Agencies and Persons Contacted

No outside agencies or persons were consulted in the preparation of this environmental assessment.

Summary and Conclusions

NFS has requested an amendment of License No. SNM–124 to authorize removal of radioactively contaminated sediment along with three to six inches of subsoil contained in the three waste-water surface impoundments located on site. NFS has proposed to extract the sediment and subsoil by slurry pumping; dewater by first allowing settlement in two 10,000 gallon cone bottom tanks and then by use of a filter press equipped with membrane plates; package and compact the dewatered sediment in 55-gallon drums; and transport the packaged sediment to a low level waste disposal facility for burial.

The staff's conclusions based on the review may be summarized as follows:

1. Removal of the impoundment sediments is a necessary step toward decontamination of the site to levels acceptable for eventual decommissioning and release for unrestricted uses.

2. Evaluation of the impacts of potential accidents showed that as long as appropriate safety measures are taken, decontamination of the impoundments will not pose a serious threat to the environment.

3. Early removal of the impoundment sediments as a source of contamination will help prevent further deterioration of the groundwater quality.

4. Even though in the long-term, sediment removal will help improve the groundwater quality, in the short-term the groundwater may worsen; however, NFS has developed a monitoring and contingency plan to detect and correct this should it occur. Presently as well as in the past, there has been no known use of groundwater for potable or irrigation purposes in the vicinity of the groundwater plume-spread from the NFS impoundments. Thus, although potential future use cannot be disregarded, further degradation of the groundwater in the short-term is not expected to have any adverse impacts on any member of the public.

5. The proposed process of removal, treatment and packaging of the impoundment sediments appears to be an effective process which will control and limit the spread of contamination from the impoundment sediments while this activity is being carried out.

Based on the above, the staff concludes that an amendment can be issued to authorize the decontamination of the impoundments in accordance with the Decommissioning Plan for Three Waste Water Impoundments, as revised, without undue radiological risk to the public or environment.

Due to the insignificant impacts to the existing environment, a finding of no significant impact is considered appropriate for this proposed action and in accordance with 10 CFR 51.31, an environmental impact statement is not warranted.

Finding of No Significant Impact

Based on the foregoing Environmental Assessment, the Commission has determined not to prepare an Environmental Impact Statement and has determined that a finding of no significant impact is appropriate.

Opportunity for a Hearing

Any person whose interest may be affected by the issuance of this amendment may file a request for a hearing. Any request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the **Federal Register**; be served on the NRC staff (Executive Director of Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852); on the licensee Nuclear Fuel Services, Inc., attn: Dr. Donald Paine, 205 Banner Hill Road, Erwin, Tennessee 37650–9718; and must comply with requirements for requesting a hearing set forth in NRC regulation, 10 CFR part 2, subpart L, "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings."

These requirements, which the requestor must describe in detail, are:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing;

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for hearing is timely, that is, filed within 30 days of the date of this notice.

In addressing how the requestor's interest may be affected by the proceeding, the request should describe the nature of the requestor's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding; the nature and extent of the requestor's property, financial, or other (i.e., health, safety) interest in the

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proceeding; and the possible effect of any order that may be entered in the proceeding upon the requestor's interest.

The NFS license amendment application dated November 17, 1989, and its revised part I dated May 1991, the Commission's Safety Evaluation Report, Environmental Assessment and Finding of No Significant Impact are available for public inspection and copying at the Commission's Public Document Room, The Gelman Building, 2120 L Street NW., Washington, DC 20555.

Dated at Rockville, Maryland, this 19th day of July 1991.

For the Nuclear Regulatory Commission.

Frederick C. Sturz,

Acting Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 91–17779 Filed 7–25–91; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–29465; File No. S7–8–90]

Options Price Reporting Authority; Notice of Filing of Amendments to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information

The parties to the Plan, collectively referred to as the Options Price Reporting Authority ("OPRA"),[1] for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("Plan") on June 17, 1991, submitted an amendment to the Plan pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 ("Act").[2]

I. Description of the Amendment

The amendment establishes a fee to be paid by persons who provide back-up facilities to OPRA Subscribers, including access to current options market information. Persons wishing to offer this service will be required to enter into a "Back-Up Facility Provider Agreement" and to pay a Back-Up Facility Access Fee and, under certain circumstances, additional device charges.

The purpose of the Back-Up Facility Provider Agreement and related fees is to permit persons to provide back-up facilities to their customers, who are OPRA Subscribers, to be used by the Subscribers in the event the Subscriber's own facilities are temporarily unavailable as a result of a natural disaster or other calamity. The Back-Up Facility Access Fee is payable by every person whose business is limited to offering back-up facilities to its customers. In addition, a device charge equal to the regular Professional Subscriber must be paid for each device actually used as a back-up facility during any month.

II. Implementation of the Amendment

The Back-Up Facility arrangement will be implemented upon its approval by the Commission pursuant to Rule 11Aa3–2(c)(2) by requiring every person who wishes to offer this service to execute a Back-Up Facility Provider Agreement and to pay the fees provided for therein. The Agreement describes the terms and conditions governing the service.

III. Request for Comment

Interested persons are invited to submit written comments on the amendments. Persons submitting comments should file six copies with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions and related items, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. All communications should refer to File No. S7–8–90 and should be submitted by August 16, 1991.

For the Commission, by the Division of Market Regulation pursuant to delegated authority. 17 CFR 200.30–3(a)(27).

Dated: July 19, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–17817 Filed 7–25–91; 8:45 am]

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[1] OPRA is a registered securities information processor.

[2] The parties to the Plan are the American Stock Exchange, Inc., Chicago Board Options Exchange, Inc., New York Stock Exchange, Inc., Pacific Stock Exchange, Inc., and Philadelphia Stock Exchange, Inc.

[Release No. 34–29466; File No. SR–CBOE–91–26]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Member and Customers Access to CBOE Constitution and Rules

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 17, 1991, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CBOE Rule 3.6 to delete redundant language regarding authorization for nominees of member organizations, codify the current Exchange policy that requires individual members and certain persons associated with member organizations to pledge to abide by the CBOE Constitution and Rules ("Rules"), and to require that all members keep and maintain a current copy of the Rules.

The text of the proposed rule is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange is proposing to delete the last sentence of paragraph (a) of CBOE Rule 3.6 pertaining to a member organization's authorization of nominees because this requirement is clearly set forth in Exchange Rule 3.8. In addition, the CBOE is proposing to codify in Rule 3.6 existing Exchange practice that individual members and executive officers, directors, principal shareholders, and general and limited partners of member organizations execute a Consent to Exchange Jurisdiction.

Finally, in order to fully understand and comply with the Exchange's Rules, as from time to time amended, and all circulars issued thereunder, CBOE members and persons associated with member organizations must have ready access to the CBOE's Constitution and Rules and the Exchange Bulletin. In addition, the Exchange believes that the Rules should be readily available to public customers. Accordingly, proposed paragraph (d) to Exchange Rule 3.6 will require members and member organizations to keep a current copy of the Exchange Rules and will require all member organizations doing business with the public to have the Rules available to customers. One copy of the paperback Rules will be given to members each time the volume is published, usually in January of each year. The Rules are updated in the Regulatory Bulletin, which is included twice a month in the weekly Exchange Bulletin. One copy of the Exchange Bulletin is currently provided to each membership. As with the Exchange Bulletin, a member organization's copy of the Rules will be distributed to the nominee of the organization.

In this regard, the Exchange intends to publish a Regulatory Circular notifying members that maintaining the paperwork Rules or the CBOE Guide, together with the Regulatory Bulletin, will satisfy the requirements of Rule 3.6(d). In addition, member organizations doing business with the public will be notified that all branch offices will be required to keep and maintain either the paperwork Rules or the CBOE Guide and the Regulatory Bulletin.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it is designed to protect investors and the public interest by insuring that all parties who utilize the facilities of the CBOE are familiar with, and have access to, the Rule governing the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date of it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 16, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 22, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-17818 Filed 7-25-91; 8:45 am]

BILLING CODE 8010-01M

[Release No. 34-29460; File No. SR-OCC-90-13]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change Relating to an Electronic Mail Service to be Offered and Fees to be Charged In Connection With the Service

July 19, 1991.

Introduction

On December 3, 1990, The Options Clearing Corporation ("OCC") filed a proposed rule change (File No. SR-OCC-90-13) with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on December 17, 1990, to solicit comments from interested persons.[2] No comments were received. On June 7, 1991, OCC filed an amendment to the proposed rule change.[3] As discussed below, this order approves the amended proposal.

II. Description of the Proposal

OCC's proposal relates to an electronic mail service ("E-Mail") to be offered in conjunction with OCC's Options News Network ("ONN").[4] Generally, electronic mail is a system that allows messages to be sent from one computer to another with the messages being stored until the receiver elects to read them. In addition to message transmission, electronic mail systems usually provide to users the capability of attaching documents to outgoing messages. Under the proposal, subscribers may utilize E-Mail to facilitate the transmission and reception of messages and other documents attached thereto.

E-Mail is currently being offered to exchange participants.[5] This proposal expands the field of eligible users of E-Mail to OCC clearing members (and their correspondents), financial institutions with which OCC has business dealings, and members of OCC's participant exchanges which are not members of OCC. OCC will not offer E-Mail to public "retail" customers.[6]

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[1] 15 U.S.C. 78s(b).

[2] Securities Exchange Act Release No. 28688 (December 10, 1990), 55 FR 51782.

[3] Letter from Jean M. Cawley, Staff Counsel, OCC, to Jerry W. Carpenter, Branch Chief, Division of Market Regulation ("Division"), Commission (June 6, 1991).

[4] ONN is an on-line centralized database developed by OCC at the request of its participant exchanges. The database contains informational memoranda and other notices issued by OCC and its participant exchanges for the benefit of clearing members as well as other options market participants. Securities Exchange Act Release No. 28669 (December 3, 1990), 55 FR 50793 (notice of filing and immediate effectiveness of ONN (SEC File No. SR-OCC-90-12)).

[5] *Id.*

[6] Letter from Jean M. Cawley, Staff Counsel, OCC, to Jonathan Kallman, Assistant Director, Division, Commission (May 9, 1991).

The ONN database, including the E-Mail facility offered in conjunction with ONN, is maintained on a system separate from the OCC clearance and settlement system.[7] Volume capacity for the system is limited only by the number of telephone lines that can be used at one time to access and enter the system, which OCC believes is adequate to meet anticipated use.

The proposed rule change also sets forth the fee schedule OCC has established for E-Mail subscribers. Those fees are as follows:

Participant Exchanges—$20.00 per month [8]
OCC Clearing Members—$15.00 per month [9]
Exchange Members (which are not OCC members but which may be correspondents of OCC members)—$20.00 per month [10]
Financial Institutions (with which OCC has business dealings)—$20.00 per month [11]

III. Discussion

Section 17A(a)(1)(C) of the Act [12] articulates Congress' finding that clearing agencies' new data processing and communications techniques create the opportunity for more efficient, effective, and safe procedures for clearance and settlement. As noted above, OCC has indicated that the E-Mail system will expedite communication of information between OCC, its members, and other E-Mail subscribers. The Commission concurs and believes that this technique for the transfer of information is efficient, effective, and safe.

Section 17A(b)(3)(D) of the Act [13] requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. The Commission believes that the fees associated with this optional information transfer technique are reasonable.

Because E-Mail is a novel service for a clearing agency to provide, OCC, at the Commission's request, has agreed that one year after the date of this approval order it will perform an assessment of E-Mail. The assessment will include such subjects as: a general assessment of the facility; description of any problems in the system and responses to such problems; subscriber complaints and disposition of those complaints; and planned modifications to the system. OCC will provide a copy of the report to the Division. Additionally, the Commission notes that OCC has agreed to maintain a log of subscribers' use of the E-Mail system.[14]

IV. Conclusion

For the reasons stated above, the Commission finds that OCC's proposal is consistent with section 17A of the Act.

IT IS THEREFORE ORDERED, pursuant to section 19(b)(2) of the Act,[15] that OCC's proposed rule change (SR-OCC-90-13) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-17819 Filed 7-25-91; 8:45 am]

BILLING CODE 8010-01-M

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[1] 15 U.S.C. 78s(b).

[7] Letter from Jean M. Cawley, Staff Counsel, OCC, to Jerry W. Carpenter, Branch Chief, Division, Commission (June 6, 1991).

[8] Organizations with five or more passwords utilizing E-Mail will receive a discounted fee of $12.00 per month per password.

[9] *Id.*

[10] Subscribers will be invoiced for the full calendar year subscription to E-Mail.

[11] *Id.*

[12] 15 U.S.C. 78q-1(a)(1)(C).

[13] 15 U.S.C. 78q-1(b)(3)(D).

[14] Subscribers to ONN and E-Mail are reminded that certain transmissions may be subject to their recordkeeping requirements provided in Act Rules 17a-1, 17a-3, and 17a-4 (17 CFR 240.17a-1, 240.17a-3, and 240.17a-4).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30-3(a)(12).

[Release. No. IC-18244; File No. 812-7707]

SMA Life Assurance Co.

July 19, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: SMA Life Assurance Company ("SMA Life"), SMA Life Separate Account VA-K ("Account VA-K"), and SMA Equities, Inc.

RELEVANT 1940 ACT SECTIONS: Exemption requested under Section 6(c) from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit the deduction of mortality and expense risk charges from the assets of Account VA-K pursuant to certain individual combination fixed/variable annuity contracts issued by SMA Life (the "Contracts").

FILING DATE: The application was filed on April 3, 1991 and amended on June 14, 1991.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m., on August 13, 1991. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, Washington, DC 20549. SMA Life, c/o Sheila B. St. Hilaire, 440 Lincoln Street, Worcester, Massachusetts, 01605.

FOR FURTHER INFORMATION CONTACT: Cindy Rose, Financial Analyst (202) 272-3027 or Nancy M. Rappa, Senior Staff Attorney (202) 272-2622, Office of Insurance Products and Legal Compliance (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. SMA Life, a stock life insurance company organized under the laws of Delaware, is the depositor and sponsor of Account VA-K. Account VA-K is registered with the SEC as a unit investment trust under the 1940 Act. Account VA-K consists of nine subaccounts, each of which invests solely in the shares of one of the funds of SMA Investment Trust (the "Trust") or of the portfolios of Variable Insurance Products Fund ("VIPF"). SMA Equities, Inc. is the principal underwriter for the Contracts.

2. The Contracts are combination fixed/variable annuity contracts which may be used for either immediate or deferred annuities. The Contracts may be issued to plans qualifying for special federal income tax treatment, plans and trusts which do not qualify for special tax treatment under the Internal Revenue Code, and individuals. The Contracts permit multiple purchase payments, unlimited as to frequency or number, but with initial and subsequent minimums of $600 and $50, respectively. Contract owners may allocate net purchase payments to any one or more of the subaccounts, and to the general

account of SMA Life for accumulation on a fixed basis.

3. Prior to the annuity commencement date, SMA Life assesses an annual contract charge, equal to the lesser of $30 or 3% of the accumulated value of the Contract. The contract charge will be deducted on each Contract anniversary and at full surrender or annuitization of the Contract during a contract year. SMA Life guarantees that the amount of this charge will not increase over the life of the Contract.

4. In addition, for certain administrative and clerical services, SMA Life assess a daily charge equal to 0.20% on an annual basis of the current value of the subaccounts of Account VA–K. The level of this administrative service charge is guaranteed not to increase.

5. The contract charge and the administrative service charge are designed to cover the cost of administrative and related expenses and are not expected to be a source of profit.

6. The Contracts do not assess a front-end sales charge from the gross purchase payments made by owners. In lieu of a front-end sales charge, the Contracts assess a contingent deferred sales charge which is applied in the case of Contract surrender, partial redemptions or annuitization under period certain options during certain periods.

7. For purposes of determining the contingent deferred sales charge, the accumulated value is divided into three categories: (1) purchase payments received by SMA Life during the nine years preceding the date of the surrender ("New Payments"); (2) purchase payments not defined as New Payments ("Old Payments"); and (3) the amount of accumulated value in excess of all purchase payments that have not been previously surrendered ("Earnings"). For purposes of determining the amount of any contingent deferred sales charge, surrenders will be deemed to be taken first from Old Payments, then from New Payments, and then from Earnings. Old Payments may be withdrawn from the Contract at any time without the imposition of a contingent deferred sales charge. Then, for the purpose of calculating surrender charges for New Payments, all amounts withdrawn are assumed to be deducted first from the earliest New Payment and then from the next earliest New Payment and so on, until all New Payments have been exhausted pursuant to the FIFO method of accounting. Subsequent withdrawals will be deducted from Earnings.

8. The contingent deferred sales charge is computed as follows:

Years from date of payment to date of withdrawal	Withdrawal charge (percent)
less than 2	8
2 but less than 3	7
3 but less than 4	6
4 but less than 5	5
5 but less than 6	4
6 but less than 7	3
7 but less than 8	2
8 but less than 9	1
9 or more	0

The charge is applied as a percentage of the New Payments redeemed. In no event will the total contingent deferred sales charges assessed against a Contract exceed 8% of the gross New Payments.

9. In each calendar year, SMA Life will waive the contingent deferred sales charge, if any, on an amount equal to a given percentage of the accumulated value ("Free Withdrawal Amount") under a Contract. In the event that a redemption of New Payments is made in excess of the amount that may be redeemed free of charge, only the excess will be subject to a contingent deferred sales charge.

10. To compensate for its assumption of certain mortality and expense risks, SMA Life will deduct from the daily net asset value of each subaccount an amount computed daily, which is equal to an annual rate of 1.25%. The charge is approximately allocable 0.80% to SMA Life's assumption of mortality risks and O.45% to SMA Life's assumption of expense risks. Applicants represent that the level of this charge is guaranteed not to increase.

11. The mortality risk arises from SMA Life's guarantees: (a) that it will make annuity payments, in accordance with annuity rate provisions established within the Contract at the time it is issued, for the life of the annuitant (or in accordance with the annuity option selected), no matter how long the annuitant or other payee lives and no matter how long all annuitants as a class 1ive and (b) that it will pay the special death benefit available under the Contract prior to annuitization. The expense risk arises from SMA Life's guarantee that the charges it makes will not exceed the limits described in the Contracts.

12. If the mortality and expense risk charge is insufficient to cover the Company's mortality costs and excess expenses, SMA Life will absorb the losses. If expenses are less than the amounts resulting from the charge, the difference will be a profit to SMA Life. Any such profit will be available for use by SMA Life for any lawful purpose, including the payment of sales, distribution and other expenses not covered by the contingent deferred sales charge. SMA Life acknowledges that the contingent deferred sales charge alone may be insufficient to recoup distribution expenses.

13. Applicants represent that the charge of 1.25% for the mortality and expense risks assumed by SMA Life is within the range established by industry practice for similar contracts. This representation is based on SMA Life's analysis of similar industry products, taking into account such factors as current charge levels, existence of charge level guarantees, and guaranteed annuity rates.

14. SMA Life represents that it will maintain at its home office, and make available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

15. Applicants represent that profits, if any, from the mortality and expense risk charge could be viewed as indirectly providing for a portion of the costs relating to the distribution and sales of the Contracts. SMA Life nevertheless has concluded that there is a reasonable likelihood that the proposed distribution financing arrangement will benefit Account VA–K and Contract owners.

16. SMA Life will maintain at its administrative offices and make available to the Commission a memorandum setting forth the basis for the conclusion that Account VA–K's distribution financing arrangements might benefit Account VA–K and the Contract owners.

17. Account VA–K will invest only in open-end management investment companies which undertake, in the event such company adopts a plan under rule 12b–1 under the 1940 Act to finance distribution expenses, to have a Board of Trustees or Directors, a majority of the members of which will not be "interested persons" of such investment company, formulate and approve such plan under rule 12b–1.[1]

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–17736 Filed 7–25–91; 8:45 am]

BILLING CODE 8010-01-M

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[1] Applicants represent that, during the notice period, the application will be amended to reflect this representation.

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	8
	7
	6
	5
	4
	3
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distribution and other expenses not covered by the contingent deferred sales charge. SMA Life acknowledges that the contingent deferred sales charge alone may be insufficient to recoup distribution expenses.

13. Applicants represent that the charge of 1.25% for the mortality and expense risks assumed by SMA Life is within the range established by industry practice for similar contracts. This representation is based on SMA Life's analysis of similar industry products, taking into account such factors as current charge levels, existence of charge level guarantees, and guaranteed annuity rates.

14. SMA Life represents that it will maintain at its home office, and make available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

15. Applicants represent that profits, if any, from the mortality and expense risk charge could be viewed as indirectly providing for a portion of the costs relating to the distribution and sales of the Contracts. SMA Life nevertheless has concluded that there is a reasonable likelihood that the proposed distribution financing arrangement will benefit Account VA–K and Contract owners.

16. SMA Life will maintain at its administrative offices and make available to the Commission a memorandum setting forth the basis for the conclusion that Account VA–K's distribution financing arrangements might benefit Account VA–K and the Contract owners.

17. Account VA–K will invest only in open-end management investment companies which undertake, in the event such company adopts a plan under rule 12b–1 under the 1940 Act to finance distribution expenses, to have a Board of Trustees or Directors, a majority of the members of which will not be "interested persons" of such investment company, formulate and approve such plan under rule 12b–1.[1]

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–17736 Filed 7–25–91; 8:45 am]

BILLING CODE 8010-01-M

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[1] Applicants represent that, during the notice period, the application will be amended to reflect this representation.

[Release No. 35–25351]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

July 19, 1991.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 12, 1991 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Central Power and Light Company (70–7861)

Central Power and Light Company ("CPL"), 539 North Carancahua Street, Corpus Christi, Texas 78401, an electric public-utility subsidiary company of Central and South West Corporation, a registered holding company, has filed a declaration under section 12(d) of the Act and rule 44 thereunder.

CPL owns and maintains as part of its transmission system approximately 14.2 miles of 345 KV transmission line ("Line Section") in Wharton County, Texas. The Line Section was originally constructed by CPL in 1974 as part of the transmission line extending from CPL's Lon C. Hill plant to the W.A. Parish plant, owned by Houston Lighting & Power Company ("HPL"), a nonaffiliate company. The Line Section was interconnected with HLP's transmission line within the South Texas Project ("STP") corridor upon completion of the corridor in 1981. STP Unit 1 went into commercial operation on August 25, 1988.

CPL proposes to lease to HLP the Line Section in Wharton County, Texas in accordance with a lease agreement ("Agreement"). The Agreement provides for HLP to pay CPL a rental rate of $13,442 per month. The Agreement will be effective beginning August 25, 1988 for an initial term of 30 years. The parties contemplate that a lump sum payment will be made by HLP to CPL upon the effectiveness of the Agreement for the period from August 25, 1988 to the present. CPL expects to apply the proceeds of the proposed lease to its general operating funds.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–17737 Filed 7–25–91; 8:45 am]

BILLING CODE 8010-01-M

SUSQUEHANNA RIVER BASIN COMMISSION

Proposed Project Review Filing & Monitoring Fee Schedule

AGENCY: Susquehanna River Basin Commission (SRBC).

ACTION: Notice of re-proposal.

SUMMARY: Notice is hereby given that the Susquehanna River Basin Commission is re-proposing and seeking comments on a filing and monitoring fee schedule.

DATES: Written comments should be submitted by August 31, 1991.

ADDRESSES: Written comments should be submitted to Richard A. Cairo, Secretary to the Commission, 1721 N. Front St., Harrisburg, PA. 17102–2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, Secretary to the Commission (717) 238–0423.

SUPPLEMENTARY INFORMATION: In the April 10, 1991 issue of the **Federal Register**, at p. 14556, the Susquehanna River Basin Commission proposed two alternative forms of a project review filing and monitoring fee schedule to help defray a portion of the costs associated with processing project review applications and monitoring compliance with Commission regulations. The proposed schedules were also published in Pennsylvania Bulletin, the New York Register and the Maryland Register. On May 23, 1991 the Commission held a public hearing to receive comments on the proposed schedules. A thirty-day written comment period was allowed following the hearing.

The Commission has received numerous comments on the fee schedules and has made a number of changes in response to those comments. Those changes are reflected in the re-proposed fee schedule published herein and are summarized as follows:

1. Most commentators felt that Alternative 1, which assesses fees on the basis of water requested for consumption or use, is a fairer method of assessing a fee than Alternative 2 which is based on project cost. The Commission agrees that Alternative 1 is a fairer reflection of a project's impact on water resources and therefore chooses Alternative 1.

2. Some commentators cited paragraph 2(g) of Alternative 1 as being overly broad and vague. Upon consideration, the Commission agrees and therefore paragraph 2(g) is being deleted from the re-proposed fee schedule.

3. Commission staff, upon further review, noted the need to add the word "requested" before the words "consumptive use" in paragraph 3(a) to make it clear that the application fee will be based on the amount of consumptive use requested for approval.

Also, with respect to paragraph 3(a), many agricultural interests complained that the application/monitoring fee schedule for consumptive users could be overly burdensome for agricultural users whose main consumptive use, irrigation, is intermittent in nature. Such intermittent users should be exempted from the fees or given some form of relief.

The Commission recognizes that, while irrigation is a consumptive use of water for purposes of Commission Regulation 803.61 (18 CFR 803.61), it is also an intermittent use. When intermittent irrigation is calculated on a 30 consecutive day average basis, as prescribed by Commission Regulation 803.61, many irrigation projects may be determined to be below the regulatory threshold of 20,000 gpd and thus be free of any regulation and fees.

To afford relief to those irrigators and other intermittent users exceeding the threshold amount, the Commission is adding sub-paragraph (i) to paragraph 3(a) which provides that projects consuming water in excess of the threshold amount for not more than any single 90 consecutive day period each calendar year shall pay an application fee of $250.00. In a similar vein, the Commission is proposing to exempt these same users from annual compliance monitoring fees as now proposed in new paragraph 5(a)(i).

4. A number of commentators had difficulty discerning the meaning of paragraph 4 which referred to fees for "revision of or addition to projects previously submitted to the Commission." The intent of this paragraph is to cover projects which are modified and must be re-submitted to the Commission for approval. The new wording below clearly indicates that intent.

5. The Commission staff, upon further review, recommended that the four-tiered monitoring fee be reduced to a three-tiered scale which would retain a $100 annual compliance monitoring fee for small consumptive users consuming up to 100,000 gpd.

The Commission received a number of other comments. These are summarized by category below and responses are provided.

Comment No. 1: The Compact does not authorize project review application fees or monitoring and compliance fees. The fees are not justified by the actions performed by staff.

Response: Article 3, § 3.9—Rates and Charges, authorizes the Commission, after public hearing, to fix, alter and revise rentals, charges and tolls for services it provides. In addition, Article 3, Section 3.4(8)—Powers of the Commission, states that the Commission may "exercise all powers necessary or convenient to carry out its express powers, and other powers which may be implied therefrom."

In reviewing project applications, the Commission provides a service to a specific project sponsor. The Commission staff often meets with applicants, explaining the regulatory requirements and suggesting methods and strategies for compliance. Depending on the complexity of a proposed project, staff expends several man-hours meeting with applicants, corresponding with them by letter and telephone and reviewing all pertinent material related to the project. A computerized data file is maintained to track all projects and monitor their continued compliance.

With respect to monitoring and compliance, the Commission must monitor the streams of the basin to determine when low flows occur and then advise permittees of those low flows so that they can take the steps needed to comply with the regulation. This is a service to the permittees and protects other uses and users on the stream. The Commission must also assimilate and store the data which consumptive users and well operators periodically submit.

Comment No. 2: All revenues to operate the project review functions of the Commission should originate through the appropriations process thus imposing accountability on the Commission for the use of these funds. Fees are just an attempt to circumvent that process and impose a tax.

Response: The proposed fees are projected to provide less than 30% of the cost to operate the project review functions of the Commission. Thus, most of the funds will originate with the appropriations process. The Commission's financial records are audited annually and the Commission is held accountable for all monies it acquires and utilizes, regardless of its source.

We would note further that it is not uncommon for governmental units who rely on appropriated funds to impose fees. Such fees are charged by the U.S. Corps of Engineers, the Pa. Dept. of Environmental Resources, the New York State Dept. of Environmental Conservation and the Delaware River Basin Commission. Local units of government such as county row offices and municipalities charge fees for such services as recording papers, filing law suits, and applying for zoning or building permits. These fees are not taxes in that they are not directed to the general populace, but to the users of the services provided.

Comment No. 3: Both alternatives presented by the Commission are not directly related to the Commission's costs of conducting reviews. The fiscal justification for these fees has not been made clear.

Response: If the Commission based its project review application fees on the actual cost of conducting reviews, the fees would have to be much higher. The cost of conducting reviews has now risen above the $200,000 per year level as more and more projects of qreater complexity have been submitted to the Commission. The fee schedule alternatives are designed to recover less than 30 of the actual review costs.

Comment No. 4: The Commission should exempt local units of government from any and all fees.

Response: About 70% of the applicants for ground-water withdrawals are municipalities or their related authorities. Exempting these municipalities, which generate the preponderance of review costs, will severely limit the effectiveness of the fee schedule in defraying a portion of the project review costs. In addition, all applicants, including municipalities, will receive a dollar for dollar credit for any fees they pay to any signatory party for the same scope of review on the same project. Also, where the Commission exercises an oversight review of surface water allocations to public water suppliers, no project review fees will be assessed.

Comment No. 5: The proposed monitoring and compliance fees pertaining to consumptive users are arbitrary because there is no difference in the amount of effort it takes to monitor small or large users.

Response: In setting monitoring fees, the Commission does not believe it is arbitrary to give some consideration to the applicant's impact on the system as a factor in setting fees. Larger users usually involve more complex systems and have a greater potential to impact a larger position of the basin's water resources. Review and often monitoring becomes more complex and involved and thus more costly.

Comment No. 6: The fee schedule imposes regulations where there were none before.

Response: This is a misconception. "Regulations and Procedures for Review of Projects" has been in effect for quite some time covering such projects as consumptive uses and ground water withdrawals. There have been no fees charged for such reviews up to this time.

Re-Proposed Project Review Filing Fee

1. A non-refundable project review fee shall be paid to the Commission, according to the schedule herein, for projects described in paragraph 2 hereof. Agencies, authorities, or commissions of the signatories to the Compact shall be exempt from such project review fee; however, political subdivisions of the signatory states shall be subject to said fee.

2. A project review fee under this resolution shall be required for the following categories of projects which require review and approval by the Commission under section 3.10(2) of the Compact and Commission Regulation 803.3 and 803.4 (18 CFR 803.3 & 803.4):

a. Diversions of water into or out of the Susquehanna River Basin.

b. Surface water withdrawals for which the Commission has primary review authority as may be applicable within the signatory states; provided, however, that the Commission shall exercise as it deems necessary overview of proposed surface withdrawals and subsequent allocations of water and shall exempt such overview action from its project review fees.

c. Hydroelectric projects.

d. Stream encroachments including local flood protection projects and impoundments having potential to cause interstate effects, or such other projects as the Commission may determine necessary.

e. Consumptive uses as defined and regulated by Commission Regulation 803.61 (18 CFR § 803.61).

f. Ground-water withdrawals as defined and regulated by Commission Regulation 803.62 (18 CFR § 803.62).

3. Fee Schedule

a. All projects involving consumptive use of water will be charged an application fee based on their requested consumptive use in accordance with the following schedule:

(i) Projects consuming water in excess of a consecutive thirty day average of 20,000 gpd for not more than any single 90 consecutive day period each calendar year—$250.00; and

(ii) All other projects as follows:

20,000 gallons per day (gpd)–100,000 gpd	$750
100,001 gpd–500,000 gpd	3,000
500,001 gpd–1 million gallons per day (mgd)	6,000
Over 1 mgd	12,000

b. All hydropower projects will be charged an application fee based on name plate generation capacity as follows:

Less than 1 megawatt	$250
1–10 megawatts	1,500
Greater than 10 megawatts	7,500

These fees will be charged for review of applications for FERC exemption, short form, or regular license, if the hydro project requires Commission review and approval as per paragraph 2 above. No fee will be charged for review of applications for a preliminary permit.

c. Stream encroachments—$2,500.

d. All other project review fees will be based on the quantities of water requested in the application as follows:

Up to 250,000 gpd	$1,000
250,001 to 500,000 gpd	2,000
500,001 gpd to 1 mgd	3,000
Over 1 mgd	4,000

e. If any project involves more than one of the above elements, the highest of the applicable fees shall apply.

4. The applicable fee shall be submitted upon billing by the Commission. Modification of projects previously approved by the Commission shall require submission of a review fee as provided herein unless the Commission finds that the said modification requires no significant review by staff.

5. Except as otherwise provided by contract, the sponsors of projects previously approved by the Commission shall be required to pay an annual compliance monitoring fee as follows:

a. All consumptive use projects will be charged as follows:

(i) Projects consuming water in excess of a consecutive thirty day average of 20,000 gpd for not more than any single 90 consecutive day period each calendar year will be exempted; and

(ii) All other projects as follows:

20,000 gpd—100,000 gpd	$100
100,001 gpd—1 mgd	500
Over 1 mgd	1,500

b. All ground-water withdrawal projects will be charged $100.

c. Projects having special monitoring requirements may be assessed annual fees as determined by Commission review.

d. Projects that have consumptive use from ground-water sources will be charged a fee from each category of a and b above.

6. In assessing the application fees, the Commission shall give a dollar for dollar credit to the project sponsor for any application fees paid to any signatory agency for the same scope of review on the same project.

7. Whenever, under the guidelines and requirements of Commission Regulation 18 CFR part 803, subpart C, §§ 803.40–803.51, the Commission holds a public hearing or an adjudicatory hearing on a project, the project sponsor shall be required to pay the reasonable costs of holding and making a record of said hearing.

8. Revenues received pursuant to this resolution shall be deposited in the Commission's general fund and be appropriated for use in support of the Commission's Annual Expense Budget.

Authority: Susquehanna River Basin Compact, 84 Stat 1509 *et seq.*

Dated: July 18, 1991.

Robert J. Bielo,

Executive Director.

[FR Doc. 91–17734 Filed 7–25–91; 8:45 am]

BILLING CODE 7040-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 91–7–24]

Fitness Determination of Rocky Mountain Helicopters, Inc.; D/B/A Rocky Mountain Aviation D/B/A Advantage Airlines

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination, order to show cause.

SUMMARY: The Department of Transportation is proposing to find that Rocky Mountain Helicopters, Inc. d/b/a Rocky Mountain Aviation d/b/a Advantage Airlines is fit, willing, and able to provide commuter air service under section 419(e) (1) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P–56, room 6401, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than August 6, 1991.

FOR FURTHER INFORMATION CONTACT: Mrs. Janet A. Davis, Air Carrier Fitness Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

Dated: July 22, 1991

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 91–17722 Filed 7–25–91; 8:45 am]

BILLING CODE 4910-62-M

[Order 91–7–25]

Fitness Determination of Safe Air International, Inc. d/b/a Island Express.

AGENCY: Department of Transportation.

ACTION: Notice of Commuter Air Carrier Fitness Determination; order to show cause.

SUMMARY: The Department of Transportation is proposing to find that Safe Air International, Inc. d/b/a Island Express is fit, willing, and able to provide commuter air service under section 419(e) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P–56, room 6401, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than August 6, 1991.

FOR FURTHER INFORMATION CONTACT: Mrs. Barbara P. Dunnigan, Air Carrier Fitness Division, Department of

Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2342.

Dated: July 22, 1991.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 91–17723 Filed 7–25–91; 8:45 am]

BILLING CODE 4910–62–M

Advisory Commission on Conferences in Ocean Shipping; Notice of Open Meeting

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice of open meeting of the Advisory Commission on Conferences in Ocean Shipping.

SUMMARY: The Commission will be holding its fourth field hearing in Portland, OR on August 9, 1991; the hearing will be open to the public. In the morning, the Commission plans to focus on issues related to antitrust immunity for conferences and other participants in the ocean shipping industry. In the afternoon, the Commission plans to hear testimony on all issues relating to the Shipping Act of 1984 and conferences in the ocean shipping industry.

DATES: Public hearing: Friday, August 9, 1991, 8:30 a.m. to 5 p.m. Pdt. Deadline for requests to speak at the public hearing: Friday, August 2, 1991.

ADDRESS: The address for the public hearing is World Trade Center, One World Trade Center Portland, Portland, OR, 97204, in the Mezzanine Level, Rooms 1, 2, and 3.

FOR FURTHER INFORMATION CONTACT: James L. Reitzes, Economist, or Ruth Dicker, Counsel, Advisory Commission on Conferences in Ocean Shipping, Department of Transportation, 400 Seventh Street, SW., room 5102, Washington, DC 20590; telephone (202) 366–9781; FAX (202) 366–7870.

SUPPLEMENTARY INFORMATION: The Commission was created by the Shipping Act of 1984 to conduct an independent and comprehensive study of conferences in ocean shipping, particularly whether the Nation would be best served by prohibiting conferences, or by closed or open conferences. The Commission is to provide its report, including recommendations, to the President and the Congress by April 10, 1992. The Commission began formal operations on April 10, 1991, at a day-long open meeting in Washington, DC, at which the Commission heard reports from Federal agencies on the impact of the 1984 Act and discussed issues to be studied by the Commission.

As part of its study, the Commission has been holding a series of public hearings around the United States. It held hearings on June 3, 1991 in New Orleans, LA; June 21, 1991, in San Francisco, CA; and July 12, 1991 in Charleston, SC. The last hearing is scheduled for New York, NY (September 13, 1991). At each hearing, a part of the day has been dedicated to issues generally raised by the 1984 Act, and part of each hearing has focused on a specific predesignated issue.

The Commission will be holding its fourth field hearing on August 9, 1991 in Portland, OR, at The World Trade Center Portland, Portland, OR 97204, in Mezzanine Level, Rooms 1, 2, and 3. Attendance is open to the public but limited to space available. The morning session will be devoted to testimony on issues related to antitrust immunity for conferences and other participants in the ocean shipping industry. The afternoon session will be open to receive testimony on any aspect of the Shipping Act of 1984.

Interested members of the public are invited to address the Commission at the August 9, 1991 hearing. In order to be assured of an opportunity to do so, each person wishing to speak should contact James Reitzes or Ruth Dicker at the address set out above by August 2, 1991. Each such person is also requested to provide by August 2, 1991 a copy of the testimony he/she will present at the Commission hearing. Persons from similar segments of the international ocean shipping industry (e.g., shippers, freight forwarders, carriers) may be grouped into panels of 2–3 persons. In this situation, each person will be given 5 minutes to summarize (give key points of) his testimony, followed by a 15 minute question and answer period. Persons who the staff believes cannot effectively be placed in a panel will present testimony individually, followed by a question and answer period. Persons appearing before the Commission are encouraged to support all opinions with factual information and evidence. To the extent that time permits and that it does not disrupt the orderly process of the meeting and will not be unfair to any person, persons who do not make prior written requests to speak will be given opportunity to do so as part of the afternoon session.

Persons who wish to provide written comments for the Commission's consideration may do so at any time by forwarding them to the address set out above.

Issued in Washington, DC on July 24, 1991.

Florizelle B. Liser,

Executive Director.

[FR Doc. 91–17944 Filed 7–26–91; 8:45 am]

BILLING CODE 4910–62–M

Office of Hearings

[U.S.-Italy Service Case Docket 47654]

Assignment of Proceeding

This proceeding has been assigned to Chief Administrative Law Judge John J. Mathias. All future pleadings and other communications regarding the proceeding shall be served on him at the Office of Hearings, M–50, room 9228, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2142.

John J. Mathias,

Chief Administrative Law Judge.

[FR Doc. 91–17855 Filed 7–25–91; 8:45 am]

BILLING CODE 4910–62–M

[U.S.-Italy Service Case Docket 47654]

Prehearing Conference

Notice is hereby given that a prehearing conference in the above entitled matter is assigned to be held on August 7, 1991, at 10 a.m. (local time), in room 5332, Nassif Building, 400 Seventh Street, SW., Washington, DC, before Administrative Law Judge John J. Mathias. Order 91–7–28, instituting this proceeding was issued on July 22, 1991, and posted on that same date.

In order to facilitate the conduct of the conference, all parties and potential parties are directed to submit one copy to each entity on the attached service list and six copies to the Judge of (1) proposed statement of the issues; (2) proposed stipulations; and (3) proposed changes in request for information and evidence set forth in the appendix to Order 91–7–28. Public Counsel will circulate their material on or before July 26, 1991, and the other parties and potential parties shall do so on or before August 2, 1991. The submissions of other parties and potential parties shall be limited to points on which they differ with Public Counsel and shall follow the numbering and lettering used by Public Counsel to facilitate cross-referencing.

The Instituting Order in this proceeding sets a deadline for the Recommended Decision in this mater of December 6, 1991. In order to adhere to this deadline, the case will be set for hearing on October 1 through 4, 1991. If additional time is needed for the presentation of evidence, we will have

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Issued in Washington, DC on July 24, 1991.

Florizelle B. Liser,

Executive Director.

[FR Doc. 91–17944 Filed 7–26–91; 8:45 am]

BILLING CODE 4910-62-M

Office of Hearings

[U.S.-Italy Service Case Docket 47654]

Assignment of Proceeding

This proceeding has been assigned to Chief Administrative Law Judge John J. Mathias. All future pleadings and other communications regarding the proceeding shall be served on him at the Office of Hearings, M–50, room 9228, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2142.

John J. Mathias,

Chief Administrative Law Judge.

[FR Doc. 91–17855 Filed 7–25–91; 8:45 am]

BILLING CODE 4910-62-M

[U.S.-Italy Service Case Docket 47654]

Prehearing Conference

Notice is hereby given that a prehearing conference in the above entitled matter is assigned to be held on August 7, 1991, at 10 a.m. (local time), in room 5332, Nassif Building, 400 Seventh Street, SW., Washington, DC, before Administrative Law Judge John J. Mathias. Order 91–7–28, instituting this proceeding was issued on July 22, 1991, and posted on that same date.

In order to facilitate the conduct of the conference, all parties and potential parties are directed to submit one copy to each entity on the attached service list and six copies to the Judge of (1) proposed statement of the issues; (2) proposed stipulations; and (3) proposed changes in request for information and evidence set forth in the appendix to Order 91–7–28. Public Counsel will circulate their material on or before July 26, 1991, and the other parties and potential parties shall do so on or before August 2, 1991. The submissions of other parties and potential parties shall be limited to points on which they differ with Public Counsel and shall follow the numbering and lettering used by Public Counsel to facilitate cross-referencing.

The Instituting Order in this proceeding sets a deadline for the Recommended Decision in this mater of December 6, 1991. In order to adhere to this deadline, the case will be set for hearing on October 1 through 4, 1991. If additional time is needed for the presentation of evidence, we will have to have extended hours on those dates, and, possibly, also hold hearings on October 5 and 6. The prescribed deadline will also require an expedited schedule in other respects. Accordingly, I expect to adhere to the following procedural schedule:

Direct Exhibits will be due: August 28, 1991
Rebuttals will be due: September 24, 1991
Posthearing briefs will be due: October 25, 1991[1]
Recommended Decision on or before: December 6, 1991

In view of the expedited schedule the parties and potential parties are advised to begin the preparation of their testimony and exhibits immediately. All parties to the proceeding will be expected to cooperate in bringing this matter to decision within the prescribed deadline.

So Ordered.

John J. Mathias,

Chief Administrative Law Judge.

[FR Doc. 91–17856 Filed 7–25–91; 8:45 am]

BILLING CODE 4910-62-M

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[1] Due to the short deadline provided, there will be no time for reply briefs.

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Sunshine Act

This section of the FEDERAL
contains notices of meetings p
under the "Government in the
Act" (Pub. L. 94-409) 5 U.S.C.

FARM CREDIT ADMINISTRA

Farm Credit Administration
Special Meeting

AGENCY: Farm Credit Adminis

SUMMARY: Notice is hereby gi
pursuant to the Government i
Sunshine Act (5 U.S.C. 552b(e
special meeting of the Farm C
Administration Board (Board)

DATE AND TIME: The special m
the Board was held at the offi
Farm Credit Administration i
Virginia, on July 25, 1991, fron
until such time as the Board c
its business.

FOR FURTHER INFORMATION C
Curtis M. Anderson, Secretar
Farm Credit Administration
883–4003, TDD 703 883–4444.

ADDRESS: Farm Credit Admir
1501 Farm Credit Drive, McL
Virginia 22102–5090.

SUPPLEMENTARY INFORMATIO
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The matter considered at the
was:

Closed Session*

New Business

- Government-Sponsored Ent
Agency Options

Dated: July 24, 1991.

Curtis M. Anderson,
Secretary, Farm Credit Adminis

[FR Doc. 91–17956 Filed 7–24–90;

BILLING CODE 6705–01–M

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* Session closed to the public—ex
to 5 U.S.C. § 552b(c)(9).

Sunshine Act Meetings

Federal Register
Vol. 56, No. 144
Friday, July 26, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board was held at the offices of the Farm Credit Administration in McLean, Virginia, on July 25, 1991, from 10:00 a.m. until such time as the Board concluded its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD 703 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board was closed to the public pursuant to exemptive provisions of the Government in the Sunshine Act. The matter considered at the meeting was:

Closed Session*

New Business

- Government-Sponsored Enterprises—Agency Options

Dated: July 24, 1991.

Curtis M. Anderson,
Secretary, Farm Credit Administration Board.

[FR Doc. 91-17956 Filed 7-24-90; 3:13 pm]
BILLING CODE 6705-01-M

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* Session closed to the public—exempt pursuant to 5 U.S.C. § 552b(c)(9).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, July 30, 1991, to consider the following matters:

Memorandum and resolution re: Final amendments to part 308 of the Corporation's rules and regulations, entitled "Rules of Practice and Procedures," which make uniform those rules concerning formal enforcement actions.

Memorandum and resolution re: Proposed amendments to the Corporation's rules and regulations in the form of a new part 356, entitled "Insider Transactions—Conflicts of Interest," which would: (1) Provide that business dealings (other than extensions of credit) between an insured nonmember bank and its directors, executive officers, principal shareholders and related interests of such persons must meet an arms-length standard, (2) require that covered business dealings be approved by the bank's board of directors in advance if the dollar value of the business dealings exceed a certain aggregate figure, (3) require bank insiders to disclose their conflicts of interest, (4) provide for certain recordkeeping requirements, (5) require the bank's board of directors to adopt written guidelines governing covered business dealings, and (6) prohibit insured nonmember banks from investing in real estate in which any of the bank's directors, executive officers, principal shareholders or related interests of such persons has an equity interest.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: July 23, 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 91–17873 Filed 7–24–91; 8:48 am]
BILLING CODE 6714-01-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Board of Directors of the Resolution Trust Corporation will meet in open session following the FDIC open session that begins at 2:00 p.m. on Tuesday, July 30, 1991 to consider the following matters:

Summary Agenda:

- *Memorandum re:*
  Delegations of authority relating to staffing.
- *Memorandum re:*
  Delegations of authority relating to personnel.

Discussion Agenda:

- *Memorandum re:*
  Proposed rule regarding the establishment of minority and women contracting program to ensure inclusion, to the maximum extent possible, of firms owned by minorities and women in RTC contracting activities.
- *Memorandum re:*
  Proposed revisions to indemnification of contractors.
- *Memorandum re:*
  Mid-year budget review and staffing analysis.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 500—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. William J. Tricarico, Assistant Executive Secretary of the Resolution Trust Corporation, at (202) 416–7282.

Dated: July 23, 1991.

Resolution Trust Corporation.

William J. Tricarico,
Assistant Executive Secretary.

[FR Doc. 91–17923 Filed 7–24–91; 12:10 pm]
BILLING CODE 6714-01-M

Corrections

This section of the FEDERAL R
contains editorial corrections of p
published Presidential, Rule, Prop
Rule, and Notice documents. Th
corrections are prepared by the
the Federal Register. Agency pre
corrections are issued as signed
documents and appear in the ap
document categories elsewhere i
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DEPARTMENT OF EDUCATION

Office of Special Education an
Rehabilitative Services; Intent
Compromise a Claim, Minneso
Department of Education

Correction

In notice document 91-17069
appearing on page 33026 in the i

Corrections

Federal Register
Vol. 56, No. 144
Friday, July 26, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Intent To Compromise a Claim, Minnesota Department of Education

Correction

In notice document 91-17069 appearing on page 33026 in the issue of Thursday, July 18, 1991, make the following correction:

In the second column, in the first full paragraph, in the third line from the bottom insert the following before the paren:

"On July 20, 1990, the MDE filed a timely application for review with the Office of Administrative Law Judges. Subsequent to the filing of its appeal, the MDE submitted additional documentation to OSERS in order to rebut the findings. On May 13, 1991, the Assistant Secretary filed a Notice of Reduction of Claim in which he determined that the statewide projection for the child count should be dropped and the cost disallowance should be reduced to $2,318.27, which is the total pro rata share of EHA-B funds for each of the remaining seven ineligible students. The MDE has agreed to repay this amount in full.

With respect to the time distribution issue, the MDE submitted additional documentation in an attempt to justify the EHA-B charges for the eight employees questioned in the PDL. No question exists that these employees worked substantially on activities that could be reimbursed by EHA-B funds. The Federal interest involved in this case is that of ensuring that the amount of time spent by each employee is proportionate to the salary costs charged to the program. (34 CFR part 74, appendix C, part II, section B, paragraph 10.b."

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federal register

Friday
July 26, 1991

Part II

Architectural and Transportation Barriers Compliance Board

36 CFR Part 1191

Americans With Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Final Guidelines

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1191

[Docket No. 90-2]

RIN 3014-AA09

Americans With Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Final guidelines.

SUMMARY: The Architectural and Transportation Barriers Compliance Board is issuing final guidelines to assist the Department of Justice to establish accessibility standards for new construction and alterations in places of public accommodation and commercial facilities, as required by title III the Americans with Disabilities Act (ADA) of 1990. The guidelines will ensure that newly constructed and altered portions of buildings and facilities covered by title III of the ADA are readily accessible to and usable by individuals with disabilities in terms of architecture and design, and communication. The Department of Justice has proposed to adopt the guidelines as the accessibility standards for new construction and alterations in places of public accommodation and commercial facilities for purposes of title III of the ADA.

EFFECTIVE DATE: July 26, 1991.

FOR FURTHER INFORMATION CONTACT: James Raggio, Office of the General Counsel, Architectural and Transportation Barriers Compliance Board, 1111-18th Street, NW., Suite 501, Washington, DC 20036. Telephone (202) 653-7834 (Voice/TDD). This is not a toll-free number. This document is available in accessible formats (cassette tape, braille, large print, or computer disc) upon request.

SUPPLEMENTARY INFORMATION:

Statutory Background

The Americans with Disabilities Act (ADA) of 1990 extends to individuals with disabilities comprehensive civil rights protections similar to those provided to persons on the basis of race, sex, national origin, and religion under the Civil Rights Act of 1964. Title III of the ADA, which becomes effective on January 26, 1992, prohibits discrimination on the basis of disability in places of public accommodation by any person who owns, leases or leases to, or operates a place of public accommodation. As discussed below, title III establishes accessibility requirements for new construction and alterations in places of public accommodation and commercial facilities.

"Public accommodation" is defined by section 301(7) of the ADA as including the following twelve categories of private entities if their operations affect commerce:

(1) An inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;

(2) A restaurant, bar, or other establishment serving food or drink;

(3) A motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

(4) An auditorium, convention center, lecture hall, or other place of public gathering;

(5) A bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;

(6) A laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;

(7) A terminal, depot, or other station used for specified public transportation;

(8) A museum, library, gallery, or other place of public display or collection;

(9) A park, zoo, amusement park, or other place of recreation;

(10) A nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;

(11) A day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and

(12) A gymnasium health spa, bowling alley, golf course, or other place of exercise or recreation.

The legislative history states that these twelve categories "should be construed liberally consistent with the intent of the legislation that people with disabilities should have equal access to the array of establishments that are available to others who do not currently have disabilities." H. Rept. 101-485, pt. 2, at 100.

"Commercial facilities" are defined by section 301(1) of the ADA as facilities that are intended for nonresidential use and whose operations will affect commerce. The legislative history states that the term is to be interpreted broadly to cover commercial establishments that are not included within the specific definition of "public accommodation" such as office buildings, factories, and other places in which employment will occur. H. Rept. 101-485, pt. 2, at 116-17.

Section 303 of the ADA establishes accessibility requirements for new construction and alterations in places of public accommodation and commercial facilities. With respect to new construction, section 303(a)1 requires that places of public accommodation and commercial facilities designed or constructed for first occupancy after January 26, 1993, must be readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impracticable. When alterations are made that affect or could affect usability of or access to a place of public accommodation or commercial facility, section 303(a)(2) requires that the alterations be made in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities. In addition, where alterations affect or could affect usability of or access to an area of the facility containing a primary function, section 303(a)(2) requires that the alterations be made in such a manner that, to the maximum extent feasible, the path of travel to the altered area, and the restrooms, telephones, and drinking fountains serving the altered area are readily accessible to and usable by individuals with disabilities unless it is disproportionate to the overall alterations in terms of cost and scope, as determined under criteria established by the Attorney General.

Section 303(b) of the ADA contains an exception which specifies that the installation of an elevator is not required for newly constructed or altered facilities that are less than three stories or have less than 3,000 square feet per story unless the building is a shopping center, shopping mall, the professional office of a health care provider, or another type of facility determined by the Attorney General to require the installation of an elevator based on the usage of the facility.

According to the legislative history, the term "readily accessible to and usable by" is intended to provide "a high degree of convenient accessibility" and "enable people with disabilities (including mobility, sensory, and cognitive impairments) to get to, enter and use a facility." H. Rept. 101-485, pt. 2, at 117-18. The term includes "accessibility of parking areas, accessible routes to and from the facility, accessible entrances, usable bathrooms and water fountains, accessibility of public and common use areas, and access to the goods, services,

As discussed below,
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Section 303 of the ADA establishes accessibility requirements for new construction and alterations in places of public accommodation and commercial facilities. With respect to new construction, section 303(a)1) requires that places of public accommodation and commercial facilities designed or constructed for first occupancy after January 26, 1993, must be readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impracticable. When alterations are made that affect or could affect usability of or access to a place of public accommodation or commercial facility, section 303(a)(2) requires that the alterations be made in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities. In addition, where alterations affect or could affect usability of or access to an area of the facility containing a primary function, section 303(a)(2) requires that the alterations be made in such a manner that, to the maximum extent feasible, the path of travel to the altered area, and the restrooms, telephones, and drinking fountains serving the altered area are readily accessible to and usable by individuals with disabilities unless it is disproportionate to the overall alterations in terms of cost and scope, as determined under criteria established by the Attorney General.

Section 303(b) of the ADA contains an exception which specifies that the installation of an elevator is not required for newly constructed or altered facilities that are less than three stories or have less than 3,000 square feet per story unless the building is a shopping center, shopping mall, the professional office of a health care provider, or another type of facility determined by the Attorney General to require the installation of an elevator based on the usage of the facility.

According to the legislative history, the term "readily accessible to and usable by" is intended to provide "a high degree of convenient accessibility" and "enable people with disabilities (including mobility, sensory, and cognitive impairments) to get to, enter and use a facility." H. Rept. 101–485, pt. 2, at 117–18. The term includes "accessibility of parking areas, accessible routes to and from the facility, accessible entrances, usable bathrooms and water fountains, accessibility of public and common use areas, and access to the goods, services,

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programs, facilities, accommodations and work areas available at the facility.' Id. The legislative history further explains that when identical features will generally serve the same function, only a reasonable number must be accessible depending on such factors as their use, location, and number; however, when identical features will generally be used in different ways, each one must be accessible in most situations. H. Rept. 101–485, pt. 2, at 118; H. Rept. 101–485, pt. 3, at 61. For example, only a reasonable number of spaces in a parking lot or stalls within a restroom would have to be accessible, but all meeting rooms at a conference center would have to be accessible because each one may be used for different purposes at any given time. Id.

Under section 504 of the ADA, the Architectural and Transportation Barriers Compliance Board is required to issue guidelines to assist the Department of Justice to establish accessibility standards for new construction and alterations in places of public accommodation and commercial facilities covered by title III.[1] Section 504 requires that the guidelines supplement the existing Minimum Guidelines and Requirements for Accessible Design (MGRAD) and "establish additional requirements, consistent with this Act, to ensure that buildings (and) facilities * * * are accessible in terms of architecture and design * * * and communication, to individuals with disabilities.[2] Section 504 also requires that the guidelines include provisions for alterations to qualified historic properties.

The Department of Justice is responsible for issuing final regulations to implement the provisions of title III of the ADA except for transportation vehicles. Section 306(c) of the ADA requires that the Department of Justice's final regulations include accessibility standards for new construction and alterations of buildings and facilities covered by title III of the ADA that are consistent with the Board's guidelines. On February 22, 1991, the Department of Justice proposed to adopt the Board's proposed guidelines with any changes made by the Board as the accessibility standards for purposes of title III of the ADA. See Department of Justice's proposed regulations, 28 CFR 34.406(a) and Appendix A to part 36—Standards for Accessible Design at 56 FR 7478, 7492, 7494 (February 22, 1991).

Proposed Guidelines

On January 22, 1991, the Board published a notice of proposed rulemaking (NPRM) in the **Federal Register** which contained the proposed Americans With Disabilities Act (ADA) Accessibility Guidelines For Buildings and Facilities (56 FR 2296). The proposed guidelines were modeled on the Uniform Federal Accessibility Standards (UFAS) which are generally consistent with MGRAD and use the same format and numbering system as the American National Standard Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped People (ANSI A117.1–1980).[3] Where the ADA estabishes requirements that differ from MGRAD or UFAS, the ADA requirements were followed.

The proposed guidelines contained:

- General provisions (sections 1 through 3) which include the purpose section, general information about the guidelines, miscellaneous instructions, and definitions.
- Scoping provisions (sections 4.1.1 through 4.1.7) which include the application section and scoping requirements for new construction of sites and exterior facilities, new construction of buildings and facilities, additions, alterations, and alterations to qualified historic properties.
- Technical specifications (sections 4.2 through 4.34) which reprint the text and illustrations of the ANSI A117.1–1980 standard with differences in the text noted by italics.
- Special application sections (sections 5 through 10) which include additional requirements for restaurants and cafeterias, medical care facilities, business and mercantile facilities, libraries, transient lodging, and transportation facilities.[4]
- An appendix which contains additional information to aid in understanding the guidelines, and designing buildings and facilities for greater accessibility.

The NPRM also asked questions and sought information on a number of specific issues related to the proposed guidelines.

Public Hearings and Comments

The Board held 14 public hearings around the country on the proposed guidelines between February 11, 1991 and March 7, 1991. A total of 450 people presented testimony on the proposed guidelines at the hearings. In addition, 1,585 written comments were submitted to the Board by the end of the comment period on March 25, 1991. Another 280 comments were received between March 26, 1991 and April 3, 1991. Although those comments were not timely, they were analyzed along with the comments received by March 25, 1991. The Board did not find it practical to consider comments received after April 3, 1991. In all, the Board received over 12,000 pages of comments and testimony on the proposed guidelines.

The Board received comments and testimony from a broad range of interested individuals and groups. Ten categories were identified and approximately the following numbers submitted timely comments or testimony for each category:

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[1] The Board is an independent Federal agency established pursuant to section 502 of the Rehabilitation Act of 1973 to ensure that the requirements of the Architectural Barriers Act of 1968 are met and to propose alternative solutions to architectural, transportation, communication, and attitudinal barriers faced by individuals with disabilities. The Board consists of 12 members appointed by the President from among the general public, at least six of whom are required to be individuals with disabilities, and the heads of 11 Federal agencies or their designees whose positions are Executive Level IV or above. The Federal agencies are: The Departments of Health and Human Services, Education, Transportation, Housing and Urban Development, Labor, Interior, Defense, Justice, and Veterans Affairs; General Services Administration; and United States Postal Service

[2] The Board developed MGRAD to assist the General Services Administration, Department of Defense, Department of Housing and Urban Development, and United States Postal Service to establish accessibility standards for those federally owned, leased, or financed buildings covered by the Architectural Barriers Act of 1968. See 36 CFR part 1190. The standards established by those agencies are known as the Uniform Federal Accessibility Standards (UFAS) and are generally consistent with MGRAD.

[3] The ANSI A117.1 standard was revised in 1986 after UFAS was adopted. The 1980 and 1986 versions of the ANSI A117.1 standard are very similar and both are currently in use. As discussed under the general issues, the ANSI A117.1 standard is in the process of being revised again and the Board intends to coordinate its work with the ANSI A117 Committee.

[4] The NPRM reserved section 10 for transportation facilities. The Board issued a supplemental notice of proposed rulemaking (SNPRM) in the **Federal Register** on March 20, 1990 which proposed additional requirements for transportation facilities that would make the guidelines also applicable to transportation facilities constructed or altered by public entities covered by title II of the ADA (56 FR 11874). The Department of Transportation has also proposed to adopt the Board's guidelines as the accessibility standards for transportation facilities for purposes of title II of the ADA. See Department of Transportation's proposed regulations, 49 CFR 37.13(b) and Appendix B to Part 37—Standards for Accessible Transportation Facilities at 56 FR 13861, 13881, and 13907 (April 4, 1991).

1270	Individuals who identified themselves as having a disability or who voiced a "consumer" perspective, and organizations representing these persons. For purposes of convenience, this category is referred to as "individuals with disabilities and their organizations" in the section-by-section analysis.
100	Government agencies involved with disability issues.
60	Building code officials and State agencies responsible for accessibility.
80	Architects, designers, engineers, and organizations representing these persons.
320	Businesses and organizations representing businesses.
60	Manufacturers.
20	Transit agencies.
50	Building owners and managers, and organizations representing these persons.
50	Other government agencies.
20	Other persons or organizations not in the above categories.

The comments and testimony were sorted by section and analyzed. For some sections, the comments were grouped around certain issues or questions identified in the NPRM. For other sections, the comments were scattered. A large number of commenters, especially individuals with disabilities and their organizations, expressed support for the guidelines, as proposed. Some commenters requested that sections be clarified or made recommendations for changes, including deletion of sections. Further, it was evident from some comments that a few of the proposed provisions in the NPRM were unclear and needed to be revised. With respect to those commenters who recommended changes, a few submitted data or studies in support of their recommendations; however, most recommendations were based on individual opinions or preferences. Where data or studies were not submitted in support of a recommended change, the Board was inclined to retain the provisions taken from the MGRAD, UFAS, and the ANSI A117.1 standard, especially with respect to the technical specifications in 4.2 through 4.34, unless more than a few commenters or an organization representing the interests of a large group believed that the provision was inadequate or otherwise in need of change. The Board considered each of those recommended changes on its merits. In some sections, commenters pointed out a need for new or additional requirements but further research or study is necessary for the Board to develop guidelines in the area. Some commenters asked questions regarding application of the guidelines to specific situations.

Due to the large number of comments received and the deadline for issuing the final guidelines, it is not possible for the Board to respond to each comment in this preamble. The Board has made every effort within the time available to respond to significant comments in the section-by-section analysis. As discussed under specific sections, the Board has reserved action in some areas pending further study or research. The Board has an on-going research and technical assistance program and plans to periodically review and up-date the guidelines to ensure that they remain consistent with technological developments and changes in model codes and national standards, and meet the needs of individuals with disabilities.

General Issues

Coordination of Board and ANSI Processes

Many commenters generally supported using the ANSI A117.1—1980 standard as the basis for the technical specifications of the guidelines since that standard or its 1986 update is incorporated or reference in many State and local building codes and is generally accepted and understood by the building industry. The Council of American Building Officials (CABO), National Conference of States on Building Codes and Standards (NCSBCS), American Institute of Architects (AIA), and other commenters recommended that the Board coordinate any substantive changes to the ANSI A117.1 standard with the ANSI A117 Committee in order to maintain a consistent and uniform set of accessibility standards which can be efficiently and effectively implemented at the State and local level through established building regulatory processes.[5]

The Board is a member of the ANSI A117 Committee and is committed to working cooperatively with the Committee. The ANSI A117 Committee solicited proposals for changes to the ANSI A117.1 standard in July 1989, a full year before the ADA was enacted. When the ADA was enacted in July 1990, the Board was charged with the responsibility of issuing final guidelines in nine months. In order to meet this responsibility, the Board issued the NPRM on January 22, 1991. The ANSI A117 Committee published draft revisions to the ANSI A117.1 standard on February 22, 1991. The timing of these events did not permit the Board and the ANSI A117 Committee to fully coordinate their processes.[6]

Members of the ANSI A117 Committee have objected to various changes proposed in the February 1991 draft revisions to the ANSI A117.1 standard and the group is scheduled to meet in July 1991 to review the objections. In voting on the draft revisions to the ANSI A117.1 standard, the Board recommended that the ANSI A117 Committee consider the final ADA guidelines with the goal of establishing a single accessibility standard that meets the requirements of the ADA and that can be incorporated or referenced by the Federal government, model codes, and State and local building codes.

A single accessibility standard would greatly facilitate the certification of State and local codes by the Department of Justice.[7] Establishing a single accessibility standard that meets the requirements of the ADA and that can be incorporated or referenced by all levels of government will also ensure that the ADA requirements are routinely implemented at the design stage when building plans are reviewed and permits issued by state and local building officials and that non-compliance can be discovered and corrected through the building inspection process before buildings are occupied.

Several commenters also recommended that the Board adopt the draft scoping provisions developed by the CABO Board for the Coordination of the Model Codes (BCMC). The draft BCMC scoping provisions were developed before the ADA was enacted and do not meet all the requirements of the ADA. Further, the draft BCMC scoping provisions were not developed guidelines to specific

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[5] The ANSI A117 Committee is responsible for periodically reviewing and up-dating the ANSI A117.1 standard. The Committee consists of 42 organizations representing individuals with disabilities, architects and designers, building owners and managers, building product manufacturers, model code groups, building code officials, and government agencies. The Committee operates under due process and consensus procedures established by the American National Standards Institute. See American National Standards Institute, Procedures for the Development and Coordination of American National Standards, approved by ANSI Board of Directors September 9, 1987.

[6] In an effort to make the guidelines generally consistent with the planned revisions to the ANSI A117.1 standard, the Board based some sections of the NPRM (e.g., alarms, detectable warnings, signage) on proposed changes considered by the ANSI A117 Committee.

[7] Section 308(b)(1)(A)(ii) of the ADA provides that, on the application of a state or local government, the Attorney General may, in consultation with the Board, and after prior notice and a public hearing, certify that a state or local code meets or exceeds the accessibility requirements of the ADA.

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in accordance with the same due process and consensus procedures followed by the ANSI A117 Committee.[8] Nonetheless, as discussed under specific provisions, the Board has considered the draft BCMC scoping provisions where they are consistent with the requirements of the ADA.

Minimum Guidelines

Several commenters remarked that section 504 of the ADA provides that the guidelines issued by the Board are to be "minimum guidelines" and that the NPRM exceeded the Board's statutory authority. Specifically, some of the commenters noted that the provisions in the NPRM for areas of refuge [areas of rescue assistance in the final guidelines], visual alarms, detectable warnings, and signage go beyond existing codes and standards.

As discussed under the statutory background, section 504(a) of the ADA requires the Board to "issue minimum guidelines that shall supplement the existing Minimum Guidelines and Requirements for Accessible Design (MGRAD) * * *." The Board was authorized to develop MGRAD by the 1978 amendments to the Rehabilitation Act of 1973 which required the Board to "establish minimum guidelines and requirements for the standards issued pursuant to * * * the Architectural Barriers Act of 1968." 29 U.S.C. 502(b)(7).[9] As originally promulgated by the Board, MGRAD contained detailed technical specifications which described how to make entrances, telephones, drinking fountains, toilet rooms, and other elements and spaces of a building or facility accessible; and scoping provisions which specified the extent to which the technical specifications must be followed, including which and how many elements and spaces are to be made accessible within a building or facility. The scoping provisions and technical specifications in MGRAD are considered to be "minimum guidelines" in that the four standard setting agencies under the Architectural Barriers Act of 1968 may exceed MGRAD's requirements and establish standard that provide a greater level of accessibility. The Department of Justice and other standard setting agencies under the ADA can also exceed the Board's "minimum guidelines" and establish standards that provide greater accessibility.

Congress specifically required in section 504 of the ADA that the Board "supplement the existing [MGRAD]" for purposes of title III of the ADA and further required that the "supplemental guidelines * * * establish additional requirements, consistent with this Act, to ensure that buildings (and) facilities * * * are accessible in terms of architecture and design, * * * and communication, to individuals with disabilities." The legislative history further explains the Board's responsibilities as follows:

> In issuing the supplemental minimum guidelines and requirements called for under this legislation, the Board should consider whether other revisions or improvements of the existing MGRAD (including scoping provisions) are called for to achieve consistency with the intent and the requirements of this legislation. Particular attention should be paid to providing greater guidance regarding communication accessibility.
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> In no event shall the minimum guidelines issued under this legislation reduce, weaken, narrow, or set less accessibility standards than those included in existing MGRAD. H. Rept. 101–485, pt. 2, at 139.

Further, Congress was clear that it intended "a high degree of convenient accessibility" and that minimum guidelines do not mean "minimal accessibility." H. Rept. 101–485, pt. 2, at 118. Thus, Congress authorized the Board to revise MGRAD and to establish new requirements where appropriate to ensure that newly constructed and altered buildings and facilities covered by title III of the ADA provide a high degree of convenient accessibility to individuals with disabilities.

In carrying out its responsibilities, the Board considered research and studies which have been conducted since MGRAD was last revised; the work of the ANSI A117 Committee in updating the ANSI A117.1 standard; and developments in the model codes. As directed by Congress, the Board paid particular attention to those areas relating to communication accessibility, including public telephones equipped with volume controls, public text telephones, assistive listening systems for assembly areas, visual alarms, detectable warnings, and signage. Where possible and consistent with the ADA, the Board attempted to make provisions in the NPRM consistent with the planned revisions to the ANSI A117.1 standard. This was done for visual alarms, detectable warnings, and signage. In developing provisions for areas of rescue assistance, as further explained in the NPRM the Board looked to the proposed BCMC scoping provisions for the ANSI A117.1 standard and the 1991 Uniform Building Code. See 56 FR 2296, at 2304 and 2309 (January 22, 1991).

The Board received many comments on the new provisions proposed in the NPRM. As futher discussed under the section-by-section analysis, the Board has carefully considered all the comments and many of the new provisions have been revised or clarified based on the comments. The Board believes that it has acted consistent with the statute in supplementing MGRAD and establishing new requirements where appropriate to ensure that buildings and facilities covered by title III of the ADA provide a high degree of convenient accessibility to individuals with disabilities.

"User Friendly" Guidelines

Several commenters recommended editorial changes to the guidelines. Some of these commenters noted that editorial changes have been proposed to the ANSI A117.1 standard and requested that the Board incorporate the proposed changes in the guidelines.

The Board has attempted to make the guidelines as "user friendly" as possible, including using the ANSI format and numbering system and providing additional explanatory information in the appendix to the guidelines. The Board also intends to make available manuals explaining the guidelines and to provide training and technical assistance. With respect to the proposed editorial changes to the ANSI A117.1 standard, the Board will consider all editorial changes to that standard after they have been approved by the ANSI A117 Committee.

Relationship to Other Regulations and Laws

A number of commenters requested clarification of the relationship between the Board's guidelines and section 302(b)(2)(A)(iv) of the ADA which requires the removal of architectural barriers, and communication barriers that are structural in nature, in existing facilities, where such removal is readily achievable.

The Board's guidelines are to be applied to the design, construction, and alteration of buildings and facilities to the extent required by regulations issued by other Federal agencies, including the Department of Justice, under the ADA. The Department of Justice's final regulations will address whether the Board's guidelines are applicable to removal of barriers in existing facilities where measures are taken solely to comply with section 302(b)(2)(A)(iv) of the ADA.

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[8] The February 22, 1991 draft revisions to the ANSI A117.1 standard reprinted the draft BCMC scoping provisions with modifications as an appendix to the standard. However, the draft BCMC scoping provisions are not part of the ANSI A117.1 standard and are not approved by the American National Standards Institute.

[9] The Architectural Barriers Act of 1968 requires that certain federally owned, leased, or financed buildings be accessible to individuals with disabilities. The General Services Administration, Department of Defense, Department of Housing and Urban Development, and United States Postal Service are responsible for establishing accessibility standards for those buildings covered by the Architectural Barriers Act of 1968.

Several commenters also requested the Board to clarify the relationship between its guidelines and areas used only by employees as work areas. As futher discussed under the section-by-section analysis, the provision in 4.1.1(3) has been revised to clarify that such areas must be designed and constructed so that individuals with disabilities can approach, enter and exit the areas. Modifications to particular work areas to meet the needs of an individual employee or applicant with a disability would be addressed by title I of the ADA which prohibits discrimination in employment on the basis of disability and which requires reasonable accommodation. This issue is within the jurisdiction of the Equal Employment Opportunity Commission.

Some commenters requested clarification regarding what requirements apply if an entity is covered by both the ADA and other Federal laws or regulations which require accessibility in new construction and alterations such as the Architectural Barriers Act of 1968 or section 504 of the Rehabilitation Act of 1973. UFAS is the applicable standard for purposes of the Architectural Barriers Act of 1968 and is also referenced as the accessibility standard in many regulations issued by other Federal agencies under section 504 of the Rehabilitation Act of 1973. In some areas, the ADA guidelines provide for greater accessibility than UFAS (e.g., provisions relating to communication access); and in other areas, UFAS provides for greater accessibility than the ADA guidelines (e.g., no elevator exception for facilities that are less than three stories or that have less than 3,000 square feet per story). An entity that is covered by both the ADA and another Federal law or regulation which requires compliance with accessibility standards must comply with the specific provisions that provide for greater accessibility.

State and Local Government Buildings

The Board is also required by section 504 of the ADA to issue accessibility guidelines for newly constructed and altered State and local government buildings which are covered by title II of the ADA. The requirements in title II of the ADA for State and local government buildings differ in some aspects from those in title III for places of public accommodation and commercial facilities. For example, the title III structural impracticability exception in new construction and the elevator exception for newly constructed or altered facilities that are less than three stories or have less than 3,000 square feet per story do not apply to State and local government buildings. The NPRM requested information on several issues relating to State and local government buildings for purposes of developing accessibility guidelines for those facilities, including providing access to various areas in courthouses (e.g., jury boxes, witness standards, and judge's benches); experience of detention and correctional facilities in complying with the UFAS scoping provisions under current regulations issued under section 504 of the Rehabilitation Act of 1973; and whether the requirements for alterations to State and local government buildings should be the same as for places of public accommodation and commercial facilities. The Board received many comments on these issues. The Board intends to further analyze those comments and to issue proposed guidelines for State and local government buildings for public comment after these final guidelines and the final guidelines for transportation vehicles and facilities are published.

The Department of Justice's final regulations will include requirements for new construction and alterations of State and local government buildings and further address the applicable accessibility standards.

Children's Environments and Recreational Facilities

The NPRM also requested information relevant to establishing accessibility guidelines for children's environments and recreational facilities. The Board received comments in each of these areas. The Board has undertaken several activities in preparation for developing accessibility guidelines in these areas. The Board is sponsoring a research project on "Accessibility Standards for Children's Environments". The Board is also working with the U.S. Forest Service, National Park Service, and other Federal agencies with recreation responsibilities in the development of comprehensive accessibility guidelines for outdoor recreational facilities, including boating access, water access at beaches, fishing piers, and horse back riding. It is anticipated that these projects will be completed in the Fall of 1991 and the Board intends to initiate rulemaking activity in the areas of children's environments and recreational facilities at that time.

Although the final guidelines do not include accessibility guidelines for children's environments and recreational facilities at this time, newly constructed or altered children's facilities and recreational facilities subject to title III of the ADA must comply with these guidelines where applicable. For example, an accessible route must be provided to a swimming pool deck area even though the guidelines do not presently include specific requirements for providing access to the pool itself. Technical assistance is available from the Board in this area.

Chemical and Environmental Sensitivities

The Board received over 400 comments from individuals who identified themselves as chemically sensitive. Many of the comments were sent in on preprinted postcards distributed by the National Center for Environmental Health Strategies (NCEHS). The commenters described the health problems that they have experienced due to exposure to chemical substances and indoor contaminants in buildings, including certain building materials, furnishings, cleaning products and fragrances, and tobacco smoke. They requested that the Board address their need for access to place of public accommodation and commercial facilities. Action on Smoking and Health (ASH) also requested the Board to address tobacco smoke in buildings. NCEHS and the Environmental Health Network provided additional background materials on chemical sensitivities. Among the suggestions made to lessen exposure to chemical substances and indoor contaminants in buildings were providing windows that open; improving the design and requirements for heating, cooling, and ventilation systems; and selecting building materials and furnishings that do not contain certain chemical substances.

Chemical and environmental sensitivities present some complex issues which require coordination and cooperation with other Federal agencies and private standard setting agencies. Pending further study of these issues, the Board does not believe it is appropriate to address them at this time.

Section-by-Section Analysis

This section of the preamble contains a concise summary of the significant comments received on the NPRM, the

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Section-by-Section Analysis

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Board's response to those comments, and any changes made to the guidelines.

1. Purpose

The purpose section has been clarified to state that the guidelines are to be applied during the design, construction, and alteration of places of public accommodation and commercial facilities to the extent required by regulations issued by Federal agencies, including the Department of Justice, under the ADA. The Department of Justice's final regulations will address the extent to which the guidelines are applicable to places of public accommodation and commercial facilities under new construction and alteration sections, including alterations to an area containing a primary function and cost disproportionality. The Department of Justice's final regulations will also address whether the guidelines are applicable to the removal of architectural barriers, and communications barriers that are structural in nature, in existing buildings and facilities where such removal is readily achievable. The Equal Employment Opportunity Commission's final regulations will address whether the guidelines are applicable for purposes of reasonable accommodation under title I of the ADA.

2. General

2.1 Provisions for Adults

There were no comments on this section. As discussed under the general issues, the Board will develop guidelines for children's environments.

2.2 Equivalent Facilitation

Comment. Commenters generally supported the equivalent facilitation provision which permits departures from the guidelines where substantially equivalent or greater access to or usability of a building or facility is provided. Some commenters requested that the guidelines include examples of alternatives that would provide equivalent facilitation. Other commenters expressed concerns about enforcement and a few recommended that a process be established for reviewing whether equivalent facilitation is provided.

Response. The equivalent facilitation provision has been clarified by substituting the words "designs and technologies" for "methods." The purpose of the provision is to allow for flexibility to design for unique and special circumstances and to facilitate the application of new technologies. The accessibility and usability of design solutions developed for unique and special circumstances must be evaluated on a case by case basis. In the case of new technologies which provide equivalent facilitation, as those technologies become more common, the Board will consider incorporating them in the guidelines.

The final guidelines in corporate specific provisions for equivalent facilitation in five sections. In 4.1.6(3)(c), in the case of alterations to an existing facility the guidelines permit an elevator car to have different dimensions when usability can be demonstrated and all other elements required to be accessible comply with the applicable provisions of 4.10 (e.g., a 49 inch by 69 inch elevator car with a door opening on the narrow dimension could accommodate the standard wheelchair clearances shown in figure 4). In 4.31.9, the guidelines permit the use of a portable text telephone if it is readily available for use with a nearby public pay telephone that is equipped with a shelf; an electrical outlet within, or adjacent to, the telephone enclosure; and a long enough telephone handset cord to allow connection of the text telephone and the telephone receiver if an acoustic coupler is used. In 7.2, the guidelines provide for equivalent facilitation at counters that may not have a cash register but at which goods or services are distributed (e.g., teller stations in banks, registration counters in hotels and motels) by permitting use of a folding shelf attached to the main counter on which an individual with a disability can write, and use of the space on the side of the counter or at the concierge desk for handling materials back and forth. In 9.1.4, the guidelines deem it equivalent facilitation if the operator of a hotel or similar place of transient lodging elects to limit construction of accessible rooms to those intended for multiple occupancy provided that such rooms are made available to an individual with a disability who requests a single-occupancy room. In 9.2.2(b)(d), hotels and other similar places of transient lodging are permitted to utilize a higher door threshold or a change in level at patios, terraces and balconies where necessary to protect the integrity of the unit from wind and water damage but equivalent facilitation is required where it results in patios, terraces, or balconies that are not on an accessible level (e.g., raised decking or a ramp must be provided to permit access to the patio, terrace or balcony).

Equivalent facilitation is appropriate and applies to the entire guidelines and not only those sections mentioned above. For example, other areas where equivalent facilitation may be appropriate include the use of automatic door openers for double leaf doors, and provision of audible signage for individuals with vision impairments. The use of a portable ramp, however, is not considered equivalent facilitation.

The ADA does not require any process to be established for reviewing whether equivalent facilitation is provided.

3. Miscellaneous Instructions and Definitions

3.1 Graphic Conventions

3.2 Dimensional Tolerances

3.3 Notes

3.4 General Terminology

Few comments were receive on these sections and they did not warrant any changes.

3.5 Definitions

Comment. Several commenters recommended that the term "individual with a disability" should be defined the same as in the ADA.

Response. The definition of the term "individual with a disability" has been deleted from the guidelines as unnecessary since the guidelines will be incorporated in the Department of Justice's regulations implementing title III of the ADA which will include a definition of the term. The NPRM defined "accessible" in terms of being used "by individuals with disabilities, including those affecting mobility, sensory, or cognitive functions." The definition of the term "accessible" has been revised in the final guidelines to mean a site, building, facility, or portion thereof that complies with the guidelines. In other words, buildings and facilities that meet the requirements of the guidelines are by definiton accessbile to individuals with disabilities.

Comment. Commenters made several recommendations for changes in the definition of the term "technically infeasible."

Response. The Definition of the term "technically infeasible" has been revised and moved to the scoping provisions for alterations at 4.1.6(1)(j). Changes to that definition are discussed under that section. A new term "structural frame" has been added to 3.5 in connection with the revised definition of "technically infeasible" which is also discussed under the scoping provision for alterations.

Comment. A commenter requested that the term "text telephone" be used in place of "telecommunication display device or telecommunication device for the deaf (TDD)."

Response. The term "text telephone" is used in the final guidelines. The term "TDD" is often understood to include devices which use only the Baudot code. Many newer models are also capable of transmitting in the ASCII code and this appears to be the trend. Other systems of communication based on computer hardware and software are also being used for communication by individuals with disabilities and their rapid proliferation suggests that they may become the dominant modes of communication in the future. The Board is concerned that the term "TDD" will become outmoded, and that entities will assume that they have satisfied their responsibilities by providing access only in an obsolete format that may be incompatible with many devices. By using the more inclusive term "text telephone," the Board intends that, as technology develops in this rapidly changing area, entities will be able to choose from a broader range of appropriate devices and formats.

Further, although the term TDD refers to a "telecommunication device for the deaf," TDDs are not used only by individuals who are deaf. Nor do all individuals who are deaf use TDDs to communicate over the telephone. The legislative history recognizes that many individuals who are deaf, hard of hearing, and speech impaired use other kinds of non-voice terminal devices. The term "text telephone" would encompass the various types of telecommunication devices. This term is currently used in Europe to describe telephones with keyboards and visual screens, and it is generally understood to mean TDDs, computer hardware and software, and other non-voice terminal devices. "Text telephones" do not include facsimile (fax) equipment.

4. Accessible Elements and Spaces: Scope and Technical Requirements

4.1 Minimum Requirements

The scoping provisions are contained in 4.1.1 through 4.1.7 and are discussed below.

4.1.1 Application

This section describes the application of the guidelines.

General (4.1.1 (1))

Comment. Several commenters requested that the application of the guidelines be clarified with respect to existing buildings.

Response. The general provision in 4.1.1(1) has been revised to clarify that all areas of newly designed or constructed buildings and facilities, and altered portions of existing buildings and facilities required to be accessible by 4.1.6, must comply with the guidelines unless otherwise provided in 4.1.1 or a special application section. The specific requirements for alterations to existing buildings are discussed under 4.1.6.

Application Based on Building Use (4.1.1(2))

Comment. Several commenters requested that application of the guidelines be clarifed with respect to transportation facilities.

Response. The special application sections 5 through 10 provide additional requirements for restaurants and cafeterias, medical care facilities, business and mercantile facilities, libraries, transient lodging, and transportation facilities. Section 10 on transportation facilities was reserved in the NPRM. The Board issued a supplemental notice of proposed rulemaking (SNPRM) on March 20, 1991 in connection with its proposed guidelines on transportation vehicles containing proposed additional requirements for transportation facilities (56 FR 11874).[10] A final section 10 on transportation facilities will be issued at the same time as the final guidelines for transportation vehicles. Although the final guidelines do not contain any additional requirements for transportation facilities at this time, newly constructed or altered transportation facilities subject to title III of the ADA must comply with these guidelines where applicable. For example, the restrooms in a newly constructed transportation facility such as a bus depot must comply with the requirements for accessible toilet facilities.

Areas Used Only By Employees As Work Areas (4.1.1(3))

Comment. A number of commenters requested that the application of the guidelines to areas used only by employees as work areas be clarified. Some commenters wanted employee work areas to be adaptable with adjustable elements and to comply with requirements for clear floor space, reach ranges and visual alarms.

Response. The legislative history explains that areas used only by employees as work areas are covered by the guidelines but individual work stations are not required to be constructed in a fully accessible manner. H. Rept. 101–485, pt. 3, at 63. Modifications to an individual workstation would be covered by reasonable accommodation under title I of the ADA which prohibits discrimination in employment on the basis of disability. The Equal Employment Opportunity Commission is responsible for issuing regulations to implement title I of the ADA.

The provision in 4.1.1(3) has been revised to clarify that areas that are used only by employees as work areas shall be designed and constructed so that individuals with disabilities can approach, enter, and exit the areas. For instance, individual office rooms in a typical office building must be on an accessible route and the doors to the rooms must comply with the technical specifications in 4.13.

The guidelines do not require that any work areas be constructed to permit maneuvering within the work area (e.g., maneuvering spaces around a desk) or that fixed or built-in equipment be accessible (e.g., counters or shelves). However, modifications may be required to a particular work area for an individual employee or applicant with a disability as a reasonable accommodation under title I of the ADA.

The appendix includes advisory guidance on individual work stations at A4.1.1(3). Where there are a series of built-in or fixed individual work stations of the same type (e.g., laboratories, service counters, ticket booths), in order to facilitate reasonable accommodation at a future date, it is recommended that 5% or at least one of each type of work station should be constructed so that an individual with disabilities can maneuver within the work station. Consideration should also be given to placing shelves in an employee work area at a convenient height for accessibility or installing commercially available shelving that is adjustable so that reasonable accommodations can be made in the future.

Comment. The NPRM requested information on fixed or built-in equipment in physician's offices that is used by patients and should be addressed by the guidelines. Commenters recommended that examining tables, diagnostic machinery, and dental chairs should be accessible or adaptable. However, anecdotal information suggests that most of the equipment is not fixed or built-in the structure of the building. No information was submitted on technical specifications for such equipment.

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[10] The SNPRM also proposed to amend the guidelines to make them applicable to transportation facilities constructed or altered by public entities covered by title II of the ADA. Until final notice of the amended guidelines is published in the **Federal Register**, the guidelines do not apply to transportation facilities constructed or altered by public entities coverd by title II of the ADA.

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stations are not required to be constructed in a fully accessible manner. H. Rept. 101–485, pt. 3, at 63. Modifications to an individual workstation would be covered by reasonable accommodation under title I of the ADA which prohibits discrimination in employment on the basis of disability. The Equal Employment Opportunity Commission is responsible for issuing regulations to implement title I of the ADA.

The provision in 4.1.1(3) has been revised to clarify that areas that are used only by employees as work areas shall be designed and constructed so that individuals with disabilities can approach, enter, and exit the areas. For instance, individual office rooms in a typical office building must be on an accessible route and the doors to the rooms must comply with the technical specifications in 4.13.

The guidelines do not require that any work areas be constructed to permit maneuvering within the work area (e.g., maneuvering spaces around a desk) or that fixed or built-in equipment be accessible (e.g., counters or shelves). However, modifications may be required to a particular work area for an individual employee or applicant with a disability as a reasonable accommodation under title I of the ADA.

The appendix includes advisory guidance on individual work stations at A4.1.1(3). Where there are a series of built-in or fixed individual work stations of the same type (e.g., laboratories, service counters, ticket booths), in order to facilitate reasonable accommodation at a future date, it is recommended that 5% or at least one of each type of work station should be constructed so that an individual with disabilities can maneuver within the work station. Consideration should also be given to placing shelves in an employee work area at a convenient height for accessibility or installing commercially available shelving that is adjustable so that reasonable accommodations can be made in the future.

Comment. The NPRM requested information on fixed or built-in equipment in physician's offices that is used by patients and should be addressed by the guidelines. Commenters recommended that examining tables, diagnostic machinery, and dental chairs should be accessible or adaptable. However, anecdotal information suggests that most of the equipment is not fixed or built-in the structure of the building. No information was submitted on technical specifications for such equipment.

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Response. These guidelines are intended to address only that equipment that is fixed or built into the structure of the building. The Board believes that this issue requires further study before it can be addressed in the guidelines. The Board may provide technical assistance in this area.

Temporary Structures (4.1.1(4))

Comment. The NPRM asked whether trailers at construction sites should be included in the list of temporary structures in 4.1.1(4) covered by the guidelines. Most of the commenters from each category who responded to the question stated that such structures should not be required to comply with the guidelines. The Associated General Contractors of America pointed out that the legislative history specifically states that construction sites are not to be considered a public accommodation. See H. Rept. 101–485, pt. 1, at 36.

Response. Based on legislative history, the list of temporary structures in 4.1.1(4) has been revised to state that construction trailers are not included.

General Exceptions (4.1.1(5))

Comment. With respect to the exception in 4.1.1(5)(a) for structural impracticability in new construction, some commenters questioned whether such an exception is necessary in new construction. Other commenters requested that the term be further defined. A few commenters suggested that the exception implied that the entire building or facility was exempt from the guidelines.

Response. The exception in 4.1.1(5)(a) is based on section 303(a)(1) of the ADA. The legislative history explains that the exception is a narrow one and applies only in rare circumstances where unique characteristics of terrain prevent the incorporation of accessibility features. H. Rept. 101–485, pt. 2, at 120. The legislative history further explains that the exception is not to be viewed as totally exempting the entire building or facility for the guidelines. id. The exception has been revised to clarify that if full compliance with the guidelines is structurally impracticable in new construction, the entity must comply with the guidelines to the extent that it is not structurally impracticable. Any portion of the building or facility which can be made accessible and is required by the guidelines to be accessible must comply with the guidelines.

Comment. The NPRM asked whether other spaces should be included in the list in 4.1.1(5)(b) of spaces exempt from complying with the guidelines and whether functional criteria should be developed for identifying such spaces. Most of the commenters who responded to the question favored the functional criteria approach. Commenters also recommended specific spaces to be included in the exception.

Response. The exception in 4.1.1(5)(b) has been revised to include functional criteria and exempts non-occupiable spaces that are: (a) Accessed only by ladders, catwalks, crawl spaces, very narrow passageways, or freight or non-passenger elevators; and (b) frequented only by service personnel for repair purposes. Such spaces include but are not limited to elevator pits, elevator penthouses, and piping or equipment catwalks. Some of the spaces recommended by commenters such as cooling towers and utility tunnels would be covered by the functional criteria. Other spaces suggested by commenters such as mechanical rooms or closets that are not accessed by ladders or very narrow passageways are considered employee work areas and are covered under 4.1.1(3) which only requires that individuals with disabilities be able to approach, enter, and exit the area but does not require maneuvering space to be provided in the area.

Observation galleries that are raised to look out over an area below and are used primarily for security purposes have also been included in the spaces exempt from the guidelines. This exemption prevails over the requirement in 4.1.1(3) that employee work areas be designed and constructed so that individuals with disabilities can approach, enter, and exit the area. Under the exemption, a vertical means of accessibility is not required to such galleries. However, modifications to such galleries to provide a vertical means of access to an employee with a disability may be required as a reasonable accommodation under title I of the ADA.

4.1.2 Accessible Sites and Exterior Facilities

This section contains scoping provisions for accessible sites and exterior facilities.

Accessible Route (4.1.2(1) and (2))

Protruding Objects (4.1.2(3))

Ground Surfaces (4.1.2(4))

Few comments were received on these scoping provisions and they did not warrant any changes.

Parking (4.1.2(5))

Comment. A number of commenters from each category stated that the number of accessible parking spaces specified in the table in 4.1.2.(5)(a) is adequate. Some commenters stated that the number should be increased, and other commenters stated that the number should be reduced. One commenter submitted a report prepared for the institute of Traffic Engineers (ITE) which was based on a survey of 198 sites taken between 1986 and 1987. The ITE report recommended that the number of accessible spaces be based on occupancy type and gross floor area of the building or facility. The National Parking Association (NPA) and some members of its Parking Consultants Council (PCC) submitted recommended standards based on the ITE report. The NPA/PCC standards recommend that three categories be established for accessible parking spaces: High use, moderate use, and low use. The high use category would provide a number of accessible parking spaces similar to that contained in the table in 4.1.2(5)(a) and apply to occupancy types where an above average number of individuals with disabilities might reasonably be anticipated. The NPA/PCC suggested that high use occupancy types would include hospitals, nursing homes, medical office buildings, and social service agencies. The low use category would provide for approximately one-half the number of accessible spaces as the high use category and apply to occupancy types which generate primarily regular, long-term parking (3 hours or more in duration) such as airports, schools, universities, office buildings (except medical), warehousing, manufacturing, and industries. The medium use category would provide for a number of accessible parking spaces between the high use and low use categories and apply to any occupancy type that does not clearly qualify as either high or low use. The NPA submitted a revised set of recommendations after the close of the comment period based on a recent survey by its members. In place of the high, medium, and low use categories, the NPA recommended three classes of occupancy types. Class I would consist of medical facilities and have a slightly higher number of accessible parking spaces then contained in the table in 4.1.2(5)(a). Class II would consist of public accommodations except those specifically included in Classes I or III and provide for a number of accessible parking spaces similar to that contained in the table in 4.1.2(5)(a). According to the NPA, the recent survey data showed the number of parking spaces specified in the table in 4.1.2(5)(a) "appears to reasonably fit the Class II uses [public accommodations] and the requirements of smaller facilities are not unreasonable." Class III would consist of commercial uses, mixed uses in which the majority of parkers are generated by a commercial use, public parking facilities in central business districts, and universities and provide for about one-half the number of accessible parking spaces specified in the table in 4.1.2(5)(a).

Response. The number of parking spaces required for specific occupancy uses is usually established by State and local zoning and land use codes. The guidelines require that a percentage of the parking spaces required under State and local codes be accessible. As noted above, the recent NPA survey supports the adequacy of the table contained in 4.1.2(5)(a) for most public accommodations. A recent study conducted for the Board on accessible parking spaces and loading zones also concluded that the table in 4.1.2(5)(a) was adequate and recommended that surveys be taken every two to three years to evaluate its continuing adequacy. No changes have been made in the table contained in 4.1.2(5)(a) because the comments and two surveys support the table.

A sentence has been added to 4.1.2(5)(a) to clarify that spaces required by the table need not be provided in the particular lot. They may be provided in a different location if equivalent or greater accessibility in terms of distance from an accessible entrance, cost, and convenience is ensured.

The NPRM proposed to add a provision to 4.1.5(a) requiring accessible parking spaces to be located as close as practical to an accessible entrance. In the final guidelines, requirements regarding the location of accessible parking spaces have been consolidated in the technical specifications for parking at 4.6.2 and are further discussed there.

Facilities that provide medical care and other services for persons with mobility impairments are discussed under a separate comment below. As for so called "low use" of "Class III" occupancy types, the ITE and NPA surveys apparently did not consider the level of accessibility provided at the buildings and facilities which would affect usage by individuals with disabilities. The Board finds no basis for concluding that individuals with disabilities have less need for using buildings and facilities included in the so called "low use" or "Class III" occupancy types, including airports, schools, universities, office buildings, and public parking facilities in central business districts. The passage and implementation of the ADA will enable and encourage many more individuals with disabilities to use these buildings and facilities and, therefore, the Board rejects establishing a separate table with a lower number of accessible parking spaces for so called "low use" or "Class III" occupancy types.

Comment. The NPRM asked whether accessible parking spaces should be required for vans and, if so, whether such spaces should be in addition to the number of accessible parking spaces specified in the table in 4.1.2(5)(a) or a percentage of those spaces. Most of the persons in each category who responded to the question were in favor of requiring accessible parking spaces for vans and recommended that those spaces should be a percentage of the spaces specified in the table in 4.1.2(5)(a). Specific recommendations ranged from 0.5% to 75%. Commenters also submitted various recommendations for the minimum width of accessible parking spaces needed to accommodate vans which ranged from 13 feet to 18 feet, including an adjacent access aisle. Recommendations for vertical clearance needed for vans ranged from 96 inches to 144 inches. Several commenters recommended that all accessible parking spaces should be the same size and be capable of accommodating vans. Some commenters recommended adoption of the universal parking design guidelines developed by the City of Phoenix Fire Department which provides for all accessible parking spaces to be at least 11 feet wide and to have an adjacent access aisle at least 5 feet wide.

Response. The technical specification in 4.6.3 for accessible parking spaces require such spaces to be 8 feet (96 inches) wide minimum and to have an adjacent access aisle 5 feet (60 inches) wide minimum. Two accessible parking spaces may share a common access aisle. An access aisle that is 60 inches wide does not provide sufficient space to permit a lift to be deployed from the side of a van and still leave room for a person using a wheelchair or other mobility aid to exit from the lift platform. A recent Board sponsored study on accessible parking and loading zones conducted tests with various van, lift, and wheelchair combinations and found that a parking space and access aisle almost 17 feet wide is needed to deploy a lift and exit conveniently.

Requirements have been added to the scoping provisions in 4.1.2(5)(b) requiring that one in every eight accessible parking spaces, but not less than one, be served by an access aisle 96 inches (8 feet) wide minimum and be designated "van accessible." For instance, if there are 16 accessible parking spaces, at least two wider access aisles must be provided. If a wider access aisle is placed between two accessible parking spaces, then both parking spaces can accommodate vans.

Requirements have also been added to the technical specifications in 4.6.5 regarding the vertical clearance to be provided at van accessible parking spaces. The NPRM proposed that the minimum vertical clearances should be 114 inches. This figure was taken from MGRAD and UFAS which was based on a survey of paratransit vehicles for purposes of establishing the vertical clearance needed at passenger loading zones. The survey found that the highest paratransit vehicle had a height of 120 inches but that a vertical clearance of 114 inches would accommodate most paratransit vehicles. MGRAD and UFAS used the same figure for accessible parking spaces for vans; however, such spaces were not mandatory. Personal vans are usually not as tall as paratransit vehicles. This is especially true with growing use of accessible mini-vans. California requires a minimum vertical clearance of 98 inches which accommodates most vans without seriously affecting multi-level parking structures. Based on the experience with the California standard, the technical specifications in 4.6.5 adopt a minimum vertical clearance of 98 inches for van accessible parking spaces. The vertical clearance must be provided along at least one vehicle access route from the site entrance(s) and exit(s) to the van accessible parking space. The technical specifications in 4.6.5 permit the van accessible parking spaces to be grouped on one level of a parking structure.

An exception has also been added to 4.1.2(5)(a) permitting all required accessible parking spaces to conform to the universal parking design guidelines developed by the City of Phoenix Fire Department. As discussed above, those guidelines provide for accessible parking spaces to be at least 11 feet wide and to have an adjacent access aisle at least 5 feet wide. Additional information on the universal parking design guidelines is provided in the appendix at A4.6.3

Comment. A number of commenters recommended that the scoping provision for accessible parking spaces at transient lodging (4.1.2(5)(d) in the NPRM) be revised. The provision would require that where parking is provided for all occupants, one accessible parking space be provided for each accessible unit or sleeping room; and where parking is provided for visitors, 2% of the spaces or a least one be accessible.

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Requirements have also been added to the technical specifications in 4.6.5 regarding the vertical clearance to be provided at van accessible parking spaces. The NPRM proposed that the minimum vertical clearances should be 114 inches. This figure was taken from MGRAD and UFAS which was based on a survey of paratransit vehicles for purposes of establishing the vertical clearance needed at passenger loading zones. The survey found that the highest paratransit vehicle had a height of 120 inches but that a vertical clearance of 114 inches would accommodate most paratransit vehicles. MGRAD and UFAS used the same figure for accessible parking spaces for vans; however, such spaces were not mandatory. Personal vans are usually not as tall as paratransit vehicles. This is especially true with growing use of accessible mini-vans. California requires a minimum vertical clearance of 98 inches which accommodates most vans without seriously affecting multi-level parking structures. Based on the experience with the California standard, the technical specifications in 4.6.5 adopt a minimum vertical clearance of 98 inches for van accessible parking spaces. The vertical clearance must be provided along at least one vehicle access route from the site entrance(s) and exit(s) to the van accessible parking space. The technical specifications in 4.6.5 permit the van accessible parking spaces to be grouped on one level of a parking structure.

An exception has also been added to 4.1.2(5)(a) permitting all required accessible parking spaces to conform to the universal parking design guidelines developed by the City of Phoenix Fire Department. As discussed above, those guidelines provide for accessible parking spaces to be at least 11 feet wide and to have an adjacent access aisle at least 5 feet wide. Additional information on the universal parking design guidelines is provided in the appendix at A4.6.3

Comment. A number of commenters recommended that the scoping provision for accessible parking spaces at transient lodging (4.1.2(5)(d) in the NPRM) be revised. The provision would require that where parking is provided for all occupants, one accessible parking space be provided for each accessible unit or sleeping room; and where parking is provided for visitors, 2% of the spaces or a least one be accessible.

Some commenters pointed out that the provision was not workable because many places of transient lodging, such as hotels, do not provide parking spaces for each room.

Response. The provision was based on smiliar requirement in MGRAD and UFAS which was intended for accessible housing. The provision may not be applicable to all places of transient lodging and has been deleted from the final guidelines. Instead, places of transient lodging must provide the number of accessible parking spaces specified in the table in 4.1.2(5)(a).

Comment. The NPRM asked whether the scoping provision in 4.1.2(5)(d) (4.1.2(5)(e) in the NPRM) should require nonmedical facilities that specialize in providing services for persons with mobility impairments such as vocational rehabilitation facilities to provide a higher number of accessible parking spaces. Most of the commenters who responded to the question favored requiring such facilities to provide a higher number of accessible parking spaces. Some commenters recommended that the percentage be greater than that proposed in the NPRM.

Response. The scoping provision in 4.1.2(5)(d) (4.1.2(5)(e) in the NPRM) has been revised and clarified. The provision has been clarified as applying to facilities that provide medical care and other services for persons with mobility impairments and units of such facilities. Generally, facilities that provide medical care and other services for persons with mobility impairments are required to provide the number of accessible parking spaces specified in the table in 4.1.2(5)(a) except in two cases. The first case applies to outpatient units and facilities where 10% of the total number of parking spaces serving each such unit or facility must be accessible. The second case applies to units and facilities that specialize in treatment or services for persons with mobility impairments where 20% of the total number of parking spaces serving each such unit or facility must be accessible. The latter case would include vocational rehabilitation facilities.

Comment. The National Parking Association (NPA) requested that valet parking facilities not be required to comply with the guidelines.

Response. Valet parking facilities are different from self-parking facilities. In valet parking facilities, the driver and passenger usually leave the vehicle at the entrance of the facility and another person parks the vehicle. The final guidelines require in 4.1.2(5)(e) that valet parking facilities provide an accessible passenger loading zone located on an accessible route to the entrance of the facility. Additional advisory material on valet parking is included in the appendix at A4.1.2(5)(e).

Portable Toilet and Bathing Units (4.1.2(6))

Comment. The NPRM asked whether the scoping provision of accessible portable toilets and bathing units should be advisory or mandatory. Most persons who responded to the question favored making the provision mandatory. As for how many accessible units should be required when single user units are clustered at a single location, the recommendations ranged from at least one unit to 100%.

Response. The provision has been revised to require that where single user portable toilet or bathing units are clustered at a single location, at least 5% but no less than one of the units at each cluster must be accessible.

Comment. Several commenters recommended that portable toilet units at construction sites should not be required to be accessible.

Response. An exception has been added for portable toilet units at construction sites used exclusively by construction personnel.

Exterior Signage (4.1.2(7))

Comment. Based on the comments received from graphic designers and sign manufacturers, the Board concluded that the scoping provisions and technical specifications for signage were unclear and needed to be revised. Many interpreted the NPRM as requiring all signs to have raised and brailled characters and all upper case letters.

Response. The scoping provisions for exterior and interior signage and the accompanying technical specifications have been clarified and revised in response to the comments. See 4.1.3(16) for scoping provisions for interior signage; and 4.30 for technical specifications for signage. Exterior signs which designate permanent rooms and spaces must comply with the technical specifications in 4.30.1 and 4.30.4 through 4.30.6 for raised and brailled characters, finish and contrast, and mounting location and height. For instance, signs on toilet facilities at a zoo must have raised and brailled characters designating the men's and women's toilet facilities, and also meet the finish and contrast, and mounting location and height requirements. Exterior signs which provide directions to or information about functional spaces of a building or facility must comply with the technical specifications in 4.30.1, 4.30.2 and 4.30.5 for character proportion, and finish and contrast. The technical specifications in 4.30.3 for character height must also be complied with if the signage is suspended or projected overhead in compliance with the technical specifications in 4.4.2 for head room for protruding objects. For instance, a sign adjacent to a pedestrian walkway directing the public to an accessible entrance to a building or facility must meet the character proportion and finish and contrast requirements, as well as the character height requirements if suspended or projected above the walkway in compliance with 4.4.2.

4.1.3 Accessible Buildings: New Construction

This section contains scoping provisions for new construction of accessible buildings and facilities.

Accessible Route (4.1.3(1))

Protruding Objects (4.1.3(2))

Ground and Floor Surfaces (4.1.3(3))

Few comments were received on these scoping provisions and they did not warrant any changes.

Stairs (4.1.3(4))

Comment. Several commenters requested clarification regarding whether 4.1.3(4) applies to exterior stairs, as well as interior stairs.

Response. The provision has been clarified that interior and exterior stairs must comply with the technical specifications in 4.9 for stairs when they connect levels that are not connected by an elevator or other accessible means of vertical access (e.g., ramp or lift). In other words, for example, if an elevator serves as a means of going from one floor to another, the stairs connecting the two floors are not required to comply with 4.9.

Comment. The NPRM asked whether in new construction stairs connecting levels that are also served by an elevator should be required to comply with the technical specifications in 4.9 for stairs especially since stairs must be used in emergency evacuations. Most persons who responded to the question favored such a requirement. Several commenters recommended that the provision should apply only to stairs required by State and local building codes for egress. Other commenters noted that the model codes are incorporating more safety features for stairs and that it is unnecessary to address the same features in accessibility standards.

Response. The technical specifications in 4.9 regarding stair treads and risers, nosings, and handrails are safety features which affect all members of the public. As the model codes are updated, more general safety features which also provide greater accessibility are being incorporated in those codes. The problem identified in the NPRM may be addressed through the model codes. The Board plans to monitor the development of the model codes and has not made any changes to the scoping provision for stairs other than to clarify that the provisions applies to exterior stairs, as well as interior stairs.

Elevators (4.1.3(5))

Elevator Exemption (4.1.3(5) Exception1).

Comment. A number of commenters objected to exempting buildings and facilities that are less than three stories or have less than 3,000 square feet per story from the elevator requirement unless the building or facility is a shopping center, a shopping mall, the professional office of a health care provider, or another type of facility that has been determined by the Attorney General to require an elevator.

Response. The elevator exemption is based on section 303(b) of the ADA. The Department of Justice is responsible for implementing this section of the ADA and that agency's final regulations will address definitions and application of the section.

A statement has been added to the appendix at 4.1.3(8) explaining that if a building or facility is exempt from the elevator requirement, it is not necessary to provide another accessible means of vertical access (e.g., ramps, platform lifts or wheelchair lifts) between each level of the building or facility.

Comment. Some commenters requested that basements, attics, and mezzanines be counted for purposes of determining whether a building or facility is less than three stories. Other commenters requested that basements, attics, and mezzanines not be counted.

Response. A "story" is defined in 3.5 as including "occupiable" space which in turn is defined as space that is: (a) Designed for human occupancy in which individuals congregate for amusement, educational or similar purposes, or in which occupants are engaged at labor; and (b) equipped with means of egress, light, and ventilation. If a basement or attic is designed or intended to be used as occupiable space or is later altered to be occupiable, it is counted for purposes of determining whether a building or facility is less than three stories.

As for mezzanines, the model codes do not consider mezzanines to be a story. Where possible, the Board defines terms in the guidelines to be consistent with the model codes when they are also consistent with the ADA and, therefore, mezzanines are not counted for purposes of determining whether a building or facility is less than three stories. However, as further discussed below, if a building or facility is exempt from the elevator requirement, but nonetheless has a full passenger elevator, that elevator must serve each level, including the mezzanine.

Comment. Several commenters questioned why buildings and facilities that are exempt from the elevator requirement must comply with other requirements in 4.1.3 on floors above or below the accessible ground floor.

Response. This provision is based on the legislative history which states that "the exception regarding elevators does not obviate or limit in any way the obligation to comply with the other accessibility requirements established by this legislation, including requirements applicable to floors which, pursuant to the exception, are not served by an elevator." H. Rept. 101–485, pt 2, at 114. There are several reasons for this provision. Some individuals who are mobility impaired may work on a building's second floor, which they can reach by stairs and the use of crutches; however, the same individuals, once they reach the second floor, may then use a wheelchair that is kept in the office. Further, an elevator may be installed at a future date, or an addition to the building or a second building which is later connected may include an elevator. The second floor must also be accessible to individuals with visual or hearing impairments.

Comment. With respect to a new building or facility that is exempt from the elevator requirement but an elevator is nonetheless planned, the NPRM asked whether it was appropriate to require the elevator in such a building or facility to meet the technical specifications in 4.10 for elevators and to serve each level in the building or facility. Most persons who responded to the question favored the requirement. Some commenters recommended that the provision be limited to full passenger elevators and not freight elevators.

Response. This provision is also based on the legislative history. See H. Rept. 101–485, pt. 2, at 114. The Board agrees that the provision should apply only to full passenger elevators and has added appropriate language to the elevator exemption. A sentence has also been added to the provision that if a full passenger elevator provides service from a garage to only one level of a building or facility, it is not required to serve the other levels of the building or facility.

Platform Lifts/Wheelchair Lifts (4.1.3(5) Exception 4)

Comment. The NPRM noted that some building codes and the proposed BCMC scoping provisions prohibit the installation of platform lifts or wheelchair lifts as part of a required accessible route in new construction and asked a series of questions regarding their use. Individuals with disabilities and their organizations who responded to the questions viewed platform lifts or wheelchair lifts as inferior to ramps, not independently operated, poorly maintained, dangerous, and undignified. However, some of these commenters acknowledged that in some alteration projects, and in limited areas in new construction, a platform lift or wheelchair lift may be the only viable option for accessibility. Lift manufacturers and vendors acknowledged that there have been significant problems in the past but believed that improvements have been made, and gave examples where a platform lift or wheelchair lift provided a better design solution than a ramp. Several architects and other commenters recommended that the Board specify conditions for the use of platform lifts or wheelchair lifts.

Response. Rather than prohibit platform lifts or wheelchair lifts in new construction, the Board believes that the better approach is to specify the conditions where their use is allowed. The applicable exception under 4.1.3(5) has been revised to permit the use of platform lifts or wheelchair lifts complying with 4.11 and applicable State or local codes in new construction under the following conditions:

(a) To provide an accessible route to performing area in an assembly occupancy;

(b) To comply with the wheelchair viewing position line-of-sight and dispersion requirements of 4.33.3 (e.g., to provide access to seating areas located above a cross aisle or to box seats);

(c) To provide access to incidental occupant spaces and rooms which are not open to the general public and which house no more than five persons (e.g., equipment control rooms, projection booths, radio and news booths, raised pharmacy platforms, manager's stations in food stores); and

(d) To provide access when existing site constraints or other constraints make use of a ramp or an elevator infeasible.

The last condition allows the use of platform lifts or wheelchair lifts only in

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Platform Lifts/Wheelchair Lifts (4.1.3(5) Exception 4)

Comment. The NPRM noted that some building codes and the proposed BCMC scoping provisions prohibit the installation of platform lifts or wheelchair lifts as part of a required accessible route in new construction and asked a series of questions regarding their use. Individuals with disabilities and their organizations who responded to the questions viewed platform lifts or wheelchair lifts as inferior to ramps, not independently operated, poorly maintained, dangerous, and undignified. However, some of these commenters acknowledged that in some alteration projects, and in limited areas in new construction, a platform lift or wheelchair lift may be the only viable option for accessibility. Lift manufacturers and vendors acknowledged that there have been significant problems in the past but believed that improvements have been made, and gave examples where a platform lift or wheelchair lift provided a better design solution than a ramp. Several architects and other commenters recommended that the Board specify conditions for the use of platform lifts or wheelchair lifts.

Response. Rather than prohibit platform lifts or wheelchair lifts in new construction, the Board believes that the better approach is to specify the conditions where their use is allowed. The applicable exception under 4.1.3(5) has been revised to permit the use of platform lifts or wheelchair lifts complying with 4.11 and applicable State or local codes in new construction under the following conditions:

(a) To provide an accessible route to performing area in an assembly occupancy;

(b) To comply with the wheelchair viewing position line-of-sight and dispersion requirements of 4.33.3 (e.g., to provide access to seating areas located above a cross aisle or to box seats);

(c) To provide access to incidental occupant spaces and rooms which are not open to the general public and which house no more than five persons (e.g., equipment control rooms, projection booths, radio and news booths, raised pharmacy platforms, manager's stations in food stores); and

(d) To provide access when existing site constraints or other constraints make use of a ramp or an elevator infeasible.

The last condition allows the use of platform lifts or wheelchair lifts only in

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very limited circumstances where use of a ramp or an elevator is infeasible due to existing site constraints or other constraints. For example, if a new infill building is being constructed incorporating a historic facade which must be maintained, thereby effectively predetermining the entry floor level, and space for a ramp to the entry floor level was not available, a platform lift or wheelchair lift would be permitted.

Windows (4.1.3(6))

The NPRM proposed to require that operable windows comply with the technical specifications in 4.12 for windows. For reasons explained under 4.12, the Board has decided to reserve the technical specifications for windows in the final guidelines and, therefore, the scoping provision is also reserved.

Doors (4.1.3(7))

Comment. Several commenters requested that a requirement be added for at least one automated door at a principal entrance, or at each entrance, or at certain rooms (e.g., restrooms, meeting rooms).

Response. The force required to open a door can affect usability of a building or facility by individuals with disabilities. This is especially true for exterior doors where a variety of factors can affect closing force (e.g., wind pressure, weight of door, heating and ventilation systems, positive or negative pressure within a building). Neither UFAS nor these guidelines specify an opening force for exterior doors because of these variable factors. Requiring an automated door in certain occupancies or large buildings could provide a solution to the problem. The Board plans to study this issue to determine where and in what types of buildings and facilities automated doors may be practical or necessary and cost feasible for future revision of the guidelines.

Entrances (4.1.3(8))

Comment. The NPRM asked two questions regarding entrances in new construction. First, in the case of buildings that have more than one ground floor level (e.g., buildings with a split level entrance leading only to stairs or escalators which connect with upper and lower levels less than one story above or below grade, and buildings built on hillsides with more than one floor having direct access to grade), should each ground floor level have an accessible entrance? [11] Second, should all entrances to every building be accessible. Businesses generally favored providing an accessible entrance at only one ground floor level in response to the first question and making some but not all entrances accessible in response to the second question. Individuals with disabilities and their organizations, and commenters from other categories, generally favored providing an accessible entrance at each ground floor level in response to the first question and making all entrances accessible in response to the second question.

Response. The NPRM proposed to follow UFAS which establishes two requirements for entrances. First, at least one principal entrance at each ground floor would be required to be accessible.[12] Second, when a building or facility has entrances which normally serve transportation facilities, passenger loading zones, accessible parking facilities, public streets and sidewalks, or accessible interior vertical access, at least one of the entrances serving each function would have to be accessible.

Depending on the interpretation of what it means for an entrance to "normally serve" a function, the NPRM could result in all the entrances to a building being accessible as illustrated by the following example. A building has four entrances: One on each side. Two of the entrances lead directly to parking lots of equal size on opposite sides of the building. People who use the building usually arrive by car and enter through the two parking lot entrances making them principal entrances. Each parking lot has accessible parking spaces and the two parking lot entrances are accessible and connected by an accessible route to the accessible parking spaces. The third entrance leads directly to a driveway with a bus stop and the fourth entrance leads directly to a public sidewalk. Even if the bus stop and the public sidewalk are connected by an accessible route to the two parking lot entrances, the third and fourth entrances could nonetheless be required to be accessible under the NPRM if an entrance which "normally serves" a function means the nearest entrance which directly leads to the function.

The legislative history makes clear that not every feature of every building needs to be accessible but rather a high level of convenient access is contemplated. The legislative history further states that "(a)ccessibility requirements shall not be evaded by constructing facilities in such a way that no story constitutes a 'ground floor,' for example, by constructing a building whose main entrance leads to stairways or escalators that connect with upper or lower floors; at least one accessible ground story must be provided." H. Rept. 101–596, at 77. Thus, each newly constructed building or facility must have at least one ground story entrance and at least one accessible entrance. The legislative history does not state that all or even most entrances must be accessible.

The Board wants to ensure a high level of access to all new buildings consistent with the statute. The Board has sought to require accessible entrances in a number that is easily definable and reasonable. The Board also wants to ensure that the requirements can be and will be met in all instances, except in those rare cases where the structural impracticability exception applies. In some urban and suburban areas, much new construction is "infill" between existing facilities and is constricted by slope and other site considerations, such as existing sidewalks and nearby property lines. In some areas there are land use plans and other restrictions that, in effect, limit development to sites where slopes are between 10% and 25%. For example, Maryland is considering imposing a land use plan on its localities which would preserve "agricultural" land (generally less than 10% slope) and steeply sloped land (more than 25% slope) and thus focus new development in areas with slopes between 10% and 25%. The Board understands that other States are considering similar proposals. Structural impracticability is a very narrow exception and, as explained in the legislative history, does not apply to situations where a building is constructed on "hilly" terrain or on a plot of land with steep slopes. H. Rept. 101–485, pt. 2, at 120. The Board believes it would be unreasonable to require all entrances to be accessible in these cases.

There is very little data available concerning the impact of site considerations on entrance accessibility. The Department of Housing and Urban Development's analysis of its Fair Housing Accessibility (FHA) Guidelines estimated the cost of providing 27 accessible entrances in new constructions at three different apartment complexes at sites having slopes of less than 10%, as ranging from an additional $240 to $1636 per entrance. The average cost was $836 per entrance. This data is not easily transferable to commercial construction because of the differences between residential and commercial construction and the differences in the FHA guidelines and the ADA guidelines. The Board's draft final regulatory impact analysis estimates the cost of an accessible building entrance ramp with a 1:12 slope for a 5-feet rise and railings extensions to be $6460 for offices and hotels. This cost does not take grading or retaining walls into account.

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[11] This question was suggested by the legislative history which stated that: "[a]ccessibility requirements shall not be evaded by constructing facilities in such a way that no story constitutes a 'ground floor,' for example, by constructing a building whose main entrance leads only to stairways or escalators that connect with upper or lower floors; at least one accessible ground story must be provided," H. Rept. 101–596, at 77.

[12] UFAS defines a "principal entrance" as "the main door through which most people enter." The NPRM defined a "principal entrance" as "one through which a significant number of people enter" in recognition of the fact that buildings, especially larger ones, typically have several principal entrances.

Thus, the Board is not at this time mandating 100% accessible entrances in new construction. At the same time, the Board recognizes that providing only one accessible entrance to a building with multiple public entrances will not always achieve the high level of convenient access contemplated by the ADA. In light of all these concerns, the Board has established two independent requirements for entrances in 4.1.3(8) (a) and (b). First, 4.1.3(8)(a)(i) requires that at least 50% of all public entrances be accessible. One of these must be a ground floor entrance. In addition, 4.1.3(8)(a)(ii) requires that accessible entrances must be provided in a number at least equivalent to the number of exits required by the applicable State or local building or life safety code. This provision acknowledges the importance of life safety issues in access to, use of, and egress from a building. Model building and life safety codes are generally consistent in their method of determining the number of exits required, the exit width necessary, and the separation of exits needed to ensure safe egress during an emergency. Since not all exits are required to serve as entrances, if only one building entrance is planned, and a building or life safety code requires two fire exits, 4.1.3(8)(ii) would not require the provision of more than the one planned entrance. Furthermore, 4.1.8(a)(iii) requires accessible entrances be provided to each tenancy in a facility. One entrance may be considered as meeting more than one of the requirements in 4.1.3(8)(a) (i) through (iii). Where feasible, the accessible entrances must be the entrances used by the majority of people visiting or working in the building.

Second, 4.1.3(8)(b) (i) and (ii) require that accessible entrances be provided from any indoor garages, pedestrian tunnels, or elevated walkways that have entrances to the facility. One entrance may be considered as meeting more than one of the requirements in 4.1.3(8)(b) (i) and (ii).

The Board believes that these provisions, combined with the other requirements described above, will ensure access at least equivalent to that required by MGRAD and UFAS and intended by Congress.

The NPRM included a requirement in the technical specifications for signage at 4.30.1 that entrances which are not accessible to have directional signage complying with 4.30 indicating the location of the nearest accessible entrance. This requirement has been placed in the scoping provisions for entrances in the final guidelines.

Comment. Several commenters recommended including sections from the proposed BCMC scoping provisions in the guidelines requiring an accessible entrance to be provided to each tenancy within a building (e.g., retail stores in a strip shopping center), and all entrances having walkways with a change in elevation of 6 inches or less at the entrance to be accessible.

Response. Multi-tenant facilities such as a strip shopping center are generally viewed as one building. To ensure that each retail store and other places of public accommodation within such facilities are accessible, a requirement has been added to 4.1.3(8)(a)(iii) for an accessible entrance to be provided to each tenancy within a building. As for entrances having walkways with a change in elevation of 6 inches or less at the entrance, the provision is not necessary in light of 4.1.3(8) in its entirety. Further, the proposed BCMC scoping provision does not address the fact that site preparation can usually be made to ensure an elevation change of more than 6 inches, thereby circumventing the intent of the requirement.

Egress and Areas of Rescue Assistance (4.1.3(9))

Comment. The NPRM proposed to require "areas of refuge" in newly constructed buildings and facilities which were defined as areas, which have direct access to an exit stairway, where people who are unable to use stairs may remain safely to await further instructions or assistance during emergency evacuation. Building owners and managers and businesses objected to the concept of "area of refuge." Many of these commenters, including the Building Owners and Managers Association (BOMA), expressed concern that such areas would result in restricting evacuation of individuals with disabilities during an emergency. Evacuation plans were recommended instead. Individuals with disabilities and their organizations who commented on the provision supported it.

Response. The Board wishes to emphasize that the purpose of areas of refuge is to facilitate and not restrict the evacuation of wheelchair users and other individuals with mobility impairments during an emergency. MGRAD, UFAS, and the ANSI A117.1 standard, all require that accessible routes connect to an accessible place of refuge in the event of an emergency. Since elevators are generally not available for egress during a fire, a safe area is needed where wheelchair users and other individuals with mobility impairments who cannot exit by stairways can temporarily await further instructions or evacuation assistance. To clarify this point, the area has been renamed "areas of rescue assistance" in the final guidelines. The appendix to the guidelines recognizes in A4.3.10 that an emergency management plan for the evacuation of people with disabilities is essential in providing for fire safety in buildings and facilities. However, an evacuation plan alone is not sufficient to ensure the safety of individuals with mobility impairments during an emergency since individuals may not be able to transfer to an evacuation device or may require assistance from trained personnel.

The final guidelines incorporate modified scoping provisions and technical specifications from chapter 31, section 3104 of the 1991 Uniform Building Code. In buildings and facilities, or portions of buildings and facilities, required to be accessible under the ADA, accessible means of egress must be provided in the same number as required for exits by State or local buidling and life safety codes. Where a required exit from an occupiable level above or below a level of accessible exit discharge is not accessible, areas of rescue assistance must be provided on each level in a number equal to that of inaccessible required exits. A horizontal exit which meets the requirements of state or local building or life safety codes may also be used for an area of rescue assistance.

The scoping provisions in 4.1.3(9) for areas of rescue assistance do not apply to exterior facilities covered by 4.1.2. For example, parking lots and open parking garages are covered only by 4.1.2 and are not required to comply with the scoping provisions in 4.1.3(9) for areas of rescue assistance.

The technical specifications for areas of rescue assistance are discussed under 4.3.11 and provide several alternatives for design of such areas. The draft final regulatory impact estimates the additional direct costs for creation of an area of rescue assistance in a portion of a stairway landing in a new building to be $624. Although there are less expensive alternatives, this option was analyzed in the draft final regulatory impact analysis because it is commonly used at the current time in buildings that provide area of rescue assistance and because it represents the highest range of cost that will be incurred. Based on this estimate, the additional direct costs for providing areas of rescue assistance in stairway landings in a new low-rise office building 6 stories and 40,000 square feet per story would be $6,240 or $.03 per square foot of building area; and in a high-rise office building with 25 stories 30,000 square feet per story would be $29,952 or $.04 per square foot of building area. In many cases the cost of providing areas of rescue assistance will be much lower because such areas can be provided in elevator lobbies, office rooms, and similar space used for other purposes. No costs will be incurred in alterations or in new buildings with supervised automatic sprinkler systems because of exceptions which are included in the final guidelines as explained below. The Board believes these costs to be reasonable in light of this important life safety issue.

Comment. Several commenters requested that buildings and facilities equipped with a supervised automatic sprinkler system be exempted from the requirements for areas of rescue assistance.

Response. An exception has been added exempting buildings and facilities having a supervised automatic sprinkler from the requirements for areas of rescue assistance. Supervised automatic sprinkler systems have built in signals for monitoring features of the system such as the opening and closing of water control valves, the power supplies for needed pumps, and water tank levels, and for indicating conditions that will impair the satisfactory operation of the sprinkler system. Because of these monitoring features, supervised automatic sprinkler systems have a high level of satisfactory performance and response to fire conditions and the Board does not believe that additional measures are needed in buildings and facilities with such systems.

Comment. The American Hotel and Motel Association requested that in the case of hotels and motels on floors used exclusively for guest rooms, such rooms be permitted to serve as areas of rescue assistance because State and local building and life safety codes require them to be fire-resistive.

Response. The organization responsible for development of the Uniform Building Code rejected this proposal on the grounds that it is inappropriate to designate a room or space that is not available to the public as an area of rescue assistance. The Board declines to accept the proposal for the same reason. In addition, there are some inconsistencies among State and local building and life safety codes regarding requirements for fire-resistive construction.

Comment. Several commenters raised questions regarding the application of the requirements for areas of rescue of assistance to alterations of existing facilities.

Response. The guidelines require areas of rescue assistance only in new construction. For the reasons discussed under 4.1.6(1)(g), a paragraph has been added to the scoping provisions for alterations to clarify that the requirements for areas of rescue assistance do not apply to alterations of existing facilities.

Drinking Fountains (4.1.3(10))

Comment. The NPRM asked whether a specific percentage of accessible drinking fountains should be required and, if so, whether at least 50% would be an appropriate number. Most persons who commented on the question stated that at least 50% was an appropriate number. Several commenters requested that the provisions address the distance between accessible drinking fountains.

Response. The Board wants to ensure that drinking fountains are accessible to wheelchair users and individuals who have difficulty bending or stooping. The final guidelines provide that where there is only one drinking fountain on a floor, there must be a drinking fountain that is accessible to wheelchair users in accordance with 4.15 and individuals who have difficulty bending or stooping. This can be accomplished by use of a "hi-lo" drinking fountain; by providing one drinking fountain accessible to wheelchair users and one drinking fountain at a standard height convenient for those who have difficulty bending or stooping; by providing a drinking fountain accessible under 4.15 and a water cooler; or by such other means as would achieve the required accessibility for each group on each floor. Where more than one drinking fountain or water cooler is provided on a floor, 50% of those provided must comply with 4.15 and be on an accessible route. In the event an odd number of drinking fountains are provided on a floor, the requirement can be met by rounding down the odd number to an even number and calculating 50% of the even number. Additional advisory material on drinking fountains is included in the appendix at A4.1.3(10).

Toilet Rooms (4.1.3(11))

Comment. Some commenters were opposed to the scoping provision in 4.1.3(11) requiring that each public and common use toilet room be accessible.

Response. Although each common and public use toilet room must be accessible, if more than one toilet stall, lavatory, or other feature is provided in such a toilet room, generally only one of each feature is required to be accessible. See 4.22.4 through 4.22.7. Toilet rooms serving specific sleeping accommodations in dormitories, hotels, and other similar places of transient lodging are not public or common use toilet rooms.

Comment. A few commenters objected to requiring other toilet rooms to be adaptable.

Response. The scoping provision in 4.1.3(11) has been clarified that the adaptability requirement applies to toilet rooms that are designed or intended for the use of the occupant of a specific space such as a private toilet room which is part of an executive's office. Exempting such toilet rooms in new construction from the adaptability requirement would make reasonable accommodation in the future impossible in many cases.

Comment. Several commenters requested clarification whether every toilet room provided as part of a sleeping accommodation in medical care facilities and transient lodging must be accessible or adaptable.

Response. As stated in 4.1.1(1), in new construction all areas of buildings and facilities must comply with 4.1 through 4.35, unless otherwise provided in the general application section or a special application section. Medical care facilities and transient lodging are covered by special application sections 6 and 9 respectively which require that a specific percentage of sleeping accommodations, including toilet rooms, be accessible. The guidelines do not require toilet rooms in other sleeping accommodations to be accessible except that, in the case of hotels, motels and other similar places of transient lodging, doors and doorways must be designed to allow passage into the toilet room.

Comment. A few commenters recommended that an accessible unisex toilet room should be required either in addition to or in place of separate toilet rooms for men and women.

Response. Unisex toilet rooms are discussed in the technical specifications for toilet rooms in 4.22.

Storage, Shelving and Display Units (4.1.3(12))

Comment. Several commenters requested clarification regarding whether all storage, shelving and display units must be within the forward and side reach ranges for wheelchair users.

Response. The scoping provision in 4.1.3(12)(a) applies only to fixed cabinets, shelves, closets, and drawers and expressly states that additional storage space may be provided outside the forward and side reach ranges for wheelchair users. The technical specifications for reach ranges for storage spaces have also been clarified. See 4.25.3; and figures 38a and 38b.

The scoping provision in 4.1.3(12)(b) applies to fixed shelves or display units allowing self-service by customers and requires such shelves and display units be located on an accessible route. A sentence has been added to the provision to clarify that compliance with the forward and side reach ranges for wheelchair users is not required.

Comment. Businesses requested that shelves in employee work areas (e.g., stockrooms, baggage rooms, maids closets) be exempt from the scoping provision in 4.1.3(12)(a).

Response. As stated in 4.1.1(1), in new construction all areas of buildings and facilities must comply with 4.1 through 4.35, unless otherwise provided in the general application section or a special application section. Areas used only by employees as work areas are covered by 4.1.1(3) which requires that such areas be designed and constructed so that individuals with disabilities can approach, enter, and exit the areas. This provision expressly states that employee work areas are not required to be equipped with accessible shelves. The appendix includes advisory guidance at A4.1.1(3) that consideration should be given to placing shelves in employee work areas at a convenient height for accessibility or installing commercially available shelving that is adjustable so that reasonable accommodation can be made in the future.

Controls and Operating Maintenance (4.1.3(13))

Comment. Several commenters requested clarification whether controls not intended for public use must be within the forward or side reach ranges for wheelchair users.

Response. An exception has been added to the technical specifications in 4.27.3 stating that the forward and side reach range requirements do not apply where the use of special equipment dictates otherwise or where electrical and communications systems receptacles are not normally intended for use by building occupants.

Audible and Visual Alarms (4.1.3(14))

Comment. Commenters generally supported the inclusion of visual alarms in the guidelines. Some businesses considered requiring visual alarms in new buildings and facilities to be excessive and recommended that such alarms should be provided only in areas where an individual with a hearing impairment was an occupant or that portable or personal alarm devices should be permitted. A few commenters requested that buildings with automatic sprinkler systems be exempt from the requirement for visual alarms.

Response. Builders and designers cannot know in advance whether a space will be occupied by a person with a hearing impairment. If visual alarms are not included in the design of new buildings and facilities but instead are required only where an individual with a hearing impairment was an occupant, buildings and facilities would have to be retrofitted at potentially greater cost.

Further, visual alarms are intended to alert visitors, and not just regular tenants, to emergencies. Portable or personal alarm devices are carried by an individual and are triggered by a signal from the building emergency alarm system. Provision of these devices is not an acceptable alternative, especially in places of public accommodation such as retail stores, assembly areas, and transportation facilities where the number of visitors and temporary users greatly exceeds the number of tenants. They have been demonstrably ineffective in both drill and emergency situations in such places and have resulted in visitors being left unaware of the need for evacuation. The only situation where portable or personal alarm devices are permitted under the guidelines is in sleeping accommodations in hotels and other similar places of transient lodging where guests are assigned temporarily to a specific room and can be provided appropriate devices when registering for the room. See 9.3.2. Even then, hallways, lobbies and other common areas in hotels and other similar places of transient lodging must have permanently installed visual alarms.

As for buildings with automatic sprinkler systems, visual alarms are generally required only where audible alarms are required or provided. Since buildings with automatic sprinkler systems are required to provide audible alarms, the Board believes that persons with hearing impairments are entitled to access the same emergency warning system.

The draft final regulatory impact analysis estimates the direct additional cost per visual alarm device in new construction, including installation, to be $169. A high-rise office building with 25 stores and 30,000 square feet per story is estimated to require 160 devices for a total cost of $27,040 or $.04 per square foot of building area. The Board believes that this cost is reasonable in light of the importance of this life safety issue.

Detectable Warnings (4.1.3(15))

A large number of comments was received in support of and in opposition to detectable warnings in general and at specific locations. As further discussed under 4.29, the requirements for detectable warnings have been revised and some sections have been reserved pending further study and research for future revisions to the guidelines. An editorial change has been made to 4.1.3(15) stating that detectable warnings shall be provided at locations specified in 4.29.

Interior Signage (4.1.3(16))

Comment. As discussed under 4.1.2(7), the Board has concluded based on review of the comments that the scoping provisions and technical specifications for signage were unclear and needed to be revised.

Response. The scoping provisions for interior and exterior signage and the accompanying technical specifications have been clarified and revised in response to the comments. See 4.1.2(7) for scoping provisions for exterior signage; and 4.30 for technical specifications for signage. Interior signs which designate permanent rooms and spaces must comply with the technical specifications in 4.30.1 and 4.30.4 through 4.30.6 for raised and brailled characters, finish and contrast, and mounting locations and height. For instance, numbers on hotel guest rooms, patient rooms in hospitals, office suites, and signs designating men's and women's toilet facilities must have raised and brailled characters, and also must meet the finish and contrast, and mounting height requirements. Interior signs which provide direction to or information about functional spaces of a building or facility must comply with the technical specifications in 4.30.1, 4.30.2 and 4.30.5 for character proportion and finish and contrast. The technical specifications in 4.30.3 for character height must also be complied with if the signage is suspended or projected overhead in compliance with the technical specifications in 4.4.2 for head room for protruding objects.

An exception has also been added to 4.1.3(16) to clarify that building directories, menus, and other signs which provide temporary information about rooms and spaces such as the current occupant's name do not have to comply with the requirements for signage.

Comment. The NPRM asked whether additional types of signage such as informational and directional signage about functional spaces, rules of conduct, or hazards should be tactile (i.e., comply with technical specifications in 4.30.4 and 4.30.6 for raised and braille characters and mounting location and height). The NPRM also requested information on available technologies such as audible signs for overhead and remote signage. Comments from individuals with disabilities and their organizations regarding additional types of signage that should be tactile were scattered with no clear consensus of opinion that would be useful for purposes of establishing guidelines. Technical information was submitted by Love Electronics regarding infrared signage.

Response. Although technology is available for making overhead and remote signage accessible, the Board plans to further study this issue to determine where and in what types of buildings and facilities such technology may be necessary for future revision of the guidelines.

Accessible Public Telephones (4.1.17(a))

Comment. Individuals with disabilities and their organizations requested that more accessible telephones be required. One commenter recommended that a maximum distance of 300 feet be established between accessible public telephones in large buildings and facilities. A telephone company objected to requiring at least one public telephone per floor to meet the technical specifications in 4.31.2 for forward reach by wheelchair users when two or more banks of telephones are provided on each floor. One commenter recommended that the exception under 4.1.3(17)(a) for exterior public telephones should permit a side reach telephone instead of a forward reach telephone if dial tone first service is available.

Response. The exception under 4.1.3(17)(a) has been revised as recommended. It has also been clarified that accessible public telephones required by 4.1.3(17)(a) do not include text telephones which are covered by 4.1.3(17)(c).

Public Telephones Equipped With Volume Controls (4.1.3(17)(b))

Comment. Most individuals with disabilities and their organizations supported the NPRM proposal to require 25% of public telephones in newly constructed buildings and facilities to be equipped with a volume control in addition to the requirement in 4.1.3(17)(a) for accessible public telephones. A few requested that the number be increased. Some recommended that scoping be based on occupancy. Telephone companies responded that they have adopted voluntary programs to install public telephones equipped with volume controls and recommended that the Board defer to a Federal Communication Commission (FCC) proceeding which declined to require 25% of all public telephones to be equipped with volume controls. See Order Completing Inquiry and Providing Further Notice of Proposed Rulemaking, CC Docket No. 87–124 (July 27, 1989).

Response. The FCC declined to require 25% of all public telephones to be equipped with volume controls based on cost estimates provided by telephone companies for retrofitting all existing public telephones with a volume control. The NPRM proposal was more modest and only required 25% of public telephones installed in newly constructed buildings and facilities to be accessible. The American Telephone and Telegraph Company reported that its newly designed public telephones incorporate volume controls as a standard feature. Southwestern Bell Telephone Company also reported that it installs volume controls in its public telephones free upon the request of its customers. Cost data provided by other telephone companies for equipping public telephones with volume controls ranged from $10 to $80. Since the additional direct cost of requiring 25% of public telephones in newly constructed buildings and facilities is nothing to minimal depending on the telephone manufacturer or company, the requirement has been retained in the final guidelines.

Comment. The American Public Communication Council requested that the requirement be postponed for one year to permit suppliers to test and evaluate equipment.

Response. The American Telephone and Telegraph Company and other telephone companies currently offer public telephones equipped with volume controls as a standard feature or upon request. In addition, many telephone companies incorporate the volume control feature into the base of the telephone rather than the handset which has virtually eliminated concerns about vandalism. The Board does not believe that any delay is warranted beyond the January 26, 1992 effective date for title III of the ADA.

Public Text Telephones (4.1.3(17)(c)–(d))

Comment. The NPRM asked whether the scoping provision for public text telephones should be based on the total number of public pay telephones in a building or facility and whether six public pay telephones should be the trigger point. As an alternative, the NPRM asked whether the scoping provision should be based on occupancy type as is done in Michigan. The NPRM also asked for information about the need for public text telephones in general and at specific types of facilities. Most individuals with disabilities and their organizations and other commenters who responded to the questions recommended basing the scoping provision on occupancy type in addition to the total number of public pay telephones in a building or facility and generally supported the need for public text telephones in the same occupancy types as required in Michigan (e.g., transportation facilities, hospitals, shopping malls, convention centers, hotels with a convention center). Many of these commenters expressed concern that smaller or rural communities may have buildings and facilities where there is a need for public text telephones regardless of the number of public pay telephones. As for the trigger point for a scoping provision based on total number of public pay telephones, many individuals with disabilities and their organizations and other commenters recommended that the trigger point be less than six public pay telephones and offered a variety of percentage, bank, and cluster options. Businesses and telephone companies were generally opposed to public text telephones and expressed concerns about cost, utilization, and maintenance. One telephone company stated that the presence of six public telephones would indicate a high volume of traffic and suggests a potential for cost recovery. Other telephone companies referred to a Federal Communications Commission proceeding to gather information concerning the telecommunication needs of individuals with hearing impairments which concluded that "requiring that pay telephones be designed to accommodate portable TDDs, however, should be less costly, and may well provide benefits that outweigh the costs." Order Completing Inquiry and Providing Further Notice of Proposed Rulemaking, CC Docket No. 87–124 (July 27, 1989) at paragraph 110.

Response. A number of changes have been made to the scoping provision for public text telephones in response to the comments. The final guidelines include requirements based on (1) the total number of interior and exterior public pay telephones provided at a site and (2) certain occupancy types, regardless of the number or public pay telephones provided at the site. The trigger point has been set at four or more interior and exterior public pay telephones at a site where at least one is in an interior location. For instance, if a building or facility has two exterior and two interior public pay telephones on the site, the scoping provisions for a public text telephone is triggered. On the other hand, if all public pay telephones are located outdoors, a public text telephone is not required because text telephones do not currently work well outdoors and the use of portable text telephones at such locations is impractical.

The final guidelines further provide that if an interior public pay telephone is provided in a stadium or arena, a convention center, a hotel with a convention center, or a covered mall, at least one interior public text telephone must be provided in the facility. In the case of hospitals, if a public pay telephone is located in or adjacent to an emergency room, recovery room, or waiting room, one public text telephone must be provided at each such location.

The scoping provision for public text telephones in transportation facilities will be included in section 10 of the final guidelines. The Board will also incorporate a scoping provision for public text telephones in State and local government buildings when the guidelines are supplemented for purposes of title II of the ADA.

The final guidelines also include new technical specifications for public text telephones at 4.31.9 and additional explanatory information in the appendix at A4.31.9. The technical specifications permit the use of either an integrated text telephone and pay telephone unit, or a conventional text telephone that is permanently affixed within, or adjacent to, the telephone enclosure. In addition, the technical specifications permit the use of portable text telephones as equivalent facilitation under certain conditions. At the present time, pocket-type text telephones do not accommodate a wide range of individuals with disabilities and are not considered appropriate for purposes of equivalent facilitation. As technology develops, this may change. To be considered equivalent facilitation, the portable text telephone must be readily available for use with nearby public pay telephones. For example, if a hotel has portable text telephones available at the registration desk on a 24 hour basis for use with nearby public pay telephones, substantially equivalent access to and usability of the public pay telephone would be provided. On the other hand, if the portable text telephone is kept at a remote location from the public pay telephones or is stored in a space near the public pay telephones but the user must search for personnel not regularly stationed near the public pay telephones, substantially equivalent access to and use of the public pay telephone would not be provided. If a portable text telephone is provided as equivalent facilitation, at least one nearby public pay telephone must be equipped with a shelf and an electrical outlet to accommodate the portable text telephone. The technical specifications for the shelf are in 4.31.9(2). If an acoustic coupler is used, the telephone handset cord must be long enough to connect the public pay phone with the text telephone. Regardless of whether the public text telephone is portable or permanently affixed, the technical specifications for signage in 4.30.7(3) require that directional signage indicating the location of the nearest public text telephone must be provided near all banks of telephones which do not contain a text telephone. If a building or facility has no banks of telephones, the directional signage must be provided at the entrance (e.g., in a building directory).

Comment. Several commenters recommended that, in addition to requiring at least one public text telephone in certain buildings and facilities, public pay telephones should be designed to accommodate portable text telephones so that individuals who carry their own devices can use public pay telephones, especially in larger facilities where one may have to walk a considerable distance to find a public text telephone.

Response. A new scoping provision has been added at 4.1.3(17)(d) requiring at least one public pay telephone in each bank of three or more interior public pay telephones to be designed to accommodate a portable text telephone. The public pay telephone must comply with the technical specifications in 4.31.9(2), and be equipped with a shelf on which to place a portable text telephone, an electrical outlet, and a telephone handset cord long enough to reach the shelf for acoustical coupling. Some telephone enclosure companies currently have several models on the market which comply with these requirements.

Fixed Seating and Tables (4.1.3(18))

Comment. The NPRM asked whether the five percent scoping provision for fixed seating and tables was adequate. Many commenters interpreted the provision as applying to seating in assembly areas or restaurants and stated that the number was too low. Some commenters stated that similar scoping provisions in their states were adequate.

Response. Wheelchair seating spaces in assembly areas and restaurants are addressed in separate provisions. See 4.1.3(19)(a) for assembly areas; and 5.1 for restaurants. The five percent figure has not been changed. Several editorial changes have been made to the provision to be consistent with 4.1.1(3) regarding areas used only by employees as work areas. The term "accessible public or common use areas" has been substituted for "accessible spaces" and the reference to "work surfaces" has been deleted. As clarified, the provision applies to fixed seating and tables in accessible public and common use areas such as study carrels or laboratory stations in a classroom.

Wheelchair Seating Spaces in Assembly Areas (4.1.3(19)(a))

Comment. Individuals with disabilities and their organizations and other commenters recommended that the scoping provisions for wheelchair seating spaces in assembly areas include such spaces for areas with less than 50 seats and generally favored an increase in the number of wheelchair seating spaces. Several commenters, including theater owners, believed that the requirements for wheelchair seating spaces in assembly areas were excessive.

Response. The table in 4.1.3(19)(a) specifying the number of wheelchair seating spaces in assembly areas has been revised in response to the comments. The new scoping provision is generally taken from the California building code. In smaller assembly areas, one wheelchair seating space is required in areas having a seating capacity of 4 to 25, and two wheelchair seating spaces are required in areas having a seating capacity of 26 to 50. The NPRM required no accessible seating in assembly areas with fewer than 50 seats. Unlike the NPRM, the new scoping provision also requires that one percent, but not less than one, of all fixed seats be aisle seats that have either no armrests, or removable or folding armrests on the aisle side of the

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Fixed Seating and Tables (4.1.3(18))

Comment. The NPRM asked whether the five percent scoping provision for fixed seating and tables was adequate. Many commenters interpreted the provision as applying to seating in assembly areas or restaurants and stated that the number was too low. Some commenters stated that similar scoping provisions in their states were adequate.

Response. Wheelchair seating spaces in assembly areas and restaurants are addressed in separate provisions. See 4.1.3(19)(a) for assembly areas; and 5.1 for restaurants. The five percent figure has not been changed. Several editorial changes have been made to the provision to be consistent with 4.1.1(3) regarding areas used only by employees as work areas. The term "accessible public or common use areas" has been substituted for "accessible spaces" and the reference to "work surfaces" has been deleted. As clarified, the provision applies to fixed seating and tables in accessible public and common use areas such as study carrels or laboratory stations in a classroom.

Wheelchair Seating Spaces in Assembly Areas (4.1.3(19)(a))

Comment. Individuals with disabilities and their organizations and other commenters recommended that the scoping provisions for wheelchair seating spaces in assembly areas include such spaces for areas with less than 50 seats and generally favored an increase in the number of wheelchair seating spaces. Several commenters, including theater owners, believed that the requirements for wheelchair seating spaces in assembly areas were excessive.

Response. The table in 4.1.3(19)(a) specifying the number of wheelchair seating spaces in assembly areas has been revised in response to the comments. The new scoping provision is generally taken from the California building code. In smaller assembly areas, one wheelchair seating space is required in areas having a seating capacity of 4 to 25, and two wheelchair seating spaces are required in areas having a seating capacity of 26 to 50. The NPRM required no accessible seating in assembly areas with fewer than 50 seats. Unlike the NPRM, the new scoping provision also requires that one percent, but not less than one, of all fixed seats be aisle seats that have either no armrests, or removable or folding armrests on the aisle side of the

seat to increase accessibility for wheelchair users who wish to transfer to a fixed seat and individuals with other mobility impairments for whom armrests present an obstacle. These seats must be identified by a sign or marker and a sign must be posted in the ticket office notifying patrons of their availability.

The total number of seating spaces for individuals with mobility impairments is generally the same under the NPRM and the final guidelines. For instance, in an assembly area with a seating capacity of 200, the NPRM required 6 wheelchair seating spaces; and the final guidelines require 4 wheelchair seating spaces and 2 accessible aisle seats. In an assembly area with a seating capacity of 1,000, the NPRM required 20 wheelchair seating spaces; and the final guidelines require 11 wheelchair seating spaces and 10 accessible aisle seats. To address the concerns regarding the number of wheelchair seating spaces required in larger facilities, a paragraph has been added to the appendix explaining that readily removable or folding seating units may be installed in wheelchair seating spaces which may be used by other persons when not needed for wheelchair users or individuals with other mobility impairments. Folding seating units usually consists of two fixed seats that can be easily folded into a fixed center bar to allow for open spaces for wheelchair users when needed.

Assistive Listening Systems (4.1.3(19)(b))

Comment. The NPRM asked whether certain assembly areas with fixed seating should be required to have permanently installed assistive listening systems, and whether other areas should be permitted to have an adequate number of electrical outlets or other supplementary wiring to accommodate portable assistive listening systems. Most commenters who responded to the question favored requiring permanently installed assistive listening systems in assembly areas with fixed seating and permitting the use of portable systems in other areas. For instance, hotels pointed out that larger meeting rooms are frequently subdivided into smaller meeting rooms and a permanently installed assistive listening system may not be usable in such spaces. Some commenters recommended that all assistive listening systems should be portable.

Response. The scoping provision for assistive listening systems has been revised. The provision applies to concert and lecture halls, playhouses and movie theaters, meeting rooms, and other assembly areas where audible communication is integral to use of the space. If such an assembly area (a) accommodates at least 50 persons or has an audioamplification system and (b) has fixed seating, a permanently installed assistive listening system is required. Other assembly areas are permitted to have an adequate number of electrical outlets or other supplementary wiring to accommodate portable assistive listening systems. The requirement assures that individuals with hearing impairments can attend functions in assembly areas with fixed seating without having to give advance notice or disrupt the event to have a portable assistive listening system set up. The requirement also provides for flexibility for smaller assembly areas and rooms and spaces with changeable seating arrangements.

The provision in the NPRM which would have required assistive listening systems to be installed in rooms if they are used regularly as meeting or conference rooms was deleted because it would have covered individual offices which are used for meetings which was not intended.

Comment. Several commenters requested that the scoping provision not be limited to indoor assembly areas and include such facilities as baseball stadiums.

Response. The baseball stadium in Boston has a permanently installed assistive listening system. Since the technology currently exists for providing communication access to such facilities, the scoping provision is not limited to indoor assembly areas.

Comment. Most commenters supported requiring that the minimum number of receivers be equal to four percent of the total number of seats but not less than two. Some commenters believed that the number was excessive and other commenters wanted the number to be increased.

Response. The four percent figure is based on a Bureau of the Census estimate of the number of persons aged 15 and over who have difficulty hearing what is said in a normal conversation with another person, excluding those who cannot hear at all. See Bureau of Census, Disability Functional Limitation and Insurance Coverage, 1984–85. There are other studies which indicate that the numbers may be as high as eight to ten percent. As assistive listening systems become more readily available, it is expected that their usage will increase. The Board intends to monitor this issue and if a need for an increase in the number of receivers is demonstrated, the scoping provision will be revised.

Comment. The NPRM requested information regarding which types of assistive listening systems (induction loop, FM, and infra red) work best in particular environments. Each of the three types of systems received some support for all applications. Many commenters described their personal experiences with particular types of systems. Those who provided extensive information on the advantages and disadvantages of the various systems recommended that a specific type should be selected only after consultation with experts in the field.

Response. The appendix in A4.33.6 has been expanded to provide additional information on the various types of assistive listening systems. The appendix includes a table reprinted from a National Institute of Disability and Rehabilitation Research "Rehab Brief" which shows some of the advantages and disadvantages of each system and typical applications. New York has also adopted technical specifications which may be useful. A pamphlet is available from the Board which lists demonstration centers across the country where technical assistance can be obtained in selecting and installing appropriate systems.

Comment. The NPRM also requested information regarding the need for an assistive listening device at sales and service counters, teller windows, box offices, and information kiosks where a physical barrier separates service personnel and customers. Most commenters favored the provision of an assistive listening device at these places. Those who were opposed to this provision recommended alternative means to address the problem such as training personnel how to communicate effectively with individuals who have hearing impairments.

Response. A provision has been added to the appendix at A7.2(3) recommending that at least one permanently installed assistive listening system be installed at sales and service counters, teller windows, box offices, and information kiosks where a physical barrier separates service personnel and customers.

Automated Teller Machines (4.1.3 (20))

The legislative history of the ADA specificaly mentions automatic teller machines (ATMs) as covered by the accessibility requirements. The NPRM included proposed scoping provisions and technical specifications for ATMs. The scoping provisions in the final guidelines have been revised and require that where ATMs are provided, each machine shall comply with 4.34

except where two or more machines are provided at one location, then only one machine shall comply with 4.34. For example, if a large shopping mall has an ATM located at each end of the mall, then each ATM must be accessible. On the other hand, if the ATMs are located adjacent to each other, then only one ATM must be accessible. Comments regarding ATMs and the requirements of the final guidelines are discussed under the technical specifications at 4.34.

Dressing and Fitting Rooms (4.1.3(21))

Comment. The NPRM asked whether the guidelines should include requirements for accessible dressing and fitting rooms. Individuals with disabilities and their organizations supported such requirements. Businesses expressed concern about having sufficient space for accessible dressing and fitting rooms, especially in existing buildings and facilities.

Response. A new scoping provision has been added at 4.1.3(21) for new construction requiring that where dressing and fitting rooms are provided for use by the public or employees, 5 percent, but not less than one, of such rooms for each type of use in each cluster of dressing rooms must be accessible. For instance, in a hospital where dressing rooms are provided for specific treatment or examination rooms, 5 percent, but not less than one, of the dressing rooms provided for each type of treatment or examination rooms must be accessible.

The Board recognizes that in some cases it may be technically infeasible to comply with the scoping provisions for new construction when altering dressing rooms in existing facilities due to space limitations and has included a provision in 4.1.6(3)(h) that requires only one dressing room for each sex on each level to be accessible in alterations where technical infeasibility can be demonstrated. Accessible unisex dressing rooms may be used to meet the requirement in 4.1.6(3)(h) where only unisex dressing rooms are provided.

Technical specifications for accessible dressing rooms are provided in 4.35.

4.1.5 Accessible Buildings: Additions

This section contains the scoping provisions for additions to existing buildings and facilities.

Comment. Several commenters raised questions regarding whether an addition to an existing building is to be treated as new construction or an alteration.

Response. Additions to existing buildings have attributes of both new construction and an alteration. To the extent that a space or element in the addition is newly constructed, each new space or element must comply with the applicable scoping provisions of 4.1.1 to 4.1.3 for new construction, the applicable technical specifications of 4.2 through 4.35, and the applicable special application sections 5 through 10. For instance, if a restroom is provided in the addition, it must comply with the requirements for new construction. Construction of an addition does not, however, create an obligation to retrofit the entire existing building or facility to meet requirements for new construction. Rather, the addition is to be regarded as an alteration and to the extent that it affects or could affect the usability of or access to an area containing a primary function, the requirements in 4.1.6(2) are triggered with respect to providing an accessible path of travel to the altered area and making the restrooms, telephones, and drinking fountains serving the altered area accessible. For example, if a museum adds a new wing that does not have a separate entrance as part of the addition, an accessible path of travel would have to be provided through the existing building or facility unless it is disproportionate to the overall cost and scope of the addition as determined under criteria established by the Attorney General. The scoping provision in 4.1.5 has been clarified to reflect these requirements.

4.1.6 Accessible Buildings: Alterations

This section contains scoping provisions for alterations.

General (4.1.6(1))

Comment. Some commenters pointed out that the provision in 4.1.6(1)(a) prohibiting any decrease in accessibility when an alteration is undertaken was inconsistent with the provision in 4.1.6(1)(d) [4.1.6(1)(e) in the NPRM] which does not impose any greater requirements in alterations than in new construction.

Response. The provision has been revised to state that no alteration shall be undertaken which decreases or has the affect of decreasing accessibility or usability of a building or facility below the requirements for new construction at the time of the alteration.

Comment. Several businesses expressed concern about minor alterations triggering extensive retrofitting of existing buildings and facilities to meet the requirements for new construction.

Response. The Board wishes to make it clear that minor alterations do not trigger extensive retrofitting of existing buildings. There are three general principles for alterations. First, if any existing element, space, or common area is altered, the altered element, space, or common area must meet new construction requirements. 4.1.6(1)(b). Second, if alterations to the elements in a space when considered together amount to an alteration of the space, the entire space must meet new construction requirements. 4.1.6(1)(c). Third, if the alteration affects or could affect the usability of or access to an area containing a primary function, the path of travel to the altered area and the restrooms, drinking fountains, and telephones serving the altered area must be made accessible unless it is disproportionate to the overall alterations in terms of cost and scope as determined under criteria established by the Attorney General. 4.1.6(2). This last requirement will be addressed in greater detail in the Department of Justice's final regulations.

There are two general exceptions that apply to alterations. First, compliance with a specific scoping provision or technical specification is not required if it is technically infeasible. 4.1.6(1)(j). As further discussed below, the definition of the term "technically infeasible" has been revised and does not require compliance with new construction requirements where existing structural conditions would require removing or altering a load-bearing member which is an essential part of the structural frame or where existing physical or site constraints prohibit full and strict compliance. Second, the installation of an elevator is not required in an altered building or facility that is less than three stories or has less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, the professional office of a health care provider, or another type of facility determined by the Attorney General. 4.1.6(1)(k). The elevator exception is established by section 303(b) of the ADA and is the same as that contained in the scoping provisions for new construction. As discussed above, if a building or facility is not exempt from the elevator requirement and the requirement for an accessible path of travel is triggered under 4.1.6(2), the installation of an elevator is subject to the disproportionality limitation. However, if an escalator or stair is planned or installed where none existed previously and major structural modifications are necessary for such installation, then an elevator or other vertical means of access must be provided. 4.1.6(1)(f).

The following examples illustrate the application of these principles and exceptions:

1. If a door handle is replaced, the new door handle must comply with

4.13.9 which states that door hardware shall have a shape that is easy to grasp and does not require tight grasping, tight pinching, or turning of the wrist (e.g., lever handles, U-shaped handles). Replacing the door handle does not trigger any other accessibility requirements for the door.

2. A common practice when replacing doors is to install a complete door assembly consisting of the frame and a pre-hung door. In interior light-frame construction (e.g., wood or metal studs), a wider door assembly can be installed without altering a load-bearing structural member which is an essential part of the structural frame. If a complete door assembly is installed in interior light-frame construction and space is available to comply with the clear width and maneuvering clearances specified in 4.13.5 and 4.13.6, those requirements must be met. However, if space is restricted, as in the case of some hotel guest rooms where narrow doorways are defined by bathroom and closet walls, it may be technically infeasible to comply with the clear width or maneuvering clearances specified in 4.13.5 and 4.13.6 due to existing physical constraints.

3. If a parking lot is resurfaced and does not have the number of accessible parking spaces required by 4.1.2(5) or the parking spaces do not comply with 4.6.3, those requirements must be met with unless it is technically infeasible. If the resurfacing does not include regrading, it may be technically infeasible to comply with the requirement in 4.6.3 that accessible parking spaces and access aisles be level with surface slopes not exceeding 1:50 (2%) in all directions due to existing site constraints. If a local zoning or land use code requires the parking lot to have a certain number of parking spaces and providing the number of accessible parking spaces in 4.1.2(5) would result in reducing the total number of parking spaces below that required by the local code, it would be technically infeasible to fully comply with the scoping provision due to site constraints resulting from legitimate requirements of the local code. For instance, if 4.1.2(5) requires five accessible parking spaces to be provided, but the parking lot can only accommodate four accessible parking spaces and still meet the local code requirement for total number of parking spaces, then four accessible parking spaces must be provided.

4. If the water closets, toilet stalls, lavatories and mirrors in a toilet room are all replaced, the new fixtures must comply with the technical specifications in 4.16, 4.17, and 4.19 for those elements. Since replacing the water closets, toilet stalls, lavatories and mirrors also amounts to an alteration of the toilet room, the entire toilet room must comply with the technical specifications in 4.22 for toilet rooms which include a requirement for the doors to the toilet room to comply with 4.13.

The Board has added provisions to the final guidelines to clarify when accessible routes and accessible entrances are required in alterations to existing buildings and facilities. A provision has been added at 4.1.6(1)(b) that, if the requirements for new construction provide for an element, space, or common area to be on an accessible route, alteration of the element, space, or common area does not trigger the requirement for an accessible route unless the alteration affects the usability of or access to an area containing a primary function in which case an accessible path of travel is required by 4.1.6(2) subject to the disproportionality limitation. For instance, in new construction the scoping provision in 4.1.3(10) requires that drinking fountains be on an accessible route. If a drinking fountain is replaced on the third story of a building that does not have an elevator, installation of a new accessible drinking fountain does not trigger the installation of an elevator.

A provision has also been added to the final guidelines at 4.1.6(1)(h) that, if a planned alteration entails alterations to an entrance, and the building has an accessible entrance, the entrance being altered is not required to comply with the new construction requirements unless the alteration affects the usability of or access to an area containing a primary function in which case an accessible path of travel is required by 4.1.6(2) subject to the disproportionality limitation. If an entrance is altered and is not made accessible, appropriate signage must be provided indicating the location of the nearest accessible entrance. Additional advisory material on alterations to entrances is included in the appendix at A4.1.6(2)(h).

Comment. A few commenters requested that a waiver process be established.

Response. The ADA does not provide for a waiver process. The technical infeasibility and elevator exceptions in 4.1.6(1) (i) and (j) are similar to a waiver in that compliance with specific scoping provisions and technical specifications is not required if certain conditions are met. Special scoping provisions and technical specifications are provided for in the case of some elements and spaces where technical infeasibility exists. See 4.1.6(3). However, the exceptions differ from a waiver in that to obtain a waiver an entity must usually submit documentation to a reviewing authority showing that conditions exist to warrant not complying with a specific scoping provision or technical specification and the reviewing authority must decide whether to grant or deny the waiver. The ADA only provides for review after the fact if a complaint is filed with the Department of Justice or a court. Entities should maintain documentation of conditions warranting an exemption in the event of such review.

Comment. Several commenters questioned why altered elements and spaces must be made accessible if the rest of the building or facility is inaccessible.

Response. Congress recognized that it would be costly to retrofit entire buildings and facilities to be accessible and that it would be more cost effective to incorporate accessibility gradually as elements and spaces are altered. See H. Rept. 101–485, pt. 3, at 60. The scoping provisions are based on the statute and ensure that individuals with disabilities will have access to the goods, services, and employment available in the altered parts of buildings and facilities.

Comment. Several commenters requested that the guidelines specifically address when public text telephones are required in existing buildings and facilities.

If alterations to existing buildings or facilities with less than four interior or exterior public pay telephones would increase the number to four or more public pay telephones with at least one in an interior location, then at least one interior public text telephone must be provided. For instance, if an existing building or facility has one interior and one exterior public pay telephone and two more are added, then at least one interior public text telephone would be required. If one or more interior or exterior public pay telephones in an existing facility with four or more public pay telephones with at least one in an interior location is altered, then at least one interior public text telephone must be provided. For instance, if an existing building or facility has two interior and two exterior public pay telephones and one or more of them is replaced, then at least one interior public text telephone would be required.

Comment. Several commenters requested that areas of rescue assistance not be required in existing buildings and facilities because it would require costly and extensive renovations.

Response. The Board recognizes that providing areas of rescue assistance in existing buildings may require costly and extensive renovations. Pending further study, a provision has been added in 4.1.6(1)(g) stating that the requirements in 4.1.6(9), 4.3.10, and 4.3.11 regarding areas of rescue assistance do not apply to alterations of existing buildings.

Comment. Several commenters requested that hazardous materials abatement and automatic sprinkling retrofitting be added to the list of alterations in 4.1.6(1)(i) (4.1.6(1)(f) in the NPRM) exempt from guidelines.

Response. Alterations which are limited solely to hazardous materials abatement and automatic sprinkling retrofitting and which do not involve changes to any elements or spaces required to be accessible by the guidelines have been added to the list of alterations in 4.1.6(1)(i) exempt from the guidelines.

Comment. A number of commenters requested changes in the definition of the term "technically infeasible." Some commenters requested that in the case of alterations that would require removing or altering a load-bearing member, a distinction should be made between: (a) wood and metal studs or joists used in light-frame construction of interior walls and floors; and (b) concrete, masonry, heavy timber or steel columns, beams, girders and structural slabs. Other commenters requested that a cost factor be included in the definition of "technically infeasible."

Response. The definition of "technically infeasible" has been moved from the definitions in 3.5 to 4.1.6(1)(i). With respect to alterations that would require removing or altering a load-bearing member, the definition has been revised to apply to a load-bearing member which is an essential part of the structural frame. The structural frame is defined in 3.5 as consisting of the columns and the girders, beams, trusses and spandrels having direct connections to the columns, and all other members which are essential to the stability of the building as a whole. This definition would not include wood or metal studs or joists used in light-frame construction of interior walls and floors. With respect to existing physical or site constraints prohibiting full and strict compliance, such constraints can result from legitimate legal requirements (e.g., a right of way agreement preventing construction of a ramp in front of a building).

As for costs, that factor has been taken into account in several places in the scoping provisions for alterations. First, as further discussed above where requirements for an accessible path of travel, including vertical access by means of an elevator, ramp, or platform lift or wheelchair lift, are triggered by an alteration that affects access to or usability of an area containing a primary function, there is a disproportionality limitation which will be addressed in the Department of Justice's final regulations. See 4.1.6(2). Second, the technical infeasibility exception is designed to limit costs by not requiring the removal or alteration of a load-bearing member which is an essential part of the structural frame and not requiring compliance with new construction requirements where there are existing physical or site constraints. Third, where commenters have pointed out specific new construction requirements which would require costly and extensive renovations to existing buildings and facilities such as those for areas of rescue assistance, the Board has not required them. See 4.1.6(1)(g). Fourth, the installation of elevators is not required in alterations of existing buildings and facilities which are less than three stories or have less than 3,000 square feet per story except for certain types of facilities. See 4.1.6(1)(k).

4.1.6(2) Alterations To An Area Containing A Primary Function

Comment. A number of commenters requested that the terms "an area containing a primary function;" "path of travel;" and "disproportionate" be defined.

Response. The Department of Justice's final regulations will define and apply these terms.

4.1.6(3) Special Technical Provisions For Alterations

Comment. A few commenters requested that the application of the special provisions in 4.1.6(3) be clarified. Some commenters objected to allowing a short ramp to be steeper and elevators to have a 48 inch by 48 inch inside car dimension. Other commenters made recommendations for elevator car sizes and alternative provisions that require further study or will be discussed in the technical assistance manual.

Response. The special provisions in 4.1.6(3) contain requirements for ramps, stairs, elevators, doors, toilet facilities, assembly areas, and dressing and fitting rooms that may be used in alterations to existing buildings and facilities when it is technically infeasible to comply with new construction requirements or other specified conditions exist. The Board recognizes that the special provisions for ramps and elevators do not accommodate as many individuals with disabilities as do the technical specifications in 4.7.2, 4.8.2, and 4.10.9. However, faced with the choice between providing no access or a lesser degree of access to existing buildings and facilities that are altered, the Board has opted for the latter. As noted above, other recommendations have been made for elevator car sizes and alternative provisions that will be studied for future revision of the guidelines or will be discussed in the technical assistance manual.

A new provision has been added at 4.1.6(3)(g) that platform lifts or wheelchair lifts complying with 4.11 and applicable State and local codes are allowed as part of an accessible route in alterations and that the use of lifts is not limited to the conditions specified in the scoping provisions for new construction.

4.1.7 Accessible Buildings: Historic Preservation

This section contains scoping provisions and alternative requirements for alterations to qualified historic buildings and facilities.

Comment: A number of commenters requested that the Board clarify the application of 4.1.7(1) and the procedures under section 106 of the National Historic Preservation Act.

Response: The provision has been revised to clarify that alterations to a qualified historic building or facility shall comply with the scoping provisions for alterations (4.1.6), the applicable technical specifications (4.2 through 4.35), and the applicable special application sections (5 through 10) unless it is determined in accordance with the procedures discussed below that compliance with the requirements for accessible routes (exterior and interior), ramps, entrances, or toilets would threaten or destroy the historic significance of the building or facility in which case the alternative requirements in 4.1.7(3) (4.1.7(2) in the NPRM) may be used. The alternative requirements allow for flexibility to accommodate the national interest in historic preservation.

The definition of a "qualified historic building or facility" has been moved to 4.1.7(1)(b) and retains the UFAS definition as required by section 504(c)(1) of the ADA.

New paragraphs have been added at 4.1.7(2)(a)(i) and (ii) to clarify the procedures under section 106 of the National Historic Preservation Act (16 U.S.C. 470f) and their application to alterations covered by the ADA. Section 106 requires that a Federal agency with jurisdiction over a Federal, federally assisted, or federally licensed undertaking consider the effects of the

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disabilities as do the technical specifications in 4.7.2, 4.8.2, and 4.10.9. However, faced with the choice between providing no access or a lesser degree of access to existing buildings and facilities that are altered, the Board has opted for the latter. As noted above, other recommendations have been made for elevator car sizes and alternative provisions that will be studied for future revision of the guidelines or will be discussed in the technical assistance manual.

A new provision has been added at 4.1.6(3)(g) that platform lifts or wheelchair lifts complying with 4.11 and applicable State and local codes are allowed as part of an accessible route in alterations and that the use of lifts is not limited to the conditions specified in the scoping provisions for new construction.

4.1.7 Accessible Buildings: Historic Preservation

This section contains scoping provisions and alternative requirements for alterations to qualified historic buildings and facilities.

Comment: A number of commenters requested that the Board clarify the application of 4.1.7(1) and the procedures under section 106 of the National Historic Preservation Act.

Response: The provision has been revised to clarify that alterations to a qualified historic building or facility shall comply with the scoping provisions for alterations (4.1.6), the applicable technical specifications (4.2 through 4.35), and the applicable special application sections (5 through 10) unless it is determined in accordance with the procedures discussed below that compliance with the requirements for accessible routes (exterior and interior), ramps, entrances, or toilets would threaten or destroy the historic significance of the building or facility in which case the alternative requirements in 4.1.7(3) (4.1.7(2) in the NPRM) may be used. The alternative requirements allow for flexibility to accommodate the national interest in historic preservation.

The definition of a "qualified historic building or facility" has been moved to 4.1.7(1)(b) and retains the UFAS definition as required by section 504(c)(1) of the ADA.

New paragraphs have been added at 4.1.7(2)(a)(i) and (ii) to clarify the procedures under section 106 of the National Historic Preservation Act (16 U.S.C. 470f) and their application to alterations covered by the ADA. Section 106 requires that a Federal agency with jurisdiction over a Federal, federally assisted, or federally licensed undertaking consider the effects of the

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agency's undertaking on buildings and facilities listed in or eligible for listing in the National Register of Historic Places and give the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking prior to approval of the undertaking. The Advisory Council on Historic Preservation has established a process to implement section 106. See 36 CFR part 800. The section 106 process provides for the Federal agency to consult with the State Historic Preservation Officer established under section 101(b) of the National Historic Preservation Act (16 U.S.C. 470a(b)) whose responsibilities include cooperating with Federal and State agencies, local governments, and organizations and individuals to ensure that historic properties are taken into consideration at all levels of planning and development. The section 106 process encourages the Federal agency and State Historic Preservation Officer to agree on alternatives to avoid or minimize adverse effects on buildings and facilities listed in or eligible for listing in the National Register of Historic Places. The section 106 process does not apply to buildings and facilities that are designated as historic under an appropriate State or local law but are not listed in or eligible for listing in the National Register of Historic Places. For example, the section 106 process applies if the National Park Service leases a federally owned building listed in the National Register of Historic Places to a private entity with permission to renovate the building for use as a bed and breakfast inn or if the Small Business Administration loans funds to a private entity to renovate a building eligible for listing in the National Register of Historic Places for use as a restaurant. Where alterations are undertaken to a qualified historic building or facility that is subject to section 106 of the National Historic Preservation Act, the Federal agency with jurisdiction over the undertaking is responsible for following the section 106 process. If the State Historic Preservation Officer or Advisory Council on Historic Preservation agrees that compliance with the requirements for accessible routes (exterior and interior), ramps, entrances, or toilets would threaten or destroy the historic significance of the building or facility, the alternative requirements may be used.

Comment: Section 504(c)(3) of the ADA requires the Board to establish procedures for determining whether the alternative requirements may be used for qualified historic buildings and facilities that are not subject to section 106 of the National Historic Preservation Act. The NPRM requested information on what procedures should be followed. The National Park Service, Advisory Council on Historic Preservation, National Conference of State Historic Preservation Officers, and other commenters responsible for historic preservation programs recommended that an entity undertaking alterations to a qualified historic building or facility should consult with the State Historic Preservation Officer whenever the entity believes that compliance with the accessibility requirements would threaten or destroy the historical significance of the building or facility and that the alternative requirements should be used. Individuals with disabilities and their organizations requested that criteria be established for determining whether compliance with the accessibility requirements would threaten or destroy the historical significance of a building or facility and that State and local accessibility officials and organizations representing individuals with disabilities should be involved in the consultation process.

Response: The State Historic Preservation Officer is a key public official in the Federal-State partnership envisioned under the National Historic Preservation Act. Every State currently has a State Historic Preservation Officer approved by the Secretary of the Interior whose responsibilities include advising and assisting Federal and State agencies and local governments in carrying out their historic preservation responsibilities; cooperating with organizations and individuals to ensure that historic properties are taken into consideration at all levels of planning and development; and providing technical assistance relating to Federal and State historic preservation programs. See 16 U.S.C. 470a(b)(3)(E) through (F). The State Historic Preservation Officer is required to have a full-time professional staff in each of the following disciplines: history, archeology, and architectural history. See 36 CFR 61.4(d).

The Board believes that it is consistent with the State Historic Preservation Officer's existing responsibilities under the National Historic Preservation Act to provide for that official to be consulted with whenever an entity undertakes alterations to a qualified historic building or facility that is not subject to the section 106 process and the entity believes that compliance with the accessibility requirements would threaten or destroy the historical significance of the building or facility and that the alternative requirements should be used. An entity may not unilaterally decide to use the alternative requirements. Rather, if an entity wants to use the alternative requirements, the entity must consult with the State Historic Preservation Officer and if that official agrees that compliance with the accessibility requirements would threaten or destroy the historic significance of the building or facility, then the alternative requirements may be used. A new paragraph has been added at 4.1.7(2)(b) for this purpose.

The Board wishes to emphasize that when applying this provision, the inquiry should focus on whether compliance with the accessibility requirements would threaten or destroy the characteristics of a building or facility that make it eligible for listing in the National Register of Historic Places or designation as historic under an appropriate State or local law. The National Park Service and Advisory Council on Historic Preservation have had considerable experience with making accessible alterations to qualified historic buildings and facilities and have expressed interest in working with the Board to develop technical guidance and procedures to assist State Historic Preservation Officers in carrying out their consultation responsibilities and to ensure consistent and uniform application of the provision at the State and local level.

The National Conference of State Historic Preservation Officers reported that some State historic preservation programs have established good working relationships with their State and local accessibility officials and that the guidelines should encourage these relationships. The section 106 process also provides for involving other interested parties in the consultation process. See 36 CFR 800.5(e)(1). A new paragraph has been added at 4.1.7(2)(c) recommending that State and local accessibility officials, and individuals with disabilities and their organizations be involved in the consultation process.

Section 101(c)(1) of the National Historic Preservation Act (16 U.S.C. 407a(c)(1)) allows for responsibilities to be delegated to a local government historic preservation program certified by the State Historic Preservation Officer and the Secretary of the Interior. To be certified, a local government must meet certain minimum requirements, including professional expertise in architectural history. See 36 CFR 61.5. There are about 600 certified local governments. A new paragraph has been added at 4.1.7(2)(d) to allow the

State Historic Preservation Officer to delegate consultation responsibilities for purposes of this section to a certified local government.

Comment: Commenters generally expressed support for using the alternative requirements in 4.1.7(3) (4.1.7(2) in the NPRM) in those cases were accessibility cannot be achieved without threatening or destroying the historical significance of a building or facility. The National Park Service noted that based on its experience accessibility can be achieved in most cases with some alteration of non-significant features. The National Park Service, Advisory Council on Historic Preservation, National Trust for Historic Preservation, and other commenters with historic preservation responsibilites expressed a need for greater flexibility in providing accessibility to qualified historic buildings and facilities. These commenters expressed concern that it may be technically infeasible to comply with specific accessibility requirements in the case of some buildings and facilities. These commenters also recommended that an exception be established for a small group of buildings and facilities such as a historic house museum that has only one entrance and where modifying the doorway or cutting out a window to create an accessible entrance would destroy the characteristics that make the building eligible for listing on the National Register of Historic Places.

Response: As stated in 4.1.7(1)(a), the provisions of 4.1.6 relating to alterations apply to qualified historic buildings and facilities. If it is technically infeasible to comply with a specific accessibility requirement, the other elements and features of the building or facility that are being altered and can be made accessible must be made accessible within the scope of the alteration. See 4.1.6(1)(g). Flexibility is also allowed under 2.2 which permits alternative designs and technologies to be used on a case-by-case basis where they will provide substantially equivalent or greater access to and usability of a building or facility. As for those buildings and facilities where it may not be possible to achieve compliance with the alternative requirements without destroying the historic significance of the building, the Board plans to consult with the National Park Service and Advisory Council on Historic Preservation about this issue and propose an exception in the next phase of rulemaking. An exception is reserved under 4.1.7(1)(a) for this purpose.

Comment: With respect to the exception in 4.1.7(3)(b) (4.1.7(2)(b) in the NPRM) which permits access by means of an entrance not generally used by the public if a public entrance cannot be made accessible provided that the alternative entrance is unlocked and directional signage is provided, the NPRM asked how security concerns can be addressed and convenient and independent access facilitated at the same time. Most persons who responded to the question favored retaining the requirement that the alternative entrance be unlocked and independently operable, and recommended that a notification system also be provided.

Response: The requirement for the alternative entrance to be unlocked has been retained and a new requirement has been added for a notification system to be provided. A provision has also been added permitting use of a remote monitoring system where security is a concern. If a remote monitoring system is used, the alternative entrance must remain unlocked.

4.2 through 4.35 Technical Specifications

Sections 4.2 through 4.35 contain the technical specifications for elements and spaces required to be accessible by the scoping provisions (4.1 through 4.1.7) and special application sections (5 through 10). The technical specifications are the same as the 1980 version of ANSI A117.1 standard, except as noted in the text of italics.[13]

4.2 Space Allowances and Reach Ranges

Comment. Several commenters recommended that the technical specifications for clear floor turning, and maneuvering spaces should be increased for individuals who use power wheelchairs and three wheeled scooters. A few commenters also recommended changes to the side reach ranges.

Response. Additional research is needed regarding space allowances and reach ranges for individuals who use power wheelchairs or three wheeled scooters. No change has been made in the guidelines.

4.3 Accessible Route

Comment. A number of commenters recommended that skywalks and tunnels be specifically included as part of accessible routes.

Response. Since skywalks and tunnels can be part of an accessible route, they have been specifically included in 4.3.1.

Comment. The NPRM requested comments on various options for language to include in 4.3.2 regarding travel distances between points on an accessible route. Most commenters from each category who responded to the question favored stating that the accessible route shall, to the maximum extent feasible, coincide with the route for the general public.

Response. A requirement has been added to 4.3.2 that the accessible route shall, to the maximum extent feasible, coincide with the route for the general public. Since the route provided for the general public is usually the shortest and most direct route, the requirement will result in that route being made accessible in most cases.

Comment. Several commenters stated that the minimum widths for accessible routes and passing space requirements were not adequate and should be increased. No research or supportive data was provided.

Response. No changes have been made.

4.3.11 Areas of Rescue Assistance

Comment. Many commenters favored including technical specifications for areas of rescue assistance in the guidelines. Commenters, including the National Fire Protection Association (NFPA), submitted various recommendations for changes to the technical specifications, including permitting the use of exit stairway landings with a standpipe and areas having direct access to elevators specifically designed for emergency evacuation purposes. Several commenters recommended that the 1991 Uniform Building Code provisions for areas of rescue assistance be adopted.

Response. The 1991 Uniform Building Code provisions for areas of rescue assistance have been modified and incorporated in 4.3.11 since they represent the most current and comprehensive provisions on the subject. See 1991 Uniform Building Code, chapter 31, section 3104(b). The final guidelines permit seven different areas meeting certain conditions to be used as areas of rescue assistance. The final guidelines do not restrict the use of exit stairway landings with standpipes because the first duty of firefighters is to assist in the evacuation of individuals from the building or facility before undertaking the protection of property. The final guidelines also permit use of elevator lobbies with direct access to an emergency evacuation elevator when

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[13] The ANSI A117.1 standard is reprinted with permission from the American National Standards Institute. Copies of the ANSI A117.1 standard may be purchased from the American National Standards Institute at 1430 Broadway, New York, NY 10016.

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Response. A requirement has been added to 4.3.2 that the accessible route shall, to the maximum extent feasible, coincide with the route for the general public. Since the route provided for the general public is usually the shortest and most direct route, the requirement will result in that route being made accessible in most cases.

Comment. Several commenters stated that the minimum widths for accessible routes and passing space requirements were not adequate and should be increased. No research or supportive data was provided.

Response. No changes have been made.

4.3.11 Areas of Rescue Assistance

Comment. Many commenters favored including technical specifications for areas of rescue assistance in the guidelines. Commenters, including the National Fire Protection Association (NFPA), submitted various recommendations for changes to the technical specifications, including permitting the use of exit stairway landings with a standpipe and areas having direct access to elevators specifically designed for emergency evacuation purposes. Several commenters recommended that the 1991 Uniform Building Code provisions for areas of rescue assistance be adopted.

Response. The 1991 Uniform Building Code provisions for areas of rescue assistance have been modified and incorporated in 4.3.11 since they represent the most current and comprehensive provisions on the subject. See 1991 Uniform Building Code, chapter 31, section 3104(b). The final guidelines permit seven different areas meeting certain conditions to be used as areas of rescue assistance. The final guidelines do not restrict the use of exit stairway landings with standpipes because the first duty of firefighters is to assist in the evacuation of individuals from the building or facility before undertaking the protection of property. The final guidelines also permit use of elevator lobbies with direct access to an emergency evacuation elevator when

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elevator shafts and adjacent lobbies are pressurized as required for smokeproof enclosures by local regulations and when complying with certain other requirements. The Uniform Building Code provisions for size, stairway width, two-way communication and signage have also been adopted with a clarification that the communication system must include both visual and audible signals.

4.4 Protruding Objects

Comment. The NPRM asked questions regarding the adequacy of the technical specifications for protruding objects. About one-fourth of the commenters believed that they were adequate. The other commenters made over 30 different suggestions for changes.

Response. No changes have been made. The comments suggest that additional research is needed in this area.

4.5 Ground and Floor Surfaces

Comment. The NPRM asked whether a quantitative value should be assigned for slip resistance of ground and floor surfaces. Although there was general support for the concept, commenters presented information on a variety of issues, including the variability of measurement techniques and the likelihood of obtaining different values; lack of consensus regarding appropriate testing methods; and manufacturers certification of products.

Response. Recommended values for slip resistant surfaces on accessible routes and ramps have been included in the appendix at A 4.5.1. Many common building materials suitable for flooring are now labelled with information on the static coefficient of friction. Although it may not be possible to compare one product directly with another, or to guarantee a constant measure, builders and designers are encouraged to specify materials with appropriate values. As more products include information on slip resistance, improved uniformity in measurement and specification is likely.

Comment. The greenhouse industry raised questions about the coverage of gravel pathways in greenhouses.

Response. If a greenhouse is used only as an employee work area, the guidelines only require that the work area be designed and constructed so that individuals with disabilities can approach, enter, and exit the area. See 4.1.1(3) Thus, ground and floor surfaces within the greenhouse are not required to comply with 4.5 where the facility is used only as an employee work area. On the other hand, if the greenhouse is also used for retail sales purposes, the facility must be designed and constructed to be accessible, including having an accessible route which has a ground or floor surface that complies with 4.5. Gravel is generally used for drainage under plant beds and walkways can be made of asphalt or concrete. Even where walkway drainage is needed, there are a variety of methods for providing firm, stable, and slip resistant surfaces.

Comment. A number of comments were received on the technical specifications for carpets in 4.5.3. Some commenters expressed concern about the 1/2 inch maximum pile height and recommended that it should not apply to carpeting off an accessible route. Other commenters recommended that performance requirements should be developed for carpets with pile height higher than 1/2 inch.

Response. The technical specifications for carpets in 4.5.3 are taken directly from the ANSI A117.1 standard. The requirements only apply to ground and floor surfaces along accessible routes and in accessible rooms and spaces, including public use and common use areas. If an area is used only as an employee work area, the ground and floor surfaces within the work area are not required to comply with 4.5, consistent with the provision in 4.1.1(3) that requires the work area to be designed and constructed so that individuals with disabilities can approach, enter, and exit the area. Additional advisory material on carpets is included in the appendix at A4.5.3.

4.6 Parking and Passenger Loading Zones[14]

Comment. Several commenters requested that the requirements regarding the location of accessible parking spaces be clarified. Some commenters recommended that a maximum distance such as 200 feet be specified between accessible parking spaces and accessible entrances.

Response. The technical specifications in 4.6.2 have been revised based on the proposed BCMC scoping provisions and provide that accessible parking spaces serving a particular building must be located on the shortest accessible route of travel from adjacent parking to an accessible entrance. In parking facilities that do not serve a particular building, the accessible parking spaces must be located on the shortest accessible route of travel to an accessible pedestrian entrance of the parking facility. In buildings with multiple accessible entrances with adjacent parking, accessible parking spaces must be dispersed and located closest to the accessible entrances. For instance, at a shopping mall with several accessible entrances or a strip shopping center where each separate tenancy is required to have an accessible entrance, the accessible parking spaces would be dispersed and located closest to the accessible entrances.

A maximum distance has not been included in the guidelines because the requirement that accessible parking spaces be located on the shortest accessible route of travel to an accessible entrance will in most cases result in the spaces being located as close as practical to the nearest accessible entrance. Specifying a maximum distance such as 200 feet could result in the provision being misinterpreted as requiring that the spaces be within 200 feet but not necessarily located closest to an accessible entrance.

Comment. Several commenters from the parking industry questioned the requirement in 4.6.3 that accessible parking spaces and adjacent access aisles must be level with surface slopes not exceeding 1:50 (2%) in all directions. For instance, the National Parking Association (NPA) noted that paved surfaces must have a designed slope of at least 1:100 (1%) to provide drainage and that structural systems frequently used in parking structures have cambered elements where the member must be sloped more than 2% to get a 1% actual slope at the high end of element.

Response. The requirement in 4.6.3 for a level surface with slopes not exceeding 1:50 (2%) applies only to accessible parking spaces and adjacent access aisles and not to the entire floor area of the parking facility. A level surface is necessary at accessible parking spaces and adjacent access aisles to enable individuals who use wheelchairs to safely transfer to and from a vehicle and to permit the deployment of lifts from vans. As the NPA's comment recognizes, it is possible to achieve an actual 1% slope at parts of the floor area of the parking facility. When planned for in the early design phase, it is possible to achieve a level surface with a slope not exceeding 1:50 (2%) at the accessible spaces and adjacent access aisles.

Comment. Several commenters recommended additional requirements for access aisles, including location of curb ramps and striping or otherwise designating access aisles.

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[14] As discussed under the scoping provisions for parking in 4.1.2(5), the final guidelines include requirements for van accessible parking spaces and the technical specifications in 4.6.4 and 4.6.5 relating to vans have been modified.

Response. Figure 9 shows that the access aisle must be demarcated (a wide parking space alone is not in compliance) and that the connection to the accessible route is at the front of the aisle. Additional information has been included in the appendix on access aisles. The access aisle must be connected to an accessible route to the appropriate accessible entrance of a building a facility. The access aisle must either blend with the accessible route or have a curb ramp complying with 4.7. The curb ramp opening must be located within the boundaries of the access aisle, and not the parking space, and the curb ramp cannot project into the aisle. The required dimensions of the access aisle cannot be restricted by planters, curbs, or wheel stops.

4.7 Curb Ramps

Few comments were received on the technical specifications for curb ramps in 4.7 and they did not warrant any changes. Some comments concerned wayfinding for persons with visual impairments and detectable warnings at curb ramps which are addressed under 4.29.

4.8 Ramps

Comment. The NPRM asked whether the technical specification in 4.8.2 requiring a maximum 1:12 slope for ramps in new construction should be changed. Most persons in each category who responded to the question favored retaining the maximum 1:12 ramp slope. Those commenters who recommended a change preferred ramp slopes between 1:16 and 1:20.

Response. The technical specification in 4.8.2 has not been changed. However, information has been added to the appendix at A4.8.2 explaining that the ability to manage an incline is related to both its slope and its length. Wheelchair users with disabilities affecting their arms or with low stamina have serious difficulty using inclines. Many wheelchair users, for instance, cannot manage a slope of 1:12 for 30 feet. Most wheelchair users and people with mobility impairments who are ambulatory can manage a slope of 1:16. For these reasons, ramp slopes between 1:16 and 1:20 are preferred. The technical specifications in 4.8.4 have also been revised to clarify that a level landing is required at the top of each ramp and each ramp run. A statement has been added to the appendix at A4.8.4 explaining that level landings are essential toward maintaining an aggregate slope that complies with the guidelines. A ramp landing that is not level can cause individuals using wheelchairs to tip backward or bottom out when the ramp is approached.

Comment. Several commenters recommended changes to the technical specifications for handrails in 4.8.5, including making the height ranges consistent with the model codes and not requiring handrails on ramps adjacent to seating in assembly areas.

Response. The height ranges for handrails in 4.8.5(5) has been changed from "between 30 inches and 34 inches" to "between 34 inches and 38 inches" to be consistent with the model codes. A similar change has been made to the technical specifications for handrails on stairs in 4.9.4. A provision has also been added to 4.8.5 clarifying that handrails are not required on ramps adjacent to seating in assembly areas.

Comment. A number of commenters recommended that additional railings or higher edge protection be provided for persons with visual impairments.

Response. These recommendations will be studied for future revisions of the guidelines.

4.9 Stairs

Comment. Several commenters recommended that open risers should be permitted on stairs under certain conditions such as where ventilation is critical or on monumental and decorative stairs.

Response. The prohibition against open risers in 4.9.2 applies only to stairs covered by the scoping provision in 4.1.3(4). That provision requires that interior and exterior stairs connecting levels that are not connected by an elevator must comply with 4.9. Thus, open risers may be used on stairs which connect levels also served by an elevator or other accessible means of vertical access.

Comment. Several commenters recommended that steps should have contrasting nosings or tread markings. Some commenters also recommend that the nosing projection should be reduced from 1½ inches to ½ inch maximum.

Response. The Board is not aware of any research that supports these recommendations. There is some controversy over whether each step should have the contrast nosing or only the top and bottom step of each stair. The Board is aware that the February 1991 draft revisions to the ANSI A117.1 standard proposed to add a technical specification for tread markings on stairs. Pending further research or action by the ANSI A117 Committee, the Board is not inclined to include this provision in the guidelines.

Comment. Commenters made several recommendations for changes to the technical specifications for handrails in 4.9.4, including making the height ranges consistent with the model codes; permitting the 1½ inch clearance between handrails and the wall to be a minimum; and adopting a provision from the California code on handrail extensions. Some commenters also presented detailed comments regarding wayfinding problems when persons who are visually impaired encounter diagonal or circular stairs.

Response. The height range for handrails in 4.9.4(5) has been changed from "between 30 inches and 34 inches" to "between 34 inches and 38 inches" to be consistent with the model codes. A similar change has been made to the technical specifications for handrails on ramps in 4.8.5. The Board has retained the 1½ inch clearance between the handrails and the wall as an absolute. As explained in the appendix at A4.26.1, many people brace their forearms between supports and walls to give them more leverage and stability in maintaining balance. The 1½ inch clearance is a safety clearance to prevent injuries from arms slipping through the openings. It also provides adequate gripping room. The other recommendations require further study.

Comment. A number of comments were received raising safety concerns about the use of the raised truncated domes as detectable warnings at stairs. These comments are further discussed under 4.29.

Response. For the reasons explained under 4.29, the requirement in 4.9.5 for detectable warnings at stairs has been reserved until further research is conducted regarding the use of raised truncated domes as a detectable warning at stairs.

4.10 Elevators

Comment. Several commenters recommended that the February 1991 draft revisions to the ANSI A117.1 standard be adopted. Some commenters also recommended that references to the elevator safety code be updated.

Response. The February 1991 draft revisions to the ANSI A117.1 standard proposed to establish separate technical specifications for new and existing elevators. The Board believes that it is best to await futher action by the ANSI A117 Committee in this area. In the meantime, the references to the elevator safety code in 4.10.1, 4.10.6, and 4.10.14 have been updated to the current code, ASME A17.1–1990. The reference to platform lifts or wheelchair lifts has also been deleted from 4.10.1 in light of the revised scoping provisions for those devices in 4.1.3(5) and 4.1.6(3)(g).

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Response. The height range for handrails in 4.9.4(5) has been changed from "between 30 inches and 34 inches" to "between 34 inches and 38 inches" to be consistent with the model codes. A similar change has been made to the technical specifications for handrails on ramps in 4.8.5. The Board has retained the 1½ inch clearance between the handrails and the wall as an absolute. As explained in the appendix at A4.26.1, many people brace their forearms between supports and walls to give them more leverage and stability in maintaining balance. The 1½ inch clearance is a safety clearance to prevent injuries from arms slipping through the openings. It also provides adequate gripping room. The other recommendations require further study.

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Response. For the reasons explained under 4.29, the requirement in 4.9.5 for detectable warnings at stairs has been reserved until further research is conducted regarding the use of raised truncated domes as a detectable warning at stairs.

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Response. The February 1991 draft revisions to the ANSI A117.1 standard proposed to establish separate technical specifications for new and existing elevators. The Board believes that it is best to await futher action by the ANSI A117 Committee in this area. In the meantime, the references to the elevator safety code in 4.10.1, 4.10.6, and 4.10.14 have been updated to the current code, ASME A17.1–1990. The reference to platform lifts or wheelchair lifts has also been deleted from 4.10.1 in light of the revised scoping provisions for those devices in 4.1.3(5) and 4.1.6(3)(g).

Comment. Commenters generally supported the requirement for braille characters on hoistway entrances, control panels, and emergency communication systems. Several commenters requested that the technical specifications in 4.10.5, 4.10.12, and 4.10.14 be clarified to specify that raised characters must be accompanied by braille. Some commenters requested that the reference to the use of recessed letters or symbols in 4.10.14 for identifying emergency communication systems be deleted. A number of commenters recommended that automatic verbal announcements of floor stops be required in place of audible signals.

Response. The NPRM provided in 4.10.5, 4.10.12, and 4.10.14 that hoistway entrances, control panels, and emergency communication systems have raised characters complying with 4.30.4. That provision provided for raised characters to be accompanied by braille. The final guidelines have been clarified by including the requirement for brailled characters in 4.10.5, 4.10.12, and 4.10.14. The technical specifications in 4.30.4 do not permit the use of recessed letters. To be consistent with that provision, the reference to recessed letters or symbols in 4.10.14 for identifying emergency communication systems has been deleted.

The Board recognizes that automatic verbal announcements of floor stops is preferred by individuals with visual impairments. The technical specifications in 4.10.13 permit their use in place of audible signals.

Comment. A number of commenters recommended that the ANSI A117.1—1986 standard for control panel height should be adopted in place of the NPRM.

Response. The NPRM provided in 4.10.12(3) that all floor buttons on elevator control panels be no higher than 48 inches, unless there is a substantial increase in cost, in which case the maximum mounting height may be increased to 54 inches. Commenters questioned what constitutes a "substantial increase in cost" and pointed out that the ANSI A117.1–1986 standard provides for greater flexibility by requiring all floor buttons to be no higher than 54 inches above the floor for side approach and 48 inches for front approach. The final guidelines adopt the ANSI A117.1–1986 standard for control panel height in 4.10.12(3).

Comment. A number of commenters requested additional guidance on the technical specification in 4.10.14 for an emergency two-way communication system.

Response. Additional information has been included in the appendix at A4.10.14 on emergency two-way communication systems. Such systems should ideally provide both voice and visual display intercommunication so that persons with visual impairments and persons with speech and hearing impairments can receive information regarding the status of a rescue. A voice intercommunication system cannot be the only means of communication because it is not accessible to persons with speech and hearing impairments. While a voice intercommunication system is not required, at a minimum, the system must provide both an audio and visual indication, such as a recorded message and flashing light, to announce that a rescue is on the way.

4.11 Platform Lifts/Wheelchair Lifts

Comment. Most of the comments received on platform lifts or wheelchair lifts were in response to questions in the NPRM regarding scoping provisions which are discussed under 4.1.3(5). Commenters from the lift industry recommended that the technical specifications should reference current safety standards. Individuals with disabilities and their organizations recommended that the technical specifications should specifically provide for independent operation.

Response. The technical specifications in 4.11.2 have been revised to reference the current safety standard, ASME A17.1–1990, part XX. The scoping provisions in 4.1.3(5) Exception 4 also require that platform lifts or wheelchair lifts comply with applicable state or local codes. The technical specification in 4.11.3 has also been revised in response to comments regarding independent operation to specifically require the platform lifts or wheelchair lifts provide for unassisted operation. This requirement does not preclude the use of a key to operate a lift as long as the key is readily available and allows for unassisted operation. The appendix in A4.11 has also been revised to provide more up-to-date information on platform lifts or wheelchair lifts.

Comment. Commenters from the lift industry requested that an exception be established to permit the use of inclined lifts with a 30 inch by 40 inch platform size in stairwells with space limitations.

Response. Inclined lifts are required to comply with the technical specifications in 4.2.4 for clear floor space which provides for a minimum clear space of 30 inches by 48 inches to accommodate a wheelchair user. The Board is aware that this space will not accommodate some powered wheelchairs or three wheeled scooters which are increasing in popularity, especially among older people. The Board does not believe that any exceptions should be established permitting the use of shorter platform lifts or wheelchair lifts.

4.12 Windows

Comment. The NPRM proposed to adopt the ANSI A117.1 standard for windows which provides for a maximum 5 pounds of force (lbf.) to open operable windows and for locks, cranks, and other hardware to comply with the technical specifications for controls and operating mechanisms, including reach ranges for forward or side approaches. A number of commenters expressed concern that the 5 lbf. maximum force requirement is not currently achievable.

Response. The technical specifications for windows have been reserved in the final guidelines and information from the ANSI A117.1 standard has been placed in the appendix at A4.12.1 and A4.12.2. When the Board issued MGRAD in 1982, it reserved the technical specifications for windows pending further study or experience with the ANSI A117.1 standard. See 47 FR 33862. (August 4, 1982). The Board subsequently sponsored a research project on hand anthropometrics which studied the capabilities of selected individuals with disabilities to operate mechanisms and building components. The findings from the research project suggested design criteria for window opening hardware and indicated appropriate operable forces based on specific types of hardware that were compatible with the ANSI A117.1 standard. Based on the results of the research project, Board adopted the ANSI A117.1 standard when it revised MGRAD in 1989. See 36 CFR 1190.31(j), 54 FR 5434 (February 3, 1989). Information obtained during the current rulemaking revealed that the existing industry standards for operable windows are 25 lbf. for sliding windows and 45 lbf. for double hung windows and that windows meeting the ANSI A117.1 standard are not commonly available for use in heavy construction. The Board needs additional information about existing products and technologies before it can adopt final technical specifications for windows.

4.13 Doors

Comment. Commenters made individual recommendations for changes or clarifications to the technical specifications for doors in 4.13 and the accompanying figures. For instance, clarification was requested regarding whether all or part of the clear space on the latch side of the door in figure 25(a) can be provided by other accessible space such as an open space for hanging clothes in a hotel guestroom.

Response. Two minor changes have been included in the technical specifications for door hardware in 4.13.9. First, the sentence in the NPRM referring to doors in dwelling units has been deleted since it was not consistent with the requirements for doors in accessible units in transient lodging in 9.2.2(3) which requires all doors designed to allow passage into and within all accessible sleeping rooms and units to comply with 4.13. Second, the sentence in the NPRM referring to doors to hazardous areas has been deleted because the technical specifications in 4.29.3 for detectable warnings on doors to hazardous areas has been reserved. An additional change has been made to 4.13.6 to label the exemption in the last sentence of that technical specification as an "exception."

With regard to figure 25(a), the guidelines do not preclude other accessible space from being used to provide the required clearance on the latch side of the door as long as the specified dimensions are met and other uses of the space do not interfere with or intrude upon the clearance required by a wheelchair user or crutch user to reach and open the door or present other barriers not allowed in the guidelines. For example, an open rack mounted on the wall in such a way so as to provide clearance for a wheelchair user or crutch user could be a protruding object. An enclosed closet area would not likely permit adequate maneuvering space.

4.14 Entrances

All the comments on entrances concerned the scoping provision and are discussed under 4.1.3(8). No changes have been made to the technical specifications.

4.15 Drinking Fountains and Water Coolers

Comment. Commenters made individual recommendations for changes or clarifications to the technical specifications for drinking fountains and water coolers in 4.15. For instance, clarification was requested regarding the spout location on a drinking fountain with a round or oval bowl.

Response. A sentence has been added to the technical specification for spout location in 4.15.3 to clairfy that on a drinking fountain with a round or oval bowl, the spout must be positioned so the flow of water is within 3 inches of the front edge of the fountain. The sentence in appendix at A4.15.2 has also been clairified that two drinking fountains, mounted side by side or on a single post, are usable by individuals with disabilities and people who find it difficult to bend over.

4.16 Water Closets

Comment. Commenters made individual recommendations for changes or clarifications to the technical specifications for water closets in 4.16 and accompanying figures. For instance, clarification was requested regarding the dimensions of the grab bar behind the water closet in figure 29(a) and the location of the lavatory in figure 28.

Response. A sentence has been added to the technical specifications in 4.16.4 to clarify that the grab bar behind the water closet must be 36 inches minimum. The grab bar dimensions have also been clarified in figure 29(a). Additional information has been provided in the appendix at A4.22 regarding figure 28 and the placement of the lavatory. The dotted lines in figure 28 designate the minimum clear floor space, depending on the direction of approach, required for wheelchair users to transfer onto the water closet. The dimensions of 48 inches and 60 inches, respectively, correspond to the space required for wheelchair users to perform a diagonal approach transfer and side approach transfer. See Fig. A6 (a) and (b). Placement of the lavatory to the immediate side of the water closet will preclude use of the side approach transfer. To accommodate the side approach transfer, the space adjacent to the water closet must remain clear of obstruction for 42 inches from the center line of the toilet and the lavatory must not be located within this space. A turning circle or T-turn, the clear floor space of the lavatory, and maneuvering space at the door must be considered when determining the possible wall location. See Fig. 3, 25 and 32.

4.17 Toilet Stalls

Comment. The NPRM presented two approaches for accommodating the needs of persons with mobility impairments who are ambulatory with respect to use of toilet stalls: (a) provide for moveable grab bar in the 60 inch wide standard stall; or (b) provide for a 36 inch wide alternate stall or a conventional, non-accessible stall equipped with dual parallel grab bars in addition to the 60 inch standard stall. Most persons in each category who commented on the two approaches opposed the use of moveable grab bars and supported the provisions of a 36 inch wide alternate stall with dual grab bars in addition to the 60 inch wide standard stall. Some commenters questioned why the 36 inch or 48 inch alternate stalls are only permitted in alterations where the provision of a 60 inch wide standard stall is technically infeasible.

Response. The guidelines require use of the 60 inch wide standard stall unless it is technically infeasible in alterations because that stall provides clear floor space and grab bars to enable wheelchair users to perform a side approach transfer or diagonal approach transfer from a wheelchair to the toilet. See Fig. A6 (a) and (b). Although many wheelchair users are unable to use either alternate stall, persons with mobility impairments who are ambulatory can use them. Many of those persons find it more convenient to use the two parallel grab bars in the 36 inch wide alternate stall. Based on the comments, a provision has been added to the technical specifications for toilet rooms in 4.22.4 requiring that a 36 inch wide alternate stall with parallel grab bars be provided in addition to the 60 inch wide standard stall where six or more toilet stalls are provided. Since the stall is primarily intended for use by persons with mobility impairments who are ambulatory rather than wheelchair users, the length of the stall could be conventional. The door, however, must swing outward to ensure a usable space by persons with mobility impairments who are ambulatory.

Comment. Several commenters recommended that the width dimensions in figure 30 (a) and (b) should be labeled as minimum. A number of commenters requested that the requirements for hardware on toilet stall doors be clarified.

Response. The width dimensions in figure 30 (a) and (b) have been labeled as minimum. The technical specification in 4.19.5 has been clarified that toilet stall doors including hardware, must comply with 4.13. That provision requires in relevant part at 4.13.9 that handles, pulls, latches, locks, and other operating devices on accessible doors must have a shape that is easy to grasp with one hand and does not require tight grasping, tight pinching, or twisting of the wrist to operate.

4.18 Urinals

Few comments were received on the technical specifications for urinals in 4.18 and they did not warrant any changes.

4.19 Lavatories and Mirrors

Comment. Commenters made individual recommendations for changes or clarifications to the technical specification for lavatories and mirrors in 4.19. For instance, it was pointed out

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that hot water and drain pipes under lavatories can be configured near the back wall so as to prevent contact but the technical specifications only allowed insulation for protection.

Response. The technical specifications for exposed pipes and surfaces in 4.19.4 have been revised to require that hot water and drain pipes under lavatories be insulated or otherwise configured to protect against contact.

4.20 Bathtubs

Comment. Commenters made individual recommendations for changes or clarifications to the technical specifications for bathtubs in 4.20. For instance, clarification was requested that the lavatory in figure 33 must provide clear space under it to reach the bathtub control area and that the shower spray unit required by 4.20.6 can be used both as a fixed shower head and as a hand-held shower.

Response. The technical specifications for lavatories in 4.19.2 and 4.19.3 require that a clearance of at least 29 inches be provided from the floor to the bottom of the apron of the lavatory and that a clear floor space of 30 inches by 48 inches be provided in front of the lavatory. The technical specifications in 4.20.6 has been clarified to provide that the shower spray unit can be used both as a fixed shower head and as a hand-held shower.

Comment. The NPRM asked whether a vertical grab bar should be provided in addition to the dual horizontal grab bars required by 4.20.4. Most persons in each category who responded to the question favored the provision of a vertical grab bar. However, the commenters made differing recommendations regarding the location and size of the vertical grab bar.

Response. The location and size of the vertical grab bar requires further study before it can be specified.

4.21 Shower Stalls

Comment. As further discussed under 9.1.2, the final guidelines require that hotels with 50 or more sleeping rooms or suites must provide a certain number of sleeping rooms or suites that include a 30 inch by 60 inch or 36 inch by 60 inch roll-in shower as illustrated in figure 57 (a) and (b). The NPRM asked several questions regarding the design of the roll-in shower. Most persons from each category who responded to the question favored: (a) including a fold-up seat in the shower; (b) requiring the seat to be slip-resistant; (c) allowing the shower head and controls to be located in the center of the long wall of the shower; and (d) providing two mounting hooks for the shower spray unit.

Response. The technical specifications for seats in 4.21.3 have been revised to add a provision for a fold-up seat in the 30 inch by 60 inch roll-in shower required for hotels. The seat must be mounted on the wall adjacent to the controls or shower as shown in figure 57. A requirement has not been included for the seat to be slip-resistant pending further study. A note has been added to figure 37(b) allowing the shower head to be located on the long wall or on either side wall. A requirement has not been included for two mounting hooks pending further study of mounting heights. However, the technical specification in 4.20.6 has been clarified to provide that the shower spray unit must be useable both as a fixed shower head and as a hand-held shower.

Comment. One commenter pointed out that the American Society of Testing and Materials (ASTM) and the Consumer Product Safety Commission have developed slip resistant standards for shower stalls. Another commenter submitted data showing that shower stall drains should be located in a corner to avoid the potential hazards of slipping on a sloping surface and to provide an even surface for portable shower seats.

Response. These matters will be further studied for future revisions of the guidelines.

4.22 Toilet Rooms

Comment. As further discussed under 4.17, most persons who responded to questions in the NPRM regarding accommodating the needs of persons with mobility impairments who are ambulatory with respect to use of toilet stalls favored the provision of a 36 inch wide alternate stall with dual grab bars in addition to the 60 inch wide standard stall.

Response. A provision has been added to the technical specifications for toilet rooms in 4.22.4 requiring that a 36 inch wide alternate stall with parallel grab bars be provided in addition to the 60 inch wide standard stall where six or more toilet stalls are provided. Additional information on the design of this stall is provided in the appendix at A4.17.3 and is discussed under 4.17.

Comment. Some commenters recommended that accessible "unisex" toilet rooms be provided.

Response. Accessible "unisex" toilet rooms are preferred by some wheelchair users, especially those who may be assisted by another person. Information on the design of accessible "unisex" toilet rooms has been included in the appendix at A4.22.3. The appendix recommends that consideration be given to providing accessible "unisex" toilet rooms in new construction, in addition to providing the required accessible toilet stalls in other rest rooms. The appendix also points out that accessible "unisex" toilet rooms are permitted in alterations where it is technically infeasible to make existing toilet rooms accessible.

4.23 Bathrooms, Bathing Facilities, and Shower Rooms

Comment. Commenters made individual recommendations for changes to the technical specifications for bathrooms, bathing facilities, and shower rooms. For instance, it was recommended that group showers in locker rooms be addressed.

Response. Group showers will be more fully addressed in future revisions of the guidelines. The technical specifications for the placement of controls and the shower head in roll-in showers can be used in a corner of a group shower to provide access.

4.24 Sinks

Few comments were received on the technical specifications for sinks in 4.24 and they did not warrant any changes. To be consistent with the change made to technical specifications for lavatories in 4.19, 4.24.6 has been revised to require that hot water and drain pipes under sinks be insulated or otherwise configured to protect against contact.

4.25 Storage

Comment. Commenters made individual recommendations for changes or clarifications to the technical specifications for storage in 4.25. For instance, it was requested that the height and depth for closet rods and shelves be clarified.

Response. The technical specifications in 4.25.3 for the height and depth of closet rods and shelves have been clarified. Accessible storage must be within the reach ranges in 4.2.5 or 4.2.6 for a forward approach (Fig. 5) or a side approach (Fig. 6). For a side approach where the distance from the wheelchair to the clothes rod or shelves does not exceed 10 inches, the height of the clothes rod canot exceed 54 inches and shelves must be provided between 9 inches and 54 inches. In reach-in closets without accessible doors where the distance from the wheelchair to the clothes rod or shelves exceeds 10 inches, but is less than 21 inches, the height of the clothes rod cannot exceed 48 inches and shelves must be provided between 9 inches and 48 inches. These dimensions are shown in figures 38 (a) and (b). An additional closet rod or shelves may be provided outside the specified dimensions.

4.26 Handrails, Grab Bars, and Tub and Shower Seats

Few comments were received on the technical specifications for handrails and grab bars in 4.26 and they did not warrant any changes.

4.27 Controls and Operating Mechanisms

Comment. Several commenters asked whether controls and operating mechanisms that are not normally intended for public use must comply with the technical specifications in 4.27.

Response. An exception has been added to the technical specifications at 4.27.3 which provides that the requirements do not apply where the use of special equipment dictates otherwise or where electrical and communications systems receptacles are not normally intended for use by building occupants. For instance, electrical receptacles installed specifically for wall-mounted clocks and refrigerators or microwave ovens in transient lodging or lunch rooms in an office building are not required to be placed within the specified reach ranges if the receptacles are not intended for regular or frequent use by building occupants.

Comment. The American Hotel and Motel Association (AHMA) stated, without any explanation, that thermostats must be mounted at 60 inches and cannot be placed at an accessible height. A few commenters also expressed concern that State and local codes require electrical outlets be placed lower than 15 inches above the floor.

Response. The technical specifications in 4.27.3 require that the highest operable part of controls, dispensers, receptacles, and other operable equipment be placed within the forward reach range in 4.2.5 (maximum high forward reach is 48 inches and minimum low forward reach is 15 inches, where there is no obstruction) or the side reach range in 4.2.6 (maximum high side reach is 54 inches and minimum low side reach is 9 inches, where there is no obstruction). Thermostats and electrical outlets that are intended for use by building occupants are controls subject to 4.27. The technical specifications in 4.27.3 regarding the location of such controls are taken directly from the ANSI A117.1 standard. AHMA did not cite to any State or local code provision that requires thermostats to be mounted at 60 inches and the Board is not aware of any. State and local building codes allow the lower placement of electrical outlets but do not preclude what is required in 4.27.3. The Fair Housing Accessibility Guidelines also provide for thermostats and electrical outlets to be placed within similar heights. Therefore, there is no basis for establishing different requirements for thermostats or electrical outlets.

4.28 Alarms

Comment. The NPRM asked whether requirements should be established for the standardization of audible alarms to distinguish them from other sounds. The commenters were divided on the issue. The National Fire Protection Association (NFPA) and several other commenters recommended that the technical specifications for audible alarms in 4.28.2 should be consistent with the NFPA 72A Standard for Protective Signalling Systems. NFPA 72A recommends that the duration of a sound which an alarm should exceed by 5 decibels should be 60 seconds rather than 30 seconds. NFPA 72A also recommends a 130 decibel maximum sound level. NFPA further recommended that the requirements should be stated in terms of the "A" weighted scale.

Response. The technical specifications for audible alarms in 4.28.2 have been revised to conform to NFPA 72A, except that the maximum sound level of 120 decibels has not been changed. The Board understands that the 120 decibel level is commonly known as the "threshold of pain." The 130 decibel level recommended in NFPA 72A was primarily intended for industrial application where noise is a problem and may be appropriate only for industrial occupancies. The 120 decibel level limit has been retained pending further information. The comments did not otherwise present any information beyond that obtained through the Board's research project which concluded that there was not enough known about the problem to develop specific requirements for the standardization of audible alarms. Instead, additional information developed by the Board's research project has been included in the appendix to assist builders and designers in selecting appropriate systems.

Comment. NFPA and several other commenters recommended that the technical specifications for visual alarms in 4.28.3 should be consistent with NFPA 72G Guide for Installation, Maintenance, and Use of Notification Appliances for Protective Signalling Systems. A few commenters recommended that the Board reserve establishing any requirements for visual alarms until it evaluated a recent study by the Underwriters Laboratory (UL) on such alarms. Some building owners and managers requested that the requirements should be more performance oriented. For example, a system was suggested in which some or all of the building lights would flash in some fashion. Several commenters stated that the requirements should address ambient light levels due to concern that the intensity of the visual signal might temporarily blind people in areas with low light. A few commenters were also concerned about the effect of strobe lights in inducing seizures in certain individuals.

Response. The technical specifications for visual alarms in 4.28.3 have been revised as follows to be consistent with NFPA 72G:

(a) A new paragraph has been added at 4.28.3(3) to provide for a maximum pulse duration of 0.2 sec. with a maximum duty cycle of 40%.

(b) The maximum 120 candela intensity has been deleted from 4.28.3(4) (4.28.3(3) in the NPRM). NFPA 72G permits intensities up to 1000 candela and the UL study found no evidence that such bright devices caused any eye damage in view of the shortness of the flash pulse.

(c) The height requirement for placement of visual signal devices in 4.28.3(6) (4.28.3(5) in the NPRM) has been amended to specify that the devices be at least 6 inches below the ceiling to reduce the potential concealment by smoke.

The requirements in 4.28.3 (7) and (8) (4.28.3 (6) and (7) in the NPRM) have been revised to clarify that the spacing distance applies only in rooms or spaces which are required to have visual signal appliances. The requirement that no place be more than 50 feet from the signal means that the signaling devices would be spaced 100 feet apart as recommended in NFPA 72G. A sentence has also been added to address the spacing of signaling devices in large rooms and spaces such as auditoriums that are more than 100 feet across and are not divided by walls or partitions above 6 feet. In such rooms and spaces, the signaling devices may be placed 100 feet apart around the perimeter of the room or space instead of suspending the devices from the ceiling.

The Board has reviewed the UL study and it generally supports the technical specifications in 4.28.3. The Board notes that NFPA 72G is scheduled to be revised in 1993 and that the UL is planning to develop standards for visual signal devices. The Board intends to monitor these standards and update the guidelines, as appropriate.

The Board has not opted for more performance oriented requirements because the lack of specificity in the current UFAS and ANSI A117.1 standards have resulted in the provision of some ineffective visual alarm systems. As new systems and technologies are developed and tested, the equivalent facilitation provision in 2.2 provides sufficient flexibility for builders and designers to use them. The Board will also consider new systems and technologies when it periodically updates the guidelines.

NFPA 72G and the UL study indicate that the 75 candela minimum signal intensity specified in 4.28.3(4) is not harmful at different lighting levels. The ambient lighting level of typical offices, classrooms, and hotel rooms as tested by UL ranges from 20 to 75 lumens per square foot. NFPA 72G recommends a signal intensity of 100 to 1000 candela for that lighting level. The UL study tested strobe lights with intensity levels equivalent to those required by 4.28.3(4), including tests conducted in a totally dark room where the strobe flash provided the only light. Not only were the subjects not blinded, but they were able to move about the room and find specific objects on a table. As for the possible effect of strobe lights in inducing seizures in certain individuals, the Board's research project and other available information indicate that the problem does not occur if the flash rate is less than 5 HZ. The Board has set the maximum rate at 3 HZ for additional safety.

Comment. Several commenters pointed out that if portable visual alarms are permitted in dwelling units and sleeping rooms, they should be triggered by the emergency alarm system for the building. A few commenters recommended that portable vibrating alarms should also be required to awaken sleepers. Some commenters noted that the requirement that the signal be visible in all areas of the dwelling unit or sleeping room would be difficult in some unusually shaped rooms and spaces.

Response. The intent of the technical specifications for auxiliary alarms in 4.28.4 is that the portable devices will be equivalent to a permanently installed visual alarm that is connected to the building emergency alarm system. The requirement has been clarified by specifying that a means must be provided by which a signal from the building emergency alarm system can trigger the auxiliary alarm. This can be accomplished by providing a separate circuit or transmitting a signal through the normal wiring system to trigger the portable device.

The UL study found that it required a signal of 110 candela to wake a sleeping person compared to a 15 candela signal to alert people in normal work situations. The UL study also found that vibrating alarms were more effective than visual signals for waking sleeping persons. This information has been included in the appendix at A4.28.4.

The requirement that the signal be visible in all areas of the dwelling unit or sleeping room is reasonable since the purpose of the alarm is to alert persons to emergencies. NFPA 72G states that the signal should be visible "regardless of the orientation" of the individual. The signal can reflect off the walls and be visible in various areas of the room. Some unusually shaped rooms and spaces may require more than one visual alarm device. Builders and designers should take this into consideration when designing and building new facilities.

4.29 Detectable Warnings

Comment. The NPRM proposed to include new provisions for detectable warnings based on research and planned revisions to the ANSI A117.1 standard. A detectable warning is a standardized surface feature built in or applied to walking surfaces or other elements to warn individuals with visual impairments of hazards on a circulation path. The detectable warning should consist of raised truncated domes. Comments were received in support of and in opposition to including detectable warnings in the guidelines. Commenters who opposed detectable warnings gave a variety of reasons. Some individuals with visual impairments stated that with proper training and use of mobility aids they can avoid dangers in the physical environment. These commenters believed that detectable warnings are unnecessary and the people with visual impairments may tend to rely on detectable warnings rather than learn adequate mobility skills. They also expressed concern that detectable warnings might cause hazards for people with visual impairments because the warnings are distracting and can cause people to lose their balance. They noted that detectable warnings may also be hazardous for people with mobility impairments who are ambulatory especially in outdoor conditions where ice and snow removal may be adversely affected by the raised truncated domes. Other commenters stated that detectable warnings create and perpetuate misconceptions and attitudinal barriers about people who have visual impairments. They expressed concern that detectable warnings would negatively affect the employment of people with visual impairments because employers might mistakenly perceive that such individuals cannot function in an environment that is not specially equipped. In their view, detectable warnings could result in "unintended discriminatory effects." A few commenters questioned the adequacy of the research; the long term durability of raised truncated domes; the ability of the construction industry to comply with the requirement; and the aesthetics of detectable warnings.

Commenters who supported detectable warnings also gave a variety of reasons. They pointed out that there is a significant number of people with visual impairments who are not able to fully master mobility skills due to a range of factors, including age of onset, type of disability, and innate abilities. They further pointed out that necessary cues such as traffic sounds are not always distinguishable due to various circumstances which are beyond the control of the individual. These commenters were concerned about the safety of persons who cannot depend on using mobility skills to detect hazardous conditions. They believed that detectable warnings can prevent unnecessary accidents and deaths and do not stigmatize people who have visual impairments because the warnings are helpful to all people. They noted that detectable warnings are frequently used in industrial settings to warn workers whose vision may be temporarily obscured of hazards in the workplace and have been proven effective in preventing accidents and injuries.

Some commenters generally supported the concept of detectable warnings but suggested that the guidelines should allow for a variety of surface treatments in order to accommodate variations in walking surfaces and design techniques.

Response. Accessibility includes ensuring that individuals with disabilities can safely use the built environment. Some of the requirements in the guidelines such as those for areas of rescue assistance and visual alarms are based primarily on concern for the safety of individuals with disabilities. The purpose of detectable warnings is to alert individuals with visual impairments of hazards on a circulation path that might otherwise go unnoticed and result in serious injury. Although mobility training is essential, as some of the commenters pointed out, a significant number of people with visual impairments are not able to fully master mobility skills. Further, mobility training is not always readily available.

The Board's goal is to provide appropriate cues in the built environment to facilitate the use of mobility skills. The Board does not believe that detectable warnings are any more stigmatizing than ramps. Like other accessibility features, detectable warnings benefit all people.

As discussed in the NPRM, studies have demonstrated the raised truncated dome pattern to be an effective detectable warning. See Tactile Warnings to Promote Safety in the Vicinity of Transit Platform Edges, Urban Mass Transportation Administration (1987); Pathfinder Tactile Tile Demonstration Test Project, Metro-Dade Transit Agency (1988). The domes can be constructed using a variety of methods including concrete stamping or the application of a prefabricated surface treatment. Although there are other common surface treatments that are detectable, the concept of a detectable warning is to provide consistent and uniform surface treatment that is distinctive from other materials and consistently recognized as a warning in order to alert pedestrians that they are approaching a potentially dangerous area.

The final guidelines retain the requirements in 4.29.2 for detectable warnings to consist of raised truncated domes. The requirement for detectable warnings used on interior surfaces to differ from adjoining walking surfaces in resiliency or sound on cane contract has also been retained. However, for the reasons discussed under the comments below, the Board has limited the application of detectable warnings to hazardous vehicular ways, reflecting pools that are not otherwise protected, and curb ramps. The provisions for detectable warnings at stairs and on doors to hazardous areas have been reserved pending further study.

Comment. The NPRM provided in 4.29.2 for detectable warnings to contrast visually with adjoining surfaces and proposed to specify a 70% contrast ratio. The NPRM asked several questions regarding the proposed contrast ratio, including whether it was too difficult to achieve and whether a one inch black band between the detectable warning and adjoining surfaces would provide sufficient contrast for persons with low vision. Most of the persons who responded to the question objected to the contrast ratio. Several commenters stated that it could not be measured or enforced under field conditions. Some commenters noted that materials with demonstrated low maintenance and durability characteristics often have low reflective values and would not meet the criteria. Many commenters also opposed the use of a black band. Several commenters recommended that detectable warnings should be a yellow color.

Response. The final guidelines provide in 4.29.2 that detectable warnings must contrast visually with adjoining surfaces, either light-on-dark or dark-on-light. The 70% contrast ratio has been placed in the appendix at A4.29.2 and is advisory only.

Comment. A number of commenters opposed the requirements in 4.9.5 and 4.29.4 for detectable warnings at stairs primarily based on concern that the raised truncated domes will create a tripping hazard. Several commenters, including industries which use detectable warnings to alert workers of hazards such as loading docks, requested that the depth of the warning be decreased from 36 inches to 24 inches.

Response. Although detectable warnings have been successfully used at such locations at transit platform edges and loading dock edges, there is no data available regarding this application at stairs. People may use a different gait when they approach stairs compared to other walking surfaces. The requirement in 4.9.5 and 4.29.4 for detectable warnings at stairs have been reserved pending further study regarding possible tripping hazards. The requirements in 4.29.3 and 4.29.7 for detectable warnings on doors to hazardous areas and for standardization of such warnings within a building, facility or site have also been reserved pending further study.

Comment. A number of commenters requested that detectable warnings also be required at uncurbed and unprotected drop off areas where a fall may be extremely hazardous or life threatening such as transit platforms and loading docks. Some commenters were opposed to detectable warnings at those locations. Several commenters recommended that detectable warnings should be required where the drop-off separating the pedestrian and vehicular way is more than curb height.

Response. The requirement in 4.29.5 has been clarified that a detectable warning is required when a walk crosses or adjoins a vehicular way, and the walking surfaces are not separated by curbs, railings, or other elements between the pedestrian areas and vehicular areas. For instance, some hotels have driveways that adjoin walkways at entrances. If there is no curb separating the pedestrian and vehicular area, a detectable warning would have to be provided. Detectable warnings for transportation facilities will be addressed in section 10 of the final guidelines which will be published separately in the **Federal Register**. Detectable warnings have not been required at loading docks and loading ramps because those areas are generally not open to the public. If an individual employee with a visual impairment works in an area with hazardous drop-offs, detectable warnings would be covered by reasonable accommodation under title I of the ADA.

Comment. Some commenters questioned the requirement in 4.7.7 for detectable warnings at curb ramps. A few commenters expressed concerns about maintenance, including snow and ice removal. Other commenters suggested changes to the requirement that the detectable warnings extend the full width and depth of the curb ramp.

Response. Properly designed curb ramps have gentle slopes which may not be easily detectable by some persons with visual impairments. Furthermore, changes in slope along pedestrian ways are commonplace and persons with visual impairments cannot predictably know when a change in slope indicates the presence of a curb ramp. The Board is concerned about the safety of persons with visual impairments who may unknowingly enter a vehicular way due to the lack of any cue or warnings at curb ramps to prevent serious injuries and deaths. The requirement in 4.7.7 for detectable warnings at curb ramps has therefore been retained.

4.30 Signage

Comment. A number of commenters, including graphic designers and sign manufacturers, objected to the technical specifications for character height and letter spacing in 4.30.3. Their primary concern was the impact of the requirements on the size of the sign. For instance, the NPRM proposed that letters on building directories by ⅝-inch minimum. One commenter pointed out that the current industry standard for film negative directories is 3/16 inch which is roughly ¼ the size proposed in the NPRM. Building directories would need to be 16 times their current size (4 times as high and 4 times as wide) to meet the ⅝-inch minimum. The commenter noted that larger office buildings have difficulty just accommodating a directory large enough to list their occupants in 3/16-inch type. Several individuals with disabilities and other commenters objected to wide letter spacing because they believed it

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vehicular area, a detectable warning would have to be provided. Detectable warnings for transportation facilities will be addressed in section 10 of the final guidelines which will be published separately in the **Federal Register**. Detectable warnings have not been required at loading docks and loading ramps because those areas are generally not open to the public. If an individual employee with a visual impairment works in an area with hazardous drop-offs, detectable warnings would be covered by reasonable accommodation under title I of the ADA.

Comment. Some commenters questioned the requirement in 4.7.7 for detectable warnings at curb ramps. A few commenters expressed concerns about maintenance, including snow and ice removal. Other commenters suggested changes to the requirement that the detectable warnings extend the full width and depth of the curb ramp.

Response. Properly designed curb ramps have gentle slopes which may not be easily detectable by some persons with visual impairments. Furthermore, changes in slope along pedestrian ways are commonplace and persons with visual impairments cannot predictably know when a change in slope indicates the presence of a curb ramp. The Board is concerned about the safety of persons with visual impairments who may unknowingly enter a vehicular way due to the lack of any cue or warnings at curb ramps to prevent serious injuries and deaths. The requirement in 4.7.7 for detectable warnings at curb ramps has therefore been retained.

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would make it more difficult to read by word shape or "footprint."

Response. The minimum height requirements for building directories and wall mounted signs and the provision for wide letter spacing have been deleted from the technical specifications in 4.30.3. Signs that are suspended or projected overhead in compliance with the technical specifications for protruding objects in 4.4.2 (i.e., more than 80 inches above the floor or ground) are required to have a character height of 3 inches minimum. A sentence has also been added to 4.30.3 to clarify that lower case letters are permitted.

Comment. Individuals with disabilities and government agencies involved with disability issues supported the technical specifications for raised and brailled characters in 4.30.4. Many of the commenters who opposed the technical specifications, including graphic designers and sign manufacturers, interpreted the NPRM as requiring all signs to have raised and brailled characters and all upper case letters and apparently objected to the scoping provisions and technical specifications on that basis. A few commenters also expressed concern that raised and braille characters may be more prone to vandalism.

Response. As discussed earlier, the scoping provisions for exterior and interior signage have been clarified in response to the comments. See 4.1.2(7) and 4.1.3(16). Only those signs which designate permanent rooms and spaces must comply with the technical specifications in 4.30.4 through 4.30.6 for raised and brailled characters, finish and contrast, and mounting location and height. No changes have been made to the technical specifications for raised and brailled characters in 4.30.4. Raised and brailled characters can be designed to be as vandal resistant as other signage.

Comment. Several graphic designers and sign manufacturers objected to eggshell finish being specified in the technical specifications for finish and contrast in 4.30.5. They felt that it unnecessarily restricts the industry. A number of commenters also objected to the 70% contrast ratio proposed in the NPRM because they believed that it could not be measured or enforced in the field.

Response. The Board sponsored research project on which the technical specifications for finish and contrast in 4.30.5 are based found that eggshell and matte finishes are equally readable by persons with low vision. The NPRM proposed to require only eggshell because of its relative resistance to soiling compared to matte. The final guidelines provide for eggshell, matte, or other non-glare finish. The 70% contrast formula has been placed in the appendix at A4.30.5 and is advisory only. The appendix also recommends an eggshell finish and light characters on a dark background.

Comment. The NPRM proposed in 4.30.6 that signs providing permanent identification of rooms and spaces be mounted on the wall adjacent to the latch side of the door at a height between 54 and 66 inches. These signs are required to include raised and brailled characters. A number of commenters recommended different mounting heights. Some pointed out that the 66 inch height was not within the reach range for wheelchair users. Other commenters pointed out that a more uniform and consistent mounting height would make it easier for persons with visual impairments to locate the signage.

Response. The technical specifications in 4.30.6 have been revised to require that signs providing permanent identification of rooms and spaces be mounted 60 inches above the finish floor to the center of the sign. The 60 inch mounting height was recommended in the original research for the ANSI A117.1—1980 standard. See Accessible Buildings for People with Severe Visual Impairments, Steinfeld (1978). Lowering the maximum height also reduces the viewing distance for persons with low vision and places the sign at a more comfortable reading height for users of braille and raised characters. A sentence has also been added to 4.30.6 clarifying that where there is no wall space to the latch side of the door, including at double leaf doors, signs are to be placed on the nearest adjacent wall.

Comment. A number of commenters recommended that the international symbol of access for hearing loss be used to identify the availability of permanently installed assistive listening systems in assembly areas required to have such systems by 4.1.3(19)(b).

Response. A requirement has been added to the technical specifications for symbols of accessibility in 4.30.7 that assistive listening systems be identified by signage that includes the international symbol of access for hearing loss. See Fig. 43(d). Additional information is provided in the appendix at A4.30.7 regarding appropriate messages to include with the symbol (e.g., Infrared Assistive Listening System Available—Please Ask).

Comment. The NPRM proposed in 4.30.8 that illumination levels on the sign surface be in the 200 to 300 lux range (10 to 30 footcandles) and that the illumination level on the surface of the sign not be significantly exceeded by the ambient light or visible bright lighting source behind or in front of the sign. A number of commenters objected to this provision as unenforceable. Other commenters noted that the proposed levels were generally met or exceeded in indoor lighted areas.

Response. The technical specifications for illumination levels in 4.30.8 has been reserved pending further study. The NPRM provision has been included in the appendix at A4.30.8 and is advisory only.

4.31 Telephones

Comment. The NPRM asked what decibel range should be specified for volume control telephones. Persons who responded to the question generally favored a range of 12 decibels to 18 decibels. Some commenters requested higher levels, stating that those with lower levels were not helpful. Although most telephone companies who responded to the question indicated that their equipment would fall within this range, they were opposed to specifying any decibel level.

Response. The final guidelines provide in 4.31.5(2) that public telephones required to be equipped with volume controls by 4.1.3(17)(b) must be capable of a minimum of 12 decibels and a maximum of 18 decibels above normal because higher levels can damage the ear. If an automatic reset button is provided, the 18 decibel level may be exceeded.

Comment. A number of commenters recommended that the requirement in 4.31.5 for a magnetic field in the area of the receiver cup should be changed to require hearing aid compatible telephones.

Response. The technical specifications in 4.31.5(1) have been revised to require that public telephones required to be equipped with volume controls by 4.1.3(17)(b) must be hearing aid compatible. The Hearing Aid Compatibility Act of 1988 requires that nearly all telephones be hearing aid compatible.

4.32 Fixed or Built-In Seating and Tables

Comment. Commenters made individual recommendations for changes and clarifications to the technical specifications for fixed or built-in seating and tables in 4.32. For instance, it was recommended that the depth requirement under tables be increased to accommodate guide dogs.

Response. The reference to "work surfaces" have been deleted from the technical specifications in 4.32 since those features are not required to be accessible by 4.1.1(3). The appendix recommends at A4.1.1(3) that if individual work stations are made accessible, they should comply with the applicable technical specifications. As for change to the depth requirements under tables, further study is needed.

4.33 Assembly Areas

Comment. Individuals with disabilities and their organizations supported the requirements in 4.33.3 for wheelchair seating spaces to be dispersed throughout the seating area. Several commenters requested that companion seating also be provided next to wheelchair seating spaces. Commenters from the theater industry expressed concern about the loss of seats if wheelchair seating spaces are placed mid-row. Motion picture theater owners pointed out that new movie theaters are typically a multiplex of small auditoriums each of which seats between 150 and 300 people and that each seat is situated to provide a clear line of sight to the screen. They requested that such small auditoriums be exempt from the dispersal requirement. A few commenters recommended that ramped aisles which are part of an accessible route to wheelchair seating spaces should be permitted to have steeper slopes if necessary to provide adequate sightlines.

Response. The requirements in 4.33.3 for dispersal of wheelchair seating spaces have been modified. Wheelchair seating spaces must be an integral part of any fixed seating plan and be situated so as to provide wheelchair users a choice of admission prices and lines of sight comparable to those available to the rest of the public. A provision has been added for at least one companion fixed seat to be provided next to each wheelchair seating space. The final guidelines require that when the seating capacity exceeds 300, wheelchair seating spaces must be provided in more than one location. This provision is based on the California code and balances considerations of cost and lost of other seating spaces with the need for access. It should be noted, however, that the guidelines do not require wheelchair seating spaces to be placed mid-row. No significant loss of seats is anticipated. As discussed under the scoping provisions in 4.1.3(19)(a), to address concerns regarding the number of wheelchair seating spaces required in large facilities, a provision has also been added to 4.33.3 permitting readily removable seats to be installed in wheelchair seating spaces which may be used by other persons when these spaces are not needed by wheelchair users or other individuals with mobility impairments. As explained in the appendix at 4.33.3, folding seating units usually consist of two fixed seats that can be easily folded into a fixed center bar to allow for open spaces for wheelchair users when needed.

As for ramped aisles which are part of an accessible route to wheelchair seating spaces, the Board is not convinced that slopes steeper than the maximum 1:12 permitted in 4.8.2 are necessary to provide adequate sightlines. Sightlines and visibility are affected by several factors, including the slope of the floor; the height of the screen; the distance between rows; and the staggering of seats. The Board understands that there are theaters designed with ramp aisles that comply with the maximum 1:12 slope and provide adequate sightlines.

Comment. The NPRM asked questions regarding row spacing and lines of sight over standing spectators in sports arenas and other similar assembly areas. Many of the persons who responded to the question stated that they have difficulty accessing mid-row seats in an assembly area. Many commenters also recommended that lines of sight should be provided over standing spectators.

Response. Building and life safety codes set minimum distances between rows of fixed seats with consideration of the number of seats in a row, the exit aisle width and arrangement, and the location of exit doors. Because row spacing is related to these other factors, the Board does not believe that it is appropriate for the guidelines to set requirements in this area. However, information has been included in the appendix at A4.33.3 on "continental" seating which allows a greater number of seats per row with a commensurate increase in row spacing and exit doors. This alternative increases ease of access to mid-row seats for people who walk with difficulty and facilitates emergency egress for all people. Builders and designers are encouraged to consider "continental" seating along with other factors when planning seating in assembly areas.

The issue of lines of sight over standing spectators will be addressed in guidelines for recreational facilities.

Comment. As discussed under the scoping provision in 4.1.3(19)(b) for assistive listening systems in assembly areas, the NPRM requested information regarding which types of assistive listening systems (magnetic induction loops, FM, and infra-red) work best in particular environments. Many comments described their personal experiences with particular types of systems. Those who provide extensive information on the various systems recommended that a specific type should be selected only after consultation with experts in the field.

Response. Additional information on assistive listening systems is provided in the technical specifications in 4.33.6 and in the appenedix at A4.33.6. The type of assistive listening system appropriate for a particular application depends on the characteristics of the setting, the nature of the program, and the intended audience. The appendix includes a table reprinted from a National Institute of Disability and Rehabilitation Research "Rehab Brief" which shows some of the advantages and disadvantages of each system and typical applications. New York has also adopted technical specifications which may be useful. A pamphlet is available from the Board which lists demonstration centers across the country where technical assistance can be obtained in selecting and installing appropriate systems.

4.34 Automated Teller Machines

Comment. The NPRM contained an exception in 4.1.3(20) for drive-up-only ATMs, which provided that drive-up ATMs are not required to comply with the requirements in 4.34.2 and 4.34.3 for controls and clearances and reach ranges because they are designed to be used from motor vehicles. The NPRM requested information on reach range requirements from standard size motor vehicles. The American Bankers Association (ABA) stated:

> A number of uncontrollable variables are inherent in designing drive-up ATMs, e.g., the size of the driver; car dimensions; the skill of the driver in stopping the car close to the ATM. * * * However, given the number of uncontrollable variables, it is inevitable that certain drivers will be unable to use comfortably the drive-up ATM or will have to exit the car in order to complete a transaction.

Response. Because of the uncontrollable variables involved in utilizing drive-up ATMs, the Board, in the NPRM, provided an exception in the scoping provisions in 4.1.3(20) for drive-up ATMs. The drive-up ATMs do not have to comply with 4.34.2 (Controls) (which refers to 4.27) and 4.34.3 (Clearances and Reach Range) because they are designed to be used from motor vehicles. The Board maintained that exception with a minor change in referencing the provisions. The current provision states that the drive-up ATMs

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particular environments. Many comments described their personal experiences with particular types of systems. Those who provide extensive information on the various systems recommended that a specific type should be selected only after consultation with experts in the field.

Response. Additional information on assistive listening systems is provided in the technical specifications in 4.33.6 and in the appendix at A4.33.6. The type of assistive listening system appropriate for a particular application depends on the characteristics of the setting, the nature of the program, and the intended audience. The appendix includes a table reprinted from a National Institute of Disability and Rehabilitation Research "Rehab Brief" which shows some of the advantages and disadvantages of each system and typical applications. New York has also adopted technical specifications which may be useful. A pamphlet is available from the Board which lists demonstration centers across the country where technical assistance can be obtained in selecting and installing appropriate systems.

4.34 Automated Teller Machines

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Response. Because of the uncontrollable variables involved in utilizing drive-up ATMs, the Board, in the NPRM, provided an exception in the scoping provisions in 4.1.3(20) for drive-up ATMs. The drive-up ATMs do not have to comply with 4.34.2 (Controls) (which refers to 4.27) and 4.34.3 (Clearances and Reach Range) because they are designed to be used from motor vehicles. The Board maintained that exception with a minor change in referencing the provisions. The current provision states that the drive-up ATMs are not required to comply with 4.27.2, 4.27.3 and 4.34.3.

Comment. The ABA took the position that drive-up ATMs should be exempt from requirements that they be accessible to persons with visual impairments. The basis for their position was that drive-up ATMs are supposed to be used by the driver of the car who must have sufficient vision to drive legally. Should a passenger wish to use the ATM, stated the ABA, the driver could assist. Another commenter supported this position stating that a person who is visually impaired cannot use the drive-up ATM from the rear seat because most newer cars do not have fully openable windows.

Response. While the Board understands that the driver must have sufficient vision to operate the automobile, a passenger riding in either the front or back seat of the automobile may be visually impaired. Although the ABA cites the availability of the driver for assistance, this method would not allow the individual to use the ATM independently. In responding to the issue of drive-up ATMs in general, the ABA stated that given the number of uncontrollable variables, it is inevitable that some drivers will have to exit the car in order to complete a transaction. Thus it is entirely conceivable and not unexpected that a passenger may exit the automobile to use the drive-up ATM and this passenger may be an individual who is visually impaired. Furthermore, while some cars do not have fully operable rear windows, many cars do and, as with the front seat passenger, the individual in the rear seat may exit the car to utilize the ATM.

Consistent with the scoping provisions in 4.1.3(20) where a drive-up ATM is located adjacent to a walk-up ATM, only one ATM would have to be accessible to persons with visual impairments. Operational issues regarding the availability of accessible ATM services (e.g., accessible ATM being open same hours as non-accessible ATM) would be covered by the Department of Justice's regulations.

Comment. Section 4.34.4 provides that instructions and all information for use of ATMs shall be made accessible to and independently usable by persons with vision impairments. In the NPRM, the Board sought additional information on equipment presently in use or available technologies for making instructions and other information relating to the use of ATMs accessible to persons with vision impairments. There were over 50 different suggestions for making ATMs accessible to persons with vision impairments including (1) The installation of a handset voice output telephone device; (2) using large print and braille; (3) a "talking machine"; (4) using phone type receivers behind locked doors; (5) cassette instructions; (6) braille instructions; and (7) using a consumer electronics bus or universal interface bus for output accessibility.

The ABA took the position that while some technology does exist to assist many visually impaired persons, there does not appear to be technology to ensure in every case ATM accessibility to all visually impaired persons. The ABA stated that current technology supplied to assist visually impaired persons includes raised key identification overlay; high quality contrast screens; character font design selections to ensure easiest reading; and character enlargement. The ABA suggested that educational audio tapes and braille manuals offer at least one source of immediate accommodation for persons with vision impairments.

The ABA further recommended that the regulations concerning ATMs be "flexible and fluid." The ABA stated that "(i)t would be unfortunate if the initial or later regulations locked in specifications and standards in a manner which discourages future innovations and improvements" and that "(a)s technology develops and improves and as disabled persons determine and convey their suggestions, the facilities should evolve to provide better accessibility to disabled persons." The ABA was of the opinion that flexibility is particularly crucial with regard to providing ATM access to persons with vision impairments.

Response. While not stated specifically in the rule, braille and large print instructions (as proposed in the planned revisions to the ANSI A117.1 standard), when used in conjunction with tactually marked keys or other means of identification, do serve as one source of accommodation for persons with vision impairments. In an article recently published in the ABA Banking Journal, it was noted that at least one manufacturer provides ATMs with brailled keys as a standard feature. The manufacturer also provides training kits for bank customers with vision impairments that include a braille workbook on how to use the machine. Access Comes to ATMs, ABA Banking Journal (November 1990).

In light of the evolving technology in this area and to allow flexibility in design, the Board has stated the requirement for accessibility for persons with vision impairments in general performance terms. No changes were made to this section from the proposed rule which provides that instructions and all information for use of ATMs shall be made accessible to and independently usable by persons with vision impairments. While the planned revisions to the ANSI A117.1 standard may contain more specific provisions with respect to equipping ATMs for use by persons with vision impairments, the Board has chosen to maintain its position of flexibility in this area.

Comment. The Board sought comment on whether or not visual displays should be required to maintain accessibility for persons with hearing impairments where telephone handsets are used to convey printed and displayed information to persons with vision impairments. The Board queried whether there was a possibility that handsets would entirely replace video display screens. The overwhelming majority of comments from individuals with disabilities and their organizations indicated that where telephone handsets are used, visual displays should also be provided. The ABA took the position that it is inconceivable at this time that telephone handsets would ever replace a visual display. The American Council of the Blind was in agreement with this position stating that whatever accommodations that are made for persons with visual impairments should not preclude use by persons with other disabilities. One commenter indicated that visual displays must be maintained for people with limited use of arms or hands and another commenter stated that many persons with hearing loss are not able to use instructions via telephones or intercoms.

Response. The Board is also of the opinion that if telephone handsets or similar devices are provided, these will be in addition to and not preclude video display screens. Although it is unlikely that this should ever occur, the Board may address this issue in the future.

Comment. The Board also sought information concerning vandalism and the use of telephone handsets. The ABA took the position that telephone handsets furnished with ATMs are more susceptible to vandalism than telephone handsets currently used for public telephones, citing the reason that ATM telephone handsets are often vandalized for reasons which do not apply to telephone handsets. As an example, the ABA cited the instance where people who try to access someone else's account using a debit card which does not belong to them could become angry enough to vandalize an ATM when they are denied access to the ATM. The Wells Fargo Bank, the Service Centers Corporation and other commenters also expressed concern that telephone handsets are subject to vandalism.

Response. The Board is not requiring telephone handsets. Telephone handsets were suggested because they are one way that some banks have chosen to address the need for accommodation for persons with visual impairments. As cited in the ABA article, other means are available for providing information for use of ATMs by persons with vision impairments. These other means are not precluded should the banks prefer to use them. (The handset alternative was chosen to cost out in the regulatory impact analysis because of its high initial cost.)

Comment. The Board sought comment on whether information provided on video display screens (such as "deposit or withdrawal" and "checking or savings") can also be provided in braille when the user presses various keys. Additionally, the Board inquired whether receipts can be made accessible by braille or voice synthesis if a telephone handset or other listening device is used. Since many ATMs are located in an outdoor environment, the Board requested comment on how screen illumination and contrast can be provided in an outdoor environment where glare may be a problem.

The ABA stated that they are not aware of the availability of video display screens which are capable of displaying information in braille. Braille printers for receipts are available; however, the ABA took the position that such printers cannot be integrated with ATMs as a practical matter.

Further, according to the ABA, ATM manufacturers have researched in depth how to minimize glare through screen illumination and contrast. The ABA further stated that as new materials and techniques are developed, the effects of glare will be reduced and readability improved. They took the position that the Board should not enumerate specific contrast and color requirements as competition alone will ensure that the most readable combinations are marketed and used.

Response. Given the lack of technology which allows for the practical integration of braille printers in ATMs, the Board has not required braille printers at this time.

The Board believes that technology in the industry must improve before specific contrast and color requirements can be included in the guidelines. The Board believes that this area needs further research.

Comment. The Board invited comments on how privacy needs can be met in the context of accessible ATMs. Comments received in response to this section were primarily based on individual concerns and no research or supportive documentation was included. The ABA took the position that given the unavailability of voice synthesis, the use of a speaker is a viable option at this point which will not threaten the privacy of the user. Another commenter suggested using a system of beeps to confirm the transaction, while other commenters noted that audio output could result in a loss of privacy and security. Other suggestions for increased privacy included (1) installation of a "next in line" area behind which the visual display is unreadable; (2) making the display of information optional; (3) having a screen with a narrow viewing range or one which is not readable from all directions and angles; (4) enclosing ATMs in a booth; and (5) modifying the video display or viewing slot so it can be angled down farther or turned to the left or right, both manually and automatically, for individuals who use wheelchairs and others.

An issue which is interrelated with privacy matters is the concern for security. The Board sought comments concerning what security issues, if any, should be considered relative to an individual with a disability and whether or not there were considerations with respect to the environment around ATMs that may cause difficulty complying with the provisions of this section. The majority of the comments received addressed the need for security at ATMs based on use by the general public and not just by those individuals with disabilities. A limited number of commenters took the position that individuals with disabilities are "easier prey" and that use by visually impaired persons may increase the opportunity for criminal activity. One commenter stated that complex or costly security measures may be unreasonable in relation to the actual use by disabled people. Many commenters stressed the need for proper lighting at ATMs. Several other commenters took the position that security must not be compromised for access, and another comment asked that flexibility be allowed because the location and security considerations at ATMs vary widely. Suggestions to improve security included (1) using a telephone handset (audio output through speakers is undesirable since it can be overheard by others) or shaded screen and keeping the handset in a closed compartment accessible by card users only to prevent vandalism; (2) providing both ⅛ and ¼ inch jacks so personal headphones can be plugged into an ATM (the jacks can be protected from tampering or vandalism by a sliding cover until the ATM is activated by logging in a correct user identification); and (3) video monitoring around ATMs, as is done in convenience stores.

Response. Based on the response that the Board received concerning these areas, it is apparent that security and privacy are issues of general concern which apply to all ATM users and not just to individuals with disabilities and are issues which the industry must address. Until such time as additional research can be conducted into the issues of security and privacy at ATMs, the Board does not propose to include requirements for such measures.

Comment. The Board sought comment on whether other point of sale machines, such as machines selling insurance at airports or machines used for overnight delivery of letters and packages, should be covered by these guidelines and, if so, what requirements would be appropriate. Many persons who responded to the question favored providing access to the machines. A few commenters questioned whether the machines were fixed or built-in parts of a building or facility. Some commenters recommended that the machines should be addressed on a case-by-case basis as the services develop because blanket coverage in the early development stage could significantly lessen their distribution and the variety and quality of services provided.

Response. The Board believes this issue needs further study. However, the Board tends to agree with comments saying that a majority of the machines are equipment and therefore not within the Board's purview.

4.35 Dressing and Fitting Rooms

As discussed in the scoping provisions at 4.1.3(21), requirements have been added to the final guidelines for accessible dressing and fitting rooms. Technical specifications are provided for clear floor space, doors, a bench, and mirrors where provided.

5. Restaurants and Cafeterias

5.1 General

Section 5 contains specific requirements for restaurants and cafeterias, in addition to those contained in 4.1 through 4.35 and provides that where fixed tables are provided (or dining counters where food is consumed but there is no service) at least 5 percent, but not less than one, of the fixed tables (or a portion of the dining counter) shall be accessible and comply with 4.32 as required in 4.1.3(18).

Comment. The NPRM did not contain a specific reference to "counters" and a number of the commenters questioned whether restaurants that provide only high counters along the wall are covered.

Response. Such counters are covered by the guidelines and the Board has clarified this coverage by specifically referencing "counters" in this section. The board further clarified the language to reflect that the 5% requirement of fixed or built-in seating or tables is not in addition to section 4.1.3(18). To avoid confusion with section 5.2 (Counters and Bars), the Board inserted language to clarify that this section refers to dining counters where food is consumed but is not served at the counter as opposed to section 5.2 which addresses counters where food or drink is served at the counter for consumption. Where counters are provided solely for the sale of food and drink and not consumption then those counters must comply with 7.2 Sales and Service Counters.

Comment. The Board invited comment on whether requiring that at least 5%, but not less than one, of the fixed tables be accessible and comply with 4.32 (Seating Tables, and Work Surfaces) was adequate or whether a higher or lower percent should be specified. The Board sought comment on the impact of the different percentages on space layouts and revenues.

Response. While a slight majority of the commenters favored a higher percentage, little supporting information was provided to assess the impact of the higher (or lower) percentage on space layouts and revenues. The requirement of 5% accessibility of fixed tables is based on current building codes. The Board retained the 5% provision with no further changes to this paragraph.

5.2 Counters and Bars

This section requires that where food or drink is served at counters exceeding 34 inches in height to customers seated on stools or standing at the counter, a portion of the main counter which is 60 inches in length minimum shall be provided in compliance with 4.32 (Fixed or Built-in Seating and Tables) or service shall be available at accessible tables within the same area.

Comment. The NPRM did not explain the term "portion" and at least half of those responding to this section urged the Board to clarify the reference to a "portion".

Response. The Board provided language to reflect that a "portion of the counter" refers to a portion of the main counter which is 60 inches in length minimum. The 60 inches space provides for two wheelchairs or one wheelchair and one seat or chair.

5.3 Access Aisles

This section contains technical specifications for access aisles to accessible fixed tables. No changes were made to this paragraph.

5.4 Dining Areas

Section 5.4 requires that, in newly constructed restaurants and cafeterias, raised or sunken dining areas, loggias, and outdoor seating areas must be accessible. In alterations, accessibility to raised or sunken dining areas, or to all parts of outdoors seating areas is not required provided that the same services and decor are provided in an accessible space usable by the general public and not restricted to use by people with disabilities.

In non-elevator buildings, an accessible means of vertical access to the mezzanine is not required provided the area of mezzanine seating measures no more than 33 percent of the area of the accessible seating area and the same services and decor are provided in an accessible space usable by the general public and are not restricted to use by persons with disabilities. This exception does not apply to buildings required to have an elevator.

Comment. Several commenters indicated that clarification was needed regarding the requirement that dining rooms be accessible. Based on the language of the NPRM, it was unclear whether all dining rooms or just those which are raised or sunken are required to be accessible.

Response. The Board clarified its intent that all dining areas are to be accessible in new construction.

5.5 Food Service Lines

Section 5.5 is taken from UFAS and provides technical specification for accessible food service lines. Instead of requiring a "reasonable portion" of self-service shelves to be within forward and side reach ranges (4.2.5 and 4.2.6), the guidelines require at least 50% of each type of self-service shelves to be within the required reach ranges. No changes were made to this paragraph.

5.6 Tableware and Condiment Areas

This section requires that self-service shelves and dispensing devices for tableware, dishware, condiments, food and beverages be installed to comply with 4.2 (Space Allowance and Reach Ranges). No changes were made to this section.

5.7 Raised Platforms

Section 5.7 requires that a raised platform used for the head table or speaker's lectern in banquet rooms or spaces shall be accessible by means of a ramp or platform lift complying with 4.8 or 4.11, respectively. Open edges of a raised platform must be protected by the placement of tables or by a curb. No changes were made to this section.

5.8 Vending Machines and Other Equipment

This section requires that spaces for vending machines and other equipment shall comply with 4.2 and shall be located on an accessible route. The NPRM also provided that the equipment comply with 4.27 (Controls and Operating Mechanisms). This latter provision was deleted as it relates to equipment not under the jurisdiction of these guidelines.

5.9 Quiet Areas (Reserved)

Comment. A significant number of responses raised the issue of the need for "Quiet Areas" in restaurants. According to these commenters, extraneous noise and dim lights make it difficult for persons with hearing impairments to communicate when dining out.

Response. The Board has reserved this section until such time as research can be conducted on appropriate requirements which address the need for a quiet area in restaurants.

6. Medical Care Facilities

These sections establish specific requirements for medical care facilities, in addition to those contained in 4.1 through 4.35. The sections apply to medical care facilities such as hospitals where persons may need assistance in responding to an emergency and where the period of stay may exceed twenty-four hours. Doctors' and dentists' offices are not included in this section but are subject to the requirements of section 4.

6.1 General

Comment. Regarding the scoping provision for hospitals specifically approximately half of the commenters proposed increasing the percentage while the other half suggested that it be reduced. In addition to those comments, there were other commenters who favored increasing the percentage for medical facilities in general. Those arguing for a reduced figure in hospitals, did so based on the impact on cost and space. Humana Inc. expressed concern that the requirements of the guidelines for accessible bed and toilet rooms could result in a loss of 10% of beds in alterations. They further expressed concern about the requirement that all employee work areas be accessible. The American Hospital Association estimated cost increases of 20% for new construction and 40% to 60% for alterations.

Response. The scoping requirement of 10% is based on the current MGRAD. The draft final regulatory impact analysis shows that the cost per square foot increase is $1.00 per square foot for an overall percentage increase in new construction costs of 1.02%. The draft final regulatory analysis further shows that the cost increase per bed in a 100 bed hospital is $879.50. Over the 40 year useful life of the facility this cost amounts to $21.99 per bed per year. These figures support the requirement for 10% accessibility.

A portion of the commenters' anticipated cost was attributable to the health care industry's concern over the perceived 100% accessibility required in employee areas. To avoid any misunderstanding that the Board is requiring 100% accessibility for all rooms as a result of the reference to "employee use areas," the Board has deleted that reference. Provisions concerning areas used only by employees as work areas and individual work stations are covered under section 4.1.1(3). That section requires access to employee work areas to the extent that individuals with disabilities can approach, enter, and exit the areas.

Furthermore, retrofitting existing facilities solely for accessibility reasons is not required by the guidelines. Additionally, the distribution of accessible beds in a hospital can vary based on the anticipated need in different specialized units. For example, more than 10% may be needed in a general surgical unit and less than 10% in obstetrics and pediatrics.

The loss of beds referenced in the comments could result only from alteration of existing units and would be unlikely in most situations. A new section 6.1(4) has been added to address concerns about the impact of the alterations requirements. Section 6.1(4)(a) provides that when patient bedrooms (and toilet/bath rooms that are part of the patient bedroom) are being added or altered as part of a planned renovation to a discrete department of an existing medical facility, accessible patient bedrooms shall be provided in a percentage consistent with the percentage of rooms required to be accessible by the applicable requirements of 6.1(1), 6.1(2), or 6.1(3), until the number of accessible patient bedrooms in the facility equals the overall number of accessible patient bedrooms that would be required if the facility were newly constructed. For example, if 20 patient bedrooms are being altered in the obstetrics department of a hospital, 2 of the altered rooms must be made accessible. If 20 patient bedrooms are being altered in a unit within the same hospital that specializes in treating mobility impairments, all of the altered rooms must be made accessible.

Section 6.1(4)(b) addresses alterations within departments that are not undergoing a complete renovation. Under section 6.1(4)(b), when patient bedrooms are being added or altered individually, and not as part of an alteration of the entire area, the altered patent bedrooms shall comply with 6.3, unless either (1) the number of accessible rooms provided in the department or area containing the altered patient bedroom equals the number of accessible patient bedrooms that would be required if the percentage requirements of 6.1(1), 6.1(2), or 6.1(3) were applied to that department or area or (2) the number of accessible patient bedrooms in the facility equals the overall number that would be required if the facility were newly constructed. For example, if a patient bedroom in a rehabilitation unit in a general hospital is altered, it must be made accessible because 6.1(2) requires all rehabilitation unit beds to be accessible. A patient bedroom in the obstetrics ward of a general hospital which is altered must be made accessible unless 10% of the beds in that ward are currently accessible or unless the facility as a whole already meets the new construction accessibility requirements. Where toilet or bath rooms are part of patient bedrooms which are added or altered and are required to be accessible, each such patient toilet or bathroom shall comply with 6.4. These provisions will enable a medical care facility to ensure that accessible rooms are distributed appropriately among the various units within the facility.

Comment. Many of the comments received on this section addressed the issue of scoping requirements for nursing homes. The majority of the comments received from nursing homes felt that the requirement for 50% of the patient bedrooms and toilets, all public use, common use and employee use areas was too excessive and suggested a figure of 5%. The justification given for the reduction was the substantial impact this requirement would have on cost and space. Many of those comments estimated that the cost increase per bed would be $8,000.

Response. The scoping requirement of 50% is based on the current MGRAD. The draft final regulatory impact analysis shows that the cost per square foot increase is $1.70 per square foot for an overall percentage increase in new construction costs of 1.74%. The draft final regulatory impact analysis further shows that the cost increase per bed in a 76 bed nursing home is $1553. Over the 40 year useful life of the facility this cost amounts to $38.83 per year. These figures support the requirement for 50% accessibility.

Comment. The majority of the comments received from the nursing homes took the position that, "residential care facilities" should be exempt from the guidelines. The basis for their position was that, by definition, those facilities are not medical care facilities since they are primarily residential in nature and are not providing medical care.

Response. The Board considered the issue of residential care facilities. It is the understanding of the Board that clarification of the applicability of these guidelines to "residential care facilities" will be addressed in the rules to be issued by the Department of Justice. To avoid any misunderstanding, the term "period of residence" used in this section was revised to read "period of stay".

Comment. The responses from the nursing homes took exception to requiring that "employee work areas" be accessible. Those commenters reasoned that since nursing facility residents are dependent upon staff to assist them in the event of a fire or life-threatening emergency, staff must be physically capable of providing assistance as a requirement of employment. The provision for employee access to all patient rooms was characterized as a needless expense.

Response. The Board is of the opinion that not all nursing home staff are expected to be physically capable of providing assistance in emergency situations (e.g. clinicians, administrative personnel). As indicated above, to avoid any misunderstanding that the Board is requiring 100% accessibility for all rooms as a result of the reference to "employee use areas," the Board has deleted that reference.

Comment. The Board sought comment on whether other types of facilities should be listed in the scoping table. A majority of the responses supported the provision as proposed in the NPRM. Approximately 25% of the responses recommended adding clinics. Other facilities which were recommended for inclusion were outpatient/ambulatory care facilities, medical professional buildings, and dentist offices. Also suggested were hospices, assisted living and congregate care facilities and rehabilitation facilities.

Response. Clinics can vary considerably in the type of services provided, and many do not provide patient bedrooms or provide overnight accommodation. If the clinics do provide patient bedrooms or overnight accommodation, they are covered under the provisions of this section of the guidelines, otherwise, they would be subject only to the requirements of section 4. The medical care facilities listed are meant to be illustrative. If a specific medical care facility is not mentioned, it is required to meet the requirements for the type of facility that it most closely resembles. For instance, an orthopedic hospital would be considered a rehabilitation facility. The Board considered outpatient care facilities, medical professional buildings and dentists offices, but did not consider these to be medical care facilities under this section as the period of stay does not exceed 24 hours.

The Board considered and included rehabilitation facilities in the guidelines based on the reason that those facilities would also specialize in treating conditions that affect mobility.

Additionally, the Board revised the language to reflect that if a hospital or a rehabilitation facility has a "unit" within the facility that specializes in treating conditions that affect mobility, then that unit, not the entire facility must meet the higher level of requirements for accessibility.

6.2 Entrances

This section contains technical specifications for entrances. No changes were made to this paragraph.

6.3 Patient Bedrooms

Section 6.3 provides that accessible patient bedrooms shall be provided in compliance with 4.1 through 4.35. Each accessible bedroom shall have a door that complies with 4.13, except that entry doors to acute care hospital bedrooms for in-patients shall be exempted from the requirement in 4.13.6 for maneuvering space at the latch side of the door if the door is at least 44 inches wide. Each accessible bedroom shall also have adequate space to provide a maneuvering space that complies with 4.2.3. In rooms with 2 beds, it is preferable that this space be located between beds. Furthermore, each accessible bedroom shall have adequate space to provide a minimum clear floor space of 36 inches along each side of the bed and to provide an accessible route complying with 4.3.3 to each side of each bed.

Comment. The NPRM provided that each bedroom would have a turning space preferably located near the entrance and a minimum clear floor space of 36 inches along each side of the bed. Approximately one-third of the comments received which addressed this section considered the space requirements at entrances to patient bedrooms and along side beds to be too restrictive or excessive and would have a substantial impact on costs and availability of space. The American Association of Homes for the Aging (AAHA) recommended that the guidelines only require a minimum amount of square footage per room and leave the configuration of the room to the discretion of facility operators. The AAHA argued that existing requirements such as those issued by the Health Care Finance Administration (HCFA) on environmental quality already address the needs of patients including those who are disabled.

Response. The HCFA requirements cannot be regarded as an effective alternative to these guidelines as they address environmental quality and are not designed to address accessibility.

The NPRM recommended that a turning space in compliance with 4.2.3 be located near the entrance. As the provisions in 4.13 for doors addresses the issue of maneuvering space at doors, this was deleted.

In the NPRM, the Board distinguished between requirements for two-bed rooms and four-bed rooms. With the exception of stating that in rooms with two beds, it is preferable that the maneuvering space be located between the beds, the Board has revised the language to provide that each bedroom shall have adequate space to provide a minimum clear floor space of 36 inches along each side of the bed and to provide an accessible route complying with 4.3.3 to each side of the bed. The Board determined that the additional requirements for space between the foot of the bed and the wall or the foot of the opposing bed of 42 and 48 inches was excessive and not consistent with other accessibility requirements in the guidelines. Accordingly, the Board revised the guidelines to provide that only a provision of 36 inches along all sides of the bed is required.

For purposes of clarity, the Board restated the exception to 4.13 that entry doors to acute care hospital bedrooms for in-patients shall be exempted from the requirement in 4.13.6 for maneuvering space at the latch side of the door if the door is at least 44 inches wide.

6.4 Patient Toilet Rooms

This section was revised to clarify that where private toilet/bath rooms are provided as part of an accessible patient bedroom, the toilet/bath room must comply with 4.22 or 4.23 and be on an accessible route.

7. Business and Mercantile

7.1 General

These sections contain specific requirements for all areas used for business transactions with the public, and are in addition to those in 4.1 through 4.35.

The comments received on this section generally involved operational issues which, pursuant to the ADA, are under the jurisdiction of the Department of Justice and not these guidelines. With the exception of providing that the provisions of this section are in addition to those in 4.1 through 4.35 (as opposed to 4.34 in the NPRM), no changes were made to this paragraph.

7.2 Sales and Service Counters, Teller Windows, Information Counters

Section 7.2 requires that where counters with cash registers are provided in department stores and miscellaneous retail stores for sales or distribution of goods or services to the public, at least one of each type shall have a portion of the counter which is at least 36 inches in length with a maximum height of 36 inches above the finish floor. It shall be on an accessible route complying with 4.3. The accessible counters must be dispersed throughout the building or facility. In alterations where it is technically infeasible to provide an accessible counter, an auxiliary counter meeting these requirements may be provided. Where counters without cash registers are provided and at which goods or services are sold or distributed, this section provides for three options: (1) A portion of the main counter which is a minimum of 36 inches in length shall be provided with a maximum height of 36 inches in; (or) (2) an auxiliary counter with a maximum height of 36 inches in close proximity to the main counter shall be provided; or (3) equivalent facilitation shall be provided. All accessible sales and service counters shall be on an accessible route complying with 4.3.

Comment. The NPRM did not explain the term "portion" and the Board was urged to clarify the reference to "portion".

Response. The Board provided language to reflect that a "portion of the counter" refers to a portion of the counter which is at least 36 inches in length with a maximum height of 36 inches above the finish floor.

Comment. The Board sought comments on whether a portion of each teller station or ticketing area should be accessible or whether a percentage of the stations should be accessible where services are available at several points. Approximately 25% of the commenters to this section supported the requirement that a percentage should comply. Only a third of those responses recommended a specific percentage which ranged from 5% to 100%, but not less than one. Almost 50% of the responses preferred that a portion of each counter/station comply. The latter group of commenters argued that a portion of each is better because (1) it is difficult to ensure that the accessible counter will be staffed at all times; (2) it eliminates the stigma of a "handicap counter"; (3) counter functions may change throughout the day; (4) often there is only one queuing line rather than a separate line for each station which lessens the chance of getting the "accessible station"; and (5) equipment may break down rendering the accessible counter unusable.

Comments from banking institutions raised the concern that lower counters are a security risk for their tellers, banks, employees and customers. The hotel/motel industry was equally concerned over the security risks for their employees and also raised the issue that a higher counter is more ergonomically efficient for standing work areas. Supermarkets were concerned with how to make the refrigerated display cases in the meat, deli, and seafood accessible. They proposed serving disabled customers at the end of the counter. Retailers were concerned over the showcase islands which they use, as well as security and the loss of storage and display areas if they have to have a lower counter at every island.

Response. The Board amended the language of this section to take into consideration the different types of businesses and the varying uses of counters.

Counters with cash registers: In a department store or other retail store where counters with cash registers are provided, there must be at least one of each type which shall have a portion of the counter which is at least 36 inches with a maximum height of 36 inches above the finish floor. It shall be on an accessible route complying with 4.3. Accordingly, if the retailer chooses to have an express cash lane and one which takes only charges, one of each must be accessible.

Counters without cash registers, but where goods or services are sold or distributed: Where there are no cash registers at the counter, the Board provided for three options: (1) A portion of the main counter that is 36 inches in width minimum shall be provided with a maximum height of 36 inches; or (2) an auxiliary counter with a height of 36 inches in close proximity to the main counter shall be provided; or (3) equivalent facilitation shall be provided.

The NPRM provided that where counters exceeding 36 inches in height are provided, a portion of the main counter shall be provided with a maximum height of between 28 inches to 34 inches above the floor. To address the concerns of safety raised by the commenters in response to the Board's question, the Board changed the scoping from "a portion of the main counter" to "at least one of each type" and raised the height requirement to a maximum of 36 inches above the finish floor. Additionally, where there is a cash register, only a portion of the counter need comply and that portion would not have to contain the cash register. Furthermore, for counters where there is no cash register, equivalent facilitation such as providing an auxiliary counter in close proximity to the main counter can be provided and may accommodate security concerns.

The Board has also added a provision in the appendix which recommends that an assistive listening device which complies with 4.33 be permanently installed at each location or series.

7.3 Check-out Aisles

Section 7.2 refers to counters without aisles whereas this section concerns counters with aisles which are identified here as check out aisles. A counter without an aisle can be approached in more than one direction such as in a convenience store, whereas a counter with an aisle has a circulation route having one approach and one exit and is therefore only approachable in one direction.

Comment. Of the comments received on this section, there was strong support from individuals with disabilities and their organizations for requiring that all check-out aisles be accessible. The response from the business community was strong in its opposition to requiring 100% accessibility. In support of their position, the business industry cited security risks, expense and difficult employee working conditions. The businesses provided statistics to support their concern for the costs involved. In connection with the cost impact of lost space, the International Mass Retail Association advised that sales per square foot equalled $185 in the last year and on the average it was $224.

Response. In the NPRM, the Board pointed out options which are available that can be designed and constructed to be accessible with only minor variations from what is considered the "typical" design and little or no increase in overall square footage. The Board cited examples such as cashiers' stations that can be staggered front-to-back, or two narrow check-out aisles can be combined into a double-wide aisle served by cashiers on both the right and left sides of the aisle. The Board sought comments relating to the experience of stores which have utilized these designs to provide wider check-out aisles and whether the designs presented security considerations or required additional space. The comments received from the business industry reflected a concern over the loss of store space that would result with each accessible aisle and security problems. The Board has addressed these concerns by changing the requirement for 100% accessibility to a requirement that the number of accessible aisles be provided in accordance with a sliding scale which is based on the number of each "design" of check-out aisles. Check-out aisles of different design include those which are specifically designed to serve different functions and includes the following features: length of belt or no belt; or permanent signage designating the aisle as an express lane. Signage identifying accessible check-out aisles shall comply with 4.30.7 and shall be mounted above the check-out aisle in the same location where the check-out number or type of check-out is displayed. For small businesses, where the selling space is under 5000 square feet, only one check-out aisle is required to be accessible.

In alterations, at least one check-out aisle shall be accessible in facilities under 5000 square feet of selling space. In facilities over 5000 square feet of selling space, at least one of each design of check-out aisle shall be made accessible when altered until the number of accessible check-out aisles of each design equals the number required in new construction.

7.4 Security Bollards

No changes were made to this paragraph.

8. Libraries

These sections are taken from UFAS without change and provide specific requirements for the design of all public areas of libraries, including reading and study areas, stacks, reference rooms, reserve areas, and special facilities and collections. They are in addition to the requirements contained in 4.1 through 4.35.

Comment. The majority of the comments received regarding this section were from individuals with

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In alterations, at least one check-out aisle shall be accessible in facilities under 5000 square feet of selling space. In facilities over 5000 square feet of selling space, at least one of each design of check-out aisle shall be made accessible when altered until the number of accessible check-out aisles of each design equals the number required in new construction.

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Comment. The majority of the comments received regarding this section were from individuals with

disabilities and their organizations and included changes related primarily to individual concerns or preferences. Except for one commenter who stated that the North Carolina Building Code requires all fixed tables, stacks and carrels to be accessible, no research or supporting data was cited in the recommended changes.

Several commenters did raise concerns over the lack of requirements for braille/voice input/output terminals for book catalogs and existing electronic catalogs.

Response. The issue of braille/voice input/output terminals is an operational matter and is under the purview of the Department of Justice and is not addressed in the guidelines.

The Board retained the language of this section with only two minor changes. In section 8.3, the reference for the check out area was changed to reference 7.2(1) to be consistent with the requirements under sales and service counters. In section 8.4 (Card Catalogs and Magazine Displays), the term "reference stacks" was deleted to avoid confusion with section 8.5 which places no limit on the height of "stacks".

9. Accessible Transient Lodging

Section 9 contains specific requirements for transient lodging which are in addition to those contained in section 4.1 through 4.35.

Comment. Many of the comments on this particular section came from the hotel industry, the majority of which recommended that the cross-reference to sections 5 and 7 should be deleted as it is redundant.

Response. Since 4.1.1(2) identifies the requirements for buildings with multiple functions, the cross-reference to sections 5 and 7 has been deleted.

Comment. The response from individuals with disabilities and their organizations generally recommended additional provisions for signage for persons who are visually impaired, such as requirements for tactile characters on doors, braille instructions on the use of phones, television, appliances, environmental controls, and other necessities and amenities which are provided by the hotel, as well as directional signage.

Response. No changes were made to this section regarding signage since section 4.30 addresses this issue and is applicable to transient lodging. In particular, sections 4.30.4 through 4.30.6 provide for permanent identification of rooms and spaces. Requiring brailled instructions for the use of phones, televisions and other portable items as suggested by commenters, is an operational issue which falls under the jurisdiction of the Department of Justice and is not addressed in these guidelines.

Comment. One commenter noted that requiring all rooms to be on an accessible route would require the installation of elevators in two story hotels previously excluded in 4.1.3(5).

Response. In lieu of installing an elevator, the accessible rooms may be located on a ground floor which is accessible and thus elevators are not mandatory in two story hotels.

Section 9.1 Hotels, Motels, Inns, Boarding Houses, Dormitories, Resorts and other Similar Places of Transient Lodging

The proposed guidelines provided that all public use and common use areas and five percent, but never fewer than one, of each class of sleeping rooms or suites are required to be designed and constructed to comply with section 4 and sections 9.2 through 9.3. The proposed guidelines further provided that in addition to the 5% accessible room requirement, another 5% must comply with 9.3 (sleeping accommodations for persons with hearing impairments) for a total of 10% of each class.

These requirements were enumerated in paragraph 9.1 of the proposed guidelines. The final guidelines address these areas in individually numbered sub-paragraphs in 9.1. They are discussed below in the order they appear under the new numbering system.

9.1.2 Accessible Units, Sleeping Rooms, and Suites

Comment—Number of accessible rooms. The majority of the comments from individuals with disabilities and their organizations supported the provision of a minimum of 5% accessible rooms. A small number of commenters suggested that the percentage of accessible rooms should equal the percentage of persons with disabilities; that at least 8% of the rooms should be accessible; that the 5% figure should increase to 10% in new construction; the exemption for facilities with fewer than 5 units should be deleted or that long term lodging (i.e. dormitories) should have additional rooms if the demand exceeds the supply.

Comments received from the business and industry groups strongly argued against the 5% figure stating that there was no foundation to support that requirement. Several commenters suggested a 2 to 4% figure. The American Hotel and Motel Association (AHMA) argued for a lower figure citing (1) the Department of Justice Preliminary Regulatory Impact Analysis which states that according to a 1984 study by Mathematica Policy Research, 645,000 persons use wheelchairs; and (2) the US Travel Data Center statistics which found that 65% of all US residents take one or more trips for business or pleasure at least 100 miles away from home each year. Using these statistics, the AHMA found that a goal of achieving an equivalent amount of travel for disabled people would result in 419,000 travelers who use wheelchairs in the United States which equates to less than 0.3% of all travelers. Using the Board's statistics, of 1,341,000 people who use a wheelchair and/or a walker (National Health Institute Services, Home Care Supplement: 1980) and assuming 65% traveling, the AHMA found this to result in slightly more than 0.5%. The AHMA also cited the 1990 California Hotel and Motel Association survey of its members which indicated that the "incidence of demand as demonstrated by reservations for wheelchair accessible rooms was less than 0.1%." Based on that survey, the AHMA proposed that only 1% of the rooms should be required to be accessible.

Comment. Roll-in showers. The Board invited comments relative to a requirement for the larger roll-in showers in transient lodging. The majority of the responses received were strongly in favor of the larger stalls but varied on the number which should be required. Some of the issues raised in the responses included (1) requiring roll-in showers for people with disabilities who are unable to transfer into a bathtub or onto a shower seat; (2) requiring 5 feet by 5 feet showers; (3) providing fold down bench seats in all shower stalls; (4) placing shower controls along the side wall adjacent to the bathroom; (5) requiring both bath tubs and showers in accessible units; and (6) providing accessible shower chairs.

Response. The Board based the requirement for 5% accessible rooms on Board sponsored research which provided that 1,341,000 individuals are reported to use a wheelchair and/or walker (National Health Institute Services, Home Care Supplement: 1980); and 5,191,000 individuals have other mobility impairments (Bureau of Census, Disability Functional Limitation and Insurance coverage: 1984–85). While the statistics provided by AHMA and others in the lodging industry would suggest a much lower percentage of 1%, the comments received from individuals with disabilities and their organizations were overwhelmingly in favor of a higher percentage citing instances where no rooms or an insufficient number of rooms were available, thus making travel difficult or impossible for individuals with disabilities. The Board took note of a voluntary standard approved by the AHMA Executive Engineers Committee and published by both AHMA and the Paralyzed Veterans of America. The standard proposed a 2% to 4% criteria for the number of accessible guest rooms in newly constructed hotels and motels (An Interpretation of ANSI A117.1 (1986) The American National Standard for Buildings and Facilities—Providing Accessibility and Usability for Physically Handicapped People as applicable to New Hotels and Motels).

Taking into consideration the additional statistics provided by AHMA regarding the percentage of people who travel as well the response from individuals with disabilities and their organizations regarding the difficulty experienced in traveling and the overwhelmingly favorable response to requiring a roll-in shower, the Board revised this section to provide that accessible sleeping rooms and roll-in showers in compliance with 9.2, 4.21 and Figure 57 shall be provided on a sliding scale in accordance with the table in 9.1.2. The table provides for 4% of the first 100 rooms to be accessible, decreasing to 20 accessible rooms in a facility with 1000 rooms, plus 1% for each 100 over that 1000. The table also provides that in facilities with over 50 rooms, 1% of the rooms shall have roll-in showers.

9.1.3 Sleeping Accommodations for Persons with Hearing Impairments

Comment. A number of commenters misunderstood the provisions relating to the number of rooms which must comply with section 9.3 (Visual Alarms, Notification Devices, and Telephones). Many did not understand that the requirement that a number of rooms must comply with 9.3 was in addition to those required to comply with 9.2.

Response. The Board has revised the language to clearly reflect that the provision for sleeping accommodations for persons with hearing impairments is in addition to the accessible room requirements for section 9.2.

Comment. As with 9.1.2, there was strong support from individuals with disabilities and their organizations in support of accessible rooms for people with hearing impairments, and strong objections from the business community over the basis for requiring 5%. The lodging industry based its objections on statistics cited by the Board in its preamble which provide that 1,741,000 individuals are deaf in both ears (National Institute on Disability and Rehabilitation Research, Data on Disability from the National Health Interview Survey: 1983) and the US Travel Data Center statistics which found that 65% of all US residents take one or more trips for business or pleasure at least 100 miles away from home each year. Using these statistics, the result would be .7% travelers. The lodging industry suggested that 1% would be a more appropriate requirement.

Response. In the preamble to the proposed guidelines, the Board also cited the Bureau of Census statistics which stated that 7,694,000 individuals have difficulty hearing what is said in a normal conversation with another person, including those who cannot hear at all (Bureau of Census, Disability Functional Limitation and Insurance Coverage: 1984–85). The Board further pointed out that an analysis of demographic date reveals there are at least as many persons with hearing impairments as there are persons with mobility impairments. Other studies indicate that a greater percentage of individuals have a hearing impairment (i.e., the National Center for Health Statistics found a 7.9 percent rate, National Health Interview Survey, 1979–80). Based on that data and the ADA's mandate that the Board provide greater guidance with respect to communication accessibility, the proposed guidelines required compliance with section 9.3 for an additional number of rooms equal to that requried to comply with section 9.2. Taking into consideration the statistical data provided by the AHMA regarding the percentage of travelers as discussed in 9.1.2 above, the Board has revised this section to provide that in addition to those accessible sleeping rooms and suites required by 9.1.2, sleeping rooms which comply with 9.3 shall be provided in conformance with the table in 9.1.3. That table provides for 4% of the first 100 rooms to comply with 9.3, decreasing to 20 accessible rooms in a facility with 1000 rooms, plus 1% for each 100 over that 1000.

9.1.4 Classes of Sleeping Accommodations

Comment. The majority of the comments received from individuals with disabilities and their organizations suggested that "class" should take into consideration price, the size of the room (i.e. number of beds) and the various amenities and features provided. Two commenters from the building code group/state access agency category suggested that in lieu of using the term "class" it would be preferable to require that the rooms be dispersed throughout the facility to ensure that a person with a disability the fullest range of room reservations available to the general public.

The lodging industry urged the use of the "standard industry classification" to define "class": (a) Standard rooms; (b) premium rooms (where a distinctly different level of service is provided); (c) suites (all types). Use of this classification would take into consideration the size of the room, amenities and features and, indirectly, price.

Response. In order to provide persons with disabilities with a range of options which are available to others, the Board has revised this section to provide that the rooms will be dispersed among the various classes of sleeping accommodations available. Factors to be considered in determining the various classes include room size, cost, amenities provided, and the number of beds provided.

The Board added a provision for equivalent facilitation to this section which allows the operator of a facility to limit construction of accessible rooms to those intended for multiple occupancy, provided that such rooms are made available to those who request a single occupancy room at the cost of a single occupancy room. This provision allows for more flexibility in the distribution of accessible rooms for the operator of a facility and provides accessible rooms for those who request a single occupancy room and rate.

9.1.5 Alterations to Accessible Units, Sleeping Rooms, and Suites

The Board took the position that a section on alterations specifically for transient lodging was appropriate for the reason that there are a number of problems peculiar to hotels, which regularly implement a seven or eight year cycle of alterations. For instance, if a percentage of rooms is required to be accessible and the hotel later alters a non-accessible room, a question is raised as to whether to make that room an accessible room or that element an accessible element, and as to how this would apply to wings of hotels. Accordingly, the Board has added a paragraph to section 9 which provides requirements for accessibility when sleeping rooms or a portion of the rooms are altered in an existing facility. The guidelines provide that where alterations occur, at least one sleeping room or suite that complies with the requirement of 9.2 (Requirements for Accessible Units, Sleeping Rooms, and Suites) shall be provided for each 25 sleeping rooms, or fraction thereof, of

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Response. In order to provide persons with disabilities with a range of options which are available to others, the Board has revised this section to provide that the rooms will be dispersed among the various classes of sleeping accommodations available. Factors to be considered in determining the various classes include room size, cost, amenities provided, and the number of beds provided.

The Board added a provision for equivalent facilitation to this section which allows the operator of a facility to limit construction of accessible rooms to those intended for multiple occupancy, provided that such rooms are made available to those who request a single occupancy room at the cost of a single occupancy room. This provision allows for more flexibility in the distribution of accessible rooms for the operator of a facility and provides accessible rooms for those who request a single occupancy room and rate.

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rooms being altered until the number of such rooms provided equals the number required to be accessible by 9.1.2. For each 25 sleeping rooms, or fraction, of rooms being altered, at least one sleeping room or suite that complies with the requirement of 9.3 (Visual Alarms, Notification Devices, and telephones) shall be provided until the number of such rooms equals the number required to be accessible by 9.1.3. For further discussion regarding alteration requirements which directly affect transient lodging, see 4.1.6 (Accessible Buildings: Alterations).

9.2 Requirements for Accessible Units, Sleeping Rooms and Suites

9.2.1 General

This section provides that units, sleeping rooms and suites required to be accessible by 9.1 shall comply with 9.2.

No comments were received for this section and the Board has not made any changes.

9.2.2 Minimum Requirements

This section provides the minimum requirements for accessible units, sleeping rooms and suites.

Maneuvering Space (9.2.2(1))

This section requires a maneuvering space of 36 inches clear width located along both sides of a bed, except that where two beds are provided, this requirement can be met by providing a 36 inches wide maneuvering space located between the two beds.

Comment. The Board sought comments on whether maneuvering space should be required along both sides of a bed to accommodate individuals who use wheelchairs and can transfer from a wheelchair to a bed from only one side. The results were divided among individuals with disabilities and their organizations and the business organizations. Individuals with disabilities and their organizations, government agencies involved with disability issues and other government agencies overwhelmingly supported the provision of maneuvering space on both sides of a bed. The lodging industry however, overwhelmingly took the opposite position based on the reasoning that the maneuvering clearances required by section 9.2.2(1) allow forward or reverse approach, thus permitting side access from either the right or the left.

Response. Because an individual can transfer from the left or the right as a result of the ability to go forward or reverse, does not mean that the individual can also turn themselves around 180 degrees to be at one end of the bed or the other. Thus, such an individual would not be able to utilize amenities provided such as television or necessities such as telephones. For this reason, the forward and reverse argument of the lodging industry was not acceptable.

The Board took the position that a maneuvering space should be required on both sides of a bed and that a 36 inches clear width maneuvering space was appropriate. Where two beds are provided, the requirement is met by providing the maneuvering space between the two beds.

Accessible Route (9.2.2.(2))

This section requires that an accessible route complying with 4.3 connect all accessible spaces and elements including telephones within the unit. This does not require an elevator in multi-story units as long as the spaces identified in 9.2.2 (6) and (7) are on accessible levels and the accessible sleeping area is suitable for dual occupancy.

Comment. One commenter suggested that the route should be required into and through the unit. This latter was reference to HUD's guidelines which provides in 24 CFR 100.205(c)(3)(ii) that there shall be an accessible route into and through the covered dwelling.

The lodging industry noted that there are a number of transient lodging facilities that have types of sleeping accomodations or dwelling units that are multi-story or split level. They took the position that vertical access should not be required to each story or level as long as all primary functions are available on accessible levels.

Response. To require an accessible route into and through each multi-story unit would be cost prohibitive unless the occupant exited their living space into a common area, used public use elevator, and reentered the unit from a different level at great inconvenience to the occupant.

The final guidelines address the concerns of the lodging industry and clarify that it is not the Board's intent to require vertical access to each story or level. However, this is provided that the spaces identified in 9.2.2 (6) and (7) are on accessible levels and are suitable for dual occupancy.

Doors (9.2.2(3))

This section requires that doors and doorways designed to allow passage into and within all sleeping rooms, suites or other covered units shall comply with 4.13.

Comment. The AHMA and other members of the lodging industry took the position that the Board should not require doors to non-usable space to be accessible.

Response. The response from individuals with disabilities and their organizations was overwhelmingly in favor of this requirement. Many individuals with disabilities stated that rooms not required to be fully accessible would still be usable by some if they were able to enter the doorways. For instance, if the doorways are accessible, individuals with varying mobility impairments may be able to use a room that does not have grab bars or a room that does not have maneuvering space.

The legislative history of the ADA states that, with respect to hotels, accessibility includes "requiring all doors and doorways designed to allow passage into and within all hotel rooms and bathrooms to be sufficiently wide to allow passage by individuals who use wheelchairs." H. Rept. 101–485, pt. 2, at 118. The Board retained this provision with no changes.

Storage (9.2.2(4))

This section requires that if fixed or built-in storage facilities such as cabinets, shelves, closets, and drawers are provided in accessible spaces, at least one of each type provided shall contain storage space complying with 4.25. Additional storage may be provided outside those dimensions.

Comment. The majority of the comments on this section were from the lodging industry, who suggested that the accessible rooms should also be usable by other than disabled guests. This could be accomplished they suggested, by such practices as installing two door viewers, two clothes closet rods—one at an "accessible" height and one at a standard height.

Response. The Board has addressed the concerns of the lodging industry by clarifying that as long as the minimum requirements are met, additional storage may be provided outside the dimensions required in 4.25.

Controls (9.2.2(5))

This section provides that all controls shall comply with 4.27. No changes were made to this section.

Accessible Areas (9.2.2(6))

This section requires that where provided the following shall be accessible and on an accessible route:

(a) The living area; (b) the dining area; (c) at least one sleeping area; (d) patios, terraces or balconies; (e) at least one full bathroom; (f) if only half baths are provided, at least one half bath, and (g) carports, garages or parking spaces.

Of the comments received on transient lodging, the majority concerned this section. The comments mainly focused on two areas—(d) patios and terraces; and (e) the bathroom area. Those areas are addressed below.

Patios, Terraces and Balconies (9.2.2(6)(d))

Comment. One commenter objected to this provision as it placed an unreasonable restraint on exterior architecture and window/door systems. The AHMA and others in the lodging industry however, were almost unanimous in their opposition to this requirement due to weather protection needs at ocean side resort property and other areas subject to high wind and water damage from hurricanes and storms which result in door sills higher than ½ inch.

Response. The Board understands the need to protect the integrity of the unit from water and weather damage and that many local building codes require higher door thresholds or a change in the level of the balcony to prevent structural damage from water. The Board also recognizes that to provide for higher thresholds or a change in level would, in all probability, eliminate the use of a balcony or deck area by individuals with disabilities. The final guidelines therefore provide that the requirements of 4.13.8 (Thresholds at Doorways) and 4.3.8 (Changes in Level) do no apply where it is necessary to utilize a higher door threshold or a change in level to protect the integrity of the unit from wind and water damage. The final guidelines also provide that where the exception to 4.13.8 and 4.3.8 would result in an inaccessible route to patios, terraces or balconies, that equivalent facilitation shall be provided. Equivalent facilitation at a hotel patio or balcony might consist of providing raised decking or a ramp to achieve accessibility.

Bathrooms (9.2.2(6)(e))

Comment. The responses to this paragraph were primarily from the disability community and focused on the need for accessible showers.

Response. The Board has responded to the issue of a roll-in shower under section 9.1.2 (Accessible Units, Sleeping Rooms, and Suites) and has included a requirement for a roll-in shower based on a sliding scale.

Kitchens, Kitchenettes, or Wet Bars (9.2.2(7))

This section provides for minimum requirements when kitchens, kitchenettes or wet bars are provided as accessory to a sleeping room or suite.

Comment. The AHMA and other commenters from the lodging industry urged the Board to reduce the requirement that 50% of the shelf space shall be accessible to 20% due to conventional design and cabinet fabrication practices.

Response. The Board considered the position of the lodging industry, however no further data was submitted in support of this position. The Board is of the opinion that current conventional design and fabrication practices are available which allow for the provision of 50% accessibility.

Comment. The AHMA and others in the lodging industry also expressed concern that many appliances are not manufactured with controls which are accessible according to 4.27 (such as coffee makers, toasters, microwave ovens, and other applicances).

Response. Under the ADA, the Board has jurisdiction to provide guidelines for built in applicances—not items such as toasters and coffee makers. Those items are therefore not addressed in the guidelines. Although portable devices are allowed under equivalent facilitation, the guidelines do not prescribe the features or controls of such devices. The Board does propose to address the issue of such appliances in the ADA manual.

9.3 Sleeping Room Accommodations for Persons with Hearing Impairments

9.3.1 General.

These requirements were enumerated in paragraph 9.3 of the proposed guidelines. The final guidelines address this area in 9.3.1. This section specifies the features which must be provided in units, sleeping rooms, or suites required to accommodate persons with hearing impairments. Visual alarms which comply with 4.28.4 must be provided. Visual notification devices which alert room occupants of incoming telephone calls and a door knock or bell must also be provided. The visual notification device may not be connected to visual alarm signal applicances. If a permanently installed telephone is provided, it shall have a volume control. An accessible electrical outlet within 4 feet of a telephone connection shall be provided to facilitate the use of a text telephone.

Comment. The disability groups generally supported the requirements of this provision. The comments suggested additional considerations which primarily involved the provision of portable devices. Members of the lodging industry took the position that guests could provide their own notification devices and that only electrical outlets should be required.

In the PRM, the Board noted the availability of both portable and built-in visual alarms and visual notification devices. The Board sought information on the effectiveness and usability of portable devices as compared to built-in devices.

Generally, individuals with disabilities and their organizations were divided on which was preferable. In all, 25% of the comments (the majority of which were from the disability community) preferred built-in devices while 23% of the comments (the majority of which were from the disability community) preferred portable devices; 12% of the comments stated that portable devices were acceptable; 2% of the comments supported the use of portable devices when built-in devices are not available; 5% of the comments oppossed the use of portable devices; and 18% of the comments supported the use of both.

The lodging industry took the position that if it was the intent of the guidelines to use portable devices only when they can be activated by a building alarm system then permanent devices will be required due to the lack of availability of such a portable system. The lodging industry stated that permanent devices will result in excessive costs and less flexibility in room selections.

Response. The guidelines require that auxiliary visual alarms shall be provided and comply with 4.28.4. Visual notification devices shall also be provided to alert room occupants of incoming telephone calls and a door knock or bell. The guidelines do allow for equivalent facilitation which requires the installation of electrical outlets and telephone wiring in order to enable the use of portable visual alarms and communications devices provided by the operator of the facility.

9.4 Other Sleeping Rooms and Suites

This section provides that doors and doorways designed to allow passage into and within all sleeping units or other covered units shall comply with 4.13.5.

Comment. The responses from individuals with disabilities and their organizations were overwhelmingly in favor of the accessibility of all doors and doorways. Responses from the lodging industry however, were overwhelmingly against this provision arguing that accessible doors should not be required to non-usable units as it is an undue burden without proven demand. Comments from the lodging industry cite the incurring of

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extraordinary costs by necessitating greater square footage in guest rooms and bathrooms to accommodate door swings and clearance. As for existing buildings which are altered, the industry commenters argued that it would be prohibitively expensive and architecturally or structurally impractical. The industry further took the position that the 32-inch minimum clearance should apply only to the guestroom entrance doors and only in new construction.

Response. Comments from individuals with disabilities however, frequently identified situations where a standard room could be used if it has an accessible entrance and bathroom doors.

The legislative history of the ADA states that, with respect to hotels, accessibility includes "requiring all doors and doorways designed to allow passage into and within all hotel rooms and bathrooms to be sufficiently wide to allow passage by individuals who use wheelchairs." H. Rept. 101–485, pt. 2, at 118.

The Board retained this provision with no changes.

9.5 Transient Lodging in Homeless Shelters, Halfway Houses, Transient Group Homes, and other Social Services Establishments

The Board received few comments specifically from organizations who were advocates for the homeless, however overall the comments received on this section from individuals with disabilities, disability groups and the business community generally expressed a sensitivity to the issues of cost and availability and the needs of those who are homeless.

9.5.1 New Construction

This section provides that in new construction all public use and common use areas are required to comply with section 4. At least one of each type of amenity in each common area shall be accessible and shall be located on an accessible route to any accessible unit or sleeping accommodation.

Comment. The Board sought comment on whether it is necessary or appropriate to require at least one of every amenity to be accessible in each of the common areas. The majority of the responses were from individuals with disabilities and their organizations. The responses were split on whether or not the Board should amend the proposed language to provide that at least one of each type of amenity be available in an accessible common area.

Response. The Board has retained the language of this provision without change but has added a provision to acknowledge the elevator exception provided in section 4.1.3(5). Where elevators are not provided, as allowed in 4.1.3(5), accessible amenities are not required on inaccessible floors as long as one of each type is provided in common areas on accessible floors.

9.5.2 Alterations

This section was previously reserved in the NPRM. The Board recognized that unique problems may arise when homeless shelters and similar establishments are placed in existing facilities originally designed for different purposes. The Board sought comments on what scoping provisions should apply to homeless shelters. Factors to be considered are the needs of the population to be served, service availability, and the significant demand for these important and scarce facilities.

Comment. Approximately 25% of the commenters took the position that the scoping should be the same as in other transient lodging. Just over 10% suggested that the scoping should be less than that in transient lodging. Some commenters responded by urging the Board to consider the cost vs. usage issue and to be sensitive to the realization that the number of shelters may be limited by the standards. A few commenters suggested a proportion (5% to 10%) of the shelter space should be accessible.

Response. The Board is mindful of the considerations in assessing the appropriate scoping requirements for alterations in homeless shelters and sought comments concerning this issue. The responses, however did not provide sufficient information regarding the need and the impact of applying the guidelines developed for other transient lodging, such as hotel and motels, to homeless shelters.

The Board is concerned that without homeless shelters, the most vulnerable members of society, including those homeless people who are disabled, will be without shelter. The Board wishes to avoid guidelines which result in a shelter not opening or expanding or result in the closing of shelters which are out of compliance.

The Board intends to conduct further study of this issue. Until such research is completed and guidelines are adopted, the Board has provided interim minimum guidelines.

The guidelines provide the provisions of 9.5.3 (Accessible Sleeping Accommodations in New Construction) and 9.1.5 (Alterations to Accessible Units, Sleeping Rooms, and Suites) shall apply to sleeping rooms and beds in social service establishments which are not homeless shelters and the alterations of other areas in such establishments shall be consistent with the new construction provisions of 9.5.1 (New Construction).

In homeless shelters, where the following elements are altered, the following requirements apply: (a) at least one public entrance shall allow a person with mobility impairments to approach, enter and exit including a minimum clear door width of 32 inches; (b) sleeping space for homeless persons as provided in the scoping provision of 9.1.2 (Accessible Units, Sleeping Rooms, and Suites in Transient Lodging) shall include doors to the sleeping area with a minimum clear width of 32 inches and maneuvering space around the beds for persons with mobility impairments complying with 9.2.2(1); (c) at least one toilet room for each gender or one unisex toilet room shall have a minimum clear door width of 32 inches, minimum turning space complying with 4.2.3 (Wheelchair Turning Space), one water closet complying with 4.16 (Water Closets), one lavatory complying with 4.19 (Lavatories and Mirrors), and the door shall have a privacy latch and, if provided, at least one tub or shower shall comply with 4.20 (Bathtubs) or 4.21 (Shower Stalls) respectively; (d) at least one common area which a person with mobility impairments can approach, enter and exit including a minimum clear door width of 32 inches; (e) at least one route connecting elements (a), (b), (c) and (d) which a person with mobility impairments can use including minimum clear width of 36 inches, passing space complying with 4.3.4 (Passing Space) turning space complying with 4.2.3 (Wheelchair Turning Space) and changes in levels complying with 4.3.8 (Changes in Levels); and (f) homeless shelters can comply with the provisions of (a)-(e) by providing the above elements on one floor.

9.5.3 Accessible Sleeping Accommodations in New Construction

The Board previously reserved this section in the NPRM and sought comments on whether the Board should require 5% of sleeping accommodations to be fully accessible, with an additional 2% for people with hearing impairments.

Comment. With respect to accessible sleeping rooms, approximately 50% of the responses supported requiring 5% of the sleeping rooms to be fully accessible.

Response. The Board is mindful of the desire to balance the need for accessibility in homeless shelters versus the impact of additional construction requirements. In the section on transient lodging for establishments such as hotels and motels, the Board adopted a sliding scale and it is the position of the Board that homeless shelters should not be held to more stringent scoping provisions. Accordingly, the scoping provisions for homeless shelters in new construction provide for accessible sleeping rooms in accordance with the table in 9.1.2 (Accessible Units, Sleeping Rooms, and Suites) and shall comply with 9.2 (Accessible Units, Sleeping Rooms and Suites) where such items are provided.

The Board recognizes that in some homeless shelters, the room or rooms contain a number of beds. In those instances, a percentage of the beds equal to the table provided in 9.1.2 shall comply with 9.2.2(1).

Comment. With respect to sleeping accommodations for persons with hearing impairments, approximately 25% of the responses favored requiring an additional 2% of the rooms to accommodate persons with hearing impairments. Approximately 50% of the commenters took the position that the 2% was too low. A number of commenters suggested that 9.5.3 should be consistent with the requirements for hotels, motels and other similar establishments.

Response. As in the requirements for accessible sleeping rooms in homeless shelters, the Board took the position that scoping provisions equal to those applicable to hotels, motels and similar establishments were appropriate. The guidelines provide that in addition to the rooms required to comply with the table in 9.1.2 (Accessible Units, Sleeping Rooms, and Suites), sleeping rooms that comply with 9.3 (Visual Alarms, Notification Devices and Telephones) shall be provided in accordance with the table in 9.1.3 (Sleeping Accommodations for Persons with Hearing Impairments).

10. Transportation Facilities [Reserved]

Regulatory Process Matters

The guidelines are issued to assist the Department of Justice to establish accessibility standards for new construction and alterations in places of public accommodation and commercial facilities as required by title III of the ADA. The Department of Justice has proposed to incorporate the guidelines in its final regulations as the accessibility standards for purposes of title III of the ADA. The guidelines thus meet the criteria for a major rule under Executive Order 12291 and have been reviewed by the Office of Management and Budget.

The Board has prepared a draft final regulatory impact analysis (RIA) of the guidelines. The draft final RIA is available for public comment. The Board will provide copies of the document to the public upon request. The public is encouraged to provide additional information as to the costs and benefits associated with the guidelines. Comments on costs and benefits that are received within 60 days of publication of these guidelines will be analyzed in the final RIA which will be completed by Janaury 1, 1992.

Accessibility does not generally add features to a building or facility but rather simply requires that features commonly provided have certain characteristics. Several studies discussed in the draft final RIA have shown that designing buildings and facilities to be accessible, from the conceptual phase onward, adds less than 1% to the total construction costs. The draft final RIA analyzes the cost impact of accessibility elements which have the potential of adding to the cost of a building or facility. Included in the analysis are: Areas of rescue assistance; parking (signage); curb ramps (detectable warnings); ramps (handrail extensions and edge protection); stairs (handrail extensions); elevators (raised characters on hoistway entrances, reopening devices, tactile and braille control indicators, and audible signage for car position); entrances (ramps); water closets and toilet stalls (grab bars); lavatories and sinks (insulation of hot water and drain pipes); bath tubs and shower stalls (seat, grab bars, and hand-held showers); alarms (visual systems); signage (tactile and braille characters); telephones (volume controls, text telephones, and signage); assembly areas (assistive listening systems); automated teller machines (equipment for persons with visual impairments); dressing and fitting rooms (curtained opening and swinging door); and roll-in showers and visual notification devices for accessible sleeping accommodations.

The draft final RIA also assesses the cost of space increases in certain building and facility types which are caused when accessible elements are repeated (e.g., accessible parking spaces in a parking lot and a parking garage; accessible patient bedrooms in a hospital and a nursing home). The element related costs are aggregated to estimate the costs for certain building types, including high-rise and low-rise office buildings, high-rise and low-rise hotels, auditoriums and movie theaters, parking lots and parking garages, and hospitals and nursing homes. For parking lots and parking garages, and hospitals and nursing homes, the aggregate costs also include the cost of space increases. The draft final RIA also discusses the indirect costs of the accessibility elements such as maintenance, operation and opportunity costs. Space allocation and re-allocation issues are analyzed with respect to maneuvering space in corridors; the standard toilet stall versus the alternate toilet stall; check-out aisles; and areas of rescue assistance.

As for regulatory alternatives, section 504 of the ADA specifically requires that the guidelines "supplement the existing (MGRAD)" on which the current UFAS is based and "establish additional requirements, consistent with this Act, to ensure that buildings (and) facilities * * * are accessible, in terms of architecture and design, * * * and communication, to individuals with disabilities." The legislative history states that the guidelines may not "reduce, weaken, narrow, or set less accessibility standards than those included in existing MGRAD" and should provide greater guidance in the area of communication accessibility for individuals with hearing and visual impairments. As mandated by the statute, the final guidelines use MGRAD and UFAS as their base or floor. The draft final RIA discusses regulatory alternatives considered for major provisions which go beyond MGRAD and UFAS. These include provisions for accessible parking; areas of rescue assistance; volume controls for public telephones; text telephones; detectable warnings; assistive listening systems; signage; and automated teller machines.

The draft final RIA also contains information that would be included in a final regulatory flexibility analysis under the Regulatory Flexibility Act and the final RIA will serve as the final regulatory flexibility analysis. The extensive notice and public comment procedure followed by the Board in the promulgation of these guidelines, which included public hearings, dissemination of materials, and provision of speakers to affected groups, clearly provided any interested small entities with the notice and opportunity for comment provided under the Regulatory Flexibility Act procedures.

The Board wishes to point out that Congress amended the Internal Revenue Code in 1990 to facilitate compliance by small entities with the ADA. Under section 44 of the Internal Revenue Code, as amended, eligible small businesses can receive a tax credit for certain costs of compliance with the ADA. An eligible small business is one whose gross receipts do not exceed $1,000,000 or whose workforce does not consist of more than 30 full-time workers.

Qualifying businesses may claim a credit of up to 50 percent of eligible access expenditures that exceed $250 but do not exceed $10,250. Examples of eligible access expenditures include the necessary and reasonable costs of removing barriers, providing auxiliary aids, and acquiring or modifying equipment or devices. Section 190 of the Internal Revenue Code, as amended, also provides for a deduction of up to $15,000 per year for expenses associated with the removal of qualified architectural and transportation barriers for any entity, regardless of size.

The guidelines do not preempt State and local regulation of the construction and alteration of places of public accommodation and commercial facilities. Section 308(b)(1)(A)(ii) of the ADA permits State and local governments to apply to the Attorney General for certification that a State or local code meets or exceeds the accessibility requirements of the ADA. Therefore, a Federalism assessment has not been prepared under Executive Order 12612.

The guidelines are effective immediately so that they can be incorporated in the Department of Justice's final regulations. The Department of Justice's final regulations will establish the effective date for the accessibility standards.

List of Subjects in 36 CFR Part 1191

Buildings, Civil rights, Handicapped, Individuals with disabilities.

Authorized by vote of the Board on July 1 and 12, 1991.

William H. McCabe,

Chairman, Architectural and Transportation Barriers Compliance Board.

For the reasons set forth in the preamble, the Board adds part 1191 to title 36 of the Code of Federal Regulations to read as follows:

PART 1191—AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY GUIDELINES FOR BUILDINGS AND FACILITIES

Sec.
1191.1 Accessibility guidelines.
Appendix to part 1191—Americans With Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities.

Authority: Americans With Disabilities Act of 1990, Pub. L. 101-336, 42 U.S.C. 12204.

§ 1191.11 Accessibility guidelines.

The accessibility guidelines for buildings and facilities for purposes of the Americans With Disabilities Act are found in the appendix to this part. The guidelines are issued to assist the Department of Justice to establish accessibility standards to implement the legislation.

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Americans with Disabilities Act (ADA)

Accessibility Guidelines for Buildings and Facilities

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1. PURPOSE.

This document sets guidelines for accessibility to places of public accommodation and commercial facilities by individuals with disabilities. These guidelines are to be applied during the design, construction, and alteration of such buildings and facilities to the extent required by regulations issued by Federal agencies, including the Department of Justice, under the Americans with Disabilities Act of 1990.

The technical specifications 4.2 through 4.35, of these guidelines are the same as those of the American National Standard Institute's document A117.1-1980, except as noted in this text by italics. However, sections 4.1.1 through 4.1.7 and sections 5 through 10 are different from ANSI A117.1 in their entirety and are printed in standard type.

The illustrations and text of ANSI A117.1 are reproduced with permission from the American National Standards Institute. Copies of the standard may be purchased from the American National Standards Institute at 1430 Broadway, New York, New York 10018.

2. GENERAL.

2.1 Provisions for Adults. *The specifications in these guidelines are based upon adult dimensions and anthropometrics.*

2.2* Equivalent Facilitation. *Departures from particular technical and scoping requirements of this guideline by the use of other designs and technologies are permitted where the alternative designs and technologies used will provide substantially equivalent or greater access to and usability of the facility.*

3. MISCELLANEOUS INSTRUCTIONS AND DEFINITIONS.

3.1 Graphic Conventions. Graphic conventions are shown in Table 1. Dimensions that are not marked minimum or maximum are absolute, unless otherwise indicated in the text or captions.

Table 1
Graphic Conventions

Convention	Description
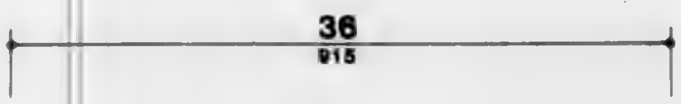	Typical dimension line showing U.S. customary units (in inches) above the line and SI units (in millimeters) below
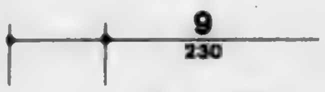	Dimensions for short distances indicated on extended line
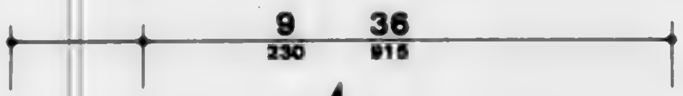	Dimension line showing alternate dimensions required
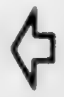	Direction of approach
max	Maximum
min	Minimum
	Boundary of clear floor area
	Centerline

3.2 Dimensional Tolerances. All dimensions are subject to conventional building industry tolerances for field conditions.

3.3 Notes. The text of *these guidelines* does not contain notes or footnotes. Additional information, explanations, and advisory materials are located in the Appendix. Paragraphs marked with an asterisk have related, nonmandatory material in the Appendix. In the Appendix, the corresponding paragraph numbers are preceded by an A.

3.4 General Terminology.

comply with. Meet one or more specifications of *these guidelines*.

if, if ... then. Denotes a specification that applies only when the conditions described are present.

may. Denotes an option or alternative.

shall. Denotes a mandatory specification or requirement.

should. Denotes an advisory specification or recommendation.

3.5 Definitions.

Access Aisle. An accessible pedestrian space between elements, such as parking spaces, seating, and desks, that provides clearances appropriate for use of the elements.

Accessible. Describes a site, building, facility, or portion thereof that complies with *these guidelines*.

Accessible Element. An *element* specified by *these guidelines* (for example, telephone, controls, and the like).

Accessible Route. A continuous unobstructed path connecting all accessible elements and spaces of a building or facility. Interior accessible routes may include corridors, floors, ramps, elevators, lifts, and clear floor space at fixtures. Exterior accessible routes may include parking access aisles, curb ramps, *crosswalks at vehicular ways*, walks, ramps, and lifts.

Accessible Space. *Space that complies with these guidelines.*

Adaptability. The ability of certain building spaces and elements, such as kitchen counters, sinks, and grab bars, to be added or altered so as to accommodate the needs of *individuals with or without disabilities* or to accommodate the needs of persons with different types or degrees of disability.

Addition. *An expansion, extension, or increase in the gross floor area of a building or facility.*

Administrative Authority. A governmental agency that adopts or enforces regulations and *guidelines* for the design, construction, or *alteration* of buildings and facilities.

Alteration. *An alteration is a change to a building or facility made by, on behalf of, or for the use of a public accommodation or commercial facility, that affects or could affect the usability of the building or facility or part thereof. Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangement of the structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility.*

Area of Rescue Assistance. *An area, which has direct access to an exit, where people who are unable to use stairs may remain temporarily in safety to await further instructions or assistance during emergency evacuation.*

Assembly Area. A room or space accommodating a *group of* individuals for recreational, educational, political, social, or amusement purposes, or for the consumption of food and drink.

Automatic Door. A door equipped with a power-operated mechanism and controls that open and close the door automatically upon receipt of a momentary actuating signal. The switch that begins the automatic cycle may be a photoelectric device, floor mat, or manual switch (see power-assisted door).

Accessible Space. *Space that complies with these guidelines.*

Adaptability. The ability of certain building spaces and elements, such as kitchen counters, sinks, and grab bars, to be added or altered so as to accommodate the needs of *individuals with or without disabilities* or to accommodate the needs of persons with different types or degrees of disability.

Addition. *An expansion, extension, or increase in the gross floor area of a building or facility.*

Administrative Authority. A governmental agency that adopts or enforces regulations and *guidelines* for the design, construction, or *alteration* of buildings and facilities.

Alteration. *An alteration is a change to a building or facility made by, on behalf of, or for the use of a public accommodation or commercial facility, that affects or could affect the usability of the building or facility or part thereof. Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangement of the structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility.*

Area of Rescue Assistance. *An area, which has direct access to an exit, where people who are unable to use stairs may remain temporarily in safety to await further instructions or assistance during emergency evacuation.*

Assembly Area. A room or space accommodating a *group of* individuals for recreational, educational, political, social, or amusement purposes, or for the consumption of food and drink.

Automatic Door. A door equipped with a power-operated mechanism and controls that open and close the door automatically upon receipt of a momentary actuating signal. The switch that begins the automatic cycle may be a photoelectric device, floor mat, or manual switch (see power-assisted door).

3.5 Definitions

Building. Any structure used and intended for supporting or sheltering any use or occupancy.

Circulation Path. An exterior or interior way of passage from one place to another for pedestrians, including, but not limited to, walks, hallways, courtyards, stairways, and stair landings.

Clear. Unobstructed.

Clear Floor Space. *The minimum unobstructed floor or ground space required to accommodate a single, stationary wheelchair and occupant.*

Closed Circuit Telephone. *A telephone with dedicated line(s) such as a house phone, courtesy phone or phone that must be used to gain entrance to a facility.*

Common Use. Refers to those interior and exterior rooms, spaces, or elements that are made available for the use of a restricted group of people (for example, *occupants of a homeless shelter*, the occupants of an office building, or the guests of such occupants).

Cross Slope. The slope that is perpendicular to the direction of travel (see running slope).

Curb Ramp. A short ramp cutting through a curb or built up to it.

Detectable Warning. *A standardized surface feature built in or applied to walking surfaces or other elements to warn visually impaired people of hazards on a circulation path.*

Dwelling Unit. A single unit which provides a kitchen or food preparation area, in addition to rooms and spaces for living, bathing, sleeping, and the like. *Dwelling units include a single family home or a townhouse used as a transient group home; an apartment building used as a shelter; guestrooms in a hotel that provide sleeping accommodations and food preparation areas; and other similar facilities used on a transient basis. For purposes of these guidelines, use of the term "Dwelling Unit" does not imply the unit is used as a residence.*

Egress, Means of. *A continuous and unobstructed way of exit travel from any point in a building or facility to a public way. A means of egress comprises vertical and horizontal travel and may include intervening room spaces, doorways, hallways, corridors, passageways, balconies, ramps, stairs, enclosures, lobbies, horizontal exits, courts and yards. An accessible means of egress is one that complies with these guidelines and does not include stairs, steps, or escalators. Areas of rescue assistance or evacuation elevators may be included as part of accessible means of egress.*

Element. *An architectural or mechanical component of a building, facility, space, or site, e.g., telephone, curb ramp, door, drinking fountain, seating, or water closet.*

Entrance. *Any access point to a building or portion of a building or facility used for the purpose of entering. An entrance includes the approach walk, the vertical access leading to the entrance platform, the entrance platform itself, vestibules if provided, the entry door(s) or gate(s), and the hardware of the entry door(s) or gate(s).*

Facility. *All or any portion of buildings, structures, site improvements, complexes, equipment, roads, walks, passageways, parking lots, or other real or personal property located on a site.*

Ground Floor. *Any occupiable floor less than one story above or below grade with direct access to grade. A building or facility always has at least one ground floor and may have more than one ground floor as where a split level entrance has been provided or where a building is built into a hillside.*

Mezzanine or Mezzanine Floor. *That portion of a story which is an intermediate floor level placed within the story and having occupiable space above and below its floor.*

Marked Crossing. A crosswalk or other identified path intended for pedestrian use in crossing a vehicular way.

Multifamily Dwelling. Any building containing more than two dwelling units.

Occupiable. *A room or enclosed space designed for human occupancy in which individuals congregate for amusement, educational or similar purposes, or in which occupants are engaged at labor, and which is equipped with means of egress, light, and ventilation.*

3.5 Definitions

Operable Part. A part of a piece of equipment or appliance used to insert or withdraw objects, or to activate, deactivate, or adjust the equipment or appliance (for example, coin slot, pushbutton, handle).

Path of Travel. *(Reserved).*

Power-assisted Door. A door used *for human passage* with a mechanism that helps to open the door, or relieves the opening resistance of a door, upon the activation of a switch or a continued force applied to the door itself.

Public Use. Describes interior or exterior rooms or spaces that are made available to the general public. Public use may be provided at a building or facility that is privately or publicly owned.

Ramp. A walking surface which has a running slope greater than 1:20.

Running Slope. The slope that is parallel to the direction of travel (see cross slope).

Service Entrance. An entrance intended primarily for delivery of goods or services.

Signage. *Displayed* verbal, symbolic, *tactile*, and pictorial information.

Site. A parcel of land bounded by a property line or a designated portion of a public right-of-way.

Site Improvement. Landscaping, paving for pedestrian and vehicular ways, outdoor lighting, recreational facilities, and the like, added to a site.

Sleeping Accommodations. Rooms in which people sleep; for example, dormitory and hotel or motel guest rooms or suites.

Space. *A definable area, e.g., room, toilet room, hall, assembly area, entrance, storage room, alcove, courtyard, or lobby.*

Story. *That portion of a building included between the upper surface of a floor and upper surface of the floor or roof next above. If such portion of a building does not include occupiable space, it is not considered a story for purposes of these guidelines. There may be more than one floor level within a story as in the case of a mezzanine or mezzanines.*

Structural Frame. The structural frame shall be considered to be the columns and the girders, beams, trusses and spandrels having direct connections to the columns and all other members which are essential to the stability of the building as a whole.

Tactile. Describes an object that can be perceived using the sense of touch.

Text Telephone. *Machinery or equipment that employs interactive graphic (i.e., typed) communications through the transmission of coded signals across the standard telephone network. Text telephones can include, for example, devices known as TDD's (telecommunication display devices or telecommunication devices for deaf persons) or computers.*

Transient Lodging. *A building, facility, or portion thereof, excluding inpatient medical care facilities, that contains one or more dwelling units or sleeping accommodations. Transient lodging may include, but is not limited to, resorts, group homes, hotels, motels, and dormitories.*

Vehicular Way. A route intended for vehicular traffic, such as a street, driveway, or parking lot.

Walk. An exterior pathway with a prepared surface intended for pedestrian use, including general pedestrian areas such as plazas and courts.

NOTE: Sections 4.1.1 through 4.1.7 are different from ANSI A117.1 in their entirety and are printed in standard type (ANSI A117.1 does not include scoping provisions).

portion of a building does not include occupiable space, it is not considered a story for purposes of these guidelines. There may be more than one floor level within a story as in the case of a mezzanine or mezzanines.

Structural Frame. The structural frame shall be considered to be the columns and the girders, beams, trusses and spandrels having direct connections to the columns and all other members which are essential to the stability of the building as a whole.

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Transient Lodging. *A building, facility, or portion thereof, excluding inpatient medical care facilities, that contains one or more dwelling units or sleeping accommodations. Transient lodging may include, but is not limited to, resorts, group homes, hotels, motels, and dormitories.*

Vehicular Way. A route intended for vehicular traffic, such as a street, driveway, or parking lot.

Walk. An exterior pathway with a prepared surface intended for pedestrian use, including general pedestrian areas such as plazas and courts.

NOTE: Sections 4.1.1 through 4.1.7 are different from ANSI A117.1 in their entirety and are printed in standard type (ANSI A117.1 does not include scoping provisions).

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4. ACCESSIBLE ELEMENTS AND SPACES: SCOPE AND TECHNICAL REQUIREMENTS.

4.1 Minimum Requirements

4.1.1* Application.

(1) General. All areas of newly designed or newly constructed buildings and facilities required to be accessible by 4.1.2 and 4.1.3 and altered portions of existing buildings and facilities required to be accessible by 4.1.6 shall comply with these guidelines, 4.1 through 4.35, unless otherwise provided in this section or as modified in a special application section.

(2) Application Based on Building Use. Special application sections 5 through 10 provide additional requirements for restaurants and cafeterias, medical care facilities, business and mercantile, libraries, accessible transient lodging, and transportation facilities. When a building or facility contains more than one use covered by a special application section, each portion shall comply with the requirements for that use.

(3)* Areas Used Only by Employees as Work Areas. Areas that are used only as work areas shall be designed and constructed so that individuals with disabilities can approach, enter, and exit the areas. These guidelines do not require that any areas used only as work areas be constructed to permit maneuvering within the work area or be constructed or equipped (i.e., with racks or shelves) to be accessible.

(4) Temporary Structures. These guidelines cover temporary buildings or facilities as well as permanent facilities. Temporary buildings and facilities are not of permanent construction but are extensively used or are essential for public use for a period of time. Examples of temporary buildings or facilities covered by these guidelines include, but are not limited to: reviewing stands, temporary classrooms, bleacher areas, exhibit areas, temporary banking facilities, temporary health screening services, or temporary safe pedestrian passageways around a construction site. Structures, sites and equipment directly associated with the actual processes of construction, such as scaffolding, bridging, materials hoists, or construction trailers are not included.

(5) General Exceptions.

(a) In new construction, a person or entity is not required to meet fully the requirements of these guidelines where that person or entity can demonstrate that it is structurally impracticable to do so. Full compliance will be considered structurally impracticable only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features. If full compliance with the requirements of these guidelines is structurally impracticable, a person or entity shall comply with the requirements to the extent it is not structurally impracticable. Any portion of the building or facility which can be made accessible shall comply to the extent that it is not structurally impracticable.

(b) Accessibility is not required to (i) observation galleries used primarily for security purposes; or (ii) in non-occupiable spaces accessed only by ladders, catwalks, crawl spaces, very narrow passageways, or freight (non-passenger) elevators, and frequented only by service personnel for repair purposes; such spaces include, but are not limited to, elevator pits, elevator penthouses, piping or equipment catwalks.

4.1.2 Accessible Sites and Exterior Facilities: New Construction. An accessible site shall meet the following minimum requirements:

(1) At least one accessible route complying with 4.3 shall be provided within the boundary of the site from public transportation stops, accessible parking spaces, passenger loading zones if provided, and public streets or sidewalks, to an accessible building entrance.

(2) At least one accessible route complying with 4.3 shall connect accessible buildings, accessible facilities, accessible elements, and accessible spaces that are on the same site.

(3) All objects that protrude from surfaces or posts into circulation paths shall comply with 4.4.

4.1.2 Accessible Sites and Exterior Facilities: New Construction

(4) Ground surfaces along accessible routes and in accessible spaces shall comply with 4.5.

(5) (a) If parking spaces are provided for self-parking by employees or visitors, or both, then accessible spaces complying with 4.6 shall be provided in each such parking area in conformance with the table below. Spaces required by the table need not be provided in the particular lot. They may be provided in a different location if equivalent or greater accessibility, in terms of distance from an accessible entrance, cost and convenience is ensured.

Total Parking in Lot	Required Minimum Number of Accessible Spaces
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	2 percent of total
1001 and over	20 plus 1 for each 100 over 1000

Except as provided in (b), access aisles adjacent to accessible spaces shall be 60 in (1525 mm) wide minimum.

(b) One in every eight accessible spaces, but not less than one, shall be served by an access aisle 96 in (2440 mm) wide minimum and shall be designated "van accessible" as required by 4.6.4. The vertical clearance at such spaces shall comply with 4.6.5. All such spaces may be grouped on one level of a parking structure.

EXCEPTION: Provision of all required parking spaces in conformance with "Universal Parking Design" (see appendix A4.6.3) is permitted.

(c) If passenger loading zones are provided, then at least one passenger loading zone shall comply with 4.6.6.

(d) At facilities providing medical care and other services for persons with mobility impairments, parking spaces complying with 4.6 shall be provided in accordance with 4.1.2(5)(a) except as follows:

(i) Outpatient units and facilities: 10 percent of the total number of parking spaces provided serving each such outpatient unit or facility;

(ii) Units and facilities that specialize in treatment or services for persons with mobility impairments: 20 percent of the total number of parking spaces provided serving each such unit or facility.

(e)*Valet parking: Valet parking facilities shall provide a passenger loading zone complying with 4.6.6 located on an accessible route to the entrance of the facility. Paragraphs 5(a), 5(b), and 5(d) of this section do not apply to valet parking facilities.

(6) If toilet facilities are provided on a site, then each such public or common use toilet facility shall comply with 4.22. If bathing facilities are provided on a site, then each such public or common use bathing facility shall comply with 4.23.

For single user portable toilet or bathing units clustered at a single location, at least 5% but no less than one toilet unit or bathing unit complying with 4.22 or 4.23 shall be installed at each cluster whenever typical inaccessible units are provided. Accessible units shall be identified by the International Symbol of Accessibility.

EXCEPTION: Portable toilet units at construction sites used exclusively by construction personnel are not required to comply with 4.1.2(6).

(7) Building Signage. Signs which designate permanent rooms and spaces shall comply with 4.30.1, 4.30.4, 4.30.5 and 4.30.6. Other signs which provide direction to, or information about, functional spaces of the building shall comply with 4.30.1, 4.30.2, 4.30.3, and 4.30.5. Elements and spaces of accessible facilities which shall be identified by the International Symbol of Accessibility and which shall comply with 4.30.7 are:

(a) Parking spaces designated as reserved for individuals with disabilities;

be provided in accordance with 4.1.2(5)(a)
except as follows:

(i) Outpatient units and facilities: 10
percent of the total number of parking spaces
provided serving each such outpatient unit or
facility;

(ii) Units and facilities that specialize in
treatment or services for persons with mobility
impairments: 20 percent of the total number of
parking spaces provided serving each such unit
or facility.

(e)*Valet parking: Valet parking facilities
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hich shall be identified by the International
ymbol of Accessibility and which shall comply
ith 4.30.7 are:

(a) Parking spaces designated as reserved
r individuals with disabilities;

(b) Accessible passenger loading zones;

(c) Accessible entrances when not all are accessible (inaccessible entrances shall have directional signage to indicate the route to the nearest accessible entrance);

(d) Accessible toilet and bathing facilities when not all are accessible.

4.1.3 Accessible Buildings: New Construction. Accessible buildings and facilities shall meet the following minimum requirements:

(1) At least one accessible route complying with 4.3 shall connect accessible building or facility entrances with all accessible spaces and elements within the building or facility.

(2) All objects that overhang or protrude into circulation paths shall comply with 4.4.

(3) Ground and floor surfaces along accessible routes and in accessible rooms and spaces shall comply with 4.5.

(4) Interior and exterior stairs connecting levels that are not connected by an elevator, ramp, or other accessible means of vertical access shall comply with 4.9.

(5)* One passenger elevator complying with 4.10 shall serve each level, including mezzanines, in all multi-story buildings and facilities unless exempted below. If more than one elevator is provided, each full passenger elevator shall comply with 4.10.

EXCEPTION 1: Elevators are not required in facilities that are less than three stories or that have less than 3000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider, or another type of facility as determined by the Attorney General. The elevator exemption set forth in this paragraph does not obviate or limit in any way the obligation to comply with the other accessibility requirements established in section 4.1.3. For example, floors above or below the accessible ground floor must meet the requirements of this section except for elevator service. If toilet or bathing facilities are provided on a level not served by an elevator, then toilet or bathing facilities must be provided on the accessible ground floor. In new construction if a building or facility is eligible for this exemption but a full passenger elevator is nonetheless planned, that elevator shall meet the requirements of 4.10 and shall serve each level in the building. A full passenger elevator that provides service from a garage to only one level of a building or facility is not required to serve other levels.

EXCEPTION 2: Elevator pits, elevator penthouses, mechanical rooms, piping or equipment catwalks are exempted from this requirement.

EXCEPTION 3: Accessible ramps complying with 4.8 may be used in lieu of an elevator.

EXCEPTION 4: Platform lifts (wheelchair lifts) complying with 4.11 of this guideline and applicable state or local codes may be used in lieu of an elevator only under the following conditions:

(a) To provide an accessible route to a performing area in an assembly occupancy.

(b) To comply with the wheelchair viewing position line-of-sight and dispersion requirements of 4.33.3.

(c) To provide access to incidental occupiable spaces and rooms which are not open to the general public and which house no more than five persons, including but not limited to equipment control rooms and projection booths.

(d) To provide access where existing site constraints or other constraints make use of a ramp or an elevator infeasible.

(6) Windows: (Reserved).

(7) Doors:

(a) At each accessible entrance to a building or facility, at least one door shall comply with 4.13.

(b) Within a building or facility, at least one door at each accessible space shall comply with 4.13.

(c) Each door that is an element of an accessible route shall comply with 4.13.

(d) Each door required by 4.3.10, Egress, shall comply with 4.13.

(8) In new construction, at a minimum, the requirements in (a) and (b) below shall be satisfied independently:

(a)(i) At least 50% of all public entrances (excluding those in (b) below) must be accessible. At least one must be a ground floor entrance. Public entrances are any entrances that are not loading or service entrances.

(ii) Accessible entrances must be provided in a number at least equivalent to the number of exits required by the applicable building/fire codes. (This paragraph does not require an increase in the total number of entrances planned for a facility.)

(iii) An accessible entrance must be provided to each tenancy in a facility (for example, individual stores in a strip shopping center).

One entrance may be considered as meeting more than one of the requirements in (a). Where feasible, accessible entrances shall be the entrances used by the majority of people visiting or working in the building.

(b)(i) In addition, if direct access is provided for pedestrians from an enclosed parking garage to the building, at least one direct entrance from the garage to the building must be accessible.

(ii) If access is provided for pedestrians from a pedestrian tunnel or elevated walkway, one entrance to the building from each tunnel or walkway must be accessible.

One entrance may be considered as meeting more than one of the requirements in (b).

Because entrances also serve as emergency exits whose proximity to all parts of buildings and facilities is essential, it is preferable that all entrances be accessible.

(c) If the only entrance to a building, or tenancy in a facility, is a service entrance, that entrance shall be accessible.

(d) Entrances which are not accessible shall have directional signage complying with 4.30.1, 4.30.2, 4.30.3, and 4.30.5, which indicates the location of the nearest accessible entrance.

(9)* In buildings or facilities, or portions of buildings or facilities, required to be accessible, accessible means of egress shall be provided in the same number as required for exits by local building/life safety regulations. Where a required exit from an occupiable level above or below a level of accessible exit discharge is not accessible, an area of rescue assistance shall be provided on each such level (in a number equal to that of inaccessible required exits). Areas of rescue assistance shall comply with 4.3.11. A horizontal exit, meeting the requirements of local building/life safety regulations, shall satisfy the requirement for an area of rescue assistance.

EXCEPTION: Areas of rescue assistance are not required in buildings or facilities having a supervised automatic sprinkler system.

(10)* Drinking Fountains:

(a) Where only one drinking fountain is provided on a floor there shall be a drinking fountain which is accessible to individuals who use wheelchairs in accordance with 4.15 and one accessible to those who have difficulty bending or stooping. (This can be accommodated by the use of a "hi-lo" fountain; by providing one fountain accessible to those who use wheelchairs and one fountain at a standard height convenient for those who have difficulty bending; by providing a fountain accessible under 4.15 and a water cooler; or by such other means as would achieve the required accessibility for each group on each floor.)

(b) Where more than one drinking fountain or water cooler is provided on a floor, 50% of those provided shall comply with 4.15 and shall be on an accessible route.

(11) Toilet Facilities: If toilet rooms are provided, then each public and common use toilet room shall comply with 4.22. Other toilet rooms provided for the use of occupants of specific spaces (i.e., a private toilet room for the occupant of a private office) shall be adaptable. If bathing rooms are provided, then each public and common use bathroom shall comply with 4.23. Accessible toilet rooms and bathing facilities shall be on an accessible route.

4.30.2, 4.30.3, and 4.30.5, which indicates the location of the nearest accessible entrance.

(9)* In buildings or facilities, or portions of buildings or facilities, required to be accessible, accessible means of egress shall be provided in the same number as required for exits by local building/life safety regulations. Where a required exit from an occupiable level above or elow a level of accessible exit discharge is not accessible, an area of rescue assistance shall e provided on each such level (in a number equal to that of inaccessible required exits). Areas of rescue assistance shall comply with .3.11. A horizontal exit, meeting the requirements of local building/life safety regulations, shall satisfy the requirement for an area of rescue assistance.

EXCEPTION: Areas of rescue assistance are not required in buildings or facilities having a upervised automatic sprinkler system.

(10)* Drinking Fountains:

(a) Where only one drinking fountain is rovided on a floor there shall be a drinking ountain which is accessible to individuals who use wheelchairs in accordance with 4.15 and one accessible to those who have difficulty ending or stooping. (This can be accommolated by the use of a "hi-lo" fountain; by roviding one fountain accessible to those who ise wheelchairs and one fountain at a stanlard height convenient for those who have ifficulty bending; by providing a fountain ccessible under 4.15 and a water cooler; or y such other means as would achieve the equired accessibility for each group on each oor.)

(b) Where more than one drinking fountain r water cooler is provided on a floor, 50% of hose provided shall comply with 4.15 and hall be on an accessible route.

(11) Toilet Facilities: If toilet rooms are rovided, then each public and common use oilet room shall comply with 4.22. Other toilet ooms provided for the use of occupants of pecific spaces (i.e., a private toilet room for the ccupant of a private office) shall be adaptable. bathing rooms are provided, then each public nd common use bathroom shall comply with 23. Accessible toilet rooms and bathing cilities shall be on an accessible route.

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(12) Storage, Shelving and Display Units:

(a) If fixed or built-in storage facilities such as cabinets, shelves, closets, and drawers are provided in accessible spaces, at least one of each type provided shall contain storage space complying with 4.25. Additional storage may be provided outside of the dimensions required by 4.25.

(b) Shelves or display units allowing self-service by customers in mercantile occupancies shall be located on an accessible route complying with 4.3. Requirements for accessible reach range do not apply.

(13) Controls and operating mechanisms in accessible spaces, along accessible routes, or as parts of accessible elements (for example, light switches and dispenser controls) shall comply with 4.27.

(14) If emergency warning systems are provided, then they shall include both audible alarms and visual alarms complying with 4.28. Sleeping accommodations required to comply with 9.3 shall have an alarm system complying with 4.28. Emergency warning systems in medical care facilities may be modified to suit standard health care alarm design practice.

(15) Detectable warnings shall be provided at locations as specified in 4.29.

(16) Building Signage:

(a) Signs which designate permanent rooms and spaces shall comply with 4.30.1, 4.30.4, 4.30.5 and 4.30.6.

(b) Other signs which provide direction to or information about functional spaces of the building shall comply with 4.30.1, 4.30.2, 4.30.3, and 4.30.5.

EXCEPTION: Building directories, menus, and all other signs which are temporary are not required to comply.

(17) Public Telephones:

(a) If public pay telephones, public closed circuit telephones, or other public telephones are provided, then they shall comply with 4.31.2 through 4.31.8 to the extent required by the following table:

Number of each type of telephone provided on each floor	Number of telephones required to comply with 4.31.2 through 4.31.8[1]
1 or more single unit	1 per floor
1 bank[2]	1 per floor
2 or more banks[2]	1 per bank. Accessible unit may be installed as a single unit in proximity (either visible or with signage) to the bank. At least one public telephone per floor shall meet the requirements for a forward reach telephone[3].

[1] Additional public telephones may be installed at any height. Unless otherwise specified, accessible telephones may be either forward or side reach telephones.

[2] A bank consists of two or more adjacent public telephones, often installed as a unit.

[3] EXCEPTION: For exterior installations only, if dial tone first service is available, then a side reach telephone may be installed instead of the required forward reach telephone (i.e., one telephone in proximity to each bank shall comply with 4.31).

(b)* All telephones required to be accessible and complying with 4.31.2 through 4.31.8 shall be equipped with a volume control. In addition, 25 percent, but never less than one, of all other public telephones provided shall be equipped with a volume control and shall be dispersed among all types of public telephones, including closed circuit telephones, throughout the building or facility. Signage complying with applicable provisions of 4.30.7 shall be provided.

(c) The following shall be provided in accordance with 4.31.9:

(i) if a total number of four or more public pay telephones (including both interior and exterior phones) is provided at a site, and at least one is in an interior location, then at least one interior public text telephone shall be provided.

(ii) if an interior public pay telephone is provided in a stadium or arena, in a convention center, in a hotel with a convention center, or in a covered mall, at least one interior public text telephone shall be provided in the facility.

(iii) If a public pay telephone is located in or adjacent to a hospital emergency room, hospital recovery room, or hospital waiting room, one public text telephone shall be provided at each such location.

(d) Where a bank of telephones in the interior of a building consists of three or more public pay telephones, at least one public pay telephone in each such bank shall be equipped with a shelf and outlet in compliance with 4.31.9(2).

(18) If fixed or built-in seating or tables (including, but not limited to, study carrels and student laboratory stations), are provided in accessible public or common use areas, at least five percent (5%), but not less than one, of the fixed or built-in seating areas or tables shall comply with 4.32. An accessible route shall lead to and through such fixed or built-in seating areas, or tables.

(19)* Assembly areas:

(a) In places of assembly with fixed seating accessible wheelchair locations shall comply with 4.33.2, 4.33.3, and 4.33.4 and shall be provided consistent with the following table:

Capacity of Seating in Assembly Areas	Number of Required Wheelchair Locations
4 to 25	1
26 to 50	2
51 to 300	4
301 to 500	6
over 500	6, plus 1 additional space for each total seating capacity increase of 100

In addition, one percent, but not less than one, of all fixed seats shall be aisle seats with no armrests on the aisle side, or removable or folding armrests on the aisle side. Each such seat shall be identified by a sign or marker. Signage notifying patrons of the availability of such seats shall be posted at the ticket office. Aisle seats are not required to comply with 4.33.4.

(b) This paragraph applies to assembly areas where audible communications are integral to the use of the space (e.g., concert and lecture halls, playhouses and movie theaters, meeting rooms, etc.). Such assembly areas, if (1) they accommodate at least 50 persons, or if they have audio-amplification systems, and (2) they have fixed seating, shall have a permanently installed assistive listening system complying with 4.33. For other assembly areas, a permanently installed assistive listening system, or an adequate number of electrical outlets or other supplementary wiring necessary to support a portable assistive listening system shall be provided. The minimum number of receivers to be provided shall be equal to 4 percent of the total number of seats, but in no case less than two. Signage complying with applicable provisions of 4.30 shall be installed to notify patrons of the availability of a listening system.

(20) Where automated teller machines (ATMs) are provided, each ATM shall comply with the requirements of 4.34 except where two or more are provided at a location, then only one must comply.

EXCEPTION: Drive-up-only automated teller machines are not required to comply with 4.27.2, 4.27.3 and 4.34.3.

(21) Where dressing and fitting rooms are provided for use by the general public, patients, customers or employees, 5 percent, but never less than one, of dressing rooms for each type of use in each cluster of dressing rooms shall be accessible and shall comply with 4.35.

Examples of types of dressing rooms are those serving different genders or distinct and different functions as in different treatment or examination facilities.

4.1.4 (Reserved).

4.1.5 Accessible Buildings: Additions. Each addition to an existing building or facility shall be regarded as an alteration. Each space or element added to the existing building or facility shall comply with the applicable provisions of 4.1.1 to 4.1.3, Minimum Requirements (for New Construction) and the applicable technical specifications of 4.2 through 4.35 and sections 5 through 10. Each addition that

(b) This paragraph applies to assembly areas where audible communications are integral to the use of the space (e.g., concert and lecture halls, playhouses and movie theaters, meeting rooms, etc.). Such assembly areas, if (1) they accommodate at least 50 persons, or if they have audio-amplification systems, and (2) they have fixed seating, shall have a permanently installed assistive listening system complying with 4.33. For other assembly areas, a permanently installed assistive listening system, or an adequate number of electrical outlets or other supplementary wiring necessary to support a portable assistive listening system shall be provided. The minimum number of receivers to be provided shall be equal to 4 percent of the total number of seats, but in no case less than two. Signage complying with applicable provisions of 4.30 shall be installed to notify patrons of the availability of a listening system.

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EXCEPTION: Drive-up-only automated teller machines are not required to comply with 4.27.2, 4.27.3 and 4.34.3.

(21) Where dressing and fitting rooms are provided for use by the general public, patients, customers or employees, 5 percent, but never less than one, of dressing rooms for each type of use in each cluster of dressing rooms shall be accessible and shall comply with 4.35.

Examples of types of dressing rooms are those serving different genders or distinct and different functions as in different treatment or examination facilities.

4.1.4 (Reserved).

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Each addition to an existing building or facility shall be regarded as an alteration. Each space or element added to the existing building or facility shall comply with the applicable provisions of 4.1.1 to 4.1.3, Minimum Requirements (for New Construction) and the applicable technical specifications of 4.2 through 4.35 and sections 5 through 10. Each addition that affects or could affect the usability of an area containing a primary function shall comply with 4.1.6(2).

4.1.6 Accessible Buildings: Alterations.

(1) General. Alterations to existing buildings and facilities shall comply with the following:

(a) No alteration shall be undertaken which decreases or has the effect of decreasing accessibility or usability of a building or facility below the requirements for new construction at the time of alteration.

(b) If existing elements, spaces, or common areas are altered, then each such altered element, space, feature, or area shall comply with the applicable provisions of 4.1.1 to 4.1.3 Minimum Requirements (for New Construction). If the applicable provision for new construction requires that an element, space, or common area be on an accessible route, the altered element, space, or common area is not required to be on an accessible route except as provided in 4.1.6(2) (Alterations to an Area Containing a Primary Function.)

(c) If alterations of single elements, when considered together, amount to an alteration of a room or space in a building or facility, the entire space shall be made accessible.

(d) No alteration of an existing element, space, or area of a building or facility shall impose a requirement for greater accessibility than that which would be required for new construction. For example, if the elevators and stairs in a building are being altered and the elevators are, in turn, being made accessible, then no accessibility modifications are required to the stairs connecting levels connected by the elevator. If stair modifications to correct unsafe conditions are required by other codes, the modifications shall be done in compliance with these guidelines unless technically infeasible.

(e) At least one interior public text telephone complying with 4.31.9 shall be provided if:

(i) alterations to existing buildings or facilities with less than four exterior or interior public pay telephones would increase the total number to four or more telephones with at least one in an interior location; or

(ii) alterations to one or more exterior or interior public pay telephones occur in an existing building or facility with four or more public telephones with at least one in an interior location.

(f) If an escalator or stair is planned or installed where none existed previously and major structural modifications are necessary for such installation, then a means of accessible vertical access shall be provided that complies with the applicable provisions of 4.7, 4.8, 4.10, or 4.11.

(g) In alterations, the requirements of 4.1.3(9), 4.3.10 and 4.3.11 do not apply.

(h)*Entrances: If a planned alteration entails alterations to an entrance, and the building has an accessible entrance, the entrance being altered is not required to comply with 4.1.3(8), except to the extent required by 4.1.6(2). If a particular entrance is not made accessible, appropriate accessible signage indicating the location of the nearest accessible entrance(s) shall be installed at or near the inaccessible entrance, such that a person with disabilities will not be required to retrace the approach route from the inaccessible entrance.

(i) If the alteration work is limited solely to the electrical, mechanical, or plumbing system, or to hazardous material abatement, or automatic sprinkler retrofitting, and does not involve the alteration of any elements or spaces required to be accessible under these guidelines, then 4.1.6(2) does not apply.

(j) EXCEPTION: In alteration work, if compliance with 4.1.6 is technically infeasible, the alteration shall provide accessibility to the maximum extent feasible. Any elements or features of the building or facility that are being altered and can be made accessible shall be made accessible within the scope of the alteration.

Technically Infeasible. Means, with respect to an alteration of a building or a facility, that it has little likelihood of being accomplished because existing structural conditions would require removing or altering a load-bearing member which is an essential part of the structural frame; or because other existing physical or site constraints prohibit modification or addition of elements, spaces, or features which are in full and strict compliance with the minimum requirements for new construction and which are necessary to provide accessibility.

(k) EXCEPTION:

(i) These guidelines do not require the installation of an elevator in an altered facility that is less than three stories or has less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, the professional office of a health care provider, or another type of facility as determined by the Attorney General.

(ii) The exemption provided in paragraph (i) does not obviate or limit in any way the obligation to comply with the other accessibility requirements established in these guidelines. For example, alterations to floors above or below the ground floor must be accessible regardless of whether the altered facility has an elevator. If a facility subject to the elevator exemption set forth in paragraph (i) nonetheless has a full passenger elevator, that elevator shall meet, to the maximum extent feasible, the accessibility requirements of these guidelines.

(2) Alterations to an Area Containing a Primary Function: In addition to the requirements of 4.1.6(1), an alteration that affects or could affect the usability of or access to an area containing a primary function shall be made so as to ensure that, to the maximum extent feasible, the path of travel to the altered area and the restrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, unless such alterations are disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(3) Special Technical Provisions for Alterations to Existing Buildings and Facilities:

(a) Ramps: Curb ramps and interior or exterior ramps to be constructed on sites or in existing buildings or facilities where space limitations prohibit the use of a 1:12 slope or less may have slopes and rises as follows:

(i) A slope between 1:10 and 1:12 is allowed for a maximum rise of 6 inches.

(ii) A slope between 1:8 and 1:10 is allowed for a maximum rise of 3 inches. A slope steeper than 1:8 is not allowed.

(b) Stairs: Full extension of handrails at stairs shall not be required in alterations where such extensions would be hazardous or impossible due to plan configuration.

(c) Elevators:

(i) If safety door edges are provided in existing automatic elevators, automatic door reopening devices may be omitted (see 4.10.6).

(ii) Where existing shaft configuration or technical infeasibility prohibits strict compliance with 4.10.9, the minimum car plan dimensions may be reduced by the minimum amount necessary, but in no case shall the inside car area be smaller than 48 in by 48 in.

(iii) Equivalent facilitation may be provided with an elevator car of different dimensions when usability can be demonstrated and when all other elements required to be accessible comply with the applicable provisions of 4.10. For example, an elevator of 47 in by 69 in (1195 mm by 1755 mm) with a door opening on the narrow dimension, could accommodate the standard wheelchair clearances shown in Figure 4.

(d) Doors:

(i) Where it is technically infeasible to comply with clear opening width requirements of 4.13.5, a projection of 5/8 in maximum will be permitted for the latch side stop.

(ii) If existing thresholds are 3/4 in high or less, and have (or are modified to have) a beveled edge on each side, they may remain.

(e) Toilet Rooms:

(i) Where it is technically infeasible to comply with 4.22 or 4.23, the installation of at least one unisex toilet/bathroom per floor, located in the same area as existing toilet facilities, will be permitted in lieu of modifying existing toilet facilities to be accessible. Each unisex toilet room shall contain one water closet complying with 4.16 and one lavatory complying with 4.19, and the door shall have a privacy latch.

(ii) A slope between 1:8 and 1:10 is allowed for a maximum rise of 3 inches. A slope steeper than 1:8 is not allowed.

(b) Stairs: Full extension of handrails at stairs shall not be required in alterations where such extensions would be hazardous or impossible due to plan configuration.

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(ii) Where it is technically infeasible to install a required standard stall (Fig. 30(a)), or where other codes prohibit reduction of the fixture count (i.e., removal of a water closet in order to create a double-wide stall), either alternate stall (Fig.30(b)) may be provided in lieu of the standard stall.

(iii) When existing toilet or bathing facilities are being altered and are not made accessible, signage complying with 4.30.1, 4.30.2, 4.30.3, 4.30.5, and 4.30.7 shall be provided indicating the location of the nearest accessible toilet or bathing facility within the facility.

(f) Assembly Areas:

(i) Where it is technically infeasible to disperse accessible seating throughout an altered assembly area, accessible seating areas may be clustered. Each accessible seating area shall have provisions for companion seating and shall be located on an accessible route that also serves as a means of emergency egress.

(ii) Where it is technically infeasible to alter all performing areas to be on an accessible route, at least one of each type of performing area shall be made accessible.

(g) Platform Lifts (Wheelchair Lifts): In alterations, platform lifts (wheelchair lifts) complying with 4.11 and applicable state or local codes may be used as part of an accessible route. The use of lifts is not limited to the four conditions in exception 4 of 4.1.3(5).

(h) Dressing Rooms: In alterations where technical infeasibility can be demonstrated, one dressing room for each sex on each level shall be made accessible. Where only unisex dressing rooms are provided, accessible unisex dressing rooms may be used to fulfill this requirement.

4.1.7 Accessible Buildings: Historic Preservation.

(1) Applicability:

(a) General Rule. Alterations to a qualified historic building or facility shall comply with 4.1.6 Accessible Buildings: Alterations, the applicable technical specifications of 4.2 through 4.35 and the applicable special application sections 5 through 10 unless it is determined in accordance with the procedures in 4.1.7(2) that compliance with the requirements for accessible routes (exterior and interior), ramps, entrances, or toilets would threaten or destroy the historic significance of the building or facility in which case the alternative requirements in 4.1.7(3) may be used for the feature.

EXCEPTION: (Reserved).

(b) Definition. A qualified historic building or facility is a building or facility that is:

(i) Listed in or eligible for listing in the National Register of Historic Places; or

(ii) Designated as historic under an appropriate State or local law.

(2) Procedures:

(a) Alterations to Qualified Historic Buildings and Facilities Subject to Section 106 of the National Historic Preservation Act:

(i) Section 106 Process. Section 106 of the National Historic Preservation Act (16 U.S.C. 470 f) requires that a Federal agency with jurisdiction over a Federal, federally assisted, or federally licensed undertaking consider the effects of the agency's undertaking on buildings and facilities listed in or eligible for listing in the National Register of Historic Places and give the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking prior to approval of the undertaking.

(ii) ADA Application. Where alterations are undertaken to a qualified historic building or facility that is subject to section 106 of the National Historic Preservation Act, the Federal agency with jurisdiction over the undertaking shall follow the section 106 process. If the State Historic Preservation Officer or Advisory Council on Historic Preservation agrees that compliance with the requirements for accessible routes (exterior and interior), ramps, entrances, or toilets would threaten or destroy the historic significance of the building or facility, the alternative requirements in 4.1.7(3) may be used for the feature.

(b) Alterations to Qualified Historic Buildings and Facilities Not Subject to Section 106 of the National Historic Preservation Act. Where alterations are undertaken to a qualified historic building or facility that is not subject to section 106 of the National Historic Preservation Act, if the entity undertaking the alterations believes that compliance with the requirements for accessible routes (exterior and interior), ramps, entrances, or toilets would threaten or destroy the historic significance of the building or facility and that the alternative requirements in 4.1.7(3) should be used for the feature, the entity should consult with the State Historic Preservation Officer. If the State Historic Preservation Officer agrees that compliance with the accessibility requirements for accessible routes (exterior and interior), ramps, entrances or toilets would threaten or destroy the historical significance of the building or facility, the alternative requirements in 4.1.7(3) may be used.

(c) Consultation With Interested Persons. Interested persons should be invited to participate in the consultation process, including State or local accessibility officials, individuals with disabilities, and organizations representing individuals with disabilities.

(d) Certified Local Government Historic Preservation Programs. Where the State Historic Preservation Officer has delegated the consultation responsibility for purposes of this section to a local government historic preservation program that has been certified in accordance with section 101(c) of the National Historic Preservation Act of 1966 (16 U.S.C. 470a (c)) and implementing regulations (36 CFR 61.5), the responsibility may be carried out by the appropriate local government body or official.

(3) Historic Preservation: Minimum Requirements:

(a) At least one accessible route complying with 4.3 from a site access point to an accessible entrance shall be provided.

EXCEPTION: A ramp with a slope no greater than 1:6 for a run not to exceed 2 ft (610 mm) may be used as part of an accessible route to an entrance.

(b) At least one accessible entrance complying with 4.14 which is used by the public shall be provided.

EXCEPTION: If it is determined that no entrance used by the public can comply with 4.14, then access at any entrance not used by the general public but open (unlocked) with directional signage at the primary entrance may be used. The accessible entrance shall also have a notification system. Where security is a problem, remote monitoring may be used.

(c) If toilets are provided, then at least one toilet facility complying with 4.22 and 4.1.6 shall be provided along an accessible route that complies with 4.3. Such toilet facility may be unisex in design.

(d) Accessible routes from an accessible entrance to all publicly used spaces on at least the level of the accessible entrance shall be provided. Access shall be provided to all levels of a building or facility in compliance with 4.1 whenever practical.

(e) Displays and written information, documents, etc., should be located where they can be seen by a seated person. Exhibits and signage displayed horizontally (e.g., open books), should be no higher than 44 in (1120 mm) above the floor surface.

NOTE: The technical provisions of sections 4.2 through 4.35 are the same as those of the American National Standard Institute's document A117.1-1980, except as noted in the text.

4.2 Space Allowance and Reach Ranges.

4.2.1* Wheelchair Passage Width. The minimum clear width for single wheelchair passage shall be 32 in (815 mm) at a point and 36 in (915 mm) continuously (see Fig. 1 and 24(e)).

4.2.2 Width for Wheelchair Passing. The minimum width for two wheelchairs to pass is 60 in (1525 mm) (see Fig. 2).

4.2.3* Wheelchair Turning Space. The space required for a wheelchair to make a 180-degree turn is a clear space of 60 in (1525 mm)

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EXCEPTION: If it is determined that no entrance used by the public can comply with 4.14, then access at any entrance not used by the general public but open (unlocked) with directional signage at the primary entrance may be used. The accessible entrance shall also have a notification system. Where security is a problem, remote monitoring may be used.

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diameter (see Fig. 3(a)) or a T-shaped space (see Fig. 3(b)).

4.2.4* Clear Floor or Ground Space for Wheelchairs.

4.2.4.1 Size and Approach. The minimum clear floor or ground space required to accommodate a single, stationary wheelchair and occupant is 30 in by 48 in (760 mm by 1220 mm) (see Fig. 4(a)). The minimum clear floor or ground space for wheelchairs may be positioned for forward or parallel approach to an object (see Fig. 4(b) and (c)). Clear floor or ground space for wheelchairs may be part of the knee space required under some objects.

4.2.4.2 Relationship of Maneuvering Clearance to Wheelchair Spaces. One full unobstructed side of the clear floor or ground space for a wheelchair shall adjoin or overlap an accessible route or adjoin another wheelchair clear floor space. If a clear floor space is located in an alcove or otherwise confined on all or part of three sides, additional maneuvering clearances shall be provided as shown in Fig. 4(d) and (e).

4.2.4.3 Surfaces for Wheelchair Spaces. Clear floor or ground spaces for wheelchairs shall comply with 4.5.

4.2.5* Forward Reach. If the clear floor space only allows forward approach to an object, the maximum high forward reach allowed shall be 48 in (1220 mm) (see Fig. 5(a)). *The minimum low forward reach is 15 in (380 mm).* If the high forward reach is over an obstruction, reach and clearances shall be as shown in Fig. 5(b).

4.2.6* Side Reach. If the clear floor space allows parallel approach by a person in a wheelchair, the maximum high side reach allowed shall be 54 in (1370 mm) and the low side reach shall be no less than 9 in (230 mm) above the floor (Fig. 6(a) and (b)). If the side reach is over an obstruction, the reach and clearances shall be as shown in Fig 6(c).

4.3 Accessible Route.

4.3.1* General. All walks, halls, corridors, aisles, *skywalks*, *tunnels*, and other spaces

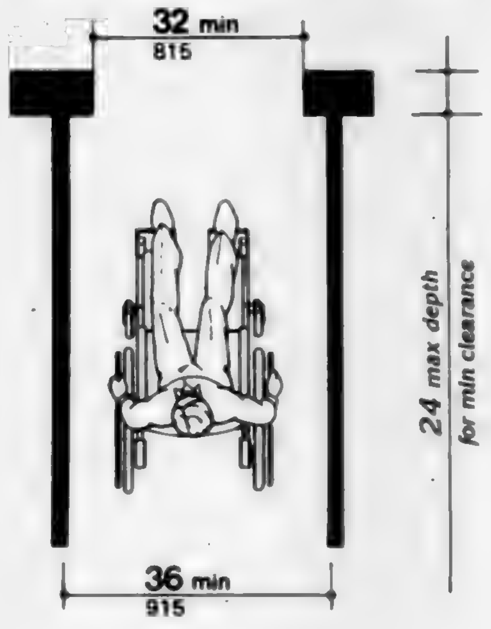

Fig. 1
Minimum Clear Width
for Single Wheelchair

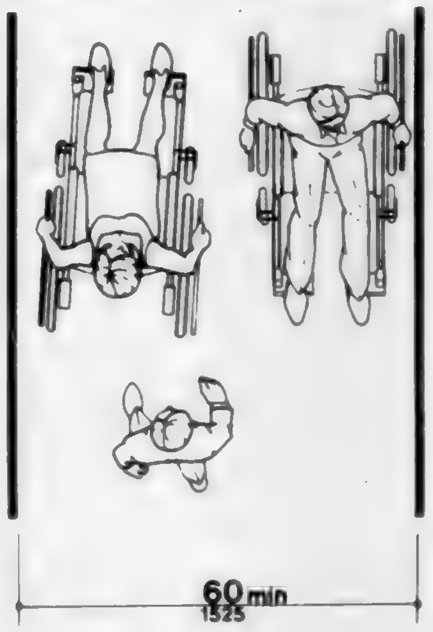

Fig. 2
Minimum Clear Width
for Two Wheelchairs

that are part of an accessible route shall comply with 4.3.

4.3.2 Location.

(1) At least one accessible route *within the boundary of the site* shall be provided from public transportation stops, accessible parking, and accessible passenger loading zones, and public streets or sidewalks to the accessible building entrance they serve. *The accessible route shall, to the maximum extent feasible, coincide with the route for the general public.*

(2) At least one accessible route shall connect accessible buildings, facilities, elements, and spaces that are on the same site.

(3) At least one accessible route shall connect accessible building or facility entrances with all accessible spaces and elements and with all accessible dwelling units within the building or facility.

(4) An accessible route shall connect at least one accessible entrance of each accessible dwelling unit with those exterior and interior spaces and facilities that serve the accessible dwelling unit.

4.3.3 Width. The minimum clear width of an accessible route shall be 36 in (915 mm) except at doors (see 4.13.5 and 4.13.6). If a person in a wheelchair must make a turn around an obstruction, the minimum clear width of the accessible route shall be as shown in Fig. 7(a) and (b).

4.3.4 Passing Space. If an accessible route has less than 60 in (1525 mm) clear width, then passing spaces at least 60 in by 60 in (1525 mm by 1525 mm) shall be located at reasonable intervals not to exceed 200 ft (61 m). A T-intersection of two corridors or walks is an acceptable passing place.

4.3.5 Head Room. Accessible routes shall comply with 4.4.2.

4.3.6 Surface Textures. The surface of an accessible route shall comply with 4.5.

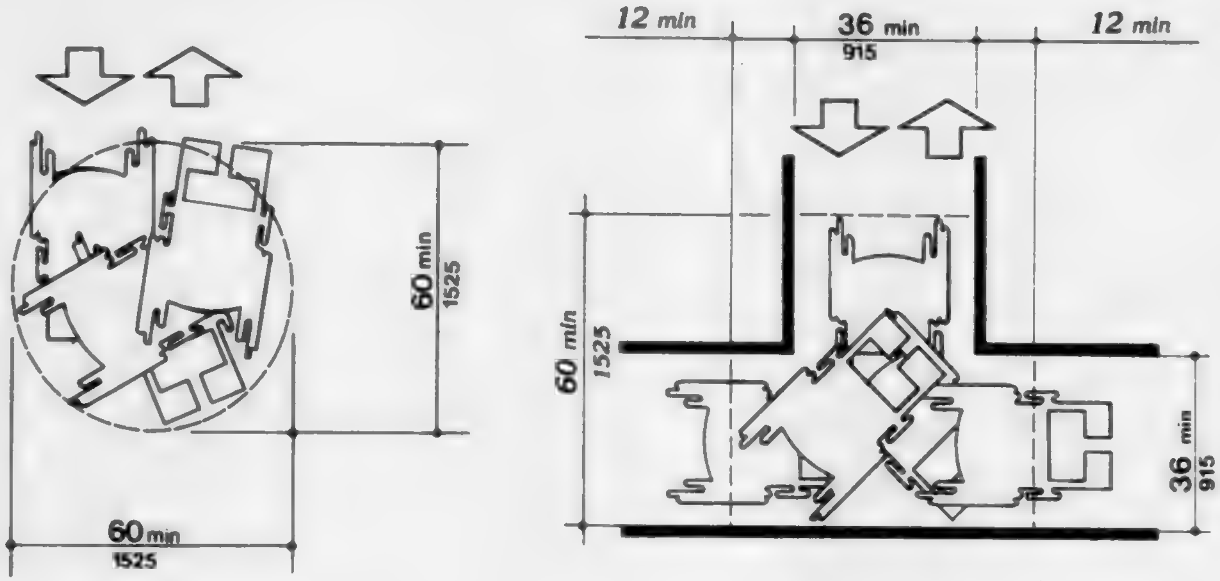

(a)
60-in (1525-mm)-Diameter Space

(b)
T-Shaped Space for 180° Turns

Fig. 3
Wheelchair Turning Space

dwelling unit with those exterior and interior spaces and facilities that serve the accessible dwelling unit.

4.3.3 Width. The minimum clear width of an accessible route shall be 36 in (915 mm) except at doors (see 4.13.5 and 4.13.6). If a person in a wheelchair must make a turn around an obstruction, the minimum clear width of the accessible route shall be as shown in Fig. 7(a) and (b).

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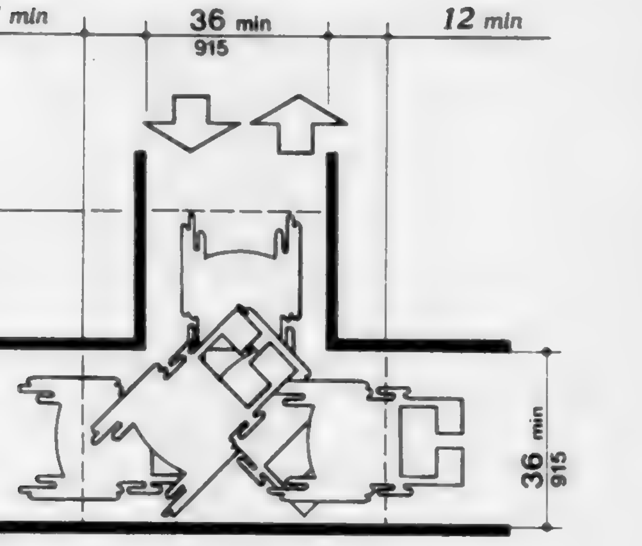

(b)
T-Shaped Space for 180° Turns

3
ning Space

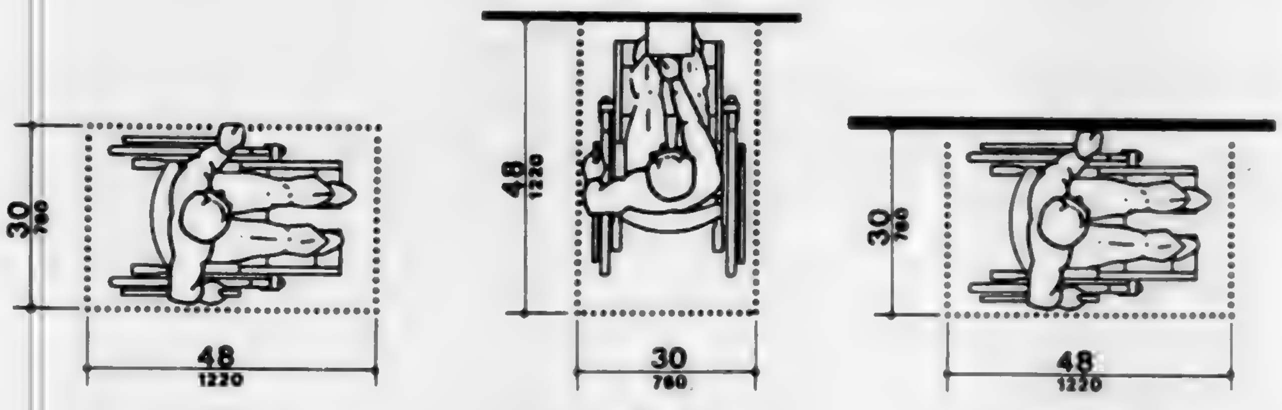

(a)
Clear Floor Space

(b)
Forward Approach

(c)
Parallel Approach

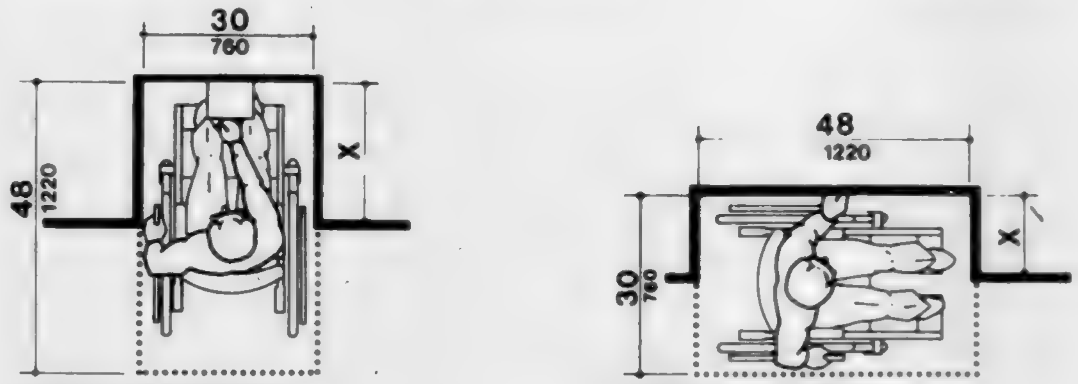

NOTE: x ≤ 24 in (610 mm).

NOTE: x ≤ 15 in (380 mm).

(d)
Clear Floor Space in Alcoves

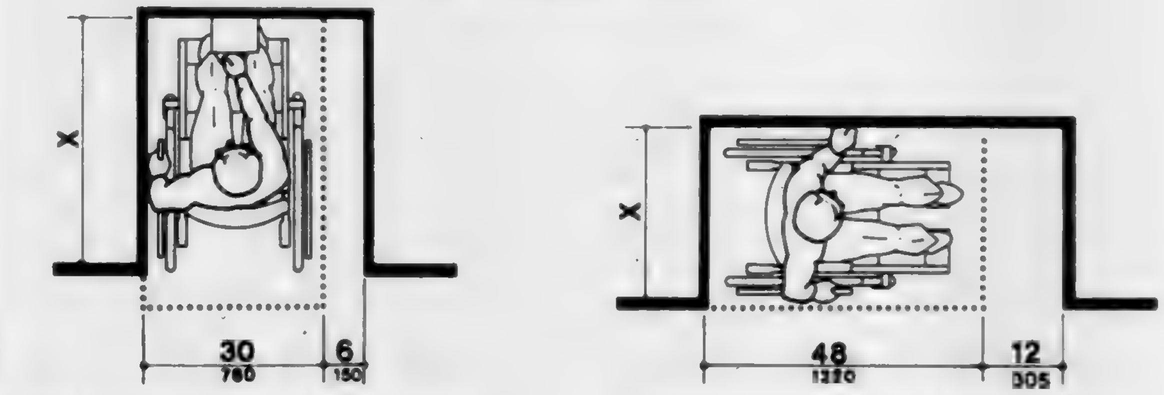

NOTE: If x > 24 in (610 mm), then an additional maneuvering clearance of 6 in (150 mm) shall be provided as shown.

NOTE: If x > 15 in (380 mm), then an additional maneuvering clearance of 12 in (305 mm) shall be provided as shown.

(e)
Additional Maneuvering Clearances for Alcoves

Fig. 4
Minimum Clear Floor Space for Wheelchairs

4.3 Accessible Route

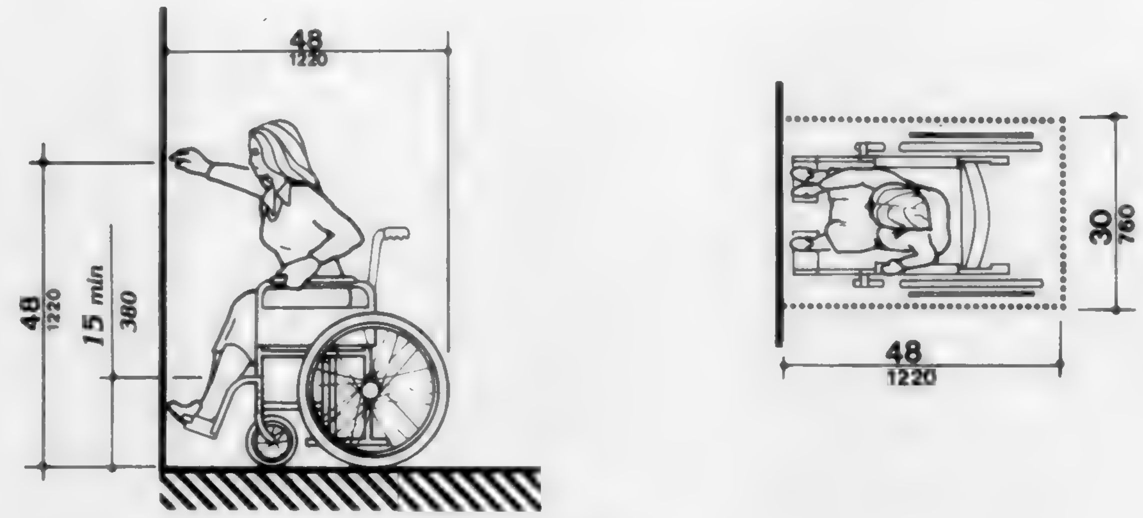
48
1220
48
1220
15 min
380
30
760
48
1220

(a)
High Forward Reach Limit

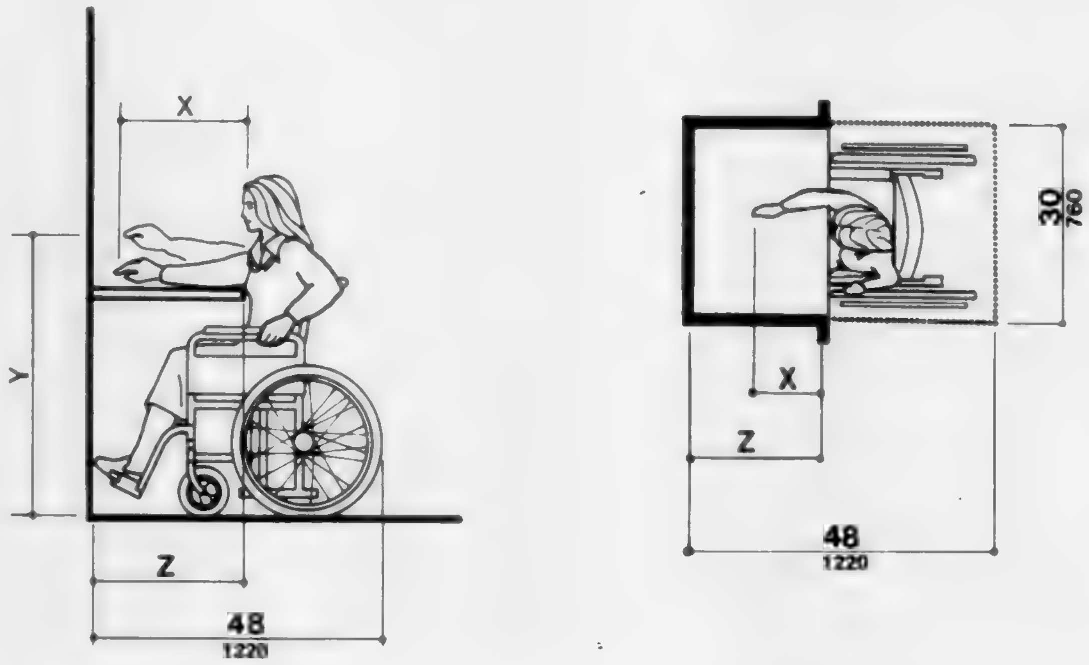
X
Y
Z
48
1220
30
760
X
Z
48
1220

NOTE: x shall be ≤ 25 in (635 mm); z shall be ≥ x. When x < 20 in (510 mm), then y shall be 48 in (1220 mm) maximum. When x is 20 to 25 in (510 to 635 mm), then y shall be 44 in (1120 mm) maximum.

(b)
Maximum Forward Reach over an Obstruction

Fig. 5
Forward Reach

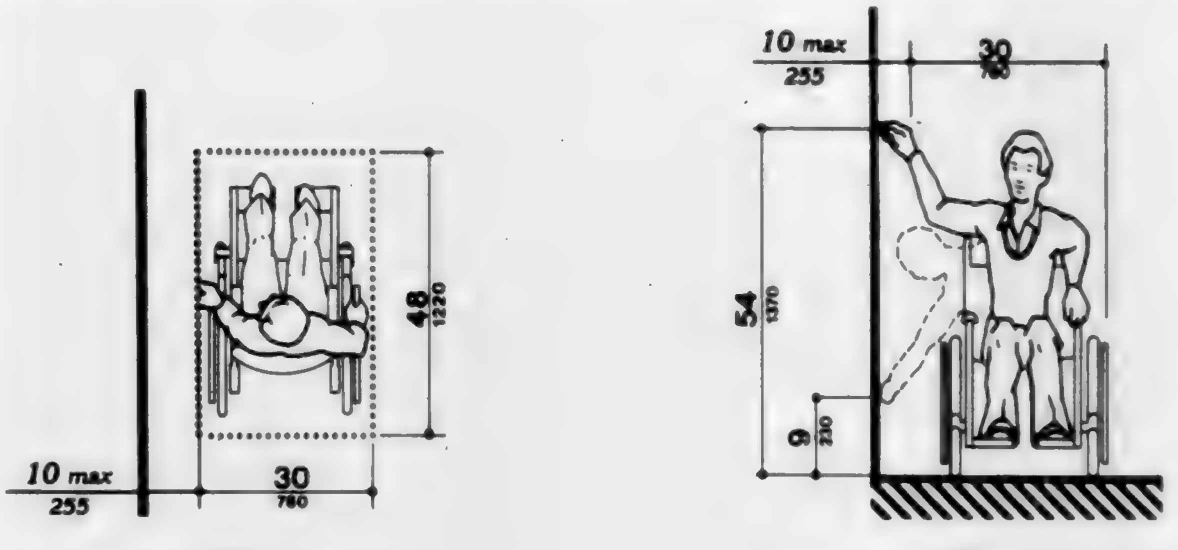

(a) Clear Floor Space Parallel Approach

(b) High and Low Side Reach Limits

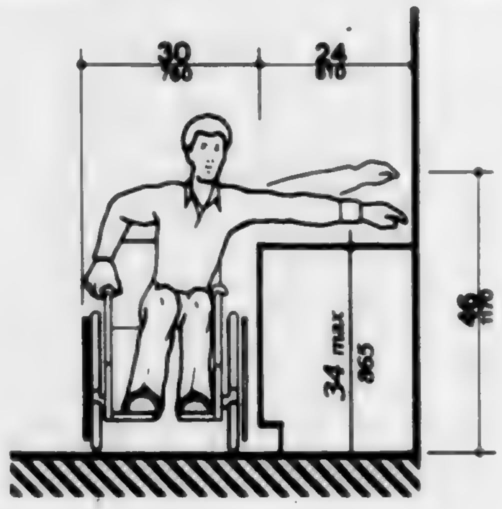

(c) Maximum Side Reach over Obstruction

Fig. 6
Side Reach

4.3.7 Slope. An accessible route with a running slope greater than 1:20 is a ramp and shall comply with 4.8. Nowhere shall the cross slope of an accessible route exceed 1:50.

4.3.8 Changes in Levels. Changes in levels along an accessible route shall comply with 4.5.2. If an accessible route has changes in level greater than 1/2 in (13 mm), then a curb ramp, ramp, elevator, or platform lift *(as permitted in 4.1.3 and 4.1.6)* shall be provided that complies with 4.7, 4.8, 4.10, or 4.11, respectively. An accessible route does not include stairs, steps, or escalators. See definition of "egress, means of" in 3.5.

4.3.9 Doors. Doors along an accessible route shall comply with 4.13.

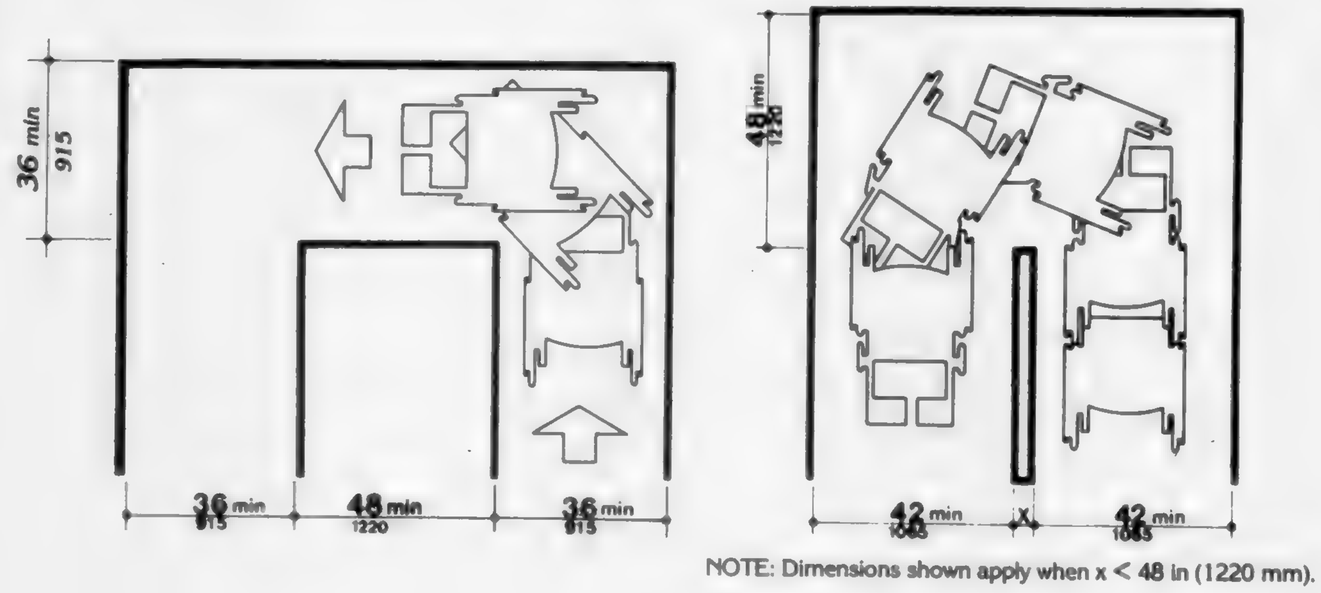

NOTE: Dimensions shown apply when x < 48 in (1220 mm).

(a)
90° Turn

(b)
Turns around an Obstruction

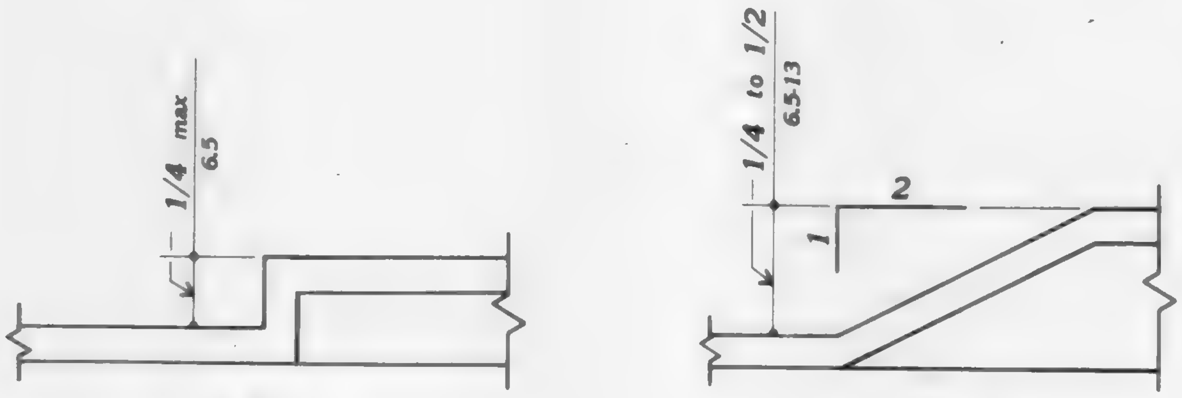

(c)
Changes in level

(d)
Changes in level

Fig. 7
Accessible Route

4.3.10* Egress. Accessible routes serving any accessible space or element shall also serve as a means of egress for emergencies or connect to an accessible area of rescue assistance.

4.3.11 Areas of Rescue Assistance.

4.3.11.1 Location and Construction. *An area of rescue assistance shall be one of the following:*

(1) A portion of a stairway landing within a smokeproof enclosure (complying with local requirements).

(2) A portion of an exterior exit balcony located immediately adjacent to an exit stairway when the balcony complies with local requirements for exterior exit balconies. Openings to the interior of the building located within 20 feet (6 m) of the

area of rescue assistance shall be protected with fire assemblies having a three-fourths hour fire protection rating.

(3) A portion of a one-hour fire-resistive corridor (complying with local requirements for fire-resistive construction and for openings) located immediately adjacent to an exit enclosure.

(4) A vestibule located immediately adjacent to an exit enclosure and constructed to the same fire-resistive standards as required for corridors and openings.

(5) A portion of a stairway landing within an exit enclosure which is vented to the exterior and is separated from the interior of the building with not less than one-hour fire-resistive doors.

(6) When approved by the appropriate local authority, an area or a room which is separated from other portions of the building by a smoke barrier. Smoke barriers shall have a fire-resistive rating of not less than one hour and shall completely enclose the area or room. Doors in the smoke barrier shall be tight-fitting smoke- and draft-control assemblies having a fire-protection rating of not less than 20 minutes and shall be self-closing or automatic closing. The area or room shall be provided with an exit directly to an exit enclosure. Where the room or area exits into an exit enclosure which is required to be of more than one-hour fire-resistive construction, the room or area shall have the same fire-resistive construction, including the same opening protection, as required for the adjacent exit enclosure.

(7) An elevator lobby when elevator shafts and adjacent lobbies are pressurized as required for smokeproof enclosures by local regulations and when complying with requirements herein for size, communication, and signage. Such pressurization system shall be activated by smoke detectors on each floor located in a manner approved by the appropriate local authority. Pressurization equipment and its duct work within the building shall be separated from other portions of the building by a minimum two-hour fire-resistive construction.

4.3.11.2 Size. *Each area of rescue assistance shall provide at least two accessible areas each being not less than 30 inches by 48 inches (760 mm by 1220 mm). The area of rescue assistance shall not encroach on any required exit width. The total number of such 30-inch by 48-inch (760 mm by 1220 mm) areas per story shall be not less than one for every 200 persons of calculated occupant load served by the area of rescue assistance.*

EXCEPTION: The appropriate local authority may reduce the minimum number of 30-inch by 48-inch (760 mm by 1220 mm) areas to one for each area of rescue assistance on floors where the occupant load is less than 200.

4.3.11.3* Stairway Width. *Each stairway adjacent to an area of rescue assistance shall have a minimum clear width of 48 inches between handrails.*

4.3.11.4* Two-way Communication. *A method of two-way communication, with both visible and audible signals, shall be provided between each area of rescue assistance and the primary entry. The fire department or appropriate local authority may approve a location other than the primary entry.*

4.3.11.5 Identification. *Each area of rescue assistance shall be identified by a sign which states "AREA OF RESCUE ASSISTANCE" and displays the international symbol of accessibility. The sign shall be illuminated when exit sign illumination is required. Signage shall also be installed at all inaccessible exits and where otherwise necessary to clearly indicate the direction to areas of rescue assistance. In each area of rescue assistance, instructions on the use of the area under emergency conditions shall be posted adjoining the two-way communication system.*

4.4 Protruding Objects.

4.4.1* General. Objects projecting from walls (for example, telephones) with their leading edges between 27 in and 80 in (685 mm and 2030 mm) above the finished floor shall protrude no more than 4 in (100 mm) into walks, halls, corridors, passageways, or aisles (see Fig. 8(a)). Objects mounted with their leading edges at or below 27 in (685 mm) above the finished floor may protrude any amount (see Fig. 8(a) and (b)). Free-standing objects mounted on posts or pylons may overhang 12 in (305 mm) maximum from 27 in to 80 in (685 mm to 2030 mm) above the ground or

4.4 Protruding Objects

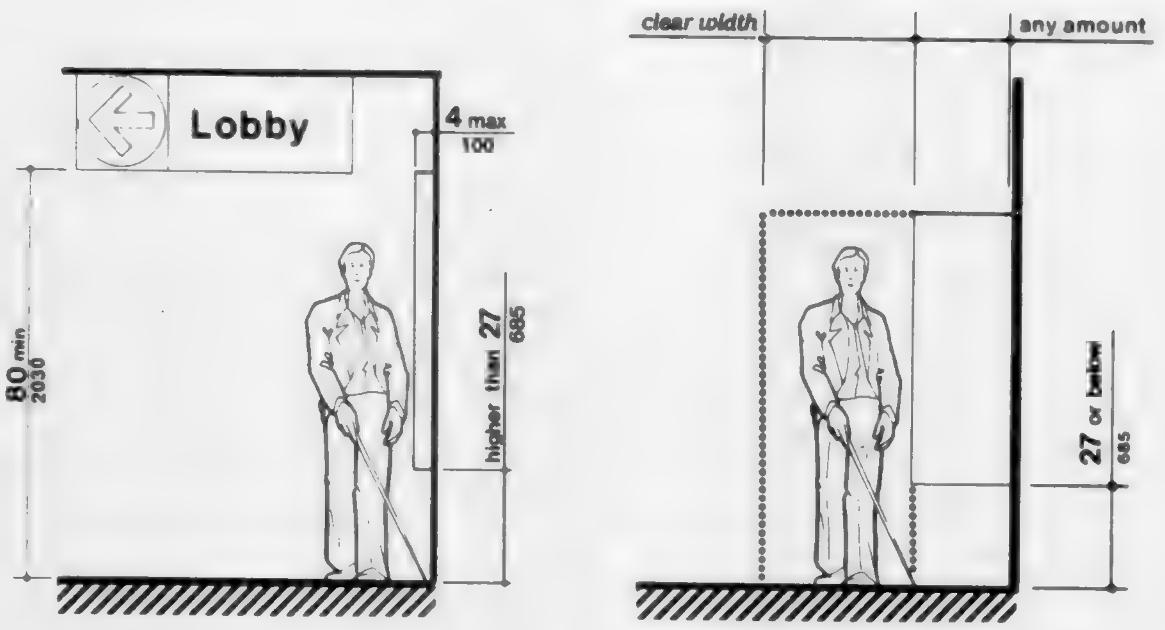

Fig. 8 (a)
Walking Parallel to a Wall

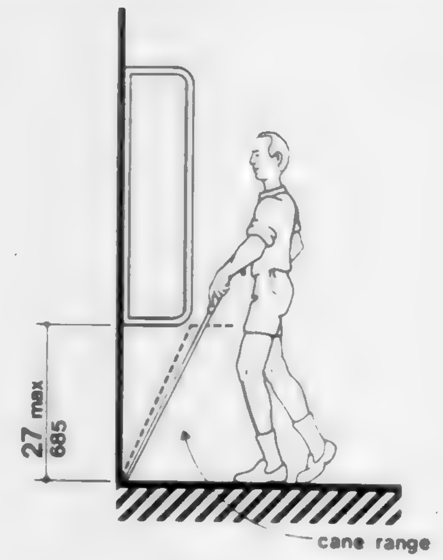

Fig. 8 (b)
Walking Perpendicular to a Wall

Fig. 8
Protruding Objects

finished floor (see Fig. 8(c) and (d)). Protruding objects shall not reduce the clear width of an accessible route or maneuvering space (see Fig. 8(e)).

4.4.2 Head Room. Walks, halls, corridors, passageways, aisles, or other circulation spaces shall have 80 in (2030 mm) minimum clear head room (see Fig. 8(a)). *If vertical clearance of an area adjoining an accessible route is reduced to less than 80 in (nominal dimension), a barrier to warn blind or visually-impaired persons shall be provided (see Fig. 8(c-1)).*

4.5 Ground and Floor Surfaces.

4.5.1* General. Ground and floor surfaces along accessible routes and in accessible rooms and spaces including floors, walks, ramps, stairs, and curb ramps, shall be stable, firm, slip-resistant, and shall comply with 4.5.

4.5.2 Changes in Level. Changes in level up to 1/4 in (6 mm) may be vertical and without edge treatment *(see Fig. 7(c))*. Changes in level between 1/4 in and 1/2 in (6 mm and 13 mm)

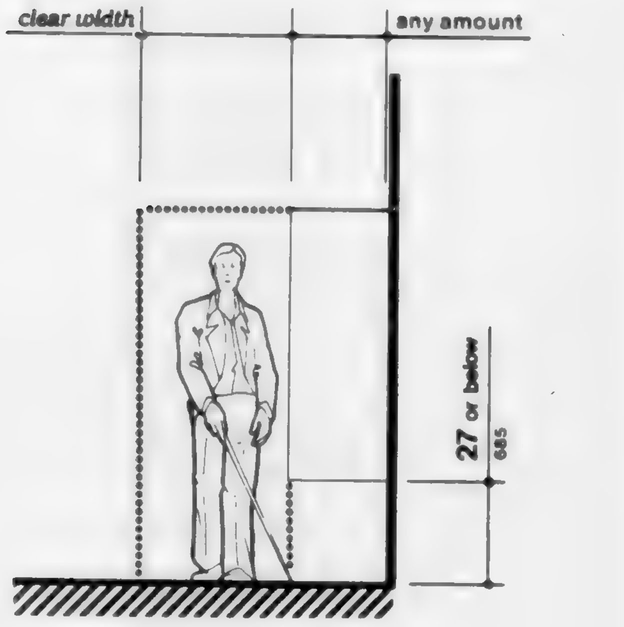
clear width
any amount
27 or below
685

(a)
el to a Wall

finished floor (see Fig. 8(c) and (d)). Protruding objects shall not reduce the clear width of an accessible route or maneuvering space see Fig. 8(e)).

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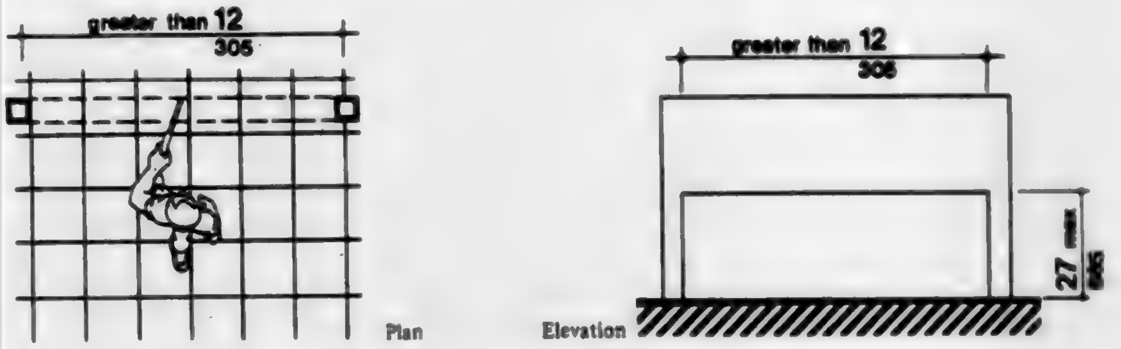
greater than 12
305
Plan
greater than 12
305
Elevation
27 max
685

Fig. 8 (c) Free-Standing Overhanging Objects

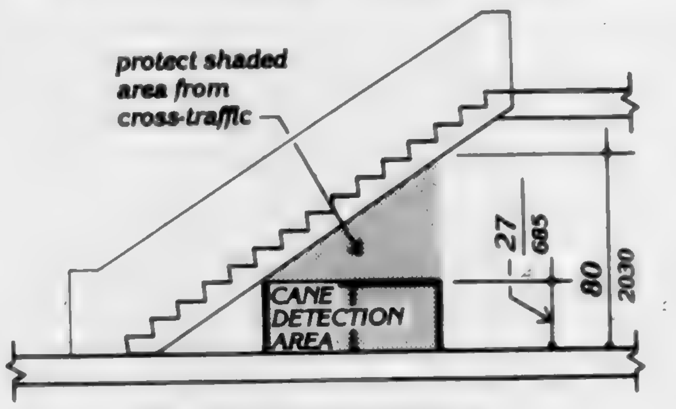
protect shaded
area from
cross-traffic
CANE
DETECTION
AREA
27
685
80
2030

Fig. 8 (c-1) Overhead Hazards

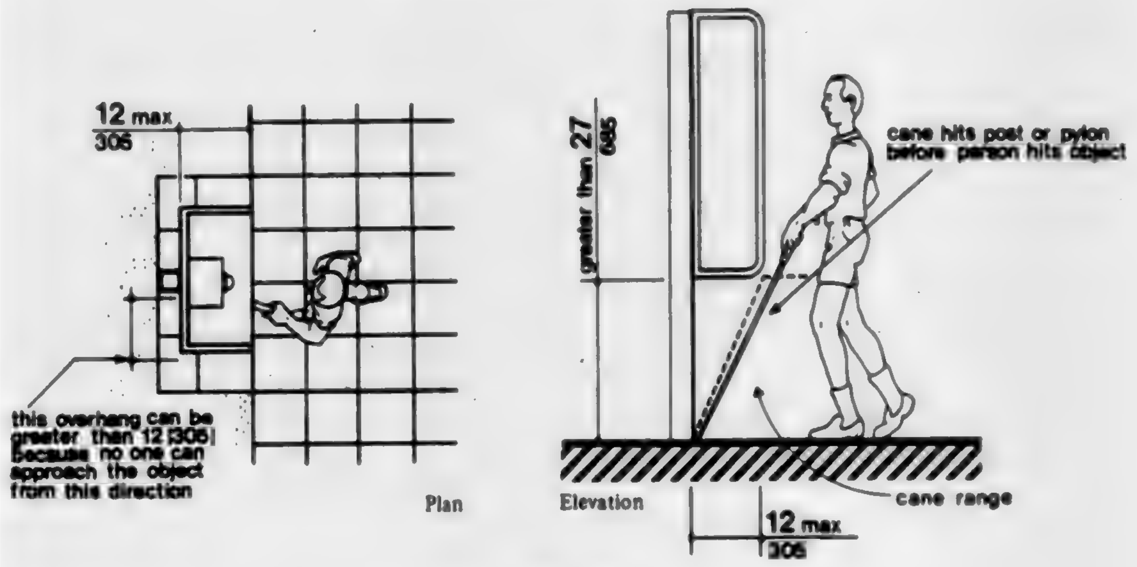
12 max
305
this overhang can be greater than 12 [305] because no one can approach the object from this direction
Plan
greater than 27
685
cane hits post or pylon before person hits object
Elevation
cane range
12 max
305

Fig. 8 (d)
Objects Mounted on Posts or Pylons

Fig. 8
Protruding Objects *(Continued)*

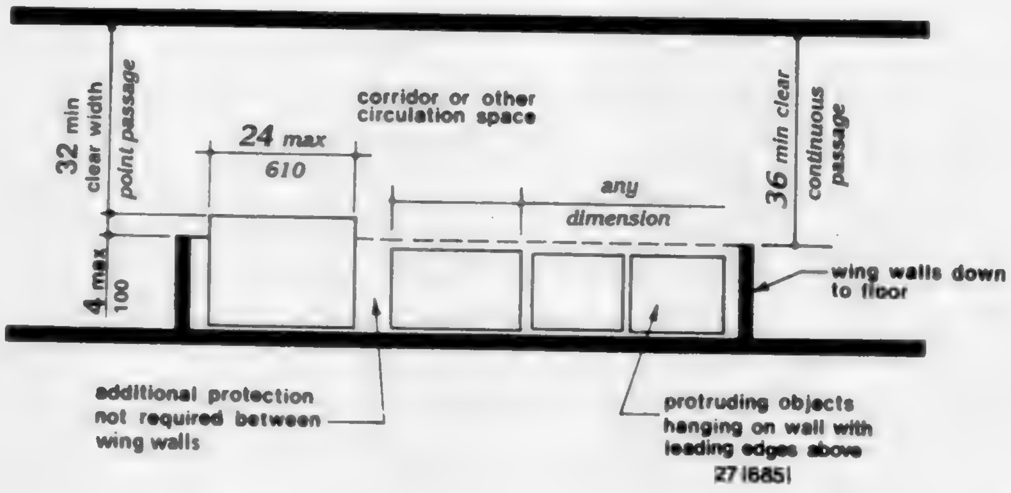
32 min
clear width
point passage
24 max
610
corridor or other circulation space
any
dimension
36 min clear
continuous passage
4 max
100
wing walls down to floor
additional protection not required between wing walls
protruding objects hanging on wall with leading edges above 27 (685)

Fig. 8 (e)
Example of Protection around Wall-Mounted Objects and Measurements of Clear Widths

Fig. 8
Protruding Objects *(Continued)*

shall be beveled with a slope no greater than 1:2 *(see Fig. 7(d))*. Changes in level greater than 1/2 in (13 mm) shall be accomplished by means of a ramp that complies with 4.7 or 4.8.

4.5.3* Carpet. If carpet or carpet tile is used on a ground or floor surface, then it shall be securely attached; have a firm cushion, pad, or backing, or no cushion or pad; and have a level loop, textured loop, level cut pile, or level cut/uncut pile texture. The maximum pile *thickness* shall be 1/2 in (13 mm) (see Fig. 8(f)). Exposed edges of carpet shall be fastened to floor surfaces and have trim along the entire length of the exposed edge. Carpet edge trim shall comply with 4.5.2.

4.5.4 Gratings. If gratings are located in walking surfaces, then they shall have spaces no greater than 1/2 in (13 mm) wide in one direction *(see Fig. 8(g))*. If gratings have elongated openings, then they shall be placed so that the long dimension is perpendicular to the dominant direction of travel *(see Fig. 8(h))*.

4.6 Parking and Passenger Loading Zones.

4.6.1 Minimum Number. *Parking spaces required to be accessible by 4.1 shall comply with 4.6.2 through 4.6.5. Passenger loading zones required to be accessible by 4.1 shall comply with 4.6.5 and 4.6.6.*

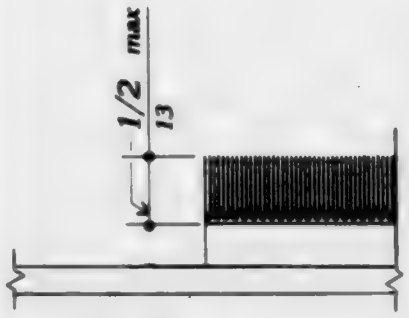

Fig. 8 (f)
Carpet Pile Thickness

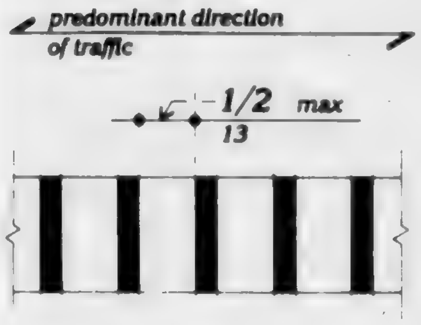

Fig. 8 (g)
Gratings

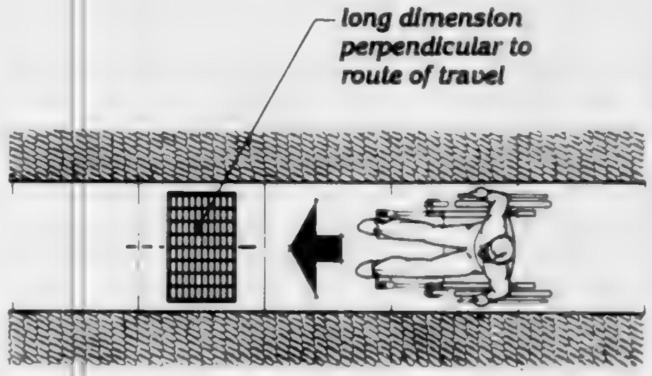

Fig. 8 (h)
Grating Orientation

4.6.2 Location. *Accessible parking spaces serving* a particular building shall be located on the shortest accessible route of travel *from adjacent parking* to an accessible entrance. *In parking facilities* that do not serve a particular building, *accessible parking* shall be located on the shortest accessible route *of travel* to an accessible pedestrian entrance of the parking facility. *In buildings with multiple accessible entrances with adjacent parking, accessible parking spaces shall be dispersed and located closest to the accessible entrances.*

4.6.3* Parking Spaces. *Accessible* parking spaces shall be at least 96 in (2440 mm) wide. Parking access aisles shall be part of an accessible route to the building or facility entrance and shall comply with 4.3. Two accessible parking spaces may share a common access aisle (see Fig. 9). Parked vehicle overhangs shall not reduce the clear width of an accessible route. *Parking spaces and access aisles shall be level with surface slopes not exceeding 1:50 (2%) in all directions.*

4.6.4* Signage. Accessible parking spaces shall be designated as reserved by a sign showing the symbol of accessibility (see 4.30.7). *Spaces complying with 4.1.2(5)(b) shall have an additional sign "Van-Accessible" mounted below the symbol of accessibility.* Such signs shall *be located so they cannot* be obscured by a vehicle parked in the space.

4.6.5* *Vertical Clearance.* *Provide minimum vertical clearance of 114 in (2895 mm) at accessible passenger loading zones and along at least one vehicle access route to such areas from site entrance(s) and exit(s). At parking spaces complying with 4.1.2(5)(b), provide minimum vertical clearance of 98 in (2490 mm) at the parking space and along at least one vehicle access route to such spaces from site entrance(s) and exit(s).*

4.6.6 Passenger Loading Zones. Passenger loading zones shall provide an access aisle at least 60 in *(1525 mm)* wide and 20 ft *(240 in) (6100 mm)* long adjacent and parallel to the vehicle pull-up space (see Fig. 10). If there are curbs between the access aisle and the vehicle pull-up space, then a curb ramp complying with 4.7 shall be provided. *Vehicle standing spaces and access aisles shall be level with*

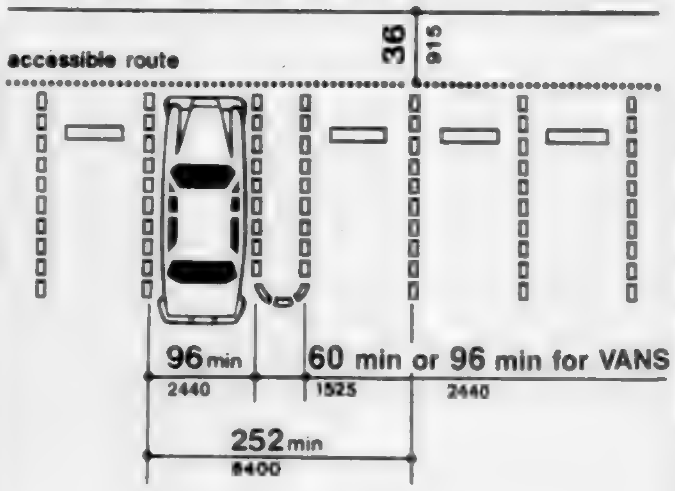

Fig. 9
Dimensions of Parking Spaces

surface slopes not exceeding 1:50 (2%) in all directions.

4.7 Curb Ramps.

4.7.1 Location. Curb ramps complying with 4.7 shall be provided wherever an accessible route crosses a curb.

4.7.2 Slope. Slopes of curb ramps shall comply with 4.8.2. The slope shall be measured as shown in Fig. 11. *Transitions from ramps to walks, gutters, or streets shall be flush and free of abrupt changes. Maximum slopes of adjoining gutters, road surface immediately adjacent to the curb ramp, or accessible route shall not exceed 1:20.*

4.7.3 Width. The minimum width of a curb ramp shall be 36 in (915 mm), exclusive of flared sides.

4.7.4 Surface. Surfaces of curb ramps shall comply with 4.5.

4.7.5 Sides of Curb Ramps. If a curb ramp is located where pedestrians must walk across the ramp, *or where it is not protected by handrails or guardrails,* it shall have flared sides; the maximum slope of the flare shall be 1:10 (see Fig. 12(a)). Curb ramps with returned curbs may be used where pedestrians would not normally walk across the ramp (see Fig. 12(b)).

4.7.6 Built-up Curb Ramps. Built-up curb ramps shall be located so that they do not project into vehicular traffic lanes (see Fig. 13).

4.7.7 *Detectable Warnings.* A curb ramp shall have a *detectable* warning complying with 4.29.2. *The detectable warning shall extend* the full width and depth of the curb ramp.

4.7.8 Obstructions. Curb ramps shall be located or protected to prevent their obstruction by parked vehicles.

4.7.9 Location at Marked Crossings. Curb ramps at marked crossings shall be wholly contained within the markings, excluding any flared sides (see Fig. 15).

4.7.10 Diagonal Curb Ramps. If diagonal (or corner type) curb ramps have returned curbs or other well-defined edges, such edges shall be parallel to the direction of pedestrian flow. The bottom of diagonal curb ramps shall have 48 in (1220 mm) minimum clear space as shown in Fig. 15(c) and (d). If diagonal curb ramps are provided at marked crossings, the 48 in (1220 mm) clear space shall be within the markings (see Fig. 15(c) and (d)). If diagonal curb ramps have flared sides, they shall also have at least a 24 in (610 mm) long segment of straight curb located on each side of the curb ramp and within the marked crossing (see Fig. 15(c)).

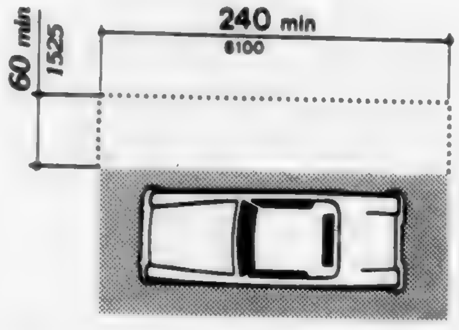

Fig. 10
Access Aisle at Passenger Loading Zones

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normally walk across the ramp (see Fig. 12(b)).

4.7.6 Built-up Curb Ramps. Built-up curb
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f straight curb located on each side of the
urb ramp and within the marked crossing
ee Fig. 15(c)).

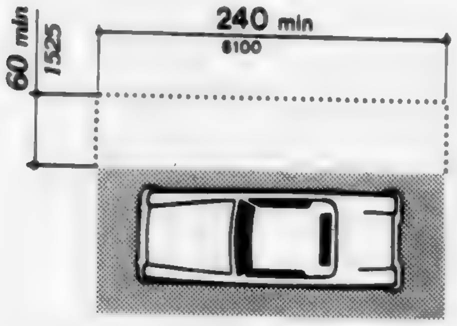

Fig. 10
Access Aisle at Passenger Loading Zones

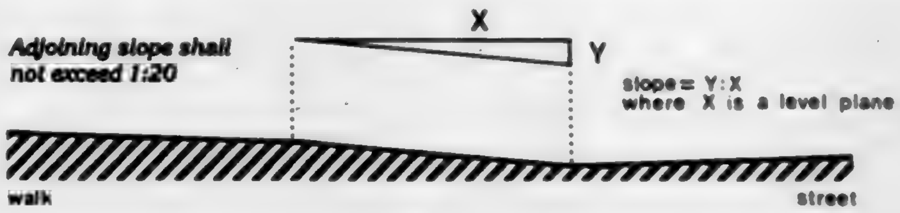

Fig. 11
Measurement of Curb Ramp Slopes

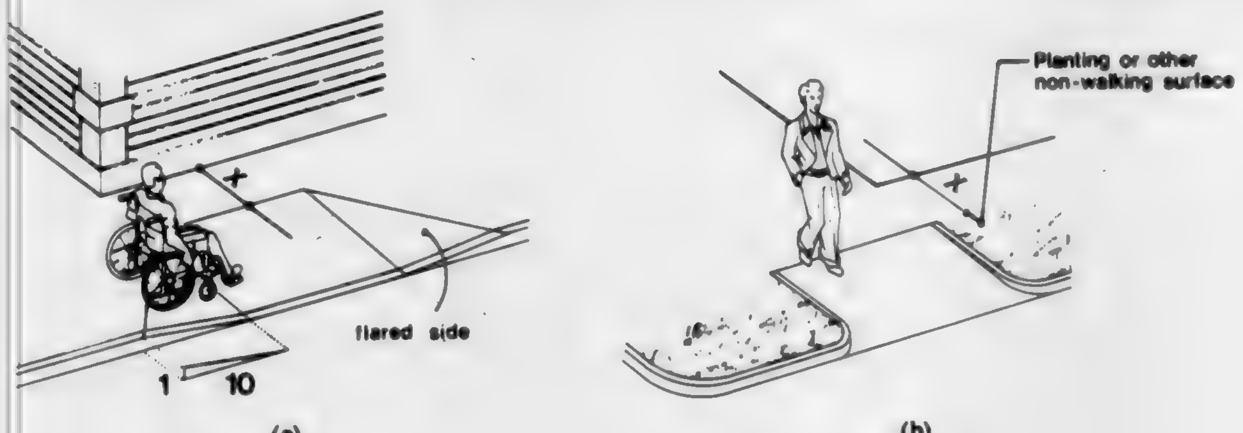

(a)
Flared Sides

(b)
Returned Curb

If X is less than 48 in, then the slope of the flared side shall not exceed 1:12.

Fig. 12
Sides of Curb Ramps

4.7.11 Islands. Any raised islands in crossings shall be cut through level with the street or have curb ramps at both sides and a level area at least 48 in (1220 mm) long between the curb ramps in the part of the island intersected by the crossings (see Fig. 15(a) and (b)).

4.8 Ramps.

4.8.1* General. Any part of an accessible route with a slope greater than 1:20 shall be considered a ramp and shall comply with 4.8.

4.8.2* Slope and Rise. The least possible slope shall be used for any ramp. The maximum slope of a ramp in new construction shall be 1:12. The maximum rise for any run shall be 30 in (760 mm) (see Fig. 16). Curb ramps and ramps to be constructed on existing sites or in existing buildings or facilities may have slopes and rises as *allowed in 4.1.6(3)(a)* if space limitations prohibit the use of a 1:12 slope or less.

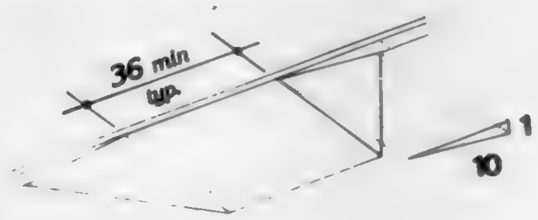

Fig. 13
Built-Up Curb Ramp

4.8 Ramps

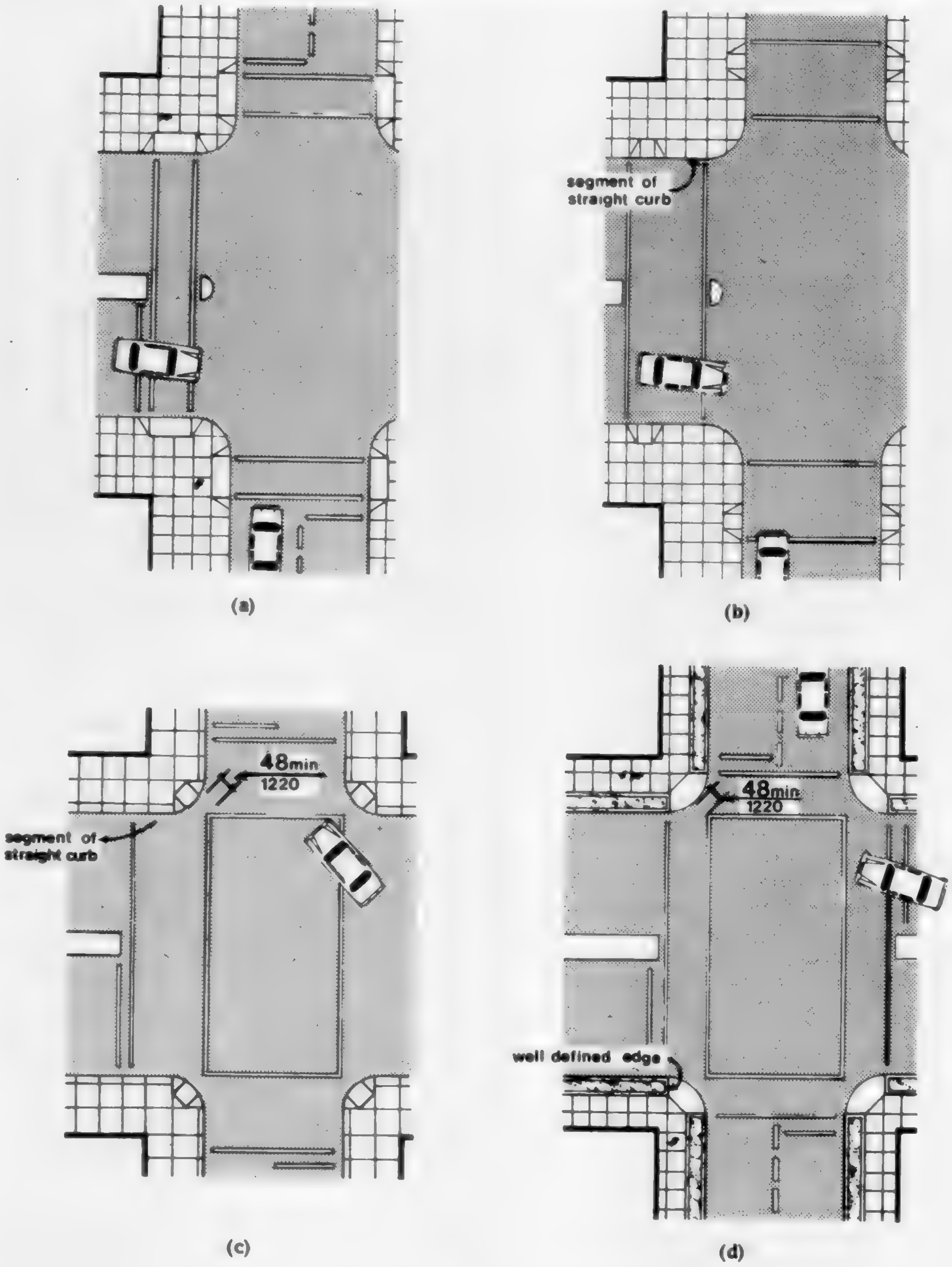
segment of straight curb
(a)
(b)
48min
1220
segment of straight curb
48min
1220
well defined edge
(c)
(d)

Fig. 15
Curb Ramps at Marked Crossings

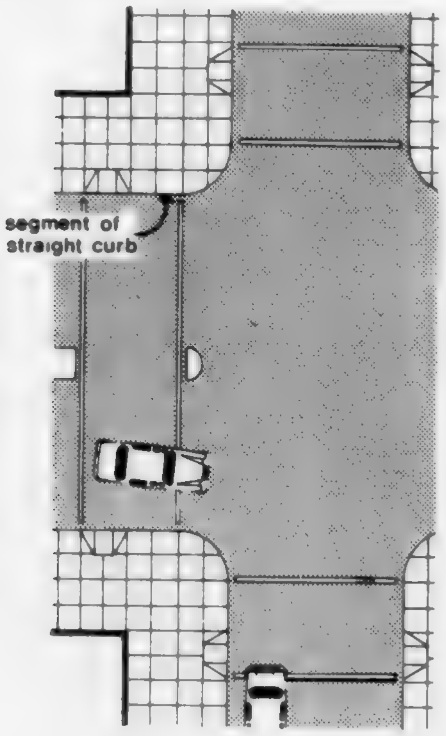

(b)

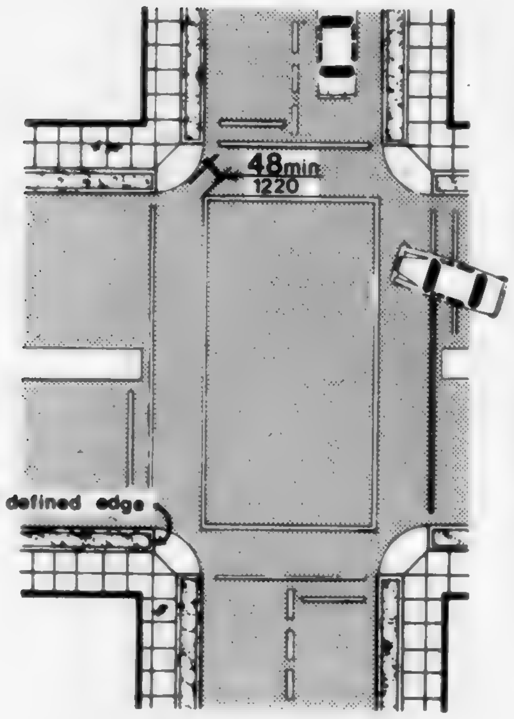

(d)

5
rked Crossings

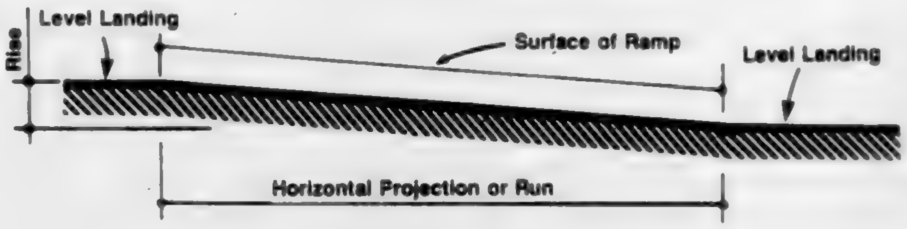

	Maximum Rise		Maximum Horizontal Projection	
Slope	in	mm	ft	m
1:12 to < 1:16	30	760	30	9
1:16 to < 1:20	30	760	40	12

Fig. 16
Components of a Single Ramp Run and Sample Ramp Dimensions

4.8.3 Clear Width. The minimum clear width of a ramp shall be 36 in (915 mm).

4.8.4* Landings. Ramps shall have level landings at bottom and top of *each ramp and* each *ramp* run. Landings shall have the following features:

(1) The landing shall be at least as wide as the ramp run leading to it.

(2) The landing length shall be a minimum of 60 in (1525 mm) clear.

(3) If ramps change direction at landings, the minimum landing size shall be 60 in by 60 in (1525 mm by 1525 mm).

(4) If a doorway is located at a landing, then the area in front of the doorway shall comply with 4.13.6.

4.8.5* Handrails. If a ramp run has a rise greater than 6 in (150 mm) or a horizontal projection greater than 72 in (1830 mm), then it shall have handrails on both sides. Handrails are not required on curb ramps *or adjacent to seating in assembly areas*. Handrails shall comply with 4.26 and shall have the following features:

(1) Handrails shall be provided along both sides of ramp segments. The inside handrail on switchback or dogleg ramps shall always be continuous.

(2) If handrails are not continuous, they shall extend at least 12 in (305 mm) beyond the top and bottom of the ramp segment and shall be parallel with the floor or ground surface (see Fig. 17).

(3) The clear space between the handrail and the wall shall be 1 - 1/2 in (38 mm).

(4) Gripping surfaces shall be continuous.

(5) Top of handrail gripping surfaces shall be mounted between 34 in and 38 in (865 mm and 965 mm) above ramp surfaces.

(6) Ends of handrails shall be either rounded or returned smoothly to floor, wall, or post.

(7) Handrails shall not rotate within their fittings.

4.8.6 Cross Slope and Surfaces. The cross slope of ramp surfaces shall be no greater than 1:50. Ramp surfaces shall comply with 4.5.

4.8.7 Edge Protection. Ramps and landings with drop-offs shall have curbs, walls, railings, or projecting surfaces that prevent people from slipping off the ramp. Curbs shall be a minimum of 2 in (50 mm) high (see Fig. 17).

4.8.8 Outdoor Conditions. Outdoor ramps and their approaches shall be designed so that water will not accumulate on walking surfaces.

4.9 Stairs.

4.9.1* Minimum Number. *Stairs required to be accessible by 4.1 shall comply with 4.9.*

4.9.2 Treads and Risers. On any given flight of stairs, all steps shall have uniform riser heights and uniform tread widths. Stair treads shall be no less than 11 in (280 mm) wide, measured from riser to riser (see Fig. 18(a)). *Open risers are not permitted.*

4.9.3 Nosings. The undersides of nosings shall not be abrupt. The radius of curvature at the leading edge of the tread shall be no greater than 1/2 in (13 mm). Risers shall be sloped or the underside of the nosing shall have an angle not less than 60 degrees from the horizontal. Nosings shall project no more than 1-1/2 in (38 mm) (see Fig. 18).

4.9.4 Handrails. Stairways shall have handrails at both sides of all stairs. Handrails shall comply with 4.26 and shall have the following features:

(1) Handrails shall be continuous along both sides of stairs. The inside handrail on switchback or dogleg stairs shall always be continuous (see Fig. 19(a) and (b)).

(2) If handrails are not continuous, they shall extend at least 12 in (305 mm) beyond the top riser and at least 12 in (305 mm) plus the width of one tread beyond the bottom riser. At the top, the extension shall be parallel with the floor or ground surface. At the bottom, the handrail shall continue to slope for a distance of the width of one tread from the bottom riser; the remainder of the extension shall be horizontal (see Fig. 19(c) and (d)). Handrail extensions shall comply with 4.4.

(3) The clear space between handrails and wall shall be 1-1/2 in (38 mm).

(4) Gripping surfaces shall be uninterrupted by newel posts, other construction elements, or obstructions.

(5) Top of handrail gripping surface shall be mounted between 34 in and 38 in (865 mm and 965 mm) above stair nosings.

(6) Ends of handrails shall be either rounded or returned smoothly to floor, wall or post.

(7) Handrails shall not rotate within their fittings.

4.9.5 *Detectable* Warnings at Stairs. *(Reserved).*

4.9.6 Outdoor Conditions. Outdoor stairs and their approaches shall be designed so that water will not accumulate on walking surfaces.

4.10 Elevators.

4.10.1 General. *Accessible* elevators shall be on an accessible route and shall comply with 4.10 and with the *ASME A17.1-1990,* Safety Code for Elevators and Escalators. *Freight elevators shall not be considered as meeting the requirements of this section unless the only elevators provided are used as combination passenger and freight elevators for the public and employees.*

4.10.2 Automatic Operation. Elevator operation shall be automatic. Each car shall be equipped with a self-leveling feature that will automatically bring the car to floor landings within a tolerance of 1/2 in (13 mm) under rated loading to zero loading conditions. This self-leveling feature shall be automatic and independent of the operating device and shall correct the overtravel or undertravel.

4.10.3 Hall Call Buttons. Call buttons in elevator lobbies and halls shall be centered at 42 in (1065 mm) above the floor. Such call buttons shall have visual signals to indicate when each call is registered and when each call is answered. Call buttons shall be a minimum of 3/4 in (19 mm) in the smallest dimension. The button designating the up direction shall be on top. (See Fig. 20.) *Buttons shall be raised or flush. Objects mounted beneath hall call buttons shall not project into the elevator lobby more than 4 in (100 mm).*

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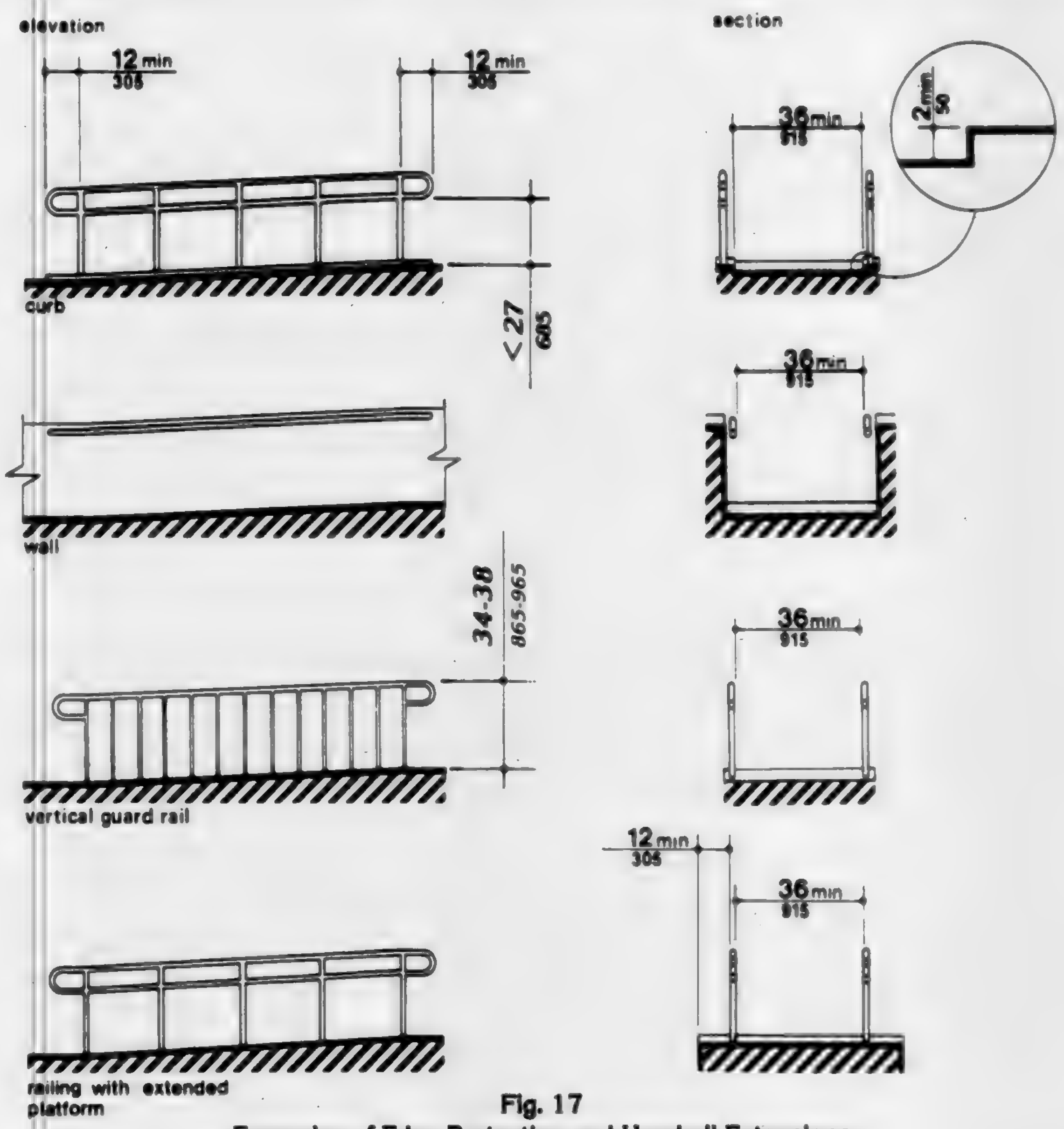
elevation
12 min
305
12 min
305
curb
< 27
685
wall
34-38
865-965
vertical guard rail
railing with extended platform
section
36 min
915
2 min
50
36 min
915
36 min
915
12 min
305
36 min
915

Fig. 17
Examples of Edge Protection and Handrail Extensions

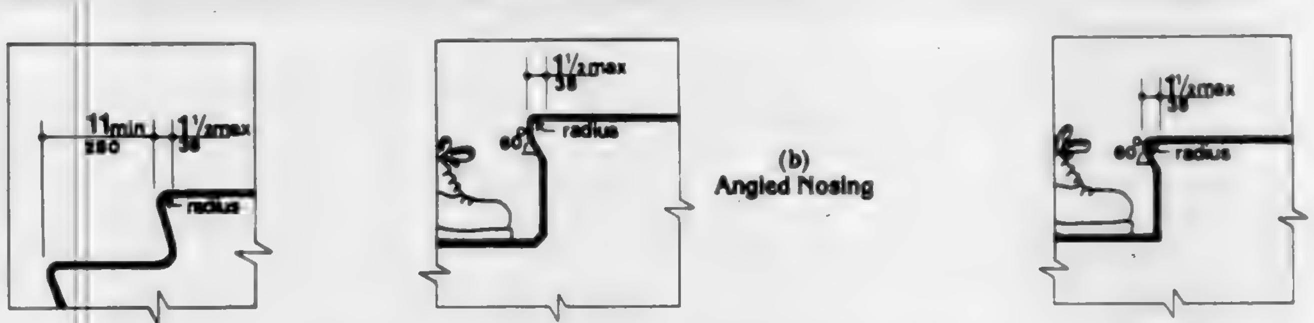
11 min
280
1½ max
38
radius
1½ max
38
60°
radius
(b)
Angled Nosing
1½ max
38
60°
radius

(a)
Flush Riser

Fig. 18
Usable Tread Width and Examples of Acceptable Nosings

(c)
Rounded Nosing

4.10 Elevators

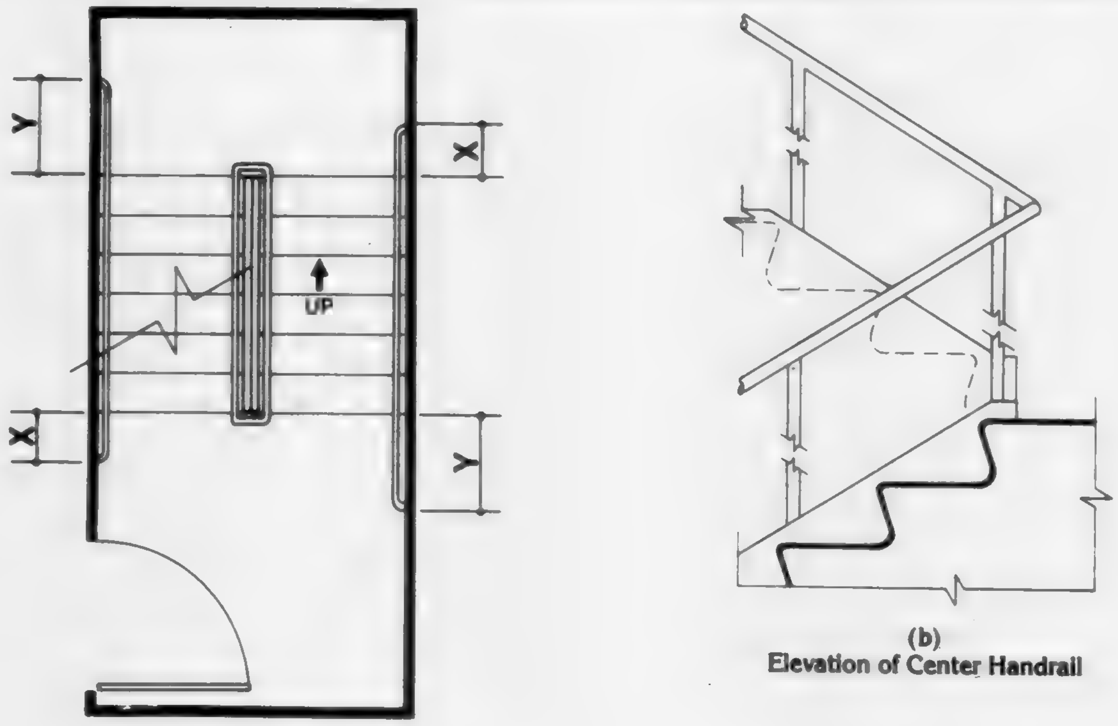

(a)
Plan

(b)
Elevation of Center Handrail

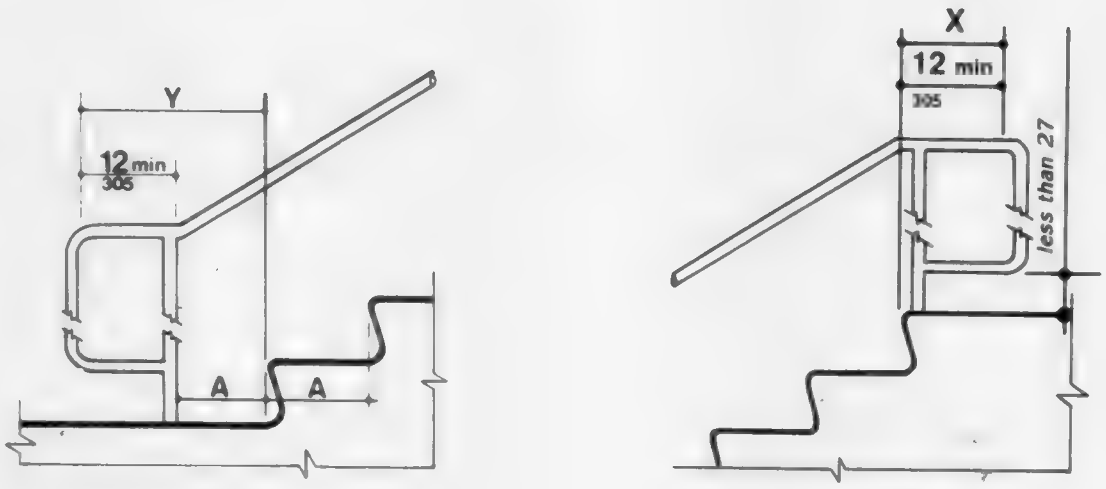
Y
12 min
305
A
A
X
12 min
305
less than 27

(c)
Extension at Bottom of Run

(d)
Extension at Top of Run

NOTE:

X is the 12 in minimum handrail extension required at each top riser.

Y is the minimum handrail extension of 12 in plus the width of one tread that is required at each bottom riser.

Fig. 19
Stair Handrails

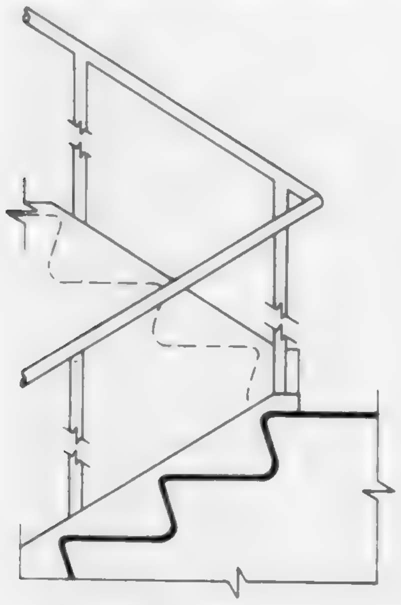

Elevation of Center Handrail

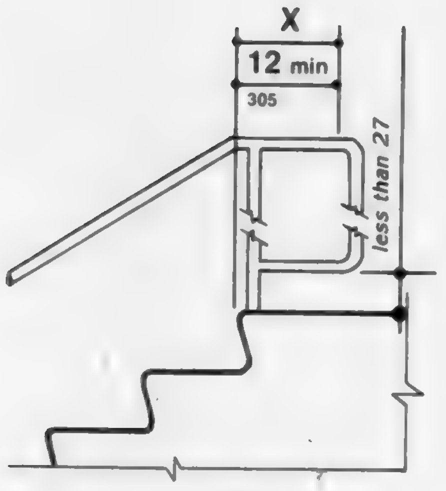

(d)
Extension at Top of Run

19
drails

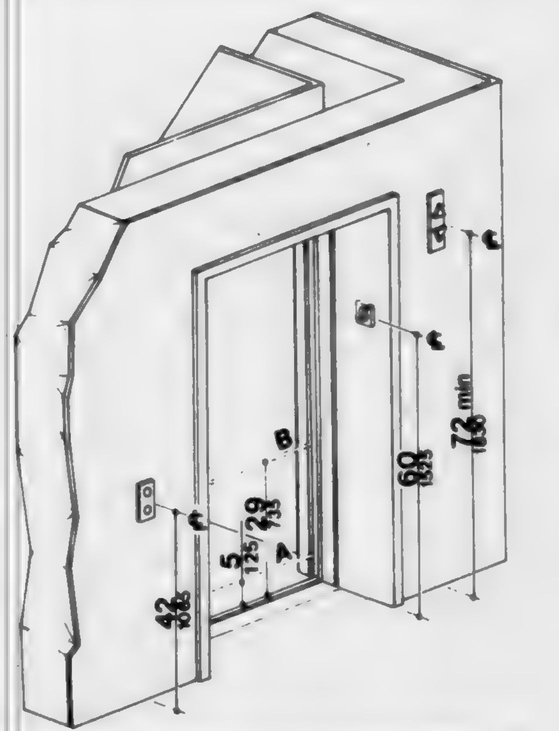

NOTE: The automatic door reopening device is activated if an object passes through either line A or line B. Line A and line B represent the vertical locations of the door reopening device not requiring contact.

Fig. 20
Holstway and Elevator Entrances

4.10.4 Hall Lanterns. A visible and audible signal shall be provided at each hoistway entrance to indicate which car is answering a call. Audible signals shall sound once for the up direction and twice for the down direction or shall have verbal annunciators that say "up" or "down." Visible signals shall have the following features:

(1) Hall lantern fixtures shall be mounted so that their centerline is at least 72 in (1830 mm) above the lobby floor. (See Fig. 20.)

(2) Visual elements shall be at least 2-1/2 in (64 mm) in the smallest dimension.

(3) Signals shall be visible from the vicinity of the hall call button (see Fig. 20). In-car lanterns located in cars, visible from the vicinity of hall call buttons, and conforming to the above requirements, shall be acceptable.

4.10.5 *Raised and Braille* Characters on Hoistway Entrances. All elevator hoistway entrances shall have *raised and Braille* floor designations provided on both jambs. The centerline of the characters shall be 60 in (1525 mm) *above finish* floor. Such characters shall be 2 in (50 mm) high and shall comply with 4.30.4. Permanently applied plates are acceptable if they are permanently fixed to the jambs. (See Fig. 20).

4.10.6* Door Protective and Reopening Device. Elevator doors shall open and close automatically. They shall be provided with a reopening device that will stop and reopen a car door and hoistway door automatically if the door becomes obstructed by an object or person. The device shall be capable of completing these operations without requiring contact for an obstruction passing through the opening at heights of 5 in and 29 in (125 mm and 735 mm) above finish floor (see Fig. 20). Door reopening devices shall remain effective for at least 20 seconds. After such an interval, doors may close in accordance with the requirements of *ASME A17.1-1990.*

4.10.7* Door and Signal Timing for Hall Calls. The minimum acceptable time from notification that a car is answering a call until the doors of that car start to close shall be calculated from the following equation:

$$T = D/(1.5 \text{ ft/s}) \text{ or } T = D/(445 \text{ mm/s})$$

where T total time in seconds and D distance (in feet or millimeters) from a point in the lobby or corridor 60 in (1525 mm) directly in front of the farthest call button controlling that car to the centerline of its hoistway door (see Fig. 21). For cars with in-car lanterns, T begins when the lantern is visible from the vicinity of hall call buttons and an audible signal is sounded. *The minimum acceptable notification time shall be 5 seconds.*

4.10.8 Door Delay for Car Calls. The minimum time for elevator doors to remain fully open in response to a car call shall be 3 seconds.

4.10.9 Floor Plan of Elevator Cars. The floor area of elevator cars shall provide space for wheelchair users to enter the car, maneuver

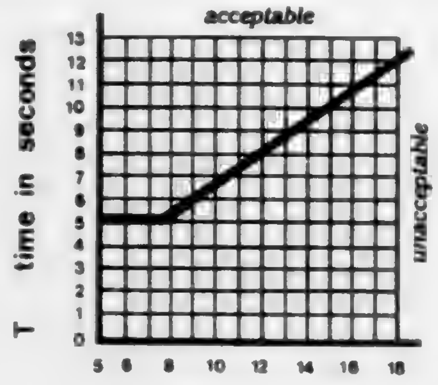

Fig. 21
Graph of Timing Equation

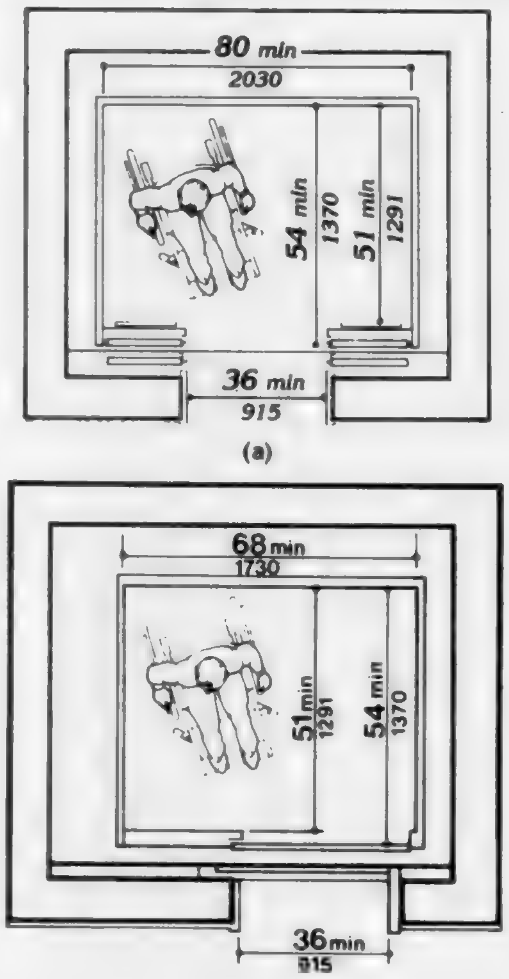

(a)

(b)

Fig. 22
Minimum Dimensions of Elevator Cars

within reach of controls, and exit from the car. Acceptable door opening and inside dimensions shall be as shown in Fig. 22. The clearance between the car platform sill and the edge of any hoistway landing shall be no greater than 1-1/4 in (32 mm).

4.10.10 Floor Surfaces. Floor surfaces shall comply with 4.5.

4.10.11 Illumination Levels. The level of illumination at the car controls, platform, and car threshold and landing sill shall be at least 5 footcandles (53.8 lux).

4.10.12* Car Controls. Elevator control panels shall have the following features:

(1) Buttons. All control buttons shall be at least 3/4 in (19 mm) in their smallest dimension. They *shall* be *raised* or flush.

(2) Tactile, *Braille*, and Visual Control Indicators. All control buttons shall be designated by *Braille and by raised* standard alphabet characters for letters, arabic characters for numerals, or standard symbols as shown in Fig. 23(a), and as required in *ASME A17.1-1990. Raised and Braille* characters and symbols shall comply with 4.30. The call button for the main entry floor shall be designated by a *raised* star at the left of the floor designation (see Fig. 23(a)). All raised designations for control buttons shall be placed immediately to the left of the button to which they apply. Applied plates, permanently attached, are an acceptable means to provide raised control designations. Floor buttons shall be provided with visual indicators to show when each call is registered. The visual indicators shall be extinguished when each call is answered.

(3) Height. All floor buttons shall be no higher than 54 in (1370 mm) above the *finish* floor *for side approach and 48 in (1220 mm) for front approach.* Emergency controls, including the emergency alarm and emergency stop, shall be grouped at the bottom of the panel and shall have their centerlines no less than 35 in (890 mm) above the finish floor (see Fig. 23(a) and (b)).

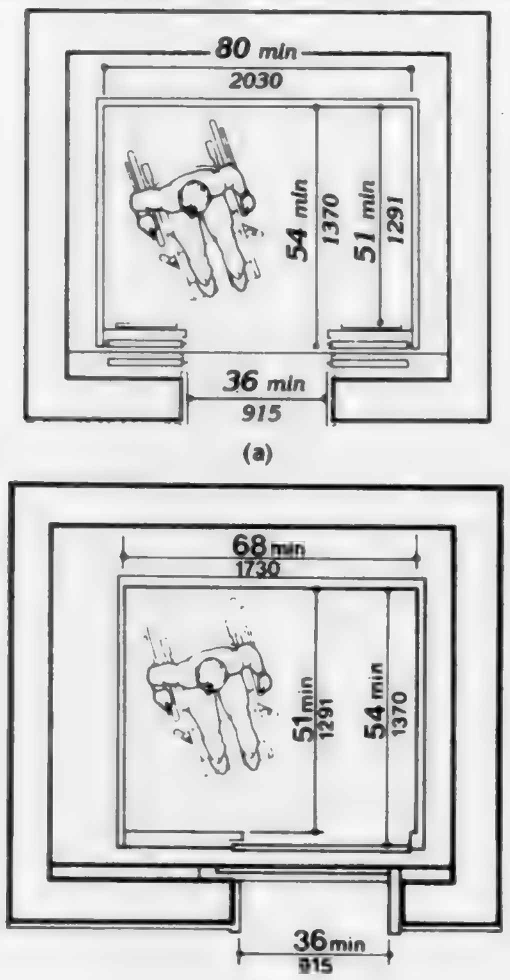
80 min
2030
54 min
1370
51 min
1291
36 min
915
(a)
68 min
1730
51 min
1291
54 min
1370
36 min
915
(b)

Fig. 22
Minimum Dimensions of Elevator Cars

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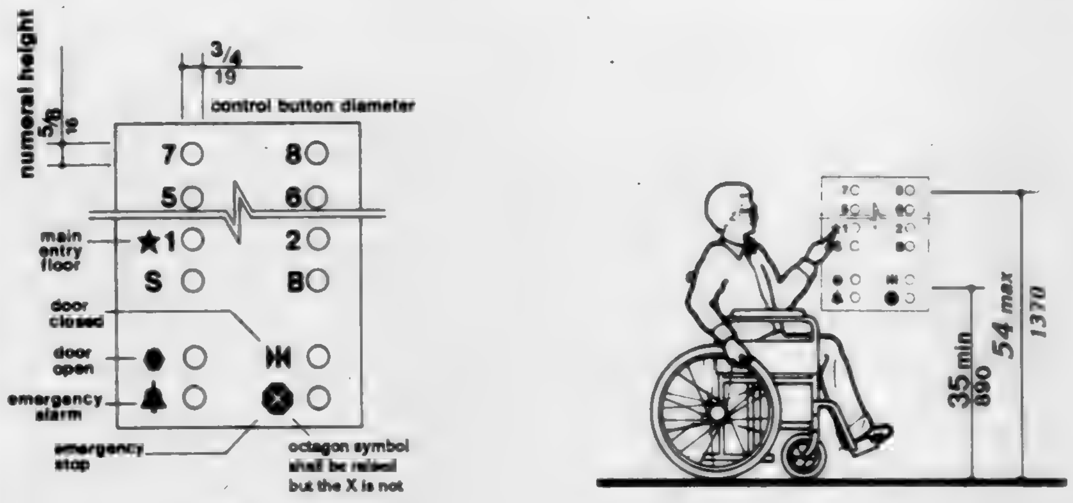
numeral height
5/8
16
3/4
19
control button diameter
7
8
5
6
main entry floor
★1
2
S
B
door closed
door open
emergency alarm
emergency stop
octagon symbol shall be raised but the X is not
35 min
890
54 max
1370

(a)
Panel Detail

(b)
Car Control Height

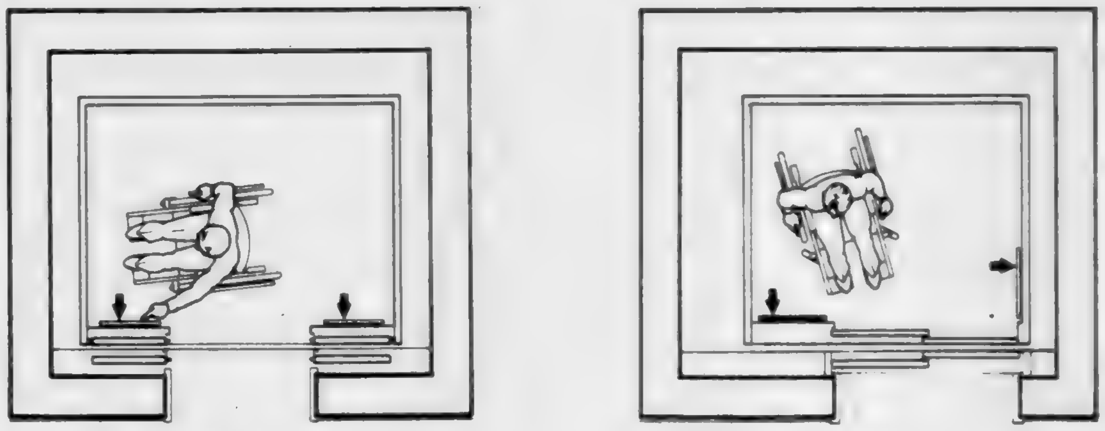

(c)
Alternate Locations of Panel with Center Opening Door

(d)
Alternate Locations of Panel with Side Opening Door

Fig. 23
Car Controls

(4) Location. Controls shall be located on a front wall if cars have center opening doors, and at the side wall or at the front wall next to the door if cars have side opening doors (see Fig. 23(c) and (d)).

4.10.13* Car Position Indicators. In elevator cars, a visual car position indicator shall be provided above the car control panel or over the door to show the position of the elevator in the hoistway. As the car passes or stops at a floor served by the elevators, the corresponding numerals shall illuminate, and an audible signal shall sound. Numerals shall be a minimum of 1/2 in (13 mm) high. The audible signal shall be no less than 20 decibels with a frequency no higher than 1500 Hz. An automatic verbal announcement of the floor number at which a car stops or which a car passes may be substituted for the audible signal.

4.10.14* Emergency Communications. If provided, emergency two-way communication systems between the elevator and a point outside the hoistway shall comply with *ASME*

A17.1-1990. The highest operable part of a two-way communication system shall be a maximum of *48 in (1220 mm)* from the floor of the car. It shall be identified by a raised symbol and lettering complying with 4.30 and located adjacent to the device. If the system uses a handset then the length of the cord from the panel to the handset shall be at least 29 in (735 mm). *If the system is located in a closed compartment the compartment door hardware shall conform to 4.27, Controls and Operating Mechanisms. The emergency intercommunication system shall not require voice communication.*

4.11 Platform Lifts *(Wheelchair Lifts).*

4.11.1 Location. *Platform lifts (wheelchair lifts) permitted by 4.1 shall comply with the requirements of 4.11.*

4.11.2* Other Requirements. If platform lifts *(wheelchair lifts)* are used, they shall comply with 4.2.4, 4.5, 4.27, and *ASME A17.1 Safety Code for Elevators and Escalators, Section XX, 1990.*

4.11.3 Entrance. *If platform lifts are used then they shall facilitate unassisted entry, operation, and exit from the lift in compliance with 4.11.2.*

4.12 Windows.

4.12.1* General. *(Reserved).*

4.12.2* Window Hardware. *(Reserved).*

4.13 Doors.

4.13.1 General. *Doors required to be accessible by 4.1* shall comply with the requirements of 4.13.

4.13.2 Revolving Doors and Turnstiles. Revolving doors or turnstiles shall not be the only means of passage at an accessible entrance or along an accessible route. *An accessible gate or door shall be provided adjacent to the turnstile or revolving door and shall be so designed as to facilitate the same use pattern.*

4.13.3 Gates. Gates, including ticket gates, shall meet all applicable specifications of 4.13.

4.13.4 Double-Leaf Doorways. If doorways have two *independently operated* door leaves, then at least one leaf shall meet the specifications in 4.13.5 and 4.13.6. That leaf shall be an active leaf.

4.13.5 Clear Width. Doorways shall have a minimum clear opening of 32 in (815 mm) with the door open 90 degrees, measured between the face of the door and the *opposite* stop (see Fig. 24(a), (b), (c), and (d)). Openings more than 24 in (610 mm) in depth shall comply with 4.2.1 and 4.3.3 (see Fig. 24(e)).

EXCEPTION: Doors not requiring full user passage, such as shallow closets, may have the clear opening reduced to 20 in (510 mm) minimum.

4.13.6 Maneuvering Clearances at Doors. Minimum maneuvering clearances at doors that are not automatic or power-assisted shall be as shown in Fig. 25. The floor or ground area within the required clearances shall be level and clear.

EXCEPTION: Entry doors to acute care hospital bedrooms for in-patients shall be exempted from the requirement for space at the latch side of the door (see dimension "x" in Fig. 25) if the door is at least 44 in (1120 mm) wide.

4.13.7 Two Doors in Series. The minimum space between two hinged or pivoted doors in series shall be 48 in (1220 mm) plus the width of any door swinging into the space. Doors in series shall swing either in the same direction or away from the space between the doors (see Fig. 26).

4.13.8* Thresholds at Doorways. Thresholds at doorways shall not exceed 3/4 in (19 mm) in height for exterior sliding doors or 1/2 in (13 mm) for other types of doors. Raised thresholds and floor level changes at accessible doorways shall be beveled with a slope no greater than 1:2 (see 4.5.2).

4.13.9* Door Hardware. Handles, pulls, latches, locks, and other operating devices on accessible doors shall have a shape that is easy

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4.13.9* Door Hardware. Handles, pulls, latches, locks, and other operating devices on accessible doors shall have a shape that is easy to grasp with one hand and does not require tight grasping, tight pinching, or twisting of the wrist to operate. Lever-operated mechanisms, push-type mechanisms, and U-shaped handles are acceptable designs. When sliding doors are fully open, operating hardware shall be exposed and usable from both sides. *Hardware required for accessible door passage shall be mounted no higher than 48 in (1220 mm) above finished floor.*

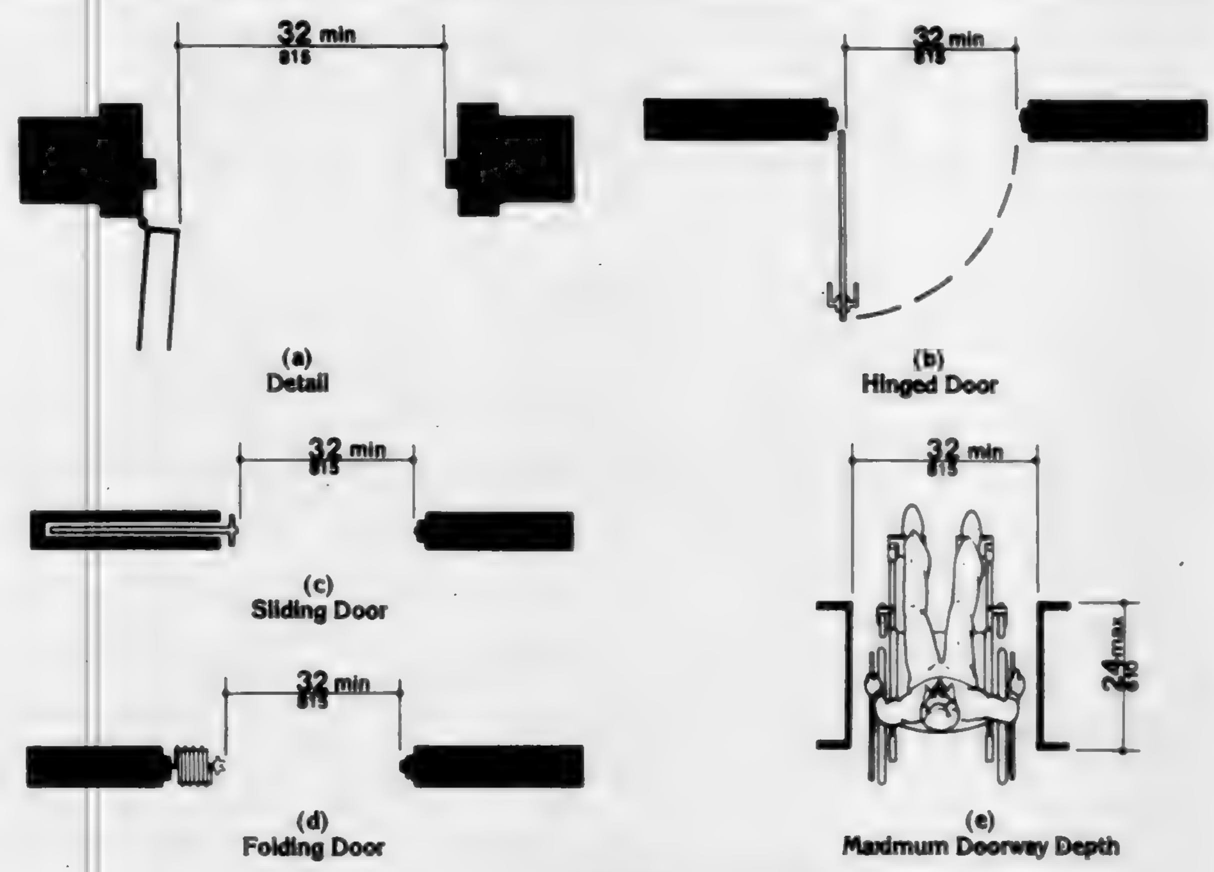

(a)
Detail

(b)
Hinged Door

(c)
Sliding Door

(d)
Folding Door

(e)
Maximum Doorway Depth

Fig. 24
Clear Doorway Width and Depth

4.13.10* Door Closers. If a door has a closer, then the sweep period of the closer shall be adjusted so that from an open position of 70 degrees, the door will take at least 3 seconds to move to a point 3 in (75 mm) from the latch, measured to the leading edge of the door.

4.13.11* Door Opening Force. The maximum force for pushing or pulling open a door shall be as follows:

(1) Fire doors shall have the minimum opening force allowable by the appropriate administrative authority.

(2) Other doors.

(a) exterior hinged doors: *(Reserved).*

(b) interior hinged doors: 5 lbf (22.2N)

(c) sliding or folding doors: 5 lbf (22.2N)

These forces do not apply to the force required to retract latch bolts or disengage other devices that may hold the door in a closed position.

4.13 Doors

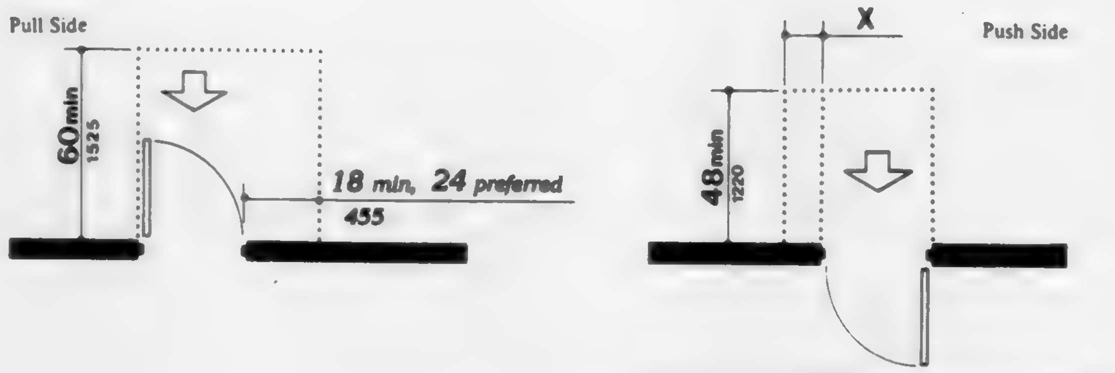
Pull Side
60min
1525
18 min, 24 preferred
455
X
Push Side
48min
1220

NOTE: x = 12 in (305 mm) if door has both a closer and latch.

(a)
Front Approaches — Swinging Doors

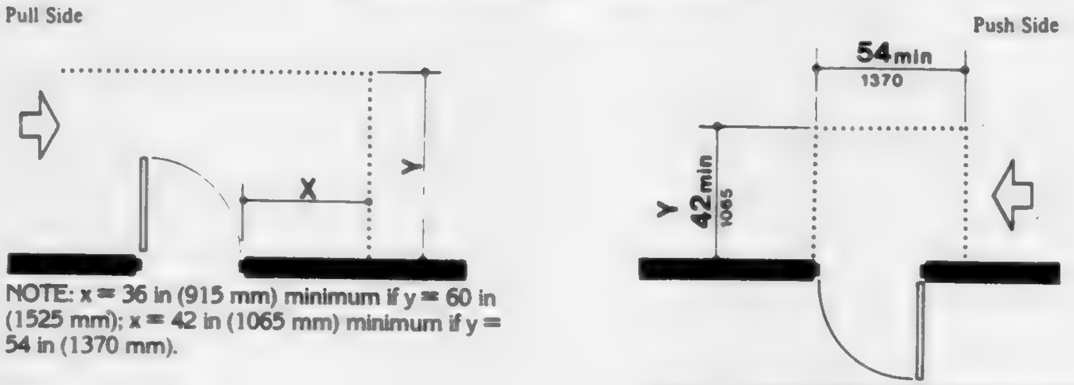
Pull Side
X
Y
Push Side
54min
1370
Y
42min
1065

NOTE: x = 36 in (915 mm) minimum if y = 60 in (1525 mm); x = 42 in (1065 mm) minimum if y = 54 in (1370 mm).

NOTE: y = 48 in (1220 mm) minimum if door has both a latch and closer.

(b)
Hinge Side Approaches — Swinging Doors

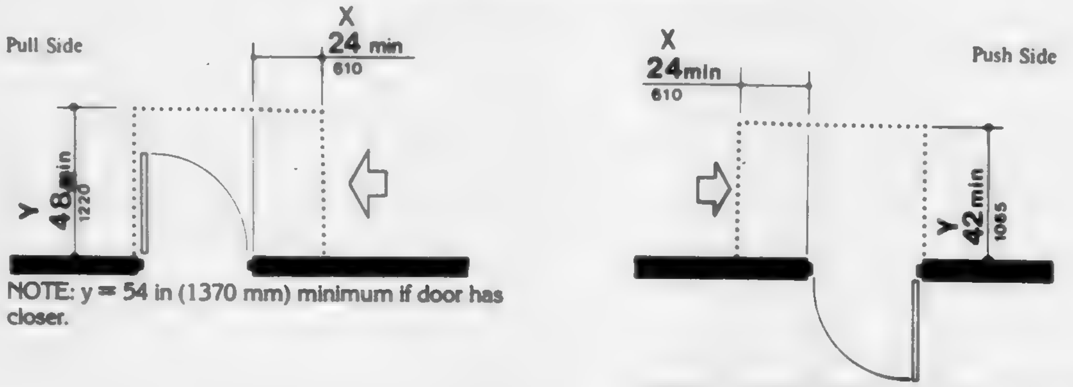
Pull Side
X
24 min
610
Y
48min
1220
X
24min
610
Push Side
Y
42min
1065

NOTE: y = 54 in (1370 mm) minimum if door has closer.

NOTE: y = 48 in (1220 mm) minimum if door has closer.

(c)
Latch Side Approaches — Swinging Doors

NOTE: All doors in alcoves shall comply with the clearances for front approaches.

Fig. 25
Maneuvering Clearances at Doors

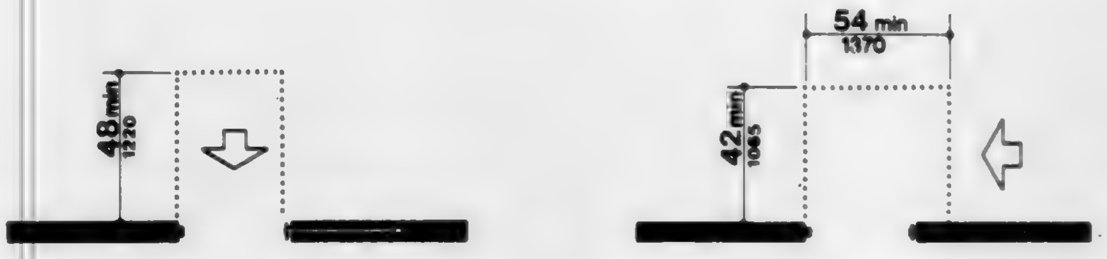
48 min
1220
54 min
1370
42 min
1065

(d)
Front Approach — Sliding Doors *and Folding Doors*

(e)
Slide Side Approach — Sliding Doors *and Folding Doors*

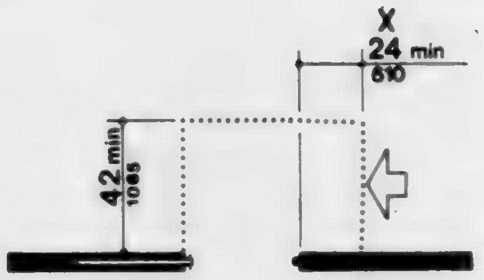
X
24 min
610
42 min
1065

(f)
Latch Side Approach — Sliding Doors *and Folding Doors*

NOTE: All doors in alcoves shall comply with the clearances for front approaches.

Fig. 25
Maneuvering Clearances at Doors *(Continued)*

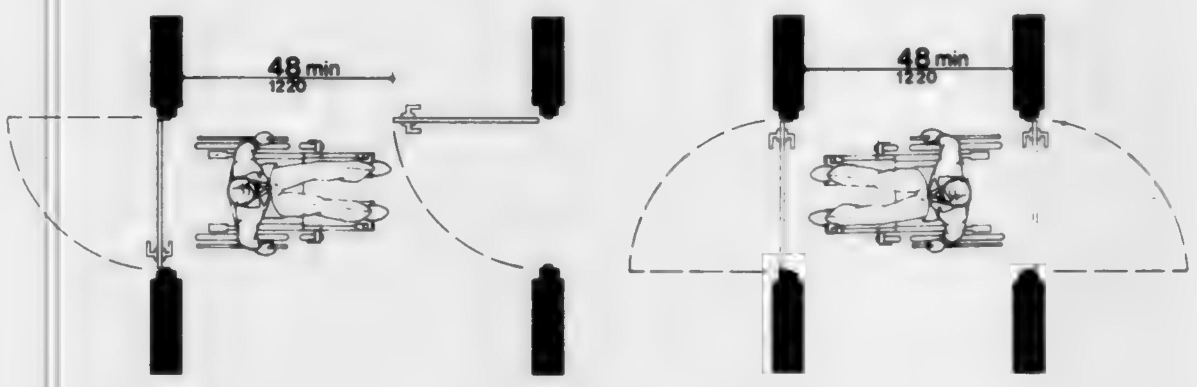
48 min
1220
48 min
1220

Fig. 26
Two Hinged Doors in Series

4.13.12* Automatic Doors and Power-Assisted Doors. If an automatic door is used, then it shall comply with *ANSI/BHMA A156.10-1985.* Slowly opening, low-powered, automatic doors shall *comply with ANSI A156.19-1984.* Such doors shall not open to back check faster than 3 seconds and shall require no more than 15 lbf (66.6N) to stop door movement. If a power-assisted door is used, its door-opening force shall comply with 4.13.11 and its closing shall conform to the requirements in *ANSI A156.19-1984.*

4.14 Entrances.

4.14.1 Minimum Number. *Entrances required to be accessible by 4.1* shall be part of an accessible route complying with 4.3. Such entrances shall be connected by an accessible route to public transportation stops, to accessible parking and passenger loading zones, and to public streets or sidewalks if available (see 4.3.2(1)). They shall also be connected by an accessible route to all accessible spaces or elements within the building or facility.

4.14.2 Service Entrances. A service entrance shall not be the sole accessible entrance unless it is the only entrance to a building or facility (for example, in a factory or garage).

4.15 Drinking Fountains and Water Coolers.

4.15.1 Minimum Number. *Drinking fountains or water coolers required to be accessible by 4.1* shall comply with 4.15.

4.15.2* Spout Height. Spouts shall be no higher than 36 in (915 mm), measured from the floor or ground surfaces to the spout outlet (see Fig. 27(a)).

4.15.3 Spout Location. The spouts of drinking fountains and water coolers shall be at the front of the unit and shall direct the water flow in a trajectory that is parallel or nearly parallel to the front of the unit. The spout shall provide a flow of water at least 4 in (100 mm) high so as to allow the insertion of a cup or glass under the flow of water. *On an accessible drinking fountain with a round or oval bowl, the spout must be positioned so the flow of water is within 3 in (75 mm) of the front edge of the fountain.*

4.15.4 Controls. Controls shall comply with 4.27.4. *Unit controls shall be front mounted or side mounted near the front edge.*

4.15.5 Clearances.

(1) Wall- and post-mounted cantilevered units shall have a clear knee space between the bottom of the apron and the floor or ground at least 27 in (685 mm) high, 30 in (760 mm) wide, and 17 in to 19 in (430 mm to 485 mm) deep (see Fig. 27(a) and (b)). Such units shall also have a minimum clear floor space 30 in by 48 in (760 mm by 1220 mm) to allow a person in a wheelchair to approach the unit facing forward.

(2) Free-standing or built-in units not having a clear space under them shall have a clear floor space at least 30 in by 48 in (760 mm by 1220 mm) that allows a person in a wheelchair to make a parallel approach to the unit (see Fig. 27(c) and (d)). This clear floor space shall comply with 4.2.4.

4.16 Water Closets.

4.16.1 General. Accessible water closets shall comply with 4.16.

4.16.2 Clear Floor Space. Clear floor space for water closets not in stalls shall comply with Fig. 28. Clear floor space may be arranged to allow either a left-handed or right-handed approach.

4.16.3* Height. The height of water closets shall be 17 in to 19 in (430 mm to 485 mm), measured to the top of the toilet seat (see Fig. 29(b)). *Seats shall not be sprung to return to a lifted position.*

4.16.4* Grab Bars. Grab bars for water closets not located in stalls shall comply with 4.26 and Fig. 29. *The grab bar behind the water closet shall be 36 in (915 mm) minimum.*

4.16.5* Flush Controls. Flush controls shall be hand operated *or automatic* and shall comply with 4.27.4. Controls for flush valves *oval bowl, the spout must be positioned so the flow of water is within 3 in (75 mm) of the front edge of the fountain.*

4.15.4 Controls. Controls shall comply with 4.27.4. *Unit controls shall be front mounted or side mounted near the front edge.*

4.15.5 Clearances.

(1) Wall- and post-mounted cantilevered units shall have a clear knee space between the bottom of the apron and the floor or ground at least 27 in (685 mm) high, 30 in (760 mm) wide, and 17 in to 19 in (430 mm to 485 mm) deep (see Fig. 27(a) and (b)). Such units shall also have a minimum clear floor space 30 in by 48 in (760 mm by 1220 mm) to allow a person in a wheelchair to approach the unit facing forward.

(2) Free-standing or built-in units not having a clear space under them shall have a clear floor space at least 30 in by 48 in (760 mm by 1220 mm) that allows a person in a wheelchair to make a parallel approach to the unit (see Fig. 27(c) and (d)). This clear floor space shall comply with 4.2.4.

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4.16.2 Clear Floor Space. Clear floor space for water closets not in stalls shall comply with Fig. 28. Clear floor space may be arranged to allow either a left-handed or right-handed approach.

4.16.3* Height. The height of water closets shall be 17 in to 19 in (430 mm to 485 mm), measured to the top of the toilet seat (see Fig. 29(b)). *Seats shall not be sprung to return to a lifted position.*

4.16.4* Grab Bars. Grab bars for water closets not located in stalls shall comply with 4.26 and Fig. 29. *The grab bar behind the water closet shall be 36 in (915 mm) minimum.*

4.16.5* Flush Controls. Flush controls shall be hand operated *or automatic* and shall comply with 4.27.4. Controls for flush valves

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shall be mounted on the wide side of toilet areas no more than 44 in (1120 mm) above the floor.

4.16.6 Dispensers. Toilet paper dispensers shall be installed within reach, as shown in Fig. 29(b). *Dispensers that control delivery, or that do not permit continuous paper flow, shall not be used.*

4.17 Toilet Stalls.

4.17.1 Location. Accessible toilet stalls shall be on an accessible route and shall meet the requirements of 4.17.

4.17.2 Water Closets. Water closets in accessible stalls shall comply with 4.16.

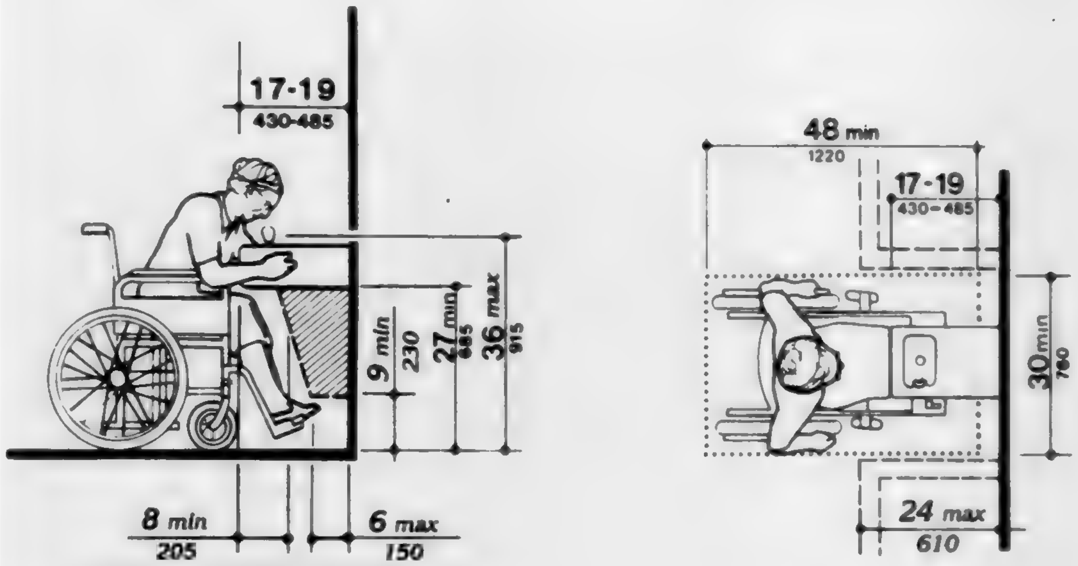

equipment permitted in shaded area

(a)
Spout Height and
Knee Clearance

(b)
Clear Floor Space

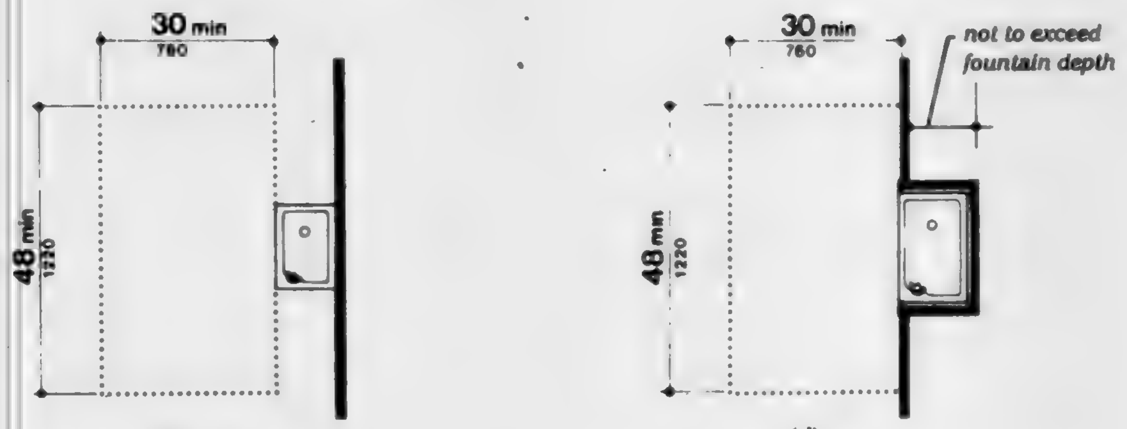

(c)
Free-Standing
Fountain or Cooler

(d)
Built-In
Fountain or Cooler

Fig. 27
Drinking Fountains and Water Coolers

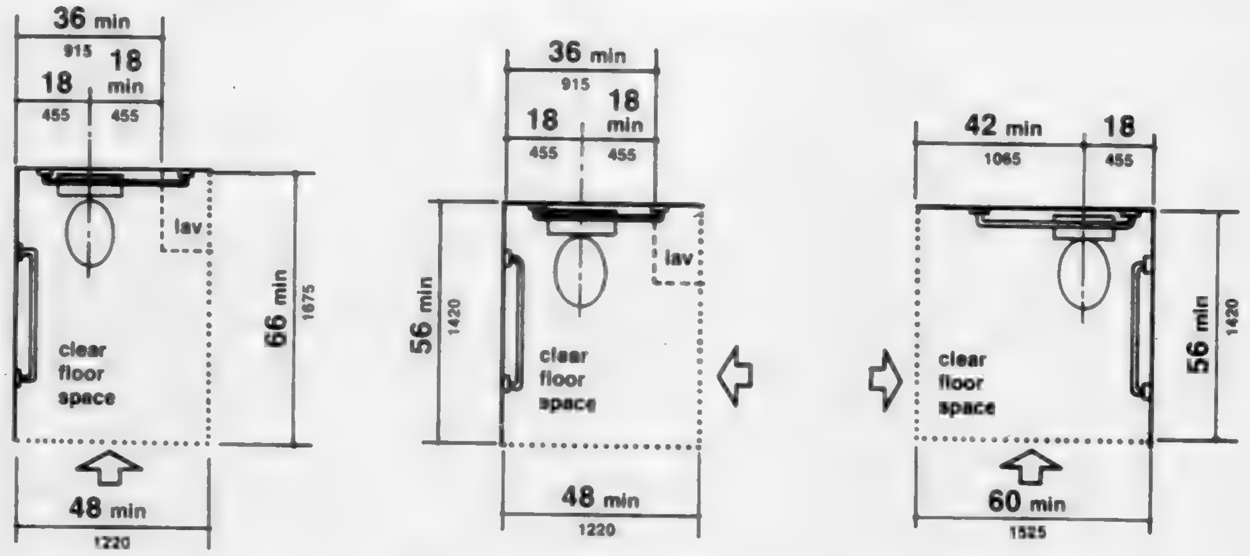
36 min
915
18 min
18
455
455
lav
clear floor space
66 min
1675
48 min
1220
36 min
915
18
18 min
455
455
56 min
1420
lav
clear floor space
48 min
1220
42 min
1065
18
455
clear floor space
56 min
1420
60 min
1525

Fig. 28
Clear Floor Space at Water Closets

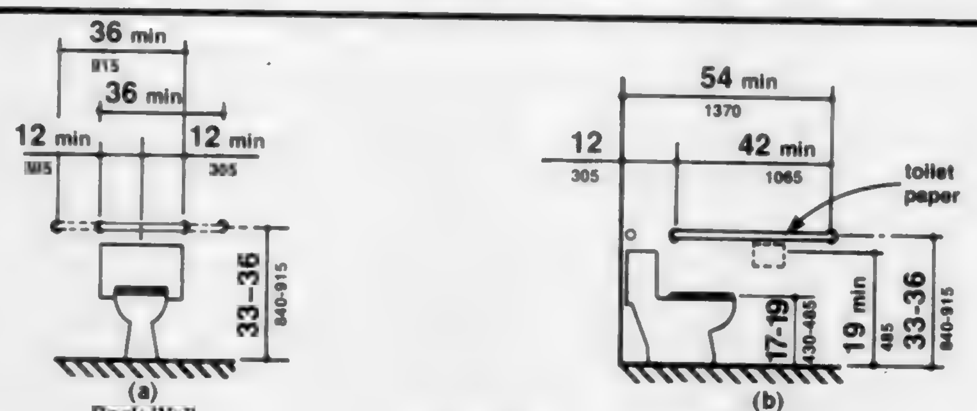
36 min
915
36 min
12 min
305
12 min
305
33-36
840-915
54 min
1370
12
305
42 min
1065
toilet paper
17-19
430-485
19 min
485
33-36
840-915

(a)
Back Wall

(b)
Side Wall

Fig. 29
Grab Bars at Water Closets

4.17.3* Size and Arrangement. The size and arrangement of the standard toilet stall shall comply with Fig. 30(a), *Standard Stall.* Standard toilet stalls with a minimum depth of 56 in (1420 mm) (see Fig. 30(a)) shall have wall-mounted water closets. If the depth of a standard toilet stall is increased at least 3 in (75 mm), then a floor-mounted water closet may be used. Arrangements shown for standard toilet stalls may be reversed to allow either a left- or right-hand approach. Additional stalls shall be provided in conformance with 4.22.4.

EXCEPTION: In instances of alteration work where provision of a standard stall (Fig. 30(a)) is technically infeasible or where plumbing code requirements prevent combining existing stalls to provide space, either alternate stall (Fig. 30(b)) may be provided in lieu of the standard stall.

4.17.4 Toe Clearances. In standard stalls, the front partition and at least one side partition shall provide a toe clearance of at least 9 in (230 mm) above the floor. If the depth of the stall is greater than 60 in (1525 mm), then the toe clearance is not required.

4.17.5* Doors. Toilet stall doors, *including door hardware,* shall comply with 4.13. *If toilet stall approach is from the latch side of the stall door, clearance between the door side of the*

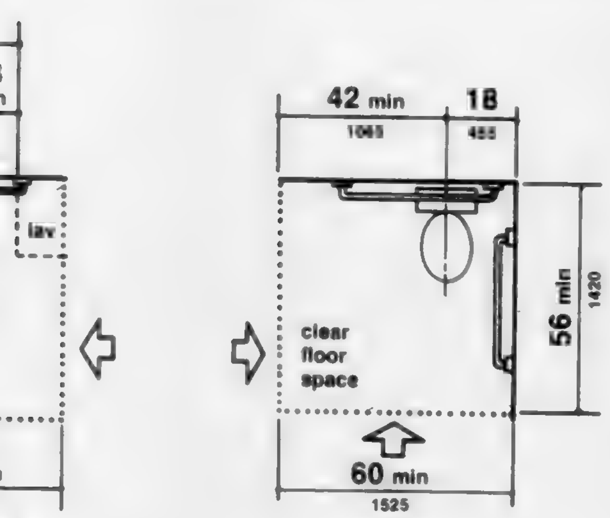

lav
42 min
1065
18
455
clear
floor
space
56 min
1420
60 min
1525

8
t Water Closets

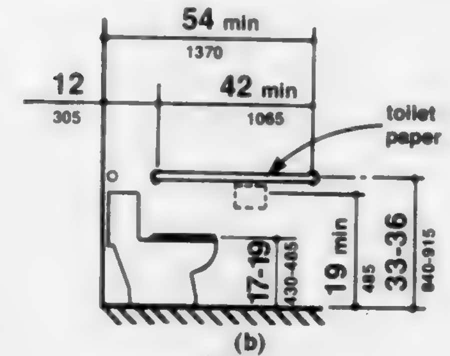

54 min
1370
12
305
42 min
1065
toilet
paper
17-19
430-485
19 min
485
33-36
840-915

(b)
Side Wall

er Closets

is technically infeasible or where plumbing code requirements prevent combining existing stalls to provide space, either alternate stall (Fig. 30(b)) may be provided in lieu of the standard stall.

4.17.4 Toe Clearances. In standard stalls, the front partition and at least one side partition shall provide a toe clearance of at least 9 in (230 mm) above the floor. If the depth of the stall is greater than 60 in (1525 mm), then the toe clearance is not required.

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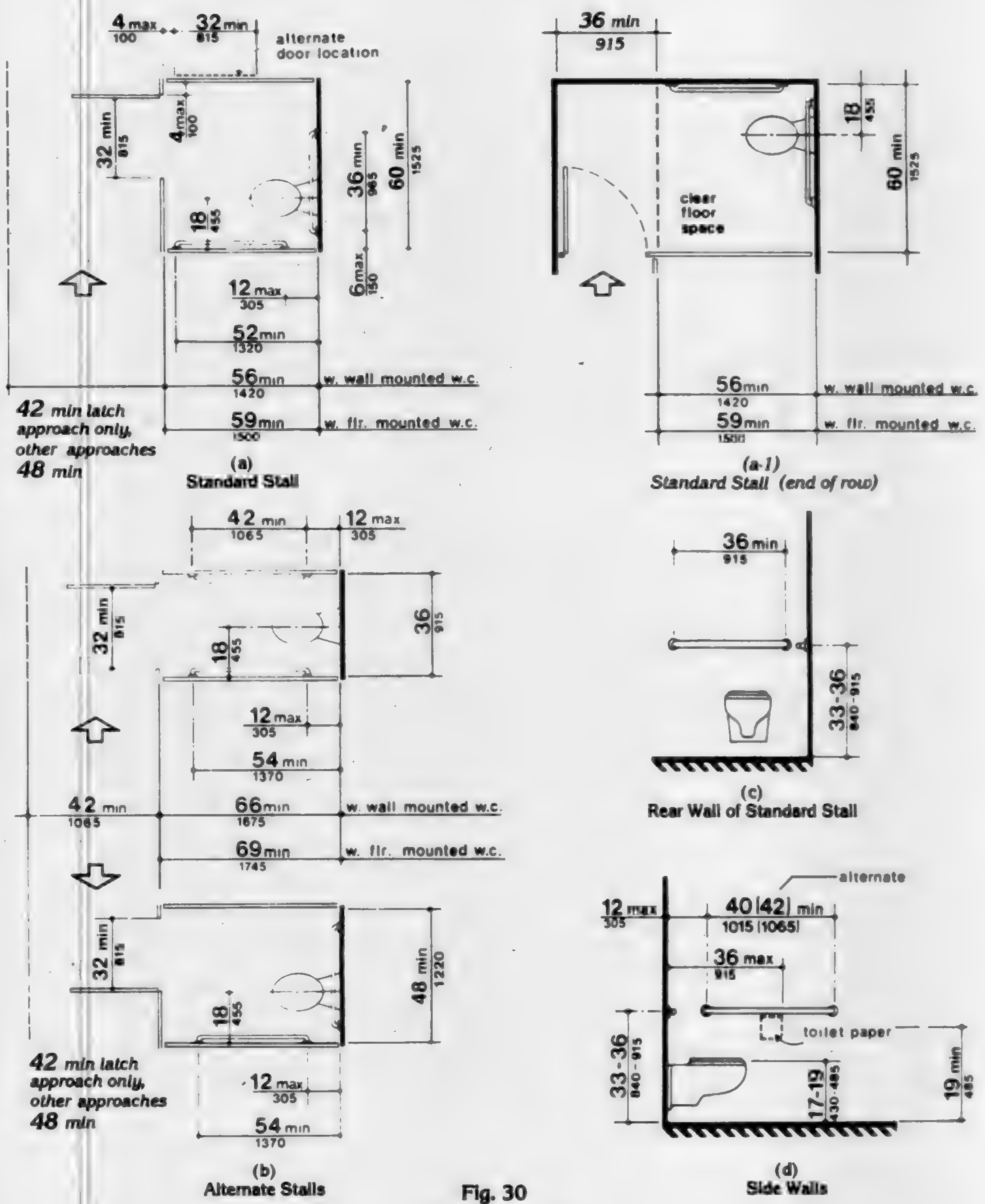

4 max
100
32 min
815
alternate
door location
32 min
815
4 max
100
18
455
36 min
965
60 min
1525
6 max
150
12 max
305
52 min
1320
56 min
1420
w. wall mounted w.c.
59 min
1500
w. flr. mounted w.c.
42 min latch
approach only,
other approaches
48 min
36 min
915
18
455
clear
floor
space
60 min
1525
56 min
1420
w. wall mounted w.c.
59 min
1500
w. flr. mounted w.c.
42 min
1065
12 max
305
32 min
815
18
455
36
915
12 max
305
54 min
1370
42 min
1065
66 min
1675
w. wall mounted w.c.
69 min
1745
w. flr. mounted w.c.
32 min
815
18
455
48 min
1220
42 min latch
approach only,
other approaches
48 min
12 max
305
54 min
1370
36 min
915
33-36
840-915
alternate
12 max
305
40 (42) min
1015 (1065)
36 max
915
toilet paper
33-36
840-915
17-19
430-485
19 min
485

(a)
Standard Stall

(a-1)
Standard Stall (end of row)

(c)
Rear Wall of Standard Stall

(b)
Alternate Stalls

(d)
Side Walls

Fig. 30
Toilet Stalls

stall and any obstruction may be reduced to a minimum of 42 in (1065 mm) (Fig. 30).

4.17.6 Grab Bars. Grab bars complying with the length and positioning shown in Fig. 30(a), (b), (c), and (d) shall be provided. Grab bars may be mounted with any desired method as long as they have a gripping surface at the locations shown and do not obstruct the required clear floor area. Grab bars shall comply with 4.26.

4.18 Urinals.

4.18.1 General. Accessible urinals shall comply with 4.18.

4.18.2 Height. Urinals shall be stall-type or wall-hung with an elongated rim at a maximum of 17 in (430 mm) above the finish floor.

4.18.3 Clear Floor Space. A clear floor space 30 in by 48 in (760 mm by 1220 mm) shall be provided in front of urinals to allow forward approach. This clear space shall adjoin or overlap an accessible route and shall comply with 4.2.4. *Urinal shields that do not extend beyond the front edge of the urinal rim may be provided with 29 in (735 mm) clearance between them.*

4.18.4 Flush Controls. Flush controls shall be hand operated or automatic, and shall comply with 4.27.4, and shall be mounted no more than 44 in (1120 mm) above the finish floor.

4.19 Lavatories and Mirrors.

4.19.1 General. The requirements of 4.19 shall apply to lavatory fixtures, vanities, and built-in lavatories.

4.19.2 Height and Clearances. Lavatories shall be mounted with *the rim or counter surface no higher than 34 in (865 mm) above the finish floor*. Provide a clearance of at least 29 in (735 mm) above the finish floor to the bottom of the apron. Knee and toe clearance shall comply with Fig. 31.

4.19.3 Clear Floor Space. A clear floor space 30 in by 48 in (760 mm by 1220 mm) complying with 4.2.4 shall be provided in front of a lavatory to allow forward approach. Such clear floor space shall adjoin or overlap an accessible route and shall extend a maximum of 19 in (485 mm) underneath the lavatory (see Fig. 32).

4.19.4 Exposed Pipes and Surfaces. Hot water and drain pipes under lavatories shall be insulated or otherwise *configured to protect against contact*. There shall be no sharp or abrasive surfaces under lavatories.

4.19.5 Faucets. Faucets shall comply with 4.27.4. Lever-operated, push-type, and electronically controlled mechanisms are examples of acceptable designs. *If* self-closing valves are

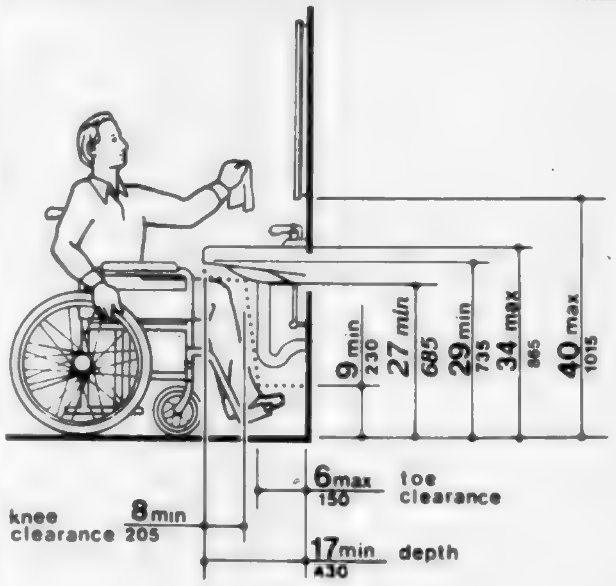

Fig. 31
Lavatory Clearances

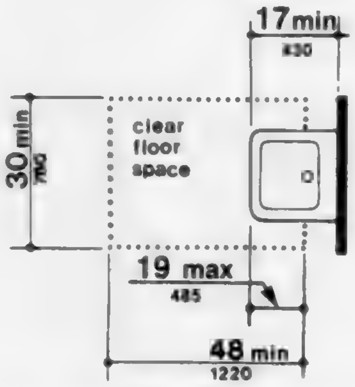

Fig. 32
Clear Floor Space at Lavatories

clear floor space shall adjoin or overlap an accessible route and shall extend a maximum of 19 in (485 mm) underneath the lavatory (see Fig. 32).

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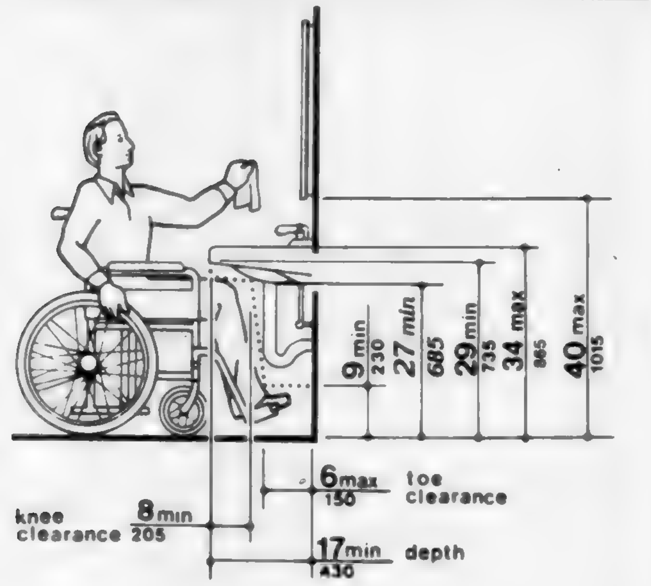

Fig. 31
Lavatory Clearances

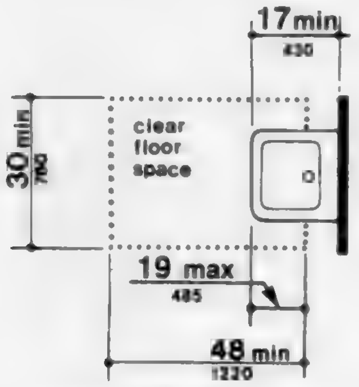

Fig. 32
Clear Floor Space at Lavatories

used the faucet *shall remain* open for at least 10 seconds.

4.19.6* Mirrors. Mirrors shall be mounted with the bottom edge *of the reflecting surface* no higher than 40 in (1015 mm) *above the finish* floor (see Fig. 31).

4.20 Bathtubs.

4.20.1 General. Accessible bathtubs shall comply with 4.20.

4.20.2 Floor Space. Clear floor space in front of bathtubs shall be as shown in Fig. 33.

4.20.3 Seat. An in-tub seat or a seat at the head end of the tub shall be provided as shown in Fig. 33 and 34. The structural strength of seats and their attachments shall comply with 4.26.3. Seats shall be mounted securely and shall not slip during use.

4.20.4 Grab Bars. Grab bars complying with 4.26 shall be provided as shown in Fig. 33 and 34.

4.20.5 Controls. Faucets and other controls complying with 4.27.4 shall be located as shown in Fig. 34.

4.20.6 Shower Unit. A shower spray unit with a hose at least 60 in (1525 mm) long that can be used *both* as a fixed shower head *and* as a hand-held shower shall be provided.

4.20.7 Bathtub Enclosures. If provided, enclosures for bathtubs shall not obstruct controls or transfer from wheelchairs onto bathtub seats or into tubs. Enclosures on bathtubs shall not have tracks mounted on their rims.

4.21 Shower Stalls.

4.21.1* General. Accessible shower stalls shall comply with 4.21.

4.21.2 Size and Clearances. Except as specified in 9.1.2, shower stall size and clear floor space shall comply with Fig. 35(a) or (b). The shower stall in Fig. 35(a) shall be 36 in by 36 in (915 mm by 915 mm). Shower stalls required by 9.1.2 shall comply with Fig. 57(a) or (b). The shower stall in Fig. 35(b) will fit into the space required for a bathtub.

4.21.3 Seat. A seat shall be provided in shower stalls 36 in by 36 in (915 mm by 915 mm) and shall be as shown in Fig. 36. The seat shall be mounted 17 in to 19 in (430 mm to 485 mm) from the bathroom floor and shall extend the full depth of the stall. In a 36 in by 36 in (915 mm by 915 mm) shower stall, the seat shall be on the wall opposite the controls. *Where a fixed seat is provided in a 30 in by 60 in minimum (760 mm by 1525 mm) shower stall, it shall be a folding type and shall be mounted on the wall adjacent to the controls as shown in Fig. 57.* The structural strength of seats and their attachments shall comply with 4.26.3.

4.21.4 Grab Bars. Grab bars complying with 4.26 shall be provided as shown in Fig. 37.

4.21.5 Controls. Faucets and other controls complying with 4.27.4 shall be located as shown in Fig. 37. In shower stalls 36 in by 36 in (915 mm by 915 mm), all controls, faucets, and the shower unit shall be mounted on the side wall opposite the seat.

4.21.6 Shower Unit. A shower spray unit with a hose at least 60 in (1525 mm) long that can be used *both* as a fixed shower head *and* as a hand-held shower shall be provided.

EXCEPTION: In unmonitored facilities where vandalism is a consideration, a fixed shower head mounted at 48 in (1220 mm) above the shower floor may be used in lieu of a hand-held shower head.

4.21.7 Curbs. If provided, curbs in shower stalls 36 in by 36 in (915 mm by 915 mm) shall be no higher than *1/2 in (13 mm).* Shower stalls that are 30 in by 60 in (760 mm by 1525 mm) minimum shall not have curbs.

4.21.8 Shower Enclosures. If provided, enclosures for shower stalls shall not obstruct controls or obstruct transfer from wheelchairs onto shower seats.

4.22 Toilet Rooms.

4.22.1 Minimum Number. *Toilet facilities required to be accessible by 4.1 shall comply*

4.21 Shower Stalls

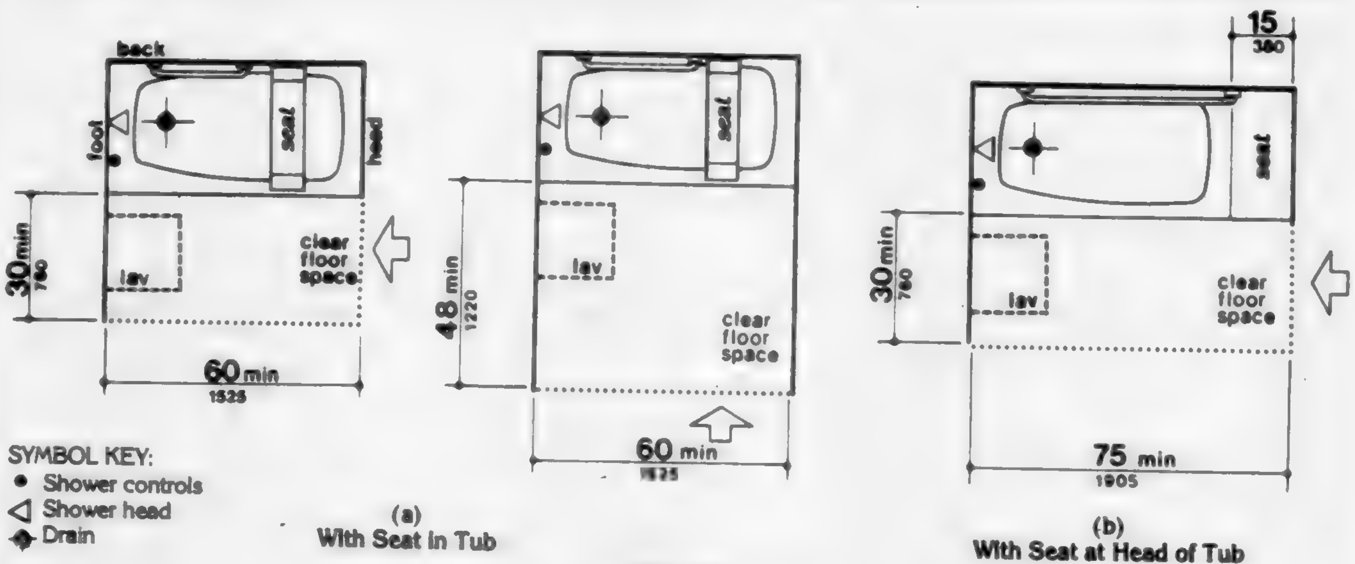
back
foot
head
seat
30 min
760
lav
clear floor space
60 min
1525
48 min
1220
60 min
1525
15
380
30 min
760
75 min
1905
SYMBOL KEY:
● Shower controls
◁ Shower head
✦ Drain

(a)
With Seat in Tub

(b)
With Seat at Head of Tub

Fig. 33
Clear Floor Space at Bathtubs

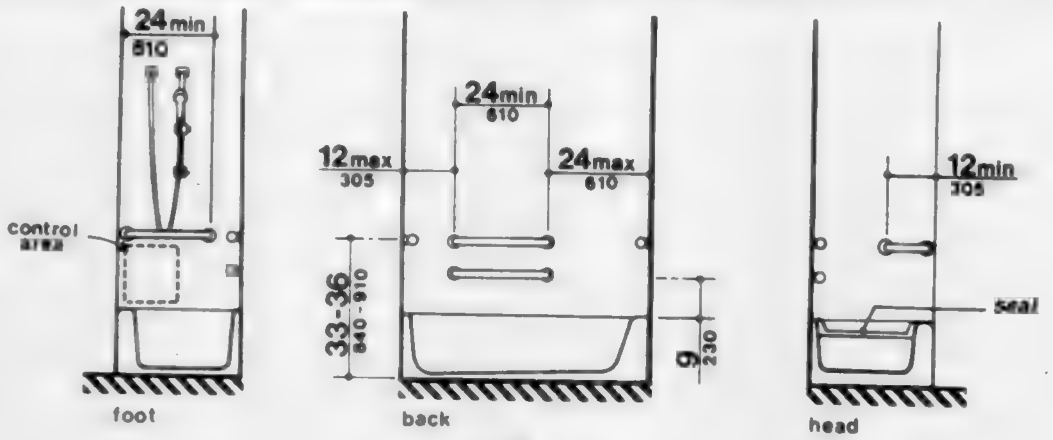
24 min
610
control area
foot
24 min
610
12 max
305
24 max
610
33-36
840-910
9
230
back
12 min
305
seat
head

(a)
With Seat in Tub

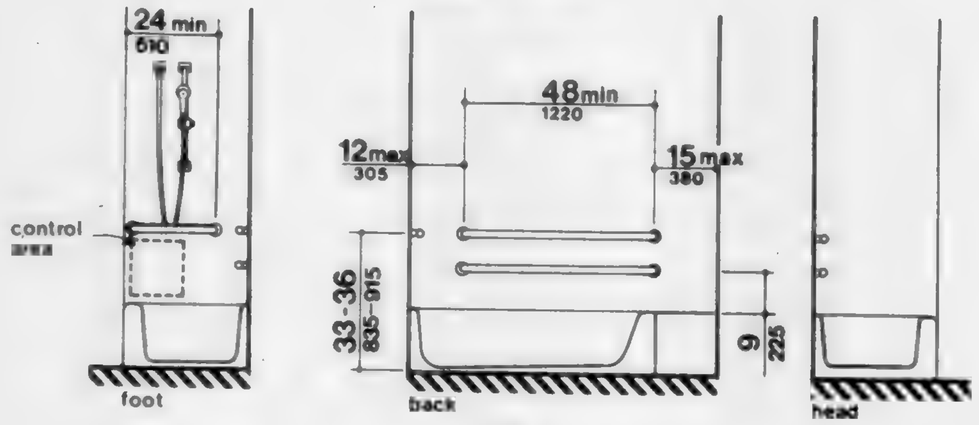
24 min
610
control area
foot
48 min
1220
12 max
305
15 max
380
33-36
835-915
9
225
back
head

(b)
With Seat at Head of Tub

Fig. 34
Grab Bars at Bathtubs

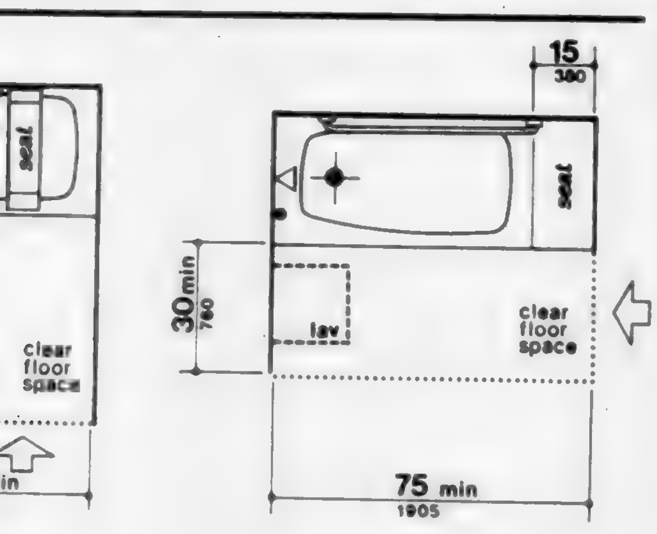
15
380
seat
seat
30min
760
lav
clear
floor
space
clear
floor
space
75 min
1905
in

(b)
With Seat at Head of Tub

3
e at Bathtubs

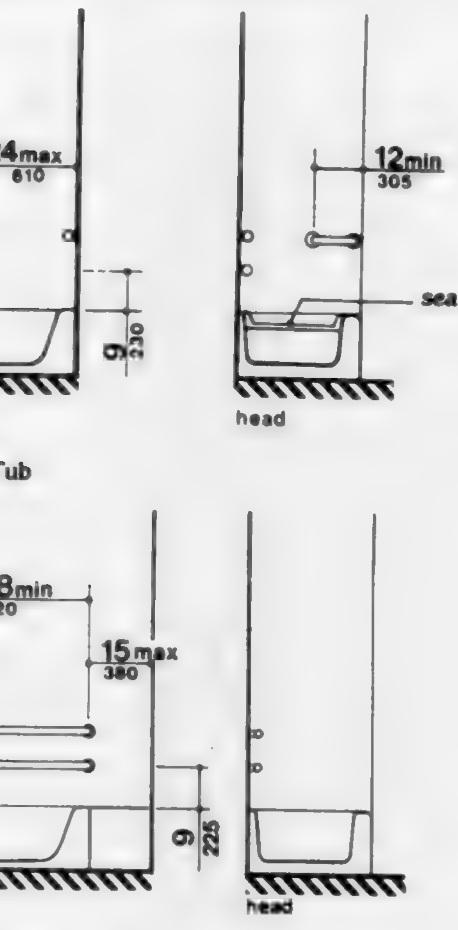
4max
610
12min
305
seat
9
230
head
8min
20
15max
380
9
225
head

Tub

of Tub

thtubs

with 4.22. Accessible toilet rooms shall be on an accessible route.

4.22.2 Doors. All doors to accessible toilet rooms shall comply with 4.13. Doors shall not swing into the clear floor space required for any fixture.

4.22.3* Clear Floor Space. The accessible fixtures and controls required in 4.22.4, 4.22.5, 4.22.6, and 4.22.7 shall be on an accessible route. An unobstructed turning space complying with 4.2.3 shall be provided within an accessible toilet room. The clear floor space at fixtures and controls, the accessible route, and the turning space may overlap.

4.22.4 Water Closets. If toilet stalls are provided, then at least one shall be a standard toilet stall complying with 4.17; *where 6 or more stalls are provided, in addition to the stall complying with 4.17.3, at least one stall 36 in (915 mm) wide with an outward swinging, self-closing door and parallel grab bars complying with Fig. 30(d) and 4.26 shall be provided. Water closets in such stalls* shall comply with 4.16. If water closets are not in stalls, then at least one shall comply with 4.16.

4.22.5 Urinals. If urinals are provided, *then* at least one shall comply with 4.18.

4.22.6 Lavatories and Mirrors. If lavatories and mirrors are provided, *then* at least one of each shall comply with 4.19.

4.22.7 Controls and Dispensers.
If controls, dispensers, receptacles, or other

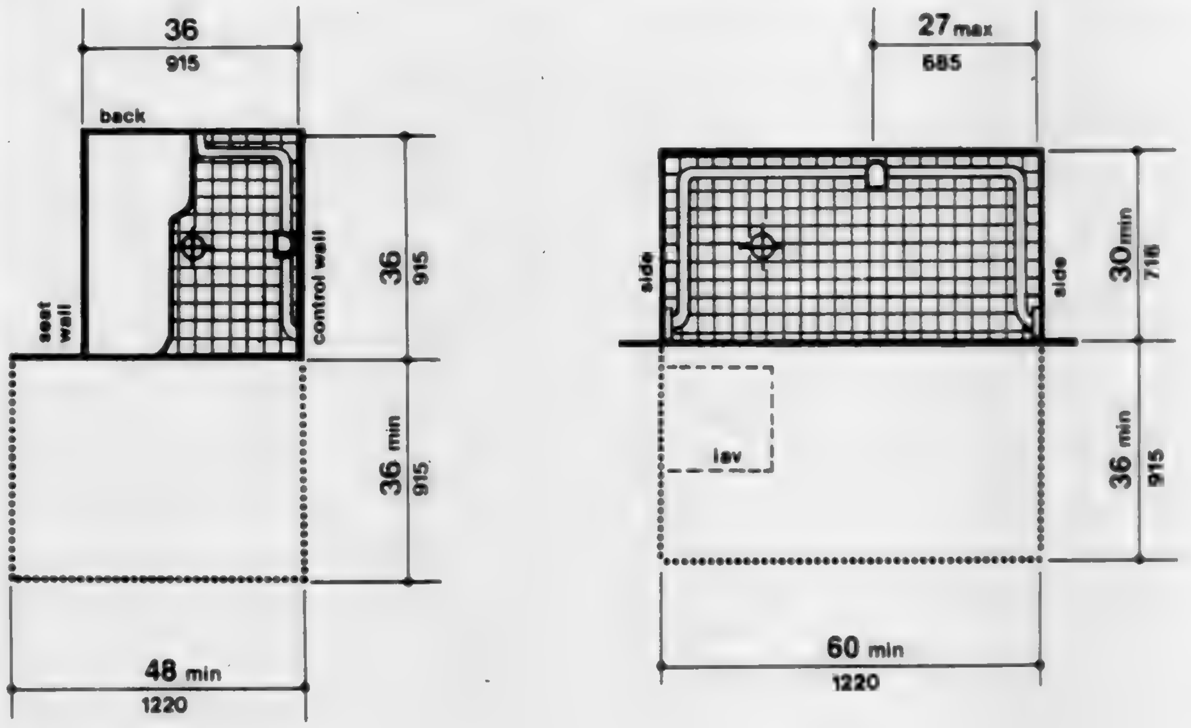
36
915
back
seat wall
control wall
36
915
36 min
915
48 min
1220
27max
685
side
side
30min
760
lav
36 min
915
60 min
1220

(a)
36-in by 36-in
(915-mm by 915-mm) Stall

(b)
30-in by 60-in
(760-mm by 1525-mm) Stall

Fig. 35
Shower Size and Clearances

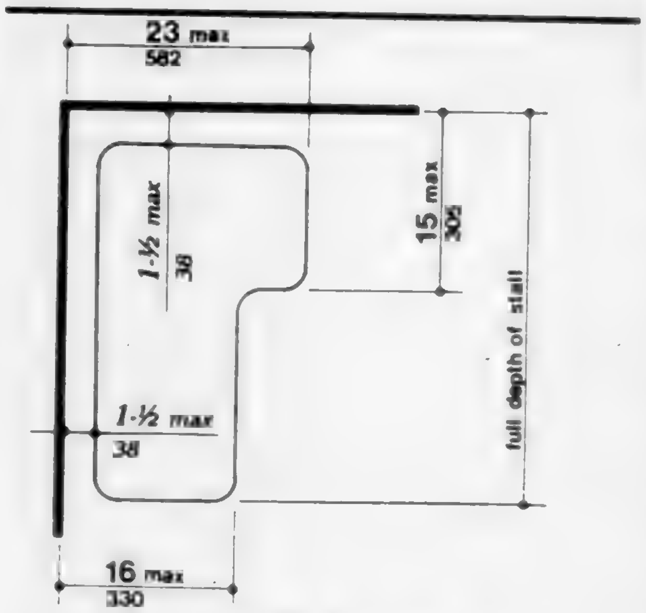
23 max
582
15 max
305
1-½ max
38
1-½ max
38
full depth of stall
16 max
330

Fig. 36
Shower Seat Design

equipment are provided, *then* at least one of each shall be on an accessible route and shall comply with 4.27.

4.23 Bathrooms, Bathing Facilities, and Shower Rooms.

4.23.1 Minimum Number. Bathrooms, bathing facilities, or shower rooms *required to be accessible by 4.1* shall comply with 4.23 and shall be on an accessible route.

4.23.2 Doors. Doors to accessible bathrooms shall comply with 4.13. Doors shall not swing into the floor space required for any fixture.

4.23.3* Clear Floor Space. The accessible fixtures and controls required in 4.23.4, 4.23.5, 4.23.6, 4.23.7, 4.23.8, and 4.23.9 shall be on an accessible route. An unobstructed turning

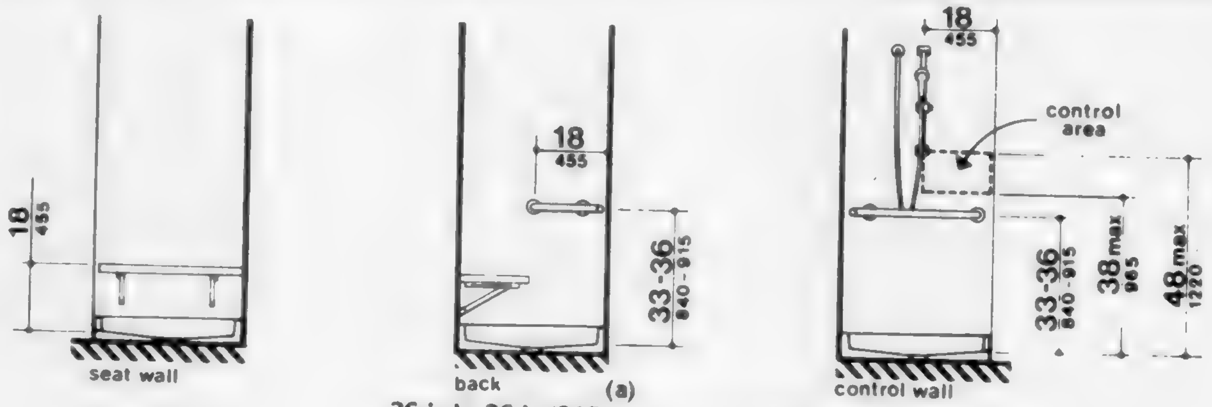
18
455
seat wall
18
455
33-36
840-915
back
18
455
control area
33-36
840-915
38 max
965
48 max
1220
control wall

(a)
36-in by 36-in (915-mm by 915-mm) Stall

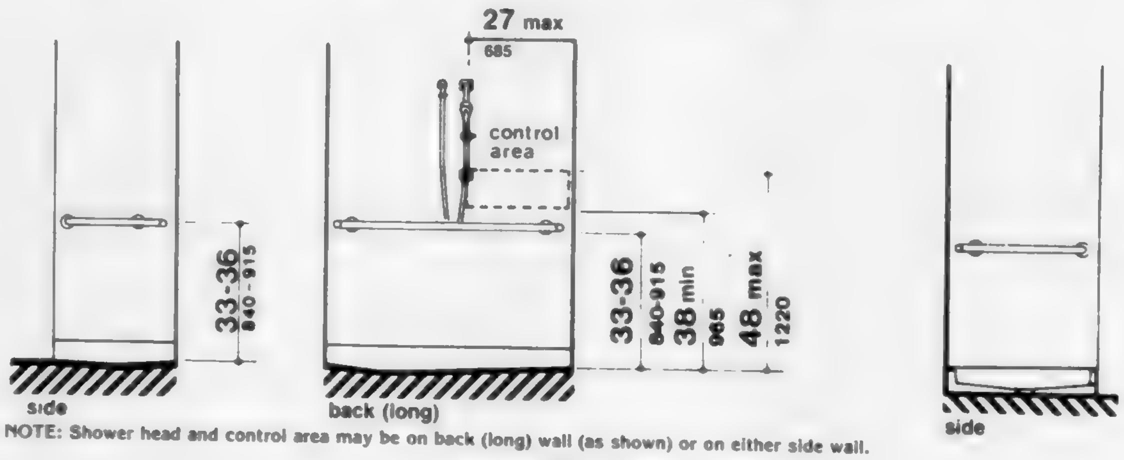
33-36
840-915
side
27 max
685
control area
33-36
840-915
38 min
965
48 max
1220
back (long)
side

NOTE: Shower head and control area may be on back (long) wall (as shown) or on either side wall.

(b)
30-in by 60-in (760-mm by 1525-mm) Stall

Fig. 37
Grab Bars at Shower Stalls

equipment are provided, *then* at least one of each shall be on an accessible route and shall comply with 4.27.

4.23 Bathrooms, Bathing Facilities, and Shower Rooms.

4.23.1 Minimum Number. Bathrooms, bathing facilities, or shower rooms *required to be accessible by 4.1* shall comply with 4.23 and shall be on an accessible route.

4.23.2 Doors. Doors to accessible bathrooms shall comply with 4.13. Doors shall not swing into the floor space required for any fixture.

4.23.3* Clear Floor Space. The accessible fixtures and controls required in 4.23.4, 4.23.5, 4.23.6, 4.23.7, 4.23.8, and 4.23.9 shall be on an accessible route. An unobstructed turning space complying with 4.2.3 shall be provided within an accessible bathroom. The clear floor spaces at fixtures and controls, the accessible route, and the turning space may overlap.

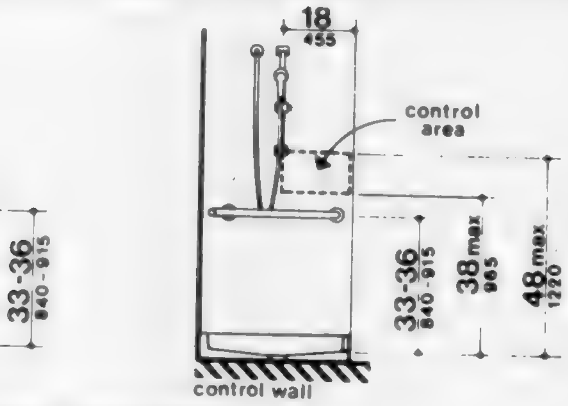

n by 915-mm) Stall

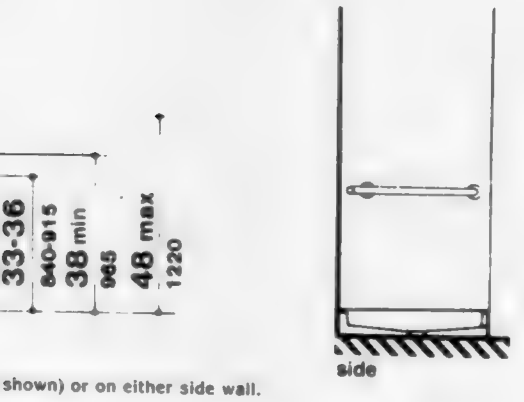

shown) or on either side wall.

y 1525-mm) Stall

wer Stalls

4.23.4 Water Closets. If toilet stalls are provided, then at least one shall be a standard toilet stall complying with 4.17; *where 6 or more stalls are provided, in addition to the stall complying with 4.17.3, at least one stall 36 in (915 mm) wide with an outward swinging, self-closing door and parallel grab bars complying with Fig. 30(d) and 4.26 shall be provided. Water closets in such stalls* shall comply with 4.16. If water closets are not in stalls, then at least one shall comply with 4.16.

4.23.5 Urinals. If urinals are provided, then at least one shall comply with 4.18.

4.23.6 Lavatories and Mirrors. If lavatories and mirrors are provided, then at least one of each shall comply with 4.19.

4.23.7 Controls and Dispensers. If controls, dispensers, receptacles, or other equipment *are* provided, *then* at least one of each shall be on an accessible route and shall comply with 4.27.

4.23.8 Bathing and Shower Facilities. If tubs or showers are provided, then at least one accessible tub that complies with 4.20 or at least one accessible shower that complies with 4.21 shall be provided.

4.23.9* Medicine Cabinets. If medicine cabinets are provided, at least one shall be located with a usable shelf no higher than 44 in (1120 mm) above the floor space. The floor space shall comply with 4.2.4.

4.24 Sinks.

4.24.1 General. Sinks *required to be accessible by 4.1* shall comply with 4.24.

4.24.2 Height. Sinks shall be mounted with the counter or rim no higher than 34 in (865 mm) *above the finish* floor.

4.24.3 Knee Clearance. Knee clearance that is at least 27 in (685 mm) high, 30 in (760 mm) wide, and 19 in (485 mm) deep shall be provided underneath sinks.

4.24.4 Depth. Each sink shall be a maximum of 6-1/2 in (165 mm) deep.

4.24.5 Clear Floor Space. A clear floor space at least 30 in by 48 in (760 mm by 1220 mm) complying with 4.2.4 shall be provided in front of a sink to allow forward approach. The clear floor space shall be on an accessible route and shall extend a maximum of 19 in (485 mm) underneath the sink (see Fig. 32).

4.24.6 Exposed Pipes and Surfaces. Hot water and drain pipes exposed under sinks shall be insulated or otherwise *configured so as to protect against contact.* There shall be no sharp or abrasive surfaces under sinks.

4.24.7 Faucets. Faucets shall comply with 4.27.4. Lever-operated, push-type, touch-type, or electronically controlled mechanisms are acceptable designs.

4.25 Storage.

4.25.1 General. *Fixed* storage facilities such as cabinets, shelves, closets, and drawers *required to be accessible by 4.1* shall comply with 4.25.

4.25.2 Clear Floor Space. A clear floor space at least 30 in by 48 in (760 mm by 1220 mm) complying with 4.2.4 that allows either a forward or parallel approach by a person using a wheelchair shall be provided at accessible storage facilities.

4.25.3 Height. Accessible storage spaces shall be within at least one of the reach ranges specified in 4.2.5 and 4.2.6 *(see Fig. 5 and Fig. 6).* Clothes rods or shelves shall be a maximum of 54 in (1370 mm) *above the finish* floor *for a side approach. Where the distance from the wheelchair to the clothes rod or shelf exceeds 10 in (255 mm) (as in closets without accessible doors) the height and depth to the rod or shelf shall comply with Fig. 38(a) and Fig. 38(b).*

4.25.4 Hardware. Hardware for accessible storage facilities shall comply with 4.27.4. Touch latches and U-shaped pulls are acceptable.

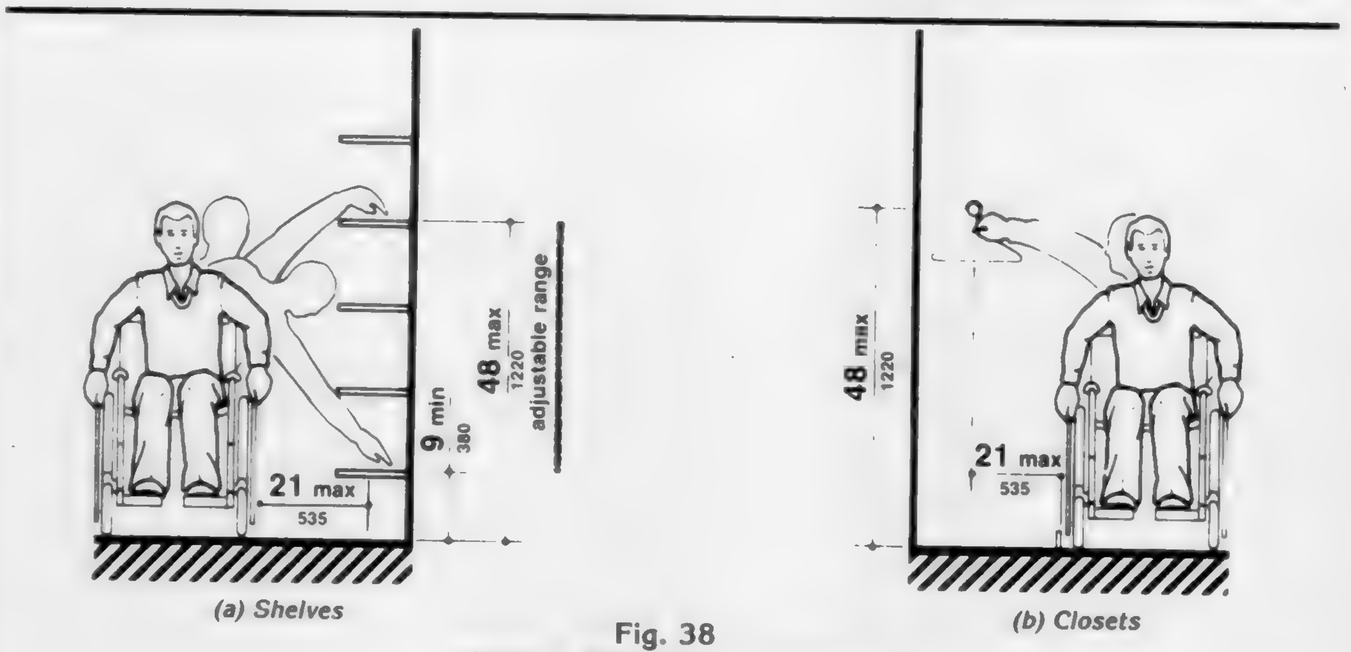

(a) Shelves

(b) Closets

Fig. 38
Storage Shelves and Closets

4.26 Handrails, Grab Bars, and Tub and Shower Seats.

4.26.1* General. All handrails, grab bars, and tub and shower seats *required to be accessible by 4.1, 4.8, 4.9, 4.16, 4.17, 4.20 or 4.21* shall comply with 4.26.

4.26.2* Size and Spacing of Grab Bars and Handrails. The diameter or width of the gripping surfaces of a handrail or grab bar shall be 1-1/4 in to 1-1/2 in (32 mm to 38 mm), or the shape shall provide an equivalent gripping surface. If handrails or grab bars are mounted adjacent to a wall, the space between the wall and the grab bar shall be 1-1/2 in (38 mm) (see Fig. 39(a), (b), (c), and *(e)*). Handrails may be located in a recess if the recess is a maximum of 3 in (75 mm) deep and extends at least 18 in (455 mm) above the top of the rail (see Fig. 39(d)).

4.26.3 Structural Strength. The structural strength of grab bars, tub and shower seats, fasteners, and mounting devices shall meet the following specification:

(1) Bending stress in a grab bar or seat induced by the maximum bending moment from the application of 250 lbf (1112N) shall be less than the allowable stress for the material of the grab bar or seat.

(2) Shear stress induced in a grab bar or seat by the application of 250 lbf (1112N) shall be less than the allowable shear stress for the material of the grab bar or seat. If the connection between the grab bar or seat and its mounting bracket or other support is considered to be fully restrained, then direct and torsional shear stresses shall be totaled for the combined shear stress, which shall not exceed the allowable shear stress.

(3) Shear force induced in a fastener or mounting device from the application of 250 lbf (1112N) shall be less than the allowable lateral load of either the fastener or mounting device or the supporting structure, whichever is the smaller allowable load.

(4) Tensile force induced in a fastener by a direct tension force of 250 lbf (1112N) plus the maximum moment from the application of 250 lbf (1112N) shall be less than the allowable withdrawal load between the fastener and the supporting structure.

(5) Grab bars shall not rotate within their fittings.

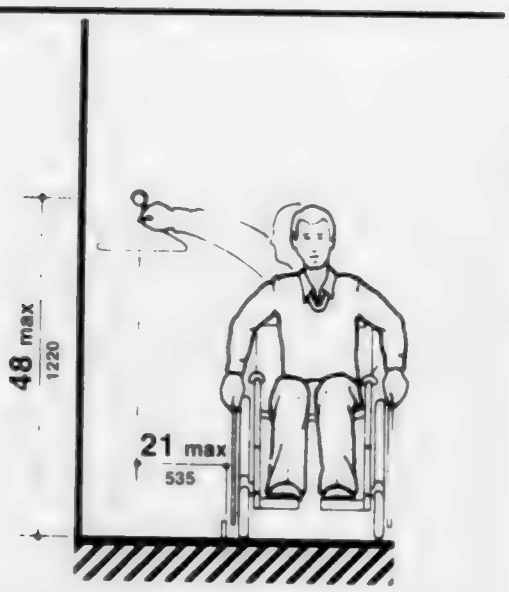

(b) Closets

8
and Closets

be less than the allowable stress for the material of the grab bar or seat.

(2) Shear stress induced in a grab bar or seat by the application of 250 lbf (1112N) shall be less than the allowable shear stress for the material of the grab bar or seat. If the connection between the grab bar or seat and its mounting bracket or other support is considered to be fully restrained, then direct and orsional shear stresses shall be totaled for the ombined shear stress, which shall not exceed he allowable shear stress.

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(4) Tensile force induced in a fastener by a irect tension force of 250 lbf (1112N) plus the naximum moment from the application of 50 lbf (1112N) shall be less than the allowable vithdrawal load between the fastener and the upporting structure.

(5) Grab bars shall not rotate within their ttings.

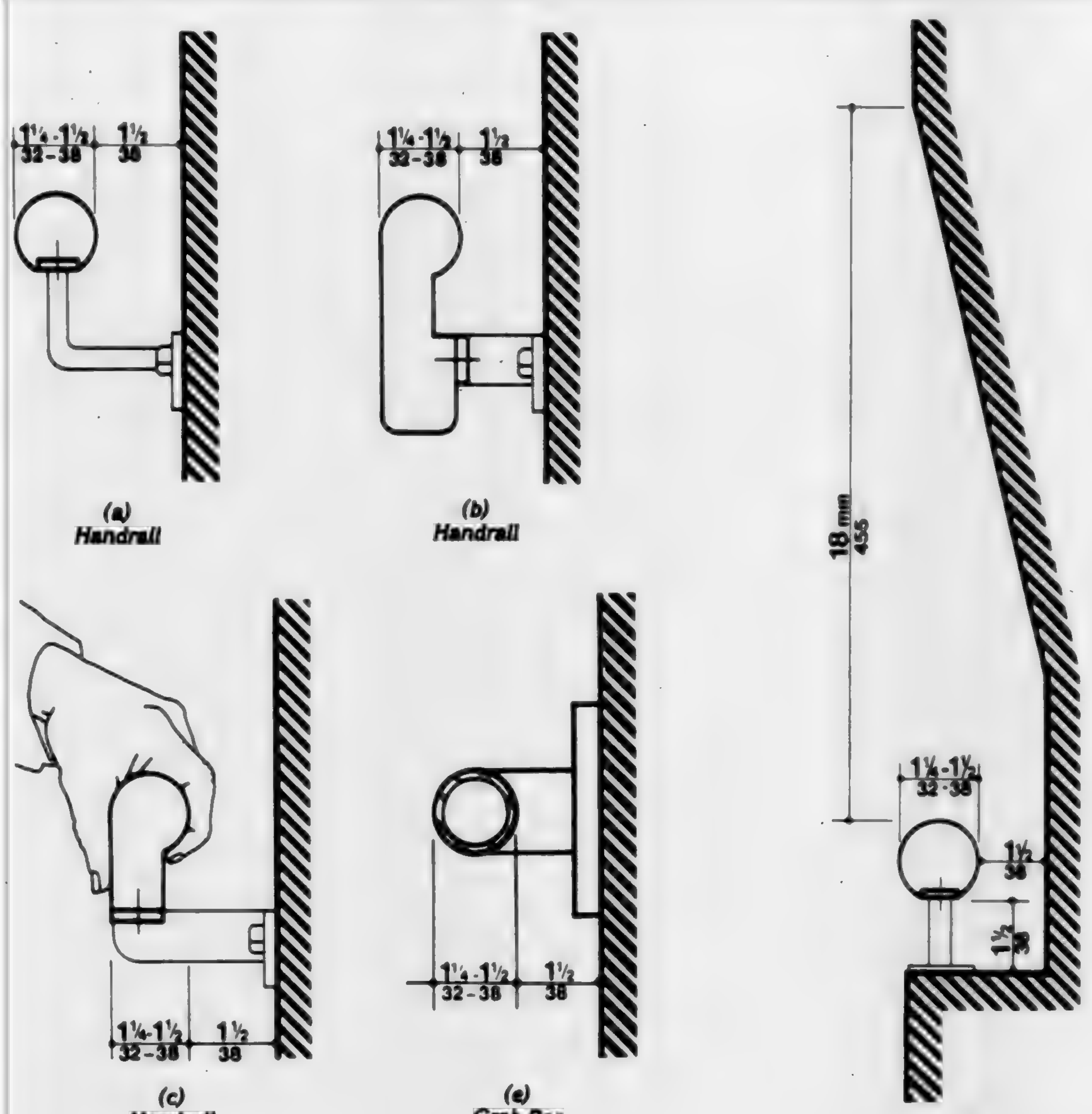

(a)
Handrail

(b)
Handrail

(c)
Handrail

(e)
Grab Bar

(d)
Handrail

Fig. 39
Size and Spacing of Handrails and Grab Bars

4.26.4 Eliminating Hazards. A handrail or grab bar and any wall or other surface adjacent to it shall be free of any sharp or abrasive elements. Edges shall have a minimum radius of 1/8 in (3.2 mm).

4.27 Controls and Operating Mechanisms.

4.27.1 General. Controls and operating mechanisms *required to be accessible by 4.1* shall comply with 4.27.

4.27.2 Clear Floor Space. Clear floor space complying with 4.2.4 that allows a forward or a parallel approach by a person using a wheelchair shall be provided at controls, dispensers, receptacles, and other operable equipment.

4.27.3* Height. The highest operable part of controls, dispensers, receptacles, and other operable equipment shall be placed within at least one of the reach ranges specified in 4.2.5 and 4.2.6. Electrical and communications system receptacles on walls shall be mounted no less than 15 in (380 mm) above the floor.

EXCEPTION: These requirements do not apply where the use of special equipment dictates otherwise or where electrical and communications systems receptacles are not normally intended for use by building occupants.

4.27.4 Operation. Controls and operating mechanisms shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate controls shall be no greater than 5 lbf (22.2 N).

4.28 Alarms.

4.28.1 General. *Alarm systems required to be accessible by 4.1 shall comply with 4.28. At a minimum, visual signal appliances shall be provided in buildings and facilities in each of the following areas: restrooms and any other general usage areas (e.g., meeting rooms), hallways, lobbies, and any other area for common use.*

4.28.2* Audible Alarms. If provided, audible emergency alarms shall produce a sound that exceeds the prevailing equivalent sound level in the room or space by at least 15 *dbA* or exceeds any maximum sound level with a duration of 60 seconds by 5 *dbA*, whichever is louder. Sound levels for alarm signals shall not exceed 120 *dbA*.

4.28.3* Visual Alarms. *Visual alarm signal appliances shall be integrated into the building or facility alarm system. If single station audible alarms are provided then single station visual alarm signals shall be provided. Visual alarm signals shall have the following minimum photometric and location features:*

(1) The lamp shall be a xenon strobe type or equivalent.

(2) The color shall be clear or nominal white (i.e., unfiltered or clear filtered white light).

(3) The maximum pulse duration shall be two-tenths of one second (0.2 sec) with a maximum duty cycle of 40 percent. The pulse duration is defined as the time interval between initial and final points of 10 percent of maximum signal.

(4) The intensity shall be a minimum of 75 candela.

(5) The flash rate shall be a minimum of 1 Hz and a maximum of 3 Hz.

(6) The appliance shall be placed 80 in (2030 mm) above the highest floor level within the space or 6 in (152 mm) below the ceiling, whichever is lower.

(7) In general, no place in any room or space required to have a visual signal appliance shall be more than 50 ft (15 m) from the signal (in the horizontal plane). In large rooms and spaces exceeding 100 ft (30 m) across, without obstructions 6 ft (2 m) above the finish floor, such as auditoriums, devices may be placed around the perimeter, spaced a maximum 100 ft (30 m) apart, in lieu of suspending appliances from the ceiling.

(8) No place in common corridors or hallways in which visual alarm signalling appliances are required shall be more than 50 ft (15 m) from the signal.

4.28.4* Auxiliary Alarms. *Units and* sleeping accommodations shall have a visual alarm connected to the building emergency alarm system or shall have a standard 110-volt electrical receptacle into which such an alarm can be connected *and a means by which a signal from the building emergency alarm system can trigger such an auxiliary alarm. When visual alarms are in place the signal shall be visible in all areas of the unit or room.* Instructions for use of the auxiliary alarm or receptacle shall be provided.

4.29 Detectable Warnings.

4.29.1 General. *Detectable* warnings *required by 4.1* and 4.7 shall comply with 4.29.

4.29.2* Detectable Warnings on Walking Surfaces. *Detectable* warnings shall consist *of raised truncated domes with a diameter of nominal 0.9 in (23 mm), a height of nominal 0.2 in (5 mm) and a center-to-center spacing of nominal 2.35 in (60 mm) and* shall contrast *visually with adjoining surfaces, either light-on-dark, or dark-on-light.*

The material used to provide contrast shall be an integral part of the walking surface. Detectable warnings used on interior surfaces shall differ from adjoining walking surfaces in resiliency or sound-on-cane contact.

4.29.3 Detectable Warnings on Doors To Hazardous Areas. *(Reserved).*

4.29.4 Detectable Warnings at Stairs. *(Reserved).*

4.29.5 Detectable Warnings at Hazardous Vehicular Areas. If a walk crosses or adjoins a vehicular way, *and the walking surfaces are not separated by* curbs, railings, or other elements *between the pedestrian areas and vehicular areas,* the boundary between the areas shall be defined by a continuous *detectable* warning *which is* 36 in (915 mm) wide, complying with 4.29.2.

4.29.6 Detectable Warnings at Reflecting Pools. The edges of reflecting pools shall be protected by railings, walls, curbs, or *detectable* warnings complying with 4.29.2.

4.29.7 Standardization. *(Reserved).*

4.30 Signage.

4.30.1* General. Signage *required to be accessible by 4.1 shall comply with the applicable provisions of 4.30.*

4.30.2* Character Proportion. Letters and numbers on signs shall have a width-to-height ratio between 3:5 and 1:1 and a stroke-width-to-height ratio between 1:5 and 1:10.

4.30.3 Character Height. *Characters and numbers on signs shall be sized according to the viewing distance from which they are to be read. The minimum height is measured using an upper case X. Lower case characters are permitted.*

Height Above Finished Floor	*Minimum Character Height*
Suspended or Projected Overhead in compliance with 4.4.2	*3 in. (75 mm) minimum*

4.30.4* Raised and Brailled Characters and Pictorial Symbol Signs (Pictograms). Letters and numerals shall be raised 1/32 in, *upper case,* sans serif *or simple serif type and shall be accompanied with Grade 2 Braille.* Raised characters shall be at least 5/8 in (16 mm) high, but no higher than 2 in (50 mm). *Pictograms shall be accompanied by the equivalent verbal description placed directly below the pictogram. The border dimension of the pictogram shall be 6 in (152 mm) minimum in height.*

4.30.5* Finish and Contrast. *The characters and background of signs shall be eggshell, matte, or other non-glare finish.* Characters and symbols shall contrast with their background — either light characters on a dark background or dark characters on a light background.

4.30.6 Mounting Location and Height. *Where permanent identification is provided for rooms and spaces, signs shall be installed on the wall adjacent to the latch side of the door. Where there is no wall space to the latch side of the door, including at double leaf doors, signs shall be placed on the nearest adjacent wall. Mounting height shall be 60 in (1525 mm) above the finish floor to the centerline of the sign. Mounting location for such signage shall be so that a person may approach within 3 in (76 mm) of signage without encountering protruding objects or standing within the swing of a door.*

4.30.7* Symbols of Accessibility.

(1) Facilities and elements required to be identified as accessible by 4.1 shall use the international symbol of accessibility. The

4.30 Signage

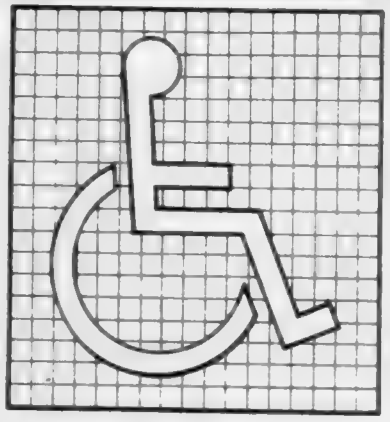

(a)
Proportions
International Symbol of Accessibility

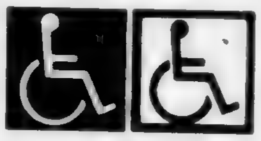

(b)
Display Conditions
International Symbol of Accessibility

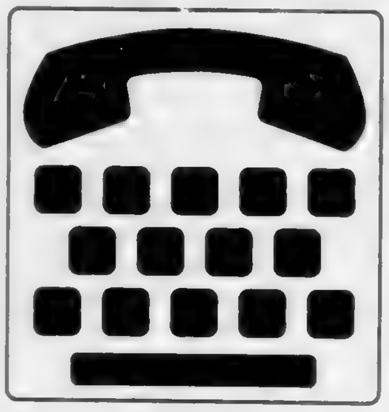

(c)
International TDD Symbol

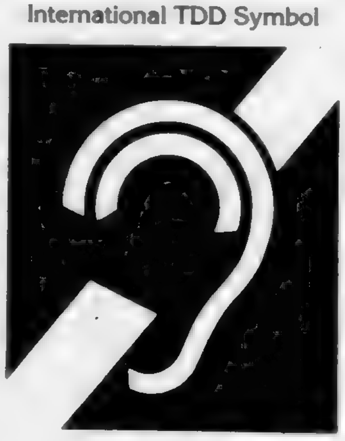

(d)
International Symbol of Access for Hearing Loss

Fig. 43
International Symbols

symbol shall be displayed as shown in Fig. 43*(a) and (b).*

(2) Volume Control Telephones. Telephones required to have a volume control by 4.1.3(17)(b) shall be identified by a sign containing a depiction of a telephone handset with radiating sound waves.

(3) Text Telephones. Text telephones required by 4.1.3 (17)(c) shall be identified by the international TDD symbol (Fig 43(c)). In addition, if a facility has a public text telephone, directional signage indicating the location of the nearest text telephone shall be placed adjacent to all banks of telephones which do not contain a text telephone. Such directional signage shall include the international TDD symbol. If a facility has no banks of telephones, the directional signage shall be provided at the entrance (e.g., in a building directory).

(4) Assistive Listening Systems. In assembly areas where permanently installed assistive listening systems are required by 4.1.3(19)(b) the availability of such systems shall be identified with signage that includes the international symbol of access for hearing loss (Fig 43(d)).

4.30.8* Illumination Levels. *(Reserved).*

4.31 Telephones.

4.31.1 General. Public telephones *required to be accessible by 4.1* shall comply with 4.31.

4.31.2 Clear Floor or Ground Space. A clear floor or ground space at least 30 in by 48 in (760 mm by 1220 mm) that allows either a forward or parallel approach by a person using a wheelchair shall be provided at telephones (see Fig. 44). The clear floor or ground space shall comply with 4.2.4. Bases, enclosures, and fixed seats shall not impede approaches to telephones by people who use wheelchairs.

4.31.3* Mounting Height. The highest operable part of the telephone shall be within the reach ranges specified in 4.2.5 or 4.2.6.

4.31.4 *Protruding Objects.* *Telephones shall comply with 4.4.*

symbol shall be displayed as shown in Fig. 43*(a) and (b).*

(2) Volume Control Telephones. Telephones required to have a volume control by 4.1.3(17)(b) shall be identified by a sign containing a depiction of a telephone handset with radiating sound waves.

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4.30.8* *Illumination Levels.* *(Reserved).*

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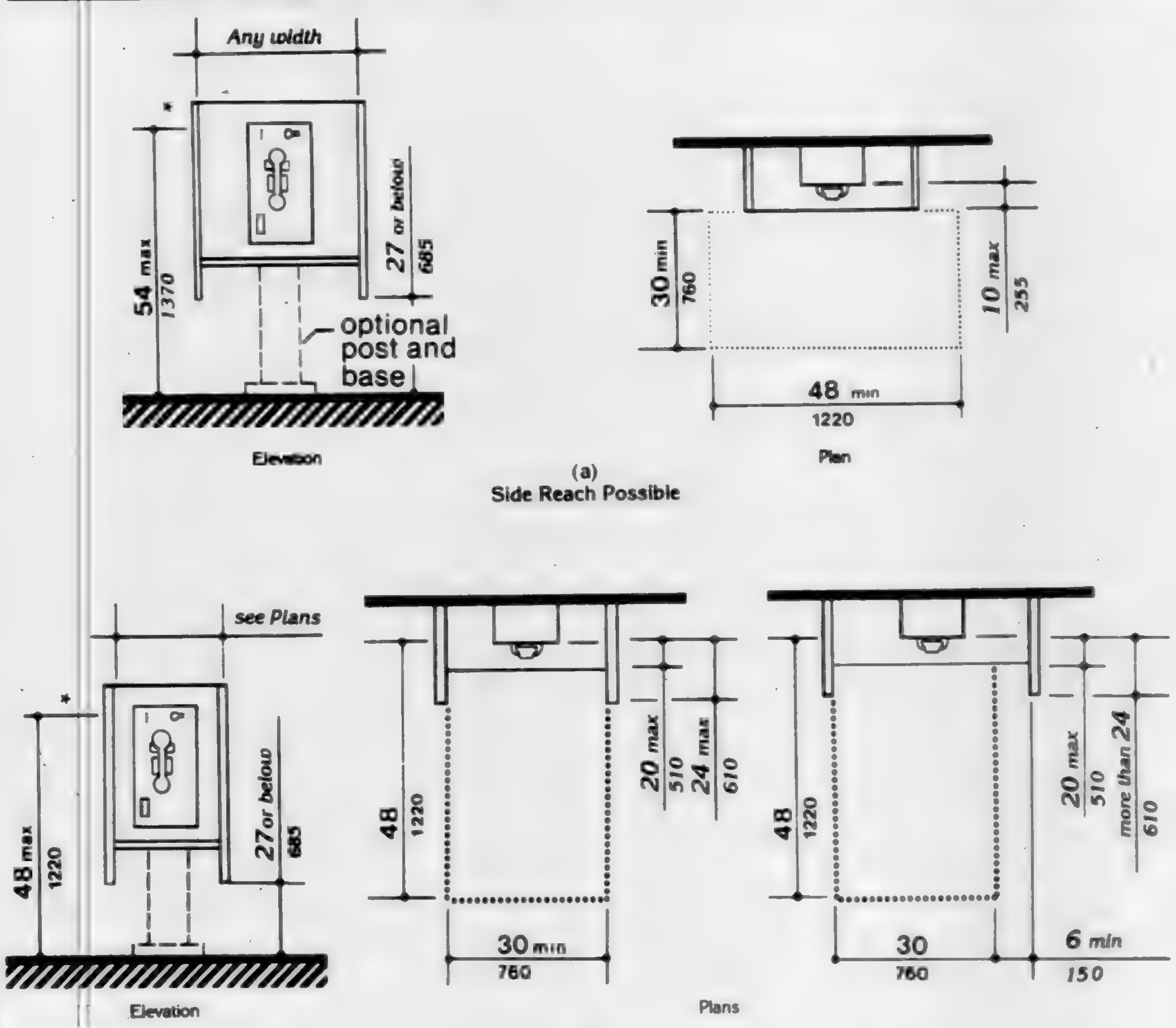

**Height to highest operable parts which are essential to basic operation of telephone.*

(b)
Forward Reach Required

Fig. 44
Mounting Heights and Clearances for Telephones

4.31.5 *Hearing Aid Compatible and Volume Control Telephones Required by 4.1.*

(1) Telephones shall be hearing aid compatible.

(2) Volume controls, *capable of a minimum of 12 dbA and a maximum of 18 dbA above normal, shall be provided in accordance with 4.1.3. If an automatic reset is provided then 18 dbA may be exceeded.*

4.31.6 Controls. Telephones shall have pushbutton controls where service for such equipment is available.

4.31.7 Telephone Books. Telephone books, if provided, shall be located *in a position that complies with the reach ranges specified in 4.2.5 and 4.2.6.*

4.31.8 Cord Length. The cord from the telephone to the handset shall be at least 29 in (735 mm) long.

4.31.9* *Text Telephones Required by 4.1.*

(1) Text telephones used with a pay telephone shall be permanently affixed within, or adjacent to, the telephone enclosure. If an acoustic coupler is used, the telephone cord shall be sufficiently long to allow connection of the text telephone and the telephone receiver.

(2) Pay telephones designed to accommodate a portable text telephone shall be equipped with a shelf and an electrical outlet within or adjacent to the telephone enclosure. The telephone handset shall be capable of being placed flush on the surface of the shelf. The shelf shall be capable of accommodating a text telephone and shall have 6 in (152 mm) minimum vertical clearance in the area where the text telephone is to be placed.

(3) Equivalent facilitation may be provided. For example, a portable text telephone may be made available in a hotel at the registration desk if it is available on a 24-hour basis for use with nearby public pay telephones. In this instance, at least one pay telephone shall comply with paragraph 2 of this section. In addition, if an acoustic coupler is used, the telephone handset cord shall be sufficiently long so as to allow connection of the text telephone and the telephone receiver. Directional signage shall be provided and shall comply with 4.30.7.

4.32 *Fixed or Built-in* Seating and Tables.

4.32.1 Minimum Number. Fixed or built-in seating or tables *required to be accessible by 4.1* shall comply with 4.32.

4.32.2 Seating. If seating spaces for people in wheelchairs are provided at *fixed* tables or counters, clear floor space complying with 4.2.4 shall be provided. Such clear floor space shall not overlap knee space by more than 19 in (485 mm) (see Fig. 45).

4.32.3 Knee Clearances. If seating for people in wheelchairs is provided at tables *or* counters, knee spaces at least 27 in (685 mm) high, 30 in (760 mm) wide, and 19 in (485 mm) deep shall be provided (see Fig. 45).

4.32.4* Height of Tables or Counters. The tops of *accessible* tables and *counters* shall be from 28 in to 34 in (710 mm to 865 mm) *above the finish* floor or ground.

4.33 Assembly Areas.

4.33.1 Minimum Number. Assembly *and associated areas required to be accessible by 4.1 shall comply with 4.33.*

4.33.2* Size of Wheelchair Locations. Each wheelchair location shall provide minimum clear ground or floor spaces as shown in Fig. 46.

4.33.3* Placement of Wheelchair Locations. Wheelchair areas shall be an integral part of any fixed seating plan and shall be *provided so as to provide people with physical disabilities a choice of admission prices and lines of sight comparable to those for members of the general public.* They shall adjoin an accessible route that also serves as a means of egress in case of emergency. *At least one companion fixed seat shall be provided next to each wheelchair seating area. When the seating capacity exceeds 300, wheelchair spaces shall be provided in more than one location. Readily removable seats may be installed in wheelchair spaces when the spaces are not required to accommodate wheelchair users.*

EXCEPTION: Accessible viewing positions may be clustered for bleachers, balconies, and other areas having sight lines that require slopes of greater than 5 percent. Equivalent accessible viewing positions may be located on levels having accessible egress.

4.33.4 Surfaces. The ground or floor at wheelchair locations shall be level and shall comply with 4.5.

shall not overlap knee space by more than 19 in (485 mm) (see Fig. 45).

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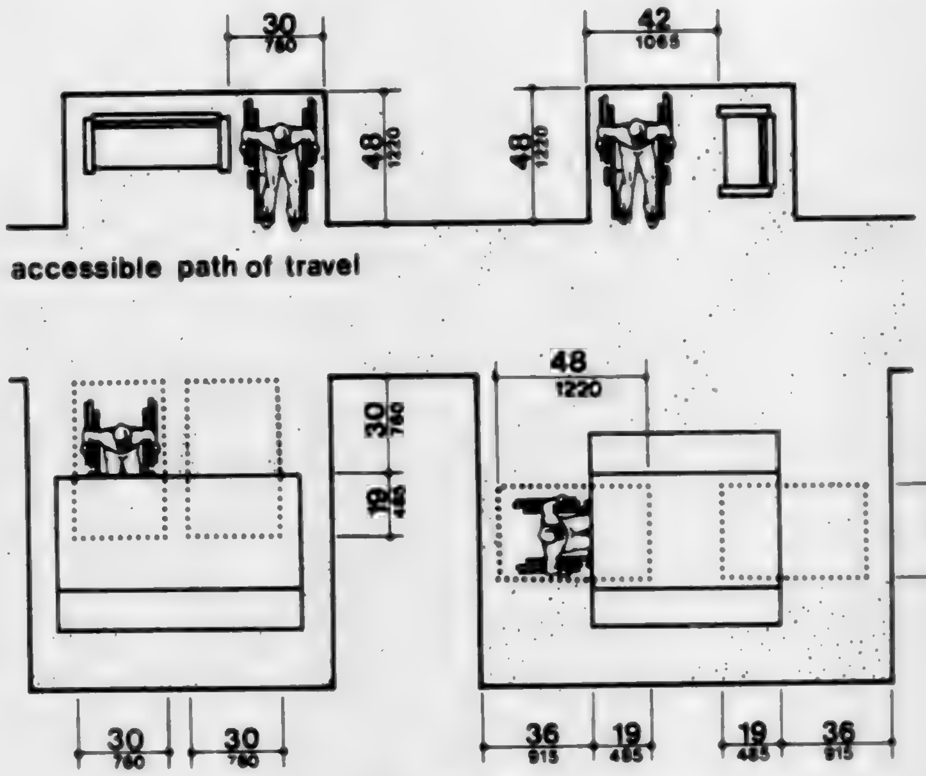

Fig. 45
Minimum Clearances for Seating and Tables

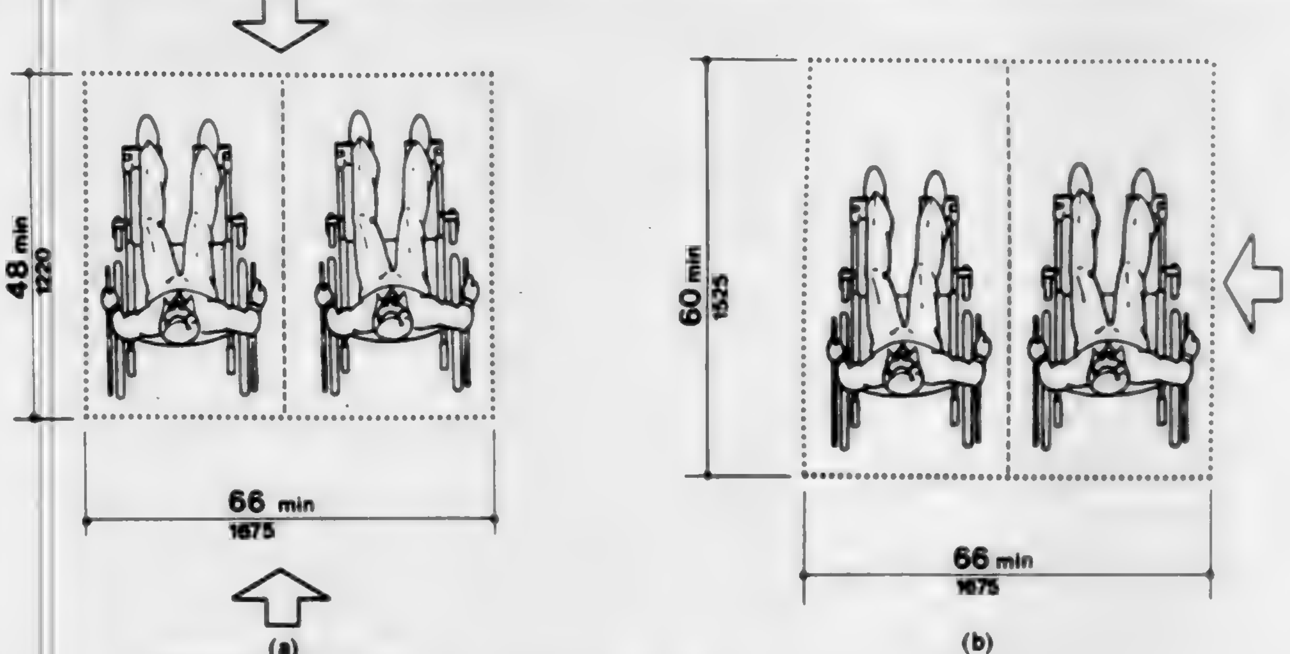

(a)
Forward or Rear Access

(b)
Side Access

Fig. 46
Space Requirements for Wheelchair Seating Spaces in Series

4.33.5 Access to Performing Areas. An accessible route shall connect wheelchair seating locations with performing areas, including stages, arena floors, dressing rooms, locker rooms, and other spaces used by performers.

4.33.6* Placement of Listening Systems. If the listening system provided serves individual fixed seats, then such seats shall be located within a 50 ft (15 m) viewing distance of the stage or playing area and shall have a complete view of the stage or playing area.

4.33.7* Types of Listening Systems. *Assistive listening systems (ALS) are intended to augment standard public address and audio systems by providing signals which can be received directly by persons with special receivers or their own hearing aids and which eliminate or filter background noise. The type of assistive listening system appropriate for a particular application depends on the characteristics of the setting, the nature of the program, and the intended audience. Magnetic induction loops, infra-red and radio frequency systems are types of listening systems which are appropriate for various applications.*

4.34 Automated Teller Machines.

4.34.1 General. *Each machine required to be accessible by 4.1.3 shall be on an accessible route and shall comply with 4.34.*

4.34.2 Controls. *Controls for user activation shall comply with the requirements of 4.27.*

4.34.3 Clearances and Reach Range. *Free standing or built-in units not having a clear space under them shall comply with 4.27.2 and 4.27.3 and provide for a parallel approach and both a forward and side reach to the unit allowing a person in a wheelchair to access the controls and dispensers.*

4.34.4 Equipment for Persons with Vision Impairments. *Instructions and all information for use shall be made accessible to and independently usable by persons with vision impairments.*

4.35 Dressing and Fitting Rooms.

4.35.1 General. *Dressing and fitting rooms required to be accessible by 4.1 shall comply with 4.35 and shall be on an accessible route.*

4.35.2 Clear Floor Space. *A clear floor space allowing a person using a wheelchair to make a 180-degree turn shall be provided in every accessible dressing room entered through a swinging or sliding door. No door shall swing into any part of the turning space. Turning space shall not be required in a private dressing room entered through a curtained opening at least 32 in (815 mm) wide if clear floor space complying with section 4.2 renders the dressing room usable by a person using a wheelchair.*

4.35.3 Doors. *All doors to accessible dressing rooms shall be in compliance with section 4.13.*

4.35.4 Bench. *Every accessible dressing room shall have a 24 in by 48 in (610 mm by 1220 mm) bench fixed to the wall along the longer dimension. The bench shall be mounted 17 in to 19 in (430 mm to 485 mm) above the finish floor. Clear floor space shall be provided alongside the bench to allow a person using a wheelchair to make a parallel transfer onto the bench. The structural strength of the bench and attachments shall comply with 4.26.3. Where installed in conjunction with showers, swimming pools, or other wet locations, water shall not accumulate upon the surface of the bench and the bench shall have a slip-resistant surface.*

4.35.5 Mirror. *Where mirrors are provided in dressing rooms of the same use, then in an accessible dressing room, a full-length mirror, measuring at least 18 in wide by 54 in high (460 mm by 1370 mm), shall be mounted in a position affording a view to a person on the bench as well as to a person in a standing position.*

NOTE: Sections 4.1.1 through 4.1.7 and sections 5 through 10 are different from ANSI A117.1 in their entirety and are printed in standard type.

4.35 Dressing and Fitting Rooms.

4.35.1 General. *Dressing and fitting rooms required to be accessible by 4.1 shall comply with 4.35 and shall be on an accessible route.*

4.35.2 Clear Floor Space. *A clear floor space allowing a person using a wheelchair to make a 180-degree turn shall be provided in every accessible dressing room entered through a swinging or sliding door. No door shall swing into any part of the turning space. Turning space shall not be required in a private dressing room entered through a curtained opening at least 32 in (815 mm) wide if clear floor space complying with section 4.2 renders the dressing room usable by a person using a wheelchair.*

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NOTE: Sections 4.1.1 through 4.1.7 and sections 5 through 10 are different from ANSI A117.1 in their entirety and are printed in standard type.

5. RESTAURANTS AND CAFETERIAS.

5.1* General. Except as specified or modified in this section, restaurants and cafeterias shall comply with the requirements of 4.1 to 4.35. Where fixed tables (or dining counters where food is consumed but there is no service) are provided, at least 5 percent, but not less than one, of the fixed tables (or a portion of the dining counter) shall be accessible and shall comply with 4.32 as required in 4.1.3(18). In establishments where separate areas are designated for smoking and non-smoking patrons, the required number of accessible fixed tables (or counters) shall be proportionally distributed between the smoking and non-smoking areas. In new construction, and where practicable in alterations, accessible fixed tables (or counters) shall be distributed throughout the space or facility.

5.2 Counters and Bars. Where food or drink is served at counters exceeding 34 in (865 mm) in height for consumption by customers seated on stools or standing at the counter, a portion of the main counter which is 60 in (1525 mm) in length minimum shall be provided in compliance with 4.32 or service shall be available at accessible tables within the same area.

5.3 Access Aisles. All accessible fixed tables shall be accessible by means of an access aisle at least 36 in (915 mm) clear between parallel edges of tables or between a wall and the table edges.

5.4 Dining Areas. In new construction, all dining areas, including raised or sunken dining areas, loggias, and outdoor seating areas, shall be accessible. In non-elevator buildings, an accessible means of vertical access to the mezzanine is not required under the following conditions: 1) the area of mezzanine seating measures no more than 33 percent of the area of the total accessible seating area; 2) the same services and decor are provided in an accessible space usable by the general public; and, 3) the accessible areas are not restricted to use by people with disabilities. In alterations, accessibility to raised or sunken dining areas, or to all parts of outdoor seating areas is not required provided that the same services and decor are provided in an accessible space usable by the general public and are not restricted to use by people with disabilities.

5.5 Food Service Lines. Food service lines shall have a minimum clear width of 36 in (915 mm), with a preferred clear width of 42 in (1065 mm) to allow passage around a person using a wheelchair. Tray slides shall be mounted no higher than 34 in (865 mm) above the floor (see Fig. 53). If self-service shelves

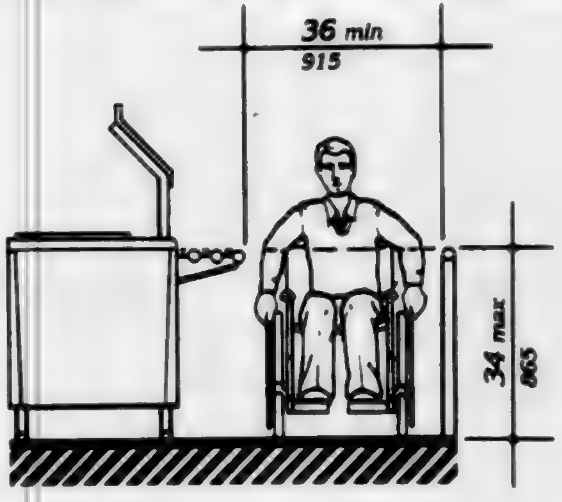

Fig. 53
Food Service Lines

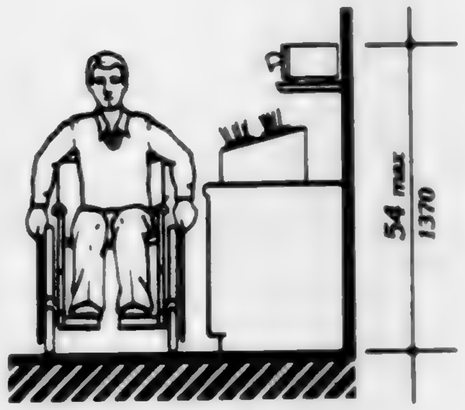

Fig. 54
Tableware Areas

are provided, at least 50 percent of each type must be within reach ranges specified in 4.2.5 and 4.2.6.

5.6 Tableware and Condiment Areas. Self-service shelves and dispensing devices for tableware, dishware, condiments, food and beverages shall be installed to comply with 4.2 (see Fig. 54).

5.7 Raised Platforms. In banquet rooms or spaces where a head table or speaker's lectern is located on a raised platform, the platform shall be accessible in compliance with 4.8 or 4.11. Open edges of a raised platform shall be protected by placement of tables or by a curb.

5.8 Vending Machines and Other Equipment. Spaces for vending machines and other equipment shall comply with 4.2 and shall be located on an accessible route.

5.9 Quiet Areas. (Reserved).

6. MEDICAL CARE FACILITIES.

6.1 General. Medical care facilities included in this section are those in which people receive physical or medical treatment or care and where persons may need assistance in responding to an emergency and where the period of stay may exceed twenty-four hours. In addition to the requirements of 4.1 through 4.35, medical care facilities and buildings shall comply with 6.

(1) Hospitals - general purpose hospitals, psychiatric facilities, detoxification facilities — At least 10 percent of patient bedrooms and toilets, and all public use and common use areas are required to be designed and constructed to be accessible.

(2) Hospitals and rehabilitation facilities that specialize in treating conditions that affect mobility, or units within either that specialize in treating conditions that affect mobility — All patient bedrooms and toilets, and all public use and common use areas are required to be designed and constructed to be accessible.

(3) Long term care facilities, nursing homes — At least 50 percent of patient bedrooms and toilets, and all public use and common use areas are required to be designed and constructed to be accessible.

(4) Alterations to patient bedrooms.

(a) When patient bedrooms are being added or altered as part of a planned renovation of an entire wing, a department, or other discrete area of an existing medical facility, a percentage of the patient bedrooms that are being added or altered shall comply with 6.3. The percentage of accessible rooms provided shall be consistent with the percentage of rooms required to be accessible by the applicable requirements of 6.1(1), 6.1(2), or 6.1(3), until the number of accessible patient bedrooms in the facility equals the overall number that would be required if the facility were newly constructed. (For example, if 20 patient bedrooms are being altered in the obstetrics department of a hospital, 2 of the altered rooms must be made accessible. If, within the same hospital, 20 patient bedrooms are being altered in a unit that specializes in treating mobility impairments, all of the altered rooms must be made accessible.) Where toilet/bath rooms are part of patient bedrooms which are added or altered and required to be accessible, each such patient toilet/bathroom shall comply with 6.4.

(b) When patient bedrooms are being added or altered individually, and not as part of an alteration of the entire area, the altered patient bedrooms shall comply with 6.3, unless either: a) the number of accessible rooms provided in the department or area containing the altered patient bedroom equals the number of accessible patient bedrooms that would be required if the percentage requirements of 6.1(1), 6.1(2), or 6.1(3) were applied to that department or area; or b) the number of accessible patient bedrooms in the facility equals the overall number that would be required if the facility were newly constructed. Where toilet/bathrooms are part of patient bedrooms which are added or altered and required to be accessible, each such toilet/bathroom shall comply with 6.4.

6.2 Entrances. At least one accessible entrance that complies with 4.14 shall be protected from the weather by canopy or roof overhang. Such entrances shall incorporate a passenger loading zone that complies with 4.6.6.

6.3 Patient Bedrooms. Provide accessible patient bedrooms in compliance with 4.1 through 4.35. Accessible patient bedrooms shall comply with the following:

(1) Each bedroom shall have a door that complies with 4.13.

EXCEPTION: Entry doors to acute care hospital bedrooms for in-patients shall be exempted from the requirement in 4.13.6 for maneuvering space at the latch side of the door if the door is at least 44 in (1120 mm) wide.

(2) Each bedroom shall have adequate space to provide a maneuvering space that complies with 4.2.3. In rooms with 2 beds, it is preferable that this space be located between beds.

(3) Each bedroom shall have adequate space to provide a minimum clear floor space of 36 in (915 mm) along each side of the bed and to provide an accessible route complying with 4.3.3 to each side of each bed.

6.4 Patient Toilet Rooms. Where toilet/bath rooms are provided as a part of a patient bedroom, each patient bedroom that is required to be accessible shall have an accessible toilet/bath room that complies with 4.22 or 4.23 and shall be on an accessible route.

7. BUSINESS AND MERCANTILE.

7.1 General. In addition to the requirements of 4.1 to 4.35, the design of all areas used for business transactions with the public shall comply with 7.

7.2 Sales and Service Counters, Teller Windows, Information Counters.

(1) In department stores and miscellaneous retail stores where counters have cash registers and are provided for sales or distribution of goods or services to the public, at least one of each type shall have a portion of the counter which is at least 36 in (915 mm) in length with a maximum height of 36 in (915 mm) above the finish floor. It shall be on an accessible route complying with 4.3. The accessible counters must be dispersed throughout the building or facility. In alterations where it is technically infeasible to provide an accessible counter, an auxiliary counter meeting these requirements may be provided.

(2) At ticketing counters, teller stations in a bank, registration counters in hotels and motels, box office ticket counters, and other counters that may not have a cash register but at which goods or services are sold or distributed, either:

(i) a portion of the main counter which is a minimum of 36 in (915 mm) in length shall be provided with a maximum height of 36 in (915 mm); or

(ii) an auxiliary counter with a maximum height of 36 in (915 mm) in close proximity to the main counter shall be provided; or

(iii) equivalent facilitation shall be provided (e.g., at a hotel registration counter, equivalent facilitation might consist of: (1) provision of a folding shelf attached to the main counter on which an individual with disabilities can write, and (2) use of the space on the side of the counter or at the concierge desk, for handing materials back and forth).

All accessible sales and service counters shall be on an accessible route complying with 4.3.

(3)* Assistive Listening Devices. (Reserved)

7.3* Check-out Aisles.

(1) In new construction, accessible check-out aisles shall be provided in conformance with the table below:

Total Check-out Aisles of Each Design	Minimum Number of Accessible Check-out Aisles (of each design)
1 - 4	1
5 - 8	2
8 - 15	3
over 15	3, plus 20% of additional aisles

EXCEPTION: In new construction, where the selling space is under 5000 square feet, only one check-out aisle is required to be accessible.

EXCEPTION: In alterations, at least one check-out aisle shall be accessible in facilities under 5000 square feet of selling space. In facilities of 5000 or more square feet of selling space, at least one of each design of check-out aisle shall be made accessible when altered until the number of accessible check-out aisles of each design equals the number required in new construction.

Examples of check-out aisles of different "design" include those which are specifically designed to serve different functions. Different "design" includes but is not limited to the following features - length of belt or no belt; or permanent signage designating the aisle as an express lane.

(2) Clear aisle width for accessible check-out aisles shall comply with 4.2.1 and maximum adjoining counter height shall not exceed 38 in (965 mm) above the finish floor. The top of the lip shall not exceed 40 in (1015 mm) above the finish floor.

(3) Signage identifying accessible check-out aisles shall comply with 4.30.7 and shall be mounted above the check-out aisle in the same location where the check-out number or type of check-out is displayed.

7.4 Security Bollards. Any device used to prevent the removal of shopping carts from store premises shall not prevent access or egress to people in wheelchairs. An alternate entry that is equally convenient to that provided for the ambulatory population is acceptable.

8. LIBRARIES.

8.1 General. In addition to the requirements of 4.1 to 4.35, the design of all public areas of a library shall comply with 8, including reading and study areas, stacks, reference rooms, reserve areas, and special facilities or collections.

8.2 Reading and Study Areas. At least 5 percent or a minimum of one of each element of fixed seating, tables, or study carrels shall comply with 4.2 and 4.32. Clearances between fixed accessible tables and between study carrels shall comply with 4.3.

8.3 Check-Out Areas. At least one lane at each check-out area shall comply with 7.2(1). Any traffic control or book security gates or turnstiles shall comply with 4.13.

8.4 Card Catalogs and Magazine Displays. Minimum clear aisle space at card catalogs and magazine displays shall comply with Fig. 55. Maximum reach height shall comply with 4.2, with a height of 48 in (1220 mm) preferred irrespective of approach allowed.

8.5 Stacks. Minimum clear aisle width between stacks shall comply with 4.3, with a minimum clear aisle width of 42 in (1065 mm) preferred where possible. Shelf height in stack areas is unrestricted (see Fig. 56).

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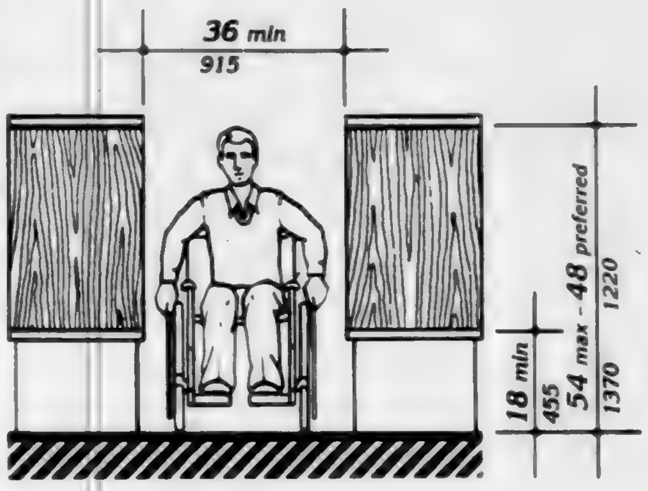

Fig. 55
Card Catalog

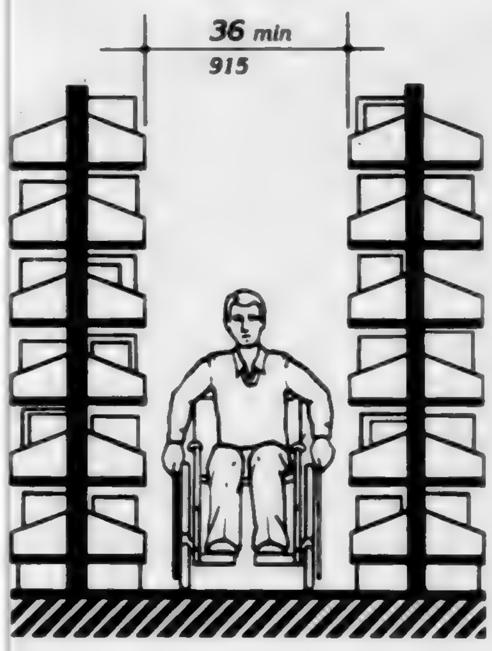

Fig. 56
Stacks

9. ACCESSIBLE TRANSIENT LODGING.

(1) Except as specified in the special technical provisions of this section, accessible transient lodging shall comply with the applicable requirements of 4.1 through 4.35. Transient lodging includes facilities or portions thereof used for sleeping accommodations, when not classed as a medical care facility.

9.1 Hotels, Motels, Inns, Boarding Houses, Dormitories, Resorts and Other Similar Places of Transient Lodging.

9.1.1 General. All public use and common use areas are required to be designed and constructed to comply with section 4 (Accessible Elements and Spaces: Scope and Technical Requirements).

EXCEPTION: Sections 9.1 through 9.4 do not apply to an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor.

9.1.2 Accessible Units, Sleeping Rooms, and Suites. Accessible sleeping rooms or suites that comply with the requirements of 9.2 (Requirements for Accessible Units, Sleeping Rooms, and Suites) shall be provided in conformance with the table below. In addition, in hotels, of 50 or more sleeping rooms or suites, additional accessible sleeping rooms or suites that include a roll-in shower shall also be provided in conformance with the table below. Such accommodations shall comply with the requirements of 9.2, 4.21, and Figure 57(a) or (b).

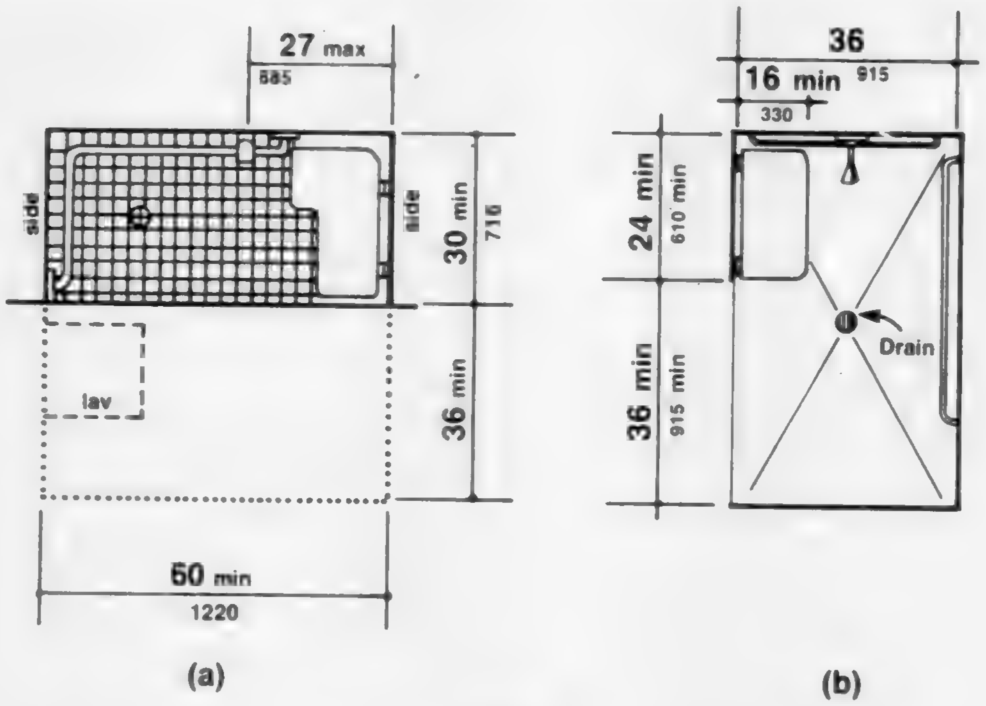

Fig. 57
Roll-in Shower with Folding Seat

Number of Rooms	Accessible Rooms	Rooms with Roll-in Showers
1 to 25	1	
26 to 50	2	
51 to 75	3	1
76 to 100	4	1
101 to 150	5	2
151 to 200	6	2
201 to 300	7	3
301 to 400	8	4
401 to 500	9	4 plus one for each additional 100 over 400
501 to 1000	2% of total	
1001 and over	20 plus 1 for each 100 over 1000	

9.1.3 Sleeping Accommodations for Persons with Hearing Impairments. In addition to those accessible sleeping rooms and suites required by 9.1.2, sleeping rooms and suites that comply with 9.3 (Visual Alarms, Notification Devices, and Telephones) shall be provided in conformance with the following table:

Number of Elements	Accessible Elements
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	2% of total
1001 and over	20 plus 1 for each 100 over 1000

ith Hearing Impairments

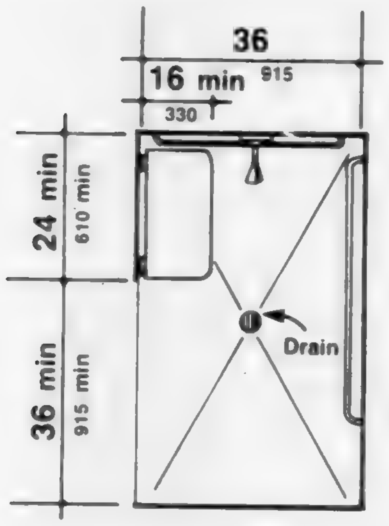

(b)

. 57
with Folding Seat

and suites that comply with 9.3 (Visual Alarms, Notification Devices, and Telephones) shall be provided in conformance with the following table:

Number of Elements	Accessible Elements
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	2% of total
1001 and over	20 plus 1 for each 100 over 1000

9.1.4 Classes of Sleeping Accommodations.

(1) In order to provide persons with disabilities a range of options equivalent to those available to other persons served by the facility, sleeping rooms and suites required to be accessible by 9.1.2 shall be dispersed among the various classes of sleeping accommodations available to patrons of the place of transient lodging. Factors to be considered include room size, cost, amenities provided, and the number of beds provided.

(2) Equivalent Facilitation. For purposes of this section, it shall be deemed equivalent facilitation if the operator of a facility elects to limit construction of accessible rooms to those intended for multiple occupancy, provided that such rooms are made available at the cost of a single-occupancy room to an individual with disabilities who requests a single-occupancy room.

9.1.5. Alterations to Accessible Units, Sleeping Rooms, and Suites. When sleeping rooms are being altered in an existing facility, or portion thereof, subject to the requirements of this section, at least one sleeping room or suite that complies with the requirements of 9.2 (Requirements for Accessible Units, Sleeping Rooms, and Suites) shall be provided for each 25 sleeping rooms, or fraction thereof, of rooms being altered until the number of such rooms provided equals the number required to be accessible with 9.1.2. In addition, at least one sleeping room or suite that complies with the requirements of 9.3 (Visual Alarms, Notification Devices, and Telephones) shall be provided for each 25 sleeping rooms, or fraction thereof, of rooms being altered until the number of such rooms equals the number required to be accessible by 9.1.3.

9.2 Requirements for Accessible Units, Sleeping Rooms and Suites.

9.2.1 General. Units, sleeping rooms, and suites required to be accessible by 9.1 shall comply with 9.2.

9.2.2 Minimum Requirements. An accessible unit, sleeping room or suite shall be on an accessible route complying with 4.3 and have the following accessible elements and spaces.

(1) Accessible sleeping rooms shall have a 36 in (915 mm) clear width maneuvering space located along both sides of a bed, except that where two beds are provided, this requirement can be met by providing a 36 in (915 mm) wide maneuvering space located between the two beds.

(2) An accessible route complying with 4.3 shall connect all accessible spaces and elements, including telephones, within the unit, sleeping room, or suite. This is not intended to require an elevator in multi-story units as long as the spaces identified in 9.2.2(6) and (7) are on accessible levels and the accessible sleeping area is suitable for dual occupancy.

(3) Doors and doorways designed to allow passage into and within all sleeping rooms, suites or other covered units shall comply with 4.13.

(4) If fixed or built-in storage facilities such as cabinets, shelves, closets, and drawers are provided in accessible spaces, at least one of each type provided shall contain storage space complying with 4.25. Additional storage may be provided outside of the dimensions required by 4.25.

(5) All controls in accessible units, sleeping rooms, and suites shall comply with 4.27.

(6) Where provided as part of an accessible unit, sleeping room, or suite, the following spaces shall be accessible and shall be on an accessible route:

(a) the living area.

(b) the dining area.

(c) at least one sleeping area.

(d) patios, terraces, or balconies.

EXCEPTION: The requirements of 4.13.8 and 4.3.8 do not apply where it is necessary to utilize a higher door threshold or a change in level to protect the integrity of the unit from wind/water damage. Where this exception results in patios, terraces or balconies that are not at an accessible level, equivalent facilitation shall be provided. (E.g., equivalent facilitation at a hotel patio or balcony might consist of providing raised decking or a ramp to provide accessibility.)

(e) at least one full bathroom (i.e., one with a water closet, a lavatory, and a bathtub or shower).

(f) if only half baths are provided, at least one half bath.

(g) carports, garages or parking spaces.

(7) Kitchens, Kitchenettes, or Wet Bars. When provided as accessory to a sleeping room or suite, kitchens, kitchenettes, wet bars, or similar amenities shall be accessible. Clear floor space for a front or parallel approach to cabinets, counters, sinks, and appliances shall be provided to comply with 4.2.4. Countertops and sinks shall be mounted at a maximum height of 34 in (865 mm) above the floor. At least fifty percent of shelf space in cabinets or refrigerator/freezers shall be within the reach ranges of 4.2.5 or 4.2.6 and space shall be designed to allow for the operation of cabinet and/or appliance doors so that all cabinets and appliances are accessible and usable. Controls and operating mechanisms shall comply with 4.27.

(8) Sleeping room accommodations for persons with hearing impairments required by 9.1 and complying with 9.3 shall be provided in the accessible sleeping room or suite.

9.3 Visual Alarms, Notification Devices and Telephones.

9.3.1 General. In sleeping rooms required to comply with this section, auxiliary visual alarms shall be provided and shall comply with 4.28.4. Visual notification devices shall also be provided in units, sleeping rooms and suites to alert room occupants of incoming telephone calls and a door knock or bell. Notification devices shall not be connected to auxiliary visual alarm signal appliances. Permanently installed telephones shall have volume controls complying with 4.31.5; an accessible electrical outlet within 4 ft (1220 mm) of a telephone connection shall be provided to facilitate the use of a text telephone.

9.3.2 Equivalent Facilitation. For purposes of this section, equivalent facilitation shall include the installation of electrical outlets (including outlets connected to a facility's central alarm system) and telephone wiring in sleeping rooms and suites to enable persons with hearing impairments to utilize portable visual alarms and communication devices provided by the operator of the facility.

9.4 Other Sleeping Rooms and Suites. Doors and doorways designed to allow passage into and within all sleeping units or other covered units shall comply with 4.13.5.

9.5 Transient Lodging in Homeless Shelters, Halfway Houses, Transient Group Homes, and Other Social Service Establishments.

9.5.1 New Construction. In new construction all public use and common use areas are required to be designed and constructed to comply with section 4. At least one of each type of amenity (such as washers, dryers and similar equipment installed for the use of occupants) in each common area shall be accessible and shall be located on an accessible route to any accessible unit or sleeping accommodation.

EXCEPTION: Where elevators are not provided as allowed in 4.1.3(5), accessible amenities are not required on inaccessible floors as long as one of each type is provided in common areas on accessible floors.

9.5.2 Alterations.

(1) Social service establishments which are not homeless shelters:

(a) The provisions of 9.5.3 and 9.1.5 shall apply to sleeping rooms and beds.

(b) Alteration of other areas shall be consistent with the new construction provisions of 9.5.1.

(2) Homeless shelters. If the following elements are altered, the following requirements apply:

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(2) Homeless shelters. If the following elements are altered, the following requirements apply:

(a) at least one public entrance shall allow a person with mobility impairments to approach, enter and exit including a minimum clear door width of 32 in (815 mm).

(b) sleeping space for homeless persons as provided in the scoping provisions of 9.1.2 shall include doors to the sleeping area with a minimum clear width of 32 in (815 mm) and maneuvering space around the beds for persons with mobility impairments complying with 9.2.2(1).

(c) at least one toilet room for each gender or one unisex toilet room shall have a minimum clear door width of 32 in (815 mm), minimum turning space complying with 4.2.3, one water closet complying with 4.16, one lavatory complying with 4.19 and the door shall have a privacy latch; and, if provided, at least one tub or shower shall comply with 4.20 or 4.21, respectively.

(d) at least one common area which a person with mobility impairments can approach, enter and exit including a minimum clear door width of 32 in (815 mm).

(e) at least one route connecting elements (a), (b), (c) and (d) which a person with mobility impairments can use including minimum clear width of 36 in (915 mm), passing space complying with 4.3.4, turning space complying with 4.2.3 and changes in levels complying with 4.3.8.

(f) homeless shelters can comply with the provisions of (a)-(e) by providing the above elements on one accessible floor.

9.5.3. Accessible Sleeping Accommodations in New Construction. Accessible sleeping rooms shall be provided in conformance with the table in 9.1.2 and shall comply with 9.2 Accessible Units, Sleeping Rooms and Suites (where the items are provided). Additional sleeping rooms that comply with 9.3 Sleeping Accommodations for Persons with Hearing Impairments shall be provided in conformance with the table provided in 9.1.3.

In facilities with multi-bed rooms or spaces, a percentage of the beds equal to the table provided in 9.1.2 shall comply with 9.2.2(1).

10. TRANSPORTATION FACILITIES. (Reserved).

APPENDIX

This appendix contains *materials of an advisory nature* and provides additional information that should help the reader to understand the minimum requirements of the *guidelines* or to design buildings or facilities for greater accessibility. The paragraph numbers correspond to the sections or paragraphs of the *guideline* to which the material relates and are therefore not consecutive (for example, A4.2.1 contains additional information relevant to 4.2.1). Sections *of the guidelines* for which additional material appears in this appendix have been indicated by an asterisk. *Nothing in this appendix shall in any way obviate any obligation to comply with the requirements of the guidelines itself.*

A2.2 Equivalent Facilitation. *Specific examples of equivalent facilitation are found in the following sections:*

4.1.6(3)(c)	*Elevators in Alterations*
4.31.9	*Text Telephones*
7.2	*Sales and Service Counters, Teller Windows, Information Counters*
9.1.4	*Classes of Sleeping Accommodations*
9.2.2(6)(d)	*Requirements for Accessible Units, Sleeping Rooms, and Suites*

A4.1.1 Application.

A4.1.1(3) Areas Used Only by Employees as Work Areas. *Where there are a series of individual work stations of the same type (e.g., laboratories, service counters, ticket booths), 5%, but not less than one, of each type of work station should be constructed so that an individual with disabilities can maneuver within the work stations. Rooms housing individual offices in a typical office building must meet the requirements of the guidelines concerning doors, accessible routes, etc. but do not need to allow for maneuvering space around individual desks. Modifications required to permit maneuvering within the work area may be accomplished as a reasonable accommodation to individual employees with disabilities under Title I of the ADA. Consideration should also be given to placing shelves in employee work areas at a convenient height for accessibility or installing commercially available shelving that is adjustable so that reasonable accommodations can be made in the future.*

If work stations are made accessible they should comply with the applicable provisions of 4.2 through 4.35.

A4.1.2 Accessible Sites and Exterior Facilities: New Construction.

A4.1.2(5)(e) Valet Parking. *Valet parking is not always usable by individuals with disabilities. For instance, an individual may use a type of vehicle controls that render the regular controls inoperable or the driver's seat in a van may be removed. In these situations, another person cannot park the vehicle. It is recommended that some self-parking spaces be provided at valet parking facilities for individuals whose vehicles cannot be parked by another person and that such spaces be located on an accessible route to the entrance of the facility.*

A4.1.3 Accessible Buildings: New Construction.

A4.1.3(5) *Only full passenger elevators are covered by the accessibility provisions of 4.10. Materials and equipment hoists, freight elevators not intended for passenger use, dumbwaiters, and construction elevators are not covered by these guidelines. If a building is exempt from the elevator requirement, it is not necessary to provide a platform lift or other means of vertical access in lieu of an elevator.*

Under Exception 4, platform lifts are allowed where existing conditions make it impractical to install a ramp or elevator. Such conditions generally occur where it is essential to provide access to small raised or lowered areas where space may not be available for a ramp. Examples include, but are not limited to, raised pharmacy platforms, commercial offices raised above a sales floor, or radio and news booths.

A4.1.3(9) *Supervised automatic sprinkler systems have built in signals for monitoring features of the system such as the opening and closing of water control valves, the power supplies for needed pumps, water tank levels, and for indicating conditions that will impair the satisfactory operation of the sprinkler system.*

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Because of these monitoring features, supervised automatic sprinkler systems have a high level of satisfactory performance and response to fire conditions.

A4.1.3(10) *If an odd number of drinking fountains is provided on a floor, the requirement in 4.1.3(10)(b) may be met by rounding down the odd number to an even number and calculating 50% of the even number. When more than one drinking fountain on a floor is required to comply with 4.15, those fountains should be dispersed to allow wheelchair users convenient access. For example, in a large facility such as a convention center that has water fountains at several locations on a floor, the accessible water fountains should be located so that wheelchair users do not have to travel a greater distance than other people to use a drinking fountain.*

A4.1.3(17)(b) *In addition to the requirements of section 4.1.3(17)(b), the installation of additional volume controls is encouraged. Volume controls may be installed on any telephone.*

A4.1.3(19)(a) *Readily removable or folding seating units may be installed in lieu of providing an open space for wheelchair users. Folding seating units are usually two fixed seats that can be easily folded into a fixed center bar to allow for one or two open spaces for wheelchair users when necessary. These units are more easily adapted than removable seats which generally require the seat to be removed in advance by the facility management.*

Either a sign or a marker placed on seating with removable or folding arm rests is required by this section. Consideration should be given for ensuring identification of such seats in a darkened theater. For example, a marker which contrasts (light on dark or dark on light) and which also reflects light could be placed on the side of such seating so as to be visible in a lighted auditorium and also to reflect light from a flashlight.

A4.1.6 Accessible Buildings: Alterations.

A4.1.6(1)(h) *When an entrance is being altered, it is preferable that those entrances being altered be made accessible to the extent feasible.*

A4.2 Space Allowances and Reach Ranges.

A4.2.1 Wheelchair Passage Width.

(1) Space Requirements for Wheelchairs. Many persons who use wheelchairs need a 30 in (760 mm) clear opening width for doorways, gates, and the like, when the latter are entered head-on. If the *person* is unfamiliar with a building, if competing traffic is heavy, if sudden or frequent movements are needed, or if the wheelchair must be turned at an opening, then greater clear widths are needed. For most situations, the addition of an inch of leeway on either side is sufficient. Thus, a minimum clear width of 32 in (815 mm) will provide adequate clearance. However, when an opening or a restriction in a passageway is more than 24 in (610 mm) long, it is essentially a passageway and must be at least 36 in (915 mm) wide.

(2) Space Requirements for Use of Walking Aids. Although people who use walking aids can maneuver through clear width openings of 32 in (815 mm), they need 36 in (915 mm) wide passageways and walks for comfortable gaits. Crutch tips, often extending down at a wide angle, are a hazard in narrow passageways where they might not be seen by other pedestrians. Thus, the 36 in (915 mm) width provides a safety allowance both for the person *with a disability* and for others.

(3) Space Requirements for Passing. Able-bodied *persons* in winter clothing, walking

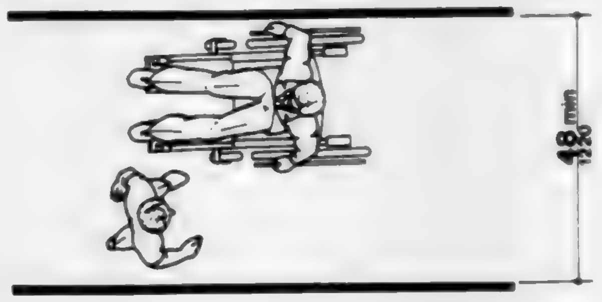

Fig. A1
Minimum Passage Width for One Wheelchair and One Ambulatory Person

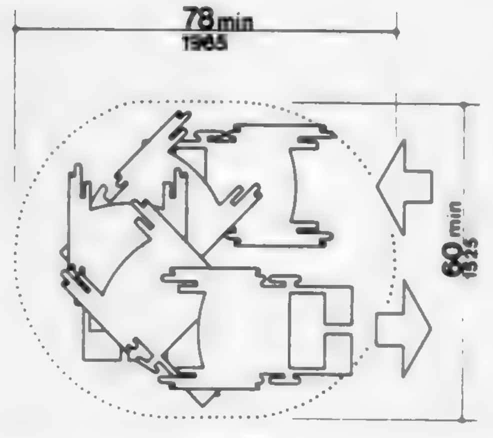
78 min
1965
60 min
1525

Fig. A2
Space Needed for Smooth U-Turn in a Wheelchair

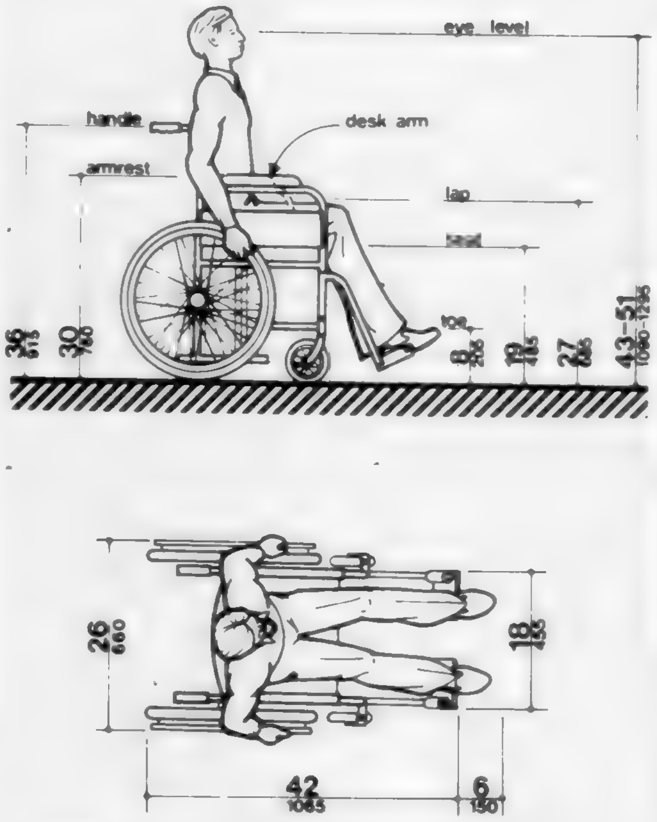
eye level
handle
desk arm
armrest
lap
seat
toe
36
915
30
760
8
205
19
485
27
685
43–51
1090–1295
26
660
18
455
42
1065
6
150

NOTE: Footrests may extend further for tall people

Fig. A3
Dimensions of Adult-Sized Wheelchairs

straight ahead with arms swinging, need 32 in (815 mm) of width, which includes 2 in (50 mm) on either side for sway, and another 1 in (25 mm) tolerance on either side for clearing nearby objects or other pedestrians. Almost all wheelchair users and those who use walking aids can also manage within this 32 in (815 mm) width for short distances. Thus, two streams of traffic can pass in 64 in (1625 mm) in a comfortable flow. Sixty inches (1525 mm) provides a minimum width for a somewhat more restricted flow. If the clear width is less than 60 in (1525 mm), two wheelchair users will not be able to pass but will have to seek a wider place for passing. Forty-eight inches (1220 mm) is the minimum width needed for an ambulatory person to pass a nonambulatory or semi-ambulatory person. Within this 48 in (1220 mm) width, the ambulatory person will have to twist to pass a wheelchair user, a person with a *service animal*, or a

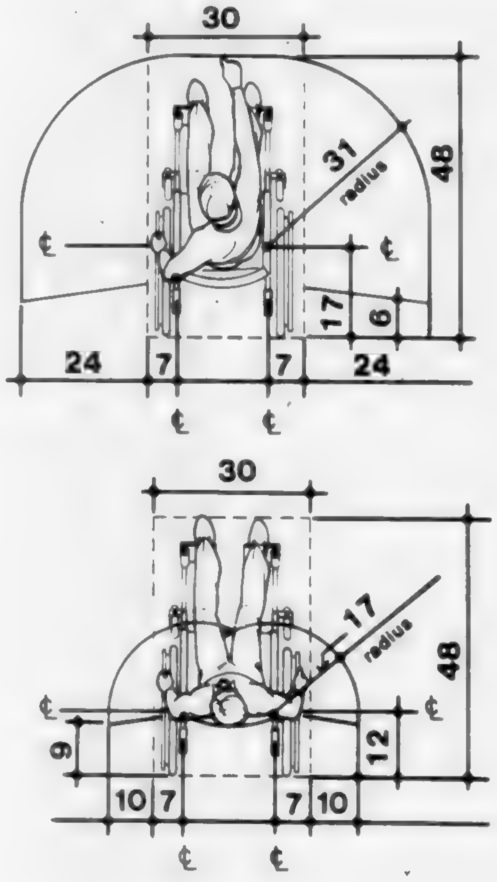
30
31
radius
48
℄
℄
17
6
24
7
7
24
℄
℄
30
17
radius
48
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9
12
10
7
7
10
℄
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Fig. A3 (a)

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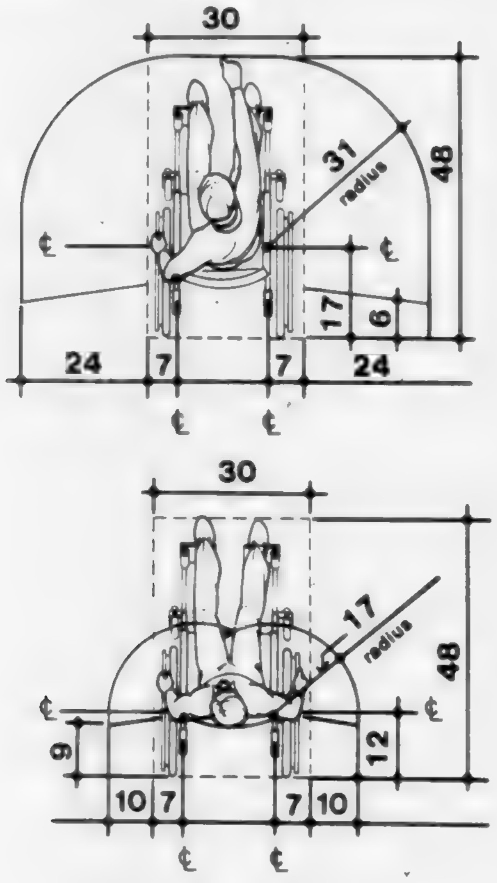

Fig. A3 (a)

A4.2.3 Wheelchair Turning Space. *These guidelines specify* a minimum space of 60 in (1525 mm) diameter *or a 60 in by 60 in (1525 mm by 1525 mm) T-shaped space* for a pivoting 180-degree turn of a wheelchair. This space is usually satisfactory for turning around, but many people will not be able to turn without repeated tries and bumping into surrounding objects. The space shown in Fig. A2 will allow most wheelchair users to complete U-turns without difficulty.

A4.2.4 Clear Floor or Ground Space for Wheelchairs. The wheelchair and user shown in Fig. A3 represent typical dimensions for a large adult male. The space requirements in this *guideline* are based upon maneuvering clearances that will accommodate most wheelchairs. Fig. A3 provides a uniform reference for design not covered by this *guideline*.

A4.2.5 & A4.2.6 Reach. *Reach ranges for persons seated in wheelchairs may be further clarified by Fig. A3(a). These drawings approximate in the plan view the information shown in Fig. 4, 5, and 6.*

A4.3 Accessible Route.

A4.3.1 General.

(1) Travel Distances. Many people with mobility impairments can move at only very slow speeds; for many, traveling 200 ft (61 m) could take about 2 minutes. This assumes a rate of about 1.5 ft/s (455 mm/s) on level ground. It also assumes that the traveler would move continuously. However, on trips over 100 ft (30 m), disabled people are apt to rest frequently, which substantially increases their trip times. Resting periods of 2 minutes for every 100 ft (30 m) can be used to estimate travel times for people with severely limited stamina. In inclement weather, slow progress and resting can greatly increase a disabled person's exposure to the elements.

(2) Sites. Level, indirect routes or those with running slopes lower than 1:20 can sometimes provide more convenience than direct routes with maximum allowable slopes or with ramps.

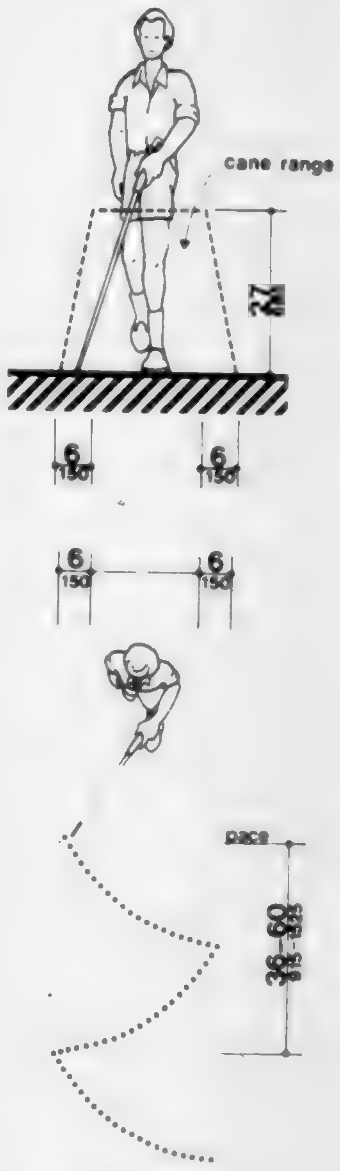

Fig. A4
Cane Technique

A4.3.10 Egress. Because people with disabilities may visit, be employed or be a resident in any building, emergency management plans with specific provisions to ensure their safe evacuation also play an essential role in fire safety and life safety.

A4.3.11.3 Stairway Width. *A 48 inch (1220 mm) wide exit stairway is needed to allow assisted evacuation (e.g., carrying a person in a wheelchair) without encroaching on the exit path for ambulatory persons.*

A4.3.11.4 Two-way Communication. *It is essential that emergency communication not be dependent on voice communications alone because the safety of people with hearing or speech impairments could be jeopardized. The visible signal requirement could be satisfied with something as simple as a button in the area of rescue assistance that lights, indicating that help is on the way, when the message is answered at the point of entry.*

A4.4 Protruding Objects.

A4.4.1 General. *Service animals* are trained to recognize and avoid hazards. However, most people with severe impairments of vision use the long cane as an aid to mobility. The two principal cane techniques are the touch technique, where the cane arcs from side to side and touches points outside both shoulders; and the diagonal technique, where the cane is held in a stationary position diagonally across the body with the cane tip touching or just above the ground at a point outside one shoulder and the handle or grip extending to a point outside the other shoulder. The touch technique is used primarily in uncontrolled areas, while the diagonal technique is used primarily in certain limited, controlled, and familiar environments. Cane users are often trained to use both techniques.

Potential hazardous objects are noticed only if they fall within the detection range of canes (see Fig. A4). Visually impaired people walking toward an object can detect an overhang if its lowest surface is not higher than 27 in (685 mm). When walking alongside *protruding* objects, they cannot detect overhangs. Since proper cane and *service animal* techniques keep people away from the edge of a path or from walls, a slight overhang of no more than 4 in (100 mm) is not hazardous.

A4.5 Ground and Floor Surfaces.

A4.5.1 General. *People who have difficulty walking or* maintaining balance *or who use crutches, canes, or walkers,* and those with restricted gaits are particularly sensitive to slipping and tripping hazards. For such people, a stable and regular surface is necessary for safe walking, particularly on stairs. Wheelchairs can be propelled most easily on surfaces that are hard, stable, and regular. Soft loose surfaces such as shag carpet, loose sand or gravel, wet clay, and irregular surfaces such as cobblestones can significantly impede wheelchair movement.

Slip resistance is based on the frictional force necessary to keep a shoe heel or crutch tip from slipping on a walking surface under conditions likely to be found on the surface. *While the dynamic coefficient of friction during walking varies in a complex and non-uniform way, the static coefficient of friction, which can be measured in several ways, provides a close approximation of the slip resistance of a surface. Contrary to popular belief, some slippage is necessary to walking, especially for persons with restricted gaits; a truly "non-slip" surface could not be negotiated.*

The Occupational Safety and Health Administration recommends that walking surfaces have a static coefficient of friction of 0.5. A research project sponsored by the Architectural and Transportation Barriers Compliance Board (Access Board) conducted tests with persons with disabilities and concluded that a higher coefficient of friction was needed by such persons. A static coefficient of friction of 0.6 is recommended for accessible routes and 0.8 for ramps.

It is recognized that the coefficient of friction varies considerably due to the presence of contaminants, water, floor finishes, and other factors not under the control of the designer or builder and not subject to design and construction guidelines and that compliance would be difficult to measure on the building site. Nevertheless, many common building materials suitable for flooring are now labeled with information on the static coefficient of friction. While it may not be possible to compare one product directly with another, or to guarantee a constant measure, builders and designers are encouraged to specify materials with appropriate values. As more products include information on slip resistance, improved uniformity in measurement and specification is likely. The Access Board's advisory guidelines on Slip Resistant Surfaces provides additional information on this subject.

Cross slopes on walks and ground or floor surfaces can cause considerable difficulty in propelling a wheelchair in a straight line.

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Cross slopes on walks and ground or floor surfaces can cause considerable difficulty in propelling a wheelchair in a straight line.

A4.5.3 Carpet. Much more needs to be done in developing both quantitative and qualitative criteria for carpeting (*i.e., problems associated with texture and weave need to be studied*). However, certain functional characteristics are well established. When both carpet and padding are used, it is desirable to have minimum movement (preferably none) between the floor and the pad and the pad and the carpet which would allow the carpet to hump or warp. In heavily trafficked areas, a thick, soft (plush) pad or cushion, particularly in combination with long carpet pile, makes it difficult for individuals in wheelchairs and those with other ambulatory disabilities to get about. Firm carpeting can be achieved through proper selection and combination of pad and carpet, sometimes with the elimination of the pad or cushion, and with proper installation. *Carpeting designed with a weave that causes a zig-zag effect when wheeled across is strongly discouraged.*

A4.6 Parking and Passenger Loading Zones.

A4.6.3 Parking Spaces. *The increasing use of vans with side-mounted lifts or ramps by persons with disabilities has necessitated some revisions in specifications for parking spaces and adjacent access aisles. The typical accessible parking space is 96 in (2440 mm) wide with an adjacent 60 in (1525 mm) access aisle. However, this aisle does not permit lifts or ramps to be deployed and still leave room for a person using a wheelchair or other mobility aid to exit the lift platform or ramp. In tests conducted with actual lift/van/wheelchair combinations, (under a Board-sponsored Accessible Parking and Loading Zones Project) researchers found that a space and aisle totaling almost 204 in (5180 mm) wide was needed to deploy a lift and exit conveniently. The "van accessible" parking space required by these guidelines provides a 96 in (2440 mm) wide space with a 96 in (2440 mm) adjacent access aisle which is just wide enough to maneuver and exit from a side mounted lift. If a 96 in (2440 mm) access aisle is placed between two spaces, two "van accessible" spaces are created. Alternatively, if the wide access aisle is provided at the end of a row (an area often unused), it may be possible to provide the wide access aisle without additional space (see Fig. A5(a)).*

A sign is needed to alert van users to the presence of the wider aisle, but the space is not intended to be restricted only to vans.

"Universal" Parking Space Design. An alternative to the provision of a percentage of spaces with a wide aisle, and the associated need to include additional signage, is the use of what has been called the "universal" parking space design. Under this design, all accessible spaces are 132 in (3350 mm) wide with a 60 in (1525 mm) access aisle (see Fig. A5(b)). One

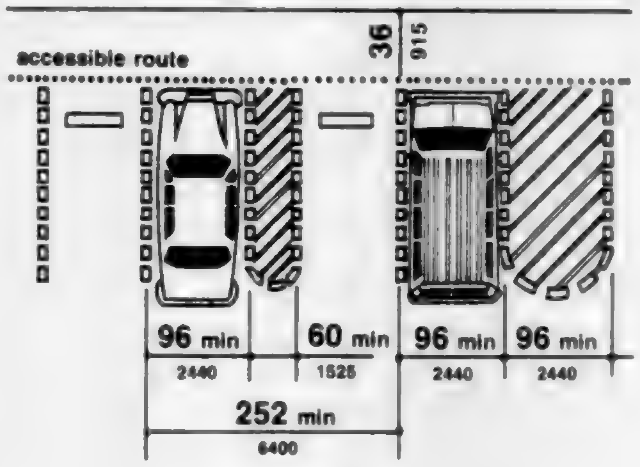

(a)
Van Accessible Space at End Row

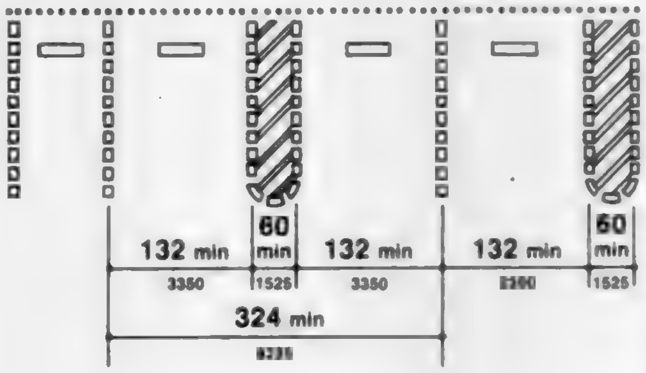

(b)
Universal Parking Space Design

Fig. A5
Parking Space Alternatives

advantage to this design is that no additional signage is needed because all spaces can accommodate a van with a side-mounted lift or ramp. Also, there is no competition between cars and vans for spaces since all spaces can accommodate either. Furthermore, the wider space permits vehicles to park to one side or the other within the 132 in (3350 mm) space to allow persons to exit and enter the vehicle on either the driver or passenger side, although, in some cases, this would require exiting or entering without a marked access aisle.

An essential consideration for any design is having the access aisle level with the parking space. Since a person with a disability, using a lift or ramp, must maneuver within the access aisle, the aisle cannot include a ramp or sloped area. The access aisle must be connected to an accessible route to the appropriate accessible entrance of a building or facility. The parking access aisle must either blend with the accessible route or have a curb ramp complying with 4.7. Such a curb ramp opening must be located within the access aisle boundaries, not within the parking space boundaries. Unfortunately, many facilities are designed with a ramp that is blocked when any vehicle parks in the accessible space. Also, the required dimensions of the access aisle cannot be restricted by planters, curbs or wheel stops.

A4.6.4 Signage. Signs designating parking places for disabled people can be seen from a driver's seat if the signs are mounted high enough above the ground and located at the front of a parking space.

A4.6.5 Vertical Clearance. High-top vans, which disabled people or transportation services often use, require higher clearances in parking garages than automobiles.

A4.8 Ramps.

A4.8.1 General. Ramps are essential for wheelchair users if elevators or lifts are not available to connect different levels. However, some people who use walking aids have difficulty with ramps and prefer stairs.

A4.8.2 Slope and Rise. *Ramp slopes between 1:16 and 1:20 are preferred.* The ability to manage an incline is related to both its slope and its length. Wheelchair users with disabilities affecting *their* arms or with low stamina have serious difficulty using inclines. Most ambulatory people and most people who use wheelchairs can manage a slope of 1:16. Many people cannot manage a slope of 1:12 for 30 ft (9 m).

A4.8.4 Landings. *Level landings are essential toward maintaining an aggregate slope that complies with these guidelines. A ramp landing that is not level causes individuals using wheelchairs to tip backward or bottom out when the ramp is approached.*

A4.8.5 Handrails. The requirements for stair and ramp handrails in this *guideline* are for adults. When children are principal users in a building or facility, a second set of handrails at an appropriate height can assist them and aid in preventing accidents.

A4.9 Stairs.

A4.9.1 Minimum Number. *Only interior and exterior stairs connecting levels that are not connected by an elevator, ramp, or other accessible means of vertical access have to comply with 4.9.*

A4.10 Elevators.

A4.10.6 Door Protective and Reopening Device. The required door reopening device would hold the door open for 20 seconds if the doorway remains obstructed. After 20 seconds, the door may begin to close. However, if designed in accordance with *ASME A17.1-1990*, the door closing movement could still be stopped if a person or object exerts sufficient force at any point on the door edge.

A4.10.7 Door and Signal Timing for Hall Calls. This paragraph allows variation in the location of call buttons, advance time for warning signals, and the door-holding period used to meet the time requirement.

A4.10.12 Car Controls. Industry-wide standardization of elevator control panel design would make all elevators significantly more convenient for use by people with severe visual impairments. In many cases, it will be possible to locate the highest control on elevator panels within 48 in (1220 mm) from the floor.

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A4.10.13 Car Position Indicators. A special button may be provided that would activate the audible signal within the given elevator only for the desired trip, rather than maintaining the audible signal in constant operation.

A4.10.14 Emergency Communications. A device that requires no handset is easier to use by people who have difficulty reaching. *Also, small handles on handset compartment doors are not usable by people who have difficulty grasping.*

Ideally, emergency two-way communication systems should provide both voice and visual display intercommunication so that persons with hearing impairments and persons with vision impairments can receive information regarding the status of a rescue. A voice intercommunication system cannot be the only means of communication because it is not accessible to people with speech and hearing impairments. While a voice intercommunication system is not required, at a minimum, the system should provide both an audio and visual indication that a rescue is on the way.

A4.11 Platform Lifts *(Wheelchair Lifts)*.

A4.11.2 Other Requirements. *Inclined stairway chairlifts, and inclined and vertical platform lifts (wheelchair lifts) are available* for short-distance, vertical transportation of people with disabilities. Care should be taken in selecting lifts *as some lifts are not equally suitable for use by both wheelchair users and semi-ambulatory individuals.*

A4.12 Windows.

A4.12.1 General. *Windows intended to be operated by occupants in accessible spaces should comply with 4.12.*

A4.12.2 Window Hardware. *Windows requiring pushing, pulling, or lifting to open (for example, double-hung, sliding, or casement and awning units without cranks) should require no more than 5 lbf (22.2 N) to open or close. Locks, cranks, and other window hardware should comply with 4.27.*

A4.13 Doors.

A4.13.8 Thresholds at Doorways. Thresholds and surface height changes in doorways are particularly inconvenient for wheelchair users who also have low stamina or restrictions in arm movement because complex maneuvering is required to get over the level change while operating the door.

A4.13.9 Door Hardware. Some disabled persons must push against a door with their chair or walker to open it. Applied kickplates on doors with closers can reduce required maintenance by withstanding abuse from wheelchairs and canes. To be effective, they should cover the door width, less approximately 2 in (51 mm), up to a height of 16 in (405 mm) from its bottom edge and be centered across the *width of the door.*

A4.13.10 Door Closers. Closers with delayed action features give a person more time to maneuver through doorways. They are particularly useful on frequently used interior doors such as entrances to toilet rooms.

A4.13.11 Door Opening Force. Although most people with disabilities can exert at least 5 lbf (22.2N), both pushing and pulling from a stationary position, a few people with severe disabilities cannot exert 3 lbf (13.13N). Although some people cannot manage the allowable forces in this guideline and many others have difficulty, door closers must have certain minimum closing forces to close doors satisfactorily. Forces for pushing or pulling doors open are measured with a push-pull scale under the following conditions:

(1) Hinged doors: Force applied perpendicular to the door at the door opener or 30 in (760 mm) from the hinged side, whichever is farther from the hinge.

(2) Sliding or folding doors: Force applied parallel to the door at the door pull or latch.

(3) Application of force: Apply force gradually so that the applied force does not exceed the resistance of the door. In high-rise buildings, air-pressure differentials may require a modification of this specification in order to meet the functional intent.

A4.13.12 Automatic Doors and Power-Assisted Doors. Sliding automatic doors do not need guard rails and are more convenient for wheelchair users and visually impaired people to use. If slowly opening automatic doors can be reactivated before their closing cycle is completed, they will be more convenient in busy doorways.

A4.15 Drinking Fountains and Water Coolers.

A4.15.2 Spout Height. *Two drinking fountains, mounted side by side or on a single post, are usable by people with disabilities and people who find it difficult to bend over.*

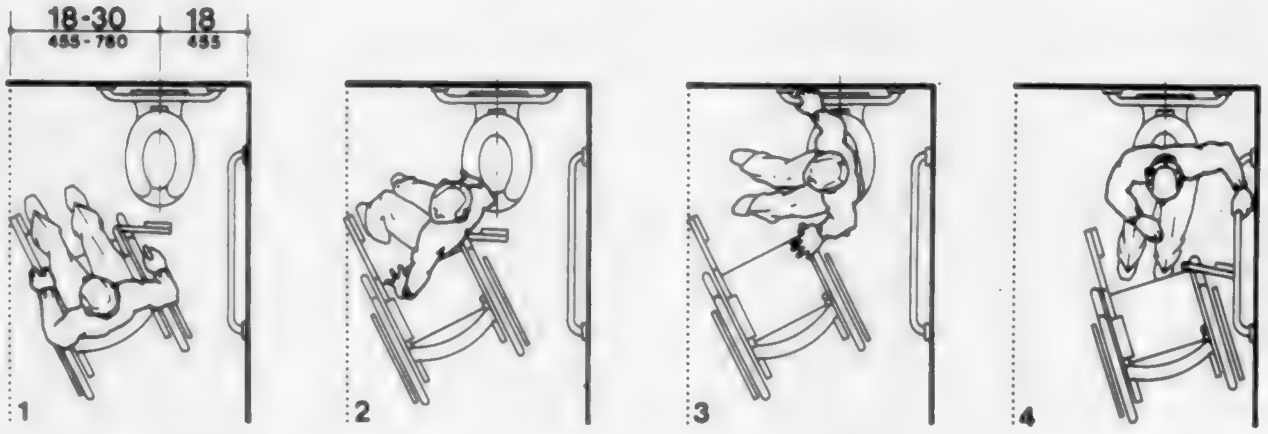

Takes transfer position, swings footrest out of the way, sets brakes.

Removes armrest, transfers.

Moves wheelchair out of the way, changes position (some people fold chair or pivot it 90° to the toilet).

Positions on toilet, releases brake.

(a)
Diagonal Approach

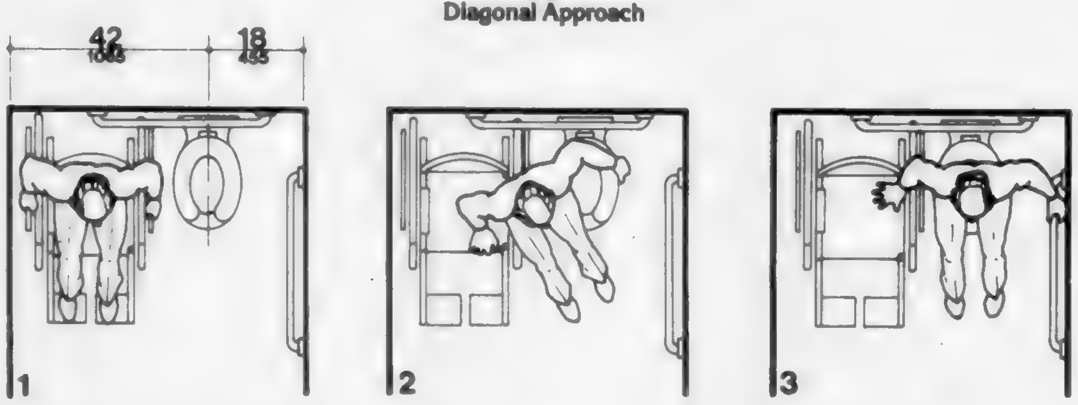

Takes transfer position; removes armrest, sets brakes.

Transfers.

Positions on toilet.

(b)
Side Approach

Fig. A6
Wheelchair Transfers

A4.16 Water Closets.

A4.16.3 Height. Height preferences for toilet seats vary considerably among disabled people. Higher seat heights may be an advantage to some ambulatory disabled people, but are often a disadvantage for wheelchair users and others. Toilet seats 18 in (455 mm) high seem to be a reasonable compromise. Thick seats and filler rings are available to adapt standard fixtures to these requirements.

A4.16.4 Grab Bars. Fig. A6(a) and (b) show the diagonal and side approaches most commonly used to transfer from a wheelchair to a water closet. Some wheelchair users can transfer from the front of the toilet while others use a 90-degree approach. Most people who use the two additional approaches can also use either the diagonal approach or the side approach.

A4.16.5 Flush Controls. Flush valves and related plumbing can be located behind walls or to the side of the toilet, or a toilet seat lid can be provided if plumbing fittings are directly behind the toilet seat. Such designs reduce the chance of injury and imbalance caused by leaning back against the fittings. Flush controls for tank-type toilets have a standardized mounting location on the left side of the tank (facing the tank). Tanks can be obtained by special order with controls mounted on the right side. If administrative authorities require flush controls for flush valves to be located in a position that conflicts with the location of the rear grab bar, then that bar may be split or shifted toward the wide side of the toilet area.

A4.17 Toilet Stalls.

A4.17.3 Size and Arrangement. *This section requires use of the 60 in (1525 mm) standard stall (Figure 30(a)) and permits the 36 in (915 mm) or 48 in (1220 mm) wide alternate stall (Figure 30(b)) only in alterations where provision of the standard stall is technically infeasible or where local plumbing codes prohibit reduction in the number of fixtures. A standard stall provides a clear space on one side of the water closet to enable persons who use wheelchairs to perform a side or diagonal transfer from the wheelchair to the water closet. However, some persons with disabilities who use mobility aids such as walkers, canes or crutches are better able to use the two parallel grab bars in the 36 in (915 mm) wide alternate stall to achieve a standing position.*

In large toilet rooms, where six or more toilet stalls are provided, it is therefore required that a 36 in (915 mm) wide stall with parallel grab bars be provided in addition to the standard stall required in new construction. The 36 in (915 mm) width is necessary to achieve proper use of the grab bars; wider stalls would position the grab bars too far apart to be easily used and narrower stalls would position the grab bars too close to the water closet. Since the stall is primarily intended for use by persons using canes, crutches and walkers, rather than wheelchairs, the length of the stall could be conventional. The door, however, must swing outward to ensure a usable space for people who use crutches or walkers.

A4.17.5 Doors. To make it easier for wheelchair users to close toilet stall doors, doors can be provided with closers, spring hinges, or a pull bar mounted on the inside surface of the door near the hinge side.

A4.19 Lavatories and Mirrors.

A4.19.6 Mirrors. If mirrors are to be used by both ambulatory people and wheelchair users, then they must be at least 74 in (1880 mm) high at their topmost edge. A single full length mirror can accommodate all people, including children.

A4.21 Shower Stalls.

A4.21.1 General. Shower stalls that are 36 in by 36 in (915 mm by 915 mm) wide provide additional safety to people who have difficulty maintaining balance because all grab bars and walls are within easy reach. Seated people use the walls of 36 in by 36 in (915 mm by 915 mm) showers for back support. Shower stalls that are 60 in (1525 mm) wide and have no curb may increase usability of a bathroom by wheelchair users because the shower area provides additional maneuvering space.

A4.22 Toilet Rooms.

A4.22.3 Clear Floor Space. *In many small facilities, single-user restrooms may be the only* *facilities provided for all building users. In addition, the guidelines allow the use of "unisex" or "family" accessible toilet rooms in alterations when technical infeasibility can be demonstrated. Experience has shown that the provision of accessible "unisex" or single-user restrooms is a reasonable way to provide access for wheelchair users and any attendants, especially when attendants are of the opposite sex. Since these facilities have proven so useful, it is often considered advantageous to install a "unisex" toilet room in new facilities in addition to making the multi-stall restrooms accessible, especially in shopping malls, large auditoriums, and convention centers.*

Figure 28 (section 4.16) provides minimum clear floor space dimensions for toilets in accessible "unisex" toilet rooms. The dotted lines designate the minimum clear floor space, depending on the direction of approach, required for wheelchair users to transfer onto the water closet. The dimensions of 48 in (1220 mm) and 60 in (1525 mm), respectively, correspond to the space required for the two common transfer approaches utilized by wheelchair users (see Fig. A6). It is important to keep in mind that the placement of the lavatory to the immediate side of the water closet will preclude the side approach transfer illustrated in Figure A6(b).

To accommodate the side transfer, the space adjacent to the water closet must remain clear of obstruction for 42 in (1065 mm) from the centerline of the toilet (Figure 28) and the lavatory must not be located within this clear space. A turning circle or T-turn, the clear floor space at the lavatory, and maneuvering space at the door must be considered when determining the possible wall locations. A privacy latch or other accessible means of ensuring privacy during use should be provided at the door.

RECOMMENDATIONS:

1. In new construction, accessible single-user restrooms may be desirable in some situations because they can accommodate a wide variety of building users. However, they cannot be used in lieu of making the multi-stall toilet rooms accessible as required.

2. Where strict compliance to the guidelines for accessible toilet facilities is technically infeasible in the alteration of existing facilities, accessible "unisex" toilets are a reasonable alternative.

3. In designing accessible single-user restrooms, the provisions of adequate space to allow a side transfer will provide accommodation to the largest number of wheelchair users.

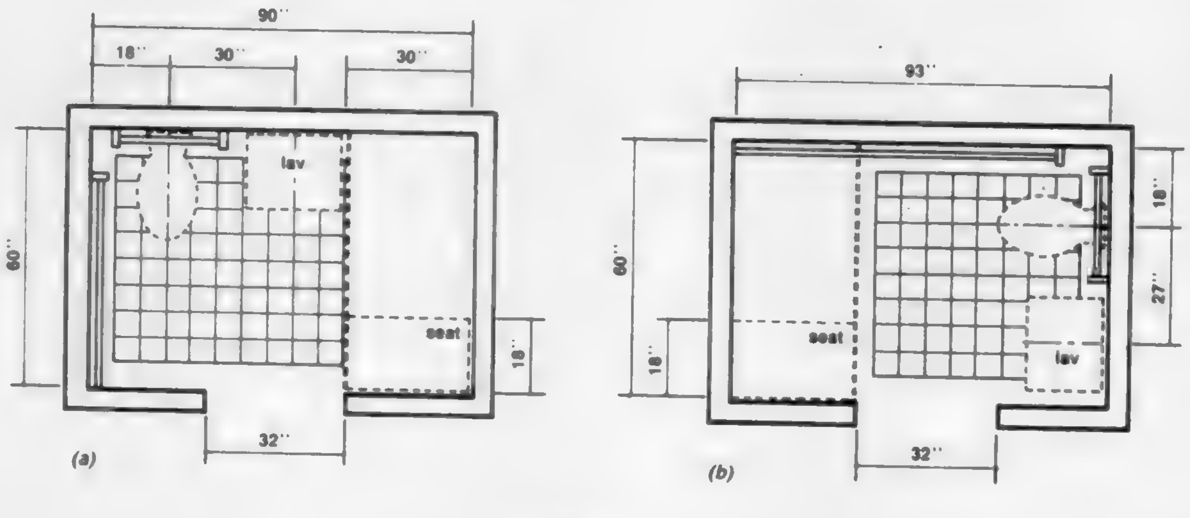

Fig. A7

A4.23 Bathrooms, Bathing Facilities, and Shower Rooms.

A4.23.3 Clear Floor Space. *Figure A7 shows two possible configurations of a toilet room with a roll-in shower. The specific shower shown is designed to fit exactly within the dimensions of a standard bathtub. Since the shower does not have a lip, the floor space can be used for required maneuvering space. This would permit a toilet room to be smaller than would be permitted with a bathtub and still provide enough floor space to be considered accessible. This design can provide accessibility in facilities where space is at a premium (i.e., hotels and medical care facilities). The alternate roll-in shower (Fig. 57b) also provides sufficient room for the "T-turn" and does not require plumbing to be on more than one wall.*

A4.23.9 Medicine Cabinets. Other alternatives for storing medical and personal care items are very useful to disabled people. Shelves, drawers, and floor-mounted cabinets can be provided within the reach ranges of disabled people.

A4.26 Handrails, Grab Bars, and Tub and Shower Seats.

A4.26.1 General. Many disabled people rely heavily upon grab bars and handrails to maintain balance and prevent serious falls. Many people brace their forearms between supports and walls to give them more leverage and stability in maintaining balance or for lifting. The grab bar clearance of 1-1/2 in (38 mm) required in this guideline is a safety clearance to prevent injuries resulting from arms slipping through the openings. It also provides adequate gripping room.

A4.26.2 Size and Spacing of Grab Bars and Handrails. This specification allows for alternate shapes of handrails as long as they allow an opposing grip similar to that provided by a circular section of 1-1/4 in to 1-1/2 in (32 mm to 38 mm).

A4.27 Controls and Operating Mechanisms.

A4.27.3 Height. *Fig. A8 further illustrates*

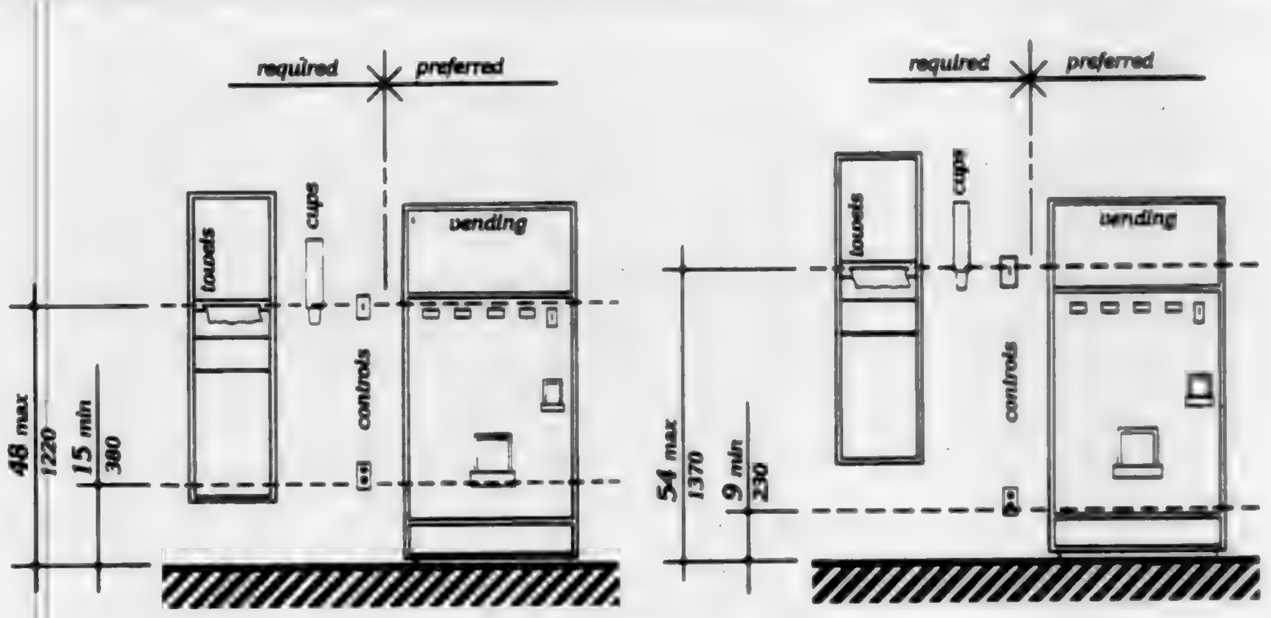

(a)
Forward Reach Possible

(b)
Side Reach Possible

Fig. A8
Control Reach Limitations

mandatory and advisory control mounting height provisions for typical equipment.

Electrical receptacles installed to serve individual appliances and not intended for regular or frequent use by building occupants are not required to be mounted within the specified reach ranges. Examples would be receptacles installed specifically for wall-mounted clocks, refrigerators, and microwave ovens.

A4.28 Alarms.

A4.28.2 Audible Alarms. Audible emergency signals must have an intensity and frequency that can attract the attention of individuals who have partial hearing loss. People over 60 years of age generally have difficulty perceiving frequencies higher than 10,000 Hz. *An alarm signal which has a periodic element to its signal, such as single stroke bells (clang-pause-clang-pause), hi-low (up-down-up-down) and fast whoop (on-off-on-off) are best. Avoid continuous or reverberating tones. Select a signal which has a sound characterized by three or four clear tones without a great deal of "noise" in between.*

A4.28.3 Visual Alarms. The specifications in this section do not preclude the use of zoned or coded alarm systems.

A4.28.4 Auxiliary Alarms. Locating visual emergency alarms in rooms where persons who are deaf may work or reside alone can ensure that they will always be warned when an emergency alarm is activated. To be effective, such devices must be located and oriented so that they will spread signals and reflections throughout a space or raise the overall light level sharply. *However, visual alarms alone are not necessarily the best means to alert sleepers. A study conducted by Underwriters Laboratory (UL) concluded that a flashing light more than seven times brighter was required (110 candela v. 15 candela, at the same distance) to awaken sleepers as was needed to alert awake subjects in a normal daytime illuminated room.*

For hotel and other rooms where people are likely to be asleep, a signal-activated vibrator placed between mattress and box spring or under a pillow was found by UL to be much more effective in alerting sleepers. Many readily available devices are sound-activated so that they could respond to an alarm clock, clock radio, wake-up telephone call or room smoke detector. Activation by a building alarm system can either be accomplished by a separate circuit activating an auditory alarm which would, in turn, trigger the vibrator or by a signal transmitted through the ordinary 110-volt outlet. Transmission of signals through the power line is relatively simple and is the basis of common, inexpensive remote light control systems sold in many department and electronic stores for home use. So-called "wireless" intercoms operate on the same principal.

A4.29 *Detectable* Warnings.

A4.29.2 *Detectable* Warnings on Walking Surfaces. *The material used to provide contrast should contrast by at least 70%. Contrast in percent is determined by:*

$$\text{Contrast} = [(B_1 - B_2)/B_1] \times 100$$

where B_1 *= light reflectance value (LRV) of the lighter area*
and B_2 *= light reflectance value (LRV) of the darker area.*

Note that in any application both white and black are never absolute; thus, B_1 *never equals 100 and* B_2 *is always greater than 0.*

A4.30 Signage.

A4.30.1 General. In building complexes where finding locations independently on a routine basis may be a necessity (for example, college campuses), tactile maps or prerecorded instructions can be very helpful to visually impaired people. Several maps and auditory instructions have been developed and tested for specific applications. The type of map or instructions used must be based on the information to be communicated, which depends highly on the type of buildings or users.

Landmarks that can easily be distinguished by visually impaired individuals are useful as orientation cues. Such cues include changes in illumination level, bright colors, unique patterns, wall murals, location of special equipment or other architectural features.

Many people with disabilities have limitations in movement of their heads and reduced peripheral vision. Thus, signage positioned *radio, wake-up telephone call or room smoke detector. Activation by a building alarm system can either be accomplished by a separate circuit activating an auditory alarm which would, in turn, trigger the vibrator or by a signal transmitted through the ordinary 110-volt outlet. Transmission of signals through the power line is relatively simple and is the basis of common, inexpensive remote light control systems sold in many department and electronic stores for home use. So-called "wireless" intercoms operate on the same principal.*

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Landmarks that can easily be distinguished by visually impaired individuals are useful as orientation cues. Such cues include changes in illumination level, bright colors, unique patterns, wall murals, location of special equipment or other architectural features.

Many people with disabilities have limitations in movement of their heads and reduced peripheral vision. Thus, signage positioned perpendicular to the path of travel is easiest for them to notice. People can generally distinguish signage within an angle of 30 degrees to either side of the centerlines of their faces without moving their heads.

A4.30.2 Character Proportion. The legibility of printed characters is a function of the viewing distance, character height, the ratio of the stroke width to the height of the character, the contrast of color between character and background, and print font. The size of characters must be based upon the intended viewing distance. A severely nearsighted person may have to be much closer to recognize a character of a given size than a person with normal visual acuity.

A4.30.4 Raised and Brailled Characters and Pictorial Symbol Signs (Pictograms). *The standard dimensions for literary Braille are as follows:*

Dot diameter	*.059 in.*
Inter-dot spacing	*.090 in.*
Horizontal separation between cells	*.241 in.*
Vertical separation between cells	*.395 in.*

Raised borders around *signs containing* raised characters may make them confusing to read unless the border is set far away from the characters. *Accessible signage with descriptive materials about public buildings, monuments, and objects of cultural interest may not provide sufficiently detailed and meaningful information. Interpretive guides, audio tape devices, or other methods may be more effective in presenting such information.*

A4.30.5 Finish and Contrast. *An eggshell finish (11 to 19 degree gloss on 60 degree glossimeter) is recommended. Research indicates that signs are more legible for persons with low vision when characters contrast with their background by at least 70 percent. Contrast in percent shall be determined by:*

$$Contrast = [(B_1 - B_2)/B_1] \times 100$$

where B_1 = light reflectance value (LRV) of the lighter area
and B_2 = light reflectance value (LRV) of the darker area.

Note that in any application both white and black are never absolute; thus, B_1 never equals 100 and B_2 is always greater than 0.

The greatest readability is usually achieved through the use of light-colored characters or symbols on a dark background.

A4.30.7 Symbols of Accessibility for Different Types of Listening Systems. *Paragraph 4 of this section requires signage indicating the availability of an assistive listening system. An appropriate message should be displayed with the international symbol of access for hearing loss since this symbol conveys general accessibility for people with hearing loss. Some suggestions are:*

INFRARED
ASSISTIVE LISTENING SYSTEM
AVAILABLE
——PLEASE ASK——

AUDIO LOOP IN USE
TURN T-SWITCH FOR
BETTER HEARING
——OR ASK FOR HELP——

FM
ASSISTIVE LISTENING
SYSTEM AVAILABLE
——PLEASE ASK——

The symbol may be used to notify persons of the availability of other auxiliary aids and services such as: real time captioning, captioned note taking, sign language interpreters, and oral interpreters.

A4.30.8 Illumination Levels. *Illumination levels on the sign surface shall be in the 100 to 300 lux range (10 to 30 footcandles) and shall be uniform over the sign surface. Signs shall be located such that the illumination level on the surface of the sign is not significantly exceeded by the ambient light or visible bright lighting source behind or in front of the sign.*

A4.31 Telephones.

A4.31.3 Mounting Height. In localities where the dial-tone first system is in operation, calls can be placed at a coin telephone through the operator without inserting coins. The operator button is located at a height of 46 in (1170 mm) if the coin slot of the telephone is at 54 in (1370 mm). A generally available public telephone with a coin slot mounted lower on the equipment would allow universal installation of telephones at a height of 48 in (1220 mm) or less to all operable parts.

A4.31.9 Text Telephones. *A public text telephone may be an integrated text telephone pay phone unit or a conventional portable text telephone that is permanently affixed within, or adjacent to, the telephone enclosure. In order to be usable with a pay phone, a text telephone which is not a single integrated text telephone pay phone unit will require a shelf large enough (10 in (255mm) wide by 10 in (255 mm) deep with a 6 in (150 mm) vertical clearance minimum) to accommodate the device, an electrical outlet, and a power cord. Movable or portable text telephones may be used to provide equivalent facilitation. A text telephone should be readily available so that a person using it may access the text telephone easily and conveniently. As currently designed pocket-type text telephones for personal use do not accommodate a wide range of users. Such devices would not be considered substantially equivalent to conventional text telephones. However, in the future as technology develops this could change.*

A4.32 *Fixed or Built-in* Seating and Tables.

A4.32.4 Height of *Tables or Counters*. Different types of work require different *table or counter* heights for comfort and optimal performance. Light detailed work such as writing requires a *table or counter* close to elbow height for a standing person. Heavy manual work such as rolling dough requires *a counter or table* height about 10 in (255 mm) below elbow height for a standing person. This principle of *high/low table or counter heights* also applies for seated persons; however, the limiting condition for seated manual work is clearance under the *table or counter*.

Table A1 shows convenient *counter heights* for seated persons. The great variety of heights for comfort and optimal performance indicates a need for alternatives or a compromise in height if people who stand and people who sit will be using the same counter area.

Table A1
Convenient Heights of Tables and Counters for Seated People[1]

Conditions of Use	Short Women in mm		Tall Men in mm	
Seated in a wheelchair:				
Manual work–				
Desk or removeable armrests	26	660	30	760
Fixed, full-size armrests[2]	32[3]	815	32[3]	815
Light detailed work:				
Desk or removable armrests	29	735	34	865
Fixed, full-size armrests[2]	32[3]	815	34	865
Seated in a 16-in. (405-mm) High chair:				
Manual work	26	660	27	685
Light detailed work	28	710	31	785

[1] All dimensions are based on a work-surface thickness of 1 1/2 in (38 mm) and a clearance of 1 1/2 in (38 mm) between legs and the underside of a work surface.

[2] This type of wheelchair arm does not interfere with the positioning of a wheelchair under a work surface.

[3] This dimension is limited by the height of the armrests: a lower height would be preferable. Some people in this group prefer lower work surfaces, which require positioning the wheelchair back from the edge of the counter.

A4.33 Assembly Areas.

A4.33.2 Size of Wheelchair Locations. Spaces large enough for two wheelchairs allow people who are coming to a performance together to sit together.

A4.33.3 Placement of Wheelchair Locations. The location of wheelchair areas can be planned so that a variety of positions

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within the seating area are provided. This will allow choice in viewing and price categories.

Building/life safety codes set minimum distances between rows of fixed seats with consideration of the number of seats in a row, the exit aisle width and arrangement, and the location of exit doors. "Continental" seating, with a greater number of seats per row and a commensurate increase in row spacing and exit doors, facilitates emergency egress for all people and increases ease of access to mid-row seats especially for people who walk with difficulty. Consideration of this positive attribute of "continental" seating should be included along with all other factors in the design of fixed seating areas.

Table A2. Summary of Assistive Listening Devices

System	Advantages	Disadvantages	Typical Applications
Induction Loop Transmitter: Transducer wired to induction loop around listening area. Receiver: Self-contained induction receiver or personal hearing aid with telecoil.	Cost-Effective Low Maintenance Easy to use Unobtrusive May be possible to integrate into existing public address system. Some hearing aids can function as receivers.	Signal spills over to adjacent rooms. Susceptible to electrical interference. Limited portability Inconsistent signal strength. Head position affects signal strength. Lack of standards for induction coil performance.	Meeting areas Theaters Churches and Temples Conference rooms Classrooms TV viewing
FM Transmitter: Flashlight-sized worn by speaker. Receiver: With personal hearing aid via DAI or induction neck-loop and telecoil; or self-contained with earphone(s).	Highly portable Different channels allow use by different groups within the same room. High user mobility Variable for large range of hearing losses.	High cost of receivers Equipment fragile Equipment obtrusive High maintenance Expensive to maintain Custom fitting to individual user may be required.	Classrooms Tour groups Meeting areas Outdoor events One-on-one
Infrared Transmitter: Emitter in line-of-sight with receiver. Receiver: Self-contained. Or with personal hearing aid via DAI or induction neckloop and telecoil.	Easy to use Insures privacy or confidentiality Moderate cost Can often be integrated into existing public address system.	Line-of-sight required between emitter and receiver. Ineffective outdoors Limited portability Requires installation	Theaters Churches and Temples Auditoriums Meetings requiring confidentiality TV viewing

Source: Rehab Brief, National Institute on Disability and Rehabilitation Research, Washington, DC, Vol. XII, No. 10, (1990).

A4.33.6 Placement of Listening Systems. A distance of 50 ft (15 m) allows a person to distinguish performers' facial expressions.

A4.33.7 Types of Listening Systems. *An assistive listening system appropriate for an assembly area for a group of persons or where the specific individuals are not known in advance, such as a playhouse, lecture hall or movie theater, may be different from the system appropriate for a particular individual provided as an auxiliary aid or as part of a reasonable accommodation. The appropriate device for an individual is the type that individual can use, whereas the appropriate system for an assembly area will necessarily be geared toward the "average" or aggregate needs of various individuals.* A listening system that can be used from any seat in a seating area is the most flexible way to meet this specification. Earphone jacks with variable volume controls can benefit only people who have slight hearing loss and do not help people who use hearing aids. At the present time, *magnetic induction* loops are the most feasible type of listening system for people who use hearing aids *equipped with "T-coils,"* but people without hearing aids or those with hearing aids not equipped with inductive pick-ups cannot use them *without special receivers.* Radio frequency systems can be extremely effective and inexpensive. People without hearing aids can use them, but people with hearing aids need a special receiver to use them as they are presently designed. If hearing aids had a jack to allow a by-pass of microphones, then radio frequency systems would be suitable for people with and without hearing aids. Some listening systems may be subject to interference from other equipment and feedback from hearing aids of people who are using the systems. Such interference can be controlled by careful engineering design that anticipates feedback sources in the surrounding area.

Table A2, reprinted from a National Institute of Disability and Rehabilitation Research "Rehab Brief," shows some of the advantages and disadvantages of different types of assistive listening systems. In addition, the Architectural and Transportation Barriers Compliance Board (Access Board) has published a pamphlet on Assistive Listening Systems which lists demonstration centers across the country where technical assistance can be obtained in selecting and installing appropriate systems. The state of New York has also adopted a detailed technical specification which may be useful.

A5.0 Restaurants and Cafeterias.

A5.1 General. *Dining counters (where there is no service) are typically found in small carry-out restaurants, bakeries, or coffee shops and may only be a narrow eating surface attached to a wall. This section requires that where such a dining counter is provided, a portion of the counter shall be at the required accessible height.*

A7.0 Business and Mercantile.

A7.2(3) Assistive Listening Devices. *At all sales and service counters, teller windows, box offices, and information kiosks where a physical barrier separates service personnel and customers, it is recommended that at least one permanently installed assistive listening device complying with 4.33 be provided at each location or series. Where assistive listening devices are installed, signage should be provided identifying those stations which are so equipped.*

A7.3 Check-out Aisles. *Section 7.2 refers to counters without aisles; section 7.3 concerns check-out aisles. A counter without an aisle (7.2) can be approached from more than one direction such as in a convenience store. In order to use a check-out aisle (7.3), customers must enter a defined area (an aisle) at a particular point, pay for goods, and exit at a particular point.*

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disadvantages of different types of assistive listening systems. In addition, the Architectural and Transportation Barriers Compliance Board (Access Board) has published a pamphlet on Assistive Listening Systems which lists demonstration centers across the country where technical assistance can be obtained in selecting and installing appropriate systems. The state of New York has also adopted a detailed technical specification which may be useful.

A5.0 Restaurants and Cafeterias.

A5.1 General. *Dining counters (where there is no service) are typically found in small carry-out restaurants, bakeries, or coffee shops and may only be a narrow eating surface attached to a wall. This section requires that where such a dining counter is provided, a portion of the counter shall be at the required accessible height.*

A7.0 Business and Mercantile.

A7.2(3) Assistive Listening Devices. *At all sales and service counters, teller windows, box offices, and information kiosks where a physical barrier separates service personnel and customers, it is recommended that at least one permanently installed assistive listening device complying with 4.33 be provided at each location or series. Where assistive listening devices are installed, signage should be provided identifying those stations which are so equipped.*

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federal register

Friday
July 26, 1991

Part III

Department of Justice

Office of the Attorney General

28 CFR Part 36

Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities; Final Rule

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 36

[Order No. 1513-91]

Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule implements title III of the Americans with Disabilities Act, Public Law 101–336, which prohibits discrimination on the basis of disability by private entities in places of public accommodation, requires that all new places of public accommodation and commercial facilities be designed and constructed so as to be readily accessible to and usable by persons with disabilities, and requires that examinations or courses related to licensing or certification for professional and trade purposes be accessible to persons with disabilities.

EFFECTIVE DATE: January 26, 1992.

FOR FURTHER INFORMATION CONTACT: Barbara S. Drake, Deputy Assistant Attorney General, Civil Rights Division; Stewart B. Oneglia, Chief, Coordination and Review Section, Civil Rights Division; and John Wodatch, Director, Office on the Americans with Disabilities Act, Civil Rights Division; all of the U.S. Department of Justice, Washington, DC 20530. They may be contacted through the Division's ADA Information Line at (202) 514–0301 (Voice), (202) 514–0381 (TDD), or (202) 514–0383 (TDD). These telephone numbers are not toll-free numbers.

Copies of this rule are available in the following alternate formats: large print, Braille, electronic file on computer disk, and audio-tape. Copies may be obtained from the Office on the Americans with Disabilities Act at (202) 514–0301 (Voice) or (202) 514–0381 (TDD). The rule is also available on electronic bulletin board at (202) 514–6193. These telephone numbers are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

The landmark Americans with Disabilities Act ("ADA" or "the Act"), enacted on July 26, 1990, provides comprehensive civil rights protections to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications.

The legislation was originally developed by the National Council on Disability, an independent Federal agency that reviews and makes recommendations concerning Federal laws, programs, and policies affecting individuals with disabilities. In its 1986 study, "Toward Independence," the National Council on Disability recognized the inadequacy of the existing, limited patchwork of protections for individuals with disabilities, and recommended the enactment of a comprehensive civil rights law requiring equal opportunity for individuals with disabilities throughout American life. Although the 100th Congress did not act on the legislation, which was first introduced in 1988, then-Vice-President George Bush endorsed the concept of comprehensive disability rights legislation during his presidential campaign and became a dedicated advocate of the ADA.

The ADA was reintroduced in modified form in May 1989 for consideration by the 101st Congress. In June 1989, Attorney General Dick Thornburgh, in testimony before the Senate Committee on Labor and Human Resources, reiterated the Bush Administration's support for the ADA and suggested changes in the proposed legislation. After extensive negotiations between Senate sponsors and the Administration, the Senate passed an amended version of the ADA on September 7, 1989, by a vote of 76–8.

In the House, jurisdiction over the ADA was divided among four committees, each of which conducted extensive hearings and issued detailed committee reports: the Committee on Education and Labor, the Committee on the Judiciary, the Committee on Public Works and Transportation, and the Committee on Energy and Commerce. On October 12, 1989, the Attorney General testified in favor of the legislation before the Committee on the Judiciary. The Civil Rights Division, on February 22, 1990, provided testimony to the Committee on Small Business, which although technically without jurisdiction over the bill, conducted hearings on the legislation's impact on small business.

After extensive committee consideration and floor debate, the House of Representatives passed an amended version of the Senate bill on May 22, 1990, by a vote of 403–20. After resolving their differences in conference, the Senate and House took final action on the bill—the House passing it by a vote of 377–28 on July 12, 1990, and the Senate, a day later, by a vote of 91–6. The ADA was enacted into law with the President's signature at a White House ceremony on July 26, 1990.

Rulemaking History

On February 22, 1991, the Department of Justice published a notice of proposed rulemaking (NPRM) implementing title III of the ADA in the **Federal Register** (56 FR 7452). On February 28, 1991, the Department published a notice of proposed rulemaking implementing subtitle A of title II of the ADA in the **Federal Register** (56 FR 8538). Each NPRM solicited comments on the definitions, standards, and procedures of the proposed rules. By the April 29, 1991, close of the comment period of the NPRM for title II, the Department had received 2,718 comments on the two proposed rules. Following the close of the comment period, the Department received an additional 222 comments.

In order to encourage public participation in the development of the Department's rules under the ADA, the Department held four public hearings. Hearings were held in Dallas, Texas on March 4–5, 1991; in Washington, DC on March 13–14–15, 1991; in San Francisco, California on March 18–19, 1991; and in Chicago, Illinois on March 27–28, 1991. At these hearings, 329 persons testified and 1,567 pages of testimony were compiled. Transcripts of the hearings were included in the Department's rulemaking docket.

The comments that the Department received occupy almost six feet of shelf space and contain over 10,000 pages. The Department received comments from individuals from all fifty States and the District of Columbia. Nearly 75% of the comments came from individuals and from organizations representing the interests of persons with disabilities. The Department received 292 comments from entities covered by the ADA and trade associations representing businesses in the private sector, and 67 from government units, such as mayors' offices, public school districts, and various State agencies working vith individuals with disabilities.

The Department received one comment from a consortium of 511 organizations representing a broad spectrum of persons with disabilities. In addition, at least another 25 commenters endorsed the position expressed by this consortium or submitted identical comments on one or both proposed regulations.

An organization representing persons with hearing impairments submitted a large number of comments. This organization presented the Department with 479 individual comments, each providing in chart form a detailed representation of what type of auxiliary aid or service would be useful in the

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various categories of places of public accommodation.

The Department received a number of comments based on almost ten different form letters. For example, individuals who have a heightened sensitivity to a variety of chemical substances submitted 266 postcards detailing how exposure to various environmental conditions restricts their access to places of public accommodation and to commercial facilities. Another large group of form letters came from groups affiliated with independent living centers.

The vast majority of the comments addressed the Department's proposal implementing title III. Just over 100 comments addressed only issues presented in the proposed title II regulation.

The Department read and analyzed each comment that was submitted in a timely fashion. Transcripts of the four hearings were analyzed along with the written comments. The decisions that the Department has made in response to these comments, however, were not made on the basis of the number of commenters addressing any one point but on a thorough consideration of the merits of the points of view expressed in the comments. Copies of the written comments, including transcripts of the four hearings, will remain available for public inspection in room 854 of the HOLC Building, 320 First Street, NW., Washington, DC from 10 a.m. to 5 p.m., Monday through Friday, except for legal holidays, until August 30, 1991.

The Americans with Disabilities Act gives to individuals with disabilities civil rights protections with respect to discrimination that are parallel to those provided to individuals on the basis of race, color, national origin, sex, and religion. It combines in its own unique formula elements drawn principally from two key civil rights statutes—the Civil Rights Act of 1964 and title V of the Rehabilitation Act of 1973. The ADA generally employs the framework of titles II (42 U.S.C. 2000a to 2000a–6) and VII (42 U.S.C. 2000e to 2000e–16) of the Civil Rights Act of 1964 for coverage and enforcement and the terms and concepts of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for what constitutes discrimination.

Other recently enacted legislation will facilitate compliance with the ADA. As amended in 1990, the Internal Revenue Code allows a deduction of up to $15,000 per year for expenses associated with the removal of qualified architectural and transportation barriers. The 1990 amendment also permits eligible small businesses to receive a tax credit for certain costs of compliance with the ADA. An eligible small business is one whose gross receipts do not exceed $1,000,000 or whose workforce does not consist of more than 30 full-time workers. Qualifying businesses may claim a credit of up to 50 percent of eligible access expenditures that exceed $250 but do not exceed $10,250. Examples of eligible access expenditures include the necessary and reasonable costs of removing barriers, providing auxiliary aids, and acquiring or modifying equipment or devices.

In addition, the Communications Act of 1934 has been amended by the Television Decoder Circuitry Act of 1990, Public Law 101–431, to require as of July 1, 1993, that all televisions with screens of 13 inches or wider have built-in decoder circuitry for displaying closed captions. This new law will eventually lessen dependence on the use of portable decoders in achieving compliance with the auxiliary aids and services requirements of the rule.

Overview of the Rule

The final rule establishes standards and procedures for the implementation of title III of the Act, which addresses discrimination by private entities in places of public accommodation, commercial facilities, and certain examinations and courses. The careful consideration Congress gave title III is reflected in the detailed statutory provisions and the expansive reports of the Senate Committee on Labor and Human Resources and the House Committees on the Judiciary, and Education and Labor. The final rule follows closely the language of the Act and supplements it, where appropriate, with interpretive material found in the committee reports.

The rule is organized into six subparts. Subpart A, "General," includes the purpose and application sections, describes the relationship of the Act to other laws, and defines key terms used in the regulation.

Subpart B, "General Requirements," contains material derived from what the statute calls the "General Rule," and the "General Prohibition," in sections 302(a) and 302(b)(1), respectively, of the Act. Topics addressed by this subpart include discriminatory denials of access or participation, landlord and tenant obligations, the provision of unequal benefits, indirect discrimination through contracting, the participation of individuals with disabilities in the most integrated setting appropriate to their needs, and discrimination based on association with individuals with disabilities. Subpart B also contains a number of "miscellaneous" provisions derived from title V of the Act that involve issues such as retaliation and coercion for asserting ADA rights, illegal drug use, insurance, and restrictions on smoking in places of public accommodation. Finally, subpart B contains additional general provisions regarding direct threats to health or safety, maintenance of accessible features of facilities and equipment, and the coverage of places of public accommodation located in private residences.

Subpart C, "Specific Requirements," addresses the "Specific Prohibitions" in section 302(b)(2) of the Act. Included in this subpart are topics such as discriminatory eligibility criteria; reasonable modifications in policies, practices or procedures; auxiliary aids and services; the readily achievable removal of barriers and alternatives to barrier removal; the extent to which inventories of accessible or special goods are required; seating in assembly areas; personal devices and services; and transportation provided by public accommodations. Subpart C also incorporates the requirements of section 309 of title III relating to examinations and courses.

Subpart D, "New Construction and Alterations," sets forth the requirements for new construction and alterations based on section 303 of the Act. It addresses such issues as what facilities are covered by the new construction requirements, what an alteration is, the application of the elevator exception, the path of travel obligations resulting from an alteration to a primary function area, requirements for commercial facilities located in private residences, and the application of alterations requirements to historic buildings and facilities.

Subpart E, "Enforcement," describes the Act's title III enforcement procedures, including private actions, as well as investigations and litigation conducted by the Attorney General. These provisions are based on sections 308 and 310(b) of the Act.

Subpart F, "Certification of State Laws or Local Building Codes," establishes procedures for the certification of State or local building accessibility ordinances that meet or exceed the new construction and alterations requirements of the ADA. These provisions are based on section 308(b)(1)(A)(ii) of the Act.

The section-by-section analysis of the rule explains in detail the provisions of each of these subparts.

The Department is also today publishing a final rule for the implementation and enforcement of subtitle A of title II of the Act. This rule prohibits discrimination on the basis of disability against qualified individuals with disabilities in all services, programs, or activities of State and local government.

Regulatory Process Matters

This final rule has been reviewed by the Office of Management and Budget (OMB) under Executive Order 12291. The Department is preparing a regulatory impact analysis (RIA) of this rule, and the Architectural and Transportation Barriers Compliance Board is preparing an RIA for its Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG) that are incorporated in Appendix A of the Department's final rule. Draft copies of both preliminary RIAs are available for comment; the Department will provide copies of these documents to the public upon request. Commenters are urged to provide additional information as to the costs and benefits associated with this rule. This will facilitate the development of a final RIA by January 1, 1992.

The Department's RIA will evaluate the economic impact of the final rule. Included among those title III provisions that are likely to result in significant economic impact are the requirements for auxiliary aids, barrier removal in existing facilities, and readily accessible new construction and alterations. An analysis of the costs of these provisions will be included in the RIA.

The preliminary RIA prepared for the notice of proposed rulemaking contained all of the available information that would have been included in a preliminary regulatory flexibility analysis, had one been prepared under the Regulatory Flexibility Act, concerning the rule's impact on small entities. The final RIA will contain all of the information that is required in a final regulatory flexibility analysis, and will serve as such an analysis. Moreover, the extensive notice and comment procedure followed by the Department in the promulgation of this rule, which included public hearings, dissemination of materials, and provision of speakers to affected groups, clearly provided any interested small entities with the notice and opportunity for comment provided for under the Regulatory Flexibility Act procedures.

This final rule will preempt State laws affecting entities subject to the ADA only to the extent that those laws directly conflict with the statutory requirements of the ADA. Therefore, this rule is not subject to Executive Order 12612, and a Federalism Assessment is not required.

The reporting and recordkeeping requirements described in subpart F of the rule are considered to be information collection requirements as that term is defined by the Office of Management and Budget in 5 CFR part 1320. Accordingly, those information collection requirements have been submitted to OMB for review pursuant to the Paperwork Reduction Act.

Section-By-Section Analysis and Response to Comments

Subpart A—General

Section 36.101 Purpose

Section 36.101 states the purpose of the rule, which is to effectuate title III of the Americans with Disabilities Act of 1990. This title prohibits discrimination on the basis of disability by public accommodations, requires places of public accommodation and commercial facilities to be designed, constructed, and altered in compliance with the accessibility standards established by this part, and requires that examinations or courses related to licensing or certification for professional or trade purposes be accessible to persons with disabilities.

Section 36.102 Application

Section 36.102 specifies the range of entities and facilities that have obligations under the final rule. The rule applies to any public accommodation or commercial facility as those terms are defined in § 36.104. It also applies, in accordance with section 309 of the ADA, to private entities that offer examinations or courses related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes. Except as provided in § 36.206, "Retaliation or coercion," this part does not apply to individuals other than public accommodations or to public entities. Coverage of private individuals and public entities is discussed in the preamble to § 36.206.

As defined in § 36.104, a public accommodation is a private entity that owns, leases or leases to, or operates a place of public accommodation. Section 36.102(b)(2) emphasizes that the general and specific public accommodations requirements of subparts B and C obligate a public accommodation only with respect to the operations of a place of public accommodation. This distinction is drawn in recognition of the fact that a private entity that meets the regulatory definition of public accommodation could also own, lease or lease to, or operate facilities that are not places of public accommodation. The rule would exceed the reach of the ADA if it were to apply the public accommodations requirements of subparts B and C to the operations of a private entity that do not involve a place of public accommodation. Similarly, § 36.102(b)(3) provides that the new construction and alterations requirements of subpart D obligate a public accommodation only with respect to facilities used as, or designed or constructed for use as, places of public accommodation or commercial facilities.

On the other hand, as mandated by the ADA and reflected in § 36.102(c), the new construction and alterations requirements of subpart D apply to a commercial facility whether or not the facility is a place of public accommodation, or is owned, leased, leased to, or operated by a public accommodation.

Section 36.102(e) states that the rule does not apply to any private club, religious entity, or public entity. Each of these terms is defined in § 36.104. The exclusion of private clubs and religious entities is derived from section 307 of the ADA; and the exclusion of public entities is based on the statutory definition of public accommodation in section 301(7) of the ADA, which excludes entities other than private entities from coverage under title III of the ADA.

Section 36.103 Relationship to Other Laws

Section 36.103 is derived from sections 501 (a) and (b) of the ADA. Paragraph (a) provides that, except as otherwise specifically provided by this part, the ADA is not intended to apply lesser standards than are required under title V of the Rehabilitation Act of 1973, as amended (29 U.S.C. 790–794), or the regulations implementing that title. The standards of title V of the Rehabilitation Act apply for purposes of the ADA to the extent that the ADA has not explicitly adopted a different standard from title V. Where the ADA explicitly provides a different standard from section 504, the ADA standard applies to the ADA, but not to section 504. For example, section 504 requires that all federally assisted programs and activities be readily accessible to and usable by individuals with handicaps, even if major structural alterations are necessary to make a program accessible. Title III of the ADA, in contrast, only requires alterations to existing facilities if the modifications are "readily achievable," that is, able to be accomplished easily and without much difficulty or expense. A public accommodation that is covered under both section 504 and the ADA is still required to meet the "program accessibility" standard in order to comply with section 504, but would not be in violation of the ADA unless it failed to make "readily achievable" modifications. On the other hand, an entity covered by the ADA is required to make "readily achievable" modifications, even if the program can be made accessible without any architectural modifications. Thus, an entity covered by both section 504 and title III of the ADA must meet both the "program accessibility" requirement and the "readily achievable" requirement.

Paragraph (b) makes explicit that the rule does not affect the obligation of recipients of Federal financial assistance to comply with the requirements imposed under section 504 of the Rehabilitation Act of 1973.

Paragraph (c) makes clear that Congress did not intend to displace any of the rights or remedies provided by other Federal laws or other State or local laws (including State common law) that provide greater or equal protection to individuals with disabilities. A plaintiff may choose to pursue claims under a State law that does not confer greater substantive rights, or even confers fewer substantive rights, if the alleged violation is protected under the alternative law and the remedies are greater. For example, assume that a person with a physical disability seeks damages under a State law that allows compensatory and punitive damages for discrimination on the basis of physical disability, but does not allow them on the basis of mental disability. In that situation, the State law would provide narrower coverage, by excluding mental disabilities, but broader remedies, and an individual covered by both laws could choose to bring an action under both laws. Moreover, State tort claims confer greater remedies and are not preempted by the ADA. A plaintiff may join a State tort claim to a case brought under the ADA. In such a case, the plaintiff must, of course, prove all the elements of the State tort claim in order to prevail under that cause of action.

A commenter had concerns about privacy requirements for banking transactions using telephone relay services. Title IV of the Act provides adequate protections for ensuring the confidentiality of communications using the relay services. This issue is more appropriately addressed by the Federal Communications Commission in its regulation implementing title IV of the Act.

Section 36.104 Definitions

"Act." The word "Act" is used in the regulation to refer to the Americans with Disabilities Act of 1990, Pub. L. 101–336, which is also referred to as the "ADA."

"Commerce." The definition of "commerce" is identical to the statutory definition provided in section 301(l) of the ADA. It means travel, trade, traffic, commerce, transportation, or communication among the several States, between any foreign country or any territory or possession and any State, or between points in the same State but through another State or foreign country. Commerce is defined in the same manner as in title II of the Civil Rights Act of 1964, which prohibits racial discrimination in public accommodations.

The term "commerce" is used in the definition of "place of public accommodation." According to that definition, one of the criteria that an entity must meet before it can be considered a place of public accommodation is that its operations affect commerce. The term "commerce" is similarly used in the definition of "commercial facility."

The use of the phrase "operations affect commerce" applies the full scope of coverage of the Commerce Clause of the Constitution in enforcing the ADA. The Constitution gives Congress broad authority to regulate interstate commerce, including the activities of local business enterprises (e.g., a physician's office, a neighborhood restaurant, a laundromat, or a bakery) that affect interstate commerce through the purchase or sale of products manufactured in other States, or by providing services to individuals from other States. Because of the integrated nature of the national economy, the ADA and this final rule will have extremely broad application.

"Commercial facilities" are those facilities that are intended for nonresidential use by a private entity and whose operations affect commerce. As explained under § 36.401, "New construction," the new construction and alteration requirements of subpart D of the rule apply to all commercial facilities, whether or not they are places of public accommodation. Those commercial facilities that are not places of public accommodation are not subject to the requirements of subparts B and C (e.g., those requirements concerning auxiliary aids and general nondiscrimination provisions).

Congress recognized that the employees within commercial facilities would generally be protected under title I (employment) of the Act. However, as the House Committee on Education and Labor pointed out, "[t]o the extent that new facilities are built in a manner that make[s] them accessible to all individuals, including potential employees, there will be less of a need for individual employers to engage in reasonable accommodations for particular employees." H.R. Rep. No. 485, 101st Cong., 2d Sess., pt. 2, at 117 (1990) [hereinafter "Education and Labor report"]. While employers of fewer than 15 employees are not covered by title I's employment discrimination provisions, there is no such limitation with respect to new construction covered under title III. Congress chose not to so limit the new construction provisions because of its desire for a uniform requirement of accessibility in new construction, because accessibility can be accomplished easily in the design and construction stage, and because future expansion of a business or sale or lease of the property to a larger employer or to a business that is a place of public accommodation is always a possibility.

The term "commercial facilities" is not intended to be defined by dictionary or common industry definitions. Included in this category are factories, warehouses, office buildings, and other buildings in which employment may occur. The phrase, "whose operations affect commerce," is to be read broadly, to include all types of activities reached under the commerce clause of the Constitution.

Privately operated airports are also included in the category of commercial facilities. They are not, however, places of public accommodation because they are not terminals used for "specified public transportation." (Transportation by aircraft is specifically excluded from the statutory definition of "specified public transportation.") Thus, privately operated airports are subject to the new construction and alteration requirements of this rule (subpart D) but not to subparts B and C. (Airports operated by public entities are covered by title II of the Act.) Places of public accommodation located within airports, such as restaurants, shops, lounges, or conference centers, however, are covered by subparts B and C of this part.

The statute's definition of "commercial facilities" specifically includes only facilities "that are intended for nonresidential use" and specifically exempts those facilities that are covered or expressly exempted from coverage under the Fair Housing Act of 1968, as amended (42 U.S.C. 3601–3631). The interplay between the Fair Housing Act and the ADA with respect to those facilities that are "places of public accommodation" was the subject of many comments and is addressed in the preamble discussion of the definition of "place of public accommodation."

"Current illegal use of drugs." The phrase "current illegal use of drugs" is used in § 36.209. Its meaning is discussed in the preamble for that section.

"Disability." The definition of the term "disability" is comparable to the definition of the term "individual with handicaps" in section 7(8)(B) of the Rehabilitation Act and section 802(h) of the Fair Housing Act. The Education and Labor Committee report makes clear that the analysis of the term "individual with handicaps" by the Department of Health, Education, and Welfare in its regulations implementing section 504 (42 FR 22685 (May 4, 1977)) and the analysis by the Department of Housing and Urban Development in its regulation implementing the Fair Housing Amendments Act of 1988 (54 FR 3232 (Jan. 23, 1989)) should also apply fully to the term "disability" (Education and Labor report at 50).

The use of the term "disability" instead of "handicap" and the term "individual with a disability" instead of "individual with handicaps" represents an effort by the Congress to make use of up-to-date, currently accepted terminology. The terminology applied to individuals with disabilities is a very significant and sensitive issue. As with racial and ethnic terms, the choice of words to describe a person with a disability is overlaid with stereotypes, patronizing attitudes, and other emotional connotations. Many individuals with disabilities, and organizations representing such individuals, object to the use of such terms as "handicapped person" or "the handicapped." In other recent legislation, Congress also recognized this shift in terminology, e.g., by changing the name of the National Council on the Handicapped to the National Council on Disability (Pub. L. 100–630).

In enacting the Americans with Disabilities Act, Congress concluded that it was important for the current legislation to use terminology most in line with the sensibilities of most Americans with disabilities. No change in definition or substance is intended nor should be attributed to this change in phraseology.

The term "disability" means, with respect to an individual—

(A) A physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) A record of such an impairment; or

(C) Being regarded as having such an impairment.

If an individual meets any one of these three tests, he or she is considered to be an individual with a disability for purposes of coverage under the Americans with Disabilities Act.

Congress adopted this same basic definition of "disability," first used in the Rehabilitation Act of 1973 and in the Fair Housing Amendments Act of 1988, for a number of reasons. It has worked well since it was adopted in 1974. There is a substantial body of administrative interpretation and judicial precedent on this definition. Finally, it would not be possible to guarantee comprehensiveness by providing a list of specific disabilities, especially because new disorders may be recognized in the future, as they have since the definition was first established in 1974.

Test A—A Physical or Mental Impairment That Substantially Limits One or More of the Major Life Activities of Such Individual

Physical or mental impairment. Under the first test, an individual must have a physical or mental impairment. As explained in paragraph (1) (i) of the definition, "impairment" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs (including speech organs that are not respiratory, such as vocal cords, soft palate, and tongue); respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine. It also means any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. This list closely tracks the one used in the regulations for section 504 of the Rehabilitation Act of 1973 (see, *e.g.*, 45 CFR 84.3(j)(2)(i)).

Many commenters asked that "traumatic brain injury" be added to the list in paragraph (1)(i). Traumatic brain injury is already included because it is a physiological condition affecting one of the listed body systems, i.e., "neurological." Therefore, it was unnecessary for the Department to add the term to the regulation.

It is not possible to include a list of all the specific conditions, contagious and noncontagious diseases, or infections that would constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of such a list, particularly in light of the fact that other conditions or disorders may be identified in the future. However, the list of examples in paragraph (1)(iii) of the definition includes: Orthopedic, visual, speech and hearing impairments; cerebral palsy; epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.

The examples of "physical or mental impairments" in paragraph (1)(iii) are the same as those contained in many section 504 regulations, except for the addition of the phrase "contagious and noncontagious" to describe the types of diseases and conditions included, and the addition of "HIV disease (symptomatic or asymptomatic)" and "tuberculosis" to the list of examples. These additions are based on the ADA committee reports, caselaw, and official legal opinions interpreting section 504. In *School Board of Nassau County* v. *Arline*, 480 U.S. 273 (1987), a case involving an individual with tuberculosis, the Supreme Court held that people with contagious diseases are entitled to the protections afforded by section 504. Following the *Arline* decision, this Department's Office of Legal Counsel issued a legal opinion that concluded that symptomatic HIV disease is an impairment that substantially limits a major life activity; therefore it has been included in the definition of disability under this part. The opinion also concluded that asymptomatic HIV disease is an impairment that substantially limits a major life activity, either because of its actual effect on the individual with HIV disease or because the reactions of other people to individuals with HIV disease cause such individuals to be treated as though they are disabled. See Memorandum from Douglas W. Kmiec, Acting Assistant Attorney General, Office of Legal Counsel, Department of Justice, to Arthur B. Culvahouse, Jr., Counsel to the President (Sept. 27, 1988), *reprinted in* Hearings on S. 933, the Americans with Disabilities Act, Before the Subcomm. on the Handicapped of the Senate Comm. on Labor and Human Resources, 101st Cong., 1st Sess. 346 (1989). The phrase "symptomatic or asymptomatic" was inserted in the final rule after "HIV disease" in response to commenters who suggested that the clarification was necessary to give full meaning to the Department's opinion.

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disability laws. Section 511(a) of the statute makes clear that they are likewise not to be considered impairments under the Americans with Disabilities Act.

Physical or mental impairment does not include simple physical characteristics, such as blue eyes or black hair. Nor does it include environmental, cultural, economic, or other disadvantages, such as having a prison record, or being poor. Nor is age a disability. Similarly, the definition does not include common personality traits such as poor judgment or a quick temper where these are not symptoms of a mental or psychological disorder. However, a person who has these characteristics and also has a physical or mental impairment may be considered as having a disability for purposes of the Americans with Disabilities Act based on the impairment.

Substantial limitation of a major life activity. Under Test A, the impairment must be one that "substantially limits a major life activity." Major life activities include such things as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. For example, a person who is paraplegic is substantially limited in the major life activity of walking, a person who is blind is substantially limited in the major life activity of seeing, and a person who is mentally retarded is substantially limited in the major life activity of learning. A person with traumatic brain injury is substantially limited in the major life activities of caring for one's self, learning, and working because of memory deficit, confusion, contextual difficulties, and inability to reason appropriately.

A person is considered an individual with a disability for purposes of Test A, the first prong of the definition, when the individual's important life activities are restricted as to the conditions, manner, or duration under which they can be performed in comparison to most people. A person with a minor, trivial impairment, such as a simple infected finger, is not impaired in a major life activity. A person who can walk for 10 miles continuously is not substantially limited in walking merely because, on the eleventh mile, he or she begins to experience pain, because most people would not be able to walk eleven miles without experiencing some discomfort.

The Department received many comments on the proposed rule's inclusion of the word "temporary" in the definition of "disability." The preamble indicated that impairments are not necessarily excluded from the definition of "disability" simply because they are temporary, but that the duration, or expected duration, of an impairment is one factor that may properly be considered in determining whether the impairment substantially limits a major life activity. The preamble recognized, however, that temporary impairments, such as a broken leg, are not commonly regarded as disabilities, and only in rare circumstances would the degree of the limitation and its expected duration be substantial: Nevertheless, many commenters objected to inclusion of the word "temporary" both because it is not in the statute and because it is not contained in the definition of "disability" set forth in the title I regulations of the Equal Employment Opportunity Commission (EEOC). The word "temporary" has been deleted from the final rule to conform with the statutory language. The question of whether a temporary impairment is a disability must be resolved on a case-by-case basis, taking into consideration both the duration (or expected duration) of the impairment and the extent to which it actually limits a major life activity of the affected individual.

The question of whether a person has a disability should be assessed without regard to the availability of mitigating measures, such as reasonable modifications or auxiliary aids and services. For example, a person with hearing loss is substantially limited in the major life activity of hearing, even though the loss may be improved through the use of a hearing aid. Likewise, persons with impairments, such as epilepsy or diabetes, that substantially limit a major life activity, are covered under the first prong of the definition of disability, even if the effects of the impairment are controlled by medication.

Many commenters asked that environmental illness (also known as multiple chemical sensitivity) as well as allergy to cigarette smoke be recognized as disabilities. The Department, however, declines to state categorically that these types of allergies or sensitivities are disabilities, because the determination as to whether an impairment is a disability depends on whether, given the particular circumstances at issue, the impairment substantially limits one or more major life activities (or has a history of, or is regarded as having such an effect).

Sometimes respiratory or neurological functioning is so severely affected that an individual will satisfy the requirements to be considered disabled under the regulation. Such an individual would be entitled to all of the protections afforded by the Act and this part. In other cases, individuals may be sensitive to environmental elements or to smoke but their sensitivity will not rise to the level needed to constitute a disability. For example, their major life activity of breathing may be somewhat, but not substantially, impaired. In such circumstances, the individuals are not disabled and are not entitled to the protections of the statute despite their sensitivity to environmental agents.

In sum, the determination as to whether allergies to cigarette smoke, or allergies or sensitivities characterized by the commenters as environmental illness are disabilities covered by the regulation must be made using the same case-by-case analysis that is applied to all other physical or mental impairments. Moreover, the addition of specific regulatory provisions relating to environmental illness in the final rule would be inappropriate at this time pending future consideration of the issue by the Architectural and Transportation Barriers Compliance Board, the Environmental Protection Agency, and the Occupational Safety and Health Administration of the Department of Labor.

Test B—A Record of Such an Impairment

This test is intended to cover those who have a record of an impairment. As explained in paragraph (3) of the rule's definition of disability, this includes a person who has a history of an impairment that substantially limited a major life activity, such as someone who has recovered from an impairment. It also includes persons who have been misclassified as having an impairment.

This provision is included in the definition in part to protect individuals who have recovered from a physical or mental impairment that previously substantially limited them in a major life activity. Discrimination on the basis of such a past impairment is prohibited. Frequently occurring examples of the first group (those who have a history of an impairment) are persons with histories of mental or emotional illness, heart disease, or cancer; examples of the second group (those who have been misclassified as having an impairment) are persons who have been misclassified as having mental retardation or mental illness.

Test C—Being Regarded as Having Such an Impairment

This test, as contained in paragraph (4) of the definition, is intended to cover persons who are treated by a private entity or public accommodation as having a physical or mental impairment that substantially limits a major life activity. It applies when a person is treated as if he or she has an impairment that substantially limits a major life activity, regardless of whether that person has an impairment.

The Americans with Disabilities Act uses the same "regarded as" test set forth in the regulations implementing section 504 of the Rehabilitation Act. *See, e.g.,* 28 CFR 42.540(k)(2)(iv), which provides:

> (iv) "Is regarded as having an impairment" means (A) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (B) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (C) Has none of the impairments defined in paragraph (k)(2)(i) of this section but is treated by a recipient as having such an impairment.

The perception of the private entity or public accommodation is a key element of this test. A person who perceives himself or herself to have an impairment, but does not have an impairment, and is not treated as if he or she has an impairment, is not protected under this test. A person would be covered under this test if a restaurant refused to serve that person because of a fear of "negative reactions" of others to that person. A person would also be covered if a public accommodation refused to serve a patron because it perceived that the patron had an impairment that limited his or her enjoyment of the goods or services being offered.

For example, persons with severe burns often encounter discrimination in community activities, resulting in substantial limitation of major life activities. These persons would be covered under this test based on the attitudes of others towards the impairment, even if they did not view themselves as "impaired."

The rationale for this third test, as used in the Rehabilitation Act of 1973, was articulated by the Supreme Court in *Arline,* 480 U.S. 273 (1987). The Court noted that, although an individual may have an impairment that does not in fact substantially limit a major life activity, the reaction of others may prove just as disabling. "Such an impairment might not diminish a person's physical or mental capabilities, but could nevertheless substantially limit that person's ability to work as a result of the negative reactions of others to the impairment." *Id.* at 283. The Court concluded that, by including this test in the Rehabilitation Act's definition, "Congress acknowledged that society's accumulated myths and fears about disability and disease are as handicapping as are the physical limitations that flow from actual impairment." *Id.* at 284.

Thus, a person who is not allowed into a public accommodation because of the myths, fears, and stereotypes associated with disabilities would be covered under this third test whether or not the person's physical or mental condition would be considered a disability under the first or second test in the definition.

If a person is refused admittance on the basis of an actual or perceived physical or mental condition, and the public accommodation can articulate no legitimate reason for the refusal (such as failure to meet eligibility criteria), a perceived concern about admitting persons with disabilities could be inferred and the individual would qualify for coverage under the "regarded as" test. A person who is covered because of being regarded as having an impairment is not required to show that the public accommodation's perception is inaccurate (e.g., that he will be accepted by others, or that insurance rates will not increase) in order to be admitted to the public accommodation.

Paragraph (5) of the definition lists certain conditions that are not included within the definition of "disability." The excluded conditions are: transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, other sexual behavior disorders, compulsive gambling, kleptomania, pyromania, and psychoactive substance use disorders resulting from current illegal use of drugs. Unlike homosexuality and bisexuality, which are not considered impairments under either the Americans with Disabilities Act (see the definition of "disability," paragraph (1)(iv)) or section 504, the conditions listed in paragraph (5), except for transvestism, are not necessarily excluded as impairments under section 504. (Transvestism was excluded from the definition of disability for section 504 by the Fair Housing Amendments Act of 1988, Pub. L. 100–430, § 6(b).) The phrase "current illegal use of drugs" used in this definition is explained in the preamble to § 36.209.

"Drug." The definition of the term "drug" is taken from section 510(d)(2) of the ADA.

"Facility." "Facility" means all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located. Committee reports made clear that the definition of facility was drawn from the definition of facility in current Federal regulations (*see, e.g.,* Education and Labor report at 114). It includes both indoor and outdoor areas where human-constructed improvements, structures, equipment, or property have been added to the natural environment.

The term "rolling stock or other conveyances" was not included in the definition of facility in the proposed rule. However, commenters raised questions about the applicability of this part to places of public accommodation operated in mobile facilities (such as cruise ships, floating restaurants, or mobile health units). Those places of public accommodation are covered under this part, and would be included in the definition of "facility." Thus the requirements of subparts B and C would apply to those places of public accommodation. For example, a covered entity could not discriminate on the basis of disability in the full and equal enjoyment of the facilities (§ 36.201). Similarly, a cruise line could not apply eligibility criteria to potential passengers in a manner that would screen out individuals with disabilities, unless the criteria are "necessary," as provided in § 36.301.

However, standards for new construction and alterations of such facilities are not yet included in the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG) adopted by § 36.406 and incorporated in Appendix A. The Department therefore will not interpret the new construction and alterations provisions of subpart D to apply to the types of facilities discussed here, pending further development of specific requirements.

Requirements pertaining to accessible transportation services provided by public accommodations are included in § 36.310 of this part; standards pertaining to accessible vehicles will be issued by the Secretary of Transportation pursuant to section 306 of the Act, and will be codified at 49 CFR part 37.

A public accommodation has obligations under this rule with respect to a cruise ship to the extent that its operations are subject to the laws of the United States.

The definition of "facility" only includes the site over which the private entity may exercise control or on which a place of public accommodation or a commercial facility is located. It does not include, for example, adjacent roads or walks controlled by a public entity that is not subject to this part. Public entities are subject to the requirements of title II of the Act. The Department's regulation implementing title II, which will be codified at 28 CFR part 35, addresses the obligations of public entities to ensure accessibility by providing curb ramps at pedestrian walkways.

"Illegal use of drugs." The definition of "illegal use of drugs" is taken from section 510(d)(1) of the Act and clarifies that the term includes the illegal use of one or more drugs.

"Individual with a disability" means a person who has a disability but does not include an individual who is currently illegally using drugs, when the public accommodation acts on the basis of such use. The phrase "current illegal use of drugs" is explained in the preamble to § 36.209.

"Place of public accommodation." The term "place of public accommodation" is an adaptation of the statutory definition of "public accommodation" in section 301(7) of the ADA and appears as an element of the regulatory definition of public accommodation. The final rule defines "place of public accommodation" as a facility, operated by a private entity, whose operations affect commerce and fall within at least one of 12 specified categories. The term "public accommodation," on the other hand, is reserved by the final rule for the private entity that owns, leases (or leases to), or operates a place of public accommodation. It is the public accommodation, and not the place of public accommodation, that is subject to the regulation's nondiscrimination requirements. Placing the obligation not to discriminate on the public accommodation, as defined in the rule, is consistent with section 302(a) of the ADA, which places the obligation not to discriminate on any person who owns, leases (or leases to), or operates a place of public accommodation.

Facilities operated by government agencies or other public entities as defined in this section do not qualify as places of public accommodation. The actions of public entities are governed by title II of the ADA and will be subject to regulations issued by the Department of Justice under that title. The receipt of government assistance by a private entity does not by itself preclude a facility from being considered as a place of public accommodation.

The definition of place of public accommodation incorporates the 12 categories of facilities represented in the statutory definition of public accommodation in section 301(7) of the ADA:

1. Places of lodging.
2. Establishments serving food or drink.
3. Places of exhibition or entertainment.
4. Places of public gathering.
5. Sales or rental establishments.
6. Service establishments.
7. Stations used for specified public transportation.
8. Places of public display or collection.
9. Places of recreation.
10. Places of education.
11. Social service center establishments.
12. Places of exercise or recreation.

In order to be a place of public accommodation, a facility must be operated by a private entity, its operations must affect commerce, and it must fall within one of these 12 categories. While the list of categories is exhaustive, the representative examples of facilities within each category are not. Within each category only a few examples are given. The category of social service center establishments would include not only the types of establishments listed, day care centers, senior citizen centers, homeless shelters, food banks, adoption agencies, but also establishments such as substance abuse treatment centers, rape crisis centers, and halfway houses. As another example, the category of sales or rental establishments would include an innumerable array of facilities that would sweep far beyond the few examples given in the regulation. For example, other retail or wholesale establishments selling or renting items, such as bookstores, videotape rental stores, car rental establishment, pet stores, and jewelry stores would also be covered under this category, even though they are not specifically listed.

Several commenters requested clarification as to the coverage of wholesale establishments under the category of "sales or rental establishments." The Department intends for wholesale establishments to be covered under this category as places of public accommodation except in cases where they sell exclusively to other businesses and not to individuals. For example, a company that grows food produce and supplies its crops exclusively to food processing corporations on a wholesale basis does not become a public accommodation because of these transactions. If this company operates a road side stand where its crops are sold to the public, the road side stand would be a sales establishment covered by the ADA. Conversely, a sales establishment that markets its goods as "wholesale to the public" and sells to individuals would not be exempt from ADA coverage despite its use of the word "wholesale" as a marketing technique.

Of course, a company that operates a place of public accommodation is subject to this part only in the operation of that place of public accommodation. In the example given above, the wholesale produce company that operates a road side stand would be a public accommodation only for the purposes of the operation of that stand. The company would be prohibited from discriminating on the basis of disability in the operation of the road side stand, and it would be required to remove barriers to physical access to the extent that it is readily achievable to do so (see § 36.304); however, in the event that it is not readily achievable to remove barriers, for example, by replacing a gravel surface or regrading the area around the stand to permit access by persons with mobility impairments, the company could meet its obligations through alternative methods of making its goods available, such as delivering produce to a customer in his or her car (see § 36.305). The concepts of readily achievable barrier removal and alternatives to barrier removal are discussed further in the preamble discussion of §§ 36.304 and 36.305.

Even if a facility does not fall within one of the 12 categories, and therefore does not qualify as a place of public accommodation, it still may be a commercial facility as defined in § 36.104 and be subject to the new construction and alterations requirements of subpart D.

A number of commenters questioned the treatment of residential hotels and other residential facilities in the Department's proposed rule. These commenters were essentially seeking resolution of the relationship between the Fair Housing Act and the ADA concerning facilities that are both residential in nature and engage in activities that would cause them to be classified as "places of public accommodation" under the ADA. The ADA's express exemption relating to the Fair Housing Act applies only to "commercial facilities" and not to "places of public accommodation."

A facility whose operations affect interstate commerce is a place of public accommodation for purposes of the ADA to the extent that its operations include those types of activities engaged in or services provided by the facilities contained on the list of 12 categories in section 301(7) of the ADA. Thus, a facility that provides social services would be considered a "social service center establishment." Similarly, the category "places of lodging" would exclude solely residential facilities because the nature of a place of lodging contemplates the use of the facility for short-term stays.

Many facilities, however, are mixed use facilities. For example, in a large hotel that has a separate residential apartment wing, the residential wing would not be covered by the ADA because of the nature of the occupancy of that part of the facility. This residential wing would, however, be covered by the Fair Housing Act. The separate nonresidential accommodations in the rest of the hotel would be a place of lodging, and thus a public accommodation subject to the requirements of this final rule. If a hotel allows both residential and short-term stays, but does not allocate space for these different uses in separate, discrete units, both the ADA and the Fair Housing Act may apply to the facility. Such determinations will need to be made on a case-by-case basis. Any place of lodging of the type described in paragraph (1) of the definition of place of public accommodation and that is an establishment located within a building that contains not more than five rooms for rent or hire and is actually occupied by the proprietor of the establishment as his or her residence is not covered by the ADA. (This exclusion from coverage does not apply to other categories of public accommodations, for example, professional offices or homeless shelters, that are located in a building that is also occupied as a private residence.)

A number of commenters noted that the term "residential hotel" may also apply to a type of hotel commonly known as a "single room occupancy hotel." Although such hotels or portions of such hotels may fall under the Fair Housing Act when operated or used as long-term residences, they are also considered "places of lodging" under the ADA when guests of such hotels are free to use them on a short-term basis. In addition, "single room occupancy hotels" may provide social services to their guests, often through the operation of Federal or State grant programs. In such a situation, the facility would be considered a "social service center establishment" and thus covered by the ADA as a place of public accommodation, regardless of the length of stay of the occupants.

A similar analysis would also be applied to other residential facilities that provide social services, including homeless shelters, shelters for people seeking refuge from domestic violence, nursing homes, residential care facilities, and other facilities where persons may reside for varying lengths of time. Such facilities should be analyzed under the Fair Housing Act to determine the application of that statute. The ADA, however, requires a separate and independent analysis. For example, if the facility, or a portion of the facility, is intended for or permits short-term stays, or if it can appropriately be categorized as a service establishment or as a social service establishment, then the facility or that portion of the facility used for the covered purpose is a place of public accommodation under the ADA. For example, a homeless shelter that is intended and used only for long-term residential stays and that does not provide social services to its residents would not be covered as a place of public accommodation. However, if this facility permitted short-term stays or provided social services to its residents, it would be covered under the ADA either as a "place of lodging" or as a "social service center establishment," or as both.

A private home, by itself, does not fall within any of the 12 categories. However, it can be covered as a place of public accommodation to the extent that it is used as a facility that would fall within one of the 12 categories. For example, if a professional office of a dentist, doctor, or psychologist is located in a private home, the portion of the home dedicated to office use (including areas used both for the residence and the office, e.g., the entrance to the home that is also used as the entrance to the professional office) would be considered a place of public accommodation. Places of public accommodation located in residential facilities are specifically addressed in § 36.207.

If a tour of a commercial facility that is not otherwise a place of public accommodation, such as, for example, a factory or a movie studio production set, is open to the general public, the route followed by the tour is a place of public accommodation and the tour must be operated in accordance with the rule's requirements for public accommodations. The place of public accommodation defined by the tour does not include those portions of the commercial facility that are merely viewed from the tour route. Hence, the barrier removal requirements of § 36.304 only apply to the physical route followed by the tour participants and not to work stations or other areas that are merely adjacent to, or within view of, the tour route. If the tour is not open to the general public, but rather is conducted, for example, for selected business colleagues, partners, customers, or consultants, the tour route is not a place of public accommodation and the tour is not subject to the requirements for public accommodations.

Public accommodations that receive Federal financial assistance are subject to the requirements of section 504 of the Rehabilitation Act as well as the requirements of the ADA.

Private schools, including elementary and secondary schools, are covered by the rule as places of public accommodation. The rule itself, however, does not require a private school to provide a free appropriate education or develop an individualized education program in accordance with regulations of the Department of Education implementing section 504 of the Rehabilitation Act of 1973, as amended (34 CFR part 104), and regulations implementing the Individuals with Disabilities Education Act (34 CFR part 300). The receipt of Federal assistance by a private school, however, would trigger application of the Department of Education's regulations to the extent mandated by the particular type of assistance received.

"Private club." The term "private club" is defined in accordance with section 307 of the ADA as a private club or establishment exempted from coverage under title II of the Civil Rights Act of 1964. Title II of the 1964 Act exempts any "private club or other establishment not in fact open to the public, except to the extent that the facilities of such establishment are made available to the customers or patrons of [a place of public accommodation as defined in title II]." The rule, therefore, as reflected in § 36.102(e) of the application section, limits the coverage of private clubs accordingly. The obligations of a private club that rents space to any other private entity for the operation of a place of public accommodation are discussed further in connection with § 36.201.

In determining whether a private entity qualifies as a private club under title II, courts have considered such factors as the degree of member control of club operations, the selectivity of the membership selection process, whether substantial membership fees are charged, whether the entity is operated on a nonprofit basis, the extent to which the facilities are open to the public, the degree of public funding, and whether the club was created specifically to avoid compliance with the Civil Rights

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Public accommodations that receive Federal financial assistance are subject to the requirements of section 504 of the Rehabilitation Act as well as the requirements of the ADA.

Private schools, including elementary and secondary schools, are covered by the rule as places of public accommodation. The rule itself, however, does not require a private school to provide a free appropriate education or develop an individualized education program in accordance with regulations of the Department of Education implementing section 504 of the Rehabilitation Act of 1973, as amended (34 CFR part 104), and regulations implementing the Individuals with Disabilities Education Act (34 CFR part 300). The receipt of Federal assistance by a private school, however, would trigger application of the Department of Education's regulations to the extent mandated by the particular type of assistance received.

"Private club." The term "private club" is defined in accordance with section 307 of the ADA as a private club or establishment exempted from coverage under title II of the Civil Rights Act of 1964. Title II of the 1964 Act exempts any "private club or other establishment not in fact open to the public, except to the extent that the facilities of such establishment are made available to the customers or patrons of [a place of public accommodation as defined in title II]." The rule, therefore, as reflected in § 36.102(e) of the application section, limits the coverage of private clubs accordingly. The obligations of a private club that rents space to any other private entity for the operation of a place of public accommodation are discussed further in connection with § 36.201.

In determining whether a private entity qualifies as a private club under title II, courts have considered such factors as the degree of member control of club operations, the selectivity of the membership selection process, whether substantial membership fees are charged, whether the entity is operated on a nonprofit basis, the extent to which the facilities are open to the public, the degree of public funding, and whether the club was created specifically to avoid compliance with the Civil Rights

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Act. See *e.g.*, *Tillman* v. *Wheaton-Haven Recreation Ass'n*, 410 U.S. 431 (1973); *Daniel* v. *Paul*, 395 U.S. 298 (1969); *Olzman* v. *Lake Hills Swim Club, Inc.*, 495 F.2d 1333 (2d Cir. 1974); *Anderson* v. *Pass Christian Isles Golf Club, Inc.*, 488 F.2d 855 (5th Cir. 1974); *Smith* v. *YMCA*, 462 F.2d 634 (5th Cir. 1972); *Stout* v. *YMCA*, 404 F.2d 687 (5th Cir. 1968); *United States* v. *Richberg*, 398 F.2d 523 (5th Cir. 1968); *Nesmith* v. *YMCA*, 397 F.2d 96 (4th Cir. 1968); *United States* v. *Lansdowne Swim Club*, 713 F. Supp. 785 (E.D. Pa. 1989); *Durham* v. *Red Lake Fishing and Hunting Club, Inc.*, 666 F. Supp. 954 (W.D. Tex. 1987); *New York* v. *Ocean Club, Inc.*, 602 F. Supp. 489 (E.D.N.Y. 1984); *Brown* v. *Loudoun Golf and Country Club, Inc.*, 573 F. Supp. 399 (E.D. Va. 1983); *United States* v. *Trustees of Fraternal Order of Eagles*, 472 F. Supp. 1174 (E.D. Wis. 1979); *Cornelius* v. *Benevolent Protective Order of Elks*, 382 F. Supp. 1182 (D. Conn. 1974).

"Private entity." The term "private entity" is defined as any individual or entity other than a public entity. It is used as part of the definition of "public accommodation" in this section.

The definition adds "individual" to the statutory definition of private entity (see section 301(6) of the ADA). This addition clarifies that an individual may be a private entity and, therefore, may be considered a public accommodation if he or she owns, leases (or leases to), or operates a place of public accommodation. The explicit inclusion of individuals under the definition of private entity is consistent with section 302(a) of the ADA, which broadly prohibits discrimination on the basis of disability by any person who owns, leases (or leases to), or operates a place of public accommodation.

"Public accommodation." The term "public accommodation" means a private entity that owns, leases (or leases to), or operates a place of public accommodation. The regulatory term, "public accommodation," corresponds to the statutory term, "person," in section 302(a) of the ADA. The ADA prohibits discrimination "by any person who owns, leases (or leases to), or operates a place of public accommodation." The text of the regulation consequently places the ADA's nondiscrimination obligations on "public accommodations" rather than on "persons" or on "places of public accommodation."

As stated in § 36.102(b)(2), the requirements of subparts B and C obligate a public accommodation only with respect to the operations of a place of public accommodation. A public accommodation must also meet the requirements of subpart D with respect to facilities used as, or designed or constructed for use as, places of public accommodation or commercial facilities.

"Public entity." The term "public entity" is defined in accordance with section 201(1) of the ADA as any State or local government; any department, agency, special purpose district, or other instrumentality of a State or States or local government; and the National Railroad Passenger Corporation, and any commuter authority (as defined in section 103(8) of the Rail Passenger Service Act). It is used in the definition of "private entity" in § 36.104. Public entities are excluded from the definition of private entity and therefore cannot qualify as public accommodations under this regulation. However, the actions of public entities are covered by title II of the ADA and by the Department's title II regulations codified at 28 CFR part 35.

"Qualified interpreter." The Department received substantial comment regarding the lack of a definition of "qualified interpreter." The proposed rule defined auxiliary aids and services to include the statutory term, "qualified interpreters" (§ 36.303(b)), but did not define that term. Section 36.303 requires the use of a qualified interpreter where necessary to achieve effective communication, unless an undue burden or fundamental alteration would result. Commenters stated that a lack of guidance on what the term means would create confusion among those trying to secure interpreting services and often result in less than effective communication.

Many commenters were concerned that, without clear guidance on the issue of "qualified" interpreter, the rule would be interpreted to mean "available, rather than qualified" interpreters. Some claimed that few public accommodations would understand the difference between a qualified interpreter and a person who simply knows a few signs or how to fingerspell.

In order to clarify what is meant by "qualified interpreter" the Department has added a definition of the term to the final rule. A qualified interpreter means an interpreter who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary. This definition focuses on the actual ability of the interpreter in a particular interpreting context to facilitate effective communication between the public accommodation and the individual with disabilities.

Public comment also revealed that public accommodations have at times asked persons who are deaf to provide family members or friends to interpret. In certain circumstances, notwithstanding that the family member or friend is able to interpret or is a certified interpreter, the family member or friend may not be qualified to render the necessary interpretation because of factors such as emotional or personal involvement or considerations of confidentiality that may adversely affect the ability to interpret "effectively, accurately, and impartially."

"Readily achievable." The definition of "readily achievable" follows the statutory definition of that term in section 301(9) of the ADA. Readily achievable means easily accomplishable and able to be carried out without much difficulty or expense. The term is used as a limitation on the obligation to remove barriers under §§ 36.304(a), 36.305(a), 36.308(a), and 36.310(b). Further discussion of the meaning and application of the term "readily achievable" may be found in the preamble section for § 36.304.

The definition lists factors to be considered in determining whether barrier removal is readily achievable in any particular circumstance. A significant number of commenters objected to § 36.306 of the proposed rule, which listed identical factors to be considered for determining "readily achievable" and "undue burden" together in one section. They asserted that providing a consolidated section blurred the distinction between the level of effort required by a public accommodation under the two standards. The readily achievable standard is a "lower" standard than the "undue burden" standard in terms of the level of effort required, but the factors used in determining whether an action is readily achievable or would result in an undue burden are identical (See Education and Labor report at 109). Although the preamble to the proposed rule clearly delineated the relationship between the two standards, to eliminate any confusion the Department has deleted § 36.306 of the proposed rule. That section, in any event, as other commenters noted, had merely repeated the lists of factors contained in the definitions of readily achievable and undue burden.

The list of factors included in the definition is derived from section 301(9) of the ADA. It reflects the congressional intention that a wide range of factors be considered in determining whether an action is readily achievable. It also takes into account that many local facilities are owned or operated by parent corporations or entities that conduct operations at many different sites. This section makes clear that, in some instances, resources beyond those of the local facility where the barrier must be removed may be relevant in determining whether an action is readily achievable. One must also evaluate the degree to which any parent entity has resources that may be allocated to the local facility.

The statutory list of factors in section 301(9) of the Act uses the term "covered entity" to refer to the larger entity of which a particular facility may be a part. "Covered entity" is not a defined term in the ADA and is not used consistently throughout the Act. The definition, therefore, substitutes the term "parent entity" in place of "covered entity" in paragraphs (3), (4), and (5) when referring to the larger private entity whose overall resources may be taken into account. This usage is consistent with the House Judiciary Committee's use of the term "parent company" to describe the larger entity of which the local facility is a part (H.R. Rep. No. 485, 101st Cong., 2d Sess., pt. 3, at 40–41, 54–55 (1990) (hereinafter "Judiciary report")).

A number of commenters asked for more specific guidance as to when and how the resources of a parent corporation or entity are to be taken into account in determining what is readily achievable. The Department believes that this complex issue is most appropriately resolved on a case-by-case basis. As the comments reflect, there is a wide variety of possible relationships between the site in question and any parent corporation or other entity. It would be unwise to posit legal ramifications under the ADA of even generic relationships (e.g., banks involved in foreclosures or insurance companies operating as trustees or in other similar fiduciary relationships), because any analysis will depend so completely on the detailed fact situations and the exact nature of the legal relationships involved. The final rule does, however, reorder the factors to be considered. This shift and the addition of the phrase "if applicable" make clear that the line of inquiry concerning factors will start at the site involved in the action itself. This change emphasizes that the overall resources, size, and operations of the parent corporation or entity should be considered to the extent appropriate in light of "the geographic separateness, and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity."

Although some commenters sought more specific numerical guidance on the definition of readily achievable, the Department has declined to establish in the final rule any kind of numerical formula for determining whether an action is readily achievable. It would be difficult to devise a specific ceiling on compliance costs that would take into account the vast diversity of enterprises covered by the ADA's public accommodations requirements and the economic situation that any particular entity would find itself in at any moment. The final rule, therefore, implements the flexible case-by-case approach chosen by Congress.

A number of commenters requested that security considerations be explicitly recognized as a factor in determining whether a barrier removal action is readily achievable. The Department believes that legitimate safety requirements, including crime prevention measures, may be taken into account so long as they are based on actual risks and are necessary for safe operation of the public accommodation. This point has been included in the definition.

Some commenters urged the Department not to consider acts of barrier removal in complete isolation from each other in determining whether they are readily achievable. The Department believes that it is appropriate to consider the cost of other barrier removal actions as one factor in determining whether a measure is readily achievable.

"Religious entity." The term "religious entity" is defined in accordance with section 307 of the ADA as a religious organization or entity controlled by a religious organization, including a place of worship. Section 36.102(e) of the rule states that the rule does not apply to any religious entity.

The ADA's exemption of religious organizations and religious entities controlled by religious organizations is very broad, encompassing a wide variety of situations. Religious organizations and entities controlled by religious organizations have no obligations under the ADA. Even when a religious organization carries out activities that would otherwise make it a public accommodation, the religious organization is exempt from ADA coverage. Thus, if a church itself operates a day care center, a nursing home, a private school, or a diocesan school system, the operations of the center, home, school, or schools would not be subject to the requirements of the ADA or this part. The religious entity would not lose its exemption merely because the services provided were open to the general public. The test is whether the church or other religious organization operates the public accommodation, not which individuals receive the public accommodation's services.

Religious entities that are controlled by religious organizations are also exempt from the ADA's requirements. Many religious organizations in the United States use lay boards and other secular or corporate mechanisms to operate schools and an array of social services. The use of a lay board or other mechanism does not itself remove the ADA's religious exemption. Thus, a parochial school, having religious doctrine in its curriculum and sponsored by a religious order, could be exempt either as a religious organization or as an entity controlled by a religious organization, even if it has a lay board. The test remains a factual one—whether the church or other religious organization controls the operations of the school or of the service or whether the school or service is itself a religious organization.

Although a religious organization or a religious entity that is controlled by a religious organization has no obligations under the rule, a public accommodation that is not itself a religious organization, but that operates a place of public accommodation in leased space on the property of a religious entity, which is not a place of worship, is subject to the rule's requirements if it is not under control of a religious organization. When a church rents meeting space, which is not a place of worship, to a local community group or to a private, independent day care center, the ADA applies to the activities of the local community group and day care center if a lease exists and consideration is paid.

"Service animal." The term "service animal" encompasses any guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability. The term is used in § 36.302(c), which requires public accommodations generally to modify policies, practices, and procedures to accommodate the use of service animals in places of public accommodation.

"Specified public transportation." The definition of "specified public transportation" is identical to the statutory definition in section 301(10) of the ADA. The term means transportation by bus, rail, or any other conveyance (other than by aircraft) that provides the general public with general or special service (including charter service) on a regular and continuing basis. It is used in category (7) of the definition of "place of public accommodation," which includes stations used for specified public transportation.

The effect of this definition, which excludes transportation by aircraft, is that it excludes privately operated airports from coverage as places of public accommodation. However, places of public accommodation located within airports would be covered by this part. Airports that are operated by public entities are covered by title II of the ADA and, if they are operated as part of a program receiving Federal financial assistance, by section 504 of the Rehabilitation Act. Privately operated airports are similarly covered by section 504 if they are operated as part of a program receiving Federal financial assistance. The operations of any portion of any airport that are under the control of an air carrier are covered by the Air Carrier Access Act. In addition, airports are covered as commercial facilities under this rule.

"State." The definition of "State" is identical to the statutory definition in section 3(3) of the ADA. The term is used in the definitions of "commerce" and "public entity" in § 36.104.

"Undue burden." The definition of "undue burden" is analogous to the statutory definition of "undue hardship" in employment under section 101(10) of the ADA. The term undue burden means "significant difficulty or expense" and serves as a limitation on the obligation to provide auxiliary aids and services under § 36.303 and §§ 36.309 (b)(3) and (c)(3). Further discussion of the meaning and application of the term undue burden may be found in the preamble discussion of § 36.303.

The definition lists factors considered in determining whether provision of an auxiliary aid or service in any particular circumstance would result in an undue burden. The factors to be considered in determining whether an action would result in an undue burden are identical to those to be considered in determining whether an action is readily achievable. However, "readily achievable" is a lower standard than "undue burden" in that it requires a lower level of effort on the part of the public accommodation (see Education and Labor report at 109).

Further analysis of the factors to be considered in determining undue burden may be found in the preamble discussion of the definition of the term "readily achievable."

Subpart B—General Requirements

Subpart B includes general prohibitions restricting a public accommodation from discriminating against people with disabilities by denying them the opportunity to benefit from goods or services, by giving them unequal goods or services, or by giving them different or separate goods or services. These general prohibitions are patterned after the basic, general prohibitions that exist in other civil rights laws that prohibit discrimination on the basis of race, sex, color, religion, or national origin.

Section 36.201 General

Section 36.201(a) contains the general rule that prohibits discrimination on the basis of disability in the full and equal enjoyment of goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation.

Full and equal enjoyment means the right to participate and to have an equal opportunity to obtain the same results as others to the extent possible with such accommodations as may be required by the Act and these regulations. It does not mean that an individual with a disability must achieve an identical result or level of achievement as persons without a disability. For example, an exercise class cannot exclude a person who uses a wheelchair because he or she cannot do all of the exercises and derive the same result from the class as persons without a disability.

Section 302(a) of the ADA states that the prohibition against discrimination applies to "any person who owns, leases (or leases to), or operates a place of public accommodation," and this language is reflected in § 36.201(a). The coverage is quite extensive and would include sublessees, management companies, and any other entity that owns, leases, leases to, or operates a place of public accommodation, even if the operation is only for a short time.

The first sentence of paragraph (b) of § 36.201 reiterates the general principle that both the landlord that owns the building that houses the place of public accommodation, as well as the tenant that owns or operates the place of public accommodation, are public accommodations subject to the requirements of this part. Although the statutory language could be interpreted as placing equal responsibility on all private entities, whether lessor, lessee, or operator of a public accommodation, the committee reports suggest that liability may be allocated. Section 36.201(b) of that section of the proposed rule attempted to allocate liability in the regulation itself. Paragraph (b)(2) of that section made a specific allocation of liability for the obligation to take readily achievable measures to remove barriers, and paragraph (b)(3) made a specific allocation for the obligation to provide auxiliary aids.

Numerous commenters pointed out that these allocations would not apply in all situations. Some asserted that paragraph (b)(2) of the proposed rule only addressed the situation when a lease gave the tenant the right to make alterations with permission of the landlord, but failed to address other types of leases, e.g., those that are silent on the right to make alterations, or those in which the landlord is not permitted to enter a tenant's premises to make alterations. Several commenters noted that many leases contain other clauses more relevant to the ADA than the alterations clause. For example, many leases contain a "compliance clause," a clause which allocates responsibility to a particular party for compliance with all relevant Federal, State, and local laws. Many commenters pointed out various types of relationships that were left unaddressed by the regulation, e.g., sale and leaseback arrangements where the landlord is a financial institution with no control or responsibility for the building; franchises; subleases; and management companies which, at least in the hotel industry, often have control over operations but are unable to make modifications to the premises.

Some commenters raised specific questions as to how the barrier removal allocation would work as a practical matter. Paragraph (b)(2) of the proposed rule provided that the burden of making readily achievable modifications within the tenant's place of public accommodation would shift to the landlord when the modifications were not readily achievable for the tenant or when the landlord denied a tenant's request for permission to make such modifications. Commenters noted that the rule did not specify exactly when the burden would actually shift from tenant to landlord and whether the landlord would have to accept a tenant's word that a particular action is not readily achievable. Others questioned if the tenant should be obligated to use alternative methods of barrier removal before the burden shifts. In light of the fact that readily achievable removal of barriers can include such actions as moving of racks and displays, some commenters doubted the appropriateness of requiring a landlord to become involved in day-to-day operations of its tenants' businesses.

The Department received widely differing comments in response to the preamble question asking whether landlord and tenant obligations should vary depending on the length of time remaining on an existing lease. Many suggested that tenants should have no responsibilities in "shorter leases," which commenters defined as ranging anywhere from 90 days to three years. Other commenters pointed out that the time remaining on the lease should not be a factor in the rule's allocation of responsibilities, but is relevant in determining what is readily achievable for the tenant. The Department agrees with this latter approach and will interpret the rule in that manner.

In recognition of the somewhat limited applicability of the allocation scheme contained in the proposed rule, paragraphs (b)(2) and (b)(3) have been deleted from the final rule. The Department has substituted instead a statement that allocation of responsibility as between the parties for taking readily achievable measures to remove barriers and to provide auxiliary aids and services both in common areas and within places of public accommodation may be determined by the lease or other contractual relationships between the parties. The ADA was not intended to change existing landlord/tenant responsibilities as set forth in the lease. By deleting specific provisions from the rule, the Department gives full recognition to this principle. As between the landlord and tenant, the extent of responsibility for particular obligations may be, and in many cases probably will be, determined by contract.

The suggested allocation of responsibilities contained in the proposed rule may be used if appropriate in a particular situation. Thus, the landlord would generally be held responsible for making readily achievable changes and providing auxiliary aids and services in common areas and for modifying policies, practices, or procedures applicable to all tenants, and the tenant would generally be responsible for readily achievable changes, provision of auxiliary aids, and modification of policies within its own place of public accommodation.

Many commenters objected to the proposed rule's allocation of responsibility for providing auxiliary aids and services solely to the tenant, pointing out that this exclusive allocation may not be appropriate in the case of larger public accommodations that operate their businesses by renting space out to smaller public accommodations. For example, large theaters often rent to smaller traveling companies and hospitals often rely on independent contractors to provide childbirth classes. Groups representing persons with disabilities objected to the proposed rule because, in their view, it permitted the large theater or hospital to evade ADA responsibilities by leasing to independent smaller entities. They suggested that these types of public accommodations are not really landlords because they are in the business of providing a service, rather than renting space, as in the case of a shopping center or office building landlord. These commenters believed that responsibility for providing auxiliary aids should shift to the landlord, if the landlord relies on a smaller public accommodation or independent contractor to provide services closely related to those of the larger public accommodation, and if the needed auxiliary aids prove to be an undue burden for the smaller public accommodation. The final rule no longer lists specific allocations to specific parties but, rather, leaves allocation of responsibilities to the lease negotiations. Parties are, therefore, free to allocate the responsibility for auxiliary aids.

Section 36.201(b)(4) of the proposed rule, which provided that alterations by a tenant on its own premises do not trigger a path of travel obligation on the landlord, has been moved to § 36.403(d) of the final rule.

An entity that is not in and of itself a public accommodation, such as a trade association or performing artist, may become a public accommodation when it leases space for a conference or performance at a hotel, convention center, or stadium. For an entity to become a public accommodation when it is the lessee of space, however, the Department believes that consideration in some form must be given. Thus, a Boy Scout troop that accepts donated space does not become a public accommodation because the troop has not "leased" space, as required by the ADA.

As a public accommodation, the trade association or performing artist will be responsible for compliance with this part. Specific responsibilities should be allocated by contract, but, generally, the lessee should be responsible for providing auxiliary aids and services (which could include interpreters, Braille programs, etc.) for the participants in its conference or performance as well as for assuring that displays are accessible to individuals with disabilities.

Some commenters suggested that the rule should allocate responsibilities for areas other than removal of barriers and auxiliary aids. The final rule leaves allocation of all areas to the lease negotiations. However, in general landlords should not be given responsibility for policies a tenant applies in operating its business, if such policies are solely those of the tenant. Thus, if a restaurant tenant discriminates by refusing to seat a patron, it would be the tenant, and not the landlord, who would be responsible, because the discriminatory policy is imposed solely by the tenant and not by the landlord. If, however, a tenant refuses to modify a "no pets" rule to allow service animals in its restaurant because the landlord mandates such a rule, then both the landlord and the tenant would be liable for violation of the ADA when a person with a service dog is refused entrance. The Department wishes to emphasize, however, that the parties are free to allocate responsibilities in any way they choose.

Private clubs are also exempt from the ADA. However, consistent with title II of the Civil Rights Act (42 U.S.C. 2000a(e), a private club is considered a public accommodation to the extent that "the facilities of such establishment are made available to the customers or patrons" of a place of public accommodation. Thus, if a private club runs a day care center that is open exclusively to its own members, the club, like the church in the example above, would have no responsibility for compliance with the ADA. Nor would the day care center have any responsibilities because it is part of the private club exempt from the ADA.

On the other hand, if the private club rents to a day care center that is open to the public, then the private club would have the same obligations as any other public accommodation that functions as a landlord with respect to compliance with title III within the day care center. In such a situation, both the private club that "leases to" a public accommodation and the public accommodation lessee (the day care center) would be subject to the ADA. This same principle would apply if the private club were to rent to, for example, a bar association, which is not generally a public accommodation but which, as explained above, becomes a public accommodation when it leases space for a conference.

Section 36.202 Activities

Section 36.202 sets out the general forms of discrimination prohibited by title III of the ADA. These general prohibitions are further refined by the specific prohibitions in subpart C. Section 36.213 makes clear that the limitations on the ADA's requirements contained in subpart C, such as "necessity" (§ 36.301(a)) and "safety" (§ 36.301(b)), are applicable to the prohibitions in § 36.202. Thus, it is unnecessary to add these limitations to § 36.202 as has been requested by some commenters. In addition, the language of § 36.202 very closely tracks the language

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On the other hand, if the private club rents to a day care center that is open to the public, then the private club would have the same obligations as any other public accommodation that functions as a landlord with respect to compliance with title III within the day care center. In such a situation, both the private club that "leases to" a public accommodation and the public accommodation lessee (the day care center) would be subject to the ADA. This same principle would apply if the private club were to rent to, for example, a bar association, which is not generally a public accommodation but which, as explained above, becomes a public accommodation when it leases space for a conference.

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of section 302(b)(1)(A) of the Act, and that statutory provision does not expressly contain these limitations.

Deny participation—Section 36.202(a) provides that it is discriminatory to deny a person with a disability the right to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation.

A public accommodation may not exclude persons with disabilities on the basis of disability for reasons other than those specifically set forth in this part. For example, a public accommodation cannot refuse to serve a person with a disability because its insurance company conditions coverage or rates on the absence of persons with disabilities. This is a frequent basis of exclusion from a variety of community activities and is prohibited by this part.

Unequal benefit—Section 36.202(b) prohibits services or accommodations that are not equal to those provided others. For example, persons with disabilities must not be limited to certain performances at a theater.

Separate benefit—Section 36.202(c) permits different or separate benefits or services only when necessary to provide persons with disabilities opportunities as effective as those provided others. This paragraph permitting separate benefits "when necessary" should be read together with § 36.203(a), which requires integration in "the most integrated setting appropriate to the needs of the individual." The preamble to that section provides further guidance on separate programs. Thus, this section would not prohibit the designation of parking spaces for persons with disabilities.

Each of the three paragraphs (a)–(c) prohibits discrimination against an individual or class of individuals "either directly or through contractual, licensing, or other arrangements." The intent of the contractual prohibitions of these paragraphs is to prohibit a public accommodation from doing indirectly, through a contractual relationship, what it may not do directly. Thus, the "individual or class of individuals" referenced in the three paragraphs is intended to refer to the clients and customers of the public accommodation that entered into a contractual arrangement. It is not intended to encompass the clients or customers of other entities. A public accommodation, therefore, is not liable under this provision for discrimination that may be practiced by those with whom it has a contractual relationship, when that discrimination is not directed against its own clients or customers. For example, if an amusement park contracts with a food service company to operate its restaurants at the park, the amusement park is not responsible for other operations of the food service company that do not involve clients or customers of the amusement park. Section 36.202(d) makes this clear by providing that the term "individual or class of individuals" refers to the clients or customers of the public accommodation that enters into the contractual, licensing, or other arrangement.

Section 36.203 Integrated Settings

Section 36.203 addresses the integration of persons with disabilities. The ADA recognizes that the provision of goods and services in an integrated manner is a fundamental tenet of nondiscrimination on the basis of disability. Providing segregated accommodations and services relegates persons with disabilities to the status of second-class citizens. For example, it would be a violation of this provision to require persons with mental disabilities to eat in the back room of a restaurant or to refuse to allow a person with a disability the full use of a health spa because of stereotypes about the person's ability to participate. Section 36.203(a) states that a public accommodation shall afford goods, services, facilities, privileges, advantages, and accommodations to an individual with a disability in the most integrated setting appropriate to the needs of the individual. Section 36.203(b) specifies that, notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different. Section 306.203(c), which is derived from section 501(d) of the Americans with Disabilities Act, states that nothing in this part shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit that he or she chooses not to accept.

Taken together, these provisions are intended to prohibit exclusion and segregation of individuals with disabilities and the denial of equal opportunities enjoyed by others, based on, among other things, presumptions, patronizing attitudes, fears, and stereotypes about individuals with disabilities. Consistent with these standards, public accommodations are required to make decisions based on facts applicable to individuals and not on the basis of presumptions as to what a class of individuals with disabilities can or cannot do.

Sections 36.203 (b) and (c) make clear that individuals with disabilities cannot be denied the opportunity to participate in programs that are not separate or different. This is an important and overarching principle of the Americans with Disabilities Act. Separate, special, or different programs that are designed to provide a benefit to persons with disabilities cannot be used to restrict the participation of persons with disabilities in general, integrated activities.

For example, a person who is blind may wish to decline participating in a special museum tour that allows persons to touch sculptures in an exhibit and instead tour the exhibit at his or her own pace with the museum's recorded tour. It is not the intent of this section to require the person who is blind to avail himself or herself of the special tour. Modified participation for persons with disabilities must be a choice, not a requirement.

Further, it would not be a violation of this section for an establishment to offer recreational programs specially designed for children with mobility impairments in those limited circumstances. However, it would be a violation of this section if the entity then excluded these children from other recreational services made available to nondisabled children, or required children with disabilities to attend only designated programs.

Many commenters asked that the Department clarify a public accommodation's obligations within the integrated program when it offers a separate program, but an individual with a disability chooses not to participate in the separate program. It is impossible to make a blanket statement as to what level of auxiliary aids or modifications are required in the integrated program. Rather, each situation must be assessed individually. Assuming the integrated program would be appropriate for a particular individual, the extent to which that individual must be provided with modifications will depend not only on what the individual needs but also on the limitations set forth in subpart C. For example, it may constitute an undue burden for a particular public accommodation, which provides a full-time interpreter in its special guided tour for individuals with hearing impairments, to hire an additional interpreter for those individuals who choose to attend the integrated program. The Department cannot identify categorically the level of assistance or aid required in the integrated program.

The preamble to the proposed rule contained a statement that some interpreted as encouraging the continuation of separate schools, sheltered workshops, special recreational programs, and other similar programs. It is important to emphasize that § 36.202(c) only calls for separate programs when such programs are "necessary" to provide as effective an opportunity to individuals with disabilities as to other individuals. Likewise, § 36.203(a) only permits separate programs when a more integrated setting would not be "appropriate." Separate programs are permitted, then, in only limited circumstances. The sentence at issue has been deleted from the preamble because it was too broadly stated and had been erroneously interpreted as Departmental encouragement of separate programs without qualification.

The proposed rule's reference in § 36.203(b) to separate programs or activities provided in accordance with "this section" has been changed to "this subpart" in recognition of the fact that separate programs or activities may, in some limited circumstances, be permitted not only by § 36.203(a) but also by § 36.202(c).

In addition, some commenters suggested that the individual with the disability is the only one who can decide whether a setting is "appropriate" and what the "needs" are. Others suggested that only the public accommodation can make these determinations. The regulation does not give exclusive responsibility to either party. Rather, the determinations are to be made based on an objective view, presumably one which would take into account views of both parties.

Some commenters expressed concern that § 36.203(c), which states that nothing in the rule requires an individual with a disability to accept special accommodations and services provided under the ADA, could be interpreted to allow guardians of infants or older people with disabilities to refuse medical treatment for their wards. Section 36.203(c) has been revised to make it clear that paragraph (c) is inapplicable to the concern of the commenters. A new paragraph (c)(2) has been added stating that nothing in the regulation authorizes the representative or guardian of an individual with a disability to decline food, water, medical treatment, or medical services for that individual. New paragraph (c) clarifies that neither the ADA nor the regulation alters current Federal law ensuring the rights of incompetent individuals with disabilities to receive food, water, and medical treatment. See, *e.g.*, Child Abuse Amendments of 1984 (42 U.S.C. 5106a(b)(10), 5106g(10)); Rehabilitation Act of 1973, as amended (29 U.S.C 794); Developmentally Disabled Assistance and Bill of Rights Act (42 U.S.C. 6042).

Sections 36.203(c) (1) and (2) are based on section 501(d) of the ADA. Section § 501(d) was designed to clarify that nothing in the ADA requires individuals with disabilities to accept special accommodations and services for individuals with disabilities that may segregate them:

> The Committee added this section (501(d)) to clarify that nothing in the ADA is intended to permit discriminatory treatment on the basis of disability, even when such treatment is rendered under the guise of providing an accommodation, service, aid or benefit to the individual with disability. For example, a blind individual may choose not to avail himself or herself of the right to go to the front of a line, even if a particular public accommodation has chosen to offer such a modification of a policy for blind individuals. Or, a blind individual may choose to decline to participate in a special museum tour that allows persons to touch sculptures in an exhibit and instead tour the exhibits at his or her own pace with the museum's recorded tour.

(Judiciary report at 71–72.) The Act is not to be construed to mean that an individual with disabilities must accept special accommodations and services for individuals with disabilities when that individual chooses to participate in the regular services already offered. Because medical treatment, including treatment for particular conditions, is not a special accommodation or service for individuals with disabilities under section 501(d), neither the Act nor this part provides affirmative authority to suspend such treatment. Section 501(d) is intended to clarify that the Act is not designed to foster discrimination through mandatory acceptance of special services when other alternatives are provided; this concern does not reach to the provision of medical treatment for the disabling condition itself.

Section 36.213 makes clear that the limitations contained in subpart C are to be read into subpart B. Thus, the integration requirement is subject to the various defenses contained in subpart C, such as safety, if eligibility criteria are at issue (§ 36.301(b)), or fundamental alteration and undue burden, if the concern is provision of auxiliary aids (§ 36.303(a)).

Section 36.204 Administrative Methods

Section 36.204 specifies that an individual or entity shall not, directly, or through contractual or other arrangements, utilize standards or criteria or methods of administration that have the effect of discriminating on the basis of disability or that perpetuate the discrimination of others who are subject to common administrative control. The preamble discussion of § 36.301 addresses eligibility criteria in detail.

Section 36.204 is derived from section 302(b)(1)(D) of the Americans with Disabilities Act, and it uses the same language used in the employment section of the ADA (section 102(b)(3)). Both sections incorporate a disparate impact standard to ensure the effectiveness of the legislative mandate to end discrimination. This standard is consistent with the interpretation of section 504 by the U.S. Supreme Court in *Alexander* v. *Choate*, 469 U.S. 287 (1985). The Court in *Choate* explained that members of Congress made numerous statements during passage of section 504 regarding eliminating architectural barriers, providing access to transportation, and eliminating discriminatory effects of job qualification procedures. The Court then noted: "These statements would ring hollow if the resulting legislation could not rectify the harms resulting from action that discriminated by effect as well as by design." *Id* at 297 (footnote omitted).

Of course, § 36.204 is subject to the various limitations contained in subpart C including, for example, necessity (§ 36.301(a)), safety (§ 36.301(b)), fundamental alteration (§ 36.302(a)), readily achievable (§ 36.304(a)), and undue burden (§ 36.303(a)).

Section 36.205 Association

Section 36.205 implements section 302(b)(1)(E) of the Act, which provides that a public accommodation shall not exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association. This section is unchanged from the proposed rule.

The individuals covered under this section include any individuals who are discriminated against because of their known association with an individual with a disability. For example, it would be a violation of this part for a day care center to refuse admission to a child because his or her brother has HIV disease.

This protection is not limited to those who have a familial relationship with the individual who has a disability. If a place of public accommodation refuses admission to a person with cerebral palsy and his or her companions, the companions have an independent right of action under the ADA and this section.

During the legislative process, the term "entity" was added to section 302(b)(1)(E) to clarify that the scope of the provision is intended to encompass not only persons who have a known association with a person with a disability, but also entities that provide services to or are otherwise associated with such individuals. This provision was intended to ensure that entities such as health care providers, employees of social service agencies, and others who provide professional services to persons with disabilities are not subjected to discrimination because of their professional association with persons with disabilities. For example, it would be a violation of this section to terminate the lease of a entity operating an independent living center for persons with disabilities, or to seek to evict a health care provider because that individual or entity provides services to persons with mental impairments.

Section 36.206 Retaliation or Coercion

Section 36.206 implements section 503 of the ADA, which prohibits retaliation against any individual who exercises his or her rights under the Act. This section is unchanged from the proposed rule. Paragraph (a) of § 36.206 provides that no private entity or public entity shall discriminate against any individual because that individual has exercised his or her right to oppose any act or practice made unlawful by this part, or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the Act or this part.

Paragraph (b) provides that no private entity or public entity shall coerce, intimidate, threaten, or interfere with any individual in the exercise of his or her rights under this part or because that individual aided or encouraged any other individual in the exercise or enjoyment of any right granted or protected by the Act or this part.

Illustrations of practices prohibited by this section are contained in paragraph (c), which is modeled on a similar provision in the regulations issued by the Department of Housing and Urban Development to implement the Fair Housing Act (see 24 CFR 100.400(c)(l)). Prohibited actions may include:

(1) Coercing an individual to deny or limit the benefits, services, or advantages to which he or she is entitled under the Act or this part;

(2) Threatening, intimidating, or interfering with an individual who is seeking to obtain or use the goods, services, facilities, privileges, advantages, or accommodations of a public accommodation;

(3) Intimidating or threatening any person because that person is assisting or encouraging an individual or group entitled to claim the rights granted or protected by the Act or this part to exercise those rights; or

(4) Retaliating against any person because that person has participated in any investigation or action to enforce the Act or this part.

This section protects not only individuals who allege a violation of the Act or this part, but also any individuals who support or assist them. This section applies to all investigations or proceedings initiated under the Act or this part without regard to the ultimate resolution of the underlying allegations. Because this section prohibits any act of retaliation or coercion in response to an individual's effort to exercise rights established by the Act and this part (or to support the efforts of another individual), the section applies not only to public accommodations that are otherwise subject to this part, but also to individuals other than public accommodations or to public entities. For example, it would be a violation of the Act and this part for a private individual, e.g., a restaurant customer, to harass or intimidate an individual with a disability in an effort to prevent that individual from patronizing the restaurant. It would, likewise, be a violation of the Act and this part for a public entity to take adverse action against an employee who appeared as a witness on behalf of an individual who sought to enforce the Act.

Section 36.207 Places of Public Accommodation Located in Private Residences

A private home used exclusively as a residence is not covered by title III because it is neither a "commercial facility" nor a "place of public accommodation." In some situations, however, a private home is not used exclusively as a residence, but houses a place of public accommodation in all or part of a home (e.g., an accountant who meets with his or her clients at his or her residence). Section 36.207(a) provides that those portions of the private residence used in the operation of the place of public accommodation are covered by this part.

For instance, a home or a portion of a home may be used as a day care center during the day and a residence at night. If all parts of the house are used for the day care center, then the entire residence is a place of public accommodation because no part of the house is used exclusively as a residence. If an accountant uses one room in the house solely as his or her professional office, then a portion of the house is used exclusively as a place of public accommodation and a portion is used exclusively as a residence. Section 36.207 provides that when a portion of a residence is used exclusively as a residence, that portion is not covered by this part. Thus, the portions of the accountant's house, other than the professional office and areas and spaces leading to it, are not covered by this part. All of the requirements of this rule apply to the covered portions, including requirements to make reasonable modifications in policies, eliminate discriminatory eligibility criteria, take readily achievable measures to remove barriers or provide readily achievable alternatives (e.g., making house calls), provide auxiliary aids and services and undertake only accessible new construction and alterations.

Paragraph (b) was added in response to comments that sought clarification on the extent of coverage of the private residence used as the place of public accommodation. The final rule makes clear that the place of accommodation extends to all areas of the home used by clients and customers of the place of public accommodation. Thus, the ADA would apply to any door or entry way, hallways, a restroom, if used by customers and clients; and any other portion of the residence, interior or exterior, used by customers or clients of the public accommodation. This interpretation is simply an application of the general rule for all public accommodations, which extends statutory requirements to all portions of the facility used by customers and clients, including, if applicable, restrooms, hallways, and approaches to the public accommodation. As with other public accommodations, barriers at the entrance and on the sidewalk leading up to the public accommodation, if the sidewalk is under the control of the public accommodation, must be removed if doing so is readily achievable.

The Department recognizes that many businesses that operate out of personal residences are quite small, often employing only the homeowner and having limited total revenues. In these circumstances the effect of ADA coverage would likely be quite minimal. For example, because the obligation to remove existing architectural barriers is limited to those that are easily accomplishable without much difficulty or expense (*see* § 36.304), the range of required actions would be quite modest.

It might not be readily achievable for such a place of public accommodation to remove any existing barriers. If it is not readily achievable to remove existing architectural barriers, a public accommodation located in a private residence may meet its obligations under the Act and this part by providing its goods or services to clients or customers with disabilities through the use of alternative measures, including delivery of goods or services in the home of the customer or client, to the extent that such alternative measures are readily achievable (*See* § 36.305).

Some commenters asked for clarification as to how the new construction and alteration standards of subpart D will apply to residences. The new construction standards only apply to the extent that the residence or portion of the residence was designed or intended for use as a public accommodation. Thus, for example, if a portion of a home is designed or constructed for use exclusively as a lawyer's office or for use both as a lawyer's office and for residential purposes, then it must be designed in accordance with the new construction standards in the appendix. Likewise, if a homeowner is undertaking alterations to convert all or part of his residence to a place of public accommodation, that work must be done in compliance with the alterations standards in the appendix.

The preamble to the proposed rule addressed the applicable requirements when a commercial facility is located in a private residence. That situation is now addressed in § 36.401(b) of subpart D.

Section 36.208 Direct Threat

Section 36.208(a) implements section 302(b)(3) of the Act by providing that this part does not require a public accommodation to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of the public accommodation, if that individual poses a direct threat to the health or safety of others. This section is unchanged from the proposed rule.

The Department received a significant number of comments on this section. Commenters representing individuals with disabilities generally supported this provision, but suggested revisions to further limit its application. Commenters representing public accommodations generally endorsed modifications that would permit a public accommodation to exercise its own judgment in determining whether an individual poses a direct threat.

The inclusion of this provision is not intended to imply that persons with disabilities pose risks to others. It is intended to address concerns that may arise in this area. It establishes a strict standard that must be met before denying service to an individual with a disability or excluding that individual from participation.

Paragraph (b) of this section explains that a "direct threat" is a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids and services. This paragraph codifies the standard first applied by the Supreme Court in *School Board of Nassau County* v. *Arline,* 480 U.S. 273 (1987), in which the Court held that an individual with a contagious disease may be an "individual with handicaps" under section 504 of the Rehabilitation Act. In *Arline,* the Supreme Court recognized that there is a need to balance the interests of people with disabilities against legitimate concerns for public safety. Although persons with disabilities are generally entitled to the protection of this part, a person who poses a significant risk to others may be excluded if reasonable modifications to the public accommodation's policies, practices, or procedures will not eliminate that risk. The determination that a person poses a direct threat to the health or safety of others may not be based on generalizations or stereotypes about the effects of a particular disability; it must be based on an individual assessment that conforms to the requirements of paragraph (c) of this section.

Paragraph (c) establishes the test to use in determining whether an individual poses a direct threat to the health or safety of others. A public accommodation is required to make an individualized assessment, based on reasonable judgment that relies on current medical evidence or on the best available objective evidence, to determine: The nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk. This is the test established by the Supreme Court in *Arline.* Such an inquiry is essential if the law is to achieve its goal of protecting disabled individuals from discrimination based on prejudice, stereotypes, or unfounded fear, while giving appropriate weight to legitimate concerns, such as the need to avoid exposing others to significant health and safety risks. Making this assessment will not usually require the services of a physician. Sources for medical knowledge include guidance from public health authorities, such as the U.S. Public Health Service, the Centers for Disease Control, and the National Institutes of Health, including the National Institute of Mental Health.

Many of the commenters sought clarification of the inquiry requirement. Some suggested that public accommodations should be prohibited from making any inquiries to determine if an individual with a disability would pose a direct threat to other persons. The Department believes that to preclude all such inquiries would be inappropriate. Under § 36.301 of this part, a public accommodation is permitted to establish eligibility criteria necessary for the safe operation of the place of public accommodation. Implicit in that right is the right to ask if an individual meets the criteria. However, any eligibility or safety standard established by a public accommodation must be based on actual risk, not on speculation or stereotypes; it must be applied to all clients or customers of the place of public accommodation; and inquiries must be limited to matters necessary to the application of the standard.

Some commenters suggested that the test established in the *Arline* decision, which was developed in the context of an employment case, is too stringent to apply in a public accommodations context where interaction between the public accommodation and its client or customer is often very brief. One suggested alternative was to permit public accommodations to exercise "good faith" judgment in determining whether an individual poses a direct threat, particularly when a public accommodation is dealing with a client or customer engaged in disorderly or disruptive behavior.

The Department believes that the ADA clearly requires that any determination to exclude an individual from participation must be based on an objective standard. A public accommodation may establish neutral eligibility criteria as a condition of receiving its goods or services. As long as these criteria are necessary for the safe provision of the public accommodation's goods and services and applied neutrally to all clients or customers, regardless of whether they are individuals with disabilities, a person who is unable to meet the criteria may be excluded from participation without inquiry into the underlying reason for the inability to comply. In places of public accommodation such as restaurants, theaters, or hotels, where the contact between the public accommodation and its clients is transitory, the uniform application of an eligibility standard precluding violent or disruptive behavior by any client or customer should be sufficient to enable a public accommodation to conduct its business in an orderly manner.

Some other commenters asked for clarification of the application of this provision to persons, particularly children, who have short-term, contagious illnesses, such as fevers, influenza, or the common cold. It is common practice in schools and day care settings to exclude persons with such illnesses until the symptoms subside. The Department believes that these commenters misunderstand the scope of this rule. The ADA only prohibits discrimination against an individual with a disability. Under the ADA and this part, a "disability" is defined as a physical or mental impairment that substantially limits one or more major life activities. Common, short-term illnesses that predictably resolve themselves within a matter of days do not "substantially limit" a major life activity; therefore, it is not a violation of this part to exclude an individual from receiving the services of a public accommodation because of such transitory illness. However, this part does apply to persons who have long-term illnesses. Any determination with respect to a person who has a chronic or long-term illness must be made in compliance with the requirements of this section.

Section 36.209 Illegal Use of Drugs

Section 36.209 effectuates section 510 of the ADA, which clarifies the Act's application to people who use drugs illegally. Paragraph (a) provides that this part does not prohibit discrimination based on an individual's current illegal use of drugs.

The Act and the regulation distinguish between illegal use of drugs and the legal use of substances, whether or not those substances are "controlled substances," as defined in the Controlled Substances Act (21 U.S.C. 812). Some controlled substances are prescription drugs that have legitimate medical uses. Section 36.209 does not affect use of controlled substances pursuant to a valid prescription, under supervision by a licensed health care professional, or other use that is authorized by the Controlled Substances Act or any other provision of Federal law. It does apply to illegal use of those substances, as well as to illegal use of controlled substances that are not prescription drugs. The key question is whether the individual's use of the substance is illegal, not whether the substance has recognized legal uses. Alcohol is not a controlled substance, so use of alcohol is not addressed by § 36.209. Alcoholics are individuals with disabilities, subject to the protections of the statute.

A distinction is also made between the use of a substance and the status of being addicted to that substance. Addiction is a disability, and addicts are individuals with disabilities protected by the Act. The protection, however, does not extend to actions based on the illegal use of the substance. In other words, an addict cannot use the fact of his or her addiction as a defense to an action based on illegal use of drugs. This distinction is not artificial. Congress intended to deny protection to people who engage in the illegal use of drugs, whether or not they are addicted, but to provide protection to addicts so long as they are not currently using drugs.

A third distinction is the difficult one between current use and former use. The definition of "current illegal use of drugs" in § 36.104, which is based on the report of the Conference Committee, H.R. Conf. Rep. No. 596, 101st Cong., 2d Sess. 64 (1990), is "illegal use of drugs that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem."

Paragraph (a)(2)(i) specifies that an individual who has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully and who is not engaging in current illegal use of drugs is protected. Paragraph (a)(2)(ii) clarifies that an individual who is currently participating in a supervised rehabilitation program and is not engaging in current illegal use of drugs is protected. Paragraph (a)(2)(iii) provides that a person who is erroneously regarded as engaging in current illegal use of drugs, but who is not engaging in such use, is protected.

Paragraph (b) provides a limited exception to the exclusion of current illegal users of drugs from the protections of the Act. It prohibits denial of health services, or services provided in connection with drug rehabilitation, to an individual on the basis of current illegal use of drugs, if the individual is otherwise entitled to such services. As explained further in the discussion of § 36.302, a health care facility that specializes in a particular type of treatment, such as care of burn victims, is not required to provide drug rehabilitation services, but it cannot refuse to treat an individual's burns on the grounds that the individual is illegally using drugs.

A commenter argued that health care providers should be permitted to use their medical judgment to postpone discretionary medical treatment of individuals under the influence of alcohol or drugs. The regulation permits a medical practitioner to take into account an individual's use of drugs in determining appropriate medical treatment. Section 36.209 provides that the prohibitions on discrimination in this part do not apply when the public accommodation acts on the basis of current illegal use of drugs. Although those prohibitions do apply under paragraph (b), the limitations established under this part also apply. Thus, under § 36.208, a health care provider or other public accommodation covered under § 36.209(b) may exclude an individual whose current illegal use of drugs poses a direct threat to the health or safety of others, and, under § 36.301, a public accommodation may impose or apply eligibility criteria that are necessary for the provision of the services being offered, and may impose legitimate safety requirements that are necessary for safe operation. These same limitations also apply to individuals with disabilities who use alcohol or prescription drugs. The Department believes that these provisions address this commenter's concerns.

Other commenters pointed out that abstention from the use of drugs is an essential condition for participation in some drug rehabilitation programs, and may be a necessary requirement in inpatient or residential settings. The Department believes that this comment is well-founded. Congress clearly did not intend to exclude from drug treatment programs the very individuals who need such programs because of their use of drugs. In such a situation, however, once an individual has been admitted to a program, abstention may be a necessary and appropriate condition to continued participation. The final rule therefore provides that a drug rehabilitation or treatment program may deny participation to individuals who use drugs while they are in the program.

Paragraph (c) expresses Congress' intention that the Act be neutral with respect to testing for illegal use of drugs. This paragraph implements the provision in section 510(b) of the Act that allows entities "to adopt or administer reasonable policies or procedures, including but not limited to drug testing," that ensure an individual who is participating in a supervised rehabilitation program, or who has completed such a program or otherwise been rehabilitated successfully, is no longer engaging in the illegal use of drugs. Paragraph (c) is not to be construed to encourage, prohibit, restrict, or authorize the conducting of testing for the illegal use of drugs.

Paragraph (c) of § 36.209 clarifies that it is not a violation of this part to adopt or administer reasonable policies or procedures to ensure that an individual who formerly engaged in the illegal use of drugs is not currently engaging in illegal use of drugs. Any such policies or procedures must, of course, be reasonable, and must be designed to identify accurately the illegal use of drugs. This paragraph does not authorize inquiries, tests, or other procedures that would disclose use of substances that are not controlled substances or are taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law, because such uses are not included in the definition of "illegal use of drugs."

One commenter argued that the rule should permit testing for lawful use of prescription drugs, but most favored the explanation that tests must be limited to *unlawful* use in order to avoid revealing the use of prescription medicine used to treat disabilities. Tests revealing legal use of prescription drugs might violate the prohibition in § 36.301 of attempts to unnecessarily identify the existence of a disability.

Section 36.210 Smoking

Section 36.210 restates the clarification in section 501(b) of the Act that the Act does not preclude the prohibition of, or imposition of restrictions on, smoking. Some commenters argued that § 36.210 does not go far enough, and that the regulation should prohibit smoking in all places of public accommodation. The reference to smoking in section 501 merely clarifies that the Act does not require public accommodations to accommodate smokers by permitting them to smoke in places of public accommodations.

Section 36.211 Maintenance of Accessible Features

Section 36.211 provides that a public accommodation shall maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities by the Act or this part. The Act requires that, to the maximum extent feasible, facilities must be accessible to, *and usable by,* individuals with disabilities. This section recognizes that it is not sufficient to provide features such as accessible routes, elevators, or ramps, if those features are not maintained in a manner that enables individuals with disabilities to use them. Inoperable elevators, locked accessible doors, or "accessible" routes that are obstructed by furniture, filing cabinets, or potted plants are neither "accessible to" nor "usable by" individuals with disabilities.

Some commenters objected that this section appeared to establish an absolute requirement and suggested that language from the preamble be included in the text of the regulation. It is, of course, impossible to guarantee that mechanical devices will never fail to operate. Paragraph (b) of the final regulation provides that this section does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs. This paragraph is intended to clarify that temporary obstructions or isolated instances of mechanical failure would not be considered violations of the Act or this part. However, allowing obstructions or "out of service" equipment to persist beyond a reasonable period of time would violate this part, as would repeated mechanical failures due to improper or inadequate maintenance. Failure of the public accommodation to ensure that accessible routes are properly maintained and free of obstructions, or failure to arrange prompt repair of inoperable elevators or other equipment intended to provide access, would also violate this part.

Other commenters requested that this section be expanded to include specific requirements for inspection and maintenance of equipment, for training staff in the proper operation of equipment, and for maintenance of specific items. The Department believes that this section properly establishes the general requirement for maintaining access and that further, more detailed requirements are not necessary.

Section 36.212 Insurance

The Department received numerous comments on proposed § 36.212. Most supported the proposed regulation but felt that it did not go far enough in protecting individuals with disabilities and persons associated with them from discrimination. Many commenters argued that language from the preamble to the proposed regulation should be included in the text of the final regulation. Other commenters argued that even that language was not strong enough, and that more stringent standards should be established. Only a few commenters argued that the Act does not apply to insurance underwriting practices or the terms of insurance contracts. These commenters cited language from the Senate committee report (S. Rep. No. 116, 101st Cong., 1st Sess., at 84–86 (1989) (hereinafter "Senate report")), indicating that Congress did not intend to affect existing insurance practices.

The Department has decided to adopt the language of the proposed rule without change. Sections 36.212 (a) and (b) restate section 501(c) of the Act, which provides that the Act shall not be construed to restrict certain insurance practices on the part of insurance companies and employers, as long as such practices are not used to evade the purposes of the Act. Section 36.212(c) is a specific application of § 36.202(a), which prohibits denial of participation on the basis of disability. It provides that a public accommodation may not refuse to serve an individual with a disability because of limitations on coverage or rates in its insurance policies (see Judiciary report at 56).

Many commenters supported the requirements of § 36.212(c) in the proposed rule because it addressed an important reason for denial of services by public accommodations. One commenter argued that services could be denied if the insurance coverage required exclusion of people whose disabilities were reasonably related to the risks involved in that particular place of public accommodation. Sections 36.208 and 36.301 establish criteria for denial of participation on the basis of legitimate safety concerns. This paragraph does not prohibit consideration of such concerns in insurance policies, but provides that any exclusion on the basis of disability must be based on the permissible criteria, rather than on the terms of the insurance contract.

Language in the committee reports indicates that Congress intended to reach insurance practices by prohibiting differential treatment of individuals with disabilities in insurance offered by public accommodations unless the differences are justified. "Under the ADA, a person with a disability cannot be denied insurance or be subject to different terms or conditions of insurance based on disability alone, if the disability does not pose increased risks" (Senate report at 84; Education and Labor report at 136). Section 501(c)(1) of the Act was intended to emphasize that "insurers may continue to sell to and underwrite individuals applying for life, health, or other insurance on an individually

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few commenters argued that the Act does not apply to insurance underwriting practices or the terms of insurance contracts. These commenters cited language from the Senate committee report (S. Rep. No. 116, 101st Cong., 1st Sess., at 84–86 (1989) (hereinafter "Senate report")), indicating that Congress did not intend to affect existing insurance practices.

The Department has decided to adopt the language of the proposed rule without change. Sections 36.212 (a) and (b) restate section 501(c) of the Act, which provides that the Act shall not be construed to restrict certain insurance practices on the part of insurance companies and employers, as long as such practices are not used to evade the purposes of the Act. Section 36.212(c) is a specific application of § 36.202(a), which prohibits denial of participation on the basis of disability. It provides that a public accommodation may not refuse to serve an individual with a disability because of limitations on coverage or rates in its insurance policies (see Judiciary report at 56).

Many commenters supported the requirements of § 36.212(c) in the proposed rule because it addressed an important reason for denial of services by public accommodations. One commenter argued that services could be denied if the insurance coverage required exclusion of people whose disabilities were reasonably related to the risks involved in that particular place of public accommodation. Sections 36.208 and 36.301 establish criteria for denial of participation on the basis of legitimate safety concerns. This paragraph does not prohibit consideration of such concerns in insurance policies, but provides that any exclusion on the basis of disability must be based on the permissible criteria, rather than on the terms of the insurance contract.

Language in the committee reports indicates that Congress intended to reach insurance practices by prohibiting differential treatment of individuals with disabilities in insurance offered by public accommodations unless the differences are justified. "Under the ADA, a person with a disability cannot be denied insurance or be subject to different terms or conditions of insurance based on disability alone, if the disability does not pose increased risks" (Senate report at 84; Education and Labor report at 136). Section 501(c) (1) of the Act was intended to emphasize that "insurers may continue to sell to and underwrite individuals applying for life, health, or other insurance on an individually

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underwritten basis, or to service such insurance products, *so long as the standards used are based on sound actuarial data and not on speculation"* (Judiciary report at 70 (emphasis added); see also Senate report at 85; Education and Labor report at 137).

The committee reports indicate that underwriting and classification of risks must be "based on sound actuarial principles or be related to actual or reasonably anticipated experience" (see, *e.g.*, Judiciary report at 71). Moreover, "while a plan which limits certain kinds of coverage based on classification of risk would be allowed * * *, the plan may not refuse to insure, or refuse to continue to insure, or limit the amount, extent, or kind of coverage available to an individual, or charge a different rate for the same coverage solely because of a physical or mental impairment, except where the refusal, limitation, or rate differential is based on sound actuarial principles or is related to actual or reasonably anticipated experience" (Senate report at 85; Education and Labor report at 136–37; Judiciary report at 71). The ADA, therefore, does not prohibit use of legitimate actuarial considerations to justify differential treatment of individuals with disabilities in insurance.

The committee reports provide some guidance on how nondiscrimination principles in the disability rights area relate to insurance practices. For example, a person who is blind may not be denied coverage based on blindness independent of actuarial risk classification. With respect to group health insurance coverage, an individual with a pre-existing condition may be denied coverage for that condition for the period specified in the policy, but cannot be denied coverage for illness or injuries unrelated to the pre-existing condition. Also, a public accommodation may offer insurance policies that limit coverage for certain procedures or treatments, but may not entirely deny coverage to a person with a disability.

The Department requested comment on the extent to which data that would establish statistically sound correlations are available. Numerous commenters cited pervasive problems in the availability and cost of insurance for individuals with disabilities and parents of children with disabilities. No commenters cited specific data, or sources of data, to support specific exclusionary practices. Several commenters reported that, even when statistics are available, they are often outdated and do not reflect current medical technology and treatment methods. Concern was expressed that adequate efforts are not made to distinguish those individuals who are high users of health care from individuals in the same diagnostic groups who may be low users of health care. One insurer reported that "hard data and actuarial statistics are not available to provide precise numerical justifications for every underwriting determination," but argued that decisions may be based on "logical principles generally accepted by actuarial science and fully consistent with state insurance laws." The commenter urged that the Department recognize the validity of information other than statistical data as a basis for insurance determinations.

The most frequent comment was a recommendation that the final regulation should require the insurance company to provide a copy of the actuarial data on which its actions are based when requested by the applicant. Such a requirement would be beyond anything contemplated by the Act or by Congress and has therefore not been included in the Department's final rule. Because the legislative history of the ADA clarifies that different treatment of individuals with disabilities in insurance may be justified by sound actuarial data, such actuarial data will be critical to any potential litigation on this issue. This information would presumably be obtainable in a court proceeding where the insurer's actuarial data was the basis for different treatment of persons with disabilities. In addition, under some State regulatory schemes, insurers may have to file such actuarial information with the State regulatory agency and this information may be obtainable at the State level.

A few commenters representing the insurance industry conceded that underwriting practices in life and health insurance are clearly covered, but argued that property and casualty insurance are not covered. The Department sees no reason for this distinction. Although life and health insurance are the areas where the regulation will have its greatest application, the Act applies equally to unjustified discrimination in all types of insurance provided by public accommodations. A number of commenters, for example, reported difficulties in obtaining automobile insurance because of their disabilities, despite their having good driving records.

Section 36.213 Relationship of Subpart B to Subparts C and D

This section explains that subpart B sets forth the general principles of nondiscrimination applicable to all entities subject to this regulation, while subparts C and D provide guidance on the application of this part to specific situations. The specific provisions in subparts C and D, including the limitations on those provisions, control over the general provisions in circumstances where both specific and general provisions apply. Resort to the general provisions of subpart B is only appropriate where there are no applicable specific rules of guidance in subparts C or D. This interaction between the specific requirements and the general requirements operates with regard to contractual obligations as well.

One illustration of this principle is its application to the obligation of a public accommodation to provide access to services by removal of architectural barriers or by alternatives to barrier removal. The general requirement, established in subpart B by § 36.203, is that a public accommodation must provide its services to individuals with disabilities in the most integrated setting appropriate. This general requirement would appear to categorically prohibit "segregated" seating for persons in wheelchairs. Section 36.304, however, only requires removal of architectural barriers to the extent that removal is "readily achievable." If providing access to all areas of a restaurant, for example, would not be "readily achievable," a public accommodation may provide access to selected areas only. Also, § 36.305 provides that, where barrier removal is not readily achievable, a public accommodation may use alternative, readily achievable methods of making services available, such as curbside service or home delivery. Thus, in this manner, the specific requirements of §§ 36.304 and 36.305 control over the general requirement of § 36.203.

Subpart C—Specific Requirements

In general, subpart C implements the "specific prohibitions" that comprise section 302(b)(2) of the ADA. It also addresses the requirements of section 309 of the ADA regarding examinations and courses.

Section 36.301 Eligibility Criteria

Section 36.301 of the rule prohibits the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, and accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered. This prohibition is based on section 302(b)(2)(A)(i) of the ADA.

It would violate this section to establish exclusive or segregative eligibility criteria that would bar, for example, all persons who are deaf from playing on a golf course or all individuals with cerebral palsy from attending a movie theater, or limit the seating of individuals with Down's syndrome to only particular areas of a restaurant. The wishes, tastes, or preferences of other customers may not be asserted to justify criteria that would exclude or segregate individuals with disabilities.

Section 36.301 also prohibits attempts by a public accommodation to unnecessarily identify the existence of a disability; for example, it would be a violation of this section for a retail store to require an individual to state on a credit application whether the applicant has epilepsy, mental illness, or any other disability, or to inquire unnecessarily whether an individual has HIV disease.

Section 36.301 also prohibits policies that unnecessarily impose requirements or burdens on individuals with disabilities that are not placed on others. For example, public accommodations may not require that an individual with a disability be accompanied by an attendant. As provided by § 36.306, however, a public accommodation is not required to provide services of a personal nature including assistance in toileting, eating, or dressing.

Paragraph (c) of § 36.301 provides that public accommodations may not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids and services, barrier removal, alternatives to barrier removal, and reasonable modifications in policies, practices, and procedures, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part.

A number of commenters inquired as to whether deposits required for the use of auxiliary aids, such as assistive listening devices, are prohibited surcharges. It is the Department's view that reasonable, completely refundable, deposits are not to be considered surcharges prohibited by this section. Requiring deposits is an important means of ensuring the availability of equipment necessary to ensure compliance with the ADA.

Other commenters sought clarification as to whether § 36.301(c) prohibits professionals from charging for the additional time that it may take in certain cases to provide services to an individual with disabilities. The Department does not intend § 36.301(c) to prohibit professionals who bill on the basis of time from charging individuals with disabilities on that basis. However, fees may not be charged for the provision of auxiliary aids and services, barrier removal, alternatives to barrier removal, reasonable modifications in policies, practices, and procedures, or any other measures necessary to ensure compliance with the ADA.

Other commenters inquired as to whether day care centers may charge for extra services provided to individuals with disabilities. As stated above, § 36.302(c) is intended only to prohibit charges for measures necessary to achieve compliance with the ADA.

Another commenter asserted that charges may be assessed for home delivery provided as an alternative to barrier removal under § 36.305, when home delivery is provided to all customers for a fee. Charges for home delivery are permissible if home delivery is not considered an alternative to barrier removal. If the public accommodation offers an alternative, such as curb, carry-out, or sidewalk service for which no surcharge is assessed, then it may charge for home delivery in accordance with its standard pricing for home delivery.

In addition, § 36.301 prohibits the imposition of criteria that "tend to" screen out an individual with a disability. This concept, which is derived from current regulations under section 504 (see, *e.g.*, 45 CFR 84.13), makes it discriminatory to impose policies or criteria that, while not creating a direct bar to individuals with disabilities, indirectly prevent or limit their ability to participate. For example, requiring presentation of a driver's license as the sole means of identification for purposes of paying by check would violate this section in situations where, for example, individuals with severe vision impairments or developmental disabilities or epilepsy are ineligible to receive a driver's license and the use of an alternative means of identification, such as another photo I.D. or credit card, is feasible.

A public accommodation may, however, impose neutral rules and criteria that screen out, or tend to screen out, individuals with disabilities, if the criteria are necessary for the safe operation of the public accommodation. Examples of safety qualifications that would be justifiable in appropriate circumstances would include height requirements for certain amusement park rides or a requirement that all participants in a recreational rafting expedition be able to meet a necessary level of swimming proficiency. Safety requirements must be based on actual risks and not on speculation, stereotypes, or generalizations about individuals with disabilities.

Section 36.302 Modifications in Policies, Practices, or Procedures

Section 36.302 of the rule prohibits the failure to make reasonable modifications in policies, practices, and procedures when such modifications may be necessary to afford any goods, services, facilities, privileges, advantages, or accommodations, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations. This prohibition is based on section 302(b)(2)(A)(ii) of the ADA.

For example, a parking facility would be required to modify a rule barring all vans or all vans with raised roofs, if an individual who uses a wheelchair-accessible van wishes to park in that facility, and if overhead structures are high enough to accommodate the height of the van. A department store may need to modify a policy of only permitting one person at a time in a dressing room, if an individual with mental retardation needs and requests assistance in dressing from a companion. Public accommodations may need to revise operational policies to ensure that services are available to individuals with disabilities. For instance, a hotel may need to adopt a policy of keeping an accessible room unoccupied until an individual with a disability arrives at the hotel, assuming the individual has properly reserved the room.

One example of application of this principle is specifically included in a new § 36.302(d) on check-out aisles. That paragraph provides that a store with check-out aisles must ensure that an adequate number of accessible check-out aisles is kept open during store hours, or must otherwise modify its policies and practices, in order to ensure that an equivalent level of convenient service is provided to individuals with disabilities as is provided to others. For example, if only one check-out aisle is accessible, and it is generally used for express service,

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one way of providing equivalent service is to allow persons with mobility impairments to make all of their purchases at that aisle. This principle also applies with respect to other accessible elements and services. For example, a particular bank may be in compliance with the accessibility guidelines for new construction incorporated in appendix A with respect to automated teller machines (ATM) at a new branch office by providing one accessible walk-up machine at that location, even though an adjacent walk-up ATM is not accessible and the drive-up ATM is not accessible. However, the bank would be in violation of this section if the accessible ATM was located in a lobby that was locked during evening hours while the drive-up ATM was available to customers without disabilities during those same hours. The bank would need to ensure that the accessible ATM was available to customers during the hours that any of the other ATM's was available.

A number of commenters inquired as to the relationship between this section and § 36.307, "Accessible or special goods." Under § 36.307, a public accommodation is not required to alter its inventory to include accessible or special goods that are designed for, or facilitate use by, individuals with disabilities. The rule enunciated in § 36.307 is consistent with the "fundamental alteration" defense to the reasonable modifications requirement of § 36.302. Therefore, § 36.302 would not require the inventory of goods provided by a public accommodation to be altered to include goods with accessibility features. For example, § 36.302 would not require a bookstore to stock Brailled books or order Brailled books, if it does not do so in the normal course of its business.

The rule does not require modifications to the legitimate areas of specialization of service providers. Section 36.302(b) provides that a public accommodation may refer an individual with a disability to another public accommodation, if that individual is seeking, or requires, treatment or services outside of the referring public accommodation's area of specialization, and if, in the normal course of its operations, the referring public accommodation would make a similar referral for an individual without a disability who seeks or requires the same treatment or services.

For example, it would not be discriminatory for a physician who specializes only in burn treatment to refer an individual who is deaf to another physician for treatment of an injury other than a burn injury. To require a physician to accept patients outside of his or her specialty would fundamentally alter the nature of the medical practice and, therefore, not be required by this section.

A clinic specializing exclusively in drug rehabilitation could similarly refuse to treat a person who is not a drug addict, but could not refuse to treat a person who is a drug addict simply because the patient tests positive for HIV. Conversely, a clinic that specializes in the treatment of individuals with HIV could refuse to treat an individual that does not have HIV, but could not refuse to treat a person for HIV infection simply because that person is also a drug addict.

Some commenters requested clarification as to how this provision would apply to situations where manifestations of the disability in question, itself, would raise complications requiring the expertise of a different practitioner. It is not the Department's intention in § 36.302(b) to prohibit a physician from referring an individual with a disability to another physician, if the disability itself creates specialized complications for the patient's health that the physician lacks the experience or knowledge to address (see Education and Labor report at 106).

Section 36.302(c)(1) requires that a public accommodation modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability in any area open to the general public. The term "service animal" is defined in § 36.104 to include guide dogs, signal dogs, or any other animal individually trained to provide assistance to an individual with a disability.

A number of commenters pointed to the difficulty of making the distinction required by the proposed rule between areas open to the general public and those that are not. The ambiguity and uncertainty surrounding these provisions has led the Department to adopt a single standard for all public accommodations.

Section 36.302(c)(1) of the final rule now provides that "[g]enerally, a public accommodation shall modify policies, practices, and procedures to permit the use of a service animal by an individual with a disability." This formulation reflects the general intent of Congress that public accommodations take the necessary steps to accommodate service animals and to ensure that individuals with disabilities are not separated from their service animals. It is intended that the broadest feasible access be provided to service animals in all places of public accommodation, including movie theaters, restaurants, hotels, retail stores, hospitals, and nursing homes (see Education and Labor report at 106; Judiciary report at 59). The section also acknowledges, however, that, in rare circumstances, accommodation of service animals may not be required because a fundamental alteration would result in the nature of the goods, services, facilities, privileges, or accommodations offered or provided, or the safe operation of the public accommodation would be jeopardized.

As specified in § 36.302(c)(2), the rule does not require a public accommodation to supervise or care for any service animal. If a service animal must be separated from an individual with a disability in order to avoid a fundamental alteration or a threat to safety, it is the responsibility of the individual with the disability to arrange for the care and supervision of the animal during the period of separation.

A museum would not be required by § 36.302 to modify a policy barring the touching of delicate works of art in order to enhance the participation of individuals who are blind, if the touching threatened the integrity of the work. Damage to a museum piece would clearly be a fundamental alteration that is not required by this section.

Section 36.303 Auxiliary Aids and Services.

Section 36.303 of the final rule requires a public accommodation to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the public accommodation can demonstrate that taking such steps would fundamentally alter the nature of the goods, services, facilities, advantages, or accommodations being offered or would result in an undue burden. This requirement is based on section 302(b)(2)(A)(iii) of the ADA.

Implicit in this duty to provide auxiliary aids and services is the underlying obligation of a public accommodation to communicate effectively with its customers, clients, patients, or participants who have disabilities affecting hearing, vision, or speech. To give emphasis to this underlying obligation, § 36.303(c) of the rule incorporates language derived from section 504 regulations for federally conducted programs (see *e.g.*, 28 CFR 39.160(a)) that requires that appropriate auxiliary aids and services be furnished to ensure that communication with persons with disabilities is as effective as communication with others.

Auxiliary aids and services include a wide range of services and devices for ensuring effective communication. Use of the most advanced technology is not required so long as effective communication is ensured. The Department's proposed § 36.303(b) provided a list of examples of auxiliary aids and services that was taken from the definition of auxiliary aids and services in section 3(1) of the ADA and was supplemented by examples from regulations implementing section 504 in federally conducted programs (see *e.g.*, 28 CFR 39.103). A substantial number of commenters suggested that additional examples be added to this list. The Department has added several items to this list but wishes to clarify that the list is not an all-inclusive or exhaustive catalogue of possible or available auxiliary aids or services. It is not possible to provide an exhaustive list, and such an attempt would omit new devices that will become available with emerging technology.

The Department has added videotext displays, computer-aided transcription services, and open and closed captioning to the list of examples. Videotext displays have become an important means of accessing auditory communications through a public address system. Transcription services are used to relay aurally delivered material almost simultaneously in written form to persons who are deaf or hard of hearing. This technology is often used at conferences, conventions, and hearings. While the proposed rule expressly included television decoder equipment as an auxiliary aid or service, it did not mention captioning itself. The final rule rectifies this omission by mentioning both closed and open captioning.

In this section, the Department has changed the proposed rule's phrase, "orally delivered materials," to the phrase, "aurally delivered materials." This new phrase tracks the language in the definition of "auxiliary aids and services" in section 3 of the ADA and is meant to include nonverbal sounds and alarms and computer-generated speech.

Several persons and organizations requested that the Department replace the term "telecommunications devices for deaf persons" or "TDD's" with the term "text telephone." The Department has declined to do so. The Department is aware that the Architectural and Transportation Barriers Compliance Board has used the phrase "text telephone" in lieu of the statutory term "TDD" in its final accessibility guidelines. Title IV of the ADA, however, uses the term "Telecommunications Device for the Deaf," and the Department believes it would be inappropriate to abandon this statutory term at this time.

Paragraph (b)(2) lists examples of aids and services for making visually delivered materials accessible to persons with visual impairments. Many commenters proposed additional examples such as signage or mapping, audio description services, secondary auditory programs (SAP), telebraillers, and reading machines. While the Department declines to add these items to the list in the regulation, they may be considered appropriate auxiliary aids and services.

Paragraph (b)(3) refers to the acquisition or modification of equipment or devices. For example, tape players used for an audio-guided tour of a museum exhibit may require the addition of Brailled adhesive labels to the buttons on a reasonable number of the tape players to facilitate their use by individuals who are blind. Similarly, permanent or portable assistive listening systems for persons with hearing impairments may be required at a hotel conference center.

Several commenters suggested the addition of current technological innovations in microelectronics and computerized control systems (e.g., voice recognition systems, automatic dialing telephones, and infrared elevator and light control systems) to the list of auxiliary aids and services. The Department interprets auxiliary aids and services as those aids and services designed to provide effective communications, i. e., making aurally and visually delivered information available to persons with hearing, speech, and vision impairments. Methods of making services, programs, or activities accessible to, or usable by, individuals with mobility or manual dexterity impairments are addressed by other sections of this part, including the requirements for modifications in policies, practices, or procedures (§ 36.302), the elimination of existing architectural barriers (§ 36.304), and the provision of alternatives to barriers removal (§ 36.305).

Paragraph (b)(4) refers to other similar services and actions. Several commenters asked for clarification that "similar services and actions" include retrieving items from shelves, assistance in reaching a marginally accessible seat, pushing a barrier aside in order to provide an accessible route, or assistance in removing a sweater or coat. While retrieving an item from a shelf might be an "auxiliary aid or service" for a blind person who could not locate the item without assistance, it might be a readily achievable alternative to barrier removal for a person using a wheelchair who could not reach the shelf, or a reasonable modification to a self-service policy for an individual who lacked the ability to grasp the item. (Of course, a store would not be required to provide a personal shopper.) As explained above, auxiliary aids and services are those aids and services required to provide effective communications. Other forms of assistance are more appropriately addressed by other provisions of the final rule.

The auxiliary aid requirement is a flexible one. A public accommodation can choose among various alternatives as long as the result is effective communication. For example, a restaurant would not be required to provide menus in Braille for patrons who are blind, if the waiters in the restaurant are made available to read the menu. Similarly, a clothing boutique would not be required to have Brailled price tags if sales personnel provide price information orally upon request; and a bookstore would not be required to make available a sign language interpreter, because effective communication can be conducted by notepad.

A critical determination is what constitutes an effective auxiliary aid or service. The Department's proposed rule recommended that, in determining what auxiliary aid to use, the public accommodation consult with an individual before providing him or her with a particular auxiliary aid or service. This suggestion sparked a significant volume of public comment. Many persons with disabilities, particularly persons who are deaf or hard of hearing, recommended that the rule should require that public accommodations give "primary consideration" to the "expressed choice" of an individual with a disability. These commenters asserted that the proposed rule was inconsistent with congressional intent of the ADA, with the Department's proposed rule implementing title II of the ADA, and with longstanding interpretations of section 504 of the Rehabilitation Act.

Based upon a careful review of the ADA legislative history, the Department believes that Congress did not intend under title III to impose upon a public accommodation the requirement that it give primary consideration to the request of the individual with a disability. To the contrary, the legislative history demonstrates

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Based upon a careful review of the ADA legislative history, the Department believes that Congress did not intend under title III to impose upon a public accommodation the requirement that it give primary consideration to the request of the individual with a disability. To the contrary, the legislative history demonstrates congressional intent to strongly encourage consulting with persons with disabilities. In its analysis of the ADA's auxiliary aids requirement for public accommodations, the House Education and Labor Committee stated that it "expects" that "public accommodation(s) will consult with the individual with a disability before providing a particular auxiliary aid or service" (Education and Labor report at 107). Some commenters also cited a different committee statement that used mandatory language as evidence of legislative intent to require primary consideration. However, this statement was made in the context of reasonable accommodations required by title I with respect to employment (Education and Labor report at 67). Thus, the Department finds that strongly encouraging consultation with persons with disabilities, in lieu of mandating primary consideration of their expressed choice, is consistent with congressional intent.

The Department wishes to emphasize that public accommodations must take steps necessary to ensure that an individual with a disability will not be excluded, denied services, segregated or otherwise treated differently from other individuals because of the use of inappropriate or ineffective auxiliary aids. In those situations requiring an interpreter, the public accommodations must secure the services of a qualified interpreter, unless an undue burden would result.

In the analysis of § 36.303(c) in the proposed rule, the Department gave as an example the situation where a note pad and written materials were insufficient to permit effective communication in a doctor's office when the matter to be decided was whether major surgery was necessary. Many commenters objected to this statement, asserting that it gave the impression that only decisions about major surgery would merit the provision of a sign language interpreter. The statement would, as the commenters also claimed, convey the impression to other public accommodations that written communications would meet the regulatory requirements in all but the most extreme situations. The Department, when using the example of major surgery, did not intend to limit the provision of interpreter services to the most extreme situations.

Other situations may also require the use of interpreters to ensure effective communication depending on the facts of the particular case. It is not difficult to imagine a wide range of communications involving areas such as health, legal matters, and finances that would be sufficiently lengthy or complex to require an interpreter for effective communication. In some situations, an effective alternative to use of a notepad or an interpreter may be the use of a computer terminal upon which the representative of the public accommodation and the customer or client can exchange typewritten messages.

Section 36.303(d) specifically addresses requirements for TDD's. Partly because of the availability of telecommunications relay services to be established under title IV of the ADA, § 36.303(d)(2) provides that a public accommodation is not required to use a telecommunication device for the deaf (TDD) in receiving or making telephone calls incident to its operations. Several commenters were concerned that relay services would not be sufficient to provide effective access in a number of situations. Commenters argued that relay systems (1) do not provide effective access to the automated systems that require the caller to respond by pushing a button on a touch tone phone, (2) cannot operate fast enough to convey messages on answering machines, or to permit a TDD user to leave a recorded message, and (3) are not appropriate for calling crisis lines relating to such matters as rape, domestic violence, child abuse, and drugs where confidentiality is a concern. The Department believes that it is more appropriate for the Federal Communications Commission to address these issues in its rulemaking under title IV.

A public accommodation is, however, required to make a TDD available to an individual with impaired hearing or speech, if it customarily offers telephone service to its customers, clients, patients, or participants on more than an incidental convenience basis. Where entry to a place of public accommodation requires use of a security entrance telephone, a TDD or other effective means of communication must be provided for use by an individual with impaired hearing or speech.

In other words, individual retail stores, doctors' offices, restaurants, or similar establishments are not required by this section to have TDD's, because TDD users will be able to make inquiries, appointments, or reservations with such establishments through the relay system established under title IV of the ADA. The public accommodation will likewise be able to contact TDD users through the relay system. On the other hand, hotels, hospitals, and other similar establishments that offer nondisabled individuals the opportunity to make outgoing telephone calls on more than an incidental convenience basis must provide a TDD on request.

Section 36.303(e) requires places of lodging that provide televisions in five or more guest rooms and hospitals to provide, upon request, a means for decoding closed captions for use by an individual with impaired hearing. Hotels should also provide a TDD or similar device at the front desk in order to take calls from guests who use TDD's in their rooms. In this way guests with hearing impairments can avail themselves of such hotel services as making inquiries of the front desk and ordering room service. The term "hospital" is used in its general sense and should be interpreted broadly.

Movie theaters are not required by § 36.303 to present open-captioned films. However, other public accommodations that impart verbal information through soundtracks on films, video tapes, or slide shows are required to make such information accessible to persons with hearing impairments. Captioning is one means to make the information accessible to individuals with disabilities.

The rule specifies that auxiliary aids and services include the acquisition or modification of equipment or devices. For example, tape players used for an audio-guided tour of a museum exhibit may require the addition of Brailled adhesive labels to the buttons on a reasonable number of the tape players to facilitate their use by individuals who are blind. Similarly, a hotel conference center may need to provide permanent or portable assistive listening systems for persons with hearing impairments.

As provided in § 36.303(f), a public accommodation is not required to provide any particular aid or service that would result either in a fundamental alteration in the nature of the goods, services, facilities, privileges, advantages, or accommodations offered or in an undue burden. Both of these statutory limitations are derived from existing regulations and caselaw under section 504 and are to be applied on a case-by-case basis (see, e.g., 28 CFR 39.160(d) and *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979)). Congress intended that "undue burden" under § 36.303 and "undue hardship," which is used in the employment provisions of title I of the ADA, should be determined on a case-by-case basis under the same standards and in light of the same factors (Judiciary report at 59). The rule, therefore, in accordance with the definition of undue hardship in section 101(10) of the ADA, defines undue burden as "significant difficulty or expense" (see §§ 36.104 and 36.303(a)) and requires that undue burden be determined in light of the factors listed in the definition in 36.104.

Consistent with regulations implementing section 504 in federally conducted programs (see, e.g., 28 CFR 39.160(d)), § 36.303(f) provides that the fact that the provision of a particular auxiliary aid or service would result in an undue burden does not relieve a public accommodation from the duty to furnish an alternative auxiliary aid or service, if available, that would not result in such a burden.

Section 36.303(g) of the proposed rule has been deleted from this section and included in a new § 36.306. That new section continues to make clear that the auxiliary aids requirement does not mandate the provision of individually prescribed devices, such as prescription eyeglasses or hearing aids.

The costs of compliance with the requirements of this section may not be financed by surcharges limited to particular individuals with disabilities or any group of individuals with disabilities (§ 36.301(c)).

Section 36.304 Removal of Barriers

Section 36.304 requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities, where such removal is readily achievable, i.e., easily accomplishable and able to be carried out without much difficulty or expense. This requirement is based on section 302(b)(2)(A)(iv) of the ADA.

A number of commenters interpreted the phrase "communication barriers that are structural in nature" broadly to encompass the provision of communications devices such as TDD's, telephone handset amplifiers, assistive listening devices, and digital check-out displays. The statute, however, as read by the Department, limits the application of the phrase "communications barriers that are structural in nature" to those barriers that are an integral part of the physical structure of a facility. In addition to the communications barriers posed by permanent signage and alarm systems noted by Congress (see Education and Labor report at 110), the Department would also include among the communications barriers covered by § 36.304 the failure to provide adequate sound buffers, and the presence of physical partitions that hamper the passage of sound waves between employees and customers. Given that § 36.304's proper focus is on the removal of physical barriers, the Department believes that the obligation to provide communications equipment and devices such as TDD's, telephone handset amplifiers, assistive listening devices, and digital check-out displays is more appropriately determined by the requirements for auxiliary aids and services under § 36.303 (see Education and Labor report at 107–108). The obligation to remove communications barriers that are structural in nature under § 36.304, of course, is independent of any obligation to provide auxiliary aids and services under § 36.303.

The statutory provision also requires the readily achievable removal of certain barriers in existing vehicles and rail passenger cars. This transportation requirement is not included in § 36.304, but rather in § 36.310(b) of the rule.

In striking a balance between guaranteeing access to individuals with disabilities and recognizing the legitimate cost concerns of businesses and other private entities, the ADA establishes different standards for existing facilities and new construction. In existing facilities, which are the subject of § 36.304, where retrofitting may prove costly, a less rigorous degree of accessibility is required than in the case of new construction and alterations (see §§ 36.401–36.406) where accessibility can be more conveniently and economically incorporated in the initial stages of design and construction.

For example, a bank with existing automatic teller machines (ATM's) would have to remove barriers to the use of the ATM's, if it is readily achievable to do so. Whether or not it is necessary to take actions such as ramping a few steps or raising or lowering an ATM would be determined by whether the actions can be accomplished easily and without much difficulty or expense.

On the other hand, a newly constructed bank with ATM's would be required by § 36.401 to have an ATM that is "readily accessible to and usable by" persons with disabilities in accordance with accessibility guidelines incorporated under § 36.406.

The requirement to remove architectural barriers includes the removal of physical barriers of any kind. For example, § 36.304 requires the removal, when readily achievable, of barriers caused by the location of temporary or movable structures, such as furniture, equipment, and display racks. In order to provide access to individuals who use wheelchairs, for example, restaurants may need to rearrange tables and chairs, and department stores may need to reconfigure display racks and shelves. As stated in § 36.304(f), such actions are not readily achievable to the extent that they would result in a significant loss of selling or serving space. If the widening of all aisles in selling or serving areas is not readily achievable, then selected widening should be undertaken to maximize the amount of merchandise or the number of tables accessible to individuals who use wheelchairs. Access to goods and services provided in any remaining inaccessible areas must be made available through alternative methods to barrier removal, as required by § 36.305.

Because the purpose of title III of the ADA is to ensure that public accommodations are accessible to their customers, clients, or patrons (as opposed to their employees, who are the focus of title I), the obligation to remove barriers under § 36.304 does not extend to areas of a facility that are used exclusively as employee work areas.

Section 36.304(b) provides a wide-ranging list of the types of modest measures that may be taken to remove barriers and that are likely to be readily achievable. The list includes examples of measures, such as adding raised letter markings on elevator control buttons and installing flashing alarm lights, that would be used to remove communications barriers that are structural in nature. It is not an exhaustive list, but merely an illustrative one. Moreover, the inclusion of a measure on this list does not mean that it is readily achievable in all cases. Whether or not any of these measures is readily achievable is to be determined on a case-by-case basis in light of the particular circumstances presented and the factors listed in the definition of readily achievable (§ 36.104).

A public accommodation generally would not be required to remove a barrier to physical access posed by a flight of steps, if removal would require extensive ramping or an elevator. Ramping a single step, however, will likely be readily achievable, and ramping several steps will in many circumstances also be readily achievable. The readily achievable standard does not require barrier removal that requires extensive restructuring or burdensome expense. Thus, where it is not readily achievable to do, the ADA would not require a restaurant to provide access to a restroom reachable only by a flight of stairs.

Like § 36.405, this section permits deference to the national interest in preserving significant historic structures. Barrier removal would not be considered "readily achievable" if it

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would threaten or destroy the historic significance of a building or facility that is eligible for listing in the National Register of Historic Places under the National Historic Preservation Act (16 U.S.C. 470, *et seq.*), or is designated as historic under State or local law.

The readily achievable defense requires a less demanding level of exertion by a public accommodation than does the undue burden defense to the auxiliary aids requirements of § 36.303. In that sense, it can be characterized as a "lower" standard than the undue burden standard. The readily achievable defense is also less demanding than the undue hardship defense in section 102(b)(5) of the ADA, which limits the obligation to make reasonable accommodation in employment. Barrier removal measures that are not easily accomplishable and are not able to be carried out without much difficulty or expense are not required under the readily achievable standard, even if they do not impose an undue burden or an undue hardship.

Section 36.304(f)(1) of the proposed rule, which stated that "barrier removal is not readily achievable if it would result in significant loss of profit or significant loss of efficiency of operation," has been deleted from the final rule. Many commenters objected to this provision because it impermissibly introduced the notion of profit into a statutory standard that did not include it. Concern was expressed that, in order for an action not to be considered readily achievable, a public accommodation would inappropriately have to show, for example, not only that the action could not be done without "much difficulty or expense", but that a significant loss of profit would result as well. In addition, some commenters asserted use of the word "significant," which is used in the definition of undue hardship under title I (the standard for interpreting the meaning of undue burden as a defense to title III's auxiliary aids requirements) (see §§ 36.104, 36.303(f)), blurs the fact that the readily achievable standard requires a lower level of effort on the part of a public accommodation than does the undue burden standard.

The obligation to engage in readily achievable barrier removal is a continuing one. Over time, barrier removal that initially was not readily achievable may later be required because of changed circumstances. Many commenters expressed support for the Department's position that the obligation to comply with § 36.304 is continuing in nature. Some urged that the rule require public accommodations to assess their compliance on at least an annual basis in light of changes in resources and other factors that would be relevant to determining what barrier removal measures would be readily achievable.

Although the obligation to engage in readily achievable barrier removal is clearly a continuing duty, the Department has declined to establish any independent requirement for an annual assessment or self-evaluation. It is best left to the public accommodations subject to § 36.304 to establish policies to assess compliance that are appropriate to the particular circumstances faced by the wide range of public accommodations covered by the ADA. However, even in the absence of an explicit regulatory requirement for periodic self-evaluations, the Department still urges public accommodations to establish procedures for an ongoing assessment of their compliance with the ADA's barrier removal requirements. The Department recommends that this process include appropriate consultation with individuals with disabilities or organizations representing them. A serious effort at self-assessment and consultation can diminish the threat of litigation and save resources by identifying the most efficient means of providing required access.

The Department has been asked for guidance on the best means for public accommodations to comply voluntarily with this section. Such information is more appropriately part of the Department's technical assistance effort and will be forthcoming over the next several months. The Department recommends, however, the development of an implementation plan designed to achieve compliance with the ADA's barrier removal requirements before they become effective on January 26, 1992. Such a plan, if appropriately designed and diligently executed, could serve as evidence of a good faith effort to comply with the requirements of § 36.104. In developing an implementation plan for readily achievable barrier removal, a public accommodation should consult with local organizations representing persons with disabilities and solicit their suggestions for cost-effective means of making individual places of public accommodation accessible. Such organizations may also be helpful in allocating scarce resources and establishing priorities. Local associations of businesses may want to encourage this process and serve as the forum for discussions on the local level between disability rights organizations and local businesses.

Section 36.304(c) recommends priorities for public accommodations in removing barriers in existing facilities. Because the resources available for barrier removal may not be adequate to remove all existing barriers at any given time, § 36.304(c) suggests priorities for determining which types of barriers should be mitigated or eliminated first. The purpose of these priorities is to facilitate long-term business planning and to maximize, in light of limited resources, the degree of effective access that will result from any given level of expenditure.

Although many commenters expressed support for the concept of establishing priorities, a significant number objected to their mandatory nature in the proposed rule. The Department shares the concern of these commenters that mandatory priorities would increase the likelihood of litigation and inappropriately reduce the discretion of public accommodations to determine the most effective mix of barrier removal measures to undertake in particular circumstances. Therefore, in the final rule the priorities are no longer mandatory.

In response to comments that the priorities failed to address communications issues, the Department wishes to emphasize that the priorities encompass the removal of communications barriers that are structural in nature. It would be counter to the ADA's carefully wrought statutory scheme to include in this provision the wide range of communication devices that are required by the ADA's provisions on auxiliary aids and services. The final rule explicitly includes Brailled and raised letter signage and visual alarms among the examples of steps to remove barriers provided in § 36.304(c)(2).

Section 36.304(c)(1) places the highest priority on measures that will enable individuals with disabilities to physically enter a place of public accommodation. This priority on "getting through the door" recognizes that providing actual physical access to a facility from public sidewalks, public transportation, or parking is generally preferable to any alternative arrangements in terms of both business efficiency and the dignity of individuals with disabilities.

The next priority, which is established in § 36.304(c)(2), is for measures that provide access to those areas of a place of public accommodation where goods and services are made available to the public. For example, in a hardware store, to the extent that it is readily achievable to do so, individuals with disabilities should be given access not only to assistance at the front desk, but also access, like that available to other customers, to the retail display areas of the store.

The Department agrees with those commenters who argued that access to the areas where goods and services are provided is generally more important than the provision of restrooms. Therefore, the final rule reverses priorities two and three of the proposed rule in order to give lower priority to accessible restrooms. Consequently, the third priority in the final rule (§ 36.304(c)(3)) is for measures to provide access to restroom facilities and the last priority is placed on any remaining measures required to remove barriers.

Section 36.304(d) requires that measures taken to remove barriers under § 36.304 be subject to subpart D's requirements for alterations (except for the path of travel requirements in § 36.403). It only permits deviations from the subpart D requirements when compliance with those requirements is not readily achievable. In such cases, § 36.304(d) permits measures to be taken that do not fully comply with the subpart D requirements, so long as the measures do not pose a significant risk to the health or safety of individuals with disabilities or others.

This approach represents a change from the proposed rule which stated that "readily achievable" measures taken solely to remove barriers under § 36.304 are exempt from the alterations requirements of subpart D. The intent of the proposed rule was to maximize the flexibility of public accommodations in undertaking barrier removal by allowing deviations from the technical standards of subpart D. It was thought that allowing slight deviations would provide access and release additional resources for expanding the amount of barrier removal that could be obtained under the readily achievable standard.

Many commenters, however, representing both businesses and individuals with disabilities, questioned this approach because of the likelihood that unsafe or ineffective measures would be taken in the absence of the subpart D standards for alterations as a reference point. Some advocated a rule requiring strict compliance with the subpart D standard.

The Department in the final rule has adopted the view of many commenters that (1) public accommodations should in the first instance be required to comply with the subpart D standards for alterations where it is readily achievable to do so and (2) safe, readily achievable measures must be taken when compliance with the subpart D standards is not readily achievable. Reference to the subpart D standards in this manner will promote certainty and good design at the same time that permitting slight deviations will expand the amount of barrier removal that may be achieved under § 36.304.

Because of the inconvenience to individuals with disabilities and the safety problems involved in the use of portable ramps, § 36.304(e) permits the use of a portable ramp to comply with § 36.304(a) only when installation of a permanent ramp is not readily achievable. In order to promote safety, § 36.304(e) requires that due consideration be given to the incorporation of features such as nonslip surfaces, railings, anchoring, and strength of materials in any portable ramp that is used.

Temporary facilities brought in for use at the site of a natural disaster are subject to the barrier removal requirements of § 36.304.

A number of commenters requested clarification regarding how to determine when a public accommodation has discharged its obligation to remove barriers in existing facilities. For example, is a hotel required by § 36.304 to remove barriers in all of its guest rooms? Or is some lesser percentage adequate? A new paragraph (g) has been added to § 36.304 to address this issue. The Department believes that the degree of barrier removal required under § 36.304 may be less, but certainly would not be required to exceed, the standards for alterations under the ADA Accessibility Guidelines incorporated by subpart D of this part (ADAAG). The ADA's requirements for readily achievable barrier removal in existing facilities are intended to be substantially less rigorous than those for new construction and alterations. It, therefore, would be obviously inappropriate to require actions under § 36.304 that would exceed the ADAAG requirements. Hotels, then, in order to satisfy the requirements of § 36.304, would not be required to remove barriers in a higher percentage of rooms than required by ADAAG. If relevant standards for alterations are not provided in ADAAG, then reference should be made to the standards for new construction.

Section 36.305 Alternatives to Barrier Removal

Section 36.305 specifies that where a public accommodation can demonstrate that removal of a barrier is not readily achievable, the public accommodation must make its goods, services, facilities, privileges, advantages, or accommodations available through alternative methods, if such methods are readily achievable. This requirement is based on section 302(b)(2)(A)(v) of the ADA.

For example, if it is not readily achievable for a retail store to raise, lower, or remove shelves or to rearrange display racks to provide accessible aisles, the store must, if readily achievable, provide a clerk or take other alternative measures to retrieve inaccessible merchandise. Similarly, if it is not readily achievable to ramp a long flight of stairs leading to the front door of a restaurant or a pharmacy, the restaurant or the pharmacy must take alternative measures, if readily achievable, such as providing curb service or home delivery. If, within a restaurant, it is not readily achievable to remove physical barriers to a certain section of a restaurant, the restaurant must, where it is readily achievable to do so, offer the same menu in an accessible area of the restaurant.

Where alternative methods are used to provide access, a public accommodation may not charge an individual with a disability for the costs associated with the alternative method (see § 36.301(c)). Further analysis of the issue of charging for alternative measures may be found in the preamble discussion of § 36.301(c).

In some circumstances, because of security considerations, some alternative methods may not be readily achievable. The rule does not require a cashier to leave his or her post to retrieve items for individuals with disabilities, if there are no other employees on duty.

Section 36.305(c) of the proposed rule has been deleted and the requirements have been included in a new § 36.306. That section makes clear that the alternative methods requirement does not mandate the provision of personal devices, such as wheelchairs, or services of a personal nature.

In the final rule, § 36.305(c) provides specific requirements regarding alternatives to barrier removal in multiscreen cinemas. In some situations, it may not be readily achievable to remove enough barriers to provide access to all of the theaters of a multiscreen cinema. If that is the case, § 36.305(c) requires the cinema to establish a film rotation schedule that provides reasonable access for individuals who use wheelchairs to films being presented by the cinema. It further requires that reasonable notice be provided to the public as to the location and time of accessible showings. Methods for providing notice include appropriate use of the international accessibility symbol in a cinema's print advertising and the addition of accessibility information to a cinema's recorded telephone information line.

Section 36.306 Personal Devices and Services

The final rule includes a new § 36.306, entitled "Personal devices and services." Section 36.306 of the proposed rule, "Readily achievable and undue burden: Factors to be considered," was deleted for the reasons described in the preamble discussion of the definition of the term "readily achievable" in § 36.104. In place of §§ 36.303(g) and 36.305(c) of the proposed rule, which addressed the issue of personal devices and services in the contexts of auxiliary aids and alternatives to barrier removal, § 36.306 provides a general statement that the regulation does not require the provision of personal devices and services. This section states that a public accommodation is not required to provide its customers, clients, or participants with personal devices, such as wheelchairs; individually prescribed devices, such as prescription eyeglasses or hearing aids; or services of a personal nature including assistance in eating, toileting, or dressing.

This statement serves as a limitation on all the requirements of the regulation. The personal devices and services limitation was intended to have general application in the proposed rule in all contexts where it was relevant. The final rule, therefore, clarifies, this point by including a general provision that will explicitly apply not just to auxiliary aids and services and alternatives to barrier removal, but across-the-board to include such relevant areas as modifications in policies, practices, and procedures (§ 36.302) and examinations and courses (§ 36.309), as well.

The Department wishes to clarify that measures taken as alternatives to barrier removal, such as retrieving items from shelves or providing curb service or home delivery, are not to be considered personal services. Similarly, minimal actions that may be required as modifications in policies, practices, or procedures under § 36.302, such as a waiter's removing the cover from a customer's straw, a kitchen's cutting up food into smaller pieces, or a bank's filling out a deposit slip, are not services of a personal nature within the meaning of § 36.306. (Of course, such modifications may be required under § 36.302 only if they are "reasonable.") Similarly, this section does not preclude the short-term loan of personal receivers that are part of an assistive listening system.

Of course, if personal services are customarily provided to the customers or clients of a public accommodation, e.g., in a hospital or senior citizen center, then these personal services should also be provided to persons with disabilities using the public accommodation.

Section 36.307 Accessible or Special Goods.

Section 36.307 establishes that the rule does not require a public accommodation to alter its inventory to include accessible or special goods with accessibility features that are designed for, or facilitate use by, individuals with disabilities. As specified in § 36.307(c), accessible or special goods include such items as Brailled versions of books, books on audio-cassettes, closed captioned video tapes, special sizes or lines of clothing, and special foods to meet particular dietary needs.

The purpose of the ADA's public accommodations requirements is to ensure accessibility to the goods offered by a public accommodation, not to alter the nature or mix of goods that the public accommodation has typically provided. In other words, a bookstore, for example, must make its facilities and sales operations accessible to individuals with disabilities, but is not required to stock Brailled or large print books. Similarly, a video store must make its facilities and rental operations accessible, but is not required to stock closed-captioned video tapes. The Department has been made aware, however, that the most recent titles in video-tape rental establishments are, in fact, closed captioned.

Although a public accommodation is not required by § 36.307(a) to modify its inventory, it is required by § 36.307(b), at the request of an individual with disabilities, to order accessible or special goods that it does not customarily maintain in stock if, in the normal course of its operation, it makes special orders for unstocked goods, and if the accessible or special goods can be obtained from a supplier with whom the public accommodation customarily does business. For example, a clothing store would be required to order specially-sized clothing at the request of an individual with a disability, if it customarily makes special orders for clothing that it does not keep in stock, and if the clothing can be obtained from one of the store's customary suppliers.

One commenter asserted that the proposed rule could be interpreted to require a store to special order accessible or special goods of all types, even if only one type is specially ordered in the normal course of its business. The Department, however, intends for § 36.307(b) to require special orders only of those particular types of goods for which a public accommodation normally makes special orders. For example, a book and recording store would not have to specially order Brailled books if, in the normal course of its business, it only specially orders recordings and not books.

Section 36.308 Seating in Assembly Areas.

Section 36.308 establishes specific requirements for removing barriers to physical access in assembly areas, which include such facilities as theaters, concert halls, auditoriums, lecture halls, and conference rooms. This section does not address the provision of auxiliary aids or the removal of communications barriers that are structural in nature. These communications requirements are the focus of other provisions of the regulation (see §§ 36.303–36.304).

Individuals who use wheelchairs historically have been relegated to inferior seating in the back of assembly areas separate from accompanying family members and friends. The provisions of § 36.308 are intended to promote integration and equality in seating.

In some instances it may not be readily achievable for auditoriums or theaters to remove seats to allow individuals with wheelchairs to sit next to accompanying family members or friends. In these situations, the final rule retains the requirement that the public accommodation provide portable chairs or other means to allow the accompanying individuals to sit with the persons in wheelchairs. Persons in wheelchairs should have the same opportunity to enjoy movies, plays, and similar events with their families and friends, just as other patrons do. The final rule specifies that portable chairs or other means to permit family members or companions to sit with individuals who use wheelchairs must be provided only when it is readily achievable to do so.

In order to facilitate seating of wheelchair users who wish to transfer to existing seating, paragraph (a)(1) of the final rule adds a requirement that, to the extent readily achievable, a reasonable number of seats with removable aisle-side armrests must be provided. Many persons in wheelchairs are able to transfer to existing seating with this relatively minor modification. This solution avoids the potential safety hazard created by the use of portable chairs and fosters integration. The final ADA Accessibility Guidelines incorporated by subpart D (ADAAG) also add a requirement regarding aisle seating that was not in the proposed guidelines. In situations when a person in a wheelchair transfers to existing seating, the public accommodation shall provide assistance in handling the wheelchair of the patron with the disability.

Likewise, consistent vith ADAAG, the final rule adds in § 36.308(a)(1)(ii)(B) a requirement that, to the extent readily achievable, wheelchair seating provide lines of sight and choice of admission prices comparable to those for members of the general public.

Finally, because Congress intended that the requirements for barrier removal in existing facilities be substantially less rigorous than those required for new construction and alterations, the final rule clarifies in § 36.308(a)(3) that in no event can the requirements for existing facilities be interpreted to exceed the standards for alterations under ADAAG. For example, § 4.33 of ADAAG only requires wheelchair spaces to be provided in more than one location when the seating capacity of the assembly area exceeds 300. Therefore, paragraph (a) of § 36.308 may not be interpreted to require readily achievable dispersal of wheelchair seating in assembly areas with 300 or fewer seats. Similarly, § 4.1.3(19) of ADAAG requires six accessible wheelchair locations in an assembly area with 301 to 500 seats. The reasonable number of wheelchair locations required by paragraph (a), therefore, may be less than six, but may not be interpreted to exceed six.

Proposed Section 36.309 Purchase of Furniture and Equipment

Section 36.309 of the proposed rule would have required that newly purchased furniture or equipment made available for use at a place of public accommodation be accessible, to the extent such furniture or equipment is available, unless this requirement would fundamentally alter the goods, services, facilities, privileges, advantages, or accommodations offered, or would not be readily achievable. Proposed § 36.309 has been omitted from the final rule because the Department has determined that its requirements are more properly addressed under other sections, and because there are currently no appropriate accessibility standards addressing many types of furniture and equipment.

Some types of equipment will be required to meet the accessibility requirements of subpart D. For example, ADAAG establishes technical and scoping requirements in new construction and alterations for automated teller machines and telephones. Purchase or modification of equipment is required in certain instances by the provisions in §§ 36.201 and 36.202. For example, an arcade may need to provide accessible video machines in order to ensure full and equal enjoyment of the facilities and to provide an opportunity to participate in the services and facilities it provides. The barrier removal requirements of § 36.304 will apply as well to furniture and equipment (lowering shelves, rearranging furniture, adding Braille labels to a vending machine).

Section 36.309 Examinations and Courses

Section 36.309(a) sets forth the general rule that any private entity that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes shall offer such examinations or courses in a place and manner accessible to persons with disabilities or offer alternative accessible arrangements for such individuals.

Paragraph (a) restates section 309 of the Americans with Disabilities Act. Section 309 is intended to fill the gap that is created when licensing, certification, and other testing authorities are not covered by section 504 of the Rehabilitation Act or title II of the ADA. Any such authority that is covered by section 504, because of the receipt of Federal money, or by title II, because it is a function of a State or local government, must make all of its programs accessible to persons with disabilities, which includes physical access as well as modifications in the way the test is administered, e.g., extended time, written instructions, or assistance of a reader.

Many licensing, certification, and testing authorities are not covered by section 504, because no Federal money is received; nor are they covered by title II of the ADA because they are not State or local agencies. However, States often require the licenses provided by such authorities in order for an individual to practice a particular profession or trade. Thus, the provision was included in the ADA in order to assure that persons with disabilities are not foreclosed from educational, professional, or trade opportunities because an examination or course is conducted in an inaccessible site or without needed modifications.

As indicated in the "Application" section of this part (§ 36.102), § 36.309 applies to any private entity that offers the specified types of examinations or courses. This is consistent with section 309 of the Americans with Disabilities Act, which states that the requirements apply to "any person" offering examinations or courses.

The Department received a large number of comments on this section, reflecting the importance of ensuring that the key gateways to education and employment are open to individuals with disabilities. The most frequent comments were objections to the fundamental alteration and undue burden provisions in §§ 36.309 (b)(3) and (c)(3) and to allowing courses and examinations to be provided through alternative accessible arrangements, rather than in an integrated setting.

Although section 309 of the Act does not refer to a fundamental alteration or undue burden limitation, those limitations do appear in section 302(b)(2)(A)(iii) of the Act, which establishes the obligation of public accommodations to provide auxiliary aids and services. The Department, therefore, included it in the paragraphs of § 36.309 requiring the provision of auxiliary aids. One commenter argued that similar limitations should apply to all of the requirements of § 36.309, but the Department did not consider this extension appropriate.

Commenters who objected to permitting "alternative accessible arrangements" argued that such arrangements allow segregation and should not be permitted, unless they are the least restrictive available alternative, for example, for someone who cannot leave home. Some commenters made a distinction between courses, where interaction is an important part of the educational experience, and examinations, where it may be less important. Because the statute specifically authorizes alternative accessible arrangements as a method of meeting the requirements of section 309, the Department has not adopted this suggestion. The Department notes, however, that, while examinations of the type covered by § 36.309 may not be covered elsewhere in the regulation, courses will generally be offered in a "place of education," which is included in the definition of "place of public accommodation" in § 36.104, and, therefore, will be subject to the integrated setting requirement of § 36.203.

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Section 36.309(b) sets forth specific requirements for examinations. Examinations covered by this section would include a bar exam or the Scholastic Aptitude Test prepared by the Educational Testing Service. Paragraph (b)(1) is adopted from the Department of Education's section 504 regulation on admission tests to postsecondary educational programs (34 CFR 104.42(b)(3)). Paragraph (b)(1)(i) requires that a private entity offering an examination covered by the section must assure that the examination is selected and administered so as to best ensure that the examination accurately reflects an individual's aptitude or achievement level or other factor the examination purports to measure, rather than reflecting the individual's impaired sensory, manual, or speaking skills (except where those skills are the factors that the examination purports to measure).

Paragraph (b)(1)(ii) requires that any examination specially designed for individuals with disabilities be offered as often and in as timely a manner as other examinations. Some commenters noted that persons with disabilities may be required to travel long distances when the locations for examinations for individuals with disabilities are limited, for example, to only one city in a State instead of a variety of cities. The Department has therefore revised this paragraph to add a requirement that such examinations be offered at locations that are as convenient as the location of other examinations.

Commenters representing organizations that administer tests wanted to be able to require individuals with disabilities to provide advance notice and appropriate documentation, at the applicants' expense, of their disabilities and of any modifications or aids that would be required. The Department agrees that such requirements are permissible, provided that they are not unreasonable and that the deadline for such notice is no earlier than the deadline for others applying to take the examination. Requiring individuals with disabilities to file earlier applications would violate the requirement that examinations designed for individuals with disabilities be offered in as timely a manner as other examinations.

Examiners may require evidence that an applicant is entitled to modifications or aids as required by this section, but requests for documentation must be reasonable and must be limited to the need for the modification or aid requested. Appropriate documentation might include a letter from a physician or other professional, or evidence of a prior diagnosis or accommodation, such as eligibility for a special education program. The applicant may be required to bear the cost of providing such documentation, but the entity administering the examination cannot charge the applicant for the cost of any modifications or auxiliary aids, such as interpreters, provided for the examination.

Paragraph (b)(1)(iii) requires that examinations be administered in facilities that are accessible to individuals with disabilities or alternative accessible arrangements are made.

Paragraph (b)(2) gives examples of modifications to examinations that may be necessary in order to comply with this section. These may include providing more time for completion of the examination or a change in the manner of giving the examination, e.g., reading the examination to the individual.

Paragraph (b)(3) requires the provision of auxiliary aids and services, unless the private entity offering the examination can demonstrate that offering a particular auxiliary aid would fundamentally alter the examination or result in an undue burden. Examples of auxiliary aids include taped examinations, interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments, readers for individuals with visual impairments or learning disabilities, and other similar services and actions. The suggestion that individuals with learning disabilities may need readers is included, although it does not appear in the Department of Education regulation, because, in fact, some individuals with learning disabilities have visual perception problems and would benefit from a reader.

Many commenters pointed out the importance of ensuring that modifications provide the individual with a disability an equal opportunity to demonstrate his or her knowledge or ability. For example, a reader who is unskilled or lacks knowledge of specific terminology used in the examination may be unable to convey the information in the questions or to follow the applicant's instructions effectively. Commenters pointed out that, for persons with visual impairments who read Braille, Braille provides the closest functional equivalent to a printed test. The Department has, therefore, added Brailled examinations to the examples of auxiliary aids and services that may be required. For similar reasons, the Department also added to the list of examples of auxiliary aids and services large print examinations and answer sheets; "qualified" readers; and transcribers to write answers.

A commenter suggested that the phrase "fundamentally alter the examination" in this paragraph of the proposed rule be revised to more accurately reflect the function affected. In the final rule the Department has substituted the phrase "fundamentally alter the measurement of the skills or knowledge the examination is intended to test."

Paragraph (b)(4) gives examples of alternative accessible arrangements. For instance, the private entity might be required to provide the examination at an individual's home with a proctor. Alternative arrangements must provide conditions for individuals with disabilities that are comparable to the conditions under which other individuals take the examinations. In other words, an examination cannot be offered to an individual with a disability in a cold, poorly lit basement, if other individuals are given the examination in a warm, well lit classroom.

Some commenters who provide examinations for licensing or certification for particular occupations or professions urged that they be permitted to refuse to provide modifications or aids for persons seeking to take the examinations if those individuals, because of their disabilities, would be unable to perform the essential functions of the profession or occupation for which the examination is given, or unless the disability is reasonably determined in advance as not being an obstacle to certification. The Department has not changed its rule based on this comment. An examination is one stage of a licensing or certification process. An individual should not be barred from attempting to pass that stage of the process merely because he or she might be unable to meet other requirements of the process. If the examination is not the first stage of the qualification process, an applicant may be required to complete the earlier stages prior to being admitted to the examination. On the other hand, the applicant may not be denied admission to the examination on the basis of doubts about his or her abilities to meet requirements that the examination is not designed to test.

Paragraph (c) sets forth specific requirements for courses. Paragraph (c)(1) contains the general rule that any course covered by this section must be modified to ensure that the place and manner in which the course is given is accessible. Paragraph (c)(2) gives examples of possible modifications that might be required, including extending the time permitted for completion of the course, permitting oral rather than written delivery of an assignment by a person with a visual impairment, or adapting the manner in which the course is conducted (i.e., providing cassettes of class handouts to an individual with a visual impairment). In response to comments, the Department has added to the examples in paragraph (c)(2) specific reference to distribution of course materials. If course materials are published and available from other sources, the entity offering the course may give advance notice of what materials will be used so as to allow an individual to obtain them in Braille or on tape but materials provided by the course offerer must be made available in alternative formats for individuals with disabilities.

In language similar to that of paragraph (b), paragraph (c)(3) requires auxiliary aids and services, unless a fundamental alteration or undue burden would result, and paragraph (c)(4) requires that courses be administered in accessible facilities. Paragraph (c)(5) gives examples of alternative accessible arrangements. These may include provision of the course through videotape, cassettes, or prepared notes. Alternative arrangements must provide comparable conditions to those provided to others, including similar lighting, room temperature, and the like. An entity offering a variety of courses, to fulfill continuing education requirements for a profession, for example, may not limit the selection or choice of courses available to individuals with disabilities.

Section 36.310 Transportation Provided by Public Accommodations

Section 36.310 contains specific provisions relating to public accommodations that provide transportation to their clients or customers. This section has been substantially revised in order to coordinate the requirements of this section with the requirements applicable to these transportation systems that will be contained in the regulations issued by the Secretary of Transportation pursuant to section 306 of the ADA, to be codified at 49 CFR part 37. The Department notes that, although the responsibility for issuing regulations applicable to transportation systems operated by public accommodations is divided between this Department and the Department of Transportation, enforcement authority is assigned only to the Department of Justice.

The Department received relatively few comments on this section of the proposed rule. Most of the comments addressed issues that are not specifically addressed in this part, such as the standards for accessible vehicles and the procedure for determining whether equivalent service is provided. Those standards will be contained in the regulation issued by the Department of Transportation. Other commenters raised questions about the types of transportation that will be subject to this section. In response to these inquiries, the Department has revised the list of examples contained in the regulation.

Paragraph (a)(1) states the general rule that covered public accommodations are subject to all of the specific provisions of subparts B, C, and D, except as provided in § 36.310. Examples of operations covered by the requirements are listed in paragraph (a)(2). The stated examples include hotel and motel airport shuttle services, customer shuttle bus services operated by private companies and shopping centers, student transportation, and shuttle operations of recreational facilities such as stadiums, zoos, amusement parks, and ski resorts. This brief list is not exhaustive. The section applies to any fixed route or demand responsive transportation system operated by a public accommodation for the benefit of its clients or customers. The section does not apply to transportation services provided only to employees. Employee transportation will be subject to the regulations issued by the Equal Employment Opportunity Commission to implement title I of the Act. However, if employees and customers or clients are served by the same transportation system, the provisions of this section will apply.

Paragraph (b) specifically provides that a public accommodation shall remove transportation barriers in existing vehicles to the extent that it is readily achievable to do so, but that the installation of hydraulic or other lifts is not required.

Paragraph (c) provides that public accommodations subject to this section shall comply with the requirements for transportation vehicles and systems contained in the regulations issued by the Secretary of Transportation.

Subpart D—New Construction and Alterations

Subpart D implements section 303 of the Act, which requires that newly constructed or altered places of public accommodation or commercial facilities be readily accessible to and usable by individuals with disabilities. This requirement contemplates a high degree of convenient access. It is intended to ensure that patrons and employees of places of public accommodation and employees of commercial facilities are able to get to, enter, and use the facility.

Potential patrons of places of public accommodation, such as retail establishments, should be able to get to a store, get into the store, and get to the areas where goods are being provided. Employees should have the same types of access, although those individuals require access to and around the employment area as well as to the area in which goods and services are provided.

The ADA is geared to the future—its goal being that, over time, access will be the rule, rather than the exception. Thus, the Act only requires modest expenditures, of the type addressed in § 36.304 of this part, to provide access to existing facilities not otherwise being altered, but requires all new construction and alterations to be accessible.

The Act does not require new construction or alterations; it simply requires that, when a public accommodation or other private entity undertakes the construction or alteration of a facility subject to the Act, the newly constructed or altered facility must be made accessible. This subpart establishes the requirements for new construction and alterations.

As explained under the discussion of the definition of "facility," § 36.104, pending development of specific requirements, the Department will not apply this subpart to places of public accommodation located in mobile units, boats, or other conveyances.

Section 36.401 New Construction

General

Section 36.401 implements the new construction requirements of the ADA. Section 303 (a)(1) of the Act provides that discrimination for purposes of section 302(a) of the Act includes a failure to design and construct facilities for first occupancy later than 30 months after the date of enactment (i.e., after January 26, 1993) that are readily accessible to and usable by individuals with disabilities.

Paragraph 36.401(a)(1) restates the general requirement for accessible new construction. The proposed rule stated that "any public accommodation or other private entity responsible for design and construction" must ensure that facilities conform to this requirement. Various commenters suggested that the proposed language

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was not consistent with the statute because it substituted "private entity responsible for design and construction" for the statutory language; because it did not address liability on the part of architects, contractors, developers, tenants, owners, and other entities; and because it limited the liability of entities responsible for commercial facilities. In response, the Department has revised this paragraph to repeat the language of section 303(a) of the ADA. The Department will interpret this section in a manner consistent with the intent of the statute and with the nature of the responsibilities of the various entities for design, for construction, or for both.

Designed and Constructed for First Occupancy

According to paragraph (a)(2), a facility is subject to the new construction requirements only if a completed application for a building permit or permit extension is filed after January 26, 1992, and the facility is occupied after January 26, 1993.

The proposed rule set forth for comment two alternative ways by which to determine what facilities are subject to the Act and what standards apply. Paragraph (a)(2) of the final rule is a slight variation on Option One in the proposed rule. The reasons for the Department's choice of Option One are discussed later in this section.

Paragraph (a)(2) acknowledges that Congress did not contemplate having actual occupancy be the sole trigger for the accessibility requirements, because the statute prohibits a failure to "design and construct for first occupancy," rather than requiring accessibility in facilities actually occupied after a particular date.

The commenters overwhelmingly agreed with the Department's proposal to use a date certain; many cited the reasons given in the preamble to the proposed rule. First, it is helpful for designers and builders to have a fixed date for accessible design, so that they can determine accessibility requirements early in the planning and design stage. It is difficult to determine accessibility requirements in anticipation of the actual date of first occupancy because of unpredictable and uncontrollable events (e.g., strikes affecting suppliers or labor, or natural disasters) that may delay occupancy. To redesign or reconstruct portions of a facility if it begins to appear that occupancy will be later than anticipated would be quite costly. A fixed date also assists those responsible for enforcing, or monitoring compliance with, the statute, and those protected by it.

The Department considered using as a trigger date for application of the accessibility standards the date on which a permit is granted. The Department chose instead the date on which a complete permit application is certified as received by the appropriate government entity. Almost all commenters agreed with this choice of a trigger date. This decision is based partly on information that several months or even years can pass between application for a permit and receipt of a permit. Design is virtually complete at the time an application is complete (i.e., certified to contain all the information required by the State, county, or local government). After an application is filed, delays may occur before the permit is granted due to numerous factors (not necessarily relating to accessibility): for example, hazardous waste discovered on the property, flood plain requirements, zoning disputes, or opposition to the project from various groups. These factors should not require redesign for accessibility if the application was completed before January 26, 1992. However, if the facility must be redesigned for other reasons, such as a change in density or environmental preservation, and the final permit is based on a new application, the rule would require accessibility if that application was certified complete after January 26, 1992.

The certification of receipt of a complete application for a building permit is an appropriate point in the process because certifications are issued in writing by governmental authorities. In addition, this approach presents a clear and objective standard.

However, a few commenters pointed out that in some jurisdictions it is not possible to receive a "certification" that an application is complete, and suggested that in those cases the fixed date should be the date on which an application for a permit is received by the government agency. The Department has included such a provision in § 36.401(a)(2)(i).

The date of January 26, 1992, is relevant only with respect to the last application for a permit or permit extension for a facility. Thus, if an entity has applied for only a "foundation" permit, the date of that permit application has no effect, because the entity must also apply for and receive a permit at a later date for the actual superstructure. In this case, it is the date of the later application that would control, unless construction is not completed within the time allowed by the permit, in which case a third permit would be issued and the date of the application for that permit would be determinative for purposes of the rule.

Choice of Option One for Defining "Designed and Constructed for First Occupancy"

Under the option the Department has chosen for determining applicability of the new construction standards, a building would be considered to be "for first occupancy" after January 26, 1993, only (1) if the last application for a building permit or permit extension for the facility is certified to be complete (or, in some jurisdictions, received) by a State, county, or local government after January 26, 1992, and (2) if the first certificate of occupancy is issued after January 26, 1993. The Department also asked for comment on an Option Two, which would have imposed new construction requirements if a completed application for a building permit or permit extension was filed after the enactment of the ADA (July 26, 1990), and the facility was occupied after January 26, 1993.

The request for comment on this issue drew a large number of comments expressing a wide range of views. Most business groups and some disability rights groups favored Option One, and some business groups and most disability rights groups favored Option Two. Individuals and government entities were equally divided; several commenters proposed other options.

Those favoring Option One pointed out that it is more reasonable in that it allows time for those subject to the new construction requirements to anticipate those requirements and to receive technical assistance pursuant to the Act. Numerous commenters said that time frames for designing and constructing some types of facilities (for example, health care facilities) can range from two to four years or more. They expressed concerns that Option Two, which would apply to some facilities already under design or construction as of the date the Act was signed, and to some on which construction began shortly after enactment, could result in costly redesign or reconstruction of those facilities. In the same vein, some Option One supporters found Option Two objectionable on due process grounds. In their view, Option Two would mean that in July 1991 (upon issuance of the final DOJ rule) the responsible entities would learn that ADA standards had been in effect since July 26, 1990, and this would amount to retroactive application of standards. Numerous commenters characterized Option Two as having no support in the statute and Option One as being more consistent with congressional intent.

Those who favored Option Two pointed out that it would include more facilities within the coverage of the new construction standards. They argued that because similar accessibility requirements are in effect under State laws, no hardship would be imposed by this option. Numerous commenters said that hardship would also be eliminated in light of their view that the ADA requires compliance with the Uniform Federal Accessibility Standards (UFAS) until issuance of DOJ standards. Those supporting Option Two claimed that it was more consistent with the statute and its legislative history.

The Department has chosen Option One rather than Option Two, primarily on the basis of the language of three relevant sections of the statute. First, section 303(a) requires compliance with accessibility standards set forth, or incorporated by reference in, regulations to be issued by the Department of Justice. Standing alone, this section cannot be read to require compliance with the Department's standards before those standards are issued (through this rulemaking). Second, according to section 310 of the statute, section 303 becomes effective on January 26, 1992. Thus, section 303 cannot impose requirements on the design of buildings before that date. Third, while section 306(d) of the Act requires compliance with UFAS if final regulations have not been issued, that provision cannot reasonably be read to take effect until July 26, 1991, the date by which the Department of Justice must issue final regulations under title III.

Option Two was based on the premise that the interim standards in section 306(d) take effect as of the ADA's enactment (July 26, 1990), rather than on the date by which the Department of Justice regulations are due to be issued (July 26, 1991). The initial clause of section 306(d)(1) itself is silent on this question:

> If final regulations have not been issued pursuant to this section, for new construction for which a * * * building permit is obtained prior to the issuance of final regulations * * * (interim standards apply).

The approach in Option Two relies partly on the language of section 310 of the Act, which provides that section 306, the interim standards provision, takes effect on the date of enactment. Under this interpretation the interim standards provision would prevail over the operative provision, section 303, which requires that new construction be accessible and which becomes effective January 26, 1992. This approach would also require construing the language of section 306(d)(1) to take effect before the Department's standards are due to be issued. The preferred reading of section 306 is that it would require that, if the Department's final standards had not been issued by July 26, 1991, UFAS would apply to certain buildings until such time as the Department's standards were issued.

General Substantive Requirements of the New Construction Provisions

The rule requires, as does the statute, that covered newly constructed facilities be readily accessible to and usable by individuals with disabilities. The phrase "readily accessible to and usable by individuals with disabilities" is a term that, in slightly varied formulations, has been used in the Architectural Barriers Act of 1968, the Fair Housing Act, the regulations implementing section 504 of the Rehabilitation Act of 1973, and current accessibility standards. It means, with respect to a facility or a portion of a facility, that it can be approached, entered, and used by individuals with disabilities (including mobility, sensory, and cognitive impairments) easily and conveniently. A facility that is constructed to meet the requirements of the rule's accessibility standards will be considered readily accessible and usable with respect to construction. To the extent that a particular type or element of a facility is not specifically addressed by the standards, the language of this section is the safest guide.

A private entity that renders an "accessible" building inaccessible in its operation, through policies or practices, may be in violation of section 302 of the Act. For example, a private entity can render an entrance to a facility inaccessible by keeping an accessible entrance open only during certain hours (whereas the facility is available to others for a greater length of time). A facility could similarly be rendered inaccessible if a person with disabilities is significantly limited in her or his choice of a range of accommodations.

Ensuring access to a newly constructed facility will include providing access to the facility from the street or parking lot, to the extent the responsible entity has control over the route from those locations. In some cases, the private entity will have no control over access at the point where streets, curbs, or sidewalks already exist, and in those instances the entity is encouraged to request modifications to a sidewalk, including installation of curb cuts, from a public entity responsible for them. However, as some commenters pointed out, there is no obligation for a private entity subject to title III of the ADA to seek or ensure compliance by a public entity with title II. Thus, although a locality may have an obligation under title II of the Act to install curb cuts at a particular location, that responsibility is separate from the private entity's title III obligation, and any involvement by a private entity in seeking cooperation from a public entity is purely voluntary in this context.

Work Areas

Proposed paragraph 36.401(b) addressed access to employment areas, rather than to the areas where goods or services are being provided. The preamble noted that the proposed paragraph provided guidance for new construction and alterations until more specific guidance was issued by the ATBCB and reflected in this Department's regulation. The entire paragraph has been deleted from this section in the final rule. The concepts of paragraphs (b) (1), (2), and (5) of the proposed rule are included, with modifications and expansion, in ADAAG. Paragraphs (3) and (4) of the proposed rule, concerning fixtures and equipment, are not included in the rule or in ADAAG.

Some commenters asserted that questions relating to new construction and alterations of work areas should be addressed by the EEOC under title I, as employment concerns. However, the legislative history of the statute clearly indicates that the new construction and alterations requirements of title III were intended to ensure accessibility of new facilities to all individuals, including employees. The language of section 303 sweeps broadly in its application to all public accommodations and commercial facilities. EEOC's title I regulations will address accessibility requirements that come into play when "reasonable accommodation" to individual employees or applicants with disabilities is mandated under title I.

The issues dealt with in proposed § 36.401(b) (1) and (2) are now addressed in ADAAG section 4.1.1(3). The Department's proposed paragraphs would have required that areas that will be used only by employees as work stations be constructed so that individuals with disabilities could approach, enter, and exit the areas. They would not have required that all individual work stations be constructed or equipped (for example, with shelves that are accessible or adaptable) to be accessible. This approach was based on the theory that, as long as an employee with disabilities could enter the building and get to and around the employment

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area, modifications in a particular work station could be instituted as a "reasonable accommodation" to that employee if the modifications were necessary and they did not constitute an undue hardship.

Almost all of the commenters agreed with the proposal to require access to a work area but not to require accessibility of each individual work station. This principle is included in ADAAG 4.1.1(3). Several of the comments related to the requirements of the proposed ADAAG and have been addressed in the accessibility standards.

Proposed paragraphs (b) (3) and (4) would have required that consideration be given to placing fixtures and equipment at accessible heights in the first instance, and to purchasing new equipment and fixtures that are adjustable. These paragraphs have not been included in the final rule because the rule in most instances does not establish accessibility standards for purchased equipment. (See discussion elsewhere in the preamble of proposed § 36.309.) While the Department encourages entities to consider providing accessible or adjustable fixtures and equipment for employees, this rule does not require them to do so.

Paragraph (b)(5) of proposed § 36.401 clarified that proposed paragraph (b) did not limit the requirement that employee areas other than individual work stations must be accessible. For example, areas that are employee "common use" areas and are not solely used as work stations (e.g., employee lounges, cafeterias, health units, exercise facilities) are treated no differently under this regulation than other parts of a building; they must be constructed or altered in compliance with the accessibility standards. This principle is not stated in § 36.401 but is implicit in the requirements of this section and ADAAG.

Commercial Facilities in Private Residences

Section 36.401(b) of the final rule is a new provision relating to commercial facilities located in private residences. The proposed rule addressed these requirements in the preamble to § 36.207, "Places of public accommodation located in private residences." The preamble stated that the approach for commercial facilities would be the same as that for places of public accommodation, i.e., those portions used exclusively as a commercial facility or used as both a commercial facility and for residential purposes would be covered. Because commercial facilities are only subject to new construction and alterations requirements, however, the covered portions would only be subject to subpart D. This approach is reflected in § 36.401(b)(1).

The Department is aware that the statutory definition of "commercial facility" excludes private residences because they are "expressly exempted from coverage under the Fair Housing Act of 1968, as amended." However, the Department interprets that exemption as applying only to facilities that are exclusively residential. When a facility is used as both a residence and a commercial facility, the exemption does not apply.

Paragraph (b)(2) is similar to the new paragraph (b) under § 36.207, "Places of public accommodation located in private residences." The paragraph clarifies that the covered portion includes not only the space used as a commercial facility, but also the elements used to enter the commercial facility, e.g., the homeowner's front sidewalk, if any; the doorway; the hallways; the restroom, if used by employees or visitors of the commercial facility; and any other portion of the residence, interior or exterior, used by employees or visitors of the commercial facility.

As in the case of public accommodations located in private residences, the new construction standards only apply to the extent that a portion of the residence is designed or intended for use as a commercial facility. Likewise, if a homeowner alters a portion of his home to convert it to a commercial facility, that work must be done in compliance with the alterations standards in appendix A.

Structural Impracticability

Proposed § 36.401(c) is included in the final rule with minor changes. It details a statutory exception to the new construction requirement: the requirement that new construction be accessible does not apply where an entity can demonstrate that it is structurally impracticable to meet the requirements of the regulation. This provision is also included in ADAAG, at section 4.1.1(5)(a).

Consistent with the legislative history of the ADA, this narrow exception will apply only in rare and unusual circumstances where unique characteristics of terrain make accessibility unusually difficult. Such limitations for topographical problems are analogous to an acknowledged limitation in the application of the accessibility requirements of the Fair Housing Amendments Act (FHAA) of 1988.

Almost all commenters supported this interpretation. Two commenters argued that the DOJ requirement is too limiting and would not exempt some buildings that should be exempted because of soil conditions, terrain, and other unusual site conditions. These commenters suggested consistency with HUD's Fair Housing Accessibility Guidelines (56 FR 9472 (1991)), which generally would allow exceptions from accessibility requirements, or allow compliance with less stringent requirements, on sites with slopes exceeding 10%.

The Department is aware of the provisions in HUD's guidelines, which were issued on March 6, 1991, after passage of the ADA and publication of the Department's proposed rule. The approach taken in these guidelines, which apply to different types of construction and implement different statutory requirements for new construction, does not bind this Department in regulating under the ADA. The Department has included in the final rule the substance of the proposed provision, which is faithful to the intent of the statute, as expressed in the legislative history. (See Senate report at 70–71; Education and Labor report at 120.)

The limited structural impracticability exception means that it is acceptable to deviate from accessibility requirements only where unique characteristics of terrain prevent the incorporation of accessibility features and where providing accessibility would destroy the physical integrity of a facility. A situation in which a building must be built on stilts because of its location in marshlands or over water is an example of one of the few situations in which the exception for structural impracticability would apply.

This exception to accessibility requirements should not be applied to situations in which a facility is located in "hilly" terrain or on a plot of land upon which there are steep grades. In such circumstances, accessibility can be achieved without destroying the physical integrity of a structure, and is required in the construction of new facilities.

Some commenters asked for clarification concerning when and how to apply the ADA rules or the Fair Housing Accessibility Guidelines, especially when a facility may be subject to both because of mixed use. Guidance on this question is provided in the discussion of the definitions of place of public accommodation and commercial facility. With respect to the structural impracticability exception, a mixed-use facility could not take advantage of the Fair Housing exemption, to the extent that it is less stringent than the ADA exemption, except for those portions of the facility that are subject only to the Fair Housing Act.

As explained in the preamble to the proposed rule, in those rare circumstances in which it is structurally impracticable to achieve full compliance with accessibility retirements under the ADA, places of public accommodation and commercial facilities should still be designed and constructed to incorporate accessibility features to the extent that the features are structurally practicable. The accessibility requirements should not be viewed as an all-or-nothing proposition in such circumstances.

If it is structurally impracticable for a facility in its entirety to be readily accessible to and usable by people with disabilities, then those portions that can be made accessible should be made accessible. If a building cannot be constructed in compliance with the full range of accessibility requirements because of structural impracticability, then it should still incorporate those features that are structurally practicable. If it is structurally impracticable to make a particular facility accessible to persons who have particular types of disabilities, it is still appropriate to require it to be made accessible to persons with other types of disabilities. For example, a facility that is of necessity built on stilts and cannot be made accessible to persons who use wheelchairs because it is structurally impracticable to do so, must be made accessible for individuals with vision or hearing impairments or other kinds of disabilities.

Elevator Exemption

Section 36.401(d) implements the "elevator exemption" for new construction in section 303(b) of the ADA. The elevator exemption is an exception to the general requirement that new facilities be readily accessible to and usable by individuals with disabilities. Generally, an elevator is the most common way to provide individuals who use wheelchairs "ready access" to floor levels above or below the ground floor of a multi-story building. Congress, however, chose not to require elevators in new small buildings, that is, those with less than three stories or less than 3,000 square feet per story. In buildings eligible for the exemption, therefore, "ready access" from the building entrance to a floor above or below the ground floor is not required, because the statute does not require that an elevator be installed in such buildings. The elevator exemption does not apply, however, to a facility housing a shopping center, a shopping mall, or the professional office of a health care provider, or other categories of facilities as determined by the Attorney General. For example, a new office building that will have only two stories, with no elevator planned, will not be required to have an elevator, even if each story has 20,000 square feet. In other words, having either less than 3000 square feet per story or less than three stories qualifies a facility for the exemption; it need not qualify for the exemption on both counts. Similarly, a facility that has five stories of 2800 square feet each qualifies for the exemption. If a facility has three or more stories at any point, it is not eligible for the elevator exemption unless all the stories are less than 3000 square feet.

The terms "shopping center or shopping mall" and "professional office of a health care provider" are defined in this section. They are substantively identical to the definitions included in the proposed rule in § 36.104, "Definitions." They have been moved to this section because, as commenters pointed out, they are relevant only for the purposes of the elevator exemption, and inclusion in the general definitions section could give the incorrect impression that an office of a health care provider is not covered as a place of public accommodation under other sections of the rule, unless the office falls within the definition.

For purposes of § 36.401, a "shopping center or shopping mall" is (1) a building housing five or more sales or rental establishments, or (2) a series of buildings on a common site, either under common ownership or common control or developed either as one project or as a series of related projects, housing five or more sales or rental establishments. The term "shopping center or shopping mall" only includes floor levels containing at least one sales or rental establishment, or any floor level that was designed or intended for use by at least one sales or rental establishment.

Any sales or rental establishment of the type that is included in paragraph (5) of the definition of "place of public accommodation" (for example, a bakery, grocery store, clothing store, or hardware store) is considered a sales or rental establishment for purposes of this definition; the other types of public accommodations (e.g., restaurants, laundromats, banks, travel services, health spas) are not.

In the preamble to the proposed rule, the Department sought comment on whether the definition of "shopping center or mall" should be expanded to include any of these other types of public accommodations. The Department also sought comment on whether a series of buildings should fall within the definition only if they are physically connected.

Most of those responding to the first question (overwhelmingly groups representing people with disabilities, or individual commenters) urged that the definition encompass more places of public accommodation, such as restaurants, motion picture houses, laundromats, dry cleaners, and banks. They pointed out that often it is not known what types of establishments will be tenants in a new facility. In addition, they noted that malls are advertised as entities, that their appeal is in the "package" of services offered to the public, and that this package often includes the additional types of establishments mentioned.

Commenters representing business groups sought to exempt banks, travel services, grocery stores, drug stores, and freestanding retail stores from the elevator requirement. They based this request on the desire to continue the practice in some locations of incorporating mezzanines housing administrative offices, raised pharmacist areas, and raised areas in the front of supermarkets that house safes and are used by managers to oversee operations of check-out aisles and other functions. Many of these concerns are adequately addressed by ADAAG. Apart from those addressed by ADAAG, the Department sees no reason to treat a particular type of sales or rental establishment differently from any other. Although banks and travel services are not included as "sales or rental establishments," because they do not fall under paragraph (5) of the definition of place of public accommodation, grocery stores and drug stores are included.

The Department has declined to include places of public accommodation other than sales or rental establishments in the definition. The statutory definition of "public accommodation" (section 301(7)) lists 12 types of establishments that are considered public accommodations. Category (E) includes "a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment." This arrangement suggests that it is only these types of establishments that would make up a shopping center for purposes of the statute. To include all types of places of public accommodation, or those from 6 or 7 of the categories, as commenters suggest, would overly limit the elevator

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exemption; the universe of facilities covered by the definition of "shopping center" could well exceed the number of multitenant facilities *not* covered, which would render the exemption almost meaningless.

For similar reasons, the Department is retaining the requirement that a building or series of buildings must house five or more sales or rental establishments before it falls within the definition of "shopping center." Numerous commenters objected to the number and requested that the number be lowered from five to three or four. Lowering the number in this manner would include an inordinately large number of two-story multitenant buildings within the category of those required to have elevators.

The responses to the question concerning whether a series of buildings should be connected in order to be covered were varied. Generally, disability rights groups and some government agencies said a series of buildings should not have to be connected, and pointed to a trend in some areas to build shopping centers in a garden or village setting. The Department agrees that this design choice should not negate the elevator requirement for new construction. Some business groups answered the question in the affirmative, and some suggested a different definition of shopping center. For example, one commenter recommended the addition of a requirement that the five or more establishments be physically connected on the non-ground floors by a common pedestrian walkway or pathway, because otherwise a series of stand-alone facilities would have to comply with the elevator requirement, which would be unduly burdensome and perhaps infeasible. Another suggested use of what it characterized as the standard industry definition: "A group of retail stores and related business facilities, the whole planned, developed, operated and managed as a unit." While the rule's definition would reach a series of related projects that are under common control but were not developed as a single project, the Department considers such a facility to be a shopping center within the meaning of the statute. However, in light of the hardship that could confront a series of existing small stand-alone buildings if elevators were required in alterations, the Department has included a common access route in the definition of shopping center or shopping mall for purposes of § 36.404.

Some commenters suggested that access to restrooms and other shared facilities open to the public should be required even if those facilities were not on a shopping floor. Such a provision with respect to toilet or bathing facilities is included in the elevator exception in final ADAAG 4.1.3(5).

For purposes of this subpart, the rule does not distinguish between a "shopping mall" (usually a building with a roofed-over common pedestrian area serving more than one tenant in which a majority of the tenants have a main entrance from the common pedestrian area) and a "shopping center" (e.g., a "shopping strip"). Any facility housing five or more of the types of sales or rental establishments described, regardless of the number of other types of places of public accommodation housed there (e.g., offices, movie theatres, restaurants), is a shopping center or shopping mall.

For example, a two-story facility built for mixed-use occupancy on both floors (e.g., by sales and rental establishments, a movie theater, restaurants, and general office space) is a shopping center or shopping mall if it houses five or more sales or rental establishments. If none of these establishments is located on the second floor, then only the ground floor, which contains the sales or rental establishments, would be a "shopping center or shopping mall," unless the second floor was designed or intended for use by at least one sales or rental establishment. In determining whether a floor was intended for such use, factors to be considered include the types of establishments that first occupied the floor, the nature of the developer's marketing strategy, i.e., what types of establishments were sought, and inclusion of any design features particular to rental and sales establishments.

A "professional office of a health care provider" is defined as a location where a person or entity regulated by a State to provide professional services related to the physical or mental health of an individual makes such services available to the public. In a two-story development that houses health care providers only on the ground floor, the "professional office of a health care provider" is limited to the ground floor unless the second floor was designed or intended for use by a health care provider. In determining if a floor was intended for such use, factors to be considered include whether the facility was constructed with special plumbing, electrical, or other features needed by health care providers, whether the developer marketed the facility as a medical office center, and whether any of the establishments that first occupied the floor was, in fact, a health care provider.

In addition to requiring that a building that is a shopping center, shopping mall, or the professional office of a health care provider have an elevator regardless of square footage or number of floors, the ADA (section 303(b)) provides that the Attorney General may determine that a particular category of facilities requires the installation of elevators based on the usage of the facilities. The Department, as it proposed to do, has added to the nonexempt categories terminals, depots, or other stations used for specified public transportation, and airport passenger terminals. Numerous commenters in all categories endorsed this proposal; none opposed it. It is not uncommon for an airport passenger terminal or train station, for example, to have only two floors, with gates on both floors. Because of the significance of transportation, because a person with disabilities could be arriving or departing at any gate, and because inaccessible facilities could result in a total denial of transportation services, it is reasonable to require that newly constructed transit facilities be accessible, regardless of square footage or number of floors. One comment suggested an amendment that would treat terminals and stations similarly to shopping centers, by requiring an accessible route only to those areas used for passenger loading and unloading and for other passenger services. Paragraph (d)(2)(ii) has been modified accordingly.

Some commenters suggested that other types of facilities (e.g., educational facilities, libraries, museums, commercial facilities, and social service facilities) should be included in the category of nonexempt facilities. The Department has not found adequate justification for including any other types of facilities in the nonexempt category at this time.

Section 36.401(d)(2) establishes the operative requirements concerning the elevator exemption and its application to shopping centers and malls, professional offices of health care providers, transit stations, and airport passenger terminals. Under the rule's framework, it is necessary first to determine if a new facility (including one or more buildings) houses places of public accommodation or commercial facilities that are in the categories for which elevators are required. If so, and the facility is a shopping center or shopping mall, or a professional office of a health care provider, then any area housing such an office or a sales or rental establishment or the professional office of a health care provider is not entitled to the elevator exemption.

The following examples illustrate the application of these principles:

1. A shopping mall has an upper and a lower level. There are two "anchor stores" (in this case, major department stores at either end of the mall, both with exterior entrances and an entrance on each level from the common area). In addition, there are 30 stores (sales or rental establishments) on the upper level, all of which have entrances from a common central area. There are 30 stores on the lower level, all of which have entrances from a common central area. According to the rule, elevator access must be provided to each store and to each level of the anchor stores. This requirement could be satisfied with respect to the 60 stores through elevators connecting the two pedestrian levels, provided that an individual could travel from the elevator to any other point on that level (i.e., into any store through a common pedestrian area) on an accessible path.

2. A commercial (nonresidential) "townhouse" development is composed of 20 two-story attached buildings. The facility is developed as one project, with common ownership, and the space will be leased to retailers. Each building has one accessible entrance from a pedestrian walk to the first floor. From that point, one can enter a store on the first floor, or walk up a flight of stairs to a store on the second floor. All 40 stores must be accessible at ground floor level or by accessible vertical access from that level. This does not mean, however, that 20 elevators must be installed. Access could be provided to the second floor by an elevator from the pedestrian area on the lower level to an upper walkway connecting all the areas on the second floor.

3. In the same type of development, it is planned that retail stores will be housed exclusively on the ground floor, with only office space (not professional offices of health care providers) on the second. Elevator access need not be provided to the second floor because all the sales or rental establishments (the entities that make the facility a shopping center) are located on an accessible ground floor.

4. In the same type of development, the space is designed and marketed as medical or office suites, or as a medical office facility. Accessible vertical access must be provided to all areas, as described in example 2.

Some commenters suggested that building owners who knowingly lease or rent space to nonexempt places of public accommodation would violate § 36.401. However, the Department does not consider leasing or renting inaccessible space in itself to constitute a violation of this part. Nor does a change in use of a facility, with no accompanying alterations (e.g., if a psychiatrist replaces an attorney as a tenant in a second-floor office, but no alterations are made to the office) trigger accessibility requirements.

Entities cannot evade the requirements of this section by constructing facilities in such a way that no story is intended to constitute a "ground floor." For example, if a private entity constructs a building whose main entrance leads only to stairways or escalators that connect with upper or lower floors, the Department would consider at least one level of the facility a ground story.

The rule requires in § 36.401(d)(3), consistent with the proposed rule, that, even if a building falls within the elevator exemption, the floor or floors other than the ground floor must nonetheless be accessible, except for elevator access, to individuals with disabilities, including people who use wheelchairs. This requirement applies to buildings that do not house sales or rental establishments or the professional offices of a health care provider as well as to those in which such establishments or offices are all located on the ground floor. In such a situation, little added cost is entailed in making the second floor accessible, because it is similar in structure and floor plan to the ground floor.

There are several reasons for this provision. First, some individuals who are mobility impaired may work on a building's second floor, which they can reach by stairs and the use of crutches; however, the same individuals, once they reach the second floor, may then use a wheelchair that is kept in the office. Secondly, because the first floor will be accessible, there will be little additional cost entailed in making the second floor, with the same structure and generally the same floor plan, accessible. In addition, the second floor must be accessible to those persons with disabilities who do not need elevators for level changes (for example, persons with sight or hearing impairments and those with certain mobility impairments). Finally, if an elevator is installed in the future for any reason, full access to the floor will be facilitated.

One commenter asserted that this provision goes beyond the Department's authority under the Act, and disagreed with the Department's claim that little additional cost would be entailed in compliance. However, the provision is taken directly from the legislative history (see Education and Labor report at 114).

One commenter said that where an elevator is not required, platform lifts should be required. Two commenters pointed out that the elevator exemption is really an exemption from the requirement for providing an accessible route to a second floor not served by an elevator. The Department agrees with the latter comment. Lifts to provide access between floors are not required in buildings that are not required to have elevators. This point is specifically addressed in the appendix to ADAAG (§ 4.1.3(5)). ADAAG also addresses in detail the situations in which lifts are permitted or required.

Section 36.402 Alterations

Sections 36.402–36.405 implement section 303(a)(2) of the Act, which requires that alterations to existing facilities be made in a way that ensures that the altered portion is readily accessible to and usable by individuals with disabilities. This part does not require alterations; it simply provides that when alterations are undertaken, they must be made in a manner that provides access.

Section 36.402(a)(1) provides that any alteration to a place of public accommodation or a commercial facility, after January 26, 1992, shall be made so as to ensure that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

The proposed rule provided that an alteration would be deemed to be undertaken after January 26, 1992, if the physical alteration of the property is in progress after that date. Commenters pointed out that this provision would, in some cases, produce an unjust result by requiring the redesign or retrofitting of projects initiated before this part established the ADA accessibility standards. The Department agrees that the proposed rule would, in some instances, unfairly penalize projects that were substantially completed before the effective date. Therefore, paragraph (a)(2) has been revised to specify that an alteration will be deemed to be undertaken after January 26, 1992, if the physical alteration of the property begins after that date. As a matter of interpretation, the Department will construe this provision to apply to alterations that require a permit from a State, County or local government, if physical alterations pursuant to the terms of the permit begin after January 26, 1992. The Department recognizes that this application of the effective date may require redesign of some facilities that were planned prior to the publication of this part, but no retrofitting will be required of facilities on which the physical alterations were initiated prior to the effective date of the Act. Of course, nothing in this section in any way alters the obligation of any facility to remove architectural barriers in existing facilities to the extent that such barrier removal is readily achievable.

Paragraph (b) provides that, for the purposes of this part, an "alteration" is a change to a place of public accommodation or a commercial facility that affects or could affect the usability of the building or facility or any part thereof. One commenter suggested that the concept of usability should apply only to those changes that affect access by persons with disabilities. The Department remains convinced that the Act requires the concept of "usability" to be read broadly to include any change that affects the usability of the facility, not simply changes that relate directly to access by individuals with disabilities.

The Department received a significant number of comments on the examples provided in paragraphs (b)(1) and (b)(2) of the proposed rule. Some commenters urged the Department to limit the application of this provision to major structural modifications, while others asserted that it should be expanded to include cosmetic changes such as painting and wallpapering. The Department believes that neither approach is consistent with the legislative history, which requires this Department's regulation to be consistent with the accessibility guidelines (ADAAG) developed by the Architectural and Transportation Barriers Compliance Board (ATBCB). Although the legislative history contemplates that, in some instances, the ADA accessibility standards will exceed the current MGRAD requirements, it also clearly indicates the view of the drafters that "minor changes such as painting or papering walls * * * do not affect usability" (Education and Labor report at 111, Judiciary report at 64), and, therefore, are not alterations. The proposed rule was based on the existing MGRAD definition of "alteration." The language of the final rule has been revised to be consistent with ADAAG, incorporated as appendix A to this part.

Some commenters sought clarification of the intended scope of this section. The proposed rule contained illustrations of changes that affect usability and those that do not. The intent of the illustrations was to explain the scope of the alterations requirement; the effect was to obscure it. As a result of the illustrations, some commenters concluded that any alteration to a facility, even a minor alteration such as relocating an electrical outlet, would trigger an extensive obligation to provide access throughout an entire facility. That result was never contemplated.

Therefore, in this final rule paragraph (b)(1) has been revised to include the major provisions of paragraphs (b)(1) and (b)(2) of the proposed rule. The examples in the proposed rule have been deleted. Paragraph (b)(1) now provides that alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangement in structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, asbestos removal, or changes to mechanical and electrical systems are not alterations unless they affect the usability of building or facility.

Paragraph (b)(2) of this final rule was added to clarify the scope of the alterations requirement. Paragraph (b)(2) provides that if existing elements, spaces, or common areas are altered, then each such altered element, space, or area shall comply with the applicable provisions of appendix A (ADAAG). As provided in § 36.403, if an altered space or area is an area of the facility that contains a primary function, then the requirements of that section apply.

Therefore, when an entity undertakes a minor alteration to a place of public accommodation or commercial facility, such as moving an electrical outlet, the new outlet must be installed in compliance with ADAAG. (Alteration of the elements listed in § 36.403(c)(2) cannot trigger a path of travel obligation.) If the alteration is to an area, such as an employee lounge or locker room, that is not an area of the facility that contains a primary function, that area must comply with ADAAG. It is only when an alteration affects access to or usability of an area containing a primary function, as opposed to other areas or the elements listed in § 36.403(c)(2), that the path of travel to the altered area must be made accessible.

The Department received relatively few comments on paragraph (c), which explains the statutory phrase "to the maximum extent feasible." Some commenters suggested that the regulation should specify that cost is a factor in determining whether it is feasible to make an altered area accessible. The legislative history of the ADA indicates that the concept of feasibility only reaches the question of whether it is possible to make the alteration accessible in compliance with this part. Costs are to be considered only when an alteration to an area containing a primary function triggers an additional requirement to make the path of travel to the altered area accessible.

Section 36.402(c) is, therefore, essentially unchanged from the proposed rule. At the recommendation of a commenter, the Department has inserted the word "virtually" to modify "impossible" to conform to the language of the legislative history. It explains that the phrase "to the maximum extent feasible" as used in this section applies to the occasional case where the nature of an existing facility makes it virtually impossible to comply fully with applicable accessibility standards through a planned alteration. In the occasional cases in which full compliance is impossible, alterations shall provide the maximum physical accessibility feasible. Any features of the facility that are being altered shall be made accessible unless it is technically infeasible to do so. If providing accessibility in conformance with this section to individuals with certain disabilities (e.g., those who use wheelchairs) would not be feasible, the facility shall be made accessible to persons with other types of disabilities (e.g., those who use crutches or who have impaired vision or hearing, or those who have other types of impairments).

Section 36.403 Alterations: Path of Travel

Section 36.403 implements the statutory requirement that any alteration that affects or could affect the usability of or access to an area of a facility that contains a primary function shall be made so as to ensure that, to the maximum extent feasible, the path of travel to the altered area, and the restrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the cost and scope of such alterations is disproportionate to the cost of the overall alteration. Paragraph (a) restates this statutory requirement.

Paragraph (b) defines a "primary function" as a major activity for which the facility is intended. This paragraph is unchanged from the proposed rule.

Areas that contain a primary function include, but are not limited to, the customer services lobby of a bank, the dining area of a cafeteria, the meeting rooms in a conference center, as well as offices and all other work areas in which the activities of the public accommodation or other private entities using the facility are carried out. The concept of "areas containing a primary function" is analogous to the concept of "functional spaces" in § 3.5 of the existing Uniform Federal Accessibility Standards, which defines "functional spaces" as "[t]he rooms and spaces in a building or facility that house the major activities for which the building or facility is intended."

Paragraph (b) provides that areas such as mechanical rooms, boiler rooms, supply storage rooms, employee lounges and locker rooms, janitorial closets, entrances, corridors, and restrooms are not areas containing a primary function. There may be exceptions to this general rule. For example, the availability of public restrooms at a place of public accommodation at a roadside rest stop may be a major factor affecting customers' decisions to patronize the public accommodation. In that case, a restroom would be considered to be an "area containing a primary function" of the facility.

Most of the commenters who addressed this issue supported the approach taken by the Department; but a few commenters suggested that areas not open to the general public or those used exclusively by employees should be excluded from the definition of primary function. The preamble to the proposed rule noted that the Department considered an alternative approach to the definition of "primary function," under which a primary function of a commercial facility would be defined as a major activity for which the facility was intended, while a primary function of a place of public accommodation would be defined as an activity which involves providing significant goods, services, facilities, privileges, advantages, or accommodations. However, the Department concluded that, although portions of the legislative history of the ADA support this alternative, the better view is that the language now contained in § 36.403(b) most accurately reflects congressional intent. No commenter made a persuasive argument that the Department's interpretation of the legislative history is incorrect.

When the ADA was introduced, the requirement to make alterations accessible was included in section 302 of the Act, which identifies the practices that constitute discrimination by a public accommodation. Because section 302 applies only to the operation of a place of public accommodation, the alterations requirement was intended only to provide access to clients and customers of a public accommodation. It was anticipated that access would be provided to employees with disabilities under the "reasonable accommodation" requirements of title I. However, during its consideration of the ADA, the House Judiciary Committee amended the bill to move the alterations provision from section 302 to section 303, which applies to commercial facilities as well as public accommodations. The Committee report accompanying the bill explains that:

> New construction and alterations of both public accommodations and commercial facilities must be made readily accessible to and usable by individuals with disabilities * * *. Essentially, [this requirement] is designed to ensure that patrons *and employees* of public accommodations and commercial facilities are able to get to, enter and use the facility * * *. The rationale for making new construction accessible applies with equal force to alterations.

Judiciary report at 62–63 (emphasis added).

The ADA, as enacted, contains the language of section 303 as it was reported out of the Judiciary Committee. Therefore, the Department has concluded that the concept of "primary function" should be applied in the same manner to places of public accommodation and to commercial facilities, thereby including employee work areas in places of public accommodation within the scope of this section.

Paragraph (c) provides examples of alterations that affect the usability of or access to an area containing a primary function. The examples include: Remodeling a merchandise display area or employee work areas in a department store; installing a new floor surface to replace an inaccessible surface in the customer service area or employee work areas of a bank; redesigning the assembly line area of a factory; and installing a computer center in an accounting firm. This list is illustrative, not exhaustive. Any change that affects the usability of or access to an area containing a primary function triggers the statutory obligation to make the path of travel to the altered area accessible.

When the proposed rule was drafted, the Department believed that the rule made it clear that the ADA would require alterations to the path of travel only when such alterations are not disproportionate to the alteration to the primary function area. However, the comments that the Department received indicated that many commenters believe that even minor alterations to individual elements would require additional alterations to the path of travel. To address the concern of these commenters, a new paragraph (c)(2) has been added to the final rule to provide that alterations to such elements as windows, hardware, controls (e.g. light switches or thermostats), electrical outlets, or signage will not be deemed to be alterations that affect the usability of or access to an area containing a primary function. Of course, each element that is altered must comply with ADAAG (appendix A). The cost of alterations to individual elements would be included in the overall cost of an alteration for purposes of determining disproportionality and would be counted when determining the aggregate cost of a series of small alterations in accordance with § 36.401(h) if the area is altered in a manner that affects access to or usability of an area containing a primary function.

Paragraph (d) concerns the respective obligations of landlords and tenants in the cases of alterations that trigger the path of travel requirement under § 36.403. This paragraph was contained in the landlord/tenant section of the proposed rule, § 36.201(b). If a tenant is making alterations upon its premises pursuant to terms of a lease that grant it the authority to do so (even if they constitute alterations that trigger the path of travel requirement), and the landlord is not making alterations to other parts of the facility, then the alterations by the tenant on its own premises do not trigger a path of travel obligation upon the landlord in areas of the facility under the landlord's authority that are not otherwise being altered. The legislative history makes clear that the path of travel requirement applies only to the entity that is already making the alteration, and thus the Department has not changed the final rule despite numerous comments suggesting that the tenant be required to provide a path of travel.

Paragraph (e) defines a "path of travel" as a continuous, unobstructed way of pedestrian passage by means of which an altered area may be approached, entered, and exited; and which connects the altered area with an exterior approach (including sidewalks, streets, and parking areas), an entrance to the facility, and other parts of the facility. This concept of an accessible path of travel is analogous to the concepts of "accessible route" and "circulation path" contained in section 3.5 of the current UFAS. Some commenters suggested that this

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paragraph should address emergency egress. The Department disagrees. "Path of travel" as it is used in this section is a term of art under the ADA that relates only to the obligation of the public accommodation or commercial facility to provide additional accessible elements when an area containing a primary function is altered. The Department recognizes that emergency egress is an important issue, but believes that it is appropriately addressed in ADAAG (appendix A), not in this paragraph. Furthermore, ADAAG does not require changes to emergency egress areas in alterations.

Paragraph (e)(2) is drawn from section 3.5 of UFAS. It provides that an accessible path of travel may consist of walks and sidewalks, curb ramps and other interior or exterior pedestrian ramps; clear floor paths through lobbies, corridors, rooms, and other improved areas; parking access aisles; elevators and lifts; or a combination of such elements. Paragraph (e)(3) provides that, for the purposes of this part, the term "path of travel" also includes the restrooms, telephones, and drinking fountains serving an altered area.

Although the Act establishes an expectation that an accessible path of travel should generally be included when alterations are made to an area containing a primary function, Congress recognized that, in some circumstances, providing an accessible path of travel to an altered area may be sufficiently burdensome in comparison to the alteration being undertaken to the area containing a primary function as to render this requirement unreasonable. Therefore, Congress provided, in section 303(a)(2) of the Act, that alterations to the path of travel that are disproportionate in cost and scope to the overall alteration are not required.

The Act requires the Attorney General to determine at what point the cost of providing an accessible path of travel becomes disproportionate. The proposed rule provided three options for making this determination.

Two committees of Congress specifically addressed this issue: the House Committee on Education and Labor and the House Committee on the Judiciary. The reports issued by each committee suggested that accessibility alterations to a path of travel might be "disproportionate" if they exceed 30% of the alteration costs (Education and Labor report at 113; Judiciary report at 64). Because the Department believed that smaller percentage rates might be appropriate, the proposed rule sought comments on three options: 10%, 20%, or 30%.

The Department received a significant number of comments on this section. Commenters representing individuals with disabilities generally supported the use of 30% (or more); commenters representing covered entities supported a figure of 10% (or less). The Department believes that alterations made to provide an accessible path of travel to the altered area should be deemed disproportionate to the overall alteration when the cost exceeds 20% of the cost of the alteration to the primary function area. This approach appropriately reflects the intent of Congress to provide access for individuals with disabilities without causing economic hardship for the covered public accommodations and commercial facilities.

The Department has determined that the basis for this cost calculation shall be the cost of the alterations to the area containing the primary function. This approach will enable the public accommodation or other private entity that is making the alteration to calculate its obligation as a percentage of a clearly ascertainable base cost, rather than as a percentage of the "total" cost, an amount that will change as accessibility alterations to the path of travel are made.

Paragraph (f)(2) (paragraph (e)(2) in the proposed rule) is unchanged. It provides examples of costs that may be counted as expenditures required to provide an accessible path of travel. They include:

- Costs associated with providing an accessible entrance and an accessible route to the altered area, for example, the cost of widening doorways or installing ramps;
- Costs associated with making restrooms accessible, such as installing grab bars, enlarging toilet stalls, insulating pipes, or installing accessible faucet controls;
- Costs associated with providing accessible telephones, such as relocating telephones to an accessible height, installing amplification devices, or installing telecommunications devices for deaf persons (TDD's);
- Costs associated with relocating an inaccessible drinking fountain.

Paragraph (f)(1) of the proposed rule provided that when the cost of alterations necessary to make the path of travel serving an altered area fully accessible is disproportionate to the cost of the overall alteration, the path of travel shall be made accessible to the maximum extent feasible. In response to the suggestion of a commenter, the Department has made an editorial change in the final rule (paragraph (g)(1)) to clarify that if the cost of providing a fully accessible path of travel is disproportionate, the path of travel shall be made accessible "to the extent that it can be made accessible without incurring disproportionate costs."

Paragraph (g)(2) (paragraph (f)(2) in the NPRM) establishes that priority should be given to those elements that will provide the greatest access, in the following order: An accessible entrance; an accessible route to the altered area; at least one accessible restroom for each sex or a single unisex restroom; accessible telephones; accessible drinking fountains; and, whenever possible, additional accessible elements such as parking, storage, and alarms. This paragraph is unchanged from the proposed rule.

Paragraph (h) (paragraph (g) in the proposed rule) provides that the obligation to provide an accessible path of travel may not be evaded by performing a series of small alterations to the area served by a single path of travel if those alterations could have been performed as a single undertaking. If an area containing a primary function has been altered without providing an accessible path of travel to serve that area, and subsequent alterations of that area, or a different area on the same path of travel, are undertaken within three years of the original alteration, the total cost of alterations to primary function areas on that path of travel during the preceding three year period shall be considered in determining whether the cost of making the path of travel serving that area accessible is disproportionate. Only alterations undertaken after January 26, 1992, shall be considered in determining if the cost of providing accessible features is disproportionate to the overall cost of the alterations.

Section 36.404 Alterations: Elevator Exemption

Section 36.404 implements the elevator exemption in section 303(b) of the Act as it applies to altered facilities. The provisions of section 303(b) are discussed in the preamble to § 36.401(d) above. The statute applies the same exemption to both new construction and alterations. The principal difference between the requirements of § 36.401(d) and § 36.404 is that, in altering an existing facility that is not eligible for the statutory exemption, the public accommodation or other private entity responsible for the alteration is not required to install an elevator if the installation of an elevator would be disproportionate in cost and scope to the cost of the overall alteration as provided in § 36.403(f)(1). In addition, the standards referenced in § 36.406 (ADAAG) provide that installation of an elevator in an altered facility is not required if it is "technically infeasible."

This section has been revised to define the terms "professional office of a health care provider" and "shopping center or shopping mall" for the purposes of this section. The definition of "professional office of a health care provider" is identical to the definition included in § 36.401(d).

It has been brought to the attention of the Department that there is some misunderstanding about the scope of the elevator exemption as it applies to the professional office of a health care provider. A public accommodation, such as the professional office of a health care provider, is required to remove architectural barriers to its facility to the extent that such barrier removal is readily achievable (see § 36.304), but it is not otherwise required by this part to undertake new construction or alterations. This part does not require that an existing two story building that houses the professional office of a health care provider be altered for the purpose of providing elevator access. If, however, alterations to the area housing the office of the health care provider are undertaken for other purposes, the installation of an elevator might be required, but only if the cost of the elevator is not disproportionate to the cost of the overall alteration. Neither the Act nor this part prohibits a health care provider from locating his or her professional office in an existing facility that does not have an elevator.

Because of the unique challenges presented in altering existing facilities, the Department has adopted a definition of "shopping center or shopping mall" for the purposes of this section that is slightly different from the definition adopted under § 36.401(d). For the purposes of this section, a "shopping center or shopping mall" is (1) a building housing five or more sales or rental establishments, or (2) a series of buildings on a common site, connected by a common pedestrian access route above or below the ground floor, either under common ownership or common control or developed either as one project or as a series of related projects, housing five or more sales or rental establishments. As is the case with new construction, the term "shopping center or shopping mall" only includes floor levels housing at least one sales or rental establishment, or any floor level that was designed or intended for use by at least one sales or rental establishment.

The Department believes that it is appropriate to use a different definition of "shopping center or shopping mall" for this section than for § 36.401, in order to make it clear that a series of existing buildings on a common site that is altered for the use of sales or rental establishments does not become a "shopping center or shopping mall" required to install an elevator, unless there is a common means of pedestrian access above or below the ground floor. Without this exemption, separate, but adjacent, buildings that were initially designed and constructed independently of each other could be required to be retrofitted with elevators, if they were later renovated for a purpose not contemplated at the time of construction.

Like § 36.401(d), § 36.404 provides that the exemptions in this paragraph do not obviate or limit in any way the obligation to comply with the other accessibility requirements established in this subpart. For example, alterations to floors above or below the ground floor must be accessible regardless of whether the altered facility has an elevator. If a facility that is not required to install an elevator nonetheless has an elevator, that elevator shall meet, to the maximum extent feasible, the accessibility requirements of this section.

Section 36.405 Alterations: Historic Preservation

Section 36.405 gives effect to the intent of Congress, expressed in section 504(c) of the Act, that this part recognize the national interest in preserving significant historic structures. Commenters criticized the Department's use of descriptive terms in the proposed rule that are different from those used in the ADA to describe eligible historic properties. In addition, some commenters criticized the Department's decision to use the concept of "substantially impairing" the historic features of a property, which is a concept employed in regulations implementing section 504 of the Rehabilitation Act of 1973. Those commenters recommended that the Department adopt the criteria of "adverse effect" published by the Advisory Council on Historic Preservation under the National Historic Preservation Act (36 CFR 800.9) as the standard for determining whether an historic property may be altered.

The Department agrees with these comments to the extent that they suggest that the language of the rule should conform to the language employed by Congress in the ADA. Therefore, the language of this section has been revised to make it clear that this provision applies to buildings or facilities that are eligible for listing in the National Register of Historic Places under the National Historic Preservation Act (16 U.S.C. 470 *et seq.*) and to buildings or facilities that are designated as historic under State or local law. The Department believes, however, that the criteria of adverse effect employed under the National Historic Preservation Act are inappropriate for this rule because section 504(c) of the ADA specifies that special alterations provisions shall apply only when an alteration would "threaten or destroy the historic significance of qualified historic buildings and facilities."

The Department intends that the exception created by this section be applied only in those very rare situations in which it is not possible to provide access to an historic property using the special access provisions in ADAAG. Therefore, paragraph (a) of § 36.405 has been revised to provide that alterations to historic properties shall comply, to the maximum extent feasible, with section 4.1.7 of ADAAG. Paragraph (b) of this section has been revised to provide that if it has been determined, under the procedures established in ADAAG, that it is not feasible to provide physical access to an historic property that is a place of public accommodation in a manner that will not threaten or destroy the historic significance of the property, alternative methods of access shall be provided pursuant to the requirements of Subpart C.

Section 36.406 Standards for New Construction and Alterations

Section 36.406 implements the requirements of sections 306(b) and 306(c) of the Act, which require the Attorney General to promulgate standards for accessible design for buildings and facilities subject to the Act and this part that are consistent with the supplemental minimum guidelines and requirements for accessible design published by the Architectural and Transportation Barriers Compliance Board (ATBCB or Board) pursuant to section 504 of the Act. This section of the rule provides that new construction and alterations subject to this part shall comply with the standards for accessible design published as appendix A to this part.

Appendix A contains the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG) which is being published by the ATBCB as a final rule elsewhere in

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The Department intends that the exception created by this section be applied only in those very rare situations in which it is not possible to provide access to an historic property using the special access provisions in ADAAG. Therefore, paragraph (a) of § 36.405 has been revised to provide that alterations to historic properties shall comply, to the maximum extent feasible, with section 4.1.7 of ADAAG. Paragraph (b) of this section has been revised to provide that if it has been determined, under the procedures established in ADAAG, that it is not feasible to provide physical access to an historic property that is a place of public accommodation in a manner that will not threaten or destroy the historic significance of the property, alternative methods of access shall be provided pursuant to the requirements of Subpart C.

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Appendix A contains the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG) which is being published by the ATBCB as a final rule elsewhere in

this issue of the **Federal Register**. As proposed in this Department's proposed rule, § 36.406(a) adopts ADAAG as the accessibility standard applicable under this rule.

Paragraph (b) was not included in the proposed rule. It provides, in chart form, guidance for using ADAAG together with subparts A through D of this part when determining requirements for a particular facility. This chart is intended solely as guidance for the user; it has no effect for purposes of compliance or enforcement. It does not necessarily provide complete or mandatory information.

Proposed § 36.406(b) is not included in the final rule. That provision, which would have taken effect only if the final rule had followed the proposed Option Two for § 36.401(a), is unnecessary because the Department has chosen Option One, as explained in the preamble for that section.

Section 504(a) of the ADA requires the ATBCB to issue minimum guidelines to supplement the existing Minimum Guidelines and Requirements for Accessible Design (MGRAD) (36 CFR part 1190) for purposes of title III. According to section 504(b) of the Act, the guidelines are to establish additional requirements, consistent with the Act, "to ensure that buildings and facilities are accessible, in terms of architecture and design, . . . and communication, to individuals with disabilities." Section 306(c) of the Act requires that the accessibility standards included in the Department's regulations be consistent with the minimum guidelines, in this case ADAAG.

As explained in the ATBCB's preamble to ADAAG, the substance and form of the guidelines are drawn from several sources. They use as their model the 1984 Uniform Federal Accessibility Standards (UFAS) (41 CFR part 101, subpart 101–19.6, appendix), which are the standards implementing the Architectural Barriers Act. UFAS is based on the Board's 1982 MGRAD. ADAAG follows the numbering system and format of the private sector American National Standard Institute's ANSI A117.1 standards. (American National Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped People (ANSI A117–1980) and American National Standard for Buildings and Facilities—Providing Accessibility and Usability for Physically Handicapped People (ANSI A117.1–1986).) ADAAG supplements MGRAD. In developing ADAAG, the Board made every effort to be consistent with MGRAD and the current and proposed ANSI Standards, to the extent consistent with the ADA.

ADAAG consists of nine main sections and a separate appendix. Sections 1 through 3 contain general provisions and definitions. Section 4 contains scoping provisions and technical specifications applicable to all covered buildings and facilities. The scoping provisions are listed separately for new construction of sites and exterior facilities; new construction of buildings; additions; alterations; and alterations to historic properties. The technical specifications generally reprint the text and illustrations of the ANSI A117.1 standard, except where differences are noted by italics. Sections 5 through 9 of the guidelines are special application sections and contain additional requirements for restaurants and cafeterias, medical care facilities, business and mercantile facilities, libraries, and transient lodging. The appendix to the guidelines contains additional information to aid in understanding the technical specifications. The section numbers in the appendix correspond to the sections of the guidelines to which they relate. An asterisk after a section number indicates that additional information appears in the appendix.

ADAAG's provisions are further explained under Summary of ADAAG below.

General Comments

One commenter urged the Department to move all or portions of subpart D, New Construction and Alterations, to the appendix (ADAAG) or to duplicate portions of subpart D in the appendix. The commenter correctly pointed out that subpart D is inherently linked to ADAAG, and that a self-contained set of rules would be helpful to users. The Department has attempted to simplify use of the two documents by deleting some paragraphs from subpart D (e.g., those relating to work areas), because they are included in ADAAG. However, the Department has retained in subpart D those sections that are taken directly from the statute or that give meaning to specific statutory concepts (e.g., structural impracticability, path of travel). While some of the subpart D provisions are duplicated in ADAAG, others are not. For example, issues relating to path of travel and disproportionality in alterations are not addressed in detail in ADAAG. (The structure and contents of the two documents are addressed below under Summary of ADAAG.) While the Department agrees that it would be useful to have one self-contained document, the different focuses of this rule and ADAAG do not permit this result at this time. However, the chart included in § 36.406(b) should assist users in applying the provisions of subparts A through D, and ADAAG together.

Numerous business groups have urged the Department not to adopt the proposed ADAAG as the accessibility standards, because the requirements established are too high, reflect the "state of the art," and are inflexible, rigid, and impractical. Many of these objections have been lodged on the basis that ADAAG exceeds the statutory mandate to establish "minimum" guidelines. In the view of the Department, these commenters have misconstrued the meaning of the term "minimum guidelines." The statute clearly contemplates that the guidelines establish a level of access—a minimum—that the standards must meet or exceed. The guidelines are not to be "minimal" in the sense that they would provide for a low level of access. To the contrary, Congress emphasized that the ADA requires a "high degree of convenient access." Education and Labor report at 117–18. The legislative history explains that the guidelines may not "reduce, weaken, narrow or set less accessibility standards than those included in existing MGRAD" and should provide greater guidance in communication accessibility for individuals with hearing and vision impairments. Id. at 139. Nor did Congress contemplate a set of guidelines less detailed than ADAAG; the statute requires that the ADA guidelines supplement the existing MGRAD. When it established the statutory scheme, Congress was aware of the content and purpose of the 1982 MGRAD; as ADAAG does with respect to ADA, MGRAD establishes a minimum level of access that the Architectural Barriers Act standards (i.e., UFAS) must meet or exceed, and includes a high level of detail.

Many of the same commenters urged the Department to incorporate as its accessibility standards the ANSI standard's technical provisions and to adopt the proposed scoping provisions under development by the Council of American Building Officials' Board for the Coordination of Model Codes (BCMC). They contended that the ANSI standard is familiar to and accepted by professionals, and that both documents are developed through consensus. They suggested that ADAAG will not stay current, because it does not follow an established cyclical review process, and that it is not likely to be adopted by nonfederal jurisdictions in State and local codes. They urged the Department and the Board to coordinate the

ADAAG provisions and any substantive changes to them with the ANSI A117 committee in order to maintain a consistent and uniform set of accessibility standards that can be efficiently and effectively implemented at the State and local level through the existing building regulatory processes.

The Department shares the commenters' goal of coordination between the private sector and Federal standards, to the extent that coordination can lead to substantive requirements consistent with the ADA. A single accessibility standard, or consistent accessibility standards, that can be used for ADA purposes and that can be incorporated or referenced by State and local governments, would help to ensure that the ADA requirements are routinely implemented at the design stage. The Department plans to work toward this goal.

The Department, however, must comply with the requirements of the ADA, the Federal Advisory Committee Act (5 U.S.C app. 1 *et seq.*) and the Administrative Procedure Act (5 U.S.C 551 *et seq.*). Neither the Department nor the Board can adopt private requirements wholesale. Furthermore, neither the 1991 ANSI A117 Standard revision nor the BCMC process is complete. Although the ANSI and BCMC provisions are not final, the Board has carefully considered both the draft BCMC scoping provisions and draft ANSI technical standards and included their language in ADAAG wherever consistent with the ADA.

Some commenters requested that, if the Department did not adopt ANSI by reference, the Department declare compliance with ANSI/BCMC to constitute equivalency with the ADA standards. The Department has not adopted this recommendation but has instead worked as a member of the ATBCB to ensure that its accessibility standards are practical and usable. In addition, as explained under subpart F, Certification of State Laws or Local Building Codes, the proper forum for further evaluation of this suggested approach would be in conjunction with the certification process.

Some commenters urged the Department to allow an additional comment period after the Board published its guidelines in final form, for purposes of affording the public a further opportunity to evaluate the appropriateness of including them as the Departments accessibility standards. Such an additional comment period is unnecessary and would unduly delay the issuance of final regulations. The Department put the public on notice, through the proposed rule, of its intention to adopt the proposed ADAAG, with any changes made by the Board, as the accessibility standards. As a member of the Board and of its ADA Task Force, the Department participated actively in the public hearings held on the proposed guidelines and in preparation of both the proposed and final versions of ADAAG. Many individuals and groups commented directly to the Department's docket, or at its public hearings, about ADAAG. The comments received on ADAAG, whether by the Board or by this Department, were thoroughly analyzed and considered by the Department in the context of whether the proposed ADAAG was consistent with the ADA and suitable for adoption as both guidelines and standards. The Department is convinced that ADAAG as adopted in its final form is appropriate for these purposes. The final guidelines, adopted here as standards, will ensure the high level of access contemplated by Congress, consistent with the ADA's balance between the interests of people with disabilities and the business community.

A few commenters, citing the Senate report (at 70) and the Education and Labor report (at 119), asked the Department to include in the regulations a provision stating that departures from particular technical and scoping requirements of the accessibility standards will be permitted so long as the alternative methods used will provide substantially equivalent or greater access to and utilization of the facility. Such a provision is found in ADAAG 2.2 and by virtue of that fact is included in these regulations.

Comments on specific provisions of proposed ADAAG

During the course of accepting comments on its proposed rule, the Department received numerous comments on ADAAG. Those areas that elicited the heaviest response included assistive listening systems, automated teller machines, work areas, parking, areas of refuge, telephones (scoping for TDD's and volume controls) and visual alarms. Strenuous objections were raised by some business commenters to the proposed provisions of the guidelines concerning check-out aisles, counters, and scoping for hotels and nursing facilities. All these comments were considered in the same manner as other comments on the Department's proposed rule and, in the Department's view, have been addressed adequately in the final ADAAG.

Largely in response to comments, the Board made numerous changes from its proposal, including the following:

- Generally, at least 50% of public entrances to new buildings must be accessible, rather than all entrances, as would often have resulted from the proposed approach.
- Not all check-out aisles are required to be accessible.
- The final guidelines provide greater flexibility in providing access to sales counters, and no longer require a portion of every counter to be accessible.
- Scoping for TDD's or text telephones was increased. One TDD or text telephone, for speech and hearing impaired persons, must be provided at locations with 4, rather than 6, pay phones, and in hospitals and shopping malls. Use of portable (less expensive) TDD's is allowed.
- Dispersal of wheelchair seating areas in theaters will be required only where there are more than 300 seats, rather than in all cases. Seats with removable armrests (i.e., seats into which persons with mobility impairments can transfer) will also be required.
- Areas of refuge (areas with direct access to a stairway, and where people who cannot use stairs may await assistance during a emergency evacuation) will be required, as proposed, but the final provisions are based on the Uniform Building Code. Such areas are not required in alterations.
- Rather than requiring 5% of new hotel rooms to be accessible to people with mobility impairments, between 2 and 4% accessibility (depending on total number of rooms) is required. In addition, 1% of the rooms must have roll-in showers.
- The proposed rule reserved the provisions on alterations to homeless shelters. The final guidelines apply alterations requirements to homeless shelters, but the requirements are less stringent than those applied to other types of facilities.
- Parking spaces that can be used by people in vans (with lifts) will be required.
- As mandated by the ADA, the Board has established a procedure to be followed with respect to alterations to historic facilities.

Summary of ADAAG

This section of the preamble summarizes the structure of ADAAG, and highlights the more important portions.

• *Sections 1 Through 3*

Sections 1 through 3 contain general requirements, including definitions.

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- *Sections 1 Through 3*

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- *Section 4.1.1, Application*

Section 4 contains scoping requirements. Section 4.1.1, Application, provides that all areas of newly designed or newly constructed buildings and facilities and altered portions of existing buildings and facilities required to be accessible by § 4.1.6 must comply with the guidelines unless otherwise provided in § 4.1.1 or a special application section. It addresses areas used only by employees as work areas, temporary structures, and general exceptions.

Section 4.1.1(3) preserves the basic principle of the proposed rule: Areas that may be used by employees with disabilities shall be designed and constructed so that an individual with a disability can approach, enter, and exit the area. The language has been clarified to provide that it applies to any area used only as a work area (not just to areas "that may be used by employees with disabilities"), and that the guidelines do not require that any area used as an individual work station be designed with maneuvering space or equipped to be accessible. The appendix to ADAAG explains that work areas must meet the guidelines' requirements for doors and accessible routes, and recommends, but does not require, that 5% of individual work stations be designed to permit a person using a wheelchair to maneuver within the space.

Further discussion of work areas is found in the preamble concerning proposed § 36.401(b).

Section 4.1.1(5)(a) includes an exception for structural impracticability that corresponds to the one found in § 36.401(c) and discussed in that portion of the preamble.

- *Section 4.1.2, Accessible Sites and Exterior Facilities: New Construction*

This section addresses exterior features, elements, or spaces such as parking, portable toilets, and exterior signage, in new construction. Interior elements and spaces are covered by § 4.1.3.

The final rule retains the UFAS scoping for parking but also requires that at least one of every eight accessible parking spaces be designed with adequate adjacent space to deploy a lift used with a van. These spaces must have a sign indicating that they are van-accessible, but they are not to be reserved exclusively for van users.

- *Section 4.1.3, Accessible Buildings: New Construction*

This section establishes scoping requirements for new construction of buildings and facilities.

Sections 4.1.3 (1) through (4) cover accessible routes, protruding objects, ground and floor surfaces, and stairs.

Section 4.1.3(5) generally requires elevators to serve each level in a newly constructed building, with four exceptions included in the subsection. Exception 1 is the "elevator exception" established in § 36.401(d), which must be read with this section. Exception 4 allows the use of platform lifts under certain conditions.

Section 4.1.3(6), Windows, is reserved. Section 4.1.3(7) applies to doors.

Under § 4.1.3(8), at least 50% of all public entrances must be accessible. In addition, if a building is designed to provide access to enclosed parking, pedestrian tunnels, or elevated walkways, at least one entrance that serves each such function must be accessible. Each tenancy in a building must be served by an accessible entrance. Where local regulations (e.g., fire codes) require that a minimum number of exits be provided, an equivalent number of accessible entrances must be provided. (The latter provision does not require a greater number of entrances than otherwise planned.)

ADAAG Section 4.1.3(9), with accompanying technical requirements in Section 4.3, requires an area of rescue assistance (*i.e.*, an area with direct access to an exit stairway and where people who are unable to use stairs may await assistance during an emergency evacuation) to be established on each floor of a multi-story building. This was one of the most controversial provisions in the guidelines. The final ADAAG is based on current Uniform Building Code requirements and retains the requirement that areas of refuge (renamed "areas of rescue assistance") be provided, but specifies that this requirement does not apply to buildings that have a supervised automatic sprinkler system. Areas of refuge are not required in alterations.

The next seven subsections deal with drinking fountains (§ 4.1.3(10)); toilet facilities (§ 4.1.3(11)); storage, shelving, and display units (§ 4.1.3(12)), controls and operating mechanisms (§ 4.1.3(13)), emergency warning systems (§ 4.1.3(14)), detectable warnings (§ 4.1.3(15)), and building signage (§ 4.1.3(16)). Paragraph 11 requires that toilet facilities comply with § 4.22, which requires one accessible toilet stall (60"×60") in each newly constructed restroom. In response to public comments, the final rule requires that a second accessible stall (36"×60") be provided in restrooms that have six or more stalls.

ADAAG Section 4.1.3(17) establishes requirements for accessibility of pay phones to persons with mobility impairments, hearing impairments (requiring some phones with volume controls), and those who cannot use voice telephones. It requires one interior "text telephone" to be provided at any facility that has a total of four or more public pay phones. (The term "text telephone" has been adopted to reflect current terminology and changes in technology.) In addition, text telephones will be required in specific locations, such as covered shopping malls, hospitals (in emergency rooms, waiting rooms, and recovery areas), and convention centers.

Paragraph 18 of Section 4.1.3 generally requires that at least five percent of fixed or built-in seating or tables be accessible.

Paragraph 19, covering assembly areas, specifies the number of wheelchair seating spaces and types and numbers of assistive listening systems required. It requires dispersal of wheelchair seating locations in facilities where there are more than 300 seats. The guidelines also require that at least one percent of all fixed seats be aisle seats without armrests (or with moveable armrests) on the aisle side to increase accessibility for persons with mobility impairments who prefer to transfer from their wheelchairs to fixed seating. In addition, the final ADAAG requires that fixed seating for a companion be located adjacent to each wheelchair location.

Paragraph 20 requires that where automated teller machines are provided, at least one must comply with section 4.34, which, among other things, requires accessible controls, and instructions and other information that are accessible to persons with sight impairments.

Under paragraph 21, where dressing rooms are provided, five percent or at least one must comply with section 4.35.

- *Section 4.1.5, Additions*

Each addition to an existing building or facility is regarded as an alteration subject to §§ 36.402 through 36.406 of subpart D, including the date established in § 36.402(a). But additions also have attributes of new construction, and to the extent that a space or element in the addition is newly constructed, each new space or element must comply with the applicable scoping provisions of sections 4.1.1 to 4.1.3 for new construction, the applicable technical specifications of sections 4.2 through 4.34, and any applicable special provisions in sections 5 through 10. For instance, if a restroom is provided in the addition, it must comply with the requirements for new construction. Construction of an addition does not, however, create an obligation to retrofit the entire existing building or facility to meet requirements for new construction. Rather, the addition is to be regarded as an alteration and to the extent that it affects or could affect the usability of or access to an area containing a primary function, the requirements in section 4.1.6(2) are triggered with respect to providing an accessible path of travel to the altered area and making the restrooms, telephones, and drinking fountains serving the altered area accessible. For example, if a museum adds a new wing that does not have a separate entrance as part of the addition, an accessible path of travel would have to be provided through the existing building or facility unless it is disproportionate to the overall cost and scope of the addition as established in § 36.403(f).

- *Section 4.1.6, Alterations*

An alteration is a change to a building or facility that affects or could affect the usability of or access to the building or facility or any part thereof. There are three general principles for alterations. First, if any existing element or space is altered, the altered element or space must meet new construction requirements (section 4.1.6(1)(b)). Second, if alterations to the elements in a space when considered together amount to an alteration of the space, the entire space must meet new construction requirements (section 4.1.6(1)(c)). Third, if the alteration affects or could affect the usability of or access to an area containing a primary function, the path of travel to the altered area and the restrooms, drinking fountains, and telephones serving the altered area must be made accessible unless it is disproportionate to the overall alterations in terms of cost and scope as determined under criteria established by the Attorney General (§ 4.1.6(2)).

Section 4.1.6 should be read with §§ 36.402 through 36.405. Requirements concerning alterations to an area serving a primary function are addressed with greater detail in the latter sections than in section 4.1.6(2). Section 4.1.6(1)(j) deals with technical infeasibility. Section 4.1.6(3) contains special technical provisions for alterations to existing buildings and facilities.

- *Section 4.1.7, Historic Preservation*

This section contains scoping provisions and alternative requirements for alterations to qualified historic buildings and facilities. It clarifies the procedures under the National Historic Preservation Act and their application to alterations covered by the ADA. An individual seeking to alter a facility that is subject to the ADA guidelines and to State or local historic preservation statutes shall consult with the State Historic Preservation Officer to determine if the planned alteration would threaten or destroy the historic significance of the facility.

- *Sections 4.2 Through 4.35*

Sections 4.2 through 4.35 contain the technical specifications for elements and spaces required to be accessible by the scoping provisions (sections 4.1 through 4.1.7) and special application sections (sections 5 through 10). The technical specifications are the same as the 1980 version of ANSI A117.1 standard, except as noted in the text by italics.

- *Sections 5 Through 9*

These are special application sections and contain additional requirements for restaurants and cafeterias, medical care facilities, business and mercantile facilities, libraries, and transient lodging. For example, at least 5 percent, but not less than one, of the fixed tables in a restaurant must be accessible.

In section 7, Business and Mercantile, paragraph 7.2 (Sales and Service Counters, Teller Windows, Information Counters) has been revised to provide greater flexibility in new construction than did the proposed rule. At least one of each type of sales or service counter where a cash register is located shall be made accessible. Accessible counters shall be dispersed throughout the facility. At counters such as bank teller windows or ticketing counters, alternative methods of compliance are permitted. A public accommodation may lower a portion of the counter, provide an auxiliary counter, or provide equivalent facilitation through such means as installing a folding shelf on the front of the counter at an accessible height to provide a work surface for a person using a wheelchair.

Section 7.3., Check-out Aisles, provides that, in new construction, a certain number of each design of check-out aisle, as listed in a chart based on the total number of check-out aisles of each design, shall be accessible. The percentage of check-outs required to be accessible generally ranges from 20% to 40%. In a newly constructed or altered facility with less than 5,000 square feet of selling space, at least one of each type of check-out aisle must be accessible. In altered facilities with 5,000 or more square feet of selling space, at least one of each design of check-out aisle must be made accessible when altered, until the number of accessible aisles of each design equals the number that would be required for new construction.

- *Section 9, Accessible Transient Lodging*

Section 9 addresses two types of transient lodging: hotels, motels, inns, boarding houses, dormitories, resorts, and other similar places (sections 9.1 through 9.4); and homeless shelters, halfway houses, transient group homes, and other social service establishments (section 9.5). The interplay of the ADA and Fair Housing Act with respect to such facilities is addressed in the preamble discussion of the definition of "place of public accommodation" in § 36.104.

The final rule establishes scoping requirements for accessibility of newly constructed hotels. Four percent of the first hundred rooms, and roughly two percent of rooms in excess of 100, must meet certain requirements for accessibility to persons with mobility or hearing impairments, and an additional identical percentage must be accessible to persons with hearing impairments. An additional 1% of the available rooms must be equipped with roll-in showers, raising the actual scoping for rooms accessible to persons with mobility impairments to 5% of the first hundred rooms and 3% thereafter. The final ADAAG also provides that when a hotel is being altered, one fully accessible room and one room equipped with visual alarms, notification devices, and amplified telephones shall be provided for each 25 rooms being altered until the number of accessible rooms equals that required under the new construction standard. Accessible rooms must be dispersed in a manner that will provide persons with disabilities with a choice of single or multiple-bed accommodations.

In new construction, homeless shelters and other social service entities must comply with ADAAG; at least one type of amenity in each common area must be accessible. In a facility that is not required to have an elevator, it is not necessary to provide accessible amenities on the inaccessible floors if at least one of each type of amenity is provided in accessible common areas. The percentage of accessible sleeping accommodations required is the same as *ric Preservation*

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that required for other places of transient lodging. Requirements for facilities altered for use as a homeless shelter parallel the current MGRAD accessibility requirements for leased buildings. A shelter located in an altered facility must have at least one accessible entrance, accessible sleeping accommodations in a number equivalent to that established for new construction, at least one accessible toilet and bath, at least one accessible common area, and an accessible route connecting all accessible areas. All accessible areas in a homeless shelter in an altered facility may be located on one level.

Section 10, Transportation Facilities

Section 10 of ADAAG is reserved. On March 20, 1991, the ATBCB published a supplemental notice of proposed rulemaking (56 FR 11874) to establish special access requirements for transportation facilities. The Department anticipates that when the ATBCB issues final guidelines for transportation facilities, this part will be amended to include those provisions.

Subpart E—Enforcement

Because the Department of Justice does not have authority to establish procedures for judicial review and enforcement, subpart E generally restates the statutory procedures for enforcement.

Section 36.501 describes the procedures for private suits by individuals and the judicial remedies available. In addition to the language in section 308(a)(1) of the Act, § 36.501(a) of this part includes the language from section 204(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000a-3(a)) which is incorporated by reference in the ADA. A commenter noted that the proposed rule did not include the provision in section 204(a) allowing the court to appoint an attorney for the complainant and authorize the commencement of the civil action without the payment of fees, costs, or security. That provision has been included in the final rule.

Section 308(a)(1) of the ADA permits a private suit by an individual who has reasonable grounds for believing that he or she is "about to be" subjected to discrimination in violation of section 303 of the Act (subpart D of this part), which requires that new construction and alterations be readily accessible to and usable by individuals with disabilities. Authorizing suits to prevent construction of facilities with architectural barriers will avoid the necessity of costly retrofitting that might be required if suits were not permitted until after the facilities were completed. To avoid unnecessary suits, this section requires that the individual bringing the suit have 'reasonable grounds" for believing that a violation is about to occur, but does not require the individual to engage in a futile gesture if he or she has notice that a person or organization covered by title III of the Act does not intend to comply with its provisions.

Section 36.501(b) restates the provisions of section 308(a)(2) of the Act, which states that injunctive relief for the failure to remove architectural barriers in existing facilities or the failure to make new construction and alterations accessible "shall include" an order to alter these facilities to make them readily accessible to and usable by persons with disabilities to the extent required by title III. The Report of the Energy and Commerce Committee notes that "an order to make a facility readily accessible to and usable by individuals with disabilities is mandatory" under this standard. H.R. Rep. No. 485, 101st Cong., 2d Sess, pt 4, at 64 (1990). Also, injunctive relief shall include, where appropriate, requiring the provision of an auxiliary aid or service, modification of a policy, or provision of alternative methods, to the extent required by title III of the Act and this part.

Section 36.502 is based on section 308(b)(1)(A)(i) of the Act, which provides that the Attorney General shall investigate alleged violations of title III and undertake periodic reviews of compliance of covered entities. Although the Act does not establish a comprehensive administrative enforcement mechanism for investigation and resolution of all complaints received, the legislative history notes that investigation of alleged violations and periodic compliance reviews are essential to effective enforcement of title III, and that the Attorney General is expected to engage in active enforcement and to allocate sufficient resources to carry out this responsibility. Judiciary Report at 67.

Many commenters argued for inclusion of more specific provisions for administrative resolution of disputes arising under the Act and this part in order to promote voluntary compliance and avoid the need for litigation. Administrative resolution is far more efficient and economical than litigation, particularly in the early stages of implementation of complex legislation when the specific requirements of the statute are not widely understood. The Department has added a new paragraph (c) to this section authorizing the Attorney General to initiate a compliance review where he or she has reason to believe there may be a violation of this rule.

Section 36.503 describes the procedures for suits by the Attorney General set out in section 308(b)(1)(B) of the Act. If the Department has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by title III or that any person or group of persons has been denied any of the rights granted by title III and such denial raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States district court. The proposed rule provided for suit by the Attorney General "or his or her designee." The reference to a "designee" has been omitted in the final rule because it is unnecessary. The Attorney General has delegated enforcement authority under the ADA to the Assistant Attorney General for Civil Rights. 55 FR 40653 (October 4, 1990) (to be codified at 28 CFR 0.50(l).)

Section 36.504 describes the relief that may be granted in a suit by the Attorney General under section 308(b)(2) of the Act. In such an action, the court may grant any equitable relief it considers to be appropriate, including granting temporary, preliminary, or permanent relief, providing an auxiliary aid or service, modification of policy or alternative method, or making facilities readily accessible to and usable by individuals with disabilities, to the extent required by title III. In addition, a court may award such other relief as the court considers to be appropriate, including monetary damages to persons aggrieved, when requested by the Attorney General.

Furthermore, the court may vindicate the public interest by assessing a civil penalty against the covered entity in an amount not exceeding $50,000 for a first violation and not exceeding $100,000 for any subsequent violation. Section 36.504(b) of the rule adopts the standard of section 308(b)(3) of the Act. This section makes it clear that, in counting the number of previous determinations of violations for determining whether a "first" or "subsequent" violation has occurred, determinations in the same action that the entity has engaged in more than one discriminatory act are to be counted as a single violation. A "second violation" would not accrue to that entity until the Attorney General brought another suit against the entity and the entity was again held in violation. Again, all of the violations found in the second suit would be cumulatively considered as a "subsequent violation."

Section 36.504(c) clarifies that the terms "monetary damages" and "other relief" do not include punitive damages. They do include, however, all forms of compensatory damages, including out-of-pocket expenses and damages for pain and suffering.

Section 36.504(a)(3) is based on section 308(b)(2)(C) of the Act, which provides that, "to vindicate the public interest," a court may assess a civil penalty against the entity that has been found to be in violation of the Act in suits brought by the Attorney General. In addition, § 36.504(d), which is taken from section 308(b)(5) of the Act, further provides that, in considering what amount of civil penalty, if any, is appropriate, the court shall give consideration to "any good faith effort or attempt to comply with this part." In evaluating such good faith, the court shall consider "among other factors it deems relevant, whether the entity could have reasonably anticipated the need for an appropriate type of auxiliary aid needed to accommodate the unique needs of a particular individual with a disability."

The "good faith" standard referred to in this section is not intended to imply a willful or intentional standard—that is, an entity cannot demonstrate good faith simply by showing that it did not willfully, intentionally, or recklessly disregard the law. At the same time, the absence of such a course of conduct would be a factor a court should weigh in determining the existence of good faith.

Section 36.505 states that courts are authorized to award attorneys fees, including litigation expenses and costs, as provided in section 505 of the Act. Litigation expenses include items such as expert witness fees, travel expenses, etc. The Judiciary Committee Report specifies that such items are included under the rubric of "attorneys fees" and not "costs" so that such expenses will be assessed against a plaintiff only under the standard set forth in *Christiansburg Garment Co.* v. *Equal Employment Opportunity Commission*, 434 U.S. 412 (1978). (Judiciary report at 73.)

Section 36.506 restates section 513 of the Act, which encourages use of alternative means of dispute resolution. Section 36.507 explains that, as provided in section 506(e) of the Act, a public accommodation or other private entity is not excused from compliance with the requirements of this part because of any failure to receive technical assistance.

Section 36.305 Effective Date

In general, title III is effective 18 months after enactment of the Americans with Disabilities Act, i.e., January 26, 1992. However, there are several exceptions to this general rule contained throughout title III. Section 36.508 sets forth all of these exceptions in one place.

Paragraph (b) contains the rule on civil actions. It states that, except with respect to new construction and alterations, no civil action shall be brought for a violation of this part that occurs before July 26, 1992, against businesses with 25 or fewer employees and gross receipts of $1,000,000 or less; and before January 26, 1993, against businesses with 10 or fewer employees and gross receipts of $500,000 or less. In determining what constitutes gross receipts, it is appropriate to exclude amounts collected for sales taxes.

Paragraph (c) concerns transportation services provided by public accommodations not primarily engaged in the business of transporting people. The 18-month effective date applies to all of the transportation provisions except those requiring newly purchased or leased vehicles to be accessible. Vehicles subject to that requirement must be accessible to and usable by individuals with disabilities if the solicitation for the vehicle is made on or after August 26, 1990.

Subpart F—Certification of State Labs or Local Building Codes

Subpart F establishes procedures to implement section 308(b)(1)(A)(ii) of the Act, which provides that, on the application of a State or local government, the Attorney General may certify that a State law or local building code or similar ordinance meets or exceeds the minimum accessibility requirements of the Act. In enforcement proceedings, this certification will constitute rebuttable evidence that the law or code meets or exceeds the ADA's requirements.

Three significant changes, further explained below, were made from the proposed subpart, in response to comments. First, the State or local jurisdiction is required to hold a public hearing on its proposed request for certification and to submit to the Department, as part of the information and materials in support of a request for certification, a transcript of the hearing. Second, the time allowed for interested persons and organizations to comment on the request filed with the Department (§ 36.605(a)(1)) has been changed from 30 to 60 days. Finally, a new § 36.608, Guidance concerning model codes, has been added.

Section 36.601 establishes the definitions to be used for purposes of this subpart. Two of the definitions have been modified, and a definition of "model code" has been added. First, in response to a comment, a reference to a code "or part thereof" has been added to the definition of "code." The purpose of this addition is to clarify that an entire code need not be submitted if only part of it is relevant to accessibility, or if the jurisdiction seeks certification of only some of the portions that concern accessibility. The Department does not intend to encourage "piecemeal" requests for certification by a single jurisdiction. In fact, the Department expects that in some cases, rather than certifying portions of a particular code and refusing to certify others, it may notify a submitting jurisdiction of deficiencies and encourage a reapplication that cures those deficiencies, so that the entire code can be certified eventually. Second, the definition of "submitting official" has been modified. The proposed rule defined the submitting official to be the State or local official who has principal responsibility for administration of a code. Commenters pointed out that in some cases more than one code within the same jurisdiction is relevant for purposes of certification. It was also suggested that the Department allow a State to submit a single application on behalf of the State, as well as on behalf of any local jurisdictions required to follow the State accessibility requirements. Consistent with these comments, the Department has added to the definition language clarifying that the official can be one authorized to submit a code on behalf of a jurisdiction.

A definition of "model code" has been added in light of new § 36.608.

Most commenters generally approved of the proposed certification process. Some approved of what they saw as the Department's attempt to bring State and local codes into alignment with the ADA. A State agency said that this section will be the backbone of the intergovernmental cooperation essential if the accessibility provisions of the ADA are to be effective.

Some comments disapproved of the proposed process as timeconsuming and laborious for the Department, although some of these comments pointed out that, if the Attorney General certified model codes on which State and local codes are based, many perceived problems would be alleviated. (This *ective Date*

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point is further addressed by new § 36.608.)

Many of the comments received from business organizations, as well as those from some individuals and disability rights groups, addressed the relationship of the ADA requirements and their enforcement, to existing State and local codes and code enforcement systems. These commenters urged the Department to use existing code-making bodies for interpretations of the ADA, and to actively participate in the integration of the ADA into the text of the national model codes that are adopted by State and local enforcement agencies. These issues are discussed in preamble section 36.406 under General comments.

Many commenters urged the Department to evaluate or certify the entire code enforcement system (including any process for hearing appeals from builders of denials by the building code official of requests for variances, waivers, or modifications). Some urged that certification not be allowed in jurisdictions where waivers can be granted, unless there is a clearly identified decision-making process, with written rulings and notice to affected parties of any waiver or modification request. One commenter urged establishment of a dispute resolution mechanism, providing for interpretation (usually through a building official) and an administrative appeals mechanism (generally called Boards of Appeal, Boards of Construction Appeals, or Boards of Review), before certification could be granted.

The Department thoroughly considered these proposals but has declined to provide for certification of processes of enforcement or administration of State and local codes. The statute clearly authorizes the Department to certify the codes themselves for equivalency with the statute; it would be ill-advised for the Department at this point to inquire beyond the face of the code and written interpretations of it. It would be inappropriate to require those jurisdictions that grant waivers or modifications to establish certain procedures before they can apply for certification, or to insist that no deviations can be permitted. In fact, the Department expects that many jurisdictions will allow slight variations from a particular code, consistent with ADAAG itself. ADAAG includes in § 2.2 a statement allowing departures from particular requirements where substantially equivalent or greater access and usability is provided. Several sections specifically allow for alternative methods providing equivalent facilitation and, in some cases, provide examples. (See, e.g., section 4.31.9, Text Telephones; section 7.2(2) (iii), Sales and Service Counters.) Section 4.1.6 includes less stringent requirements that are permitted in alterations, in certain circumstances.

However, in an attempt to ensure that it does not certify a code that in practice has been or will be applied in a manner that defeats its equivalency with the ADA, the Department will require that the submitting official include, with the application for certification, any relevant manuals, guides, or any other interpretive information issued that pertain to the code. (§ 36.603(c)(1).) The requirement that this information be provided is in addition to the NPRM's requirement that the official provide any pertinent formal opinions of the State Attorney General or the chief legal officer of the jurisdiction.

The first step in the certification process is a request for certification, filed by a "submitting official" (§ 36.603). The Department will not accept requests for certification until after January 26, 1992, the effective date of this part. The Department received numerous comments from individuals and organizations representing a variety of interests, urging that the hearing required to be held by the Assistant Attorney General in Washington, DC, after a preliminary determination of equivalency (§ 36.605(a)(2)), be held within the State or locality requesting certification, in order to facilitate greater participation by all interested parties. While the Department has not modified the requirement that it hold a hearing in Washington, it has added a new subparagraph 36.603(b)(3) requiring a hearing within the State or locality before a request for certification is filed. The hearing must be held after adequate notice to the public and must be on the record; a transcript must be provided with the request for certification. This procedure will insure input from the public at the State or local level and will also insure a Washington, DC, hearing as mentioned in the legislative history.

The request for certification, along with supporting documents (§ 36.603(c)), must be filed in duplicate with the office of the Assistant Attorney General for Civil Rights. The Assistant Attorney General may request further information. The request and supporting materials will be available for public examination at the office of the Assistant Attorney General and at the office of the State or local agency charged with administration and enforcement of the code. The submitting official must publish public notice of the request for certification.

Next, under § 36.604, the Assistant Attorney General's office will consult with the ATBCB and make a preliminary determination to either (1) find that the code is equivalent (make a "preliminary determination of equivalency") or (2) deny certification. The next step depends on which of these preliminary determinations is made.

If the preliminary determination is to find equivalency, the Assistant Attorney General, under § 36.605, will inform the submitting official in writing of the preliminary determination and publish a notice in the **Federal Register** informing the public of the preliminary determination and inviting comment for 60 days. (This time period has been increased from 30 days in light of public comment pointing out the need for more time within which to evaluate the code.) After considering the information received in response to the comments, the Department will hold an hearing in Washington. This hearing will not be subject to the formal requirements of the Administrative Procedure Act. In fact, this requirement could be satisfied by a meeting with interested parties. After the hearing, the Assistant Attorney General's office will consult again with the ATBCB and make a final determination of equivalency or a final determination to deny the request for certification, with a notice of the determination published in the **Federal Register.**

If the preliminary determination is to deny certification, there will be no hearing (§ 36.606). The Department will notify the submitting official of the preliminary determination, and may specify how the code could be modified in order to receive a preliminary determination of equivalency. The Department will allow at least 15 days for the submitting official to submit relevant material in opposition to the preliminary denial. If none is received, no further action will be taken. If more information is received, the Department will consider it and make either a final decision to deny certification or a preliminary determination of equivalency. If at that stage the Assistant Attorney General makes a preliminary determination of equivalency, the hearing procedures set out in § 36.605 will be followed.

Section 36.607 addresses the effect of certification. First, certification will only be effective concerning those features or elements that are both (1) covered by the certified code and (2) addressed by the regulations against which they are being certified. For example, if children's facilities are not addressed by the Department's standards, and the building in question is a private elementary school, certification will not be effective for those features of the building to be used by children. And if the Department's regulations addressed equipment but the local code did not, a building's equipment would not be covered by the certification.

In addition, certification will be effective only for the particular edition of the code that is certified. Amendments will not automatically be considered certified, and a submitting official will need to reapply for certification of the changed or additional provisions.

Certification will not be effective in those situations where a State or local building code official allows a facility to be constructed or altered in a manner that does not follow the technical or scoping provisions of the certified code. Thus, if an official either waives an accessible element or feature or allows a change that does not provide equivalent facilitation, the fact that the Department has certified the code itself will not stand as evidence that the facility has been constructed or altered in accordance with the minimum accessibility requirements of the ADA. The Department's certification of a code is effective only with respect to the standards in the code; it is not to be interpreted to apply to a State or local government's application of the code. The fact that the Department has certified a code with provisions concerning waivers, variances, or equivalent facilitation shall not be interpreted as an endorsement of actions taken pursuant to those provisions.

The final rule includes a new § 36.608 concerning model codes. It was drafted in response to concerns raised by numerous commenters, many of which have been discussed under General comments (§ 36.406). It is intended to assist in alleviating the difficulties posed by attempting to certify possibly tens of thousands of codes. It is included in recognition of the fact that many codes are based on, or incorporate, model or consensus standards developed by nationally recognized organizations (e.g., the American National Standards Institute (ANSI); Building Officials and Code Administrators (BOCA) International; Council of American Building Officials (CABO) and its Board for the Coordination of Model Codes (BCMC); Southern Building Code Congress International (SBCCI)). While the Department will not certify or "precertify" model codes, as urged by some commenters, it does wish to encourage the continued viability of the consensus and model code process consistent with the purposes of the ADA.

The new section therefore allows an authorized representative of a private entity responsible for developing a model code to apply to the Assistant Attorney General for review of the code. The review process will be informal and will not be subject to the procedures of §§ 36.602 through 36.607. The result of the review will take the form of guidance from the Assistant Attorney General as to whether and in what respects the model code is consistent with the ADA's requirements. The guidance will not be binding on any entity or on the Department; it will assist in evaluations of individual State or local codes and may serve as a basis for establishing priorities for consideration of individual codes. The Department anticipates that this approach will foster further cooperation among various government levels, the private entities developing standards, and individuals with disabilities.

List of Subjects in 28 CFR Part 36

Administrative practice and procedure, Alcoholism, Americans with disabilities, Buildings, Business and industry, Civil rights, Consumer protection, Drug abuse, Handicapped, Historic preservation, Reporting and recordkeeping requirements.

By the authority vested in me as Attorney General by 28 U.S.C. 509, 510, 5 U.S.C. 301, and section 306(b) of the Americans with Disabilities Act, Public Law 101–336, and for the reasons set forth in the preamble, Chapter I of title 28 of the Code of Federal Regulations is amended by adding a new part 36 to read as follows:

PART 36—NONDISCRIMINATION ON THE BASIS OF DISABILITY BY PUBLIC ACCOMMODATIONS AND IN COMMERCIAL FACILITIES

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Sec.

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36.102 Application.
36.103 Relationship to other laws.
36.104 Definitions.
36.105–36.200 [Reserved]

Subpart B—General Requirements

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36.202 Activities.
36.203 Integrated settings.
36.204 Administrative methods.
36.205 Association.
36.206 Retaliation or coercion.
36.207 Places of public accommodations located in private residences.
36.208 Direct threat.
36.209 Illegal use of drugs.
36.210 Smoking.
36.211 Maintenance of accessible features.
36.212 Insurance.
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36.214–36.300 [Reserved]

Subpart C—Specific Requirements

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36.302 Modifications in policies, practices, or procedures.
36.303 Auxiliary aids and services.
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36.306 Personal devices and services.
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36.308 Seating in assembly areas.
36.309 Examinations and courses.
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Subpart D—New Construction and Alterations

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36.402 Alterations.
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36.404 Alterations: Elevator exemption.
36.405 Alterations: Historic preservation.
36.406 Standards for new construction and alterations.
36.407–36.500 [Reserved]

Subpart E—Enforcement

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36.502 Investigations and compliance reviews.
36.503 Suit by the Attorney General.
36.504 Relief.
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36.507 Effect of unavailability of technical assistance.
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Subpart F—Certification of State Laws or Local Building Codes

36.601 Definitions.
36.602 General rule.
36.603 Filing a request for certification.
36.604 Preliminary determination.
36.605 Procedure following preliminary determination of equivalency.
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36.607 Effect of certification.
36.608 Guidance concerning model codes.
36.609–36.999 [Reserved]

Appendix A to Part 36—Standards for Accessible Design

Appendix B to Part 36—Preamble to Regulation on Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities (Published July 26, 1991)

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; Pub. L. 101–336, 42 U.S.C. 12186.

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Appendix A to Part 36—Standards for Accessible Design

Appendix B to Part 36—Preamble to Regulation on Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities (Published July 26, 1991)

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; Pub. L. 101–336, 42 U.S.C. 12186.

Subpart A—General

§ 36.101 Purpose.

The purpose of this part is to implement title III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12181), which prohibits discrimination on the basis of disability by public accommodations and requires places of public accommodation and commercial facilities to be designed, constructed, and altered in compliance with the accessibility standards established by this part.

§ 36.102 Application.

(a) *General.* This part applies to any—

(1) Public accommodation;

(2) Commercial facility; or

(3) Private entity that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes.

(b) *Public accommodations.* (1) The requirements of this part applicable to public accommodations are set forth in subparts B, C, and D of this part.

(2) The requirements of subparts B and C of this part obligate a public accommodation only with respect to the operations of a place of public accommodation.

(3) The requirements of subpart D of this part obligate a public accommodation only with respect to—

(i) A facility used as, or designed or constructed for use as, a place of public accommodation; or

(ii) A facility used as, or designed and constructed for use as, a commercial facility.

(c) *Commercial facilities.* The requirements of this part applicable to commercial facilities are set forth in subpart D of this part.

(d) *Examinations and courses.* The requirements of this part applicable to private entities that offer examinations or courses as specified in paragraph (a) of this section are set forth in § 36.309.

(e) *Exemptions and exclusions.* This part does not apply to any private club (except to the extent that the facilities of the private club are made available to customers or patrons of a place of public accommodation), or to any religious entity or public entity.

§ 36.103 Relationship to other laws.

(a) *Rule of interpretation.* Except as otherwise provided in this part, this part shall not be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 791) or the regulations issued by Federal agencies pursuant to that title.

(b) *Section 504.* This part does not affect the obligations of a recipient of Federal financial assistance to comply with the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and regulations issued by Federal agencies implementing section 504.

(c) *Other laws.* This part does not invalidate or limit the remedies, rights, and procedures of any other Federal laws, or State or local laws (including State common law) that provide greater or equal protection for the rights of individuals with disabilities or individuals associated with them.

§ 36.104 Definitions.

For purposes of this part, the term—

Act means the Americans with Disabilities Act of 1990 (Pub. L. 101–336, 104 Stat. 327, 42 U.S.C. 12101–12213 and 47 U.S.C. 225 and 611).

Commerce means travel, trade, traffic, commerce, transportation, or communication—

(1) Among the several States;

(2) Between any foreign country or any territory or possession and any State; or

(3) Between points in the same State but through another State or foreign country.

Commercial facilities means facilities—

(1) Whose operations will affect commerce;

(2) That are intended for nonresidential use by a private entity; and

(3) That are not—

(i) Facilities that are covered or expressly exempted from coverage under the Fair Housing Act of 1968, as amended (42 U.S.C. 3601–3631);

(ii) Aircraft; or

(iii) Railroad locomotives, railroad freight cars, railroad cabooses, commuter or intercity passenger rail cars (including coaches, dining cars, sleeping cars, lounge cars, and food service cars), any other railroad cars described in section 242 of the Act or covered under title II of the Act, or railroad rights-of-way. For purposes of this definition, "rail" and "railroad" have the meaning given the term "railroad" in section 202(e) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431(e)).

Current illegal use of drugs means illegal use of drugs that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem.

Disability means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

(1) The phrase *physical or mental impairment* means—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine;

(ii) Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities;

(iii) The phrase physical or mental impairment includes, but is not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism;

(iv) The phrase *physical or mental impairment* does not include homosexuality or bisexuality.

(2) The phrase *major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) The phrase *has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) The phrase *is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a private entity as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by a private entity as having such an impairment.

(5) The term *disability* does not include—

(i) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(ii) Compulsive gambling, kleptomania, or pyromania; or

(iii) Psychoactive substance use disorders resulting from current illegal use of drugs.

Drug means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

Facility means all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located.

Illegal use of drugs means the use of one or more drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812). The term "illegal use of drugs" does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

Individual with a disability means a person who has a disability. The term "individual with a disability" does not include an individual who is currently engaging in the illegal use of drugs, when the private entity acts on the basis of such use.

Place of public accommodation means a facility, operated by a private entity, whose operations affect commerce and fall within at least one of the following categories—

(1) An inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of the establishment as the residence of the proprietor;

(2) A restaurant, bar, or other establishment serving food or drink;

(3) A motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

(4) An auditorium, convention center, lecture hall, or other place of public gathering;

(5) A bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;

(6) A laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;

(7) A terminal, depot, or other station used for specified public transportation;

(8) A museum, library, gallery, or other place of public display or collection;

(9) A park, zoo, amusement park, or other place of recreation;

(10) A nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;

(11) A day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and

(12) A gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

Private club means a private club or establishment exempted from coverage under title II of the Civil Rights Act of 1964 (42 U.S.C. 2000a(e)).

Private entity means a person or entity other than a public entity.

Public accommodation means a private entity that owns, leases (or leases to), or operates a place of public accommodation.

Public entity means—

(1) Any State or local government;

(2) Any department, agency, special purpose district, or other instrumentality of a State or States or local government; and

(3) The National Railroad Passenger Corporation, and any commuter authority (as defined in section 103(8) of the Rail Passenger Service Act). (45 U.S.C. 541)

Qualified interpreter means an interpreter who is able to interpret effectively, accurately and impartially both receptively and expressively, using any necessary specialized vocabulary.

Readily achievable means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable factors to be considered include—

(1) The nature and cost of the action needed under this part;

(2) The overall financial resources of the site or sites involved in the action; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements that are necessary for safe operation, including crime prevention measures; or the impact otherwise of the action upon the operation of the site;

(3) The geographic separateness, and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity;

(4) If applicable, the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; the number, type, and location of its facilities; and

(5) If applicable, the type of operation or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity.

Religious entity means a religious organization, including a place of worship.

Service animal means any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.

Specified public transportation means transportation by bus, rail, or any other conveyance (other than by aircraft) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

State means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

Undue burden means significant difficulty or expense. In determining whether an action would result in an undue burden, factors to be considered include—

(1) The nature and cost of the action needed under this part;

(2) The overall financial resources of the site or sites involved in the action; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements that are necessary for safe operation, including crime prevention measures; or the impact otherwise of the action upon the operation of the site;

(3) The geographic separateness, and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity;

(4) If applicable, the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; the number, type, and location of its facilities; and

(5) If applicable, the type of operation or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity.

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Undue burden means significant difficulty or expense. In determining whether an action would result in an undue burden, factors to be considered include—

(1) The nature and cost of the action needed under this part;

(2) The overall financial resources of the site or sites involved in the action; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements that are necessary for safe operation, including crime prevention measures; or the impact otherwise of the action upon the operation of the site;

(3) The geographic separateness, and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity;

(4) If applicable, the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; the number, type, and location of its facilities; and

(5) If applicable, the type of operation or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity.

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§§ 36.105–36.200 [Reserved]

Subpart B—General Requirements

§ 36.201 General.

(a) *Prohibition of discrimination.* No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any private entity who owns, leases (or leases to), or operates a place of public accommodation.

(b) *Landlord and tenant responsibilities.* Both the landlord who owns the building that houses a place of public accommodation and the tenant who owns or operates the place of public accommodation are public accommodations subject to the requirements of this part. As between the parties, allocation of responsibility for complying with the obligations of this part may be determined by lease or other contract.

§ 36.202 Activities.

(a) *Denial of participation.* A public accommodation shall not subject an individual or class of individuals on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation.

(b) *Participation in unequal benefit.* A public accommodation shall not afford an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals.

(c) *Separate benefit.* A public accommodation shall not provide an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with a good, service, facility, privilege, advantage, or accommodation, or other opportunity that is as effective as that provided to others.

(d) *Individual or class of individuals.* For purposes of paragraphs (a) through (c) of this section, the term "individual or class of individuals" refers to the clients or customers of the public accommodation that enters into the contractual, licensing, or other arrangement.

§ 36.203 Integrated settings.

(a) *General.* A public accommodation shall afford goods, services, facilities, privileges, advantages, and accommodations to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

(b) *Opportunity to participate.* Notwithstanding the existence of separate or different programs or activities provided in accordance with this subpart, a public accommodation shall not deny an individual with a disability an opportunity to participate in such programs or activities that are not separate or different.

(c) *Accommodations and services.* (1) Nothing in this part shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit available under this part that such individual chooses not to accept.

(2) Nothing in the Act or this part authorizes the representative or guardian of an individual with a disability to decline food, water, medical treatment, or medical services for that individual.

§ 36.204 Administrative methods.

A public accommodation shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration that have the effect of discriminating on the basis of disability, or that perpetuate the discrimination of others who are subject to common administrative control.

§ 36.205 Association.

A public accommodation shall not exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

§ 36.206 Retaliation or coercion.

(a) No private or public entity shall discriminate against any individual because that individual has opposed any act or practice made unlawful by this part, or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the Act or this part.

(b) No private or public entity shall coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by the Act or this part.

(c) Illustrations of conduct prohibited by this section include, but are not limited to:

(1) Coercing an individual to deny or limit the benefits, services, or advantages to which he or she is entitled under the Act or this part;

(2) Threatening, intimidating, or interfering with an individual with a disability who is seeking to obtain or use the goods, services, facilities, privileges, advantages, or accommodations of a public accommodation;

(3) Intimidating or threatening any person because that person is assisting or encouraging an individual or group entitled to claim the rights granted or protected by the Act or this part to exercise those rights; or

(4) Retaliating against any person because that person has participated in any investigation or action to enforce the Act or this part.

§ 36.207 Places of public accommodation located in private residences.

(a) When a place of public accommodation is located in a private residence, the portion of the residence used exclusively as a residence is not covered by this part, but that portion used exclusively in the operation of the place of public accommodation or that portion used both for the place of public accommodation and for residential purposes is covered by this part.

(b) The portion of the residence covered under paragraph (a) of this section extends to those elements used to enter the place of public accommodation, including the homeowner's front sidewalk, if any, the door or entryway, and hallways; and those portions of the residence, interior or exterior, available to or used by customers or clients, including restrooms.

§ 36.208 Direct threat.

(a) This part does not require a public accommodation to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of that public accommodation when that individual poses a direct threat to the health or safety of others.

(b) *Direct threat* means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.

(c) In determining whether an individual poses a direct threat to the health or safety of others, a public accommodation must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk.

§ 36.209 Illegal use of drugs.

(a) *General.* (1) Except as provided in paragraph (b) of this section, this part does not prohibit discrimination against an individual based on that individual's current illegal use of drugs.

(2) A public accommodation shall not discriminate on the basis of illegal use of drugs against an individual who is not engaging in current illegal use of drugs and who—

(i) Has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully;

(ii) Is participating in a supervised rehabilitation program; or

(iii) Is erroneously regarded as engaging in such use.

(b) *Health and drug rehabilitation services.* (1) A public accommodation shall not deny health services, or services provided in connection with drug rehabilitation, to an individual on the basis of that individual's current illegal use of drugs, if the individual is otherwise entitled to such services.

(2) A drug rehabilitation or treatment program may deny participation to individuals who engage in illegal use of drugs while they are in the program.

(c) *Drug testing.* (1) This part does not prohibit a public accommodation from adopting or administering reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual who formerly engaged in the illegal use of drugs is not now engaging in current illegal use of drugs.

(2) Nothing in this paragraph (c) shall be construed to encourage, prohibit, restrict, or authorize the conducting of testing for the illegal use of drugs.

§ 36.210 Smoking.

This part does not preclude the prohibition of, or the imposition of restrictions on, smoking in places of public accommodation.

§ 36.211 Maintenance of accessible features.

(a) A public accommodation shall maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities by the Act or this part.

(b) This section does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs.

§ 36.212 Insurance.

(a) This part shall not be construed to prohibit or restrict—

(1) An insurer, hospital or medical service company, health maintenance organization, or any agent, or entity that administers benefit plans, or similar organizations from underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(2) A person or organization covered by this part from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(3) A person or organization covered by this part from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that is not subject to State laws that regulate insurance.

(b) Paragraphs (a) (1), (2), and (3) of this section shall not be used as a subterfuge to evade the purposes of the Act or this part.

(c) A public accommodation shall not refuse to serve an individual with a disability because its insurance company conditions coverage or rates on the absence of individuals with disabilities.

§ 36.213 Relationship of subpart B to subparts C and D of this part.

Subpart B of this part sets forth the general principles of nondiscrimination applicable to all entities subject to this part. Subparts C and D of this part provide guidance on the application of the statute to specific situations. The specific provisions, including the limitations on those provisions, control over the general provisions in circumstances where both specific and general provisions apply.

§§ 36.214–36.300 [Reserved]

Subpart C—Specific Requirements

§ 36.301 Eligibility criteria.

(a) *General.* A public accommodation shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered.

(b) *Safety.* A public accommodation may impose legitimate safety requirements that are necessary for safe operation. Safety requirements must be based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with disabilities.

(c) *Charges.* A public accommodation may not impose a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids, barrier removal, alternatives to barrier removal, and reasonable modifications in policies, practices, or procedures, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part.

§ 36.302 Modifications in policies, practices, or procedures.

(a) *General.* A public accommodation shall make reasonable modifications in policies, practices, or procedures, when the modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the public accommodation can demonstrate that making the modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations.

(b) *Specialties*—(1) *General.* A public accommodation may refer an individual with a disability to another public accommodation, if that individual is seeking, or requires, treatment or services outside of the referring public accommodation's area of specialization, and if, in the normal course of its operations, the referring public accommodation would make a similar referral for an individual without a disability who seeks or requires the same treatment or services.

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§§ 36.214–36.300 [Reserved]

Subpart C—Specific Requirements

§ 36.301 Eligibility criteria.

(a) *General.* A public accommodation shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered.

(b) *Safety.* A public accommodation may impose legitimate safety requirements that are necessary for safe operation. Safety requirements must be based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with disabilities.

(c) *Charges.* A public accommodation may not impose a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids, barrier removal, alternatives to barrier removal, and reasonable modifications in policies, practices, or procedures, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part.

§ 36.302 Modifications in policies, practices, or procedures.

(a) *General.* A public accommodation shall make reasonable modifications in policies, practices, or procedures, when the modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities; unless the public accommodation can demonstrate that making the modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations.

(b) *Specialties*—(1) *General.* A public accommodation may refer an individual with a disability to another public accommodation, if that individual is seeking, or requires, treatment or services outside of the referring public accommodation's area of specialization, and if, in the normal course of its operations, the referring public accommodation would make a similar referral for an individual without a disability who seeks or requires the same treatment or services.

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(2) *Illustration—medical specialties.* A health care provider may refer an individual with a disability to another provider, if that individual is seeking, or requires, treatment or services outside of the referring provider's area of specialization, and if the referring provider would make a similar referral for an individual without a disability who seeks or requires the same treatment or services. A physician who specializes in treating only a particular condition cannot refuse to treat an individual with a disability for that condition, but is not required to treat the individual for a different condition.

(c) *Service animals*—(1) *General.* Generally, a public accommodation shall modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability.

(2) *Care or supervision of service animals.* Nothing in this part requires a public accommodation to supervise or care for a service animal.

(d) *Check-out aisles.* A store with check-out aisles shall ensure that an adequate number of accessible check-out aisles are kept open during store hours, or shall otherwise modify its policies and practices, in order to ensure that an equivalent level of convenient service is provided to individuals with disabilities as is provided to others. If only one check-out aisle is accessible, and it is generally used for express service, one way of providing equivalent service is to allow persons with mobility impairments to make all their purchases at that aisle.

§ 36.303 Auxiliary aids and services.

(a) *General.* A public accommodation shall take those steps that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the public accommodation can demonstrate that taking those steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue burden, i.e., significant difficulty or expense.

(b) *Examples.* The term "auxiliary aids and services" includes—

(1) Qualified interpreters, notetakers, computer-aided transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDD's), videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(2) Qualified readers, taped texts, audio recordings, Brailled materials, large print materials, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(3) Acquisition or modification of equipment or devices; and

(4) Other similar services and actions.

(c) *Effective communication.* A public accommodation shall furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities.

(d) *Telecommunication devices for the deaf (TDD's).* (1) A public accommodation that offers a customer, client, patient, or participant the opportunity to make outgoing telephone calls on more than an incidental convenience basis shall make available, upon request, a TDD for the use of an individual who has impaired hearing or a communication disorder.

(2) This part does not require a public accommodation to use a TDD for receiving or making telephone calls incident to its operations.

(e) *Closed caption decoders.* Places of lodging that provide televisions in five or more guest rooms and hospitals that provide televisions for patient use shall provide, upon request, a means for decoding captions for use by an individual with impaired hearing.

(f) *Alternatives.* If provision of a particular auxiliary aid or service by a public accommodation would result in a fundamental alteration in the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or in an undue burden, i.e., significant difficulty or expense, the public accommodation shall provide an alternative auxiliary aid or service, if one exists, that would not result in an alteration or such burden but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the goods, services, facilities, privileges, advantages, or accommodations offered by the public accommodation.

§ 36.304 Removal of barriers.

(a) *General.* A public accommodation shall remove architectural barriers in existing facilities, including communication barriers that are structural in nature, where such removal is readily achievable, i.e., easily accomplishable and able to be carried out without much difficulty or expense.

(b) *Examples.* Examples of steps to remove barriers include, but are not limited to, the following actions—

(1) Installing ramps;

(2) Making curb cuts in sidewalks and entrances;

(3) Repositioning shelves;

(4) Rearranging tables, chairs, vending machines, display racks, and other furniture;

(5) Repositioning telephones;

(6) Adding raised markings on elevator control buttons;

(7) Installing flashing alarm lights;

(8) Widening doors;

(9) Installing offset hinges to widen doorways;

(10) Eliminating a turnstile or providing an alternative accessible path;

(11) Installing accessible door hardware;

(12) Installing grab bars in toilet stalls;

(13) Rearranging toilet partitions to increase maneuvering space;

(14) Insulating lavatory pipes under sinks to prevent burns;

(15) Installing a raised toilet seat;

(16) Installing a full-length bathroom mirror;

(17) Repositioning the paper towel dispenser in a bathroom;

(18) Creating designated accessible parking spaces;

(19) Installing an accessible paper cup dispenser at an existing inaccessible water fountain;

(20) Removing high pile, low density carpeting; or

(21) Installing vehicle hand controls.

(c) *Priorities.* A public accommodation is urged to take measures to comply with the barrier removal requirements of this section in accordance with the following order of priorities.

(1) First, a public accommodation should take measures to provide access to a place of public accommodation from public sidewalks, parking, or public transportation. These measures include, for example, installing an entrance ramp, widening entrances, and providing accessible parking spaces.

(2) Second, a public accommodation should take measures to provide access to those areas of a place of public accommodation where goods and services are made available to the public. These measures include, for example, adjusting the layout of display racks, rearranging tables, providing Brailled and raised character signage, widening doors, providing visual alarms, and installing ramps.

(3) Third, a public accommodation should take measures to provide access to restroom facilities. These measures include, for example, removal of

obstructing furniture or vending machines, widening of doors, installation of ramps, providing accessible signage, widening of toilet stalls, and installation of grab bars.

(4) Fourth, a public accommodation should take any other measures necessary to provide access to the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation.

(d) *Relationship to alterations requirements of subpart D of this part.* (1) Except as provided in paragraph (d)(2) of this section, measures taken to comply with the barrier removal requirements of this section shall comply with the applicable requirements for alterations in § 36.402 and §§ 36.404–36.406 of this part for the element being altered. The path of travel requirements of § 36.403 shall not apply to measures taken solely to comply with the barrier removal requirements of this section.

(2) If, as a result of compliance with the alterations requirements specified in paragraph (d)(1) of this section, the measures required to remove a barrier would not be readily achievable, a public accommodation may take other readily achievable measures to remove the barrier that do not fully comply with the specified requirements. Such measures include, for example, providing a ramp with a steeper slope or widening a doorway to a narrower width than that mandated by the alterations requirements. No measure shall be taken, however, that poses a significant risk to the health or safety of individuals with disabilities or others.

(e) *Portable ramps.* Portable ramps should be used to comply with this section only when installation of a permanent ramp is not readily achievable. In order to avoid any significant risk to the health or safety of individuals with disabilities or others in using portable ramps, due consideration shall be given to safety features such as nonslip surfaces, railings, anchoring, and strength of materials.

(f) *Selling or serving space.* The rearrangement of temporary or movable structures, such as furniture, equipment, and display racks is not readily achievable to the extent that it results in a significant loss of selling or serving space.

(g) *Limitation on barrier removal obligations.* (1) The requirements for barrier removal under § 36.304 shall not be interpreted to exceed the standards for alterations in subpart D of this part.

(2) To the extent that relevant standards for alterations are not provided in subpart D of this part, then the requirements of § 36.304 shall not be interpreted to exceed the standards for new construction in subpart D of this part.

(3) This section does not apply to rolling stock and other conveyances to the extent that § 36.310 applies to rolling stock and other conveyances.

§ 36.305 Alternatives to barrier removal.

(a) *General.* Where a public accommodation can demonstrate that barrier removal is not readily achievable, the public accommodation shall not fail to make its goods, services, facilities, privileges, advantages, or accommodations available through alternative methods, if those methods are readily achievable.

(b) *Examples.* Examples of alternatives to barrier removal include, but are not limited to, the following actions—

(1) Providing curb service or home delivery;

(2) Retrieving merchandise from inaccessible shelves or racks;

(3) Relocating activities to accessible locations;

(c) *Multiscreen cinemas.* If it is not readily achievable to remove barriers to provide access by persons with mobility impairments to all of the theaters of a multiscreen cinema, the cinema shall establish a film rotation schedule that provides reasonable access for individuals who use wheelchairs to all films. Reasonable notice shall be provided to the public as to the location and time of accessible showings.

§ 36.306 Personal devices and services.

This part does not require a public accommodation to provide its customers, clients, or participants with personal devices, such as wheelchairs; individually prescribed devices, such as prescription eyeglasses or hearing aids; or services of a personal nature including assistance in eating, toileting, or dressing.

§ 36.307 Accessible or special goods.

(a) This part does not require a public accommodation to alter its inventory to include accessible or special goods that are designed for, or facilitate use by, individuals with disabilities.

(b) A public accommodation shall order accessible or special goods at the request of an individual with disabilities, if, in the normal course of its operation, it makes special orders on request for unstocked goods, and if the accessible or special goods can be obtained from a supplier with whom the public accommodation customarily does business.

(c) Examples of accessible or special goods include items such as Brailled versions of books, books on audio cassettes, closed-captioned video tapes, special sizes or lines of clothing, and special foods to meet particular dietary needs.

§ 36.308 Seating in assembly areas.

(a) *Existing facilities.* (1) To the extent that it is readily achievable, a public accommodation in assembly areas shall—

(i) Provide a reasonable number of wheelchair seating spaces and seats with removable aisle-side arm rests; and

(ii) Locate the wheelchair seating spaces so that they—

(A) Are dispersed throughout the seating area;

(B) Provide lines of sight and choice of admission prices comparable to those for members of the general public;

(C) Adjoin an accessible route that also serves as a means of egress in case of emergency; and

(D) Permit individuals who use wheelchairs to sit with family members or other companions.

(2) If removal of seats is not readily achievable, a public accommodation shall provide, to the extent that it is readily achievable to do so, a portable chair or other means to permit a family member or other companion to sit with an individual who uses a wheelchair.

(3) The requirements of paragraph (a) of this section shall not be interpreted to exceed the standards for alterations in subpart D of this part.

(b) *New construction and alterations.* The provision and location of wheelchair seating spaces in newly constructed or altered assembly areas shall be governed by the standards for new construction and alterations in subpart D of this part.

§ 36.309 Examinations and courses.

(a) *General.* Any private entity that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes shall offer such examinations or courses in a place and manner accessible to persons with disabilities or offer alternative accessible arrangements for such individuals.

(b) *Examinations.* (1) Any private entity offering an examination covered by this section must assure that—

(i) The examination is selected and administered so as to best ensure that, when the examination is administered to an individual with a disability that impairs sensory, manual, or speaking skills, the examination results accurately reflect the individual's

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(ii) Locate the wheelchair seating spaces so that they—

(A) Are dispersed throughout the seating area;

(B) Provide lines of sight and choice of admission prices comparable to those for members of the general public;

(C) Adjoin an accessible route that also serves as a means of egress in case of emergency; and

(D) Permit individuals who use wheelchairs to sit with family members or other companions.

(2) If removal of seats is not readily achievable, a public accommodation shall provide, to the extent that it is readily achievable to do so, a portable chair or other means to permit a family member or other companion to sit with an individual who uses a wheelchair.

(3) The requirements of paragraph (a) of this section shall not be interpreted to exceed the standards for alterations in subpart D of this part.

(b) *New construction and alterations.* The provision and location of wheelchair seating spaces in newly constructed or altered assembly areas shall be governed by the standards for new construction and alterations in subpart D of this part.

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(a) *General.* Any private entity that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes shall offer such examinations or courses in a place and manner accessible to persons with disabilities or offer alternative accessible arrangements for such individuals.

(b) *Examinations.* (1) Any private entity offering an examination covered by this section must assure that—

(i) The examination is selected and administered so as to best ensure that, when the examination is administered to an individual with a disability that impairs sensory, manual, or speaking skills, the examination results accurately reflect the individual's

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aptitude or achievement level or whatever other factor the examination purports to measure, rather than reflecting the individual's impaired sensory, manual, or speaking skills (except where those skills are the factors that the examination purports to measure);

(ii) An examination that is designed for individuals with impaired sensory, manual, or speaking skills is offered at equally convenient locations, as often, and in as timely a manner as are other examinations; and

(iii) The examination is administered in facilities that are accessible to individuals with disabilities or alternative accessible arrangements are made.

(2) Required modifications to an examination may include changes in the length of time permitted for completion of the examination and adaptation of the manner in which the examination is given.

(3) A private entity offering an examination covered by this section shall provide appropriate auxiliary aids for persons with impaired sensory, manual, or speaking skills, unless that private entity can demonstrate that offering a particular auxiliary aid would fundamentally alter the measurement of the skills or knowledge the examination is intended to test or would result in an undue burden. Auxiliary aids and services required by this section may include taped examinations, interpreters or other effective methods of making orally delivered materials available to individuals with hearing impairments, Brailled or large print examinations and answer sheets or qualified readers for individuals with visual impairments or learning disabilities, transcribers for individuals with manual impairments, and other similar services and actions.

(4) Alternative accessible arrangements may include, for example, provision of an examination at an individual's home with a proctor if accessible facilities or equipment are unavailable. Alternative arrangements must provide comparable conditions to those provided for nondisabled individuals.

(c) *Courses.* (1) Any private entity that offers a course covered by this section must make such modifications to that course as are necessary to ensure that the place and manner in which the course is given are accessible to individuals with disabilities.

(2) Required modifications may include changes in the length of time permitted for the completion of the course, substitution of specific requirements, or adaptation of the manner in which the course is conducted or course materials are distributed.

(3) A private entity that offers a course covered by this section shall provide appropriate auxiliary aids and services for persons with impaired sensory, manual, or speaking skills, unless the private entity can demonstrate that offering a particular auxiliary aid or service would fundamentally alter the course or would result in an undue burden. Auxiliary aids and services required by this section may include taped texts, interpreters or other effective methods of making orally delivered materials available to individuals with hearing impairments, Brailled or large print texts or qualified readers for individuals with visual impairments and learning disabilities, classroom equipment adapted for use by individuals with manual impairments, and other similar services and actions.

(4) Courses must be administered in facilities that are accessible to individuals with disabilities or alternative accessible arrangements must be made.

(5) Alternative accessible arrangements may include, for example, provision of the course through videotape, cassettes, or prepared notes. Alternative arrangements must provide comparable conditions to those provided for nondisabled individuals.

§ 36.310 Transportation provided by public accommodations.

(a) *General.* (1) A public accommodation that provides transportation services, but that is not primarily engaged in the business of transporting people, is subject to the general and specific provisions in subparts B, C, and D of this part for its transportation operations, except as provided in this section.

(2) *Examples.* Transportation services subject to this section include, but are not limited to, shuttle services operated between transportation terminals and places of public accommodation, customer shuttle bus services operated by private companies and shopping centers, student transportation systems, and transportation provided within recreational facilities such as stadiums, zoos, amusement parks, and ski resorts.

(b) *Barrier removal.* A public accommodation subject to this section shall remove transportation barriers in existing vehicles and rail passenger cars used for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles or rail passenger cars by the installation of a hydraulic or other lift) where such removal is readily achievable.

(c) *Requirements for vehicles and systems.* A public accommodation subject to this section shall comply with the requirements pertaining to vehicles and transportation systems in the regulations issued by the Secretary of Transportation pursuant to section 306 of the Act.

§§ 36.311–36.400 [Reserved]

Subpart D—New Construction and Alterations

§ 36.401 New construction.

(a) *General.* (1) Except as provided in paragraphs (b) and (c) of this section, discrimination for purposes of this part includes a failure to design and construct facilities for first occupancy after January 26, 1993, that are readily accessible to and usable by individuals with disabilities.

(2) For purposes of this section, a facility is designed and constructed for first occupancy after January 26, 1993, only—

(i) If the last application for a building permit or permit extension for the facility is certified to be complete, by a State, County, or local government after January 26, 1992 (or, in those jurisdictions where the government does not certify completion of applications, if the last application for a building permit or permit extension for the facility is received by the State, County, or local government after January 26, 1992); and

(ii) If the first certificate of occupancy for the facility is issued after January 26, 1993.

(b) *Commercial facilities located in private residences.* (1) When a commercial facility is located in a private residence, the portion of the residence used exclusively as a residence is not covered by this subpart, but that portion used exclusively in the operation of the commercial facility or that portion used both for the commercial facility and for residential purposes is covered by the new construction and alterations requirements of this subpart.

(2) The portion of the residence covered under paragraph (b)(1) of this section extends to those elements used to enter the commercial facility, including the homeowner's front sidewalk, if any, the door or entryway, and hallways; and those portions of the residence, interior or exterior, available to or used by employees or visitors of the commercial facility, including restrooms.

(c) *Exception for structural impracticability.* (1) Full compliance with the requirements of this section is not required where an entity can demonstrate that it is structurally impracticable to meet the requirements. Full compliance will be considered structurally impracticable only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features.

(2) If full compliance with this section would be structurally impracticable, compliance with this section is required to the extent that it is not structurally impracticable. In that case, any portion of the facility that can be made accessible shall be made accessible to the extent that it is not structurally impracticable.

(3) If providing accessibility in conformance with this section to individuals with certain disabilities (e.g., those who use wheelchairs) would be structurally impracticable, accessibility shall nonetheless be ensured to persons with other types of disabilities (e.g., those who use crutches or who have sight, hearing, or mental impairments) in accordance with this section.

(d) *Elevator exemption.* (1) For purposes of this paragraph (d)—

(i) *Professional office of a health care provider* means a location where a person or entity regulated by a State to provide professional services related to the physical or mental health of an individual makes such services available to the public. The facility housing the "professional office of a health care provider" only includes floor levels housing at least one health care provider, or any floor level designed or intended for use by at least one health care provider.

(ii) *Shopping center or shopping mall means*—

(A) A building housing five or more sales or rental establishments; or

(B) A series of buildings on a common site, either under common ownership or common control or developed either as one project or as a series of related projects, housing five or more sales or rental establishments. For purposes of this section, places of public accommodation of the types listed in paragraph (5) of the definition of "place of public accommodation" in section § 36.104 are considered sales or rental establishments. The facility housing a "shopping center or shopping mall" only includes floor levels housing at least one sales or rental establishment, or any floor level designed or intended for use by at least one sales or rental establishment.

(2) This section does not require the installation of an elevator in a facility that is less than three stories or has less than 3000 square feet per story, except with respect to any facility that houses one or more of the following:

(i) A shopping center or shopping mall, or a professional office of a health care provider.

(ii) A terminal, depot, or other station used for specified public transportation, or an airport passenger terminal. In such a facility, any area housing passenger services, including boarding and debarking, loading and unloading, baggage claim, dining facilities, and other common areas open to the public, must be on an accessible route from an accessible entrance.

(3) The elevator exemption set forth in this paragraph (d) does not obviate or limit, in any way the obligation to comply with the other accessibility requirements established in paragraph (a) of this section. For example, in a facility that houses a shopping center or shopping mall, or a professional office of a health care provider, the floors that are above or below an accessible ground floor and that do not house sales or rental establishments or a professional office of a health care provider, must meet the requirements of this section but for the elevator.

§ 36.402 Alterations.

(a) *General.* (1) Any alteration to a place of public accommodation or a commercial facility, after January 26, 1992, shall be made so as to ensure that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) An alteration is deemed to be undertaken after January 26, 1992, if the physical alteration of the property begins after that date.

(b) *Alteration.* For the purposes of this part, an alteration is a change to a place of public accommodation or a commercial facility that affects or could affect the usability of the building or facility or any part thereof.

(1) Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangement in structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, asbestos removal, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility.

(2) If existing elements, spaces, or common areas are altered, then each such altered element, space, or area shall comply with the applicable provisions of appendix A to this part.

(c) *To the maximum extent feasible.* The phrase "to the maximum extent feasible," as used in this section, applies to the occasional case where the nature of an existing facility makes it virtually impossible to comply fully with applicable accessibility standards through a planned alteration. In these circumstances, the alteration shall provide the maximum physical accessibility feasible. Any altered features of the facility that can be made accessible shall be made accessible. If providing accessibility in conformance with this section to individuals with certain disabilities (e.g., those who use wheelchairs) would not be feasible, the facility shall be made accessible to persons with other types of disabilities (e.g., those who use crutches, those who have impaired vision or hearing, or those who have other impairments).

§ 36.403 Alterations: Path of travel.

(a) *General.* An alteration that affects or could affect the usability of or access to an area of a facility that contains a primary function shall be made so as to ensure that, to the maximum extent feasible, the path of travel to the altered area and the restrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the cost and scope of such alterations is disproportionate to the cost of the overall alteration.

(b) *Primary function.* A "primary function" is a major activity for which the facility is intended. Areas that contain a primary function include, but are not limited to, the customer services lobby of a bank, the dining area of a cafeteria, the meeting rooms in a conference center, as well as offices and other work areas in which the activities of the public accommodation or other private entity using the facility are carried out. Mechanical rooms, boiler rooms, supply storage rooms, employee lounges or locker rooms, janitorial closets, entrances, corridors, and restrooms are not areas containing a primary function.

(c) *Alterations to an area containing a primary function.* (1) Alterations that affect the usability of or access to an area containing a primary function include, but are not limited to—

(i) Remodeling merchandise display areas or employee work areas in a department store;

(ii) Replacing an inaccessible floor surface in the customer service or employee work areas of a bank;

(iii) Redesigning the assembly line area of a factory; or

(iv) Installing a computer center in an accounting firm.

(2) For the purposes of this section, alterations to windows, hardware, controls, electrical outlets, and signage shall not be deemed to be alterations that affect the usability of or access to an area containing a primary function.

(d) *Landlord/tenant:* If a tenant is making alterations as defined in § 36.402 that would trigger the requirements of this section, those alterations by the tenant in areas that only the tenant occupies do not trigger a path of travel obligation upon the landlord with respect to areas of the facility under the landlord's authority, if those areas are not otherwise being altered.

(e) *Path of travel.* (1) A "path of travel" includes a continuous, unobstructed way of pedestrian passage by means of which the altered area may be approached, entered, and exited, and which connects the altered area with an exterior approach (including sidewalks, streets, and parking areas), an entrance to the facility, and other parts of the facility.

(2) An accessible path of travel may consist of walks and sidewalks, curb ramps and other interior or exterior pedestrian ramps; clear floor paths through lobbies, corridors, rooms, and other improved areas; parking access aisles; elevators and lifts; or a combination of these elements.

(3) For the purposes of this part, the term "path of travel" also includes the restrooms, telephones, and drinking fountains serving the altered area.

(f) *Disproportionality.* (1) Alterations made to provide an accessible path of travel to the altered area will be deemed disproportionate to the overall alteration when the cost exceeds 20% of the cost of the alteration to the primary function area.

(2) Costs that may be counted as expenditures required to provide an accessible path of travel may include:

(i) Costs associated with providing an accessible entrance and an accessible route to the altered area, for example, the cost of widening doorways or installing ramps;

(ii) Costs associated with making restrooms accessible, such as installing grab bars, enlarging toilet stalls, insulating pipes, or installing accessible faucet controls;

(iii) Costs associated with providing accessible telephones, such as relocating the telephone to an accessible height, installing amplification devices, or installing a telecommunications device for deaf persons (TDD);

(iv) Costs associated with relocating an inaccessible drinking fountain.

(g) *Duty to provide accessible features in the event of disproportionality.* (1) When the cost of alterations necessary to make the path of travel to the altered area fully accessible is disproportionate to the cost of the overall alteration, the path of travel shall be made accessible to the extent that it can be made accessible without incurring disproportionate costs.

(2) In choosing which accessible elements to provide, priority should be given to those elements that will provide the greatest access, in the following order:

(i) An accessible entrance;

(ii) An accessible route to the altered area;

(iii) At least one accessible restroom for each sex or a single unisex restroom;

(iv) Accessible telephones;

(v) Accessible drinking fountains; and

(vi) When possible, additional accessible elements such as parking, storage, and alarms.

(h) *Series of smaller alterations.* (1) The obligation to provide an accessible path of travel may not be evaded by performing a series of small alterations to the area served by a single path of travel if those alterations could have been performed as a single undertaking.

(2) (i) If an area containing a primary function has been altered without providing an accessible path of travel to that area, and subsequent alterations of that area, or a different area on the same path of travel, are undertaken within three years of the original alteration, the total cost of alterations to the primary function areas on that path of travel during the preceding three year period shall be considered in determining whether the cost of making that path of travel accessible is disproportionate.

(ii) Only alterations undertaken after January 26, 1992, shall be considered in determining if the cost of providing an accessible path of travel is disproportionate to the overall cost of the alterations.

§ 36.404 Alterations: Elevator exemption.

(a) This section does not require the installation of an elevator in an altered facility that is less than three stories or has less than 3,000 square feet per story, except with respect to any facility that houses a shopping center, a shopping mall, the professional office of a health care provider, a terminal, depot, or other station used for specified public transportation, or an airport passenger terminal.

(1) For the purposes of this section, "professional office of a health care provider" means a location where a person or entity regulated by a State to provide professional services related to the physical or mental health of an individual makes such services available to the public. The facility that houses a "professional office of a health care provider" only includes floor levels housing by at least one health care provider, or any floor level designed or intended for use by at least one health care provider.

(2) For the purposes of this section, shopping center or shopping mall means—

(i) A building housing five or more sales or rental establishments; or

(ii) A series of buildings on a common site, connected by a common pedestrian access route above or below the ground floor, that is either under common ownership or common control or developed either as one project or as a series of related projects, housing five or more sales or rental establishments. For purposes of this section, places of public accommodation of the types listed in paragraph (5) of the definition of "place of public accommodation" in § 36.104 are considered sales or rental establishments. The facility housing a "shopping center or shopping mall" only includes floor levels housing at least one sales or rental establishment, or any floor level designed or intended for use by at least one sales or rental establishment.

(b) The exemption provided in paragraph (a) of this section does not obviate or limit in any way the obligation to comply with the other accessibility requirements established in this subpart. For example, alterations to floors above or below the accessible ground floor must be accessible regardless of whether the altered facility has an elevator.

§ 36.405 Alterations: Historic preservation.

(a) Alterations to buildings or facilities that are eligible for listing in the National Register of Historic Places under the National Historic Preservation Act (16 U.S.C. 470 *et seq.*), or are designated as historic under State or local law, shall comply to the maximum extent feasible with section 4.1.7 of appendix A to this part.

(b) If it is determined under the procedures set out in section 4.1.7 of appendix A that it is not feasible to provide physical access to an historic property that is a place of public accommodation in a manner that will not threaten or destroy the historic significance of the building or facility, alternative methods of access shall be provided pursuant to the requirements of subpart C of this part.

§ 36.406 Standards for new construction and alterations.

(a) New construction and alterations subject to this part shall comply with the standards for accessible design published as appendix A to this part (ADAAG).

(b) The chart in the appendix to this section provides guidance to the user in reading appendix A to this part (ADAAG) together with subparts A through D of this part, when determining requirements for a particular facility.

Appendix to § 36.406

This chart has no effect for purposes of compliance or enforcement. It does not necessarily provide complete or mandatory information.

	Subparts A–D	ADAAG
Application, General.	36.102(b)(3): public accommodations. 36.102(c): commercial facilities. 36.102(e): public entities. 36.103 (other laws). 36.401 ("for first occupancy"). 36.402(a) (alterations).	1, 2, 3, 4.1.1.
Definitions	36.104: commercial facilities, facility, place of public accommodation, private club, public accommodation, public entity, religious entity.	3.5 Definitions, including: addition, alteration, building, element, facility, space, story.
	36.401(d)(1)(ii), 36.404(a)(2): shopping center or shopping mall. 36.401(d)(1)(i), 36.404(a)(1): professional office of a health care provider. 36.402: alteration; usability. 36.402(c): to the maximum extent feasible.	4.1.6(j), technical infeasibility.
New Construction:.		
General	36.401(a) General. 36.401(b) Commercial facilities in private residences. 36.207 Places of public accommodation in private residences.	4.1.2. 4.1.3.
Work Areas		4.1.1(3).
Structural Impracticability.	36.401(c)	4.1.1(5)(a).
Elevator Exemption.	36.401(d) 36.404	4.1.3(5).
Other Exceptions.		4.1.1(5), 4.1.3(5) and throughout.
Alterations: General.	36.401(b): commercial facilities in private residences. 36.402	4.1.6(1).
Alterations Affecting an Area Containing A Primary Function; Path of Travel; Disproportionality.	36.403	4.1.6(2).
Alterations: Special Technical Provisions.		4.1.6(3).
Additions	36.401–36.405	4.1.5.
Historic Preservation.	36.405	4.1.7.
Technical Provisions.		4.2 through 4.35.
Restaurants and Cafeterias.		5.
Medical Care Facilities.		6.
Business and Mercantile.		7.
Libraries		8.
Transient Lodging (Hotels, Homeless Shelters, Etc.).		9.
Transportation Facilities.		[10, Reserved].

§§ 36.407–36.500 [Reserved]

Subpart E—Enforcement

§-36.501 Private suits.

(a) *General.* Any person who is being subjected to discrimination on the basis of disability in violation of the Act or this part or who has reasonable grounds for believing that such person is about to be subjected to discrimination in violation of section 303 of the Act or subpart D of this part may institute a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order. Upon timely application, the court may, in its discretion, permit the Attorney General to intervene in the civil action if the Attorney General or his or her designee certifies that the case is of general public importance. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the civil action without the payment of fees, costs, or security. Nothing in this section shall require a person with a disability to engage in a futile gesture if the person has actual notice that a person or organization covered by title III of the Act or this part does not intend to comply with its provisions.

(b) *Injunctive relief.* In the case of violations of § 36.304, § 36.308, § 36.310(b), § 36.401, § 36.402, § 36.403, and § 36.405 of this part, injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by the Act or this part. Where appropriate, injunctive relief shall also include requiring the provision of an auxiliary aid or service, modification of a policy, or provision of alternative methods, to the extent required by the Act or this part.

§ 36.502 Investigations and compliance reviews.

(a) The Attorney General shall investigate alleged violations of the Act or this part.

(b) Any individual who believes that he or she or a specific class of persons has been subjected to discrimination prohibited by the Act or this part may request the Department to institute an investigation.

(c) Where the Attorney General has reason to believe that there may be a violation of this part, he or she may initiate a compliance review.

§ 36.503 Suit by the Attorney General.

Following a compliance review or investigation under § 36.502, or at any other time in his or her discretion, the Attorney General may commence a civil action in any appropriate United States district court if the Attorney General has reasonable cause to believe that—

(a) Any person or group of persons is engaged in a pattern or practice of discrimination in violation of the Act or this part; or

(b) Any person or group of persons has been discriminated against in violation of the Act or this part and the

Subparts A–D	ADAAG
6.401(b) Commercial facilities in private residences. 6.207 Places of public accommodation in private residences.	4.1.3.
	4.1.1(3).
6.401(c)	4.1.1(5)(a).
6.401(d)	4.1.3(5).
6.404	
	4.1.1(5), 4.1.3(5) and throughout.
6.401(b): commercial facilities in private residences.	
6.402	4.1.6(1).
6.403	4.1.6(2).
	4.1.6(3).
6.401–36.405	4.1.5.
6.405	4.1.7.
	4.2 through 4.35.
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te suits.

Any person who is being
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or temporary injunction, restraining order, or other order. Upon timely application, the court may, in its discretion, permit the Attorney General to intervene in the civil action if the Attorney General or his or her designee certifies that the case is of general public importance. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the civil action without the payment of fees, costs, or security. Nothing in this section shall require a person with a disability to engage in a futile gesture if the person has actual notice that a person or organization covered by title III of the Act or this part does not intend to comply with its provisions.

(b) *Injunctive relief.* In the case of violations of § 36.304, § 36.308, § 36.310(b), § 36.401, § 36.402, § 36.403, and § 36.405 of this part, injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by the Act or this part. Where appropriate, injunctive relief shall also include requiring the provision of an auxiliary aid or service, modification of a policy, or provision of alternative methods, to the extent required by the Act or this part.

§ 36.502 Investigations and compliance reviews.

(a) The Attorney General shall investigate alleged violations of the Act or this part.

(b) Any individual who believes that he or she or a specific class of persons has been subjected to discrimination prohibited by the Act or this part may request the Department to institute an investigation.

(c) Where the Attorney General has reason to believe that there may be a violation of this part, he or she may initiate a compliance review.

§ 36.503 Suit by the Attorney General.

Following a compliance review or investigation under § 36.502, or at any other time in his or her discretion, the Attorney General may commence a civil action in any appropriate United States district court if the Attorney General has reasonable cause to believe that—

(a) Any person or group of persons is engaged in a pattern or practice of discrimination in violation of the Act or this part; or

(b) Any person or group of persons has been discriminated against in violation of the Act or this part and the

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discrimination raises an issue of general public importance.

§ 36.504 Relief.

(a) *Authority of court.* In a civil action under § 36.503, the court—

(1) May grant any equitable relief that such court considers to be appropriate, including, to the extent required by the Act or this part—

(i) Granting temporary, preliminary, or permanent relief;

(ii) Providing an auxiliary aid or service, modification of policy, practice, or procedure, or alternative method; and

(iii) Making facilities readily accessible to and usable by individuals with disabilities;

(2) May award other relief as the court considers to be appropriate, including monetary damages to persons aggrieved when requested by the Attorney General; and

(3) May, to vindicate the public interest, assess a civil penalty against the entity in an amount

(i) Not exceeding $50,000 for a first violation; and

(ii) Not exceeding $100,000 for any subsequent violation.

(b) *Single violation.* For purposes of paragraph (a)(3) of this section, in determining whether a first or subsequent violation has occurred, a determination in a single action, by judgment or settlement, that the covered entity has engaged in more than one discriminatory act shall be counted as a single violation.

(c) *Punitive damages.* For purposes of paragraph (a)(2) of this section, the terms "monetary damages" and "such other relief" do not include punitive damages.

(d) *Judicial consideration.* In a civil action under § 36.503, the court, when considering what amount of civil penalty, if any, is appropriate, shall give consideration to any good faith effort or attempt to comply with this part by the entity. In evaluating good faith, the court shall consider, among other factors it deems relevant, whether the entity could have reasonably anticipated the need for an appropriate type of auxiliary aid needed to accommodate the unique needs of a particular individual with a disability.

§ 36.505 Attorneys fees.

In any action or administrative proceeding commenced pursuant to the Act or this part, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

§ 36.506 Alternative means of dispute resolution.

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, is encouraged to resolve disputes arising under the Act and this part.

§ 36.507 Effect of unavailability of technical assistance.

A public accommodation or other private entity shall not be excused from compliance with the requirements of this part because of any failure to receive technical assistance, including any failure in the development or dissemination of any technical assistance manual authorized by the Act.

§ 36.508 Effective date.

(a) *General.* Except as otherwise provided in this section and in this part, this part shall become effective on January 26, 1992.

(b) *Civil actions.* Except for any civil action brought for a violation of section 303 of the Act, no civil action shall be brought for any act or omission described in section 302 of the Act that occurs—

(1) Before July 26, 1992, against businesses with 25 or fewer employees and gross receipts of $1,000,000 or less.

(2) Before January 26, 1993, against businesses with 10 or fewer employees and gross receipts of $500,000 or less.

(c) *Transportation services provided by public accommodations.* Newly purchased or leased vehicles required to be accessible by § 36.310 must be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, if the solicitation for the vehicle is made after August 25, 1990.

§§ 36.509–36.600 [Reserved]

Subpart F—Certification of State Laws or Local Building Codes

§ 36.601 Definitions.

Assistant Attorney General means the Assistant Attorney General for Civil Rights or his or her designee.

Certification of equivalency means a final certification that a code meets or exceeds the minimum requirements of title III of the Act for accessibility and usability of facilities covered by that title.

Code means a State law or local building code or similar ordinance, or part thereof, that establishes accessibility requirements.

Model code means a nationally recognized document developed by a private entity for use by State or local jurisdictions in developing codes as defined in this section. A model code is intended for incorporation by reference or adoption in whole or in part, with or without amendment, by State or local jurisdictions.

Preliminary determination of equivalency means a preliminary determination that a code appears to meet or exceed the minimum requirements of title III of the Act for accessibility and usability of facilities covered by that title.

Submitting official means the State or local official who—

(1) Has principal responsibility for administration of a code, or is authorized to submit a code on behalf of a jurisdiction; and

(2) Files a request for certification under this subpart.

§ 36.602 General rule.

On the application of a State or local government, the Assistant Attorney General may certify that a code meets or exceeds the minimum requirements of the Act for the accessibility and usability of places of public accommodation and commercial facilities under this part by issuing a certification of equivalency. At any enforcement proceeding under title III of the Act, such certification shall be rebuttable evidence that such State law or local ordinance does meet or exceed the minimum requirements of title III.

§ 36.603 Filing request for certification.

(a) A submitting official may file a request for certification of a code under this subpart.

(b) Before filing a request for certification of a code, the submitting official shall ensure that—

(1) Adequate public notice of intention to file a request for certification, notice of a hearing, and notice of the location at which the request and materials can be inspected is published within the relevant jurisdiction;

(2) Copies of the proposed request and supporting materials are made available for public examination and copying at the office of the State or local agency charged with administration and enforcement of the code; and

(3) The local or State jurisdiction holds a public hearing on the record, in the State or locality, at which the public is invited to comment on the proposed request for certification.

(c) The submitting official shall include the following materials and information in support of the request:

(1) The text of the jurisdiction's code; any standard, regulation, code, or other relevant document incorporated by reference or otherwise referenced in the code; the law creating and empowering the agency; any relevant manuals, guides, or any other interpretive information issued that pertain to the code; and any formal opinions of the State Attorney General or the chief legal officer of the jurisdiction that pertain to the code;

(2) Any model code or statute on which the pertinent code is based, and an explanation of any differences between the model and the pertinent code;

(3) A transcript of the public hearing required by paragraph (b)(3) of this section; and

(4) Any additional information that the submitting official may wish to be considered.

(d) The submitting official shall file the original and one copy of the request and of supporting materials with the Assistant Attorney General. The submitting official shall clearly label the request as a "request for certification" of a code. A copy of the request and supporting materials will be available for public examination and copying at the offices of the Assistant Attorney General in Washington, DC. The submitting official shall ensure that copies of the request and supporting materials are available for public examination and copying at the office of the State or local agency charged with administration and enforcement of the code. The submitting official shall ensure that adequate public notice of the request for certification and of the location at which the request and materials can be inspected is published within the relevant jurisdiction.

(e) Upon receipt of a request for certification, the Assistant Attorney General may request further information that he or she considers relevant to the determinations required to be made under this subpart.

§ 36.604 Preliminary determination.

After consultation with the Architectural and Transportation Barriers Compliance Board, the Assistant Attorney General shall make a preliminary determination of equivalency or a preliminary determination to deny certification.

§ 36.605 Procedure following preliminary determination of equivalency.

(a) If the Assistant Attorney General makes a preliminary determination of equivalency under § 36.604, he or she shall inform the submitting official, in writing, of that preliminary determination. The Assistant Attorney General shall also—

(1) Publish a notice in the **Federal Register** that advises the public of the preliminary determination of equivalency with respect to the particular code, and invite interested persons and organizations, including individuals with disabilities, during a period of at least 60 days following publication of the notice, to file written comments relevant to whether a final certification of equivalency should be issued;

(2) After considering the information received in response to the notice described in paragraph (a) of this section, and after publishing a separate notice in the **Federal Register**, hold an informal hearing in Washington, DC at which interested persons, including individuals with disabilities, are provided an opportunity to express their views with respect to the preliminary determination of equivalency; and

(b) The Assistant Attorney General, after consultation with the Architectural and Transportation Barriers Compliance Board, and consideration of the materials and information submitted pursuant to this section and § 36.603, shall issue either a certification of equivalency or a final determination to deny the request for certification. He or she shall publish notice of the certification of equivalency or denial of certification in the **Federal Register**.

§ 36.606 Procedure following preliminary denial of certification.

(a) If the Assistant Attorney General makes a Preliminary determination to deny certification of a code under § 36.604, he or she shall notify the submitting official of the determination. The notification may include specification of the manner in which the code could be amended in order to qualify for certification.

(b) The Assistant Attorney General shall allow the submitting official not less than 15 days to submit data, views, and arguments in opposition to the preliminary determination to deny certification. If the submitting official does not submit materials, the Assistant Attorney General shall not be required to take any further action. If the submitting official submits materials, the Assistant Attorney General shall evaluate those materials and any other relevant information. After evaluation of any newly submitted materials, the Assistant Attorney General shall make either a final denial of certification or a preliminary determination of equivalency.

§ 36.607 Effect of certification.

(a)(1) A certification shall be considered a certification of equivalency only with respect to those features or elements that are both covered by the certified code and addressed by the standards against which equivalency is measured.

(2) For example, if certain equipment is not covered by the code, the determination of equivalency cannot be used as evidence with respect to the question of whether equipment in a building built according to the code satisfies the Act's requirements with respect to such equipment. By the same token, certification would not be relevant to construction of a facility for children, if the regulations against which equivalency is measured do not address children's facilities.

(b) A certification of equivalency is effective only with respect to the particular edition of the code for which certification is granted. Any amendments or other changes to the code after the date of the certified edition are not considered part of the certification.

(c) A submitting official may reapply for certification of amendments or other changes to a code that has already received certification.

§ 36.608 Guidance concerning model codes.

Upon application by an authorized representative of a private entity responsible for developing a model code, the Assistant Attorney General may review the relevant model code and issue guidance concerning whether and in what respects the model code is consistent with the minimum requirements of the Act for the accessibility and usability of places of public accommodation and commercial facilities under this part.

§§ 36.609–36.999 [Reserved]

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certification. If the submitting official does not submit materials, the Assistant Attorney General shall not be required to take any further action. If the submitting official submits materials, the Assistant Attorney General shall evaluate those materials and any other relevant information. After evaluation of any newly submitted materials, the Assistant Attorney General shall make either a final denial of certification or a preliminary determination of equivalency.

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§§ 36.609–36.999 [Reserved]

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Appendix A to Part 36—Standards for Accessible Design

ADA ACCESSIBILITY GUIDELINES FOR BUILDINGS AND FACILITIES
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1. PURPOSE.

This document sets guidelines for accessibility to places of public accommodation and commercial facilities by individuals with disabilities. These guidelines are to be applied during the design, construction, and alteration of such buildings and facilities to the extent required by regulations issued by Federal agencies, including the Department of Justice, under the Americans with Disabilities Act of 1990.

The technical specifications 4.2 through 4.35, of these guidelines are the same as those of the American National Standard Institute's document A117.1-1980, except as noted in this text by italics. However, sections 4.1.1 through 4.1.7 and sections 5 through 10 are different from ANSI A117.1 in their entirety and are printed in standard type.

The illustrations and text of ANSI A117.1 are reproduced with permission from the American National Standards Institute. Copies of the standard may be purchased from the American National Standards Institute at 1430 Broadway, New York, New York 10018.

2. GENERAL.

2.1 Provisions for Adults. *The specifications in these guidelines are based upon adult dimensions and anthropometrics.*

2.2* Equivalent Facilitation. *Departures from particular technical and scoping requirements of this guideline by the use of other designs and technologies are permitted where the alternative designs and technologies used will provide substantially equivalent or greater access to and usability of the facility.*

3. MISCELLANEOUS INSTRUCTIONS AND DEFINITIONS.

3.1 Graphic Conventions. Graphic conventions are shown in Table 1. Dimensions that are not marked minimum or maximum are absolute, unless otherwise indicated in the text or captions.

Table 1
Graphic Conventions

Convention	Description
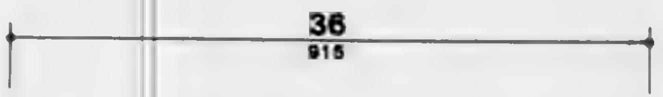	Typical dimension line showing U.S. customary units (in inches) above the line and SI units (in millimeters) below
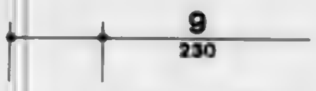	Dimensions for short distances indicated on extended line
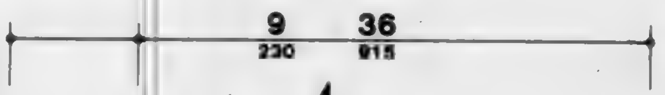	Dimension line showing alternate dimensions required
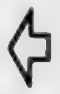	Direction of approach
max	Maximum
min	Minimum
....	Boundary of clear floor area
——— — ——— — ——— — ℄	Centerline

3.2 Dimensional Tolerances. All dimensions are subject to conventional building industry tolerances for field conditions.

3.3 Notes. The text of *these guidelines* does not contain notes or footnotes. Additional information, explanations, and advisory materials are located in the Appendix. Paragraphs marked with an asterisk have related, non-mandatory material in the Appendix. In the Appendix, the corresponding paragraph numbers are preceded by an A.

3.4 General Terminology.

comply with. Meet one or more specifications of *these guidelines*.

if, if ... then. Denotes a specification that applies only when the conditions described are present.

may. Denotes an option or alternative.

shall. Denotes a mandatory specification or requirement.

should. Denotes an advisory specification or recommendation.

3.5 Definitions.

Access Aisle. An accessible pedestrian space between elements, such as parking spaces, seating, and desks, that provides clearances appropriate for use of the elements.

Accessible. Describes a site, building, facility, or portion thereof that complies with *these guidelines*.

Accessible Element. An *element* specified by *these guidelines* (for example, telephone, controls, and the like).

Accessible Route. A continuous unobstructed path connecting all accessible elements and spaces of a building or facility. Interior accessible routes may include corridors, floors, ramps, elevators, lifts, and clear floor space at fixtures. Exterior accessible routes may include parking access aisles, curb ramps, *crosswalks at vehicular ways*, walks, ramps, and lifts.

Accessible Space. *Space that complies with these guidelines.*

Adaptability. The ability of certain building spaces and elements, such as kitchen counters, sinks, and grab bars, to be added or altered so as to accommodate the needs of *individuals with or without disabilities* or to accommodate the needs of persons with different types or degrees of disability.

Addition. *An expansion, extension, or increase in the gross floor area of a building or facility.*

Administrative Authority. A governmental agency that adopts or enforces regulations and *guidelines* for the design, construction, or *alteration* of buildings and facilities.

Alteration. *An alteration is a change to a building or facility made by, on behalf of, or for the use of a public accommodation or commercial facility, that affects or could affect the usability of the building or facility or part thereof. Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangement of the structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility.*

Area of Rescue Assistance. *An area, which has direct access to an exit, where people who are unable to use stairs may remain temporarily in safety to await further instructions or assistance during emergency evacuation.*

Assembly Area. A room or space accommodating a *group of* individuals for recreational, educational, political, social, or amusement purposes, or for the consumption of food and drink.

Automatic Door. A door equipped with a power-operated mechanism and controls that open and close the door automatically upon receipt of a momentary actuating signal. The switch that begins the automatic cycle may be a photoelectric device, floor mat, or manual switch (see power-assisted door).

Accessible Space. *Space that complies with these guidelines.*

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Automatic Door. A door equipped with a power-operated mechanism and controls that open and close the door automatically upon receipt of a momentary actuating signal. The switch that begins the automatic cycle may be a photoelectric device, floor mat, or manual switch (see power-assisted door).

3.5 Definitions

Building. Any structure used and intended for supporting or sheltering any use or occupancy.

Circulation Path. An exterior or interior way of passage from one place to another for pedestrians, including, but not limited to, walks, hallways, courtyards, stairways, and stair landings.

Clear. Unobstructed.

Clear Floor Space. *The minimum unobstructed floor or ground space required to accommodate a single, stationary wheelchair and occupant.*

Closed Circuit Telephone. *A telephone with dedicated line(s) such as a house phone, courtesy phone or phone that must be used to gain entrance to a facility.*

Common Use. Refers to those interior and exterior rooms, spaces, or elements that are made available for the use of a restricted group of people (for example, *occupants of a homeless shelter*, the occupants of an office building, or the guests of such occupants).

Cross Slope. The slope that is perpendicular to the direction of travel (see running slope).

Curb Ramp. A short ramp cutting through a curb or built up to it.

Detectable Warning. *A standardized surface feature built in or applied to walking surfaces or other elements to warn visually impaired people of hazards on a circulation path.*

Dwelling Unit. A single unit which provides a kitchen or food preparation area, in addition to rooms and spaces for living, bathing, sleeping, and the like. *Dwelling units include a single family home or a townhouse used as a transient group home; an apartment building used as a shelter; guestrooms in a hotel that provide sleeping accommodations and food preparation areas; and other similar facilities used on a transient basis. For purposes of these guidelines, use of the term "Dwelling Unit" does not imply the unit is used as a residence.*

Egress, Means of. *A continuous and unobstructed way of exit travel from any point in a building or facility to a public way. A means of egress comprises vertical and horizontal travel and may include intervening room spaces, doorways, hallways, corridors, passageways, balconies, ramps, stairs, enclosures, lobbies, horizontal exits, courts and yards. An accessible means of egress is one that complies with these guidelines and does not include stairs, steps, or escalators. Areas of rescue assistance or evacuation elevators may be included as part of accessible means of egress.*

Element. *An architectural or mechanical component of a building, facility, space, or site, e.g., telephone, curb ramp, door, drinking fountain, seating, or water closet.*

Entrance. *Any access point to a building or portion of a building or facility used for the purpose of entering. An entrance includes the approach walk, the vertical access leading to the entrance platform, the entrance platform itself, vestibules if provided, the entry door(s) or gate(s), and the hardware of the entry door(s) or gate(s).*

Facility. *All or any portion of buildings, structures, site improvements, complexes, equipment, roads, walks, passageways, parking lots, or other real or personal property located on a site.*

Ground Floor. *Any occupiable floor less than one story above or below grade with direct access to grade. A building or facility always has at least one ground floor and may have more than one ground floor as where a split level entrance has been provided or where a building is built into a hillside.*

Mezzanine or Mezzanine Floor. *That portion of a story which is an intermediate floor level placed within the story and having occupiable space above and below its floor.*

Marked Crossing. A crosswalk or other identified path intended for pedestrian use in crossing a vehicular way.

Multifamily Dwelling. Any building containing more than two dwelling units.

Occupiable. *A room or enclosed space designed for human occupancy in which individuals congregate for amusement, educational or similar purposes, or in which occupants are engaged at labor, and which is equipped with means of egress, light, and ventilation.*

3.5 Definitions

Operable Part. A part of a piece of equipment or appliance used to insert or withdraw objects, or to activate, deactivate, or adjust the equipment or appliance (for example, coin slot, pushbutton, handle).

Path of Travel. *(Reserved).*

Power-assisted Door. A door used *for human passage* with a mechanism that helps to open the door, or relieves the opening resistance of a door, upon the activation of a switch or a continued force applied to the door itself.

Public Use. Describes interior or exterior rooms or spaces that are made available to the general public. Public use may be provided at a building or facility that is privately or publicly owned.

Ramp. A walking surface which has a running slope greater than 1:20.

Running Slope. The slope that is parallel to the direction of travel (see cross slope).

Service Entrance. An entrance intended primarily for delivery of goods or services.

Signage. *Displayed* verbal, symbolic, *tactile,* and pictorial information.

Site. A parcel of land bounded by a property line or a designated portion of a public right-of-way.

Site Improvement. Landscaping, paving for pedestrian and vehicular ways, outdoor lighting, recreational facilities, and the like, added to a site.

Sleeping Accommodations. Rooms in which people sleep; for example, dormitory and hotel or motel guest rooms or suites.

Space. *A definable area, e.g., room, toilet room, hall, assembly area, entrance, storage room, alcove, courtyard, or lobby.*

Story. *That portion of a building included between the upper surface of a floor and upper surface of the floor or roof next above. If such portion of a building does not include occupiable space, it is not considered a story for purposes of these guidelines. There may be more than one floor level within a story as in the case of a mezzanine or mezzanines.*

Structural Frame. The structural frame shall be considered to be the columns and the girders, beams, trusses and spandrels having direct connections to the columns and all other members which are essential to the stability of the building as a whole.

Tactile. Describes an object that can be perceived using the sense of touch.

Text Telephone. *Machinery or equipment that employs interactive graphic (i.e., typed) communications through the transmission of coded signals across the standard telephone network. Text telephones can include, for example, devices known as TDD's (telecommunication display devices or telecommunication devices for deaf persons) or computers.*

Transient Lodging. *A building, facility, or portion thereof, excluding inpatient medical care facilities, that contains one or more dwelling units or sleeping accommodations. Transient lodging may include, but is not limited to, resorts, group homes, hotels, motels, and dormitories.*

Vehicular Way. A route intended for vehicular traffic, such as a street, driveway, or parking lot.

Walk. An exterior pathway with a prepared surface intended for pedestrian use, including general pedestrian areas such as plazas and courts.

NOTE: Sections 4.1.1 through 4.1.7 are different from ANSI A117.1 in their entirety and are printed in standard type (ANSI A117.1 does not include scoping provisions).

portion of a building does not include occupiable space, it is not considered a story for purposes of these guidelines. There may be more than one floor level within a story as in the case of a mezzanine or mezzanines.

Structural Frame. The structural frame shall be considered to be the columns and the girders, beams, trusses and spandrels having direct connections to the columns and all other members which are essential to the stability of the building as a whole.

Tactile. Describes an object that can be perceived using the sense of touch.

Text Telephone. *Machinery or equipment that employs interactive graphic (i.e., typed) communications through the transmission of coded signals across the standard telephone network. Text telephones can include, for example, devices known as TDD's (telecommunication display devices or telecommunication devices for deaf persons) or computers.*

Transient Lodging. *A building, facility, or portion thereof, excluding inpatient medical care facilities, that contains one or more dwelling units or sleeping accommodations. Transient lodging may include, but is not limited to, resorts, group homes, hotels, motels, and dormitories.*

Vehicular Way. A route intended for vehicular traffic, such as a street, driveway, or parking lot.

Walk. An exterior pathway with a prepared surface intended for pedestrian use, including general pedestrian areas such as plazas and courts.

NOTE: Sections 4.1.1 through 4.1.7 are different from ANSI A117.1 in their entirety and are printed in standard type (ANSI A117.1 does not include scoping provisions).

4. ACCESSIBLE ELEMENTS AND SPACES: SCOPE AND TECHNICAL REQUIREMENTS.

4.1 Minimum Requirements

4.1.1* Application.

(1) General. All areas of newly designed or newly constructed buildings and facilities required to be accessible by 4.1.2 and 4.1.3 and altered portions of existing buildings and facilities required to be accessible by 4.1.6 shall comply with these guidelines, 4.1 through 4.35, unless otherwise provided in this section or as modified in a special application section.

(2) Application Based on Building Use. Special application sections 5 through 10 provide additional requirements for restaurants and cafeterias, medical care facilities, business and mercantile, libraries, accessible transient lodging, and transportation facilities. When a building or facility contains more than one use covered by a special application section, each portion shall comply with the requirements for that use.

(3)* Areas Used Only by Employees as Work Areas. Areas that are used only as work areas shall be designed and constructed so that individuals with disabilities can approach, enter, and exit the areas. These guidelines do not require that any areas used only as work areas be constructed to permit maneuvering within the work area or be constructed or equipped (i.e., with racks or shelves) to be accessible.

(4) Temporary Structures. These guidelines cover temporary buildings or facilities as well as permanent facilities. Temporary buildings and facilities are not of permanent construction but are extensively used or are essential for public use for a period of time. Examples of temporary buildings or facilities covered by these guidelines include, but are not limited to: reviewing stands, temporary classrooms, bleacher areas, exhibit areas, temporary banking facilities, temporary health screening services, or temporary safe pedestrian passageways around a construction site. Structures, sites and equipment directly associated with the actual processes of construction, such as scaffolding, bridging, materials hoists, or construction trailers are not included.

(5) General Exceptions.

(a) In new construction, a person or entity is not required to meet fully the requirements of these guidelines where that person or entity can demonstrate that it is structurally impracticable to do so. Full compliance will be considered structurally impracticable only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features. If full compliance with the requirements of these guidelines is structurally impracticable, a person or entity shall comply with the requirements to the extent it is not structurally impracticable. Any portion of the building or facility which can be made accessible shall comply to the extent that it is not structurally impracticable.

(b) Accessibility is not required to (i) observation galleries used primarily for security purposes; or (ii) in non-occupiable spaces accessed only by ladders, catwalks, crawl spaces, very narrow passageways, or freight (non-passenger) elevators, and frequented only by service personnel for repair purposes; such spaces include, but are not limited to, elevator pits, elevator penthouses, piping or equipment catwalks.

4.1.2 Accessible Sites and Exterior Facilities: New Construction. An accessible site shall meet the following minimum requirements:

(1) At least one accessible route complying with 4.3 shall be provided within the boundary of the site from public transportation stops, accessible parking spaces, passenger loading zones if provided, and public streets or sidewalks, to an accessible building entrance.

(2) At least one accessible route complying with 4.3 shall connect accessible buildings, accessible facilities, accessible elements, and accessible spaces that are on the same site.

(3) All objects that protrude from surfaces or posts into circulation paths shall comply with 4.4.

4.1.2 Accessible Sites and Exterior Facilities: New Construction

(4) Ground surfaces along accessible routes and in accessible spaces shall comply with 4.5.

(5) (a) If parking spaces are provided for self-parking by employees or visitors, or both, then accessible spaces complying with 4.6 shall be provided in each such parking area in conformance with the table below. Spaces required by the table need not be provided in the particular lot. They may be provided in a different location if equivalent or greater accessibility, in terms of distance from an accessible entrance, cost and convenience is ensured.

Total Parking in Lot	Required Minimum Number of Accessible Spaces
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	2 percent of total
1001 and over	20 plus 1 for each 100 over 1000

Except as provided in (b), access aisles adjacent to accessible spaces shall be 60 in (1525 mm) wide minimum.

(b) One in every eight accessible spaces, but not less than one, shall be served by an access aisle 96 in (2440 mm) wide minimum and shall be designated "van accessible" as required by 4.6.4. The vertical clearance at such spaces shall comply with 4.6.5. All such spaces may be grouped on one level of a parking structure.

EXCEPTION: Provision of all required parking spaces in conformance with "Universal Parking Design" (see appendix A4.6.3) is permitted.

(c) If passenger loading zones are provided, then at least one passenger loading zone shall comply with 4.6.6.

(d) At facilities providing medical care and other services for persons with mobility impairments, parking spaces complying with 4.6 shall be provided in accordance with 4.1.2(5)(a) except as follows:

(i) Outpatient units and facilities: 10 percent of the total number of parking spaces provided serving each such outpatient unit or facility;

(ii) Units and facilities that specialize in treatment or services for persons with mobility impairments: 20 percent of the total number of parking spaces provided serving each such unit or facility.

(e)*Valet parking: Valet parking facilities shall provide a passenger loading zone complying with 4.6.6 located on an accessible route to the entrance of the facility. Paragraphs 5(a), 5(b), and 5(d) of this section do not apply to valet parking facilities.

(6) If toilet facilities are provided on a site, then each such public or common use toilet facility shall comply with 4.22. If bathing facilities are provided on a site, then each such public or common use bathing facility shall comply with 4.23.

For single user portable toilet or bathing units clustered at a single location, at least 5% but no less than one toilet unit or bathing unit complying with 4.22 or 4.23 shall be installed at each cluster whenever typical inaccessible units are provided. Accessible units shall be identified by the International Symbol of Accessibility.

EXCEPTION: Portable toilet units at construction sites used exclusively by construction personnel are not required to comply with 4.1.2(6).

(7) Building Signage. Signs which designate permanent rooms and spaces shall comply with 4.30.1, 4.30.4, 4.30.5 and 4.30.6. Other signs which provide direction to, or information about, functional spaces of the building shall comply with 4.30.1, 4.30.2, 4.30.3, and 4.30.5. Elements and spaces of accessible facilities which shall be identified by the International Symbol of Accessibility and which shall comply with 4.30.7 are:

(a) Parking spaces designated as reserved for individuals with disabilities;

(b) Accessible passenger loading zones;

(c) Accessible entrances when not all are accessible (inaccessible entrances shall have directional signage to indicate the route to the nearest accessible entrance);

(d) Accessible toilet and bathing facilities when not all are accessible.

4.1.3 Accessible Buildings: New Construction. Accessible buildings and facilities shall meet the following minimum requirements:

(1) At least one accessible route complying with 4.3 shall connect accessible building or facility entrances with all accessible spaces and elements within the building or facility.

(2) All objects that overhang or protrude into circulation paths shall comply with 4.4.

(3) Ground and floor surfaces along accessible routes and in accessible rooms and spaces shall comply with 4.5.

(4) Interior and exterior stairs connecting levels that are not connected by an elevator, ramp, or other accessible means of vertical access shall comply with 4.9.

(5)* One passenger elevator complying with 4.10 shall serve each level, including mezzanines, in all multi-story buildings and facilities unless exempted below. If more than one elevator is provided, each full passenger elevator shall comply with 4.10.

EXCEPTION 1: Elevators are not required in facilities that are less than three stories or that have less than 3000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider, or another type of facility as determined by the Attorney General. The elevator exemption set forth in this paragraph does not obviate or limit in any way the obligation to comply with the other accessibility requirements established in section 4.1.3. For example, floors above or below the accessible ground floor must meet the requirements of this section except for elevator service. If toilet or bathing facilities are provided on a level not served by an elevator, then toilet or bathing facilities must be provided on the accessible ground floor. In new construction if a building or facility is eligible for this exemption but a full passenger elevator is nonetheless planned, that elevator shall meet the requirements of 4.10 and shall serve each level in the building. A full passenger elevator that provides service from a garage to only one level of a building or facility is not required to serve other levels.

EXCEPTION 2: Elevator pits, elevator penthouses, mechanical rooms, piping or equipment catwalks are exempted from this requirement.

EXCEPTION 3: Accessible ramps complying with 4.8 may be used in lieu of an elevator.

EXCEPTION 4: Platform lifts (wheelchair lifts) complying with 4.11 of this guideline and applicable state or local codes may be used in lieu of an elevator only under the following conditions:

(a) To provide an accessible route to a performing area in an assembly occupancy.

(b) To comply with the wheelchair viewing position line-of-sight and dispersion requirements of 4.33.3.

(c) To provide access to incidental occupiable spaces and rooms which are not open to the general public and which house no more than five persons, including but not limited to equipment control rooms and projection booths.

(d) To provide access where existing site constraints or other constraints make use of a ramp or an elevator infeasible.

(6) Windows: (Reserved).

(7) Doors:

(a) At each accessible entrance to a building or facility, at least one door shall comply with 4.13.

(b) Within a building or facility, at least one door at each accessible space shall comply with 4.13.

(c) Each door that is an element of an accessible route shall comply with 4.13.

(d) Each door required by 4.3.10, Egress, shall comply with 4.13.

(8) In new construction, at a minimum, the requirements in (a) and (b) below shall be satisfied independently:

(a)(i) At least 50% of all public entrances (excluding those in (b) below) must be accessible. At least one must be a ground floor entrance. Public entrances are any entrances that are not loading or service entrances.

(ii) Accessible entrances must be provided in a number at least equivalent to the number of exits required by the applicable building/fire codes. (This paragraph does not require an increase in the total number of entrances planned for a facility.)

(iii) An accessible entrance must be provided to each tenancy in a facility (for example, individual stores in a strip shopping center).

One entrance may be considered as meeting more than one of the requirements in (a). Where feasible, accessible entrances shall be the entrances used by the majority of people visiting or working in the building.

(b)(i) In addition, if direct access is provided for pedestrians from an enclosed parking garage to the building, at least one direct entrance from the garage to the building must be accessible.

(ii) If access is provided for pedestrians from a pedestrian tunnel or elevated walkway, one entrance to the building from each tunnel or walkway must be accessible.

One entrance may be considered as meeting more than one of the requirements in (b).

Because entrances also serve as emergency exits whose proximity to all parts of buildings and facilities is essential, it is preferable that all entrances be accessible.

(c) If the only entrance to a building, or tenancy in a facility, is a service entrance, that entrance shall be accessible.

(d) Entrances which are not accessible shall have directional signage complying with 4.30.1, 4.30.2, 4.30.3, and 4.30.5, which indicates the location of the nearest accessible entrance.

(9)* In buildings or facilities, or portions of buildings or facilities, required to be accessible, accessible means of egress shall be provided in the same number as required for exits by local building/life safety regulations. Where a required exit from an occupiable level above or below a level of accessible exit discharge is not accessible, an area of rescue assistance shall be provided on each such level (in a number equal to that of inaccessible required exits). Areas of rescue assistance shall comply with 4.3.11. A horizontal exit, meeting the requirements of local building/life safety regulations, shall satisfy the requirement for an area of rescue assistance.

EXCEPTION: Areas of rescue assistance are not required in buildings or facilities having a supervised automatic sprinkler system.

(10)* Drinking Fountains:

(a) Where only one drinking fountain is provided on a floor there shall be a drinking fountain which is accessible to individuals who use wheelchairs in accordance with 4.15 and one accessible to those who have difficulty bending or stooping. (This can be accommodated by the use of a "hi-lo" fountain; by providing one fountain accessible to those who use wheelchairs and one fountain at a standard height convenient for those who have difficulty bending; by providing a fountain accessible under 4.15 and a water cooler; or by such other means as would achieve the required accessibility for each group on each floor.)

(b) Where more than one drinking fountain or water cooler is provided on a floor, 50% of those provided shall comply with 4.15 and shall be on an accessible route.

(11) Toilet Facilities: If toilet rooms are provided, then each public and common use toilet room shall comply with 4.22. Other toilet rooms provided for the use of occupants of specific spaces (i.e., a private toilet room for the occupant of a private office) shall be adaptable. If bathing rooms are provided, then each public and common use bathroom shall comply with 4.23. Accessible toilet rooms and bathing facilities shall be on an accessible route.

4.30.2, 4.30.3, and 4.30.5, which indicates the location of the nearest accessible entrance.

(9)* In buildings or facilities, or portions of buildings or facilities, required to be accessible, accessible means of egress shall be provided in the same number as required for exits by local building/life safety regulations. Where a required exit from an occupiable level above or below a level of accessible exit discharge is not accessible, an area of rescue assistance shall be provided on each such level (in a number equal to that of inaccessible required exits). Areas of rescue assistance shall comply with 4.3.11. A horizontal exit, meeting the requirements of local building/life safety regulations, shall satisfy the requirement for an area of rescue assistance.

EXCEPTION: Areas of rescue assistance are not required in buildings or facilities having a supervised automatic sprinkler system.

(10)* Drinking Fountains:

(a) Where only one drinking fountain is provided on a floor there shall be a drinking fountain which is accessible to individuals who use wheelchairs in accordance with 4.15 and one accessible to those who have difficulty bending or stooping. (This can be accommodated by the use of a "hi-lo" fountain; by providing one fountain accessible to those who use wheelchairs and one fountain at a standard height convenient for those who have difficulty bending; by providing a fountain accessible under 4.15 and a water cooler; or by such other means as would achieve the required accessibility for each group on each floor.)

(b) Where more than one drinking fountain or water cooler is provided on a floor, 50% of those provided shall comply with 4.15 and shall be on an accessible route.

(11) Toilet Facilities: If toilet rooms are provided, then each public and common use toilet room shall comply with 4.22. Other toilet rooms provided for the use of occupants of specific spaces (i.e., a private toilet room for the occupant of a private office) shall be adaptable. If bathing rooms are provided, then each public and common use bathroom shall comply with 4.23. Accessible toilet rooms and bathing facilities shall be on an accessible route.

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(12) Storage, Shelving and Display Units:

(a) If fixed or built-in storage facilities such as cabinets, shelves, closets, and drawers are provided in accessible spaces, at least one of each type provided shall contain storage space complying with 4.25. Additional storage may be provided outside of the dimensions required by 4.25.

(b) Shelves or display units allowing self-service by customers in mercantile occupancies shall be located on an accessible route complying with 4.3. Requirements for accessible reach range do not apply.

(13) Controls and operating mechanisms in accessible spaces, along accessible routes, or as parts of accessible elements (for example, light switches and dispenser controls) shall comply with 4.27.

(14) If emergency warning systems are provided, then they shall include both audible alarms and visual alarms complying with 4.28. Sleeping accommodations required to comply with 9.3 shall have an alarm system complying with 4.28. Emergency warning systems in medical care facilities may be modified to suit standard health care alarm design practice.

(15) Detectable warnings shall be provided at locations as specified in 4.29.

(16) Building Signage:

(a) Signs which designate permanent rooms and spaces shall comply with 4.30.1, 4.30.4, 4.30.5 and 4.30.6.

(b) Other signs which provide direction to or information about functional spaces of the building shall comply with 4.30.1, 4.30.2, 4.30.3, and 4.30.5.

EXCEPTION: Building directories, menus, and all other signs which are temporary are not required to comply.

(17) Public Telephones:

(a) If public pay telephones, public closed circuit telephones, or other public telephones are provided, then they shall comply with 4.31.2 through 4.31.8 to the extent required by the following table:

Number of each type of telephone provided on each floor	**Number of telephones required to comply with 4.31.2 through 4.31.8**[1]
1 or more single unit	1 per floor
1 bank[2]	1 per floor
2 or more banks[2]	1 per bank. Accessible unit may be installed as a single unit in proximity (either visible or with signage) to the bank. At least one public telephone per floor shall meet the requirements for a forward reach telephone[3].

[1] Additional public telephones may be installed at any height. Unless otherwise specified, accessible telephones may be either forward or side reach telephones.

[2] A bank consists of two or more adjacent public telephones, often installed as a unit.

[3] EXCEPTION: For exterior installations only, if dial tone first service is available, then a side reach telephone may be installed instead of the required forward reach telephone (i.e., one telephone in proximity to each bank shall comply with 4.31).

(b)* All telephones required to be accessible and complying with 4.31.2 through 4.31.8 shall be equipped with a volume control. In addition, 25 percent, but never less than one, of all other public telephones provided shall be equipped with a volume control and shall be dispersed among all types of public telephones, including closed circuit telephones, throughout the building or facility. Signage complying with applicable provisions of 4.30.7 shall be provided.

(c) The following shall be provided in accordance with 4.31.9:

(i) if a total number of four or more public pay telephones (including both interior and exterior phones) is provided at a site, and at least one is in an interior location, then at least one interior public text telephone shall be provided.

(ii) if an interior public pay telephone is provided in a stadium or arena, in a convention center, in a hotel with a convention center, or in a covered mall, at least one interior public text telephone shall be provided in the facility.

(iii) if a public pay telephone is located in or adjacent to a hospital emergency room, hospital recovery room, or hospital waiting room, one public text telephone shall be provided at each such location.

(d) Where a bank of telephones in the interior of a building consists of three or more public pay telephones, at least one public pay telephone in each such bank shall be equipped with a shelf and outlet in compliance with 4.31.9(2).

(18) If fixed or built-in seating or tables (including, but not limited to, study carrels and student laboratory stations), are provided in accessible public or common use areas, at least five percent (5%), but not less than one, of the fixed or built-in seating areas or tables shall comply with 4.32. An accessible route shall lead to and through such fixed or built-in seating areas, or tables.

(19)* Assembly areas:

(a) In places of assembly with fixed seating accessible wheelchair locations shall comply with 4.33.2, 4.33.3, and 4.33.4 and shall be provided consistent with the following table:

Capacity of Seating in Assembly Areas	Number of Required Wheelchair Locations
4 to 25	1
26 to 50	2
51 to 300	4
301 to 500	6
over 500	6, plus 1 additional space for each total seating capacity increase of 100

In addition, one percent, but not less than one, of all fixed seats shall be aisle seats with no armrests on the aisle side, or removable or folding armrests on the aisle side. Each such seat shall be identified by a sign or marker. Signage notifying patrons of the availability of such seats shall be posted at the ticket office. Aisle seats are not required to comply with 4.33.4.

(b) This paragraph applies to assembly areas where audible communications are integral to the use of the space (e.g., concert and lecture halls, playhouses and movie theaters, meeting rooms, etc.). Such assembly areas, if (1) they accommodate at least 50 persons, or if they have audio-amplification systems, and (2) they have fixed seating, shall have a permanently installed assistive listening system complying with 4.33. For other assembly areas, a permanently installed assistive listening system, or an adequate number of electrical outlets or other supplementary wiring necessary to support a portable assistive listening system shall be provided. The minimum number of receivers to be provided shall be equal to 4 percent of the total number of seats, but in no case less than two. Signage complying with applicable provisions of 4.30 shall be installed to notify patrons of the availability of a listening system.

(20) Where automated teller machines (ATMs) are provided, each ATM shall comply with the requirements of 4.34 except where two or more are provided at a location, then only one must comply.

EXCEPTION: Drive-up-only automated teller machines are not required to comply with 4.27.2, 4.27.3 and 4.34.3.

(21) Where dressing and fitting rooms are provided for use by the general public, patients, customers or employees, 5 percent, but never less than one, of dressing rooms for each type of use in each cluster of dressing rooms shall be accessible and shall comply with 4.35.

Examples of types of dressing rooms are those serving different genders or distinct and different functions as in different treatment or examination facilities.

4.1.4 (Reserved).

4.1.5 Accessible Buildings: Additions. Each addition to an existing building or facility shall be regarded as an alteration. Each space or element added to the existing building or facility shall comply with the applicable provisions of 4.1.1 to 4.1.3, Minimum Requirements (for New Construction) and the applicable technical specifications of 4.2 through 4.35 and sections 5 through 10. Each addition that affects or could affect the usability of an area containing a primary function shall comply with 4.1.6(2).

4.1.6 Accessible Buildings: Alterations.

(1) General. Alterations to existing buildings and facilities shall comply with the following:

(a) No alteration shall be undertaken which decreases or has the effect of decreasing accessibility or usability of a building or facility below the requirements for new construction at the time of alteration.

(b) If existing elements, spaces, or common areas are altered, then each such altered element, space, feature, or area shall comply with the applicable provisions of 4.1.1 to 4.1.3 Minimum Requirements (for New Construction). If the applicable provision for new construction requires that an element, space, or common area be on an accessible route, the altered element, space, or common area is not required to be on an accessible route except as provided in 4.1.6(2) (Alterations to an Area Containing a Primary Function.)

(c) If alterations of single elements, when considered together, amount to an alteration of a room or space in a building or facility, the entire space shall be made accessible.

(d) No alteration of an existing element, space, or area of a building or facility shall impose a requirement for greater accessibility than that which would be required for new construction. For example, if the elevators and stairs in a building are being altered and the elevators are, in turn, being made accessible, then no accessibility modifications are required to the stairs connecting levels connected by the elevator. If stair modifications to correct unsafe conditions are required by other codes, the modifications shall be done in compliance with these guidelines unless technically infeasible.

(e) At least one interior public text telephone complying with 4.31.9 shall be provided if:

(i) alterations to existing buildings or facilities with less than four exterior or interior public pay telephones would increase the total number to four or more telephones with at least one in an interior location; or

(ii) alterations to one or more exterior or interior public pay telephones occur in an existing building or facility with four or more public telephones with at least one in an interior location.

(f) If an escalator or stair is planned or installed where none existed previously and major structural modifications are necessary for such installation, then a means of accessible vertical access shall be provided that complies with the applicable provisions of 4.7, 4.8, 4.10, or 4.11.

(g) In alterations, the requirements of 4.1.3(9), 4.3.10 and 4.3.11 do not apply.

(h)*Entrances: If a planned alteration entails alterations to an entrance, and the building has an accessible entrance, the entrance being altered is not required to comply with 4.1.3(8), except to the extent required by 4.1.6(2). If a particular entrance is not made accessible, appropriate accessible signage indicating the location of the nearest accessible entrance(s) shall be installed at or near the inaccessible entrance, such that a person with disabilities will not be required to retrace the approach route from the inaccessible entrance.

(i) If the alteration work is limited solely to the electrical, mechanical, or plumbing system, or to hazardous material abatement, or automatic sprinkler retrofitting, and does not involve the alteration of any elements or spaces required to be accessible under these guidelines, then 4.1.6(2) does not apply.

(j) EXCEPTION: In alteration work, if compliance with 4.1.6 is technically infeasible, the alteration shall provide accessibility to the maximum extent feasible. Any elements or features of the building or facility that are being altered and can be made accessible shall be made accessible within the scope of the alteration.

Technically Infeasible. Means, with respect to an alteration of a building or a facility, that it has little likelihood of being accomplished because existing structural conditions would require removing or altering a load-bearing member which is an essential part of the structural frame; or because other existing physical or site constraints prohibit modification or addition of elements, spaces, or features which are in full and strict compliance with the minimum requirements for new construction and which are necessary to provide accessibility.

(k) EXCEPTION:

(i) These guidelines do not require the installation of an elevator in an altered facility that is less than three stories or has less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, the professional office of a health care provider, or another type of facility as determined by the Attorney General.

(ii) The exemption provided in paragraph (i) does not obviate or limit in any way the obligation to comply with the other accessibility requirements established in these guidelines. For example, alterations to floors above or below the ground floor must be accessible regardless of whether the altered facility has an elevator. If a facility subject to the elevator exemption set forth in paragraph (i) nonetheless has a full passenger elevator, that elevator shall meet, to the maximum extent feasible, the accessibility requirements of these guidelines.

(2) Alterations to an Area Containing a Primary Function: In addition to the requirements of 4.1.6(1), an alteration that affects or could affect the usability of or access to an area containing a primary function shall be made so as to ensure that, to the maximum extent feasible, the path of travel to the altered area and the restrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, unless such alterations are disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(3) Special Technical Provisions for Alterations to Existing Buildings and Facilities:

(a) Ramps: Curb ramps and interior or exterior ramps to be constructed on sites or in existing buildings or facilities where space limitations prohibit the use of a 1:12 slope or less may have slopes and rises as follows:

(i) A slope between 1:10 and 1:12 is allowed for a maximum rise of 6 inches.

(ii) A slope between 1:8 and 1:10 is allowed for a maximum rise of 3 inches. A slope steeper than 1:8 is not allowed.

(b) Stairs: Full extension of handrails at stairs shall not be required in alterations where such extensions would be hazardous or impossible due to plan configuration.

(c) Elevators:

(i) If safety door edges are provided in existing automatic elevators, automatic door reopening devices may be omitted (see 4.10.6).

(ii) Where existing shaft configuration or technical infeasibility prohibits strict compliance with 4.10.9, the minimum car plan dimensions may be reduced by the minimum amount necessary, but in no case shall the inside car area be smaller than 48 in by 48 in.

(iii) Equivalent facilitation may be provided with an elevator car of different dimensions when usability can be demonstrated and when all other elements required to be accessible comply with the applicable provisions of 4.10. For example, an elevator of 47 in by 69 in (1195 mm by 1755 mm) with a door opening on the narrow dimension, could accommodate the standard wheelchair clearances shown in Figure 4.

(d) Doors:

(i) Where it is technically infeasible to comply with clear opening width requirements of 4.13.5, a projection of 5/8 in maximum will be permitted for the latch side stop.

(ii) If existing thresholds are 3/4 in high or less, and have (or are modified to have) a beveled edge on each side, they may remain.

(e) Toilet Rooms:

(i) Where it is technically infeasible to comply with 4.22 or 4.23, the installation of at least one unisex toilet/bathroom per floor, located in the same area as existing toilet facilities, will be permitted in lieu of modifying existing toilet facilities to be accessible. Each unisex toilet room shall contain one water closet complying with 4.16 and one lavatory complying with 4.19, and the door shall have a privacy latch.

(ii) A slope between 1:8 and 1:10 is
wed for a maximum rise of 3 inches. A
pe steeper than 1:8 is not allowed.

(b) Stairs: Full extension of handrails at
rs shall not be required in alterations where
h extensions would be hazardous or impos-
e due to plan configuration.

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ensions may be reduced by the minimum
unt necessary, but in no case shall the
de car area be smaller than 48 in by 48 in.

(iii) Equivalent facilitation may be pro-
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s when usability can be demonstrated and
n all other elements required to be acces-
e comply with the applicable provisions of
. For example, an elevator of 47 in by 69 in
5 mm by 1755 mm) with a door opening on
narrow dimension, could accommodate the
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re 4.

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13.5, a projection of 5/8 in maximum will
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ies, will be permitted in lieu of modifying
ng toilet facilities to be accessible. Each
x toilet room shall contain one water
complying with 4.16 and one lavatory
lying with 4.19, and the door shall have
acy latch.

(ii) Where it is technically infeasible to install a required standard stall (Fig. 30(a)), or where other codes prohibit reduction of the fixture count (i.e., removal of a water closet in order to create a double-wide stall), either alternate stall (Fig.30(b)) may be provided in lieu of the standard stall.

(iii) When existing toilet or bathing facilities are being altered and are not made accessible, signage complying with 4.30.1, 4.30.2, 4.30.3, 4.30.5, and 4.30.7 shall be provided indicating the location of the nearest accessible toilet or bathing facility within the facility.

(f) Assembly Areas:

(i) Where it is technically infeasible to disperse accessible seating throughout an altered assembly area, accessible seating areas may be clustered. Each accessible seating area shall have provisions for companion seating and shall be located on an accessible route that also serves as a means of emergency egress.

(ii) Where it is technically infeasible to alter all performing areas to be on an accessible route, at least one of each type of performing area shall be made accessible.

(g) Platform Lifts (Wheelchair Lifts): In alterations, platform lifts (wheelchair lifts) complying with 4.11 and applicable state or local codes may be used as part of an accessible route. The use of lifts is not limited to the four conditions in exception 4 of 4.1.3(5).

(h) Dressing Rooms: In alterations where technical infeasibility can be demonstrated, one dressing room for each sex on each level shall be made accessible. Where only unisex dressing rooms are provided, accessible unisex dressing rooms may be used to fulfill this requirement.

4.1.7 Accessible Buildings: Historic Preservation.

(1) Applicability:

(a) General Rule. Alterations to a qualified historic building or facility shall comply with 4.1.6 Accessible Buildings: Alterations, the applicable technical specifications of 4.2 through 4.35 and the applicable special application sections 5 through 10 unless it is determined in accordance with the procedures in 4.1.7(2) that compliance with the requirements for accessible routes (exterior and interior), ramps, entrances, or toilets would threaten or destroy the historic significance of the building or facility in which case the alternative requirements in 4.1.7(3) may be used for the feature.

EXCEPTION: (Reserved).

(b) Definition. A qualified historic building or facility is a building or facility that is:

(i) Listed in or eligible for listing in the National Register of Historic Places; or

(ii) Designated as historic under an appropriate State or local law.

(2) Procedures:

(a) Alterations to Qualified Historic Buildings and Facilities Subject to Section 106 of the National Historic Preservation Act:

(i) Section 106 Process. Section 106 of the National Historic Preservation Act (16 U.S.C. 470 f) requires that a Federal agency with jurisdiction over a Federal, federally assisted, or federally licensed undertaking consider the effects of the agency's undertaking on buildings and facilities listed in or eligible for listing in the National Register of Historic Places and give the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking prior to approval of the undertaking.

(ii) ADA Application. Where alterations are undertaken to a qualified historic building or facility that is subject to section 106 of the National Historic Preservation Act, the Federal agency with jurisdiction over the undertaking shall follow the section 106 process. If the State Historic Preservation Officer or Advisory Council on Historic Preservation agrees that compliance with the requirements for accessible routes (exterior and interior), ramps, entrances, or toilets would threaten or destroy the historic significance of the building or facility, the alternative requirements in 4.1.7(3) may be used for the feature.

(b) Alterations to Qualified Historic Buildings and Facilities Not Subject to Section 106 of the National Historic Preservation Act. Where alterations are undertaken to a qualified historic building or facility that is not subject to section 106 of the National Historic Preservation Act, if the entity undertaking the alterations believes that compliance with the requirements for accessible routes (exterior and interior), ramps, entrances, or toilets would threaten or destroy the historic significance of the building or facility and that the alternative requirements in 4.1.7(3) should be used for the feature, the entity should consult with the State Historic Preservation Officer. If the State Historic Preservation Officer agrees that compliance with the accessibility requirements for accessible routes (exterior and interior), ramps, entrances or toilets would threaten or destroy the historical significance of the building or facility, the alternative requirements in 4.1.7(3) may be used.

(c) Consultation With Interested Persons. Interested persons should be invited to participate in the consultation process, including State or local accessibility officials, individuals with disabilities, and organizations representing individuals with disabilities.

(d) Certified Local Government Historic Preservation Programs. Where the State Historic Preservation Officer has delegated the consultation responsibility for purposes of this section to a local government historic preservation program that has been certified in accordance with section 101(c) of the National Historic Preservation Act of 1966 (16 U.S.C. 470a (c)) and implementing regulations (36 CFR 61.5), the responsibility may be carried out by the appropriate local government body or official.

(3) Historic Preservation: Minimum Requirements:

(a) At least one accessible route complying with 4.3 from a site access point to an accessible entrance shall be provided.

EXCEPTION: A ramp with a slope no greater than 1:6 for a run not to exceed 2 ft (610 mm) may be used as part of an accessible route to an entrance.

(b) At least one accessible entrance complying with 4.14 which is used by the public shall be provided.

EXCEPTION: If it is determined that no entrance used by the public can comply with 4.14, then access at any entrance not used by the general public but open (unlocked) with directional signage at the primary entrance may be used. The accessible entrance shall also have a notification system. Where security is a problem, remote monitoring may be used.

(c) If toilets are provided, then at least one toilet facility complying with 4.22 and 4.1.6 shall be provided along an accessible route that complies with 4.3. Such toilet facility may be unisex in design.

(d) Accessible routes from an accessible entrance to all publicly used spaces on at least the level of the accessible entrance shall be provided. Access shall be provided to all levels of a building or facility in compliance with 4.1 whenever practical.

(e) Displays and written information, documents, etc., should be located where they can be seen by a seated person. Exhibits and signage displayed horizontally (e.g., open books), should be no higher than 44 in (1120 mm) above the floor surface.

NOTE: The technical provisions of sections 4.2 through 4.35 are the same as those of the American National Standard Institute's document A117.1-1980, except as noted in the text.

4.2 Space Allowance and Reach Ranges.

4.2.1* Wheelchair Passage Width. The minimum clear width for single wheelchair passage shall be 32 in (815 mm) at a point and 36 in (915 mm) continuously (see Fig. 1 and 24(e)).

4.2.2 Width for Wheelchair Passing. The minimum width for two wheelchairs to pass is 60 in (1525 mm) (see Fig. 2).

4.2.3* Wheelchair Turning Space. The space required for a wheelchair to make a 180-degree turn is a clear space of 60 in (1525 mm) diameter (see Fig. 3(a)) or a T-shaped space (see Fig. 3(b)).

4.2.4* Clear Floor or Ground Space for Wheelchairs.

4.2.4.1 Size and Approach. The minimum clear floor or ground space required to accommodate a single, stationary wheelchair and occupant is 30 in by 48 in (760 mm by 1220 mm) (see Fig. 4(a)). The minimum clear floor or ground space for wheelchairs may be positioned for forward or parallel approach to an object (see Fig. 4(b) and (c)). Clear floor or ground space for wheelchairs may be part of the knee space required under some objects.

4.2.4.2 Relationship of Maneuvering Clearance to Wheelchair Spaces. One full unobstructed side of the clear floor or ground space for a wheelchair shall adjoin or overlap an accessible route or adjoin another wheelchair clear floor space. If a clear floor space is located in an alcove or otherwise confined on all or part of three sides, additional maneuvering clearances shall be provided as shown in Fig. 4(d) and (e).

4.2.4.3 Surfaces for Wheelchair Spaces. Clear floor or ground spaces for wheelchairs shall comply with 4.5.

4.2.5* Forward Reach. If the clear floor space only allows forward approach to an object, the maximum high forward reach allowed shall be 48 in (1220 mm) (see Fig. 5(a)). *The minimum low forward reach is 15 in (380 mm).* If the high forward reach is over an obstruction, reach and clearances shall be as shown in Fig. 5(b).

4.2.6* Side Reach. If the clear floor space allows parallel approach by a person in a wheelchair, the maximum high side reach allowed shall be 54 in (1370 mm) and the low side reach shall be no less than 9 in (230 mm) above the floor (Fig. 6(a) and (b)). If the side reach is over an obstruction, the reach and clearances shall be as shown in Fig 6(c).

4.3 Accessible Route.

4.3.1* General. All walks, halls, corridors, aisles, *skywalks, tunnels,* and other spaces

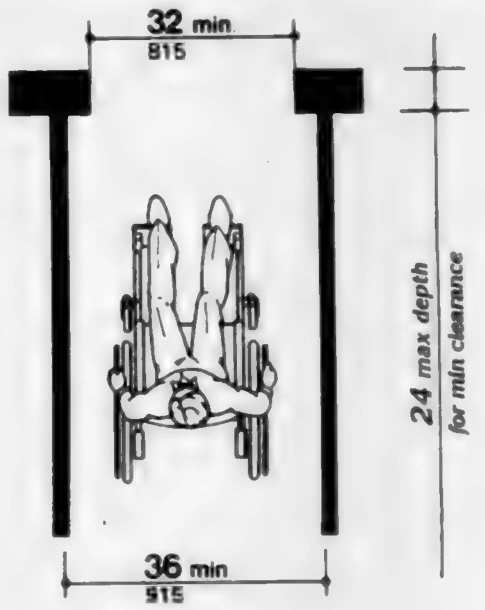

Fig. 1
Minimum Clear Width
for Single Wheelchair

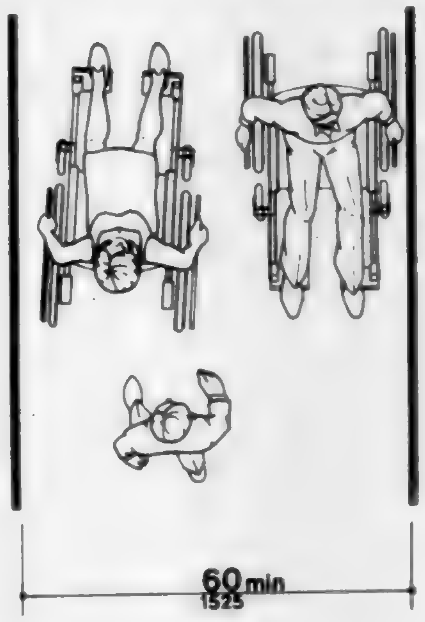

Fig. 2
Minimum Clear Width
for Two Wheelchairs

4.3 Accessible Route

that are part of an accessible route shall comply with 4.3.

4.3.2 Location.

(1) At least one accessible route *within the boundary of the site* shall be provided from public transportation stops, accessible parking, and accessible passenger loading zones, and public streets or sidewalks to the accessible building entrance they serve. *The accessible route shall, to the maximum extent feasible, coincide with the route for the general public.*

(2) At least one accessible route shall connect accessible buildings, facilities, elements, and spaces that are on the same site.

(3) At least one accessible route shall connect accessible building or facility entrances with all accessible spaces and elements and with all accessible dwelling units within the building or facility.

(4) An accessible route shall connect at least one accessible entrance of each accessible dwelling unit with those exterior and interior spaces and facilities that serve the accessible dwelling unit.

4.3.3 Width. The minimum clear width of an accessible route shall be 36 in (915 mm) except at doors (see 4.13.5 and 4.13.6). If a person in a wheelchair must make a turn around an obstruction, the minimum clear width of the accessible route shall be as shown in Fig. 7(a) and (b).

4.3.4 Passing Space. If an accessible route has less than 60 in (1525 mm) clear width, then passing spaces at least 60 in by 60 in (1525 mm by 1525 mm) shall be located at reasonable intervals not to exceed 200 ft (61 m). A T-intersection of two corridors or walks is an acceptable passing place.

4.3.5 Head Room. Accessible routes shall comply with 4.4.2.

4.3.6 Surface Textures. The surface of an accessible route shall comply with 4.5.

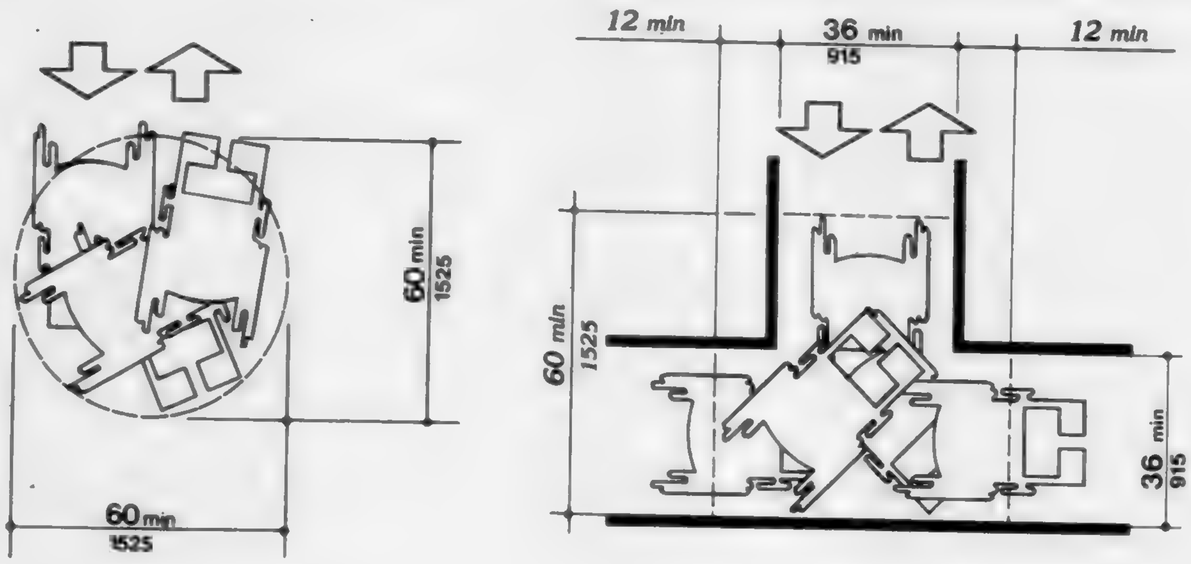

(a)
60-in (1525-mm)-Diameter Space

(b)
T-Shaped Space for 180° Turns

Fig. 3
Wheelchair Turning Space

lling unit with those exterior and interior
ces and facilities that serve the accessible
lling unit.

3 Width. The minimum clear width of an
ssible route shall be 36 in (915 mm) except
oors (see 4.13.5 and 4.13.6). If a person in
heelchair must make a turn around an
ruction, the minimum clear width of the
ssible route shall be as shown in Fig. 7(a)
(b).

4 Passing Space. If an accessible route
less than 60 in (1525 mm) clear width,
passing spaces at least 60 in by 60 in
5 mm by 1525 mm) shall be located at
onable intervals not to exceed 200 ft (61 m).
ntersection of two corridors or walks is an
ptable passing place.

5 Head Room. Accessible routes shall
ply with 4.4.2.

3 Surface Textures. The surface of an
ssible route shall comply with 4.5.

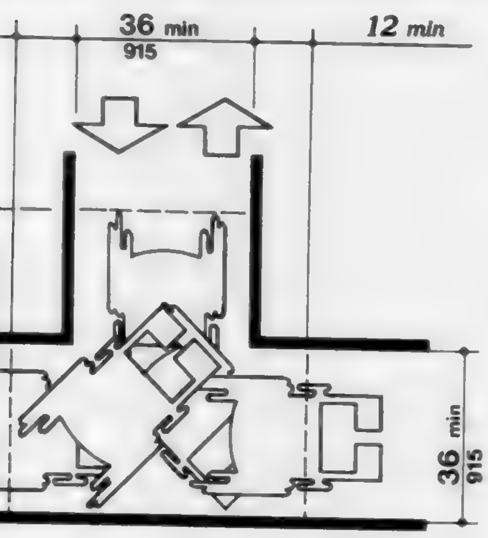

(b)
T-Shaped Space for 180° Turns

ace

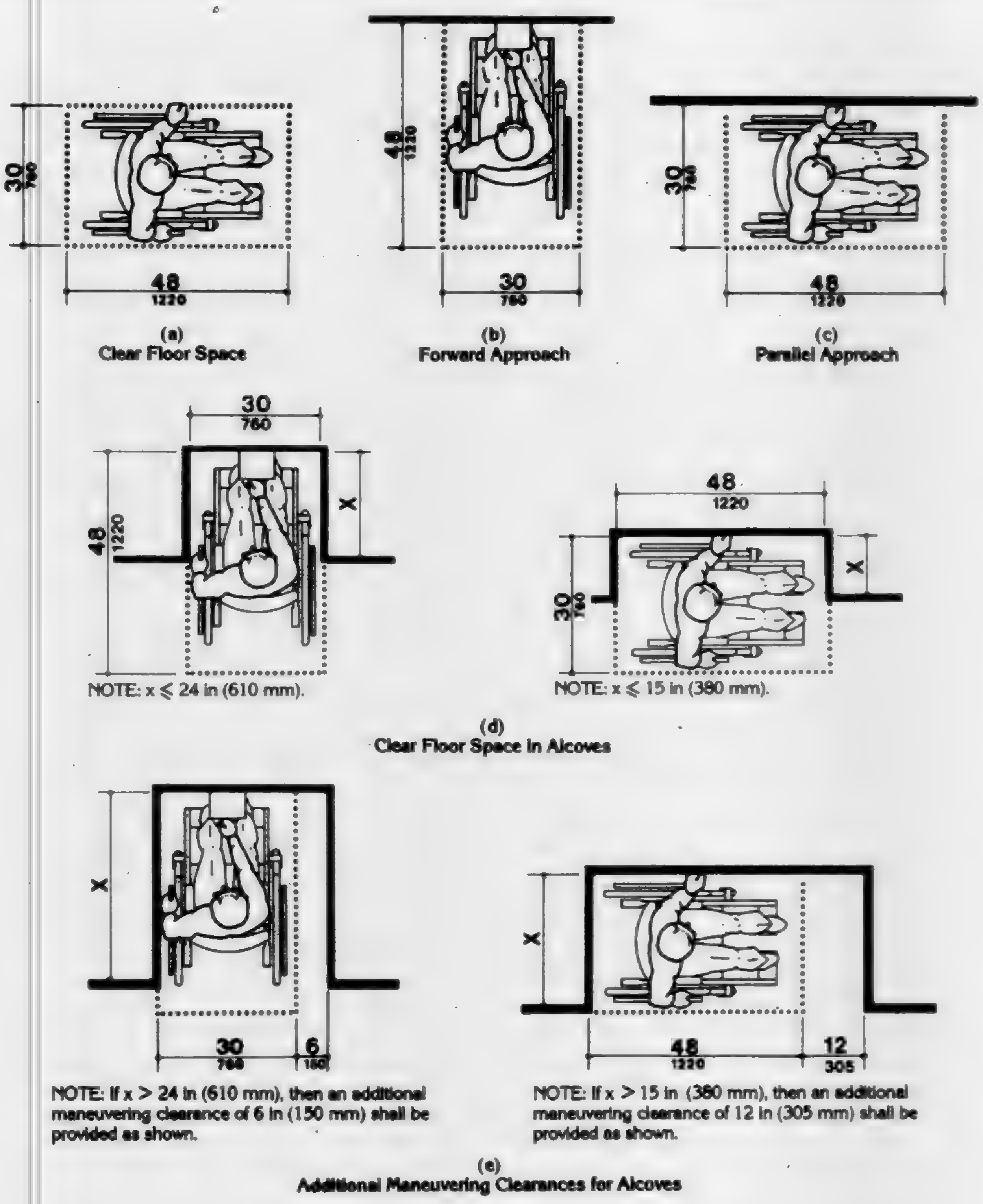

(a)
Clear Floor Space

(b)
Forward Approach

(c)
Parallel Approach

NOTE: x ≤ 24 in (610 mm).

NOTE: x ≤ 15 in (380 mm).

(d)
Clear Floor Space in Alcoves

NOTE: If x > 24 in (610 mm), then an additional maneuvering clearance of 6 in (150 mm) shall be provided as shown.

NOTE: If x > 15 in (380 mm), then an additional maneuvering clearance of 12 in (305 mm) shall be provided as shown.

(e)
Additional Maneuvering Clearances for Alcoves

Fig. 4
Minimum Clear Floor Space for Wheelchairs

4.3 Accessible Route

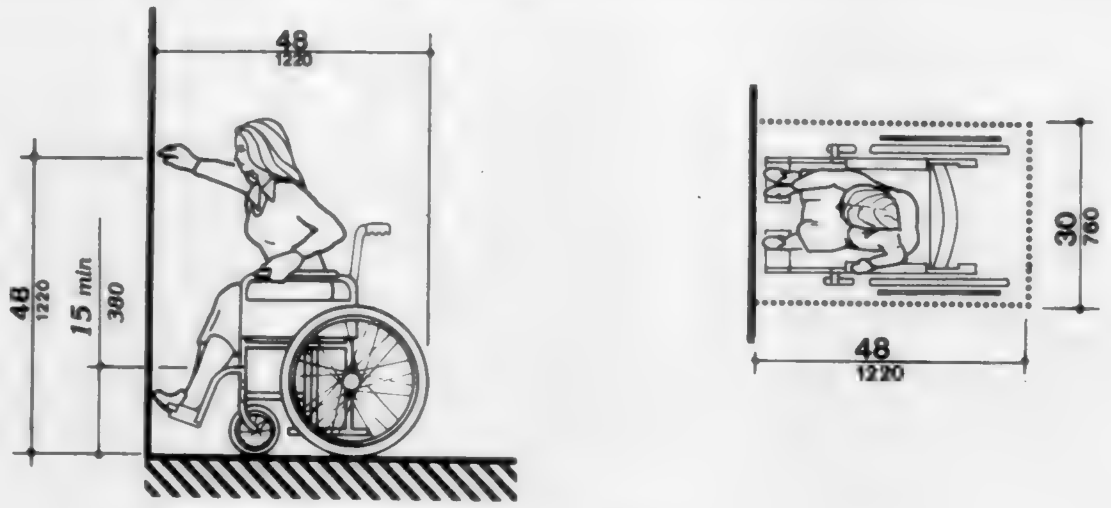
48
1220
48
1220
15 min
380
30
760
48
1220

(a)
High Forward Reach Limit

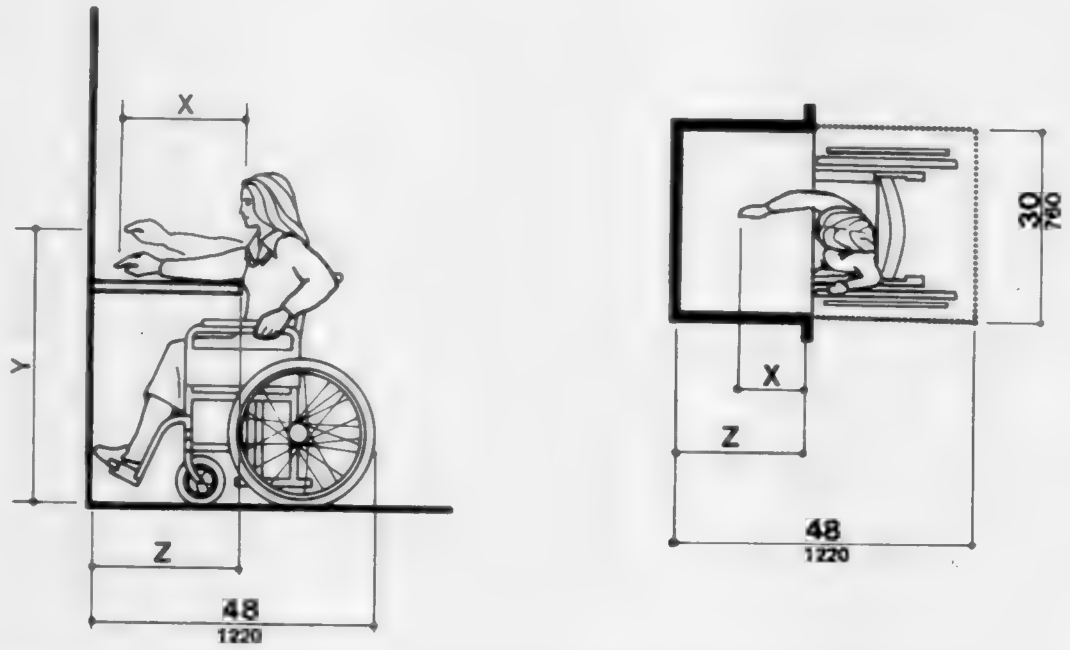
X
Y
Z
48
1220
30
760
X
Z
48
1220

NOTE: x shall be ≤ 25 in (635 mm); z shall be ≥ x. When x < 20 in (510 mm), then y shall be 48 in (1220 mm) maximum. When x is 20 to 25 in (510 to 635 mm), then y shall be 44 in (1120 mm) maximum.

(b)
Maximum Forward Reach over an Obstruction

Fig. 5
Forward Reach

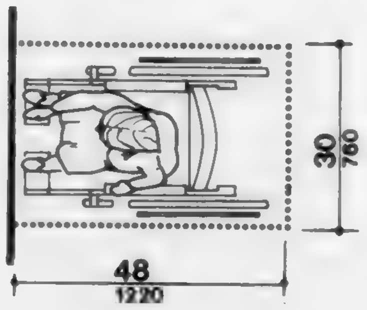
30
760
48
1220

Limit

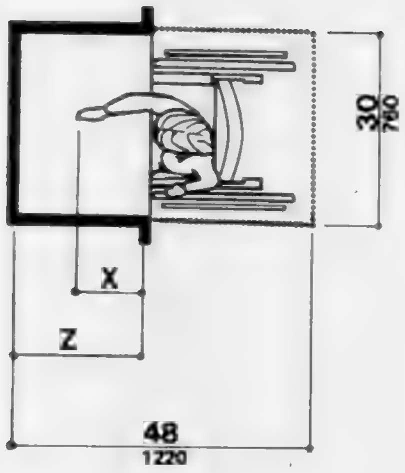
30
760
X
Z
48
1220

0 mm), then y shall be 48 in (1220 mm) maximum.
) maximum.

n Obstruction

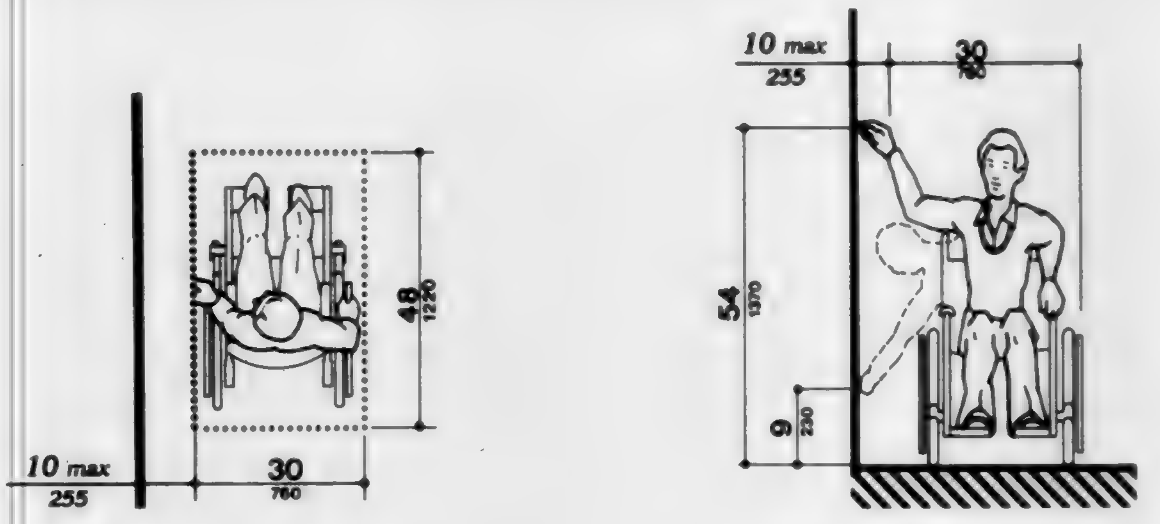
10 max
255
30
760
48
1220
10 max
255
30
760
54
1370
9
230

(a)
Clear Floor Space Parallel Approach

(b)
High and Low Side Reach Limits

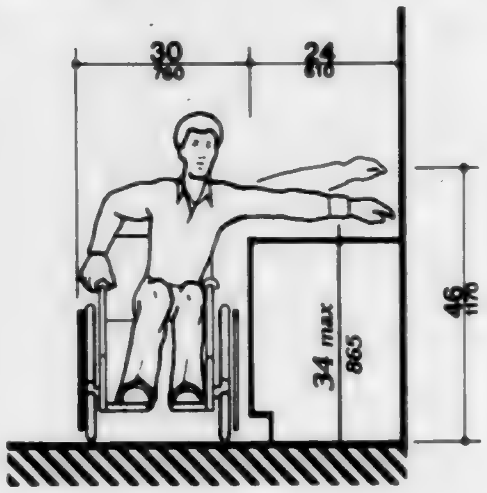
30
760
24
610
34 max
865
46
1170

(c)
Maximum Side Reach over Obstruction

Fig. 6
Side Reach

4.3.7 Slope. An accessible route with a running slope greater than 1:20 is a ramp and shall comply with 4.8. Nowhere shall the cross slope of an accessible route exceed 1:50.

4.3.8 Changes in Levels. Changes in levels along an accessible route shall comply with 4.5.2. If an accessible route has changes in level greater than 1/2 in (13 mm), then a curb ramp, ramp, elevator, or platform lift *(as permitted in 4.1.3 and 4.1.6)* shall be provided that complies with 4.7, 4.8, 4.10, or 4.11, respectively. An accessible route does not include stairs, steps, or escalators. See definition of "egress, means of" in 3.5.

4.3.9 Doors. Doors along an accessible route shall comply with 4.13.

4.3.10* Egress

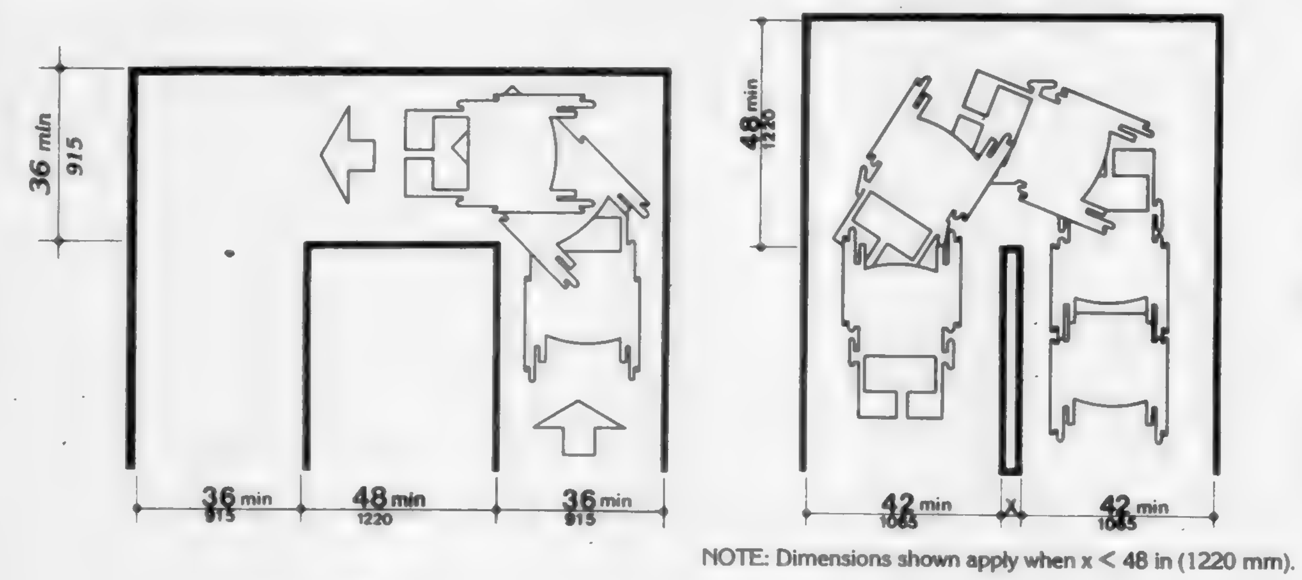

NOTE: Dimensions shown apply when x < 48 in (1220 mm).

(a)
90°Turn

(b)
Turns around an Obstruction

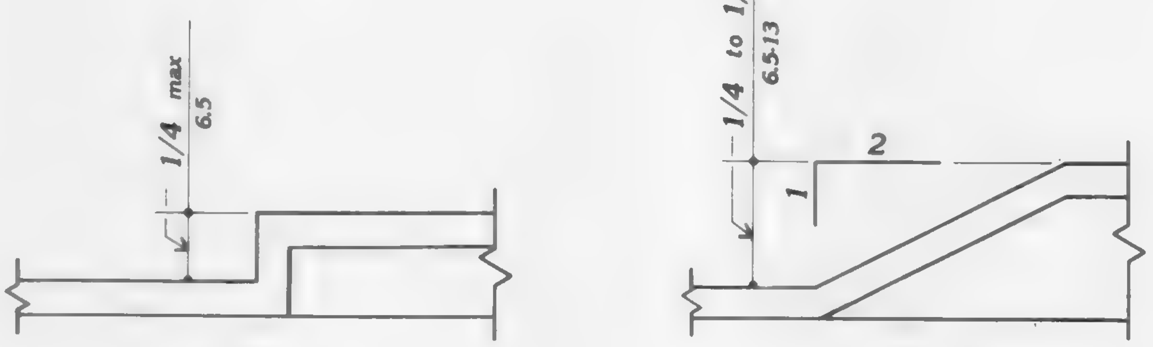

(c)
Changes in level

(d)
Changes in level

Fig. 7
Accessible Route

4.3.10* Egress. Accessible routes serving any accessible space or element shall also serve as a means of egress for emergencies or connect to an accessible area of *rescue assistance.*

4.3.11 Areas of Rescue Assistance.

4.3.11.1 Location and Construction. *An area of rescue assistance shall be one of the following:*

(1) A portion of a stairway landing within a smokeproof enclosure (complying with local requirements).

(2) A portion of an exterior exit balcony located immediately adjacent to an exit stairway when the balcony complies with local requirements for exterior exit balconies. Openings to the interior of the building located within 20 feet (6 m) of the

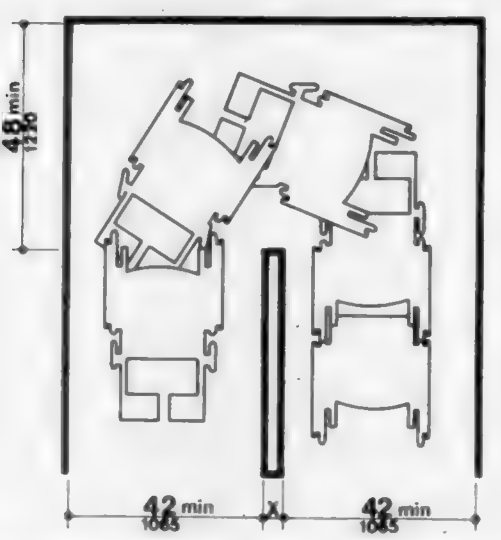

TE: Dimensions shown apply when x < 48 in (1220 mm).

(b)
Turns around an Obstruction

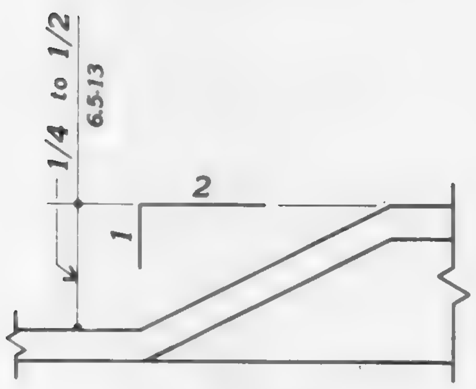

(d)
Changes in level

te

A portion of a stairway landing within a eproof enclosure (complying with local rements).

A portion of an exterior exit balcony located ediately adjacent to an exit stairway when alcony complies with local requirements for ior exit balconies. Openings to the interior of uilding located within 20 feet (6 m) of the

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area of rescue assistance shall be protected with fire assemblies having a three-fourths hour fire protection rating.

(3) A portion of a one-hour fire-resistive corridor (complying with local requirements for fire-resistive construction and for openings) located immediately adjacent to an exit enclosure.

(4) A vestibule located immediately adjacent to an exit enclosure and constructed to the same fire-resistive standards as required for corridors and openings.

(5) A portion of a stairway landing within an exit enclosure which is vented to the exterior and is separated from the interior of the building with not less than one-hour fire-resistive doors.

(6) When approved by the appropriate local authority, an area or a room which is separated from other portions of the building by a smoke barrier. Smoke barriers shall have a fire-resistive rating of not less than one hour and shall completely enclose the area or room. Doors in the smoke barrier shall be tight-fitting smoke- and draft-control assemblies having a fire-protection rating of not less than 20 minutes and shall be self-closing or automatic closing. The area or room shall be provided with an exit directly to an exit enclosure. Where the room or area exits into an exit enclosure which is required to be of more than one-hour fire-resistive construction, the room or area shall have the same fire-resistive construction, including the same opening protection, as required for the adjacent exit enclosure.

(7) An elevator lobby when elevator shafts and adjacent lobbies are pressurized as required for smokeproof enclosures by local regulations and when complying with requirements herein for size, communication, and signage. Such pressurization system shall be activated by smoke detectors on each floor located in a manner approved by the appropriate local authority. Pressurization equipment and its duct work within the building shall be separated from other portions of the building by a minimum two-hour fire-resistive construction.

4.3.11.2 Size. *Each area of rescue assistance shall provide at least two accessible areas each being not less than 30 inches by 48 inches (760 mm by 1220 mm). The area of rescue assistance shall not encroach on any required exit width. The total number of such 30-inch by 48-inch (760 mm by 1220 mm) areas per story shall be not less than one for every 200 persons of calculated occupant load served by the area of rescue assistance.*

EXCEPTION: The appropriate local authority may reduce the minimum number of 30-inch by 48-inch (760 mm by 1220 mm) areas to one for each area of rescue assistance on floors where the occupant load is less than 200.

4.3.11.3* Stairway Width. *Each stairway adjacent to an area of rescue assistance shall have a minimum clear width of 48 inches between handrails.*

4.3.11.4* Two-way Communication. *A method of two-way communication, with both visible and audible signals, shall be provided between each area of rescue assistance and the primary entry. The fire department or appropriate local authority may approve a location other than the primary entry.*

4.3.11.5 Identification. *Each area of rescue assistance shall be identified by a sign which states "AREA OF RESCUE ASSISTANCE" and displays the international symbol of accessibility. The sign shall be illuminated when exit sign illumination is required. Signage shall also be installed at all inaccessible exits and where otherwise necessary to clearly indicate the direction to areas of rescue assistance. In each area of rescue assistance, instructions on the use of the area under emergency conditions shall be posted adjoining the two-way communication system.*

4.4 Protruding Objects.

4.4.1* General. Objects projecting from walls (for example, telephones) with their leading edges between 27 in and 80 in (685 mm and 2030 mm) above the finished floor shall protrude no more than 4 in (100 mm) into walks, halls, corridors, passageways, or aisles (see Fig. 8(a)). Objects mounted with their leading edges at or below 27 in (685 mm) above the finished floor may protrude any amount (see Fig. 8(a) and (b)). Free-standing objects mounted on posts or pylons may overhang 12 in (305 mm) maximum from 27 in to 80 in (685 mm to 2030 mm) above the ground or

4.4 Protruding Objects

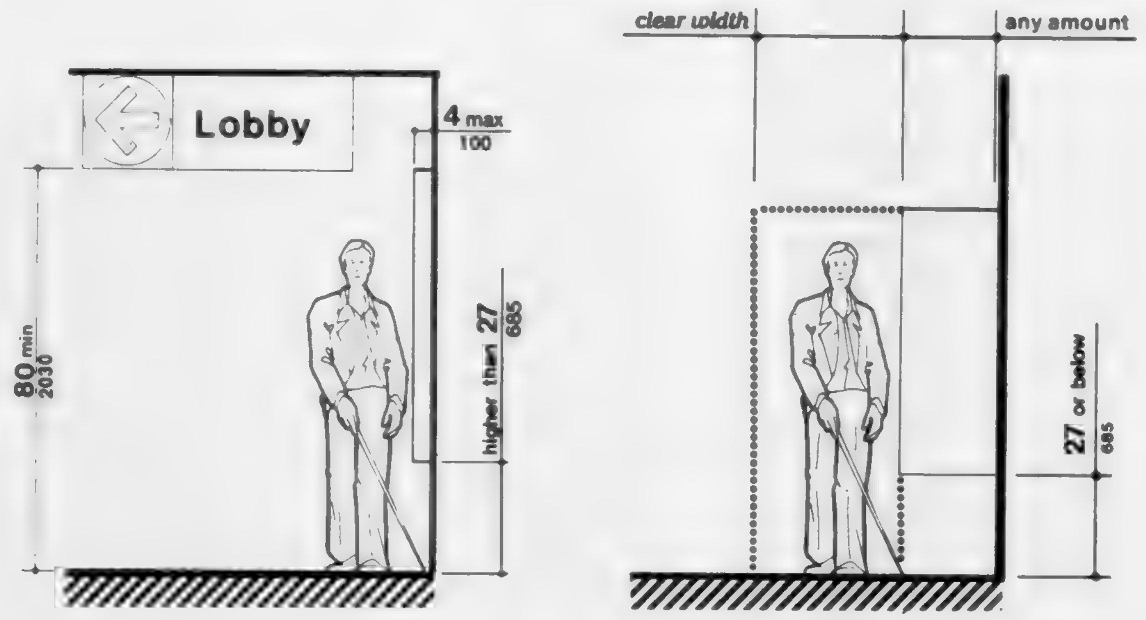

Fig. 8 (a)
Walking Parallel to a Wall

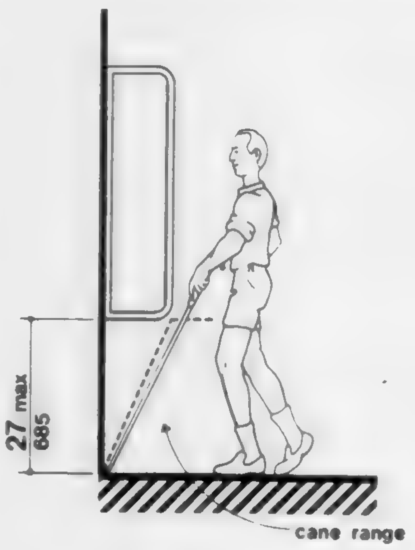

Fig. 8 (b)
Walking Perpendicular to a Wall

Fig. 8
Protruding Objects

finished floor (see Fig. 8(c) and (d)). Protruding objects shall not reduce the clear width of an accessible route or maneuvering space (see Fig. 8(e)).

4.4.2 Head Room. Walks, halls, corridors, passageways, aisles, or other circulation spaces shall have 80 in (2030 mm) minimum clear head room (see Fig. 8(a)). *If vertical clearance of an area adjoining an accessible route is reduced to less than 80 in (nominal dimension), a barrier to warn blind or visually-impaired persons shall be provided (see Fig. 8(c-1)).*

4.5 Ground and Floor Surfaces.

4.5.1* General. Ground and floor surfaces along accessible routes and in accessible rooms and spaces including floors, walks, ramps, stairs, and curb ramps, shall be stable, firm, slip-resistant, and shall comply with 4.5.

4.5.2 Changes in Level. Changes in level up to 1/4 in (6 mm) may be vertical and without edge treatment *(see Fig. 7(c)).* Changes in level between 1/4 in and 1/2 in (6 mm and 13 mm)

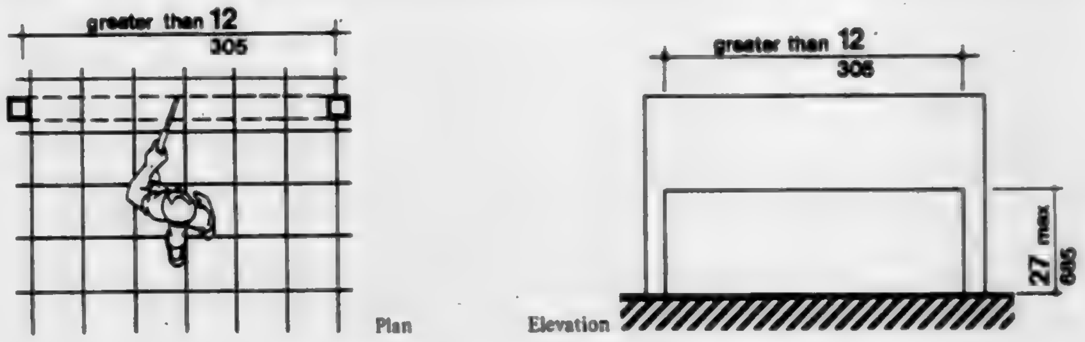
greater than 12
305
Plan
greater than 12
305
27 max
685
Elevation

Fig. 8 (c) Free-Standing Overhanging Objects

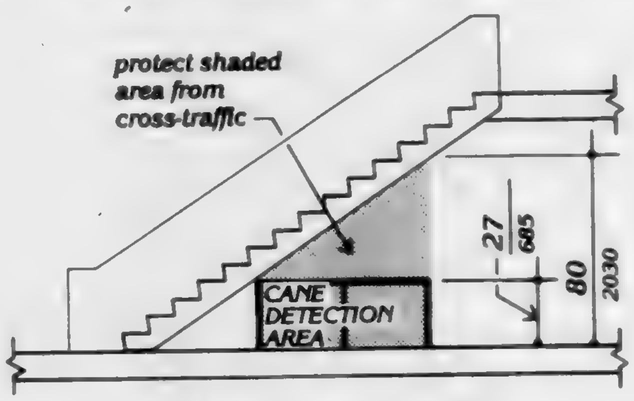
protect shaded area from cross-traffic
CANE DETECTION AREA
27
685
80
2030

Fig. 8 (c-1) Overhead Hazards

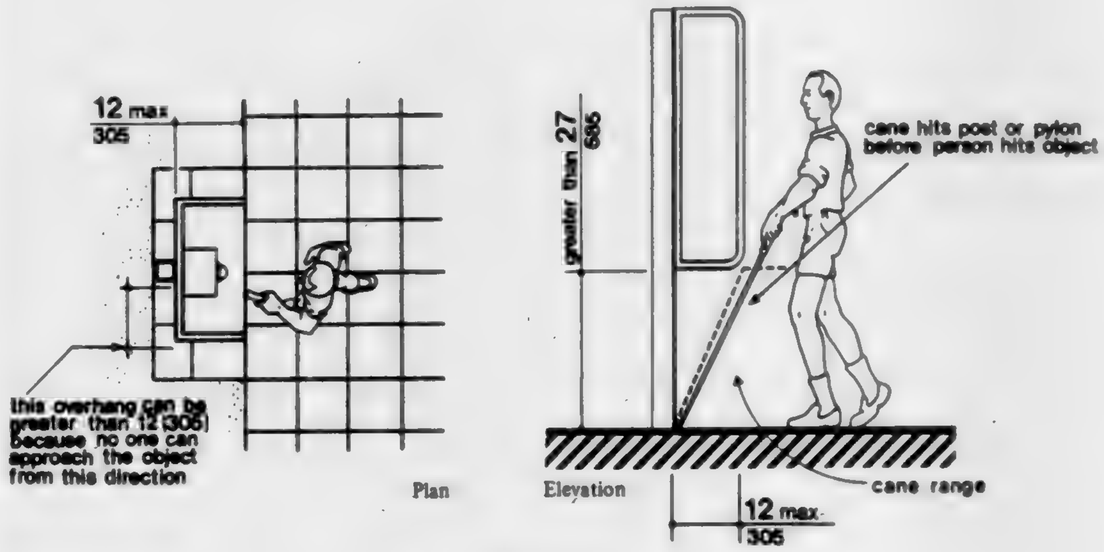
12 max
305
this overhang can be greater than 12 (305) because no one can approach the object from this direction
Plan
greater than 27
685
cane hits post or pylon before person hits object
Elevation
cane range
12 max
305

Fig. 8 (d)
Objects Mounted on Posts or Pylons

Fig. 8
Protruding Objects *(Continued)*

4.5 Ground and Floor Surfaces

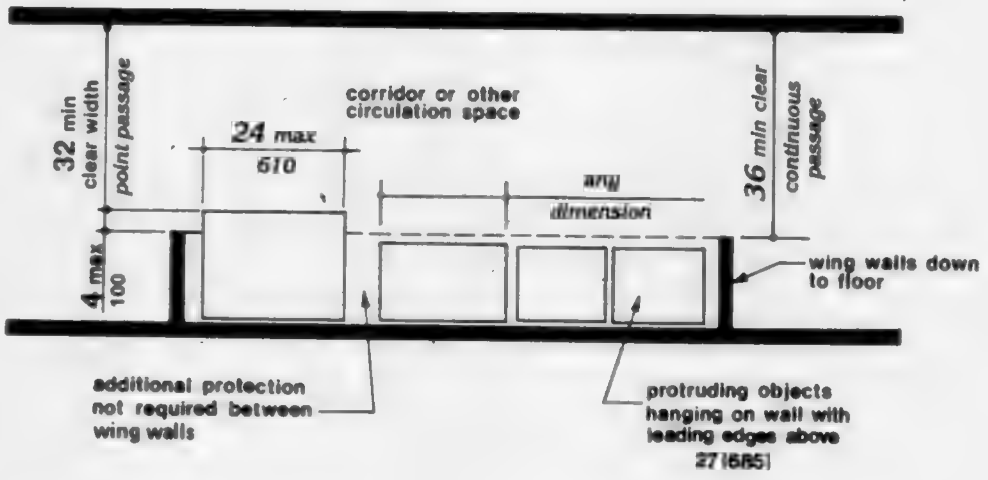
32 min
clear width
point passage
corridor or other
circulation space
24 max
610
any
dimension
36 min clear
continuous
passage
4 max
100
wing walls down
to floor
additional protection
not required between
wing walls
protruding objects
hanging on wall with
leading edges above
27 [685]

Fig. 8 (e)
Example of Protection around Wall-Mounted Objects and Measurements of Clear Widths

Fig. 8
Protruding Objects *(Continued)*

shall be beveled with a slope no greater than 1:2 *(see Fig. 7(d))*. Changes in level greater than 1/2 in (13 mm) shall be accomplished by means of a ramp that complies with 4.7 or 4.8.

4.5.3* Carpet. If carpet or carpet tile is used on a ground or floor surface, then it shall be securely attached; have a firm cushion, pad, or backing, or no cushion or pad; and have a level loop, textured loop, level cut pile, or level cut/uncut pile texture. The maximum pile *thickness* shall be 1/2 in (13 mm) (see Fig. 8(f)). Exposed edges of carpet shall be fastened to floor surfaces and have trim along the entire length of the exposed edge. Carpet edge trim shall comply with 4.5.2.

4.5.4 Gratings. If gratings are located in walking surfaces, then they shall have spaces no greater than 1/2 in (13 mm) wide in one direction *(see Fig. 8(g))*. If gratings have elongated openings, then they shall be placed so that the long dimension is perpendicular to the dominant direction of travel *(see Fig. 8(h))*.

4.6 Parking and Passenger Loading Zones.

4.6.1 Minimum Number. *Parking spaces required to be accessible by 4.1 shall comply with 4.6.2 through 4.6.5. Passenger loading zones required to be accessible by 4.1 shall comply with 4.6.5 and 4.6.6.*

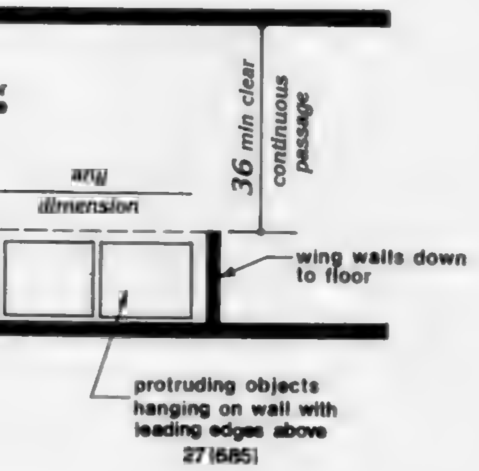
36 min clear
continuous passage
any dimension
wing walls down to floor
protruding objects hanging on wall with leading edges above 27 [685]

and Measurements of Clear Widths

ontinued)

4 Gratings. If gratings are located in
ing surfaces, then they shall have spaces
reater than 1/2 in (13 mm) wide in one
ction *(see Fig. 8(g))*. If gratings have elon-
d openings, then they shall be placed so
the long dimension is perpendicular to the
inant direction of travel *(see Fig. 8(h))*.

**Parking and Passenger Loading
es.**

1 Minimum Number. *Parking spaces
ired to be accessible by 4.1 shall comply
4.6.2 through 4.6.5. Passenger loading
s required to be accessible by 4.1 shall
ly with 4.6.5 and 4.6.6.*

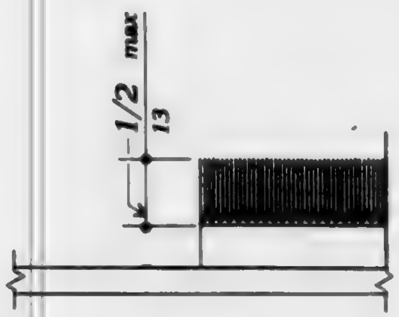

Fig. 8 (f)
Carpet Pile Thickness

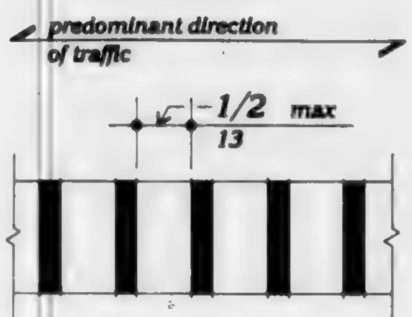

Fig. 8 (g)
Gratings

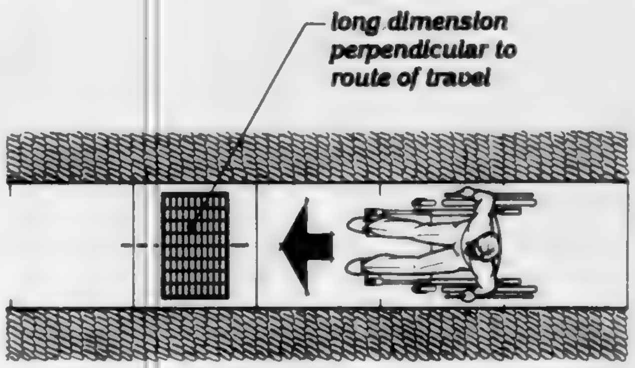

Fig. 8 (h)
Grating Orientation

4.6.2 Location. *Accessible parking spaces serving* a particular building shall be located on the shortest accessible route of travel *from adjacent parking* to an accessible entrance. *In parking facilities* that do not serve a particular building, *accessible parking* shall be located on the shortest accessible route *of travel* to an accessible pedestrian entrance of the parking facility. *In buildings with multiple accessible entrances with adjacent parking, accessible parking spaces shall be dispersed and located closest to the accessible entrances.*

4.6.3* Parking Spaces. *Accessible* parking spaces shall be at least 96 in (2440 mm) wide. Parking access aisles shall be part of an accessible route to the building or facility entrance and shall comply with 4.3. Two accessible parking spaces may share a common access aisle (see Fig. 9). Parked vehicle overhangs shall not reduce the clear width of an accessible route. *Parking spaces and access aisles shall be level with surface slopes not exceeding 1:50 (2%) in all directions.*

4.6.4* Signage. Accessible parking spaces shall be designated as reserved by a sign showing the symbol of accessibility (see 4.30.7). *Spaces complying with 4.1.2(5)(b) shall have an additional sign "Van-Accessible" mounted below the symbol of accessibility.* Such signs shall be *located so they cannot* be obscured by a vehicle parked in the space.

4.6.5* Vertical Clearance. *Provide minimum vertical clearance of 114 in (2895 mm) at accessible passenger loading zones and along at least one vehicle access route to such areas from site entrance(s) and exit(s). At parking spaces complying with 4.1.2(5)(b), provide minimum vertical clearance of 98 in (2490 mm) at the parking space and along at least one vehicle access route to such spaces from site entrance(s) and exit(s).*

4.6.6 Passenger Loading Zones. Passenger loading zones shall provide an access aisle at least *60 in (1525 mm)* wide and 20 ft *(240 in)* *(6100 mm)* long adjacent and parallel to the vehicle pull-up space (see Fig. 10). If there are curbs between the access aisle and the vehicle pull-up space, then a curb ramp complying with 4.7 shall be provided. *Vehicle standing spaces and access aisles shall be level with*

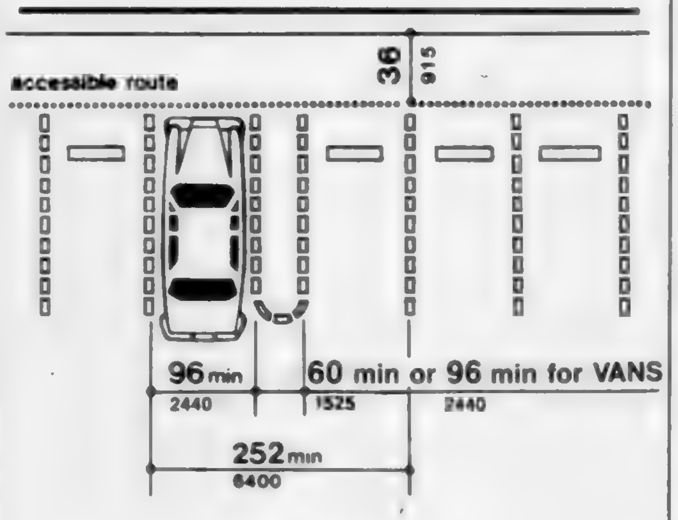

Fig. 9
Dimensions of Parking Spaces

surface slopes not exceeding 1:50 (2%) in all directions.

4.7 Curb Ramps.

4.7.1 Location. Curb ramps complying with 4.7 shall be provided wherever an accessible route crosses a curb.

4.7.2 Slope. Slopes of curb ramps shall comply with 4.8.2. The slope shall be measured as shown in Fig. 11. *Transitions from ramps to walks, gutters, or streets shall be flush and free of abrupt changes. Maximum slopes of adjoining gutters, road surface immediately adjacent to the curb ramp, or accessible route shall not exceed 1:20.*

4.7.3 Width. The minimum width of a curb ramp shall be 36 in (915 mm), exclusive of flared sides.

4.7.4 Surface. Surfaces of curb ramps shall comply with 4.5.

4.7.5 Sides of Curb Ramps. If a curb ramp is located where pedestrians must walk across the ramp, *or where it is not protected by handrails or guardrails*, it shall have flared sides; the maximum slope of the flare shall be 1:10 (see Fig. 12(a)). Curb ramps with returned curbs may be used where pedestrians would not normally walk across the ramp (see Fig. 12(b)).

4.7.6 Built-up Curb Ramps. Built-up curb ramps shall be located so that they do not project into vehicular traffic lanes (see Fig. 13).

4.7.7 *Detectable Warnings.* A curb ramp shall have a *detectable* warning complying with 4.29.2. *The detectable warning shall extend* the full width and depth of the curb ramp.

4.7.8 Obstructions. Curb ramps shall be located or protected to prevent their obstruction by parked vehicles.

4.7.9 Location at Marked Crossings. Curb ramps at marked crossings shall be wholly contained within the markings, excluding any flared sides (see Fig. 15).

4.7.10 Diagonal Curb Ramps. If diagonal (or corner type) curb ramps have returned curbs or other well-defined edges, such edges shall be parallel to the direction of pedestrian flow. The bottom of diagonal curb ramps shall have 48 in (1220 mm) minimum clear space as shown in Fig. 15(c) and (d). If diagonal curb ramps are provided at marked crossings, the 48 in (1220 mm) clear space shall be within the markings (see Fig. 15(c) and (d)). If diagonal curb ramps have flared sides, they shall also have at least a 24 in (610 mm) long segment of straight curb located on each side of the curb ramp and within the marked crossing (see Fig. 15(c)).

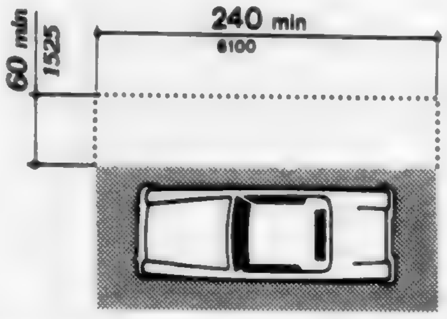

Fig. 10
Access Aisle at Passenger Loading Zones

may be used where pedestrians would not normally walk across the ramp (see Fig. 12(b)).

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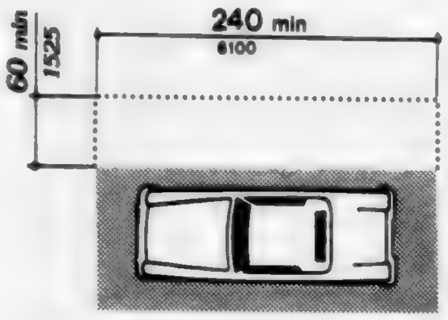

Fig. 10
Access Aisle at Passenger Loading Zones

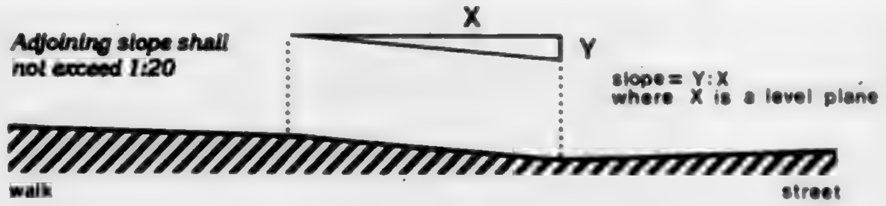

Fig. 11
Measurement of Curb Ramp Slopes

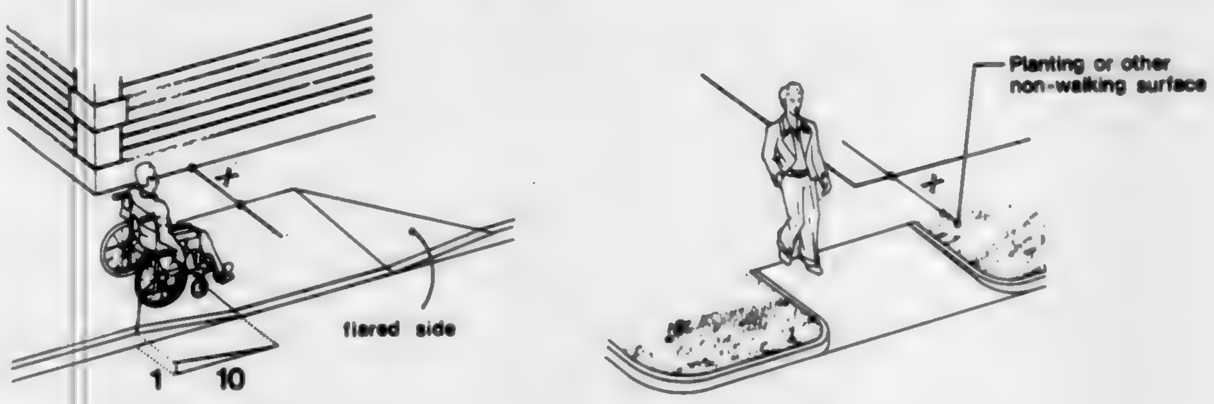

(a)
Flared Sides

(b)
Returned Curb

If X is less than 48 in, then the slope of the flared side shall not exceed 1:12.

Fig. 12
Sides of Curb Ramps

4.7.11 Islands. Any raised islands in crossings shall be cut through level with the street or have curb ramps at both sides and a level area at least 48 in (1220 mm) long between the curb ramps in the part of the island intersected by the crossings (see Fig. 15(a) and (b)).

4.8 Ramps.

4.8.1* General. Any part of an accessible route with a slope greater than 1:20 shall be considered a ramp and shall comply with 4.8.

4.8.2* Slope and Rise. The least possible slope shall be used for any ramp. The maximum slope of a ramp in new construction shall be 1:12. The maximum rise for any run shall be 30 in (760 mm) (see Fig. 16). Curb ramps and ramps to be constructed on existing sites or in existing buildings or facilities may have slopes and rises as *allowed in 4.1.6(3)(a)* if space limitations prohibit the use of a 1:12 slope or less.

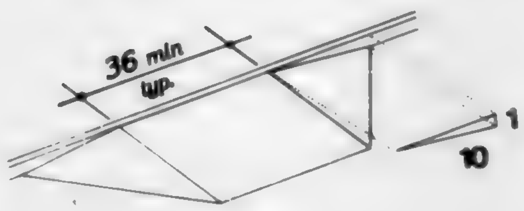

Fig. 13
Built-Up Curb Ramp

4.8 Ramps

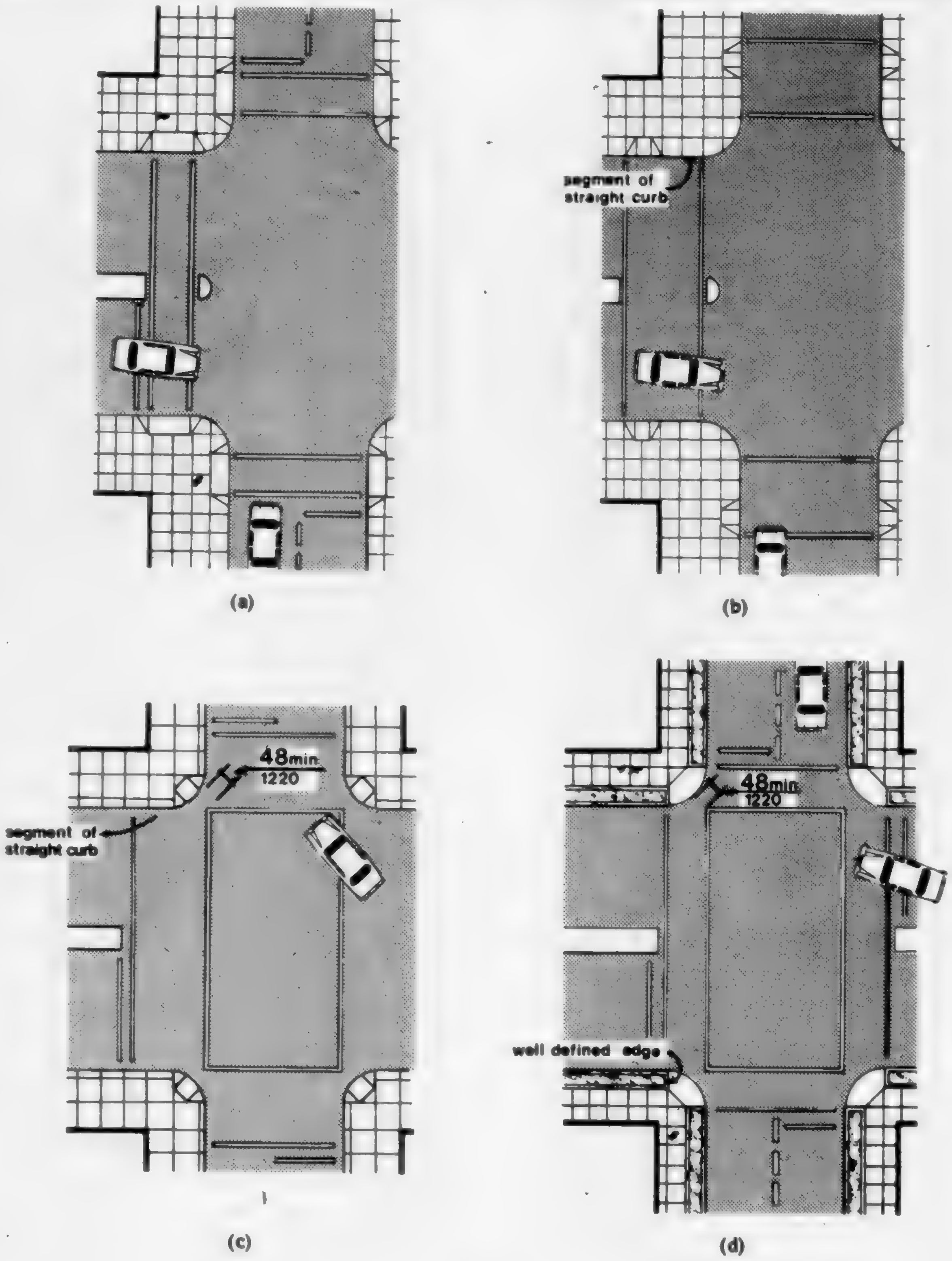
segment of straight curb
48min
1220
segment of straight curb
48min
1220
well defined edge

(a) (b)

(c) (d)

Fig. 15
Curb Ramps at Marked Crossings

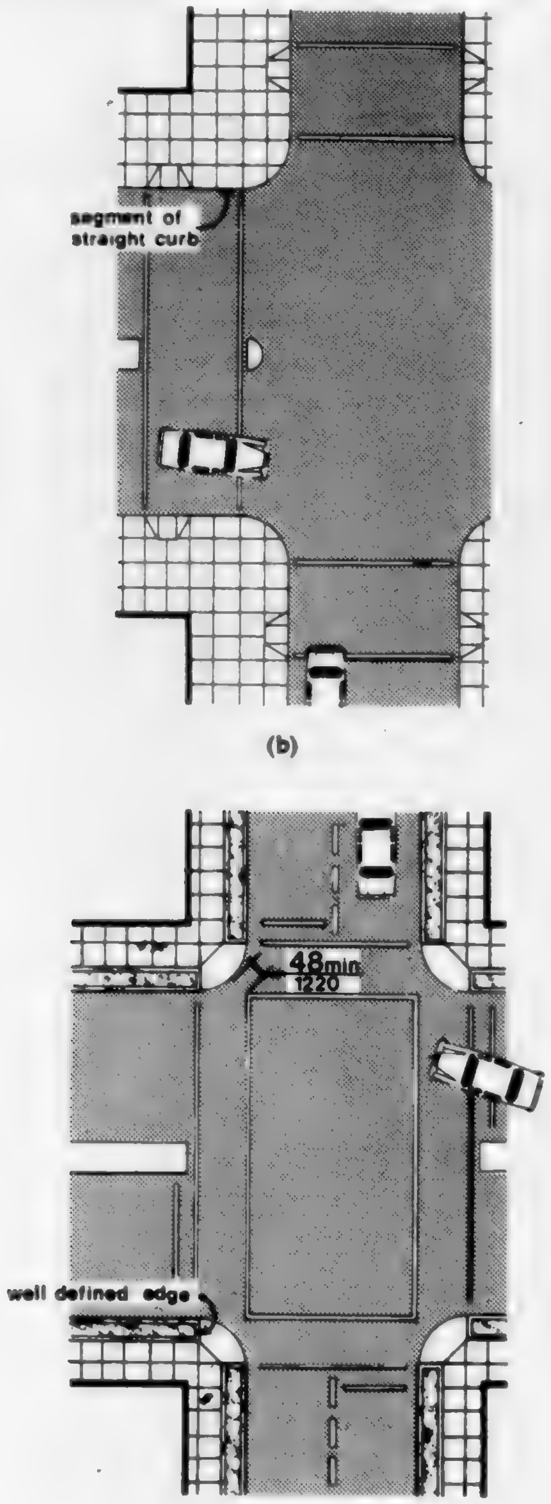

(b)

(d)

Fig. 15
at Marked Crossings

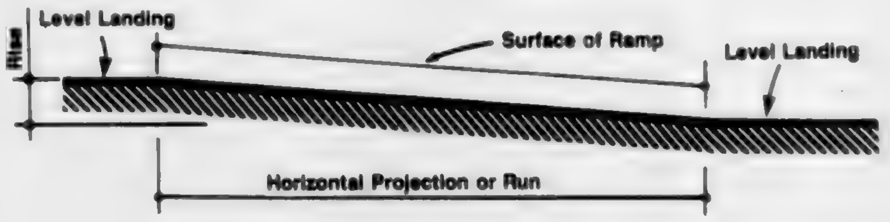

	Maximum Rise		Maximum Horizontal Projection	
Slope	in	mm	ft	m
1:12 to < 1:16	30	760	30	9
1:16 to < 1:20	30	760	40	12

Fig. 16
Components of a Single Ramp Run and Sample Ramp Dimensions

4.8.3 Clear Width. The minimum clear width of a ramp shall be 36 in (915 mm).

4.8.4* Landings. Ramps shall have level landings at bottom and top of *each ramp and* each *ramp* run. Landings shall have the following features:

(1) The landing shall be at least as wide as the ramp run leading to it.

(2) The landing length shall be a minimum of 60 in (1525 mm) clear.

(3) If ramps change direction at landings, the minimum landing size shall be 60 in by 60 in (1525 mm by 1525 mm).

(4) If a doorway is located at a landing, then the area in front of the doorway shall comply with 4.13.6.

4.8.5* Handrails. If a ramp run has a rise greater than 6 in (150 mm) or a horizontal projection greater than 72 in (1830 mm), then it shall have handrails on both sides. Handrails are not required on curb ramps *or adjacent to seating in assembly areas.* Handrails shall comply with 4.26 and shall have the following features:

(1) Handrails shall be provided along both sides of ramp segments. The inside handrail on switchback or dogleg ramps shall always be continuous.

(2) If handrails are not continuous, they shall extend at least 12 in (305 mm) beyond the top and bottom of the ramp segment and shall be parallel with the floor or ground surface (see Fig. 17).

(3) The clear space between the handrail and the wall shall be 1 - 1/2 in (38 mm).

(4) Gripping surfaces shall be continuous.

(5) Top of handrail gripping surfaces shall be mounted between 34 in and 38 in (865 mm and 965 mm) above ramp surfaces.

(6) Ends of handrails shall be either rounded or returned smoothly to floor, wall, or post.

(7) Handrails shall not rotate within their fittings.

4.8.6 Cross Slope and Surfaces. The cross slope of ramp surfaces shall be no greater than 1:50. Ramp surfaces shall comply with 4.5.

4.8.7 Edge Protection. Ramps and landings with drop-offs shall have curbs, walls, railings, or projecting surfaces that prevent people from slipping off the ramp. Curbs shall be a minimum of 2 in (50 mm) high (see Fig. 17).

4.8.8 Outdoor Conditions. Outdoor ramps and their approaches shall be designed so that water will not accumulate on walking surfaces.

4.9 Stairs.

4.9.1* Minimum Number. *Stairs required to be accessible by 4.1 shall comply with 4.9.*

4.9.2 Treads and Risers. On any given flight of stairs, all steps shall have uniform riser heights and uniform tread widths. Stair treads shall be no less than 11 in (280 mm) wide, measured from riser to riser (see Fig. 18(a)). *Open risers are not permitted.*

4.9.3 Nosings. The undersides of nosings shall not be abrupt. The radius of curvature at the leading edge of the tread shall be no greater than 1/2 in (13 mm). Risers shall be sloped or the underside of the nosing shall have an angle not less than 60 degrees from the horizontal. Nosings shall project no more than 1-1/2 in (38 mm) (see Fig. 18).

4.9.4 Handrails. Stairways shall have handrails at both sides of all stairs. Handrails shall comply with 4.26 and shall have the following features:

(1) Handrails shall be continuous along both sides of stairs. The inside handrail on switchback or dogleg stairs shall always be continuous (see Fig. 19(a) and (b)).

(2) If handrails are not continuous, they shall extend at least 12 in (305 mm) beyond the top riser and at least 12 in (305 mm) plus the width of one tread beyond the bottom riser. At the top, the extension shall be parallel with the floor or ground surface. At the bottom, the handrail shall continue to slope for a distance of the width of one tread from the bottom riser; the remainder of the extension shall be horizontal (see Fig. 19(c) and (d)). Handrail extensions shall comply with 4.4.

(3) The clear space between handrails and wall shall be 1-1/2 in (38 mm).

(4) Gripping surfaces shall be uninterrupted by newel posts, other construction elements, or obstructions.

(5) Top of handrail gripping surface shall be mounted between 34 in and 38 in (865 mm and 965 mm) above stair nosings.

(6) Ends of handrails shall be either rounded or returned smoothly to floor, wall or post.

(7) Handrails shall not rotate within their fittings.

4.9.5 *Detectable Warnings at Stairs.* *(Reserved).*

4.9.6 Outdoor Conditions. Outdoor stairs and their approaches shall be designed so that water will not accumulate on walking surfaces.

4.10 Elevators.

4.10.1 General. *Accessible* elevators shall be on an accessible route and shall comply with 4.10 and with the *ASME A17.1-1990*, Safety Code for Elevators and Escalators. *Freight elevators shall not be considered as meeting the requirements of this section unless the only elevators provided are used as combination passenger and freight elevators for the public and employees.*

4.10.2 Automatic Operation. Elevator operation shall be automatic. Each car shall be equipped with a self-leveling feature that will automatically bring the car to floor landings within a tolerance of 1/2 in (13 mm) under rated loading to zero loading conditions. This self-leveling feature shall be automatic and independent of the operating device and shall correct the overtravel or undertravel.

4.10.3 Hall Call Buttons. Call buttons in elevator lobbies and halls shall be centered at 42 in (1065 mm) above the floor. Such call buttons shall have visual signals to indicate when each call is registered and when each call is answered. Call buttons shall be a minimum of 3/4 in (19 mm) in the smallest dimension. The button designating the up direction shall be on top. (See Fig. 20.) *Buttons shall be raised or flush. Objects mounted beneath hall call buttons shall not project into the elevator lobby more than 4 in (100 mm).*

(4) Gripping surfaces shall be uninterrupted by newel posts, other construction elements, or obstructions.

(5) Top of handrail gripping surface shall be mounted between 34 in and 38 in (865 mm and 965 mm) above stair nosings.

(6) Ends of handrails shall be either rounded or returned smoothly to floor, wall or post.

(7) Handrails shall not rotate within their fittings.

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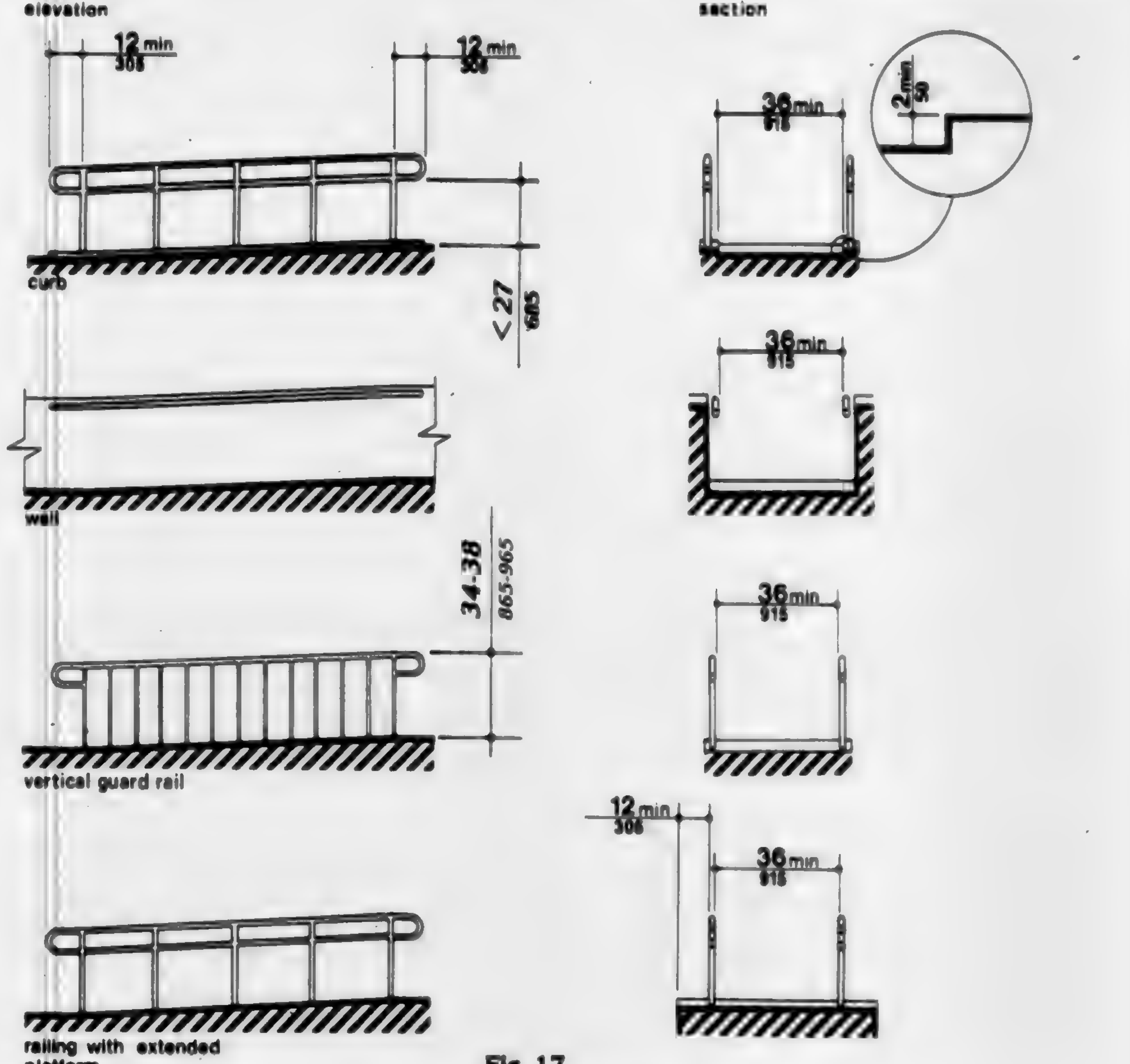
elevation
section
12 min 305
12 min 305
36 min 915
2 min 50
curb
< 27 685
36 min 915
wall
34-38 865-965
36 min 915
vertical guard rail
12 min 305
36 min 915
railing with extended platform

Fig. 17
Examples of Edge Protection and Handrail Extensions

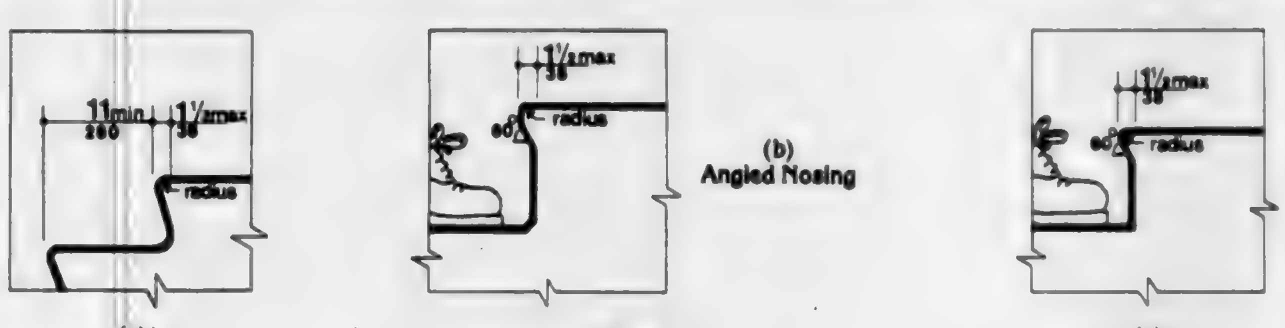
11 min 280
1½ max 38
radius
1½ max 38
60°
radius
1½ max 38
60°
radius

(a)
Flush Riser

(b)
Angled Nosing

(c)
Rounded Nosing

Fig. 18
Usable Tread Width and Examples of Acceptable Nosings

4.10 Elevators

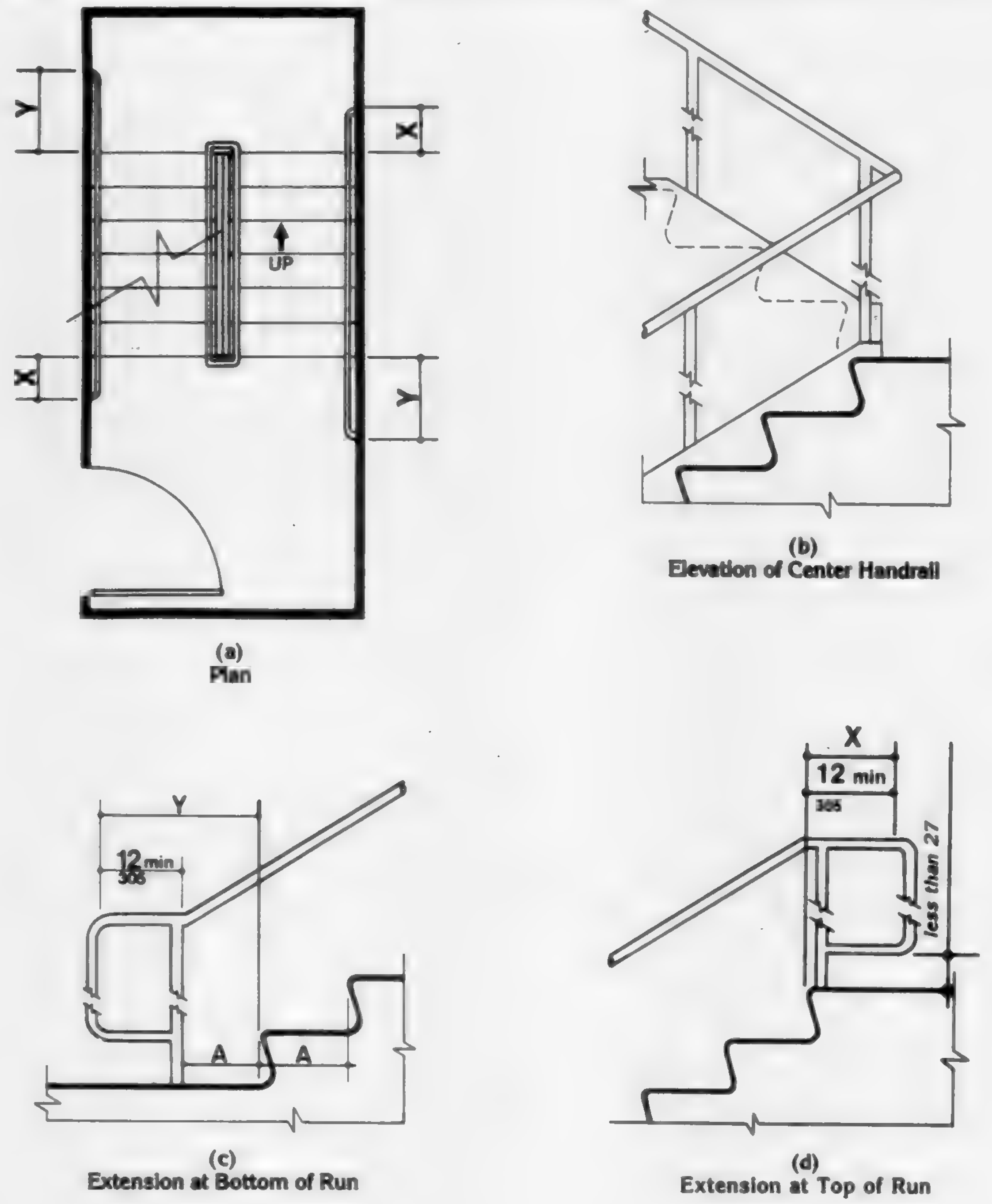
Y
X
UP
X
Y
X
12 min
305
less than 27
Y
12 min
305
A
A

(a)
Plan

(b)
Elevation of Center Handrail

(c)
Extension at Bottom of Run

(d)
Extension at Top of Run

NOTE:

X is the 12 in minimum handrail extension required at each top riser.

Y is the minimum handrail extension of 12 in plus the width of one tread that is required at each bottom riser.

Fig. 19
Stair Handrails

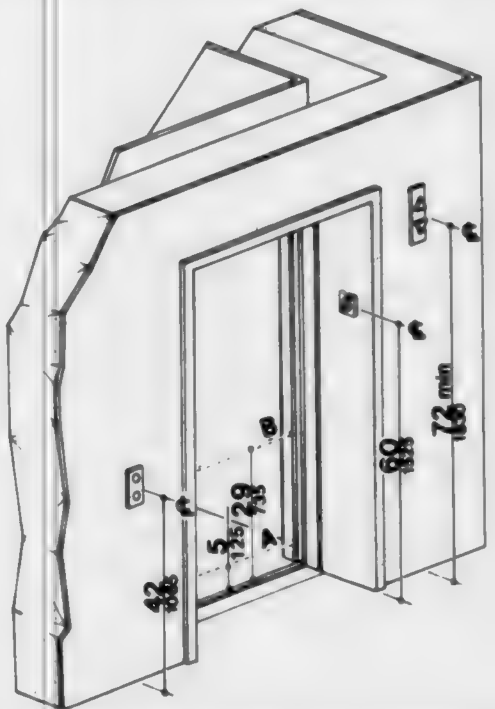

NOTE: The automatic door reopening device is activated if an object passes through either line A or line B. Line A and line B represent the vertical locations of the door reopening device not requiring contact.

Fig. 20
Hoistway and Elevator Entrances

4.10.4 Hall Lanterns. A visible and audible signal shall be provided at each hoistway entrance to indicate which car is answering a call. Audible signals shall sound once for the up direction and twice for the down direction or shall have verbal annunciators that say "up" or "down." Visible signals shall have the following features:

(1) Hall lantern fixtures shall be mounted so that their centerline is at least 72 in (1830 mm) above the lobby floor. (See Fig. 20.)

(2) Visual elements shall be at least 2-1/2 in (64 mm) in the smallest dimension.

(3) Signals shall be visible from the vicinity of the hall call button (see Fig. 20). In-car lanterns located in cars, visible from the vicinity of hall call buttons, and conforming to the above requirements, shall be acceptable.

4.10.5 *Raised and Braille* Characters on Hoistway Entrances. All elevator hoistway entrances shall have *raised and Braille* floor designations provided on both jambs. The centerline of the characters shall be 60 in (1525 mm) *above finish* floor. Such characters shall be 2 in (50 mm) high and shall comply with 4.30.4. Permanently applied plates are acceptable if they are permanently fixed to the jambs. (See Fig. 20).

4.10.6* Door Protective and Reopening Device. Elevator doors shall open and close automatically. They shall be provided with a reopening device that will stop and reopen a car door and hoistway door automatically if the door becomes obstructed by an object or person. The device shall be capable of completing these operations without requiring contact for an obstruction passing through the opening at heights of 5 in and 29 in (125 mm and 735 mm) above finish floor (see Fig. 20). Door reopening devices shall remain effective for at least 20 seconds. After such an interval, doors may close in accordance with the requirements of *ASME A17.1-1990.*

4.10.7* Door and Signal Timing for Hall Calls. The minimum acceptable time from notification that a car is answering a call until the doors of that car start to close shall be calculated from the following equation:

$$T = D/(1.5 \text{ ft/s}) \text{ or } T = D/(445 \text{ mm/s})$$

where T total time in seconds and D distance (in feet or millimeters) from a point in the lobby or corridor 60 in (1525 mm) directly in front of the farthest call button controlling that car to the centerline of its hoistway door (see Fig. 21). For cars with in-car lanterns, T begins when the lantern is visible from the vicinity of hall call buttons and an audible signal is sounded. *The minimum acceptable notification time shall be 5 seconds.*

4.10.8 Door Delay for Car Calls. The minimum time for elevator doors to remain fully open in response to a car call shall be 3 seconds.

4.10.9 Floor Plan of Elevator Cars. The floor area of elevator cars shall provide space for wheelchair users to enter the car, maneuver

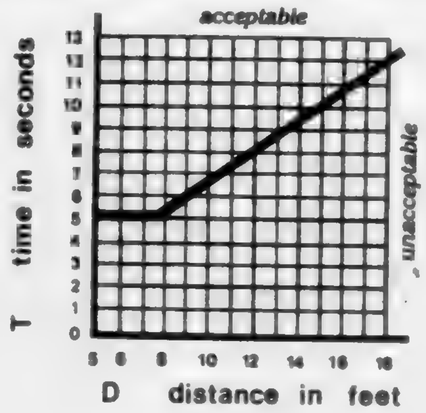

Fig. 21
Graph of Timing Equation

within reach of controls, and exit from the car. Acceptable door opening and inside dimensions shall be as shown in Fig. 22. The clearance between the car platform sill and the edge of any hoistway landing shall be no greater than 1-1/4 in (32 mm).

4.10.10 Floor Surfaces. Floor surfaces shall comply with 4.5.

4.10.11 Illumination Levels. The level of illumination at the car controls, platform, and car threshold and landing sill shall be at least 5 footcandles (53.8 lux).

4.10.12* Car Controls. Elevator control panels shall have the following features:

(1) Buttons. All control buttons shall be at least 3/4 in (19 mm) in their smallest dimension. They *shall* be *raised* or flush.

(2) Tactile, *Braille*, and Visual Control Indicators. All control buttons shall be designated by *Braille and by raised* standard alphabet characters for letters, arabic characters for numerals, or standard symbols as shown in Fig. 23(a), and as required in *ASME A17.1-1990. Raised and Braille* characters and symbols shall comply with 4.30. The call button for the main entry floor shall be designated by a *raised* star at the left of the floor designation (see Fig. 23(a)). All raised designations for control buttons shall be placed immediately to the left of the button to which they apply. Applied plates, permanently attached, are an acceptable means to provide raised control designations. Floor buttons shall be provided with visual indicators to show when each call is registered. The visual indicators shall be extinguished when each call is answered.

(3) Height. All floor buttons shall be no higher than 54 in (1370 mm) above the *finish* floor *for side approach and 48 in (1220 mm) for front approach.* Emergency controls, including the emergency alarm and emergency stop, shall be grouped at the bottom of the panel and shall have their centerlines no less than 35 in (890 mm) above the finish floor (see Fig. 23(a) and (b)).

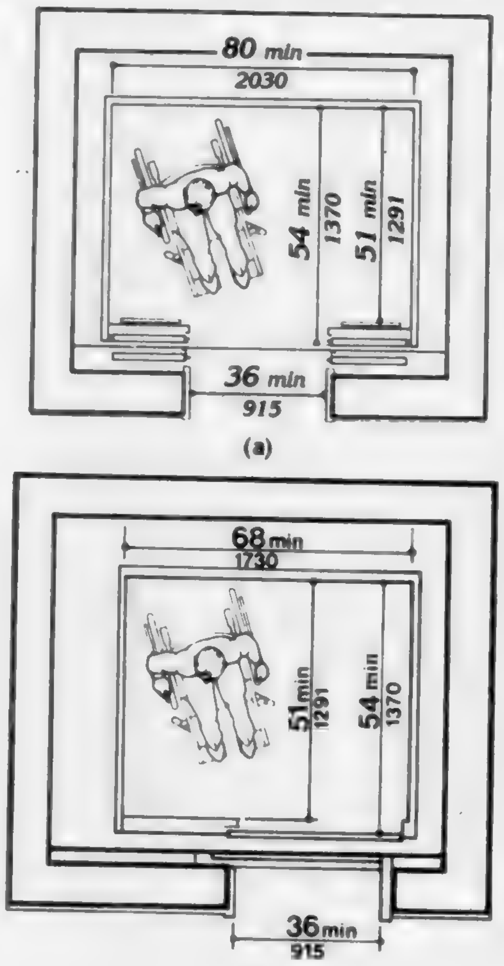

(a)

(b)

Fig. 22
Minimum Dimensions of Elevator Cars

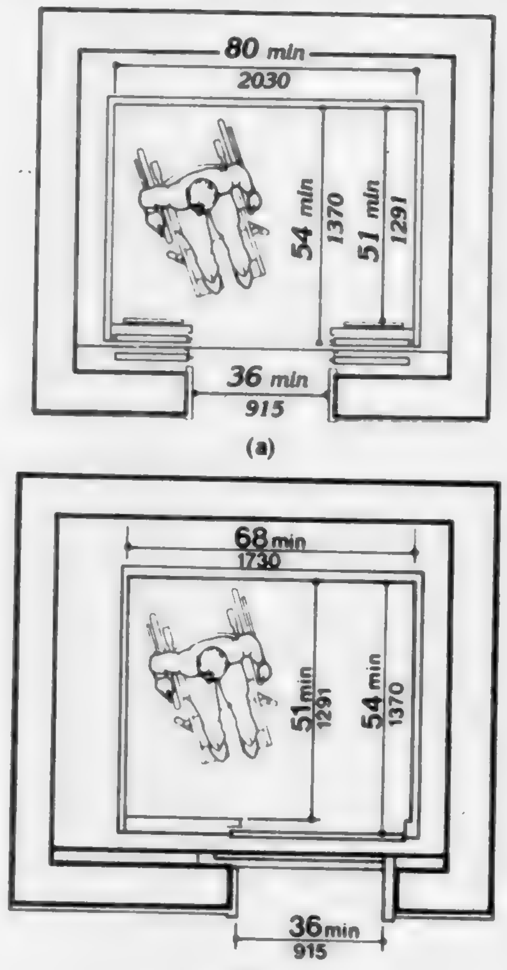
80 min
2030
54 min
1370
51 min
1291
36 min
915
(a)
68 min
1730
51 min
1291
54 min
1370
36 min
915
(b)

Fig. 22
Minimum Dimensions of Elevator Cars

permanently attached, are an acceptable means to provide raised control designations. Floor buttons shall be provided with visual indicators to show when each call is registered. The visual indicators shall be extinguished when each call is answered.

(3) Height. All floor buttons shall be no higher than 54 in (1370 mm) above the *finish* floor *for side approach and 48 in (1220 mm) for front approach*. Emergency controls, including the emergency alarm and emergency stop, shall be grouped at the bottom of the panel and shall have their centerlines no less than 35 in (890 mm) above the finish floor (see Fig. 23(a) and (b)).

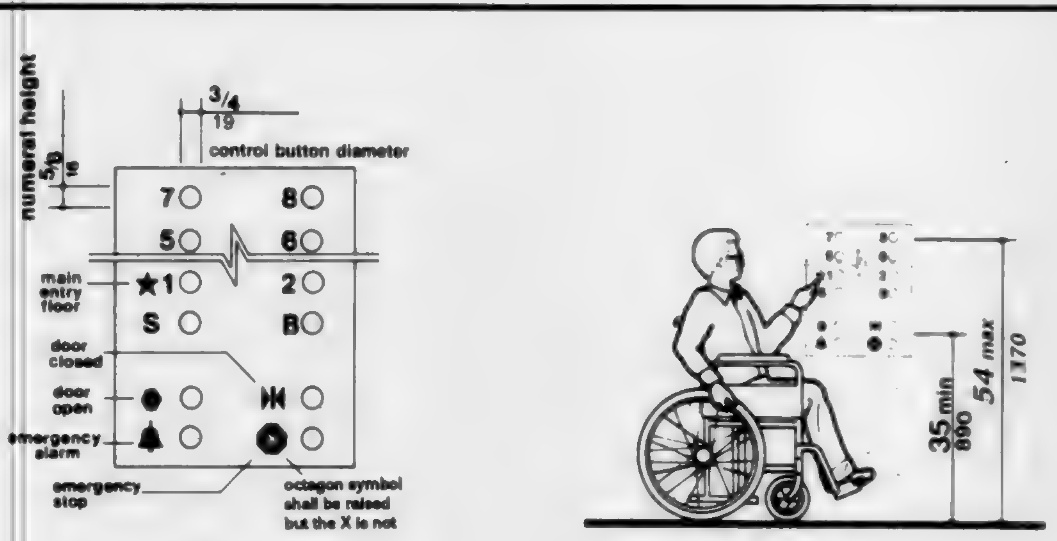
numeral height
5/8
16
3/4
19
control button diameter
7
8
5
6
main entry floor
★1
2
S
B
door closed
door open
emergency alarm
emergency stop
octagon symbol shall be raised but the X is not
35 min
890
54 max
1370

(a)
Panel Detail

(b)
Car Control Height

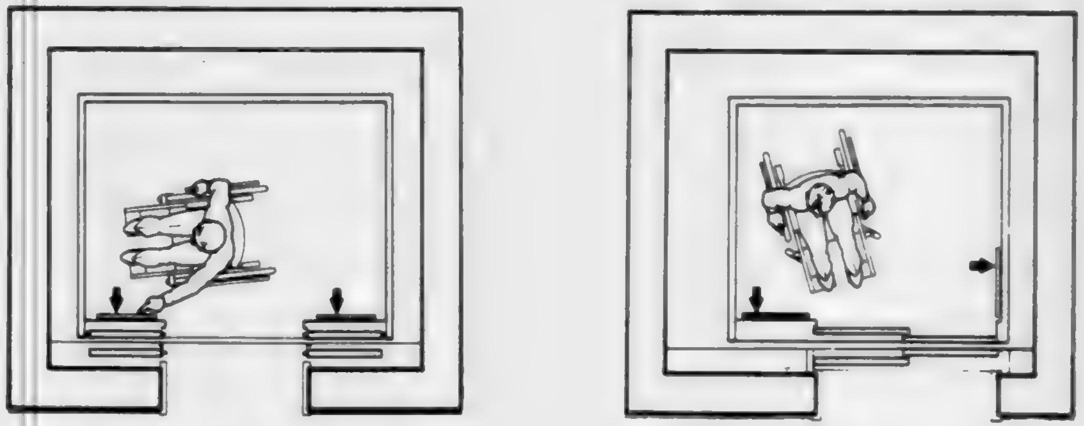

(c)
Alternate Locations of Panel with Center Opening Door

(d)
Alternate Locations of Panel with Side Opening Door

Fig. 23
Car Controls

(4) Location. Controls shall be located on a front wall if cars have center opening doors, and at the side wall or at the front wall next to the door if cars have side opening doors (see Fig. 23(c) and (d)).

4.10.13* Car Position Indicators. In elevator cars, a visual car position indicator shall be provided above the car control panel or over the door to show the position of the elevator in the hoistway. As the car passes or stops at a floor served by the elevators, the corresponding numerals shall illuminate, and an audible signal shall sound. Numerals shall be a minimum of 1/2 in (13 mm) high. The audible signal shall be no less than 20 decibels with a frequency no higher than 1500 Hz. An automatic verbal announcement of the floor number at which a car stops or which a car passes may be substituted for the audible signal.

4.10.14* Emergency Communications. If provided, emergency two-way communication systems between the elevator and a point outside the hoistway shall comply with *ASME*

A17.1-1990. The highest operable part of a two-way communication system shall be a maximum of *48 in (1220 mm)* from the floor of the car. It shall be identified by a raised symbol and lettering complying with 4.30 and located adjacent to the device. If the system uses a handset then the length of the cord from the panel to the handset shall be at least 29 in (735 mm). *If the system is located in a closed compartment the compartment door hardware shall conform to 4.27, Controls and Operating Mechanisms. The emergency intercommunication system shall not require voice communication.*

4.11 Platform Lifts *(Wheelchair Lifts)*.

4.11.1 Location. *Platform lifts (wheelchair lifts) permitted by 4.1 shall comply with the requirements of 4.11.*

4.11.2* Other Requirements. If platform lifts *(wheelchair lifts)* are used, they shall comply with 4.2.4, 4.5, 4.27, and *ASME A17.1 Safety Code for Elevators and Escalators, Section XX, 1990.*

4.11.3 Entrance. *If platform lifts are used then they shall facilitate unassisted entry, operation, and exit from the lift in compliance with 4.11.2.*

4.12 Windows.

4.12.1* General. *(Reserved).*

4.12.2* Window Hardware. *(Reserved).*

4.13 Doors.

4.13.1 General. *Doors required to be accessible by 4.1* shall comply with the requirements of 4.13.

4.13.2 Revolving Doors and Turnstiles. Revolving doors or turnstiles shall not be the only means of passage at an accessible entrance or along an accessible route. *An accessible gate or door shall be provided adjacent to the turnstile or revolving door and shall be so designed as to facilitate the same use pattern.*

4.13.3 Gates. Gates, including ticket gates, shall meet all applicable specifications of 4.13.

4.13.4 Double-Leaf Doorways. If doorways have two *independently operated* door leaves, then at least one leaf shall meet the specifications in 4.13.5 and 4.13.6. That leaf shall be an active leaf.

4.13.5 Clear Width. Doorways shall have a minimum clear opening of 32 in (815 mm) with the door open 90 degrees, measured between the face of the door and the *opposite* stop (see Fig. 24(a), (b), (c), and (d)). Openings more than 24 in (610 mm) in depth shall comply with 4.2.1 and 4.3.3 (see Fig. 24(e)).

EXCEPTION: Doors not requiring full user passage, such as shallow closets, may have the clear opening reduced to 20 in (510 mm) minimum.

4.13.6 Maneuvering Clearances at Doors. Minimum maneuvering clearances at doors that are not automatic or power-assisted shall be as shown in Fig. 25. The floor or ground area within the required clearances shall be level and clear.

EXCEPTION: Entry doors to acute care hospital bedrooms for in-patients shall be exempted from the requirement for space at the latch side of the door (see dimension "x" in Fig. 25) if the door is at least 44 in (1120 mm) wide.

4.13.7 Two Doors in Series. The minimum space between two hinged or pivoted doors in series shall be 48 in (1220 mm) plus the width of any door swinging into the space. Doors in series shall swing either in the same direction or away from the space between the doors (see Fig. 26).

4.13.8* Thresholds at Doorways. Thresholds at doorways shall not exceed 3/4 in (19 mm) in height for exterior sliding doors or 1/2 in (13 mm) for other types of doors. Raised thresholds and floor level changes at accessible doorways shall be beveled with a slope no greater than 1:2 (see 4.5.2).

4.13.9* Door Hardware. Handles, pulls, latches, locks, and other operating devices on accessible doors shall have a shape that is easy

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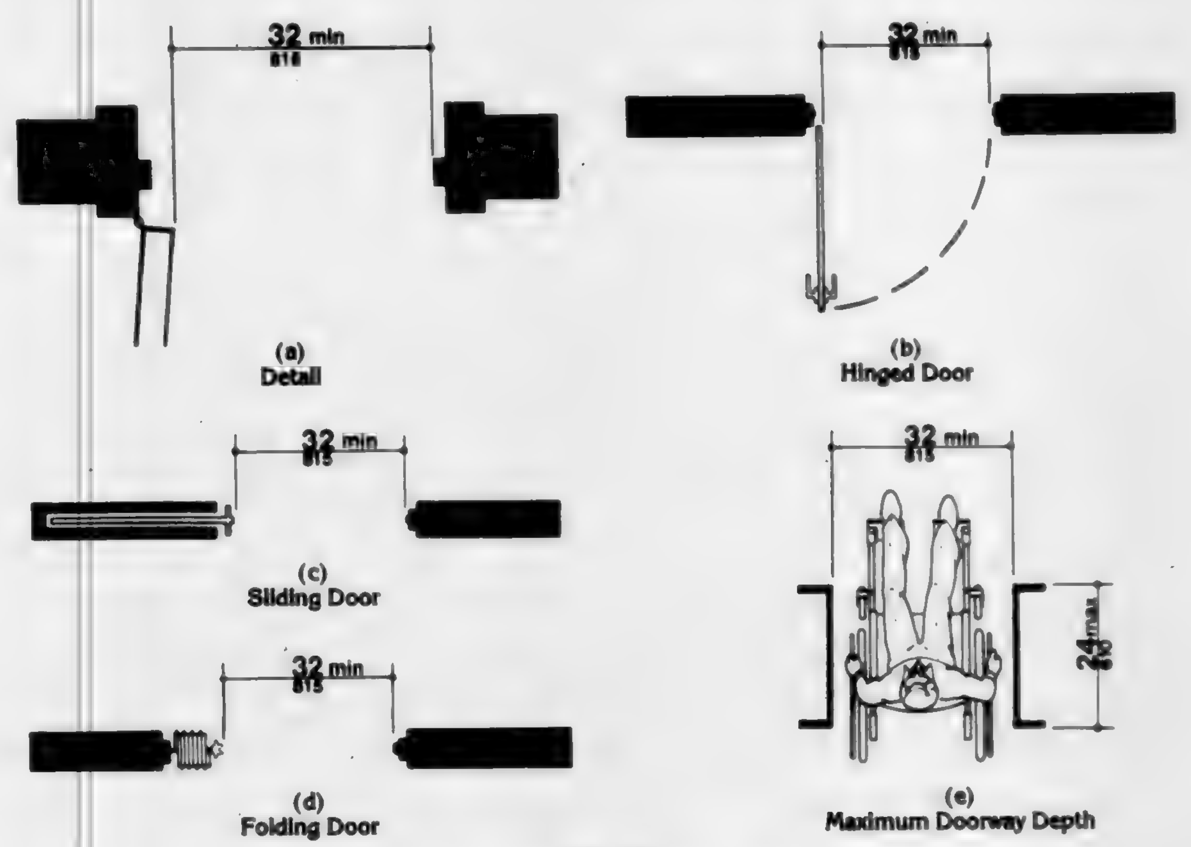

Fig. 24
Clear Doorway Width and Depth

4.13.9* Door Hardware. Handles, pulls, latches, locks, and other operating devices on accessible doors shall have a shape that is easy to grasp with one hand and does not require tight grasping, tight pinching, or twisting of the wrist to operate. Lever-operated mechanisms, push-type mechanisms, and U-shaped handles are acceptable designs. When sliding doors are fully open, operating hardware shall be exposed and usable from both sides. *Hardware required for accessible door passage shall be mounted no higher than 48 in (1220 mm) above finished floor.*

4.13.10* Door Closers. If a door has a closer, then the sweep period of the closer shall be adjusted so that from an open position of 70 degrees, the door will take at least 3 seconds to move to a point 3 in (75 mm) from the latch, measured to the leading edge of the door.

4.13.11* Door Opening Force. The maximum force for pushing or pulling open a door shall be as follows:

(1) Fire doors shall have the minimum opening force allowable by the appropriate administrative authority.

(2) Other doors.

(a) exterior hinged doors: *(Reserved).*

(b) interior hinged doors: 5 lbf (22.2N)

(c) sliding or folding doors: 5 lbf (22.2N)

These forces do not apply to the force required to retract latch bolts or disengage other devices that may hold the door in a closed position.

4.13 Doors

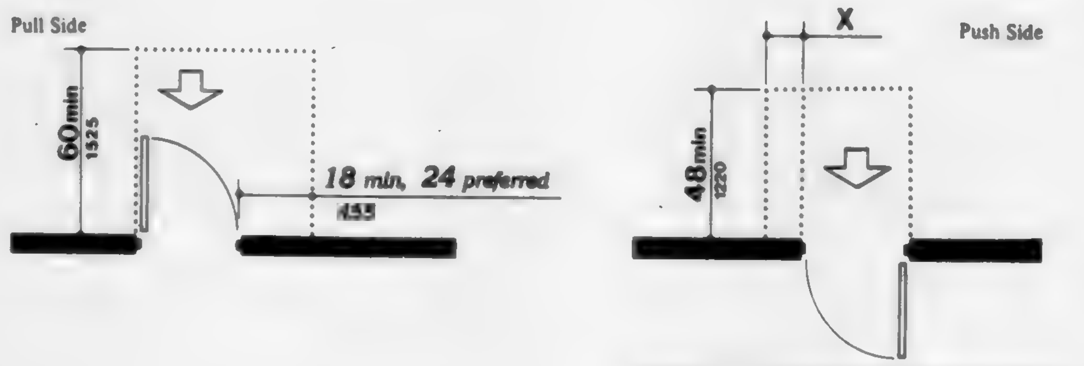
Pull Side
60min
1525
18 min, 24 preferred
455
X
Push Side
48min
1220

NOTE: x = 12 in (305 mm) if door has both a closer and latch.

(a)
Front Approaches — Swinging Doors

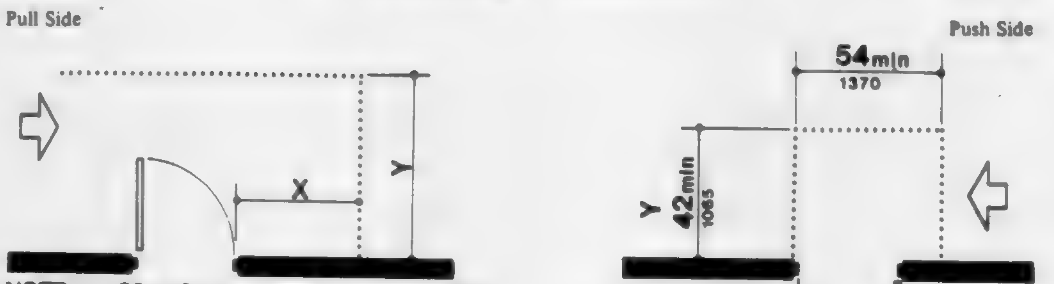
Pull Side
X
Y
Push Side
54min
1370
Y
42min
1065

NOTE: x = 36 in (915 mm) minimum if y = 60 in (1525 mm); x = 42 in (1065 mm) minimum if y = 54 in (1370 mm).

NOTE: y = 48 in (1220 mm) minimum if door has both a latch and closer.

(b)
Hinge Side Approaches — Swinging Doors

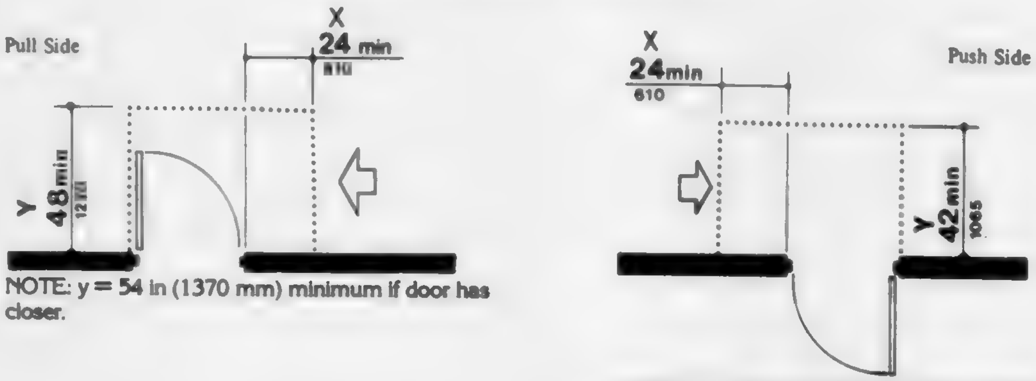
Pull Side
X
24 min
610
Y
48min
1220
X
24min
610
Push Side
Y
42min
1065

NOTE: y = 54 in (1370 mm) minimum if door has closer.

NOTE: y = 48 in (1220 mm) minimum if door has closer.

(c)
Latch Side Approaches — Swinging Doors

NOTE: All doors in alcoves shall comply with the clearances for front approaches.

Fig. 25
Maneuvering Clearances at Doors

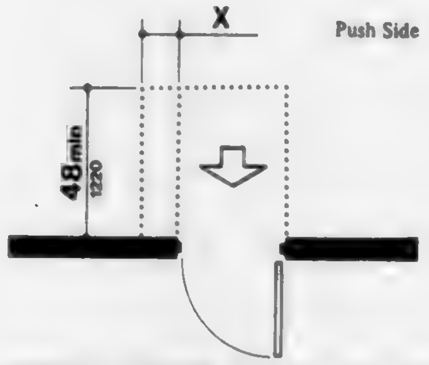
X
Push Side
48 min
1220

NOTE: x = 12 in (305 mm) if door has both a closer and latch.

Swinging Doors

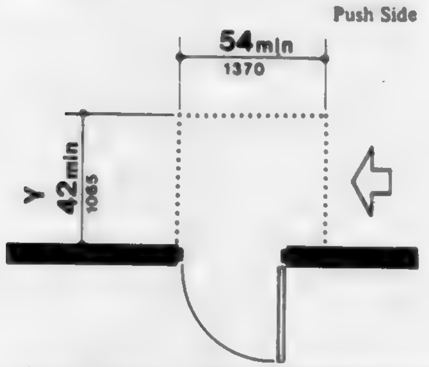
Push Side
54 min
1370
Y
42 min
1065

NOTE: y = 48 in (1220 mm) minimum if door has both a latch and closer.

— Swinging Doors

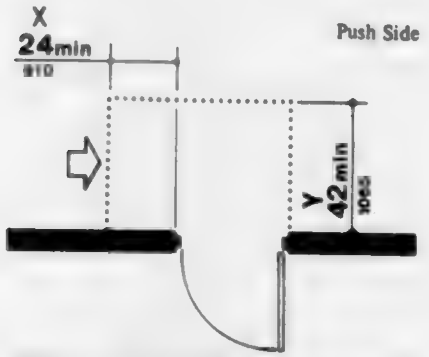
X
24 min
610
Push Side
Y
42 min
1065

NOTE: y = 48 in (1220 mm) minimum if door has closer.

— Swinging Doors

es for front approaches.

5

nces at Doors

4.13 Doors

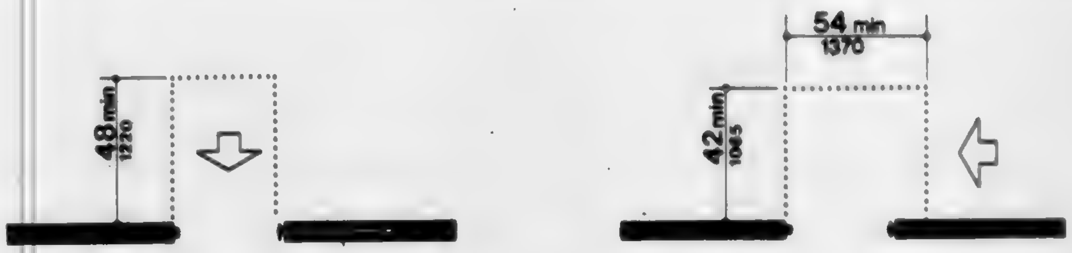
48 min
1220
54 min
1370
42 min
1065

(d)
Front Approach — Sliding Doors *and Folding Doors*

(e)
Slide Side Approach — Sliding Doors *and Folding Doors*

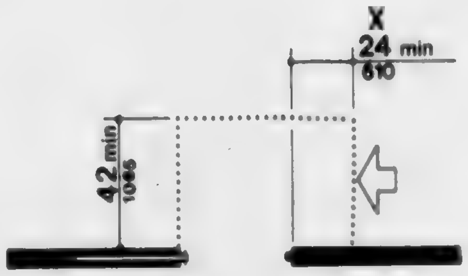
X
24 min
610
42 min
1065

(f)
Latch Side Approach — Sliding Doors *and Folding Doors*

NOTE: All doors in alcoves shall comply with the clearances for front approaches.

Fig. 25
Maneuvering Clearances at Doors *(Continued)*

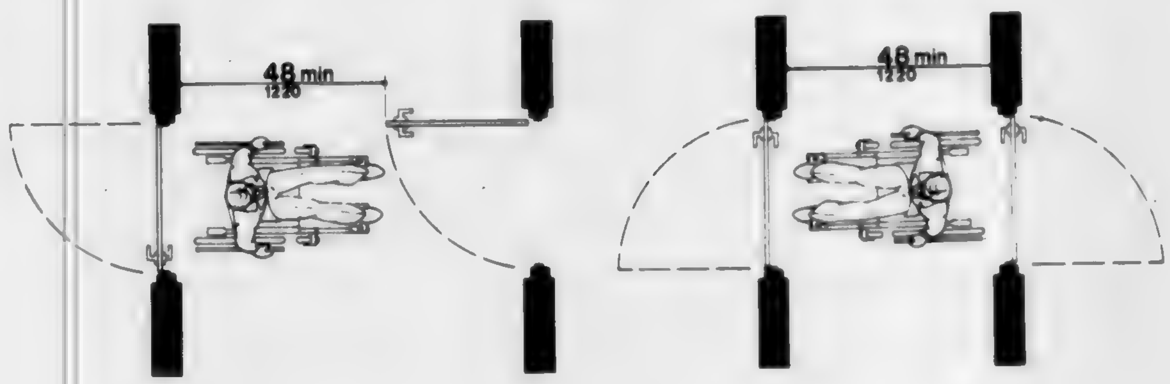
48 min
1220
48 min
1220

Fig. 26
Two Hinged Doors in Series

4.13.12* Automatic Doors and Power-Assisted Doors. If an automatic door is used, then it shall comply with *ANSI/BHMA A156.10-1985*. Slowly opening, low-powered, automatic doors shall *comply with ANSI A156.19-1984*. Such doors shall not open to back check faster than 3 seconds and shall require no more than 15 lbf (66.6N) to stop door movement. If a power-assisted door is used, its door-opening force shall comply with 4.13.11 and its closing shall conform to the requirements in *ANSI A156.19-1984*.

4.14 Entrances.

4.14.1 Minimum Number. *Entrances required to be accessible by 4.1* shall be part of an accessible route complying with 4.3. Such entrances shall be connected by an accessible route to public transportation stops, to accessible parking and passenger loading zones, and to public streets or sidewalks if available (see 4.3.2(1)). They shall also be connected by an accessible route to all accessible spaces or elements within the building or facility.

4.14.2 Service Entrances. A service entrance shall not be the sole accessible entrance unless it is the only entrance to a building or facility (for example, in a factory or garage).

4.15 Drinking Fountains and Water Coolers.

4.15.1 Minimum Number. *Drinking fountains or water coolers required to be accessible by 4.1* shall comply with 4.15.

4.15.2* Spout Height. Spouts shall be no higher than 36 in (915 mm), measured from the floor or ground surfaces to the spout outlet (see Fig. 27(a)).

4.15.3 Spout Location. The spouts of drinking fountains and water coolers shall be at the front of the unit and shall direct the water flow in a trajectory that is parallel or nearly parallel to the front of the unit. The spout shall provide a flow of water at least 4 in (100 mm) high so as to allow the insertion of a cup or glass under the flow of water. *On an accessible drinking fountain with a round or oval bowl, the spout must be positioned so the flow of water is within 3 in (75 mm) of the front edge of the fountain.*

4.15.4 Controls. Controls shall comply with 4.27.4. *Unit controls shall be front mounted or side mounted near the front edge.*

4.15.5 Clearances.

(1) Wall- and post-mounted cantilevered units shall have a clear knee space between the bottom of the apron and the floor or ground at least 27 in (685 mm) high, 30 in (760 mm) wide, and 17 in to 19 in (430 mm to 485 mm) deep (see Fig. 27(a) and (b)). Such units shall also have a minimum clear floor space 30 in by 48 in (760 mm by 1220 mm) to allow a person in a wheelchair to approach the unit facing forward.

(2) Free-standing or built-in units not having a clear space under them shall have a clear floor space at least 30 in by 48 in (760 mm by 1220 mm) that allows a person in a wheelchair to make a parallel approach to the unit (see Fig. 27(c) and (d)). This clear floor space shall comply with 4.2.4.

4.16 Water Closets.

4.16.1 General. Accessible water closets shall comply with 4.16.

4.16.2 Clear Floor Space. Clear floor space for water closets not in stalls shall comply with Fig. 28. Clear floor space may be arranged to allow either a left-handed or right-handed approach.

4.16.3* Height. The height of water closets shall be 17 in to 19 in (430 mm to 485 mm), measured to the top of the toilet seat (see Fig. 29(b)). *Seats shall not be sprung to return to a lifted position.*

4.16.4* Grab Bars. Grab bars for water closets not located in stalls shall comply with 4.26 and Fig. 29. *The grab bar behind the water closet shall be 36 in (915 mm) minimum.*

4.16.5* Flush Controls. Flush controls shall be hand operated *or automatic* and shall comply with 4.27.4. Controls for flush valves *oval bowl, the spout must be positioned so the flow of water is within 3 in (75 mm) of the front edge of the fountain.*

4.15.4 Controls. Controls shall comply with 4.27.4. *Unit controls shall be front mounted or side mounted near the front edge.*

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4.16.5* Flush Controls. Flush controls shall be hand operated *or automatic* and shall comply with 4.27.4. Controls for flush valves

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shall be mounted on the wide side of toilet areas no more than 44 in (1120 mm) above the floor.

4.16.6 Dispensers. Toilet paper dispensers shall be installed within reach, as shown in Fig. 29(b). *Dispensers that control delivery, or that do not permit continuous paper flow, shall not be used.*

4.17 Toilet Stalls.

4.17.1 Location. Accessible toilet stalls shall be on an accessible route and shall meet the requirements of 4.17.

4.17.2 Water Closets. Water closets in accessible stalls shall comply with 4.16.

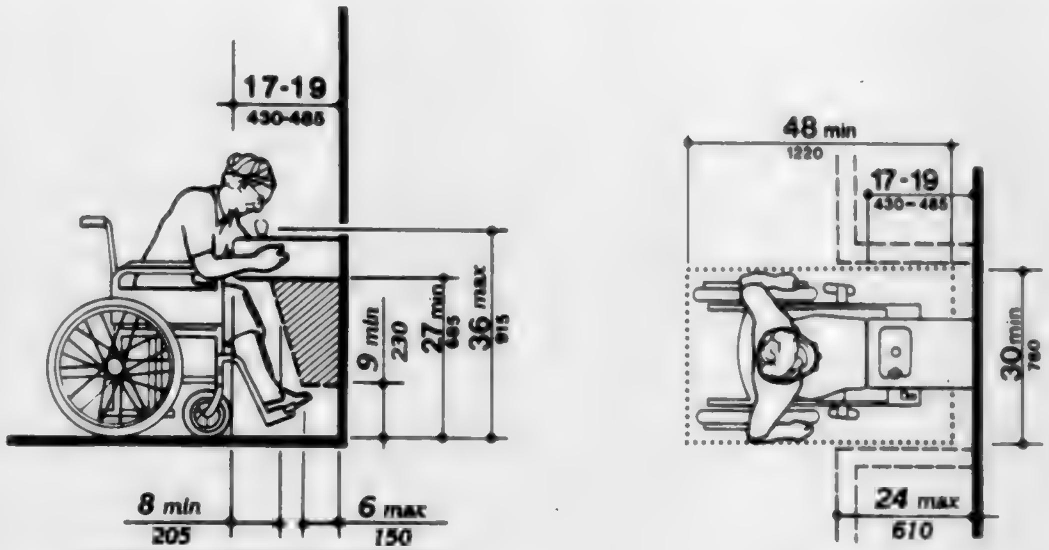

equipment permitted in shaded area

(a)
Spout Height and
Knee Clearance

(b)
Clear Floor Space

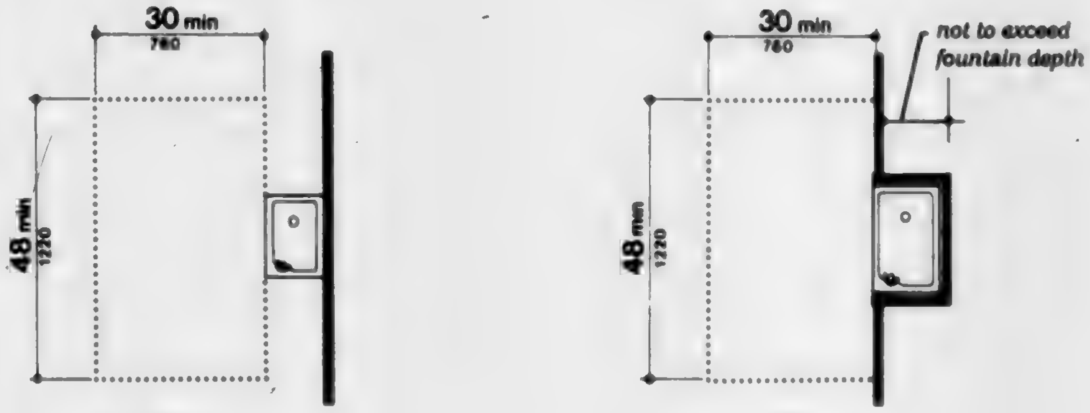

(c)
Free-Standing
Fountain or Cooler

(d)
Built-in
Fountain or Cooler

Fig. 27
Drinking Fountains and Water Coolers

4.17 Toilet Stalls

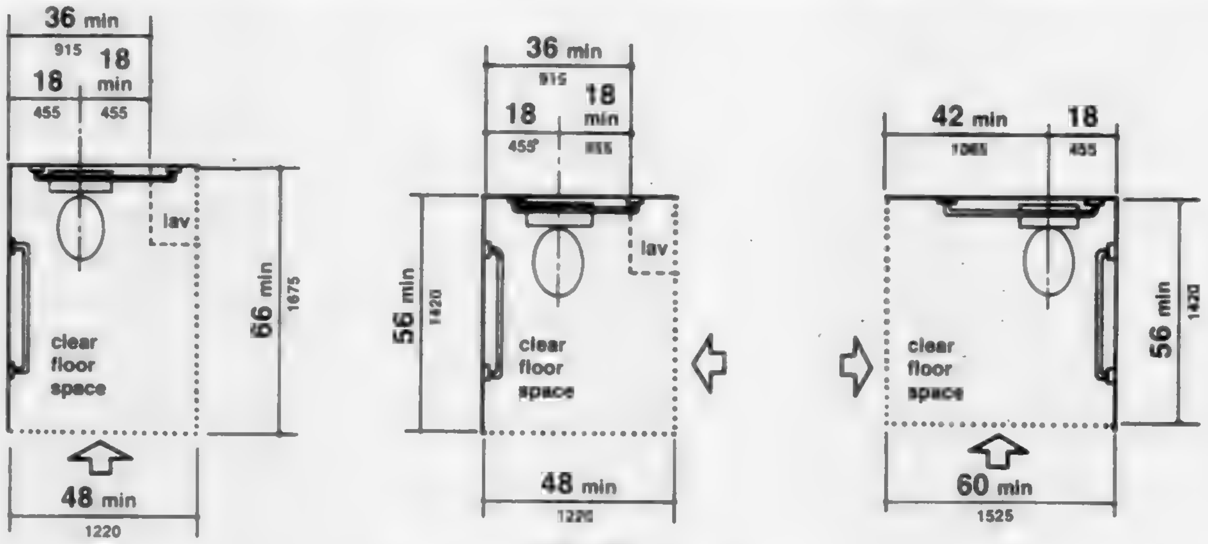
36 min
915
18 min
18
455
455
lav
66 min
1675
clear floor space
48 min
1220
36 min
915
18
18 min
455
455
lav
56 min
1420
clear floor space
48 min
1220
42 min
1065
18
455
56 min
1420
clear floor space
60 min
1525

Fig. 28
Clear Floor Space at Water Closets

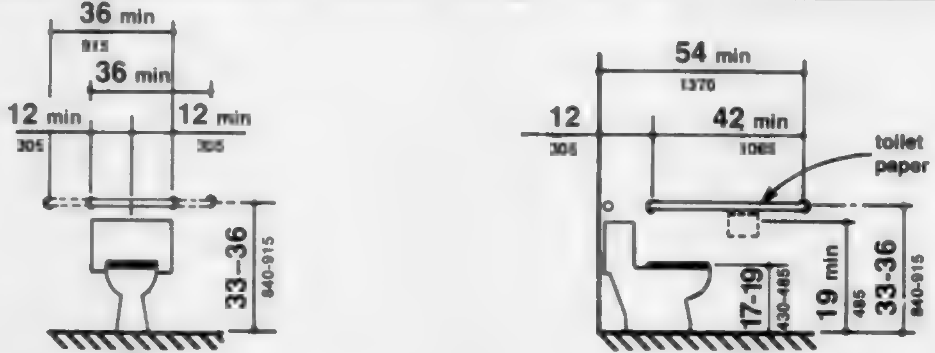
36 min
915
36 min
12 min
305
12 min
305
33-36
840-915
54 min
1370
12
305
42 min
1065
toilet paper
17-19
430-485
19 min
485
33-36
840-915

(a)
Back Wall

(b)
Side Wall

Fig. 29
Grab Bars at Water Closets

4.17.3* Size and Arrangement. The size and arrangement of the standard toilet stall shall comply with Fig. 30(a), *Standard Stall*. Standard toilet stalls with a minimum depth of 56 in (1420 mm) (see Fig. 30(a)) shall have wall-mounted water closets. If the depth of a standard toilet stall is increased at least 3 in (75 mm), then a floor-mounted water closet may be used. Arrangements shown for standard toilet stalls may be reversed to allow either a left- or right-hand approach. Additional stalls shall be provided in conformance with 4.22.4.

EXCEPTION: In instances of alteration work where provision of a standard stall (Fig. 30(a)) is technically infeasible or where plumbing code requirements prevent combining existing stalls to provide space, either alternate stall (Fig. 30(b)) may be provided in lieu of the standard stall.

4.17.4 Toe Clearances. In standard stalls, the front partition and at least one side partition shall provide a toe clearance of at least 9 in (230 mm) above the floor. If the depth of the stall is greater than 60 in (1525 mm), then the toe clearance is not required.

4.17.5* Doors. Toilet stall doors, *including door hardware*, shall comply with 4.13. *If toilet stall approach is from the latch side of the stall door, clearance between the door side of the*

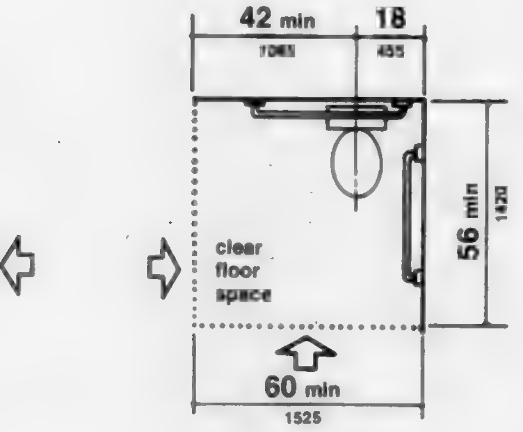
42 min
1065
18
455
56 min
1420
clear
floor
space
60 min
1525

r Closets

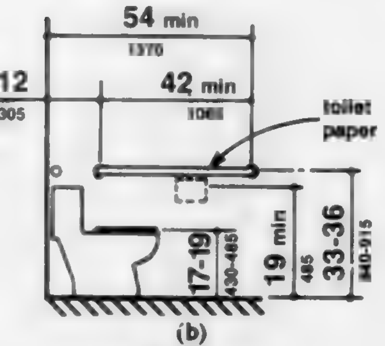
54 min
1370
12
305
42 min
1065
toilet
paper
17-19
430-485
19 min
485
33-36
840-915

(b)
Side Wall

osets

chnically infeasible or where plumbing code irements prevent combining existing stalls to ide space, either alternate stall (Fig. 30(b)) be provided in lieu of the standard stall.

7.4 Toe Clearances. In standard stalls, ront partition and at least one side parti- shall provide a toe clearance of at least (230 mm) above the floor. If the depth of tall is greater than 60 in (1525 mm), then oe clearance is not required.

7.5* Doors. Toilet stall doors, *including hardware*, shall comply with 4.13. *If toilet approach is from the latch side of the stall clearance between the door side of the*

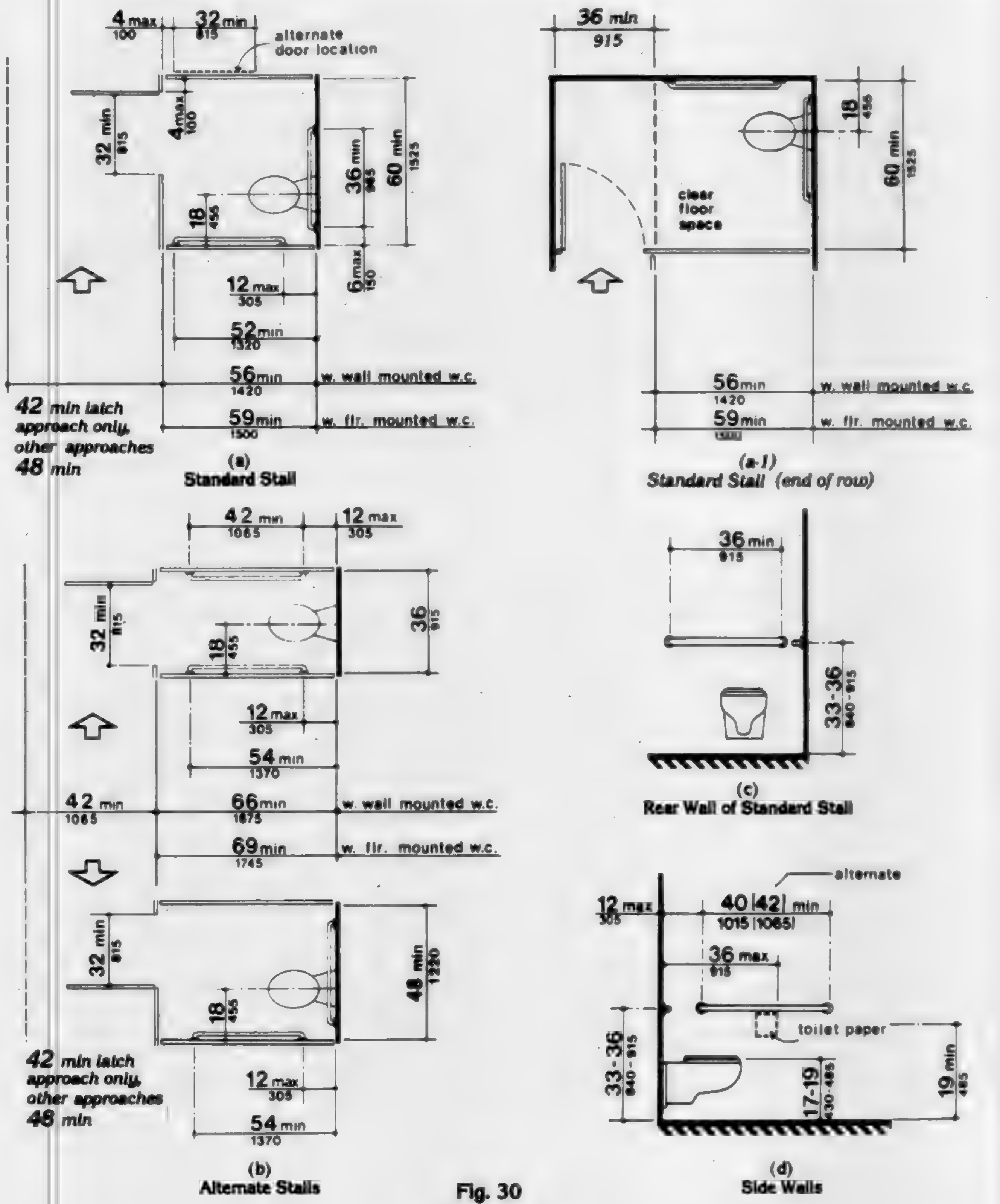
4 max
100
32 min
815
alternate
door location
32 min
815
4 max
100
36 min
915
60 min
1525
18
455
6 max
150
12 max
305
52 min
1320
56 min
1420
w. wall mounted w.c.
59 min
1500
w. flr. mounted w.c.
42 min latch
approach only,
other approaches
48 min
(a)
Standard Stall
36 min
915
18
455
60 min
1525
clear
floor
space
56 min
1420
w. wall mounted w.c.
59 min
1500
w. flr. mounted w.c.
(a-1)
Standard Stall (end of row)
42 min
1065
12 max
305
32 min
815
18
455
36
915
12 max
305
54 min
1370
42 min
1065
66 min
1675
w. wall mounted w.c.
69 min
1745
w. flr. mounted w.c.
32 min
815
18
455
48 min
1220
42 min latch
approach only,
other approaches
48 min
12 max
305
54 min
1370
36 min
915
33-36
840-915
(c)
Rear Wall of Standard Stall
alternate
12 max
305
40 [42] min
1015 [1065]
36 max
915
toilet paper
33-36
840-915
17-19
430-485
19 min
485

(b)
Alternate Stalls

Fig. 30
Toilet Stalls

(d)
Side Walls

stall and any obstruction may be reduced to a minimum of 42 in (1065 mm) (Fig. 30).

4.17.6 Grab Bars. Grab bars complying with the length and positioning shown in Fig. 30(a), (b), (c), and (d) shall be provided. Grab bars may be mounted with any desired method as long as they have a gripping surface at the locations shown and do not obstruct the required clear floor area. Grab bars shall comply with 4.26.

4.18 Urinals.

4.18.1 General. Accessible urinals shall comply with 4.18.

4.18.2 Height. Urinals shall be stall-type or wall-hung with an elongated rim at a maximum of 17 in (430 mm) above the finish floor.

4.18.3 Clear Floor Space. A clear floor space 30 in by 48 in (760 mm by 1220 mm) shall be provided in front of urinals to allow forward approach. This clear space shall adjoin or overlap an accessible route and shall comply with 4.2.4. *Urinal shields that do not extend beyond the front edge of the urinal rim may be provided with 29 in (735 mm) clearance between them.*

4.18.4 Flush Controls. Flush controls shall be hand operated or automatic, and shall comply with 4.27.4, and shall be mounted no more than 44 in (1120 mm) above the finish floor.

4.19 Lavatories and Mirrors.

4.19.1 General. The requirements of 4.19 shall apply to lavatory fixtures, vanities, and built-in lavatories.

4.19.2 Height and Clearances. Lavatories shall be mounted with *the rim or counter surface no higher than 34 in (865 mm) above the finish floor.* Provide a clearance of at least 29 in (735 mm) above the finish floor to the bottom of the apron. Knee and toe clearance shall comply with Fig. 31.

4.19.3 Clear Floor Space. A clear floor space 30 in by 48 in (760 mm by 1220 mm) complying with 4.2.4 shall be provided in front of a lavatory to allow forward approach. Such clear floor space shall adjoin or overlap an accessible route and shall extend a maximum of 19 in (485 mm) underneath the lavatory (see Fig. 32).

4.19.4 Exposed Pipes and Surfaces. Hot water and drain pipes under lavatories shall be insulated or otherwise *configured to protect against contact.* There shall be no sharp or abrasive surfaces under lavatories.

4.19.5 Faucets. Faucets shall comply with 4.27.4. Lever-operated, push-type, and electronically controlled mechanisms are examples of acceptable designs. *If* self-closing valves are

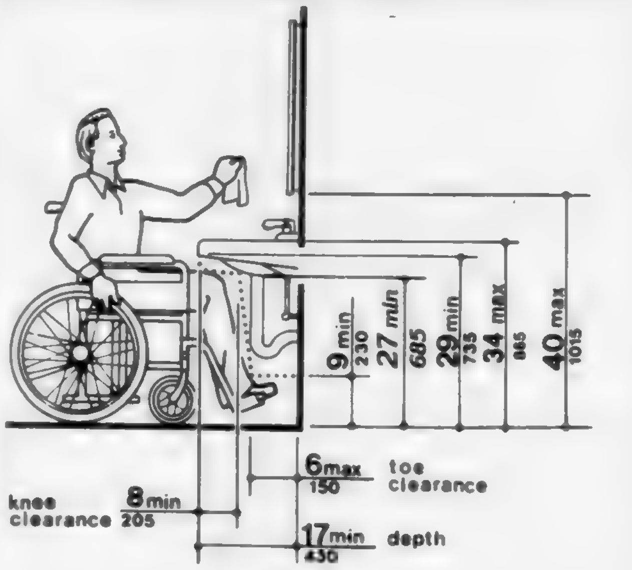

Fig. 31
Lavatory Clearances

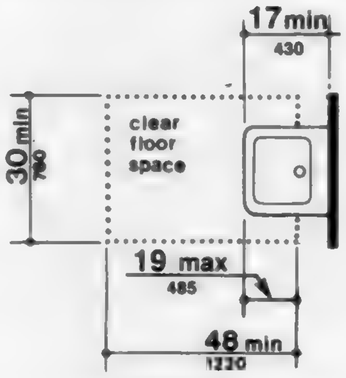

Fig. 32
Clear Floor Space at Lavatories

used the faucet *shall remain* open for at least 10 seconds.

4.19.6* Mirrors. Mirrors shall be mounted with the bottom edge *of the reflecting surface* no higher than 40 in (1015 mm) *above the finish* floor (see Fig. 31).

4.20 Bathtubs.

4.20.1 General. Accessible bathtubs shall comply with 4.20.

4.20.2 Floor Space. Clear floor space in front of bathtubs shall be as shown in Fig. 33.

4.20.3 Seat. An in-tub seat or a seat at the head end of the tub shall be provided as shown in Fig. 33 and 34. The structural strength of seats and their attachments shall comply with 4.26.3. Seats shall be mounted securely and shall not slip during use.

4.20.4 Grab Bars. Grab bars complying with 4.26 shall be provided as shown in Fig. 33 and 34.

4.20.5 Controls. Faucets and other controls complying with 4.27.4 shall be located as shown in Fig. 34.

4.20.6 Shower Unit. A shower spray unit with a hose at least 60 in (1525 mm) long that can be used *both* as a fixed shower head *and* as a hand-held shower shall be provided.

4.20.7 Bathtub Enclosures. If provided, enclosures for bathtubs shall not obstruct controls or transfer from wheelchairs onto bathtub seats or into tubs. Enclosures on bathtubs shall not have tracks mounted on their rims.

4.21 Shower Stalls.

4.21.1* General. Accessible shower stalls shall comply with 4.21.

4.21.2 Size and Clearances. Except as specified in 9.1.2, shower stall size and clear floor space shall comply with Fig. 35(a) or (b). The shower stall in Fig. 35(a) shall be 36 in by 36 in (915 mm by 915 mm). Shower stalls required by 9.1.2 shall comply with Fig. 57(a) or (b). The shower stall in Fig. 35(b) will fit into the space required for a bathtub.

4.21.3 Seat. A seat shall be provided in shower stalls 36 in by 36 in (915 mm by 915 mm) and shall be as shown in Fig. 36. The seat shall be mounted 17 in to 19 in (430 mm to 485 mm) from the bathroom floor and shall extend the full depth of the stall. In a 36 in by 36 in (915 mm by 915 mm) shower stall, the seat shall be on the wall opposite the controls. *Where a fixed seat is provided in a 30 in by 60 in minimum (760 mm by 1525 mm) shower stall, it shall be a folding type and shall be mounted on the wall adjacent to the controls as shown in Fig. 57.* The structural strength of seats and their attachments shall comply with 4.26.3.

4.21.4 Grab Bars. Grab bars complying with 4.26 shall be provided as shown in Fig. 37.

4.21.5 Controls. Faucets and other controls complying with 4.27.4 shall be located as shown in Fig. 37. In shower stalls 36 in by 36 in (915 mm by 915 mm), all controls, faucets, and the shower unit shall be mounted on the side wall opposite the seat.

4.21.6 Shower Unit. A shower spray unit with a hose at least 60 in (1525 mm) long that can be used *both* as a fixed shower head *and* as a hand-held shower shall be provided.

EXCEPTION: In unmonitored facilities where vandalism is a consideration, a fixed shower head mounted at 48 in (1220 mm) above the shower floor may be used in lieu of a hand-held shower head.

4.21.7 Curbs. If provided, curbs in shower stalls 36 in by 36 in (915 mm by 915 mm) shall be no higher than *1/2 in (13 mm)*. Shower stalls that are 30 in by 60 in (760 mm by 1525 mm) minimum shall not have curbs.

4.21.8 Shower Enclosures. If provided, enclosures for shower stalls shall not obstruct controls or obstruct transfer from wheelchairs onto shower seats.

4.22 Toilet Rooms.

4.22.1 Minimum Number. *Toilet facilities required to be accessible by 4.1 shall comply*

4.21 Shower Stalls

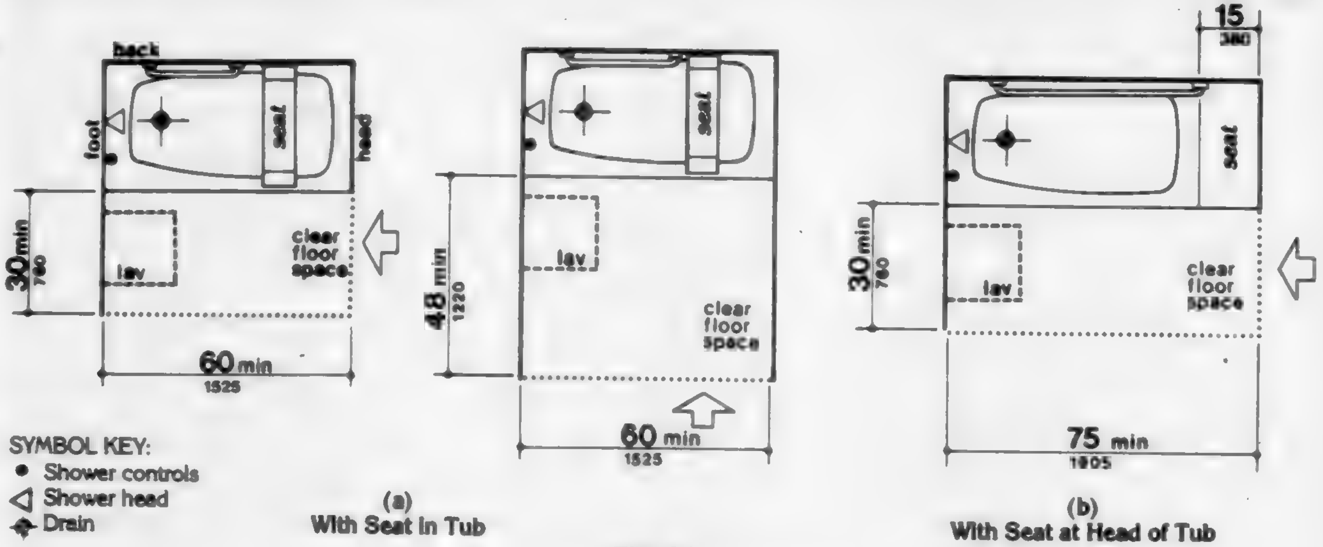
back
foot
seat
head
30 min 760
lav
clear floor space
60 min 1525
48 min 1220
60 min 1525
15 380
30 min 760
75 min 1905
SYMBOL KEY:
• Shower controls
◁ Shower head
✦ Drain

(a) With Seat in Tub

(b) With Seat at Head of Tub

Fig. 33
Clear Floor Space at Bathtubs

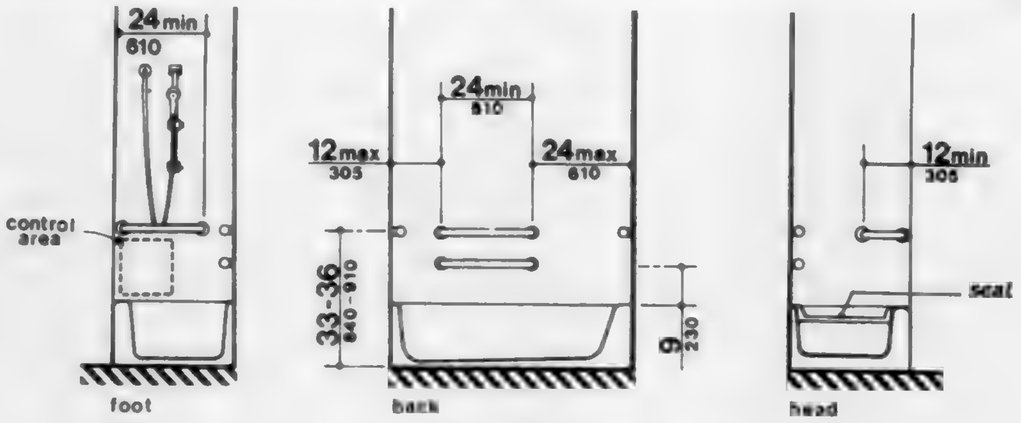
24 min 610
control area
foot
24 min 610
12 max 305
24 max 610
33-36 840-910
9 230
back
12 min 305
seat
head

(a) With Seat in Tub

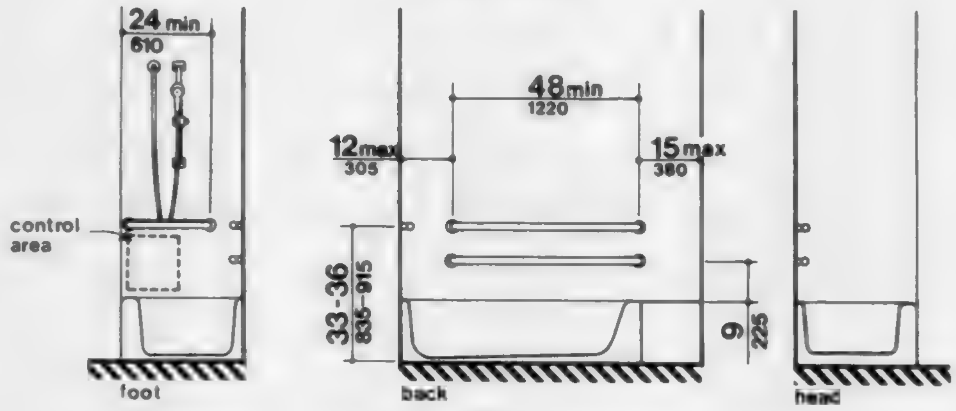
24 min 610
control area
foot
48 min 1220
12 max 305
15 max 380
33-36 835-915
9 225
back
head

(b) With Seat at Head of Tub

Fig. 34
Grab Bars at Bathtubs

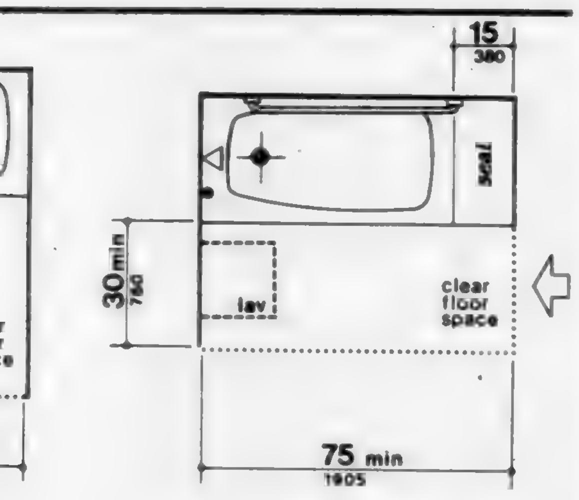
15
380
seat
30 min
760
lav
clear floor space
75 min
1905

(b)
With Seat at Head of Tub

athtubs

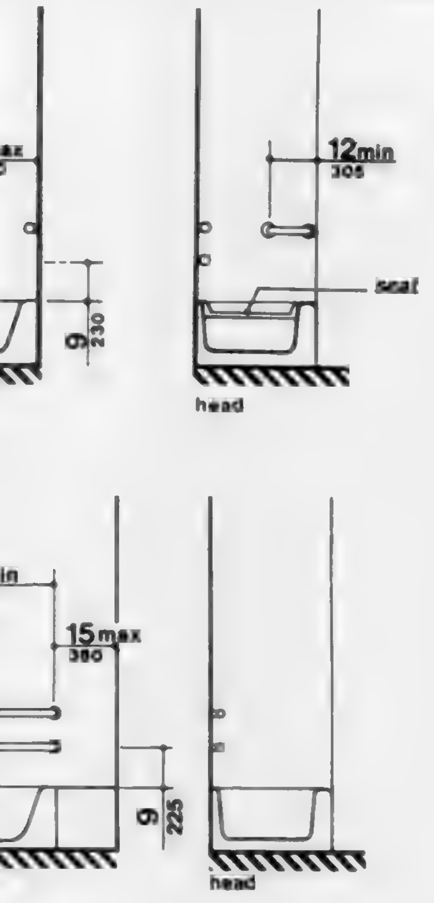
12 min
305
seat
9
230
head
15 max
380
9
225
head

Tub

tubs

with 4.22. Accessible toilet rooms shall be on an accessible route.

4.22.2 Doors. All doors to accessible toilet rooms shall comply with 4.13. Doors shall not swing into the clear floor space required for any fixture.

4.22.3* Clear Floor Space. The accessible fixtures and controls required in 4.22.4, 4.22.5, 4.22.6, and 4.22.7 shall be on an accessible route. An unobstructed turning space complying with 4.2.3 shall be provided within an accessible toilet room. The clear floor space at fixtures and controls, the accessible route, and the turning space may overlap.

4.22.4 Water Closets. If toilet stalls are provided, then at least one shall be a standard toilet stall complying with 4.17; *where 6 or more stalls are provided, in addition to the stall complying with 4.17.3, at least one stall 36 in (915 mm) wide with an outward swinging, self-closing door and parallel grab bars complying with Fig. 30(d) and 4.26 shall be provided. Water closets in such stalls* shall comply with 4.16. If water closets are not in stalls, then at least one shall comply with 4.16.

4.22.5 Urinals. If urinals are provided, *then* at least one shall comply with 4.18.

4.22.6 Lavatories and Mirrors. If lavatories and mirrors are provided, *then* at least one of each shall comply with 4.19.

4.22.7 Controls and Dispensers. If controls, dispensers, receptacles, or other

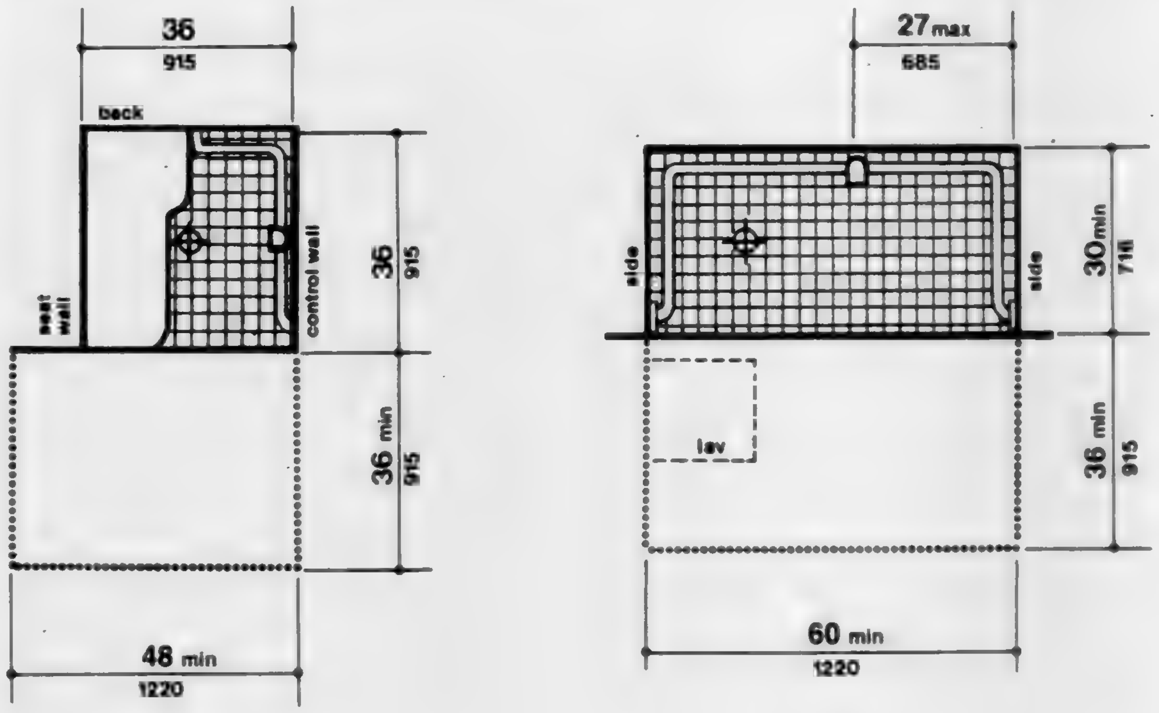
36
915
back
seat wall
control wall
36
915
36 min
915
48 min
1220
27 max
685
side
side
30 min
760
lav
36 min
915
60 min
1220

(a)
36-in by 36-in
(915-mm by 915-mm) Stall

(b)
30-in by 60-in
(760-mm by 1525-mm) Stall

Fig. 35
Shower Size and Clearances

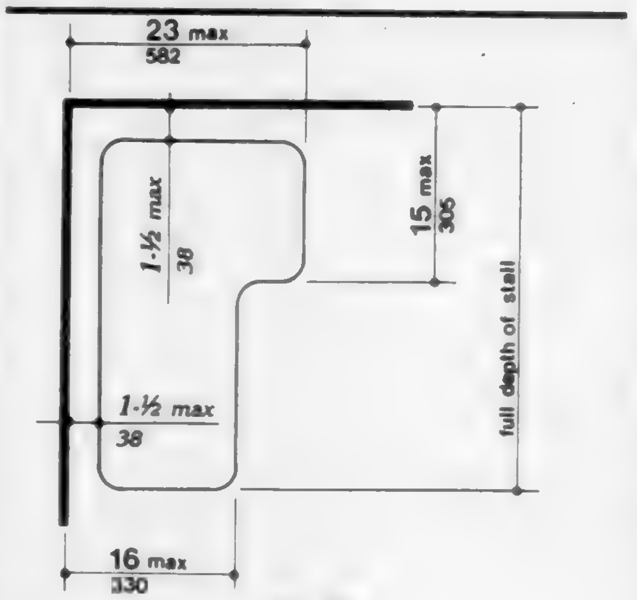
23 max
582
1-½ max
38
15 max
305
full depth of stall
1-½ max
38
16 max
330

Fig. 36
Shower Seat Design

equipment are provided, *then* at least one of each shall be on an accessible route and shall comply with 4.27.

4.23 Bathrooms, Bathing Facilities, and Shower Rooms.

4.23.1 Minimum Number. Bathrooms, bathing facilities, or shower rooms *required to be accessible by 4.1* shall comply with 4.23 and shall be on an accessible route.

4.23.2 Doors. Doors to accessible bathrooms shall comply with 4.13. Doors shall not swing into the floor space required for any fixture.

4.23.3* Clear Floor Space. The accessible fixtures and controls required in 4.23.4, 4.23.5, 4.23.6, 4.23.7, 4.23.8, and 4.23.9 shall be on an accessible route. An unobstructed turning

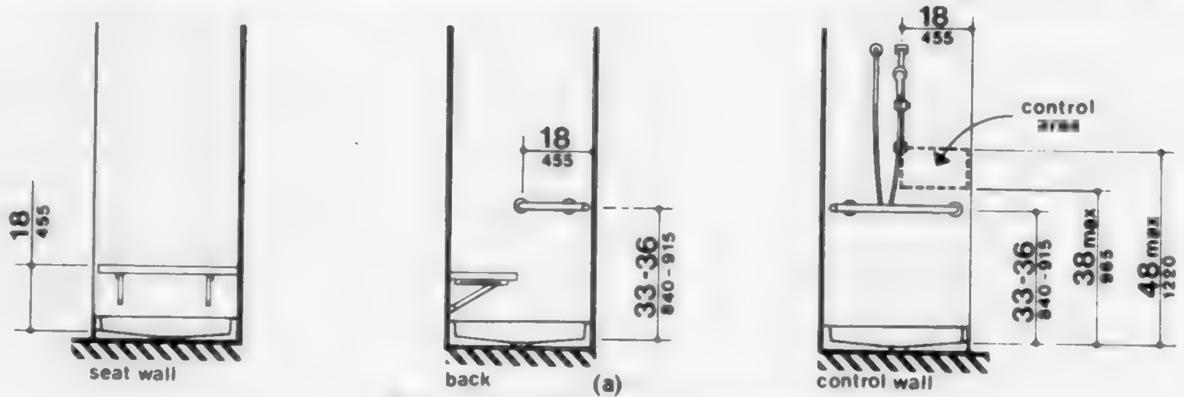
18
455
seat wall
18
455
back
33-36
840-915
18
455
control area
33-36
840-915
38 max
965
48 max
1220
control wall

(a)
36-in by 36-in (915-mm by 915-mm) Stall

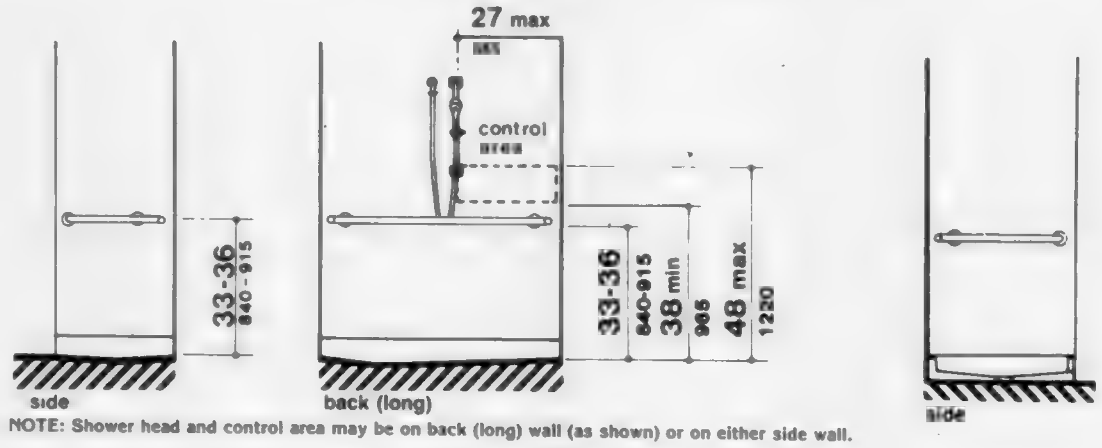
33-36
840-915
side
27 max
685
control area
33-36
840-915
38 min
965
48 max
1220
back (long)
side

NOTE: Shower head and control area may be on back (long) wall (as shown) or on either side wall.

(b)
30-in by 60-in (760-mm by 1525-mm) Stall

Fig. 37
Grab Bars at Shower Stalls

space complying with 4.2.3 shall be provided within an accessible bathroom. The clear floor spaces at fixtures and controls, the accessible route, and the turning space may overlap.

4.23.4 Water Closets. If toilet stalls are provided, then at least one shall be a standard toilet stall complying with 4.17; *where 6 or more stalls are provided, in addition to the stall complying with 4.17.3, at least one stall 36 in (915 mm) wide with an outward swinging, self-closing door and parallel grab bars complying with Fig. 30(d) and 4.26 shall be provided. Water closets in such stalls* shall comply with 4.16. If water closets are not in stalls, then at least one shall comply with 4.16.

4.23.5 Urinals. If urinals are provided, then at least one shall comply with 4.18.

4.23.6 Lavatories and Mirrors. If lavatories and mirrors are provided, then at least one of each shall comply with 4.19.

4.23.7 Controls and Dispensers. If controls, dispensers, receptacles, or other equipment *are* provided, *then* at least one of each shall be on an accessible route and shall comply with 4.27.

4.23.8 Bathing and Shower Facilities. If tubs or showers are provided, then at least one accessible tub that complies with 4.20 or at least one accessible shower that complies with 4.21 shall be provided.

4.23.9* Medicine Cabinets. If medicine cabinets are provided, at least one shall be located with a usable shelf no higher than 44 in (1120 mm) above the floor space. The floor space shall comply with 4.2.4.

4.24 Sinks.

4.24.1 General. Sinks *required to be accessible by 4.1* shall comply with 4.24.

4.24.2 Height. Sinks shall be mounted with the counter or rim no higher than 34 in (865 mm) *above the finish* floor.

4.24.3 Knee Clearance. Knee clearance that is at least 27 in (685 mm) high, 30 in (760 mm) wide, and 19 in (485 mm) deep shall be provided underneath sinks.

4.24.4 Depth. Each sink shall be a maximum of 6-1/2 in (165 mm) deep.

4.24.5 Clear Floor Space. A clear floor space at least 30 in by 48 in (760 mm by 1220 mm) complying with 4.2.4 shall be provided in front of a sink to allow forward approach. The clear floor space shall be on an accessible route and shall extend a maximum of 19 in (485 mm) underneath the sink (see Fig. 32).

4.24.6 Exposed Pipes and Surfaces. Hot water and drain pipes exposed under sinks shall be insulated or otherwise *configured so as to protect against contact.* There shall be no sharp or abrasive surfaces under sinks.

4.24.7 Faucets. Faucets shall comply with 4.27.4. Lever-operated, push-type, touch-type, or electronically controlled mechanisms are acceptable designs.

4.25 Storage.

4.25.1 General. *Fixed* storage facilities such as cabinets, shelves, closets, and drawers *required to be accessible by 4.1* shall comply with 4.25.

4.25.2 Clear Floor Space. A clear floor space at least 30 in by 48 in (760 mm by 1220 mm) complying with 4.2.4 that allows either a forward or parallel approach by a person using a wheelchair shall be provided at accessible storage facilities.

4.25.3 Height. Accessible storage spaces shall be within at least one of the reach ranges specified in 4.2.5 and 4.2.6 *(see Fig. 5 and Fig. 6).* Clothes rods or shelves shall be a maximum of 54 in (1370 mm) *above the finish* floor *for a side approach. Where the distance from the wheelchair to the clothes rod or shelf exceeds 10 in (255 mm) (as in closets without accessible doors) the height and depth to the rod or shelf shall comply with Fig. 38(a) and Fig. 38(b).*

4.25.4 Hardware. Hardware for accessible storage facilities shall comply with 4.27.4. Touch latches and U-shaped pulls are acceptable.

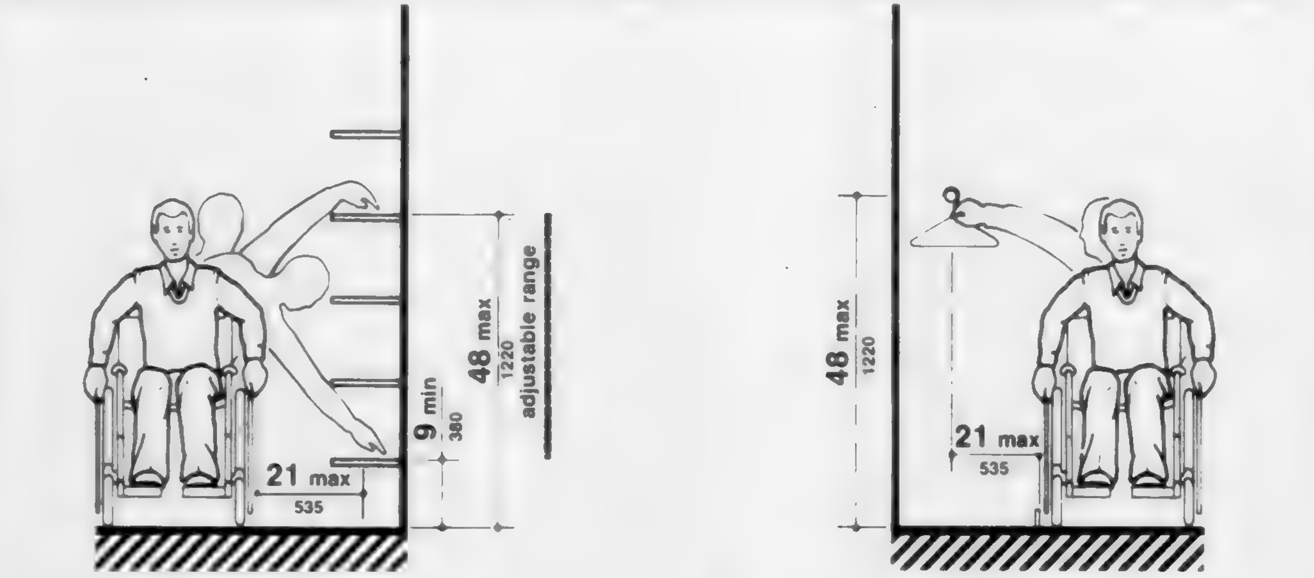

(a) Shelves

(b) Closets

Fig. 38
Storage Shelves and Closets

4.26 Handrails, Grab Bars, and Tub and Shower Seats.

4.26.1* General. All handrails, grab bars, and tub and shower seats *required to be accessible by 4.1, 4.8, 4.9, 4.16, 4.17, 4.20 or 4.21* shall comply with 4.26.

4.26.2* Size and Spacing of Grab Bars and Handrails. The diameter or width of the gripping surfaces of a handrail or grab bar shall be 1-1/4 in to 1-1/2 in (32 mm to 38 mm), or the shape shall provide an equivalent gripping surface. If handrails or grab bars are mounted adjacent to a wall, the space between the wall and the grab bar shall be 1-1/2 in (38 mm) (see Fig. 39(a), (b), (c), and *(e)*). Handrails may be located in a recess if the recess is a maximum of 3 in (75 mm) deep and extends at least 18 in (455 mm) above the top of the rail (see Fig. 39(d)).

4.26.3 Structural Strength. The structural strength of grab bars, tub and shower seats, fasteners, and mounting devices shall meet the following specification:

(1) Bending stress in a grab bar or seat induced by the maximum bending moment from the application of 250 lbf (1112N) shall be less than the allowable stress for the material of the grab bar or seat.

(2) Shear stress induced in a grab bar or seat by the application of 250 lbf (1112N) shall be less than the allowable shear stress for the material of the grab bar or seat. If the connection between the grab bar or seat and its mounting bracket or other support is considered to be fully restrained, then direct and torsional shear stresses shall be totaled for the combined shear stress, which shall not exceed the allowable shear stress.

(3) Shear force induced in a fastener or mounting device from the application of 250 lbf (1112N) shall be less than the allowable lateral load of either the fastener or mounting device or the supporting structure, whichever is the smaller allowable load.

(4) Tensile force induced in a fastener by a direct tension force of 250 lbf (1112N) plus the maximum moment from the application of 250 lbf (1112N) shall be less than the allowable withdrawal load between the fastener and the supporting structure.

(5) Grab bars shall not rotate within their fittings.

eats

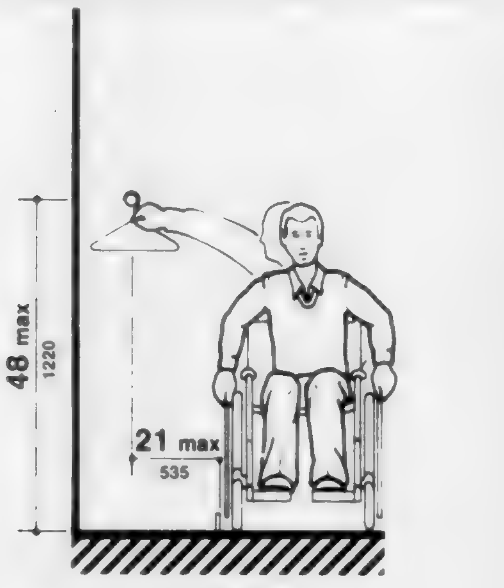

(b) Closets

d Closets

less than the allowable stress for the
aterial of the grab bar or seat.

(2) Shear stress induced in a grab bar or
at by the application of 250 lbf (1112N) shall
less than the allowable shear stress for the
aterial of the grab bar or seat. If the con-
ction between the grab bar or seat and its
ounting bracket or other support is consid-
ed to be fully restrained, then direct and
rsional shear stresses shall be totaled for the
mbined shear stress, which shall not exceed
e allowable shear stress.

(3) Shear force induced in a fastener or
ounting device from the application of 250 lbf
112N) shall be less than the allowable lateral
ad of either the fastener or mounting device
the supporting structure, whichever is the
aller allowable load.

(4) Tensile force induced in a fastener by a
rect tension force of 250 lbf (1112N) plus the
aximum moment from the application of
0 lbf (1112N) shall be less than the allowable
thdrawal load between the fastener and the
pporting structure.

(5) Grab bars shall not rotate within their
tings.

4.26 Handrails, Grab Bars, and Tub and Shower Seats

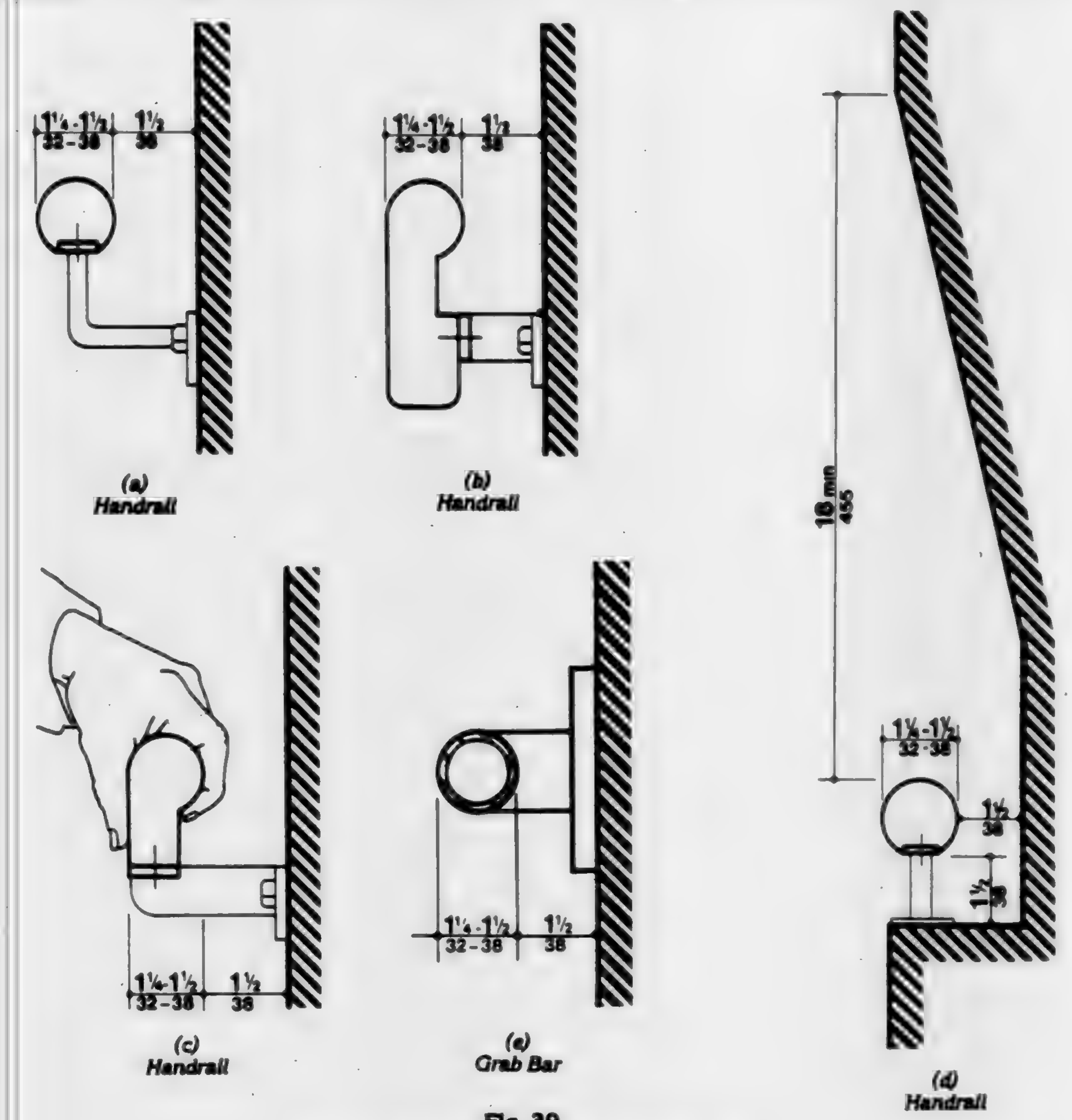

Fig. 39
Size and Spacing of Handrails and Grab Bars

4.26.4 Eliminating Hazards. A handrail or grab bar and any wall or other surface adjacent to it shall be free of any sharp or abrasive elements. Edges shall have a minimum radius of 1/8 in (3.2 mm).

4.27 Controls and Operating Mechanisms.

4.27.1 General. Controls and operating mechanisms *required to be accessible by 4.1* shall comply with 4.27.

4.27.2 Clear Floor Space. Clear floor space complying with 4.2.4 that allows a forward or a parallel approach by a person using a wheelchair shall be provided at controls, dispensers, receptacles, and other operable equipment.

4.27.3* Height. The highest operable part of controls, dispensers, receptacles, and other operable equipment shall be placed within at least one of the reach ranges specified in 4.2.5 and 4.2.6. Electrical and communications system receptacles on walls shall be mounted no less than 15 in (380 mm) above the floor.

EXCEPTION: These requirements do not apply where the use of special equipment dictates otherwise or where electrical and communications systems receptacles are not normally intended for use by building occupants.

4.27.4 Operation. Controls and operating mechanisms shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate controls shall be no greater than 5 lbf (22.2 N).

4.28 Alarms.

4.28.1 General. *Alarm systems required to be accessible by 4.1 shall comply with 4.28. At a minimum, visual signal appliances shall be provided in buildings and facilities in each of the following areas: restrooms and any other general usage areas (e.g., meeting rooms), hallways, lobbies, and any other area for common use.*

4.28.2* Audible Alarms. If provided, audible emergency alarms shall produce a sound that exceeds the prevailing equivalent sound level in the room or space by at least 15 *dbA* or exceeds any maximum sound level with a duration of *60* seconds by 5 *dbA*, whichever is louder. Sound levels for alarm signals shall not exceed 120 *dbA*.

4.28.3* Visual Alarms. *Visual alarm signal appliances shall be integrated into the building or facility alarm system. If single station audible alarms are provided then single station visual alarm signals shall be provided. Visual alarm signals shall have the following minimum photometric and location features:*

(1) The lamp shall be a xenon strobe type or equivalent.

(2) The color shall be clear or nominal white (i.e., unfiltered or clear filtered white light).

(3) The maximum pulse duration shall be two-tenths of one second (0.2 sec) with a maximum duty cycle of 40 percent. The pulse duration is defined as the time interval between initial and final points of 10 percent of maximum signal.

(4) The intensity shall be a minimum of 75 candela.

(5) The flash rate shall be a minimum of 1 Hz and a maximum of 3 Hz.

(6) The appliance shall be placed 80 in (2030 mm) above the highest floor level within the space or 6 in (152 mm) below the ceiling, whichever is lower.

(7) In general, no place in any room or space required to have a visual signal appliance shall be more than 50 ft (15 m) from the signal (in the horizontal plane). In large rooms and spaces exceeding 100 ft (30 m) across, without obstructions 6 ft (2 m) above the finish floor, such as auditoriums, devices may be placed around the perimeter, spaced a maximum 100 ft (30 m) apart, in lieu of suspending appliances from the ceiling.

(8) No place in common corridors or hallways in which visual alarm signalling appliances are required shall be more than 50 ft (15 m) from the signal.

4.28.4* Auxiliary Alarms. *Units and* sleeping accommodations shall have a visual alarm connected to the building emergency alarm system or shall have a standard 110-volt electrical receptacle into which such an alarm can be connected *and a means by which a signal from the building emergency alarm system can trigger such an auxiliary alarm. When visual alarms are in place the signal shall be visible in all areas of the unit or room.* Instructions for use of the auxiliary alarm or receptacle shall be provided.

4.29 *Detectable* Warnings.

4.29.1 General. *Detectable* warnings *required by* 4.1 and 4.7 shall comply with 4.29.

4.29.2* *Detectable* Warnings on Walking Surfaces. *Detectable* warnings shall consist *of raised truncated domes with a diameter of nominal 0.9 in (23 mm), a height of nominal 0.2 in (5 mm) and a center-to-center spacing of nominal 2.35 in (60 mm)* and shall contrast *visually* with *adjoining surfaces, either light-on-dark, or dark-on-light.*

The material used to provide contrast shall be an integral part of the walking surface. Detectable warnings used on interior surfaces shall differ from adjoining walking surfaces in resiliency or sound-on-cane contact.

4.29.3 *Detectable* Warnings on Doors To Hazardous Areas. *(Reserved).*

4.29.4 *Detectable* Warnings at Stairs. *(Reserved).*

4.29.5 *Detectable* Warnings at Hazardous Vehicular Areas. If a walk crosses or adjoins a vehicular way, *and the walking surfaces are not separated by* curbs, railings, or other elements *between the pedestrian areas and vehicular areas*, the boundary between the areas shall be defined by a continuous *detectable* warning *which* is 36 in (915 mm) wide, complying with 4.29.2.

4.29.6 *Detectable* Warnings at Reflecting Pools. The edges of reflecting pools shall be protected by railings, walls, curbs, or *detectable* warnings complying with 4.29.2.

4.29.7 Standardization. *(Reserved).*

4.30 Signage.

4.30.1* General. Signage *required to be accessible by 4.1 shall comply with the applicable provisions of 4.30.*

4.30.2* Character Proportion. Letters and numbers on signs shall have a width-to-height ratio between 3:5 and 1:1 and a stroke-width-to-height ratio between 1:5 and 1:10.

4.30.3 Character Height. *Characters and numbers on signs shall be sized according to the viewing distance from which they are to be read. The minimum height is measured using an upper case X. Lower case characters are permitted.*

Height Above Finished Floor	***Minimum Character Height***
Suspended or Projected Overhead in compliance with 4.4.2	*3 in. (75 mm) minimum*

4.30.4* Raised and Brailled Characters and Pictorial Symbol Signs (Pictograms). Letters and numerals shall be raised 1/32 in, *upper case,* sans serif *or simple serif type and shall be accompanied with Grade 2 Braille.* Raised characters shall be at least 5/8 in (16 mm) high, but no higher than 2 in (50 mm). *Pictograms shall be accompanied by the equivalent verbal description placed directly below the pictogram. The border dimension of the pictogram shall be 6 in (152 mm) minimum in height.*

4.30.5* Finish and Contrast. *The characters and background of signs shall be eggshell, matte, or other non-glare finish.* Characters and symbols shall contrast with their background — either light characters on a dark background or dark characters on a light background.

4.30.6 Mounting Location and Height. *Where permanent identification is provided for rooms and spaces, signs shall be installed on the wall adjacent to the latch side of the door. Where there is no wall space to the latch side of the door, including at double leaf doors, signs shall be placed on the nearest adjacent wall. Mounting height shall be 60 in (1525 mm) above the finish floor to the centerline of the sign. Mounting location for such signage shall be so that a person may approach within 3 in (76 mm) of signage without encountering protruding objects or standing within the swing of a door.*

4.30.7* Symbols of Accessibility.

(1) Facilities and elements required to be identified as accessible by 4.1 shall use the international symbol of accessibility. The

4.30 Signage

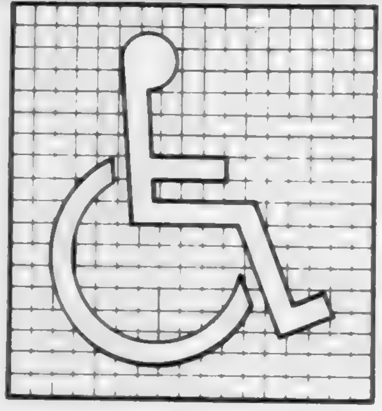

(a)
Proportions
International Symbol of Accessibility

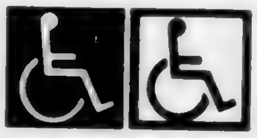

(b)
Display Conditions
International Symbol of Accessibility

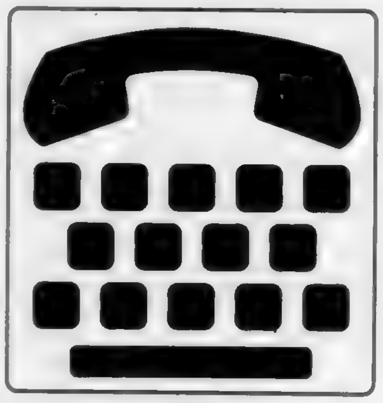

(c)
International TDD Symbol

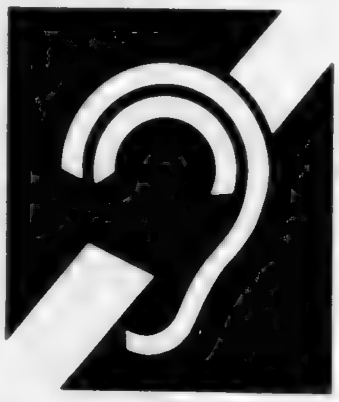

(d)
International Symbol of Access for Hearing Loss

Fig. 43
International Symbols

symbol shall be displayed as shown in Fig. 43*(a) and (b).*

(2) Volume Control Telephones. Telephones required to have a volume control by 4.1.3(17)(b) shall be identified by a sign containing a depiction of a telephone handset with radiating sound waves.

(3) Text Telephones. Text telephones required by 4.1.3 (17)(c) shall be identified by the international TDD symbol (Fig 43(c)). In addition, if a facility has a public text telephone, directional signage indicating the location of the nearest text telephone shall be placed adjacent to all banks of telephones which do not contain a text telephone. Such directional signage shall include the international TDD symbol. If a facility has no banks of telephones, the directional signage shall be provided at the entrance (e.g., in a building directory).

(4) Assistive Listening Systems. In assembly areas where permanently installed assistive listening systems are required by 4.1.3(19)(b) the availability of such systems shall be identified with signage that includes the international symbol of access for hearing loss (Fig 43(d)).

4.30.8* Illumination Levels. *(Reserved).*

4.31 Telephones.

4.31.1 General. Public telephones *required to be accessible by 4.1* shall comply with 4.31.

4.31.2 Clear Floor or Ground Space. A clear floor or ground space at least 30 in by 48 in (760 mm by 1220 mm) that allows either a forward or parallel approach by a person using a wheelchair shall be provided at telephones (see Fig. 44). The clear floor or ground space shall comply with 4.2.4. Bases, enclosures, and fixed seats shall not impede approaches to telephones by people who use wheelchairs.

4.31.3* Mounting Height. The highest operable part of the telephone shall be within the reach ranges specified in 4.2.5 or 4.2.6.

4.31.4 Protruding Objects. *Telephones shall comply with 4.4.*

mbol shall be displayed as shown in
g. *43(a) and (b).*

*(2) Volume Control Telephones. Telephones
quired to have a volume control by 4.1.3(17)(b)
all be identified by a sign containing a depic-
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30.8* *Illumination Levels*. *(Reserved).*

31 Telephones.

31.1 General. Public telephones *required
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31.2 Clear Floor or Ground Space. A
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in (760 mm by 1220 mm) that allows
er a forward or parallel approach by a
son using a wheelchair shall be provided
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roaches to telephones by people who use
eelchairs.

1.3* Mounting Height. The highest
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reach ranges specified in 4.2.5 or 4.2.6.

1.4 *Protruding Objects*. *Telephones
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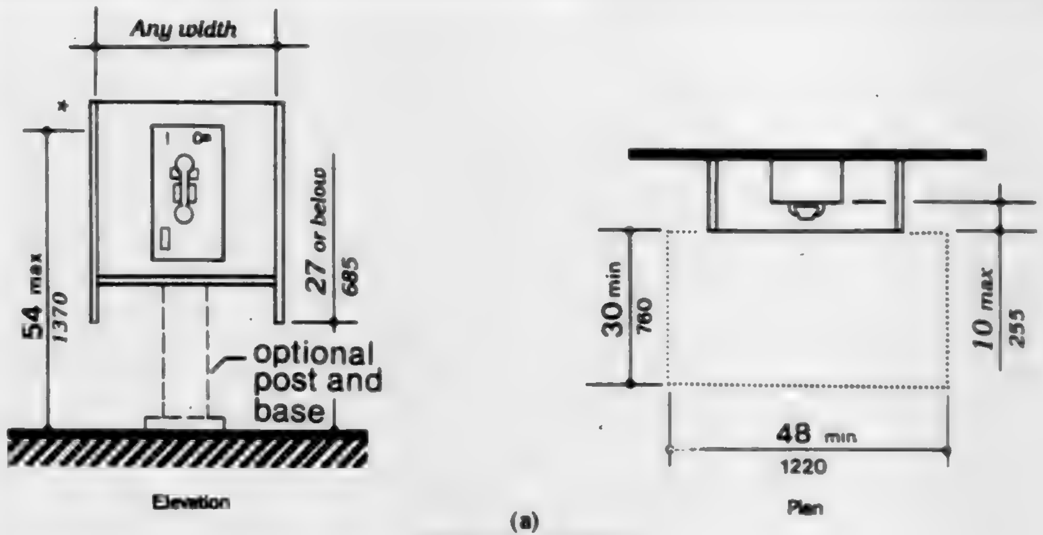

(a)
Side Reach Possible

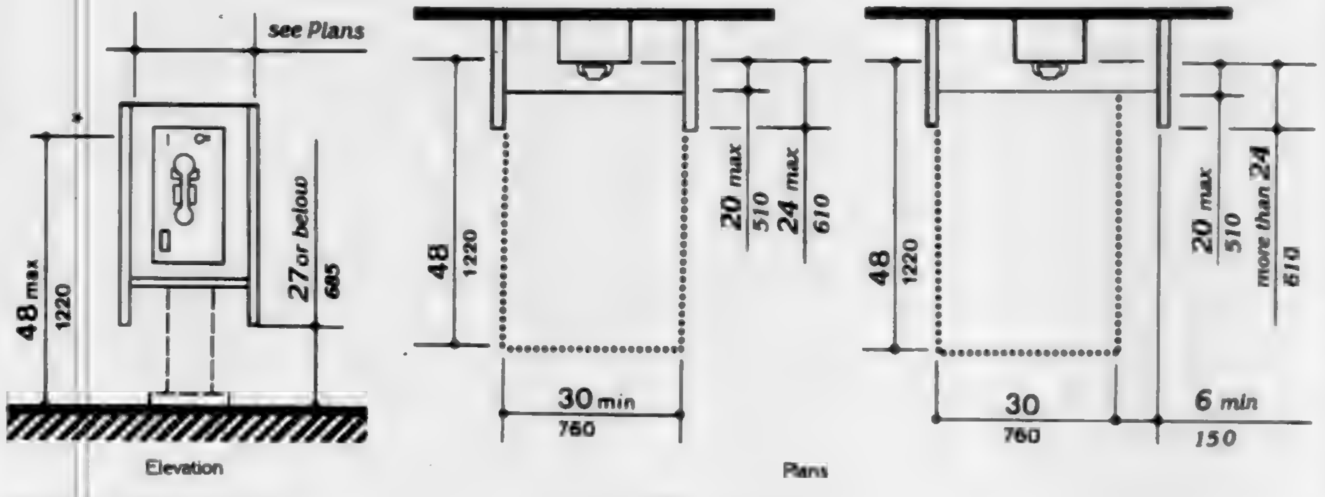

**Height to highest operable parts which are essential to basic operation of telephone.*

(b)
Forward Reach Required

Fig. 44
Mounting Heights and Clearances for Telephones

4.31.5 *Hearing Aid Compatible and Volume Control Telephones Required by 4.1.*

(1) Telephones shall be hearing aid compatible.

(2) Volume controls, *capable of a minimum of 12 dbA and a maximum of 18 dbA above normal, shall be provided in accordance with 4.1.3. If an automatic reset is provided then 18 dbA may be exceeded.*

4.31.6 Controls. Telephones shall have pushbutton controls where service for such equipment is available.

4.31.7 Telephone Books. Telephone books, if provided, shall be located *in a position that complies with the reach ranges specified in 4.2.5 and 4.2.6.*

4.31.8 Cord Length. The cord from the telephone to the handset shall be at least 29 in (735 mm) long.

4.31.9 Text Telephones Required by 4.1.*

(1) Text telephones used with a pay telephone shall be permanently affixed within, or adjacent to, the telephone enclosure. If an acoustic coupler is used, the telephone cord shall be sufficiently long to allow connection of the text telephone and the telephone receiver.

(2) Pay telephones designed to accommodate a portable text telephone shall be equipped with a shelf and an electrical outlet within or adjacent to the telephone enclosure. The telephone handset shall be capable of being placed flush on the surface of the shelf. The shelf shall be capable of accommodating a text telephone and shall have 6 in (152 mm) minimum vertical clearance in the area where the text telephone is to be placed.

(3) Equivalent facilitation may be provided. For example, a portable text telephone may be made available in a hotel at the registration desk if it is available on a 24-hour basis for use with nearby public pay telephones. In this instance, at least one pay telephone shall comply with paragraph 2 of this section. In addition, if an acoustic coupler is used, the telephone handset cord shall be sufficiently long so as to allow connection of the text telephone and the telephone receiver. Directional signage shall be provided and shall comply with 4.30.7.

4.32 *Fixed or Built-in* Seating and Tables.

4.32.1 Minimum Number. Fixed or built-in seating or tables *required to be accessible by 4.1* shall comply with 4.32.

4.32.2 Seating. If seating spaces for people in wheelchairs are provided at *fixed* tables or counters, clear floor space complying with 4.2.4 shall be provided. Such clear floor space shall not overlap knee space by more than 19 in (485 mm) (see Fig. 45).

4.32.3 Knee Clearances. If seating for people in wheelchairs is provided at tables *or* counters, knee spaces at least 27 in (685 mm) high, 30 in (760 mm) wide, and 19 in (485 mm) deep shall be provided (see Fig. 45).

4.32.4* Height of Tables or Counters. The tops of *accessible* tables and *counters* shall be from 28 in to 34 in (710 mm to 865 mm) *above the finish* floor or ground.

4.33 Assembly Areas.

4.33.1 Minimum Number. Assembly *and associated* areas *required to be accessible by 4.1 shall comply with 4.33.*

4.33.2* Size of Wheelchair Locations. Each wheelchair location shall provide minimum clear ground or floor spaces as shown in Fig. 46.

4.33.3* Placement of Wheelchair Locations. Wheelchair areas shall be an integral part of any fixed seating plan and shall be *provided so as to provide people with physical disabilities a choice of admission prices and lines of sight comparable to those for members of the general public.* They shall adjoin an accessible route that also serves as a means of egress in case of emergency. *At least one companion fixed seat shall be provided next to each wheelchair seating area. When the seating capacity exceeds 300, wheelchair spaces shall be provided in more than one location. Readily removable seats may be installed in wheelchair spaces when the spaces are not required to accommodate wheelchair users.*

EXCEPTION: Accessible viewing positions may be clustered for bleachers, balconies, and other areas having sight lines that require slopes of greater than 5 percent. Equivalent accessible viewing positions may be located on levels having accessible egress.

4.33.4 Surfaces. The ground or floor at wheelchair locations shall be level and shall comply with 4.5.

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32.3 Knee Clearances. If seating for ople in wheelchairs is provided at tables *or* unters, knee spaces at least 27 in (685 mm) h, 30 in (760 mm) wide, and 19 in (485 mm) ep shall be provided (see Fig. 45).

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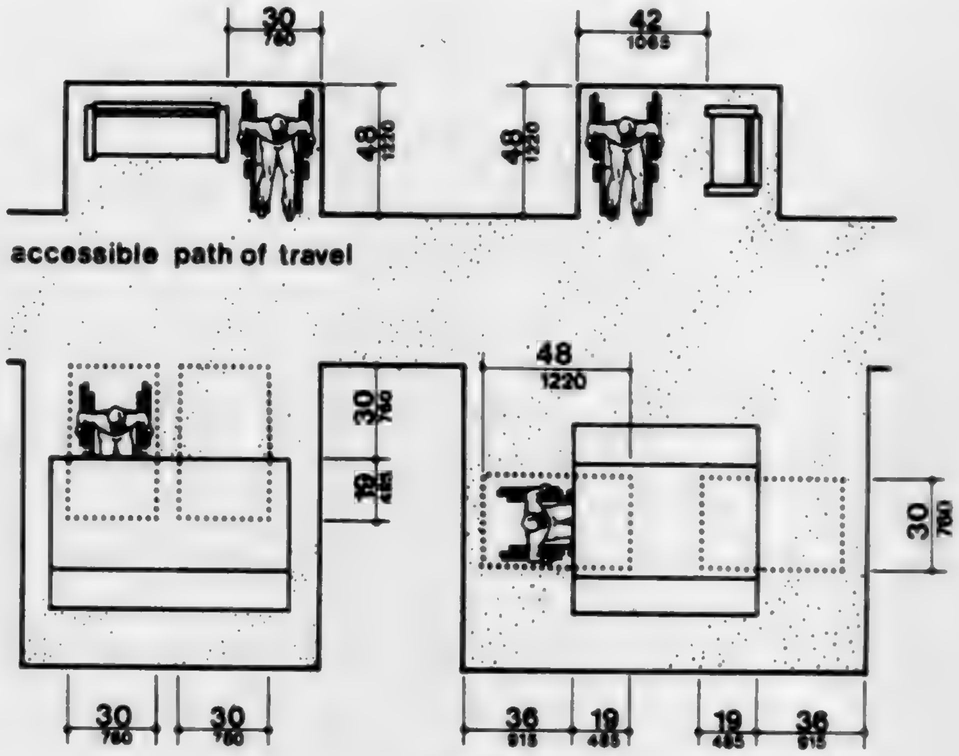

Fig. 45
Minimum Clearances for Seating and Tables

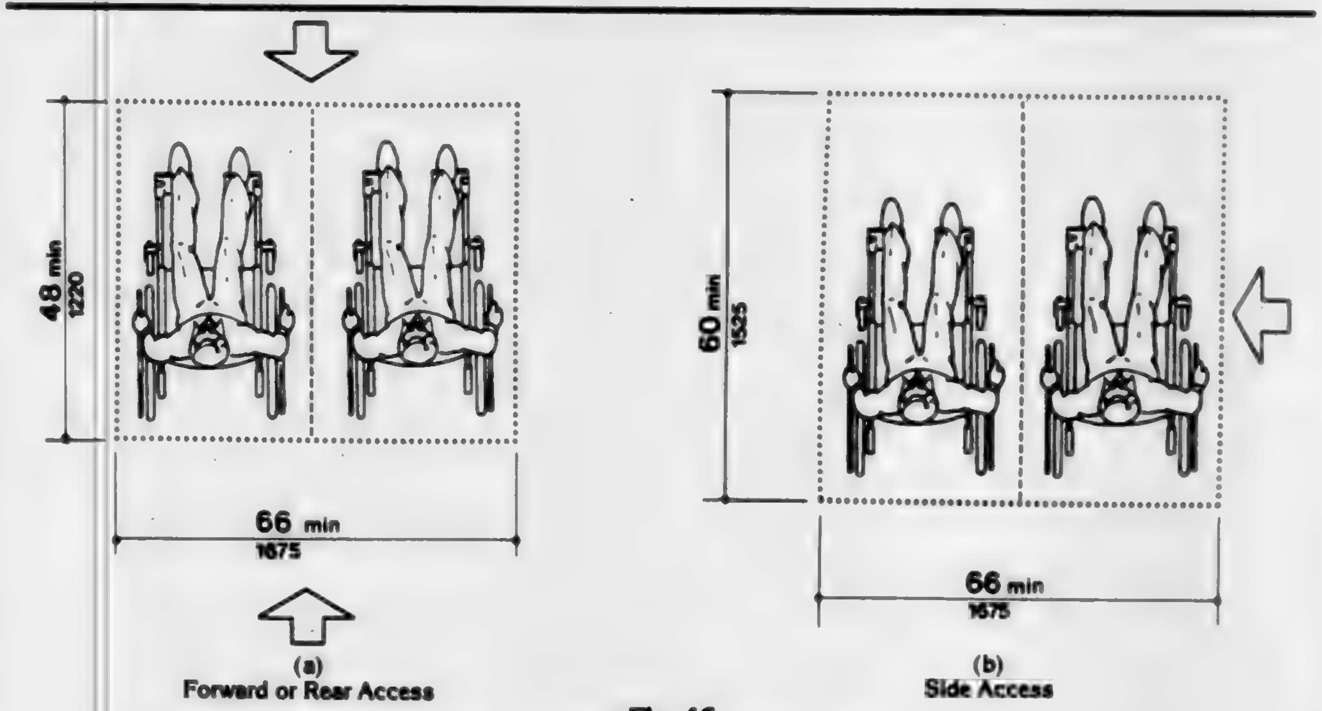

(a)
Forward or Rear Access

(b)
Side Access

Fig. 46
Space Requirements for Wheelchair
Seating Spaces in Series

4.33.5 Access to Performing Areas. An accessible route shall connect wheelchair seating locations with performing areas, including stages, arena floors, dressing rooms, locker rooms, and other spaces used by performers.

4.33.6* Placement of Listening Systems. If the listening system provided serves individual fixed seats, then such seats shall be located within a 50 ft (15 m) viewing distance of the stage or playing area and shall have a complete view of the stage or playing area.

4.33.7* Types of Listening Systems. *Assistive listening systems (ALS) are intended to augment standard public address and audio systems by providing signals which can be received directly by persons with special receivers or their own hearing aids and which eliminate or filter background noise. The type of assistive listening system appropriate for a particular application depends on the characteristics of the setting, the nature of the program, and the intended audience. Magnetic induction loops, infra-red and radio frequency systems are types of listening systems which are appropriate for various applications.*

4.34 Automated Teller Machines.

4.34.1 General. *Each machine required to be accessible by 4.1.3 shall be on an accessible route and shall comply with 4.34.*

4.34.2 Controls. *Controls for user activation shall comply with the requirements of 4.27.*

4.34.3 Clearances and Reach Range. *Free standing or built-in units not having a clear space under them shall comply with 4.27.2 and 4.27.3 and provide for a parallel approach and both a forward and side reach to the unit allowing a person in a wheelchair to access the controls and dispensers.*

4.34.4 Equipment for Persons with Vision Impairments. *Instructions and all information for use shall be made accessible to and independently usable by persons with vision impairments.*

4.35 Dressing and Fitting Rooms.

4.35.1 General. *Dressing and fitting rooms required to be accessible by 4.1 shall comply with 4.35 and shall be on an accessible route.*

4.35.2 Clear Floor Space. *A clear floor space allowing a person using a wheelchair to make a 180-degree turn shall be provided in every accessible dressing room entered through a swinging or sliding door. No door shall swing into any part of the turning space. Turning space shall not be required in a private dressing room entered through a curtained opening at least 32 in (815 mm) wide if clear floor space complying with section 4.2 renders the dressing room usable by a person using a wheelchair.*

4.35.3 Doors. *All doors to accessible dressing rooms shall be in compliance with section 4.13.*

4.35.4 Bench. *Every accessible dressing room shall have a 24 in by 48 in (610 mm by 1220 mm) bench fixed to the wall along the longer dimension. The bench shall be mounted 17 in to 19 in (430 mm to 485 mm) above the finish floor. Clear floor space shall be provided alongside the bench to allow a person using a wheelchair to make a parallel transfer onto the bench. The structural strength of the bench and attachments shall comply with 4.26.3. Where installed in conjunction with showers, swimming pools, or other wet locations, water shall not accumulate upon the surface of the bench and the bench shall have a slip-resistant surface.*

4.35.5 Mirror. *Where mirrors are provided in dressing rooms of the same use, then in an accessible dressing room, a full-length mirror, measuring at least 18 in wide by 54 in high (460 mm by 1370 mm), shall be mounted in a position affording a view to a person on the bench as well as to a person in a standing position.*

NOTE: Sections 4.1.1 through 4.1.7 and sections 5 through 10 are different from ANSI A117.1 in their entirety and are printed in standard type.

4.35 Dressing and Fitting Rooms.

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5. RESTAURANTS AND CAFETERIAS.

5.1* General. Except as specified or modified in this section, restaurants and cafeterias shall comply with the requirements of 4.1 to 4.35. Where fixed tables (or dining counters where food is consumed but there is no service) are provided, at least 5 percent, but not less than one, of the fixed tables (or a portion of the dining counter) shall be accessible and shall comply with 4.32 as required in 4.1.3(18). In establishments where separate areas are designated for smoking and non-smoking patrons, the required number of accessible fixed tables (or counters) shall be proportionally distributed between the smoking and non-smoking areas. In new construction, and where practicable in alterations, accessible fixed tables (or counters) shall be distributed throughout the space or facility.

5.2 Counters and Bars. Where food or drink is served at counters exceeding 34 in (865 mm) in height for consumption by customers seated on stools or standing at the counter, a portion of the main counter which is 60 in (1525 mm) in length minimum shall be provided in compliance with 4.32 or service shall be available at accessible tables within the same area.

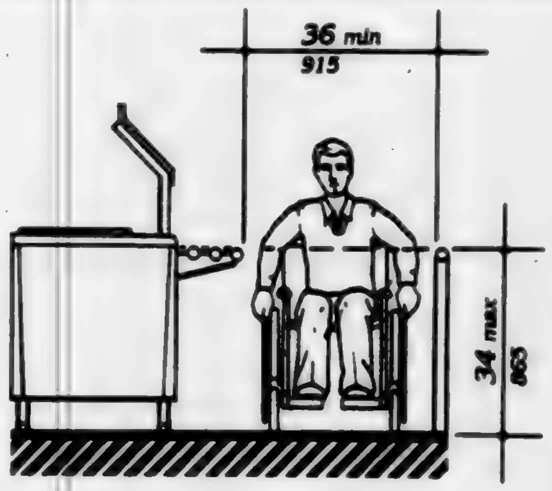

Fig. 53
Food Service Lines

5.3 Access Aisles. All accessible fixed tables shall be accessible by means of an access aisle at least 36 in (915 mm) clear between parallel edges of tables or between a wall and the table edges.

5.4 Dining Areas. In new construction, all dining areas, including raised or sunken dining areas, loggias, and outdoor seating areas, shall be accessible. In non-elevator buildings, an accessible means of vertical access to the mezzanine is not required under the following conditions: 1) the area of mezzanine seating measures no more than 33 percent of the area of the total accessible seating area; 2) the same services and decor are provided in an accessible space usable by the general public; and, 3) the accessible areas are not restricted to use by people with disabilities. In alterations, accessibility to raised or sunken dining areas, or to all parts of outdoor seating areas is not required provided that the same services and decor are provided in an accessible space usable by the general public and are not restricted to use by people with disabilities.

5.5 Food Service Lines. Food service lines shall have a minimum clear width of 36 in (915 mm), with a preferred clear width of 42 in (1065 mm) to allow passage around a person using a wheelchair. Tray slides shall be mounted no higher than 34 in (865 mm) above the floor (see Fig. 53). If self-service shelves

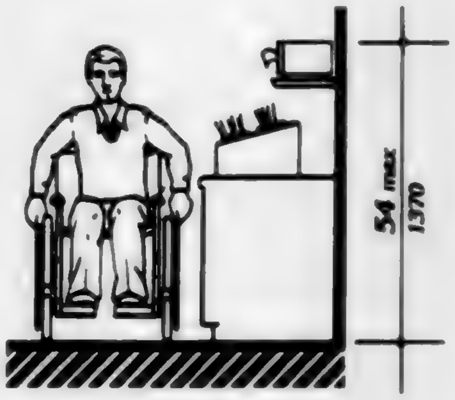

Fig. 54
Tableware Areas

are provided, at least 50 percent of each type must be within reach ranges specified in 4.2.5 and 4.2.6.

5.6 Tableware and Condiment Areas. Self-service shelves and dispensing devices for tableware, dishware, condiments, food and beverages shall be installed to comply with 4.2 (see Fig. 54).

5.7 Raised Platforms. In banquet rooms or spaces where a head table or speaker's lectern is located on a raised platform, the platform shall be accessible in compliance with 4.8 or 4.11. Open edges of a raised platform shall be protected by placement of tables or by a curb.

5.8 Vending Machines and Other Equipment. Spaces for vending machines and other equipment shall comply with 4.2 and shall be located on an accessible route.

5.9 Quiet Areas. (Reserved).

6. MEDICAL CARE FACILITIES.

6.1 General. Medical care facilities included in this section are those in which people receive physical or medical treatment or care and where persons may need assistance in responding to an emergency and where the period of stay may exceed twenty-four hours. In addition to the requirements of 4.1 through 4.35, medical care facilities and buildings shall comply with 6.

(1) Hospitals - general purpose hospitals, psychiatric facilities, detoxification facilities — At least 10 percent of patient bedrooms and toilets, and all public use and common use areas are required to be designed and constructed to be accessible.

(2) Hospitals and rehabilitation facilities that specialize in treating conditions that affect mobility, or units within either that specialize in treating conditions that affect mobility — All patient bedrooms and toilets, and all public use and common use areas are required to be designed and constructed to be accessible.

(3) Long term care facilities, nursing homes — At least 50 percent of patient bedrooms and toilets, and all public use and common use areas are required to be designed and constructed to be accessible.

(4) Alterations to patient bedrooms.

(a) When patient bedrooms are being added or altered as part of a planned renovation of an entire wing, a department, or other discrete area of an existing medical facility, a percentage of the patient bedrooms that are being added or altered shall comply with 6.3. The percentage of accessible rooms provided shall be consistent with the percentage of rooms required to be accessible by the applicable requirements of 6.1(1), 6.1(2), or 6.1(3), until the number of accessible patient bedrooms in the facility equals the overall number that would be required if the facility were newly constructed. (For example, if 20 patient bedrooms are being altered in the obstetrics department of a hospital, 2 of the altered rooms must be made accessible. If, within the same hospital, 20 patient bedrooms are being altered in a unit that specializes in treating mobility impairments, all of the altered rooms must be made accessible.) Where toilet/bath rooms are part of patient bedrooms which are added or altered and required to be accessible, each such patient toilet/bathroom shall comply with 6.4.

(b) When patient bedrooms are being added or altered individually, and not as part of an alteration of the entire area, the altered patient bedrooms shall comply with 6.3, unless either: a) the number of accessible rooms provided in the department or area containing the altered patient bedroom equals the number of accessible patient bedrooms that would be required if the percentage requirements of 6.1(1), 6.1(2), or 6.1(3) were applied to that department or area; or b) the number of accessible patient bedrooms in the facility equals the overall number that would be required if the facility were newly constructed. Where toilet/bathrooms are part of patient bedrooms which are added or altered and required to be accessible, each such toilet/bathroom shall comply with 6.4.

6.2 Entrances. At least one accessible entrance that complies with 4.14 shall be protected from the weather by canopy or roof overhang. Such entrances shall incorporate a passenger loading zone that complies with 4.6.6.

6.3 Patient Bedrooms. Provide accessible patient bedrooms in compliance with 4.1 through 4.35. Accessible patient bedrooms shall comply with the following:

(1) Each bedroom shall have a door that complies with 4.13.

EXCEPTION: Entry doors to acute care hospital bedrooms for in-patients shall be exempted from the requirement in 4.13.6 for maneuvering space at the latch side of the door if the door is at least 44 in (1120 mm) wide.

(2) Each bedroom shall have adequate space to provide a maneuvering space that complies with 4.2.3. In rooms with 2 beds, it is preferable that this space be located between beds.

(3) Each bedroom shall have adequate space to provide a minimum clear floor space of 36 in (915 mm) along each side of the bed and to provide an accessible route complying with 4.3.3 to each side of each bed.

6.4 Patient Toilet Rooms. Where toilet/bath rooms are provided as a part of a patient bedroom, each patient bedroom that is required to be accessible shall have an accessible toilet/bath room that complies with 4.22 or 4.23 and shall be on an accessible route.

7. BUSINESS AND MERCANTILE.

7.1 General. In addition to the requirements of 4.1 to 4.35, the design of all areas used for business transactions with the public shall comply with 7.

7.2 Sales and Service Counters, Teller Windows, Information Counters.

(1) In department stores and miscellaneous retail stores where counters have cash registers and are provided for sales or distribution of goods or services to the public, at least one of each type shall have a portion of the counter which is at least 36 in (915 mm) in length with a maximum height of 36 in (915 mm) above the finish floor. It shall be on an accessible route complying with 4.3. The accessible counters must be dispersed throughout the building or facility. In alterations where it is technically infeasible to provide an accessible counter, an auxiliary counter meeting these requirements may be provided.

(2) At ticketing counters, teller stations in a bank, registration counters in hotels and motels, box office ticket counters, and other counters that may not have a cash register but at which goods or services are sold or distributed, either:

(i) a portion of the main counter which is a minimum of 36 in (915 mm) in length shall be provided with a maximum height of 36 in (915 mm); or

(ii) an auxiliary counter with a maximum height of 36 in (915 mm) in close proximity to the main counter shall be provided; or

(iii) equivalent facilitation shall be provided (e.g., at a hotel registration counter, equivalent facilitation might consist of: (1) provision of a folding shelf attached to the main counter on which an individual with disabilities can write, and (2) use of the space on the side of the counter or at the concierge desk, for handing materials back and forth).

All accessible sales and service counters shall be on an accessible route complying with 4.3.

(3)* Assistive Listening Devices. (Reserved)

7.3* Check-out Aisles.

(1) In new construction, accessible check-out aisles shall be provided in conformance with the table below:

Total Check-out Aisles of Each Design	Minimum Number of Accessible Check-out Aisles (of each design)
1 – 4	1
5 – 8	2
8 – 15	3
over 15	3, plus 20% of additional aisles

EXCEPTION: In new construction, where the selling space is under 5000 square feet, only one check-out aisle is required to be accessible.

EXCEPTION: In alterations, at least one check-out aisle shall be accessible in facilities under 5000 square feet of selling space. In facilities of 5000 or more square feet of selling space, at least one of each design of check-out aisle shall be made accessible when altered until the number of accessible check-out aisles of each design equals the number required in new construction.

Examples of check-out aisles of different "design" include those which are specifically designed to serve different functions. Different "design" includes but is not limited to the following features - length of belt or no belt; or permanent signage designating the aisle as an express lane.

(2) Clear aisle width for accessible check-out aisles shall comply with 4.2.1 and maximum adjoining counter height shall not exceed 38 in (965 mm) above the finish floor. The top of the lip shall not exceed 40 in (1015 mm) above the finish floor.

(3) Signage identifying accessible check-out aisles shall comply with 4.30.7 and shall be mounted above the check-out aisle in the same location where the check-out number or type of check-out is displayed.

7.4 Security Bollards. Any device used to prevent the removal of shopping carts from store premises shall not prevent access or egress to people in wheelchairs. An alternate entry that is equally convenient to that provided for the ambulatory population is acceptable.

8. LIBRARIES.

8.1 General. In addition to the requirements of 4.1 to 4.35, the design of all public areas of a library shall comply with 8, including reading and study areas, stacks, reference rooms, reserve areas, and special facilities or collections.

8.2 Reading and Study Areas. At least 5 percent or a minimum of one of each element of fixed seating, tables, or study carrels shall comply with 4.2 and 4.32. Clearances between fixed accessible tables and between study carrels shall comply with 4.3.

8.3 Check-Out Areas. At least one lane at each check-out area shall comply with 7.2(1). Any traffic control or book security gates or turnstiles shall comply with 4.13.

8.4 Card Catalogs and Magazine Displays. Minimum clear aisle space at card catalogs and magazine displays shall comply with Fig. 55. Maximum reach height shall comply with 4.2, with a height of 48 in (1220 mm) preferred irrespective of approach allowed.

8.5 Stacks. Minimum clear aisle width between stacks shall comply with 4.3, with a minimum clear aisle width of 42 in (1065 mm) preferred where possible. Shelf height in stack areas is unrestricted (see Fig. 56).

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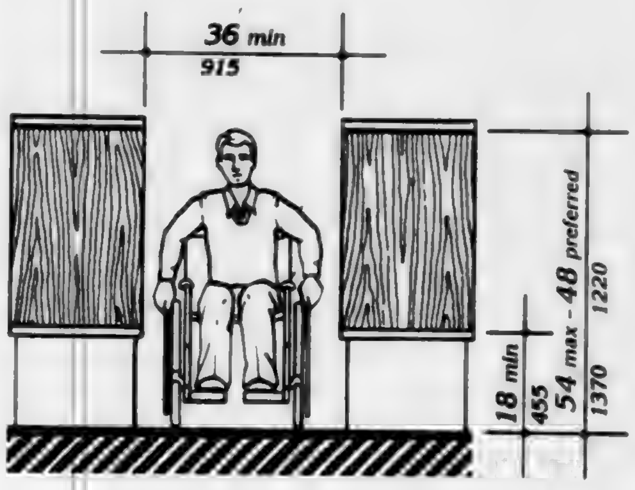

Fig. 55
Card Catalog

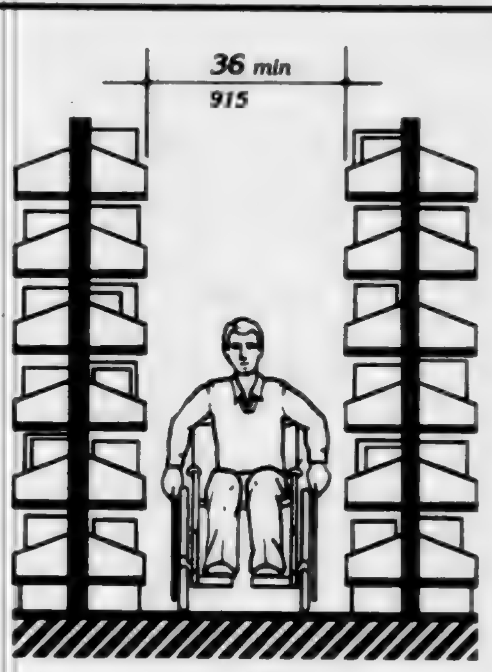

Fig. 56
Stacks

9. ACCESSIBLE TRANSIENT LODGING.

(1) Except as specified in the special technical provisions of this section, accessible transient lodging shall comply with the applicable requirements of 4.1 through 4.35. Transient lodging includes facilities or portions thereof used for sleeping accommodations, when not classed as a medical care facility.

9.1 Hotels, Motels, Inns, Boarding Houses, Dormitories, Resorts and Other Similar Places of Transient Lodging.

9.1.1 General. All public use and common use areas are required to be designed and constructed to comply with section 4 (Accessible Elements and Spaces: Scope and Technical Requirements).

EXCEPTION: Sections 9.1 through 9.4 do not apply to an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor.

9.1.2 Accessible Units, Sleeping Rooms, and Suites. Accessible sleeping rooms or suites that comply with the requirements of 9.2 (Requirements for Accessible Units, Sleeping Rooms, and Suites) shall be provided in conformance with the table below. In addition, in hotels, of 50 or more sleeping rooms or suites, additional accessible sleeping rooms or suites that include a roll-in shower shall also be provided in conformance with the table below. Such accommodations shall comply with the requirements of 9.2, 4.21, and Figure 57(a) or (b).

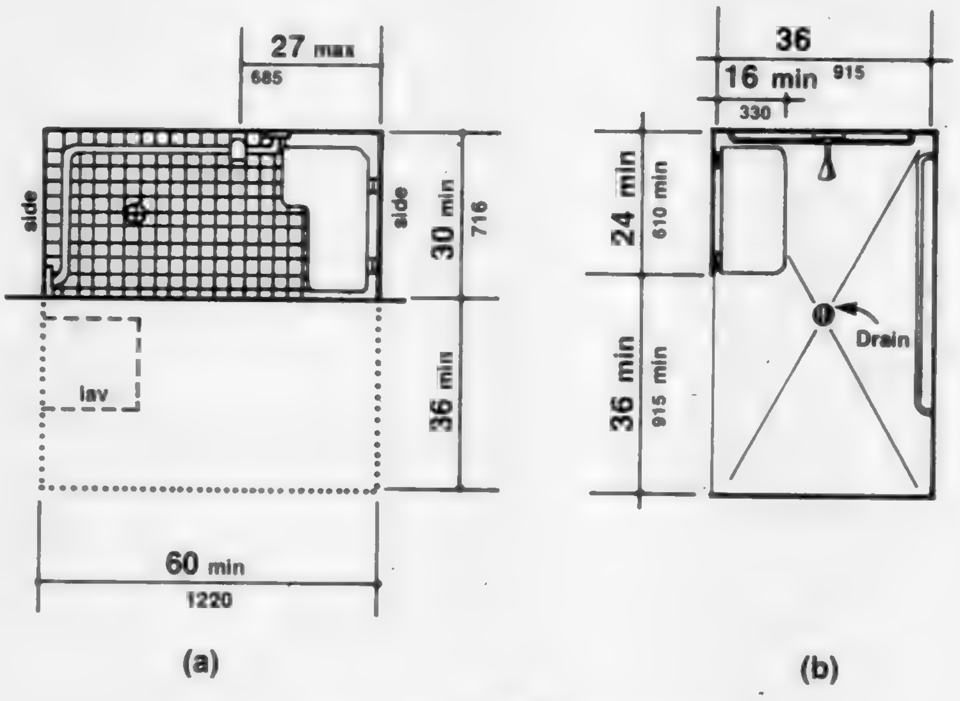

Fig. 57
Roll-in Shower with Folding Seat

Number of Rooms	Accessible Rooms	Rooms with Roll-in Showers
1 to 25	1	
26 to 50	2	
51 to 75	3	1
76 to 100	4	1
101 to 150	5	2
151 to 200	6	2
201 to 300	7	3
301 to 400	8	4
401 to 500	9	4 plus one for each additional 100 over 400
501 to 1000	2% of total	
1001 and over	20 plus 1 for each 100 over 1000	

9.1.3 Sleeping Accommodations for Persons with Hearing Impairments. In addition to those accessible sleeping rooms and suites required by 9.1.2, sleeping rooms and suites that comply with 9.3 (Visual Alarms, Notification Devices, and Telephones) shall be provided in conformance with the following table:

Number of Elements	Accessible Elements
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	2% of total
1001 and over	20 plus 1 for each 100 over 1000

9.1.4 Classes of Sleeping Accommodations.

(1) In order to provide persons with disabilities a range of options equivalent to those available to other persons served by the facility, sleeping rooms and suites required to be accessible by 9.1.2 shall be dispersed among the various classes of sleeping accommodations available to patrons of the place of transient lodging. Factors to be considered include room size, cost, amenities provided, and the number of beds provided.

(2) Equivalent Facilitation. For purposes of this section, it shall be deemed equivalent facilitation if the operator of a facility elects to limit construction of accessible rooms to those intended for multiple occupancy, provided that such rooms are made available at the cost of a single-occupancy room to an individual with disabilities who requests a single-occupancy room.

9.1.5. Alterations to Accessible Units, Sleeping Rooms, and Suites. When sleeping rooms are being altered in an existing facility, or portion thereof, subject to the requirements of this section, at least one sleeping room or suite that complies with the requirements of 9.2 (Requirements for Accessible Units, Sleeping Rooms, and Suites) shall be provided for each 25 sleeping rooms, or fraction thereof, of rooms being altered until the number of such rooms provided equals the number required to be accessible with 9.1.2. In addition, at least one sleeping room or suite that complies with the requirements of 9.3 (Visual Alarms, Notification Devices, and Telephones) shall be provided for each 25 sleeping rooms, or fraction thereof, of rooms being altered until the number of such rooms equals the number required to be accessible by 9.1.3.

9.2 Requirements for Accessible Units, Sleeping Rooms and Suites.

9.2.1 General. Units, sleeping rooms, and suites required to be accessible by 9.1 shall comply with 9.2.

9.2.2 Minimum Requirements. An accessible unit, sleeping room or suite shall be on an accessible route complying with 4.3 and have the following accessible elements and spaces.

(1) Accessible sleeping rooms shall have a 36 in (915 mm) clear width maneuvering space located along both sides of a bed, except that where two beds are provided, this requirement can be met by providing a 36 in (915 mm) wide maneuvering space located between the two beds.

(2) An accessible route complying with 4.3 shall connect all accessible spaces and elements, including telephones, within the unit, sleeping room, or suite. This is not intended to require an elevator in multi-story units as long as the spaces identified in 9.2.2(6) and (7) are on accessible levels and the accessible sleeping area is suitable for dual occupancy.

(3) Doors and doorways designed to allow passage into and within all sleeping rooms, suites or other covered units shall comply with 4.13.

(4) If fixed or built-in storage facilities such as cabinets, shelves, closets, and drawers are provided in accessible spaces, at least one of each type provided shall contain storage space complying with 4.25. Additional storage may be provided outside of the dimensions required by 4.25.

(5) All controls in accessible units, sleeping rooms, and suites shall comply with 4.27.

(6) Where provided as part of an accessible unit, sleeping room, or suite, the following spaces shall be accessible and shall be on an accessible route:

(a) the living area.

(b) the dining area.

(c) at least one sleeping area.

(d) patios, terraces, or balconies.

EXCEPTION: The requirements of 4.13.8 and 4.3.8 do not apply where it is necessary to utilize a higher door threshold or a change in level to protect the integrity of the unit from wind/water damage. Where this exception results in patios, terraces or balconies that are not at an accessible level, equivalent facilitation shall be provided. (E.g., equivalent facilitation at a hotel patio or balcony might consist of providing raised decking or a ramp to provide accessibility.)

(e) at least one full bathroom (i.e., one with a water closet, a lavatory, and a bathtub or shower).

(f) if only half baths are provided, at least one half bath.

(g) carports, garages or parking spaces.

(7) Kitchens, Kitchenettes, or Wet Bars. When provided as accessory to a sleeping room or suite, kitchens, kitchenettes, wet bars, or similar amenities shall be accessible. Clear floor space for a front or parallel approach to cabinets, counters, sinks, and appliances shall be provided to comply with 4.2.4. Countertops and sinks shall be mounted at a maximum height of 34 in (865 mm) above the floor. At least fifty percent of shelf space in cabinets or refrigerator/freezers shall be within the reach ranges of 4.2.5 or 4.2.6 and space shall be designed to allow for the operation of cabinet and/or appliance doors so that all cabinets and appliances are accessible and usable. Controls and operating mechanisms shall comply with 4.27.

(8) Sleeping room accommodations for persons with hearing impairments required by 9.1 and complying with 9.3 shall be provided in the accessible sleeping room or suite.

9.3 Visual Alarms, Notification Devices and Telephones.

9.3.1 General. In sleeping rooms required to comply with this section, auxiliary visual alarms shall be provided and shall comply with 4.28.4. Visual notification devices shall also be provided in units, sleeping rooms and suites to alert room occupants of incoming telephone calls and a door knock or bell. Notification devices shall not be connected to auxiliary visual alarm signal appliances. Permanently installed telephones shall have volume controls complying with 4.31.5; an accessible electrical outlet within 4 ft (1220 mm) of a telephone connection shall be provided to facilitate the use of a text telephone.

9.3.2 Equivalent Facilitation. For purposes of this section, equivalent facilitation shall include the installation of electrical outlets (including outlets connected to a facility's central alarm system) and telephone wiring in sleeping rooms and suites to enable persons with hearing impairments to utilize portable visual alarms and communication devices provided by the operator of the facility.

9.4 Other Sleeping Rooms and Suites. Doors and doorways designed to allow passage into and within all sleeping units or other covered units shall comply with 4.13.5.

9.5 Transient Lodging in Homeless Shelters, Halfway Houses, Transient Group Homes, and Other Social Service Establishments.

9.5.1 New Construction. In new construction all public use and common use areas are required to be designed and constructed to comply with section 4. At least one of each type of amenity (such as washers, dryers and similar equipment installed for the use of occupants) in each common area shall be accessible and shall be located on an accessible route to any accessible unit or sleeping accommodation.

EXCEPTION: Where elevators are not provided as allowed in 4.1.3(5), accessible amenities are not required on inaccessible floors as long as one of each type is provided in common areas on accessible floors.

9.5.2 Alterations.

(1) Social service establishments which are not homeless shelters:

(a) The provisions of 9.5.3 and 9.1.5 shall apply to sleeping rooms and beds.

(b) Alteration of other areas shall be consistent with the new construction provisions of 9.5.1.

(2) Homeless shelters. If the following elements are altered, the following requirements apply:

9.3.2 Equivalent Facilitation. For purposes of this section, equivalent facilitation shall include the installation of electrical outlets (including outlets connected to a facility's central alarm system) and telephone wiring in sleeping rooms and suites to enable persons with hearing impairments to utilize portable visual alarms and communication devices provided by the operator of the facility.

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(b) Alteration of other areas shall be consistent with the new construction provisions of 9.5.1.

(2) Homeless shelters. If the following elements are altered, the following requirements apply:

(a) at least one public entrance shall allow a person with mobility impairments to approach, enter and exit including a minimum clear door width of 32 in (815 mm).

(b) sleeping space for homeless persons as provided in the scoping provisions of 9.1.2 shall include doors to the sleeping area with a minimum clear width of 32 in (815 mm) and maneuvering space around the beds for persons with mobility impairments complying with 9.2.2(1).

(c) at least one toilet room for each gender or one unisex toilet room shall have a minimum clear door width of 32 in (815 mm), minimum turning space complying with 4.2.3, one water closet complying with 4.16, one lavatory complying with 4.19 and the door shall have a privacy latch; and, if provided, at least one tub or shower shall comply with 4.20 or 4.21, respectively.

(d) at least one common area which a person with mobility impairments can approach, enter and exit including a minimum clear door width of 32 in (815 mm).

(e) at least one route connecting elements (a), (b), (c) and (d) which a person with mobility impairments can use including minimum clear width of 36 in (915 mm), passing space complying with 4.3.4, turning space complying with 4.2.3 and changes in levels complying with 4.3.8.

(f) homeless shelters can comply with the provisions of (a)-(e) by providing the above elements on one accessible floor.

9.5.3. Accessible Sleeping Accommodations in New Construction. Accessible sleeping rooms shall be provided in conformance with the table in 9.1.2 and shall comply with 9.2 Accessible Units, Sleeping Rooms and Suites (where the items are provided). Additional sleeping rooms that comply with 9.3 Sleeping Accommodations for Persons with Hearing Impairments shall be provided in conformance with the table provided in 9.1.3.

In facilities with multi-bed rooms or spaces, a percentage of the beds equal to the table provided in 9.1.2 shall comply with 9.2.2(1).

10. TRANSPORTATION FACILITIES. (Reserved).

APPENDIX

This appendix contains *materials of an advisory nature* and provides additional information that should help the reader to understand the minimum requirements of the *guidelines* or to design buildings or facilities for greater accessibility. The paragraph numbers correspond to the sections or paragraphs of the *guideline* to which the material relates and are therefore not consecutive (for example, A4.2.1 contains additional information relevant to 4.2.1). Sections *of the guidelines* for which additional material appears in this appendix have been indicated by an asterisk. *Nothing in this appendix shall in any way obviate any obligation to comply with the requirements of the guidelines itself.*

A2.2 Equivalent Facilitation. *Specific examples of equivalent facilitation are found in the following sections:*

4.1.6(3)(c)	*Elevators in Alterations*
4.31.9	*Text Telephones*
7.2	*Sales and Service Counters, Teller Windows, Information Counters*
9.1.4	*Classes of Sleeping Accommodations*
9.2.2(6)(d)	*Requirements for Accessible Units, Sleeping Rooms, and Suites*

A4.1.1 Application.

A4.1.1(3) Areas Used Only by Employees as Work Areas. *Where there are a series of individual work stations of the same type (e.g., laboratories, service counters, ticket booths), 5%, but not less than one, of each type of work station should be constructed so that an individual with disabilities can maneuver within the work stations. Rooms housing individual offices in a typical office building must meet the requirements of the guidelines concerning doors, accessible routes, etc. but do not need to allow for maneuvering space around individual desks. Modifications required to permit maneuvering within the work area may be accomplished as a reasonable accommodation to individual employees with disabilities under Title I of the ADA. Consideration should also be given to placing shelves in employee work areas at a convenient height for accessibility or installing commercially available shelving that is adjustable so that reasonable accommodations can be made in the future.*

If work stations are made accessible they should comply with the applicable provisions of 4.2 through 4.35.

A4.1.2 Accessible Sites and Exterior Facilities: New Construction.

A4.1.2(5)(e) Valet Parking. *Valet parking is not always usable by individuals with disabilities. For instance, an individual may use a type of vehicle controls that render the regular controls inoperable or the driver's seat in a van may be removed. In these situations, another person cannot park the vehicle. It is recommended that some self-parking spaces be provided at valet parking facilities for individuals whose vehicles cannot be parked by another person and that such spaces be located on an accessible route to the entrance of the facility.*

A4.1.3 Accessible Buildings: New Construction.

A4.1.3(5) *Only full passenger elevators are covered by the accessibility provisions of 4.10. Materials and equipment hoists, freight elevators not intended for passenger use, dumbwaiters, and construction elevators are not covered by these guidelines. If a building is exempt from the elevator requirement, it is not necessary to provide a platform lift or other means of vertical access in lieu of an elevator.*

Under Exception 4, platform lifts are allowed where existing conditions make it impractical to install a ramp or elevator. Such conditions generally occur where it is essential to provide access to small raised or lowered areas where space may not be available for a ramp. Examples include, but are not limited to, raised pharmacy platforms, commercial offices raised above a sales floor, or radio and news booths.

A4.1.3(9) *Supervised automatic sprinkler systems have built in signals for monitoring features of the system such as the opening and closing of water control valves, the power supplies for needed pumps, water tank levels, and for indicating conditions that will impair the satisfactory operation of the sprinkler system.*

convenient height for accessibility or installing commercially available shelving that is adjustable so that reasonable accommodations can be made in the future.

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A4.1.3(9) *Supervised automatic sprinkler systems have built in signals for monitoring features of the system such as the opening and closing of water control valves, the power supplies for needed pumps, water tank levels, and for indicating conditions that will impair the satisfactory operation of the sprinkler system.*

Because of these monitoring features, supervised automatic sprinkler systems have a high level of satisfactory performance and response to fire conditions.

A4.1.3(10) *If an odd number of drinking fountains is provided on a floor, the requirement in 4.1.3(10)(b) may be met by rounding down the odd number to an even number and calculating 50% of the even number. When more than one drinking fountain on a floor is required to comply with 4.15, those fountains should be dispersed to allow wheelchair users convenient access. For example, in a large facility such as a convention center that has water fountains at several locations on a floor, the accessible water fountains should be located so that wheelchair users do not have to travel a greater distance than other people to use a drinking fountain.*

A4.1.3(17)(b) *In addition to the requirements of section 4.1.3(17)(b), the installation of additional volume controls is encouraged. Volume controls may be installed on any telephone.*

A4.1.3(19)(a) *Readily removable or folding seating units may be installed in lieu of providing an open space for wheelchair users. Folding seating units are usually two fixed seats that can be easily folded into a fixed center bar to allow for one or two open spaces for wheelchair users when necessary. These units are more easily adapted than removable seats which generally require the seat to be removed in advance by the facility management.*

Either a sign or a marker placed on seating with removable or folding arm rests is required by this section. Consideration should be given for ensuring identification of such seats in a darkened theater. For example, a marker which contrasts (light on dark or dark on light) and which also reflects light could be placed on the side of such seating so as to be visible in a lighted auditorium and also to reflect light from a flashlight.

A4.1.6 Accessible Buildings: Alterations.

A4.1.6(1)(h) *When an entrance is being altered, it is preferable that those entrances being altered be made accessible to the extent feasible.*

A4.2 Space Allowances and Reach Ranges.

A4.2.1 Wheelchair Passage Width.

(1) Space Requirements for Wheelchairs. Many persons who use wheelchairs need a 30 in (760 mm) clear opening width for doorways, gates, and the like, when the latter are entered head-on. If the *person* is unfamiliar with a building, if competing traffic is heavy, if sudden or frequent movements are needed, or if the wheelchair must be turned at an opening, then greater clear widths are needed. For most situations, the addition of an inch of leeway on either side is sufficient. Thus, a minimum clear width of 32 in (815 mm) will provide adequate clearance. However, when an opening or a restriction in a passageway is more than 24 in (610 mm) long, it is essentially a passageway and must be at least 36 in (915 mm) wide.

(2) Space Requirements for Use of Walking Aids. Although people who use walking aids can maneuver through clear width openings of 32 in (815 mm), they need 36 in (915 mm) wide passageways and walks for comfortable gaits. Crutch tips, often extending down at a wide angle, are a hazard in narrow passageways where they might not be seen by other pedestrians. Thus, the 36 in (915 mm) width provides a safety allowance both for the person *with a disability* and for others.

(3) Space Requirements for Passing. Able-bodied *persons* in winter clothing, walking

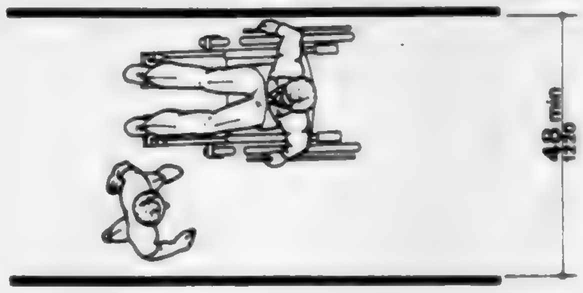

Fig. A1
Minimum Passage Width for One Wheelchair and One Ambulatory Person

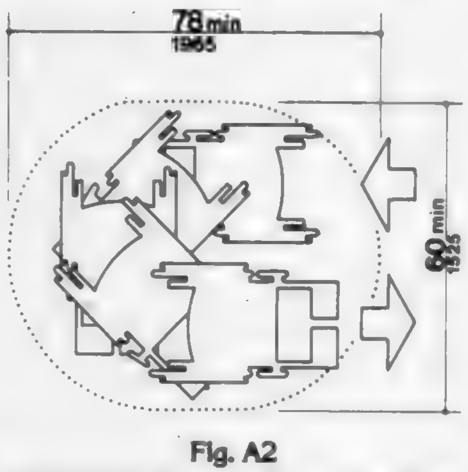
78 min
1965
60 min
1525

Fig. A2
Space Needed for Smooth U-Turn in a Wheelchair

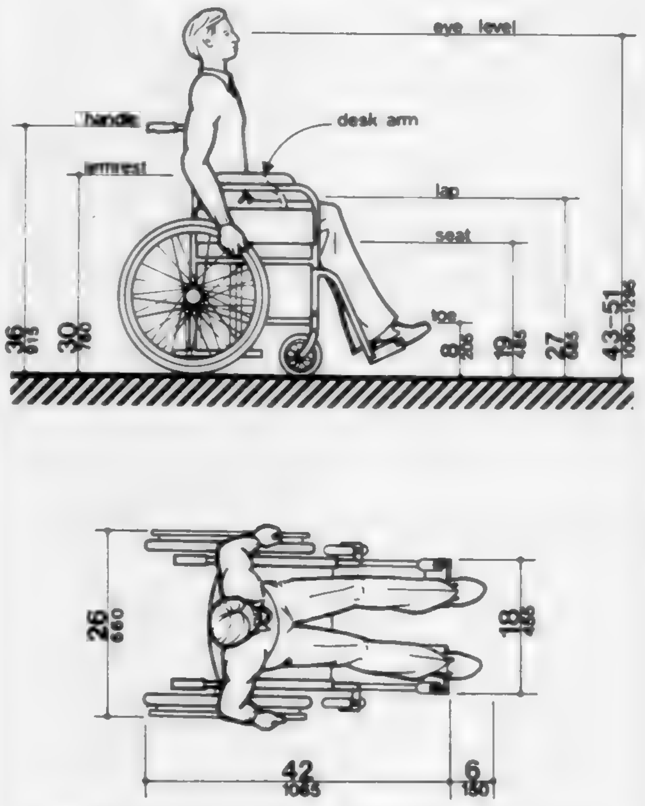
eye level
handle
desk arm
armrest
lap
seat
toe
36
915
30
760
8
205
19
485
27
685
43-51
1090-1295
26
660
18
455
42
1065
6
150

NOTE: Footrests may extend further for tall people

Fig. A3
Dimensions of Adult-Sized Wheelchairs

straight ahead with arms swinging, need 32 in (815 mm) of width, which includes 2 in (50 mm) on either side for sway, and another 1 in (25 mm) tolerance on either side for clearing nearby objects or other pedestrians. Almost all wheelchair users and those who use walking aids can also manage within this 32 in (815 mm) width for short distances. Thus, two streams of traffic can pass in 64 in (1625 mm) in a comfortable flow. Sixty inches (1525 mm) provides a minimum width for a somewhat more restricted flow. If the clear width is less than 60 in (1525 mm), two wheelchair users will not be able to pass but will have to seek a wider place for passing. Forty-eight inches (1220 mm) is the minimum width needed for an ambulatory person to pass a nonambulatory or semi-ambulatory person. Within this 48 in (1220 mm) width, the ambulatory person will have to twist to pass a wheelchair user, a person with a *service animal*, or a

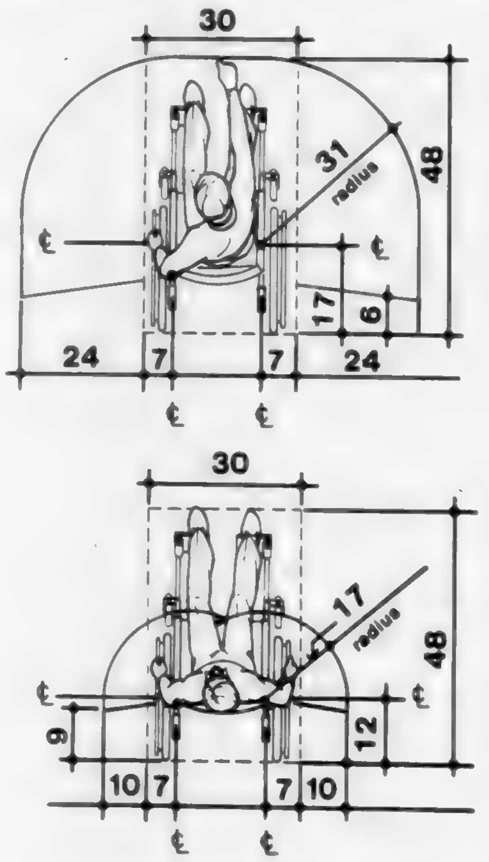
30
31
radius
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Fig. A3 (a)

semi-ambulatory person. There will be little leeway for swaying or missteps (see Fig. A1).

A4.2.3 Wheelchair Turning Space. *These guidelines specify* a minimum space of 60 in (1525 mm) diameter *or a 60 in by 60 in (1525 mm by 1525 mm) T-shaped space* for a pivoting 180-degree turn of a wheelchair. This space is usually satisfactory for turning around, but many people will not be able to turn without repeated tries and bumping into surrounding objects. The space shown in Fig. A2 will allow most wheelchair users to complete U-turns without difficulty.

A4.2.4 Clear Floor or Ground Space for Wheelchairs. The wheelchair and user shown in Fig. A3 represent typical dimensions for a large adult male. The space requirements in this *guideline* are based upon maneuvering clearances that will accommodate most wheelchairs. Fig. A3 provides a uniform reference for design not covered by this *guideline*.

A4.2.5 & A4.2.6 Reach. *Reach ranges for persons seated in wheelchairs may be further clarified by Fig. A3(a). These drawings approximate in the plan view the information shown in Fig. 4, 5, and 6.*

A4.3 Accessible Route.

A4.3.1 General.

(1) Travel Distances. Many people with mobility impairments can move at only very slow speeds; for many, traveling 200 ft (61 m) could take about 2 minutes. This assumes a rate of about 1.5 ft/s (455 mm/s) on level ground. It also assumes that the traveler would move continuously. However, on trips over 100 ft (30 m), disabled people are apt to rest frequently, which substantially increases their trip times. Resting periods of 2 minutes for every 100 ft (30 m) can be used to estimate travel times for people with severely limited stamina. In inclement weather, slow progress and resting can greatly increase a disabled person's exposure to the elements.

(2) Sites. Level, indirect routes or those with running slopes lower than 1:20 can sometimes provide more convenience than direct routes with maximum allowable slopes or with ramps.

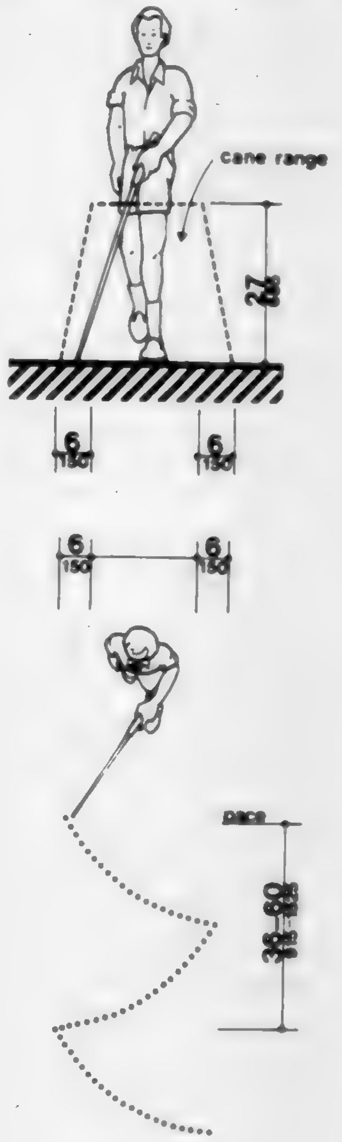

Fig. A4
Cane Technique

A4.3.10 Egress. Because people with disabilities may visit, be employed or be a resident in any building, emergency management plans with specific provisions to ensure their safe evacuation also play an essential role in fire safety and life safety.

A4.3.11.3 Stairway Width. *A 48 inch (1220 mm) wide exit stairway is needed to allow assisted evacuation (e.g., carrying a person in a wheelchair) without encroaching on the exit path for ambulatory persons.*

A4.3.11.4 Two-way Communication. *It is essential that emergency communication not be dependent on voice communications alone because the safety of people with hearing or speech impairments could be jeopardized. The visible signal requirement could be satisfied with something as simple as a button in the area of rescue assistance that lights, indicating that help is on the way, when the message is answered at the point of entry.*

A4.4 Protruding Objects.

A4.4.1 General. *Service animals* are trained to recognize and avoid hazards. However, most people with severe impairments of vision use the long cane as an aid to mobility. The two principal cane techniques are the touch technique, where the cane arcs from side to side and touches points outside both shoulders; and the diagonal technique, where the cane is held in a stationary position diagonally across the body with the cane tip touching or just above the ground at a point outside one shoulder and the handle or grip extending to a point outside the other shoulder. The touch technique is used primarily in uncontrolled areas, while the diagonal technique is used primarily in certain limited, controlled, and familiar environments. Cane users are often trained to use both techniques.

Potential hazardous objects are noticed only if they fall within the detection range of canes (see Fig. A4). Visually impaired people walking toward an object can detect an overhang if its lowest surface is not higher than 27 in (685 mm). When walking alongside *protruding* objects, they cannot detect overhangs. Since proper cane and *service animal* techniques keep people away from the edge of a path or from walls, a slight overhang of no more than 4 in (100 mm) is not hazardous.

A4.5 Ground and Floor Surfaces.

A4.5.1 General. *People who have difficulty walking or* maintaining balance *or who use crutches, canes, or walkers*, and those with restricted gaits are particularly sensitive to slipping and tripping hazards. For such people, a stable and regular surface is necessary for safe walking, particularly on stairs. Wheelchairs can be propelled most easily on surfaces that are hard, stable, and regular. Soft loose surfaces such as shag carpet, loose sand or gravel, wet clay, and irregular surfaces such as cobblestones can significantly impede wheelchair movement.

Slip resistance is based on the frictional force necessary to keep a shoe heel or crutch tip from slipping on a walking surface under conditions likely to be found on the surface. *While the dynamic coefficient of friction during walking varies in a complex and non-uniform way, the static coefficient of friction, which can be measured in several ways, provides a close approximation of the slip resistance of a surface. Contrary to popular belief, some slippage is necessary to walking, especially for persons with restricted gaits; a truly "non-slip" surface could not be negotiated.*

The Occupational Safety and Health Administration recommends that walking surfaces have a static coefficient of friction of 0.5. A research project sponsored by the Architectural and Transportation Barriers Compliance Board (Access Board) conducted tests with persons with disabilities and concluded that a higher coefficient of friction was needed by such persons. A static coefficient of friction of 0.6 is recommended for accessible routes and 0.8 for ramps.

It is recognized that the coefficient of friction varies considerably due to the presence of contaminants, water, floor finishes, and other factors not under the control of the designer or builder and not subject to design and construction guidelines and that compliance would be difficult to measure on the building site. Nevertheless, many common building materials suitable for flooring are now labeled with information on the static coefficient of friction. While it may not be possible to compare one product directly with another, or to guarantee a constant measure, builders and designers are encouraged to specify materials with appropriate values. As more products include information on slip resistance, improved uniformity in measurement and specification is likely. The Access Board's advisory guidelines on Slip Resistant Surfaces provides additional information on this subject.

Cross slopes on walks and ground or floor surfaces can cause considerable difficulty in propelling a wheelchair in a straight line.

A4.5.3 Carpet. Much more needs to be done in developing both quantitative and qualitative criteria for carpeting *(i.e., problems associated with texture and weave need to be studied).* However, certain functional characteristics are well established. When both carpet and padding are used, it is desirable to have minimum movement (preferably none) between the floor and the pad and the pad and the carpet which would allow the carpet to hump or warp. In heavily trafficked areas, a thick, soft (plush) pad or cushion, particularly in combination with long carpet pile, makes it difficult for individuals in wheelchairs and those with other ambulatory disabilities to get about. Firm carpeting can be achieved through proper selection and combination of pad and carpet, sometimes with the elimination of the pad or cushion, and with proper installation. *Carpeting designed with a weave that causes a zig-zag effect when wheeled across is strongly discouraged.*

A4.6 Parking and Passenger Loading Zones.

A4.6.3 Parking Spaces. *The increasing use of vans with side-mounted lifts or ramps by persons with disabilities has necessitated some revisions in specifications for parking spaces and adjacent access aisles. The typical accessible parking space is 96 in (2440 mm) wide with an adjacent 60 in (1525 mm) access aisle. However, this aisle does not permit lifts or ramps to be deployed and still leave room for a person using a wheelchair or other mobility aid to exit the lift platform or ramp. In tests conducted with actual lift/van/wheelchair combinations, (under a Board-sponsored Accessible Parking and Loading Zones Project) researchers found that a space and aisle totaling almost 204 in (5180 mm) wide was needed to deploy a lift and exit conveniently. The "van accessible" parking space required by these guidelines provides a 96 in (2440 mm) wide space with a 96 in (2440 mm) adjacent access aisle which is just wide enough to maneuver and exit from a side mounted lift. If a 96 in (2440 mm) access aisle is placed between two spaces, two "van accessible" spaces are created. Alternatively, if the wide access aisle is provided at the end of a row (an area often unused), it may be possible to provide the wide access aisle without additional space (see Fig. A5(a)). A sign is needed to alert van users to the presence of the wider aisle, but the space is not intended to be restricted only to vans.*

"Universal" Parking Space Design. An alternative to the provision of a percentage of spaces with a wide aisle, and the associated need to include additional signage, is the use of what has been called the "universal" parking space design. Under this design, all accessible spaces are 132 in (3350 mm) wide with a 60 in (1525 mm) access aisle (see Fig. A5(b)). One

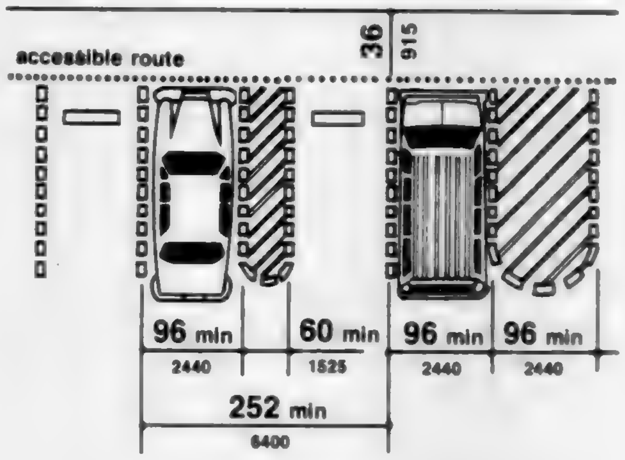

(a)
Van Accessible Space at End Row

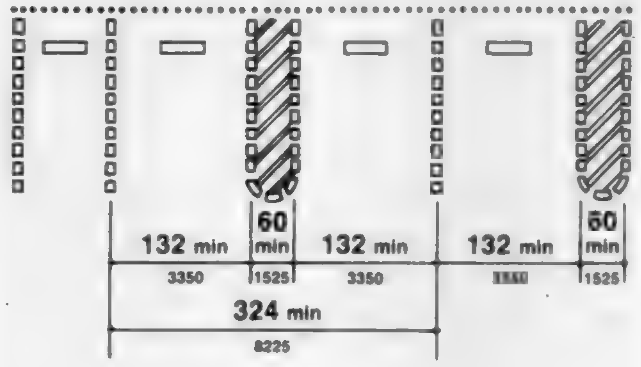

(b)
Universal Parking Space Design

Fig. A5
Parking Space Alternatives

advantage to this design is that no additional signage is needed because all spaces can accommodate a van with a side-mounted lift or ramp. Also, there is no competition between cars and vans for spaces since all spaces can accommodate either. Furthermore, the wider space permits vehicles to park to one side or the other within the 132 in (3350 mm) space to allow persons to exit and enter the vehicle on either the driver or passenger side, although, in some cases, this would require exiting or entering without a marked access aisle.

An essential consideration for any design is having the access aisle level with the parking space. Since a person with a disability, using a lift or ramp, must maneuver within the access aisle, the aisle cannot include a ramp or sloped area. The access aisle must be connected to an accessible route to the appropriate accessible entrance of a building or facility. The parking access aisle must either blend with the accessible route or have a curb ramp complying with 4.7. Such a curb ramp opening must be located within the access aisle boundaries, not within the parking space boundaries. Unfortunately, many facilities are designed with a ramp that is blocked when any vehicle parks in the accessible space. Also, the required dimensions of the access aisle cannot be restricted by planters, curbs or wheel stops.

A4.6.4 Signage. Signs designating parking places for disabled people can be seen from a driver's seat if the signs are mounted high enough above the ground and located at the front of a parking space.

A4.6.5 Vertical Clearance. High-top vans, which disabled people or transportation services often use, require higher clearances in parking garages than automobiles.

A4.8 Ramps.

A4.8.1 General. Ramps are essential for wheelchair users if elevators or lifts are not available to connect different levels. However, some people who use walking aids have difficulty with ramps and prefer stairs.

A4.8.2 Slope and Rise. *Ramp slopes between 1:16 and 1:20 are preferred.* The ability to manage an incline is related to both its slope and its length. Wheelchair users with disabilities affecting *their* arms or with low stamina have serious difficulty using inclines. Most ambulatory people and most people who use wheelchairs can manage a slope of 1:16. Many people cannot manage a slope of 1:12 for 30 ft (9 m).

A4.8.4 Landings. *Level landings are essential toward maintaining an aggregate slope that complies with these guidelines. A ramp landing that is not level causes individuals using wheelchairs to tip backward or bottom out when the ramp is approached.*

A4.8.5 Handrails. The requirements for stair and ramp handrails in this *guideline* are for adults. When children are principal users in a building or facility, a second set of handrails at an appropriate height can assist them and aid in preventing accidents.

A4.9 Stairs.

A4.9.1 Minimum Number. *Only interior and exterior stairs connecting levels that are not connected by an elevator, ramp, or other accessible means of vertical access have to comply with 4.9.*

A4.10 Elevators.

A4.10.6 Door Protective and Reopening Device. The required door reopening device would hold the door open for 20 seconds if the doorway remains obstructed. After 20 seconds, the door may begin to close. However, if designed in accordance with *ASME A17.1-1990*, the door closing movement could still be stopped if a person or object exerts sufficient force at any point on the door edge.

A4.10.7 Door and Signal Timing for Hall Calls. This paragraph allows variation in the location of call buttons, advance time for warning signals, and the door-holding period used to meet the time requirement.

A4.10.12 Car Controls. Industry-wide standardization of elevator control panel design would make all elevators significantly more convenient for use by people with severe visual impairments. In many cases, it will be possible to locate the highest control on elevator panels within 48 in (1220 mm) from the floor.

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A4.10.13 Car Position Indicators. A special button may be provided that would activate the audible signal within the given elevator only for the desired trip, rather than maintaining the audible signal in constant operation.

A4.10.14 Emergency Communications. A device that requires no handset is easier to use by people who have difficulty reaching. *Also, small handles on handset compartment doors are not usable by people who have difficulty grasping.*

Ideally, emergency two-way communication systems should provide both voice and visual display intercommunication so that persons with hearing impairments and persons with vision impairments can receive information regarding the status of a rescue. A voice intercommunication system cannot be the only means of communication because it is not accessible to people with speech and hearing impairments. While a voice intercommunication system is not required, at a minimum, the system should provide both an audio and visual indication that a rescue is on the way.

A4.11 Platform Lifts *(Wheelchair Lifts)*.

A4.11.2 Other Requirements. *Inclined stairway chairlifts, and inclined and vertical platform lifts (wheelchair lifts) are available* for short-distance, vertical transportation of people with disabilities. Care should be taken in selecting lifts *as some lifts are not equally suitable for use by both wheelchair users and semi-ambulatory individuals.*

A4.12 Windows.

A4.12.1 General. *Windows intended to be operated by occupants in accessible spaces should comply with 4.12.*

A4.12.2 Window Hardware. *Windows requiring pushing, pulling, or lifting to open (for example, double-hung, sliding, or casement and awning units without cranks) should require no more than 5 lbf (22.2 N) to open or close. Locks, cranks, and other window hardware should comply with 4.27.*

A4.13 Doors.

A4.13.8 Thresholds at Doorways. Thresholds and surface height changes in doorways are particularly inconvenient for wheelchair users who also have low stamina or restrictions in arm movement because complex maneuvering is required to get over the level change while operating the door.

A4.13.9 Door Hardware. Some disabled persons must push against a door with their chair or walker to open it. Applied kickplates on doors with closers can reduce required maintenance by withstanding abuse from wheelchairs and canes. To be effective, they should cover the door width, less approximately 2 in (51 mm), up to a height of 16 in (405 mm) from its bottom edge and be centered across the *width of the door.*

A4.13.10 Door Closers. Closers with delayed action features give a person more time to maneuver through doorways. They are particularly useful on frequently used interior doors such as entrances to toilet rooms.

A4.13.11 Door Opening Force. Although most people with disabilities can exert at least 5 lbf (22.2N), both pushing and pulling from a stationary position, a few people with severe disabilities cannot exert 3 lbf (13.13N). Although some people cannot manage the allowable forces in this guideline and many others have difficulty, door closers must have certain minimum closing forces to close doors satisfactorily. Forces for pushing or pulling doors open are measured with a push-pull scale under the following conditions:

(1) Hinged doors: Force applied perpendicular to the door at the door opener or 30 in (760 mm) from the hinged side, whichever is farther from the hinge.

(2) Sliding or folding doors: Force applied parallel to the door at the door pull or latch.

(3) Application of force: Apply force gradually so that the applied force does not exceed the resistance of the door. In high-rise buildings, air-pressure differentials may require a modification of this specification in order to meet the functional intent.

A4.13.12 Automatic Doors and Power-Assisted Doors. Sliding automatic doors do not need guard rails and are more convenient for wheelchair users and visually impaired people to use. If slowly opening automatic doors can be reactivated before their closing cycle is completed, they will be more convenient in busy doorways.

A4.15 Drinking Fountains and Water Coolers.

A4.15.2 Spout Height. *Two drinking fountains, mounted side by side or on a single post, are usable by people with disabilities and people who find it difficult to bend over.*

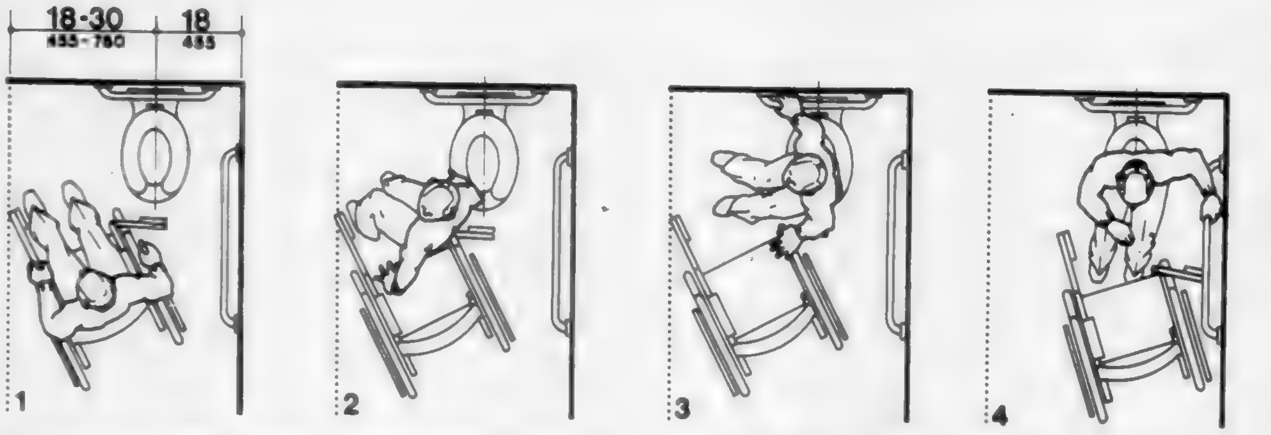

1 Takes transfer position, swings footrest out of the way, sets brakes.

2 Removes armrest, transfers.

3 Moves wheelchair out of the way, changes position (some people fold chair or pivot it 90° to the toilet).

4 Positions on toilet, releases brake.

(a)
Diagonal Approach

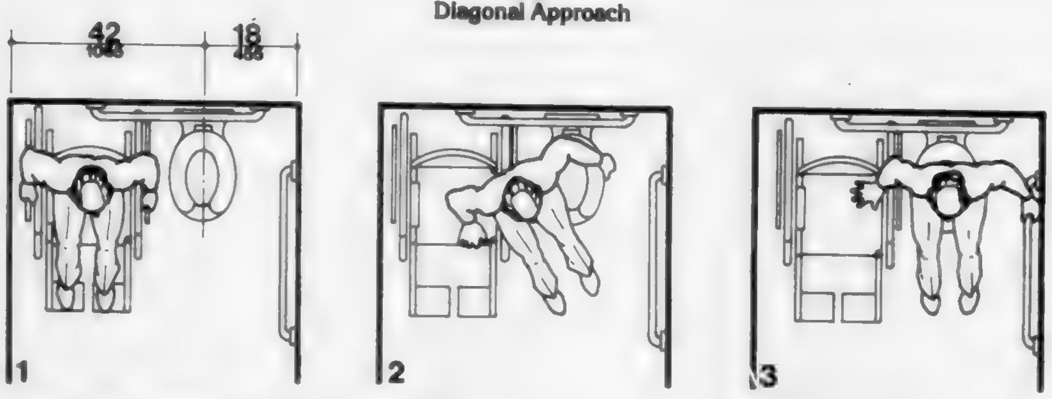

1 Takes transfer position, removes armrest, sets brakes.

2 Transfers.

3 Positions on toilet.

(b)
Side Approach

Fig. A6
Wheelchair Transfers

A4.16 Water Closets.

A4.16.3 Height. Height preferences for toilet seats vary considerably among disabled people. Higher seat heights may be an advantage to some ambulatory disabled people, but are often a disadvantage for wheelchair users and others. Toilet seats 18 in (455 mm) high seem to be a reasonable compromise. Thick seats and filler rings are available to adapt standard fixtures to these requirements.

A4.16.4 Grab Bars. Fig. A6(a) and (b) show the diagonal and side approaches most commonly used to transfer from a wheelchair to a water closet. Some wheelchair users can transfer from the front of the toilet while others use a 90-degree approach. Most people who use the two additional approaches can also use either the diagonal approach or the side approach.

A4.16.5 Flush Controls. Flush valves and related plumbing can be located behind walls or to the side of the toilet, or a toilet seat lid can be provided if plumbing fittings are directly behind the toilet seat. Such designs reduce the chance of injury and imbalance caused by leaning back against the fittings. Flush controls for tank-type toilets have a standardized mounting location on the left side of the tank (facing the tank). Tanks can be obtained by special order with controls mounted on the right side. If administrative authorities require flush controls for flush valves to be located in a position that conflicts with the location of the rear grab bar, then that bar may be split or shifted toward the wide side of the toilet area.

A4.17 Toilet Stalls.

A4.17.3 Size and Arrangement. *This section requires use of the 60 in (1525 mm) standard stall (Figure 30(a)) and permits the 36 in (915 mm) or 48 in (1220 mm) wide alternate stall (Figure 30(b)) only in alterations where provision of the standard stall is technically infeasible or where local plumbing codes prohibit reduction in the number of fixtures. A standard stall provides a clear space on one side of the water closet to enable persons who use wheelchairs to perform a side or diagonal transfer from the wheelchair to the water closet. However, some persons with disabilities who use mobility aids such as walkers, canes or crutches are better able to use the two parallel grab bars in the 36 in (915 mm) wide alternate stall to achieve a standing position.*

In large toilet rooms, where six or more toilet stalls are provided, it is therefore required that a 36 in (915 mm) wide stall with parallel grab bars be provided in addition to the standard stall required in new construction. The 36 in (915 mm) width is necessary to achieve proper use of the grab bars; wider stalls would position the grab bars too far apart to be easily used and narrower stalls would position the grab bars too close to the water closet. Since the stall is primarily intended for use by persons using canes, crutches and walkers, rather than wheelchairs, the length of the stall could be conventional. The door, however, must swing outward to ensure a usable space for people who use crutches or walkers.

A4.17.5 Doors. To make it easier for wheelchair users to close toilet stall doors, doors can be provided with closers, spring hinges, or a pull bar mounted on the inside surface of the door near the hinge side.

A4.19 Lavatories and Mirrors.

A4.19.6 Mirrors. If mirrors are to be used by both ambulatory people and wheelchair users, then they must be at least 74 in (1880 mm) high at their topmost edge. A single full length mirror can accommodate all people, including children.

A4.21 Shower Stalls.

A4.21.1 General. Shower stalls that are 36 in by 36 in (915 mm by 915 mm) wide provide additional safety to people who have difficulty maintaining balance because all grab bars and walls are within easy reach. Seated people use the walls of 36 in by 36 in (915 mm by 915 mm) showers for back support. Shower stalls that are 60 in (1525 mm) wide and have no curb may increase usability of a bathroom by wheelchair users because the shower area provides additional maneuvering space.

A4.22 Toilet Rooms.

A4.22.3 Clear Floor Space. *In many small facilities, single-user restrooms may be the only* *facilities provided for all building users. In addition, the guidelines allow the use of "unisex" or "family" accessible toilet rooms in alterations when technical infeasibility can be demonstrated. Experience has shown that the provision of accessible "unisex" or single-user restrooms is a reasonable way to provide access for wheelchair users and any attendants, especially when attendants are of the opposite sex. Since these facilities have proven so useful, it is often considered advantageous to install a "unisex" toilet room in new facilities in addition to making the multi-stall restrooms accessible, especially in shopping malls, large auditoriums, and convention centers.*

Figure 28 (section 4.16) provides minimum clear floor space dimensions for toilets in accessible "unisex" toilet rooms. The dotted lines designate the minimum clear floor space, depending on the direction of approach, required for wheelchair users to transfer onto the water closet. The dimensions of 48 in (1220 mm) and 60 in (1525 mm), respectively, correspond to the space required for the two common transfer approaches utilized by wheelchair users (see Fig. A6). It is important to keep in mind that the placement of the lavatory to the immediate side of the water closet will preclude the side approach transfer illustrated in Figure A6(b).

To accommodate the side transfer, the space adjacent to the water closet must remain clear of obstruction for 42 in (1065 mm) from the centerline of the toilet (Figure 28) and the lavatory must not be located within this clear space. A turning circle or T-turn, the clear floor space at the lavatory, and maneuvering space at the door must be considered when determining the possible wall locations. A privacy latch or other accessible means of ensuring privacy during use should be provided at the door.

RECOMMENDATIONS:

1. In new construction, accessible single-user restrooms may be desirable in some situations because they can accommodate a wide variety of building users. However, they cannot be used in lieu of making the multi-stall toilet rooms accessible as required.

2. Where strict compliance to the guidelines for accessible toilet facilities is technically infeasible in the alteration of existing facilities, accessible "unisex" toilets are a reasonable alternative.

3. In designing accessible single-user restrooms, the provisions of adequate space to allow a side transfer will provide accommodation to the largest number of wheelchair users.

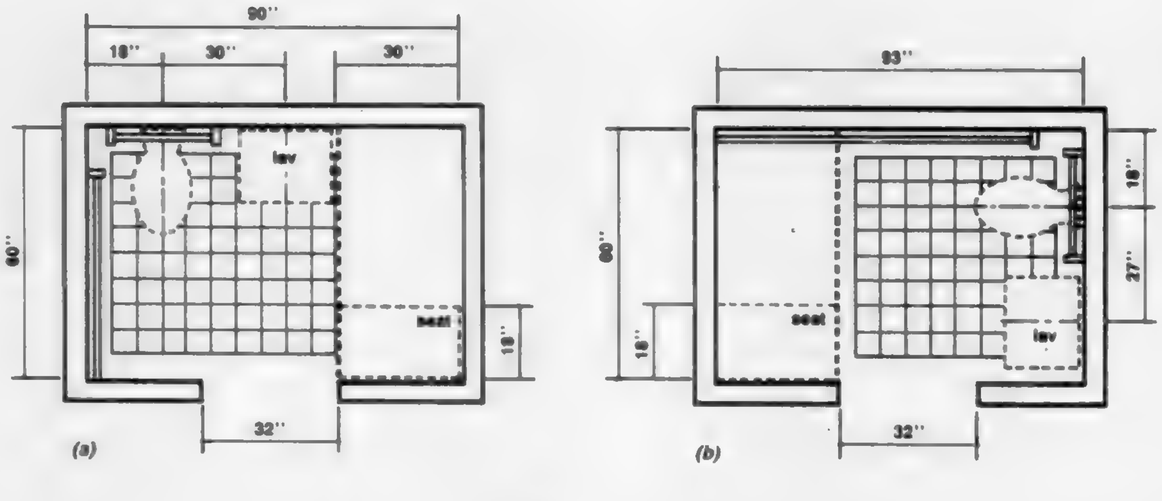

Fig. A7

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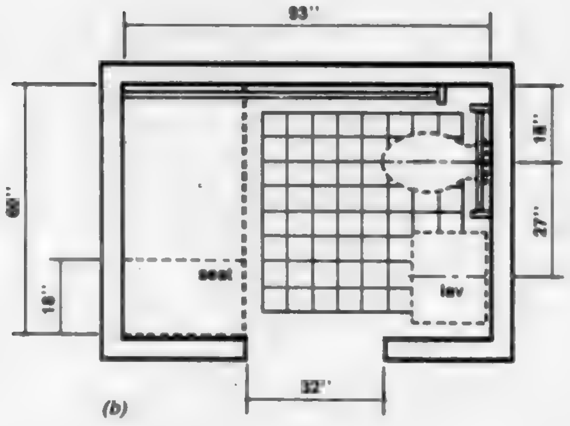

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A4.23 Bathrooms, Bathing Facilities, and Shower Rooms.

A4.23.3 Clear Floor Space. *Figure A7 shows two possible configurations of a toilet room with a roll-in shower. The specific shower shown is designed to fit exactly within the dimensions of a standard bathtub. Since the shower does not have a lip, the floor space can be used for required maneuvering space. This would permit a toilet room to be smaller than would be permitted with a bathtub and still provide enough floor space to be considered accessible. This design can provide accessibility in facilities where space is at a premium (i.e., hotels and medical care facilities). The alternate roll-in shower (Fig. 57b) also provides sufficient room for the "T-turn" and does not require plumbing to be on more than one wall.*

A4.23.9 Medicine Cabinets. Other alternatives for storing medical and personal care items are very useful to disabled people. Shelves, drawers, and floor-mounted cabinets can be provided within the reach ranges of disabled people.

A4.26 Handrails, Grab Bars, and Tub and Shower Seats.

A4.26.1 General. Many disabled people rely heavily upon grab bars and handrails to maintain balance and prevent serious falls. Many people brace their forearms between supports and walls to give them more leverage and stability in maintaining balance or for lifting. The grab bar clearance of 1-1/2 in (38 mm) required in this guideline is a safety clearance to prevent injuries resulting from arms slipping through the openings. It also provides adequate gripping room.

A4.26.2 Size and Spacing of Grab Bars and Handrails. This specification allows for alternate shapes of handrails as long as they allow an opposing grip similar to that provided by a circular section of 1-1/4 in to 1-1/2 in (32 mm to 38 mm).

A4.27 Controls and Operating Mechanisms.

A4.27.3 Height. *Fig. A8 further illustrates*

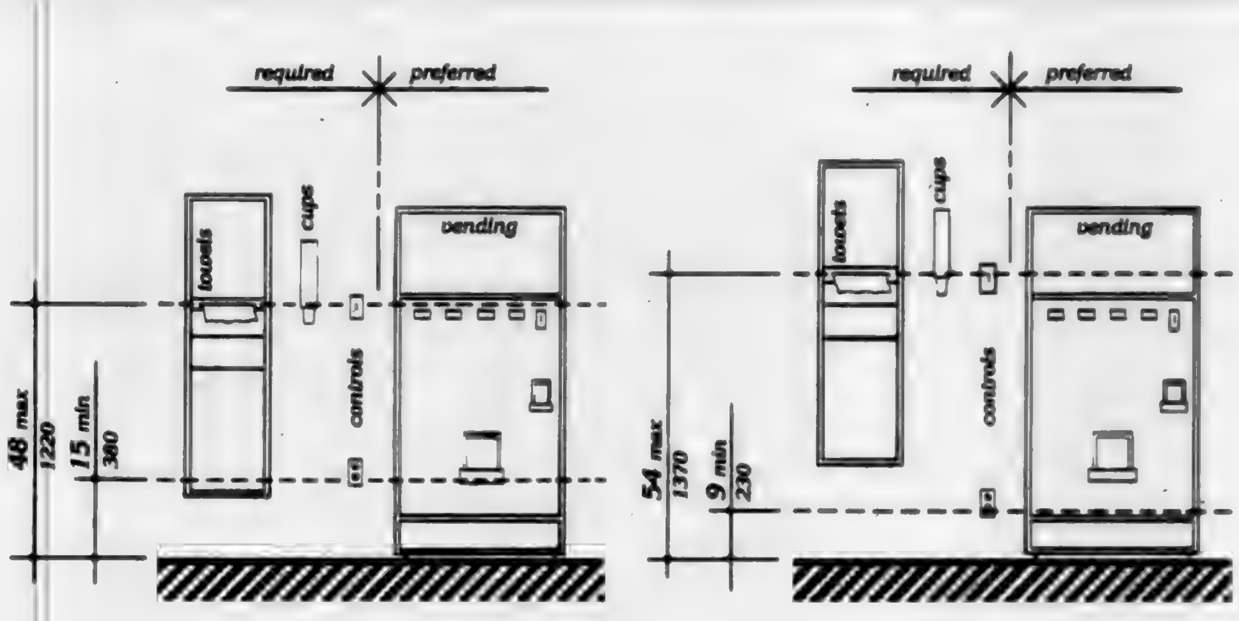

(a)
Forward Reach Possible

(b)
Side Reach Possible

Fig. A8
Control Reach Limitations

mandatory and advisory control mounting height provisions for typical equipment.

Electrical receptacles installed to serve individual appliances and not intended for regular or frequent use by building occupants are not required to be mounted within the specified reach ranges. Examples would be receptacles installed specifically for wall-mounted clocks, refrigerators, and microwave ovens.

A4.28 Alarms.

A4.28.2 Audible Alarms. Audible emergency signals must have an intensity and frequency that can attract the attention of individuals who have partial hearing loss. People over 60 years of age generally have difficulty perceiving frequencies higher than 10,000 Hz. *An alarm signal which has a periodic element to its signal, such as single stroke bells (clang-pause-clang-pause), hi-low (up-down-up-down) and fast whoop (on-off-on-off) are best. Avoid continuous or reverberating tones. Select a signal which has a sound characterized by three or four clear tones without a great deal of "noise" in between.*

A4.28.3 Visual Alarms. The specifications in this section do not preclude the use of zoned or coded alarm systems.

A4.28.4 Auxiliary Alarms. Locating visual emergency alarms in rooms where persons who are deaf may work or reside alone can ensure that they will always be warned when an emergency alarm is activated. To be effective, such devices must be located and oriented so that they will spread signals and reflections throughout a space or raise the overall light level sharply. *However, visual alarms alone are not necessarily the best means to alert sleepers. A study conducted by Underwriters Laboratory (UL) concluded that a flashing light more than seven times brighter was required (110 candela v. 15 candela, at the same distance) to awaken sleepers as was needed to alert awake subjects in a normal daytime illuminated room.*

For hotel and other rooms where people are likely to be asleep, a signal-activated vibrator placed between mattress and box spring or under a pillow was found by UL to be much more effective in alerting sleepers. Many readily available devices are sound-activated so that they could respond to an alarm clock, clock radio, wake-up telephone call or room smoke detector. Activation by a building alarm system can either be accomplished by a separate circuit activating an auditory alarm which would, in turn, trigger the vibrator or by a signal transmitted through the ordinary 110-volt outlet. Transmission of signals through the power line is relatively simple and is the basis of common, inexpensive remote light control systems sold in many department and electronic stores for home use. So-called "wireless" intercoms operate on the same principal.

A4.29 *Detectable* Warnings.

A4.29.2 *Detectable* Warnings on Walking Surfaces. *The material used to provide contrast should contrast by at least 70%. Contrast in percent is determined by:*

$$Contrast = [(B_1 - B_2)/B_1] \times 100$$

where B_1 *= light reflectance value (LRV) of the lighter area*
and B_2 *= light reflectance value (LRV) of the darker area.*

Note that in any application both white and black are never absolute; thus, B_1 *never equals 100 and* B_2 *is always greater than 0.*

A4.30 Signage.

A4.30.1 General. In building complexes where finding locations independently on a routine basis may be a necessity (for example, college campuses), tactile maps or prerecorded instructions can be very helpful to visually impaired people. Several maps and auditory instructions have been developed and tested for specific applications. The type of map or instructions used must be based on the information to be communicated, which depends highly on the type of buildings or users.

Landmarks that can easily be distinguished by visually impaired individuals are useful as orientation cues. Such cues include changes in illumination level, bright colors, unique patterns, wall murals, location of special equipment or other architectural features.

Many people with disabilities have limitations in movement of their heads and reduced peripheral vision. Thus, signage positioned perpendicular to the path of travel is easiest for them to notice. People can generally distinguish signage within an angle of 30 degrees to either side of the centerlines of their faces without moving their heads.

A4.30.2 Character Proportion. The legibility of printed characters is a function of the viewing distance, character height, the ratio of the stroke width to the height of the character, the contrast of color between character and background, and print font. The size of characters must be based upon the intended viewing distance. A severely nearsighted person may have to be much closer to recognize a character of a given size than a person with normal visual acuity.

A4.30.4 Raised and Brailled Characters and Pictorial Symbol Signs (Pictograms). *The standard dimensions for literary Braille are as follows:*

Dot diameter	*.059 in.*
Inter-dot spacing	*.090 in.*
Horizontal separation between cells	*.241 in.*
Vertical separation between cells	*.395 in.*

Raised borders around *signs containing* raised characters may make them confusing to read unless the border is set far away from the characters. *Accessible signage with descriptive materials about public buildings, monuments, and objects of cultural interest may not provide sufficiently detailed and meaningful information. Interpretive guides, audio tape devices, or other methods may be more effective in presenting such information.*

A4.30.5 Finish and Contrast. *An eggshell finish (11 to 19 degree gloss on 60 degree glossimeter) is recommended. Research indicates that signs are more legible for persons with low vision when characters contrast with their background by at least 70 percent. Contrast in percent shall be determined by:*

$$\text{Contrast} = [(B_1 - B_2)/B_1] \times 100$$

where B_1 = light reflectance value (LRV) of the lighter area
and B_2 = light reflectance value (LRV) of the darker area.

Note that in any application both white and black are never absolute; thus, B_1 never equals 100 and B_2 is always greater than 0.

The greatest readability is usually achieved through the use of light-colored characters or symbols on a dark background.

A4.30.7 Symbols of Accessibility for Different Types of Listening Systems. *Paragraph 4 of this section requires signage indicating the availability of an assistive listening system. An appropriate message should be displayed with the international symbol of access for hearing loss since this symbol conveys general accessibility for people with hearing loss. Some suggestions are:*

INFRARED
ASSISTIVE LISTENING SYSTEM
AVAILABLE
——PLEASE ASK——

AUDIO LOOP IN USE
TURN T-SWITCH FOR
BETTER HEARING
——OR ASK FOR HELP——

FM
ASSISTIVE LISTENING
SYSTEM AVAILABLE
——PLEASE ASK——

The symbol may be used to notify persons of the availability of other auxiliary aids and services such as: real time captioning, captioned note taking, sign language interpreters, and oral interpreters.

A4.30.8 Illumination Levels. *Illumination levels on the sign surface shall be in the 100 to 300 lux range (10 to 30 footcandles) and shall be uniform over the sign surface. Signs shall be located such that the illumination level on the surface of the sign is not significantly exceeded by the ambient light or visible bright lighting source behind or in front of the sign.*

A4.31 Telephones.

A4.31.3 Mounting Height. In localities where the dial-tone first system is in operation, calls can be placed at a coin telephone through the operator without inserting coins. The operator button is located at a height of 46 in (1170 mm) if the coin slot of the telephone is at 54 in (1370 mm). A generally available public telephone with a coin slot mounted lower on the equipment would allow universal installation of telephones at a height of 48 in (1220 mm) or less to all operable parts.

A4.31.9 Text Telephones. *A public text telephone may be an integrated text telephone pay phone unit or a conventional portable text telephone that is permanently affixed within, or adjacent to, the telephone enclosure. In order to be usable with a pay phone, a text telephone which is not a single integrated text telephone pay phone unit will require a shelf large enough (10 in (255mm) wide by 10 in (255 mm) deep with a 6 in (150 mm) vertical clearance minimum) to accommodate the device, an electrical outlet, and a power cord. Movable or portable text telephones may be used to provide equivalent facilitation. A text telephone should be readily available so that a person using it may access the text telephone easily and conveniently. As currently designed pocket-type text telephones for personal use do not accommodate a wide range of users. Such devices would not be considered substantially equivalent to conventional text telephones. However, in the future as technology develops this could change.*

A4.32 *Fixed or Built-in Seating* and Tables.

A4.32.4 Height of *Tables or Counters*. Different types of work require different *table or counter* heights for comfort and optimal performance. Light detailed work such as writing requires a *table or counter* close to elbow height for a standing person. Heavy manual work such as rolling dough requires a *counter or table* height about 10 in (255 mm) below elbow height for a standing person. This principle of *high/low table or counter heights* also applies for seated persons; however, the limiting condition for seated manual work is clearance under the *table or counter*.

Table A1 shows convenient *counter heights* for seated persons. The great variety of heights for comfort and optimal performance indicates a need for alternatives or a compromise in height if people who stand and people who sit will be using the same counter area.

Table A1
Convenient Heights of Tables and Counters for Seated People[1]

Conditions of Use	Short Women in mm		Tall Men in mm	
Seated in a wheelchair:				
Manual work-				
Desk or removeable armrests	26	660	30	760
Fixed, full-size armrests[2]	32[3]	815	32[3]	815
Light detailed work:				
Desk or removable armrests	29	735	34	865
Fixed, full-size armrests[2]	32[3]	815	34	865
Seated in a 16-in. (405-mm) High chair:				
Manual work	26	660	27	685
Light detailed work	28	710	31	785

[1] All dimensions are based on a work-surface thickness of 1 1/2 in (38 mm) and a clearance of 1 1/2 in (38 mm) between legs and the underside of a work surface.

[2] This type of wheelchair arm does not interfere with the positioning of a wheelchair under a work surface.

[3] This dimension is limited by the height of the armrests: a lower height would be preferable. Some people in this group prefer lower work surfaces, which require positioning the wheelchair back from the edge of the counter.

A4.33 Assembly Areas.

A4.33.2 Size of Wheelchair Locations. Spaces large enough for two wheelchairs allow people who are coming to a performance together to sit together.

A4.33.3 Placement of Wheelchair Locations. The location of wheelchair areas can be planned so that a variety of positions

A4.31 Telephones

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Table A2. Summary of Assistive Listening Devices

within the seating area are provided. This will allow choice in viewing and price categories.

Building/life safety codes set minimum distances between rows of fixed seats with consideration of the number of seats in a row, the exit aisle width and arrangement, and the location of exit doors. "Continental" seating, with a greater number of seats per row and a commensurate increase in row spacing and exit doors, facilitates emergency egress for all people and increases ease of access to mid-row seats especially for people who walk with difficulty. Consideration of this positive attribute of "continental" seating should be included along with all other factors in the design of fixed seating areas.

Table A2. Summary of Assistive Listening Devices

System	Advantages	Disadvantages	Typical Applications
Induction Loop Transmitter: Transducer wired to induction loop around listening area. Receiver: Self-contained induction receiver or personal hearing aid with telecoil.	Cost-Effective Low Maintenance Easy to use Unobtrusive May be possible to integrate into existing public address system. Some hearing aids can function as receivers.	Signal spills over to adjacent rooms. Susceptible to electrical interference. Limited portability Inconsistent signal strength. Head position affects signal strength. Lack of standards for induction coil performance.	Meeting areas Theaters Churches and Temples Conference rooms Classrooms TV viewing
FM Transmitter: Flashlight-sized worn by speaker. Receiver: With personal hearing aid via DAI or induction neck-loop and telecoil; or self-contained with earphone(s).	Highly portable Different channels allow use by different groups within the same room. High user mobility Variable for large range of hearing losses.	High cost of receivers Equipment fragile Equipment obtrusive High maintenance Expensive to maintain Custom fitting to individual user may be required.	Classrooms Tour groups Meeting areas Outdoor events One-on-one
Infrared Transmitter: Emitter in line-of-sight with receiver. Receiver: Self-contained. Or with personal hearing aid via DAI or induction neckloop and telecoil.	Easy to use Insures privacy or confidentiality Moderate cost Can often be integrated into existing public address system.	Line-of-sight required between emitter and receiver. Ineffective outdoors Limited portability Requires installation	Theaters Churches and Temples Auditoriums Meetings requiring confidentiality TV viewing

Source: Rehab Brief, National Institute on Disability and Rehabilitation Research, Washington, DC, Vol. XII, No. 10, (1990).

A4.33.6 Placement of Listening Systems. A distance of 50 ft (15 m) allows a person to distinguish performers' facial expressions.

A4.33.7 Types of Listening Systems. *An assistive listening system appropriate for an assembly area for a group of persons or where the specific individuals are not known in advance, such as a playhouse, lecture hall or movie theater, may be different from the system appropriate for a particular individual provided as an auxiliary aid or as part of a reasonable accommodation. The appropriate device for an individual is the type that individual can use, whereas the appropriate system for an assembly area will necessarily be geared toward the "average" or aggregate needs of various individuals.* A listening system that can be used from any seat in a seating area is the most flexible way to meet this specification. Earphone jacks with variable volume controls can benefit only people who have slight hearing loss and do not help people who use hearing aids. At the present time, *magnetic induction* loops are the most feasible type of listening system for people who use hearing aids *equipped with "T-coils,"* but people without hearing aids or those with hearing aids not equipped with inductive pick-ups cannot use them *without special receivers.* Radio frequency systems can be extremely effective and inexpensive. People without hearing aids can use them, but people with hearing aids need a special receiver to use them as they are presently designed. If hearing aids had a jack to allow a by-pass of microphones, then radio frequency systems would be suitable for people with and without hearing aids. Some listening systems may be subject to interference from other equipment and feedback from hearing aids of people who are using the systems. Such interference can be controlled by careful engineering design that anticipates feedback sources in the surrounding area.

Table A2, reprinted from a National Institute of Disability and Rehabilitation Research "Rehab Brief," shows some of the advantages and disadvantages of different types of assistive listening systems. In addition, the Architectural and Transportation Barriers Compliance Board (Access Board) has published a pamphlet on Assistive Listening Systems which lists demonstration centers across the country where technical assistance can be obtained in selecting and installing appropriate systems. The state of New York has also adopted a detailed technical specification which may be useful.

A5.0 Restaurants and Cafeterias.

A5.1 General. *Dining counters (where there is no service) are typically found in small carry-out restaurants, bakeries, or coffee shops and may only be a narrow eating surface attached to a wall. This section requires that where such a dining counter is provided, a portion of the counter shall be at the required accessible height.*

A7.0 Business and Mercantile.

A7.2(3) Assistive Listening Devices. *At all sales and service counters, teller windows, box offices, and information kiosks where a physical barrier separates service personnel and customers, it is recommended that at least one permanently installed assistive listening device complying with 4.33 be provided at each location or series. Where assistive listening devices are installed, signage should be provided identifying those stations which are so equipped.*

A7.3 Check-out Aisles. *Section 7.2 refers to counters without aisles; section 7.3 concerns check-out aisles. A counter without an aisle (7.2) can be approached from more than one direction such as in a convenience store. In order to use a check-out aisle (7.3), customers must enter a defined area (an aisle) at a particular point, pay for goods, and exit at a particular point.*

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Appendix B to Part 36—Preamble to Regulation on Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities (Published July 26, 1991)

Note: For the convenience of the reader, this appendix contains the text of the preamble to the final regulation on nondiscrimination on the basis of disability by public accommodations and in commercial facilities beginning at the heading "Section-by-Section Analysis and Response to Comments" and ending before "List of Subjects in 28 CFR part 36" (56 FR July 26, 1991).

Dated: July 17, 1991.

Dick Thornburgh,

Attorney General.

[FR Doc. 91-17482 Filed 7-25-91; 8:45 am]

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July 26, 1991

Part IV

Department of Justice

Office of the Attorney General

28 CFR Part 35

Nondiscrimination on the Basis of Disability in State and Local Government Services; Final Rule

DEPARTMENT OF JUSTICE

28 CFR Part 35

[Order No. 1512-91]

Nondiscrimination on the Basis of Disability in State and Local Government Services

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule implements subtitle A of title II of the Americans with Disabilities Act, Public Law 101–336, which prohibits discrimination on the basis of disability by public entities. Subtitle A protects qualified individuals with disabilities from discrimination on the basis of disability in the services, programs, or activities of all State and local governments. It extends the prohibition of discrimination in federally assisted programs established by section 504 of the Rehabilitation Act of 1973 to all activities of State and local governments, including those that do not receive Federal financial assistance, and incorporates specific prohibitions of discrimination on the basis of disability from titles I, III, and V of the Americans with Disabilities Act. This rule, therefore, adopts the general prohibitions of discrimination established under section 504, as well as the requirements for making programs accessible to individuals with disabilities and for providing equally effective communications. It also sets forth standards for what constitutes discrimination on the basis of mental or physical disability, provides a definition of disability and qualified individual with a disability, and establishes a complaint mechanism for resolving allegations of discrimination.

EFFECIVE DATE: January 26, 1992.

FOR FURTHER INFORMATION CONTACT: Barbara S. Drake, Deputy Assistant Attorney General, Civil Rights Division; Stewart B. Oneglia, Chief, Coordination and Review Section, Civil Rights Division; John L. Wodatch, Director, Office on the Americans with Disabilities Act, Civil Rights Division; all of the U.S. Department of Justice, Washington, DC 20530. These individuals may be contacted through the Division's ADA Information Line at (202) 514–0301 (Voice), (202) 514–0381 (TDD), or (202) 514–0383 (TDD). These telephone numbers are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

The landmark Americans with Disabilities Act ("ADA" or "the Act"), enacted on July 26, 1990, provides comprehensive civil rights protections to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications.

This regulation implements subtitle A of title II of the ADA, which applies to State and local governments. Most programs and activities of State and local governments are recipients of Federal financial assistance from one or more Federal funding agencies and, therefore, are already covered by section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) ("section 504"), which prohibits discrimination on the basis of handicap in federally assisted programs and activities. Because title II of the ADA essentially extends the nondiscrimination mandate of section 504 to those State and local governments that do not receive Federal financial assistance, this rule hews closely to the provisions of existing section 504 regulations. This approach is also based on section 204 of the ADA, which provides that the regulations issued by the Attorney General to implement title II shall be consistent with the ADA and with the Department of Health, Education, and Welfare's coordination regulation, now codified at 28 CFR part 41, and, with respect to "program accessibility, existing facilities," and "communications," with the Department of Justice's regulation for its federally conducted programs and activities, codified at 28 CFR part 39.

The first regulation implementing section 504 was issued in 1977 by the Department of Health, Education, and Welfare (HEW) for the programs and activities to which it provided Federal financial assistance. The following year, pursuant to Executive Order 11914, HEW issued its coordination regulation for federally assisted programs, which served as the model for regulations issued by the other Federal agencies that administer grant programs. HEW's coordination authority, and the coordination regulation issued under that authority, were transferred to the Department of Justice by Executive Order 12250 in 1980.

In 1978, Congress extended application of section 504 to programs and activities conducted by Federal Executive agencies and the United States Postal Service. Pursuant to Executive Order 12250, the Department of Justice developed a prototype regulation to implement the 1978 amendment for federally conducted programs and activities. More than 80 Federal agencies have now issued final regulations based on that prototype, prohibiting discrimination based on handicap in the programs and activities they conduct.

Despite the large number of regulations implementing section 504 for federally assisted and federally conducted programs and activities, there is very little variation in their substantive requirements, or even in their language. Major portions of this regulation, therefore, are taken directly from the existing regulations.

In addition, section 204(b) of the ADA requires that the Department's regulation implementing subtitle A of title II be consistent with the ADA. Thus, the Department's final regulation includes provisions and concepts from titles I and III of the ADA.

Rulemaking History

On February 22, 1991, the Department of Justice published a notice of proposed rulemaking (NPRM) implementing title III of the ADA in the **Federal Register.** 56 FR 7452. On February 28, 1991, the Department published a notice of proposed rulemaking implementing subtitle A of title II of the ADA in the **Federal Register.** 56 FR 8538. Each NPRM solicited comments on the definitions, standards, and procedures of the proposed rules. By the April 29, 1991, close of the comment period of the NPRM for title II, the Department had received 2,718 comments. Following the close of the comment period, the Department received an additional 222 comments.

In order to encourage public participation in the development of the Department's rules under the ADA, the Department held four public hearings. Hearings were held in Dallas, Texas on March 4–5, 1991, in Washington, DC on March 13–15, 1991, in San Francisco, California on March 18–19, 1991, and in Chicago, Illinois on March 27–28, 1991. At these hearings, 329 persons testified and 1,567 pages of testimony were compiled. Transcripts of the hearings were included in the Department's rulemaking docket.

The comments that the Department received occupy almost six feet of shelf space and contain over 10,000 pages. The Department received comments from individuals from all fifty States and the District of Columbia. Nearly 75% of the comments that the Department received came from individuals and from organizations representing the interests of persons with disabilities. The Department received 292 comments from entities covered by the ADA and trade associations representing businesses in the private sector, and 67 from government units, such as mayors'

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offices, public school districts, and various State agencies working with individuals with disabilities.

The Department received one comment from a consortium of 540 organizations representing a broad spectrum of persons with disabilities. In addition, at least another 25 commenters endorsed the position expressed by this consortium, or submitted identical comments on one or both proposed regulations.

An organization representing persons with hearing impairments submitted a large number of comments. This organization presented the Department with 479 individual comments, each providing in chart form a detailed representation of what type of auxiliary aid or service would be useful in the various categories of places of public accommodation.

The Department received a number of comments based on almost ten different form letters. For example, individuals who have a heightened sensitivity to a variety of chemical substances submitted 266 post cards detailing how exposure to various environmental conditions restricts their access to public and commercial buildings. Another large group of form letters came from groups affiliated with independent living centers.

The vast majority of the comments addressed the Department's proposal implementing title III. Slightly more than 100 comments addressed only issues presented in the proposed title II regulation.

The Department read and analyzed each comment that was submitted in a timely fashion. Transcripts of the four hearings were analyzed along with the written comments. The decisions that the Department has made in response to these comments, however, were not made on the basis of the number of commenters addressing any one point but on a thorough consideration of the merits of the points of view expressed in the comments. Copies of the written comments, including transcripts of the four hearings, will remain available for public inspection in room 854 of the HOLC Building, 320 First Street, NW., Washington, DC from 10 a.m. to 5 p.m., Monday through Friday, except for legal holidays, until August 30, 1991.

Overview of the Rule

The rule is organized into seven subparts. Subpart A, "General," includes the purpose and application sections, describes the relationship of the Act to other laws, and defines key terms used in the regulation. It also includes administrative requirements adapted from section 504 regulations for self-evaluations, notices, designation of responsible employees, and adoption of grievance procedures by public entities.

Subpart B, "General Requirements," contains the general prohibitions of discrimination based on the Act and the section 504 regulations. It also contains certain "miscellaneous" provisions derived from title V of the Act that involve issues such as retaliation and coercion against those asserting ADA rights, illegal use of drugs, and restrictions on smoking. These provisions are also included in the Department's proposed title III regulation, as is the general provision on maintenance of accessible features.

Subpart C addresses employment by public entities, which is also covered by title I of the Act. Subpart D, which is also based on the section 504 regulations, sets out the requirements for program accessibility in existing facilities and for new construction and alterations. Subpart E contains specific requirements relating to communications.

Subpart F establishes administrative procedures for enforcement of title II. As provided by section 203 of the Act, these are based on the procedures for enforcement of section 504, which, in turn, are based on the enforcement procedures for title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d to 2000d–4a). Subpart F also restates the provisions of title V of the ADA on attorneys fees, alternative means of dispute resolution, the effect of unavailability of technical assistance, and State immunity.

Subpart G designates the Federal agencies responsible for investigation of complaints under this part. It assigns enforcement responsibility for particular public entities, on the basis of their major functions, to eight Federal agencies that currently have substantial responsibilities for enforcing section 504. It provides that the Department of Justice would have enforcement responsibility for all State and local government entities not specifically assigned to other designated agencies, but that the Department may further assign specific functions to other agencies. The part would not, however, displace the existing enforcement authorities of the Federal funding agencies under section 504.

Regulatory Process Matters

This final rule has been reviewed by the Office of Management and Budget under Executive Order 12291. The Department is preparing a final regulatory impact analysis (RIA) of this rule and the Architectural and Transportation Barriers Compliance Board is preparing an RIA for its Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG) that are incorporated in appendix A of the Department's final rule implementing title III of the ADA. Draft copies of both preliminary RIAs are available for comment; the Department will provide copies of these documents to the public upon request. Commenters are urged to provide additional information as to the costs and benefits associated with this rule. This will facilitate the development of a final RIA by January 1, 1992.

The Department's RIA will evaluate the economic impact of the final rule. Included among those title II provisions that are likely to result in significant economic impact are the requirements for auxiliary aids, barrier removal in existing facilities, and readily accessible new construction and alterations. An analysis of these costs will be included in the RIA.

The Preliminary RIA prepared for the notice of proposed rulemaking contained all of the available information that would have been included in a preliminary regulatory flexibility analysis, had one been prepared under the Regulatory Flexibility Act, concerning the rule's impact on small entities. The final RIA will contain all of the information that is required in a final regulatory flexibility analysis and will serve as such an analysis. Moreover, the extensive notice and comment procedure followed by the Department in the promulgation of this rule, which included public hearings, dissemination of materials, and provision of speakers to affected groups, clearly provided any interested small entities with the notice and opportunity for comment provided for under the Regulatory Flexibility Act procedures.

The Department is preparing a statement of the federalism impact of the rule under Executive Order 12612 and will provide copies of this statement on request.

The reporting and recordkeeping requirements described in the rule are considered to be information collection requirements as that term is defined by the Office of Management and Budget in 5 CFR part 1320. Accordingly, those information collection requirements have been submitted to OMB for review pursuant to the Paperwork Reduction Act.

Section-by-Section Analysis

Subpart A—General

Section 35.101 Purpose

Section 35.101 states the purpose of the rule, which is to effectuate subtitle A of title II of the Americans with Disabilities Act of 1990 (the Act), which prohibits discrimination on the basis of disability by public entities. This part does not, however, apply to matters within the scope of the authority of the Secretary of Transportation under subtitle B of title II of the Act.

Section 35.102 Application

This provision specifies that, except as provided in paragraph (b), the regulation applies to all services, programs, and activities provided or made available by public entities, as that term is defined in § 35.104. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination on the basis of handicap in federally assisted programs and activities, already covers those programs and activities of public entities that receive Federal financial assistance. Title II of the ADA extends this prohibition of discrimination to include all services, programs, and activities provided or made available by State and local governments or any of their instrumentalities or agencies, regardless of the receipt of Federal financial assistance. Except as provided in § 35.134, this part does not apply to private entities.

The scope of title II's coverage of public entities is comparable to the coverage of Federal Executive agencies under the 1978 amendment to section 504, which extended section 504's application to all programs and activities "conducted by" Federal Executive agencies, in that title II applies to anything a public entity does. Title II coverage, however, is not limited to "Executive" agencies, but includes activities of the legislative and judicial branches of State and local governments. All governmental activities of public entities are covered, even if they are carried out by contractors. For example, a State is obligated by title II to ensure that the services, programs, and activities of a State park inn operated under contract by a private entity are in compliance with title II's requirements. The private entity operating the inn would also be subject to the obligations of public accommodations under title III of the Act and the Department's title III regulations at 28 CFR part 36.

Aside from employment, which is also covered by title I of the Act, there are two major categories of programs or activities covered by this regulation: those involving general public contact as part of ongoing operations of the entity and those directly administered by the entities for program beneficiaries and participants. Activities in the first category include communication with the public (telephone contacts, office walk-ins, or interviews) and the public's use of the entity's facilities. Activities in the second category include programs that provide State or local government services or benefits.

Paragraph (b) of § 35.102 explains that to the extent that the public transportation services, programs, and activities of public entities are covered by subtitle B of title II of the Act, they are subject to the regulation of the Department of Transportation (DOT) at 49 CFR part 37, and are not covered by this part. The Department of Transportation's ADA regulation establishes specific requirements for construction of transportation facilities and acquisition of vehicles. Matters not covered by subtitle B, such as the provision of auxiliary aids, are covered by this rule. For example, activities that are covered by the Department of Transportation's regulation implementing subtitle B are not required to be included in the self-evaluation required by § 35.105. In addition, activities not specifically addressed by DOT's ADA regulation may be covered by DOT's regulation implementing section 504 for its federally assisted programs and activities at 49 CFR part 27. Like other programs of public entities that are also recipients of Federal financial assistance, those programs would be covered by both the section 504 regulation and this part. Although airports operated by public entities are not subject to DOT's ADA regulation, they are subject to subpart A of title II and to this rule.

Some commenters asked for clarification about the responsibilities of public school systems under section 504 and the ADA with respect to programs, services, and activities that are not covered by the Individuals with Disabilities Education Act (IDEA), including, for example, programs open to parents or to the public, graduation ceremonies, parent-teacher organization meetings, plays and other events open to the public, and adult education classes. Public school systems must comply with the ADA in all of their services, programs, or activities, including those that are open to parents or to the public. For instance, public school systems must provide program accessibility to parents and guardians with disabilities to these programs, activities, or services, and appropriate auxiliary aids and services whenever necessary to ensure effective communication, as long as the provision of the auxiliary aids results neither in an undue burden or in a fundamental alteration of the program.

Section 35.103 Relationship to Other Laws

Section 35.103 is derived from sections 501 (a) and (b) of the ADA. Paragraph (a) of this section provides that, except as otherwise specifically provided by this part, title II of the ADA is not intended to apply lesser standards than are required under title V of the Rehabilitation Act of 1973, as amended (29 U.S.C. 790–94), or the regulations implementing that title. The standards of title V of the Rehabilitation Act apply for purposes of the ADA to the extent that the ADA has not explicitly adopted a different standard than title V. Because title II of the ADA essentially extends the antidiscrimination prohibition embodied in section 504 to all actions of State and local governments, the standards adopted in this part are generally the same as those required under section 504 for federally assisted programs. Title II, however, also incorporates those provisions of titles I and III of the ADA that are not inconsistent with the regulations implementing section 504. Judiciary Committee report, H.R. Rep. No. 485, 101st Cong., 2d Sess., pt. 3, at 51 (1990) (hereinafter "Judiciary report"); Education and Labor Committee report, H.R. Rep. No. 485, 101st Cong., 2d Sess., pt. 2, at 84 (1990) (hereinafter "Education and Labor report"). Therefore, this part also includes appropriate provisions derived from the regulations implementing those titles. The inclusion of specific language in this part, however, should not be interpreted as an indication that a requirement is not included under a regulation implementing section 504.

Paragraph (b) makes clear that Congress did not intend to displace any of the rights or remedies provided by other Federal laws (including section 504) or other State laws (including State common law) that provide greater or equal protection to individuals with disabilities. As discussed above, the standards adopted by title II of the ADA for State and local government services are generally the same as those required under section 504 for federally assisted programs and activities. Subpart F of the regulation establishes compliance procedures for processing complaints covered by both this part and section 504.

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With respect to State law, a plaintiff may choose to pursue claims under a State law that does not confer greater substantive rights, or even confers fewer substantive rights, if the alleged violation is protected under the alternative law and the remedies are greater. For example, a person with a physical disability could seek damages under a State law that allows compensatory and punitive damages for discrimination on the basis of physical disability, but not on the basis of mental disability. In that situation, the State law would provide narrower coverage, by excluding mental disabilities, but broader remedies, and an individual covered by both laws could choose to bring an action under both laws. Moreover, State tort claims confer greater remedies and are not preempted by the ADA. A plaintiff may join a State tort claim to a case brought under the ADA. In such a case, the plaintiff must, of course, prove all the elements of the State tort claim in order to prevail under that cause of action.

Section 35.104 Definitions

"Act." The word "Act" is used in this part to refer to the Americans with Disabilities Act of 1990, Public Law 101–336, which is also referred to as the "ADA."

"Assistant Attorney General." The term "Assistant Attorney General" refers to the Assistant Attorney General of the Civil Rights Division of the Department of Justice.

"Auxiliary aids and services." Auxiliary aids and services include a wide range of services and devices for ensuring effective communication. The proposed definition in § 35.104 provided a list of examples of auxiliary aids and services that were taken from the definition of auxiliary aids and services in section 3(1) of the ADA and were supplemented by examples from regulations implementing section 504 in federally conducted programs (see 28 CFR 39.103).

A substantial number of commenters suggested that additional examples be added to this list. The Department has added several items to this list but wishes to clarify that the list is not an all-inclusive or exhaustive catalogue of possible or available auxiliary aids or services. It is not possible to provide an exhaustive list, and an attempt to do so would omit the new devices that will become available with emerging technology.

Subparagraph (1) lists several examples, which would be considered auxiliary aids and services to make aurally delivered materials available to individuals with hearing impairments. The Department has changed the phrase used in the proposed rules, "orally delivered materials," to the statutory phrase, "aurally delivered materials," to track section 3 of the ADA and to include non-verbal sounds and alarms, and computer generated speech.

The Department has added videotext displays, transcription services, and closed and open captioning to the list of examples. Videotext displays have become an important means of accessing auditory communications through a public address system. Transcription services are used to relay aurally delivered material almost simultaneously in written form to persons who are deaf or hearing-impaired. This technology is often used at conferences, conventions, and hearings. While the proposed rule expressly included television decoder equipment as an auxiliary aid or service, it did not mention captioning itself. The final rule rectifies this omission by mentioning both closed and open captioning.

Several persons and organizations requested that the Department replace the term "telecommunications devices for deaf persons" or "TDD's" with the term "text telephone." The Department has declined to do so. The Department is aware that the Architectural and Transportation Barriers Compliance Board (ATBCB) has used the phrase "text telephone" in lieu of the statutory term "TDD" in its final accessibility guidelines. Title IV of the ADA, however, uses the term "Telecommunications Device for the Deaf" and the Department believes it would be inappropriate to abandon this statutory term at this time.

Several commenters urged the Department to include in the definition of "auxiliary aids and services" devices that are now available or that may become available with emerging technology. The Department declines to do so in the rule. The Department, however, emphasizes that, although the definition would include "state of the art" devices, public entities are not required to use the newest or most advanced technologies as long as the auxiliary aid or service that is selected affords effective communication.

Subparagraph (2) lists examples of aids and services for making visually delivered materials accessible to persons with visual impairments. Many commenters proposed additional examples, such as signage or mapping, audio description services, secondary auditory programs, telebraillers, and reading machines. While the Department declines to add these items to the list, they are auxiliary aids and services and may be appropriate depending on the circumstances.

Subparagraph (3) refers to acquisition or modification of equipment or devices. Several commenters suggested the addition of current technological innovations in microelectronics and computerized control systems (e.g., voice recognition systems, automatic dialing telephones, and infrared elevator and light control systems) to the list of auxiliary aids. The Department interprets auxiliary aids and services as those aids and services designed to provide effective communications, i.e., making aurally and visually delivered information available to persons with hearing, speech, and vision impairments. Methods of making services, programs, or activities accessible to, or usable by, individuals with mobility or manual dexterity impairments are addressed by other sections of this part, including the provision for modifications in policies, practices, or procedures (§ 35.130 (b)(7)).

Paragraph (b)(4) deals with other similar services and actions. Several commenters asked for clarification that "similar services and actions" include retrieving items from shelves, assistance in reaching a marginally accessible seat, pushing a barrier aside in order to provide an accessible route, or assistance in removing a sweater or coat. While retrieving an item from a shelf might be an "auxiliary aid or service" for a blind person who could not locate the item without assistance, it might be a method of providing program access for a person using a wheelchair who could not reach the shelf, or a reasonable modification to a self-service policy for an individual who lacked the ability to grasp the item. As explained above, auxiliary aids and services are those aids and services required to provide effective communications. Other forms of assistance are more appropriately addressed by other provisions of the final rule.

"Complete complaint." "Complete complaint" is defined to include all the information necessary to enable the Federal agency designated under subpart G as responsible for investigation of a complaint to initiate its investigation.

"Current illegal use of drugs." The phrase "current illegal use of drugs" is used in § 35.131. Its meaning is discussed in the preamble for that section.

"Designated agency." The term "designated agency" is used to refer to the Federal agency designated under subpart G of this rule as responsible for carrying out the administrative enforcement responsibilities established by subpart F of the rule.

"Disability." The definition of the term "disability" is the same as the definition in the title III regulation codified at 28 CFR part 36. It is comparable to the definition of the term "individual with handicaps" in section 7(8) of the Rehabilitation Act and section 802(h) of the Fair Housing Act. The Education and Labor Committee report makes clear that the analysis of the term "individual with handicaps" by the Department of Health, Education, and Welfare (HEW) in its regulations implementing section 504 (42 FR 22685 (May 4, 1977)) and the analysis by the Department of Housing and Urban Development in its regulation implementing the Fair Housing Amendments Act of 1988 (54 FR 3232 (Jan. 23, 1989)) should also apply fully to the term "disability" (Education and Labor report at 50).

The use of the term "disability" instead of "handicap" and the term "individual with a disability" instead of "individual with handicaps" represents an effort by Congress to make use of up-to-date, currently accepted terminology. As with racial and ethnic epithets, the choice of terms to apply to a person with a disability is overlaid with stereotypes, patronizing attitudes, and other emotional connotations. Many individuals with disabilities, and organizations representing such individuals, object to the use of such terms as "handicapped person" or "the handicapped." In other recent legislation, Congress also recognized this shift in terminology, e.g., by changing the name of the National Council on the Handicapped to the National Council on Disability (Pub. L. 100-630).

In enacting the Americans with Disabilities Act, Congress concluded that it was important for the current legislation to use terminology most in line with the sensibilities of most Americans with disabilities. No change in definition or substance is intended nor should one be attributed to this change in phraseology.

The term "disability" means, with respect to an individual—

(A) A physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) A record of such an impairment; or

(C) Being regarded as having such an impairment. If an individual meets any one of these three tests, he or she is considered to be an individual with a disability for purposes of coverage under the Americans with Disabilities Act.

Congress adopted this same basic definition of "disability," first used in the Rehabilitation Act of 1973 and in the Fair Housing Amendments Act of 1988, for a number of reasons. First, it has worked well since it was adopted in 1974. Second, it would not be possible to guarantee comprehensiveness by providing a list of specific disabilities, especially because new disorders may be recognized in the future, as they have since the definition was first established in 1974.

Test A—A physical or mental impairment that substantially limits one or more of the major life activities of such individual

Physical or mental impairment. Under the first test, an individual must have a physical or mental impairment. As explained in paragraph (1)(i) of the definition, "impairment" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs (which would include speech organs that are not respiratory such as vocal cords, soft palate, tongue, etc.); respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine. It also means any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. This list closely tracks the one used in the regulations for section 504 of the Rehabilitation Act of 1973 (see, *e.g.*, 45 CFR 84.3(j)(2)(i)).

Many commenters asked that "traumatic brain injury" be added to the list in paragraph (1)(i). Traumatic brain injury is already included because it is a physiological condition affecting one of the listed body systems, i.e., "neurological." Therefore, it was unnecessary to add the term to the regulation, which only provides representative examples of physiological disorders.

It is not possible to include a list of all the specific conditions, contagious and noncontagious diseases, or infections that would constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of such a list, particularly in light of the fact that other conditions or disorders may be identified in the future. However, the list of examples in paragraph (1)(ii) of the definition includes: orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism. The phrase "symptomatic or asymptomatic" was inserted in the final rule after "HIV disease" in response to commenters who suggested the clarification was necessary.

The examples of "physical or mental impairments" in paragraph (1)(ii) are the same as those contained in many section 504 regulations, except for the addition of the phrase "contagious and noncontagious" to describe the types of diseases and conditions included, and the addition of "HIV disease (symptomatic or asymptomatic)" and "tuberculosis" to the list of examples. These additions are based on the committee reports, caselaw, and official legal opinions interpreting section 504. In *School Board of Nassau County* v. *Arline*, 480 U.S. 273 (1987), a case involving an individual with tuberculosis, the Supreme Court held that people with contagious diseases are entitled to the protections afforded by section 504. Following the *Arline* decision, this Department's Office of Legal Counsel issued a legal opinion that concluded that symptomatic HIV disease is an impairment that substantially limits a major life activity; therefore it has been included in the definition of disability under this part. The opinion also concluded that asymptomatic HIV disease is an impairment that substantially limits a major life activity, either because of its actual effect on the individual with HIV disease or because the reactions of other people to individuals with HIV disease cause such individuals to be treated as though they are disabled. See Memorandum from Douglas W. Kmiec, Acting Assistant Attorney General, Office of Legal Counsel, Department of Justice, to Arthur B. Culvahouse, Jr., Counsel to the President (Sept. 27, 1988), reprinted in Hearings on S. 933, the Americans with Disabilities Act, Before the Subcomm. on the Handicapped of the Senate Comm. on Labor and Human Resources, 101st. Cong., 1st Sess. 346 (1989).

Paragraph (1)(iii) states that the phrase "physical or mental impairment" does not include homosexuality or bisexuality. These conditions were never considered impairments under other Federal disability laws. Section 511(a) of the statute makes clear that they are likewise not to be considered impairments under the Americans with Disabilities Act.

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characteristics, such as blue eyes or black hair. Nor does it include environmental, cultural, economic, or other disadvantages, such as having a prison record, or being poor. Nor is age a disability. Similarly, the definition does not include common personality traits such as poor judgment or a quick temper where these are not symptoms of a mental or psychological disorder. However, a person who has these characteristics and also has a physical or mental impairment may be considered as having a disability for purposes of the Americans with Disabilities Act based on the impairment.

Substantial Limitation of a Major Life Activity. Under Test A, the impairment must be one that "substantially limits a major life activity." Major life activities include such things as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

For example, a person who is paraplegic is substantially limited in the major life activity of walking, a person who is blind is substantially limited in the major life activity of seeing, and a person who is mentally retarded is substantially limited in the major life activity of learning. A person with traumatic brain injury is substantially limited in the major life activities of caring for one's self, learning, and working because of memory deficit, confusion, contextual difficulties, and inability to reason appropriately.

A person is considered an individual with a disability for purposes of Test A, the first prong of the definition, when the individual's important life activities are restricted as to the conditions, manner, or duration under which they can be performed in comparison to most people. A person with a minor, trivial impairment, such as a simple infected finger, is not impaired in a major life activity. A person who can walk for 10 miles continuously is not substantially limited in walking merely because, on the eleventh mile, he or she begins to experience pain, because most people would not be able to walk eleven miles without experiencing some discomfort.

The Department received many comments on the proposed rule's inclusion of the word "temporary" in the definition of "disability." The preamble indicated that impairments are not necessarily excluded from the definition of "disability" simply because they are temporary, but that the duration, or expected duration, of an impairment is one factor that may properly be considered in determining whether the impairment substantially limits a major life activity. The preamble recognized, however, that temporary impairments, such as a broken leg, are not commonly regarded as disabilities, and only in rare circumstances would the degree of the limitation and its expected duration be substantial. Nevertheless, many commenters objected to inclusion of the word "temporary" both because it is not in the statute and because it is not contained in the definition of "disability" set forth in the title I regulations of the Equal Employment Opportunity Commission (EEOC). The word "temporary" has been deleted from the final rule to conform with the statutory language.

The question of whether a temporary impairment is a disability must be resolved on a case-by-case basis, taking into consideration both the duration (or expected duration) of the impairment and the extent to which it actually limits a major life activity of the affected individual.

The question of whether a person has a disability should be assessed without regard to the availability of mitigating measures, such as reasonable modification or auxiliary aids and services. For example, a person with hearing loss is substantially limited in the major life activity of hearing, even though the loss may be improved through the use of a hearing aid. Likewise, persons with impairments, such as epilepsy or diabetes, that substantially limit a major life activity, are covered under the first prong of the definition of disability, even if the effects of the impairment are controlled by medication.

Many commenters asked that environmental illness (also known as multiple chemical sensitivity) as well as allergy to cigarette smoke be recognized as disabilities. The Department, however, declines to state categorically that these types of allergies or sensitivities are disabilities, because the determination as to whether an impairment is a disability depends on whether, given the particular circumstances at issue, the impairment substantially limits one or more major life activities (or has a history of, or is regarded as having such an effect).

Sometimes respiratory or neurological functioning is so severely affected that an individual will satisfy the requirements to be considered disabled under the regulation. Such an individual would be entitled to all of the protections afforded by the Act and this part. In other cases, individuals may be sensitive to environmental elements or to smoke but their sensitivity will not rise to the level needed to constitute a disability. For example, their major life activity of breathing may be somewhat, but not substantially, impaired. In such circumstances, the individuals are not disabled and are not entitled to the protections of the statute despite their sensitivity to environmental agents.

In sum, the determination as to whether allergies to cigarette smoke, or allergies or sensitivities characterized by the commenters as environmental illness are disabilities covered by the regulation must be made using the same case-by-case analysis that is applied to all other physical or mental impairments. Moreover, the addition of specific regulatory provisions relating to environmental illness in the final rule would be inappropriate at this time pending future consideration of the issue by the Architectural and Transportation Barriers Compliance Board, the Environmental Protection Agency, and the Occupational Safety and Health Administration of the Department of Labor.

Test B—A record of such an impairment

This test is intended to cover those who have a record of an impairment. As explained in paragraph (3) of the rule's definition of disability, this includes a person who has a history of an impairment that substantially limited a major life activity, such as someone who has recovered from an impairment. It also includes persons who have been misclassified as having an impairment.

This provision is included in the definition in part to protect individuals who have recovered from a physical or mental impairment that previously substantially limited them in a major life activity. Discrimination on the basis of such a past impairment is prohibited. Frequently occurring examples of the first group (those who have a history of an impairment) are persons with histories of mental or emotional illness, heart disease, or cancer; examples of the second group (those who have been misclassified as having an impairment) are persons who have been misclassified as having mental retardation or mental illness.

Test C—Being regarded as having such an impairment

This test, as contained in paragraph (4) of the definition, is intended to cover persons who are treated by a public entity as having a physical or mental impairment that substantially limits a major life activity. It applies when a person is treated as if he or she has an impairment that substantially limits a major life activity, regardless of whether that person has an impairment.

The Americans with Disabilities Act uses the same "regarded as" test set forth in the regulations implementing section 504 of the Rehabilitation Act. See, e.g., 28 CFR 42.540(k)(2)(iv), which provides:

> (iv) "Is regarded as having an impairment" means (A) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (B) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (C) Has none of the impairments defined in paragraph (k)(2)(i) of this section but is treated by a recipient as having such an impairment.

The perception of the covered entity is a key element of this test. A person who perceives himself or herself to have an impairment, but does not have an impairment, and is not treated as if he or she has an impairment, is not protected under this test.

A person would be covered under this test if a public entity refused to serve the person because it perceived that the person had an impairment that limited his or her enjoyment of the goods or services being offered.

For example, persons with severe burns often encounter discrimination in community activities, resulting in substantial limitation of major life activities. These persons would be covered under this test based on the attitudes of others towards the impairment, even if they did not view themselves as "impaired."

The rationale for this third test, as used in the Rehabilitation Act of 1973, was articulated by the Supreme Court in *Arline*, 480 U.S. 273 (1987). The Court noted that although an individual may have an impairment that does not in fact substantially limit a major life activity, the reaction of others may prove just as disabling. "Such an impairment might not diminish a person's physical or mental capabilities, but could nevertheless substantially limit that person's ability to work as a result of the negative reactions of others to the impairment." *Id.* at 283. The Court concluded that, by including this test in the Rehabilitation Act's definition, "Congress acknowledged that society's accumulated myths and fears about disability and diseases are as handicapping as are the physical limitations that flow from actual impairment." *Id.* at 284.

Thus, a person who is denied services or benefits by a public entity because of myths, fears, and stereotypes associated with disabilities would be covered under this third test whether or not the person's physical or mental condition would be considered a disability under the first or second test in the definition.

If a person is refused admittance on the basis of an actual or perceived physical or mental condition, and the public entity can articulate no legitimate reason for the refusal (such as failure to meet eligibility criteria), a perceived concern about admitting persons with disabilities could be inferred and the individual would qualify for coverage under the "regarded as" test. A person who is covered because of being regarded as having an impairment is not required to show that the public entity's perception is inaccurate (e.g., that he will be accepted by others) in order to receive benefits from the public entity.

Paragraph (5) of the definition lists certain conditions that are not included within the definition of "disability." The excluded conditions are: Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, other sexual behavior disorders, compulsive gambling, kleptomania, pyromania, and psychoactive substance use disorders resulting from current illegal use of drugs. Unlike homosexuality and bisexuality, which are not considered impairments under either section 504 or the Americans with Disabilities Act (see the definition of "disability," paragraph (1)(iv)), the conditions listed in paragraph (5), except for transvestism, are not necessarily excluded as impairments under section 504. (Transvestism was excluded from the definition of disability for section 504 by the Fair Housing Amendments Act of 1988, Pub. L. 100–430, section 6(b)).

"Drug." The definition of the term "drug" is taken from section 510(d)(2) of the ADA.

"Facility." "Facility" means all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located. It includes both indoor and outdoor areas where human-constructed improvements, structures, equipment, or property have been added to the natural environment.

Commenters raised questions about the applicability of this part to activities operated in mobile facilities, such as bookmobiles or mobile health screening units. Such activities would be covered by the requirement for program accessibility in § 35.150, and would be included in the definition of "facility" as "other real or personal property," although standards for new construction and alterations of such facilities are not yet included in the accessibility standards adopted by § 35.151. Sections 35.150 and 35.151 specifically address the obligations of public entities to ensure accessibility by providing curb ramps at pedestrian walkways.

"Historic preservation programs" and "Historic properties" are defined in order to aid in the interpretation of §§ 35.150 (a)(2) and (b)(2), which relate to accessibility of historic preservation programs, and § 35.151(d), which relates to the alteration of historic properties.

"Illegal use of drugs." The definition of "illegal use of drugs" is taken from section 510(d)(1) of the Act and clarifies that the term includes the illegal use of one or more drugs.

"Individual with a disability" means a person who has a disability but does not include an individual who is currently illegally using drugs, when the public entity acts on the basis of such use. The phrase "current illegal use of drugs" is explained in § 35.131.

"Public entity." The term "public entity" is defined in accordance with section 201(1) of the ADA as any State or local government; any department, agency, special purpose district, or other instrumentality of a State or States or local government; or the National Railroad Passenger Corporation, and any commuter authority (as defined in section 103(8) of the Rail Passenger Service Act).

"Qualified individual with a disability." The definition of "qualified individual with a disability" is taken from section 201(2) of the Act, which is derived from the definition of "qualified handicapped person" in the Department of Health and Human Services' regulation implementing section 504 (45 CFR § 84.3(k)). It combines the definition at 45 CFR 84.3(k)(1) for employment ("a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question") with the definition for other services at 45 CFR 84.3(k)(4) ("a handicapped person who meets the essential eligibility requirements for the receipt of such services").

Some commenters requested clarification of the term "essential eligibility requirements." Because of the variety of situations in which an individual's qualifications will be at issue, it is not possible to include more specific criteria in the definition. The "essential eligibility requirements" for participation in some activities covered under this part may be minimal. For example, most public entities provide information about their operations as a public service to anyone who requests it. In such situations, the only "eligibility requirement" for receipt of such information would be the request for it.

Where such information is provided by telephone, even the ability to use a voice telephone is not an "essential eligibility requirement," because § 35.161 requires a public entity to provide equally effective telecommunication systems for individuals with impaired hearing or speech.

For other activities, identification of the "essential eligibility requirements" may be more complex. Where questions of safety are involved, the principles established in § 36.208 of the Department's regulation implementing title III of the ADA, to be codified at 28 CFR, part 36, will be applicable. That section implements section 302(b)(3) of the Act, which provides that a public accommodation is not required to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of the public accommodation, if that individual poses a direct threat to the health or safety of others.

A "direct threat" is a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services. In *School Board of Nassau County* v. *Arline,* 480 U.S. 273 (1987), the Supreme Court recognized that there is a need to balance the interests of people with disabilities against legitimate concerns for public safety. Although persons with disabilities are generally entitled to the protection of this part, a person who poses a significant risk to others will not be "qualified," if reasonable modifications to the public entity's policies, practices, or procedures will not eliminate that risk.

The determination that a person poses a direct threat to the health or safety of others may not be based on generalizations or stereotypes about the effects of a particular disability. It must be based on an individualized assessment, based on reasonable judgment that relies on current medical evidence or on the best available objective evidence, to determine: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk. This is the test established by the Supreme Court in *Arline.* Such an inquiry is essential if the law is to achieve its goal of protecting disabled individuals from discrimination based on prejudice, stereotypes, or unfounded fear, while giving appropriate weight to legitimate concerns, such as the need to avoid exposing others to significant health and safety risks. Making this assessment will not usually require the services of a physician. Sources for medical knowledge include guidance from public health authorities, such as the U.S. Public Health Service, the Centers for Disease Control, and the National Institutes of Health, including the National Institute of Mental Health.

"Qualified interpreter." The Department received substantial comment regarding the lack of a definition of "qualified interpreter." The proposed rule defined auxiliary aids and services to include the statutory term, "qualified interpreters" (§ 35.104), but did not define it. Section 35.160 requires the use of auxiliary aids including qualified interpreters and commenters stated that a lack of guidance on what the term means would create confusion among those trying to secure interpreting services and often result in less than effective communication.

Many commenters were concerned that, without clear guidance on the issue of "qualified" interpreter, the rule would be interpreted to mean "available, rather than qualified" interpreters. Some claimed that few public entities would understand the difference between a qualified interpreter and a person who simply knows a few signs or how to fingerspell.

In order to clarify what is meant by "qualified interpreter" the Department has added a definition of the term to the final rule. A qualified interpreter means an interpreter who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary. This definition focuses on the actual ability of the interpreter in a particular interpreting context to facilitate effective communication between the public entity and the individual with disabilities.

Public comment also revealed that public entities have at times asked persons who are deaf to provide family members or friends to interpret. In certain circumstances, notwithstanding that the family member of friend is able to interpret or is a certified interpreter, the family member or friend may not be qualified to render the necessary interpretation because of factors such as emotional or personal involvement or considerations of confidentiality that may adversely affect the ability to interpret"effectively, accurately, and impartially."

The definition of "qualified interpreter" in this rule does not invalidate or limit standards for interpreting services of any State or local law that are equal to or more stringent than those imposed by this definition. For instance, the definition would not supersede any requirement of State law for use of a certified interpreter in court proceedings.

"Section 504." The Department added a definition of "section 504" because the term is used extensively in subpart F of this part.

"State." The definition of "State" is identical to the statutory definition in section 3(3) of the ADA.

Section 35.105 Self-evaluation

Section 35.105 establishes a requirement, based on the section 504 regulations for federally assisted and federally conducted programs, that a public entity evaluate its current policies and practices to identify and correct any that are not consistent with the requirements of this part. As noted in the discussion of § 35.102, activities covered by the Department of Transportation's regulation implementing subtitle B of title II are not required to be included in the self-evaluation required by this section.

Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with individuals with disabilities, which has promoted both effective and efficient implementation of section 504. The Department expects that it will likewise be useful to public entities newly covered by the ADA.

All public entities are required to do a self-evaluation. However, only those that employ 50 or more persons are required to maintain the self-evaluation on file and make it available for public inspection for three years. The number 50 was derived from the Department of Justice's section 504 regulations for federally assisted programs, 28 CFR 42.505(c). The Department received comments critical of this limitation, some suggesting the requirement apply to all public entities and others suggesting that the number be changed from 50 to 15. The final rule has not been changed. Although many regulations implementing section 504 for federally assisted programs do use 15 employees as the cut-off for this record-keeping requirement, the Department believes that it would be inappropriate to extend it to those smaller public entities covered by this regulation that do not receive Federal financial assistance. This approach has the benefit of minimizing paperwork burdens on small entities.

Paragraph (d) provides that the self-evaluation required by this section shall apply only to programs not subject to section 504 or those policies and practices, such as those involving communications access, that have not already been included in a self-evaluation required under an existing regulation implementing section 504. Because most self-evaluations were done from five to twelve years ago, however, the Department expects that a great many public entities will be reexamining all of their policies and programs. Programs and functions may have changed, and actions that were supposed to have been taken to comply with section 504 may not have been fully implemented or may no longer be effective. In addition, there have been statutory amendments to section 504 which have changed the coverage of section 504, particularly the Civil Rights Restoration Act of 1987, Public Law No. 100–259, 102 Stat. 28 (1988), which broadened the definition of a covered "program or activity."

Several commenters suggested that the Department clarify public entities' liability during the one-year period for compliance with the self-evaluation requirement. The self-evaluation requirement does not stay the effective date of the statute nor of this part. Public entities are, therefore, not shielded from discrimination claims during that time.

Other commenters suggested that the rule require that every self-evaluation include an examination of training efforts to assure that individuals with disabilities are not subjected to discrimination because of insensitivity, particularly in the law enforcement area. Although the Department has not added such a specific requirement to the rule, it would be appropriate for public entities to evaluate training efforts because, in many cases, lack of training leads to discriminatory practices, even when the policies in place are nondiscriminatory.

Section 35.106 Notice

Section 35.106 requires a public entity to disseminate sufficient information to applicants, participants, beneficiaries, and other interested persons to inform them of the rights and protections afforded by the ADA and this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe a public entity's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio. In providing the notice, a public entity must comply with the requirements for effective communication in § 35.160. The preamble to that section gives guidance on how to effectively communicate with individuals with disabilities.

Section 35.107 Designation of Responsible Employee and Adoption of Grievance Procedures

Consistent with § 35.105, self-evaluation, the final rule requires that public entities with 50 or more employees designate a responsible employee and adopt grievance procedures. Most of the commenters who suggested that the requirement that self-evaluation be maintained on file for three years not be limited to those employing 50 or more persons made a similar suggestion concerning § 35.107. Commenters recommended either that all public entities be subject to § 35.107, or that "50 or more persons" be changed to "15 or more persons." As explained in the discussion of § 35.105, the Department has not adopted this suggestion.

The requirement for designation of an employee responsible for coordination of efforts to carry out responsibilities under this part is derived from the HEW regulation implementing section 504 in federally assisted programs. The requirement for designation of a particular employee and dissemination of information about how to locate that employee helps to ensure that individuals dealing with large agencies are able to easily find a responsible person who is familiar with the requirements of the Act and this part and can communicate those requirements to other individuals in the agency who may be unaware of their responsibilities. This paragraph in no way limits a public entity's obligation to ensure that all of its employees comply with the requirements of this part, but it ensures that any failure by individual employees can be promptly corrected by the designated employee.

Section 35.107(b) requires public entities with 50 or more employees to establish grievance procedures for resolving complaints of violations of this part. Similar requirements are found in the section 504 regulations for federally assisted programs (see, e.g., 45 CFR 84.7(b)). The rule, like the regulations for federally assisted programs, provides for investigation and resolution of complaints by a Federal enforcement agency. It is the view of the Department that public entities subject to this part should be required to establish a mechanism for resolution of complaints at the local level without requiring the complainant to resort to the Federal complaint procedures established under subpart F. Complainants would not, however, be required to exhaust the public entity's grievance procedures before filing a complaint under subpart F. Delay in filing the complaint at the Federal level caused by pursuit of the remedies available under the grievance procedure would generally be considered good cause for extending the time allowed for filing under § 35.170(b).

Subpart B—General Requirements

Section 35.130 General Prohibitions Against Discrimination

The general prohibitions against discrimination in the rule are generally based on the prohibitions in existing regulations implementing section 504 and, therefore, are already familiar to State and local entities covered by section 504. In addition, § 35.130 includes a number of provisions derived from title III of the Act that are implicit to a certain degree in the requirements of regulations implementing section 504.

Several commenters suggested that this part should include the section of the proposed title III regulation that implemented section 309 of the Act, which requires that courses and examinations related to applications, licensing, certification, or credentialing be provided in an accessible place and manner or that alternative accessible arrangements be made. The Department has not adopted this suggestion. The requirements of this part, including the general prohibitions of discrimination in this section, the program access requirements of subpart D, and the communications requirements of subpart E, apply to courses and examinations provided by public entities. The Department considers these requirements to be sufficient to ensure that courses and examinations administered by public entities meet the requirements of section 309. For example, a public entity offering an examination must ensure that modifications of policies, practices, or procedures or the provision of auxiliary aids and services furnish the individual with a disability an equal opportunity to demonstrate his or her knowledge or ability. Also, any examination specially designed for individuals with disabilities must be offered as often and in as timely a manner as are other examinations. Further, under this part, courses and examinations must be offered in the most integrated setting appropriate. The analysis of § 35.130(d) is relevant to this determination.

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seizures or other disabilities such as mental retardation, cerebral palsy, traumatic brain injury, mental illness, or deafness. Several disabled commenters gave personal statements about the abuse they had received at the hands of law enforcement personnel. Two organizations that commented cited the Judiciary report at 50 as authority to require law enforcement training.

The Department has not added such a training requirement to the regulation. Discriminatory arrests and brutal treatment are already unlawful police activities. The general regulatory obligation to modify policies, practices, or procedures requires law enforcement to make changes in policies that result in discriminatory arrests or abuse of individuals with disabilities. Under this section law enforcement personnel would be required to make appropriate efforts to determine whether perceived strange or disruptive behavior or unconsciousness is the result of a disability. The Department notes that a number of States have attempted to address the problem of arresting disabled persons for noncriminal conduct resulting from their disability through adoption of the Uniform Duties to Disabled Persons Act, and encourages other jurisdictions to consider that approach.

Paragraph (a) restates the nondiscrimination mandate of section 202 of the ADA. The remaining paragraphs in § 35.130 establish the general principles for analyzing whether any particular action of the public entity violates this mandate.

Paragraph (b) prohibits overt denials of equal treatment of individuals with disabilities. A public entity may not refuse to provide an individual with a disability with an equal opportunity to participate in or benefit from its program simply because the person has a disability.

Paragraph (b)(1)(i) provides that it is discriminatory to deny a person with a disability the right to participate in or benefit from the aid, benefit, or service provided by a public entity. Paragraph (b)(1)(ii) provides that the aids, benefits, and services provided to persons with disabilities must be equal to those provided to others, and paragraph (b)(1)(iii) requires that the aids, benefits, or services provided to individuals with disabilities must be as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as those provided to others. These paragraphs are taken from the regulations implementing section 504 and simply restate principles long established under section 504.

Paragraph (b)(1)(iv) permits the public entity to develop separate or different aids, benefits, or services when necessary to provide individuals with disabilities with an equal opportunity to participate in or benefit from the public entity's programs or activities, but only when necessary to ensure that the aids, benefits, or services are as effective as those provided to others. Paragraph (b)(1)(iv) must be read in conjunction with paragraphs (b)(2), (d), and (e). Even when separate or different aids, benefits, or services would be more effective, paragraph (b)(2) provides that a qualified individual with a disability still has the right to choose to participate in the program that is not designed to accommodate individuals with disabilities. Paragraph (d) requires that a public entity administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

Paragraph (b)(2) specifies that, notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different. Paragraph (e), which is derived from section 501(d) of the Americans with Disabilities Act, states that nothing in this part shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit that he or she chooses not to accept.

Taken together, these provisions are intended to prohibit exclusion and segregation of individuals with disabilities and the denial of equal opportunities enjoyed by others, based on, among other things, presumptions, patronizing attitudes, fears, and stereotypes about individuals with disabilities. Consistent with these standards, public entities are required to ensure that their actions are based on facts applicable to individuals and not on presumptions as to what a class of individuals with disabilities can or cannot do.

Integration is fundamental to the purposes of the Americans with Disabilities Act. Provision of segregated accommodations and services relegates persons with disabilities to second-class status. For example, it would be a violation of this provision to require persons with disabilities to eat in the back room of a government cafeteria or to refuse to allow a person with a disability the full use of recreation or exercise facilities because of stereotypes about the person's ability to participate.

Many commenters objected to proposed paragraphs (b)(1)(iv) and (d) as allowing continued segregation of individuals with disabilities. The Department recognizes that promoting integration of individuals with disabilities into the mainstream of society is an important objective of the ADA and agrees that, in most instances, separate programs for individuals with disabilities will not be permitted. Nevertheless, section 504 does permit separate programs in limited circumstances, and Congress clearly intended the regulations issued under title II to adopt the standards of section 504. Furthermore, Congress included authority for separate programs in the specific requirements of title III of the Act. Section 302(b)(1)(A)(iii) of the Act provides for separate benefits in language similar to that in § 35.130(b)(1)(iv), and section 302(b)(1)(B) includes the same requirement for "the most integrated setting appropriate" as in § 35.130(d).

Even when separate programs are permitted, individuals with disabilities cannot be denied the opportunity to participate in programs that are not separate or different. This is an important and overarching principle of the Americans with Disabilities Act. Separate, special, or different programs that are designed to provide a benefit to persons with disabilities cannot be used to restrict the participation of persons with disabilities in general, integrated activities.

For example, a person who is blind may wish to decline participating in a special museum tour that allows persons to touch sculptures in an exhibit and instead tour the exhibit at his or her own pace with the museum's recorded tour. It is not the intent of this section to require the person who is blind to avail himself or herself of the special tour. Modified participation for persons with disabilities must be a choice, not a requirement.

In addition, it would not be a violation of this section for a public entity to offer recreational programs specially designed for children with mobility impairments. However, it would be a violation of this section if the entity then excluded these children from other recreational services for which they are qualified to participate when these services are made available to nondisabled children, or if the entity required children with disabilities to attend only designated programs.

Many commenters asked that the Department clarify a public entity's obligations within the integrated program when it offers a separate program but an individual with a disability chooses not to participate in the separate program. It is impossible to make a blanket statement as to what level of auxiliary aids or modifications would be required in the integrated program. Rather, each situation must be assessed individually. The starting point is to question whether the separate program is in fact necessary or appropriate for the individual. Assuming the separate program would be appropriate for a particular individual, the extent to which that individual must be provided with modifications in the integrated program will depend not only on what the individual needs but also on the limitations and defenses of this part. For example, it may constitute an undue burden for a public accommodation, which provides a full-time interpreter in its special guided tour for individuals with hearing impairments, to hire an additional interpreter for those individuals who choose to attend the integrated program. The Department cannot identify categorically the level of assistance or aid required in the integrated program.

Paragraph (b)(1)(v) provides that a public entity may not aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the public entity's program. This paragraph is taken from the regulations implementing section 504 for federally assisted programs.

Paragraph (b)(1)(vi) prohibits the public entity from denying a qualified individual with a disability the opportunity to participate as a member of a planning or advisory board.

Paragraph (b)(1)(vii) prohibits the public entity from limiting a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Paragraph (b)(3) prohibits the public entity from utilizing criteria or methods of administration that deny individuals with disabilities access to the public entity's services, programs, and activities or that perpetuate the discrimination of another public entity, if both public entities are subject to common administrative control or are agencies of the same State. The phrase "criteria or methods of administration" refers to official written policies of the public entity and to the actual practices of the public entity. This paragraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny individuals with disabilities an effective opportunity to participate. This standard is consistent with the interpretation of section 504 by the U.S. Supreme Court in *Alexander* v. *Choate*, 469 U.S. 287 (1985). The Court in *Choate* explained that members of Congress made numerous statements during passage of section 504 regarding eliminating architectural barriers, providing access to transportation, and eliminating discriminatory effects of job qualification procedures. The Court then noted: "These statements would ring hollow if the resulting legislation could not rectify the harms resulting from action that discriminated by effect as well as by design." *Id.* at 297 (footnote omitted).

Paragraph (b)(4) specifically applies the prohibition enunciated in § 35.130(b)(3) to the process of selecting sites for construction of new facilities or selecting existing facilities to be used by the public entity. Paragraph (b)(4) does not apply to construction of additional buildings at an existing site.

Paragraph (b)(5) prohibits the public entity, in the selection of procurement contractors, from using criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

Paragraph (b)(6) prohibits the public entity from discriminating against qualified individuals with disabilities on the basis of disability in the granting of licenses or certification. A person is a "qualified individual with a disability" with respect to licensing or certification if he or she can meet the essential eligibility requirements for receiving the license or certification (see § 35.104).

A number of commenters were troubled by the phrase "essential eligibility requirements" as applied to State licensing requirements, especially those for health care professions. Because of the variety of types of programs to which the definition of "qualified individual with a disability" applies, it is not possible to use more specific language in the definition. The phrase "essential eligibility requirements," however, is taken from the definitions in the regulations implementing section 504, so caselaw under section 504 will be applicable to its interpretation. In *Southeastern Community College* v. *Davis*, 442 U.S. 397, for example, the Supreme Court held that section 504 does not require an institution to "lower or effect substantial modifications of standards to accommodate a handicapped person," 442 U.S. at 413, and that the school had established that the plaintiff was not "qualified" because she was not able to "serve the nursing profession in all customary ways," *id.* Whether a particular requirement is "essential" will, of course, depend on the facts of the particular case.

In addition, the public entity may not establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. For example, the public entity must comply with this requirement when establishing safety standards for the operations of licensees. In that case the public entity must ensure that standards that it promulgates do not discriminate against the employment of qualified individuals with disabilities in an impermissible manner.

Paragraph (b)(6) does not extend the requirements of the Act or this part directly to the programs or activities of licensees or certified entities themselves. The programs or activities of licensees or certified entities are not themselves programs or activities of the public entity merely by virtue of the license or certificate.

Paragraph (b)(7) is a specific application of the requirement under the general prohibitions of discrimination that public entities make reasonable modifications in policies, practices, or procedures where necessary to avoid discrimination on the basis of disability. Section 302(b)(2)(A)(ii) of the ADA sets out this requirement specifically for public accommodations covered by title III of the Act, and the House Judiciary Committee Report directs the Attorney General to include those specific requirements in the title II regulation to the extent that they do not conflict with the regulations implementing section 504. Judiciary report at 52.

Paragraph (b)(8), a new paragraph not contained in the proposed rule, prohibits the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered. This prohibition is also a specific application of the general prohibitions of discrimination and is based on section 302(b)(2)(A)(i) of the ADA. It prohibits overt denials of equal treatment of individuals with disabilities, or establishment of exclusive or segregative criteria that would bar individuals with disabilities

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established that the plaintiff was not "qualified" because she was not able to "serve the nursing profession in all customary ways," *id.* Whether a particular requirement is "essential" will, of course, depend on the facts of the particular case.

In addition, the public entity may not establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. For example, the public entity must comply with this requirement when establishing safety standards for the operations of licensees. In that case the public entity must ensure that standards that it promulgates do not discriminate against the employment of qualified individuals with disabilities in an impermissible manner.

Paragraph (b)(6) does not extend the requirements of the Act or this part directly to the programs or activities of licensees or certified entities themselves. The programs or activities of licensees or certified entities are not themselves programs or activities of the public entity merely by virtue of the license or certificate.

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from participation in services, benefits, or activities.

Paragraph (b)(8) also prohibits policies that unnecessarily impose requirements or burdens on individuals with disabilities that are not placed on others. For example, public entities may not require that a qualified individual with a disability be accompanied by an attendant. A public entity is not, however, required to provide attendant care, or assistance in toileting, eating, or dressing to individuals with disabilities, except in special circumstances, such as where the individual is an inmate of a custodial or correctional institution.

In addition, paragraph (b)(8) prohibits the imposition of criteria that "tend to" screen out an individual with a disability. This concept, which is derived from current regulations under section 504 (*see, e.g.*, 45 CFR 84.13), makes it discriminatory to impose policies or criteria that, while not creating a direct bar to individuals with disabilities, indirectly prevent or limit their ability to participate. For example, requiring presentation of a driver's license as the sole means of identification for purposes of paying by check would violate this section in situations where, for example, individuals with severe vision impairments or developmental disabilities or epilepsy are ineligible to receive a driver's license and the use of an alternative means of identification, such as another photo I.D. or credit card, is feasible.

A public entity may, however, impose neutral rules and criteria that screen out, or tend to screen out, individuals with disabilities if the criteria are necessary for the safe operation of the program in question. Examples of safety qualifications that would be justifiable in appropriate circumstances would include eligibility requirements for drivers' licenses, or a requirement that all participants in a recreational rafting expedition be able to meet a necessary level of swimming proficiency. Safety requirements must be based on actual risks and not on speculation, stereotypes, or generalizations about individuals with disabilities.

Paragraph (c) provides that nothing in this part prohibits a public entity from providing benefits, services, or advantages to individuals with disabilities, or to a particular class of individuals with disabilities, beyond those required by this part. It is derived from a provision in the section 504 regulations that permits programs conducted pursuant to Federal statute or Executive order that are designed to benefit only individuals with disabilities or a given class of individuals with disabilities to be limited to those individuals with disabilities. Section 504 ensures that federally assisted programs are made available to all individuals, without regard to disabilities, unless the Federal program under which the assistance is provided is specifically limited to individuals with disabilities or a particular class of individuals with disabilities. Because coverage under this part is not limited to federally assisted programs, paragraph (c) has been revised to clarify that State and local governments may provide special benefits, beyond those required by the nondiscrimination requirements of this part, that are limited to individuals with disabilities or a particular class of individuals with disabilities, without thereby incurring additional obligations to persons without disabilities or to other classes of individuals with disabilities.

Paragraphs (d) and (e), previously referred to in the discussion of paragraph (b)(1)(iv), provide that the public entity must administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities, *i.e.*, in a setting that enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible, and that persons with disabilities must be provided the option of declining to accept a particular accommodation.

Some commenters expressed concern that § 35.130(e), which states that nothing in the rule requires an individual with a disability to accept special accommodations and services provided under the ADA, could be interpreted to allow guardians of infants or older people with disabilities to refuse medical treatment for their wards. Section 35.130(e) has been revised to make it clear that paragraph (e) is inapplicable to the concern of the commenters. A new paragraph (e)(2) has been added stating that nothing in the regulation authorizes the representative or guardian of an individual with a disability to decline food, water, medical treatment, or medical services for that individual. New paragraph (e) clarifies that neither the ADA nor the regulation alters current Federal law ensuring the rights of incompetent individuals with disabilities to receive food, water, and medical treatment. See, *e.g.*, Child Abuse Amendments of 1984 (42 U.S.C. 5106a(b)(10), 5106g(10)); Rehabilitation Act of 1973, as amended (29 U.S.C. 794); the Developmentally Disabled Assistance and Bill of Rights Act (42 U.S.C. 6042).

Sections 35.130(e) (1) and (2) are based on section 501(d) of the ADA. Section 501(d) was designed to clarify that nothing in the ADA requires individuals with disabilities to accept special accommodations and services for individuals with disabilities that may segregate them:

> The Committee added this section [501(d)] to clarify that nothing in the ADA is intended to permit discriminatory treatment on the basis of disability, even when such treatment is rendered under the guise of providing an accommodation, service, aid or benefit to the individual with disability. For example, a blind individual may choose not to avail himself or herself of the right to go to the front of a line, even if a particular public accommodation has chosen to offer such a modification of a policy for blind individuals. Or, a blind individual may choose to decline to participate in a special museum tour that allows persons to touch sculptures in an exhibit and instead tour the exhibits at his or her own pace with the museum's recorded tour.

Judiciary report at 71–72. The Act is not to be construed to mean that an individual with disabilities must accept special accommodations and services for individuals with disabilities when that individual can participate in the regular services already offered. Because medical treatment, including treatment for particular conditions, is not a special accommodation or service for individuals with disabilities under section 501(d), neither the Act nor this part provides affirmative authority to suspend such treatment. Section 501(d) is intended to clarify that the Act is not designed to foster discrimination through mandatory acceptance of special services when other alternatives are provided; this concern does not reach to the provision of medical treatment for the disabling condition itself.

Paragraph (f) provides that a public entity may not place a surcharge on a particular individual with a disability, or any group of individuals with disabilities, to cover any costs of measures required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part. Such measures may include the provision of auxiliary aids or of modifications required to provide program accessibility.

Several commenters asked for clarification that the costs of interpreter services may not be assessed as an element of "court costs." The Department has already recognized that imposition of the cost of courtroom interpreter services is impermissible under section 504. The preamble to the Department's section 504 regulation for its federally assisted programs states that where a court system has an obligation to provide qualified interpreters, "it has the corresponding responsibility to pay for the services of the interpreters." (45 FR 37630 (June 3, 1980)). Accordingly, recouping the costs of interpreter services by assessing them as part of court costs would also be prohibited.

Paragraph (g), which prohibits discrimination on the basis of an individual's or entity's known relationship or association with an individual with a disability, is based on sections 102(b)(4) and 302(b)(1)(E) of the ADA. This paragraph was not contained in the proposed rule. The individuals covered under this paragraph are any individuals who are discriminated against because of their known association with an individual with a disability. For example, it would be a violation of this paragraph for a local government to refuse to allow a theater company to use a school auditorium on the grounds that the company had recently performed for an audience of individuals with HIV disease.

This protection is not limited to those who have a familial relationship with the individual who has a disability. Congress considered, and rejected, amendments that would have limited the scope of this provision to specific associations and relationships. Therefore, if a public entity refuses admission to a person with cerebral palsy and his or her companions, the companions have an independent right of action under the ADA and this section.

During the legislative process, the term "entity" was added to section 302(b)(1)(E) to clarify that the scope of the provision is intended to encompass not only persons who have a known association with a person with a disability, but also entities that provide services to or are otherwise associated with such individuals. This provision was intended to ensure that entities such as health care providers, employees of social service agencies, and others who provide professional services to persons with disabilities are not subjected to discrimination because of their professional association with persons with disabilities.

Section 35.131 Illegal Use of Drugs

Section 35.131 effectuates section 510 of the ADA, which clarifies the Act's application to people who use drugs illegally. Paragraph (a) provides that this part does not prohibit discrimination based on an individual's current illegal use of drugs.

The Act and the regulation distinguish between illegal use of drugs and the legal use of substances, whether or not those substances are "controlled substances," as defined in the Controlled Substances Act (21 U.S.C. 812). Some controlled substances are prescription drugs that have legitimate medical uses. Section 35.131 does not affect use of controlled substances pursuant to a valid prescription under supervision by a licensed health care professional, or other use that is authorized by the Controlled Substances Act or any other provision of Federal law. It does apply to illegal use of those substances, as well as to illegal use of controlled substances that are not prescription drugs. The key question is whether the individual's use of the substance is illegal, not whether the substance has recognized legal uses. Alcohol is not a controlled substance, so use of alcohol is not addressed by § 35.131 (although alcoholics are individuals with disabilities, subject to the protections of the statute).

A distinction is also made between the use of a substance and the status of being addicted to that substance. Addiction is a disability, and addicts are individuals with disabilities protected by the Act. The protection, however, does not extend to actions based on the illegal use of the substance. In other words, an addict cannot use the fact of his or her addiction as a defense to an action based on illegal use of drugs. This distinction is not artificial. Congress intended to deny protection to people who engage in the illegal use of drugs, whether or not they are addicted, but to provide protection to addicts so long as they are not currently using drugs.

A third distinction is the difficult one between current use and former use. The definition of "current illegal use of drugs" in § 35.104, which is based on the report of the Conference Committee, H.R. Conf. Rep. No. 596, 101st Cong., 2d Sess. 64 (1990) (hereinafter "Conference report"), is "illegal use of drugs that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem."

Paragraph (a)(2)(i) specifies that an individual who has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully and who is not engaging in current illegal use of drugs is protected. Paragraph (a)(2)(ii) clarifies that an individual who is currently participating in a supervised rehabilitation program and is not engaging in current illegal use of drugs is protected. Paragraph (a)(2)(iii) provides that a person who is erroneously regarded as engaging in current illegal use of drugs, but who is not engaging in such use, is protected.

Paragraph (b) provides a limited exception to the exclusion of current illegal users of drugs from the protections of the Act. It prohibits denial of health services, or services provided in connection with drug rehabilitation to an individual on the basis of current illegal use of drugs, if the individual is otherwise entitled to such services. A health care facility, such as a hospital or clinic, may not refuse treatment to an individual in need of the services it provides on the grounds that the individual is illegally using drugs, but it is not required by this section to provide services that it does not ordinarily provide. For example, a health care facility that specializes in a particular type of treatment, such as care of burn victims, is not required to provide drug rehabilitation services, but it cannot refuse to treat a individual's burns on the grounds that the individual is illegally using drugs.

Some commenters pointed out that abstention from the use of drugs is an essential condition of participation in some drug rehabilitation programs, and may be a necessary requirement in inpatient or residential settings. The Department believes that this comment is well-founded. Congress clearly intended to prohibit exclusion from drug treatment programs of the very individuals who need such programs because of their use of drugs, but, once an individual has been admitted to a program, abstention may be a necessary and appropriate condition to continued participation. The final rule therefore provides that a drug rehabilitation or treatment program may prohibit illegal use of drugs by individuals while they are participating in the program.

Paragraph (c) expresses Congress' intention that the Act be neutral with respect to testing for illegal use of drugs. This paragraph implements the provision in section 510(b) of the Act that allows entities "to adopt or administer reasonable policies or procedures, including but not limited to drug testing," that ensure that an individual who is participating in a supervised rehabilitation program, or who has completed such a program or otherwise been rehabilitated successfully is no longer engaging in the illegal use of drugs. The section is not to be "construed to encourage, prohibit, restrict, or authorize the conducting of testing for the illegal use of drugs."

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illegal use of drugs. Any such policies or procedures must, of course, be reasonable, and must be designed to identify accurately the illegal use of drugs. This paragraph does not authorize inquiries, tests, or other procedures that would disclose use of substances that are not controlled substances or are taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law, because such uses are not included in the definition of "illegal use of drugs." A commenter argued that the rule should permit testing for lawful use of prescription drugs, but most commenters preferred that tests must be limited to unlawful use in order to avoid revealing the lawful use of prescription medicine used to treat disabilities.

Section 35.132 Smoking

Section 35.132 restates the clarification in section 501(b) of the Act that the Act does not preclude the prohibition of, or imposition of restrictions on, smoking in transportation covered by title II. Some commenters argued that this section is too limited in scope, and that the regulation should prohibit smoking in all facilities used by public entities. The reference to smoking in section 501, however, merely clarifies that the Act does not require public entities to accommodate smokers by permitting them to smoke in transportation facilities.

Section 35.133 Maintenance of Accessible Features

Section 35.133 provides that a public entity shall maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities by the Act or this part. The Act requires that, to the maximum extent feasible, facilities must be accessible to, and usable by, individuals with disabilities. This section recognizes that it is not sufficient to provide features such as accessible routes, elevators, or ramps, if those features are not maintained in a manner that enables individuals with disabilities to use them. Inoperable elevators, locked accessible doors, or "accessible" routes that are obstructed by furniture, filing cabinets, or potted plants are neither "accessible to" nor "usable by" individuals with disabilities.

Some commenters objected that this section appeared to establish an absolute requirement and suggested that language from the preamble be included in the text of the regulation. It is, of course, impossible to guarantee that mechanical devices will never fail to operate. Paragraph (b) of the final regulation provides that this section does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs. This paragraph is intended to clarify that temporary obstructions or isolated instances of mechanical failure would not be considered violations of the Act or this part. However, allowing obstructions or "out of service" equipment to persist beyond a reasonable period of time would violate this part, as would repeated mechanical failures due to improper or inadequate maintenance. Failure of the public entity to ensure that accessible routes are properly maintained and free of obstructions, or failure to arrange prompt repair of inoperable elevators or other equipment intended to provide access would also violate this part.

Other commenters requested that this section be expanded to include specific requirements for inspection and maintenance of equipment, for training staff in the proper operation of equipment, and for maintenance of specific items. The Department believes that this section properly establishes the general requirement for maintaining access and that further details are not necessary.

Section 35.134 Retaliation or Coercion

Section 35.134 implements section 503 of the ADA, which prohibits retaliation against any individual who exercises his or her rights under the Act. This section is unchanged from the proposed rule. Paragraph (a) of § 35.134 provides that no private or public entity shall discriminate against any individual because that individual has exercised his or her right to oppose any act or practice made unlawful by this part, or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the Act or this part.

Paragraph (b) provides that no private or public entity shall coerce, intimidate, threaten, or interfere with any individual in the exercise of his or her rights under this part or because that individual aided or encouraged any other individual in the exercise or enjoyment of any right granted or protected by the Act or this part.

This section protects not only individuals who allege a violation of the Act or this part, but also any individuals who support or assist them. This section applies to all investigations or proceedings initiated under the Act or this part without regard to the ultimate resolution of the underlying allegations. Because this section prohibits any act of retaliation or coercion in response to an individual's effort to exercise rights established by the Act and this part (or to support the efforts of another individual), the section applies not only to public entities subject to this part, but also to persons acting in an individual capacity or to private entities. For example, it would be a violation of the Act and this part for a private individual to harass or intimidate an individual with a disability in an effort to prevent that individual from attending a concert in a State-owned park. It would, likewise, be a violation of the Act and this part for a private entity to take adverse action against an employee who appeared as a witness on behalf of an individual who sought to enforce the Act.

Section 35.135 Personal Devices and Services

The final rule includes a new § 35.135, entitles "Personal devices and services," which states that the provision of personal devices and services is not required by title II. This new section, which serves as a limitation on all of the requirements of the regulation, replaces § 35.160(b)(2) of the proposed rule, which addressed the issue of personal devices and services explicitly only in the context of communications. The personal devices and services limitation was intended to have general application in the proposed rule in all contexts where it was relevant. The final rule, therefore, clarifies this point by including a general provision that will explicitly apply not only to auxiliary aids and services but across-the-board to include other relevant areas such as, for example, modifications in policies, practices, and procedures (§ 35.130(b)(7)). The language of § 35.135 parallels an analogous provision in the Department's title III regulations (28 CFR 36.306) but preserves the explicit reference to "readers for personal use or study" in § 35.160(b)(2) of the proposed rule. This section does not preclude the short-term loan of personal receivers that are part of an assistive listening system.

Subpart C—Employment

Section 35.140 Employment Discrimination Prohibited

Title II of the ADA applies to all activities of public entities, including their employment practices. The proposed rule cross-referenced the definitions, requirements, and procedures of title I of the ADA, as established by the Equal Employment

Opportunity Commission in 29 CFR part 1630. This proposal would have resulted in use, under § 35.140, of the title I definition of "employer," so that a public entity with 25 or more employees would have become subject to the requirements of § 35.140 on July 26, 1992, one with 15 to 24 employees on July 26, 1994, and one with fewer than 15 employees would have been excluded completely.

The Department received comments objecting to this approach. The commenters asserted that Congress intended to establish nondiscrimination requirements for employment by all public entities, including those that employ fewer than 15 employees; and that Congress intended the employment requirements of title II to become effective at the same time that the other requirements of this regulation become effective, January 26, 1992. The Department has reexamined the statutory language and legislative history of the ADA on this issue and has concluded that Congress intended to cover the employment practices of all public entities and that the applicable effective date is that of title II.

The statutory language of section 204(b) of the ADA requires the Department to issue a regulation that is consistent with the ADA and the Department's coordination regulation under section 504, 28 CFR part 41. The coordination regulation specifically requires nondiscrimination in employment, 28 CFR 41.52–41.55, and does not limit coverage based on size of employer. Moreover, under all section 504 implementing regulations issued in accordance with the Department's coordination regulation, employment coverage under section 504 extends to all employers with federally assisted programs or activities, regardless of size, and the effective date for those employment requirements has always been the same as the effective date for nonemployment requirements established in the same regulations. The Department therefore concludes that § 35.140 must apply to all public entities upon the effective date of this regulation.

In the proposed regulation the Department cross-referenced the regulations implementing title I of the ADA, issued by the Equal Employment Opportunity Commission at 29 CFR part 1630, as a compliance standard for § 35.140 because, as proposed, the scope of coverage and effective date of coverage under title II would have been coextensive with title I. In the final regulation this language is modified slightly. Subparagraph (1) of new paragraph (b) makes it clear that the standards established by the Equal Employment Opportunity Commission in 29 CFR part 1630 will be the applicable compliance standards if the public entity is subject to title I. If the public entity is not covered by title I, or until it is covered by title I, subparagraph (b)(2) cross-references section 504 standards for what constitutes employment discrimination, as established by the Department of Justice in 28 CFR part 41. Standards for title I of the ADA and section 504 of the Rehabilitation Act are for the most part identical because title I of the ADA was based on requirements set forth in regulations implementing section 504.

The Department, together with the other Federal agencies responsible for the enforcement of Federal laws prohibiting employment discrimination on the basis of disability, recognizes the potential for jurisdictional overlap that exists with respect to coverage of public entities and the need to avoid problems related to overlapping coverage. The other Federal agencies include the Equal Employment Opportunity Commission, which is the agency primarily responsible for enforcement of title I of the ADA, the Department of Labor, which is the agency responsible for enforcement of section 503 of the Rehabilitation Act of 1973, and 26 Federal agencies with programs of Federal financial assistance, which are responsible for enforcing section 504 in those programs. Section 107 of the ADA requires that coordination mechanisms be developed in connection with the administrative enforcement of complaints alleging discrimination under title I and complaints alleging discrimination in employment in violation of the Rehabilitation Act. Although the ADA does not specifically require inclusion of employment complaints under title II in the coordinating mechanisms required by title I, Federal investigations of title II employment complaints will be coordinated on a government-wide basis also. The Department is currently working with the EEOC and other affected Federal agencies to develop effective coordinating mechanisms, and final regulations on this issue will be issued on or before January 26, 1992.

Subpart D—Program Accessibility

Section 35.149 Discrimination Prohibited

Section 35.149 states the general nondiscrimination principle underlying the program accessibility requirements of §§ 35.150 and 35.151.

Section 35.150 Existing Facilities

Consistent with section 204(b) of the Act, this regulation adopts the program accessibility concept found in the section 504 regulations for federally conducted programs or activities (e.g., 28 CFR part 39). The concept of "program accessibility" was first used in the section 504 regulation adopted by the Department of Health, Education, and Welfare for its federally assisted programs and activities in 1977. It allowed recipients to make their federally assisted programs and activities available to individuals with disabilities without extensive retrofitting of their existing buildings and facilities, by offering those programs through alternative methods. Program accessibility has proven to be a useful approach and was adopted in the regulations issued for programs and activities conducted by Federal Executive agencies. The Act provides that the concept of program access will continue to apply with respect to facilities now in existence, because the cost of retrofitting existing facilities is often prohibitive.

Section 35.150 requires that each service, program, or activity conducted by a public entity, when viewed in its entirety, be readily accessible to and usable by individuals with disabilities. The regulation makes clear, however, that a public entity is not required to make each of its existing facilities accessible (§ 35.150(a)(1)). Unlike title III of the Act, which requires public accommodations to remove architectural barriers where such removal is "readily achievable," or to provide goods and services through alternative methods, where those methods are "readily achievable," title II requires a public entity to make its programs accessible in all cases, except where to do so would result in a fundamental alteration in the nature of the program or in undue financial and administrative burdens. Congress intended the "undue burden" standard in title II to be significantly higher than the "readily achievable" standard in title III. Thus, although title II may not require removal of barriers in some cases where removal would be required under title III, the program access requirement of title II should enable individuals with disabilities to participate in and benefit from the services, programs, or activities of public entities in all but the most unusual cases.

Paragraph (a)(2), which establishes a special limitation on the obligation to ensure program accessibility in historic

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Consistent with section 204(b) of the Act, this regulation adopts the program accessibility concept found in the section 504 regulations for federally conducted programs or activities (e.g., 28 CFR part 39). The concept of "program accessibility" was first used in the section 504 regulation adopted by the Department of Health, Education, and Welfare for its federally assisted programs and activities in 1977. It allowed recipients to make their federally assisted programs and activities available to individuals with disabilities without extensive retrofitting of their existing buildings and facilities, by offering those programs through alternative methods. Program accessibility has proven to be a useful approach and was adopted in the regulations issued for programs and activities conducted by Federal Executive agencies. The Act provides that the concept of program access will continue to apply with respect to facilities now in existence, because the cost of retrofitting existing facilities is often prohibitive.

Section 35.150 requires that each service, program, or activity conducted by a public entity, when viewed in its entirety, be readily accessible to and usable by individuals with disabilities. The regulation makes clear, however, that a public entity is not required to make each of its existing facilities accessible (§ 35.150(a)(1)). Unlike title III of the Act, which requires public accommodations to remove architectural barriers where such removal is "readily achievable," or to provide goods and services through alternative methods, where those methods are "readily achievable," title II requires a public entity to make its programs accessible in all cases, except where to do so would result in a fundamental alteration in the nature of the program or in undue financial and administrative burdens. Congress intended the "undue burden" standard in title II to be significantly higher than the "readily achievable" standard in title III. Thus, although title II may not require removal of barriers in some cases where removal would be required under title III, the program access requirement of title II should enable individuals with disabilities to participate in and benefit from the services, programs, or activities of public entities in all but the most unusual cases.

Paragraph (a)(2), which establishes a special limitation on the obligation to ensure program accessibility in historic preservation programs, is discussed below in connection with paragraph (b).

Paragraph (a)(3), which is taken from the section 504 regulations for federally conducted programs, generally codifies case law that defines the scope of the public entity's obligation to ensure program accessibility. This paragraph provides that, in meeting the program accessibility requirement, a public entity is not required to take any action that would result in a fundamental alteration in the nature of its service, program, or activity or in undue financial and administrative burdens. A similar limitation is provided in § 35.164.

This paragraph does not establish an absolute defense; it does not relieve a public entity of all obligations to individuals with disabilities. Although a public entity is not required to take actions that would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens, it nevertheless must take any other steps necessary to ensure that individuals with disabilities receive the benefits or services provided by the public entity.

It is the Department's view that compliance with § 35.150(a), like compliance with the corresponding provisions of the section 504 regulations for federally conducted programs, would in most cases not result in undue financial and administrative burdens on a public entity. In determining whether financial and administrative burdens are undue, all public entity resources available for use in the funding and operation of the service, program, or activity should be considered. The burden of proving that compliance with paragraph (a) of § 35.150 would fundamentally alter the nature of a service, program, or activity or would result in undue financial and administrative burdens rests with the public entity.

The decision that compliance would result in such alteration or burdens must be made by the head of the public entity or his or her designee and must be accompanied by a written statement of the reasons for reaching that conclusion. The Department recognizes the difficulty of identifying the official responsible for this determination, given the variety of organizational forms that may be taken by public entities and their components. The intention of this paragraph is that the determination must be made by a high level official, no lower than a Department head, having budgetary authority and responsibility for making spending decisions.

Any person who believes that he or she or any specific class of persons has been injured by the public entity head's decision or failure to make a decision may file a complaint under the compliance procedures established in subpart F.

Paragraph (b)(1) sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides.

The Department wishes to clarify that, consistent with longstanding interpretation of section 504, carrying an individual with a disability is considered an ineffective and therefore an unacceptable method for achieving program accessibility. Department of Health, Education, and Welfare, Office of Civil Rights, Policy Interpretation No. 4, 43 FR 36035 (August 14, 1978). Carrying will be permitted only in manifestly exceptional cases, and only if all personnel who are permitted to participate in carrying an individual with a disability are formally instructed on the safest and least humiliating means of carrying. "Manifestly exceptional" cases in which carrying would be permitted might include, for example, programs conducted in unique facilities, such as an oceanographic vessel, for which structural changes and devices necessary to adapt the facility for use by individuals with mobility impairments are unavailable or prohibitively expensive. Carrying is not permitted as an alternative to structural modifications such as installation of a ramp or a chairlift.

In choosing among methods, the public entity shall give priority consideration to those that will be consistent with provision of services in the most integrated setting appropriate to the needs of individuals with disabilities. Structural changes in existing facilities are required only when there is no other feasible way to make the public entity's program accessible. (It should be noted that "structural changes" include all physical changes to a facility; the term does not refer only to changes to structural features, such as removal of or alteration to a load-bearing structural member.) The requirements of § 35.151 for alterations apply to structural changes undertaken to comply with this section. The public entity may comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits as appropriate.

Historic Preservation Programs

In order to avoid possible conflict between the congressional mandates to preserve historic properties, on the one hand, and to eliminate discrimination against individuals with disabilities on the other, paragraph (a)(2) provides that a public entity is not required to take any action that would threaten or destroy the historic significance of an historic property. The special limitation on program accessibility set forth in paragraph (a)(2) is applicable only to historic preservation programs, as defined in § 35.104, that is, programs that have preservation of historic properties as a primary purpose. Narrow application of the special limitation is justified because of the inherent flexibility of the program accessibility requirement. Where historic preservation is not a primary purpose of the program, the public entity is not required to use a particular facility. It can relocate all or part of its program to an accessible facility, make home visits, or use other standard methods of achieving program accessibility without making structural alterations that might threaten or destroy significant historic features of the historic property. Thus, government programs located in historic properties, such as an historic State capitol, are not excused from the requirement for program access.

Paragraph (a)(2), therefore, will apply only to those programs that uniquely concern the preservation and experience of the historic property itself. Because the primary benefit of an historic preservation program is the experience of the historic property, paragraph (b)(2) requires the public entity to give priority to methods of providing program accessibility that permit individuals with disabilities to have physical access to the historic property. This priority on physical access may also be viewed as a specific application of the general requirement that the public entity administer programs in the most integrated setting appropriate to the needs of qualified individuals with disabilities (§ 35.130(d)). Only when providing physical access would threaten or destroy the historic significance of an historic property, or would result in a fundamental alteration in the nature of the program or in undue financial and administrative burdens, may the public entity adopt alternative methods for providing program accessibility that do not ensure physical access. Examples of some alternative methods are provided in paragraph (b)(2).

Time Periods

Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirement. Like the regulations for federally assisted programs (e.g., 28 CFR 41.57(b)), paragraph (c) requires the public entity to make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of this regulation.

The proposed rule provided that, aside from structural changes, all other necessary steps to achieve compliance with this part must be taken within sixty days. The sixty day period was taken from regulations implementing section 504, which generally were effective no more than thirty days after publication. Because this regulation will not be effective until January 26, 1992, the Department has concluded that no additional transition period for non-structural changes is necessary, so the sixty day period has been omitted in the final rule. Of course, this section does not reduce or eliminate any obligations that are already applicable to a public entity under section 504.

Where structural modifications are required, paragraph (d) requires that a transition plan be developed by an entity that employs 50 or more persons, within six months of the effective date of this regulation. The legislative history of title II of the ADA makes it clear that, under title II, "local and state governments are required to provide curb cuts on public streets." Education and Labor report at 84. As the rationale for the provision of curb cuts, the House report explains, "The employment, transportation, and public accommodation sections of * * * (the ADA) would be meaningless if people who use wheelchairs were not afforded the opportunity to travel on and between the streets." Id. Section 35.151(e), which establishes accessibility requirements for new construction and alterations, requires that all newly constructed or altered streets, roads, or highways must contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street level pedestrian walkway, and all newly constructed or altered street level pedestrian walkways must have curb ramps or other sloped areas at intersections to streets, roads, or highways. A new paragraph (d)(2) has been added to the final rule to clarify the application of the general requirement for program accessibility to the provision of curb cuts at existing crosswalks. This paragraph requires that the transition plan include a schedule for providing curb ramps or other sloped areas at existing pedestrian walkways, giving priority to walkways serving entities covered by the Act, including State and local government offices and facilities, transportation, public accommodations, and employers, followed by walkways serving other areas. Pedestrian "walkways" include locations where access is required for use of public transportation, such as bus stops that are not located at intersections or crosswalks.

Similarly, a public entity should provide an adequate number of accessible parking spaces in existing parking lots or garages over which it has jurisdiction.

Paragraph (d)(3) provides that, if a public entity has already completed a transition plan required by a regulation implementing section 504, the transition plan required by this part will apply only to those policies and practices that were not covered by the previous transition plan. Some commenters suggested that the transition plan should include all aspects of the public entity's operations, including those that may have been covered by a previous transition plan under section 504. The Department believes that such a duplicative requirement would be inappropriate. Many public entities may find, however, that it will be simpler to include all of their operations in the transition plan than to attempt to identify and exclude specifically those that were addressed in a previous plan. Of course, entities covered under section 504 are not shielded from their obligations under that statute merely because they are included under the transition plan developed under this section.

Section 35.151 New Construction and Alterations

Section 35.151 provides that those buildings that are constructed or altered by, on behalf of, or for the use of a public entity shall be designed, constructed, or altered to be readily accessible to and usable by individuals with disabilities if the construction was commenced after the effective date of this part. Facilities under design on that date will be governed by this section if the date that bids were invited falls after the effective date. This interpretation is consistent with Federal practice under section 504.

Section 35.151(c) establishes two standards for accessible new construction and alteration. Under paragraph (c), design, construction, or alteration of facilities in conformance with the Uniform Federal Accessibility Standards (UFAS) or with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (hereinafter ADAAG) shall be deemed to comply with the requirements of this section with respect to those facilities except that, if ADAAG is chosen, the elevator exemption contained at §§ 36.401(d) and 36.404 does not apply. ADAAG is the standard for private buildings and was issued as guidelines by the Architectural and Transportation Barriers Compliance Board (ATBCB) under title III of the ADA. It has been adopted by the Department of Justice and is published as appendix A to the Department's title III rule in today's **Federal Register.** Departures from particular requirements of these standards by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided. Use of two standards is a departure from the proposed rule.

The proposed rule adopted UFAS as the only interim accessibility standard because that standard was referenced by the regulations implementing section 504 of the Rehabilitation Act promulgated by most Federal funding agencies. It is, therefore, familiar to many State and local government entities subject to this rule. The Department, however, received many comments objecting to the adoption of UFAS. Commenters pointed out that, except for the elevator exemption, UFAS is not as stringent as ADAAG. Others suggested that the standard should be the same to lessen confusion.

Section 204(b) of the Act states that title II regulations must be consistent not only with section 504 regulations but also with "this Act." Based on this provision, the Department has determined that a public entity should be entitled to choose to comply either with ADAAG or UFAS.

Public entities who choose to follow ADAAG, however, are not entitled to the elevator exemption contained in title III of the Act and implemented in the title III regulation at § 36.401(d) for new construction and § 36.404 for alterations. Section 303(b) of title III states that, with some exceptions, elevators are not required in facilities that are less than three stories or have less than 3000 square feet per story. The section 504 standard, UFAS, contains no such exemption. Section 501 of the ADA makes clear that nothing in the Act may be construed to apply a lesser standard to public entities than the standards applied under section 504. Because permitting the elevator exemption would clearly result in application of a lesser standard than that applied under section 504, paragraph (c) states that the elevator exemption does not apply when public entities choose to follow ADAAG. Thus, a two-story courthouse, whether built according to UFAS or

ADAAG, must be constructed with an elevator. It should be noted that Congress did not include an elevator exemption for public transit facilities covered by subtitle B of title II, which covers public transportation provided by public entities, providing further evidence that Congress intended that public buildings have elevators.

Section 504 of the ADA requires the ATBCB to issue supplemental Minimum Guidelines and Requirements for Accessible Design of buildings and facilities subject to the Act, including title II. Section 204(c) of the ADA provides that the Attorney General shall promulgate regulations implementing title II that are consistent with the ATBCB's ADA guidelines. The ATBCB has announced its intention to issue title II guidelines in the future. The Department anticipates that, after the ATBCB's title II guidelines have been published, this rule will be amended to adopt new accessibility standards consistent with the ATBCB's rulemaking. Until that time, however, public entities will have a choice of following UFAS or ADAAG, without the elevator exemption.

Existing buildings leased by the public entity after the effective date of this part are not required by the regulation to meet accessibility standards simply by virtue of being leased. They are subject, however, to the program accessibility standard for existing facilities in § 35.150. To the extent the buildings are newly constructed or altered, they must also meet the new construction and alteration requirements of § 35.151.

The Department received many comments urging that the Department require that public entities lease only accessible buildings. Federal practice under section 504 has always treated newly leased buildings as subject to the existing facility program accessibility standard. Section 204(b) of the Act states that, in the area of "program accessibility, existing facilities," the title II regulations must be consistent with section 504 regulations. Thus, the Department has adopted the section 504 principles for these types of leased buildings. Unlike the construction of new buildings where architectural barriers can be avoided at little or no cost, the application of new construction standards to an existing building being leased raises the same prospect of retrofitting buildings as the use of an existing Federal facility, and the same program accessibility standard should apply to both owned and leased existing buildings. Similarly, requiring that public entities only lease accessible space would significantly restrict the options of State and local governments in seeking leased space, which would be particularly burdensome in rural or sparsely populated areas.

On the other hand, the more accessible the leased space is, the fewer structural modifications will be required in the future for particular employees whose disabilities may necessitate barrier removal as a reasonable accommodation. Pursuant to the requirements for leased buildings contained in the Minimum Guidelines and Requirements for Accessible Design published under the Architectural Barriers Act by the ATBCB, 36 CFR 1190.34, the Federal Government may not lease a building unless it contains (1) One accessible route from an accessible entrance to those areas in which the principal activities for which the building is leased are conducted, (2) accessible toilet facilities, and (3) accessible parking facilities, if a parking area is included within the lease (36 CFR 1190.34). Although these requirements are not applicable to buildings leased by public entities covered by this regulation, such entities are encouraged to look for the most accessible space available to lease and to attempt to find space complying at least with these minimum Federal requirements.

Section 35.151(d) gives effect to the intent of Congress, expressed in section 504(c) of the Act, that this part recognize the national interest in preserving significant historic structures. Commenters criticized the Department's use of descriptive terms in the proposed rule that are different from those used in the ADA to describe eligible historic properties. In addition, some commenters criticized the Department's decision to use the concept of "substantially impairing" the historic features of a property, which is a concept employed in regulations implementing section 504 of the Rehabilitation Act of 1973. Those commenters recommended that the Department adopt the criteria of "adverse effect" published by the Advisory Council on Historic Preservation under the National Historic Preservation Act, 36 CFR 800.9, as the standard for determining whether an historic property may be altered.

The Department agrees with these comments to the extent that they suggest that the language of the rule should conform to the language employed by Congress in the ADA. A definition of "historic property," drawn from section 504 of the ADA, has been added to § 35.104 to clarify that the term applies to those properties listed or eligible for listing in the National Register of Historic Places, or properties designated as historic under State or local law.

The Department intends that the exception created by this section be applied only in those very rare situations in which it is not possible to provide access to an historic property using the special access provisions established by UFAS and ADAAG. Therefore, paragraph (d)(1) of § 35.151 has been revised to clearly state that alterations to historic properties shall comply, to the maximum extent feasible, with section 4.1.7 of UFAS or section 4.1.7 of ADAAG. Paragraph (d)(2) has been revised to provide that, if it has been determined under the procedures established in UFAS and ADAAG that it is not feasible to provide physical access to an historic property in a manner that will not threaten or destroy the historic significance of the property, alternative methods of access shall be provided pursuant to the requirements of § 35.150.

In response to comments, the Department has added to the final rule a new paragraph (e) setting out the requirements of § 36.151 as applied to curb ramps. Paragraph (e) is taken from the statement contained in the preamble to the proposed rule that all newly constructed or altered streets, roads, and highways must contain curb ramps at any intersection having curbs or other barriers to entry from a street level pedestrian walkway, and that all newly constructed or altered street level pedestrian walkways must have curb ramps at intersections to streets, roads, or highways.

Subpart E—Communications

Section 35.160 General

Section 35.160 requires the public entity to take such steps as may be necessary to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others.

Paragraph (b)(1) requires the public entity to furnish appropriate auxiliary aids and services when necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, the public entity's service, program, or activity. The public entity must provide an opportunity for individuals with disabilities to request the auxiliary aids and services of their choice. This expressed choice shall be given primary consideration by the public entity (§ 35.160(b)(2)). The public entity shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 35.164.

Deference to the request of the individual with a disability is desirable because of the range of disabilities, the variety of auxiliary aids and services, and different circumstances requiring effective communication. For instance, some courtrooms are now equipped for "computer-assisted transcripts," which allow virtually instantaneous transcripts of courtroom argument and testimony to appear on displays. Such a system might be an effective auxiliary aid or service for a person who is deaf or has a hearing loss who uses speech to communicate, but may be useless for someone who uses sign language.

Although in some circumstances a notepad and written materials may be sufficient to permit effective communication, in other circumstances they may not be sufficient. For example, a qualified interpreter may be necessary when the information being communicated is complex, or is exchanged for a lengthy period of time. Generally, factors to be considered in determining whether an interpreter is required include the context in which the communication is taking place, the number of people involved, and the importance of the communication.

Several commenters asked that the rule clarify that the provision of readers is sometimes necessary to ensure access to a public entity's services, programs or activities. Reading devices or readers should be provided when necessary for equal participation and opportunity to benefit from any governmental service, program, or activity, such as reviewing public documents, examining demonstrative evidence, and filling out voter registration forms or forms needed to receive public benefits. The importance of providing qualified readers for examinations administered by public entities is discussed under § 35.130. Reading devices and readers are appropriate auxiliary aids and services where necessary to permit an individual with a disability to participate in or benefit from a service, program, or activity.

Section 35.160(b)(2) of the proposed rule, which provided that a public entity need not furnish individually prescribed devices, readers for personal use or study, or other devices of a personal nature, has been deleted in favor of a new section in the final rule on personal devices and services (see § 35.135).

In response to comments, the term "auxiliary aids and services" is used in place of "auxiliary aids" in the final rule. This phrase better reflects the range of aids and services that may be required under this section.

A number of comments raised questions about the extent of a public entity's obligation to provide access to television programming for persons with hearing impairments. Television and videotape programming produced by public entities are covered by this section. Access to audio portions of such programming may be provided by closed captioning.

Section 35.161 Telecommunication Devices for the Deaf (TDD's)

Section 35.161 requires that, where a public entity communicates with applicants and beneficiaries by telephone, TDD's or equally effective telecommunication systems be used to communicate with individuals with impaired speech or hearing.

Problems arise when a public entity which does not have a TDD needs to communicate with an individual who uses a TDD or vice versa. Title IV of the ADA addresses this problem by requiring establishment of telephone relay services to permit communications between individuals who communicate by TDD and individuals who communicate by the telephone alone. The relay services required by title IV would involve a relay operator using both a standard telephone and a TDD to type the voice messages to the TDD user and read the TDD messages to the standard telephone user.

Section 204(b) of the ADA requires that the regulation implementing title II with respect to communications be consistent with the Department's regulation implementing section 504 for its federally conducted programs and activities at 28 CFR part 39. Section 35.161, which is taken from § 39.160(a)(2) of that regulation, requires the use of TDD's or equally effective telecommunication systems for communication with people who use TDD's. Of course, where relay services, such as those required by title IV of the ADA are available, a public entity may use those services to meet the requirements of this section.

Many commenters were concerned that public entities should not rely heavily on the establishment of relay services. The commenters explained that while relay services would be of vast benefit to both public entities and individuals who use TDD's, the services are not sufficient to provide access to all telephone services. First, relay systems do not provide effective access to the increasingly popular automated systems that require the caller to respond by pushing a button on a touch tone phone. Second, relay systems cannot operate fast enough to convey messages on answering machines, or to permit a TDD user to leave a recorded message. Third, communication through relay systems may not be appropriate in cases of crisis lines pertaining to rape, domestic violence, child abuse, and drugs. The Department believes that it is more appropriate for the Federal Communications Commission to address these issues in its rulemaking under title IV.

Some commenters requested that those entities with frequent contacts with clients who use TDD's have on-site TDD's to provide for direct communication between the entity and the individual. The Department encourages those entities that have extensive telephone contact with the public such as city halls, public libraries, and public aid offices, to have TDD's to insure more immediate access. Where the provision of telephone service is a major function of the entity, TDD's should be available.

Section 35.162 Telephone Emergency Services

Many public entities provide telephone emergency services by which individuals can seek immediate assistance from police, fire, ambulance, and other emergency services. These telephone emergency services—including "911" services—are clearly an important public service whose reliability can be a matter of life or death. The legislative history of title II specifically reflects congressional intent that public entities must ensure that telephone emergency services, including 911 services, be accessible to persons with impaired hearing and speech through telecommunication technology (Conference report at 67; Education and Labor report at 84–85).

Proposed § 35.162 mandated that public entities provide emergency telephone services to persons with disabilities that are "functionally equivalent" to voice services provided to others. Many commenters urged the Department to revise the section to make clear that direct access to telephone emergency services is required by title II of the ADA as indicated by the legislative history (Conference report at 67–68; Education and Labor report at 85). In response, the final rule mandates "direct access," instead of "access that is functionally equivalent" to that provided to all other telephone users. Telephone emergency access through a third party or through a relay service would not satisfy the requirement for direct access.

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Several commenters asked about a separate seven-digit emergency call number for the 911 services. The requirement for direct access disallows the use of a separate seven-digit number where 911 service is available. Separate seven-digit emergency call numbers would be unfamiliar to many individuals and also more burdensome to use. A standard emergency 911 number is easier to remember and would save valuable time spent in searching in telephone books for a local seven-digit emergency number.

Many commenters requested the establishment of minimum standards of service (e.g., the quantity and location of TDD's and computer modems needed in a given emergency center). Instead of establishing these scoping requirements, the Department has established a performance standard through the mandate for direct access.

Section 35.162 requires public entities to take appropriate steps, including equipping their emergency systems with modern technology, as may be necessary to promptly receive and respond to a call from users of TDD's and computer modems. Entities are allowed the flexibility to determine what is the appropriate technology for their particular needs. In order to avoid mandating use of particular technologies that may become outdated, the Department has eliminated the references to the Baudot and ASCII formats in the proposed rule.

Some commenters requested that the section require the installation of a voice amplification device on the handset of the dispatcher's telephone to amplify the dispatcher's voice. In an emergency, a person who has a hearing loss may be using a telephone that does not have an amplification device. Installation of speech amplification devices on the handsets of the dispatchers' telephones would respond to that situation. The Department encourages their use.

Several commenters emphasized the need for proper maintenance of TDD's used in telephone emergency services. Section 35.133, which mandates maintenance of accessible features, requires public entities to maintain in operable working condition TDD's and other devices that provide direct access to the emergency system.

Section 35.163 Information and Signage

Section 35.163(a) requires the public entity to provide information to individuals with disabilities concerning accessible services, activities, and facilities. Paragraph (b) requires the public entity to provide signage at all inaccessible entrances to each of its facilities that directs users to an accessible entrance or to a location with information about accessible facilities.

Several commenters requested that, where TDD-equipped pay phones or portable TDD's exist, clear signage should be posted indicating the location of the TDD. The Department believes that this is required by paragraph (a). In addition, the Department recommends that, in large buildings that house TDD's, directional signage indicating the location of available TDD's should be placed adjacent to banks of telephones that do not contain a TDD.

Section 35.164 Duties

Section 35.164, like paragraph (a)(3) of § 35.150, is taken from the section 504 regulations for federally conducted programs. Like paragraph (a)(3), it limits the obligation of the public entity to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it. It also includes specific requirements for determining the existence of undue financial and administrative burdens. The preamble discussion of § 35.150(a) regarding that determination is applicable to this section and further explains the public entity's obligation to comply with §§ 35.160–35.164. Because of the essential nature of the services provided by telephone emergency systems, the Department assumes that § 35.164 will rarely be applied to § 35.162.

Subpart F—Compliance Procedures

Subpart F sets out the procedures for administrative enforcement of this part. Section 203 of the Act provides that the remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) for enforcement of section 504 of the Rehabilitation Act, which prohibits discrimination on the basis of handicap in programs and activities that receive Federal financial assistance, shall be the remedies, procedures, and rights for enforcement of title II. Section 505, in turn, incorporates by reference the remedies, procedures, and rights set forth in title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d to 2000d–4a). Title VI, which prohibits discrimination on the basis of race, color, or national origin in federally assisted programs, is enforced by the Federal agencies that provide the Federal financial assistance to the covered programs and activities in question. If voluntary compliance cannot be achieved, Federal agencies enforce title VI either by the termination of Federal funds to a program that is found to discriminate, following an administrative hearing, or by a referral to this Department for judicial enforcement.

Title II of the ADA extended the requirements of section 504 to all services, programs, and activities of State and local governments, not only those that receive Federal financial assistance. The House Committee on Education and Labor explained the enforcement provisions as follows:

> It is the Committee's intent that administrative enforcement of section 202 of the legislation should closely parallel the Federal government's experience with section 504 of the Rehabilitation Act of 1973. The Attorney General should use section 504 enforcement procedures and the Department's coordination role under Executive Order 12250 as models for regulation in this area.
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> The Committee envisions that the Department of Justice will identify appropriate Federal agencies to oversee compliance activities for State and local governments. As with section 504, these Federal agencies, including the Department of Justice, will receive, investigate, and where possible, resolve complaints of discrimination. If a Federal agency is unable to resolve a complaint by voluntary means, * * * the major enforcement sanction for the Federal government will be referral of cases by these Federal agencies to the Department of Justice.
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> The Department of Justice may then proceed to file suits in Federal district court. As with section 504, there is also a private right of action for persons with disabilities, which includes the full panoply of remedies. Again, consistent with section 504, it is not the Committee's intent that persons with disabilities need to exhaust Federal administrative remedies before exercising their private right of action.

Education & Labor report at 98. See also S. Rep. No. 116, 101st Cong., 1st Sess., at 57–58 (1989).

Subpart F effectuates the congressional intent by deferring to section 504 procedures where those procedures are applicable, that is, where a Federal agency has jurisdiction under section 504 by virtue of its provision of Federal financial assistance to the program or activity in which the discrimination is alleged to have occurred. Deferral to the 504 procedures also makes the sanction of fund termination available where necessary to achieve compliance. Because the Civil Rights Restoration Act (Pub. L. 100–259) extended the application of section 504 to all of the operations of the public entity receiving the Federal financial assistance, many activities of State and local governments are already covered by section 504. The procedures in subpart F apply to complaints concerning services, programs, and activities of public entities that are covered by the ADA.

Subpart G designates the Federal agencies responsible for enforcing the ADA with respect to specific components of State and local government. It does not, however, displace existing jurisdiction under section 504 of the various funding agencies. Individuals may still file discrimination complaints against recipients of Federal financial assistance with the agencies that provide that assistance, and the funding agencies will continue to process those complaints under their existing procedures for enforcing section 504. The substantive standards adopted in this part for title II of the ADA are generally the same as those required under section 504 for federally assisted programs, and public entities covered by the ADA are also covered by the requirements of section 504 to the extent that they receive Federal financial assistance. To the extent that title II provides greater protection to the rights of individuals with disabilities, however, the funding agencies will also apply the substantive requirements established under title II and this part in processing complaints covered by both this part and section 504, except that fund termination procedures may be used only for violations of section 504.

Subpart F establishes the procedures to be followed by the agencies designated in subpart G for processing complaints against State and local government entities when the designated agency does not have jurisdiction under section 504.

Section 35.170 Complaints

Section 35.170 provides that any individual who believes that he or she or a specific class of individuals has been subjected to discrimination on the basis of disability by a public entity may, by himself or herself or by an authorized representative, file a complaint under this part within 180 days of the date of the alleged discrimination, unless the time for filing is extended by the agency for good cause. Although § 35.107 requires public entities that employ 50 or more persons to establish grievance procedures for resolution of complaints, exhaustion of those procedures is not a prerequisite to filing a complaint under this section. If a complainant chooses to follow the public entity's grievance procedures, however, any resulting delay may be considered good cause for extending the time allowed for filing a complaint under this part.

Filing the complaint with any Federal agency will satisfy the requirement for timely filing. As explained below, a complaint filed with an agency that has jurisdiction under section 504 will be processed under the agency's procedures for enforcing section 504.

Some commenters objected to the complexity of allowing complaints to be filed with different agencies. The multiplicity of enforcement jurisdiction is the result of following the statutorily mandated enforcement scheme. The Department has, however, attempted to simplify procedures for complainants by making the Federal agency that receives the complaint responsible for referring it to an appropriate agency.

The Department has also added a new paragraph (c) to this section providing that a complaint may be filed with any agency designated under subpart G of this part, or with any agency that provides funding to the public entity that is the subject of the complaint, or with the Department of Justice. Under § 35.171(a)(2), the Department of Justice will refer complaints for which it does not have jurisdiction under section 504 to an agency that does have jurisdiction under section 504, or to the agency designated under subpart G as responsible for complaints filed against the public entity that is the subject of the complaint or in the case of an employment complaint that is also subject to title I of the Act, to the Equal Employment Opportunity Commission. Complaints filed with the Department of Justice may be sent to the Coordination and Review Section, P.O. Box 66118, Civil Rights Division, U.S. Department of Justice, Washington, DC 20035-6118.

Section 35.171 Acceptance of Complaints

Section 35.171 establishes procedures for determining jurisdiction and responsibility for processing complaints against public entities. The final rule provides complainants an opportunity to file with the Federal funding agency of their choice. If that agency does not have jurisdiction under section 504, however, and is not the agency designated under subpart G as responsible for that public entity, the agency must refer the complaint to the Department of Justice, which will be responsible for referring it either to an agency that does have jurisdiction under section 504 or to the appropriate designated agency, or in the case of an employment complaint that is also subject to title I of the Act, to the Equal Employment Opportunity Commission.

Whenever an agency receives a complaint over which it has jurisdiction under section 504, it will process the complaint under its section 504 procedures. When the agency designated under subpart G receives a complaint for which it does not have jurisdiction under section 504, it will treat the complaint as an ADA complaint under the procedures established in this subpart.

Section 35.171 also describes agency responsibilities for the processing of employment complaints. As described in connection with § 35.140, additional procedures regarding the coordination of employment complaints will be established in a coordination regulation issued by DOJ and EEOC. Agencies with jurisdiction under section 504 for complaints alleging employment discrimination also covered by title I will follow the procedures established by the coordination regulation for those complaints. Complaints covered by title I but not section 504 will be referred to the EEOC, and complaints covered by this part but not title I will be processed under the procedures in this part.

Section 35.172 Resolution of Complaints

Section 35.172 requires the designated agency to either resolve the complaint or issue to the complainant and the public entity a Letter of Findings containing findings of fact and conclusions of law and a description of a remedy for each violation found.

The Act requires the Department of Justice to establish administrative procedures for resolution of complaints, but does not require complainants to exhaust these administrative remedies. The Committee Reports make clear that Congress intended to provide a private right of action with the full panoply of remedies for individual victims of discrimination. Because the Act does not require exhaustion of administrative remedies, the complainant may elect to proceed with a private suit at any time.

Section 35.173 Voluntary Compliance Agreements

Section 35.173 requires the agency to attempt to resolve all complaints in which it finds noncompliance through voluntary compliance agreements enforceable by the Attorney General.

Section 35.174 Referral

Section 35.174 provides for referral of the matter to the Department of Justice if the agency is unable to obtain voluntary compliance.

Section 35.175 Attorney's Fees

Section 35.175 states that courts are authorized to award attorneys fees, including litigation expenses and costs, as provided in section 505 of the Act. Litigation expenses include items such as expert witness fees, travel expenses,

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etc. The Judiciary Committee Report specifies that such items are included under the rubric of "attorneys fees" and not "costs" so that such expenses will be assessed against a plaintiff only under the standard set forth in *Christiansburg Garment Co.* v. *Equal Employment Opportunity Commission*, 434 U.S. 412 (1978). (Judiciary report at 73.)

Section 35.176 Alternative Means of Dispute Resolution

Section 35.176 restates section 513 of the Act, which encourages use of alternative means of dispute resolution.

Section 35.177 Effect of Unavailability of Technical Assistance

Section 35.177 explains that, as provided in section 506(e) of the Act, a public entity is not excused from compliance with the requirements of this part because of any failure to receive technical assistance.

Section 35.178 State Immunity

Section 35.178 restates the provision of section 502 of the Act that a State is not immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court for violations of the Act, and that the same remedies are available for any such violations as are available in an action against an entity other than a State.

Subpart G—Designated Agencies

Section 35.190 Designated Agencies

Subpart G designates the Federal agencies responsible for investigating complaints under this part. At least 26 agencies currently administer programs of Federal financial assistance that are subject to the nondiscrimination requirements of section 504 as well as other civil rights statutes. A majority of these agencies administer modest programs of Federal financial assistance and/or devote minimal resources exclusively to "external" civil rights enforcement activities. Under Executive Order 12250, the Department of Justice has encouraged the use of delegation agreements under which certain civil rights compliance responsibilities for a class of recipients funded by more than one agency are delegated by an agency or agencies to a "lead" agency. For example, many agencies that fund institutions of higher education have signed agreements that designate the Department of Education as the "lead" agency for this class of recipients.

The use of delegation agreements reduces overlap and duplication of effort, and thereby strengthens overall civil rights enforcement. However, the use of these agreements to date generally has been limited to education and health care recipients. These classes of recipients are funded by numerous agencies and the logical connection to a lead agency is clear (e.g., the Department of Education for colleges and universities, and the Department of Health and Human Services for hospitals).

The ADA's expanded coverage of State and local government operations further complicates the process of establishing Federal agency jurisdiction for the purpose of investigating complaints of discrimination on the basis of disability. Because all operations of public entities now are covered irrespective of the presence or absence of Federal financial assistance, many additional State and local government functions and organizations now are subject to Federal jurisdiction. In some cases, there is no historical or single clear-cut subject matter relationship with a Federal agency as was the case in the education example described above. Further, the 33,000 governmental jurisdictions subject to the ADA differ greatly in their organization, making a detailed and workable division of Federal agency jurisdiction by individual State, county, or municipal entity unrealistic.

This regulation applies the delegation concept to the investigation of complaints of discrimination on the basis of disability by public entities under the ADA. It designates eight agencies, rather than all agencies currently administering programs of Federal financial assistance, as responsible for investigating complaints under this part. These "designated agencies" generally have the largest civil rights compliance staffs, the most experience in complaint investigations and disability issues, and broad yet clear subject area responsibilities. This division of responsibilities is made functionally rather than by public entity type or name designation. For example, all entities (regardless of their title) that exercise responsibilities, regulate, or administer services or programs relating to lands and natural resources fall within the jurisdiction of the Department of Interior.

Complaints under this part will be investigated by the designated agency most closely related to the functions exercised by the governmental component against which the complaint is lodged. For example, a complaint against a State medical board, where such a board is a recognizable entity, will be investigated by the Department of Health and Human Services (the designated agency for regulatory activities relating to the provision of health care), even if the board is part of a general umbrella department of planning and regulation (for which the Department of Justice is the designated agency). If two or more agencies have apparent responsibility over a complaint, § 35.190(c) provides that the Assistant Attorney General shall determine which one of the agencies shall be the designated agency for purposes of that complaint.

Thirteen commenters, including four proposed designated agencies, addressed the Department of Justice's identification in the proposed regulation of nine "designated agencies" to investigate complaints under this part. Most comments addressed the proposed specific delegations to the various individual agencies. The Department of Justice agrees with several commenters who pointed out that responsibility for "historic and cultural preservation" functions appropriately belongs with the Department of Interior rather than the Department of Education. The Department of Justice also agrees with the Department of Education that "museums" more appropriately should be delegated to the Department of Interior, and that "preschool and daycare programs" more appropriately should be assigned to the Department of Health and Human Services, rather than to the Department of Education. The final rule reflects these decisions.

The Department of Commerce opposed its listing as the designated agency for "commerce and industry, including general economic development, banking and finance, consumer protection, insurance, and small business". The Department of Commerce cited its lack of a substantial existing section 504 enforcement program and experience with many of the specific functions to be delegated. The Department of Justice accedes to the Department of Commerce's position, and has assigned itself as the designated agency for these functions.

In response to a comment from the Department of Health and Human Services, the regulation's category of "medical and nursing schools" has been clarified to read "schools of medicine, dentistry, nursing, and other health-related fields". Also in response to a comment from the Department of Health and Human Services, "correctional institutions" have been specifically added to the public safety and administration of justice functions assigned to the Department of Justice.

The regulation also assigns the Department of Justice as the designated agency responsible for all State and local government functions not assigned to other designated agencies. The Department of Justice, under an agreement with the Department of the Treasury, continues to receive and coordinate the investigation of complaints filed under the Revenue Sharing Act. This entitlement program, which was terminated in 1986, provided civil rights compliance jurisdiction for a wide variety of complaints regarding the use of Federal funds to support various general activities of local governments. In the absence of any similar program of Federal financial assistance administered by another Federal agency, placement of designated agency responsibilities for miscellaneous and otherwise undesignated functions with the Department of Justice is an appropriate continuation of current practice.

The Department of Education objected to the proposed rule's inclusion of the functional area of "arts and humanities" within its responsibilities, and the Department of Housing and Urban Development objected to its proposed designation as responsible for activities relating to rent control, the real estate industry, and housing code enforcement. The Department has deleted these areas from the lists assigned to the Departments of Education and Housing and Urban Development, respectively, and has added a new paragraph (c) to § 35.190, which provides that the Department of Justice may assign responsibility for components of State or local governments that exercise responsibilities, regulate, or administer services, programs, or activities relating to functions not assigned to specific designated agencies by paragraph (b) of this section to other appropriate agencies. The Department believes that this approach will provide more flexibility in determining the appropriate agency for investigation of complaints involving those components of State and local governments not specifically addressed by the listings in paragraph (b). As provided in §§ 35.170 and 35.171, complaints filed with the Department of Justice will be referred to the appropriate agency.

Several commenters proposed a stronger role for the Department of Justice, especially with respect to the receipt and assignment of complaints, and the overall monitoring of the effectiveness of the enforcement activities of Federal agencies. As discussed above, §§ 35.170 and 35.171 have been revised to provide for referral of complaints by the Department of Justice to appropriate enforcement agencies. Also, language has been added to § 35.190(a) of the final regulation stating that the Assistant Attorney General shall provide policy guidance and interpretations to designated agencies to ensure the consistent and effective implementation of this part.

List of Subjects in 28 CFR Part 35

Administrative practice and procedure, Alcoholism, Americans with disabilities, Buildings, Civil rights, Drug abuse, Handicapped, Historic preservation, Intergovernmental relations, Reporting and recordkeeping requirements.

By the authority vested in me as Attorney General by 28 U.S.C. 509, 510, 5 U.S.C. 301, and section 204 of the Americans with Disabilities Act, and for the reasons set forth in the preamble, chapter I of title 28 of the Code of Federal Regulations is amended by adding a new part 35 to read as follows:

PART 35—NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SERVICES

Subpart A—General

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35.101 Purpose.
35.102 Application.
35.103 Relationship to other laws.
35.104 Definitions.
35.105 Self-evaluation.
35.106 Notice.
35.107 Designation of responsible employee and adoption of grievance procedures.
35.108–35.129 [Reserved]

Subpart B—General Requirements

35.130 General prohibitions against discrimination.
35.131 Illegal use of drugs.
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35.133 Maintenance of accessible features.
35.134 Retaliation or coercion.
35.135 Personal devices and services.
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Subpart C—Employment

35.140 Employment discrimination prohibited.
35.141–35.148 [Reserved]

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35.149 Discrimination prohibited.
35.150 Existing facilities.
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35.160 General.
35.161 Telecommunication devices for the deaf (TDD's).
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Subpart F—Compliance Procedures

35.170 Complaints.
35.171 Acceptance of complaints.
35.172 Resolution of complaints.
35.173 Voluntary compliance agreements.
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35.175 Attorney's fees.
35.176 Alternative means of dispute resolution.
35.177 Effect of unavailability of technical assistance.
35.178 State immunity.
35.179–35.189 [Reserved]

Subpart G—Designated Agencies

35.190 Designated agencies.
35.191–35.999 [Reserved]

Appendix A to Part 35—Preamble to Regulation on Nondiscrimination on the Basis of Disability in State and Local Government Services (Published July 26, 1991)

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; Title II, Pub. L. 101–336 (42 U.S.C. 12134).

Subpart A—General

§ 35.101 Purpose.

The purpose of this part is to effectuate subtitle A of title II of the Americans with Disabilities Act of 1990, (42 U.S.C. 12131), which prohibits discrimination on the basis of disability by public entities.

§ 35.102 Application.

(a) Except as provided in paragraph (b) of this section, this part applies to all services, programs, and activities provided or made available by public entities.

(b) To the extent that public transportation services, programs, and activities of public entities are covered by subtitle B of title II of the ADA (42 U.S.C. 12141), they are not subject to the requirements of this part.

§ 35.103 Relationship to other laws.

(a) *Rule of interpretation.* Except as otherwise provided in this part, this part shall not be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 791) or the regulations issued by Federal agencies pursuant to that title.

(b) *Other laws.* This part does not invalidate or limit the remedies, rights, and procedures of any other Federal laws, or State or local laws (including State common law) that provide greater or equal protection for the rights of individuals with disabilities or individuals associated with them.

§ 35.104 Definitions.

For purposes of this part, the term—

Act means the Americans with Disabilities Act (Pub. L. 101–336, 104

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Subpart F—Compliance Procedures

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35.178 State immunity.
35.179–35.189 [Reserved]

Subpart G—Designated Agencies

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Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; Title II, Pub. L. 101–336 (42 U.S.C. 12134).

Subpart A—General

§ 35.101 Purpose.

The purpose of this part is to effectuate subtitle A of title II of the Americans with Disabilities Act of 1990, (42 U.S.C. 12131), which prohibits discrimination on the basis of disability by public entities.

§ 35.102 Application.

(a) Except as provided in paragraph (b) of this section, this part applies to all services, programs, and activities provided or made available by public entities.

(b) To the extent that public transportation services, programs, and activities of public entities are covered by subtitle B of title II of the ADA (42 U.S.C. 12141), they are not subject to the requirements of this part.

§ 35.103 Relationship to other laws.

(a) *Rule of interpretation.* Except as otherwise provided in this part, this part shall not be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 791) or the regulations issued by Federal agencies pursuant to that title.

(b) *Other laws.* This part does not invalidate or limit the remedies, rights, and procedures of any other Federal laws, or State or local laws (including State common law) that provide greater or equal protection for the rights of individuals with disabilities or individuals associated with them.

§ 35.104 Definitions.

For purposes of this part, the term—

Act means the Americans with Disabilities Act (Pub. L. 101–336, 104

Stat. 327, 42 U.S.C. 12101–12213 and 47 U.S.C. 225 and 611).

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids and services includes—

(1) Qualified interpreters, notetakers, transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDD's), videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(2) Qualified readers, taped texts, audio recordings, Brailled materials, large print materials, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(3) Acquisition or modification of equipment or devices; and

(4) Other similar services and actions.

Complete complaint means a written statement that contains the complainant's name and address and describes the public entity's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of this part. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Current illegal use of drugs means illegal use of drugs that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem.

Designated agency means the Federal agency designated under subpart G of this part to oversee compliance activities under this part for particular components of State and local governments.

Disability means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

(1)(i) The phrase *physical or mental impairment* means—

(A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine;

(B) Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(ii) The phrase *physical or mental impairment* includes, but is not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.

(iii) The phrase *physical or mental impairment* does not include homosexuality or bisexuality.

(2) The phrase *major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) The phrase *has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) The phrase *is regarded as having an impairment means*—

(i) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a public entity as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by a public entity as having such an impairment.

(5) The term *disability* does not include—

(i) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(ii) Compulsive gambling, kleptomania, or pyromania; or

(iii) Psychoactive substance use disorders resulting from current illegal use of drugs.

Drug means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

Facility means all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located.

Historic preservation programs means programs conducted by a public entity that have preservation of historic properties as a primary purpose.

Historic Properties means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under State or local law.

Illegal use of drugs means the use of one or more drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812). The term *illegal use of drugs* does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

Individual with a disability means a person who has a disability. The term *individual with a disability* does not include an individual who is currently engaging in the illegal use of drugs, when the public entity acts on the basis of such use.

Public entity means—

(1) Any State or local government;

(2) Any department, agency, special purpose district, or other instrumentality of a State or States or local government; and

(3) The National Railroad Passenger Corporation, and any commuter authority (as defined in section 103(8) of the Rail Passenger Service Act).

Qualified individual with a disability means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

Qualified interpreter means an interpreter who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended.

State means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the

Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

§ 35.105 Self-evaluation.

(a) A public entity shall, within one year of the effective date of this part, evaluate its current services, policies, and practices, and the effects thereof, that do not or may not meet the requirements of this part and, to the extent modification of any such services, policies, and practices is required, the public entity shall proceed to make the necessary modifications.

(b) A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the self-evaluation process by submitting comments.

(c) A public entity that employs 50 or more persons shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A list of the interested persons consulted;

(2) A description of areas examined and any problems identified; and

(3) A description of any modifications made.

(d) If a public entity has already complied with the self-evaluation requirement of a regulation implementing section 504 of the Rehabilitation Act of 1973, then the requirements of this section shall apply only to those policies and practices that were not included in the previous self-evaluation.

§ 35.106 Notice.

A public entity shall make available to applicants, participants, beneficiaries, and other interested persons information regarding the provisions of this part and its applicability to the services, programs, or activities of the public entity, and make such information available to them in such manner as the head of the entity finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

§ 35.107 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* A public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to it alleging its noncompliance with this part or alleging any actions that would be prohibited by this part. The public entity shall make available to all interested individuals the name, office address, and telephone number of the employee or employees designated pursuant to this paragraph.

(b) *Complaint procedure.* A public entity that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by this part.

§§ 35.108–35.129 [Reserved]

Subpart B—General Requirements

§ 35.130 General prohibitions against discrimination.

(a) No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

(b) (1) A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability—

(i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aids, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aids, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the public entity's program;

(vi) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards;

(vii) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) A public entity may not deny a qualified individual with a disability the opportunity to participate in services, programs, or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) A public entity may not, directly or through contractual or other arrangements, utilize criteria or methods of administration:

(i) That have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability;

(ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities; or

(iii) That perpetuate the discrimination of another public entity if both public entities are subject to common administrative control or are agencies of the same State.

(4) A public entity may not, in determining the site or location of a facility, make selections—

(i) That have the effect of excluding individuals with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination; or

(ii) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the service, program, or activity with respect to individuals with disabilities.

(5) A public entity, in the selection of procurement contractors, may not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

(6) A public entity may not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may a public entity establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. The programs or activities of entities that are licensed or certified by a public entity are not, themselves, covered by this part.

(7) A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability,

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(vii) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) A public entity may not deny a qualified individual with a disability the opportunity to participate in services, programs, or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) A public entity may not, directly or through contractual or other arrangements, utilize criteria or methods of administration:

(i) That have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability;

(ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities; or

(iii) That perpetuate the discrimination of another public entity if both public entities are subject to common administrative control or are agencies of the same State.

(4) A public entity may not, in determining the site or location of a facility, make selections—

(i) That have the effect of excluding individuals with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination; or

(ii) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the service, program, or activity with respect to individuals with disabilities.

(5) A public entity, in the selection of procurement contractors, may not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

(6) A public entity may not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may a public entity establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. The programs or activities of entities that are licensed or certified by a public entity are not, themselves, covered by this part.

(7) A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability,

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unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

(8) A public entity shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered.

(c) Nothing in this part prohibits a public entity from providing benefits, services, or advantages to individuals with disabilities, or to a particular class of individuals with disabilities beyond those required by this part.

(d) A public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

(e)(1) Nothing in this part shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit provided under the ADA or this part which such individual chooses not to accept.

(2) Nothing in the Act or this part authorizes the representative or guardian of an individual with a disability to decline food, water, medical treatment, or medical services for that individual.

(f) A public entity may not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part.

(g) A public entity shall not exclude or otherwise deny equal services, programs, or activities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

§ 35.131 Illegal use of drugs.

(a) *General.* (1) Except as provided in paragraph (b) of this section, this part does not prohibit discrimination against an individual based on that individual's current illegal use of drugs.

(2) A public entity shall not discriminate on the basis of illegal use of drugs against an individual who is not engaging in current illegal use of drugs and who—

(i) Has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully;

(ii) Is participating in a supervised rehabilitation program; or

(iii) Is erroneously regarded as engaging in such use.

(b) *Health and drug rehabilitation services.* (1) A public entity shall not deny health services, or services provided in connection with drug rehabilitation, to an individual on the basis of that individual's current illegal use of drugs, if the individual is otherwise entitled to such services.

(2) A drug rehabilitation or treatment program may deny participation to individuals who engage in illegal use of drugs while they are in the program.

(c) *Drug testing.* (1) This part does not prohibit a public entity from adopting or administering reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual who formerly engaged in the illegal use of drugs is not now engaging in current illegal use of drugs.

(2) Nothing in paragraph (c) of this section shall be construed to encourage, prohibit, restrict, or authorize the conduct of testing for the illegal use of drugs.

§ 35.132 Smoking.

This part does not preclude the prohibition of, or the imposition of restrictions on, smoking in transportation covered by this part.

§ 35.133 Maintenance of accessible features.

(a) A public accommodation shall maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities by the Act or this part.

(b) This section does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs.

§ 35.134 Retaliation or coercion.

(a) No private or public entity shall discriminate against any individual because that individual has opposed any act or practice made unlawful by this part, or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the Act or this part.

(b) No private or public entity shall coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by the Act or this part.

§ 35.135 Personal devices and services.

This part does not require a public entity to provide to individuals with disabilities personal devices, such as wheelchairs; individually prescribed devices, such as prescription eyeglasses or hearing aids; readers for personal use or study; or services of a personal nature including assistance in eating, toileting, or dressing.

§§ 35.136–35.139 [Reserved]

Subpart C—Employment

§ 35.140 Employment discrimination prohibited.

(a) No qualified individual with a disability shall, on the basis of disability, be subjected to discrimination in employment under any service, program, or activity conducted by a public entity.

(b)(1) For purposes of this part, the requirements of title I of the Act, as established by the regulations of the Equal Employment Opportunity Commission in 29 CFR part 1630, apply to employment in any service, program, or activity conducted by a public entity if that public entity is also subject to the jurisdiction of title I.

(2) For the purposes of this part, the requirements of section 504 of the Rehabilitation Act of 1973, as established by the regulations of the Department of Justice in 28 CFR part 41, as those requirements pertain to employment, apply to employment in any service, program, or activity conducted by a public entity if that public entity is not also subject to the jurisdiction of title I.

§§ 35.141–35.148 [Reserved]

Subpart D—Program Accessibility

§ 35.149 Discrimination prohibited.

Except as otherwise provided in § 35.150, no qualified individual with a disability shall, because a public entity's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

§ 35.150 Existing facilities.

(a) *General.* A public entity shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph does not—

(1) Necessarily require a public entity to make each of its existing facilities accessible to and usable by individuals with disabilities;

(2) Require a public entity to take any action that would threaten or destroy the historic significance of an historic property; or

(3) Require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with § 35.150(a) of this part would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of a public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity.

(b) *Methods*—(1) *General.* A public entity may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock or other conveyances, or any other methods that result in making its services, programs, or activities readily accessible to and usable by individuals with disabilities. A public entity is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. A public entity, in making alterations to existing buildings, shall meet the accessibility requirements of § 35.151. In choosing among available methods for meeting the requirements of this section, a public entity shall give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of § 35.150(a) in historic preservation programs, a public entity shall give priority to methods that provide physical access to individuals with disabilities. In cases where a physical alteration to an historic property is not required because of paragraph (a)(2) or (a)(3) of this section, alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance.* Where structural changes in facilities are undertaken to comply with the obligations established under this section, such changes shall be made within three years of January 26, 1992, but in any event as expeditiously as possible.

(d) *Transition plan.* (1) In the event that structural changes to facilities will be undertaken to achieve program accessibility, a public entity that employs 50 or more persons shall develop, within six months of January 26, 1992, a transition plan setting forth the steps necessary to complete such changes. A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the development of the transition plan by submitting comments. A copy of the transition plan shall be made available for public inspection.

(2) If a public entity has responsibility or authority over streets, roads, or walkways, its transition plan shall include a schedule for providing curb ramps or other sloped areas where pedestrian walks cross curbs, giving priority to walkways serving entities covered by the Act, including State and local government offices and facilities, transportation, places of public accommodation, and employers, followed by walkways serving other areas.

(3) The plan shall, at a minimum—

(i) Identify physical obstacles in the public entity's facilities that limit the accessibility of its programs or activities to individuals with disabilities;

(ii) Describe in detail the methods that will be used to make the facilities accessible;

(iii) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(iv) Indicate the official responsible for implementation of the plan.

(4) If a public entity has already complied with the transition plan requirement of a Federal agency regulation implementing section 504 of the Rehabilitation Act of 1973, then the requirements of this paragraph (d) shall apply only to those policies and practices that were not included in the previous transition plan.

§ 35.151 New construction and alterations.

(a) *Design and construction.* Each facility or part of a facility constructed by, on behalf of, or for the use of a public entity shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities, if the construction was commenced after January 26, 1992.

(b) *Alteration.* Each facility or part of a facility altered by, on behalf of, or for the use of a public entity in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities, if the alteration was commenced after January 26, 1992.

(c) *Accessibility standards.* Design, construction, or alteration of facilities in conformance with the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR part 101–19.6) or with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG) (Appendix A to 28 CFR part 36) shall be deemed to comply with the requirements of this section with respect to those facilities, except that the elevator exemption contained at section 4.1.3(5) and section 4.1.6(1)(j) of ADAAG shall not apply. Departures from particular requirements of either standard by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.

(d) *Alterations: Historic properties.* (1) Alterations to historic properties shall comply, to the maximum extent feasible, with section 4.1.7 of UFAS or section 4.1.7 of ADAAG.

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(ii) Describe in detail the methods that will be used to make the facilities accessible;

(iii) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(iv) Indicate the official responsible for implementation of the plan.

(4) If a public entity has already complied with the transition plan requirement of a Federal agency regulation implementing section 504 of the Rehabilitation Act of 1973, then the requirements of this paragraph (d) shall apply only to those policies and practices that were not included in the previous transition plan.

§ 35.151 New construction and alterations.

(a) *Design and construction.* Each facility or part of a facility constructed by, on behalf of, or for the use of a public entity shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities, if the construction was commenced after January 26, 1992.

(b) *Alteration.* Each facility or part of a facility altered by, on behalf of, or for the use of a public entity in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities, if the alteration was commenced after January 26, 1992.

(c) *Accessibility standards.* Design, construction, or alteration of facilities in conformance with the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR part 101–19.6) or with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG) (Appendix A to 28 CFR part 36) shall be deemed to comply with the requirements of this section with respect to those facilities, except that the elevator exemption contained at section 4.1.3(5) and section 4.1.6(1)(j) of ADAAG shall not apply. Departures from particular requirements of either standard by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.

(d) *Alterations: Historic properties.* (1) Alterations to historic properties shall comply, to the maximum extent feasible, with section 4.1.7 of UFAS or section 4.1.7 of ADAAG.

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(2) If it is not feasible to provide physical access to an historic property in a manner that will not threaten or destroy the historic significance of the building or facility, alternative methods of access shall be provided pursuant to the requirements of § 35.150.

(e) *Curb ramps.* (1) Newly constructed or altered streets, roads, and highways must contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street level pedestrian walkway.

(2) Newly constructed or altered street level pedestrian walkways must contain curb ramps or other sloped areas at intersections to streets, roads, or highways.

§§ 35.152–35.159 [Reserved]

Subpart E—Communications

§ 35.160 General.

(a) A public entity shall take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others.

(b)(1) A public entity shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity.

(2) In determining what type of auxiliary aid and service is necessary, a public entity shall give primary consideration to the requests of the individual with disabilities.

§ 35.161 Telecommunication devices for the deaf (TDD's).

Where a public entity communicates by telephone with applicants and beneficiaries, TDD's or equally effective telecommunication systems shall be used to communicate with individuals with impaired hearing or speech.

§ 35.162 Telephone emergency services.

Telephone emergency services, including 911 services, shall provide direct access to individuals who use TDD's and computer modems.

§ 35.163 Information and signage.

(a) A public entity shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(b) A public entity shall provide signage at all inaccessible entrances to each of its facilities, directing users to an accessible entrance or to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each accessible entrance of a facility.

§ 35.164 Duties.

This subpart does not require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with this subpart would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of the public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this subpart would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the public entity.

§§ 35.165–35.169 [Reserved]

Subpart F—Compliance Procedures

§ 35.170 Complaints.

(a) *Who may file.* An individual who believes that he or she or a specific class of individuals has been subjected to discrimination on the basis of disability by a public entity may, by himself or herself or by an authorized representative, file a complaint under this part.

(b) *Time for filing.* A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the designated agency for good cause shown. A complaint is deemed to be filed under this section on the date it is first filed with any Federal agency.

(c) *Where to file.* An individual may file a complaint with any agency that he or she believes to be the appropriate agency designated under subpart G of this part, or with any agency that provides funding to the public entity that is the subject of the complaint, or with the Department of Justice for referral as provided in § 35.171(a)(2).

§ 35. 171 Acceptance of complaints.

(a) *Receipt of complaints.* (1)(i) Any Federal agency that receives a complaint of discrimination on the basis of disability by a public entity shall promptly review the complaint to determine whether it has jurisdiction over the complaint under section 504.

(ii) If the agency does not have section 504 jurisdiction, it shall promptly determine whether it is the designated agency under subpart G of this part responsible for complaints filed against that public entity.

(2)(i) If an agency other than the Department of Justice determines that it does not have section 504 jurisdiction and is not the designated agency, it shall promptly refer the complaint, and notify the complainant that it is referring the complaint to the Department of Justice.

(ii) When the Department of Justice receives a complaint for which it does not have jurisdiction under section 504 and is not the designated agency, it shall refer the complaint to an agency that does have jurisdiction under section 504 or to the appropriate agency designated in subpart G of this part or, in the case of an employment complaint that is also subject to title I of the Act, to the Equal Employment Opportunity Commission.

(3)(i) If the agency that receives a complaint has section 504 jurisdiction, it shall process the complaint according to its procedures for enforcing section 504.

(ii) If the agency that receives a complaint does not have section 504 jurisdiction, but is the designated agency, it shall process the complaint according to the procedures established by this subpart.

(b) *Employment complaints.* (1) If a complaint alleges employment discrimination subject to title I of the Act, and the agency has section 504 jurisdiction, the agency shall follow the procedures issued by the Department of Justice and the Equal Employment Opportunity Commission under section 107(b) of the Act.

(2) If a complaint alleges employment discrimination subject to title I of the Act, and the designated agency does not have section 504 jurisdiction, the agency shall refer the complaint to the Equal Employment Opportunity Commission for processing under title I of the Act.

(3) Complaints alleging employment discrimination subject to this part, but not to title I of the Act shall be processed in accordance with the procedures established by this subpart.

(c) *Complete complaints.* (1) A designated agency shall accept all complete complaints under this section and shall promptly notify the complainant and the public entity of the receipt and acceptance of the complaint.

(2) If the designated agency receives a complaint that is not complete, it shall notify the complainant and specify the additional information that is needed to make the complaint a complete complaint. If the complainant fails to complete the complaint, the designated agency shall close the complaint without prejudice.

§ 35.172 Resolution of complaints.

(a) The designated agency shall investigate each complete complaint, attempt informal resolution, and, if resolution is not achieved, issue to the complainant and the public entity a Letter of Findings that shall include—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) Notice of the rights available under paragraph (b) of this section.

(b) If the designated agency finds noncompliance, the procedures in §§ 35.173 and 35.174 shall be followed. At any time, the complainant may file a private suit pursuant to section 203 of the Act, whether or not the designated agency finds a violation.

§ 35.173 Voluntary compliance agreements.

(a) When the designated agency issues a noncompliance Letter of Findings, the designated agency shall—

(1) Notify the Assistant Attorney General by forwarding a copy of the Letter of Findings to the Assistant Attorney General; and

(2) Initiate negotiations with the public entity to secure compliance by voluntary means.

(b) Where the designated agency is able to secure voluntary compliance, the voluntary compliance agreement shall—

(1) Be in writing and signed by the parties;

(2) Address each cited violation;

(3) Specify the corrective or remedial action to be taken, within a stated period of time, to come into compliance;

(4) Provide assurance that discrimination will not recur; and

(5) Provide for enforcement by the Attorney General.

§ 35.174 Referral.

If the public entity declines to enter into voluntary compliance negotiations or if negotiations are unsuccessful, the designated agency shall refer the matter to the Attorney General with a recommendation for appropriate action.

§ 35.175 Attorney's fees.

In any action or administrative proceeding commenced pursuant to the Act or this part, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

§ 35.176 Alternative means of dispute resolution.

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, is encouraged to resolve disputes arising under the Act and this part.

§ 35.177 Effect of unavailability of technical assistance.

A public entity shall not be excused from compliance with the requirements of this part because of any failure to receive technical assistance, including any failure in the development or dissemination of any technical assistance manual authorized by the Act.

§ 35.178 State immunity.

A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this Act. In any action against a State for a violation of the requirements of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

§§ 35.179–35.189 [Reserved]

Subpart G—Designated Agencies

§ 35.190 Designated agencies.

(a) The Assistant Attorney General shall coordinate the compliance activities of Federal agencies with respect to State and local government components, and shall provide policy guidance and interpretations to designated agencies to ensure the consistent and effective implementation of the requirements of this part.

(b) The Federal agencies listed in paragraph (b) (1) through (8) of this section shall have responsibility for the implementation of subpart F of this part for components of State and local governments that exercise responsibilities, regulate, or administer services, programs, or activities in the following functional areas.

(1) *Department of Agriculture:* All programs, services, and regulatory activities relating to farming and the raising of livestock, including extension services.

(2) *Department of Education:* All programs, services, and regulatory activities relating to the operation of elementary and secondary education systems and institutions, institutions of higher education and vocational education (other than schools of medicine, dentistry, nursing, and other health-related schools), and libraries.

(3) *Department of Health and Human Services:* All programs, services, and regulatory activities relating to the provision of health care and social services, including schools of medicine, dentistry, nursing, and other health-related schools, the operation of health care and social service providers and institutions, including "grass-roots" and community services organizations and programs, and preschool and daycare programs.

(4) *Department of Housing and Urban Development:* All programs, services, and regulatory activities relating to state and local public housing, and housing assistance and referral.

(5) *Department of Interior:* All programs, services, and regulatory activities relating to lands and natural resources, including parks and recreation, water and waste management, environmental protection, energy, historic and cultural preservation, and museums.

(6) *Department of Justice:* All programs, services, and regulatory activities relating to law enforcement, public safety, and the administration of justice, including courts and correctional institutions; commerce and industry, including general economic development, banking and finance, consumer protection, insurance, and small business; planning, development, and regulation (unless assigned to other designated agencies); state and local government support services (e.g., audit, personnel, comptroller, administrative services); all other government functions not assigned to other designated agencies.

(7) *Department of Labor:* All programs, services, and regulatory activities relating to labor and the work force.

(8) *Department of Transportation:* All programs, services, and regulatory activities relating to transportation, including highways, public transportation, traffic management (non-

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services, programs, or activities in the following functional areas.

(1) *Department of Agriculture:* All programs, services, and regulatory activities relating to farming and the raising of livestock, including extension services.

(2) *Department of Education:* All programs, services, and regulatory activities relating to the operation of elementary and secondary education systems and institutions, institutions of higher education and vocational education (other than schools of medicine, dentistry, nursing, and other health-related schools), and libraries.

(3) *Department of Health and Human Services:* All programs, services, and regulatory activities relating to the provision of health care and social services, including schools of medicine, dentistry, nursing, and other health-related schools, the operation of health care and social service providers and institutions, including "grass-roots" and community services organizations and programs, and preschool and daycare programs.

(4) *Department of Housing and Urban Development:* All programs, services, and regulatory activities relating to state and local public housing, and housing assistance and referral.

(5) *Department of Interior:* All programs, services, and regulatory activities relating to lands and natural resources, including parks and recreation, water and waste management, environmental protection, energy, historic and cultural preservation, and museums.

(6) *Department of Justice:* All programs, services, and regulatory activities relating to law enforcement, public safety, and the administration of justice, including courts and correctional institutions; commerce and industry, including general economic development, banking and finance, consumer protection, insurance, and small business; planning, development, and regulation (unless assigned to other designated agencies); state and local government support services (e.g., audit, personnel, comptroller, administrative services); all other government functions not assigned to other designated agencies.

(7) *Department of Labor:* All programs, services, and regulatory activities relating to labor and the work force.

(8) *Department of Transportation:* All programs, services, and regulatory activities relating to transportation, including highways, public transportation, traffic management (non-

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law enforcement), automobile licensing and inspection, and driver licensing.

(c) Responsibility for the implementation of subpart F of this part for components of State or local governments that exercise responsibilities, regulate, or administer services, programs, or activities relating to functions not assigned to specific designated agencies by paragraph (b) of this section may be assigned to other specific agencies by the Department of Justice.

(d) If two or more agencies have apparent responsibility over a complaint, the Assistant Attorney General shall determine which one of the agencies shall be the designated agency for purposes of that complaint.

§§ 35.191–35.999 [Reserved]

Appendix A to Part 35—Preamble to Regulation on Nondiscrimination on the Basis of Disability in State and Local Government Services (Published July 26, 1991)

Note: For the convenience of the reader, this appendix contains the text of the preamble to the final regulation on nondiscrimination on the basis of disability in State and local government services beginning at the heading "Section-by-Section Analysis" and ending before "List of Subjects in 28 CFR Part 35" (56 FR (INSERT FR PAGE CITATIONS); July 26, 1991).

Dated: July 17, 1991.

Dick Thornburgh,

Attorney General.

[FR Doc. 91–17368 Filed 7–25–91; 8:45 am]

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Part V

Equal Employment Opportunity Commission

29 CFR Part 1630

Equal Employment Opportunity for Individuals With Disabilities; Final Rule

29 CFR Parts 1602 and 1627

Recordkeeping and Reporting Under Title VII of the Civil Rights Act of 1964 and the Americans With Disabilities Act (ADA); Final Rule

Equal Employment Opportunity Commission

29 CFR Part 1630

Equal Employment Opportunity for Individuals With Disabilities

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: On July 26, 1990, the Americans With Disabilities Act (ADA) was signed into law. Section 106 of the ADA requires that the Equal Employment Opportunity Commission (EEOC) issue substantive regulations implementing title I (Employment) within one year of the date of enactment of the Act. Pursuant to this mandate, the Commission is publishing a new part 1630 to its regulations to implement title I and sections 3(2), 3(3), 501, 503, 506(e), 508, 510, and 511 of the ADA as those sections pertain to employment. New part 1630 prohibits discrimination against qualified individuals with disabilities in all aspects of employment.

EFFECTIVE DATE: July 26, 1992.

FOR FURTHER INFORMATION CONTACT: Elizabeth M. Thornton, Deputy Legal Counsel, (202) 663–4638 (voice), (202) 663–7026 (TDD) or Christopher G. Bell, Acting Associate Legal Counsel for Americans With Disabilities Act Services, (202) 663–4679 (voice), (202) 663–7026.

Copies of this final rule and interpretive appendix may be obtained by calling the Office of Communications and Legislative Affairs at (202) 663–4900. Copies in alternate formats may be obtained from the Office of Equal Employment Opportunity by calling (202) 663–4398 or (202) 663–4395 (voice) or (202) 663–4399 (TDD). The alternate formats available are: Large print, braille, electronic file on computer disk, and audio-tape.

SUPPLEMENTARY INFORMATION:

Rulemaking History

The Commission actively solicited and considered public comment in the development of part 1630. On August 1, 1990, the Commission published an advance notice of proposed rulemaking (ANPRM), 55 FR 31192, informing the public that the Commission had begun the process of developing substantive regulations pursuant to title I of the ADA and inviting comment from interested groups and individuals. The comment period ended on August 31, 1990. In response to the ANPRM, the Commission received 138 comments from various disability rights organizations, employer groups, and individuals. Comments were also solicited at 62 ADA input meetings conducted by Commission field offices throughout the country. More than 2400 representatives from disability rights organizations and employer groups participated in these meetings.

On February 28, 1991, the Commission published a notice of proposed rulemaking (NPRM), 56 FR 8578, setting forth proposed part 1630 for public comment. The comment period ended April 29, 1991. In response to the NPRM, the Commission received 697 timely comments from interested groups and individuals. In many instances, a comment was submitted on behalf of several parties and represented the views of numerous groups, employers, or individuals with disabilities. The comments have been analyzed and considered in the development of this final rule.

Overview of Regulations

The format of part 1630 reflects congressional intent, as expressed in the legislative history, that the regulations implementing the employment provisions of the ADA be modeled on the regulations implementing section 504 of the Rehabilitation Act of 1973, as amended, 34 CFR part 104. Accordingly, in developing part 1630, the Commission has been guided by the section 504 regulations and the case law interpreting those regulations.

It is the intent of Congress that the regulations implementing the ADA be comprehensive and easily understood. Part 1630, therefore, defines terms not previously defined in the regulations implementing section 504 of the Rehabilitation Act, such as "substantially limits," "essential functions," and "reasonable accommodation." Of necessity, many of the determinations that may be required by this part must be made on a case-by-case basis. Where possible, part 1630 establishes parameters to serve as guidelines in such inquiries.

The Commission is also issuing interpretive guidance concurrently with the issuance of part 1630 in order to ensure that qualified individuals with disabilities understand their rights under this part and to facilitate and encourage compliance by covered entities. Therefore, part 1630 is accompanied by an appendix. This appendix represents the Commission's interpretation of the issues discussed, and the Commission will be guided by it when resolving charges of employment discrimination. The appendix addresses the major provisions of part 1630 and explains the major concepts of disability rights. Further, the appendix cites to the authority, such as the legislative history of the ADA and case law interpreting section 504 of the Rehabilitation Act, that provides the basis and purpose of the rule and interpretative guidance.

More detailed guidance on specific issues will be forthcoming in the Commission's Compliance Manual. Several Compliance Manual sections and policy guidances on ADA issues are currently under development and are expected to be issued prior to the effective date of the Act. Among the issues to be addressed in depth are the theories of discrimination; definitions of disability and of qualified individual with a disability; reasonable accommodation and undue hardship, including the scope of reassignment; and pre-employment inquiries.

To assist us in the development of this guidance, the Commission requested comment in the NPRM from disability rights organizations, employers, unions, state agencies concerned with employment or workers compensation practices, and interested individuals on specific questions about insurance, workers' compensation, and collective bargaining agreements. Many commenters responded to these questions, and several commenters addressed other matters pertinent to these areas. The Commission has considered these comments in the development of the final rule and will continue to consider them as it develops further ADA guidance.

In the NPRM, the Commission raised questions about a number of insurance-related matters. Specifically, the Commission asked commenters to discuss risk assessment and classification, the relationship between "risk" and "cost," and whether employers should consider the effects that changes in insurance coverage will have on individuals with disabilities before making those changes. Many commenters provided information about insurance practices and explained some of the considerations that affect insurance decisions. In addition, some commenters discussed their experiences with insurance plans and coverage. The commenters presented a wide range of opinions on insurance-related matters, and the Commission will consider the comments as it continues to analyze these complex matters.

The Commission received a large number of comments concerning inquiries about an individual's workers' compensation history. Many employers asserted that such inquiries are job related and consistent with business necessity. Several individuals with disabilities and disability rights

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organizations, however, argued that such inquiries are prohibited pre-employment inquiries and are not job related and consistent with business necessity. The Commission has addressed this issue in the interpretive guidance accompanying § 1630.14(a) and will discuss the matter further in future guidance.

There was little controversy about the submission of medical information to workers' compensation offices. A number of employers and employer groups pointed out that the workers' compensation offices of many states request medical information in connection with the administration of second-injury funds. Further, they noted that the disclosure of medical information may be necessary to the defense of a workers' compensation claim. The Commission has responded to these comments by amending the interpretive guidance accompanying § 1630.14(b). This amendment, discussed below, notes that the submission of medical information to workers' compensation offices in accordance with state workers' compensation laws is not inconsistent with § 1630.14(b). The Commission will address this area in greater detail and will discuss other issues concerning workers' compensation matters in future guidances, including the policy guidance on pre-employment inquiries.

With respect to collective bargaining agreements, the Commission asked commenters to discuss the relationship between collective bargaining agreements and such matters as undue hardship, reassignment to a vacant position, the determination of what constitutes a "vacant" position, and the confidentiality requirements of the ADA. The comments that we received reflected a wide variety of views. For example, some commenters argued that it would always be an undue hardship for an employer to provide a reasonable accommodation that conflicted with the provisions of a collective bargaining agreement. Other commenters, however, argued that an accommodation's effect on an agreement should not be considered when assessing undue hardship. Similarly, some commenters stated that the appropriateness of reassignment to a vacant position should depend upon the provisions of a collective bargaining agreement while others asserted that an agreement cannot limit the right to reassignment. Many commenters discussed the relationship between an agreement's seniority provisions and an employer's reasonable accommodation obligations.

In response to comments, the Commission has amended § 1630.2(n)(3) to include "the terms of a collective bargaining agreement" in the types of evidence relevant to determining the essential functions of a position. The Commission has made a corresponding change to the interpretive guidance on § 1630.2(n)(3). In addition, the Commission has amended the interpretive guidance on § 1630.15(d) to note that the terms of a collective bargaining agreement may be relevant to determining whether an accommodation would pose an undue hardship on the operation of a covered entity's business.

The divergent views expressed in the public comments demonstrate the complexity of employment-related issues concerning insurance, workers' compensation, and collective bargaining agreement matters. These highly complex issues require extensive research and analysis and warrant further consideration. Accordingly, the Commission has decided to address the issues in depth in future Compliance Manual sections and policy guidances. The Commission will consider the public comments that it received in response to the NPRM as it develops further guidance on the application of title I of the ADA to these matters.

The Commission has also decided to address burdens-of-proof issues in future guidance documents, including the Compliance Manual section on the theories of discrimination. Many commenters discussed the allocation of the various burdens of proof under title I of the ADA and asked the Commission to clarify those burdens. The comments in this area addressed such matters as determining whether a person is a qualified individual with a disability, job relatedness and business necessity, and undue hardship. The Commission will consider these comments as it prepares further guidance in this area.

A discussion of other significant comments and an explanation of the changes made in part 1630 since publication of the NPRM follows.

Section-by-Section Analysis of Comments and Revisions

Section 1630.1 Purpose, Applicability, and Construction

The Commission has made a technical correction to § 1630.1(a) by adding section 506(e) to the list of statutory provisions implemented by this part. Section 506(e) of the ADA provides that the failure to receive technical assistance from the federal agencies that administer the ADA is not a defense to failing to meet the obligations of title I.

Some commenters asked the Commission to note that the ADA does not preempt state claims, such as state tort claims, that confer greater remedies than are available under the ADA. The Commission has added a paragraph to that effect in the appendix discussion of §§ 1630.1 (b) and (c). This interpretation is consistent with the legislative history of the Act. See H.R. Rep. No. 485 part 3, 101st Cong., 2d Sess. 69–70 (1990) (hereinafter referred to as House Judiciary Report).

In addition, the Commission has made a technical amendment to the appendix discussion to note that the ADA does not automatically preempt medical standards or safety requirements established by Federal law or regulations. The Commission has also amended the discussion to refer to a direct threat that cannot be eliminated "or reduced" through reasonable accommodation. This language is consistent with the regulatory definition of direct threat. (See § 1630.2(r), below.)

Section 1630.2 Definitions

Section 1630.2(h) Physical or Mental Impairment

The Commission has amended the interpretive guidance accompanying § 1630.2(h) to note that the definition of the term "impairment" does not include characteristic predisposition to illness or disease.

In addition, the Commission has specifically noted in the interpretive guidance that pregnancy is not an impairment. This change responds to the numerous questions that the Commission has received concerning whether pregnancy is a disability covered by the ADA. Pregnancy, by itself, is not an impairment and is therefore not a disability.

Section 1630.2(j) Substantially Limits

The Commission has revised the interpretive guidance accompanying § 1630.2(j) to make clear that the determination of whether an impairment substantially limits one or more major life activities is to be made without regard to the availability of medicines, assistive devices, or other mitigating measures. This interpretation is consistent with the legislative history of the ADA. See S. Rep. No. 116, 101st Cong., 1st Sess. 23 (1989) (hereinafter referred to as Senate Report); H.R. Rep. No. 485 part 2, 101st Cong., 2d Sess. 52 (1990) (hereinafter referred to as House Labor Report); House Judiciary Report at 28. The Commission has also revised the examples in the third paragraph of this section's guidance. The examples now focus on the individual's capacity to perform major life activities rather than on the presence or absence of mitigating measures. These revisions respond to comments from disability rights groups, which were concerned that the discussion could be misconstrued to exclude from ADA coverage individuals with disabilities who function well because of assistive devices or other mitigating measures.

In an amendment to the paragraph concerning the factors to consider when determining whether an impairment is substantially limiting, the Commission has provided a second example of an impairment's "impact." This example notes that a traumatic head injury's affect on cognitive functions is the "impact" of that impairment.

Many commenters addressed the provisions concerning the definition of "substantially limits" with respect to the major life activity of working (§ 1630.2(j)(3)). Some employers generally supported the definition but argued that it should be applied narrowly. Other employers argued that the definition is too broad. Disability rights groups and individuals with disabilities, on the other hand, argued that the definition is too narrow, unduly limits coverage, and places an onerous burden on individuals seeking to establish that they are covered by the ADA. The Commission has responded to these comments by making a number of clarifications in this area.

The Commission has revised § 1630.2(j)(3)(ii) and the accompanying interpretive guidance to note that the listed factors "may" be considered when determining whether an individual is substantially limited in working. This revision clarifies that the factors are relevant to, but are not required elements of, a showing of a substantial limitation in working.

Disability rights groups asked the Commission to clarify that "substantially limited in working" applies only when an individual is not substantially limited in any other major life activity. In addition, several other commenters indicated confusion about whether and when the ability to work should be considered when assessing if an individual has a disability. In response to these comments, the Commission has amended the interpretive guidance by adding a new paragraph clarifying the circumstances under which one should determine whether an individual is substantially limited in the major life activity of working. This paragraph makes clear that a determination of whether an individual is substantially limited in the ability to work should be made only when the individual is not disabled in any other major life activity. Thus, individuals need not establish that they are substantially limited in working if they already have established that they are, have a record of, or are regarded as being substantially limited in another major life activity.

The proposed interpretive guidance in this area provided an example concerning a surgeon with a slight hand impairment. Several commenters expressed concern about this example. Many of these comments indicated that the example confused, rather than clarified, the matter. The Commission, therefore, has deleted this example. To explain further the application of the "substantially limited in working" concept, the Commission has provided another example (concerning a commercial airline pilot) in the interpretive guidance.

In addition, the Commission has clarified that the terms "numbers and types of jobs" (see § 1630.2(j)(3)(ii)(B)) and "numbers and types of other jobs" (see § 1630.2(j)(3)(ii)(C)) do not require an onerous evidentiary showing.

In the proposed Appendix, after the interpretive guidance accompanying § 1630.2(l), the Commission included a discussion entitled "Frequently Disabling Impairments." Many commenters expressed concern about this discussion. In response to these comments, and to avoid confusion, the Commission has revised the discussion and has deleted the list of frequently disabling impairments. The revised discussion now appears in the interpretive guidance accompanying § 1630.2(j).

Section 1630.2(l) Is Regarded as Having Such an Impairment

Section 1630.2(l)(3) has been changed to refer to "a substantially limiting impairment" rather than "such an impairment." This change clarifies that an individual meets the definition of the term "disability" when a covered entity treats the individual as having a substantially limiting impairment. That is, § 1630.2(l)(3) refers to any substantially limiting impairment, rather than just to one of the impairments described in §§ 1630.2(l) (1) or (2).

The proposed interpretive guidance on § 1630.2(l) stated that, when determining whether an individual is regarded as substantially limited in working, "it should be assumed that all similar employers would apply the same exclusionary qualification standard that the employer charged with discrimination has used." The Commission specifically requested comment on this proposal, and many commenters addressed this issue. The Commission has decided to eliminate this assumption and to revise the interpretive guidance. The guidance now explains that an individual meets the "regarded as" part of the definition of disability if he or she can show that a covered entity made an employment decision because of a perception of a disability based on "myth, fear, or stereotype." This is consistent with the legislative history of the ADA. See House Judiciary Report at 30.

Section 1630.2(m) Qualified Individual With a Disability

Under the proposed part 1630, the first step in determining whether an individual with a disability is a qualified individual with a disability was to determine whether the individual "satisfies the requisite skill, experience and education requirements of the employment position" the individual holds or desires. Many employers and employer groups asserted that the proposed regulation unduly limited job prerequisites to skill, experience, and education requirements and did not permit employers to consider other job-related qualifications. To clarify that the reference to skill, experience, and education requirements was not intended to be an exhaustive list of permissible qualification requirements, the Commission has revised the phrase to include "skill, experience, education, and other job-related requirements." This revision recognizes that other types of job-related requirements may be relevant to determining whether an individual is qualified for a position.

Many individuals with disabilities and disability rights groups asked the Commission to emphasize that the determination of whether a person is a qualified individual with a disability must be made at the time of the employment action in question and cannot be based on speculation that the individual will become unable to perform the job in the future or may cause increased health insurance or workers' compensation costs. The Commission has amended the interpretive guidance on § 1630.2(m) to reflect this point. This guidance is consistent with the legislative history of the Act. See Senate Report at 26, House Labor Report at 55, 136; House Judiciary Report at 34, 71.

Section 1630.2(n) Essential Functions

Many employers and employer groups objected to the use of the terms "primary" and "intrinsic" in the definition of essential functions. To

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Section 1630.2(n) Essential Functions

Many employers and employer groups objected to the use of the terms "primary" and "intrinsic" in the definition of essential functions. To

avoid confusion about the meanings of "primary" and "intrinsic," the Commission has deleted these terms from the definition. The final regulation defines essential functions as "fundamental job duties" and notes that essential functions do not include the marginal functions of a position.

The proposed interpretive guidance accompanying § 1630.2(n)(2)(ii) noted that one of the factors in determining whether a function is essential is the number of employees available to perform a job function or among whom the performance of that function can be distributed. The proposed guidance explained that "(t)his may be a factor either because the total number of employees is low, or because of the fluctuating demands of the business operations." Some employers and employer groups expressed concern that this language could be interpreted as requiring an assessment of whether a job function could be distributed among all employees in any job at any level. The Commission has amended the interpretive guidance on this factor to clarify that the factor refers only to distribution among "available" employees.

Section 1630.2(n)(3) lists several kinds of evidence that are relevant to determining whether a particular job function is essential. Some employers and unions asked the Commission to recognize that collective bargaining agreements may help to identify a position's essential functions. In response to these comments, the Commission has added "(t)he terms of a collective bargaining agreement" to the list. In addition, the Commission has amended the interpretive guidance to note specifically that this type of evidence is relevant to the determination of essential functions. This addition is consistent with the legislative history of the Act. See Senate Report at 32; House Labor Report at 63.

Proposed § 1630.2(n)(3) referred to the evidence on the list as evidence "that may be considered in determining whether a particular function is essential." The Commission has revised this section to refer to evidence "of" whether a particular function is essential. The Commission made this revision in response to concerns about the meaning of the phrase "may be considered." In that regard, some commenters questioned whether the phrase meant that some of the listed evidence might not be considered when determining whether a function is essential to a position. This revision clarifies that all of the types of evidence on the list, when available, are relevant to the determination of a position's essential functions. As the final rule and interpretive guidance make clear, the list is not an exhaustive list of all types of relevant evidence. Other types of available evidence may also be relevant to the determination.

The Commission has amended the interpretive guidance concerning § 1630.2(n)(3)(ii) to make clear that covered entities are not required to develop and maintain written job descriptions. Such job descriptions are relevant to a determination of a position's essential functions, but they are not required by part 1630.

Several commenters suggested that the Commission establish a rebuttable presumption in favor of the employer's judgment concerning what functions are essential. The Commission has not done so. On that point, the Commission notes that the House Committee on the Judiciary specifically rejected an amendment that would have created such a presumption. See House Judiciary Report at 33–34.

The last paragraph of the interpretive guidance on § 1630.2(n) notes that the inquiry into what constitutes a position's essential functions is not intended to second guess an employer's business judgment regarding production standards, whether qualitative or quantitative. In response to several comments, the Commission has revised this paragraph to incorporate examples of qualitative production standards.

Section 1630.2(o) Reasonable Accommodation

The Commission has deleted the reference to undue hardship from the definition of reasonable accommodation. This is a technical change reflecting that undue hardship is a defense to, rather than an aspect of, reasonable accommodation. As some commenters have noted, a defense to a term should not be part of the term's definition. Accordingly, we have separated the concept of undue hardship from the definition of reasonable accommodation. This change does not affect the obligations of employers or the rights of individuals with disabilities. Accordingly, a covered entity remains obligated to make reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability unless to do so would impose an undue hardship on the operation of the covered entity's business. See § 1630.9.

With respect to § 1630.2(o)(1)(i), some commenters expressed confusion about the use of the phrase "qualified individual with a disability." In that regard, they noted that the phrase has a specific definition under this part (see § 1630.2(m)) and questioned whether an individual must meet that definition to request an accommodation with regard to the application process. The Commission has substituted the phrase "qualified applicant with a disability" for "qualified individual with a disability." This change clarifies that an individual with a disability who requests a reasonable accommodation to participate in the application process must be eligible only with respect to the application process.

The Commission has modified § 1630.2(o)(1)(iii) to state that reasonable accommodation includes modifications or adjustments that enable employees with disabilities to enjoy benefits and privileges that are "equal" to (rather than "the same" as) the benefits and privileges that are enjoyed by other employees. This change clarifies that such modifications or adjustments must ensure that individuals with disabilities receive equal access to the benefits and privileges afforded to other employees but may not be able to ensure that the individuals receive the same results of those benefits and privileges or precisely the same benefits and privileges.

Many commenters discussed whether the provision of daily attendant care is a form of reasonable accommodation. Employers and employer groups asserted that reasonable accommodation does not include such assistance. Disability rights groups and individuals with disabilities, however, asserted that such assistance is a form of reasonable accommodation but that this part did not make that clear. To clarify the extent of the reasonable accommodation obligation with respect to daily attendant care, the Commission has amended the interpretive guidance on § 1630.2(o) to make clear that it may be a reasonable accommodation to provide personal assistants to help with specified duties related to the job.

The Commission also has amended the interpretive guidance to note that allowing an individual with a disability to provide and use equipment, aids, or services that an employer is not required to provide may also be a form of reasonable accommodation. Some individuals with disabilities and disability rights groups asked the Commission to make this clear.

The interpretive guidance points out that reasonable accommodation may include making non-work areas accessible to individuals with disabilities. Many commenters asked the Commission to include rest rooms in the examples of accessible areas that may be required as reasonable accommodations. In response to those comments, the Commission has added rest rooms to the examples.

In response to other comments, the Commission has added a paragraph to the guidance concerning job restructuring as a form of reasonable accommodation. The new paragraph notes that job restructuring may involve changing when or how an essential function is performed.

Several commenters asked the Commission to provide additional guidance concerning the reasonable accommodation of reassignment to a vacant position. Specifically, commenters asked the Commission to clarify how long an employer must wait for a vacancy to arise when considering reassignment and to explain whether the employer is required to maintain the salary of an individual who is reassigned from a higher-paying position to a lower-paying one. The Commission has amended the discussion of reassignment to refer to reassignment to a position that is vacant "within a reasonable amount of time * * * in light of the totality of the circumstances." In addition, the Commission has noted that an employer is not required to maintain the salaries of reassigned individuals with disabilities if it does not maintain the salaries of individuals who are not disabled.

Section 1630.2(p) Undue Hardship

The Commission has substituted "facility" or "facilities" for "site," or "sites" in § 1630.2(p)(2) and has deleted the definition of the term "site" Many employers and employer groups expressed concern about the use and meaning of the term "site." The final regulation's use of the terms "facility" and "facilities" is consistent with the language of the statute.

The Commission has amended the last paragraph of the interpretive guidance accompanying § 1630.2(p) to note that, when the cost of a requested accommodation would result in an undue hardship and outside funding is not available, an individual with a disability should be given the option of paying the portion of the cost that constitutes an undue hardship. This amendment is consistent with the legislative history of the Act. See Senate Report at 36; House Labor Report at 69.

Several employers and employer groups asked the Commission to expand the list of factors to be considered when determining if an accommodation would impose an undue hardship on a covered entity by adding another factor: The relationship of an accommodation's cost to the value of the position at issue, as measured by the compensation paid to the holder of the position. Congress, however, specifically rejected this type of factor. See House Judiciary Report at 41 (noting that the House Judiciary Committee rejected an amendment proposing that an accommodation costing more than ten percent of the employee's salary be treated as an undue hardship). The Commission, therefore, has not added this to the list.

Section 1630.2(q) Qualification Standards

The Commission has deleted the reference to direct threat from the definition of qualification standards. This revision is consistent with the revisions the Commission has made to §§ 1630.10 and 1630.15(b). (See discussion below.)

Section 1630.2(r) Direct Threat

Many disability rights groups and individuals with disabilities asserted that the definition of direct threat should not include a reference to the health or safety of the individual with a disability. They expressed concern that the reference to "risk to self" would result in direct threat determinations that are based on negative stereotypes and paternalistic views about what is best for individuals with disabilities. Alternatively, the commenters asked the Commission to clarify that any assessment of risk must be based on the individual's present condition and not on speculation about the individual's future condition. They also asked the Commission to specify evidence other than medical knowledge that may be relevant to the determination of direct threat.

The final regulation retains the reference to the health or safety of the individual with a disability. As the appendix notes, this is consistent with the legislative history of the ADA and the case law interpreting section 504 of the Rehabilitation Act.

To clarify the direct threat standard, the Commission has made four revisions to § 1630.2(r). First, the Commission has amended the first sentence of the definition of direct threat to refer to a significant risk of substantial harm that cannot be eliminated "or reduced" by reasonable accommodation. This amendment clarifies that the risk need not be eliminated entirely to fall below the direct threat definition; instead, the risk need only be reduced to the level at which there no longer exists a significant risk of substantial harm. In addition, the Commission has rephrased the second sentence of § 1630.2(r) to clarify that an employer's direct threat standard must apply to all individuals, not just to individuals with disabilities. Further, the Commission has made clear that a direct threat determination must be based on "an individualized assessment of the individual's present ability to safely perform the essential functions of the job." This clarifies that a determination that employment of an individual would pose a direct threat must involve an individualized inquiry and must be based on the individual's current condition. In addition, the Commission has added "the imminence of the potential harm" to the list of factors to be considered when determining whether employment of an individual would pose a direct threat. This change clarifies that both the probability of harm and the imminence of harm are relevant to direct threat determinations. This definition of direct threat is consistent with the legislative history of the Act. See Senate Report at 27, House Labor Report at 56–57, 73–75, House Judiciary Report at 45–46.

Further, the Commission has amended the interpretive guidance on § 1630.2(r) to highlight the individualized nature of the direct threat assessment. In addition, the Commission has cited examples of evidence other than medical knowledge that may be relevant to determining whether employment of an individual would pose a direct threat.

Section 1630.3 Exceptions to the Definitions of "Disability" and "Qualified Individual With a Disability"

Many commenters asked the Commission to clarify that the term "rehabilitation program" includes self-help groups. In response to these comments, the Commission has amended the interpretive guidance in this area to include a reference to professionally recognized self-help programs.

The Commission has added a paragraph to the guidance on § 1630.3 to note that individuals who are not excluded under this provision from the definitions of the terms "disability" and "qualified individual with a disability" must still establish that they meet those definitions to be protected by part 1630. Several employers and employer groups asked the Commission to clarify that individuals are not automatically covered by the ADA simply because they do not fall into one of the exclusions listed in this section.

The proposed interpretive guidance on § 1630.3 noted that employers are entitled to seek reasonable assurances that an individual is not currently engaging in the illegal use of drugs. In that regard, the guidance stated, "It is essential that the individual offer evidence, such as a drug test, to prove that he or she is not currently engaging" in such use. Many commenters interpreted this guidance to require individuals to come forward with evidence even in the absence of a request by the employer. The Commission has revised the interpretive guidance to clarify that such evidence is required only upon request.

Section 1630.6 Contractual or Other Arrangements

The Commission has added a sentence to the first paragraph of the interpretive guidance on § 1630.6 to clarify that this section has no impact on whether one is a covered entity or employer as defined by § 1630.2.

The proposed interpretive guidance on contractual or other relationships noted that § 1630.6 applied to parties on either side of the relationship. To illustrate this point, the guidance stated that "a copier company would be required to ensure the provision of any reasonable accommodation necessary to enable its copier service representative with a disability to service a client's machine." Several employers objected to this example. In that respect, the commenters argued that the language of the example was too broad and could be interpreted as requiring employers to make all customers premises accessible. The Commission has revised this example to provide a clearer, more concrete indication of the scope of the reasonable accommodation obligations in this area.

In addition, the Commission has clarified the interpretive guidance by noting that the existence of a contractual relationship adds no new obligations "under this part."

Section 1630.8 Relationship or Association With an Individual With a Disability

The Commission has added the phrase "or otherwise discriminate against" to § 1630.8. This change clarifies that harassment or any other form of discrimination against a qualified individual because of the known disability of a person with whom the individual has a relationship or an association is also a prohibited form of discrimination.

The Commission has revised the first sentence of the interpretive guidance to refer to a person's relationship or association with an individual who has a "known" disability. This revision makes the language of the interpretive guidance consistent with the language of the regulation. In addition, to reflect current, preferred terminology, the Commission has substituted the term "people who have AIDS" for the term "AIDS patients." Finally, the Commission has added a paragraph to clarify that this provision applies to discrimination in other employment privileges and benefits, such as health insurance benefits.

Section 1630.9 Not Making Reasonable Accommodation

Section 1630.9(c) provides that "(a) covered entity shall not be excused from the requirements of this part because of any failure to receive technical assistance * * *." Some employers asked the Commission to revise this section and to state that the failure to receive technical assistance is a defense to not providing reasonable accommodation. The Commission has not made the requested revision. Section 1630.9(c) is consistent with section 506(e) of the ADA, which states that the failure to receive technical assistance from the federal agencies that administer the ADA does not excuse a covered entity from compliance with the requirements of the Act.

The first paragraph of the interpretive guidance accompanying § 1630.9 notes that the reasonable accommodation obligation does not require employers to provide adjustments or modifications that are primarily for the personal use of the individual with a disability. The Commission has amended this guidance to clarify that employers may be required to provide items that are customarily personal-use items where the items are specifically designed or required to meet job-related needs.

In addition, the Commission has amended the interpretive guidance to clarify that there must be a nexus between an individual's disability and the need for accommodation. Thus, the guidance notes that an individual with a disability is "otherwise qualified" if he or she is qualified for the job except that, "because of the disability," the individual needs reasonable accommodation to perform the essential functions of the job. Similarly, the guidance notes that employers are required to accommodate only the physical or mental limitations "resulting from the disability" that are known to the employer.

In response to commenters' requests for clarification, the Commission has noted that employers may require individuals with disabilities to provide documentation of the need for reasonable accommodation when the need for a requested accommodation is not obvious.

In addition, the Commission has amended the last paragraph of the interpretive guidance on the "Process of Determining the Appropriate Reasonable Accommodation." This amendment clarifies that an employer must consider allowing an individual with a disability to provide his or her own accommodation if the individual wishes to do so. The employer, however, may not require the individual to provide the accommodation.

Section 1630.10 Qualification Standards, Tests, and Other Selection Criteria

The Commission has added the phrase "on the basis of disability" to § 1630.10(a) to clarify that a selection criterion that is not job related and consistent with business necessity violates this section only when it screens out an individual with a disability (or a class of individuals with disabilities) on the basis of disability. That is, there must be a nexus between the exclusion and the disability. A selection criterion that screens out an individual with a disability for reasons that are not related to the disability does not violate this section. The Commission has made similar changes to the interpretive guidance on this section.

Proposed § 1630.10(b) stated that a covered entity could use as a qualification standard the requirement that an individual not pose a direct threat to the health or safety of the individual or others. Many individuals with disabilities objected to the inclusion of the direct threat reference in this section and asked the Commission to clarify that the direct threat standard must be raised by the covered entity as a defense. In that regard, they specifically asked the Commission to move the direct threat provision from § 1630.10 (qualification standards) to § 1630.15 (defenses). The Commission has deleted the direct threat provision from § 1630.10 and has moved it to § 1630.15. This is consistent with section 103 of the ADA, which refers to defenses and states (in section 103(b)) that the term "qualification standards" may include a requirement that an individual not pose a direct threat.

Section 1630.11 Administration of Tests

The Commission has revised the interpretive guidance concerning § 1630.11 to clarify that a request for an alternative test format or other testing accommodation generally should be made prior to the administration of the test or as soon as the individual with a disability becomes aware of the need for accommodation. In addition, the Commission has amended the last paragraph of the guidance on this section to note that an employer can require a written test of an applicant with dyslexia if the ability to read is "the skill the test is designed to measure." This language is consistent with the regulatory language, which refers to the skills a test purports to measure.

Some commenters noted that certain tests are designed to measure the speed with which an applicant performs a function. In response to these comments, the Commission has amended the interpretive guidance to state that an employer may require an applicant to complete a test within a specified time frame if speed is one of the skills being tested.

In response to comments, the Commission has amended the interpretive guidance accompanying § 1630.14(a) to clarify that employers may invite applicants to request accommodations for taking tests. (See § 1630.14(a), below.)

Section 1630.12 Retaliation and Coercion

The Commission has amended § 1630.12 to clarify that this section also prohibits harassment.

Section 1630.13 Prohibited Medical Examinations and Inquiries

In response to the Commission's request for comment on certain workers' compensation matters, many commenters addressed whether a covered entity may ask applicants about their history of workers' compensation claims. Many employers and employer groups argued that an inquiry about an individual's workers' compensation history is job related and consistent with business necessity. Disability rights groups and individuals with disabilities, however, asserted that such an inquiry could disclose the existence of a disability. In response to comments and to clarify this matter, the Commission has amended the interpretive guidance accompanying § 1630.13(a). The amendment states that an employer may not inquire about an individual's workers' compensation history at the pre-offer stage.

The Commission has made a technical change to § 1630.13(b) by deleting the phrase "unless the examination or inquiry is shown to be job-related and consistent with business necessity" from the section. This change does not affect the substantive provisions of § 1630.13(b). The Commission has incorporated the job-relatedness and business-necessity requirement into a new § 1630.14(c), which clarifies the scope of permissible examinations or inquiries of employees. (See § 1630.14(c), below.)

Section 1630.14 Medical Examinations and Inquiries Specifically Permitted

Section 1630.14(a) Acceptable Pre-employment Inquiry

Proposed § 1630.14(a) stated that a covered entity may make pre-employment inquiries into an applicant's ability to perform job-related functions. The interpretive guidance accompanying this section noted that an employer may ask an individual whether he or she can perform a job function with or without reasonable accommodation.

Many employers asked the Commission to provide additional guidance in this area. Specifically, the commenters asked whether an employer may ask how an individual will perform a job function when the individual's known disability appears to interfere with or prevent performance of job-related functions. To clarify this matter, the Commission has amended § 1630.14(a) to state that a covered entity "may ask an applicant to describe or to demonstrate how, with or without reasonable accommodation, the applicant will be able to perform job-related functions." The Commission has amended the interpretive guidance accompanying § 1630.14(a) to reflect this change.

Many commenters asked the Commission to state that employers may inquire, before tests are taken, whether candidates will require any reasonable accommodations to take the tests. They asked the Commission to acknowledge that such inquiries constitute permissible pre-employment inquiries. In response to these comments, the Commission has added a new paragraph to the interpretive guidance on § 1630.14(a). This paragraph clarifies that employers may ask candidates to inform them of the need for reasonable accommodation within a reasonable time before the administration of the test and may request documentation verifying the need for accommodation.

The Commission has received many comments from law enforcement and other public safety agencies concerning the administration of physical agility tests. In response to those comments, the Commission has added a new paragraph clarifying that such tests are not medical examinations.

Many employers and employer groups have asked the Commission to discuss whether employers may invite applicants to self-identify as individuals with disabilities. In that regard, many of the commenters noted that section 503 of the Rehabilitation Act imposes certain obligations on government contractors. The interpretive guidance accompanying § 1630.1(b) and (c) notes that "title I of the ADA would not be a defense to failing to collect information required to satisfy the affirmative action requirements of section 503 of the Rehabilitation Act." To reiterate this point, the Commission has amended the interpretive guidance accompanying § 1630.14(a) to note specifically that this section does not restrict employers from collecting information and inviting individuals to identify themselves as individuals with disabilities as required to satisfy the affirmative action requirements of section 503 of the Rehabilitation Act.

Section 1630.14(b) Employment Entrance Examinations

Section 1630.14(b) has been amended to include the phrase "(and/or inquiry)" after references to medical examinations. Some commenters were concerned that the regulation as drafted prohibited covered entities from making any medical inquiries or administering questionnaires that did not constitute examinations. This change clarifies that the term "employment entrance examinations" includes medical inquiries as well as medical examinations.

Section 1630.14(b)(2) has been revised to state that the results of employment entrance examinations "shall not be used for any purpose inconsistent with this part." This language is consistent with the language used in § 1630.14(c)(2).

The second paragraph of the proposed interpretive guidance on this section referred to "relevant" physical and psychological criteria. Some commenters questioned the use of the term "relevant" and expressed concern about its meaning. The Commission has deleted this term from the paragraph.

Many commenters addressed the confidentiality provisions of this section. They noted that it may be necessary to disclose medical information in defense of workers' compensation claims or during the course of other legal proceedings. In addition, they pointed out that the workers' compensation offices of many states request such information for the administration of second-injury funds or for other administrative purposes.

The Commission has revised the last paragraph of the interpretive guidance on § 1630.14(b) to reflect that the information obtained during a permitted employment entrance examination or

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Section 1630.14(b) Employment Entrance Examinations

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Section 1630.14(b)(2) has been revised to state that the results of employment entrance examinations "shall not be used for any purpose inconsistent with this part." This language is consistent with the language used in § 1630.14(c)(2).

The second paragraph of the proposed interpretive guidance on this section referred to "relevant" physical and psychological criteria. Some commenters questioned the use of the term "relevant" and expressed concern about its meaning. The Commission has deleted this term from the paragraph.

Many commenters addressed the confidentiality provisions of this section. They noted that it may be necessary to disclose medical information in defense of workers' compensation claims or during the course of other legal proceedings. In addition, they pointed out that the workers' compensation offices of many states request such information for the administration of second-injury funds or for other administrative purposes.

The Commission has revised the last paragraph of the interpretive guidance on § 1630.14(b) to reflect that the information obtained during a permitted employment entrance examination or

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inquiry may be used only "in a manner not inconsistent with this part." In addition, the Commission has added language clarifying that it is permissible to submit the information to state workers' compensation offices.

Several commenters asked the Commission to clarify whether information obtained from employment entrance examinations and inquiries may be used for insurance purposes. In response to these comments, the Commission has noted in the interpretive guidance that such information may be used for insurance purposes described in § 1630.16(f).

Section 1630.14(c) Examination of Employees

The Commission has added a new § 1630.14(c), Examination of employees, that clarifies the scope of permissible medical examinations and inquiries. Several employers and employer groups expressed concern that the proposed version of part 1630 did not make it clear that covered entities may require employee medical examinations, such as fitness-for-duty examinations, that are job related and consistent with business necessity. New § 1630.14(c) clarifies this by expressly permitting covered entities to require employee medical examinations and inquiries that are job related and consistent with business necessity. The information obtained from such examinations or inquiries must be treated as a confidential medical record. This section also incorporates the last sentence of proposed § 1630.14(c). The remainder of proposed § 1630.14(c) has become § 1630.14(d).

To comport with this technical change in the regulation, the Commission has made corresponding changes in the interpretive guidance. Thus, the Commission has moved the second paragraph of the proposed guidance on § 1630.13(b) to the guidance on § 1630.14(c). In addition, the Commission has reworded the paragraph to note that this provision permits (rather than does not prohibit) certain medical examinations and inquiries.

Some commenters asked the Commission to clarify whether employers may make inquiries or require medical examinations in connection with the reasonable accommodation process. The Commission has noted in the interpretive guidance that such inquiries and examinations are permissible when they are necessary to the reasonable accommodation process described in this part.

Section 1630.15 Defenses

The Commission has added a sentence to the interpretive guidance on § 1630.15(a) to clarify that the assertion that an insurance plan does not cover an individual's disability or that the disability would cause increased insurance or workers' compensation costs does not constitute a legitimate, nondiscriminatory reason for disparate treatment of an individual with a disability. This clarification, made in response to many comments from individuals with disabilities and disability rights groups, is consistent with the legislative history of the ADA. See Senate Report at 85; House Labor Report at 136; House Judiciary Report at 71.

The Commission has amended § 1630.15(b) by stating that the term "qualification standard" may include a requirement that an individual not pose a direct threat. As noted above, this is consistent with section 103 of the ADA and responds to many comments from individuals with disabilities.

The Commission has made a technical correction to § 1630.15(c) by changing the phrase "an individual or class of individuals with disabilities" to "an individual with a disability or a class of individuals with disabilities."

Several employers and employer groups asked the Commission to acknowledge that undue hardship considerations about reasonable accommodations at temporary work sites may be different from the considerations relevant to permanent work sites. In response to these comments, the Commission has amended the interpretive guidance on § 1630.15(d) to note that an accommodation that poses an undue hardship in a particular job setting, such as a temporary construction site, may not pose an undue hardship in another setting. This guidance is consistent with the legislative history of the ADA. See House Labor Report at 69–70; House Judiciary Report at 41–42.

The Commission also has amended the interpretive guidance to note that the terms of a collective bargaining agreement may be relevant to the determination of whether a requested accommodation would pose an undue hardship on the operation of a covered entity's business. This amendment, which responds to commenters' requests that the Commission recognize the relevancy of collective bargaining agreements, is consistent with the legislative history of the Act. See Senate Report at 32; House Labor Report at 63.

Section 1630.2(p)(2)(v) provides that the impact of an accommodation on the ability of other employees to perform their duties is one of the factors to be considered when determining whether the accommodation would impose an undue hardship on a covered entity. Many commenters addressed whether an accommodation's impact on the morale of other employees may be relevant to a determination of undue hardship. Some employers and employer groups asserted that a negative impact on employee morale should be considered an undue hardship. Disability rights groups and individuals with disabilities, however, argued that undue hardship determinations must not be based on the morale of other employees. It is the Commission's view that a negative effect on morale, by itself, is not sufficient to meet the undue hardship standard. Accordingly, the Commission has noted in the guidance on § 1630.15(d) that an employer cannot establish undue hardship by showing only that an accommodation would have a negative impact on employee morale.

Section 1630.16 Specific Activities Permitted

The Commission has revised the second sentence of the interpretive guidance on § 1630.16(b) to state that an employer may hold individuals with alcoholism and individuals who engage in the illegal use of drugs to the same performance and conduct standards to which it holds "all of its" other employees. In addition, the Commission has deleted the term "otherwise" from the third sentence of the guidance. These revisions clarify that employers may hold all employees, disabled (including those disabled by alcoholism or drug addiction) and nondisabled, to the same performance and conduct standards.

Many commenters asked the Commission to clarify that the drug testing provisions of § 1630.16(c) pertain only to tests to determine the illegal use of drugs. Accordingly, the Commission has amended § 1630.16(c)(1) to refer to the administration of "such" drug tests and § 1630.16(c)(3) to refer to information obtained from a "test to determine the illegal use of drugs." We have also made a change in the grammatical structure of the last sentence of § 1630.16(c)(1). We have made similar changes to the corresponding section of the interpretive guidance. In addition, the Commission has amended the interpretive guidance to state that such tests are neither encouraged, "authorized," nor prohibited. This amendment conforms the language of the guidance to the language of § 1630.16(c)(1).

The Commission has revised § 1630.16(e)(1) to refer to communicable diseases that "are" (rather than "may be") transmitted through the handling of food. Several commenters asked the Commission to make this technical change, which adopts the statutory language.

Several commenters also asked the Commission to conform the language of proposed § 1630.16(f) (1) and (2) to the language of sections 501(c) (1) and (2) of the Act. The Commission has made this change. Thus, § 1630.16(f) (1) and (2) now refer to risks that are "not inconsistent with State law."

Executive Order 12291 and Regulatory Flexibility Act

The Commission published a Preliminary Regulatory Impact Analysis on February 28, 1991 (56 FR 8578). Based on the Preliminary Regulatory Impact Analysis, the Commission certifies that this final rule will not have a significant economic impact on a substantial number of small business entities. The Commission is issuing this final rule at this time in the absence of a Final Regulatory Impact Analysis in order to meet the statutory deadline. The Commission's Preliminary Regulatory Impact Analysis was based upon existing data on the costs of reasonable accommodation. The Commission received few comments on this aspect of its rulemaking. Because of the complexity inherent in assessing the economic costs and benefits of this rule and the relative paucity of data on this issue, the Commission will further study the economic impact of the regulation and intends to issue a Final Regulatory Impact Analysis prior to January 1, 1992. As indicated above, the Preliminary Regulatory Impact Analysis was published on February 28, 1991 (56 FR 8578) for comment. The Commission will also provide a copy to the public upon request by calling the Commission's Office of Communications and Legislative Affairs at (202) 663–4900. Commenters are urged to provide additional information as to the costs and benefits associated with this rule. This will further facilitate the development of a Final Regulatory Impact Analysis. Comments must be received by September 26, 1991. Written comments should be submitted to Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 1801 "L" Street, NW., Washington, DC 20507.

As a convenience to commenters, the Executive Secretariat will accept public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 663–4114. (This is not a toll-free number). Only public comments of six or fewer pages will be accepted via FAX transmittal. This limitation is necessary in order to assure access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat Staff at (202) 663–4078. (This is not a toll-free number).

Comments received will be available for public inspection in the EEOC Library, room 6502, by appointment only, from 9 a.m. to 5 p.m., Monday through Friday except legal holidays from October 15, 1991, until the Final Regulatory Impact Analysis is published. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. To schedule an appointment call (202) 663–4630 (voice), (202) 663–4630 (TDD).

List of Subjects in 29 CFR Part 1630

Equal employment opportunity, Handicapped, Individuals with disabilities.

For the Commission,

Evan J. Kemp, Jr.,
Chairman.

Accordingly, 29 CFR chapter XIV is amended by adding part 1630 to read as follows:

PART 1630—REGULATIONS TO IMPLEMENT THE EQUAL EMPLOYMENT PROVISIONS OF THE AMERICANS WITH DISABILITIES ACT

Sec.
1630.1 Purpose, applicability, and construction.
1630.2 Definitions.
1630.3 Exceptions to the definitions of "Disability" and "Qualified Individual with a Disability."
1630.4 Discrimination prohibited.
1630.5 Limiting, segregating, and classifying.
1630.6 Contractual or other arrangements.
1630.7 Standards, criteria, or methods of administration.
1630.8 Relationship or association with an individual with a disability.
1630.9 Not making reasonable accommodation.
1630.10 Qualification standards, tests, and other selection criteria.
1630.11 Administration of tests.
1630.12 Retaliation and coercion.
1630.13 Prohibited medical examinations and inquiries.
1630.14 Medical examinations and inquiries specifically permitted.
1630.15 Defenses.
1630.16 Specific activities permitted.

Appendix to Part 1630—Interpretive Guidance on Title I of the Americans with Disabilities Act

Authority: 42 U.S.C. 12116.

§ 1630.1 Purpose, applicability, and construction.

(a) *Purpose.* The purpose of this part is to implement title I of the Americans with Disabilities Act (42 U.S.C. 12101, *et seq.*) (ADA), requiring equal employment opportunities for qualified individuals with disabilities, and sections 3(2), 3(3), 501, 503, 506(e), 508, 510, and 511 of the ADA as those sections pertain to the employment of qualified individuals with disabilities.

(b) *Applicability.* This part applies to "covered entities" as defined at § 1630.2(b).

(c) *Construction.*—(1) *In general.* Except as otherwise provided in this part, this part does not apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790–794a), or the regulations issued by Federal agencies pursuant to that title.

(2) *Relationship to other laws.* This part does not invalidate or limit the remedies, rights, and procedures of any Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this part.

§ 1630.2 Definitions.

(a) *Commission* means the Equal Employment Opportunity Commission established by section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4).

(b) *Covered Entity* means an employer, employment agency, labor organization, or joint labor management committee.

(c) *Person, labor organization, employment agency, commerce and industry affecting commerce* shall have the same meaning given those terms in section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

(d) *State* means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

(e) *Employer.*—(1) *In general.* The term employer means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person, except that, from July 26,

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Appendix to Part 1630—Interpretive Guidance on Title I of the Americans with Disabilities Act

Authority: 42 U.S.C. 12116.

§ 1630.1 Purpose, applicability, and construction.

(a) *Purpose.* The purpose of this part is to implement title I of the Americans with Disabilities Act (42 U.S.C. 12101, *et seq.*) (ADA), requiring equal employment opportunities for qualified individuals with disabilities, and sections 3(2), 3(3), 501, 503, 506(e), 508, 510, and 511 of the ADA as those sections pertain to the employment of qualified individuals with disabilities.

(b) *Applicability.* This part applies to "covered entities" as defined at § 1630.2(b).

(c) *Construction.*—(1) *In general.* Except as otherwise provided in this part, this part does not apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790–794a), or the regulations issued by Federal agencies pursuant to that title.

(2) *Relationship to other laws.* This part does not invalidate or limit the remedies, rights, and procedures of any Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this part.

§ 1630.2 Definitions.

(a) *Commission* means the Equal Employment Opportunity Commission established by section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4).

(b) *Covered Entity* means an employer, employment agency, labor organization, or joint labor management committee.

(c) *Person, labor organization, employment agency, commerce and industry affecting commerce* shall have the same meaning given those terms in section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

(d) *State* means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

(e) *Employer.*—(1) *In general.* The term employer means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person, except that, from July 26,

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1992 through July 25, 1994, an employer means a person engaged in an industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year and any agent of such person.

(2) *Exceptions.* The term employer does not include—

(i) The United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) A bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986.

(f) *Employee* means an individual employed by an employer.

(g) *Disability* means, with respect to an individual—

(1) A physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(2) A record of such an impairment; or

(3) being regarded as having such an impairment.

(See § 1630.3 for exceptions to this definition).

(h) *Physical or mental impairment* means:

(1) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(i) *Major Life Activities* means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(j) *Substantially limits*—(1) The term *substantially limits* means:

(i) Unable to perform a major life activity that the average person in the general population can perform; or

(ii) Significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.

(2) The following factors should be considered in determining whether an individual is substantially limited in a major life activity:

(i) The nature and severity of the impairment;

(ii) The duration or expected duration of the impairment; and

(iii) The permanent or long term impact, or the expected permanent or long term impact of or resulting from the impairment.

(3) With respect to the major life activity of *working*—

(i) The term *substantially limits* means significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills and abilities. The inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working.

(ii) In addition to the factors listed in paragraph (j)(2) of this section, the following factors may be considered in determining whether an individual is substantially limited in the major life activity of "working":

(A) The geographical area to which the individual has reasonable access;

(B) The job from which the individual has been disqualified because of an impairment, and the number and types of jobs utilizing similar training, knowledge, skills or abilities, within that geographical area, from which the individual is also disqualified because of the impairment (class of jobs); and/or

(C) The job from which the individual has been disqualified because of an impairment, and the number and types of other jobs not utilizing similar training, knowledge, skills or abilities, within that geographical area, from which the individual is also disqualified because of the impairment (broad range of jobs in various classes).

(k) *Has a record of such impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(l) *Is regarded as having such an impairment* means:

(1) Has a physical or mental impairment that does not substantially limit major life activities but is treated by a covered entity as constituting such limitation;

(2) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(3) Has none of the impairments defined in paragraphs (h) (1) or (2) of this section but is treated by a covered entity as having a substantially limiting impairment.

(m) *Qualified individual with a disability* means an individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position. (See § 1630.3 for exceptions to this definition).

(n) *Essential functions.*—(1) *In general.* The term *essential functions* means the fundamental job duties of the employment position the individual with a disability holds or desires. The term "essential functions" does not include the marginal functions of the position.

(2) A job function may be considered essential for any of several reasons, including but not limited to the following:

(i) The function may be essential because the reason the position exists is to perform that function;

(ii) The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed; and/or

(iii) The function may be highly specialized so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

(3) Evidence of whether a particular function is essential includes, but is not limited to:

(i) The employer's judgment as to which functions are essential;

(ii) Written job descriptions prepared before advertising or interviewing applicants for the job;

(iii) The amount of time spent on the job performing the function;

(iv) The consequences of not requiring the incumbent to perform the function;

(v) The terms of a collective bargaining agreement;

(vi) The work experience of past incumbents in the job; and/or

(vii) The current work experience of incumbents in similar jobs.

(o) *Reasonable accommodation.* (1) The term *reasonable accommodation* means:

(i) Modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; or

(ii) Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or

(iii) Modifications or adjustments that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities.

(2) *Reasonable accommodation* may include but is not limited to:

(i) Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(ii) Job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modifications of equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities.

(3) To determine the appropriate reasonable accommodation it may be necessary for the covered entity to initiate an informal, interactive process with the qualified individual with a disability in need of the accommodation. This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.

(p) *Undue hardship*—(1) *In general. Undue hardship* means, with respect to the provision of an accommodation, significant difficulty or expense incurred by a covered entity, when considered in light of the factors set forth in paragraph (p)(2) of this section.

(2) *Factors to be considered.* In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include:

(i) The nature and net cost of the accommodation needed under this part, taking into consideration the availability of tax credits and deductions, and/or outside funding;

(ii)The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at such facility, and the effect on expenses and resources;

(iii) The overall financial resources of the covered entity, the overall size of the business of the covered entity with respect to the number of its employees, and the number, type and location of its facilities;

(iv) The type of operation or operations of the covered entity, including the composition, structure and functions of the workforce of such entity, and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the covered entity; and

(v) The impact of the accommodation upon the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business.

(q) *Qualification standards* means the personal and professional attributes including the skill, experience, education, physical, medical, safety and other requirements established by a covered entity as requirements which an individual must meet in order to be eligible for the position held or desired.

(r) *Direct Threat* means a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation. The determination that an individual poses a "direct threat" shall be based on an individualized assessment of the individual's present ability to safely perform the essential functions of the job. This assessment shall be based on a reasonable medical judgment that relies on the most current medical knowledge and/or on the best available objective evidence. In determining whether an individual would pose a direct threat, the factors to be considered include:

(1) The duration of the risk;

(2) The nature and severity of the potential harm;

(3) The likelihood that the potential harm will occur; and

(4) The imminence of the potential harm.

§ 1630.3 Exceptions to the definitions of "Disability" and "Qualified Individual with a Disability."

(a) The terms *disability* and *qualified individual with a disability* do not include individuals currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

(1) *Drug* means a controlled substance, as defined in schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C 812)

(2) *Illegal use of drugs* means the use of drugs the possession or distribution of which is unlawful under the Controlled Substances Act, as periodically updated by the Food and Drug Administration. This term does not include the use of a drug taken under the supervision of a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(b) However, the terms *disability* and *qualified* individual with a disability may not exclude an individual who:

(1) Has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of drugs; or

(2) Is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(3) Is erroneously regarded as engaging in such use, but is not engaging in such use.

(c) It shall not be a violation of this part for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (b) (1) or (2) of this section is no longer engaging in the illegal use of drugs. (See § 1630.16(c) Drug testing).

(d) *Disability* does not include:

(1) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(2) Compulsive gambling, kleptomania, or pyromania; or

(3) Psychoactive substance use disorders resulting from current illegal use of drugs.

(e) *Homosexuality and bisexuality* are not impairments and so are not disabilities as defined in this part.

§ 1630.4 Discrimination prohibited.

It is unlawful for a covered entity to discriminate on the basis of disability against a qualified individual with a disability in regard to:

(a) Recruitment, advertising, and job application procedures;

(b) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(c) Rates of pay or any other form of compensation and changes in compensation;

(d) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(e) Leaves of absence, sick leave, or any other leave;

(f) Fringe benefits available by virtue of employment, whether or not administered by the covered entity;

(g) Selection and financial support for training, including: apprenticeships, professional meetings, conferences and other related activities, and selection for leaves of absence to pursue training;

(h) Activities sponsored by a covered entity including social and recreational programs; and

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(1) Has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of drugs; or

(2) Is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(3) Is erroneously regarded as engaging in such use, but is not engaging in such use.

(c) It shall not be a violation of this part for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (b) (1) or (2) of this section is no longer engaging in the illegal use of drugs. (See § 1630.16(c) Drug testing).

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(b) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(c) Rates of pay or any other form of compensation and changes in compensation;

(d) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(e) Leaves of absence, sick leave, or any other leave;

(f) Fringe benefits available by virtue of employment, whether or not administered by the covered entity;

(g) Selection and financial support for training, including: apprenticeships, professional meetings, conferences and other related activities, and selection for leaves of absence to pursue training;

(h) Activities sponsored by a covered entity including social and recreational programs; and

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(i) Any other term, condition, or privilege of employment.

The term *discrimination* includes, but is not limited to, the acts described in §§ 1630.5 through 1630.13 of this part.

§ 1630.5 Limiting segregating, and classifying.

It is unlawful for a covered entity to limit, segregate, or classify a job applicant or employee in a way that adversely affects his or her employment opportunities or status on the basis of disability.

§ 1630.6 Contractual or other arrangements.

(a) *In general.* It is unlawful for a covered entity to participate in a contractual or other arrangement or relationship that has the effect of subjecting the covered entity's own qualified applicant or employee with a disability to the discrimination prohibited by this part.

(b) *Contractual or other arrangement defined.* The phrase *contractual or other arrangement or relationship* includes, but is not limited to, a relationship with an employment or referral agency; labor union, including collective bargaining agreements; an organization providing fringe benefits to an employee of the covered entity; or an organization providing training and apprenticeship programs.

(c) *Application.* This section applies to a covered entity, with respect to its own applicants or employees, whether the entity offered the contract or initiated the relationship, or whether the entity accepted the contract or acceded to the relationship. A covered entity is not liable for the actions of the other party or parties to the contract which only affect that other party's employees or applicants.

§ 1630.7 Standards, criteria, or methods of administration.

It is unlawful for a covered entity to use standards, criteria, or methods of administration, which are not job-related and consistent with business necessity, and:

(a) That have the effect of discriminating on the basis of disability; or

(b) That perpetuate the discrimination of others who are subject to common administrative control.

§ 1630.8 Relationship or association with an individual with a disability.

It is unlawful for a covered entity to exclude or deny equal jobs or benefits to, or otherwise discriminate against, a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a family, business, social or other relationship or association.

§ 1630.9 Not making reasonable accommodation.

(a) It is unlawful for a covered entity not to make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of its business.

(b) It is unlawful for a covered entity to deny employment opportunities to an otherwise qualified job applicant or employee with a disability based on the need of such covered entity to make reasonable accommodation to such individual's physical or mental impairments.

(c) A covered entity shall not be excused from the requirements of this part because of any failure to receive technical assistance authorized by section 506 of the ADA, including any failure in the development or dissemination of any technical assistance manual authorized by that Act.

(d) A qualified individual with a disability is not required to accept an accommodation, aid, service, opportunity or benefit which such qualified individual chooses not to accept. However, if such individual rejects a reasonable accommodation, aid, service, opportunity or benefit that is necessary to enable the individual to perform the essential functions of the position held or desired, and cannot, as a result of that rejection, perform the essential functions of the position, the individual will not be considered a qualified individual with a disability.

§ 1630.10 Qualification standards, tests, and other selection criteria.

It is unlawful for a covered entity to use qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities, on the basis of disability, unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity.

§ 1630.11 Administration of tests.

It is unlawful for a covered entity to fail to select and administer tests concerning employment in the most effective manner to ensure that, when a test is administered to a job applicant or employee who has a disability that impairs sensory, manual or speaking skills, the test results accurately reflect the skills, aptitude, or whatever other factor of the applicant or employee that the test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

§ 1630.12 Retaliation and coercion.

(a) *Retaliation.* It is unlawful to discriminate against any individual because that individual has opposed any act or practice made unlawful by this part or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing to enforce any provision contained in this part.

(b) *Coercion, interference or intimidation.* It is unlawful to coerce, intimidate, threaten, harass or interfere with any individual in the exercise or enjoyment of, or because that individual aided or encouraged any other individual in the exercise of, any right granted or protected by this part.

§ 1630.13 Prohibited medical examinations and inquiries.

(a) *Pre-employment examination or inquiry.* Except as permitted by § 1630.14, it is unlawful for a covered entity to conduct a medical examination of an applicant or to make inquiries as to whether an applicant is an individual with a disability or as to the nature or severity of such disability.

(b) *Examination or inquiry of employees.* Except as permitted by § 1630.14, it is unlawful for a covered entity to require a medical examination of an employee or to make inquiries as to whether an employee is an individual with a disability or as to the nature or severity of such disability.

§ 1630.14 Medical examinations and inquiries specifically permitted.

(a) *Acceptable pre-employment inquiry.* A covered entity may make pre-employment inquiries into the ability of an applicant to perform job-related functions, and/or may ask an applicant to describe or to demonstrate how, with or without reasonable accommodation, the applicant will be able to perform job-related functions.

(b) *Employment entrance examination.* A covered entity may require a medical examination (and/or inquiry) after making an offer of employment to a job applicant and before the applicant begins his or her employment duties, and may condition an offer of employment on the results of such examination (and/or inquiry), if all entering employees in the same job category are subjected to such an examination (and/or inquiry) regardless of disability.

(1) Information obtained under paragraph (b) of this section regarding the medical condition or history of the applicant shall be collected and maintained on separate forms and in separate medical files and be treated as a confidential medical record, except that:

(i) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(ii) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) Government officials investigating compliance with this part shall be provided relevant information on request.

(2) The results of such examination shall not be used for any purpose inconsistent with this part.

(3) Medical examinations conducted in accordance with this section do not have to be job-related and consistent with business necessity. However, if certain criteria are used to screen out an employee or employees with disabilities as a result of such an examination or inquiry, the exclusionary criteria must be job-related and consistent with business necessity, and performance of the essential job functions cannot be accomplished with reasonable accommodation as required in this part. (See § 1630.15(b) Defenses to charges of discriminatory application of selection criteria.)

(c) *Examination of employees.* A covered entity may require a medical examination (and/or inquiry) of an employee that is job-related and consistent with business necessity. A covered entity may make inquiries into the ability of an employee to perform job-related functions.

(1) Information obtained under paragraph (c) of this section regarding the medical condition or history of any employee shall be collected and maintained on separate forms and in separate medical files and be treated as a confidential medical record, except that:

(i) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(ii) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) Government officials investigating compliance with this part shall be provided relevant information on request.

(2) Information obtained under paragraph (c) of this section regarding the medical condition or history of any employee shall not be used for any purpose inconsistent with this part.

(d) *Other acceptable examinations and inquiries.* A covered entity may conduct voluntary medical examinations and activities, including voluntary medical histories, which are part of an employee health program available to employees at the work site.

(1) Information obtained under paragraph (d) of this section regarding the medical condition or history of any employee shall be collected and maintained on separate forms and in separate medical files and be treated as a confidential medical record, except that:

(i) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(ii) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) Government officials investigating compliance with this part shall be provided relevant information on request.

(2) Information obtained under paragraph (d) of this section regarding the medical condition or history of any employee shall not be used for any purpose inconsistent with this part.

§ 1630.15 Defenses.

Defenses to an allegation of discrimination under this part may include, but are not limited to, the following:

(a) *Disparate treatment charges.* It may be a defense to a charge of disparate treatment brought under §§ 1630.4 through 1630.8 and 1630.11 through 1630.12 that the challenged action is justified by a legitimate, nondiscriminatory reason.

(b) *Charges of discriminatory application of selection criteria*—(1) *In general.* It may be a defense to a charge of discrimination, as described in § 1630.10, that an alleged application of qualification standards, tests, or selection criteria that screens out or tends to screen out or otherwise denies a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished with reasonable accommodation, as required in this part.

(2) *Direct threat as a qualification standard.* The term "qualification standard" may include a requirement that an individual shall not pose a direct threat to the health or safety of the individual or others in the workplace. (See § 1630.2(r) defining direct threat.)

(c) *Other disparate impact charges.* It may be a defense to a charge of discrimination brought under this part that a uniformly applied standard, criterion, or policy has a disparate impact on an individual with a disability or a class of individuals with disabilities that the challenged standard, criterion or policy has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished with reasonable accommodation, as required in this part.

(d) *Charges of not making reasonable accommodation.* It may be a defense to a charge of discrimination, as described in § 1630.9, that a requested or necessary accommodation would impose an undue hardship on the operation of the covered entity's business.

(e) *Conflict with other federal laws.* It may be a defense to a charge of discrimination under this part that a challenged action is required or necessitated by another Federal law or regulation, or that another Federal law or regulation prohibits an action (including the provision of a particular reasonable accommodation) that would otherwise be required by this part.

(f) *Additional defenses.* It may be a defense to a charge of discrimination under this part that the alleged discriminatory action is specifically permitted by §§ 1630.14 or 1630.16.

§ 1630.16 Specific activities permitted.

(a) *Religious entities.* A religious corporation, association, educational institution, or society is permitted to give preference in employment to individuals of a particular religion to perform work connected with the carrying on by that corporation, association, educational institution, or society of its activities. A religious entity may require that all applicants and employees conform to the religious tenets of such organization. However, a religious entity may not discriminate against a qualified individual, who satisfies the permitted religious criteria, because of his or her disability.

(b) *Regulation of alcohol and drugs.* A covered entity:

(1) May prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;

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(2) *Direct threat as a qualification standard.* The term "qualification standard" may include a requirement that an individual shall not pose a direct threat to the health or safety of the individual or others in the workplace. (See § 1630.2(r) defining direct threat.)

(c) *Other disparate impact charges.* It may be a defense to a charge of discrimination brought under this part that a uniformly applied standard, criterion, or policy has a disparate impact on an individual with a disability or a class of individuals with disabilities that the challenged standard, criterion or policy has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished with reasonable accommodation, as required in this part.

(d) *Charges of not making reasonable accommodation.* It may be a defense to a charge of discrimination, as described in § 1630.9, that a requested or necessary accommodation would impose an undue hardship on the operation of the covered entity's business.

(e) *Conflict with other federal laws.* It may be a defense to a charge of discrimination under this part that a challenged action is required or necessitated by another Federal law or regulation, or that another Federal law or regulation prohibits an action (including the provision of a particular reasonable accommodation) that would otherwise be required by this part.

(f) *Additional defenses.* It may be a defense to a charge of discrimination under this part that the alleged discriminatory action is specifically permitted by §§ 1630.14 or 1630.16.

§ 1630.16 Specific activities permitted.

(a) *Religious entities.* A religious corporation, association, educational institution, or society is permitted to give preference in employment to individuals of a particular religion to perform work connected with the carrying on by that corporation, association, educational institution, or society of its activities. A religious entity may require that all applicants and employees conform to the religious tenets of such organization. However, a religious entity may not discriminate against a qualified individual, who satisfies the permitted religious criteria, because of his or her disability.

(b) *Regulation of alcohol and drugs.* A covered entity:

(1) May prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;

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(2) May require that employees not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;

(3) May require that all employees behave in conformance with the requirements established under the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.);

(4) May hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior to which the entity holds its other employees, even if any unsatisfactory performance or behavior is related to the employee's drug use or alcoholism;

(5) May require that its employees employed in an industry subject to such regulations comply with the standards established in the regulations (if any) of the Departments of Defense and Transportation, and of the Nuclear Regulatory Commission, regarding alcohol and the illegal use of drugs; and

(6) May require that employees employed in sensitive positions comply with the regulations (if any) of the Departments of Defense and Transportation and of the Nuclear Regulatory Commission that apply to employment in sensitive positions subject to such regulations.

(c) *Drug testing*—(1) *General policy.* For purposes of this part, a test to determine the illegal use of drugs is not considered a medical examination. Thus, the administration of such drug tests by a covered entity to its job applicants or employees is not a violation of § 1630.13 of this part. However, this part does not encourage, prohibit, or authorize a covered entity to conduct drug tests of job applicants or employees to determine the illegal use of drugs or to make employment decisions based on such test results.

(2) *Transportation Employees.* This part does not encourage, prohibit, or authorize the otherwise lawful exercise by entities subject to the jurisdiction of the Department of Transportation of authority to:

(i) Test employees of entities in, and applicants for, positions involving safety sensitive duties for the illegal use of drugs or for on-duty impairment by alcohol; and

(ii) Remove from safety-sensitive positions persons who test positive for illegal use of drugs or on-duty impairment by alcohol pursuant to paragraph (c)(2)(i) of this section.

(3) *Confidentiality.* Any information regarding the medical condition or history of any employee or applicant obtained from a test to determine the illegal use of drugs, except information regarding the illegal use of drugs, is subject to the requirements of § 1630.14(b) (2) and (3) of this part.

(d) *Regulation of smoking.* A covered entity may prohibit or impose restrictions on smoking in places of employment. Such restrictions do not violate any provision of this part.

(e) *Infectious and communicable diseases; food handling jobs*—(1) *In general.* Under title I of the ADA, section 103(d)(1), the Secretary of Health and Human Services is to prepare a list, to be updated annually, of infectious and communicable diseases which are transmitted through the handling of food. (Copies may be obtained from Center for Infectious Diseases, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop C09, Atlanta, GA 30333.) If an individual with a disability is disabled by one of the infectious or communicable diseases included on this list, and if the risk of transmitting the disease associated with the handling of food cannot be eliminated by reasonable accommodation, a covered entity may refuse to assign or continue to assign such individual to a job involving food handling. However, if the individual with a disability is a current employee, the employer must consider whether he or she can be accommodated by reassignment to a vacant position not involving food handling.

(2) *Effect on state or other laws.* This part does not preempt, modify, or amend any State, county, or local law, ordinance or regulation applicable to food handling which:

(i) Is in accordance with the list, referred to in paragraph (e)(1) of this section, of infectious or communicable diseases and the modes of transmissibility published by the Secretary of Health and Human Services; and

(ii) Is designed to protect the public health from individuals who pose a significant risk to the health or safety of others, where that risk cannot be eliminated by reasonable accommodation.

(f) *Health insurance, life insurance, and other benefit plans*—(1) An insurer, hospital, or medical service company, health maintenance organization, or any agent or entity that administers benefit plans, or similar organizations may underwrite risks, classify risks, or administer such risks that are based on or not inconsistent with State law.

(2) A covered entity may establish, sponsor, observe or administer the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law.

(3) A covered entity may establish, sponsor, observe, or administer the terms of a bona fide benefit plan that is not subject to State laws that regulate insurance.

(4) The activities described in paragraphs (f) (1), (2), and (3) of this section are permitted unless these activities are being used as a subterfuge to evade the purposes of this part.

Appendix to Part 1630—Interpretive Guidance on Title I of the Americans with Disabilities Act

Background

The ADA is a federal antidiscrimination statute designed to remove barriers which prevent qualified individuals with disabilities from enjoying the same employment opportunities that are available to persons without disabilities.

Like the Civil Rights Act of 1964 that prohibits discrimination on the bases of race, color, religion, national origin, and sex, the ADA seeks to ensure access to equal employment opportunities based on merit. It does not guarantee equal results, establish quotas, or require preferences favoring individuals with disabilities over those without disabilities.

However, while the Civil Rights Act of 1964 prohibits any consideration of personal characteristics such as race or national origin, the ADA necessarily takes a different approach. When an individual's disability creates a barrier to employment opportunities, the ADA requires employers to consider whether reasonable accommodation could remove the barrier.

The ADA thus establishes a process in which the employer must assess a disabled individual's ability to perform the essential functions of the specific job held or desired. While the ADA focuses on eradicating barriers, the ADA does not relieve a disabled employee or applicant from the obligation to perform the essential functions of the job. To the contrary, the ADA is intended to enable disabled persons to compete in the workplace based on the same performance standards and requirements that employers expect of persons who are not disabled.

However, where that individual's functional limitation impedes such job performance, an employer must take steps to reasonably accommodate, and thus help overcome the particular impediment, unless to do so would impose an undue hardship. Such accommodations usually take the form of adjustments to the way a job customarily is performed, or to the work environment itself.

This process of identifying whether, and to what extent, a reasonable accommodation is required should be flexible and involve both the employer and the individual with a disability. Of course, the determination of whether an individual is qualified for a particular position must necessarily be made on a case-by-case basis. No specific form of accommodation is guaranteed for all individuals with a particular disability.

Rather, an accommodation must be tailored to match the needs of the disabled individual with the needs of the job's essential functions.

This case-by-case approach is essential if qualified individuals of varying abilities are to receive equal opportunities to compete for an infinitely diverse range of jobs. For this reason, neither the ADA nor this part can supply the "correct" answer in advance for each employment decision concerning an individual with a disability. Instead, the ADA simply establishes parameters to guide employers in how to consider, and take into account, the disabling condition involved.

Introduction

The Equal Employment Opportunity Commission (the Commission or EEOC) is responsible for enforcement of title I of the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 *et seq.* (1990), which prohibits employment discrimination on the basis of disability. The Commission believes that it is essential to issue interpretive guidance concurrently with the issuance of this part in order to ensure that qualified individuals with disabilities understand their rights under this part and to facilitate and encourage compliance by covered entities. This appendix represents the Commission's interpretation of the issues discussed, and the Commission will be guided by it when resolving charges of employment discrimination. The appendix addresses the major provisions of this part and explains the major concepts of disability rights.

The terms "employer" or "employer or other covered entity" are used interchangeably throughout the appendix to refer to all covered entities subject to the employment provisions of the ADA.

Section 1630.1 Purpose, Applicability and Construction

Section 1630.1(a) Purpose

The Americans with Disabilities Act was signed into law on July 26, 1990. It is an antidiscrimination statute that requires that individuals with disabilities be given the same consideration for employment that individuals without disabilities are given. An individual who is qualified for an employment opportunity cannot be denied that opportunity because of the fact that the individual is disabled. The purpose of title I and this part is to ensure that qualified individuals with disabilities are protected from discrimination on the basis of disability.

The ADA uses the term "disabilities" rather than the term "handicaps" used in the Rehabilitation Act of 1973, 29 U.S.C. 701–796. Substantively, these terms are equivalent. As noted by the House Committee on the Judiciary, "[t]he use of the term 'disabilities' instead of the term 'handicaps' reflects the desire of the Committee to use the most current terminology. It reflects the preference of persons with disabilities to use that term rather than 'handicapped' as used in previous laws, such as the Rehabilitation Act of 1973 * * *." H.R. Rep. No. 485 part 3, 101st Cong., 2d Sess. 26–27 (1990) (hereinafter House Judiciary Report); see also S. Rep. No. 116, 101st Cong., 1st Sess. 21 (1989) (hereinafter Senate Report); H.R. Rep. No. 485 part 2, 101st Cong., 2d Sess. 50–51 (1990) [hereinafter House Labor Report].

The use of the term "Americans" in the title of the ADA is not intended to imply that the Act only applies to United States citizens. Rather, the ADA protects all qualified individuals with disabilities, regardless of their citizenship status or nationality.

Section 1630.1(b) and (c) Applicability and Construction

Unless expressly stated otherwise, the standards applied in the ADA are not intended to be lesser than the standards applied under the Rehabilitation Act of 1973.

The ADA does not preempt any Federal law, or any state or local law, that grants to individuals with disabilities protection greater than or equivalent to that provided by the ADA. This means that the existence of a lesser standard of protection to individuals with disabilities under the ADA will not provide a defense to failing to meet a higher standard under another law. Thus, for example, title I of the ADA would not be a defense to failing to collect information required to satisfy the affirmative action requirements of section 503 of the Rehabilitation Act. On the other hand, the existence of a lesser standard under another law will not provide a defense to failing to meet a higher standard under the ADA. See House Labor Report at 135; House Judiciary Report at 69–70.

This also means that an individual with a disability could choose to pursue claims under a state discrimination or tort law that does not confer greater substantive rights, or even confers fewer substantive rights, if the potential available remedies would be greater than those available under the ADA and this part. The ADA does not restrict an individual with a disability from pursuing such claims in addition to charges brought under this part. House Judiciary at 69–70.

The ADA does not automatically preempt medical standards or safety requirements established by Federal law or regulations. It does not preempt State, county, or local laws, ordinances or regulations that are consistent with this part, and are designed to protect the public health from individuals who pose a direct threat, that cannot be eliminated or reduced by reasonable accommodation, to the health or safety of others. However, the ADA does preempt inconsistent requirements established by state or local law for safety or security sensitive positions. See Senate Report at 27; House Labor Report at 57.

An employer allegedly in violation of this part cannot successfully defend its actions by relying on the obligation to comply with the requirements of any state or local law that imposes prohibitions or limitations on the eligibility of qualified individuals with disabilities to practice any occupation or profession. For example, suppose a municipality has an ordinance that prohibits individuals with tuberculosis from teaching school children. If an individual with dormant tuberculosis challenges a private school's refusal to hire him or her because of the tuberculosis, the private school would not be able to rely on the city ordinance as a defense under the ADA.

Sections 1630.2(a)–(f) Commission, Covered Entity, etc.

The definitions section of part 1630 includes several terms that are identical, or almost identical, to the terms found in title VII of the Civil Rights Act of 1964. Among these terms are "Commission," "Person," "State," and "Employer." These terms are to be given the same meaning under the ADA that they are given under title VII.

In general, the term "employee" has the same meaning that it is given under title VII. However, the ADA's definition of "employee" does not contain an exception, as does title VII, for elected officials and their personal staffs. It should be further noted that all state and local governments are covered by title II of the ADA whether or not they are also covered by this part. Title II, which is enforced by the Department of Justice, becomes effective on January 26, 1992. See 28 CFR part 35.

The term "covered entity" is not found in title VII. However, the title VII definitions of the entities included in the term "covered entity" (*e.g.*, employer, employment agency, *etc.*) are applicable to the ADA.

Section 1630.2(g) Disability

In addition to the term "covered entity," there are several other terms that are unique to the ADA. The first of these is the term "disability." Congress adopted the definition of this term from the Rehabilitation Act definition of the term "individual with handicaps." By so doing, Congress intended that the relevant caselaw developed under the Rehabilitation Act be generally applicable to the term "disability" as used in the ADA. Senate Report at 21; House Labor Report at 50; House Judiciary Report at 27.

The definition of the term "disability" is divided into three parts. An individual must satisfy at least one of these parts in order to be considered an individual with a disability for purposes of this part. An individual is considered to have a "disability" if that individual either (1) has a physical or mental impairment which substantially limits one or more of that person's major life activities, (2) has a record of such an impairment, or, (3) is regarded by the covered entity as having such an impairment. To understand the meaning of the term "disability," it is necessary to understand, as a preliminary matter, what is meant by the terms "physical or mental impairment," "major life activity," and "substantially limits." Each of these terms is discussed below.

Section 1630.2(h) Physical or Mental Impairment

This term adopts the definition of the term "physical or mental impairment" found in the regulations implementing section 504 of the Rehabilitation Act at 34 CFR part 104. It defines physical or mental impairment as any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of several body systems, or any mental or psychological disorder.

The existence of an impairment is to be determined without regard to mitigating measures such as medicines, or assistive or prosthetic devices. See Senate Report at 23, House Labor Report at 52, House Judiciary Report at 28. For example, an individual with epilepsy would be considered to have an impairment even if the symptoms of the disorder were completely controlled by medicine. Similarly, an individual with hearing loss would be considered to have an impairment even if the condition were correctable through the use of a hearing aid.

It is important to distinguish between conditions that are impairments and physical, psychological, environmental, cultural and economic characteristics that are not impairments. The definition of the term "impairment" does not include physical characteristics such as eye color, hair color, left-handedness, or height, weight or muscle tone that are within "normal" range and are not the result of a physiological disorder. The definition, likewise, does not include characteristic predisposition to illness or disease. Other conditions, such as pregnancy, that are not the result of a physiological disorder are also not impairments. Similarly, the definition does not include common personality traits such as poor judgment or a quick temper where these are not symptoms of a mental or psychological disorder. Environmental, cultural, or economic disadvantages such as poverty, lack of education or a prison record are not impairments. Advanced age, in and of itself, is also not an impairment. However, various medical conditions commonly associated with age, such as hearing loss, osteoporosis, or arthritis would constitute impairments within the meaning of this part. See Senate Report at 22–23; House Labor Report at 51–52; House Judiciary Report at 28–29.

Section 1630.2(i) Major Life Activities

This term adopts the definition of the term "major life activities" found in the regulations implementing section 504 of the Rehabilitation Act at 34 CFR part 104. "Major life activities" are those basic activities that the average person in the general population can perform with little or no difficulty. Major life activities include caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. This list is not exhaustive. For example, other major life activities include, but are not limited to, sitting, standing, lifting, reaching. See Senate Report at 22; House Labor Report at 52; House Judiciary Report at 28.

Section 1630.2(j) Substantially Limits

Determining whether a physical or mental impairment exists is only the first step in determining whether or not an individual is disabled. Many impairments do not impact an individual's life to the degree that they constitute disabling impairments. An impairment rises to the level of disability if the impairment substantially limits one or more of the individual's major life activities. Multiple impairments that combine to substantially limit one or more of an individual's major life activities also constitute a disability.

The ADA and this part, like the Rehabilitation Act of 1973, do not attempt a "laundry list" of impairments that are "disabilities." The determination of whether an individual has a disability is not necessarily based on the name or diagnosis of the impairment the person has, but rather on the effect of that impairment on the life of the individual. Some impairments may be disabling for particular individuals but not for others, depending on the stage of the disease or disorder, the presence of other impairments that combine to make the impairment disabling or any number of other factors.

Other impairments, however, such as HIV infection, are inherently substantially limiting.

On the other hand, temporary, non-chronic impairments of short duration, with little or no long term or permanent impact, are usually not disabilities. Such impairments may include, but are not limited to, broken limbs, sprained joints, concussions, appendicitis, and influenza. Similarly, except in rare circumstances, obesity is not considered a disabling impairment.

An impairment that prevents an individual from performing a major life activity substantially limits that major life activity. For example, an individual whose legs are paralyzed is substantially limited in the major life activity of walking because he or she is unable, due to the impairment, to perform that major life activity.

Alternatively, an impairment is substantially limiting if it significantly restricts the duration, manner or condition under which an individual can perform a particular major life activity as compared to the average person in the general population's ability to perform that same major life activity. Thus, for example, an individual who, because of an impairment, can only walk for very brief periods of time would be substantially limited in the major life activity of walking. An individual who uses artificial legs would likewise be substantially limited in the major life activity of walking because the individual is unable to walk without the aid of prosthetic devices. Similarly, a diabetic who without insulin would lapse into a coma would be substantially limited because the individual cannot perform major life activities without the aid of medication. See Senate Report at 23; House Labor Report at 52. It should be noted that the term "average person" is not intended to imply a precise mathematical "average."

Part 1630 notes several factors that should be considered in making the determination of whether an impairment is substantially limiting. These factors are (1) the nature and severity of the impairment, (2) the duration or expected duration of the impairment, and (3) the permanent or long term impact, or the expected permanent or long term impact of, or resulting from, the impairment. The term "duration," as used in this context, refers to the length of time an impairment persists, while the term "impact" refers to the residual effects of an impairment. Thus, for example, a broken leg that takes eight weeks to heal is an impairment of fairly brief duration. However, if the broken leg heals improperly, the "impact" of the impairment would be the resulting permanent limp. Likewise, the effect on cognitive functions resulting from traumatic head injury would be the "impact" of that impairment.

The determination of whether an individual is substantially limited in a major life activity must be made on a case by case basis, without regard to mitigating measures such as medicines, or assistive or prosthetic devices. An individual is not substantially limited in a major life activity if the limitation, when viewed in light of the factors noted above, does not amount to a significant restriction when compared with the abilities of the average person. For example, an individual who had once been able to walk at an extraordinary speed would not be substantially limited in the major life activity of walking if, as a result of a physical impairment, he or she were only able to walk at an average speed, or even at moderately below average speed.

It is important to remember that the restriction on the performance of the major life activity must be the result of a condition that is an impairment. As noted earlier, advanced age, physical or personality characteristics, and environmental, cultural, and economic disadvantages are not impairments. Consequently, even if such factors substantially limit an individual's ability to perform a major life activity, this limitation will not constitute a disability. For example, an individual who is unable to read because he or she was never taught to read would not be an individual with a disability because lack of education is not an impairment. However, an individual who is unable to read because of dyslexia would be an individual with a disability because dyslexia, a learning disability, is an impairment.

If an individual is not substantially limited with respect to any other major life activity, the individual's ability to perform the major life activity of working should be considered. If an individual is substantially limited in any other major life activity, no determination should be made as to whether the individual is substantially limited in working. For example, if an individual is blind, *i.e.*, substantially limited in the major life activity of seeing, there is no need to determine whether the individual is also substantially limited in the major life activity of working. The determination of whether an individual is substantially limited in working must also be made on a case by case basis.

This part lists specific factors that may be used in making the determination of whether the limitation in working is "substantial." These factors are:

(1) The geographical area to which the individual has reasonable access;

(2) The job from which the individual has been disqualified because of an impairment, and the number and types of jobs utilizing similar training, knowledge, skills or abilities, within that geographical area, from which the individual is also disqualified because of the impairment (class of jobs); and/or

(3) The job from which the individual has been disqualified because of an impairment, and the number and types of other jobs not utilizing similar training, knowledge, skills or abilities, within that geographical area, from which the individual is also disqualified because of the impairment (broad range of jobs in various classes).

Thus, an individual is not substantially limited in working just because he or she is unable to perform a particular job for one employer, or because he or she is unable to perform a specialized job or profession requiring extraordinary skill, prowess or talent. For example, an individual who cannot be a commercial airline pilot because of a minor vision impairment, but who can be a commercial airline co-pilot or a pilot for a courier service, would not be substantially limited in the major life activity of working. Nor would a professional baseball pitcher who develops a bad elbow and can no longer throw a baseball be considered substantially limited in the major life activity of working. In both of these examples, the individuals are not substantially limited in the ability to perform any other major life activity and, with regard to the major life activity of working, are only unable to perform either a particular specialized job or a narrow range of jobs. See *Forrisi* v. *Bowen*, 794 F.2d 931 (4th Cir. 1986); *Jasany* v. *U.S. Postal Service*, 755 F.2d 1244 (6th Cir. 1985); *E.E Black, Ltd.* v. *Marshall*, 497 F. Supp. 1088 (D. Hawaii 1980).

On the other hand, an individual does not have to be totally unable to work in order to be considered substantially limited in the major life activity of working. An individual is substantially limited in working if the individual is significantly restricted in the ability to perform a class of jobs or a broad range of jobs in various classes, when compared with the ability of the average person with comparable qualifications to perform those same jobs. For example, an individual who has a back condition that prevents the individual from performing any heavy labor job would be substantially limited in the major life activity of working because the individual's impairment eliminates his or her ability to perform a class of jobs. This would be so even if the individual were able to perform jobs in another class, *e.g.*, the class of semi-skilled jobs. Similarly, suppose an individual has an allergy to a substance found in most high rise office buildings, but seldom found elsewhere, that makes breathing extremely difficult. Since this individual would be substantially limited in the ability to perform the broad range of jobs in various classes that are conducted in high rise office buildings within the geographical area to which he or she has reasonable access, he or she would be substantially limited in working.

The terms "number and types of jobs" and "number and types of other jobs," as used in the factors discussed above, are not intended to require an onerous evidentiary showing. Rather, the terms only require the presentation of evidence of general employment demographics and/or of recognized occupational classifications that indicate the approximate number of jobs (*e.g.*, "few," "many," "most") from which an individual would be excluded because of an impairment.

If an individual has a "mental or physical impairment" that "substantially limits" his or her ability to perform one or more "major life activities," that individual will satisfy the first part of the regulatory definition of "disability" and will be considered an individual with a disability. An individual who satisfies this first part of the definition of the term "disability" is not required to demonstrate that he or she satisfies either of the other parts of the definition. However, if an individual is unable to satisfy this part of the definition, he or she may be able to satisfy one of the other parts of the definition.

Section 1630.2(k) Record of a Substantially Limiting Condition

The second part of the definition provides that an individual with a record of an impairment that substantially limits a major life activity is an individual with a disability. The intent of this provision, in part, is to ensure that people are not discriminated against because of a history of disability. For example, this provision protects former cancer patients from discrimination based on their prior medical history. This provision also ensures that individuals are not discriminated against because they have been misclassified as disabled. For example, individuals misclassified as learning disabled are protected from discrimination on the basis of that erroneous classification. Senate Report at 23; House Labor Report at 52–53; House Judiciary Report at 29.

This part of the definition is satisfied if a record relied on by an employer indicates that the individual has or has had a substantially limiting impairment. The impairment indicated in the record must be an impairment that would substantially limit one or more of the individual's major life activities. There are many types of records that could potentially contain this information, including but not limited to, education, medical, or employment records.

The fact that an individual has a record of being a disabled veteran, or of disability retirement, or is classified as disabled for other purposes does not guarantee that the individual will satisfy the definition of "disability" under part 1630. Other statutes, regulations and programs may have a definition of "disability" that is not the same as the definition set forth in the ADA and contained in part 1630. Accordingly, in order for an individual who has been classified in a record as "disabled" for some other purpose to be considered disabled for purposes of part 1630, the impairment indicated in the record must be a physical or mental impairment that substantially limits one or more of the individual's major life activities.

Section 1630.2(l) Regarded as Substantially Limited in a Major Life Activity

If an individual cannot satisfy either the first part of the definition of "disability" or the second "record of" part of the definition, he or she may be able to satisfy the third part of the definition. The third part of the definition provides that an individual who is regarded by an employer or other covered entity as having an impairment that substantially limits a major life activity is an individual with a disability.

There are three different ways in which an individual may satisfy the definition of "being regarded as having a disability":

(1) The individual may have an impairment which is not substantially limiting but is perceived by the employer or other covered entity as constituting a substantially limiting impairment;

(2) The individual may have an impairment which is only substantially limiting because of the attitudes of others toward the impairment; or

(3) The individual may have no impairment at all but is regarded by the employer or other covered entity as having a substantially limiting impairment.

Senate Report at 23; House Labor Report at 53; House Judiciary Report at 29.

An individual satisfies the first part of this definition if the individual has an impairment that is not substantially limiting, but the covered entity perceives the impairment as being substantially limiting. For example, suppose an employee has controlled high blood pressure that is not substantially limiting. If an employer reassigns the individual to less strenuous work because of unsubstantiated fears that the individual will suffer a heart attack if he or she continues to perform strenuous work, the employer would be regarding the individual as disabled.

An individual satisfies the second part of the "regarded as" definition if the individual has an impairment that is only substantially limiting because of the attitudes of others toward the condition. For example, an individual may have a prominent facial scar or disfigurement, or may have a condition that periodically causes an involuntary jerk of the head but does not limit the individual's major life activities. If an employer discriminates against such an individual because of the negative reactions of customers, the employer would be regarding the individual as disabled and acting on the basis of that perceived disability. See Senate Report at 24; House Labor Report at 53; House Judiciary Report at 30–31.

An individual satisfies the third part of the "regarded as" definition of "disability" if the employer or other covered entity erroneously believes the individual has a substantially limiting impairment that the individual actually does not have. This situation could occur, for example, if an employer discharged an employee in response to a rumor that the employee is infected with Human Immunodeficiency Virus (HIV). Even though the rumor is totally unfounded and the individual has no impairment at all, the individual is considered an individual with a disability because the employer perceived of this individual as being disabled. Thus, in this example, the employer, by discharging this employee, is discriminating on the basis of disability.

The rationale for the "regarded as" part of the definition of disability was articulated by the Supreme Court in the context of the Rehabilitation Act of 1973 in *School Board of Nassau County* v. *Arline*, 480 U.S. 273 (1987). The Court noted that, although an individual may have an impairment that does not in fact substantially limit a major life activity, the reaction of others may prove just as disabling. "Such an impairment might not diminish a person's physical or mental capabilities, but could nevertheless substantially limit that person's ability to work as a result of the negative reactions of others to the impairment." 480 U.S. at 283. The Court concluded that by including "regarded as" in the Rehabilitation Act's

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(2) The individual may have an impairment which is only substantially limiting because of the attitudes of others toward the impairment; or

(3) The individual may have no impairment at all but is regarded by the employer or other covered entity as having a substantially limiting impairment.

Senate Report at 23; House Labor Report at 53; House Judiciary Report at 29.

An individual satisfies the first part of this definition if the individual has an impairment that is not substantially limiting, but the covered entity perceives the impairment as being substantially limiting. For example, suppose an employee has controlled high blood pressure that is not substantially limiting. If an employer reassigns the individual to less strenuous work because of unsubstantiated fears that the individual will suffer a heart attack if he or she continues to perform strenuous work, the employer would be regarding the individual as disabled.

An individual satisfies the second part of the "regarded as" definition if the individual has an impairment that is only substantially limiting because of the attitudes of others toward the condition. For example, an individual may have a prominent facial scar or disfigurement, or may have a condition that periodically causes an involuntary jerk of the head but does not limit the individual's major life activities. If an employer discriminates against such an individual because of the negative reactions of customers, the employer would be regarding the individual as disabled and acting on the basis of that perceived disability. See Senate Report at 24; House Labor Report at 53; House Judiciary Report at 30–31.

An individual satisfies the third part of the "regarded as" definition of "disability" if the employer or other covered entity erroneously believes the individual has a substantially limiting impairment that the individual actually does not have. This situation could occur, for example, if an employer discharged an employee in response to a rumor that the employee is infected with Human Immunodeficiency Virus (HIV). Even though the rumor is totally unfounded and the individual has no impairment at all, the individual is considered an individual with a disability because the employer perceived of this individual as being disabled. Thus, in this example, the employer, by discharging this employee, is discriminating on the basis of disability.

The rationale for the "regarded as" part of the definition of disability was articulated by the Supreme Court in the context of the Rehabilitation Act of 1973 in *School Board of Nassau County* v. *Arline*, 480 U.S. 273 (1987). The Court noted that, although an individual may have an impairment that does not in fact substantially limit a major life activity, the reaction of others may prove just as disabling. "Such an impairment might not diminish a person's physical or mental capabilities, but could nevertheless substantially limit that person's ability to work as a result of the negative reactions of others to the impairment." 480 U.S. at 283. The Court concluded that by including "regarded as" in the Rehabilitation Act's

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definition, "Congress acknowledged that society's accumulated myths and fears about disability and diseases are as handicapping as are the physical limitations that flow from actual impairment." 480 U.S. at 284.

An individual rejected from a job because of the "myths, fears and stereotypes" associated with disabilities would be covered under this part of the definition of disability, whether or not the employer's or other covered entity's perception were shared by others in the field and whether or not the individual's actual physical or mental condition would be considered a disability under the first or second part of this definition. As the legislative history notes, sociologists have identified common attitudinal barriers that frequently result in employers excluding individuals with disabilities. These include concerns regarding productivity, safety, insurance, liability, attendance, cost of accommodation and accessibility, workers' compensation costs, and acceptance by coworkers and customers.

Therefore, if an individual can show that an employer or other covered entity made an employment decision because of a perception of disability based on "myth, fear or stereotype," the individual will satisfy the "regarded as" part of the definition of disability. If the employer cannot articulate a non-discriminatory reason for the employment action, an inference that the employer is acting on the basis of "myth, fear or stereotype" can be drawn.

Section 1630.2(m) Qualified Individual With a Disability

The ADA prohibits discrimination on the basis of disability against qualified individuals with disabilities. The determination of whether an individual with a disability is "qualified" should be made in two steps. The first step is to determine if the individual satisfies the prerequisites for the position, such as possessing the appropriate educational background, employment experience, skills, licenses, etc. For example, the first step in determining whether an accountant who is paraplegic is qualified for a certified public accountant (CPA) position is to examine the individual's credentials to determine whether the individual is a licensed CPA. This is sometimes referred to in the Rehabilitation Act caselaw as determining whether the individual is "otherwise qualified" for the position. See Senate Report at 33; House Labor Report at 64–65. (See § 1630.9 Not Making Reasonable Accommodation).

The second step is to determine whether or not the individual can perform the essential functions of the position held or desired, with or without reasonable accommodation. The purpose of this second step is to ensure that individuals with disabilities who can perform the essential functions of the position held or desired are not denied employment opportunities because they are not able to perform marginal functions of the position. House Labor Report at 55.

The determination of whether an individual with a disability is qualified is to be made at the time of the employment decision. This determination should be based on the capabilities of the individual with a disability at the time of the employment decision, and should not be based on speculation that the employee may become unable in the future or may cause increased health insurance premiums or workers compensation costs.

Section 1630.2(n) Essential Functions

The determination of which functions are essential may be critical to the determination of whether or not the individual with a disability is qualified. The essential functions are those functions that the individual who holds the position must be able to perform unaided or with the assistance of a reasonable accommodation.

The inquiry into whether a particular function is essential initially focuses on whether the employer actually requires employees in the position to perform the functions that the employer asserts are essential. For example, an employer may state that typing is an essential function of a position. If, in fact, the employer has never required any employee in that particular position to type, this will be evidence that typing is not actually an essential function of the position.

If the individual who holds the position is actually required to perform the function the employer asserts is an essential function, the inquiry will then center around whether removing the function would fundamentally alter that position. This determination of whether or not a particular function is essential will generally include one or more of the following factors listed in part 1630.

The first factor is whether the position exists to perform a particular function. For example, an individual may be hired to proofread documents. The ability to proofread the documents would then be an essential function, since this is the only reason the position exists.

The second factor in determining whether a function is essential is the number of other employees available to perform that job function or among whom the performance of that job function can be distributed. This may be a factor either because the total number of available employees is low, or because of the fluctuating demands of the business operation. For example, if an employer has a relatively small number of available employees for the volume of work to be performed, it may be necessary that each employee perform a multitude of different functions. Therefore, the performance of those functions by each employee becomes more critical and the options for reorganizing the work become more limited. In such a situation, functions that might not be essential if there were a larger staff may become essential because the staff size is small compared to the volume of work that has to be done. See *Treadwell* v. *Alexander*, 707 F.2d 473 (11th Cir. 1983).

A similar situation might occur in a larger work force if the workflow follows a cycle of heavy demand for labor intensive work followed by low demand periods. This type of workflow might also make the performance of each function during the peak periods more critical and might limit the employer's flexibility in reorganizing operating procedures. See *Dexler* v. *Tisch*, 660 F. Supp. 1418 (D. Conn. 1987).

The third factor is the degree of expertise or skill required to perform the function. In certain professions and highly skilled positions the employee is hired for his or her expertise or ability to perform the particular function. In such a situation, the performance of that specialized task would be an essential function.

Whether a particular function is essential is a factual determination that must be made on a case by case basis. In determining whether or not a particular function is essential, all relevant evidence should be considered. Part 1630 lists various types of evidence, such as an established job description, that should be considered in determining whether a particular function is essential. Since the list is not exhaustive, other relevant evidence may also be presented. Greater weight will not be granted to the types of evidence included on the list than to the types of evidence not listed.

Although part 1630 does not require employers to develop or maintain job descriptions, written job descriptions prepared before advertising or interviewing applicants for the job, as well as the employer's judgment as to what functions are essential are among the relevant evidence to be considered in determining whether a particular function is essential. The terms of a collective bargaining agreement are also relevant to the determination of whether a particular function is essential. The work experience of past employees in the job or of current employees in similar jobs is likewise relevant to the determination of whether a particular function is essential. See H.R. Conf. Rep. No. 101–596, 101st Cong., 2d Sess. 58 (1990) [hereinafter Conference Report]; House Judiciary Report at 33–34. See also *Hall* v. *U.S. Postal Service*, 857 F.2d 1073 (6th Cir. 1988).

The time spent performing the particular function may also be an indicator of whether that function is essential. For example, if an employee spends the vast majority of his or her time working at a cash register, this would be evidence that operating the cash register is an essential function. The consequences of failing to require the employee to perform the function may be another indicator of whether a particular function is essential. For example, although a firefighter may not regularly have to carry an unconscious adult out of a burning building, the consequence of failing to require the firefighter to be able to perform this function would be serious.

It is important to note that the inquiry into essential functions is not intended to second guess an employer's business judgment with regard to production standards, whether qualitative or quantitative, nor to require employers to lower such standards. (See § 1630.10 Qualification Standards, Tests and Other Selection Criteria). If an employer requires its typists to be able to accurately type 75 words per minute, it will not be called upon to explain why an inaccurate work product, or a typing speed of 65 words per minute, would not be adequate. Similarly, if a hotel requires its service workers to thoroughly clean 16 rooms per day, it will not have to explain why it requires thorough cleaning, or why it chose a 16 room rather than a 10 room requirement. However, if an employer does require accurate 75 word per minute typing or the thorough cleaning of 16 rooms, it will have to show that it actually imposes such requirements on its employees in fact, and not simply on paper. It should also be noted that, if it is alleged that the employer intentionally selected the particular level of production to exclude individuals with disabilities, the employer may have to offer a legitimate, nondiscriminatory reason for its selection.

Section 1630.2(o) Reasonable Accommodation

An individual is considered a "qualified individual with a disability" if the individual can perform the essential functions of the position held or desired with or without reasonable accommodation. In general, an accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities. There are three categories of reasonable accommodation. These are (1) accommodations that are required to ensure equal opportunity in the application process; (2) accommodations that enable the employer's employees with disabilities to perform the essential functions of the position held or desired; and (3) accommodations that enable the employer's employees with disabilities to enjoy equal benefits and privileges of employment as are enjoyed by employees without disabilities. It should be noted that nothing in this part prohibits employers or other covered entities from providing accommodations beyond those required by this part.

Part 1630 lists the examples, specified in title I of the ADA, of the most common types of accommodation that an employer or other covered entity may be required to provide. There are any number of other specific accommodations that may be appropriate for particular situations but are not specifically mentioned in this listing. This listing is not intended to be exhaustive of accommodation possibilities. For example, other accommodations could include permitting the use of accrued paid leave or providing additional unpaid leave for necessary treatment, making employer provided transportation accessible, and providing reserved parking spaces. Providing personal assistants, such as a page turner for an employee with no hands or a travel attendant to act as a sighted guide to assist a blind employee on occasional business trips, may also be a reasonable accommodation. Senate Report at 31; House Labor Report at 62; House Judiciary Report at 39.

It may also be a reasonable accommodation to permit an individual with a disability the opportunity to provide and utilize equipment, aids or services that an employer is not required to provide as a reasonable accommodation. For example, it would be a reasonable accommodation for an employer to permit an individual who is blind to use a guide dog at work, even though the employer would not be required to provide a guide dog for the employee.

The accommodations included on the list of reasonable accommodations are generally self explanatory. However, there are a few that require further explanation. One of these is the accommodation of making existing facilities used by employees readily accessible to, and usable by, individuals with disabilities. This accommodation includes both those areas that must be accessible for the employee to perform essential job functions, as well as non-work areas used by the employer's employees for other purposes. For example, accessible break rooms, lunch rooms, training rooms, restrooms etc., may be required as reasonable accommodations.

Another of the potential accommodations listed is "job restructuring." An employer or other covered entity may restructure a job by reallocating or redistributing nonessential, marginal job functions. For example, an employer may have two jobs, each of which entails the performance of a number of marginal functions. The employer hires a qualified individual with a disability who is able to perform some of the marginal functions of each job but not all of the marginal functions of either job. As an accommodation, the employer may redistribute the marginal functions so that all of the marginal functions that the qualified individual with a disability can perform are made a part of the position to be filled by the qualified individual with a disability. The remaining marginal functions that the individual with a disability cannot perform would then be transferred to the other position. See Senate Report at 31; House Labor Report at 62.

An employer or other covered entity is not required to reallocate essential functions. The essential functions are by definition those that the individual who holds the job would have to perform, with or without reasonable accommodation, in order to be considered qualified for the position. For example, suppose a security guard position requires the individual who holds the job to inspect identification cards. An employer would not have to provide an individual who is legally blind with an assistant to look at the identification cards for the legally blind employee. In this situation the assistant would be performing the job for the individual with a disability rather than assisting the individual to perform the job. See *Coleman* v. *Darden,* 595 F.2d 533 (10th Cir. 1979).

An employer or other covered entity may also restructure a job by altering when and/or how an essential function is performed. For example, an essential function customarily performed in the early morning hours may be rescheduled until later in the day as a reasonable accommodation to a disability that precludes performance of the function at the customary hour. Likewise, as a reasonable accommodation, an employee with a disability that inhibits the ability to write, may be permitted to computerize records that were customarily maintained manually.

Reassignment to a vacant position is also listed as a potential reasonable accommodation. In general, reassignment should be considered only when accommodation within the individual's current position would pose an undue hardship. Reassignment is not available to applicants. An applicant for a position must be qualified for, and be able to perform the essential functions of, the position sought with or without reasonable accommodation.

Reassignment may not be used to limit, segregate, or otherwise discriminate against employees with disabilities by forcing reassignments to undesirable positions or to designated offices or facilities. Employers should reassign the individual to an equivalent position, in terms of pay, status, etc., if the individual is qualified, and if the position is vacant within a reasonable amount of time. A "reasonable amount of time" should be determined in light of the totality of the circumstances. As an example, suppose there is no vacant position available at the time that an individual with a disability requests reassignment as a reasonable accommodation. The employer, however, knows that an equivalent position for which the individual is qualified, will become vacant next week. Under these circumstances, the employer should reassign the individual to the position when it becomes available.

An employer may reassign an individual to a lower graded position if there are no accommodations that would enable the employee to remain in the current position and there are no vacant equivalent positions for which the individual is qualified with or without reasonable accommodation. An employer, however, is not required to maintain the reassigned individual with a disability at the salary of the higher graded position if it does not so maintain reassigned employees who are not disabled. It should also be noted that an employer is not required to promote an individual with a disability as an accommodation. See Senate Report at 31–32; House Labor Report at 63.

The determination of which accommodation is appropriate in a particular situation involves a process in which the employer and employee identify the precise limitations imposed by the disability and explore potential accommodations that would overcome those limitations. This process is discussed more fully in § 1630.9 Not Making Reasonable Accommodation.

Section 1630.2(p) Undue Hardship

An employer or other covered entity is not required to provide an accommodation that will impose an undue hardship on the operation of the employer's or other covered entity's business. The term "undue hardship" means significant difficulty or expense in, or resulting from, the provision of the accommodation. The "undue hardship" provision takes into account the financial realities of the particular employer or other covered entity. However, the concept of undue hardship is not limited to financial difficulty. "Undue hardship" refers to any accommodation that would be unduly costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the business. See Senate Report at 35; House Labor Report at 67.

For example, suppose an individual with a disabling visual impairment that makes it extremely difficult to see in dim lighting applies for a position as a waiter in a nightclub and requests that the club be brightly lit as a reasonable accommodation. Although the individual may be able to perform the job in bright lighting, the nightclub will probably be able to demonstrate that that particular accommodation, though inexpensive, would impose an undue hardship if the bright lighting would destroy the ambience of the nightclub and/or make it difficult for the customers to see the stage show. The fact that that particular accommodation poses an undue hardship, however, only means that the employer is not required to provide that accommodation. If there is another accommodation that will not create an undue hardship, the employer would be required to provide the alternative accommodation.

An employer's claim that the cost of a particular accommodation will impose an undue hardship will be analyzed in light of the factors outlined in part 1630. In part, this analysis requires a determination of whose financial resources should be considered in deciding whether the accommodation is unduly costly. In some cases the financial resources of the employer or other covered entity in its entirety should be considered in determining whether the cost of an accommodation poses an undue hardship. In other cases, consideration of the financial resources of the employer or other covered entity as a whole may be inappropriate because it may not give an accurate picture of the financial resources available to the particular facility that will actually be required to provide the accommodation. See House Labor Report at 68–69; House Judiciary Report at 40–41; see also Conference Report at 56–57.

If the employer or other covered entity asserts that only the financial resources of the facility where the individual will be employed should be considered, part 1630 requires a factual determination of the relationship between the employer or other covered entity and the facility that will provide the accommodation. As an example, suppose that an independently owned fast food franchise that receives no money from the franchisor refuses to hire an individual with a hearing impairment because it asserts that it would be an undue hardship to provide an interpreter to enable the individual to participate in monthly staff meetings. Since the financial relationship between the franchisor and the franchise is limited to payment of an annual franchise fee, only the financial resources of the franchise would be considered in determining whether or not providing the accommodation would be an undue hardship. See House Labor Report at 68; House Judiciary Report at 40.

If the employer or other covered entity can show that the cost of the accommodation would impose an undue hardship, it would still be required to provide the accommodation if the funding is available from another source, *e.g.*, a State vocational rehabilitation agency, or if Federal, State or local tax deductions or tax credits are available to offset the cost of the accommodation. If the employer or other covered entity receives, or is eligible to receive, monies from an external source that would pay the entire cost of the accommodation, it cannot claim cost as an undue hardship. In the absence of such funding, the individual with a disability requesting the accommodation should be given the option of providing the accommodation or of paying that portion of the cost which constitutes the undue hardship on the operation of the business. To the extent that such monies pay or would pay for only part of the cost of the accommodation, only that portion of the cost of the accommodation that could not be recovered—the final net cost to the entity—may be considered in determining undue hardship. (See § 1630.9 Not Making Reasonable Accommodation). See Senate Report at 36; House Labor Report at 69.

Section 1630.2(r) Direct Threat

An employer may require, as a qualification standard, that an individual not pose a direct threat to the health or safety of himself/herself or others. Like any other qualification standard, such a standard must apply to all applicants or employees and not just to individuals with disabilities. If, however, an individual poses a direct threat as a result of a disability, the employer must determine whether a reasonable accommodation would either eliminate the risk or reduce it to an acceptable level. If no accommodation exists that would either eliminate or reduce the risk, the employer may refuse to hire an applicant or may discharge an employee who poses a direct threat.

An employer, however, is not permitted to deny an employment opportunity to an individual with a disability merely because of a slightly increased risk. The risk can only be considered when it poses a significant risk, *i.e.*, high probability, of substantial harm; a speculative or remote risk is insufficient. See Senate Report at 27; House Report Labor Report at 56–57; House Judiciary Report at 45.

Determining whether an individual poses a significant risk of substantial harm to others must be made on a case by case basis. The employer should identify the specific risk posed by the individual. For individuals with mental or emotional disabilities, the employer must identify the specific behavior on the part of the individual that would pose the direct threat. For individuals with physical disabilities, the employer must identify the aspect of the disability that would pose the direct threat. The employer should then consider the four factors listed in part 1630:

(1) The duration of the risk;

(2) The nature and severity of the potential harm;

(3) The likelihood that the potential harm will occur; and

(4) The imminence of the potential harm.

Such consideration must rely on objective, factual evidence—not on subjective perceptions, irrational fears, patronizing attitudes, or stereotypes—about the nature or effect of a particular disability, or of disability generally. See Senate Report at 27; House Labor Report at 56–57; House Judiciary Report at 45–46. See also *Strathie* v. *Department of Transportation*, 716 F.2d 227 (3d Cir. 1983). Relevant evidence may include input from the individual with a disability, the experience of the individual with a disability in previous similar positions, and opinions of medical doctors, rehabilitation counselors, or physical therapists who have expertise in the disability involved and/or direct knowledge of the individual with the disability.

An employer is also permitted to require that an individual not pose a direct threat of harm to his or her own safety or health. If performing the particular functions of a job would result in a high probability of substantial harm to the individual, the employer could reject or discharge the individual unless a reasonable accommodation that would not cause an undue hardship would avert the harm. For example, an employer would not be required to hire an individual, disabled by narcolepsy, who frequently and unexpectedly loses consciousness for a carpentry job the essential functions of which require the use of power saws and other dangerous equipment, where no accommodation exists that will reduce or eliminate the risk.

The assessment that there exists a high probability of substantial harm to the individual, like the assessment that there exists a high probability of substantial harm to others, must be strictly based on valid medical analyses and/or on other objective evidence. This determination must be based on individualized factual data, using the factors discussed above, rather than on stereotypic or patronizing assumptions and must consider potential reasonable accommodations. Generalized fears about risks from the employment environment, such as exacerbation of the disability caused by stress, cannot be used by an employer to disqualify an individual with a disability. For example, a law firm could not reject an applicant with a history of disabling mental illness based on a generalized fear that the stress of trying to make partner might trigger a relapse of the individual's mental illness. Nor can generalized fears about risks to individuals with disabilities in the event of an evacuation or other emergency be used by an employer to disqualify an individual with a disability. See Senate Report at 56; House Labor Report at 73–74; House Judiciary Report at 45. See also *Mantolete* v. *Bolger*, 767 F.2d 1416 (9th Cir. 1985); *Bentivegno* v. *U.S. Department of Labor*, 694 F.2d 619 (9th Cir.1982).

Section 1630.3 Exceptions to the Definitions of "Disability" and "Qualified Individual with a Disability"

Section 1630.3 (a) through (c) Illegal Use of Drugs

Part 1630 provides that an individual currently engaging in the illegal use of drugs is not an individual with a disability for purposes of this part when the employer or other covered entity acts on the basis of such use. Illegal use of drugs refers both to the use of unlawful drugs, such as cocaine, and to the unlawful use of prescription drugs.

Employers, for example, may discharge or deny employment to persons who illegally use drugs, on the basis of such use, without fear of being held liable for discrimination. The term "currently engaging" is not intended to be limited to the use of drugs on the day of, or within a matter of days or weeks before, the employment action in question. Rather, the provision is intended to apply to the illegal use of drugs that has occurred recently enough to indicate that the individual is actively engaged in such conduct. See Conference Report at 64.

Individuals who are erroneously perceived as engaging in the illegal use of drugs, but are not in fact illegally using drugs are not excluded from the definitions of the terms "disability" and "qualified individual with a disability." Individuals who are no longer illegally using drugs and who have either been rehabilitated successfully or are in the process of completing a rehabilitation program are, likewise, not excluded from the definitions of those terms. The term "rehabilitation program" refers to both in-patient and out-patient programs, as well as to appropriate employee assistance programs, professionally recognized self-help programs, such as Narcotics Anonymous, or other programs that provide professional (not necessarily medical) assistance and counseling for individuals who illegally use drugs. See Conference Report at 64; see also House Labor Report at 77; House Judiciary Report at 47.

It should be noted that this provision simply provides that certain individuals are not excluded from the definitions of "disability" and "qualified individual with a disability." Consequently, such individuals are still required to establish that they satisfy the requirements of these definitions in order to be protected by the ADA and this part. An individual erroneously regarded as illegally using drugs, for example, would have to show that he or she was regarded as a drug addict in order to demonstrate that he or she meets the definition of "disability" as defined in this part.

Employers are entitled to seek reasonable assurances that no illegal use of drugs is occurring or has occurred recently enough so that continuing use is a real and ongoing problem. The reasonable assurances that employers may ask applicants or employees to provide include evidence that the individual is participating in a drug treatment program and/or evidence, such as drug test results, to show that the individual is not currently engaging in the illegal use of drugs. An employer, such as a law enforcement agency, may also be able to impose a qualification standard that excludes individuals with a history of illegal use of drugs if it can show that the standard is job-related and consistent with business necessity. (See § 1630.10 Qualification Standards, Tests and Other Selection Criteria) See Conference Report at 64.

Section 1630.4 Discrimination Prohibited

This provision prohibits discrimination against a qualified individual with a disability in all aspects of the employment relationship. The range of employment decisions covered by this nondiscrimination mandate is to be construed in a manner consistent with the regulations implementing section 504 of the Rehabilitation Act of 1973.

Part 1630 is not intended to limit the ability of covered entities to choose and maintain a qualified workforce. Employers can continue to use job-related criteria to select qualified employees, and can continue to hire employees who can perform the essential functions of the job.

Section 1630.5 Limiting, Segregating and Classifying

This provision and the several provisions that follow describe various specific forms of discrimination that are included within the general prohibition of § 1630.4. Covered entities are prohibited from restricting the employment opportunities of qualified individuals with disabilities on the basis of stereotypes and myths about the individual's disability. Rather, the capabilities of qualified individuals with disabilities must be determined on an individualized, case by case basis. Covered entities are also prohibited from segregating qualified employees with disabilities into separate work areas or into separate lines of advancement.

Thus, for example, it would be a violation of this part for an employer to limit the duties of an employee with a disability based on a presumption of what is best for an individual with such a disability, or on a presumption about the abilities of an individual with such a disability. It would be a violation of this part for an employer to adopt a separate track of job promotion or progression for employees with disabilities based on a presumption that employees with disabilities are uninterested in, or incapable of, performing particular jobs. Similarly, it would be a violation for an employer to assign or reassign (as a reasonable accommodation) employees with disabilities to one particular office or installation, or to require that employees with disabilities only use particular employer provided non-work facilities such as segregated break-rooms, lunch rooms, or lounges. It would also be a violation of this part to deny employment to an applicant or employee with a disability based on generalized fears about the safety of an individual with such a disability, or based on generalized assumptions about the absenteeism rate of an individual with such a disability.

In addition, it should also be noted that this part is intended to require that employees with disabilities be accorded equal access to whatever health insurance coverage the employer provides to other employees. This part does not, however, affect pre-existing condition clauses included in health insurance policies offered by employers. Consequently, employers may continue to offer policies that contain such clauses, even if they adversely affect individuals with disabilities, so long as the clauses are not used as a subterfuge to evade the purposes of this part.

So, for example, it would be permissible for an employer to offer an insurance policy that limits coverage for certain procedures or treatments to a specified number per year. Thus, if a health insurance plan provided coverage for five blood transfusions a year to all covered employees, it would not be discriminatory to offer this plan simply because a hemophiliac employee may require more than five blood transfusions annually. However, it would not be permissible to limit or deny the hemophiliac employee coverage for other procedures, such as heart surgery or the setting of a broken leg, even though the plan would not have to provide coverage for the additional blood transfusions that may be involved in these procedures. Likewise, limits may be placed on reimbursements for certain procedures or on the types of drugs or procedures covered (e.g. limits on the number of permitted X-rays or non-coverage of experimental drugs or procedures), but that limitation must be applied equally to individuals with and without disabilities. See Senate Report at 28–29; House Labor Report at 58–59; House Judiciary Report at 36.

Leave policies or benefit plans that are uniformly applied do not violate this part simply because they do not address the special needs of every individual with a disability. Thus, for example, an employer that reduces the number of paid sick leave days that it will provide to all employees, or reduces the amount of medical insurance coverage that it will provide to all employees, is not in violation of this part, even if the benefits reduction has an impact on employees with disabilities in need of greater sick leave and medical coverage. Benefits reductions adopted for discriminatory reasons are in violation of this part. See *Alexander* v. *Choate*, 469 U.S. 287 (1985). See Senate Report at 85; House Labor Report at 137. (See also, the discussion at § 1630.16(f) Health Insurance, Life Insurance, and Other Benefit Plans).

Section 1630.6 Contractual or Other Arrangements

An employer or other covered entity may not do through a contractual or other relationship what it is prohibited from doing directly. This provision does not affect the determination of whether or not one is a "covered entity" or "employer" as defined in § 1630.2.

This provision only applies to situations where an employer or other covered entity has entered into a contractual relationship that has the effect of discriminating against its own employees or applicants with disabilities. Accordingly, it would be a violation for an employer to participate in a contractual relationship that results in discrimination against the employer's employees with disabilities in hiring, training, promotion, or in any other aspect of the employment relationship. This provision applies whether or not the employer or other covered entity intended for the contractual relationship to have the discriminatory effect.

Part 1630 notes that this provision applies to parties on either side of the contractual or other relationship. This is intended to highlight that an employer whose employees provide services to others, like an employer whose employees receive services, must ensure that those employees are not discriminated against on the basis of disability. For example, a copier company whose service representative is a dwarf could be required to provide a stepstool, as a reasonable accommodation, to enable him to perform the necessary repairs. However, the employer would not be required, as a

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However, it would not be permissible to limit or deny the hemophiliac employee coverage for other procedures, such as heart surgery or the setting of a broken leg, even though the plan would not have to provide coverage for the additional blood transfusions that may be involved in these procedures. Likewise, limits may be placed on reimbursements for certain procedures or on the types of drugs or procedures covered (e.g. limits on the number of permitted X-rays or non-coverage of experimental drugs or procedures), but that limitation must be applied equally to individuals with and without disabilities. See Senate Report at 28–29; House Labor Report at 58–59; House Judiciary Report at 36.

Leave policies or benefit plans that are uniformly applied do not violate this part simply because they do not address the special needs of every individual with a disability. Thus, for example, an employer that reduces the number of paid sick leave days that it will provide to all employees, or reduces the amount of medical insurance coverage that it will provide to all employees, is not in violation of this part, even if the benefits reduction has an impact on employees with disabilities in need of greater sick leave and medical coverage. Benefits reductions adopted for discriminatory reasons are in violation of this part. See *Alexander* v. *Choate,* 469 U.S. 287 (1985). See Senate Report at 85; House Labor Report at 137. (See also, the discussion at § 1630.16(f) Health Insurance, Life Insurance, and Other Benefit Plans).

Section 1630.6 Contractual or Other Arrangements

An employer or other covered entity may not do through a contractual or other relationship what it is prohibited from doing directly. This provision does not affect the determination of whether or not one is a "covered entity" or "employer" as defined in § 1630.2.

This provision only applies to situations where an employer or other covered entity has entered into a contractual relationship that has the effect of discriminating against its own employees or applicants with disabilities. Accordingly, it would be a violation for an employer to participate in a contractual relationship that results in discrimination against the employer's employees with disabilities in hiring, training, promotion, or in any other aspect of the employment relationship. This provision applies whether or not the employer or other covered entity intended for the contractual relationship to have the discriminatory effect.

Part 1630 notes that this provision applies to parties on either side of the contractual or other relationship. This is intended to highlight that an employer whose employees provide services to others, like an employer whose employees receive services, must ensure that those employees are not discriminated against on the basis of disability. For example, a copier company whose service representative is a dwarf could be required to provide a stepstool, as a reasonable accommodation, to enable him to perform the necessary repairs. However, the employer would not be required, as a

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reasonable accommodation, to make structural changes to its customer s inaccessible premises.

The existence of the contractual relationship adds no new obligations under part 1630. The employer, therefore, is not liable through the contractual arrangement for any discrimination by the contractor against the contractors own employees or applicants, although the contractor, as an employer, may be liable for such discrimination.

An employer or other covered entity, on the other hand, cannot evade the obligations imposed by this part by engaging in a contractual or other relationship. For example, an employer cannot avoid its responsibility to make reasonable accommodation subject to the undue hardship limitation through a contractual arrangement. See Conference Report at 59; House Labor Report at 59–61; House Judiciary Report at 36–37.

To illustrate, assume that an employer is seeking to contract with a company to provide training for its employees. Any responsibilities of reasonable accommodation applicable to the employer in providing the training remain with that employer even if it contracts with another company for this service. Thus, if the training company were planning to conduct the training at an inaccessible location, thereby making it impossible for an employee who uses a wheelchair to attend, the employer would have a duty to make reasonable accommodation unless to do so would impose an undue hardship. Under these circumstances, appropriate accommodations might include (1) having the training company identify accessible training sites and relocate the training program; (2) having the training company make the training site accessible; (3) directly making the training site accessible or providing the training company with the means by which to make the site accessible; (4) identifying and contracting with another training company that uses accessible sites; or (5) any other accommodation that would result in making the training available to the employee.

As another illustration, assume that instead of contracting with a training company, the employer contracts with a hotel to host a conference for its employees. The employer will have a duty to ascertain and ensure the accessibility of the hotel and its conference facilities. To fulfill this obligation the employer could, for example, inspect the hotel first-hand or ask a local disability group to inspect the hotel. Alternatively, the employer could ensure that the contract with the hotel specifies it will provide accessible guest rooms for those who need them and that all rooms to be used for the conference, including exhibit and meeting rooms, are accessible. If the hotel breaches this accessibility provision, the hotel may be liable to the employer, under a non-ADA breach of contract theory, for the cost of any accommodation needed to provide access to the hotel and conference, and for any other costs accrued by the employer. (In addition, the hotel may also be independently liable under title III of the ADA). However, this would not relieve the employer of its responsibility under this part nor shield it from charges of discrimination by its own employees. See House Labor Report at 40; House Judiciary Report at 37.

Section 1630.8 Relationship or Association With an Individual With a Disability

This provision is intended to protect any qualified individual, whether or not that individual has a disability, from discrimination because that person is known to have an association or relationship with an individual who has a known disability. This protection is not limited to those who have a familial relationship with an individual with a disability.

To illustrate the scope of this provision, assume that a qualified applicant without a disability applies for a job and discloses to the employer that his or her spouse has a disability. The employer thereupon declines to hire the applicant because the employer believes that the applicant would have to miss work or frequently leave work early in order to care for the spouse. Such a refusal to hire would be prohibited by this provision. Similarly, this provision would prohibit an employer from discharging an employee because the employee does volunteer work with people who have AIDS, and the employer fears that the employee may contract the disease.

This provision also applies to other benefits and privileges of employment. For example, an employer that provides health insurance benefits to its employees for their dependents may not reduce the level of those benefits to an employee simply because that employee has a dependent with a disability. This is true even if the provision of such benefits would result in increased health insurance costs for the employer.

It should be noted, however, that an employer need not provide the applicant or employee without a disability with a reasonable accommodation because that duty only applies to qualified applicants or employees with disabilities. Thus, for example, an employee would not be entitled to a modified work schedule as an accommodation to enable the employee to care for a spouse with a disability. See Senate Report at 30; House Labor Report at 61–62; House Judiciary Report at 38–39.

Section 1630.9 Not Making Reasonable Accommodation

The obligation to make reasonable accommodation is a form of non-discrimination. It applies to all employment decisions and to the job application process. This obligation does not extend to the provision of adjustments or modifications that are primarily for the personal benefit of the individual with a disability. Thus, if an adjustment or modification is job-related, *e.g.*, specifically assists the individual in performing the duties of a particular job, it will be considered a type of reasonable accommodation. On the other hand, if an adjustment or modification assists the individual throughout his or her daily activities, on and off the job, it will be considered a personal item that the employer is not required to provide. Accordingly, an employer would generally not be required to provide an employee with a disability with a prosthetic limb, wheelchair, or eyeglasses. Nor would an employer have to provide as an accommodation any amenity or convenience that is not job-related, such as a private hot plate, hot pot or refrigerator that is not provided to employees without disabilities. See Senate Report at 31; House Labor Report at 62.

It should be noted, however, that the provision of such items may be required as a reasonable accommodation where such items are specifically designed or required to meet job-related rather than personal needs. An employer, for example, may have to provide an individual with a disabling visual impairment with eyeglasses specifically designed to enable the individual to use the office computer monitors, but that are not otherwise needed by the individual outside of the office.

The term "supported employment," which has been applied to a wide variety of programs to assist individuals with severe disabilities in both competitive and non-competitive employment, is not synonymous with reasonable accommodation. Examples of supported employment include modified training materials, restructuring essential functions to enable an individual to perform a job, or hiring an outside professional ("job coach") to assist in job training. Whether a particular form of assistance would be required as a reasonable accommodation must be determined on an individualized, case by case basis without regard to whether that assistance is referred to as "supported employment." For example, an employer, under certain circumstances, may be required to provide modified training materials or a temporary "job coach" to assist in the training of a qualified individual with a disability as a reasonable accommodation. However, an employer would not be required to restructure the essential functions of a position to fit the skills of an individual with a disability who is not otherwise qualified to perform the position, as is done in certain supported employment programs. See 34 CFR part 363. It should be noted that it would not be a violation of this part for an employer to provide any of these personal modifications or adjustments, or to engage in supported employment or similar rehabilitative programs.

The obligation to make reasonable accommodation applies to all services and programs provided in connection with employment, and to all non-work facilities provided or maintained by an employer for use by its employees. Accordingly, the obligation to accommodate is applicable to employer sponsored placement or counseling services, and to employer provided cafeterias, lounges, gymnasiums, auditoriums, transportation and the like.

The reasonable accommodation requirement is best understood as a means by which barriers to the equal employment opportunity of an individual with a disability are removed or alleviated. These barriers may, for example, be physical or structural obstacles that inhibit or prevent the access of an individual with a disability to job sites, facilities or equipment. Or they may be rigid work schedules that permit no flexibility as to when work is performed or when breaks may be taken, or inflexible job procedures that unduly limit the modes of communication that are used on the job, or the way in which particular tasks are accomplished.

The term "otherwise qualified" is intended to make clear that the obligation to make reasonable accommodation is owed only to an individual with a disability who is qualified within the meaning of § 1630.2(m) in that he or she satisfies all the skill, experience, education and other job-related selection criteria. An individual with a disability is "otherwise qualified," in other words, if he or she is qualified for a job, except that, because of the disability, he or she needs a reasonable accommodation to be able to perform the job's essential functions.

For example, if a law firm requires that all incoming lawyers have graduated from an accredited law school and have passed the bar examination, the law firm need not provide an accommodation to an individual with a visual impairment who has not met these selection criteria. That individual is not entitled to a reasonable accommodation because the individual is not "otherwise qualified" for the position.

On the other hand, if the individual has graduated from an accredited law school and passed the bar examination, the individual would be "otherwise qualified." The law firm would thus be required to provide a reasonable accommodation, such as a machine that magnifies print, to enable the individual to perform the essential functions of the attorney position, unless the necessary accommodation would impose an undue hardship on the law firm. See Senate Report at 33–34; House Labor Report at 64–65.

The reasonable accommodation that is required by this part should provide the qualified individual with a disability with an equal employment opportunity. Equal employment opportunity means an opportunity to attain the same level of performance, or to enjoy the same level of benefits and privileges of employment as are available to the average similarly situated employee without a disability. Thus, for example, an accommodation made to assist an employee with a disability in the performance of his or her job must be adequate to enable the individual to perform the essential functions of the relevant position. The accommodation, however, does not have to be the "best" accommodation possible, so long as it is sufficient to meet the job-related needs of the individual being accommodated. Accordingly, an employer would not have to provide an employee disabled by a back impairment with a state-of-the art mechanical lifting device if it provided the employee with a less expensive or more readily available device that enabled the employee to perform the essential functions of the job. See Senate Report at 35; House Labor Report at 66; see also *Carter* v. *Bennett*, 840 F.2d 63 (DC Cir. 1988).

Employers are obligated to make reasonable accommodation only to the physical or mental limitations resulting from the disability of a qualified individual with a disability that is known to the employer. Thus, an employer would not be expected to accommodate disabilities of which it is unaware. If an employee with a known disability is having difficulty performing his or her job, an employer may inquire whether the employee is in need of a reasonable accommodation. In general, however, it is the responsibility of the individual with a disability to inform the employer that an accommodation is needed. When the need for an accommodation is not obvious, an employer, before providing a reasonable accommodation, may require that the individual with a disability provide documentation of the need for accommodation.

See Senate Report at 34; House Labor Report at 65.

Process of Determining the Appropriate Reasonable Accommodation

Once a qualified individual with a disability has requested provision of a reasonable accommodation, the employer must make a reasonable effort to determine the appropriate accommodation. The appropriate reasonable accommodation is best determined through a flexible, interactive process that involves both the employer and the qualified individual with a disability. Although this process is described below in terms of accommodations that enable the individual with a disability to perform the essential functions of the position held or desired, it is equally applicable to accommodations involving the job application process, and to accommodations that enable the individual with a disability to enjoy equal benefits and privileges of employment. See Senate Report at 34–35; House Labor Report at 65–67.

When a qualified individual with a disability has requested a reasonable accommodation to assist in the performance of a job, the employer, using a problem solving approach, should:

(1) Analyze the particular job involved and determine its purpose and essential functions;

(2) Consult with the individual with a disability to ascertain the precise job-related limitations imposed by the individual's disability and how those limitations could be overcome with a reasonable accommodation;

(3) In consultation with the individual to be accommodated, identify potential accommodations and assess the effectiveness each would have in enabling the individual to perform the essential functions of the position; and

(4) Consider the preference of the individual to be accommodated and select and implement the accommodation that is most appropriate for both the employee and the employer.

In many instances, the appropriate reasonable accommodation may be so obvious to either or both the employer and the qualified individual with a disability that it may not be necessary to proceed in this step-by-step fashion. For example, if an employee who uses a wheelchair requests that his or her desk be placed on blocks to elevate the desktop above the arms of the wheelchair and the employer complies, an appropriate accommodation has been requested, identified, and provided without either the employee or employer being aware of having engaged in any sort of "reasonable accommodation process."

However, in some instances neither the individual requesting the accommodation nor the employer can readily identify the appropriate accommodation. For example, the individual needing the accommodation may not know enough about the equipment used by the employer or the exact nature of the work site to suggest an appropriate accommodation. Likewise, the employer may not know enough about the individual's disability or the limitations that disability would impose on the performance of the job to suggest an appropriate accommodation. Under such circumstances, it may be necessary for the employer to initiate a more defined problem solving process, such as the step-by-step process described above, as part of its reasonable effort to identify the appropriate reasonable accommodation.

This process requires the individual assessment of both the particular job at issue, and the specific physical or mental limitations of the particular individual in need of reasonable accommodation. With regard to assessment of the job, "individual assessment" means analyzing the actual job duties and determining the true purpose or object of the job. Such an assessment is necessary to ascertain which job functions are the essential functions that an accommodation must enable an individual with a disability to perform.

After assessing the relevant job, the employer, in consultation with the individual requesting the accommodation, should make an assessment of the specific limitations imposed by the disability on the individual's performance of the job's essential functions. This assessment will make it possible to ascertain the precise barrier to the employment opportunity which, in turn, will make it possible to determine the accommodation(s) that could alleviate or remove that barrier.

If consultation with the individual in need of the accommodation still does not reveal potential appropriate accommodations, then the employer, as part of this process, may find that technical assistance is helpful in determining how to accommodate the particular individual in the specific situation. Such assistance could be sought from the Commission, from state or local rehabilitation agencies, or from disability constituent organizations. It should be noted, however, that, as provided in § 1630.9(c) of this part, the failure to obtain or receive technical assistance from the federal agencies that administer the ADA will not excuse the employer from its reasonable accommodation obligation.

Once potential accommodations have been identified, the employer should assess the effectiveness of each potential accommodation in assisting the individual in need of the accommodation in the performance of the essential functions of the position. If more than one of these accommodations will enable the individual to perform the essential functions or if the individual would prefer to provide his or her own accommodation, the preference of the individual with a disability should be given

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This process requires the individual assessment of both the particular job at issue, and the specific physical or mental limitations of the particular individual in need of reasonable accommodation. With regard to assessment of the job, "individual assessment" means analyzing the actual job duties and determining the true purpose or object of the job. Such an assessment is necessary to ascertain which job functions are the essential functions that an accommodation must enable an individual with a disability to perform.

After assessing the relevant job, the employer, in consultation with the individual requesting the accommodation, should make an assessment of the specific limitations imposed by the disability on the individual's performance of the job's essential functions. This assessment will make it possible to ascertain the precise barrier to the employment opportunity which, in turn, will make it possible to determine the accommodation(s) that could alleviate or remove that barrier.

If consultation with the individual in need of the accommodation still does not reveal potential appropriate accommodations, then the employer, as part of this process, may find that technical assistance is helpful in determining how to accommodate the particular individual in the specific situation. Such assistance could be sought from the Commission, from state or local rehabilitation agencies, or from disability constituent organizations. It should be noted, however, that, as provided in § 1630.9(c) of this part, the failure to obtain or receive technical assistance from the federal agencies that administer the ADA will not excuse the employer from its reasonable accommodation obligation.

Once potential accommodations have been identified, the employer should assess the effectiveness of each potential accommodation in assisting the individual in need of the accommodation in the performance of the essential functions of the position. If more than one of these accommodations will enable the individual to perform the essential functions or if the individual would prefer to provide his or her own accommodation, the preference of the individual with a disability should be given

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primary consideration. However, the employer providing the accommodation has the ultimate discretion to choose between effective accommodations, and may choose the less expensive accommodation or the accommodation that is easier for it to provide. It should also be noted that the individual's willingness to provide his or her own accommodation does not relieve the employer of the duty to provide the accommodation should the individual for any reason be unable or unwilling to continue to provide the accommodation.

Reasonable Accommodation Process Illustrated

The following example illustrates the informal reasonable accommodation process. Suppose a Sack Handler position requires that the employee pick up fifty pound sacks and carry them from the company loading dock to the storage room, and that a sack handler who is disabled by a back impairment requests a reasonable accommodation. Upon receiving the request, the employer analyzes the Sack Handler job and determines that the essential function and purpose of the job is not the requirement that the job holder physically lift and carry the sacks, but the requirement that the job holder cause the sack to move from the loading dock to the storage room.

The employer then meets with the sack handler to ascertain precisely the barrier posed by the individual's specific disability to the performance of the job's essential function of relocating the sacks. At this meeting the employer learns that the individual can, in fact, lift the sacks to waist level, but is prevented by his or her disability from carrying the sacks from the loading dock to the storage room. The employer and the individual agree that any of a number of potential accommodations, such as the provision of a dolly, hand truck, or cart, could enable the individual to transport the sacks that he or she has lifted.

Upon further consideration, however, it is determined that the provision of a cart is not a feasible effective option. No carts are currently available at the company, and those that can be purchased by the company are the wrong shape to hold many of the bulky and irregularly shaped sacks that must be moved. Both the dolly and the hand truck, on the other hand, appear to be effective options. Both are readily available to the company, and either will enable the individual to relocate the sacks that he or she has lifted. The sack handler indicates his or her preference for the dolly. In consideration of this expressed preference, and because the employer feels that the dolly will allow the individual to move more sacks at a time and so be more efficient than would a hand truck, the employer ultimately provides the sack handler with a dolly in fulfillment of the obligation to make reasonable accommodation.

Section 1630.9(b)

This provision states that an employer or other covered entity cannot prefer or select a qualified individual without a disability over an equally qualified individual with a disability merely because the individual with a disability will require a reasonable accommodation. In other words, an individual's need for an accommodation cannot enter into the employer's or other covered entity's decision regarding hiring, discharge, promotion, or other similar employment decisions, unless the accommodation would impose an undue hardship on the employer. See House Labor Report at 70.

Section 1630.9(d)

The purpose of this provision is to clarify that an employer or other covered entity may not compel a qualified individual with a disability to accept an accommodation, where that accommodation is neither requested nor needed by the individual. However, if a necessary reasonable accommodation is refused, the individual may not be considered qualified. For example, an individual with a visual impairment that restricts his or her field of vision but who is able to read unaided would not be required to accept a reader as an accommodation. However, if the individual were not able to read unaided and reading was an essential function of the job, the individual would not be qualified for the job if he or she refused a reasonable accommodation that would enable him or her to read. See Senate Report at 34; House Labor Report at 65; House Judiciary Report at 71–72.

Section 1630.10 Qualification Standards, Tests, and Other Selection Criteria

The purpose of this provision is to ensure that individuals with disabilities are not excluded from job opportunities unless they are actually unable to do the job. It is to ensure that there is a fit between job criteria and an applicant's (or employee's) actual ability to do the job. Accordingly, job criteria that even unintentionally screen out, or tend to screen out, an individual with a disability or a class of individuals with disabilities because of their disability may not be used unless the employer demonstrates that that criteria, as used by the employer, are job-related to the position to which they are being applied and are consistent with business necessity. The concept of "business necessity" has the same meaning as the concept of "business necessity" under section 504 of the Rehabilitation Act of 1973.

Selection criteria that exclude, or tend to exclude, an individual with a disability or a class of individuals with disabilities because of their disability but do not concern an essential function of the job would not be consistent with business necessity.

The use of selection criteria that are related to an essential function of the job may be consistent with business necessity. However, selection criteria that are related to an essential function of the job may not be used to exclude an individual with a disability if that individual could satisfy the criteria with the provision of a reasonable accommodation. Experience under a similar provision of the regulations implementing section 504 of the Rehabilitation Act indicates that challenges to selection criteria are, in fact, most often resolved by reasonable accommodation. It is therefore anticipated that challenges to selection criteria brought under this part will generally be resolved in a like manner.

This provision is applicable to all types of selection criteria, including safety requirements, vision or hearing requirements, walking requirements, lifting requirements, and employment tests. See Senate Report at 37–39; House Labor Report at 70–72; House Judiciary Report at 42. As previously noted, however, it is not the intent of this part to second guess an employer's business judgment with regard to production standards. (See section 1630.2(n) Essential Functions). Consequently, production standards will generally not be subject to a challenge under this provision.

The Uniform Guidelines on Employee Selection Procedures (UGESP) 29 CFR part 1607 do not apply to the Rehabilitation Act and are similarly inapplicable to this part.

Section 1630.11 Administration of Tests

The intent of this provision is to further emphasize that individuals with disabilities are not to be excluded from jobs that they can actually perform merely because a disability prevents them from taking a test, or negatively influences the results of a test, that is a prerequisite to the job. Read together with the reasonable accommodation requirement of section 1630.9, this provision requires that employment tests be administered to eligible applicants or employees with disabilities that impair sensory, manual, or speaking skills in formats that do not require the use of the impaired skill.

The employer or other covered entity is, generally, only required to provide such reasonable accommodation if it knows, prior to the administration of the test, that the individual is disabled and that the disability impairs sensory, manual or speaking skills. Thus, for example, it would be unlawful to administer a written employment test to an individual who has informed the employer, prior to the administration of the test, that he is disabled with dyslexia and unable to read. In such a case, as a reasonable accommodation and in accordance with this provision, an alternative oral test should be administered to that individual. By the same token, a written test may need to be substituted for an oral test if the applicant taking the test is an individual with a disability that impairs speaking skills or impairs the processing of auditory information.

Occasionally, an individual with a disability may not realize, prior to the administration of a test, that he or she will need an accommodation to take that particular test. In such a situation, the individual with a disability, upon becoming aware of the need for an accommodation, must so inform the employer or other covered entity. For example, suppose an individual with a disabling visual impairment does not request an accommodation for a written examination because he or she is usually able to take written tests with the aid of his or her own specially designed lens. When the test is distributed, the individual with a disability discovers that the lens is insufficient to distinguish the words of the test because of the unusually low color contrast between the paper and the ink, the individual would be entitled, at that point, to request an accommodation. The employer or other covered entity would, thereupon, have to provide a test with higher contrast, schedule a retest, or provide any other effective accommodation unless to do so would impose an undue hardship.

Other alternative or accessible test modes or formats include the administration of tests in large print or braille, or via a reader or sign interpreter. Where it is not possible to test in an alternative format, the employer may be required, as a reasonable accommodation, to evaluate the skill to be tested in another manner (*e.g.*, through an interview, or through education license, or work experience requirements). An employer may also be required, as a reasonable accommodation, to allow more time to complete the test. In addition, the employer's obligation to make reasonable accommodation extends to ensuring that the test site is accessible. (See § 1630.9 Not Making Reasonable Accommodation) See Senate Report at 37–38; House Labor Report at 70–72; House Judiciary Report at 42; see also *Stutts* v. *Freeman*, 694 F.2d 666 (11th Cir. 1983); *Crane* v. *Dole*, 617 F. Supp. 156 (D.D.C. 1985).

This provision does not require that an employer offer every applicant his or her choice of test format. Rather, this provision only requires that an employer provide, upon advance request, alternative, accessible tests to individuals with disabilities that impair sensory, manual, or speaking skills needed to take the test.

This provision does not apply to employment tests that require the use of sensory, manual, or speaking skills where the tests are intended to measure those skills. Thus, an employer could require that an applicant with dyslexia take a written test for a particular position if the ability to read is the skill the test is designed to measure. Similarly, an employer could require that an applicant complete a test within established time frames if speed were one of the skills for which the applicant was being tested. However, the results of such a test could not be used to exclude an individual with a disability unless the skill was necessary to perform an essential function of the position and no reasonable accommodation was available to enable the individual to perform that function, or the necessary accommodation would impose an undue hardship.

Section 1630.13 Prohibited Medical Examinations and Inquiries

Section 1630.13(a) Pre-employment Examination or Inquiry

This provision makes clear that an employer cannot inquire as to whether an individual has a disability at the pre-offer stage of the selection process. Nor can an employer inquire at the pre-offer stage about an applicant's workers' compensation history.

Employers may ask questions that relate to the applicant's ability to perform job-related functions. However, these questions should not be phrased in terms of disability. An employer, for example, may ask whether the applicant has a driver's license, if driving is a job function, but may not ask whether the applicant has a visual disability. Employers may ask about an applicant's ability to perform both essential and marginal job functions. Employers, though, may not refuse to hire an applicant with a disability because the applicant's disability prevents him or her from performing marginal functions. See Senate Report at 39; House Labor Report at 72–73; House Judiciary Report at 42–43.

Section 1630.13(b) Examination or Inquiry of Employees

The purpose of this provision is to prevent the administration to employees of medical tests or inquiries that do not serve a legitimate business purpose. For example, if an employee suddenly starts to use increased amounts of sick leave or starts to appear sickly, an employer could not require that employee to be tested for AIDS, HIV infection, or cancer unless the employer can demonstrate that such testing is job-related and consistent with business necessity. See Senate Report at 39; House Labor Report at 75; House Judiciary Report at 44.

Section 1630.14 Medical Examinations and Inquiries Specifically Permitted

Section 1630.14(a) Pre-employment Inquiry

Employers are permitted to make pre-employment inquiries into the ability of an applicant to perform job-related functions. This inquiry must be narrowly tailored. The employer may describe or demonstrate the job function and inquire whether or not the applicant can perform that function with or without reasonable accommodation. For example, an employer may explain that the job requires assembling small parts and ask if the individual will be able to perform that function, with or without reasonable accommodation. See Senate Report at 39; House Labor Report at 73; House Judiciary Report at 43.

An employer may also ask an applicant to describe or to demonstrate how, with or without reasonable accommodation, the applicant will be able to perform job-related functions. Such a request may be made of all applicants in the same job category regardless of disability. Such a request may also be made of an applicant whose known disability may interfere with or prevent the performance of a job-related function, whether or not the employer routinely makes such a request of all applicants in the job category. For example, an employer may ask an individual with one leg who applies for a position as a home washing machine repairman to demonstrate or to explain how, with or without reasonable accommodation, he would be able to transport himself and his tools down basement stairs. However, the employer may not inquire as to the nature or severity of the disability. Therefore, for example, the employer cannot ask how the individual lost the leg or whether the loss of the leg is indicative of an underlying impairment.

On the other hand, if the known disability of an applicant will not interfere with or prevent the performance of a job-related function, the employer may only request a description or demonstration by the applicant if it routinely makes such a request of all applicants in the same job category. So, for example, it would not be permitted for an employer to request that an applicant with one leg demonstrate his ability to assemble small parts while seated at a table, if the employer does not routinely request that all applicants provide such a demonstration.

An employer that requires an applicant with a disability to demonstrate how he or she will perform a job-related function must either provide the reasonable accommodation the applicant needs to perform the function or permit the applicant to explain how, with the accommodation, he or she will perform the function. If the job-related function is not an essential function, the employer may not exclude the applicant with a disability because of the applicant's inability to perform that function. Rather, the employer must, as a reasonable accommodation, either provide an accommodation that will enable the individual to perform the function, transfer the function to another position, or exchange the function for one the applicant is able to perform.

An employer may not use an application form that lists a number of potentially disabling impairments and ask the applicant to check any of the impairments he or she may have. In addition, as noted above, an employer may not ask how a particular individual became disabled or the prognosis of the individual's disability. The employer is also prohibited from asking how often the individual will require leave for treatment or use leave as a result of incapacitation because of the disability. However, the employer may state the attendance requirements of the job and inquire whether the applicant can meet them.

An employer is permitted to ask, on a test announcement or application form, that individuals with disabilities who will require a reasonable accommodation in order to take the test so inform the employer within a reasonable established time period prior to the administration of the test. The employer may also request that documentation of the need for the accommodation accompany the request. Requested accommodations may include accessible testing sites, modified testing conditions and accessible test formats. (See § 1630.11 Administration of Tests).

Physical agility tests are not medical examinations and so may be given at any point in the application or employment process. Such tests must be given to all similarly situated applicants or employees regardless of disability. If such tests screen out or tend to screen out an individual with a disability or a class of individuals with disabilities, the employer would have to demonstrate that the test is job-related and consistent with business necessity and that performance cannot be achieved with reasonable accommodation. (See § 1630.9 Not Making Reasonable Accommodation: Process of Determining the Appropriate Reasonable Accommodation).

As previously noted, collecting information and inviting individuals to identify themselves as individuals with disabilities as required to satisfy the affirmative action requirements of Section 503 of the Rehabilitation Act is not restricted by this

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As previously noted, collecting information and inviting individuals to identify themselves as individuals with disabilities as required to satisfy the affirmative action requirements of Section 503 of the Rehabilitation Act is not restricted by this

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part. (See § 1630.1 (b) and (c) Applicability and Construction).

Section 1630.14(b) Employment Entrance Examination

An employer is permitted to require post-offer medical examinations before the employee actually starts working. The employer may condition the offer of employment on the results of the examination, provided that all entering employees in the same job category are subjected to such an examination, regardless of disability, and that the confidentiality requirements specified in this part are met.

This provision recognizes that in many industries, such as air transportation or construction, applicants for certain positions are chosen on the basis of many factors including physical and psychological criteria, some of which may be identified as a result of post-offer medical examinations given prior to entry on duty. Only those employees who meet the employer's physical and psychological criteria for the job, with or without reasonable accommodation, will be qualified to receive confirmed offers of employment and begin working.

Medical examinations permitted by this section are not required to be job-related and consistent with business necessity. However, if an employer withdraws an offer of employment because the medical examination reveals that the employee does not satisfy certain employment criteria, either the exclusionary criteria must not screen out or tend to screen out an individual with a disability or a class of individuals with disabilities, or they must be job-related and consistent with business necessity. As part of the showing that an exclusionary criteria is job-related and consistent with business necessity, the employer must also demonstrate that there is no reasonable accommodation that will enable the individual with a disability to perform the essential functions of the job. See Conference Report at 59–60; Senate Report at 39; House Labor Report at 73–74; House Judiciary Report at 43.

As an example, suppose an employer makes a conditional offer of employment to an applicant, and it is an essential function of the job that the incumbent be available to work every day for the next three months. An employment entrance examination then reveals that the applicant has a disabling impairment that, according to reasonable medical judgment that relies on the most current medical knowledge, will require treatment that will render the applicant unable to work for a portion of the three month period. Under these circumstances, the employer would be able to withdraw the employment offer without violating this part.

The information obtained in the course of a permitted entrance examination or inquiry is to be treated as a confidential medical record and may only be used in a manner not inconsistent with this part. State workers' compensation laws are not preempted by the ADA or this part. These laws require the collection of information from individuals for state administrative purposes that do not conflict with the ADA or this part. Consequently, employers or other covered entities may submit information to state workers' compensation offices or second injury funds in accordance with state workers' compensation laws without violating this part.

Consistent with this section and with § 1630.16(f) of this part, information obtained in the course of a permitted entrance examination or inquiry may be used for insurance purposes described in § 1630.16(f).

Section 1630.14(c) Examination of Employees

This provision permits employers to make inquiries or require medical examinations (fitness for duty exams) when there is a need to determine whether an employee is still able to perform the essential functions of his or her job. The provision permits employers or other covered entities to make inquiries or require medical examinations necessary to the reasonable accommodation process described in this part. This provision also permits periodic physicals to determine fitness for duty or other medical monitoring if such physicals or monitoring are required by medical standards or requirements established by Federal, state, or local law that are consistent with the ADA and this part (or in the case of a federal standard, with section 504 of the Rehabilitation Act) in that they are job-related and consistent with business necessity.

Such standards may include federal safety regulations that regulate bus and truck driver qualifications, as well as laws establishing medical requirements for pilots or other air transportation personnel. These standards also include health standards promulgated pursuant to the Occupational Safety and Health Act of 1970, the Federal Coal Mine Health and Safety Act of 1969, or other similar statutes that require that employees exposed to certain toxic and hazardous substances be medically monitored at specific intervals. See House Labor Report at 74–75.

The information obtained in the course of such examination or inquiries is to be treated as a confidential medical record and may only be used in a manner not inconsistent with this part.

Section 1630.14(d) Other Acceptable Examinations and Inquiries

Part 1630 permits voluntary medical examinations, including voluntary medical histories, as part of employee health programs. These programs often include, for example, medical screening for high blood pressure, weight control counseling, and cancer detection. Voluntary activities, such as blood pressure monitoring and the administering of prescription drugs, such as insulin, are also permitted. It should be noted, however, that the medical records developed in the course of such activities must be maintained in the confidential manner required by this part and must not be used for any purpose in violation of this part, such as limiting health insurance eligibility. House Labor Report at 75; House Judiciary Report at 43–44.

Section 1630.15 Defenses

The section on defenses in part 1630 is not intended to be exhaustive. However, it is intended to inform employers of some of the potential defenses available to a charge of discrimination under the ADA and this part.

Section 1630.15(a) Disparate Treatment Defenses

The "traditional" defense to a charge of disparate treatment under title VII, as expressed in *McDonnell Douglas Corp.* v. *Green*, 411 U.S. 792 (1973), *Texas Department of Community Affairs* v. *Burdine*, 450 U.S. 248 (1981), and their progeny, may be applicable to charges of disparate treatment brought under the ADA. See *Prewitt* v. *U.S. Postal Service*, 662 F.2d 292 (5th Cir. 1981). Disparate treatment means, with respect to title I of the ADA, that an individual was treated differently on the basis of his or her disability. For example, disparate treatment has occurred where an employer excludes an employee with a severe facial disfigurement from staff meetings because the employer does not like to look at the employee. The individual is being treated differently because of the employer's attitude towards his or her perceived disability. Disparate treatment has also occurred where an employer has a policy of not hiring individuals with AIDS regardless of the individuals' qualifications.

The crux of the defense to this type of charge is that the individual was treated differently not because of his or her disability but for a legitimate nondiscriminatory reason such as poor performance unrelated to the individual's disability. The fact that the individual's disability is not covered by the employer's current insurance plan or would cause the employer's insurance premiums or workers' compensation costs to increase, would not be a legitimate nondiscriminatory reason justifying disparate treatment of an individual with a disability. Senate Report at 85; House Labor Report at 136 and House Judiciary Report at 70. The defense of a legitimate nondiscriminatory reason is rebutted if the alleged nondiscriminatory reason is shown to be pretextual.

Section 1630.15 (b) and (c) Disparate Impact Defenses

Disparate impact means, with respect to title I of the ADA and this part, that uniformly applied criteria have an adverse impact on an individual with a disability or a disproportionately negative impact on a class of individuals with disabilities. Section 1630.15(b) clarifies that an employer may use selection criteria that have such a disparate impact, *i.e.*, that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities only when they are job-related and consistent with business necessity.

For example, an employer interviews two candidates for a position, one of whom is blind. Both are equally qualified. The employer decides that while it is not essential to the job it would be convenient to have an employee who has a driver's license and so could occasionally be asked to run errands by car. The employer hires the individual who is sighted because this individual has a driver's license. This is an example of a uniformly applied criterion, having a driver's permit, that screens out an individual who has a disability that makes it impossible to obtain a driver's permit. The employer would, thus, have to show that this criterion is job-related and consistent with business necessity. See House Labor Report at 55.

However, even if the criterion is job-related and consistent with business necessity, an employer could not exclude an individual with a disability if the criterion could be met or job performance accomplished with a reasonable accommodation. For example, suppose an employer requires, as part of its application process, an interview that is job-related and consistent with business necessity. The employer would not be able to refuse to hire a hearing impaired applicant because he or she could not be interviewed. This is so because an interpreter could be provided as a reasonable accommodation that would allow the individual to be interviewed, and thus satisfy the selection criterion.

With regard to safety requirements that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities, an employer must demonstrate that the requirement, as applied to the individual, satisfies the "direct threat" standard in § 1630.2(r) in order to show that the requirement is job-related and consistent with business necessity.

Section 1630.15(c) clarifies that there may be uniformly applied standards, criteria and policies not relating to selection that may also screen out or tend to screen out an individual with a disability or a class of individuals with disabilities. Like selection criteria that have a disparate impact, non-selection criteria having such an impact may also have to be job-related and consistent with business necessity, subject to consideration of reasonable accommodation.

It should be noted, however, that some uniformly applied employment policies or practices, such as leave policies, are not subject to challenge under the adverse impact theory. "No-leave" policies (*e.g.*, no leave during the first six months of employment) are likewise not subject to challenge under the adverse impact theory. However, an employer, in spite of its "no-leave" policy, may, in appropriate circumstances, have to consider the provision of leave to an employee with a disability as a reasonable accommodation, unless the provision of leave would impose an undue hardship. See discussion at § 1630.5 Limiting, Segregating and Classifying, and § 1630.10 Qualification Standards, Tests, and Other Selection Criteria.

Section 1630.15(d) Defense to Not Making Reasonable Accommodation

An employer or other covered entity alleged to have discriminated because it did not make a reasonable accommodation, as required by this part, may offer as a defense that it would have been an undue hardship to make the accommodation.

It should be noted, however, that an employer cannot simply assert that a needed accommodation will cause it undue hardship, as defined in § 1630.2(p), and thereupon be relieved of the duty to provide accommodation. Rather, an employer will have to present evidence and demonstrate that the accommodation will, in fact, cause it undue hardship. Whether a particular accommodation will impose an undue hardship for a particular employer is determined on a case by case basis. Consequently, an accommodation that poses an undue hardship for one employer at a particular time may not pose an undue hardship for another employer, or even for the same employer at another time. Likewise, an accommodation that poses an undue hardship for one employer in a particular job setting, such as a temporary construction worksite, may not pose an undue hardship for another employer, or even for the same employer at a permanent worksite. See House Judiciary Report at 42.

The concept of undue hardship that has evolved under Section 504 of the Rehabilitation Act and is embodied in this part is unlike the "undue hardship" defense associated with the provision of religious accommodation under title VII of the Civil Rights Act of 1964. To demonstrate undue hardship pursuant to the ADA and this part, an employer must show substantially more difficulty or expense than would be needed to satisfy the "de minimis" title VII standard of undue hardship. For example, to demonstrate that the cost of an accommodation poses an undue hardship, an employer would have to show that the cost is undue as compared to the employer's budget. Simply comparing the cost of the accommodation to the salary of the individual with a disability in need of the accommodation will not suffice. Moreover, even if it is determined that the cost of an accommodation would unduly burden an employer, the employer cannot avoid making the accommodation if the individual with a disability can arrange to cover that portion of the cost that rises to the undue hardship level, or can otherwise arrange to provide the accommodation. Under such circumstances, the necessary accommodation would no longer pose an undue hardship. See Senate Report at 36; House Labor Report at 68–69; House Judiciary Report at 40–41.

Excessive cost is only one of several possible bases upon which an employer might be able to demonstrate undue hardship. Alternatively, for example, an employer could demonstrate that the provision of a particular accommodation would be unduly disruptive to its other employees or to the functioning of its business. The terms of a collective bargaining agreement may be relevant to this determination. By way of illustration, an employer would likely be able to show undue hardship if the employer could show that the requested accommodation of the upward adjustment of the business' thermostat would result in it becoming unduly hot for its other employees, or for its patrons or customers. The employer would thus not have to provide this accommodation. However, if there were an alternate accommodation that would not result in undue hardship, the employer would have to provide that accommodation.

It should be noted, moreover, that the employer would not be able to show undue hardship if the disruption to its employees were the result of those employees fears or prejudices toward the individual's disability and not the result of the provision of the accommodation. Nor would the employer be able to demonstrate undue hardship by showing that the provision of the accommodation has a negative impact on the morale of its other employees but not on the ability of these employees to perform their jobs.

Section 1630.15(e) Defense—Conflicting Federal Laws and Regulations

There are several Federal laws and regulations that address medical standards and safety requirements. If the alleged discriminatory action was taken in compliance with another Federal law or regulation, the employer may offer its obligation to comply with the conflicting standard as a defense. The employer's defense of a conflicting Federal requirement or regulation may be rebutted by a showing of pretext, or by showing that the Federal standard did not require the discriminatory action, or that there was a nonexclusionary means to comply with the standard that would not conflict with this part. See House Labor Report at 74.

Section 1630.16 Specific Activities Permitted

Section 1630.16(a) Religious Entities

Religious organizations are not exempt from title I of the ADA or this part. A religious corporation, association, educational institution, or society may give a preference in employment to individuals of the particular religion, and may require that applicants and employees conform to the religious tenets of the organization. However, a religious organization may not discriminate against an individual who satisfies the permitted religious criteria because that individual is disabled. The religious entity, in other words, is required to consider qualified individuals with disabilities who satisfy the permitted religious criteria on an equal basis with qualified individuals without disabilities who similarly satisfy the religious criteria. See Senate Report at 42; House Labor Report at 76–77; House Judiciary Report at 46.

Section 1630.16(b) Regulation of Alcohol and Drugs

This provision permits employers to establish or comply with certain standards regulating the use of drugs and alcohol in the workplace. It also allows employers to hold alcoholics and persons who engage in the illegal use of drugs to the same performance and conduct standards to which it holds all of its other employees. Individuals disabled by alcoholism are entitled to the same protections accorded other individuals with disabilities under this part. As noted above, individuals currently engaging in the illegal use of drugs are not individuals with disabilities for purposes of part 1630 when the employer acts on the basis of such use.

Section 1630.16(c) Drug Testing

This provision reflects title I's neutrality toward testing for the illegal use of drugs. Such drug tests are neither encouraged, authorized nor prohibited. The results of such drug tests may be used as a basis for disciplinary action. Tests for the illegal use of

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drugs are not considered medical examinations for purposes of this part. If the results reveal information about an individual's medical condition beyond whether the individual is currently engaging in the illegal use of drugs, this additional information is to be treated as a confidential medical record. For example, if a test for the illegal use of drugs reveals the presence of a controlled substance that has been lawfully prescribed for a particular medical condition, this information is to be treated as a confidential medical record. See House Labor Report at 79; House Judiciary Report at 47.

Section 1630.16(e) Infectious and Communicable Diseases; Food Handling Jobs

This provision addressing food handling jobs applies the "direct threat" analysis to the particular situation of accommodating individuals with infectious or communicable diseases that are transmitted through the handling of food. The Department of Health and Human Services is to prepare a list of infectious and communicable diseases that are transmitted through the handling of food. If an individual with a disability has one of the listed diseases and works in or applies for a position in food handling, the employer must determine whether there is a reasonable accommodation that will eliminate the risk of transmitting the disease through the handling of food. If there is an accommodation that will not pose an undue hardship, and that will prevent the transmission of the disease through the handling of food, the employer must provide the accommodation to the individual. The employer, under these circumstances, would not be permitted to discriminate against the individual because of the need to provide the reasonable accommodation and would be required to maintain the individual in the food handling job.

If no such reasonable accommodation is possible, the employer may refuse to assign, or to continue to assign the individual to a position involving food handling. This means that if such an individual is an applicant for a food handling position the employer is not required to hire the individual. However, if the individual is a current employee, the employer would be required to consider the accommodation of reassignment to a vacant position not involving food handling for which the individual is qualified. Conference Report at 61–63. (See § 1630.2(r) Direct Threat).

Section 1630.16(f) Health Insurance, Life Insurance, and Other Benefit Plans

This provision is a limited exemption that is only applicable to those who establish, sponsor, observe or administer benefit plans, such as health and life insurance plans. It does not apply to those who establish, sponsor, observe or administer plans not involving benefits, such as liability insurance plans.

The purpose of this provision is to permit the development and administration of benefit plans in accordance with accepted principles of risk assessment. This provision is not intended to disrupt the current regulatory structure for self-insured employers. These employers may establish, sponsor, observe, or administer the terms of a bona fide benefit plan not subject to state laws that regulate insurance. This provision is also not intended to disrupt the current nature of insurance underwriting, or current insurance industry practices in sales, underwriting, pricing, administrative and other services, claims and similar insurance related activities based on classification of risks as regulated by the States.

The activities permitted by this provision do not violate part 1630 even if they result in limitations on individuals with disabilities, provided that these activities are not used as a subterfuge to evade the purposes of this part. Whether or not these activities are being used as a subterfuge is to be determined without regard to the date the insurance plan or employee benefit plan was adopted.

However, an employer or other covered entity cannot deny a qualified individual with a disability equal access to insurance or subject a qualified individual with a disability to different terms or conditions of insurance based on disability alone, if the disability does not pose increased risks. Part 1630 requires that decisions not based on risk classification be made in conformity with non-discrimination requirements. See Senate Report at 84–86; House Labor Report at 136–138; House Judiciary Report at 70–71. See the discussion of § 1630.5 Limiting, Segregating and Classifying.

[FR Doc. 91–17512 Filed 7–25–91; 8:45 am]

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Parts 1602 and 1627

Recordkeeping and Reporting Under Title VII and the ADA

AGENCY: Equal Employment Opportunity Commission (EEOC).

ACTION: Final rule.

SUMMARY: This final rule is based on two separate Notices of Proposed Rulemaking (NPRM) published on February 13, 1989 (54 FR 6551), and March 5, 1991 (56 FR 9185). This final rule amends 29 CFR part 1602, EEOC's regulations on Recordkeeping and Reporting under title VII of the Civil Rights Act of 1964 (title VII), to add recordkeeping requirements under the Americans with Disabilities Act of 1990 (ADA). It increases the records retention period required in part 1602 for title VII and the ADA from 6 months to one year. The Commission also is adding a new subpart R to part 1602, 29 CFR 1602.56, that will clarify that the Commission has the authority to investigate persons to determine whether they comply with the reporting or recordkeeping requirements of part 1602. In addition, the Commission is making several minor changes to §§ 1602.7 and 1602.10.

The Commission also is deleting § 1602.14(b) of its title VII recordkeeping regulations, which provides that the § 1602 recordkeeping requirements do not apply to temporary or seasonal positions. Information regarding such employees now must be reported on Standard Form 100 on September 30 of each year, in the same fashion as information regarding permanent employees is reported. Similarly, the Commission is deleting §§ 1627.3(b) and 1627.4(a)(2) of the Age Discrimination in Employment Act recordkeeping regulations, which provide for a 90-day retention period for temporary positions, and is clarifying the mandatory nature of such recordkeeping. The Commission is not issuing a final rule on proposed § 1602.57 at this time.

EFFECTIVE DATE: August 26, 1991.

FOR FURTHER INFORMATION CONTACT: Thomas J. Schlageter, Acting Assistant Legal Counsel, Grace C. Karmiol, General Attorney, or Wendy Adams, General Attorney, at (202) 663–4669 (voice) or (202) 663–4399 (TDD).

SUPPLEMENTARY INFORMATION: The Commission received nine comments in response to the NPRM published in the March 5, 1991 **Federal Register** on Recordkeeping and Reporting under title VII and the ADA. The comments responded to the invitation in the preamble of the NPRM for comment on whether there should be a reporting requirement under the ADA, how the reported information should be used, and how it should be collected. Four comments recommended that there be a reporting requirement although one of them suggested that it be collected by sampling rather than universal reporting. Five comments opposed any new reporting requirements on the grounds of administrative burden. One of these suggested that no reporting requirement be imposed at this time, but that the need for reporting be reassessed at a later date. Another of these argued that if a reporting requirement is necessary, it should be accomplished by using the existing EEO–1 rather than a separate report, should be collected by both employer visual identification and employee self-identification, and should be used to monitor the impact of the ADA and to document utilization of persons with disabilities, not for affirmative action purposes. The Commission is continuing its consideration of possible reporting requirements under the ADA and will confer with the Department of Labor, and any other affected federal agency, to discuss whether a reporting requirement would be appropriate under the ADA. If it concludes that a reporting requirement may be appropriate, it will issue an NPRM.

The Commission received over 20 comments in response to the February 13, 1989 NPRM. While this preamble does not address each individual comment, it addresses the most significant issues raised in the comments. Current § 1602.7 concerns the filing of Standard Form 100, and has been interpreted in conjunction with the instructions accompanying the form. In order to clarify which of the employers that are subject to title VII must file the report, the Commission has incorporated some of the information that is contained in the instructions into § 1602.7.

Current § 1602.14 provides that personnel or employment records made or kept by an employer shall be preserved by the employer for a period of six months from the date of the making of the record or of the personnel action involved, whichever is later. This requirement was promulgated before title VII was amended in 1972 to change the time limit for filing a charge from 90 days to 180 days (or, in some instances, to 300 days). Requiring an employer or labor organization to maintain records for six months when the charge filing limit was 90 days ensured that all applicable records were kept. Due to the lengthening of the filing period, however, it no longer is true that employers or labor organizations necessarily will have retained records until the title VII filing period expires. Under the current regulation, an employer or labor organization may have already lawfully destroyed its employment records before it is notified that a charge has been filed. Moreover, a one year retention period for employers and labor organizations subject to title VII and the ADA will make the records retention period the same as that required by the Commission's regulations under the Age Discrimination in Employment Act, 29 U.S.C. 621 *et seq.* (ADEA), 29 CFR 1627.3(b)(1) and 1627.4(a)(1). This uniform retention period will simplify and clarify recordkeeping for employers who are also subject to the ADEA.

In order to promote efficiency and to eliminate confusion as to recordkeeping requirements regarding temporary and seasonal employees, the Commission is deleting § 1602.14(b) which provides that the part 1602 recordkeeping requirements do not apply to temporary or seasonal positions. Similarly, the Commission is deleting §§ 1627.3(b)(3) and 1627.4(a)(2) of the ADEA recordkeeping regulations, which provide for a 90 day records retention period for temporary positions, and is clarifying the mandatory nature of such recordkeeping. These changes will require employers to retain records on all employees, permanent and temporary, for a one year period. They will, however, impose a new recordkeeping requirement only on the relatively few employers who are not subject to the recordkeeping provisions of the ADEA.

Section 709(c) of title VII, 42 U.S.C. 2000e–8(c), provides, *inter alia,* that any person who fails to maintain information as required by that subsection and by Commission regulations may, upon application of the Commission or the Attorney General in a case involving a government, governmental agency or political subdivision, be ordered to comply by the appropriate United States district court. At present, Commission regulations do not explicitly provide that the Commission may conduct an investigation when it has reason to believe an employer or other entity subject to title VII has failed to comply with the recordkeeping requirements of part 1602, as when, for example, an employer does not provide the required recordkeeping information to the Commission. The Commission is adding § 1602.56 to give clear notice of its authority to enforce section 709(c) of title VII. The addition of this section is consistent with the Commission's authority to issue suitable procedural regulations to carry out the provisions of title VII, 42 U.S.C. 2000e–12(a), and is an appropriate procedural mechanism for investigating apparent violations of those provisions.

The revisions to § 1602.7 change the annual Standard Form 100 reporting date from March 31 to September 30. By changing the reporting date the Commission also is changing the dates for which the information should be reported, i.e., from the three months preceding March 31, to the three months preceding September 30. Any employer that has received permission to use a different period for reporting may continue to use that approved period. The Commission has determined that this change will result in a reporting date that is less affected by the variation in seasonal employment, such as employment in the construction industry, than the present date and will provide employment figures which reflect annual average employment more closely than the present date does. This change will not affect the date by which employers must report VETS information to the United States Department of Labor, as the VETS data and the Standard Form 100 data are processed separately. The revisions also change the address for obtaining necessary reporting supplies from "Jeffersonville, Indiana" to "the Commission or its delegate."

The revision to § 1602.10 deletes the reference to "section 4(c) of the instructions" and substitutes "section 5 of the instructions." The reference to the 100 employee jurisdictional test of section 701(b) of title VII is deleted since the number of employees required for an employer to be subject to title VII now is 15 or more. This change in no way affects the present Standard Form 100 reporting requirement of 100 or more employees that is set out in the instructions accompanying the form and now is made explicit in the regulation.

In order to provide a mechanism for those subject to the reporting requirements to seek a change in the reporting date or the date by which data should be reported, the Commission has revised § 1602.10 to permit employers to seek changes in those requirements. The Commission notes that retention of the records for the period of one year will increase only minimally, if at all, the employer's cost of maintaining the records. Employers already are required to maintain the records for a period of six months. The cost of retaining the records for an additional six months will be minimal. Moreover, most employers subject to Title VII also are subject to the ADEA, which presently requires that these records be retained for a period of one year.

The Commission estimates that the changes to §§ 1602.14 and 1602.28(a) increasing the title VII records retention period from six months to one year will result in an increased recordkeeping burden on employers of approximately 9,000 burden hours annually. The Commission estimates that the changes in the title VII and ADEA recordkeeping requirements for employers with temporary employees will result in an increased recordkeeping burden of approximately 20,800 burden hours annually. The Commission believes that this increase in burden hours is *de minimis* and that the modifications will not have a significant impact on a substantial number of small employers. Further, the Commission believes that the above cited benefits of the modifications, by establishing a uniform period of recordkeeping for full time and part time employees under title VII, ADA and the ADEA, outweigh the minimal increase in recordkeeping burden hours on employers. For the above reasons, the regulatory change

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In order to provide a mechanism for those subject to the reporting requirements to seek a change in the reporting date or the date by which data should be reported, the Commission has revised § 1602.10 to permit employers to seek changes in those requirements. The Commission notes that retention of the records for the period of one year will increase only minimally, if at all, the employer's cost of maintaining the records. Employers already are required to maintain the records for a period of six months. The cost of retaining the records for an additional six months will be minimal. Moreover, most employers subject to Title VII also are subject to the ADEA, which presently requires that these records be retained for a period of one year.

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will simplify the recordkeeping requirements. The Commission also certifies under 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act (Pub. L. No. 96–354), that these modifications will not result in a significant economic impact on a substantial number of small employers and that a regulatory flexibility analysis therefore is not required.

List of Subjects in 29 CFR Parts 1602 and 1627

Equal employment opportunity, Reporting and recordkeeping requirements.

For the Commission,

Evan J. Kemp, Jr.,

Chairman.

Accordingly, 29 CFR parts 1602 and 1627 are amended as follows:

PART 1602—[AMENDED]

1. The heading for part 1602 is revised to read as follows:

PART 1602—RECORDKEEPING AND REPORTING REQUIREMENTS UNDER TITLE VII AND THE ADA

2. The authority citation for part 1602 is revised to read as follows:

Authority: 42 U.S.C. 2000e–8, 2000e–12; 44 U.S.C. 3501 et seq.; 42 U.S.C. 12117.

3. Section 1602.1 is revised to read as follows:

§ 1602.1 Purpose and scope.

Section 709 of title VII (42 U.S.C. 2000e) and section 107 of the Americans with Disabilities Act (ADA) (42 U.S.C. 12117) require the Commission to establish regulations pursuant to which employers, labor organizations, joint labor-management committees, and employment agencies subject to those Acts shall make and preserve certain records and shall furnish specified information to aid in the administration and enforcement of the Acts.

4. The heading for Subpart A is revised to read as follows:

Subpart A—General

§ 1602.1 [Amended]

5. Section 1602.1 is moved under subpart A.

§§ 1602.2–1602.6 [Removed]

6. Sections 1602.2–1602.6 are removed and reserved.

§ 1602.7 [Amended]

7. Section 1602.7 is amended by revising the first and last sentences to read as follows:

§ 1602.7 Requirement for filing of report.

On or before September 30 of each year, every employer that is subject to title VII of the Civil Rights Act of 1964, as amended, and that has 100 or more employees, shall file with the Commission or its delegate executed copies of Standard Form 100, as revised (otherwise known as "Employer Information Report EEO–1") in conformity with the directions set forth in the form and accompanying instructions. * * * Appropriate copies of Standard Form 100 in blank will be supplied to every employer known to the Commission to be subject to the reporting requirements, but it is the responsibility of all such employers to obtain necessary supplies of the form from the Commission or its delegate prior to the filing date.

8. Section 1602.10 is revised to read as follows:

§ 1602.10 Employer's exemption from reporting requirements.

If an employer claims that the preparation or filing of the report would create undue hardship, the employer may apply to the Commission for an exemption from the requirements set forth in this part, according to instruction 5. If an employer is engaged in activities for which the reporting unit criteria described in section 5 of the instructions are not readily adaptable, special reporting procedures may be required. If an employer seeks to change the date for filing its Standard Form 100 or seeks to change the period for which data are reported, an alternative reporting date or period may be permitted. In such instances, the employer should so advise the Commission by submitting to the Commission or its delegate a specific written proposal for an alternative reporting system prior to the date on which the report is due.

§ 1602.11 [Amended]

9. Section 1602.11 is amended as follows:

a. In the first sentence, after "purposes of title VII" insert "or the ADA".

b. In the second sentence, after "section 709(c) of title VII" insert "or section 107 of the ADA".

§ 1602.12 [Amended]

10. Section 1602.12 is amended as follows:

a. In the first sentence, after "purposes of Title VII" insert "or the ADA".

b. In the second sentence, after "section 709(c)" insert "of Title VII, or section 107 of the ADA".

c. By revising the parenthetical at the end of the section to read as follows:

(Approved by the Office of Management and Budget under control number 3046–0040)

§ 1602.14 [Amended]

11. Section 1602.14(a) is amended as follows:

a. By removing the words "6 months" wherever they appear and replacing them with the words "one year".

b. In the first sentence, after "not necessarily limited to" insert "requests for reasonable accommodation,".

c. In the third sentence, after "under title VII" insert "or the ADA".

d. By revising the parenthetical at the end of the section to read as follows:

(Approved by the Office of Management and Budget under control number 3046–0040)

§ 1602.14 [Amended]

12. Section 1602.14 is amended by removing paragraph (b), by removing the designation from paragraph (a), and by revising the parenthetical at the end of the section to read as follows:

(Approved by the Office of Management and Budget under control number 3046–0040)

§ 1602.19 [Amended]

13. Section 1602.19 is amended as follows:

a. In the first sentence, after "purpose of Title VII" insert "or the ADA".

b. In the second sentence, after "section 709(c) of title VII" insert "or section 107 of the ADA".

§ 1602.21 [Amended]

14. Section 1602.21(b) is amended as follows:

a. In the first sentence, after "not necessarily limited to" insert "requests for reasonable accommodation,".

b. In the second sentence, after "under Title VII" insert "or the ADA".

§ 1602.26 [Amended]

15. Section 1602.26 is amended as follows:

a. In the first sentence, after "purposes of Title VII" insert "or the ADA".

b. In the second sentence, after "section 709(c)" insert "of Title VII or section 107 of the ADA".

§ 1602.28 [Amended]

16. Section 1602.28(a) is amended as follows:

a. By removing the words "6 months" wherever they appear and replacing them with the words "one year".

b. In the third sentence, after "under title VII" insert "or the ADA".

c. By revising the parenthetical at the end of the section to read as follows:

(Approved by the Office of Management and Budget under control number 3046–0040)

§ 1602.31 [Amended]

17. Section 1602.31 is amended as follows:

a. By removing paragraph (b) and the designation from paragraph (a).

b. In the first sentence, after "not necessarily limited to" insert "requests for reasonable accommodation,".

c. In the third sentence, after "under title VII" insert "or the ADA".

d. By revising the parenthetical at the end of the section to read as follows:

(Approved by the Office of Management and Budget under control number 3046–0040)

§ 1602.37 [Amended]

18. Section 1602.37 is amended as follows:

a. In the first sentence, after "purposes of title VII" insert "or the ADA".

b. In the second sentence, after "section 709(c) of title VII" insert "or section 107 of the ADA".

§ 1602.40 [Amended]

19. Section 1602.40 is amended as follows:

a. By removing paragraph (b) and the designation from paragraph (a).

b. In the first sentence, after "not necessarily limited to" insert "requests for reasonable accommodation,".

c. By revising the parenthetical at the end of the section to read as follows:

(Approved by the Office of Management and Budget under control number 3046–0040)

§ 1602.45 [Amended]

20. Section 1602.45 is amended as follows:

a. In the first sentence, after "purposes of title VII" insert "or the ADA".

b. In the second sentence, after "section 709(c) of title VII" insert "or section 107 of the ADA".

§ 1602.49 [Amended]

21. Section 1602.49 is amended as follows:

a. By removing paragraph (b) and redesignating paragraph (c) as new paragraph (b).

b. In the first sentence of paragraph (a), after "not necessarily limited to" insert "requests for reasonable accommodation,".

c. By revising the parenthetical at the end of the section to read as follows:

(Approved by the Office of Management and Budget under control number 3046–0040)

§ 1602.54 [Amended]

22. Section 1602.54 is amended as follows:

a. In the first sentence, after "purposes of title VII" insert "or the ADA".

b. In the second sentence, after "section 709(c) of title VII" insert "or section 107 of the ADA".

23. A new subpart R consisting of § 1602.56 is added, to read as follows:

Subpart R—Investigation of Reporting or Recordkeeping Violations

§ 1602.56 Investigation of reporting or recordkeeping violations.

When it has received an allegation, or has reason to believe, that a person has not complied with the reporting or recordkeeping requirements of this Part or of Part 1607 of this chapter, the Commission may conduct an investigation of the alleged failure to comply.

Part 1627—[Amended]

24. The authority citation for 29 CFR part 1627 continues to read as follows:

Authority: Sec. 7, 81 Stat. 604; 29 U.S.C. 626; sec. 11, 52 Stat. 1066; 29 U.S.C. 211; sec. 12, 29 U.S.C. 631, Pub. L. No. 99–592, 100 Stat. 3342; sec. 2, Reorg. Plan No. 1 of 1978, 43 FR 19807.

§ 1627.3 [Amended]

25. In § 1627.3, paragraph (b)(3) is removed and paragraph (b)(4) is redesignated as new paragraph (b)(3).

26. Newly designated § 1627.3(b)(3) is amended by removing the word "may" and replacing it with the word "shall" and by revising the words "paragraph (b) (1), (2), or (3)" to read "paragraph (b) (1) or (2)".

§ 1627.4 [Amended]

27. In § 1627.4, paragraph (a)(2) is removed and paragraph (a)(3) is redesignated as new paragraph (a)(2).

28. Newly designated § 1627.4(a)(2) is amended by removing the word "may" and replacing it with the word "shall" and by revising the words "paragraph (a) (1) or (2)" to read "paragraph (a)(1)".

§ 1627.5 [Amended]

29. Section 1627.5(c) is amended by removing the word "may" and replacing it with the word "shall".

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§ 1627.3 [Amended]

25. In § 1627.3, paragraph (b)(3) is removed and paragraph (b)(4) is redesignated as new paragraph (b)(3).

26. Newly designated § 1627.3(b)(3) is amended by removing the word "may" and replacing it with the word "shall" and by revising the words "paragraph (b) (1), (2), or (3)" to read "paragraph (b) (1) or (2)".

§ 1627.4 [Amended]

27. In § 1627.4, paragraph (a)(2) is removed and paragraph (a)(3) is redesignated as new paragraph (a)(2).

28. Newly designated § 1627.4(a)(2) is amended by removing the word "may" and replacing it with the word "shall" and by revising the words "paragraph (a) (1) or (2)" to read "paragraph (a)(1)".

§ 1627.5 [Amended]

29. Section 1627.5(c) is amended by removing the word "may" and replacing it with the word "shall".

[FR Doc. 91–17513 Filed 7–25–91; 8:45 am]

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federal register

Friday
July 26, 1991

Part VI

Environmental Protection Agency

40 CFR Parts 261, 271, and 302

Identification and Listing of Hazardous Waste; Coke By-Products Waste; Proposed Rule and Request for Comments

ENVIRONMENTAL PROTECTION AGENCY

49 CFR Parts 261, 271, and 302

[FRL-3901-8]

Hazardous Waste Management Systems: Identification and Listing of Hazardous Waste; CERCLA Hazardous Substance Designation; Reportable Quantity Adjustment, Coke By-Products Waste Listings

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) is today proposing to amend the regulations for hazardous waste listing under the Resource Conservation and Recovery Act (RCRA) by adding seven additional wastes generated during the production, recovery, and refining of coke by-products produced from coal to the list of hazardous wastes under 40 CFR 261.32. The EPA is also proposing to amend appendix VII of 40 CFR part 261 to add the constituents for which these wastes are being listed. The listings are being proposed pursuant to the Hazardous and Solid Waste Amendments (HSWA) of 1984.

In addition, the Agency is proposing amendments to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) regulations in 40 CFR part 302 that are related to today's proposed waste listings. The EPA is proposing to designate all of the wastes proposed in today's rule as hazardous substances under CERCLA and is proposing to adjust the reportable quantities (RQs) that would be applicable to these wastes from the statutory level of one pound to their final RQs.

The effect of this proposed regulation, if promulgated, would be to subject these wastes to the hazardous waste regulations under 40 CFR parts 124, 262 through 266, 268, 270, and 271, and to the notification requirements under RCRA section 3010; and the notification requirements under CERCLA section 103.

In addition to the listings, the Agency is proposing a series of exclusions to the definition of solid waste designed to facilitate the recycling of the wastes proposed in today's notice. The effect of these proposals, if promulgated, will be to allow the reinsertion of the proposed wastes into a coke oven or mixing with coal tar products in an environmentally responsible fashion.

DATES: EPA will accept public comments on this proposed rule until September 24, 1991. For the recycling exclusions proposed in 40 CFR 261.4(a)(12), EPA will accept public comments only until August 16, 1991. Comments received after these dates will be marked late and may not be considered. Any person may request a public hearing on this proposed regulation by filing a request with EPA, to be received no later than August 12, 1991.

ADDRESSES: The public must send an original and three copies of their comments to: EPA RCRA Docket Clerk (OS-305), 401 M Street SW., Washington, DC 20460. The Docket Number F-91-CBPP-FFFFF should appear on all comments. The RCRA docket is located in room M2427 at the above address and is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (202) 475-9327. The public may copy a maximum of 100 pages of material from any one regulatory docket at no cost; additional copies cost $0.15 per page. Copies of the listing Background Document, Health and Environmental Effects Profiles (HEEPs), and other references that are not readily available can be viewed and copied in the RCRA docket. Certain sections of the background document contain Confidential Business Information (CBI) and are not available to the public.

Copies of materials that support the Reportable Quantities (RQs) for waste streams K141 through K145, K147, and K148 are available in Room M2427 at the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. This docket is available for inspection between the hours of 9 a.m. and 4 p.m., Monday through Friday, excluding Federal holidays. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services. Comments on the CERCLA portion of today's proposal should be sent in triplicate to: Emergency Response Division, Superfund Docket and Information Center, Attention: Docket Clerk (OS-245), Docket No. 102RQ-7COKE, room M2514, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket number 102RQ-7COKE should appear on all comments.

Requests for a hearing should be addressed to Mr. David Bussard, Director, Characterization and Assessment Division, Office of Solid Waste, U.S Environmental Protection Agency (OS-330), 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424-9346 or (202) 382-3000. For technical information on the RCRA portion of the proposal, contact Mr. Ron Josephson, Listing Section, Office of Solid Waste (OS-333), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4770. For technical information on the CERCLA portion of the proposal, contact Ms. Gerain Perry, Response Standards and Criteria Branch, Office of Emergency and Remedial Response (OS-210), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-2190.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Background

A. Introduction
B. Previous Listings
C. Proposal to List Tar Refining Wastewaters
D. Toxicity Characteristic Rule
E. Industrial Furnace Rules
F. Today's Proposal

II. Summary of the Proposed Regulation

A. Overview of the Proposal
B. Industry Description
C. Description of Wastes
  1. Process and Waste Descriptions
  a. Coke By-Products
  b. Tar Refining
  2. Quantities of Waste Generated
  3. Waste Management Practices
D. Basis for Listing
  1. Summary of Basis for Listing
  a. Leaching Protocols
  b. Groundwater Models
  2. Waste Characterization and Constituents of Concern
  3. Mobility of Constituents of Concern
  4. Persistence of Constituents of Concern
  5. Health Effects of Concern
  6. Mismanagement Case Histories
  7. Conclusions
E. Recycling
  1. Classification as a Solid Waste
  2. Rationale for Exclusions from the Definition of Solid Waste for Coke By-Products Residuals Recycled to the Coke Oven or when Mixed with Coal Tar
  3. Descriptions of Management Practices for the Wastes Proposed for Listing as Hazardous from the Point of Generation to the Point of Reinsertion into Coke Ovens or Mixing with Coal Tar
  a. Management Practices for Residuals from their Point of Generation to the Point of Reinsertion into Coke Ovens
  (i) Conveyance to storage or blending unit
  (ii) Blending of residuals with coal
  (iii) Feeding the coke oven
  b. Management Practices for Residuals Proposed for Listing as Hazardous Prior to Blending with Coal Tar

  4. Similar Exclusion for Decanter Tank Tar Sludge (K087) when Reinserted into Coke Ovens or Blended with Coal Tar
  5. Generator Requirements
  6. Other Options
  7. Conclusions
- F. Proposal Not to List Coke By-Products Wastewaters
- G. Impact of Future Land Disposal Restrictions (LDR) Determinations
  1. Request for Comment on the Agency's Approach to Pollution Prevention in the LDR Program
  2. Request for Comment on the Agency's Approach to the Development of BDAT Treatment Standards
  3. Request for Comment on the Agency's Approach to the Analyses of BDAT Treatment Capacity

III. State Authority

- A. Applicability of Rules in States
- B. Effect on State Authorizations

IV. CERCLA Designation and RQ Adjustment

V. Cost and Economic Analysis

VI. Regulatory Flexibility Act

VII. Paperwork Reduction Act

VIII. Compliance and Implementation

- A. Section 3010 Notification
- B. Compliance Dates for Facilities

IX. References

I. Background

A. Introduction

Pursuant to section 3001 of subtitle C of RCRA, EPA proposes to list as hazardous seven wastes generated from the production, recovery, and refining of coke by-products produced from coal. Three wastes generated by this industry (EPA Hazardous Waste No. K035—Wastewater treatment sludges generated in the production of creosote; EPA Hazardous Waste No. K060—Ammonia still lime sludge from coking operations; and EPA Hazardous Waste No. K087—Decanter tank tar sludge from coking operations) currently are listed and are regulated as hazardous wastes. Another waste (process wastewater from the production of creosote) was proposed for regulation under RCRA previously (see 45 FR 33136); however, this proposal has never been finalized. The following discussion provides a brief overview of prior regulatory action affecting wastes from this industry as well as summarizes the Agency's basis for proposing to list as hazardous the wastes covered by this rule.

B. Previous Listings

As part of its final and interim final regulations implementing Section 3001 of RCRA, EPA published several lists of hazardous wastes generated from specific and nonspecific sources. These lists have been amended several times and are published in 40 CFR 261.31 and 261.32. Among other things, on May 19, 1980, EPA listed ammonia still lime sludge (EPA Hazardous Waste No. K060) under the category of iron and steel, and wastewater treatment sludge from the production of creosote (EPA Hazardous Waste No. K035) under the category of pesticides (see 45 FR 33123–33124).[1] Decanter tank tar sludge (EPA Hazardous Waste No. K087) was added to the list of hazardous wastes on July 16, 1980, under the category of coking (see 45 FR 47832).

C. Proposal to List Tar Refining Wastewaters

The Agency also proposed to add process wastewaters from the production of creosote (*i.e.*, tar refining) to the list of hazardous wastes from specific sources (see 45 FR 33136, May 19, 1980). This proposed listing was never made final. The Agency has now tentatively decided not to list process wastewater from creosote production for the reasons explained later in this preamble (see Section I.F of today's proposal).

D. Toxicity Characteristic Rule

On March 29, 1990, as part of its regulations implementing the Hazardous and Solid Waste Amendments of 1984, the Agency amended the Toxicity Characteristics rule (TC) (40 CFR 261.24) by adding 25 additional organic hazardous constituents to the list of toxic constituents of concern and substituting a new leaching procedure called the Toxicity Characteristic Leaching Procedure (TCLP) (55 FR 11798–11862). With the promulgation of the Toxicity Characteristic, a number of wastes generated by coke by-products plants and tar refining operations, including wastes proposed for listing in today's proposal, are expected to be characteristically hazardous because they fail the Toxicity Characteristic for benzene (one of the 25 additional organic compounds). Some wastes generated by coke by-products plants and tar refining operations may also fail the TC levels for ortho-, meta- and/or para-cresol. For some of the wastes addressed in today's proposal, analytical results from the TCLP may not completely reveal the true nature of the toxicity of these wastes owing to the difficulties that may be experienced while performing the test.[2] Specifically, tarry samples pose problems with sample homogenization, filtration, and dispersion of solids in the leaching medium. Because of these difficulties, EPA believes that the TCLP tends to provide analytical results which underestimate the concentrations of hazardous constituents in leachate from these wastes. Further details on the relationship of the TC and these wastes are discussed in section II.D.1 of today's proposal.

E. Industrial Furnace Rules

On January 4, 1985, EPA promulgated amendments to the definition of solid waste which made clear that secondary materials that are burned in boilers and industrial furnaces for energy and materials recovery were solid wastes (see 50 FR 614, *et seq.*). The Agency also defined industrial furnaces as a specific list of ". . . enclosed devices that are integral components of manufacturing processes and that use controlled flame devices to accomplish recovery of materials or energy . . ." (40 CFR 260.10). Coke ovens were included on the list of devices considered to be industrial furnaces, although coke ovens do not "burn" coal.

On February 21, 1991 (see 56 FR 7134–7240), EPA promulgated permitting standards for boilers and industrial furnaces that burn hazardous waste. The standards include controls for emissions of toxic organic compounds, toxic metals, and hydrogen chloride. In addition, the rule includes provisions that subject owners and operators of boilers and industrial furnaces that burn hazardous waste to the same general facility standards applicable to hazardous waste treatment, storage, and disposal facilities.

In the preamble to the February 21, 1991 rule, EPA stated that the permitting standards apply to boilers and industrial furnaces that burn hazardous waste for the purpose of both materials and energy recovery. The February 21, 1991 preamble identified coke ovens as industrial furnaces that use hazardous waste for these two purposes and stated that these devices would be subject to regulation. However, the February 21, 1991 rule also excludes from the definition of solid waste coke and coal tar from the iron and steel industry that contain or are produced from EPA

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[1] Creosote, one of the major products produced by the refining of coal tar in coke by-products plants, is used as a pesticide in the preservation of wood. The Agency elected to list K035 under the industrial category of pesticides and used the term creosote production to describe the overall operation of tar refining. All tar refining operations produce creosote; therefore, there is no substantive difference in scope between the terms tar refining and creosote production.

[2] Research Triangle Institute. Evaluation and Modification of Method 1311 for Determining the Release Potential of Difficult-to-Filter Wastes. Final Report, April 1990.

Hazardous Waste No. K087, decanter tar tank sludge (see 56 FR 7202–7203). This exclusion extends to by-products recovered from coke oven gas generated by coke ovens charged with mixtures of coal and decanter tar tank sludge which otherwise would be considered hazardous. The Agency is today proposing to modify this exclusion for K087 wastes somewhat, and is proposing a similar exclusion for the wastes proposed to be listed in today's notice.

F. Today's Proposal

EPA is proposing today to amend 40 CFR part 261 by adding seven waste streams to the list of hazardous wastes from specific sources. Five wastes generated during the production and recovery of coke by-products will be added to the "Coking" section of the list, and two wastes from the refining of coal tar will be added to the "Pesticides" section.

Sections 3001 (a), (b)(1), and (e)(2) of RCRA and the Hazardous and Solid Waste Amendments (HSWA) requires that EPA determine whether to list wastes from the coke by-products industry as hazardous. A wide variety of materials fall within the scope of the term coke by-products, including coal tar, light oil, naphthalene, phenol, and coke oven gas. EPA has extensively studied the coke by-products industry and proposes, based on this evaluation and pursuant to the HSWA mandate, to list as hazardous the following seven wastes that are associated with the production, recovery, and refining of coke by-products:

K141 Process residues from the recovery of coal tar, including, but not limited to, tar collecting sump residues from the production of coke from coal or the recovery of coke by-products produced from coal. This listing does not include K087 (decanter tank tar sludge from coking operations).

K142 Tar storage tank residues from the production of coke from coal or from the recovery of coke by-products produced from coal.

K143 Process residues from the recovery of light oil, including, but not limited to, those generated in stills, decanters, and wash oil recovery units from the recovery of coke by-products produced from coal.

K144 Wastewater treatment sludges from light oil refining, including, but not limited to, intercepting or contamination sump sludges from the recovery of coke by-products produced from coal.

K145 Residues from naphthalene collection and recovery operations from the recovery of coke by-products produced from coal.

K147 Tar storage tank residues from coal tar refining.

K148 Residues from coal tar distillation, including, but not limited to, still bottoms.

The wastes covered in today's proposal (which are more fully described in Section II) include process residues and storage tank residues. The constituents of concern that are present in the proposed listed wastes are benzene and polynuclear aromatic hydrocarbons (PAHs), including benz(a)anthracene, benzo(a)pyrene, benzo(b and k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene, and naphthalene. The proposed listings do not include residuals already listed as EPA Hazardous Waste Nos. K035, K060, and K087. Rather, these proposed listings, if finalized, would supplement the existing listings and increase the quantity of waste from coke by-products recovery processes and tar refining processes regulated under subtitle C of RCRA. As discussed below, the proposed listings do not include wastewaters from coke by-products recovery and tar refining.

The Agency has collected data showing that the wastes proposed today for lising typically contain significant concentrations of hazardous constituents that cause carcinogenic, mutagenic, teratogenic, and chronically toxic effects in laboratory animals. The hazardous constitutents are demonstrated to be mobile and persistent in the environment and, thus, can reach environmental receptors in harmful concentrations when the wastes are mismanaged. The Agency has evaluated these wastes using the criteria for listing hazardous wastes, which are identified in 40 CFR 261.11(a). The Agency has determined that these wastes are hazardous because they contain toxic constituents that are capable of posing a substantial present or potential hazard to human health and the environment when improperly treated, stored, transported, disposed, or otherwise mismanaged.

The sources of the wastes proposed for listing as hazardous are described in section II below and in more detail in the background document (available from the public docket at EPA Headquarters—see "ADDRESSES" section—and from the EPA Regional Libraries). Certain sections of the background document, however, contain CBI material and are not available to the public. EPA will accept petitions submitted in accordance with 40 CFR part 2 for declassifying CBI material.

A number of wastes included in today's proposal are recycled by a substantial segment of the coke by-products industry. For managing proposed EPA Hazardous Waste Nos. K141 through K145, K147, and K148, two recycling techniques are commonly used: (1) Combining the residue with coal feedstock prior to or just after charging the coal into the coke oven; and (2) mixing the residue with coal tar prior to its being sold as a product. In addition, these same recycling practices are typical for tar decanter tank sludge, already listed as EPA Hazardous Waste No. K087.

To address both of these recycling practices, EPA today is proposing, first, to exclude the wastes proposed for listing in today's proposal from the definition of solid waste at the point of their reinsertion with feedstock into coke ovens, and, second, to exclude from the definition of solid waste coal tar products that contain or are produced from these wastes. EPA is extending the promulgation (contained in the February 21, 1991 Boiler and Industrial Furnace rule) of an exclusion from the definition of solid waste for K087 when reinserted into coke ovens (see section II.E of today's proposal and 56 FR 7202–7203).

The current and proposed exclusions would not apply prior to the point of reinsertion of the wastes into the coke ovens or prior to the point at which they are mixed with coal tar. (See 56 FR 7203.) Therefore, management of the wastes from their point of generation through the point at which they are reinserted into the coke oven or mixed with coal tar, including interim storage, would be regulated under subtitle C of RCRA. The Agency believes that recycling of wastes from these facilities achieves its goals of waste minimization in a beneficial, environmentally responsible manner. Discussion of the details of the recycling exclusion may be found in section II.E of today's proposal and in a future separate rulemaking.

Generators should note that, under 40 CFR 261.6(a)(1), hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of paragraphs (b) and (c) of that section, except for materials listed in (a)(2) and (a)(3) of that section. Under 40 CFR 261.6(b), generators and transporters of recyclable materials are subject to the applicable requirements of parts 262 and 263, and notification requirements under section 3010 of RCRA, except for materials listed in § 261.6 (a)(2) and (a)(3).

Under 40 CFR 261.6(c)(1), owners or operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of subparts A through L of parts 264 and 265, and

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K141 through K145, K147, and K148, two recycling techniques are commonly used: (1) Combining the residue with coal feedstock prior to or just after charging the coal into the coke oven; and (2) mixing the residue with coal tar prior to its being sold as a product. In addition, these same recycling practices are typical for tar decanter tank sludge, already listed as EPA Hazardous Waste No. K087.

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Under 40 CFR 261.6(c)(1), owners or operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of subparts A through L of parts 264 and 265, and

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under parts 124, 266, 268, and 270, and the notification requirements under section 3010 of RCRA, except for materials listed in § 261.6 (a)(2) and (a)(3). Under 40 CFR 261.6(c)(2), owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to the following requirements, except for materials listed in § 261.6 (a)(2) and (a)(3):

(i) Notification requirements under section 3010 of RCRA.

(ii) Section 265.71 and 265.72 (dealing with the use of a manifest system and manifest discrepancies).

Today's proposal does not list wastewaters from the production, recovery, and refining of coke by-products. The Agency expects that some of these wastewaters may be TC hazardous for benzene. The Agency does not have sufficient data showing that PAHs are typically present in these wastewaters at levels of regulatory concern. The Agency solicits comment and any information relevant to hazardous constituents found in these wastewaters. If such data are received and they demonstrate that several hazardous constituents are typically and frequently present in wastewaters at levels of regulatory concern, the Agency may reconsider whether to list these wastewaters as hazardous.

The Agency is also not proposing to list process wastewaters from the production of creosote (tar refining operations) as hazardous. Sludges generated from the treatment of these wastewaters are already regulated under subtitle C of RCRA since they are listed as hazardous wastes (EPA Hazardous Waste No. K035).

HSWA requires the Agency to promulgate standards restricting the land disposal of newly identified wastes within six months of promulgating new listings. While today's notice does not propose land disposal restrictions for these wastes, the Agency will propose such standards in the future. The Agency's information requirements as they relate to land disposal restrictions are outlined in section II.G of this proposal.

II. Summary of the Proposed Regulation

A. Overview of the Proposal

This notice proposes to add seven wastes from the production, recovery, and refining of coke by-products to the list of hazardous wastes from specific sources (40 CFR 261.32).

The seven wastes are:

K141 Process residues from the recovery of coal tar, including, but not limited to, tar collecting sump residues from the production of coke from coal or the recovery of coke by-products produced from coal. This listing does not include K087 (decanter tank tar sludge from coking operations).

K142 Tar storage tank residues from the production of coke from coal or from the recovery of coke by-products produced from coal.

K143 Process residues from the recovery of light oil, including, but limited to, those generated in stills, decanters, and wash oil recovery units from the recovery of coke by-products produced from coal.

K144 Wastewater treatment sludges from light oil refining, including, but not limited to, intercepting or contamination sump sludges from the recovery of coke by-products produced from coal.

K145 Residues from naphthalene collection and recovery operations from the recovery of coke by-products produced from coal.

K147 Tar storage tank residues from coal tar refining.

K148 Residues from coal tar distillation, including, but not limited to, still bottoms.

EPA has found that these wastes typically contain toxic constituents, including some that may be carcinogenic, that when mismanaged may pose a substantial present or potential threat to human health and the environment. In addition, the Agency has compiled evidence to demonstrate that the toxic constituents are mobile and persistent in the environment and are capable of reaching receptors in harmful concentrations. The information that supports these findings is summarized in this preamble and is presented in detail in the background document and other supporting materials that are available in the RCRA Docket for this proposal (see "**ADDRESSES**" section).

Upon promulgation of these proposed listings, all wastes meeting the listing descriptions would become hazardous wastes under RCRA. Wastes generated prior to promulgation, however, would not be subject to regulation as hazardous waste as long as they are not actively managed after the effective date of this rule.

B. Industry Description

The proposed regulations would list residuals from the production, recovery, and refining of coke by-products produced from coal as hazardous wastes. Coke oven gas, a coke by-product, is produced from coal along with the main product, coke. Coke by-products recovered from the coke oven gas include naphthalene, light oil, coal tar, and other marketable products. Light oil is processed further to recover benzene, toluene, and xylene. The processing of light oil to produce these products is not included in today's rule because these products are not necessarily by-products of the coke manufacturing process but may be produced by a variety of other processes. By-products and sludges generated by the light oil recovery process itself, however, are included for listing in today's proposal (K143 and K144). Coal tars usually are shipped to other facilities for coal tar refining. Because these operations usually are conducted at separate locations, the descriptions of coke production and coal tar refining industries are presented separately in this section.

In 1987, 21 domestic companies produced approximately 28 million metric tons (MT) of coke at 34 plants. The coke by-products industry is divided into two distinct segments—captive coke producers (23 plants) and merchant coke producers (11 plants). Table 1 provides the distribution of coke plants (captive and merchant) and tar refining plants by state. The 23 captive coke plants are operated by major iron and steel companies and produce blast furnace coke that is generally used on-site at integrated iron and steel plants to produce steel.

The 11 merchant coke plants generally produce coke for sale on the open market. These plants produce blast furnace coke for sale to iron and steel companies, and metallurgical coke for sale to iron and steel foundries and to other metallurgical and chemical industries.

TABLE 1.—DISTRIBUTION OF COKE PLANTS AND TAR REFINING PLANTS BY STATE

State	Number of coke plants			Number of tar refining plants
	Captive	Merchant	Total	
Alabama	1	4	5	2
Illinois	3	0	3	2

TABLE 1.—DISTRIBUTION OF COKE PLANTS AND TAR REFINING PLANTS BY STATE—Continued

State	Number of coke plants			Number of tar refining plants
	Captive	Merchant	Total	
Indiana	4	2	6	0
Kentucky	1	0	1	0
Maryland	1	0	1	0
Michigan	1	1	2	1
New York	1	1	2	0
Ohio	4	2	6	1
Pennsylvania	5	1	6	0
Tennessee	0	0	0	1
Texas	0	0	0	2
Utah	1	0	1	1
West Virginia	1	0	1	1
Total	23	11	34	11

The major by-products from coke production are coke oven gas, coal tar, naphthalene, sodium phenolate, and light oils. The coke oven gas is processed to remove the coal tars, phenols (which are used to produce sodium phenolate), naphthalene, and light oils and then is used as a fuel for noncontact heating of the coke ovens or in other processes in the coke or steel plant. In 1985, about 1,200 million liters of coal tar, 3.7 million liters of sodium phenolate, 7,700 short tons of naphthalene, and 580 million liters of light oil were produced by coke plants.

Historically, coal tar refining was a part of the coke by-products recovery operation at coke-making facilities. However, most coke plants have eliminated or have sold their tar refining operations. The crude coal tar that is produced at most coke plants now is sold to independent tar refiners for the production of other coal tar by-products.

In 1987, four companies operated 11 tar refining operations (see Table 1). Because tar refining plants depend on coke plants for their raw material, they are generally located in the vicinity of coke-making facilities. The primary products produced from coal tar at these refining facilities are light oil, creosote oil (middle fraction), refined tar (heavy fraction), and tar pitch (bottom fraction). The 1985 production of these products was approximately 45 million liters of light oil, 500 million liters of creosote oils, 550 million liters of refined tar (excluding tar used as road tar), and 470,000 metric tons (MT) of coal tar pitch.

C. Description of Wastes

1. Process and Waste Descriptions

a. Coke By-Products. While coke-making operations vary somewhat with respect to the products formed, oven size, and coking time, the general process is common to all plants. Coke by-products recovery operations, however, vary to a greater extent from plant to plant, and each plant is unique in terms of the coke by-products recovered and the specific steps used for recovery operations. The most common processes involve recovery of light oil and coal tar, as well as production of ammonia, naphthalene, and phenol. Further refining of light oil and coal tar also may occur at coke plants, but, generally, these products are sent to off-site refiners for further processing. The following description provides an overview of the coke production and coke by-products recovery processed. For completeness and continuity, background information on currently listed wastes also is presented. However, EPA is not soliciting and will not respond to comments pertaining to those wastes currently listed (K087, K060, and K035).

For coke production, coking coals are selected mainly on the basis of quality and amount of coke they will produce. About 65–70% of the coal charged is converted to coke. Mature coals (>75% carbon) are comprised mainly of polynuclear carbon ring systems connected by a variety of functional groups. Volatile matter in the coal, arising from coal decomposition, is released as coke oven gas during the coking (carbonization) process. The coke oven gas, containing benzene and PAHs, is captured to recover coke by-products and finally used as a fuel. Coke produced in the coking process is used in the manufacture of steel.

Figure 1 is a general process flow diagram that shows the points where the proposed wastes typically are generated. This process flow diagram is presented for illustrative purposes only and should not be construed to show all the unit operations in the manufacture of coke by-products. Individual facilities may have processes that are different from those shown in Figure 1 and may generate the proposed wastes at different points in the process.

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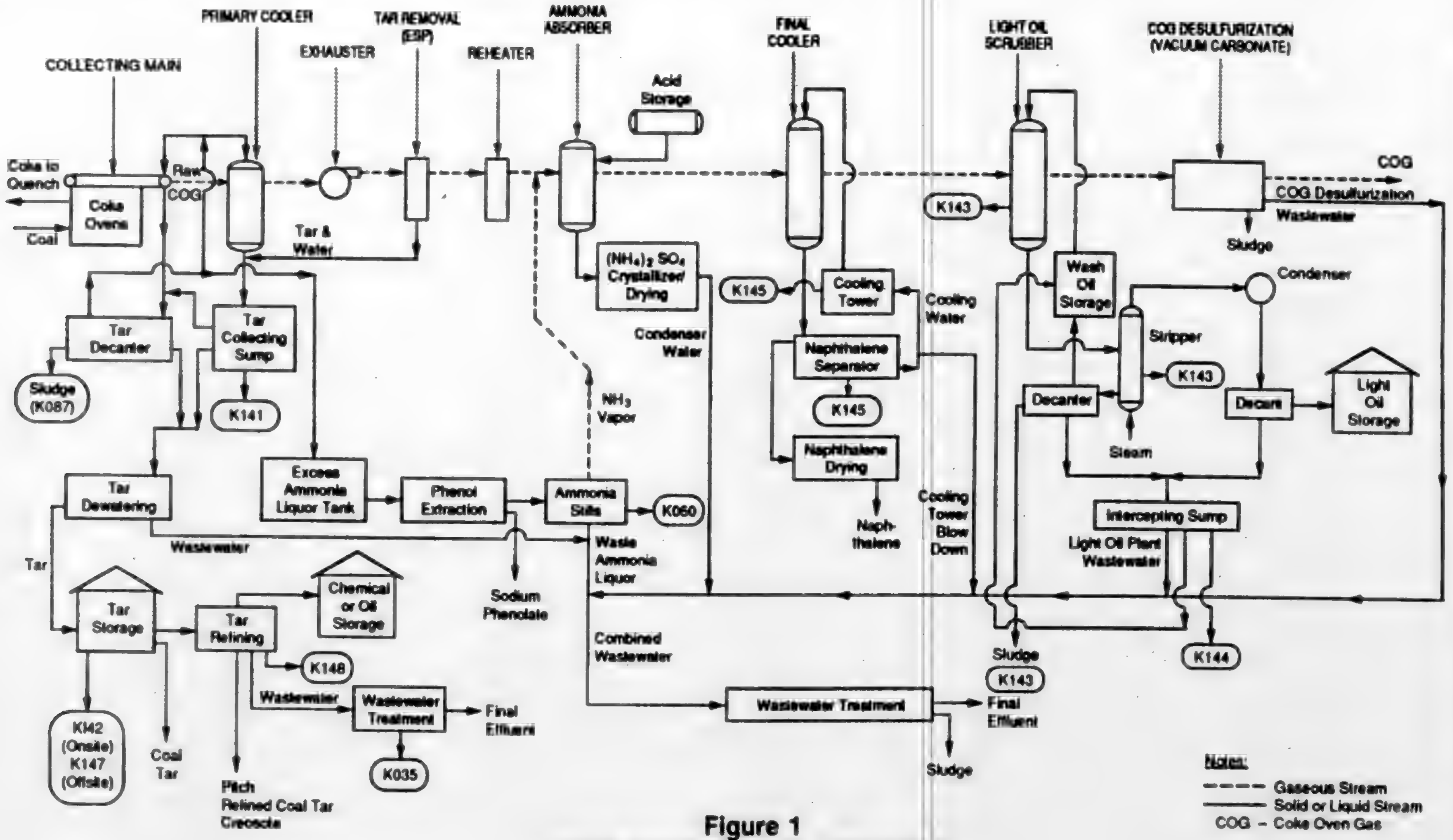
PRIMARY COOLER
TAR REMOVAL (ESP)
AMMONIA ABSORBER
FINAL COOLER
LIGHT OIL SCRUBBER
COG DESULFURIZATION (VACUUM CARBONATE)
COLLECTING MAIN
EXHAUSTER
REHEATER
Acid Storage
Coke to Quench
Raw COG
Coke Ovens
Coal
Tar & Water
COG
COG Desulfurization Wastewater
Sludge
K143
(NH4)2 SO4 Crystallizer/ Drying
K145
Cooling Tower
Cooling Water
Wash Oil Storage
Condenser
Tar Decanter
Tar Collecting Sump
Sludge (K087)
K141
Condenser Water
Naphthalene Separator
Stripper
K143
K145
Decanter
Decant
Light Oil Storage
NH3 Vapor
Steam
Naphthalene Drying
Tar Dewatering
Excess Ammonia Liquor Tank
Phenol Extraction
Ammonia Stills
K060
Cooling Tower Blow Down
Intercepting Sump
Naph-thalene
Wastewater
Waste Ammonia Liquor
Light Oil Plant Wastewater
Tar
Tar Storage
Tar Refining
Chemical or Oil Storage
Sodium Phenolate
K148
Combined Wastewater
Sludge
K143
K144
Wastewater
Wastewater Treatment
Final Effluent
Wastewater Treatment
Final Effluent
K142 (Onsite) K147 (Offsite)
Coal Tar
K035
Sludge
Pitch
Refined Coal Tar
Creosote
Notes:
---- Gaseous Stream
—— Solid or Liquid Stream
COG – Coke Oven Gas

Figure 1
COKE BY-PRODUCTS RECOVERY

Source: Background Document

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The following discussion describes the processes illustrated in Figure 1. Coal is charged to the coke oven and heated to temperatures between 700° and 900° C to produce coke and coke oven gas (COG). In coke ovens, the carefully blended coal charge is heated on two opposite sides so that heat travels toward the center and thus produces shorter and more solid pieces of coke. Air is excluded so that no burning takes place within the oven; the heat is supplied completely by the flues on the sides. The raw coke oven gas exits the oven at temperatures ranging from 760° to 870° C through the collecting main where it is sprayed with flushing liquor. The flushing liquor, composed primarily of water, tar, light oils, and heavy hydrocarbons, cools the coke oven gas to temperatures between 80° and 100° C. At these temperatures, the tar precipitates, and most of the nonvolatile organics condense from the gas. Coal tar, water, and ammonia are carried with the flushing liquor to the tar decanter tank (i.e., flushing liquor decanter tank). The uncondensed gas flows from the collecting main through crossover mains to the suction main, from which it enters the primary cooler. About 40 percent of the coke oven gas, after being stripped of its by-products, is returned and burned for the underfiring of a battery of ovens, and some is used on-site as fuel gas or for other purposes.

The uncondensed gas that leaves the collecting main enters the primary cooler where the gas temperature is reduced to approximately 40° C. The temperature reduction causes condensation of additional tar and liquor. Primary cooling is accomplished directly, by contacting the gas with cooling liquor in a baffled tower, or indirectly, by using countercurrent water flow in a heat exchanger. The condensate from the primary cooler flows into a tar collecting sump and is discharged into a tar decanter. The sludge that accumulates at the bottom of the collecting sump, tar collecting sump residue, must be removed periodically. The tar collecting sump residue is proposed to be listed as EPA Hazardous Waste No. K141. In most cases, this residue is recycled to the tar decanter.

The gas that exits the primary cooler is compressed in an exhauster and sent to an electrostatic precipitator (ESP), which removes entrained coal tar. The coal tar typically is routed to the tar collecting sump. In some facilities, tar from the primary cooler and ESP is discharged directly into the tar decanter tank, thereby eliminating the need for a tar collecting sump.

In the tar decanter tank, the material separates into three phases: the top layer is a dilute ammonia flushing liquor; the middle layer is coal tar; and the bottom layer contains heavy carbonaceous deposits that were entrained with the tar and liquor in the collecting main. Ammonia is a coke by-product and is removed with a dilute ammonia flushing liquor that is skimmed from the top layer in the tar decanter tank. A portion of this liquor is recycled to the collecting main. The flushing liquor system is a net generator of excess ammonia liquor that is sent to the excess ammonia liquor tank for storage. Phenols can be extracted from the excess ammonia liquor by direct contact with a countercurrent flow of light oil from the light oil recovery unit. The phenol containing light oil flows to the phenol column where the phenols are removed by reaction with caustic (sodium hydroxide or NaOH) to form sodium phenolate. The sodium phenolate and the separated light oil fraction are both sold as by-products.

Excess ammonia liquor leaving the phenol recovery unit is then sent to ammonia stills for ammonia recovery. The ammonia stills employ either caustic (NaOH) or lime (calcium hydroxide or $Ca(OH)_2$) to react with any fixed ammonium salt to render 'free' ammonia. Alternatively, lime can be added to the ammonia liquor before it enters the ammonia still in a vessel called a prelimer. Ammonia still lime sludge is generated in the ammonia stills. This ammonia still lime sludge is currently listed as EPA Hazardous Waste No. K060. No sludge (K060) is generated if only NaOH is used in the process. The waste ammonia liquor resulting from the ammonia recovery ultimately is sent to a wastewater treatment system.

The tar is drained from the middle layer of the tar decanter tank and sent for tar dewatering and then for storage. Tar dewatering reduces the water content of the tar by gravity separation. The water from tar dewatering is sent to the wastewater treatment system. Dewatered tar is sent for storage. The Agency does not have any data indicating that sludges are generated from the tar dewatering step.

Over time, a tar residue, identified in today's proposal as proposed EPA Hazardous Waste Nos. K142 for coke by-products facilities and K147 for tar distillation facilities, accumulates at the bottom of the tar storage tanks. This tar residue must be removed periodically to maintain capacity of tar storage tanks. The accumulated carbonaceous deposits at the bottom of the tar decanter tank currently are listed as EPA Hazardous Waste No. K087—Decanter Tank Tar Sludge. This residue is collected continuously by scrapers and is either recycled via ball mills to the coke ovens or treated and disposed.

Coke oven gas exiting the electrostatic precipitator (ESP) and the reheater, is sent for ammonia recovery. The recovery of ammonia from coke oven gas is practiced at most coke by-products plants. Ammonia may be recovered from the gas stream (*i.e.*, coke oven gas) using either the direct or indirect recovery process. The direct process involves contacting the entire gas stream with a solution of sulfuric acid (H_2SO_4) in an absorber to produce ammonium sulfate crystals (after a series of drying and crystallization steps). The ammonium sulfate crystals are sold or disposed depending on market conditions. When indirect ammonia recovery is used, the gas is scrubbed with cooling water to absorb the ammonia, and the scrubbing liquor is distilled with steam in ammonia stills to yield ammonia vapor. This vapor is then reacted with sulfuric acid to produce ammonium sulfate crystals.

Coke oven gas exiting the ammonia absorber (saturator) is sent to the final cooler for naphthalene removal. Coke by-product plants use one of two distinct processes for final cooling. The most common method is direct contact final cooling (see Figure 1), which uses water as a cooling medium. The alternative cooling process uses counterflow wash oil as a cooling/collection medium.

When water is used in the final cooler, naphthalene in the coke oven gas condenses and must be removed from the recirculating cooling water. The effluent stream from the final cooler is first sent to a sump called the naphthalene separator where the naphthalene is skimmed mechanically from the surface of the water. Naphthalene collection and recovery residue (proposed EPA Hazardous Waste No. K145) accumulates at the bottom of the naphthalene separator sump over a period of time. From the separator sump, the water is discharged to a hot sump, which acts as a collection or surge vessel for the cooling tower. From the hot sump, the water is routed at a constant flow rate through the cooling tower to a cold sump, which serves as a collection or surge tank for the cooled water before it reenters the final cooler. Naphthalene collection and recovery residues (proposed EPA Hazardous Waste No. K145) also accumulate in the hot and cold sumps, and on the surfaces of the cooling tower.

Naphthalene may also be separated from the final cooler water by sending the coke oven gas stream through a layer of tar at the bottom of the final cooler. The use of a tar-bottom final cooler allows the naphthalene to dissolve in the tar and to be included with the tar in any further refining operation. The same effect can be produced by sending the final cooler effluent stream to the tar collecting sump. The naphthalene dissolves in the tar, and the water separates out by gravity. This separated water can either be recycled to the cooling process or sent for wastewater treatment.

When the alternative wash oil cooling process is used, the material recovered from the final cooler contains naphthalene and some light oil. This stream is sent to a wash oil decanter (to remove condensed water) and then to a wash oil circulation tank. Some of the wash oil from the recirculation tank is recycled back to the final cooler through an indirect heat exchanger. The remainder is routed eventually to the light oil recovery plant (or benzol plant), which is described below, for removal of both the naphthalene and the light oil. Naphthalene collection and recovery residues (K145) are formed in the final cooler and the wash oil decanter.

After final cooling, the gas stream enters the light oil recovery stage in which the gas is scrubbed countercurrently with petroleum wash oil in a scrubber called the light oil scrubber (or benzol plant scrubber) to absorb the light oil. Material that builds up in this scrubber over time will be listed as light oil recovery residues (proposed EPA Hazardous Waste No. K143). From the scrubber, the "benzolized" wash oil is sent to the light oil stripping still or stripper to separate the wash oil from the light oil. Light oil recovery residue (proposed EPA Hazardous Waste No. K143) also includes material that accumulates in the still. Recovered light oil is then stored and subsequently sold. The wash oil is recycled to the light oil scrubber.

As the wash oil recycles through the light oil recovery process, a high-boiling-point resin is formed through polymerization reactions, which degrades the quality of the wash oil. A portion of the wash oil is removed continuously and is treated to separate this polymerized resin. The cleanup can be accomplished thermally in a wash oil purifier, gravitationally in wash oil decanters, or by using the difference in densities between the resin and the wash oil in a centrifuge (only gravitational separation in a decanter is shown in Figure 1). The polymerized resin known as wash oil muck or muck oil (proposed EPA Hazardous Waste No. K143) accumulates over time and is removed periodically from the decanter. The cleaned wash oil is recycled to the light oil recovery cycle via the wash oil storage or recirculation tank. The material that accumulates in the storage or recirculation tank is also referred to as a light oil recovery residue (proposed EPA Hazardous Waste No. K143).

Most plants that practice light oil recovery have a sump that collects wastewaters generated in the light oil recovery area. Such wastewaters would include decanter water from the primary, intermediate, and secondary separators, as well as equipment and floor wash water. The primary purpose of the intercepting sump is to provide sufficient residence time for oil and water to separate. The separated light oil fraction is recovered by skimming and returned to the process. Sludge that accumulates in the bottom of the intercepting sump typically is removed on a periodic basis. These settled solids are residues that are defined as wastewater sump sludges from light oil recovery (proposed EPA Hazardous Waste No. K144). Wastewater from the intercepting sump usually is treated onsite prior to disposal or is used to extinction in the coke quench system.

The coke oven gas (COG) that exists from the light oil plant has a relatively high heating value. At captive plants, about 40 percent of the COG is used as fuel for the coke ovens, and the remainder is used as fuel in other steel plant operations. Merchant plants use about 40 percent of the COG as fuel for the coke ovens, and the remainder is sold as a fuel or flared. Historically, the gas from the light oil scrubber has been used as a fuel without further pretreatment. However, because the COG contains significant quantities of hydrogen sulfide (H_2S) (roughly 1 g of H_2S per 100 m^3 of COG) that are converted to sulfur dioxide (SO_2) and sulfur trioxide (SO_3) when the gas is burned, many plants now practice COG desulfurization to reduce SO_x (SO_2 and SO_3) emissions. The three basic types of COG desulfurization processes are (a) liquid absorption processes, (b) wet oxidative processes, and (c) dry oxidative processes. Sulfur compounds recovered from these processes may be sold or disposed, depending on market conditions.

In the coke by-products recovery plant, wastewaters from the light oil recovery process, waste ammonia liquor, and final cooler blow-down constitute the majority of liquid wastes. Other minor sources of aqueous waste are barometric condenser wastes from ammonia crystallizers, desulfurization wastes, and contaminated waters from air pollution emission scrubbers used at charging, pushing, preheating, or screening stations.

Based on the information available from RCRA 3007 questionnaires, 49 percent of the facilities discharge these wastewaters to a POTW, 25 percent of the facilities discharge these wastewaters to surface water, 21 percent reuse these wastewaters in their process (e.g., use as quench water), and the remaining four percent of the facilities dispose of these wastewaters in underground injection wells. According to the information available to the Agency, a significant number of facilities use biological treatment to treat these wastewaters before discharging them to a POTW or through their NPDES permitted outfall. However, some facilities do discharge their wastewaters to a POTW without any treatment onsite. Most of the facilities treat their wastewaters in tanks. However, six facilities use surface impoundments to manage their wastewaters.

Based on the limited information available to the Agency, four facilities have reported storing sludges resulting from wastewater treatment in surface impoundment, one facility has reported storing sludges from wastewater treatment in waste piles, three facilities have reported disposing of sludges from wastewater treatment in landfills, one facility has reported incinerating sludges from wastewater treatment.

b. Tar Refining. Coal tars typically are refined at facilities other than coke plants. Coal tar is refined by either batch or continuous distillation into a number of products, including pitch, creosote, naphthalene, and tar acids. The following paragraphs discuss the tar refining steps.

A batch still is a horizontal tank used to heat the crude coal tar. Vapors from the material being distilled leave the top of the still and pass through a water-cooled condenser. The pitch (at the bottom of the horizontal tank) is heated until it reaches its softening point. At that point, the pitch is discharged from the still, cooled, and poured into barrels for storage. In the batch distillation process, high-boiling-point residues accumulate on the fire tubes and at the bottom of the still and must be removed periodically. This residue is called tar distillation bottoms or residue (proposed EPA Hazardous Waste No. K148).

When coal tar is refined using continuous distillation, the crude material is first heated in a dehydration column, then flashed to separate its components. The heavy liquid components such as pitch and creosote are sent to a distillation column for further refining. Vapors from the flash chambers and distillation columns are sent to a fractionating column. Finished commercial products include heavy naphtha, naphthalene, creosote, and anthracene oil. No still residues are generated from the continuous process.

Tar from either of these processes is stored in tanks and, over time, a tar residue may accumulate at the bottom of the storage tanks and, if it reaches a certain level, is removed periodically. This tar residue is identified in today's proposal as EPA Hazardous Waste No. K147 (for the refining facilities). Currently EPA does not have any data that indicate residues are generated from chemical or oil storage.

The Agency realizes that the tar refining industry generates products from still bottoms, as opposed to relying purely on distillate products. The Agency seeks comment as to which bottoms are really products, by-products, or co-products and which are, in fact, wastes. The Agency is proposing to limiting the listings to materials that are wastes, not legitimate products. The Agency also seeks comments and suggestions as to the wording of the K147 and K148 listings, so that there is no confusion in the regulated community as to the scope of the listings, if promulgated.

2. Quantities of Waste Generated

Table 2 presents estimates of the quantities of waste generated from the production of coke and coke by-products, recovery of coke by-products, and coal tar refining. These estimates are based on data supplied to EPA by the industry in response to the questionnaires sent to each operating facility in 1985, and on supplemental data collected from all tar refiners and approximately 50 percent of the coke plants in 1987. The industry questionnaires were issued under the authority of RCRA Section 3007. The estimates were calculated using a best-estimate, production-normalized waste generation rate for each residual stream. Plant-specific waste/residual estimates of waste quantities were made based on the process description or residual characterization supplied by the plant, and using plant-specific production rates for those plants that were known to generate the residual stream. The assumptions and data used to generate these estimates are provided in detail in the Background Document for this proposed listing and in confidential data memoranda referenced in the Background Document. EPA will accept petitions submitted in accordance with 40 CFR part 2 for declassifying CBI material.

TABLE 2.—ESTIMATED NATIONWIDE WASTE QUANTITIES (MT/YR)

Waste	Quantity
K141—Process residues from the recovery of coal tar, including, but not limited to, tar collecting sump residues from the production of coke from coal or the recovery of coke by-products produced from coal. This listing does not include K087 (decanter tank tar sludge from coking operations)	3,100
K142—Tar storage tank residues from the production of coke from coal or from the recovery of coke by-products produced from coal	10,000
K143—Process residues from the recovery of light oil, including, but not limited to, those generated in stills, decanters, and wash oil recovery units from the recovery of coke by-products produced from coal	4,500
K144—Wastewater treatment sludges from light oil refining, including, but not limited to, intercepting or contamination sump sludges from the recovery of coke by-products produced from coal	900
K145—Residues from naphthalene collection and recovery operations from the recovery of coke by-products produced from coal	450
K147—Tar storage tank residues from coal tar refining	2,800
K148—Residues from coal tar distillation, including, but not limited to, still bottoms	270

Source: Background Document (USEPA 1990).

3. Waste Management Practices

The principal sources of information on waste management practices are the responses to the 1985 EPA questionnaires, the supplemental information collected in 1987, and information from States and other government agencies. Table 3 summarizes the information obtained on management practices for the coke plant residual streams. Coal tar refining waste management practices are summarized in Table 4.

TABLE 3.—WASTE MANAGEMENT PRACTICES FOR COKE BY-PRODUCTS RECOVERY WASTES (PERCENT) [1]

Waste management practice	K141	K142	K143	K144	K145
	Residues from tar recovery [2]	Tar storage tank residues	Residues from light oil processing	Wastewater treatment sludges from light oil refining	Residues from naphthalene collection, recovery
Reuse, returned to process	[2] 100	31	53	43	100
Removed by waste removal contractor	0	8	13	29	0
Burned in boiler/used as fuel	0	31	19	14	0
Landfill	0	31	6	14	0
Other	0	0	[3] 6	0	0
No. of facilities responding	1	13	17	8	5
Percent of total coke production by responding facilities	5	44	27	27	16

[1] Percentages are based on number of facilities responding to RCRA 3007 questionnaire, which reported management practices, not number of facilities that generated waste. Totals may exceed 100 percent because many facilities reported more than one management practice.

[2] Only one plant reported management practices for tar collecting sump residues and that plant indicated that residues are recycled to the tar decanter. This number may not be representative of all facilities.

[3] Sold or stored.

Source: RCRA 3007 questionnaries.

TABLE 4.—WASTE MANAGEMENT PRACTICES FOR TAR REFINING WASTES (PERCENT) [1]

Waste management practice	K147 tar storage tank residual	K148 tar distillation residue
Reuse, return to process	0	33
Removed by waste removal contractor	50	33
Burned in boiler/used as fuel	0	0
Landfill	50	33
Thermal evaporation in tanks	0	0
Other	0	0
Number of facilities responding	4	6
Percent of total tar production by responding facilities	50	55

[1] Percentages are based on number of facilities responding to the RCRA 3007 questionnaire, which reported management practices, not number of facilities that generated waste. Totals may exceed 100 percent because many facilities reported more than one waste management practice.

Source: RCRA 3007 Questionnaires.

The four primary waste management practices for coke plant residual streams are landfilling, removal by designated contractors for off-site disposal, combustion as a fuel, and reuse in the process. Further details on off-site waste management practices utilized by the contractors were not reported in the RCRA 3007 questionnaires, but presumably the wastes are either landfilled or used as a fuel because of their high heating value (>12,000 BTU/lb).

Several recycling options are available for reuse of residuals in the process. For example, for residues from tar recovery (proposed EPA Hazardous Waste No. K141), one option is to recycle the residue to the tar decanter. Tar storage tank residuals (proposed EPA Hazardous Waste No. K142) are generally recycled to the coke oven and introduced with the coal as feedstock. Residues from naphthalene production (proposed EPA Hazardous Waste No. K145) can be returned to the coke oven or dissolved in the tar and processed as a component of the crude coal tar. The two light oil recovery residues (proposed EPA Hazardous Waste Nos. K143 and K144) can be dissolved in the tar, dissolved in the wash oil and recycled in the light oil recovery process, or recycled to the coke oven with the coal. Two facilities reported recycling tar distillation residue (proposed EPA Hazardous Waste No. K148). One plant recycled the residue with the tar. The other plant recycled the residue to a coke plant where it was returned to the coke oven with the coal feed.

D. Basis for Listing

1. Summary of Basis for Listing

Each of the seven wastes from coke, coke by-products, and tar refining meets the criteria for listing wastes as hazardous that is presented in 40 CFR 261.11(a)(3). Consequently, EPA is proposing that they be added to the list of hazardous wastes from specific sources appearing at 40 CFR 261.32. Hazardous constituents are typically present in these wastes at such levels that ground-water concentrations of these constituents are expected to exceed health-based levels of concern when the wastes are improperly managed. As discussed later, all the constituents of concern are carcinogens and/or systemic toxicants. All of the constituents of concern are listed as hazardous constituents in 40 CFR part 261, appendix VIII. Under plausible mismanagement scenarios, the Agency believes that these proposed hazardous wastes (proposed EPA Hazardous Waste Nos. K141 through K145, K147, and K148) are capable of posing a substantial present or potential hazard to human health or the environment. By mismanagement scenario, the Agency means disposal in a sanitary or industrial (RCRA subtitle D) landfill, surface impoundment, open dumping, etc.

Table 5 presents the selected constituents of concern in each of the proposed wastes. Tables 6 and 7 present the range of measured concentrations of constituents in coke by-products and tar refining wastes. EPA selected the constituents of concern based on two principal factors: their known toxicity and their average concentrations in the waste. In the past, EPA's selection of constituents of concern for listed hazardous wastes has relied on comparisons of maximum reported waste constituent concentrations with health-based levels of concern. The Agency used the same selection procedure to identify the constituents of concern in the wastes being proposed for listing as hazardous. In this case, the Agency has found, as is shown and discussed later in Tables 8 through 8F, that the concentrations of constituents of concern in coke by-products wastes are so high that even projections of ground water contamination levels based on average waste concentrations (rather than maximum concentrations) exceed health-based levels of concern. Other constituents were detected in these wastes but were not selected as constituents of concern at this time because their levels of toxicity are not well established or because they typically are not present in concentrations of regulatory concern. Data on these constituents can be found in the Background Document for today's proposal.

TABLE 5.—CONSTITUENTS OF CONCERN

Constituents	K141	K142	K143	K144	K145	K147	K148
Benzene	X	X	X	X	X	X	–
Benz(a)anthracene	X	X	X	X	X	X	X
Benzo(a)pyrene	X	X	X	X	X	X	X
Benzo(b and k)fluoranthene	X	X	X	X	–	X	X
Dibenz(a,h)anthracene	X	X	–	X	X	X	X
Indeno(1,2,3-cd)pyrene	X	X	–	–	–	X	X
Naphthalene	–	–	–	–	X	–	–

Note.—X indicates that the constituent has been found to be present at levels of regulatory concern in the individual waste stream.

TABLE 6—Coke and Coke By-Product Wastes: Constituents of Concern and Range of Measured Concentrations (All Values in PPM)

Constituent	K141—Process residues from coal tar recovery[a]	K142—Tar storage tank residues		K143—Residues from light oil processing		K144—Wastewater treatment sludges from light oil refining		K145—Residues from naphthalene collection and recovery	
		Range	Avg.	Range	Avg.	Range	Avg.	Range	Avg.
Benzene	3,850	230–290	260	39–8,500	1,600	200–14,000	3,000	120–3,000	1,000
Benz(a) anthracene	7,850	5,400–7,400	6,600	ND–320	[b] 69	<15–140	[b] 66	<3–[c] 48	[b] 22
Benzo(a)pyrene	8,450	4,500–8,300	6,500	<10–130	[b] 34	<20–130	[b] 65	ND–22	[c] 7
Benzo(b)fluoranthene [d]									
Benzo(k)fluoranthene [d]	5,450	5,200–10,000	7,500	<5–230	[b] 59	15–220	[b] 75	ND–5	[b] 26
Dibenz(a,h)anthracene	1,750	720–1,600	1,000	ND–[c] 250	[b] 38	<7–[c] 31	[b] 15	ND–5	[b] 1.3
Indeno(1,2,3-cd)pyrene	6,150	2,000–4,100	2,900	ND–[c] 250	[b] 40	<15–77	[b] 36	ND–9.9	[b] 4
Naphthalene	95,000	32,000–84,000	55,000	1,400–480,000	52,000	360–53,000	27,000	5.7–300,000	140,000

[a] Only one data point exists. However, this residual is presumed to be comparable in composition to tar decanter sludge (listed waste K087).
[b] Arithmetic averages are based on one half the quantitation limit for constituents detected below quantitation limits and zero for constitutents not detected (ND).
[c] Value represents one half the quantitation limit because the constitutent was detected at trace levels.
[d] GC peak resolution was not adequate to provide quantitation of the two isomers individually. The results shown are the sum of the two isomers.

TABLE 7.—TAR REFINING WASTES: CONSTITUENTS OF CONCERN AND RANGE OF MEASURED CONCENTRATIONS (ALL VALUES IN PPM)

Constituent	K147—Tar storage tank residuals		K148—Tar Distillation residuals	
	Range	Avg	Range	Avg
Benzene	230–290	260	NA [a]	NA[a]
Benz(a)anthracene	5,400–7,400	6,600	160–10,000	4,500
Benzo(a)pyrene	4,500–8,300	6,500	330–7,300	3,600
Benzo(b)fluoranthene [b]				
Benzo(k)fluoranthene [b]	5,200–10,000	7,500	150–13,000	6,100
Dibenz(a,h)anthracene	720–1,600	1,000	36–1,400	800
Indeno(1,2,3-cd)pyrene	2,000–4,100	2,900	110–3,300	1,700
Naphthalene	32,000–84,000	55,000	17–2,400	850

[a] Constituent not analyzed (volatiles were not anticipated in still bottoms that have been heated to high temperatures).
[b] GC peak resolution was not adequate to provide quantitation of the two isomers individually. The results are the sum of the isomers.
Source: Background Document.

The Agency lists a waste as hazardous if the waste poses a potential hazard to human health or the environment. In order to assess the potential hazard that a waste may pose, the Agency evaluates the potential human health and environmental risk if the waste is disposed of improperly. This risk is estimated as a function of the amount of exposure and the toxicity of hazardous constituents present in the waste stream of concern. In evaluating the risk posed by today's wastes, the Agency considered human exposure and exposure to environmental receptors from contaminated ground water. The amount of exposure to humans through ingestion of contaminated drinking water and environmental receptors via ground water is estimated from the expected concentrations of hazardous constituents in drinking water and the average amount of water consumed over the entire life span of an individual.

The expected drinking water concentrations of hazardous constituents from the wastes can be estimated as follows. First, the concentrations of these constituents released to a leachate generated from the wastes are estimated. Then, the concentrations of these constituents in drinking water are estimated after transportation of the leachate to a drinking water well. Various alternatives, discussed below, were considered for estimating the exposure concentrations.

In order to estimate the concentration of the constituents of regulatory concern present in the proposed coke by-products wastes, EPA considered the use of leachability models and subsurface fate and transport models to estimate concentrations of these constituents in drinking water. Specifically, the Agency considered the use of the Organic Leachate Model (OLM) and the Toxicity Characteristic Leaching Procedure (TCLP) to estimate the leachate concentrations that are likely to result from the proposed wastes. This would be followed by the use of EPA's Composite Model for Landfills (EPACML) to estimate the migration of the hazardous constituents to the drinking water well. However, due to limitations in the applicability of these models to the wastes being addressed in today's proposal, the Agency has determined that they may not be appropriate for these wastes. These limitations are discussed below.

a. Leaching Protocols. On November 27, 1985, the Agency proposed an organic leachate model (OLM) to estimate the amount of organic contaminants that will leach from a waste (see 51 FR 41082 and 50 FR 48886). The OLM is an empirical equation which was developed through application of modeling techniques to a data base of waste constituent concentrations and experimentally measured leachate concentrations. The OLM takes into account the concentrations of organic constituents of concern and their aqueous solubility.

However, OLM does not consider cosolvency effects and therefore, tends to underestimate pollutant mobility in waste matrices where cosolvency may be significant. EPA believes that, with the possible exception of tar distillation residues, wastes addressed in today's proposal may be subject to significant cosolvency effects.

EPA also analyzed samples of the wastes addressed in today's proposal for selected organic constituents, using the Toxicity Characteristic Leaching Procedure (TCLP) (see 55 FR 11798–11862 for details on the TC rule). Problems were encountered in applying the leaching procedure to these wastes. The principal problem with the samples of these wastes is associated with the variable amounts of tar (*i.e.*, percent solids). Tarry samples pose problems with sample homogenization, filtration, and dispersion of solids in the leaching medium when performing the TCLP. The tendency of tar to adhere to surfaces causes mass balance problems. Because of these difficulties, EPA believes that the TCLP procedure tends to provide analytical results which may underestimate the concentrations of hazardous constituents in leachates from these wastes if they are disposed of in a landfill environment. (The analytical results are provided in the Background Document for today's proposal.)

b. Groundwater Models. The modelling method referred to as EPACML has been used to estimate the attenuation and dilution of specific constituents during their migration through the unsaturated zone beneath a municipal landfill, and their transport through the saturated zone to a potential drinking water source (exposure point). EPACML accounts for dispersion in the longitudinal, lateral, and vertical directions; one-dimensional steady and uniform advective flow; sorption; and chemical degradation from hydrolysis.

EPACML accounts for the unsaturated zone transport modules and implements them using the Monte Carlo (probabilistic) framework.

The input concentration to the unsaturated zone transport module of EPACML corresponds to the leachate concentration at the bottom of the landfill. Under certain conditions, particularly very high constituent concentration, immiscible liquid flow can occur. For such situations, the model's inability to account for the immiscible flow condition may result in an underestimation of the receptor well concentrations. As discussed below, the wastes addressed in today's proposal typically have very high concentrations of certain hazardous constituents. Therefore, use of EPACML may result in an underestimate of concentrations of these constituents at drinking well sites.

For the reasons stated above, EPA believes that the use of available leaching and subsurface fate and transport models is not optimal for the wastes addressed in today's proposal. In addition, analytical results from the application of the TCLP to waste samples tend to understate the concentrations of hazardous constituents in leachates which may possibly originate from the wastes. However, in spite of the limitations of available methodologies for evaluating the potential health threats from these wastes, the Agency believes that the methodologies reveal high concentrations of hazardous constituents in these wastes. For that reason and because of the toxicity of these constituents, the mobility of the hazardous constituents, and the persistence of the constituents in the environment, EPA believes that the wastes are hazardous.

After considering all of the factors of 40 CFR 261.11(a)(3), EPA concludes that these wastes are capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of. The concentrations and toxicities of hazardous constituents in the wastes are of such a magnitude that, even under conservative assumptions regarding the potential for release of these constituents to the environment and their subsequent transport in the subsurface environment, improper management of the wastes poses an unacceptable health risk. The following discussion illustrates this concern.

Tables 8 through 8F summarize the average concentrations of hazardous constituents in the wastes and the health-based concentrations of these constituents in drinking water at specified risk levels. For illustrative purposes, the tables also indicate the concentrations of these constituents when hypothetical environmental exposure factors (HEEFs), ranging from 100 to 10,000, are applied to the concentrations in the wastes. The purpose of this illustration is to indicate the concentrations of the constituents which result under a range of assumptions regarding the release of these constituents and their fate and transport in the environment.

TABLE 8.—BASIS FOR LISTING: HEALTH EFFECTS OF THE CONSTITUENTS OF CONCERN IN K141

Hazardous constituent	Average waste concentration detected (ppm)	Health-based water concentration limits (ppm)	Basis [a]	Estimated drinking well concentration [b] (ppm)			Calculated concentration to health-based limit ratios [c]		
				HEEF 100	HEEF 1000	HEEF 10,000	HEEF 100	HEEF 1000	HEEF 10,000
Benzene	3,850	5.0×10^{-3}	MCL (A)	38.5	3.85	0.385	7,700	770	77
Benz(a)anthracene	7,850	1.1×10^{-5}	RSD (B_2)	78.5	7.85	0.785	7,100,000	710,000	71,000
Benzo(a)pyrene	8,450	3.0×10^{-6}	RSD (B_2)	84.5	8.45	0.845	28,000,000	2,800,000	280,000
Benzo(b)fluoranthene Benzo(k)fluoranthene [d]	5,450	4.0×10^{-3}	RSD (B_2)	54.5	5.45	.0545	14,000	1,400	140
Dibenz(a,h)anthracene	1,750	7.1×10^{-7}	RSD (B_2)	17.5	1.75	0.175	25,000,000	2,500,000	250,000
Indeno(1,2,3-cd)pyrene	6,150	2.0×10^{-2}	RSD (C)	61.5	6.15	0.615	3,100	310	31

[a] Reference Dose (RfD), Risk-Specific Dose (RSD), and Maximum Contaminant Level (MCL) are explained later in the preamble, as are the classes of RSDs. Class A and B carcinogens are based on exposure limits at a 10^{-6} risk level. Class C carcinogens are based on exposure limits at a 10^{-5} risk level.

[b] Calculated for three hypothetical environmental exposure factors (HEEFs).

[c] Ratio obtained by dividing values in estimated drinking well concentration column by values in health-based, water concentration limit column for all three HEEFs.

[d] GC peak resolution was not adequate to provide quantitation of the two isomers individually. The results show the sum of the two isomers.

Source: Background Document.

TABLE 8A.—BASIS FOR LISTING: HEALTH EFFECTS OF THE CONSTITUENTS OF CONCERN IN K142

Hazardous constituent	Average waste concentration detected (ppm)	Health-based water concentration limits (ppm)	Basis [a]	Estimated drinking well concentration [b] (ppm)			Calculated concentration to health-based limit ratios [c]		
				HEEF 100	HEEF 1000	HEEF 10,000	HEEF 100	HEEF 1000	HEEF 10,000
Benzene	260	5.0×10^{-3}	MCL (A)	2.6	0.26	0.026	520	52	5
Benz(a)anthracene	6,600	1.1×10^{-6}	RSD (B_2)	66	6.6	0.66	56,000,000	600,000	60,000
Benzo(a)pyrene	6,500	3.0×10^{-6}	RDS (B_2)	65	6.5	0.65	22,000,000	2,200,000	220,000
Benzo(b)fluoranthene Benzo(k)fluoranthene [d]d	7,500	4.0×10^{-3}	RSD (B_2)	75	7.5	0.75	19,000	1,900	190
Dibenz(a,h) anthracene	1,000	7.1×10^{-7}	RSD (B_2)	10	1.0	0.1	14,000,000	1,400,000	14,000
Indeno (1,2,3-cd)pyrene	2,900	2.0×10^{-2}	RSD (C)	29	2.9	0.29	1,400	140	14

[a] Reference Dose (RfD), Risk-Specific Dose (RSD), and Maximum Contaminant Level (MCL) are explained later in the preamble, as are the classes of RSDs. Class A and B carcinogens are based on exposure limits at a 10^{-6} risk level. Class C carcinogens are based on exposure limits at a 10^{-5} risk level.

[b] Calculated for three hypothetical environmental exposure factors (HEEFs).

[c] Ratio obtained by dividing values in estimated drinking well concentration column by values in health-based, water concentration limit column for all three HEEFs.

[d] GC peak resolution was not adequate to provide quantitation of the two isomers individually. The results show the sum of the two isomers.

Source: Background Document.

TABLE 8B.—BASIS FOR LISTING: HEALTH EFFECTS OF THE CONSTITUENTS OF CONCERN IN K143

Hazardous constituent	Average waste concentration detected (ppm)	Health-based water concentration limits (ppm)	Basis [a]	Estimated drinking well concentration [b] (ppm)			Calculated concentration to health-based limit ratios [c]		
				HEEF 100	HEEF 1000	HEEF 10,000	HEEF 100	HEEF 1000	HEEF 10,000
Benzene	1,600	5.0×10^{-3}	MCL (A)	16	1.6	0.16	3,200	320	32
Benz(a)anthracene	69	1.1×10^{-5}	RSD (B_2)	0.69	0.069	0.007	63,000	6,300	630
Benzo(a)pyrene	34	3.0×10^{-6}	RSD (B_2)	0.34	0.034	0.003	110,000	11,000	1,100
Benzo(b)fluoranthene Benzo(k)fluoranthene [d]	59	4.0×10^{-3}	RSD (B_2)	0.59	0.059	0.006	150	15	1.5

[a] Reference Dose (RfD), Risk-Specific Dose (RSD), and Maximum Contaminant Level (MCL) are explained later in the preamble, as are the classes of RSDs. Class A and B carcinogens are based on exposure limits at a 10^{-6} risk level. Class C carcinogens are based on exposure limits at a 10^{-5} risk level.

[b] Calculated for three hypothetical environmental exposure factors (HEEFs).

[c] Ratio obtained by dividing values in estimated drinking well concentration column by values in health-based, water concentration limit column for all three HEEFs.

[d] GC peak resolution was not adequate to provide quantitation of the two isomers individually. The results show the sum of the two isomers.

Source: Background Document.

TABLE 8C.—BASIS FOR LISTING: HEALTH EFFECTS OF THE CONSTITUENTS OF CONCERN IN K144

Hazardous constituent	Average waste concentration detected (ppm)	Health-based water concentration limits (ppm)	Basis [a]	Estimated drinking well concentration [b] (ppm)			Calculated concentration to health-based limit ratios [c]		
				HEEF 100	HEEF 1000	HEEF 10,000	HEEF 100	HEEF 1000	HEEF 10,000
Benzene	3,000	5.0×10^{-3}	MCL (A)	30	3.0	0.30	6,000	600	60
Benz(a)anthracene	68	1.1×10^{-5}	RSD (B_2)	0.68	0.068	0.007	61,000	6,100	610
Benzo(a)pyrene	65	3.0×10^{-6}	RSD (B_2)	0.65	0.065	0.007	210,000	21,000	2,100
Benzo(b)fluoranthene Benzo(k)fluoranthene [d]	75	4.0×10^{-3}	RSD (B_2)	0.75	0.075	0.008	180	18	1.8
Dibenz(a,h)anthrancene	15	7.1×10^{-7}	RSD (B_2)	0.15	0.015	0.002	210,000	21,000	2,100

[a] Reference Dose (RfD), Risk-Specific Dose (RSD), and Maximum Contaminant Level (MCL) are explained later in the preamble, as are the classes of RSDs. Class A and B carcinogens are based on exposure limits at a 10^{-6} risk level. Class C carcinogens are based on exposure limits at a 10^{-5} risk level.

[b] Calculated for three hypothetical environmental exposure factors (HEEFs).

[c] Ratio obtained by dividing values in estimated drinking well concentration column by values in health-based, water concentration limit column for all three HEEFs.

[d] GC peak resolution was not adequate to provide quantitation of the two isomers individually. The results show the sum of the two isomers.

Source: Background Document.

TABLE 8D.—BASIS FOR LISTING: HEALTH EFFECTS OF THE CONSTITUENTS OF CONCERN IN K145

Hazardous constituent	Average waste concentration detected (ppm)	Health-based water concentration limits (ppm)	Basis [a]	Estimated drinking well concentration [b] (ppm)			Calculated concentration to health-based limit ratios [c]		
				HEEF 100	HEEF 1000	HEEF 10,000	HEEF 100	HEEF 1000	HEEF 10,000
Benzene	1,000	5.0×10^{-3}	MCL (A)	10	1.0	0.10	2,200	220	22
Benz(a)anthracene	22	1.1×10^{-5}	RSD (B_2)	0.22	0.022	0.002	20,000	2,000	200
Benzo(a)pyrene	7	3.0×10^{-6}	RSD (B_2)	0.07	0.007	0.001	23,000	2,300	230
Dibenz(a,h)anthracene	15	7.1×10^{-7}	RSD (B_2)	0.15	0.015	0.002	210,000	21,000	2,100
Naphthalene	140,000	14	RfD	1,400	140	14	100	10	1

[a] Reference Dose (RfD), Risk-Specific Dose (RSD), and Maximum Contaminant Level (MCL) are explained later in the preamble, as are the classes of RSDs. Class A and B carcinogens are based on exposure limits at 10^{-6} risk level. Class C carcinogens are based on exposure limits at a 10^{-5} risk level.

[b] Calculated for three hypothetical environmental exposure factors (HEEFs).

[c] Ratio obtained by dividing values in estimated drinking well concentration column by values in health-based, water concentration limit column for all three HEEFs.

Source: Background Document.

TABLE 8E.—BASIS FOR LISTING: HEALTH EFFECTS OF THE CONSTITUENTS OF CONCERN IN K145

Hazardous constituent	Average waste concentration detected (ppm)	Health-based water concentration limits (ppm)	Basis [a]	Estimated drinking well concentration [b] (ppm)			Calculated concentration to health-based limit ratios [c]		
				HEEF 100	HEEF 1000	HEEF 10,000	HEEF 100	HEEF 1000	HEEF 10,000
Benzene	260	5.0×10^{-3}	MCL (A)	2.6	0.26	0.026	520	52	5
Benz(a)anthracene	6,600	1.1×10^{-6}	RSD (B_2)	66	6.6	0.66	66,000,000	600,000	60,000
Benzo(a)pyrene	6,500	3.0×10^{-6}	RSD (B_2)	65	6.5	0.65	22,000,000	2,200,00	220,000
Benzo(b)fluoranthene Benzo(k)fluoranthene [d]	7,500	4.0×10^{-3}	RSD (B_2	75	7.5	0.75	19,000	1,900	190
Dibenz(a,h)anthracene	1,000	7.1×10^{-7}	RSD (B_2)	10	1.0	0.1	14,000,000	1,400,000	140,000
Indeno(1,2,3-cd)pyrene	2,900	2.0×10^{-2}	RSD (C)	29	2.9	0.29	1,400	140	14

[a] Reference Dose (RfD), Risk-Specific Dose (RSD), and Maximum Contaminant Level (MCL) are explained later in the preamble, as are the classes of RSDs. Class A and B carcinogens are based on exposure limits at 10^{-6} risk level. Class C carcinogens are based on exposure limits at a 10^{-5} risk level.

[b] Calculated for three hypothetical environmental exposure factors (HEEFs).

[c] Ratio obtained by dividing values in estimated drinking well concentration column by values in health-based, water concentration limit column for all three HEEFs.

[d] GC peak resolution was not adequate to provide quantitation of the two isomers individually. The results show the sum of the two isomers.

Source: Background Document.

TABLE 8 F.—BASIS FOR LISTING: HEALTH EFFECTS OF THE CONSTITUENTS OF CONCERN IN K148

Hazardous constituent	Average waste concentration detected (ppm)	Health-based water concentration limits (ppm)	Basis [a]	Estimated drinking well concentration [b] (ppm)			Calculated concentration to health-based limit ratios [c]		
				HEEF 100	HEEF 1000	HEEF 10,000	HEEF 100	HEEF 1000	HEEF 10,000
Benz(a)anthracene	4,500	1.1×10^{-6}	RSD (B_2)	45	4.5	0.45	44,100,000	410,000	41,000
Benzo(a)pyrene	3,600	3.0×10^{-6}	RSD (B_2)	36	3.6	0.36	12,000,000	1,200,000	120,000
Benzo(b)fluoranthene Benzo(k)fluoranthene [d]	6,100	4.0×10^{-3}	RSD (B_2)	61	6.1	0.61	15,000	1,500	150
Dibenz(a,h)anthracene	800	7.1×10^{-7}	RSD (B_2)	8	0.8	0.08	11,000,000	1,100,000	110,000
Indeno(1,2,3,-cd)pyrene	1,700	2.0×10^{-2}	RSD (C)	17	1.7	0.17	850	85	8.5

[a] Reference Dose (Rfd), Risk-Specific Dose (RSD), and Maximum Contaminant Level (MCL) are explained later in the preamble, as are the classes of RSDs. Class A and B carcinogens are based on exposure limits at a 10^{-6} risk level. Class C carcinogens are based on exposure limits at a 10^{-5} risk level.

[b] Calculated for three hypothetical environmental exposure factors (HEEFs).

[c] Ratio obtained by dividing values in estimated drinking well concentration column by values in health-based, water concentration limit column for all three HEEFs.

[d] GC peak resolution was not adequate to provide quantitation of two isomers individually. The results show the sum of the two isomers.

Source: Background Document.

The constituent levels, once the HEEF multipliers have been applied to them, are compared to their health-based numbers. Health-based numbers are based upon consideration of risk-specific doses for the constituent (see section II.D.3 of today's proposal). If the calculated level of the applicable constituent in a well is above the health-based number, the Agency considers the constituent to be one of concern and, therefore, a part of the basis for listing. The Agency also proposes to add these constituents to 40 CFR part 261 appendix VII for each of the proposed waste codes in today's proposal. The data in the tables illustrate that the wastes examined pose a potential threat to human health and the environment across an extremely broad range of assumptions regarding the mobility, fate, and transport of constituents in the wastes.

Tables 8 through 8F show that for each of the proposed wastes, the concentrations of the constituents of concern in ground water would exceed the corresponding health-based levels of concern. The calculated ratios of estimated drinking water concentration values to health-based water-concentration-limit values presented in these tables also illustrate that even if only 0.01 percent of the average constituent levels in the wastes (*i.e.*, HEEF of 10,000) reaches environmental receptors, the exposure concentrations could exceed the health-based levels of concern by up of three orders of magnitude.

In addition to the high concentrations of hazardous constituents and the toxicity of the hazardous constituents in the wastes, the Agency also considered the mobility and persistence of the constituents in the environment. Information on the mobility and persistence of the constituents of concern are provided in sections II.D.3 and II.D.4, respectively. Information on the toxicity of these constituents is provided in section II.D.5. Based on considerations of the concentrations of hazardous constituents in the wastes, on the toxicity of these constituents, on the mobility and persistence of these constituents in the environment, and on the other factors of 40 CFR 261.11(a)(3), EPA is proposing to list these wastes as hazardous.

2. Waste Characterization and Constituents of Concern

Tables 5, 6, and 7 list selected constituents of concern found in wastes from the production and recovery of coke by-products and tar refining, as well as the range and average concentrations for these constituents. The constituents of concern listed in the tables are carcinogens and/or systemic toxicants. All of the constituents of concern are already listed as hazardous constituents in 40 CFR part 261, appendix VIII. Waste composition data were obtained from sampling and analysis of representative waste streams at various coke plants and tar refineries. All of the selected constituents of concern were found in concentrations of regulatory concern (*i.e.*, under plausible improper management scenarios, the constituent concentration likely to be present in ground waters are expected to be significantly higher than their health-based levels of concern for these constituents).

Other constituents that were detected in the proposed waste streams were not selected as constituents of concern for today's proposed listings because they were either not present in concentrations of regulatory concern or they do not have an established health-based number. The Agency may, however, add other constituents that were detected in today's proposed wastes to the list of constituents of concern for these wastes when the listing is promulgated based upon consideration of comments and/or additional data. Following is a list of constituents known to be present in the proposed wastes that were not selected as constituents of concern: acenaphthene, acenaphthylene, anthracene, benzo(g,h,i) perylene, chrysene, 2,4-dimethyl phenol, 2,4-dinitrotoluene, ethyl benzene, fluoranthene, fluorene, 1-methyl naphthalene, 2-methyl naphthalene, 2-methyl phenol, 4-methyl phenol, phenanthrene, phenol, pyrene, styrene, and toluene. The Agency solicits comments on the list of constituents that have not been included as constituents of concern. The measured concentrations of these compounds in the proposed K141 through K145, K147 and K148 wastes, and available health data on their toxicity are presented in the Background Document for this proposed rule. The addition of any or all of these constituents as constituents of concern would not affect the Agency's decision regarding listing these wastes.

3. Mobility of Constituents of Concern

The exposure pathway of principal concern is leaching and migration to ground water. The water solubility of a given hazardous constituent is one of the indicators of its mobility (*i.e.*, the likelihood that it will be released from a management site, will dissolve in water, and would reach a water resource of concern), and is considered by EPA among other factors in evaluating the potential of the constituent to migrate in the environment. Leaching is of concern because several of these compounds are soluble in water and could, therefore, leach from the wastes and potentially contaminate ground water. For example, the water solubility of benzene is significantly greater than its corresponding health-based level in drinking water. Thus, this constituent is capable of existing in water at significant concentrations. The solubilities and projected ground-water mobilities of the selected constituents of concern from the production, recovery, and refining of coke by-products wastes are presented in Table 9.

TABLE 9.—GROUND-WATER MOBILITY AND PERSISTENCE OF CONSTITUENTS OF CONCERN

Constituents of concern	Health-based water concentration limits (ppm)	Water solubility (ppm)	LOG[a] K_{ow}	K_{oc}[b]	Mobility[c]		Persistence[c]
					Slightly[d] contaminated medium	Highly[e] contaminated medium	
Benzene	5.0×10^{-3}	1.780×10^{3}	2.13	65	moderate	moderate	low.
Benz(a)anthracene	1.1×10^{-5}	5.7×10^{-3}	5.61	20,000	low	high	high.
Benzo(a)pyrene	3.0×10^{-6}	3.8×10^{-3}	6.06	550,000	low	high	high.
Benzo(b)fluoranthene,[f] Benzo(k)fluoranthene[f]	4.0×10^{-3}	4.3×10^{-3}	6.06	550,000	low	high	high.
Dibenz(a,h)anthracene	7.1×10^{-7}	5×10^{-4}	6.84	3,300,000	low	high	high.
Indeno(1,2,3-cd)pyrene	2.0×10^{-3}	5×10^{-4}	6.50	1,600,000	low	high	high.
Naphthalene	14	31.7	3.29	940	low	high	high.

Source: CHEMWASTE Database.

[a] K_{ow}=Octanol-water partition coefficient.

[b] K_{oc}=Soil sorption coefficient.

[c] Qualitative relative evaluation of mobility and persistence, based on water solubility, log K_{ow}, and K_{oc}.

[d] Slightly contaminated medium represents a mismanagement scenario where release of hazardous constituents does not result in saturation of the underlying soil by organic hazardous constituents.

[e] Highly contaminated medium represents a mismanagement scenario where release of hazardous constituents results in saturation of the underlying soil by organic hazardous constituents.

[f] GC peak resolution was not adequate to provide quantitation of the two isomers individually. The results are the sum of the two isomers.

Also, data available to the Agency indicate that toxic PAHs are present in ground water at concentrations that far exceed their water solubility. At one site, benzo(a)pyrene was measured in ground water at a concentration of 0.08 ppm, which is greater than its reported solubility. Although the exact reason for this phenomenon is not fully understood, it is believed that the presence of these constituents in ground water is due to the oily nature of these wastes and multiphase transport. This phenomenon is discussed in greater detail in the Background Document to today's proposal.

Another factor that can provide an indication of the mobility of each constituent is its log octonol/water partition coefficient (log K_{ow}). The log K_{ow} value for benzene is 2.13. According to Briggs (1977), this value indicates that benzene is moderately mobile in soil.

The PAHs (*i.e.*, benz(a) anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, ideno(1,2,3-cd)pyrene, and naphthalene) have high log octanol/water partition coefficients and may be predicted to be relatively immobile in soil and sediment. However, available evidence indicates that these constituents may move more readily than would be predicted in soil with a low organic content or when codisposed with other solvents or oils, or when the waste itself is of an oily nature. They can also be transported while suspended on particulate matter in air or water.

The exact transport mechanisms for the constituents of concern in proposed EPA Hazardous Waste Nos. K141 through K145, K147, and K148 are not fully understood. However, under the plausible types of improper management to which the wastes could be subjected, the constituent concentrations that reach ground waters could be significantly higher than corresponding health-based numbers. This is shown by concentrations of some PAHs found in ground water samples as a result of solvent assisted transport. The Background Document for today's proposal provides information on PAH levels found in the ground water samples. This conclusion is consistent with the conclusions derived from application of HEEFs in the range of 100 to 10,000 for these wastes, as discussed in section II.D.1 of today's proposal.

4. Persistence of Constituents of Concern

The persistence of a constituent in the environment is an important criterion considered by the Agency when determining the potential of a waste to pose a threat to human health and the environment. The chemical and biological reactivity of the constituents of concern present in today's proposed wastes indicate that they are persistent and, thus, capable of posing a significant hazard to human health and the environment. All the constituents of concern in today's proposed wastes are sufficiently persistent to result in human exposure if they are released into ground water. The principal processes that limit the persistence of these constituents in ground water are hydrolysis and biodegradation.

None of the constituents are expected to hydrolyze in water between pH 2 and 12 at ambient temperature at a rate high enough to be a limiting factor in human exposure. This is because none of the constituents of concern have structural components that would be expected to react with water under those conditions. Benzene, for example, does not react with acidic (pH 2) or alkaline (pH 14) water. Therefore, it is unlikely that hydrolysis is a significant fate for benzene. The PAHs of concern do not contain groups amenable to hydrolysis. Hydrolysis is, therefore, not thought to be a significant fate process for PAHs (Radding *et al.*, 1976). PAHs are known to be persistent in the environment. PAHs have also been detected in drinking water, surface water, ground water, soils, sediments, and air. Persistence of benzene and PAHs in the environment has been confirmed by detection of these constituents in ground water, surface water, drinking water, soil, and air.

Biodegradation is another potential degradation mechanism for each of the organic constituents of concern. Under certain aerobic conditions, organic hazardous constituents are biodegradable, as shown in controlled laboratory experiments. Although benzene is expected to biodegrade in biologically active surface water systems, it is not expected to undergo biodegradation in ground water due to the relatively low level of biological activity in ground-water systems.

Biological degradation processes are not known to occur at a rate sufficient to prevent the spread of PAHs in the environment. Three studies reported no appreciable degradation of benzo(a)pyrene in contaminated water and sediment (Herbes and Schwall, 1977; Muller and Korte, 1975; Herbes, 1981).

5. Health Effects of Concern

The Agency has obtained data demonstrating that the constituents found in the wastes generated by the production, recovery, and refining of coke by-products and tar refining are systemic toxicants and/or carcinogens. These toxic constituents are present in concentrations capable of causing adverse health effects as shown by Tables 8 through 8F. These tables illustrate that even if only 0.01 percent of the average constituent levels in the wastes reaches environmental receptors, the exposure concentrations are often three orders of magnitude higher than the health-based levels of concern. The health-based levels of concern are calculated using the three basic indicators of toxicity discussed in the following paragraphs. If the Agency assumes more conservative hypothetical environmental exposure factors (projecting less dilution prior to reaching environmental receptors) the exposure concentrations would be even higher.

For the purpose of listing wastes as hazardous under RCRA, the Agency often uses three basic indicators of toxic levels of concern: (1) Maximum Contaminant (MCLs); (2) Risk-Specific Doses (RSDs) for known carcinogens; and (3) Reference Doses (Rfds) for systemic toxicants.

MCLs are final Drinking Water Standards promulgated under Section 1412 of the Safe Drinking Water Act of 1974, as amended in 1986, for both carcinogenic and noncarcinogenic compounds. In setting MCLs, EPA considers a range of pertinent factors (for details, see 52 FR 25697–25701, July 8, 1987).

Where MCLs are not yet established, the Agency has developed oral RSDs for many carcinogenic constituents. The RSD is a dose that corresponds to a specified level of risk of an individual contracting cancer over a 70-year lifetime due to the presence of the toxicant in drinking water. In order to develop an RSD, a risk level must be specified. EPA specifies the risk level for a constituent of concern by using a weight-of-evidence scheme that is based on an assessment of the quality and adequacy of experimental data and the kinds of responses induced by a suspect carcinogen. The carcinogenic constituents of concern in proposed EPA Hazardous Waste Nos. K141 through K145, K147, and K148 for which no MCLs exist are either probable human carcinogens (Class B_2)—based on a combination of sufficient evidence, in animals and inadequate human or no human data—or possible human carcinogens (Class C)—based on limited evidence in animals and the absence of human data. Details on the other classes of carcinogens are given in the Background Document. The oral RSDs for carcinogenic agents are calculated at the 10^{-6} risk level for Class B carcinogens and at the 10^{-5} risk level for Class C carcinogens. These risk levels are consistent with the risk levels used to delist specific waste streams.

In addition, oral Reference Dose numbers (RfDs) are established for non-carcinogenic constituents for which MCLs have not been developed. An RfD is an estimate of the daily exposure to a substance for the human population (including sensitive subgroups) that appears to be without an appreciable risk of deleterious effects during a lifetime of exposure. If frequent exposures that exceed the RfD occur, the probability that adverse effects may be observed increases. The method for estimating the RfD for non-carcinogenic end points was described in the proposed rule for the Toxicity Characteristic (51 FR 21648, June 13, 1986).

The hazardous constituents of concern found in the wastes proposed for listing today have produced carcinogenic or other chronic systemic effects in laboratory animals or humans. EPA has established RfDs, RSDs or MCLs for all of the constituents of concern in coke by-products and tar refining wastes. These constituents have been detected in the wastes from the production, recovery, and refining of coke by-products in concentrations sufficient to pose a substantial threat to human health and the environment. The health-based levels of concern calculated for the constituents of concern in Table 8 through 8F are based on two assumptions: (1) That the average person has a body mass of 70 kg and, (2) that a person drinks an average of 2 liters of test solution daily over a period of 70 years. The Agency's Carcinogen Assessment Group (CAG) has determined that there is substantial evidence to suggest that benz (a) anthracene, benzene, benzo (a) pyrene, benzo (b and K) fluoranthene, dibenz (a, h) anthracene, and indeno (1, 2, 3–cd) pyrene are carcinogens. Epidemiological evidence from studies of coke oven workers and tar roofers demonstrates the carcinogenic potential of the materials generated by coke ovens and tar refining. A brief summary of the toxicity and health effects of these constituents is presented in this preamble. A more detailed discussion is included in the Background Document for today's proposal.

Benzene is a class A carcinogen. Benzene is carcinogenic in rats after exposure by gavage and in mice following exposure by inhalation (IARC, 1982). An epidemiological study that correlated benzene exposure with the incidence of leukemia provides sufficient evidence that benzene is carcinogenic in humans (NTP 85–002).

Benz(a) anthracene (BA) is a Class B^2 carcinogen. BA has been found to be carcinogenic in experiemental mice following oral administration, dermal application, subcutaneous injection, and bladder implantation (IARC, 1973). Oral exposure to BA resulted in an increased incidence of hepatomas and pulmonary adenomas in the mouse (Klein, 1963).

Benzo (a) pyrene (BaP) is a Class B_2 carcinogen. BaP is perhaps one of the most potent animal carcinogens known. Microgram quantities have been shown to induce tumors in a number of experimental animal species via several routes of exposure, including oral, inhalation, and dermal application (IARC, 1973). The types of tumors seen after exposure to BaP include mammary tumbors in rats (IARC, 1973); squamous cell papillomas and/or carcinomas of the forestomach in mice (Rigdon and Neal, 1966); and skin tumors in mice (Poel, 1963). BaP can also act as a transplancental carcinogen in mice (Bulay and Waternberg, 1971).

Benzo (b and K) fluoranthenes (BbF and BkF) are class B_2 carcinogens. BbF and BkF have both been shown to be dermal carcinogens in mice (IARC, 1973). BkF also induces tumor formation when injected subcutaneously in mice (Lacassagne *et al.*, 1963) and directly into the pulmonary tissue of rats (Deutsch-Wenzel *et al.*, 1983).

Dibenz(a, h) anthracene (DBA) is a Class B_2 carcinogen. DBA produced tumors in mice following oral, dermal, or subcutaneous administration (IARC, 1973). The types of tumbors seen in mice after exposure to DBA by various routes include adenomas carcinomas of the skin (Wonder and Hoffman, 1959); pulmonary alveologenic carcinomas and adenomatosis; mixed-type mammary tumors; hemangioendotheliomas involving the pancreas and mesenteric and abdominal lymph nodes; and precancerous lesions of the small intestine (Snell and Stewart, 1962).

Indeno(1,2,3-cd)pyrene (IP) is a Class C carcinogen. IP is considered carcinogenic to experimental animals based on dermal application and subcutaneous injection studies on the mouse. Dose-related increases in the incidence of skin tumors have been observed in mice that received dermal applications of this chemcial (IARC, 1973).

Several of the constituents of concern, including benzene (IARC, 1982), BaP (Shum *et al.*, 1979), DBA (Wolfe and Byran, 1939), and naphthalene (Harris *et al.*, 1979) have also been shown to be embryotoxic and/or teratogenic in experimental animals. Also, nephthalene has been shown to be embryotoxic in humans (Zinkham and Childs, 1958; Anziulewisc *et al.*, 1959).

In addition to their ability to act as carcinogens, several of these constituents (as well as other PAHs that express no carcinogenicity on their own) have been found to act as initiators or promoters (cocarcinogens) of skin tumors in mice. Chemicals found to initiate skin tumors after a single application or multiple applications followed by croton oil treatment (a classical promoter) include BA (Hadler *et al.*, 1959); BbF (Van Duuren *et al.*, 1966); BkF (LaVoie *et al.*, 1982); DBA (Klein, 1960); and IP (IARC, 1973).

It is important to note that PAHs other than the constituents of concern, are known to be present in the wastes proposed for listing in today's notice, and may have the ability to act as cocarcinogens. PAHs such as benzo(g,h,i)perylene (BghiP), fluoranthene, and pyrene are not carcinogenic *per se.* When applied to the skin of mice along with a carcinogen such as BaP, however, they can often enhance the carcinogenic effect of BaP (*e.g.,* IARC, 1983; Van Duuren and Goldschmidt, 1976). This cocarcinogenic phenomenon is of concern because many of the waste streams proposed for listing in today's notice contain mixtures of PAHs that are carcinogens and cocarcinogens. This factor indicates that, for some PAH mixtures, the health-based levels of concern presented earlier (which are based on exposure to individual compounds) may underestimate the toxicity of these compounds when found in the wastes as mixtures of PAHs.

Almost all of the PAHs considered here possess some degree of mutagenicity in short-term tests for genotoxicity. Chemicals found to induce mutations in at least one strain of *Salmonella typhimurium* include BA (*e.g.,* Claxton, 1983); BaP (*e.g.,* McCann *et al.,* 1975); and IP (*e.g.,* LaVoie *et al.,* 1979). Other evidence for genotoxicity includes induction of sister chromatid exchanges by BA (Tong *et al.*, 1981a, 1981b) and by BaP, BbF, and DBA (Rozinski and Kocher *et al.*, 1979); and morphological transformation in a number of in *vitro* test systems by DBA and IP (Chen and Heidelberger, 1969 and Emura *et al.*, 1982).

6. Mismanagement Case Histories

A number of environmental damage incidents have occurred in the past due to the mismanagement of coke by-products and tar refining wastes. These incidents show that constituents present in these wastes are capable of reaching environmental receptors in potentially harmful concentrations. The cases describing environmental contamination with coke by-products and tar refining wastes can be found in the docket supporting the listing of EPA Hazardous Waste Nos. K141 through K145, K147, and K148.

As a basis for illustrating the environmental contamination associated with coke by-products, EPA has identified several incidents where the management of the coking wastes in question has resulted in environmental damage and increased risk to human health. To illustrate the hazards posed by these wastes when mismanaged, EPA has summarized the following studies:

Polynuclear Aromatic Hydrocarbon Sediment Investigations conducted in Region V, including five sites involved in coke production; and,

Six specific case studies conducted at plants that engage in various types of activities that involve coal tar and other coking by-products.

The case studies presented below illustrate the threat posed to human health and environment by these wastes. As discussed previously, these wastes may contain levels of benzene and PAHs including benzo(a)anthracene, benzo(a)pyrene, benzo(b and k)–fluoranthene, dibenzo(a,h)anthracene, indeno(1,2,3–cd)pyrene, and naphthalene. When improperly treated, stored, transported, or disposed, the PAHs and benzene in these wastes have been shown to migrate into the environment. In such a case, these wastes pose a threat to human health and the environment.

In previous discussions (sections II.D.1.a and II.D.1.b of this proposal), EPA focused upon quantifying the levels of constituents (benzene and select PAHs) that would pose a hazard to the environment when mismanaged. In summarizing these case studies, EPA provides actual examples where the mismanagement of the coking wastes of concern has resulted in environmental

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6. Mismanagement Case Histories

A number of environmental damage incidents have occurred in the past due to the mismanagement of coke by-products and tar refining wastes. These incidents show that constituents present in these wastes are capable of reaching environmental receptors in potentially harmful concentrations. The cases describing environmental contamination with coke by-products and tar refining wastes can be found in the docket supporting the listing of EPA Hazardous Waste Nos. K141 through K145, K147, and K148.

As a basis for illustrating the environmental contamination associated with coke by-products, EPA has identified several incidents where the management of the coking wastes in question has resulted in environmental damage and increased risk to human health. To illustrate the hazards posed by these wastes when mismanaged, EPA has summarized the following studies:

Polynuclear Aromatic Hydrocarbon Sediment Investigations conducted in Region V, including five sites involved in coke production; and,

Six specific case studies conducted at plants that engage in various types of activities that involve coal tar and other coking by-products.

The case studies presented below illustrate the threat posed to human health and environment by these wastes. As discussed previously, these wastes may contain levels of benzene and PAHs including benzo(a)anthracene, benzo(a)pyrene, benzo(b and k)–fluoranthene, dibenzo(a,h)anthracene, indeno(1,2,3–cd)pyrene, and naphthalene. When improperly treated, stored, transported, or disposed, the PAHs and benzene in these wastes have been shown to migrate into the environment. In such a case, these wastes pose a threat to human health and the environment.

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damage. Specifically, the Agency supplies examples where the concentrations of benzene or select PAHs in ground water exceeds acceptable health levels.

a. PAH Sediment Investigation. Results of sediment studies conducted downstream of the coke operation discharges on the Black River in Ohio indicate that high levels of PAHs are present and that these contaminants adversely affect fisheries located on the river. For example, it is documented (Baumann and Fabacher, 1985) that elevated levels of PAHs are responsible for the occurrence of tumors on fish from the Black River. Due to these results and because of the large number of coke plants in EPA Region V, the Region decided to undertake a series of surveys to determine the extent of sediment contamination by PAHs in the Region. The case studies include six sites in Illinois, Indiana, Ohio, and Michigan that are or were engaged in the production of coke and steel. As a result of operations at these plants, the surrounding rivers, including the Calumet, the Cuyahoga, the Mahoning, the Ohio and the Rouge Rivers, have been contaminated by PAHs through the discharge of treatment wastewaters bearing coking processing wastes.

The wastewaters from the sites resulted from such processes as coke quenches, ammonia liquor distillation, and processing of coal tars. These wastewaters varied in the degree of both contamination and treatment that they underwent before discharge and contained some or all of the wastes that are considered under this listing. The exact percentage of coke wastes discharged with the wastewaters, however, has not been quantified.

At each facility, river sediments were collected above and below each wastewater discharge, as well as the area immediately surrounding the discharge. At each site, these samples confirmed that high levels of PAH contamination had occurred below and near the site being studied. The levels of contamination varied directly with the distance away from the outfall from the plant, both upstream and downstream with downstream concentrations markedly higher than those upstream. The PAHs were found to have contaminated the rivers at the various sample sites at levels up to and including the following concentrations: naphthalene—38,000 ppm, benzo(a)anthracene—7,600 ppm, benzo(b)fluoranthene—8,000 ppm, indeno(1,2,3-cd)pyrene—6,000 ppm, and dibenz(a,h)anthracene—1,100 ppm. These levels of contamination were found to be significantly higher than the levels that are acceptable by health-based standards.

The sampling measurements, however, reflect concentrations in sediments while the health-based standards refer to maximum allowable concentrations in water. While this difference may limit the comparability of the two measurements, the studies still indicate a hazard since the water and sediment at the sites are in direct contact. Further, since the PAHs occur in the sediments in high concentrations, the constituents may migrate to the surface and drinking waters and present an even greater hazard to human health and the environment.

b. Specific Site Evaluations. Summaries of selected cases describing environmental contamination by constitutents of concern present in coke by-products and tar refining wastes are described below. These sites include a manufacturing plant (which conducted coking operations), a coal tar by-products manufacturing plant, a coal gasification plant, a tar refiner, a wood preserving and coal tar distillation facility, and a disposal site for wastes from three sources. Each of these sites described below involved ground water contamination by PAHs and benzene.

Site 1

A steel manufacturing plant operating in New York from 1920 through 1983 on Lake Erie was the site of contamination caused by several different wastes, including coking wastes. Various coking wastes were mixed with other wastes at most of the sites involved, although two disposal areas received coking wastes almost exclusively.

At this facility, excess blast furnace and steelmaking slags, as well as steel scrap and coking wastes were initially dumped directly into Lake Erie and then into pits and landfills located on a man-made peninsula created at the point where a creek discharges into Lake Erie. The slag fill extended approximately 1,700 feet off the shoreline of the lake and raised the subsurface elevation more than 50 feet. Of 160 pits/landfills located on the peninsula, two waste management areas, a pit and a landfill, have been identified as areas that were designated to receive coking wastes. Ground-water monitoring wells were installed in the areas to assess the migration of contaminants from these hazardous waste management areas to ground water. Coking wastes that were co-disposed in the pit and landfill include K060, K087, and the proposed K141–K145 wastes. As a result of this co-disposal, constituents in the coking wastes have migrated from the fill materials to the ground water and possibly to the lake.

The concentrations of naphthalene and benzene (up to 720 ppm and 340 ppm respectively) from these two sites were found to be well above the accepted health-based levels for these constituents. Although the source of these constituents may include non-coking process wastes, the coking process wastes have contributed significantly to the problem. Coking waste is the main contributor to the PAH problem, although non-coking process wastes may also affect the level of PAHs and benzene present in the samples. The ground-water monitoring results indicate that the levels of PAHs and benzene in this case are significant and that they pose a threat to human health and the environment.

Site 2

A manufacturer of coal tar by-products along the east bank of the Ohio River in West Virginia was involved in ground-water monitoring to examine the level of contamination resulting from plant activities. These activities included using crude coal tar as feedstock to produce three major products: refined chemical oil, creosote, and industrial pitch. Monitoring results showed that activities both at this plant and at a nearby coke facility led to ground water contamination by coal tar residuals (proposed K147 and K148). The studies examined the shallow, perched aquifer and the alluvial aquifer. These investigations revealed varying extent of contamination in all aquifers. This contamination was due to uncontrolled seepage and discharge of pollutants into the Ohio River. The following constitutents were found to have contaminated the aquifers at levels up to and including the following concentrations: naphthalene—92,000 ppm, benzo(a)anthracene—4,000 ppm, benzo(b)fluoranthene—4,100 ppm, indeno(1,2,3-cd)pyrene—1,200 ppm, and dibenz(a,h)anthracene—21 ppm. These concentrations are well above the accepted healthbased levels for these constituents.

Site 3

A coal gasification plant was the site of soil and groundwater contamination. Tar and soil contaminated with tar were widely distributed over the site as a result of plant operations. Materials found at coal gasification sites are similar in nature to those found at coke by-products facilities. The site is listed in the National Priorities List (NPL) of hazardous waste sites.

The coal gasification site is known to have coal tar and other coal gasification wastes present in three locations: a tar pit, two ponds, and in an area of tar boils (tar refining). The total estimated volume of tar in these areas is 5000 yd^3. The deepest penetration of tar was observed at a location adjacent to the ponds where a slight tar odor was also detected at a depth of 50 feet.

Three shallow, water-bearing strata (aquifers) exist at a depth of less than 60 feet under the site. In some locations at the site these three aquifers are separated by fine clay materials, while in other locations one aquifer is in direct contact with a deeper aquifer, allowing waters from the two aquifers to mix. There is evidence of contamination in the two shallower aquifers. Concentrations of benzene, phenols, and PAHs ranging from 5 to 30 µg/L were detected in the shallowest aquifer water, while PAH concentrations up to 14,000 µg/L were detected in wells tapping the middle aquifer. Surface water quality was determined on several occasions at five locations. Analytical data indicate that a variety of organic compounds are present in surface waters, including some of the constituents of concern in today's proposal

Site 4

A former sand and gravel pit was the disposal site of wastes from three sources from 1945 to 1977. Wastes from a tar refining plant, foundry sand from an iron foundry, and wastes from a gravel company were disposed at this site. The site was assigned to the NPL in September 1983 due to the extent of its soil and ground-water contamination.

Both soil and ground water in areas around the pit showed evidence of contamination. Soil boring and ground-water samples confirmed that the ground water below and near the site was contaminated with organics. This contamination reaches the Ohio River with a north plume extending to the iron company's production wells, in which benzene has been measured from nondetectable levels to 36 ppb (parts per billion).

Evidence of ground-water contamination below the pit includes trace levels of anthracene and phenanthrene detected in nine out of ten wells drilled through the north end of the pit at varying depths (detection limits for these compounds ranged from 10 µg/L to 16,000 µg/L). Benz(a)anthracene was also detected at trace levels in four of these wells. The highest ground-water concentration of benzene was at 18,000 µg/L.

In addition, analysis of soil borings indicated that a 10 to 15 foot layer on top of the bedrock underlying the pit appears to be contaminated with organics (the bedrock begins at a depth of 80 ft). The intermediate zone between the bottom of the pit and the lower contaminated zone appears to be only slightly contaminated. This phenomenon suggests that nonaqueous phase substance contaminants have moved through the sand and gravel aquifer to the underlying impermeable layer.

Site 5

At another site, a tar refiner functioned from 1917 to 1972. As a result of PAH contamination of four area aquifers, this site is now included on the NPL. According to the Record of Decision (ROD) report, contamination of one of the deeper aquifers is believed to be the result of injection of creosote and process waste products directly into the facility's deep well located on-site. The well permeates the deep aquifers. Another method of migration of contaminants into this aquifer, called the Prairie du Chien-Jordan Aquifer, is believed to be from overflow into the well casing during on-site runoff events and spills.

Primary methods of contamination of the uppermost aquifers, the Drift and Platteville aquifers, are believed to be through contaminated soil at the site and at the bog south of the site. Contamination is not evenly distributed throughout the bog but appears to be more representative of a channel through the bog. According to the ROD data, the migration of contaminants from the ditches used to dispose of wastes has caused contamination of the aquifers. the Minnesota Department of Health (MDH) believes that the St. Peter Aquifer, which is located to the east of the site probably is contaminated due to ground-water migration from the Drift and Platteville aquifers. Further sampling of wells near the site is expected to confirm this assumption.

Site 6

An NPL site was used as a wood preserving and coal tar distillation facility from 1910 to 1962. Stormwater runoff flows to two stormwater drainage ditches which flow into an aquatic habitat. Sampling of the site indicated that there were two discrete areas of contamination: (1) the southern portion of the site, which was where the coal tar refining and wood treating operations were located, and (2) the northern portion of the site where an inactive disposal pond was situated. The average attenuation depth of organic compounds in the soils in the southern site area is about 58 feet. The primary contaminants of concern affecting the ground water, soils, and sediments are volatile organic compounds (VOCs) including benzene, toluene, and xylenes; other organics, including PAHs; and metals.

Soil staining was observed at 15 of 139 auger boring locations and at 29 of 82 soil boring locations. Total surficial soil PAH concentrations in the four surface/surficial soil samples which were analyzed ranged from below detection limits to 8,567 mg/kg. Benzo(a)pyrene was measured at a concentration as high as 210 mg/kg, benz(a)anthracene was measured as high as 340 mg/kg, and the concentration for combined benzo(b and K) fluoranthene was measured as high as 290 mg/kg.

The primary compounds found in the shallow aquifer below the site were PAHs, VOCs, and metals. The maximum concentrations of total PAHs were measured at 22,000 mg/L. Benzo(a)pyrene was measured at a maximum concentration of 570 µg/L, and benzo(b and k) fluoranthene was measured at a maximum concentration of 1,200 µg/L. The ROD data indicate that the same contaminants were present in an adjacent deeper aquifer, but at lower concentrations.

A total of eighteen surface water samples and five sediment samples were collected from on-site drainage ditches bordering the site. Surface water data did not show any site-specific contamination. In the sediment samples, PAH compounds were detected in concentrations ranging from 2.3 mg/kg to 240 mg/kg. Benzo(a)pyrene was measured at a concentration of 30 mg/kg. Benz(a)anthracene was measured at 5.6 mg/kg, and benzo(b and k) fluoranthene was measured at 59 mg/kg.

7. Conclusions

The criteria in 40 CFR 261.11(a)(3) specify that the Agency will list a waste as hazardous if it contains constituents listed in Appendix VIII and, after considering the factors enumerated in 40 CFR 261.11(a)(3), the Agency concludes that the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly managed. After considering these factors, particularly the toxicity, mobility, persistence, and the concentration of hazardous constituents in these wastes, the Agency concludes that these wastes meet the criteria for listing. The Agency, therefore, is proposing to add the wastes described in this notice to the list of hazardous wastes in 40 CFR 261.32.

E. Recycling

A number of residuals proposed to be listed as hazardous wastes are recycled by a substantial segment of the coke by-products industry (see Tables 3 and 4 for waste management practices for the residuals proposed for listing). Two recycling techniques are currently in use: (1) Using mixtures of the residuals and coal to charge coke ovens and (2) mixing the residuals with coal tar prior to its being sold or refined. These recycling practices are also commonly used for tar decanter sludge, which is already listed as a hazardous waste (EPA Hazardous Waste No. K087) from the coke by-products industry. Coke and coal tar containing tar decanter sludge, K087, are currently exempt from regulation as hazardous wastes under 40 CFR 261.4(a)(10); however, the sludge is still considered a solid waste if not recycled. In the November 29, 1985 final rule (50 FR 49170) and the February 21, 1991 final rule (56 FR 7203), EPA concluded that the hazardous constituents are not present in coke derived from K087 at levels that would pose substantial risk to human health and the environment and that the recycling of K087 into coke by-products does not increase levels of hazardous constituents in coal tar.

EPA has studied and analyzed these practices for each of the proposed listed residuals to determine (a) whether these practices constitute waste management and should, therefore, be regulated as such or (b) whether the proposed residuals are being used in ongoing, continuous manufacturing processes and should, therefore, not be regulated under RCRA. Based on this analysis, the Agency has determined that while the proposed residuals would be solid wastes under 40 CFR 261.2, the Agency has determined it is appropriate to exclude proposed EPA Hazardous Waste Nos. K141 through K145, K147, and K148 from the definition of solid waste when these wastes are reinserted into coke ovens and when blended with coal tar product that is sold. As explained fully below, EPA believes that regulation of the material when reinserted is not necessary to protect human health and the environment, and will further the objectives of waste minimization and pollution prevention.

The effect of these exclusions would be that the coke oven, using mixtures of these residuals as feedstock, and the materials derived from them in the coking process, would not be regulated under Subtitle C of RCRA. Also, the tar refining process, using mixtures of these residuals and coal tar as feedstock would not be subject to regulation under Subtitle C of RCRA. EPA's rationale for providing these exclusions from the definition of solid waste is presented in section 2.

The proposed exclusions would not apply prior to the reinsertion of the wastes into coke ovens or mixtures with coal tar for use as product. Management of these wastes up to that point may present a hazard to human health and the environment and would, therefore, be regulated under RCRA subtitle C. These waste management practices include removal and transportation, interim storage, or processing of the residuals at any time from their point of generation to the point of reinsertion into coke ovens or mixing with coal tar. In addition, residuals which are not reinserted into coke ovens or otherwise excluded from RCRA regulations would be subject to RCRA Subtitle C regulations. Section 2 provides a description of management practices for the wastes proposed for listing as hazardous from the point of generation to the point of reinsertion into coke ovens or mixing with coal tar.

The recycling of wastes from this industry is affected by the combined promulgation of two major rules. One of them, the Toxicity Characteristic, was promulgated on March 29, 1990. The other, the Boiler and Industrial Furnace rule, was promulgated on February 21, 1991. Because these rules were promulgated before this listing (with its attached exclusions) could become effective, the Agency is proposing a set of exclusions (§ 261.4(a)(10), (11), and (12)) for wastes from the coke by-products industry that are recycled. These exclusions will be discussed in section 6.

1. Classifications as a Solid Waste

The definition of solid waste (40 CFR 261.2) states that certain secondary materials, when used as or to produce a fuel, are solid waste (see 40 CFR 261.2(c)(2)(i)(B)). The regulations also state that materials which are reused as ingredients in an industrial process or as substitutes for commercial products are *not* solid wastes; however, those used in production of a "fuel" *are* considered to be solid wastes (see § 261.2(e)(2)(ii). Waste-derived coke and coal tar are considered by-products for regulatory purposes and are sometimes burned, albeit not exclusively, or necessarily, for energy recovery. Since some energy recovery ultimately occurs, they are considered solid wastes under the current classification scheme.

2. Rationale for Exclusions from the Definition of Solid Waste for Coke By-Products Residuals Recycled to the Coke Oven or when Mixed with Coal Tar

The residuals being proposed for listing as hazardous when recycled into the coke ovens act as feedstock to the process, providing a source of carbon that is needed for the manufacture of coke. Although the iron and steel industry generally uses only small volumes of residuals with respect to the amount of coal used, the Agency believes that the practice of reinserting these residuals into coke ovens serves to replace the raw material (*i.e.,* coal). Similarly, the practice of mixing the proposed residuals with coal tar prior to its sale or refining constitutes replacing a product (*i.e.,* coal tar). The Agency has concluded that the quality of coke (*i.e.,* levels of hazardous constituents) produced is unaffected by the use of mixtures of the residuals and coal as a feedstock as typically practiced by the industry. Similarly, EPA believes that the quality of coal tar is unaffected by mixing certain wastes with coal tar prior to its sale or refining as typically practiced by the industry (see 50 FR 49170, November 29, 1985 and 56 FR 7203, February 21, 1991.) For these reasons, the Agency believes that reinsertion of these residuals into coke ovens and mixing of these residuals with coal tar to be sold as a product are recycling practices that do not increase the levels of hazardous constituents in the final coke by-product, and therefore do not pose any significantly increased risk to human health and the environment.

EPA has evaluated whether concentrations of toxic constituents in the residuals were likely to have a significant effect on the products of the recycling processes as compared with the products derived solely from raw materials (*i.e.,* coal that is feedstock for coke ovens and coal tar that is feedstock for tar refining). This evaluation was performed by using the results and supporting data considered in developing the Agency's exclusion of coke and coal tar produced from or containing recycled tar decanter sludge (EPA Hazardous Waste No. K087) from the definition of solid waste. This exclusion was based on the Agency's findings that: (1) The recycle of tar decanter sludge by application to the coal charge does not appear to have a signficant effect on the chemical make-up of coke, (2) the organic chemical make-up of the sludge does not appear to be significantly different from the coal tar, and (3) although the concentration of one metal, lead, appears to be slightly higher in the sludge than in the coal tar, the increase does not appear to be statistically significant. EPA, therefore, has determined that recycling of EPA Hazardous Waste No. K087 does not significantly affect the concentrations of toxic metals and organic constituents in coal tar or coke. Based on this determination and on the fact that coke, coal tar, and sludge arise from a single process, are similar materials, and contain the same contaminants, EPA had excluded coke and coal tar containing or produced from K087 (see 56 FR 7202—7203, February 21, 1991).

Since EPA does not have analytical data for coke or coal tar produced from feed containing the wastes being proposed for listing, the Agency's approach for evaluating these wastes was to compare the concentrations of the hazardous organic constituents in these wastes with the same constituents in EPA Hazardous Waste No. K087. In performing this comparative analysis, the Agency used data available for K087 that demonstrates the effects of using recycled materials on quality of coke and coal tar produced. The Agency believes the same results would also apply to wastes that are recycled in the same manner, are physically similar to K087, and have concentrations of hazardous constituents similar or lower than the concentrations of these constitents in EPA Hazardous Waste No. K087. In general, EPA found that typical concentrations of the constituents of regulatory concern in the wastes (*i.e.,* organic constituents) proposed for listing were similar to or lower than the concentrations of the same constituents in EPA Hazardous Waste No. K087. These results are summarized in the Background Document to this proposal. The Agency's general understanding of the process would indicate that the levels of toxic metals would not increase from K087 to the other wastes proposed for listing today.

3. Descriptions of Management Practices for the Wastes Proposed for Listing as Hazardous from the Point of Generation to the Point of Reinsertion into Coke Ovens or Mixing with Coal Tar

For the purposes of determining and clarifying at what point the recycling exclusions apply, the Agency is describing existing practices in the coke by-products industry. (These practices apply to K087 wastes as well as to the wastes proposed in today's notice.) The Agency considered the reclamation process involved, the manner in which these residuals are handled, the transportation methods employed (*i.e.,* mechanisms used to transport the residuals from the point of generation to the point of their recycling), and any intermittent storage that takes place. The waste management practices are discussed below. Since, up to the point of reinsertion, the listed materials are solid and hazardous waste, the requirements of § 261.6(a)(1), (b), and (c) apply. See part 5 of this section and section I.F of today's proposal.

The Agency considered excluding the wastes proposed for listing from the definition of solid waste when destined for recycling, rather than when reinserted. The rationale for this was based on interpretations of certain court decisions as whether or not materials were part of the waste disposal problem. However, due to concerns about hazardous constituents in the waste as well as real and potential waste mismanagement scenarios (particularly placement on the land), the Agency tentatively prefers the option of excluding these wastes only at the point of reinsertion into the coke ovens or mixing with crude coal tar.

a. Management Practices for Residuals From Their Point of Generation to the Point of Reinsertion Into Coke Ovens.—(i) Conveyance to Storage or Blending Unit

Based on the information available to EPA, the transportation of these residuals from their point of generation to the storage or blending site typically takes place in trucks or hopper cars. Facilities involved in recycling these residuals transport them to the blending site or store them in tanks (see 40 CFR 260.10 for EPA's definition of tanks). Hopper cars or trucks are currently used to transport these residuals from the point of generation to the point of reinsertion into coke ovens or mixing with coal tar. Interim management practices include storage of these residuals and mixing with coal. Wastes recycled on site may be stored up to 90 days without a permit.

To comply with Land Disposal Restrictions (LDR, 40 CFR Part 268), many facilities have had to discontinue putting K087 wastes on the ground, in a pit, or on a low-walled concrete pad in order to mix these wastes with coal. Instead, these wastes are managed in a unit such as a tank to accommodate K087 (and other) wastes. The Agency believes that recycling the proposed wastes will cause minimal extra requirements to construct recycling equipment over and above what already exists, and solicits comment on this point.

Some of the wastes proposed for listing may also be transported from one facility to another (in particular, K147 and K148). Such transportation may occur across a property boundary of adjacent facilities or over several hundred miles and across state lines. The Agency requires a manifest to ensure proper transport and delivery of these hazardous wastes prior to recycling. In addition, storage of wastes received from another facility may require a permit.

(ii) Blending of Residuals With Coal

The blending of these residuals with a portion of the coal feed is typically practiced to make the recyclable material physically similar to the coal feed (*i.e.,* to give the feedstock-blend a solid consistency as opposed to the semisolid form in which some of the residuals are generated). Based on the limited information available to the Agency, a homogenizing agent may also be used in some cases in the blending process. In a limited number of cases, earthmoving equipment is used for mixing these residuals with coal. In other cases, ball milling of the residuals is required to make a homogeneous mixture with the coal feed. Most of the processing steps involved in preparing the residual/coal mixture are carried out to avoid "hot spots" in the coke oven, operational problems that may be encountered, and any long term damage to the coke oven as a result of using these residuals as a part of the feedstock. However, the recycling process is typically carried out in a way such that the quality of coke manufactured is unaffected. The residual mixture thus prepared is then usually transported to the coal feed site.

(iii) Feeding the Coke Oven

Typically, the residual mixture is put on the conveyor that feeds the coke oven, or it is sprayed on the coal as it ascends a conveyor belt. In many cases, the residual mixture is heated before it is combined with the main coal feed to ensure an even feed mix and easier material handling. It should be noted that the residual mixture would be a hazardous waste before it is fed to the coke oven.

b. Management Practices for Residuals Proposed for Listing as Hazardous Prior to Blending with Crude Coal Tar. Today's proposed residuals would be solid and hazardous wastes subject to RCRA subtitle C regulations prior to their mixing with the crude coal tar and subsequently sold as a product. The coal tar itself is subsequently refined into tar, pitch, or creosote. The

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management practices for these residuals prior to blending with coal tar are similar to the management practices described above for residuals mixed with coal to be fed to the coke oven. Some of the proposed residuals are sent to ball mills to produce a uniform material before they are mixed with coal tar. The proposed exclusion under 40 CFR 261.4(a)(11) would only exempt the residuals proposed for listing as hazardous at the point where blending with crude coal tar occurs.

4. Similar Exclusion for Decanter Tank Tar Sludge (K087) When Reinserted Into Coke Ovens or Blended with Coal Tar

EPA also proposes today to modify slightly this same exclusion for decanter tank tar sludge (EPA Hazardous Waste No. K087) when it is reinserted into coke ovens. Coke and coal tar containing decanter tank tar sludge currently are excluded from regulation as a hazardous waste under 40 CFR 261.4(a)(10) when used as a fuel. The exclusion classifies mixtures of the waste and coal tar, and coke derived from such mixtures, as products rather than wastes. However, other by-products, such as light oil recovered from coke oven gas generated by coke ovens charged with mixtures of coal and the waste, would have been hazardous wastes without the exclusion because of the "derived from" rule. Therefore, EPA excluded decanter tank tar sludge from the definition of solid waste at the point of reinsertion into coke ovens.

In addition, the wording of the exclusion in § 261.4(a)(10) is being corrected to delete the phrase "when used as a fuel." The Agency has found that inclusion of this phrase in the regulations will lead to confusion as to the scope of the exclusion, since coal tar is not generally used as a fuel (although it has high fuel value).

5. Generator Requirements

Generators should note that, under CFR 261.6(a)(1), hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of paragraphs (b) and (c) of that section, except for materials listed in (a)(2) and (a)(3) of that section. Under 40 CFR 261.6(b), generators and transporters of recyclable materials are subject to the applicable requirements of parts 262 and 263, and notification requirements under section 3010 of RCRA, except for materials listed in (a)(2) and (a)(3) of that section.

Under 40 CFR 261.6(c)(1), owners or operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of subparts A through L of parts 264 and 265, and under Parts 124, 266, 268, and 270, and the notification requirements under section 3010 of RCRA, except as provided in paragraph (a) of that section. Under 40 CFR 261.6(c)(2), owners or operators of facilities that recycle materials without storing them before they are recycled are subject to the following requirements, except as provided in paragraph (a) of that section:

(i) Notification requirements under section 3010 of RCRA.

(ii) Section 265.71 and 265.72 (dealing with the use of a manifest system and manifest discrepancies).

6. Other Options

Recognizing the significant role recycling plays in this industry, and the implications of the definition of solid waste and RCRA Subtitle C regulations, the Agency has considered various options in designing a regulatory structure to allow recycling of certain coke by-products wastes. The options considered are oriented around: 1) whether or not to facilitate the recycling, 2) at what point would the wastes be outside the scope of RCRA regulation, and 3) an exclusion for wastes which exhibit the newly-promulgated Toxicity Characteristic (TC).

On March 29, 1990, the Agency promulgated the amended Toxicity Characteristic rule (55 FR 11798). The Agency believes that many of the wastes proposed to be listed as hazardous in today's rule already may be hazardous wastes because they contain levels of organic constituents (*e.g.*, benzene) in excess of levels of these constituents published in the Toxicity Characteristic rule. Since these wastes may already be hazardous, recycling the wastes into the coke oven may also subject coke ovens to the strict management standards of the Boiler and Industrial Furnace rule mentioned above, unless an exclusion from the Definition of Solid Waste as described in this section were also effective.

In the period of time between the promulgation of the Boiler and Industrial Furnace rule and the K141–K145, K147, and K148 listings, recycling of these wastes would be discouraged if they are TC hazardous. As explained in Section I.1 of this proposal, any hazardous waste (listed or characteristic) that is used as a fuel or to make a fuel is still considered a solid waste. Therefore, the Agency is proposing (here and in a separate rulemaking) an exclusion from the definition of solid waste for characteristically hazardous wastes generated at coke by-products manufacturing facilities that are recycled into the coke oven (40 CFR 261.4(a)(12)). Those wastes which fail the TC for benzene and are recycled into the coke oven (as described above in this section) will not be considered solid wastes at the point they are inserted into the coke oven. The Agency is not proposing to limit the scope of the exclusion to wastes which fail the TC for organic chemicals only. Since natural coal contains inorganic constituents, limiting the proposal only to organics would be anomalous.

The Agency notes that if the wastes proposed for listing today are TC hazardous for benzene, and they are mixed with K087 wastes prior to recycling into the coke ovens, the entire mixture would assume the K087 listing. Since under 40 CFR 268.43, K087 waste already has a treatment standard for benzene, no additional notification for TC hazardous wastes is required for the combined wastes. (This classification scheme is clarified in the technical corrections to the Third Third rule at 56 FR 3872, January 31, 1991.) The Agency will still promulgate the exclusions for recycled TC hazardous wastes at coking facilities in order not to cause confusion among the regulated community, and to avoid any difficulties for facilities that find prior mixing of these wastes with K087 is not always possible.

The Agency is also considering options other than the ones presented in the description of management practices. Some of these options may be addressed by commenters as to the specifics of recycling practices (see requests under "Conclusions" in this section). The Agency is also considering whether to exclude or exempt those wastes from this industry that are destined for recycling, as long as these wastes do not touch the ground or are placed on land. Specifically, the Agency is concerned with: (1) transportation of the wastes from one point to another (whether on one plant site or from one site to another), (2) what sort of facilities for handling the wastes could keep the wastes qualified for this exclusion (particularly in light of the recently promulgated land disposal restrictions regulations in 40 CFR part 268), (3) what alternatives may exist for specific waste streams if the wastes are chemically incompatible with the process equipment or with each other, (4) the legal jurisdiction the Agency has over the wastes at various points in the process, and (5) the extent of closed-loop recycling that takes place at coke by-products facilities.

7. Conclusions

In conclusion, the practice of reinserting these residuals (proposed K141 through K145, K147, and K148) back into the coke ovens serves to replace the raw material, coal, and the practice of mixing these residuals with coal tar serves to replace the product, coal tar. The practice, based on available information, seems to pose no additional hazard to human health and the environment. Therefore, the Agency is proposing to exclude these residuals when reinserted into the coke ovens or when mixed with product coal tar from the definition of solid waste under 40 CFR 261.4(a) (10), (11), and (12).

EPA recognizes that certain common management practices for coke by-products wastes may present a threat to human health and the environment. Even in cases where the wastes are recycled, some of the management steps prior to recycling could provide opportunity for the release of hazardous materials. As such, the proposed listing and recycling exclusions have been developed to require that the wastes be handled in accordance with subtitle C regulations after generation and up to the point of recycling.

The Agency notes that waste management practices are subject to change as new technologies are developed, economic incentives change, or as the Agency publishes other regulatory programs. Specifically, new regulations under the Clean Air Act (National Emissions Standards for hazardous Air Pollutants, or NESHAPs) published in September 1989 and March 1990 affect the coke by-products industry, and may have a direct effect on industrial operations and waste management practices. The Agency believes that compliance with NESHAP regulations will further reduce the potential for hazardous constituent releases into the environment; however, the Agency requests comment on this particular postulation. Given the fact that several of the wastes contain constituents of relatively high molecular weight, EPA does not expect that mixing of the proposed wastes with coal tar would contribute to increased benzene emissions for the most part. Depending on the location of tar refining, storage, and mixing operations, the NESHAP regulations may apply to the mixing of coal tar with the wastes proposed in today's notice at certain facilities. However, the exclusions from the definition of solid waste will mean that facilities will not be subject to RCRA air rules (sections 264 and 265, subparts AA and BB) when mixing wastes with coal tar or reinserting wastes into the coke oven.

The February 21, 1991 Boiler and Industrial Furnace rule concluded that the sludge recycling does not affect the amount of toxic constituents in coke or coal tar, or emissions from their manufacturing processes. Furthermore, management of the wastes in question does not contribute to the waste disposal problem, rendering the regulation of coke and coal tar as RCRA solid wastes unnecessary. Additionally, the process of making coke and coal tar from K087, K060, K141–K145, K147, and K148 need not be subject to RCRA control. Since making coke and mixing coal tar are subject to special criteria under the Clean Air Act, RCRA regulation of some of these practices may be disruptive and inappropriate to the CAA regulatory scheme. As described above, the K087, K060, K141–K145, K147, and K148 wastes are subject to full RCRA regulation prior to entering the recycling process. Exclusions would not apply to the coking or coal tar producing process if other hazardous wastes (*e.g.*, spent solvents) are mixed into the process. (See 56 FR 7203.)

EPA requests comment on its decision to exclude the proposed residuals when reinserted into coke ovens or mixed with coal tar product from the definition of solid waste under 40 CFR 261.4(a) (10), (11), and (12). Comments and data on the extent and nature of recycling and reclamation practices of these wastes, and the relationship of these practices to the definition of solid waste are requested. Specific information on the following is requested: the length of time over which residuals accumulate; the manner in which they are returned to the process; the chemical compatibility of the wastes with the industrial process and with each other; the percentage of material recycled or reclaimed; the ability of the materials in question to be wastes under some circumstances and products in others; whether the recycling or reclamation takes place continuously; and, any other relevant information or data on the recycling or reclamation of these wastes.

F. Proposal Not To List Coke By-Products Wastewaters

EPA is not proposing to list coke by-products wastewaters as hazardous wastes. This decision is based on the Agency's expectation that at least some of the wastewater streams at coke by-products facilities may fail the TC test for benzene. EPA, therefore, expects that such wastewaters could be effectively regulated under the TC rule. In particular, final cooler blowdown and wastewaters from light oil recovery contain benzene levels ranging from 0.44 to 140 ppm. Table 10 presents the ranges of concentrations found for the hazardous constituents present in these wastewaters. EPA found that out of twelve samples, seven analyzed by EPA had benzene levels higher than the promulgated TC level of 0.5 ppm. Therefore, these wastes are now regulated Subtitle C wastes because they are characteristically hazardous. As shown in Table 10, wastewaters do not typically and frequently contain PAHs at quantifiable levels of regulatory concern. The Agency notes that if the wastes proposed for listing in today's notice (or any other listed hazardous waste) were to be deliberately mixed with coke by-product wastewaters, the mixture would become a hazardous waste pursuant to the mixture rule in 40 CFR 261.3(a)(2)(iv).

TABLE 10.—COKE BY-PRODUCTS PLANT WASTEWATERS

Constituent of concern	Health-based water concentration limits (ppm)	Basis [1]	TC regulatory level [2] (ppm)	Coke by-products wastewater concentrations (ppm) [3]											
				Waste ammonia liquor			Final cooler blowdown			Light oil recovery wastewater			Mixed coke plant wastewaters		
				Range	No. of data points	Average	Range	No. of data points	Average	Range	No. of data points	Average	Range	No. of data points	Average
Benzene	5.0×10^{-3}	HCL	0.5	<0.002	2	0.001	0.44–36	4	16	23–66	4	47	0.1–0.3	2	0.2
Benz(a) anthracene	1.1×10^{-4}	RSD (Class B_2).	NA	<0.05–0.32	2	<0.17	<0.14–0.11	3	0.09	ND–1.2	4	0.43	<0.04–<0.06	2	0.03
Benzo(a)pyrene	3.0×10^{-6}	RSD (Class B_2).	NA	<0.05–0.21	2	0.12	ND–0.082	3	0.03	ND–<1	4	0.1	ND–<0.06	2	0.02

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UCTS PLANT WASTEWATERS

oke by-products wastewater concentrations (ppm) [3]								
cooler blowdown			Light oil recovery wastewater			Mixed coke plant wastewaters		
	No. of data points	Average	Range	No. of data points	Average	Range	No. of data points	Average
	4	16	23–66	4	47	0.1–0.3	2	0.2
1	3	0.09	ND–1.2	4	0.43	<0.04–<0.06	2	0.03
53	3	0.03	ND–<1	4	0.1	ND–<0.06	2	0.02

TABLE 10.—COKE BY-PRODUCTS PLANT WASTEWATERS—Continued

Constituent of concern	Health-based water concentration limits (ppm)	Basis [1]	TC regulatory level [2] (ppm)	Coke by-products wastewater concentrations (ppm) [3]											
				Waste ammonia liquor			Final cooler blowdown			Light oil recovery wastewater			Mixed coke plant wastewaters		
				Range	No. of data points	Average	Range	No. of data points	Average	Range	No. of data points	Average	Range	No. of data points	Average
Benzo(b and k)fluoranthene	4.0×10^{-3}	RSD (Class B_2).	NA	<0.05–0.36	2	0.19	ND	2	ND	ND–<1	2	0.25	ND–<0.06	2	0.02
Dibenz(a,h) anthracene	7.1×10^{-7}	RSD (Class B_2).	NA	ND–<0.1	2	0.03	ND	2	ND	ND–<2.5	2	0.63	ND	2	ND

Source: Background Document.

[1] MCL—Maximum Contaminant Level.
[2] RSD—Risk Specific Dose—Toxicity Characteristic (TC) levels were promulgated on March 29, 1990 (See 55 FR 11798–11862).
[3] RSD—Risk Specific Dose— = Not Reported.
ND = Not Detected.
< = Detected but not quantifiable.

Pursuant to 40 CFR 261.11(a)(1) the Agency could have listed other wastewater streams from coke by-products plants (e.g., final cooler blowdown and wastewaters from light oil recovery) on the basis of the concentrations of benzene present in these waste streams. However, the Agency has currently decided not to list them and considers their regulation by the promulgated TC rule to be sufficiently protective of human health and the environment (for details on the TC rule, see 55 FR 11798–11862).

EPA does not have analytical data on the concentrations of benzene and other hazardous constituents of concern in sludges generated from the treatment of coke by-product wastewaters. However, since concentrations of most of these constituents in wastewaters with the exception of benzene are not typically and frequently present at levels of regulatory concern, the Agency does not believe that listing of sludges is warranted.

G. Impact of Future Land Disposal Restrictions (LDR) Determinations

The Hazardous and Solid Waste Amendments of 1984 (HSWA) impose substantial new responsibilities on those who handle hazardous waste. HSWA prohibits, in particular, the continued placement of hazardous waste in or on the land unless the Agency makes the determination that the prohibition is not required to protect human health and environment for as long as the waste remains hazardous. Land disposal of these wastes is only allowed if the wastes meet treatment standards promulgated by the Agency. These standards must substantially reduce the toxicity of or the likelihood of migration of hazardous constituents from the wastes. The statute also established a rigorous schedule for making determinations regarding the continued land disposal of these wastes. This schedule placed special emphasis on all hazardous wastes that were identified prior to the enactment of HSWA (November 8, 1984).

The Agency is also required to make a land disposal prohibition determination for any hazardous waste that is newly identified or listed in 40 CFR Part 261 after November 8, 1984, within six months of the date of identification or effective date of listing (section 3004(g)(4), 42 U.S.C. 6924(g)(4)). Once promulgated, the coke by-products wastes being proposed in today's rule would, therefore, be subject to this requirement.

This section of today's preamble addresses activities EPA is planning to perform in order to comply with the mandatory requirements to develop land disposal restrictions for coke by-products wastes. The Agency is requesting comments and information in the areas of pollution prevention, recycling, treatment, and treatment capacity for these wastes.

1. Request for Comment on the Agency's Approach to Pollution Prevention in the LDR Program

EPA has made considerable progress over the years in improving environmental quality through its media-specific pollution control programs. Standard practice in several industries, however, has relied traditionally on land disposal of solid wastes, including those residuals generated from the control of air and water emissions. Treatment of many of these wastes was primarily motivated by industry's desire to reduce liability and costs of disposal. In part to conserve energy, industry began to recycle and burn or otherwise process many wastes as fuel substitutes where such technologies were relatively easy to implement. Elimination or reduction of the generation of these wastes, while instituted by a number of corporations, was typically not a high priority management practice.

This changed dramatically in 1984, as HSWA established a national policy reversing this scheme of priorities that was previously practiced by industry and inadvertently spawned by regulatory efforts. HSWA thus established elimination or reduction of wastes as the first priority for managing all wastes. Recycling and treatment came next in order of priority. While land disposal was established as the least preferred means of managing wastes, it was recognized as necessary for some wastes, provided they were treated prior to disposal.

The Agency intends to gather information on pollution prevention potential wherever feasible and thus is requesting comment on particular opportunities for volume and toxicity reduction for coke by-products wastes. Through cooperative efforts such as these, the Agency can better inform the public and make enlightened decisions on regulatory matters. At the same time, the information collected as a response to today's notice can be assembled, evaluated, and potentially disseminated through the Agency's technology transfer program potentially resulting in short-term positive impact on volume reductions. The Agency points out that even if the listing of these wastes is not promulgated, the pollution prevention ideas gathered from this notice can still be very useful to regulatory agencies, industry, and to the public.

Successful reduction in waste generation is often erroneously interpreted by industry to result only from complex and/or expensive process changes. Often there are relatively simple engineering solutions that can be easily implemented that will achieve this goal. Evaluation of adherence to existing process control measures along with slight modifications of these can often result in significant volume reduction. These evaluations may also point out the need for more complex engineering evaluations (e.g., mixing effectiveness, process temperatures and pressures, and mutual compatibility of wastes). Simple physical audits of current waste generation and in-plant management practices for the wastes can also yield very positive results. These audits often turn up simple non-engineering practices that can be successfully implemented. They may point out the need for the repair/replacement of leaking pipes, valves, and simple equipment, or may result in modification of inspection and maintenance schedules.

The likelihood exists that pollution prevention opportunities for the manufacturing processes generating the wastes proposed in today's notice may potentially result in significant reductions in waste generation and, thus, considerable cost-savings for industry. The Agency is interested in comments and data on such opportunities, including both successful and unsuccessful attempts to reduce waste generation, as well as the potential for volume or toxicity reductions. It is also possible that, due to previous implementation of waste minimization procedures, some facilities or specific processes have very little potential for decreases in waste generation rates or toxicity. The Agency is particularly interested in specific information such as: (1) Data on the quantities of wastes that have been or could be reduced; (2) a means of calculating percent reductions that are achievable (accounting for changes in production rates); (3) potential for reduction in toxicity of the wastes; (4) the results of waste audits that have been performed; (5) capacity for recycling the wastes to the coke oven (or another part of the process); and (6) potential cost savings that can be (or have been) achieved.

In the case of wastes generated by the coke by-products industry, the Agency has some information concerning waste recycling practices, as discussed in the previous section of this preamble. EPA has collected this information as a result of other rulemaking efforts, such as the Boiler and Industrial Furnaces Rule, and is, in fact, proposing exclusions from the definition of solid waste for certain wastes as they are recycled. Any additional information provided by commenters will greatly ameliorate the Agency's ability to take into account past and present waste management practices for the purposes of LDR.

2. Request for Comment on the Agency's Approach to the Development of BDAT Treatment Standards

While the Agency prefers source reduction/pollution prevention and recycling/recovery over conventional treatment, inevitably some wastes (such as residues from recycling and inadvertent spill residues) will be generated. Thus, standards based on treatment using Best Demonstrated Available Technology (BDAT) will be required to be developed, at a minimum, for these wastes. (Note: The Agency does recognize there may be some special situations where the generation of a particular waste can be totally eliminated. This is unlikely, however, for most wastes.)

A general overview of the Agency's approach in performing analysis of BDAT for hazardous wastes can be found in Section III.A.1 of the preamble to the final rule for Third Third wastes (55 FR 22535—22542, June 1, 1990). If all or part of the proposed listing of the coke by-product wastes is promulgated in a later rulemaking, the Agency may develop BDAT treatment standards for these wastes based on the transfer of performance data from the treatment of wastes (such as K087) with similar chemical and physical characteristics or similar concentrations of hazardous constituents. Treatment standards will be established for these wastes on a constituent-specific basis, with the regulated constituents selected based on their presence in the untreated wastes. These constituents are not necessarily limited to the hazardous constituents of concern (proposed for 40 CFR part 261 appendix VII) identified as present in the wastes in today's rule.

The technologies required by and those forming the basis of the treatment standards, in general, are determined by whether the wastes contain organics and/or metals. For wastes such as the ones proposed in today's notice containing primarily organics, the Agency has found that incineration and other thermal destruction techniques can destroy most organics to concentrations at or near the limit of detection as measured in the ash residues. Many people, however, are apprehensive about incineration of hazardous wastes and prefer the use of alternative treatment technologies for wastes that must be treated. While the Agency believes that incineration and other thermal destruction technologies achieve a level of relatively complete destruction for the organics, it typically establishes concentration-based standards based on these data rather than requiring the wastes to be incinerated. Thus, any alternative technologies that can achieve these levels may be used. In fact, where alternative treatment technologies cannot achieve these levels, but achieve reasonably comparable results, the Agency may promulgate adjusted treatment standards achievable by both incineration and the alternative technologies.

As stated above, the Agency has extensive information that the coking industry recycles many of its wastes by reinjecting them into the coke ovens. Because of this practice, the likelihood exists that this practice will be proposed as the BDAT for treatment of these wastes.

Thus, the Agency is soliciting or updating data and information on appropriate treatment technologies for the wastes proposed in today's rule. Information should include, but not be limited to, the following: (1) Technical descriptions of the treatment systems that are currently used for these wastes; (2) descriptions of alternative technologies that might be currently available or anticipated as applicable; (3) performance data for the treatment of these wastes (in particular, constituent concentrations in both treated and untreated wastes, as well as equipment design and operating conditions); (4) information on known or perceived difficulties in analyzing treatment residues or specific constituents; and (5) quality assurance/control information for all data submissions.

3. Request for Comment on the Agency's Approach to the Analyses of BDAT Treatment Capacity

In today's notice, the Agency is proposing to list coke by-product wastes as hazardous under 40 CFR 261.32. Although data on waste characteristics and current management practices have been gathered for the purpose of listing the wastes, the Agency has not evaluated these data for the purposes of developing specific BDAT treatment standards or assessing the capacity to treat (or recycle) these wastes. As a result, we are soliciting comments on the completeness of the existing data (which can be found in the RCRA docket) and requesting additional data and information with respect to treatment and capacity.

The Agency is particularly interested in updating the following information about the proposed wastes (identified by the proposed waste codes): (1) The total quantities of each waste generated; (2) the quantities (on-site and off-site) stored, treated, recycled, or disposed (and types of units) with particular emphasis on those managed in units designated as land disposal under HSWA (Note: Besides landfills, this also includes underground injection units, surface impoundments, land treatment, and waste piles); (3) the treatability group classifications of the wastes (*i.e.*, wastewaters or nonwastewaters as defined in the Third Third rule); (4) the chemical/physical characteristics of the wastes, including information such as total organic carbon content, BTU value, concentration of organic and metal constituents, etc.; and (5) specific chemical composition or physical form of the waste that could potentially interfere or otherwise limit the application of specific treatment or recycling technologies and thus would impact EPA's analysis of capacity.

The Agency also needs additional data on the number of facilities and volume of wastes currently regulated under other regulations (*e.g.*, the Clean Water Act or the Clean Air Act), along with State or local waste management requirements. EPA needs to evaluate the impact of shifting these wastes from land disposal to on-site, captive, and commercial treatment or recycling capacity. The Agency is also soliciting comment on the viability of treating or recycling these wastes at commercial treatment and/or recycling facilities. It is particularly important that short-term and long-term trends (including potential capacity shortfalls) be identified, especially for new treatment and for recycling technologies. Finally, it is important to have this information provided on a facility-specific basis in order to address the impacts of the land disposal restrictions program on the regulated community.

III. State Authority

A. Applicability of Rules in States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce RCRA programs within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final RCRA authorization administered its authorized hazardous waste program entirely in lieu of EPA. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State which the State was authorized to permit. When new, more-stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA (42 U.S.C. 6926(g)), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to implement these requirements and prohibitions in authorized States, including the issuance of permits, until the State modifies its program to reflect the Federal standards, and applies for and is granted authorization. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in authorized States in the interim.

Today's proposal for listing EPA Hazardous Waste Nos. K141 through K145, K147, and K148 is being proposed pursuant to section 3001(e)(2) of RCRA, a provision added by HSWA. When the final rules are promulgated, EPA will consider its HSWA obligation to make a determination regarding listing coke by-products wastes to be fulfilled. Therefore, the Agency is proposing to add these requirements to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA and that take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions identified in 40 CFR 271.1(j) table 1, as discussed in the following section of the preamble.

B. Effect on State Authorizations

As noted previously, today's rule is being proposed pursuant to provisions added by HSWA. The addition of K141 through K145, K147, and K148 to the list of hazardous wastes from specific sources is proposed pursuant to section 3001(e)(2) of RCRA, a provision added by HSWA.

As noted above, EPA will implement the HSWA portions of today's rule (*i.e.*, the addition of K141 through K145, K147, and K148 to the list of hazardous wastes from specific sources) in authorized States until they modify their programs to adopt these rules and such modifications are approved by EPA. Because this rule will be promulgated pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final RCRA authorization under section 3006(g)(2) or 3006(b), respectively, on the basis that State regulations are substantially equivalent or fully equivalent to EPA's regulations. The procedures and schedule for State program modifications for either interim or final authorization are described in 40 CFR 271.21. It should be noted that all HSWA interim authorizations will expire on January 1, 1993 (see 40 CFR 271.24(c)).

It should be noted that 40 CFR 271.21(e) requires that States having final RCRA authorization must modify their programs to reflect Federal program changes and must subsequently submit the modifications to EPA for approval. The deadline by which States must modify their programs to adopt today's proposed rule will be determined by the date of promulgation of the final rule in accordance with 40 CFR 271.21(e)(2). Once EPA approves the modification, the State requirements become RCRA subtitle C requirements.

States with authorized RCRA programs may already have regulations similar to those proposed in today's rule. Such State regulations have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement its regulations as RCRA requirements until the State program modification is submitted to EPA and approved. Of course, States with existing regulations may continue to administer and enforce those regulations as a matter of State law. In addition, in implementing the Federal program, EPA will work with the States under cooperative agreements to minimize duplication of efforts; in many cases, EPA will be able to defer to the States in their efforts to implement their programs, rather than take separate actions under Federal authority.

States that submit their official applications for final authorization less than 12 months after the effective date of EPA's regulations are not required to include regulations equivalent to the EPA regulations in their application. However, States must modify their programs by the deadlines set forth in 40 CFR 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these standards must include standards equivalent to these standards in their application. The requirements States must meet when submitting final authorization applications are set forth in 40 CFR 271.3.

IV. CERCLA Designation and RQ Adjustment

Pursuant to section 101(14)(C) of the Comprehensive Environmental

Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, the wastes proposed to be listed as hazardous in today's notice will, on the effective date of the final rule, automatically become hazardous substances under CERCLA by virtue of their listing under RCRA. The CERCLA hazardous substances are listed in Table 302.4 at 40 CFR 302.4 along with their reportable quantities (RQs). CERCLA section 103(a) requires that persons in charge of vessels or facilities from which a hazardous substance has been released in a quantity that is equal to or greater than its RQ shall immediately notify the National Response Center of the release at (800) 424–8802 or at (202) 426–2675. In addition, section 304 of the Superfund Amendments and Reauthorization Act of 1986 (SARA) requires the owners or operator of a facility to report the release of a CERCLA hazardous substance or an extremely hazardous substance to the appropriate State emergency response commission (SERC) and to the local emergency planning committee (LEPC) when the amount released equals or exceeds the RQ for the substance or one pound where no RQ has been set.

The release of a hazardous waste to the environment must be reported when the amount released equals or exceeds the RQ for the waste, unless the concentrations of the constituents of the waste are known (48 FR 23566, May 25, 1983). If the concentrations of the constituents of the waste are known, then the mixture rule may be applied. According to the "mixture rule" developed in connection with the Clean Water Act Section 311 regulations (40 CFR 302.6(b)) and also used in notification under CERCLA and SARA (50 FR 13463, April 4, 1985 and amended on August 14, 1989, 54 FR 33481), the release of mixtures or solutions (including hazardous waste streams) of hazardous substances would need to be reported to the NRC, and to the SERC and LEPC: (1) If the quantity of all of the hazardous constituent(s) of the mixture or solution is known, when an RQ or more of any hazardous constituent is released, or (2) if the quantity of one or more of the hazardous constituent(s) of the mixture or solution is unknown, when the total amount of the mixture or solution released equals or exceeds the RQ for the hazardous constituent with the lowest RQ. RQs of different hazardous substances are not additive under the mixture rule, so that spilling a mixture containing half an RQ of one hazardous substance and half an RQ of another hazardous substance need not be reported.

Under section 102(b) of CERCLA, all hazardous wastes newly designated under RCRA will have a statutorily-imposed RQ of one pound unless and until adjusted by regulation under CERCLA. In order to coordinate the RCRA and CERCLA rulemaking with respect to new waste listings, the Agency today is proposing regulatory amendments under CERCLA authority in connection with the proposed listing of wastes K141, K142, K143, K144, K145, K147, and K148. The Agency is proposing to: (1) Designate wastes K141, K142, K143, K144, K145, K147, and K148 as hazardous substances under section 102(a) of CERCLA and (2) adjust the RQs of wastes K141, K142, K143, K144, K145, K147, and K148 to one pound. Releases of a waste stream are reportable if any hazardous constituent of the waste stream is released in a quantity greater than or equal to the RQ for that constituent (50 FR 13463, April 4, 1985). Wastes K141, K142, K143, K144, K145, K147, and K148 each contain one or more hazardous constituents that have a 1-pound RQ; therefore, the RQs of the wastes are also proposed as 1 pound. The RQs for each of the hazardous constituents and the proposed RQs for each waste are identified in Table 11.

TABLE 11.—RQS FOR CONSTITUENTS OF CONCERN FOR WASTES K141–K145, K147, AND K148

Hazardous substance	Constituent	RQ (lbs)
Waste No. K141		1
	Benzene	10
	Benz(a)anthracene	10
	Benzo(a)pyrene	1
	Benzo(b)fluoranthene	1
	Benzo(k)fluoranthene	5,000
	Dibenz(a,h)anthracene	1
	Indeno(1,2,3–cd)pyrene	100
Waste No. K142		1
	Benzene	10
	Benz(a)anthracene	10
	Benzo(a)pyrene	1
	Benzo(b)fluoranthene	1
	Benzo(k)fluoranthene	5,000
	Dibenz(a,h)anthracene	1
	Indeno(1,2,3–cd)pyrene	100
Waste No. K143		1
	Benzene	10
	Benz(a)anthracene	10
	Benzo(a)pyrene	1
	Benzo(b)fluoranthene	1
	Benzo(k)fluoranthene	5,000
Waste No. K144		1
	Benzene	10
	Benz(a)anthracene	10
	Benzo(a)pyrene	1
	Benzo(b)fluoranthene	1
	Benzo(k)fluoranthene	5,000
	Dibenz(a,h)anthracene	1
Waste No. K145		1
	Benzene	10
	Benz(a)anthracene	10
	Benzo(a)pyrene	1
	Dibenz(a,h)anthracene	1

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the constituents of the
(48 FR 23566, May 25,
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waste are known,
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substance need not

Under section 102(b) of CERCLA, all hazardous wastes newly designated under RCRA will have a statutorily-imposed RQ of one pound unless and until adjusted by regulation under CERCLA. In order to coordinate the RCRA and CERCLA rulemaking with respect to new waste listings, the Agency today is proposing regulatory amendments under CERCLA authority in connection with the proposed listing of wastes K141, K142, K143, K144, K145, K147, and K148. The Agency is proposing to: (1) Designate wastes K141, K142, K143, K144, K145, K147, and K148 as hazardous substances under section 102(a) of CERCLA and (2) adjust the RQs of wastes K141, K142, K143, K144, K145, K147, and K148 to one pound. Releases of a waste stream are reportable if any hazardous constituent of the waste stream is released in a quantity greater than or equal to the RQ for that constituent (50 FR 13463, April 4, 1985). Wastes K141, K142, K143, K144, K145, K147, and K148 each contain one or more hazardous constituents that have a 1-pound RQ; therefore, the RQs of the wastes are also proposed as 1 pound. The RQs for each of the hazardous constituents and the proposed RQs for each waste are identified in Table 11.

CERN FOR WASTES K141–K145, K147, AND K148

Constituent	RQ (lbs)
	1
	10
	10
	1
	1
	5,000
	1
	100
	1
	10
	10
	1
	1
	5,000
	1
	100
	1
	10
	10
	1
	1
	5,000
	1
	10
	10
	1
	1
	5,000
	1
	1
	10
	10
	1
	1

TABLE 11.—RQS FOR CONSTITUENTS OF CONCERN FOR WASTES K141–K145, K147, AND K148—Continued

Hazardous substance	Constituent	RQ (lbs)
	Naphthalene	100
Waste No. K147		1
	Benzene	10
	Benz(a)anthracene	10
	Benzo(a)pyrene	1
	Benzo(b)fluoranthene	1
	Benzo(k)fluoranthene	5,000
	Dibenz(a,h)anthracene	1
	Indeno(1,2,3-cd)pyrene	100
Waste No. K148		1
	Benz(a)anthracene	10
	Benzo(a)pyrene	1
	Benzo(b)fluoranthene	1
	Benzo(k)fluoranthene	5,000
	Dibenz(a,h)anthracene	1
	Indeno(1,2,3-cd)pyrene	100

V. Cost and Economic Analysis

Executive Order No. 12291 requires EPA to prepare an analysis of the costs and economic impacts associated with a proposed regulation. The results of this analysis are used to determine whether the regulation will result in: (1) Incremental annual costs that exceed $100 million, (2) significant increases in costs or prices for consumers or individual industries, or (3) significant adverse effects on competition, employment, investment, innovation, or international trade. If a proposed rule meets any of these criteria, it is a "major rule," as defined by Executive Order No. 12291, and a Regulatory Impact Analysis must be completed before the rule is promulgated.

Today's proposed rule is not a "major" rule because it would not have an annual economic effect of more than $100 million and would not have significant adverse effects on the coke by-products and tar refining industries. This section of the preamble discusses the results of the cost analyses undertaken to assess the effects of the proposed rule. The draft Cost and Economic Impact Analysis (DPRA, 1990) is available in the public docket for this proposal.

In order to assess the effects of the proposed rule, EPA first identified wastes and facilities which would be affected by the rule. Incremental costs for each facility were estimated based on the changes in waste management practices that would be required once the wastes are regulated as hazardous. The incremental costs for the individual facilities were aggregated to estimate national costs of the rule.

To determine the nationwide costs of the proposed rule, waste quantities, baseline management practices, and compliance management practices for proposed EPA Hazardous Waste Nos. K141 through K145, K147, and K148 were developed based on the information in RCRA 3007 questionnaires and best engineering judgment. For these wastes, the baseline management practices included recycling of wastes to coke ovens, burning as fuels, and disposal in off-site landfills. The most-costly compliance management practice for all these wastes was assumed to be incineration in a permitted RCRA incinerator.

Incremental costs were calculated by subtracting costs of baseline management practices from costs of management practices if all of the proposed wastes are regulated as hazardous. Management practices were developed for both the least-costly compliance option and most-costly compliance option based on waste types and quantities.

EPA's analysis indicates that the total annualized incremental cost to the industry, excluding regulatory costs for 40 CFR parts 262 and 266, would range from approximately $150,000 for the least-costly compliance option to $18 million for the most-costly compliance option. The least costly compliance option involves costs associated with managing today's proposed wastes as hazardous before they are reinserted into the coke oven. Costs involved in this option would result from upgrading existing storage and secondary containment systems, and the transportation of those tar refining wastes that are not currently being recycled to the coke ovens. The most costly compliance option involves incineration of all residuals in RCRA permitted incinerators.

The annualized administrative costs for complying with 40 CFR parts 262 are estimated to be $52,000, which includes costs for reporting and record keeping. Therefore, even for the most costly compliance option (*i.e.*, incineration of these wastes) the total annualized incremental cost of this rule is estimated to be less than $100 million. Additionally, the Agency's analysis concluded that these costs would not result in significant price increases or significant adverse effects on competition, trade, employment or investment. Therefore, because impacts of the proposed rule do not meet the criteria for major rules set by Executive Order No. 12291, the Agency has determined that today's rule is not a major rule.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601–612), whenever an Agency is required to publish a General Notice of Rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis (RFA) that describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). No RFA is required, however, if the head of the Agency certifies that the rule will not have a significant impact on a substantial number of small entities.

Since EPA has determined the hazardous wastes proposed for listing here are not generated by small entities (as defined by the Regulatory Flexibility Act), and the Agency believes that small entities will not generate them in significant quantities. This regulation, therefore, does not require an RFA. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities.

VII. Paperwork Reduction Act

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

VIII. Compliance and Implementation

A. Section 3010 Notification

Generally, when new hazardous wastes are listed, all persons who generate, transport, treat, store, or dispose the newly listed waste(s) are required to notify either EPA, or a State authorized by EPA to operate the hazardous waste program, of their activities pursuant to section 3010 of RCRA. However, under the Solid Waste Disposal Amendments of 1980 (Pub. L. 96–482), EPA was given the option of waiving the notification requirements under section 3010 of RCRA following revision of the section 3001 regulations, at the discretion of the Administrator. EPA is proposing to waive this notification requirement for persons who handle wastes that are covered by today's proposed listing and have already notified EPA that they manage other hazardous wastes and have received an EPA identification number. This waiver is being proposed because of the likelihood that persons managing today's proposed wastes already are managing one or more hazardous wastes that generally are associated with the generation of proposed EPA Hazardous Waste Nos. K141 through K145, K147, and K148 and have, therefore, previously notified EPA and received an EPA identification number. In the event that any person who generates, transports, treats, stores, or disposes these wastes and has not previously notified and received an identification number, that person must obtain an identification number pursuant to 40 CFR 262.12 before that person can generate, transport, treat, store, or dispose of these wastes.

B. Compliance Dates for Facilities

Today's proposed listings will be promulgated pursuant to HSWA. HSWA requirements are applicable in authorized States at the same time as in unauthorized States. Therefore, EPA will regulate the wastes being proposed today until States are authorized to regulate these wastes. Once these regulations are promulgated in a final rule by EPA, the Agency will apply these Federal regulations to these wastes and to their management in both authorized and unauthorized States.

Newly regulated facilities (*i.e.*, facilities at which the only hazardous wastes that are managed are today's proposed wastes in units subject to permit requirements when these listings are finalized) must qualify for interim status within six months of publication of the rule in order to continue managing these wastes in such units. To retain interim status, a newly-regulated land disposal facility must submit a part B permit application within eighteen months after publication of the rule and certify that the facility is in compliance with all applicable ground-water monitoring and financial responsibility requirements (see RCRA section 3005(e)(3)).

Interim status facilities that manage today's proposed wastes after these listings are finalized, must file an amended Part A permit application within six months of publication of the final rule if they are to continue managing these wastes in units that require a permit. The facilities must file the necessary amendments by the effective date of the rule, or they will not retain interim status with respect to today's proposed wastes (*i.e.*, they will be prohibited from managing additionally listed coke by-products wastes until permitted).

Currently permitted facilities that manage today's proposed wastes after their listings are finalized by EPA, must request permit modifications if they are to continue managing these wastes in units that require a permit. Since EPA will initially be responsible for processing these permit modifications, the new Federal procedures for permit modifications will be followed (see 53 FR 37934, September 28, 1988). These new procedures contain a specific provision for newly listed or identified wastes (see § 270.42(g)). This provision generally requires that a permitted facility that is "in existence" for the newly listed or identified waste on the effective date of the waste listing must submit a Class 1 modification by that date. Essentially, this modification notifies the Agency and the public that the facility is handling the waste and identifies the units involved. By submitting this notice, the facility is temporarily allowed to continue management of the newly listed wastes until the Agency can make a final change to the permit. Next, within 180 days of the effective date the permittee must submit a more detailed permit modification request (*i.e.*, a Class 2 or 3 modification). This information will be used by the Agency to develop a final permit change. For more information on permit modifications see the September 28, 1988 preamble discussion referenced above.

List of Subjects

40 CFR Part 261

Hazardous waste, Recycling.

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and record keeping requirements, Water pollution control, Water supply.

40 CFR Part 302

Air pollution control, Chemicals, Hazardous substances, Hazardous materials, Hazardous waste, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Superfund, Water pollution control, and water supply.

Dated: July 12, 1991.

William K. Reilly,

Administrator.

IX. References

1. Van Osdell, D.W., *et al.*, Environmental Assessment of Coke By-Product Recovery Plants. U.S. Environmental Protection Agency, Research Triangle Park, North Carolina. Publication No. EPA–600/2–79–016. January 1979.
2. U.S. Environmental Protection Agency. Benzene Emissions from Coke By-Product Recovery Plants, Benzene Storage Vessels, Equipment Leaks, and Ethylbenzene/Styrene Process Vents—Background Information and Responses to Technical Comments for 1989 Final Decisions. Final Environmental Impact Statement (EIS). Research Triangle Park, North Carolina. Publication No. EPA–450/3–89–31. August 1989.
3. U.S. Environmental Protection Agency. Development Document for Effluent Guidelines. New Source Performance Standards and Pretreatment Standards for the Iron and Steel Manufacturing Point Source Category, Volume II. Washington, DC Publication No. EPA 440/1–82/024. Final Draft. May 1982.
4. RCRA 3007 Questionnaire Responses. 1985.
5. RCRA 3007 Clarification Request Responses. 1987
6. Shine, B. Memorandum to Coke Project File documenting waste generation estimates. February 1989.
7. Development Planning and Research Associates, Inc. (DPRA). Draft Final Report on Cost and Economic Impact Analyses of Listing Additional Hazardous Wastes From the for the Coke By-Products (Coking and Tar Refining) Industry. Prepared for Economic Analysis Branch, Office of Solid Waste, U.S. Environmental Protection Agency, June 1990.
8. Background Document for the Proposed Listing of Coke By-Products Wastes. June 1990.

For the reasons set out in the preamble, it is proposed to amend title 40 of the Code of Federal Regulations as follows:

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Recycling.

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and record keeping requirements, Water pollution control, Water supply.

40 CFR Part 302

Air pollution control, Chemicals, Hazardous substances, Hazardous materials, Hazardous waste, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Superfund, Water pollution control, and water supply.

Dated: July 12, 1991.

William K. Reilly,

Administrator.

IX. References

1. Van Osdell, D.W., *et al.*, Environmental Assessment of Coke By-Product Recovery Plants. U.S. Environmental Protection Agency, Research Triangle Park, North Carolina. Publication No. EPA-600/2-79-016. January 1979.
2. U.S. Environmental Protection Agency. Benzene Emissions from Coke By-Product Recovery Plants, Benzene Storage Vessels, Equipment Leaks, and Ethylbenzene/Styrene Process Vents—Background Information and Responses to Technical Comments for 1989 Final Decisions. Final Environmental Impact Statement (EIS). Research Triangle Park, North Carolina. Publication No. EPA-450/3-89-31. August 1989.
3. U.S. Environmental Protection Agency. Development Document for Effluent Guidelines. New Source Performance Standards and Pretreatment Standards for the Iron and Steel Manufacturing Point Source Category, Volume II. Washington, DC Publication No. EPA 440/1-82/024. Final Draft. May 1982.
4. RCRA 3007 Questionnaire Responses. 1985.
5. RCRA 3007 Clarification Request Responses. 1987
6. Shine, B. Memorandum to Coke Project File documenting waste generation estimates. February 1989.
7. Development Planning and Research Associates, Inc. (DPRA). Draft Final Report on Cost and Economic Impact Analyses of Listing Additional Hazardous Wastes From the for the Coke By-Products (Coking and Tar Refining) Industry. Prepared for Economic Analysis Branch, Office of Solid Waste, U.S. Environmental Protection Agency, June 1990.
8. Background Document for the Proposed Listing of Coke By-Products Wastes. June 1990.

For the reasons set out in the preamble, it is proposed to amend title 40 of the Code of Federal Regulations as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922 and 6938.

2. Section 261.4 paragraph (a)(10) is revised and paragraphs (a)(11) and (a)(12) are added to read as follows:

§ 261.4 Exclusions.

(a) * * *

(10) Coke and coal tar from the iron and steel industry that contain or are produced by recycling EPA Hazardous Waste Nos. K060, K087, K141, K142, K143, K144, K145, K147, and K148. The process of producing coke and coal tar from these wastes is likewise excluded from regulation. This exclusion does not apply prior to the point of mixing wastes with coal or coal tar.

(11) EPA Hazardous Waste Nos. K060, K087, K141, K142, K143, K144, K145, K147, and K148 when reinserted into coke ovens as feedstock to produce coke. This exclusion does not apply prior to the point of reinsertion of wastes into coke ovens.

(12) All wastes from the coke by-products industry that are hazardous only because they exceed levels for hazardous constituents in § 261.24, when these wastes are reinserted into coke ovens as a feedstock to produce coke. This exclusion does not apply prior to the point of reinsertion of wastes into coke ovens.

* * * * *

3. Section 261.32 is amended by adding the following hazardous waste listings to the subgroups Coking and Pesticides:

§ 261.32 Hazardous wastes from specific sources.

* * * * *

Industry and EPA hazardous waste no.	Hazardous waste	Hazard code
*	* * *	*
Pesticides:	* * *	
K147	Tar storage tank residuals from coal tar refining.	(T)
K148	Residues from coal tar distillation, including, but not limited to, still bottoms.	(T)
*	* * *	*
Coking:	* * *	
K141	Process residues from the recovery of coal tar, including, but not limited to, collecting sump residues from the production of coke from coal or the recovery of coke by-products produced from coal. This listing does not include K087 (decanter tank tar sludges from coking operations).	(T)
K142	Tar storage tank residues from the production of coke from coal or from the recovery of coke by-products produced from coal.	(T)
K143	Process residues from the recovery of light oil, including those generated in stills, decanters, and wash oil recovery units from the recovery of coke by-products produced from coal.	(T)
K144	Wastewater treatment sludges from light oil refining, including, but not limited to, interception or contamination sump sludges from the recovery of coke by-products produced from coal.	(T)
K145	Residues from naphthalene collection and recovery operations from the recovery of coke by-products produced from coal.	(T)

4. Appendix VII of part 261 is amended by adding the following waste streams in alphanumeric order as follows:

APPENDIX VII.—BASIS FOR LISTING HAZARDOUS WASTE

EPA hazardous waste no.	Hazardous constituents for which listed
*	* * * *
K141	Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b) fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene.
K142	Benzene, benz(a)anthracene, benzo(a) pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h) anthracene, indeno(1,2,3-cd)pyrene.
K143	Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b) fluoranthene, benzo(k)fluoranthene.
K144	Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b) fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene.
K145	Benzene, benz(a)(anthracene, benzo(a)pyrene, dibenz(a,h) anthracene, naphthalene.
K147	Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h) anthracene, indeno(1,2,3-cd)pyrene.
K148	Benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k) fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene.

* * * * *

PART 271—REQUIREMENT FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

5. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

6. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
* *	* *	* *	*
[Insert date of final rule publication]	The listing of wastes from the production, recovery, and refining of coke by-products produced from coal.	XX FR XX [Insert page citation of final rule.].	[Insert effective date of final rule.]

* * * * *

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

7. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 9602; 33 U.S.C. 1321 and 1361.

§ 302.4 [Amended]

8. Section 302.4 is amended by adding the waste streams K141 through K145, K147 and K148 to Table 302.4. The appropriate footnotes to Table 302.4 are republished without change.

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA waste No.	Category	Pounds (Kg)
*	*	*	*	*	*	*	
K141 Process residues from the recovery of coal tar, including, but not limited to, tar collecting sump residues from the production of coke from coal or the recovery of coke by-products produced from coal. This listing does not include K087 (decanter tank tar sludge from coking operations).			1*	4	K141	X	1 (0.454)
K142 Tar storage tank residues from the production of coke from coal or from the recovery of coke by-products produced from coal.			1*	4	K142	X	1 (0.454)
K143 Process residues from the recovery of light oil, including, but not limited to, those generated in stills, decanters, and wash oil recovery units from the recovery of coke by-products produced from coal.			1*	4	K143	X	1 (0.454)
K144 Wastewater treatment sludges from light oil refining, including, but not limited to, intercepting or contamination sump sludges from the recovery of coke by-products produced from coal.			1*	4	K144	X	1 (0.454)
K145 Residues from naphthalene collection and recovery operations from the recovery of coke by-products produced from coal.			1*	4	K145	X	1 (0.454)
K147 Tar storage tank residues from coal tar refining.			1*	4	K147	X	1 (0.454)
K148 Residues from coal tar distillation, including, but not limited to, still bottoms.			1*	4	K148	X	1 (0.454)
*	*	*	*	*	*	*	

† —indicates the statutory source as defined by 1, 2, 3, 4, or 5 below.

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4 —indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA Section 3001.

1* —indicates that the 1-pound RQ is a CERCLA statutory RQ.

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[FR Doc. 91-17238 Filed 7-25-91; 8:45 am]

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9602; 33 U.S.C. 1321

amended by adding
K141 through K145,
able 302.4. The
es to Table 302.4 are

republished without change.

BSTANCES AND REPORTABLE QUANTITIES

Regulatory synonyms	Statutory			Final RQ	
	RQ	Code †	RCRA waste No.	Category	Pounds (Kg)
*	*	*	*		
	1*	4	K141	X	1 (0.454)
	1*	4	K142	X	1 (0.454)
	1*	4	K143	X	1 (0.454)
	1*	4	K144	X	1 (0.454)
	1*	4	K145	X	1 (0.454)
	1*	4	K147	X	1 (0.454)
	1*	4	K148	X	1 (0.454)
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nce under CERCLA is RCRA Section 3001.

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federal register

Friday
July 26, 1991

Part VII

Department of Education

Institutional Quality Control Project; Notice of Deadline for Participation

DEPARTMENT OF EDUCATION

Institutional Quality Control Project

AGENCY: Department of Education.

ACTION: Notice of deadline date for participation in the Institutional Quality Control Project and revision of selection criteria.

SUMMARY: The Secretary issues a deadline date for the submission of a written notice by an institution that it wishes to participate in the Institutional Quality Control (IQC) Project. The criteria used to select institutions for the IQC Project were published in the **Federal Register** of December 27, 1988, 53 FR 52387. However, the Secretary is revising certain elements of those selection criteria.

The IQC Project is an alternative management approach to verification of information provided on student financial assistance applications, under which a participating institution develops and implements a quality control system in connection with its administration of the Pell Grant, campus-based (Perkins Loan, College Work-Study, and Supplemental Educational Opportunity Grant), and Stafford Loan programs.

EFFECTIVE DATE: These selection criteria take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. These selection criteria will become effective after the information collection requirement in this notice has been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these criteria, call or write the Department of Education contact person.

DEADLINE DATE FOR REQUEST TO PARTICIPATE IN IQC PROJECT: An institution must submit its request to participate in the IQC Project by August 26, 1991.

FOR FURTHER INFORMATION CONTACT: Barbara Mroz, Division of Quality Assurance, U.S. Department of Education, 400 Maryland Avenue SW. (Regional Office Building 3, Room 5042), Washington, DC, 20202–5243. Telephone Number: (202) 708–8439. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The Secretary plans to publish separately regulations to extend the Project through the end of the 1993–94 award year. An institution that is selected to participate in the IQC Project is exempt, for the period of its participation in the IQC Project, from selected requirements set forth in the verification regulations of subpart E of the Student Assistance General Provisions Regulations, 34 CFR part 668.

These requirements are contained in the following sections:

—Section 668.53(a) (1) through (4).
—Section 668.54(a) (1), (2), and (4).
—Section 668.56
—Section 668.57, except that an institution shall require an applicant that it has selected for verification to submit to it a copy of the income tax return, if filed, of the applicant, his or her spouse, and his or her parents, if the income reported on the income tax return was used in determining the expected family contribution.
—Section 668.60(a).

In lieu of these regulatory requirements, the Secretary requires a participating institution to develop and implement a quality control system in connection with its administration of the Title IV, HEA programs. Under such a quality control system, the institution must 1) evaluate its current procedures for administering the Title IV, HEA programs ("management assessment component"); 2) identify the errors that result from its current procedures ("error measurement component"); and 3) design corrections to its procedures that will enable it to eliminate or significantly reduce those errors ("corrective actions component").

The Secretary published Final Selection Criteria for participation in the IQC Project in the **Federal Register** of December 27, 1988, 53 FR 52387. When the Secretary published the Final Selection Criteria he indicated that, to administer the IQC Project properly, the number of institutions participating in the IQC Project should not exceed 102. Currently 61 institutions participate in the IQC Project, and these institutions need not reapply to continue participating. Therefore, if all 61 of the current participants choose to remain in the IQC Project, the Secretary will select no more than 41 new participants. Should any currently participating institution choose not to continue in the IQC Project, the Secretary will select the maximum number of new participants, resulting in a total of no more than 102 participants.

The selection criteria indicated that selected institutions should have experience in the Pell Grant, campus-based (Perkins Loan, College Work-Study, and Supplemental Educational Opportunity Grant), and Stafford Loan programs and in dealing with a significant number of students and Federal dollars in all those programs. Accordingly, the selection criteria required that an institution be a participant in the above programs during the 1988–89 award year and have participated in all five programs during the preceding two award years (the 1986–87 and 1987–88 award years).

The Secretary is amending those criteria and updating the pertinent award years. Therefore, for institutions that wish to participate in the IQC Project for the first time during the 1991–92 award year, they must be participating in the five programs during the 1990–91 award year, and have participated in all five programs during the 1988–89 and 1989–90 award years.

The Secretary encourages participation in the IQC Project by junior and community colleges, and by two- and four-year colleges serving predominantly low-income populations, provided that these institutions otherwise qualify under the Final Selection Criteria. Any institution applying to participate should have a strong interest in increasing the quality of its management and award of student financial assistance dollars.

The Secretary is republishing only Final Selection Criteria I and II. The Secretary will select all applicants that meet Selection Criterion I provided that, when that number of applicants is added to the number of current participants, the total does not exceed 102. In the event that the number of new applicants meeting Selection Criterion I would bring the total number of participants over 102, the Secretary will select applicants on the basis of additional criteria published under Final Selection Criterion III in the **Federal Register** of December 1, 1986, 51 FR 43334–43335. Criterion III pertains exclusively to the Department's selection process and has no bearing on institutional applications.

Application Procedures

There are no application forms from the Department of Education that must be used to apply to participate in the IQC Project. An institution applies to participate in the IQC Project by sending a written notice to the Secretary of its request to participate. In this notice, an interested institution must include a written statement of not more than 500 words that demonstrates its commitment to quality control and error reduction in processing and awarding student financial assistance dollars. In addition to a description of the institution's procedures for verification of student data and eligibility, the statement must include a description of activities and procedures that its financial aid office routinely uses to control, reduce, and correct errors in its administration of the Title IV, HEA programs. In addition, the statement must indicate the resources, such as automated data processing, personnel and the degree of management support at all levels of the organization that will be committed to efficient administration of the project. Interested institutions may request background information and materials on the IQC Project from the Department of Education contact person.

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1840 NEW, Washington, DC 20503.

Waiver of Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed rules. However, the changes to the criteria are technical in nature and establish no new substantive policy.

Therefore, pursuant to 5 U.S.C. 553(b)(B) the Secretary finds that publication of proposed selection criteria is unnecessary and contrary to public interest.

Final Selection Criteria I and II

I. In order to be selected to participate in the IQC Project, an institution must:

1. Participate in the Pell Grant, campus-based (Perkins Loan, College Work-Study and Supplemental Educational Opportunity Grant) and Stafford Loan programs during the 1990–91 award year and have participated in all five programs during the 1988–89 and 1989–90 award years;

2. Have had, in the aggregate, at least 1,000 Pell Grant and campus-based program recipients during the 1988–89 award year;

3. Have awarded, in the aggregate, at least $1 million under the Pell Grant and campus-based programs combined in the 1988–89 award year; and

4. Have submitted and had approved by the Secretary its most recent audit report in which the reported liability was less than $150,000.

II. If not more than 41 applicants meet the above criterion, the Secretary selects all the applicants who meet the criterion to participate in the IQC Project.

(Catalog of Federal Domestic Assistance Numbers: Number 84.007, Supplemental Educational Opportunity Grant Program: Number 84.032, Guaranteed Student Loan Program: Number 84.033, College Work-Study Program: Number 84.038, Perkins Loan Program: Number 84.063, Pell Grant Program)

Authority: 20 U.S.C. 1070 *et seq.*

Dated: July 12, 1991.

Lamar Alexander,

Secretary of Education.

[FR Doc. 91–17743 Filed 7–25–91; 8:45 am]

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federal register

Friday
July 26, 1991

Part VIII

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 39

Indian School Equalization Program; Administrative Cost Formula; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 39

RIN 1076–AC58

Indian School Equalization Program; Subpart J—Administrative Cost Formula

June 28, 1991.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: Beginning on page 53312 of the December 28, 1990, **Federal Register** (55 FR 53312), there was published a notice of proposed rulemaking to amend subpart J of 25 CFR part 39. These rules are to describe the method which will be used to distribute administrative funds to agency and area education offices of the Bureau of Indian Affairs by removing the existing subpart J in its entirety and replacing it with the new subpart J contained in this rule. This action formally implements an administrative decision of the Bureau under 25 U.S.C. 13.

EFFECTIVE DATE: These regulations shall become effective on July 21, 1991.

FOR FURTHER INFORMATION CONTACT: Edward F. Parisian, Director (Office of Indian Education Programs), Mail Stop 3530, 1849 C St., NW., Washington, DC 20240, telephone (202) 208–6175, (FTS) 268–6175.

SUPPLEMENTARY INFORMATION: These rules are published in exercise of the authority delegated by the Secretary of the Interior (Secretary) to the Assistant Secretary-Indian Affairs in the Departmental Manual at 209 DM 8.

The primary author of this document is Edward Parisian, Director, Office of Indian Education Programs.

There are no information collection requirements contained in part 39 which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

On December 28, 1990, (55 FR 53312), the Bureau of Indian Affairs published a proposed rule describing the method for distributing administrative funds for the operation of agency and area education offices (Element 10 funds). The public was invited to offer comments on the proposed rule on or before March 28, 1991. Fourteen public comments were received from individuals or groups.

COMMENTS AND RESPONSES:

1. (Section 39.122) One commentor recommended that the formula consider the unique characteristics of offices. *Response*: A review of the proposed distribution formula indicates that the formula takes into consideration six different variables within the offices; this is felt to be an acceptable consideration of the unique characteristics of the affected offices.

2. (Section 39.122) One commentor recommended the use of weighted factors for education programs. *Response*: The distribution formula uses the weighted student units for distributing a part of the funds and the number of schools weighted for type of operation (contract, grant or Bureau). Consequently no revision of the formula was attempted.

3. (Section 39.121) One commentor opposed the definitions of agency education office and area education office, stating that the definitions were in conflict with the functions in 25 CFR part 33.5 and 33.6. *Response*: The functions in 25 CFR part 33 are not changed by these definitions. The functions referenced are established by law. These definitions are included only for clarification of which offices received funds under this part.

4. (Section 39.122(a)) Four commentors suggested increasing the base amount from $50,000 to another amount ranging from $75,000 to $175,000. One commentor suggested establishing a base of $50,000 per state served. *Response*: Prior to publication of the proposed rule, the Bureau consulted with tribes throughout the United States in May and July, 1990. Various options, including base amounts of $50,000, $75,000 and $100,000, were discussed at that time. The general reaction of most tribes was that they preferred that funds be directed at the level closest to tribes (the agency) and that reductions should be taken at the area and central office level. Since increasing the base has the primary result of increasing funds at area offices and decreasing funds at agency offices, this comment is not adopted.

5. (Section 39.122(b)) Three commentors suggested increasing the percentage of funds for administration of Johnson-O'Malley, higher education and adult education from 2 percent to an amount from two and one half per cent to eight percent. *Response*: Since all of Johnson-O'Malley funds and the great majority of higher education and adult education funds are contracted to tribes or other non-Bureau entities, a determination was made that two percent is adequate for administering these programs.

6. (Section 39.122(c)) One commentor suggested that the same weight be used for contract and grant schools as for Bureau-operated schools. *Response*: The administrative workload for an education office is far less for contract and grant schools than for Bureau-operated schools. For example, the education office is responsible for contract monitoring for contract schools and review of the annual audit and progress report for grant schools. Therefore, a lesser weight for contract and grant schools is appropriate.

7. (Section 39.122(d)) One commentor suggested that the funds in this section be distributed for post-secondary and Johnson-O'Malley program administration rather than by weighted student units. *Response*: Funds are provided for post-secondary and Johnson-O'Malley operations under § 39.122(b). Education offices are not given credit for student enrollment in any other section. Therefore, this comment was not adopted.

8. Two commentors requested the establishment and funding of a new education office for the Nevada tribes. *Response*: This section is only a fund distribution formula and such a request is beyond the scope of this part.

9. Two commentors requested that the Bureau increase available funds for distribution under this part. Another commentor recommended developing a formula to generate funds rather than distribute them. *Response*: This formula is only for fund distribution and such requests are beyond the scope of this part. The nature of the Federal budget process precludes the use of the formula to generate funds, since only a specified amount of funds are available for the funding of agency and area education offices.

10. One commentor suggested changing the CFR to allow agency education offices to administer off-reservation boarding schools. *Response*: Such a request requires a legislative change and is beyond the scope of this part.

11. One commentor suggested using the number of contracts in each office in establishing the formula. *Response*: The number of contract schools is considered in the formula. The number of other contracts is not considered as it is too easily manipulated. It is felt that the 2 percent allowed for administration of Johnson-O'Malley, higher education and adult education is adequate for contract administration at all affected offices.

12. One commentor recommended publishing the formula as part of 25 CFR part 32. *Response*: Part 32 is concerned with policies on Indian education. This rule replaces an existing part of part 39, which is the only part which is concerned with funds distribution for

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12. One commentor recommended publishing the formula as part of 25 CFR part 32. *Response*: Part 32 is concerned with policies on Indian education. This rule replaces an existing part of part 39, which is the only part which is concerned with funds distribution for

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education programs. Therefore, part 39 is the appropriate part for these rules.

The Department of the Interior has determined that this is not a major rule under E.O. 12291 because only a limited number of individuals will be affected and the action proposed will not have a significant gross annual effect on the economy.

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because of the limited applicability as stated above.

The Department of the Interior has determined that this rule is not a major Federal action significantly affecting the quality of the human environment and that neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 25 CFR Part 39

Elementary and secondary education, Government contracts, Grant programs—education, Grant programs—Indians, Indians—education, Schools.

For the reasons set out in the preamble, part 39 of subchapter E of chapter I of title 25 of the Code of Federal Regulations is revised as set forth below.

PART 39—INDIAN SCHOOL EQUALIZATION PROGRAM

1. The authority citation for part 39 is revised to read as follows:

Authority: 25 U.S.C. 13; 25 U.S.C. 2008.

2. Subpart J is revised to read as follows:

Subpart J—Administrative Cost Formula

Sec.
39.120 Purpose and scope.
39.121 Definitions.
39.122 Allotment of education administrative funds.
39.123 Allotment exception for FY 1991.

Subpart J—Administrative Cost Formula

§ 39.120 Purpose and scope.

The purpose of this subpart is to provide funds at the agency and area education offices for FY 1991 and future years for administration of all Bureau of Indian Affairs education functions, including but not limited to school operations, continuing education, early childhood education, post-secondary education and Johnson-O'Malley Programs.

§ 39.121 Definitions.

(a) *Agency Education Office* means a field office of the Office of Indian Education Programs providing administrative direction and supervision to one or more Bureau-operated schools as well as being responsible for all other education functions serving tribes within that agency's jurisdiction.

(b) *Area Education Office* means a field office of the Office of Indian Education Programs responsible for all education functions serving tribes not serviced by an agency education office an in some cases providing administrative direction to one or more off-reservation boarding schools not under an agency education office.

§ 39.122 Allotment of education administrative funds.

The total annual budget for agencies/areas shall be allotted to the Director and through him/her to agency and area education offices. This total budget shall be distributed to the various agency and area education offices as follows:

(a) Each agency or area education office as defined above shall receive a base amount of $50,000 for basic administrative costs; and

(b) Each agency or area education office as defined above shall receive an amount under these funds equal to two percent of the total higher education, Johnson-O'Malley and adult education funds administered by each office, except that the Navajo Agencies are restricted to a maximum of $50,000 for administering the Johnson-O'Malley and higher education programs; and

(c) Eighty percent of the remaining funds shall be distributed proportionately based on the number of schools operated under the jurisdiction of each agency or area education office, with Bureau-operated schools counting as 1 and contract/grant schools counting as 0.6; and

(d) The remaining twenty percent shall be distributed proportionately based on the total weighted student units generated by all schools under the jurisdiction of each agency or area education office.

§ 39.123 Allotment exception for FY 1991.

For FY 1991 only, the Director may reserve an amount equal to no more than one half of the funds received in FY 1990 by those offices to be closed in FY 1991 to cover severance pay costs, lump sum leave payments and relocation costs for those individuals affected by the closures. Any balance uncommitted by March 31, 1991, shall be distributed in accordance with the formula in 39.122.

Eddie F. Brown,
Assistant Secretary, Indian Affairs.

[FR Doc. 91-17747 Filed 7-25-91; 8:45 am]

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federal register

Friday
July 26, 1991

Part IX

Department of Energy

Office of Procurement, Assistance and Program Management

10 CFR Part 707

Workplace Substance Abuse Program at DOE Facilities; Notice of Cancellation of Public Hearing in Albuquerque, NM

DEPARTMENT OF ENERGY

Office of Procurement, Assistance and Program Management

10 CFR Part 707

Workplace Substance Abuse Programs at DOE Facilities

AGENCY: Department of Energy.

ACTION: Notice of cancellation of public hearing in Albuquerque, NM.

SUMMARY: On July 3, 1991, the Department of Energy (DOE) published in the Federal Register a notice of proposed rulemaking and public hearing, together with a request for public comments. The rulemaking proposed to add a new part 707 to title 10, Code of Federal Regulations, dealing with workplace substance abuse programs at DOE facilities. (56 FR 30644.) That publication contained a notice of two public hearings to be held on the rulemaking, one in Washington, DC, on July 29, 1991, and one in Albuquerque, New Mexico, on July 31, 1991, "unless there are not a sufficient number of advance requests to present views, in which event a hearing will be cancelled." DOE received requests to appear at the hearings and present views before and up to 4:30 p.m. on Friday, July 19, 1991, as provided in the notice. When the period for receiving requests to appear at the hearings expired, only two requests to appear at the hearing in Albuquerque had been received. DOE does not consider this to be "a sufficient number of advance requests" to justify the expense of holding a second hearing in Albuquerque after the hearing in Washington. Those persons who requested to appear at the Albuquerque hearing are invited to attend the Washington hearing, or to submit their written comments. Written public comments shall, of course, continue to be received up until September 3, 1991, the date originally specified in the notice of proposed rulemaking. For further information, see the original notice.

DATES: Written comments must be received by September 3, 1991, as provided in the original notice. Six copies of all comments should be provided. A public hearing will be held in the Forrestal Building, Room GJ-015, 1000 Independence Avenue SW., Washington, DC, on Monday, July 29, 1991, beginning at 9 a.m., e.d.t., and concluding at 4:30 p.m., e.d.t., or when all persons present who have given proper and timely notice of their intention to present views have done so, whichever is sooner, also as provided in the original notice.

ADDRESSES: Written comments are to be submitted to: Director, Office of Contractor Human Resource Management, Department of Energy, Washington, DC 20585. The public hearing will be held at the location given in the above paragraph.

FOR FURTHER INFORMATION CONTACT: Juanita E. Smith or Armin Behr at (202) 586-9023 (FTS 896-9023).

For the foregoing reasons, the public hearing on proposed 10 CFR part 707, set for Albuquerque, New Mexico, on July 31, 1991, is hereby cancelled.

Washington, DC.
Dated: July 23, 1991.

Berton J. Roth,
Deputy Director, Office of Procurement, Assistance and Program Management.

[FR Doc. 91-17881 Filed 7-25-91; 8:45 am]

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For the foregoing reasons, the public hearing on proposed 10 CFR part 707, set for Albuquerque, New Mexico, on July 31, 1991, is hereby cancelled.

Washington, DC.
Dated: July 23, 1991.

Barton J. Roth,
Deputy Director, Office of Procurement, Assistance and Program Management.

[FR Doc. 91–17881 Filed 7–25–91; 8:45 am]

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Friday, July 26, 1991

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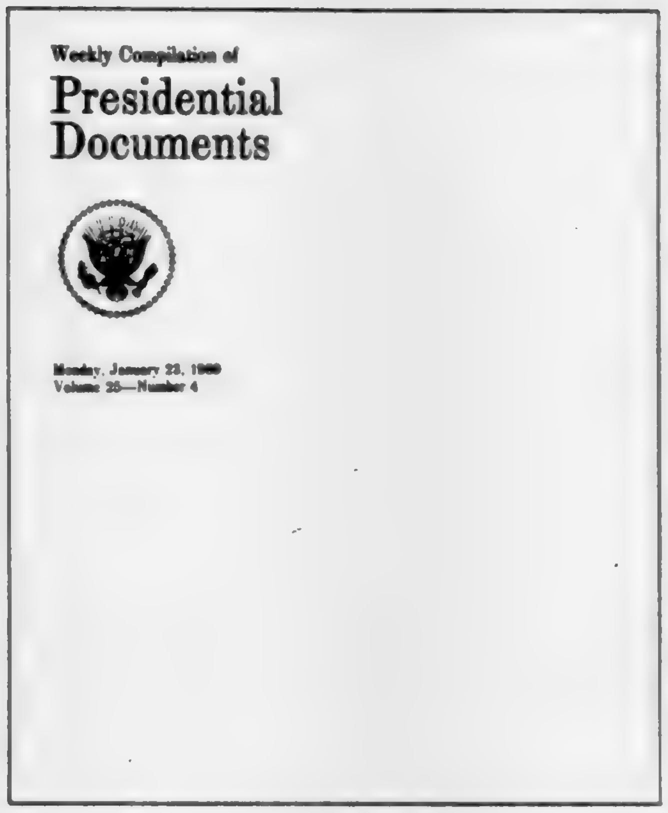

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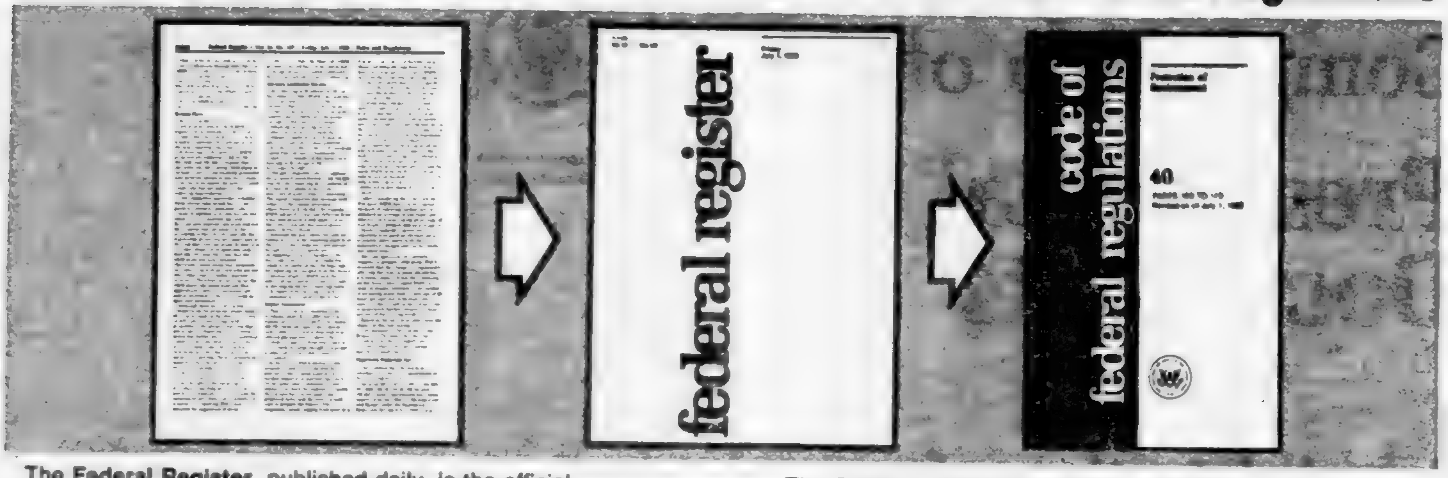

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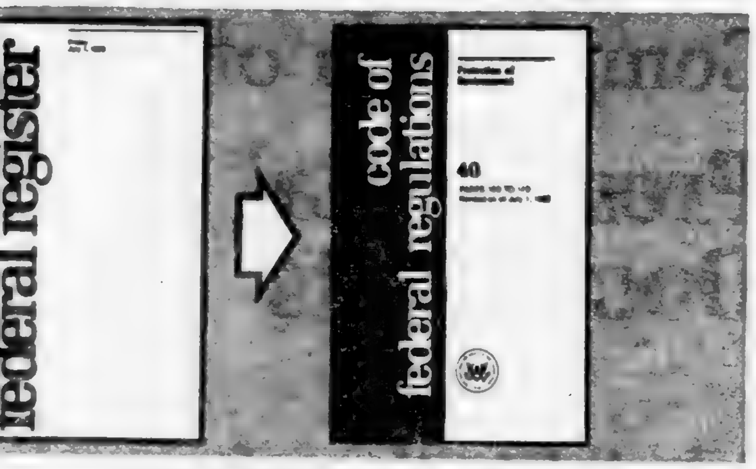

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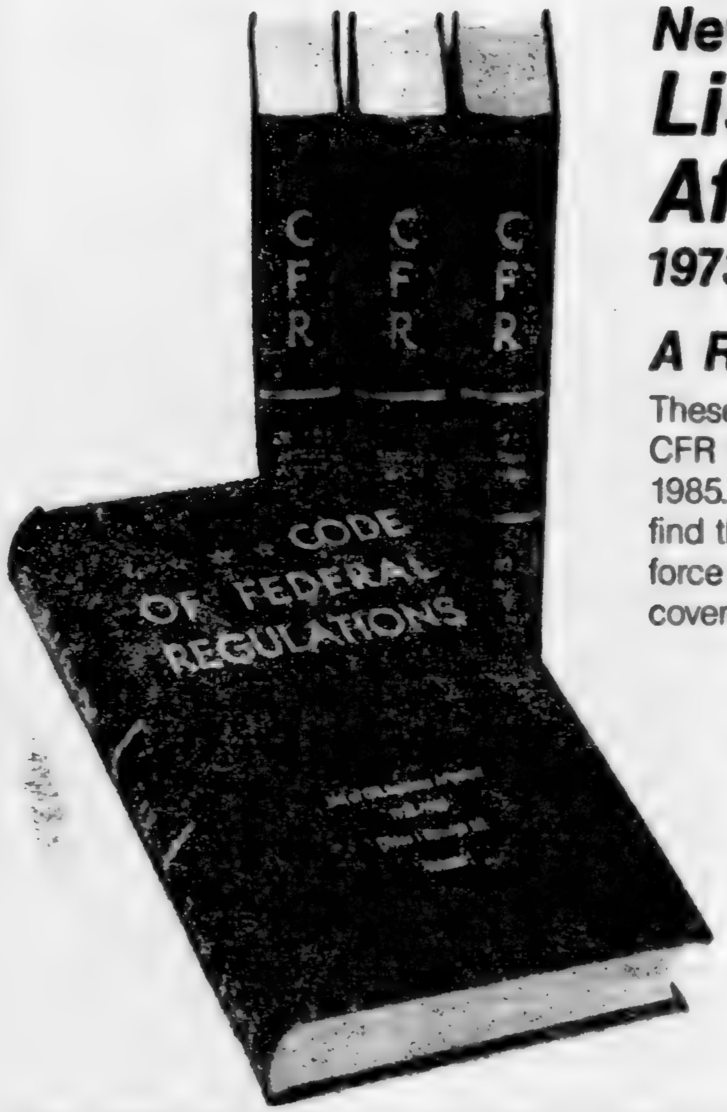

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The President

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Title 3—

The President

Proclamation 6317 of July 24, 1991

Women's Equality Day, 1991

By the President of the United States of America

A Proclamation

Each August 26 we commemorate the ratification of the 19th Amendment to our Constitution. This Amendment guaranteed for women the right to vote and gave them an equal voice in our Nation's system of self-government. Passed by the Congress in June of 1919, the proposed Amendment was ratified by the Tennessee Legislature on August 18, 1920, and declared part of our Constitution on August 26.

Although the woman's suffrage movement had gained ground in preceding years, and although women already enjoyed the right to vote in some States, the contributions of women during World War I contributed significantly to gathering the force of public opinion behind the proposed 19th Amendment to our Constitution. President Woodrow Wilson noted that the services of women during the war were "of the most signal usefulness and distinction. The war could not have been fought without them, or its sacrifices endured." The achievements of women during that epic conflict underscored not only their desire but also their ability to act as full and equal partners in the life of our country.

Since the adoption of the 19th Amendment, as more and more legal and attitudinal barriers to their advancement have fallen, women have entered positions of leadership and responsibility in virtually every field of endeavor. For example, today women are not only providing support for our Nation's military personnel but also serving as members of the Armed Forces themselves. Through the workplace, through the ballot box, and, as ever, through their families and their communities, women are helping to shape America's future.

The anniversary of the ratification of the 19th Amendment reminds us of our obligation to ensure that every individual has the opportunity to participate fully in the social, political, and economic life of our country. It also underscores the importance of having the right to vote and of faithfully exercising that right, so that this Nation might always be true to the ideals enshrined in our Constitution and Declaration of Independence.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim August 26, 1991, as Women's Equality Day. I invite all Americans to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of July, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and sixteenth.

Bush

[FR Doc. 91-18043
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Presidential Documents

Executive Order 12770 of July 25, 1991

Metric Usage in Federal Government Programs

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Metric Conversion Act of 1975, Public Law 94–168 (15 U.S.C. 205a *et seq.*) ("the Metric Conversion Act"), as amended by section 5164 of the Omnibus Trade and Competitiveness Act of 1988, Public Law 100–418 ("the Trade and Competitiveness Act"), and in order to implement the congressional designation of the metric system of measurement as the preferred system of weights and measures for United States trade and commerce, it is hereby ordered as follows:

Section 1. *Coordination by the Department of Commerce.* (a) The Secretary of Commerce ("Secretary") is designated to direct and coordinate efforts by Federal departments and agencies to implement Government metric usage in accordance with section 3 of the Metric Conversion Act (15 U.S.C. 205b), as amended by section 5164(b) of the Trade and Competitiveness Act.

(b) In furtherance of his duties under this order, the Secretary is authorized:

(1) to charter an Interagency Council on Metric Policy ("ICMP"), which will assist the Secretary in coordinating Federal Government-wide implementation of this order. Conflicts and questions regarding implementation of this order shall be resolved by the ICMP. The Secretary may establish such subcommittees and subchairs within this Council as may be necessary to carry out the purposes of this order.

(2) to form such advisory committees representing other interests, including State and local governments and the business community, as may be necessary to achieve the maximum beneficial effects of this order; and

(3) to issue guidelines, to promulgate rules and regulations, and to take such actions as may be necessary to carry out the purposes of this order. Regulations promulgated by the Secretary shall function as policy guidelines for other agencies and departments.

(c) The Secretary shall report to the President annually regarding the progress made in implementing this order. The report shall include:

(1) an assessment of progress made by individual Federal agencies towards implementing the purposes underlying this order;

(2) an assessment of the effect that this order has had on achieving the national goal of establishing the metric system as the preferred system of weights and measures for United States trade and commerce; and

(3) on October 1, 1992, any recommendations which the Secretary may have for additional measures, including proposed legislation, needed to achieve the full economic benefits of metric usage.

Sec. 2. *Department and Agency Responsibilities.* All executive branch departments and agencies of the United States Government are directed to take all appropriate measures within their authority to carry out the provisions of this order. Consistent with this mission, the head of each executive department and agency shall:

(a) use, to the extent economically feasible by September 30, 1992, or by such other date or dates established by the department or agency in consultation with the Secretary of Commerce, the metric system of measurement in Federal Government procurements, grants, and other business-related activities. Other business-related activities include all use of measurement units in agency programs and functions related to trade, industry, and commerce.

(1) Metric usage shall not be required to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms.

(2) Heads of departments and agencies shall establish an effective process for a policy-level and program-level review of proposed exceptions to metric usage. Appropriate information about exceptions granted shall be included in the agency annual report along with recommendations for actions to enable future metric usage.

(b) seek out ways to increase understanding of the metric system of measurement through educational information and guidance and in Government publications. The transition to use of metric units in Government publications should be made as publications are revised on normal schedules or new publications are developed, or as metric publications are required in support of metric usage pursuant to paragraph (a) of this section.

(c) seek the appropriate aid, assistance, and cooperation of other affected parties, including other Federal, State, and local agencies and the private sector, in implementing this order. Appropriate use shall be made of governmental, trade, professional, and private sector metric coordinating groups to secure the maximum benefits of this order through proper communication among affected sectors.

(d) formulate metric transition plans for the department or agency which shall incorporate the requirements of the Metric Conversion Act and this order, and which shall be approved by the department or agency head and be in effect by November 30, 1991. Copies of approved plans shall be forwarded to the Secretary of Commerce. Such metric transition plans shall specify, among other things:

(1) the total scope of the metric transition task for that department or agency, including firm dates for all metric accomplishment milestones for the current and subsequent fiscal year;

(2) plans of the department or agency for specific initiatives to enhance cooperation with industry, especially small business, as it voluntarily converts to the metric system, and with all affected parties in undertaking the requirements of paragraph (a) of this section; and

(3) specific steps and associated schedules through which the department or agency will seek to increase understanding of the metric system through educational information and guidance, and in department or agency publications.

(e) designate a senior-level official as the Metric Executive for the department or agency to assist the head of each executive department or agency in implementing this order. The responsibilities of the Metric Executive shall include, but not be limited to:

(1) acting as the department's or agency's policy-level representative to the ICMP and as a liaison with other government agencies and private sector groups;'

(2) management oversight of department or agency outreach and response to inquiries and questions from affected parties during the transition to metric system usage; and

(3) management oversight of preparation of the department's or agency's metric transition plans and progress reports, including the Annual Metric Report required by 15 U.S.C. 205j and OMB Circular A-11.

(4) preparation by June 30, 1992, of an assessment of agency progress and problems, together with recommendations for steps to assure successful implementation of the Metric Conversion Act. The assessment and recommendations shall be approved by the head of the department or agency and provided

s-related activities include all use of measurement units in
and functions related to trade, industry, and commerce.
all not be required to the extent that such use is impractical
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program-level review of proposed exceptions to metric
information about exceptions granted shall be included in
report along with recommendations for actions to enable

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The transition to use of metric units in Government publi-
made as publications are revised on normal schedules or
are developed, or as metric publications are required in
sage pursuant to paragraph (a) of this section.

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other Federal, State, and local agencies and the private
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assist the head of each executive department or agency in
order. The responsibilities of the Metric Executive shall
limited to:

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tions from affected parties during the transition to metric

versight of preparation of the department's or agency's
lans and progress reports, including the Annual Metric
15 U.S.C. 205j and OMB Circular A–11.

June 30, 1992, of an assessment of agency progress and
with recommendations for steps to assure successful imple-
etric Conversion Act. The assessment and recommenda-
oved by the head of the department or agency and provided

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to the Secretary by June 30, 1992, for inclusion in the Secretary's October 1, 1992, report on implementation of this order.

Sec. 3. *Application of Resources.* The head of each executive department and agency shall be responsible for implementing and applying the necessary resources to accomplish the goals set forth in the Metric Conversion Act and this order.

Sec. 4. *Judicial Review.* This order is intended only to improve the internal management of the executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any other person.

Bush

THE WHITE HOUSE,
July 25, 1991.

[FR Doc. 91-18028
Filed 7-25-91; 3:06 pm]
Billing code 3195-01-M

Rules and Re

This section of the FEDERA
contains regulatory document
general applicability and lega
of which are keyed to and
the Code of Federal Regulat
published under 50 titles pur
U.S.C. 1510.
The Code of Federal Regula
by the Superintendent of Do
Prices of new books are list
first FEDERAL REGISTER iss
week.

FEDERAL RESERVE SYST

12 CFR Parts 207, 220, 221

[Regulations G, T, U and X]

Securities Credit Transacti
Marginable OTC Stocks; Li
Foreign Margin Stocks

July 23, 1991.

AGENCY: Board of Governors
Federal Reserve System.

ACTION: Final rule; determina
applicability of regulations.

SUMMARY: The List of Margi
Stocks (OTC List) is compris
traded over-the-counter (OT
United States that have been
determined by the Board of
of the Federal Reserve Syste
subject to the margin require
under certain Federal Reserv
regulations. The List of Forei
Stocks (Foreign List) represe
equity securities that have m
Board's eligibility criteria un
Regulation T. The OTC List a
Foreign List are published fo
year by the Board. This docu
forth additions to or deletion
previous OTC List and additi
previous Foreign List. Both L
published on April 29, 1991 (
and effective on May 13, 199

EFFECTIVE DATE: August 12, 1

FOR FURTHER INFORMATION C
Peggy Wolffrum, Securities R
Analyst, Division of Banking
Supervision and Regulation (
2781, Board of Governors of t
Reserve System, Washington,
For the hearing impaired only
Dorothea Thompson,
Telecommunications Device f
(TDD) at (202) 452-3544.

SUPPLEMENTARY INFORMATIO
below are additions to or dele
the OTC List. This supersedes

Rules and Regulations

Federal Register
Vol. 56, No. 145
Monday, July 29, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220, 221 and 224

[Regulations G, T, U and X]

Securities Credit Transactions; List of Marginable OTC Stocks; List of Foreign Margin Stocks

July 23, 1991.

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; determination of applicability of regulations.

SUMMARY: The List of Marginable OTC Stocks (OTC List) is comprised of stocks traded over-the-counter (OTC) in the United States that have been determined by the Board of Governors of the Federal Reserve System to be subject to the margin requirements under certain Federal Reserve regulations. The List of Foreign Margin Stocks (Foreign List) represents foreign equity securities that have met the Board's eligibility criteria under Regulation T. The OTC List and the Foreign List are published four times a year by the Board. This document sets forth additions to or deletions from the previous OTC List and additions to the previous Foreign List. Both Lists were published on April 29, 1991 (56 FR 19547) and effective on May 13, 1991.

EFFECTIVE DATE: August 12, 1991.

FOR FURTHER INFORMATION CONTACT: Peggy Wolffrum, Securities Regulation Analyst, Division of Banking Supervision and Regulation (202) 452–2781, Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD) at (202) 452–3544.

SUPPLEMENTARY INFORMATION: Listed below are additions to or deletions from the OTC List. This supersedes the last OTC List which was effective May 13, 1991. Additions and deletions to the OTC List were last published on April 29, 1991 (56 FR 19547). A copy of the complete OTC List is available from the Federal Reserve Banks.

The OTC List includes those stocks that meet the criteria in Regulations G, T and U (12 CFR parts 207, 220 and 221, respectively). This determination also affects the applicability of Regulation X (12 CFR part 224). These stocks have the degree of national investor interest, the depth and breadth of market, and the availability of information respecting the stock and its issuer to warrant regulation in the same fashion as exchange-traded securities. The OTC List also includes any OTC stock designated under a Securities and Exchange Commission (SEC) rule as qualified for trading in the national market system (NMS security). Additional OTC stocks may be designated as NMS securities in the interim between the Board's quarterly publications. They will become automatically marginable upon the effective date of their NMS designation. The names of these stocks are available at the Board and the SEC and will be incorporated into the Board's next quarterly publication of the OTC List.

The second group of securities represents additions to the Board's Foreign List, which was last published April 29, 1991 (56 FR 19547) and effective May 13, 1991. There are no deletions to the Foreign List. Stocks on the Foreign List are eligible for margin treatment at broker-dealers pursuant to a 1990 amendment to Regulation T (12 CFR part 220). The Foreign List includes those stocks that meet the criteria in Regulation T and are eligible for margin at broker-dealers on the same basis as domestic margin securities. A copy of the complete Foreign List is available from the Federal Reserve Banks.

Public Comment and Deferred Effective Date

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the Lists specified in 12 CFR 207.6 (a) and (b), 220.17 (a), (b), (c) and (d), and § 221.7 (a) and (b). No additional useful information would be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of these Lists as soon as possible. The Board has responded to a request by the public and allowed a two-week delay before the Lists are effective.

List of Subjects

12 CFR Part 207

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 220

Banks, Banking, Brokers, Credit, Federal Reserve System, Margin, Margin requirements, Investments, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 221

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 224

Banks, Banking, Borrowers, Credit, Federal Reserve System, Margin, Margin requirements, Reporting and recordkeeping requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), and in accordance with 12 CFR 207.2(k) and 207.6(c) (Regulation G), 12 CFR 220.2(u) and 220.17(e) (Regulation T), and 12 CFR 221.2(j) and 221.7(c) (Regulation U), there is set forth below a listing of deletions from and additions to the OTC List, and additions to the Foreign List.

Deletions From the List of Marginable OTC Stocks

Stocks Removed for Failing Continued Listing Requirements

Alcide Corporation
  $.01 par common

Algorex Corporation
  $.01 par common
Alloy Computer Products, Inc.
  $.01 par common
Amoskeag Bank Shares, Inc.
  $1.00 par common
Astrocom Corporation
  $.10 par common
Barry Blau & Partners, Inc.
  $.01 par common
Bell, W. & Co., Inc.
  $.10 par common
Biogen, Inc.
  $.01 par convertible, exchangeable preferred
CF & I Steel Corporation
  $5.00 par common
Citizens Growth Properties
  $1.00 par shares of beneficial interest
Coca-Cola Enterprises, Inc.
  Warrants (expire 07–10–91)
Duramed Pharmaceutical, Inc.
  $.01 par common
E & B Marine Inc.
  $.01 par common
Encore Computer Corporation
  $.01 par common
Enstar Group, Inc., The
  $.50 par common
Famous Restaurants Inc.
  $.01 par common
Great American Management & Investment, Inc.
  $.01 par common
Healthco International, Inc.
  $.05 par common
Helian Health Group Inc.
  Warrants (expire 11–22–92)
Hemodynamics Incorporated
  $.01 par common
International Broadcast Systems Inc.
  Class A, $.001 par common
International Broadcasting Corporation
  $.001 par common
Isomet Corporation
  $1.00 par common
James Madison Limited
  $1.00 par common
John Hanson Bancorp, Inc.
  $1.00 par common
Metropolitan Federal Bank, a Savings Bank (Tennessee)
  $1.00 par common
Microscience International Corp.
  No par common
Midwest Communications Corporation
  $.01 par common
Moto Photo, Inc.
  $.01 par common
  $.01 par cumulative, convertible preferred
  Warrants (expire 11–25–91)
Mr. Gasket Company
  No par common
Normandy Oil & Gas Company, Inc.
  $.001 par common
Plymouth Five Cents Savings Bank (Massachusetts)
  $.10 par common
Profit Technology, Inc.
  $.01 par common
Prospect Park Financial Corporation
  $1.00 par common
Rax Restaurants, Inc.
  $.10 par common
Seacoast Savings Bank (New Hampshire)
  $1.00 par common
Statewide Bancorp
  $2.50 par common
Stratford American Corporation
  $.01 par common
Tempest Technologies, Inc.
  $.01 par common
Twin Star Productions, Inc.
  $.001 par common
U.S. Gold Corporation
  $.01 par common
Unigene Laboratories, Inc.
  Class A, warrants (expire 06–11–92)
United Dominion Realty Trust
  9% convertible subordinated debentures
Valley Federal Savings & Loan Association (California)
  No par common
Workingmens Corporation
  $.10 par common

Stocks Removed for Listing on a National Securities Exchange or Being Involved in an Acquisition

Air Midwest, Inc.
  No par common
Angeion Corporation
  $.01 par common
Bancorp Hawaii, Inc.
  $2.00 par common
Banks of Iowa, Inc.
  No par common
Benton Oil and Gas Company
  $.01 par common
Bizmart, Inc.
  $.01 par common
Calgon Carbon Corporation
  $.01 par common
Coca Mines Inc.
  $.01 par common
  Warrants (expire 05–05–94)
Continental Medical Systems, Inc.
  $.01 par common
Critical Care America, Inc.
  $.10 par common
Dataphaz, Inc.
  $.001 par common
Eastchester Financial Corporation
  $.01 par common
First Federal Savings Bank (Alabama)
  $.01 par common
Hamilton Oil Corporation
  $.25 par common
Inbancshares
  No par common
Iowa Southern Inc.
  $5.00 par common
Medical Management of America, Inc.
  $.01 par common
Mission-Valley Bancorp (California)
  No par common
NAPA Valley Bancorp
  No par common
National Health Laboratories Incorporated
  $.01 par common
Provena Foods, Inc.
  No par common
Royalpar Industries, Inc.
  $.01 par common
  Warrants (expire 01–20–92)
Sensormatic Electronics Corporation
  $.01 par common
Sizzler Restaurants International, Inc.
  $.01 par common
Southern Bankshares, Inc.
  $2.50 par common
Tocor, Inc.
  Units (expire 12–31–94)
United Banks of Colorado, Inc
  $2.50 par common
Universal Health Service, Inc.
  Class B, $.01 par common
US West Newvector Group, Inc.
  Class A, no par common
Vitalink Communications Corporation
  $.01 par common
Vivigen, Inc.
  $.01 par common
Wavetek Corporation
  $1.00 par common

Additions to the List of Marginable OTC Stocks

Advanced Promotion Technologies, Inc.
  $.01 par common
AES Corporation, The
  $.01 par common
Air-Cure Environmental, Inc.
  $.001 par common
Alpha 1 Biomedicals, Inc.
  $.001 par common
American Biodyne, Inc.
  $.01 par common
American Claims Evaluations, Inc.
  $.01 par common
American Dental Laser, Inc.
  $.01 par common
Applied Extrusion Technologies, Inc.
  $.01 par common
Applied Immune Sciences, Inc.
  $.01 par common
Artel Communications Corporation
  Rights (expire 07–25–91)
Aspen Bancshares, Inc.
  $.01 par common
Au Bon Pain Co., Inc.
  Class A, $.0001 par common
Aura Systems, Inc.
  $.005 par common
Automated Security (Holdings) PLC
  American Depositary Receipts
Bertucci's Inc.
  $.005 par common
Bio-Technology General Corporation
  $.01 par common
Biomedical Dynamics Corporation
  No par common

Inc.
ncial Corporation
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a Corporation
gies, Inc.
ons, Inc.
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ies, Inc.
ts (expire 06-11-92)
Realty Trust
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vings & Loan
California)
poration
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ar Listing on a
s Exchange or Being
quisition
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s Company
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re 05-05-94)
cal Systems, Inc.
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erica, Inc.
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on
cial Corporation
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ngs Bank (Alabama)
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poration
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c.
on
nent of America, Inc.
n
ancorp (California)

No par common
NAPA Valley Bancorp
No par common
National Health Laboratories Incorporated
$.01 par common
Provena Foods, Inc.
No par common
Royalpar Industries, Inc.
$.01 par common
Warrants (expire 01-20-92)
Sensormatic Electronics Corporation
$.01 par common
Sizzler Restaurants International, Inc.
$.01 par common
Southern Bankshares, Inc.
$2.50 par common
Tocor, Inc.
Units (expire 12-31-94)
United Banks of Colorado, Inc
$2.50 par common
Universal Health Service, Inc.
Class B, $.01 par common
US West Newvector Group, Inc.
Class A, no par common
Vitalink Communications Corporation
$.01 par common
Vivigen, Inc.
$.01 par common
Wavetek Corporation
$1.00 par common

Additions to the List of Marginable OTC Stocks

Advanced Promotion Technologies, Inc.
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AES Corporation, The
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$.001 par common
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$.01 par common
American Claims Evaluations, Inc.
$.01 par common
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$.01 par common
Applied Extrusion Technologies, Inc.
$.01 par common
Applied Immune Sciences, Inc.
$.01 par common
Artel Communications Corporation
Rights (expire 07-25-91)
Aspen Bancshares, Inc.
$.01 par common
Au Bon Pain Co., Inc.
Class A, $.0001 par common
Aura Systems, Inc.
$.005 par common
Automated Security (Holdings) PLC
American Depositary Receipts
Bertucci's Inc.
$.005 par common
Bio-Technology General Corporation
$.01 par common
Biomedical Dynamics Corporation
No par common

Bioplasty, Inc.
$.01 par common
Brooktree Corporation
No par common
BWIP Holding, Inc.
Class A, $.01 par common
Calloway's Nursery, Inc.
$.01 par common
Cambridge Neuroscience Research, Inc.
$.001 par common
CBL Medical, Inc.
$.01 par common
Warrants (expire 12-21-93)
Centocor, Inc.
Warrants (expire 12-31-94)
7¼% convertible subordinated debentures
Central Indiana Bancorp
No par common
Century Medicorp
No par common
Cephalon, Inc.
$.01 par common
Chemi-Trol Chemical Co.
No par common
Cherokee Inc.
$.01 par common
Chipcom Corporation
$.02 par common
Coastal Healthcare Group, Inc.
$.01 par common
Commerce Clearing House, Inc.
Class B, $1.00 par common
Cor Therapeutics, Inc.
$.0001 par common
Cragin Financial Corporation
$.01 par common
Curative Technologies Inc.
$.01 par common
Danek Group, Inc.
No par common
Devry Inc.
$.01 par common
Envoy Corporation
$1.00 par common
Filene's Basement Corporation
$.01 par common
First Federal Savings Bank of New Smyrna
$1.00 par common
First Team Sports, Inc.
$.01 par common
Fortis Corporation
$.0001 par common
Franklin Savings Bank, FSB (Michigan)
Series A, no par noncumulative convertible preferred
Future Now, Inc., The
No par common
Genelabs Technologies, Inc.
No par common
General Kinetics Incorporated
$.25 par common
Genesis Health Ventures, Inc.
$.02 par common
Glycomed Incorporated
No par common
Hancock Holding Company
$3.33 par common
Hi-Lo Automotive, Inc.
$.01 par common
Homedco Group, Inc.
$.01 par common
Icos Corporation
$.01 par common
Idexx Laboratories, Inc.
$.01 par common
IHOP Corporation
$.01 par common
Immulogic Pharmaceutical Corporation
$.01 par common
Integated Circuit Systems, Inc.
No par common
Integrated Health Services, Inc.
$.001 par common
Interwest Savings Bank
$.20 par common
Isis Pharmaceuticals, Inc.
$.001 par common
Leslie's Poolmart
No par common
Lifetime Hoan Corporation
$.01 par common
Machine Technology, Inc.
No par common
Marrow-Tech Incorporated
Class A, $.01 par common
Marsh Supermarkets, Inc.
Class B, no par common
Medarex, Inc.
$.01 par common
Warrants (expire 06-19-96)
Medimmune, Inc.
$.01 par common
Moorco International Inc.
$.01 par common
Mylex Corporation
$.01 par common
OESI Power Corporation
$.01 par common
Osteotech, Inc.
$.01 par common
Otra Securities Group, Inc.
$.01 par common
Outback Steakhouse, Inc.
$.01 par common
Outlook Graphics Corporation
$.01 par common
OW Office Warehouse, Inc.
$.01 par common
Penril Datacomm Networks, Inc.
$.01 par common
Platinum Technology, Inc.
$.001 par common
Ponder Industries, Inc.
$.01 par common
Pope Resources
Depositary receipts representing limited partnership units
Professional Care, Inc.
$.02 par common
Proteon, Inc.
$.01 par common
Pulse Engineering, Inc.
Class A, $.01 par common
Qual-Med, Inc.
$.01 par common
Quantum Health Resources, Inc.
$.01 par common
Quarterdeck Office Systems, Inc.
$.0001 par common
Rag Shops, Inc.
$.01 par common
Regis Corporation
$.05 par common
Rehabcare Corporation
$.01 par common
Rentrak Corporation
$.001 par common
Riddell Sports Inc.
$.01 par common
Ross Systems, Inc.
No par common
Scigenics, Inc.
Units (expire 05-31-96)
Shoreline Financial Corporation
$1.00 par common
Short, C.A., International, Inc.
No par common
Sierra Semiconductor Corporation
No par common
Sierra Tahoe Bancorp
No par common
Software Spectrum Inc.
$.01 par common
Staodyn, Inc.
Warrants (expire 06-01-93)
State Auto Financial Corporation
No par common
State of the Art, Inc.
No par common
Sunrise Technologies, Inc.
No par common
Tanknology Environmental, Inc.
$.01 par common
TSI Corporation
$.02 par common
U.S. Homecare Corporation
$.01 par common
U.S. Long Distance Corporation
$.01 par common
United American Healthcare Corporation
No par common
Wheatley TXT Corporation
$.01 par common
Wisconsin Central Transportation Corporation
$.01 par common
Xyplex, Inc.
$.01 par common

Additions to the List of Foreign Margin Stocks

Aoyama Trading
¥ 50 par common
Chubu Electric
¥ 500 par common
Daiei, Inc., The
¥ 50 par common
Daiwa Kosho Lease Co., Ltd.
¥ 50 par common
Hihon Unisys, Ltd.
¥ 50 par common
Iwatani International Corp.
¥ 50 par common

Japan Airlines Co., Ltd.
¥ 50 par common
Joshin Denki Co., Ltd.
¥ 50 par common
Komori Corporation
¥ 50 par common
Lion Corporation
¥ 50 par common
Long Term Credit Bank of Japan, Ltd.
¥ 50 par common
Matsushita Electric Industrial Co., Ltd.
¥ 50 par common
Mercian Corporation
¥ 50 par common
Nintendo Co., Ltd.
¥ 50 par common
Sanrio Co., Ltd.
¥ 50 par common
Sega Enterprises, Ltd.
¥ 50 par common
Sumitomo Realty & Development Co., Ltd.
¥ 50 par common
Takasago Thermal Engineering Co.
¥ 50 par common
TDK Corporation
¥ 50 par common
Yurtec Corporation
¥ 50 par common

By order of the Board of Governors of the Federal Reserve System, acting by its Staff Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.2(c)(18)), July 23, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91–17786 Filed 7–26–91; 8:45 am]

BILLING CODE 6210-01-M

FARM CREDIT ADMINISTRATION

12 CFR Parts 602 and 603

RIN 3052-AA05

Releasing Information; Privacy Act Regulations; Fees Imposed on Information Requests; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published final regulations under parts 602 and 603 on June 21, 1991 (56 FR 28474). The final regulations amend 12 CFR parts 602 and 603 relating to the availability of records of the FCA, pursuant to the Freedom of Information Act of 1986 which established a new fee structure governing the fees which can be imposed for providing information under the Freedom of Information Act. The final regulation also implements the provisions of Executive Order 12600 by providing predisclosure notification procedures for confidential commercial information. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is July 29, 1991.

EFFECTIVE DATE: July 29, 1991.

FOR FURTHER INFORMATION CONTACT:

Ronald H. Erickson, Freedom of Information Officer, Office of Congressional and Public Affairs, Farm Credit Administration, McLean, VA 22102–5090 (703) 883–4113,

or

James M. Morris, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090 (703) 883–4020, TDD (703) 883–4444,

12 U.S.C. 2252(a) (9) and (10).

Dated: July 24, 1991.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 91–17955 Filed 7–26–91; 8:45 am]

BILLING CODE 6705-01-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 741

Requirements for Insurance and Eligible Obligations

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: This final rule will require any credit union insured by the National Credit Union Share Insurance Fund (NCUSIF) to receive approval from the NCUA Board before either purchasing or acquiring certain loans or assuming or receiving an assignment of certain deposits, shares or liabilities of any credit union not insured by the NCUSIF, of any other financial-type institution, or of any successor in interest to either such institution. NCUSIF-insured credit union purchases of real estate loans and student loans to facilitate packaging of a pool for the secondary market, and purchases of certain member loans, are not subject to the approval process. The regulation on purchase of eligible obligations is amended to refer to the new approval process.

DATES: August 28, 1991.

ADDRESSES: National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Hattie M. Ulan, Associate General Counsel, Office of General Counsel, or Martin E. Conrey, Staff Attorney, Office of General Counsel, at the above address or telephone: (202) 682–9630.

SUPPLEMENTARY INFORMATION:

A. Background

On November 26, 1990, the NCUA Board published a proposed rule on the purchases of assets and assumption of liabilities from various depository institutions and their successors in interest. (See 55 FR 49059.) The NCUA issued the proposed rule upon becoming aware of several actual and attempted transactions involving the purchase of assets and/or assumption of liabilities of various depository institutions (including failed institutions) by NCUSIF-insured credit unions. Since many institutions fail due to weaknesses in their loan portfolios or a reliance on non-core deposits, NCUA wanted to ensure protection of the NCUSIF through some method of review and approval of these transactions. The proposal was issued with a sixty day comment period.

B. Comments

Seven comments were received. Two were from national credit union trade groups, three from state credit union leagues, one from an FCU and one from a state credit union regulator. Most of the commenters agreed that some form of regulation or other control was necessary to protect credit unions and ultimately the NCUSIF from certain risky transactions. The principal issues raised by the comments are discussed in the section below. The commenters were split on the desirability of the proposed amendment. Three commenters supported the proposal, but offered certain suggestions in response to questions raised in the proposed amendment. Three commenters felt the proposal was overly broad and vague, and also offered certain suggestions to narrow the scope of the proposed rule. One commenter opposed the rule, but suggested certain ideas to improve the proposal.

C. Discussion and Authority

Investment Assets

The proposed rule required that federally insured credit unions receive approval from the NCUA Board before purchasing or acquiring loans or "investment assets" or assuming or receiving an assignment of deposits, shares or liabilities from specified sources. The NCUA solicited comments on whether "investment assets" in the

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proposed § 741.4 should be defined, and if so, how it should be defined. The purpose of this solicitation was to tailor the definition to attain a balance between sufficiently reviewing the purchase of assets that present risk to the NCUSIF and those that do not present such risk.

Two commenters felt that "investment assets" should be broadly defined to include all investments permissible for federal credit unions. The NCUA believes that such a definition would be overly broad and present an administrative burden both upon the NCUA and credit unions for many investments that pose little risk to the NCUSIF, such as purchases of United States obligations.

Four commenters stated that "investment assets" should be defined restrictively, by exclusion. One commenter felt that repurchase agreements and transactions with corporate credit unions should be excluded from the definition because of their routine and relatively risk free nature. Another commenter suggested excluding fixed asset acquisitions, which are already subject to a limitation of 5% of shares and retained earnings. 12 CFR 701.36(c). One commenter proposed that participation loans should be excluded from the definition because they are subject to § 701.22 of the NCUA Rules and Regulations. 12 CFR 701.22. However, the NCUA's loan participation rule does not address the same concerns as does this final rule, and for that reason NCUA believes participation loans should not be exempt from the definition of loans for this purpose. A fourth commenter believed that NCUA should narrowly focus on investments posing real risk to the NCUSIF and survey credit unions for a list of available investment opportunities in today's market and then define the term. The NCUA requested precisely this information in the proposed rule and sees no reason to extend the comment period. The exclusion of routine repurchase transactions, corporate credit union transactions and fixed asset acquisitions makes sense. Since the problems experienced to date by the NCUA have concerned loans, the NCUA has decided to limit the scope of the rule to loans alone at this time. If it becomes necessary, the NCUA will reevaluate the need to add other assets requiring approval at some future date. NCUA does note that it will look at substance over form in transactions, and it is the agency's intent that all acquisitions and purchases of lender/borrower obligations are intended to be included in the definition of "loan" for purposes of this regulation.

Three commenters suggested a threshold amount that a credit union could acquire before the application requirement was triggered. One of these commenters suggested the threshold be set at 1% of unimpaired capital and surplus for aggregate purchases of loans from a single liquidating seller in addition to the 5% of unimpaired capital and surplus limitation on the aggregate of the unpaid balances of eligible obligations purchased under the existing § 701.23 of the NCUA Rules and Regulations. 12 CFR 701.23. Another commenter suggested that the threshold amount be set at 5% of the acquiring credit union's assets before NCUA approval was required. The third commenter suggested that a floor limit based upon an unstated portion of the purchasing credit union's reserves, under which approval is not required, be established. The NCUA believes that a threshold concept would not meet the objectives of the regulation. If an amount of loans equalling 1% or 5% or any other fixed percentage of a credit union's shares or assets were of poor investment quality, illiquid or of declining value, such losses could pose a threat of instability to the credit union and of loss to the NCUSIF. The purpose of the regulation is to protect the safety and soundness of credit unions and the integrity of the NCUSIF. Therefore, the threshold concept has not been adopted.

Student Loan/Real Estate Loan/Member Loan

NCUA solicited comments on whether the exception of federal credit union (FCU) eligible obligation transactions set forth in the proposed regulation involving student loans and real estate secured loans pursuant to § 701.23(b) of the NCUA Rules and Regulations should be extended to federally insured state chartered credit unions (FISCUs). 12 CFR 701.23(b). NCUA review indicates that these transactions are routine, such assets are subject to industry standards protecting safety and soundness and, often, the window of opportunity to consummate such transactions is limited and FCUs would be hampered competitively by agency review. Five of the commenters wholeheartedly endorsed the extension of the exemption to FISCUs. The NCUA Board has adopted this extension in the final rule.

Two of the commenters also strongly endorsed the exemption of the purchase of member loans under § 701.23(b)(1)(i) from the coverage under the final rule. Their reasoning is that if the purchase is nothing more than a loan of the credit union's member that the credit union is empowered to grant, no unusual risk is presented to either the safety and soundness of the acquiring credit union or to the NCUSIF. Finding this approach well reasoned and sound, the final rule extends the exemption to the purchase of eligible obligation member loans.

One of these commenters also requested an extension of the eligible obligation exemption to permit credit unions to acquire whole loans secured by real estate as eligible obligations without the conditions that such purchases be on an ongoing basis by the credit union to facilitate the packaging of a pool of such loans to be sold or pledged on the secondary mortgage market. Such a comment is outside of the scope of the final rule. NCUA notes that it recently considered such an extension of the eligible obligation regulation. 55 FR 1827 at 1829 (January 19, 1990). However, the NCUA Board concluded such a change was not necessary. 56 FR 15034 at 15036 (April 15, 1991).

Information regarding specific powers of FISCUs that FCUs do not have, that might be affected by the proposed regulation, was also solicited. No information on this issue was received.

The NCUA also solicited comments on other methods of tailoring the proposed regulation to achieve its purposes without overly burdening credit unions. One commenter suggested that rollovers of retirement accounts be exempt from the application and approval process of the final rule due to their routine nature. Another commenter suggested that a credit union's perfection of the security interest in the form of a share or other deposit account in another financial institution should also be exempt from coverage of the final rule. Given the routine nature of these transactions, and the lack of risk to the NCUSIF, an exception has been provided in the final rule for both.

Extending Coverage of Rule

The proposed rule covered certain acquisitions from uninsured credit unions, other depository institutions, their successors in interest and insured credit unions that are not in liquidation. NCUA solicited comments on whether the rule should be extended to cover purchases from entities other than credit unions or depository institutions. Three commenters felt that the number of entities covered by the rule should not be extended at this time because of potential interference with the business decisions of a credit union and insufficient information regarding transactions between such entities and credit unions which present safety and soundness concerns as well as risk to the NCUSIF. One commenter proposed that the number of entities covered by the rule should be extended to other entities from which credit unions could purchase or acquire substandard loans. NCUA staff also feels strongly that the coverage should be broadened to include mortgage banks, consumer finance companies, insurance companies, loan brokers and other loan sellers or liability traders. Therefore, the final rule applies to "financial-type" institutions. Depository institutions as well as the types of institutions mentioned above defined as financial-type institutions in § 741.4(a)(2) of the final rule.

One commenter questioned the coverage of noninsured credit unions and NCUSIF-insured credit unions not in liquidation, but not NCUSIF-insured credit unions in liquidation. Upon further reflection, the NCUA believes that the NCUSIF is not exposed to more risk when a federally insured credit union is purchasing or acquiring loans from other NCUSIF-insured credit unions or assuming or receiving shares, deposits or liabilities from other NCUSIF-insured credit unions. Likewise, such exchanges should not unduly affect the safety and soundness of NCUSIF-insured credit unions because of regulations applicable to these credit unions which are examined for and enforced by appropriate regulators. Because of this, the NCUA has decided to drop transactions between NCUSIF-insured credit unions from the coverage of this rule.

Implementation

Four commenters requested guidance be provided on the application process. Section 205(c) of the FCU Act provides factors for the NCUA Board to consider in determining whether to grant or withhold approval or consent for transactions covered by the final rule. These factors are: (l) The history, financial condition, and management policies of the credit union; (2) the adequacy of the credit union's reserves; (3) the economic advisability of the transaction; (4) the general character and fitness of the credit union's management; (5) the convenience and needs of the members to be served by the credit union; and (6) whether the credit union is a cooperative association organized for the purpose of promoting thrift among its members and creating a source of credit for provident and productive purposes. 12 U.S.C. 1785(c). In particular, the NCUA Board believes that the market volatility and liquidity of the loans or deposits to be acquired and the potential risk to the NCUSIF will be determining considerations. As stated in the supplementary information section of the proposed rule, the NCUA might review any such dealings for thorough due diligence investigation, fair negotiation (absence of conflicts of interest and evidence of arm's length dealing), proper contract subject matter, reasonable pricing (to protect against waste of corporate assets), and adequate and prudent documentation and closing methods of the transaction by the purchasing or assuming insured credit union before consummation. Furthermore, the NCUA might review such a transaction for any potential effects upon the credit union's membership, liquidity, profitability, management and support capabilities, quality controls, concentrations of credit, diversity of portfolio investments, risk weighted assets, and capital ratio. One commenter questioned whether the factors NCUA will evaluate by are realistic.

NCUA has years of expertise in evaluating credit union transactions and believes that it has ample ability and expertise to evaluate the applications required by the final rule. Four of the commenters requested specific application forms, guidelines or written policies on the application process required by the final rule. NCUA staff will review the need for such documentation, and, if deemed necessary, such documentation will be released to credit unions.

Four commenters requested information on a timetable for agency action on required applications, expressing concern about the potential for lost business opportunities due to the application process. As each application will be considered on its own merits, the NCUA Board cannot release a generic timetable. However, the NCUA Board fully intends to review all applications as quickly as a thorough evaluation will allow. One commenter suggested that an expedited review process be available in order that business opportunities would not be lost by the application and review process. Credit unions are welcome to bring such considerations to the NCUA Board's attention in the application, which the Board will then attempt to make every reasonable effort to consider.

Two commenters requested that the authority to approve applications be delegated to NCUA staff. One commenter preferred the Director of Examination and Insurance while the other preferred the Regional Directors. Since the number of applications is estimated to be quite small, the NCUA Board has decided to postpone any decision regarding delegation at this time.

As noted in the Supplementary Information section of the proposed regulation, NCUA does not intend to change field of membership policy or requirements by virtue of this regulation In addition, as in the proposed rule, §§ 741.3 and 741.4 are combined in the final rule as § 741.3 with no substantive changes. The sections are combined so a new § 741.4 can be added without renumbering all subsequent sections of part 741.

c. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). Based on information received by the NCUA, few credit unions of any size will be affected by the final rule. In the most active state NCUA has knowledge of, only four transactions that would be covered by the proposed rule have occurred in two years. Various Regional Offices of the NCUA have reported interest, but no activity, on the part of NCUSIF-insured credit unions for transactions that would be subject to the rule. The Resolution Trust Corporation has informed the NCUA that it is unaware of any transactions involving NCUSIF-insured credit unions. Accordingly, the Board determines and certifies that this proposed rule does not have a significant economic impact on a substantial number of small credit unions and that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The Paperwork Reduction Act requirements do not apply to information collection requests submitted to nine or fewer persons. The information we have at present, including comments to the proposed rule, indicates that very few applications will be received by the Board. One commenter stated that if purchases of member loans were exempted from coverage of the rule that nine or fewer applications would be received each year. This change is adopted by NCUA in the final rule. NCUA, at this time, expects no more than nine applications per year. Therefore, the Board has determined that the requirements of the Paperwork Reduction Act do not apply to the final rule.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The authority of the NCUA to regulate NCUSIF-insured credit unions under the above-referenced sections of the Federal Credit Union Act is clear. Furthermore, the protection of NCUSIF-insured institutions and the NCUSIF itself are concerns of national scope.

Comments were solicited on the potential use of delegated authority, cooperative decisionmaking responsibilities, certification processes of federal standards, adoption of comparable programs by states requesting an exemption for their regulated institutions, or other ways of meeting the intent of the Executive Order. One commenter suggested allowing the state regulator to determine the permissibility of transactions entered into by FISCUs. The NCUA Board disagrees with this approach, as it permits no participation in the decision by the NCUA and the transactions involve potential risk to the NCUSIF. No other comments were received. In light of this, and the small number of applications expected, the NCUA Board determines that the final rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. However, in considering applications from state-chartered NCUSIF insured credit unions, the NCUA Board will lend substantial weight to recommendations from state regulators.

List of Subjects

12 CFR Part 701

Credit, Credit unions, Insurance, Reporting and recordkeeping requirements.

12 CFR Part 741

Bank deposit insurance, Credit unions, and Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on July 18, 1991.

Becky Baker,

Secretary to the Board.

For the reasons set forth in the preamble, 12 CFR parts 701 and 741 are amended as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789 and Public Law 101–73. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 et seq., 42 U.S.C. 1861 and 42 U.S.C. 3601–3610.

2. In § 701.23, paragraph (b)(2) is revised to read as follows:

§ 701.23 Purchase, sale, and pledge of eligible obligations.

* * * * *

(b) * * *

(2) A Federal credit union may make purchases in accordance with this paragraph (b), provided:

(i) The board of directors or investment committee approves the purchase;

(ii) A written agreement and a schedule of the eligible obligations covered by the agreement are retained in the purchasers office; and

(iii) For purchases under paragraph (b)(1)(ii) of this section, any advance written approval required by § 741.4 of this chapter is obtained before consummation of such purchase.

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PART 741—REQUIREMENTS FOR INSURANCE

The authority citation for part 741 is revised to read as follows:

Authority: 12 U.S.C. 1757, 1766, and 1781–1790. Section 741.11 is also authorized by 31 U.S.C. 3717.

2. Section 741.3 is revised to read as follows:

§ 741.3 Minimum loan policy and appraisal requirements.

Any credit union which is insured pursuant to title II of the Act must:

(a) Adhere to the requirements stated in § 701.21(h) of this chapter concerning member business loans, § 701.21(c)(8) of this chapter concerning prohibited fees, and § 701.21(d)(5) of this chapter concerning nonpreferential loans. State-chartered, NCUSIF-insured credit unions in a given state are exempt from these requirements if the state regulatory authority for that state adopts substantially equivalent regulations as determined by the NCUA Board. In nonexempt states, all required NCUA reviews and approvals will be handled in coordination with the state credit union supervisory authority; and

(b) Adhere to the requirements stated in part 722 of this chapter concerning appraisals.

3. Section 741.4 is revised to read as follows:

§ 741.4 Purchase of assets and assumption of liabilities.

(a) Any credit union insured pursuant to title II of the Act must apply for and receive approval from the NCUA Board before either purchasing or acquiring loans or assuming or receiving an assignment of deposits, shares or liabilities from:

(1) Any credit union that is not insured pursuant to title II of the Act,

(2) Any other financial-type institution (including depository institutions, mortgage banks, consumer finance companies, insurance companies, loan brokers and other loan sellers or liability traders), or

(3) Any successor in interest to any institution identified in paragraphs (a) or (b) of this section.

(b) Approval is not required for:

(1) Purchases of student loans or real estate secured loans to facilitate the packaging of a pool of loans to be sold or pledged on the secondary market under § 701.23(b)(1)(iii) or (iv) of this chapter or comparable state law for state-chartered credit unions, or purchases of member loans under § 701.23(b)(1)(i) of this chapter or comparable state law for state-chartered credit unions; or

(2) assumptions or receipt of deposits, shares or liabilities as rollovers or transfers of member retirement accounts or in which an NCUSIF-insured credit union perfects a security interest in connection with an extension of credit to any member.

[FR Doc. 91–17820 Filed 7–26–91; 8:45 am]

BILLING CODE 7535-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1204

Administrative Authority and Policy

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: NASA is amending 14 CFR part 1204 by revising subpart 14, "Use of NASA Airfield Facilities by Aircraft Not Operated for the Benefit of the Federal Government." This revision updates the procedures and regulations needed to provide for the orderly and controlled use of NASA research facilities that have limited availability for aircraft owned and operated by and for private citizens or companies. This revision also reflects changes at the Wallops Flight Facility; hours of operations; and the facilities available. This rule also

modifies the regulations pertaining to the Shuttle Landing Facility at the Kennedy Space Center in Florida and reflects changes to the facility.

These procedures and requirements involve the use of public property and will be applied in agreements entered into by NASA. However, the notice and public procedures of 5 U.S.C. 553 were not followed since these procedures and requirements are determined to be exempt under 5 U.S.C. 553(a)(2) "as a matter relating to Agency management or personnel or to public property, loans, grants, benefits, or contracts."

EFFECTIVE DATES: July 29, 1991.

ADDRESSES: Director, Aircraft Management Office, Code NIF, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: G.T. McCarthy, 202–453–1991.

SUPPLEMENTARY INFORMATION: The National Aeronautics and Space Administration has determined that:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, since it will not exert a significant impact on a substantial number of small entities.

2. This rule is not a major rule as defined in Executive Order 12291.

List of Subjects in 14 CFR Part 1204

Airports, Authority delegations (Government agencies), Federal buildings and facilities, Government contracts, Government employees, Government procurement, Grant programs: Science and technology, Intergovernmental relations, Labor unions, Security measures, Small business, Real estate.

PART 1240—ADMINISTRATIVE AUTHORITY AND POLICY

14 CFR part 1204 is amended by revising subpart 14 to read as follows:

Subpart 14—Use of NASA Airfield Facilities by Aircraft Not Operated for the Benefit of the Federal Government

Sec.
1204.1400 Scope.
1204.1401 Definitions.
1204.1402 Policy.
1204.1403 Available airport facilities.
1204.1404 Requests for use of NASA airfield facilities.
1204.1405 Approving authority.
1204.1406 Procedures in the event of a declared in-flight emergency.
1204.1407 Procedure in the event of an unauthorized use.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 14—Use of NASA Airfield Facilities by Aircraft Not Operated for the Benefit of the Federal Government

§ 1204.1400 Scope.

This subpart establishes the responsibility and sets forth the conditions and procedures for the use of NASA airfield facilities by aircraft not operated for the benefit of the Federal Government.

§ 1204.1401 Definitions.

For the purpose of this subpart, the following definitions apply:

(a) *NASA Airfield Facility.* Those aeronautical facilities owned and operated by NASA that consist of the following:

(1) *Shuttle Landing Facility.* The aeronautical facility which is a part of the John F. Kennedy Space Center (KSC), Kennedy Space Center, Florida, and is located at 80° 41′ west longitude and 28° 37′ north latitude.

(2) *Wallops Airport.* The aeronautical facility which is part of the Wallops Flight Facility (WFF), Wallops Island, VA, and is located at 75° 28′ west longitude and 37° 56′ north latitude in the general vicinity of Chincoteague, Virginia.

(b) *Aircraft not Operated for the Benefit of the Federal Government.* Aircraft which are not owned or leased by the United States Government or aircraft carrying crew members or passengers who do not have official business requiring the use of a NASA airfield facility in the particular circumstance in question.

(c) *Official Business.* Business, in the interest of the U.S. Government, which personnel aboard an aircraft must transact with U.S. Government personnel or organizations at or near a NASA facility. The use of a NASA airfield facility by transient aircraft to petition for U.S. Government business or to obtain clearance, servicing, or other items pertaining to itinerant operations is not considered official business.

(d) *User.* An individual partnership or corporation owning, operating, or using an aircraft not operated for the benefit of the Federal Government in whose name permission to use a NASA airfield facility is to be requested and granted.

(e) *Hold Harmless Agreement.* An agreement executed by the user by which the user acknowledges awareness of the conditions of the permission to use a NASA airfield facility, assumes any risks connected therewith, and releases the U.S. Government from all liability incurred by the use of such facility.

(f) *Use Permit.* The written permission signed by the authorized approving official to land, take off, and otherwise use a NASA airfield facility. Such use permit may be issued for single or multiple occasions. The specific terms of the use permit and the provisions of this subpart govern the use which may be made of the airport by aircraft not operated for the benefit for the Federal Government.

(g) *Certificate of Insurance.* A certificate signed by an authorized insurance company representative (or a facsimile of an insurance policy) evidencing that insurance is then in force with respect to any aircraft not operated for the benefit of the Federal Government, the user of which is requesting permission to use a NASA airfield facility (see § 1204.1404(b)).

§ 1204.1402 Policy.

(a) NASA airfields are not normally available to the general public; hence, any use of airfield facilities by aircraft not operated for the benefit of the Federal Government shall be within the sole discretion of the approving authorities.

(b) Except in the event of a declared in-flight emergency (see § 1204.1406) or as otherwise determined by an approving authority, aircraft not operated for the benefit of the Federal Government are not permitted to land or otherwise use NASA airfield facilities.

(c) Any use of a NASA airfield facility by aircraft not operated for the benefit of the Federal Government shall be free of charge and no consideration (monetary or otherwise) shall be exacted or received by NASA for such use. However, each user, as a condition of receiving permission to use such airfield facility, shall agree to become familiar with the physical condition of the airfield; abide by the conditions placed upon such use; subject the aircraft, the user, and those accompanying the user to any requirements imposed by NASA in the interest of security and safety while the aircraft or persons are on a NASA facility; use the facilities entirely at the user's own risk; hold the Federal Government harmless with respect to any and all liabilities which may arise as a result of the use of the facilities; and carry insurance covering liability to others in amounts not less than those listed in the Hold Harmless Agreement.

(d) Permission to use a NASA airfield facility will be granted only in accordance with the limitations and procedures established by an approving authority and then only when such use will not compete with another airport in the vicinity which imposes landing fees or other user charges.

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(g) *Certificate of Insurance.* A certificate signed by an authorized insurance company representative (or a facsimile of an insurance policy) evidencing that insurance is then in force with respect to any aircraft not operated for the benefit of the Federal Government, the user of which is requesting permission to use a NASA airfield facility (see § 1204.1404(b)).

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(d) Permission to use a NASA airfield facility will be granted only in accordance with the limitations and procedures established by an approving authority and then only when such use will not compete with another airport in the vicinity which imposes landing fees or other user charges.

(e) In no event, except for an in-flight emergency (see § 1204.1406), will permission to use NASA airfield facilities be granted to an aircraft arriving directly from, or destined for, any location outside the continental United States unless previously arranged and approved by the authorized approving official.

(f) Permission to use NASA airfields may be granted only to those users having the legal capacity to contract and whose aircraft are in full compliance with applicable Federal Aviation Administration (FAA) or other cognizant regulatory agency requirements.

(g) Permission to use NASA airfields, except in connection with a declared in-flight emergency, will consist only of the right to land, park an aircraft, and subsequently take off. NASA is not equipped to provide any other services such as maintenance or fuel and such services will not be provided except following an in-flight emergency.

§ 1204.1403 Available airport facilities.

The facilities available vary at each NASA Installation having an airfield. The airport facilities available are:

(a) *Shuttle Landing Facility*—(1) *Runways.* Runway 15–33 is 15,000 feet long and 300 feet wide with 1,000-foot overruns. The first 3,500 feet at each end of the runway have been modified for smoothness. The center 8,000 feet of the runway is grooved for improved braking under wet conditions.

(2) *Parking Areas and Hangar Space.* No hangar space is available. Limited available concrete parking ramp space makes precoordination necessary.

(3) *Control Tower.* The control tower is normally in operation from 0800 to 1600 local time, Monday through Friday. Additional hours of operation are filed with the St. Petersburg Flight Service Station (FSS). The tower may be contacted on 128.55 MHz or 284.0 MHz. FAA regulations pertaining to the operation of aircraft at airports with an operating control tower (§ 91.87 of this title) will apply. When the tower is not in operation, the FAA regulations pertaining to the operation of aircraft at airports without an operating control tower (§ 91.89 of this title) will apply.

(4) *Navigation aids.* A Microwave Scanning Beam Landing System (MSBLS) and a Tactical Airborne Navigation System (TACAN) are installed at the Facility. There are two published TACAN approaches and an approved and published nondirectional beacon (NDB) approach available from Titusville. Runway approach lighting (similar to Category II ALSF–2) and edge lights are available by prior arrangement.

(5) *Hazards.* There are towers and buildings south, southeast, and northeast of the facility as high as 550 feet that could pose hazards to air navigation. All are marked with obstruction lights.

(6) *Emergency Equipment.* Aircraft Rescue and Fire-fighting (ARFF) equipment will be provided in accordance with 14 CFR part 139.

(b) *Wallops Airport*—(1) *Runways.* There are three hard surfaced runways in satisfactory condition. The runways and taxiways are concrete and/or asphalt. Runway 10–28 is 8,000 feet long, 200 feet wide with maximum wheel load of 57,500 pounds; runway 04–22 is 8,750 feet long, 150 feet wide with maximum wheel load of 57,500 pounds; and runway 17–35 is 4,820 feet long, 150 feet wide with maximum wheel load of 14,700 pounds.

(2) *Parking Areas and Hangar Space.* No hangar space is available. However, limited concrete parking ramp space is available as directed by the control tower.

(3) *Control Tower.* This control tower is normally in operation from 0630 to 1830 local time, Monday through Friday, excluding Federal holidays. The tower may be contacted on 126.5 MHz or 394.3 MHz. When the tower is in operation, FAA regulations pertaining to the operation of aircraft at airports with an operating tower (§ 91.87 of this title) will apply. When the tower is not in operation, all aircraft operations will be handled by Wallops UNICOM on the tower frequency, and FAA regulations pertaining to the operation of aircraft at airports without an operating control tower (§ 91.89 of this title) will apply. In addition to Federal Aviation Regulations (FAR's) (s 91 of this title), Wallops requires that pilots obtain clearances from the Wallops UNICOM before landings, takeoffs, and taxiing. Civil aircraft operations are normally confined to daylight hours.

(4) *Navigation Aids.* All runways, 04–22, 10–28, and 17–35 are lighted. Both active taxiways, parallels 04–22 and 10–28, are lighted. Airfield lighting is available upon request. All runway approaches are equipped with operating precision approach path indicator (PAPI) systems and are available on request. All airfield obstructions are equipped with red obstruction lights.

(5) *Hazards.* Numerous towers in airport vicinity up to 241 feet above ground level. Existing tree obstructions are located 1500 feet west of runway 10 threshold. High shore bird population exists in the Wallops area. Deer occasionally venture across runways. Light-controlled traffic crossovers are in existence. Potential radio frequency (RF) hazards exist from tracking radars. Hazards involving aircraft and rocket launch operations exist when Restricted Area R–6604 is active.

(6) *Emergency Equipment.* Aircraft rescue and fire-fighting equipment is normally available on a continuous basis.

(c) *Other Facilities.* No facilities or services other than those described above are available except on an individual emergency basis to any user.

(d) *Status of Facilities.* Changes to the status of the KSC and WFF facilities will be published in appropriate current FAA aeronautical publications.

§ 1204.1404 Requests for use of NASA airfield facilities.

(a) Request for use of a NASA airfield, whether on a one time or recurring basis, must be in writing and addressed to the appropriate NASA facility, namely:

(1) *Shuttle Landing Facility.* Director of Center Support Operations, John F. Kennedy Space Center, Kennedy Space Center, Florida 32899.

(2) *Wallops Airport.* Director of Suborbital Projects and Operations, Goddard Space Flight Center, Wallops Flight Facility, Wallops Island, Virginia 23337.

(b) Such requests will:

(1) Fully identify the prospective user and aircraft.

(2) State the purpose of the proposed use and the reason why the use of the NASA airfield is proposed rather than a commercial airport.

(3) Indicate the expected annual use, to include number and approximate date(s) and time(s) of such proposed use.

(4) State that the prospective user is prepared to fully comply with the terms of this Subpart 14 and the use permit which may be issued.

(c) Upon receipt of the written request for permission to use the airport, the NASA official designated by each facility will request additional information, if necessary, and forward both this regulation and the required Hold Harmless Agreement for execution by the requestor or forward, where appropriate, a denial of the request.

(d) The signed original of the Hold Harmless Agreement shall be returned to the designated NASA official, and a copy retained in the aircraft at all times. Such copy shall be exhibited upon proper demand by any designated NASA official.

(e) At the same time that the prospective user returns the executed original of the Hold Harmless Agreement, the user shall forward to the designated NASA official the required Certificate of Insurance and waiver of rights to subrogation. Such certificate shall evidence that during any period for which a permit to use is being requested, the prospective user has in force a policy of insurance covering liability in amounts not less than those listed in the Hold Harmless Agreement.

(f) When the documents (in form and substance) required by paragraphs b through e of this section have been received, they will be forwarded with a proposed use permit to the approving authority for action.

(g) The designated NASA official will forward the executed use permit or notification of denial thereof to the prospective user after the approving authority has acted.

§ 1204.1405 Approving authority.

The authority to establish limitations and procedures for use of a NASA airfield, as well as the authority to approve or disapprove the use of the NASA airfield facilities subject to the terms and conditions of this subpart and any supplemental rules or procedures established for the facility is vested in:

(a) *Shuttle Landing Facility.* Director of Center Support Operations, Kennedy Space Center, NASA.

(b) *Wallops Airport.* Director of Suborbital Projects and Operations, Goddard Space Flight Center, Wallops Flight Facility, NASA.

§ 1204.1406 Procedures in the event of a declared in-flight emergency.

(a) Any aircraft involved in a declared in-flight emergency that endangers the safety of its passengers and aircraft may land at a NASA airfield. In such situations, the requirements for this subpart for advance authorizations, do not apply.

(b) NASA personnel may use any method or means to clear the aircraft or wreckage from the runway after a landing following an in-flight emergency. Care will be taken to preclude unnecessary damage in so doing. However, the runway will be cleared as soon as possible for appropriate use.

(c) The emergency user will be billed for all costs to the Government that result from the emergency landing. No landing fee will be charged, but the charges will include the labor, materials, parts, use of equipment, and tools required for any service rendered under these circumstances.

(d) In addition to any report required by the Federal Aviation Administration, a complete report covering the landing and the emergency will be filed with the airfield manager by the pilot or, if the pilot is not available, any other crew member or passenger.

(e) Before an aircraft which has made an emergency landing is permitted to take off (if the aircraft can and is to be flown out) the owner or operator thereof shall make arrangements acceptable to the approving authority to pay any charges assessed for services rendered and execute a Hold Harmless Agreement. The owner or operator may also be required to furnish a certificate of insurance, as provided in § 1204.1404, covering such takeoff.

§ 1204.1407 Procedure in the event of an unauthorized use.

Any aircraft not operated for benefit of the Federal Government which lands at a NASA airfield facility without obtaining prior permission from the approving authority, except in a bona fide emergency, is in violation of this subpart. Such aircraft will experience delays while authorization for departure is obtained pursuant to this subpart and may, contrary to the other provisions of this subpart, be required, at the discretion of the approving authority, to pay a user fee of not less than $100. Before the aircraft is permitted to depart, the approving authority will require full compliance with this Subpart 1204.14, including the filing of a complete report explaining the reasons for the unauthorized landing. Violators could also be subject to legal liability for unauthorized use. When it appears that the violation of this subpart was deliberate or is a repeated violation, the matter will be referred to the Aircraft Management Office, NASA Headquarters, which will then grant any departure authorization.

Richard H. Truly,

Administrator.

[FR Doc. 91-17890 Filed 7-26-91; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 50

[Docket No. 910642-1142]

Special Services and Studies by the Bureau of the Census (Age Search and Citizenship Service)

AGENCY: Census, Commerce.

ACTION: Final rule; technical amendment.

SUMMARY: The Secretary of Commerce issues this final rule implementing a technical amendment to announce a change of address for the Bureau of the Census age search and citizenship service operations from Pittsburg, Kansas, to Jeffersonville, Indiana.

EFFECTIVE DATE: August 2, 1991.

FOR FURTHER INFORMATION CONTACT: Joseph S. Harris, Chief, Data Preparation Division, 1201 East 10th Street, Jeffersonville, Indiana 47132, telephone (812) 288-3344.

SUPPLEMENTARY INFORMATION: As a service to the public, the Bureau of the Census conducts searches of past decennial census records to provide individuals with proof of their or their ancestors' age, relationships, citizenship, and other personal data, upon request and payment of a fee for the cost of the service. This service is supported entirely by user fees. The function is being relocated from an office in Pittsburg, Kansas, to the Census Bureau processing office in Jeffersonville, Indiana, in order to contain costs and to ensure effective, efficient continuation of the service. Operations in Pittsburg, Kansas will cease on August 1, 1991.

Classification

This final rule, technical amendment, is issued under part 50, § 50.1, paragraph (c). The Bureau of the Census determines for good cause that this technical amendment makes no substantive changes other than a change in the location of the age search and citizenship service function, therefore, it is unnecessary under 5 U.S.C. 553(b)(B) to provide for prior public comment, and there is good cause under 5 U.S.C. 553(d) not to delay for 30 days its effective date.

Because this rule is being issued without prior comment, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act and none has been prepared.

This rule has been determined not to be a major rule under Executive Order 12291, does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612, and does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act. There is no regulatory impact.

List of Subjects in 15 CFR Part 50

Census data.

For reasons set out in the preamble, 15 CFR part 50 is amended as follows:

PART 50—SPECIAL SERVICES AND STUDIES BY THE BUREAU OF THE CENSUS

1. The authority citation for part 50 continues to read as follows:

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Census age search and citizenship service operations from Pittsburg, Kansas, to Jeffersonville, Indiana.

EFFECTIVE DATE: August 2, 1991.

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SUPPLEMENTARY INFORMATION: As a service to the public, the Bureau of the Census conducts searches of past decennial census records to provide individuals with proof of their or their ancestors' age, relationships, citizenship, and other personal data, upon request and payment of a fee for the cost of the service. This service is supported entirely by user fees. The function is being relocated from an office in Pittsburg, Kansas, to the Census Bureau processing office in Jeffersonville, Indiana, in order to contain costs and to ensure effective, efficient continuation of the service. Operations in Pittsburg, Kansas will cease on August 1, 1991.

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List of Subjects in 15 CFR Part 50

Census data.

For reasons set out in the preamble, 15 CFR part 50 is amended as follows:

PART 50—SPECIAL SERVICES AND STUDIES BY THE BUREAU OF THE CENSUS

1. The authority citation for part 50 continues to read as follows:

Authority: Sec. 3, 49 Stat. 293 as amended; 15 U.S.C. 192a. Interprets or applies sec. 1, 40 Stat. 1256, as amended, sec. 1, 49 Stat. 292, sec. 8, 60 Stat. 1013, as amended, 15 U.S.C. 192, 189a, 13 U.S.C. 8.

2. Section 50.1 is amended by revising paragraph (c) to read as follows:

§ 50.1 General.

* * * * *

(c) Requests for age search and citizenship service should be addressed to the Personal Census Search Unit, Data Preparation Division, Bureau of the Census, P.O. Box 1545, Jeffersonville, Indiana 47131. Application forms may be obtained at Department of Commerce field offices or Social Security offices or by writing to the Jeffersonville, Indiana office.

Dated: July 2, 1991.

Barbara Everitt Bryant,

Director, Bureau of the Census.

[FR Doc. 91–17592 Filed 7–26–91; 8:45 am]

BILLING CODE 3510-07-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 812

[Docket No. 85N-0331]

Cardiovascular Devices; Extension of Effective Date of Requirement for Premarket Approval; Replacement Heart Valve Allograft

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of extension of applicability of a final rule.

SUMMARY: The Food and Drug Administration (FDA) is extending the effective date of a notice which was issued on June 26, 1991, and which clarified that replacement heart valve allograft devices are subject to a final rule issued by FDA on May 13, 1987. The May 1987 rule required the filing of a premarket approval application (PMA) for all preamendment replacement heart valves and those substantially equivalent to replacement heart valves. The June 1991 notice provided that if a PMA for a replacement heart valve allograft was not approved on or before August 26, 1991, the device would violate the Federal Food, Drug, and Cosmetic Act (the act) unless it were the subject of an approved investigational device exemption (IDE). The current notice extends the effective date until November 25, 1991.

EFFECTIVE DATES: FDA is extending the effective date for an approved PMA or IDE until November 25, 1991.

FOR FURTHER INFORMATION CONTACT: Kenneth Palmer, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1200.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 26, 1991 (56 FR 29177), FDA stated that the May 13, 1987 (52 FR 18162) regulation requiring the filing, under section 515(b) of the act (21 U.S.C. 360e(b)), of a PMA for replacement heart valves, expressly covers replacement heart valve allograft devices. In the June 1991 notice, FDA emphasized that the regulation requiring premarket approval or investigational device exemptions for replacement heart valve allografts, was necessary to ensure protection of the public health for the use of a device that can raise significant safety concerns. FDA stated that prior to premarket approval the availability of human heart valves need not be diminished. Distribution of the device could continue under an approved IDE, which would ensure that sponsors received informed consent from human heart valve recipients while requiring the systematic collection of data. The notice advised all persons who currently sponsor or intend to sponsor clinical investigations involving the device to submit an IDE application to FDA no later than July 26, 1991.

On July 17, 1991, FDA received a petition on behalf of six nonprofit tissue banks that process human heart valve allografts requesting a stay of the effective date of its action for a period of 30 months, until February 26, 1994. The petition recited a number of legal and policy grounds for the requested relief, but explained that assurance of availability of heart valve allografts was its principal reason. Petitioners argued in part that the last step to an operational IDE, that of IRB approval, could not be obtained within the 60-day time period allowed under the June 1991 notice. Similar concerns about the difficulty of obtaining IRB approval within the 60-day timeframe were raised in a July 15, 1991, letter to the agency by attorneys for Cryolife, Cardiovascular, Inc., a laboratory that specializes in the low temperature preparation of human heart valves for transplantation.

While mindful of the need to have approved PMA's or IDE's in effect promptly to protect the public health in the use of these devices, FDA recognizes the concerns raised by allograft suppliers that there may be difficulty in obtaining IRB approval by August 26, 1991. FDA is therefore extending the August 26, 1991, date until November 25, 1991. FDA emphasizes that sponsors should submit their PMA or IDE applications and secure IRB approval as soon as practicable in advance of that date.

FDA is continuing to evaluate the remainder of the arguments presented by the petition and will respond fully at a later date.

Dated: July 24, 1991.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91–17898 Filed 7–26–91; 8:45 a.m.]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[T.D. 8341]

RIN 1545–A066

Deposits of Employment Taxes; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to Treasury Decision 8341, which was published in the **Federal Register** on April 2, 1991 (56 FR 13400). The final regulations relate to the deposit of Federal employment taxes (including railroad retirement taxes).

EFFECTIVE DATE: April 2, 1991.

FOR FURTHER INFORMATION CONTACT: Vincent G. Surabian, (202) 566–5985 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction concern the manner in which an employer computes its deposit liability at the close of a specified deposit period. The regulations also reflect the addition of section 6302(g) to the Internal Revenue Code by the Omnibus Budget Reconciliation Act of 1989, Public Law 101–239, 103 Stat. 2106, accelerating the deposit due date of employment taxes of $100,000 or more, and its amendment by the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508, 104 Stat. 1388. Guidance concerning the acceleration provisions was previously issued in Notice 90–37, 1990–1, C.B. 343, dated May 21, 1990.

Need for Correction

As published, T.D. 8341 contains an omission which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of final regulations (T.D. 8341), which was the subject of FR Doc. 91-7601, is corrected as follows:

§ 31.6302 [Corrected]

1. On page 13402, column 1, the last line of § 31.6302(c)-1(a)(1)(ii)(*a*) appearing before "Example 1:", the language "any) for that month." is corrected to read "any) for that month. However, this paragraph (a)(1)(ii)(*a*) shall not apply if the employer was required to make a deposit of taxes pursuant to paragraph (a)(1)(ii)(*b*) of this section with respect to an eighth-month period which occurred during the calendar month."

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91-17949 Filed 7-26-91; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 90-064a]

RIN-2115-AD71

Drawbridge Operation Regulations; Potomac River, District of Columbia

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule with request for comments.

SUMMARY: The Coast Guard has been petitioned by the Federal Highway Administration, the Maryland and Virginia Departments of Transportation, and the District of Columbia Department of Public Works to permanently amend the regulations governing operation of the Woodrow Wilson Memorial Bridge across the Potomac River, mile 103.8, at Alexandria, Virginia. As part of the rulemaking process, the Coast Guard is considering several alternative opening schedules as well as the schedule proposed by the petitioners. This temporary rule is being issued to evaluate the impacts of one of the alternatives under consideration on both marine and highway traffic during the period.

DATES: This temporary rule is effective from July 31, 1991, through September 28, 1991, unless sooner terminated. Comments must be received on or before September 13, 1991.

ADDRESSES: Comments should be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004. The comments received will be available for inspection and copying at room 507 at the above address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at 804-398-6222.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are Ann B. Deaton, Project Officer, and Capt. M. K. Cain, Project Attorney.

Discussion of Temporary Rule

This temporary rule is being issued to evaluate one of the alternative opening schedules being considered by the Coast Guard in response to a request from the Federal Highway Administration, the Virginia and Maryland Departments of Transportation, and the District of Columbia Department of Public Works, to permanently change the regulations for the Woodrow Wilson Memorial Bridge by further restricting the hours during which the bridge may open for vessel traffic. This alternative has been selected for evaluation because it is one of several considered to strike a reasonable balance between the needs of both marine and vehicular traffic using this bridge.

This temporary rule is for evaluation purposes only and will be effective for a 60 day period beginning on July 31, 1991. The impact of this proposal on highway and marine traffic during this period will be evaluated to determine if it will result in substantial improvements in vehicular traffic flow without unreasonably restricting marine traffic. Data will be collected during the period to document the time and duration of draw openings and length of any resulting vehicle backups. If this rule results in an unforeseen disruption of traffic it may be withdrawn sooner than 60 days.

The Woodrow Wilson Bridge operated under temporary rules from August 2, 1990, through May 31, 1991, to facilitate repairs to the bridge. Repairs were completed by May 31, 1991. Normally, operation of the bridge would revert to the permanent rule in 33 CFR 117.255. However, it is apparent that these will not provide a satisfactory balance between the needs of today's vehicular traffic and the needs of vessels. Therefore, the Coast Guard issued a temporary deviation from the permanent rules under the provisions of 33 CFR 117.43. That temporary rule with request for comments was issued to evaluate one of the alternative opening schedules being considered for a permanent change in the regulations. The rule was published in the **Federal Register** (56 FR 25369) on June 4, 1991. It was effective from June 1, 1991, through July 30, 1991. Comments were accepted through July 15, 1991.

Before any permanent changes are made in the operating rule for the Woodrow Wilson Bridge, a notice of proposed rulemaking will be published and comments on all alternatives under consideration will be solicited. Comments are also invited concerning any particular problems experienced with this temporary schedule. These comments will be evaluated and modifications may be made or an alternate temporary schedule of openings may be established for the purpose of further evaluation. All comments received will also be considered along with those received in connection with the permanent operating schedule rule change being considered. Persons submitting comments should include their name and address, identify the bridge, and give reasons for any recommended changes to the temporary rules. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

Since this temporary rule serves the immediate interests of highway traffic with no expected significant adverse impacts on marine traffic, I find that good cause exists for publishing this temporary rule without publication of a notice of proposed rulemaking and for making it effective in less than 30 days.

Regulatory Evaluation

This temporary rule is considered to be not major under Executive Order 12291 and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This conclusion is based on the fact that these regulations are temporary and may be withdrawn earlier than scheduled. They are not expected to have any substantial affect on commercial navigation or on any businesses that depend on waterborne transportation for successful operations.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the U.S. Coast Guard must consider whether proposed rules will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as " small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). The Coast Guard will accept comments on the economic impact on small entities, in connection with the proposal for permanent regulations, and consider them at that time.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the temporary rule does not raise sufficient federalism implications to warrant preparation of a Federal Assessment.

Environment

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g.(5) of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is temporarily amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); 33 CFR 117.43.

2. Section 117.255 is temporarily amended by revising paragraph (a)(2) to read as follows: (This is a temporary rule and will not appear in the Code of Federal Regulations).

§ 117.255 Potomac River.

(a) * * *

(2) Need not open:

(i) Except as provided in paragraph (a)(1) of this section, for the passage of any vessel unless at least 2 hours advance notice is given to the bridgetender at (202) 727–5522.

(ii) For the passage of any vessel from 4 a.m. to 9 a.m. and from 2 p.m. to 7 p.m., on Monday through Fridays other than Federal holidays.

(iii) For the passage of any vessel from 2 p.m. to 7 p.m. on Saturdays, Sundays, and Federal holidays.

(iv) For the passage of recreational vessels from 4 a.m. to 12 midnight with the exception of one opening at 12 noon, if requested, on Mondays through Fridays other than Federal holidays.

(v) For the passage of recreational vessels from 6 a.m. to 12 midnight with the exception of one opening at 12 noon, if requested, and one opening at 9 p.m., if requested, on Saturdays, Sundays, and Federal holidays.

(vi) This temporary rule is effective from July 31, 1991, through September 28, 1991.

* * * * *

Dated: July 9, 1991.

H.B. Gehring,

Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District Acting.

[FR Doc. 91–17901 Filed 7–26–91; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Parts 127 and 154; 46 CFR Parts 25, 32, 34, 50, 52, 53, 54, 55, 56, 57, 58, 59, 71, 76, 91, 92, 95, 107, 108, 150, 153, 162, 163, 169, 170, 174, 182, 189, 190, and 193

[CGD 88–032]

RIN 2115–AD05

Incorporation and Adoption of Industry Standards

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its regulations to adopt industry standards and specifications. These changes eliminate the submission of technical information for affected components and reduce the overall cost and burden in staff hours and paperwork for both industry and the government, while providing a better method for ensuring that the affected components comply with Coast Guard regulations.

DATES: This rule is effective on August 28, 1991. The Director of the Federal Register approves as of August 28, 1991, the incorporation by reference of certain publications listed in the regulations.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen R. Irvin, Office of Marine Safety, Security and Environmental Protection, (202) 267–2206.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Mr. Stephen R. Irvin, Project Manager, and Mr. Stephen H. Barber, Project Counsel, Office of Chief Counsel.

Regulatory History

On August 17, 1990, the Coast Guard published a notice of proposed rulemaking entitled "Incorporation and Adoption of Industry Standards" in the **Federal Register** (55 FR 33824). The Coast Guard received four letters commenting on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

This rulemaking incorporates industry developed standards by reference. Since 1968 the Marine Safety Program has adopted over 250 industry consensus standards into the regulations. This action has lessened the regulatory burden on industry as well as saved many pages of regulations. This rulemaking also adopts international standards, allowing the United States to be more competitive in the world market.

The Coast Guard has taken a very pro-active stance in promoting incorporation of industry standards in the spirit of the Office of Management and Budget's Circular 119, "Federal Participation in the Development and Use of Voluntary Standards." This process has mutual benefit for both industry and government. Government costs are reduced in the areas of people intensive activities needed to review and approve equipment and the time expended by field inspectors to verify compliance with the standards. Industry no longer needs to submit plans to the government for review.

The regulations in this rulemaking will have no effect on installations and equipment already accepted by Coast Guard marine inspectors and maintained in good and serviceable condition. However, when a piece of equipment, system component, or whole system is replaced, the regulations in this rulemaking, as well as other regulations promulgated after the original date of acceptance which relates to the equipment or system, would be applicable to the replacement.

The standards being newly incorporated or updated by this rulemaking are:

Title

ABS Rules for Classing and Building Steel Vessels, 1989.

API No.

RP 14C Analysis, Design, Installation and Testing of Basic Surface Safety Systems for Offshore Production Platforms.
RP 53 Recommended Practice for Blowout Protection Equipment Systems.

ANSI No.

B16.5–88 Steel Pipe Flanges and Flanged Fittings.
B31.5–87 Refrigeration Piping.

ASME No.

Sec. I Boiler and Pressure Vessel (B&PV) Code, Power Boilers.
Sec. III B&PV Code, Division 1, Construction of Nuclear Power Plant Components.
Sec. IV B&PV Code, Heating Boilers.
Sec. VII B&PV Code, Recommended Guidelines for the Care of Power Boilers.
Sec. VIII B&PV Code, Division 1, Pressure Vessels.
Sec. IX B&PV Code, Welding and Brazing Qualifications.

ASTM No.

A–193–90 Standard Specification for Alloy-Steel and Stainless Steel Bolting Materials for High-Temperature Service.
B–122–85 Standard Specification for Copper-Nickel-Tin Alloy, Copper-Nickel-Zinc Alloy (Nickel Silver) and Copper-Nickel Alloy Plate, Sheet, Strip and Rolled Bar.
B–127–80a Standard Specification for Nickel-Copper Alloy (UNS No. 4400) Plate, Sheet and Strip.
B–152–84 Standard Specification for Copper Sheet, Strip, Plate and Rolled Bar.
F–1121–87 Standard Specification for International Shore Connections for Marine Fire Applications.
F–1122–87 Standard Specification for Quick Disconnect Couplings.
F–1196–89 Standard Specification for Sliding Watertight Door Assemblies.
F–1197–89 Standard Specification for Sliding Watertight Door Control Systems.
F–1271–89 Standard Specification for Spill Valves for Use in Marine Tank Liquid Overpressure Protection Applications.
F–1273–91 Standard Specification for Tank Vent Flame Arresters.

NFPA No.

302 Fire Protection Standard for Pleasure and Commercial Motor Craft.

SAE No.

J–1928–89 Devices Providing Backfire Flame Control for Gasoline Engines in Marine Applications.
J–1942–89 Hose and Hose Assemblies for Marine Applications.

UL No.

1111–88 Marine Carburetor Flame Arresters.

Discussion of Comments and Changes

A total of four comment letters were received. Three of the letters were supportive of the efforts by the Coast Guard to incorporate industry standards by reference. One letter suggested incorporation of a standard which is currently under development by the American Society for Testing and Materials. The Coast Guard will consider incorporation of the standard once the standard is completed.

One comment letter questioned the reasons for incorporation of two standards, API RP 14C and RP 53, into § 58.03–1 of 46 CFR and commented that the most current editions should be incorporated if the standards are needed. As the comment correctly pointed out, industrial systems on Outer Continental Shelf (OCS) facilities are the primary responsibility of the Mineral Management Service (MMS). However, MMS has no jurisdiction over U.S. flagged mobile offshore drilling units (MODU's) drilling in foreign waters. Because the U.S. Coast Guard has this regulatory responsibility, its regulations address industrial systems, such as blowout preventer equipment and high pressure mud and cement piping on U.S. flagged MODU's operating outside of our OCS. API RP 14C and RP 53 were added to part 58 in December 1978 (43 FR 56801) and were merely consolidated with all other adopted standards into the format prescribed for incorporation by reference. The Coast Guard agrees with the comment regarding incorporation of the current edition of the standards, and this change has been made.

In the Notice of Proposed Rulemaking, the addition of a new § 182.01–10, Incorporation by Reference, was proposed. The standards to be incorporated were determined not to be necessary in the regulatory text. Therefore, the proposed section has not been included in the Final Rule.

Incorporation by Reference

The Director of the Federal Register has approved the material in 33 CFR 127.003 and 154.106 and 46 CFR 25.01–3, 32.01–1, 34.01–15, 52.01–1, 53.01–1, 54.01–1, 55.01–1, 56.01–2, 57.02–1, 58.03–1, 59.01–2, 76.01–2, 92.01–2, 95.01–2, 108.101, 150.210, 153.4, 170.015, 174.007, 182.01–10, 190.01–3, and 193.01–3 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. The material is available as indicated in those sections.

Regulatory Evaluation

This rule is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that no further Regulatory Evaluation is necessary.

These regulations will result in overall savings for industry and the Coast Guard. While industry may incur some short-term retooling costs to change from approval numbers to industry standard markings, these costs should be offset in the long term by the savings realized from reduced administrative costs and industry standardization.

Small Entities

As discussed under "Regulatory Evaluation", this rule will not have a significant impact on any entity. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no new collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this rule and concluded that, under section 2.B.2. of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule revises existing regulations to clarify technical requirements, correct errors, and substitute industry standards for existing regulatory requirements. A Categorical Exclusion Determination is available in the docket for inspection or copying at the office of the Executive Secretary, Marine Safety Council, room 3406, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001.

List of Subjects

33 CFR Part 127

Harbors, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

33 CFR Part 154

Incorporation by reference, Oil pollution, Reporting and recordkeeping requirements, Vapor control.

46 CFR Part 25

Fire prevention, Incorporation by reference, Marine safety.

46 CFR Part 32

Cargo vessels, Fire prevention, Incorporation by reference, Marine safety, Navigation (water), Occupational

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Coast Guard agrees
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Proposed Rulemaking,
new § 182.01–10,
Reference, was
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egulatory text.
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Reference

the Federal Register
material in 33 CFR
6 and 46 CFR 25.01–3,
52.01–1, 53.01–1, 54.01–
57.02–1, 58.03–1,
2.01–2, 95.01–2, 108.101,
015, 174.007, 182.01–10,
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List of Subjects

33 CFR Part 127

Harbors, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

33 CFR Part 154

Incorporation by reference, Oil pollution, Reporting and recordkeeping requirements, Vapor control.

46 CFR Part 25

Fire prevention, Incorporation by reference, Marine safety.

46 CFR Part 32

Cargo vessels, Fire prevention, Incorporation by reference, Marine safety, Navigation (water), Occupational

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safety and health, Seamen, Vapor control.

46 CFR Part 34

Cargo vessels Fire prevention, Incorporation by reference, Marine safety.

46 CFR Part 50

Marine safety, Vessels.

46 CFR Parts 52, 53, and 54

Incorporation by reference, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 55

Incorporation by reference, Nuclear vessels, Reporting and recordkeeping requirements.

46 CFR Parts 56, 57, 58, and 59

Incorporation by reference, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 71

Incorporation by reference, Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 76

Fire prevention, Incorporation by reference, Marine safety.

46 CFR Part 91

Cargo vessels, Incorporation by reference, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 92

Cargo vessels, Fire prevention, Incorporation by reference, Marine safety, Occupational safety and health, Seamen.

46 CFR Part 95

Cargo vessels, Incorporation by reference, Marine safety.

46 CFR Part 107

Incorporation by reference, Marine safety, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 108

Fire prevention, Incorporation by reference, Marine safety, Occupational safety and health, Oil and gas exploration, Vessels.

46 CFR Part 150

Hazardous materials transportation, Incorporation by reference, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 153

Cargo vessels, Hazardous materials transportation, Incorporation by reference, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 162

Fire prevention, Marine safety, Oil pollution, Reporting and recordkeeping requirements.

46 CFR Part 163

Marine safety.

46 CFR Part 169

Fire prevention, Incorporation by reference, Marine safety, Reporting and recordkeeping requirements, Schools, Vessels.

46 CFR Parts 170 and 174

Incorporation by reference, Marine safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 182

Incorporation by reference, Marine safety, Passenger vessels.

46 CFR Part 189

Incorporation by reference, Marine safety, Oceanographic research vessels, Reporting and recordkeeping requirements.

46 CFR Part 190

Fire prevention, Incorporation by reference, Marine safety.

46 CFR Part 193

Incorporation by reference, Marine safety, Oceanographic research vessels.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR parts 127 and 154 and 46 CFR parts 25, 32, 34, 50, 52, 53, 54, 55, 56, 57, 58, 59, 71, 76, 91, 92, 95, 107, 108, 150, 153, 162, 163, 169, 170, 174, 182, 189, 190, and 193 as follows:

TITLE 33—[AMENDED]

PART 127—[AMENDED]

1. The authority citation for part 127 is revised to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

2. Section 127.003 is revised to read as follows:

§ 127.003 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G–MTH), 2100 Second Street SW., Washington, DC 20593–0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Society for Testing and Materials (ASTM)	
1916 Race Street, Philadelphia, PA 19103	
ASTM F–1121, International Shore Connections for Marine Fire Applications, 1987	127.611
National Fire Protection Association (NFPA)	
Batterymarch Park, Quincy, MA 02269	
NFPA 10, Portable Fire Extinguishers, 1984	127.603
NFPA 51B, Cutting and Welding Processes, 1984	127.405
NFPA 59A, Production, Storage, and Handling of Liquefied Natural Gas (LNG), 1985	127.101; 127.201; 127.405; 127.603
NFPA 70, National Electrical Code, 1987	127.107; 127.201
NFPA 251, Fire Tests of Building Construction and Materials, 1985	127.005

3. Section 127.611 is revised to read as follows:

§ 127.611 International shore connection.

The marine transfer area must have an international shore connection that is in accordance with ASTM F–1121, a 2½ inch fire hydrant, and 2½ inch fire hose of sufficient length to connect the fire hydrant to the international shore connection on the vessel.

PART 154—[AMENDED]

4. The authority citation for Part 154 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1)(c); sec. 2, E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

5. Section 154.106 is revised to read as follows:

§ 154.106 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G–MTH), 2100 Second Street SW., Washington, DC 20593–0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Petroleum Institute (API)

2101 L Street NW., Washington, DC 20037
API Standard 2000, Venting Atmospheric and Low-Pressure Storage Tanks (Nonrefrigerated and Refrigerated), Third Edition, January 1982 (reaffirmed December 1987) 154.814
API Recommended Practice 550, Manual on Installation of Refinery Instruments and Control Systems, Part II—Process Stream Analyzers, Section 1—Oxygen Analyzers, Fourth Edition, February 1985 ..... 154.824

American National Standards Institute (ANSI)

1430 Broadway, New York, NY 10018
ANSI B16.5, Steel Pipe Flanges and Flanged Fittings, 1988 ... 154.500; 154.808; 154.810
ANSI B16.24, Bronze Pipe Flanges and Flange Fittings Class 150 and 300, 1979 ..... 154.500; 154.808
ANSI B31.3, Chemical Plant and Petroleum Refinery Piping, 1987 (including B31.3a–1988, B31.3b–1988, and B31.3c–1989 addenda) ... 154.510; 154.808

American Society for Testing and Materials (ASTM)

1916 Race Street, Philadelphia, PA 19103
ASTM F–1122, Standard Specifications for Quick Disconnect Couplings, 1987 ..... 154.500

International Electrotechnical Commission (IEC)

Bureau Central de la Commission Electrotechnique Internationale, 1 rue de Varembe, Geneva, Switzerland
IEC 309–1—Plugs, Socket-Outlets and Couplers for Industrial Purposes: Part 1, General Requirements, 1979 ..... 154.812
IEC 309–2—Plugs, Socket-Outlets and Couplers for Industrial Purposes; Part 2, Dimensional Interchangeability Requirements for Pin and Contact-tube Accessories, 1981 ..... 154.812

National Electrical Manufacturers Association (NEMA)

2101 L Street NW., Washington, DC 20036
ANSI NEMA WD–6—Wiring Devices, Dimensional Requirements, 1988 ... 154.812

National Fire Protection Association (NFPA)

Batterymarch Park, Qunicy, MA 02269
NFPA 70, National Electric Code, 1987 ..... 154.735; 154.808; 154.812

Oil Companies International Marine Forum (OCIMF)

6th Floor, Portland House, Stag Place, London SWIE 5BH, England
International Safety Guide for Oil Tankers and Terminals, Third Ed., 1988 ..... 154.735; 154.810

6. Section 154.500 is amended by revising paragraph (d)(3) to read as follows:

§ 154.500 Hose assemblies.

* * * * *

(d) * * *

(3) Quick-disconnect couplings that meet ASTM F–1122.

* * * * *

TITLE 46—[AMENDED]

PART 25—[AMENDED]

7. The authority citation for part 25 continues to read as follows:

Authority: 46 U.S.C. 3306, 4104, 4302; 49 CFR 1.46.

8. Section 25.01–3 is revised to read as follows:

§ 25.01–3 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Merchant Vessel Inspection and Documentation Division (G–MVI), 2100 Second Street SW., Washington, DC 20593–0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Boat and Yacht Council (ABYC)

P.O. Box 747, 405 Headquarters Drive, suite 3, Millersville, MD 21108–0747
Standard A–1–78, Marine LPG-Liquefied Petroleum Gas Systems, December 15, 1978 ..... 25.45–2
Standard A–22–78, Marine CNG-Compressed Natural Gas Systems, December 15, 1978 ..... 25.45–2

National Fire Protection Association (NFPA)

Batterymarch Park, Quincy, MA 02260
NFPA 302, Fire Protection Standard for Pleasure and Commercial Motor Craft, 1989 ..... 25.45–2

Society of Automotive Engineers (SAE)

400 Commonwealth Drive, Warrendale, PA 15096
SAE J–1928, Devices Providing Backfire Flame Control for Gasoline Engines in Marine Applications, June 1989 ..... 25.35–1

Underwriter's Laboratories (UL)

12 Laboratory Drive, Research Triangle Park, NC 27709
UL 1111, Marine Carburetor Flame Arrestors, June 1988 ..... 25.35–1

9. Section 25.35.1 is amended by revising paragraph (c) and removing paragraphs (d) and (e) to read as follows:

§ 25.35–1 Requirements.

* * * * *

(c) Installations consisting of backfire flame arresters bearing basic Approval Nos. 162.015 or 162.041 or engine air and fuel induction systems bearing basic Approval Nos. 162.015 or 162.042 may be continued in use as long as they are serviceable and in good condition. New installations or replacements must meet applicable requirements of subpart 58.10 of this chapter.

PART 32—[AMENDED]

10. The authority citation for part 32 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

11. Existing subpart 32.01 is redesignated as subpart 32.02 and §§ 32.01–1, 32.01–5, 32.01–10, and 32.01–15 are redesignated, respectively, as §§ 32.02–1, 32.02–5, 32.02–10, and 32.02–15; new subpart 32.01, consisting of § 32.01–1, is added to read as follows:

Subpart 32.01—General

Sec.
32.01.1 Incorporation by reference.

Subpart 32.01—General

§ 32.01–1 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G–MTH), 2100 Second Street SW., Washington, DC 20593–0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Bureau of Shipping (ABS)

45 Eisenhower Drive, Paramus, NJ 07652
Rules for Building and Classing Steel Vessels, 1989... 32.15–15; 32.60–10; 32.65–40

American Society for Testing and Materials (ASTM)

1916 Race Street, Philadelphia, PA 19103
ASTM F–1273, Standard Specification for Tank Vent Flame Arresters, 1991 .... 32.20–10

12. Section 32.20–10 is revised to read as follows:

§ 32.20–10 Flame arresters—TB/ALL.

Flame arresters must be of a type and size suitable for the purpose intended and meet ASTM F–1273.

PART 34—[AMENDED]

13. The authority citation for part 34 continues to read as follows:

Authority. 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

14. The heading of subpart 34.01 is revised to read as follows:

Subpart 34.01—General

15. The heading of § 34.01–1 is revised to read as follows:

§ 34.01–1 Applicability—TB/ALL.

16. Section 34.01–15 is added to read as follows:

§ 34.01–15 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G–MTH), 2100 Second Street SW., Washington, DC 20593–0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Society for Testing and Materials (ASTM)

1916 Race Street, Philadelphia, PA 19103
ASTM F–1121, Standard Specification for International Shore Connections for Marine Fire Applications, 1987 .... 34.10–15

17. Section 34.10–15 is amended by revising paragraph (d) to read as follows:

§ 34.10–15 Piping—T/ALL.

* * * * *

(d) Tankships of 500 gross tons and over on an international voyage must be provided with at least one international shore connection which meets ASTM F–1121. Facilities must be available enabling such a connection to be used on either side of the vessel.

* * * * *

PART 50—[AMENDED]

18. The authority citation for part 50 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.45, 1.46; § 50.01–20 also issued under the authority of 44 U.S.C. 3507.

Subpart 50.15—[Removed]

19. Subpart 50.15 is removed.

PART 52—[AMENDED]

20. The authority citation for part 52 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

21. Subpart 52.01 is amended by removing the note following the subpart heading, removing § 52.01–1(a)(1), redesignating § 52.01–1 and § 52.01–2, and adding new § 52.01–1 to read as follows:

Subpart 52.01—[Amended]

§ 52.01–1 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G–MTH), 2100 Second Street SW., Washington, DC 20593–0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Society of Mechanical Engineers (ASME)

United Engineering Center, 345 East 47th Street, New York, NY 10017
Boiler and Pressure Vessel Code, Section I, Power Boilers, July 1989 with 1989 addenda...52.01–2; 52.01–5; 52.01–50; 52.01–90; 52.01–95; 52.01–100; 52.01–105; 52.01–110; 52.01–115; 52.01–120; 52.01–135; 52.01–140; 52.01–145; 52.05–1; 52.05–15; 52.05–20; 52.05–30; 52.05–45; 52.15–1; 52.15–5; 52.20–1; 52.20–17; 52.20–25; 52.25–3; 52.25–5; 52.25–7; 52.25–10

PART 53—[AMENDED]

22. The authority citation for part 53 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR 1980 Comp., p. 277; 49 CFR 1.46.

23. Subpart 53.01 is amended by removing the note following the subpart heading, removing § 53.01–1(a)(1), redesignating § 53.01–1 as § 53.01–3, and adding a new § 53.01–1 to read as follows:

53.01—[Amended]

§ 53.01–1 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G–MTH), 2100 Second Street SW., Washington, DC 20593–0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Society of Mechanical Engineers (ASME)

United Engineering Center, 345 East 47th Street, New York, NY 10017
Boiler and Pressure Vessel Code, Section IV, Heating Boilers, July 1989 with 1989 addenda.... 53.01–5; 53.01–10; 53.05–1; 53.05–3; 53.05–5; 53.10–1; 53.10–3; 53.10–10; 53.10–15; 53.12–1

PART 54—[AMENDED]

24. The authority citation for part 54 continues to read as follows:

Authority: 33 U.S.C. 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR 1980 Comp., p. 277; 49 CFR 1.46.

25. Subpart 54.01 is amended by removing Notes (1) and (2) preceding § 54.01–1, removing § 54.01–3, redesignating §§ 54.01–1 and 54.01–2 as §§ 54.01–2 and 54.01–3, respectively, and adding a new § 54.01–1 to read as follows:

Subpart 54.01—[Amended]

§ 54.01–1 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G–MTH), 2100 Second Street SW., Washington, DC 20593–0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Society of Mechanical Engineers (ASME)

United Engineering Center, 345 East 47th Street, New York, NY 10017
Boiler and Pressure Vessel Code, section VIII, Division 1, Pressure Vessels, July 1989 with 1989 addenda...54.01–2; 54.01–5; 54.01–15; 54.01–18; 54.01–25; 54.01–30; 54.01–35; 54.03–1; 54.03–5; 54.05–1; 54.10–1; 54.10–3; 54.10–5; 54.10–10; 54.10–15; 54.15–1; 54.15–5; 54.15–10; 54.15–13; 54.20–1; 54.20–3; 54.25–1; 54.25–3; 54.25–5; 54.25–8; 54.25–10; 54.25–15; 54.25–20; 54.25–25; 54.30–3; 54.30–5; 54.30–10

American Society for Testing and Materials (ASTM)

1916 Race Street, Philadelphia, PA 19103
ASTM A–20, Steel Plates for Pressure Vessels, 1980.......... 54.25–10
ASTM A–203, Pressure Vessel Plates, Alloy Steel, Nickel, 1980.......... 54.05–20
ASTM A–370, Mechanical Testing of Steel Products, 1977.......... 54.25–20
ASTM E–23, Notched Bar Impact Testing of Metallic Materials, 1980.......... 54.05–5
ASTM E–208, Conducting Drop-Weight Test to Determine Nil-Ductility Transition Temperature of Ferritic Steels, 1969.......... 54.05–5

Compressed Gas Association (CGA)

500 Fifth Avenue, New York, NY 10036
S–1.2, Safety Relief Device Standards—Cargo and Portable Tanks for Compressed Gases, 1979.......... 54.15–25
S–1.2.5.2, Flow Test of Safety Relief Valves, 1979.......... 54.15–10

Manufacturers Standardization Society (MSS)

127 Park Street, NE. Vienna, VA 22180
SP–25, Standard Marketing System for Valves, Fittings, Flanges and Unions, 1978.......... 54.01–25

Tubular Exchanger Manufacturer's Association (TEMA)

707 Westchester Avenue, White Plains, NY 10604
Heat Exchangers, Class "B", "C", or "R", 1978.......... 54.01–3

26. Section 54.15–1 is amended by revising the section heading and paragraph (a) to read as follows:

§ 54.15–1 General (modifies UG–125 through UG–136).

(a) All pressure vessels built in accordance with applicable requirements in Division 1 of section VIII of the ASME Code must be provided with protective devices as indicated in UG–125 through UG–136 except as noted otherwise in this subpart.

* * * * *

27. Section 54.15–5 is amended by revising paragraph (a) to read as follows:

§ 54.15–5 Protective devices (modifies UG–125).

(a) All pressure vessels must be provided with protective devices. The protective devices must be in accordance with the requirements of UG–125 through UG–136 of the ASME Code except as modified in this subpart.

* * * * *

PART 55—[AMENDED]

28. The authority citation for part 55 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR 1980 Comp., p. 277; 49 CFR 1.46.

29. Subpart 55.01 is amended by removing the note following the subpart heading, removing § 55.01–1(a)(1), redesignating § 55.01–1 as § 55.01–3, and adding a new § 55.01–1 to read as follows:

Subpart 55.01—[Amended]

§ 55.01–1 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G–MTH), 2100 Second Street SW., Washington, DC 20593–0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Society of Mechanical Engineers (ASME)

United Engineering Center, 345 East 47th Street, New York, NY 10017
Boiler and Pressure Vessel Code, section III, Division 1, Rules for Construction of Nuclear Power Plant Components, July 1989 with 1989 addenda. 55.01–03; 55.05–1; 55.10–1; 55.10–5; 55.10–20; 55.10–25; 55.10–30; 55.10–35; 55.10–40; 55.15–1; 55.15–3; 55.15–5; 55.15–10; 55.15–15; 55.20–1; 55.20–5; 55.20–10; 55.20–20; 55.25–1; 55.25–10

PART 56—[AMENDED]

30. The authority citation for part 56 continues to read as follows:

Authority: 33 U.S.C. 1321(j), 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5115; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

31. Paragraph (b) of § 56.01–2 is amended by removing the entry "SAE J–343–80", and adding "SAE J–1942–89" after the entry "SAE J–1475–84" to read as follows:

§ 56.01–2 Incorporation by reference.

* * * * *

(b) * * *

SAE J–1942–89, Hose and Hose Assemblies for Marine Applications.......... 56.60–25

* * * * *

32. Section 56.60–25 is amended by removing table 56.60–25(c), and revising paragraph (c) to read as follows:

§ 56.60–25 Nonmetallic materials.

* * * * *

(c) *Nonmetallic flexible hose.* (1) Nonmetallic flexible hose must be in accordance with SAE J–1942 and may be installed only in vital and nonvital fresh and salt water systems, nonvital pneumatic systems, lube oil and fuel systems, and fluid power systems.

(2) Nonmetallic flexible hose may be used in vital fresh and salt water systems at a maximum service pressure of 150 psi. Nonmetallic flexible hose may be used in lengths not exceeding 30 inches where flexibility is required subject to the limitations of paragraphs (a) (1) through (6) of this section. Nonmetallic flexible hose may be used for plastic pipe in duplicate installations

in accordance with paragraph (b) of this section.

(3) Nonmetallic flexible hose may be used for plastic pipe in nonvital fresh and salt water systems and nonvital pneumatic systems subject to the limitations of paragraphs (a) (1) through (6) of this section. Unreinforced hoses are limited to a maximum service pressure of 50 psi, reinforced hoses are limited to a maximum service pressure of 150 psi.

(4) Nonmetallic flexible hose may be used in lube oil, fuel oil and fluid power systems only where flexibility is required and in lengths not exceeding 30 inches.

(5) Nonmetallic flexible hose must be complete with factory-assembled end fittings requiring no further adjustment of the fittings on the hose, except that field attachable type fittings may be used. Hose end fittings must comply with SAE J-1475. Field attachable fittings must be installed following the manufacturer's recommended practice. If special equipment is required, such as crimping machines, it must be of the type and design specified by the manufacturer. A hydrostatic test of each hose assembly must be conducted in accordance with § 56.97-5 of this part.

* * * * *

PART 57—[AMENDED]

33. The authority citation for part 57 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

34. Subpart 57.02 is amended by redesignating §§ 57.02-1 through 57.02-4 as §§ 57.02-2 through 57.02-5, respectively, and adding a new § 57.02-1 to read as follows:

Subpart 57.02—[Amended]

§ 57.02-1 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G-MTH), 2100 Second Street SW. Washington, DC 20593-0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Society of Mechanical Engineers (ASME)

United Engineering Center, 345 East 47th Street, New York, NY 10017
Boiler and Pressure Vessel Code, section IX, Welding and Brazing Qualifications, July 1989 with 1989 addenda. 57.01-1; 57.02-2; 57.02-3; 57.02-4; 57.03-1; 57.04-1; 57.05-1; 57.06-1; 57.06-3; 57.06-4

PART 58—[AMENDED]

35. The authority citation for part 58 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

36. Subpart 58.03, consisting of § 58.03-1, is revised to read as follows:

Subpart 58.03—Incorporation of Standards

Sec.
58.03-1 Incorporation by reference.

Subpart 58.03—Incorporation of Standards

§ 58.03-1 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G-MTH), 2100 Second Street SW., Washington, DC 20593-0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Boat and Yacht Council (ABYC)

P.O. Box 747, 405 Headquarters Drive, suite 3, Millersville, MD 21108
P-1-73, Safe Installation of Exhaust Systems for Propulsion and Auxiliary Machinery, 1973 .... 58.10-5

American Bureau of Shipping (ABS)

45 Eisenhower Drive, Paramus, NJ 07653
Rules for Building and Classing Steel Vessels, 1989...58.01-5; 58.05-1; 58.10-15; 58.20-5; 58.25-5

American National Standards Institute (ANSI)

1430 Broadway, New York, NY 10018
ANSI B31.3, Chemical Plant and Petroleum Refinery Piping, 1987......58.60-7
ANSI B31.5, Refrigeration Piping, 1987 .... 58.20-5; 58.20-20
ANSI B93.5, Recommended practice for the use of Fire Resistant Fluids for Fluid Power Systems, 1979 .... 58.30-10

American Petroleum Institute (API)

1201 L Street NW., Washington, DC 20037.
API RP 14C, Analysis, Design, Installation and Testing of Basic Surface Safety Systems for Offshore Production Platforms, 1986 .... 58.60-9
API RP 53, Recommended Practice for Blowout Prevention Equipment Systems for Drilling Wells, 1984..... 58.60-7

American Society of Mechanical Engineers (ASME)

United Engineering Center, 345 East 47th Street, New York, NY 10017.
Boiler and Pressure Vessel Code.
Section I, Power Boilers, July 1989 with 1989 addenda 58.30-15
Section III, Division 1, Rules for Construction of Nuclear Power Plant Components, July 1989 with 1989 addenda 58.30-15
Section VIII, Division 1, Pressure Vessels, July 1989 with 1989 addenda 58.30-15

American Society for Testing and Materials (ASTM)

1916 Race Street, Philadelphia, PA 19103
ASTM A-193-90, Standard Specification for Alloy-Steel and Stainless Steel Bolting Materials for High-Temperature Service, 1990 .... 58.30-15
ASTM B-122-85, Standard Specification for Copper-Nickel-Tin Alloy, Copper-Nickel-Zinc Alloy (Nickel Silver) and Copper-Nickel Alloy Plate, Sheet, Strip and Rolled Bar, 1985 .... 58.50-5
ASTM B-127-80a, Standard Specification for Nickel-Copper Alloy (UNS No. 4400) Plate, Sheet and Strip, 1980 .... 58.50-5; 58.50-10
ASTM B-152-84, Standard Specification for Copper Sheet, Strip, Plate and Rolled Bar, 1984..... 58.50-5
ASTM B-209-81, Standard Specification for Aluminum and Aluminum-Alloy Sheet and Plate, 1981 .... 58.50-5; 58.50-10
ASTM D-92-78, Test Method for Flash and Fire Points by Cleveland Open Cup, 1978 .... 58.30-10
ASTM D-93-80, Test Method for Flash Point by Pensky-Martens Closed Tester, 1980......58.01-10; 58.01-15; 58.30-10
ASTM D-323-79, Test Method for Vapor Pressure of Petroleum Products (Reid Method), 1979.......... 58.16-5

Military Specifications (MIL-SPEC)

Naval Publication and Forms Center, Code 1052, 5801 Tabor Avenue, Philadelphia, PA 19120
MIL-S-901, Requirements for High Impact Shock Tests of Shipboard Machinery Equipment and Systems, 1963 .... 58.30-17

National Fire Protection Association (NFPA)

Batterymarch Park, Quincy, MA 02269

NFPA 302, Fire Protection Standard for Pleasure and Commercial Craft, 1989	58.10–5

Society of Automotive Engineers (SAE)

400 Commonwealth Drive, Warrendale, PA 15096

SAE J–1928, Devices Providing Backfire Flame Control for Gasoline Engines in Marine Applications, 1989	58.10–5

Underwriters Laboratories, Inc. (UL)

12 Laboratory Drive, Research Triangle Park, NC 27709

UL 1111, Marine Carburetor Flame Arresters, 1988	58.10–5

37. Section 58.10–5 is amended by revising paragraphs (b)(2) and (b)(3) to read as follows:

§ 58.10–5 Gasoline engine installations.

* * * * *

(b) * * *

(2) All gasoline engines must be equipped with an acceptable means of backfire flame control. Installations of backfire flame arresters bearing basic Approval Nos. 162.015 or 162.041 or engine air and fuel induction systems bearing basic Approval Nos. 162.015 or 162.042 may be continued in use as long as they are serviceable and in good condition. New installations or replacements must meet the applicable requirements of this section.

(3) The following are acceptable means of backfire flame control for gasoline engines:

(i) A backfire flame arrester complying with SAE J–1928 or UL 1111 and marked accordingly. The flame arrester must be suitably secured to the air intake with a flametight connection.

(ii) An engine air and fuel induction system which provides adequate protection from propagation of backfire flame to the atmosphere equivalent to that provided by an acceptable backfire flame arrester. A gasoline engine utilizing an air and fuel induction system, and operated without an approved backfire flame arrester, must either include a reed valve assembly or be installed in accordance with SAE J–1928.

(iii) An arrangement of the carburetor or engine air induction system that will disperse any flames caused by engine backfire. The flames must be dispersed to the atmosphere outside the vessel in such a manner that the flames will not endanger the vessel, persons, on board, or nearby vessels and structures. Flame dispersion may be achieved by attachments to the carburetor or location of the engine air induction system. All attachments must be of metallic construction with flametight connections and firmly secured to withstand vibration, shock, and engine backfire. Such installations do not require formal approval and labeling but must comply with this subpart.

* * * * *

38. Section 58.60–7 is revised to read as follows:

§ 58.60–7 Industrial systems: piping.

The piping for industrial systems under this subpart must meet ANSI B31.3, except that blow out preventor control systems must also meet API RP 53.

39. Section 58.60–9 is revised to read as follows:

§ 58.60–9. Industrial systems: design.

Each system under this subpart must be designed and analyzed in accordance with the principles of API RP 14C.

PART 59—[AMENDED]

40. The authority citation for part 59 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR 1980 Comp., p. 277; 49 CFR 1.46.

41. Section 59.01–2 is added to read as follows:

§ 59.01–2 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G–MTH), 2100 Second Street SW., Washington, DC 20593–0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Society of Mechanical Engineers (ASME)

United Engineering Center, 345 East 47th Street, New York, NY 10017

Boiler and Pressure Vessel (B&PV) Code Section I, Power Boilers, July 1989 with 1989 addenda	59.10–5
Boiler and Pressure Vessel Code Section VII, Recommended Guidelines for the Care of Power Boilers, July 1989 with 1989 addenda	59.01–5
Boiler and Pressure Vessel Code Section VIII, Division 1, Pressure Vessels July 1989 with 1989 addenda	59.10–5; 59.10–10
Boiler and Pressure Vessel Code Section IX, Welding and Brazing Qualifications, July 1989 with 1989 addenda	59.10–5

PART 71—[AMENDED]

42. The authority citation for part 71 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

43. Section 71.65–5 is amended by revising paragraph (b)(11) to read as follows:

§ 71.65–5 Plans and specifications required for new construction.

* * * * *

(b) Hull Structure * * *

(11) * Details of Hinged Subdivision Watertight Doors and Operating Gear.[1]

* * * * *

PART 76—[AMENDED]

44. The authority citation for part 76 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

45. Section 76.01–2 is added to read as follows:

§ 76.01–2 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G–MTH), 2100 Second Street SW., Washington, DC 20593–0001 and is available from the sources indicated in paragraph (b) of this section.

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[1] The Asterisk (*) indicates items that are approved by the American Bureau of Shipping for vessels classed by it. Items approved the American Bureau of Shipping are generally accepted as satisfactory unless the law or Coast Guard regulations contain requirements that are not covered by the American Bureau of Shipping.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Society for Testing and Materials (ASTM)

1916 Race Street, Philadelphia, PA 19103

ASTM F-1121, International Shore Connections for Marine Fire Applications, 1987	76.10-10

46. Section 76.10-10 is amended by revising paragraph (c) to read as follows:

§ 76.10-10 Fire hydrants and hose.

* * * * *

(c) On vessels of 500 gross tons and over there must be at least one shore connection to the fire main available to each side of the vessel in an accessible location. Suitable cut-out valves and check valves must be provided. Suitable adaptors also must be provided for furnishing the vessel's shore connections with couplings mating those on the shore fire lines. Vessels of 500 gross tons and over on an international voyage, must be provided with at least one international shore connection complying with ASTM F-1121. Facilities must be available enabling an international shore connection to be used on either side of the vessel.

* * * * *

PART 91—[AMENDED]

47. The authority citation for part 91 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp., p. 793; 49 CFR 1.46.

48. Section 91.55-5 is amended by revising paragraph (b)(11) to read as follows:

§ 91.55-5 Plans and specifications required for new construction.

* * * * *

(b) Hull Structure * * *

(11) *Details of Hinged Subdivision Watertight Doors and Operating Gear.[1]

* * * * *

PART 92—[AMENDED]

49. The authority citation for part 92 continues to read as follows:

Authority: 46 U.S.C. 3306, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

50. Section 92.01-2 is added to read as follows:

§ 92.01-2 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish a notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G-MTH), 2100 Second Street SW., Washington, DC 20593-0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Society for Testing and Materials (ASTM)

1916 Race Street, Philadelphia, PA 19103

ASTM F-1196, Sliding Watertight Door Assemblies, 1989	92.01-13
ASTM F-1197, Sliding Watertight Door Control Systems, 1989	92.01-13

51. Section 92.01-13 is revised to read as follows:

§ 92.01-13 Sliding watertight door assemblies.

(a) Sliding watertight door assemblies, where fitted, must—

(1) Be designed, constructed, built, tested, and marked in accordance with ASTM F-1196;

(2) Have controls in accordance with ASTM F-1197; and

(3) If installed in a subdivision bulkhead, meet Supplemental Requirements S1 and S3 of ASTM F-1196, unless the watertight door assemblies are built in accordance with plans previously approved by the Coast Guard, in which case, only Supplemental Requirements Nos. S1 and S3.1.4 of ASTM F-1196 must be met. In either case, the operating systems must have power supplies, power sources, installation tests and inspection, and additional remote operating consoles in accordance with Supplemental Requirements Nos. S1 through S4 of ASTM F-1197.

(b) Installation of watertight door assemblies must be in accordance with the following.

(1) Before a sliding watertight door assembly is installed in a vessel, the bulkhead in the vicinity of the door opening must be stiffened. Such bulkhead stiffeners, or deck reinforcement where flush deck door openings are desired, must not be less than 6 inches nor more than 12 inches from the door frame so that an unstiffened diaphragm of bulkhead plating 6 to 12 inches wide is provided completely around the door frame. Where such limits cannot be maintained, alternative installations may be submitted for consideration by the Commanding Officer, Marine Safety Center, 400 7th Street SW., Washington, DC 20590-0001. In determining the scantlings of these bulkhead stiffeners, the door frame should not be considered as contributing to the strength of the bulkhead. Provision must also be made to adequately support the thrust bearings and other equipment that may be mounted on the bulkhead or deck.

(2) Sliding watertight door frames may be either bolted or welded watertight to the bulkhead.

(i) If bolted, a suitable thin heat and fire resistant gasket or suitable compound must be used between the bulkhead and the frame for watertightness. The bulkhead plating must be worked to a plane surface in way of the frame when mounting.

(ii) If welded, caution must be exercised in the welding process so that the door frame is not distorted.

PART 95—[AMENDED]

52. The authority citation for part 95 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

53. Section 95.01-2 is added to read as follows:

§ 95.01-2 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G-MTH), 2100 Second Street SW., Washington, DC 20593-0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Society for Testing and Materials (ASTM)

1916 Race Street, Philadelphia, PA 19103
ASTM F–1121, International Shore Connections for Marine Fire Applications, 1987.............................95.10–10

54. Section 95.10–10 is amended by revising paragraph (c) to read as follows:

§ 95.10–10 Fire hydrants and hose.

* * * * *

(c) On vessels of 500 gross tons and over there must be at least one shore connection to the fire main available to each side of the vessel in an accessible location. Suitable cut-out valves and check valves must be provided. Suitable adapters also must be provided for furnishing the vessel's shore connections with couplings mating those on the shore fire lines. Vessels of 500 gross tons and over on an international voyage, must be provided with at least one international shore connection complying with ASTM F–1121. Facilities must be available enabling an international connection to be used on either side of the vessel.

* * * * *

PART 107—[AMENDED]

55. The authority citation for part 107 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 5115; 49 CFR 1.45, 1.46; § 107.05 also issued under the authority of 44 U.S.C. 3507.

56. Section 107.305 is amended by revising paragraph (m) to read as follows:

§ 107.305 Plans and information.

* * * * *

(b) Hull structure * * *

(m) Details of hinged subdivision watertight doors and operating gear.[1]

* * * * *

PART 108—[AMENDED]

57. The authority citation for part 108 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3102, 3306, 5115; 49 CFR 1.46.

58. Section 108.101 is revised to read as follows:

§ 108.101 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G–MTH), 2100 Second Street SW., Washington, DC 20593–0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Society for Testing and Materials (ASTM)

1916 Race Street, Philadelphia, PA 19103
ASTM F–1014, Standard Specification for Flashlights on Vessels, 1986.......108.497
ASTM F–1121, International Shore Connections for Marine Fire Applications, 1987.............................108.427

Note: All other documents referenced in this part are still in effect.

59. Section 108.427 is amended by revising paragraph (a) to read as follows:

§ 108.427 International shore connection.

* * * * *

(a) At least one international shore connection that meets ASTM F–1121.

* * * * *

PART 150—[AMENDED]

60. The authority citation for part 150 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.45, 1.46; § 150.105 also issued under the authority of 44 U.S.C. 3507.

61. Section 150.210 is revised to read as follows:

§ 150.210 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G–MTH), 2100 Second Street SW., Washington, DC 20593–0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American National Standards Institute (ANSI)

1430 Broadway, New York, NY 10018
ANSI B16.5, Pipe Flanges and Flanged Fittings, 1988.......................................150.480
ANSI B16.24, Bronze Pipe Flanges and Flanged Fittings, 1979........................150.480
ANSI B16.31, Non-Ferrous Pipe Flanges, 1971.. 150.480
ANSI Z87.1, Practice for Occupational and Educational Eye and Face Protection, 1979...................150.395; 150.457
ANSI Z88.2, Practices for Respiratory Protection, 1980.....150.395; 150.457; 150.460

American Society for Testing and Materials (ASTM)

1916 Race Street, Philadelphia, PA 19103
ASTM F–1122, Standard Specification for Quick Disconnect Couplings, 1987...150.480

National Fire Protection Association (NFPA)

Batterymarch Park, Quincy, MA 02269
NFPA 306, Control of Gas Hazards on Vessels, 1984.. 150.460

62. Section 150.480 is amended by revising paragraphs (a)(2) and (a)(3) to read as follows:

§ 150.480 Standards for marking of cargo hose carried onboard.

(a) * * *

(2) Flanges that meet ANSI B16.5, B16.24, or B16.31; or

(3) Class 1 quick-disconnect couplings that meet ASTM F–1122 and are marked "Cl–1."

* * * * *

PART 153—[AMENDED]

63. The authority citation for part 153 continues to read as follows:

Authority: 46 U.S.C. 3703; 49 CFR 1.46. Section 153.40 issued under 49 U.S.C. 1804; §§ 153.470 through 153.491, 153.1100 through 153.1132, and 153.1600 through 153.1608 also issued under 33 U.S.C. 1903(b).

64. Section 153.4 is added to read as follows:

§ 153.4 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G–MTH), 2100 Second Street SW., Washington, DC 20593–0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

e Federal Register,
, Washington, DC, and
Guard, Marine
zardous Materials
), 2100 Second Street
DC 20593–0001 and is
sources indicated in
his section.
. approved for
eference in this part
ffected are:

r Testing and Materials

iladelphia, PA 19103
lard Specification
n Vessels, 1986.......108.497
national Shore
Marine Fire
87.......108.427
cuments referenced in
ffect.

27 is amended by
(a) to read as

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international shore
eets ASTM F–1121.

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y citation for part 150
as follows:

C. 3306, 3703; 49 CFR 1.45,
ssued under the authority

10 is revised to read

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rial is incorporated by
part with the
rector of the Federal
ance with 5 U.S.C.
any edition other than
aragraph (b) of this
Guard must publish
the **Federal Register**
erial available to the
ed material is on file
Federal Register,
Washington, DC, and
uard, Marine
ardous Materials
, 2100 Second Street
DC 20593–0001 and is
sources indicated in
is section.
approved for
eference in this part
ffected are:

tandards Institute

York, NY 10018
nges and Flanged
.......150.480

ANSI B16.24, Bronze Pipe Flanges and Flanged Fittings, 1979	150.480
ANSI B16.31, Non-Ferrous Pipe Flanges, 1971	150.480
ANSI Z87.1, Practice for Occupational and Educational Eye and Face Protection, 1979	150.395; 150.457
ANSI Z88.2, Practices for Respiratory Protection, 1980	150.395; 150.457; 150.460

American Society for Testing and Materials (ASTM)

1916 Race Street, Philadelphia, PA 19103

ASTM F–1122, Standard Specification for Quick Disconnect Couplings, 1987	150.480

National Fire Protection Association (NFPA)

Batterymarch Park, Quincy, MA 02269

NFPA 306, Control of Gas Hazards on Vessels, 1984	150.460

62.Section 150.480 is amended by revising paragraphs (a)(2) and (a)(3) to read as follows:

§ 150.480 Standards for marking of cargo hose carried onboard.

(a) * * *

(2) Flanges that meet ANSI B16.5, B16.24, or B16.31; or

(3) Class 1 quick-disconnect couplings that meet ASTM F–1122 and are marked "Cl–1."

* * * * *

PART 153—[AMENDED]

63. The authority citation for part 153 continues to read as follows:

Authority: 46 U.S.C. 3703; 49 CFR 1.46. Section 153.40 issued under 49 U.S.C. 1804; §§ 153.470 through 153.491, 153.1100 through 153.1132, and 153.1600 through 153.1608 also issued under 33 U.S.C. 1903(b).

64. Section 153.4 is added to read as follows:

§ 153.4 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register. 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G–MTH), 2100 Second Street SW., Washington, DC 20593–0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American National Standards Institute (ANSI)

1430 Broadway, New York, NY 10018

ANSI B16.5, Pipe Flanges and Flanged Fittings, 1988	153.940
ANSI B16.24, Bronze Pipe Flanges and Flanged Fittings, 1979	153.940
ANSI B16.31, Non-Ferrous Flanges, 1971	153.940

American Society for Testing and Materials (ASTM)

1916 Race Street, Philadelphia, PA 19103

ASTM F–1122, Standard Specification for Quick Disconnect Couplings, 1987	153.940
ASTM F–1271, Standard Specification for Spill Valves for use in Marine Tank Liquid Overpressure Protection Applications, 1989	153.365

65. Section 153.365 is amended by revising paragraph (b)(1) to read as follows:

§ 153.365 Liquid overpressurization protection.

* * * * *

(b) * * *

(1) Meets ASTM F–1271; and

* * * * *

66. Section 153.940 is amended by revising paragraphs (a)(2) and (a)(3) to read as follows:

§ 153.940 Standards for marking of cargo hose.

* * *

(a) * * *

(2) Flanges that meet ANSI B16.5, B16.24, or B16.31; or

(3) Class 1 quick-disconnect couplings that comply with ASTM F–1122, and are marked "Cl–1."

* * * * *

PART 162—[AMENDED]

67. The authority citation for part 162 is revised to read as follows:

Authority: 33 U.S.C. 1321(j) 1903; 46 U.S.C. 3306, 3703, 4104, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

Subparts 162.016, 162.034, 162.041, 162.042, and 162.043 [Removed]

68. Part 162 is amended by removing and reserving subparts 162.016, 162.034, 162.041, 162.042, and 162.043.

69. The heading of subpart 162.017 is revised to read as follows:

Subpart 162.017—Valves, Pressure-Vacuum Relief, for Tank Vessels

70. Section 162.017–2 is revised to read as follows:

§ 162.017–2 Type.

This specification covers the design and construction of pressure-vacuum relief valves intended for use in venting systems on all tank vessels transporting inflammable or combustible liquids.

71. Section 162.017–3 is amended by revising paragraph (b) to read as follows:

§ 162.017–3 Materials, construction, and workmanship.

* * * * *

(b) Bodies of pressure-vacuum relief valves must be made of bronze or such corrosion-resistant material as may be approved by the Commandant (G–MTH).

* * * * *

72. Section 162.017–4 is revised to read as follows:

§ 162.017–4 Inspections and testing.

Pressure-vacuum relief valves may be inspected and tested at the plant of the manufacturer. An inspector may conduct such tests and examinations as may be necessary to determine compliance with this specification.

73. Section 162.017–6 is revised to read as follows:

§ 162.017–6 Procedure for approval.

(a) *General.* Pressure-vacuum relief valves intended for use on tank vessels must be approved for such use by the Commandant (G–MTH), U.S. Coast Guard, Washington, DC 20593–0001.

(b) *Drawings and specifications.* Manufacturers desiring approval of a new design or type of pressure-vacuum relief valve shall submit drawings in quadruplicate showing the design of the valve, the sizes for which approval is requested, method of operation, thickness and material specification of component parts, diameter of seat opening and lift of discs, mesh and size of wire of flame screens.

(c) *Pre-approval tests.* Before approval is granted, the manufacturer shall have tests conducted, or submit evidence that such tests have been conducted, by the Underwriters' Laboratories, the Factory Mutual Laboratories, or by a properly supervised and inspected test laboratory acceptable to the Commandant (G–MTH), relative to determining the lift, relieving pressure and vacuum, and flow capacity of a representative sample of the pressure-vacuum relief valve in each size for which approval is desired. Test reports including flow capacity curves must be submitted to the Commandant (G–MTH).

PART 163—[AMENDED]

74. The authority citation for part 163 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

Subpart 163.001 [Removed]

75. Part 163 is amended by removing and reserving Subpart 163.001.

PART 169—[AMENDED]

76. The authority citation for part 169 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 5115, 6101; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.45, 146; § 169.117 also issued under the authority of 44 U.S.C. 3507.

77. Section 169.611 is amended by revising paragraph (c) and removing paragraph (d) to read as follows:

§ 169.611 Carburetors.

* * * * *

(c) All gasoline engines must be equipped with an acceptable means of backfire flame control. Installations of backfire flame arresters bearing basic Approval Nos. 162.015 or 162.041 or engine air and fuel induction systems bearing basic Approval Nos. 162.015 or 165.042 may be continued in use as long as they are serviceable and in good condition. New installations or replacements must meet the applicable requirements of part 58, subpart 58.10 (Internal Combustion Engine Installations) of this chapter.

PART 170—[AMENDED]

78. The authority citation for part 170 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

79. Section 170.015 is revised to read as follows:

§ 170.015 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G–MTH), 2100 Second Street SW., Washington, DC 20593–0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Society for Testing and Materials (ASTM)

1916 Race Street, Philadelphia, PA 19103
ASTM F–1196, Sliding Watertight Door Assemblies, 1989 .... 170.270
ASTM F–1197, Sliding Watertight Door Control Systems, 1989 .... 170.270

Military Specification

Naval Publications and Forms Center, Code 1052, 5801 Tabor Avenue, Philadelphia, PA 19120
MIL–P–21929B, Plastic Material, Cellular Polyurethane, Foam in Place, Rigid, 1970 .... 170.245

International Maritime Organization (IMO)

Publications Section, International Maritime Organization, 4 Albert Embankment, London SE1 7SR
Resolution A.265 (VIII) 170.135

80. Section 170.270 is amended by revising paragraph (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) to read as follows:

§ 170.270 Door design, operation, installation, and testing.

* * * * *

(c) Each Class 2 and Class 3 door must—

(1) Be designed, constructed, tested, and marked in accordance with ASTM F–1196;

(2) Have controls in accordance with ASTM F–1197; and

(3) If installed in a subdivision bulkhead, meet Supplemental Requirements Nos. S1 and S3 of ASTM F–1196, unless the watertight doors are built in accordance with plans previously approved by the Coast Guard, in which case, only Supplemental Requirements Nos. S1 and S3.1.4 of ASTM F–1196 must be met. In either case, control systems for watertight doors must have power supplies, power sources, installation tests and inspection, and additional remote operating consoles in accordance with Supplemental Requirements Nos. S1 through S4 of ASTM F–1197.

(d) Installations of sliding watertight door assemblies must be in accordance with the following:

(1) Before a sliding watertight door assembly is installed in a vessel, the bulkhead in the vicinity of the door opening must be stiffened. Such bulkhead stiffeners, or deck reinforcement where flush deck door openings are desired, must not be less than 6 inches nor more than 12 inches from the door frame so that an unstiffened diaphragm of bulkhead plating 6 to 12 inches wide is provided completely around the door frame. Where such limits cannot be maintained, alternative installations will be considered by the Marine Safety Center. In determining the scantlings of these bulkhead stiffeners, the door frame should not be considered as contributing to the strength of the bulkhead. Provision must also be made to adequately support the thrust bearings and other equipment that may be mounted on the bulkhead or deck.

(2) Sliding watertight door frames must be either bolted or welded watertight to the bulkhead.

(i) If bolted, a suitable thin heat and fire resistant gasket or suitable compound must be used between the bulkhead and the frame for watertightness. The bulkhead plating must be worked to a plane surface in way of the frame when mounting.

(ii) If welded, caution must be exercised in the welding process so that the door frame is not distorted.

* * * * *

PART 174—[AMENDED]

81. The authority citation for part 174 continues to read as follows:

Authority: 42 U.S.C. 9118, 9119, 9153; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

82. Section 174.007 is added to read as follows:

§ 174.007 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G–MTH), 2100 Second Street SW., Washington, DC 20593–0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Society for Testing and Materials (ASTM)

1916 Race Street, Philadelphia, PA 19103
ASTM F–1196, Sliding Watertight Door Assemblies, 1989 .... 174.100
ASTM F–1197, Sliding Watertight Door Control Systems, 1989 .... 174.100

83. Section 174.100 is amended by revising paragraph (e) and adding paragraph (f) to read as follows:

§ 174.100 Appliances for watertight and weathertight integrity.

* * * * *

(e) If a unit is equipped with sliding watertight doors, each sliding watertight door must—

(1) Be designed, constructed, tested, and marked in accordance with ASTM F–1196;

(2) Have controls in accordance with ASTM F–1197, except that a remote manual means of closure, as specified in paragraphs 7.1 and 7.5.1, and a remote mechanical indicator, as specified in paragraph 7.5.2, will not be required; and

(3) If installed in a subdivision bulkhead, meet Supplemental Requirements Nos. S1 and S3 of ASTM F–1196, unless the watertight doors are built in accordance with plans previously approved by the Coast Guard, in which case, only Supplemental Requirements Nos. S1 and S3.1.4 of ASTM F–1196 must be met. In either case, control systems for watertight doors must have power supplies, power sources, installation tests and inspection, and additional remote operating consoles in accordance with Supplemental Requirements Nos. S1 through S4 of ASTM F–1197.

(f) Installations of sliding watertight door assemblies must be in accordance with the following:

(1) Before a sliding watertight door assembly is installed in a vessel, the bulkhead in the vicinity of the door opening must be stiffened. Such bulkhead stiffeners, or deck reinforcement where flush deck door openings are desired, must not be less than 6 inches nor more than 12 inches from the door frame so that an unstiffened diaphragm of bulkhead plating 6 to 12 inches wide is provided completely around the door frame. Where such limits cannot be maintained, alternative installations will be considered by the Marine Safety Center. In determining the scantlings of these bulkhead stiffeners, the door frame should not be considered as contributing to the strength of the bulkhead. Provision must also be made to adequately support the thrust bearings and other equipment that may be mounted on the bulkhead or deck.

(2) Sliding watertight door frames must be either bolted or welded watertight to the bulkhead.

(i) If bolted, a suitable thin heat and fire resistant gasket or suitable compound must be used between the bulkhead and the frame for watertightness. The bulkhead plating

§ 174.100 Appliances for watertight and weathertight integrity.

* * * * *

(e) If a unit is equipped with sliding watertight doors, each sliding watertight door must—

(1) Be designed, constructed, tested, and marked in accordance with ASTM F-1196;

(2) Have controls in accordance with ASTM F-1197, except that a remote manual means of closure, as specified in paragraphs 7.1 and 7.5.1, and a remote mechanical indicator, as specified in paragraph 7.5.2, will not be required; and

(3) If installed in a subdivision bulkhead, meet Supplemental Requirements Nos. S1 and S3 of ASTM F-1196, unless the watertight doors are built in accordance with plans previously approved by the Coast Guard, in which case, only Supplemental Requirements Nos. S1 and S3.1.4 of ASTM F-1196 must be met. In either case, control systems for watertight doors must have power supplies, power sources, installation tests and inspection, and additional remote operating consoles in accordance with Supplemental Requirements Nos. S1 through S4 of ASTM F-1197.

(f) Installations of sliding watertight door assemblies must be in accordance with the following:

(1) Before a sliding watertight door assembly is installed in a vessel, the bulkhead in the vicinity of the door opening must be stiffened. Such bulkhead stiffeners, or deck reinforcement where flush deck door openings are desired, must not be less than 6 inches nor more than 12 inches from the door frame so that an unstiffened diaphragm of bulkhead plating 6 to 12 inches wide is provided completely around the door frame. Where such limits cannot be maintained, alternative installations will be considered by the Marine Safety Center. In determining the scantlings of these bulkhead stiffeners, the door frame should not be considered as contributing to the strength of the bulkhead. Provision must also be made to adequately support the thrust bearings and other equipment that may be mounted on the bulkhead or deck.

(2) Sliding watertight door frames must be either bolted or welded watertight to the bulkhead.

(i) If bolted, a suitable thin heat and fire resistant gasket or suitable compound must be used between the bulkhead and the frame for watertightness. The bulkhead plating

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shall be worked to a plane surface in way of the frame when mounting.

(ii) If welded, caution must be exercised in the welding process so that the door frame is not distorted.

PART 182—[AMENDED]

84. The authority citation for part 182 continues to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

85. Section 182.15-7 is amended by revising paragraph (b) and removing paragraph (c) to read as follows:

§ 182.15-7 Carburetors.

* * * * *

(b) All gasoline engines must be equipped with an acceptable means of backfire flame control. Installations of backfire flame arresters bearing basic Approval Nos. 162.015 or 162.041 or engine air and fuel induction system bearing basic Approval Nos. 162.015 or 162.042 may be continued in use as long as they are servicable and in good condition. New installations or replacements must meet the applicable requirements of subpart 58.10 of subchapter F (Marine Engineering) of this chapter.

PART 189—[AMENDED]

86. The authority citation for part 189 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3306; E.O 12234, 45 FR 58801, 3 CFR 1980 Comp., p. 277; E.O. 11735, 38 FR 31243, 3 CFR, 1971-1975 Comp., p. 793; 49 CFR 1.46.

87. Section 189.55-5 is amended by revising paragraph (b)(11) to read as follows:

§ 189.55-5 Plans and specifications required for new construction.

* * * * *

(b) Hull structure * * *

(11) *Details of hinged subdivision watertight doors and operating gear.

* * * * *

PART 190—[AMENDED]

88. The authority citation for part 190 continues to read as follows:

Authority: 46 U.S.C. 2213, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

The asterisk (*) indicates items which may require approval by the American Bureau of Shipping for vessels classed by that society.

89. Section 190.01-3 is added to read as follows:

§ 190.01-3 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G-MTH), 2100 Second Street SW., Washington, DC 20593-0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Society for Testing and Materials (ASTM)

1916 Race Street, Philadelphia, PA 19103
ASTM F-1196, Sliding Watertight Door Assemblies, 1989 .... 190.01-13
ASTM F-1197, Sliding Watertight Door Assemblies, 1989 .... 189.01-13

88. Section 190.01-13 is revised to read as follows:

§ 190.01-13 Sliding watertight doors.

(a) Sliding watertight door assemblies, where fitted, must—

(1) Be designed, constructed, tested, and marked in accordance with ASTM F-1196;

(2) Have controls in accordance with ASTM F-1197; and

(3) If installed in a subdivision bulkhead, meet Supplemental Requirements Nos. S1 and S3 of ASTM F-1196, unless the watertight door assemblies are built in accordance with plans previously approved by the Coast Guard, in which case, only Supplemental Requirement Nos. S1 and S3.1.4 of ASTM F-1196 must be met. In either case, control systems for watertight door assemblies must have power supplies, power sources, installation tests and inspection, and additional remote operating consoles in accordance with Supplemental Requirement Nos. S1 through S4 of ASTM F-1197.

(b) Installations of sliding watertight door assemblies must be in accordance with the following:

Before a sliding watertight door assembly is installed in a vessel, the bulkhead in the vicinity of the door opening must be stiffened. Such bulkhead stiffeners, or deck reinforcement where flush deck door openings are desired, must not be less than 6 inches nor more than 12 inches from the door frame so that an unstiffened diaphragm of bulkhead plating 6 to 12 inches wide is provided completely around the door frame. Where such limits cannot be maintained, alternative installations will be considered by the Marine Safety Center. In determining the scantlings of these bulkhead stiffeners, the door frame should not be considered as contributing to the strength of the bulkhead. Provision must also be made to adequately support the thrust bearings and other equipment that may be mounted on the bulkhead or deck.

(2) Sliding watertight door frames must be either bolted or welded watertight to the bulkhead.

(i) If bolted, a suitable thin heat and fire resistant gasket or suitable compound must be used between the bulkhead and the frame for watertightness. The bulkhead plating must be worked to a plane surface in way of the frame when mounting.

(ii) If welded, caution must be exercised in the welding process so that the door frame is not distorted.

PART 193—[AMENDED]

91. The authority citation for part 193 continues to read as follows:

Authority: 46 U.S.C. 2213, 3102, 3306; E.O. 12234, 34 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

92. Section 193.01-3 is added to read follows:

§ 193.01-3 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G-MTH), 2100 Second Street SW., Washington, DC 20593-0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Society for Testing and Materials

1916 Race Street, Philadelphia, PA 19103
ASTM F-1121, International Shore Connections for Marine Fire Applications, 1987 .... 193.10-10

93. Section 193.10-10 is amended by revising paragraph (c) to read as follows:

§ 193.10–Fire hydrants and hose.

* * * * *

(c) On vessels of 500 gross tons and over there must be at least one shore connection to the fire main available to each side of the vessel in an accessible location. Suitable cutout valves and check valves must be provided for furnishing the vessel's shore connections with couplings mating those on the shore fire lines. Vessels of 500 gross tons and over on an international voyage, must be provided with at least one international shore connection complying with ASTM F–1121. Facilities must be available enabling an international shore connection to be used on either side of the vessel.

* * * * *

Dated: February 8, 1991.

J.D. Sipes,

Rear Adminial, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 91–17642 Filed 7–26–91; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

33 CFR Part 165

[CGD1 91–106]

Safety Zone Regulations: Echo Bay, New Rochelle, NY

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in Echo Bay, New Rochelle, New York. This zone is needed to protect the maritime community from the possible dangers and hazards to navigation associated with a fireworks display. Entry into this zone, or movement within this zone, is prohibited unless authorized by the Captain of the Port, New York.

EFFECTIVE DATE: This regulation becomes effective at 9 p.m. local time 27 July 1991. It terminates at 10 p.m. local time 27 July 1991.

FOR FURTHER INFORMATION CONTACT: MST1 S. Whinham of Captain of the Port, New York (212) 668–7933.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to any potential hazards.

Drafting Information

The drafters of this regulation are LTJG C. W. Jennings, project officer, Captain of the Port New York, and LT John B. Gately, project attorney, First Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation result from the possible dangers and hazards to navigation associated with a fireworks display. This regulation is effective from 9 p.m., 27 July 1991 to 10 p.m., 27 July 1991. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water) Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 33 CFR 160.5.

2. A new § 165.T1106 is added to read as follows:

§ 165.T1106 Safety Zone: Echo Bay, New Rochelle, New York.

(a) *Location.* The following area has been declared a Safety Zone: All waters within a 300 hundred yard radius of the fireworks barge located in Echo Bay, New Rochelle, New York.

(b) *Effective date.* This regulation becomes effective at 9 p.m. local time 27 July 1991. It terminates at 10 p.m. local time 27 July 1991.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part entry into or movement within this zone is prohibited unless authorized by the Captain of the Port.

R.M. Larrabee,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 91–17904 Filed 7–26–91; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD1 91–107]

Safety Zone Regulations: Upper Bay, New York and New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in the Upper Bay, New York and New Jersey. This zone is needed to protect the maritime community from the possible dangers and hazards to navigation associated with a fireworks display. Entry into this zone, or movement within this zone, is prohibited unless authorized by the Captain of the Port, New York.

EFFECTIVE DATE: This regulation becomes effective at 9 p.m. local time 8 August 1991. It terminates at 10 p.m. local time 8 August 1991.

FOR FURTHER INFORMATION CONTACT: MST1 S. Whinham of Captain of the Port, New York (212) 668–7934.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to any potential hazards.

Drafting Information

The drafters of this regulation are LTJG C.W. Jennings, project officer, Captain of the Port of New York, and LT John B. Gately, project attorney, first Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation result from the possible dangers and hazards to navigation associated with a fireworks display. This regulation is effective from 9 p.m., 8 August 1991 to 10 p.m., 8 August 1991. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water) Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 33 CFR 160.5.

2. A new § 165.T1107 is added to read as follows:

§ 165.T1107 Safety Zone: Upper Bay, New York and New Jersey.

(a) *Location.* The following area has been declared a Safety Zone: All waters within a 300 yard radius of the fireworks barge located at 40° 41′ 17″ North and 74° 02′26″ west in Federal Anchorage 20C east of Liberty Island.

(b) *Effective date.* This regulation becomes effective at 9 p.m. local time 8 August 1991. It terminates at 10 p.m. local time 8 August 1991.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part entry into or movement within this zone is prohibited unless authorized by the Captain of the Port.

Dated: 09 July 1991.

R.M. Larrabee,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 91-17902 Filed 7-26-91; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[CGD1 91-110]

Safety Zone Regulations: Upper Bay, New York and New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in the Upper Bay, New York and New Jersey. This zone is needed to protect the maritime community from the possible dangers and hazards to navigation associated with a fireworks display. Entry into this zone, or movement within this zone, is prohibited unless authorized by the Captain of the Port, New York.

EFFECTIVE DATES: This regulation becomes effective at 9 p.m. local time 7 August 1991. It terminates at 10 p.m. local time 7 August 1991.

FOR FURTHER INFORMATION CONTACT: MST1 S. Whinham of Captain of the Port, New York (212) 668-7934.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to any potential hazards.

Drafting Information

The drafters of this regulation are LTJG C.W. Jennings, project officer, Captain of the Port New York, and LT John B. Gately, project attorney, First Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation result from the possible dangers and hazards to navigation associated with a fireworks display. This regulation is effective from 9 p.m., 7 August 1991 to 10 p.m., 7 August 1991. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water) Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 33 CFR 160.5.

2. A new § 165.T1110 is added to read as follows:

§ 165.T1110 Safety Zone: Upper Bay, New York and New Jersey.

(a) *Location.* The following area has been declared a Safety Zone: All waters within a 300 yard radius of the fireworks barge located at 40° 41′17″ North and 74° 02′26″ West in Federal Anchorage 20C east of Liberty Island.

(b) *Effective date.* This regulation becomes effective at 9 p.m. local time 7 August 1991. It terminates at 10 p.m. local time 7 August 1991.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part entry into or movement within this zone is prohibited unless authorized by the Captain of the Port.

Dated: July 9, 1991.

R. M. Larrabee,

Captain, U. S. Coast Guard Captain of the Port, New York.

[FR Doc. 91-17903 Filed 7-26-91; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-3978-3]

Indiana: Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Indiana has applied for final authorization of revisions to its authorized hazardous waste program under the Resource Conservation and Recovery Act of 1976 as amended (hereinafter "RCRA" or the "Act"). The Environmental Protection Agency (EPA) has reviewed Indiana's application and has reached a decision, subject to public review and comment, that Indiana's hazardous waste program revision satisfies all the requirements necessary to qualify for final authorization. Thus, EPA intends to grant final authorization to Indiana to operate its revised program, subject to authority retained by EPA under the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984, hereinafter "HSWA"). Indiana's application for program revision is available for public review and comment.

DATES: Final authorization of Indiana's application shall be effective September 27, 1991, unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule.

All comments on Indiana's program revision application must be received by 4:30 p.m. central standard time on August 28, 1991.

ADDRESSES: Copies of Indiana's program revision application are available for inspection and copying, from 8:30 a.m. to 4:30 p.m., at the following addresses: Indiana Department of Environmental Management, Hazardous Waste Management Branch, 105 South Meridian Street, Indianapolis, Indiana 46206, Contact: Michael Dalton, (317) 232-8884; U.S. EPA Headquarters Library, PM 211A, 401 M Street, SW., Washington, DC 20460, Phone: (202) 382-5926; U.S. EPA Region V, Waste Management Division, Office of RCRA, 230 South Dearborn Street, Chicago, Illinois 60604, Contact: George Woods, (312) 886-6134. Written comments on Indiana's application should be sent to George Woods, at the address listed below.

FOR FURTHER INFORMATION CONTACT: George Woods, Indiana Regulatory Specialist, U.S. Environmental Protection Agency Region V, Waste Management Division, Office of RCRA, Program Management Branch, Regulatory Development Section, 5HR-JCK-13, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6134 (FTS 886-6134).

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is at least equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. For further explanation see section C of this notice.

In accordance with part 271, § 271.21(a) of title 40 of the Code of Federal Regulations (40 CFR 271.21(a)), revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260–268 and 270.

B. Indiana

Indiana initially received final authorization for its base RCRA program effective January 31, 1986 (51 FR 3953–3954, January 31, 1986). Indiana received authorization for revisions to its program effective December 31, 1986 (51 FR 39752–39754, October 31, 1986), January 19, 1988 (53 FR 128–129, January 5, 1988), and September 11, 1989 (54 FR 29557–29559, July 13, 1989). On September 1, 1989, Indiana submitted a program revision application for additional program approvals covering section 3006(f) of HSWA: Availability of Information, and some minor, State initiated clarifications to the interim status closure plan amendment process. These clarifications make Indiana's rule more stringent than the EPA standard. Today, Indiana is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Indiana's application and has made an immediate final decision, subject to public review and comment, that Indiana's hazardous waste management program revision does reflect the State's equivalency with the Federal program and satisfies all the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization to Indiana for its additional program revisions. The public may submit written comments on EPA's immediate final decision up until August 28, 1991. Copies of Indiana's application for this program revision are available for inspection and copying at the locations indicated in the "**ADDRESSES**" section of this notice.

Approval of Indiana's program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received, EPA will publish either (1) a withdrawal of this immediate final rule or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

On the effective date of final authorization, Indiana will be authorized to carry out, in lieu of the Federal program, those provisions of the State's regulations found at title 329 of the Indiana Administrative Code, article 3 (329 IAC 3), effective July 29, 1989, and those statutes of the Indiana Code found at title 4, article 21 (IC 4–21), and title 5, article 14 (IC 5–14), effective July 1, 1987. These State rules and statutes are being recognized as analogous to the following Resource Conservation and Recovery Act rules found at title 40 of the Code of Federal Regulations, and the Freedom of Information Act, 5 U.S.C. 552:

Federal requirement	Analogous state authority
1. Section 3006(f) Availability Of Information; November 8, 1984. 40 CFR, §§ 2.100(b), 2.104(b), 2.109(b), 2.112, 2.113(f), 2.114(a), 2.116, 2.117, 2.120(d), 2.201(e), 2:204(d)(1)(ii), 2.208, 270.12, 271.21(a); 5 U.S.C. 552(a)(4)(E), and (a)(6)(C).	329 IAC 3–34–3, 3–58–1 through 3–58–16, 3–59–1 through 3–59–9; IC 4–21.5–3–27, IC 4–21.5–3–29, IC 4–21.5–5–5, IC 5–14–3–4, IC 5–14–3–9 (d) and (h).
2. 40 CFR 265.112, Closure Plan; amendment of plan. May 2, 1986, 51 FR 16443–16459.	329 IAC 3–21–3.

EPA shall administer any RCRA hazardous waste permits, or portions of permits, that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of Indiana's authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization. EPA has previously suspended issuance of permits for other provisions on January 31, 1986, on January 19, 1988, and on September 11, 1989, the effective dates of Indiana's final authorizations for the RCRA base program and for two approved revisions to Indiana's authorized program.

Indiana is not authorized to operate the Federal Program on Indian lands. This authority shall remain with EPA unless provided otherwise in a future statute or regulation.

C. Effect of HSWA on Indiana's Authorization

Prior to the Hazardous and Solid Waste Amendments to RCRA, a State with final authorization would have administered its hazardous waste program instead of, or entirely in lieu of, the Federal program. Except for enforcement provisions not applicable here, EPA no longer directly applied the Federal requirements in the authorized States, and EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent, Federal requirements were promulgated or enacted, the State was obligated to obtain equivalent authority within specified time frames. New Federal requirements usually did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under the amended section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time as they take effect in non-authorized States. EPA carries out those requirements and prohibitions directly in authorized and non-authorized States, including the issuance of full or partial HSWA permits, until EPA grants the State authorization to do so. States must still, in accordance with the deadlines specified in paragraphs 40 CFR 271.21(e)(2) (ii) through (v), adopt HSWA-related provisions as State law to retain final authorization. In the interim, the HSWA provisions apply in authorized States.

As a result of the HSWA, there will be a dual State/Federal regulatory program in Indiana. To the extent the authorized State program is unaffected by the HSWA, the State program will operate in lieu of the Federal program. To the extent HSWA-related requirements are in effect, EPA will administer and enforce those HSWA requirements in Indiana until the State receives authorization for them. Among other things, this will entail the issuance of Federal RCRA permits for those HSWA requirements for which the State is not yet authorized, in addition to any State permits. Any State requirement that

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(IC 4–21), and title 5,
, effective July 1, 1987.
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ogous to the following
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title 40 of the Code of
s, and the Freedom of
U.S.C. 552:

	Analogous state authority
ail- on; 40 (b), (b), (a), (d), (ii), (a); (E),	329 IAC 3–34–3, 3–58–1 through 3–58–16, 3–59–1 through 3–59–9; IC 4–21.5–3–27, IC 4–21.5–3–29, IC 4–21.5–5–5, IC 5–14–3–4, IC 5–14–3–9 (d) and (h).
Clo- ent 51	329 IAC 3–21–3.

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September 11, 1989, the effective dates of Indiana's final authorizations for the RCRA base program and for two approved revisions to Indiana's authorized program.

Indiana is not authorized to operate the Federal Program on Indian lands. This authority shall remain with EPA unless provided otherwise in a future statute or regulation.

C. Effect of HSWA on Indiana's Authorization

Prior to the Hazardous and Solid Waste Amendments to RCRA, a State with final authorization would have administered its hazardous waste program instead of, or entirely in lieu of, the Federal program. Except for enforcement provisions not applicable here, EPA no longer directly applied the Federal requirements in the authorized States, and EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent, Federal requirements were promulgated or enacted, the State was obligated to obtain equivalent authority within specified time frames. New Federal requirements usually did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under the amended section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time as they take effect in non-authorized States. EPA carries out those requirements and prohibitions directly in authorized and non-authorized States, including the issuance of full or partial HSWA permits, until EPA grants the State authorization to do so. States must still, in accordance with the deadlines specified in paragraphs 40 CFR 271.21(e)(2) (ii) through (v), adopt HSWA-related provisions as State law to retain final authorization. In the interim, the HSWA provisions apply in authorized States.

As a result of the HSWA, there will be a dual State/Federal regulatory program in Indiana. To the extent the authorized State program is unaffected by the HSWA, the State program will operate in lieu of the Federal program. To the extent HSWA-related requirements are in effect, EPA will administer and enforce those HSWA requirements in Indiana until the State receives authorization for them. Among other things, this will entail the issuance of Federal RCRA permits for those HSWA requirements for which the State is not yet authorized, in addition to any State permits. Any State requirement that

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EPA has reviewed, approved, and determined to be more stringent than a HSWA provision also remains in effect; thus, the universe of the more stringent provisions in HSWA and the approved State program defines the applicable subtitle C requirements in Indiana.

With the exception of HSWA § 3006(f): State availability of Information, Indiana is not being authorized now for any other requirement implementing HSWA. Once EPA authorizes Indiana to carry out a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal provision or prohibition. Until that time, the State may assist EPA's implementation of the HSWA under a Cooperative Agreement.

EPA has published a **Federal Register** notice that explains in detail the HSWA and its effect on authorized States. That notice was published at 50 FR 28702–28755, July 15, 1985.

D. Decision

I conclude that Indiana's application for this program revision meets all the statutory and regulatory requirements established by RCRA. Accordingly EPA grants Indiana final authorization to operate its hazardous waste program as revised. Indiana now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out the other aspects of the RCRA program. This responsibility is subject to the limitations of this program revision application and previously approved authorities. Indiana also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

E. Codification in Part 272

EPA uses part 272 of 40 CFR for codification of the decision to authorize Indiana's program and for incorporation by reference of those provisions of Indiana's statutes and regulations that EPA will enforce under sections 3008, 3013 and 7003 of RCRA. Therefore, EPA is proposing to amend part 272, subpart P. A separate **Federal Register** notice will be published for the proposed codification. This will provide notice to the public of the scope of the authorized program in Indiana.

Compliance with Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Indiana's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended, (42 U.S.C. 6912(a), 6926 and 6974(b)).

Dated: June 4, 1990.

Valdas V. Adamkus,

Regional Administrator.

Editorial Note: This document was received in the Office of the Federal Register on July 23, 1991.

[FR Doc. 91–17792 Filed 7–26–91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91–4; RM–7588]

Radio Broadcasting Services; Eagle Grove, IA

AGENCY: Federal Communication Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Iowa Inspirational Radio, allots Channel 264C3 to Eagle Grove, Iowa, as the community's first local FM service. See 56 FR 3063, January 28, 1991. Channel 264C3 can be allotted to Eagle Grove in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates North Latitude 42–39–54 and West Longitude 93–54–18. With this action, this proceeding is terminated.

DATES: Effective September 5, 1991. The window period for filing applications will open on September 6, 1991, and close on October 7, 1991.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91–4, adopted July 9, 1991, and released July 22, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center (202) 452–1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by adding Eagle Grove, Channel 264C3.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–17830 Filed 7–26–91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91–48; RM–7621]

Radio Broadcasting Services; Milford, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of 202 Data Systems, allots Channel 271C2 to Milford, Iowa, as the community's first local FM service. See

56 FR 10527, March 13, 1991. Channel 271C2 can be allotted to Milford in compliance with the Commission's minimum distance separation requirements with a site restriction of 3 kilometers (1.9 miles) northwest to avoid a short-spacing to Station KAYL-FM, Channel 268C1, Storm Lake, Iowa, at coordinates North Latitude 43-20-33 and West Longitude 95-07-40. With this action, this proceeding is terminated.

DATES: Effective September 5, 1991. The window period for filing applications will open on September 6, 1991, and close on October 7, 1991.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-48, adopted July 5, 1991, and released July 22, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by adding Milford, Channel 271C2.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-17832 filed 7-26-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-24; RM-7598]

Radio Broadcasting Services; Canton, SD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Dallas M. Tarkenton, substitutes Channel 274C2 for Channel 274A at Canton, South Dakota, and modifies his construction permit for Station KIXK to specify operation on the higher powered channel. See 56 FR 7318, February 22, 1991. Channel 274C2 can be allotted to Canton in compliance with the Commission's minimum distance separation requirements with a site restriction of 20.5 kilometers (12.7 miles) north to accommodate petitioner's desired transmitter site, at coordinates North Latitude 43-29-00 and West Longitude 96-38-00. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 5, 1991.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-24, adopted July 5, 1991, and released July 22, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under South Dakota, is amended by removing Channel 274A and adding Channel 274C2 at Canton.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-17831 Filed 7-26-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-3; RM-7589]

Radio Broadcasting Services; Reedsport, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Paul C. Bjornstad, allots Channel 258A to Reedsport, Oregon, as the community's second local FM service. See 56 FR 3063, January 28, 1991. Channel 258A can be allotted to Reedsport in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates North Latitude 43-42-00 and West Longitude 124-06-12. With this action, this proceeding is terminated.

DATES: Effective September 5, 1991. The window period for filing applications will open on September 6, 1991, and close on October 7, 1991.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-3, adopted July 9, 1991, and released July 22, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by adding Channel 258A at Reedsport.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-17829 Filed 7-26-91; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1152

Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903

AGENCY: Interstate Commerce Commission.

ACTION: Technical amendment.

South Dakota, and
struction permit for
specify operation on the
channel. See 56 FR 7318,
1. Channel 274C2 can be
n in compliance with
s minimum distance
rements with a site
5 kilometers (12.7 miles)
odate petitioner's
er site, at coordinates
–29–00 and West
00. With this action,
s terminated.
September 5, 1991.
ORMATION CONTACT:
, Mass Media Bureau

INFORMATION: This is a
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Docket No. 91–24,
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Center (202) 452–1422,
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n 47 CFR Part 73

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Communications

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Channel 258A to Reedsport, Oregon, as the community's second local FM service. See 56 FR 3063, January 28, 1991. Channel 258A can be allotted to Reedsport in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates North Latitude 43–42–00 and West Longitude 124–06–12. With this action, this proceeding is terminated.

DATES: Effective September 5, 1991. The window period for filing applications will open on September 6, 1991, and close on October 7, 1991.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91–3, adopted July 9, 1991, and released July 22, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center (202) 452–1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by adding Channel 258A at Reedsport.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–17829 Filed 7–26–91; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1152

Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903

AGENCY: Interstate Commerce Commission.

ACTION: Technical amendment.

SUMMARY: The Commission's regulations in 49 CFR 1152.20(a)(2)(vii) and 1152.50(d)(ii) require rail carriers to send notices of rail abandonment actions to various federal and state officials and agencies. One of those agencies, the Department of Defense's Military Traffic Management Command, has notified the Commission that effective August 5, 1991, that its agency which receives such notices will be relocated. In order to keep the Commission's regulations as up-to-date as possible, we are amending part 1152 to reflect this new information.

EFFECTIVE DATE: This amendment is effective on August 5, 1991.

FOR FURTHER INFORMATION CONTACT: Kathleen King (202) 275–7429.

SUPPLEMENTARY INFORMATION: The new mailing address is:

Department of Defense (Military Traffic Management Command, Transportation Engineering Agency, Railroads for National Defense Program), P.O. Box 6276, Newport News, VA 23606–0276. Telephone: (804) 599–1100, Telefax: (804) 599–2119.

List of Subjects in 49 CFR Part 1152

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements, Uniform System of Accounts.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1152 is amended as set forth below:

PART 1152—ABANDONMENT AND DISCONTINUANCE OF RAIL LINES AND RAIL TRANSPORTATION UNDER 49 U.S.C. 10903

1. The authority citation for part 1152 continues to read as follows:

Authority: 5 U.S.C. 553, 559 and 704; 11 U.S.C. 1170; 16 U.S.C. 1247(d) and 1248; and 49 U.S.C. 10321, 10362, 10505, 10903, 10904, 10905, 10906, 11161 and 11163.

2. In § 1152.20, paragraph (a)(2)(vii) is revised to read as follows:

§ 1152.20 Notice of intent to abandon or discontinue service.

(a) * * *

(b) * * *

(vii) Department of Defense (Military Traffic Management Command, Transportation Engineering Agency, Railroads for National Defense Program);

* * * * *

3. In § 1152.50, paragraph (d)(1)(ii) is revised to read as follows:

§ 1152.50 Exempt abandonments and discontinuances of service and trackage rights.

* * * * *

(d) * * *

(1) * * *

(ii) Department of Defense (Military Traffic Management Command, Transportation Engineering Agency, Railroads for National Defense Program),

* * * * *

[FR Doc. 91–17929 Filed 7–26–91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 901184–1042]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director of the Alaska Region, NMFS (Regional Director), has determined that the total allowable catch (TAC) specified for pollock in the third quarter of 1991 for the Western pollock subarea of the Gulf of Alaska soon will be reached. The Regional Director is establishing a directed fishing allowance and NMFS is closing the directed fishery for pollock in that subarea. This action is necessary to prevent the TAC of pollock in the Western pollock subarea for the third quarter from being exceeded. The intent of this action is to ensure optimum use of groundfish while conserving pollock stocks.

DATES: Effective 12:00 noon, Alaska local time (A.l.t.), July 24, 1991, through 24:00 midnight, A.l.t., September 29, 1991.

FOR FURTHER INFORMATION CONTACT: Jessica A. Gharrett, Resource Management Specialist, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone within the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and is implemented by regulations appearing at 50 CFR 611.92 and parts 620 and 672.

The amount of a species or species group apportioned to a fishery is TAC, as stated in § 672.20(a)(2). Under § 672.20(a)(2)(v), the TAC for pollock in the Western and Central Regulatory areas is apportioned equally to the Western pollock subarea (combined statistical areas 61 and 62) and the Central pollock subarea (statistical area 63). Each apportionment is divided equally into four quarterly reporting periods of the fishing year. The announcement of initial harvest specifications for pollock for the 1991 fishing year established a TAC of pollock for the Western pollock subarea as 50,000 metric tons (mt) or, for each quarter, 12,500 mt plus or minus that quarter's proportional share of over or under harvest from prior quarters (56 FR 28112, June 19, 1991). The cumulative amount of pollock available for harvest for the Western pollock subarea through the third quarter of 1991 is 25,471 mt.

Under § 672.20(c)(2), the Regional Director has determined that the catch of pollock in the Western pollock subarea will reach 24,571 mt by July 24, 1991. The remaining 900 mt of pollock will be necessary for bycatch to support remaining groundfish fisheries in the Western pollock subarea during the third quarter.

With this action the Regional Director is establishing a directed fishing allowance of 24,571 mt, and is prohibiting directed fishing for pollock in the Western pollock subarea of the Gulf of Alaska for the remainder of the third quarter.

Under § 672.20(g)(3), during the effective dates of this action, vessels fishing in the Western pollock subarea (statistical areas 61 and 62) may not retain, at any particular time during a trip, pollock in an amount equal to or greater than 20 percent of the amount of all other fish species retained at the same time by the vessel during the same trip.

Classification

This action is taken under 50 CFR 672.20 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 24, 1991.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management National Marine Fisheries Service.

[FR Doc. 91–17925 Filed 7–24–91; 2:50 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 145
Monday, July 29, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[FV-91-414PR]

Expenses and Assessment Rate for Cranberries Grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under the cranberry marketing order for the 1991–92 fiscal year. This action is needed for the Cranberry Marketing Committee (Committee), which is responsible for the local administration of the order, to incur operating expenses during the 1991–92 fiscal year and to collect funds during that year to pay those expenses. This would facilitate program operations. Funds to administer this program are derived from assessments on handlers.

DATES: Comments must be received by August 20, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Christian D. Nissen, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 447–5127.

SUPPLEMENTARY INFORMATION: This rule is proposed under the Marketing Agreement and Order No. 929 (7 CFR part 929), regulating the handling of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This proposed rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in the Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 30 handlers of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, and approximately 950 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of cranberry handlers and producers may be classified as small entities.

The cranberry marketing order requires that the assessment rate for a particular fiscal year apply to all assessable cranberries handled from the beginning of such year. An annual budget of expenses is prepared by the Committee and submitted to the Department for approval. The Committee members are cranberry producers. They are familiar with the Committee's needs and with the costs of goods, services, and personnel in their local areas and are in a position to formulate appropriate budgets.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of cranberries. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. The recommended budget and rate of assessment are usually acted upon by the Committee before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so the Committee will have funds to pay its expenses for the 1991–92 fiscal year beginning on September 1, 1991.

The Committee conducted a mail vote and recommended 1991–92 marketing order expenditures of $167,730 and an assessment rate of $0.037 per 100-pound barrel of cranberries shipped. In comparison, 1990–91 marketing year budgeted expenditures were $159,850, and the assessment rate was $0.037 per 100-pound barrel of cranberries shipped. Assessment income for 1991–92 is estimated at $145,965 based on a crop of 3,945,000 barrels of cranberries. Interest income expected to be received is estimated at $7,500, bringing total income to $153,465. The Committee plans to transfer $14,265 from its reserve account to meet the deficit between income and expenditures. Major budget categories for 1991–92 are $67,640 for salaries, $37,500 for travel and meeting expenses, and $44,245 for administrative expenses. Comparable budgeted expenditures for the 1990–91 season were $70,995, $39,500, and $34,425, respectively.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers.

nch, F&V, AMS,
456, room 2525–S,
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The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of cranberries. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. The recommended budget and rate of assessment are usually acted upon by the Committee before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so the Committee will have funds to pay its expenses for the 1991–92 fiscal year beginning on September 1, 1991.

The Committee conducted a mail vote and recommended 1991–92 marketing order expenditures of $167,730 and an assessment rate of $0.037 per 100-pound barrel of cranberries shipped. In comparison, 1990–91 marketing year budgeted expenditures were $159,850, and the assessment rate was $0.037 per 100-pound barrel of cranberries shipped. Assessment income for 1991–92 is estimated at $145,965 based on a crop of 3,945,000 barrels of cranberries. Interest income expected to be received is estimated at $7,500, bringing total income to $153,465. The Committee plans to transfer $14,265 from its reserve account to meet the deficit between income and expenditures. Major budget categories for 1991–92 are $67,640 for salaries, $37,500 for travel and meeting expenses, and $44,245 for administrative expenses. Comparable budgeted expenditures for the 1990–91 season were $70,995, $39,500, and $34,425, respectively.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers.

Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval for the program needs to be expedited. The Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. In addition, the Committee plans to meet on August 14, and anticipates revising its budget and assessment rate to reflect changes in the crop estimate. Thus, a comment period ending on August 20 would allow the Committee to submit such revisions to the Department as a comment to this proposed rule prior to finalization of this action.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 929 is proposed to be amended as follows:

PART 929—CRANBERRIES GROWN IN STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

1. The authority citation for 7 CFR part 929 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 929.232 is added to read as follows:

§ 929.232 Expenses and assessment rate.

Expenses of $167,730 by the Cranberry Marketing Committee are authorized, and an assessment rate of $0.037 per 100-pound barrel of assessable cranberries is established for the fiscal year ending on August 31, 1992. Unexpended funds may be carried over as a reserve.

Dated: July 24, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91-17921 Filed 7-26-91; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-CE-58-AD]

Airworthiness Directives; Avions Mudry & Cie Model CAP10B Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would be applicable to certain Avions Mudry & Cie Model CAP10B airplanes. This proposed action would require a modification to the fuel system. Several incidents have occurred where air entered into the inverted flight valve on the affected airplanes. The actions specified in this proposed AD are intended to prevent engine stoppage caused by this condition.

DATES: Commments must be received on or before September 25, 1991.

ADDRESSES: Service Bulletin CAP10B No. 13, dated May 14, 1991, that is discussed in this AD may be obtained from Avions Mudry & Cie, B.P. 214, 27300 Bernay, France; Telephone (33) 32 43 47 34; Facsimile (33) 32 43 47 90. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–58–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Carl F. Mittag, Project Manager, Brussels Aircraft Certification Office, Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone 322.513.38.30 extension 2716; or Mr. Michael Dahl, Project Officer, Small Airplane Directorate, Aircraft Certification Service, FAA, 601 E. 12th Street, Kansas City Missouri 64106; Telephone (816) 426–6932; Facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–58–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Avions Mudry & Cie Model CAP10B airplanes. The DGAC reports several incidents where air entered into the inverted flight valve on the affected airplanes. The DGAC advises that this condition could occur during level flight, when the front fuel tank is less than half full, and if improper engine adjustment is causing minor vibration. Avions Mudry & Cie has issued Service Bulletin (SB) CAP10B No. 13, dated May 14, 1991, which specifies fuel system modification procedures for certain CAP 10B airplanes. The DGAC classified this service bulletin as mandatory and issued DGAC AD 91–112(A) in order to assure the airworthiness of these airplanes in France. The airplanes are manufactured in France and are type certificated for operation in the United States. Pursuant to a bilateral airworthiness agreement, the DGAC has kept the FAA totally informed of the above situation.

The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States. Since this condition could exist or develop in other Avions Mudry & Cie CAP10B airplanes of the same type design, the proposed AD would require modification of the fuel system in accordance with the instructions in Avions Mudry & Cie CAP10B Service Bulletin No. 13, dated May 14, 1991.

It is estimated that 25 airplanes in the U.S. registry would be affected by this AD, that it would take approximately 8 hours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $403 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $21,075.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Avions Mudry & Cie: Docket No. 91-CE-58-AD.

Applicability: Model CAP10B Airplanes (serial numbers 01 through 208), certificated in any category.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent engine stoppage caused by air entering the inverted flight valve, accomplish the following:

(a) Modify the fuel system in accordance with the instructions in Avions Mudry & Cie Service Bulletin CAP10B No. 13, dated May 14, 1991.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium. The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, Manager, Brussels Aircraft Certification Office.

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to Avions Mudry & Cie, B.P. 214, 27300 Bernay, France; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on July 15, 1991.

Don C. Jacobsen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-17879 Filed 7-26-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 91-ANM-11]

Proposed Amendment to The Dalles Transition Area, The Dalles, Oregon

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend The Dalles, Oregon Transition Area. This proposed action would provide controlled airspace for The Dalles VOR/DME-A approach segment from The Dalles VORTAC to MUGGZ intersection which is presently outside of controlled airspace.

DATES: Comments must be received on or before September 9, 1991.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Docket No. 91-ANM-11, 1601 Lind Avenue SW., Renton, WA 98055-4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM-535, Federal Aviation Administration, Docket No. 91-ANM-11, 1601 Lind Avenue SW., Renton, WA 98055-4056, Telephone: (206) 227-2535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91-ANM-11." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington 98055-4056 both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

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The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM–535, Federal Aviation Administration, Docket No. 91–ANM–11, 1601 Lind Avenue SW., Renton, WA 98055–4056, Telephone: (206) 227–2535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91–ANM–11." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington 98055–4056 both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA proposes an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to provide controlled airspace for The Dalles VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME–A) approach segment from The Dalles VOR Tactical Air Navigation (VORTAC) to MUGGZ intersection (DLS 165R) which is presently outside of controlled airspace. The intent of this action would be to segregate aircraft operating in visual flight rules conditions from aircraft operating in instrument flight rules conditions. The area would be depicted on aeronautical charts for pilot reference. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, if promulgated, will not have a significant economic impact positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

The Dalles, Oregon [Revised]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of The Dalles Municipal Airport (lat. 45°37'07" N., long. 121°09' W) and that airspace within 5-miles each side of The Dalles VORTAC (lat. 45°42'40" N., long. 121°05'59" W.) 184° radial extending from The Dalles VORTAC to 17.5-miles south of the VORTAC, and that airspace between The Dalles Vortac 206° radial clockwise to the 222° radial extending from the 5-mile radius of the Airport to the 11.5-mile radius of the Airport, and that airspace 5-miles either side of the 17.3-mile radius of the VORTAC between the 121° radial clockwise to the 206° radial: that airspace extending upward from 1,200 feet above the surface within 8-miles north and 6-miles south of The Dalles VORTAC 281° radial and 101° radial extending from 7-miles west to 14 miles east of the VORTAC, and within 5-miles north of the VORTAC 101° radial extending from 14-miles east to 23-miles east of the VORTAC, and that airspace within a 23-mile radius of the VORTAC extending clockwise from the 101° radial to the 272° radial, excluding the airspace within the Portland, OR, Transition Area.

Issued in Seattle, Washington, on July 12, 1991.

Helen M. Parke,

Assistant Manager, Air Traffic Division.

[FR Doc. 91–17680 Filed 7–26–91; 8:45 am]

BILLING CODE 4910–13–M

Coast Guard

33 CFR Part 117

[CCGD5–91–29]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Elizabeth River, South Branch, Chesapeake, VA

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard is issuing a supplemental proposed rule for the operation of the Dominion Boulevard drawbridge across the Atlantic Intracoastal Waterway, Southern Branch of the Elizabeth River, mile 8.8, in Chesapeake, Virginia, by reducing the morning and evening rush hour restriction on drawbridge openings. This proposed change to the extent practical and feasible, is intended to provide for regularly scheduled drawbridge openings during those rush hour periods.

DATES: Comments must be received on or before September 12, 1991.

ADDRESSES: Comments should be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004. The comments and other materials referenced in this notice will be available for inspection and copying at the above address, room 507, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Comments may be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398–6222.

SUPPLEMENTARY INFORMATION: On August 6, 1990, the Coast Guard published a proposed rule (55 FR 31846) to evaluate bridge opening restrictions during the morning and evening rush hours for the Dominion Boulevard Bridge. The Commander, Fifth Coast Guard District also published the proposed rule as a public notice on August 7, 1990. Interested persons were given until September 20, 1990, to comment on the proposed rule that was published in the **Federal Register**. The comment period for the public notice ended September 20, 1990. A supplemental Public Notice was issued on September 17, 1990, with the comment period ending October 22, 1990.

This supplemental proposed rule reduces morning and evening rush hour restrictions proposed in August 1990, by one hour in the morning and one hour in the afternoon. It was determined that the proposed three hour restriction in the morning and evening was too harsh a closure for waterway traffic transiting on the Southern Branch of the Elizabeth River.

Public comments are requested on the reduced morning and evening rush hour restrictions to ensure that this proposal is reasonable. Persons wishing to comment may do so by submitting written comments to the office listed under "ADDRESSES" in this preamble. Persons submitting comments should include their names and addresses, identify the bridge and give reasons for their comments. The Commander, Fifth Coast Guard District, will evaluate all communications received and determine a final course of action on this supplemental proposal. This rule may be changed based on comments received.

Drafting Information

The drafters of this notice are Linda L. Gilliam, project officer, and LT M.L. Lombardi, project attorney.

Discussion of Proposed Regulations

Concerned motorists requested that the regulations for the drawbridge across the Southern Branch of the Elizabeth River at mile 8.8 in Chesapeake, Virginia, be amended to restrict openings during the peak highway traffic hours to help reduce traffic congestion, but remain open on signal during the rest of the time. The proposed change would close the Dominion Boulevard Bridge to commercial, recreational, and public vessels Monday through Friday, except Federal holidays, from 6 a.m. to 9 a.m. and from 3 p.m. to 6 p.m. A provision that allows the draw to open on signal at all times for vessels in distress was made a part of the proposal. As a result of the proposed rule that was published and the public notice issued on August 7, 1990, written comments were received from the maritime community and the motoring public. The comments from the motorists were all in favor of the proposed restrictions during peak traffic hours since elimination of draw openings during these hours would help reduce traffic disruption, delays, congestion and minor accidents. The comments from the commercial maritime industry were opposed to restricting the drawbridge based on such generalized factors as economic impact concerns and safety. This supplemental proposal includes that provision, but reduces the hours of morning and evening rush hour restrictions on the bridge. The hours of restriction on the drawbridge were greatly reduced after the comments from the commercial marine industry were reviewed. It was determined that restricting the drawbridge openings three hours in the morning and three hours in the evening was too harsh; therefore, the hours of restriction the Coast Guard is proposing are 6:30 a.m. to 7:30 a.m. and 3:30 p.m. to 5 p.m., Monday through Friday, except Federal holidays. These new proposed hours will reduce the risk of safety hazards on the water while still providing waterway users short delays along this waterway as opposed to the schedule originally proposed.

In deciding the issues in case, consideration was given to all views. However, it is felt that the needs of motorists who use the bridge warrant special consideration. The Coast Guard feels that imposition of this proposed rule, will not create an undue hardship on commercial interests since these companies can plan most of their vessel transits around the restricted hours of operation.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule will not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Evaluation

These proposed regulations are considered to be non-major under Executive Order 12291 and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of the proposed regulation on commercial navigation or on any industries that depend on waterborne transportation should be minimal. Because the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g.5 of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.997(d) is redesignated as § 117.997(e) and new paragraph § 117.997(d) is added to read as follows:

§ 117.997 Atlantic Intracoastal Waterway, South Branch of the Elizabeth River to the Albemarle and Chesapeake Canal.

* * * * *

(d) The draw of the Dominion Boulevard Bridge, mile 8.8, in Chesapeake shall open on signal, except:

(1) From 6:30 a.m. to 7:30 a.m. and from 3:30 p.m. to 5 p.m., Monday through Friday, except Federal Holidays, the draw will remain closed to all vessel traffic.

(2) The draw shall open on signal at all times for vessels in distress.

* * * * *

Dated: July 12, 1991.

H.B. Gehring,

Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District Acting.

[FR Doc. 91–17900 Filed 7–26–91; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–3978–5]

National Priorities List for Uncontrolled Hazardous Waste Sites

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List ("NPL") constitutes this list.

The Environmental Protection Agency ("EPA") is proposing to add 22 new sites to the NPL. The identification of a site for the NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This proposed rule brings the number of proposed NPL sites to 23; 1,188 sites are on the NPL at this time, for a total of 1,211.

DATES: Comments must be submitted on or before September 27, 1991.

ADDRESSES: Mail comments in triplicate, to Larry Reed, Acting Director, Hazardous Site Evaluation Division (Attn: NPL Staff), Office of Emergency and Remedial Response (0S–230), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. For Docket addresses and further details on their contents see Section I of the

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Dated: July 12, 1991.

H.B. Gehring,

Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District Acting.

[FR Doc. 91-17900 Filed 7-26-91; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-3978-5]

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FOR FURTHER INFORMATION CONTACT: Agnes Ortiz, Hazardous Site Evaluation Division, Office of Emergency and Remedial Response (0S-230), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC, 20460, or the Superfund Hotline, Phone (800) 424-9346 or (703) 920-9810 in the Washington, DC, metropolitan area).

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Purpose and Implementation of the NPL
III. Contents of This Proposed Rule
IV. Regulatory Impact Analysis
V. Regulatory Flexibility Act Analysis

I. Introduction

Background

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601-9675 ("CERCLA" or "the Act") in response to the dangers of uncontrolled hazardous waste sites. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act ("SARA"), Public Law No. 99-499, stat. 1613 *et seq.* To implement CERCLA, the Environmental Protection Agency ("EPA" or "the Agency") promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets forth the guidelines and procedures needed to respond under CERCLA to releases and threatened releases of hazardous substances, pollutants, or contaminants. EPA has revised the NCP on several occasions, most recently on March 8, 1990 (55 FR 8666).

Section 105(a)(8)(A) of CERCLA requires that the NCP include "criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action." As defined in CERCLA section 101(24), remedial action tends to be long-term in nature and involves response actions that are consistent with a permanent remedy for a release.

Mechanisms for determining priorities for possible remedial actions financed by the Trust Fund established under CERCLA (commonly referred to as the "Superfund") are included in the NCP at 40 CFR 300.425(c) (55 FR 8845, March 8, 1990). Under 40 CFR 300.425(c)(1), a site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System ("HRS"), which EPA promulgated as appendix A of 40 CFR part 300. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four migration pathways: ground water, surface water, soil exposure, and air. The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. Those sites that score 28.50 or greater on the HRS are eligible for the NPL.

Under a second mechanism for adding sites to the NPL, each State may designate a single site as its top priority, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2), requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State.

The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed whether or not they score above 28.50, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority (available only at NPL sites) than to use its removal authority to respond to the release.

Based on these criteria, and pursuant to section 105(a)(8)(B) of CERCLA, as amended by SARA, EPA prepares a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. That list, which is appendix B of 40 CFR part 300, is the National Priorities List ("NPL"). The discussion below may refer to the "releases or threatened releases" that are included on the NPL interchangeably as "releases," "facilities, or "sites."[1]

CERCLA section 105(a)(8)(B) also requires that the NPL be revised at least annually. A site may undergo CERCLA-financed remedial action only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1).

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on February 11, 1991 (56 FR 5598). The NPL contains 1,188 final sites at this time.

EPA may delete sites from the NPL where no further response is appropriate, as explained in the NCP at 40 CFR 300.425(e) (55 FR 8845, March 8, 1990). To date, the Agency has deleted 34 sites from the NPL, most recently the M&T Delisa landfill on March 21, 1991 (56 FR 11938). The 34 sites are listed below.

FINAL SITES DELETED FROM NPL BECAUSE NO FURTHER RESPONSE NEEDED JULY 1991

State	Site name	Location
AR	Cecil Lindsey	Newport.
AS	Taputimu Farm [1]	Island of Tutuila.
AZ	Mountain View Mobile Home Estates (once listed as Globe) [1].	Globe.
CM	PCB Warehouse [1]	Saipan.
DE	New Castle Steel	New Castle County.
FL	Parramore Surplus	Mount Pleasant.
FL	Tri-city Oil Conservationist, Inc.	Tampa.
FL	Varsol Spill (once listed as part of Biscayne Aquifer).	Miami.
GA	Luminous Processes, Inc.	Athens.
IL	Petersen Sand & Gravel.	Libertyville.
IN	International Minerals & Chemical Corp. (Terre Haute East Plant).	Terre Haute.
IN	Poer Farm	Hancock County.
MD	Chemical Metals Industries, Inc.	Baltimore.
MN	Middletown Road Dump.	Annapolis.
MI	Gratiot County Golf Course.	St. Louis.
MI	Whitehall Municipal Wells.	Whitehall.
MN	Morris Arsenic Dump	Morris.
MS	Walcotte Chemical Co. Warehouses.	Greenville.
NC	PCB Spills [1]	243 Miles of Roads.
NJ	Cooper Road	Voorhees Township.
NJ	Friedman Property (once listed as Upper Freehold Site).	Upper Freehold Township.
NJ	Krysowaty Farm	Hillsborough.
NJ	M&T Delisa Landfill	Asbury Park.
OH	Chemical & Minerals Reclamation.	Cleveland.
PA	Enterprise Avenue	Philadelphia.
PA	Lehigh Electric & Engineering Co.	Old Forge Borough.

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[1] CERCLA section 105 (a)(8)(B) defines the NPL as a list of "releases" and as a list of the highest priority "facilities." For ease of reference, EPA uses the term "site" to refer to all "releases" and "facilities" on the NPL.

FINAL SITES DELETED FROM NPL BECAUSE NO FURTHER RESPONSE NEEDED JULY 1991—Continued

State	Site name	Location
PA	Presque Isle	Erie.
PA	Reeser's Landfill	Upper Macungie Township.
PA	Voortman Farm	Upper Saucon Township.
PA	Wade (ABM) (once listed as ABM-Wade).	Chester.
TT	PCB Wastes [1]	Pacific Trust Terrace.
TX	Harris (Farley Street)	Houston.
VA	Matthews Electroplating [1].	Roanoke County.
WA	Toftdahl Drums	Brush Prairie.

Number of sites deleted: 34.

[1] State top-priority.

In addition, 14 sites on the NPL are in the construction completion category (56 FR 5634, February 11, 1991), and fifteen others are awaiting final documentation before they can be formally placed in the construction completion category. The construction completion category includes sites awaiting deletion, sites awaiting first five-year review after completion of the remedial action, and sites undergoing long-term remedial actions at which the construction phase of the action is complete.

Thus, a total of 63 sites have been deleted, placed in the construction completion category, or are awaiting final documentation before being placed in the construction completion category.

Pursuant to the NCP at 40 CFR 300.425(c), this document proposes to add 22 sites to the NPL. On May 9, 1991 (56 FR 21460), EPA proposed White Chemical Corp., Newark, New Jersey, on the basis of an ATSDR advisory. Final and proposed sites now total 1,211.

Public Comment Period

The Headquarters and Regional public dockets for the NPL contain documents relating to the evaluation and scoring of sites in this proposed rule. The dockets are available for viewing, by appointment only, after the appearance of this document. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday excluding Federal holidays.

Please contact individual Regional Dockets for hours.

Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, OS–245, Waterside Mall, 401 M Street, SW., Washington, DC 20460, 202/382–3046.

Evo Cunha, Region 1, U.S. EPA Waste Management Records Center, HES–CAN 6, J.F. Kennedy Federal Building, Boston, MA 02203–2211, 617/573–5729.

Ben Conetta, Region 2, 26 Federal Plaza, 7th Floor, Room 740, New York, NY 10278, 212/264–6096.

Diane McCreary, Region 3, U.S. EPA Library, 3rd Floor, 841 Chestnut Building, 9th & Chestnut Streets, Philadelphia, PA 19107, 215/597–7904.

Beverly Fulwood, Region 4, U.S. EPA Library, Room G–6, 345 Courtland Street, NE., Atlanta, GA 30365, 404/347–4216.

Cathy Freeman, Region 5, U.S. EPA, 5 HSM–TUB 7, 230 South Dearborn Street, Chicago, IL 60604, 312/886–6214.

Bill Taylor, Region 6, U.S. EPA, 1445 Ross Avenue, Mail Code 6H–MA, Dallas, TX 75202–2733, 214/655–6740.

Steven Wyman, Region 7, U.S. EPA Library, 726 Minnesota Avenue, Kansas City, KS 66101, 913/551–7241.

Barbara Wagner, Region 8, U.S. EPA Library, 999 18th Street, Suite 500, Denver, CO 80202–2405, 303/293–1444.

Lisa Nelson, Region 9, U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105, 415/744–2347.

David Bennett, Region 10, U.S. EPA, 9th Floor, 1200 6th Avenue, Mail Stop HW–093, Seattle, WA 98101, 206/442–2103.

The Headquarters docket contains HRS score sheets for each proposed site; a Documentation Record for each site describing the information used to compute the score; pertinent information for any site affected by statutory requirements or EPA listing policies; and a list of documents referenced in the Documentation Record.

Each Regional docket includes all information available in the Headquarters docket for sites in that Region, as well as the actual reference documents containing the data principally relied upon by EPA in calculating or evaluating the HRS scores for sites in that Region. These reference documents are available only in the Regional dockets. They may be viewed, by appointment only, in the appropriate Regional Docket or Superfund Branch Office. Requests for copies may be directed to the appropriate Regional Docket or Superfund Branch. An informal written request, rather than a formal request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents.

EPA considers all comments received during the formal comment period. During the comment period, comments are placed in the Headquarters docket and are available to the public on an "as received" basis. A complete set of comments will be available for viewing in the Regional docket approximately one week after the formal comment period closes. Comments received after the comment period closes will be available in the Headquarters docket and in the Regional docket on an "as received" basis.

Comments that include complex or voluminous reports or materials prepared for purposes other than HRS scoring, should point out the specific information that EPA should consider and how it affects individual HRS factor values. See *Northside Sanitary Landfill* v. *Thomas,* 849 F. 2d 1516 (D.C. Cir. 1988). After considering the relevant comments received during the comment period, EPA will add sites to the NPL if they meet requirements set out in the NCP and any applicable listing policies.

In past rules, EPA has attempted to respond to late comments, or when that was not practicable, to read all late comments and address those that brought to the Agency's attention a fundamental error in the scoring of a site. (See, most recently, 56 FR 5603, February 11, 1991.) Although EPA intends to pursue the same policy with sites in this rule, EPA can guarantee that it will consider only those comments received during the formal comment period. EPA cannot delay a final listing decision solely to accommodate consideration of late comments.

II. Purpose and Implementation of the NPL

Purpose

The legislative history of CERCLA (Report of the Committee on Environment and Public Works, Senate Report No. 96–848, 96th Cong., 2d Sess. 60 (1980)) states the primary purpose of the NPL:

> The priority lists serve primarily informational purposes, identifying for the States and the public those facilities and sites or other releases which appear to warrant remedial actions. Inclusion of a facility or site on the list does not in itself reflect a judgment of the activities of its owner or operator, it does not require those persons to undertake any action, nor does it assign liability to any person. Subsequent government action in the form of remedial actions or enforcement actions will be necessary in order to do so, and these actions will be attended by all appropriate procedural safeguards.

The purpose of the NPL, therefore, is primarily to serve as an informational and management tool. The identification of a site for the NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of the public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. The NPL also serves to notify the public of sites that EPA believes warrant further investigation. Finally, listing a site may, to the extent potentially responsible parties are

n 2, 26 Federal Plaza, 7th
New York, NY 10278, 212/

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Comments that include complex or voluminous reports or materials prepared for purposes other than HRS scoring, should point out the specific information that EPA should consider and how it affects individual HRS factor values. See *Northside Sanitary Landfill* v. *Thomas*, 849 F. 2d 1516 (D.C. Cir. 1988). After considering the relevant comments received during the comment period, EPA will add sites to the NPL if they meet requirements set out in the NCP and any applicable listing policies.

In past rules, EPA has attempted to respond to late comments, or when that was not practicable, to read all late comments and address those that brought to the Agency's attention a fundamental error in the scoring of a site. (See, most recently, 56 FR 5603, February 11, 1991.) Although EPA intends to pursue the same policy with sites in this rule, EPA can guarantee that it will consider only those comments received during the formal comment period. EPA cannot delay a final listing decision solely to accommodate consideration of late comments.

II. Purpose and Implementation of the NPL

Purpose

The legislative history of CERCLA (Report of the Committee on Environment and Public Works, Senate Report No. 96–848, 96th Cong., 2d Sess. 60 (1980)) states the primary purpose of the NPL:

> The priority lists serve primarily informational purposes, identifying for the States and the public those facilities and sites or other releases which appear to warrant remedial actions. Inclusion of a facility or site on the list does not in itself reflect a judgment of the activities of its owner or operator, it does not require those persons to undertake any action, nor does it assign liability to any person. Subsequent government action in the form of remedial actions or enforcement actions will be necessary in order to do so, and these actions will be attended by all appropriate procedural safeguards.

The purpose of the NPL, therefore, is primarily to serve as an informational and management tool. The identification of a site for the NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of the public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. The NPL also serves to notify the public of sites that EPA believes warrant further investigation. Finally, listing a site may, to the extent potentially responsible parties are

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identifiable at the time of listing, serves as notice to such parties that the Agency may initiate CERCLA-financed remedial action.

Implementation

The NCP at 40 CFR 300.425(b)(1) (55 FR 8845, March 8, 1990) limits expenditure of the Trust Fund for remedial actions to sites on the final NPL. However, EPA may take enforcement actions under CERCLA or other applicable statutes against responsible parties regardless of whether the site is on the NPL, although, as a practical matter, the focus of EPA's CERCLA enforcement actions has been and will continue to be on NPL sites. Similarly, in the case of CERCLA removal actions, EPA has the authority to act at any site, whether listed or not, that meets the criteria of the NCP at 40 CFR 300.425(b)(1) (55 FR 8845, March 8, 1990). As of April 1991, EPA has conducted 1,940 removal actions, 489 of them at NPL sites. Information on removals is available from the Superfund Hotline.

EPA's policy is to pursue cleanup of NPL sites using all the appropriate response and/or enforcement actions available to the Agency, including authorities other than CERCLA. The Agency will decide on a site-by-site basis whether to take enforcement or other action under CERCLA or other authorities, proceed directly with CERCLA-financed response actions and seek to recover response costs after cleanup, or do both. To the extent feasible, once sites are on the NPL, EPA will determine high-priority candidates for CERCLA-financed response action and/or enforcement action through both State and Federal initiatives. EPA will take into account which approach is more likely to most expeditiously accomplish cleanup of the site while using CERCLA's limited resources as efficiently as possible.

EPA will not necessarily fund remedial response actions in the same order as a sites' HRS scores, since the information collected to develop HRS scores is not sufficient in itself to determine either the extent of contamination or the appropriate response for a particular site. Moreover, the sites with the highest scores do not necessarily come to the Agency's attention first. Thus, EPA relies on further, more detailed studies in the remedial investigation/feasibility study (RI/FS) that typically follows listing.

The RI/FS determines the nature and extent of the threat presented by the contamination (40 CFR 300.430(a)(2) (55 FR 8846, March 8, 1990). It also takes into account the amount of contaminants in the environment, the risk to effected populations and environment, the cost to correct problems at the site, and the response actions that have been taken by potentially responsible parties or others. Decisions on the type and extent of action to be taken at these sites are made in accordance with subpart E of the NCP (55 FR 8839, March 8, 1990). After conducting these additional studies, EPA may conclude that it is not desirable to initiate a CERCLA remedial action at some sites on the NPL because of more pressing needs at other sites, or because a private party cleanup is already underway pursuant to an enforcement action. Given the limited resources available in the Trust Fund, the Agency must carefully balance the relative needs for response at the numerous sites it has studied. It is also possible that EPA will conclude after further analysis that the site does not warrant remedial action.

RI/FS at Proposed Sites

An RI/FS may be performed at proposed sites (or even non-NPL sites) pursuant to the Agency's removal authority under CERCLA, as outlined in the NCP at 40 CFR 300.425(b)(1). Although an RI/FS generally is conducted at a site after it has been placed on the NPL, in a number of circumstances the Agency elects to conduct an RI/FS at a proposed NPL site in preparation for a possible CERCLA-financed remedial action, such as when the Agency believes that a delay may create unnecessary risks to public health or the environment. In addition, the Agency may conduct an RI/FS to assist in determining whether to conduct a removal or enforcement action at a site.

Facility (Site) Boundaries

The purpose of the NPL is merely to identify releases or threatened releases of hazardous substances that are priorities for further evaluation. The Agency believes that it would be neither feasible nor consistent with this limited purpose for the NPL to attempt to describe releases in precise geographical terms. The term "facility" is broadly defined in CERCLA to include any area where a hazardous substance has "come to be located" (CERCLA section 101(9)), and the listing process is not intended to define or reflect boundaries of such facilities or releases. Site names are provided for general identification purposes only. Knowledge regarding the extent of sites will be refined as more information is developed during the RI/FS and even during implementation of the remedy.

Because the NPL does not assign liability nor define the geographic extent of a release, a listing need not be amended if further research into the extent of the contamination reveals new information as to its extent. This is further explained in preambles to past NPL rules, most recently February 11, 1991 (56 FR 5598).

III. Contents of This Proposed Rule

Table 1 identifies 19 non-Federal sites and Table 2 identifies 3 Federal facility sites proposed for the NPL in this rule. Both tables follow this preamble. All are proposed based on HRS scores of 28.50 or above. Each proposed site is placed by score in a group corresponding to groups of 50 sites presented within the NPL. For example, a site in Group 4 of this proposal has a score that falls within the range of scores covered by the fourth group of 50 sites on the NPL.

Since promulgation of the original NPL (48 FR 40660, September 8, 1983), EPA has arranged the NPL by rank based on HRS Scores and presented sites on the NPL in groups of 50 to emphasize that minor differences in scores do not necessarily represent significantly different levels of risk.

EPA is proposing an alternative, and what it believes to be more useful, format for presenting NPL sites in both proposed and final rules. Proposed and final rules would present sites in alphabetical order by State and by site name within the State. Once a year the entire NPL, appendix B, would be published. The following table presents the 22 sites in this rule in the proposed format.

NATIONAL PRIORITIES LIST, PROPOSED SITES BY STATE (PROPOSED ALTERNATIVE)

Site name	City/county	Notes [1]
California:		
Del Amo Facility	Los Angeles	
Stoker Co	Imperial	
Westminster Tract #2633.	Westminster	
Florida:		
Broward County—21st Manor Dump.	Fort Lauderdale	
Illinois:		
Ottawa Radiation Areas.	Ottawa	
Kentucky:		
National Electric Coil Co./Cooper Industries.	Dayhoit	
National Southwire Aluminum Co.	Hawesville	
Nebraska:		
Cleburn Street Well.	Grand Island	
Sherwood Medical Co.	Norfolk	

NATIONAL PRIORITIES LIST, PROPOSED SITES BY STATE (PROPOSED ALTERNATIVE)—Continued

Site name	City/county	Notes [1]
New Hampshire:		
New Hampshire Plating Co.	Merrimack	
New York:		
Li Tungsten Corp.	Glen Cove	
Pennsylvania.		
Crossley Farm	Hereford Twp.	
Rodale Manufacturing Co., Inc.	Emmaus Borough	
Rhode Island:		
West Kingston Town Dump/URI Disposal Area.	South Kingstown	
South Dakota:		
Annie Creek Mine Tailings.	Lead	
Utah:		
Petrochem Recycling Corp./ Ekotek, Inc.	Salt Lake City	
Washington:		
Moses Lake Wellfield Contamination.	Moses Lake	
Tulalip Landfill	Marysville	
Vancouver Water Station #4 Contamination.	Vancouver	

[1] Column reserved for State top-priority or ATSDR Health Advisory Sites.

NATIONAL PRIORITIES LIST, PROPOSED FEDERAL FACILITY SITES BY STATE (PROPOSED ALTERNATIVE)

Site name	City/county
Hawaii:	
Pearl Harbor Naval Complex.	Pearl Harbor.
Texas:	
Pantex Plant (USDOE)	Pantex Village.
Washington:	
Hamilton Island Landfill	North Bonneville.

EPA is proposing this change because as the NPL has grown over the years, listing sites by rank has made it increasingly difficult for users of appendix B to find individual sites. Almost all public requests for the NPL ask for a list organized by State, rather than by site, rank and score. Information on rank or actual HRS score still will be provided upon request. (Informal requests are encouraged since they generally take less time than requests under the Freedom of Information Act.)

Further, EPA is considering whether to retain in the preamble (but not appendix B) some form of identification by rank of each site included in the rule. Presentation of the NPL in groups of 50 often has been confusing to the public, and has not conveyed the significance of rankings, as EPA had intended. For example, sites having the same scores have different ranks, and sometimes are even in different groups. In addition, State top priority sites are placed in the top 100 sites, as required by CERCLA, even though some of their scores are lower than many sites ranked below them. However, some information on relative ranking of sites may be useful to the public. To eliminate some of the concerns with the present method of ranking, EPA is considering rankings in larger groups, possibly even as top, middle, or low thirds of the NPL.

The public is invited to comment on these proposed changes in NPL format, and on whether rankings are useful and should be continued, and in what form, as well as to provide any further suggestions on ways to improve the clarity and usability of Appendix B.

Statutory Requirements

CERCLA restricts EPA's authority to respond to certain categories of releases of hazardous substances, pollutants, or contaminants by expressly excluding some substances, such as petroleum, from the response program. In addition, CERCLA section 105(a)(8)(B) directs EPA to list priority sites "among" the known releases or threatened releases of hazardous substances, pollutants, or contaminants, and section 105(a)(8)(A) directs EPA to consider certain enumerated and "other appropriate" factors in doing so. Thus, as a matter of policy, EPA has the discretion not to use CERCLA to respond to certain types of releases. Where other authorities exist, placing sites on the NPL for possible remedial action under CERCLA may not be appropriate. Therefore, EPA has chosen not to place certain types of sites on the NPL even though CERCLA does not exclude such action. If, however, the Agency later determines that sites not listed as a matter of policy are not being properly responded to, the Agency may place them on the NPL.

The listing policies and statutory requirements of relevance to this proposed rule cover sites subject to the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901–6991i) and Federal facility sites. These policies and requirements are explained below and have been explained in greater detail in previous rulemakings, the latest being February 11, 1991 (56 FR 5598).

Releases From Resource Conservation and Recovery Act (RCRA) Sites

EPA's policy is that sites subject to RCRA subtitle C corrective action authorities will not, in general, be placed on the NPL. However, EPA will list certain categories of RCRA sites subject to subtitle C corrective action authorities, as well as other sites subject to those authorities, if the Agency concludes that doing so best furthers the aims of the NPL/RCRA policy and the CERCLA program. EPA has explained these policies in detail in past Federal Register discussions (51 FR 21054, June 10, 1986; 53 FR 23978, June 24, 1988; 54 FR 41000, October 4, 1989; 56 FR 5602, February 11, 1991).

Consistent with EPA's NPL/RCRA policy, EPA is proposing to add two sites to the NPL, New Hampshire Plating Co. in Merrimack, New Hampshire, and Petrochem Recycling Corp./Ekotech, Inc., in Salt Lake City, Utah, that are subject to RCRA Subtitle C corrective action authorities. Material has been placed in the public docket for the Petrochem Recycling Corp./Ekotech, Inc. site confirming that the owner is bankrupt. Regarding the New Hampshire Plating Co. site, even though the owner has not formally invoked the bankruptcy laws, available documentation indicates that the company assets cannot cover a current State lien on the property for response action, much less address any new expenses which would be incurred in remediating the site. A moredetailed discussion of this issue as well as supporting documentation is available in the public docket for this site. Since New Hampshire Plating Co. is unable to finance corrective action, the site meets the NPL/RCRA policy for placement on the NPL.

Releases From Federal Facility Sites

On March 13, 1989 (54 FR 10520), the Agency announced a policy for placing Federal facility sites on the NPL if they meet the eligibility criteria (e.g., an HRS score of 28.50 or greater), even if the Federal facility also is subject to the corrective action authorities of RCRA Subtitle C. In that way, those sites could be cleaned up under CERCLA, if appropriate.

In this rule, the Agency is proposing to add three Federal facility sites to the NPL.

IV. Regulatory Impact Analysis

The costs of cleanup actions that may be taken at sites are not directly attributable to placement on the NPL, as explained below. Therefore, the Agency has determined that this rulemaking is not a "major" regulation under Executive Order 12291. EPA has conducted a preliminary analysis of the economic implications of today's proposal to add new sites to the NPL. EPA believes that the kinds of economic effects associated with this proposed revision are generally similar to those identified in the regulatory impact

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Costs

This proposed rulemaking is not a "major" regulation because it does not establish that EPA necessarily will undertake remedial action, nor does it require any action by a private party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Nonetheless, it is useful to consider the costs associated with responding to all sites in this rule. The proposed listing of a site on the NPL may be followed by a search for potentially responsible parties and a Remedial Investigation/Feasibility Study (RI/FS) to determine if remedial actions will be undertaken at a site. Design and construction of the selected remedial alternative follow completion of the RI/FS, and operation and maintenance (O&M) activities may continue after construction has been completed.

EPA initially bears costs associated with responsible party searches. Responsible parties may bear some or all of the costs of the RI/FS, remedial design and construction, and O&M, or EPA and the States may share costs.

The State's share of site cleanup costs has been amended by CERCLA section 104. For privately-owned sites, as well as at publicly-owned but not publicly-operated sites, EPA will pay for 100 percent of the costs of the RI/FS and remedial planning, and 90 percent of the costs of the remedial action, leaving 10 percent to the State. For publicly-operated sites, the State's share is at least 50 percent of all response costs at the site, including the RI/FS and remedial design and construction of the remedial action selected. After the remedy is built, costs fall into two categories:

- For restoration of ground water and surface water, EPA will share in start-up costs according to the ownership criteria in the previous paragraph for 10 years or until a sufficient level of protectiveness is achieved before the end of 10 years.
- For other cleanups, EPA will share for up to 1 year the cost of that portion of response needed to assure that a remedy is operational and functional. After that, the State assumes all O&M costs.

In previous NPL rulemakings, the Agency estimated the costs associated with these activities (RI/FS, remedial design, remedial action, and O&M) on an average-per-site and total cost basis. EPA will continue with this approach, using the most recent (1988) cost estimates available; these estimates are presented below. However, costs for individual sites vary widely, depending on the amount, type, and extent of contamination. Additionally, EPA is unable to predict what portions of the total costs responsible parties will bear, since the distribution of costs depends on the extent of voluntary and negotiated response and the success of any cost-recovery actions.

Cost category	Average total cost per site [1]
RI/FS	1,100,000
Remedial design	750,000
Remedial action	[2] 13,500,000
Net present value of O&M [3]	[2] 3,770,000

[1] 1988 U.S. Dollars

[2] Includes State cost-share

[3] Assumes cost of O&M over 30 years, $400,000 for the first year and 10 percent discount rate.

Source: Office of Program Management, Office of Emergency and Remedial Response, U.S. EPA, Washington, DC.

Costs to States associated with today's proposed rule arise from the required State cost-share of: (1) 10 percent of remedial actions and 10 percent of first-year O&M costs at privately-owned sites and sites that are publicly-owned but not publicly-operated; and (2) at least 50 percent of the remedial planning (RI/FS and remedial design), remedial action, and first-year O&M costs at publicly-operated sites. States will assume the cost for O&M after EPA's participation ends. Using the assumptions developed in the 1982 RIA for the NCP, EPA has assumed that 90 percent of the non-Federal sites proposed for the NPL in this rule will be privately-owned and 10 percent will be State- or locally-operated. Therefore, using the budget projections presented above, the cost to States of undertaking Federal remedial planning and actions at all non-Federal sites in today's proposed rule, but excluding O&M costs, would be approximately $60 million. State O&M costs cannot be accurately determined because EPA, as noted above, will share O&M costs for up to 10 years for restoration of ground water and surface water, and it is not known how many sites will require this treatment and for how long. However, based on past experience, EPA believes a reasonable estimate is that it will share start-up costs for up to 10 years at 25 percent of sites. Using this estimate, State O&M costs would be approximately $54 million.

Proposing a hazardous waste site for the NPL does not itself cause firms responsible for the site to bear costs. Nonetheless, a listing may induce firms to clean up the sites voluntarily, or it may act as a potential trigger for subsequent enforcement or cost-recovery actions. Such actions may impose costs on firms, but the decisions to take such actions are discretionary and made on a case-by-case basis. Consequently, these effects cannot be precisely estimated. EPA does not believe that every site will be cleaned up by a responsible party. EPA cannot project at this time which firms or industry sectors will bear specific portions of the response costs, but the Agency considers: The volume and nature of the waste at the sites; the strength of the evidence linking the wastes at the site to the parties; the parties' ability to pay; and other factors when deciding whether and how to proceed against the parties.

Economy-wide effects of this proposed amendment to the NCP are aggregations of effects on firms and State and local governments. Although effects could be felt by some individual firms and States, the total impact of this proposal on output, prices, and employment is expected to be negligible at the national level, as was the case in the 1982 RIA.

Benefits

The real benefits associated with today's proposal to place additional sites on the NPL are increased health and environmental protection as a result of increased public awareness of potential hazards. In addition to the potential for more Federally-financed remedial actions, expansion of the NPL could accelerate privately-financed, voluntary cleanup efforts. Proposing sites as national priority targets also may give States increased support for funding responses at particular sites.

As a result of the additional CERCLA remedies, there will be lower human exposure to high-risk chemicals, and higher-quality surface water, ground water, soil, and air. These benefits are expected to be significant, although difficult to estimate before the RI/FS is completed at these sites.

Associated with the costs are significant potential benefits and cost offsets. The distributional costs to firms of financing NPL remedies have corresponding "benefits" in that funds expended for a response generate employment, directly or indirectly (through purchased materials).

VII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980 requires EPA to review the impacts of this action on small entities, or certify that the action will not have a significant impact on a substantial number of small entities. By small entities, the Act refers to small businesses, small government jurisdictions, and nonprofit organizations.

While this rule proposes revisions to the NCP, they are not typical regulatory changes since the revisions do not automatically impose costs. As stated above, proposing sites for the NPL does not in itself require any action by any private party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, impacts on any group are hard to predict. A site's proposed inclusion on the NPL could increase the likelihood of adverse impacts on responsible parties (in the form of cleanup costs), but at this time EPA cannot identify the potentially affected businesses nor estimate the number of small businesses that might also be affected.

The Agency does expect that CERCLA actions could significantly affect certain industries, and firms within industries, that have caused a proportionately high percentage of waste site problems. However, EPA does not expect the listing of these sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would occur only through enforcement and cost-recovery actions, which EPA takes at its discretion on a site-by-site basis. EPA considers many factors when determining enforcement actions, including not only the firm's contribution to the problem, but also its ability to pay.

The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Table 1.—National Priorities List, Proposed Update #11 Sites (By Group)

NPL Gr [1]	State	Site name	City/county
1	CA	Stoker Co	Imperial.
1	UT	Petrochem Recycling Corp./Ekotek, Inc.	Salt Lake City.
4	FL	Broward County—21st Manor Dump.	Fort Lauderdale.
4	WA	Tulalip Landfill	Marysville.
5	IL	Ottawa Radiation Areas.	Ottawa.
5	KY	National Electric Coil Co./Cooper Industries.	Dayhoit.
5	KY	National Southwire Aluminum Co.	Hawesville.
5	NE	Cleburn Street Well.	Grand Island.
5	NE	Sherwood Medical Co.	Norfolk.
5	NH	New Hampshire Plating Co.	Merrimack.
5	NY	Li Tungsten Corp.	Glen Cove.
5	PA	Rodale Manufacturing Co., Inc.	Emmaus Borough.
5	RI	West Kingston Town Dump/URI Disposal Area.	South Kingstown.
5	SD	Annie Creek Mine Tailings.	Lead.
5	WA	Moses Lake Wellfield Contamination.	Moses Lake.
5	WA	Vancouver Water Station #4 Contamination.	Vancouver.
6	CA	Del Amo Facility	Los Angeles.
15	CA	Westminster Tract #2633.	Westminster.
21	PA	Crossley Farm	Hereford Township.

Number of sites proposed for listing: 19.

[1] Sites are placed in groups (Gr) corresponding to groups of 50 on the final NPL.

Table 2.—National Priorities List, Federal Facility Sites, Proposed Update #11 (by Group)

NPL Gr [1]	State	Site name	City/county
1	HI	Pearl Harbor Naval Complex.	Pearl Harbor.
4	TX	Pantex Plant (USDOE).	Pantex Village.
4	WA	Hamilton Island Landfill (USA/COE).	North Bonneville.

Number of Federal facility sites proposed for listing: 3.

[1] Sites are placed in groups (Gr) corresponding to groups of 50 on the final NPL.

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 11735, 38 FR 21243, E.O. 12580, 52 FR 2923.

Dated: July 19, 1991.

Don R. Clay,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 91–17794 Filed 7–26–91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 515, 560 and 572

[Docket No. 91-20]

Exemption of Certain Marine Terminal Services Arrangements

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking; Extension of reply date.

SUMMARY: On May 15, 1991, the Federal Maritime Commission published a notice of proposed rulemaking (56 FR 22384) which proposes to amend 46 CFR parts 515, 560 and 572 to conditionally exempt, pursuant to section 35 of the Shipping Act, 1916, and section 16 of the Shipping Act of 1984, certain marine terminal services arrangements from certain agreement filing requirements of the Shipping Act, 1916, the Shipping Act of 1984 and the Commission's implementing regulations thereunder, and to conditionally discontinue the Commission's tariff filing requirements for such matters. The notice of proposed rulemaking required the filing of comments by July 15, 1991, and replies to comments by August 13, 1991. The American Association of Port Authorities ("AAPA") has requested that time for filing replies be extended to August 31, 1991, to provide ample time to review and respond to comments. The Commission has determined to grant AAPA's request.

DATES: Replies to comments due on or before August 31, 1991.

ADDRESSES: Send an original and fifteen copies of replies to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Deputy Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street, NW, Washington, DC 20573–0001, (202) 523–5796.

onal Priorities List,
#11 Sites (By Group)

e name	City/county
r Co.	Imperial.
chem ycling o./Ekotek,	Salt Lake City.
rd nty—21st oor Dump.	Fort Lauderdale.
o Landfill	Marysville.
e lation s.	Ottawa.
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Kingston n Dump/ Disposal	South Kingstown.
Creek Tailings.	Lead.
Lake field amination.	Moses Lake.
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o Facility	Los Angeles.
inster t #2633.	Westminster.
y Farm	Hereford Township.

sed for listing: 19.
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Priorities List, Federal
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name	City/county
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roups (Gr) corresponding to NPL.

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 11735, 38 FR 21243, E.O. 12580, 52 FR 2923.

Dated: July 19, 1991.

Don R. Clay,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 91–17794 Filed 7–26–91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 515, 560 and 572

[Docket No. 91-20]

Exemption of Certain Marine Terminal Services Arrangements

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking; Extension of reply date.

SUMMARY: On May 15, 1991, the Federal Maritime Commission published a notice of proposed rulemaking (56 FR 22384) which proposes to amend 46 CFR parts 515, 560 and 572 to conditionally exempt, pursuant to section 35 of the Shipping Act, 1916, and section 16 of the Shipping Act of 1984, certain marine terminal services arrangements from certain agreement filing requirements of the Shipping Act, 1916, the Shipping Act of 1984 and the Commission's implementing regulations thereunder, and to conditionally discontinue the Commission's tariff filing requirements for such matters. The notice of proposed rulemaking required the filing of comments by July 15, 1991, and replies to comments by August 13, 1991. The American Association of Port Authorities ("AAPA") has requested that time for filing replies be extended to August 31, 1991, to provide ample time to review and respond to comments. The Commission has determined to grant AAPA's request.

DATES: Replies to comments due on or before August 31, 1991.

ADDRESSES: Send an original and fifteen copies of replies to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Deputy Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street, NW, Washington, DC 20573–0001, (202) 523–5796.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–17824 Filed 7–26–91; 8:45 am]

BILLING CODE 6730-01-M

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46 CFR Parts 550, 580, and 581

[Docket No. 90-23]

Automated Tariff Filing and Information System ("ATFI") Ocean Freight Tariffs in Foreign and Domestic Offshore Commerce; Inquiry

AGENCY: Federal Maritime Commission.

ACTION: Notice of availability of Third Interim Report.

SUMMARY: The Federal Maritime Commission's Third Interim Report resolves remaining issues set forth in the August 1990 Notice of Inquiry, except for the required use of the Harmonized System of Commodity Coding and implementation plan (transition to full-scale operation). Further comments are invited on these two issues.

DATES: Written comments on #1, Harmonized System, and #23, Transition Plan, (original and 15 copies) must be submitted by August 26, 1990, and served on other parties to the proceeding.

Availability of Third Interim Report: July 23, 1991.

ADDRESSES: Submit written comments to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573. A copy of the Service List in this proceeding, as well as a copy of the Third Interim Report, may also be obtained through the Secretary.

FOR FURTHER INFORMATION CONTACT: John Robert Ewers, Deputy Managing Director, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5800.

SUPPLEMENTARY INFORMATION: On August 1, 1990, the Federal Maritime Commission issued an ATFI Notice of Inquiry (55 FR 31199, August 1, 1990), requesting public comment on some of the basic features being considered for ATFI. On December 26, 1990, after consideration of the comments received, the Commission issued an Interim Report with an appended ATFI Batch Filing Guide (with transaction sets) (56 FR 668, January 8, 1991). On March 25, 1991, the Commission issued a Second Interim Report (56 FR 13101, March 29, 1991) which responds to concerns of commercial Electronic Tariff Filers, affirms that the Commission will not furnish batch filing software, and reiterates that the Batch Filing Guide is all that is necessary for any firm to develop its own software. The Second Interim Report also establishes a tentative schedule for certification of such privately-developed batch filing software, the window for which will begin in early November 1991 and extend into early 1992, when ATFI goes into full-scale operation.

The July 23, 1991, Third Interim Report resolves remaining issues set forth in the Notice of Inquiry, except for the required use of the Harmonized System of Commodity Coding, and proposes an implementation plan for transition to full-scale operations, upon which comments are invited. Additionally, the Third Interim Report reflects a recent iteration of the U.S. House of Representatives' policy promoting the use of algorithms in ATFI and making the "bottom-line" functionality available to all public users.

A proposed rule, with opportunity for public comments, is being prepared for publication in the **Federal Register**.

Joseph C. Polking,

Secretary.

[FR Doc. 91–17823 Filed 7–26–91; 8:45 am]

BILLING CODE 6730-01-M

Notices

Federal Register

Vol. 56, No. 145

Monday, July 29, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 91-109]

Secretary's Advisory Committee on Foreign Animal and Poultry Diseases; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: With this document, we give notice of a meeting of the Secretary's Advisory Committee on Foreign Animal and Poultry Diseases.

PLACE, DATES, AND TIME OF MEETING: The meeting will be held in the North Prairie Room of the Holiday Inn-Gateway Center, US Highway 30 and Elwood Drive, Ames, Iowa 50010, August 27 through August 29, 1991. Sessions will be held from 1 p.m. to 5 p.m. on August 27, from 8 a.m. to 5 p.m. on August 28, and from 8 a.m. to 12 noon on August 29.

FOR FURTHER INFORMATION CONTACT: Dr. M.A. Mixson, Chief Staff Veterinarian, Emergency Programs Staff, VS, APHIS, USDA, room 747, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8073.

SUPPLEMENTARY INFORMATION: The Secretary's Advisory Committee on Foreign Animal and Poultry Diseases (Committee) advises the Secretary of Agriculture of means to suppress, control, or eradicate an outbreak of foot-and-mouth disease, or other destructive foreign animal or poultry disease, in the event these diseases should enter the United States. The Committee also advises the Secretary of Agriculture of means to prevent these diseases.

Tentative topics for discussion at the upcoming meeting will include, among other things, the expectations of the Committee for 1992, emergency preparedness goals for the Animal and Plant Health Inspection Service (APHIS), and a review of APHIS plans to deal effectively with outbreaks of foreign diseases. A representative of the Agricultural Research Service will report on that agency's foreign animal disease research activities. The Committee will also develop recommendations and prepare comments on control and eradication guides for foot-and-mouth disease and other foreign animal diseases.

The meeting will be open to the public. However, due to time constraints, the public will not be allowed to participate in the Committee's discussion. Written statements concerning meeting topics may be filed with the Committee before or after the meeting by sending them to Dr. M.A. Mixson at the above address, or may be filed at the meeting.

This notice is given in compliance with the Federal Advisory Committee Act (Pub. L. 92–463).

Done in Washington, DC, this 24th day of July 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–17874 Filed 7–26–91; 8:45 am]

BILLING CODE 3410-34-M

Rural Electrification Administration

Rayburn Country Electric Cooperative, Inc.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Finding of no significant impact relating to the construction and operation by Rayburn Country Electric Cooperative, Inc. (RCEC), of the Mineola-Canton Tap and Explorer-Overton 138 kV Transmission Lines located in Anderson, Cherokee, Henderson, Kaufman, Rusk, Smith and Van Zandt Counties, Texas.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended, the Council on Environmental Quality Regulations (40 CFR parts 1500–1508) and REA Environmental Policies and Procedures (7 CFR part 1794), has made a Finding of No significant Impact (FONSI) with respect to the construction and operation of the Mineola-Canton tap and Explorer-Overton 138 kV Transmission Line Project.

FOR FURTHER INFORMATION CONTACT: Mr. Martin G. Seipel, Director, Southwest Area—Electric, Rural Electrification Administration, Room 0207, Agriculture South Building, Washington, DC 20250, telephone: (202) 382–8848. Copies of the Environmental Assessment (EA) and FONSI can be reviewed at REA at the address provided above or at the office of Rayburn Country Electric Cooperative, Inc., 980 Sids Road, Rockwall, Texas 75087.

SUPPLEMENTARY INFORMATION: RCEC is a power supply cooperative that is not an REA borrower. It supplies the wholesale power requirements of its six member distribution cooperatives that are REA borrowers. RCEC is not seeking financing assistance from REA for the proposed facilities. However, this arrangement requires certain REA actions with respect to RCEC's proposed plan of power supply. The project will allow RCEC to interconnect its facilities with the Southwestern Electric Power Company (SWEPCO) and to more economically serve its member systems.

REA, in accordance with its environmental policies and procedures, required that Rayburn Country Electric Cooperative, Inc. (RCEC), develop a Borrower's Environmental Report (BER) reflecting the potential impacts of the proposed facility. The BER, which includes input from Federal, State and local agencies, has been adopted as REA's EA for the project in accordance with 7 CFR 1794.83. REA has concluded that the BER represents an accurate assessment of the environmental impacts of the project. RCEC, in conjunction with SWEPCO, plans to construct the proposed 209.1 km (130.0 mile) transmission line project in seven segments using primarily wood pole H-frame structures. Detailed routing information can be obtained by contacting RCEC at the above address.

The first segment will be approximately 34.4 km (21.5 miles) in length and connect SWEPCO's Mineola Substation located northeast of Mineola, Texas, and RCEC's existing Canton Tap Switching Station located approximately 8.8 km (5.5 miles) southwest of Grand Saline, Texas. SWEPCO will construct a

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SUPPLEMENTARY INFORMATION: RCEC is a power supply cooperative that is not an REA borrower. It supplies the wholesale power requirements of its six member distribution cooperatives that are REA borrowers. RCEC is not seeking financing assistance from REA for the proposed facilities. However, this arrangement requires certain REA actions with respect to RCEC's proposed plan of power supply. The project will allow RCEC to interconnect its facilities with the Southwestern Electric Power Company (SWEPCO) and to more economically serve its member systems.

REA, in accordance with its environmental policies and procedures, required that Rayburn Country Electric Cooperative, Inc. (RCEC), develop a Borrower's Environmental Report (BER) reflecting the potential impacts of the proposed facility. The BER, which includes input from Federal, State and local agencies, has been adopted as REA's EA for the project in accordance with 7 CFR 1794.83. REA has concluded that the BER represents an accurate assessment of the environmental impacts of the project. RCEC, in conjunction with SWEPCO, plans to construct the proposed 209.1 km (130.0 mile) transmission line project in seven segments using primarily wood pole H-frame structures. Detailed routing information can be obtained by contacting RCEC at the above address.

The first segment will be approximately 34.4 km (21.5 miles) in length and connect SWEPCO's Mineola Substation located northeast of Mineola, Texas, and RCEC's existing Canton Tap Switching Station located approximately 8.8 km (5.5 miles) southwest of Grand Saline, Texas. SWEPCO will construct a

24.8 km (15.5 mile) section of this segment.

The second segment will be approximately 10.5 km (6.5 miles) in length and will connect RCEC's proposed Explorer Switching Station located approximately 16.9 km (10.5 miles) southwest of Canton, Texas, with Kaufman County Electric Cooperative's (KCEC) proposed Mabank Switching Station located approximately 8.0 km (5.0 miles) north of Mabank, Texas.

The third segment will be approximately 25.7 km (16.0 miles) in length and connect KCEC's proposed Mabank Substation site with New Era Electric Cooperative's (NEEC) existing Cedar Substation located approximately 4.3 km (2.7 miles) south of Eustace, Texas.

The fourth segment will be approximately 18.5 km (11.5 miles) in length and connect NEEC's Cedar Substation and NEEC's existing Walton Substation.

The fifth segment will be approximately 13.7 km (8.5 miles) in length and connect NEEC's Walton Substation and NEEC's proposed Barton Chapel Substation site located approximately 7.2 km (4.5 miles) northeast of Murchison, Texas.

The sixth segment will be approximately 18.5 km (11.5 miles) in length and connect NEEC's Barton Chapel Substation site and NEEC's Antioch Switching Station located in eastern Henderson County.

The seventh segment will be approximately 63.0 km (39.0 miles) in length and connect NEEC's existing Coffee Substation located 6.4 km (4.0 miles) northeast of Frankston, Texas, with SWEPCO's existing Overton Switching Station located south of Overton, Texas.

Alternatives examined for the proposed project included no action and alternative routes. The "no action" alternative would also allow RCEC to meet its present and future needs. REA determined that the proposed project will meet RCEC's existing and future needs more effectively and economically and will have no significant impact on the environment.

In accordance with REA Environmental Policies and Procedures, 7 CFR Part 1794, RCEC and SWEPCO published notices and advertisements in the Palestine Herald Press, Jacksonville Progress, Athens Daily Review, Terrell Tribune, Henderson Daily News, Tyler Courier-Times-Telegraph, Canton Herald, Winnsboro News, Grand Saline Sun and the Mineola Monitor. The newspapers have a general circulation in Anderson, Cherokee, Henderson, Kaufman, Rusk, Smith and Van Zandt Counties, Texas. The notices described the project, announced the availability of the BERs for review, and gave addresses where comments could be sent.

The public was given at least 30 days to respond and submit comments. No responses were received by RCEC.

As a result of its independent evaluation, REA concluded that its approval to allow RCEC to construct the proposed project does not constitute a major Federal action significantly affecting the quality of the human environment. REA hereby reaches a Finding of No Significant Impact with respect to the proposed project in accordance with 7 CFR part 1794.

Dated: July 26, 1991.

John H. Arnesen,

Assistant Administrator—Electric.

[FR Doc. 91–17922 Filed 7–26–91; 8:45 am]

BILLING CODE 3410–15–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Ohio Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Ohio Advisory Committee to the Commission will be held from 9 a.m. until 3 p.m. on Wednesday, August 28, 1991, at the Sheraton Cleveland City Center, 777 St. Clair Avenue, Cleveland, Ohio 44114. The purpose of this meeting is to orient members, meet Midwestern Regional staff, discuss civil rights issues, and plan future activities.

Persons desiring additional information should contact Committee Chairperson, Lynwood Battle, at (513) 983–2843 or Constance M. Davis, Regional Director of the Midwestern Regional Office, U.S. Commission on Civil Rights, at (312) 353–8311. Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 19, 1991.

Carol Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91–17844 Filed 7–26–91; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Economic Development Administration

Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

Firm name	Address	Date petition accepted	Product
Gaylord Foundry Equipment, Inc	703 S. Cottage, Independence, MO 64051	06/14/91	Enameled cast iron household articles.
Plymouth Rubber Company, Inc	104 Revere Street, Canton, MA 02021	06/14/91	Vinyl and electrical tape.
Iva Manufacturing Company	201 East Broad Street, Iva, SC 29655	06/18/91	Ladies blouses and ladies slacks.
Ruggeri Manufacturing, Inc	35 Industrial Park Circle, Rochester, NY 14624-2403.	06/18/91	Cameras, carousel trays, stapler bars and heater motors.
American Modern Metals Corporation	25 Belgrove Drive, Kearny, NJ 07032	06/24/91	Drawn aluminum tubing, rod, bar and extruded shapes for baseball and softball bats.
King Brothers Industries	27781 Avenue Hopkins, Valencia, CA 91355	06/24/91	Plastic plumbing fittings.
Act II/B.b.A. John Roberts Limited	Biddeford Industrial Park, Biddeford, ME 04005	06/25/91	Men's suits and sportcoats and women's coats.
Kennetex, Inc	740 Cypress Street, Box 816, Kennett Square, PA 19348.	06/25/91	Synthetic spun yarn.
Bunton Company	4501 E. Indian Trail, Louisville, KY 40213	06/26/91	Gasoline powered commercial grass cutting mowers (riding and walk-behind).

Firm name	Address	Date petition accepted	Product
Triangle Brass Manufacturing Company, Inc.	3528 Emery Street, Los Angeles, CA 90023	06/27/91	Door closers, parts, stops, pulls, and kick plates.
Westin-Nielsen Corporation	4301 White Bear Parkway, St. Paul, MN 55110	06/27/91	Upholstered chairs with wooden frames, with wood or metal swivel base.
H.M. Quackenbush, Inc	220 Prospect Street, Herkimer, NY 13350	07/01/91	Nutcrackers and nutpicks, machined, plated and assembled from steel.
Sequoia Industries, Inc	11813 Hubbard Road, Livonia, MI 48150	07/01/91	Machined parts for motor vehicle clutches.
Northeast Knitting Mills, Inc	69 Alden Street, Fall River, MA 02723	07/01/91	Sweaters: men's and women's cotton, knit and other blends of fibers.
Adolph Meller Company	120 Corliss Street, Providence, RI 02904	07/03/91	Optical components known as sapphires.
Aerolloy, Inc.	42-21 Ninth Street, Long Island City, NY 11101	07/05/91	Stainless steel flanges, couplings and gear blanks.
Paul Krone Diecasting Company	6605 W. Fullerton Avenue, Chicago, IL 60635	07/05/91	Die cast parts of aluminum & zinc, for automobile coolant systems, transmission & steering systems.
ASBK, Inc. DBA/Marion Rohr Corporation	152 Madison Avenue, New York, NY 10016-6714.	07/05/91	Ladies panties made of nylon/lycra lace.
Sherco Enterprises	627 Field Street, Johnson City, NY 13790	07/05/91	Electrical cable, harness assemblies used for machines and computers.
Top Switch Manufacturing Company	1925 8th Avenue, Seattle, WA 98101	07/05/91	Jackets.
Scott McLean, Inc.	924 W. Main St./P.O. Box 2140, Bowling Green, KY 42101.	07/05/91	OEM parts for brush industry, tool and brush bodies of dimension lumber and chairs.
Buffalo Brake Beam Company	400 Ingham Avenue, Lackawanna, NY 14218	07/08/91	Brake systems for railroad cars.
Sebago Woodcrafters, Inc	Route 117, Buckfield, ME 04220	07/08/91	Wood furniture.
Saf-T-Bak, Inc	201 Cayuga Avenue, Altoona, PA 16603	07/09/91	Insulated coats and pants, coveralls and vests.
Bel Air Tool Corporation	110 Byfield Street, Warwick, RI 02888	07/09/91	Costume earrings and belt buckle assemblies.
Planto Furniture Mfg. Co., Inc	307 Indiana Street, San Antonio, TX 78210	07/09/91	Wood upholstered office chairs.
Etta Industries, Inc.	4755 Walnut Street, Boulder, CO 80301	07/11/91	Ballasts for lighting.
Kearney & Trecker Corporation	11000 West Theodore Trecker Way, Milwaukee, WI 53214.	07/11/91	Machining centers without automatic tool changers, and multiple stations.
Staodyn, Inc.	1225 Florida Avenue, Box 1379, Longmont, CO 80502-1379.	07/11/91	Tens—transcutaneous electrical nerve stimulators.
Wondermaid, Inc	1520 Washington Avenue, St. Louis, MO 63103	07/12/91	Slips (full and half) pattern design, cut and sew man-made fibers.
White Lift Truck Parts & Mfg. Co., Inc	8600 Jefferson Highway, Osseo, MN 55369	07/15/91	Self-propelled fork lift trucks, electric, gasoline, propane or diesel engines and parts.

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Trade Adjustment Assistance Division, room 4015A, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: July 23, 1991.

L. Joyce Hampers,

Assistant Secretary for Economic Development.

[FR Doc. 91-17943 Filed 7-26-91; 8:45 am]

BILLING CODE 3510-24-M

National Oceanic and Atmospheric Administration

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Issuance of Scientific Research Permit No. 743.

SUMMARY: On Friday, March 29, 1991, notice was published in the **Federal Register** (56 FR 13128) that an application (P167F) had been filed by Dr. Frank T. Awbrey, Hubbs Sea World Research Institute, 1700 South Shores Road, San Diego, California 92107, to take by harassment up to 100 killer whales (*Orcinus orca*), as many as 50 times each, all sizes, ages, sexes, and reproductive conditions. The research involves identification of acoustical cues likely to be used by the killer whales to locate a commercial fishing boat retrieving a longline with sablefish and to find ways to make those sounds less audible to the whales. Duration of the research is two years in Prince William Sound, Alaska, especially in Knight Island Passage.

Notice is hereby given that on July 17, 1991, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the National Marine Fisheries Service issued a permit for the above research activities subject to the Special Conditions set forth therein.

The permit is available for review by appointment by interested persons in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, SSMC1, room 7320, Silver Spring, Maryland 20910 (301/427-2289);

Director, Alaska Region, National Marine Fisheries Service, NOAA, 709 West 9th Street, Federal Bldg., Juneau, Alaska 99802 (907/586-7221); and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731-7415 (213/514-6196).

Dated: July 17, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91–17825 Filed 7–26–91; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The following inventions are owned by the United States Government and are available for licensing in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development.

United States Patent Application Serial Number 7–429,326, "Polymer Bead Containing Immobilized Metal Extractants", is available for licensing to one party co-exclusively with existing licensees. It disclosed spherical polymeric beads having internal ore structures containing extractant material capable of sorbing toxic metals, a process for producing such beads and a method for removing toxic metal wastes dissolved in dilute aqueous streams.

United States Patent Number 4,053,776 (Patent Application Serial Number 5–689,757), "Sub-Micron Particle Detector" which discloses an instrument to detect submicron particles by charge-transfer attachment. The instrument is made up of a charging chamber with two concentric cylindrical electrodes, a remote third collector electrode, and a pump to force ambient air through the charging chamber and into the collection electrode. The innermost electrode of the charging chamber is supplied with a radioactive material having a gold foil covering. This material can create a small bipolar region symmetrical to the inner electrode where primary ionization takes place. Positive ions created in this region move to the large outside unipolar region to attach themselves to sub-micron particles. These charged particles are then forced from the charged chamber at which time they may either impinge on the collection electrode to create a measurable axial current or the particles may enter a size discrimination chamber. Should they enter this discrimination chamber, particles of a given mobility or size are collected by two additional concentric cylindrical electrodes.

A copy of the above patent application may be purchased specifying the serial number, by writing the National Technical Information Service at 5285 Port Royal Road, Springfield, Virginia 22161 or by telephoning the National Technical Information Services Sales Desk at (703) 487–4650 or, outside Virginia, 800–553–NTIS. A copy of the above patent may be obtained from the Commissioner of Patents, United States Patent and Trademark Office, Washington, DC 20231.

Licensing information may be obtained by writing to: National Technical Information Service, Center for Utilization of Federal Technology-Patent Licensing, United States Department of Commerce, Post Office Box 1423, Springfield, Virginia 22151.

In all communications to NTIS concerning the above inventions, please refer to the related patent application serial number written above.

Douglas J. Campion,

Patent Licensing Specialist, Center for Utilization of Federal Technology.

[FR Doc. 91–17847 Filed 7–26–91; 8:45 am]

BILLING CODE 3510-04-M

Patent and Trademark Office

[Docket No. 910235–1173]

Termination of Status of International Depositary Authority Under Budapest Treaty

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: Notice is hereby given that In Vitro International, Inc.'s status as an international depositary authority is terminated effective September 25, 1991.

ADDRESSES: Questions should be submitted to H. Dieter Hoinkes, Office of Legislation and International Affairs, Box 4, Patent and Trademark Office, Washington, DC 20231.

FOR FURTHER INFORMATION CONTACT: H. Dieter Hoinkes, Office of Legislation and International Affairs, (703) 557–3065.

SUPPLEMENTARY INFORMATION: Since November 30, 1983, In Vitro International, Inc. (IVI) of Linthicum, Maryland, has been recognized as an international depositary authority under the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure.

The Patent and Trademark Office has received a letter from Dr. Rex A. D'Agostino, President of IVI, dated May 24, 1991, stating that IVI can no longer continue to perform its functions as an international depositary authority under the Budapest Treaty.

By letter dated June 25, 1991, the Patent and Trademark Office has notified the Director General of the World Intellectual Property Organization that "the United States withdraws its declaration of assurances made on behalf of IVI on September 9, 1983". As a consequence, the termination of the status of IVI as an international depositary authority takes effect on September 25, 1991.

All deposits stored with IVI under the Budapest Treaty were transferred on June 20, 1991, to a substitute authority, which is the American Type Culture Collection (ATCC), 12301 Parklawn Drive, Rockville, Maryland, 20852, (Telephone No. (301) 881–2600). All mail or other communications addressed to IVI regarding those deposits, including all files and other relevant information, have also been transferred to ATCC. In its capacity as a substitute authority, ATCC has agreed to store all deposits transferred from IVI for an initial period of not less than three months from July 5, 1991, the date of first notice in the **Federal Register** of IVI's termination as an international depositary authority. Patent owners and applicants who wish to preserve their date of original deposit must contact ATCC by October 5, 1991, to make arrangements to pay ATCC's fee for continued maintenance and storage of their deposits past the initial storage period. ATCC will not accept responsibility for continued storage of deposits in respect of which depositors have failed to make appropriate arrangements by October 5, 1991.

For further information, contact H. Dieter Hoinkes, Office of Legislation and International Affairs, Box 4, Patent and Trademark Office, Washington, DC 20231; telephone (703) 557–3065.

Dated: July 23, 1991.

Harry F. Manbeck, Jr.,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 91–17834 Filed 7–26–91; 8:45 am]

BILLING CODE 3510-16-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Determinations; Excess Defense Articles (4 LCUs, 20 OV-10 Spare Engines and Support Equipment)

Pursuant to the reporting requirements of section 517 of the Foreign Assistance Act of 1961 (FAA) this document provides notification that during Fiscal Year 1991 the United States Government will transfer to the Government of Colombia excess support equipment for

OV-10 aircraft. The total value of the items is estimated to be $35,612. The original acquisition value of the items was $71,333.

This action is required to ensure that Colombia is afforded the opportunity of obtaining these needed items at no cost. The items are needed to enable the military forces in Colombia to participate in a comprehensive national anti-narcotics enforcement program, by conducting activities within Colombia to prevent the production, processing, trafficking, transportation, and consumption of illicit drugs or other controlled substances.

In accordance with section 517(c) FAA the recipient country will agree in the associated Letter of Offer and Acceptance that it will ensure that these items will be used primarily in support of anti-narcotics activities.

The Director, Defense Security Assistance Agency, Lt. Gen. Teddy G. Allen, certifies that the items are needed by Colombia and determines that there will be no adverse impact on U.S. military readiness as a result of these transfers.

Dated: July 23, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-17857 Filed 7-26-91; 8:45 am]

BILLING CODE 3810-01-M

Joint Defense Policy Board/Defense Science Board Task Force on Nonstrategic Nuclear Forces

ACTION: Notice of Task Force Meeting.

SUMMARY: The Joint Defense Policy Board/Defense Science Board Task Force on Nonstrategic Nuclear Forces will meet in closed session on 21–22 August 1991 from 0900 until 1700 at the Naval Ocean Systems Center, San Diego, California.

The mission of the Joint Defense Policy Board/Defense Science Board Task Force is to provide the Secretary of Defense, Deputy Secretary of Defense, Under Secretary of Defense for Policy and the Under Secretary of Defense for Acquisition with independent, informed advice and opinion concerning major matter relating to nonstrategic nuclear force policy and acquisitions. At the meeting the Task Force will hold classified discussions on national security matters.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended [5 U.S.C. App. II, (1982)], it has been determined that this Joint Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: July 23, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-17858 Filed 7-26-91; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Availability of Patent

AGENCY: Office of the Judge Advocate General, Intellectual Property Law Division, DOD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive, or nonexclusive licenses under the following patent. Any licenses granted shall comply with U.S.C. 209 and 37 CFR part 404.

Issued patent	Title	Issued date
4,978,286	Variable Cycle Engine Passive Mechanism	12/18/90

EFFECTIVE DATE: July 29, 1991.

FOR FURTHER INFORMATION CONTACT: Earl T. Reichert, Department of the Army, Office of the Judge Advocate General, Intellectual Property Law Division, 5611 Columbia Pike, JALS-IP, Falls Church, VA 22041-5013, (703) 756-2823.

SUPPLEMENTARY INFORMATION: Using centrifugal force to deploy propeller blades, the Variable-Cycle Engine Passive Mechanism would allow gas turbine engines to smoothly transition between turboprop and turbojet modes of operation, taking advantage of the fuel economy afforded by turboprop operation and the speed afforded by the turbojet.

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 91-17841 Filed 7-26-91; 8:45 am]

BILLING CODE 3710-08-M

Defense Logistics Agency

Privacy Act of 1974; Amend a record system

AGENCY: Defense Logistics Agency (DLA), DOD.

ACTION: Amend a record system.

SUMMARY: The Defense Logistics Agency proposes to amend one existing record system to its inventory of record system notices subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

DATES: The proposed action will be effective without further notice on August 28, 1991, unless comments are received which would result in a contrary determination.

ADDRESSES: Ms. Susan Salus, DLA-XAM, Defense Logistics Agency, Cameron Station, Alexandria, VA 22304-6100. Telephone (202) 274-6234 or Autovon 284-6234.

SUPPLEMENTARY INFORMATION: The complete inventory of Defense Logistics Agency record system notices subject to the Privacy Act of 1974, as amended, have been published in the **Federal Register** as follows:

50 FR 22897, May 29, 1985 (DoD Compilation, changes follow)
50 FR 51898, Dec. 20, 1985
51 FR 27443, Jul. 31, 1986
51 FR 30104, Aug. 22, 1986
52 FR 35304, Sep. 18, 1987
52 FR 37495, Oct. 7, 1987
53 FR 04442, Feb. 16, 1988
53 FR 09965, Mar. 28, 1988
53 FR 21511, Jun. 8, 1988
53 FR 26105, Jul. 11, 1988
53 FR 32091, Aug. 23, 1988
53 FR 39129, Oct. 5, 1988
53 FR 44937, Nov. 7, 1988
53 FR 48708, Dec. 2, 1988
54 FR 11997, Mar. 23, 1989
55 FR 21918, May 30, 1990 (DLA Address Directory)
55 FR 32284, Aug. 8, 1990
55 FR 34050, Aug. 21, 1990
55 FR 42755, Oct. 23, 1990
55 FR 53178, Dec. 27, 1990
56 FR 5806, Feb. 13, 1991
56 FR 8987, Mar. 4, 1991
56 FR 11207, Mar. 15, 1991
56 FR 19838, Apr. 30, 1991

The specific changes to the record system being amended are set forth below, followed by the system notice, as amended, in its entirety. This notice is not within the purview of subsection (r) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), which requires the submission of an altered system report.

Dated: July 23, 1991.

L.M. Bynum

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S322.10 DMDC

System name:

Defense Manpower Data Center Data Base (56 FR 19838, April 30, 1991)

Changes:

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Title	Issued date
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2041–5013, (703) 756–

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ADDRESSES: Ms. Susan Salus, DLA–XAM, Defense Logistics Agency, Cameron Station, Alexandria, VA 22304–6100. Telephone (202) 274–6234 or Autovon 284–6234.

SUPPLEMENTARY INFORMATION: The complete inventory of Defense Logistics Agency record system notices subject to the Privacy Act of 1974, as amended, have been published in the **Federal Register** as follows:

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51 FR 30104, Aug. 22, 1986
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56 FR 19838, Apr. 30, 1991

The specific changes to the record system being amended are set forth below, followed by the system notice, as amended, in its entirety. This notice is not within the purview of subsection (r) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), which requires the submission of an altered system report.

Dated: July 23, 1991.

L.M. Bynum

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S322.10 DMDC

System name:

Defense Manpower Data Center Data Base (56 FR 19838, April 30, 1991)

Changes:

* * * * *

Categories of individuals covered by the system:

Insert between the sixth and seventh paragraph a new paragraph "All Federal Civil Service employees."

Categories of records covered by the system:

Add a new paragraph between the existing sixth and seventh paragraphs "Office of Personnel Management (OPM) Central Personnel Data File (CPDF), an extract portion of the OPM/GOVT–l, General Personnel Records, containing employment/personnel data on all Federal employees consisting of name, Social Security Number, date of birth, sex, work schedule (full-time, part-time, intermittent), annual salary rate (but not actual earnings), occupational series, position occupied, agency identifier, geographic location of duty station, metropolitan statistical area, and personnel office identifier. These records provided by OPM for approved computer matching"

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In the eleventh paragraph, second line, replace the word "regular" with "certain," and delete the word "officer."

Add a new paragraph after the twenty-first paragraph "To the U.S. Coast Guard (USCG) of the Department of Transportation (DOT) to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of exchanging personnel and financial information on certain retired USCG military members, who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of military pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and to permit adjustment of military retired pay by the U.S. Coast Guard and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions."

In the thirtieth paragraph, second line, replace the word "regular" with "certain," and delete the word "officer."

* * * * *

S322.10 DMDC

SYSTEM NAME:

Defense Manpower Data Center Data Base.

SYSTEM LOCATION:

Primary location—W.R. Church Computer Center, Naval Postgraduate School, Monterey, CA 93920–5000.

Back-up files maintained in a bank vault in Hermann Hall, Naval Postgraduate School, Monterey, CA 93920–5000.

Decentralized segments—Portions of this file may be maintained by the military and non-appropriated fund personnel and finance centers of the military services, selected civilian contractors with research contracts in manpower area, and other Federal agencies.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All uniformed services officers and enlisted personnel who served on active duty from July 1, 1968, and after or who have been a member of a reserve component since July 1975; retired military personnel; participants in Project 100,000 and Project Transition, and the evaluation control groups for these programs. All individuals examined to determine eligibility for military service at an Armed Forces Entrance and Examining Station from July 1, 1970, and later.

DoD civilian employees since January 1, 1972. All veterans who have used the GI Bill education and training employment services office since January 1, 1971. All veterans who have used GI Bill education and training entitlements, who visited a state employment service office since January 1, 1971, or who participated in a Department of Labor special program since July 1, 1971. All individuals who ever participated in an educational program sponsored by the U.S. Armed Forces Institute and all individuals who ever participated in the Armed Forces Vocational Aptitude Testing Programs at the high school level since September 1969.

Individuals who responded to various paid advertising campaigns seeking enlistment information since July 1, 1973; participants in the Department of Health and Human Services National Longitudinal Survey. Individuals responding to recruiting advertisements since January 1987; survivors of retired military personnel who are eligible for or currently receiving disability payments or disability income compensation from the Department of Veterans Affairs; surviving spouses of active or retired deceased military personnel; 100% disabled veterans and their survivors.

Individuals receiving disability compensation from the Department of Veterans Affairs or who are covered by a Department of Veterans Affairs' insurance or benefit program; civilian employees of the Federal Government; dependents of active duty military retirees, selective service registrants.

Individuals receiving a security background investigation as identified in the Defense Central Index of Investigation. Former military and civilian personnel who are employed by DoD contractors and are subject to the provisions of 10 U.S.C. 2397.

All U.S. Postal Service employees.

All Federal Civil Service employees.

All non-appropriated funded individuals who are employed by the Department of Defense.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computerized personnel/employment/pay records consisting of name, Service Number, Selective Service Number, Social Security Number, compensation data, demographic information such as home town, age, sex, race, and educational level; civilian occupational information; civilian and military acquisition work force warrant location, training and job specialty information; military personnel information such as rank, length of service, military occupation, aptitude scores, post-service education, training, and employment information for veterans; participation in various inservice education and training programs; military hospitalization records; and home and work addresses.

CHAMPUS claim records containing enrollee, patient and health care facility, provided data such as cause of treatment, amount of payment, name and Social Security or tax ID of providers or potential providers of care.

Selective Service System registration data.

Department of Veterans Affairs disability payment records.

Credit or financial data as required for security background investigations.

Criminal history information on individuals who subsequently enter the military.

U.S. Postal Service employment/personnel records containing Social Security Number, name, salary, home and work address. U.S. Postal Service records will be maintained on a temporary basis for approved computer matching between the U.S. Postal Service and DoD.

Office of Personnel Management (OPM) Central Personnel Data File (CPDF), an extract portion of the OPM/GOVT–1, General Personnel Records, containing employment/personnel data on all Federal employees consisting of name, Social Security Number, date of birth, sex, work schedule (full-time, part-time, intermittent), annual salary rate (but not actual earnings), occupational series, position occupied, agency identifier, geographic location of duty station, metropolitan statistical area, and personnel office identifier. These records provided by OPM for approved computer matching.

Non-appropriated fund employment/personnel records consist of Social Security Number, name, and work address.

AUTHORITY FOR THE MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, Assistant Secretaries of Defense; Appointment Powers and Duties; 10 U.S.C. 2358; Research Projects; Pub. L. 95–452, as amended (Inspector General Act of 1978); and Executive Order 9397.

PURPOSE(S):

The purpose of the system of records is to provide a single central facility within the Department of Defense to assess manpower trends, support personnel functions to perform longitudinal statistical analyses, identify current and former DoD civilian and military personnel for purposes of detecting fraud and abuse of pay and benefit programs, and to collect debts owed to the United States Government and state and local governments.

All records in this record system are subject to use in authorized computer matching programs within the Department of Defense and with other Federal agencies or non-Federal agencies as regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Department of Veterans Affairs (DVA), Statistical Policy and Research Office, Office of Information Management and Statistics, DVA Management Sciences Division to provide military personnel employment and pay data for the purpose of selection samples for surveys asking veterans about the use of veteran benefits and satisfaction with DVA services, and to validate eligibility for DVA benefits; and to analyze the cost to the individual of military service under the Veteran's Group Life Insurance program.

To the Department of Veterans Affairs (DVA) to provide identifying military personnel data to the DVA and its contractor, the Prudential Insurance Company, for the purpose of notifying members of the Individual Ready Reserve (IRR) of their right to apply for Veteran's Group Life Insurance coverage.

To the Department of Veterans Affairs (DVA) to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of:

1. Providing full identification of active duty military personnel, including full-time National Guard/Reserve support personnel, for use in the administration of DVA's Compensation and Pension benefit program (38 U.S.C. 3104(c), 3006–3008). The information is used to determine continued eligibility for DVA disability compensation to recipients who have returned to active duty so that benefits can be adjusted or terminated as required and steps taken by DVA to collect any resulting over payment.

2. Providing military personnel and financial data to the Veterans Benefits Administration, DVA for the purpose of determining initial eligibility and any changes in eligibility status to insure proper payment of benefits for GI Bill education and training benefits by the DVA under the Montgomery GI Bill (title 10 U.S.C., chapter 106—Selected Reserve and title 38 U.S.C., chapter 30—Active Duty). The administrative responsibilities designated to both agencies by the law require that data be exchanged in administering the programs.

3. Providing identification of reserve duty, including full-time support National Guard/Reserve military personnel, to the DVA, for the purpose of deducting reserve time served from any DVA disability compensation paid or waiver of VA benefit. The law (10 U.S.C. 684) prohibits receipt of reserve pay and DVA compensation for the same time period, however, it does permit waiver of DVA compensation to draw reserve pay.

4. Providing identification of former active duty military personnel who received separation payments to the DVA for the purpose of deducting such repayment from any DVA disability compensation paid. The law (38 U.S.C. 3104(c)) requires recoupment of severance payments before DVA disability compensation can be paid.

5. Providing identification of former military personnel and survivor's financial benefit data to DVA for the purpose of identifying military retired pay and survivor benefit payments for use in the administration of the DVA's Compensation and Pension program (38 U.S.C. 3104(c), 30063008). The information is to be used to process all DVA award actions more efficiently, reduce subsequent overpayment collection actions, and minimize erroneous payments.

To the Office of Personnel Management (OPM) consisting of personnel/employment/financial data for the purpose of carrying out OPM's management functions. Records disclosed concern pay, benefits, retirement deductions and any other information necessary for those management functions required by law (Pub. L. 83–598, 84–356, 86–724, 94–455 and 5 U.S.C. 1302, 2951, 3301, 3372, 4118, 8347).

To the Office of Personnel Management (OPM) to conduct computer matching programs regulated by the Privacy Act of l974, as amended (5 U.S.C. 552a) for the purpose of:

1. Exchanging personnel and financial information on certain military retirees, who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of military retired pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and to permit adjustments of military retired pay by the Defense Finance and Accounting Service and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

2. Exchanging personnel and financial data on civil service annuitants (including disability annuitants under age 60) who are reemployed by DoD to insure that annuities of DoD reemployed annuitants are terminated where applicable, and salaries are correctly offset where applicable as required by law (5 U.S.C. 8331, 8344, 8401 and 8468).

3. Exchanging personnel and financial data to identify individuals who are improperly receiving military retired pay and credit for military service in their civil service annuities, or annuities based on the "guaranteed minimum" disability formula. The match will identify and/or prevent erroneous payments under the Civil Service Retirement Act (CSRA) 5 U.S.C. 8331 and the Federal Employees' Retirement System Act (FERSA) 5 U.S.C. 8411. DoD's legal authority for monitoring retired pay is 10 U.S.C. 1401.

4. Exchanging civil service and Reserve military personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and cannot be released for extended active duty in the event of mobilization. Employing Federal agencies are informed of the reserve status of those affected personnel so that a choice of terminating the position or the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O.

11190, Providing for the Screening of the Ready Reserve of the Armed Services.

To the Internal Revenue Service (IRS) for the purpose of obtaining home addresses to contact Reserve component members for mobilization purposes and for tax administration. For the purpose of conducting aggregate statistical analyses on the impact of DoD personnel of actual changes in the tax laws and to conduct aggregate statistical analyses to lifestream earnings of current and former military personnel to be used in studying the comparability of civilian and military pay benefits. To aid in administration of Federal Income Tax laws and regulations, to identify non-compliance and delinquent filers.

To the Department of Health and Human Services (DHHS), Office of the Inspector General, for the purpose of identification and investigation of DoD employees and military members who may be improperly receiving funds under the Aid to Families of Dependent Children Program. To the Office of Child Support Enforcement, DHHS, pursuant to 42 U.S.C. 653 and Public Law 94–505, to assist state child support offices in locating absent parents in order to establish and/or enforce child support obligations.

To the Social Security Administration (SSA), Office of Research and Statistics for the purpose of conducting statistical analyses of impact of military service and use of GI Bill benefits on long term earnings.

To the Bureau of Supplemental Security Income, SSA, to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of verifying information provided to the SSA by applicants and recipients who are retired military members or their survivors for Supplemental Security Income (SSI) benefits. By law (42 U.S.C. 1383) the SSA is required to verify eligibility factors and other relevant information provided by the SSI applicant from independent or collateral sources and obtain additional information as necessary before making SSI determinations of eligibility, payment amounts or adjustments thereto.

To the Selective Service System (SSS) for the purpose of facilitating compliance of members and former members of the Armed Forces, both active and reserve, with the provisions of the Selective Service registration regulations (50 U.S.C. App. 451 and E.O. 11623).

To DoD Civilian Contractors for the purpose of performing research on manpower problems for statistical analyses.

To the Department of Labor (DOL) to reconcile the accuracy of unemployment compensation payments made to former DoD civilian employees and military members by the states.

To the U.S. Coast Guard (USCG) of the Department of Transportation (DOT) to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of exchanging personnel and financial information on certain retired USCG military members, who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of military pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and to permit adjustments of military retired pay by the U.S. Coast Guard and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

To Federal and Quasi-Federal agencies, territorial, state, and local governments to support personnel functions requiring data on prior military service credit for their employees or for job applications. To determine continued eligibility and help eliminate fraud and abuse in benefit programs and to collect debts and over payments owed to these programs. To assist in the return of unclaimed property or assets escheated to states of civilian employees and military member and to provide members and former members with information and assistance regarding various benefit entitlements, such as state bonuses for veterans, etc. Information released includes name, Social Security Number, and military or civilian address of individuals. To detect fraud, waste and abuse pursuant to the authority contained in the Inspector General Act of 1978, as amended (Pub. L. 95–452) for the purpose of determining eligibility for, and/or continued compliance with, any Federal benefit program requirements.

To private consumer reporting agencies to comply with the requirements to update security clearance investigations of DoD personnel.

To Defense contractors to monitor the employment of former DoD employees and members subject to the provisions of 10 U.S.C. 2397.

To financial depository institutions to assist in locating individuals with dormant accounts in danger of reverting to state ownership by escheatment for accounts of DoD civilian employees and military members.

To any Federal, state or local agency to conduct authorized computer matching programs regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a) for the purposes of identifying and locating delinquent debtors for collection of a claim owed the Department of Defense or the United States Government under the Debt Collection Act of 1982 (Pub. L. 97–365).

To state and local law enforcement investigative agencies to obtain criminal history information for the purpose of evaluating military service performance and security clearance procedures (10 U.S.C. 2358).

To the United States Postal Service to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purposes of:

1. Exchanging civil service and Reserve military personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and who cannot be released for extended active duty in the event of mobilization. The Postal Service is informed of the reserve status of those affected personnel so that a choice of terminating the position on the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O. 11190, Providing for the Screening of the Ready Reserve of the Armed Forces.

2. Exchanging personnel and financial information on certain military retirees who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of retired military pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and permit adjustments to military retired pay to be made by the Defense Finance and Accounting Service and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

The Defense Logistics Agency "Blanket Routine Uses" published at the beginning of the DLA compilation of record system notices also apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Retrieved by name, Social Security Number, occupation, or any other data element contained in system

SAFEGUARDS:

W.R. Church Computer Center—Tapes are stored in a locked cage in a controlled access area; tapes can be physically accessed only by computer center personnel and can be mounted for processing only if the appropriate security code is provided.

Back-up location—Tapes are stored in a bank-type vault; buildings are locked after hours and only properly cleared and authorized personnel have access.

RETENTION AND DISPOSAL:

Files constitute a historical data base and are permanent.

U.S. Postal Service records are temporary and are destroyed after the computer matching program results are verified.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Defense Manpower Data Center, 99 Pacific Street, suite 155A, Monterey, CA 93940–2453.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Deputy Director, Defense Manpower Data Center, 99 Pacific Street, suite 155A, Monterey, CA 93940–2453.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

For personal visits, the individual should be able to provide some acceptable identification such as driver's license or military or other identification card.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address inquiries to the Deputy Director, Defense Manpower Data Center, 99 Pacific Street, suite 155A, Monterey, CA 93940–2453.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

For personal visits, the individual should be able to provide some acceptable identification such as driver's license or military or other identification card.

CONTESTING RECORD PROCEDURES:

DLA rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, "Personal Privacy and Rights of Individuals Regarding Their Personal Records"; 32 CFR part 1286; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The military services, the Department of Veterans Affairs, the Department of Education, Department of Health and Human Services, from individuals via survey questionnaires, the Department of Labor, the Office of Personnel Management, Federal and Quasi-Federal agencies, Selective Service System, and the U.S. Postal Service.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 91–17859 Filed 7–26–91; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. TQ91-3-16-001 and TF91-11-16-001]

National Fuel Gas Supply Corp.; Proposed Changes to FERC Gas Tariff

July 23, 1991.

Take notice that on July 19, 1991, National Fuel Gas Supply Corporation ("National") submitted for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective July 1, 1991:

Substitute Tenth Revised Sheet No. 5
Substitute Eleventh Revised Sheet No. 5
First Revised Sheet No. 102

National states that the purpose of this filing is to comply with the Commission's June 21, 1991 Letter Order at Docket No. 91–3–16–000 directing that National revise the GeneralTerms and Conditions to its FERC Gas Tariff, Second Revised Volume No. 1, and to describe its method of computing the current adjustment for the demand adjustment rate component in its Purchased Gas Adjustment ("PGA"). National further states that its filing is to comply with the Commission's directive that National track through its PGA the most recent rates filed by its pipeline suppliers.

National states that copies of this filing were served on its jurisdictional customers and on the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts and New Jersey.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before July 30, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–17908 Filed 7–26–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM91-10-17-000]

Texas Eastern Transmission Corp., Proposed Changes in FERC Gas Tariff

July 23, 1991.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on July 17, 1991 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Twelfth Revised Sheet No. 72
Twelfth Revised Sheet No. 73
Eleventh Revised Sheet No. 74
Twelfth Revised Sheet No. 75

Texas Eastern states that these tariff sheets are being filed to reflect changes in take-or-pay costs allocated to Texas Eastern by Texas Gas Transmission Corporation (Texas Gas); On March 22, 1991 Texas Gas filed a settlement intended to resolve and terminate its take-or-pay recovery proceedings filed pursuant to Order Nos. 500 and 528, *et al.* On May 1, 1991, the Commission issued an order approving that settlement. On May 24, 1991, Texas Gas filed tariff sheets in compliance with the May 1, 1991 order which revised the take-or-pay costs allocated to Texas Eastern by Texas Gas for its take-or-pay costs paid directly to producers.

The proposed effective date of the tariff sheets listed above is August 17, 1991.

Copies of the filing were served on Texas Eastern's jurisdictional customers, interested state commissions and all parties in Docket Nos. RP91–72, *et al.*

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 30, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17909 Filed 7-26-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL90-12-004]

Cajun Electric Power Cooperative, Inc. v. Louisiana Power & Light Co.; Filing

July 23, 1991

Take notice that on July 5, 1991, Cajun Electric Cooperative, Inc. tendered for filing its compliance refund report pursuant to the Commission's order issued on May 23, 1991.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 2, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17864 Filed 7-27-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP-91-199-000]

Colorado Interstate Gas Co.; Proposed Changes in FERC Gas Tariff

July 23, 1991.

Take notice that Colorado Interstate Gas Company ("CIG"), on July 19, 1991, tendered for filing the following tariff sheet to revise its FERC Gas Tariff, Original Volume No. 1:

Original Sheet No. 61G11-2

CIG states that the above-referenced tariff sheet is being filed to implement recovery of Buyout-Buydown costs incurred by CIG as a result of the settlement of contract claims in litigation as of March 31, 1989, and other claims settled prior to December 31, 1990, in conformance with the procedures reflected in CIG's Commission-approved tariff.

CIG states that, pursuant to the procedures established in its tariff and filings in Docket Nos. RP-98, RP89-133, and RP90-95, CIG will allocate its Buyout-Buydown costs between its jurisdictional and nonjurisdictional customers, absorb 50 percent of the jurisdictional portion of the Buyout-Buydown costs, and recover 50 percent of such costs through fixed surcharges applicable to its jurisdictional firm sales customers. CIG states that the total and the jurisdictional portion of the Buyout-Buydown costs related to this filing are $5,052,213 and $4,772,983, respectively. Therefore, CIG is proposed to recover $2,386,492 from its affected jurisdictional firm sales customers.

CIG has requested that the Commission accept this filing, to become effective August 1, 1991.

CIG states that copies of the filing were served upon all of its affected firm sales customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 30, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party mule file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17916 Filed 7-26-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP90-1014-006]

Pan Gas Storage Company, d.b.a. Southwest Gas Storage Co.; Proposed Changes in FERC Gas Tariff

July 23, 1991.

Take notice that Pan Gas Storage Company, d.b.a. Southwest Gas Storage Company (Southwest), on July 11, 1991 tendered for filing proposed changes to its FERC Gas Tariff, Original Volume No. 1. The proposed effective date of these tariff sheets is January 20, 1991.

Southwest states that these tariff sheets are being filed in accordance with Commission's Order granting rehearing issued July 2, 1991 in Docket No. CP90-1014-001 and with section 154 of the Commission's Regulations, and reflect changes to Southwest's tariff of Rate Schedules ISS and FSS, which provide for interruptible and firm open-access nondiscriminatory storage pursuant to section 7(c) of the Natural Gas Act.

Southwest states that copies of this letter and enclosure have been served on all parties to this proceeding and interested state agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before July 30, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17917 Filed 7-26-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-111-000]

East Tennessee Natural Gas Co.; Informal Conference

July 23, 1991.

Take notice that an informal conference will be convened in this proceeding on August 8, 1991, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC. The purpose of the conference is to discuss whether any revision to the procedural schedule established in this proceeding at the prehearing conference of June 19, 1991, is necessary.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Donald A. Heydt at (202) 208-0740 or Irene E. Szopo at (202) 208-1602.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17867 Filed 7-26-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER91-498-000]

Entergy Power, Inc.; Filing

(July 23, 1991.)

Take notice that on June 21, 1991, Entergy Power, Inc. (EPI) tendered for filing a Letter Agreement for the sale of replacement to the Tennessee Valley Authority.

EPI requests an effective date of June 1, 1991 for the Letter Agreement. EPI requests waiver of the Commission's notice requirements under § 35.11 of the Commission's regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 2, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17862 Filed 7-26-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER91-516-000]

Puget Sound Power & Light Co.; Filing

July 23, 1991.

Take notice that Puget Sound Power & Light Company (Puget) on July 1, 1991, tendered for filing a proposed Supplement No. 9 to the General Transfer Agreement between Puget and the United States of America, Department of Interior acting by and through the Bonneville Power Administrator ("Bonneville") Contract No. 14-13-001-11487. (Puget Sound Power & Light Company Supplement No. 9 to Rate Schedule FPC No. 16.) The proposed Supplement relates to certain transmission service to the Town of Sumas which was previously provided under Contract No. 14-03-64458 between Puget and Bonneville (FPC Rate Schedule No. 11). In addition, Puget tendered for filing a proposed Revision No. 1 to Supplement No. 9. The proposed changes would increase revenue from jurisdictional service under this schedule from $7,844 for the twelve months prior to November 30, 1987 to $73,489 for the twelve months immediately thereafter, and from $71,044 for the twelve months immediately thereafter.

These changes in the rate schedule are necessary to reflect the costs of providing this transmission service during the specified periods. Puget and Bonneville have agreed upon an effective date for original Supplement No. 9 of November 30, 1987 and an effective date of January 31, 1989 for Revision No. 1.

Copies of the filing were served upon Bonneville.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 2, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17863 Filed 7-26-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER91-540-000]

Nantahala Power & Light Co.; Filing

July 23, 1991.

Take notice that on July 8, 1991, Nantahala Power & Light Company (Nantahala) tendered for filing the following documents:

(1) A Partial Settlement Agreement dated July 8, 1991;

(2) An "Explanatory Statement and References in Support of Partial Settlement Agreement"; and

(3) A draft "Order Accepting Partial Settlement Agreement."

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 2, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17860 Filed 7-26-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER91-530-000]

Northeast Empire Limited, Limited Partnership # 2; Filing

July 23, 1991.

Take notice that on July 18, 1991, Northeast Empire Limited Partnership # 2 tendered for filing an Assignment of Power Purchase Agreement from Alternative Energy, Inc. to Northeast Empire Limited Partnership # 2.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 2, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17861 Filed 7-26-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-40-008]

Northern Natural Gas Co., Proposed Changes to FERC Gas Tariff

July 23, 1991.

Take notice that the Northern Natural Gas Company (Northern) on July 10,

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Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 2, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–17860 Filed 7–26–91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER91-530-000]

Northeast Empire Limited, Limited Partnership # 2; Filing

July 23, 1991.

Take notice that on July 18, 1991, Northeast Empire Limited Partnership # 2 tendered for filing an Assignment of Power Purchase Agreement from Alternative Energy, Inc. to Northeast Empire Limited Partnership # 2.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 2, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–17861 Filed 7–26–91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-40-008]

Northern Natural Gas Co., Proposed Changes to FERC Gas Tariff

July 23, 1991.

Take notice that the Northern Natural Gas Company (Northern) on July 10, 1991, tendered for filing the tariff sheets listed below. Northern has requested that the proposed tariff sheets be effective as indicated on the listing below:

Third Revised Volume No. 1	Effective date
Substitute Second Revised Sixtieth Revised Sheet No. 4A.	June 1, 1991.
Substitute Sixth Revised Ninetieth Revised Sheet No. 4B.	Do.
Substitute First Revised Original Sheet No. 74S.	Do.
Third Substitute Sixty-Second Revised Sheet No. 4A.	July 1, 1991.
Second Substitute Ninety-Second Revised Sheet No. 4B.	Do.
Third Substitute Sixty-Third Revised Sheet No. 4A.	Do.
Fourth Substitute Ninety-Third Revised Sheet No. 4B.	Do.
Substitute Ninety-Fourth Revised Sheet No. 4B.	Do.
Substitute Thirteenth Revised Sheet No. 4H.	Do.
Fifth Substitute Ninety-Third Revised Sheet No. 4B.	Do.

Northern also filed to withdraw the following previously filed tariff sheets:

Docket No. RP91-40-002

Filed: June 27, 1991

Substitute Seventh Revised Tenth Revised Sheet No. 4H

Docket No. TM91-3-59-000

Filed: June 27, 1991

Second Substitute Twelfth Revised Sheet No. 4H

Northern states that such tariff sheets are being submitted in compliance with the Commission's order dated June 19, 1991 in Docket No. RP91–40, which approved an uncontested settlement and allows Northern, effective June 1, 1991, to recover, through a volumetric surcharge and a demand surcharge, approximately $77 million in take-or-pay buyout, buydown, contract reformation and settlement costs (transition costs). Northern states that in previous compliance filings it reflected recovery of demand surcharge costs from GS customers through the GS commodity rate and the GS fixed cost recovery rate, rather than through a demand surcharge applied to such customers. Northern states that this filing corrects those previous filings and makes certain conforming changes in Northern's PGA and NGTS filings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before July 30, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–17913 Filed 7–26–91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-165-001]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

July 23, 1991.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on July 17, 1991 tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1.

Original Sheet No. 32-AQ.3
Original Sheet No. 32-BU.4
Second Revised Sheet No. 43–7

Panhandle states that the proposed changes herein which are being filed in compliance with the Commission Order dated June 28, 1991 in the subject proceeding, reflect a new provision to the General Terms and Conditions (1) for sales service and (2) for transportation service pursuant to Rate Schedule PT-Firm and Rate Schedule PT-Interruptible to provide for the payments of refunds by electronic funds transfer to those sales and transportation customers who provide payment for services to Panhandle by electronic funds.

Panhandle respectfully requests any waiver of the Commission's Regulations necessary to allow these proposed tariff sheets to become effective July 1, 1991.

Panhandle states that copies of this filing have been sent to it's jurisdictional customers, affected state regulatory commissions and parties to the Docket No. RP91–165–000 proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before July 31, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–17914 Filed 7–26–91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-72-004]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 23, 1991.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on July 17, 1991 submitted for filing workpapers to support figures on tariff sheet nos. 72 through 75 filed on June 11, 1991 in Docket Nos. RP91–72–003, *et al.* as part of Texas Eastern's FERC Gas Tariff, Fifth Revised Volume No. 1.

Texas Eastern states that it is also submitting as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Revised Eleventh Revised Sheet No. 72
Revised Eleventh Revised Sheet No. 73
Revised Tenth Revised Sheet No. 74
Revised Eleventh Revised Sheet No. 75

Texas Eastern states that these tariff sheets are being filed to revise supersession inaccuracies resulting from the effective date granted by the Commission in its order dated July 11, 1991 in Docket Nos. RP91–72–003, *et al.*

The proposed effective date of the tariff sheets listed above is July 12, 1991.

Copies of the filing were served on Texas Eastern's jurisdictional customers, interested state commissions and all parties in Docket Nos. RP91–72, *et al.*

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before July 31, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17915 Filed 7-26-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. IR-924-002]

Public Utility Commission of Texas; Petition for Waiver

July 23, 1991.

Notice is hereby given that the Public Utility Commission of Texas (TPUC), has filed on June 14, 1991, as amended on July 12, 1991, pursuant to § 292.403 of the Commission's Regulations, a petition for waiver of certain obligations imposed under § 292.303(a) and 292.303(b) of the Commission's Regulations (18 CFR part 292 subpart C) which implement section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA). The TPUC has duly implemented the Commission's PURPA Regulations by filing a PURPA implementation plan on November 16, 1981.

The TPUC requests a waiver on behalf of the Brazos Electric Power Cooperative, Inc. (BEPC) and nineteen of its twenty members. Specifically, the TPUC seeks waivers on behalf of BEPC of the obligation under 18 CFR 292.303(b) to sell power to QFs and of the obligation on behalf of nineteen of BEPC's members of the obligation under 18 CFR 292.303(a) to purchase energy and capacity that is made available by a QF.

Any person desiring to be heard or protest and of the above filings should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed within 30 days after the date of publication of this notice and must be served on the TPUC. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17919 Filed 7-26-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. FA90-19-000]

Southern Energy Co.; Order Establishing Hearing Procedures

Issued July 23, 1991.

On May 23, 1991, the Chief Accountant issued a contested audit report under delegated authority noting Southern Energy Company's (Southern Energy) disagreement with an item contained in the staff's audit report of Southern Energy's books and records. The report noted Southern Energy's disagreement with the staff regarding Correcting Entry No. 1 on Schedule No. 2 and Compliance Exception No. 1 on Schedule No. 3, concerning the accounting for depreciation expense on the LNG facilities. Southern Energy was requested to advise whether it would agree to the disposition of the issues under the shortened procedures provided for by part 158 of the Commission's Regulations. 18 CFR 158.1, *et seq.*

On June 24, 1991, Southern Energy responded that it did not consent to the shortened procedures. Section 158.7 of the Commission's Regulations provides that in case consent to the shortened procedures is not given, the proceeding will be assigned for hearing. Accordingly, the Secretary, under authority delegated by the Commission, will set these matters for hearing.

Any interested person seeking to participate in this docket shall file a protest or a motion to intervene pursuant to Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) no later than 15 days after the date of publication of this order in the **Federal Register**.

It is ordered:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act, the provisions of the Natural Gas Act, particularly sections 4, 5 and 8 thereof, and pursuant to the Commission's Rules of Practice and Procedure (18 CFR, chapter I), a public hearing shall be held concerning the appropriateness of Southern Energy's practices as discussed above.

(B) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in this proceeding, to be held within 45 days of the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426. The Presiding Judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(C) This order shall be promptly published in the **Federal Register**.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17866 Filed 7-26-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-173-001]

South Georgia Natural Gas Co.; Proposed Changes to FERC Gas Tariff

July 23, 1991.

Take notice that on July 18, 1991, South Georgia Natural Gas Company ("South Georgia") tendered for filing the following tariff sheet to its FERC Gas Tariff, First Revised Volume No. 1, to be effective July 5, 1991:

First Substitute Third Revised Sheet No. 16K

First Substitute Second Revised Sheet No. 16O

First Substitute Second Revised Sheet No. 16DD

First Substitute Second Revised Sheet No. 34R

South Georgia states that the purpose of this filing is to comply with the Commission's Order Accepting Tariff Sheets Subject to Conditions issued on July 3, 1991, in Docket No. RP91-173-000. South Georgia has requested that the Commission make the sheet effective July 5, 1991, the effective date approved by the Commission's Order.

South Georgia states that copies of the filing will be served upon its jurisdictional purchasers, shippers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before July 30, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17910 Filed 7-26-91; 8:45 am]

BILLING CODE 6717-01-M

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(C) This order shall be promptly published in the **Federal Register**.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17866 Filed 7-26-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-173-001]

South Georgia Natural Gas Co.; Proposed Changes to FERC Gas Tariff

July 23, 1991.

Take notice that on July 18, 1991, South Georgia Natural Gas Company ("South Georgia") tendered for filing the following tariff sheet to its FERC Gas Tariff, First Revised Volume No. 1, to be effective July 5, 1991:

First Substitute Third Revised Sheet No. 16K
First Substitute Second Revised Sheet No. 16O
First Substitute Second Revised Sheet No. 16DD
First Substitute Second Revised Sheet No. [illegible]

South Georgia states that the purpose of this filing is to comply with the Commission's Order Accepting Tariff Sheets Subject to Conditions issued on July 3, 1991, in Docket No. RP91-173-000. South Georgia has requested that the Commission make the sheet effective July 5, 1991, the effective date approved by the Commission's Order.

South Georgia states that copies of the filing will be served upon its jurisdictional purchasers, shippers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before July 30, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17910 Filed 7-26-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-172-001]

Southern Natural Gas Co.; Proposed Changes to FERC Gas Tariff

July 23, 1991.

Take notice that on July 18, 1991, Southern Natural Gas Company ("Southern") tendered for filing the following tariff sheet to its FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective July 5, 1991:

First Substitute Third Revised Sheet No. 30W

Southern states that the purpose of this filing is to comply with the Commission's Order Accepting Tariff Sheets Subject to Conditions issued on July 3, 1991, in Docket No. RP91-172-000 reflecting the inclusion of interest on prepayments made in conjunction with requests for firm transportation. Southern has requested that the Commission make the sheet effective July 5, 1991, the date the prepayment requirement became effective.

Southern states that copies of the filing will be served upon its jurisdictional purchasers, shippers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before July 30, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17911 Filed 7-26-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-11-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 23, 1991.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on July 17, 1991 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets.

Proposed to be Effective August 17, 1991

Eighth Revised Sheet No. 60
Eighth Revised Sheet No. 61
Seventh Revised Sheet No. 62
Eighth Revised Sheet No. 63

Texas Eastern states that these tariff sheets are being filed to reflect the reduction by Southern Natural Gas Company (Southern) of costs flowed through in Southern's Docket No. TM90-5-7 to Texas Eastern which are attributable to charges directly to Southern by Sea Robin Pipeline Company (Sea Robin) and reflect the crediting of amounts previously billed to customers by Texas Eastern for those costs related to Sea Robin as flowed through by Southern. Southern filed tariff sheets on May 31, 1991, reflecting the reduction in costs from Southern's take-or-pay recovery attributable to Sea Robin.

Texas Eastern states that it is also submitting as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Proposed to be Effective June 22, 1991

Revised Seventh Revised Sheet No. 60
Revised Seventh Revised Sheet No. 61
Revised Sixth Revised Sheet No. 62
Revised Seventh Revised Sheet No. 63

Texas Eastern states that these tariff sheets are being filed to revise supersession inaccuracies resulting from the effective date granted by the Commission in its order dated June 20, 1991 in Docket Nos. RP91-72-002 and TM91-6-17-000.

Copies of the filing were served on Texas Eastern's jurisdictional customers, interested state commissions and all parties in Docket Nos. RP91-72, *et al.*

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 31, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17912 Filed 7-26-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-5-7-001, et al.]

Southern Natural Gas Co.; Report of Refunds

July 22, 1991.

Take notice that on June 3, 1991, Southern Natural Gas Company (Southern) tendered for filing with the Federal Energy Regulatory Commission (Commission) its Report of Refunds made in accordance with the provisions of Southern's Stipulation and Agreement in Docket Nos. RP83-58, *et al.*, approved by the Commission in an Order dated March 23, 1989.

Southern states that copies of this filing were mailed to all of Southern's jurisdictional sales customers affected by the report as well as parties on the official service list and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the commission's rules of Practice and Procedure (18 CFR 385.211 and 385.214 (1989). All such protests should be filed on or before July 29, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to the proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17905 Filed 7-26-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-10-012]

Williston Basin Interstate Pipeline Co.; Refund Report

July 22, 1991.

Take notice that on July 13, 1991, Williston Basin Interstate Pipeline Company (Williston Basin) respectfully submitted for filing with the Commission copies of a Refund Report and supporting workpapers in compliance with the Commission's "Order Affirming in Part and Modifying in Part Initial Decision" issued August 3, 1990 and "Order Granting in Part and Denying in Part Rehearing" issued May 31, 1991, in the above-referenced proceedings. Williston states that on this same date refunds were paid to Williston Basin's customers for the lock-in period May 2, 1986 through February 29, 1988. in accordance with § 154.67(c) of the Commission's Regulations.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before July 29, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Parties which have heretofore intervened in this proceeding need not file anew. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–17888 Filed 7–26–91; 8:45 am]

BILLING CODE 6717-01-M

Western Area Power Administration

Cooperative Agreement; Financial Assistance Award to California Municipal Utilities Association

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed cooperative agreement between the Western Area Power Administration (Western) and the California Municipal Utilities Association (CMUA) to assist in the implementation of Western's Conservation and Renewable Energy (C&RE) Program in the State of California.

SUMMARY: Western announces that, pursuant to 10 CFR 600.7(b), eligibility for a cooperative agreement to develop and implement C&RE activities for consumer-owned retail electric suppliers in the State of California (State) has been restricted to CMUA, the organization recognized by the American Public Power Association as the State association representing California consumer-owned utility interests. These consumer-owned retail suppliers include irrigation districts with utility responsibility, public utility districts, municipal utility districts, municipalities, rural electric cooperatives, and public power agencies. The 70-member CMUA is the only central representative organization which can effectively consider all the varying interests from these differently directed political bodies and supply the needed energy efficiency and renewable energy related products to the target audience—consumer-owned retail suppliers of energy services. CMUA has the resources, technical capability, and statewide credibility to manage and promote this cooperative program. The program provides technical assistance to Western's utility customers in planning, developing, and implementing effective C&RE programs.

FOR FURTHER INFORMATION CONTACT: Dorothy Gross, Contract Specialist, Western Area Power Administration, P.O. Box 3402 Attn: A1521, Golden, CO 80401–3398, (303) 231–1578.

SUPPLEMENTARY INFORMATION: Western's C&RE Program is designed to ensure wise stewardship of the Federal hydropower resources and to encourage energy conservation and the development of renewable energy resources. To meet these ends, Western offers a number of C&RE Program activities to its customers. The cooperative agreement being conducted with CMUA will accomplish the goals of Western to provide a leadership role in conservation and renewable energy planning and development for its preference customers with utility responsibility.

Solicitation Number: DE–RP65–91WN09027

Scope of Project: The Western/CMUA C&RE Program will provide technical assistance to Western's California customers, who are primarily electric utilities, to help them plan, develop, and implement effective C&RE programs in accordance with Western's published Guidance and Acceptance Criteria. Services to be delivered under this agreement include, but are not limited to: technical expertise on C&RE-related subjects; technology transfer workshops; educational products such as manuals and slide or video technical presentations; C&RE software packages; identification of energy resource potential; project evaluations and reports; model energy efficiency plans; methodologies for addressing environmental factors in resource planning efforts; and dissemination of information to the public on energy efficiencies.

Issued at Golden, Colorado, July 15, 1991.

William H. Clagett,

Administrator.

[FR Doc. 91–17883 Filed 7–26–91; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award; Intent To Award Grant to Edward David Dysarz

AGENCY: Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(2), it is making a discretionary financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) to Edward D. Dysarz, under Grant Number DE–FG01–91CE15513. The proposed grant will provide funding in the estimated amount of $99,950 for Edward D. Dysarz to design and provide the materials for construction of a prototype of the multiwell pump. The total cost of the project will be $230,876, the remainder of the cost will be shared by a manufacturing company leading to commercialization of the multiwell pump.

The Department of Energy has determined in accordance with 10 CFR 600.14(f) that the application submitted by Edward D. Dysarz is meritorious based on the general evaluation required by 10 CFR 600.14(d) and that the proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current or planned solicitation. This pump is a highly promising new technology with an ingenious mechanical linkage between two wells which are paired and balanced against each other to drive both wells with one motor. This concept eliminates the need for dead weight counterbalances and thus allows the beam pump to be more commonly used in clustered locations, such as an offshore platforms, thus saving energy and increasing oil productivity.

The proposed project is not eligible for financial assistance under a recent, current planned solicitation because the funding program, the Energy-Related Inventions Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

The anticipated term of the proposed grant is 18 months from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, ATTN: Joyce P. Gray, PR–322.2, 1000 Independence Avenue SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Operations Division "B", Office of Placement and Administration.

[FR Doc. 91–17936 Filed 7–26–91; 8:45 am]

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SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(2), it is making a discretionary financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) to Edward D. Dysarz, under Grant Number DE–FG01–91CE15513. The proposed grant will provide funding in the estimated amount of $99,950 for Edward D. Dysarz to design and provide the materials for construction of a prototype of the multiwell pump. The total cost of the project will be $230,876, the remainder of the cost will be shared by a manufacturing company leading to commercialization of the multiwell pump.

The Department of Energy has determined in accordance with 10 CFR 600.14(f) that the application submitted by Edward D. Dysarz is meritorious based on the general evaluation required by 10 CFR 600.14(d) and that the proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current or planned solicitation. This pump is a highly promising new technology with an ingenious mechanical linkage between two wells which are paired and balanced against each other to drive both wells with one motor. This concept eliminates the need for dead weight counterbalances and thus allows the beam pump to be more commonly used in clustered locations, such as an offshore platforms, thus saving energy and increasing oil productivity.

The proposed project is not eligible for financial assistance under a recent, current planned solicitation because the funding program, the Energy-Related Inventions Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

The anticipated term of the proposed grant is 18 months from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, ATTN: Joyce P. Gray, PR–322.2, 1000 Independence Avenue SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Operations Division "B", Office of Placement and Administration.

[FR Doc. 91–17936 Filed 7–26–91; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Intent To Award Grant to National Association of Home Builders Research Center

AGENCY: Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(2), it is making a discretionary financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) to National Association of Home Builders (NAHB) Research Center under Grant Number DE–FG01–91CE15506. The purpose of the proposed grant is investigate the functionality and cost effectiveness of the Lite-Form system for poured-in-place walls. The system utilizes readily available sheet insulation and high-impact polypropylene ties to increase the R-value of the walls and provide a pliable surface for interior and/or exterior finishing materials. The advantages of the insulated wall system over conventional walls include: Increased energy efficiency and comfort, improved moisture control, and reduced radon gas penetration. This grant will provide funding to NAHB Research Center in the estimated amount of $90,000 to be provided by the Government.

The Department of Energy has determined in accordance with 10 CFR 600.14(f) that the application submitted by the NAHB Research Center is meritorious based on the general evaluation required by 10 CFR 600.14(d) and that the proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current or planned solicitation. The invention is a unique system of thermally insulative forms and ties for poured-in-place concrete walls. The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the funding program, the Energy-Related Inventions Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation. The anticipated term of the proposed grant is 18 months from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, ATTN: Joyce P. Gray, PR–322.2, 1000 Independence Avenue SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Operations Division "B", Office of Placement and Administration.

[FR Doc. 91–17937 Filed 7–26–91; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Intent To Award a Grant to the Petroleum Industry Research Foundation

AGENCY: Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy (DOE) announces that pursuant to 10 CFR 600.6(a)(2), it is making a financial assistance award based on an unsolicited application satisfying the criteria of 10 CFR 600.14(e)(1) under grant Number DE–FG01–91PE79095 to the Petroleum Industry Research Foundation. The grant is for a study and report on the impact of recent State and Federal oil spill prevention and liability legislation on the oil market, the availability and cost of marine transportation, and the ability of the market to transport oil imports. This effort will have a total estimated cost of $157,259 to be provided by DOE.

SCOPE: The grant will provide funding for the Petroleum Industry Research Foundation to perform a study on U.S. oil spill legislation and the tanker market.

The proposed study represents an innovative approach because rather than a simple review of the legislative initiatives, it will move a critical step further, to examine the impact of legislation and regulations on the oil market. The multi-diciplinary approach—economic, legal, and technical—will provide a unique analysis for policy makers to use in designing legislation and regulations. It will allow the Department of Energy, specifically, to better evaluate the Nation's energy situation, its vulnerability to catastrophic supply interruptions, competition in petroleum transportation markets and ultimately, the ability of the petroleum industry to serve the needs of consumers.

ELIGIBILITY: Based on the receipt of an unsolicited proposal, eligibility for this award is being limited to the Petroleum Industry Research Foundation. The key personnel of the Petroleum Industry Research Foundation are highly qualified in the petroleum industry. It has been determined that this study has high technical merit, representing an innovative approach that fully supports a public purpose by contributing significantly to the public understanding and focusing on oil spills and alternative methods of payment for resulting environmental damage.

The term of the grant shall be seven months from the effective date of the award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, ATTN: Gracie Narcho, PR–322.1, 1000 Independence Ave. SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Placement and Administration.

[FR Doc. 91–17938 Filed 7–26–91; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Intent To Award Grant to University of Missouri—Rolla

AGENCY: Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(2), it is making a discretionary financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) to the University of Missouri—Rolla, under grant Number DE–FG01–91CE15452. The proposed grant will provide funding in the estimated amount of $83,568 for the inventor Dr. Thomas J. O'Keefe and Dr. William J. James, Senior Research Investigator at the University of Missouri—Rolla, to develop new approaches to be used with polymeric materials used in dies for stamping out automobile bodies and other parts. The researchers plan to work closely with General Motors in constructing a larger reactor to allow low-temperature coatings of carbides and nitrides on pilot-scale Superior Tooling and Molding Plastic (STAMP) dies. Technology transfer would then follow from a university laboratory directly into the private sector where it would be put to immediate use. The probability of achieving these objectives is very high representing a unique technology which has a strong possibility of allowing for future reductions in the Nation's energy consumption.

The Department of Energy has determined in accordance with 10 CFR 600.14(f) that the application submitted by the University of Missouri—Rolla is meritorious based on the general evaluation required by 10 CFR 600.14(d) and that the proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current or planned solicitation. The invention is a unique process in that the inventor has found a way to deposit hard, wear-resistant thin films on substrates, such as polymers, that cannot withstand the conventional high-temperature, high pressure coating process. The technique the inventor uses employs room temperature and minimal pressure. The National Institute of Standards and Technology (NIST) have estimated that an enhanced low-temperature coating of carbides and nitrides employing the STAMP die process in industry could result in a saving figure of 1.5 million barrels of oil equivalent annually.

The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the funding program, the Energy-Related Inventions Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

The anticipated term of the proposed grant is 24 months from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, ATTN: Joyce P. Gray, PR–322.2, 1000 Independence Avenue SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Operations Division "B", Office of Placement and Administration.

[FR Doc. 91–17939 Filed 7–26–91; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 91–44–NG]

Cibola Corp.; Application To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on July 1, 1991, of an application filed by Cibola Corporation (Cilbola) requesting blanket authorization to import up to 36.5 Bcf of natural gas from Canada over a two-year period commencing with the date of first delivery. Cibola intends to use existing pipeline facilities within Canada and the United States. Cibola states that it will submit quarterly reports detailing each transaction.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, August 28, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, room 3F–056, FE-50, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Charles E. Blackburn, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–094, 1000 Independence Avenue SW, Washington, DC 20585 (202) 586–7751.

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586–0503.

SUPPLEMENTARY INFORMATION: Cibola, a marketer of natural gas, is a corporation organized under the laws of the State of Nebraska, having its principal place of business in Omaha, Nebraska. Cibola proposes to purchase gas from a variety of Canadian suppliers at market responsive prices and terms for sale to various United States customers, which might include end users, distribution companies, pipeline companies and other marketers of natural gas.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties, especially those that may oppose this application, should comment on the issue of competitiveness as set forth in the policy guidelines regarding the requested import authority. The applicant asserts that imports made under the proposed arrangement will be competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance. The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures. In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notice of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notice of intervention, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, of policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Cibola's application is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, expect Federal holidays.

Issued in Washington, DC, on July 23, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–17940 Filed 7–26–91; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91–27–NG]

Venro Petroleum Corp.; Order Granting Blanket Authorization To Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to export natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Venro Petroleum Corporation blanket authorization to export to Mexico up to 146 Bcf of natural gas over a two-year period beginning on the date of first export. A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 22, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–17941 Filed 7–26–91; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91–43–NG]

American Natural Gas Corp.; Application for Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on June 26, 1991, of an application filed by American Natural Gas Corporation (American Natural), for blanket authorization to import up to 219 Bcf of natural gas from Canada, over a two-year term, beginning on the date of first delivery after August 2, 1991, the date American Natural's current authorization to import gas from Canada expires (see 1 FE Para. 70,719, August 14, 1987). American Natural states that no new facilities are planned in connection with the application and that it will submit quarterly reports to FE detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., Eastern time, August 28, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–094, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–4523

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667

SUPPLEMENTARY INFORMATION: American Natural, a Colorado corporation with its principal place of business in Fort Collins, Colorado, gathers, purchases, and markets natural gas and sells it to pipelines, local distribution companies, and commercial and industrial end users throughout the United States. The applicant states that it has entered into gas sales agreements for some of the gas proposed to be imported under the requested authorization and is engaged in negotiating additional gas sales contracts. Furthermore, the company anticipates that it will enter into other spot sales during the requested two-year period. American Natural states that the price of gas will be the result of negotiation between the parties and that contracts will be competitive, and reflect market conditions. American Natural asserts that there is a need for the proposed gas imports and that Canada is a secure source of supply.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties, especially those that may oppose this application, should comment in their responses on the issue of competitiveness as set forth in the policy guidelines regarding the requested import authority. The applicant asserts that imports made under this arrangement will be competitive. Parties opposing the arrangement bear the burden of overcoming these assertions.

NEPA Compliance. The National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures. In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of American Natural's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC July 23, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-17882 Filed 7-26-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 10853-000 Minnesota]

Otter Tail Power Co; Availability of Environmental Assessment

July 23, 1991.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a major license for the existing Otter Tail River Hydroelectric Project located on the Otter Tail River in Otter Tail County, near Fergus Falls, Minnesota, and has prepared an Environmental Assessment (EA) for the existing project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the existing project, with appropriate enhancement measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices at 941 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17918 Filed 7-26-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TF91-4-20-001, TM91-10-20-001]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff; Correction of Tariff Sheet

July 23, 1991.

Tkae notice that Algonquin Gas Transmission Company ("Algonquin") on July 17, 1991, tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, as set forth in the revised tariff sheet:

Proposed to be effective July 1, 1991
Sub Original Sheet No. 25

Algonquin states that Sub Original Sheet No. 25 is being filed to correct a typographical error contained in Original Sheet No. 25 which was filed as part of Algonquin's interim PGA filing dated July 1, 1991 in Docket Nos. TF91-4-20-000 and TM91-10-20-000. Algonquin further states that Sheet No. 25 as found in the Interim PGA indicates a commodity rate of $2.6587, the correct rate as contained in the instant filing is $2.6379.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before July 31, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-17907 Filed 7-26-91; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3976-9]

Clean Air Act Advisory Committee; Notice of Additional Committee Appointments

SUMMARY: On November 8, 1990, the U.S. Environmental Protection Agency (EPA) gave notice of the establishment of a Clean Air Act Advisory Committee (CAAAC) (55 FR No. 217 46,993). This Committee was established pursuant to the Federal Advisory Committee Act (5 U.S.C. app. I) to provide advice to the Agency on policy and technical issues related to the development and implementation of the requirements of the Clean Air Act Amendments of 1990. In the November 8, 1990 notice, EPA also sought nominations for candidates for membership on the CAAAC. On March 25, 1991, EPA gave notice on the appointment of members to the CAAAC.

APPOINTMENT OF ADDITIONAL COMMITTEE MEMBERS: As the result of advice received from the CAAAC and other sources, EPA decided that certain areas represented on the CAAAC would benefit from the addition of new members. Consequently, the following individuals have agreed to accept EPA's invitation to serve as members of the Committee:

Dr. Thomas J. Godar, M.D., Director, Pulmonary Disease Section, St. Francis Hospital & Medical Center, Hartford, Connecticut.

Ms. Linda F. Golodner, Executive Director, National Consumers League, Washington, DC

Mr. William Klinefelter, Legislative Director, Industrial Union Department, AFL/CIO, Washington, DC

Mr. Raymond Lewis, President, American Methanol Institute, Washington, DC

FOR FURTHER INFORMATION CONTACT: Concerning the CAAAC or its activities please contact Mr. Paul Rasmussen, Designated Federal Official to the Committee at (202) 382-7430, FAX (202) 245-4185, or by mail at U.S. EPA, Office of Program Management Operations (ANR-443), Office of Air and Radiation, Washington, DC 20460.

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Lois D. Cashell,

Secretary.

[FR Doc. 91-17907 Filed 7-26-91; 8:45 am]

BILLING CODE 6717-01-M

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Mr. William Klinefelter, Legislative Director, Industrial Union Department, AFL/CIO, Washington, DC

Mr. Raymond Lewis, President, American Methanol Institute, Washington, DC

FOR FURTHER INFORMATION CONTACT: Concerning the CAAAC or its activities please contact Mr. Paul Rasmussen, Designated Federal Official to the Committee at (202) 382-7430, FAX (202) 245-4185, or by mail at U.S. EPA, Office of Program Management Operations (ANR-443), Office of Air and Radiation, Washington, DC 20460.

Dated: July 23, 1991.

William G. Rosenberg,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 91-17932 Filed 7-26-91; 8:45 am]

BILLING CODE 6560-50-M

Lee's Lane Landfill Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has agreed to settle claims for response costs at the Lee's Lane Landfill Site, Louisville, Kentucky, with the Louisville and Jefferson County Sewer District and Jefferson County. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Carolyn McCall, Waste Programs Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365 (404) 347-5059.

Written comment may be submitted to the person above by 30 days from the date of publication.

Dated: July 16, 1991.

Donald J. Guinyard,

Director, Waste Management Division.

[FR Doc. 91-17934 Filed 7-26-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3978-8]

Clean Water Act Class II; Proposed Administrative Penalty Assessment and Opportunity To Comment Regarding IRECO, Inc., Carthage, Missouri and Salt Lake City, UT

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment regarding IRECO, Incorporated, Carthage, Missouri.

SUMMARY: EPA is providing notice of a proposed administrative penalty assessment for alleged violations of the Clean Water Act ("Act"). EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g)(4)(A).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR part 22. The procedures by which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty (30) days after issuance of this public notice.

On May 30, 1991, EPA commenced the following Class II proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551-7630, the following Complaint: In the Matter of IRECO, Incorporated, EPA Docket No. VII-91-W-0055.

The Complaint proposes a penalty of Thirty-Five Thousand Dollars ($35,000.00) for discharging pollutants into Center Creek, a water of the United States, from the company's facility near Carthage, Jasper County, Missouri, in violation of the effluent limitations and conditions of National Pollutant Discharge Elimination System Permit MO-0002402.

FOR FURTHER INFORMATION: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by IRECO, Incorporated is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding prior to thirty (30) days from the date of this notice.

Dated: May 30, 1991.

Morris Kay,

Regional Administrator.

[FR Doc. 91-17935 Filed 7-26-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Coosa Radio Partnership, et al; Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and state	File No.	MM docket No.
I		
A. Coosa Radio Partnership; Coosa, GA.	BPH-900226MC	91-164
B. Jean M. Gradick; Coosa, GA.	BPH-900226MD	
C. Screaming Eagle Communications, Inc.; Coosa, GA.	BPH-900226ME	
Issue heading and applicants 1. Environmental; A 2. Comparable, A-C 3. Ultimate, A-C		
II		
A. Jean Swann; Tuckerton, NJ.	BPH-900117MQ	91-165
B. Richard Lee Harvey; Tuckerton, NJ.	BPH-900117MS	
C. Jersey Shore Broadcasting Corporation; Tuckerton, NJ.	BPH-900117MV	
D. (David D. Oxenford Jr. and Carolyn B. Oxenford) d/b/a [illegible] Communications Partners; Tuckerton, NJ.	BPH-900117MW	
E. Broad Spectrum Communications, Inc.; Tuckerton, NJ.	BPH-900117MZ	
Issue heading and applicants 1. Environmental; A through D 2. Comparative, A through E 3. Ultimate, A through E		
III		
A. Stephen D. Tarkenton; Gray, GA.	BPH-900416MI	91-166
B. Debbie R. Hart; Gray, GA.	BPH-900416MJ	
C. Gray Communications, Inc.; Gray, GA.	BPH-900416MK	

Applicant, city and state	File No.	MM docket No.

Issue heading and applicants

1. See Appendix, C
2. See Appendix, C
E. See Appendix, C
4. Comparative, A, B, C
5. Ultimate, A, B, C

Applicant, city and state	File No.	MM docket No.
IV		
A. Radio Ingstad Minnesota, Inc.; Faribault, MN.	BPH-891222MH	91-163
B. Faribault Broadcasting, Inc.; Faribault, MN.	BPH-891228MH	
C. KYMN, Inc.; Faribault, MN.	BPH-891228MJ	
D. Dick Johnson and Kathy Johnson, A Joint Partnership, d/b/a Johnson Broadcasting; Faribault, MN.	BPH-891228MO	
E. Judith M. Clarine; Faribault, MN.	BPH-891228MP	
F. Howard G. Bill; Faribault, MN.	BPH-891228MQ	
G. Alan R. Quarnstrom; Faribault, MN.	BPH-891228MR	
H. Sioux Valley Broadcasting, Inc.; Brainerd, MN.	BPH-891222IF	

Issue heading and applicants

1. Air Hazard, All
2. Comparative, All
3. Ultimate, All

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicant to which it applies is set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 91-17827 Filed 7-26-91; 8:45 am]

BILLING CODE 6712-01-M

Scott M. Trentadue; Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and state	File No.	MM docket No.
I		
A. Scott M. Trentadue; Whitewater, WI.	BPH-900604MA	91-201
B. Mianne Nelson; Whitewater, WI.	BPH-900606MA	
C. Frederick W. Kinlow d/b/a F.W.K. Broadcasting Co.; Whitewater, WI.	BPH-900606MF	

Issue heading and applicants

1. Air Hazard, B, C
2. Contingent Environmental, A
3. Comparative, A, B, C
4. Ultimate, A, B, C

Applicant, city and state	File No.	MM docket No.
II		
A. Baker Communications Company; Baker, CA.	BPH-900607MA	91-202
B. Robert Adelman; Baker, CA.	BPH-900607MB	
C. Dulos Broadcasting, Inc.; Baker, CA.	BPH-900607ME	
D. Kenneth B. Orchard; Baker, CA.	BPH-900608MK	
E. Mount Wilson FM Broadcasters, Inc.; Baker, CA.	BPH-900607MF (Dismissed Herein).	

Issue heading and applicants

1. Environmental, A, C, D
2. Air Hazard, C
3. Comparative, A through D
4. Ultimate, A through D

Applicant, city and state	File No.	MM docket No.
III		
A. Kennedy Broadcasting, Inc.; Martinez, GA.	BPH-900125MQ	91-203
B. Global Media, Inc.; Martinez, GA.	BPH-900125MR	
C. HBA Broadcasting, Inc.; Martinez, GA.	BPH-900125MT	
D. MJR Broadcasting, Limited Partnership; Martinez, GA.	BPH-900125MV	
E. Jo Maelisa Jones & Tina Elizabeth Jones, A Partnership d/b/a Martinez Broadcasters; Martinez, GA.	BPH900125MW	
F. P.V.R. Communications, L.P.; Martinez, GA.	BPH-900125MX	
G. Little River Communications Group, Inc.; Martinez, GA.	BPH-900125MY	
H. Robert C. Beckham; Martinez, GA.	BPH-900125MZ	
I. Bible Broadcasting Network, Inc.; Martinez, GA.	BPH-900125MB (Dismissed Herein).	

Issue heading and applicants

1. Environmental, A, C through H
2. Air Hazard, A through H
3. Comparative, A through H
4. Ultimate, A through H

Applicant, city and state	File No.	MM docket No.
IV		
A. Nancy C. Hier; Hillman, MI.	BPH-900116MU	91-200
B. Mark A. Kilmer; Hillman, MI.	BPH-900118MN	
C. Mary A. Reynolds; Hillman, MI.	BPH-900118MP	
D. T & L Broadcasting; Hillman, MI.	BPH-900118MR	

Issue heading and applicants

1. Contingent Environmental, A, B, C
2. Comparative, A, B, C, D
3. Ultimate, A, B, C, D

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth above. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used to signify whether the issue in question applies to that particular applicant.

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File No.	MM docket No.
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BPH-900606MA ...	
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File No.	MM docket No.
II	
BPH-900607MA ...	91-202
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File No.	MM docket No.
III	
BPH-900125MQ...	91-203
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BPH-900125MT ...	
BPH-900125MV ...	

Applicant, city and state	File No.	MM docket No.
E. Jo Maelisa Jones & Tina Elizabeth Jones, A Partnership d/b/a Martinez Broadcasters; Martinez, GA.	BPH900125MW	
F. P.V.R. Communications, L.P.; Martinez, GA.	BPH-900125MX ...	
G. Little River Communications Group, Inc.; Martinez, GA.	BPH-900125MY ...	
H. Robert C. Beckham; Martinez, GA.	BPH-900125MZ ...	
I. Bible Broadcasting Network, Inc.; Martinez, GA.	BPH-900125MB (Dismissed Herein).	

Issue heading and applicants
1. Environmental, A, C through H
2. Air Hazard, A through H
3. Comparative, A through H
4. Ultimate, A through H

Applicant, city and state	File No.	MM docket No.
IV		
A. Nancy C. Hier; Hillman, MI.	BPH-900116MU ...	91-200
B. Mark A. Kilmer; Hillman, MI.	BPH-900118MN ...	
C. Mary A. Reynolds; Hillman, MI.	BPH-900118MP ...	
D. T & L Broadcasting; Hillman, MI.	BPH-900118MR ...	

Issue heading and applicants
1. Contingent Environmental, A, B, C
2. Comparative, A, B, C, D
3. Ultimate, A, B, C, D

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth above. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used to signify whether the issue in question applies to that particular applicant.

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1114 21st Street NW., Washington, DC 20036. (Telephone 202–452–1422).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 91–17828 Filed 7–26–91; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Empire National Bank of Traverse City Employee Stock Ownership Trust, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 19, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Empire National Bank of Traverse City Employee Stock Ownership Trust, Traverse City, Michigan; to acquire an additional 0.69 percent of the voting shares of Empire Banc Corporation, Traverse City, Michigan.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Clear Lake National Bank Employee Stock Ownership Plan and Trust, Houston, Texas; to acquire 23.5 percent of the voting shares of Hometown Bancshares, Inc., Houston, Texas, and thereby indirectly acquire Clear Lake National Bank, Houston, Texas.

Board of Governors of the Federal Reserve System, July 23, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-17884 Filed 7-26-91; 8:45 am]

BILLING CODE 6210-01-F

Tate Financial Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than August 19, 1991.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Tate Financial Corp., Coldwater, Mississippi; to acquire 100 percent of the voting shares of Senatobia Bank, Senatobia, Mississippi.

Board of Governors of the Federal Reserve System, July 23, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-17885 Filed 7-26-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N–0279]

Animal Drug Export; Heartgard-30® Plus (Ivermectin/Pyrantel Pamoate)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the Merck Sharp & Dohme Research Laboratories has filed an application requesting approval for the export of the animal drug Heartgard-30® Plus (ivermectin and pyrantel pamoate).

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of animal drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Gregory S. Gates, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8612.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Merck Sharp & Dohme Research Laboratories, Division of Merck & Co., Inc., Rahway, NJ 07065, has filed an application requesting approval for the export of the combination animal drug Heartgard-30® Plus (ivermectin and pyrantel pamoate) to Canada. The product is intended for use as an anthelmintic in dogs. The application was received and filed in the Center for Veterinary Medicine on July 12, 1991, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by August 8, 1991, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.44).

Dated: July 23, 1991.

Robert Furrow,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 91–17897 Filed 7–26–91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91N–0283]

Drug Export; Ortho™ HIV-1/HIV-2 ELISA Test System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ortho Diagnostic Systems Inc. has filed an application requesting approval for the export of the biological product ORTHO™ HIV–1/HIV–2 ELISA Test System to Australia, Belgium, Canada, Italy, Portugal, and The United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Carl J. Chancey, Center for Biologics Evaluation and Research (HFB–124), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8191.

SUPPLEMENTARY INFORMATION: The drug export provisions in (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provide that FDA may approve applications for the export of biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Ortho Diagnostic Systems Inc., Route 202, Raritan, New Jersey 08869, has filed an application requesting approval for the export of the biological product ORTHO™ HIV–1/HIV–2 ELISA Test System to Australia, Belgium, Canada, Italy, Portugal, and The United Kingdom. The ORTHO™ HIV–1/HIV–2 ELISA Test System is a qualitative, enzyme-linked, immunosorbent assay for the detection of antibodies to Human Immunodeficiency Virus, Types 1 and 2 (HIV–1 and HIV–2) in human serum or plasma samples. The application was received and filed in the Center for Biologics Evaluation and Research on July 15, 1991, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by August 6, 1991, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (section 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: July 19, 1991

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 91–17887 Filed 7–26–91; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of September 1991:

Name: Advisory Council on Nurses Education.

Date and Time: September 4, 1991, 9 a.m.–5 p.m.; September 5, 1991, 12 p.m.–4 p.m.

Place: Conference Room G, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Open on September 4, 9 a.m.–12 p,m.; closed for remainder of meeting.

Purpose: The Council advises the Secretary and Administrator, Health Resources and Services Administration, concerning general regulations and policy matters arising in the administration of the Nursing Shortage Reduction and Education Extension Act of 1988 (Pub. L. 100–607). The Council also performs final review of grant applications for Federal Assistance, and makes recommendations to the Administrator, HRSA.

Agenda: The open portion of the meeting will cover announcements; considerations of minutes of previous meeting; the report of the Director, Division of Nursing and staff reports. The meeting will be closed to the public on September 4, at 12 p.m. to 5 p.m. and 12 p.m. to 4 p.m. on September 5 for the review of grant applications for Nurse Anesthetist Program Grants and Nursing Education Opportunities for Individuals from Disadvantaged Backgrounds Grants. The closing is in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C. Code, and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Public Law 92–463.

Name: Advisory Council on Nurses Education and National Advisory Council for Nursing Research.

Date and Time: September 5, 1991, 9 a.m.–12 p.m.

Place: Conference Room G and H, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Open to the Public for entire meeting.

Agenda: The first joint meeting of the Advisory Council on Nurses Education and the National Advisory Council for Nursing Research, will include administrative and special reports. Attention will be focused on activities dealing with health promotion, disease prevention and innovative practice models.

Anyone requiring information regarding the subject Council should contact Dr. Mary S. Hill, Executive Secretary, Advisory Council on Nurses Education, room 5C–14, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–6193.

Agenda Items are subject to change as priorities dictate.

Dated: July 23, 1991.

Jackie E. Baum.

Advisory Committee Management Officer, HRSA.

[FR Doc. 91–17888 Filed 7–26–91; 8:45 am]

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Meeting

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scheduled to meet during the month of September 1991:

Name: Advisory Council on Nurses Education.

Date and Time: September 4, 1991, 9 a.m.–5 p.m.; September 5, 1991, 12 p.m.–4 p.m.

Place: Conference Room G, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Open on September 4, 9 a.m.–12 p,m.; closed for remainder of meeting.

Purpose: The Council advises the Secretary and Administrator, Health Resources and Services Administration, concerning general regulations and policy matters arising in the administration of the Nursing Shortage Reduction and Education Extension Act of 1988 (Pub. L. 100–607). The Council also performs final review of grant applications for Federal Assistance, and makes recommendations to the Administrator, HRSA.

Agenda: The open portion of the meeting will cover announcements; considerations of minutes of previous meeting; the report of the Director, Division of Nursing and staff reports. The meeting will be closed to the public on September 4, at 12 p.m. to 5 p.m. and 12 p.m. to 4 p.m. on September 5 for the review of grant applications for Nurse Anesthetist Program Grants and Nursing Education Opportunities for Individuals from Disadvantaged Backgrounds Grants. The closing is in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C. Code, and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Public Law 92–463.

Name: Advisory Council on Nurses Education and National Advisory Council for Nursing Research.

Date and Time: September 5, 1991, 9 a.m.–12 p.m.

Place: Conference Room G and H, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Open to the Public for entire meeting.

Agenda: The first joint meeting of the Advisory Council on Nurses Education and the National Advisory Council for Nursing Research, will include administrative and special reports. Attention will be focused on activities dealing with health promotion, disease prevention and innovative practice models.

Anyone requiring information regarding the subject Council should contact Dr. Mary S. Hill, Executive Secretary, Advisory Council on Nurses Education, room 5C–14, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–6193.

Agenda Items are subject to change as priorities dictate.

Dated: July 23, 1991.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 91–17888 Filed 7–26–91; 8:45 am]

BILLING CODE 4160-15-M

Human Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory bodies scheduled to meet during the months of September and October 1991.

Name: Residency Training Review Committee.

Date and Time: September 23–24, 1991, 8:30 a.m.

Place: Conference Rooms I and J, Parkland Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on September 23, 8:30 a.m.–10:30 a.m.
Closed for remainder of meeting.

Purpose: The Residency Training Review Committee shall review applications that plan, develop and operate approved residency training programs in internal medicine or pediatrics, which emphasize the training of residents for the practice of general internal medicine or general pediatrics and assist residents, through traineeships and fellowships, who are participants in any such program and who plan to specialize or work in the practice of general internal medicine or general pediatrics.

Agenda: The open portion of the meeting will cover welcome and opening remarks, financial management and legislative implementation updates, and overview of the review process. The meeting will be closed to the public on September 23, at 10:30 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C. Code, and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Public Law 92–463

Name: Faculty Development Review Committee.

Date and Time: September 26–27, 1991, 8:30 a.m.

Place: Conference Rooms K and L, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857

Open on September 26, 8:30 a.m.–10:30 a.m.
Closed for remainder of meeting.

Purpose: The Faculty Development Review Committee shall review applications that (1) plan, develop and operate programs for the training of physicians who plan to teach in family medicine training programs; and support physicians who are trainees in such programs and who plan to teach in family medicine training programs; and that (2) plan, develop and operate programs for the training of physicians who plan to teach in general internal medicine or general pediatrics training programs and support traineeships and fellowships to physicians in training.

Agenda: The open portion of the meeting will cover welcome and opening remarks, financial management and legislative implementation updates, and overview of the review process. The meeting will be closed to the public on September 26 at 10:30 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C. Code, and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Pub. L. 92–463.

Name: Graduate Training in Family Medicine Review Committee

Date and Time: October 9, 1991, 8:30 a.m.

Place: Conference Rooms I & J, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on October 9, 8:30 a.m.–10:30 a.m.
Closed for remainder of meeting.

Purpose: The Graduate Training in Family Medicine Review Committee shall review applications from public or nonprofit private hospitals, and other public or nonprofit entities that plan, develop and operate or participate in approved graduate training programs in the field of family medicine; or supports trainees in such programs who plan to specialize or work in the practice of family medicine.

Agenda: The open portion of the meeting will cover welcome and opening remarks, financial management and legislative implementation updates, and overview of the review progress. The meeting will be closed to the public on October 9, at 10:30 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C. Code, and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Public Law 92–463.

Anyone requiring information regarding the subject Councils should contact Mrs. Sherry Whipple, Executive Secretary of the Faculty Development Review Committee, and the Graduate Training in Family Medicine Review Committee, room 4C–18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–6874.

Agenda items are subject to change as priorities dictate.

Dated: July 23, 1991.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 91–17889 Filed 7–26–91; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Supplemental Environmental Assessment on the Proposed Florida Panther Captive Breeding Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Fish and Wildlife Service (Service) has prepared and is making available a draft Supplemental Environmental Assessment (Supplement) regarding the proposed establishment and management of a captive Florida panther (*Felis concolor coryi*) population. Copies of the draft Supplement can be obtained by making requests to the address below. Individuals that have already made a request for a copy of the Supplement and/or have submitted written comments on the Notice of Intent to Prepare A Supplement to the Final Environmental Assessment (**Federal Register** March 28, 1991) on the captive breeding proposal will automatically receive a copy. Information meetings for the purpose of updating the public on the proposed program are being scheduled as indicated below. This notice is being furnished under provisions of the National Environmental Policy Act Regulations (40 CFR 1501.7) to obtain comments from other agencies and the public on the draft Supplement. Following an appropriate public comment and review process, the Service intends to evaluate all comments received and select a preferred course of action by December 1991.

INFORMATION MEETINGS ARE SCHEDULED AS FOLLOWS:

August 19, 1991—7 p.m. The Conservancy (Auditorium), 1450 Merrihue Drive, Naples, Florida, 813/262–0304.
August 20, 1991—7 p.m. Holiday Inn—Airport, 5750 T.G. Lee Boulevard, Orlando, Florida, 407/851–6400.
August 21, 1991—7 p.m. Lake City Holiday Inn, US–90, I–75, Lake City, Florida, 904/752–3901.

DATES: Written comments on the draft Supplement should be received on or before September 12, 1991.

ADDRESSES: Comments should be addressed to James W. Pulliam, Jr., Regional Director, U.S. Fish and Wildlife Service, 75 Spring Street SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION AND COPIES OF THE SUPPLEMENT CONTACT: Dennis B. Jordan, Florida Panther Recovery Coordinator, U.S. Fish and Wildlife Service, 117 Newins-Ziegler Hall, University of Florida, Gainesville, Florida 32611–0307, telephone 904/392–1861.

SUPPLEMENTARY INFORMATION: In December 1990, the Service completed a Final Environmental Assessment on the proposed captive breeding program for the endangered Florida panther. The primary impetus behind this proposal was to preserve and maintain the existing genetic diversity of the Florida panther, to provide opportunity to significantly increase the wild population, and to provide security against extinction. In the Final Environmental Assessment, the Service evaluated seven potential courses of action in order to identify and select a program that would insure the long-term survival and recovery of the Florida panther in the wild. The Service's preferred alternative in the Final Environmental Assessment was to establish a captive breeding population over a 3- to 6-year period that focused primarily on the capture of a limited number of offspring of key adults (genetic founders) from the wild population. The proposed removal regime would attempt to achieve full genetic representation of the wild population without compromising the integrity of the wild population. The Service determined on December 12, 1990, that the preferred alternative was not a major Federal action significantly affecting the quality of the human environment, and indicated that appropriate permits to implement the program would likely be issued soon after January 19, 1991.

On January 15, 1991, The Fund for Animals, Inc., and Holly Jensen, a Florida resident, filed a lawsuit against the Service regarding the proposed captive breeding program and requested a court injunction that would prevent the issuing of the subject permits. An out-of-court settlement was reached on February 6, 1991, that included the preparation of a Supplement by the Service to be completed by November 30, 1991.

In the Supplement, the Service rigorously explores and objectively evaluates a program designed to mix non-Florida panthers (other *Felis concolor* subspecies) with Florida panthers for genetic enrichment purposes. The Supplement also addresses the feasibility of captive breeding Florida panthers, the conditioning of captive raised panthers for survival in the wild, and public attitudes towards reintroduction of panthers. Additionally, the Supplement provides a thorough, expanded analysis of the feasibility and impact of reintroduction of captive-bred Florida panthers to the wild. This expanded analysis includes: The availability of suitable habitat for reintroduction of captive-bred panthers; reintroduction goals, strategies, and site evaluation, ranking and selection criteria both within and outside Florida; potential conflicts with other uses of such sites including recreational activities such as off-road vehicle use and hunting, and development activity; actions that would be taken to ensure the preservation and suitability of such sites; and, the establishment of target dates for such reintroduction actions to be taken and for any eventual reintroduction. Finally, the Supplement provides a thorough, expanded analysis of the impacts posed to the remaining wild population from the removal of adults and kittens.

Dated: July 22, 1991.

James W. Pulliam, Jr.,

Regional Director.

[FR Doc. 91-17896 Filed 7-26-91; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[WY-920-01-4120-11; WYW124724]

Notice of Invitation; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of correction of legal description.

SUMMARY: This notice corrects an error in the legal description for a Notice of Invitation for coal exploration license, WYW124724, which appeared in the **Federal Register** on July 8, 1991 (56 FR 30931). The legal description in the Notice of Invitation reads:

T. 50 N., R. 72 W., 6th P.M., Wyoming,
  Sec. 4: Lots 1 and 2.
T. 51 N., R. 72 W., 6th P.M., Wyoming,
  Sec. 33: Lots 1 thru 16;
  Sec. 34: Lots 3 thru 6, 9 thru 16.
  Containing 1,279.40 acres.

The legal description in the Notice of Invitation should read:

T. 50 N., R. 72 W., 6th P.M., Wyoming,
  Sec. 4: Lots 1 and 2, S2NE.
T. 51 N., R. 72 W., 6th P.M., Wyoming,
  Sec. 33: Lots 1 thru 16;
  Sec. 34: Lots 3 thru 6, 9 thru 16.
  Containing 1,279.40 acres.

The Notice of Invitation is also changed to reflect that any party electing to participate in the exploration program must send written notice to AMAX Coal Company and the Bureau of Land Management no later than 30 days after publication of this notice in the **Federal Register**. The balance of the Notice of Invitation remains unchanged.

Dated: July 22, 1991.

F. William Eikenberry,

Associate State Director.

[FR Doc. 91-17875 Filed 7-26-91; 8:45 am]

BILLING CODE 4310-22-M

[NV020-4320-02]

Winnemucca District

July 19, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Winnemucca District Grazing Advisory Board, meeting.

SUMMARY: Notice is hereby given in accordance with Public Law 94-579 and section 3. Executive Order 12548, February 14, 1986, that a meeting of the Winnemucca District Grazing Advisory Board will be held on September 5, 1991.

The meeting will begin at 10 a.m. in the conference room of the Bureau of Land Management Office at 705 East Fourth Street, Winnemucca, Nevada 89445.

The agenda for the meeting will include:

1. Public Statement—10 a.m.
2. District Manager's Update.
3. Update on Range Improvement Funds: FY92 Projects.
4. Advisory Board Prioritize FY92 Range Improvement Projects.

The meeting is open to the public. Interested persons may make oral statements for the Board's consideration. Anyone wishing to make an oral statement should notify the District Manager, 705 East Fourth Street, Winnemucca, Nevada 89445 by August 30, 1991. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the Board meeting will be maintained in the District Office and available for public inspection (during regular business hours) within 30 days following the meeting.

Dated: July 16, 1991.

Ron Wenker,

District Manager.

[FR Doc. 91-17845 Filed 7-26-91; 8:45 am]

BILLING CODE 4310-HC-M

[CA-010-01-3110-10-B002; CA 28382]

Exchange of Public and Private Lands in San Luis Obispo County, CA; Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—CA 28382.

SUMMARY: The following described public land has been determined to be suitable for exchange under section 206 of the Federal Land Policy and

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[NV020-4320-02]

Winnemucca District

July 19, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Winnemucca District Grazing Advisory Board, meeting.

SUMMARY: Notice is hereby given in accordance with Public Law 94-579 and section 3. Executive Order 12548, February 14, 1986, that a meeting of the Winnemucca District Grazing Advisory Board will be held on September 5, 1991.

The meeting will begin at 10 a.m. in the conference room of the Bureau of Land Management Office at 705 East Fourth Street, Winnemucca, Nevada 89445.

The agenda for the meeting will include:

1. Public Statement—10 a.m.
2. District Manager's Update.
3. Update on Range Improvement Funds: FY92 Projects.
4. Advisory Board Prioritize FY92 Range Improvement Projects.

The meeting is open to the public. Interested persons may make oral statements for the Board's consideration. Anyone wishing to make an oral statement should notify the District Manager, 705 East Fourth Street, Winnemucca, Nevada 89445 by August 30, 1991. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the Board meeting will be maintained in the District Office and available for public inspection (during regular business hours) within 30 days following the meeting.

Dated: July 16, 1991.

Ron Wenker,

District Manager.

[FR Doc. 91-17845 Filed 7-26-91; 8:45 am]

BILLING CODE 4310-HC-M

[CA-010-01-3110-10-B002; CA 28382]

Exchange of Public and Private Lands in San Luis Obispo County, CA; Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—CA 28382.

SUMMARY: The following described public land has been determined to be suitable for exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

Mt. Diablo Meridian, California

T.28S., R.12E.
  Section 31—Lots 3 & 6, SW¼SE¼, 121.72 acres
  Section 32—Lot 1, 31.71 acres

All mineral rights on the subject public land will be exchanged, along with the surface rights. In exchange for this public land, the Bureau of Land Management (BLM) will acquire an equal value of lands from the Nature Conservancy (TNC) in the Carrizo Plain Natural Area. These lands will be purchased by TNC from willing sellers, will be somewhere within the following sections, and will include surface rights only:

Mt. Diablo Meridian, California

T.30S., R.20E.
  Sec. 19 to 22, 25 to 31, and 34 to 36
T.30S., R.21E.
  Sec. 23 to 36
T.30S., R.22E.
  Sec. 31
T.31S., R.20E.
  Sec. 1 to 8, 10 to 13, 15, 17, and 20 to 25
T.31S., R.21E.
  Sec. 1 to 4, 6, 7, 10 to 25, 27 to 29, and 32 to 36
T.31S., R.22E.
  Sec. 3, 6, 7, and 17 to 21
T.32S., R.20E.
  Sec. 19, 26, and 27
T.32S., R.21E.
  Sec. 1 to 5, and 10 to 13
T.32S., R.22E.
  Sec. 6, 7, 16, 19 to 22, 27 to 33, 35, and 36

San Bernardino Meridian, California

T.12N., R.27W.
  Sec. 35
T.12N., R.26W.
  Sec. 31, and 33 to 36
T.12N., R.25W.
  Sec. 31 to 33, and 36
T.11N., R.27W.
  Sec. 1 to 4, and 10 to 14
T.11N., R.26W.
  Sec. 1 to 18, 20 to 25, and 36
T.11N., R.25W.
  Sec. 3, 6, and 7 to 35
T.11N., R.24W.
  Sec. 18 to 20 and 29 to 32
T.10N., R.26W.
  Sec. 11 and 12
T.10N., R.25W.
  Sec. 1 to 3, 7, 8, 12, and 16

SUPPLEMENTARY INFORMATION: Lands transferred from the United States will be offered for purchase to adjacent landowners by The Nature Conservancy. Lands transferred from the United States will reserve a right-of-way for ditches or canals constructed by the authority of the United States, under the Act of August 30, 1890 (43 U.S.C. 945). Publication of this notice in the **Federal Register** segregates the subject public land from the operation of the public land laws and the mining laws, except for mineral leasing. The segregative effect will end upon issuance of patent or two years from the date of publication in the **Federal Register**, whichever occurs first.

The purpose of the exchange is to acquire a portion of the private lands in the Carrizo Plain Natural Area. This Area will promote the conservation of threatened and endangered species and preserve a representative sample of the historic southern San Joaquin Valley flora and fauna. The ultimate goal for the Natural Area is to acquire approximately 155,000 acres of private land. A secondary purpose of the exchange is to consolidate the BLM lands and reduce the number of scattered, isolated BLM parcels that are difficult to manage. The public interest will be well served by completing the exchange. Interested parties may submit comments to the Area Manager at the following address until August 12, 1991. For further information contact: Bureau of Land Management, Caliente Resource Area, Attn: Dan Vaughn, 4301 Rosedale Highway, Bakersfield, CA 93308 (805) 861-4236.

Dated: June 27, 1991.

Glenn A. Carpenter,

Caliente Resource Area Manager.

[FR Doc. 91-16370 Filed 7-26-91; 8:45 am]

BILLING CODE 4310-40-M

[G-040-G1-0406-4212-14]

Public Land Sale in Canadian, Harper, Major, Payne, Pottawatomie, Texas, Woods, and Woodward Counties

AGENCY: United States Department of Interior, Bureau of Land Management.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) has determined that the lands described below are suitable for public sale under the authority of section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 43 U.S.C. 1713), at no less than the appraised fair market value as shown below. Any bid for less than fair market value will be rejected. The BLM may accept or reject any and all offers or withdraw any land or interest in the land for sale if the sale would not be consistent with FLPMA or other applicable law, or if in the opinion of the Authorized Officer, consummation of the sale would not be in the best interest of the United States.

The subject lands are part of the remaining public land holdings in Oklahoma scattered throughout the state. The lands are being offered for sale since the Bureau of Land Management (BLM) can not economically or feasibly manage the subject lands. No other federal agency or department was interested in managing these lands. Most of the parcels do not have legal or physical access and the Bureau of Land Management will not guarantee access. The sale is consistent with BLM planning for the lands involved and has been discussed with governmental units and local officials. Area residents favor the transfer of the lands into private ownership. The public interest would be served by offering the lands for sale.

INDIAN MERIDIAN, OKLAHOMA

[Parcels]

Tract	Legal description	Acres	Value
Canadian County (CN):			
CN-2 OK NM 68904.	T. 10 N., R. 7 W., Sec. 11, lot 8.	14.72	$2,950.00
CN-9 OK NM 68905.	T. 12 N., R. 7 W., Sec. 2, lot 22.	0.22	75.00
Harper County (HP):			
HP-1 OK NM 82740.	T. 29 N., R 24 W., Sec. 18, lot 5.	0.20	100.00
Major County (MJ):			
MJ-3 OK NM 82741.	T. 20 N., R. 16 W., Sec. 34, lot 21.	15.37	3,100.00
Payne County (PA):			
PA-1 OK NM 82742.	T. 17 N., R. 2 E., Sec. 8, lot 5.	0.05	100.00
PA-3 OK NM 82743.	T. 18 N., R. 4 E., Sec. 17, lot 1.	0.13	100.00
Pottawatomie County (PO):			
PO-1 OK NM 68914.	T. 6 N., R. 2 E., Sec. 35, lot 13.	11.80	2,350.00
PO-2 OK NM 68919.	T. 6 N., R. 3 E., Sec. 35, lot 5.	15.00	3,000.00

INDIAN MERIDIAN, OKLAHOMA—Continued

[Parcels]

Tract	Legal description	Acres	Value
WW-5 OK NM 82751.	T. 25 N., R. 16 W., Sec. 31, lot 7.	0.180	100.00
Woods County (WD):			
WD-2 OK NM 82744.	T 24 N., R. 16 W., Sec. 21, NENE, NESW.	80.00	16,000.00
WD-3 OK NM 82745.	T. 24 N., R. 16 W., Sec. 22, NWNW.	40.00	8,000.00
WD-5 OK NM 82746.	T. 25 N., R. 14 W., Sec. 18, lot 3.	37.27	11,200.00
WD-6 OK NM 82747.	T. 25 N., R. 17 W., Sec. 26, lot 5.	0.20	100.00
WD-7 OK NM 82748.	T. 27 N., R. 20 W., Sec. 2, lot 7.	0.413	100.00
Woodward County (WW):			
WW-2 OK NM 82749.	T. 24 N., R. 17 W., Sec. 1, SESE.	40.00	8,000.00
WW-3 OK NM 82750.	DT. 24 N., R. 17 W., Sec. 12, NENE.	40.00	8,000.00

CIMARRON MERIDIAN, OKLAHOMA

Tract	Legal description	Acres	Value
Texas County (TX):			
TX-50 OK NM 68915.	T. 1 S., R. 12 E., Sec. 5, Blk. 4, lots 6 & 7.	0.161	$200.00
TX-51 OK NM 68916.	T. 1 S., R. 12 E., Sec. 5, Blk. 4, lot 27.	0 067	100.00
TX-53 OK NM 68918.	T. 1 S., R. 12 E., Sec. 5, Blk. 11, lot 13 and N. 9 feet of lot 14.	0.106	125.00

The lands, when patented, will be subject to the following terms, reservations and restrictions:

1. A reservation to the United States for ditches and canals for tracts TX-50, TX-51, and TX-53.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. A more detailed description of this reservation which will be incorporated in the patent document, is available for review at the BLM office.

3. Title will be issued by a patent subject to all prior valid existing rights.

4. Title will be issued by a patent with restrictions under Executive Orders 11990 and 11988 for the protection and management of wetlands and floodplain. Tracts HP-1, PA-1, PA-3, PO-1, PO-2, WD-7, and WW-5 will contain both patent restrictions. Tracts CN-2, CN-9, MJ-3, WD-2, and WD-6 will contain floodplain patent restrictions only.

The sale will be conducted by sealed bidding. The minimum acceptable bid is listed above. Bids must be received by the Oklahoma Resource Area, 221 N. Service Road, Moore, Oklahoma, 73160-4946, by 10:00 a.m. Monday, September 30, 1991. Federal law requires that bidders be United States citizens 18 years of age or older, or, in the case of a corporation, subject to the laws of any state of the United States. Proof of citizenship shall accompany the bid (voting registration, birth certificate). Bids sent by mail must be in sealed envelopes accompanied by a certified check, postal money order, bank draft, or cashiers check for at least twenty percent of the bid, made payable to the Department of Interior-BLM. A separate written bid must be submitted for each tract desired. The sealed bid envelopes must be marked on the front lower left hand corner (Example, "September 30, 1991, Land Sale, Tract Number HP-1"). All sealed bids will be opened at 10 a.m. Monday, September 30, 1991. If two or more qualified sealed bids for the same amount are received, then the apparent successful bidder will be determined by drawing. The successful high bidder will be required to submit the remainder of the payment by cash, certified check, bank draft, money order, cashiers check, or combination thereof, within 180 days of the date of the sale. Failure to pay the full bid price within 180 days shall result in the cancellation of the sale of the tract, and the deposit shall be forfeited and disposed of as other receipts of sale. All bids will be either returned, accepted, or rejected within 30 days of the sale date.

If the identified parcels are not sold, they will be available for sale by sealed bid for six months. The sealed bids will be opened at 10:00 am as follows: (1) October 28, 1991; (2) November 18, 1991; (3) December 16, 1991; (4) January 27, 1992; (5) February 24, 1992; (6) March 9, 1992. Publication of this notice will segregate the land from all appropriation, under the public land laws, including the mining laws, for 270 days, or until issuance of patent, or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

DATES: For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of Interior. The 45 day comment period ends on September 12, 1991.

ADDRESSES: Comments and suggestions should be sent to: District Manager, Bureau of Land Management, Tulsa District Office, 9522-H E. 47th Place, Tulsa, Oklahoma 74145.

FOR FURTHER INFORMATION CONTACT: John Ledbetter, (405) 794-9624.

Dated: July 19, 1991.

Jim Sims,

District Manager.

[FR Doc. 91-17833 Filed 7-26-91; 8:45 am]

BILLING CODE 4310-FR-M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and the Office of Management and Budget; Paperwork Reduction Project (1010-0045); Washington, DC 20503, telephone (202) 395-7340, with copies to John V. Mirabella, Acting Chief, Engineering and Standards Branch, Engineering and Technology Division, Mail Stop 4700, Minerals

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BILLING CODE 4310-FR-M

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Management Service, 381 Elden Street, Herndon, Virginia 22070-4817.

Title: Sundry Notices and Reports on Wells, Form MMS-331.

OMB approval number: 1010-0045.

Abstract: Respondents submit Form MMS-331 to the Minerals Management Services's (MMS) District Supervisors to be evaluated and approved or disapproved for the adequacy of the equipment, materials, and/or procedures which the lessee plans to use to safely perform drilling, well-completion, well-workover, and well-abandonment operations.

This form is necessary to enable MMS to ensure safety of operations; protection of the human, marine, and coastal environments; conservation of the natural resources in the Outer Continental Shelf (OCS); prevention of waste; and protection of correlative rights with respect to oil, gas, and sulphur operations in the OCS.

Bureau form number: Form MMS-331.

Frequency: On occasion.

Description of respondents: OCS oil, gas, and sulphur lessees.

Estimated completion time: .5 hour.

Annual responses: 5,566.

Annual burden hours: 2,783.

Bureau Clearance Officer: Dorothy Christopher, (703) 787-1239.

Dated: July 18, 1991.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 91-17842 Filed 7-26-91; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[I.C.C. Order No. P-110]

Passenger Train Operation; Chicago Central & Pacific Railroad Co.

The National Railroad Passenger Corporation (AMTRAK) has established through passenger train service between Chicago, Illinois and Seattle, Washington, Train Nos. 7 & 8, the Empire Builder. These train operations require the use of tracks and other facilities of the Soo Line Railroad Company (SL). A portion of the SL tracks near Portage, Wisconsin are out of service because of a derailment. An alternate route is available over the Burlington Northern Railroad Company that requires the use of the Chicago Central & Pacific Railroad Company tracks between East Dubuque and Portage, Illinois.

It is the opinion of the Commission that such an operation is necessary in the interest of the public and the commerce of the people; that notice and public procedure are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered

(a) Pursuant to authority vested in me by order of the Commission decided January 13, 1986, and of the authority vested in the Commission by section 402(c) of the Rail Passenger Service Act of 1970 (45 U.S.C. 562(c)), Chicago Central & Pacific Railroad Company is directed to operate or allow the operation of trains of the National Railroad Passenger Corporation between East Dubuque and Portage, Illinois in order to permit a rerouting utilizing the Burlington Northern Railroad Company.

(b) In executing the provisions of this order, the common carriers involved shall proceed even if no agreements or arrangements may now exist between them with reference to the compensation terms and conditions applicable to said operations. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of said carriers in accordance with pertinent authority conferred upon it by the Interstate Commerce Act and by the Rail Passenger Service Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign commerce.

(d) *Effective date.* This order shall become effective at 7 a.m., e.d.t., May 13, 1991.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m. e.d.t., May 14, 1991, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon the Chicago Central & Pacific Railroad Company and the National Railroad Passenger Corporation, and a copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, DC, May 13, 1991, by William J. Love, Agent.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-17926 Filed 7-26-91; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 387X)]

CSX Transportation, Inc.; Abandonment Exemption in Letcher County, KY

Applicant has filed a notice of exemption under 49 CFR 1152, Subpart F—Exempt Abandonments to abandon its 6.45-mile line of railroad between milepost LVB-277.61, at Hot Spot, and milepost LVB-284.06, at Whitesburg, in Letcher County, KY.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on August 30, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by August 12, 1991.[3]

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[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this commission to review an act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by August 20, 1991, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pettiion filed with the Commission should be sent to applicant's representative: Karen Anne Koster, 500 Water Street J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by August 5, 1991. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: July 24, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-17928 Filed 7-26-91; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-290 (Sub-No. 113X)]

Wabash Railroad Co. and Norfolk and Western Railway Co.—Abandonment and Discontinuance—Between Maumee and Montpelier in Lucas, Fulton and Williams Counties, OH

AGENCY: Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment and discontinuance of service by the Wabash Railroad Company and Norfolk and Western Railway Company of a 48-mile line of railroad in Lucas, Fulton and Williams Counties, OH, subject to standard labor protective conditions.

EFFECTIVE DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective August 28, 1991. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by August 8, 1991, petitions to stay must be filed by August 13, 1991, and petitions for reconsideration must be filed by August 23, 1991. Requests for a public use condition must be filed by August 8, 1991.

ADDRESSES: Send pleadings referring to Docket No. AB-290 (Sub-No. 113X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative:
Robert J. Conney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510-2191.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275-7245. (TDD for hearing impaired (202) 275-1721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275-1721).

Decided: July 23, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-17927 Filed 7-26-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Information Collections Under Review

July 23, 1991.

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chaptér 35) and the Paperwork Reduction Reauthorization Act since the last list was published.

Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether Section 3504(h) of Public Law 96-511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Edward H. Clarke, on (202) 395-7340 and to the Department of Justice's Clearance Officer, Mr. Lewis B. Arnold, on (202) 514-4305.

If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible.

Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Lewis B. Arnold, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

Revision of a Currently Approved Collection

(1) National Crime Survey
(2) NCS-500(X), NCS-7, NCS-1(X), NCS-2(X), NCS-572(L), Bureau of Justice Statistics
(3) Semi-annually
(4) Persons 12 years old or older living in 60,000 households in 312 PSU's. The National Crime Survey collects, analyzes, publishes, and disseminates statistics on the amount and type of crime committed against households and individuals in the U.S.
(5) 151,200 respondents at .424 hours per total response
(6) 64,146 hours
(7) Not applicable under 3504(h)

New Collections

(1) Report of Public Safety Officer's Permanent and Total Disability.
(2) OJP ADMIN 3650/7, Office of Justice Programs, Bureau of Justice Assistance.
(3) One-time.
(4) Individuals, households, State or local governments, Federal agencies or employees. The collected

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[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

information is used to evaluate a Federal, state, or local public safety officer's eligibility for a lump-sum benefit awarded upon finding of a permanent and total disability from a line-of-duty injury.

(5) 150 annual respondents at 10 hours per response.
(6) 1500 annual burden hours.
(7) Not applicable under 3504(h).

(1) Obstacles to the Recovery and Return of Parentally Abducted Children: The legal provider survey
(2) No form number. Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.
(3) One time.
(4) State or local governments, small businesses or organizations. The purpose of this research program is to document significant obstacles—including legal, policy, procedural, and practical—to the recovery and return of parentally abducted children and develop recommendations for eliminating them.
(5) 297 annual respondents at .483 hours per response.
(6) 143.4 annual burden hours.
(7) Not applicable under 3504(h).

(1) Obstacles to Recovery and Return of Parentally Abducted Children.
(2) No form number. Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.
(3) One-time.
(4) Individuals or households, State or local governments. The purpose of this research program is to document and disseminate information on the legal, policy, procedural, and practical obstacles to the recovery and return of parentally abducted children.
(5) 200 annual respondents at .75 hours per response.
(6) 150 annual burden hours.
(7) Not applicable under 3504(h).

Reinstatement of a Previously Approved Collection for Which Approval Has Expired

(1) Accounting System and Financial Capability Questionnaire.
(2) OJP Form No. 7120/1. Office of Justice Programs, Office of the Comptroller.
(3) One time.
(4) Non-Profit institutions, small businesses or organizations. This form is completed by applicants that are newly formed firms or established firms with no previous Federal business. It is used as an aid to determine those applicants/grantees that may require special attention in matters relating to the accountability of Federal funds.
(5) 25 annual respondents at 4 hours per response.
(6) 100 annual burden hours.
(7) Not applicable under 3504(h).

Public comment on these items is encouraged.

Lewis Arnold,

Department Clearance Officer, Department of Justice.

[FR Doc. 91-17942 Filed 7-26-91; 8:45 am]

BILLING CODE 4410-18-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—Southwest Research Institute ("SwRI")

Notice is hereby given that, on July 1, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute ("SwRI") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission of a project entitled "Feasibility Study on Using Molecular Sieves for Diesel NO_x Control." The notification discloses (1) the identities of the parties to the project and (2) the nature and objective of the project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the project and its general areas of planned activities are given below:

The parties to the project are:

1. Caterpillar, Inc.
2. Centro Ricerche Fiat
3. Kemira Oy
4. Navistar International
5. Osaka Gas Co., Ltd.
6. TNO Road-Vehicles Research Institute
7. Toyota Motor Corporation
8. Volvo Truck Corporation
9. Emissionsteknik AB
10. Honda R&D Co., Ltd.

Each member's participation is effective as of May 15, 1991.

The purpose of the project is to determine if nitrogen oxides ("NO_x") can be controlled by employing molecular sieves such as zeolites which involve direct catalytic reduction of NO_x to nitrogen or by some other means, such as collection and subsequent reduction. Resulting technology could be applicable to lean exhaust from diesel, gasoline, methanol or natural gas engines. The major tasks involve: (1) A brief literature search, (2) contact with corporate and university researchers, (3) acquisition and bench testing of candidate materials and (4) engine exhaust gas experimentation.

Membership in this group research project remains open, and the parties intend to file additional written notification disclosing all changes in membership of this project.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-17846 Filed 7-26-91; 8:45 am]

BILLING CODE 4410-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on August 8-10, 1991, in room P-110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the **Federal Register** on June 20, 1991.

Thursday, August 8, 1991

8:30 a.m.–8:45 a.m.: Opening Remarks by ACRS Chairman (Open)—The ACRS Chairman will make opening remarks and comment briefly regarding items of current interest.

8:45 a.m.–12 Noon and 1 p.m.–2 p.m.: Diablo Canyon Nuclear Power Plant (Open/Closed)—The Committee will review and report on the results of the long-term seismic reevaluation program for this plant. Representatives of the NRC staff and the licensee will participate, as appropriate.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to this matter.

2:15 p.m.–3:15 p.m.: Reactor Operating Experience (Open)—The Committee will hear a report by and hold discussions with representatives of the NRC staff and the licensees as appropriate regarding recent operating incidents and events at nuclear facilities, including the loss of off-site power event that occurred at the Vermont Yankee nuclear station.

3:15 p.m.–5:15 p.m.: Advanced Reactor Key Technical Issues (Open)—The members will identify and discuss key technical issues in need of early resolution with respect to the certification of advanced nuclear power plant designs, including the evolutionary and passive light-water reactor nuclear power plant designs.

5:15 p.m.–6:15 p.m.: Reactor Safety Research (Open)—The members will discuss the scope and nature of a proposed Committee report to the

Commission on the NRC safety research program.

Friday, August 9, 1991

8:30 a.m.–9:30 a.m.: San Onofre Nuclear Generating Station, Unit 1 (Open)—The Committee will review and report on the proposed conversion of the provisional operating license for this plant to a full-term operating license. Representatives of the NRC staff and the licensee will participate, as appropriate.

9:30 a.m.–12 Noon: NRC Regulatory Impact Survey (Open)—The Committee will review and report on the results of and proposed regulatory changes resulting from the regulatory impact survey of NRC licensees (SECY–91–172, Regulatory Impact Survey Report—Final, dated June 7, 1991).

1 p.m.–2 p.m.: Implementation of the NRC Station Blackout Rule (Open)—The Committee will hear a briefing and hold a discussion regarding the status of nuclear power plant licensees' corrective measures to deal with "station blackout (USI A–44)." Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

2:15 p.m.–3:15 p.m.: Reliability of Systems (Open)—The Committee will hear a briefing and hold a discussion on the proposed adoption of the "N+2" concept for electrical systems which are actuated to perform safety functions. Representatives of the NRC and the nuclear industry will participate as appropriate.

3:15 p.m.–5:15 p.m.: ACRS Review of Evolutionary and Advanced Nuclear Power Plants (Open)—The Committee will discuss the scope and nature of the ACRS review regarding certification of evolutionary and advanced nuclear power plant designs, including the GE ABWR.

5:15 p.m.–6 p.m.: Future ACRS Activities (Open)—The members will discuss anticipated subcommittee activities and items proposed for consideration by the full Committee.

Saturday, August 10, 1991

8:30 a.m.–11 a.m.: Preparation of ACRS Reports (Open)—The members will discuss proposed reports to the NRC regarding items considered during this meeting.

11 a.m.–12 Noon: Generic Issue 130, Essential Service Water System Failures at Multi-Unit Sites (Open)—The members will discuss a proposed supplementary report to the NRC regarding the NRC staff reaction to the April 18, 1991 ACRS report on the proposed resolution of this Generic Issue.

1 p.m.–2 p.m.: Preparation of ACRS Reports (Open)—The Committee will complete preparation of reports regarding items considered during this meeting and during previous meetings as time and availability of information permit.

2 p.m.–3 p.m.: Miscellaneous (Open)—The Committee will complete discussion of issues considered during this meeting and administrative matters as appropriate related to the conduct of Committee business.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 2, 1990 (55 FR 40249). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those open portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Public Law 92–463 that it is necessary to close portions of this meeting noted above to discuss Proprietary Information applicable to the matter being considered (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301/492–8049), between 8 a.m. and 4:30 p.m.

Dated: July 23, 1991.

John C. Hoyle,

Advisory, Committee Management Officer.

[FR Doc. 91–17894 Filed 7–26–91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–271–OLA–4, ASLBP No. 89–595–03–OLA]

Atomic Safety and Licensing Board; Vermont Yankee Nuclear Power Corp., Vermont Yankee Nuclear Power Station; Construction Period Recapture

July 22, 1991.

Notice of Prehearing Conference

Notice is hereby given that a prehearing conference in the above-identified proceeding, concerning the proposed extension of the expiration date of the Facility Operating License for Vermont Yankee Nuclear Power Station, will commence at 9:30 a.m. on Tuesday, August 6, 1991, at the U.S. District Court, Post Office and Courthouse Building, 204 Main Street, Brattleboro, Vermont. The prehearing conference will continue, to the extent necessary, on Wednesday, August 7, 1991. The principal matters to be considered at the conference will be the status of discovery requests in this proceeding, oral arguments on late-filed Contention X,[1] further scheduling for the proceeding, and such other matters as may aid in the orderly disposition of the proceeding.

Members of the public are invited to attend the conference. However, limited appearance statements, as authorized by 10 CFR 2.715(a), will not be taken at this session of the proceeding. Documents related to this proceeding are on file at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Commission's Local Public Document Room, Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

It is so ordered.

Issued at Bethesda, Maryland,
this 22nd day of July 1991.

For the Atomic Safety and Licensing Board.

Robert M. Lazo,

Chairman, Administrative Judge.

[FR Doc. 91–17893 Filed 7–26–91; 8:45 am]

BILLING CODE 6717–01–M

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[1] On August 23, 1990, the State of Vermont filed a "Motion for Leave to File Reply to Vermont Yankee's and NRC Staff's Answers to Vermont's Late-Filed Contention." The motion is granted provided that if Vermont chooses to file a written reply, it shall be in the hands of the Board and other parties no later than August 2, 1991.

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Dated: July 23, 1991.

John C. Hoyle,

Advisory, Committee Management Officer.

[FR Doc. 91–17894 Filed 7–26–91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–271–OLA–4, ASLBP No. 89-595–03–OLA]

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It is so ordered.

Issued at Bethesda, Maryland,
this 22nd day of July 1991.

For the Atomic Safety and Licensing Board.

Robert M. Lazo,

Chairman, Administrative Judge.

[FR Doc. 91–17893 Filed 7–26–91; 8:45 am]

BILLING CODE 6717-01-M

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[1] On August 23, 1990, the State of Vermont filed a "Motion for Leave to File Reply to Vermont Yankee's and NRC Staff's Answers to Vermont's Late-Filed Contention." The motion is granted provided that if Vermont chooses to file a written reply, it shall be in the hands of the Board and other parties no later than August 2, 1991.

OFFICE OF PERSONNEL MANAGEMENT

Request for Clearance of Form SF 2808

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for clearance of an information collection. Form SF 2808, Designation of Beneficiary, is completed by Federal employees and annuitants to designate a beneficiary to receive the lump sum payment due from the Civil Service Retirement System in the event of death. This OMB clearance is only submitted for annuitants required to complete the form.

Approximately 2,000 forms SF 2808 will be completed per year. The form requires 15 minutes to fill out. The annual burden is 500 hours.

For copies of this proposal, contact C. Ronald Trueworthy, on (703) 908–8550.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E. Street NW., CHP 500, Washington, DC 20415
and
Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building NW., room 3002, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mary Beth Smith-Toomey (202) 606–0623.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 91–17854 Filed 7–26–91; 8:45 am]

BILLING CODE 6325-01-M

POSTAL RATE COMMISSION

[Docket No. A91–9; Order No. 894]

Extension, Louisiana 71239 (John L. Dailey, Jr., Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule

Issued: July 23, 1991

Docket Number: A91–9
Name of Affected Post Office: Extension, Louisiana 71239
Name(s) of Petitioner(s): John L. Dailey, Jr.
Type of Determination: Closing
Date of Filing of Appeal Papers: July 17, 1991
Categories of Issues Apparently Raised:

1. Effect on postal services (39 U.S.C. 404(b)(2)(C)).
2. Effect on the community (39 U.S.C. 404(b)(2)(A)).

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule (39 U.S.C. 404(b)(5)), the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before August 1, 1991.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

July 17, 1991—Filing of Petition
July 23, 1991—Notice and Order of Filing of Appeal
August 12, 1991—Last day of filing of petitions to intervene (see 39 CFR 3001.111(b))
August 22, 1991—Petitioners' Participant Statement or Initial Brief (see 39 CFR 3001.115(a) and (b))
September 11, 1991—Postal Service Answering Brief (see 39 CFR 3001.115(c))
September 26, 1991—Petitioners' Reply Brief should Petitioners choose to file one (see CFR 3001.115(d))
October 3, 1991—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings (see 39 CFR 3001.116)
November 13, 1991—Expiration of 120-day decisional schedule (see 39 USC 404(b)(5)).

[FR Doc. 91–17836 Filed 7–26–91; 8:45 am]

BILLING CODE 7710-FW-M

[Docket No. A91–10; Order No. 895]

Mount Clemens, Michigan 48043 (Quinnie Cody, et al., Petitioners); Order Accepting Appeal and Establishing Procedural Schedule

Issued: July 23, 1991.

Docket Number: A91–10
Name of Affected Post Office: Mount Clemens, Michigan 48043
Name(s) of Petitioner(s): Quinnie Cody and others
Type of Determination: Partial closing
Date of Filing of Appeal Papers: July 18, 1991
Categories of Issues Apparently Raised:

1. Whether Postal Service's action is subject to the requirements of 39 U.S.C. 404(b).
2. Effect on the community (39 U.S.C. 404(b)(2)(A)).
3. Effect on employees (39 U.S.C. 404(b)(2)(B)).
4. Effect on postal services (39 U.S.C. 404(b)(2)(C)).
5. Economic savings (39 U.S.C. 404(b)(2)(D)).

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule (39 U.S.C. 404(b)(5)), the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before August 2, 1991.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

July 18, 1991—Filing of Petition
July 23, 1991—Notice and Order of Filing of Appeal
August 12, 1991—Last day of filing of petitions to intervene (see 39 CFR 3001.111(b))
August 22, 1991—Petitioner's Participant Statement or Initial Brief (see 39 CFR 3001.115 (a) and (b))
September 11, 1991—Postal Service Answering Brief (see 39 CFR 3001.115(c))

September 30, 1991—Petitioner's Reply Brief should Petitioners choose to file one (see CFR 3001.115(d))
October 7, 1991—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings (see 39 CFR 3001.116)
November 15, 1991—Expiration of 120-day decisional schedule (see 39 U.S.C. 404(b)(5))

[FR Doc. 91–17835 Filed 7–26–91; 8:45 am]

BILLING CODE 7710–FW–M

POSTAL SERVICE

Privacy Act of 1974; System of Records

AGENCY: Postal Service.

ACTION: Notice of amended routine use in existing system of records.

SUMMARY: The purpose of this document is to provide information for public comment concerning the Postal Service's proposal to amend an existing routine use in system USPS 010.080, Collection and Delivery Records—Rural Carrier Route Records. An existing routine use permits disclosure of name and address information to local governments or planning authorities for the limited purpose of address conversion. This notice amends that routine use to permit disclosure under the same restricted conditions to agents under contract to those local governments or planning authorities.

DATES: This proposal will become effective without further notice 30 days from the date of this publication (August 29, 1991) unless comments are received on or before that date which result in a contrary determination.

ADDRESSES: Comments may be mailed to the Records Office, US Postal Service, 475 L'Enfant Plaza SW RM 8141, Washington, DC 20260–5010, or delivered to room 8141 at the above address between 8:15 a.m. and 4:45 p.m. Comments received also may be inspected during the above hours in room 8141.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff, Records Office (202) 268–5158.

SUPPLEMENTARY INFORMATION: Privacy Act system USPS 010.080, Collection and Delivery Records—Rural Carrier Route Records contains the names and rural route locations of customers who receive rural mail delivery service. As stated by the system description (last published at 54 FR 43661 on October 26, 1989), a use of the information is to assist government planning authorities in converting rural addresses to locatable (city-style) street addresses. Local planning authorities usually request the conversion in connection with Emergency 9–1–1 implementation. Consistent with the system purpose, existing routine use No. 4 permits disclosure of name and address information to government planning authorities, limited to that necessary to assign a locatable street address to each rural route address. The amended routine use No. 4 will also permit disclosure of the same limited information for the same limited purpose to firms under contract with the local government planning authorities. The firm will be required to execute a confidentiality agreement (Agreement) certifying that it is a contracted agent of the local planning authority to assist that authority in address conversion connected with Emergency 9–1–1 implementation. The Agreement requires the contractor to protect the confidentiality of address information provided and to use the information solely for the purpose of Emergency 9–1–1 System implementation. Further, the contractor is prohibited from copying address information received from the Postal Service and must return all such information upon fulfillment of the contract or Postal Service demand. Internal access must be limited on a need to know basis and public disclosure of information received from the Postal Service or of information resulting from such information is prohibited. Under these conditions, the proposed amendment should not impact the privacy of individuals.

Disclosure under the amended routine use is compatible with the purpose statement of USPS 080.010, discussed above.

Accordingly, it is proposed that existing routine use No. 4 to system USPS 010.080, Collection and Delivery Records—Rural Carrier Route Records be amended as follows:

USPS 080.010

SYSTEM NAME:

Collection and Delivery Records—Rural Carrier Route Records.

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES.

4. Name and address information may be disclosed to government planning authorities, or firms under contract with those authorities, for the purpose of assigning locatable (city-style) addresses to rural addresses, but disclosure will be limited to that necessary for address conversion or assignment.

* * * * *

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 91–17724 Filed 7–26–91; 8:45 am]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–18247; 811–3635]

Rochester Growth Fund, Inc.; Notice of Application

July 23, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Rochester Growth Fund, Inc.

RELEVANT ACT SECTIONS: Section 8(f) of the Act.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on June 10, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 19, 1991, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 70 Linden Oaks, Rochester, New York 14625.

FOR FURTHER INFORMATION CONTACT: Elizabeth G. Osterman, Staff Attorney, at (202) 504–2524, or Jeremy N. Rubenstein, Assistant Director, at (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application

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Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 91-17724 Filed 7-26-91; 8:45 am]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

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FILING DATE: The application was filed on June 10, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 19, 1991, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

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FOR FURTHER INFORMATION CONTACT: Elizabeth G. Osterman, Staff Attorney, at (202) 504-2524, or Jeremy N. Rubenstein, Assistant Director, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application

may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end non-diversified management company organized and existing as a corporation under the laws of the State of New York. On January 21, 1983, Applicant filed a Notification of Registration on Form N-8A pursuant to section 8(a) of the Act. Applicant also filed a registration statement on Form N-1A under section 8(b) of the Act and under the Securities Act of 1933 on January 21, 1983. The registration statement was declared effective on April 6, 1983. Applicant's initial public offering commenced on April 6, 1983.

2. At a meeting held on July 26, 1990, Applicant's board of directors approved an agreement and plan of reorganization. On October 12, 1990, Applicant filed proxy materials with the Commission relating to the proposed reorganization. Applicant's shareholders approved the reorganization at a special meeting held on November 26, 1990.

3. On November 27, 1990, pursuant to the agreement and plan of reorganization, Applicant transferred substantially all of its assets and liabilities to Rochester Convertible Fund (the "Acquiror") in exchange for shares of the Acquiror's capital stock in reliance on rule 17a-8 of the Act. Applicant distributed such shares to its shareholders *pro rata*. The transfer of Applicant's assets and liabilities in exchange for shares of Acquiror's capital stock was based on the relative net asset value of the funds.

4. The total expenses incurred in connection with the reorganization were $39,900 as of the date of the application. This amount was borne by Applicant's investment adviser, but up to $40,000 of it is subject to reimbursement by the Acquiror if the Acquiror reaches an aggregate net asset value equal to $12,000,000, as more fully described in the application. As of the date of the application, the Acquiror had an aggregate net asset value equal to $6,000,000.

5. Applicant has filed a certificate of dissolution with the New York Department of State.

6. As of the date of the application, Applicant had no debts or liabilities and was not a party to any litigation or administrative proceeding.

7. Applicant is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-17924 Filed 7-26-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended July 19, 1991

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47646

Date filed: July 15, 1991.

Parties: Members of the International Air Transport Association.

Subject: TC12 Reso/P 1339 dated June 14, 1991, North Atlantic-Middle East (Except Israel), R-1 To R-15.

Proposed Effective Date: October 1, 1991.

Docket Number: 47647

Date filed: July 15, 1991.

Parties: Members of the International Air Transport Association.

Subject: TC31 Reso/P 0877 dated June 6, 1991.

North America-Southwest Pacific Reso 015V, R-1.

TC31 Reso/P 0878 dated June 6, 1991 North America-Southwest Pacific (except French Polynesia, New Caledonia), R-1 To R-19.

TC31 Reso/P 0878 dated June 6, 1991 South America-Southwest Pacific, R-20 To R-28.

TC31 Reso/P 0880 dated June 6, 1991, North America-French Polynesia/New Caledonia, R-29 To R-39.

Proposed Effective Date: October 1/January 1, 1992.

Docket Number: 47650

Date filed: July 19, 1991.

Parties: Members of the International Air Transport Association.

Subject: Telex dated July 3, 1991, Mail Vote 503 (Comp-Special Fares Amending Reso).

Proposed Effective Date: August 1, 1991.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91-17871 Filed 7-26-91; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended July 19, 1991

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 47049.

Date filed: July 17, 1991.

Due Date for Answers, Conforming Applications, or Motions To Modify Scope: August 14, 1991.

Description: Amendment No. 1 to the Application of Delta Air Lines, Inc., request amendment of paragraph IV of its initial Application to request a new or amended certificate of public convenience and necessity authorizing Delta to provide scheduled foreign air transportation of persons, property, and mail as follows: Between the terminal point Atlanta, Georgia via intermediate points in the Azores and Lisbon, Portugal, and the coterminal points Madrid, Barcelona, Malaga, and Palma de Mallorca, Spain.

Additionally, Delta requests authority to combine the foregoing authority with Delta's existing certificate and exemption authority.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91-17872 Filed 7-26-91; 8:45 am]

BILLING CODE 4910-62-M

Office of the Secretary

[Order 91-7-29, Dockets 47081 and 47082]

Applications of Miami Air International, Inc., for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue orders finding Miami Air International, Inc., fit, willing, and able, and awarding it certificates of public convenience and necessity to engage in domestic and foreign charter air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than August 6, 1991.

ADDRESSES: Objections and answers to objections should be filed in Dockets 47081 and 47082 and addressed to the Documentary Services Division (C–55, room 4107), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590 and should be served upon the parties listed in attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Woods, Air Carrier Fitness Division (P–56, room 6401), U.S. Department of Transportation, 400 Seventh Street SW., Washington DC 20590, (202) 366–2340.

Dated: July 22, 1991.

Patrick V. Murphy,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 91–17870 Filed 7–26–91; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review; Tri-City International Airport, Freeland, Michigan

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for Tri-City International Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) (hereinafter referred to as "the Act") and 14 CFR part 150 by the Tri-City Airport Commission. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR part 150 for Tri–City International Airport were in compliance with applicable requirements effective December 13, 1989. The proposed noise compatibility program will be approved or disapproved on or before December 30, 1991.

EFFECTIVE DATE: The effective date of the FAA's start of its review of the associated noise compatibility program is July 3, 1991. The public comment period ends September 01, 1991.

FOR FURTHER INFORMATION CONTACT: Ernest P. Gubry, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET–ADO–650.5, East, Willow Run Airport, 8820 Beck Road, Belleville, Michigan 48111 (313) 487–7280. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for the Tri-City International Airport which will be approved or disapproved on or before December 30, 1991. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program for Tri-City International Airport, effective on July 3, 1991. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before December 30, 1991.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Great Lakes Region, 2300 East Devon Avenue, room 269, Des Plaines, Illinois 60018.

Federal Aviation Administration, Detroit Airports District Office, East, Willow Run Airport, 8820 Beck Road, Belleville, Michigan 48111.

Tri-City Airport Commission, Tri-City International Airport, 8500 Garfield Road, P.O. Box P, Freeland, Michigan 48623.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Belleville, Michigan, July 3, 1991.

Peter A. Serini,

Manager, Detroit Airports District Office, Great Lakes Region.

[FR Doc. 91–17878 Filed 7–26–91; 8:45 am]

BILLING CODE 4910–13–M

Receipt of Noise Compatibility Program and Request for Review; University of Illinois—Willard Airport, Champaign-Urbana, Illinois

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for University of Illinois—Willard Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) (hereinafter referred to as "the Act") and 14 CFR part 150 by the University of Illinois. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR part 150 for University of Illinois—Willard Airport were in compliance with applicable requirements effective September 5, 1989. The proposed noise compatibility program will be approved or disapproved on or before January 6, 1992.

EFFECTIVE DATE: The effective date of the FAA's start of its review of the associated noise compatibility program is July 9, 1991. The public comment period ends September 9, 1991.

FOR FURTHER INFORMATION CONTACT: Jerry R. Mork, Federal Aviation Administration, Great Lakes Region, Chicago Airports District Office, CHI–ADO–630.5, 2300 East Devon Avenue, Des Plaines, Illinois 60018 (312) 694–7522. Comments on the proposed noise

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the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Great Lakes Region, 2300 East Devon Avenue, room 269, Des Plaines, Illinois 60018.
Federal Aviation Administration, Detroit Airports District Office, East, Willow Run Airport, 8820 Beck Road, Belleville, Michigan 48111.
Tri-City Airport Commission, Tri-City International Airport, 8500 Garfield Road, P.O. Box P, Freeland, Michigan 48623.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Belleville, Michigan, July 3, 1991.

Peter A. Serini,

Manager, Detroit Airports District Office, Great Lakes Region.

[FR Doc. 91–17878 Filed 7–26–91; 8:45 am]

BILLING CODE 4910-13-M

Receipt of Noise Compatibility Program and Request for Review; University of Illinois—Willard Airport, Champaign-Urbana, Illinois

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for University of Illinois—Willard Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) (hereinafter referred to as "the Act") and 14 CFR part 150 by the University of Illinois. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR part 150 for University of Illinois—Willard Airport were in compliance with applicable requirements effective September 5, 1989. The proposed noise compatibility program will be approved or disapproved on or before January 6, 1992.

EFFECTIVE DATE: The effective date of the FAA's start of its review of the associated noise compatibility program is July 9, 1991. The public comment period ends September 9, 1991.

FOR FURTHER INFORMATION CONTACT: Jerry R. Mork, Federal Aviation Administration, Great Lakes Region, Chicago Airports District Office, CHI–ADO–630.5, 2300 East Devon Avenue, Des Plaines, Illinois 60018 (312) 694–7522. Comments on the proposed noise

compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announced that the FAA is reviewing a proposed noise compatibility program for that University of Illinois—Willard Airport which will be approved or disapproved on or before January 6, 1992. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program for University of Illinois—Willard Airport, effective on July 9, 1991. It was requested that the FAA review this material and that the noise mitigation measure, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before January 6, 1992.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., room 617, Washington, DC 20591.
Federal Aviation Administration, Great Lakes Region, Airports Division, 2300 East Devon Avenue, room 269, Des Plaines, Illinois 60018.
Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, room 260, Des Plaines, Illinois 60018.
Office of Airport Manager, University of Illinois—Willard Airport, Savoy, Illinois 61874.
Division of Aeronautics, Illinois Department of Transportation, Capital Airport, Springfield, Illinois 62706.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Des Plaines, Illinois, July 9, 1991.

Louis H. Yates,

Manager, Chicago Airports District Office, Great Lakes Region.

[FR Doc. 91–17877 Filed 7–26–91; 8:45 am]

BILLING CODE 4910-13-M

Receipt of Noise Compatibility Program/Revised 5-year Noise Exposure Map and Request for Review; Bloomington-Normal Airport, Illinois

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program (NCP) and revised 5-year noise exposure map (NEM) that was submitted for Bloomington-Normal Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) (hereinafter referred to as "the Act") and 14 CFR part 150 by the Bloomington-Normal Airport Authority. This program and revised NEM were submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR part 150 for Bloomington-Normal Airport were in compliance with applicable requirements effective August 6, 1990. The proposed noise compatibility program will be approved or disapproved on or before January 6, 1992. The revised 5-year noise exposure map will be accepted/rejected at the same time.

EFFECTIVE DATE: The effective date of the FAA's start of its review of the associated noise compatibility program is July 9, 1991. The public comment period ends September 9, 1991.

FOR FURTHER INFORMATION CONTACT: Jerry R. Mork, Federal Aviation Administration, Great Lakes Region, Chicago Airports District Office, CHI–ADO–630.5, 2300 East Devon Avenue, room 258, Des Plaines, Illinois 60018 (312) 694–7522. Comments on the proposed noise compatibility program and revised 5-year noise exposure map should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program and revised 5-year noise exposure map for Bloomington-Normal Airport. The former will be approved or disapproved on or before January 6, 1992. This notice also announces the availability of this program and revised map for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program for Bloomington-Normal Airport, effective on July 9, 1991. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before January 6, 1992.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., room 617, Washington, DC 20591.

Federal Aviation Administration, Great Lakes Region, Airports Division, 2300 East Devon Avenue, room 269, Des Plaines, Illinois 60018

Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, room 258, Des Plaines, Illinois 60018.

Bloomington-Normal Airport Authority, Bloomington-Normal Airport, R.R. 1, Box 26, Bloomington, Illinois 61704.

Division of Aeronautics, Illinois Department of Transportation, Capital Airport, Springfield, Illinois 62706.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Des Plaines, Illinois, July 9, 1991.

Louis H. Yates,

Manager, Chicago Airports District Office, Great Lakes Region.

[FR Doc. 91-17876 Filed 7-26-91; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. 91-03; Notice 2]

Passenger Automobile Average Fuel Economy Standards; Denial of Petitions for Exemption From Low Volume Manufacturers

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petitions for low volume exemption from average fuel economy standards.

SUMMARY: This notice denies petitions filed by three companies, ASC, Inc., PAS, Inc., and Shelby Automobiles, Inc., each requesting low volume exemption from the generally applicable passenger automobile average fuel economy standards, and seeking establishment of alternative standards for each model year for which they seek exemption. The passenger automobiles manufactured by ASC, PAS and Shelby each have two manufacturers, a major, i.e., high volume manufacturer, General Motors (GM) or Chrysler, as well as a low volume manufacturer. Moreover, the passenger automobiles at issue are essentially high performance versions of GM or Chrysler cars, and are sold through GM or Chrysler dealers. NHTSA has concluded that it would be inconsistent with the statutory scheme to exempt the three petitioners from the generally applicable average fuel economy standards. Comments on a proposed decision to deny the petitions were requested in a notice published in the **Federal Register** (56 FR 3137) on January 28, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen P. Wood, Assistant Chief Counsel for Rulemaking, room 5219, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone (202) 366-2992.

SUPPLEMENTARY INFORMATION:

Statutory Provisions

In December 1975, Congress enacted the Energy Policy and Conservation Act (EPCA) in response to the energy crisis created by the oil embargo of 1973-1974, and to the level of oil imports. Congress included a provision in that Act establishing an automobile fuel economy regulatory program under which standards are established for the corporate average fuel economy (CAFE) of the annual production fleets of passenger automobiles and light trucks. Responsibility for the automotive fuel economy program was delegated by the Secretary of Transportation to the Administrator of NHTSA.

Compliance with CAFE standards is determined by averaging the fuel economy ratings of the various models produced by each manufacturer, enabling them to produce vehicles with fuel economy below the level of the standard. The standards for passenger automobiles for MYs 1987-1990 were: 26 miles per gallon (mpg) for MYs 1987 and 1988; 26.5 mpg for MY 1989, and 27.5 mpg for MY 1990.

Section 502(c) of the Motor Vehicle Information and Cost Savings Act ("the Cost Savings Act"), 15 U.S.C. 2002(c), provides that certain manufacturers of passenger automobiles (referred to here as "low volume manufacturers") may be exempted from the generally applicable corporate average fuel economy ("CAFE") standards for passenger automobiles if those standards are more stringent than the maximum feasible average fuel economy for the manufacturer and if NHTSA establishes an alternative standard for the manufacturer at its maximum feasible level. Under the Cost Savings Act, a low volume manufacturer is one that manufactures (whether or not in the United States) fewer than 10,000 passenger automobiles in the model year (MY) for which the exemption is sought and in the second model year preceding that model year. In determining maximum feasible average fuel economy, the agency is required by section 502(e) of the Cost Savings Act to consider:

(1) Technological feasibility;

(2) Economic practicability;

(3) The effect of other Federal motor vehicle standards on fuel economy; and

(4) The need of the nation to conserve energy.

Petitions

By separate petitions, ASC, PAS, and Shelby requested low volume exemptions from the generally applicable CAFE standards and the establishment of alternate standards for specific model years. ASC petitioned NHTSA for an alternate fuel economy standard for its passenger automobiles for MYs 1989 and 1990, seeking an alternate standard of 22.5 mpg for MY 1989 and an alternate standard of 23.0 for MY 1990. ASC stated that it had entered into an arrangement for development and production of a limited number of special high performance passenger automobiles based upon an incomplete automobile to be obtained from General Motors (GM). The automobiles were subsequently identified as the Pontiac Grand Prix STE Turbo and Turbo Grand Prix. PAS requested an exemption from the generally applicable fuel economy standard for MY 1989 but did not request a specific figure as an alternate standard. PAS requested the exemption for a "special production package" of the Pontiac Firebird Trans Am to commemorate its twentieth anniversary. Shelby petitioned the agency for an exemption from the generally applicable average fuel economy standards for passenger automobiles to be manufactured by Shelby in MYs 1987, 1988 and 1989. For MY 1987, Shelby requested an alternate standard of 24.7 mpg, and for MY 1989, Shelby requested an alternate standard of 20.5 mpg. Because it manufactured no passenger automobiles in MY 1988, Shelby subsequently withdrew its petition for MY 1988. Shelby's petition covered its versions of the Chrysler GLHS/Charger, CSX/Shadow, and Lancer and Daytona.

Issues Raised by Petitions

The passenger automobiles manufactured by ACS, PAS and Shelby each have more than one manufacturer: A major manufacturer (either GM or Chrysler) and a low volume manufacturer. Moreover, the passenger automobiles at issue are essentially high

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(1) Technological feasibility;

(2) Economic practicability;

(3) The effect of other Federal motor vehicle standards on fuel economy; and

(4) The need of the nation to conserve energy.

Petitions

By separate petitions, ASC, PAS, and Shelby requested low volume exemptions from the generally applicable CAFE standards and the establishment of alternate standards for specific model years. ASC petitioned NHTSA for an alternate fuel economy standard for its passenger automobiles for MYs 1989 and 1990, seeking an alternate standard of 22.5 mpg for MY 1989 and an alternate standard of 23.0 for MY 1990. ASC stated that it had entered into an arrangement for development and production of a limited number of special high performance passenger automobiles based upon an incomplete automobile to be obtained from General Motors (GM). The automobiles were subsequently identified as the Pontiac Grand Prix STE Turbo and Turbo Grand Prix. PAS requested an exemption from the generally applicable fuel economy standard for MY 1989 but did not request a specific figure as an alternate standard. PAS requested the exemption for a "special production package" of the Pontiac Firebird Trans Am to commemorate its twentieth anniversary. Shelby petitioned the agency for an exemption from the generally applicable average fuel economy standards for passenger automobiles to be manufactured by Shelby in MYs 1987, 1988 and 1989. For MY 1987, Shelby requested an alternate standard of 24.7 mpg, and for MY 1989, Shelby requested an alternate standard of 20.5 mpg. Because it manufactured no passenger automobiles in MY 1988, Shelby subsequently withdrew its petition for MY 1988. Shelby's petition covered its versions of the Chrysler GLHS/Charger, CSX/Shadow, and Lancer and Daytona.

Issues Raised by Petitions

The passenger automobiles' manufactured by ACS, PAS and Shelby each have more than one manufacturer: A major manufacturer (either GM or Chrysler) and a low volume manufacturer. Moreover, the passenger automobiles at issue are essentially high

performance versions of GM or Chrysler cars, and are sold through GM or Chrysler dealers. These facts, and the overall relationships between the petitioners and GM or Chrysler, raise the following issues:

(1) Since there is more than one manufacturer of the vehicles in question, is the low volume manufacturer or the major manufacturer considered the manufacturer for CAFE purposes? (If GM or Chrysler is considered to be the manufacturer, the vehicles would be placed in those companies' fleets rather than the fleets of ASC, PAS and/or Shelby.)

(2) To the extent that the low volume manufacturer can be considered the manufacturer for CAFE purposes, is the low volume manufacturer in a control relationship with the major manufacturer? (Under section 503(c) of the Cost Savings Act, the automobiles produced by all manufacturers within a control relationship are considered to be manufactured by the same manufacturer. Thus, if the low volume manufacturer is controlled by GM or Chrysler, the major manufacturer's vehicles would be added to those of the low volume manufacturer for purposes of determining the petitioners' satisfaction of the production volume criterion for eligibility for a low volume exemption. Combining these fleets would make ASC, PAS and/or Shelby ineligible for a low volume exemption.)

(3) Assuming that the low volume manufacturer can be considered the manufacturer for CAFE purposes and is not controlled by GM or Chrysler, would it be appropriate under the statute for NHTSA to grant a low volume exemption given the significant involvement by GM and Chrysler in the manufacture of the passenger cars at issue and the nature of the manufacturing operations performed by the petitioners?

In February 1990, NHTSA sent letters to each of the petitioners, as well as to GM and Chrysler, requesting additional information to assist the agency in analyzing the issues. Each of the companies provided a response to NHTSA's letters.

Notice Proposing To Deny Petitions

On January 26, 1991, NHTSA published in the **Federal Register** (56 FR 3137) a proposed decision to deny the petitions submitted by ASC, PAS and Shelby. Public comment was sought on the proposed decision.

The agency discussed each of the issues cited above. In addressing the first issue, whether the low volume manufacturer or the major manufacturer should be considered the manufacturer for CAFE purposes, NHTSA considered whether 49 CFR part 529 applies to any of the manufacturing arrangements of the petitioners. NHTSA concluded that it does not. Since part 529 does not cover the manufacturing arrangements of Chrysler/Shelby, GM/ASC, or GM/PAS, the agency concluded that the manufacturers can, under a past agency interpretation letter, determine by agreement which of them will count a vehicle as its own.

In addressing the second issue, whether any of the low volume manufacturers are in a control relationship with a major manufacturer, the agency concluded there is no such relationship between the petitioners and GM or Chrysler. NHTSA cited the fact that there are no ownership interests between the companies, and the relationships between the companies appear to be based on arms-length business agreements. In the absence of special other circumstances demonstrating control, NHTSA did not believe that the relationships between the companies indicate control.

The third issue addressed by the agency was whether it would be appropriate under the statute for NHTSA to grant a low volume exemption given the significant involvement by GM and Chrysler in the manufacture of the passenger cars at issue and the nature of the manufacturing operations performed by the petitioners. NHTSA noted that section 502(c) authorizes but does not require the agency to exempt a low volume manufacturer of passenger automobiles from the generally applicable average fuel economy standards for passenger automobiles if those standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if the agency establishes an alternate standard for the manufacturer at its maximum level. Title V does not provide any explicit guidance to the agency for exercising its discretion. However, NHTSA is guided by the Administrative Procedure Act, which provides that agency actions must not be arbitrary, capricious, an abuse of discretion or otherwise contrary to law.

NHTSA stated that, in deciding whether to exercise its discretion, it believes it should consider both the statutory scheme as a whole and the special provision for low volume exemptions. The agency tentatively concluded that it would be inconsistent with the statutory scheme to exempt the three petitioners from the generally applicable average fuel economy standards. There were two primary reasons for this tentative conclusion, which are discussed below.

First, granting the petitions would establish a precedent by which major manufacturers could easily transfer significant numbers of low fuel economy vehicles out of their fleets and into fleets exempt from the industrywide CAFE standard. This would disturb the statutory scheme adopted by Congress.

The agency noted that the passenger cars at issue are essentially high performance versions of GM or Chrysler cars. As indicated above, ASC, under its arrangement with GM, used a GM incomplete vehicle to produce the 1989/1990 Turbo Grand Prix and 1990 Grand Prix STE Turbo. The vehicles were then sold through Pontiac dealers. PAS, under its arrangement with GM, used a GM incomplete vehicle to produce the 1989 20th Anniversary Trans Am. Shelby, under its arrangement with Chrysler, modified complete Chrysler vehicles to produce special versions of several Chrysler products. The vehicles were then sold through Dodge dealers selected by Shelby.

The agency stated that in terms of effect, the relationships between GM and Chrysler and the petitioners are not significantly different than if GM and Chrysler contracted out selected powertrain work to other companies. The result is that the major manufacturers can sell, through their dealers, high performance versions of selected GM and Chrysler models. The fact that the sale may be indirect, in the sense that the low volume manufacturer may be an intervening purchaser, does not alter the basic effect.

If NHTSA granted the petitions, the major manufacturers might be encouraged to adopt similar relationships with other companies, for the purpose of transferring low fuel economy vehicles out of their fleets and into fleets exempt from the industrywide CAFE standard. This would disturb the statutory scheme. In establishing a program of average fuel economy standards, Congress intended to permit manufacturers to produce vehicles with fuel economy below the level of the standard, but only if they produce sufficient numbers of vehicles with fuel economy above the level of the standard to enable them to meet the standard. If manufacturers could transfer low fuel economy vehicles out of their fleets and into fleets exempt from the industrywide standard, they would have less incentive to produce vehicles with fuel economy above the level of the standard.

Although NHTSA does not believe that this consideration was one of the motivations underlying GM's and Chrysler's arrangements with the petitioners, the agency must carefully consider the potential practical effects of the precedents that are established by its actions.

The agency noted that its primary concern is not whether a major manufacturer or a low volume manufacturer takes responsibility under the CAFE standards for vehicles they manufacture but instead whether a major manufacturer's vehicles are placed in a fleet exempt from the industrywide CAFE standard. NHTSA stated that it continues to believe that since part 529 does not cover the manufacturing arrangements of Chrysler/Shelby, GM/ASC, or GM/PAS, the manufacturers can determine by agreement which of them will count a vehicle as its own. If the low volume manufacturer decides to take CAFE responsibility, however, the agency tentatively concluded that it would be inappropriate to grant that company a low volume exemption.

As the second reason for its tentative conclusion, NHTSA stated that it did not believe that Congress intended low volume exemptions to be available to manufacturers whose primary manufacturing operations do not involve changing the basic nature of major manufacturers' cars. NHTSA noted that the primary manufacturing operations engaged in by ASC, PAS and Shelby consisted of "boosting" the performance of major manufacturers' cars.

The agency states its belief that Congress, in establishing the low volume exemption procedures, had in mind manufacturers which produce their own special vehicle types, as opposed to companies which primarily "boost" the performance or otherwise modify a major manufacturer's vehicles, without changing its basic nature.

The agency also noted that CAFE standards impose constraints on vehicle performance. While manufacturers may meet CAFE standards in other ways, one option is to reduce or constrain performance. To the extent that another company comes along and "boosts" the performance of a major manufacturer's vehicles, it may be "undoing" a fuel economy improvement made for the purpose of meeting fuel economy standards. NHTSA therefore tentatively concluded that it would be inappropriate for the agency to then grant that company a low volume exemption.

Public Comment

The agency received one comment, from ASC, Inc. ASC stated that it "strongly disagreed" with the proposed decision and urged NHTSA to reconsider its proposal with regard to ASC. ASC offered three main arguments for its position: (1) ASC has met the statutory criteria for an exemption; (2) the facts and circumstances of ASC's development and manufacturing activities merit its being granted an alternate standard as an independent manufacturer; and (3) denying an alternate standard would substantially inhibit the development of specialty car production in the United States. Each of these issues is addressed below.

In support of its position that it meets the statutory criteria necessary to be granted an exemption from generally applicable CAFE standards, ASC stated that it was "neither technologically feasible nor economically practicable" for ASC to have attained higher fuel economy levels and at the same time compete against the foreign imports in their market. ASC also stated that considering the low number of vehicles involved, establishing an alternate standard for the company would not affect the need of the United States to conserve energy.

NHTSA notes that, as discussed in the January 1991 notice, section 502(c) authorizes but does not require the agency to grant a low volume exemption if certain statutory criteria are met. A showing that a particular manufacturer meets the statutory criteria does not mean that the agency will necessarily grant an exemption.

The agency also notes that the argument that a particular manufacturer may have achieved its maximum feasible fuel economy level, or that the granting of a particular alternate standard will not affect the need of the United States to conserve energy, does not necessarily lead to the granting of an exemption. With respect to ASC's latter argument, one of the agency's stated concerns about granting the petitions at issue is that such action would establish a precedent by which the major manufacturers could easily transfer significant numbers of low fuel economy vehicles out of their fleets and into fleets exemption from the industrywide CAFE standard. Thus, while the number of vehicles covered by ASC's petition is very small, the precedential effect of granting that company's petition could have a significant impact on the effectiveness of the CAFE statute. In this connection, NHTSA notes that the other major domestic manufacturer, Ford, currently produces its own high performance versions of several of its models, the Taurus SHO and Thunderbird Super Coupe. Granting these petitions would at least create the opportunity for that company to make other manufacturing arrangements in the future.

ASC's second argument is that the facts and circumstances of its development and manufacturing activities merit its being granted an alternate standard as an independent manufacturer. ASC stated that its development and manufacturing activity involved far more than a simple modification and transfer of an already completed vehicle, and asserted that it is a special purpose manufacturer and has produced a fundamentally different automobile from any manufactured by General Motors. Although ASC obtains the incomplete vehicle from GM, ASC stated that "the incomplete vehicle obtained by ASC has no relationship or equivalency to any General Motors corporation vehicle." ASC stated that it performed significant testing on the vehicles, including crash tests, and invested more than 14 million dollars in the vehicles.

ASC compared its situation with that of Checker Motor Corporation, a company which the legislative history of the Cost Savings Act had cited as being the type of company for which low volume exemptions were intended. ASC stated that ASC also is a small special purpose manufacturer with limited flexibility to improve fuel economy and which produces its special vehicle type.

ASC took exception to the suggestion that it may be "undoing" a fuel economy improvement in manufacturing its special high performance vehicle. That company stated that the incomplete vehicle it obtains from GM does not include the power train which is part of the completed automobile. It also argued that the consumer who purchases the vehicle would otherwise not purchase a GM vehicle based upon a similar incomplete vehicle.

ASC also took exception to NHTSA's reference in the January 1991 notice to an advertiament for the Grand Prix STE which appeared in Fortune Magazine. The advertisement was headlined "A Uniquely American Performance Car For the Grown-Up Who Hasn't Given Up, The Grand Prix STE," and prominently featured the trademark "Pontiac We Build Excitement." The advertisement included the GM logo and was copyrighted by GM. The first paragraph read as follows:

> Okay, so you've got a career and responsibility. Pontiac's still willing to revive the driving enthusiasm of your youth with a Special Touring Edition of Grand Prix. From the pavement up, it's a sport sedan formulated with as much of our brand of Excitement as you can get without a prescription.

NHTSA stated that to a reader of the advertisement, and presumably to a purchaser, the Grand Prix STE is simply another GM car. The agency noted that the only mention of ASC in the advertisement was a short footnote which stated in very small print: "Turbo system mfd. by ASC Inc."

ASC stated that the advertisement apparently promotes the Pontiac Grand Prix STE manufactured by GM and "appears perhaps to have been a confused attempt by General Motors marketing personnel to benefit from the favorable review of the Turbo Grand Prix and Grand Prix STE Turbo automobiles manufactured by ASC."

NHTSA disagrees with ASC's argument that it "independently developed and produced a new automobile which is fundamentally different from any automobile produced by GM." In disagreeing, NHTSA is not attempting to minimize the amount of development work that is necessary to create high performance versions of standard models. The amount of resources expended, however, does not dictate whether the final product should be exempted from generally applicable CAFE standards. The agency does not consider the boosting of performance of a major manufacturer's car to be changing the basic nature of the vehicle as a high performance of the car. The agency further does not consider such boosting of performance to be in any way similar to the manufacturing operations engaged in by Checker.

NHTSA also disagrees with ASC's suggestion that GM marketing personnel are confused about Pontiac products. The agency believes that the advertisement illustrates that the vehicles for which ASC seeks a low volume exemption are simply a higher performance version of a Pontiac car. NHTSA notes that the second paragraph of the advertisement reads as follows:

> The STE's fastest-acting ingredient is its 3.1L V6. It features a 60-degree cylinder spread for high-rev potential, a cross-ram intake for dense combustion chamber charging and multi-port fuel injection for immediate response characteristics. Prefer maximum response? Get over 200 horses worth from an available turbocharged and intercooled V6 and special 4 speed automatic transmission.

Thus, the Pontiac Grand Prix STE came in two versions, one with a 3.1 L V6, at 135 horsepower, and the other (the one for which ASC requested an exemption) with a 3.1 L turbo V6, and 205 horsepower. Both versions had the same general appearance, bore the same Pontiac nameplate, were sold through the same dealers, and were advertised in the same General Motors advertisements. The primary difference between the two versions of the car is that the turbo version offered "maximum response."

With respect to ASC's objection to the suggestion that it may be "undoing" a fuel economy improvement, NHTSA notes that this concern is not limited to "tampering" with production vehicles. As discussed in the January 1991 notice, CAFE standards impose constraints on vehicle performance. While manufacturers may meet CAFE standards in many ways, one option is to reduce or constrain performance. Thus, if GM chose to meet the CAFE standard in part by declining to offer a special high performance version of a particular car, that action would be nullified if another manufacturer made the powertrain changes needed for a high performance version and the vehicle was then included in a fleet exempt from the industrywide CAFE standard.

ASC's third argument is that denial of an exemption to ASC will significantly damage the developing U.S. special purpose automobile industry. ASC stated that, unlike larger manufacturers, it is not in a position to offset the lower fuel economy of its special high performance automobiles against other vehicles manufactured by it with higher fuel economy. ASC argued that CAFE penalties would be a disincentive for it and other small manufacturers to attempt further development work.

NHTSA notes that, assuming ASC cannot produce higher fuel economy vehicles to offset the lower fuel economy of its high performance vehicles, that company has two options absent obtaining an exemption. First, in making its manufacturing arrangements with GM, ASC can seek to have GM take CAFE responsibility for the vehicles. Since GM obtains the benefits of selling the incomplete vehicle and adding a high performance version of one of its cars to its product lineup, GM presumably has a significant market incentive to accept such responsibility. Alternatively, ASC can pay the penalties for failing to comply with the CAFE statute. Assuming that ASC can obtain a CAFE of 23.0 mpg, the penalty would be $225.00 per car under a 27.5 mpg standard.

Agency Decision

After carefully considering the comment from ASC, NHTSA has decided to deny the petitions filed by ASC, PAS and Shelby. The agency continues to believe that granting the petitions would establish a precedent by which the major manufacturers could easily transfer significant numbers of low fuel economy vehicles out of their fleets and into fleets exempt from the industrywide standard, thereby disturbing the statutory scheme adopted by Congress. The agency also continues to believe that Congress did not intend low volume exemptions to be available to manufacturers whose primary manufacturing operation does not involve changing the basic nature of major manufacturers' cars.

Authority: 15 U.S.C. 2002; delegation of authority at 49 CFR 1.40 and 501.8.

Issued on July 23, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91–17869 Filed 7–26–91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

July 22, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: None.
Type of Review: New Collection.
Title: Focus Groups on the Small Business Initiative Program Products and Services.
Description: These focus groups will be conducted as part of an effort to evaluate the interest and effectiveness of products and services developed for Research Division's Small Business Initiative program. This program and its products and services were developed as incentives to assist small business owners in meeting their tax obligations, thereby reducing their burden.
Respondents: Small businesses or organizations.
Estimated Number of Respondents: 1,000.
Estimated Burden Hours Per Response: 3 hours.

Frequency of Response: One-time.
Estimated Total Reporting Burden: 444 hours.
OMB Number: New.
Form Number: 9282.
Type of Review: New Collection.
Title: Form 1040 Electronic Payment Voucher.
Description: Form 9282 will be used by individual taxpayers as a payment voucher to accompany payments of income tax due. The payment of tax due is mailed in by the taxpayer subsequent to the filing of a balance due electronic tax return. There is no other available form for this purpose.
Respondents: Individuals or households.
Estimated Number of Respondents: 1,000,000.
Estimated Burden Hours Per Response: 3 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 50,000 hours.
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 91–17850 Filed 7–26–91; 8:45 am]
BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

July 23, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0998.
Form Number: 8615.
Type of Review: Revision.
Title: Tax for Children Under Age 14 Who Have Investment Income of More Than 1,100.
Description: Under section 1(g), children under age 14 who have unearned income may be taxed on part of that income at their parent's tax rate. Form 8615 is used to see if any of the child's unearned income is taxed at the parent's rate and, if so, to figure the child's tax on his or her unearned income and earned income, if any.
Respondents: Individuals or households.
Estimated Number of Respondents: 500,000.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping—13 minutes.
Learning about the law or the form—12 minutes.
Preparing the form—41 minutes.
Copying, assembling, and sending the form to IRS—17 minutes.
Frequency of Response: Annually.
Estimated Total Recordkeeping/Reporting Burden: 695,000 hours.
OMB Number: 1545–1053.
Form Number: 8709.
Type of Review: Extension.
Title: Exemption From Withholding on Investment Income of Foreign Governments and International Organizations.
Description: This form is used by foreign governments, with certain types of investments in the United States, to file with withholding agents to obtain exemption from withholding under Code section 892. The withholding agent uses the information to determine the appropriate withholding, if any.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 3,000.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping—13 minutes.
Learning about the law or the form—23 minutes.
Preparing the form—24 minutes.
Copying, assembling, and sending the form to IRS—20 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping/Reporting Burden: 40,500 hours.
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 91–17851 Filed 7–26–91; 8:45 am]
BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

July 22, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0714.
Form Number: 8027 and 8027–T.
Type of Review: Extension.
Title: Employer's Annual Information Return of Tip Income and Allocated Tips; Transmittal of Employer's Annual Information Return of Tip Income and Allocated Tips.
Description: To help IRS in its examination of returns filed by tipped employees, large food or beverage establishments are required to report annually information concerning food or beverage operations receipts, tips reported by employees, and in certain cases, the employer must allocate tips to certain employees.
Respondents: Individuals or households, State or local governments, businesses or other for-profit, non-profit institutions.
Estimated Number of Respondents: 52,050.
Estimated Burden Hours Per Response/Recordkeeping:

	Form 8027	Form 8027–T
Recordkeeping	5 hours, 44 minutes.	43 minutes.
Learning about the law or the form.	35 minutes	
Preparing and sending the form to IRS.	43 minutes	1 minute.

Frequency of Response: Annually.
Estimated Total Recordkeeping/Reporting Burden: 346,456 hours.
OMB Number: 1545–0938.
Form Number: 1120–IC–DISC, Schedule K and Schedule P.
Type of Review: Revision.
Title: Interest Charge Domestic International Sales Corporation

Return; Shareholder's Statement of IC–DISC Distributions; Inter-Company Transfer Price or Commission.

Description: U.S. Corporations that have elected to be an interest charge domestic international sales corporation (IC–DISC) file Form 1120–IC–DISC to report their income and deductions. The IC–DISC is not taxed but IC–DISC shareholders are taxed on their share of IC–DISC income. IRS uses Form 1120–IC–DISC to check the IC–DISC's computation of income. Schedule P (Form 1120–IC–DISC) is used by the IC–DISC to report its dealings with related suppliers, etc.; Schedule K (Form 1120–IC–DISC) is used to report income to shareholders.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 1,200.

Estimated Burden Hours Per Response/ Recordkeeping:

	1120–IC–DISC	Sched. K	Sched. P
Recordkeeping.	96 hrs., 23 mins.	4 hrs., 4 mins.	11 hrs., 58 mins.
Learning about the law or the form.	18 hrs., 40 mins.	47 mins.	1 hr., 17 mins.
Preparing the form.	27 hrs., 35 mins.	54 mins.	1 hr., 34 mins.
Copying, assembling, and sending the form to IRS.	1 hr., 53 mins.		

Frequency of Response: Annually.

Estimated Total Recordkeeping/ Reporting Burden: 225,521 hours.

Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91–17852 Filed 7–26–91; 8:45 am]

BILLING CODE 4830-01-M

Office of the Secretary

[Department Circular—Public Debt Series—No. 21–91]

Treasury Notes of July 15, 1998, Series G–1998; Notice

Washington, July 5, 1991.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for approximately $9,000,000,000 of United States securities, designated Treasury Notes of July 15, 1998, Series G–1998 (CUSIP No. 912827 B5 0), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated July 15, 1991, and will accrue interest from that date, payable on a semiannual basis on January 15, 1992, and each subsequent 6 months on July 15 and January 15 through the date that the principal becomes payable. They will mature July 15, 1998, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount of $1,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2–86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500, Wednesday, July 10, 1991, prior to 12 noon, Eastern Daylight Saving time, for noncompetitive tenders and prior to 1 p.m., Eastern Daylight Saving time, for competitive tenders. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, July 9, 1991, and received no later than Monday, July 15, 1991.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of competitive tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of competitive tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.250. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Monday, July 15, 1991. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, July 11, 1991.

When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

General Murphy,

Fiscal Assistant Secretary.

[FR Doc. 91-17892 Filed 7-24-91; 11:06 am]

BILLING CODE 4810-40-M

[Supplement to the Department Circular—Public Debt Series—No. 21-91]

Treasury Notes, Series G-1998; Notice

Washington, July 11, 1991.

The Secretary announced on July 10, 1991, that the interest rate on the notes designated Series G-1998, described in Department Circular—Public Debt Series—No. 21-91 dated July 5, 1991, will be 8¼ percent. Interest on the notes will be payable at the rate of 8¼ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 91-17899 Filed 7-24-91; 11:06 am]

BILLING CODE 4810-40-M

Office of Thrift Supervision

Co-Operative Federal Savings and Loan Association, Westmont, IL; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Co-Operative Federal Savings and Loan Association, Westmont, Illinois, OTS No. 5524, on July 19, 1991.

Dated: July 23, 1991.

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6. General Provisions

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6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

General Murphy,

Fiscal Assistant Secretary.

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Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 91-17899 Filed 7-24-91; 11:06 am]

BILLING CODE 4810-40-M

Office of Thrift Supervision

Co-Operative Federal Savings and Loan Association, Westmont, IL; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Co-Operative Federal Savings and Loan Association, Westmont, Illinois, OTS No. 5524, on July 19, 1991.

Dated: July 23, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-17840 Filed 7-26-91; 8:45 am]

BILLING CODE 6720-01-M

Co-Operative Federal Savings Bank, Westmont, Il; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Co-Operative Federal Savings Bank, Westmont, Illinois, on July 19, 1991.

Dated: July 23, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-17838 Filed 7-26-91; 8:45 am]

BILLING CODE 6720-01-M

New Metropolitan Federal Savings Bank; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for New Metropolitan Federal Savings Bank, Hialeah, Florida, on July 19, 1991.

Dated: July 23, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-17839 Filed 7-26-91; 8:45 am]

BILLING CODE 6720-01-M

Clinton Savings & Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in Section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as Sole Receiver for Clinton Savings and Loan Association, Clinton, Oklahoma, OTS No. 4540, on July 19, 1991.

Dated: July 23, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-17848 Filed 7-26-91; 8:45 am]

BILLING CODE 6720-01-M

New Metropolitan Federal Savings and Loan Association; Replacement of Conservator With Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the existing Conservator with the Resolution Trust Corporation as sole Receiver for New Metropolitan Federal Savings and Loan Association, Hialeah, Florida, OTS No. 8331, on July 19, 1991.

Dated: July 23, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-17837 Filed 7-26-91; 8:45 am]

BILLING CODE 6720-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 145
Monday, July 29, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of July 29, 1991:

A closed meeting will be held on Tuesday, July 30, 1991, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, July 30, 1991, at 2:30 p.m., will be:

Regulatory matter regarding financial institutions.

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Settlement of injunctive actions.

Institution of injuctive actions.

Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: George Kramer at (202) 272–2000.

Dated: July 25, 1991.

Jonathan G. Katz,
Secretary.

[FR Doc. 91–18034 Filed 7–25–91; 3:54 pm]

BILLING CODE 8010-01-M

FEDERAL ENERGY REGULATORY COMMISSION

Notice

July 24, 1991.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–49), U.S.C. 552B:

DATE AND TIME: July 31, 1991, 10:00 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20226.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 942nd Meeting—July 31, 1991, Regular Meeting (10:00 a.m.)

CAH–1.
  Project No. 1957–004, Wisconsin Public Service Corporation
CAH–2.
  Project No. 8435–081, Smith Falls Hydropower
CAH–3.
  Project No. 6902–015, City of New Martinsville, West Virginia
  Project No. 9042–011 Gallia Hydro Partners
CAH–4.
  Omitted
CAH–5.
  Omitted
CAH–6.
  Project Nos. UL87–14–001 and UL87–15–001, Upper Peninsula Power Company
CAH–7.
  Project No. 11083–001, Black River Hydro Corporation
  Project No. 11084–001, School Street Hydro Corporation
  Project No. 11085–001, Raymondville Hydro Corporation
  Project No. 11086–001, East Norfolk Hydro Corporation
  Project No. 11087–001, Kamargo Corporation
  Project Nos. 10636–001, 10637–001, 10638–001, 10639–001, 10640–001, 10641–001 and 10642–001, Niagara Mohawk Power Corporation
  Project Nos. 11104–001, 11105–001, 11106–001, 11107–001 and 11108–001, City of Oswego, New York
CAH–8.
  Project No. 5461–000, Niagara Mohawk Power Corporation
  Project No. 9703–000, South Glens Falls Corporation
CAH–9.
  Omitted
CAH–10.
  Project No. 8291–005, North Star Hydro, Ltd.
CAH–11.
  Project No. 596–004, Utah Power & Light Company
  Project No. 4029–002, Utah Municipal Power Agency, *et al.*
  Project No. 4040–001, Bountiful City, Utah

Consent Agenda—Electric

CAE–1.
  Docket No. ER91–306–000, Kanawha Valley Power Compnay
CAE–2.
  Docket No. ER91–480–000, Jersey Central Power & Light Company
CAE–3.
  Docket No. QF90–175–002, U S WEST Financial Services, Inc.
CAE–4.
  Docket No. ER91–176–001, PSI Energy, Inc. and Consumers Power Company
CAE–5.
  Omitted
CAE–6.
  Docket Nos. QF87–237–003, 000, and 001, CMS Midland, Inc. and Midland Cogeneration Venture, L.P.
CAE–7.
  Docket Nos. ER89–207–004, and EL91–45–000, Public Service Company of New Hampshire
CAE–8.
  Docket No. EC91–17–000, Doswell Limited Partnership
  Docket No. EL91–40–000, Diamond Energy, Inc.
CAE–9.
  Docket No. ES91–30–000, Northeast Empire Limited Partnership #1 and Northeast Empire Limited Partnership #2
CAE–10.
  Docket No. EC91–5–000, Kentucky Utilities Company and Old Dominion Power Company
CAE–11.
  Docket No. ER91–149–002, Boston Edison Company
CAE–12.
  Docket Nos. FA89–17–001, and AC91–80–000, Central Maine Power Company
CAE–13.
  Docket No. EL90–38–000, Interstate Power Company

Consent Agenda—Miscellaneous

CAM–1.
  Omitted

Consent Agenda—Oil and Gas

CAG–1.
  Omitted
CAG–2.
  Docket No. RP91–191–000, Northern Natural Gas Company
CAG–3.

Federal Register

Vol. 56, No. 145

Monday, July 29, 1991

otice of meeting is
t to Section 3(a) of the
Sunshine Act (Pub. L.
552B:

y 31, 1991, 10:00 a.m.
Capitol Street, N.E.,
ngton, D.C. 20226.

NSIDERED: Agenda.

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OR MORE
D. Cashell, Secretary,
8–0400.

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Commission. It does
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documents may be
eference and
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dro, 942nd Meeting—
Meeting (10:00 a.m.)

4, Wisconsin Public
ion

1, Smith Falls

5, City of New
t Virginia
1 Gallia Hydro Partners

4–001 and UL87–15–001,
Power Company

01, Black River Hydro

01, School Street Hydro

01, Raymondville Hydro

01, East Norfolk Hydro

01, Kamargo

001, 10637–001, 10638–
640–001, 10641–001 and
a Mohawk Power

001, 11105–001, 11106–
d 11108–001, City of
k

, Niagara Mohawk
n

, South Glens Falls

CAH–9.
Omitted

CAH–10.
Project No. 8291–005, North Star Hydro, Ltd.

CAH–11.
Project No. 596–004, Utah Power & Light Company
Project No. 4029–002, Utah Municipal Power Agency, *et al.*
Project No. 4040–001, Bountiful City, Utah

Consent Agenda—Electric

CAE–1.
Docket No. ER91–306–000, Kanawha Valley Power Compnay

CAE–2.
Docket No. ER91–480–000, Jersey Central Power & Light Company

CAE–3.
Docket No. QF90–175–002, U S WEST Financial Services, Inc.

CAE–4.
Docket No. ER91–176–001, PSI Energy, Inc. and Consumers Power Company

CAE–5.
Omitted

CAE–6.
Docket Nos. QF87–237–003, 000, and 001, CMS Midland, Inc. and Midland Cogeneration Venture, L.P.

CAE–7.
Docket Nos. ER89–207–004, and EL91–45–000, Public Service Company of New Hampshire

CAE–8.
Docket No. EC91–17–000, Doswell Limited Partnership
Docket No. EL91–40–000, Diamond Energy, Inc.

CAE–9.
Docket No. ES91–30–000, Northeast Empire Limited Partnership #1 and Northeast Empire Limited Partnership #2

CAE–10.
Docket No. EC91–5–000, Kentucky Utilities Company and Old Dominion Power Company

CAE–11.
Docket No. ER91–149–002, Boston Edison Company

CAE–12.
Docket Nos. FA89–17–001, and AC91–80–000, Central Maine Power Company

CAE–13.
Docket No. EL90–38–000, Interstate Power Company

Consent Agenda—Miscellaneous

CAM–1.
Omitted

Consent Agenda—Oil and Gas

CAG–1.
Omitted

CAG–2.
Docket No. RP91–191–000, Northern Natural Gas Company

CAG–3.

Docket No. RP91–189–000, Midwestern Gas Transmission Company

CAG–4.
Docket No. RP91–188–000, El Paso Natural Gas Company

CAG–5.
Docket Nos. RP91–187–000 and CP91–2448–000, Florida Gas Transmission Company

CAG–6.
Docket No. RP91–182–000, Natural Gas Pipeline Company of America

CAG–7.
Docket No. RP91–174–000, Great Lakes Gas Transmission Limited Partnership

CAG–8.
Docket No. RP91–171–000, Southern Natural Gas Company

CAG–9.
Docket No. RP89–161–019, ANR Pipeline Company

CAG–10.
Docket No. RP91–190–000, Southern Natural Gas Company

CAG–11.
Docket Nos. RP91–178–000 and 001, Algonquin Gas Transmission Corporation

CAG–12.
Docket Nos. RP91–68–006, 007 and 008, Penn-York Energy Corporation

CAG–13.
Docket No. RP88–211–013, *et al.*, RP88–211–014, *et al.* and RP88–211–015, *et al.*, CNG Transmission Corporation

CAG–14.
Docket No. RP89–37–017, High Island Offshore System

CAG–15.
Docket No. RP91–192–000, ANR Pipeline Company

CAG–16.
Docket No. TA91–1–29–000, Transcontinental Gas Pipe Line Corporation

CAG–17.
Docket No. TA91–1–86–000, Pacific Gas Transmission Company

CAG–18.
Docket Nos. TA91–1–52–000, 001 and 002, Western Gas Interstate Company

CAG–19.
Docket Nos. TA91–1–49–000, 001 and RP91–169–000, Williston Basin Interstate Pipeline Company

CAG–20.
Docket Nos. TA91–1–20–000, and 001, Algonquin Gas Transmission Company

CAG–21.
Docket Nos. TF91–4–20–000, TM91–10–20–000, TF91–4–20–001 and TM91–10–20–001, Algonquin Gas Transmission Company

CAG–22.
Docket No. CP89–1281–012, Natural Gas Pipeline Company of America

CAG–23.
Docket No. PR91–14–000, Acacia Natural Gas Corporation

CAG–24.
Omitted

CAG–25.
Docket No. RP90–132–006, United Gas Pipe Line Company

CAG–26.
Docket Nos. RP91–82–004 and RP90–108–012, Columbia Gas Transmission Corporation
Docket No. RP90–107–008, Columbia Gulf Transmission Company

CAG–27.
Docket No. RP91–152–002, Williams Natural Gas Company

CAG–28.
Docket Nos. CP88–391–005, RP87–7–072, RP88–167–003, RP85–148–011, CP89–759–009, CP90–2229–002, CP90–2230–003, CP89–790–002, CP88–328–005, RP90–8–005, CP90–499–007, CP84–336–006, G–12059–001, RP73–3–011, RP82–55–049, CP72–255–003, CP90–2228–002, C89–728–002, CP88–273–001, CP89–1916–003, RP90–51–001, CP84–146–008 and G–12503–001, Transcontinental Gas Pipe Line Corporation

CAG–29.
Docket No. RP88–267–013, South Georgia Natural Gas Company

CAG–30.
Docket No. RP91–161–001, Columbia Gas Transmission Corporation
Docket No. RP91–160–001, Columbia Gulf Transmission Company

CAG–31.
Docket No. RP91–147–003, Transcontinental Gas Pipe Line Corporation

CAG–32.
Docket No. RP91–145–002, Florida Gas Transmission Company

CAG–33.
Docket No. RP91–140–004, Questar Pipeline Company

CAG–34.
Docket Nos. RP91–51–006, 007, TM91–5–22–001, TM91–6–22–002, 003, RP91–125–002, 003, RP91–98–005 and 006, CNG Transmission Corporation

CAG–35.
Docket No. TA91–1–55–001, Questar Pipeline Company

CAG–36.
Docket Nos. TA91–1–17–004 and TM91–2–17–001, Texas Eastern Transmission Company

CAG–37.
Docket No. TA90–1–29–003, Transcontinental Gas Pipe Line Corporation

CAG–38.
Docket No. RP85–39–006, Wyoming Interstate Company, Ltd.

CAG–39.
Omitted

CAG–40.
Omitted

CAG–41.
Docket Nos. RP91–100–002 and RP91–134–002, Texas Gas Transmission Corporation

CAG–42.
Docket No. RP89–183–028, Williams Natural Gas Company

CAG–43.
Docket No. RP88–28–002, Northern Illinois Gas Company v. Natural Gas Pipeline Company of America

CAG–44.
Docket No. RP91–132–001, Colorado Interstate Gas Company

CAG–45.
Docket Nos. RP85–122–019 and RP87–30–024, Colorado Interstate Gas Company and Natural Gas Pipeline Company of America
Docket No. RP90–170–001, Colorado Interstate Gas Corporation

CAG–46.
Docket No. RP90–131–001, Northern Natural Gas Company, Division of Enron Corp.

CAG–47.
Docket No. RP91–107–002, Williams Natural Gas Company

CAG–48.
Docket Nos. TQ90–3–32–002 and RP90–126–002, Colorado Interstate Gas Company

CAG–49.
Docket Nos. TA84–2–37–011 and FA84–9–002, Northwest Pipeline Corporation

CAG–50.
Docket No. TM91–8–29–001, Transcontinental Gas Pipe Line Company

CAG–51.
Docket No. ST90–359–002, Transok, Inc.

CAG–52.
Docket Nos. CP86–578–028, CP88–611–001, CP89–312–003, CP89–1740–001 and CP90–203–001, Northwest Pipeline Corporation

CAG–53.
Omitted

CAG–54.
Docket Nos. RP86–119–000, RP88–191–000, RP89–30–000, RP90–122–000, RP91–29–000, RP91–167–000, RP88–228–000, RP89–249–000, RP89–29–000, RP89–149–000, RP89–242–000, CP87–115–000, CP89–470–000, TA84–2–9–000, TA85–1–9–000, TA89–1–9–000, TA90–1–9–000, TA91–1–9–000, RP91–16–000 and CP87–103–000, Tennessee Gas Pipeline Company

CAG–55.
Omitted

CAG–56.
Docket No. PR91–15–000, Farmland Industries Inc. v. Louisiana Intrastate Gas Corporation

CAG–57.
Docket Nos. RP85–203–000, RP88–203–000, RP88–262–000, *et al.*, RP88–88–000, RP82–58–019, *et al.*, TA84–1–28–002, *et al.*, TA85–1–28–001, TA85–3–28–000, TA86–2–28–000, 001, TA86–3–28–000, 001, TQ89–2–28–001, TA90–1–28–001, TA91–1–28–000 and TM91–9–28–000, Panhandle Eastern Pipe Line Company
Docket No. CP86–586–002, Trunkline Gas Company

CAG–58.
Omitted

CAG–59.
Docket No. RP85–202–000, Trunkline Gas Company

CAG–60.
Docket Nos. RP89–248–000, RP90–75–000 and RP90–106–000, Mississippi River Transmission Corporation

CAG–61.
Docket Nos. RP87–30–036 (Phase II) and RP90–69–007, Colorado Interstate Gas Company

CAG–62.
Docket Nos. RP90–164–000 and RP90–165–000, Mid Louisiana Gas Company

CAG–63.
Docket No. PR90–10–000, Llano, Inc.

CAG–64.
Docket No. PR91–2–000, Rhone-Poulenc Pipeline Company

CAG–65.

Docket Nos. IS91–25–000, IS87–14–000 and OR88–3–000, Buckeye Pipe Line Company, L.P.

CAG–66.

Docket No. RM91–6–000, Qualifying Certain Tight Formation Gas for Tax Credit

CAG–67.

Docket No. RI88–30–004, Phillips 66 Natural Gas Company

CAG–68.

Docket No. RM89–16–003, Order Implementing the Natural Gas Decontrol Act of 1989

CAG–69.

Docket No. GP88–27–002, Quintana Petroleum Corp., NGPA § 103 Determination, State of Louisiana Department of Natural Resources

CAG–70.

Docket No. GP91–7–000, Bureau of Land Management, Section 108 Determination, HiGar Petro, Inc., No. 1 U.S.A. "D" Well, FERC No. JD 91–02669

CAG–71.

Docket No. GP91–6–000, American Distribution Company (Alabama Division)

CAG–72.

Docket No. GP88–26–002, Northern Pump Company (Danner No. A–1 Well)

CAG–73.

Docket No. CP91–2–000, Natural Gas Pipeline Company of America

CAG–74.

Docket No. CP88–570–006, Mobile Bay Pipeline Projects

Docket No. CP88–415–004, Florida Gas Transmission Company and Southern Natural Gas Company

Docket No. CP88–437–002, Tennessee Gas Pipeline Company

Docket No. CP89–464–003, Florida Gas Transmission Company, Southern Natural Gas Company and Tennessee Gas Pipeline Company

Docket No. CP89–511–002, Texas Eastern Transmission Corporation and ANR Pipeline Company

Docket No. CP89–512–002, Texas Eastern Transmission Corporation

Docket Nos. CP89–513–002, and CP89–517–002, Southern Natural Gas Company

Docket No. CP89–523–002, Transcontinential Gas Pipe Line Corporation, Florida Gas Transmission Company, Tennessee Gas Pipeline Company, Texas Eastern Transmission Corporation and ANR Pipeline Company

Docket No. CP89–522–003, Transcontinental Gas Pipeline Corporation, Florida Gas Transmission Company, Tennessee Gas Pipeline Company and Texas Eastern Transmission Corporation

Docket No. CP88–474–002, Texas Eastern Transmission Corporation

Docket No. CI91–16–001, Shell Gas Pipeline Company

CAG–75.

Docket No. CP89–637–007, ANR Pipeline Company

Docket No. CP88–178–004, Trunkline Gas Company

Docket No. CP90–1726–002, Great Lakes Gas Transmission Limited Partnership

Docket No. CP89–638–004, CNG Transmission Corporation

Docket No. CP90–687–004, Transcontinental Gas Pipe Line Corporation

Docket No. CP90–688–003, Texas Gas Transmission Corporation

CAG–76.

Docket No. CP91–1448–001, The Peoples Natural Gas Company

CAG–77.

Docket No. CP89–2095–001, Trunkline Gas Company

CAG–78.

Docket Nos. CP91–1372–001, and CP91–1373–001, Tennessee Gas Pipeline Company

CAG–79.

Docket No. CP91–969–001 CNG Transmission Corporation

CAG–80.

Docket No. CP88–587–004, Distrigas Corporation and Distrigas of Massachusetts Corporation

CAG–81.

Omitted

CAG–82.

Docket No. CP91–2334–000, Colorado Interstate Gas Company

CAG–83.

Omitted

CAG–84.

Omitted

CAG–85

Omitted

CAG–86.

Docket No. CP91–321–000, Natural Gas Pipeline Company of America

CAG–87.

Docket No. CP90–1297–000, Williams Natural Gas Company

CAG–88.

Docket Nos. CP91–2013–000, and CP91–2014–000, Trunkline Gas Company

CAG–89.

Docket No. CP91–433–000, Tennessee Gas Pipeline Company

CAG–90.

Docket No. CP91–1228–000, The Inland Gas Company, Inc.

CAG–91.

Docket No. CP89–7–000, Transcontinental Gas Pipe Line Corporation

CAG–92.

Docket Nos. CP89–661–003, and CP88–187–005, Algonquin Gas Transmission Company

CAG–93.

Omitted

CAG–94.

Docket Nos. CP88–212–000, 001, 002, RP89–67–000, 001, RP89–121–000, 001, 002, CP88–238–000, MT89–5–000, 001, 002, 003, 004, MG89–15–000, 001, CP89–1120–000, 003 and RP89–31–000, West Texas Gathering Company

CAG–95.

Omitted

CAG–96.

Docket No. CP90–1439–000, Trunkline Gas Pipeline Company

Docket No. CP91–1794–000, Tennessee Gas Pipeline Company

CAG–97.

Docket Nos. CP70–69–002 and CP70–70–001, Northern Natural Gas Company, Division of Enron Corporation and Northern Natural Gas Company

CAG–98.

Docket Nos. CP91–2127–000, and CP91–2128–000, Western Gas Interstate Company

CAG–99.

Omitted

CAG–100.

Docket Nos. RP89–183–000, 007, 027, RP91–43–003 and TM91–3–43–003, Williams Natural Gas Company

CAG–101.

Docket Nos. RP91–47–000 and TM91–4–16–000, National Fuel Gas Supply Corporation

CAG–102.

Docket No. CP91–2417–000, Iroquois Gas Transmission System, L.P.

CAG–103.

Docket No. CP91–780–000, Northwest Pipeline Corporation

CAG–104.

Docket Nos. RP89–48–014 and RP91–176–000, Transwestern Pipeline Company

Hydro Agenda

H–1.

Project No. 618–023, Alabama Power Company. Order on rehearing.

Electric Agenda

E–1.

Docket No. ER91–457–000, Central Maine Power Company. Order on rate filing.

E–2.

Docket Nos. EC90–10–000, ER90–143–000, ER90–144–000, ER90–145–000 and EL90–9–000, Northeast Utilities Service Company. Order on application merger.

E–3.

Docket No. RM91–17–000, Generic Determination of Rate of Return on Common Equity for Public Utilities. Notice of proposed rulemaking.

Miscellaneous Agenda

M–1.

Docket No. RM91–10–000, Comprehensive Review of the Commission's *Ex Parte* Regulations Using Negotiated Rulemaking Procedures. Notice of intent to establish committee.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.

Docket No. RM91–11–000, In Re Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations. Notice of proposed rulemaking.

PR–2(A).

Docket Nos. RP88–92–000, RP88–263–000 and RP88–265–000, United Gas Pipeline Company. Initial decision.

PR–2(B).

Docket No. RP88–92–000, *et al.*, United Gas Pipe Line Company.

Docket No. RP91–28–000, Entex, a division of Arkla, Inc., Louisiana Gas Service Company, and New Orleans Public Service, Inc. Complainants v. United Gas Pipe Line Company Respondent. Order on partial initial decision and complaint.

PR–3.

Docket Nos. RP88–262–000, CP89–917–000, TA89–1–28–000, TA90–1–28–000, RP88–88–002 and RP87–103–000, Panhandle Eastern Pipe Line Company. Initial decision.

PR–4.

Docket Nos. RP88–44–011, 016, 018, RP76–12–000, RP79–12–000, RP85–58–012, 017, 021, 022, 023, 026, 032, RP88–184–002, 004, 005, 006, 010, RP88–185–002, 003, RP88–202–001, 002, RP89–57–001, 003, RP88–184–011, RP88–185–004, RP89–132–004, 005, 007, 009, 011, 012, RP89–230–004, RP90–81–000, 001, 003, 004, TA84–1–33–005, 011, TA84–2–33–013, TA85–1–33–004, 015, 016, 017, TA88–1–33–000, 003, 004, TA88–3–33–003, TA89–1–33–000, 001, 003, TQ89–1–33–002, TM90–3–33–003, 004, TQ91–2–33–002, TQ89–1–33–002, CI81–290–000, CI87–290–002, CI88–605–005, CP87–44–001, CP87–553–001, 002, CP88–77–000, CP88–203–000, 003, CP88–244–001, CP88–270–001, CP88–433–002, CP88–434–003, 004, 005, CP88–700–002, CP89–483–001, CP89–896–001, CP89–1540–002, CP89–1722–001, CP90–1034–001, CP90–1084–002, CP90–1269–002, CP90–1281–002 and CP90–1600–001, El Paso Natural Gas Company. Order on rehearing.

PR–5.

Docket Nos. Docket Nos. RP89–48–011, 013, CP89–1126–001, RP89–222–005, RP89–254–004, CP88–133–002 and CP89–886–002, Transwestern Pipeline Company. Order on rehearing.

PR–6.

Docket Nos. RP91–109–001, CP90–2026,–001, RP90–136–002, RP91–104–002 and RP91–106–002, Transwestern Pipeline Company. Order on rehearing.

PR–7.

Docket Nos. CP91–687–000 and CP90–2275–000, ANR Pipeline Company: Order on certificate.

II. Producer Matters

PF–1.

Reserved

III. Pipeline Certificate Matters

PC–1.

Docket No. RM90–1–001, Revisions to Regulations Governing Authorizations for Construction of Natural Gas Facilities. Final Rule.

PC–2.

Docket No. RM90–7–000, Revisions to Regulations Governing Transportation Under Section 311 of the Natural Gas Policy Act of 1978 and Blanket Transportation Certificates

Docket No. GP88–11–002, Hadson Gas Systems, Inc.

Docket No. CP88–286–004, Cascade Natural Gas Corporation v. Northwest Pipeline Corporation, *et. al.*

Docket Nos. RP88–81–014, RP88–67–033 and RP88–175–002, Texas Eastern Transmission Corporation. Final Rule.

PC–3.

Docket Nos. CP90–1372–000, 001, CP90–1373–000, 001, CP90–1374–000, 001, CP90–1375–000 and 001, Altamont Gas Transmission Company. Order on application for certificate.

PC–4.

Docket Nos. CP89–460–003, 000, 001, 006, 007 and CP90–1–001, Pacific Gas Transmission Company. Order on application for certificate.

PC–5.

Docket No. CP90–2214–001, El Paso Natural Gas Company. Order on application for certificate.

PC–6.

Docket Nos. CP90–2294–000 and 001, Transwestern Pipeline Company. Order on application for a certificate.

PC–7.

Docket Nos. CP88–433–002 and 003, El Paso Natural Gas Company. Order on requests for rehearing.

PC–8.

Docket No. CP91–1379–000, Kern River Gas Transmission Company. Order on application for rehearing.

PC–9.

Docket Nos. CP91–2284–000 and RP91–153–002, East Tennessee Natural Gas Company. Declaratory order regarding transportation under section 311 of the Natural Gas Policy Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91–18035 Filed 7–25–91; 4:02 pm]

BILLING CODE 6717–01–M

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Monday
July 29, 1991

Part II

Federal Election Commission

11 CFR Part 100, et al.

Public Financing of Presidential Primary and General Election Candidates; Final Rule

FEDERAL ELECTION COMMISSION

[Notice 1991-11]

11 CFR Parts 100, 102, 106, 110, 116, 9001-9007, 9012, and 9031-9039

Public Financing of Presidential Primary and General Election Candidates

AGENCY: Federal Election Commission.

ACTION: Final rule; transmittal of regulations to Congress.

SUMMARY: The Commission has revised its regulations governing publicly financed Presidential primary and general election candidates. These regulations implement the provisions of 26 U.S.C. chapters 95 and 96, the "Presidential Election Campaign Fund Act" and the "Presidential Primary Matching Payment Account Act." The principal changes involve allocation of expenses to the state-by-state spending limits. Other areas in which changes are being made include candidate agreements, the matching fund process, media travel costs, joint fundraising, transfers to compliance funds, and repayment determinations. Further information on these revisions is provided in the supplementary information which follows.

DATES: Further action, including the announcement of an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d) and 26 U.S.C. 9009(c) and 9039(c). A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 376-5690 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Commission is publishing today the final text of revisions to its regulations at 11 CFR 106.2, and Parts 9001-9007, 9012, and 9031-9039, which concern the public financing process for Presidential primary and general election candidates. The Commission is also publishing conforming amendments to §§ 100.8(b), 102.17, 110.1, 110.8, and 116.5. On January 2, 1991, the Commission issued a Notice of Proposed Rulemaking (NPRM) in which it sought comments on proposed revisions to these regulations. 56 FR 106. Written comments were received from the Internal Revenue Service, the Democratic National Committee, and the Gephardt for President Committee in response to the Notice.

Section 438(d) of title 2, United States Code, and 26 U.S.C. 9009(c) and 9039(c) require that any rules or regulations prescribed by the Commission to carry out the provisions of titles 2 and 26 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on July 19, 1991.

Explanation and Justification

The Commission has revised its regulations governing publicly financed Presidential primary and general election candidates in several respects. The principal changes involve the allocation of expenses to the state-by-state spending limits, and the exclusion of certain costs from state allocation. Other areas in which changes are made include candidate agreements, media travel costs, joint fundraising, transfers to compliance funds, and repayment determinations.

The Commission has initiated a separate rulemaking to consider possible changes to its matching fund submission and certification procedures set forth at 11 CFR 9034.1, 9034.5, 9036.2, 9036.4, 9036.5, 9036.6, 9037.1 and 9037.2. See notice of proposed rulemaking, 56 FR 29372 (June 26, 1991). A new rulemaking is necessitated by the Department of the Treasury's recent promulgation of new rules regarding payments to candidates, which it adopted to address the possible shortage in the Presidential Election Campaign Fund. See 26 CFR parts 701 and 702, 56 FR 21596 (May 10, 1991).

In the course of this rulemaking, the Commission considered proposals for change that it did not ultimately incorporate into the revised rules. For example, the Commission sought comments on ways to streamline the audit and repayment processes and to encourage quicker termination of committee activity. One possibility considered was to set winding down costs as a fixed percentage of a candidate's total expenditures during the campaign, or as a percentage of total matching funds certified for that candidate. However, the Commission has decided not to change the current approach to winding down costs at this time because other changes in the primary election regulations, such as the revisions to the state allocation rules, should result in quicker completion of the audit and repayment processes.

In addition, two changes have been made throughout these regulations. First, the term "committee assets" is used instead of "campaign assets." Secondly, the cross-references to the convention regulations at 11 CFR part 9008 have been changed back to the current citations, since the reorganization and revision of the convention rules has been suspended until after the 1992 conventions. See 56 FR 14319 (April 9, 1991).

Part 100—Scope and Definitions (2 U.S.C. 431)

Section 100.8 Expenditure (2 U.S.C. 431(9))

The Commission is now revising and simplifying the way in which the 20% fundraising exemption from the overall spending limit for primary candidates is determined. Under the new method set out in § 100.8(b)(21), the amounts excluded at the state level are added to an amount excluded at the national level to permit committees to claim the full benefit of the 20% fundraising exemption established by the FECA. These changes correspond with changes in the method set out in § 110.8(c)(2) for determining the amount of fundraising costs exempt from the state spending limits.

Part 102—Registration, Organization, and Recordkeeping by Political Committees (2 U.S.C. 433)

Section 102.17 Joint Fundraising by Committees Other Than Separate Segregated Funds

The Commission is revising the joint fundraising rules set out at 11 CFR 102.17 in several respects. First, paragraph (a)(1) now specifies that if committees participating in a joint fundraiser elect to form a separate committee to serve as the fundraising representative, the separate committee cannot be a participant in any other joint fundraising efforts but may conduct more than one joint fundraising effort for the participating committees. This change corrects two problems. First, in cases where this has occurred, there was no explicit allocation formula for determining the amounts to be distributed to each of the participating original committees. Secondly, there has been confusion as to the amount that may be contributed to the fundraising representative for distribution among the participating committees. Under new paragraph (c)(7)(i)(C) the expenses for a series of fundraising events or activities must be allocated on a per event basis. This provision parallels language in current § 9034.8(c)(8)(i)(C).

New language is also being added to paragraph (c)(1) to require the allocation formula to indicate the amount or percentage of each contribution that will

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New language is also being added to paragraph (c)(1) to require the allocation formula to indicate the amount or percentage of each contribution that will be allocated to each participant. Thus, the formula may not state that a fixed amount of the proceeds will be allocated to a specific participant, or that contributions will be allocated to one participant because the contributions are matchable. Section 9034.8(c)(7)(i) does not permit the committee to use a joint fundraiser to maximize the matchability of contributions. However, the formula may state, for example, that the first $250 of each contribution will be allocated to a particular candidate. The new rules also delete the previous language in paragraph (c)(1) indicating that the joint fundraising participants must use the formula to allocate fundraising expenses. This change was necessary because paragraph (c)(7) indicates that the joint fundraising representative allocates expenses based on the percentage of total receipts allocated to each participant. Please note that corresponding changes are included in the joint fundraising rules applicable to presidential candidates. See 11 CFR 9034.8.

Part 106—Allocation of Candidate and Committee Activities

Section 106.2 State Allocation of Expenditures Incurred by Authorized Committees of Presidential Primary Candidates Receiving Matching Funds

As in the past, many of the issues arising in the 1988 election cycle involved the allocation of expenses to particular states for purposes of the statutory state-by-state spending limitations for Presidential primary candidates receiving matching funds. 2 U.S.C. 441a(b)(1) and 441a(g). In practice, the state limits have the greatest impact in the states holding the first primaries because the spending limits are based on voting age population and do not recognize that the national importance of these primaries extends well beyond the relatively small numbers of delegates at stake. The national significance of the first primary campaigns is shown by their focus on national issues, their coverage by the national and international press, the candidates' appeals to voters nationwide, and the effect these primaries have in winnowing the field of candidates able to continue to campaign in subsequent primaries. The importance of the early primaries has resulted in creative attempts to reduce the amounts allocated to these states for various activities. This, in turn, has necessitated extensive review of committees' allocation practices during the post-primary audits.

For these reasons, the Commission has now decided to make substantial changes in its regulations to try to resolve some of the current problems and to simplify state allocation. One of the two comments received stated that proposals designed to simplify allocation and to treat these as national primaries "makes eminent sense in the light of experience." As discussed below, the other commenter urged the Commission to take several additional steps in this direction.

Under the new state allocation rules, the detailed list of allocable expenditures and exemptions set out in previous 11 CFR 106.2 is replaced with a more limited set of allocable expenditures that are directly related to the campaigns in particular states. All other expenditures are exempted from state allocation, but not from the overall spending limits. The following expenditures are subject to state allocation:

(1) Expenses for campaign advertising distributed through the broadcast media and print media in a particular state, but excluding production costs, national advertising costs and commissions for media purchases. For broadcast and print media buys distributed to more than one state, allocation is based on the proportion of viewers or readers in each state.

(2) Expenditures for mass mailings where more than 500 pieces are sent to a given state and expenditures for shipping other campaign materials to the state.

(3) Expenditures for special telephone programs targeted at a particular state, such as voter registration, get out the vote, fundraising or telemarketing programs.

(4) Expenditures for public opinion polls, except those conducted on a nationwide basis. Allocable costs are based on the number of people interviewed in each state.

(5) Overhead expenses for state offices, but not for national campaign headquarters. Overhead expenses for regional offices are allocated to the next primary state in the region.

Under the new approach, presidential primary candidates are not required to allocate the following categories of expenditures to specific states:

(1) Interstate and intrastate travel and subsistence expenses for the candidate and his or her campaign staff;

(2) Salaries of campaign staff working in a given state; and

(3) Consulting fees for those consulting on national campaign strategy.

Finally, the new rules simplify the application of the fundraising exemption by allowing committees to treat up to 50% of expenditures allocable to each state as exempt fundraising costs, except that 100% of the costs of mass mailings may be treated as fundraising if the materials were mailed more than 28 days before the primary. This approach revises the 28 day rule previously set forth at 11 CFR 110.8(c)(2) so that the timing of fundraising activities is only significant for mass mailings. In addition, the new rules supersede AO 1988–6 in which the Commission concluded that 50% of the costs of broadcasting a particular advertisement may be excluded from state allocation under the fundraising exemption.

These changes also involve reorganizing § 106.2 in the following respects. Paragraph (a) now sets out the general rule that only the expenditures indicated in this section must be allocated to particular states. Previous paragraphs (b) and (c) have been combined into new paragraph (b) describing allocable expenses. The reporting provisions of former paragraph (d) are now located in paragraph (c). The recordkeeping requirements of previous paragraph (e) have been amended and placed in paragraph (d). The revised state allocation rules in § 106.2 address the following types of expenses:

1. *Media expenditures.* The new rules continue the previous approach requiring allocation of print and broadcast advertising, but excluding national advertising and media production costs from state allocation. However, one modification has been made regarding commissions. Under the old rules, § 106.2(b)(2)(i)(B) provided for state-by-state allocation of any commission charged for the purchase of broadcast media, using industry market data. The new rules specify that commissions, fees, and other compensation for the purchase of broadcast or print media need not be allocated to any State.

The NPRM indicated that the Commission has encountered situations in recent audits in which committees have sought to claim very low amounts as media commissions in comparison to the amounts claimed as production costs, and in comparison to the amounts of commissions in previous presidential election cycles. Consequently, comments were sought on how to determine whether the amount paid to the advertising firm or media consultant represents the usual and normal charge for the services provided. Questions may also arise as to whether media commissions are national or state expenditures. One commenter suggested that because of these difficulties, the

Commission should not allocate media commissions against the state spending ceilings. The Commission has decided to take the approach of not allocating media commissions to the state spending limits. The final rules also include new language to clarify that if industry market data is not available to support state allocation of media advertising costs, market data must be obtained from the media carrier.

2. *Mass mailings and shipping other campaign materials.* New § 106.2(b)(2)(ii) specifically requires the allocation of the costs associated with mass mailings of over 500 pieces to a state and the costs of shipping campaign materials to a state. Such costs were allocable under previous § 106.2, unless they could qualify as fundraising expenses. The new language parallels the concept of mass mailings used in the franked mail statute applicable to members of Congress. 39 U.S.C. 3210(a)(6). In contrast to the previous rules, the new language does not require allocation of the costs of producing materials that are subsequently shipped to a state for distribution. The new mass mailing provision operates in conjunction with the Commission's simplified approach to the fundraising exemptions from the state and overall spending limits set out in § 100.8(b)(21) and 110.8(c)(2). Under the new approach, a committee may treat 100% of mass mail expenses and 50% of campaign material shipping costs as counting against the state or overall fundraising exemptions.

3. *Overhead expenditures for state offices and regional offices.* The Commission is now revising § 106.2(b)(2)(iii) to provide further guidance as to how to allocate overhead expenses of regional offices. Overhead expenses will be allocated to the next primary state in the region. If two or more states in the region hold primaries on the same day, overhead expenses should be apportioned equally between these states.

As under the previous rules, allocation is required for state offices, but with certain exceptions, it is not required for national campaign headquarters. These provisions are also reorganized so that the definition of "overhead expenditure" only appears once. Please note that the State office overhead provision has been revised to clarify that the location of the State office is not controlling, and to clarify that allocable expenses include the costs of facilities used for campaign events in a State. Overhead also includes the cost of temporary offices established while the candidate is traveling in the State or in the final weeks before the primary election, as well as expenses paid by campaign staff and subsequently reimbursed by the campaign, such as miscellaneous supplies, copying, printing, and telephone expenses. See 11 CFR 116.5. However, overhead does not include the cost of vehicles leased for extended periods and used in a particular State, unless these costs are allocable for another reason, such as the use of vehicles for polling purposes.

One comment urged the Commission to exclude from allocation overhead expenses related to dealing with the press and organizing campaign trips and events for the candidate. This suggestion was not adopted because drawing distinctions for different categories of overhead is contrary to the Commission's new approach of creating broad categories of allocable expenses and exempt expenses. The newly created exemptions for travel and salary expenses will result in the exclusion of a substantial amount of expenses. In addition, the final rules concerning overhead permit committees to treat 10 percent of State office overhead expenditures as exempt compliance costs which are therefore excludable from the state spending limits.

4. *Expenditures for special telephone programs.* The Commission is now replacing its previous allocation rules for interstate and intrastate telephone calls with new language at § 106.2(b)(2)(iv) requiring allocation only if the intrastate or interstate telephone calls part of a special telephone programs targeted at a particular state. This includes special programs such as voter registration, get out the vote efforts, fundraising, or telemarketing calls designed to increase candidate recognition and support among voters in the state. These costs are allocable irrespective of whether the calls originated inside or outside the state called. The final rules indicate that "targeted at a particular state" means that 10 percent or more of the total telephone calls made in each month are made to that state. The final rules have been modified from the previous proposals to clarify that the allocable expenses for special telephone programs include consultants' fees, related travel costs, and the costs of office rental. This covers both the costs of renting office space for a limited period specifically for the purpose of conducting the program, as well as a *pro rata* portion of the campaign committee's state office or national headquarters if used to conduct the program. As explained below, consultants' fees are allocable if they relate to conducting special telephone programs or polling activity, but they are not allocable if they are charged for consulting on national campaign strategy.

5. *Public opinion polls.* Paragraph (b)(2)(v) of revised § 106.2 continues the previous approach regarding the allocation of polling expenses. Thus, expenditures incurred for public opinion polls covering one state are allocable to that state. Polls covering two or more states continue to be allocable to those states based on the number of people interviewed in each state, but polls conducted on a nationwide basis are not allocable. The revised rules also specify that allocable expenses include the costs of designing and conducting a poll, such as consultants' fees and travel costs.

6. *Costs excluded from allocation.* As indicated above, the revised allocation rules are intended to eliminate several problems encountered by the Commission and by committees under the previous rules. For example, the previous regulations required the allocation of intrastate travel and subsistence expenses, as well as salary expenses, for persons working in a particular state for five consecutive days or more. 11 CFR 106.2(b)(2)(ii) and (iii). The original purpose of these provisions was to simplify the allocation of travel and salary expenses. However, in administering these requirements, the Commission has found that the rule forced committees to create and maintain travel itineraries for many trips by candidates and campaign staff so that the Commission could determine the length of their stays in particular states. In addition, questions arose as to whether travel expenses of independent consultants, as well as travel and salary costs for a committee's vendors' employees, were also subject to this five day rule. Other questions involved the application of the exemption for interstate travel set out at 11 CFR 106.2(c)(4) in situations where campaign staff commuted on a regular basis to and from airports or hotels located across the border in a neighboring state. Consequently, the effects of the five day rule for salaries and intrastate travel, and the interstate travel exemption were to complicate, not to simplify, allocation.

To alleviate these difficulties, the Commission is now excluding all interstate and intrastate travel and salary expenses from state allocation. This will allow the Commission to devote its limited resources to monitoring other aspects of the Matching Fund Program. Moreover, now that salaries are excluded from state

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To alleviate these difficulties, the Commission is now excluding all interstate and intrastate travel and salary expenses from state allocation. This will allow the Commission to devote its limited resources to monitoring other aspects of the Matching Fund Program. Moreover, now that salaries are excluded from state

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allocation, § 106.2 is being further simplified by eliminating the language that had permitted committees to exclude 10 percent or more of campaign workers' salaries from state allocation as exempt compliance costs. See previous 11 CFR 106.2(c)(5). Please note, however, that salaries continue to be counted against the overall spending limit for primary candidates, and campaigns may continue to deduct 10 percent of salary costs from the overall limits for compliance activities under 11 CFR 9035.1(c).

The Commission has also decided to expressly exclude national consulting fees from allocation. See 11 CFR 106.2(b)(3). This exemption applies to charges for consulting on national campaign strategy, but does not include consulting fees charged for conducting special telephone programs or public opinion polls in a particular state.

7. *Recordkeeping and Allocation to the Next Primary State.* Specific recordkeeping requirements have been included in several sections to indicate particular kinds of records committees must maintain regarding allocable expenses such as direct mail, shipping costs, regional overhead expenses, special telephone programs and polling. See § 106.2(b)(2)(ii), (iii)(B), (iv), and (v). In addition, the final rules add new language at § 106.2(d) generally requiring the retention of all documents supporting allocations of expenditures to particular states and claims of exemption from allocation under this section. If a presidential campaign committee does not maintain these records, the regulations indicate that the expenditures will be considered to be allocable, and shall be allocated to the state holding the next primary election, caucus or convention after the expenditure is incurred. In an appropriate case, the Commission may also wish to pursue the failure to maintain records under 11 CFR 104.14. One commenter indicated that the purposes served by this provision could be accomplished in a less burdensome way, but did not indicate specifically how this could be accomplished.

Part 110—Contribution and Expenditure Limitations and Prohibitions

Section 110.1 Contributions by Persons Other Than Multicandidate Political Committees (2 U.S.C. 441a(a)(1))

The Commission's administration of the public financing laws has highlighted the need for modifications in the documentation requirements for reattributed and redesignated contributions, which are set forth in paragraph (l) of this section. For example, during the audits of several 1988 presidential campaign committees, problems were encountered in verifying that excessive contributions were reattributed to joint contributors or redesignated for compliance funds within the time periods established by 11 CFR 110.1(b) (5) and (k)(3)

To monitor compliance with the time periods established for obtaining reattributions and redesignations, § 110.1(l) is being revised to require committees to retain documentation demonstrating that redesignations and reattributions are received within 60 days. The new language gives committees a fair amount of flexibility as to the type of evidence they may choose to rely upon to demonstrate timely receipt.

Section 110.8 Presidential Candidate Expenditure Limitations

There are two changes in this section. First, in paragraph (f)(2), the citation to former § 141.2(c) has now been changed to current § 9003.2(c).

The other change involves the operation of the fundraising exemption from the state spending limits, which is set out at § 110.8(c)(2). This exemption has been the focus of a number of recent questions. For example, in Advisory Opinion 1988–6 the Commission was presented with the question of whether part of the costs of broadcasting a candidate's political advertisement in a particular state could be treated as an exempt fundraising expense if the advertisement concluded with a brief message urging the viewers to contribute to the candidate's campaign. On the basis of a previous decision made in one of the 1984 presidential audits, the Commission concluded that it would be reasonable for the candidate to allocate 50 percent of the costs of this advertisement to exempt fundraising, provided the advertisement was not broadcast within 28 days before the state's primary election. See previous 11 CFR 110.8(c)(2).

Since that time, presidential campaigns have tried to broaden the application of the fundraising exemption set forth in previous 11 CFR 106.2(c)(5)(ii) and 110.8(c)(2) in a variety of ways. For example, committees have sought to deduct 50 percent or more of the costs associated with candidate appearances at various political events designed to attract voters on the theory that the incidental distribution of solicitation materials is sufficient to qualify for the fundraising exemption. In other situations, committees have sought to apply the fundraising exemption to the costs of a telemarketing program targeted at voters in a key primary state. However, these telephone calls have tended to focus on voter education and garnering support, and have not always included a fundraising appeal. One committee claimed the fundraising exemption for such telephone calls because follow-up letters requesting contributions were sent to some of the voters contacted. Finally, some committees have sought to exclude part of their broadcast media costs from state allocation as exempt compliance costs incurred for including the disclaimer notice required by 2 U.S.C. 441d(a). They have based this allocation on an analogy to the principle set out in AO 1988–6.

To simplify the application of the fundraising exemption, 11 CFR 110.8(c)(2) is being revised to allow committees to treat up to 50 percent of their expenditures allocable to each state as exempt fundraising costs, and to permit these amounts to be excluded from the committees' total expenditures attributable to the spending limit for each state. The total amount excluded may not exceed 20 percent of the overall spending limit under 11 CFR 9035.1. This new approach revises the previous 28 day rule set forth in this section so that the timing of specific fundraising activities is only significant for mass mailings. The new rules implementing this method of calculating the fundraising exemption supersede AO 1988–6.

One reason for establishing a fundraising deduction of up to 50 percent of the state expenditures is that, as the commenters point out, there may be a fundraising component to many of the committee's campaign activities. Moreover, by adopting this change, the Commission will no longer need to examine disbursements claimed under the exemption to determine whether they are related to fundraising efforts.

The Commission decided to allow 100 percent of the cost of mass mailings to be treated as fundraising, unless the materials were mailed within 28 days before the election. Based on previous practice and experience, the Commission concluded that the primary purpose of mass mailings can be presumed to be fundraising until that point.

The NPRM sought comments regarding other ways to accommodate the special needs of candidates who must devote more time and effort to fundraising during the first two primaries to obtain enough money to be perceived as viable candidates for their party's nomination. One commenter urged the Commission to create an additional 20 percent across the board exemption from the spending limits for expenditures made in the early primary states on the grounds that a good portion of the campaign activities in the early primary states is directed at a national audience. The Commission believes that treating 50 percent of state expenditures as exempt fundraising costs will alleviate the commenter's concerns. In addition, the Commission expects that the revised state allocation categories will help to offset the amount of expenses previously allocable to the early primary states.

Part 116—Debts Owed by Candidates and Political Committees

Section 116.5 Advances by Committee Staff and Other Individuals

The definition of subsistence expenses, which was previously located in § 106.2(b)(2)(iii), has been moved to paragraph (b)(2) of § 116.5. Section 106.2 has been revised so that subsistence expenses are no longer allocable.

Part 9001—Scope

Section 9001.1 Scope

The references to the title 2 rules have been revised to reflect the addition of new 11 CFR part 116.

Part 9002—Definitions

There are no changes in §§ 9002.1 through 9002.8, § 9002.10, and § 9002.11.

Section 9002.9 Political Committee

The definition of "political committee" is revised by deleting the reference to former § 9012.6, which no longer exists.

Part 9003—Eligibility for Payments

There are no changes in §§ 9003.2 and 9003.6.

Section 9003.1 Candidate and Committee Agreements

Presidential candidates seeking federal funds for their general election campaigns must agree to comply with all of the conditions set forth in paragraph (b) of this section to be eligible to receive these funds. The Commission is now revising these conditions in two respects. First, the candidate agreement provisions are being revised to conform to the new magnetic media rules regarding the production of computerized information on magnetic diskettes or magnetic tapes in accordance with the new technical standards. See 11 CFR 9003.6, 55 FR 26392 (June 27, 1990).

The Commission also sought comments on requiring presidential candidates and their authorized committees to obtain and provide upon the Commission's request records regarding funds received and disbursements made on the candidate's behalf by other committees and organizations associated with the candidate. One commenter believed this requirement was unnecessary because the Commission already has authority to request and, if necessary, subpoena these records. Nevertheless, the Commission has concluded that inclusion of this requirement in the candidate agreements will ensure a more timely production of pertinent records that the Commission needs to audit the candidate's Presidential campaign committee or to make repayment determinations.

The Commission's proposed rules had included a requirement that candidates agree to file alphabetized schedules if their reports are generated from computerized files. One comment objected to the placement of such a requirement in the candidate agreements. The Commission has now decided not to require the filing of alphabetized schedules. Similarly, the Commission considered and rejected a proposal to add new language to the candidate agreement provisions to require committees to verify that they are not spending possibly illegal contributions while they are making inquiries as to the permissibility of these contributions. One commenter indicated that such a requirement would not add anything to existing law.

Section 9003.3 Allowable Contributions

Paragraphs (a)(1) (ii) and (iii) of § 9003.3 are being revised to resolve questions concerning the ability of campaign committees to seek redesignations to legal and accounting compliance funds of contributions properly received during the primary election campaign. The previous rules at 11 CFR 9003.3(a)(1)(iii) permit committees to seek redesignations to the compliance fund if they receive contributions that either exceed the primary election limits or that are made after the party's presidential nominee is chosen. Campaign committees may also transfer to the compliance fund amounts remaining in the primary election account that exceed the amount that must be reimbursed to the U.S. Treasury under 11 CFR 9038.2. See 11 CFR 9003.3(a)(1)(ii). The question presented was whether a campaign committee could obtain redesignations of contributions properly received during the primary election period. This situation only arises if a primary candidate becomes the nominee in the general election, since other rules apply to unsuccessful primary candidates. Accordingly, the Commission sought comments on revising paragraphs (ii) and (iii) of § 9003.3(a)(1) in the following respects. First, language was proposed to permit transfers to legal and accounting compliance funds only if such amounts are not needed to pay remaining primary obligations. In addition, the changes would have prevented committees from having nonexcessive primary contributions redesignated for the general election compliance fund if these primary contributions represent funds that are otherwise repayable to the Presidential Primary Matching Payment Account as surplus funds under 11 CFR 9038.2. The proposed revisions would also have clarified that redesignated contributions will be subject to the contribution limits for the general election, not the primary.

One comment opposed the redesignation restrictions on the grounds that contributions received late in the primary election season were probably intended for general election compliance purposes and should be so used. The Commission has now modified the proposed rule to permit redesignations for the compliance fund provided that the redesignations are received within 60 days of the Treasurer's receipt of the original contribution, and the committee follows the redesignation procedures set forth at 11 CFR 110.1(b) (5) and (1). In addition, the contributions redesignated must represent funds in excess of any amount needed to pay remaining primary expenses. If this requirement is not met, the committee would have to make a transfer back to the primary account to cover such expenses. Finally, contributions may not be redesignated if they have been submitted for matching.

Paragraph (a)(2) of this section is also being revised to permit contributions to a legal and accounting compliance fund to be used to defray the committee's unreimbursed costs incurred in providing transportation and services for the Secret Service and national security staff.

Section 9003.4 Expenses Incurred Prior to the Beginning of the Expenditure Report Period or Prior to Receipt of Federal Funds

This section generally follows previous § 9003.4.

Section 9003.5 Documentation of Disbursements

Section 9003.5(b)(1)(iv) is being revised to indicate that collateral evidence documenting qualified campaign expenses may include evidence that the disbursement is

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One comment opposed the redesignation restrictions on the grounds that contributions received late in the primary election season were probably intended for general election compliance purposes and should be so used. The Commission has now modified the proposed rule to permit redesignations for the compliance fund provided that the redesignations are received within 60 days of the Treasurer's receipt of the original contribution, and the committee follows the redesignation procedures set forth at 11 CFR 110.1(b) (5) and (1). In addition, the contributions redesignated must represent funds in excess of any amount needed to pay remaining primary expenses. If this requirement is not met, the committee would have to make a transfer back to the primary account to cover such expenses. Finally, contributions may not be redesignated if they have been submitted for matching.

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Section 9003.5(b)(1)(iv) is being revised to indicate that collateral evidence documenting qualified campaign expenses may include evidence that the disbursement is

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covered by a preestablished written campaign committee policy, such as a daily travel expense policy. The previous rules had indicated that collateral evidence of a per diem policy would be acceptable. The new, more specific wording is intended to resolve the difficulties surrounding broad per diem policies that do not always provide adequate evidence that the expenses claimed are qualified campaign expenses. The final wording of § 9003.5(b)(1)(iv) represents an improvement over the proposed rules in the NPRM which would simply have required committees to submit collateral evidence showing that "the expenditure is part of an identifiable program or project which is otherwise sufficiently documented." This proposal did not clearly specify what types of documentation would be acceptable. The Commission is also making corresponding revisions to the documentation requirements for primary election committees at 11 CFR 9033.11(b)(1)(iv).

Part 9004—Entitlement of Eligible Candidates to Payments; Use of Payments

There are no changes in §§ 9004.1 through 9004.3, § 9004.5, § 9004.7, or § 9004.8.

Section 9004.4 Use of Payments

In AO 1988–5 questions were raised as to whether a current publicly-funded presidential campaign committee may contribute or loan or transfer funds to another federally funded committee of the same candidate for a previous election cycle for the purpose of paying debts from the earlier campaign. The opinion concluded that such payments are not qualified campaign expenses under 11 CFR 9034.4 and are not includable in the candidate's NOCO statement under 11 CFR 9034.5. However, such payments could be made from excess campaign funds once the audit process is concluded and any repayment or possible penalty obligations have been satisfied.

The attached final rules include new language in § 9004.4(b)(7) applying the conclusion reached in AO 1988–5 to general election candidates. Thus, similar payments from general election funds are nonqualified campaign expenses under § 9004.4(b). Accordingly, they could serve as a basis for a repayment determination under 11 CFR 9007.2. Please note that even though the question presented in AO 1988–5 was framed in terms of treating such payments as contributions, the Commission would regard such a flow of funds as a transfer, not a contribution. See H. Rept. No. 96–422, 96th Cong., 1st Sess. 7 (1979).

Section 9004.6 Reimbursements for Transportation and Services Made Available to Media Personnel

Under this section, candidates may seek reimbursement from media personnel for the costs of providing transportation and services to media representatives accompanying the candidate on campaign trips. These provisions also establish the method to be used in determining how much committees may receive from media personnel for such costs. The Commission is now making several changes to these rules. First, paragraph (a) is being revised to clarify that expenditures incurred for transportation or services made available to Secret Service and national security staff, less any reimbursements received, are qualified campaign expenses but not subject to the overall spending limit. This language allows the campaign to pay unreimbursed Secret Service expenses without having to count such payments toward the spending ceiling. Because such payments would otherwise deplete the public fund, and because such payments might otherwise cause a campaign to exceed the spending limit, legal compliance funds may be used. This approach addresses concerns expressed by one commenter who opposed treating the unreimbursed costs incurred by the campaign as subject to the spending limits. The new wording does not affect the amount that the Secret Service and national security staff pay for such transportation and services, since that is established by other federal agencies.

The second change in § 9004.6 pertains to the method for calculating each media representative's *pro rata* share of the actual cost of the transportation and services made available. Language is being added in paragraph (b) to explain that the total number of individuals to whom such transportation or services were made available includes committee staff, media personnel, Secret Service, national security staff and any other individuals traveling with the candidate.

Section 9004.6(b) permits campaign committees to bill the media 110 percent of the actual *pro rata* cost of providing transportation and services to media personnel. These provisions recognize the difficulties of administering a major transportation program in the midst of a campaign. However, under paragraph (d), committees may not deduct from the overall expenditure limitation amounts received that exceed the actual costs of providing transportation and services to the media plus an additional 3 percent for administrative costs. Paragraph (d) is now being revised to clarify that the amount deducted for the actual costs of providing the transportation and services may not exceed the amount the committee actually expended for such costs.

Another area in which questions have arisen concerns reimbursements from the media exceeding the committee's actual costs plus 3 percent for administrative costs. As noted above, the current rules permit billing the media for up to 110 percent of the actual *pro rata* cost, while allowing a deduction from the expenditure limit of no more than 103 percent of the actual cost. Previously, paragraph (d)(1) indicated that general election campaign committees were required to repay to the United States Treasury all amounts over 103 percent. This provision is now being revised to indicate that the amount to be repaid to the Treasury is the amount between 103 percent and 110 percent. Amounts received that exceed 110 percent will have to be returned to the media, since those amounts exceed the total that can permissibly be billed.

Section 9004.9 Net Outstanding Qualified Campaign Expenses

This section generally follows previous § 9004.9.

Section 9004.10 Sale of Assets Acquired for Fundraising Purposes

This section generally follows previous section 9004.10.

Part 9005—Certification by Commission

There are no changes in section 9005.1.

Section 9005.2 Payments to Eligible Candidates From the Fund

In paragraph (c), the previous references to accounts insured by the Federal Savings and Loan Insurance Corporation have been deleted because these accounts are now insured by the Federal Deposit Insurance Corporation.

Part 9006—Reports and Recordkeeping

There are no changes to § 9006.1 or § 9006.2.

Part 9007—Examination and Audits; Repayments

There are no changes in §§ 9007.3 through 9007.6.

Section 9007.1 Audits

During the course of the audits of certain 1988 campaign committees, the Commission issued subpoenas, and also sought information informally from committees and third parties. Accordingly, new language is now being added to 11 CFR 9007.1(b)(1)(v) to inform candidates that the investigative procedures set forth at 11 CFR 111.11 through 111.15, including the issuance of subpoenas, may be invoked in appropriate cases. Please note that the final rules have been modified to refer to the Commission's general authority to issue subpoenas and orders under 2 U.S.C. 437d(a)(1) and (3).

Section 9007.2 Repayments

The Commission's rules at 11 CFR 9007.2(a)(2) indicate that candidates will be notified of repayment determinations as soon as possible, but not later than three years after the end of the expenditure report period. New language is now included in the final rules to explain that the Commission considers the issuance of its interim audit report to constitute notification for purposes of the three year period.

Paragraph (b)(2)(iii) has been revised to clarify the amount representing total deposits under this section which is used to determine the repayment specified in 11 CFR 9007.2(b)(2). A similar clarification is included in 11 CFR 9038.2.

Part 9012—Unauthorized Expenditures and Contributions

There are no changes in part 9012.

Part 9031—Scope

Section 9031.1 Scope

The references to the title 2 rules have been revised to reflect the addition of new 11 CFR part 116.

Part 9032—Definitions

There are no changes in part 9032.

Part 9033—Eligibility for Payments

There are no changes in §§ 9033.2 through 9033.4, §§ 9033.6 through 9033.9 and § 9033.12.

Section 9033.1 Candidate and Committee Agreements

Presidential candidates seeking federal funds for their primary election campaigns must agree to comply with all of the conditions set forth in paragraph (b) of this section to be eligible to receive these funds. The Commission is now revising these conditions in several respects. First, the candidate agreement provisions are being revised to conform to the new magnetic media rules regarding the production of computerized information on magnetic diskettes or magnetic tapes in accordance with the new technical standards. See 11 CFR 9033.12, 55 FR 26392 (June 27, 1990).

The Commission also sought comments on requiring presidential candidates and their authorized committees to obtain and provide upon the Commission's request records regarding funds received and disbursements made on the candidate's behalf by other committees and organizations associated with the candidate. One commenter believed this requirement was unnecessary because the Commission already has authority to request and, if necessary, subpoena these records. Nevertheless, the Commission has concluded that inclusion of this requirement in the candidate agreements will ensure a more timely production of pertinent records that the Commission needs to audit the candidate's Presidential campaign committee or to make repayment determinations.

The Commission's proposed rules had included a requirement that candidates agree to file alphabetized schedules if their reports are generated from computerized files. One comment objected to the placement of such a requirement in the candidate agreements. The Commission has now decided not to require the filing of alphabetized schedules. Similarly, the Commission considered and rejected a proposal to add new language to the candidate agreement provisions to require committees to verify that they are not spending possibly illegal contributions while they are making inquiries as to the permissibility of these contributions. One commenter indicated that such a requirement would not add anything to existing law.

Section 9033.5 Determination of Ineligibility Date

Under the Matching Payment Account Act, a candidate's continued eligibility to receive matching funds is based upon receipt of at least 10 percent of the popular vote cast in the party's primary elections if the candidate has permitted or authorized his or her name to appear on the ballot, unless the candidate certifies to the Commission that he or she will not be an active candidate in a particular primary. 26 U.S.C. 9033(c). During the 1988 primary election cycle, a question arose regarding the effect of a candidate's certification that he or she will not be an active candidate in a primary if the candidate subsequently receives 10 percent or more of the popular votes cast in that primary. Consequently, the Commission is now revising 11 CFR 9033.5(b) to clarify that if a candidate certifies his or her nonparticipation in a particular election, that election will not be counted in determining the candidate's date of ineligibility regardless of whether he or she receives more or less than 10 percent of the popular vote. Thus the election will not be used to disqualify such candidates receiving less than 10 percent, and it will not count to the advantage of candidates exceeding the 10 percent cutoff.

Section 9033.10 Procedures for Initial and Final Determinations

This section generally follows previous § 9033.10.

Section 9033.11 Documentation of Disbursements

Section 9033.11(b)(1)(iv) is being revised to indicate that collateral evidence documenting qualified campaign expenses may include evidence that the disbursement is covered by a preestablished written campaign committee policy, such as a daily travel expense policy. The previous rules had indicated that collateral evidence of a per diem policy would be acceptable. The new, more specific wording is intended to resolve two difficulties. First, a canceled check in combination with a broad per diem policy does not always provide adequate evidence that the expenses claimed are qualified campaign expenses. In addition, a per diem policy does not always provide sufficient information to ascertain whether the committee allocated the expenses correctly for purposes of the state spending limits. By specifying a "daily travel expense policy," the new rules distinguish travel expenses from other campaign costs paid for by individuals that are allocable to a particular state. The second concern should no longer be problematic because the changes to § 106.2 no longer require state allocation of travel costs. The final wording of § 9033.11(b)(1)(iv) represents an improvement over the proposed rules in the NPRM which would simply have required committees to submit collateral evidence showing that "the expenditure is part of an identifiable program or project which is otherwise sufficiently documented to permit (state) allocation." One commenter expressed the concern that this proposal did not specify what types of documentation would be acceptable. The Commission is also making corresponding revisions to the documentation requirements for general election committees at 11 CFR 9003.5(b)(1)(iv).

Part 9034—Entitlements

Section 9034.1 Candidate Entitlements

The Commission has previously notified both the President and Congress

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Part 9034—Entitlements

Section 9034.1 Candidate Entitlements

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of a projected shortage in the Presidential Election Campaign Fund for the 1992 presidential election cycle. The priorities established by the public financing statutes indicate that a shortfall would affect the availability of matching funds for primary candidates before it would affect general election or convention financing. See 26 U.S.C. 9006(c), 9008(a) and 9037. Accordingly, the Commission is adding to § 9034.1(a) of its regulations a cross-reference to 26 U.S.C. 9037 and 11 CFR part 9037 to alert candidates that their receipt of matching funds could be affected by the amount of funds available in the matching payment account. In addition, the Commission has been working with the Treasury Department on implementing the Secretary of the Treasury's statutory obligation to achieve an equitable distribution of the funds available. Now that the Treasury Department has promulgated final rules in this area, the Commission has initiated another rulemaking to make necessary conforming changes to its existing procedures. See Notice of Proposed Rulemaking, 56 FR 29372 (June 26, 1991).

Section 9034.2 Matchable Contributions

New paragraph (c)(1)(iii) has been added to clarify that contributions reattributed to a joint contributor must meet the reattribution requirements of 11 CFR 110.1(k), and must be accompanied by the documentation described in 11 CFR 110.1(l).

Section 9034.3 Non-Matchable Contributions

New paragraph (k) states that contributions redesignated for a different election or redesignated for a legal and accounting compliance fund are not matchable. See 11 CFR 9003.3(a).

Section 9034.4 Use of Contributions and Matching Payments

A candidate's eligibility to receive federal matching funds is predicated upon his or her ability to receive at least 10 percent of the vote in each primary election. The Presidential Primary Matching Payment Account Act specifically recognizes that a candidate who has fallen below this level of support may reestablish eligibility by obtaining at least 20 percent of the votes cast in a subsequent primary. 26 U.S.C. 9033(c)(4)(B). However, the previous regulations did not provide a method for a candidate to use private funds to continue to campaign beyond the date of ineligibility without this affecting the candidate's entitlement to matching funds, since all funds in a publicly funded committee's accounts are considered to be commingled. See, *Kennedy for President Committee* v. *FEC*, 734 F.2d 1558, 1565 at n.11 (D.C. Cir. 1984); *See, also Reagan for President Committee* v. *FEC*, 734 F.2d 1569 (D.C. Cir. 1984). Moreover, under the previous rules, in calculating a candidate's statement of net outstanding campaign obligations ("NOCO"), a candidate's private contributions were applied to eliminate the pre-date of ineligibility debt before they were used to pay debts incurred in continuing to campaign. Thus, a candidate could not separate out private funds to be used to continue to campaign. As a result, a candidate who continued to raise private funds after the date of ineligibility may have been required to make a repayment based on matching funds received in excess of his or her entitlement or based on nonqualified campaign expenses associated with continuing to campaign.

The Commission has now revised § 9034.4(a)(3)(ii) to allow a candidate to use post-ineligibility contributions to continue campaigning after the date of ineligibility without such activity resulting in a repayment of funds in excess of entitlement or a repayment of funds used for nonqualified campaign expenses. Compare new 11 CFR 9038.2(b)(2)(ii)(D). Under the new approach, the candidate's NOCO is "frozen" as of the candidate's date of ineligibility. Contributions received after the date of ineligibility that are used to continue to campaign may be submitted for matching. The candidate may continue to receive the same proportion of matching funds to defray NOCO as the candidate received before the date of ineligibility. The amount of matching funds received will be added to the post-ineligibility contributions to determine the amount of the candidate's remaining entitlement. Post-ineligibility matching fund payments may be used to defray the candidate's NOCO, but may not be used to defray the costs of continuing to campaign unless the candidate is able to reestablish eligibility under 11 CFR 9033.8. Post-ineligibility contributions are subject to the limitations, prohibitions, recordkeeping and reporting requirements. As under the previous rules, the candidate is not eligible to receive matching funds for winding down costs until the candidate is no longer continuing to campaign. Expenditures made for purposes of continuing to campaign are still counted against the spending limits, since the candidate's previous acceptance of matching funds was based on his or her agreement to comply with the spending limits. One comment supported efforts to allow for the raising and spending of private funds to continue to campaign following a determination of ineligibility. The new provisions reflect the Commission's intention to treat candidates who continue to campaign as fairly as those who withdraw as of the date of ineligibility.

In AO 1988–5 questions were raised as to whether a current publicly-funded presidential campaign committee may contribute or loan or transfer funds to another federally funded committee of the same candidate for a previous election cycle for the purpose of paying debts from the earlier campaign. The opinion concluded that such payments are not qualified campaign expenses under 11 CFR 9034.4 and are not includable in the candidate's NOCO statement under 11 CFR 9034.5. However, such payments could be made from excess campaign funds once the audit process is concluded and any repayment or possible penalty obligations have been satisfied. The attached final rules include new language in section 9034.4(b)(6) reaffirming the conclusion reached in AO 1988–5 that these payments are not qualified campaign expenses. Accordingly, they could serve as a basis for a repayment determination under 11 CFR 9038.2. Please note that even though the question presented in AO 1988–5 was framed in terms of treating such payments as contributions, the Commission would regard such a flow of funds as a transfer, not a contribution. See H. Rept. No. 96–422, 96th Cong., 1st Sess. 7 (1979).

New paragraph (b)(7) indicates that payments for expenses subject to the state spending limits will not be treated as qualified campaign expenses if the committee's records do not provide sufficient information to accurately allocate the expenses to particular states. This new provision may apply, for example, if the records do not show when an allocable expense was incurred.

Finally, paragraph (d) of this section has been reorganized and a new sentence has been added to assist the reader in locating the provisions regarding transfers to a legal and accounting compliance fund. 11 CFR 9003.3(a)(1).

Section 9034.5 Net Outstanding Campaign Obligations

This section generally follows previous § 9034.5.

Section 9034.6 Reimbursements for Transportation and Services Made Available to Media Personnel

Under this section, candidates may seek reimbursement from media personnel for the costs of providing transportation and services to media representatives accompanying the candidate on campaign trips. These provisions also establish the method to be used in determining how much committees may receive from media personnel for such costs. The Commission is now making several changes to these rules. First, paragraph (a) is being revised to clarify that expenditures incurred for transportation or services made available to Secret Service and national security staff, less any reimbursements received, are qualified campaign expenses but not subject to the overall spending limits. This language allows the campaign to pay unreimbursed Secret Service expenses without having to count such payments toward the spending ceiling. This approach addresses concerns expressed by one commenter who opposed treating the unreimbursed costs incurred by the campaign as subject to the spending limits. The new wording does not affect the amount that the Secret Service and national security staff pay for such transportation and services, since that is established by other federal agencies.

The second change in § 9034.6 pertains to the method for calculating each media representative's *pro rata* share of the actual cost of the transportation and services made available. Language is being added in paragraph (b) to explain that the total number of individuals to whom such transportation or services were made available includes committee staff, media personnel, Secret Service, national security staff and any other individuals traveling with the candidate.

Section 9034.6(b) permits campaign committees to bill the media 110 percent of the actual *pro rata* cost of providing transportation and services to media personnel. These provisions recognize the difficulties of administering a major transportation program in the midst of a campaign. However, under paragraph (d), committees may not deduct from the overall expenditure limitation amounts received that exceed the actual costs of providing transportation and services to the media plus an additional 3 percent for administrative costs. Paragraph (d) is now being revised to clarify that the amount deducted for the actual costs of providing the transportation and services may not exceed the amount the committee actually expended for such costs.

Another area in which questions have arisen concerns reimbursements from the media exceeding the committee's actual costs plus 3 percent for administrative costs. As noted above, the current rules permit billing the media for up to 110 percent of the actual *pro rata* cost, while allowing a deduction from the expenditure limit of no more than 103 percent of the actual cost. New language is now being added to paragraph (d) to indicate that the amount between 103 percent and 110 percent of the actual cost must be repaid to the Treasury, and that amounts received that exceed 110 percent will have to be returned to the media on a *pro rata* basis. This approach is consistent with the media reimbursement rules for general election candidates, as set out at 11 CFR 9004.6(d). It recognizes that reimbursements from the media may cover actual transportation costs and the costs of administering the program, but should not result in a primary candidate's committee making a profit.

Section 9034.7 Allocation of Travel Expenditures

There are no changes in this section.

Section 9034.8 Joint Fundraising

The Commission is revising the joint fundraising rules set out at 11 CFR 9034.8 in several respects. First, paragraph (b)(1) now specifies that if committees participating in a joint fundraiser elect to form a separate committee to serve as the fundraising representative, the separate committee cannot be a participant in any other joint fundraising efforts but may conduct more than one joint fundraising effort for the participating committees. This change corrects two problems. First, in cases where this has occurred, there was no explicit allocation formula for determining the amounts to be distributed to each of the original participating committees. Secondly, there has been confusion as to the amount that may be contributed to the fundraising representative for distribution among the participating committees. If a series of fundraising events or activities is held, the expenses must be allocated on a per event basis under paragraph (c)(8)(i)(C) of this section.

New language is also being added to paragraph (c)(1) to require the allocation formula to indicate the amount or percentage of each contribution that will be allocated to each participant. Thus, the formula may not state that a fixed amount of the proceeds will be allocated to a specific participant, or that contributions will be allocated to one participant because the contributions are matchable. Section 9034.8(c)(7)(i) does not permit the committee to use a joint fundraiser to maximize the matchability of contributions. However, the formula may state, for example, that the first $250 of each contribution will be allocated to a particular candidate. The new rules also delete the previous language in paragraph (c)(1) indicating that the joint fundraising participants must use the formula to allocate fundraising expenses. This change was necessary because paragraph (c)(8) indicates that the joint fundraising representative allocates expenses based on the percentage of total receipts allocated to each participant. Similarly, paragraph (c)(7)(ii) is being amended to indicate that reallocation of contributions is the responsibility of the joint fundraising representative, not the participating candidates. Please note that corresponding changes are included in the joint fundraising rules applicable to nonpresidential candidates. See 11 CFR 102.17.

Part 9035—Expenditure Limitations

Section 9035.1 Campaign Expenditure Limitation

The compliance and fundraising exemptions set out in § 9035.1(c) are being revised to reflect the changes in §§ 100.8(b)(21) and 110.8(c)(2) in determining the amount excluded from the overall spending limit for exempt fundraising activity.

Section 9035.2 Limitation on Expenditures From Personal or Family Funds

There are no changes in § 9035.2.

Part 9036—Review of Submission and Certification of Payments by Commission

There are no changes in §§ 9036.3 through 9036.6.

Section 9036.1 Threshold Submission

New paragraph (b)(2) has been added to this provision to require all committees that have computerized their contributor lists to submit computerized magnetic media at the time they make their threshold submission for matching fund payments. See the Commission's Computerized Magnetic Media Requirements for Title 26 Candidates/Committees Receiving Federal Funding. Please note that these requirements also apply to additional submissions governed by § 9036.2. Previously, the submission of computerized information expended for such

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Part 9035—Expenditure Limitations

Section 9035.1 Campaign Expenditure Limitation

The compliance and fundraising exemptions set out in § 9035.1(c) are being revised to reflect the changes in §§ 100.8(b)(21) and 110.8(c)(2) in determining the amount excluded from the overall spending limit for exempt fundraising activity.

Section 9035.2 Limitation on Expenditures From Personal or Family Funds

There are no changes in § 9035.2.

Part 9036—Review of Submission and Certification of Payments by Commission

There are no changes in §§ 9036.3 through 9036.6.

Section 9036.1 Threshold Submission

New paragraph (b)(2) has been added to this provision to require all committees that have computerized their contributor lists to submit computerized magnetic media at the time they make their threshold submission for matching fund payments. See the Commission's Computerized Magnetic Media Requirements for Title 26 Candidates/Committees Receiving Federal Funding. Please note that these requirements also apply to additional submissions governed by § 9036.2. Previously, the submission of computerized information

at the matching fund stage was optional. Now that the Commission has prepared new technical standards for the submission of computer tapes and diskettes, the Commission may be able to process all matching fund submissions more efficiently. See 11 CFR 9033.12. Please note that this change does not require presidential campaign committees to computerize part or all of their financial records if they do not wish to do so.

New paragraph (b)(6) requires all threshold submissions to include a list of refunded contributions, regardless of whether they were submitted for matching. One commenter expressed concerns regarding the burdensomeness of such a rule. This requirement is included in the final rules because the relevant information is needed to ensure that refunded contributions are not submitted for matching, and are properly reported.

Section 9036.2 Additional Submissions for Matching Fund Payments

New paragraph (b)(1)(iv) has been added to require nonthreshold submissions to include a list of refunded contributions, regardless of whether they were submitted for matching. Although one commenter expressed concerns regarding the burdensomeness of such a rule, the requirement is included in the final rules to ensure that refunded contributions are not submitted for matching, and are properly reported.

The Commission has also decided that during limited periods of time, it will use a new procedure of rejecting matching fund submissions from review in cases where the projected dollar value of the nonmatchable contributions exceeded 15 percent of the amount required. Please note that the new rejection policy does not apply to submissions made on the last submission date in the year preceding the Presidential election year, or to submissions made during the Presidential election year before the candidate's date of ineligibility. At other times when the new policy is in operation, the entire submission will be returned to the committee for corrective action before any amount is certified for payment. If the committee is able to correct the submission and resubmit it within five business days, it will be reviewed before the next regularly scheduled submission date and an amount will be certified on the certification date for the original submission. However, if the resubmission is made after the five day period, it will be reviewed after the next regularly scheduled submission date, and an amount will be certified on the next regularly scheduled certification date. Corrected submissions may not contain new or additional contributions that were not previously submitted for matching. Similarly, under 11 CFR 9036.5(c)(5), resubmissions may not contain new or additional contributions that were not previously submitted. Submissions would not be considered to be corrected until the projected dollar value of nonmatchable contributions has been reduced to 15 percent or less of the amount requested. The new policy is not reflected in the final version of 11 CFR 9036.2 (c) and (d), and 9036.4(a), which follows, but is included in a separate draft of those sections found in the Commission's Notice of Proposed Rulemaking, which proposes broader changes to the Commission's matching fund submission and certification procedures. See 56 FR 29372 (June 26, 1991).

Part 9037—Payments

There are no changes in §§ 9037.1 and 9037.2.

Section 9037.3 Deposits of Presidential Primary Matching Funds

This section has been slightly modified to update the language regarding campaign depositories. It now parallels the revised general election provisions at 11 CFR 9005.2(c).

Part 9038—Examination and Audits

There are no changes in §§ 9038.4 through 9038.6.

Section 9038.1 Audit

During the course of the audits of certain 1988 campaign committees, the Commission issued subpoenas, and also sought information informally from committees and third parties. Accordingly, new language is now being added to 11 CFR 9038.1(b)(1)(v) to inform candidates that the investigative procedures set forth at 11 CFR 111.11 through 111.15, including the issuance of subpoenas, may be invoked in appropriate cases. Please note that the final rules have been modified to refer to the Commission's general authority to issue subpoenas and orders under 2 U.S.C. 437d(a) (1) and (3).

Section 9038.2 Repayments

The Commission has decided to revise several aspects of the repayment process for presidential primary candidates set forth at 11 CFR 9038.2. First, the Commission's rules at 11 CFR 9038.2(a)(2) indicate that candidates will be notified of repayment determinations as soon as possible, but not later than three years after the end of the matching payment period. New language is now included in the final rules to explain that the Commission considers the issuance of its interim audit report to constitute notification for purposes of the three year period.

The Commission's regulations at 11 CFR 9038.2(b)(1) require primary candidates to repay matching funds received which are in excess of the amount to which the candidates are entitled. A candidate's committee may receive matching funds in excess of the amount to which it is entitled if, for example, it receives matching funds after the candidate's date of ineligibility and the candidate had no net outstanding campaign obligations to justify the amount of a post-ineligibility payment. This can occur if the candidate includes on his or her NOCO statement accounts payable for nonqualified campaign expenses. In such a situation, the Commission's audit may result in the correction of the NOCO statement and a dollar for dollar repayment of the amount determined to exceed the candidate's entitlement.

In addition to the (b)(1) repayment, paragraph (b)(2) of § 9038.2 requires repayment of a portion of all nonqualified campaign expenses incurred and paid between the campaign's date of inception and the date on which the committee's accounts no longer contain any matching funds. Thus, concerns have been raised that if a candidate's entitlement was artificially increased as a result of nonqualified campaign expenses, and a 100 percent repayment is sought under (b)(1), these nonqualified campaign expenses should be excluded when calculating the amount repayable under (b)(2), to avoid seeking repayment twice for the same funds, or "double counting" them.

The Commission has now concluded that the public funding statutes establish separate bases for seeking repayments of payments in excess of a candidate's entitlement and repayments of amounts spent for nonqualified campaign expenses. Accordingly, new language has been added to the final rules to indicate that repayment determinations will be sought under § 9038.2(b)(2) for nonqualified campaign expenses paid before the point when the committee's accounts no longer contain matching funds, regardless of whether a separate repayment determination is sought under § 9038.2(b)(1).

The final rules also address situations in which primary candidates have exceeded both the spending limits for a particular state and the overall spending limit. 11 CFR 9038.2(b)(2)(v). Disbursements in excess of these spending limits are considered nonqualified campaign expenses. The Commission sought comments on two possible methods for calculating the candidate's repayment obligations under 11 CFR 9038.2(b)(2) in this situation. The first approach treats the state expenditure limitations and the overall expenditure limitation as separate for repayment purposes, but avoids dual repayment for disbursements that exceed both limits. Thus, this method operates by assuming that expenditures should count against the spending limits in the order in which they are paid. This permits identification of those particular expenditures that exceed both limits. To avoid double counting, the total amount of disbursements exceeding both limits are then subtracted from the excessive amount repayable under one limit or the other. Although these disbursements are considered nonqualified campaign expenses for two reasons, they are subject to repayment only once.

In contrast, the second approach considered by the Commission simply calculates the repayment using only the larger of the two excessive amounts. The Commission has used the second method in an audit from the 1984 Presidential election cycle. This method assumes that the same disbursements cause both overages, since few, if any, committees that exceed the overall spending limit are able to stay within the state-by-state spending limits. For example, where the amount in excess of the overall limit is larger than the amount in excess of the state limits, the second approach operates by denoting the amount in excess of the state-by-state limitations as a subset of the overall expenditure limitation, regardless of when the expenditures were paid by the committee. To avoid the possibility of double counting, the expenditures that exceed the state-by-state limits are subsumed into the expenditures that exceed the overall limit. Conversely, if the amount of expenditures exceeding the overall limits is the lesser amount, it would be subsumed into the amount of expenditures exceeding the state limits.

The Commission has now concluded that the second method is the better approach. Accordingly, new § 9038.2(b)(2)(v) incorporates this method.

New paragraph (b)(2)(ii)(D) has also been added to indicate that the use of federal funds for continuing to campaign after a candidate's date of ineligibility will be considered nonqualified campaign expenses. See revised 11 CFR 9034.4(a)(3)(ii).

The Commission is now adding language to 11 CFR 9038.2(b)(4) to specifically require the repayment of net income received from the investment of surplus public funds after the candidate's date of ineligibility. The Commission's rules at 11 CFR 9004.5, which pertain to general election candidates, already provide for the repayment of interest and other forms of income derived from the investment of public funds. Please note, however, that the receipt of such investment income before a primary candidate's date of ineligibility simply reduces the candidate's net outstanding campaign obligations and increases the amount of any surplus repayment.

The new rules also clarify that the amount representing total deposits under 11 CFR 9038.3(c)(2) is used to determine the repayment specified in 11 CFR 9038.2(b)(2)(iii). A similar clarification has been included in 11 CFR 9007.2(b)(2)(iii). Finally, § 9038.2(b)(2)(iii) is amended to clarify that the last-in, first-out method of determining when a committee's account no longer contains matching funds only applies to committees that received matching funds after the candidate's date of ineligibility.

Section 9038.3 Liquidation of Obligations; Repayment

This section generally follows previous § 9038.3.

Part 9039—Review and Investigation Authority

There are no changes in this part.

List of Subjects

11 CFR Part 100

Elections, Political committees and parties.

11 CFR Part 102

Campaign funds, Political candidates, Political committees and parties, Reporting requirements.

11 CFR Part 106

Campaign funds, Political candidates, Political committees and parties.

11 CFR Part 110

Campaign funds, Elections, Political candidates, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 116

Administrative practice and procedure, Business and industry, Credit, Elections, Political candidates, Political committees and parties.

11 CFR Parts 9001–9005

Campaign funds, Elections, Political candidates.

11 CFR Part 9006

Campaign funds, Elections, Political candidates, Reporting requirements.

11 CFR Part 9007

Administrative practice and procedure, Campaign funds, Political candidates.

11 CFR Part 9012

Elections, Political candidates, Political committees and parties.

11 CFR Parts 9031–9035

Campaign funds, Elections, Political candidates.

11 CFR Part 9036

Administrative practice and procedure, Campaign funds, Political candidates.

11 CFR Part 9037

Campaign funds, Political candidates.

11 CFR Parts 9038–9039

Administrative practice and procedure, Campaign funds, Political candidates.

Certification of no Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The attached final rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that few, if any, small entities are affected by these rules. Further, any small entities affected are already required to comply with the requirements of the Act in these areas.

For the reasons set out in the preamble, subchapters A, E and F, chapter I of title 11 of the Code of Federal Regulations are amended as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for part 100 continues to read as follows:

Authority: 2 U.S.C. 431, 438(a)(8).

2. 11 CFR part 100 is amended by revising paragraph (b)(21) of § 100.8 to read as follows:

§ 100.8 Expenditure (2 U.S.C 431(9)).

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(21)(i) Any costs incurred by a candidate or his or her authorized

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11 CFR Parts 9001–9005

Campaign funds, Elections, Political candidates.

11 CFR Part 9006

Campaign funds, Elections, Political candidates, Reporting requirements.

11 CFR Part 9007

Administrative practice and procedure, Campaign funds, Political candidates.

11 CFR Part 9012

Elections, Political candidates, Political committees and parties.

11 CFR Parts 9031–9035

Campaign funds, Elections, Political candidates.

11 CFR Part 9036

Administrative practice and procedure, Campaign funds, Political candidates.

11 CFR Part 9037

Campaign funds, Political candidates.

11 CFR Parts 9038–9039

Administrative practice and procedure, Campaign funds, Political candidates.

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PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for part 100 continues to read as follows:

Authority: 2 U.S.C. 431, 438(a)(8).

2. 11 CFR part 100 is amended by revising paragraph (b)(21) of § 100.8 to read as follows:

§ 100.8 Expenditure (2 U.S.C 431(9)).

* * * * *

(b) * * *

(21)(i) Any costs incurred by a candidate or his or her authorized

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committee(s) in connection with the solicitation of contributions are not expenditures if incurred by a candidate who has been certified to receive Presidential Primary Matching Fund Payments, or by a candidate who has been certified to receive general election public financing under 26 U.S.C. 9004 and who is soliciting contributions in accordance with 26 U.S.C. 9003(b)(2) or 9003(c)(2) to the extent that the aggregate of such costs does not exceed 20 percent of the expenditure limitation applicable to the candidate. These costs shall, however, be reported as disbursements pursuant to 11 CFR part 104.

(ii) For a candidate who has been certified to receive general election public financing under 26 U.S.C. 9004 and who is soliciting contributions in accordance with 26 U.S.C. 9003(b)(2) or 9003(c)(2), "in connection with the solicitation of contributions" means any cost reasonably related to fundraising activity, including the costs of printing and postage, the production of and space or air time for, advertisements used for fundraising, and the costs of meals, beverages, and other costs associated with a fundraising reception or dinner.

(iii) For a candidate who has been certified to receive Presidential Primary Matching Fund Payments, the costs that may be exempted as fundraising expenses under this section shall not exceed 20% of the overall expenditure limitation under 11 CFR 9035.1, and shall equal the total of:

(A) All amounts excluded from the state expenditure limitations for exempt fundraising activities under 11 CFR 110.8(c)(2), plus

(B) An amount of costs that would otherwise be chargeable to the overall expenditure limitation but that are not chargeable to any state expenditure limitation, such as salary and travel expenses. See 11 CFR 106.2.

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PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)

3. The authority citation for part 102 continues to read as follows:

Authority: 2 U.S.C. 432, 433, 438(a)(8), 441d.

4. 11 CFR 102.17 is amended by revising paragraphs (a)(1)(i), (c)(1) and (c)(6)(ii) and by adding paragraph (c)(7)(i)(C) to read as follows:

§ 102.17 Joint fundraising by committees other than separate segregated funds.

(a) *General.* (1)(i) Political committees may engage in joint fundraising with other political committees or with unregistered committees or organizations. The participants in a joint fundraising effort under this section shall either establish a separate committee or select a participating committee, to act as fundraising representative for all participants. The fundraising representative shall be a reporting political committee and an authorized committee of each candidate for federal office participating in the joint fundraising activity. If the participants establish a separate committee to act as the fundraising representative, the separate committee shall not be a participant in any other joint fundraising effort, but the separate committee may conduct more than one joint fundraising effort for the participants.

* * * * *

(c) * * *

(1) *Written agreement.* The participants in a joint fundraising activity shall enter into a written agreement, whether or not all participants are political committees under 11 CFR 100.5. The written agreement shall identify the fundraising representative and shall state a formula for the allocation of fundraising proceeds. The formula shall be stated as the amount or percentage of each contribution received to be allocated to each participant. The fundraising representative shall retain the written agreement for a period of three years and shall make it available to the Commission on request.

* * * * *

(6) * * *

(ii) Designated contributions which exceed the contributor's limit to the designated participant under 11 CFR part 110 may not be reallocated by the fundraising representative absent the prior written permission of the contributor.

* * * * *

(7) * * *

(i) * * *

(C) The expenses from a series of fundraising events or activities shall be allocated among the participants on a per-event basis regardless of whether the participants change or remain the same throughout the series.

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PART 106—ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES

5. The authority citation for part 106 continues to read as follows:

Authority: 2 U.S.C. 438(a)(8), 441a(b), 441a(g).

6. 11 CFR part 106 is amended by revising § 106.2 to read as follows:

§ 106.2 State allocation of expenditures incurred by authorized committees of presidential primary candidates receiving matching funds.

(a) *General*—(1) This section applies to Presidential primary candidates receiving or expecting to receive federal matching funds pursuant to 11 CFR parts 9031 *et seq.* The expenditures described in 11 CFR 106.2(b)(2) shall be allocated to a particular State if incurred by a candidate's authorized committee(s) for the purpose of influencing the nomination of that candidate for the office of President with respect to that State. An expenditure shall not necessarily be allocated to the State in which the expenditure is incurred or paid. In the event that the Commission disputes the candidate's allocation or claim of exemption for a particular expense, the candidate shall demonstrate, with supporting documentation, that his or her proposed method of allocation or claim of exemption was reasonable.

(2) Disbursements made prior to the time an individual becomes a candidate for the purpose of determining whether that individual should become a candidate pursuant to 11 CFR 100.7(b)(1) and 100.8(b)(1), i.e., payments for testing the waters, shall be allocable expenditures under this section if the individual becomes a candidate.

(b) *Method of allocating expenditures among States*—(1) *General allocation method.* Unless otherwise specified under 11 CFR 106.2(b)(2), an expenditure described in 11 CFR 106.2(b)(2) and incurred by a candidate's authorized committee(s) for the purpose of influencing the nomination of that candidate in more than one State shall be allocated to each State on a reasonable and uniformly applied basis. The total amount allocated to a particular State may be reduced by the amount of exempt fundraising expenses for that State, as specified in 11 CFR 110.8(c)(2).

(2) *Specific allocation methods.* Expenditures that fall within the categories listed below shall be allocated based on the following methods. The method used to allocate a category of expenditures shall be based on consistent data for each State to which an allocation is made.

(i) *Media expenditures*—(A) *Print media.* Except for expenditures exempted under 11 CFR 106.2(b)(2)(i) (E) and (F), allocation of expenditures for the publication and distribution of newspaper, magazine and other types of printed advertisements distributed in more than one State shall be made using relative circulation percentages in each State or an estimate thereof. For purposes of this section, allocation to a particular State will not be required if less than 3% of the total estimated readership of the publication is in that State.

(B) *Broadcast media.* Except for expenditures exempted under 11 CFR 106.2(b)(2)(i) (E) and (F), expenditures for radio, television and similar types of advertisements purchased in a particular media market that covers more than one State shall be allocated to each State in proportion to the estimated audience. This allocation of expenditures, shall be made using industry market data. If industry market data is not available, the committee shall obtain market data from the media carrier transmitting the advertisement(s).

(C) *Refunds for media expenditures.* Refunds for broadcast time or advertisement space, purchased but not used, shall be credited to the States on the same basis as the original allocation.

(D) *Limits on allocation of media expenditures.* No allocation of media expenditures shall be made to any State in which the primary election has already been held.

(E) *National advertising.* Expenditures incurred for advertisements on national networks, national cable or in publications distributed nationwide need not be allocated to any State.

(F) *Media production costs.* Expenditures incurred for production of media advertising, whether or not that advertising is used in more than one State, need not be allocated to any State.

(G) *Commissions.* Expenditures for commissions, fees and other compensation for the purchase of broadcast or print media need not be allocated to any State.

(ii) *Expenditures for mass mailings and other campaign materials.* Expenditures for mass mailings of more than 500 pieces to addresses in the same State, and expenditures for shipping campaign materials to a State, including pins, bumperstickers, handbills, brochures, posters and yardsigns, shall be allocated to that State. For purposes of this section, "mass mailing" includes newsletters and other materials in which the content of the materials is substantially identical. Records supporting the committee's allocations under this section shall include: For each mass mailing, documentation showing the total number of pieces mailed and the number mailed to each state or zip code; and, for other campaign materials acquired for use outside the State of purchase, records relating to any shipping costs incurred for transporting these items to each State.

(iii) *Overhead expenditures*—(A) *Overhead expenditures of State offices and other facilities.* Except for expenditures exempted under 11 CFR 106.2(b)(2)(iii)(C), overhead expenditures of committee offices whose activities are directed at a particular State, and the costs of other facilities used for office functions and campaign events, shall be allocated to that State. An amount that does not exceed 10% of office overhead expenditures for a particular State may be treated as exempt compliance expenses, and may be excluded from allocation to that State.

(B) *Overhead expenditures of regional offices.* Except for expenditures exempted under 11 CFR 106.2(b)(2)(iii)(C), overhead expenditures of a committee regional office or any committee office with responsibilities in two or more States shall be allocated to the State holding the next primary election, caucus or convention in the region. The committee shall maintain records to demonstrate that an office operated on a regional basis. These records should show, for example, the kinds of programs conducted from the office, the number and nature of contacts with other States in the region, and the amount of time devoted to regional programs by staff working in the regional office.

(C) *Overhead expenditures of national campaign headquarters.* Expenditures incurred for administrative, staff, and overhead expenditures of the national campaign headquarters need not be allocated to any State, except as provided in paragraph (b)(2)(iv) of this section.

(D) *Definition of overhead expenditures.* For purposes of 11 CFR 106.2(b)(2)(iii), overhead expenditures include, but are not limited to, rent, utilities, equipment, furniture, supplies, and telephone service base charges. "Telephone service base charges" include any regular monthly charges for committee phone service, and charges for phone installation and intrastate phone calls other than charges related to a special program under 11 CFR 106.2(b)(2)(iv). Inter-state calls are not included in "telephone service base charges." Overhead expenditures also include the costs of temporary offices established while the candidate is traveling in the State or in the final weeks before the primary election, as well as expenses paid by campaign staff and subsequently reimbursed by the committee, such as miscellaneous supplies, copying, printing and telephone expenses. See 11 CFR 116.5.

(iv) *Expenditures for special telephone programs.* Expenditures for special telephone programs targeted at a particular State, including the costs of designing and operating the program, the costs of installing or renting telephone lines and equipment, toll charges, personnel costs, consultants' fees, related travel costs, and rental of office space, including a *pro rata* portion of national, regional or State office space used for such purposes, shall be allocated to that State based on the percentage of telephone calls made to that State. Special telephone programs include voter registration, get out the vote efforts, fundraising, and telemarketing efforts conducted on behalf of the candidate. A special telephone program is targeted at a particular State if 10% or more of the total telephone calls made each month are made to that State. Records supporting the committee's allocation of each special telephone program under this section shall include either the telephone bills showing the total number of calls made in that program and the number made to each State; or, a copy of the list used to make the calls, from which these numbers can be determined.

(v) *Public opinion poll expenditures.* Expenditures incurred for the taking of a public opinion poll covering only one State shall be allocated to that State. Except for expenditures incurred in conducting a public opinion poll on a nationwide basis, expenditures incurred for the taking of a public opinion poll covering two or more States shall be allocated to those States based on the number of people interviewed in each State. Expenditures incurred for the taking of a public opinion poll include consultant's fees, travel costs and other expenses associated with designing and conducting the poll. Records supporting the committee's allocation under this section shall include documentation showing the total number of people contacted for each poll and the number contacted in each State.

(3) *National consulting fees.* Expenditures for consultants' fees need not be allocated to any State if the fees are charged for consulting on national campaign strategy. Expenditures for consultants' fees charged for conducting special telephone programs and public opinion polls shall be allocated in accordance with paragraphs (b)(2) (iv) and (v) of this section.

(c) *Reporting.* All expenditures allocated under this section shall be reported on FEC Form 3P, page 3.

(d) *Recordkeeping.* All assumptions and supporting calculations for allocations made under this section shall be documented and retained for Commission inspection. In addition to the records specified in paragraph (b) of this section, the treasurer shall retain records supporting the committee's allocations of expenditures to particular States and claims of exemption from allocation under this section. If the records supporting the allocation or claim of exemption are not retained, the expenditure shall be considered allocable and shall be allocated to the State holding the next primary election, caucus or convention after the expenditure is incurred.

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

7. The authority citation for part 110 continues to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h and 441i.

8. 11 CFR part 110 is amended by revising paragraph (1) of § 110.1 to read as follows:

§ 110.1 Contributions by persons other than multicandidate political committees (2 U.S.C. 441a(a)(1)).

* * * * *

(1) *Supporting evidence.* (1) If a political committee receives a contribution designated in writing for a particular election, the treasurer shall retain a copy of the written designation, as required by 11 CFR 110.1(b)(4) or 110.2(b)(4), as appropriate. If the written designation is made on a check or other written instrument, the treasurer shall retain a full-size photocopy of the check or written instrument.

(2) If a political committee receives a written redesignation of a contribution for a different election, the treasurer shall retain the written redesignation provided by the contributor, as required by 11 CFR 110.1(b)(5) or 110.2(b)(5), as appropriate.

(3) If a political committee receives a written reattribution of a contribution to a different contributor, the treasurer shall retain the written reattribution signed by each contributor, as required by 11 CFR 110.1(k).

(4) If a political committee chooses to rely on a postmark as evidence of the date on which a contribution was made, the treasurer shall retain the envelope or a copy of the envelope containing the postmark and other identifying information.

(5) If a political committee does not retain the written records concerning designation required under 11 CFR 110.1(1)(2), the contribution shall not be considered to be designated in writing for a particular election, and the provisions of 11 CFR 110.1(b)(2)(ii) or 110.2(b)(2)(ii) shall apply. If a political committee does not retain the written records concerning redesignation or reattribution required under 11 CFR 110.1(1) (2), (3) or (6), the redesignation or reattribution shall not be effective, and the original designation or attribution shall control.

(6) For each written redesignation or written reattribution of a contribution described in paragraph (b)(5) or paragraph (k)(3) of this section, the political committee shall retain documentation demonstrating when the written redesignation or written reattribution was received. Such documentation shall consist of:

(i) A copy of the envelope bearing the postmark and the contributor's name, or return address or other identifying code; or

(ii) A copy of the written redesignation or written reattribution with a date stamp indicating the date of the committee's receipt; or

(iii) A copy of the written redesignation or written reattribution dated by the contributor.

* * * * *

9. 11 CFR part 110 is amended by revising paragraph (c)(2) of § 110.8 to read as follows:

§ 110.8 Presidential candidate expenditure limitations.

* * * * *

(c) * * *

(2) The candidate may treat an amount that does not exceed 50% of the candidate's total expenditures allocable to a particular State under 11 CFR 106.2 as exempt fundraising expenses, and may exclude this amount from the candidate's total expenditures attributable to the expenditure limitations for that State. The candidate may treat 100% of the cost of mass mailings as exempt fundraising expenses, unless the mass mailings were mailed within 28 days before the state's primary election, convention or caucus. The total of all amounts excluded for exempt fundraising expenses shall not exceed 20% of the overall expenditure limitation under 11 CFR 9035.1.

* * * * *

10. 11 CFR 110.8(f)(2) is amended by removing the citation to "§ 141.2(c)" and adding, in its place, a citation to "11 CFR 9003.2(c)."

PART 116—DEBTS OWED BY CANDIDATES AND POLITICAL COMMITTEES

11. The authority citation for part 116 continues to read as follows:

Authority: 2 U.S.C. 433(d), 434(b)(8), 438(a)(8), 441a, 441b and 451.

12. 11 CFR part 116 is amended by revising paragraph (b)(2) of § 116.5 to read as follows:

§ 116.5 Advances by committee staff and other individuals.

* * * * *

(b) * * *

(2) The individual is reimbursed within sixty days after the closing date of the billing statement on which the charges first appear if the payment was made using a personal credit card, or within thirty days after the date on which the expenses were incurred if a personal credit card was not used. For purposes of this section, the closing date shall be the date indicated on the billing statement which serves as the cutoff date for determining which charges are included on that billing statement. In addition, "subsistence expenses" include only expenditures for personal living expenses related to a particular individual traveling on committee business, such as food or lodging.

* * * * *

13. 11 CFR parts 9001 through 9007 is revised to read as follows:

PART 9001—SCOPE

Sec.
9001.1 Scope.

Authority: 26 U.S.C. 9009(b).

§ 9001.1 Scope.

This subchapter governs entitlement to and use of funds certified from the Presidential Election Campaign Fund under 26 U.S.C. 9001 *et seq.* The definitions, restrictions, liabilities and obligations imposed by this subchapter are in addition to those imposed by sections 431–455 of title 2, United States Code, and regulations prescribed thereunder (11 CFR parts 100 through 116). Unless expressly stated to the contrary, this subchapter does not alter the effect of any definitions, restrictions, obligations and liabilities imposed by sections 431–455 of title 2, United States Code, or regulations prescribed thereunder (11 CFR parts 100 through 116).

PART 9002—DEFINITIONS

Sec.
9002.1 Authorized committee.
9002.2 Candidate.

Sec.
9002.3 Commission.
9002.4 Eligible candidates.
9002.5 Fund.
9002.6 Major party.
9002.7 Minor party.
9002.8 New party.
9002.9 Political committee.
9002.10 Presidential election.
9002.11 Qualified campaign expense.
9002.12 Expenditure report period.
9002.13 Contribution.
9002.14 Secretary.
9002.15 Political party.

Authority: 26 U.S.C. 9002 and 9009(b).

§ 9002.1 Authorized committee.

(a) Notwithstanding the definition at 11 CFR 100.5, "authorized committee" means with respect to a candidate (as defined at 11 CFR 9002.2) of a political party for President and Vice President, any political committee that is authorized by a candidate to incur expenses on behalf of such candidate. The term "authorized committee" includes the candidate's principal campaign committee designated in accordance with 11 CFR 102.12, any political committee authorized in writing by the candidate in accordance with 11 CFR 102.13, and any political committee not disavowed by the candidate pursuant to 11 CFR 100.3(a)(3). If a party has nominated a Presidential and a Vice Presidential candidate, all political committees authorized by that party's Presidential candidate shall also be authorized committees of the Vice Presidential candidate and all political committees authorized by the Vice Presidential candidate shall also be authorized committees of the Presidential candidate.

(b) Any withdrawal of an authorization shall be in writing and shall be addressed and filed in the same manner provided for at 11 CFR 102.12 or 102.13.

(c) Any candidate nominated by a political party may designate the national committee of that political party as that candidate's authorized committee in accordance with 11 CFR 102.12(c).

(d) For purposes of this subchapter, references to the "candidate" and his or her responsibilities under this subchapter shall also be deemed to refer to the candidate's authorized committee(s).

§ 9002.2 Candidate.

(a) For the purposes of this subchapter, "candidate" means with respect to any presidential election, an individual who—

(1) Has been nominated by a major party for election to the office of President of the United States or the office of Vice President of the United States; or

(2) Has qualified or consented to have his or her name appear on the general election ballot (or to have the names of electors pledged to him or her on such ballot) as the candidate of a political party for election to either such office in 10 or more States. For the purposes of this section, "political party" shall be defined in accordance with 11 CFR 9002.15.

(b) An individual who is no longer actively conducting campaigns in more than one State pursuant to 11 CFR 9004.8 shall cease to be a candidate for the purpose of this subchapter.

§ 9002.3 Commission.

Commission means the Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

§ 9002.4 Eligible candidates.

Eligible candidates means those Presidential and Vice Presidential candidates who have met all applicable conditions for eligibility to receive payments from the Fund under 11 CFR part 9003.

§ 9002.5 Fund.

Fund means the Presidential Election Campaign Fund established by 26 U.S.C. 9006(a).

§ 9002.6 Major party.

Major party means a political party whose candidate for the office of President in the preceding Presidential election received, as a candidate of such party, 25 percent or more of the total number of popular votes received by all candidates for such office. For the purposes of 11 CFR 9002.6, *candidate* means, with respect to any preceding Presidential election, an individual who received popular votes for the office of President in such election.

§ 9002.7 Minor party.

Minor party means a political party whose candidate for the office of President in the preceding Presidential election received, as a candidate of such party, 5 percent or more, but less than 25 percent, of the total number of popular votes received by all candidates for such office. For the purposes of 11 CFR 9002.7, *candidate* means with respect to any preceding Presidential election, an individual who received popular votes for the office of President in such election.

§ 9002.8 New party.

New party means a political party which is neither a major party nor a minor party.

§ 9002.9 Political committee.

For purposes of this subchapter, *political committee* means any committee, club, association, organization or other group of persons (whether or not incorporated) which accepts contributions or makes expenditures for the purpose of influencing, or attempting to influence, the election of any candidate to the office of President or Vice President of the United States.

§ 9002.10 Presidential election.

Presidential election means the election of Presidential and Vice Presidential electors.

§ 9002.11 Qualified campaign expense.

(a) *Qualified campaign expense* means any expenditure, including a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value—

(1) Incurred to further a candidate's campaign for election to the office of President or Vice President of the United States;

(2) Incurred within the expenditure report period, as defined under 11 CFR 9002.12, or incurred before the beginning of such period in accordance with 11 CFR 9003.4 to the extent such expenditure is for property, services or facilities to be used during such period; and

(3) Neither the incurrence nor the payment of such expenditure constitutes a violation of any law of the United States, any law of the State in which such expense is incurred or paid, or any regulation prescribed under such Federal or State law, except that any State law which has been pre-empted by the Federal Election Campaign Act of 1971, as amended, shall not be considered a State law for purposes of this subchapter. An expenditure which constitutes such a violation shall nevertheless count against the candidate's expenditure limitation if the expenditure meets the conditions set forth at 11 CFR 9002.11(a) (1) and (2).

(b)(1) An expenditure is made to further a Presidential or Vice Presidential candidate's campaign if it is incurred by or on behalf of such candidate or his or her authorized committee. For purposes of 11 CFR 9002.11(b)(1), any expenditure incurred by or on behalf of a Presidential candidate of a political party will also be considered an expenditure to further the campaign of the Vice Presidential candidate of that party. Any expenditure incurred by or on behalf of the Vice Presidential candidate will also be considered an expenditure to further sident of the United

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§ 9002.10 Presidential election.

Presidential election means the election of Presidential and Vice Presidential electors.

§ 9002.11 Qualified campaign expense.

(a) *Qualified campaign expense* means any expenditure, including a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value—

(1) Incurred to further a candidate's campaign for election to the office of President or Vice President of the United States;

(2) Incurred within the expenditure report period, as defined under 11 CFR 9002.12, or incurred before the beginning of such period in accordance with 11 CFR 9003.4 to the extent such expenditure is for property, services or facilities to be used during such period; and

(3) Neither the incurrence nor the payment of such expenditure constitutes a violation of any law of the United States, any law of the State in which such expense is incurred or paid, or any regulation prescribed under such Federal or State law, except that any State law which has been pre-empted by the Federal Election Campaign Act of 1971, as amended, shall not be considered a State law for purposes of this subchapter. An expenditure which constitutes such a violation shall nevertheless count against the candidate's expenditure limitation if the expenditure meets the conditions set forth at 11 CFR 9002.11(a) (1) and (2).

(b)(1) An expenditure is made to further a Presidential or Vice Presidential candidate's campaign if it is incurred by or on behalf of such candidate or his or her authorized committee. For purposes of 11 CFR 9002.11(b)(1), any expenditure incurred by or on behalf of a Presidential candidate of a political party will also be considered an expenditure to further the campaign of the Vice Presidential candidate of that party. Any expenditure incurred by or on behalf of the Vice Presidential candidate will also be considered an expenditure to further the campaign of the Presidential candidate of that party.

(2) An expenditure is made on behalf of a candidate if it is made by—

(i) Any authorized committee or any other agent of the candidate for the purpose of making an expenditure; or

(ii) Any person authorized or requested by the candidate, by the candidate's authorized committee(s), or by an agent of the candidate or his or her authorized committee(s) to make an expenditure; or

(iii) A committee which has been requested by the candidate, the candidate's authorized committee(s), or an agent thereof to make the expenditure, even though such committee is not authorized in writing.

(3) Expenditures that further the election of other candidates for any public office shall be allocated in accordance with 11 CFR 106.1(a) and will be considered qualified campaign expenses only to the extent that they specifically further the election of the candidate for President or Vice President. A candidate may make expenditures under this section in conjunction with other candidates for any public office, but each candidate shall pay his or her proportionate share of the cost in accordance with 11 CFR 106.1(a).

(4) Expenditures by a candidate's authorized committee(s) pursuant to 11 CFR 9004.6 for the travel and related ground service costs of media shall be qualified campaign expenses. Any reimbursement for travel and related services costs received by a candidate's authorized committee shall be subject to the provisions of 11 CFR 9004.6.

(5) Legal and accounting services which are provided solely to ensure compliance with 2 U.S.C. 431 *et seq.* or 26 U.S.C. 9001, *et seq.* shall be qualified campaign expenses which may be paid from payments received from the Fund. If federal funds are used to pay for such services, the payments will count against the candidate's expenditure limitation. Payments for such services may also be made from an account established in accordance with 11 CFR 9003.3 or may be provided to the committee in accordance with 11 CFR 100.7(b)(14) and 100.8(b)(15). If payments for such services are made from an account established in accordance with 11 CFR 9003.3, the payments do not count against the candidate's expenditure limitation. If payments for such services are made by a minor or new party candidate from an account containing private contributions, the payments do not count against that candidate's expenditure limitation. The amount paid by the committee shall be reported in accordance with 11 CFR part 9006. Amounts paid by the regular employer of the person providing such services pursuant to 11 CFR 100.7(b)(14) and 100.8(b)(15) shall be reported by the recipient committee in accordance with 11 CFR 104.3(h).

(c) Expenditures incurred either before the beginning of the expenditure report period or after the last day of a candidate's eligibility will be considered qualified campaign expenses if they meet the provisions of 11 CFR 9004.4(a). Expenditures described under 11 CFR 9004.4(b) will not be considered qualified campaign expenses.

§ 9002.12 Expenditure report period.

Expenditure report period means, with respect to any Presidential election, the period of time described in either paragraph (a) or (b) of this section, as appropriate. (a) In the case of a major party, the expenditure report period begins on September 1 before the election or on the date on which the major party's presidential nominee is chosen, whichever is earlier; and the period ends 30 days after the Presidential election.

(b) In the case of a minor or new party, the period will be the same as that of the major party with the shortest expenditure report period for that Presidential election as determined under paragraph (a) of this section.

§ 9002.13 Contribution.

Contribution has the same meaning given the term under 2 U.S.C. 431(8), 441b and 441c, and under 11 CFR 100.7, and 11 CFR Parts 114 and 115.

§ 9002.14 Secretary.

Secretary means the Secretary of the Treasury.

§ 9002.15 Political party.

Political party means an association, committee, or organization which nominates or selects an individual for election to any Federal office, including the office of President or Vice President of the United States, whose name appears on the general election ballot as the candidate of such association, committee, or organization.

PART 9003—ELIGIBILITY FOR PAYMENTS

Sec.
9003.1 Candidate and committee agreements.
9003.2 Candidate certifications.
9003.3 Allowable contributions.
9003.4 Expenses incurred prior to the beginning of the expenditure report period or prior to receipt of Federal funds.
Sec.
9003.5 Documentation of disbursements.
9003.6 Production of computer information.

Authority: 26 U.S.C. 9003 and 9009(b).

§ 9003.1 Candidate and committee agreements.

(a) *General.* (1) To become eligible to receive payments under 11 CFR part 9005, the Presidential and Vice Presidential candidates of a political party shall agree in a letter signed by the candidates to the Commission that they and their authorized committee(s) shall comply with the conditions set forth in 11 CFR 9003.1(b).

(2) Major party candidates shall sign and submit such letter to the Commission within 14 days after receiving the party's nomination for election. Minor and new party candidates shall sign and submit such letter within 14 days after such candidates have qualified to appear on the general election ballot in 10 or more states pursuant to 11 CFR 9002.2(a)(2). The Commission, on written request by a minor or new party candidate, at any time prior to the date of the general election, may extend the deadline for filing such letter except that the deadline shall be a date prior to the date of the general election.

(b) *Conditions.* The candidates shall:

(1) Agree that they have the burden of proving that disbursements made by them or any authorized committee(s) or agent(s) thereof are qualified campaign expenses as defined in 11 CFR 9002.11.

(2) Agree that they and their authorized committee(s) shall comply with the documentation requirements set forth at 11 CFR 9003.5.

(3) Agree that they and their authorized committee(s) shall provide an explanation, in addition to complying with the documentation requirements, of the connection between any disbursements made by the candidates or the authorized committee(s) of the candidates and the campaign if requested by the Commission.

(4) Agree that they and their authorized committee(s) will keep and furnish to the Commission all documentation relating to receipts and disbursements including any books, records (including bank records for all accounts), all documentation required by this subchapter including those required to be maintained under 11 CFR 9003.5, and other information that the Commission may request. If the candidate or the candidate's authorized committee maintains or uses computerized information containing any of the categories of data listed in 11 CFR 9003.6(a), the committee will

provide computerized magnetic media, such as magnetic tapes or magnetic diskettes, containing the computerized information at the times specified in 11 CFR 9007.1(b)(1) that meet the requirements of 11 CFR 9003.6(b). Upon request, documentation explaining the computer system's software capabilities shall be provided and such personnel as are necessary to explain the operation of the computer system's software and the computerized information prepared or maintained by the committee shall also be made available.

(5) Agree that they and their authorized committee(s) shall obtain and furnish to the Commission upon request all documentation relating to funds received and disbursements made on the candidate's behalf by other political committees and organizations associated with the candidate.

(6) Agree that they and their authorized committee(s) shall permit an audit and examination pursuant to 11 CFR part 9007 of all receipts and disbursements including those made by the candidate, all authorized committees and any agent or person authorized to make expenditures on behalf of the candidate or committee(s). The candidate and authorized committee(s) shall facilitate the audit by making available in one central location, office space, records and such personnel as are necessary to conduct the audit and examination, and shall pay any amounts required to be repaid under 11 CFR part 9007.

(7) Submit the name and mailing address of the person who is entitled to receive payments from the Fund on behalf of the candidates; the name and address of the depository designated by the candidates as required by 11 CFR part 103 and 11 CFR 9005.2; and the name under which each account is held at the depository at which the payments from the Fund are to be deposited.

(8) Agree that they and their authorized committee(s) shall comply with the applicable requirements of 2 U.S.C. 431 *et seq.*, 26 U.S.C. 9001 *et seq.*, and the Commission's regulations at 11 CFR parts 100–116, and 9001–9012.

(9) Agree that they and their authorized committee(s) shall pay any civil penalties included in a conciliation agreement entered into under 2 U.S.C. 437g against the candidates, any authorized committees of the candidates or any agent thereof.

§ 9003.2 Candidate certifications.

(a) *Major party candidates.* To be eligible to receive payments under 11 CFR part 9005, each Presidential and Vice Presidential candidate of a major party shall, under penalty of perjury, certify to the Commission:

(1) That the candidate and his or her authorized committee(s) have not incurred and will not incur qualified campaign expenses in excess of the aggregate payments to which they will be entitled under 11 CFR part 9004.

(2) That no contributions have been or will be accepted by the candidate or his or her authorized committee(s); except as contributions specifically solicited for, and deposited to, the candidate's legal and accounting compliance fund established under 11 CFR 9003.3(a); or except to the extent necessary to make up any deficiency in payments received from the Fund due to the application of 11 CFR 9005.2(b).

(b) *Minor and new party candidates.* To be eligible to receive any payments under 11 CFR part 9005, each Presidential and Vice Presidential candidate of a minor or new party shall, under penalty of perjury, certify to the Commission:

(1) That the candidate and his or her authorized committee(s) have not incurred and will not incur qualified campaign expenses in excess of the aggregate payments to which the eligible candidates of a major party are entitled under 11 CFR 9004.1.

(2) That no contributions to defray qualified campaign expenses have been or will be accepted by the candidate or his or her authorized committee(s) except to the extent that the qualified campaign expenses incurred exceed the aggregate payments received by such candidate from the Fund under 11 CFR 9004.2.

(c) *All candidates.* To be eligible to receive any payment under 11 CFR 9004.2, the Presidential candidate of each major, minor or new party shall certify to the Commission, under penalty of perjury, that such candidate will not knowingly make expenditures from his or her personal funds, or the personal funds of his or her immediate family, in connection with his or her campaign for the office of President in excess of $50,000 in the aggregate.

(1) For purposes of this section, the term *immediate family* means a candidate's spouse, and any child, parent, grandparent, brother, half-brother, sister, or half-sister of the candidate, and the spouses of such persons.

(2) Expenditures from personal funds made under this paragraph shall not apply against the expenditure limitations.

(3) For purposes of this section, the terms *personal funds* and *personal funds of his or her immediate family* mean:

(i) Any assets which, under applicable state law, at the time he or she became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had either:

(A) Legal and rightful title, or

(B) An equitable interest.

(ii) Salary and other earned income from bona fide employment; dividends and proceeds from the sale of the candidate's stocks or other investments; bequests to the candidate; income from trusts established before candidacy; income from trusts established by bequest after candidacy of which the candidate is a beneficiary; gifts of a personal nature which had been customarily received prior to candidacy; proceeds from lotteries and similar legal games of chance.

(iii) A candidate may use a portion of assets jointly owned with his or her spouse as personal funds. The portion of the jointly owned assets that shall be considered as personal funds of the candidate shall be that portion which is the candidate's share under the instrument(s) of conveyance or ownership. If no specific share is indicated by any instrument of conveyance or ownership, the value of one-half of the property used shall be considered as personal funds of the candidate.

(4) For purposes of this section, expenditures from personal funds made by a candidate of a political party for the office of Vice President shall be considered to be expenditures made by the candidate of such party for the office of President.

(5) Contributions made by members of a candidate's family from funds which do not meet the definition of personal funds under 11 CFR 9003.2(c)(3) shall not count against such candidate's $50,000 expenditure limitation under 11 CFR 9003.2(c).

(6) Personal funds expended pursuant to this section shall be first deposited in an account established in accordance with 11 CFR 9003.3 (b) or (c).

(7) The provisions of this section shall not operate to limit the candidate's liability for, nor the candidate's ability to pay, any repayments required under 11 CFR part 9007. If the candidate or his or her committee knowingly incurs expenditures in excess of the limitations of 11 CFR 110.8(a), the Commission may seek civil penalties under 11 CFR part 111 in addition to any repayment determinations made on the basis of such excessive expenditures.

(8) Expenditures made using a credit card for which the candidate is jointly or solely liable will count against the limits

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(i) Any assets which, under applicable state law, at the time he or she became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had either:

(A) Legal and rightful title, or

(B) An equitable interest.

(ii) Salary and other earned income from bona fide employment; dividends and proceeds from the sale of the candidate's stocks or other investments; bequests to the candidate; income from trusts established before candidacy; income from trusts established by bequest after candidacy of which the candidate is a beneficiary; gifts of a personal nature which had been customarily received prior to candidacy; proceeds from lotteries and similar legal games of chance.

(iii) A candidate may use a portion of assets jointly owned with his or her spouse as personal funds. The portion of the jointly owned assets that shall be considered as personal funds of the candidate shall be that portion which is the candidate's share under the instrument(s) of conveyance or ownership. If no specific share is indicated by any instrument of conveyance or ownership, the value of one-half of the property used shall be considered as personal funds of the candidate.

(4) For purposes of this section, expenditures from personal funds made by a candidate of a political party for the office of Vice President shall be considered to be expenditures made by the candidate of such party for the office of President.

(5) Contributions made by members of a candidate's family from funds which do not meet the definition of personal funds under 11 CFR 9003.2(c)(3) shall not count against such candidate's $50,000 expenditure limitation under 11 CFR 9003.2(c).

(6) Personal funds expended pursuant to this section shall be first deposited in an account established in accordance with 11 CFR 9003.3 (b) or (c).

(7) The provisions of this section shall not operate to limit the candidate's liability for, nor the candidate's ability to pay, any repayments required under 11 CFR part 9007. If the candidate or his or her committee knowingly incurs expenditures in excess of the limitations of 11 CFR 110.8(a), the Commission may seek civil penalties under 11 CFR part 111 in addition to any repayment determinations made on the basis of such excessive expenditures.

(8) Expenditures made using a credit card for which the candidate is jointly or solely liable will count against the limits

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of this section to the extent that the full amount due, including any finance charge, is not paid by the committee within 60 days after the closing date of the billing statement on which the charges first appear. For purposes of this section, the "closing date" shall be the date indicated on the billing statement which serves as the cutoff date for determining which charges are included on that billing statement.

(d) *Form.* Major party candidates shall submit the certifications required under 11 CFR 9003.2 in a letter which shall be signed and submitted within 14 days after receiving the party's nomination for election. Minor and new party candidates shall sign and submit such letter within 14 days after such candidates have qualified to appear on the general election ballot in 10 or more States pursuant to 11 CFR 9002.2(a)(2). The Commission, upon written request by a minor or new party candidate made at any time prior to the date of the general election, may extend the deadline for filing such letter, except that the deadline shall be a date prior to the day of the general election.

§ 9003.3 Allowable contributions.

(a) *Legal and accounting compliance fund—major party candidates*—(1) *Sources.* (i) A major party candidate may accept contributions to a legal and accounting compliance fund if such contributions are received and disbursed in accordance with this section. A legal and accounting compliance fund may be established by such candidate prior to being nominated or selected as the candidate of a political party for the office of President or Vice President of the United States.

(A) All solicitations for contributions to this fund shall clearly state that such contributions are being solicited for this fund.

(B) Contributions to this fund shall be subject to the limitations and prohibitions of 11 CFR parts 110, 114, and 115.

(ii) Funds received during the matching payment period that are remaining in a candidate's primary election account, which funds are in excess of any amount needed to pay remaining primary expenses or any amount required to be reimbursed to the Presidential Primary Matching Payment Account under 11 CFR 9038.2, may be transferred to the legal and accounting compliance fund without regard to the contribution limitations of 11 CFR part 110 and used for any purpose permitted under this section. The excess funds so transferred may include contributions made before the beginning of the expenditure report period, which contributions do not exceed the contributor's limit for the primary election. Such contributions need not be redesignated by the contributors for the legal and accounting compliance fund.

(iii) Contributions that are made after the beginning of the expenditure report period but which are designated for the primary election, and contributions that exceed the contributor's limit for the primary election, may be redesignated for the legal and accounting compliance fund and transferred to or deposited in such fund if the candidate obtains the contributor's redesignation in accordance with 11 CFR 110.1. Contributions that do not exceed the contributor's limit for the primary election may be redesignated and deposited in the legal and accounting compliance fund only if—

(A) The contributions represent funds in excess of any amount needed to pay remaining primary expenses;

(B) The redesignations are received within 60 days of the Treasurer's receipt of the contributions;

(C) The requirements of 11 CFR 110.1 (b)(5) and (l) regarding redesignations are satisfied; and

(D) The contributions have not been submitted for matching.

All contributions so redesignated and deposited shall be subject to the contribution limitations applicable for the general election, pursuant to 11 CFR 110.1(b)(2)(i).

(2) *Uses.* (i) Contributions to the legal and accounting compliance fund shall be used only for the following purposes:

(A) To defray the cost of legal and accounting services provided solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* in accordance with 11 CFR 9003.3(a)(2)(ii);

(B) To defray in accordance with 11 CFR 9003.3(a)(2)(ii)(A), that portion of expenditures for payroll, overhead, and computer services related to ensuring compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.*;

(C) To defray any civil or criminal penalties imposed pursuant to 2 U.S.C. 437g or 26 U.S.C. 9012;

(D) To make repayments under 11 CFR 9007.2;

(E) To defray the cost of soliciting contributions to the legal and accounting compliance fund;

(F) To defray the cost of producing, delivering and explaining the computerized information and materials provided pursuant to 11 CFR 9003.6 and explaining the operation of the computer system's software;

(G) To make a loan to an account established pursuant to 11 CFR 9003.4 to defray qualified campaign expenses incurred prior to the expenditure report period or prior to receipt of federal funds, provided that the amounts so loaned are restored to the legal and accounting compliance fund; and

(H) To defray unreimbursed costs incurred in providing transportation and services for the Secret Service and national security staff pursuant to 11 CFR 9004.6.

(ii)(A) Expenditures for payroll (including payroll taxes), overhead and computer services, a portion of which are related to ensuring compliance with title 2 and chapter 95 of title 26, shall be initially paid from the candidate's federal fund account under 11 CFR 9005.2 and may be later reimbursed by the compliance fund. For purposes of 11 CFR 9003.3(a)(2)(i)(B), a candidate may use contributions to the compliance fund to reimburse his or her federal fund account an amount equal to 10% of the payroll and overhead expenditures of his or her national campaign headquarters and state offices. Overhead expenditures include, but are not limited to rent, utilities, office equipment, furniture, supplies and all telephone charges except for telephone charges related to a special use such as voter registration and get out the vote efforts. In addition, a candidate may use contributions to the compliance fund to reimburse his or her federal fund account an amount equal to 70% of the costs (other than payroll) associated with computer services. Such costs include but are not limited to rental and maintenance of computer equipment, data entry services not performed by committee personnel, and related supplies. If the candidate wishes to claim a larger compliance exemption for payroll or overhead expenditures, the candidate shall establish allocation percentages for each individual who spends all or a portion of his or her time to perform duties which are considered necessary to ensure compliance with title 2 or chapter 95 of title 26. The candidate shall keep detailed records to support the derivation of each percentage. Such records shall indicate which duties are considered compliance and the percentage of time each person spends on such activity. If the candidate wishes to claim a larger compliance exemption for costs associated with computer services, the candidate shall establish allocation percentages for each computer function that is considered necessary, in whole or in part, to ensure compliance with 2 U.S.C. 431 *et seq.*, and 26 U.S.C. 9001 *et seq.* The allocation shall be based on a reasonable estimate of the costs associated with each computer function.

such as the costs for data entry services performed by persons other than committee personnel and processing time. The candidate shall keep detailed records to support such calculations. The records shall indicate which computer functions are considered compliance-related and shall reflect which costs are associated with each computer function. The Commission's Financial Control and Compliance Manual for General Election Candidates Receiving Public Funding contains some accepted alternative allocation methods for determining the amount of salaries and overhead expenditures that may be considered exempt compliance costs.

(B) Reimbursement from the compliance fund may be made to the separate account maintained for federal funds under 11 CFR 9005.2 for legal and accounting compliance services disbursements that are initially paid from the separate federal funds account. Such reimbursement must be made prior to any final repayment determination by the Commission pursuant to 11 CFR 9007.2. Any amounts so reimbursed to the federal fund account may not subsequently be transferred back to the legal and accounting compliance fund.

(iii) Amounts paid from this account for the purposes permitted by 11 CFR 9003.3(a)(2)(i) (A) through (E) shall not be subject to the expenditure limits of 2 U.S.C. 441a(b) and 11 CFR 110.8. (See also 11 CFR 100.8(b)(15).) When the proceeds of loans made in accordance with 11 CFR 9003.2(a)(2)(i)(F) are expended on qualified campaign expenses, such expenditures shall count against the candidate's expenditure limit.

(iv) Contributions to or funds deposited in the legal and accounting compliance fund may not be used to retire debts remaining from the Presidential primaries, except that, if after payment of all expenses relating to the general election, there are excess campaign funds, such funds may be used for any purpose permitted under 2 U.S.C. 439a and 11 CFR part 113, including payment of primary election debts.

(3) *Deposit and disclosure.* (i) Amounts received pursuant to 11 CFR 9003.3(a)(1) shall be deposited and maintained in an account separate from that described in 11 CFR 9005.2 and shall not be commingled with any money paid to the candidate by the Secretary pursuant to 11 CFR 9005.2.

(ii) The receipts to and disbursements from this account shall be reported in a separate report in accordance with 11 CFR 9006.1(b)(2). All contributions made to this account shall be recorded in accordance with 11 CFR 102.9. Disbursements made from this account shall be documented in the same manner provided in 11 CFR 9003.5.

(b) *Contributions to defray qualified campaign expenses—major party candidates.* (1) A major party candidate or his or her authorized committee(s) may solicit contributions to defray qualified campaign expenses to the extent necessary to make up any deficiency in payments received from the Fund due to the application of 11 CFR 9005.2(b).

(2) Such contributions may be deposited in a separate account or may be deposited with federal funds received under 11 CFR 9005.2. Disbursements from this account shall be made only to defray qualified campaign expenses and to defray the cost of soliciting contributions to such account. All disbursements from this account shall be documented in accordance with 11 CFR 9003.5 and shall be reported in accordance with 11 CFR 9006.1.

(3) A candidate may make transfers to this account from his or her legal and accounting compliance fund.

(4) The contributions received under this section shall be subject to the limitations and prohibitions of 11 CFR parts 110, 114 and 115 and shall be aggregated with all contributions made by the same persons to the candidate's legal and accounting compliance fund under 11 CFR 9003.3(a) for the purposes of such limitations.

(5) Any costs incurred for soliciting contributions to this account shall not be considered expenditures to the extent that the aggregate of such costs does not exceed 20 percent of the expenditure limitation under 11 CFR 9003.2(a)(1). These costs shall, however, be reported as disbursements in accordance with 11 CFR part 104 and 11 CFR 9006.1. For purposes of this section, a candidate may exclude from the expenditure limitation an amount equal to 10% of the payroll (including payroll taxes) and overhead expenditures of his or her national campaign headquarters and state offices as exempt fundraising costs.

(6) Any costs incurred for legal and accounting services which are provided solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* shall not count against the candidate's expenditure limitation. Such costs include the cost of producing, delivering and explaining the computerized information and materials provided pursuant to 11 CFR 9003.6 and explaining the operation of the computer system's software. For purposes of this section, a candidate may exclude from the expenditure limitation an amount equal to 10% of the payroll (including payroll taxes) and overhead expenditures of his or her national campaign headquarters and state offices. In addition, a candidate may exclude from the expenditure limitation an amount equal to 70% of the costs (other than payroll) associated with computer services.

(i) For purposes of 11 CFR 9003.3(b)(6), overhead costs include, but are not limited to, rent, utilities, office equipment, furniture, supplies and all telephone charges except for telephone charges related to a special use such as voter registration and get out the vote efforts.

(ii) For purposes of 11 CFR 9003.3(b)(6) costs associated with computer services include, but are not limited to, rental and maintenance of computer equipment, data entry services not performed by committee personnel, and related supplies.

(7) If the candidate wishes to claim a larger compliance or fundraising exemption under 11 CFR 9003.3(b) (5) or (6) for payroll and overhead expenditures, the candidate shall establish allocation percentages for each individual who spends all or a portion of his or her time to perform duties which are considered compliance or fundraising. The candidate shall keep detailed records to support the derivation of each percentage. Such records shall indicate which duties are considered compliance or fundraising and the percentage of time each person spends on such activity.

(8) If the candidate wishes to claim a larger compliance exemption under 11 CFR 9003.3(b)(6) for costs associated with computer services, the candidate shall establish allocation percentages for each computer function that is considered necessary, in whole or in part, to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* The allocation shall be based on a reasonable estimate of the costs associated with each computer function, such as the costs for data entry services performed by other than committee personnel and processing time. The candidate shall keep detailed records to support such calculations. The records shall indicate which computer functions are considered compliance-related and shall reflect which costs are associated with each computer function.

(9) The Commission's Financial Control and Compliance Manual for General Election Candidates Receiving Public Funding contains some accepted alternative allocation methods for determining the amount of salaries and overhead expenditures that may be

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(i) For purposes of 11 CFR 9003.3(b)(6), overhead costs include, but are not limited to, rent, utilities, office equipment, furniture, supplies and all telephone charges except for telephone charges related to a special use such as voter registration and get out the vote efforts.

(ii) For purposes of 11 CFR 9003.3(b)(6) costs associated with computer services include, but are not limited to, rental and maintenance of computer equipment, data entry services not performed by committee personnel, and related supplies.

(7) If the candidate wishes to claim a larger compliance or fundraising exemption under 11 CFR 9003.3(b) (5) or (6) for payroll and overhead expenditures, the candidate shall establish allocation percentages for each individual who spends all or a portion of his or her time to perform duties which are considered compliance or fundraising. The candidate shall keep detailed records to support the derivation of each percentage. Such records shall indicate which duties are considered compliance or fundraising and the percentage of time each person spends on such activity.

(8) If the candidate wishes to claim a larger compliance exemption under 11 CFR 9003.3(b)(6) for costs associated with computer services, the candidate shall establish allocation percentages for each computer function that is considered necessary, in whole or in part, to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* The allocation shall be based on a reasonable estimate of the costs associated with each computer function, such as the costs for data entry services performed by other than committee personnel and processing time. The candidate shall keep detailed records to support such calculations. The records shall indicate which computer functions are considered compliance-related and shall reflect which costs are associated with each computer function.

(9) The Commission's Financial Control and Compliance Manual for General Election Candidates Receiving Public Funding contains some accepted alternative allocation methods for determining the amount of salaries and overhead expenditures that may be

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considered exempt compliance costs or exempt fundraising costs.

(c) *Contributions to defray qualified campaign expenses—minor and new party candidates.* (1) A minor or new party candidate may solicit contributions to defray qualified campaign expenses which exceed the amount received by such candidate from the Fund, subject to the limits of 11 CFR 9003.2(b).

(2) The contributions received under this section shall be subject to the limitations and prohibitions of 11 CFR parts 110, 114 and 115.

(3) Such contributions may be deposited in a separate account or may be deposited with federal funds received under 11 CFR 9005.2. Disbursements from this account shall be made only for the following purposes:

(i) To defray qualified campaign expenses;

(ii) To make repayments under 11 CFR 9007.2;

(iii) To defray the cost of soliciting contributions to such account;

(iv) To defray the cost of legal and accounting services provided solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq*;

(v) To defray the cost of producing, delivering and explaining the computerized information and materials provided pursuant to 11 CFR 9003.6 and explaining the operation of the computer system's software.

(4) All disbursements from this account shall be documented in accordance with 11 CFR 9003.5 and shall be reported in accordance with 11 CFR part 104 and 9006.1.

(5) Any costs incurred for soliciting contributions to this account shall not be considered expenditures to the extent that the aggregate of such costs does not exceed 20 percent of the expenditure limitation under 11 CFR 9003.2(a)(1). These costs shall, however, be reported as disbursements in accordance with 11 CFR part 104 and 9006.1. For purposes of this section, a candidate may exclude from the expenditure limitation an amount equal to 10% of the payroll (including payroll taxes) and overhead expenditures of his or her national campaign headquarters and state offices as exempt fundraising costs.

(6) Any costs incurred for legal and accounting services which are provided solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* shall not count against the candidate's expenditure limitation. For purposes of this section, a candidate may exclude from the expenditure limitation an amount equal to 10% of the payroll (including payroll taxes) and overhead expenditures of his or her national campaign headquarters and state offices. In addition, a candidate may exclude from the expenditure limitation an amount equal to 70% of the costs (other than payroll) associated with computer services.

(i) For purposes of 11 CFR 9003.3(c)(6), overhead costs include, but are not limited to, rent, utilities, office equipment, furniture, supplies and all telephone charges except for telephone charges related to a special use such as voter registration and get out the vote efforts.

(ii) For purposes of 11 CFR 9003.3(c)(6) costs associated with computer services include but are not limited to, rental and maintenance of computer equipment, data entry services not performed by committee personnel, and related supplies.

(7) If the candidate wishes to claim a larger compliance or fundraising exemption under 11 CFR 9003.3(c)(6) for payroll and overhead expenditures, the candidate shall establish allocation percentages for each individual who spends all or a portion of his or her time to perform duties which are considered compliance or fundraising. The candidate shall keep detailed records to support the derivation of each percentage. Such records shall indicate which duties are considered compliance or fundraising and the percentage of time each person spends on such activity..

(8) If the candidate wishes to claim a larger compliance exemption under 11 CFR 9003.3(c)(6) for costs associated with computer services, the candidate shall establish allocation percentages for each computer function that is considered necessary, in whole or in part, to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* The allocation shall be based on a reasonable estimate of the costs associated with each computer function, such as the costs for data entry services performed by other than committee personnel and processing time. The candidate shall keep detailed records to support such calculations. The records shall indicate which computer functions are considered compliance-related and shall reflect which costs are associated with each computer function.

(9) The candidate shall keep and maintain a separate record of disbursements made to defray exempt legal and accounting costs under 11 CFR 9003.3(c) (6) and (7) and shall report such disbursements in accordance with 11 CFR part 104 and 11 CFR 9006.1.

(10) The Commission's Financial Control and Compliance Manual for General Election Candidates Receiving Public Funding contains some accepted alternative allocation methods for determining the amount of salaries and overhead expenditures that may be considered exempt compliance costs or exempt fundraising costs.

§ 9003.4 Expenses incurred prior to the beginning of the expenditure report period or prior to receipt of Federal funds.

(a) *Permissible expenditures.* (1) A candidate may incur expenditures before the beginning of the expenditure report period, as defined at 11 CFR 9002.12, if such expenditures are for property, services or facilities which are to be used in connection with his or her general election campaign and which are for use during the expenditure report period. Such expenditures will be considered qualified campaign expenses. Examples of such expenditures include but are not limited to: Expenditures for establishing financial accounting systems, expenditures for organizational planning and expenditures for polling.

(2) A candidate may incur qualified campaign expenses prior to receiving payments under 11 CFR part 9005.

(b) *Sources.* (1) A candidate may obtain a loan which meets the requirements of 11 CFR 100.7(b)(11) for loans in the ordinary course of business to defray permissible expenditures described in 11 CFR 9003.4(a). A candidate receiving payments equal to the expenditure limitation in 11 CFR 110.8 shall make full repayment of principal and interest on such loans from payments received by the candidate under 11 CFR part 9005 within 15 days of receiving such payments.

(2) A major party candidate may borrow from his or her legal and accounting compliance fund for the purposes of defraying permissible expenditures described in 11 CFR 9003.4(a). All amounts borrowed from the legal and accounting compliance fund must be restored to such fund after the beginning of the expenditure report period either from federal funds received under 11 CFR part 9005 or private contributions received under 11 CFR 9003.3(b). For candidates receiving federal funds, restoration shall be made within 15 days after receipt of such funds.

(3) A minor or new party candidate may defray such expenditures from contributions received in accordance with 11 CFR 9003.3(c).

(4)(i) A candidate who has received federal funding under 11 CFR part 9031 *et seq.*, may borrow from his or her primary election committee(s) an amount not to exceed the residual balance projected to remain in the candidate's primary account(s) on the basis of the formula set forth at 11 CFR 9038.3(c). A major party candidate receiving payments equal to the expenditure limitation shall reimburse amounts borrowed from his or her primary committee(s) from payments received by the candidate under 11 CFR part 9005 within 15 days of such receipt.

(ii) A candidate who has not received federal funding during the primary campaign may borrow at any time from his or her primary account(s) to defray such expenditures, provided that a major party candidate receiving payments equal to the expenditure limitation shall reimburse all amounts borrowed from his or her primary committee(s) from payments received by the candidate under 11 CFR part 9005 within 15 days of such receipt.

(5) A candidate may use personal funds in accordance with 11 CFR 9003.2(c), up to his or her $50,000 limit, to defray such expenditures.

(c) *Deposit and disclosure.* Amounts received or borrowed by a candidate under 11 CFR 9003.4(b) to defray expenditures permitted under 11 CFR 9003.4(a) shall be deposited in a separate account to be used only for such expenditures. All receipts and disbursements from such account shall be reported pursuant to 11 CFR 9006.1(a) and documented in accordance with 11 CFR 9003.5

§ 9003.5 Documentation of disbursements.

(a) *Burden of proof.* Each candidate shall have the burden of proving that disbursements made by the candidate or his or her authorized committee(s) or persons authorized to make expenditures on behalf of the candidate or authorized committee(s) are qualified campaign expenses as defined in 11 CFR 9002.11. The candidate and his or her authorized committee(s) shall obtain and furnish to the Commission at its request any evidence regarding qualified campaign expenses made by the candidate, his or her authorized committees and agents or persons authorized to make expenditures on behalf of the candidate or committee(s) as provided in 11 CFR 9003.5(b).

(b) *Documentation required.* (1) For disbursements in excess of $200 to a payee, the candidate shall present either:

(i) A receipted bill from the payee that states the purpose of the disbursement; or

(ii) If such a receipt is not available, a canceled check negotiated by the payee, and

(A) One of the following documents generated by the payee: A bill, invoice, or voucher that states the purpose of the disbursement; or

(B) Where the documents specified in 11 CFR 9003.5(b)(1)(ii)(A) are not available, a voucher or contemporaneous memorandum from the candidate or the committee that states the purpose of the disbursement; or

(iii) If neither a receipted bill as specified in 11 CFR 9003.5(b)(1)(i) nor the supporting documentation specified in 11 CFR 9003.5(b)(1)(ii) is available, a canceled check negotiated by the payee that states the purpose of the disbursement.

(iv) Where the supporting documentation required in 11 CFR 9003.5(b)(1) (i), (ii) or (iii) is not available, the candidate or committee may present a canceled check and collateral evidence to document the qualified campaign expense. Such collateral evidence may include but is not limited to:

(A) Evidence demonstrating that the expenditure is part of an identifiable program or project which is otherwise sufficiently documented such as a disbursement which is one of a number of documented disbursements relating to a campaign mailing or to the operation of a campaign office:

(B) Evidence that the disbursement is covered by a pre-established written campaign committee policy, such as a daily travel expense policy.

(2) For all other disbursements the candidate shall present:

(i) A record disclosing the full name and mailing address of the payee, the amount, date and purpose of the disbursement, if made from a petty cash fund; or

(ii) A canceled check negotiated by the payee that states the full name and mailing address of the payee, and the amount, date and purpose of the disbursement.

(3) For purposes of this section:

(i) *Payee* means the person who provides the goods or services to the candidate or committee in return for the disbursement; except that an individual will be considered a payee under this section if he or she receives $500 or less advanced for travel and/or subsistence and if the individual is the recipient of the goods or services purchased.

(ii) *Purpose* means the full name and mailing address of the payee, the date and amount of the disbursement, and a brief description of the goods or services purchased.

(c) *Retention of records.* The candidate shall retain records with respect to each disbursement and receipt, including bank records, vouchers, worksheets, receipts, bills and accounts, journals, ledgers, fundraising solicitation material, accounting systems documentation, and any related materials documenting campaign receipts and disbursements, for a period of three years pursuant to 11 CFR 102.9(c), and shall present these records to the Commission on request.

(d) *List of capital and other assets*—(1) *Capital assets.* The candidate or committee shall maintain a list of all capital assets whose purchase price exceeded $2000 when acquired by the candidate's authorized committee(s). The list shall include a brief description of each capital asset, the purchase price, the date it was acquired, the method of disposition and the amount received in disposition. For purposes of this section, *capital asset* shall be defined in accordance with 11 CFR 9004.9(d)(1).

(2) *Other assets.* The candidate or committee shall maintain a list of other assets acquired for use in fundraising or as collateral for campaign loans, if the aggregate value of such assets exceeds $5000. The list shall include a brief description of each such asset, the fair market value of each asset, the method of disposition and the amount received in disposition. The fair market value of other assets shall be determined in accordance with 11 CFR 9004.9(d)(2).

§ 9003.6 Production of computer information.

(a) *Categories of computerized information to be provided.* If the candidate or the candidate's authorized committee maintains or uses computerized information containing any of the categories of data listed in paragraphs (a)(1) through (a)(9) of this section, the committee shall provide computerized magnetic media, such as magnetic tapes or magnetic diskettes, containing the computerized information at the times specified in 11 CFR 9007.1(b)(1):

(1) Information required by law to be maintained regarding the committee's receipts or disbursements;

(2) Receipts by and disbursements from a legal and accounting compliance fund under 11 CFR 9003.3(a), including the allocation of payroll and overhead expenditures;

(3) Receipts and disbursements under 11 CFR 9003.3 (b) or (c) to defray the costs of soliciting contributions or to defray the costs of legal and accounting services, including the allocation of payroll and overhead expenditures;

(4) Records relating to the costs of producing broadcast communications and purchasing airtime;

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accounts, journals, ledgers, fundraising solicitation material, accounting systems documentation, and any related materials documenting campaign receipts and disbursements, for a period of three years pursuant to 11 CFR 102.9(c), and shall present these records to the Commission on request.

(d) *List of capital and other assets*—(1) *Capital assets.* The candidate or committee shall maintain a list of all capital assets whose purchase price exceeded $2000 when acquired by the candidate's authorized committee(s). The list shall include a brief description of each capital asset, the purchase price, the date it was acquired, the method of disposition and the amount received in disposition. For purposes of this section, *capital asset* shall be defined in accordance with 11 CFR 9004.9(d)(1).

(2) *Other assets.* The candidate or committee shall maintain a list of other assets acquired for use in fundraising or as collateral for campaign loans, if the aggregate value of such assets exceeds $5000. The list shall include a brief description of each such asset, the fair market value of each asset, the method of disposition and the amount received in disposition. The fair market value of other assets shall be determined in accordance with 11 CFR 9004.9(d)(2).

§ 9003.6 Production of computer information.

(a) *Categories of computerized information to be provided.* If the candidate or the candidate's authorized committee maintains or uses computerized information containing any of the categories of data listed in paragraphs (a)(1) through (a)(9) of this section, the committee shall provide computerized magnetic media, such as magnetic tapes or magnetic diskettes, containing the computerized information at the times specified in 11 CFR 9007.1(b)(1):

(1) Information required by law to be maintained regarding the committee's receipts or disbursements;

(2) Receipts by and disbursements from a legal and accounting compliance fund under 11 CFR 9003.3(a), including the allocation of payroll and overhead expenditures;

(3) Receipts and disbursements under 11 CFR 9003.3 (b) or (c) to defray the costs of soliciting contributions or to defray the costs of legal and accounting services, including the allocation of payroll and overhead expenditures;

(4) Records relating to the costs of producing broadcast communications and purchasing airtime;

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(5) Records used to prepare statements of net outstanding qualified campaign expenses;

(6) Records used to reconcile bank statements;

(7) Disbursements made and reimbursements received for the cost of transportation, ground services and facilities made available to media personnel, including records relating to how costs charged to media personnel were determined;

(8) Records relating to the acquisition, use and disposition of capital assets or other assets; and

(9) Any other information that may be used during the Commission's audit to review the committee's receipts, disbursements, loans, debts, obligations, bank reconciliations or statements of net outstanding qualified campaign expenses.

(b) *Organization of computerized information and technical specifications.* The computerized magnetic media shall be prepared and delivered at the committee's expense and shall conform to the technical specifications, including file requirements, described in the Federal Election Commission's Computerized Magnetic Media Requirements for title 26 Candidates/Committees Receiving Federal Funding. The data contained in the computerized magnetic media provided to the Commission shall be organized in the order specified by the Computerized Magnetic Media Requirements.

(c) *Additional materials and assistance.* Upon request, the committee shall produce documentation explaining the computer system's software capabilities, such as user guides, technical manuals, formats, layouts and other materials for processing and analyzing the information requested. Upon request, the committee shall also make available such personnel as are necessary to explain the operation of the computer system's software and the computerized information prepared or maintained by the committee.

PART 9004—ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS; USE OF PAYMENTS

Sec.
9004.1 Major parties.
9004.2 Pre-election payments for minor and new party candidates.
9004.3 Post-election payments.
9004.4 Use of payments.
9004.5 Investment of public funds.
9004.6 Reimbursements for transportation and services made available to media personnel.
9004.7 Allocation of travel expenditures.
9004.8 Withdrawal by candidate.
9004.9 Net outstanding qualified campaign expenses.
9004.10 Sale of assets acquired for fund-raising purposes.

Authority: 26 U.S.C. 9004 and 9009(b).

§ 9004.1 Major parties.

The eligible candidates of each major party in a Presidential election shall be entitled to equal payments under 11 CFR part 9005 in an amount which, in the aggregate, shall not exceed $20,000,000 as adjusted by the Consumer Price Index in the manner described in 11 CFR 110.9(c).

§ 9004.2 Pre-election payments for minor and new party candidates.

(a) *Candidate of a minor party in the preceding election.* An eligible candidate of a minor party is entitled to pre-election payments:

(1) If he or she received at least 5% of the total popular vote as the candidate of a minor party in the preceding election whether or not he or she is the same minor party's candidate in this election.

(2) In an amount which is equal, in the aggregate, to a proportionate share of the amount to which major party candidates are entitled under 11 CFR 9004.1.

The aggregate amount received by a minor party candidate shall bear the same ratio to the amount received by the major party candidates as the number of popular votes received by the minor party Presidential candidate in the preceding Presidential election bears to the average number of popular votes received by all major party candidates in that election.

(b) *Candidate of a minor party in the current election.* The eligible candidate of a minor party whose candidate for the office of President in the preceding election received at least 5% but less than 25% of the total popular vote is eligible to receive pre-election payments. The amount which a minor party candidate is entitled to receive under this section shall be computed pursuant to 11 CFR 9004.2(a) based on the number of popular votes received by the minor party's candidate in the preceding Presidential election; however, the amount to which the minor party candidate is entitled under this section shall be reduced by the amount to which the minor party's Presidential candidate in this election is entitled under 11 CFR 9004.2(a), if any.

(c) *New party candidate.* A candidate of a new party who was a candidate for the office of President in at least 10 States in the preceding election may be eligible to receive pre-election payments if he or she received at least 5% but less than 25% of the total popular vote in the preceding election. The amount which a new party candidate is entitled to receive under this section shall be computed pursuant to 11 CFR 9004.2(a) based on the number of popular votes received by the new party candidate in the preceding election. If a new party candidate is entitled to payments under this section, the amount of the entitlement shall be reduced by the amount to which the candidate is entitled under 11 CFR 9004.2(a), if any.

§ 9004.3 Post-election payments.

(a) *Minor and new party candidates.* Eligible candidates of a minor party or of a new party who, as candidates, receive 5 percent or more of the total number of popular votes cast for the office of President in the election shall be entitled to payments under 11 CFR part 9005 equal, in the aggregate, to a proportionate share of the amount allowed for major party candidates under 11 CFR 9004.1. The amount to which a minor or new party candidate is entitled shall bear the same ratio to the amount received by the major party candidates as the number of popular votes received by the minor or new party candidate in the Presidential election bears to the average number of popular votes received by the major party candidates for President in that election.

(b) *Amount of entitlement.* The aggregate payments to which an eligible candidate shall be entitled shall not exceed an amount equal to the lower of:

(1) The amount of qualified campaign expenses incurred by such eligible candidate and his or her authorized committee(s), reduced by the amount of contributions which are received to defray qualified campaign expenses by such eligible candidate and such committee(s); or

(2) The aggregate payments to which the eligible candidates of a major party are entitled under 11 CFR 9004.1, reduced by the amount of contributions received by such eligible candidates and their authorized committees to defray qualified campaign expenses in the case of a deficiency in the Fund.

(c) *Amount of entitlement limited by pre-election payment.* If an eligible candidate is entitled to payment under 11 CFR 9004.2, the amount allowable to that candidate under this section shall also be limited to the amount, if any, by which the entitlement under 11 CFR 9004.3(a) exceeds the amount of the entitlement under 11 CFR 9004.2.

§ 9004.4 Use of payments.

(a) *Qualified campaign expenses.* An eligible candidate shall use payments received under 11 CFR part 9005 only for the following purposes:

(1) A candidate may use such payments to defray qualified campaign expenses;

(2) A candidate may use such payments to repay loans that meet the requirements of 11 CFR 100.7(a)(1) or 100.7(b)(11) or to otherwise restore funds (other than contributions received pursuant to 11 CFR 9003.3(b) and expended to defray qualified campaign expenses) used to defray qualified campaign expenses;

(3) A candidate may use such payments to restore funds expended in accordance with 11 CFR 9003.4 for qualified campaign expenses incurred by the candidate prior to the beginning of the expenditure report period.

(4) *Winding down costs.* The following costs shall be considered qualified campaign expenses:

(i) Costs associated with the termination of the candidate's general election campaign such as complying with the post-election requirements of the Act and other necessary administrative costs associated with winding down the campaign, including office space rental, staff salaries and office supplies; or

(ii) Costs incurred by the candidate prior to the end of the expenditure report period for which written arrangement or commitment was made on or before the close of the expenditure report period.

(b) *Non-qualified campaign expenses*—(1) *General.* The following are examples of disbursements that are not qualified campaign expenses.

(2) *Excessive expenditures.* An expenditure which is in excess of any of the limitations under 11 CFR 9003.2 shall not be considered a qualified campaign expense. The Commission will calculate the amount of expenditures attributable to these limitations using the full amounts originally charged for goods and services rendered to the committee and not the amounts for which such obligations were later settled and paid, unless the committee can demonstrate that the lower amount paid reflects a reasonable settlement of a bona fide dispute with the creditor.

(3) *Expenditures incurred after the close of the expenditure report period.* Any expenditures incurred after the close of the expenditure report period, as defined in 11 CFR 9002.12, are not qualified campaign expenses except to the extent permitted under 11 CFR 9004.4(a)(4).

(4) *Civil or criminal penalties.* Civil or criminal penalties paid pursuant to the Federal Election Campaign Act are not qualified campaign expenses and cannot be defrayed from payments received under 11 CFR part 9005. Penalties may be paid from contributions in the candidate's legal and accounting compliance fund, in accordance with 11 CFR 9003.3(a)(2)(i)(C). Additional amounts may be received and expended to pay such penalties, if necessary. These funds shall not be considered contributions or expenditures but all amounts so received shall be subject to the prohibitions of the Act. Amounts received and expended under this section shall be reported in accordance with 11 CFR part 104.

(5) *Solicitation expenses.* Any expenses incurred by a major party candidate to solicit contributions to a legal and accounting compliance fund established pursuant to 11 CFR 9003.3(a) are not qualified campaign expenses and cannot be defrayed from payments received under 11 CFR part 9005.

(6) *Payments to candidate.* Payments made to the candidate by his or her committee, other than to reimburse funds advanced by the candidate for qualified campaign expenses, are not qualified campaign expenses.

(7) *Payments to other authorized committees.* Payments, including transfers, contributions and loans, to other committees authorized by the same candidate for a different election are not qualified campaign expenses.

(c) *Repayments.* Repayments may be made only from the following sources: Personal funds of the candidate (without regard to the limitations of 11 CFR 9003.2(c)), contributions and federal funds in the committee's account(s), and any additional funds raised subject to the limitations and prohibitions of the Federal Election Campaign Act of 1971, as amended.

§ 9004.5 Investment of public funds.

Investment of public funds or any other use of public funds to generate income is permissible, provided that an amount equal to all net income derived from such investments, less Federal, State and local taxes paid on such income, shall be repaid to the Secretary. Any net loss resulting from the investment of public funds will be considered a non-qualified campaign expense and an amount equal to the amount of such net loss shall be repaid to the United States Treasury as provided under 11 CFR 9007.2(b)(2)(i).

§ 9004.6 Reimbursements for transportation and services made available to media personnel.

(a) If an authorized committee incurs expenditures for transportation, ground services and facilities (including air travel, ground transportation, housing, meals, telephone service, typewriters) made available to media personnel, Secret Service personnel or national security staff, such expenditures will be considered qualified campaign expenses and, except for costs relating to Secret Service personnel or national security staff, subject to the overall expenditure limitations of 11 CFR 9003.2 (a)(1) and (b)(1).

(b) If reimbursement for such expenditures is received by a committee, the amount of such reimbursement for each media representative shall not exceed either: The media representative's pro rata share of the actual cost of the transportation and services made available; or a reasonable estimate of the media representative's pro rata share of the actual cost of the transportation and services made available. A media representative's pro rata share shall be calculated by dividing the total cost of the transportation and services by the total number of individuals to whom such transportation and services are made available. For purposes of this calculation, the total number of individuals shall include committee staff, media personnel, Secret Service personnel, national security staff and any other individuals to whom such transportation and services are made available. The total amount of reimbursements received from a media representative under this section shall not exceed the actual pro rata cost of the transportation and services made available to that media representative by more than 10%.

(c) The total amount paid by an authorized committee for the cost of transportation or for ground services and facilities shall be reported as an expenditure in accordance with 11 CFR 104.3(b)(2)(i). Any reimbursement received by such committee for transportation or ground services and facilities shall be reported in accordance with 11 CFR 104.3(a)(3)(ix).

(d)(1) The committee may deduct from the amount of expenditures subject to the overall expenditure limitation of 11 CFR 9003.2 (a)(1) and (b)(1) the amount of reimbursements received in payment for the actual cost of transportation and services described in paragraph (a) of this section. This deduction shall not exceed the amount the committee

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§ 9004.6 Reimbursements for transportation and services made available to media personnel.

(a) If an authorized committee incurs expenditures for transportation, ground services and facilities (including air travel, ground transportation, housing, meals, telephone service, typewriters) made available to media personnel, Secret Service personnel or national security staff, such expenditures will be considered qualified campaign expenses and, except for costs relating to Secret Service personnel or national security staff, subject to the overall expenditure limitations of 11 CFR 9003.2 (a)(1) and (b)(1).

(b) If reimbursement for such expenditures is received by a committee, the amount of such reimbursement for each media representative shall not exceed either: The media representative's pro rata share of the actual cost of the transportation and services made available; or a reasonable estimate of the media representative's pro rata share of the actual cost of the transportation and services made available. A media representative's pro rata share shall be calculated by dividing the total cost of the transportation and services by the total number of individuals to whom such transportation and services are made available. For purposes of this calculation, the total number of individuals shall include committee staff, media personnel, Secret Service personnel, national security staff and any other individuals to whom such transportation and services are made available. The total amount of reimbursements received from a media representative under this section shall not exceed the actual pro rata cost of the transportation and services made available to that media representative by more than 10%.

(c) The total amount paid by an authorized committee for the cost of transportation or for ground services and facilities shall be reported as an expenditure in accordance with 11 CFR 104.3(b)(2)(i). Any reimbursement received by such committee for transportation or ground services and facilities shall be reported in accordance with 11 CFR 104.3(a)(3)(ix).

(d)(1) The committee may deduct from the amount of expenditures subject to the overall expenditure limitation of 11 CFR 9003.2 (a)(1) and (b)(1) the amount of reimbursements received in payment for the actual cost of transportation and services described in paragraph (a) of this section. This deduction shall not exceed the amount the committee

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expended for the actual cost of transportation and services provided. The committee may also deduct from the overall expenditure limitation an additional amount of reimbursements received equal to 3% of the actual cost of transportation and services provided under this section as the administrative cost to the committee of providing such services and seeking reimbursement for them. If the committee has incurred higher administrative costs in providing these services, the committee must document the total cost incurred for such services in order to deduct a higher amount of reimbursements received from the overall expenditure limitation. Amounts reimbursed that exceed the amount actually paid by the committee for transportation and services provided under paragraph (a) of this section plus the amount of administrative costs permitted by this section up to the maximum amount that may be received under paragraph (b) of this section shall be repaid to the Treasury. Amounts paid by the committee for transportation, services and administrative costs for which no reimbursement is received will be considered qualified campaign expenses subject to the overall expenditure limitation in accordance with paragraph (a).

(2) For the purposes of this section, "administrative costs" shall include all costs incurred by the committee for making travel arrangements and for seeking reimbursements, whether performed by committee staff or independent contractors.

§ 9004.7 Allocation of travel expenditures.

(a) Notwithstanding the provisions of 11 CFR part 106, expenditures for travel relating to a Presidential or Vice Presidential candidate's campaign by any individual, including a candidate, shall, pursuant to the provisions of 11 CFR 9004.7(b), be qualified campaign expenses and be reported by the candidate's authorized committee(s) as expenditures.

(b)(1) For a trip which is entirely campaign-related, the total cost of the trip shall be a qualified campaign expense and a reportable expenditure.

(2) For a trip which includes campaign-related and non-campaign related stops, that portion of the cost of the trip allocable to campaign activity shall be a qualified campaign expense and a reportable expenditure. Such portion shall be determined by calculating what the trip would have cost from the point of origin of the trip to the first campaign-related stop and from the stop through each subsequent campaign-related stop to the point of origin. If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign-related.

(3) For each trip, an itinerary shall be prepared and such itinerary shall be made available for Commission inspection.

(4) For trips by government conveyance or by charter, a list of all passengers on such trip, along with a designation of which passengers are and which are not campaign-related, shall be made available for Commission inspection.

(5) If any individual, including a candidate, uses government conveyance or accommodations paid for by a government entity for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount equal to:

(i) The first class commercial air fare plus the cost of other services, in the case of travel to a city served by a regularly scheduled commercial service; or

(ii) The commercial charter rate plus the cost of other services, in the case of travel to a city not served by a regularly scheduled commercial service.

(6) Travel expenses of a candidate's spouse and family when accompanying the candidate on campaign-related travel may be treated as qualified campaign expenses and reportable expenditures. If the spouse or family members conduct campaign-related activities, their travel expenses shall be qualified campaign expenses and reportable expenditures.

(7) If any individual, including a candidate, incurs expenses for campaign-related travel, other than by use of government conveyance or accommodations, an amount equal to that portion of the actual cost of the conveyance or accommodations which is allocable to all passengers, including the candidate, traveling for campaign purposes shall be a qualified campaign expense and shall be reported by the committee as an expenditure.

(i) If the trip is by charter, the actual cost for each passenger shall be determined by dividing the total operating cost for the charter by the total number of passengers transported. The amount which is a qualified campaign expense and a reportable expenditure shall be calculated in accordance with the formula set forth at 11 CFR 9004.7(b)(2) on the basis of the actual cost per passenger multiplied by the number of passengers traveling for campaign purposes.

(ii) If the trip is by non-charter commercial transportation, the actual cost shall be calculated in accordance with the formula set forth at 11 CFR 9004.7(b)(2) on the basis of the commercial fare. Such actual cost shall be a qualified campaign expense and a reportable expenditure.

§ 9004.8 Withdrawal by candidate.

(a) Any individual who is not actively conducting campaigns in more than one State for the office of President or Vice President shall cease to be a candidate under 11 CFR 9002.2.

(b) An individual who ceases to be a candidate under this section shall:

(1) No longer be eligible to receive any payments under 11 CFR 9005.2 except to defray qualified campaign expenses as provided in 11 CFR 9004.4.

(2) Submit a statement, within 30 calendar days after he or she ceases to be a candidate, setting forth the information required under 11 CFR 9004.9(c).

§ 9004.9 Net outstanding qualified campaign expenses.

(a) *Candidates receiving post-election funding.* A candidate who is eligible to receive post-election payments under 11 CFR 9004.3 shall file, no later than 20 calendar days after the date of the election, a preliminary statement of that candidate's net outstanding qualified campaign expenses. The candidate's net outstanding qualified campaign expenses under this section equal the difference between 11 CFR 9004.9(a) (1) and (2).

(1) The total of:

(i) All outstanding obligations for qualified campaign expenses as of the date of the election; plus

(ii) An estimate of the amount of qualified campaign expenses that will be incurred by the end of the expenditure report period; plus

(iii) An estimate of necessary winding down costs as defined under 11 CFR 9004.4(a)(4); less

(2) The total of:

(i) Cash on hand as of the close of business on the day of the election, including: All contributions dated on or before that date; currency; balances on deposit in banks, savings and loan institutions, and other depository institutions; traveler's checks; certificates of deposit; treasury bills; and any other committee investments valued at fair market value;

(ii) The fair market value of capital assets and other assets on hand; and

(iii) Amounts owed to the candidate's authorized committee(s) in the form of credits, refunds of deposits, returns, receivables, or rebates of qualified campaign expenses; or a commercially reasonable amount based on the collectibility of those credits, returns, receivables or rebates.

(3) The amount submitted as the total of outstanding campaign obligations under paragraph (a)(1) of this section shall not include any accounts payable for non-qualified campaign expenses nor any amounts determined or anticipated to be required as a repayment under 11 CFR part 9007 or any amounts paid to secure a surety bond under 11 CFR 9007.5(c).

(b) *All candidates.* Each candidate, except for individuals who have withdrawn pursuant to 11 CFR 9004.8, shall submit a statement of net outstanding qualified campaign expenses no later than 30 calendar days after the end of the expenditure report period. The statement shall contain the information required by 11 CFR 9004.9(a) (1) and (2), except that the amount of outstanding obligations under 11 CFR 9004.9(a)(1)(i) and the amount of cash on hand, assets and receivables under 11 CFR 9004.9(a)(2) shall be complete as of the last day of the expenditure report period.

(c) *Candidates who withdraw.* An individual who ceases to be a candidate pursuant to 11 CFR 9004.8 shall file a statement of net outstanding qualified campaign expenses no later than 30 calendar days after he or she ceases to be a candidate. The statement shall contain the information required under 11 CFR 9004.9(a) (1) and (2), except that the amount of outstanding obligations under 11 CFR 9004.9(a)(1)(i) and the amount of cash on hand, assets and receivables under 11 CFR 9004.9(a)(2) shall be complete as of the day on which the individual ceased to be a candidate.

(d) (1) *Capital assets.* For purposes of this section, the term *capital asset* means any property used in the operation of the campaign whose purchase price exceeded $2000 when acquired by the committee. Property that must be valued as capital assets under this section includes, but is not limited to, office equipment, furniture, vehicles and fixtures acquired for use in the operation of the candidate's campaign, but does not include property defined as "other assets" under 11 CFR 9004.9(d)(2). A list of all capital assets shall be maintained by the committee in accordance with 11 CFR 9003.5(d)(1). The fair market value of capital assets may be considered to be the total original cost of such items when acquired less 40%, to account for depreciation, except that items acquired after the date of ineligibility must be valued at their fair market value on the date acquired. If the candidate wishes to claim a higher depreciation percentage for an item, he or she must list that capital asset on the statement separately and demonstrate, through documentation, the fair market value of each such asset.

(2) *Other assets.* The term *other assets* means any property acquired by the committee for use in raising funds or as collateral for campaign loans. "Other assets" must be included on the candidate's statement of net outstanding qualified campaign expenses if the aggregate value of such assets exceeds $5000. The value of "other assets" shall be determined by the fair market value of each item on the last day of the expenditure report period or the day on which the individual ceased to be a candidate, whichever is earlier, unless the item is acquired after these dates, in which case the item shall be valued on the date it is acquired. A list of other assets shall be maintained by the committee in accordance with 11 CFR 9003.5(d)(2).

(e) *Collectibility of accounts receivable.* If the committee determines that an account receivable of $500 or more, including any credit, refund, return or rebate, is not collectible in whole or in part, the committee shall demonstrate through documentation that the determination was commercially reasonable. The documentation shall include records showing the original amount of the account receivable, copies of correspondence and memoranda of communications with the debtor showing attempts to collect the amount due, and an explanation of how the lesser amount or full write-off was determined.

(f) *Review of candidate statement*—(1) *General.* The Commission will review the statement filed by each candidate under this section. The Commission may request further information with respect to statements filed pursuant to 11 CFR 9004.9(b) during the audit of that candidate's authorized committee(s) under 11 CFR part 9007.

(2) *Candidate eligible for post-election funding.* (i) If, in reviewing the preliminary statement of a candidate eligible to receive post-election funding, the Commission receives information indicating that substantial assets of that candidate's authorized committee(s) have been undervalued or not included in the statement or that the amount of outstanding qualified campaign expenses has been otherwise overstated in relation to committee assets, the Commission may decide to temporarily postpone its certification of funds to that candidate pending a final determination of whether the candidate is entitled to all or a portion of the funds for which he or she is eligible based on the percentage of votes the candidate received in the general election.

(ii) *Initial determination.* In making a determination under 11 CFR 9004.9(f)(2)(i), the Commission will notify the candidate within 10 business days after its receipt of the statement of its initial determination that the candidate is not entitled to receive the full amount for which the candidate may be eligible. The notice will give the legal and factual reasons for the initial determination and advise the candidate of the evidence on which the Commission's initial determination is based. The candidate will be given the opportunity to revise the statement or to submit, within 10 business days, written legal or factual materials to demonstrate that the candidate has net outstanding qualified campaign expenses that entitle the candidate to post-election funds. Such materials may be submitted by counsel if the candidate so desires.

(iii) *Final determination.* The Commission will consider any written legal or factual materials submitted by the candidate before making its final determination. A final determination that the candidate is entitled to receive only a portion or no post-election funding will be accompanied by a written statement of reasons for the Commission's action. This statement will explain the legal and factual reasons underlying the Commission's determination and will summarize the results of any investigation on which the determination is based.

(iv) If the candidate demonstrates that the amount of outstanding qualified campaign expenses still exceeds committee assets, the Commission will certify the payment of post-election funds to which the candidate is entitled.

(v) *Petitions for rehearing.* The candidate may file a petition for rehearing of a final determination under this section in accordance with 11 CFR 9007.5(a).

§ 9004.10 Sale of assets acquired for fundraising purposes.

(a) *General.* A minor or new party candidate may sell assets donated to the candidate's authorized committee(s) or otherwise acquired for fundraising purposes subject to the limitations and prohibitions of 11 CFR 9003.2, title 2, United States Code, and 11 CFR parts 110 and 114. This section will only apply to major party candidates to the extent that they sell assets acquired either for fundraising purposes in connection with his or her legal and accounting compliance fund or when it is necessary to make up any deficiency in payments received from the Fund due to the application of 11 CFR 9005.2(b).

(b) *Sale after end of expenditure report period.* A minor or new party candidate, or a major party candidate in the event of a deficiency in the payments received from the Fund due to the application of 11 CFR 9005.2(b), whose outstanding debts exceed the cash on hand after the end of the expenditure report period as determined under 11 CFR 9002.12, may dispose of assets acquired for fundraising purposes in a sale to a wholesaler or other intermediary who will in turn sell such assets to the public provided that the sale to the wholesaler or intermediary is an arms-length transaction. Sales made under this subsection will not be subject to the limitations and prohibitions of title 2, United States Code and 11 CFR parts 110 and 114.

PART 9005—CERTIFICATION BY COMMISSION

Sec.
9005.1 Certification of payments for candidates.
9005.2 Payments to eligible candidates from the Fund.

Authority: 26 U.S.C. 9005, 9006 and 9009(b).

§ 9005.1 Certification of payments for candidates.

(a) *Certification of payments for major party candidates.* Not later than 10 days after the Commission determines that the Presidential and Vice Presidential candidates of a major party have met all applicable conditions for eligibility tb receive payments under 11 CFR 9003.1 and 9003.2, the Commission shall certify to the Secretary that payment in full of the amounts to which such candidates are entitled under 11 CFR part 9004 should be made pursuant to 11 CFR 9005.2.

(b) *Certification of pre-election payments for minor and new party candidates.* (1) Not later than 10 days after a minor or new party candidate has met all applicable conditions for eligibility to receive payments under 11 CFR 9003.1, 9003.2 and 9004.2, the Commission will make an initial determination of the amount, if any, to which the candidate is entitled. The Commission will base its determination on the percentage of votes received in the official vote count certified in each State. In notifying the candidate, the Commission will give the legal and factual reasons for its determination and advise the candidate of the evidence on which the determination is based.

(2) The candidate may submit, within 15 days after the Commission's initial determination, written legal or factual materials to demonstrate that a redetermination is appropriate. Such materials may be submitted by counsel if the candidate so desires.

(3) The Commission will consider any written legal or factual materials timely submitted by the candidate in making its final determination. A final determination of certification by the Commission will be accompanied by a written statement of reasons for the Commission's action. This statement will explain the reasons underlying the Commission's determination and will summarize the results of any investigation on which the determination is based.

(c) *Certification of minor and new party candidates for post-election payments.* (1) Not later than 30 days after the general election, the Commission will determine whether a minor or new party candidate is eligible for post-election payments.

(2) The Commission's determination of eligibility will be based on the following factors:

(i) The candidate has received at least 5% or more of the total popular vote based on unofficial vote results in each State;

(ii) The candidate has filed a preliminary statement of his or her net outstanding qualified campaign expenses pursuant to 11 CFR 9004.9(a); and

(iii) The candidate has met all applicable conditions for eligibility under 11 CFR 9003.1 and 9003.2.

(3) The Commission will notify the candidate of its initial determination of the amount, if any, to which the candidate is entitled, give the legal and factual reasons for its determination and advise the candidate of the evidence on which the determination is based. The Commission will also notify the candidate that it will deduct a percentage of the amount to which the candidate is entitled based on the unofficial vote results when the Commission certifies an amount for payment to the Secretary. This deduction will be based on the average percentage differential between the unofficial and official vote results for all candidates who received public funds in the preceding Presidential general election.

(4) The candidate may submit within 15 days after the Commission's initial determination written legal or factual materials to demonstrate that a redetermination is appropriate. Such materials may be submitted by counsel if the candidate so desires.

(5) The Commission will consider any written legal or factual materials timely submitted by the candidate in making its final determination. A final determination of certification by the Commission will be accompanied by a written statement of reasons for the Commission's action. This statement will explain the reasons underlying the Commission's determination and will summarize the results of any investigation on which the determination is based.

(d) All certifications made by the Commission pursuant to this section shall be final and conclusive, except to the extent that they are subject to examination and audit by the Commission under 11 CFR part 9007 and judicial review under 26 U.S.C. 9011.

§ 9005.2 Payments to eligible candidates from the Fund.

(a) Upon receipt of a certification from the Commission under 11 CFR 9005.1 for payment to the eligible Presidential and Vice Presidential candidates of a political party, the Secretary shall pay to such candidates out of the Fund the amount certified by the Commission. Amounts paid to a candidate shall be under the control of that candidate.

(b)(1) If at the time of a certification from the Commission under 11 CFR 9005.1, the Secretary determines that the monies in the Fund are not, or may not be, sufficient to satisfy the full entitlements of the eligible candidates of all political parties, he or she shall withhold an amount which is determined to be necessary to assure that the eligible candidates of each political party will receive their pro rata share.

(2) Amounts withheld under 11 CFR 9005.2(b)(1) shall be paid when the Secretary determines that there are sufficient monies in the Fund to pay such amounts, or pro rata portions thereof, to all eligible candidates from whom amounts have been withheld.

(c) Payments received from the Fund by a major party candidate shall be deposited in a separate account maintained by his or her authorized committee, unless there is a deficiency in the Fund as provided under 11 CFR 9005.2(b)(1). In the case of a deficiency, the candidate may establish a separate account for payments from the Fund or may deposit such payments with contributions received pursuant to 11 CFR 9003.3(b). The account(s) shall be maintained at a State bank, federally chartered depository institution or other depository institution, the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation.

(d) No funds other than the payments received from the Treasury, reimbursements, or income generated through use of public funds in accordance with 11 CFR 9004.5, shall be deposited in the account described in 11 CFR 9005.2(c). "Reimbursements" shall include, but are not limited to, refunds of deposits, vendor refunds, reimbursements for travel expenses under 11 CFR 9004.6 and 9004.7 and reimbursements for legal and accounting costs under 11 CFR 9003.3(a)(2)(ii)(B).

PART 9006—REPORTS AND RECORDKEEPING

Sec.
9006.1 Separate reports.
9006.2 Filing dates.

Authority: 2 U.S.C. 434 and 26 U.S.C. 9009(b).

§ 9006.1 Separate reports.

(a) The authorized committee(s) of a candidate shall report all expenditures to further the candidate's general election campaign in reports separate from reports of any other expenditures made by such committee(s) with respect to other elections. Such reports shall be filed pursuant to the requirements of 11 CFR part 104.

(b) The authorized committee(s) of a candidate shall file separate reports as follows:

(1) One report shall be filed which lists all receipts and disbursements of:

(i) Contributions and loans received by a major party candidate pursuant to 11 CFR part 9003 to make up deficiencies in Fund payments due to the application of 11 CFR part 9005;

(ii) Contributions and loans received pursuant to 11 CFR 9003.2(b)(2) by a minor, or new party for use in the general election;

(iii) Receipts for expenses incurred before the beginning of the expenditure report period pursuant to 11 CFR 9003.4;

(iv) Personal funds expended in accordance with 11 CFR 9003.2(c); and

(v) Payments received from the Fund.

(2) A second report shall be filed which lists all receipts of and disbursements from, contributions received for the candidate's legal and accounting compliance fund in accordance with 11 CFR 9003.3(a).

§ 9006.2 Filing dates.

The reports required to be filed under 11 CFR 9006.1 shall be filed during an election year on a monthly or quarterly basis as prescribed at 11 CFR 104.5(b)(1). During a non-election year, the candidate's principal campaign committee may elect to file reports either on a monthly or quarterly basis in accordance with 11 CFR 104.5(b)(2).

PART 9007—EXAMINATIONS AND AUDITS; REPAYMENTS

Sec.
9007.1 Audits.
9007.2 Repayments.
9007.3 Extensions of time.
9007.4 Additional audits.
9007.5 Petitions for rehearing; stays of repayment determinations.
9007.6 Stale-dated committee checks.

Authority: 26 U.S.C. 9007 and 9009(b).

§ 9007.1 Audits.

(a) *General.* (1) After each Presidential election, the Commission will conduct a thorough examination and audit of the receipts, disbursements, debts and obligations of each candidate, his or her authorized committee(s), and agents of such candidates or committees. Such examination and audit will include, but will not be limited to, expenditures pursuant to 11 CFR 9003.4 prior to the beginning of the expenditure report period, contributions to and expenditures made from the legal and accounting compliance fund established under 11 CFR 9003.3(a), contributions received to supplement any payments received from the Fund, and qualified campaign expenses.

(2) In addition, the Commission may conduct other examinations and audits from time to time as it deems necessary to carry out the provisions of this subchapter.

(3) Information obtained pursuant to any audit and examination conducted under 11 CFR 9007.1(a) (1) and (2) may be used by the Commission as the basis, or partial basis, for its repayment determinations under 11 CFR 9007.2.

(b) *Conduct of fieldwork.* (1) If the candidate or the candidate's authorized committee does not maintain or use any computerized information containing the data listed in 11 CFR 9003.6, the Commission will give the candidate's authorized committee at least two weeks, notice of the Commission's intention to commence fieldwork on the audit and examination. The fieldwork shall be conducted at a site provided by the committee. If the candidate or the candidate's authorized committee maintains or uses computerized information containing any of the data listed in 11 CFR 9003.6, the Commission generally will request such information prior to commencement of audit fieldwork. Such request will be made in writing. The committee shall produce the computerized information no later than 15 calendar days after service of such request. Upon receipt of the computerized information requested and compliance with the technical specifications of 11 CFR 9003.6(b), the Commission will give the candidate's authorized committee at least two weeks, notice of the Commission's intention to commence fieldwork on the audit and examination. The fieldwork shall be conducted at a site provided by the committee. During or after audit fieldwork, the Commission may request additional or updated computerized information which expands the coverage dates of computerized information previously provided, and which may be used for purposes including, but not limited to, updating a statement of net outstanding qualified campaign expenses. During or after audit fieldwork, the Commission may also request additional computerized information which was created by or becomes available to the committee that is of assistance in the Commission's audit. The committee shall produce the additional or updated computerized information no later than 15 calendar days after service of the Commission's request.

(i) *Office space and records.* On the date scheduled for the commencement of fieldwork, the candidate or his or her authorized committee(s) shall provide Commission staff with office space and committee records in accordance with the candidate and committee agreement under 11 CFR 9003.1(b)(6).

(ii) *Availability of committee personnel.* On the date scheduled for the commencement of fieldwork, the candidate or his or her authorized committee(s) shall have committee personnel present at the site of the fieldwork. Such personnel shall be familiar with the committee's records and operation and shall be available to Commission staff to answer questions and to aid in locating records.

(iii) *Failure to provide staff, records or office space.* If the candidate or his or her authorized committee(s) fail to provide adequate office space, personnel or committee records, the Commission may seek judicial intervention under 2 U.S.C. 437d or 26 U.S.C. 9010(c) to enforce the candidate and committee agreement made under 11 CFR 9003.1(b). Before seeking judicial intervention, the Commission will notify the candidate of his or her failure to comply with the agreement and will recommend corrective action to bring the candidate into compliance. Upon receipt of the Commission's notification, the candidate will have ten (10) calendar days in which to take the corrective action indicated or to otherwise demonstrate to the Commission in writing that he or she is complying with the candidate and committee agreements.

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(i) *Office space and records.* On the date scheduled for the commencement of fieldwork, the candidate or his or her authorized committee(s) shall provide Commission staff with office space and committee records in accordance with the candidate and committee agreement under 11 CFR 9003.1(b)(6).

(ii) *Availability of committee personnel.* On the date scheduled for the commencement of fieldwork, the candidate or his or her authorized committee(s) shall have committee personnel present at the site of the fieldwork. Such personnel shall be familiar with the committee's records and operation and shall be available to Commission staff to answer questions and to aid in locating records.

(iii) *Failure to provide staff, records or office space.* If the candidate or his or her authorized committee(s) fail to provide adequate office space, personnel or committee records, the Commission may seek judicial intervention under 2 U.S.C. 437d or 26 U.S.C. 9010(c) to enforce the candidate and committee agreement made under 11 CFR 9003.1(b). Before seeking judicial intervention, the Commission will notify the candidate of his or her failure to comply with the agreement and will recommend corrective action to bring the candidate into compliance. Upon receipt of the Commission's notification, the candidate will have ten (10) calendar days in which to take the corrective action indicated or to otherwise demonstrate to the Commission in writing that he or she is complying with the candidate and committee agreements.

(iv) If, in the course of the audit process, a dispute arises over the documentation sought or other requirements of the candidate agreement, the candidate may seek review by the Commission of the issues raised. To seek review, the candidate shall submit a written statement within 10 days after the disputed Commission staff request is made, describing the dispute and indicating the candidate's proposed alternative(s).

(v) If the candidate or his or her authorized committee fails to produce particular records, materials, evidence or other information requested by the Commission, the Commission may issue an order pursuant to 2 U.S.C. 437d(a)(1) or a subpoena or subpoena duces tecum pursuant to 2 U.S.C. 437d(a)(3). The procedures set forth in 11 CFR 111.11 through 111.15, as appropriate, shall apply to the production of such records, materials, evidence or other information as specified in the order, subpoena or subpoena duces tecum.

(2) Fieldwork will include the following steps designed to keep the candidate and committee informed as to the progress of the audit and to expedite the process:

(i) *Entrance conference.* At the outset of the fieldwork, Commission staff will hold an entrance conference, at which the candidate's representatives will be advised of the purpose of the audit and the general procedures to be followed. Future requirements of the candidate and his or her authorized committee, such as possible repayments to the United States Treasury, will also be discussed. Committee representatives shall provide information and records necessary to conduct the audit, and Commission staff will be available to answer committee questions.

(ii) *Review of records.* During the fieldwork, Commission staff will review committee records and may conduct interviews of committee personnel. Commission staff will be available to explain aspects of the audit and examination as it progresses. Additional meetings between Commission staff and committee personnel may be held from time to time during the fieldwork to discuss possible audit findings and to resolve issues arising during the course of the audit.

(iii) *Exit conference.* At the conclusion of the fieldwork, Commission staff will hold an exit conference to discuss with committee representatives the staff's preliminary findings and recommendations which the Commission staff anticipates that it may present to the Commission for approval. Commission staff will advise committee representatives at this conference of the projected timetable regarding the issuance of an audit report, the committee's opportunity to respond thereto, and the Commission's initial and final repayment determinations under 11 CFR 9007.2.

(3) Commission staff may conduct additional fieldwork after the completion of the fieldwork conducted pursuant to 11 CFR 9007.1(b) (1) and (2). Factors that may necessitate such follow-up fieldwork include, but are not limited to, the following:

(i) Committee response to audit findings;

(ii) Financial activity of the committee subsequent to the fieldwork conducted pursuant to 11 CFR 9007.1(b)(1);

(iii) Committee responses to Commission repayment determinations made under 11 CFR 9007.2.

(4) The Commission will notify the candidate and his or her authorized committee if follow-up fieldwork is necessary. The provisions of 11 CFR 9007.1(b) (1) and (2) will apply to any additional fieldwork conducted.

(c) *Preparation of interim audit report.* (1) After the completion of the fieldwork conducted pursuant to 11 CFR 9007.1(b)(1), the Commission will issue an interim audit report to the candidate and his or her authorized committee. The interim audit report may contain Commission findings and recommendations regarding one or more of the following areas:

(i) An evaluation of procedures and systems employed by the candidate and committee to comply with applicable provisions of the Federal Election Campaign Act, Presidential Election Campaign Fund Act and Commission regulations;

(ii) Accuracy of statements and reports filed with the Commission by the candidate and committee;

(iii) Compliance of the candidate and committee with applicable statutory and regulatory provisions in those instances where the Commission has not instituted any enforcement action on the matter(s) under the provisions of 2 U.S.C. 437g and 11 CFR part 111; and

(iv) Preliminary calculations regarding future repayments to the United States Treasury.

(2) The candidate and his or her authorized committee will have an opportunity to submit in writing within 30 calendar days of service of the interim report, legal and factual materials disputing or commenting on the contents of the interim report. Such materials may be submitted by counsel if the candidate so desires.

(3) The Commission will consider any written legal and factual materials submitted by the candidate or his or her authorized committee in accordance with 11 CFR 9007.1(c)(2) before approving and issuing an audit report to be released to the public. The contents of the publicly released audit report may differ from that of the interim report since the Commission will consider timely submissions of legal and factual materials by the candidate or committee in response to the interim report.

(d) *Preparation of publicly released audit report.* An audit report prepared subsequent to an interim report will be publicly released pursuant to 11 CFR 9007.1(e). This report will contain Commission findings and recommendations addressed in the interim audit report but may contain adjustments based on the candidate's response to the interim report. In addition, this report will contain an initial repayment determination made by the Commission pursuant to 11 CFR 9007.2(c)(1) in lieu of the preliminary calculations set forth in the interim report.

(e) *Public release of audit report.* (1) After the candidate and committee have had an opportunity to respond to a written interim report of the Commission, the Commission will make public the audit report prepared subsequent to the interim report, as provided in 11 CFR 9007.1(d).

(2) If the Commission determines, on the basis of information obtained under the audit and examination process, that certain matters warrant enforcement under 2 U.S.C. 437g and 11 CFR part 111, those matters will not be contained in the publicly released report. In such cases, the audit report will indicate that certain other matters have been referred to the Commission's Office of General Counsel.

(3) The Commission will provide the candidate and the committee with copies of the agenda document containing those portions of the final audit report to be considered in open session 24 hours prior to releasing the agenda document to the public. The Commission will also provide the candidate and committee with copies of the final audit report 24 hours before releasing the report to the public.

(4) Addenda to the audit report may be issued from time to time as circumstances warrant and as additional information becomes available. Such addenda may be based in part on follow-up fieldwork conducted under 11 CFR 9007.1(b)(3) and will be placed on the public record.

§ 9007.2 Repayments.

(a) *General.* (1) A candidate who has received payments from the Fund under

11 CFR part 9005 shall pay the United States Treasury any amounts which the Commission determines to be repayable under this section. In making repayment determinations under this section, the Commission may utilize information obtained from audits and examinations conducted pursuant to 11 CFR 9007.1 or otherwise obtained by the Commission in carrying out its responsibilities under this subchapter.

(2) The Commission will notify the candidate of any repayment determinations made under this section as soon as possible, but not later than 3 years after the close of the expenditure report period. The Commission's issuance of an interim audit report to the candidate under 11 CFR 9007.1(c) will constitute notification for purposes of the 3-year period.

(3) Once the candidate receives notice of the Commission's final repayment determination under this section, the candidate should give preference to the repayment over all other outstanding obligations of his or her committee, except for any federal taxes owed by the committee.

(b) *Bases for repayment.* The Commission may determine that an eligible candidate of a political party who has received payments from the Fund must repay the United States Treasury under any of the circumstances described below.

(1) *Payments in excess of candidate's entitlement.* If the Commission determines that any portion of the payments made to the candidate was in excess of the aggregate payments to which such candidate was entitled, it will so notify the candidate, and such candidate shall pay to the United States Treasury an amount equal to such portion.

(2) *Use of funds for non-qualified campaign expenses.* (i) If the Commission determines that any amount of any payment to an eligible candidate from the Fund was used for purposes other than those described in paragraphs (b)(2)(i) (A) through (C) of this section, it will notify the candidate of the amount so used, and such candidate shall pay to the United States Treasury an amount equal to such amount.

(A) To defray qualified campaign expenses;

(B) To repay loans, the proceeds of which were used to defray qualified campaign expenses; and

(C) To restore funds (other than contributions which were received and expended by minor or new party candidates to defray qualified campaign expenses) which were used to defray qualified campaign expenses.

(ii) Examples of Commission repayment determinations under 11 CFR 9007.2(b)(2) include, but are not limited to the following:

(A) Determinations that a candidate, a candidate's authorized committee(s) or agent(s) have incurred expenses in excess of the aggregate payments to which an eligible major party candidate is entitled;

(B) Determinations that amounts spent by a candidate, a candidate's authorized committee(s) or agent(s) from the Fund were not documented in accordance with 11 CFR 9003.5;

(C) Determinations that any portion of the payments made to a candidate from the Fund was expended in violation of State or Federal law; and

(D) Determinations that any portion of the payments made to a candidate from the Fund was used to defray expenses resulting from a violation of State or Federal law, such as the payment of fines or penalties.

(iii) In the case of a candidate who has received contributions pursuant to 11 CFR 9003.3 (b) or (c), the amount of any repayment sought under this section shall bear the same ratio to the total amount determined to have been used for non-qualified campaign expenses as the amount of payments certified to the candidate from the Fund bears to the total deposits, as of December 31 of the Presidential election year. For purposes of this section, total deposits means all deposits to all candidate accounts minus transfers between accounts, refunds, rebates, reimbursements, checks returned for insufficient funds, proceeds of loans and other similar amounts.

(3) *Surplus.* If the Commission determines that a portion of payments from the Fund remains unspent after all qualified campaign expenses have been paid, it shall so notify the candidate, and such candidate shall pay the United States Treasury that portion of surplus funds.

(4) *Income on investment of payments from the Fund.* If the Commission determines that a candidate received any income as a result of investment or other use of payments from the Fund pursuant to 11 CFR 9004.5, it shall so notify the candidate and such candidate shall pay to the United States Treasury an amount equal to the amount determined to be income, less any Federal, State or local taxes on such income.

(5) *Unlawful acceptance of contributions by an eligible candidate of a major party.* If the Commission determines that an eligible candidate of a major party, the candidate's authorized committee(s) or agent(s) accepted contributions to defray qualified campaign expenses (other than contributions to make up deficiencies in payments from the Fund, or to defray expenses incurred for legal and accounting services in accordance with 11 CFR 9003.3(a)), it shall notify the candidate of the amount of contributions so accepted, and the candidate shall pay to the United States Treasury an amount equal to such amount.

(c) *Repayment determination procedures.* The Commission repayment determination will be made in accordance with the procedures set forth at 11 CFR 9007.2 (c)(1) through (c)(4).

(1) *Initial determination.* The Commission will provide the candidate with a written notice of its initial repayment determination(s). This notice will be included in the Commission's publicly-released audit report pursuant to 11 CFR 9007.1(d) and will set forth the legal and factual reasons for such determination(s). Such notice will also advise the candidate of the evidence upon which any such determination is based. If the candidate does not dispute an initial repayment determination of the Commission within 30 calendar days after service of the notice, such initial determination will be considered a final determination of the Commission.

(2) *Submission of written materials.* If the candidate disputes the Commission's initial repayment determination(s), he or she shall have an opportunity to submit in writing, within 30 calendar days after service of the Commission's notice, legal and factual materials to demonstrate that no repayment, or a lesser repayment, is required. The Commission will consider any written legal and factual materials submitted by the candidate within this 30 day period in making its final repayment determination(s). Such materials may be submitted by counsel if the candidate so desires.

(3) *Oral presentation.* A candidate who has submitted written materials under 11 CFR 9007.2(c)(2) may request that the Commission provide such candidate with an opportunity to address the Commission in open session. If the Commission decides by an affirmative vote of four (4) of its members to grant the candidate's request, it will inform the candidate of the date and time set for the oral presentation. At the date and time set by the Commission, the candidate or candidate's designated representative will be allotted an amount of time in which to make an oral presentation to the Commission based upon the legal and factual materials submitted under 11 CFR 9007.2(c)(2). The candidate or

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(c) *Repayment determination procedures.* The Commission repayment determination will be made in accordance with the procedures set forth at 11 CFR 9007.2 (c)(1) through (c)(4).

(1) *Initial determination.* The Commission will provide the candidate with a written notice of its initial repayment determination(s). This notice will be included in the Commission's publicly-released audit report pursuant to 11 CFR 9007.1(d) and will set forth the legal and factual reasons for such determination(s). Such notice will also advise the candidate of the evidence upon which any such determination is based. If the candidate does not dispute an initial repayment determination of the Commission within 30 calendar days after service of the notice, such initial determination will be considered a final determination of the Commission.

(2) *Submission of written materials.* If the candidate disputes the Commission's initial repayment determination(s), he or she shall have an opportunity to submit in writing, within 30 calendar days after service of the Commission's notice, legal and factual materials to demonstrate that no repayment, or a lesser repayment, is required. The Commission will consider any written legal and factual materials submitted by the candidate within this 30 day period in making its final repayment determination(s). Such materials may be submitted by counsel if the candidate so desires.

(3) *Oral presentation.* A candidate who has submitted written materials under 11 CFR 9007.2(c)(2) may request that the Commission provide such candidate with an opportunity to address the Commission in open session. If the Commission decides by an affirmative vote of four (4) of its members to grant the candidate's request, it will inform the candidate of the date and time set for the oral presentation. At the date and time set by the Commission, the candidate or candidate's designated representative will be allotted an amount of time in which to make an oral presentation to the Commission based upon the legal and factual materials submitted under 11 CFR 9007.2(c)(2). The candidate or

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representative will also have the opportunity to answer any questions from individual members of the Commission.

(4) *Final determination.* In making its final repayment determination(s), the Commission will consider any submission made under 11 CFR 9007.2(c)(2) and any oral presentation made under 11 CFR 9007.2(c)(3). A final determination that a candidate must repay a certain amount will be accompanied by a written statement of reasons for the Commission's actions. This statement will explain the reasons underlying the Commission's determination and will summarize the results of any investigation upon which the determination is based.

(d) *Repayment period.* (1) Within 90 calendar days of service of the notice of the Commission's initial repayment determination(s), the candidate shall repay to the United States Treasury amounts which the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 90 calendar days in which to make repayment.

(2) If the candidate submits written materials under 11 CFR 9007.2(c)(2) disputing the Commission's initial repayment determination(s), the time for repayment will be suspended until the Commission makes its final repayment determination(s). Within 30 calendar days after service of the notice of the Commission's final repayment determination(s), the candidate shall repay to the United States Treasury amounts which the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 90 calendar days in which to make repayment.

(e) *Computation of time.* The time periods established by this section shall be computed in accordance with 11 CFR 111.2.

(f) *Additional repayments.* Nothing in this section will prevent the Commission from making additional repayment determinations on one or more of the bases set forth at 11 CFR 9007.2(b) after it has made a final determination on any such basis. The Commission may make additional repayment determinations where there exist facts not used as the basis for a previous final determination. Any such additional repayment determination will be made in accordance with the provisions of this section.

(g) *Newly-discovered assets.* If, after any initial or final repayment determination made under this section, a candidate or his or her authorized committee(s) receives or becomes aware of assets not previously included in any statement of net outstanding qualified campaign expenses submitted pursuant to 11 CFR 9004.9, the candidate or his or her authorized committee(s) shall promptly notify the Commission of such newly-discovered assets. Newly-discovered assets may include refunds, rebates, late-arriving receivables, and actual receipts for capital assets in excess of the value specified in any previously-submitted statement of net outstanding qualified campaign expenses. Newly-discovered assets may serve as a basis for additional repayment determinations under 11 CFR 9007.2(f).

(h) *Limit on repayment.* No repayment shall be required from the eligible candidates of a political party under 11 CFR 9007.2 to the extent that such repayment, when added to other repayments required from such candidates under 11 CFR 9007.2, exceeds the amount of payments received by such candidates under 11 CFR 9005.2.

(i) *Petitions for rehearing; stays pending appeal.* The candidate may file a petition for rehearing of a final repayment determination in accordance with 11 CFR 9007.5(a). The candidate may request a stay of a final repayment determination in accordance with 11 CFR 9007.5(c) pending the candidate's appeal of that repayment determination.

§ 9007.3 Extensions of time.

(a) It is the policy of the Commission that extensions of time under 11 CFR part 9007 will not be routinely granted.

(b) Whenever a candidate has a right or is required to take action within a period of time prescribed by 11 CFR part 9007 or by notice given thereunder, the candidate may apply in writing to the Commission for an extension of time in which to exercise such right or take such action. The candidate shall demonstrate in the application for extension that good cause exists for his or her request.

(c) An application for extension of time shall be made at least 7 calendar days prior to the expiration of the time period for which the extension is sought. The Commission may, upon a showing of good cause, grant an extension of time to a candidate who has applied for such extension in a timely manner. The length of time of any extension granted hereunder shall be decided by the Commission and may be less than the amount of time sought by the candidate in his or her application.

(d) If a candidate fails to seek an extension of time, exercise a right or take a required action prior to the expiration of a time period prescribed by 11 CFR part 9007, the Commission may, on the candidate's showing of excusable neglect:

(1) Permit such candidate to exercise his or her right(s), or take such required action(s) after the expiration of the prescribed time period; and

(2) Take into consideration any information obtained in connection with the exercise of any such right or taking of any such action before making decisions or determinations under 11 CFR part 9007.

§ 9007.4 Additional audits.

In accordance with 11 CFR 104.16(c), the Commission, pursuant to 11 CFR 111.10, may upon affirmative vote of four members conduct an audit and field investigation of any committee in any case in which the Commission finds reason to believe that a violation of a statute or regulation over which the Commission has jurisdiction has occurred or is about to occur.

§ 9007.5 Petitions for rehearing; stays of repayment determinations.

(a) *Petitions for rehearing.* (1) Following the Commission's final repayment determination or a final determination that a candidate is not entitled to all or a portion of post election funding under 11 CFR 9004.9(f), the candidate may file a petition for rehearing setting forth the relief desired and the legal and factual basis in support. To be considered by the Commission, petitions for rehearing must:

(i) Be filed within 20 calendar days following service of the Commission's final determination;

(ii) Raise new questions of law or fact that would materially alter the Commission's final determination; and

(iii) Set forth clear and convincing grounds why such questions were not and could not have been presented during the earlier determination process.

(2) If a candidate files a timely petition under this section challenging a Commission final repayment determination, the time for repayment will be suspended until the Commission serves notice on the candidate of its determination on the petition. The time periods for making repayment under 11 CFR 9007.2(d)(2) shall apply to any amounts determined to be repayable following the Commission's consideration of a petition for rehearing under this section.

(b) *Effect of failure to raise issues.* The candidate's failure to raise an argument in a timely fashion during the initial determination process or in a petition for rehearing under this section, as appropriate, shall be deemed a waiver of the candidate's right to present such arguments in any future stage of proceedings including any petition for review filed under 26 U.S.C. 9011(a). An issue is not timely raised in a petition for rehearing if it could have been raised earlier in response to the Commission's initial determination.

(c) *Stay of repayment determination pending appeal.* (1)(i) The candidate may apply to the Commission for a stay of all or a portion of the amount determined to be repayable under this section or under 11 CFR 9007.2 pending the candidate's appeal of that repayment determination pursuant to 26 U.S.C. 9011(a). The repayment amount requested to be stayed shall not exceed the amount at issue on appeal.

(ii) A request for a stay shall be made in writing and shall be filed within 30 calendar days after service of the Commission's decision on a petition for rehearing under paragraph (a) of this section or, if no petition for rehearing is filed, within 30 calendar days after service of the Commission's final repayment determination under 11 CFR 9007.2(c)(4).

(2) The Commission's approval of a stay request will be conditioned upon the candidate's presentation of evidence in the stay request that he or she:

(i) Has placed the entire amount at issue in a separate interest-bearing account pending the outcome of the appeal and that withdrawals from the account may only be made with the joint signatures of the candidate or his or her agent and a Commission representative; or

(ii) Has posted a surety bond guaranteeing payment of the entire amount at issue plus interest; or

(iii) Has met the following criteria:

(A) He or she will suffer irreparable injury in the absence of a stay; and, if so, that

(B) He or she has made a strong showing of the likelihood of success on the merits of the judicial action.

(C) Such relief is consistent with the public interest; and

(D) No other party interested in the proceedings would be substantially harmed by the stay.

(3) In determining whether the candidate has made a strong showing of the likelihood of success on the merits under paragraph (c)(2)(iii)(B) of this section, the Commission may consider whether the issue on appeal presents a novel or admittedly difficult legal question and whether the equities of the case suggest that the status quo should be maintained.

(4) All stays shall require the payment of interest on the amount at issue. The amount of interest due shall be calculated from the date 30 days after service of the Commission's final repayment determination under 11 CFR 9007.2(c)(4) and shall be the greater of:

(i) An amount calculated in accordance with 28 U.S.C. 1961 (a) and (b); or

(ii) The amount actually earned on the funds set aside under this section.

§ 9007.6 Stale-dated committee checks.

If the committee has checks outstanding to creditors or contributors that have not been cashed, the committee shall notify the Commission. The committee shall inform the Commission of its efforts to locate the payees, if such efforts have been necessary, and its efforts to encourage the payees to cash the outstanding checks. The committee shall also submit a check for the total amount of such outstanding checks, payable to the United States Treasury.

14. 11 CFR part 9012 is revised to read as follows:

PART 9012—UNAUTHORIZED EXPENDITURES AND CONTRIBUTIONS

Sec.
9012.1 Excessive expenses.
9012.2 Unauthorized acceptance of contributions.
9012.3 Unlawful use of payments received from the Fund.
9012.4 Unlawful misrepresentations and falsification of statements, records or other evidence to the Commission; refusal to furnish books and records.
9012.5 Kickbacks and illegal payments.

Authority: 26 U.S.C. 9012. 12.

§ 9012.1 Excessive expenses.

(a) It shall be unlawful for an eligible candidate of a political party for President and Vice President in a Presidential election or the candidate's authorized committee(s) knowingly and willfully to incur qualified campaign expenses in excess of the aggregate payments to which the eligible candidates of a major party are entitled under 11 CFR part 9004 with respect to such election.

(b) It shall be unlawful for the national committee of a major or minor party knowingly and willfully to incur expenses with respect to a presidential nominating convention in excess of the expenditure limitation applicable with respect to such committee under 11 CFR part 9008, unless the incurring of such expenses is authorized by the Commission under 11 CFR 9008.7(a)(3).

§ 9012.2 Unauthorized acceptance of contributions.

(a) It shall be unlawful for an eligible candidate of a major party in a Presidential election or any of his or her authorized committees knowingly and willfully to accept any contribution to defray qualified campaign expenses, except to the extent necessary to make up any deficiency in payments received from the Fund due to the application of 11 CFR 9005.2(b), or to defray expenses which would be qualified campaign expenses but for 11 CFR 9002.11(a)(3).

(b) It shall be unlawful for an eligible candidate of a political party (other than a major party) in a Presidential election or any of his or her authorized committees knowingly and willfully to accept and expend or retain contributions to defray qualified campaign expenses in an amount which exceeds the qualified campaign expenses incurred in that election by that eligible candidate or his or her authorized committee(s).

§ 9012.3 Unlawful use of payments received from the Fund.

(a) It shall be unlawful for any person who receives any payment under 11 CFR part 9005, or to whom any portion of any payment so received is transferred, knowingly and willfully to use, or authorize the use of, such payment or any portion thereof for any purpose other than—

(1) To defray the qualified campaign expenses with respect to which such payment was made; or

(2) To repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used, to defray such qualified campaign expenses.

(b) It shall be unlawful for the national committee of a major or minor party which receives any payment under 11 CFR part 9008 to use, or authorize the use of, such payment for any purpose other than a purpose authorized by 11 CFR 9008.6.

§ 9012.4 Unlawful misrepresentations and falsification of statements, records or other evidence to the Commission; refusal to furnish books and records.

It shall be unlawful for any person knowingly and willfully—

(a) To furnish any false, fictitious, or fraudulent evidence, books or information to the Commission under 11 CFR parts 9001-9008, or to include in any evidence, books or information so furnished any misrepresentation of a material fact, or to falsify or conceal any evidence, books or information relevant

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§ 9012.2 Unauthorized acceptance of contributions.

(a) It shall be unlawful for an eligible candidate of a major party in a Presidential election or any of his or her authorized committees knowingly and willfully to accept any contribution to defray qualified campaign expenses, except to the extent necessary to make up any deficiency in payments received from the Fund due to the application of 11 CFR 9005.2(b), or to defray expenses which would be qualified campaign expenses but for 11 CFR 9002.11(a)(3).

(b) It shall be unlawful for an eligible candidate of a political party (other than a major party) in a Presidential election or any of his or her authorized committees knowingly and willfully to accept and expend or retain contributions to defray qualified campaign expenses in an amount which exceeds the qualified campaign expenses incurred in that election by that eligible candidate or his or her authorized committee(s).

§ 9012.3 Unlawful use of payments received from the Fund.

(a) It shall be unlawful for any person who receives any payment under 11 CFR part 9005, or to whom any portion of any payment so received is transferred, knowingly and willfully to use, or authorize the use of, such payment or any portion thereof for any purpose other than—

(1) To defray the qualified campaign expenses with respect to which such payment was made; or

(2) To repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used, to defray such qualified campaign expenses.

(b) It shall be unlawful for the national committee of a major or minor party which receives any payment under 11 CFR part 9008 to use, or authorize the use of, such payment for any purpose other than a purpose authorized by 11 CFR 9008.6.

§ 9012.4 Unlawful misrepresentations and falsification of statements, records or other evidence to the Commission; refusal to furnish books and records.

It shall be unlawful for any person knowingly and willfully—

(a) To furnish any false, fictitious, or fraudulent evidence, books or information to the Commission under 11 CFR parts 9001-9008, or to include in any evidence, books or information so furnished any misrepresentation of a material fact, or to falsify or conceal any evidence, books or information relevant

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to a certification by the Commission or any examination and audit by the Commission under 11 CFR parts 9001 *et seq.*; or

(b) To fail to furnish to the Commission any records, books or information requested by the Commission for purposes of 11 CFR parts 9001 *et seq.*

§ 9012.5 Kickbacks and illegal payments.

(a) It shall be unlawful for any person knowingly and willfully to give or accept any kickback or any illegal payment in connection with any qualified campaign expenses of any eligible candidate or his or her authorized committee(s).

(b) It shall be unlawful for the national committee of a major or minor party knowingly and willfully to give or accept any kickback or any illegal payment in connection with any expense incurred by such committee with respect to a Presidential nominating convention.

15. 11 CFR parts 9031 through 9039 is revised to read as follows:

PART 9031—SCOPE

Sec.
9031.1 Scope.

Authority: 26 U.S.C. 9031 and 9039(b).

§ 9031.1 Scope.

This subchapter governs entitlement to and use of funds certified from the Presidential Primary Matching Payment Account under 26 U.S.C. 9031 *et seq.* The definitions, restrictions, liabilities and obligations imposed by this subchapter are in addition to those imposed by sections 431–455 of title 2, United States Code, and regulations prescribed thereunder (11 CFR part 100 through 116). Unless expressly stated to the contrary, this subchapter does not alter the effect of any definitions, restrictions, obligations and liabilities imposed by sections 431–455 of title 2, United States Code, or regulations prescribed thereunder (11 CFR parts 100 through 116).

PART 9032—DEFINITIONS

Sec.
9032.1 Authorized committee.
9032.2 Candidate.
9032.3 Commission.
9032.4 Contribution.
9032.5 Matching payment account.
9032.6 Matching payment period.
9032.7 Primary election.
9032.8 Political committee.
9032.9 Qualified campaign expenses.
9032.10 Secretary.
9032.11 State.

Authority: 26 U.S.C. 9032 and 9039(b).

§ 9032.1 Authorized committee.

(a) Notwithstanding the definition at 11 CFR 100.5, *authorized committee* means with respect to candidates (as defined at 11 CFR 9032.2) seeking the nomination of a political party for the office of President, any political committee that is authorized by a candidate to solicit or receive contributions or to incur expenditures on behalf of the candidate. The term *authorized committee* includes the candidate's principal campaign committee designated in accordance with 11 CFR 102.12, any political committee authorized in writing by the candidate in accordance with 11 CFR 102.13, and any political committee not disavowed by the candidate in writing pursuant to 11 CFR 100.3(a)(3).

(b) Any withdrawal of an authorization shall be in writing and shall be addressed and filed in the same manner provided for at 11 CFR 102.12 or 102.13.

(c) For the purposes of this subchapter, references to the "candidate" and his or her responsibilities under this subchapter shall also be deemed to refer to the candidate's authorized committee(s).

(d) An expenditure by an authorized committee on behalf of the candidate who authorized the committee cannot qualify as an independent expenditure.

(e) A delegate committee, as defined in 11 CFR 100.5(e)(5), is not an authorized committee of a candidate unless it also meets the requirements of 11 CFR 9032.1(a). Expenditures by delegate committees on behalf of a candidate may count against that candidate's expenditure limitation under the circumstances set forth in 11 CFR 110.14.

§ 9032.2 Candidate.

Candidate means an individual who seeks nomination for election to the office of President of the United States. An individual is considered to seek nomination for election if he or she—

(a) Takes the action necessary under the law of a State to qualify for a caucus, convention, primary election or run-off election;

(b) Receives contributions or incurs qualified campaign expenses;

(c) Gives consent to any other person to receive contributions or to incur qualified campaign expenses on his or her behalf; or

(d) Receives written notification from the Commission that any other person is receiving contributions or making expenditures on the individual's behalf and fails to disavow that activity by letter to the Commission within 30 calendar days after receipt of notification.

§ 9032.3 Commission.

Commission means the Federal Election Commission, 999 E Street NW., Washington, DC 20463.

§ 9032.4 Contribution.

For purposes of this subchapter, *contribution* has the same meaning given the term under 2 U.S.C. 431(8)(A) and 11 CFR 100.7, except as provided at 11 CFR 9034.4(b)(4).

§ 9032.5 Matching payment account.

Matching payment account means the Presidential Primary Matching Payment Account established by the Secretary of the Treasury under 26 U.S.C. 9037(a).

§ 9032.6 Matching payment period.

Matching payment period means the period beginning January 1 of the calendar year in which a Presidential general election is held and may not exceed one of the following dates:

(a) For a candidate seeking the nomination of a party which nominates its Presidential candidate at a national convention, the date on which the party nominates its candidate.

(b) For a candidate seeking the nomination of a party which does not make its nomination at a national convention, the earlier of—

(1) The date the party nominates its Presidential candidate, or

(2) The last day of the last national convention held by a major party in the calendar year.

§ 9032.7 Primary election.

(a) *Primary election* means an election held by a State or a political party, including a run-off election, or a nominating convention or a caucus—

(1) For the selection of delegates to a national nominating convention of a political party;

(2) For the expression of a preference for the nomination of Presidential candidates;

(3) For the purposes stated in both paragraphs (a) (1) and (2) of this section; or

(4) To nominate a Presidential candidate.

(b) If separate primary elections are held in a State by the State and a political party, the primary election for the purposes of this subchapter will be the election held by the political party.

§ 9032.8 Political committee.

Political committee means any committee, club, association, organization or other group of persons (whether or not incorporated) which accepts contributions or incurs qualified campaign expenses for the purpose of influencing, or attempting to influence, the nomination of any individual for election to the office of President of the United States.

§ 9032.9 Qualified campaign expense.

(a) *Qualified campaign expense* means a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value—

(1) Incurred by or on behalf of a candidate or his or her authorized committees from the date the individual becomes a candidate through the last day of the candidate's eligibility as determined under 11 CFR 9033.5;

(2) Made in connection with his or her campaign for nomination; and

(3) Neither the incurrence nor payment of which constitutes a violation of any law of the United States or of any law of any State in which the expense is incurred or paid, or of any regulation prescribed under such law of the United States or of any State, except that any State law which has been preempted by the Federal Election Campaign Act of 1971, as amended, will not be considered a State law for purposes of this subchapter.

(b) An expenditure is made on behalf of a candidate, including a Vice Presidential candidate, if it is made by—

(1) An authorized committee or any other agent of the candidate for purposes of making an expenditure;

(2) Any person authorized or requested by the candidate, an authorized committee of the candidate, or an agent of the candidate to make the expenditure; or

(3) A committee which has been requested by the candidate, by an authorized committee of the candidate, or by an agent of the candidate to make the expenditure, even though such committee is not authorized in writing.

(c) Expenditures incurred either before the date an individual becomes a candidate or after the last day of a candidate's eligibility will be considered qualified campaign expenses if they meet the provisions of 11 CFR 9034.4(a). Expenditures described under 11 CFR 9034.4(b) will not be considered qualified campaign expenses.

§ 9032.10 Secretary.

For purposes of this subchapter, *Secretary* means the Secretary of the Treasury.

§ 9032.11 State.

State means each State of the United States, Puerto Rico, the Canal Zone, the Virgin Islands, the District of Columbia, and Guam.

PART 9033—ELIGIBILITY FOR PAYMENTS

Sec.

9033.1 Candidate and committee agreements.
9033.2 Candidate and committee certifications; threshold submission.
9033.3 Expenditure limitation certification.
9033.4 Matching payment eligibility threshold requirements.
9033.5 Determination of ineligibility date.
9033.6 Determination of inactive candidacy.
9033.7 Determination of active candidacy.
9033.8 Reestablishment of eligibility.
9033.9 Failure to comply with disclosure requirements or expenditure limitations.
9033.10 Procedures for initial and final determinations.
9033.11 Documentation of disbursements.
9033.12 Production of computerized information.

Authority: 26 U.S.C. 9033 and 9039(b)

§ 9033.1 Candidate and committee agreements.

(a) *General.* (1) A candidate seeking to become eligible to receive Presidential primary matching fund payments shall agree in a letter signed by the candidate to the Commission that the candidate and the candidate's authorized committee(s) will comply with the conditions set forth in 11 CFR 9033.1(b). The candidate may submit the letter containing the agreements required by this section at any time after January 1 of the year immediately preceding the Presidential election year.

(2) The Commission will not consider a candidate's threshold submission until the candidate has submitted a candidate agreement that meets the requirements of this section.

(b) *Conditions.* The candidate shall agree that:

(1) The candidate has the burden of proving that disbursements by the candidate or any authorized committee(s) or agents thereof are qualified campaign expenses as defined at 11 CFR 9032.9.

(2) The candidate and the candidate's authorized committee(s) will comply with the documentation requirements set forth in 11 CFR 9033.11.

(3) The candidate and the candidate's authorized committee(s) will provide an explanation, in addition to complying with the documentation requirements, of the connection between any disbursements made by the candidate or authorized committee(s) of the candidate and the campaign if requested by the Commission.

(4) The candidate and the candidate's authorized committee(s) will keep and furnish to the Commission all documentation for matching fund submissions, any books, records (including bank records for all accounts), and supporting documentation and other information that the Commission may request.

(5) The candidate and the candidate's authorized committee(s) will keep and furnish to the Commission all documentation relating to disbursements and receipts including any books, records (including bank records for all accounts), all documentation required by this section including those required to be maintained under 11 CFR 9033.11, and other information that the Commission may request. If the candidate or the candidate's authorized committee maintains or uses computerized information containing any of the categories of data listed in 11 CFR 9033.12(a), the committee will provide computerized magnetic media such as magnetic tapes or magnetic diskettes, containing the computerized information at the times specified in 11 CFR 9038.1(b)(1) that meet the requirements of 11 CFR 9033.12(b). Upon request, documentation explaining the computer system's software capabilities shall be provided, and such personnel as are necessary to explain the operation of the computer system's software and the computerized information prepared or maintained by the committee shall also be made available.

(6) The candidate and the candidate's authorized committee(s) will obtain and furnish to the Commission upon request all documentation relating to funds received and disbursements made on the candidate's behalf by other political committees and organizations associated with the candidate.

(7) The candidate and the candidate's authorized committee(s) will permit an audit and examination pursuant to 11 CFR part 9038 of all receipts and disbursements including those made by the candidate, all authorized committee(s) and any agent or person authorized to make expenditures on behalf of the candidate or committee(s). The candidate and authorized committee(s) shall facilitate the audit by making available in one central location, office space, records and such personnel as are necessary to conduct the audit and examination, and shall pay any amounts required to be repaid under 11 CFR parts 9038 and 9039.

(8) The candidate and the candidate's authorized committee(s) will submit the name and mailing address of the person who is entitled to receive matching fund payments on behalf of the candidate and the name and address of the campaign depository designated by the candidate as required by 11 CFR part 103 and 11 CFR 9037.3. Changes in the

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(5) The candidate and the candidate's authorized committee(s) will keep and furnish to the Commission all documentation relating to disbursements and receipts including any books, records (including bank records for all accounts), all documentation required by this section including those required to be maintained under 11 CFR 9033.11, and other information that the Commission may request. If the candidate or the candidate's authorized committee maintains or uses computerized information containing any of the categories of data listed in 11 CFR 9033.12(a), the committee will provide computerized magnetic media such as magnetic tapes or magnetic diskettes, containing the computerized information at the times specified in 11 CFR 9038.1(b)(1) that meet the requirements of 11 CFR 9033.12(b). Upon request, documentation explaining the computer system's software capabilities shall be provided, and such personnel as are necessary to explain the operation of the computer system's software and the computerized information prepared or maintained by the committee shall also be made available.

(6) The candidate and the candidate's authorized committee(s) will obtain and furnish to the Commission upon request all documentation relating to funds received and disbursements made on the candidate's behalf by other political committees and organizations associated with the candidate.

(7) The candidate and the candidate's authorized committee(s) will permit an audit and examination pursuant to 11 CFR part 9038 of all receipts and disbursements including those made by the candidate, all authorized committee(s) and any agent or person authorized to make expenditures on behalf of the candidate or committee(s). The candidate and authorized committee(s) shall facilitate the audit by making available in one central location, office space, records and such personnel as are necessary to conduct the audit and examination, and shall pay any amounts required to be repaid under 11 CFR parts 9038 and 9039.

(8) The candidate and the candidate's authorized committee(s) will submit the name and mailing address of the person who is entitled to receive matching fund payments on behalf of the candidate and the name and address of the campaign depository designated by the candidate as required by 11 CFR part 103 and 11 CFR 9037.3. Changes in the

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information required by this paragraph shall not be effective until submitted to the Commission in a letter signed by the candidate or the Committee treasurer.

(9) The candidate and the candidate's authorized committee(s) will prepare matching fund submissions in accordance with the Federal Election Commission's Guideline for Presentation in Good Order.

(10) The candidate and the candidate's authorized committee(s) will comply with the applicable requirements of 2 U.S.C. 431 *et seq.*; 26 U.S.C. 9031 *et seq.* and the Commission's regulations at 11 CFR parts 100–116, and 9031–9039.

(11) The candidate and the candidate's authorized committee(s) will pay any civil penalties included in a conciliation agreement imposed under 2 U.S.C. 437g against the candidate, any authorized committee of the candidate or any agent thereof.

§ 9033.2 Candidate and committee certifications; threshold submission.

(a) *General.* (1) A candidate seeking to become eligible to receive Presidential primary matching fund payments shall make the certifications set forth in 11 CFR 9033.2(b) to the Commission in a written statement signed by the candidate. The candidate may submit the letter containing the required certifications at any time after January 1 of the year immediately preceding the Presidential election year.

(2) The Commission will not consider a candidate's threshold submission until the candidate has submitted candidate certifications that meet the requirements of this section.

(b) *Certifications.* (1) The candidate shall certify that he or she is seeking nomination by a political party to the Office of President in more than one State. For purposes of this section, in order for a candidate to be deemed to be seeking nomination by a political party to the office of President, the party whose nomination the candidate seeks must have a procedure for holding a primary election, as defined in 11 CFR 9032.7, for nomination to that office. For purposes of this section, the term "political party" means an association, committee or organization which nominates an individual for election to the office of President. The fact that an association, committee or organization qualifies as a political party under this section does not affect the party's status as a national political party for purposes of 2 U.S.C. 441a(a)(1)(B) and 441a(a)(2)(B).

(2) The candidate and the candidate's authorized committee(s) shall certify that they have not incurred and will not incur expenditures in connection with the candidate's campaign for nomination, which expenditures are in excess of the limitations under 11 CFR part 9035.

(3) The candidate and the candidate's authorized committee(s) shall certify:

(i) That they have received matchable contributions totaling more than $5,000 in each of at least 20 States; and

(ii) That the matchable contributions are from individuals who are residents of the State for which their contributions are submitted.

(iii) A maximum of $250 of each individual's aggregate contributions will be considered as matchable contributions for the purpose of meeting the thresholds of this section.

(iv) For purposes of this section, contributions of an individual who maintains residences in more than one State may only be counted toward the $5,000 threshold for the State from which the earliest contribution was made by that contributor.

(c) *Threshold submission.* To become eligible to receive matching payments, the candidate shall submit documentation of the contributions described in 11 CFR 9033.2(b)(3) to the Commission for review. The submission shall follow the format and requirements of 11 CFR 9036.1.

§ 9033.3 Expenditure limitation certification.

(a) If the Commission makes an initial determination that a candidate or the candidate's authorized committee(s) have knowingly and substantially exceeded the expenditure limitations at 11 CFR part 9035 prior to that candidate's application for certification, the Commission may make an initial determination that the candidate is ineligible to receive matching funds.

(b) The Commission will notify the candidate of its initial determination, in accordance with the procedures outlined in 11 CFR 9033.10(b). The candidate may submit, within 20 calendar days after service of the Commission's notice, written legal or factual materials, in accordance with 11 CFR 9033.10(b), demonstrating that he or she has not knowingly and substantially exceeded the expenditure limitations at 11 CFR part 9035.

(c) A final determination of the candidate's ineligibility will be made by the Commission in accordance with the procedures outlined in 11 CFR 9033.10(c).

(d) A candidate who receives a final determination of ineligibility under 11 CFR 9033.3(c) shall be ineligible to receive matching fund payments under 11 CFR 9034.1.

§ 9033.4 Matching payment eligibility threshold requirements.

(a) The Commission will examine the submission made under 11 CFR 9033.1 and 9033.2 and either—

(1) Make a determination that the candidate has satisfied the minimum contribution threshold requirements under 11 CFR 9033.2(c); or

(2) Make an initial determination that the candidate has failed to satisfy the matching payment threshold requirements. The Commission will notify the candidate of its initial determination in accordance with the procedures outlined in 11 CFR 9033.10(b). The candidate may, within 30 calendar days after service of the Commission's notice, satisfy the threshold requirements or submit in accordance with 11 CFR 9033.10(b) written legal or factual materials to demonstrate that he or she has satisfied those requirements. A final determination by the Commission that the candidate has failed to satisfy threshold requirements will be made in accordance with the procedures outlined in 11 CFR 9033.10(c).

(b) In evaluating the candidate's submission under 11 CFR 9033.1 and 9033.2, the Commission may consider other information in its possession, including but not limited to past actions of the candidate in an earlier publicly-financed campaign, that is relevant to a determination regarding the candidate's eligibility for matching funds.

(c) The Commission will make its examination and determination under this section as soon as practicable. During the Presidential election year, the Commission will generally complete its review and make its determination within 15 business days.

§ 9033.5 Determination of ineligibility date.

The candidate's date of ineligibility shall be whichever date by operation of 11 CFR 9033.5 (a), (b), or (c) occurs first. After the candidate's date of ineligibility, he or she may only receive matching payments to the extent that he or she has net outstanding campaign obligations as defined in 11 CFR 9034.5.

(a) *Inactive candidate.* The ineligibility date shall be the day on which an individual ceases to be a candidate because he or she is not actively conducting campaigns in more than one State in connection with seeking the Presidential nomination. This date shall be the earliest of—

(1) The date the candidate publicly announces that he or she will not be actively conducting campaigns in more than one State; or

(2) The date the candidate notifies the Commission by letter that he or she is not actively conducting campaigns in more than one State; or

(3) The date which the Commission determines under 11 CFR 9033.6 to be the date that the candidate is not actively seeking election in more than one State.

(b) *Insufficient votes.* The ineligibility date shall be the 30th day following the date of the second consecutive primary election in which such individual receives less than 10 percent of the number of popular votes cast for all candidates of the same party for the same office in that primary election, if the candidate permitted or authorized his or her name to appear on the ballot, unless the candidate certifies to the Commission at least 25 business days prior to the primary that he or she will not be an active candidate in the primary involved.

(1) The Commission may refuse to accept the candidate's certification if it determines under 11 CFR 9033.7 that the candidate is an active candidate in the primary involved.

(2) For purposes of this paragraph, if the candidate is running in two primary elections in different States on the same date, the highest percentage of votes the candidate receives in any one State will govern. Separate primary elections held in more than one State on the same date are not deemed to be consecutive primaries. If two primary elections are held on the same date in the same State (e.g., a primary to select delegates to a national nominating convention and a primary for the expression of preference for the nomination of candidates for election to the office of President), the highest percentage of votes a candidate receives in either election will govern. If two or more primaries are held in the same State on different dates, the earliest primary will govern.

(3) If the candidate certifies that he or she will not be an active candidate in a particular primary, and the Commission accepts the candidate's certification, the primary involved shall not be counted in determining the candidate's date of ineligibility under paragraph (b) of this section, regardless of the percentage of popular votes cast for the candidate in that primary.

(c) *End of matching payment period.* The ineligibility date shall be the last day of the matching payment period for the candidate as specified in 11 CFR 9032.6.

(d) *Reestablishment of eligibility.* If the Commission has determined that a candidate is ineligible under 11 CFR 9033.5 (a) or (b), the candidate may reestablish eligibility to receive matching funds under 11 CFR 9033.8.

§ 9033.6 Determination of inactive candidacy.

(a) *General.* The Commission may, on the basis of the factors listed in 11 CFR 9033.6(b) below, make a determination that a candidate is no longer actively seeking nomination for election in more than one State. Upon a final determination by the Commission that a candidate is inactive, that candidate will become ineligible as provided in 11 CFR 9033.5.

(b) *Factors considered.* In making its determination of inactive candidacy, the Commission may consider, but is not limited to considering, the following factors:

(1) The frequency and type of public appearances, speeches, and advertisements;

(2) Campaign activity with respect to soliciting contributions or making expenditures for campaign purposes;

(3) Continued employment of campaign personnel or the use of volunteers;

(4) The release of committed delegates;

(5) The candidate urges his or her delegates to support another candidate while not actually releasing committed delegates;

(6) The candidate urges supporters to support another candidate.

(c) *Initial determination.* The Commission will notify the candidate of its initial determination in accordance with the procedures outlined in 11 CFR 9033.10(b) and will advise the candidate of the date on which active campaigning in more than one State ceased. The candidate may, within 15 business days after service of the Commission's notice, submit in accordance with 11 CFR 9033.10(b) written legal or factual materials to demonstrate that he or she is actively campaigning in more than one State.

(d) *Final determination.* A final determination of inactive candidacy will be made by the Commission in accordance with the procedures outlined in 11 CFR 9033.10(c).

§ 9033.7 Determination of active candidacy.

(a) Where a candidate certifies to the Commission under 11 CFR 9033.5(b) that he or she will not be an active candidate in an upcoming primary, the Commission may, nevertheless, on the basis of factors listed in 11 CFR 9033.6(b), make an initial determination that the candidate is an active candidate in the primary involved.

(b) The Commission will notify the candidate of its initial determination within 10 business days of receiving the candidate's certification under 11 CFR 9033.5(b) or, if the timing of the activity does not permit notice during the 10 day period, as soon as practicable following campaign activity by the candidate in the primary state. The Commission's initial determination will be made in accordance with the procedures outlined in 11 CFR 9033.10(b). Within 10 business days after service of the Commission's notice the candidate may submit, in accordance with 11 CFR 9033.10(b), written legal or factual materials to demonstrate that he or she is not an active candidate in the primary involved.

(c) A final determination by the Commission that the candidate is active will be made in accordance with the procedures outlined in 11 CFR 9033.10(c).

§ 9033.8 Reestablishment of eligibility.

(a) *Candidates found to be inactive.* A candidate who has become ineligible under 11 CFR 9033.5(a) on the basis that he or she is not actively campaigning in more than one State may reestablish eligibility for matching payments by submitting to the Commission evidence of active campaigning in more than one State. In determining whether the candidate has reestablished eligibility, the Commission will consider, but is not limited to considering, the factors listed in 11 CFR 9033.6(b). The day the Commission determines to be the day the candidate becomes active again will be the date on which eligibility is reestablished.

(b) *Candidates receiving insufficient votes.* A candidate determined to be ineligible under 11 CFR 9033.5(b) by failing to obtain the required percentage of votes in two consecutive primaries may have his or her eligibility reestablished if the candidate receives at least 20 percent of the total number of votes cast for candidates of the same party for the same office in a primary election held subsequent to the date of the election which rendered the candidate ineligible.

(c) The Commission will make its determination under 11 CFR 9033.8 (a) or (b) without requiring the individual to reestablish eligibility under 11 CFR 9033.1 and 2. A candidate whose eligibility is reestablished under this section may submit, for matching payment, contributions received during ineligibility. Any expenses incurred during the period of ineligibility that would have been considered qualified campaign expenses if the candidate had been eligible during that time may be defrayed with matching payments.

§ 9033.9 Failure to comply with disclosure requirements or expenditure limitations.

(a) If the Commission receives information indicating that a candidate or his or her authorized committee(s) has knowingly and substantially failed to comply with the disclosure requirements of 2 U.S.C. 434 and 11 CFR part 104, or that a candidate has knowingly and substantially exceeded the expenditure limitations at 11 CFR part 9035, the Commission may make an initial determination to suspend payments to that candidate.

(b) The Commission will notify the candidate of its initial determination in accordance with the procedures outlined in 11 CFR 9033.10(b). The candidate will be given an opportunity, within 20 calendar days after service of the Commission's notice, to comply with the above cited provisions or to submit in acçordance with 11 CFR 9033.10(b) written legal or factual materials to demonstrate that he or she is not in violation of those provisions.

(c) Suspension of payments to a candidate will occur upon a final determination by the Commission to suspend payments. Such final determination will be made in accordance with the procedures outlined in 11 CFR 9033.10(c).

(d) (1) A candidate whose payments have been suspended for failure to comply with reporting requirements may become entitled to receive payments if he or she subsequently files the required reports and pays or agrees to pay any civil or criminal penalties resulting from failure to comply.

(2) A candidate whose payments are suspended for exceeding the expenditure limitations shall not be entitled to receive further matching payments under 11 CFR 9034.1.

§ 9033.10 Procedures for initial and final determinations.

(a) *General.* The Commission will follow the procedures set forth in this section when making an initial or final determination based on any of the following reasons.

(1) The candidate has knowingly and substantially exceeded the expenditure limitations of 11 CFR part 9035 prior to the candidate's application for certification, as provided in 11 CFR 9033.3;

(2) The candidate has failed to satisfy the matching payment threshold requirements, as provided in 11 CFR 9033.4;

(3) The candidate is no longer actively seeking nomination in more than one state, as provided in 11 CFR 9033.6;

(4) The candidate is an active candidate in an upcoming primary despite the candidate's assertion to the contrary, as provided in 11 CFR 9033.7;

(5) The Commission receives information indicating that the candidate has knowingly and substantially failed to comply with the disclosure requirements or exceeded the expenditure limits, as provided in 11 CFR 9033.9; or

(6) The Commission receives information indicating that substantial assets of the candidate's authorized committee have been undervalued or not included in the candidate's statement of net outstanding campaign obligations or that the amount of outstanding campaign obligations has been otherwise overstated in relation to committee assets, as provided in 11 CFR 9034.5(g).

(b) *Initial determination.* If the Commission makes an initial determination that a candidate may not receive matching funds for one or more of the reasons indicated in 11 CFR 9033.10(a), the Commission will notify the candidate of its initial determination. The notification will give the legal and factual reasons for the determination and advise the candidate of the evidence on which the Commission's initial determination is based. The candidate will be given an opportunity to comply with the requirements at issue or to submit, within the time provided by the relevant section as referred to in 11 CFR 9033.10(a), written legal or factual materials to demonstrate that the candidate has satisfied those requirements. Such materials may be submitted by counsel if the candidate so desires.

(c) *Final determination.* The Commission will consider any written legal or factual materials timely submitted by the candidate before making its final determination. A final determination that the candidate has failed to satisfy the requirements at issue will be accompanied by a written statement of reasons for the Commission's action. This statement will explain the legal and factual reasons underlying the Commission's determination and will summarize the results of any investigation upon which the determination is based.

(d) *Effect on other determinations.* If the Commission makes an initial determination under this section, but decides to take no further action at that time, the Commission may use the legal and factual bases on which the initial determination was based in any future repayment determination under 11 CFR part 9038 or 9039. A determination by the Commission under this section may be independent of any Commission decision to institute an enforcement proceeding under 2 U.S.C. 437g.

(e) *Petitions for rehearing.* Following a final determination under this section, the candidate may file a petition for rehearing in accordance with 11 CFR 9038.5(a).

§ 9033.11 Documentation of disbursements.

(a) *Burden of proof.* Each candidate shall have the burden of proving that disbursements made by the candidate or his or her authorized committee(s) or persons authorized to make expenditures on behalf of the candidate or committee(s) are qualified campaign expenses as defined in 11 CFR 9032.9. The candidate and his or her authorized committee(s) shall obtain and furnish to the Commission on request any evidence regarding qualified campaign expenses made by the candidate, his or her authorized committees and agents or persons authorized to make expenditures on behalf of the candidate or committee(s) as provided in 11 CFR 9033.11(b).

(b) *Documentation required.* (1) For disbursements in excess of $200 to a payee, the candidate shall present either:

(i) A receipted bill from the payee that states the purpose of the disbursement, or

(ii) If such a receipt is not available, a canceled check negotiated by the payee, and

(A) One of the following documents generated by the payee: A bill, invoice, or voucher that states the purpose of the disbursement; or

(B) Where the documents specified in 11 CFR 9033.11(b)(1)(ii)(A) are not available, a voucher or contemporaneous memorandum from the candidate or the committee that states the purpose of the disbursement; or

(iii) If neither a receipted bill as specified in 11 CFR 9033.11(b)(1)(i) nor the supporting documentation specified in 11 CFR 9033.11(b)(1)(ii) is available, a canceled check negotiated by the payee that states the purpose of the disbursement.

(iv) Where the supporting documentation required in 11 CFR 9033.11(b)(1) (i), (ii) or (iii) is not available, the candidate or committee may present a canceled check and collateral evidence to document the qualified campaign expense. Such collateral evidence may include but is not limited to:

(A) Evidence demonstrating that the expenditure is part of an identifiable program or project which is otherwise sufficiently documented such as a disbursement which is one of a number of documented disbursements relating to a campaign mailing or to the operation of a campaign office;

(B) Evidence that the disbursement is covered by a preestablished written campaign committee policy, such as a daily travel expense policy.

(2) For all other disbursements the candidate shall present:

(i) A record disclosing the identification of the payee, the amount, date and purpose of the disbursement, if made from a petty cash fund; or

(ii) A canceled check negotiated by the payee that states the identification of the payee, and the amount, date and purpose of the disbursement.

(3) For purposes of this section,

(i) *Payee* means the person who provides the goods or services to the candidate or committee in return for the disbursement; except that an individual will be considered a payee under this section if he or she receives $500 or less advanced for travel and or/subsistence and if he or she is the recipient of the goods or services purchased.

(ii) *Purpose* means the identification of the payee, the date and amount of the disbursement, and a description of the goods or services purchased.

(c) *Retention of records.* The candidate shall retain records, with respect to each disbursement and receipt, including bank records, vouchers, worksheets, receipts, bills and accounts, journals, ledgers, fundraising solicitation material, accounting systems documentation, matching fund submissions, and any related materials documenting campaign receipts and disbursements, for a period of three years pursuant to 11 CFR 102.9(c), and shall present these records to the Commission on request.

(d) *List of capital and other assets*—(1) *Capital assets.* The candidate or committee shall maintain a list of all capital assets whose purchase price exceeded $2000 when acquired by the candidate's authorized committee(s). The list shall include a brief description of each capital asset, the purchase price, the date it was acquired, the method of disposition and the amount received in disposition. For purposes of this section, *capital asset* shall be defined in accordance with 11 CFR 9034.5(c)(1).

(2) *Other assets.* The candidate or committee shall maintain a list of other assets acquired for use in fundraising or as collateral for campaign loans, if the aggregate value of such assets exceeds $5000. The list shall include a brief description of each such asset, the fair market value of each asset, the method of disposition and the amount received in disposition. The fair market value of other assets shall be determined in accordance with 11 CFR 9034.5(c)(2).

§ 9033.12 Production of computerized information.

(a) *Categories of computerized information to be provided.* If the candidate or the candidate's authorized committee maintains or uses computerized information containing any of the categories of data listed in paragraphs (a)(1) through (a)(9) of this section, the committee shall provide computerized magnetic media, such as magnetic tapes or magnetic diskettes, containing the computerized information at the times specified in 11 CFR 9038.1(b)(1):

(1) Information required by law to be maintained regarding the committee's receipts or disbursements;

(2) Records of allocations of expenditures to particular state expenditure limits and to the overall expenditure limit;

(3) Disbursements for exempt fundraising and exempt compliance costs, including the allocation of salaries and overhead expenditures;

(4) Records of allocations of expenditures for the purchase of broadcast media;

(5) Records used to prepare statements of net outstanding campaign obligations;

(6) Records used to reconcile bank statements;

(7) Disbursements made and reimbursements received for the cost of transportation, ground services and facilities made available to media personnel, including records relating to how costs charged to media personnel were determined;

(8) Records relating to the acquisition, use and disposition of capital assets or other assets; and

(9) Any other information that may be used during the Commission's audit to review the committee's receipts, disbursements, loans, debts, obligations, bank reconciliations or statements of net outstanding campaign obligations.

(b) *Organization of computerized information and technical specifications.* The computerized magnetic media shall be prepared and delivered at the committee's expense and shall conform to the technical specifications, including file requirements, described in the Federal Election Commission's Computerized Magnetic Media Requirements for title 26 Candidates/Committees Receiving Federal Funding. The data contained in the computerized magnetic media provided to the Commission shall be organized in the order specified by the Computerized Magnetic Media Requirements.

(c) *Additional materials and assistance.* Upon request, the committee shall provide documentation explaining the computer system's software capabilities, such as user guides, technical manuals, formats, layouts and other materials for processing and analyzing the information requested. Upon request, the committee shall also make available such personnel as are necessary to explain the operation of the computer system's software and the computerized information prepared or maintained by the committee.

PART 9034—ENTITLEMENTS

Sec.
9034.1 Candidate entitlements.
9034.2 Matchable contributions.
9034.3 Non-matchable contributions.
9034.4 Use of contributions and matching payments.
9034.5 Net outstanding campaign obligations.
9034.6 Reimbursements for transportation and services made available to media personnel.
9034.7 Allocation of travel expenditures.
9034.8 Joint fundraising.
9034.9 Sale of assets acquired for fundraising purposes.

Authority: 26 U.S.C. 9034 and 9039(b).

§ 9034.1 Candidate entitlements.

(a) A candidate who has been notified by the Commission under 11 CFR 9036.1 that he or she has successfully satisfied eligibility and certification requirements is entitled to receive payments under 26 U.S.C. 9037 and 11 CFR part 9037 in an amount equal to the amount of each matchable campaign contribution received by the candidate, except that a candidate who has become ineligible under 11 CFR 9033.5 may not receive further matching payments regardless of the date of deposit of the underlying contributions if he or she has no net outstanding campaign obligations as defined in 11 CFR 9034.5.

(b) If on the date of ineligibility a candidate has net outstanding campaign obligations as defined under 11 CFR 9034.5, that candidate may continue to receive matching payments for matchable contributions received and deposited on or before December 31 of the Presidential election year provided that on the date of payment there are remaining net outstanding campaign obligations, i.e., the sum of the contributions received on or after the

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26 Candidates/Committees Receiving Federal Funding. The data contained in the computerized magnetic media provided to the Commission shall be organized in the order specified by the Computerized Magnetic Media Requirements.

(c) *Additional materials and assistance.* Upon request, the committee shall provide documentation explaining the computer system's software capabilities, such as user guides, technical manuals, formats, layouts and other materials for processing and analyzing the information requested. Upon request, the committee shall also make available such personnel as are necessary to explain the operation of the computer system's software and the computerized information prepared or maintained by the committee.

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§ 9034.1 Candidate entitlements.

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(b) If on the date of ineligibility a candidate has net outstanding campaign obligations as defined under 11 CFR 9034.5, that candidate may continue to receive matching payments for matchable contributions received and deposited on or before December 31 of the Presidential election year provided that on the date of payment there are remaining net outstanding campaign obligations, i.e., the sum of the contributions received on or after the

date of ineligibility plus matching funds received on or after the date of ineligibility is less than the candidate's net outstanding campaign obligations. This entitlement will be equal to the lesser of:

(1) The amount of contributions submitted for matching; or

(2) The remaining net outstanding campaign obligations.

(c) A candidate whose eligibility has been reestablished under 11 CFR 9033.8 or who after suspension of payments has met the conditions set forth at 11 CFR 9033.9(d) is entitled to receive payments for matchable contributions for which payments were not received during the ineligibility or suspension period.

(d) The total amount of payments to a candidate under this section shall not exceed 50% of the total expenditure limitation applicable under 11 CFR part 9035.

§ 9034.2 Matchable contributions.

(a) Contributions meeting the following requirements will be considered matchable campaign contributions.

(1) The contribution shall be a gift of money made: By an individual; by a written instrument and for the purpose of influencing the result of a primary election.

(2) Only a maximum of $250 of the aggregate amount contributed by an individual may be matched.

(3) Before a contribution may be submitted for matching, it must actually be received by the candidate or any of the candidate's authorized committees and deposited in a designated campaign depository maintained by the candidate's authorized committee.

(4) The written instrument used in making the contribution must be dated, physically received and deposited by the candidate or authorized committee on or after January 1 of the year immediately preceding the calendar year of the Presidential election, but no later than December 31 following the matching payment period as defined under 11 CFR 9032.6. Donations received by an individual who is testing the waters pursuant to 11 CFR 100.7(b)(1) and 100.8(b)(1) may be matched when the individual becomes a candidate if such donations meet the requirements of this section.

(b) For purposes of this section, the term *written instrument* means a check written on a personal, escrow or trust account representing or containing the contributor's personal funds; a money order; or any similar negotiable instrument.

(c) The written instrument shall be: Payable on demand; and to the order of, or specifically endorsed without qualification to, the Presidential candidate, or his or her authorized committee. The written instrument shall contain: The full name and signature of the contributor(s); the amount and date of the contribution; and the mailing address of the contributor(s).

(1) In cases of a check drawn on a joint checking account, the contributor is considered to be the owner whose signature appears on the check.

(i) To be attributed equally to other joint tenants of the account, the check or other accompanying written document shall contain the signature(s) of the joint tenant(s). If a contribution on a joint account is to be attributed other than equally to the joint tenants, the check or other written documentation shall also indicate the amount to be attributed to each joint tenant.

(ii) In the case of a check for a contribution attributed to more than one person, where it is not apparent from the face of the check that each contributor is a joint tenant of the account, a written statement shall accompany the check stating that the contribution was made from each individual's personal funds in the amount so attributed and shall be signed by each contributor.

(iii) In the case of a contribution reattributed to a joint tenant of the account, the reattribution shall comply with the requirements of 11 CFR 110.1(k) and the documentation described in 11 CFR 110.1 (1), (3), (5) and (6) shall accompany the reattributed contribution.

(2) Contributions in the form of checks drawn on an escrow or trust account are matchable contributions, provided that:

(i) The contributor has equitable ownership of the account; and

(ii) The check is accompanied by a statement, signed by each contributor to whom all or a portion of the contribution is being attributed, together with the check number, amount and date of contribution. This statement shall specify that the contributor has equitable ownership of the account and the account represents the personal funds of the contributor.

(3) Contributions in the form of checks written on partnership accounts or accounts of unincorporated associations or businesses are matchable contributions, so long as:

(i) The check is accompanied by a statement, signed by each contributor to whom all or a portion of the contribution is being attributed, together with the check number, amount and date of contribution. This statement shall specify that the contribution is made with the contributor's personal funds and that the account on which the contribution is drawn is not maintained or controlled by an incorporated entity; and

(ii) The aggregate amount of the contributions drawn on a partnership or unincorporated association or business does not exceed $1,000 to any one Presidential candidate seeking nomination.

(4) Contributions in the form of money orders, cashier's checks, or other similar negotiable instruments are matchable contributions, provided that:

(i) At the time it is initially submitted for matching, such instrument is signed by each contributor and is accompanied by a statement which specifies that the contribution was made in the form of a money order, cashier's check, traveler's check, or other similar negotiable instrument, with the contributor's personal funds;

(ii) Such statement identifies the date and amount of the contribution made by money order, cashier's check, traveler's check, or other similar negotiable instrument, the check or serial number, and the name of the issuer of the negotiable instrument; and

(iii) Such statement is signed by each contributor.

(5) Contributions in the form of the purchase price paid for the admission to any activity that primarily confers private benefits in the form of entertainment to the contributor (i.e., concerts, motion pictures) are matchable. The promotional material and tickets for the event shall clearly indicate that the ticket purchase price represents a contribution to the Presidential candidate.

(6) Contributions in the form of a purchase price paid for admission to an activity that is essentially political are matchable. An "essentially political" activity is one the principal purpose of which is political speech or discussion, such as the traditional political dinner or reception.

(7) Contributions received from a joint fundraising activity conducted in accordance with 11 CFR 9034.8 are matchable, provided that such contributions are accompanied by a copy of the joint fundraising agreement when they are submitted for matching.

§ 9034.3 Non-matchable contributions.

A contribution to a candidate other than one which meets the requirements of 11 CFR 9034.2 is not matchable. Contributions which are not matchable include, for example:

(a) In-kind contributions of real or personal property;

(b) A subscription, loan, advance, or deposit of money, or anything of value;

(c) A contract, promise, or agreement, whether or not legally enforceable, such as a pledge card or credit card transaction, to make a contribution for any such purposes (but a gift of money by written instrument is not rendered unmatchable solely because the contribution was preceded by a promise or pledge);

(d) Funds from a corporation, labor organization, government contractor, political committee as defined in 11 CFR 100.5 or any group of persons other than those under 11 CFR 9034.2(c)(3);

(e) Contributions which are made or accepted in violation of 2 U.S.C. 441a, 441b, 441c, 441e, 441f, or 441g;

(f) Contributions in the form of a check drawn on the account of a committee, corporation, union or government contractor even though the funds represent personal funds earmarked by a contributing individual to a Presidential candidate;

(g) Contributions in the form of the purchase price paid for an item with significant intrinsic and enduring value, such as a watch;

(h) Contributions in the form of the purchase price paid for or other otherwise induced by a chance to participate in a raffle, lottery, or a similar drawing for valuable prizes;

(i) Contributions which are made by persons without the necessary donative intent to make a gift or made for any purpose other than to influence the result of a primary election;

(j) Contributions of currency of the United States or currency of any foreign country; and

(k) Contributions redesignated for a different election or redesignated for a legal and accounting compliance fund pursuant to 11 CFR 9003.3.

§ 9034.4 Use of contributions and matching payments.

(a) *Qualified campaign expenses*—(1) *General.* Except as provided in 11 CFR 9034.4(b)(3), all contributions received by an individual from the date he or she becomes a candidate and all matching payments received by the candidate shall be used only to defray qualified campaign expenses or to repay loans or otherwise restore funds (other than contributions which were received and expended to defray qualified campaign expenses), which were used to defray qualified campaign expenses.

(2) *Testing the waters.* Even though incurred prior to the date an individual becomes a candidate, payments made for the purpose of determining whether an individual should become a candidate, such as those incurred in conducting a poll, shall be considered qualified campaign expenses if the individual subsequently becomes a candidate and shall count against that candidate's limits under 2 U.S.C. 441a(b). See 11 CFR 100.8(b)(1).

(3) *Winding down costs and continuing to campaign.* (i) Costs associated with the termination of political activity, such as the costs of complying with the post election requirements of the Act and other necessary administrative costs associated with winding down the campaign, including office space rental, staff salaries and office supplies, shall be considered qualified campaign expenses. A candidate may receive and use matching funds for these purposes either after he or she has notified the Commission in writing of his or her withdrawal from the campaign for nomination or after the date of the party's nominating convention, if he or she has not withdrawn before the convention.

(ii) If the candidate continues to campaign after becoming ineligible due to the operation of 11 CFR 9033.5(b), the candidate may only receive matching funds based on net outstanding campaign obligations as of the candidate's date of ineligibility. The statement of net outstanding campaign obligations shall only include costs incurred before the candidate's date of ineligibility for goods and services to be received before the date of ineligibility and for which written arrangement or commitment was made on or before the candidate's date of ineligibility, and shall not include winding down costs until the date on which the candidate qualifies to receive winding down costs under paragraph (a)(3)(i) of this section. Contributions received after the candidate's date of ineligibility may be used to continue to campaign, and may be submitted for matching fund payments. The candidate shall be entitled to receive the same proportion of matching funds to defray net outstanding campaign obligations as the candidate received before his or her date of ineligibility. Payments from the matching payment account that are received after the candidate's date of ineligibility may be used to defray the candidate's net outstanding campaign obligations, but shall not be used to defray any costs associated with continuing to campaign unless the candidate reestablishes eligibility under 11 CFR 9033.8.

(4) *Taxes.* Federal income taxes paid by the committee on non-exempt function income, such as interest, dividends and sale of property, shall be considered qualified campaign expenses. These expenses shall not, however, count against the state or overall expenditure limits of 11 CFR 9035.1(a).

(b) *Non-qualified campaign expenses*—(1) *General.* The following are examples of disbursements that are not qualified campaign expenses.

(2) *Excessive expenditures.* An expenditure which is in excess of any of the limitations under 11 CFR Part 9035 shall not be considered a qualified campaign expense. The Commission will calculate the amount of expenditures attributable to the limitations in accordance with 11 CFR 9035.1(a)(2).

(3) *Post-ineligibility expenditures.* Any expenses incurred after a candidate's date of ineligibility, as determined under 11 CFR 9033.5, are not qualified campaign expenses except to the extent permitted under 11 CFR 9034.4(a)(3). Any expenses incurred before the candidate's date of ineligibility for goods and services to be received after the candidate's date of ineligibility are not qualified campaign expenses.

(4) *Civil or criminal penalties.* Civil or criminal penalties paid pursuant to the Federal Election Campaign Act are not qualified campaign expenses and cannot be defrayed from contributions or matching payments. Any amounts received or expended to pay such penalties shall not be considered contributions or expenditures but all amounts so received shall be subject to the prohibitions of the Act. Amounts received and expended under this section shall be reported in accordance with 11 CFR part 104.

(5) *Payments to candidate.* Payments made to the candidate by his or her committee, other than to reimburse funds advanced by the candidate for qualified campaign expenses, are not qualified campaign expenses.

(6) *Payments to other authorized committees.* Payments, including transfers and loans, to other committees authorized by the same candidate for a different election are not qualified campaign expenses.

(7) *Allocable expenses.* Payments for expenses subject to state allocation under 11 CFR 106.2 are not qualified campaign expenses if the records retained are not sufficient to permit allocation to any state, such as the failure to keep records of the date on which the expense is incurred.

(c) *Repayments.* Repayments may be made only from the following sources: personal funds of the candidate (without regard to the limitations of 11 CFR 9035.2(a)), contributions and matching payments in the committee's account(s),

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(b) *Non-qualified campaign expenses*—(1) *General.* The following are examples of disbursements that are not qualified campaign expenses.

(2) *Excessive expenditures.* An expenditure which is in excess of any of the limitations under 11 CFR Part 9035 shall not be considered a qualified campaign expense. The Commission will calculate the amount of expenditures attributable to the limitations in accordance with 11 CFR 9035.1(a)(2).

(3) *Post-ineligibility expenditures.* Any expenses incurred after a candidate's date of ineligibility, as determined under 11 CFR 9033.5, are not qualified campaign expenses except to the extent permitted under 11 CFR 9034.4(a)(3). Any expenses incurred before the candidate's date of ineligibility for goods and services to be received after the candidate's date of ineligibility are not qualified campaign expenses.

(4) *Civil or criminal penalties.* Civil or criminal penalties paid pursuant to the Federal Election Campaign Act are not qualified campaign expenses and cannot be defrayed from contributions or matching payments. Any amounts received or expended to pay such penalties shall not be considered contributions or expenditures but all amounts so received shall be subject to the prohibitions of the Act. Amounts received and expended under this section shall be reported in accordance with 11 CFR part 104.

(5) *Payments to candidate.* Payments made to the candidate by his or her committee, other than to reimburse funds advanced by the candidate for qualified campaign expenses, are not qualified campaign expenses.

(6) *Payments to other authorized committees.* Payments, including transfers and loans, to other committees authorized by the same candidate for a different election are not qualified campaign expenses.

(7) *Allocable expenses.* Payments for expenses subject to state allocation under 11 CFR 106.2 are not qualified campaign expenses if the records retained are not sufficient to permit allocation to any state, such as the failure to keep records of the date on which the expense is incurred.

(c) *Repayments.* Repayments may be made only from the following sources: personal funds of the candidate (without regard to the limitations of 11 CFR 9035.2(a)), contributions and matching payments in the committee's account(s),

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and any additional funds raised subject to the limitations and prohibitions of the Federal Election Campaign Act of 1971, as amended.

(d) *Transfers to other campaigns*—(1) *Other Federal offices.* If a candidate has received matching funds and is simultaneously seeking nomination or election to another Federal office, no transfer of funds between his or her principal campaign committees or authorized committees may be made. See 2 U.S.C. 441a(a)(5)(C) and 11 CFR 110.3(c)(5) and 110.8(d). A candidate will be considered to be simultaneously seeking nomination or election to another Federal office if he or she is seeking nomination or election to such Federal office under 11 CFR 110.3(c)(5).

(2) *General election.* If a candidate has received matching funds, all transfers from the candidate's primary election account to a legal and accounting compliance fund established for the general election must be made in accordance with 11 CFR 9003.3(a)(1) (ii) and (iii).

§ 9034.5 Net outstanding campaign obligations.

(a) Within 15 calendar days after the candidate's date of ineligibility, as determined under 11 CFR 9033.5, the candidate shall submit a statement of net outstanding campaign obligations. The candidate's net outstanding campaign obligations under this section equal the difference between paragraphs (a) (1) and (2) of this section:

(1) The total of all outstanding obligations for qualified campaign expenses as of the candidate's date of ineligibility as determined under 11 CFR 9033.5, plus estimated necessary winding down costs as defined under 11 CFR 9034.4(a)(3), less

(2) The total of:

(i) Cash on hand as of the close of business on the last day of eligibility (including all contributions dated on or before that date whether or not submitted for matching; currency; balances on deposit in banks; savings and loan institutions; and other depository institutions; traveler's checks; certificates of deposit; treasury bills; and any other committee investments valued at fair market value);

(ii) The fair market value of capital assets and other assets on hand; and

(iii) Amounts owed to the committee in the form of credits, refunds of deposits, returns, receivables, or rebates of qualified campaign expenses; or a commercially reasonable amount based on the collectibility of those credits, returns, receivables or rebates.

(b) The amount submitted as the total of outstanding campaign obligations under paragraph (a)(1) of this section shall not include any accounts payable for non-qualified campaign expenses nor any amounts determined or anticipated to be required as a repayment under 11 CFR part 9038 or any amounts paid to secure a surety bond under 11 CFR 9038.5(c).

(c) (1) *Capital assets.* For purposes of this section, the term *capital asset* means any property used in the operation of the campaign whose purchase price exceeded $2000 when acquired by the committee. Property that must be valued as capital assets under this section includes, but is not limited to, office equipment, furniture, vehicles and fixtures acquired for use in the operation of the candidate's campaign, but does not include property defined as "other assets" under 11 CFR 9034.5(c)(2). A list of all capital assets shall be maintained by the Committee in accordance with 11 CFR 9033.11(d). The fair market value of capital assets may be considered to be the total original cost of such items when acquired less 40%, to account for depreciation, except that items acquired after the date of ineligibility must be valued at their fair market value on the date acquired. If the candidate wishes to claim a higher depreciation percentage for an item, he or she must list that capital asset on the statement separately and demonstrate, through documentation, the fair market value of each such asset.

(2) *Other assets.* The term *other assets* means any property acquired by the committee for use in raising funds or as collateral for campaign loans. "Other assets" must be included on the candidate's statement of net outstanding campaign obligations if the aggregate value of such assets exceeds $5000. The value of "other assets" shall be determined by the fair market value of each item on the candidate's date of ineligibility or on the date the item is acquired if acquired after the date of ineligibility. A list of other assets shall be maintained by the committee in accordance with 11 CFR 9033.11(d)(2).

(d) *Collectibility of accounts receivable.* If the committee determines that an account receivable of $500 or more, including any credit, refund, return or rebate, is not collectible in whole or in part, the committee shall demonstrate through documentation that the determination was commercially reasonable. The documentation shall include records showing the original amount of the account receivable, copies of correspondence and memoranda of communications with the debtor showing attempts to collect the amount due, and an explanation of how the lesser amount or full writeoff was determined.

(e) Contributions received from joint fundraising activities conducted under 11 CFR 9034.8 may be used to pay a candidate's outstanding campaign obligations.

(1) Such contributions shall be deemed monies available to pay outstanding campaign obligations as of the date these funds are received by the fundraising representative committee and shall be included in the candidate's statement of net outstanding campaign obligations.

(2) The amount of money deemed available to pay a candidate's net outstanding campaign obligations will equal either—

(i) An amount calculated on the basis of the predetermined allocation formula, as adjusted for 2 U.S.C. 441a limitations; or

(ii) If a candidate receives an amount greater than that calculated under 11 CFR 9034.5(e)(2)(i), the amount actually received.

(f) The candidate shall submit a revised statement of net outstanding campaign obligations with each submission for matching funds payments filed after the candidate's date of ineligibility. The revised statement shall reflect the financial status of the committee as of the close of business on the last business day preceding the date of submission for matching funds. The revised statement shall also contain a brief explanation of each change in the committee's assets and obligations from the previous statement.

(g) (1) If the Commission receives information indicating that substantial assets of the candidate's authorized committee(s) have been undervalued or not included in the statement or that the amount of outstanding campaign obligations has been otherwise overstated in relation to committee assets, the Commission may decide to temporarily suspend further matching payments pending a final determination whether the candidate is entitled to receive all or a portion of the matching funds requested.

(2) In making a determination under 11 CFR 9034.5(g)(1), the Commission will follow the procedures for initial and final determinations under 11 CFR 9033.10 (b) and (c). The Commission will notify the candidate of its initial determination within 15 business days after receipt of the candidate's statement of net outstanding campaign obligations. Within 15 business days after service of the Commission's notice,

the candidate may submit written legal or factual materials to demonstrate that he or she has met outstanding campaign obligations that entitle the campaign to further matching payments.

(3) If the candidate demonstrates that the amount of outstanding campaign obligations still exceeds committee assets, he or she may continue to receive matching payments.

(4) Following a final determination under this section, the candidate may file a petition for rehearing in accordance with 11 CFR 9038.5(a).

§ 9034.6 Reimbursements for transportation and services made available to media personnel.

(a) If an authorized committee incurs expenditures for transportation, ground services and facilities (including air travel, ground transportation, housing, meals, telephone service, and typewriters) made available to media personnel, Secret Service personnel or national security staff, such expenditures will be considered qualified campaign expenses and, except for costs relating to Secret Service personnel or national security staff, subject to the overall expenditure limitations of 11 CFR 9035.1(a).

(b) If reimbursement for such expenditures is received by a committee, the amount of such reimbursement for each media representative shall not exceed either: The media representative's pro rata share of the actual cost of the transportation and services made available; or a reasonable estimate of the media representative's pro rata share of the actual cost of the transportation and services made available. A media representative's pro rata share shall be calculated by dividing the total cost of the transportation and services by the total number of individuals to whom such transportation and services are made available. For purposes of this calculation, the total number of individuals shall include committee staff, media personnel, Secret Service personnel, national security staff and any other individuals to whom such transportation and services are made available. The total amount of reimbursements received from a media representative under this section shall not exceed the actual pro rata cost of the transportation and services made available to that media representative by more than 10%.

(c) The total amount paid by an authorized committee for the cost of transportation or for ground services and facilities shall be reported as an expenditure in accordance with 11 CFR 104.3(b)(2)(i). Any reimbursement received by such committee for transportation or ground services and facilities shall be reported in accordance with 11 CFR 104.3(a)(3)(ix).

(d)(1) The committee may deduct from the amount of expenditures subject to the overall expenditure limitation of 11 CFR 9035.1(a) the amount of reimbursements received in payment for the actual cost of transportation and services described in paragraph (a) of this section. This deduction shall not exceed the amount the committee expended for the actual cost of transportation and services provided. The committee may also deduct from the overall expenditure limitation an additional amount of reimbursements received equal to 3% of the actual cost of transportation and services provided under this section as the administrative cost to the committee of providing such services and seeking reimbursement for them. If the committee has incurred higher administrative costs in providing these services, the committee must document the total cost incurred for such services in order to deduct a higher amount of reimbursements received from the overall expenditure limitation. Amounts reimbursed that exceed the amount actually paid by the committee for transportation and services provided under paragraph (a) of this section plus the amount of administrative costs permitted by this section up to the maximum amount that may be received under paragraph (b) shall be repaid to the Treasury. Amounts paid by the committee for transportation, services and administrative costs for which no reimbursement is received will be considered qualified campaign expenses subject to the overall expenditure limitation in accordance with paragraph (a) of this section.

(2) For the purposes of this section, "administrative costs" shall include all costs incurred by the committee for making travel arrangements and for seeking reimbursements, whether performed by committee staff or independent contractors.

§ 9034.7 Allocation of travel expenditures.

(a) Notwithstanding the provisions of 11 CFR part 106, expenditures for travel relating to the campaign of a candidate seeking nomination for election to the office of President by any individual, including a candidate, shall, pursuant to the provisions of 11 CFR 9034.7(b), be qualified campaign expenses and be reported by the candidate's authorized committee(s) as expenditures.

(b)(1) For a trip which is entirely campaign-related, the total cost of the trip shall be a qualified campaign expense and a reportable expenditure.

(2) For a trip which includes campaign-related and non-campaign related stops, that portion of the cost of the trip allocable to campaign activity shall be a qualified campaign expense and a reportable expenditure. Such portion shall be determined by calculating what the trip would have cost from the point of origin of the trip to the first campaign-related stop and from that stop through each subsequent campaign-related stop, back to the point of origin. If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign-related.

(3) For each trip, an itinerary shall be prepared and such itinerary shall be made available for Commission inspection.

(4) For trips by government conveyance or by charter, a list of all passengers on such trip, along with a designation of which passengers are and which are not campaign-related, shall be made available for Commission inspection.

(5) If any individual, including a candidate, uses government conveyance or accommodations paid for by a government entity for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount equal to:

(i) The first class commercial air fare plus the cost of other services, in the case of travel to a city served by a regularly scheduled commercial service; or

(ii) The commercial charter rate plus the cost of other services, in the case of travel to a city not served by a regularly scheduled commercial service.

(6) Travel expenses of a candidate's spouse and family when accompanying the candidate on campaign-related travel may be treated as qualified campaign expenses and reportable expenditures. If the spouse or family members conduct campaign-related activities, their travel expenses will be treated as qualified campaign expenses and reportable expenditures.

(7) If any individual, including a candidate, incurs expenses for campaign-related travel, other than by use of government conveyance or accommodations, an amount equal to that portion of the actual cost of the conveyance or accommodations which is allocable to all passengers, including the candidate, traveling for campaign purposes will be a qualified campaign expense and shall be reported by the committee as an expenditure.

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(2) For a trip which includes campaign-related and non-campaign related stops, that portion of the cost of the trip allocable to campaign activity shall be a qualified campaign expense and a reportable expenditure. Such portion shall be determined by calculating what the trip would have cost from the point of origin of the trip to the first campaign-related stop and from that stop through each subsequent campaign-related stop, back to the point of origin. If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign-related.

(3) For each trip, an itinerary shall be prepared and such itinerary shall be made available for Commission inspection.

(4) For trips by government conveyance or by charter, a list of all passengers on such trip, along with a designation of which passengers are and which are not campaign-related, shall be made available for Commission inspection.

(5) If any individual, including a candidate, uses government conveyance or accommodations paid for by a government entity for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount equal to:

(i) The first class commercial air fare plus the cost of other services, in the case of travel to a city served by a regularly scheduled commercial service; or

(ii) The commercial charter rate plus the cost of other services, in the case of travel to a city not served by a regularly scheduled commercial service.

(6) Travel expenses of a candidate's spouse and family when accompanying the candidate on campaign-related travel may be treated as qualified campaign expenses and reportable expenditures. If the spouse or family members conduct campaign-related activities, their travel expenses will be treated as qualified campaign expenses and reportable expenditures.

(7) If any individual, including a candidate, incurs expenses for campaign-related travel, other than by use of government conveyance or accommodations, an amount equal to that portion of the actual cost of the conveyance or accommodations which is allocable to all passengers, including the candidate, traveling for campaign purposes will be a qualified campaign expense and shall be reported by the committee as an expenditure.

(i) If the trip is by charter, the actual cost for each passenger shall be determined by dividing the total operating cost for the charter by the total number of passengers transported. The amount which is a qualified campaign expense and a reportable expenditure shall be calculated in accordance with the formula set forth at 11 CFR 9034.7(b)(2) on the basis of the actual cost per passenger multiplied by the number of passengers traveling for campaign purposes.

(ii) If the trip is by non-charter commercial transportation, the actual cost shall be calculated in accordance with the formula set forth at 11 CFR 9034.7(b)(2) on the basis of the commercial fare. Such actual cost shall be a qualified campaign expense and a reportable expenditure.

§ 9034.8 Joint fundraising.

(a) *General.*—(1) *Permissible participants.* Presidential primary candidates who receive matching funds under this subchapter may engage in joint fundraising with other candidates, political committees or unregistered committees or organizations.

(2) *Use of funds.* Contributions received as a result of a candidate's participation in a joint fundraising activity under this section may be—

(i) Submitted for matching purposes in accordance with the requirements of 11 CFR 9034.2 and the Federal Election Commission's Guideline for Presentation in Good Order;

(ii) Used to pay a candidate's net outstanding campaign obligations as provided in 11 CFR 9034.5;

(iii) Used to defray qualified campaign expenses;

(iv) Used to defray exempt legal and accounting costs; or

(v) If in excess of a candidate's net outstanding campaign obligations or expenditure limit, used in any manner consistent with 11 CFR 113.2, including repayment of funds under 11 CFR part 9038.

(b) *Fundraising representatives.*—(1) *Establishment or selection of fundraising representative.* The participants in a joint fundraising effort under this section shall either establish a separate committee or select a participating committee, to act as fundraising representative for all participants. The fundraising representative shall be a reporting political committee and an authorized committee of each candidate. If the participants estabish a separate committee to act as the fundraising representative, the separate committee shall not be a participant in any other joint fundraising effort, but the separate committee may conduct more than one joint fundraising effort for the participants.

(2) *Separate fundraising committee as fundraising representative.* A separate fundraising committee established by the participants to act as fundraising representative for all participants shall—

(i) Be established as a reporting political committee under 11 CFR 100.5;

(ii) Collect contributions;

(iii) Pay fundraising costs from gross proceeds and funds advanced by participants; and

(iv) Disburse net proceeds to each participant.

(3) *Participating committee as fundraising representative.* A participant selected to act as fundraising representative for all participants shall—

(i) Be a political committee as defined in 11 CFR 100.5;

(ii) Collect contributions; however, other participants may also collect contributions and then forward them to the fundraising representative as required by 11 CFR 102.8;

(iii) Pay fundraising costs from gross proceeds and funds advanced by participants; and

(iv) Disburse net proceeds to each participant.

(4) *Independent fundraising agent.* The participants or the fundraising representative may hire a commercial fundraising firm or other agent to assist in conducting the joint fundraising activity. In that case, however, the fundraising representative shall still be responsible for ensuring that the recordkeeping, reporting and documentation requirements set forth in this subchapter are met.

(c) *Joint fundraising procedures.* Any joint fundraising activity under this section shall be conducted in accordance with the following requirements:

(1) *Written agreement.* The participants in a joint fundraising activity shall enter into a written agreement, whether or not all participants are political committees under 11 CFR 100.5. The written agteement shall identify the fundraising representative and shall state a formula for the allocation of fundraising proceeds. The formula shall be stated as the amount or percentage of each contribution received to be allocated to each participant. The fundraising representative shall retain the written agreement for a period of three years and shall make it available to the Commission on request.

(2) *Funds advanced for fundraising costs.* (i) Except as provided in 11 CFR 9034.8(c)(2)(ii), the amount of funds advanced by each participant for fundraising costs shall be in proportion to the allocation formula agreed upon under 11 CFR 9034.8(c)(1).

(ii) A participant may advance more than its proportionate share of the fundraising costs; however, the amount advanced which is in excess of the participant's proportionate share shall not exceed the amount that participant could legally contribute to the remaining participants. See 11 CFR 102.12(c)(2), part 110, and 9034.4(b)(6).

(3) *Fundraising notice.* In addition to any notice required under 11 CFR 110.11, a joint fundraising notice shall be included with every solicitation for contributions.

(i) This notice shall include the following information:

(A) The names of all committees participating in the joint fundraising activity whether or not such committees are political committees under 11 CFR 100.5;

(B) The allocation formula to be used for distributing joint fundraising proceeds;

(C) A statement informing contributors that, notwithstanding the stated allocation formula, they may designate their contributions for a particular participant or participants; and

(D) A statement informing contributors that the allocation formula may change if a contributor makes a contribution which would exceed the amount that contributor may give to any participant.

(ii) If one or more participants engage in the joint fundraising activity solely to satisfy outstanding debts, the notice shall also contain a statement informing contributors that the allocation formula may change if a participant receives sufficient funds to pay its outstanding debts.

(4) *Separate depository account.* (i) The participants or the fundraising representative shall establish a separate depository account to be used solely for the receipt and disbursement of the joint fundraising proceeds. All contributions deposited into the separate depository account must be permissible under title 2, United States Code. Each political committee shall amend its Statement of Organization to reflect the account as an additional depository.

(ii) The fundraising representative shall deposit all joint fundraising proceeds in the separate depository account within ten days of receipt as required by 11 CFR 103.3. The fundraising representative may delay distribution of the fundraising proceeds to the participants until all contributions are received and all expenses are paid.

(iii) For contribution reporting and limitation purposes, the date of receipt of a contribution by a participating political committee is the date that the contribution is received by the fundraising representative. The fundraising representative shall report contributions in the reporting period in which they are received. Participating political committees shall report joint fundraising proceeds in accordance with 11 CFR 9034.8(c)(9) when such funds are received from the fundraising representative.

(5) *Recordkeeping requirements.* (i) The fundraising representative and participating committees shall screen all contributions received to insure that the prohibitions and limitations of 11 CFR parts 110 and 114 are observed. Participating political committees shall make their contributor records available to the fundraising representative to enable the fundraising representative to carry out its duty to screen contributions.

(ii) The fundraising representative shall collect and retain contributor information with regard to gross proceeds as required under 11 CFR 102.8 and shall also forward such information to participating political committees.

(iii) The fundraising representative shall retain the records required under 11 CFR 9033.11 regarding fundraising disbursements for a period of three years. Commercial fundraising firms or agents shall forward such information to the fundraising representative.

(6) *Contribution limitations.* Except to the extent that the contributor has previously contributed to any of the participants, a contributor may make a contribution to the joint fundraising effort which contribution represents the total amount that the contributor could contribute to all of the participants under the applicable limits of 11 CFR 110.1 and 110.2.

(7) *Allocation of gross proceeds.* (i) The fundraising representative shall allocate proceeds according to the formula stated in the fundraising agreement. Each contribution received shall be allocated among the participants in accordance with the allocation formula, unless the circumstances described in paragraphs (c)(7) (ii), (iii) or (iv) of this section apply. Funds may not be distributed or reallocated so as to maximize the matchability of the contributions.

(ii) If distribution according to the allocation formula extinguishes the debts of one or more participants or if distribution under the formula results in a violation of the contribution limits of 11 CFR 110.1(b), the fundraising representative may reallocate the surplus funds. The fundraising representative shall not reallocate funds so as to allow candidates seeking to extinguish outstanding debts to rely on the receipt of matching funds to pay the remainder of their debts; rather, all funds to which a participant is entitled under the allocation formula shall be deemed funds available to pay the candidate's outstanding campaign obligations as provided in 11 CFR 9034.5(c).

(iii) Reallocation shall be based upon the remaining participant's proportionate shares under the allocation formula. If reallocation results in a violation of a contributor's limit under 11 CFR 110.1, the fundraising representative shall return to the contributor the amount of the contribution that exceeds the limit.

(iv) Earmarked contributions which exceed the contributor's limit to the designated participant under 11 CFR part 110 may not be reallocated by the fundraising representative without the prior written permission of the contributor. A written instrument made payable to one of the participants shall be considered an earmarked contribution unless a written statement by the contributor indicates that it is intended for inclusion in the general proceeds of the fundraising activity.

(8) *Allocation of expenses and distribution of net proceeds.* (i) If participating committees are not affiliated as defined in 11 CFR 110.3 prior to the joint fundraising activity and are not committees of the same political party:

(A) After gross contributions are allocated among the participants under 11 CFR 9034.8(c)(7), the fundraising representative shall calculate each participant's share of expenses based on the percentage of the total receipts each participant had been allocated. To calculate each participant's net proceeds, the fundraising representative shall subtract the participant's share of expenses from the amount that participant has been allocated from gross proceeds.

(B) A participant may only pay expenses on behalf of another participant subject to the contribution limits of 11 CFR part 110. See also 11 CFR 9034.4(b)(6).

(C) The expenses from a series of fundraising events or activities shall be allocated among the participants on a per-event basis regardless of whether the participants change or remain the same throughout the series.

(ii) If participating committees are affiliated as defined in 11 CFR 110.3 prior to the joint fundraising activity or if participants are party committees of the same political party, expenses need not be allocated among those participants. Payment of such expenses by an unregistered committee or organization on behalf of an affiliated political committee may cause the unregistered organization to become a political committee.

(iii) Payment of expenses may be made from gross proceeds by the fundraising representative.

(9) *Reporting of receipts and disbursements.*— (i) *Reporting receipts.* (A) The fundraising representative shall report all funds received in the reporting period in which they are received. Each Schedule A filed by the fundraising representative under this section shall clearly indicate that the contributions reported on that schedule represent joint fundraising proceeds.

(B) After distribution of net proceeds, each participating political committee shall report its share of net proceeds received as a transfer-in from the fundraising representative. Each participating political committee shall also file a memo Schedule A itemizing its share of gross receipts as contributions from original contributors to the extent required under 11 CFR 104.3(a).

(ii) *Reporting disbursements.* The fundraising representative shall report all disbursements in the reporting period in which they are made. Each participant shall report in a memo Schedule B his or her total allocated share of these disbursements in the same reporting period in which net proceeds are distributed and reported and include the amount on page 4 of Form 3–P, under "Expenditures Subject to Limit."

§ 9034.9 Sale of assets acquired for fundraising purposes.

(a) *General.* A candidate may sell assets donated to the candidate's authorized committee(s) or otherwise acquired for fundraising purposes (See 11 CFR 9034.5(c)(2)), subject to the limitations and prohibitions of title 2, United States Code and 11 CFR parts 110 and 114.

(b) *Sale after end of matching payment period.* A candidate whose outstanding debts exceed his or her cash on hand after the end of the matching payment period as determined under 11 CFR 9032.6 may dispose of assets acquired for fundraising purposes in a sale to a wholesaler or other intermediary who will in turn sell such assets to the public, provided that the sale to the wholesaler or intermediary is an arms-length transaction. Sales made under this subsection will not be subject to the limitations and prohibitions of title 2, United States Code and 11 CFR parts 110 and 114.

PART 9035—EXPENDITURE LIMITATIONS

Sec.
9035.1 Campaign expenditure limitation.
9035.2 Limitation on expenditures from personal or family funds.

Authority: 26 U.S.C. 9035 and 9039(b).

§ 9035.1 Campaign expenditure limitation.

(a)(1) No candidate or his or her authorized committee(s) shall knowingly incur expenditures in connection with the candidate's campaign for nomination, which expenditures, in the aggregate, exceed $10,000,000 (as adjusted under 2 U.S.C. 441a(c)), except that the aggregate expenditures by a candidate in any one State shall not exceed the greater of: 16 cents (as adjusted under 2 U.S.C. 441a(c)) multiplied by the voting age population of the State (as certified under 2 U.S.C. 441a(e)); or $200,000 (as adjusted under 2 U.S.C. 441a(c)).

(2) The Commission will calculate the amount of expenditures attributable to the overall expenditure limit or to a particular state using the full amounts originally charged for goods and services rendered to the committee and not the amounts for which such obligations were settled and paid, unless the committee can demonstrate that the lower amount paid reflects a reasonable settlement of a bona fide dispute with the creditor.

(b) Each candidate receiving or expecting to receive matching funds under this subchapter shall also allocate his or her expenditures in accordance with the provisions of 11 CFR 106.2.

(c)(1) A candidate may exclude from the overall expenditure limitation of 11 CFR 9035.1 an amount equal to 10% of all salaries and overhead expenditures as an exempt legal and accounting compliance cost under 11 CFR 100.8(b)(15). For purposes of this section overhead expenditures include, but are not limited to rent, utilities, office equipment, furniture, supplies, and telephone base service charges as set forth at 11 CFR 106.2(b)(2)(iii)(A).

(i) If the candidate wishes to claim a larger compliance exemption for any person, the candidate shall establish allocation percentages for each individual who spends all or a portion of his or her time to perform duties which are considered compliance. The candidate shall keep detailed records to support the derivation of each percentage. Such records shall indicate which duties are considered compliance and the percentage of time each person spends on such activity. Alternatively, the Commission's Financial Control and Compliance Manual for Presidential Primary Candidates contains some other accepted allocation methods for calculating a compliance exemption.

(ii) Exempt compliance costs are those legal and accounting costs incurred solely to ensure compliance with 26 U.S.C. 9031 *et seq.*, 2 U.S.C. 431 *et seq.*, and 11 CFR ch. I, including the costs of preparing matching fund submissions and the costs of producing, delivering and explaining computerized information and materials provided pursuant to 11 CFR 9033.12 and explaining the operation of the computer system's software. The costs of preparing matching fund submissions shall be limited to those functions not required for general contribution processing and shall include the costs associated with: Generating the matching fund submission list and the matching fund computer tape or other form of magnetic media for each submission, edits of the contributor data base that are related to preparing a matching fund submission, making photocopies of contributor checks, and seeking additional documentation from contributors for matching purposes. The costs associated with general contribution processing shall include those normally performed for fundraising purposes, or for compliance with the recordkeeping and reporting requirements of 11 CFR part 100 *et seq.*, such as data entry, batching contributions for deposit, and preparation of FEC reports.

(2) A candidate may exclude from the overall expenditure limitation of 11 CFR 9035.1 the amount of exempt fundraising costs specified in 11 CFR 100.8(b)(21)(iii).

(d) The expenditure limitations of 11 CFR 9035.1 shall not apply to a candidate who does not receive matching funds at any time during the matching payment period.

§ 9035.2 Limitation on expenditures from personal or family funds.

(a)(1) No candidate who has accepted matching funds shall knowingly make expenditures from his or her personal funds, or funds of his or her immediate family, in connection with his or her campaign for nomination for election to the office of President which exceed $50,000, in the aggregate. This section shall not operate to prohibit any member of the candidate's immediate family from contributing his or her personal funds to the candidate, subject to the limitations of 11 CFR part 110. The provisions of this section also shall not limit the candidate's liability for, nor the candidate's ability to pay, any repayments required under 11 CFR part 9038. If the candidate or his or her committee knowingly incurs expenditures in excess of the limitations of 11 CFR 110.8(a), the Commission may seek civil penalties under 11 CFR part 111 in addition to any repayment determinations made on the basis of such excessive expenditures.

(2) Expenditures made using a credit card for which the candidate is jointly or solely liable will count against the limits of this section to the extent that the full amount due, including any finance charge, is not paid by the committee within 60 days after the closing date of the billing statement on which the charges first appear. For purposes of this section, the *closing date* shall be the date indicated on the billing statement which serves as the cutoff date for determining which charges are included on that billing statement.

(b) For purposes of this section, the term *immediate family* means a candidate, spouse, and any child, parent, grandparent, brother, half-brother, sister, or half-sister of the candidate, and the spouses of such persons.

(c) For purposes of this section, *personal funds* has the same meaning as specified in 11 CFR 110.10.

PART 9036—REVIEW OF SUBMISSION AND CERTIFICATION OF PAYMENTS BY COMMISSION

Sec.
9036.1 Threshold submission.
9036.2 Additional submissions for matching fund payments.
9036.3 Submission of errors and insufficient documentation.
9036.4 Commission review of submissions.
9036.5 Resubmissions.
9036.6 Continuation of certification.

Authority: 26 U.S.C. 9036 and 9039(b).

§ 9036.1 Threshold submission.

(a) *Time for submission of threshold submission.* At any time after January 1 of the year immediately preceding the Presidential election year, the candidate may submit a threshold submission for matching fund payments in accordance with the format for such submissions set forth in 11 CFR 9036.1(b). The candidate may submit the threshold submission simultaneously with or subsequent to his or her submission of the candidate agreement and certifications required by 11 CFR 9033.1 and 9033.2.

(b) *Format for threshold submission.* (1) For each State in which the candidate certifies that he or she has met the requirements of the certifications in 11 CFR 9033.2(b), the candidate shall submit an alphabetical list of contributors showing:

(i) Each contributor's full name and residential address;

(ii) The occupation and name of employer for individuals whose aggregate contributions exceed $200 in the calendar year;

(iii) The date of deposit of each contribution into the designated campaign depository;

(iv) The full dollar amount of each contribution submitted for matching purposes;

(v) The matchable portion of each contribution submitted for matching purposes;

(vi) The aggregate amount of all matchable contributions from that contributor submitted for matching purposes;

(vii) A notation indicating which contributions were received as a result of joint fundraising activities.

(2) For each list of contributors generated directly or indirectly from computerized files or computerized records, the candidate shall submit computerized magnetic media, such as magnetic tapes or magnetic diskettes, containing the information required by 11 CFR 9036.1(b)(1) in accordance with 11 CFR 9033.12.

(3) The candidate shall submit a full-size photocopy of each check or written instrument and of supporting documentation in accordance with 11 CFR 9034.2 for each contribution that the candidate submits to establish eligibility for matching funds. For purposes of the threshold submission, the photocopies shall be segregated alphabetically by contributor within each State, and shall be accompanied by and referenced to copies of the relevant deposit slips.

(4) The candidate shall submit bank documentation, such as bank-validated deposit slips or unvalidated deposit slips accompanied by the relevant bank statements, which indicate that the contributions submitted were deposited into a designated campaign depository.

(5) For each State in which the candidate certifies that he or she has met the requirements to establish eligibility, the candidate shall submit a listing, alphabetically by contributor, of all checks returned by the bank to date as unpaid (e.g., stop payments, non-sufficient funds) regardless of whether the contribution was submitted for matching. This listing shall be accompanied by a full-size photocopy of each unpaid check, and copies of the associated debit memo and bank statement.

(6) For each State in which the candidate certifies that he or she has met the requirements to establish eligibility, the candidate shall submit a listing, in alphabetical order by contributor, of all contributions that were refunded to the contributor, regardless of whether the contributions were submitted for matching. For each refunded contribution, the listing shall state the contributor's full name and address, the deposit date and batch number, an indication of which matching fund submission the contribution was included in, if any, and the amount and date of the refund. The listing shall be accompanied by a full-sized photocopy of each refunded contributor check.

(7) The candidate shall submit all contributions in accordance with the Federal Election Commission's Guideline for Presentation in Good Order.

(8) Contributions that are not submitted in compliance with this section shall not count toward the threshold amount.

(c) *Threshold certification by Commission.* (1) After the Commission has determined under 11 CFR 9033.4 that the candidate has satisfied the eligibility and certification requirements of 11 CFR 9033.1 and 9033.2, the Commission will notify the candidate in writing that the candidate is eligible to receive primary matching fund payments as provided in 11 CFR part 9034.

(2) If the Commission makes a determination of a candidate's eligibility under 11 CFR 9036.1(a) in a Presidential election year, the Commission shall certify to the Secretary, within 10 calendar days after the Commission has made its determination, the amount to which the candidate is entitled.

(3) If the Commission makes a determination of a candidate's eligibility under 11 CFR 9036.1(a) in the year preceding the Presidential election year, the Commission will notify the candidate that he or she is eligible to receive matching fund payments; however, the Commission's determination will not result in a payment of funds to the candidate until after January 1 of the Presidential election year.

§ 9036.2 Additional submissions for matching fund payments.

(a) *Time for submission of additional submissions.* The candidate may submit additional submissions for payments to the Commission on dates to be determined and published by the Commission.

(b) *Format for additional submissions.* The candidate may obtain additional matching fund payments subsequent to the Commission's threshold certification and payment of primary matching funds to the candidate by filing an additional submission for payment. All additional submissions for payments filed by the candidate shall be made in accordance with the Federal Election Commission's Guideline for Presentation in Good Order.

(1) The first submission for matching funds following the candidate's threshold submission shall contain all the matchable contributions included in the threshold submission and any additional contributions to be submitted for matching in that submission. This submission shall contain all the information required for the threshold submission except that:

(i) The candidate is not required to resubmit the candidate agreement and certifications of 11 CFR 9033.1 and 9033.2;

(ii) The candidate is required to submit an alphabetical list of contributors, but not segregated by State as required in the threshold submission;

(iii) The candidate is required to submit a listing, alphabetical by contributor, of all checks returned unpaid, but not segregated by State as required in the threshold submission;

(iv) The candidate is required to submit a listing, in alphabetical order by contributor, of all contributions refunded to the contributor but not segregated by State as required in the threshold submission.

(v) The occupation and employer's name need not be disclosed on the contributor list for individuals whose aggregate contributions exceed $200 in the calendar year, but such information is subject to the recordkeeping and reporting requirements of 2 U.S.C. 432(c)(3), 434(b)(3)(A) and 11 CFR 102.9(a)(2), 104.3(a)(4)(i); and

(vi) The photocopies of each check or written instrument and of supporting documentation shall either be alphabetized and referenced to copies of the relevant deposit slip, but not segregated by State as required in the threshold submission; or such photocopies may be batched in deposits of 50 contributions or less and cross-referenced by deposit number and sequence number within each deposit on the contributor list.

(2) Following the first submission under 11 CFR 9036.2(b)(1), candidates may request additional matching funds on dates prescribed by the Commission by making a letter request in lieu of making a full submission as required under 11 CFR 9036.2(b)(1), however, letter requests may not be submitted

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(1) The first submission for matching funds following the candidate's threshold submission shall contain all the matchable contributions included in the threshold submission and any additional contributions to be submitted for matching in that submission. This submission shall contain all the information required for the threshold submission except that:

(i) The candidate is not required to resubmit the candidate agreement and certifications of 11 CFR 9033.1 and 9033.2;

(ii) The candidate is required to submit an alphabetical list of contributors, but not segregated by State as required in the threshold submission;

(iii) The candidate is required to submit a listing, alphabetical by contributor, of all checks returned unpaid, but not segregated by State as required in the threshold submission;

(iv) The candidate is required to submit a listing, in alphabetical order by contributor, of all contributions refunded to the contributor but not segregated by State as required in the threshold submission.

(v) The occupation and employer's name need not be disclosed on the contributor list for individuals whose aggregate contributions exceed $200 in the calendar year, but such information is subject to the recordkeeping and reporting requirements of 2 U.S.C. 432(c)(3), 434(b)(3)(A) and 11 CFR 102.9(a)(2), 104.3(a)(4)(i); and

(vi) The photocopies of each check or written instrument and of supporting documentation shall either be alphabetized and referenced to copies of the relevant deposit slip, but not segregated by State as required in the threshold submission; or such photocopies may be batched in deposits of 50 contributions or less and cross-referenced by deposit number and sequence number within each deposit on the contributor list.

(2) Following the first submission under 11 CFR 9036.2(b)(1), candidates may request additional matching funds on dates prescribed by the Commission by making a letter request in lieu of making a full submission as required under 11 CFR 9036.2(b)(1), however, letter requests may not be submitted

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after the candidate's date of ineligibility. Letter requests shall state an amount of matchable contributions not previously submitted for matching and shall provide bank documentation, such as bank-validated deposit slips or unvalidated deposit slips accompanied by the relevant bank statement, demonstrating that the committee has received the funds for which matching payments are requested. The amount requested for matching may include contributions received up to the last business day preceding the date of the request. On the next submission date as designated for that committee after a letter request has been made, the committee shall submit the documentation required under 11 CFR 9036.2(b)(1) for all contributions included in the letter request, as well as any contributions submitted for matching in that full submission. A committee may not submit two consecutive letter requests, but the committee may choose to make a full regular submission on a date designated by the Commission as a letter request date for that committee.

(c) *Certification of additional payments by Commission.* (1)(i) When a candidate who is eligible under 11 CFR 9033.4 submits an additional submission for payment in the Presidential election year, the Commission may certify to the Secretary within 5 business days after the Commission's receipt of information submitted by the candidate under 11 CFR 9036.2(a), an amount based on the holdback procedure described in the Federal Election Commission's Guideline for Presentation in Good Order. If the candidate makes a letter request, the Commission may certify to the Secretary an amount which is less than that requested based upon the ratio of verified matchable contributions to total deposits for that committee in the committee's last regular submission.

(ii) The Commission will certify to the Secretary any additional amount to which the eligible candidate is entitled, if any, within 20 business days after the Commission's receipt of information submitted by the candidate under 11 CFR 9036.2(a), unless the projected dollar value of the nonmatchable contributions contained in the submission exceeds 10% of the amount requested. In the latter case, the Commission will certify any additional amount within 25 business days. See 11 CFR 9036.4 for Commission procedures for certification of additional payments.

(2) After a candidate's date of ineligibility, the Commission will certify to the Secretary, within 20 business days after receipt of a submission by the candidate under 11 CFR 9036.2(a), an amount to which the ineligible candidate is entitled in accordance with 11 CFR 9034.1(b), unless the projected dollar value of the nonmatchable contributions contained in the submission exceeds 10% of the amount requested. In the latter case, the Commission will certify any amount to which the ineligible candidate is entitled within 25 business days.

(d) *Additional submissions submitted in non-Presidential election year.* The candidate may submit additional contributions for review during the year preceding the presidential election year; however, the amount of each submission made during this period must exceed $50,000. Additional submissions filed by a candidate in a non-Presidential election year will not result in payment of matching funds to the candidate until after January 1 of the Presidential election year.

§ 9036.3 Submission of errors and insufficient documentation.

Contributions which are otherwise matchable may be rejected for matching purposes because of submission errors or insufficient supporting documentation. Contributions, other than those defined in 11 CFR 9034.3 or in the form of money orders, cashier's checks, or similar negotiable instruments, may become matchable if there is a proper resubmission in accordance with 11 CFR 9036.5 and 9036.6. Insufficient documentation or submission errors include but are not limited to:

(a) Discrepancies in the written instrument, such as:

(1) Instruments drawn on other than personal accounts of contributors and not signed by the contributing individual;

(2) Signature discrepancies; and

(3) Lack of the contributor's signature, the amount or date of the contribution, or the listing of the committee or candidate as payee.

(b) Discrepancies between listed contributions and the written instrument or supporting documentation, such as:

(1) The listed amount requested for matching exceeds the amount contained on the written instrument;

(2) A written instrument has not been submitted to support a listed contribution;

(3) The submitted written instrument cannot be associated either by accountholder identification or signature with the listed contributor; or

(4) A discrepancy between the listed contribution and the supporting bank documentation or the bank documentation is omitted.

(c) Discrepancies within or between contributor lists submitted, such as:

(1) The address of the contributor is omitted or incomplete or the contributor's name is alphabetized incorrectly, or more than one contributor is listed per item;

(2) A discrepancy in aggregation within or between submissions which results in a request that more than $250 be matched for that contributor, or a listing of a contributor more than once within the same submission; or

(3) A written instrument has been previously submitted and matched in full or is listed twice in the same submission.

(d) The omission of information, supporting statements, or documentation required by 11 CFR 9034.2.

§ 9036.4 Commission review of submissions.

(a) *Non-acceptance of submission for review of matchability.* The Commission will make an initial review of each submission made under 11 CFR part 9036 to determine if it substantially meets the format requirements of 11 CFR 9036.1(b) and 9036.2(b) and the Federal Election Commission's Guideline for Presentation in Good Order. If the Commission determines that a submission does not substantially meet these requirements, it will not review the matchability of the contributions contained therein. In such a case, the Commission will return the submission to the candidate and request that it be corrected in accordance with the format requirements. If the candidate makes a corrected submission within 3 business days after the Commission's return of the original, the Commission will review the corrected submission prior to the next regularly-scheduled submission date. Corrected submissions made after this three-day period will be reviewed subsequent to the next regularly-scheduled submission date.

(b) *Acceptance of submission for review of matchability.* If the Commission determines that a submission made under 11 CFR part 9036 satisfies the format requirements of 11 CFR 9036.1(b) and 9036.2(b) and the Federal Election Commission's Guideline for Presentation in Good Order, it will review the matchability of the contributions contained therein. The Commission, in conducting its review, may utilize statistical sampling techniques. Based on the results of its review, the Commission may calculate a matchable amount for the submission which is less than the amount requested by the candidate. If the Commission certifies for payment to the Secretary an amount that is less than the amount requested by the candidate in a particular submission, or reduces the amount of a subsequent certification to the Secretary by adjusting a previous certification made under 11 CFR 9036.2(c)(1), the Commission will notify the candidate in writing of the following:

(1) The amount of the difference between the amount requested and the amount to be certified by the Commission;

(2) The amount of each contribution and the corresponding contributor's name for each contribution that the Commission has rejected as non-matchable and the reason that it is not matchable; or if statistical sampling is used, the estimated amount of contributions by type and the reason for rejection;

(3) The amount of contributions that have been determined to be matchable and that the Commission will certify to the Secretary for payment; and

(4) A statement that the candidate may supply the Commission with additional documentation or other information in the resubmission of any rejected contribution under 11 CFR 9036.5 in order to show that a rejected contribution is matchable under 11 CFR 9034.2.

(c) *Adjustment of amount to be certified by Commission.* The candidate shall notify the Commission as soon as possible if the candidate or the candidate's authorized committee(s) has knowledge that a contribution submitted for matching does not qualify under 11 CFR 9034.2 as a matchable contribution, such as a check returned to the committee for insufficient funds or a contribution that has been refunded, so that the Commission may properly adjust the amount to be certified for payment.

(d) *Commission audit of submissions.* The Commission may determine, for the reasons stated in 11 CFR part 9039, that an audit and examination of contributions submitted for matching payment is warranted. The audit and examination shall be conducted in accordance with the procedures of 11 CFR part 9039.

§ 9036.5 Resubmissions.

(a) *Alternative resubmission methods.* Upon receipt of the Commission's notice of the results of the submission review pursuant to 11 CFR 9036.4(b), a candidate may choose to:

(1) Resubmit the entire submission; or

(2) Make a written request for the identification of the specific contributions that were rejected for matching, and resubmit those specific contributions.

(b) *Time for presentation of resubmissions.* If the candidate chooses to resubmit any contributions under 11 CFR 9036.5(a), the contributions shall be resubmitted on dates to be determined and published by the Commission. The candidate may not make any resubmissions later than the first Tuesday in September of the year following the Presidential election year.

(c) *Format for resubmissions.* All resubmissions filed by the candidate shall be made in accordance with the Federal Election Commission's Guideline for Presentation in Good Order. In making a presentation of resubmitted contributions, the candidate shall follow the format requirements as specified in 11 CFR 9036.2(b)(1), except that:

(1) The candidate need not provide photocopies of written instruments, supporting documentation and bank documentation unless it is necessary to supplement the original documentation.

(2) Each resubmitted contribution shall be referenced to the submission in which it was first presented.

(3) Each list of resubmitted contributions shall reflect the aggregate amount of contributions submitted for matching from each contributor as of the date of the original submission.

(4) Each list of resubmitted contributions shall reflect the aggregate amount of contributions submitted for matching from each contributor as of the date of the resubmission.

(5) Each list of resubmitted contributions shall only contain contributions previously submitted for matching and no new or additional contributions.

(6) Each resubmission shall be accompanied by a statement that the candidate has corrected his or her contributor records (including the data base for those candidates maintaining their contributor list on computer).

(d) *Certification of resubmitted contributions.* Contributions that the Commission determines to be matchable will be certified to the Secretary within 15 business days. If the candidate chooses to request the specific contributions rejected for matching pursuant to 11 CFR 9036.5(a)(2), the amount certified shall equal only the matchable amount of the particular contribution that meets the standards on resubmission, rather than the amount projected as being nonmatchable based on that contribution due to the sampling techniques used in reviewing the original submission.

(e) *Initial determinations.* If the candidate resubmits a contribution for matching and the Commission determines that the rejected contribution is still non-matchable, the Commission will notify the candidate in writing of its determination. The Commission will advise the candidate of the legal and factual reasons for its determination and of the evidence on which that determination is based. The candidate may submit written legal or factual materials to demonstrate that the contribution is matchable within 30 calendar days after service of the Commission's notice. Such materials may be submitted by counsel if the candidate so desires.

(f) *Final determinations.* The Commission will consider any written legal or factual materials timely submitted by the candidate in making its final determination. A final determination by the Commission that a contribution is not matchable will be accompanied by a written statement of reasons for the Commission's action. This statement will explain the reasons underlying the Commission's determination and will summarize the results of any investigation upon which the determination is based.

§ 9036.6 Continuation of certification.

Candidates who have received matching funds and who are eligible to continue to receive such funds may continue to submit additional submissions for payment to the Commission on dates specified in the Federal Election Commission's Guideline for Presentation in Good Order. The Commission will notify each candidate of the last date on which contributions may be submitted for the first time for matching in the year following the election. The last date for first-time submissions will be either the last Monday in February or the second Monday in March of the year following the election, depending on the submission schedule the Commission has designated for the candidate. No contribution will be matched if it is submitted after the last submission date designated for that candidate, regardless of the date the contribution was deposited.

PART 9037—PAYMENTS AND REPORTING

Sec.
9037.1 Payments of Presidential primary matching funds.
9037.2 Equitable distribution of funds.
9037.3 Deposits of Presidential primary matching funds.

Authority: 26 U.S.C. 9037 and 9039(b).

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(f) *Final determinations.* The Commission will consider any written legal or factual materials timely submitted by the candidate in making its final determination. A final determination by the Commission that a contribution is not matchable will be accompanied by a written statement of reasons for the Commission's action. This statement will explain the reasons underlying the Commission's determination and will summarize the results of any investigation upon which the determination is based.

§ 9036.6 Continuation of certification.

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PART 9037—PAYMENTS AND REPORTING

Sec.
9037.1 Payments of Presidential primary matching funds.
9037.2 Equitable distribution of funds.
9037.3 Deposits of Presidential primary matching funds.

Authority: 26 U.S.C. 9037 and 9039(b).

§ 9037.1 Payments of Presidential primary matching funds.

Upon receipt of a written certification from the Commission, but not before the beginning of the matching payment period, the Secretary will promptly transfer the amount certified from the matching payment account to the candidate.

§ 9037.2 Equitable distribution of funds.

In making such transfers to candidates of the same political party, the Secretary will seek to achieve an equitable distribution of funds available in the matching payment account, and the Secretary will take into account, in seeking to achieve an equitable distribution of funds available in the matching payment account, the sequence in which such certifications are received.

§ 9037.3 Deposits of Presidential primary matching funds.

Upon receipt of any matching funds, the candidate shall deposit the full amount received into a checking account maintained by the candidate's principal campaign committee in the depository designated by the candidate. The account(s) shall be maintained at a State bank, federally chartered depository institution or other depository institution, the deposits of which are insured by the Federal Deposit Insurance Corporation.

PART 9038—EXAMINATION AND AUDITS

Sec.
9038.1 Audit.
9038.2 Repayments.
9038.3 Liquidation of obligations; repayment.
9038.4 Extensions of time.
9038.5 Petitions for rehearing; stays of repayment determinations.
9038.6 Stale-dated committee checks.

Authority: 26 U.S.C. 9038 and 9039(b).

§ 9038.1 Audit.

(a) *General.* (1) The Commission will conduct an audit of the qualified campaign expenses of every candidate and his or her authorized committee(s) who received Presidential primary matching funds. The audit may be conducted at any time after the date of the candidate's ineligibility.

(2) In addition, the Commission may conduct other examinations and audits from time to time as it deems necessary to carry out the provisions of this subchapter.

(3) Information obtained pursuant to any audit and examination conducted under 11 CFR 9038.1(a) (1) and (2) may be used by the Commission as the basis, or partial basis, for its repayment determinations under 11 CFR 9038.2.

(b) *Conduct of fieldwork.* (1) If the candidate or the candidate's authorized committee does not maintain or use any computerized information containing the data listed in 11 CFR 9033.12, the Commission will give the candidate's authorized committee at least two weeks' notice of the Commission's intention to commence fieldwork on the audit and examination. The fieldwork shall be conducted at a site provided by the committee. If the candidate or the candidate's authorized committee maintains or uses computerized information containing any of the data listed in 11 CFR 9033.12, the Commission generally will request such information prior to commencement of audit fieldwork. Such request will be made in writing. The committee shall produce the computerized information no later than 15 calendar days after service of such request. Upon receipt of the computerized information requested and compliance with the technical specifications of 11 CFR 9033.12(b), the Commission will give the candidate's authorized committee at least two weeks' notice of the Commission's intention to commence fieldwork on the audit and examination. The fieldwork shall be conducted at a site provided by the committee. During or after audit fieldwork, the Commission may request additional or updated computerized information which expands the coverage dates of computerized information previously provided, and which may be used for purposes including, but not limited to, updating a statement of net outstanding campaign obligations, or updating the amount chargeable to a state expenditure limit. During or after audit fieldwork, the Commission may also request additional computerized information which was created by or becomes available to the committee and that is of assistance in the Commission's audit. The committee shall produce the additional or updated computerized information no later than 15 calendar days after service of the Commission's request.

(i) *Office space and records.* On the date scheduled for the commencement of fieldwork, the candidate or his or her authorized committee(s) shall provide Commission staff with office space and committee records in accordance with the candidate and committee agreement under 11 CFR 9033.1(b)(6).

(ii) *Availability of committee personnel.* On the date scheduled for the commencement of fieldwork, the candidate or his or her authorized committee(s) shall have committee personnel present at the site of the fieldwork. Such Personnel shall be familiar with the committee's records and operation and shall be available to Commission staff to answer questions and to aid in locating records.

(iii) *Failure to provide staff, records or office space.* If the candidate or his or her authorized committee(s) fail to provide adequate office space, personnel or committee records, the Commission may seek judicial intervention under 2 U.S.C. 437d or 26 U.S.C. 9040(c) to enforce the candidate and committee agreement made under 11 CFR 9033.1(b). Before seeking judicial intervention, the Commission will notify the candidate of his or her failure to comply with the agreement and will recommend corrective action to bring the candidate into compliance. Upon receipt of the Commission's notification, the candidate will have 10 calendar days in which to take the corrective action indicated or to otherwise demonstrate to the Commission in writing that he or she is complying with the candidate and committee agreement.

(iv) If, in the course of the audit process, a dispute arises over the documentation sought or other requirements of the candidate agreement, the candidate may seek review by the Commission of the issues raised. To seek review, the candidate shall submit a written statement, within 10 calendar days after the disputed Commission staff request is made, describing the dispute and indicating the candidate's proposed alternative(s).

(v) If the candidate or his or her authorized committee fails to produce particular records, materials, evidence or other information requested by the Commission, the Commission may issue an order pursuant to 2 U.S.C. 437d(a)(1) or a subpoena or subpoena duces tecum pursuant to 2 U.S.C. 437(d)(a)(3). The procedures set forth in 11 CFR 111.11 through 111.15, as appropriate, shall apply to the production of such records, materials, evidence or other information as specified in the order, subpoena or subpoena duces tecum.

(2) Fieldwork will include the following steps designed to keep the candidate and committee informed as to the progress of the audit and to expedite the process:

(i) *Entrance conference.* At the outset of the fieldwork, Commission staff will hold an entrance conference, at which the candidate's representatives will be advised of the purpose of the audit and the general procedures to be followed. Future requirements of the candidate and his or her authorized committee, such as possible repayments to the United States Treasury, will also be discussed. Committee representatives shall provide information and records necessary to conduct the audit, and Commission staff will be available to answer committee questions.

(ii) *Review of records.* During the fieldwork, Commission staff will review committee records and may conduct interviews of committee personnel. Commission staff will be available to explain aspects of the audit and examination as it progresses. Additional meetings between Commission staff and committee personnel may be held from time to time during the fieldwork to discuss possible audit findings and to resolve issues arising during the course of the audit.

(iii) *Exit conference.* At the conclusion of the fieldwork, Commission staff will hold an exit conference to discuss with committee representatives the staff's preliminary findings and recommendations which the Commission staff anticipates that it may present to the Commission for approval. Commission staff will advise committee representatives at this conference of the projected timetable regarding the issuance of an audit report, the committee's opportunity to respond thereto, and the Commission's initial and final repayment determinations under 11 CFR 9038.2.

(3) Commission staff may conduct additional fieldwork after the completion of the fieldwork conducted pursuant to 11 CFR 9038.1(b) (1) and (2). Factors that may necessitate such follow-up fieldwork include, but are not limited to, the following:

(i) Committee responses to audit findings;

(ii) Financial activity of the committee subsequent to the fieldwork conducted pursuant to 11 CFR 9038.1(b)(1);

(iii) Committee responses to Commission repayment determinations made under 11 CFR 9038.2.

(4) The Commission will notify the candidate and his or her authorized committee if follow-up fieldwork is necessary. The provisions of 11 CFR 9038.1(b) (1) and (2) shall apply to any additional fieldwork conducted.

(c) *Preparation of interim audit report.* (1) After the completion of the fieldwork conducted pursuant to 11 CFR 9038.1(b)(1), the Commission will issue an interim audit report to the candidate and his or her authorized committee. The interim audit report may contain Commission findings and recommendations regarding one or more of the following areas:

(i) An evaluation of procedures and systems employed by the candidate and committee to comply with applicable provisions of the Federal Election Campaign Act, Primary Matching Payment Account Act and Commission regulations;

(ii) Eligibility of the candidate to receive primary matching payments;

(iii) Accuracy of statements and reports filed with the Commission by the candidate and committee;

(iv) Compliance of the candidate and committee with applicable statutory and regulatory provisions except for those instances where the Commission has instituted an enforcement action on the matter(s) under the provisions of 2 U.S.C. 437g and 11 CFR part 111; and

(v) Preliminary calculations regarding future repayments to the United States Treasury.

(2) The candidate and his or her authorized committee will have an opportunity to submit, in writing, within 30 calendar days after service of the interim report legal and factual materials disputing or commenting on the contents of the interim report. Such materials may be submitted by counsel if the candidate so desires.

(3) The Commission will consider any written legal and factual materials submitted by the candidate or his or her authorized committee in accordance with 11 CFR 9038.1(c)(2) before approving and issuing an audit report to be released to the public. The contents of the publicly-released audit report may differ from that of the interim report since the Commission will consider timely submissions of legal and factual materials by the candidate or committee in response to the interim report.

(d) *Preparation of publicly-released audit report.* An audit report prepared subsequent to an interim report will be publicly released pursuant to 11 CFR 9038.1(e). This report will contain Commission findings and recommendations addressed in the interim audit report but may contain adjustments based on the candidate's response to the interim report. In addition, this report will contain an initial repayment determination made by the Commission pursuant to 11 CFR 9038.2(c)(1) in lieu of the preliminary calculations set forth in the interim report.

(e) *Public release of audit report.* (1) After the candidate and committee have had an opportunity to respond to a written interim report of the Commission, the Commission will make public the audit report prepared subsequent to the interim report, as provided in 11 CFR 9038.1(d).

(2) If the Commission determines, on the basis of information obtained under the audit and examination process, that certain matters warrant enforcement under 2 U.S.C. 437g and 11 CFR part 111, those matters will not be contained in the publicly-released report. In such cases, the audit report will indicate that certain other matters have been referred to the Commission's Office of General Counsel.

(3) The Commission will provide the candidate and the committee with copies of the agenda document containing those portions of the final audit report to be considered in open session 24 hours prior to releasing the agenda document to the public. The Commission will also provide the candidate and committee with copies of the final audit report 24 hours before releasing the report to the public.

(4) Addenda to the audit report may be issued from time to time as circumstances warrant and as additional information becomes available. Such addenda may be based, in part, on follow-up fieldwork conducted under 11 CFR 9038.1(b)(3), and will be placed on the public record.

§ 9038.2 Repayments.

(a) *General.* (1) A candidate who has received payments from the matching payment account shall pay the United States Treasury any amounts which the Commission determines to be repayable under this section. In making repayment determinations under this section, the Commission may utilize information obtained from audits and examinations conducted pursuant to 11 CFR 9038.1 and part 9039 or otherwise obtained by the Commission in carrying out its responsibilities under this subchapter.

(2) The Commission will notify the candidate of any repayment determinations made under this section as soon as possible, but not later than 3 years after the end of the matching payment period. The Commission's issuance of an interim audit report to the candidate under 11 CFR 9038.1(c) will constitute notification for purposes of the 3 year period.

(3) Once the candidate receives notice of the Commission's final repayment determination under this section, the candidate should give preference to the repayment over all other outstanding obligations of his or her committee, except for any federal taxes owed by the committee.

(b) *Bases for repayment*—(1) *Payments in excess of candidate's entitlement.* The Commission may determine that certain portions of the payments made to a candidate from the matching payment account were in excess of the aggregate amount of payments to which such candidate was entitled. Examples of such excessive

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(b) *Bases for repayment*—(1) *Payments in excess of candidate's entitlement.* The Commission may determine that certain portions of the payments made to a candidate from the matching payment account were in excess of the aggregate amount of payments to which such candidate was entitled. Examples of such excessive

payments include, but are not limited to, the following:

(i) Payments made to the candidate after the candidate's date of ineligibility where it is later determined that the candidate had no net outstanding campaign obligations as defined in 11 CFR 9034.5;

(ii) Payments or portions of payments made to the candidate which are later determined to have been excessive due to the operation of the Commission's expedited payment procedures as set forth in the Federal Election Commission's Guideline for Presentation in Good Order;

(iii) Payments or portions of payments made on the basis of matched contributions later determined to have been non-matchable;

(iv) Payments or portions of payments made to the candidate which are later determined to have been excessive due to the candidate's failure to include funds received by a fundraising representative committee under 11 CFR 9034.8 on the candidate's statement of net outstanding campaign obligations under 11 CFR 9034.5; and

(v) Payments or portions of payments made to the candidate on the basis of the debts reflected in the candidate's statement of net outstanding campaign obligations, which debts are later settled for an amount less than that stated in the statement of net outstanding campaign obligations.

(2) *Use of funds for non-qualified campaign expenses.* (i) The Commission may determine that amount(s) of any payments made to a candidate from the matching payment account were used for purposes other than those set forth in paragraphs (b)(2)(i) (A)–(C) of this section:

(A) Defrayal of qualified campaign expenses;

(B) Repayment of loans which were used to defray qualified campaign expenses; and

(C) Restoration of funds (other than contributions which were received and expended to defray qualified campaign expenses) which were used to defray qualified campaign expenses.

(ii) Examples of Commission repayment determinations under 11 CFR 9038.2(b)(2) include, but are not limited to, the following:

(A) Determinations that a candidate, a candidate's authorized committee(s) or agents have made expenditures in excess of the limitations set forth in 11 CFR part 9035;

(B) Determinations that funds described in 11 CFR 9038.2(b)(2)(i) were expended in violation of state or federal law;

(C) Determinations that funds described in 11 CFR 9038.2(b)(2)(i) were expended for expenses resulting from a violation of state or federal law, such as the payment of fines or penalties; and

(D) Determinations that funds described in 11 CFR 9038.2(b)(2)(i) were expended for costs associated with continuing to campaign after the candidate's date of ineligibility.

(iii) The amount of any repayment sought under this section shall bear the same ratio to the total amount determined to have been used for non-qualified campaign expenses as the amount of matching funds certified to the candidate bears to the total deposits, as of the candidate's date of ineligibility. Total deposits is defined in accordance with 11 CFR 9038.3(c)(2). For the purpose of seeking repayment for non-qualified campaign expenses from committees that have received matching fund payments after the candidate's date of ineligibility, the Commission will review committee expenditures to determine at what point committee accounts no longer contain matching funds. In doing this, the Commission will review committee expenditures from the date of the last matching fund payment to which the candidate was entitled, using the assumption that the last payment has been expended on a last-in, first-out basis.

(iv) Repayment determinations under 11 CFR 9038.2(b)(2) will include all non-qualified campaign expenses paid before the point when committee accounts no longer contain matching funds, including non-qualified campaign expenses listed on the candidate's statement of net outstanding campaign obligations that may result in a separate repayment determination under 11 CFR 9038.2(b)(1).

(v) If a candidate or a candidate's authorized committee(s) exceeds both the overall expenditure limitation and one or more State expenditure limitations, as set forth at 11 CFR 9035.1(a), the repayment determination under 11 CFR 9038.2(b)(2)(ii)(A) shall be based on only the larger of either the amount exceeding the State expenditure limitation(s) or the amount exceeding the overall expenditure limitation.

(3) *Failure to provide adequate documentation.* The Commission may determine that amount(s) spent by the candidate, the candidate's authorized committee(s), or agents were not documented in accordance with 11 CFR 9033.11. The amount of any repayment sought under this section shall be determined by using the formula set forth in 11 CFR 9038.2(b)(2)(iii).

(4) *Surplus.* The Commission may determine that the candidate's net outstanding campaign obligations, as defined in 11 CFR 9034.5, reflect a surplus. The Commission may determine that the net income derived from the investment of surplus public funds after the candidate's date of ineligibility, less Federal, State and local taxes paid on such income, is also repayable.

(c) *Repayment determination procedures.* Commission repayment determinations will be made in accordance with the procedures set forth at 11 CFR 9038.2(c) (1) through (4) of this section.

(1) *Initial determination.* The Commission will provide the candidate with a written notice of its initial repayment determination(s). This notice will be included in the Commission's publicly-released audit report, pursuant to 11 CFR 9038.1(d), and will set forth the legal and factual reasons for such determination(s). Such notice will also advise the candidate of the evidence upon which any such determination is based. If the candidate does not dispute an initial repayment determination of the Commission within 30 calendar days after service of the notice, such initial determination will be considered a final determination of the Commission.

(2) *Submission of written materials.* If the candidate disputes the Commission's initial repayment determination(s), he or she shall have an opportunity to submit in writing, within 30 calendar days after service of the Commission's notice, legal and factual materials to demonstrate that no repayment, or a lesser repayment, is required. The Commission will consider any written legal and factual materials submitted by the candidate within this 30-day period in making its final repayment determination(s). Such materials may be submitted by counsel if the candidate so desires.

(3) *Oral presentation.* A candidate who has submitted written materials under 11 CFR 9038.2(c)(2) may request that the Commission provide such candidate with an opportunity to address the Commission in open session. If the Commission decides by an affirmative vote of four (4) of its members to grant the candidate's request, it will inform the candidate of the date and time set for the oral presentation. At the date and time set by the Commission, the candidate or candidate's designated representative will be allotted an amount of time in which to make an oral presentation to the Commission based upon the legal and factual materials submitted under 11 CFR 9038.2(c)(2). The candidate or representative will also have the opportunity to answer any questions

from individual members of the Commission.

(4) *Final determination.* In making its final repayment determination(s), the Commission will consider any submission made under 11 CFR 9038.2(c)(2) and any oral presentation made under 11 CFR 9038.2(c)(3). A final determination that a candidate must repay a certain amount will be accompanied by a written statement of reasons for the Commission's actions. This statement will explain the reasons underlying the Commission's determination and will summarize the results of any investigation upon which the determination is based.

(d) *Repayment period.* (1) Within 90 calendar days after service of the notice of the Commission's initial repayment determination(s), the candidate shall repay to the Secretary amounts which the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 90 calendar days in which to make repayment.

(2) If the candidate submits written materials under 11 CFR 9038.2(c)(2) disputing the Commission's initial repayment determination(s), the time for repayment will be suspended until the Commission makes its final repayment determination(s). Within 30 calendar days after service of the notice of the Commission's final repayment determination(s), the candidate shall repay to the Secretary amounts which the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 90 days in which to make repayment.

(e) *Computation of time.* The time periods established by this section shall be computed in accordance with 11 CFR 111.2.

(f) *Additional repayments.* Nothing in this section will prevent the Commission from making additional repayment determinations on one or more of the bases set forth at 11 CFR 9038.2(b) after it has made a final determination on any such basis. The Commission may make additional repayment determinations where there exist facts not used as the basis for a previous final determination. Any such additional repayment determination will be made in accordance with the provisions of this section.

(g) *Newly-discovered assets.* If, after any initial or final repayment determination made under this section, a candidate or his or her authorized committee(s) receives or becomes aware of assets not previously included in any statement of net outstanding campaign obligations submitted pursuant to 11 CFR 9034.5, the candidate or his or her authorized committee(s) shall promptly notify the Commission of such newly-discovered assets. Newly-discovered assets may include refunds, rebates, late-arriving receivables, and actual receipts for capital assets in excess of the value specified in any previously-submitted statement of net outstanding campaign obligations. Newly-discovered assets may serve as a basis for additional repayment determinations under 11 CFR 9038.2(f).

(h) *Petitions for rehearing; stays pending appeal.* The candidate may file a petition for rehearing of a final repayment determination in accordance with 11 CFR 9038.5(a). The candidate may request a stay of a final repayment determination in accordance with 11 CFR 9038.5(c) pending the candidate's appeal of that repayment determination.

§ 9038.3 Liquidation of obligations; repayment.

(a) The candidate may retain amounts received from the matching payment account for a period not exceeding 6 months after the matching payment period to pay qualified campaign expenses incurred by the candidate.

(b) After all obligations have been liquidated, the candidate shall so inform the Commission in writing.

(c)(1) If on the last day of candidate eligibility the candidate's net outstanding campaign obligations, as defined in 11 CFR 9034.5, reflect a surplus, the candidate shall within 30 calendar days of the ineligibility date repay to the Secretary an amount which represents the amount of matching funds contained in the candidate's surplus. The amount shall be an amount equal to that portion of the surplus which bears the same ratio to the total surplus that the total amount received by the candidate from the matching payment account bears to the total deposits made to the candidate's accounts.

(2) For purposes of this subsection, total deposits means all deposits to all candidate accounts minus transfers between accounts, refunds, rebates, reimbursements, checks returned for insufficient funds, proceeds of loans and other similar amounts.

(3) Notwithstanding the payment of any amounts to the United States Treasury under this section, the Commission may make surplus repayment determination(s) which require repayment in accordance with 11 CFR 9038.2.

§ 9038.4 Extensions of time.

(a) It is the policy of the Commission that extensions of time under 11 CFR part 9038 shall not be routinely granted.

(b) Whenever a candidate has a right or is required to take action within a period of time prescribed by 11 CFR part 9038 or by notice given thereunder, the candidate may apply in writing to the Commission for an extension of time in which to exercise such right or take such action. The candidate shall demonstrate in the application for extension that good cause exists for his or her request.

(c) An application for extension of time shall be made at least 7 calendar days prior to the expiration of the time period for which the extension is sought. The Commission may, upon a showing of good cause, grant an extension of time to a candidate who has applied for such extension in a timely manner. The length of time of any extension granted hereunder will be decided by the Commission and may be less than the amount of time sought by the candidate in his or her application.

(d) If a candidate fails to seek an extension of time, exercise a right or take a required action prior to the expiration of a time period prescribed by 11 CFR part 9038 the Commission may, on the candidate's showing of excusable neglect:

(1) Permit such candidate to exercise his or her right(s), or take such required action(s) after the expiration of the prescribed time period; and

(2) Take into consideration any information obtained in connection with the exercise of any such right or taking of any such action before making decisions or determinations under 11 CFR part 9038.

§ 9038.5 Petitions for rehearing; stays of repayment determinations.

(a) *Petitions for rehearing.* (1) Following the Commission's final determination under 11 CFR 9033.10 or 9034.5(g) or the Commission's final repayment determination under 11 CFR 9038.2(c)(4), the candidate may file a petition for rehearing setting forth the relief desired and the legal and factual basis in support. To be considered by the Commission, petitions for rehearing must:

(i) Be filed within 20 calendar days after service of the Commission's final determination;

(ii) Raise new questions of law or fact that would materially alter the Commission's final determination; and

(iii) Set forth clear and convincing grounds why such questions were not and could not have been presented during the earlier determination process.

(2) If a candidate files a timely petition under this section challenging a Commission final repayment determination, the time for repayment of

the amount at issue will be suspended until the Commission serves notice on the candidate of its determination on the petition. The time periods for making repayment under 11 CFR 9038.2(d)(2) shall apply to any amounts determined to be repayable following the Commission's consideration of a petition for rehearing under this section.

(b) *Effect of failure to raise issues.* The candidate's failure to raise an argument in a timely fashion during the initial determination process or in a petition for rehearing under this section, as appropriate, shall be deemed a waiver of the candidate's right to present such arguments in any future stage of proceedings including any petition for review filed under 26 U.S.C. 9041(a). An issue is not timely raised in a petition for rehearing if it could have been raised earlier in response to the Commission's initial determination.

(c) *Stay of repayment determination pending appeal.* (1)(i) The candidate may apply to the Commission for a stay of all or a portion of the amount determined to be repayable under this section or under 11 CFR 9038.2 pending the candidate's appeal of that repayment determination pursuant to 26 U.S.C. 9041(a). The repayment amount requested to be stayed shall not exceed the amount at issue on appeal.

(ii) A request for a stay shall be made in writing and shall be filed within 30 calendar days after service of the Commission's decision on a petition for rehearing under paragraph (a) of this section, or, if no petition for rehearing is filed, within 30 calendar days after service of the Commission's final repayment determination under 11 CFR 9038.2(c)(4).

(2) The Commission's approval of a stay request will be conditioned upon the candidate's presentation of evidence in the stay request that he or she:

(i) Has placed the entire amount at issue in a separate interest-bearing account pending the outcome of the appeal and that withdrawals from the account may only be made with the joint signatures of the candidate or his or her agent and a Commission representative; or

(ii) Has posted a surety bond guaranteeing payment of the entire amount at issue plus interest; or

(iii) Has met the following criteria:

(A) He or she will suffer irreparable injury in the absence of a stay; and, if so, that

(B) He or she has made a strong showing of the likelihood of success on the merits of the judicial action.

(C) Such relief is consistent with the public interest; and

(D) No other party interested in the proceedings would be substantially harmed by the stay.

(3) In determining whether the candidate has made a strong showing of the likelihood of success on the merits under paragraph (c)(2)(iii)(B) of this section, the Commission may consider whether the issue on appeal presents a novel or admittedly difficult legal question and whether the equities of the case suggest that the status quo should be maintained.

(4) All stays shall require the payment of interest on the amount at issue. The amount of interest due shall be calculated from the date 30 days after service of the Commission's final repayment determination under 11 CFR 9038.2(c)(4) and shall be the greater of:

(i) An amount calculated in accordance with 28 U.S.C. 1961 (a) and (b); or

(ii) The amount actually earned on the funds set aside under this section.

§ 9038.6 Stale-dated committee checks.

If the committee has checks outstanding to creditors or contributors that have not been cashed, the committee shall notify the Commission. The committee shall inform the Commission of its efforts to locate the payees, if such efforts have been necessary, and its efforts to encourage the payees to cash the outstanding checks. The committee shall also submit a check for the total amount of such outstanding checks, payable to the United States Treasury.

PART 9039—REVIEW AND INVESTIGATION AUTHORITY

Sec.

9039.1 Retention of books and records.
9039.2 Continuing review.
9039.3 Examinations and audits; investigations.

Authority: 26 U.S.C. 9039.

§ 9039.1 Retention of books and records.

The candidate and his or her authorized committee(s) shall keep all books, records and other information required under 11 CFR 9033.11, 9034.2 and part 9036 for a period of three years pursuant to 11 CFR 102.9(c) and shall furnish such books, records and information to the Commission on request.

§ 9039.2 Continuing review.

(a) In reviewing candidate submissions made under 11 CFR part 9036 and in otherwise carrying out its responsibilities under this subchapter, the Commission may routinely consider information from the following sources:

(1) Any and all materials and communications which the candidate and his or her authorized committee(s) submit or provide under 11 CFR part 9036 and in response to inquiries or requests of the Commission and its staff;

(2) Disclosure reports on file with the Commission; and

(3) Other publicly available documents.

(b) In carrying out the Commission's responsibilities under this subchapter, Commission staff may contact representatives of the candidate and his or her authorized committee(s) to discuss questions and to request documentation concerning committee activities and any submission made under 11 CFR part 9036.

§ 9039.3 Examination and audits; investigations.

(a) *General.* (1) The Commission will consider information obtained in its continuing review under 11 CFR 9039.2 in making any certification, determination or finding under this subchapter. If the Commission decides by an affirmative vote of four of its members that additional information must be obtained in connection with any such certification, determination or finding, it will conduct a further inquiry. A decision to conduct an inquiry under this section may be based on information that is obtained under 11 CFR 9039.2, received by the Commission from outside sources, or otherwise ascertained by the Commission in carrying out its supervisory responsibilities under the Presidential Primary Matching Payment Account Act and the Federal Election Campaign Act.

(2) An inquiry conducted under this section may be used to obtain information relevant to candidate eligibility, matchability of contributions and repayments to the United States Treasury. Information obtained during such an inquiry may be used as the basis, or partial basis, for Commission certifications, determinations and findings under 11 CFR parts 9033, 9034, 9036 and 9038. Information thus obtained may also be the basis of, or be considered in connection with, an investigation under 2 U.S.C. 437g and 11 CFR part 111.

(3) Before conducting an inquiry under this section, the Commission will attempt to obtain relevant information under the continuing review provisions of 11 CFR 9039.2. Matching payments will not be withheld pending the results of an inquiry under this section unless the Commission finds patent irregularities suggesting the possibility of fraud in materials submitted by, or in

the activities of, the candidate or his or her authorized committee(s).

(b) *Procedures.* (1) The Commission will notify the candidate of its decision to conduct an inquiry under this section. The notice will summarize the legal and factual basis for the Commission's decision.

(2) The Commission's inquiry may include, but is not limited to, the following:

(i) A field audit of the candidate's books and records;

(ii) Field interviews of agents and representatives of the candidate and his or her authorized committee(s);

(iii) Verification of reported contributions by contacting reported contributors;

(iv) Verification of disbursement information by contacting reported vendors;

(v) Written questions under order; 1

(vi) Production of documents under subpoena;

(vii) Depositions.

(3) The provisions of 2 U.S.C. 437g and 11 CFR part 111 will not apply to inquiries conducted under this section except that the provisions of 11 CFR 111.12 through 111.15 shall apply to any orders or subpoenas issued by the Commission.

Dated: July 19, 1991.

John Warren McGarry,

Chairman, Federal Election Commission.

[FR Doc. 91-17610 Filed 7-26-91; 8:45 am]

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Dated: July 19, 1991.

John Warren McGarry,

Chairman, Federal Election Commission.

[FR Doc. 91-17610 Filed 7-26-91; 8:45 am]

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federal register

Monday
July 29, 1991

Part III

Department of Health and Human Services

Office of Inspector General

42 CFR Part 1001

Medicare and State Health Care Programs: Fraud and Abuse; OIG Anti-Kickback Provisions; Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1001

RIN 0991-AA49

Medicare and State Health Care Programs: Fraud and Abuse; OIG Anti-Kickback Provisions

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Final rule.

SUMMARY: This final rule implements section 14 of Public Law 100–93, the Medicare and Medicaid Patient and Program Protection Act of 1987, by specifying various payment practices which, although potentially capable of inducing referrals of business under Medicare or a State health care program, will be protected from criminal prosecution or civil sanctions under the anti-kickback provisions of the statute.

EFFECTIVE DATE: This regulation is effective on July 29, 1991.

FOR FURTHER INFORMATION CONTACT:

Thomas S. Crane or D. McCarty Thornton, Office of the General Counsel, (202) 619–0335.
Joel Schaer, Office of Inspector General, (202) 619–3270.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Medicare Anti-Kickback Statute

Section 1128B(b) of the Social Security Act (42 U.S.C. 1320a–7b(b)), previously codified at sections 1877 and 1909 of the Act, provides criminal penalties for individuals or entities that knowingly and willfully offer, pay, solicit or receive remuneration in order to induce business reimbursed under the Medicare or State health care programs. The offense is classified as a felony, and is punishable by fines of up to $25,000 and imprisonment for up to 5 years.

This provision is extremely broad. The types of remuneration covered specifically include kickbacks, bribes, and rebates made directly or indirectly, overtly or covertly, or in cash or in kind. In addition, prohibited conduct includes not only remuneration intended to induce referrals of patients, but remuneration also intended to induce the purchasing, leasing, ordering, or arranging for any good, facility, service, or item paid for by Medicare or State health care programs.

Since the statute on its face is so broad, concern has arisen among a number of health care providers that many relatively innocuous, or even beneficial, commercial arrangements are technically covered by the statute and are, therefore, subject to criminal prosecution.

B. Public Law 100–93

Public Law 100–93, the Medicare and Medicaid Patient and Program Protection Act of 1987, added two new provisions addressing the anti-kickback statute. Section 2 specifically provided new authority to the Office of Inspector General (OIG) to exclude an individual or entity from participation in the Medicare and State health care programs if it is determined that the party has engaged in a prohibited remuneration scheme. (Section 1128(b)(7) of the Act, 42 U.S.C. 1320a–7(b)(7)) This new sanction authority is intended to provide an alternative civil remedy, short of criminal prosecution, that will be a more effective way of regulating abusive business practices than is the case under criminal law.

In addition, section 14 of Public Law 100–93 requires the promulgation of regulations specifying those payment practices that will not be subject to criminal prosecution under section 1128B of the Act and that will not provide a basis for exclusion from the Medicare program or from the State health care programs under section 1128(b)(7) of the Act.

C. Notice of Intent

The legislative history of section 14 of Public Law 100–93 indicates that Congress expected the Department of Health and Human Services to consult with affected provider, practitioner, supplier and beneficiary representatives before promulgating regulations. In order to most effectively address issues related to this provision, we published a notice of intent to develop regulations (52 FR 38794, October 19, 1987) soliciting comments from interested parties prior to developing a proposed regulation. As a result of that notice, the OIG received a number of public comments, recommendations and suggestions on generic criteria that can be applied to particular types of business arrangements in order to determine if such arrangements are inappropriate for civil or criminal sanctions.

D. Notice of Proposed Rulemaking

The proposed regulation designed to implement section 14 of Public Law 100–93 was developed by the OIG and published in the **Federal Register** on January 23, 1989 (54 FR 3033). The regulation sets forth various proposed business and payment practices, or "safe harbors," that would not be treated as criminal offenses under section 1128B(b) of the Act and would not serve as a basis for a program exclusion under section 1128(b)(7) of the Act. As a result of that proposed rulemaking, we received a total of 754 public comments for consideration.

II. Summary of the Proposed Rule

A. Business Arrangements Not Exempt

The proposed regulation indicated that in order for a business arrangement to comply with one of the ten safe harbors, each standard of that safe harbor provision would have to be met. The proposed rule stated that if the business arrangement involves payments for different purposes (for example a single payment for personal services and for equipment rental) then each payment purpose would be analyzed to determine if all the standards of each applicable safe harbor provision have been fulfilled. The proposed rule further specified that where individuals and entities have entered into arrangements that are covered by the statute and where they have chosen not to fully comply with one of the exemptions proposed in these regulations, they would risk scrutiny by the OIG and may be subject to civil or criminal enforcement action.

B. Need for Continuing Guidance

Since there may be a need for the Department to respond to changes in health care delivery or business arrangements more quickly and informally than through the regulatory process to keep the industry abreast of our enforcement policy, the proposed rule invited public comment on how we can best achieve the dual goals of keeping the industry aware of our views of particular business practices, and assuring that our regulations remain current with new developments.

C. Notice to Beneficiaries

While we considered including in several of the proposed safe harbor provisions a requirement that a person notify each Medicare or Medicaid patient he or she refers to a related entity of the financial relationship that exists, we indicated that such notice requirements may be unduly burdensome compared with the potential benefits and, therefore, did not include the requirement in the safe harbors in the proposed regulation. Instead, we invited public comments on this issue.

D. Preferred Provider Organizations

We cited the increasing variety of arrangements among entities grouped under the generic headings "preferred provider organizations" (PPOs) or "managed care," and that unlike HMOs, there is often no single entity that is recognized as the "health care provider." The proposed regulations did not specifically delineate a safe harbor provision for these arrangements since we believed that one or more of the other proposed safe harbors would often cover relationships in preferred provider and managed care networks. We invited comments from the public, however, on the idea of adding additional safe harbors that would provide further protection to HMOs, PPOs, and other managed care plans.

E. Waiver of Coinsurance and Deductible Amounts for Inpatient Hospital Care

We noted that with the advent in 1963 of the prospective payment system for paying hospitals for inpatient care, some hospitals have advertised the routine waiver of Medicare coinsurance and deductible amounts as a means of attracting patients to their facilities. We solicited comments on defining a safe harbor for waiving coinsurance and deductible amounts that would be limited to inpatient hospital care, be available to all Medicare beneficiaries without regard to diagnosis or length of stay, and assure that any costs to the hospital of waiving the coinsurance and deductible amounts would not be passed on to any Federal program as a bad debt or in any other way.

F. Proposed Safe Harbors

The regulation published on January 23, 1989, proposing to amend 42 CFR part 1001 by adding a new § 1001.952, set forth "safe harbors" in ten broad areas:

1. Investment Interests

To reflect the view that Congress did not intend to bar all investments by physicians in other health care entities to which they refer patients, a safe harbor provision was proposed for investment interests in large public corporations where such investments are available to the general public. This safe harbor described a minimum number of shareholders and a minimum number of assets the company must have in order to qualify under this provision.

Safe harbors for limited and managing partnerships were considered under the proposed regulation, but were not included. These areas were discussed in the preamble of the proposed rule, and we specifically requested public comments on adopting these practices as safe harbors.

2. Space Rental

While many rental arrangements are legitimate, many situations exist where rental payments are simply a device used to mask illegal payments intended to induce referrals. Accordingly, a safe harbor provision was proposed for rental arrangements if: (a) Access to the space is for periodic intervals and such intervals are set in advance in the lease, rather than based on the number of referred patients; (b) the lease is for at least one year so it cannot be readjusted on too frequent a basis to reflect prior referrals; and (c) the charges reflect fair market value.

3. Equipment Rental

With the understanding that the payment for the use of diagnostic and other medical equipment may simply be a vehicle to provide reimbursement for referrals, a safe harbor was proposed for certain situations involving equipment rentals similar to those applied to real estate rentals cited above.

4. Personal Services and Management Contracts

While health care providers often have arrangements to perform services for each other on a mutually beneficial basis, some of these arrangements may vary the payment with the volume of referrals. The proposed regulation set forth a safe harbor provision for joint ventures and other arrangements involving payments for personal services or management contracts, but only if certain standards are met that limit the opportunity to provide financial incentives in exchange for referrals. This proposed provision required the services to be paid at fair market value, and was predicated on requirements similar to those set forth in the provisions for space and equipment rental.

5. Sale of Practice

Unlike the traditional sale of a practice by a retiring physician, a physician may sell, or appear to sell, a practice to a hospital while continuing to practice on its staff. A safe harbor provision was proposed for the sale of physician practices when occurring as the result of retirement or some other event that removes the physician from the practice of medicine or from the service area in which he or she was practicing, but not when the sale is for the purpose of obtaining an ongoing source of patient referrals.

6. Referral Services

Professional societies and other consumer-oriented groups often operate referral services for a fee. Because such a service fee could be construed as a payment in order to obtain a referral, we concluded that it was appropriate to establish a specific safe harbor for this type of practice. In order to safeguard against abuse, however, the provision is only available when several standards are met.

7. Warranties

It is in the public interest to have companies offer warranties as an inducement to the consumer to purchase a product. A safe harbor was proposed for such purposes.

8. Discounts

Safe harbors relating to discounts, employees and group purchasing organizations are specifically required by statute. The discount exception was intended to encourage price competition that benefits the Medicare and Medicaid programs. The proposed discount provision was limited in application to reductions in the amount a seller charges for a good or service to the buyer. The discount could take the form of a specified price break, or the inclusion of an extra quantity of the item purchased "at no extra charge." We did not propose to protect many kinds of marketing incentive programs such as cash rebates, free goods or services, redeemable coupons, or credits.

9. Employees

The proposed exception for employees permitted an employer to pay an employee in whatever manner he or she chose for having that employee assist in the solicitation of program business and applied only to bona fide employee-employer relationships.

10. Group Purchasing Organizations

The proposed group purchasing organization (GPO) exception was designed to apply to payments from vendors to entities authorized to act as a GPO for individuals or entities who are furnishing Medicare or Medicaid services. The proposed exception required a written agreement between the GPO and the individual or entity that specifies the amounts vendors will pay the GPO.

III. Response to Comments and Summary of Revisions

As indicated above, in response to the proposed rulemaking we received 754 public comments from various provider groups, medical facilities, professional and business organizations and associations, medical societies, State and local government entities, private practitioners and concerned citizens. The comments included both general and broadreaching concerns regarding the impact of this regulation, and specific comments on those areas and safe harbor provisions about which we requested public input. A summary of the comments received and our responses to those comments follows.

A. General Comments

Comment: A large number of commenters expressed concern about the implication of engaging in a business arrangement that does not comply fully with a provision of this regulation. Some of these commenters expressed the view that the safe harbor provisions are narrowly drawn and leave many lawful business arrangements unprotected. Moreover, the preamble to the proposed rule warns: "[W]here individuals and entities have entered into arrangements that are covered by the statute, where they have chosen not to comply fully with one of the exemptions in these regulations, they would risk scrutiny by the OIG * * *." These commenters urged the OIG to make clear that the failure to comply fully with a safe harbor provision is not *per se* illegal, and does not mean that prosecution will automatically follow. In addition, they requested safe harbor protection for business arrangements where there has only been a "technical violation" of the statute, where there has been "substantial compliance" with this regulation, or where the remuneration in question is "de minimis."

Response: This regulation covers many categories of business arrangements, providing standards to be met within each safe harbor provision. If a person participates in an arrangement that fully complies with a given provision, he or she will be assured of not being prosecuted criminally or civilly for the arrangement that is the subject of that provision.

This regulation does not expand the scope of activities that the statute prohibits. The statute itself describes the scope of illegal activities. The legality of a particular business arrangement must be determined by comparing the particular facts to the proscriptions of the statute.

The failure to comply with a safe harbor can mean one of three things. First, as we stated in the preamble to the proposed rule, it may mean that the arrangement does not fall within the ambit of the statute. In other words, the arrangement is not intended to induce the referral of business reimbursable under Medicare or Medicaid; so there is no reason to comply with the safe harbor standards, and no risk of prosecution.

Second, at the other end of the spectrum, the arrangement could be a clear statutory violation and also not qualify for safe harbor protection. In that case, assuming the arrangement is obviously abusive, prosecution would be very likely.

Third, the arrangement may violate the statute in a less serious manner, although not be in compliance with a safe harbor provision. Here there is no way to predict the degree of risk. Rather, the degree of the risk depends on an evaluation of the many factors which are part of the decision-making process regarding case selection for investigation and prosecution. Certainly, in many (but not necessarily all) instances, prosecutorial discretion would be exercised not to pursue cases where the participants appear to have acted in a genuine good-faith attempt to comply with the terms of a safe harbor, but for reasons beyond their control are not in compliance with the terms of that safe harbor. In other instances, there may not even be an applicable safe harbor, but the arrangement may appear innocuous. But in other instances, we will want to take appropriate action.

We do not believe the Medicare and Medicaid programs would be properly served if we assured protection in all instances of "substantial compliance," "technical violations," or "de minimis" payments. Unfortunately, these are vague concepts, subject to differing interpretations. In this regulation, we have attempted to provide bright lines, to the extent possible, for safe harbors in order to provide clarity and predictability as to what conduct is immune from government action. Our endorsement of the concepts mentioned above would only serve to blur these lines and produce litigation as to what "substantial," "technical" and "de minimis" really mean. The OIG therefore declines to adopt these concepts.

A recent decision of the United States Court of Appeals for the First Circuit provides an indication of the litigation problems that could arise if "substantial compliance" with a safe harbor provision was all that was required. *United States* v. *Bay State Ambulance and Hospital Rental Service, Inc.*, 874 F.2d 20 (1st Cir., 1989) involved an arrangement between an employee of a city owned hospital (Felci) and an ambulance company (Bay State). Felci was involved in the administration of the city's ambulance service contract. During this period, Bay State retained Felci as a consultant, provided him with two automobiles, and paid Felci's consulting company several thousand dollars. When it came time for renewal of the ambulance contract, Felci used his position and influence at the city hospital to assist Bay State in securing the new contract. Felci was prosecuted and convicted under the statute.

In affirming Felci's conviction (as well as that of Bay State's president, Kotzen), the First Circuit rejected Felci's contention that he had substantially complied with this regulation as published as a notice of proposed rulemaking, and thus should not be prosecuted. The court found: "The proposed regulation does not exempt every transaction in which the amount paid for services is an amount consistent with fair market value; rather it exempts only a small subset of such transactions * * *. [U]nder the circumstances such as the present case where the consulting arrangement is not full-time, * * * stringent requirements are necessary to meet the exemption from criminal liability. HHS has thus decided *not* to create a safe harbor for transactions such as the present case." (Emphasis in original; footnote omitted) *Id.* 874 F.2d at 31.

Comment: Several commenters described business arrangements that technically may violate the statute, but do not increase costs to the Medicare or Medicaid programs, or otherwise injure beneficiaries. They requested safe harbor protection for these arrangements because of concern of their risk of being scrutinized.

Response: Increased cost to the Medicare and Medicaid programs and harm to beneficiaries are not the only criteria we look at in determining whether a particular business arrangement is abusive. As the court in *United States* v. *Ruttenberg*, 625 F.2d 173, 177, n.9 (7th Cir. 1980) noted:

> [T]he law does not make increased cost to the government the sole criterion of corruption. In prohibiting "kickbacks," Congress need not have spelled out the obvious truisms that, while unnecessary expenditure of money earned and contributed by taxpaying fellow citizens may exacerbate the result of the crime, kickback schemes can freeze competing suppliers from the system, can mask the possibility of government price reductions, can misdirect program funds, and, when proportional, can erect strong temptations to order more drugs and supplies than needed.

Furthermore, it is unfortunately not possible to provide safe harbor protections for all business arrangements that are not abusive. There are certain arrangements that, although themselves legitimate, are and no risk of

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structurally so similar to abusive arrangements that protection by way of new safe harbor provisions will inevitably also protect abusive practices as well. For example, equipment rental arrangements made between parties in a position to make and accept referrals do not receive safe harbor protection if the payments are based on utilization (sometimes known as a "wear and tear" clause). We recognize that equipment becomes less valuable the more it is used, and that its owner deserves compensation for such wear and tear. However, it is also a relatively easy matter to disguise such a wear and tear payment as a payment for referrals. Thus, we need to examine the intent of the parties on a case-by-case basis even though a large majority of such payments may represent only legitimate compensation to the owner of the equipment.

The recent case, *United States* v. *Bay State Ambulance and Hospital Rental Service, Inc.*, discussed above, emphasizes that the gravamen of a violation of the statute is "inducement" and not necessarily the structure of the arrangement. *Id.* 874 F.2d at 29. Thus, such case by case inquiries must necessarily focus on the intent of the parties.

The *Bay State Ambulance* case also illustrates the risk health care providers engage in when they enter into a business arrangement that violates the statute, but try to argue that the arrangement does not increase program costs or result in overutilization. The First Circuit rejected the defendants' arguments that there would have been no fiscal drain on public programs because ambulance services and Medicare reimbursement would have been required no matter which ambulance service company had received the contract. The court noted that it was unclear whether Medicare paid Bay State more for these services than it would have paid to the losing bidder even though that bidder's charges were lower. The court observed: "Although the reason for enacting the statute was to prevent drains on the public fisc, the statute does not require that there be a drain on the public fisc in order for payments to be illegal." *Id.* n.21, 874 F.2d at 32.

Comment: Numerous commenters expressed concern about the difficulty in revising a business arrangement that they entered into with a good-faith belief that the arrangement did not violate the statute, but which they now find does not qualify under one of the safe harbor provisions. They suggested that the OIG either "grandfather" these arrangements or provide a reasonable period of time before initiating enforcement action to enable health care providers to restructure their arrangements to meet the safe harbor provisions.

Response: The failure of a particular business arrangement to comply with these provisions does not determine whether or not the arrangement violates the statute because, as we stated above, this regulation does not make conduct illegal. Any conduct that could be construed to be illegal after the promulgation of this rule would have been illegal at any time since the current law was enacted in 1977. Thus illegal arrangements entered into in the past were undertaken with a risk of prosecution. This regulation is intended to provide a formula for avoiding risk in the future.

We also recognize, however, that many health care providers have structured their business arrangements based on the advice of an attorney and in good-faith believed that the arrangement was legal. In the event that they now find that the arrangement does not comply fully with a particular safe harbor provision and are working with diligence and good faith to restructure it so that it does comply, we will use our discretion to be fair to the parties to such arrangements.

Nonetheless, we believe that it would be inappropriate for us to provide a blanket protection, even for a limited period of time, for all business arrangements that do not qualify for a safe harbor. As we stated above, certain business arrangements that do not qualify may warrant immediate enforcement action.

Comment: Many commenters discussed the interrelationships between these safe harbor provisions and reimbursement rules promulgated by the Health Care Financing Administration (HCFA). A few of these commenters appeared to suggest that if a health care provider complied with a particular safe harbor provision, then its reimbursement may be affected.

Response: We wish to emphasize that nothing in this regulation changes reimbursement rules promulgated by HCFA or a State health care program. Clearly if a provider chooses to engage in one course of conduct in order to comply with these safe harbor provisions, such action may very well have reimbursement implications. However, such reimbursement is governed exclusively by HCFA or State regulations, and not by this regulation.

Comment: Several commenters requested that the OIG publish this regulation with an additional comment period because of the complexity of the issues involved and the revisions or additions of new safe harbor provisions created as a result of the comments.

Response: We believe that the disadvantages of providing an additional comment period outweigh the benefits. As we stated above, we received extensive comments in response to this proposed rule. In addition, due to the novelty and complexity of these issues, we started this process with a special notice of intent to develop regulations, (52 FR 38794, October 19, 1987) and received over 150 comments, which we used to develop the proposed rule.

Also weighing against any benefit of receiving additional comments on this rule is the desirability of providing the level of certainty that accompanies a final rule. This will permit individuals and entities to structure business arrangements under the provisions of this rule with the assurance that it will not change in the near future. Such assurance is delayed somewhat by providing an additional comment period.

We acknowledge the congressional expectation that we should "formally re-evaluate the anti-kickback regulations on a periodic basis, and, in so doing, * * * solicit public comment at the outset of the review process." H.R. Rep. No. 85, part 2, 100th Cong. 1st Sess. 27 (1987). We believe it is most appropriate to allow all parties time to obtain experience with these safe harbor provisions in their final form before we solicit additional public comments to start our formal re-evaluation process.

Nonetheless, we received many comments requesting safe harbor protection for a number of business arrangements, many of which deserve safe harbor protection. As discussed in more detail below in section III.B.3. of this preamble, the comments we received on HMOs, PPOs, and other managed care plans warrant the creation of two new safe harbor provisions. Because of the lack of specificity in those comments, we expect to publish these provisions as a separate interim final regulation at a later date. While this provision will be effective upon publication, the public will have an opportunity to submit their specific comments and concerns regarding this new safe harbor.

In addition, as discussed in more detail below in section III.B. of this preamble, many other arrangements brought to our attention were for arrangements on which we did not solicit comments. Because some of these arrangements may deserve safe harbor protection, we anticipate publishing additional safe harbor provisions in a separate notice of proposed rulemaking. Any discussion below indicating that we are considering a new safe harbor provision should in no way be construed as legalizing the business arrangement at this time.

Comment: Numerous commenters suggested that the OIG should employ a cease and desist mechanism. Some suggested that the OIG should be required to employ such a mechanism before it initiates a criminal prosecution or program exclusion. Others supported the use of this mechanism because they believed that many business arrangements that violate the statute do not warrant prosecution but should be stopped.

Response: We do not have the authority to seek or issue a legally enforceable order directing a person to cease and desist from a particular unlawful kickback activity. We recognize that there may be situations where it may be appropriate to inform a person that he or she is violating the statute, and request that the unlawful activity be stopped. Where the person takes immediate action to conform his activity to the law, we may decide that no further action is warranted. However, there may be other situations where criminal prosecution is appropriate even though the person has stopped the illegal activity. Since we lack the power to issue or seek a legally enforceable cease and desist order, we cannot rely on that mechanism as a significant enforcement tool.

Comment: Three commenters suggested that because many business arrangements will not meet the safe harbor provisions, the regulation was of limited value. They suggested that health care providers would be better aided if the OIG would provide examples of arrangements that violate the statute.

Response: As we stated above, the purpose of this regulation is not to describe illegal conduct, but rather to set forth standards for certain safe harbors. If an individual or entity engages in a business arrangement that is the subject of a safe harbor provision and complies with all of its provisions, that individual will be assured that he or she will not be prosecuted. However, we recognize the desirability of communicating to the public the existence of other business practices and arrangements that we believe are subject to serious abuse. Accordingly, we issued a special OIG Fraud Alert on joint venture arrangements that described various suspect features of these business ventures that may result in a violation of the statute. As the need arises, we intend to issue other fraud alerts that will provide guidance to the public on other types of arrangements.

Comment: In seeking guidance with respect to transactions or practices not covered by any specific safe harbor provision, many commenters requested the OIG to include within this regulation a list of generic criteria it would consider in evaluating business arrangements under the statute. These commenters cite a variety of positive and negative factors as relevant generic criteria, including on the positive side whether the arrangement has "a legitimate business purpose" or promotes the delivery of needed services, particularly to indigent, elderly, or rural populations; and on the negative side whether the arrangement promotes overutilization, interferes with patient freedom of choice, diminishes the quality of care provided, or increases costs to beneficiaries or to the government. Some commenters pointed out that the legislative history of Public Law 100–93 directs the Department to include in the rules "any generic criteria that might apply to business arrangements generally." H.R. Rep. No. 85, part 2, 100th Cong., 1st Sess. 27 (1987).

Response: We believe the same generic criteria applicable to all business arrangements would not provide useful guidance to the extent that they are based on value judgments regarding the relative advantages (e.g., lower cost or improved accessibility) and disadvantages (e.g., higher cost or overutilization) of the arrangement. It would be virtually impossible to set forth rules describing how we intend to apply them. For example, the determination of whether a joint venture has a legitimate business purpose, is a matter of subjective judgment, and we believe the use of such criteria would invite litigation because health care providers will not be sure if they are complying with them.

An example of the problems in using these types of generic criteria can be seen if we attempted to provide safe harbor protection for business arrangements that have a "legitimate business purpose." The statute proscribes the giving of rebates as a form of remuneration to induce referrals. Yet rebates are legitimate and common business practices outside the health care services business sector. For the numerous people who engage in both health care and non-health care lines of business, they may have become accustomed to providing various inducements to others in their non-health care activities. They may now start to provide similar inducements in their health care lines of business in a manner that violates the statute. To them, these inducements have a "legitimate business purpose," that is, to gain referrals and thereby make money, yet the practice is expressly prohibited by the statute.

We believe that Congress did not require us to specify such generic criteria. The House Committee Report so often cited by commenters directs us to promulgate rules that, "to the extent practical, contain * * * any generic criteria that might apply to business arrangements generally." *Id.* We believe that we have done so. It was only practical to include generic criteria for specific categories of arrangements, such as "fair market value" in the "space rental" safe harbor. We have concluded, however, that a single set of standards for all business arrangements would be of extremely limited value because the subjectivity or arbitrariness in applying the standards to individual fact situations would make such standards of extremely limited value.

We recognize that some of the factors cited by commenters are useful in determining the extent to which a particular arrangement is abusive, and therefore likely to be prosecuted. For example, the more an arrangement involving remuneration offered to induce referrals increases Medicare or Medicaid program costs or results in unnecessary utilization, the more likely it would be that we would have an interest in prosecuting the offense. It must be emphasized that these are not the only factors upon which a determination regarding prosecution is based, and as we have noted "the statute does not require that there be a drain on the public fisc in order for payments to be illegal." *United States* v. *Bay State Ambulance and Hospital Rental Service, Inc., supra,* 874 F.2d at 32, n. 21.

Comment: Several commenters objected to the regulation because they believed that the OIG had exceeded its statutory authority. In particular, they commented that the OIG does not have authority under section 14 of Public Law 100–93 to narrow the scope of the statutory exceptions, particularly the "discount" exception of section 1128B(b)(3)(A) of the Act. They cited the last sentence of section 14(a) which states, "Any practices specified in regulations pursuant to [sec. 14 of Pub. L. 100–93] shall be in addition to the practices described in subparagraphs (A) through (C) of section 1128B(b)(3)." This sentence led some commenters to conclude that our regulatory authority

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start to provide similar inducements in their health care lines of business in a manner that violates the statute. To them, these inducements have a "legitimate business purpose," that is, to gain referrals and thereby make money, yet the practice is expressly prohibited by the statute.

We believe that Congress did not require us to specify such generic criteria. The House Committee Report so often cited by commenters directs us to promulgate rules that, "to the extent practical, contain * * * any generic criteria that might apply to business arrangements generally." *Id.* We believe that we have done so. It was only practical to include generic criteria for specific categories of arrangements, such as "fair market value" in the "space rental" safe harbor. We have concluded, however, that a single set of standards for all business arrangements would be of extremely limited value because the subjectivity or arbitrariness in applying the standards to individual fact situations would make such standards of extremely limited value.

We recognize that some of the factors cited by commenters are useful in determining the extent to which a particular arrangement is abusive, and therefore likely to be prosecuted. For example, the more an arrangement involving remuneration offered to induce referrals increases Medicare or Medicaid program costs or results in unnecessary utilization, the more likely it would be that we would have an interest in prosecuting the offense. It must be emphasized that these are not the only factors upon which a determination regarding prosecution is based, and as we have noted "the statute does not require that there be a drain on the public fisc in order for payments to be illegal." *United States v. Bay State Ambulance and Hospital Rental Service, Inc., supra,* 874 F.2d at 32, n. 21.

Comment: Several commenters objected to the regulation because they believed that the OIG had exceeded its statutory authority. In particular, they commented that the OIG does not have authority under section 14 of Public Law 100–93 to narrow the scope of the statutory exceptions, particularly the "discount" exception of section 1128B(b)(3)(A) of the Act. They cited the last sentence of section 14(a) which states, "Any practices specified in regulations pursuant to [sec. 14 of Pub. L. 100–93] shall be in addition to the practices described in subparagraphs (A) through (C) of section 1128B(b)(3)." This sentence led some commenters to conclude that our regulatory authority does not permit us to refine or clarify the statutory exceptions.

Response: We believe that these commenters have misconstrued the intent of this sentence. The plain language of the first sentence of section 14(a) of Public Law 100–93 requires the Secretary to promulgate regulations "specifying payment practices that shall not be treated as a criminal offense under section 1128B(b) of the Social Security Act and shall not serve as the basis for an exclusion under section 1128(b)(7) of such Act." We believe that the second sentence, which was quoted by many commenters, requires us to add to the exceptions provided in section 1128B(b)(3) of the Act. But we do not believe the intent of this sentence is to prohibit us from interpreting statutory terms used in these exceptions. The clear congressional intent behind the development of these safe harbor provisions is to define innocuous arrangements that should not be prosecuted, including the statutory exceptions. We believe it is in the public interest to provide the health care community with our interpretation of the meaning of certain important statutory terms, for example, "appropriately reflect" in the discount exception or "bona fide employment relationship" in the employee-employer exception.

Comment: One commenter asked the OIG to clarify how it expects health care providers to comply with this regulation when it engages in a business arrangement that may be covered by two or more of the provisions of this regulation.

Response: This comment addresses two potential situations. The first situation arises where a payment practice serves a single purpose (e.g., compensation for personal services), but potentially fits into more than one safe harbor (e.g., the employer-employee safe harbor and the personal services and management contracts safe harbor). In this situation, if the payment practice fits into either one of the safe harbors, it is exempt from criminal prosecution and program exclusion. In the example given, if the payment practice does not qualify as a bona fide employment relationship, it still may receive safe harbor protection under the personal services and management contract safe harbor.

The second situation arises where a payment practice serves multiple purposes (e.g., a payment to recompensate another party for personal services and equipment rental). Under these circumstances, it will be necessary to examine each aspect of the payment practice to determine compliance with each respective safe harbor provision. A person engaged in a "multi-purpose" payment practice who seeks protection will need to document separately his or her compliance with the safe harbor applicable to each purpose being served by the payment practice. Compliance with one provision (for one of the purposes of the payment practice) would not insulate the entire payment practice from criminal prosecution or program exclusion, where another purpose of the payment practice is implemented in a manner which violates the statute.

In the provision-by-provision analysis in section III.C. below, we will discuss specific comments and our responses to other special issues regarding the interrelationships of these provisions.

Comment: Two commenters requested that the OIG clarify the relationship between the statute and various State laws.

Response: Issues of state law are completely independent of the federal anti-kickback statute and these regulations. There is no federal preemption provision under the statute. Thus, conduct that is lawful under the federal anti-kickback statute or this regulation may still be illegal under State law. Conversely, conduct that is lawful under State law may still be illegal under the federal anti-kickback statute.

Comment: We received many comments on the proposed "Ethics in Patient Referrals Act" then pending in Congress aimed at restricting physicians from referring patients to entities in which they have a financial interest, the so-called "Stark Bill." Many of these commenters asked the OIG to either support or oppose this legislation. Others asked the OIG to clarify the relationship of this legislation to the anti-kickback statute and this regulation.

Response: This legislation was enacted as section 6204 of the Omnibus Budget Reconciliation Act of 1989, Public Law 101–239, adding a new section 1877 to the Act. With numerous exceptions, it generally restricts physicians from making referrals for clinical laboratory services to entities in which they have an ownership or other compensation arrangement. These referral restrictions become effective on January 1, 1992.

The legislation, although in many respects aimed at the same problems as we are addressing in this regulation, requires different elements of proof and has different remedies than under the anti-kickback statute. Generally, section 1877 is violated when a "financial relationship" exists between an entity furnishing clinical laboratory services and a physician, and a referral is made or a claim or bill is presented. For the anti-kickback statute to be violated, it must be shown that the remuneration between the two parties was intended to induce the referral of business payable under Medicare or Medicaid. Whereas the anti-kickback statute contains criminal penalties, violations under section 1877 will result in a denial of payment and may result in the imposition of civil money penalties and program exclusions under section 1128A of the Act.

Because of these differences between the two provisions, the conference report includes the following clarification:

> The conferees wish to clarify that any prohibition, exemption, or exception authorized under this provision in no way alters (or reflects on) the scope and application of the anti-kickback provisions in section 1128B of the Social Security Act. The conferees do not intend that this provision should be construed as affecting, or in any way interfering, with the efforts of the Inspector General to enforce current law, such as cases described in the recent Fraud Alert issued by the Inspector General. In particular, entities which would be eligible for a specific exemption would be subject to all of the provisions of current law.

H.R. Conf. Rep. 239, 101st Cong., 1st sess. 856 (1989).

This clear expression of legislative intent to keep enforcement under the anti-kickback statute separate from enforcement under section 1877 makes it inappropriate to adjust our safe harbor provisions to take into account any exception or prohibition under section 1877.

Comment: Thirty-three commenters reacted to our comments in the preamble of the proposed rule regarding the breadth and scope of the statute. Fourteen commenters suggested that these regulations should in no way undermine the scope or strength of the statute. These commenters believe that by adding the civil exclusion remedy for the kickback violations as part of Public Law 100–93, Congress sent a clear and appropriate message to the health care community not to place financial considerations above beneficiaries' interests. Two commenters requested that the statute's term "to refer" should be defined. Other commenters were concerned that diminishing the reach of the statute would create conflicts of interest between health care providers and their patients, and impugn the professional image of physicians. A few commenters opposed the implementation of any safe harbor provisions whatsoever.

Response: Our charge from Congress under section 14 of Public Law 100–93 is to clarify what payment practices will not subject a person to criminal prosecution or exclusion from the Medicare or State health care programs. The process involves both a determination of the scope of the statute and decisions as to how to draft the safe harbor provisions so that they protect only non-abusive relationships.

With respect to the scope of the statute, we do not believe that it is necessary to define any of the statute's terms in the regulation itself. However, the meaning of two of its terms deserve comment (1) "any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind;" and (2) "to induce." These terms demonstrate congressional intent to create a very broadly worded prohibition. Our comments in the preamble to the proposed rule reflected our belief that Congress ratified this intent in their mandate to create these safe harbor provisions.

Congress's intent in placing the term "remuneration" in the statute in 1977 was to cover the transferring of anything of value in any form or manner whatsoever. The statute's language makes clear that illegal payments are prohibited beyond merely "bribes," "kickbacks," and "rebates," which were the three terms used in the original 1972 statute. The language "directly or indirectly, overtly or covertly, in cash or in kind" makes clear that the form or manner of the payment includes indirect, covert, and in kind transactions. Moreover, the statutory exception for discounts demonstrates that Congress prohibited transactions where there is no direct payment at all from the party receiving the referrals. The remuneration in a discount is merely a lowered price that a purchaser would otherwise obtain from a seller, which is made as an inducement to purchase larger quantities.

The statute's legislative history supports this reading of the term "remuneration," and makes clear that the fundamental analysis required of a trier of fact is "to recognize that the substance rather than simply the form of a transaction should be controlling" (123 Cong. Rec. 30,280 (1977), Statement of Chairman of the House Committee on Ways and Means and principal author of H.R. 3, Representative Rostenkowski). Also see H.R. Rep. No. 393, part II, 95th Cong., 1st Sess. 53; reprinted in (1977) U.S. Code Cong. & Ad. News 3056; S.Rep. No. 453, 95th Cong., 1st Sess. 12 (1977).

The meaning of the term "to induce," which describes the intent of those who offer or pay remuneration in paragraph (2) of the statute, is found in the ordinary dictionary definition: "to lead or move by influence or persuasion" (The American Heritage Dictionary (2d College Ed. 1982)).

The OIG's interpretation of the statute is fully supported by its case law. At the time that the proposed rule was issued, the leading case interpreting the breadth of the statute was *United States* v. *Greber*, 760 F.2d 68 (3d Cir.) *cert. denied*, 474 U.S. 988 (1985). Since publication of the notice of proposed rulemaking on January 23, 1989, two other circuit courts have lent further support to a broad reading of the statute: *Bay State Ambulance*, which was discussed above, and *United States* v. *Kats*, 871 F.2d 105 (9th Cir. 1989).

Kats involved an arrangement between physician offices or clinics, a phlebotomy service ("THC"), and a clinical diagnostic laboratory ("Tech-Lab"). Under the arrangement, THC collected blood and urine samples from physician offices and medical clinics, and forwarded these laboratory specimens to Tech-Lab. Tech-Lab performed the laboratory tests and billed the respective insurance programs, including Medicare and Medicaid. Tech-Lab kicked back 50 percent of its proceeds to THC, which in turn kicked back part of its proceeds to the various physician offices and clinics, including a clinic owned by Yan Kats. Kats and others were prosecuted and convicted under the statute.

In upholding Kats's conviction, the United States Court of Appeals for the Ninth Circuit became the first court specifically to adopt the holding in *Gerber* that "if one purpose of the payment is to induce future referrals, the [M]edicare statute has been violated." 760 F.2d at 69. The *Kats* court held that the statute is violated unless the payments are "wholly and not incidentally attributable to the delivery of goods or services." *Id.* 871 F.2d at 108. The court upheld a jury instruction that read, in part, "It is not a defense that there might have been other reasons for the solicitation of a remuneration by the defendants, if you find that one of the material purposes for the solicitation was to obtain money for the referral of services." *Id.* 871 F.2d at 108, n.1.

Because the statute is broad, the payment practices described in these safe harbor provisions would be prohibited by the statute but for their inclusion here. In mandating this regulation, Congress directed us to limit the reach of the statute somewhat by permitting certain non-abusive arrangements, while encouraging beneficial or innocuous arrangements. We believe that we have accomplished this task in a manner that will not restrict our ability to prosecute, either criminally or civilly, abusive schemes that violate the statute. However, these safe harbor provisions do not constitute a guarantee that a health care provider whose practice conforms to a particular safe harbor will not engage in abusive practices. For this reason, we intend to monitor business arrangements that comply with the terms of these safe harbor provisions, particularly investment interests (see section III.C.1.b.ii. below), to determine whether abusive arrangements exist within the parameter of a particular safe harbor. If abusive arrangements are found to exist, we will entirely withdraw or modify any provision as appropriate.

Comment: A small number of commenters requested clarification as to whether the statute prohibits remuneration in return for referrals or other arrangements to induce services or items reimbursed under Medicare alone, or whether the conduct prohibited by the statute includes referrals or other arrangements to induce services or items reimbursed by Medicaid and other State health care programs.

Response: We agree that clarification is needed, and have amended the final rule to make clear that the statute, and hence these safe harbor provisions, apply to items or services which may be paid in whole or in part under Medicare or a federally funded State health care program, such as Medicaid. However, because commenters have expressed particular concern about the applicability of these provisions to items and services payable under the Medicare and Medicaid programs, our discussion of comments and responses often refer solely to these two programs.

B. Comments on Areas That the OIG Invited Comments

In this section, we discuss four issues on which we specifically invited public comments: continuing guidance, notice to beneficiaries, preferred provider organizations (PPOs), and waiver of coinsurance and deductible amounts for inpatient hospital care. We also requested comments on suggested standards for two additional investment interest provisions that would protect investors, such as limited and general partners, investing in small entities. Our discussion of those comments and our responses are contained in the provision-by-provision analysis of investment interests (see section III.C.1. below).

1. Continuing Guidance

Comment: We received a large number of responses to our invitation for comments on how the OIG can best inform health care providers about fraudulent practices, and can best ensure that the safe harbor regulation remains current as new health care business practices develop. Many of these commenters suggested that the Department issue advisory opinions about the legality of proposed business arrangements under the statute. Some commenters requested that the Department implement a mechanism for informing health care providers about business practices that raise problems under the statute.

Proponents of advisory opinions argued that such a mechanism would provide guidance concerning activities unaddressed by the safe harbor regulation, curb illegal payment practices, and keep the Department informed of industry developments. These commenters asserted that the Department has authority to issue advisory opinions pursuant to its general statutory authority to promulgate regulations, and pursuant to the specific authority under Public Law 100–93 to promulgate this regulation. The commenters contended that advisory opinion rulings would not hamper the Department of Justice's prosecutorial discretion under the statute, because the immunizing effects of advice given would be limited to the facts disclosed. The commenters also claimed that several other agencies employ advisory opinion procedures in administering laws under their respective jurisdictions.

Response: We understand and appreciate providers' desire for legal security in their business relations. Consistent with our mandate under Public Law 100–93, we will continue to make efforts to inform health care providers about business practices that may subject them to criminal prosecution or program exclusion.

We have concluded that we will not provide a mechanism responding to individual requests for advisory opinions about the legality of a particular business arrangement under the statute. The statute is primarily a criminal statute, and the Department of Justice is vested with exclusive authority to enforce all criminal laws of the United States. See sections 516, 519 and 547 of title 28 of the United States Code. A plethora of case law holds that this exclusive authority extends to all decisions to initiate, or to decline to initiate, criminal prosecutions. See *Smith* v. *United States*, 375 F.2d 243, 247 (4th Cir. 1967), *cert. denied* 389 U.S. 841; *Powell* v. *Katzenbach*, 359 F.2d 234 (D.C. Cir. 1965), *cert. denied* 384 U.S. 906; *United States* v. *Wong Kim Bo*, 466 F.2d 1298 (5th Cir. 1972); *United States* v. *Kysar*, 459 F. 2d 422 (10th Cir. 1972). For these reasons, this Department cannot, through advisory opinions, immunize health care providers from criminal prosecution under the statute.

The general or specific statutory authorizations cited by commenters do not supersede the case law cited above. The Department's general authority as an executive agency to promulgate regulations governing conduct within the Department's jurisdiction does not, implicitly or explicitly, include authority to make judgments that are within the exclusive domain of another agency. Neither does our mandate, under Public Law 100–93, to promulgate this regulation provide such authority. Our charge to immunize, by regulation, conduct and arrangements potentially falling under the statute does not include judging whether the conduct of particular individuals violates the statute.

Aside from these legal impediments, it is impossible as a practical matter to give meaningful advice with respect to liability under the statute in the context of a letter ruling. The statute requires proof of a knowing and willful intent to induce or arrange for referrals or for other business reimbursable under the Medicare or Medicaid programs. See *United States* v. *Bay State Ambulance and Hospital Rental Service, Inc., supra*, 874 F.2d at 29 ("The gravamen of Medicare Fraud is inducement"); *United States* v. *Greber*, 760 F. 2d 68 at 71 ("The statute is aimed at the inducement factor"). Thus, the extent to which conduct is motivated by inducing or arranging for referrals will, in large part, determine liability under the statute. The types of factual summaries that typically accompany requests for advisory opinions—descriptions of proposed management contracts or lease agreements, or prospectuses of joint ventures—are likely, however, to be insufficient for purposes of understanding the motives of the parties.

In our experience, assessing whether parties to a particular scheme intend to induce referrals requires substantial investigation resources. Requests for advice typically do not furnish complete and objective accounts of all the facts necessary to determine the subjective intent of the parties. In addition, requests for advice involving business arrangements not yet consummated are especially difficult to analyze because the motives of the parties to induce referrals often become apparent only when the arrangement is operational.

Furthermore, we do not believe that an advisory opinion process is a necessary or appropriate mechanism for keeping the Department aware of new developments in industry business practices, and ensuring that the regulation remains current. As we have discussed above, the legislative history of Public Law 100–93 clearly directs the Secretary to "formally re-evaluate the anti-kickback regulations on a periodic basis and, in so doing, * * * solicit public comment at the outset of the review process." H.R. Rep. No. 85, *supra*, at 27. We believe that periodic updating of this regulation, with the opportunity for public input, is the best way to ensure that these regulations remain practical and relevant in the face of changes in health care delivery and payment arrangements. The need to clarify, interpret, fine tune, expand, or otherwise alter this regulation in response to public and industry input will provide an occasion for us to respond to unanticipated, newly developing, or other beneficial arrangements.

Despite commenters' arguments that other Federal agencies offer the public mechanisms for obtaining advisory opinions, only one other agency of which we are aware, the Federal Elections Commission (FEC), provides any advice with respect to a statutory provision that prohibits "knowing and willful" conduct. The FEC issues such advice under specific statutory authority (2 U.S.C. 437d(a)(7)). It is our understanding, however, that the FEC's advisory opinions do not inquire into whether any conduct is knowing and willful. Thus, the FEC's practice follows the general rule that agencies will refrain from rendering prospective advice on issues of intent. For example, the IRS has stated that it will not issue advice as to the "due diligence" or "good-faith" of parties. See Rev. Proc. 88–3, 1988–1 IRB 29.

As an alternative, we believe that OIG fraud alerts are the best mechanism for imparting practical and continuing guidance to individuals and entities seeking to avoid violations of the statute. The fraud alert program, implemented in March of 1984, was designed to increase our effectiveness in preventing fraud in this Department's programs by highlighting conduct likely to be illegal. Since 1984, we have issued over 100 fraud alerts on subjects unrelated to the anti-kickback statute. On April 24, 1989, we initiated distribution of a Special Fraud Alert on Joint Venture Arrangements to all individuals and entities participating in Medicare, which gave examples of specific characteristics of provider-owned entities that, in our view, might result in abusive or unlawful business arrangements. By identifying what we consider to be suspect features of limited partnerships and other joint ventures (including potentially abusive practices for selecting and retaining investors, for structuring the legal entity or entities involved, and for distributing profits), the Special Fraud Alert communicated our views about the legitimacy of potential or existing ownership arrangements. We believe that fraud alerts can be equally as educational about other areas of enforcement of the statute, and plan to distribute similar information as the need arises.

Comment: A few commenters inquired about the binding effect of advisory letters written by HCFA in the 1970s, when that agency was responsible for enforcing the statute. The commenters suggested that these letters may serve to protect health care providers who engage in a particular business arrangement that was approved by HCFA at that time even though the OIG has not now proposed a safe harbor for that arrangement.

Response: No person in the Department or with the fiscal intermediaries or carriers is, or ever has been, authorized to permit a practice that the statute makes illegal. The Department's lack of authority to provide legal advice on the application of the statute to specific factual situations has been consistently communicated to the public for years. Consequently, no person may reasonably rely on any such advice, especially when that advice is a letter written to a third party about a business arrangement different from the one in which the party is engaging. In sum, the so-called advisory letters may not be regarded in any way as authoritative.

The only authority to legalize conduct is this safe harbor regulation. This regulation supersedes any prior communications from the Department regarding business practices considered not subject to prosecution, and is the only formal mechanism to set forth business arrangements or payment practices that will not be prosecuted under the statute.

Comment: Two commenters requested the OIG to issue selective opinions on issues affecting a class of providers that arise under the statute and safe harbor regulations, even if we decline to provide advice about specific business arrangements or activities.

Response: As we have said, we plan to provide guidance on generic issues through fraud alerts distributed to the provider community. In addition, we remain open to examining the usefulness of other mechanisms for informing the public and health care provider groups about the types of new business arrangements to which the OIG will give investigative priority.

2. Notice to Beneficiaries

Comment: Commenters overwhelmingly supported requiring health care providers to disclose to patients any financial relationships with sources of referral. They argued that such disclosure would not be burdensome, and that many codes of professional ethics, as well as many state statutes, already mandate such disclosure.

Response: With one exception, we have decided not to require such disclosure to qualify under a particular safe harbor provision. First, the activities covered under each safe harbor provision are by definition activities that we deem have a low potential for abuse. Second, disclosure in and of itself would not provide a significant additional assurance that abuse would not occur, even though disclosure may reduce the potential for abuse somewhat by increasing consumer awareness of the relationship between health care providers. Finally, it is possible for a health care provider to cast a disclosure to fit that provider's promotional objective, which is exactly the opposite result from that which we would want to achieve.

The one provision in which we condition safe harbor protection on disclosure is that of referral services. Referral services help beneficiaries make their initial contact with the health care system before a relationship of trust is established with a particular health care provider. Without disclosure of the manner in which a provider of services was selected or rejected by a referral service and the relationship between the service and health care providers, a consumer has very little information upon which to base his or her trust in the practitioner to whom the consumer is being referred. For example, a consumer may well decide to put more trust in a surgeon referred by the referral service if the consumer knew that the referral service only uses board certified physicians. On the other hand, a consumer may feel less confidence in a referral if any physician, no matter what his or her disciplinary record, were one of the referral service's members. Consequently, we are confident that, in this instance, disclosure represents a meaningful added protection.

Although we are not requiring disclosure of financial interests under the other safe harbor provisions, we consider disclosure of financial interests in entities to which health care providers refer patients an ethical duty (See, for example, rule 8.03 of the Current Opinions of the Council on Ethical and Judicial Affairs of the American Medical Association, Chicago, Ill. 1989). Also, to the extent that disclosure affects a patient's freedom of choice and quality of care, it may be necessary to enable a patient to give informed consent.

3. Health Maintenance Organizations, Preferred Provider Organizations and Other Managed Care Plans

We received a number of responses to our invitation to comment on how to protect health maintenance organizations (HMOs), preferred provider organizations (PPOs), and other managed care plans. In addition, we received many other comments regarding HMOs that waive coinsurance and deductible amounts, and price reduction agreements negotiated by these and other types of health benefit plans. We are including these comments in this section.

Comment: Two commenters requested safe harbor protection for HMOs that waive the beneficiary's obligation to pay coinsurance and deductible amounts. They believed that this was a common practice among HMOs. In addition, a few commenters pointed out that some PPOs negotiate agreements with contract health care providers for those providers not to charge the health plan or enrollee for some or all of the coinsurance and deductible amounts they are owed for furnishing services to enrollees. Under such an agreement, when the contract provider bills the Medicare program directly (and not the health plan) and agrees to waive all coinsurance and deductibles, the commenters typically phrased the agreement as one "to accept Medicare payment as payment in full." One commenter specifically objected to this practice.

Response: We agree that protection should be given to prepaid plans with contracts and agreements with HCFA and State agencies for waiver of beneficiary obligations to pay coinsurance and deductible amounte. However, as will be discussed below, we do not agree that such protection is warranted at this time for PPOs and prepaid plans that do not have contracts

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Health plans offer a variety of incentives to attract beneficiaries to become enrollees. In many instances, HCFA permits such HMOs and competitive medical plans (CMPs) to waive the premiums attributable to the coinsurance and deductible amounts. Further, HMOs and CMPs under a risk contract with HCFA are required under certain circumstances to reduce coinsurance and deductible amounts or offer additional benefit options.

The routine waiver by a prepaid health plan of beneficiaries' obligation to pay coinsurance and deductible amounts is clearly distinguishable from such routine waiver by other health care providers, such as hospital outpatient departments, physicians, or durable medical equipment suppliers. Two principal characteristics distinguish a health plan's routine waiver of cost-sharing amounts from that of other health care providers. First, a health plan's routine waiver program is inextricably intertwined with the offering of a comprehensive package of covered benefits, and is not offered for the purchase of an individual item or service. Quite often, in the case of prepaid plans, the routine waiver of cost-sharing amounts is made in the form of a reduction or waiver of the beneficiary's premium and may also be combined with the offering of increased covered benefits. Thus, the routine waiver of cost-sharing amounts is generally not an incentive to use a particular item or service at the time it is furnished.

Second, although cost-sharing requirements can serve to control utilization, HMOs and other health plans under contract with HCFA or a State agency have built-in incentives to control unnecessary utilization, or have their utilization and costs monitored by HCFA or the State agency. Thus, the issue of potential overutilization (with increased costs to the programs) is adequately dealt with without resort to imposing the obligation on beneficiaries to pay coinsurance and deductible amounts.

Therefore, we expect to publish at a later date an additional safe harbor provision to protect prepaid health plans that have a contract or agreement with HCFA or a State agency where the health plan offers beneficiaries increased benefits coverage, reduced cost-sharing amounts (coinsurance, deductibles, or copayments), or reduced premiums where certain standards are met. Because of the limited scope of the comments we received on HMOs, PPOs and managed care plans, we expect to publish at a later date an interim final rule in order to solicit additional comments from the public on this new safe harbor provision.

This new safe harbor provision will not protect incentives offered to beneficiaries by health plans, such as PPOs, that are not operating under a contract or agreement with HCFA or a State agency. Unlike health plans with such contracts or agreements, we are not confident that all PPOs that engage in these negotiated waiver agreements properly protect the Medicare and Medicaid programs against overutilization. And we did not receive sufficient comments on the different types of PPOs for us to distinguish the characteristics of a PPO engaging in these negotiated waiver agreements where the Medicare and Medicaid programs are properly protected.

Comment: Several commenters requested the OIG to protect a variety of arrangements between HMOs, PPOs, competitive medical plans (CMPs), managed care plans, and other health plans on the one hand, and medical groups and other health care providers who furnish items and services to the health plans at a reduced price on the other hand. A few of these commenters observed the benefits that can be achieved when a health care provider offers discounts to these organizations. Several commenters recommended special treatment for relationships between HMOs and health care providers, such as physicians and hospitals, involving the leasing of space and equipment and contracting for personal services. One commenter requested special safe harbor protection for "[a]ll transactions between an HMO and contracting medical groups * * * if the medical group provides over 90 percent of its services to HMO members."

Response: We agree that there is a need to provide safe harbor protection for certain practices between managed care plans and health care providers. Thus, we are expecting to publish a rule that will protect many of these price reduction arrangements where certain standards are met. For the same reasons as stated above, we are expecting to publish this safe harbor provision as an interim final rule with an opportunity for additional comments from the public.

The safe harbor provision we are expecting to publish will only protect agreements between health plans and contract health care providers for the sole purpose of furnishing items and services covered by the health plan, Medicare, or Medicaid. In other words, for the reasons explained below, we are not protecting in this provision the contracts between health plans and contract health care providers for these providers to furnish services other than covered benefits, such as peer review and management services.

As with all safe harbor provisions, where two parties engage in a multi-faceted payment arrangement where protection is sought from more than one safe harbor, we expect separate justifications to be clearly set forth for each provision for which protection is sought. Where HMOs contract with physicians and other health care providers for the furnishing of services other than covered health care services, we believe that HMOs, PPOs and other prepaid health plans will be able to conform their arrangements to the appropriate safe harbor provisions. For example, many contract health care providers furnish peer review, marketing services, or pre-enrollment screening for HMOs. For the remuneration attributable to the furnishing of such services to be protected, it must comply with the personal service/management contracts safe harbor provision. Also for example, the remuneration attributable to the lease of space or equipment must comply with those respective safe harbor provisions.

We are not convinced that merely because a medical group has a large majority of its business with an HMO that a special across-the-board exemption for all transactions is warranted. HMOs operate under a variety of payment mechanisms, both with respect to the Medicare and Medicaid payments they receive and the payments they make to physicians. Although in many cases the incentive structure in which HMOs operate is designed to protect against overutilization of service, this incentive structure may not extend to fee-for-service arrangements.

Further, even though many HMOs have generally operated largely free of fraud and abuse problems, we are aware of some HMOs that have abused their contractual relationships with medical groups, where individuals in the groups have engaged in abusive activities on behalf of the HMO, or where the medical group has compromised the interest of beneficiaries in order to keep the vital HMO contract. In at least one case, a criminal conviction was obtained for such a practice. Although safe harbor protection is warranted for certain contractual relationships between health plans and contract health care providers, we also intend to use our authorities aggressively to monitor closely and, where appropriate, penalize any abusive relationships between these parties to assure that medically necessary services of a high quality are available and accessible to all enrollees.

4. Waiver of Beneficiary Deductible and Coinsurance Amounts

Comment: The OIG received numerous comments on the establishment of a safe harbor for waiver of hospital inpatient coinsurance and deductible (copayment) amounts owed by program beneficiaries. Many commenters requested the OIG to provide safe harbor protection for routine hospital waiver or partial reduction of inpatient fees not subsequently claimed as bad debts because the practice would benefit hospital inpatients without increasing program costs. Some commenters urged the OIG to protect the submission of bad debt claims where copayments were routinely waived for limited categories of patients, such as seniors. On the other hand, several commenters were concerned that permitting hospital waiver of inpatient copayments would encourage overutilization of hospital services and promote cost-shifting to patients with nongovernmental insurance policies.

Response: Since October 1, 1983, when the prospective payment system (PPS) for reimbursing hospital inpatient services was implemented, we have been aware of hospitals that routinely waive Medicare beneficiary deductibles and coinsurance charges for inpatient hospital services in order to attract patients. Because the waiver of patient charges constitutes an inducement to use services in exchange for something of value (the forgiveness of financial obligation), this practice violates the statute. However, assuming the waived amounts are not later claimed as bad debt, the practice appears to cause no direct financial harm to the Medicare program because hospitals receive a pre-determined payment amount under PPS regardless of their costs or charges. Moreover, due to hospital peer review requirements and the relatively fixed level of patient demand for hospital inpatient services, waiver of inpatient beneficiary fees is not likely to increase utilization significantly. Furthermore, if hospital waiver policies do not discriminate on the basis of length of stay or type of disease, the potential for program abuse appears minimal.

In addition, we know of no data, nor have commenters produced or referred us to any, indicating that routine hospital waivers of inpatient copayments owed by program beneficiaries will shift the costs of care to non-Medicare patients. Rather, we assume that most hospitals that choose to waive these amounts do so because the hospital more than makes up in increased volume for any initial "loss" resulting from not collecting the full amount to which it is entitled. Although we believe there is little risk of "cost-shifting" to the non-Medicare population, the first standard in this provision makes clear that any such cost-shifting is not protected.

We do not agree, however, that health care providers who choose to waive copayment amounts routinely for some or all of their patients should be permitted to claim such amounts as bad debt. Such a rule would muddle two very distinct Medicare policies. Traditionally, Medicare health care providers are reimbursed for uncollectible payments owed by beneficiaries. See 42 CFR 413.80. This rule requires, among other things, that health care providers make an indigence determination on a case-by-case basis, or reasonable collection efforts, prior to recouping bad debt losses from the program. See also Provider Reimbursement Manual, sections 310, 312, HCFA Pub. No. 15–1. Thus, payment of Medicare bad debts, unlike routine waivers of Medicare cost sharing amounts protected under this safe harbor regulation, are only authorized under certain conditions pertaining to the uncollectability of payments and the indigence of beneficiaries. Health care providers who routinely waive beneficiary copayments in accordance with this safe harbor regulation, and do not make case-by-case indigence determinations or otherwise prove uncollectability under 42 CFR 413.80, cannot deduct expenses as bad debt. Where such an unlawful expense is claimed, the hospital may be subject to civil or criminal prosecution.

Comment: Many commenters requested the OIG to extend safe harbor protection to waiver of patient fees imposed for a wide array of provider services. Several commenters sought protection for waiver of beneficiary copayments for part A services furnished by other cost-based health care providers, such as skilled nursing facilities and home health agencies. These commenters argued that where services are paid on a reasonable cost basis, just as where services are reimbursed under PPS, waiver of beneficiary copayments causes no financial harm to the program. Other commenters sought still broader protection under the safe harbor for copayments for services under part B, arguing that the limited protection granted for inpatient hospital copayments was discriminatory.

Response: We believe that protection is uniquely appropriate for waiver of patient charges related to hospital inpatient services. A routine waiver program will not likely increase patient demand for these services, since beneficiaries cannot admit themselves, and hospital overnight stays are inherently undesirable from a patient's perspective. Thus, it is unlikely that a routine waiver program will affect utilization. By contrast, cost-based fee-for-service health care providers, such as home health agencies and nursing homes, may be able to offset their losses resulting from their waiver of copayments by increasing their Medicare allowable costs. Such manipulation of reimbursement amounts would be virtually impossible to prevent. Thus, we do not believe that the protection offered under this safe harbor provision should be extended to routine waiver of beneficiary copayments by cost-based fee-for-service health care providers.

Routine waiver of beneficiary copayments by individuals or entities reimbursed on the basis of reasonable charges even more clearly affects program costs. When charge-based health care providers routinely fail to collect all or part of beneficiary copayments authorized by law, and then submit actual charges to Medicare as if copayment amounts were collected, these charges increase customary and prevailing rates which, in turn, inflate program costs. The Medicare Carriers Manual makes clear that in these situations, a health care provider is required to reduce his or her actual charge. See section 5220, HCFA Pub. No. 14. Thus, we believe that individuals and entities who fail to reduce actual charges submitted to Medicare are misrepresenting their charges, and may be subject to civil and criminal liability for submitting false claims.

We are aware that some local government health care providers, including county hospital outpatient departments, routinely reduce beneficiary payments at the time of service for the extremely indigent populations they serve. For these health care providers, offering patients the option of reduced payment at time of service may be a more successful collection strategy than subsequently billing patients for the entire copayment. This practice, while not protected by this safe harbor regulation, would not likely violate the statute so long as the partial forgiveness of the copayment obligation was strictly a pragmatic

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financial decision and not an inducement to patients to purchase medical services. We see no purpose in interfering in the mission of local governments or other hospitals that serve primarily indigent populations when they reduce beneficiary fees for those unable to pay. Such health care providers, typically, have no need to engage in sophisticated marketing strategies to induce more business.

Comment: One commenter advised the OIG that in accordance with 42 U.S.C. 254b(f)(3)(F) and 254c(e)(3)(F), federally qualified migrant and community health care centers are required to develop a sliding fee schedule for patients based upon ability to pay, which could result in waiver of part or all of the Medicare coinsurance and deductible amounts. These commenters argued that such waivers, although mandated under Public Health Service Act grant programs, could be deemed a violation of the statute.

Response: In section 4161(a)(4) of Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990, Congress enacted a fourth statutory exception to the statute, which exempts a waiver of any Medicare Part B coinsurance by a Federally qualified health care center to any individual who qualifies for subsidized services under the Public Health Services Act. Thus, we are providing a safe harbor provision for this exception. In addition, we are making this safe harbor applicable to similarly situated individuals who receive services under the Maternal and Child Health Service Block Grant program (see section 505(2)(D) of the Act; 42 U.S.C. 705(2)(D), or who are Medicaid beneficiaries.

Comment: Six commenters argued that protecting routine waiver of beneficiary payments for inpatient hospital services would discourage competition from ambulatory surgical centers (ASCs).

Response: Although the granting of safe harbor protection for the waiver of inpatient copayments gives practitioners or their patients an incentive to choose inpatient hospital settings over outpatient settings, we believe that the activities of the PROs reasonably ensure that services are furnished in outpatient settings where appropriate. Therefore, we believe that the granting of safe harbor protection only for inpatient services is unlikely to draw patients away from ASCs and other outpatient settings.

Comment: A few commenters requested the OIG to protect waiver or discounts of inpatient copayments where hospitals and physicians offer this benefit not to patients directly, but to insurance companies, HMOs, or employer or union medical service plans, that have assumed liability for the beneficiary portion of payment under the terms of their insurance policies. Insurers offering these insurance benefits may attempt to negotiate with hospitals to reduce or eliminate the beneficiary portion of reimbursement in exchange for endorsing the hospital as a preferred provider or offering other tangible benefits.

Response: This safe harbor provision protects the waiver by hospitals of inpatient copayment amounts only where these amounts would otherwise be paid by Medicare beneficiaries themselves. In paragraph (k)(1)(iii), we have expressly made this provision inapplicable to negotiated price reduction agreements between health care providers and third-party payers, even where the reduction involves beneficiary copayments for which the third party payor has assumed liability as part of a Medigap policy. As we discussed in the section immediately above, we are expecting to publish an additional safe harbor provision to protect HMOs, CMPs and HCPPs under contract with HCFA or a State agency that waive coinsurance and deductible amounts owed by beneficiaries where certain standards are met.

Comment: Two commenters sought protection for the waiver of patient copayment amounts for the first eight days of care in a skilled nursing facility (SNF) after discharge from a hospital under the same ownership. These commenters stated that protection was needed to enable the smooth transfer of patients who were ill, and to allow hospital beds to be vacated for sicker patients.

Response: We understand that health care providers operating both hospitals and SNFs may, for entirely legitimate reasons, wish to continue waiving SNF copayment amounts when transferring hospital patients into the SNF for a brief period. In section III.D. below, we discuss in more detail the special considerations that exist where the hospital and SNF are wholly owned by a single "parent" entity, or where one of the facilities is the sole owner of the other.

Comment: One commenter requested the OIG to expand the safe harbor provision for waiver of hospital inpatient copayments to cover the provision of free items or services such as meals or presurgical overnight stays, samples of products from manufacturers, or blood screening and other testing services. The commenter suggested that such free gifts benefit patients without causing harm to the program, so long as there is no obligation to purchase additional items or services upon receipt of the free gifts.

Response: We decline to protect the offer of free gifts to beneficiaries within this safe harbor provision, as we have declined to protect this practice within the safe harbor provision governing discounts. The statute clearly contemplates that illicit remuneration may involve payments "in cash or in kind." The practice of offering free gifts may well induce beneficiaries to purchase additional or unnecessary items or services. Such inducements could easily become excessive, and there is no distinct financial or other cut-off point below which we could be sure that gifts remained non-abusive. Because we understand that such inducements are an area of significant abuse, we believe that protection of this practice would be unwarranted.

C. Provision-by-Provision Analysis of Safe Harbors

1. Investment Interests—§ 1001.952(a)

The OIG received close to three hundred comments on the issue of providing safe harbor protection for payments from investment interests. These comments are divided into three broad categories: (a) Comments on the proposed safe harbor provision for payments from investments in large publicly traded entities; (b) suggestions for safe harbors for payments from investments in small entities such as limited partnerships, about which we solicited comments, and (c) proposals for protecting payments from other investment interests. For convenience, we are discussing all of these comments in this section. Before discussing the comments and responses for these three broad categories of investment interests, we will discuss general issues raised with respect to investment interests.

Comment: We received a number of comments asking the OIG to clarify the types of investors and investment interests to be protected. In particular, we received many comments urging the OIG to protect indirect investment interests held by family members and to protect debt as well as equity investments.

Response: We are adding a definition of the terms "investor" and "investment interests" to this safe harbor provision. We are defining an "investor" to include both individuals and entities who either directly or indirectly hold an investment interest in an entity. Our definition includes examples, which are not intended to be an exhaustive list, of ways that investment interests may be indirectly held. For example, a family member of a referring physician may hold the investment interest in the joint venture entity, or a referring physician may have a legal or beneficial interest in an entity, such as his or her group practice, a trust or a holding company, where that entity directly holds the investment interest in the joint venture entity. In both cases, we view the physician as having the ownership interest in the joint venture entity.

In many cases we distinguish investors who do business with the entity in which they have invested from other investors who are exclusively seeking a return on their investment. We call an investor who does business with the entity as "an investor who is in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity." This classification is meant to include all investors who do business in any manner with the entity. Except as noted below, we do not limit this category to investors who actually make referrals. Rather, our focus is on the status of the investor and the ability to make or influence the referral stream or level of business activity for the entity. Such investors include not only physicians, but hospitals and other entities capable of influencing referrals.

We note that this category of investor doing business with the entity also includes those investors who furnish items and services to the entity as well as those investors who otherwise generate business for the entity. Thus for example, if a durable medical equipment (DME) supplier and hospital both enter into a joint venture to furnish DME to patients when they leave the hospital, both the DME supplier and the hospital fit within this category of investor doing business with the entity.

There are some very limited situations where, because of the special status or location of the investor, he or she does not fit within this category of investor doing business with the entity. For example, for the most part, retired physicians no longer make or influence referrals. In addition, typically a physician who resides and practices in a separate service area from the entity is similarly not "in a position to make or influence referrals." Or an investor could simply make an agreement barring him or her from actually making or influencing referrals to the entity. In all three examples, the determination whether an investor should be classified as doing business with the entity in which he or she has invested is a factual question. However, we will accept a written stipulation that for the life of the investment the investor will not make referrals to, furnish items or services for, or otherwise generate business for the entity. We emphasize that, because of the potential for abuse of this stipulation agreement, the investor must be bound to this agreement for the life of the investment as long as he or she remains an investor.

Finally, our definition of the term "investment interest" makes clear that debt as well as equity investments are protected.

a. *Large Publicly Traded Entities. Comment:* Several commenters questioned the relationship of this proposed safe harbor provision to the rules of the Securities and Exchange Commission (SEC) for the registration of securities. For example, some suggested that the OIG should exempt all investment interests that are traded on a publicly regulated exchange, while another suggested that public trading be an additional condition for protection. In addition, a variety of comments were received regarding the standards adopted from the SEC rules that, in order for payments from investment interests in an entity to be protected, the assets of the entity must exceed $5 million and the number of shareholders must exceed 500 persons (the so-called "$5 million asset/500 investor rule"). While some suggested the $5 million test was too high, one suggested that it was too low. One commenter suggested that the 500 shareholder test was too high, and another suggested that the OIG require either $5 million in assets or 500 shareholders, but not both. Finally, another commenter suggested that the OIG protect an investment in an entity any time the asset level was greater than $5 million.

Response: We intended to protect profit distributions made to referring investors in large publicly traded corporations where the investment interest was obtained at fair market value through trading on a publicly regulated exchange. The remuneration received by these investors is so tangentially related to their referrals that the potential for abuse is minimal.

As we stated in the preamble of the proposed rule, we adopted the SEC registration rules from 15 U.S.C. 78*l*(g) and 17 CFR 240.12g–1, which generally require entities with more than $5 million in assets and more than 500 investors to register with the SEC. At the time, we had believed that such a test would protect payments from only those entities that are actively traded on a national securities exchange.

Based on the comments we received and our experience in enforcing the statute, we believe that in many respects the SEC rules are not applicable for the purposes of protecting against abuse. In particular, the $5 million threshold is too low. An entity that owns two magnetic resonance imaging (MRI) machines may well meet this test. Thus, we are changing the asset threshold level from $5 million to $50 million. Publicly traded entities of this size are sufficiently large to assure that abuse is minimal.

In addition, the SEC's other criteria of 500 investors does not provide meaningful protection against abuse. We recognize that in many cases a large number of investors can dilute the influence of one investor's referral patterns on the level of payments that he or she receives. However, it has been our experience that many sham joint ventures try to obtain many investors, each of whom contribute nominal investments, as a mechanism to lock-in the loyalties of as many physicians as possible. Thus, depending on the factual circumstances of a particular joint venture, a large number of investors could either be abusive or minimize abuse.

We are making other revisions to this first investment interest safe harbor provision to provide greater clarity consistent with our original intent. Thus this safe harbor as revised contains two definitional prerequisites in paragraph (a)(1) for the type of entity we are protecting, and is followed by five standards, all of which must be met to the extent they apply to the investment interest in question.

For an entity to be protected under this safe harbor, it must meet two definitional prerequisites. The first prerequisite to qualify for protection is that the assets of the entity must be measured any time within the previous fiscal year or the previous 12 month period. This time period is different from the SEC rule, which we believe to be overly restrictive for the purposes of this safe harbor. The time period for measuring compliance which we are adopting will mean for all practical purposes that growing entities will be protected as soon as they reach compliance with all the preconditions and standards in this safe harbor, rather than having to wait for the next fiscal year as the SEC requires. In addition, the time period we are specifying permits an entity to retain safe harbor protection for a limited time period even though it is no longer in compliance with the $50 million asset threshold in this rule. During this time period, an entity

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The second definitional prerequisite is that the entity must possess $50 million in the form of undepreciated net tangible assets. This clarification of what we mean by $50 million in assets removes many assets which we never intended to include within the scope of protection. We are excluding all intangible assets such as the company's valuation of its name recognition and stock and other forms of goodwill. We are excluding such assets because their valuation is too subject to "creative" accounting or appraisal techniques. The assets must also be reduced by any liabilities. Thus, a corporation only has $1 million of net tangible assets when it buys a $5 million piece of equipment with a $4 million loan. However, we are excluding from the calculation of assets any reductions in the value of assets due to depreciation. We believe it is inappropriate for an entity to lose safe harbor protection as a result of the aging of its assets. Further, we do not want to create incentives to replace equipment unnecessarily merely for the entity to regain safe harbor protection based on the value of new equipment. We are also clarifying that the reporting of net tangible assets must be based on net acquisition costs of purchasing such assets from an unrelated entity. The use of net acquisition costs in this rule is a generally accepted accounting principle, and makes clear that, for the purposes of this rule, we will not accept a company's use of current market valuations of assets. Further, we intend to use the Medicare related party rule, 42 CFR 413.17, to assure that the acquisition costs from the purchase of an asset is only based on a bona fide purchase through an arm's length transaction. Our final clarification in how to apply the $50 million asset test is that assets unrelated to a company's health care line of business cannot be used in the calculation of assets. For example, a nursing home corporation could be a subsidiary of a hotel chain. The hotel assets cannot be used for purposes of qualifying for the $50 million asset test. However, with the exception of the related party rule, it is not our intent to require corporations to be familiar with cost reimbursement rules of 42 CFR part 413. Tangible assets used in furnishing items and services may be counted even though they may not be allowable costs under part 413. The information necessary to determine compliance with this $50 million asset test is readily available in the accounting books of entities, and the accounting methods for determining compliance are fully consistent with generally accepted accounting principles. Thus, an independent certified public accountant should have little trouble certifying an entity's compliance with these requirements.

This safe harbor contains five standards, not all of which may be applicable in every instance. The first two standards, paragraphs (a)(1) (i)–(ii), which will be discussed here, focus on the nature of the investment interest. (The three remaining standards are being added in response to other comments which will be discussed below.)

The first standard (see paragraph (a)(1)(i)) applies only to an investment interest in an equity security, and requires such a security to be registered with the SEC under 15 U.S.C. 78l (b) or (g). We had considered but are rejecting an alternative standard that the investment interest must merely meet the SEC registration qualifications. This requirement of actual registration provides a clear bright-line rule, and is an indication of good-faith entry into the public securities markets, which is a significant factor underlying the rationale for this safe harbor. In addition, we are requiring the investment interest actually to be registered with the SEC because many exemptions exist to the SEC's $5 million asset/500 investor rule, which permit many entities to be actively traded but not to be registered with the SEC, and thus not under its oversight. See 15 U.S.C. 78l(g)(2). However, the SEC's reasons for granting an exception may not be consistent with the purposes of this rule, and thus we see no particular reason to protect securities simply because they qualify for an SEC exemption. We note that one such exemption under 15 U.S.C. 78l(g)(2) is for securities listed and registered on a national securities exchange. Such securities must comply with 15 U.S.C. 78l(b), and for the purposes of this rule we are requiring such securities to be registered with the SEC.

We are not applying the registration requirement to investment interests that involve debt securities because we believe that the extra safeguard of SEC registration is unnecessary. Publicly traded debt instruments, although protected under this safe harbor, are not the type of investment interests that are the focal point of this rule. Although the potential for abuse is present, we have not been apprised of the actual occurrence of abuse relating to these investment interests, and believe that their usefulness as instruments for inducing investors' referrals is more limited than equity investment interests.

The second standard (see paragraph (a)(1)(ii)) responds to the commenters' suggestions regarding public trading. We are adding a standard to this provision requiring the investment interest of an investor in a position to make or influence referrals to, furnish items and services to, or otherwise generate business for the entity to be obtained on terms equally available to the public through a registered national securities exchange, such as the New York Stock Exchange or the American Stock Exchange, or through the National Association of Securities Dealers Automated Quotation (NASDAQ) system. We note that we specifically intend to preclude safe harbor protection for securities traded through the so-called "pink sheets" or those "non-NASDAQ" securities that are traded through the OTC Bulletin Board Service. See, Securities Exchange Act Release No. 34–27975, May 1, 1990. This standard follows our original intent to assure that the investment interests of physicians or others in a position to influence referrals must be obtained through the kind of arms length trading that is normally associated with actively traded public securities at the fair market value through a publicly regulated exchange. Such public trading assures that the entity does not obtain capital by self-selecting investors based on their status as sources of referrals.

Although we are not requiring investment interests of other investors to be obtained through public trading, physicians and others in a position to influence referrals must strictly comply with this standard. We plan to closely scrutinize attempts to circumvent this standard. For example, any investment interest obtained before an entity becomes publicly traded is not protected under this provision. In addition, an investor is not protected by exchanging a limited partnership interest for shares in a newly formed entity that is publicly traded. Further, this standard precludes protection of payments from securities where physicians are afforded the opportunity to buy the available shares of an entity before other members of the public have the opportunity to invest in that entity. Such an entity would have only physicians as investors, and it is not our intent to protect payments from such entities. We expect the public to be afforded a genuine opportunity to invest in these publicly traded entities. Where referring sources (or their immediate families) hold a large proportion of the shares, we will presume that this standard has not been met.

Comment: A number of commenters suggested that the OIG expand this provision in a variety of ways to protect remuneration from debt as well as equity instruments and from entities other than corporations, such as partnerships.

Response: As discussed above, this safe harbor protects debt as well as equity instruments. We recognize that an ambiguity existed in our proposed rule in that our 500 investor test applied only to "a class of equity security" and thus appeared to prohibit debt instruments from qualifying under this safe harbor provision. However, this ambiguity is resolved by eliminating the 500 investor test. In addition as discussed above, we are exempting debt instruments from the SEC registration requirement contained in the first standard.

We also agree that investments in partnerships should be protected, and we are revising this provision accordingly, by adding a definition of investment interest.

Comment: A few commenters expressed concern that entities meeting the requirements contained in the proposed safe harbor provision could still be engaging in abusive relationships with individuals in a position to make referrals. One commenter suggested that we specifically protect against fraudulent cross-referral arrangements whereby investors in entity "A" are explicitly or implicitly encouraged to refer to entity "B" in return for entity "A" receiving the referrals from the investors of entity "B."

Response: We agree with the thrust of these comments, and are adding three standards (see paragraphs (a)(1) (iii)–(v)) to clarify our original intent and assure that investment interests are not used as inducements for referrals. One, the entity or any investor must not market or furnish the entity's items or services to passive investors in any manner differently than to non-investors. In other words, although an entity may seek referrals or other business from passive investors, it must promote and furnish its items or services to investors and non-investors in the same manner. An entity may not use a separate marketing approach or provide a different level of service to passive investors as opposed to non-investors. For example, in its promotional efforts, the entity may not in any manner appeal to or refer to such investor's position as an investor, and in serving customers it may not offer special arrangements to investors that are not available or are offered on different terms to non-investors. Any distribution to passive investors of individual or aggregate investor referral patterns would also not be protected under this provision. In addition, the entity or any investor must not promote the items or services of other entities as part of a cross referral agreement. One type of cross referral arrangement we are not protecting is the sham transaction described in the above comment.

Two, the entity must not loan funds to or guarantee a loan for an investor to use for the purpose of obtaining the investment interest. We do not believe protection should be afforded where an investor is loaned money from the entity, or from a parent or subsidiary corporation (or is guaranteed a loan by the entity or a related organization), and the investor makes an investment based on that loan. In such a situation, the investor is adding no real capital to the entity. We note, however, that safe harbor protection is available where the investor borrows from other sources, such as from his or her broker or a bank.

And three, the amount of payment in return for the investment interest must be directly proportional to the amount of the capital investment. Such payments are consistent with the type of corporate dividend payment that we are trying to protect.

We believe that these minor revisions, which are fully consistent with our original intent, should offer reasonable protection against the possibility of significant abuses without unduly restricting the types of entities that may qualify under this provision.

b. *Small Entities.* In the notice of proposed rulemaking we solicited comments on expanding the proposed investment interest safe harbor to protect payments from investments in small entities, particularly limited and general partnership interests. For limited partnership interests we suggested four standards for protection: (1) A bona fide opportunity to invest is made on an equal basis without regard to the investor's ability to make referrals, (2) no requirement is imposed on the investor to make referrals, (3) disclosure is made to the referred patient, and (4) payments are not related to referrals. As conditions for protection of payments from investments in general partnership interests, we suggested that disclosure of the investment interest be made to a referred patient and payments not be related to referrals.

Comment: A large number of people commented that, in view of the OIG's interpretation of the statute as not prohibiting all referrals to entities in which a physician has an investment interest, safe harbor protection should be provided for legitimate arrangements. While some commenters suggested that the OIG adopt generic criteria for analyzing these arrangements, others commented more directly on the proposed standards we suggested in the proposed rule. A few commenters suggested that any safe harbor protections should treat indirect ownership interests held by family members in the same manner as direct ownership interests to assure that investors who make referrals to that entity do not circumvent the intent of these requirements by having investments held in the name of family members instead of their own names.

The enormous response to this invitation for comment reflected the polarization of the health care community on this issue. Those supporting safe harbor protection emphasized that physician-investor joint ventures promote competition, provide quality services, promote patient convenience, bring needed services to communities, are cost effective, do not lead to over-utilization, do not compromise ethics, and enable services to be provided outside hospitals and physician offices. Those urging no safe harbor protection or expressing a need for stringent safeguards argued that these joint ventures hurt competition, compromise quality of care, are not in patients' best interests, increase costs, lead to over-utilization, and create conflict of interests between health care providers and patients.

A large number of commenters generally supported safe harbor protection for payments to those with managing partnership interests and agreed with the OIG's two suggested conditions for protection. However, a few commenters opposed such protection. In addition, a few commenters suggested that the OIG define which individuals would be protected under this provision.

Response: Because of the significant business investment activity in these small entities—typically joint ventures—and the advantages of permitting them in certain situations, we believe that safe harbor protection is warranted. However, we have also observed widespread abuses in many of these joint ventures. In particular, we believe that a large number of these newly formed entities are designed to have physicians as investors specifically to induce them to use the entity in which they have invested. Therefore, any safe harbor protection must include significant safeguards to minimize any corrupting influence the investment interest may have on the physician-investor's decision where to refer a patient. We are including a second investment interest provision (paragraph (a)(2)) that protects payments to investors who are limited and general partners, shareholders, or holders of debt securities where eight standards are met. We will discuss some of the definitional categories of persons who are protected under this provision, our response to comments recommending special protection for managing partnership interests, and our three categories that provide structure for the eight standards in this safe harbor.

We have classified "investors" as either "passive" or "active" because some of the standards apply only to those defined as "passive" investors. The definition of an "active" investor includes two categories of persons. The first category is modeled after a bona fide general partner in a partnership under the Uniform Partnership Act who is responsible for the day-to-day management of the entity.

We are including a second way to qualify as an "active" investor: the individual or entity must agree in writing to undertake the liability for the partnership, including the acts of its agents acting within the scope of their agency. We believe that such an affirmative act will assure that the individual or entity performs many of the same functions that general partners do who actively manage the day-to-day operations of the joint venture entity. For example, these active investors undertake the business risk that a typical general partner does, and will be interested in assuring that the day-to-day managers of the entity engage in sound business practices and not run afoul of the statute as well as other Federal and State laws and regulations.

"Passive" investors are those investors who are not active investors, such as limited partners in a partnership or shareholders in a corporation.

This second investment interest safe harbor provision includes some standards that must be met by both passive and active investors, and some standards that need only be met by passive investors, to the extent any exist in the joint venture. If an entity contains only active investors, the standards applicable only to passive investors would, of course, not apply. It must be emphasized, however, that the standards for this safe harbor must be met by all the investors in the entity. To the extent that one class of investors, such as active investors, qualifies, but the passive investors do not meet one of the standards, safe harbor protection is not given to payments to any investors in the entity.

In this regard, special attention must be paid to cases involving ownership interests held indirectly through other entities. Take a situation, for example, where a group of individuals are passive investors in entity "A", which in turn is the active investor in entity "B." For entity "B" to qualify under this safe harbor provision, entity "A" must meet all the requirements for active investor in entity "B," and the individual investors of entity "A" must meet all the requirements as passive investors in entity "B."

We believe that this provision will protect investment interests of those with managing partnership interests who establish limited partnerships that meet the standards of this provision. We have decided not to include a third investment interest provision at this time that would place fewer requirements on business structures composed entirely of active investors. We recognize that there are many legitimate small businesses structured in this manner where a group of individuals come together and all of them participate as hands-on managers in the day-to-day operations of the business and undertake personal liability for the entity. Historically, many hospitals were formed in this manner. And currently many group practices and other innovative health care delivery systems are being formed on a bona fide basis in this same manner. However, there are many new entities that have the same business structure, but that may be subject to abuse under the statute. Consequently, we have determined that it is inappropriate to implement a safe harbor provision at this time for entities composed exclusively of active investors that would not have to meet the standards we are implementing in this second investment interest provision. However, we are considering a new safe harbor provision for such investment interests which we anticipate publishing as a separate regulation.

The safe harbor provision we are including in this rule for investment interests in small entities was developed based on the standards we suggested in the proposed rule, the comments we received on our proposals and our continuing experience in enforcing the statute. This experience includes investigations of abusive joint venture arrangements, our Fraud Alert describing suspect features of these arrangements, and our Report to Congress entitled "Financial Arrangements Between Physicians and Health Care Businesses" (OIG, Office of Analysis and Inspections, May 1989). The Report to Congress disclosed in detail both the extensive ownership of joint ventures by physicians, and the additional services received by patients of these physicians as compared to all Medicare patients in general.

The standards for this provision are structured into three categories that we have identified as being of concern to us in joint venture arrangements: (1) The manner in which investors are selected and retained, (2) the nature of their business structure, and (3) the financing and profit distributions. To the extent possible, we have adopted bright line rules. We believe that this approach will facilitate compliance because investors will be able to determine easily whether they meet the conditions of safe harbor protection. As discussed in section III.A. above, we are not accepting commenters' suggestions for generic criteria. We believe that such criteria do not provide sufficient protection against abusive arrangements, nor do they provide meaningful guidance to delineate when a provider has complied with them.

The following discussion will be structured along the lines of the three problem areas we have identified.

(i) *Manner in which investors are selected and retained.* In this section we discuss the comments and our responses regarding the problem of the manner in which investors are selected and retained. The first five standards of this investment interest provision protecting small entities (paragraphs (a)(2)(i)–(v)) relate to this problem area.

Comment: The OIG received mixed comments on the first standard suggested in the proposed rule, that a bona fide opportunity to invest be provided on an equal basis to all investors without regard to their ability to make referrals. A large number of commenters expressed concern about the meaning and workability of this standard, particularly that it is vague and would be difficult to police. Several commenters construed this first suggested standard as a results-oriented test requirement, in other words, that joint ventures must be owned partly by individuals not in a position to make referrals. Some suggested that the OIG place a limit on the percentage of ownership of an entity that can be held by such referring investors. The percentages ranged from 5 percent to 85 percent ownership by referring investors. Others suggested that the OIG should not require these entities to have some amount of non-referring investors. One commenter specifically objected to a requirement that a joint venture have a majority of the ownership interests held by non-referring investors. Five commenters expressed concern that any requirement that investment interests be offered to non-referring individuals may be construed as requiring a public offering, thus triggering the necessity of complying with SEC rules (such as Regulation D governing the limited offering and sale of securities without registration under the Securities Act of 1933, 17 CFR 230.501 *et seq.*) or State "blue sky" laws which require public securities registration.

Response: We agree with the concerns expressed by most of the commenters about our first suggested standard. Thus, we are replacing it with three standards (paragraphs (a)(2)(i)–(iii)) in order to better address problems concerning the manner in which investors are selected. To comply with our first standard, investors who make referrals or who are in a position to make referrals or furnish items or services cannot own more than 40 percent of the value of investment interests within each class of investments in the entity. This standard requires not only that a bona fide opportunity to invest has been afforded to people not in a position to make referrals, but that these individuals hold at least 60 percent of the value of the investment interests in each class of investments.

In essence, we are switching a process measure with an outcome measure. As several commenters observed, our proposed standard of equal opportunity to invest contemplated that an equal number of referring and non-referring individuals would be given an opportunity to invest. Such a process-orientated test would have been virtually impossible to monitor. For example, such a standard would have required a joint venture to monitor all marketing solicitations, and determine the referral status of everyone who was solicited to make sure that an equal number of referring and non-referring potential investors were given the opportunity to invest. The alternative outcome measure we are adopting will provide a bright line test which will assist all the parties to the joint venture and the Department in determining whether compliance with this first standard has been achieved.

Although compliance with this "60–40 percent investment" standard will necessitate some monitoring data, we want to minimize the burden. Therefore, the joint venture is free to use any internal accounting principles it chooses to adopt so long as it uses such principles consistently over time so that it is not manipulating the data to obscure its noncompliance. In addition, we are establishing two alternative time periods in which compliance is to be measured. The measurement period can either be a joint venture's prior fiscal year or the previous 12 month period. For example, if a joint venture uses a calendar year as its fiscal year and wants to know in April 1990 whether it is in compliance with this standard, it may either look at the number and status of investors in 1989, or it may use its investor data from March 1989 through March 1990.

We expect that the parties to a joint venture will find it far preferable to use its prior fiscal year data because if that year's data shows compliance with this standard then the joint venture is in compliance for the entire current fiscal year. The alternative approach of a rolling 12 month average will enable a joint venture to reach compliance sometime within the current fiscal year so that it does not have to remain out of compliance for a full year. However, we also recognize that a joint venture using this rolling 12 month average that is being operated close to this 40 percent line may find itself in compliance one month and then out of compliance the next month. We emphasize that it is highly unlikely we will pursue an investigation of a joint venture where it complies with all the other standards in this safe harbor, is out of compliance with this 60–40 percent investment standard based on its prior fiscal year data, but is making a good-faith effort to reach compliance with this standard based on data showing compliance on a monthly basis for the most recent months of operation.

As previously discussed, for the purposes of complying with this 60–40 percent investment standard, we are classifying investors who provide items and services together with investors who make or influence referrals to the entity. This classification is necessary to preclude a supplier, such as a DME company, from forming a joint venture with referring physicians, giving them a 39 percent interest in the entity. It would be inappropriate to grant safe harbor protection to such an entity because all of the owners would be doing business with the joint venture by either furnishing items or making referrals. In order to remedy this problem, the DME supplier is classified with the referring physicians for the purposes of this 60–40 percent investment standard. Thus, for example, if a DME supplier and its referral sources want to be investors in an entity with which they will do business, to comply with this first standard, at least 60 percent of the value of the investment interests must be held by investors who will neither make referrals nor engage in business activity with the entity.

The second and third standards of this provision address the problems of discriminatory marketing strategies that result in the offer of better deals, for example, more shares or a better price, to individuals who will refer a high volume of patients. The second standard focuses on the *status* of investor and bars safe harbor protection where the terms of investment opportunities depend on whether a passive investor is in a position to influence referrals, furnish items or services, or otherwise generate business for the entity. The entity can offer investments to such investors only on the same terms as those offered to other passive investors not in a position to influence the flow of business to the entity. We are not imposing this standard on active investors because we recognize that it is precisely because of a physician's familiarity with the health care field that he or she may be chosen as a general partner and offered different investment terms from those offered to passive investors.

The third standard assumes that an investment interest is being offered to a person in a position to make referrals, but bars the offering of favorable terms based on his or her past or expected referrals or amount of business otherwise generated for the entity. This standard applies both to active and passive investors because we believe it is inappropriate to protect all investment interests where any investor, even general partners, can obtain more shares because they can be expected to generate more business for the entity. We recognize that there may be situations where it is not abusive to offer more shares based on this consideration, but we also believe that such a practice can have a serious potential for abuse.

With respect to the potential triggering of a public registration requirement under SEC rules or State "blue sky" laws, we believe that there is nothing in this provision that would compel such a result. Thus, we see no need to modify this provision.

Comment: In response to the OIG's proposal that no requirement be imposed on the investor to make referrals, many comments dealt with the issue of how investors are retained. Specifically, many commenters objected to requirements, which entities commonly place on investors, that investors must divest their interest if they no longer are able to make referrals to that entity. One commenter suggested that the OIG prohibit entities from distributing any information to investors about their referral patterns to that entity.

Response: We generally agree with these comments and have addressed them in the fourth and fifth standards of this safe harbor provision. (Paragraphs (a) (2) (iv) and (v)). The fourth standard bars the entity from requiring passive investors to make referrals or remain in a position to make referrals as a condition for retaining their investment. The fifth standard parallels the new standard for publicly traded entities and requires the entity and investors not to market or furnish items or services to passive investors in any manner differently than to non-investors. Some examples of practices that would not be protected are provided in the discussion above on the parallel provision for publicly traded entities. These two standards apply only to passive investors because, as we stated, we recognize that active investors are often sought out because they will help generate business for the joint venture.

This fifth standard also requires the entity and any investor not to promote the services of other entities as part of a cross referral agreement. As we noted in the previous section on publicly traded entities, an example of a cross referral arrangement that would not comply with this standard exists when investors in entity "A" are explicitly or implicitly encouraged to refer to entity "B" in return for entity "A" receiving the referrals from the investors of entity "B."

Comment: A large number of commenters supported the OIG's third proposal that disclosure of the investment interest be made to individuals for which a referral is made. However, some were opposed to such a requirement.

Response: For the reasons discussed in section III.B.2. above, we decline to adopt a disclosure requirement.

(ii) *Business structure.* In this section we discuss the comments and our responses regarding the problem of the nature of the business structure of joint ventures. The sixth standard (paragraph (a)(2)(vi)) relates to this problem area.

Comment: The OIG received a large number of comments relating to the business structure of joint ventures, and particularly on the problem that many abusive joint ventures exist primarily on the referrals from their investors. Many of these commenters alleged that such joint ventures are unable to compete for business in the open market on the basis of cost, quality and convenience. These commenters alleged that such joint ventures thereby hurt competition by unfairly "locking in" referrals from investors. However, one trade association reported from a survey of its members that, on average, 47 percent of the referrals to entities operated by its members came from non-investors. Many commenters also expressed concern that abusive joint ventures have no real business purpose, and that the four standards we suggested will not prevent abuse. Four commenters suggested that safe harbor protection be provided where the costs to Medicare and Medicaid are not increased. One commenter observed that, in many cases, the apparent lower costs of joint ventures are illusory because their hours of operation are shorter than those of hospitals. To assure that joint ventures do not raise costs or operate in an abusive manner, a large number of commenters suggested that the OIG require utilization review.

Response: We agree with the concern that entities protected under this safe harbor provision should not exist by relying on their business coming from referrals from investing physicians. In our experience, a large number of joint ventures are formed with the intent to encourage investors to refer patients to the joint venture. In many cases, the referrals from investing physicians dominate the joint venture's business so that it is does not have to compete for outside business and that it cannot survive without such referrals from its investing physicians. At that point, the business purpose of the joint venture becomes suspect.

We also agree with commenters who believed that the standards we suggested in the proposed rule will not sufficiently protect against abuse. Although some protection is afforded by the fifth standard we are promulgating which is discussed immediately above (that the entity may not treat a passive investor differently than non-investors), we believe that an additional bright line rule is necessary as a condition of safe harbor protection.

Therefore, the sixth standard in this provision requires that no more than 40 percent of an entity's gross revenue comes from referrals from, or items or services furnished by, investors. This "60–40 percent revenue" standard is reasonable, and, at least according to one commenter's survey of its members, appears to be achievable for many joint ventures.

This standard, as well as the first standard in this safe harbor provision, provide clear rules which assure that no protection is afforded to joint ventures that operate primarily on the referrals of physician investors. By requiring that no more than 40 percent of the joint venture's revenue come from investors' referrals, we help assure that revenues of these joint ventures come from a wider group than referrals from physician investors. And by limiting the number of investors who make referrals, we help assure that the profits from these entities are distributed to a wider group than referring physician investors. Thus, these two standards will help assure that joint ventures are not dependent on the capital and referrals of physician-investors.

As part of the Department's program to monitor business arrangements' compliance with these safe harbor provisions (see section III.A. above), we will report to the Secretary on the compliance with these two 60–40 rules (see § 1001.953). This report, which will be issued within 180 days of the publication of this rule, will evaluate whether compliance with these two 60–40 rules adequately controls abusive arrangements or whether more stringent requirements are needed.

As with the first 60–40 percent standard, we are permitting a joint venture to use any internal accounting principles it chooses to adopt so long as it uses such principles consistently over time so that it is not manipulating the data to obscure its non-compliance. In addition, we are establishing the same two alternative time periods in which compliance is to be measured. The measurement period can either be a joint venture's prior fiscal year or the previous 12 month period. Again, as with the first 60–40 percent standard, it is highly unlikely we will pursue an investigation of a joint venture where it complies with all the other standards in this safe harbor, is out of compliance with this 60–40 percent standard based on its prior fiscal year data, but is making a good-faith effort to reach compliance with this standard based on data showing compliance on a monthly basis for the most recent months of operation.

As noted above in the discussion of our definition of the term "investor," in applying these two 60–40 rules in situations where the joint venture entity is owned by other entities, we will examine the ownership structure of these other entities to determine whether they are owned by physicians who are referring to the joint venture entity. In such a situation, these physicians are considered to be investors of the joint venture entity, and their ownership interest must be offset by non-referring owners and the revenue they generate for the joint venture must be offset by referrals from non-investors.

We believe the suggestion that we require protected joint ventures to provide services at lower costs to Medicare and Medicaid is unworkable. Although such a feature is obviously a desirable goal, we believe that any analysis of the relative costs of services can only be accomplished meaningfully on a case-by-case basis. Examples of some of the areas such an analysis must examine include: (1) The reimbursement methodology of the service, (2) the patient population being served, (3) the hours of operation, (4) the bad debt and free care policies, and (5) the impact on costs and charges of depreciation of new equipment. These factors must be analyzed for both the joint venture entity and other competing entities to which a comparison is being drawn.

We believe that utilization review should be encouraged. However, there are many variables that distinguish a successful utilization review program from a sham. For example, utilization review may be conducted under contract by a Peer Review Organization or another independent contractor, or it may be conducted in-house. A critical feature of utilization review is that follow-up or corrective action occurs when a determination is made that a particular practitioner who is under review is engaging in aberrant or substandard behavior. Obviously this action can take many forms, ranging from barring the practitioner from further practice to taking no action at all. Because there are so many variables to an effective utilization review program, we believe it would be overly prescriptive and largely unproductive to impose such a requirement. Thus, we decline to include a utilization review requirement as part of this safe harbor.

(iii) *Financing and profit distributions.* In this section we discuss the comments and our responses regarding the problem of the financing and profit distribution of joint ventures. The last two standards (paragraphs (a)(2) (vii) and (viii)) relate to this problem area.

Comment: As discussed above, a large number of commenters argued that physician involvement in joint ventures is necessary because physicians provide needed capital. Several commenters, however, questioned whether investors are really generating capital for the joint ventures in which they invest. Many suggested that the OIG only protect an investor's capital in cases where the capital was genuinely at risk. In other words, if the investor's interest is obtained through a no-interest loan paid off through deductions from future dividend distributions, there was never really any capital placed in risk. Some suggested that the OIG protect investment interests even where the entity loans the investor funds which are then used to make the capital investment. One commenter reported results from a survey of its members that, on average, 60 percent of the investment from referring physician owners came in the form on non-cash investments (including debt guarantees).

Response: We agree that a new condition of safe harbor protection is needed to assure that the investments are bona fide, i.e., that investors' funds are genuinely at risk. Thus, the seventh standard of this provision parallels the new standard for the provision dealing with investments in large publicly traded entities: These entities cannot lend the funds or guarantee loans used to make the investment. Consistent with our first investment interest provision, other debt relationships are permitted. For example, the entity may borrow from the investor, and investors may borrow from other sources to obtain funds to use for the capital investment. But as we discussed above, where investors make their investment with money loaned from the entity, they are adding no real capital to it. Thus, this standard will help assure that physicians and other investors in fact provide new needed capital and that the joint venture is not in reality a sham to facilitate the distribution of payments for referrals.

Comment: The OIG received a large number of comments suggesting other protections to assure non-abusive financing arrangements and, in particular, urging the OIG to protect "nominal" investments. Many suggested that the OIG specify an upper limit on the amount an individual may invest, either in terms of a dollar amount or a percentage interest in the entity. Some specifically suggested a 5 percent limit. Three commenters took another approach and suggested a minimum capitalization amount, pointing out that many of the more abusive arrangements have minimal capital needs.

Response: We believe that individuals with a small investment in an entity may be just as likely as those with a large investment stake to be influenced to make referrals to the entity. Many of the more abusive joint venture arrangements of which we are aware offer only nominal investments to physicians. We believe that, in many cases, these nominal investment interests are designed to induce referrals or encourage the investor to otherwise generate business for the entity. In addition, by distributing the benefits of ownership to as wide a base of physician investors as possible, these joint ventures seek to lock-up their market, and thus operate in an insulated business environment largely free from normal competitive pressures such as pricing constraints.

We believe that it is not useful to impose a minimum capitalization requirement. Because each joint venture has different capital needs, it is not possible to specify one level of capitalization that would represent a reasonable floor for all joint ventures. For example, requiring at least $500,000 in capitalization would obviously be viewed very differently by a laboratory joint venture than by a magnetic resonance imaging joint venture. We do believe, however, that it is useful to analyze joint ventures on a case-by-case basis to determine what the real capital needs of the project are, and whether the capital that has been invested is merely a sham to pay investors for referrals.

Comment: We received a large number of comments on one of the standards suggested in the preamble to the proposed rule, that payments not be related to referrals. We also received other comments relating to the general problem of the manner in which profits are distributed. Many commenters suggested that the OIG limit the return on investment which will be subject to protection. Some suggested merely that the return be "reasonable," while another commenter stressed that there is no realistic way to determine an appropriate cut-off for a return on investment that would still be classified as "reasonable." One commenter suggested that, because there is less potential for abuse with repayments on debt instruments, the OIG should treat these payments differently from profit distributions.

Response: The eighth standard in this provision is that the amount of payment to each investor must be directly proportional to his or her capital investment. In other words, to receive protection, dividend payments can only be tied to the number of shares owned by an investor, and not to his or her referrals. Where investors, such as general partners, contribute capital in the form of pre-operational services or sweat equity, their dividend payments may reflect the fair market value of those services rendered.

This standard in no way protects payments to active investors for operational services they provide to the joint venture. By its very terms, this provision only protects payments that represent a return on investment. Safe harbor protection for the personal

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We believe that it is not useful to impose a minimum capitalization requirement. Because each joint venture has different capital needs, it is not possible to specify one level of capitalization that would represent a reasonable floor for all joint ventures. For example, requiring at least $500,000 in capitalization would obviously be viewed very differently by a laboratory joint venture than by a magnetic resonance imaging joint venture. We do believe, however, that it is useful to analyze joint ventures on a case-by-case basis to determine what the real capital needs of the project are, and whether the capital that has been invested is merely a sham to pay investors for referrals.

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Response: The eighth standard in this provision is that the amount of payment to each investor must be directly proportional to his or her capital investment. In other words, to receive protection, dividend payments can only be tied to the number of shares owned by an investor, and not to his or her referrals. Where investors, such as general partners, contribute capital in the form of pre-operational services or sweat equity, their dividend payments may reflect the fair market value of those services rendered.

This standard in no way protects payments to active investors for operational services they provide to the joint venture. By its very terms, this provision only protects payments that represent a return on investment. Safe harbor protection for the personal services that an active investor renders would be governed by the "personal services and management contracts" provisions (paragraph (d)).

With respect to limiting the return on investment, we believe that it would be arbitrary to specify a limitation applicable for all joint ventures, and that it would be meaningless to merely specify as a general criterion that the return "be reasonable." As many commenters pointed out, a reasonable return can be appropriately measured only in light of the risk of the investment. An investor would surely expect a much higher return from an investment in an expensive piece of diagnostic equipment that might soon become obsolete than from an investment in a relatively inexpensive piece of equipment that can be expected to generate a steady profit stream for the foreseeable future.

With respect to repayments on debt instruments, we believe that it is unnecessary to create a separate provision for debt instruments, but, as discussed in section III.C.1.a. above, this provision is written to protect a variety of payments in securities, including debt instruments.

c. Proposals for New Safe Harbor Provisions

A large number of comments were received urging the OIG to provide special protection for investments in certain special circumstances which would not qualify under the safe harbor provisions suggested in the proposed rule.

Note: Any discussion below indicating that we are considering a new safe harbor provision should in no way be construed as legalizing the business arrangement at this time.

Comment: A large majority of these commenters requested protection for ambulatory surgical centers (ASCs). Many of these commenters believed that the OIG was attempting to eliminate ASCs. In presenting the benefits of ASCs, these commenters made many of the same arguments discussed in section III.C1.b. above, regarding the positive features of joint ventures in general. In addition, many commenters emphasized the unique features of ASCs: (1) They are subject to peer review; (2) they provide services at lower prices than hospitals; (3) they were formed to a very large extent by physicians, and (4) in many cases, they are really an extension of a physician's practice. Several other commenters suggested protection for payments from other types of entities based on a rationale similar to this latter "extension of practice" argument. For example, commenters wanted protection for physicians providing inpatient services for their patients, nephrologists performing services at renal dialysis facilities, pathologists examining test results in laboratories, and radiation therapy oncologists performing radiation therapy services at outpatient centers.

Response: We understand that a special situation may exist when a physician sees a patient in his or her office, makes a referral to an entity in which he or she has an ownership interest and performs the service for which the referral is made. In such a situation, Medicare makes payment to the facility for the service it furnishes, which may result in a profit distribution to the physician. And the physician may also receive reimbursement from the program for performing the professional service.

We believe that, with respect to the physician's own fee, such a referral is simply a referral to oneself. It should not matter whether the patient is first seen at the office or at the facility. Consequently, we believe that, in this situation, both the professional service fee and the profit distribution from the associated facility fee that are generated from this referral may warrant protection. However, we remain concerned about the investing physician's ability to profit from any diagnostic testing that is generated from the services he or she performs. We are also concerned about the extent to which we should modify this second investment interest safe harbor to protect a physician-investor's profit in other joint venture entities where he or she both makes a referral and performs some level of service for the referred patient at the entity. Therefore, we are considering a safe harbor provision, that we anticipate publishing as a separate regulation to protect these payments where there is no likelihood of abuse.

We believe that a broader exemption at this time for payments from ASCs and similar entities is not appropriate. We recognize that many of these entities, and ASCs in particular, have operated under the Medicare and Medicaid programs largely without abuse and have saved these programs money when compared to some alternative treatment settings, particularly inpatient hospital care. We also recognize that one of the fundamental purposes of the statute is to prevent abusive business arrangements that increase cost to the Medicare and Medicaid programs. However, our approach is one of providing standards that define categories of business arrangements and business practices that will be given safe harbor protection. Our approach is not one of providing protection to particular categories of health care providers who earn it by being lawful or cost-effective.

We remain concerned about the widespread apprehension expressed by those commenters with an ownership interest in ASCs. Many commenters did not understand that the investment interest safe harbor provisions upon which we invited comment would protect many of the situations about which the commenters claimed no protection was being offered. In addition, as we made clear in section III.A. above, when an investment interest does not qualify under one of the safe harbor provisions, it does not mean that prosecution is imminent. The business arrangement may not even violate the statute, or, after examination on a case-by-case basis, we may conclude that prosecution is not warranted. Our disinclination to provide blanket protection for all investment interests in ASCs does not mean that we hold them in disfavor.

2. Space and Equipment Rental and Personal Services and Management Contracts—§§ 1001.952 (b), (c), and (d)

Comment: An overwhelming number of commenters criticized the restrictive definition of fair market value in the safe harbor provision for space rental. Many expressed concern that the safe harbor does not exempt rental payments that take into account added value attributable to a rental property's intended use as a facility for furnishing medical, laboratory, or other health services. Some were disappointed that this safe harbor provision does not appear to allow adjustments in rental charges for special construction or renovation costs incurred by the lessor to make the space suitable for furnishing medical services. Other commenters argued that the added value to providers of locating in a building or area proximate and convenient to other health care providers is a legitimate factor in calculating rent and may bear no relationship to prospective referrals of Medicare or Medicaid program business. They contended that the close proximity of rental property to other health care providers justifies elevated rent because both providers and their patients view such location as a convenience.

Response: The safe harbor provision for space rental does not contemplate a single figure for fair market value. Rather, it contemplates a rental fee falling within a reasonable commercial range, but not taking into account any value attached by either party based upon the property's proximity or convenience to referral sources. To the extent there is a nexus between the location of property and the opportunity to engage in business reimbursable under Medicare or Medicaid, rental charges that take location into account may impermissibly generate referrals or other health care business. For example, we believe that a fair inference may be drawn that impermissible payments are being made when a group of doctors owns a medical arts building and rents space in that building to a diagnostic laboratory, and the rent is substantially above the laboratory's cost of renting the same sized space at a nearby location.

Consequently, we decline to extend safe harbor protection to space rental charges that take into account any value attached to property due to the proximity of referral sources. We have modified the definition of fair market value in this provision to clarify that protection does not extend to rental charges reflecting the value attributed by either party to the proximity or convenience of property to potential sources of referrals or other business from the other party. However, we would note that where the lessor is a real estate developer or other entity not involved in the delivery of health care services, any arrangements that encourage referrals between the lessee and other third parties would not likely be scrutinized by the OIG.

However, we recognize that there may be instances where rental fees for medical, laboratory or other health related office space are justifiably higher than the market price for comparable commercial property. For example, we agree with commenters who stated that the cost of leasehold improvements needed to make space suitable for the furnishing of medical services (such as extra plumbing or electrical costs) should be considered within the provision's definition of fair market value. Accordingly, we have further amended this safe harbor's definition of fair market value to delete the requirement that fair market value not take into account the intended use of rental space. However, we have retained the requirement that rental payments be commensurate with the fair market value of equivalent commercial property, and decline to extend blanket safe harbor protection to rental arrangements that reflect the added value a hospital places on having referring physicians located in a medical building the hospital owns on its property. We recognize that this requirement will preclude safe harbor protection for many health care providers who lease space to physicians or suppliers at a reduced rate due to the favorable location of the property. In particular, hospitals that give rent concessions to staff physicians leasing private office space may not fall within the safe harbor. For a discussion of how such payments may qualify as part of a physician recruitment effort, see section III.D. below.

Comment: A few commenters inquired whether rental arrangements involving both the use of office space and the furnishing of personal or management services must meet the requirements of both safe harbor provisions in order to be protected from liability under the statute.

Response: In section III.A. above, we addressed generally the circumstances under which the requirements of two relevant safe harbor provisions must be met in order to be protected under this regulation. However, because several commenters specifically requested guidance about contracts involving the rental of space and the furnishing of personal services, we are responding to their comments here.

To the extent that office rental payments include the value of other personal services furnished as part of a business arrangement, the payments must reflect the fair market value of the rent and these personal services in order to qualify under the safe harbor regulation. To be exempt from kickback liability, arrangements involving remuneration for rental and personal services must meet the conditions of each provision. For example, where a mobile business provides diagnostic services to patients in physicians' offices, and contracts for diagnostic equipment or for cleaning, billing or other services in addition to renting office space from these physicians, the arrangement must qualify under the provisions for space and equipment rental and personal services and management contracts.

Comment: Several commenters, expressing support for a strong and effective anti-kickback statute, stated that sham office leases in which the space is not actually used are among the most common and abusive kickback schemes. Examples of such abusive schemes cited by commenters included physicians who entered into office rental contracts with other referring physicians, solely in order to obtain the referrals, and diagnostic services companies and clinical laboratories that lease space from physicians which the laboratories in reality do not use, as kickbacks for the physicians' patient referrals.

Response: We agree that sham contracts in which remuneration is exchanged for property that does not exist or space which is not used are among the most egregious kickback arrangements. We have become aware of office rental arrangements in which the "space" rented may not be large enough or otherwise suitable to perform any services for which rent could legitimately be paid. For example, a physician may rent office space to a clinical laboratory, allegedly in order to provide space to furnish laboratory services, when the space (often a closet or anteroom not useable for such purposes) is not actually occupied by laboratory personnel at any time. If the physician refers most or all laboratory work to this lessee, the "rent" is simply remuneration for referring laboratory work.

We believe, however, that these safe harbor provisions are sufficient to protect against this abuse. These provisions require that the amount of payments for rent, equipment or personal services contracts not take into account the volume or value of referrals or other business generated between the parties. If a sham contract is entered into, which on paper looks like it complies with these provisions, but where there is no intent to have the space or equipment used or the services provided, then clearly we will look behind the contract and find that in reality payments are based on referrals. Thus, these contracts would not be protected under these provisions.

Comment: Two commenters stated that the safe harbor requirements for determining fair market value of rental space should be the same requirements of section 501(c)(3) of title 26 of the United States Code, the Internal Revenue Code section governing tax exemptions for nonprofit institutions. Under this section, fair market value assessments are necessary to determine whether hospital/physician arrangements result in the prohibited inurement of private benefit to individuals.

Response: We do not believe that procedures for assessing the fair market value of hospital/physician arrangements under the Internal Revenue Code are relevant to safe harbor requirements under the anti-kickback statute. The anti-kickback statute is concerned with prohibiting fraud and abuse by individuals and entities participating in the Medicare and Medicaid programs; a statute providing tax exemptions to nonprofit institutions under specified conditions does not share this focus. The requirements we have set forth for determining fair market value under the safe harbor regulation are not undermined by the fact that they do not replicate the requirements under the Internal Revenue Code. Moreover, we cannot see, nor has any commenter adequately explained, how these regulations impede health care providers' ability to obtain tax exempt status under the Internal Revenue Code.

Comment: Commenters requested clarification as to whether these safe harbor provisions protect any types of percentage, "per use" or "per procedure" leases or contracts in which the amount of compensation fluctuates in accordance with the actual use of premises or equipment, or the frequency of services performed. A few commenters inquired whether percentage leases between parties in a position to refer Medicare or Medicaid business were a *per se* violation of the statute. Many commenters urged the OIG to extend safe harbor protection to per use equipment leases, and to percentage contracts for personal services, in which total business, in contrast to referral business, is the basis for payment. With regard to equipment leases, several commenters argued that these provisions should protect equipment lessors who receive higher rent based on increased use, because the useful life and value of equipment depreciates with use.

Response: As we explained in section III.A. above, in discussing wear and tear clauses, percentage or per use agreements between health care providers in a position to refer Medicare or Medicaid business threaten to violate the statute because the payments in these arrangements are directly tied to the volume of business or amount of revenue generated, providing an improper incentive to refer. Moreover, historically, percentage leases and contracts have been rife with abuse.

These sorts of arrangements need to be examined on a case-by-case basis. For example, a lease to a hospital of major medical equipment, such as a magnetic resonance imaging scanner, may specify that higher rent is to be paid when more than a predetermined number of procedures is performed. Such an arrangement can be troublesome if the lessor is a partnership of radiologists on the hospital's medical staff, because the incentive for overutilization is clear. It is the nature of the relationship, if any, between overall volume of use and referrals, that triggers the statute. Thus, if the owner of equipment were not in a position to make referrals to the lessee, the agreement would not violate the statute.

For these reasons, we specifically decline to protect rental charges or compensation for personal services where the aggregate amounts of payments are not set out in advance. This does not mean, however, that percentage or per use leases and contracts that are based on overall volume (including business from referral sources with no financial interest to motivate them), are *per se* violations of the statute. We recognize that legitimate considerations, such as the depreciation of equipment, could result in some part of the payment to be based on a percentage or "per use" payment arrangement without these payments influencing or being influenced by Medicare or Medicaid referrals. However, the more the payments appear to reflect the volume of referrals from the financially-interested party, the more suspect the arrangement becomes and the more likely we will need to examine it carefully.

Comment: Many commenters were opposed to the condition that space and equipment leases and personal services and management contracts run for periods of not less than one year. They argued that the one year condition was superfluous, given additional restrictions relating to fair market value and referral relationships between the parties. They also argued that the one year rule would preclude many legitimate short-term arrangements, such as leases of state-of-the-art imaging equipment by health care providers who could not afford a full year's lease. Some health care providers claimed that the rule would cause them to forsake good business judgment in order to obtain needed equipment or services.

Commenters were most concerned about the one year requirement in the context of personal services and management contracts. Several commenters argued that many professional services typically contracted for by health care providers, from medical or surgical consulting services to peer review functions, involve projects or activities that require less than one year to complete. They argued that it is inefficient and wasteful for health care providers to enter into contracts for periods of one year under these circumstances. Additionally, a few commenters sought clarification as to the effect of the one year rule on leases terminated for cause prior to the expiration of a contract extending one year or longer. In particular, there was concern that the conditions of the space rental safe harbor not conflict with Internal Revenue Service guidelines governing advance determinations of tax exempt status. These guidelines require tax exempt facilities to be able to terminate, within 90 days notice, contracts with non-exempt persons where compensation is based on fees charged for services furnished by the non-exempt persons.

Response: We have retained the one year contract requirement as a condition for safe harbor protection under the space rental, equipment rental, and personal services and management contracts safe harbor provisions. We included the one year rule limitation in these provisions because we are concerned about abuse resulting from periodic renegotiation of ostensibly short term agreements, in response to changes in referral patterns. For example, if a health care provider rents office space to another individual or entity with whom he or she is in an ongoing referral relationship, and these providers alter their rental terms with frequency, the volume or value of referrals can influence the size of renegotiated rental payments. When rental charges are constantly subject to modification, the threat to the lessor of receiving reduced rent, or the threat to the lessee of paying higher rent, may improperly induce increased referrals. However, we recognize that health care providers may enter into short-term leases or services contracts for legitimate business reasons and not on account of referral opportunities. For example, an academic physician who spends one semester or school year visiting at another medical university may need to rent office space from the medical university for less than a year.

Several commenters expressed concern that contracts for the performance of activities or services that, by their very nature, take less than one year, would necessarily fall outside the safe harbor provision for personal services and management contracts. However, the one year contract requirement restricts the period within which contract terms may not be changed, and not the time within which services under a contract may be performed. So long as contract terms are not altered within a one year period, an agreement that is performed in less than one year's time will meet the one year requirement in the safe harbor provision.

With regard to the comments we received concerning early termination clauses in leases or contracts extending not less than one year, we acknowledge the customary use of such provisions for tax and other legitimate business purposes. The legitimacy of an early termination clause in a lease or contract which otherwise meets the conditions of these three provisions depends on the parties' intent. Termination "for cause" clauses drafted in compliance with Internal Revenue Service or other legal or regulatory requirements should not jeopardize safe harbor status, if the purpose of the termination clause is to comply with those requirements, and not to facilitate renegotiation of contract terms. If a contract is terminated in accordance with a legally enforceable termination clause, the failure to renew the contract would provide evidence that the termination was effectuated for a legitimate purpose.

Comment: The safe harbor provisions governing space and equipment rental and personal services and management contracts provide that when the property or service is to be provided on a periodic, sporadic or part-time basis, the agreement must specify precisely the timing and duration of rental periods and compensation charged for each period. Numerous commenters were troubled by these requirements. They argued that furnishing professional services and leasing space and equipment on an "as needed" basis are commercially acceptable, cost-effective business practices that should be protected so long as the rate of compensation is commercially reasonable. They also stated that under many periodic lease and contract arrangements, precise intervals of activity or use, and the exact compensation for these intervals, cannot feasibly be specified in advance. In addition, there was concern that requiring specificity of time intervals and compensation as conditions for safe harbor protection would interfere with the flexibility necessary to accommodate changing demand, and would increase costs in situations where the demand proved lower than expected at the time the contract was made. Finally, a few commenters asked for clarification of the meaning of the word "periodicity" in these three provisions when the space or equipment lease or personal services agreement is not on a full-time basis.

Response: Part-time contractual arrangements and periodic access leases between health care providers are especially vulnerable to abuse because they are subject to modification based on changing referral patterns between the parties. For example, an optometrist who pays *ad hoc* "rent" to an ophthalmologist for the time spent in the physician's office examining only referred patients, is impermissibly paying for the referrals. In order to avoid the potential for abuse inherent in part-time business arrangements between parties in actual or potential referral relationships, we have limited safe harbor protection under these three provisions to periodic leases and contracts which set forth the timing, frequency, and length of services or intervals of use.

We recognize that health care providers, for various reasons, may be unable to specify the timing or duration of business arrangements, or the precise compensation involved. For example, compensation under a management contract requiring the furnishing of supplies and the hiring of personnel may need to vary depending on the costs of the supplies and number of personnel. Or, a health care provider may contract with an allied health practitioner group (such as a physical therapy group) to pay a specific amount per hour of care provided, without being able to anticipate the scheduling of services in advance. We believe that part-time leases or service arrangements that do not meet safe harbor standards need to be analyzed on a case-by-case basis under the statute. Many periodic contracts of this sort would fall outside the statute because the compensation involved is not linked to referral opportunities. A contract to serve as medical director of a small clinic on a part-time basis, for example, is not likely to involve activities or compensation tied to the referral of patients or to arrangement for services reimbursable under Medicare or Medicaid programs.

Finally, we are deleting the word "periodicity" from these three provisions because it duplicates the requirements that the rental or equipment lease or personal services agreement specify the schedule of intervals, their precise length, and payments for the intervals.

Comment: Three commenters requested the OIG to protect marketing and advertising activities because such activities either promote competition or do not violate the statute.

Response: The statute on its face prohibits the offering or acceptance of remuneration, *inter alia*, for the purposes of "arranging for or recommending purchasing, leasing, or ordering any. . . service or item" payable under Medicare or Medicaid. Thus, we believe that many marketing and advertising activities may involve at least technical violations of the statute. We, of course, recognize that many of these advertising and marketing activities do not warrant prosecution in part because (1) they are passive in nature, i.e., the activities do not involve direct contact with program beneficiaries, or (2) the individual or entity involved in these promotions is not involved in the delivery of health care. Such individuals or entities are not in a position of public trust in the same manner as physicians or other health care professionals who recommend or order products and services for their patients. Thus, we agree that many advertising and marketing activities warrant safe harbor protection under the personal services and management contracts safe harbor.

However, we have experienced many instances where promoters and consultants have become involved in marketing activities that encourage health care providers and others to violate the statute, such as to develop impermissible joint venture arrangements or to routinely waive coinsurance and deductible amounts owed under Medicare Part B. It would be inappropriate to allow such activities to receive safe harbor protection.

Thus, we are adding paragraph (d)(6) to this safe harbor provision to make clear that the service that is contracted for is not protected if it involves the counselling or promotion of a business arrangement or other activity which itself constitutes a violation of any State or Federal law. However, the safe harbor (revised as indicated) protects contracts where the individual paid under the contract counsels or promotes business arrangements or other activities that are either specifically exempted under one of the provisions of this regulation or otherwise do not violate the statute.

Comment: Four commenters sought specific protection for commission sales arrangements between health care providers and independent contractors.

Response: We see no reason, nor has any commenter claimed to have provided one, for treating commission sales agreements differently under these regulations from other types of contracts for personal services performed by independent contractors. Therefore, commission sales agreements must meet the conditions of the safe harbor provisions governing personal services and management contracts.

3. Sale of Practice—§ 1001.952(e)

Comment: While many commenters supported the one-year limitation on the completion of a sale of a practice, others believed that it is too short. One commenter asserted that such a limitation would effectively ban option

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agreements on sales of physicians' practices.

Response: We decline to protect option agreements or sales which extend beyond one year because, as we stated in the preamble to the proposed rule, we believe that this is an area of significant abuse. Often, sales and option agreements are designed solely to ensure referrals, and payments for the sale or option agreement are actually payments for referrals. The one-year limit serves to protect sales where the sale occurs because the physician is no longer going to be practicing and not because the purchaser seeks an ongoing stream of referrals. To the extent that one can enter into an option agreement, exercise that option and complete the purchase of the practice within one year from the date the option agreement is entered into, this aspect of the transaction will fall within this safe harbor provision.

Many commenters appeared confused about whether the provision requires payments from the sale to be completed within one year. This provision does not preclude a purchaser from making payments to a practitioner beyond the one-year period as long as the other conditions of this provision have been met.

Comment: Many commenters strongly supported the one-year grace period from the date of a purchase agreement to complete the purchase, and during which time referrals would be permissible. One commenter believed this period should be shortened to six months, but others stated that it should be longer than one year.

Response: We were presented with no persuasive reason to extend or shorten this one-year period and we therefore decline to revise this limitation period.

Comment: Several hospitals requested protection for their purchases of the practices of retiring physicians.

Response: When a hospital purchases a physician's practice and thereafter there are no referrals from that physician to the hospital, the statute would not appear to be implicated. Accordingly, in ordinary circumstances, a hospital is not in violation of the statute if it purchases the practice of a retiring physician who no longer makes referrals to that hospital.

However, many hospitals engage in this practice as part of a physician recruitment effort. Such activities do implicate the statute, but we are considering a new safe harbor provision, that we anticipate publishing as a separate regulation, to protect many such recruitment activities.

Comment: Several hospitals requested that their practice of buying physicians' practices for fair market value and then retaining the physicians on staff be afforded the protection of a safe harbor. They asserted that the financial pressures of maintaining private practices have drawn physicians to hospitals in order to get management assistance and capital.

Response: As we stated in the preamble of the proposed rule, hospitals often purchase physicians' practices in order to ensure the hospital of a steady stream of referrals. We continue to believe that such practices lead to increased program costs and potential conflicts between the patient's best interests and the physician's business relationship to the hospital. Accordingly, we decline to protect a practice that often leads to the very abuses that the statute is designed to prevent.

Comment: Several commenters requested safe harbor protection for the sale of an individual's practice to a group practice or the sale of part of a practice to another physician or group practice when the physician chooses to change the scope of his or her practice.

Response: We recognize that some buy-out arrangements are not abusive, and we would not want to prosecute such arrangements. However, we are also aware of abusive purchase arrangements, such as between ophthalmologists and optometrists, where one practitioner or group practice seeks to buy another practitioner's practice as a condition for continuing to make referrals. In essence, the sale becomes another mechanism for the buyer to profit from the stream of referrals made to the seller who previously practiced independently without dividing profits with the new "partner." No commenter proposed standards for a safe harbor provision that would cover only arrangements that are not abusive, and we are skeptical that such standards can be formulated. Accordingly, we have not protected this very diverse category of sales of practices. Rather, we are considering a limited new safe harbor provision for the purchase of group practices that we anticipate publishing as a separate regulation.

Comment: Two commenters asked the OIG to clarify the relationship between the safe harbor provision for the sale of a practice and the employee exception.

Response: Where a practitioner purchases another practitioner's practice, makes payments to that other practitioner which continue for some period of time, and retains that other practitioner on his or her staff as an employee, we believe that such payments are not protected under this provision or the employee exception. They do not qualify under this provision because the practitioner who sold the practice remains in a position to make referrals. The payments are not protected by the employee exception because that provision only protects payments "for employment in the provision of covered items or services * * *." These payments, however, relate to the purchase of a practice and not to services provided pursuant to employment for the provision of items or services. Of course, the employing practitioner who has bought out the other practitioner is making other payments for such employment services, and if a bona fide employment relationship as defined in 26 U.S.C. 3121(d)(2) exists, then these payments are protected under the employee safe harbor provision. As noted in the General comments section in section III.A. above, where parties are attempting to comply with two safe harbor provisions, we would expect separate justifications for compliance with each provision.

4. Referral Services—§ 1001.952(f)

Comment: Many commenters urged the OIG to extend this safe harbor provision beyond only physicians to include payments by chiropractors, dentists, podiatrists, psychologists, nursing homes and other health care providers to entities that refer members of the public to them.

Response: We agree and have revised this provision to protect payments by practitioners and other health care providers who utilize referral services.

Comment: Many commenters requested that the OIG define the term "qualified" with respect to the requirement that a referral service not exclude any "qualified" health care provider from participation in the service.

Response: Whether a particular health care provider is "qualified" as a participant in a referral service will vary depending on how the service is organized. For instance, to be qualified as a participant in a referral service run by a hospital, it may be necessary that the participant be an employee of that hospital. On the other hand, a referral service run by a professional organization may require only that the participant be a dues-paying member of that organization to qualify for participation. The determination as to whether a particular health care provider is "qualified" to participate in the service may be made by the referral service according to its own criteria. To be protected under this safe harbor, the referral service must apply the eligibility criteria equally to all participants in the referral service.

In addition, the referral service must disclose to all persons seeking a referral the criteria it uses to determine who is qualified as a participant. The information that must be disclosed includes the manner in which it selects the pool of participants. In other words, if a pregnant woman calls a hospital's referral service, the referral service must disclose how it selects obstetricians to be qualified to receive referrals and whether the obstetrician has paid a fee to participate. The referral service must also disclose how the particular obstetrician is selected for the referral, for example, on a rotation basis. In addition, the referral service must disclose the relationship between the participant and the referral service, for example, that the obstetrician is on the active medical staff. Finally, the referral service must disclose what criteria it uses to exclude an individual or entity from continuing as a participant, for example, if a malpractice allegation is raised against the obstetrician or if he or she refuses to treat a certain level of uncompensated care cases.

The referral service must maintain a written record certifying that such disclosures have been made to each person seeking a referral. Such a record must be signed by either the person seeking the referral or by the individual making the disclosure on behalf of the referral service. This requirement will not be met if the referral service merely maintains a blank copy of the disclosure form or instructions to staff on how to make the disclosure.

Comment: One commenter suggested that a referral service should be permitted to require the practitioners or providers to charge clients that are referred by the service the same fees as they charge other clients.

Response: We agree and have revised paragraph (f)(3) to permit referral services to bar participants from engaging in discriminatory pricing practices.

Comment: A few commenters were uncertain about what fees could be charged for the referral service. They questioned whether the referral fee must be paid prior to the referral and whether a set amount could be charged for each referral.

Response: This provision protects fee payments that are related only to the cost of operating the referral service. This provision explicitly does not protect fees that in any manner are based on the volume or value of Medicare or Medicaid referrals or business otherwise generated by the participant for the referral service. While a referral fee need not be paid in full before any referrals are made, paragraph (f)(2) specifies that referral fees may not be based on the volume of referrals to the practitioner or provider.

Comment: One commenter asked whether the disclosure requirements of this provision could be satisfied by sending a letter to the referred person after the referral is made.

Response: Although the method of disclosure is not prescribed, to meet the requirements of this provision any disclosure must constitute effective disclosure. Effective disclosure requires that the relevant information is communicated in time for the information to be used by the beneficiary before an important decision is made. Accordingly, it is unlikely that disclosure after the referral has been made would constitute effective disclosure if the beneficiary had already seen the health care provider, or in some cases, if the appointment had already been made.

Comment: Several commenters questioned whether the statute and, therefore, this safe harbor provision, applies to referral services where health care providers are not charged for the services or where the services are provided pursuant to association dues.

Response: The statute applies to such referral services. The statute is implicated not only where direct payments are made in return for referrals, but also where indirect forms of remuneration are given for referrals. For example, hospitals often operate free referral services for members of their medical staffs as one of the benefits that comes with being on that hospital's staff. In return for the benefits of staff privileges (including the free referral service), physicians have a variety of obligations, such as sitting on various hospital committees. Depending on the circumstances, the services physicians furnish a hospital to assist in its operations may constitute a form of remuneration to the hospital for providing the referral service, and would be covered by the statute. As the United States Court of Appeals for the First Circuit found: "Giving a person an opportunity to earn money may well be an inducement to that person to channel potential Medicare payments towards a particular recipient." *United States* v. *Bay State Ambulance and Hospital Rental Service, Inc., supra,* 874 F.2d at 29. Therefore, staff physicians and hospitals seeking safe harbor protection must comply with this provision when they are engaged in a referral service that does not charge a specific fee.

5. Warranties—§ 1001.952(g)

Comment: Two commenters objected to the requirement that as a condition for protection the warranty include payments to compensate for any costs associated with the replacement of the product that is the subject of the warranty. These commenters pointed out that virtually no warranties now in existence pay for such expenses and that this requirement will necessitate the revision of warranty policies, which in turn must be paid for by price increases to cover this additional liability expense.

Response: We agree with the concern over the potential that this standard will increase costs, and are deleting it. We are revising this provision based on the Federal Trade Commission interpretation of 15 U.S.C. 2301(6), which does not require the manufacturer to make full payment to compensate for all costs associated with its defective product.

Comment: One pacemaker manufacturer noted that a particular warranty complied with the discount exception, implying that it need not comply with this warranty provision.

Response: We do not believe that warranty arrangements fit within the "discount" safe harbor provision, and are revising that provision accordingly. However, we agree that some of the policies underlying the discount exception should apply to warranties. Consequently, with respect to any reductions of equipment prices offered as part of a warranty agreement, we are requiring the same disclosure requirements as contained in the discount provision.

Comment: Two commenters urged the OIG to expand this safe harbor provision to protect "competitive replacement agreements." Under such an agreement, for example, a company offers various inducements to encourage hospitals (or other entities such as ASCs) and physicians to replace a defective pacemaker with one made by the company offering the inducements. These commenters argued that these arrangements should be protected because they make it easier to purchase the latest available technology. In addition, the comments pointed out that there is little potential for abuse because Peer Review organizations review virtually every pacemaker implant decision, and because competitive replacement programs put the beneficiary only in the same financial position he or she would be in if he or she purchased a replacement pacemaker

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from the original manufacturer pursuant to that manufacturer's warranty.

Response: We generally agree with these comments, but we remain concerned that many of these programs either provide additional incentives beyond the original warranty or impose additional costs on the Medicare and Medicaid programs. For example, while some competitive replacement programs replace the item, such as a pacemaker, only on the same terms as those in the warranty of the original manufacturer, others replace the item under other conditions as well; while some provide the replacement item free of charge, others provide a discount on the replacement item capped at a specified dollar amount; and while some make no payments for medical expenses, others assist patients (either directly or by paying the health care provider) with their unreimbursed medical expenses up to a specified dollar amount. Depending on the original manufacturer's warranty, some of these programs do much more than merely put the beneficiary in the same position he or she would be in if he or she bought a replacement item from the original manufacturer under the terms of that warranty.

We believe that safe harbor protection is proper where a replacement program honors the original manufacturer's warranty, which qualifies by itself under this provision, and the agreement provides remuneration on the same terms as the original manufacturer's warranty without providing additional incentives or shifting additional costs to the Medicare and Medicaid programs. Under such programs, any incentive to replace a product under warranty stems from the original warranty, and not from the competitive replacement agreement.

We remain concerned about potential abuse in one additional area. Some competitive replacement agreements pay the health care provider or practitioner directly for the beneficiary's medical expenses. We believe that such direct payments are potentially abusive because the health care provider or practitioner knows that the warranty insures against beneficiaries' bad debts. Thus, we are adding paragraph (g)(4) so that safe harbor protection is not provided when payments are made to any health care provider (such as a hospital or ASC) for expenses such as medical, surgical or hospital expenses incurred by the beneficiary. Payments made to the health care provider or practitioner for the item itself, or price reductions on that item, are protected.

Comment: One commenter suggested that the OIG should provide safe harbor protection for payments made by manufacturers or suppliers to settle claims or to satisfy judgments arising out of product liability claims regardless of whether such payments were included in the warranty at the time of the original sale of the item.

Response: Where such payments are not part of a warranty made at the time of the original sale of an item, they do not appear to be intended to induce the purchase of that item, and hence are not covered by the statute. Where such payments are included in a warranty given at the time of sale, they would only be protected if they were made as part of a warranty that complied with this provision.

Comment: One commenter suggested that the OIG should not provide safe harbor protection for middlemen suppliers that expand the protection afforded by the manufacturer' s warranty.

Response: We believe that warranties generally benefit consumers as well as the Medicare and Medicaid program, even though they may constitute a technical violation of the statute. As long as a supplier acting as a middleman wholesaler complies with this safe harbor provision, we fail to see the harm when it provides greater benefits than those provided by the manufacturer. Such expanded warranties are commonly provided by middlemen in industries other than health care, for example, by automobile dealers, and we believe such expanded warranties should be encouraged.

6. Discounts—§ 1001.952(h)

Comment: A few commenters expressed concern about the meaning of the word "discount." For example, four commenters asked us to clarify whether a discount includes a general price reduction offered across the board to all buyers. One commenter argued that a marketing strategy similar to a warranty, but not falling within that safe harbor provision was, in fact, a discount.

Response: We believe that this first statutory exception is intended to cover discounts and other price reductions offered by a seller through an arms length transaction to induce a buyer to order or purchase goods (including items) or services for which the discount applies or other goods or services payable under Medicare or Medicaid. A discount typically is the difference in the price at which a good or service is normally sold compared to the price at which it is actually sold when the inducement is given.

The statutory discount exception applies only to discounts obtained by health care providers who submit claims to the Medicare and Medicaid programs. We believe that this exception was not intended to cover the offering of discounts by health care providers who submit claims, for example, to beneficiaries as part of a routine waiver program for coinsurance and deductible amounts. We have changed the definition of the term "discount" to clarify the limited scope of this exception. A discussion of the limited safe harbor protection we are providing for routine waivers is found in section III.B.4. In addition, as discussed in section III.B.3., price reductions negotiated by HMOs, preferred provider organizations and other health care plans to protect such discounted fee arrangements are expected to be addressed at a later date in a separate interim final rule.

We believe discounts are distinct from across-the-board price reductions offered to all buyers where the inducement that is made is so diffuse that it does not appear intended to encourage a particular buyer to purchase or order a particular good or service payable under Medicare or Medicaid.

In addition, we believe that Congress did not intend for this discount exception to apply to price reductions offered to one payor but not to Medicare or Medicaid. For example, we are aware of cases where laboratories offer a discount to physicians who then bill the patient, but do not offer the same discount to the Medicare program. In some of these cases, the discount offered to the physician is explicitly conditioned on the physician's referral of all of his or her laboratory business. Such a "discount" does not benefit Medicare, and is therefore inconsistent with the statutory intent for discounts to be reported to the programs with costs and charges reduced appropriately to reflect the discounts.

Another problem exists when an entity, which is both a provider or supplier of items or services and a joint venture partner with referring physicians, makes discounts to the joint venture as a way to share its profits with the physician partners. Very often this entity furnishes items or services to the joint venture, and also acts as the joint venture's general partner or provides management services to the joint venture. For example, in some cases a reference laboratory performs testing for another laboratory at a discount price in accordance with a management contract. In other cases, the services the reference laboratory provides are paid on the basis of a percentage of revenues that the joint venture receives from Medicare. These arrangements are not arms length transactions where the joint venture entity shops around for the best price on a good or service. Rather, it has entered into a collusive arrangement with a particular provider or supplier of items or services that seeks to share its profits with referring physician partners. To clarify that we do not intend to protect these types of transactions which are sometimes made to appear as "discounts," we are clarifying the definition of "discounts" in paragraph (h)(3) of this section to permit only transactions made on an arms length basis.

Since many of these illegal transactions are made as part of personal services or management contracts, we are clarifying the definition of "discounts" to preclude discounts made as part of such transactions. We are making this revision for the additional reason that Congress did not intend to exempt such arrangements merely because those services were provided at a "discount." Since we believe that contracts for personal or management services do not fit within the ambit of the statutory discount exception, such arrangements must be analyzed under the respective safe harbor provision for those contracts. Of course, to the extent that the failure to report the actual price of the management contract implicates the civil monetary penalties law (section 1128A of the Act) liability may be imposed under that statute.

With respect to warranties, as we discussed in the warranty section immediately above, warranties are not discounts. Therefore to provide clearer guidance, we have modified the definition of the term "discount" in paragraph (h)(3) to exclude warranties and other examples of arrangements that do not constitute "discounts."

Comment: Many commenters urged the OIG to expand this safe harbor provision to include a variety of other discounting practices where the benefit received relates to something other than the specific good or service purchased or provided. Examples of the suggested permissible arrangements include bundled goods closely related to the purchased goods, such as free "surgical packs" (including such items as sutures, Healon, viscoelastics, and disposable gloves provided with purchases of intraocular lenses (IOLs), or credits toward free computers or other items that are useful in a physician's practice.

Response: We believe that such an interpretation goes well beyond the legislative intent of this statutory exception, and vitiates its purpose. We believe that Congress did not intend to include within this provision the practice of a seller giving away, or reducing the price of, one good in connection with the purchase of a different good. Such arrangements, for the most part, do not represent price reductions where the value of the goods received can be measured and fully reported to the Medicare and Medicaid programs.

Although there are many instances where these practices are cost effective arrangements that benefit the health care provider, there is enormous potential for abuse. One of the most common features of a serious kickback violation exists when a seller offers a valuable good, for example a car or a trip, to a person in return for that person's participation in activity prohibited under the statute, for example, referral of business payable by the Medicare and Medicaid programs. Thus, these commenters, while pointing to some potentially beneficial arrangements, are asking us to permit a broad class of arrangements that would include acts which have resulted in criminal convictions and at least one pending criminal prosecution. See *e.g., United States* v. *Bay State Ambulance and Hospital Rental Service, Inc., supra.*

Even where the particular item that is being given away may result in a more effective means of delivering the supplies to the health care provider, these types of "discounts" cause problems because they often shift costs among reimbursement systems or distort the true costs of all the items. As a result, it may be difficult for the Medicare and Medicaid programs to determine the proper reimbursement levels.

For example, in developing accurate pricing data to assist HCFA in setting the amount of reimbursement for IOLs, we found that bundled pricing arrangements similar to those suggested by our commenters were common, and made it difficult to determine the true acquisition cost of IOLs. (See Medicare certified Ambulatory Surgical Centers, Cataract Surgery Costs and Related Issues, at 9–12, March 1986, OAI–09–86–00490.) In addition, HCFA determined that its IOL pricing data obtained from the ASCs "revealed significant inconsistencies in reporting net IOL costs." 53 FR 31476. The necessity of accurately reporting the true acquisition costs of IOLs undistorted by bundling arrangements is underscored by HCFA's stated policy in its final rule promulgating a $200 add-on rate: "to continue to collect data on IOL acquisition costs and purchasing arrangements to ensure that the IOL rate appropriately reflects lens acquisition costs." 55 FR 436.

Finally, this practice of bundling IOLs with other goods is of sufficient seriousness that it is the subject of at least one pending criminal prosecution.

For these reasons, we decline to broaden the scope of this provision to include discounts on bundled goods and have clarified the definition of the term "discount" to specifically exclude such arrangements. Of course, where discounts are offered on goods that are unbundled and the discount otherwise complies with the rules of this provision, safe harbor protection is granted.

For purchasing practices involving the free provision of another type of item, we will examine the surrounding circumstances to determine the desirability of prosecuting that arrangement. Examples of potential factors which we may consider include: (1) The amount of the benefit that was reported and passed along to the programs, (2) whether the good is separately reimbursable, and (3) the intent behind the arrangement.

A related issue is the practice of giving away free computers. In some cases the computer can only be used as part of a particular service that is being provided, for example, printing out the results of laboratory tests. In this situation, it appears that the computer has no independent value apart from the service that is being provided and that the purpose of the free computer is not to induce an act prohibited by the statute. Rather, the computer is part of a package of services provided at a price that can be accurately reported to the programs. In contrast, sometimes the computer that is given away is a regular personal computer, which the physician is free to use for a variety of purposes in addition to receiving test results. In that situation the computer has a definite value to the physician, and, depending on the circumstances, may well constitute an illegal inducement.

Comment: A large number of commenters urged the OIG to broaden this safe harbor provision to include other reductions in price, such as "rebates" and "credits." These commenters argued that such programs are equivalent to price reductions and are capable of being properly reported.

Response: We generally agree with the thrust of these comments and have revised the definition of discount in paragraph (h)(3) to protect rebate checks, redeemable coupons and credits, subject to the following conditions. First, because of our continued concern about the potential for improper use of redeemable coupons,

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we are limiting the ability of recipients of such discounts to negotiate these instruments to third parties. As revised, this provision requires these instruments to be redeemed only by the seller. Second, the rebate check, redeemable coupon, or credit can only be applied to the same good or service that was purchased or provided. Thus, a redeemable coupon or credit obtained on the purchase of one good cannot be used toward the purchase of a different good. Third, like other discounts covered under this provision, these forms of discounts must be fully and accurately reported. Finally, except as noted below, such discounts must be given at the time the good or service was purchased or provided.

The reporting of credits presents an unusual situation because the monetary value of the credit only applies to future purchases of goods or services. Thus, to comply with this provision, the buyer must report the credits on the applicable cost report or claim form covering the goods or services for which the credit is being used.

Comment: A large number of commenters urged the OIG to expand this safe harbor provision to include other types of discount mechanisms where the value of the discount is not calculated until after some period of time has passed. Examples of such a discount mechanism include end-of-year discounts and prompt pay discounts. These commenters believed that these discounting mechanisms encourage legitimate, beneficial business practices that do not harm the program. In addition, many commenters pointed out that such discounting practices have long been encouraged through HCFA's prudent buyer guidelines. (Provider Reimbursement Manual, part I section 2103, HCFA Pub. No. 15–1)

Response: We recognize that there are many legitimate discount programs where the value of the discount is only reported after the good is purchased or the service is provided. Unfortunately, due to the nature of some reimbursement systems, it is sometimes not possible to determine retrospectively how much such discounts reduce the price of the goods or services previously purchased or provided. For example, it would be virtually impossible to take the numerous claims for cataract surgery submitted by a physician in a given year and determine the true acquisition cost of an IOL provided to that physician when the discount is only calculated at year end. Thus, paragraph (h)(1)(iii) of this section, which governs discounts on items and services paid on the basis of charges or acquisition costs, does not permit end-of-year discounts. On the other hand, where the Department or a State agency requires a health care provider to maintain cost reports (including HMOs, CMPs and health care prepayment plans (HCPPs pursuant to agreements under sections 1876(h) or 1833 of the Act), we believe that end of year calculations of discounts on purchases of the same good or service can be fully and accurately reported, as well as those discounts obtained at the time of the purchase.

Therefore, we are revising this provision in paragraph (h)(1)(i) of this section (which applies only to cost report providers) to protect such end-of-year discounts when all of the following conditions are met. One, end-of-year discounts can only be calculated based on purchases of the same good or service in a single fiscal year. Of course, the discount may be obtained at the time of purchase as well. Two, the entity must claim the benefit of the discount from the seller in the fiscal year in which the discount is earned or the following year. In many cases, a seller will be able to calculate the amount of the discount and give the buyer the benefit of the discount (for example, in a credit or reduced price on future purchases of that same good) in the same fiscal year in which the credit was earned. However, in many other cases, the seller may take several weeks after the end of a fiscal year to give the buyer the necessary information. Under either circumstance, this prong of the safe harbor is satisfied. Three, the buyer must fully and accurately report the discount in the cost report for the fiscal year in which the benefit of the discount is received. And four, if the Secretary or a State Medicaid agency requests information, the buyer must provide the appropriate invoices from the seller. (See discussion below of seller's separate reporting requirements.)

We believe that this revision complies with the most important statutory requirement of the discount exception—full reporting—and accommodates many of these end-of-year discounting programs. In addition, we believe that this revision is consistent with HCFA's prudent buyer rules, which are not applicable to charge-based health care providers.

With respect to prompt pay discounts, we have made no change to include such discount arrangements. No change is necessary because, by definition, they are designed to induce prompt payment, and thus do not appear to violate the statute. Of course, we will continue to scrutinize closely "prompt pay" discounts to make sure that they are not payments made for an illegal purpose cloaked under a legitimate label.

Comment: Three commenters requested the OIG to provide various kinds of special treatment for HMOs and PPOs. For example, one commenter urged the OIG to broaden this provision as it applies to HMOs to permit cash grants and training assistance. Another commenter urged the OIG to change the definition of discount to permit discounts offered to HMOs and PPOs by contract health care providers.

Response: We recognize that HMOs and CMPs paid in accordance with a risk contract with HCFA or a State health care program deserve special attention, and paragraph (h)(1)(ii) follows the proposed rule recognizing their special status. These HMOs and CMPs need not report discounts they receive except as may otherwise be required under their risk contract.

In addition, we have expanded this provision in significant ways that should be of assistance to all health care providers, including HMOs. However, we do not believe that it would be appropriate to provide special safe harbor protection for purchasing arrangements that go beyond the intended purpose of this statutory exception. As with all arrangements that drift from a safe harbor out to sea, we will examine them on a case-by-case basis to determine whether the statute has been violated in such a way as to warrant prosecution.

With respect to discounts offered to HMOs, CMPs and PPOs by contract health care providers, as discussed in section III.B.3. above, we are expecting to promulgate a new interim final safe harbor provision to protect arrangements between these parties for the furnishing of covered items and services to beneficiaries where certain standards are met.

Comment: Many commenters objected on a variety of grounds to the requirement that charge-based health care providers reduce their charges by the full amount of the discount. These commenters pointed out that historically the Medicare program has not sought to regulate the discrete components that make up a particular charge. In addition, many suggested that the OIG will destroy the incentive of obtaining discounts if it requires health care providers to pass along the full amount of the discount to the programs. Another rationale for suggesting a change in this safe harbor provision is that the OIG should treat cost and charge-based health care providers in the same manner, and because this safe harbor provision does not require a reduction in reported costs for cost-based health care providers, no parallel requirement should be placed on charge-based health care providers.

Response: We agree with the thrust of these comments, and are revising paragraph (h)(1)(iii) of this safe harbor provision to delete the requirement that charge-based health care providers reduce their charges by the full amount of the discount. Such a provision would be largely unenforceable. As many commenters pointed out, the Department has never monitored the various input costs that make up a health care provider's charge. Therefore, we are not in a position to know a health care provider's base from which he or she was reducing the charge. Thus, for example, if a physician receives a discount as defined in this provision valued at $4 per service, the physician could argue that he or she is not required to reduce the charge by that amount because other costs included in that charge had increased to offset the $4 discount. We are generally not in a position to prove otherwise.

Although we continue to believe that individuals and entities have an obligation to pass along to the Medicare and Medicaid programs the value of discounts they receive, we believe that the actual savings that would result from requiring such charge reductions would be offset by the cost of enforcement. In many areas of reimbursement, for example, physician or laboratory services and purchases of IOLs, Congress has steadily moved away from charge-based reimbursement or has imposed limitations on charges. We believe that those statutory reforms are better suited to address the problem of excessive charging practices. Nonetheless, even though we are deleting this requirement for the purposes of this safe harbor provision, we strongly encourage charge-based health care providers to pass along discounts to the programs.

With respect to the different treatment of health care providers based on the type of reimbursement system, we believe that reasonable safe harbor rules for discounts must be closely tailored to the various reimbursement principles and cost reporting mechanisms. Just as we believe it is appropriate to treat HMOs reimbursed on a capitated basis differently from other health care providers, we now believe that it is appropriate to treat charge-based health care providers differently from cost-based health care providers for the purposes of requiring the discount to be passed along to the program. Such an approach is far preferable than a blind adherence to uniform treatment of health care providers. We believe that such a position is a reasonable reading of the statutory requirement that "the reduction in price [be] * * * appropriately reflected in the costs claimed or charges made by the provider or entity * * *." (Section 1128B(b)(3)(A) of the Act.)

We emphasize, however, that paragraph (h)(1)(iii) still requires charge-based health care providers to comply with the respective rules regarding full and accurate reporting of discounts as defined in this provision. This reporting requirement is limited to items or services that are separately claimed as a line item for payment with the Department or a State agency. As discussed below, under paragraph (h)(1)(iii) of this section, we will not require health care providers to report discounts they receive on goods purchased for which a line item charge is not separately made, but rather is included within their professional charge.

In addition, we note that some commenters were confused about the requirements we are placing on health care providers reimbursed on the basis of costs. The regulation need not specify that a health care provider must separately reduce its cost by the amount of the discount because the cost reporting requirements accomplish the statutory purpose of having the amount of the discount "appropriately reflected in the costs claimed." Whether a provider submits cost reports (and complies with paragraph (h)(1)(i) of this section) or submits a seller's invoice to demonstrate its acquisition costs (and complies with paragraph (h)(1)(iii) of this section), the amount of the discount is passed along to the Medicare and Medicaid programs. As a result, this revised discount provision treats items and services reimbursed on the basis of charges differently from those reimbursed on the basis of costs, because costs will be reduced by the amounts of discounts whereas charges will not be affected.

Finally, although we have attempted to tailor this discount provision to make sense within the context of the varying reimbursement rules, as we have explained in section III.A. above, compliance with this safe harbor provision in no way affects Medicare or Medicaid reimbursement rules.

Comment: Five commenters discussed the requirement in the proposed rule that the discount appear on the seller's invoice or statement and the consequent liability of the seller for failing to make such disclosure. They questioned the apparent inconsistency with the preamble to the proposed rule that no requirements need be placed on sellers in order for their discounts to qualify under this exemption.

Response: We agree with the comments that we should clarify the requirement for a seller to report the value of the discount on the invoice or statement provided to a purchaser, and we are modifying this provision in paragraph (h)(2) accordingly. As discussed above, such standards are necessary to assist the Department and State agencies in verifying that the buyer has fully and accurately reported the value of the discount.

This paragraph describes the requirements we are placing on sellers. With respect to those who sell goods or services to risk contract HMOs and CMPs at a discount, paragraph (h)(2)(i) makes clear that the seller is under no obligation to report the discount to the HMO or CMP for purposes of this safe harbor. Paragraph (h)(2)(ii) sets out the seller's requirements with respect to its sales to all other health care providers. It must either fully and accurately report the discount on the invoice or statement. In addition, it must inform the buyer of its obligations under paragraph (h)(1). With respect to permissible end-of-year discounts, this paragraph, as revised, requires the seller's invoice or statement to show clearly the existence of a discount program, and the seller must inform the buyer of its obligations under paragraph (h)(1). The seller is also required to provide the buyer with a separate document, such as a reconciliation statement, showing the calculation of the discount and identifying the specific goods or services purchased to which the discount is attributed.

It was our original intent not to hold sellers liable for the reporting omissions of health care providers, and we believe such a policy remains appropriate. However, we agree with the commenters that some rules should apply to sellers. We believe that the limited conditions we are placing on sellers seeking safe harbor protection will not place an undue burden on them, but are sufficient to prevent them from avoiding liability when they engage in unlawful schemes disguised as discounts.

Comment: Many commenters questioned what information must be reported to the program and the methods to be used in reporting such information. Among the questions that were asked is whether the list price, liability of the seller for failing to make such disclosure. They questioned the apparent inconsistency with the preamble to the proposed rule that no requirements need be placed on sellers in order for their discounts to qualify under this exemption.

Response: We agree with the comments that we should clarify the requirement for a seller to report the value of the discount on the invoice or statement provided to a purchaser, and we are modifying this provision in paragraph (h)(2) accordingly. As discussed above, such standards are necessary to assist the Department and State agencies in verifying that the buyer has fully and accurately reported the value of the discount.

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It was our original intent not to hold sellers liable for the reporting omissions of health care providers, and we believe such a policy remains appropriate. However, we agree with the commenters that some rules should apply to sellers. We believe that the limited conditions we are placing on sellers seeking safe harbor protection will not place an undue burden on them, but are sufficient to prevent them from avoiding liability when they engage in unlawful schemes disguised as discounts.

Comment: Many commenters questioned what information must be reported to the program and the methods to be used in reporting such information. Among the questions that were asked is whether the list price,

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discount, and final actual price all need to be reported on the invoice, claim, or statement. In addition, many commenters suggested that it was unrealistic to require practitioners to report all discounts on goods they purchase, such as office supplies and surgical gloves, for which they do not charge separately, but rather include within their professional service charge.

Response: The fundamental test for complying with the reporting requirement is whether the actual purchase price net of any discount is fully and accurately reported by the seller on the invoice or statement (or, where applicable for end-of-year discounts, on a reconciliation statement) and by the purchaser on the claim or request for payment submitted to Medicare and Medicaid. We do not necessarily require all the information in the calculation of the discount to be noted specifically on the invoice, statement, claim or request for payment; rather, a notation may be made that the actual purchase price is "net discount." Such reporting is acceptable for the purpose of satisfying this provision.

We agree that no purpose would be accomplished if we were to require practitioners to report the discounts they receive on office supplies where there is no requirement to separately report the item on which the discount is received. Thus, we are clarifying the requirements for reporting discounts under paragraph (h)(1)(iii) of this section to make clear that where a practitioner obtains a discount, defined in this provision, for a good that is included as part of his or her professional service charge, such discounts need not be reported. Where a practitioner, however, purchases an item or service at a discount and such item or service is separately claimed as a line item on the applicable claim form, the discounted price must be fully and accurately reported. For example, where a surgeon performs cataract surgery in his or her office and implants an intraocular lens (IOL), the surgeon must report any discount received on the price of the IOL.

Finally, it is noted that where the discount in question does not qualify as a discount under this provision, no safe harbor protection applies. For example, as we stated above, we are not expanding this safe harbor provision to protect the offering of a free good different from the one that is being purchased. Thus, consistent with that position, we are not willing to protect the offering of free computers even when named as "office supplies" to induce the purchase of other items that are reimbursable separately.

7. Employees—§ 1001.952(i)

Comment: Many commenters urged the OIG to extend this exception to apply to independent contractors paid on a commission basis. Two commenters asserted that the legislative history of the statute makes clear that Congress intended to include independent contractors in the employee exception. In support of this contention, they quoted remarks made by Representative Rostenkowski when the House was considering the Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977. (123 Cong. Rec. 30,280 (1977))

Response: We continue to reject this approach because of the existence of widespread abusive practices by salespersons who are independent contractors and, therefore, who are not under appropriate supervision and control. Although two commenters asserted that they could achieve appropriate supervision and control of independent contractors by including restrictive terms in the contract, we cannot expand this provision to cover such relationships unless we can predict with reasonable certainty that they will not be abusive. We are confident that the employer-employee relationship is unlikely to be abusive, in part because the employer is generally fully liable for the actions of its employees and is therefore more motivated to supervise and control them.

Furthermore, we believe that Representative Rostenkowski's remarks do not reflect congressional intent in this case. His comments related to the House version of the employee exception that was rejected by the Conference Committee. Instead, Congress passed the Senate version, which expressly limited the exception to bona fide employment relationships (See H.Conf.Rep. No. 673, 95th Cong., 1st Sess. 41 (1977)). Consequently, we find no support for the position that Congress intended to cover independent contractors under this exception.

Comment: Two commenters questioned the wisdom of the employee exception, stating that health care providers should not be able to refer patients to other health care providers within their own offices because abuse could be worse than when individuals or entities make referrals to outside sources.

Response: The exception for bona fide employment relationships is clear on the face of the statute, and we are not free to ignore that statutory mandate.

Comment: One commenter asserted that we do not have the statutory authority to limit the definition of "employee" to the meaning it has under 26 U.S.C. 3121(d)(2).

Response: As we have discussed, Congress expressly limited the scope of the employee exception to "bona fide employment relationship[s]" between an employer and an employee. The Secretary clearly has the power, and indeed the duty, to establish the criteria for a bona fide employment relationship. The Internal Revenue Service's (IRS) definition of employee is a longstanding one that has been developed by both agency and court rulings. Furthermore, this definition is sufficiently narrow that it excludes certain types of relationships that we believe tend to be associated with violations of the statute. We are clarifying this safe harbor provision to make clear that the meaning of the term "employee" is defined not only by 26 U.S.C. 3121(d)(2) itself, but also by the IRS's interpretation of that provision as codified in its regulations and other interpretive sources.

Comment: One commenter inquired whether a part-time employee paid on a commission-only basis falls within the employee exception.

Response: As long as a bona fide employer-employee relationship exists between the part-time employee and the employer, such a relationship falls within the scope of this provision.

Comment: Some commenters asserted that many legitimate employment relationships that are common in the health care industry are not protected from prosecution under this exception. One commenter suggested that the employee exception include independent contractors where beneficiaries are being induced to participate in cost-containment programs because such programs are beneficial to Medicare and State health care programs, and therefore should be protected.

Response: We recognize that this provision does not cover some types of personal service arrangements, but our position is necessary to protect the program from abuse to a reasonable degree. However, many of these other arrangements could be protected under the personal services and management contracts safe harbor provision.

Comment: One commenter stated that hospitals are often compelled by State "corporate practice of medicine" requirements to employ physicians and other health care personnel as independent contractors, and that these employment relationships should be afforded safe harbor protection.

Response: We understand that there may be circumstances where, because of State laws, health care providers may not be able to enter into arrangements with health care personnel that comply with the IRS definition of employee. In such cases, however, health care providers may obtain protection for payments from these arrangements by drafting their personal contracts to satisfy the safe harbor provision for personal services and management contracts.

8. Group Purchasing Organizations—§ 1001.952(j)

Comment: One commenter urged the OIG to further define what constitutes a group purchasing organization (GPO) for purposes of this provision. This commenter specifically questioned whether a nursing home chain that requested percentage payments from laboratories as "GPO fees" in return for the referral of laboratory services from member nursing homes fit this definition.

Response: As stated in the preamble to the proposed rule, this exception applies to payments made by a vendor of goods or services to a person authorized to act on behalf of a group of individuals or entities who are furnishing Medicare or Medicaid services. Our definition of the term "GPO" makes clear that a nursing home chain requesting fees for referrals would not qualify for this safe harbor because a chain of nursing homes that are wholly owned subsidiaries of a single corporate entity for all practical purposes constitutes a single entity and not a "group" of entities. As we discuss in section III.D. below, because of the special relationship wholly-owned subsidiaries have with their parent corporation, we are considering separate protection for payments between these entities. However, following this reasoning, we do not believe it appropriate for a nursing home chain to qualify as a GPO and request "GPO fees" for referrals. If a nursing home directly requested such a fee it would appear to represent an illegal inducement. We see no reason how such a solicitation sanitizes the illegality when it is made indirectly by a wholly-owned subsidiary of the nursing home, instead of directly by the nursing home itself.

In addition, we believe that Congress did not intend this exception to apply where it is the vendor and not the health care provider who is furnishing services and directly billing the Medicare or Medicaid program. For example, in addition to services furnished by the nursing home, other health care providers furnish many part B services to nursing home patients, such as laboratory services and durable medical equipment (DME). We believe that a GPO, acting on behalf of a group of nursing homes, is not serving as a GPO when it receives a "GPO fee" from a laboratory or DME supplier that is supplying goods or services to nursing home patients and billing Medicare or Medicaid directly.

Comment: Several commenters objected to the requirement that a purchasing agent, i.e., a GPO, have a written agreement with each individual or entity in the group that specifies the amount the agent will be paid by each vendor. This requirement, they asserted, would be burdensome and expensive.

Response: We agree with the general thrust of these comments and have modified paragraph (j)(1)(ii). The statutory exception requires that written contracts specify the amount the GPO will be paid by the vendor. We believe that this statutory mandate is satisfied if the GPO discloses to a health care provider the fees it will receive from only those vendors that provide goods or services to that provider. This obviates the need for the GPO to divulge fees from vendors that do not provide goods or services to that particular individual or entity.

Comment: To promote administrative convenience, efficiency, and cost-containment purposes, several commenters requested that the GPO should be permitted to specify the range of fees to be paid by the potential vendors instead of the actual amount. One commenter asserted that because of the varying contracts between GPOs and their vendors, it was impossible to determine and disclose in advance the amount the GPO would receive from its vendors.

Response: We agree that it is not necessary, in all circumstances, to specify the exact fees the GPO will receive from its vendors as a result of a particular member's purchases. The legislative history to this exception, however, shows Congress's concern for excessive GPO fees, particularly those exceeding 3 percent. (See, H.Conf. Rep. 1012, 99th Cong., 2d Sess. 310–11 (1986)) For this reason, we are revising this provision (see paragraph (j)(1)(i)) so that a GPO needs to specify the administrative fee it is paid from vendors only if any fee will be above 3 percent.

In the event that the fee cannot be ascertained at the time of the contract or the fee is not fixed at 3 percent or less, the contract must state the maximum amount that could be paid to the GPO by the vendor. This mechanism will permit some flexibility in payments made to the GPO, yet retain the focus on excessive fees about which Congress was concerned.

Comment: Several commenters questioned the interrelationship of this provision to the discount safe harbor.

Response: Several commenters appeared confused about the relationship between these two provisions. This is an example of an arrangement where two safe harbor provisions could apply, i.e., one applicable to discounts, and one applicable to GPOs. However, the GPO provision applies only to payments made by a vendor of goods or services to a person authorized to act as a GPO. Payments, such as discounts, made by vendors of goods or services to health care providers must qualify under the discount exception.

D. Comments on Proposals for New Safe Harbor Provisions

In sections III.B.3. and III.C.1. we discussed proposals and our responses regarding new safe harbor provisions for negotiated price reductions and investment interests. In this section we discuss the remaining proposals and our responses regarding potential new safe harbors.

Note: Any discussion below indicating that we are considering a new safe harbor provision should in no way be construed as legalizing the business arrangement at this time.

Comment: A large number of commenters urged the OIG to adopt a safe harbor provision to protect certain physician recruitment activities. They commented that subsidy payments to physicians for recruitment purposes provide important benefits to many communities that have difficulty in obtaining and retaining physicians. Some urged that we also protect hospital recruitment activities even though a physician does not need to move his or her residence to join the medical staff of the new hospital. Others urged a variety of other provisions, for example, that we not require the physician to disclose to his or her patients the relationship between the physician and the hospital, and that we not specify how long the payments may continue.

Response: We agree with the need to protect some recruitment activities for physicians and other practitioners, and we are considering a new safe harbor provision for practitioner recruitment that we anticipate publishing as a separate regulation.

Comment: Three commenters requested the OIG to adopt a safe harbor provision that will protect all payments that subsidize malpractice

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premiums. These commenters stressed that such payments have an overwhelming public benefit with limited potential for abuse. One of these commenters argued that obstetrician-gynecologists are facing significant difficulty in paying for malpractice insurance, and suggested that many communities are facing a cut-off of obstetrical services as a result.

Response: We understand the need to assist certain physicians in making malpractice insurance more affordable, and we are considering a new safe harbor provision which we anticipate publishing as a separate regulation, that would protect certain arrangements that subsidize the costs of a practitioner's malpractice insurance premiums where there is no likelihood of abuse.

Comment: Several commenters asked the OIG to provide a new safe harbor provision to protect different types of cross-referral arrangements where no money is exchanged between the parties, for example, traditional referral patterns between a primary care practitioner and specialist, between a hospital and nursing home, and among practitioners within a group practice.

Response: We agree that a large majority of these relationships benefit patients by assuring either proper continuity of care or convenient access to a specialist in whom the primary care physician has confidence. Thus, we are considering a new safe harbor provision, that we anticipate publishing as a separate regulation, that would protect many such arrangements where there is no likelihood of abuse.

Comment: Two commenters suggested that the regulation protect payments related to cooperative hospital service organizations qualified under section 501(e) of the Internal Revenue Code of 1986. Under this statute and implementing Internal Revenue Service regulation, these organizations are formed by one or more hospitals (known as "patron-hospitals") to provide specifically enumerated services, such as purchasing, billing, and clinical services solely for the benefit of its patron-hospitals. In addition, these entities are required to distribute "all net earnings to patrons on the basis of services performed." (26 U.S.C. 501(e)(2)) The commenters believed that although such a distribution requirement runs afoul of the anti-kickback statute, the services they perform are beneficial to rural communities in particular, and there has been no indication of abuse by these organizations.

Response: We agree and are considering a new safe harbor provision, that we anticipate publishing as a separate regulation, that would protect payments between cooperative hospital service organizations and patron-hospitals.

Comment: Many commenters requested the OIG to clarify that payments between corporations which have common ownership are not subject to the statute. Commenters cited as examples intracorporate discounts and payments between two wholly-owned subsidiaries. Some commenters argued that referral arrangements between two related corporations do not constitute "referrals" within the meaning of the statute, and suggested that the OIG define the word "referral" to exclude such activity.

Response: We agree that much of the activity described in these comments is either not covered by the statute or deserves safe harbor protection. We believe that the statute is not implicated when payments are transferred within a single entity, for example, from one division to another. Thus, no explicit safe harbor protection is needed for such payments.

Because the statute is implicated when payments are made from one entity to another even though the payments are made between entities with common ownership, we believe that safe harbor protection may be appropriate. However, we remain concerned about wholly-owned shell entities that are established for a fraudulent purpose, for example, to help hide the identity of the owners or to shield assets. Nonetheless, we are considering a new safe harbor provision, that we anticipate publishing as a separate regulation, that would protect payments between wholly owned subsidiaries and other payments between entities where exclusive ownership control is present and the practice is not otherwise abusive.

We do not, however, believe that the situations commenters described require us to define the word "referral." The commenters do not appear concerned with any unusual conduct that warrants special attention. Rather the commenters have focused on the source and recipient of the payment in question. Thus, our consideration in any proposed rule will be focused on the relationship of the parties making and receiving payments.

IV. Additional Information

A. Regulatory Impact Statement

Executive Order 12291 requires us to prepare and publish a final regulatory impact analysis for any regulation that meets one of the Executive Order criteria for a "major rule," that is, that which would be likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individuals, industries, Federal, State, or local government agencies or geographic regions; or, (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (5 U.S.C. 601–612), unless the Secretary certifies that a final regulation would not have a significant economic impact on a substantial number of small entities.

In the proposed rule published on January 23, 1989, we indicated that this provision was designed to specify the various business and payment practices that would not be considered a kickback for purposes of criminal or civil remedies, and served to clarify departmental policy as to the legality of various commercial arrangements. We stated that the great majority of health care providers and practitioners do not engage in illegal remuneration schemes, and that the aggregate economic impact of this provision should, in effect, be minimal, affecting only those who have chosen to engage in prohibited payment schemes in violation of the statutory intent. As indicated in the proposed regulation's impact statement, the rulemaking is a result of a statutory requirement and not a Department initiative.

The two comments we received on the cost impact indicated that the safe harbors for discounts and personnel services contracts would cast a cloud over a substantial number of legitimate business practices and existing contractual arrangements. Both commenters believed that a comprehensive regulatory flexibility analysis should be performed and a statement added disclosing the possible financial impact of this rulemaking.

Consistent with the intent of the statute, this regulation has been designed to permit individuals and entities to freely engage in business practices and arrangements that encourage competition, innovation and economy. However, the regulation imposes no requirements on anyone. Health care providers and others may voluntarily seek to comply with these provisions so that they have the assurance that their business practices are not subject to any enforcement action under the anti-kickback statute. Thus, it is impossible to predict how many individuals and entities will be affected by this regulation. For these reasons, we have determined that a regulatory impact analysis is not required. Further we have determined, and the Secretary certifies, that this final rule will not have a significant economic impact on a number of small business entities, and we have, therefore, not prepared a regulatory flexibility analysis.

B. Department of Justice Review

In accordance with the provisions of Public Law 100-93, this regulation has been developed in consultation with the Department of Justice.

List of Subjects in 42 CFR Part 1001

Administrative practice and procedure, Fraud, Health facilities, Health professions, Medicare.

TITLE 42—PUBLIC HEALTH

CHAPTER V—OFFICE OF INSPECTOR GENERAL—HEALTH CARE, DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR part 1001 is amended as set forth below:

1. The heading for part 1001 is revised to read as follows:

PART 1001—PROGRAM INTEGRITY—MEDICARE AND STATE HEALTH CARE PROGRAMS

2. The authority citation for part 1001 is revised to read as follows:

Authority: 42 U.S.C. 1302, 1320a-7, 1320a-7b, 1395u(j), 1395u(k), 1395y(e), and 1395hh, and section 14 of Public Law 100-93, unless otherwise noted.

3. Section 1001.1 is revised to read as follows:

§ 1001.1 Scope and purpose.

(a) This part sets forth provisions for the detection of fraud and abuse in the Medicare and certain State health care programs. It implements statutory sections, specifically identified in each subpart, aimed at protecting the integrity of the Medicare and certain State health care programs.

(b) This part also sets forth provisions addressing the OIG's authority to exclude any individual and entity that it determines has committed an act described in section 1128B of the Social Security Act, subject to the exceptions set forth in this part.

4. A new Subpart E is added to read as follows:

Subpart E—Permissive Exclusions

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1001.951 Fraud, kickbacks and other prohibited activities.
1001.952 Exceptions.
1001.953 OIG report on compliance with investment interest safe harbor.

Subpart E—Permissive Exclusions

§ 1001.951 Fraud, kickbacks and other prohibited activities.

The OIG may exclude any individual or entity that it determines has committed an act described in section 1128B of the Social Security Act, subject to the exceptions set forth in § 1001.952.

§ 1001.952 Exceptions.

The following payment practices shall not be treated as a criminal offense under section 1128B of the Act and shall not serve as the basis for an exclusion:

(a) *Investment Interests.* As used in section 1128B of the Act, "remuneration" does not include any payment that is a return on an investment interest, such as a dividend or interest income, made to an investor as long as all of the applicable standards are met within one of the following two categories of entities:

(1) If, within the previous fiscal year or previous 12 month period, the entity possesses more than $50,000,000 in undepreciated net tangible assets (based on the net acquisition cost of purchasing such assets from an unrelated entity) related to the furnishing of items and services, all of the following five applicable standards must be met—

(i) With respect to an investment interest that is an equity security, the equity security must be registered with the Securities and Exchange Commission under 15 U.S.C. 78*l*(b) or (g).

(ii) The investment interest of an investor in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity must be obtained on terms equally available to the public through trading on a registered national securities exchange, such as the New York Stock Exchange or the American Stock Exchange, or on the National Association of Securities Dealers Automated Quotation System.

(iii) The entity or any investor must not market or furnish the entity's items or services (or those of another entity as part of a cross referral agreement) to passive investors differently than to non-investors.

(iv) The entity must not loan funds to or guarantee a loan for an investor who is in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity if the investor uses any part of such loan to obtain the investment interest.

(v) The amount of payment to an investor in return for the investment interest must be directly proportional to the amount of the capital investment of that investor.

(2) If the entity possesses investment interests that are held by either active or passive investors, all of the following eight applicable standards must be met—

(i) No more than 40 percent of the value of the investment interests of each class of investments may be held in the previous fiscal year or previous 12 month period by investors who are in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity.

(ii) The terms on which an investment interest is offered to a passive investor, if any, who is in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity must be no different from the terms offered to other passive investors.

(iii) The terms on which an investment interest is offered to an investor who is in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity must not be related to the previous or expected volume of referrals, items or services furnished, or the amount of business otherwise generated from that investor to the entity.

(iv) There is no requirement that a passive investor, if any, make referrals to, be in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity as a condition for remaining as an investor.

(v) The entity or any investor must not market or furnish the entity's items or services (or those of another entity as part of a cross referral agreement) to passive investors differently than to non-investors.

(vi) No more than 40 percent of the gross revenue of the entity in the previous fiscal year or previous 12 month period may come from referrals, items or services furnished, or business otherwise generated from investors.

(vii) The entity must not loan funds to or guarantee a loan for an investor who is in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity if the investor uses any part of such loan to obtain the investment interest.

(viii) The amount of payment to an investor in return for the investment interest must be directly proportional to the amount of the capital investment (including the fair market value of any pre-operational services rendered) of that investor.

For purposes of paragraph (a) of this section, the following terms apply. *Active investor* means an investor either who is responsible for the day-to-day management of the entity and is a bona fide general partner in a partnership under the Uniform Partnership Act or who agrees in writing to undertake liability for the actions of the entity's agents acting within the scope of their agency. *Investment interest* means a security issued by an entity, and may include the following classes of investments: Shares in a corporation, interests or units of a partnership, bonds, debentures, notes, or other debt instruments. *Investor* means an individual or entity either who directly holds an investment interest in an entity, or who holds such investment interest indirectly by, including but not limited to, such means as having a family member hold such investment interest or holding a legal or beneficial interest in another entity (such as a trust or holding company) that holds such investment interest. *Passive investor* means an investor who is not an active investor, such as a limited partner in a partnership under the Uniform Partnership Act, a shareholder in a corporation, or a holder of a debt security.

(b) *Space Rental.* As used in section 1128B of the Act, "remuneration" does not include any payment made by a lessee to a lessor for the use of premises, as long as all of the following five standards are met—

(1) The lease agreement is set out in writing and signed by the parties.

(2) The lease specifies the premises covered by the lease.

(3) If the lease is intended to provide the lessee with access to the premises for periodic intervals of time, rather than on a full-time basis for the term of the lease, the lease specifies exactly the schedule of such intervals, their precise length, and the exact rent for such intervals.

(4) The term of the lease is for not less than one year.

(5) The aggregate rental charge is set in advance, is consistent with fair market value in arms-length transactions and is not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties for which payment may be made in whole or in part under Medicare or a State health care program.

For purposes of paragraph (b) of this section, the term *fair market value* means the value of the rental property for general commercial purposes, but shall not be adjusted to reflect the additional value that one party (either the prospective lessee or lessor) would attribute to the property as a result of its proximity or convenience to sources of referrals or business otherwise generated for which payment may be made in whole or in part under Medicare or a State health care program.

(c) *Equipment rental.* As used in section 1128B of the Act, "remuneration" does not include any payment made by a lessee of equipment to the lessor of the equipment for the use of the equipment, as long as all of the following five standards are met—

(1) The lease agreement is set out in writing and signed by the parties.

(2) The lease specifies the equipment covered by the lease.

(3) If the lease is intended to provide the lessee with use of the equipment for periodic intervals of time, rather than on a full-time basis for the term of the lease, the lease specifies exactly the schedule of such intervals, their precise length, and the exact rent for such interval.

(4) The term of the lease is for not less than one year.

(5) The aggregate rental charge is set in advance, is consistent with fair market value in arms-length transactions and is not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties for which payment may be made in whole or in part under Medicare or a State health care program.

For purposes of paragraph (c) of this section, the term *fair market value* means the value of the equipment when obtained from a manufacturer or professional distributor, but shall not be adjusted to reflect the additional value one party (either the prospective lessee or lessor) would attribute to the equipment as a result of its proximity or convenience to sources of referrals or business otherwise generated for which payment may be made in whole or in part under Medicare or a State health care program.

(d) *Personal services and management contracts.* As used in section 1128B of the Act, "remuneration" does not include any payment made by a principal to an agent as compensation for the services of the agent, as long as all of the following six standards are met—

(1) The agency agreement is set out in writing and signed by the parties.

(2) The agency agreement specifies the services to be provided by the agent.

(3) If the agency agreement is intended to provide for the services of the agent on a periodic, sporadic or part-time basis, rather than on a full-time basis for the term of the agreement, the agreement specifies exactly the schedule of such intervals, their precise length, and the exact charge for such intervals.

(4) The term of the agreement is for not less than one year.

(5) The aggregate compensation paid to the agent over the term of the agreement is set in advance, is consistent with fair market value in arms-length transactions and is not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties for which payment may be made in whole or in part under Medicare or a State health care program.

(6) The services performed under the agreement do not involve the counseling or promotion of a business arrangement or other activity that violates any State or Federal law.

For purposes of paragraph (d) of this section, an agent of a principal is any person, other than a bona fide employee of the principal, who has an agreement to perform services for, or on behalf of, the principal.

(e) *Sale of practice.* As used in section 1128B of the Act, "remuneration" does not include any payment made to a practitioner by another practitioner where the former practitioner is selling his or her practice to the latter practitioner, as long as both of the following two standards are met—

(1) The period from the date of the first agreement pertaining to the sale to the completion of the sale is not more than one year.

(2) The practitioner who is selling his or her practice will not be in a professional position to make referrals to, or otherwise generate business for, the purchasing practitioner for which payment may be made in whole or in part under Medicare or a State health care program after one year from the date of the first agreement pertaining to the sale.

(f) *Referral services.* As used in section 1128B of the Act, "remuneration" does not include any payment or exchange of anything of value between an individual or entity ("participant") and another entity serving as a referral service ("referral service"), as long as all of the following four standards are met—

(1) The referral service does not exclude as a participant in the referral service any individual or entity who meets the qualifications for participation.

(2) Any payment the participant makes to the referral service is assessed equally against and collected equally from all participants, and is only based on the cost of operating the referral service, and not on the volume or value of any referrals to or business otherwise generated by the participants for the referral service for which payment may be made in whole or in part under Medicare or a State health care program.

(3) The referral service imposes no requirements on the manner in which the participant provides services to a referred person, except that the referral service may require that the participant charge the person referred at the same rate as it charges other persons not referred by the referral service, or that these services be furnished free of charge or at reduced charge.

(4) The referral service makes the following five disclosures to each person seeking a referral, with each such disclosure maintained by the referral service in a written record certifying such disclosure and signed by either such person seeking a referral or by the individual making the disclosure on behalf of the referral service—

(i) The manner in which it selects the group of participants in the referral service to which it could make a referral;

(ii) Whether the participant has paid a fee to the referral service;

(iii) The manner in which it selects a particular participant from this group for that person;

(iv) The nature of the relationship between the referral service and the group of participants to whom it could make the referral; and

(v) The nature of any restrictions that would exclude such an individual or entity from continuing as a participant.

(g) *Warranties.* As used in section 1128B of the Act, "remuneration" does not include any payment or exchange of anything of value under a warranty provided by a manufacturer or supplier of an item to the buyer (such as a health care provider or beneficiary) of the item, as long as the buyer complies with all of the following standards in paragraphs (g)(1) and (g)(2) of this section and the manufacturer or supplier complies with all of the following standards in paragraphs (g)(3) and (g)(4) of this section—

(1) The buyer must fully and accurately report any price reduction of the item (including a free item), which was obtained as part of the warranty, in the applicable cost reporting mechanism or claim for payment filed with the Department or a State agency.

(2) The buyer must provide, upon request by the Secretary or a State agency, information provided by the manufacturer or supplier as specified in paragraph (g)(3) of this section.

(3) The manufacturer or supplier must comply with either of the following two standards—

(i) The manufacturer or supplier must fully and accurately report the price reduction of the item (including a free item), which was obtained as part of the warranty, on the invoice or statement submitted to the buyer, and inform the buyer of its obligations under paragraphs (a)(1) and (a)(2) of this section.

(ii) Where the amount of the price reduction is not known at the time of sale, the manufacturer or supplier must fully and accurately report the existence of a warranty on the invoice or statement, inform the buyer of its obligations under paragraphs (g)(1) and (g)(2) of this section, and, when the price reduction becomes known, provide the buyer with documentation of the calculation of the price reduction resulting from the warranty.

(4) The manufacturer or supplier must not pay any remuneration to any individual (other than a beneficiary) or entity for any medical, surgical, or hospital expense incurred by a beneficiary other than for the cost of the item itself.

For purposes of paragraph (g) of this section, the term *warranty* means either an agreement made in accordance with the provisions of 15 U.S.C. 2301(6), or a manufacturer's or supplier's agreement to replace another manufacturer's or supplier's defective item (which is covered by an agreement made in accordance with this statutory provision), on terms equal to the agreement that it replaces.

(h) *Discounts.* As used in section 1128B of the Act, "remuneration" does not include a discount, as defined in paragraph (h)(3) of this section, on a good or service received by a buyer, which submits a claim or request for payment for the good or service for which payment may be made in whole or in part under Medicare or a State health care program, from a seller as long as the buyer complies with the applicable standards of paragraph (h)(1) of this section and the seller complies with the applicable standards of paragraph (h)(2) of this section:

(1) With respect to the following three categories of buyers, the buyer must comply with all of the applicable standards within each category—

(i) If the buyer is an entity which reports its costs on a cost report required by the Department or a State agency, it must comply with all of the following four standards—

(A) the discount must be earned based on purchases of that same good or service bought within a single fiscal year of the buyer;

(B) the buyer must claim the benefit of the discount in the fiscal year in which the discount is earned or the following year;

(C) the buyer must fully and accurately report the discount in the applicable cost report; and

(D) the buyer must provide, upon request by the Secretary or a State agency, information provided by the seller as specified in paragraph (h)(2)(ii) of this section.

(ii) If the buyer is an entity which is a health maintenance organization or competitive medical plan acting in accordance with a risk contract under section 1876(g) or 1903(m) of the Act, or under another State health care program, it need not report the discount except as otherwise may be required under the risk contract.

(iii) If the buyer is not an entity described in paragraphs (h)(1)(i) or (h)(1)(ii) of this section, it must comply with all of the following three standards—

(A) the discount must be made at the time of the original sale of the good or service;

(B) where an item or service is separately claimed for payment with the Department or a State agency, the buyer must fully and accurately report the discount on that item or service; and

(C) the buyer must provide, upon request by the Secretary or a State agency, information provided by the seller as specified in paragraph (h)(2)(ii)(A) of this section.

(2) With respect to either of the following two categories of buyers, the seller must comply with all of the applicable standards within each category—

(i) If the buyer is an entity described in paragraph (h)(1)(ii) of this section, the seller need not report the discount to the buyer for purposes of this provision.

(ii) If the buyer is any other individual or entity, the seller must comply with either of the following two standards—

(A) where a discount is required to be reported to the Department or a State agency under paragraph (h)(1) of this section, the seller must fully and

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this section:

(1) With respect to the following three categories of buyers, the buyer must comply with all of the applicable standards within each category—

(i) If the buyer is an entity which reports its costs on a cost report required by the Department or a State agency, it must comply with all of the following four standards—

(A) the discount must be earned based on purchases of that same good or service bought within a single fiscal year of the buyer;

(B) the buyer must claim the benefit of the discount in the fiscal year in which the discount is earned or the following year;

(C) the buyer must fully and accurately report the discount in the applicable cost report; and

(D) the buyer must provide, upon request by the Secretary or a State agency, information provided by the seller as specified in paragraph (h)(2)(ii) of this section.

(ii) If the buyer is an entity which is a health maintenance organization or competitive medical plan acting in accordance with a risk contract under section 1876(g) or 1903(m) of the Act, or under another State health care program, it need not report the discount except as otherwise may be required under the risk contract.

(iii) If the buyer is not an entity described in paragraphs (h)(1)(i) or (h)(1)(ii) of this section, it must comply with all of the following three standards—

(A) the discount must be made at the time of the original sale of the good or service;

(B) where an item or service is separately claimed for payment with the Department or a State agency, the buyer must fully and accurately report the discount on that item or service; and

(C) the buyer must provide, upon request by the Secretary or a State agency, information provided by the seller as specified in paragraph (h)(2)(ii)(A) of this section.

(2) With respect to either of the following two categories of buyers, the seller must comply with all of the applicable standards within each category—

(i) If the buyer is an entity described in paragraph (h)(1)(ii) of this section, the seller need not report the discount to the buyer for purposes of this provision.

(ii) If the buyer is any other individual or entity, the seller must comply with either of the following two standards—

(A) where a discount is required to be reported to the Department or a State agency under paragraph (h)(1) of this section, the seller must fully and

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accurately report such discount on the invoice or statement submitted to the buyer, and inform the buyer of its obligations to report such discount; or

(B) where the value of the discount is not known at the time of sale, the seller must fully and accurately report the existence of a discount program on the invoice or statement submitted to the buyer, inform the buyer of its obligations under paragraph (h)(1) of this section and, when the value of the discount becomes known, provide the buyer with documentation of the calculation of the discount identifying the specific goods or services purchased to which the discount will be applied.

(3) For purposes of this paragraph, the term *discount* means a reduction in the amount a seller charges a buyer (who buys either directly or through a wholesaler or a group purchasing organization) for a good or service based on an arms length transaction. The term *discount* may include a rebate check, credit or coupon directly redeemable from the seller only to the extent that such reductions in price are attributable to the original good or service that was purchased or furnished. The term *discount* does not include—

(i) Cash payment;

(ii) Furnishing one good or service without charge or at a reduced charge in exchange for any agreement to buy a different good or service;

(iii) A reduction in price applicable to one payor but not to Medicare or a State health care program;

(iv) A reduction in price offered to a beneficiary (such as a routine reduction or waiver of any coinsurance or deductible amount owed by a program beneficiary);

(v) Warranties;

(vi) Services provided in accordance with a personal or management services contract; or

(vii) Other remuneration in cash or in kind not explicitly described in this paragraph.

(i) *Employees.* As used in section 1128B of the Act, "remuneration" does not include any amount paid by an employer to an employee, who has a bona fide employment relationship with the employer, for employment in the furnishing of any item or service for which payment may be made in whole or in part under Medicare or a State health care program. For purposes of paragraph (i) of this section, the term *employee* has the same meaning as it does for purposes of 26 U.S.C. 3121(d)(2):

(j) *Group purchasing organizations.* As used in section 1128B of the Act, "remuneration" does not include any payment by a vendor of goods or services to a group purchasing organization (GPO), as part of an agreement to furnish such goods or services to an individual or entity as long as both of the following two standards are met—

(1) The GPO must have a written agreement with each individual or entity, for which items or services are furnished, that provides for either of the following—

(i) The agreement states that participating vendors from which the individual or entity will purchase goods or services will pay a fee to the GPO of 3 percent or less of the purchase price of the goods or services provided by that vendor.

(ii) In the event the fee paid to the GPO is not fixed at 3 percent or less of the purchase price of the goods or services, the agreement specifies the amount (or if not known, the maximum amount) the GPO will be paid by each vendor (where such amount may be a fixed sum or a fixed percentage of the value of purchases made from the vendor by the members of the group under the contract between the vendor and the GPO).

(2) Where the entity which receives the good or service from the vendor is a health care provider of services, the GPO must disclose in writing to the entity at least annually, and to the Secretary upon request, the amount received from each vendor with respect to purchases made by or on behalf of the entity.

For purposes of paragraph (j) of this section, the term *group purchasing organization* (GPO) means an entity authorized to act as a purchasing agent for a group of individuals or entities who are furnishing services for which payment may be made in whole or in part under Medicare or a State health care program, and who are neither wholly-owned by the GPO nor subsidiaries of a parent corporation that wholly owns the GPO (either directly or through another wholly-owned entity).

(k) *Waiver of beneficiary coinsurance and deductible amounts.* As used in section 1128B of the Act, "remuneration" does not include any reduction or waiver of a Medicare or a State health care program beneficiary's obligation to pay coinsurance or deductible amounts as long as all of the standards are met within either of the following two categories of health care providers:

(1) If the coinsurance or deductible amounts are owed to a hospital for inpatient hospital services for which Medicare pays under the prospective payment system, the hospital must comply with all of the following three standards—

(i) The hospital must not later claim the amount reduced or waived as a bad debt for payment purposes under Medicare or otherwise shift the burden of the reduction or waiver onto Medicare, a State health care program, other payers, or individuals.

(ii) The hospital must offer to reduce or waive the coinsurance or deductible amounts without regard to the reason for admission, the length of stay of the beneficiary, or the diagnostic related group for which the claim for Medicare reimbursement is filed.

(iii) The hospital's offer to reduce or waive the coinsurance or deductible amounts must not be made as part of a price reduction agreement between a hospital and a third-party payor.

(2) If the coinsurance or deductible amounts are owed by an individual who qualifies for subsidized services under a provision of the Public Health Services Act or under titles V or XIX of the Act to a federally qualified health care center or other health care facility under any Public Health Services Act grant program or under title V of the Act, the health care center or facility may reduce or waive the coinsurance or deductible amounts for items or services for which payment may be made in whole or in part under part B of Medicare or a State health care program.

§ 1001.953 OIG report on compliance with investment interest safe harbor.

Within 180 days of the effective date of this subpart, the OIG will report to the Secretary on the compliance with §§ 1001.952(a)(2)(i) and 1001.952(a)(2)(vi).

Dated: July 19, 1991.

R.P. Kusserow,

Inspector General, Department of Health and Human Services.

Approved: July 22, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91-17891 Filed 7-26-91; 8:45 am]

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federal register

Monday
July 29, 1991

Part IV

The President

Proclamation 6318—National Juvenile Arthritis Awareness Week, 1991

Executive Order 12771—Revoking Earlier Orders With Respect to Kuwait

Notice of July 26—Continuation of Iraqi Emergency

Federal Register
Vol. 56, No. 145
Monday, July 29, 1991

Title 3—

The President

[FR Doc. 91-18078
Filed 7-26-91; 10:40 am]
Billing code 3195-01-M

Federal Register
Vol. 56, No. 145
Monday, July 29, 1991

Presidential Documents

Title 3—

The President

Proclamation 6318 of July 25, 1991

National Juvenile Arthritis Awareness Week, 1991

By the President of the United States of America

A Proclamation

It is estimated that more than 250,000 children in the United States suffer from some form of arthritis. A chronic inflammatory disease of unknown cause, juvenile arthritis may attack the joints and major organs of the body, such as the heart, liver, spleen, and eyes. The disease, which can last a lifetime, often makes even simple tasks difficult and frustrating for its victims.

In addition to the physical pain and limitations that it imposes on its young victims, juvenile arthritis can inflict emotional and financial hardship on entire families. This week, as our Nation reaffirms its commitment to the fight against juvenile arthritis, we commend the courage of the children who cope with the disease from day to day. We also applaud the strength and the resourcefulness of their families in dealing with the disease.

Public awareness of juvenile arthritis and the importance of related scientific research is critical. Today the Federal Government and private voluntary organizations across the country are working together to educate Americans about juvenile arthritis while advancing studies of the disease. These cooperative efforts are evidence of our Nation's determination to conquer juvenile arthritis.

The Congress, by Senate Joint Resolution 142, has designated the week beginning July 28, 1991, as "National Juvenile Arthritis Awareness Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week beginning July 28, 1991, as National Juvenile Arthritis Awareness Week. I urge all Americans—and, in particular, government agencies and health care organizations—to observe this week with appropriate programs and activities designed to promote public awareness of juvenile arthritis.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of July, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and sixteenth.

George Bush

[FR Doc. 91–18078
Filed 7–26–91; 10:40 am]
Billing code 3195–01–M

[FR Doc. 91-18079
Filed 7-26-91; 10:41 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12771 of July 25, 1991

Revoking Earlier Orders With Respect to Kuwait

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), section 301 of title 3 of the United States Code, and the United Nations Participation Act (22 U.S.C. 287c),

I, GEORGE BUSH, President of the United States of America, find that the expulsion from Kuwait of Iraq's occupation forces, the restoration of Kuwait to its citizens, and the reinstatement of the lawful Government of Kuwait eliminate the need for Executive Order No. 12723 of August 2, 1990, entitled "Blocking Kuwaiti Government Property," and Executive Order No. 12725 of August 9, 1990, entitled "Blocking Kuwaiti Government Property and Prohibiting Transactions With Kuwait." Those orders were issued to protect the assets of the Government of Kuwait which were subject to United States jurisdiction, and to prevent the transfer of benefits by United States persons to Iraq based upon its invasion of Kuwait. Those orders also implemented the foreign policy and protected the national security of the United States, in conformity with applicable resolutions of the United Nations Security Council. Finding continuation of these orders unnecessary, I hereby order:

Section 1. Executive Order No. 12723 and Executive Order No. 12725 are hereby revoked. This revocation shall not affect the national emergency declared in Executive Order No. 12722 to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States posed by the policies and action of the Government of Iraq.

Sec. 2. This revocation shall not affect:

(a) any action taken or proceeding pending and not finally concluded or determined on the effective date of this order;

(b) any action or proceeding based on any act committed prior to the effective date of this order; or

(c) any rights or duties that matured or penalties that were incurred prior to the effective date of this order.

Sec. 3. This order shall take effect immediately.

G Bush

THE WHITE HOUSE,
July 25, 1991.

[FR Doc. 91–18079
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NOTICE

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CONTINUATION OF IRAQI EMERGENCY

On August 2, 1990, by Executive Order No. 12722, I declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of the Government of Iraq. By Executive Orders Nos. 12722 of August 2 and 12724 of August 9, 1990, I imposed trade sanctions on Iraq and blocked Iraqi government assets. Similar sanctions were imposed against occupied Kuwait by Executive Orders Nos. 12723 and 12725 of August 2 and August 9, 1990, respectively, which were terminated by Executive Order No. 12771 of July 25, 1991. Because the Government of Iraq has continued its activities hostile to U.S. interests in the Middle East, the national emergency declared on August 2, 1990, and the measures adopted on August 2 and August 9, 1990, to deal with that emergency must continue in effect beyond August 2, 1991. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Iraq.

This notice shall be published in the Federal Register and transmitted to the Congress.

THE WHITE HOUSE,

July 26, 1991.

[FR Doc. 91-18145
Filed 7-25-91; 2:09 pm]
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H.J. Res. 255/Pub. L. 102-72

Designating the week beginning July 21, 1991, as the "Korean War Veterans Remembrance Week". (July 23, 1991; 105 Stat. 331; 2 pages) Price: $1.00

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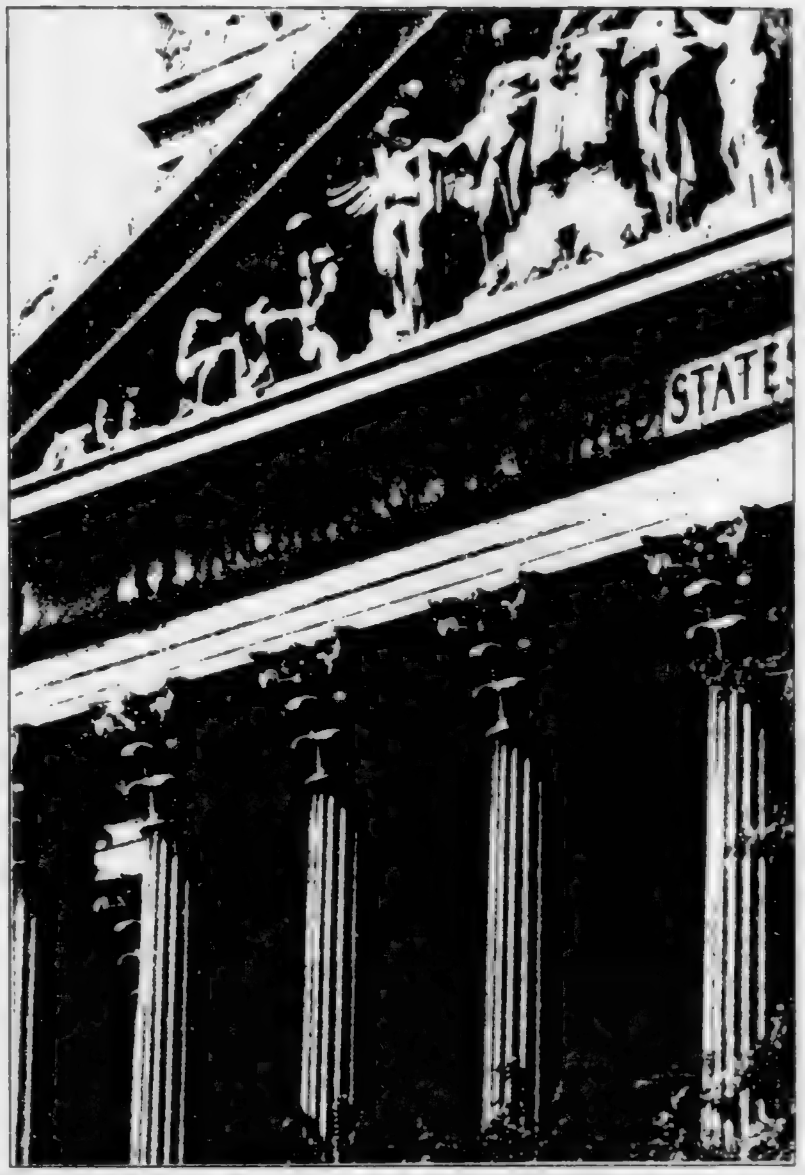

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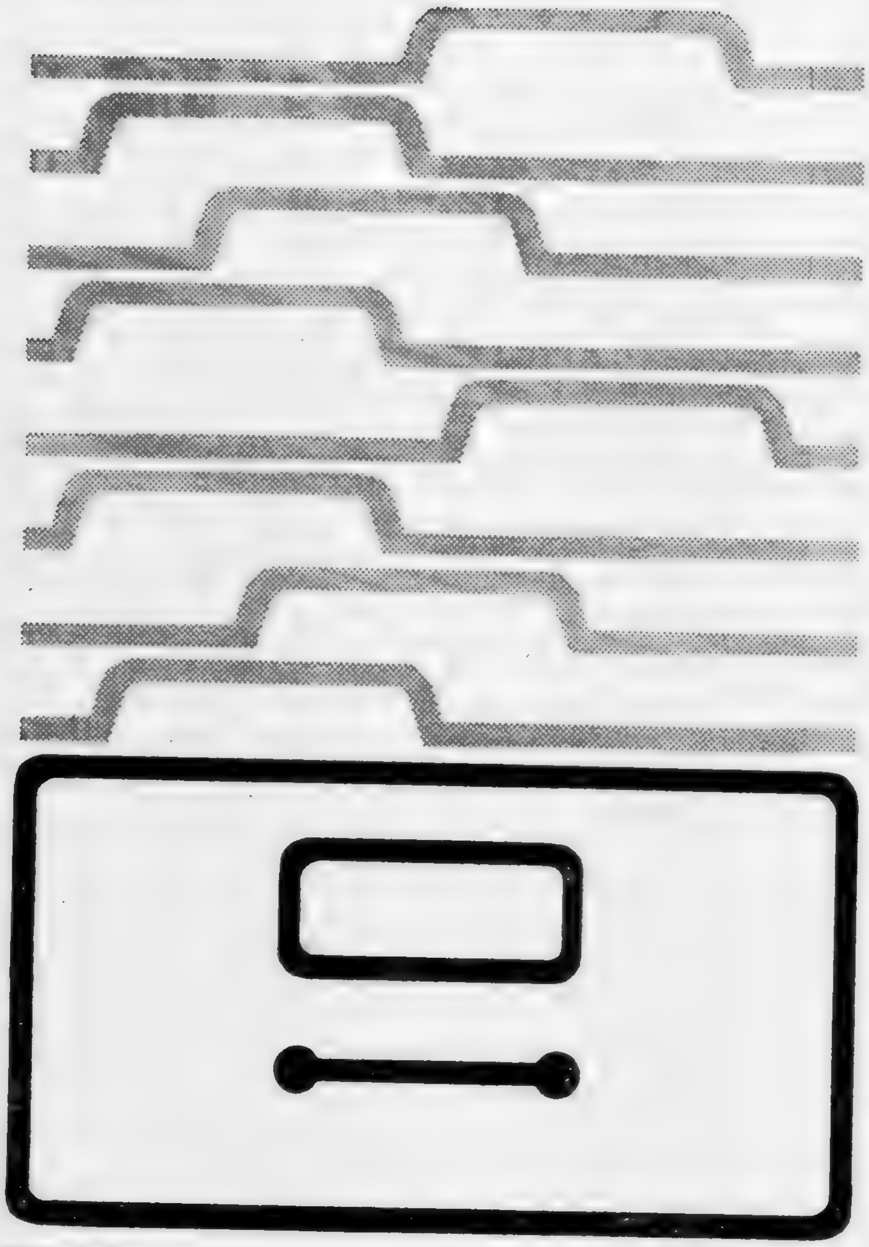

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Rules and Regulations

Federal Register

Vol. 56, No. 146

Tuesday, July 30, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[FV-91-265 FR]

Cranberries Grown in States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Suspension of a Provision Regarding the Month in Which To Conduct a Continuance Referendum Under the Cranberry Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service is adopting, without modification, as a final rule the provisions of a temporary suspension of an order provision which required a continuance referendum to be conducted on the marketing order for cranberries grown in 10 States during the month of May 1991. (56 FR 21444, May 9, 1991). The order currently specifies that a continuance referendum should be conducted every four years in the month of May, commencing in 1975. The suspension of the continuance referendum date allows the U.S. Department of Agriculture (Department) to delay conducting a continuance referendum until 1992, as recommended by the Cranberry Marketing Committee (Committee). The Committee is responsible for local administration of the marketing order.

DATES: The partial suspension of § 929.68 published on May 9, 1991 was in effect from May 9, 1991 through May 31, 1991.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525–5, P.O. Box 96456, Washington, DC 20090–6456 telephone: (202) 475–3920.

SUPPLEMENTARY INFORMATION: This suspension is issued under Marketing Order No. 929 (7 CFR part 929), as amended, regulating the handling of cranberries grown in 10 states. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 30 handlers of cranberries subject to regulation under the cranberry marketing order and approximately 950 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of cranberries may be classified as small entities.

This action finalizes the May 9, 1991 (56 FR 21444) suspension of the provision in the order which specified the month in which a continuance referendum should be conducted to determine if producers favor the continuance of the cranberry marketing order. That date is specified in § 929.68(d) of the order. The suspension was unanimously recommended by the Committee at its March 6, 1991, meeting.

Section 929.68(d) of the order provided that the Secretary shall conduct a referendum during the month of May 1975 to ascertain whether continuance of this part is favored by the producers, and that the Secretary shall conduct such a referendum during the month of May of every fourth year thereafter. A continuance referendum was therefore scheduled to be conducted in May 1991.

In August 1989, the Committee recommended several amendments to the marketing order. The Administrator issued a Recommended Decision (January 18, 1991, 56 FR 1938) on these amendments. Exceptions to the Recommended Decision were due on March 15, 1991. Under the applicable rules of practice (7 CFR part 900), the next step in the amendment process is for the Secretary to consider the record including any exceptions to the Recommended Decision and then issue a Secretary's Decision and, if warranted, a Referendum Order. Without this suspension, it was possible that any referendum on the order amendments would coincide with or closely follow a continuance referendum.

Therefore, the provisions regarding the May 1991 continuance referendum were temporarily suspended from May 9, 1991, through May 31, 1991, in order to allow the Department to complete the amendatory proceeding prior to conducting a continuance referendum. Although the suspension postpones the next continuance referendum for the cranberry marketing order until May 1995, as provided in § 929.68(d), the Committee also recommended that the Secretary conduct a continuance referendum prior to May 1992. We expect that such continuance referendum would be conducted sometime between January 1992 and May 1992, following the cranberry harvest.

This action will not have a significant economic impact on small producers or handlers. The temporary suspension of the order provision allows the Secretary to conduct a continuance referendum later than the May 1991 date specified in the order. Thus, there is no significant economic impact anticipated.

No comments were received on the temporary suspension during the comment period which ended on May 24, 1991.

Based on available information, the Administrator of the AMS has determined that the issuance of this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all available information, it is found that the second sentence in § 929.68(d), does not tend to effectuate the declared policy of the Act for the period specified herein and should be temporarily suspended for that period.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because this final rule is an adoption, without modification, of a temporary suspension of an order provision which was suspended from May 9 through May 31, 1991.

List of Subjects in 7 CFR Part 29

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 929 is amended as follows:

PART 929—CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

1. The authority citation for 7 CFR part 929 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended: 7 U.S.C. 601–674.

2. Accordingly, the temporary suspension of the order provision in § 929.68(d), from May 9, 1991 through May 31, 1991, which was published at 56 FR 21444 on May 9, 1991, is adopted as a final rule without change.

Dated: July 17, 1991.

JoAnn R. Smith,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 91–17566 Filed 7–29–91; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

RIN 0960–AC83

Full-Time Attendance by Elementary or Secondary School Student

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: We are amending our rule on full-time attendance by an elementary or secondary school student to provide that, in some situations, we may determine that scheduled attendance of fewer than 20 hours per week will be considered full-time attendance for purposes of entitlement to child's insurance benefits. We believe that this amendment will enable us to fulfill more equitably the intent of Congress in providing these benefits.

EFFECTIVE DATE: This rule is effective July 30, 1991.

FOR FURTHER INFORMATION CONTACT: Jack Schanberger, Legal Assistant, 3–B–l Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–8471.

SUPPLEMENTARY INFORMATION: With several exceptions, child's insurance benefits under the Social Security Act (the Act) usually terminate when the child attains age 18. One exception allows benefits for persons under age 19 who are full-time elementary or secondary school students.

Section 202(d)(7)(A) of the Act, 42 U.S.C. 402(d)(7)(A) provides that a full-time elementary or secondary school student is an individual who is in full-time attendance as a student at an elementary or secondary school, as determined by the Secretary of Health and Human Services, in accordance with regulations prescribed by him, in the light of the standards and practices of the schools involved.

Our regulation requires that an elementary or secondary school student must be scheduled to attend school at least 20 hours per week to be considered a full-time student. Our experience has shown that this is generally a reasonable standard. However, we are aware that there are some unique situations in which students are enrolled for full-time attendance under the school's standards and practices but, because of special circumstances, the students are unable to schedule attendance of at least 20 hours per week.

For example, in the case of *Haberman* v. *Finch*, 418 F. 2d 664 (2d Cir. 1969), a claimant had been forced to discontinue her schooling at age 14 because of a serious illness. When she was able to resume school at age 17, she applied for admission to the public and private schools where she lived, and was told by school authorities that she was too old to enroll as a full-time high school day student. The only program available to her was an evening high school program at a fully accredited private school that enabled her to take 16½ hours of class per week: This scheduled attendance was considered to be the equivalent of full-time day instruction. The court held that where a child takes the maximum number of hours available in the only accredited school program available to the child and meets the other conditions for entitlement to child's benefits, there should be little question of the child's right to receive benefits under a limited exception to the 20-hour rule.

For the above reasons, we are amending § 404.367(b) to provide for exceptions to the 20-hour rule where the student is considered to be full-time for day students under the school's standards and practices and either the school does not schedule at least 20 hours per week for the child and attending that school is the student's only reasonable alternative, or the student's medical condition prevents him or her from scheduled attendance of at least 20 hours per week. We believe that this modification to our rules is consistent with the intent of Congress that child's insurance benefits be paid to full-time elementary or secondary school students under age 19 who have suffered a loss of parental support. Our experience has shown that 20 hours per week is a reasonable attendance standard for most students, but that there is a need to provide for exceptional situations, such as the one presented in Haberman, where students are prevented by reasons beyond their control from enrolling in a program that provides for attendance of at least 20 hours per week.

Discussion of Comments

On September 6, 1990, a proposed rule was published in the **Federal Register** at 55 FR 36656 with a 60-day comment period. We received comments from one individual. The commenter believes that the school's statement that a student is prevented from enrolling for at least 20 hours per week should be sufficient cause to grant an exception. Paragraph (b)(2) of this final regulation § 404.367 provides that we may request medical

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For example, in the case of *Haberman* v. *Finch*, 418 F. 2d 664 (2d Cir. 1969), a claimant had been forced to discontinue her schooling at age 14 because of a serious illness. When she was able to resume school at age 17, she applied for admission to the public and private schools where she lived, and was told by school authorities that she was too old to enroll as a full-time high school day student. The only program available to her was an evening high school program at a fully accredited private school that enabled her to take 16½ hours of class per week: This scheduled attendance was considered to be the equivalent of full-time day instruction. The court held that where a child takes the maximum number of hours available in the only accredited school program available to the child and meets the other conditions for entitlement to child's benefits, there should be little question of the child's right to receive benefits under a limited exception to the 20-hour rule.

For the above reasons, we are amending § 404.367(b) to provide for exceptions to the 20-hour rule where the student is considered to be full-time for day students under the school's standards and practices and either the school does not schedule at least 20 hours per week for the child and attending that school is the student's only reasonable alternative, or the student's medical condition prevents him or her from scheduled attendance of at least 20 hours per week. We believe that this modification to our rules is consistent with the intent of Congress that child's insurance benefits be paid to full-time elementary or secondary school students under age 19 who have suffered a loss of parental support. Our experience has shown that 20 hours per week is a reasonable attendance standard for most students, but that there is a need to provide for exceptional situations, such as the one presented in Haberman, where students are prevented by reasons beyond their control from enrolling in a program that provides for attendance of at least 20 hours per week.

Discussion of Comments

On September 6, 1990, a proposed rule was published in the **Federal Register** at 55 FR 36656 with a 60-day comment period. We received comments from one individual. The commenter believes that the school's statement that a student is prevented from enrolling for at least 20 hours per week should be sufficient cause to grant an exception. Paragraph (b)(2) of this final regulation § 404.367 provides that we may request medical

evidence or a statement from the school. In many cases, we may find that the statement from the school is sufficient evidence to support a determination that the exception has been met. In order to ensure that benefits under the Act are paid properly, however, we believe that we must reserve the right to seek additional evidence, and possibly to reject the statement from the school, when appropriate. Accordingly, we have not changed the final rule.

The commenter also suggests that we amend our regulation to provide that benefits may be paid to a high school student who is no older than 20 years old. However, the age at which child's insurance benefits payable to a full-time elementary or secondary school student must cease is prescribed by statute in sections 202(d)(1) and 202(d)(7)(D) of the Act, as reflected in § 404.352(b)(1) of our regulation. Although there are limited circumstances in which a student may continue to receive benefits for a few months after he or she attains age 19, the statute does not permit the extension suggested by the commenter. For the reasons stated above, we have not revised the proposed rule based on the comments.

We have, however, replaced the reference to an "illness" in § 404.367(b)(2) with a reference to a "medical condition" because we believe that this broader reference more clearly expresses our policy.

Regulatory Procedures

Executive Order No. 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because the small number of cases involved will result in negligible program and administrative costs. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities since this rule affects only the entitlement of individuals to monthly benefits. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

This final rule imposes no additional reporting and recordkeeping requirements subject to Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance Program Nos. 93.803 Social Security—Retirement Insurance; 93.805 Social Security—Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure; Death benefits; Disability benefits; Old-Age, Survivors, and Disability Insurance.

Dated: May 8, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: June 28, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set out in the preamble, Subpart D of part 404 of 20 CFR chapter III is amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE (1950–)

1. The authority citation for subpart D continues to read as follows:

Authority: Secs. 202, 203 (a) and (b), 205(a), 216, 223, 228(a)–(e), and 1102 of the Social Security Act; 42 U.S.C. 402, 403 (a) and (b), 405(a), 416, 423, 428(a)–(e), and 1302.

2. Section 404.367 is amended by revising the introductory text and paragraph (b) to read as follows:

§ 404.367 When you are a "full-time elementary or secondary school student."

Beginning August 1982, you may be eligible for child's benefits if you are a full-time elementary or secondary school student. For the purposes of determining whether the conditions of entitlement are met throughout the first month as stated in § 404.352(a)(2)(i), if you are entitled as a student on the basis of attendance at an elementary or secondary school, you will be considered to be in full-time attendance for a month during any part of which you are in full-time attendance. You are a full-time elementary or secondary school student if you meet all the following conditions:

* * * * *

(b) You are in full-time attendance in a day or evening noncorrespondence course of at least 13 weeks duration and are carrying a subject load which is considered full-time for day students under the institution's standards and practices. Additionally, your scheduled attendance must be at the rate of at least 20 hours per week unless we find that:

(1) The school attended does not schedule at least 20 hours per week and going to that particular school is your only reasonable alternative; or

(2) Your medical condition prevents you from having scheduled attendance of at least 20 hours per week. To prove that your medical condition prevents you from scheduling 20 hours per week, we may request that you provide appropriate medical evidence or a statement from the school.

* * * * *

[FR Doc. 91–17963 Filed 7–29–91; 8:45 am]

BILLING CODE 4190-29-M

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20 CFR Part 416

[Regulations No. 16]

RIN 0960–AC52

Supplemental Security Income for the Aged, Blind, and Disabled; Death Benefits Spent on Last Illness and Burial

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: The regulations are being amended to include the provisions of section 9120 of Public Law 100–203 (the Omnibus Budget Reconciliation Act of 1987) enacted December 22, 1987. Section 9120, which became effective April 1, 1988, amended section 1612(a)(2)(D) and (E) of the Social Security Act (the Act) to provide that payments to an individual (including gifts and inheritances) occasioned by the death of another person will not be considered income for supplemental security income (SSI) purposes to the individual receiving them to the extent that they are used to pay for the deceased person's last illness and burial. In addition, the final rule provides that death benefits to be spent on a last illness and burial, if not yet spent by the first of the month following the month of receipt, will not be considered as resources of the individual receiving them for 1 calendar month after the month of receipt. The purpose of this change in the regulations is to allow a reasonable time for the death benefits to be used for payment of debts accruing from the deceased person's last illness and burial before those death benefits affect the SSI eligibility of the individual who received them.

EFFECTIVE DATE: July 30, 1991.

FOR FURTHER INFORMATION CONTACT: Duane Heaton, Legal Assistant, 3–B–I Operations Building, 6401 Security Blvd., Baltimore, MD 21235, (301) 965–8470.

SUPPLEMENTARY INFORMATION: Under the law prior to the enactment of Public Law 100–203 (the Omnibus Budget Reconciliation Act of 1987), when an individual received payments as a beneficiary of a life insurance policy, the payments were counted as income for SSI purposes except for any amount up to $1,500 that the individual spent for the insured's last illness and burial expenses. Illness and burial expenses include related hospital and medical expenses, funeral, burial plot and interment expenses, and other related costs.

Section 9120 of Public Law 100–203 removed the $1,500 limit on the amount of the proceeds of a life insurance policy that would not be treated as income if spent on the last illness and burial of the deceased and also removed from consideration as income for SSI purposes other payments occasioned by the death of a person, including gifts and inheritances, which are spent on the deceased person's last illness and burial. Sections 416.1121 (e) and (g) of the regulations are revised to reflect these statutory changes. Section 9120, however, made no change regarding the treatment of these funds as resources for SSI purposes. Under current policy and regulations, death benefits retained until the month following the month of receipt are considered countable resources.

Recognizing that the recipient of death benefits who uses all or part of those benefits to pay the expenses of the deceased person's last illness and burial may not always be able to do so in the same month in which he or she receives them, the final rule at § 416.1201(a)(4) also would make a change in current policy regarding treatment of these funds as resources. In order to allow a reasonable time for payment of the expenses of the deceased person's last illness and burial before the death benefits affect the SSI eligibility of the recipient, these final regulations provide that death benefits to be spent on outstanding debts resulting from the last illness and burial will not be considered resources of the individual receiving them for the calendar month after the month of receipt.

We believe that such a change in the resources rule is consistent with, and will help effectuate, the legislative intent underlying section 9120 of Public Law 100–203. That intent was to prevent a reduction or cessation of SSI benefits on account of receipt of death benefits not intended to assist the recipient in meeting needs of food, clothing, or shelter where these benefits are used to pay the expenses of the deceased's last illness and burial. The 1-month grace period will enable the recipient to use these benefits to meet burial expenses without suffering the loss of SSI benefits and thus will effectuate this intent. We are promulgating this change based on the Secretary's general rulemaking authority conferred by sections 1102 and 1631(d)(1) of the Act.

Public comment

A notice of proposed rulemaking (NPRM) was published on April 30, 1990, at 55 FR 17999. A 60-day comment period was provided. The comment period ended June 29, 1990. We received one comment. The comment was from an individual who generally supported the NPRM. We have summarized and responded to the individual's comment below.

Comment

The commenter suggested that since many vendors, such as medical, funeral, and burial service providers, are slow in billing, the regulations should provide, in the case of an estate, that SSA will wait until the time for the filing of creditor's claims against the estate has expired, as determined under the State law, before counting for SSI purposes any portion of the death benefits.

Response

We understand that there may be cases where the billing for services is slow. However, this does not preclude the individual from requesting a bill from the service provider. In the event the funeral service provider is unknown, this information may be obtained from the family members of the decedent, the person administering the decedent's estate, or from the obituaries in the local newspaper. The attending physician can provide information as to the hospitals involved and the medical services that he or she authorized.

As indicated elsewhere in this preamble, we have provided a reasonable amount of time, not less than 28 days or more than 61 days depending on when the benefits were received, for payment of these expenses before we count the benefits received which were occasioned by the death of another person as a resource. We believe that this time period is sufficient for payment of these expenses without creating hardship on the part of the SSI recipient and, at the same time, is administratively efficient. Therefore, we are rejecting the change suggested.

We are adopting these regulations as proposed.

Regulatory Procedures

Executive Order No. 12291

The Secretary has determined that this is not a major rule under Executive Order 12291, because the program and administrative costs will be insignificant and savings are estimated at less than $1 million a year. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these final regulations will not have a significant impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act of 1980

These final regulations impose no reporting and recordkeeping requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.807, Supplemental Security Income Program)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income.

Dated: May 8, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: June 12, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set out in the preamble, part 416 of title 20 of the Code of Federal Regulations is amended as follows:

1. The authority citation for subpart K of part 416 is revised to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, l382b, l382c(f) , l382j, and 1383; sec. 211 of Pub. L. 93–66, 87 Stat. 154; sec. 2639 of Pub. L. 98–369; 98 Stat. 1144.

2. In § 416.1121, paragraphs (e) and (g) are revised to read as follows:

§ 416.1121 Types of unearned income.

* * * * *

(e) *Death benefits.* We count payments you get which were occasioned by the death of another person except for the amount of such payments that you spend on the deceased person's last illness and burial expenses. Last illness and burial expenses include related hospital and medical expenses, funeral, burial plot and interment expenses, and other related costs.

Example: If you receive $2,000 from your uncle's life insurance policy and you spend $900 on his last illness and burial expenses, the balance, $1,100, is unearned income. If you spend the entire $2,000 for the last illness and burial, there is no unearned income.

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We certify that these final regulations will not have a significant impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act of 1980

These final regulations impose no reporting and recordkeeping requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.807, Supplemental Security Income Program)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income.

Dated: May 8, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: June 12, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set out in the preamble, part 416 of title 20 of the Code of Federal Regulations is amended as follows:

1. The authority citation for subpart K of part 416 is revised to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, l382b, l382c(f) , l382j, and 1383; sec. 211 of Pub. L. 93–66, 87 Stat. 154; sec. 2639 of Pub. L. 98–369; 98 Stat. 1144.

2. In § 416.1121, paragraphs (e) and (g) are revised to read as follows:

§ 416.1121 Types of unearned income.

* * * * *

(e) *Death benefits.* We count payments you get which were occasioned by the death of another person except for the amount of such payments that you spend on the deceased person's last illness and burial expenses. Last illness and burial expenses include related hospital and medical expenses, funeral, burial plot and interment expenses, and other related costs.

Example: If you receive $2,000 from your uncle's life insurance policy and you spend $900 on his last illness and burial expenses, the balance, $1,100, is unearned income. If you spend the entire $2,000 for the last illness and burial, there is no unearned income.

* * * * *

(g) *Gifts and inheritances.* A gift is something you receive which is not repayment to you for goods or services you provided and which is not given to you because of a legal obligation on the giver's part. An inheritance is something that comes to you as a result of someone's death. It can be in cash or in kind, including any right in real or personal property. Gifts and inheritances occasioned by the death of another person, to the extent that they are used to pay the expenses of the deceased's last illness and burial, as defined in paragraph (e) of this section, are not considered income.

* * * * *

3. The authority citation for subpart L of part 416 is revised to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), l382j, and 1383; sec. 211 of Pub. L. 93–66; 87 Stat. 154.

4. In § 416.1201(a), paragraph (a)(4) is added to read as follows:

§ 416.1201 Resources; general.

(a) *Resources; defined.* * * *

* * * * *

(4) Death benefits, including gifts and inheritances, received by an individual, to the extent that they are not income in accordance with paragraphs (e) and (g) of § 416.1121 because they are to be spent on costs resulting from the last illness and burial of the deceased, are not resources for the calendar month following the month of receipt. However, such death benefits retained until the first moment of the second calendar month following their receipt are resources at that time.

* * * * *

[FR Doc. 91–17964 Filed 7–29–91; 8:45 am]

BILLING CODE 4190-29-M

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Office of the Commissioner

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority relating to general redelegations of authority from the Commissioner of Food and Drugs to other officers of the Food and Drug Administration to redelegate to the Deputy Commissioner for Policy the authority to approve notices and regulations. This action is being taken to reflect an organizational change in the Office of the Commissioner. This action is an interim measure that may be supplemented in the future by additional or revised delegations. This action does not affect previous delegations to FDA's center directors or other officials to issue specific types of regulations or notices.

EFFECTIVE DATE: July 30, 1991.

FOR FURTHER INFORMATION CONTACT: Ellen Rawlings, Division of Management Systems and Policy (HFA–300), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

SUPPLEMENTARY INFORMATION: FDA is amending the delegations of authority under § 5.20 *General redelegations of authority from the Commissioner to other officers of the Food and Drug Administration* (21 CFR 5.20) to redelegate to the Deputy Commissioner for Policy the authority to approve notices and regulations. This redelegation reflects an organizational change in the Office of the Commissioner.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–393); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 354–360F, 361, 362, 1701–1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 2421, 242n, 243, 262, 263, 263b–263n, 264, 265, 300u–300u–5, 300aa–1); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591.

2. Section 5.20 is amended by redesignating paragraph (e) as paragraph (f) and by adding a new paragraph (e) to read as follows:

§ 5.20 General redelegations of authority from the Commissioner to other officers of the Food and Drug Administration.

* * * * *

(e)(1) The Deputy Commissioner for Policy is authorized to perform any of the functions of the Commissioner of Food and Drugs with respect to the issuance of **Federal Register** notices and proposed and final regulations of the Food and Drug Administration.

(2) The Deputy Commissioner for Policy is authorized to issue responses to the following matters under part 10 of this chapter as follows:

(i) Requests for waiver, suspension, or modification of procedural requirements under § 10.19;

(ii) Citizen petitions under § 10.30;

(iii) Petitions for reconsideration under § 10.33;

(iv) Petitions for stay under § 10.35; or

(v) Requests for advisory opinions under § 10.85.

(3) With respect to any matter delegated to the Deputy Commissioner for Policy under this paragraph, the Deputy Commissioner for Policy is authorized to perform the functions of the Commissioner under §§ 10.40, 10.45, 10.50, 10.55, 10.60, 10.65, 10.80, 10.90, and 10.95 and of the Deputy Commissioner under § 10.206 (g) and (h) of this chapter.

* * * * *

Dated: July 25, 1991.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 91–18141 Filed 7–29–91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 880 and 881

[Docket No. R–91–1544; FR–2950–F–01]

RIN 2502–AF31

Section 8 Housing Assistance Payments Program for New Construction and Substantial Rehabilitation—Fair Market Rents, Redelegation of Authority to Regional Administrators

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule redelegates to Regional Administrators the authority to approve gross rents which exceed the published Fair Market Rents (FMRs) by up to 20 percent. This redelegation of authority to the Regional Administrator will reduce the number of routine rent prerogative reviews and approvals at the Headquarters level.

EFFECTIVE DATE: August 29, 1991.

FOR FURTHER INFORMATION CONTACT: Linda Cheatham, Acting Director, Office of Insured Multifamily Housing Development, Department of Housing and Urban Development, room 6134, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 708–3000. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This rule amends 24 CFR parts 880 and 881 to redelegate to the Regional Administrator the authority to approve gross rents which exceed published Fair Market Rents (FMRs) by up to 20 percent. Before promulgation of this redelegation, this authority was reserved to the Assistant Secretary for Housing. This redelegation of authority to the Regional Administrator will reduce the number of routine rent prerogative reviews and approvals at the Headquarters level.

In compliance with 24 CFR 10.1, the Department has determined that notice and public procedure may be omitted in the promulgation of this final rule. Inasmuch as this rule governs the Department's internal procedure for approvals of gross rents which exceed the published Fair Market Rents (FMRs) by up to 20 percent, notice and public procedure are unnecessary.

Other Matters

Environmental Review

HUD regulations in 24 CFR part 50, implementing section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities, and programs specified in 50.20. Since the redelegation of authority set forth in this notice and the statutorily required establishment of a fair market rent ceiling are within the exclusions set forth in 24 CFR 50.20(k) and 50.20(l), respectively, no environmental assessment is required, and no environmental finding has been prepared.

Executive Order 12291

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued on February 17, 1981. An analysis of the rule indicates that it will not: (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact in a substantial number of small entities, because it merely effects a redelegation of authority.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule does not have "federalism implications" because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being.

Semiannual Agenda of Regulations

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 22, 1991 (56 FR 17360) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 880

Grant programs—housing and community development, Rent subsidies, Reporting and record keeping requirements.

24 CFR Part 881

Grant programs—housing and community development, Rent subsidies, Reporting and record keeping requirements.

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

1. The authority citation for part 880 continues to read as follows:

Authority: Secs. 3, 5, and 8, U.S. Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Paragraph (b)(1)(i)(B) of § 880.204 is revised to read as follows:

§ 880.204 Limitations on contract rents, replacement costs and amenities.

* * * * *

(b)(1) * * *
(i) * * *
(B) Except in the case of the rental of a manufactured home space only, by up to 20 percent with the approval of the Regional Administrator.

* * * * *

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

3. The authority for part 881 continues to read as follows:

Authority: Secs. 3, 5, and 8, U.S. Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

4. Paragraph (b)(1)(i)(B) of § 881.204 is revised to read as follows:

§ 881.204 Limitations on contract rents, replacement costs and amenities.

* * * * *

(b)(1) * * *
(i) * * *
(B) Except in the case of the rental of a manufactured home space only, by up to 20 percent with the approval of the Regional Administrator.

* * * * *

Dated: July 3, 1991.

Arthur J. Hill,
Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 91–17972 Filed 7–29–91; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 266

[DoD Directive 7600.10]

Audits of State and Local Governments, Institutions of Higher Education, and Other Nonprofit Institutions

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This rule revises 32 CFR part 266 to reflect the inclusion of audits of institutions of higher education and other nonprofit institutions that receive

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Authority: Secs. 3, 5, and 8, U.S. Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Paragraph (b)(1)(i)(B) of § 880.204 is revised to read as follows:

§ 880.204 Limitations on contract rents, replacement costs and amenities.

* * * * *

(b)(1) * * *

(i) * * *

(B) Except in the case of the rental of a manufactured home space only, by up to 20 percent with the approval of the Regional Administrator.

* * * * *

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

3. The authority for part 881 continues to read as follows:

Authority: Secs. 3, 5, and 8, U.S. Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

4. Paragraph (b)(1)(i)(B) of § 881.204 is revised to read as follows:

§ 881.204 Limitations on contract rents, replacement costs and amenities.

* * * * *

(b)(1) * * *

(i) * * *

(B) Except in the case of the rental of a manufactured home space only, by up to 20 percent with the approval of the Regional Administrator.

* * * * *

Dated: July 3, 1991.

Arthur J. Hill,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 91–17972 Filed 7–29–91; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 266

[DoD Directive 7600.10]

Audits of State and Local Governments, Institutions of Higher Education, and Other Nonprofit Institutions

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This rule revises 32 CFR part 266 to reflect the inclusion of audits of institutions of higher education and other nonprofit institutions that receive Federal financial assistance. This revision is necessary to reflect the requirements of Office of Management and Budget Circular A–133, "Audits of Institutions of Higher Education and Other Nonprofit Institutions," March 16, 1990.

DATES: *Effective date:* June 19, 1991.

Comment date: Comments may be received by August 29, 1991.

ADDRESSES: Forward comments to: Office of Assistant Inspector General for Audit Policy and Oversight, Office of Inspector General, Department of Defense, 400 Army Navy Drive, room 1076, Arlington, VA 22202–2884.

FOR FURTHER INFORMATION CONTACT: Mr. Michael R. Hill, (703) 693–0003.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 266

Accounting, Grant programs, Indians, Intergovernmental relations.

Accordingly, 32 CFR part 266 is revised to read as follows:

PART 266—AUDITS OF STATE AND LOCAL GOVERNMENTS, INSTITUTIONS OF HIGHER EDUCATION, AND OTHER NONPROFIT INSTITUTIONS

Sec.
266.1 Purpose.
266.2 Applicability.
266.3 Definitions.
266.4 Policy.
266.5 Responsibilities.
266.6 Procedures.

Authority: 10 U.S.C. 140.

§ 266.1 Purpose.

This part:

(a) Updates policy, responsibilities, and procedures.

(b) Implements Public Law 98–502 (31 U.S.C. 7501–7507 and 3512) and Office of Management and Budget (OMB) Circulars A–128 [1] and A–133 [2] to establish audit requirements for State and local governments, institutions of higher education, and other nonprofit institutions that receive Federal financial assistance.

(c) Assigns responsibilities within the Department of Defense for monitoring compliance with those requirements.

§ 266.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Commands, the Inspector General of the Department of Defense (IG, DoD), the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components") that provide Federal financial assistance to State and local governments, institutions of higher education, and other nonprofit institutions.

§ 266.3 Definitions.

Terms used in this part are defined in OMB Circulars A–128 and A–133 with the following deviation. Funds paid by the National Guard Bureau to States under facilities' operation and maintenance agreements do not constitute "Federal financial assistance" for purposes of Public Law 98–502 and OMB Circular A–128.

§ 266.4 Policy.

The DoD Components shall rely on and use financial and performance audits performed by non-Federal auditors under OMB Circular A–128 and independent auditors under OMB Circular A–133 in the oversight of Federal financial assistance provided to State and local governments, institutions of higher education, and other nonprofit institutions. Public Law 98–502 provides that a non-Federal audit of the operations of a State or local government performed under OMB Circular A–128 may exclude public colleges and universities, in which case an audit of the public college or university shall be made in accordance with OMB Circular A–133. The DoD Components, however, may request additional audits of such assistance when required by regulation or to ensure effective use of such assistance as deemed necessary. Any additional audit effort shall be planned and carried out in such a way as to avoid duplication and shall be separately funded.

§ 266.5 Responsibilities.

(a) The Inspector General of the Department of Defense shall:

(1) Serve as the DoD senior official under OMB Circulars A–128 and A–133 for policy guidance, direction, and coordination with DoD Components and other Federal Agencies on audit matters related to State and local governments, institutions of higher education and other nonprofit institutions.

(2) For State and local governments, institutions of higher education, and other nonprofit institutions for which the OMB has assigned the DoD cognizance, do the following:

(i) Ensure that audits are made and reports are received in a timely manner and in accordance with the requirements of OMB Circulars A–128 and A–133.

(ii) Provide technical advice and liaison through the DoD Components to State and local governments, institutions of higher education, other nonprofit institutions, and independent auditors.

(iii) Make desk reviews of all reports received, and also make quality control reviews of selected audits made by non-Federal audit organizations and provide the results, when appropriate, to other interested organizations.

(iv) Promptly inform other affected Federal Agencies and appropriate law enforcement officials of any reported illegal acts or irregularities in accordance with requirements of OMB Circulars A–128 and A–133.

(v) Advise the recipient of audits that have been found not to have met the requirements in OMB Circulars A–128 and A–133. In such instances, the recipient will work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency shall notify the recipient and Federal awarding agencies of the facts and make recommendations for followup action. Major inadequacies or repetitive sub-standard performance of independent auditors shall be referred to appropriate professional bodies for disciplinary action.

(vi) Coordinate, to the extent practicable, audits requested by other Federal Agencies, in addition to those required by OMB Circulars A–128 and A–133.

(vii) Ensure the resolution of audit findings and recommendations that affect DoD programs and those findings affecting programs of more than one Federal Agency. Ensure that a management decision affecting audit resolution shall be made within 6 months after receipt of the audit report.

(3) For local governments, institutions of higher education, and other nonprofit institutions for which the Department of Defense has assumed oversight responsibility, do the following:

(i) Provide technical advice and counsel through DoD Components to institutions and independent auditors when requested.

(ii) Assume all or some of the cognizant agency responsibilities (see paragraph (a)(2) of this section), as deemed necessary.

(4) For other State and local governments, institutions of higher education, and other nonprofit institutions, receive and distribute copies of single audit reports to appropriate DoD Components for appropriate action and followup by designated program officials.

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[1] Forward written requests to: Office of Management and Budget Publications, 725 17th Street, NW. New Executive Office Building, Washington, DC 20503.

[2] See footnote 1 to § 266.1(b).

(5) For audit reports that contain conditions affecting DoD programs, institute followup efforts to ensure that corrective actions have been taken by DoD organizations responsible for managing associated programs or funds.

(b) The Heads of the DoD Components shall:

(1) Designate an official to coordinate with the IG, DoD, on matters dealing with audits of financial assistance provided by the DoD Component to State and local governments, institutions of higher education, and other nonprofit institutions.

(2) Ensure input of accurate award data for Federal financial assistance to the appropriate DoD management information system.

(3) Ensure that the State or local government, institution of higher education, or other nonprofit institution takes appropriate actions to correct audit deficiencies involving financial assistance provided by the DoD Component.

(4) For State and local governments, institutions of higher education, and other nonprofit institutions for which the OMB has assigned DoD cognizance, do the following:

(i) Coordinate with the IG, DoD, on requests from other Federal Agencies for audits of State and local governments, institutions of higher education, and other nonprofit institutions, in addition to those required by OMB Circulars A–128 and A–133.

(ii) Seek the views of other interested agencies when a coordinated audit approach is to be used and before completing a coordinated program.

(iii) Help coordinate the audit work and reporting responsibilities among independent public accountants, State auditors, and both resident and non-resident Federal auditors to achieve the most cost-effective audit.

§ 266.6 Procedures.

The costs of audits made by non-Federal auditors under OMB Circulars A–128 and A–133 are allowable charges to Federal financial assistance programs. The charges may be considered as a direct cost or an allocated indirect cost in accordance with OMB Circulars A–87, A–122 and A–21[3]; FAR, Part 31 (48 CFR part 31); or the DFARS, Part 231 (48 CFR part 231). Generally, the percentage of costs charged to Federal assistance programs for an audit shall not exceed the percentage of Federal funds expended to the total funds expended by the recipient during the fiscal year. No cost, however, may be charged to Federal programs for audits not made in accordance with OMB Circulars A–128 and A–133 and other applicable cost principles and regulations.

Dated: 24 July 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–17953 Filed 7–29–91; 8:45 am]

BILLING CODE 3810–01–M

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[3] See footnote 1 to § 266.1(b).

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1 91–115]

Safety Zone Regulations: East Passage, Narragansett Bay, RI

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a moving safety zone around participants in the Swim the Bay event and associated craft, in the East of Passage Narragansett Bay, RI between Potter Cove, Jamestown, RI and Coasters Harbor Island, Newport, RI (Position 41–31N, 071–19.8W to 41–31N, 071–22W). The zone is needed to protect participants in the swimming event and the associated craft from inherent hazards associated with vessels transitting the area.

Entry into this zone is prohibited unless authorized by the Captain of the Port Providence.

EFFECTIVE DATE: This regulation becomes effective at 6:30 a.m. on August 3, 1991. It terminates at 10:30 a.m. on August 3, 1991, unless terminated sooner by the Captain of the Port Providence.

FOR FURTHER INFORMATION CONTACT: BM1 Krug at (401) 528–5335.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent potential damage to craft and potential injury to the persons involved.

Drafting Information

The drafters of this regulation are BM1 Krug, project officer for the Captain of the Port, Providence and Lt. John E. Gately, project attorney, First Coast Guard District Legal Office.

Discussion of Regulations

The circumstances requiring this regulation involve the inherent hazards associated with transitting vessels in the vicinity of participants swimming the breadth of the East Passage of Narragansett Bay, RI. The event is scheduled to take place August 3, 1991, between Potter Cove, Jamestown, RI and Coasters Harbor Island, Newport, RI (Position 41–31N, 071–19.8W to 41–31N, 071–22W). These inherent hazards include, but are not limited to, personal injury and property damage resulting from collisions between participants in the water, or craft associated with the event, and vessels transitting Narragansett Bay. Due to the brief duration of this safety zone, it is believed that the economic impact will be minimal.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—AMENDED

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46; 33 CFR 1.05(g), 6.04–1, 6.04–6, and 160.5.

2. A new § 165.T0110 is added to read as follows:

§ 165.T0110 Safety Zone: East Passage, Narragansett Bay, RI

(a) *Location:* The following area is designated a moving safety zone: (1) A three hundred yard radius around the participants swimming in the event and the associated craft as they transit the East Passage of Narragansett Bay, RI between Potter Cove, Jamestown, RI, and Coasters Harbor Island, Newport, RI (Position 41–31N, 071–19.8W to 41–31N, 071–22W).

(b) *Effective Date:* This regulation becomes effective at 6:30 a.m. on August 3, 1991. It terminates at 10:30 a.m. on August 3, 1991, unless terminated sooner by the Captain of the Port Providence.

(c) *Regulations:* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Providence.

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Discussion of Regulations

The circumstances requiring this regulation involve the inherent hazards associated with transitting vessels in the vicinity of participants swimming the breadth of the East Passage of Narragansett Bay, RI. The event is scheduled to take place August 3, 1991, between Potter Cove, Jamestown, RI and Coasters Harbor Island, Newport, RI (Position 41–31N, 071–19.8W to 41–31N, 071–22W). These inherent hazards include, but are not limited to, personal injury and property damage resulting from collisions between participants in the water, or craft associated with the event, and vessels transitting Narragansett Bay. Due to the brief duration of this safety zone, it is believed that the economic impact will be minimal.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—AMENDED

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46; 33 CFR 1.05(g), 6.04–1, 6.04–6, and 160.5.

2. A new § 165.T0110 is added to read as follows:

§ 165.T0110 Safety Zone: East Passage, Narragansett Bay, RI

(a) *Location:* The following area is designated a moving safety zone: (1) A three hundred yard radius around the participants swimming in the event and the associated craft as they transit the East Passage of Narragansett Bay, RI between Potter Cove, Jamestown, RI, and Coasters Harbor Island, Newport, RI (Position 41–31N, 071–19.8W to 41–31N, 071–22W).

(b) *Effective Date:* This regulation becomes effective at 6:30 a.m. on August 3, 1991. It terminates at 10:30 a.m. on August 3, 1991, unless terminated sooner by the Captain of the Port Providence.

(c) *Regulations:* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Providence.

Dated: July 18, 1991.

H.D. Robinson,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 91–18014 Filed 7–29–91; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD7 90–52]

RIN 2115–AD65

Regulated Navigation Area; Sparkman Channel, Tampa, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard has designated Sparkman Channel, Tampa, Florida, a regulated navigation area. A pipeline crossing the channel at the southern entrance creates a ridge in the outer quarters of the channel and limits water depths to 37 feet over the pipeline in the center of the channel and to an average of 32 feet in the outer quarters of the channel. To ensure safe navigation in the channel, this rule establishes vessel draft restrictions, limits meeting and passing situations, and requires vessels with drafts greater than 30 feet to transit near the center of the channel.

EFFECTIVE DATE: The regulation is effective July 30, 1991.

FOR FURTHER INFORMATION CONTACT: Lieutenant Paul J. MacDonald, Coast Guard Marine Safety Office, Tampa, Florida (813) 228–2194.

SUPPLEMENTARY INFORMATION: The Coast Guard published an interim final rule, "Regulated Navigation Area; Sparkman Channel, Tampa, FL", on 25 January 1991 at 56 FR 2850. One comment was received. A public hearing was not requested and one was not held.

Regulatory History

The interim final rule designated Sparkman Channel as a regulated navigation area and restricted maximum draft to 35.5 feet. Vessels with a draft of 34.5 feet, but not over 35.5 feet, may transit Sparkman Channel only when the tide is at least one foot above mean low water. Vessels with a draft of 30 feet or greater must transit as near as possible to the center of the channel. Meeting or overtaking between vessels requiring pilotage is not allowed.

These restrictions are necessary to protect deep draft vessels from an area of hard bottom at the location of a 48 inch sewage pipeline crossing and to protect the environment from oil and chemical spills which may result from ship damage. The pipeline has restricted dredging in the channel, and creates a ridge in the outer quarters where water depths go from 37 feet to an average of 32 feet within an approximate 300 foot section of the channel. This situation reduces the safe navigable channel to 200 feet.

Discussion of Comment

The comment pointed out that the water depth over the pipeline at center channel was incorrectly stated in the interim final rule as 34 feet, when in fact the most recent soundings show 37 feet. The commenter requested that the maximum draft be increased by 6 inches. The Coast Guard agrees that the depth over the pipeline at center channel is 37 feet and that a maximum draft of 34 feet 6 inches at mean low water and 35 feet 6 inches at plus one foot tide and greater is within the safety margins intended by this rule. This final rule reflects the change. A purpose for the regulation has been added to the language of the final rule. The rule has also been reworded to clarify the boundaries of the regulated navigation area.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1989). Changes to the rule as a result of the comment will impose no new cost or burden. Therefore, the Coast Guard certifies under Section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

The Coast Guard has reviewed this rule and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.b.2 of Commandant Instruction (COMDINST) M16475.1B. A Categorical Exclusion Determination statement has been prepared and is included as part of the rulemaking docket.

Federalism

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Security measures, Waterways, Regulated navigation areas, and Limited access areas.

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5, 49 CFR 1.46.

2. Section 165.752 is added to read as follows:

§ 165.752 Sparkman Channel, Tampa, Florida—regulated navigation area.

(a) A regulated navigation area is established to protect vessels from limited water depth in Sparkman Channel caused by an underwater pipeline. The regulated navigation area is in Sparkman Channel between the lines connecting the following points (referenced in NAD 83):

Latitude	Longitude		Latitude	Longitude
1: 27–56–20.5 N	082–26–42.0 W	to	27–56–19.3 N	82–26–37.5 W
2: 27–55–32.0 N	082–26–54.0 W	to	27–55–30.9 N	82–26–49.1 W

(b) Ships requiring Federal or State pilotage shall not meet or overtake other like vessels in Sparkman Channel.

(c) Vessels having a draft of more than 35.5 feet may not transit Sparkman Channel.

(d) Vessels having a draft of 34.5 feet, but not over 35.5 feet, may transit Sparkman Channel only when the tide is at least one foot above mean low water.

(e) Vessels with a draft of 30 feet or greater shall transit as near as possible to the center of the channel.

Dated: May 13, 1991.

Robert E. Kramek,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 91-17983 Filed 7-29-91; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3969-4]

Approval and Promulgation of State Implementation Plans; OR

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: By this notice, EPA is approving numerous revisions to the Oregon state implementation plan (SIP) as submitted by the State of Oregon Department of Environmental Quality on May 31, 1986 and July 11, 1986. This action will result in an updated SIP, rescinding provisions which are no longer needed, revising and updating certain rules and sections of the SIP and adding rules which were not previously included in the SIP. These revisions were submitted to satisfy the requirements of section 110 of the Clean Air Act (hereinafter referred to as the Act).

EFFECTIVE DATE: July 30, 1991.

ADDRESSES: Copies of the materials submitted to EPA may be examined during normal business hours at:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.
Air Programs Branch, Docket OR3-1-5157, Environmental Protection Agency, 1200 Sixth Avenue, AT-082, Seattle, Washington 98101.
State of Oregon, Department of Environmental Quality, 811 SW., Sixth, Portland, Oregon 97504.

FOR FURTHER INFORMATION CONTACT: David Bray, Air Programs Branch, AT-082, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, telephone: (206) 553-4253, FTS: 399-4253.

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act of 1970 required states to submit state implementation plans (SIPs) to EPA which provided for implementation, maintenance and enforcement of the national ambient air quality standards. The SIP contains statutes, rules, strategies, and programs which demonstrate a state's ability to attain and/or maintain compliance with the national ambient air quality standards (NAAQS) in all areas. In 1972, the Oregon Environmental Quality Commission adopted the initial Oregon SIP which was approved by EPA on May 31, 1972 (37 FR 10888). As a result of the Clean Air Act Amendments of 1977, the Oregon Department of Environmental Quality (ODEQ) submitted a revised SIP on June 27, 1979, and July 6, 1979, portions of which were approved by EPA on June 24, 1980 (45 FR 42265).

Since 1972 ODEQ has been responsible for developing revisions and additions to the SIP as needed to maintain the NAAQS. During the past 16 years there have been numerous SIP revisions submitted by ODEQ, some of which have been approved by EPA and some of which have yet to be acted upon. As a result, the contents of the EPA-approved Oregon SIP were often in question. To rectify this problem, ODEQ undertook a several-year effort to revise and reorganize its entire SIP.

On May 30, 1986, the State of Oregon Department of Environmental Quality (ODEQ) submitted to EPA a request to rescind the existing SIP and replace it with an updated SIP. Additionally, on July 11, 1986, ODEQ submitted the "Specific Air Pollution Control Rules for the Medford-Ashland Air Quality Maintenance Area" (OAR 340-30-015, 030, 031, 040 and 055).

EPA reviewed the numerous amendments to the Oregon SIP and found that the revisions met the criteria in accordance with section 110 of the Clean Air Act and 40 CFR part 51. On November 3, 1988 (53 FR 44487) EPA provided a 30-day public comment period on its proposed approval of the ODEQ request. No comments were received.

II. Summary of Action

EPA is today approving numerous revisions to the Oregon SIP as submitted by ODEQ on May 30, 1986 and July 11, 1986.

Specifically EPA is approving revisions to the following sections of Volume 2 [The Federal Clean Air Act Implementation Plan (and Other State Regulations)] and section 3 [Statewide Regulatory Provisions—Chapter 340]:

Section 1 Introduction
Section 2 General Administration
Section 3 Statewide Regulatory Provisions, Subsection 3.1 Oregon Administrative Rule—Chapter 340
  OAR 340-14-005 to 050 Procedures for Issuance of Permits
  OAR 340-20-046 Records, Maintaining and Reporting
  OAR 340-20-047 "State of Oregon Clean Air Act, Implementation Plan"
  OAR 340-30-015(2) Specific Air Pollution Control Rules for the Medford-Ashland Air Quality Maintenance Area
  OAR 340-31-105 PSD Definitions
Section 4 Control Strategies for Nonattainment Areas
Section 5 Control Strategies for Attainment and Nonattainment Areas
Section 6 Ambient Air Quality Monitoring Program
Section 8 Public Involvement
Section 9 Plan Revisions and Reporting

EPA is approving the deletion of the following provisions of section 3.1:

OAR 340-11-005 to 035 Rules of Practice and Procedure
OAR 340-13-005 to 035 Wilderness, Recreational, and Scenic Area Rules
OAR 340-20-100 to 135 Rules for Indirect Sources
OAR 340-24-005 to 040 Motor Vehicle Rules
OAR 340-24-311 and 337 Motor Vehicle Noise Rules
OAR 340-25-055 to 080 Reduction of Animal Matter
OAR 340-28-001 to 090 Specific Air Pollution Control Rules for Clackamas, Columbia, Multnomah, and Washington Counties
OAR 340-31-045 Particle Fallout
OAR 340-31-050 Calcium Oxide (Lime Dust)

In addition to the May 30, 1986, submittal, EPA is also approving revisions to the Specific Air Pollution Control Rules for Medford-Ashland Air Quality Maintenance Area" (OAR 340-30-015, 030, 031, 040 and 055) which were submitted to EPA on July 11, 1986.

There are two revisions which were submitted to EPA on May 30, 1986, that will not be processed in this rulemaking action. Instead EPA will prepare separate **Federal Register** Notices of Rulemaking proposing action on OAR 340-25-150 to 205 Kraft Pulp Mills and OAR 340-25-305 to 325 Board Products Industries.

On February 24, 1986, ODEQ submitted extensive revisions to the ozone control strategy for the Portland-Vancouver Air Quality Maintenance Area (section 4.3) and certain implementing rules (OAR 340-22-100 to 220, OAR 340-20-155(i) Table 1, and

553–4253, FTS:

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  Subsection 3.1 Oregon Administrative Rule—Chapter 340
  OAR 340–14–005 to 050 Procedures for Issuance of Permits
  OAR 340–20–046 Records, Maintaining and Reporting
  OAR 340–20–047 "State of Oregon Clean Air Act, Implementation Plan"
  OAR 340–30–015(2) Specific Air Pollution Control Rules for the Medford-Ashland Air Quality Maintenance Area
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OAR 340–24–005 to 040 Motor Vehicle Rules
OAR 340–24–311 and 337 Motor Vehicle Noise Rules
OAR 340–25–055 to 080 Reduction of Animal Matter
OAR 340–28–001 to 090 Specific Air Pollution Control Rules for Clackamas, Columbia, Multnomah, and Washington Counties
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There are two revisions which were submitted to EPA on May 30, 1986, that will not be processed in this rulemaking action. Instead EPA will prepare separate **Federal Register** Notices of Rulemaking proposing action on OAR 340–25–150 to 205 Kraft Pulp Mills and OAR 340–25–305 to 325 Board Products Industries.

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OAR 340–20–241). These revisions supersede the respective sections in the May 30, 1986 submittal (even though they predate that submittal). EPA will not be acting on these provisions in this rulemaking, but instead, will prepare a separate **Federal Register** Notice of Rulemaking if warranted pursuant to the Clean Air Act Amendments of 1990.

On August 5, 1985, and December 5, 1986, ODEQ submitted extensive revisions to title 14, 34, and 38 of Lane Regional Air Pollution Authority's (LRAPA) rules. Since portions of these submittals supersede parts of the May 30, 1986 submittal, EPA will take action on all of these requested revisions to the LRAPA rules in a separate **Federal Register** Notice of Rulemaking.

III. Administrative Review

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years and has been extended.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

The Agency has reviewed this request for revision of the federally-approved state implementation plan for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 30, 1991. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See 42 U.S.C. 7607(b)(2).)

Under 5 U.S.C. 605(b), I certify that this revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

List of Subjects in 40 CFR Part 52

Air Pollution control, Carbon monoxide, Hydrocarbons, Incorporation By Reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and Recordkeeping requirements, Sulfur oxides.

Dated May 29, 1991.

Dana A. Rasmussen,
Regional Administrator.

Note: Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of Federal Register on July 1, 1982.

Title 40, chapter I of part 52 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c)(87) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(87) On May 30, 1986, the Director of the Department of Environmental Quality submitted revisions to Volume 2 "The Federal Clean Air Act Implementation Plan (and Other State Regulations)" and on July 11, 1986 a revised Section 3 "Statewide Regulatory Provisions" 'Subsection 3.1 Oregon Administrative Rule—Chapter 340' (OAR 340–30–015, 030, 031, 040, and 055) as revisions to the Oregon State Implementation Plan.

(i) Incorporation By Reference.

(A) May 30, 1986 letter from the Director of the Department of Environmental Quality to EPA Region 10 submitting amendments to the Oregon state implementation plan.

(B) July 11, 1986 letter from the Director of the Department of Environmental Quality to EPA Region 10 submitting amendments to the Oregon state implementation plan.

(C) Volume 2 "The Federal Clean Air Act Implementation Plan (and Other State Regulations)" Section 1 (Introduction); Section 2 (General Administration); Section 3 (Statewide Regulatory Provisions) Introduction; Section 4 (Control Strategies for Nonattainment Areas) Introduction; Section 5 (Control Strategies for Attainment and Nonattainment Areas) Introduction and Section 5.2 (Prevention of Significant Deterioration); Section 6 (Ambient Air Quality Monitoring Program); Section 8 (Public Involvement); and Section 9 (Plan Revisions and Reporting), dated January 1986, as adopted by the Environmental Quality Commission on April 25, 1986.

(D) Volume 2 "The Federal Clean Air Act Implementation Plan (and Other State Regulations)," Section 3 (Statewide Regulatory Provisions), Subsection 3.1 Oregon Administrative Rule—Chapter 340 (OAR 340–14–005 to 050 [Procedures for Issuance, Denial, Modification, and Revocation of Permits] dated 10–1–89, OAR 340–20–046 [Records; Maintaining and Reporting] effective 10–1–72, OAR 340–20–047 [State of Oregon Clean Air Act Implementation Plan] effective 9–30–85, OAR 340–30–015 [Wood Waste Boilers] effective 10–29–80, and OAR 340–31–105 [Definitions]) effective 9–8–81.

(E) Volume 2 "The Federal Clean Air Act Implementation Plan (and Other State Regulations)," Section 3 "(Statewide Regulatory Provisions)", Subsection 3.1 Oregon Administrative Rule—Chapter 340, Division 30 (Specific Air Pollution Control Rules for the Medford-Ashland Air Quality Maintenance Area), Section 015 (Wood Waste Boilers); Section 030 (Wood Particle Dryers at Particleboard Plants); Section 031 (Hardboard Manufacturing Plants); Section 040 (Charcoal Processing Plants); and Section 055 (Source Testing) as adopted by the Environmental Quality Commission on June 13, 1986.

3. Section 52.1977 is added as follows:

§ 52.1977 Content of approved State submitted Implementation Plan.

The following sections of the State air quality control plan (as amended on the dates indicated) have been approved and are pert of the current State Implementation Plan.

State of Oregon Air Quality Control Program

Volume 2—The Federal Clean Air Act Implementation Plan (and Other State Regulations)

Section
1. Introduction (1–86)
2. General Administration (1–86)
  2.1 Agency Organization (1–86)
  2.2 Legal Authority (1–86)
  2.3 Resources (1–86)
  2.4 Intergovernmental Cooperation and Consultation (1–86)

2.5 Miscellaneous Provisions (1–86)
3. Statewide Regulatory Provisions
3.1 Oregon Administrative Rules—Chapter 340 (1–86)

Division 12—Civil Penalties

Sec. 030 Definitions (11–8–84)
Sec. 035 Consolidation of Proceedings (9–25–74)
Sec. 040 Notice of Violation
Sec. 045 Mitigating and Aggravating Factors (11–8–88)
Sec. 050 Air Quality Schedule of Civil Penalties (11–8–84)
Sec. 070 Written Notice of Assessment of Civil Penalty; When Penalty Payable (11–8–84)
Sec. 075 Compromise or Settlement of Civil Penalty by Director (11–8–84)

Division 14—Procedures for Issuance, Denial, Modification, and Revocation of Permits (4–15–72)

Sec. 005 Purpose (4–15–72)
Sec. 007 Exception (10–15–73)
Sec. 010 Definitions (4–15–72)
Sec. 015 Type, Duration, and Termination of Permits (12–16–76)
Sec. 020 Application for a Permit (4–15–72)
Sec. 025 Issuance of a Permit (4–15–72)
Sec. 030 Renewal of a Permit (4–15–72)
Sec. 035 Denial of a Permit (4–15–72)
Sec. 040 Modification of a Permit (4–15–72)
Sec. 045 Suspension or Revocation of a Permit (4–15–72)
Sec. 050 Special Permits (4–15–72)

Division 20—General

Sec. 001 Highest and Best Practicable Treatment and Control Required (3–1–72)
Sec. 003 Exceptions (3–1–72)

Registration

Sec. 005 Registration in General (9–1–70)
Sec. 010 Registration Requirements (9–1–70)
Sec. 015 Re-registration (9–1–70)

Notice of Construction and Approval of Plans

Sec. 020 Requirement (9–1–70)
Sec. 025 Scope (3–1–72)
Sec. 030 Procedure (9–1–72)
Sec. 032 Compliance Schedules (3–1–72)

Sampling, Testing, and Measurement of Air Contaminant Emissions

Sec. 035 Program (9–1–70)
Sec. 037 Stack Heights & Dispersion Techniques (4–25–86)
Sec. 040 Methods (9–11–70)
Sec. 045 Department Testing (9–1–70)
Sec. 046 Records; Maintaining and Reporting (10–1–72)
Sec. 047 State of Oregon Clean Air Act, Implementation Plan (9–30–85)

Air Contaminant Discharge Permits

Sec. 140 Purpose (1–6–86)
Sec. 145 Definitions (1–6–76)
Sec. 150 Notice Policy (1–6–76)
Sec. 155 Permit Required (5–31–83)
Sec. 160 Multiple-Source Permit (1–6–76)
Sec. 165 Fees (5–31–83, 3–14–86)
Sec. 170 Procedures For Obtaining Permits (1–11–74)
Sec. 175 Other Requirements (6–29–79)
Sec. 180 Registration Exemption (6–29–79)
Sec. 185 Permit Program For Regional Air Pollution Authority (1–6–76)

Conflict of Interest

Sec. 200 Purpose (10–13–78)
Sec. 205 Definitions (10–13–78)
Sec. 210 Public Interest Representation (10–13–78)
Sec. 215 Disclosure of Potential Conflicts of Interest (10–13–78)

New Source Review

Sec. 220 Applicability (9–8–81)
Sec. 225 Definitions (10–16–84)
Sec. 230 Procedural Requirements (10–16–84)
Sec. 235 Review of New Sources and Modifications for Compliance With Regulations (9–8–81)
Sec. 240 Requirements for Sources in Nonattainment Areas (4–18–83)
Sec. 245 Requirements for Sources in Attainment or Unclassified Areas (Prevention of Significant Deterioration) (10–16–85)
Sec. 250 Exemptions (9–8–81)
Sec. 255 Baseline for Determining Credit for Offsets (9–8–81)
Sec. 260 Requirements for Net Air Quality Benefit (4–18–83)
Sec. 265 Emission Reduction Credit Banking (4–18–83)
Sec. 270 Fugitive and Secondary Emissions (9–8–81)
Sec. 275 Repealed
Sec. 276 Visibility Impact (10–16–85)

Plant Site Emission Limits

Sec. 300 Policy (9–8–81)
Sec. 301 Requirement for Plant Site Emission Limits (9–8–81)
Sec. 305 Definitions (9–8–81)
Sec. 310 Criteria for Establishing Plant Site Emission Limits (9–8–81)
Sec. 315 Alternative Emission Controls (9–8–81)
Sec. 320 Temporary PSD Increment Allocation (9–8–81)

Stack Heights and Dispersion Techniques

Sec. 340 Definitions (4–18–83)
Sec. 345 Limitations (4–18–83)

Division 21—General Emission Standards for Particulate Matter

Sec. 005 Definitions (1–16–84)
Sec. 010 Special Control Areas (7–11–70)
Sec. 015 Visible Air Contaminant Limitations (7–11–70)
Sec. 020 Fuel Burning Equipment Limitations (9–1–82)
Sec. 025 Refuse Burning Equipment Limitations (1–16–84)
Sec. 027 Municipal Waste Incinerator in Coastal Areas (1–16–84)
Sec. 030 Particulate Emission Limitations for Sources Other Than Fuel Burning and Refuse Burning Equipment (3–1–72)

Particulate Emissions From Process Equipment

Sec. 035 Applicability (3–1–72)
Sec. 040 Emission Standard (3–1–72)
Sec. 045 Determination of Process Weight (3–1–72)

Fugitive Emissions

Sec. 050 Definitions (3–1–72)
Sec. 055 Applicability (3–1–72)
Sec. 060 Requirements (3–1–72)

Upset Conditions

Sec. 065 Introduction (3–1–72)
Sec. 070 Scheduled Maintenance (3–1–72)
Sec. 075 Malfunction of Equipment (3–1–72)

Woodstove Certification

Sec. 100 Definitions (6–26–84)
Sec. 105 Requirements for Sale of New Woodstoves in Oregon (6–26–84)
Sec. 110 Exemptions (6–26–84)
Sec. 115 Emissions Performance Standards and Certification (6–26–84)
Sec. 120 Testing Criteria and Procedures (6–26–84)
Sec. 125 General Certification Procedures (6–26–84)
Sec. 130 Changes in Woodstove Design (6–26–84)
Sec. 135 Labelling Requirements (6–26–84)
Sec. 140 Permanent Label (6–26–84)
Sec. 145 Contents of Permanent Label (6–26–84)
Sec. 150 Removable Label (6–26–84)
Sec. 155 Label Approval (6–26–84)
Sec. 160 Laboratory Accreditation Requirements (6–26–84)
Sec. 165 Accreditation Criteria (6–26–84)
Sec. 170 Application for Laboratory Accreditation (6–26–84)
Sec. 175 On-Site Laboratory Inspection and Stove Testing Proficiency Demonstration (6–26–84)
Sec. 180 Accreditation Application Deficiency, Notification and Resolution (6–26–84)
Sec. 185 Final Department Review and Certificate of Accreditation (6–26–84)
Sec. 190 Civil Penalties, Revocation, and Appeals (6–26–84)

Division 22—General Gaseous Emissions, Sulfur Content of Fuels

Sec. 005 Definitions (3–1–72)
Sec. 010 Residual Fuel Oils (8–25–77)
Sec. 015 Distillate Fuel Oils (3–1–72)
Sec. 020 Coal (1–29–82)
Sec. 025 Exemptions (3–1–72)

General Emission Standards for Sulfur Dioxide

Sec. 050 Definitions (3–1–72)
Sec. 055 Fuel Burning Equipment (3–1–72)
Sec. 300 Reid Vapor Pressure for Gasoline, except that in Paragraph (6) only sampling procedures and test methods specified in 40 CFR Part 80 are approved (6–15–89)

Division 23—Rules for Open Burning

Sec. 022 How to Use These Open Burning Rules (9–8–81)
Sec. 025 Policy (9–8–81)
Sec. 030 Definitions (6–16–84)
Sec. 035 Exemptions, Statewide (6–16–84)
Sec. 040 General Requirements Statewide (9–8–81)
Sec. 042 General Prohibitions Statewide (6–16–84)
Sec. 043 Open Burning Schedule (6–16–84)
Sec. 045 County Listing of Specific Open Burning Rules (9–8–81)

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  11–010 Construction and Validity (8–2–72)
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9. Plan Revisions and Reporting (1–86)
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Directive 1–4–1–601 Operational Guidance for the Oregon Smoke Management Program (12–86)

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40 CFR Part 271

[FRL-3978-2]

Indiana: Final Authorization of Revisions to State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Indiana has applied for final authorization of revisions to its authorized hazardous waste program under the Resource Conservation and Recovery Act of 1976 as amended (hereinafter "RCRA" or the "Act"). The Environmental Protection Agency (EPA) has reviewed Indiana's application and has reached a decision, subject to public review and comment, that Indiana's hazardous waste program revisions satisfy all the requirements necessary to qualify for final authorization. Thus, EPA intends to grant final authorization to Indiana to operate its revised program, subject to authority retained by EPA under the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984, hereinafter "HSWA").

DATES: *Effective date:* Final authorization of Indiana's application shall be effective September 30, 1991 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule.

All comments on Indiana's program revision application must be received by 4:30 p.m. central standard time on August 14, 1991.

ADDRESSES: Copies of Indiana's program revision application are available for inspection and copying, from 8:30 a.m. to 4:30 p.m., at the following addresses: Indiana Department of Environmental Management, Hazardous Waste Management Branch, 105 South Meridian Street, Indianapolis, Indiana 46206, Contact: Michael Dalton, (317) 232–8884; U.S. EPA Headquarters Library, PM 211A, 401 M Street SW., Washington, DC 20460, phone (202) 382–5926; U.S. EPA Region V, Waste Management Division, Office of RCRA, 230 South Dearborn Street, Chicago, Illinois 60604, Contact: George Woods, (312) 886–6134. Written comments on Indiana's application should be sent to George Woods, at the address listed below.

FOR FURTHER INFORMATION CONTACT: George Woods, Indiana Regulatory

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FOR FURTHER INFORMATION CONTACT: George Woods, Indiana Regulatory Specialist, U.S. Environmental Protection Agency, Region V, Waste Management Division, Office of RCRA, Program Management Branch, Regulatory Development Section, 5HR-JCK-13, 230 South Dearborn, Chicago, Illinois 60604, (312) 886–6134 (FTS 886-6134).

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is at least equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. For further explanation see section C of this notice.

In accordance with 40 CFR 271.21(a), revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260–268 and 270.

B. Indiana

Indiana initially received final authorization for its base RCRA program effective January 31, 1986 (51 FR 3953–3954, January 31, 1986). Indiana received authorization for revisions to its program effective December 31, 1986 (51 FR 39752–39754, October 31, 1986) January 19, 1988 (53 FR 128–129, January 5, 1988), and September 11, 1989 (54 FR 29557–29559, July 13, 1989). On November 1, 1988, Indiana submitted a program revision application for additional program approvals covering both the non-HSWA and HSWA Cluster I Portions of the Subtitle C Tank Standards, and for provisions of Non-HSWA Cluster III. On November 19, 1990, the Indiana Attorney General certified that, in his opinion, the laws of the State of Indiana provide adequate authority to carry out this revised program, and that the specific authorities provided are contained in statutes or regulations lawfully adopted and in effect as of November 19, 1990.

EPA has reviewed Indiana's application and has made an immediate final decision, subject to public review and comment, that Indiana's hazardous waste management program revisions are equivalent to the Federal program revisions listed below and satisfy all the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization to Indiana for its additional program revisions.

On September 30, 1991 (unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule), Indiana will be authorized to carry out, in lieu of the Federal program, those provisions of the State's regulations which were modified and originally codified at title 320, article 4, rule 1 (320 IAC 4.1) of the Indiana Administrative Code, effective June 19, 1988 (see **Indiana Register,** Volume 11, Number 10, pages 3153–3199, July 1, 1988). Because Indiana's hazardous waste management rules found at 320 IAC 4.1 were repealed and simultaneously recodified at title 329, article 3 (329 IAC 3) of the Indiana Administrative Code, effective July 1, 1988 (see **Indiana Register,** Volume 11, Number 10, pages 3199 and 3210 through 3519, July 1, 1988), the modified rules are designated herein under the recodified citations and have the 329 IAC 3 prefix. These State rules are being recognized as analogous to the following provisions of the Federal Program:

Federal requirement	Analogous state authority
● Standards for Hazardous Waste Storage and Treatment Tank Systems, July 14, 1986 (51 FR 25422, as amended August 15, 1986 (51 FR 29430). (Note: These provisions cover both HSWA and non-HSWA portions of the Subtitle C Tank Standards.)	Indiana Administrative Code, Title 329, Article 3, Rule 1–7; 3–4(a)(8); 9–5(a)(1), 9–5(d) (2) and (3); 16–4(b)(6); 16–6(b) (4); 19–4(b) (3) and (6); 21–1(2)(C); 22-1(b); 24–1(a) and (b); 24–2(a) (b) (c) and (d); 24–3(a) (b) (c) (d) (e) (f) and (g); 24–4(a) (b) (c) (d) (e) and (f); 24–4(f)(1)–(4); 24–4(g) (h) and (i); 24–5(a) (b) and (c); 24–6(a) (b) and (c); 24–7(1)–(6); 24-8(a) (b) and (c); 24-9(a) and (b); 24-10(a) and (b); 24-11(1) and (2); 24-12(a) (b) (c) (d) (e) and (f); 34–5(b) (5) and (13); 34–7(1)–(10); 38–3(e); 41-6(b) (4); 44–4(b)(6); 46–1(b)(3); 47–1(b) (3); 49–1(a) and (b); 49–2(a) (b) (c) and (d); 49–3(a) (b) (c) (d) (e) (f) and (g); 49–4(a) (b) (c) (d) (e) and (f); 49–4(f)(1)–(4); 49–4(g) (3) and (4); 49–4(h) and (i); 49–5(a) (b) and (c); 49–6(a) (b) (c) and (d); 49–7(1)–(6); 49-8(a) (b) and (c); 49-9(1) and (2); and 49-10(a) and (b). (Effective July 1, 1988.)
● Radioactive Mixed Waste, July 3, 1986 (51 FR 24504).	IC 13–7–1–22. (Effective July 1, 1988.)
● Liability Coverage—Corporate Guarantee, July 11, 1986 (51 FR 25350).	Indiana Administrative Code, Title 329, Article 3, Rule 22-24(a) (2) and (3); 22–24(b) (3); 22-24(g) (1) (A) and (B); 22–24(g) (2); 47–8(a) (3); 47–8(b) (3); 47-8(g) (1) (A) and (B); 47–8(g) (2); 47–8-10(g); and 47–8-10(h) (2). (Effective July 1, 1988.)
● Listing of Spent Pickle Liquor, 40 CFR 261.32, as amended May 28, 1986, and September 22, 1986 (51 FR 19320 and 51 FR 33612).	Indiana Administrative Code, Title 329, Article 3, Rule 6–3. (Effective July 1, 1988.)
● Interim Status Standards for Owners/Operators of Hazardous Waste TSD Facilities, March 19, 1987 (52 FR 8708).	Indiana Administrative Code, Title 329, Article 3, Rule 25-7(a) (1) and (2); 25-7(a)(2) (A) and (B); 25–7(a)(2) (C) (i) (ii) (iii) (iv) and (v); 25-7(b) (b) (1) (2) and (3). (Effective July 1, 1988.)
● Development of Corrective Action Programs After Permitting Hazardous Waste Land Disposal Facilities, June 22, 1987 (52 FR 23447) as amended September 9, 1987 (52 FR 33936).	Indiana Administrative Code, Title 329, Article 3, Rule 34-5(c)(7); and 34–5(c) (8)(E). (Effective July 1, 1988.)

EPA shall administer any RCRA hazardous waste permits, or portions of permits, that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of Indiana's authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization. EPA has previously suspended issuance of permits for other provisions on January 31, 1986, on January 19, 1988, and on September 11, 1989, the effective dates of Indiana's final authorizations for the RCRA base program and for two approved revisions to Indiana's authorized program.

Indiana is not authorized to operate the Federal Program on Indian lands. This authority shall remain with EPA unless provided otherwise in a future statute or regulation.

C. Effect of HSWA on Indiana's Authorization

Prior to the Hazardous and Solid Waste Amendments to RCRA, a State with final authorization would have administered its hazardous waste program instead of, or entirely in lieu of, the Federal program. Except for enforcement provisions not applicable here, EPA no longer directly applied the Federal requirements in the authorized State, and EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent, Federal requirements were promulgated or enacted, the State was obligated to obtain equivalent authority within specified time frames. New Federal requirements usually did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under the amended section 3006(g) of RCRA, 42 U.S.C. 6926(g), new HSWA requirements and prohibitions take effect in authorized States at the same time as they take effect in nonauthorized States. EPA directly carries out those requirements and imposes those prohibitions in authorized and non-authorized States, including the issuance of full or partial HSWA permits, until EPA grants the State authorization to do so. States must still, in accordance with the deadlines specified in paragraphs 40 CFR 271.21(e)(2) (ii) through (v), adopt HSWA-related provisions as State law in order to retain final authorization. In the interim, the HSWA provisions apply in authorized States.

As a result of the HSWA, there will be a dual State/Federal regulatory program in Indiana. To the extent HSWA does not affect the authorized State program, the State program will operate in lieu of the Federal program. To the extent HSWA-related requirements are in effect, EPA will administer and enforce those HSWA requirements in Indiana until the State is authorized for them. Among other things, this will entail the issuance of Federal RCRA permits for those HSWA requirements for which the State is not yet authorized, in addition to any State permits.

Indiana is being authorized to implement only those HSWA requirements addressed in the July 14, 1986, FR notice, as amended August 15, 1986, (51 FR 25422 and 51 FR 29430.) Once EPA authorizes Indiana to carry out further HSWA requirements or prohibitions, the State program in those areas will operate in lieu of the Federal provisions or prohibitions. Until that time, the State may assist EPA's implementation of the HSWA under a Cooperative Agreement. Any effective State requirement that is more stringent or broader in scope than a Federal HSWA provision will continue to remain in effect; thus, regulated handlers must comply with any more stringent State requirements.

EPA has published a **Federal Register** notice that explains in detail the HSWA and its effect on authorized States. That notice was published at 50 FR 28702–28755, July 15, 1985.

D. Decision

I conclude that Indiana's application for this program revision meets all the statutory and regulatory requirements established by RCRA. Accordingly, EPA grants Indiana final authorization to operate its hazardous waste program as revised. Indiana now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out the other aspects of the RCRA program. This responsibility is subject to the limitations of this program revision application and previously approved authorities. Indiana also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

E. Codification in Part 272

EPA codifies authorized RCRA State programs in part 272 of 40 CFR. The purpose of codification is to provide notice to the public of the scope of the authorized program in each State. Codification of these revisions to the Indiana program will be published later in a separate **Federal Register** notice.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Indiana's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended, (42 U.S.C. 6912(a), 6926, and 6974(b)).

Dated: February 22, 1991.

Valdas V. Adamkus,

Regional Administrator.

Editorial Note: This document was received in the Office of the Federal Register on July 23, 1991.

[FR Doc. 91-17793 Filed 7-29-91; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 681

[Docket No. 910494-1094]

Western Pacific Crustacean Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule; effective date extension of closure of the lobster fishery in the Northwestern Hawaiian Islands.

SUMMARY: The Secretary of Commerce (Secretary) extends an emergency rule now in effect that closes the lobster fishery in the Northwestern Hawaiian Islands (NWHI). An extended closure of the fishery is needed to protect the lobster spawning stock from heavy fishing pressure during the summer peak spawning period. In addition, this extension will allow the Western Pacific Fishery Management Council to complete an amendment to the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region (FMP) that would establish a seasonal closure, a limited entry plan, and an annual harvest quota, without a lapse in protection to the lobster stock.

EFFECTIVE DATE: The emergency interim regulations published on May 13, 1991, are extended from 0000 hours local time August 13, 1991, to 2400 hours local time November 10, 1991.

ADDRESSES: Copies of the environmental assessment prepared for the emergency rule may be obtained

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EFFECTIVE DATE: The emergency interim regulations published on May 13, 1991, are extended from 0000 hours local time August 13, 1991, to 2400 hours local time November 10, 1991.

ADDRESSES: Copies of the environmental assessment prepared for the emergency rule may be obtained from, and comments should be addressed to R.V. Fullerton, Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Fisheries Management Division, Southwest Region, NMFS, Terminal Island, California (213) 514–6660, (FTS) 795–6660, or Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, Honolulu, Hawaii (808) 523–1368, (FTS) 551–1974.

SUPPLEMENTARY INFORMATION: Under the emergency action authority of section 305(c) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), the Secretary issued an emergency rule (56 FR 21961, May 13, 1991) temporarily amending the FMP and its implementing regulations. The rule, which become effective at 0000 hours local time May 8, 1991, closes the NWHI lobster fishery in response to the low level of lobster spawning stock biomass, which may be at or near the level at which recruitment failure could occur. The catch per unit of effort (CPUE) of legal lobster from January through April 1991 was 0.63 legal lobsters per trap-haul. This CPUE is the lowest recorded during the period since 1984 when data records become available. The closure is intended to increase the biomass of spawning lobster by prohibiting the harvest of lobsters before the during the summer peak spawning period. Also, it is intended to delay the opening of the fishery while Amendment 7 to the FMP is being prepared. That amendment, if approved, would establish a seasonal closure, a limited entry program, and a process to set an annual harvest quota.

Because the same circumstances still exist in the fishery as when the emergency rule took effect, the Secretary extends for 90 days the effective dates of the rule under section 305(c)(3)(B) of the Magnuson Act.

The emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. The rule was reported to the Director of the Office of Management and Budget with an explanation of why following the procedures of that order was impracticable.

List of Subjects in 50 CFR Part 681

Fisheries, Fishing, Reporting and recordkeeping.

Dated: July 24, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 91–18004 Filed 7–29–91; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 146
Tuesday, July 30, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1240

[Docket No. FV-91-272]

Honey Research, Promotion and Consumer Information Order; Order Directing That a Referendum Be Conducted; Determination of Representative Period for Voter Eligibility; and Designation of a Referendum Agent To Conduct the Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Order for referendum.

SUMMARY: This document directs that a referendum be conducted among eligible honey producers and importers to determine: (1) Whether they favor continuance of the Honey Research, Promotion, and Consumer Information Order (Order); and, (2) whether they favor termination of the authority for producers and importers to obtain a refund of assessments.

DATES: For purposes of determining voter eligibility, the representative production period is from January 1, 1990, to December 31, 1990. The referendum will be conducted from August 1 through August 31, 1991.

ADDRESSES: Copies of the text of the aforesaid Order may be examined in the Office of the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Sheila A. Young, (202) 475–3930, at the above address.

SUPPLEMENTARY INFORMATION: This order directs that a referendum be conducted among honey producers and importers under the Honey Research, Promotion and Consumer Information Order (Order) (7 CFR part 1240), as amended. The Order is effective under the Honey Research, Promotion and Consumer Information Act (Act), as amended (7 U.S.C. 4601–4612). The referendum is to be conducted among the producers and importers of honey who, during the period January 1, 1990, through December 31, 1990 (which period is hereby determined to be the representative period for purposes of this referendum), were engaged in the production or importation of honey to ascertain whether producers and importers favor continuance of the Order and/or termination of the refund of assessment provisions.

The Act, as amended, provides that the Secretary shall conduct a referendum to determine if honey producers and importers favor, (1) The continuation of the Order, and (2) termination of the authority for honey producers and importers to obtain a refund of assessments.

The Act requires the Secretary to terminate the Order if its continuance is not favored by the requisite majority of voting producers and importers, who produced and imported more than 50 percent of the volume of honey produced and imported by those voting in the referendum.

In the event the termination of the refund provisions is favored by more than 50 percent of the producers and importers voting in the referendum, who produced and import4ed more than 50 percent of the volume of honey produced and imported by those voting in the referendum, the Order would be amended to reflect that decision.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the ballot materials that will be sued in the referendum herein ordered have been submitted to and approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0093. It has been estimated that it will take an average of 10 minutes for each of the approximately 6,000 producers and importers of honey to participate in the voluntary referendum balloting.

Ms. Sheila A. Young, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, is hereby designated the referendum agent of the Secretary of Agriculture to conduct this referendum. The procedure applicable to the referendum shall be the "Procedure for the Conduct of Referenda in Connection with the Honey Research, Promotion and Consumer Information Order," as amended in 1991 (7 CFR 1240.200). Ballots will be mailed to all eligible honey producers and importers of record on or before August 1, 1991.

Honey producers and importers not receiving ballots for the referendum may obtain them from State Agricultural Stabilization and Conservation Service Offices, and some of their county and local offices, and from the referendum agent. Ballots must be postmarked no later then August 31, 1991, to be counted.

List of Subjects in 7 CFR Part 1240

Honey, Agricultural research, Reporting and recordkeeping requirements, Market development, and Consumer information.

Authority: Honey Research, Promotion and Consumer Information Act, as amended, 7 U.S.C. 4601–4612.

Dated: July 19, 1991.

JoAnn R. Smith,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 91–17996 Filed 7–29–91; 8:45 am]

BILLING CODE 3410–02–M

Rural Electrification Administration

7 CFR Part 1703

Rural Development: Loan and Grant Program

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to amend 7 CFR chapter XVII by revising part 1703, subpart B, Rural Economic Development Loan and Grant Program. Policies, requirements and procedures contained in this subpart implement a rural economic development zero interest loan and grant program established by section 313 of the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*) (the "RE Act"). The program provides funds to RE Act Borrowers for the purpose of promoting rural economic development and job creation projects. This proposed revision would establish a method of documenting REA's selection process, permit REA to establish the maximum size of the loan or grant, permit

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List of Subjects in 7 CFR Part 1240

Honey, Agricultural research, Reporting and recordkeeping requirements, Market development, and Consumer information.

Authority: Honey Research, Promotion and Consumer Information Act, as amended, 7 U.S.C. 4601–4612.

Dated: July 19, 1991.

JoAnn R. Smith,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 91–17996 Filed 7–29–91; 8:45 am]

BILLING CODE 3410–02–M

Rural Electrification Administration

7 CFR Part 1703

Rural Development: Loan and Grant Program

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to amend 7 CFR chapter XVII by revising part 1703, subpart B, Rural Economic Development Loan and Grant Program. Policies, requirements and procedures contained in this subpart implement a rural economic development zero interest loan and grant program established by section 313 of the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*) (the "RE Act"). The program provides funds to RE Act Borrowers for the purpose of promoting rural economic development and job creation projects. This proposed revision would establish a method of documenting REA's selection process, permit REA to establish the maximum size of the loan or grant, permit Borrowers to file during the first fourteen days of every month, provide detailed guidance on the form of an application and make other less significant changes in the program. The proposed revisions are based on experiences during the first two years of the program's operation. These revisions would provide the Borrowers with information on REA's selection process, standardize the form of the application, expedite the advance of funds to the rural economic development projects, and improve the overall operation of the program.

DATES: Written comments must be submitted not later than August 29, 1991.

ADDRESSES: Submit written comments to Mark B. Wyatt, Rural Economic Development Coordinator, Rural Electrification Administration, room 4051, South Building, U.S. Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC 20250. The public may inspect all written comments on this proposed rule during regular business hours at the above address (7 CFR 1.27(b)). REA requests an original and three copies of all comments.

FOR FURTHER INFORMATION CONTACT: Mark B. Wyatt, Rural Economic Development Coordinator, Rural Electrification Administration, room 4051, South Building, U.S. Department of Agriculture, 14th and Independence Avenue SW., Washington, DC 20250, telephone number (202) 382–9552.

SUPPLEMENTARY INFORMATION: This rule is issued in conformance with Executive Order 12291. This action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, this rule has been determined to be "non-major."

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule will not represent a major Federal action that significantly affects the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.* (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment.

This program is listed in the Catalog of Federal Domestic Assistance (1990) under No. 10.854, Rural Economic Development Loan and Grant Program.

The reporting requirements contained in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The amendments to the reporting requirements in the existing rule will not become effective until approved by OMB.

Public reporting burden for this collection of information is estimated to average 3.6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to U.S. Department of Agriculture, Clearance Officer, OIRA, room 404–W, Washington, DC 20250 and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Background

On February 15, 1989, REA published the final rule, 7 CFR 1709, subpart B, in the **Federal Register** (54 FR 6867) that implemented the Rural Economic Development Loan and Grant Program, also known as the Cushion of Credit Payments Program, established by section 313 of the Rural Electrification Act of 1936, as amended, (the "RE Act"). On September 27, 1990, REA changed the designation of this rule from 7 CFR part 1709 to part 1703 (55 FR 39393). This program provides funds to RE Act Borrowers for the promotion of rural economic development and job creation projects. As of April 1991, REA had selected 146 zero interest loan applications totalling $12,403,500.

Revision of Regulation

This proposed rule reflects the experience REA has gained during the first two years of the Rural Economic Development Loan and Grant Program. The most significant revision is to select applications based on the total number of points that are received during the evaluation process. When the initial rule for this program was being developed in late 1988 and early 1989, REA spent a considerable amount of time evaluating the desirability of a ranking procedure based on assigning a given number of points for each selection factor. In 1988, REA proposed an evaluation process without a point system and requested comments from the public on this matter (53 FR 43442). REA received a number of comments in support of a point system from the public. When the final rule was published in 1989, REA did not include a point system (54 FR 6867). The final rule stated that "REA needs the latitude to develop its method of evaluating rural economic development projects as it gains experience" since the nature of this program differed entirely from traditional REA financing programs. Over the course of the last two years REA has gained a considerable amount of experience in evaluating and selecting applications. In addition, the Department of Agriculture's (USDA) Office of Inspector General (OIG) has recommended that REA establish a numerical based methodology to rank all applications to document the selection process. Based on this experience and the OIG recommendation, REA has decided to propose a selection process based on the total number of points assigned to the Borrower's application. The proposed point system will provide a Borrower with specific information on REA's evaluation of its application and how it stands with respect to other applications under consideration.

The proposed rule uses the selection factors in the existing regulation, with a few additions, deletions and modifications. Points would be used to document REA's evaluation of the application for each selection factor. The selection factors and the weights assigned to each factor have been carefully designed to reflect the many different types of projects that will promote economic development and job creation in rural areas. The development of this ranking system is guided by several important concepts. The first concept is the importance of having other funds supplement REA's financing The proposed rule requires at least a modest portion of the financing to come from other sources. The minimum amount of supplemental financing required would be equal to twenty percent of the REA funds. In addition to this minimum requirement, the number of points assigned to supplemental funds increases to the maximum level of points when supplemental funds are five times the amount of REA funds requested. The maximum number of points was capped at a level equal to 500 percent so large Projects with only a very small percentage of REA funds would not dominate all other applications.

The unemployment rate and per capita personal income levels also are very significant factors in determining the number of points an application receives. There is a close connection between supplemental financing levels and these two economic indicators. A Project receiving the highest number of points for the two economic indicators but the lowest number for supplemental financing receives approximately the same number of points as the Project scoring highest in supplemental financing but lowest for the economic indicators. This tends to adjust for concerns that those in less economically advantaged areas might not be as able to arrange as much supplemental financing as other areas.

Another concept is the necessity of including several factors that are subjective in nature. Given the nature of this program, no ranking system should select Projects simply on the basis of factors such as the amount of supplemental funds being used to finance the Project or the current economic conditions. First, REA must select Projects that will result in long-term economic development or job creation in rural areas. Second, REA, as any other lending institution, must consider factors that relate to the ultimate recipient and indicate the likelihood of success. An example of such a factor is the ultimate recipient's business plan. While there are subjective elements, this ranking system provides REA an opportunity to document the decision-making process for each selection factor. This documentation, in turn, will be useful to a Borrower to determine how its application has been evaluated with respect to each selection factor.

The concept of rural economic development as a long-term process to increase productivity and the income levels of people in rural areas has been added as a selection factor. The emphasis on Projects that provide long-term benefits is also applied to creating new jobs and improving the marketable skills of people in rural areas. REA intends for these factors to provide overall guidance for the long-term goals of this program.

Additionally, the proposal will establish a preference for Projects that have a meaningful level of REA funds. It is proposed that this level be set at five percent of the total amount of financing required for the Project. While REA has proposed a system that strongly encourages supplementing its funds, at a certain point the benefit of the Agency's funds becomes fairly insignificant and the limited funds would be more effective assisting other projects.

The last concept to be addressed is the need for REA to have the discretion in certain circumstances to decline to select an application regardless of the number of points it receives. The proposed rule allows REA to (a) limit the number of selections in a particular state during a fiscal year, (b) limit the number of selections made to a particular Borrower during each selection period, (c) allocate funds between the Electric and Telephone program Borrowers, (d) decline to select an application that will not promote economic development and/or job creation in rural areas, (e) decline to select an application to protect the long-term interests of the program, (f) decline to select an application for funds that would merely transfer property or real estate between owners without making any improvements that promote economic development, (g) decline to select an application based on the management and financial situation of the REA Borrower, (h) decline to select an application if there are conflicts with State laws, (i) decline to select an application if the Borrower is in default on its REA loans, (j) select the highest ranking feasibility studies, and, finally (k) select an application receiving fewer points if there are insufficient funds remaining for the higher scoring application but sufficient funds for one receiving fewer points.

The exception for feasibility studies listed above under (j) recognizes that studies will tend to receive fewer points for several of the selection factors. Rather than introduce the complications of a separate ranking for feasibility studies, REA would be able to select the highest ranking studies from within a group of applications. The last exception discussed above under (k) proposes to allow REA to select a small application, for example one requesting $25,000, if there are insufficient funds to select an application for $100,000.

One selection factor that is proposed in this revision pertains to the nature of the Project. Whenever a point system is used there must be a methodology established that will result in the selection of Projects that will promote economic development and job creation projects as required in section 313 of the RE Act. This factor will allocate REA funds to Projects generally considered to accomplish this goal such as the creation or expansion of business and the improvement of marketable skills.

For most selection factors, the maximum number of points is basically a measure of its importance to the overall selection. However, for supplemental funds, unemployment rates, per capita personal income levels, jobs created, and the level of cushion of credit payments, the points are based on various levels and percentages.

First, an application with supplemental funds equal to the amount of REA financing being requested (the 100% level) is used as the midpoint. As mentioned previously, the maximum number of points for supplemental funds is capped at a level equal to 500 percent. For the unemployment rate factor, approximately 33 percent of the counties in the United States fall within the category which receives the maximum number of points and approximately 80 percent of the counties fall into the categories which receive more than the minimum number of points. These same distribution percentages were used for the per capita personal income selection factor.

The levels used for job creation per dollar invested reflect levels used in other programs. For example, one U.S. Small Business Administration program (the Section 504 Certified Development Company Program) requires one job per $15,000 and they have experienced approximately one job per $10,000. The one job per $10,000 level would receive the maximum number of points under this proposed rule.

Finally, the levels proposed for the cushion of credit payments factor are designed to encourage Borrowers to support this program. They are tied into the number of points that would be given for supplemental funds invested by the Borrower in the Project. They are not at the same level because an investment in a rural development project even earning an interest rate above five percent has risk whereas a deposit into a cushion of credit account is risk-fee. It also recognizes that the existing cushion of credit deposit might be drawn down over a short period of time. Calculating the points for cushion of credit payments as both a percentage of assets and as an absolute dollar amount takes into account the size of the REA borrower. Smaller systems are not at a disadvantage. For this factor, even a modest cushion of credit payment to show support for the program results in a significant number of points.

It is proposed to revise § 1703.22 to permit the Administrator to establish the maximum size of a zero interest loan or grant based on both the amount of funds available for this program and the number and size of applicants. This will allow REA to adjust the maximum size without rulemaking.

It is proposed to revise § 1703.28(a) to permit Borrowers to file an application during the first fourteen days of every month rather than every other month. REA would still maintain a minimum review period after an application has

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It is proposed to revise § 1703.22 to permit the Administrator to establish the maximum size of a zero interest loan or grant based on both the amount of funds available for this program and the number and size of applicants. This will allow REA to adjust the maximum size without rulemaking.

It is proposed to revise § 1703.28(a) to permit Borrowers to file an application during the first fourteen days of every month rather than every other month. REA would still maintain a minimum review period after an application has been received in order to provide time for both State and local governments to review the application and for REA to perform an analysis. This review period would continue to be approximately 40 to 45 days. REA would continue to review all completed applications as a group on a periodic basis.

It is proposed to revise § 1703.20(a)(1) to replace the term "owner" with the term "Significant Stockholder." A Significant Stockholder is defined as a holder of five percent of stock in the REA Borrower. REA has also clarified the provisions on conflicts of interest. The proposed rule provides that a closely held, for-profit REA Borrower would only be able to own or manage a rural economic development Project operated on a not-for-profit basis. This is an area in the program that the USDA's Office of Inspector General felt should be clarified in the rule.

It is proposed to revise § 1703.20(a)(2) to modify restrictions on the use of REA funds for costs incurred on the rural development Project prior to the date the application is received, selected and REA's environmental review completed. It is proposed to add § 1703.20(a)(4) to expressly prohibit "conflict of interest" business transactions. It is proposed to add § 1703.20(a)(5) to prohibit the use of REA funds to refinance indebtedness incurred prior to REA's receipt of the application. REA believes the limited funds available for this program should not be used to lower the interest rate on existing indebtedness. It is proposed to add § 1703.20(a)(6) to prohibit the use of REA funds for any part of the Borrower's utility operations. This section also defines the maximum amount of "reasonable loan servicing charges" to be, on average, equal to one percent per year of the outstanding principal on the zero interest loan. In addition to loan servicing fees, expenses associated with a letter of credit used to guarantee an REA zero interest loan as proposed in § 1703.23(d) may be passed on to the ultimate recipient. Furthermore, § 1703.20(e) currently requires a Borrower to use a separate account for any deposits of zero interest loan funds prior to disbursing them unless they will be disbursed within one month.

A considerable number of new laws requiring certifications, assurances, disclosures and pledges for any application for Federal assistance have been enacted over the last several years. There are requirements in these laws that pertain to debarment and suspension, acquisition of real property, disclosure of lobbying activities and establishment of a drug-free workplace program. It is proposed to add these requirements to § 1703.28(b) (3) and (4).

In response to feedback from REA Borrowers, it is proposed to revise the section on the form of the application, § 1703.28(b), to provide detailed guidance on the information the Borrower needs to submit. This proposed section would establish a standard format for Borrowers to follow which should make applications easier to prepare and would also permit REA to analyze the application more expeditiously. It is proposed to revise the section by rearranging information currently requested into two sections that discuss the selection factors and describe the proposed Project. In addition, REA is proposing to revise the rule to request general environmental information with the application rather than after the Project has been selected. Based on experience gained this past year, REA believes it can shorten the time between the selection of an application and completion of REA's environmental review if the application includes general environmental information that the Borrower can readily provide. This information will assist REA to determine whether an environmental assessment or statement is required. In addition, REA will have the information necessary to evaluate the environmental impact of a proposed Project prior to considering it for selection.

As previously discussed, it is proposed to revise section 1703.22 to increase the maximum amount of a loan or grant above the $100,000 level. In order to analyze these larger rural economic development Projects, it is proposed to require a more comprehensive proposal from a Borrower that requests more than $100,000 in funds or more than $100,000 for a Project. (see § 1703.28(b)(6)(x)).

REA is proposing to revise § 1703.14, "Eligibility," by adding the provision that a zero interest loan or grant will not be approved for an REA Borrower when the Administrator has determined that financial assistance should not be provided to the Borrower under any section of the RE Act.

It is proposed to revise § 1703.11, "Policy," to define the long-term goal of rural economic development and job creation under this program as a sustainable increase in the productivity of economic resources in rural areas, thereby leading to an increase in income levels for the rural citizens. In addition, it is proposed to add a provision encouraging Borrowers to promote Projects that will benefit "rural areas" as defined in the RE Act (populations of 1,500 or less).

REA proposes to revise § 1703.16(c), "Purposes of zero interest loans and grants," to state that zero interest loans and grants under this program will not be provided for electric and telephone purposes. This will state explicitly what was implicit in the previous regulation. In addition to RE Act electric and telephone purposes, it is proposed to prohibit the use of funds for non-RE Act electric and telephone purposes such as a windmill producing electricity that is not part of a system providing central station service, a co-generator producing electricity or a reseller of telephone service. REA has electric and telephone programs designed to assist in providing electric and telephone service in rural areas and believes they are the proper source of any RE Act financing for those purposes. In addition, REA will give a preference under this program to applications for Projects that are not funded through REA Borrowers under other Federal programs.

REA proposes a new section, 1703.21, "Owner's equity in the Project"which states that the Administrator may determine that the owner of the rural development Project should invest equity capital in the Project. This proposed section is designed to improve the long-term success of ventures, such as state-up businesses, where the proposed Project would be essentially financed entirely with debt. REA has emphasized that one of the important aspects of supplementing its funds with other sources, such as private banks, would be to encourage sound financial arrangements for the rural development Projects. In most cases a bank, or another source of funds, providing capital for the Project will require adequate equity. There might be situations, however, where it may be necessary for the Administrator to condition REA financing on equity considerations. REA recognizes the situation of some fledgling entrepreneurs but also recognizes the importance of owner's equity in determining the ultimate success of the Project.

It is proposed to revise § 1703.23(c) to require an REA Borrower to repay its REA zero interest loan if the ultimate recipient of these funds repays its loan to the Borrower, unless the Administrator has approved otherwise. Additionally, REA proposes to add a new § 1703.23(d) to address the use of a letter of credit to guarantee an REA zero interest loan. This new section provides the Administrator the discretion to offer a letter of credit as an option to a

Borrower in a situation where state laws, orders or rulings would place the risk that the ultimate recipient might not repay its zero-interest loan on REA rather than the Borrower. In those situations, REA will require a third-party guarantee to provide the necessary assurance that the REA zero interest loan will be repaid.

REA is proposing to revise § 1703.25, "Approval of agreements." this section covers agreements between the REA Borrower and the owner of a rural economic development Project. REA must obtain sufficient information about these third-party or pass-through transactions to fulfill its responsibilities but wishes to reduce the administrative burden to the extent possible. REA has proposed to revise this section to permit prior approval of the final draft version of the documents such as the loan agreement, security agreement and note. REA proposes to add § 1703.24(c) to direct and caution REA Borrowers to make agreements and prepare documents with the owner of the rural development Project, or those undertaking the Project, that are in accordance with all applicable laws.

It is proposed to add § 1703.29(c) and (e), § 1703.30(b) and § 1703.31 (b), (c) and (d) to cover situations where the REA Borrower no longer wants funds for a selected application, fails to complete its application, fails to satisfy conditions prerequisite to release of funds, or does not spend funds on the rural economic development Project in a reasonable time period. Additionally, REA proposes to add § 1703.29(d) to cover situations where there is a change in the purpose of a loan or grant rather than just a change in the method of carrying out a particular purpose.

REA proposes to revise § 1703.32(a) to provide more details about records that must be available to support the disbursement of REA funds. Since third parties are generally undertaking these rural development Projects, it becomes a greater challenge to provide those reviewing the Project, such as the REA field accountant, with the necessary supporting records. The proposed change will permit REA and others to make necessary reviews of the use of Federal funds yet at the same time take into account the involvement of third parties.

REA has proposed provisions under § 1703.32(b) that require an REA Borrower to return any amounts used for unapproved purposes as a prepayment on the note. Finally, a new subsection, 1703.32(d), is proposed that would require an REA Borrower to notify REA if the entity that received the proceeds of the zero interest loan is in default on its loan to the Borrower.

REA has received some complaints about tying the receipt of rural development assistance from REA Borrowers to acceptance of electric service. This topic has been discussed recently in several industry seminars. In view of the continuing interest in this subject, REA invites comments from the public on whether any REA regulation in this area is necessary or desirable. Persons urging provisions in this rule addressing tying arrangements are asked to elaborate on the basis for their views and to suggest specific ways in which they think the proposed rule should be modified to address their concerns.

Finally, REA is proposing to change the name of this program to the Rural Economic Development Financing Program. There have been several new programs that have authorized loans and grants for REA Borrowers for rural economic development. We wish to distinguish this program from others with a title that doesn't rely simply on the ability to provide loans and grants. Any suggestions for alternative titles are welcome.

List of Subjects in 7 CFR Part 1703

Community development, grant programs—housing and community development, Loan programs—housing and community development, Reporting and recordkeeping requirements, Rural areas.

For reasons set forth in the preamble, REA hereby proposes to amend 7 CFR chapter XVII by revising part 1703, subpart B, as set forth below:

1. The authority citation for 7 CFR part 1703 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*; Title I, Subtitle D, Section 1403, Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203: Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72.

2. Subpart B is revised to read as follows:

Subpart B—Rural Economic Development Financing Program

Sec.
1703.10 Purpose.
1703.11 Policy.
1703.12 Definitions.
1703.13 Source of funds.
1703.14 Eligibility.
1703.15 Disposition of funds in the subaccount.
1703.16 Purposes of zero interest loans and grants.
1703.17 Documenting the evaluation of applications for zero interest loans and grants.
1703.18 Significance of REA financing to the total project costs.
1703.19 Preference for zero interest loans over grants.
1703.20 Limitations on the use of zero interest loan and grant funds.
1703.21 Owner's equity in the project.
1703.22 Maximum and minimum sizes of a zero interest loan or grant.
1703.23 Terms of zero interest loan repayment.
1703.24 Approval of agreements.
1703.25 Transfer of employment or business.
1703.26 Environmental requirements.
1703.27 Other considerations.
1703.28 Applications.
1703.29 Review and selection process.
1703.30 Final application processing and legal documents.
1703.31 Disbursement of zero interest loan and grant funds.
1703.32 Review and other requirements.

Subpart B—Rural Economic Development Financing Program

§ 1703.10 Purpose.

(a) This subpart sets forth the Rural Electrification Administration's (REA's) policies and procedures for making zero interest loans and grants to Borrowers in accordance with the Cushion of Credit Payments Program authorized in section 313 of the Act.

(b) The zero interest loans and grants are to be provided for the purpose of promoting rural economic development and rural job creation Projects.

§ 1703.11 Policy.

(a) It is REA's policy to encourage Borrowers to use the Rural Economic Development Financing Program to promote Projects that will result in a sustainable increase in the productivity of economic resources in rural areas and thereby lead to a higher level of income for rural citizens.

(b) REA also encourages Borrowers to promote rural economic development and rural job creation Projects that:

(1) Are based on sound economic and financial analyses;

(2) Take a long-term perspective; and

(3) Will benefit Rural Areas as defined in title I, section 13 of the Act.

(c) Borrowers are encouraged to make deposits into cushion of credit accounts of the Rural Electrification and Telephone Revolving Fund.

(d) REA will maintain liaisons with officials of other Federal, State, regional and local rural development agencies to coordinate this program with other rural economic development programs.

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1703.17 Documenting the evaluation of applications for zero interest loans and grants.
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1703.20 Limitations on the use of zero interest loan and grant funds.
1703.21 Owner's equity in the project.
1703.22 Maximum and minimum sizes of a zero interest loan or grant.
1703.23 Terms of zero interest loan repayment.
1703.24 Approval of agreements.
1703.25 Transfer of employment or business.
1703.26 Environmental requirements.
1703.27 Other considerations.
1703.28 Applications.
1703.29 Review and selection process.
1703.30 Final application processing and legal documents.
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Subpart B—Rural Economic Development Financing Program

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(b) The zero interest loans and grants are to be provided for the purpose of promoting rural economic development and rural job creation Projects.

§ 1703.11 Policy.

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(b) REA also encourages Borrowers to promote rural economic development and rural job creation Projects that:

(1) Are based on sound economic and financial analyses;

(2) Take a long-term perspective; and

(3) Will benefit Rural Areas as defined in title I, section 13 of the Act.

(c) Borrowers are encouraged to make deposits into cushion of credit accounts of the Rural Electrification and Telephone Revolving Fund.

(d) REA will maintain liaisons with officials of other Federal, State, regional and local rural development agencies to coordinate this program with other rural economic development programs.

§ 1703.12 Definitions.

Act—the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*).

Administrator—the Administrator of the Rural Electrification Administration.

Approved Purpose—a purpose that REA has specifically approved in the Letter of Agreement covering the use of the REA zero interest loan and/or grant funds provided to the Borrower.

Borrower—an entity that has outstanding REA and/or Rural Telephone Bank loans or loan guarantees under the provisions of the Act.

Business Incubator—a facility in which small businesses can share premises, support staff, computers, software or hardware, telecommunications terminal equipment, machinery, janitorial services, utilities, or other overhead expenses, and where such businesses can receive technical assistance, financial advice, business planning services or other support. The business incubator program, however, does not necessarily have to involve the sharing of premises.

Demonstration Project—a Project for which the owner agrees in writing to provide REA, if requested, with detailed information on the steps it takes in organizing and operating the Project, will permit REA and REA's guests to make reasonable visits to the Project, and honor any other reasonable REA request to disseminate information on the Project. Examples of information include a description of the process of incorporation, types of financing obtained, permits required by governments, amount of time required for various stages of Project, sources of technical assistance from government programs, private foundations or trade organizations, any experiences or lessons that the owner wishes to share with the public and other information which will assist REA in promoting similar projects. It shall not require the disclosure of trade secrets or proprietary techniques.

Electric or Telephone Purpose—a purpose that:

(1) The Administrator or Governor of the Rural Telephone Bank (RTB) is authorized to finance under sections 2, 4, 5, 201, 305, and 408 of the Act; or

(2) Is characterized as furnishing, generating or transmitting electric energy or other activities involved in providing electricity, or is characterized as providing telephone service. It shall include electric and telephone facilities and equipment used in connection with providing such a purpose. As applied to electric Borrowers, it shall not include community antenna television (CATV) systems or facilities intended exclusively for educational purposes as set forth in section 203 of the Act. As applied to telephone Borrowers it shall include CATV systems or facilities intended exclusively for educational purposes, as set forth in section 203 of the Act, that the Administrator or Governor of the RTB is authorized to finance under sections 201, 305 or 408 of the Act and the regulations that implement those sections.

Job Creation—creation of jobs in rural areas, or in close enough proximity to rural areas so that it is likely that the majority of the jobs created will be held by residents of rural areas.

Letter of Agreement—a legal document executed by REA and the Borrower that contains certain terms, conditions, requirements and understandings applicable to the zero interest loan and/or grant as determined by the Administrator. It will include, among other things, a Project description, Approved Purposes for the zero interest loan and/or grant, the maximum amount of zero interest loan and/or grant, supplemental funds to be provided to the Project and certain agreements or committees the Borrower proposed in its application.

Pass-through-grant—a grant that the Borrower makes to another entity that will own or undertake the Project using the proceeds of the REA grant.

Pass-through-loan—a loan that the Borrower makes to another entity that will own or undertake the Project using the proceeds of the REA zero interest loan.

Project—is an undertaking which develops the economy of a rural area or results in Job Creation. As used in subpart B, the term "Project" includes both direct undertakings by Borrowers as well as those sponsored by other parties using the proceeds of Pass-through-loans or Pass-through-grants.

REA—the Rural Electrification Administration, an agency of the United States Department of Agriculture.

Reasonable Loan Servicing Charges—charges for expenses the Borrower incurs to service a loan provided to another entity unaffiliated with the Borrower using the proceeds of the REA zero interest loan. The charges over the life of the loan for routine loan service expenses shall not exceed an amount equal to the sum of one percent per year of the outstanding principal on the first day of each year on the Borrower's REA zero interest loan. The charges for extraordinary expenses associated with collection of delinquent payments or other similar expenses must receive the prior approval of REA.

Rural Area—a rural area as defined in section 13 of the Act.

Rural Economic Development Account—a Federally insured account into which the Borrower deposits any advances of zero interest loan funds from REA until the Borrower disburses the funds.

Significant Stockholder—an owner or holder of five percent or more of the common stock (or shares) or five percent or more of the preferred stock (or shares) of the REA Borrower.

Technical Assistance—Feasibility studies, market research, environmental studies and similar activities that are generally characterized as studies, analyses or designs.

§ 1703.13 Source of funds.

All funds for zero interest loans and grants provided under this program shall come from interest differential credits to the Rural Economic Development Subaccount (Subaccount), other funds made available to the Subaccount, and from the repayment of zero interest loans into the Subaccount.

§ 1703.14 Eligibility.

Zero interest loans and grants may be made to any Borrower that is not delinquent on any Federal debt or in bankruptcy proceedings. However, a zero interest loan or grant will not be made to a Borrower during any period in which the Administrator has determined that no additional financial assistance of any nature should be provided to the Borrower pursuant to any provision of the Act. The determination to suspend eligibility for assistance under this subpart will be based on one or more of the following factors:

(a) The Borrower's demonstrated unwillingness to exercise diligence in repaying REA loans or loan guarantees that results in the Administrator being unable to find that a loan, or loan guaranteed by REA, would be repaid within the time agreed;

(b) The Borrower's demonstrated unwillingness to meet requirements in REA's legal documents or regulations; or

(c) Other actions on the part of the Borrower that thwart the achievement of the objectives of the REA program.

§ 1703.15 Disposition of funds in Subaccount.

Zero interest loans and grants will be made during each fiscal year to the full extent of the amounts held in the Subaccount subject only to limitations imposed by law. For administrative purposes, REA will make a determination of the fiscal year-end amount held in the Subaccount as of a date prior to, but as near as practicable to, the end of fiscal year.

§ 1703.16 Purposes of zero interest loans and grants.

(a) Zero interest loans and grants shall be used exclusively to promote rural economic development and/or Job Creation Projects, including, but not limited to, Project feasibility studies, start-up costs, Business Incubator Projects, and other reasonable expenses for the purpose of fostering rural economic development.

(b) REA shall give preference to applications for rural economic development and/or Job Creation Projects that are not currently funded under other Federal rural development programs authorizing Borrowers to receive financial assistance, including other REA programs. REA shall give preference to providing funds under this subpart for Projects other than Business Incubator Projects to the extent funds are available to Borrowers for Business Incubator Projects from a Rural Business Incubator Fund administered by the Administrator.

(c) Zero interest loans and grants shall not be used for any Electric or Telephone Purpose, as determined by the Administrator.

(d) Zero interest loans and grants shall not be used for proposed Projects located in areas covered by the Coastal Barrier Resources Act (16 U.S.C. 3501 *et seq.*)

§ 1703.17 Documenting the evaluation of applications for zero interest loans and grants.

(a) REA will select applications that receive the greatest number of total points based on the factors in this section, subject to available funds and the provisions of §§ 1703.17(d), 1703.18, and 1703.19. REA will make the determination of all numbers, dollars, levels and rates, as well as the nature, costs, location and other characteristics of the proposed Project, to determine the number of points assigned to an application for each selection factor. Applications for zero interest loans and grants will be ranked separately. In addition, applications requesting less than five percent of the total Project costs as provided in § 1703.18 will be ranked separately.

(b) REA will not select an application unless the Project will receive supplemental funds in an amount at least equal to 20% of the REA zero interest loan or grant to be provided to the Project, as determined by the Administrator. Supplemental funds as used in this section may come from the Project owner in the form of equity funds, private sources, State and local government sources, other Federal government sources, the Borrower or other sources. The minimum amount of supplemental funds must be provided to the Project after REA receives the Borrower's application. Prior to the advance of REA funds, REA must verify that any owner equity funds have been provided to the Project and any funds from other sources have been committed to the Project.

(c) The number of points assigned for each selection factor shall be determined as follows:

(1) The amount of supplemental funds provided or to be provided to the Project from the Project owner in the form of equity funds, private sources, State and local government sources, other Federal government sources, the Borrower or other sources of funds. The supplemental funds used in this calculation must be provided to the Project during the period covering six months prior to the receipt of the application by REA and two years after the first advance of REA funds for the Project. REA will determine what constitutes expenditures on the Project. If supplemental funds as a percentage of the REA zero interest loan and/or grant to be provided to the Project is:

(i) Equal to 20%—10 points, the minimum number of points;

(ii) Equal to 100%—20 points;

(iii) Equal to 500%—30 points, the maximum number of points.

Ratios of supplemental funds to REA funds falling between these levels will be assigned points based on a straight-line interpolation calculated to the nearest whole point. The result will be rounded based on the standard convention of a fraction of ½ or greater equals 1.

(2) A comparison of the unemployment rate in the county where the Project will be located to the State and National unemployment rates.

(i) If the unemployment rate in the county where the Project will be located:

(A) Exceeds the National unemployment rate by 30 percent or more—10 points, the maximum number of points;

(B) Is equal to the National unemployment rate—5 points;

(C) Is equal to or less than 75 percent of the National unemployment rate—1 point, the minimum number of points.

(ii) If the unemployment rate in the county where the Project will be located:

(A) Exceeds the State unemployment rate by 30 percent or more—8 points, the maximum number of points;

(B) Is equal to the State unemployment rate—4 points;

(C) Is equal to or less than 75 percent of the State unemployment rate—1 point, the minimum number of points.

Unemployment rates falling between these levels will be assigned points based on straight-line interpolation calculated to the nearest whole point. The result will be rounded based on the standard convention of a fraction of ½ or greater equals 1. If the Project will be located in several counties, REA will use a simple average (mean) of the counties for the comparison. REA will use the average of the most recent twelve months of unemployment rates it has obtained from the Bureau of Labor Statistics, U.S. Department of Labor or other government sources and processed into a suitable format.

(3) A comparison of the per capita personal income in the county where the Project will be located to State and National per capita personal income levels.

(i) If the per capita personal income level in the county where the Project will be located:

(A) Is less than or equal to 90 percent of the National per capita personal income level—10 points, the maximum number of points;

(B) Is equal to the National per capita personal income level—5 points;

(C) Exceeds the National per capita personal income level by 15 percent or more—1 point, the minimum number of points.

(ii) If the per capita personal income level in the county where the Project will be located:

(A) Is less than or equal to 90 percent of the State per capita personal income level—8 points, the maximum number of points;

(B) Is equal to the State per capita personal income level—4 points;

(C) Exceeds the State per capita personal income level by 15 percent or more—1 point, the minimum number of points.

Per capita personal income levels falling between these levels will be assigned points based on straight-line interpolation calculated to the nearest whole point. The result will be rounded based on the standard convention of a fraction of ½ or greater equals 1. If the Project will be located in several counties, REA will use a simple average (mean) of the counties for the comparison. REA will use the most recent annual per capita personal income levels it has obtained from the Bureau of Economic Analysis, U.S. Department of Commerce or other government sources and processed into a suitable format.

(4) The number of long-term jobs that the Project will directly create in rural areas:

(i) For one or more direct, long-term jobs per $10,000 of total Project costs—10 points, the maximum number of points;

(ii) For one direct, long-term jobs per $20,000 of total Project costs—5 points;

(iii) For no direct, long-term jobs—0 points.

REA will consider a Project such as construction of an industrial building or business incubator to be directly creating jobs once it is occupied. REA will also consider water and sewer facilities that are necessary for a new business to be directly creating jobs. This factor will not count indirect job creation that results from an overall increase in the local economy once the Project is completed. If total Project costs per job falls between these levels, points will be assigned based on straight-line interpolation calculated to the nearest whole point. The result will be rounded based on the standard convention of a fraction of ½ or greater equals 1.

(5) Projects that have a written plan to provide opportunities or incentives to improve marketable skills for people in rural areas through training and/or education, or Projects which consists of providing this training and/or education.—10 points.

(6) Projects that lead directly to an increase in long-term productivity and per capita income in rural areas—up to 20 points. REA's determination will be based on the extent to which the Project will improve the productive potential of the labor force, industrial plant, infrastructure, natural resources and institutions by utilizing advanced technology, creating higher skilled occupations, adding higher value to natural resources, creating jobs with higher career potential or is considered part of a knowledge intensive industry. In considering infrastructure, REA will award points only for the facilities, such as water and sewer facilities, that will serve and are necessary for businesses, industrial parks and similar commercial activities.

(7) Projects that will strengthen a weak or depressed economy in rural areas served by a Borrower, as determined by REA, taking into account the financial condition of the Borrower and the impact of the Project on the Borrower—up to 10 points.

(8) Commitment from the owner(s) of the Project that the Project will be a Demonstration Project—5 points.

(9) Projects that will be located in Rural Areas (population of 1,500 or less) or will provide greater benefit to Rural Areas than other areas. The points will be based on the following:

(i) Projects that will be located in Rural Areas—20 points;

(ii) Projects that will provide greater benefit to Rural Areas than other areas, as determined by the Administrator—15 points.

(10) Projects organized on a not-for-profit basis that:

(i) Provide services to rural businesses and/or areas, such as management training and advice, education, training for community leaders and providing assistance in market research;

(ii) Expand the institutional base; and

(iii) Promote economic development in rural areas—5 points.

(11) Projects that in REA's best judgment have the greatest probability of success as measured by long-term job creation or retention, and long-term rural economic development.—up to 20 points. REA's determination will be based on the ultimate recipient's feasibility studies, income statements, cash flow statements, existing and projected balance sheets, especially the equity (and grant) financing to debt financing ratio, market research, industry trends and current economic conditions given the nature of the Project. Long-term job creation and rural economic development as used for this factor shall mean jobs or development that would generally be expected to last at least five years.

(12) Applications submitted by Borrowers that have made cushion of credit payments as set forth in Section 313 of the Act based on the following:

(i) If the Borrower has $300,000 or three percent of total assets, whichever is less, in Cushion of Credit payments on the date REA receives the application—15 points;

(ii) If the Borrower has $100,000 or one percent of total assets, whichever is less, in Cushion of Credit payments; on the date REA receives the application—10 points;

(iii) If the Borrower has at least $5,000 or 0.5 percent of total assets, whichever is less, in Cushion of Credit payments on the date REA receives the application—5 points.

The calculation of a Borrower's total assets will be based on REA's most recently published Statistical Report, Rural Electric Borrowers (REA Bulletin 1–1) or Statistical Report, Rural Telephone Borrowers (REA Bulletin 300–4). If the amount of Cushion of Credits payments falls between these levels, points will be based on a straight-line interpolation calculated to the nearest whole point. The result will be rounded based on the standard convention of a fraction of ½ or greater equals 1.

(13) The knowledge, experience, education and training of the proposed owners and management of the Project—up to 10 points.

(14) The ultimate recipient's business plan—up to 20 points. REA's determination will be based on the quality of the business plan. The business plan should include the following: a description of the Project, what will be produced or accomplished, the area to be served, any market research, total Project costs, projected use of funds by purpose or category, a feasibility study with projected balance sheets, income statement and cash flow statements, the source of supplemental funds, the nature and strength of commitments from other sources of financing, the equity contribution, the proposed ownership and management of the Project and other relevant information. The plan should describe any coordination with a local, regional or state development organization. REA expects the ultimate recipient's business plan to be comparable to a plan normally submitted to a bank for long-term financing.

(15) Quality and completeness of Borrower's application—up to 10 points. REA's determination will be based on the completeness and quality of the Borrower's application as outlined in § 1703.28 of this subpart.

(16) Projects that in the judgement of REA will diversify the rural economic base or indirectly create jobs—5 points.

(17) The extent to which the nature of the Project will promote rural economic development and/or job creation—up to 20 points.

(i) REA will base its determination for this factor on whether the Project:

(A) Is considered a start-up or expansion of a business, a Business Incubator, an industrial building or park, or infrastructure necessary to connect these projects to existing infrastructure;

(B) Will provide long-term employment for people in rural areas; or

(C) Will train or educate people or provide rural economic development advice to businesses of people, including educational television to schools.

(ii) Points will not be awarded for Projects that:

(A) Are normally provided as Federal, State or local government services unless they will directly create long-term jobs comparable to private business jobs;

(B) Consist of land that will not be used as the site for a structure; or

(C) Will be used for residential purposes or that will be used for entertainment purposes at the residential level, such as residential dwellings and land sites, entertainment cable television, and a personal, non-business related vehicle.

(d) Regardless of the number of points assigned to a Borrower's application, REA may:

(1) Limit the number of applications selected in any one state during any fiscal year to the ratio of REA or RTB Borrowers in that state to the total number of REA or Rural Telephone Bank Borrowers multiplied by three, or ten percent of the total number selections that have been made during the current fiscal year, or ten, whichever is greatest. The number of REA and Rural Telephone Bank Borrowers shall be determined as of the latest published REA Statistical Reports;

(2) Limit a Borrower to one selected application during any selection period;

(3) Allocate available funds between applications from Electric and Telephone Borrowers;

(4) Decline to select an application that the Administrator has determined would not accomplish the purpose of promoting economic development and job creation in rural areas;

(5) Decline to select an application that would harm the reputation of this program;

(6) Decline to select an application for funds that will transfer property or real estate between owners without making any additions or improvements which will promote economic development, as determined by REA;

(7) Decline to select an application based on the management and financial situation of the Borrower applying for the zero interest loan or grant. In determining the Borrower's financial situation, REA will consider, among other things, the Borrower's existing and projected cash flows, equity to asset ratios, times interest earned ratios, debt service coverage ratios, the level of its investments, the level of its cash and other liquid assets, its working capital and repayment of its debts;

(8) Decline to select an application based on a determination that limitations under State laws will lessen the likelihood of repayment of the REA zero interest loan in the event that the Borrower does not receive funds from the Project necessary to cover the REA zero interest loan payments;

(9) Decline to select an application based on the unwillingness of the Borrower applying for the zero interest loan or grant to exercise diligence in repaying REA loans or loan guarantees, and comply with REA's legal documents and regulations;

(10) Select an application receiving fewer points than another application if there are insufficient funds during a particular budget period to select the higher ranked application;

(11) Select the highest ranking application for funds to finance a project that consists of preparing a feasibility study.

(e) REA will only evaluate, and consider for selection, applications that request funds for purposes set forth in § 1703.16, as determined by the Administrator. REA will not evaluate applications that do not conform with all of the provisions of this subpart, as determined by the Administrator.

§ 1703.18 Significance of REA financing to the total project costs

Selection of applications shall be based on a preference for applications requesting REA financing which will be at least equal to five percent of the total Project costs, as determined by the Administrator. Projects costs shall be based on the amount that would be spent over the first two years after the first advance of REA funds for the Project.

§ 1703.19 Preference for zero interest loans over grants.

Selection of applications shall be based on a preference for providing Borrowers zero interest loans rather than grants under this program.

§ 1703.20 Limitations on the use of zero interest loan and grant funds.

(a) Zero interest loans and grants shall not be used:

(1) To fund or assist Projects of which any director, officer, general manager or Significant Stockholder of the Borrower, or close relative thereof, is an owner, or which would, in the judgment of REA, create a conflict of interest or the appearance of a conflict of interest. However, REA shall not consider cooperative members to be owners of the Borrower in making this determination. Without limiting the generality of the foregoing, ordinarily, a Borrower organized as a closely held, for-profit corporation, its subsidiary or an affiliate, would only be able to own or manage a Project operated on a not-for-profit basis;

(2) For any costs incurred on the Project:

(i) Prior to receipt of the Borrower's completed application by REA during an application period unless REA has specifically approved such usage in writing;

(ii) Prior to the selection of the application covering the Project by the Administrator, except for such costs that are included in the Approved Purposes, which REA has determined were necessary to initiate the Project; or

(iii) For site development, the destruction or alteration of buildings, or other activities that would adversely affect the environment or limit the choice of reasonable alternatives prior to satisfying the requirements of § 1703.26, Environmental requirements, as determined by the Administrator;

(3) By the recipient of a Pass-through-loan or Pass-through-grant to purchase or lease any real property, materials, equipment or services from the Borrower, or Significant Stockholders, officers, managers or directors of the Borrower, or close relatives thereof, in excess of a level that would reasonably be considered the fair market value, as determined by the Administrator;

(4) By the Borrower to purchase or lease any real property, materials, equipment or services that would create a conflict of interest or the appearance of a conflict of interest, as determined by the Administrator;

(5) For refinancing indebtedness incurred prior to receipt of the Borrower's completed application by REA;

(6) For the Borrower's electric or telephone operations nor for any operations affiliated with the Borrower unless the Administrator has specifically informed the Borrower in writing that the affiliated operations are part of the approved REA loan or grant purposes; or

(7) For any purpose that the Administrator has not approved.

(b) A Borrower may not charge interest for the use of the proceeds of the zero interest loan provided under this program; however, it may charge Reasonable Loan Servicing Charges and the amount paid for an irrevocable Letter of Credit made payable to REA and issued on behalf of the Borrower that guarantees repayment of an REA zero interest loan, as determined by the Administrator.

(c) A Borrower must calculate any costs to charge in connection with the use of grant funds under this program for the Project and shall temporarily deposit the grant funds in accordance with 7 CFR part 3015, Uniform Federal Assistance Regulations, and 7 CFR part 3016, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, as appropriate.

(d) A Borrower may not make a profit from any zero interest loan or grant provided from the Subaccount.

(e) The Borrower shall temporarily deposit the zero interest loan funds into a separate Federally insured account

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(iii) For site development, the destruction or alteration of buildings, or other activities that would adversely affect the environment or limit the choice of reasonable alternatives prior to satisfying the requirements of § 1703.26, Environmental requirements, as determined by the Administrator;

(3) By the recipient of a Pass-through-loan or Pass-through-grant to purchase or lease any real property, materials, equipment or services from the Borrower, or Significant Stockholders, officers, managers or directors of the Borrower, or close relatives thereof, in excess of a level that would reasonably be considered the fair market value, as determined by the Administrator;

(4) By the Borrower to purchase or lease any real property, materials, equipment or services that would create a conflict of interest or the appearance of a conflict of interest, as determined by the Administrator;

(5) For refinancing indebtedness incurred prior to receipt of the Borrower's completed application by REA;

(6) For the Borrower's electric or telephone operations nor for any operations affiliated with the Borrower unless the Administrator has specifically informed the Borrower in writing that the affiliated operations are part of the approved REA loan or grant purposes; or

(7) For any purpose that the Administrator has not approved.

(b) A Borrower may not charge interest for the use of the proceeds of the zero interest loan provided under this program; however, it may charge Reasonable Loan Servicing Charges and the amount paid for an irrevocable Letter of Credit made payable to REA and issued on behalf of the Borrower that guarantees repayment of an REA zero interest loan, as determined by the Administrator.

(c) A Borrower must calculate any costs to charge in connection with the use of grant funds under this program for the Project and shall temporarily deposit the grant funds in accordance with 7 CFR part 3015, Uniform Federal Assistance Regulations, and 7 CFR part 3016, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, as appropriate.

(d) A Borrower may not make a profit from any zero interest loan or grant provided from the Subaccount.

(e) The Borrower shall temporarily deposit the zero interest loan funds into a separate Federally insured account

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called the Rural Economic Development Account unless the funds will be disbursed within one month. However, all interest earned on temporarily deposited funds in excess of $250 per year must be used for Approved Purposes or returned to the Rural Economic Development Subaccount.

§ 1703.21 Owner's equity in the project.

The Administrator may require, as a condition to REA financing, that owner(s) of the Project invest equity capital if determined to be financially necessary, based on an REA financial analysis and sound lending practices.

§ 1703.22 Maximum and minimum sizes of a zero interest loan or grant.

The maximum size of a zero interest loan or grant shall be $10,000. The Administrator shall establish and may periodically increase or decrease the maximum size of a zero interest loan or grant taking into account such factors as the amount of funds to be made available from the Subaccount and the Borrowers' applications for zero interest loans and grants. The Administrator shall publish the maximum size of a zero interest loan or grant in the **Federal Register**. For an exceptionally beneficial Project, the Administrator may waive the minimum size limitations in this section.

§ 1703.23 Terms of zero interest loan repayment.

(a) REA shall determine the terms and repayment schedule of the zero interest loan to the Borrower based on the nature of the Project and Approved Purposes. Ordinarily, the total term of the zero interest loan, including any principal deferment period, shall not exceed 10 years. In general, the repayment terms the Borrower sets on a Pass-through-loan must be at least as generous as the zero interest loan provided to the Borrower but, with the Administrator's approval, may be more generous.

(b) REA has the discretion to defer the repayment of principal up to two years, based on its analysis of the feasibility of the Project. Ordinarily, if REA considers the Project to be a business expansion or going concern, the first repayment of principal will not begin until one year after the date of the REA note. This should provide sufficient time for the Borrower to satisfy the prerequisites to the advance of loan funds. Ordinarily, if REA considers the Project to be a start-up project, the first repayment of principal will not begin until two years after the date of the REA note. Loans shall be repaid in equal monthly payments of principal.

(c) Unless the Administrator has specifically approved otherwise, the Borrower shall be required to repay the REA zero interest loan in full at such time as a Pass-through-loan has been fully repaid to the Borrower. If the Borrower uses the proceeds of the REA zero interest loan to provide Pass-through-loans to more than one entity, this requirement shall only apply to that portion of the zero interest loan associated with the loan that has been fully repaid to the Borrower.

(d) If the Administrator determines that, as a result of state law, court rulings or regulatory commission decisions, it is necessary to ensure that the Borrower will repay the REA zero interest loan, the Borrower may be required to provide an irrevocable letter of credit, or another form of guarantee satisfactory to the Administrator. The letter of credit or other guarantee is to be made payable to REA and issued on behalf of the Borrower. The letter of credit, or other guarantee, may not be secured by any assets under a REA and/or Rural Telephone Bank mortgage and must be in form and substance satisfactory to the Administrator. REA must receive the letter of credit or other guarantee prior to the advance of any zero interest loan funds.

§ 1703.24 Approval of agreements.

REA must approve any agreements between the Borrower and the owner(s) of the Project, those undertaking the Project, or any intermediary that will re-lend or transfer the proceeds of the REA funds, that the Administrator deems necessary.

(a) Borrowers must obtain REA approval of any loan, grant or security agreement, mortgage or note between the Borrower and the owner(s) of the Project, those undertaking the Project or any intermediary that will re-lend or transfer the proceeds of the REA funds, prior to the advance of REA zero interest loan or grant funds to the Borrower. The Borrower must receive REA's approval of the final draft version of the documents prior to their execution.

(b) Borrowers must obtain REA's written approval prior to revising or amending any loan, grant or security agreement, mortgage or note that has been reviewed and approved by REA pursuant to § 1703.24(a). Additionally, the Borrower must obtain REA's written approval prior to executing, revising or amending any other agreement, in connection with the Project, between the Borrower and the owner(s) of the Project, those undertaking the Project or any intermediary that will re-lend or transfer the proceeds of the REA funds.

(c) The Borrower and the owner(s) of the Project, or those undertaking the Project, should make agreements and prepare documents in accordance with all applicable laws.

(Approved by the Office of Management and Budget under control number 0572–0086)

§ 1703.25 Transfer of employment or business.

The Project must not result primarily in the transfer of any existing employment or business activity from one area to another.

§ 1703.26 Environmental requirements.

(a) Prospective recipients of zero interest loans or grants must consider the potential environmental impact of their proposed Projects at the earliest planning stage and plan development in a manner that reduces, to the extent practicable, the potential to affect the quality of the human environment adversely.

(b) *Application for zero interest loans or grants for Technical Assistance.* The application for a zero interest loan or grant for Technical Assistance is generally covered by 7 CFR 1794.31(b)(13) and (14). Consequently, no Borrower's Environmental Report or other environmental documentation is normally required to support such an application.

(c) *Application for zero interest loans or grants for a Project that is not considered Technical Assistance.* REA will review support materials in the application and initiate an environmental review process pursuant to 7 CFR part 1794. This process will focus on any environmental concerns or problems that are associated with the Project. The level and scope of the environmental review will be determined in accordance with the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), the Council of Environmental Policy for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), REA's Environmental Policies and Procedures (7 CFR part 1794) and other relevant Federal environmental laws, regulations and Executive Orders. Activity related to the Project that will adversely affect the environment or limit the choice of reasonable alternatives shall not be undertaken prior to completion of REA's environmental review process.

§ 1703.27 Other considerations.

(a) *Equal opportunity and nondiscrimination requirements.* All zero interest loans and grants made under this subpart are subject to the nondiscrimination provisions of title VI of the Civil Rights Act of 1964, as amended (7 CFR part 15); section 504 of the Rehabilitation Act of 1973, as amended (7 CFR part 15b); the Age Discrimination Act of 1975, as amended (45 CFR part 90); and Executive Order 11246, as amended by Executive Order 11375.

(b) *Architectural Barriers.* All facilities financed with REA zero interest loans or grants that are open to the public or in which physically handicapped persons may be employed or reside must be designed, constructed, and/or altered to be readily accessible to, and usable by handicapped persons. Standards for these facilities must comply with the Architectural Barriers Act of 1968, as amended, and with the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR part 101–19, subpart 101–19.6).

(c) *Flood hazard area precautions.* In accordance with 7 CFR part 1788, if the Project is in an area subject to flooding, flood insurance must be provided to the extent available and required under the National Flood Insurance Act of 1968, as amended by the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 through 4128). The insurance shall cover, in addition to the buildings, any machinery, equipment, fixtures and furnishings contained in the buildings. REA shall comply with Executive Order 11988, Floodplain management, in considering the application for the Project.

(d) *Real property acquisition.* Any acquisition of real property in connection with this program is subject to 7 CFR Part 21, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs. Owners of real property acquired under Federal or federally-assisted programs, and persons displaced from their dwellings, businesses, or farms as a result of such an acquisition, must be provided fair, consistent, and equitable treatment, as defined by these regulations.

(e) *Drug-Free Workplace.* Grants made under this program are subject to the requirements set forth in 7 CFR Part 3017, Subpart F, Drug-Free Workplace Requirements, which implements the Drug-Free Workplace Act of 1988. A Borrower requesting a grant will be required to certify that it will establish and make a good faith effort to maintain a drug-free workplace program.

(f) *Debarment and Suspension.* The requirements of EO 12549, Debarment and Suspension, and 7 CFR part 3017, subparts A through E, Governmentwide Debarment and Suspension (Nonprocurement), regarding debarment and suspension are applicable to this program.

(g) *Intergovernmental Review of Federal Programs.* This program is subject to the requirements of Executive Order (EO) 12372, Intergovernmental Review of Federal Programs and 7 CFR Part 3015, Subpart V, Intergovernmental Review of Department of Agriculture Programs and Activities, which implements EO 12372. With the exception of zero interest loans and grants for Technical Assistance, proposed Projects are subject to the State and local government review process set forth in 7 CFR part 3015. Under the review process, State and local governments have 60 days to comment on the proposed Project. REA will not give final approval to an application until the requirements of 7 CFR part 3015, Subpart V, regarding State and local government review have been satisfied.

(h) *Restrictions on Lobbying.* The restrictions and requirements imposed by U.S.C. title 31, section 1352, entitled "Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions" and the implementing regulation, 7 CFR part 3018, New Restrictions on Lobbying, are applicable to this program. The regulation that implements this statute requires applicants for a zero interest loan in excess of $150,000 and applicants for a grant in excess of $100,000 to file a certification statement regarding the use of Federal appropriated funds to lobby the Executive and Legislative branches of the Federal Government and to file a disclosure form if engaged in these activities using unappropriated funds. In addition, persons that receive contracts or subcontracts in excess of $150,000 under a zero interest loan and persons that receive subgrants, contracts or subcontracts in excess of $100,000 under a grant are required to file certification statements regarding lobbying the Executive and Legislative branches and, if engaged in these activities, to file disclosure forms.

§ 1703.28 Applications.

(a) Borrowers may file an application on any official workday during the first fourteen days of every month. A Borrower shall send a copy of the application, except for an application that requests a zero interest loan or grant for Technical Assistance, to the State government point of contact at the same time it submits the application to REA. As discussed in § 1703.27(g), State and local governments have 60 days to review a Borrower's proposal before REA gives final approval to an application, except a proposal for Technical Assistance.

(b) An application shall consist of an original and two copies of:

(1) A completed application form, "Application for Federal Assistance," Standard Form 424;

(2) A board resolution that:

(i) Requests a zero interest loan and/or grant, including the amount of the zero interest loan and/or the amount of the grant rounded to the nearest one thousand dollars;

(ii) Includes the total term requested for a zero interest loan;

(iii) Specifies any commitment from the Borrower to the owner of the proposed Project;

(iv) States the proposed Project will not violate § 1703.20, "Limitations on the use of zero interest loan and grant funds";

(v) Authorizes an official to requisition zero interest loan or grant funds under this program; and

(vi) For an application for a grant only, authorizes the chief executive officer of the Borrower to execute and deliver on behalf of the Borrower the certification Form AD–1049 regarding a drug-free workplace program;

(3) The following completed forms:

(i) Form AD–1047, "Certification Regarding Debarment Suspension, and Other Responsibility Matters—Primary Covered Transactions,";

(ii) Assurance statement or certification statement required under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. For Pass-through-loans and Pass-through-grants, the ultimate recipient of the proceeds of the REA zero interest loan or grant must sign the assurance statement that it will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (the "Uniform Act") or sign a certification that the rural development Project which will be partially financed with the proceeds of REA funds will not result in the acquisition of real property or the displacement of any person, and as a result, the provisions of the Uniform Act will not apply. If the Borrower will not provide a Pass-through-loan or Pass-through-grant to another entity, the Borrower must submit a completed assurance statement or certification regarding the Uniform Act, or have such an assurance statement on file at REA;

(4) If applicable for the Borrower or application:

(i) For an application for a zero interest loan in excess of $150,000 or for review a Borrower's proposal before REA gives final approval to an application, except a proposal for Technical Assistance.

(b) An application shall consist of an original and two copies of:

(1) A completed application form, "Application for Federal Assistance," Standard Form 424;

(2) A board resolution that:

(i) Requests a zero interest loan and/or grant, including the amount of the zero interest loan and/or the amount of the grant rounded to the nearest one thousand dollars;

(ii) Includes the total term requested for a zero interest loan;

(iii) Specifies any commitment from the Borrower to the owner of the proposed Project;

(iv) States the proposed Project will not violate § 1703.20, "Limitations on the use of zero interest loan and grant funds";

(v) Authorizes an official to requisition zero interest loan or grant funds under this program; and

(vi) For an application for a grant only, authorizes the chief executive officer of the Borrower to execute and deliver on behalf of the Borrower the certification Form AD–1049 regarding a drug-free workplace program;

(3) The following completed forms:

(i) Form AD–1047, "Certification Regarding Debarment Suspension, and Other Responsibility Matters—Primary Covered Transactions,";

(ii) Assurance statement or certification statement required under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. For Pass-through-loans and Pass-through-grants, the ultimate recipient of the proceeds of the REA zero interest loan or grant must sign the assurance statement that it will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (the "Uniform Act") or sign a certification that the rural development Project which will be partially financed with the proceeds of REA funds will not result in the acquisition of real property or the displacement of any person, and as a result, the provisions of the Uniform Act will not apply. If the Borrower will not provide a Pass-through-loan or Pass-through-grant to another entity, the Borrower must submit a completed assurance statement or certification regarding the Uniform Act, or have such an assurance statement on file at REA;

(4) If applicable for the Borrower or application:

(i) For an application for a zero interest loan in excess of $150,000 or for

an application for a grant in excess of $100,000, a certification statement, "Certification Regarding Lobbying," and, if the Borrower is engaged in lobbying activities described under § 1703.27(h), a completed disclosure form, "Disclosure of Lobbying Activities"; and

(ii) For an application for a grant only, a completed certification form, "Certification Regarding Drug-Free Workplace Requirements (Grants)," Form AD–1049;

(5) A section entitled "Selection Factors" that discusses or provides information on each selection factor described in § 1703.17. In discussing:

(i) "Supplemental Funds" (§ 1703.17(c)(1)), include the name of each source and the respective amount of supplemental funds that was provided to the Project within six months of submitting the application to REA and the amount that will be provided within two years of receiving REA funds. Also indicate the nature and strength of the commitments to make these supplemental funds available, when these funds will be disbursed, any special terms and conditions associated with the commitments, copies of the commitments, and, if established, the interest rate, term and deferment period on any loan for the Project;

(ii) "Unemployment Rates" (§ 1703.17(c)(2)), it is not necessary to include the country, State or National unemployment rates. REA obtains these rates from other Federal agencies. List the county or counties in which the Project will be located;

(iii) "Per Capita Personal Income" (§ 1703.17(c)(3)), as with "Unemployment Rates," it is not necessary to include the county, State or National per capita personal income levels;

(iv) "Long-term Jobs" (§ 1703.17(c)(4)), include the number of long-term jobs that the Project will directly create in rural areas and the total Project cost;

(v) "Plan for Improving the Marketable Skills of People in Rural Areas" (§ 1703.17(c)(5)), include information on any written plan for the Project to provide opportunities or incentives to improve the marketable skills of people in rural areas through training an/or education. For Projects that consist of providing training or education, indicate how it will benefit people in rural areas;

(vi) "Increasing the Long-term Productivity and Per Capita Income in Rural Areas" (§ 1703.17(c)(6)) address the extent to which the Project will improve the productive potential of the labor force, industrial plant, infrastructure, natural resources and institutions by employing advanced technology, creating higher skilled occupations, adding higher value to natural resources, creating jobs with higher career potential or is considered part of a knowledge intensive industry;

(vii) "Strengthening the Local Rural Economy" (§ 1703.17(c)(7)) indicate the extent to which the Project will strengthen the economy in the rural areas served by the REA Borrower and the impact of the Project on the REA Borrower;

(viii) "Demonstration Project" (§ 1703.17(c)(8)) a discussion of any commitments from the owner(s) of the Project to be a Demonstration Project and a copy of the written commitment;

(ix) " 'Rural Area' as Defined in the RE Act" (§ 1703.17(c)(9)), indicate whether or not the Project will be located in a town and, if so, the name of the town. Discuss any benefits of the Project to "Rural Areas" which is defined in the RE Act as areas not included within towns with populations in excess of 1,500;

(x) "Providing Services to Rural Businesses and Developing the Institutional Base" (§ 1703.17(c)(10)) discuss how the Project is organized on a not-for-profit basis to provide services to rural businesses and rural areas. Services discussed could be management training and advice, education, training for community leaders, assistance in providing market research. Depending on the Project, describe how it will contribute to developing these forms of assistance into an institutional structure which will provide long-term benefits for rural areas;

(xi) "Greatest Probability of Success" (§ 1703.17(c)(11)) discuss the ultimate recipient's feasibility study, income statements, cash flow statements, existing and projected balance sheets, especially the equity (and grant) financing to debt financing ratio, market research and industry trends;

(xii) "Cushion of Credit Payments" (§ 1703.17(c)(12)), mention any cushion of credits payments in accounts at REA;

(xiii) "Owners and Management of the Project" (§ 1703.17(c)(13)), discuss how the knowledge, experience, education and training of the proposed owners and management of the Project increases the likelihood of long-term success;

(xiv) "Ultimate Recipient's Business Plan" (§ 1703.17(c)(14)) include a copy of the business plan. The plan should include the following: A description of the Project, what will be produced or accomplished, the area to be served, any market research, total Project costs, projected use of funds by purpose or category, a feasibility study with projected balance sheets, income statements and cash flow statements, the source of supplemental funds, the nature and strength of commitments from other sources of financing, the equity contribution, the proposed ownership and management of the Project and other relevant information. The plan should describe any coordination with a local, regional or state development organization;

(xv) "Diversifying the Rural Economic Base and Indirect Job Creation" (§ 1703.17(c)(16)) include any information the Borrower desires REA to consider;

(6) A section entitled "Project Description" that, in general, should be more detailed the larger the amount of the zero interest loan and/or grant the Borrower is requesting. This section should consist of:

(i) A description of the proposed rural economic development and Job Creation Project including the nature of the Project, the location of the Project, organizations that will be involved in the Project and the primary beneficiaries of the Project. Also include in this subsection a statement describing whether the Borrower has or will have a direct or indirect (through a subsidiary or affiliated organization) ownership or similar beneficial interest in the facilities to be constructed or in the entity that will occupy or utilize these facilities. In addition, explain whether it seems likely that the proposed Project will be undertaken or completed in the absence of an REA zero interest loan or grant;

(ii) A separate paragraph entitled "Uses of REA Funds and Total Project Costs", that includes a breakdown of the specific uses of REA funds and a breakdown of the specific uses of all funds necessary to ensure completion of the Project. Project costs should be limited to the amount to be spent over the two year period after receiving REA funds;

(iii) For a Project that involves the establishment of a new venture such as a rural Business Incubator, or a similar start-up venture, a discussion of how the costs of establishing, organizing and arranging financing for the venture will be paid, how start-up costs incurred after the venture has been established will be paid, the expected sources of revenue necessary to sustain the Project and revenue and expense projections for the first three years of the Project;

(iv) The total term requested for the REA zero interest loan. If the Borrower will provide a Pass-through-loan to another entity, outline the terms and conditions that the Borrower intends to place on the recipient of the loan funds including the security arrangements and collateral;

(v) For Pass-through-grants, the terms and conditions that the Borrower intends to place on the ultimate recipient of the grant funds. Include a copy of any proposed grant agreement;

(vi) For Pass-through-loans and Pass-through-grants, a description of the ultimate recipient, including the form of organization and ownership (i.e., corporation, nonprofit corporation, cooperative, partnership, sole proprietor), the owner(s) and the chief officers;

(vii) If the Project involves construction, a brief description of the construction necessary to make the Project operational and the organization involved with the Project that will be responsible for building the Project facilities or having them built;

(viii) A discussion of the manner in which the Borrower intends to monitor the zero interest loan and/or grant proceeds to ensure that they are used only for Approved Purposes;

(ix) If applicable, a discussion that clarifies any aspect of the Project with respect to the restriction that it must not result primarily in the transfer of any existing employment or business activity from one area to another or clarifies any aspect of the Project with respect to limitations in § 1703.20, "Limitations on the use of zero interest loan and grant funds";

(x) If the total application request exceeds $100,000 or the total amount of zero interest loan and/or grant funds to be provided for a Project under this program exceeds $100,000, then the Borrower shall be expected to submit a more comprehensive Project proposal. This shall include the information in paragraphs (b)(6)(x) (A), (B) and (C) of this section:

(A) A more detailed business plan and feasibility study prepared for the Project that includes an in-depth discussion of the nature of the business or economic development project, market research pertaining to the business and projected financial statements showing repayment of any zero interest loan;

(B) For Pass-through-loans, a much more detailed discussion of the terms and conditions that the Borrower intends to place on the recipient of the loan funds, especially the proposed security arrangements and collateral. Include a copy of any proposed loan/security agreements and loan notes;

(C) For Pass-through-loans and Pass-through-grants, include a copy of the recipient's corporate charter, the recipient's bylaws, the lease or deed showing the recipient's right to use the Project site. Any operation and maintenance agreement, or similar arrangement, between the Borrower and the recipient and the name, address and telephone number of the attorney for recipient;

(7) For all applications for zero interest loans and grants, a section entitled "Environmental Impact of the Project." This section must provide information on whether or not the proposed Project will be located within an area protected under the Coastal Barrier Resources Act. No other environmental information is normally required for proposals that are considered Technical Assistance as defined under § 1703.12. All other applications, except for those described in paragraph (b)(7)(iii) of this section, shall include the information specified in paragraphs (b)(7)(i) and (ii) of this section:

(i) A subsection that contains information concerning potential adverse impact on the environment.. This data shall include, but not necessarily be limited to:

(A) The size of the Project site;

(B) A map (preferably a U.S. Geological Survey map) of the Project area indicating the Project location;

(C) The presence of floodplains at the Project site;

(D) The amount of property to be cleared, excavated, fenced or otherwise disturbed by the Project;

(E) The use and zoning of the Project site;

(F) Buildings or other major structures, including dimensions, to be constructed or modified;

(G) The presence of wetlands or existing agricultural operations at the Project site; properties listed or eligible for listing in the National Register of Historic Places on or near the Project site; threatened or endangered species or critical habitat on or near the Project site; and

(H) The general nature of the use to which the Project facilities will be put, including any hazardous materials to be used, created, or discharged, any substantial amount of air emissions, wastewater discharge, or solid waste that will be generated.

(ii) A copy of any environmental review, study, assessment, report or other document that has been prepared in connection with obtaining permits, approvals or other financing for the proposed Project from State, local or other Federal bodies. Such material, to the extent relevant, may be used to fulfill the requirements of paragraph (b)(7)(i) of this section.

(iii) Due to the nature and magnitude of likely environmental impacts, the categories of proposed Projects in paragraphs (b)(7)(ii) (A) and (B) of this section need only provide the additional data on whether the Project site contains or is near a property listed or eligible for listing in the National Register of Historic Places and the information in paragraph (b)(7)(i)(H) of this section:

(A) Internal modifications or equipment additions (for example: relocating interior walls or adding computer facilities) to buildings or other structures.

(B) External changes or additions to existing buildings, structures or facilities requiring new fencing or physical disturbance of less than 0.4 hectare (0.99 acre). A description of the changes shall be provided to REA.

(iv) Notwithstanding paragraphs (b)(7)(i) through (iii) of this section, REA may request additional environmental information in specific cases to satisfy REA's Environmental Policies and Procedures, and Federal environmental laws, regulations and Executive Orders.

(8) Any other information that the Borrower considers relevant.

(c) REA may request additional information it considers relevant from the Borrower.

(d) During the application review process, the Borrower may change the amount of the zero interest loan or grant funds requested or other portions of its application, only if approved by the Administrator. A Borrower that changes its request from a grant to a zero interest loan must submit information necessary for the Administrator to evaluate a loan proposal as set forth in paragraphs (b)(6)(iv) and, if applicable, (b)(6)(x) of this section, and submit a new board resolution requesting the loan.

(The information collection requirements contained in paragraph (b) of this section were approved by the Office of Management and Budget under control number 0572–0086)

§ 1703.29 Review and selection process.

(a) Periodically, or at such times as the Administrator determines, all eligible applications, completed in accordance with § 1703.27, "Applications" and other sections of this subpart, as determined by the Administrator, that REA has fully reviewed and analyzed, will be considered for selection as provided in § 1703.17. Completed applications received at REA by the 14th day of the month will be considered at the first selection date which occurs at least 40 days after the application was received. Completed applications received at REA after the 14th day of a month will not be considered for selection until a selection date which occurs at least 70 days after

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(A) Internal modifications or equipment additions (for example; relocating interior walls or adding computer facilities) to buildings or other structures.

(B) External changes or additions to existing buildings, structures or facilities requiring new fencing or physical disturbance of less than 0.4 hectare (0.99 acre). A description of the changes shall be provided to REA.

(iv) Notwithstanding paragraphs (b)(7)(i) through (iii) of this section, REA may request additional environmental information in specific cases to satisfy REA's Environmental Policies and Procedures, and Federal environmental laws, regulations and Executive Orders.

(8) Any other information that the Borrower considers relevant.

(c) REA may request additional information it considers relevant from the Borrower.

(d) During the application review process, the Borrower may change the amount of the zero interest loan or grant funds requested or other portions of its application, only if approved by the Administrator. A Borrower that changes its request from a grant to a zero interest loan must submit information necessary for the Administrator to evaluate a loan proposal as set forth in paragraphs (b)(6)(iv) and, if applicable, (b)(6)(x) of this section, and submit a new board resolution requesting the loan.

(The information collection requirements contained in paragraph (b) of this section were approved by the Office of Management and Budget under control number 0572-0086)

§ 1703.29 Review and selection process.

(a) Periodically, or at such times as the Administrator determines, all eligible applications, completed in accordance with § 1703.27, "Applications" and other sections of this subpart, as determined by the Administrator, that REA has fully reviewed and analyzed, will be considered for selection as provided in § 1703.17. Completed applications received at REA by the 14th day of the month will be considered at the first selection date which occurs at least 40 days after the application was received. Completed applications received at REA after the 14th day of a month will not be considered for selection until a selection date which occurs at least 70 days after

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the application was received. The review period of at least 40 days will allow sufficient time for State and local governments to review the proposed Projects under the intergovernmental review process, as set forth in 7 CFR part 3015, and to provide sufficient time for REA to fully review and analyze these applications.

(b) REA will inform a Borrower whether the Administrator has selected its application. REA's selection of an application is not binding on the Administrator and creates no rights in the Borrower. A Borrower that submitted an application which was not selected will be asked to inform REA whether it desires to be reconsidered at a later date. The Borrower may modify the application after its has been considered without resubmitting all the required material in an application, except if it changes the request from a grant to a zero interest loan it must submit information necessary for the Administrator to evaluate a loan proposal as set forth in § 1703.28(b)(6)(iv) and, if applicable, 1703.28(b)(6)(x), and submit a new board resolution requesting a loan. If the Borrower so desires, REA will consider an application for up to one year after the date REA originally received the application. A Borrower may submit new applications as often as it desires.

(c) During the period between the selection of the application and the execution of REA's legal documents, the Borrower shall inform REA if the Project is no longer viable or the Borrower no longer desires a zero interest loan or grant for the Project. Upon a determination by REA to that effect, the selected application will be considered cancelled.

(d) Ordinarily, after the selection of an application, if the Project is no longer viable as originally proposed or if there is a change of purpose of the application, both as determined by REA, the Borrower must resubmit a new application to REA for consideration. At any time after the selection of an application, REA may approve changes in the method of carrying out the purposes of the Project, revise the amount of the zero interest loan and/or grant, revise the loan maturity date and principal deferment period and make other adjustments.

(e) If State or local governments raised objections to a proposed Project under the intergovernmental review process that are not resolved within three months of REA's selection of the application, REA may consider the selection of the application cancelled.

§ 1703.30 Final application processing and legal documents.

(a) After a Borrower has submitted all information the Administrator determines is necessary for the selected application, REA will send the necessary legal documents to the Borrower to execute and return to REA. The legal documents will include a Letter of Agreement and any legal documents the Administrator deems appropriate, including any loan agreements, notes, security instruments, certifications or legal opinions. The Letter of Agreement, will among other things, constitute REA's approval of funds for the Project subject to certain terms and conditions as determined by the Administrator, and include a Project description, Approved Purposes of the zero interest loan and/or grant, the maximum amount of zero interest loan and/or grant, supplemental funds to be provided to the Project and certain agreements or commitments the Borrower proposed in its application.

(b) If the Borrower fails to submit within one year all of the information that the Administrator determines to be necessary for REA to prepare legal documents and satisfy other requirements, REA may consider the selection of the application cancelled.

§ 1703.31 Disbursement of zero interest loan and grant funds.

(a) REA shall disburse grant funds to the Borrower and the Borrower shall disburse grant proceeds to the Project for Approved Purposes in accordance with the provisions of 7 CFR part 3015 and 7 CFR part 3016, as appropriate, the legal documents executed by REA and the Borrower, and applicable REA regulations. REA shall disburse zero interest loan funds to the Borrower and the Borrower shall disburse zero interest loan proceeds to the Project for Approved Purposes in accordance with the legal documents executed by REA and the Borrower and applicable REA regulations. The Borrower shall make payments on a zero interest loan as set forth in the legal documents executed by the Borrower and REA.

(b) If the Borrower fails to satisfy all conditions, requirements and terms prerequisite to the advance of zero interest loan and/or grant funds as set forth in the Letter of Agreement or other REA legal documents within one year after the date of the loan or grant agreement, the zero interest loan and/or grant commitment will be considered rescinded, unless the commitment is specifically extended by REA.

(c) During the period between the execution of REA's legal documents and the disbursement of funds, the Borrower shall inform REA if the Project is no longer viable or the Borrower no longer desires a zero interest loan or grant for the Project. Upon a determination by REA to that effect, the commitment will be considered rescinded.

(d) If REA zero interest loan and/or grant funds advanced for Approved Purposes have not been used for those purposes within one year of the date of the advance of the funds, then the Borrower shall promptly return to REA the funds advanced for those purposes, and any interest earned on the funds, unless REA has specifically authorized otherwise in the legal documents or provided the Borrower with a written extension. Authorization of an extension rests solely within the discretion of REA for cause shown.

§ 1703.32 Review and other requirements.

(a) REA will review Borrowers receiving zero interest loans or grants, as necessary, to ensure that funds are expended for Approved Purposes. Borrowers receiving zero interest loans or grants shall monitor the Project to the extent necessary to ensure that the Project is in compliance with all applicable regulations, including ensuring that funds are expended for Approved Purposes. The Borrower is responsible for ensuring that disbursements of funds are properly supported with invoices, contracts, or other evidence and that such supporting material is available, at the Borrower's premises, for review by the REA Field Accountant, Borrower's certified public accountant, the Office of Inspector General, the General Accounting Office and any other accountant conducting an audit of the Borrower's financial statements or this rural development program. Borrowers will be required to permit REA to inspect and copy its records and documents that pertain to the Project.

(b) The legal documents executed between the Borrower and REA in connection with a zero interest loan shall contain provisions giving REA discretionary rights and remedies in the event a Borrower fails to comply with this subpart, other Federal regulations and statutes, or the terms, conditions and requirements of the executed legal documents. Regardless of any right or remedy that REA chooses to assert, if the Borrower uses any zero interest loan funds other than for Approved Purposes, the Borrower shall be required to return to REA the amount used for unapproved purposes and it shall be considered a prepayment on the REA note.

(c) Borrowers receiving zero interest loans shall have a financial report and general accounting or all zero interest loan funds prepared in accordance with the provisions of 7 CFR part 1773, REA Policy on Audits of Electric and Telephone Borrowers.

(d) The Borrower shall promptly notify REA in writing if another entity is in default on a Pass-through-loan between the Borrower and the entity.

(e) Grants provided under this program will be administered under and are subject to 7 CFR part 3015 and 7 CFR part 3016, as appropriate. The Borrower that receives a grant shall be subject to requirements under these regulations which cover, among other things, financial reporting, accounting records, budget controls, record retention and audits.

Dated: July 12, 1991.

Gary C. Byrne,

Administrator.

[FR Doc. 91–17714 Filed 7–29–91; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 212

[INS No. 1225-91]

RIN 1115–AB40

Waiver of Certain Types of Visas

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule with request for comments.

SUMMARY: This rule will amend 8 CFR 212.1(g) to permit district directors of the Immigration and Naturalization Service, acting alone, to waive a nonimmigrant visa or passport under section 212(d)(4)(A) of the Immigration and Nationality Act in individual cases, if satisfied that a nonimmigrant alien was unable to obtain these documents because of an unforeseen emergency. Currently, the district director must seek concurrence of the Department of State Visa Office to grant a waiver of the nonimmigrant visa or passport under such circumstances. This amendment will result in savings of resources for both agencies and reduce the time it takes to admit certain nonimmigrant aliens.

DATES: Written comments must be submitted on or before August 29, 1991.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., room 5304, Washington, DC 20536. Please include INS number 1225–91 on the mailing envelope to ensure proper and timely handling.

FOR FURTHER INFORMATION CONTACT: Diane Hinckley, Assistant Chief Inspector, Inspections Division, Immigration and Naturalization Services, 425 I Street NW., room 7123, Washington, DC 20536, telephone (202) 514–2725.

SUPPLEMENTARY INFORMATION: The revision of this rule changes language that refers to the role of the Department of State Visa Office in granting waivers authorized under section 212(d)(4)(A) of the Act. Currently, in order to grant a waiver of passport or visa, the district director having jurisdiction over the port of entry is required to obtain the concurrence of the Department of State Visa Office. Pursuant to the authority delegated to the Commissioner of the Immigration and Naturalization Service by title 8 U.S.C. section 103 and to the Director of the Visa Office of the Department of State by title 8 U.S.C. section 104, the Commissioner and the Director of the Visa Office, acting jointly, have determined that the current procedure is time consuming for the Visa Office, the ports of entry, and the nonimmigrant alien seeking the waiver. Further, since the applicants for the waiver are already carefully screened at the ports of entry before concurrence from the Visa Office is sought, officers of the Department of State concur with the recommendations from the ports in over 95% of the cases presented. The proposed simplification of the procedure will result in a savings of resources for both agencies and quicker admission of the nonimmigrant alien. If the district director is satisfied that the alien should be granted the waiver, the procedure at the ports of entry will remain the same, except for seeking the Department of State's concurrence. The nonimmigrant will be required to fill out the same application that is now used, the information will be checked, and a fee will be charged. Consequently, the rule is amended to omit the step of obtaining the Department of State's concurrence in waivers of passports or visas when the district director having jurisdiction over the port of entry where the alien applies for admission is satisfied that the alien failed to obtain a visa or passport due to an unforeseen emergency. If the district director is not satisfied that the alien is eligible for the waiver, he shall seek concurrence of the Department of State Visa Office. The Department of State has promulgated a similar regulation to be published at 22 CFR 41.2.

Pursuant to the authority delegated to the Associate Commissioner for Examination under title 8 CFR section 103.1(f), the rule substitutes the Associate Commissioner for Examinations for the Deputy Commissioner as one of the Immigration and Naturalization Service officials who can revoke a waiver previously authorized under section 212(d)(4)(A) of the Act.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

The information collection requirements contained in this rule have been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. The OMB control numbers for these collections are contained in 8 CFR 299.5.

List of Subjects in 8 CFR Part 212

Aliens, Documentation, Nonimmigrant, Passport and visas, Waivers.

Accordingly, part 212 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1184, 1225, 1226, 1252; 8 CFR part 2.

2. In § 212.1, the first two sentences in paragraph (g) are revised into three sentences to read as follows:

§ 212.1 Documentary requirements for nonimmigrants

* * * * *

(g) *Unforseen emergency.* A visa and a passport are not required of a nonimmigrant who, either prior to his or her embarkation at a foreign port or place or at the time of arrival at a port of entry in the United States, satisfies the district director at the port of entry that, because of an unforeseen emergency, he or she was unable to obtain the required documents, in which case a waiver application shall be made on Form I–193. If the district director is not satisfied that the nonimmigrant meets all requirements for the waiver, the

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Pursuant to the authority delegated to the Associate Commissioner for Examination under title 8 CFR section 103.1(f), the rule substitutes the Associate Commissioner for Examinations for the Deputy Commissioner as one of the Immigration and Naturalization Service officials who can revoke a waiver previously authorized under section 212(d)(4)(A) of the Act.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

The information collection requirements contained in this rule have been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. The OMB control numbers for these collections are contained in 8 CFR 299.5.

List of Subjects in 8 CFR Part 212

Aliens, Documentation, Nonimmigrant, Passport and visas, Waivers.

Accordingly, part 212 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1184, 1225, 1226, 1252; 8 CFR part 2.

2. In § 212.1, the first two sentences in paragraph (g) are revised into three sentences to read as follows:

§ 212.1 Documentary requirements for nonimmigrants

* * * * *

(g) *Unforeseen emergency.* A visa and a passport are not required of a nonimmigrant who, either prior to his or her embarkation at a foreign port or place or at the time of arrival at a port of entry in the United States, satisfies the district director at the port of entry that, because of an unforeseen emergency, he or she was unable to obtain the required documents, in which case a waiver application shall be made on Form I-193. If the district director is not satisfied that the nonimmigrant meets all requirements for the waiver, the district director shall seek concurrence for the waiver from the Department of State Visa Office. The district director or the Associate Commissioner for Examinations may at any time revoke a waiver previously authorized pursuant to this paragraph and notify the nonimmigrant in writing to that effect. * * *

* * * * *

Dated: April 11, 1991.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

Concurrence:

Dated: May 8, 1991.

Elizabeth M. Tamposi,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 91-17982 Filed 7-29-91; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 41

[Public Notice 1437]

Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act; Waiver by Secretary of State and Attorney General of Passport and/or Visa Requirements for Certain Categories of Nonimmigrants

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule amends § 41.2(j) of title 22, Code of Federal Regulations which presently provides for the waiver of the visa and passport requirements by the district director of the Immigration and Naturalization Service at the port of entry, with the concurrence of the Director of the Visa Office, Department of State, if such officials are satisfied that the nonimmigrant alien was unable to obtain the required documentation because of an unforeseen emergency. This rule authorizes the INS District Director to exercise the Department of State's function with respect to waiver of the passport and/or visa requirement under the provisions of section 212(d)(4)(A). The amendment will eliminate time consuming procedures for obtaining the concurrence of passport and/or visa waivers and will benefit this category of nonimmigrant aliens who, because of certain unforeseen circumstances, are subjected to delays when seeking admission to the United States without the required documents.

DATES: Written comments, in duplicate, must be received on or before August 29, 1991.

ADDRESSES: Comments may be submitted to the Chief of Legislation and Regulations Division, Visa Office, room 1337, 2401 E Street NW., Washington, DC 20522-0113.

FOR FURTHER INFORMATION CONTACT: Stephen K. Fischel, Legislation and Regulations Division, Visa Office, Washington, DC (202) 663-1204.

SUPPLEMENTARY INFORMATION: Under present procedures, in cases where a nonimmigrant alien applies for admission to the United States without the required documentation, the Immigration and Naturalization Service's (INS) officer in charge at the port of entry must obtain the concurrence of a State Department official in order to waive the passport and/or visa requirement. This procedure must be followed in all such cases even though, for example, the INS officer has readily available information as to the circumstances relating to the alien's inability to present the required documentation. In most cases in which the officer in charge at the port of entry determines that the alien qualifies for such section 212(d)(4)(A) waiver, he or she must inform the designated official in the Department of the circumstances regarding the absence of documentation and recommend a waiver of the passport and/or visa requirement for the purpose of obtaining the concurrence of the Department's official. Furthermore, this procedure is not only time consuming, but it also requires from designated officers additional administrative work concerning each case. It is disruptive to the performance of the regularly assigned duties of designated Department employees and requires the designation of duty officers for the purpose of providing around-the-clock consultations between the two agencies.

After consultations between the Department and INS officials, it has been determined that, in emergency situations, authorizing the INS officer in charge at the port of entry to perform the functions of both agencies will ease the administrative burden of the granting of such waivers and will decrease delays experienced by certain aliens seeking admission to the United States without the requisite documentation as the benefit from more expeditious processing.

The proposed rule is intended to eliminate time consuming, marginally beneficial, procedures between the two agencies involved and expedite the processing of certain aliens seeking admission to the United States.

The proposed rule is not considered to be a major rule for purposes of E.O. 12291 nor is it expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 22 CFR Part 41

Aliens, Documentation, Nonimmigrant, Passport and visas, Waivers.

Accordingly, 22 CFR part 41 would be amended as follows:

PART 41—[AMENDED]

1. The authority citation for part 41 continues to read as follows:

Authority: Sec. 104, 66 Stat. 174, 8 U.S.C. 1104; Sec. 109(b)(1), 91 Stat. 847.

2. In § 41.2 paragraph (j) is revised to read as follows:

§ 41.2 Waiver by Secretary of State and Attorney General of passport and/or visa requirements for certain categories of nonimmigrants.

* * * * *

(j) *Individual cases of unforeseen emergencies.* A visa and passport are not required of an alien if, either prior to the alien's embarkation abroad or upon arrival at a port of entry, the responsible district director of the Immigration and Naturalization Service in charge of the port of entry concludes that the alien was unable to obtain the required documents because of an unforeseen emergency. Any waiver of the visa or passport requirement may be granted by the INS district director pursuant to INA 212(d)(4)(A) without reference to the Department of State in each case in which the district director concludes that the alien's claim of emergency circumstances is legitimate and bona fide and that approval of the waiver would be appropriate under all of the attendant facts and circumstances.

* * * * *

Dated: April 3, 1991.

Elizabeth M. Tamposi,

Assistant Secretary for Consular Affairs.

Concurred by:
Dated: April 11, 1991.

Gene McNary,

Commissioner, Immigration and Naturalization Service Department of Justice.

[FR Doc. 91-17991 Filed 7-29-91; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 412 and 413

[BPD-711-CN]

RIN 0938-AE90

Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and Fiscal Year 1992 Rates; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule; correction.

SUMMARY: In the June 3, 1991 issue of the Federal Register (FR Doc. 91-13059), (56 FR 25178), we proposed to revise the Medicare inpatient hospital prospective payment system and to revise the amounts and factors necessary to determine prospective payment rates for Medicare inpatient hospital services. These changes would be applicable to discharges occurring on or after October 1, 1991. This notice corrects errors made in that document.

FOR FURTHER INFORMATION CONTACT: Barbara Wynn, (301) 966-4529.

SUPPLEMENTARY INFORMATION: We are making the following corrections to the June 3, 1991 proposed rule (56 FR 25178):

1. On page 25185, in the second column, under section 8, Refinements of Complications and Comorbidities List, the diagnosis code for Organic hallucinosis syndrome is changed from 292.82 to 293.82.

2. On page 25187, in the first column, in line one of the first partial paragraph, "is similar to those procedures that" is inserted after "procedure that".

§ 413.40 [Amended]

3. On page 25208, in the first column, in § 413.40(g)(4)(ii), beginning on line four, "is 8 percent higher than the rate of increase in the national average hourly earnings for hospital workers" is amended to read "exceeds 108 percent of the increase in the national average hourly earnings for hospital workers."

Addendum, Table 5 [Corrected]

4. Beginning on page 25246, an error was made in the computation of the outlier thresholds listed in the last column of TABLE 5. We have revised Table 5 to reflect the FY 1992 proposed day outlier threshold of 32 days or 3 standard deviations rather than the current day outlier threshold of 29 days or 3 standard deviations. The correct TABLE 5 is shown below in its entirety.

BILLING CODE 4120-01-M

TABLE 5

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LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
1	01	SURG	CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA	3.3418	12.2	44
2	01	SURG	CRANIOTOMY FOR TRAUMA AGE >17	3.3220	11.4	43
3	01	SURG	* CRANIOTOMY AGE 0-17	2.8830	12.7	42
4	01	SURG	SPINAL PROCEDURES	2.4232	9.8	42
5	01	SURG	EXTRACRANIAL VASCULAR PROCEDURES	1.5245	5.5	35
6	01	SURG	CARPAL TUNNEL RELEASE	.4848	1.9	17
7	01	SURG	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC WITH CC	2.6581	11.5	43
8	01	SURG	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC	.7629	3.0	35
9	01	MED	SPINAL DISORDERS & INJURIES	1.2807	7.2	39
10	01	MED	NERVOUS SYSTEM NEOPLASMS WITH CC	1.2811	7.7	40
11	01	MED	NERVOUS SYSTEM NEOPLASMS W/O CC	.7603	4.5	36
12	01	MED	DEGENERATIVE NERVOUS SYSTEM DISORDERS	.9345	6.9	39
13	01	MED	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	.8572	6.7	39
14	01	MED	SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA	1.2196	7.1	39
15	01	MED	TRANSIENT ISCHEMIC ATTACK & PRECEREBRAL OCCLUSIONS	.6541	4.1	33
16	01	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W CC	1.0830	6.6	39
17	01	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC	.6315	4.4	36
18	01	MED	CRANIAL & PERIPHERAL NERVE DISORDERS WITH CC	.8958	5.9	38
19	01	MED	CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	.5723	3.9	36
20	01	MED	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	1.9272	8.5	40
21	01	MED	VIRAL MENINGITIS	1.4657	7.5	39
22	01	MED	HYPERTENSIVE ENCEPHALOPATHY	.7192	4.3	34
23	01	MED	NONTRAUMATIC STUPOR & COMA	.8766	4.4	36
24	01	MED	SEIZURE & HEADACHE AGE >17 WITH CC	.9783	5.3	37
25	01	MED	SEIZURE & HEADACHE AGE >17 W/O CC	.5273	3.5	28
26	01	MED	SEIZURE & HEADACHE AGE 0-17	.6411	3.4	31
27	01	MED	TRAUMATIC STUPOR & COMA, COMA >1 HR	1.3450	4.3	36
28	01	MED	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 WITH CC	1.2289	5.9	38
29	01	MED	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W/O CC	.5511	3.2	35
30	01	MED	* TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0-17	.3496	2.0	17
31	01	MED	CONCUSSION AGE >17 WITH CC	.7131	4.3	36
32	01	MED	CONCUSSION AGE >17 W/O CC	.4092	2.6	24
33	01	MED	* CONCUSSION AGE 0-17	.2427	1.6	9
34	01	MED	OTHER DISORDERS OF NERVOUS SYSTEM WITH CC	1.1509	5.9	38
35	01	MED	OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	.5849	3.7	36

* MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.

** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.

NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER AND TRANSFER CASES.

NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.

TABLE 5

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
36	02	SURG	RETINAL PROCEDURES	.6402	2.1	12
37	02	SURG	ORBITAL PROCEDURES	.7926	2.9	35
38	02	SURG	PRIMARY IRIS PROCEDURES	.3550	2.1	16
39	02	SURG	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	.4711	1.5	8
40	02	SURG	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	.5110	2.0	23
41	02	SURG *	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0-17	.3613	1.6	7
42	02	SURG	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	.6134	2.1	15
43	02	MED	HYPHEMA	.3540	3.6	24
44	02	MED	ACUTE MAJOR EYE INFECTIONS	.6114	5.5	38
45	02	MED	NEUROLOGICAL EYE DISORDERS	.5955	3.5	30
46	02	MED	OTHER DISORDERS OF THE EYE AGE >17 W CC	.6715	4.2	36
47	02	MED	OTHER DISORDERS OF THE EYE AGE >17 W/O CC	.3951	2.7	31
48	02	MED *	OTHER DISORDERS OF THE EYE AGE 0-17	.3989	2.9	30
49	03	SURG	MAJOR HEAD & NECK PROCEDURES	2.2703	7.0	39
50	03	SURG	SIALOADENECTOMY	.6633	2.2	14
51	03	SURG	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	.5861	2.0	17
52	03	SURG	CLEFT LIP & PALATE REPAIR	.7457	2.4	23
53	03	SURG	SINUS & MASTOID PROCEDURES AGE >17	.6611	1.9	20
54	03	SURG *	SINUS & MASTOID PROCEDURES AGE 0-17	.6806	3.2	22
55	03	SURG	MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES	.5096	1.6	14
56	03	SURG	RHINOPLASTY	.5499	1.8	15
57	03	SURG	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	.6489	3.4	35
58	03	SURG *	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	.3060	1.5	4
59	03	SURG	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	.4131	1.5	11
60	03	SURG *	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	.2584	1.5	4
61	03	SURG	MYRINGOTOMY W TUBE INSERTION AGE >17	.6180	2.5	35
62	03	SURG *	MYRINGOTOMY W TUBE INSERTION AGE 0-17	.3052	1.3	5
63	03	SURG	OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES	1.0616	3.8	36
64	03	MED	EAR, NOSE, MOUTH & THROAT MALIGNANCY	1.1170	5.2	37
65	03	MED	DYSEQUILIBRIUM	.4748	3.3	23
66	03	MED	EPISTAXIS	.4618	3.3	24
67	03	MED	EPIGLOTTITIS	.8787	4.2	33
68	03	MED	OTITIS MEDIA & URI AGE >17 WITH CC	.7284	5.0	33
69	03	MED	OTITIS MEDIA & URI AGE >17 W/O CC	.5109	3.9	23
70	03	MED	OTITIS MEDIA & URI AGE 0-17	.5369	3.2	33

* MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER AND TRANSFER CASES.
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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
71	03	MED	LARYNGOTRACHEITIS	.8298	4.8	37
72	03	MED	NASAL TRAUMA & DEFORMITY	.5648	3.4	35
73	03	MED	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE >17	.7533	4.1	36
74	03	MED	* OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0-17	.3388	2.1	20
75	04	SURG	MAJOR CHEST PROCEDURES	3.0000	11.5	44
76	04	SURG	OTHER RESP SYSTEM O.R. PROCEDURES W CC	2.3758	10.8	43
77	04	SURG	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC	1.0388	4.5	37
78	04	MED	PULMONARY EMBOLISM	1.4339	8.7	41
79	04	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 WITH CC	1.7847	9.2	41
80	04	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC	1.0097	6.7	29
81	04	MED	* RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0-17	1.0899	6.1	35
82	04	MED	RESPIRATORY NEOPLASMS	1.2461	6.7	39
83	04	MED	MAJOR CHEST TRAUMA WITH CC	.9544	6.2	35
84	04	MED	MAJOR CHEST TRAUMA W/O CC	.4854	3.7	32
85	04	MED	PLEURAL EFFUSION WITH CC	1.1683	6.8	39
86	04	MED	PLEURAL EFFUSION W/O CC	.6839	4.3	36
87	04	MED	PULMONARY EDEMA & RESPIRATORY FAILURE	1.3919	6.0	38
88	04	MED	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	.9962	5.9	38
89	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE >17 WITH CC	1.1719	7.1	39
90	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	.7318	5.4	30
91	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE 0-17	.7903	4.1	36
92	04	MED	INTERSTITIAL LUNG DISEASE WITH CC	1.2034	6.9	39
93	04	MED	INTERSTITIAL LUNG DISEASE W/O CC	.8021	5.2	37
94	04	MED	PNEUMOTHORAX WITH CC	1.2494	7.1	39
95	04	MED	PNEUMOTHORAX W/O CC	.6146	4.4	35
96	04	MED	BRONCHITIS & ASTHMA AGE >17 WITH CC	.9505	5.9	35
97	04	MED	BRONCHITIS & ASTHMA AGE >17 W/O CC	.6466	4.6	26
98	04	MED	BRONCHITIS & ASTHMA AGE 0-17	.7484	5.2	37
99	04	MED	RESPIRATORY SIGNS & SYMPTOMS WITH CC	.7980	4.1	36
100	04	MED	RESPIRATORY SIGNS & SYMPTOMS W/O CC	.4991	2.6	17
101	04	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES WITH CC	.9252	5.1	37
102	04	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	.5300	3.3	30
103	05	SURG	HEART TRANSPLANT	12.2183	23.8	58
104	05	SURG	CARDIAC VALVE PROCEDURES W CARDIAC CATH	8.2071	18.1	50
105	05	SURG	CARDIAC VALVE PROCEDURES W/O CARDIAC CATH	6.1312	12.7	45

* MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.

** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.

NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER AND TRANSFER CASES.

NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.

TABLE 5

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LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
106	05	SURG	CORONARY BYPASS W CARDIAC CATH	5.4368	13.6	46
107	05	SURG	CORONARY BYPASS W/O CARDIAC CATH	4.9325	11.3	43
108	05	SURG	OTHER CARDIOTHORACIC PROCEDURES	5.9278	12.7	45
109			NO LONGER VALID	.0000	.0	0
110	05	SURG	MAJOR CARDIOVASCULAR PROCEDURES WITH CC	4.2563	10.3	42
111	05	SURG	MAJOR CARDIOVASCULAR PROCEDURES W/O CC	2.4009	7.5	40
112	05	SURG	PERCUTANEOUS CARDIOVASCULAR PROCEDURES	2.0129	4.8	37
113	05	SURG	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE	2.6816	14.2	46
114	05	SURG	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	1.5571	9.0	41
115	05	SURG	PERM CARDIAC PACEMAKER IMPLANT W AMI, HEART FAILURE OR SHOCK	3.6897	11.9	44
116	05	SURG	PERM CARDIAC PACEMAKER IMPLANT W/O AMI, HEART FAILURE OR SHOCK	2.5029	5.7	38
117	05	SURG	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT	1.2714	3.7	36
118	05	SURG	CARDIAC PACEMAKER DEVICE REPLACEMENT	1.6977	2.8	35
119	05	SURG	VEIN LIGATION & STRIPPING	.9411	3.5	36
120	05	SURG	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	2.0683	7.4	39
121	05	MED	CIRCULATORY DISORDERS W AMI & C.V. COMP DISCH ALIVE	1.8268	8.2	40
122	05	MED	CIRCULATORY DISORDERS W AMI W/O C.V. COMP DISCH ALIVE	1.1714	6.0	38
123	05	MED	CIRCULATORY DISORDERS W AMI, EXPIRED	1.3957	3.0	35
124	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG	1.1979	4.2	36
125	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG	.7389	2.2	22
126	05	MED	ACUTE & SUBACUTE ENDOCARDITIS	2.8809	16.3	48
127	05	MED	HEART FAILURE & SHOCK	1.0095	6.0	38
128	05	MED	DEEP VEIN THROMBOPHLEBITIS	.7941	7.4	33
129	05	MED	CARDIAC ARREST, UNEXPLAINED	1.2600	2.4	34
130	05	MED	PERIPHERAL VASCULAR DISORDERS WITH CC	.9156	6.1	38
131	05	MED	PERIPHERAL VASCULAR DISORDERS W/O CC	.5917	4.8	37
132	05	MED	ATHEROSCLEROSIS WITH CC	.7282	4.0	36
133	05	MED	ATHEROSCLEROSIS W/O CC	.5334	3.0	26
134	05	MED	HYPERTENSION	.5874	3.9	30
135	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE > 17 WITH CC	.8770	4.9	37
136	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE > 17 W/O CC	.5472	3.2	28
137	05	MED	* CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0-17	.6239	3.3	32
138	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS WITH CC	.8232	4.5	36
139	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC	.5153	3.1	23
140	05	MED	ANGINA PECTORIS	.6258	3.7	25

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** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.

NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER AND TRANSFER CASES.

NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.

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LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
141	05	MED	SYNCOPE & COLLAPSE WITH CC	.6959	4.3	35
142	05	MED	SYNCOPE & COLLAPSE W/O CC	.5018	3.1	22
143	05	MED	CHEST PAIN	.5138	2.8	18
144	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	1.0897	5.2	37
145	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	.8470	3.4	34
146	06	SURG	RECTAL RESECTION WITH CC	2.5742	12.4	44
147	06	SURG	RECTAL RESECTION W/O CC	1.6354	9.0	35
148	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES WITH CC	3.1749	13.5	45
149	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.5462	8.9	29
150	06	SURG	PERITONEAL ADHESIOLYSIS WITH CC	2.5108	11.4	43
151	06	SURG	PERITONEAL ADHESIOLYSIS W/O CC	1.2024	8.7	39
152	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES WITH CC	1.7292	8.7	41
153	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.0567	6.7	28
154	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE > 17 WITH CC	4.1565	14.3	46
155	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE > 17 W/O CC	1.5468	7.7	40
156	06	SURG *	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0-17	.8281	6.0	35
157	06	SURG	ANAL & STOMAL PROCEDURES WITH CC	.9425	4.6	37
158	06	SURG	ANAL & STOMAL PROCEDURES W/O CC	.4924	2.5	18
159	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 WITH CC	1.0740	4.9	37
160	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC	.6167	2.9	20
161	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 WITH CC	.7392	3.2	34
162	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC	.4490	1.8	11
163	06	SURG	HERNIA PROCEDURES AGE 0-17	.8751	4.0	35
164	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG WITH CC	2.1733	9.8	42
165	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC	1.2595	6.9	25
166	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG WITH CC	1.2980	6.1	35
167	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC	.7821	4.0	15
168	03	SURG	MOUTH PROCEDURES WITH CC	1.0604	3.8	36
169	03	SURG	MOUTH PROCEDURES W/O CC	.5439	2.0	17
170	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES WITH CC	2.7466	11.1	43
171	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC	1.1431	5.3	37
172	06	MED	DIGESTIVE MALIGNANCY WITH CC	1.2535	7.0	39
173	06	MED	DIGESTIVE MALIGNANCY W/O CC	.6219	3.6	36
174	06	MED	G.I. HEMORRHAGE WITH CC	.9738	5.4	37
175	06	MED	G.I. HEMORRHAGE W/O CC	.5704	3.8	23

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** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.

NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER AND TRANSFER CASES.

NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.

TABLE 5

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LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
176	06	MED	COMPLICATED PEPTIC ULCER	1.0226	5.9	36
177	06	MED	UNCOMPLICATED PEPTIC ULCER WITH CC	.7823	5.1	32
178	06	MED	UNCOMPLICATED PEPTIC ULCER W/O CC	.5055	3.8	22
179	06	MED	INFLAMMATORY BOWEL DISEASE	1.1157	7.1	39
180	06	MED	G.I. OBSTRUCTION WITH CC	.9222	5.8	38
181	06	MED	G.I. OBSTRUCTION W/O CC	.4990	3.8	25
182	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 WITH CC	.7619	4.9	37
183	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W/O CC	.5207	3.5	25
184	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0-17	.5126	2.7	16
185	03	MED	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17	.7857	4.4	36
186	03	MED	* DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0-17	.4062	2.9	23
187	03	MED	DENTAL EXTRACTIONS & RESTORATIONS	.5159	2.3	26
188	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 WITH CC	.9840	5.2	37
189	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC	.4681	2.8	30
190	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0-17	.7522	4.2	38
191	07	SURG	PANCREAS, LIVER & SHUNT PROCEDURES WITH CC.	4.3970	15.4	47
192	07	SURG	PANCREAS, LIVER & SHUNT PROCEDURES W/O CC	1.7299	[illegible]	40
193	07	SURG	BILIARY TRACT PROC W CC EXCEPT ONLY CHOLECYST W OR W/O CDE .D.E	3.0112	13.9	46
194	07	SURG	BILIARY TRACT PROC W/O CC EXCEPT ONLY CHOLECYST W OR W/O C.D.E	1.6109	8.7	41
195	07	SURG	CHOLECYSTECTOMY W C.D.E. WITH CC	2.2105	10.6	43
196	07	SURG	CHOLECYSTECTOMY W C.D.E. W/O CC	1.3578	7.6	28
197	07	SURG	CHOLECYSTECTOMY W/O C.D.E. WITH CC	1.6863	7.8	40
198	07	SURG	CHOLECYSTECTOMY W/O C.D.E. W/O CC	.9084	4.5	25
199	07	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	2.3695	11.8	44
200	07	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY	2.7731	9.4	41
201	07	SURG	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES	2.2911	8.8	41
202	07	MED	CIRRHOSIS & ALCOHOLIC HEPATITIS	1.2263	7.2	39
203	07	MED	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	1.1803	6.8	39
204	07	MED	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	1.0897	6.1	38
205	07	MED	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA WITH CC	1.2355	6.7	39
206	07	MED	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W/O CC	.6003	3.7	36
207	07	MED	DISORDERS OF THE BILIARY TRACT WITH CC	.9754	5.5	37
208	07	MED	DISORDERS OF THE BILIARY TRACT W/O CC	.5528	3.3	26
209	08	SURG	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES - LOWER EXTREMITY	2.3884	10.1	38
210	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 WITH CC	1.9494	11.4	43

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LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
211	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC	1.3851	9.0	36
212	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0-17	.9803	4.5	37
213	08	SURG	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS	1.7483	9.4	41
214	08	SURG	BACK & NECK PROCEDURES WITH CC	1.8621	8.9	41
215	08	SURG	BACK & NECK PROCEDURES W/O CC	1.1145	5.8	32
216	08	SURG	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	1.9244	9.3	41
217	08	SURG	WND DEBRID & SKN GRFT EXCEPT HAND,FOR MUSCSKELET & CONN TISS DIS	3.1258	14.0	48
218	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 WITH CC	1.4137	7.2	39
219	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W/O CC	.9054	4.6	28
220	08	SURG *	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE 0-17	.9120	5.3	34
221	08	SURG	KNEE PROCEDURES WITH CC	1.8483	7.6	40
222	08	SURG	KNEE PROCEDURES W/O CC	.9638	3.8	38
223	08	SURG	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC	.8054	3.3	25
224	08	SURG	SHOULDER,ELBOW OR FOREARM PROC,EXC MAJOR JOINT PROC, W/O CC	.6322	2.5	15
225	08	SURG	FOOT PROCEDURES	.7882	3.3	35
226	08	SURG	SOFT TISSUE PROCEDURES WITH CC	1.3604	6.0	36
227	08	SURG	SOFT TISSUE PROCEDURES W/O CC	.6807	2.9	25
228	08	SURG	MAJOR THUMB OR JOINT PROC,OR OTH HAND OR WRIST PROC W CC	.8024	2.6	28
229	08	SURG	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC	.5402	1.9	16
230	08	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR	.9346	4.1	36
231	08	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR	1.0800	4.0	36
232	08	SURG	ARTHROSCOPY	1.2480	4.0	26
233	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC WITH CC	1.9754	9.0	41
234	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC	1.0341	4.6	37
235	08	MED	FRACTURES OF FEMUR	1.0982	7.4	39
236	08	MED	FRACTURES OF HIP & PELVIS	.8420	6.8	39
237	08	MED	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH	.5803	4.4	38
238	08	MED	OSTEOMYELITIS	1.5808	10.6	43
239	08	MED	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISS MALIGNANCY	1.0271	7.5	40
240	08	MED	CONNECTIVE TISSUE DISORDERS WITH CC	1.1489	7.1	39
241	08	MED	CONNECTIVE TISSUE DISORDERS W/O CC	.5898	4.4	38
242	08	MED	SEPTIC ARTHRITIS	1.2543	8.2	40
243	08	MED	MEDICAL BACK PROBLEMS	.6897	5.0	37
244	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES WITH CC	.7675	5.5	37
245	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC	.5431	4.0	36

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NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.

TABLE 5

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
246	08	MED	NON-SPECIFIC ARTHROPATHIES	.5869	4.4	36
247	08	MED	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE	.5467	3.6	36
248	08	MED	TENDONITIS, MYOSITIS & BURSITIS	.6896	4.6	37
249	08	MED	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	.7178	4.3	36
250	08	MED	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 WITH CC	.7017	4.5	37
251	08	MED	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W/O CC	.4297	2.5	24
252	08	MED	* FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0-17	.3454	1.8	15
253	08	MED	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 WITH CC	.7911	5.6	38
254	08	MED	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W/O CC	.4247	3.5	35
255	08	MED	* FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE 0-17	.4582	2.9	32
256	08	MED	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES	.6398	3.8	36
257	09	SURG	TOTAL MASTECTOMY FOR MALIGNANCY WITH CC	.9045	4.6	24
258	09	SURG	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	.7076	3.6	15
259	09	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY WITH CC	.9044	4.0	36
260	09	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	.5715	2.4	14
261	09	SURG	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION	.6722	2.2	15
262	09	SURG	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY	.4911	1.9	18
263	09	SURG	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS WITH CC	2.6850	15.1	47
264	09	SURG	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W/O CC	1.2901	8.5	40
265	09	SURG	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC	1.3805	6.1	38
266	09	SURG	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O CC	.6821	3.0	35
267	09	SURG	PERIANAL & PILONIDAL PROCEDURES	.5953	2.7	35
268	09	SURG	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES	.7138	2.5	34
269	09	SURG	OTHER SKIN, SUBCUT TISS & BREAST PROCEDURE WITH CC	1.6528	8.0	40
270	09	SURG	OTHER SKIN, SUBCUT TISS & BREAST PROCEDURE W/O CC	.6537	2.9	35
271	09	MED	SKIN ULCERS	1.2458	8.8	41
272	09	MED	MAJOR SKIN DISORDERS WITH CC	1.0789	7.3	39
273	09	MED	MAJOR SKIN DISORDERS W/O CC	.8726	5.5	38
274	09	MED	MALIGNANT BREAST DISORDERS WITH CC	1.1340	6.6	39
275	09	MED	MALIGNANT BREAST DISORDERS W/O CC	.5829	3.2	35
276	09	MED	NON-MALIGANT BREAST DISORDERS	.5763	3.8	36
277	09	MED	CELLULITIS AGE >17 WITH CC	.9201	7.0	39
278	09	MED	CELLULITIS AGE >17 W/O CC	.6179	5.3	30
279	09	MED	* CELLULITIS AGE 0-17	.7278	4.2	24
280	09	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 WITH CC	.6636	4.6	37

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					RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
281	09	MED		TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W/O CC	.4188	3.1	30
282	09	MED	*	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0-17	.3983	2.2	18
283	09	MED		MINOR SKIN DISORDERS WITH CC	.7317	5.2	37
284	09	MED		MINOR SKIN DISORDERS W/O CC	.4401	3.5	34
285	10	SURG		AMPUTAT OF LOWER LIMB FOR ENDOCRINE,NUTRIT,& METABOL DISORDERS	2.6867	15.0	47
286	10	SURG		ADRENAL & PITUITARY PROCEDURES	2.4249	9.5	41
287	10	SURG		SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DISORDERS	2.2498	13.4	45
288	10	SURG		O.R. PROCEDURES FOR OBESITY	2.0003	7.1	39
289	10	SURG		PARATHYROID PROCEDURES	1.0063	4.0	38
290	10	SURG		THYROID PROCEDURES	.7500	2.8	17
291	10	SURG		THYROGLOSSAL PROCEDURES	.4430	1.7	8
292	10	SURG		OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC WITH CC	2.8130	12.0	44
293	10	SURG		OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC	1.1455	5.5	37
294	10	MED		DIABETES AGE >35	.7531	5.8	38
295	10	MED		DIABETES AGE 0-35	.7466	4.4	36
296	10	MED		NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 WITH CC	.9369	6.0	38
297	10	MED		NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC	.5311	4.0	31
298	10	MED		NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0-17	.5477	2.8	31
299	10	MED		INBORN ERRORS OF METABOLISM	.8574	4.8	37
300	10	MED		ENDOCRINE DISORDERS WITH CC	1.1238	6.9	39
301	10	MED		ENDOCRINE DISORDERS W/O CC	.5899	4.1	36
302	11	SURG		KIDNEY TRANSPLANT	3.8312	13.8	48
303	11	SURG		KIDNEY,URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM	2.6651	11.4	43
304	11	SURG		KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL WITH CC	2.3712	10.0	42
305	11	SURG		KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC	1.1878	5.3	37
306	11	SURG		PROSTATECTOMY WITH CC	1.2958	6.9	39
307	11	SURG		PROSTATECTOMY W/O CC	.7136	4.0	23
308	11	SURG		MINOR BLADDER PROCEDURES WITH CC	1.4382	6.4	36
309	11	SURG		MINOR BLADDER PROCEDURES W/O CC	.7380	3.2	31
310	11	SURG		TRANSURETHRAL PROCEDURES WITH CC	.8787	3.9	36
311	11	SURG		TRANSURETHRAL PROCEDURES W/O CC	.5136	2.3	16
312	11	SURG		URETHRAL PROCEDURES, AGE >17 WITH CC	.8190	3.8	36
313	11	SURG		URETHRAL PROCEDURES, AGE >17 W/O CC	.4818	2.1	17
314	11	SURG	*	URETHRAL PROCEDURES, AGE 0-17	.4271	2.3	26
315	11	SURG		OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	2.0964	7.0	39

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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
316	11	MED	RENAL FAILURE	1.2808	6.3	38
317	11	MED	ADMIT FOR RENAL DIALYSIS	.4827	2.5	32
318	11	MED	KIDNEY & URINARY TRACT NEOPLASMS WITH CC	1.0977	6.0	38
319	11	MED	KIDNEY & URINARY TRACT NEOPLASMS W/O CC	.5479	2.6	32
320	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE >17 WITH CC	1.0014	6.7	39
321	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC	.6371	4.9	28
322	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE 0-17	.6296	4.6	35
323	11	MED	URINARY STONES WITH CC, &/OR ESW LITHOTRIPSY	.7118	2.9	31
324	11	MED	URINARY STONES W/O CC	.3947	2.1	14
325	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 WITH CC	.6679	4.3	36
326	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC	.4216	2.9	25
327	11	MED	* KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0-17	.5444	3.1	32
328	11	MED	URETHRAL STRICTURE AGE >17 WITH CC	.6170	3.6	36
329	11	MED	URETHRAL STRICTURE AGE >17 W/O CC	.3978	2.1	18
330	11	MED	* URETHRAL STRICTURE AGE 0-17	.2754	1.6	9
331	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 WITH CC	.9533	5.3	37
332	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC	.5310	3.0	35
333	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0-17	.8728	4.7	37
334	12	SURG	MAJOR MALE PELVIC PROCEDURES W CC	1.7565	8.9	32
335	12	SURG	MAJOR MALE PELVIC PROCEDURES W/O CC	1.3801	7.4	21
336	12	SURG	TRANSURETHRAL PROSTATECTOMY WITH CC	.9029	5.0	26
337	12	SURG	TRANSURETHRAL PROSTATECTOMY W/O CC	.6187	3.7	13
338	12	SURG	TESTES PROCEDURES, FOR MALIGNANCY	.7784	2.9	35
339	12	SURG	TESTES PROCEDURES, NON-MALIGNANCY AGE >17	.6423	2.5	35
340	12	SURG	* TESTES PROCEDURES, NON-MALIGNANCY AGE 0-17	.4283	2.4	13
341	12	SURG	PENIS PROCEDURES	.9659	3.3	25
342	12	SURG	CIRCUMCISION AGE >17	.5942	2.5	34
343	12	SURG	* CIRCUMCISION AGE 0-17	.3742	1.7	6
344	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY	1.0462	4.4	36
345	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY	.7330	3.3	35
346	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, WITH CC	.9615	5.8	38
347	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC	.4998	2.6	35
348	12	MED	BENIGN PROSTATIC HYPERTROPHY WITH CC	.6686	3.9	36
349	12	MED	BENIGN PROSTATIC HYPERTROPHY W/O CC	.4023	2.3	20
350	12	MED	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	.6761	4.9	28

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** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.

NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER AND TRANSFER CASES.

NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.

TABLE 5

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

					RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
351	12	MED	*	STERILIZATION, MALE	.3293	1.3	5
352	12	MED		OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	.5826	3.3	35
353	13	SURG		PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY	2.0537	10.1	42
354	13	SURG		UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG WITH CC	1.3884	7.2	33
355	13	SURG		UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC	.8801	5.0	13
356	13	SURG		FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES	.7119	4.1	17
357	13	SURG		UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIG	2.2188	10.2	42
358	13	SURG		UTERINE & ADNEXA PROC FOR NON-MALIGNANCY WITH CC	1.1143	6.0	23
359	13	SURG		UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC	.7859	4.6	12
360	13	SURG		VAGINA, CERVIX & VULVA PROCEDURES	.7786	4.1	30
361	13	SURG		LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	.8484	3.3	35
362	13	SURG	*	ENDOSCOPIC TUBAL INTERRUPTION	.4921	1.4	5
363	13	SURG		D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	.8398	3.1	27
364	13	SURG		D&C, CONIZATION EXCEPT FOR MALIGNANCY	.5289	2.5	28
365	13	SURG		OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES	1.8777	7.4	39
366	13	MED		MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM WITH CC	1.1830	6.8	39
367	13	MED		MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC	.4943	2.9	35
368	13	MED		INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	.9284	6.0	38
369	13	MED		MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS	.5338	3.3	35
370	14	SURG		CESAREAN SECTION W CC	1.0350	5.8	37
371	14	SURG		CESAREAN SECTION W/O CC	.6526	4.1	11
372	14	MED		VAGINAL DELIVERY W COMPLICATING DIAGNOSES	.5408	3.3	33
373	14	MED		VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	.3135	2.1	8
374	14	SURG		VAGINAL DELIVERY W STERILIZATION &/OR D&C	.5167	2.5	9
375	14	SURG	*	VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C	.6735	4.4	29
376	14	MED		POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE	3751	2.4	22
377	14	SURG		POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE	.6539	2.8	35
378	14	MED		ECTOPIC PREGNANCY	.7592	3.9	14
379	14	MED		THREATENED ABORTION	.2818	2.1	15
380	14	MED		ABORTION W/O D&C	.2775	1.4	10
381	14	SURG		ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY	.3792	1.6	10
382	14	MED		FALSE LABOR	.1304	1.2	5
383	14	MED		OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS	.3880	3.2	30
384	14	MED		OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS	.2938	2.2	22
385	15	MED	*	NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	1.2084	1.8	31

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NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER AND TRANSFER CASES.

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LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
386	15	MED	* EXTREME IMMATURITY OR RESPIRATORY DISTRESS SYNDROME, NEONATE	3.6039	17.9	47
387	15	MED	* PREMATURITY W MAJOR PROBLEMS	1.8046	13.3	42
388	15	MED	* PREMATURITY W/O MAJOR PROBLEMS	1.1431	8.6	38
389	15	MED	FULL TERM NEONATE W MAJOR PROBLEMS	1.4531	6.5	35
390	15	MED	NEONATE W OTHER SIGNIFICANT PROBLEMS	.8997	4.5	37
391	15	MED	* NORMAL NEWBORN	.2191	3.1	11
392	16	SURG	SPLENECTOMY AGE >17	3.2872	11.8	44
393	16	SURG	* SPLENECTOMY AGE 0-17	1.5022	9.1	38
394	16	SURG	OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS	1.5686	5.7	38
395	16	MED	RED BLOOD CELL DISORDERS AGE >17	.7691	4.8	37
396	16	MED	RED BLOOD CELL DISORDERS AGE 0-17	.5397	2.4	34
397	16	MED	COAGULATION DISORDERS	1.2109	5.5	37
398	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS WITH CC	1.2062	6.6	39
399	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC	.6682	4.0	36
400	17	SURG	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE	2.5840	9.4	41
401	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC	2.2450	10.3	42
402	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC	.8632	3.6	36
403	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	1.6106	8.1	40
404	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	.7294	3.9	36
405	17	MED	* ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0-17	1.0281	4.9	34
406	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W CC	2.6481	10.8	43
407	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O CC	1.1634	5.3	37
408	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R.PROC	1.1049	4.2	38
409	17	MED	RADIOTHERAPY	1.0073	6.4	38
410	17	MED	CHEMOTHERAPY WITHOUT ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS	.5551	2.8	19
411	17	MED	HISTORY OF MALIGNANCY W/O ENDOSCOPY	.4545	2.5	31
412	17	MED	HISTORY OF MALIGNANCY W ENDOSCOPY	.4221	2.1	21
413	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG WITH CC	1.3268	7.5	39
414	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC	.7243	4.3	36
415	18	SURG	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	3.5766	14.8	47
416	18	MED	SEPTECEMIA AGE >17	1.5335	7.5	40
417	18	MED	SEPTECEMIA AGE 0-17	1.0093	5.0	37
418	18	MED	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	.9571	6.5	39
419	18	MED	FEVER OF UNKNOWN ORIGIN AGE >17 WITH CC	.9550	5.8	38
420	18	MED	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC	.6528	4.5	30

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NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER AND TRANSFER CASES.

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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
421	18	MED	VIRAL ILLNESS AGE >17	.6673	4.4	32
422	18	MED	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0-17	.5928	4.0	33
423	18	MED	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	1.6176	8.1	40
424	19	SURG	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS	2.3460	12.5	45
425	19	MED	ACUTE ADJUST REACT & DISTURBANCES OF PSYCHOSOCIAL DYSFUNCTION	.7118	4.7	37
426	19	MED	DEPRESSIVE NEUROSES	.6222	5.5	37
427	19	MED	NEUROSES EXCEPT DEPRESSIVE	.6056	5.2	37
428	19	MED	DISORDERS OF PERSONALITY & IMPULSE CONTROL	.7901	6.7	39
429	19	MED	ORGANIC DISTURBANCES & MENTAL RETARDATION	.9325	7.6	40
430	19	MED	PSYCHOSES	.9074	8.8	41
431	19	MED	CHILDHOOD MENTAL DISORDERS	.7381	6.1	38
432	19	MED	OTHER MENTAL DISORDER DIAGNOSES	.7015	4.3	38
433	20	MED	ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA	.3774	3.1	35
434	20	MED	ALC/DRUG ABUSE OR DEPENDENCE, DETOX OR OTHER SYMPT TRT WITH CC	.7702	5.6	38
435	20	MED	ALC/DRUG ABUSE OR DEPENDENCE, DETOX OR OTHER SYMPT TRT W/O CC	.5154	4.8	37
436	20	MED	ALC/DRUG DEPENDENCE W REHABILITATION THERAPY	1.0903	16.6	49
437	20	MED	ALC/DRUG DEPENDENCE, COMBINED REHAB & DETOX THERAPY	1.1838	15.1	47
438			NO LONGER VALID	.0000	.0	0
439	21	SURG	SKIN GRAFTS FOR INJURIES	1.4834	6.4	38
440	21	SURG	WOUND DEBRIDEMENTS FOR INJURIES	1.8270	8.4	40
441	21	SURG	HAND PROCEDURES FOR INJURIES	.6913	2.4	28
442	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES WITH CC	1.9320	6.2	38
443	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES W/O CC	.7576	2.7	32
444	21	MED	TRAUMATIC INJURY AGE > 17 W CC	.7537	5.2	37
445	21	MED	TRAUMATIC INJURY AGE > 17 W/O CC	.4897	3.6	30
446	21	MED	* TRAUMATIC INJURY AGE 0-17	.4738	2.4	22
447	21	MED	ALLERGIC REACTIONS AGE >17	.4802	2.6	24
448	21	MED	* ALLERGIC REACTIONS AGE 0-17	.3428	2.8	17
449	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 WITH CC	.7874	4.2	36
450	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC	.4458	2.5	25
451	21	MED	* POISONING & TOXIC EFFECTS OF DRUGS AGE 0-17	.5126	2.1	17
452	21	MED	COMPLICATIONS OF TREATMENT WITH CC	.8130	4.2	36
453	21	MED	COMPLICATIONS OF TREATMENT W/O CC	.4176	2.8	25
454	21	MED	OTHER INJURY, POISONING & TOXIC EFF DIAG WITH CC	.8118	4.4	36
455	21	MED	OTHER INJURY, POISONING & TOXIC EFF DIAG W/O CC	.4210	2.5	25

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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
456	22	MED	BURNS, TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	2.0663	5.7	38
457	22	MED	EXTENSIVE BURNS W/O O.R. PROCEDURE	1.6726	3.0	35
458	22	SURG	NON-EXTENSIVE BURNS W SKIN GRAFT	4.0260	16.3	48
459	22	SURG	NON-EXTENSIVE BURNS W WOUND DEBRIDEMENT OR OTHER O.R. PROC	1.9344	10.4	42
460	22	MED	NON-EXTENSIVE BURNS W/O O.R. PROCEDURE	1.0484	6.4	38
461	23	SURG	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES	.8219	2.5	34
462	23	MED	REHABILITATION	1.8140	14.2	46
463	23	MED	SIGNS & SYMPTOMS W CC	.7319	5.0	37
464	23	MED	SIGNS & SYMPTOMS W/O CC	.4505	3.1	26
465	23	MED	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	.3671	1.8	18
466	23	MED	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	.5754	2.6	35
467	23	MED	OTHER FACTORS INFLUENCING HEALTH STATUS	.4299	2.5	35
468			EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	3.4055	13.3	45
469		**	PRINCIPAL DIAGNOSIS INVALID AS DISCHARGE DIAGNOSIS	.0000	.0	0
470		**	UNGROUPABLE	.0000	.0	0
471	08	SURG	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY	3.9537	13.3	45
472	22	SURG	EXTENSIVE BURNS W O.R. PROCEDURE	13.4433	21.8	54
473	17	MED	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17	3.3130	9.8	42
474	04		NO LONGER VALID	.0000	.0	0
475	04	MED	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT	3.6144	9.8	42
476			PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2.2235	14.3	46
477			NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	1.4339	6.1	38
478	05	SURG	OTHER VASCULAR PROCEDURES W CC	2.2083	7.2	39
479	05	SURG	OTHER VASCULAR PROCEDURES W/O CC	1.3271	4.4	36
480		SURG	LIVER TRANSPLANT	24.4737	41.1	73
481		SURG	BONE MARROW TRANSPLANT	14.7402	36.9	69
482		SURG	TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	3.1671	13.5	45
483		SURG	TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	13.9015	39.3	71
484	24	SURG	CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA	6.1795	13.9	48
485	24	SURG	LIMB REATTACH., HIP AND FEMUR PROCS FOR MULTI SIGN TRAUMA	2.9326	13.5	45
486	24	SURG	OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA	5.1650	11.2	43
487	24	MED	OTHER MULTIPLE SIGNIFICANT TRAUMA	1.7693	7.7	40
488	25	SURG	HIV W EXTENSIVE O.R. PROCEDURE	4.3075	17.1	49
489	25	MED	HIV W MAJOR RELATED CONDITION	1.9737	9.5	42
490	25	MED	HIV W OR W/O OTHER RELATED CONDITION	1.1964	5.5	38

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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
491	08	SURG	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES - UPPER EXTREMITY	1.5888	5.9	34
492	17	MED	CHEMOTHERAPY WITH ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS	2.5533	8.2	40

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Addendum, Table 6A [Corrected]

5. On page 25261, in TABLE 6A, for diagnosis code 204.01, Acute lymphoid leukemia in remission, we incorrectly included DRG 401 in the DRG column. The correct entries in the DRG column are 400, 405, and 473.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: July 24, 1991.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 91-17989 Filed 7-29-91; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 594

[Docket No. 89-8; Notice 5]

RIN 2127-AC98

Schedule of Fees Authorized by the National Traffic and Motor Vehicle Safety Act

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Imported Vehicle Safety Compliance Act of 1988 provides that the fees shall be reviewed, and, if appropriate, adjusted at least every 2 years. This notice proposes fees that would apply as of October 1, 1991, the beginning of Fiscal Year 1992.

The agency has tentatively determined that the fee for the registration should remain unchanged at $255 for applications for registered importer status, and that the annual fee for renewal of such status should also remain at $255.

The agency would also retain its present petition fee of $100 for substantially similar determinations, and $500 for others. Each vehicle imported under either determination would continue to be subject to a fee of $83. Each vehicle imported under a determination made by NHTSA on its own initiative would remain subject to the existing fee of $156.

The agency believes that its increasing familiarity with the petition procedures has allowed it to reduce the time required to handle each petition such that this increased efficiency offsets the increase in costs attributable to the annual GS schedule salary increases and other factors. Thus, maintenance of fees at the current level would continue to allow recovery of costs associated with administration of these programs.

The fee required to reimburse the U.S. Customs Service for bond processing costs would increase by twenty cents to $4.75 per bond.

DATES: The comment closing date for the proposal is August 29, 1991. The effective date of the final rule would be September 30, 1991.

ADDRESS: Comments should refer to the docket number and the notice number, and be submitted to: Docket Section, room 5109, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are from 9:30 a.m. to 4 p.m.).

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA, (202-366-5263).

SUPPLEMENTARY INFORMATION:

Introduction

On September 29, 1989, NHTSA adopted 49 CFR part 594, establishing the initial fees authorized by section 108 of the National Traffic and Motor Vehicle Safety Act, as amended by the Imported Vehicle Safety Compliance Act of 1988, Public Law 100-562 (54 FR 40100; See this notice for a full description of the agency's methodology and rationale in its determination of costs). The final rule adopting fees for FY 1991 was published on October 4, 1990 (55 FR 40664), after publication of a proposal on August 31, 1990 (55 FR 35694).

Section 108(c)(3)(B) (15 U.S.C. 108(c)(3)(B)) of the Act provides that the amount or rate of fees shall be reviewed, and, if appropriate, adjusted at least every 2 years. Further, the fees applicable in any fiscal year shall be established before the beginning of such year. The statute authorizes an annual fee to cover the costs of administration of the importer registration program, an annual fee or fees to cover the costs of making import eligibility determinations, and an annual fee or fees to cover the costs of processing the bond furnished to the Customs Service.

The purpose of this notice is to propose appropriate fees for FY 1992, which begins October 1, 1991. With the exception of the bond processing fee, the agency has tentatively determined to retain the existing fees for the next fiscal year.

Requirements of the Fee Regulation

594.6 Annual Fee for administration of the importer registration program

Section 108(c)(3)(A)(iii) of th Vehicle Safety Act provides that registered importers must pay "such annual fee as the Secretary establishes to cover the cost of administering the registration program. * * *" The annual fee attributable to the registration program is payable both by new applicants and by registered importers seeking to renew their registrations. The reader is referred to the notices of August 31, 1990, and September 29, 1989, for a fuller discussion of the fee and its components.

The initial component of the Registration Program Fee is the portion of the fee attributable to processing and acting upon registration applications. The agency estimates that this portion of the fee will be $86, and identical for both new applications and renewals.

Other costs attributable to maintenance of the registration program arise from reviewing a registrant's annual statement, and verifying the continuing validity of information already submitted. These costs also include costs attributable to revocation or suspension of a registration.

There has been a slight increase in hourly costs in FY 1991, attributable to the 4.2% raise in salaries of employees on the General Schedule that became effective January 1, 1991. Moreover, as both registered importers and NHTSA personnel have become increasingly familiar with the petition process, each individual petition has required less of the agency's time. NHTSA believes that the slight increase in costs has been offset by the lesser amount of time required to administer the registration program.

The total portion attributable to maintenance of the registration program, as estimated by NHTSA, is approximately $169. When added to the $86 representing the registration application (or annual renewal) component, the cost per applicant or renewal equals $255. Therefore, NHTSA has tentatively determined that the annual registration fee, for the period October 1, 1991 through September 30, 1992, should remain at $255. In the event that an application is denied or withdrawn, NHTSA would refund all but $86 of this amount, $169.

594.7, 594.8 Fees to cover agency costs in making important eligibility determination

Section 108(c)(3)(A)(iii)(II) also requires Registered Importers to pay "such other annual feel or fees as the Secretary reasonably establishes to cover the cost of . . . making the determinations under this section." Pursuant to Part 593, these determinations are whether the vehicle sought to be imported is substantially

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the Secretary establishes to cover the cost of administering the registration program. * * *" The annual fee attributable to the registration program is payable both by new applicants and by registered importers seeking to renew their registrations. The reader is referred to the notices of August 31, 1990, and September 29, 1989, for a fuller discussion of the fee and its components.

The initial component of the Registration Program Fee is the portion of the fee attributable to processing and acting upon registration applications. The agency estimates that this portion of the fee will be $86, and identical for both new applications and renewals.

Other costs attributable to maintenance of the registration program arise from reviewing a registrant's annual statement, and verifying the continuing validity of information already submitted. These costs also include costs attributable to revocation or suspension of a registration.

There has been a slight increase in hourly costs in FY 1991, attributable to the 4.2% raise in salaries of employees on the General Schedule that became effective January 1, 1991. Moreover, as both registered importers and NHTSA personnel have become increasingly familiar with the petition process, each individual petition has required less of the agency's time. NHTSA believes that the slight increase in costs has been offset by the lesser amount of time required to administer the registration program.

The total portion attributable to maintenance of the registration program, as estimated by NHTSA, is approximately $169. When added to the $86 representing the registration application (or annual renewal) component, the cost per applicant or renewal equals $255. Therefore, NHTSA has tentatively determined that the annual registration fee, for the period October 1, 1991 through September 30, 1992, should remain at $255. In the event that an application is denied or withdrawn, NHTSA would refund all but $86 of this amount, $169.

594.7, 594.8 Fees to cover agency costs in making important eligibility determination

Section 108(c)(3)(A)(iii)(II) also requires Registered Importers to pay "such other annual feel or fees as the Secretary reasonably establishes to cover the cost of . . . making the determinations under this section." Pursuant to Part 593, these determinations are whether the vehicle sought to be imported is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, and certified as meeting the Federal standards, and whether it is capable of being readily modified to meet those standards, or, alternatively, where there is no substantially similar U.S. motor vehicle, whether the safety features of the vehicle comply with or are capable of being modified to comply with the U.S. standards. These determinations are made pursuant to petition submitted by Registered Importers or manufacturers, or pursuant to determinations made upon the Administrator's initiative. Because a substantially different procedure was adopted for the second year of this program, FY 1991, and reader is referred to the August 31, 1990 notice for a fuller discussion of the cost factors of such determinations.

For FY 1991, NHTSA adopted a restructuring of its fee schedule. The cost basis previously adopted remaied at $1,560 for substantially similar determinations, and at $2,150 for others. Under the restructuring, the fee for a vehicle imported under a determination made on the agency's initiative is payable by the importer of any vehicle covered by any determination made on the agency's initiative. The fee for a vehicle imported under a determination pursuant to a petition is payable in part by the petitioner and in part by importers. However, the fee to be charged for a vehicle is a pro rata share of the costs in making all the eligibility determinations in the fiscal year.

The fees that NHTSA adopted were based upon its best estimates of the number of petitions that would be filed, and the numer of vehicles that would be imported pursuant to determinations of eligibility made upon granting those petitions (see 55 FR 40664). However, the period covered by the estimates was the entire fiscal year of 1991. Because FY 1991 will not end until September 30, 1991, NHTSA will not be able to determine the degree of accuracy of its estimates. In the absence of final FY 1991 figures, NHTSA believes that it is not appropriate to base fees for FY 1992 upon available data, which may change as FY 1991 progresses. Therefore, NHTSA has tentatively determined that it should retain the existing fee structure for another fiscal year. During FY 1992, NHTSA will compare the accuracy of its estimates with the complete data from FY 1991, so as to formulate a basis upon which to propose appropriate fees for FY 1993.

In § 594.7(f), NHTSA specifies that it uses a year of July 1–June 30 as the basis of its calculations for petition filing fees for the next fiscal year. This basis for this specification was the necessity and time required to prepare and publish proposed fees, to allow a sufficient amount of time to comment upon them, and to prepare and issue a final rule not later than September 30. However, experience has demonstrated that three months (July 1 to September 30) is an inadequate time to collate data, to prepare a notice of proposed rulemaking and obtain clearances, to publish the proposal and allow the preferred 45 days for comment on the proposal, to review the comments, to prepare a final rule and obtain clearances, and to issue it not later than September 30. NHTSA will review § 594.7(f) in the forthcoming year together with the final vehicle importation and petition numbers from FY 1991.

594.9 Fee to recover the costs of processing the bond

Section 108 (c)(3)(A)(iii)(II) also requires a registered importer to pay "such annual fee or fees as the Secretary reasonably establishes to cover the cost of processing the Bond furnished to the Secretary of the Treasury" upon the important of a nonconforming vehicle to ensure that the vehicle will be brought into compliance within a reasonable time, or if the vehicle is not brought into compliance within such time, that it is exported without cost of the United States, or abandoned to the United States.

The statute contemplates that NHTSA make a reasonable determination of the cost to the United States Custom Service of processing the bond. In essence, the cost to Customs is based upon the time that a GS 9 Step 5 employee is estimated to spend on each petition, which was judged to be 20 minutes. For a fuller discussion of these costs, the reader is again referred to the notices of August 31, 1990, and September 29, 1989.

Because of the 4.2% salary raise in the General Schedule that was effective January 1, 1991, NHTSA proposes that the current processing fee be increased by twenty cents, to $4.75, for FY 1992.

Rulemaking Analyses

A. Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

After considering the impacts of this rulemaking action, NHTSA has determined that the action is not major within the meaning of Executive Order 12291 "Federal Regulation". It further implements Public Law 100–562 under which fees may be established to cover the costs of administering the program for registration of importers of vehicles not originally manufactured to conform to the Federal motor vehicle safety standards, of determinations that nonconforming vehicles are capable of conformity to the standards, and of reimbursing or advancing the U.S. Customs Service its costs in processing safety standards conformance bonds. It is not significant under Department of Transportation regulatory policies and procedures. The action does not involve any substantial public interest or controversy. There is no substantial effect upon state and local governments. There is no substantial impact upon a major transportation safety program. Both the number of registered importers and determinations are estimated to be comparatively small, and the number of vehicles to be imported by or through such importers from October 1, 1991 through September 30, 1992, is estimated to be 600. Nevertheless, a regulatory evaluation analyzing the economic impact of the final rule adopted on September 29, 1989, was prepared, and is available for review in the docket.

B. Regulatory Flexibility Act

The agency has also considered the effects of this action in relation to the Regulatory Flexibility Act. I certify that this action would not have a significant economic impact upon a substantial number of small entities. Although entities that currently modify nonconforming vehicles are small businesses within the meaning of the Regulatory Flexibility Act, the agency has no reason to believe that a substantial number of these companies could not pay the fees proposed by this action. The cost to owners or purchasers of modifying nonconforming vehicles to conform with the safety standards may be expected to increase to the extent necessary to reimburse the registered importer for the fees payable to the agency for the cost of administering the registration program and making eligibility determinations, and to compensate Customs for its bond processing costs. Governmental jurisdictions would not be affected at all since they are generally neither importers nor purchasers of nonconforming motor vehicles.

C. Executive Order 12612 (Federalism)

The agency has analyzed the action in accordance with the principles and criteria contained in Executive Order 12612 "Federalism" and determined that the action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

D. National Environmental Policy Act

NHTSA has analyzed this action for purposes of the National Environmental Policy Act. The action would not have a significant effect upon the environment because it is anticipated that the annual volume of motor vehicles imported through registered importers would not vary significantly from that existing before promulgation of the action.

List of Subjects in 49 CFR Part 594

Imports, Motor vehicle safety, Motor vehicles.

PART 594—[AMENDED]

In consideration of the foregoing, 49 CFR part 594 would be amended as follows:

1. The authority citation for part 594 would continue to read as follows:

Authority: Pub. L. 100–562, 15 U.S.C. 1401, 1407; delegation of authority at 49 CFR 1.50.

2. In § 594.6, paragraphs (a), (b), (d), (h) and (i), and paragraph (e) of § 594.7, "October 1, 1990" would be replaced by "October 1, 1991" wherever it appears and "September 30, 1991" would be replaced by "September 30, 1992" wherever it appears.

3. Section 594.9(c) would be revised to read:

§ 594.9 Fee for reimbursement of bond processing costs.

* * * * *

(c) The bond processing fee for each vehicle imported from October 1, 1991, through September 30, 1992, for which a certificate of conformity is furnished, is $4.75.

Issued on July 24, 1991.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 91–17957 Filed 7–29–91; 8:45 am]

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3. Section 594.9(c) would be revised to read:

§ 594.9 Fee for reimbursement of bond processing costs.

* * * * *

(c) The bond processing fee for each vehicle imported from October 1, 1991, through September 30, 1992, for which a certificate of conformity is furnished, is $4.75.

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[FR Doc. 91-17957 Filed 7-29-91; 8:45 am]

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Notices

Federal Register
Vol. 56, No. 146
Tuesday, July 30, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

United States Origin Requirement for Nonagricultural Ingredients

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: This notice advises the public that the Commodity Credit Corporation (CCC) intends to implement new contractual requirements in the procurement of agricultural commodities for the title II, Public Law 480 program.

DATES: In order to be assured of consideration, comments regarding this notice must be received by August 29, 1991.

ADDRESSES: Comments should be sent to the Director, Commodity Operations Division, USDA-ASCS, P.O. Box 2415, room 5755-S, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Ronald L. Wilson (202) 447-3995.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to inform the public of certain new contractual requirements which CCC intends to adopt effective with all contracts entered into on and after October 1, 1991, for the procurement of agricultural commodities for the Agricultural Trade Development and Assistance Act of 1954, title II program (Pub. L. 480).

Section 1512 of the Food, Agriculture, Conservation, and Trade Act of 1990 amended Public Law 480 in its entirety. The term "agricultural commodity", as defined in section 402(2) of Public Law 480, includes "any agricultural commodity or the products thereof produced in the United States * * *" Section 402(2) further provides that:

> Effective beginning on October 1, 1991, for purposes of title II, a product of an agricultural commodity shall not be considered to be produced in the United States if it contains any ingredient that is not produced in the United States, if that ingredient is produced and is commercially available in the United States at fair and reasonable prices.

CCC intends to administer this requirement in the following manner:

Except as specified below, CCC will require its commodity suppliers (contractors) to certify to CCC that the nonagricultural ingredients contained in an agricultural product are of domestic origin. An "ingredient" will be considered as any nonagricultural component of the agricultural end product that CCC is procuring. For example, such components include, but are not limited to, vitamin and mineral enrichments which CCC requires to be added to the end product.

CCC will consider exempting any particular ingredient from the general domestic origin requirement when the contractor or ingredient supplier submits a written statement to the Director, Kansas City Commodity Office, USDA-ASCS, 8930 Ward Parkway, Kansas City, Missouri 64141, accompanied by any supporting evidence such submitter deems appropriate, that either:

1. The ingredient is not produced in the United States, or
2. The ingredient is not commercially available in the United States at fair and reasonable prices.

Upon receipt of such statement, CCC will promptly notify other interested parties of an opportunity to review the evidence submitted in support of the above statement and to present additional information which may have a bearing in CCC's determination. If CCC determines it to be necessary, such notice may be by publication in the **Federal Register**. Interested parties will have an opportunity to present their views verbally, or in writing, to the Director, Kansas City Commodity Office, who will issue a final determination on behalf of CCC as to whether to exempt a particular ingredient from the general domestic origin requirement.

If CCC determines that a particular ingredient of an agricultural product is not produced in the United States, or is not commercially available in the United States at fair and reasonable prices, CCC will amend its purchase announcements to permit the use of either domestic or foreign source ingredients. Any such determination will remain in place for twelve (12) months, or such other period of time as the Director, Kansas City Commodity Office, determines appropriate, from the time CCC's purchase announcements are amended, to reflect the current conditions resulting in the determination.

In reaching its decision on requests to exempt any particular ingredient from the general domestic origin requirement, CCC will review available evidence on factors such as domestic production, private and Government demand, and prior historical price data. Also, when determining whether an ingredient is commercially available at fair and reasonable prices, CCC will give consideration to the amount by which the offered price of the ingredient exceeds the price of like foreign source ingredients, inclusive of duty. In evaluating this factor, CCC will consider the principle used for evaluating domestic end products as stated in the Federal Acquisition Regulation (48 CFR 25.105). In general, this provision states that the offered price of a domestic product may be considered unreasonable if the lowest acceptable domestic offer exceeds the lowest acceptable foreign offer, inclusive of duty, by more than 6 percent.

Signed at Washington, DC on July 25, 1991.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91-17987 Filed 7-29-91; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

Cottonwood and Golf Timber Sales, Sequoia National Forest Kern County, CA., Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an environmental impact statement for a proposal to harvest and regenerate timber on the Cottonwood and Golf Timber Sales within the Greenhorn Ranger District. The Sequoia National Forest Land and Resource Management Plan has been prepared. One of the management emphases in the Plan is to manage for timber harvest and production on lands within the Breckenridge Compartment.

The alternatives to be considered will range from "no action" to harvesting up to approximately 12 million board feet.

The quantity of timber cut, road construction and reconstruction, as well as the physical, biological, economic, and social effects of project implementation will be analyzed within the context of the alternatives. Potential resource issues which may affect alternative development are condor habitat, clearcutting, visual quality water quality, spotted owl habitat, maintaining biodiversity, reforestation, and furbearer habitat.

The California Department of Fish and Game and the U.S. Fish and Wildlife Service will be invited to participate as cooperating agencies to evaluate potential impacts on threatened and endangered species habitat if any such species are found to exist in the proposed timber sale areas. Federal, State, and local agencies, as well as industry; and other individuals or organizations who may be interested in or affected by the decision, will be invited to participate in the scoping process. This process will include:

1. Identification of potential issues and/or concerns.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.

Scoping was initiated during the spring of 1990, and continued into the spring of 1991.

The analysis is expected to take approximately 9 months to complete. The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review and comment by September 1991. EPA will publish a notice of availability for the draft EIS in the **Federal Register.** The comment period will be 45 days from the date of the EPA's published notice of availability. All persons interested in the proposed projects are urged to participate at that time. Comments on the draft EIS should be as specific as possible and may address the adequacy of the EIS or the merits of the alternatives considered. In addition, Federal court decisions have established that reviewers of a draft EIS must structure their participation in the environmental review so that it is meaningful and alerts an agency to the reviewer's positions and contentions. Environmental objections that could have been raised at the draft EIS review stage may be waived if not raised until after completion of the final EIS. The reason for this is to ensure that substantive comments and objections are made available to the Forest Service in a timely manner so that the agency can respond to them in the final EIS.

The final EIS is scheduled to be completed by November 1991. In the final EIS, the Forest Service is required to respond to comments received from the public and consulted agencies. The responsible official will consider the comments, responses, laws, regulations, and policies in making a decision regarding these project proposals. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal.

Philip H. Bayles, Acting Forest Supervisor, Sequoia National Forest, Porterville, CA, is the responsible official. Written comments, questions, and suggestions concerning the analysis should be sent to Linda Brett, District Ranger, Greenhorn Ranger District, P.O. Box 6129, Bakersfield, California 93386 (phone 805–871–2223).

Dated: July 20, 1991.

Philip H. Bayles,

Forest Supervisor.

[FR Doc. 91–17980 Filed 7–29–91; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Announcement of Public Scoping Meetings Regarding a National Marine Sanctuary in the Waters Adjacent to Kahoolawe Island, HI

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of public scoping meetings.

SUMMARY: In October 1990, the 101st U.S. Congress directed the National Oceanic and Atmospheric Administration (NOAA) to conduct a study of the feasibility of establishing a national marine sanctuary in the marine environment adjacent to Kahoolawe Island, Hawaii (Pub. L. 101–515). In conducting the study, NOAA was instructed to give special consideration to the effects of such a sanctuary on the humpback whale populations that inhabit the waters off Kahoolawe Island. At this stage, NOAA is not proposing any site, or sites, in Hawaiian waters for national marine sanctuary designation. The feasibility study, which is to be transmitted to the Congress by December 1, 1991, will contain NOAA's recommendation for further action.

NOAA will conduct seven public scoping meetings in Hawaii between August 20 and August 29, 1991, and one meeting in Washington, DC, on September 5, 1991, to solicit public comments regarding the identification, distribution and status of the natural, cultural, historical and archeological resources in the marine environment of the Hawaiian Islands, and in particular Kahoolawe. Information pertaining to boundary alternatives, management alternatives, existing resource protection and management regimes, research and interpretive opportunities, as well as the identification of additional public concerns will also be sought. This information will be used to evaluate the marine resources adjacent to Kahoolawe Island for national marine sanctuary status. Individuals and representatives of concerned organizations and government agencies, including native Hawaiian interests, are invited and encouraged to attend. NOAA also encourages the submission of written comments, prior to September 15, 1991, to the individuals identified below.

FOR FURTHER INFORMATION CONTACT: Joseph A. Uravitch, Chief, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue NW., suite 714, Washington, DC 20235, (202/606–4126) or Christopher Evans, NOAA Hawaii Liaison, c/o Office of State Planning, Office of the Governor, State Capitol, Honolulu, Hawaii 96813, (808/587–2834).

DATES AND LOCATIONS: NOAA's Sanctuaries and Reserves Division will hold the following public scoping meetings:

- August 20, 1991, at 7 p.m., in Hibiscus Ballroom #1 of the Ala Moana Hotel, 410 Atkinson Drive, Honolulu, Oahu, Hawaii;
- August 22, 1991, at 6:30 p.m., at the Kaha-Kai Elementary School Cafeteria, 76–147 Royal Poinciana Drive, Kailua-Kona, Hawaii, Hawaii;
- August 23, 1991, at 1:30 p.m., at the State Office Building, 75 Aupini Street, Conference Room B, Hilo, Hawaii, Hawaii;
- August 26, 1991, at 6:30 p.m., at the Lahaina Civic Center/Social Hall, 1840 Honoapiilani Highway, Lahaina, Maui, Hawaii;
- August 27, 1991, at 6 p.m., at the Mitchell Pauole Meeting Hall, Kaunakakai, Molokai, Hawaii;

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- August 27, 1991, at 6 p.m., at the Mitchell Pauole Meeting Hall, Kaunakakai, Molokai, Hawaii;

- August 28, 1991, at 6 p.m., at the Lanai Public and School Library, Lanai City, Lanai, Hawaii;
- August 29, 1991, at 6 p.m., at the Council Chambers, 4396 Rice Street, Lihue, Kauai, Hawaii; and
- September 5, 1991, at 1 p.m., at the Herbert C. Hoover Building, 14th and Constitution NW., room 1414, Washington, DC.

SUPPLEMENTARY INFORMATION: Title III of the Marine Protection, Research and Sanctuaries Act of 1972, 16 U.S.C. 1431 *et seq.*, (the "Act") authorizes the Secretary of Commerce to designate discrete areas of the marine environment as national marine sanctuaries to protect their special conservational, recreational, ecological, historical, research, educational, or esthetic qualities. The Act is administered by the National Oceanic and Atmospheric Administration (NOAA) through the Office of Ocean and Coastal Resource Management (OCRM), Sanctuaries and Reserves Division (SRD).

In October 1990, the Congress directed NOAA to conduct a study of the feasibility of establishing a national marine sanctuary in the marine environment adjacent to Kahoolawe Island, Hawaii. Kahoolawe is the smallest of the eight main islands in the Hawaiian archipelago and is located approximately seven miles southwest of Maui. In the past Kahoolawe has served as a base for fishing and several ranching attempts, but now is sparsely inhabited with a limited military presence. From 1941 until 1990, the island was primarily used as a combat training and live ordnance target site for the U.S. military. These activities were halted in 1990 by Executive order, which placed a moratorium on all military uses on Kahoolawe until 1992. Because of the island's spiritual and archeological importance to native Hawaiian culture, as well as its potential economic and environmental value, the State of Hawaii is actively seeking the return of Kahoolawe to the State. In 1990, Congress passed legislation (Pub. L. 101–511) to establish a commission to study and recommend terms and conditions for the return and restoration of the island.

The waters adjacent to Kahoolawe Island represent a relatively pristine marine ecosystem that provides habitat for numerous marine species, including wintering populations of the humpback whale (*Megaptera novaeangliae*). The humpback whale was classified as an endangered species with the passage of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) in 1973 and remains so today. Current estimates regarding the number of North Pacific humpback whales suggest that the population is less than 10% of the estimated 15,000 whales that existed prior to exploitation.

Humpback whales are one of the more easily recognized marine species in Hawaiian waters. They principally use the shallow waters within the 100-fathom (183-meter) isobath for breeding and calving purposes. The highest density of whales occurs between the months of February and April, primarily in State waters around the islands of Maui, Molokai, Lanai, and Kahoolawe; around Niihau Island; and along the northwestern coast of Hawaii Island from Keahole Point north to Upola Point. Lower densities are found around Kauai, Oahu, and the eastern and southwestern coast of Hawaii Island. Few humpback whales have been reported around the atolls, islands, banks and reefs of the Northwestern Hawaiian Islands.

In December 1977, NOAA received a nomination for a humpback whale national marine sanctuary in the waters off the western coast of Maui, Hawaii. This area had been identified as a principal breeding and calving area for the wintering population of approximately 600 endangered humpbacks. On March 17, 1982, NOAA declared the site an Active Candidate for the national marine sanctuary designation. In January 1984, NOAA released the "Proposed Hawaii Humpback Whale National Marine Sanctuary Draft Environmental Impact Statement/Draft Management Plan" for public review and comment. Based on the comments received, subsequent review and consideration of the site was suspended.

Other species of marine mammals that frequent the waters around Kahoolawe Island include pilot whales (*Gobicephala melaena*), false killer whales (*Pseudorca crassidens*), Pacific bottlenose dolphins (*Tursiops* sp.), and spinner dolphins (*Stenella longirostris*). A majority of the Hawaiian population of juvenile and adult green sea turtles (*Chelonia mydas*) are found in the nearshore habitat of the Hawaiian archipelago (Hawaii, Maui, Kahoolawe, Lanai, Molokai, Oahu, Kuaui, and Niihau). However, at least 90% of all reproductive activity associated with this Federally-protected species occurs at French Frigate Shoals in the Northwestern Hawaiian Islands. The endangered Hawaiian monk seal (*Monachus schauinslandi*) is found primarily in the Northwestern Hawaiian Islands.

Coral reef development in the Hawaiian Islands is varied. In general, reefs in the eastern portion of the island chain are less developed than the complex calcareous structures found in the Northwestern Hawaiian Islands and tropical Indo-Pacific region. This is due to several factors: Exposure to large waves; suboptimal water temperature, clarity and salinity; and geographic isolation, which has left the archipelago without the main reef-building coral of the Pacific, *Acropora* sp. However, extensive fringing reefs are found off the coasts of Oahu, Kauai, the south coast of Molokai, and the northwest coast of Lanai. *Porites* sp. and *Pocillopora* sp. are the most common reef-building corals in the Hawaiian Islands.

Coral reefs provide habitat for a wide variety of marine life including fish, crustaceans, mollusks and worms. They provide important breeding and nursery grounds for economically important fisheries. Terraces and sharp "drop-offs", at depths of 50–75 meters, are also associated with some of the most abundant and economically valuable fisheries in the State such as grouper (*Serranidae* sp.), snapper (*Lutjanidae* sp.), tuna (*Scombridae* sp.) and Kona crab (*Ranina ranina*).

NOAA is seeking information on marine, ecological, and cultural resources throughout the Hawaiian Islands in its evaluation of the waters adjacent to Kahoolawe Island for national marine sanctuary status. NOAA believes that a comprehensive information base concerning the marine resources in Hawaiian waters will enable the agency to better evaluate the resources of Kahoolawe. NOAA will employ the criteria found in Section 303 of the Act to determine if the marine resources of the Kahoolawe area merit further evaluation for sanctuary designation. These criteria include:

(1) The area's natural resource and ecological qualities;
(2) The area's historical, cultural, archeological, or paleontological significance;
(3) The present and potential uses that depend on maintenance of the area's marine resources;
(4) The present and potential activities that may adversely affect the area's resources;
(5) The existing State and Federal regulatory and management authorities;
(6) The manageability of the area, including such factors as its size, accessibility, and suitability for monitoring and enforcement activities;
(7) The public benefits to be derived from sanctuary status;
(8) The significance of the area from a regional and national perspective;

and

(9) The potential for coordinated and comprehensive conservation and management of the area.

In addition to materials collected by NOAA, information gathered through the public scoping meetings, coordination with other Federal, State, and local resource management agencies, and input from public advocacy groups will be incorporated into the report. The Kahoolawe Island National Marine Sanctuary feasibility study, along with NOAA's recommendation for further action, is to be transmitted to the Congress by December 1, 1991, and will be made available to the public at that time.

Federal Domestic Assistance Catalogue Number 11.429; Marine Sanctuary Program

Dated: July 24, 1991.

John J. Carey,

Deputy Assistant Administrator, National Ocean Service.

[Docket No. 910788-1188]

Snapper-Grouper Fishery of the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of control date for entry into the snapper-grouper fishery.

SUMMARY: This notice announces that anyone entering the snapper-grouper fishery, other than the wreckfish sector of the fishery, in the exclusive economic zone (EEZ) off the South Atlantic states after July 30, 1991 (control date), may not be assured of future access to the fishery if a management regime is developed and implemented under the Magnuson Fishery Conservation and Management Act (Magnuson Act) that limits the number of participants in the fishery. This notice is intended to promote awareness of potential eligibility criteria for access to the snapper-grouper fishery and to discourage new entries into the fishery based on economic speculation while the South Atlantic Fishery Management Council (Council) contemplates whether and how fishery access to the snapper-grouper resource should be controlled. This announcement does not prevent establishment of any other date for eligibility in the fishery or another method of controlling fishing effort from being proposed by the Council or being implemented by the Secretary of Commerce (Secretary).

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 813-893-3161.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), prepared by the Council, and its implementing regulations at 50 CFR part 646, under the authority of the Magnuson Act.

The Council is developing a limited access system for the wreckfish sector of the snapper-grouper fishery. A notice of a March 28, 1990, control date for entry into the wreckfish sector was published on September 24, 1990 (55 FR 39039). The Council anticipates developing a limited access system in the remaining sectors of the snapper-grouper fishery. Comments received by the Council during development of Amendment 4 to the FMP support the concept of limited access for all sectors of the fishery.

The Council voted to establish July 30, 1991, as a control date for new entrants into the snapper-grouper fishery, other than the wreckfish sector of the fishery, in the EEZ off the South Atlantic states and requested that a notice be published in the **Federal Register** announcing that anyone entering sectors of the snapper-grouper fishery other than the wreckfish sector after the control date will not be assured of future participation if the Council develops, and the Secretary approves and implements, an effort-controlled fishery management regime limiting the number of participants in the fishery. The Council intends to evaluate participation in the fishery by documentation of landings of snapper-grouper prior to the control date.

In establishing a control date and making this announcement, the Council intends to discourage speculative entry into the snapper-grouper fishery while the Council discusses possible limited entry or access-controlled management regimes for the fishery. As the Council develops a limited entry or access-controlled management regime, certain fishermen who do not currently fish for snapper-grouper other than wreckfish, and never have done so, may decide to enter the fishery for the sole purpose of establishing a record of making commercial landings. In the absence of a control date, such a record generally may be considered indicative of economic dependence on the fishery. On this basis, such fishermen may successfully lay claim to access to a snapper-grouper fishery that the Council may intend to be limited to traditional participants. New fishery entrants subsequent to the establishment of any limited entry or access-controlled system may have to buy the fishing rights or a permit from an existing participant. Hence, initial access to the fishery at little or no cost may result in a windfall gain when selling an access right to a new entrant subsequent to establishment of a limited entry or access-controlled system.

When management authorities begin to consider use of a limited access management regime, speculative entry into a fishery often is responsible for a rapid increase in fishing effort in fisheries already fully or over-developed. Those seeking possible windfall gain from a potential management change can exacerbate the original problems. To help distinguish *bona fide* and established snapper-grouper fishermen from speculative entrants to the fishery, a control date may be set before beginning discussions and planning of limited access regimes. As a result, fishermen are notified that entering the fishery after that date will not necessarily assure them of future access to the fishery resource on grounds of previous participation.

This establishment of a control date does not commit the Council or the Secretary to any particular management regime or criterion for entry into the snapper-grouper fishery. Fishermen are not guaranteed future participation in the fishery regardless of their date of entry or intensity of participation in the fishery before or after the control date. The Council may subsequently choose a different control date, or it may choose a management regime that does not make use of such a date. The Council is free to apply other qualifying criteria for fishery entry. The Council may give varying considerations to fishermen in the fishery before and after the control date. Finally, the Council may choose to take no further action to control entry or access to the fishery.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 24, 1991.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 91-18003 Filed 7-29-91; 8:45 am]

BILLING CODE 3510-22-M

National Fish and Seafood Promotional Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

TIME AND DATE: The meeting will convene at 9 a.m. on Monday, August 12, and adjourn approximately 12 noon on Tuesday, August 13, 1991.

PLACE: Sheraton Hotel, 401 East 6th Avenue, Anchorage, AK 99501.

STATUS: NOAA announces a meeting of the National Fish and Seafood Promotional Council (NFSPC). The NFSPC, consisting of 15 industry

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Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 24, 1991.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 91–18003 Filed 7–29–91; 8:45 am]

BILLING CODE 3510-22-M

National Fish and Seafood Promotional Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

TIME AND DATE: The meeting will convene at 9 a.m. on Monday, August 12, and adjourn approximately 12 noon on Tuesday, August 13, 1991.

PLACE: Sheraton Hotel, 401 East 6th Avenue, Anchorage, AK 99501.

STATUS: NOAA announces a meeting of the National Fish and Seafood Promotional Council (NFSPC). The NFSPC, consisting of 15 industry

members and the Secretary of Commerce as a non-voting member, was established by the Fish and Seafood Promotion Act of 1986 to carry out programs to promote the consumption of fish and seafood and to improve the competitiveness of the U.S. fishing industry.

The NFSPC is required to submit an annual marketing plan and budget to the Secretary of Commerce for his approval that describes the marketing and promotion activities the NFSPC intends to carry out. Funding for NFSPC activities is provided through Congressional appropriations.

Matters To Be Considered

Portion Opened to the Public

August 12, 1991

9 a.m.–12:30 p.m.—Chairman's opening remarks; approval of minutes from previous meeting; review of meeting agenda and objectives; presentation of retrospective video on Council program and consumer and industry comments video; presentation of results of summer radio advertising campaign: rating levels achieved, consumer reaction, etc.; preliminary report on retail tie-in program in the six "heavy-up" markets, including available retail sales comparisons. 12:30 p.m.–2 p.m.—Lunch. 2 p.m.–5 p.m.—Administrative team update, including budget recap and funds availability; plans for October Seafood Month and holiday food editor packages, and discussion of additional project plans through 1991.

August 13, 1991

9 a.m.–12 noon—Update on results of industry pollings regarding the referendum issue; discussion of future Council options and other general business.

Portion Closed to the Public: None

FOR FURTHER INFORMATION CONTACT: Jeanne M. Grasso, Program Manager, National Fish and Seafood Promotional Council, 1825 Connecticut Avenue NW., room 620, Washington, DC 20235. Telephone: (202) 606–4237.

Dated: July 25, 1991.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–18002 Filed 7–29–91; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council was unable to complete its lengthy agenda at its June 24–28, 1991, meeting in Anchorage, Alaska. The meeting will reconvene on August 13 at 10 a.m., at the Baranof Hotel in Juneau, Alaska, and is scheduled to continue at least through August 15.

The only agenda items completed in the earlier session were approval of an inshore-offshore amendment for Secretarial Review, approval of halibut limited access proposals for public review, and direction to staff on bycatch amendments (this last item was done by a Council teleconference on July 3). All other items on the Council's June agenda remain to be considered at this meeting. In addition, draft regulations to implement the inshore-offshore amendment may be available for Council review at the August meeting.

For more information contact the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510; telephone: (907) 271–2809.

Dated: July 25, 1991.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–18006 Filed 7–29–91; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Prospective Grant of Exclusive Patent License; Alton Dean Medical, Inc.

This is notice in accordance with 35 USC 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States and certain foreign countries to practice the inventions embodied in U.S. Patent Application Serial Number 7–606,967, entitled "Device for Intratracheal Ventilation and Intratracheal Pulmonary Ventilation," and its continuation-in-part, SN 7–702,449, entitled "Catheter Tip for Intratracheal Ventilation and Intratracheal Pulmonary Ventilation," to Alton Dean Medical, Inc. having a place of business in North Salt Lake, Utah. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published notice, NTIS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The present inventions consist of a method and apparatus for intratracheal ventilation (ITV) and intratracheal pulmonary ventilation (ITPV) in which a catheter positioned in a patient's trachea at the carina supplies a constant supply of fresh oxygen containing gas to flush anatomical dead space. By positioning the catheter in the patient's trachea, the dead space of the trachea is bypassed and the trachea is only utilized for expiration. The catheter includes a catheter tip which directs the constant supply of fresh oxygen containing gas in a manner so as to create sub-atmospheric pressure near the carina and thus allows control of intratracheal airway pressures during the entire respiratory cycle and prevents overinflation of the lungs. By providing a timed expiratory valve in the ITPV mode, lower pressures and fresh oxygen flow rates may be utilized with respiratory rates from 10 to 120/min. or higher.

The availability of SN 7–606,967 for licensing was published in the **Federal Register**, Vol. 56, #64, p. 13628 (April 3, 1991). The availability of SN 7–702,479 for licensing is announced herein.

A copy of the instant patent applications may be purchased from the NTIS sales desk by telephoning 1–800–553–NTIS or by writing to the Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Neil L. Mark, Center for Utilization of Federal Technology, NTIS, Box 1423, Springfield, VA 22151. Properly filed competing applications received by the NTIS in response to this notice will be considered as objections to the grant of the contemplated license.

Douglas J. Campion,

Center for Utilization of Federal Technology, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 91–17981 Filed 7–29–91; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of a Request for Bilateral Textile Consultations on Silk Blend and Other Vegetable Fiber Coats Produced or Manufactured in Taiwan

July 24, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Kim-Bang Nguyen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on categories on which consultations have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On July 9, 1991, the American Institute in Taiwan (AIT) requested consultations with the Coordination Council for North American Affairs (CCNAA) regarding imports of women's and girls' coats in Category 835, produced or manufactured in Taiwan. This request was made on the basis of the current bilateral agreement between AIT and CCNAA.

CITA reserves the right to control imports at the level under paragraph 7 of the agreement. The AIT remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with CCNAA, further notice will be published in the **Federal Register**.

Anyone wishing to comment or provide data or information regarding the treatment of Category 835, under the agreement or to comment on domestic production or availability of products included in Category 835, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande.

Because the consultations are scheduled for August 1991, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-18013 Filed 7-29-91; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Office of the Secretary

DIA Advisory Board; Closed Meetings

AGENCY: Defense Intelligence Agency Advisory Board.

ACTION: Notice of closed meetings.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92-463, as amended by section 5 of Public Law 94-409, notice is hereby given that closed meetings of a panel of the DIA Advisory Board have been scheduled as follows.

DATES: Wednesday, August 28, 1991 (9 a.m. to 5 p.m.); Tuesday, September 24, 1991 (9 a.m. to 5 p.m.).

ADDRESSES: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John G. Sutay, USAF, Chief, DIA Advisory Board, Washington, DC 20340-1328 (202/373-4930).

SUPPLEMENTARY INFORMATION: The entire meetings will be devoted to the discussion of classified information as defined in section 552b(c)(1), title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Technologies and Applications.

Dated: July 24, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-17954 Filed 7-29-91; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Plus and Supplemental Loans for Students Programs

AGENCY: Department of Education.

ACTION: Notice of SLS and PLUS interest rate for the period July 1, 1991, through June 30, 1992.

The Acting Assistant Secretary for Postsecondary Education announces the interest rate for variable rate Supplemental Loans for Students (SLS) and PLUS loans to be 9.34 percent for the period July 1, 1991, through June 30, 1992. The interest rate for these loans is provided under section 427A of the Higher Education Act of 1965 (the Act), as amended (20 U.S.C. 1077a(c)).

Section 427A(c) of the Act provides that a variable interest rate applies to SLS and PLUS loans disbursed on or after July 1, 1987, existing SLS and PLUS loans made at a variable interest rate, and SLS and PLUS loans made prior to July 1, 1987 that are refinanced at a variable rate. The variable rate applies for each 12-month period beginning July 1 and ending June 30.

Pursuant to section 427A(c) of the Act, as amended, the Acting Assistant Secretary has determined the interest rate for variable rate PLUS and SLS loans for the period July 1, 1991 through June 30, 1992 in the following manner:

Step 1. By determining the bond equivalent rate of the 52-week Treasury bills sold at the final auction prior to June 1, 1991 (6.09 percent); and

Step 2. By adding 3.25 percent to the average.

FOR FURTHER INFORMATION CONTACT: Ralph B. Madden, Senior Program Specialist, Guaranteed Student Loan Branch, Division of Policy and Program Development, Department of Education on (202) 708-8242.

(20 U.S.C. 1077a(c)).

Dated: July 22, 1991.

(Catalog of Federal Domestic Assistance No. 84.032, Guaranteed Student Loan Program and PLUS Program)

Michael J. Farrell,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 91-17965 Filed 7-29-91; 8:45 am]

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Dated: July 24, 1991.

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[FR Doc. 91–17954 Filed 7–29–91; 8:45 am]

BILLING CODE 3810-01-M

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Dated: July 22, 1991.

(Catalog of Federal Domestic Assistance No. 94.032, Guaranteed Student Loan Program and PLUS Program)

Michael J. Farrell,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 91–17965 Filed 7–29–91; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award Twenty-Two Cooperative Agreements Under the State Heating Oil Program

AGENCY: Department of Energy (DOE).

ACTION: Notice of intent to make the following restricted eligibility financial assistance awards:

DE–FC01–91E122713—State of Iowa
DE–FC01–91E122714—State of Nebraska
DE–FC01–91E122715—State of New York
DE–FC01–91E122716—State of North Carolina
DE–FC01–91E122717—State of Ohio
DE–FC01–91E122718—State of Vermont
DE–FC01–91E122719—State of Minnesota
DE–FC01–91E122720—State of Michigan
DE–FC01–91E122722—District of Columbia
DE–FC01–91E122723—State of Massachusetts
DE–FC01–91E122725—State of Wisconsin
DE–FC01–91E122780—State of Connecticut
DE–FC01–91E122781—State of New Hampshire
DE–FC01–91E122782—State of New Jersey
DE–FC01–91E122783—State of South Dakota
DE–FC01–91E122784—State of Pennsylvania
DE–FC01–91E122786—State of Maine
DE–FC01–91E122785—State of Virginia
DE–FC01–91E122787—State of Rhode Island
DE–FC01–91E122788—State of Maryland
DE–FC01–91E122789—State of Indiana
DE–FC01–91E122790—State of Missouri

SUMMARY: DOE announces that, pursuant to 10 CFR 600.7, it is making twenty-two (22) restricted eligibility financial assistance awards under the above listed Cooperative Agreements.

The awards will total $486,000.00 (DOE share: $243,000.00 Recipients share: $243,000.00). The cooperative agreements will permit the involved states to complete and receive payment for conducting semi-monthly surveys to collect state level residential No. 2 heating oil and propane prices during the heating season. These data will provide Congress with information to be utilized in analyzing the heating fuels markets in the event of supply and price related crises.

SCOPE: The objective of the proposed cooperative agreements is to analyze the heating fuels markets, during the heating season, in order to determine these states' specific program plans and individual needs for heating fuels statistics.

ELIGIBILITY: Out of a universe of 50 potentially eligible states, Congress has mandated that data be collected from only primary residential fuel consuming states. As a result of this mandate, only 22 states have been identified as the primary residential fuel consuming states. Furthermore, these states have unique qualifications and capabilities to provide the necessary information, based on their participation in this program in prior heating seasons, and have established data collection relationships with the heating oil distributors and refiners. Accordingly, it has been determined that the objectives of this program may only be achieved by the 22 states identified above.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, Attn: Ms. Donna Williams, PR–322.2, 1000 Independence Avenue SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Operations Division "B", Office of Placement and Administration.

[FR Doc. 91–18008 Filed 7–29–91; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 90–84–NG]

Centra Gas Manitoba; Application for Long-Term Authorization To Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application for long-term authorization to export natural gas to Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed by Centra Gas Manitoba (Centra) on September 25, 1990, as supplemented on June 7, and June 17, 1991, for long-term authorization to export up to 13.5 Bcf of natural gas to Canada over a term beginning on the date of first delivery through March 31, 1995. Pursuant to a November 1, 1990, gas sales contract with Coastal Gas Marketing Company (Coastal), Centra intends to use existing facilities in the United States to export natural gas by backhaul (as more fully described below) to TransCanada PipeLines Limited (TransCanada). TransCanada would then deliver the backhaul volumes to Centra near Winnipeg, Manitoba, Canada.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, August 29, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Thomas Dukes, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–070, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9590.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Centra, a corporation organized and existing under the laws of the Province of Manitoba, Canada, has its principal place of business in Winnipeg, Manitoba. Centra's ultimate parent corporation is Westcoast Energy Inc., a company incorporated pursuant to the laws of Canada. Under a Centra's export arrangement with Coastal, a natural gas marketing company and Delaware corporation located in Houston, Texas, Coastal has arranged for the storage and backhaul transportation of natural gas on the systems of ANR Pipeline (ANR) and Great Lakes Gas Transmission Company (Great Lakes). Great Lakes interconnects with ANR in central Michigan and crosses northern Michigan, Wisconsin, and Minnesota before interconnecting with TransCanada's facilities near Emerson, Manitoba, Canada.

According to Centra, the backhaul would be accomplished by Coastal providing gas downstream to the southern segment of Great Lakes' facilities. ANR, under its arrangement with Coastal, would deliver to Great Lakes the same volumes downstream that Centra nominates daily during the winter season, thus allowing TransCanada to provide Centra equivalent gas supplies at Centra city gate in Winnipeg, Manitoba. In essence, TransCanada would deliver less gas to Great Lakes to meet Centra's gas demand in Canada, but Coastal would make up the shortfall by supplying equivalent volumes of domestic and/or other Canadian supplies from ANR's gas storage facility near its interconnnection with Great Lakes' system at Farwell, Michigan. The net effect of the arrangement would be: (1) To allow TransCanada and Great Lakes to transport Centra's requirements *via* backhaul while; (2) equivalent volumes continue to flow into Great Lakes' system for delivery in the U.S. or

Canada downstream of ANR Storage. Great Lakes was authorized to import from and export to Canada up to 925,000 Mcf/d through November 1, 2005 (see, DOE/ERA Opinion and Order No. 264, August 9, 1988).

Centra states that all the backhaul gas delivered from TransCanada would be Canadian and, because Coastal would be making up those supplies downstream, there would be no net change in the volume of gas exported back into Canada on Great Lakes' system by virtue of the arrangement if approved by DOE.

According to the application, the gas sales contract between Centra and Coastal provides for a price consisting of a demand and commodity charge. The commodity charge would be calculated from the Inside FERC Gas Market Report's average price index of spot gas delivered to pipelines for the State of Louisiana for the months of May through October in the first contract year and for April through October in each subsequent contract year. The demand or transportation charge would be for firm deliveries from Great Lakes' receipt and delivery points, as described in the November 1, 1990, Centra/Coastal gas sales contract, and would not exceed $.27 per MMBtu for the first year.

This export application will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 204–111 and 0204–127. In deciding whether the proposed export of natural gas is in the public interest, domestic need for the natural gas will be considered, and any other issues determined to be appropriate, including whether the arrangement is consistent with DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority. The applicant asserts that there is no current need for the domestic gas that would be exported under the proposed arrangements. Parties opposing this arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Centra's application is available for inspection and copying in the Office of Fuels Programs Docket Room, Room 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 24, 1991.

Anthony J. Como,

Director, Office of Coal and Electricity, Office of Fossil Energy.

[FR Doc. 91–18009 Filed 7–30–91; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91–39–NG]

The Montana Power Co.; Application for Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application for long-term authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed by The Montana Power Company (MPC) on June 3, 1991, as supplemented June 14, 1991, for authorization to import up to 50,000 MMBtu per day (50,000 Mcf) of natural gas from Canada beginning November 1, 1991, through October 31, 2006. MPC proposes to import this gas from its wholly-owned Canadian subsidiary, Canadian-Montana Pipe Line Company (CMPL), for its system supply. The volumes would enter the pipeline facilities of MPC at a point on the international boundary with the United States near Aden, Alberta (Whitlash, Montana). No new pipeline construction is required. If this application is approved, it would replace MPC's existing authorization to import gas from CMPL which otherwise would expire December 31, 1992, and also lower by one-half the daily volume that had previously been authorized.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notice of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed at the address listed below no later than 4:30 p.m., Eastern time, August 29, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478.

FOR FURTHER INFORMATION CONTACT:

P.J. Fleming, Office of Fuels Programs,
Fossil Energy, U.S. Department of
Energy, Forrestal Building, room 3F–
094, 1000 Independence Avenue SW.,
Washington, DC 20585, (202) 586–4819.

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Issued in Washington, DC, July 24, 1991.

Anthony J. Como,

Director, Office of Coal and Electricity, Office of Fossil Energy.

[FR Doc. 91–18009 Filed 7–30–91; 8:45 am]

BILLING CODE 6450-01-M

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The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notice of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed at the address listed below no later than 4:30 p.m., Eastern time, August 29, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478.

FOR FURTHER INFORMATION CONTACT:

P.J. Fleming, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–094, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–4819.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, Office of General Counsel, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: MPC is a public utility that operates an intrastate natural gas pipeline serving customers throughout western and central Montana. Since the early 1980's MPC's natural gas supply has been composed of about one-fourth Canadian natural gas and three-fourths Montana natural gas. All of MPC's Canadian gas is imported under two long-term agreements with CMPL, except for a small amount obtained under a two-year blanket authorization granted by FE that will end February 6, 1993 (1 FE ¶70,409). The blanket imports have been short-term arrangements to augment other gas supplies during the winter heating season.

MPC is currently receiving the majority of its natural gas supplies from Canada at Aden, Alberta, under a contract between MPC and CMPL dated October 30, 1984, as amended. This is the same contract that is the subject of the present application. The importation of this gas was initially approved by the Federal Power Commission (FPC). By order issued March 21, 1975, as amended, MPC is authorized to import a maximum daily volume of gas not to exceed 99,460 Mcf through December 31, 1992. See 53 FPC 908. This authorization would be replaced during its remaining term by the authorization sought in this proceeding.

MPC is also currently purchasing gas from CMPL under a separate long-term agreement dated May 1, 1979, as amended, and import authorization initially approved by the Economic Regulatory Administration (ERA) of DOE. The term of this authorization to import 1,060 Mcf per day produced from the Reagan gas field spanning the international border in southwestern Alberta extends through December 31, 1993. See 1 ERA ¶70,542 (July 20, 1981).

In its present application, MPC requests authorization to continue to import natural gas at Aden, but at a reduced level of 50,000 Mcf per day (in contrast to 99,460 Mcf per day), beginning November 1, 1991, for a period ending October 31, 2006. MPC's proposal would result in its current authorization being vacated a year before its expiration date when the new authorization becomes effective.

MPC states that the proposed extension of the Aden import arrangement would be governed by its October 30, 1984, gas purchase contract with CMPL, as amended by letter agreements dated November 29, 1988, and August 1, 1989. The contract provides for a maximum daily quantity of 50,000 Mcf at an initial price of $1.69 (U.S.) per MMBtu. The price is subject to redetermination every six months. It is intended that the redetermined price be competitive in MPC's market area. The annual contract quantity (ACQ) under the agreement would be equal to the volume authorized for export from Canada by the National Energy Board of Canada (NEB). CMPL applies to the NEB to export 10 Bcf per year. The application is currently under review.

The purchase contract imposes a take-or-pay obligation requiring MPC to purchase at least 60 percent of the ACQ. If MPC fails to take the required minimum volumes, it must pay a charge equal to 80 percent of the prevailing Imputed Alberta Border Price for each Mcf of gas below 60 percent not taken. The Imputed Alberta Border Price is established by the Government of Canada pursuant to the Petroleum Administration Act. Prepaid gas volumes may be made up by MPC over the entire contract term. If MPC has been unable to take all prepaid volumes at the time the contract expires, CMPL would refund money.

MPC has imported gas from the Aden area of Alberta since 1952. It contends that the proposed continuation of the importation of Canadian gas is necessary to meet the present and future demands of the Montana market.

The decision on MPC's application for import authority will be made consistent with DOE's natural gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In the case of a long-term arrangement such as this, other matters that will be considered in making a public interest determination include need for the natural gas and security of the long-term supply. Parties that may oppose this application should comment in their responses on the issues of competitiveness, need for the gas, and security of supply as set forth in the policy guidelines. MPC asserts that this import arrangement is in the public interest because it is needed, competitive, and its natural gas source will be secure. Parties opposing the import arrangement bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR § 590.316.

A copy of MPC's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 25, 1991.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs Fossil Energy.

[FR Doc. 91-18010 Filed 7-29-91; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed With the Office of Hearings and Appeals; Week of June 28 Through July 5, 1991

During the week of June 28 through July 5, 1991, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: July 23, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of June 28 through July 5, 1991]

Date	Name and location of applicant	Case No.	Type of submission
6/28/91	Bernard Hanft, Forest Hills, NY	LFA-0133	Appeal of an Information Request Denial. If granted: Bernard Hanft would receive access to copies of specified documents which relate to the conversion of coal to gaseous and liquid fuels and the demonstration of such processes.
6/28/91	Sauvage Gas/John E. Jones Oil Co., Inc., St. Louis, MO	RR308-4	Request for Modification/Rescission in the Sauvage Gas Refund Proceeding. If granted: The 6/26/91 Decision and Order (Case No. RF308-13) issued to John E. Jones Oil Co., Inc. would be modified regarding the firm's Application for Refund submitted in the Sauvage Gas refund proceeding.
6/28/91	Sauvage Gas/John Mobley, St. Louis, MO	RR308-6	Request for Modification/Rescission in the Sauvage Gas Refund Proceeding. If granted: The 6/26/91 Decision and Order (Case No. RF308-19) issued to John E. Mobley would be modified regarding the firm's Application for Refund submitted in the Sauvage Gas refund proceeding.
6/28/91	Sauvage Gas/Tutcher Magic Gas Co., Inc., St. Louis, MO.	RR308-5	Request for Modification/Rescission in the Sauvage Gas Refund Proceeding. If granted: The 6/26/91 Decision and Order (Case No. RF308-17) issued to Tutcher Magic Gas Co., Inc. would be modified regarding the firm's Application for Refund submitted in the Sauvage Gas refund proceeding.
6/28/91	Sauvage Gas/Joel Wilkinson/H.C. Oil Company, St. Louis, MO.	RR308-7	Request for Modification/Rescission in the Sauvage Gas Refund Proceeding. If granted: The 6/26/91 Decision and Order (Case No. RF308-20) issued to Joel Wilkinson/H.C. Oil Co. would be modified regarding the firm's Application for Refund submitted in the Sauvage Gas refund proceeding.
6/28/91	Housing Authority of the City of Baltimore, Baltimore, MD.	RR272-80	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If granted: The 6/13/91 Decision and Order (Case No. RF272-4075) issued to the Housing Authority of the City of Baltimore would be modified regarding the firm's Application for Refund submitted in the Crude Oil refund proceeding.
6/28/91	James L. Schwab, Spokane, WA	LFA-0134	Freedom of Information Appeal. If granted: The June 24, 1991 Freedom of Information Act Request Denial issued by the Office of Security Affairs would be rescinded, and James L. Schwab would receive access to information regarding the Schwab Investigation.
6/28/91	Texaco/Time Oil, Washington, DC	RR321-74	Request for Modification/Rescission in the Texaco Refund Proceeding. If granted: The 6/21/91 Decision and Order (Case Nos. RF321-14212 and RF321-15328) issued to Time Oil would be modified regarding the firm's Application for Refund submitted in the Texaco refund proceeding.

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Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: July 23, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

FFICE OF HEARINGS AND APPEALS

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se No.	Type of submission
-0133	Appeal of an Information Request Denial. If granted: Bernard Hanft would receive access to copies of specified documents which relate to the conversion of coal to gaseous and liquid fuels and the demonstration of such processes.
08-4	Request for Modification/Rescission in the Sauvage Gas Refund Proceeding. If granted: The 6/26/91 Decision and Order (Case No. RF308-13) issued to John E. Jones Oil Co., Inc. would be modified regarding the firm's Application for Refund submitted in the Sauvage Gas refund proceeding.
08-6	Request for Modification/Rescission in the Sauvage Gas Refund Proceeding. If granted: The 6/26/91 Decision and Order (Case No. RF308-19) issued to John E. Mobley would be modified regarding the firm's Application for Refund submitted in the Sauvage Gas refund proceeding.
08-5	Request for Modification/Rescission in the Sauvage Gas Refund Proceeding. If granted: The 6/26/91 Decision and Order (Case No. RF308-17) issued to Tutcher Magic Gas Co., Inc. would be modified regarding the firm's Application for Refund submitted in the Sauvage Gas refund proceeding.
08-7	Request for Modification/Rescission in the Sauvage Gas Refund Proceeding. If granted: The 6/26/91 Decision and Order (Case No. RF308-20) issued to Joel Wilkinson/H.C. Oil Co. would be modified regarding the firm's Application for Refund submitted in the Sauvage Gas refund proceeding.
72-80	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If granted: The 6/13/91 Decision and Order (Case No. RF272-4075) issued to the Housing Authority of the City of Baltimore would be modified regarding the firm's Application for Refund submitted in the Crude Oil refund proceeding.
-0134	Freedom of Information Appeal. If granted: The June 24, 1991 Freedom of Information Act Request Denial issued by the Office of Security Affairs would be rescinded, and James L. Schwab would receive access to information regarding the Schwab Investigation.
21-74	Request for Modification/Rescission in the Texaco Refund Proceeding. If granted: The 6/21/91 Decision and Order (Case Nos. RF321-14212 and RF321-15328) issued to Time Oil would be modified regarding the firm's Application for Refund submitted in the Texaco refund proceeding.

REFUND APPLICATIONS RECEIVED

[Week of June 28 to July 5, 1991]

Date received	Name of refund proceeding/name of refund applicant	Case No.
6/20/91	Belridge/Utah	RQ8-573
6/28/91 thru 7/5/91	Texaco Refund Applications Received.	RF321-16195 thru RF321-16224
7/1/9	City of Greenfield	RF272-89442
7/1/91	Bammel Oil Co	RF326-311
7/1/91	Marilyn Dickson	RF335-30
7/2/91	E.L. Yeager	RF272-8944
7/1/91	CSX Transportation.	RF300-17133
7/1/91	Caribou 4 Corners Oil Inc.	RF329-6
7/1/91	B. Purity Oil Co	RF329-7
7/2/91	Peter Balko	RF300-17134
7/2/91	ICI Americas Inc	RF300-17135
7/3/91	Thomas M. Degonia.	RF335-31
7/3/91	North Georgia College.	RF272-89444
7/5/91	United Western Energy Corp.	RF336-17
7/5/91	Thrifty Oil Co	RF329-8
7/5/91	Hiawatha C U School Dist.	RF272-89445
7/5/91	Hull & Smith Horse Vans, Inc.	RF272-89446
7/5/91	Home Service Oil Co. Inc.	RF330-31

[FR Doc. 91-18011 Filed 7-29-91; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Housing

[Docket No. N-91-3295]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Wendy Swire, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David Cristy, Reports Management Officer Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the document submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). It is also requested that OMB complete its review within thirty days.

This Notice lists the following information:

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submissions will be required;

(7) An estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new, an extension, or reinstatement; and

(9) The telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 16, 1991.

Arthur J. Hill,

Assistant Secretary for Housing-Federal Housing Commissioner.

Submission of Proposed Information Collection to OMB

Proposal: Report on Program Participation Units under Housing Assistance Payments Contract (HAP) section 8 Moderate Rehabilitation Program.

Office: Housing.

Description of the Need for the Information and its Proposed Use: Housing Program, Rehabilitation, Rental Housing—The data gathered from this form will enable HUD to maintain a single listing of any assistance provided under the section 8 Moderate Rehabilitation program which will identify the owners and location of project to which assistance was made, the amount of the assistance and the number of units.

Form Number: Form HUD 52525.

Respondents: Public Housing Agencies (PHA).

Frequency of Submission: Annually.

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Reporting Burden:	100		1		.25		25

Contact: Madeline Hastings, HUD (202) 755-4969. Wendy Swire, OMB (202) 395-6988.

Date: July 16, 1991.

Supporting Statement for Form HUD—52525

Report on Program Participation—Units Under Housing Assistance Payments (HAP) Contract. Section 8 Moderate Rehabilitation Program

A. Justification

1. Section 8 of the Housing and Community Development (HCD) Act of 1974, as amended, authorizes HUD to provide housing assistance on behalf of eligible lower-income families occupying existing units which, through upgrading involving at least $3,000 per unit to correct substandard conditions, are made decent, safe, and sanitary. In addition, section 127 of Public Law 101-235-December 15, 1989, states that the Secretary shall maintain a single listing of any assistance provided under the section 8 Moderate Rehabilitation Program, which shall include a statement identifying the owner and

address of the project to which assistance was made, the amount of the assistance, and the number of units assisted.

2. PHAs must prepare Form HUD 52525 for each section 8 Moderate Rehabilitation Project under an Annual Contributions Contract (ACC) with HUD funded subsequent to the enactment of Public Law 101–235. The report on program participation will list all units under Housing Assistance Payments (HAP) Contract from funds made available to PHAs after December 15, 1989, and will identify the owner, address of property, number of units, and the amount of assistance.

If the forms were not required to be submitted, HUD could not comply with the statute, since HUD typically does not obtain this information from PHAs.

3. The burden hours for completing the form cannot be reduced any further.

4. There is no duplication.

5. This is a new form and is the first time this type of information has been requested.

6. Not applicable. No small businesses are involved.

7. Not applicable.

8. There are no special circumstances that require the information to be conducted in a manner inconsistent with CFR 1320.6.

9. There were no consultations outside the agency.

10. No assurance of confidentiality is provided because no personal information is obtained from the use of the form.

11. There are no sensitive questions contained in this form.

12. The estimated annualized cost to the Federal Government is $4.00 per Field Office × 25 Field Offices = $100.00. This estimate is based on a staff person at a GS–11 level (16.00 per hourly salary) taking 15 minutes to determine that the appropriate PHAs submit the report. The estimated annualized cost to the respondent (PHA) is based on estimated $3.00 labor-cost × per respondents (100) = $300.00. This is based on a staff person at a GS–5 level ($9.00 hourly salary) taking 15 minutes to prepare the report annually.

The estimated annualized cost to the Federal Government is $4.00 per Field Office × 25 Field Offices = $100.00.

13. Number of Respondents	100
Annual Response	1
Hours per Response	.25
Annual Hours	25

The estimated burden hours per response of 15 minutes for a PHA to compile the data and fill out the report takes into consideration that this information is already known and located in the PHA's files. The form HUD 52525 will only be used once a year.

14. Not applicable—New request.

15. Not applicable—information contained in this report will not be published for statistical use.

B. Collection of Information Employing Statistical Methods

Not applicable—statistical methods are not utilized.

BILLING CODE 4210-01-M

Report on Program Participation
Units Under Housing Assistance Payments (HAP) Contract
Section 8 Moderate Rehabilitation Program

U.S. Department of Housing
and Urban Development
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2502-XXXX (exp.mm/dd/yy)

Public reporting burden for this collection of information is estimated to average XX hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-XXXX), Washington, D.C. 20503.

Project ID or HAP Contract Number

1. Region	2. Field Office	3. Public Housing Agency	4. Section 8 Project Number (11 digits)	5. Name and Address of Owner	6. Name and Address of Project	7. Number of Units in Project	8. Number of Assisted Units*							9. Contract Authority	10. Budget Authority
							0	1	2	3	4	5	Total		

PROOF

Previous editions are obsolete

* Number of Assisted Units by bedroom size

form HUD-52525 (06/05/91)
ref. Handbook 7420.3

BILLING CODE 4210-01-C

Instruction for Preparation of Form HUD-52525—Report on Program Participation Units Under Housing Assistance Payments (HAP) Contract, Section 8 Moderate Rehabilitation Program

A. General Instruction

The original and 1 copy of Form HUD-52525 must be prepared and submitted to the HUD Field Office (Attention: Assisted Housing Management Branch) by Public Housing Agencies (PHAs) for each section 8 Moderate Rehabilitation Project, including the component for Single Room Occupancy Dwellings for Homeless Individuals, funded after December 15, 1989 and under Housing Assistance Payments (HAP) Contract. The initial report will include projects funded between December 15, 1989 and September 30, 1991. The initial report must be submitted by October 10, 1991.

B. Reporting Frequency

Subsequent Forms HUD-52525 must be accomplished annually as of September 30 to be received by the HUD Field Office by October 10. The Field Office will forward the original report to Headquarters, Attention: Section 8 Moderate Rehabilitation Division by October 30.

Detailed Instructions

Print or Type

1. *Region:* Indicate the Region by Roman numeral I, II, III
2. *Field Office:* Enter the name of the HUD Field Office (e.g. Baltimore Office)
3. *Public Housing Agency:* Enter the name of the PHA with which HUD has entered into an ACC.
4. *Section 8 Project Number:* Enter the eleven character alpha/numeric project number assigned to the project by the HUD Field Office. Example: MA06-K123-001
5. *Name and Address of Owner:* Enter the name of the owner (the person who signed the HAP Contract) and the owner's current address.
6. *Name and Address of Project:* Enter the street address or RT's number, city, county, state and ZIP CODE for each project
7. *Number of Units in Project:* Enter the total number of all units in the project (both assisted and unassisted)
8. *Number of Assisted Units:* and Bedroom Distribution Total 0 1 2 3 4 5

Enter the total number of assisted units for which HAP Contract(s) have been executed by Bedroom size.

Example	Bedroom Distribution					Total
(size)	0	1	2	3	4	
number of unit units	3	4	2	5	6	20

9. *Contract Authority:* The Contract Authority is determined by multiplying, for each bedroom size, the number of units by the applicable Moderate Rehabilitation FMR (120 percent of the Existing Housing FMR). Then multiply the total of all products by 12 months. Example for 20 three bedroom units and 10 four bedroom units at respective published FMRs of $300 and $400: 20 × $300 × 1.20 = *$7200*; 10 × $400 × 1.20 = *$4800*; $7200 + $4800 = $12,000×12 = $144,000 Contract Authority.
10. *Budget Authority:* The Budget Authority is determined by multiplying the Contract Authority by 15 years for the regular Mod Rehab Program or 10 years for the SRO Mod Rehab Program. Contract Authority of $144,000 yields Budget Authority of $2,160,000 for the regular Mod Rehab Program, and $1,440,000 for the SRO Mod Rehab Program.

[FR Doc. 91-17970 Filed 7-29-91; 8:45 am]

BILLING CODE 4210-01-M

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. D-91-956; FR-3082-D-01]

Redelegation of Authority Under Title VI of the Civil Rights Act of 1964

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: On May 13, 1971 (36 FR 8821), the Secretary of Housing and Urban Development delegated, to the Assistant Secretary for Fair Housing and Equal Opportunity, the authority to act as the "responsible Department official" in most matters relating to carrying out the requirements of title VI of the Civil Rights Act of 1964, as that authority is set forth in HUD's regulations and procedures in 24 CFR parts 1 and 2. By a notice of redelegation published June 15, 1990 (55 FR 24346) and two notices of redelegation published January 23, 1991 (55 FR 2588), the Assistant Secretary redelegated the authority to act as "responsible Department official", in certain specified circumstances, to the Regional Directors for Fair Housing and Equal Opportunity in all regions. The redelegations of authority to the Regional Director for Fair Housing and Equal Opportunity in Region VI, however, were more limited in scope than the redelegations to the other Regional Directors. In today's notice, the Assistant Secretary is redelegating additional authority to the Regional Director for Fair Housing and Equal Opportunity in Region VI. The additional authority does not extend to proceedings involving any of the 70 Public Housing Agencies located in any of the 36 class action counties involved in the litigation in *Young* v. *Kemp,* Civil Action No. P. 80-8-CA, E.D. Tex., Paris Div.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Peter Kaplin, Director, Office of Program Compliance, Office of Fair Housing and Equal Opportunity, room 5230, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-2904. A telecommunications device for deaf persons (TDD) is available at (202) 708-0015. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Section A—Redelegation of Authority

The Assistant Secretary for Fair Housing and Equal Opportunity redelegates to the Regional Director for Fair Housing and Equal Opportunity in Region VI the following authority:

(a) The authority under 24 CFR 1.7(d)(2) to determine where there is a finding of compliance on all issues, that an investigation does not warrant action, and to issue the recipient a formal written determination of compliance.

(b) The authority under 24 CFR 1.7(d)(1) to issue findings of noncompliance, in connection with periodic compliance reviews, and to attempt to resolve such noncompliance findings by informal means under the following circumstances:

(1) The recipient has engaged in the specifically prohibited discriminatory actions described under 24 CFR 1.4(b)(2)(ii), or has failed to keep, submit or provide access to information required under 24 CFR 1.6 (b) and (c);

(2) No other violations of 24 CFR part 1 are found;

(3) The violation has not resulted in, or perpetuated, patterns of occupancy that are inconsistent with Part 1;

(4) No individual or class or individuals can be identified who have been injured by the prohibited discriminatory action;

(5) No affirmative action is necessary to overcome the effects of prior discrimination or conditions which resulted in limiting participation by

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EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Peter Kaplin, Director, Office of Program Compliance, Office of Fair Housing and Equal Opportunity, room 5230, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-2904. A telecommunications device for deaf persons (TDD) is available at (202) 708-0015. (These are not toll-free numbers.)

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(b) The authority under 24 CFR 1.7(d)(1) to issue findings of noncompliance, in connection with periodic compliance reviews, and to attempt to resolve such noncompliance findings by informal means under the following circumstances:

(1) The recipient has engaged in the specifically prohibited discriminatory actions described under 24 CFR 1.4(b)(2)(ii), or has failed to keep, submit or provide access to information required under 24 CFR 1.6 (b) and (c);

(2) No other violations of 24 CFR part 1 are found;

(3) The violation has not resulted in, or perpetuated, patterns of occupancy that are inconsistent with Part 1;

(4) No individual or class or individuals can be identified who have been injured by the prohibited discriminatory action;

(5) No affirmative action is necessary to overcome the effects of prior discrimination or conditions which resulted in limiting participation by

persons of a particular race, color or national origin; or

(6) The recipient is not currently operating under a voluntary compliance agreement entered pursuant to 24 CFR part 1.

(c) The Regional Director for Fair Housing and Equal Opportunity in Region VI may not redelegate the authority granted under this redelegation.

Section B—Authority Excepted

The authority granted under Section A of this redelegation does not include authority under 24 CFR part 1 to make findings of compliance or noncompliance involving any of the 70 Public Housing Agencies located in any of the 36 class action counties involved in the litigation in *Young* v. *Kemp,* Civil Action No. P. 80-8-CA, E.D. Tex., Paris Div.

Authority: 42 U.S.C. 2000d; 42 U.S.C. 3535(d).

Dated: July 1, 1991.

Gordon H. Mansfield,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 91-17969 Filed 7-29-91; 8:45 am]

BILLING CODE 4210-28-M

Office of the Regional Administrator—Regional Housing Commissioner

[Docket No. D-91-955]

Acting Regional Administrator, Region IV (Atlanta); Designation

AGENCY: Department of Housing and Urban Development.

ACTION: Designation.

SUMMARY: Updates the designation of officials who may serve as Acting Regional Administrator for Region IV.

EFFECTIVE DATE: July 14, 1991.

FOR FURTHER INFORMATION CONTACT: Charles A. Lipthrott, Director, Management Systems Division, Office of Administration, Atlanta Regional Office, Department of Housing and Urban Development, room 634, Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, Georgia 30303-3388, 404-331-5199.

Designation of Acting Regional Administrator for Region IV

Each of the officials appointed to the following positions is designated to serve as Acting Regional Administrator during the absence of, or vacancy in the position of, the Regional Administrator, with all the powers, functions, and duties redelegated or assigned to the Regional Administrator: Provided, That no official is authorized to serve as Acting Regional Administrator unless all other employees whose names or titles precede his/hers in this designation are unable to serve by reason of absence:

1. Deputy Regional Administrator.
2. Executive Assistant.
3. Director, Office of Housing.
4. Director, Office of Administration.
5. Director, Office of Public Housing.
6. Director, Office of Community Planning and Development.
7. Regional Counsel.
8. Director, Office of Fair Housing and Equal Opportunity.
9. Georgia Program Coordinator.
10. Director, Operational Support Division.

This designation supersedes the designation effective September 11, 1990 (55 FR 41891, October 16, 1990).

(Delegation of Authority by the Secretary effective May 4, 1962, (27 FR 4319, May 4, 1962); Dept. Interim Order II (31 FR 815, January 21, 1966)

This designation shall be effective as of July 14, 1991.

Raymond A. Harris,

Regional Administrator-Regional Housing Commissioner, Region IV (Atlanta).

[FR Doc. 91-17966 Filed 7-29-91; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Susanville District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with Public Law 95-579 (FLPMA), that the Susanville District Advisory Council will hold a business meeting on Thursday, August 29, 1991, from 10 a.m. to 4:30 p.m. in the Conference Room of the Bureau of Land Management's (BLM) Susanville District Office, 705 Hall Street, Susanville, California, 96130. Topics scheduled for discussion include resource values and management needs in High Rock Canyon, development of an interim management plan for the Black Rock Desert and High Rock Canyon areas, formation of a Susanville and Winnemucca District Advisory Council subcommittee on the Black Rock Desert and High Rock Canyon, the upcoming appointment of council members and a change in chairmanship. The meeting will also include a public discussion of the Susanville District's FY 1992 helicopter gathering plans for wild horses and burros. The council will also be updated on other BLM programs and initiatives.

The meeting is open to the public, and interested persons may make oral statements or file a written statement for the council's consideration. Those wishing to make oral statements must notify the Susanville District Manager, 705 Hall Street, Susanville, CA 96130, by Monday, Aug. 19, 1991. Depending on the number of persons wishing to speak, a time limit may be imposed.

For further information, contact: Jeff Fontana, (916) 257-5381.

Robert J. Sherve,

Associate District Manager.

[FR Doc. 91-17975 Filed 7-29-91; 8:45 am]

BILLING CODE 4310-40-M

National Park Service

Final Environmental Impact Statement, George Washington Memorial Parkway—Potomac Greens

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of final environmental impact statement.

SUMMARY: Notice is hereby given that the National Park Service is releasing a final Environmental Impact Statement for George Washington Memorial Parkway, Potomac Greens, Virginia. This Environmental Impact Statement is required by Public Law 100-446, and addresses the potential impacts to the George Washington Memorial Parkway which may result from proposed private development of the 38-acre Potomac Greens tract located immediately to the west of Daingerfield Island on the Parkway in Alexandria, Virginia. The Environmental Impact Statement focuses on the potential impacts of the planned Potomac Greens development on traffic and the visual, recreational, and historical integrity of the Parkway. The Environmental Impact Statement presents mitigating alternatives for consideration.

The final Environmental Impact Statement will be available for public review at the National Park Service, National Capital Region, Office of Land Use Coordination, 1100 Ohio Drive SW., room 201, Washington, DC.

SUPPLEMENTARY INFORMATION: Send requests for further information to Mr. John Parsons, Associate Regional Director, Land Use Coordination, National Park Service, National Capital Region, 1100 Ohio Drive SW., Washington, DC 20242.

Dated: July 17, 1991.

Robert Stanton,

Regional Director, National Capital Region.

[FR Doc. 91-18016 Filed 7-29-91; 8:45 am]

BILLING CODE 4310-70-M

Civil War Sites Advisory Commission; Meetings

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting of the Civil War Sites Advisory Commission.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988), that a meeting of the Civil War Sites Advisory Commission will be held on August 16, 1991 in the First Floor Conference Room, 1100 L Street NW., Washington, DC.

The meeting will begin at 9 a.m. and conclude at 4 p.m.

This meeting constitutes the second meeting of the Commission. The Commissioners will hear various reports on the proposed work of the Commission.

Space and facilities to accommodate members of the public are limited and persons will be accommodated on a first-come, first-served basis. Anyone may file with the Board a written statement concerning matters to be discussed.

Persons wishing further information concerning the meeting, or who wish to submit written statements, may contact Dr. Marilyn Nickels, Interagency Resources Division, P.O. Box 37127, Washington, DC 20013-7127 (telephone 202-343-9549). Draft summary minutes of the meeting will be available for public inspection about 8 weeks after the meeting, in room 6111, 1100 L Street NW., Washington, DC.

Dated: July 22, 1991.

Lawrence E. Aten,

Acting Executive Director and Chief, Interagency Resources Division.

[FR Doc. 91-18017 Filed 7-29-91; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 16, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by August 14, 1991.

Carol D. Shull,

Chief of Registration, National Register.

COLORADO

Mesa County

Devils Kitchen Picnic Shelter (Colorado National Mounument MPS), Near E entrance, Colorado National Monument, Grand Junction vicinity, 91001051

Rim Rock Drive Historic District (Colorado National Monument MPS), Extending S and E from W entrance to E entrance, Colorado National Monument, Grand Junction vicinity, 91001054

Saddlehorn Historic District (Colorado National Monument MPS), Near W entrance, Colorado National Monument, Grand Junction vicinity, 91001053

Serpent's Trail (Colorado National Monument MPS), Near E entrance, Colorado National Monument, Grand Junction vicinity, 91001052

LOUISIANA

Caddo Parish

Long, Huey P., House, 305 Forest Ave., Shreveport, 91001060

Pointe Coupee Parish

Labatut (Louisiana's French Creole Architecture MPS), Jct. of LA 420 and LA 10, New Roads vicinity, 91001056

MINNESOTA

Hennepin County

Church of St. Stephen (Catholic), 2201 Clinton Ave. S., Minneapolis, 91001058

Itasca County

Bovey Village Hall (Federal Relief Construction in Minnesota MPS), 402 2d St., Bovey, 91001059

Lac Qui Parle County

Lac qui Parle State Park WPA—Rustic Style Historic District (Minnesota State Park CCC/WPA/Rustic Style MPS), Off Co. Hwy. 33 at SE end of Lac qui Parle Township, Montevideo vicinity, 91001055

St. Louis County

Congdon, Chester and Clara, Estate, 3300 London Rd., Duluth, 91001057

[FR Doc. 91-18018 Filed 7-29-91; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31845]

Adrian & Blissfield Rail Road Co.; Modified Rail Certificate

On February 25, 1991, Adrian & Blissfield Rail Road Company (A&B) filed a notice for a modified certificate of public convenience and necessity under 49 CFR 1150.23 to operate a rail line in Lenawee County, MI, owned by the Michigan Department of Transportation (MDOT), consisting of 19.35 miles of track in three segments:

(1) Between milepost 325.5, at Lenawee Junction, and milepost 332.9, near Adrian, a distance of 7.40 miles (Segment 1);

(2) a) Between mileposts 0.0 and 0.25, at or near Lenawee Junction, and b) between milepost 315.5, at Riga, and milepost 325.5, a distance of 10.25 miles (Segment 2);

(3) Between milepost 0.0, at Grosvenor, and milepost 1.7, a point near the north bank of the Raisin River, a distance of 1.70 miles (Segment 3).

Segments 1 and 3 were not designated to Consolidated Rail Corporation (Conrail), but were available for subsidy under section 304 of the Regional Rail Reorganization Act of 1973. USRA-Final System Plan-July 1975—Vol. II, pp. 156-57, respectively. From April 1, 1976, when Penn Central discontinued service, until September 30, 1977, the State of Michigan provided operating subsidies to Conrail on both segments. From October 1, 1977, until September 30, 1990, Lenawee County Railroad Company, Inc. (LCR), was the designated operator (D-OP) of Segments 1 and 3. The State of Michigan purchased both segments from Penn Central on February 15, 1984.

Segments 1 and 3 qualify for a modified certificate of public convenience and necessity. A rail line which was approved for abandonment under the Final System Plan, but over which operations were continued by a D-OP, has been "fully abandoned, or approved for abandonment" within the meaning of 49 CFR 1150.21. See Finance Docket No. 28990F, Common Carrier Status of States, State Agencies and Instrumentalities, and Political Subdivisions (not printed), served July 16, 1981, pp. 9-10.

Conrail's application to abandon Segment 2 was dismissed when a purchase agreement was entered into under the offer of financial assistance procedures. See Docket No. AB-167 (Sub-No. 154N), Conrail Abandonment of the Clinton and Vulcan Secondary Track in MI (not printed), served June 9, 1982. The acquisition by MDOT was consummated November 30, 1982. Under a modified rail certificate issued in Finance Docket No. 29997, LCR operated the segment until September 30, 1990.

Segment 2 was "approved for abandonment" within the meaning of 49 CFR 1150.21 and thus (as in the LCR proceeding) qualifies for a modified certificate. See Common Carrier Status of States, State Agencies, 363 I.C.C. 132, 135 (1980), and, *e.g.,* Finance Docket No.

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Segment 2 was "approved for abandonment" within the meaning of 49 CFR 1150.21 and thus (as in the LCR proceeding) qualifies for a modified certificate. See Common Carrier Status of States, State Agencies, 363 I.C.C. 132, 135 (1980), and, *e.g.*, Finance Docket No.

30383, Caney, Fork & Western Railroad, Inc. Modified Rail Certificate (not printed), served January 30, 1984.

Operations under the modified rail certificate were to have commenced on or about February 1, 1991, and the agreement between the State of Michigan and A&B expires September 30, 1993. Service will be offered to all shippers on an "as needed" basis. The involved line connects at Adrian with Norfolk Southern Corporation's Detroit, MI, to Fort Wayne, IN, mainline, at Lenawee Junction with Southern Michigan Railroad Society, and near Riga with Grand Trunk Western Railroad Company.

The Commission will serve a copy of this notice on the Association of American Railroads (Car Service Division) as agent of all railroads subscribing to the car-service and car-hire agreement, and on the American Short Line Railroad Association.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Dated: July 24, 1991.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–18007 Filed 7–29–91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of July 1991.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–25,772; Cooper Industries, Copper Distribution Equipment Div., Earlysville, VA
TA–W–25,823; Thronton Drum Ring, Springfield, NJ
TA–W–25,754; S.D. Warren Co., Div. of Scott Paper Co., Westbrook, ME
TA–W–25,799; Eastern Steel Barrel Corp., Piscataway, NJ
TA–W–25,851; Sunshine Mining Co (Big Creek), Kellogg, ID
TA–W–25,808; Kelsey-Hayes Corp., Mt. Vernon, OH
TA–W–25,817; Santa Fe Minerals, Inc., Dallas, TX
TA–W–25,818; Santa Fe Minerals, Inc., El Reno, OK
TA–W–25,819; Santa Fe Minerals, Inc., Lafayette, LA
TA–W–25,820; Santa Fe Minerals, Inc., Tulsa, OK
TA–W–26,006; Santa Fe Minerals, Inc., Middletown, CA
TA–W–26,007; Santa Fe Minerals, Inc., Tyrone, OK
TA–W–26,008; Santa Fe Minerals, Inc., Fort Smith, AR
TA–W–26,009; Santa Fe Minerals, Inc., Live Oak, CA

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA–W–25,863; Durawool, Inc., Queens Village, NY

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–25,856; AT and T Communications, Buffalo, NY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–25,805; Hagglunds Denison, Marysville, OH

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–25,857; B and S Testers, Gillette, WY

The investigation revealed that criterion (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification.

Affirmative Determinations

TA–W–25,854; The William Carter Co., Vicksburg, MS

A certification was issued covering all workers separated on or after May 2, 1990.

TA–W–25,833; C and R Cedar, Forks, WA

A certification was issued covering all workers separated on or after May 8, 1990.

I hereby certify that the aforementioned determinations were issued during the months of July, 1991. Copies of these determinations are available for inspection in room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: July 22, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91–18001 Filed 7–29–91; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (91-67)]

NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting change.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 56FR31970, Notice Number 91–65, July 12, 1991.

PREVIOUSLY ANNOUNCED TIMES AND DATES OF MEETING: August 8, 1991, 8:15 a.m. to 4:15 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine Smith, Office of Aeronautics, Exploration and Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–2367.

CHANGES IN THE MEETING: The agenda for this meeting has been revised to read as follows:

Agenda

August 8, 1991
8:15 a.m.—Opening Remarks.
8:30 a.m.—Welcome, Fiscal Year 1992 Budget Status.

9 a.m.—Results and Discussion of Integrated Technology Plan External Review.
4 p.m.—Summary Session.
4:15 p.m.—Adjourn.

Dated: July 25, 1991.

Philip D. Waller,

Deputy Director, Management Operations Office.

[FR Doc. 91-17971 Filed 7-29-91; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATES: Request for copies must be received in writing on or before September 13, 1991. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of the Army (N1-AU-91-10). Records relating to general officer's quarters.
2. Department of the Army (N1-AU-91-11). Records relating to revocation of clinical privileges of health care providers.
3. Department of the Army (N1-AU-91-12). Records relating to publishing and printing.
4. Department of the Army (N1-AU-91-13). Records relating to the accommodation of religious practices.
5. Defense Logistics Agency (N1-361-91-13). Contract management records.
6. Department of the Navy (N1-NU-89-4). Routine and facilitative records relating to the general administrative management of the Department.
7. Department of the Navy (N1-NU-89-5). Routine and facilitative records relating to operations and readiness.
8. Department of Commerce, Bureau of the Census, Geography Division (N1-29-91-2). 1990 Decennial Census computer plot tapes.
9. Federal Deposit Insurance Corporation (N1-34-91-5). Bank liquidation records.
10. Department of Health and Human Services, Family Support Administration (N1-292-90-4). Comprehensive schedule for the Office of Refugee Resettlement.
11. Department of Justice, Criminal Division (N1-60-91-5). Subject, project, and correspondence files of the Deputy Assistant Attorneys General.
12. Bureau of Labor Statistics, Office of Compensation and Working Conditions (N1-257-91-2). Test project professional, administration, technical, and clerical pay survey forms, 1987.
13. National Archives and Records Administration (N1-GRS-91-4). Modification of the retention period provided by the *General Records Schedules* for microform inspection records.
14. National Capital Planning Commission (N1-328-91-1). Audiotapes of National Capital Planning Commission meetings, for which transcripts exist.
15. Department of the Treasury, Energy Policy Group (N1-56-91-3). Administrative records of the Emergency Petroleum Supply Committee, 1973-75.
16. Department of the Treasury, Office of the Secretary (N1-56-91-4). Fragments of the office file of Charles E. Walker, Under Secretary of the Treasury, 1969-71.

Dated: July 19, 1991.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 91-17974 Filed 7-29-91; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME

Working Group on Religious Communities

AGENCY: National Commission on Acquired Immune Deficiency Syndrome.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463 as amended, the National Commission on Acquired Immune Deficiency Syndrome announces a forthcoming meeting of the Working Group on Religious Communities.

DATE AND TIME: Monday, August 26, 1991, 9 a.m. to 5 p.m.

PLACE: Omni Shoreham Hotel, 2500 Calvert Street NW., Washington, DC

TYPE OF MEETING: Open.

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DATE AND TIME: Monday, August 26, 1991, 9 a.m. to 5 p.m.

PLACE: Omni Shoreham Hotel, 2500 Calvert Street NW., Washington, DC

TYPE OF MEETING: Open.

FOR FURTHER INFORMATION CONTACT: Maureen Byrnes, Executive Director, The National Commission on Acquired Immune Deficiency Syndrome, 1730 K Street NW., suite 815, Washington, DC 20006 (202) 254–5125. Records shall be kept of all Commission proceedings and shall be available for public inspection at this address.

AGENDA: A Working Group of the Commission will hold a meeting to identify the current issues and concerns of religious communities responding to the HIV/AIDS epidemic, and to discuss the interface between the religious communities' response and the Federal Government's response to the HIV/AIDS epidemic.

Interpreting services are available for deaf people. Please call our TDD number (202) 254–3816 to request services no later than August 19, 1991.

Dated: July 24, 1991.

Maureen Byrnes,

Executive Director.

[FR Doc. 91–17992 Filed 7–29–91; 8:45 am]

BILLING CODE 6820–CN–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Media Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Media Arts Centers/National Services I Section) to the National Council on the Arts will be held on August 12, 1991 from 9 a.m.–6:30 p.m. and August 13 from 9 a.m.–5:30 p.m. in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 13 from 4:30 p.m.–5:30 p.m. The topic will be policy discussion.

The remaining portions of this meeting on August 12 from 9 a.m.–6:30 p.m. and August 13 from 9 a.m.–4:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 5, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–17976 Filed 7–29–91; 8:45 am]

BILLING CODE 7537–01–M

Museum Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Utilization of Museum Resources "A" Section) to the National Council on the Arts will be held on August 12–13, 1991 from 9:15 a.m.–5:30 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 12 from 9:15 a.m.–10 a.m. The topics will be opening remarks and general discussion.

The remaining portions of this meeting on August 12 from 10 a.m.–5:30 p.m. and August 13 from 9:15 a.m.–5:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 5, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

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If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–17978 Filed 7–29–91; 8:45 am]

BILLING CODE 7537–01–M

Museum Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Utilization of Museum Resources "B" Section) to the National Council on the Arts will be held on August 14–15, 1991 from 9:15 a.m.–5:30 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC. 20506.

A portion of this meeting will be open to the public on August 14 from 9:15 a.m.–10 a.m. The topics will be opening remarks and general discussion.

The remaining portions of this meeting on August 14 from 10 a.m.–5:30 p.m. and August 15 from 9:15 a.m.–5:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 5, 1991, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–17979 Filed 7–29–91; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Renewal; Antarctic Pollution Control Task Group

Because the proposed Environmental Act has not yet been signed, it is necessary that the Antarctic Pollution Control Task Group be extended to December 31, 1991 to accommodate more meetings. Therefore, the Assistant Director for Geosciences has determined that the renewal of the Antarctic Pollution Control Task Group is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF) by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

NAME OF COMMITTEE: Antarctic Pollution Control Task Group.

PURPOSE: The Antarctic Conservation Act requires the Director of the National Science Foundation to designate pollutants and specify those actions which must or must not be taken in order to prevent or control the discharge or other disposal of pollutants from any source within Antarctica. 16 U.S.C. 2405(b) (6) and (7). The Advisory Committee will assist the National Science Foundation in formulating these pollution control regulations.

RESPONSIBLE NSF OFFICIAL: Mr. Lawrence Rudolph, Deputy General Counsel, National Science Foundation, room 501, 1800 G Street, NW., Washington, DC 20550 (202) 357–9435.

Dated: July 24, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–17966 Filed 7–29–91; 8:45 am]

BILLING CODE 7555-01-M

Office of Experimental Programs Proposal Review Panel, Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: EPSCoR Final Review Panel.

Dates: August 14–16, 1991.

Times: 3:30 p.m.–9 p.m., August 14, 1991; 8 a.m.–9 p.m., August 15, 1991; 8 a.m.–12 p.m., August 16, 1991.

Place: New Hampshire Suites Hotel, 1121 New Hampshire Avenue NW., Washington, DC 20037.

Type of Meeting: Closed.

Agenda: Review and evaluate proposals from fifteen states and the Commonwealth of Puerto Rico submitted to the EPSCoR Advanced Development competition.

Contact: Dr. Richard J. Anderson, Program Manager, Office of Experimental Programs, National Science Foundation, room 1228, Washington, DC 20550 (202) 357–7560.

Dated: July 25, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–17985 Filed 7–29–91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Below Regulatory Concern; Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Deferral of action; Initiation of a consensus process.

SUMMARY: The Commission is declaring a moratorium on the implementation of its July 3, 1990, BRC Policy Statement and is initiating a consensus process to provide advice to the Commission on the full range of issues related to the BRC Policy.

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, U.S. Nuclear Regulatory Commission, Washington DC 20055, (301)–492–1803.

SUPPLEMENTARY INFORMATION: On July 3, 1990, the Commission published its Below Regulatory Concern Policy Statement ("BRC Policy") in the **Federal Register**. The BRC Policy Statement established the framework within which the Commission will formulate rules or make licensing decisions to exempt from some or all regulatory controls certain practices involving small quantities of radioactive materials. The adoption of the policy resulted in widespread public concern over the implications of the new Policy. In an effort to better understand the nature of these concerns, and to ensure that a BRC Policy be based on clear and comprehensive information, the Commission decided to consider the use of consensus-building techniques and evaluated the feasibility of using a consensus process to address the issues related to the BRC Policy. The evaluation was conducted through interviews with a wide number of groups across the various interests that might be affected by the BRC Policy.

On May 21, 1991, the Commission was briefed on the results of the feasibility evaluation (SECY–91–132). One of the principal findings of the feasibility evaluation was that there was substantial support for a consensus-building initiative on the BRC Policy issues. This support largely stemmed from the dissatisfaction with the process that the Commission used to develop the BRC Policy. Most groups felt that they had little effective input to the development of the Policy. For example,

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Dated: July 25, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–17985 Filed 7–29–91; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Below Regulatory Concern; Policy Statement

AGENCY: Nuclear Regulatory Commission.

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On May 21, 1991, the Commission was briefed on the results of the feasibility evaluation (SECY–91–132). One of the principal findings of the feasibility evaluation was that there was substantial support for a consensus-building initiative on the BRC Policy issues. This support largely stemmed from the dissatisfaction with the process that the Commission used to develop the BRC Policy. Most groups felt that they had little effective input to the development of the Policy. For example, although the Commission solicited comments from affected groups during the development of the Policy, it was unclear to these groups how their comments were ultimately addressed by the Commission.

On June 28, 1991, based on the findings and recommendations in the feasibility evaluation, the Commission formally initiated a phased process for seeking consensus on the full range of issues related to a BRC Policy. In connection with the implementation of this consensus process, the Commission is declaring a moratorium on the implementation of its July 3, 1990 BRC Policy, including the deferral of the consideration of any BRC petitions for rulemaking that seek BRC exemptions for generic waste streams on a national scale, such as those requested pursuant to 10 CFR part 2, appendix B. The Commission has established a target of December, 1992, as the date for completion of the BRC consensus process.

The BRC consensus process will be implemented in three phases—(I) the convening of a "core group", (II) the creation of a Steering Committee, and (III) the establishment of the plenary consensus body. Phase I involves the convening of a "core group" of representatives from the highest levels of leadership in the interests affected by the BRC Policy, including a Commissioner of the Nuclear Regulatory Commission. The core group will provide the foundation for proceeding further with the BRC consensus process and will focus on the general framework of, and conditions on, the consensus process. The work of the core group is to be completed by October 31, 1991. Phase II involves the creation of a Steering Committee, a larger group, again composed of representatives of the groups affected by the BRC Policy. The Steering Committee will develop the preliminary agenda and ground rules for the BRC consensus process and will issue the invitations to participate in the plenary consensus body. It is anticipated that the Steering Committee will complete its work by March, 1992. Phase III will involve the convening of the plenary consensus body. The plenary body will finalize the agenda and the ground rules for the BRC consensus process and will proceed to discuss the various issues related to the BRC Policy, including the issue of the need for an overarching BRC Policy. The deliberations of the plenary body will take place over a nine to ten month period, with the ultimate objective being the provision of advice to the Commission on BRC Policy issues.

A primary recommendation contained in the feasibility evaluation was that it was essential for the representatives of all affected interests, including environmental interests, to be included in the consensus process. Accordingly, the Commission will not continue to pursue the consensus process in any phase unless representatives of the full range of parties who have demonstrated a major interest in the BRC Policy are willing to participate. In addition, the Commission believes that before proceeding to the Phase II Steering Committee, there must be assurance that all parties who participate in the consensus process will agree to defer litigative and legislative actions on BRC Policy issues during the duration of the BRC consensus process. The need for such a deferral is based on the Commission's belief that, in order for the BRC consensus process to be fully effective, participants must have some assurance that their efforts will not be vitiated by the pursuit of alternative actions and to ensure that the entire range of issues are considered in this process. In fact, some groups vital to the success of the consensus process, including the Commission, may be unwilling to commit resources to the process without such an assurance. Accordingly, a primary issue for discussion by the Phase I core group must be a determination of what type of deferral is necessary to provide such an assurance and whether core group members and potential Steering Committee and plenary body members will agree to such ground rules. If agreement cannot be reached, the Commission will ask staff to initiate rulemaking on a single topic, such as the establishment of residual contamination criteria, using a process that will go beyond the normal notice and comment rulemaking. This process will include the conduct of early scoping meetings with all interested parties who are willing to participate. The objective of using this enhanced rulemaking process would be to fully ventilate the issues and seek consensus on their resolution as a basis for proposed rules on BRC-related topics.

Parties to the consensus process should also recognize that the NRC will need to continue with those activities that are necessary to provide adequate protection of the public health and safety and the environment, particularly those activities concerned with the clean-up of contaminated sites in a timely manner. Therefore, although the Commission is deferring implementation of the BRC Policy, the Commission must carry out its responsibilites to address issues related to waste disposal, consumer products, recycling of materials, and decontamination and decommissioning, as necessary and on a case-by-case basis, in the manner in which these issues were considered prior to the publication of the BRC Policy Statement. Accordingly, the NRC staff will continue to make licensing decisions involving exemptions or site decommissioning using existing rules, criteria, and practices. However, the NRC staff will inform the Commission of all significant or controversial actions of this type. The NRC staff will also continue its development of the technical bases for BRC-related actions such as the development of residual contamination criteria. This information will also prove useful to the consensus body in its deliberations on BRC issues such as the residual radioactivity rulemaking, and for any rulemaking proceedings which will resume at the conclusion of the consensus process.

Dated at Rockville, Maryland this 24th day of July 1991.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 91–17993 Filed 7–29–91; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Request for Extension of SF–171, 171–A, and 172 Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (Title 44, U.S. Code, chapter 35), this notice announces a proposed revision of forms which collect information from the public. Standard Form 171, Application for Federal Employment, Standard Form 171–A, Continuation Sheet for SF 171, and the Standard Form 172, Amendment to Application for Federal Employment–SF 171, comprise the major applications forms used by applicants for Federal employment. OPM is responsible for open competitive examinations for admission to the competitive service, in accordance with section 3302, title 5, United States Code. For copies of this proposal, call C. Ronald Trueworthy on (703) 908–8550.

DATES: Comments on this proposal should be received by August 19, 1991.

ADDRESSES: Send or deliver comments to:

C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, room CHP 500, 1900 E Street, NW., Washington, DC 20415.
and
Joseph Lackey, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Laurence T. Lorenz, (202) 606–0980.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 91–17950 Filed 7–29–91; 8:45 am]

BILLING CODE 6325-01-M

Request for Clearance of Form SF 2803 and SF 3108

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for clearance of an information collection. Forms SF 2803, Application to Make Deposit or Redeposit (CSRS), and SF 3108, Application to Make Service Credit Payment for Civilian Service (FERS), are applications to make payment used by persons who are eligible to pay for Federal service which was not subject to retirement deductions and/or for Federal service which was subject to retirement deductions which were subsequently refunded to the applicant.

Approximately 780 forms SF 2803 and SF 3108 will be completed per year. Each form requires 30 minutes to fill out. The combined annual burden is 390 hours.

For copies of this proposal, contact C. Ronald Trueworthy, on (703) 908–8550.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to-

C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street, NW., CHP 500, Washington, DC 20415
and
Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mary Beth Smith-Toomey, (202) 606–0623.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 91–18012 Filed 7–29–91; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34–29476; File No. SR–CBOE–91–19]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change Relating to Limiting Exchange Liability Resulting From the Use by Members of Exchange Automated Systems

On May 13, 1991, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b–4 thereunder,[2] a proposed rule change to modify Exchange Rule 6.7 to provide for a limitation on the Exchange's liability for losses resulting from an Exchange member's transmission of custody of an unexecuted order to or through the Exchange's Order Routing System, Electronic Book or Retail Automatic Execution System, or to any other automated facility of the Exchange whereby the Exchange assumes responsibility for the transmission or execution of the order.[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 29258 (May 30, 1991), 56 FR 26171 (June 6, 1991). No comments were received on the proposed rule change.

Currently, Exchange Rule 6.7 disclaims the CBOE's liability to its members for losses arising out of the use of facilities or systems of the Exchange. This rule was amended in 1978 to specifically disclaim any liability relating to the newly developed Order Support System.

Despite this rule, which places the liability for any problems with the user of the systems, the Exchange has made payments to members and member firms to offset losses incurred as a result of Exchange systems' errors or outages. These payments were initially made to encourage member firms to use Exchange automated systems such as the Order Routing System ("ORS"), the Retail Automatic Execution System ("RAES"), and the Electronic Book ("EB") during their developmental stages.

The proposal will modify Exchange Rule 6.7 to support the Exchange's current practice of accepting liability under specific circumstances. The proposal permits Exchange liability for the losses resulting from an Exchange member's transmission of custody of an unexecuted order to or through ORS, RAES, EB, or to or through any other automated facility of the Exchange whereby the Exchange assumes responsibility for the transmission or execution of the order. Specifically, provided that the Exchange has acknowledged receipt of the order, the proposal permits Exchange liability for the negligent acts or omissions of its employees or for the failure of its systems or facilities. The proposal, however, limits such payments as follows:

(a) $100,000 as to any claim or series of claims made by a single member on a single day;

(b) $250,000 as to claims by all members on any single trading day; and

(c) $500,000 as to all claims, in aggregate, by all members in any calendar month.

The Exchange believes that these limitations will allow the CBOE to continue to support its members and member firms at the liability levels that have been experienced since the introduction of the automated systems.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Sections 6 and 11A of the Act.[4] Specifically, the Commission finds that the proposal is consistent with section 6(b)(5) in that it fosters cooperation and coordination with persons engaging in processing information with respect to and facilitating transactions in securities by encouraging member firms to use

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[1] 15 U.S.C. 78s(b) (1988).

[2] 17 CFR 240.19b–4 (1990).

[3] The term "transmission of custody of an order" refers to the moment when an order actually enters an automated facility of the Exchange. The Exchange does not intend to accept liability for any losses until the order enters the CBOE's facilities. Conversation between Monica C. Michelizzi, Staff Attorney, Division of Market Regulation, SEC, and Robert P. Ackermann, Vice President Legal Services, CBOE on July 23, 1991.

[4] 15 U.S.C. 78f(b)(5) (1988).

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The proposal will modify Exchange Rule 6.7 to support the Exchange's current practice of accepting liability under specific circumstances. The proposal permits Exchange liability for the losses resulting from an Exchange member's transmission of custody of an unexecuted order to or through ORS, RAES, EB, or to or through any other automated facility of the Exchange whereby the Exchange assumes responsibility for the transmission or execution of the order. Specifically, provided that the Exchange has acknowledged receipt of the order, the proposal permits Exchange liability for the negligent acts or omissions of its employees or for the failure of its systems or facilities. The proposal, however, limits such payments as follows:

(a) $100,000 as to any claim or series of claims made by a single member on a single day;

(b) $250,000 as to claims by all members on any single trading day; and

(c) $500,000 as to all claims, in aggregate, by all members in any calendar month.

The Exchange believes that these limitations will allow the CBOE to continue to support its members and member firms at the liability levels that have been experienced since the introduction of the automated systems.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Sections 6 and 11A of the Act.[4] Specifically, the Commission finds that the proposal is consistent with section 6(b)(5) in that it fosters cooperation and coordination with persons engaging in processing information with respect to and facilitating transactions in securities by encouraging member firms to use

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[4] 15 U.S.C. 78f(b)(5) (1988).

Exchange automated systems. The Commission also finds that the proposal is consistent with sections 11A(a)(1) (B) and (C)(i) of the Act in that the purpose of the development and implementation of Exchange automated systems is to improve the efficiency of the execution of transactions in CBOE options through the use of new data processing and communications techniques. The Commission believes that encouraging member firms to use Exchange automated systems will aid the development and implementation of these systems.

The Commission further believes that the proposed limitation on liability is a reasonable exercise of the Exchange's discretion in determining to permit Exchange liability in certain cases. The Commission notes that Exchange rules presently disclaim all CBOE liability to its member for losses arising out of the use of Exchange facilities or systems. Accordingly, since the CBOE's proposal will formalize the Exchange's policy to compensate CBOE members under certain circumstances for CBOE systems failures or errors, the proposed rule change will ensure that compensation be paid to members for certain systems' failures or errors.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change (SR–CBOE–91–19) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Dated: July 23, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–17997 Filed 7–29–91; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–29478; File No. SR–DTC–91–17]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees for DTC's Legal Notice System ("LENS")

July 23, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), [1] notice is hereby given that on June 21, 1991, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–DTC–91–17) as described in Items I, II, and III below, which items have been prepared by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On June 12, 1991, the Commission issued an order approving DTC's new Legal Notice System ("LENS").[2] LENS enables DTC participants to order certain notices received by DTC from a menu on their Participant Terminal System ("PTS") screens. DTC is filing herewith a twenty-five cent ($.25) per impression fee for documents ordered by participants under LENS.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC's current notice distribution system has become an enormous and expensive enterprise, requiring duplication and distribution of up to 850,000 copies per day. The expense for this is borne by DTC's participants and currently is paid for out of the participants' general fee. A recent survey revealed that most participants find that only a fraction of distributed notices are of interest to them.

Participants asked DTC to create a system that would reduce the amount of notices that they receive. LENS was developed to allow participants to prescreen and to order from a menu on their PTS screens certain notices (which may relate to bankruptcies, class actions, and default and performance histories of asset-backed securities that DTC receives and chooses to make available to participants via LENS) so that participants can avoid receiving and, ultimately, paying for the duplication and distribution of notices that are irrelevant to them. The proposed fee will allow for equitable billing. If a participant does not order any notices, it will not be charged any fee for the duplication and distribution of LENS notices. If a participant elects to order a notice, it will be charged $.25 per impression ($.25 for each side of a notice page copied).

Furthermore, the LENS menu sets forth the number of pages comprising each notice, so that participants will be able to calculate the fee for the duplication of any notice before they place an order.

DTC has adopted the proposed rule change pursuant to section 17A(b)(3)(D) of the Act, which requires clearing agencies to have rules that provide for the equitable allocation of fees for the services they provide to participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

DTC has discussed the proposed rule change with and invited written comments from various participants. No comments have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective on filing pursuant to section 19(b)(3)(A) of the Act and pursuant to rule 19b–4(e) promulgated thereunder because the proposed rule change establishes or changes a due, fee, or other charge imposed by DTC. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–91–17 and should be submitted by August 20, 1991.

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[5] 15 U.S.C. 78s(b)(2) (1988).

[6] 17 CFR 200.30–3(a)(12) (1990).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 29291 (June 12, 1991), 56 FR 28190 [File No. SR–DTC–91–06].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–18000 Filed 7–29–91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34–29474; No. SR–NYSE–91–23]

Self-Regulatory Organizations; Notice of Proposed Rule Change by New York Stock Exchange, Inc. Relating to the Discontinuance of the Use of Discretionary Market Orders in the Exchange's Automated Bond System

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 8, 1991, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to discontinue the acceptance of discretionary market orders by the Exchange's Automated Bond System ("ABS").

A discretionary market order is an order, unique to the ABS system, that is eligible to trade at the current market price but that also has an undisclosed limit price. A discretionary market order moves up or down with the quotation as the quotation changes. An order to buy will move with changes in the bid and an order to sell will move with changes in the offer. The order, however, will not trade beyond the undisclosed limit price. If the disclosed bid (or offer) price reaches the undisclosed limit price of a discretionary market order, the order is converted to a regular limit price order. In addition, if the quotation spread narrows to a half-point or less, a discretionary market order within the quotation is either executed or converted to a regular limit price order.

Under existing NYSE interpretations, ABS users currently may enter discretionary market orders into their ABS terminals. The NYSE proposes to redesign the ABS system so that it will accept only limit orders, and will no longer accept discretionary market orders.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) *Purpose*—The NYSE introduced ABS on a pilot basis in 1976, with an initial capability to trade limit orders only. ABS became fully operational in 1977, and at that time the NYSE introduced the discretionary market order to ABS in an effort to offer ABS users greater flexibility. The NYSE currently is in the process of redesigning its ABS system. In connection with that effort, the NYSE has reviewed ABS trading procedures, including the use of discretionary market orders. The NYSE has found that ABS users rarely use discretionary market orders. Indeed, a significant number of ABS user firms have endorsed the discontinuance of the use of the order.

(b) *Basis*—The proposed change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NYSE, and, in particular, furthers the objectives of section 6(b)(5) which provides in pertinent part, that the rules of the Exchange promote just and equitable principles of trade, facilitate transactions in securities, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The NYSE has not solicited, and does not intend to solicit, comments on the proposed rule change. However, during the NYSE's review of ABS trading procedures, the NYSE received the endorsement of a significant number of ABS user firms to discontinue the discretionary market order in the ABS system.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at

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[8] 17 CFR 200.30–3(a)(12).

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C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The NYSE has not solicited, and does not intend to solicit, comments on the proposed rule change. However, during the NYSE's review of ABS trading procedures, the NYSE received the endorsement of a significant number of ABS user firms to discontinue the discretionary market order in the ABS system.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-91-23 and should be submitted by August 20, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 23, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-17999 Filed 7-29-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-29477; File No. SR-PSE-91-24]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to Withdrawal of Approval of Underlying Securities

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 17, 1991, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend Exchange Rule 3.7 to allow the Exchange to withdraw approval of an underlying security for options trading for any reason the Exchange deems necessary. This revision will conform the PSE's rule to those of other self-regulatory organizations. The text of the proposed rule change is available at the Office of the Secretary, PSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, Exchange Rule 3.6 establishes the standards that underlying securities must satisfy in order to be eligible to underlie PSE-traded options. Exchange Rule 3.7 allows the Exchange to withdraw approval of an underlying security if the underlying security fails to meet or to maintain any one of the PSE's requirements necessary to maintain such approval. Specifically, Commentary .01 to Exchange Rule 3.7 sets forth the maintenance standards that an underlying security must satisfy in order to remain eligible for options trading. The PSE proposes to amend Exchange Rule 3.7 to allow the Exchange to withdraw approval of an underlying security for any reason it deems necessary. Thus, although an underlying security may satisfy the maintenance standards set forth in Commentary .01 to Exchange Rule 3.7, the proposed rule change will permit the PSE to withdraw approval of an underlying security for reasons other than a failure to satisfy the Exchange's options maintenance standards. The proposed amendment, which is an explicit statement of the PSE's policy and practice with respect to the administration of its listing standards rules, will conform the PSE's written rules to the rules of the American Stock Exchange ("Amex"), the Chicago Board Options Exchange ("CBOE"), the New York Stock Exchange ("NYSE"), and the Philadelphia Stock Exchange ("PHLX"), which allow those exchanges to withdraw approval of underlying securities for reasons other than a failure to satisfy the exchange's respective options listing maintenance standards.[1]

The PSE believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it promotes just and equitable principles of trade.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Options Listing Committee, a standing committee of the PSE comprised of members and representatives of member firms, has endorsed the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice or interpretation with respect to the administration of an existing PSE rule in that it codifies the PSE practice of delisting an option for reasons related to a *bona fide* business judgment. Accordingly, the proposal has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of rule 19b-4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC.

Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 20, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

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[1] See Amex Rule 91., CBOE Rule 5.4, NYSE Rule 716, and PHLX Rule 1010.

Dated: July 23, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-17988 Filed 7-29-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Incorporated

July 24, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following security:

Telecom Corporation of New Zealand Ltd.
American Depositary Shares (File No. 7-7109)

This security is listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 14, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-17958 Filed 7-29-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

July 24, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Exel Limited
Ordinary Shares, $0.01 Par Value (File No. 7-7107)
Enquirer/Star Group, Inc.
Common Stock, $0.01 Par Value (File No. 7-7108)

These securities are listed and registered on one or more of the other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 14, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-17959 Filed 7-29-91; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Application To Withdraw From Listing and Registration; Gould Investors L.P., Limited Partnership Units (File No. 1-9126)

July 24, 1991.

Gould Investors L.P. ("Partnership") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

In making the decision to withdraw its Limited Partnership Units ("Units") from listing on the Amex, the Partnership considered the direct and indirect costs of expenses attendant on maintaining the listing of its Units on the Amex, the limited trading activity in the Units, the lack of public interest in the Partnership, the limited number of registered holders of Units and the fact that approximately 65% of the Units are owned by officers and directors of the Managing General Partner or companies or entities affiliated with such persons.

Any interested person may, on or before August 14, 1991, submit by letter to the Secretary of the Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-17960 Filed 7-29-91; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Application To Withdraw From Listing and Registration; the Timberland Company, Class A Common Stock, $0.01 Par Value (File No. 1-9548)

July 24, 1991.

The Timberland Company ("Company") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

Effective at the opening of business on June 10, 1991, the Company's Class A Common Stock ("Common Stock") commenced trading on the New York Stock Exchange ("NYSE"). In making the decision to withdraw its Common Stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its Common Stock on the NYSE and Amex. The Company does not see any particular advantage in the dual trading

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Any interested person may, on or before August 14, 1991, submit by letter to the Secretary of the Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–17960 Filed 7–29–91; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Application To Withdraw From Listing and Registration; the Timberland Company, Class A Common Stock, $0.01 Par Value (File No. 1–9548)

July 24, 1991.

The Timberland Company ("Company") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2–2(d) promulgated thereunder to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

Effective at the opening of business on June 10, 1991, the Company's Class A Common Stock ("Common Stock") commenced trading on the New York Stock Exchange ("NYSE"). In making the decision to withdraw its Common Stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its Common Stock on the NYSE and Amex. The Company does not see any particular advantage in the dual trading

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of its Common Stock and believes that dual listing would fragment the market for its Common Stock.

Any interested person may, on or before August 14, 1991, submit by letter to the Secretary of the Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–17961 Filed 7–29–91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 90–13–IP–No. 2]

Takata-Gerico Corp.; Denial of Petition for Determination of Inconsequential Noncompliance

This notice denies the petition by Takata-Gerico Corporation, of Denver, Colorado, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.213, Federal Motor Vehicle Safety Standard No. 213, Child Restraint Systems. The basis of the petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on July 10, 1990, and an opportunity afforded for comment (55 FR 28341).

Paragraph S5.4.3.5 Buckle Release of Standard No. 213 states in pertinent part that:

> "Any buckle in a child restraint system belt assembly designed to restrain a child using the system shall: (a) When tested in accordance with S8.2.1 prior to the dynamic test of S6.1, not release when a force of less than nine pounds is applied and shall release when a force of not more than 14 pounds is applied."

The Takata-Gerico Corporation believes that approximately 26,257 buckles that could release with less than nine pounds of pressure (*e.g.*, eight pounds) were incorporated in Gerry Guardian car seats manufactured between January 31, 1990 and May 3, 1990. Takata-Gerico supported its petition for inconsequential noncompliance on the basis of the results of the Yellowstone Environmental Science study entitled Cognitive Skill Based Child-Resistant Safety Belt Buckle (March 1990). It claimed that this study concluded that the "ideal" minimum release tension should be five pounds, and the escaping child problem is better solved by providing a more comfortable and better designed seat and buckle assembly. These findings were based on the following:

1. Alleged excessive force requirements, such as those required under Standard 213, can "impede" rescue in an emergency situation. (p. 79)
2. The upper limit of thumb opposability strength of a child from two to four years old is forty pounds. (p. 45) (Takata-Gerico stated that studies show that children under three years of age are likely to use the Guardian car seat and children in this age group are physically incapable of releasing a belt buckle at seven pounds.)
3. A study of 1500 children, whose car seat habits were studied, revealed that children escape from seats through means other than releasing the belt buckle (p. 16).
4. A car seat design in which the child is denied access to the car seat buckle is more important in ensuring that the child remains restrained while in the car seat than the pounds of pressure needed to release the belt buckle (p. 46). [In the Yellowstone study, a car seat was used which had the belt buckle located in the same position as the Guardian belt buckle. The study revealed that the position of these belt buckles resulted in children rarely releasing the car safety seat harness buckle.]
5. Push-button buckle release mechanisms with force requirements less than nine pounds were acceptable to parents (p. 32).
6. An excessive force requirement is above the strength abilities of older people, *e.g.*, grandparents, thus discouraging or making impossible the use of child car seats by the older persons. (p. 37, and p. 45, stating that the lower limit of thumb opposability strength of 61 to 94 year olds is thirteen pounds).

No comments were received on the petition.

The noncompliance that is the subject of the petition was confirmed by NHTSA in the course of its FY90 testing program of child restraint systems manufactured by the petitioner and other companies. NHTSA conducted tests on five of petitioner's Gerry Guardian child restraint systems (agency file NCI 3149). With respect to the 9-pound requirement, one of the child restraint buckles released at 7.0 pounds, three at 8.0 pounds, and one passed at 9.0 pounds. The agency terminated its investigation when the petitioner made a determination that the seats failed to comply, and filed a Noncompliance Report, as required by 49 CFR part 573.

Petitioner's basic argument is that the Yellowstone study, completed in 1990, concluded that the ideal minimum release tension should be 5 pounds, as contrasted with the 9-pound minimum specified by Standard No. 213. NHTSA disagrees with this argument. The agency established its minimum as a means of assurance that children under the age of 4 years would not be able to unbuckle the release mechanism. This value was supported by the "Child Restraint Systems" study conducted by Peter W. Arnberg in 1975 for the National Swedish Road and Traffic Research Institute, which showed that approximately 50 percent of children aged 3½ to 4 years could release a buckle with 8.3 pounds of pressure.

Furthermore, the conclusions derived from the Yellowstone Study must be viewed in terms of the objective of the study. That objective was to establish criteria for an ideal child seat. One such criterion derived was a buckle release pressure of 5 pounds when the release strategy for unbuckling the seat is based on cognitive skills. However, since emergency situations require release strategies familiar to all people, a release approach based on cognitive skills is not acceptable as a basis for this regulation.

Petitioner also stated that its data showed that children under the age of 3 years are likely to use the seat, and that children of this age are physically incapable of releasing a belt buckle at 7 pounds. However, the agency notes that the instructions for the seat state that it is suitable for a child who weighs up to 40 pounds. According to the Highway Safety Research Institute's study titled Anthropometry of Infants, Children, and Youths to Age 18 for Product Safety Design, the mean weight of children ages 3½ to 4½ years is 35.64 pounds with a standard deviation of mean of 4.62 pounds. Therefore, the seat is designed for children whose ability to exert force on the release buckle exceeds the 8-pound average experienced in NHTSA's testing, but does not reach the 9-pound minimum imposed by Standard No. 213.

Notwithstanding Petitioner's reservations, 9 pounds of force is not excessive and will not impede rescue of a restrained child in an emergency by either the child's mother or its grandparents. The Arnberg study showed that all of the adult women surveyed could operate buckle releases of up to 11.25 pounds force with only one hand. The Yellowstone Study referred to by Petitioner demonstrated that the lower thumb opposability strength of people 61 to 94 years of age is 13 pounds. Thus, neither mothers nor grandparents should experience difficulty in releasing a buckle that provides a minimum release tension of 9 pounds.

Petitioner also argued that children escape from car seats through means other than releasing the belt buckle. The whole point of the child restraint standard is that children are best protected by being properly restrained in their child seats. If a child has been properly restrained according to the manufacturer's instructions, (s)he ought not be able to escape from a car seat unless the buckle is released. Maintenance and enforcement of the 9-pound minimum reduces the likelihood that a child whose age is less than 4 years will either inadvertently or deliberately release the buckle.

For the foregoing reasons, Petitioner has not met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is denied.

Authority: 15 U.S.C. 1417; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on July 24, 1991.

Stanley R. Scheiner,

Acting Associate Administrator for Rulemaking.

[FR Doc. 91–17962 Filed 7–29–91; 8:45 am]

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For the foregoing reasons, Petitioner has not met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is denied.

Authority: 15 U.S.C. 1417; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on July 24, 1991.

Stanley R. Scheiner,

Acting Associate Administrator for Rulemaking.

[FR Doc. 91-17962 Filed 7-29-91; 8:45 am]

BILLING CODE 4910-59-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 146
Tuesday, July 30, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, July 31, 1991.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: Bicycle Helmet Petition CP 90-1.

The Commission will consider petition CP 90-1 from the Consumer Federation of America and other member organizations of the National Safe Kids Coalition which requests that the Commission set mandatory safety standards for bicycle helmets for childen and adults.

For a Recorded Message Containing the Latest Agenda Information, Call (301) 492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 492-6800.

Dated: July 24, 1991.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 91-18143 Filed 7-26-91; 2:18 pm]

BILLING CODE 6355-01-M

FEDERAL COMMUNICATIONS COMMISSION

July 25, 1991.

FCC To Hold Open Commission Meeting, Thursday, August 1, 1991

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, August 1, 1991, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street NW., Washington, DC.

Item No., Bureau and Subject

1—Mass Media—Title: Remand from the U.S. Court of Appeals (D.C. Cir.) of *King Broadcasting Company, Inc.* v. *FCC.* Summary: The Commission will consider a ruling that programming proposed by King Broadcasting for coverage of 1988 Presidential campaign is not exempt as bona fide news from the equal opportunities provision of section 315 of the Communications Act.

2—Mass Media—Title: In the Matter of Television Satellite Stations; Review of Policy and Rules (MM Docket No. 87-8). Summary: The Commission will consider adoption of a *Second Further Notice of Proposed Rule Making* to examine the relationship between satellite status and the nationwide multiple ownership rule.

3—Mass Media—Title: Policies and Rules Concerning Children's Television Programming; Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations (MM Docket Nos. 90-570 and 83-670). Summary: The Commission will consider petitions for reconsideration of the *Report and Order*, 6 FCC Rcd 2111 (1991), in this proceeding.

4—Common Carrier—Title: Provision of Access for 800 Service (CC Docket No. 86-10). Summary: The Commission will consider Petitions for Reconsideration of a *Report and Order* regarding the implementation of data base access for 800 service.

5—Common Carrier—Title: MTS and WATS Market Structure (CC Docket No. 78-72, Phase I). Summary: The Commission will consider local transport rate structure and pricing issues.

6—Common Carrier—Title: Competition in the Interstate Interexchange Marketplace (CC Docket No. 90-132). Summary: The Commission will consider adoption of a *Report and Order* concerning the level of competition in the interstate interexchange marketplace and adapting its regulatory policies to reflect this competition.

7—Common Carrier—Title: Investigation of AT&T Communications Tariff F.C.C. No. 15, Transmittal No. 1854, Competitive Pricing Plan No. 2, Resort Condominiums International, Inc. (CC Docket No. 90-11). Summary: The Commission will consider adoption of a *Memorandum Opinion and Order* which terminates the investigation of this tariff transmittal.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632-5050.

Issued: July 25, 1991.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 91-18062 Filed 7-26-91; 10:28 am]

BILLING CODE 6712-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

July 25, 1991.

TIME AND DATE: 10:00 a.m., Thursday, August 1, 1991.

PLACE: Room 600, 1730 K Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Westmoreland Coal Company*, Docket No. VA 90-28. (Issues include whether the judge erred in finding that Westmoreland violated 30 CFR § 75.1003 and that the violation was of a significant and substantial nature.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653-5629/(202) 708-9300 for TDD Relay 1-800-877-8339 (Toll Free).

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 91-18169 Filed 7-26-91; 3:13 pm]

BILLING CODE 6735-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-91-23]

TIME AND DATE: Thursday, August 8, 1991 at 10:30 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings.
2. Minutes.
3. Ratifications.
4. Petitions and complaints.
5. Inv. 731-TA-524 (Preliminary) (Steel Wire Rope from Canada)—briefing and vote
6. Inv. 731-TA-476 and 479 (Final) (Steel Wire Rope from Argentina and Mexico)—briefing and vote.
7. Inv. 731-TA-483 (Final) (Certain Personal Word Processors from Japan)—briefing and vote.
8. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 205-2000.

Dated: July 28, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-18126 Filed 7-26-91; 2:17 pm]

BILLING CODE 7020-03-M

INTERSTATE COMMERCE COMMISSION

Commission Conference

TIME AND DATE: 10:00 a.m., Tuesday, August 6, 1991.

PLACE: Hearing Room A, Interstate Commerce Commisison, 12th & Constitution Avenue NW., Washington, DC. 20423.

STATUS: The Commission will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Finance Docket No. 31700, *Canadian Pacific Limited, et al.—Purchase and Related Trackage Rights—Delaware & Hudson Railway Company* Finance Docket No. 31805, *Canadian Pacific Limited and D&H Corporation—Trackage Rights Exemption—Consolidated Rail Corporation.*

Docket No. AB-308 (Sub-No. 1), *Central Michigan Railway Company—Abandonment—East of Ionia To West of Owosso—In Michigan.*

Docket No. AB-6 (Sub-No. 332), *Burlington Northern Railroad Company—Abandonment—In Otoe Nemaha Counties, Nebraska.*

CONTACT PERSON FOR MORE INFORMATION: A. Dennis Watson, Office of External Affairs, Telephone: (202) 275-7252, TDD: (202) 275-1721.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-18109 Filed 7-26-91; 2:16 pm]

BILLING CODE 7035-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Friday, July 26, 1991 and Weeks of July 29, August 5, 12, and 19, 1991.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Friday, July 26

10:00 a.m.

Briefing by NRC Staff on Recommendations Regarding Yankee Rowe Pressure Vessel Embrittlement Issues (Public Meeting)

11:30 a.m.

Consideration of Commission's Options in Yankee Rowe Matters (Closed—Ex. 10)

Week of July 29

Tuesday, July 30

10:00 a.m.

Briefing on International Nuclear Reactor Safety (Closed—Ex. 1)

Wednesday July 31

1:30 p.m.

Affirmation/Discussion and Vote (Public Meeting)

a. Commission Decision Regarding Yankee Rowe Reactor Vessel (Tentative)

Thursday, August 1

4:00 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of August 5—Tentative

Monday, August 5

10:00 a.m.

Briefing on AEOD Programs (Public Meeting)

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

3:00 p.m.

Discussion of Pending Investigations (Closed—Ex. 5 & 7)

Week of August 12—Tentative

Friday, August 16

10:00 a.m.

Briefing on Uncertainties in Implementing the EPA HLW Standards (Public Meeting)

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting (if needed)

Week of August 19—Tentative

Wednesday, August 21

10:00 a.m.

Briefing by NUMARC on Program for Inspections, Tests, Analyses, and Criteria (ITAAC) for Advanced Reactors (Public Meeting)

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting (if needed)

2:00 p.m.

Briefing by NRC Staff on International Programs (Public Meeting)

ADDITIONAL INFORMATION: By a vote of 4-0 on July 25, the Commission determined pursuant to U.S.C. 552b(e) and Sec. 9.107(a) of the Commission's rules that "Affirmation of Response to Emergency Motion for Stay on Behalf of Shoreham Petitioners" (Public Meeting), be held on July 25, and on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings Call (Recording)—(301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

Dated: July 25, 1991.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 91-18106 Filed 7-26-91; 2:15 pm]

BILLING CODE 7590-01-M

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Week of August 19—Tentative

Wednesday, August 21

10:00 a.m.
Briefing by NUMARC on Program for Inspections, Tests, Analyses, and Criteria (ITAAC) for Advanced Reactors (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting (if needed)

2:00 p.m.
Briefing by NRC Staff on International Programs (Public Meeting)

ADDITIONAL INFORMATION: By a vote of 4–0 on July 25, the Commission determined pursuant to U.S.C. 552b(e) and Sec. 9.107(a) of the Commission's rules that "Affirmation of Response to Emergency Motion for Stay on Behalf of Shoreham Petitioners" (Public Meeting), be held on July 25, and on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings Call (Recording)—(301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

Dated: July 25, 1991.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 91–18106 Filed 7–26–91; 2:15 pm]

BILLING CODE 7590-01-M

Reader Aids

Federal Register

Vol. 56, No. 146

Tuesday, July 30, 1991

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H.R. 751/Pub. L. 102–73

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102d Congress, 1st Session, 1991

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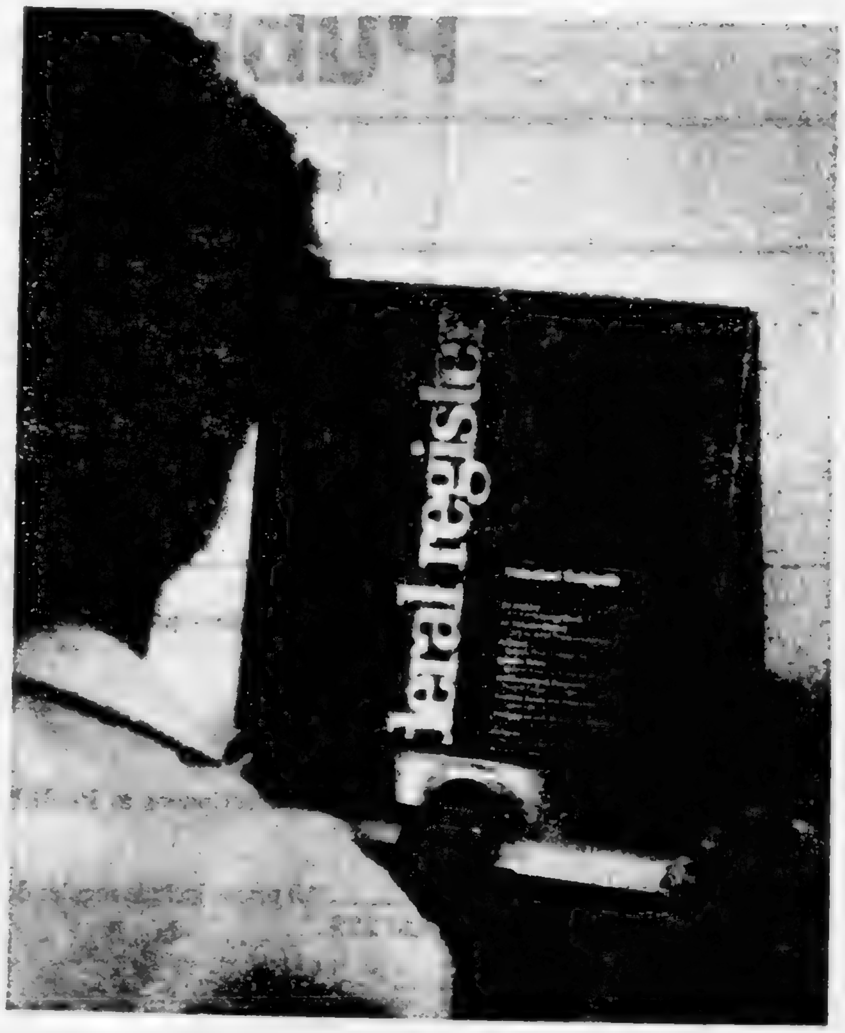

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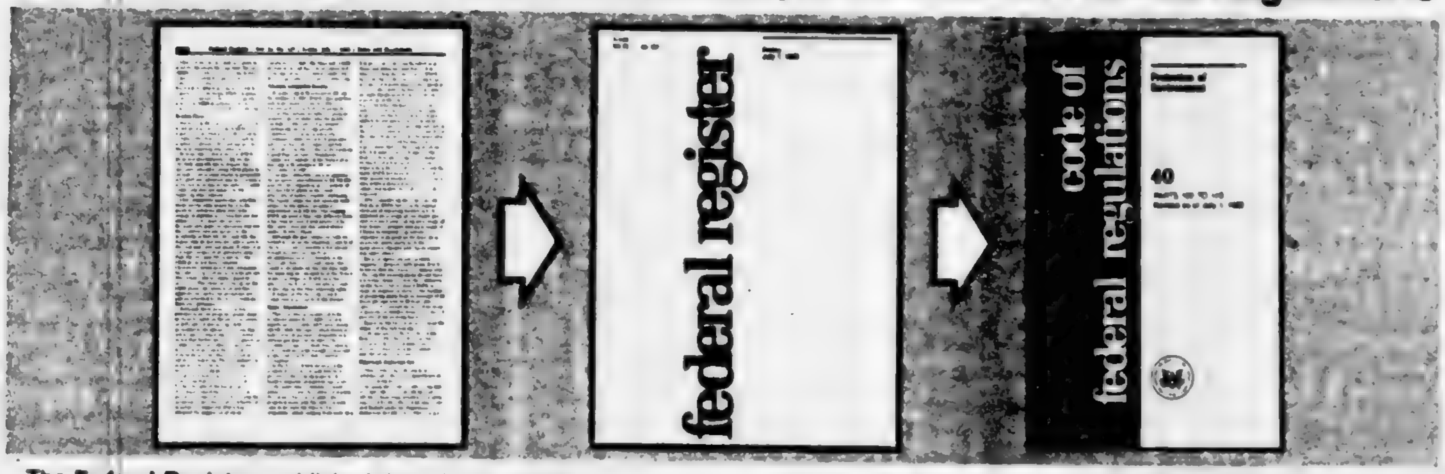

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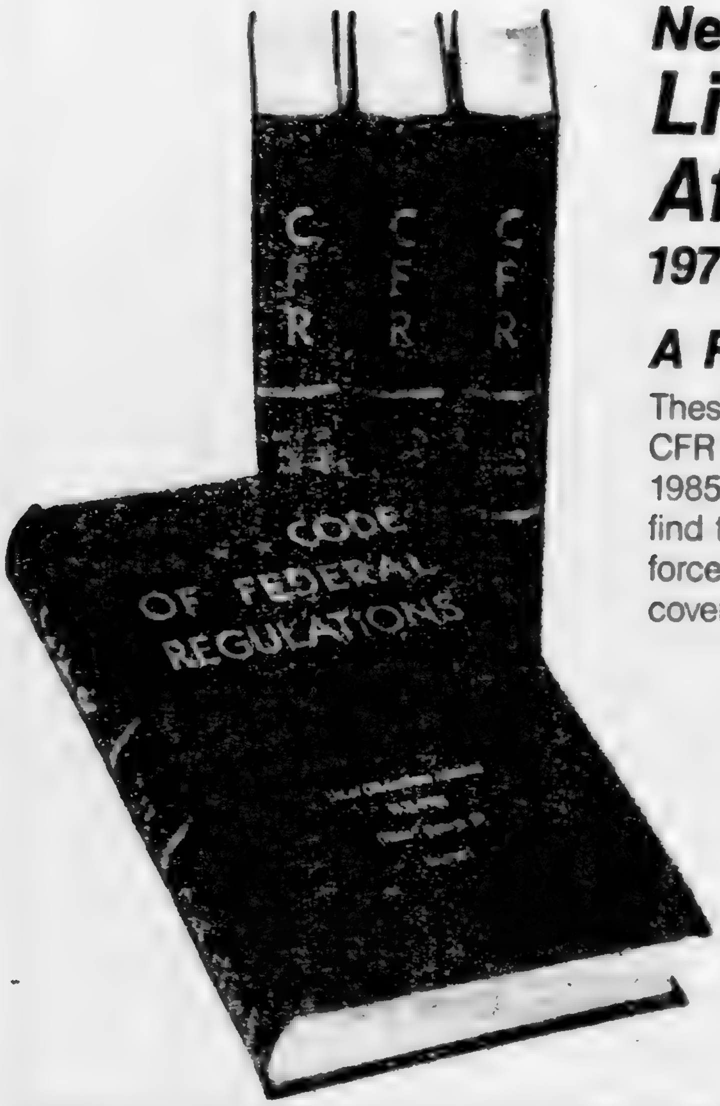

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Wednesday
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DEPARTMENT OF AGRICULT

Agricultural Marketing Servic

7 CFR Part 915

[Docket No. FV-91-226FR]

Avocados Grown in South Flo
Grade and Container Marketin
Requirements

AGENCY: Agricultural Marketin
USDA.

ACTION: Final rule.

SUMMARY: This final rule estab
minimum grade requirement of
2 and container marking and s
requirements for Florida avoca
handled to points within the pr
area (South Florida). This actio
expected to result in the shipm
better quality avocados to the
market within the production a
improve program compliance i
interest of growers, handlers, a
consumers.

EFFECTIVE DATE: July 31, 1991.

FOR FURTHER INFORMATION CO
Gary D. Rasmussen, Marketing
Specialist, Marketing Order
Administration Branch, Fruit a
Vegetable Division, AMS, USD
Box 96456, room 2525-S, Wash
DC 20090-6456, telephone (202)
3918.

SUPPLEMENTARY INFORMATION:

This final rule is issued unde
Marketing Agreement and Mar
Order No. 915, as amended (7 C
915), regulating the handling of
avocados grown in South Flori
agreement and order are effect
the Agricultural Marketing Agr
Act of 1937, as amended (7 U.S
674), hereinafter referred to as

This final rule has been revie
the Department in accordance
Department Regulation 1512-1

Rules and Regulations

Federal Register
Vol. 56, No. 147
Wednesday, July 31, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 915

[Docket No. FV-91-226FR]

Avocados Grown in South Florida; Grade and Container Marketing Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes a minimum grade requirement of U.S. No. 2 and container marking and sealing requirements for Florida avocados handled to points within the production area (South Florida). This action is expected to result in the shipment of better quality avocados to the fresh market within the production area and improve program compliance in the interest of growers, handlers, and consumers.

EFFECTIVE DATE: July 31, 1991.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone (202) 475-3918.

SUPPLEMENTARY INFORMATION:

This final rule is issued under the Marketing Agreement and Marketing Order No. 915, as amended (7 CFR part 915), regulating the handling of avocados grown in South Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed by the Department in accordance with Department Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 40 handlers of Florida avocados subject to regulation under Marketing Order No. 915, and about 300 avocado producers in the production area (South Florida). Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural services firms are defined as those whose annual receipts are less than $3,500,000. The majority of the avocado handlers and producers may be classified as small entities.

This final rule changes current grade and container marking requirements for Florida avocados by revising paragraphs (a) and (b) of § 915.306 (7 CFR 915.306) to require that avocados handled in containers other than those authorized under section 915.305 grade at least U.S. No. 2. This action also requires that avocados packed in such containers be marked with a Federal-State Inspection Service (FSIS) lot stamp number applied to an adhesive tape seal affixed to the container in a manner to prevent the container from being opened and/or the fruit removed without breaking the seal. The stamp and tape shall be affixed to the container by the FSIS or by the handler under the supervision of the FSIS. Only stamps and tape which have been approved by the Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, may be used for purposes of stamping and sealing containers to meet these requirements.

Currently, all Florida avocados shipped to markets within and outside of the production area in containers authorized under § 915.306 must grade at least U.S. No. 2 and the containers must be marked with a FSIS lot stamp number. At the present time, avocados in containers other than those authorized under § 915.306 do not have to meet any grade requirements and the containers need not be marked with a FSIS lot stamp number. Avocados in containers not authorized under § 915.306 may only be shipped within the production area.

A proposed rule concerning this action was published in the **Federal Register** (56 FR 4953, February 7, 1991), with a 30-day comment period ending on March 11, 1991. Five comments were received and are discussed in detail in the attached final rule.

The committee recommended that all avocados handled within the production area be required to grade at least U.S. No. 2 to improve the quality of avocados shipped to markets within the production area. These requirements are designed to strengthen market conditions for shipments within South Florida in the interest of growers, handlers, and consumers. The committee reported that shipments of poor quality avocados to markets within the production area have depressed prices for better quality avocados and resulted in lower overall returns to producers.

Requiring avocados handled in containers other than those authorized under § 915.305 to be marked with a Federal-State Inspection Service lot stamp number applied to an adhesive tape seal affixed to the container is expected to help prevent unauthorized shipments of substandard avocados. These requirements are also expected to make it easier to determine if a particular avocado shipment was inspected and certified as meeting marketing order requirements and who handled the fruit. This should improve compliance with order requirements within South Florida, and help prevent violative shipments of substandard avocados within the production area.

About 12 percent of Florida's fresh avocado shipments in 1989-90 were to production area markets, of which slightly over one-half were inspected and certified as meeting both grade and maturity requirements, with the remainder meeting maturity requirements only.

Although compliance with these grade and lot stamping requirements will affect costs to handlers, these costs will be offset by the benefits of providing the trade and consumers with better quality avocados.

Maturity requirements for Florida avocados handled to points both within and outside the production area are specified in section 915.332. These requirements, based on minimum weights and diameters, remain in effect and unchanged by this rule. In addition, avocados imported into the United States are already required to grade U.S. No. 2 under 7 CFR 944.28. Therefore, the regulations concerning the grade of imported avocados remain unchanged.

Hank J. Foley, a Florida avocado grower, filed a comment favoring the proposed grade and container marking requirements, indicating that such requirements will help prevent the disposition of stolen fruit and eliminate poor quality fruit in the marketplace.

Geoffrey Byerly, a Florida avocado grower, filed a comment favoring the proposed grade and container marking requirements, indicating that such requirements will reduce fruit theft and will help make sure that only quality fruit is sold.

Harold E. Kendall, President, South Florida Growers Association, Inc., filed a comment opposing the proposed higher grade requirements, but favoring the container marking requirements for avocados marketed in the production area. This commenter expressed the opinion that there is a demand for lower quality fruit within the production area and that application of the U.S. No. 2 grade would be too high for avocados sold within the production area. Since the committee recommended this action to assure that fresh markets in the production area are supplied with good quality avocados to encourage demand, consistent with the objectives of the marketing order, the Department finds that the proposed grade and container marking requirements for avocados marketed in the production area are reasonable and should be issued. Thus, Mr. Kendall's comment is denied.

Craig Wheeling, a Florida avocado grower, filed a comment favoring the proposed grade and container marking requirements, because he believes that such requirements would help reduce the problem of stolen fruit and help ensure that only quality fruit is sold.

Craig Wheeling filed another comment on behalf of J.R. Brooks and Son, Inc., an avocado handler, recommending a modification to the proposed container marking requirements to require that the containers shipped within the production area be marked with a Federal-State Inspection Service (FSIS) seal number as well as a lot stamp number. This commenter indicated that this additional requirement would help prevent such containers from being reused to sell substandard or stolen fruit in the Miami market. This comment has merit. Such a requirement would be reasonable and consistent with the objectives of the marketing order. Therefore, § 915.306 is revised to require that avocados handled in containers other than those authorized under § 915.305, be packed in such containers marked with a FSIS lot stamp number applied to an adhesive tape seal affixed to the container in a manner to prevent the container from being opened and/or the fruit removed without breaking the seal. The stamp and tape shall be affixed to the container by the FSIS or by the handler under the supervision of the FSIS. Only stamps and tape which have been approved by the Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, may be used for purposes of stamping and sealing containers to meet these requirements. This should help prevent such containers from being used to make violative shipments of avocados.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other available information, it is found that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) Shipment of the 1991–92 season Florida avocado crop began in May, and these requirements should apply to as much of the 1991–92 season Florida avocado crop as possible; (2) Florida avocado handlers are aware of this action which was recommended by the committee at a public meeting; and (3) the interim final rule provided a 30-day comment period and the comments received are fully addressed in this final rule.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 915 is amended as follows:

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR part 915 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 915.306 is amended by revising paragraphs (a) and (b) to read as follows:

Note: This section will appear in the annual Code of Federal Regulations.

§ 915.306 Florida avocado grade, pack, and container marking regulation.

(a) No handler shall handle any variety of avocados grown in the production area unless:

(1) Such avocados grade at least U.S. No. 2.

(2) Such avocados are in containers authorized under § 915.305, when handled to points outside the production area.

(3) Such avocados are packed in accordance with standard pack, when handled in containers authorized under § 915.305.

(4) Such avocados are in containers marked with a Federal-State Inspection Service lot stamp number, when handled in containers authorized under § 915.305.

(5) Such avocados are in containers marked with a Federal-State Inspection Service (FSIS) lot stamp number applied to an adhesive tape seal affixed to the container in a manner to prevent the container from being opened and/or the fruit being removed without breaking the seal, when handled in containers other than those authorized under § 915.305. The stamp and tape shall be affixed to the container by the FSIS or by the handler under the supervision of the FSIS. Only stamps and tape which have been approved by the Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, may be used for purposes of stamping and sealing containers to meet these requirements.

(6) Such avocados when handled in containers authorized under § 915.305, except for those to export destinations, are marked with the grade of the fruit in letters and numbers at least one inch in height on the top and two sides of the lid of the container, effective each fiscal year from the first Monday after July 15 until the first Monday after January 1.

(b) The provisions of paragraphs (a)(2), (a)(3), (a)(4), (a)(5), and (a)(6) of this section shall not apply to individual packages of avocados weighing four pounds or less, net weight, in master containers.

* * * * *

Dated: July 25, 1991.

William J. Doyle,

Acting, Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91-18068 Filed 7-30-91; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 21 and 50

RIN 3150-AA65

Criteria and Procedures for the Reporting of Defects and Conditions of Construction Permits

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations on the reporting of safety defects. The amendments are a result of the Commission efforts to apply the experience gained as a result of the Three Mile Island accident and also reflect Commission experience to date with the existing regulations. The amendments are applicable to Commission licensees, and to nonlicensees who construct facilities for, or supply basic components to facilities or activities licensed by the Commission. The amendments would reduce duplicate reporting of defects, clarify the criteria for reporting defects, and would establish uniform time periods for reporting and uniform requirements for the content of safety defect reports.

DATES: These amendments will be effective October 29, 1991.

FOR FURTHER INFORMATION CONTACT: W.R. Jones, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492-4442.

SUPPLEMENTARY INFORMATION: On November 4, 1988, the Nuclear Regulatory Commission ("NRC" or "Commission") published in the **Federal Register** (53 FR 44594) for public comment proposed amendments to 10 CFR Part 21 (part 21), "Reporting of Defects and Noncompliance" and § 50.55 "Conditions of Construction Permits." The purpose of these proposed amendments was to reduce duplicate evaluation and reporting, establish consistent time limits for reporting, establish a time limit for transfer of information from vendors to purchasers of basic components, more clearly define defects that must be reported, and establish consistent content for reporting. Other minor changes were proposed.

Public comments regarding the proposed amendments were received from thirty-five respondents. These comments were received from segments of the nuclear industry as follows: Twenty-three were received from utilities; five, from law firms representing members of the nuclear industry; three, from owners groups; two, from architect/engineers; and two were received from vendors. These comments have been evaluated and, where appropriate, incorporated into the final regulations. The public comments are discussed below in connection with the final regulations.

A detailed analysis of the public comments has been prepared and is available for public inspection in the NRC Public Document Room.

Background

The existing regulations contain several safety deficiency reporting requirements that apply to the construction and operation of nuclear power plants:

—Part 21 applies to all NRC licensees, as well as nonlicensees who construct facilities for or supply basic components or services associated with basic components to these licensees, and implements section 206 of the Energy Reorganization Act of 1974, as amended (ERA), (42 U.S.C. 5841 et seq.), which requires the reporting of defects that could create a "substantial safety hazard," and failures to comply related to a "substantial safety hazard" as defined in regulations.

—Section 50.55(e) applies solely to the holders of construction permits and currently requires the reporting of "significant deviations" or "significant deficiencies" which could have an adverse effect upon safety if they remain uncorrected.

—Sections 50.72 and 50.73 establish an event reporting system that applies uniformly to all operating nuclear power plants. These regulations require the licensee to make prompt telephone notification to NRC and to submit a written report for each operating event or adverse plant condition. As discussed below, changes to §§ 50.72 and 50.73 are not being made at this time.

—Section 73.71 applies to licensees and establishes a reporting system for safeguards events, including any security failure, degradation, or discovered vulnerability of a safeguards system. As stated in § 73.71, a report under § 73.71 satisfies reporting requirements in both §§ 50.72 and 50.73. Section 73.71 is not being changed at this time.

Task II J.4 of the TMI Action Plan directed the NRC staff to evaluate and revise, if necessary, the existing requirements of part 21 and § 50.55(e) to assure prompt and comprehensive reporting. Over several years, the need for revision of these regulations has become apparent. Accordingly, based upon the staff experience with part 21 and § 50.55(e), the final rule will:

1. Reduce duplicate evaluation and reporting;
2. Establish uniform time limits for reporting;
3. Establish a time limit for transfer of information to end users when a substantial safety hazard determination by vendors is not possible;
4. More clearly and uniformly define the defects that need to be reported under § 50.55(e);
5. Establish uniform content for reports submitted under § 50.55(e) and part 21;
6. Clarify the definition of "basic component;"
7. Clarify records retention requirements including the requirement for retention of records of evaluations of deviations that did not result in a finding of substantial safety hazard;
8. Establish time limits for evaluation of potential defects and failures to comply; and
9. Make other minor changes detailed below.

These revisions will reduce the amount of time and effort expended by industry in complying with existing reporting and evaluation requirements while still ensuring that safety deficiencies are identified and evaluated in a timely manner.

Part 21

Part 21 was intended to implement section 206 of the ERA. Section 206 requires directors and responsible officers of firms constructing, owning, operating, or supplying the basic components of any facility or activity licensed under the Atomic Energy Act of 1954, as amended, (AEA), (42 U.S.C. 2011 et seq.), to immediately report to the Commission the discovery of "defects" in "basic components" or failures to comply that could create a "substantial safety hazard." In addition to imposing obligations on the directors and responsible officers of NRC licensees, section 206 of the ERA also imposes obligations on the directors and responsible officers of nonlicensees that construct facilities for or supply basic components to licensed facilities or activities. Any individual officer or director who knowingly fails to comply with the notification requirements is subject to civil penalties.

On March 3, 1975, the NRC published a proposed rule designed to implement section 206 (40 FR 8832), and on June 6, 1977, issued the final rule, adding part 21 to the Commission's regulations (42 FR 28893).

The regulations in part 21 impose reporting requirements on directors and responsible officers of firms which construct, own, operate, or supply basic components for any facility or activity licensed or otherwise regulated pursuant to the AEA or the ERA. Part 21 was amended on October 19, 1978 (43 FR 48721) to exempt "commercial grade items" from part 21 requirements until the items were "dedicated" for use as basic components in a nuclear facility.

Approximately 12,000 organizations, licensees, and nonlicensees, fall under the scope of part 21 reporting requirements. Part 21 covers licensees granted the following licenses: production and utilization facility licenses issued under part 50, including nuclear power plants and research and test reactors; byproduct material licenses issued under parts 30 through 35; well logging licenses issued under Part 39; source material licenses issued under Part 40; high-level radioactive waste disposal licenses issued under part 60; land disposal of radioactive waste licenses issued under part 61; special nuclear materials licenses issued under part 70; licenses for the packaging of radioactive materials for transport licenses issued under part 71; and spent fuel storage licenses issued under part 72.

The nonlicensee suppliers covered under part 21 are firms of many different sizes, supplying many different types of basic components and services associated with basic components to NRC licensees. For example, construction and operation of a nuclear power plant involves a many-level procurement chain. At the top of the chain is the electrical utility and the utility's major contractors such as the nuclear steam system supplier. The next level includes manufacturers who produce basic components specifically designed for nuclear use such as instrumentation, controls, major piping, pumps, and valves. These manufacturers in turn procure necessary parts, such as resistors, wiring, solid-state devices, and other hardware, from a multitude of sources. For nuclear power reactors, part 21 applies to all tiers of the supply chain for basic components and to all activities which could create a substantial safety hazard. In the case of fuel cycle licensees and organizations supplying components to them, responsibility for complying with part 21 does not extend past the first tier of suppliers.

Approximately 300 reports have been submitted to the NRC annually under part 21. These reports of potential safety problems have resulted in generic communications such as NRC bulletins, generic letters, and information notices, and have contributed to the overall improved safety of the nuclear industry.

Section 50.55(e)

Section 50.55(e) of part 50, originally published as a final rule on March 30, 1972 (37 FR 6459), establishes requirements for reporting deficiencies occurring during the design and construction of nuclear power plants. The rule was designed to enable the NRC to receive prompt notification of deficiencies and to have timely information on which to base an evaluation of the potential safety consequences of the deficiency and determine whether regulatory action was required. Therefore, the holder of a permit for the construction of a nuclear power plant is required to notify the Commission of each significant deficiency found in design and construction, which if it were to have remained uncorrected, could have adversely affected the safety of operations of the nuclear power plant at any time throughout the expected lifetime of the plant.

Approximately 750 reports were submitted annually in the past to the NRC under § 50.55(e). As with part 21, these § 50.55(e) reports have formed the basis for generic communications such as NRC bulletins, generic letters, and information notices and have also contributed to the overall improved safety of the nuclear industry.

Action Being Taken

1. Reducing Duplicate Evaluation and Reporting Requirements

As stated above, the Commission regulations contain four different safety deficiency reporting requirements. Although distinctions exist between these requirements, staff experience indicates a need to reduce duplication in reporting or evaluation among part 21, and §§ 50.55(e), 50.72, 50.73, and 73.71.

Duplicate reporting has been primarily a problem for part 21 and § 50.55(e).

A. Part 21 and § 50.55(e)

A number of instances have occurred where the same deficiency in a basic component was evaluated and reported by two different organizations, one attempting to satisfy the criteria of part 21, and the other attempting to meet the differently worded criteria of § 50.55(e). The fact that reporting criteria are different for each requirement and that there is a lack of any explicit framework in the regulations to preclude duplicate reporting have led to duplication of both licensee and NRC staff effort. The revised rule makes the relationship between these two regulations straightforward. Construction permit holders will perform evaluations, report as appropriate, and keep records under § 50.55(e). If deviations are evaluated under § 50.55(e) and result in either a negative reportability determination or reportable defect, then this satisfies requirements of part 21.

Additionally, the scope of § 50.55(e) is being expanded from covering only the construction of nuclear power plants to cover all construction permits issued under § 50.23 for any production or utilization facility. This action will provide uniform reporting of defects and failures to comply associated with a substantial safety hazard found during construction for all production and utilization facilities. In summary, construction permit holders will be required to report under § 50.55(e) rather than under part 21.

For research reactors, (non-power reactors), which are currently covered by part 21, such facilities for which future construction permits are issued will report defects and non-compliance found during construction under § 50.55(e). No expansion of current reporting requirements is taking place. The regulation under which research reactors would report is being shifted from part 21 to § 50.55(e).

Special consideration has been given to those holders of construction permits issued prior to the effective date of these amendments. Section 50.55(e)(10), allows these construction permit holders to continue to report and evaluate defects under part 21 if they so choose. This provision is intended to avoid requiring these construction permit holders to change reporting procedures.

B. Part 21 and §§ 50.72 and 50.73

In the Supplementary Information for the proposed amendments published for public comment in November, 1988, (53 FR 44594) a brief discussion was presented on duplicate reporting by operating license holders under § 50.73

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B. Part 21 and §§ 50.72 and 50.73

In the Supplementary Information for the proposed amendments published for public comment in November, 1988, (53 FR 44594) a brief discussion was presented on duplicate reporting by operating license holders under § 50.73

[Licensee Event Reports (LERs)] and part 21. The statement was made that § 50.73 would not be changed at this time and that the duplication of reporting was minimal for these two regulations. Licensee Event Reports and reports made under part 21 were reviewed for 1988. The amount of duplication was small. Approximately 55 percent of the part 21 reports submitted in 1988 were submitted by licensees. Of these, only a few were submitted by an LER.

Most of the respondents commenting on the proposed amendments stated that in actual practice there is some duplication of evaluation and reporting effort between part 21 and §§ 50.72 and 50.73 and many respondents urged the Commission to adopt amendments to §§ 50.72 and 50.73 at the same time as those for part 21.

Amendment of §§ 50.72 and 50.73 has been reconsidered. Other changes to §§ 50.72 and 50.73 unrelated to these issues are also under consideration and broad changes cannot be accomplished on a schedule consistent with the present changes to part 21 and § 50.55(e). A piecemeal approach would be burdensome and confusing. Hence, changes to §§ 50.72 and 50.73 to eliminate duplicate evaluation and reporting are not being made at this time. They are currently being evaluated.

To eliminate possible confusion created by the brief discussion in the Supplementary Information for the proposed amendments, the following discussion addresses the concerns raised by numerous commentors to the proposed rule, and describes the relationship between §§ 50.72 and 50.73 and part 21.

The criterion for reporting a defect under part 21 for nuclear reactors is that a deviation in a basic component under reasonably expected operational circumstances, including expected normal operation, transients, and design basis accidents, could create a substantial safety hazard. Basic components are plant structures, systems, or components necessary to ensure the (i) integrity of the reactor coolant pressure boundary; (ii) capability to shut down the reactor and keep it in a safe shutdown condition; or (iii) prevent or mitigate the consequences of an accident which could result in potential offsite exposures comparable to those referred to in § 100.11.

The criteria for determining the existence of a substantial safety hazard and, consequently, whether a defect is reportable under part 21 are given in NUREG–0302, Revision 1, "Remarks Presented (Questions/Answers Discussed) at Public Regional Meetings to Discuss Regulations (10 CFR part 21) for Reporting of Defects and Noncompliance, July 12–26, 1977," as:

—Moderate exposure to or release of licensed material. Moderate exposure is further clarified as exposure in excess of 25 rem to the whole body and exposure to an individual in an unrestricted area of 0.5 rem;

—Major degradation of essential safety-related equipment. This phrase is considered to represent a loss of redundancy if, in conjunction with a single failure, a required safety function could not be performed; or

—Major deficiencies involving design, construction, inspection, test, or use. "Major deficiency" means a condition or circumstance which under normal operating conditions, an anticipated transient, or postulated design basis accident could contribute to exceeding a safety limit or cause an accident or in the event of an accident due to other causes could, considering an independent single failure, result in a loss of safety function necessary to mitigate the consequences of the accident.

For operating nuclear plants, events or conditions are reported under §§ 50.72 and 50.73. Basic components or services associated with basic components which are installed in the plant which have deviations and, thus, could be potential defects (i.e., could create substantial safety hazards), should be evaluated under appropriate criteria of §§ 50.72 and 50.73 to determine if the deviations are a reportable event or condition. That is, where deviations in basic components do produce potentially reportable events or conditions, the deviations should be evaluated under the criteria of §§ 50.72 and 50.73. Several paragraphs of §§ 50.72 and 50.73 contain criteria on reporting of possible defects and are comparable to the criteria for part 21. Section 50.73(a)(2)(ii) and the companion § 50.72(b)(1)(ii) provide the criteria:

> Any event or condition that resulted in the condition of the nuclear power plant, including its principal safety barriers, being seriously degraded, or that resulted in the nuclear power plant being:
>
> (A) In an unanalyzed condition that significantly compromised plant safety;
>
> (B) In a condition that was outside the design basis of the plant; or
>
> (C) In a condition not covered by the plant's operating and emergency procedures.

Additionally, § 50.73(a)(2)(vii) provides the criteria:

> Any event where a single cause or condition caused at least one independent train or channel to become inoperable in multiple systems or two independent trains or channels to become inoperable in a single system designed to:
>
> (A) Shut down the reactor and maintain it in a safe shutdown condition;
>
> (B) Remove residual heat;
>
> (C) Control the release of radioactive material; or
>
> (D) Mitigate the consequences of an accident.

Substantial safety hazard evaluations of potential defects in basic components must consider failure of functionally redundant basic components in determining whether a loss of safety function could occur. A condition, circumstance, or deviation which could cause a failure of the functionally redundant component must be considered in evaluating potential losses of safety function or major reduction in the degree of protection provided the public health and safety.

This requirement is similar to § 50.72(b)(2)(iii) and § 50.73(a)(2)(v) and (vi):

> (v) Any event or condition that alone could have prevented the fulfillment of a safety function of structures or systems that are needed to:
>
> (A) Shut down the reactor and maintain it in a safe shutdown condition;
>
> (B) Remove residual heat;
>
> (C) Control the release of radioactive material; or
>
> (D) Mitigate the consequences of an accident.
>
> (vi) Events covered in paragraph (a)(2)(v) of this section may include one or more personnel errors, equipment failures, and/or discovery of design, analysis, fabrication, construction, and/or procedural inadequacies. However, individual component failures need not be reported pursuant to this paragraph if redundant equipment in the same system was operable and available to perform the required safety function.

However, as discussed in NUREG–1022, "Licensee Event Report System", September, 1983, if a basic component contains a defect, and the defect could occur in the functionally redundant component, then this second failure must be considered in the evaluation of reportability. Thus, these two requirements, one in part 21 to include failure of the functionally redundant component in evaluation of a substantial safety hazard, and one in §§ 50.72 and 50.73 to include failure of the functionally redundant component, are compatible.

Operating license holders can reduce duplicate evaluation and reporting effort by evaluating deviations in basic components installed in operating plants which produce events which could meet the criteria of §§ 50.72 and 50.73. If the evaluation of events using the criteria of §§ 50.72 or 50.73 results in a finding that the event is reportable and the event is reported via these sections, then as indicated in § 21.2(c), the evaluation, notification, recordkeeping, and reporting obligations of part 21 are met. If the event is determined not to be reportable under §§ 50.72 or 50.73, then the obligations of part 21 are met by the evaluation.

As indicated in the discussion of the substantial safety hazard criterion above, evaluation under the substantial safety hazard criteria requires evaluation of possibilities of events which, because of the defect in the basic component, would lead to a moderate exposure, a major degradation, or a major deficiency. This evaluation must include consideration of the defect in conjunction with the worst operational transient or design basis accident. This requirement is somewhat different than that in either § 50.72 or § 50.73. However, §§ 50.72 and 50.73, in the paragraphs discussed above, require explicit evaluation of loss of safety function. Such an evaluation would be adequate to determine if the safety function would be lost during the worst transient or accident.

As stated in § 21.2(c), the evaluation of the deviation in a basic component which causes an event which is evaluated using criteria of either §§ 50.72 or 50.73, satisfies the required evaluation and reporting requirements of part 21. Thus, to the extent possible by changing part 21, § 21.2(c) would explicitly relieve the officers and directors of holders of operating licensees under part 50 from the part 21 evaluation, notification, and reporting requirements if potential defects which produce events are evaluated and defects are reported under §§ 50.72 and 50.73. The reporting requirements associated with §§ 50.72 and 50.73 would be deemed to satisfy the corresponding requirements of part 21.

The defect reporting requirements of section 206 of the Energy Reorganization Act as amended would be met by part 50 operating licensees, for defects which produce reportable events, by reporting under appropriate paragraphs of §§ 50.72 and 50.73.

Even though the Commission need not be notified of defects more than once, where previously reported defects create reportable events as defined in §§ 50.72 and 50.73, these events must be reported pursuant to §§ 50.72 and 50.73 for each nuclear power plant facility licensed under part 50 where they occur. For licensees with more than one facility with an operating license, each containing the same defect, the Commission need only be notified once of the defect. However, §§ 50.72 and 50.73 requires reports of any events associated with the defect for any facility at which they occur. There is no intention to eliminate any reporting currently required under §§ 50.72 or 50.73.

For utilities with two facilities, one with a construction permit and one with an operating license, each having the same defect, the Commission can be notified via appropriate reporting under §§ 50.72 and 50.73 for the operating plant if the defect creates a reportable event. This reporting will satisfy the requirements of §§ 50.72 and 50.73 for the operating plant and § 50.55(e) for the facility with a construction permit.

It should be noted, as stated in NUREG–0302, Revision 1, "Remarks Presented (Questions/Answers Discussed) at Public Regional Meetings to Discuss Regulations (10 CFR part 21) for Reporting of Defects and Noncompliance, July 12–26, 1977," October 1977, on pages 21.3(d)–1 and 21.3(d)–2, that deviations or potential defects discovered during receipt inspection are not reportable by the purchaser if the purchaser returns the basic component to the vendor for evaluation. If the purchaser chooses to keep the basic component because of unavailability of another component, or for whatever reason, then the purchaser should evaluate the potential defect under part 21.

Thus, one category of defects which will still be reported by power plant operating license holders under part 21 rather than §§ 50.72 and 50.73 are those defects discovered by licensees in equipment which has never been installed or used in the nuclear plant. Defects in these basic components cannot create situations which are reportable under § 50.72 or § 50.73 since these components cannot create a reportable event or condition. Basic components which are delivered and accepted by the purchaser but are not installed in the plant should be evaluated under part 21 and reported under part 21 if found to be reportable.

As a final point regarding the relationship between part 21 and §§ 50.72 and 50.73, since these sections are not being changed at this time, failures to comply associated with a substantial safety hazard should still be reported under part 21 by licensees.

C. Part 21 and § 73.71

Section 21.2(c) will explicitly relieve the officers and directors of holders of operating licenses under part 50 from the part 21 evaluation, notification, and reporting requirements when defects associated with safeguards events are reported under § 73.71. The reporting requirements associated with § 73.71 would be deemed to satisfy the corresponding requirements of part 21.

D. Vendors

In addition to relief of licensees and construction permit holders, § 21.21(c)(2) relieves vendors subject to the reporting requirements of part 21 from reporting to the Commission, if the Commission has been previously notified of a defect under either part 21, §§ 50.73, 50.55(e), or § 73.71. That is, for any defect identified, evaluated, and for which the Commission has been notified by any entity under any of the four regulations, the related vendor will not be required to provide initial notification to the Commission. However, all entities covered by these regulations should be aware that the NRC will continue to evaluate notifications made to determine if additional information is required. If the Commission determines that additional information is required, the Commission will contact appropriate vendors, licensees, or construction permit holders under § 21.21(e), to obtain adequate information. Based on this information, the staff will then determine appropriate regulatory action. Such action may consist of direct contact or generic communication such as an Information Notice.

One commentor stated that the proposed amendments did not eliminate the requirement for contractors who perform evaluations for licensees or construction permit holders to report defects even though the defects were reported by licensees or construction permit holders. The following discussion is provided to clarify this issue. When a vendor (including architect-engineers or other service organizations) performs an evaluation of a deviation for a licensee or construction permit holder under the direction of the licensee and under contract, the reporting obligation lies with the licensee or construction permit holder. When the evaluation is complete, the evaluation satisfies the licensee's obligation under the regulations if either (1) the deviation is determined to be a defect and is reported or (2) the deviation is determined not to be reportable. Under the circumstances described here, the contractor has no reporting obligation provided the licensee fulfills its reporting obligation. If subsequent to the evaluation, the evaluating organization (vendor, architect-engineer, or service organization) discovers that the evaluation itself contained a defect, as opposed to the original deviation, then

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the evaluating organization has the obligation to report the defect.

E. Enforcement

Responsible officers and directors of a part 50 construction permit or operating licensee would still be subject to the civil penalty provisions of section 206 (b) of the ERA as set forth in § 21.61 for the failure to notify the Commission of a defect or failure to comply. However, as noted above, notification under any one of these four regulations (part 21, §§ 50.55(e), 50.73, and 73.71) satisfies reporting obligations under section 206.

F. Relationship to Other Reporting Regulations

Several respondents commenting on the proposed amendments stated that the relationship of part 21 and § 50.55(e) to § 50.4, 50.9 and part 20 should be discussed in these amendments. Regarding § 50.9, the last sentence of § 50.9 states, "This requirement is not applicable to information which is already required to be provided to the Commission by other reporting or updating requirements."

Regarding § 50.4, which provides administrative details of written communications to the Commission, § 50.55(e) and part 21 contain their own written communication directions and reference to § 50.4 is not required. Review of part 20 indicates that no changes to the regulations are necessary.

Thus, based on the above discussions, §§ 50.72 and 50.73 will be used by operating license holders to report defects which create events or conditions reportable under these sections. Section 50.55(e) will be used by part 50 construction permit holders for reporting of defects and failures to comply associated with a substantial safety hazard discovered by construction permit holders or contractors hired by construction permit holders (or referred to construction permit holders by vendors who cannot evaluate the defect). Part 21 will be used by part 50 vendors and by materials licensees and their vendors covered under parts 30 through 35, 39, 40, 60, 61, 70, 71, and 72 to report defects and failures to comply associated with a substantial safety hazard. Part 50 non-power reactor operating license holders will use part 21 for reporting of defects and failures to comply associated with a substantial safety hazard. It should be noted that nuclear power plant operating license holders will still use 10 CFR part 21 to report failures to comply associated with a substantial safety hazard.

While no requirement is being placed in these regulations to require the notification of vendors of the existence of a defect by construction permit or operating license holders and no requirement is being placed in the regulations to require vendors to inform purchasers of a defect (unless the vendor cannot perform the evaluation of the potential defect), it is expected that licensees, construction permit holders, and vendors will continue to communicate about defects with each other. Entities covered by these regulations are encouraged to continue to communicate so that all appropriate entities will be aware of defects.

Research reactors with operating licenses will continue to report under part 21 since they are not subject to §§ 50.72 and 50.73.

2. Establishing Uniform Time Limits for Reporting

Both § 50.55(e) and part 21 currently require an initial notification and a follow-up written notification. In the case of part 21, if the initial notification was a written report, no followup notification is required. There are differences between the current part 21 and § 50.55(e) for the time limits for both these notifications. In order to improve consistency between the two regulations uniform time limits are being implemented.

Regarding the initial time limit, part 21 allows two days from the time the determination has been made that a defect exist. Currently § 50.55(e) requires the initial notification to be made in 24 hours. The final amendments to § 50.55(e) will extend the period for notification of the Commission under § 50.55(e) from one day to two days. In Petition for Rulemaking (PRM) 50–36, filed by the Nuclear Utility Backfitting and Reform Group (48 FR 28282), dated April 20, 1983, petitioners proposed revising § 50.55(e) reporting requirements to eliminate the 24 hour initial report (Issue III). Alternatively, the petition recommended adoption of a deadline of five days for an initial report. In addition to this PRM, four respondents commenting on the proposed amendments stated that the two-day notification was too short.

This final rule extends the initial reporting deadline under § 50.55(e) from 24 hours to two days. The Commission believes that the two-day requirement will provide industry with more flexibility while still allowing sufficient warning of safety problems and is consistent with the objective of establishing uniform reporting criteria. The Commission believes that the five-day recommendation proposed by PRM–50–36 and recommended by the commentors mentioned above is too long considering staff's need to be provided with early notification of potentially generic conditions at construction permit facilities which could affect operating facilities. This two-day time limit will be consistent with the current part 21 time limit. Accordingly, the two-day time limit in the final rule addresses and resolves Issue III of PRM 50–36.

Additionally, the use of the same initial notification period for both part 21 and § 50.55(e) is consistent with the objective of establishing uniform reporting time frames.

In the current part 21, submittal of the required written report within the five day time limit has been difficult to accomplish. In addition, the incremental information available during the subsequent three day interval following the initial report does not provide a meaningful addition to the information already available to the Commission. The extension to 30 days for the time limit for submittal of the written followup report would allow submittal of a complete report. Thus, the final rule will change the time limit for submission of the required followup written report from five days to 30 days. This time limit for the written report submittal is consistent with that in § 50.55(e) and § 50.73.

3. Establishing Time Limit for Transfer of Information

Currently, § 21.21(a)(1)(ii) does not explicitly address time limits for transfer of information in situations for which vendors of basic components are unable to evaluate whether deficiencies or failures to comply could create substantial safety hazards. This inability to evaluate may be due to the vendor's lack of knowledge of how the basic component is utilized by the end user or for other reasons. The change to § 21.21(b) will explicitly add a time limit provision to correct this problem.

Two commentors stated that the five working day time limit was too short and was arbitrary. The Commission believes that the five day time limit is not arbitrary. It begins after the formal evaluation process has reached the conclusion that the vendor cannot determine if a defect exists. Additionally, this time period is comparable to the two day initial reporting requirement when a defect is determined to exist.

Thus, the final rule requires that if, during the evaluation period, the supplier which discovers a deviation or failure to comply that could potentially create a substantial safety hazard determines that it is unable, due to insufficient information or other reasons, to perform the evaluation, then that entity must inform the purchasers of the "basic component" within five days of this determination.

Transfer of information from vendors to purchasers or affected licensees is expected to be a formal process which should involve records retention discussed below and will trigger the start of the evaluation process by the purchasers or affected licensees.

4. Defining Defects To Be Reported

Section 206 of the ERA requires the reporting of "defects which could create a substantial safety hazard." Existing § 21.3(k) defines substantial safety hazard as "a loss of safety function to the extent that there is a major reduction in the degree of protection provided to public health and safety for any facility or activity licensed, other than for export, pursuant to parts 30, 40, 50, 60, 61, 70, 71, or 72 * * *." In addition, the supplementary information for the original part 21 final rulemaking, June 6, 1977 (42 FR 2889), contained the following guidance on what constitutes a "substantial safety hazard":

—Moderate exposure to, or release of, licensed material, or
—Major degradation of essential safety-related equipment, or
—Major deficiencies involving design, construction, inspection, test, or use.

Existing § 50.55(e) requires the reporting of deficiencies in design and construction which could adversely affect the safety of operations of a nuclear power plant and which represent the following:

—A significant breakdown in any portion of the quality assurance program, or
—A significant deficiency in a final design, or
—A significant deficiency in the construction of, or significant damage to a structure, system, or component requiring corrective action involving extensive effort, or
—A significant deviation from performance specifications requiring corrective action involving extensive effort.

NRC experience with § 50.55(e) reports has indicated that clarification of the type of deviation that is required to be reported would be advantageous. Accordingly, the reporting criteria in § 50.55(e) are amended to be the same as those contained in part 21.

As stated above, duplication of evaluation and reporting has primarily been a problem for § 50.55(e) and part 21. This increase in the reporting threshold and extension of § 50.55(e) application to all construction permit holders will allow the Commission to obtain the proper level of reporting with no loss of significant safety information, i.e., the amendment raising the § 50.55(e) threshold will facilitate eliminating duplicate reporting by making the definition of defects reported under § 50.55(e) identical to those reported under part 21. This reduction of duplication will be accomplished with no loss in critical safety information and will reduce unnecessary industry burden.

It should be pointed out that a slight difference exists between the current definition of "deviation" in part 21 and that in the amendments to § 50.55(e). In the current part 21, "procurement documents" are specifically referred to as determining the requirements of a basic component. However, in § 50.55(e), procurement documents are not mentioned as determining these requirements. The basis for this difference is that in applying § 50.55(e), basic components will have requirements imposed on them not only by their procurement documents, but also by other licensee documents. In the case of part 21, application of the regulation to vendors will require the use of procurement documents to determine the requirements which the purchaser placed on the basic component.

5. Reporting Content

The final revisions to § 50.55(e)(8) will require the content of the information reported under § 50.55(e) to be consistent with that required by current § 21.21(b)(3). These revisions will assure that the Commission obtains all the information necessary to evaluate and take corrective action, in reference to a particular defect.

6. Clarification of "Basic Component"

Current § 21.3(a)(3), which clarifies items which are to be considered as "basic components," includes:

> * * * design, inspection, testing, or consulting services important to safety that are associated with the component hardware whether these services are performed by the component supplier or others.

That paragraph is being modified to further clarify what is intended to be significant items. The terms "analysis," "fabrication," and "replacement parts," are being added to the definition of "basic component." The subsection is revised to read

> * * * safety related design, analysis, inspection, testing, fabrication, replacement parts, or consulting services that are associated with the component hardware whether these services are performed by the component supplier or others.

The proposed rule published November 4, 1988, for public comment contained the additional items "quality assurance," "training," and "maintenance" in the definition of basic component. These items have been eliminated from the definition based on public comment. Eleven commentors responding to the November 4, 1988 request for public comment stated that the additional items were not clarifications, but, actually expanded the scope of part 21 and § 50.55(e). One commentor stated that the addition of the items to the definition of basic component exceeded the legal authority granted the NRC by section 206 of the ERA. As discussed below, the legal authority provided in section 206 is not exceeded.

The Commission regards the additional items as clarification. The items "analysis," "fabrication," and "replacement parts" are clearly within the scope of the present part 21. They do not expand the scope of part 21.

The final amendments retain the coverage of significant quality assurance breakdowns in § 50.55(e). Such breakdowns in the quality assurance programs may not actually result in a defect being created in a basic component. However, such breakdowns may be severe enough or extensive enough to indicate that the overall program is deficient to the extent that the program itself represents a defect. In such cases, these programmatic breakdowns are reportable as defects because they could clearly have produced substantial safety hazards. Enforcement action resulting from reports of these quality assurance breakdowns will be consistent with ordinary enforcement policies.

Also, it should be noted that, as stated in the current definition of basic component in § 21.3(a)(1), "systems" are properly considered as "basic components." These systems are those systems which are safety-related. Examples are the auxiliary feedwater system for pressurized water reactors and the high pressure coolant injection system for boiling water reactors.

The Supplementary Information accompanying the proposed amendments discussed the reporting of the fire protection system and the security system defects under part 21. Seven commentors stated that fire and security systems were not safety related systems and that the components are purchased as commercial grade items.

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The Supplementary Information accompanying the proposed amendments discussed the reporting of the fire protection system and the security system defects under part 21. Seven commentors stated that fire and security systems were not safety related systems and that the components are purchased as commercial grade items.

Where fire and security systems are not basic components, defects are not reportable under part 21. However, to the extent that basic components are involved, defects in fire protection and security systems are reportable under part 21. In addition, a deficiency in either of these systems could produce a reportable event under § 50.72, 50.73 or § 73.71 even though a "basic component" is not involved.

In addition, vendors, construction permit holders, and licensees are encouraged to voluntarily report potential defects in components for these systems and in the systems themselves.

7. Clarifying Records Retention Requirements

Section 50.55(e)(9) in the final rule and final revisions to § 21.51 clarify the specific records that must be maintained and their retention period to assure compliance with the regulations. These include records of evaluations, including records of evaluations of deviations which were not judged to cause substantial safety hazards. These records are identical to records currently required to be retained under part 21 and § 50.55(e). Also, for vendors, notifications and a list of purchasers of basic components are required to be retained. Several commentors responding to the request for public comments stated that the requirement for vendors to retain a list of purchasers of basic components for the lifetime of the component was impractical. The main reason was that vendors did not know what happened to basic components in licensed facilities and, thus, did not know how long the lifetime would be. Additionally, since services are included in basic components, lifetime retention requirements for these components were difficult to implement because the lifetime of a service at a licensed facility was impossible for vendors to ascertain. The NRC has recent experience with records review performed as part of our regulatory function. Based on the above, the time period for retention of records of purchasers of basic components has been reduced to 10 years.

Some persons commenting on the proposed amendments also stated that the records requirements for evaluations and notifications should be discussed in more detail. The purpose of the requirement to retain evaluations for 5 years assures that vendors, licensees, and construction permit holders maintain records of evaluations of deviations which were found reportable and also those found not reportable. The records of notifications required to be maintained under § 21.51 are notifications which vendors have sent informing purchasers or licensees that a deviation has been found and the vendor is unable to complete the substantial safety hazard evaluation.

Also based on public comments, clarifying phrases have been added to the records retention requirements. The phrase, "after the date of the evaluation" has been added to § 21.51(a)(1) and § 50.55(e)(9)(ii) to clarify this requirement. The phrases "after the date of the notification" and "after delivery" have been added to §§ 21.51(a)(2) and 21.51(a)(3) respectively to clarify these requirements.

8. Evaluation Time Limit

Under existing § 21.21(b)(2), the initial notification of a defect or failure to comply must be made to the NRC within two days of the time a director or responsible officer obtains information on the existence of a reportable defect. However, the existing rule is silent concerning the time period between the discovery of a potential defect and the time when an evaluation of the potential defect should be completed. Similarly, no deadline is established prescribing when the director or responsible officer must be informed of a potentially reportable defect.

In the proposed amendments published for public comment in November, 1988, no amendment to part 21 was proposed to prescribe a specific length of time allowed for the evaluation. However, a time period of 30 days was discussed as a reasonable time to complete evaluations in the Supplementary Information accompanying the proposed amendments published in November, 1988.

The Commission is aware of a number of cases where an inordinate length of time passed between the initial discovery of a potential defect and when the Commission was informed of the existence of a defect. In addition, NRC discussions held with utility personnel indicate that they generally believe a time limit for evaluations is necessary to ensure that defects or failures to comply which create substantial safety hazards are brought to the attention of the Commission. Also, section 206 of the ERA indicates that the Commission should be notified immediately of defects and failures to comply associated with a substantial safety hazard. Thus, in order to ensure consistency in the evaluation of the less complex issues, the final amendments to § 21.21(a)(1) require that, except in certain instances discussed below, the evaluation of deviations be completed within 60 days after the date of discovery of the deviation. Instances of allowing long lapses in the evaluation process due to administrative problems or personnel absence must be avoided.

The final amendment to § 21.21(a)(3) also requires that a director or responsible officer be informed within 5 working days of completion of the evaluation identifying existence of a defect or failure to comply associated with a substantial safety hazard.

Over half of the persons responding to the proposed amendments published for public comment were concerned with the time limit for evaluation. Industry comments concerning the establishment of a specific time limit for evaluation were in general concerned that the 30 day period was insufficient to adequately evaluate more complex issues. The commentors stated that the time period would result in over-reporting of issues due to lack of adequate time for evaluation. Additionally, several commentors recommended that a reasonableness standard should be applied which was based on the complexity of the issue being evaluated.

In general, the Commission believes that most deviations should be evaluated within 60 days. However, the Commission agrees that there are deviations and failures to comply which require complex evaluations and, as such, an evaluation might not be completed within 60 days. When completion of the evaluation is not possible within the 60-day evaluation time limit, the amended § 21.21(b) would require that an "interim" written report be submitted within 60 days of the date of discovery. No telephonic (2 day) notification is required for interim reports.

The interim report must contain available information about the deviation or failure to comply describing it and contain a statement telling when the evaluation of the deviation or failure to comply will be completed.

Existing § 50.55(e) (2) and (3) establish time frames only for reporting. The final amendments to § 50.55(e)(1)(i) would require the holder of a construction permit to evaluate deviations within 60 days. As with final amendments to part 21, if completion of the evaluation is not possible within 60 days, the final amended § 50.55(e)(1)(ii) would require that an "interim" written report be submitted within 60 days of the date of discovery of the defect or failure to comply. The final amendment to § 50.55(e)(1)(iii) would require that a director or responsible officer be informed within 5 working days after completion of the evaluation identifying a defect or failure to comply associated with a substantial safety hazard.

9. Other Changes

(a) For consistency with §§ 50.55(e) and 50.73, part 21 has been changed to direct correspondence to the Document Control Desk with appropriate copies. Also, telephone communications have been specifically directed to the NRC Operations Center. In addition, in part 21, the number of copies required to be submitted has been reduced by eliminating copies to specific NRC offices.

(b) Section 21.2, which sets forth the scope of part 21 coverage, has been revised to include part 60 facilities.

The existing rule already applies to part 60 licensees (as an entity licensed to possess, use, and/or transfer within the United States source material, byproduct material, special nuclear material, and/or spent fuel) and to those entities that supply basic components for an activity licensed under part 60. The extension of part 21 to organizations that construct geologic repositories will complete the part 21 coverage by extending it to all the major activities or facilities licensed by the Commission.

(c) Additional changes to definitions in part 21 and § 50.2 for § 50.55(e) are being made in response to comments received. First, the definition of "construction" and "constructing" is being added to § 50.2. This definition was omitted from the previously published proposed amendment.

The definition of "discovery" is being added to the regulations. The time limit for evaluation of deviations and failures to comply begins on the date a deviation or failure to comply is discovered. Thus, in order to complete the documentation, some evaluation must take place to identify a deviation or failure to comply. Further, the discovery process is intended to be included in the procedures necessary to comply with part 21 or § 50.55(e).

The definition of "notification" is being added to part 21 and § 50.2 for § 50.55(e). The purpose of this addition is to clarify understanding that the Commission must be notified by vendors, construction permit holders and licensees by letter or telephone call. Second party information or word of mouth information to unspecified members of the NRC staff does not constitute notification.

(d) In response to public comment, § 50.55(e)(10)(iii) was added to ensure understanding that recordkeeping in accordance with § 50.55(e) satisfies the requirements of part 21.

Environmental Impact: Categorical Exclusion

The NRC has determined that this regulation is the type of action described in categorical exclusion in § 51.22(c) (1) and (3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final regulation.

Paperwork Reduction Act Statement

The final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget approval numbers 3150–0011 and 3150–0035.

Public reporting burden for this collection of information is estimated to average 95 hours per part 21 response and 95 hours per § 50.55(e) response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Information and Records Management Branch (MNBB–7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019 (3150–0011 and 3150–0035), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Commission has prepared a regulatory analysis on the final regulation. The analysis identifies and examines the costs and benefits of the final regulation and its alternatives. The analysis is available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20555. Single copies may be obtained from William R. Jones, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone (301) 492–4442.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b) et seq., the Commission certifies that this rule, will not have a significant economic impact on a substantial number of small entities. The revision to § 50.55(e) applies solely to the holders of construction permits issued under § 50.23, none of which can be considered small entities. Although the revision to Part 21 could potentially affect a substantial number of small entities (see NRC size standards published December 9, 1985, 50 FR 50241) who supply basic components to NRC licensees, the economic impact on these firms is expected to be slight. Approximately 80 percent of the 300 annual nuclear-power-plant-related 10 CFR part 21 reports have been submitted by licensees; the remaining 20 percent have been submitted by nonlicensee suppliers and vendors. Section 21.2 eliminates duplicate reporting for those organizations subject to the defect reporting requirements, and therefore should reduce the economic impact on these organizations, including small businesses.

Backfit Analysis

The Commission has determined that the final rule, when effective, does not impose new safety reporting requirements on part 50 licensees. Therefore, a Backfit Analysis is not required for this final rule pursuant to § 50.109.

List of Subjects

10 CFR Part 21

Nuclear power plants and reactors, Penalty, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 50

Antitrust, Classified information, Civil penalty, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the Preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 21 and 50.

PART 21—REPORTING OF DEFECTS AND NONCOMPLIANCE

1. The authority citation for part 21 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2201, 2282); secs. 201, as amended, 206, 88 Stat. 1242, as amended, 1246 (42 U.S.C. 5841, 5846).

Section 21.2 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 21.6, 21.21(a) and 21.31 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and

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considered small entities. Although the revision to Part 21 could potentially affect a substantial number of small entities (see NRC size standards published December 9, 1985, 50 FR 50241) who supply basic components to NRC licensees, the economic impact on these firms is expected to be slight. Approximately 80 percent of the 300 annual nuclear-power-plant-related 10 CFR part 21 reports have been submitted by licensees; the remaining 20 percent have been submitted by nonlicensee suppliers and vendors. Section 21.2 eliminates duplicate reporting for those organizations subject to the defect reporting requirements, and therefore should reduce the economic impact on these organizations, including small businesses.

Backfit Analysis

The Commission has determined that the final rule, when effective, does not impose new safety reporting requirements on part 50 licensees. Therefore, a Backfit Analysis is not required for this final rule pursuant to § 50.109.

List of Subjects

10 CFR Part 21

Nuclear power plants and reactors, Penalty, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 50

Antitrust, Classified information, Civil penalty, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the Preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 21 and 50.

PART 21—REPORTING OF DEFECTS AND NONCOMPLIANCE

1. The authority citation for part 21 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2201, 2282); secs. 201, as amended, 206, 88 Stat. 1242, as amended, 1246 (42 U.S.C. 5841, 5846).

Section 21.2 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 21.6, 21.21(a) and 21.31 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and

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§§ 21.21, 21.41 and 21.51 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

Section 21.2 is revised to read as follows:

§ 21.2 Scope.

(a) The regulations in this part apply, except as specifically provided otherwise in parts 31, 34, 35, 39, 40, 60, 61, 70, or part 72 of this chapter, to each individual, partnership, corporation, or other entity licensed pursuant to the regulations in this chapter to possess, use, or transfer within the United States source material, byproduct material, special nuclear material, and/or spent fuel and high level radioactive waste, or to construct, manufacture, possess, own, operate or transfer within the United States, any production or utilization facility or independent spent fuel storage installation (ISFSI) or monitored retrievable storage installation (MRS); and to each director and responsible officer of such a licensee. The regulations in this part apply also to each individual, corporation, partnership or other entity doing business within the United States, and each director and responsible officer of such organization, that constructs a production or utilization facility licensed for manufacture, construction, or operation pursuant to part 50 of this chapter, an ISFSI for the storage of spent fuel licensed pursuant to part 72 of this chapter, a MRS for the storage of spent fuel or high level radioactive waste pursuant to part 72 of this chapter, or a geologic repository for the disposal of high-level radioactive waste under part 60 of this chapter; or supplies basic components for a facility or activity licensed, other than for export, under parts 30, 40, 50, 60, 61, 70, 71, or part 72 of this chapter.

(b) For persons licensed to construct a facility under a construction permit issued under § 50.23 of this chapter, evaluation of potential defects and failures to comply and reporting of defects and failures to comply under § 50.55(e) of this chapter satisfies each person's evaluation, notification, and reporting obligation to report defects and failures to comply under this part and the responsibility of individual directors and responsible officers of such licensees to report defects under section 206 of the Energy Reorganization Act of 1974.

(c) For persons licensed to operate a nuclear power plant under part 50 of this chapter, evaluation of potential defects and appropriate reporting of defects under §§ 50.72, 50.73 or § 73.71 of this chapter satisfies each person's evaluation, notification, and reporting obligation to report defects under this part and the responsibility of individual directors and responsible officers of such licensees to report defects under section 206 of the Energy Reorganization Act of 1974.

(d) Nothing in these regulations should be deemed to preclude either an individual, a manufacturer, or a supplier of a commercial grade item (see § 21.3(a–1)) not subject to the regulations in this part from reporting to the Commission, a known or suspected defect or failure to comply and, as authorized by law, the identity of anyone so reporting will be withheld from disclosure. NRC regional offices and headquarters will accept collect telephone calls from individuals who wish to speak to NRC representatives concerning nuclear safety-related problems. The location and telephone numbers of the five regions (answered during regular working hours), are listed in appendix D to part 20 of this chapter. The telephone number of the NRC Operations Center (answered 24 hours a day—including holidays) is (301) 951–0550.

3. In § 21.3 paragraphs (h) through (l) are redesignated as paragraphs (j) through (n); paragraph (g) is redesignated as paragraph (h); new paragraphs (g) and (i) are added; and paragraphs (a)(3) and (c), and newly redesignated (h) and (j) are revised to read as follows:

§ 21.3 Definitions.

* * * * *

(a) * * *

(3) In all cases, *basic component* includes safety related design, analysis, inspection, testing, fabrication, replacement parts, or consulting services that are associated with the component hardware whether these services are performed by the component supplier or others.

* * * * *

(c) *Constructing* or *construction* means the analysis, design, manufacture, fabrication, placement, erection, installation, modification, inspection, or testing of a facility or activity which is subject to the regulations in this part and consulting services related to the facility or activity that are safety related.

* * * * *

(g) *Discovery* means the completion of the documentation first identifying the existence of a deviation or failure to comply potentially associated with a substantial safety hazard within the evaluation procedures discussed in § 21.21. (a).

(h) *Evaluation* means the process of determining whether a particular deviation could create a substantial hazard or determining whether a failure to comply is associated with a substantial safety hazard.

(i) *Notification* means the telephonic communication to the NRC Operations Center or written transmittal of information to the NRC Document Control Desk.

(j) *Operating or operation* means the operation of a facility or the conduct of a licensed activity which is subject to the regulations in this part and consulting services related to operations that are safety related.

* * * * *

4. Section 21.5 is revised to read as follows:

§ 21.5 Communications.

Except where otherwise specified in this part, all written communications and reports concerning the regulations in this part must be addressed to the Document Control Desk, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In the case of a licensee, a copy must also be sent to the appropriate Regional Administrator at the address specified in appendix D to part 20 of this chapter.

5. In § 21.21, paragraph (b)(1) is redesignated (c)(1); paragraphs (b)(2) through (b)(4) are redesignated (c)(3) through (c)(5); paragraph (c) is redesignated (d); new paragraphs (b) and(c)(2) are added; and the section heading and paragraphs (a), and newly designated (c)(1), (c)(3) and (d) are revised to read as follows:

§ 21.21 Notification of failure to comply or existence of a defect and its evaluation.

(a) Each individual, corporation, partnership, or other entity subject to the regulations in this part must adopt appropriate procedures to—

(1) Evaluate deviations and failures to comply to identify defects and failures to comply associated with substantial safety hazards as soon as practicable, and, except as provided in paragraph (a)(2) of this section, in all cases within 60 days of discovery, in order to identify a reportable defect or failure to comply that could create a substantial safety hazard, were it to remain uncorrected, and

(2) Ensure that if an evaluation of an identified deviation or failure to comply potentially associated with a substantial safety hazard cannot be completed within 60 days from discovery of the deviation or failure to comply, an interim report is prepared and submitted to the Commission through a director or

responsible officer or designated person as discussed in § 21.21(c)(5). The interim report should describe the deviation or failure to comply that is being evaluated and should also state when the evaluation will be completed. This interim report must be submitted in writing within 60 days of discovery of the deviation or failure to comply.

(3) Ensure that a director or responsible officer subject to the regulations of this part is informed as soon as practicable, and, in all cases, within the 5 working days after completion of the evaluation described in § 21.21(a)(1) or § 21.21(a)(2) if the construction or operation of a facility or activity, or a basic component supplied for such facility or activity—

(i) Fails to comply with the Atomic Energy Act of 1954, as amended, or any applicable rule, regulation, order, or license of the Commission relating to a substantial safety hazard, or

(ii) Contains a defect.

(b) If the deviation or failure to comply is discovered by a supplier of basic components, or services associated with basic components, and the supplier determines that it does not have the capability to perform the evaluation to determine if a defect exists, then the supplier must inform the purchasers or affected licensees within five working days of this determination so that the purchasers or affected licensees may evaluate the deviation or failure to comply, pursuant to § 21.21(a).

(c)(1) A director or responsible officer subject to the regulations of this part or a person designated under § 21.21(c)(5) must notify the Commission when he or she obtains information reasonably indicating a failure to comply or a defect affecting—

(i) The construction or operation of a facility or an activity within the United States that is subject to the licensing requirements under parts 30, 40, 50, 60, 61, 70, 71, or 72 of this chapter and that is within his or her organization's responsibility; or

(ii) A basic component that is within his or her organization's responsibility and is supplied for a facility or an activity within the United States that is subject to the licensing requirements under parts 30, 40, 50, 60, 61, 70, 71, or 72 of this chapter.

(2) The notification to NRC of a failure to comply or of a defect under paragraph (c)(1) of this section and the evaluation of a failure to comply or a defect under paragraphs (a)(1) and (a)(2) of this section, are not required if the director or responsible officer has actual knowledge that the Commission has been notified in writing of the defect or the failure to comply

(3) Notification required by paragraph (c)(1) of this section must be made as follows—

(i) Initial notification by facsimile, which is the preferred method of notification, to the NRC Operations Center at 301–492–8187 or by telephone at 301–951–0550 within two days following receipt of information by the director or responsible corporate officer under paragraph (a)(1) of this section, on the identification of a defect or a failure to comply. Verification that the facsimile has been received should be made by calling the NRC Operations Center. This paragraph does not apply to interim reports described in § 21.21(a)(2).

(ii) Written notification to the NRC at the address specified in § 21.5 within 30 days following receipt of information by the director or responsible corporate officer under paragraph (a)(3) of this section, on the identification of a defect or a failure to comply.

* * * * *

(d) Individuals subject to this part may be required by the Commission to supply additional information related to a defect or failure to comply. Commission action to obtain additional information may be based on reports of defects from other reporting entities.

6. Section 21.51 is revised to read as follows:

§ 21.51 Maintenance and inspection of records.

(a) Each individual, corporation, partnership, or other entity subject to the regulations in this part must prepare and maintain records necessary to accomplish the purposes of this part, specifically—

(1) Retain evaluations of all deviations and failures to comply for a minimum of five years after the date of the evaluation;

(2) Suppliers of basic components must retain any notifications sent to purchasers and affected licensees for a minimum of five years after the date of the notification.

(3) Suppliers of basic components must retain a record of the purchasers of basic components for 10 years after delivery of the basic component or service associated with a basic component.

(b) Each individual, corporation, partnership, or other entity subject to the regulations in this part must afford the Commission, at all reasonable times, the opportunity to inspect records pertaining to basic components that relate to the discovery, evaluation, and reporting of deviations, failures to comply and defects, including any advice given to purchasers or licensees on the placement, erection, installation, operation, maintenance, modification, or inspection of a basic component.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

7. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55e, and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80 through 50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 50.46 (a) and (b), and 50.54(c) are issued under sec. 161b, 161i and 161o, 68 Stat. 948, as amended (42 U.S.C. 2201(b)), §§ 50.7(a), 50.10(a)–(c), 50.34 (a) and (e), 50.44(a)–(c), 50.46 (a) and (b), 50.47(b), 50.48 (a), (c), (d), and (e), 50.49(a), 50.54 (a), (i), (i)(1), (l)–(n), (p), (q), (t), (v), and (y), 50.55(f), 50.55a(a), (c)–(e), (g), and (h), 50.59(c), 50.60(a), 50.62(c), 50.64(b), and 50.80 (a) and (b) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.49 (d), (h), and (j), 50.54 (w), (z), (bb), (cc), and (dd), 50.55(e), 50.59(b), 50.61(b), 50.62(b), 50.70(a), 50.71 (a)–(c) and (e), 50.72(a), 50.73 (a) and (b), 50.74, 50.78, and 50.90 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

8. Section 50.2 is amended by adding the following definitions in alphabetical order to read as follows:

§ 50.2 Definitions

* * * * *

Basic component means, for the purposes of § 50.55(e) of this chapter:

(1) When applied to nuclear power reactors, any plant structure, system, component, or part thereof necessary to assure

(i) The integrity of the reactor coolant pressure boundary, operation, maintenance, modification, or inspection of a basic component.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

7. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55e, and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80 through 50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 50.46 (a) and (b), and 50.54(c) are issued under sec. 161b, 161i and 161o, 68 Stat. 948, as amended (42 U.S.C. 2201(b)), §§ 50.7(a), 50.10(a)–(c), 50.34 (a) and (e), 50.44(a)–(c), 50.46 (a) and (b), 50.47(b), 50.48 (a), (c), (d), and (e), 50.49(a), 50.54 (a), (i), (i)(1), (l)–(n), (p), (q), (t), (v), and (y), 50.55(f), 50.55a(a), (c)–(e), (g), and (h), 50.59(c), 50.60(a), 50.62(c), 50.64(b), and 50.80 (a) and (b) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.49 (d), (h), and (j), 50.54 (w), (z), (bb), (cc), and (dd), 50.55(e), 50.59(b), 50.61(b), 50.62(b), 50.70(a), 50.71 (a)–(c) and (e), 50.72(a), 50.73 (a) and (b), 50.74, 50.78, and 50.90 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

8. Section 50.2 is amended by adding the following definitions in alphabetical order to read as follows:

§ 50.2 Definitions

* * * * *

Basic component means, for the purposes of § 50.55(e) of this chapter:

(1) When applied to nuclear power reactors, any plant structure, system, component, or part thereof necessary to assure

(i) The integrity of the reactor coolant pressure boundary,

(ii) The capability to shut down the reactor and maintain it in a safe shutdown condition, or

(iii) The capability to prevent or mitigate the consequences of accidents which could result in potential offsite exposures comparable to those referred to in § 100.11 of this chapter.

(2) When applied to other types of facilities or portions of such facilities for which construction permits are issued under § 50.23, a component, structure, system or part thereof that is directly procured by the construction permit holder for the facility subject to the regulations of this part and in which a defect or failure to comply with any applicable regulation in this chapter, order, or license issued by the Commission could create a substantial safety hazard.

(3) In all cases, *basic component* includes safety related design, analysis, inspection, testing, fabrication, replacement parts, or consulting services that are associated with the component hardware, whether these services are performed by the component supplier or other supplier.

* * * * *

Construction or *constructing* means, for the purposes of § 50.55(e), the analysis, design, manufacture, fabrication, quality assurance, placement, erection, installation, modification, inspection, or testing of a facility or activity which is subject to the regulations in this part and consulting services related to the facility or activity that are safety related.

* * * * *

Defect means, for the purposes of § 50.55(e) of this chapter:

(1) A deviation in a basic component delivered to a purchaser for use in a facility or activity subject to a construction permit under this part, if on the basis of an evaluation, the deviation could create a substantial safety hazard; or

(2) The installation, use, or operation of a basic component containing a defect as defined in paragraph (1) of this definition; or

(3) A deviation in a portion of a facility subject to the construction permit of this part provided the deviation could, on the basis of an evaluation, create a substantial safety hazard.

* * * * *

Deviation means, for the purposes of § 50.55(e) of this chapter, a departure from the technical or quality assurance requirements defined in procurement documents, safety analysis report, construction permit, or other documents provided for basic components installed in a facility subject to the regulations of this part.

Director means, for the purposes of § 50.55(e) of this chapter, an individual, appointed or elected according to law, who is authorized to manage and direct the affairs of a corporation, partnership or other entity.

Discovery means, for the purposes of § 50.55(e) of this chapter, the completion of the documentation first identifying the existence of a deviation or failure to comply potentially associated with a substantial safety hazard within the evaluation procedures discussed in § 50.55(e)(1).

* * * * *

Evaluation means, for the purposes of § 50.55(e) of this chapter, the process of determining whether a particular deviation could create a substantial safety hazard or determining whether a failure to comply is associated with a substantial safety hazard.

* * * * *

Notification means the telephonic communication to the NRC Operations Center or written transmittal of information to the NRC Document Control Desk.

* * * * *

Procurement document means, for the purposes of § 50.55(e) of this chapter, a contract that defines the requirements which facilities or basic components must meet in order to be considered acceptable by the purchaser.

* * * * *

Responsible officer means, for the purposes of § 50.55(e) of this chapter, the president, vice-president, or other individual in the organization of a corporation, partnership, or other entity who is vested with executive authority over activities subject to this part.

* * * * *

Substantial safety hazard means, for the purposes of § 50.55(e) of this chapter, a loss of safety function to the extent that there is a major reduction in the degree of protection provided to public health and safety for any facility or activity authorized by the construction permit issued under this part.

* * * * *

9. In § 50.55, paragraph (e) is revised to read as follows:

§ 50.55 Conditions of construction permits.

* * * * *

(e)(1) Each individual, corporation, partnership, or other entity holding a facility construction permit subject to this part must adopt appropriate procedures to—

(i) Evaluate deviations and failures to comply to identify defects and failures to comply associated with substantial safety hazards as soon as practicable, and, except as provided in paragraph (e)(1)(ii) of this section, in all cases within 60 days of discovery, in order to identify a reportable defect or failure to comply that could create a substantial safety hazard, were it to remain uncorrected.

(ii) Ensure that if an evaluation of an identified deviation or failure to comply potentially associated with a substantial safety hazard cannot be completed within 60 days from discovery of the deviation or failure to comply, an interim report is prepared and submitted to the Commission through a director or responsible officer or designated person as discussed in paragraph (e)(7) of this section. The interim report should describe the deviation or failure to comply that is being evaluated and should also state when the evaluation will be completed. This interim report must be submitted in writing within 60 days of discovery of the deviation or failure to comply.

(iii) Ensure that a director or responsible officer of the holder of a facility construction permit subject to this part is informed as soon as practicable, and, in all cases, within the 5 working days after completion of the evaluation described in paragraph (e)(1)(i) or (e)(1)(ii) of this section, if the construction of a facility or activity, or a basic component supplied for such facility or activity—

(A) Fails to comply with the Atomic Energy Act of 1954, as amended, or any applicable rule, regulation, order, or license of the Commission relating to a substantial safety hazard,

(B) Contains a defect, or

(C) Undergoes any significant breakdown in any portion of the quality assurance program conducted pursuant to the requirements of appendix B to 10 CFR part 50 which could have produced a defect in a basic component. Such breakdowns in the quality assurance program are reportable whether or not the breakdown actually resulted in a defect in a design approved and released for construction or installation.

(2) The holder of a facility construction permit subject to this part who obtains information reasonably indicating that the facility fails to comply with the Atomic Energy Act of 1954, as amended, or any applicable rule, regulation, order, or license of the Commission relating to a substantial safety hazard must notify the Commission of the failure to comply through a director or responsible officer or designated person as discussed in paragraph (e)(7) of this section.

(3) The holder of a facility construction permit subject to this part who obtains information reasonably indicating the existence of any defect found in construction or any defect found in the final design of a facility as approved and released for construction must notify the Commission of the defect through a director or responsible officer or designated person as discussed in paragraph (e)(7) of this section.

(4) The holder of a facility construction permit subject to this part who obtains information reasonably indicating that the quality assurance program has undergone any significant breakdown discussed in paragraph (e)(1)(ii)(C) of this section must notify the Commission of the breakdown in the quality assurance program through a director or responsible officer or designated person as discussed in paragraph (e)(7) of this section.

(5) The notification requirements of paragraphs (e)(2), (e)(3), and (e)(4) of this section apply to all defects and failures to comply associated with a substantial safety hazard regardless of whether extensive evaluation, redesign, or repair is required to conform to the criteria and bases stated in the safety analysis report or construction permit. Evaluation of potential defects and failures to comply and reporting of defects and failures to comply under this section satisfies the construction permit holder's evaluation and notification obligations under part 21 of this chapter and, satisfies the responsibility of individual directors or responsible officers of holders of construction permits issued under § 50.23 of this chapter to report defects, and failures to comply associated with substantial safety hazards under section 206 of the Energy Reorganization Act of 1974.

(6) The notification required by paragraphs (e)(2), (e)(3), and (e)(4) of this section must consist of—

(i) Initial notification by facsimile, which is the preferred method of notification, to the NRC Operations Center at 301–492–8187 or by telephone at 301–951–0550 within two days following receipt of information by the director or responsible corporate officer under paragraph (e)(1)(iii) of this section, on the identification of a defect or a failure to comply. Verification that the facsimile has been received should be made by calling the NRC Operations Center. This paragraph does not apply to interim reports described in paragraph (e)(1)(ii).

(ii) Written notification submitted to the Document Control Desk, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the appropriate Regional Administrator at the address specified in appendix D to part 20 of this chapter and a copy to the appropriate NRC resident inspector within 30 days following receipt of information by the director or responsible corporate officer under paragraph (e)(1)(iii) of this section, on the identification of a defect or failure to comply.

(7) The director or responsible officer may authorize an individual to provide the notification required by this section, provided that this must not relieve the director or responsible officer of his or her responsibility under this section.

(8) The written notification required by paragraph (e)(6)(ii) of this section must clearly indicate that the written notification is being submitted under § 50.55(e) and include the following information, to the extent known—

(i) Name and address of the individual or individuals informing the Commission.

(ii) Identification of the facility, the activity, or the basic component supplied for the facility or the activity within the United States which contains a defect or fails to comply.

(iii) Identification of the firm constructing the facility or supplying the basic component which fails to comply or contains a defect.

(iv) Nature of the defect or failure to comply and the safety hazard which is created or could be created by such defect or failure to comply.

(v) The date on which the information of such defect or failure to comply was obtained.

(vi) In the case of a basic component which contains a defect or fails to comply, the number and location of all the components in use at the facility subject to the regulations in this part.

(vii) The corrective action which has been, is being, or will be taken; the name of the individual or organization responsible for the action; and the length of time that has been or will be taken to complete the action.

(viii) Any advice related to the defect or failure to comply about the facility, activity, or basic component that has been, is being, or will be given to other entities.

(9) The holder of a construction permit must prepare and maintain records necessary to accomplish the purposes of this section, specifically —

(i) Retain procurement documents, which define the requirements that facilities or basic components must meet in order to be considered acceptable, for the lifetime of the basic component.

(ii) Retain evaluations of all deviations and failures to comply for a minimum of five years.

(iii) Maintaining records in accordance with this section satisfies the construction permit holders recordkeeping obligations under part 21 of this chapter. The recordkeeping obligations of responsible officers and directors under part 21 of this chapter are met by recordkeeping in accordance with this section.

(10) The requirements of this § 50.55(e) are satisfied when the defect or failure to comply associated with a substantial safety hazard has been previously reported under Part 21 of this chapter or under § 73.71 of this chapter under § 50.55(e) or § 50.73 of this part. For holders of construction permits issued prior to October 29, 1991. Evaluation, reporting and recordkeeping requirements of § 50.55(e) may be met by complying with the comparable requirements of Part 21 of this chapter.

* * * * *

Dated at Rockville, Md, this 24th day of July, 1991.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 91–17994 Filed 7–30–91; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM–53; Special Conditions No. 25–ANM–45]

Special Conditions: British Aerospace Public Limited Company Model 4100 Airplane, Main Cabin Aisle Arrangement

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the British Aerospace, Public Limited Company (BAe), Model 4100 airplane. This airplane will have a novel or unusual design feature associated with the main cabin aisle arrangement. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this particular design feature. These special conditions contain the additional safety standards which the Administrator finds necessary to establish a level of safety equivalent to that established by the airworthiness standards of part 25 of the Federal Aviation Regulations (FAR)

EFFECTIVE DATE: August 30, 1991.

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(iii) Maintaining records in accordance with this section satisfies the construction permit holders recordkeeping obligations under part 21 of this chapter. The recordkeeping obligations of responsible officers and directors under part 21 of this chapter are met by recordkeeping in accordance with this section.

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* * * * *

Dated at Rockville, Md, this 24th day of July, 1991.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 91–17994 Filed 7–30–91; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM–53; Special Conditions No. 25–ANM–45]

Special Conditions: British Aerospace Public Limited Company Model 4100 Airplane, Main Cabin Aisle Arrangement

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the British Aerospace, Public Limited Company (BAe), Model 4100 airplane. This airplane will have a novel or unusual design feature associated with the main cabin aisle arrangement. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this particular design feature. These special conditions contain the additional safety standards which the Administrator finds necessary to establish a level of safety equivalent to that established by the airworthiness standards of part 25 of the Federal Aviation Regulations (FAR)

EFFECTIVE DATE: August 30, 1991.

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin, Regulations Branch, ANM–114, Transport Airplane Directorate, Aircraft Certification Service, FAA, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2136.

SUPPLEMENTARY INFORMATION:

Background

On May 24, 1989, BAe Public Limited Company applied for a type certificate for the Model 4100 series airplane in the transport airplane category. The Model 4100 is a derivative of the Model 3100, which is a small airplane and is certificated under the provisions of part 23 of the FAR. The Model 4100 is a low wing, twin engine turbo-prop airplane configured to seat 29 passengers in a 3-abreast arrangement. The Model 4100 airplane, which has the same fuselage cross section as the Model 3100 airplane does not have a traditional main cabin aisle arrangement.

The FAR specifies, in § 25.815, the minimum aisle width dimensions for transport category airplanes based on the passenger capacity. For airplanes with 20 or more passengers, a minimum 15-inch width at heights 25 inches or less above the main aisle floor and a minimum 20-inch width at heights greater than 25 inches above the floor must be maintained. Aisle width is measured at any point along the aisle, normal to the centerline of the aisle. The main aisle envisioned by the regulations would run in a straight line from one end of the passenger cabin to the other and would satisfy these width criteria. Long standing FAA policy has permitted slight deviation from a straight line where there is a transition from one cabin section to another, or where there are interior features which dictate that the aisle move laterally. For example, from tourist class to first class there may be a change from 5-abreast seating to 4-abreast seating which moves the aisle centerline laterally. This has been accepted provided the required widths are maintained at all heights normal to the path that an individual would take. This type of offset normally occurs at one or two points in a main cabin aisle. In addition, there is no offset permitted in the aisle vertically; that is, the required 15-inch dimension must lie completely below the projected 20-inch dimension at all points along the aisle.

British Aerospace has presented a main cabin aisle arrangement which utilizes an offset at each seat row. The left and right seat assemblies are offset from one another longitudinally such that the seatbacks are not opposite each other across the aisle. This arrangement permits a 20-inch measurement between seatbacks (at an angle to the airplane centerline) and the required 15-inch dimension is maintained within the projected 20-inch dimension vertically. Thus the "required aisle" is not a straight line from one end of the cabin to the other, but a series of alternating angular segments from seatback to seatback. It is important to note that there is a straight path along the cabin length, and the aisle floor does not deviate from side to side at all; however, the projected aisle width along this straight path does not reach 20 inches until a height of approximately 48 inches above the floor.

Other significant features of the cabin aisle include the height of the seatbacks above the aisle floor. A "typical" transport airplane cabin has the seatback height approximately 43 inches above the floor, with the space above that essentially open from one sidewall to the other. On the Model 4100, the aisle floor is below the level of the seat mountings such that the seatback height above the aisle floor is almost 50 inches. The overall cabin height is approximately 69 inches. Another feature of the design includes the use of overwing exits which are offset longitudinally, corresponding to the seat positions on the left and right of the airplane.

These special conditions for a staggered main cabin aisle, utilize the existing regulations to develop appropriate design criteria, and make mandatory certain favorable design features in the Model 4100.

Type Certification Basis

Under the provisions of § 21.17 and an existing bilateral agreement between the United States and the United Kingdom, BAe must show that the Model 4100 complies with the regulations established in the certification basis. The certification basis for the Model 4100 is as follows:

The certification basis for the Model 4100 will be established in accordance with § 21.29, using the Joint Aviation Regulations (JAR) as a reference point, with appropriate additional requirements incorporated to provide an equivalent certification basis to the FAR requirements for U.S. certification.

British Aerospace and British Civil Aviation Authority (CAA) have elected to have the TC basis be the following:

—JAR 25 as amended through Change 12 dated May 10, 1988;
—JAR 25 Orange Paper Amendment 88–1 effective October 18, 1988;
—JAR 1, definitions as amended through Change 4 dated June 1, 1987; and
—Any additional part 25 paragraphs necessary to provide a composite TC basis equal to the required Part 25 certification basis.

Based on §§ 21.29 and 21.17 of the FAR and the TC application date, the applicable U.S. TC basis would be as follows:

—Part 25 of the FAR dated February 1, 1965, as amended by Amendments 25–1 through 25–66;
—Any applicable special conditions issued;
—Any applicable exemptions granted;
—Any equivalent safety findings made;
—The fuel venting and exhaust emission requirements of Part 34 of the FAR, and
—Part 36 of the FAR, including Amendments 36–1 through the latest amendment in effect on the date of TC.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25 as amended) do not contain adequate or appropriate safety standards for the Model 4100 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.17(a)(2).

Novel or Unusual Design Features

The Model 4100 will incorporate the following novel or unusual design features:

The required main cabin aisle widths will be established using measurements taken between seatbacks, which form a path in angular segments. The aisle width measured normal to the fuselage centerline above 25 inches from the floor, will extend from the seatback to the opposite cabin sidewall. Thus, while the required 15-inch dimension at cabin heights below 25 inches from the floor is completely within the projected 20-inch width vertically, the 20-inch portion is not centered over the 15-inch portion. (See Figure 1).

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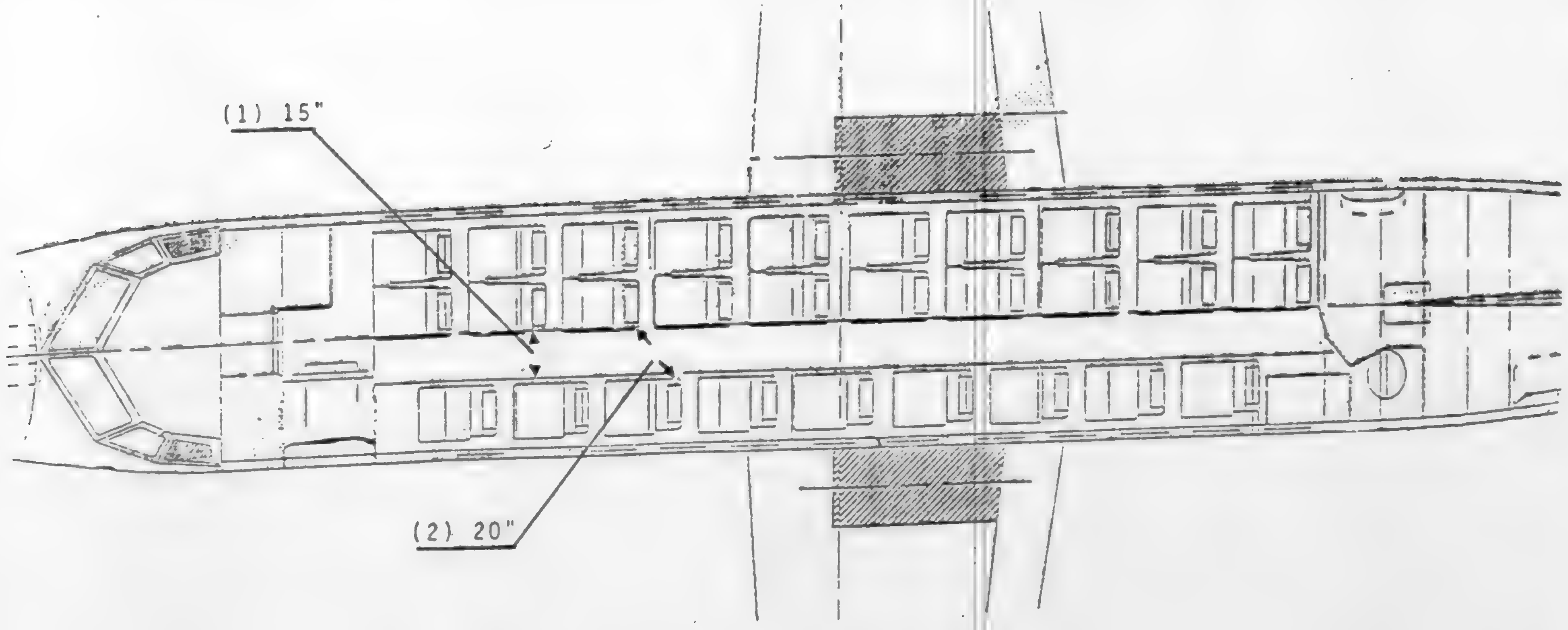

(1) AT HEIGHTS ABOVE THE FLOOR 25" AND BELOW

(2) AT HEIGHTS ABOVE THE FLOOR ABOVE 25"

FIGURE 1

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The FAA has carefully evaluated the relevant design parameters of the BAe Model 4100 and determined that the proposed main aisle configuration is clearly not what was envisioned by the regulations. The regulations do not specifically prohibit the arrangement proposed; however, they were predicated on a largely straight aisle which has only one or two lateral deviations; in other words, a traditional cabin arrangement. Therefore, special conditions are herewith issued to develop design criteria which will result in a level of safety equivalent to configurations on which the regulations are based.

The BAe Model 4100 incorporates several favorable features from a cabin safety standpoint. These include a good exit to passenger ratio for the number of passengers requested; i.e., one pair of Type II exits and one pair of Type III exits for 29 passengers. The regulations would allow up to 39 passengers with this exit arrangement. A second feature is a good exit distribution. Most passenger seats are only 3 seat rows from an exit. A third feature is a low total passenger count. Finally, Type III exits which are offset longitudinally, enable flow to the exits from opposite directions simultaneously without interference. Features of the cabin which are not favorable with respect to a standard configuration include the higher than normal seatback height and the low overall headroom, and the aisle stagger.

The FAA has addressed each of these points in developing these special conditions to preserve the level of safety inherent in the existing fleet. The higher than normal seatback height is not specifically addressed by regulations. Nonetheless, the additional 6–7 inches of restriction vertically will constrict the available space in the aisle for certain individuals and in certain evacuation scenarios. This is a factor that is inherently accounted for in the typical aisle configuration and provides an unquantified but real margin of safety. The FAA has attempted to retain this margin of safety by proposing to achieve a projected 20-inch aisle width at a more typical height above the aisle floor. Due to the very strict design constraints necessary to achieve the aisle configuration proposed for the Model 4100, it is considered mandatory that seat location and specific part number be the subject of FAA approval when any change is made.

Transport category airplanes with a passenger capacity of more than 44 are required to demonstrate by a full scale test that the maximum number of occupants can be evacuated in 90 seconds or less. Airplanes with passenger capacities of 44 or less are not required to meet this specific requirement since it is considered that the other regulations governing passenger safety will obviate the need for a specific evacuation demonstration. For example, the ratio of exits to passengers is much higher for very small passenger capacities than it is for larger capacities. In this case however, the FAA believes that the interior design of the Model 4100 differs sufficiently from the norm that a special evacuation demonstration is necessary to retain the same level of confidence as is provided for in typical designs. The form this demonstration should take has not been decided and will be discussed with the manufacturer and the CAA.

These special conditions provide requirements which result in a cabin aisle that is as effective and safe as those envisioned by the regulations. Where appropriate, requirements have been drawn from existing regulations. In other cases, new requirements have been developed to preserve the level of safety which is inherent in the design of more conventional aisle arrangements.

Accordingly, in addition to the requirements of § 25.815, these special conditions are issued for the BAe Model 4100 airplane with a staggered main aisle. Other conditions may be developed as needed based on further FAA review and discussions with the manufacturer and the Civil Aviation Authority (CAA).

Discussion of Comments

Notice of Proposed Special Conditions No. SC–91–4–NM for the British Aerospace Model BAe 4100 airplane was published in the **Federal Register** on April 18, 1991 (56 FR 15847). Comments were received from a labor organization and an airframe manufacturer.

The first commenter proposed that seatbacks be required to breakover (except at overwing exits) to assist passengers moving through the cabin in an emergency. The FAA does not feel that it is appropriate to mandate seatback breakover, since the effect on the aisle will essentially be to compound the reduced width at all seat rows. Breakover may be a desirable feature from a crash dynamics standpoint, but this will be dependent on other factors and will be self-evident based on testing.

The commenter also expresses concern with the access to the aft exit, particularly with respect to the lavatory door shown on the accompanying figure. The commenter states that the door obstructs the flight attendant direct view and represents a major impediment to egress should it be distorted in an emergency landing. The FAA agrees that the lavatory door must not impede rapid egress. The position of the door in the figure is not representative however, of the position required for takeoff and landing. For takeoff and landing, the door will be fastened such that it does not block flight attendant direct view, or impede evacuation. The commenter also contends that the emergency exit arrangement is poor and suggests that an additional Type II exit be installed opposite the existing forward entry door. The commenter also feels the proposed standards contained in Notice of Proposed Rulemaking (NPRM) 91–11 be made applicable to this arrangement. The FAA disagrees that the exit arrangement is poor. In fact, for this size airplane, the FAA considers this type of exit arrangement to have advantages over diametrically located exits, since there is good exit distribution front to back, as well as left to right. The special conditions are based on the requirements of the existing regulations, and not those that might be enacted. Should other more stringent standards be adopted as future operating requirements, the Model 4100 would have to comply with those standards in order to be eligible for operation after a specified date in this country.

Finally, the commenter supports the requirement for an evacuation demonstration and proposes that the demonstration to be required be realistic. The commenter suggests that as an example, both exits of a given type be made inoperative for the test. As noted in the proposed special conditions, the FAA has not yet determined what kind of evacuation demonstration is appropriate. In any case, the purpose of the demonstration would be to show that the overall evacuation capability of the airplane is not degraded by the novel aisle arrangement.

The second commenter contends that there are insufficient grounds for issuance of special conditions and that the proposed aisle arrangement is, in fact, a non-compliance with § 25.815 of the FAR. The commenter bases this contention on the FAA policy on cabin aisles as described in the notice, as well as the content of the regulation. The FAA disagrees. To the contrary, existing FAA policy is based on the fact that the regulations do not prohibit an offset aisle, and therefore such an installation is permissible under the current requirements. Prior to the BAe 4100, offset aisles were an infrequent occurrence in a cabin, and seldom were configured with the regulatory minimum dimensions on either side of the transition point. This situation was addressed by the FAA and was considered acceptable. The arrangement of the BAe 4100 is clearly a different situation that was not envisioned by the regulations. Nonetheless, the regulations do not prohibit such an installation. For this reason, the FAA is issuing special conditions that will address all of the special features needed to retain the level of safety intended by the existing regulations.

The commenter also addresses the seat back height on the 4100 and states that this will pose a "barrier" to the flow of passengers. The FAA agrees that seat back height is a factor in the overall effectiveness of the evacuation capability of the airplane and it is for this reason that the special conditions address the seat backs. The FAA considers that the special conditions adequately mitigate that effect of increased seat back height. The commenter contends that approval of this arrangement is a reversal of continuous FAA rulemaking efforts to improve human factors associated with passenger safety, and cites several examples; the commenter also references NPRM 91-11. As noted above, the special conditions are based on the applicable regulations currently in effect. It should also be noted that the special conditions are in addition to the existing regulations, which are still applicable.

Conclusion

This action affects only certain unusual or novel design features on one model of airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f-10, 4321 et seq., E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the British Aerospace, Public Limited Company, Model BAe 4100 airplane.

1. The BAe Model 4100 may be approved with an offset main aisle provided:

a. There are no more than 29 passenger seats with no more than ten seat rows on either side of the aisle;

b. The interior arrangement includes one pair of Type II and one pair of Type III passenger emergency exits;

c. In addition to the requirements of § 25.815, the projected aisle width is at least 20 inches measured at height of 43 inches above the aisle floor; and

d. The Type III exits and adjacent seat rows are offset longitudinally such that persons approaching an exit from one end of the cabin may use the exit without interfering with those approaching the other exit from the other end of the cabin.

2. The location and part number of each passenger seat is defined by a drawing approved by the FAA or foreign civil airworthiness authority. The seat arrangement may not be configured without FAA approval.

3. An evacuation demonstration is conducted to demonstrate the efficacy of the aisle arrangement. The results of this demonstration must be found to be acceptable by the Administrator.

Issued in Renton, Washington, on July 9, 1991.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-18075 Filed 7-30-91; 8:45 am]

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14 CFR Part 97

[Docket No. 26602; Amdt. No. 1457]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective*: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim

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, Washington, on July 9,

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Filed 7–30–91; 8:45 am]

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DATES: *Effective*: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

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The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reasons, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC, on July 19, 1991.

Thomas C. Accardi,
Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *September 19, 1991*

Hawthorne, CA—Hawthorne Muni, LOC RWY 25, Amdt. 9
San Jose, CA—San Jose Intl, ILS RWY 30L, Amdt. 20
Akron, CO—Akron-Washington Co, VOR RWY 27, Amdt. 6, Cancelled
Washington, DC—Washington Dulles International, Converging ILS RWY 12, Amdt. 2
Washington, DC—Washington Dulles International, Converging ILS RWY 19L Amdt. 2
Washington, DC—Washington Dulles International, Converging ILS RWY 19R Amdt. 3
Mason City, IA—Mason City Muni, VOR RWY 35, Amdt. 5
Mason City, IA—Mason City Muni, VOR/DME RWY 17, Amdt. 3
Mason City, IA—Mason City Muni, LOC/DME BC RWY 17, Amdt. 5
Mason City, IA—Mason City Muni, ILS RWY 35, Amdt. 5
Ashland, KY—Ashland-Boyd County, VOR RWY 10, Amdt. 8
Ashland, KY—Ashland-Boyd County, SDF RWY 10, Amdt. 4
Bemidji, MN—Bemidji-Beltrami County, VOR RWY 13, Amdt. 18
Bemidji, MN—Bemidji-Beltrami County, VOR/DME or TACAN RWY 31, Amdt. 12
Bemidji, MN—Bemidji-Beltrami County, NDB RWY 31, Amdt. 5
Bemidji, MN—Bemidji-Beltrami County, ILS RWY 31, Amdt. 3
Willmar, MN—Willmar Muni-John L. Rice Field, VOR RWY 10, Amdt. 1
Willmar, MN—Willmar Muni-John L. Rice Field, VOR RWY 28, Amdt. 1
Newark, NJ—Newark Intl, ILS RWY 4R, Amdt. 8
Newark, NJ—Newark Intl, ILS RWY 22L, Amdt. 7
McAllen, TX—Miller Intl, VOR RWY 13, Amdt. 14
McAllen, TX—Miller Intl, VOR–A, Amdt. 13
McAllen, TX—Miller Intl, LOC BC RWY 31, Amdt. 7
McAllen, TX—Miller Intl, NDB RWY 13, Amdt. 6
McAllen, TX—Miller Intl, ILS RWY 13, Amdt. 7
Muleshoe, TX—Muleshoe Municipal, VOR/DME–A, Orig.
Wakefield, VA—Wakefield Muni, NDB RWY 20, Amdt. 4
Seattle, WA—Boeing Field/King County Intl, LOC BC RWY 31, Amdt. 10
Seattle, WA—Boeing Field/King County Intl, NDB–B, Amdt. 5, Cancelled
Seattle, WA—Boeing Field/King County Intl, ILS RWY 13R, Amdt. 24
Seattle, WA—Seattle-Tacoma Intl, VOR RWY 34L/R, Amdt. 7

* * * *Effective August 22, 1991*

South Haven, MI—South Haven Area Regional, VOR RWY 22, Amdt. 6
North Kingstown, RI—Quonset State, NDB RWY 16, Orig., Cancelled
Brookings, SD—Brookings Muni, VOR RWY 12, Amdt. 10
Brookings, SD—Brookings Muni, VOR RWY 30, Amdt. 8
Mitchell, SD—Mitchell Muni, VOR RWY 12, Amdt. 8
Mitchell, SD—Mitchell Muni, VOR RWY 30, Amdt. 1
Yankton, SD—Chan Gurney Muni, VOR RWY 13, Amdt. 2
Yankton, SD—Chan Gurney Muni, VOR RWY 31, Amdt. 2
Yankton, SD—Chan Gurney Muni, NDB RWY 31, Amdt. 2
Yankton, SD—Chan Gurney Muni, ILS RWY 31, Amdt. 3

* * * *Effective July 25, 1991*

Eveleth, MN—Eveleth-Virginia Muni, VOR RWY 27, Amdt. 10
Eveleth, MN—Eveleth-Virginia Muni, VOR/DME RNAV RWY 27, Amdt. 1

* * * *Effective July 16, 1991*

Nenana, AK—Nenana Muni, NDB RWY 3L, Amdt. 1
Cartersville, GA—Cartersville, VOR/DME–A, Amdt. 1

* * * *Effective June 12, 1991*

Aniak, AK—Aniak, LOC/DME RWY 10, Amdt. 1

[FR Doc. 91-18077 Filed 7-30-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1020

[Docket No. 87P-0256/CP]

Performance Standards for Ionizing Radiation Emitting Products: Diagnostic X-Ray Systems and Their Major Components; Computed Tomography Equipment; Removal of a Requirement; Citizen Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule to remove a requirement in the performance standard for diagnostic X-ray systems and their major components regarding computed tomography (CT) equipment.

EFFECTIVE DATE: September 30, 1991.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: On July 31, 1987, the National Electrical Manufacturers Association (NEMA) filed a petition requesting that FDA remove § 1020.33(f)(2)(ii) (21 CFR 1020.33(f)(2)(ii)), a paragraph of the performance standard for diagnostic X-ray systems and their major components regarding CT equipment. The requirement that the petition requested be removed is as follows:

> (ii) Means shall be provided such that the exposure from the system does not exceed the radiation levels specified in § 1020.30(k) except when X-ray transmission data are being collected for use in image production or technique factor selection.

On April 14, 1987, FDA sent a letter to all CT system manufacturers setting forth the agency's interpretation of § 1020.33(f)(2)(ii) and requesting additional information from the manufacturers as to how they had designed their systems to comply with § 1020.33(f)(2)(ii).

On June 24, 1987, FDA and manufacturers of CT systems through NEMA met to discuss the interpretation of § 1020.33(f)(2)(ii) and its impact on manufacturers. The manufacturers stated that a large number of currently marketed CT systems failed to comply with the agency's interpretation of § 1020.33(f)(2)(ii). Their problem in meeting the agency's interpretation was claimed to be due to the manufacturers' misinterpretation of the regulations.

Subsequently, FDA received a citizen petition from NEMA. The petition requested and stated arguments for the removal of the requirement in § 1020.33(f)(2)(ii).

In the **Federal Register** of January 16, 1991 (56 FR 1589), FDA issued a proposed rule to revoke § 1020.33(f)(2)(ii). Interested persons were given until March 18, 1991 to comment. Only one comment, which supported the proposal, was received. Therefore, FDA is issuing a final rule based upon the proposal.

Environmental Impact

The agency has determined under 21 CFR 25.24(e)(3) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

After considering the economic consequences of removing § 1020.33(f)(2)(ii), FDA certifies that this notice requires neither a regulatory impact analysis, as specified in Executive Order 12291, nor a regulatory flexibility analysis as defined in the Regulatory Flexibility Act (Pub. L. 96-354).

List of Subjects in 21 CFR Part 1020

Electronic products, Medical devices, Performance standards for ionizing radiation emitting products, Radiation protection, Reporting and recordkeeping requirements, Television, X-rays.

Therefore, under the Federal Food, Drug, and Cosmetic Act as amended by the Safe Medical Devices Act of 1990 and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 1020 is amended as follows:

PART 1020—PERFORMANCE STANDARDS FOR IONIZING RADIATION EMITTING PRODUCTS

1. The authority citation for 21 CFR part 1020 is revised to read as follows:

Authority: Secs. 501, 502, 515-520, 530-542, 701, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360gg-360ss, 360e-360j, 371, 381).

§ 1020.33 [Amended]

2. Section 1020.33 *Computed tomography (CT) equipment* is amended by removing paragraph (f)(2)(ii) and by redesignating paragraph (f)(2)(iii) as paragraph (f)(2)(ii).

Dated: July 11, 1991.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-18071 Filed 7-30-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5-91-28]

Drawbridge Operation Regulations; New River, Jacksonville, NC

AGENCY: Coast Guard, DOT.

ACTION: Final rule—Removal.

SUMMARY: This amendment removes the regulations for the railroad bridge across New River, mile 21.1, in Jacksonville, North Carolina, because the swing bridge has been removed. A notice of proposed rulemaking has not been issued for this regulation because removal of the bridge eliminates all need for regulation.

EFFECTIVE DATE: This rule becomes effective on July 31, 1991.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704 (804) 398-6222.

DRAFTING INFORMATION: The drafters of this notice are Linda L. Gilliam, project officer, and LT Monica Lombardi, project attorney.

SUPPLEMENTARY INFORMATION: This action has no economic consequences. It merely removes regulations for a swing bridge that no longer exists. Consequently, this action is not considered major under Executive Order 12291 on Federal Regulation nor significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Since there is no economic impact, a full regulatory evaluation is unnecessary. Because no notice of proposed rulemaking is required under 5 U.S.C. 553, this action is exempt from the Regulatory Flexibility Act (5 U.S.C. 605(b)). Nevertheless, the Coast Guard certifies that this action will not have a significant economic impact on a substantial number of small entities.

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§ 1020.33 [Amended]

2. Section 1020.33 *Computed tomography (CT) equipment* is amended by removing paragraph (f)(2)(ii) and by redesignating paragraph (f)(2)(iii) as paragraph (f)(2)(ii).

Dated: July 11, 1991.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 91–18071 Filed 7–30–91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

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Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations is amended to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

§ 117.827 [Removed]

2. Section 117.827 is removed.

Dated: July 15, 1991.

W.T. Leland,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 91–18060 Filed 7–30–91; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

RIN No. 0596-AA33

Sale and Disposal of National Forest Timber; Downpayment and Periodic Payments

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule will increase and revise downpayment requirements and implement periodic payment requirements pursuant to the Federal Timber Contract Payment Modification Act (the Act). The intended effect is to fully implement the Act and thereby encourage orderly harvest of National Forest timber sales, reduce speculation, and increase security. This final rule also clarifies the Department's position on modification of existing contracts to take advantage of this rule's companion provision on market-related contract term additions which was published as a final rule in conjunction with the proposed rule on December 7, 1990 (55 FR 50643).

EFFECTIVE DATE: This rule is effective July 31, 1991.

FOR FURTHER INFORMATION CONTACT: Fred Walk, Timber Management Staff (202) 205–0858.

SUPPLEMENTARY INFORMATION: Section 2(d) of the Federal Timber Contract Payment Modification Act of October 16, 1984 (98 Stat. 2213; 16 U.S.C. 618(d)), requires that "(I)n any contract for the sale of timber from the National Forests, the Secretary of Agriculture shall require a cash downpayment at the time the contract is executed and periodic payments to be made over the remaining period of the contract."

To implement these payment requirements as well as to implement the bid monitoring provisions of the Act, the Department of Agriculture published a proposed rule in the **Federal Register** of January 17, 1985 (50 FR 2591).

Substantial opposition was received on the proposal for periodic payments, primarily due to the requirement that they be made annually. Timber purchasers felt the annual payment would reduce flexibility in operations which, in turn, could increase operational costs and could result in environmental damage. Others felt that periodic payments would add to the complexity of purchasing National Forest timber.

After the initial public comments were analyzed, the Department of Agriculture published a final rule on October 11, 1985 (50 FR 41498), implementing only those provisions of the Federal Timber Contract Payment Modification Act that require: (1) Purchasers to make a downpayment for the sale of National Forest timber (36 CFR 223.49); and (2) the Secretary of Agriculture to monitor bidding patterns on timber sale contracts and to take action to discourage speculative bidding (36 CFR 223.51). The rule also required a midpoint payment on sales with contract periods exceeding 1 year (36 CFR 223.50) as an interim step to deter speculation under section 2(c) of the Act until a new rule on periodic payments could be developed.

In publishing the final rule of October 11, 1985, the Department also stated that it would offer a revised proposed rule implementing periodic payments in timber sale contracts. A new proposed rule was published on November 6, 1987 (52 FR 43020) to establish procedures for periodic payments as well as to add to the length of the contract terms in response to adverse conditions in the timber market. In addition, the Forest Service proposed to make clarifying amendments to the downpayment requirement (36 CFR 223.49) in order to minimize possible inconsistencies in the implementation of that requirement. On January 8, 1988, the comment period was extended to February 19, 1988 (53 FR 519). As a result of the input received, the Forest Service proposed a new rule concerning downpayment and periodic payment requirements to fulfill the requirement for periodic payments as specified in the Federal Timber Contract Payment Modification Act of 1984. That proposed rule was published on December 7, 1990 (55 FR 50647).

On April 24, 1991, the General Accounting Office (GAO) testified before the House Appropriations Subcommittee on Interior and Related Agencies regarding Forest Service collection efforts on defaulted contracts. GAO's testimony was directed at its work on the status of Forest Service collection efforts on defaulted contracts and on Forest Service actions to reduce future timber sale contract defaults.

GAO testified that the Forest Service's key contracting measures such as downpayments, periodic payments, performance bonds, and calculations of damages were similar to those of other timber sellers, with the exception that the Forest Service returns or credits the downpayment before the contract is substantially complete. GAO testified that, by crediting or returning the downpayment, the Forest Service has less security, in terms of access to funds in the event of a default, to protect the government's interest. GAO's testimony included a recommendation that the Secretary of Agriculture direct the Chief of the Forest Service to retain the downpayment until the contract is substantially complete.

Based on GAO's testimony and the recommendation GAO has made to the Secretary of Agriculture, the Forest Service will develop and publish for comment as soon as possible a proposed rule that would eliminate transfer or refund of the downpayment and that would respond to GAO's concern that the downpayment be retained until the contract is substantially complete. Pending evaluation of comments on such a proposed rule, the Forest Service will continue to allow refund or transfer of downpayments. This final rule does change the point of release from the 25 percent volume criteria to a 25 percent value criteria.

Response to Public Comments

The comment period on the new proposed rule closed January 7, 1991. Twenty-one respondents submitted comments. The comments came from private citizens (3), timber purchasers (12), timber purchaser associations (4), the USDA Office of Inspector General (1), and a preservation association (1). Of the 20 public comments received, 18 came from the West and 2 from the East.

Fifty-seven percent of the respondents expressed support for the downpayment and periodic payment proposals either in their entirety or with suggested modification. The remaining 43 percent did not support the proposal because of perceived increases in the cost of doing business.

The following summarizes the major comments and suggestions received on specific provisions of the proposed rule and the Department's response to these in the final rule.

Downpayment Requirements

The proposed revisions to 36 CFR 223.49 would have changed the downpayment requirements to 10 percent of the advertised value plus 20 percent of the bid premium, deleted all references to bid ratio, not allowed use of the downpayment to cover other charges until 25 percent of the total bid value had been charged and paid for or shown on the timber sale statement of account to have been cut, removed, and paid for, authorized the Chief to increase the period of retention of the downpayment to deter speculation, and provided that the downpayment could be released on lump sum sales to apply toward the single payment unit payment. It is not the intent of the Act to require payments exceeding the total bid value for lump sum sales.

Comment. Thirteen respondents objected to the language that allows the Chief of the Forest Service to increase the period of retention for the downpayment amount to deter speculative bidding. These respondents thought the requirement was too vague and should be supported by additional criteria defining speculative bidding.

Response. The Department agrees that additional criteria are needed and will require the Agency to develop and propose specific criteria for determining speculative bidding. These proposed criteria will be published in the **Federal Register** for public comment prior to implementation of the final policy. Therefore, the final rule retains the provision authorizing the Chief of the Forest Service to extend the period of retention for the downpayment to deter speculative bidding. This provision was included as part of § 223.49(d) in the proposed rule and is found at § 223.49(j) in the final rule. The authority to retain the downpayment for a longer period is an appropriate complement to the existing authority at 36 CPA 223.49(c)(1) which allows the Chief to increase the amount of the downpayment to deter speculation.

Comment. Six respondents objected to changing the downpayment amount to 10 percent of the advertised value plus 20 percent of the bid premium because this would increase cash requirements for timber sale contracts, which would be adverse to their ability to buy timber sales.

Response. Section 223.49(c) of the proposed rule contained a mistake on how the minimum downpayment should be calculated. The preamble stated that the minimum downpayment would be equivalent to 10 percent of the "advertised value" plus 20 percent of the bid premium. However, the rule itself referred to 10 percent of the "total bid value." The final rule has been corrected to refer to "total advertised value".

The Department recognizes that in instances where timber purchasers are presently being required to deposit only the minimum 10 percent of total bid value, the rule will result in an increased deposit. Nevertheless, the Department believes that all purchasers should be treated equally. Accordingly, the calculation for the amount of the downpayment will be uniform and equal for all sales under the final rule. The Department is of the opinion that the amount calculated using 10 percent of the advertised rate and 20 percent of the bid premium is the amount needed to provide the minimum amount of financial security to protect the Government in the event of contract default.

Comment. Four respondents opposed any change in the criteria for releasing the downpayment. The proposed rule would have changed the release basis from 25 percent of volume removed to 25 percent of the value removed.

Response. Under § 223.49(d) of the proposed rule, a purchaser could not apply the amount deposited as a downpayment to cover other payments due on that sale until stumpage value representing 25 percent of the total bid value had been charged and paid for on scaled sales or until stumpage value representing 25 percent of the total bid value is shown on the timber sale statement of account to have been cut, removed, and paid for on tree measurement sales. The Department thinks that the value criteria for release of the downpayment is more equitable due to the variability in species rates. The value criteria also provides greater security for the Government because purchasers will be required to pay at least 25 percent of the sale value before the downpayment deposit is released. Therefore, this provision has been retained in the final rule.

Periodic Payments

The current regulation requires a midpoint payment of 25 percent of the total contract value calculated at the bid date, including required deposits, or 50 percent of the bid premium, whichever is greater. Under the current regulation, this 25 percent payment is due at the midpoint between bid date and termination date. The proposed rule abolished the midpoint payment and included an initial periodic payment of 35 percent of total contract value calculated at the bid date, exclusive of other required deposits, or 50 percent of bid premium, whichever is greater (36 CFR 223.50(b)(1)). This 35 percent payment would be due at the midpoint between the scheduled road completion date or award date (if there is no road construction) and the termination date to more closely reflect the true operating season. The proposed rule also included the requirement for an additional periodic payment of 75 percent of the total contract value, calculated at the award date, for contracts exceeding two full operating seasons. The final rule has changed this calculation date from award to bid date to be consistent with the calculation for the initial periodic payment. The proposed rule provided that the additional periodic payment would be due either 1 year after the initial periodic payment or at the midpoint of the last normal operating season whichever occurs first.

Comment. Six respondents objected to the increased payment requirements.

Response. The Department is compelled to increase the payment requirements to meet statutory requirements of the Federal Timber Contract Payment Modification Act which requires that periodic payments be included in timber sale contracts. The Department's opinion is that payment amounts and frequency as stated in the proposed rule are the minimum requirements necessary to comply with the statute. Therefore, the final rule retains the additional payment requirements with the changes discussed herein.

Comment. Two respondents suggested that more stringent payment requirements than those proposed in the rule are appropriate. One of these respondents proposed an alternative payment procedure requiring the entire sale value be paid at the beginning of the sale. The other respondent suggested a series of payments at regular intervals, with the additional requirement that cash deposit value be maintained equal to one unit ahead of the actual value of the cutting.

Response. The Department disagrees with these suggested proposals. Requiring full payment would severely restrict competition for sales and substantially increase the cost of buying National Forest timber. The additional payment proposal would increase the cost of holding timber sale contracts and complicate the administration of the contracts.

Comment. One respondent indicated that the proposed rule changed the date on which the initial periodic payment will be due in comparison with the due date of the current midpoint payment.

Response. The Department agrees that a change was made and supports the change. The criteria used for the current midpoint payment focuses on the bid date. The current midpoint payment is included in contracts when the term of the contract from bid date to termination date is greater than 1 year. The criteria in the proposed rule for requiring an initial periodic payment is the number of full operating seasons from road completion date or award date if no roads are required. The use of the operating season criteria recognizes the actual period being allowed for harvest operations and, therefore, is a more equitable basis for representing the time available for scheduling timber harvest. This is retained in the final rule.

The proposed rule required that purchasers initiate a written request to have periodic payment determination dates adjusted where the contract qualified for contract term adjustment or market-related contract term addition. The final rule deletes this requirement. The agency will automatically adjust periodic payment determination dates when contract term adjustment or market-related contract term addition is granted. The agency will not adjust periodic payment determination dates that have already passed. The final rule provides that periodic payment determination dates shall not be adjusted when contract term extension is granted under 36 CFR 223.115.

Comment. Five respondents expressed concern about the discretion given the Contracting officer to develop, prior to timber sale advertisement, an alternative periodic payment schedule to provide for harvest early in the contract period for salvage or other types of timber sales, where another periodic payment would better meet sale objectives. These respondents thought that early harvest could be accomplished by cutting unit completion requirements or by positive incentives such as those provided under urgent removal procedures or price discounting.

Response. After further review of the requirement, the Department agrees that the alternative periodic payment schedule is not needed. Accordingly, the provision appearing at 36 CFR 223.50(f) of the proposed rule is not adopted.

Comment. The Department also received comments objecting to delaying implementation of market-related contract term addition.

Response. The Department has decided that the final rule must clarify the linkage between periodic payment requirements of this rule and requirements adopted in the companion market-related contract term addition rule published December 7, 1990 (55 FR 50643). The market-related contract term addition rule required that a contract clause implementing the rule be added to all contracts that contain "periodic payment requirements" (36 CFR 223.52(a)). No contracts will contain "periodic payment requirements" until this rule becomes effective. Due to the interrelation of these two rules, market-related contract term addition cannot be made available until this final rule becomes effective.

The existing midpoint payment is not considered a "periodic payment" for purposes of the market-related contract term addition rule. The preamble to the final rule establishing the midpoint payment (50 FR 41493, October 11, 1985) expressly noted that the midpoint payment was an interim step to deter speculation under section 2(c) of the Federal Timber Contract Payment Modification Act and that the periodic payment requirement of section 2(d) would be implemented by a future rule. Thus, the midpoint payment was not considered to satisfy the "periodic payment" requirement of section 2(d) of the Act.

The Department sought to implement the periodic payment requirements of section 2(d) through a proposed rule published November 6, 1987 (52 FR 43020). In that rule, the Department sought to allay concerns that periodic payments would be too onerous by including a market-related contract term addition provision that would grant additional time to complete contracts if severe market conditions occur. The Department's position is that the market-related contract term addition rule and this rule on periodic payments have clearly been companion provisions from the inception of the market-related rule. The final rule on market-related contract term addition was adopted December 7, 1990 (55 FR 50643). On the same date, at 55 FR 50647, a new proposed rule on downpayment and periodic payment was published and a chart showing the relationship of the two rules was published at 55 FR 50642.

Comment. One respondent questioned whether purchasers would be able to apply for market-related contract term addition immediately after the January 7, 1991, effective date of the rule or whether they would have to wait until two "down" quarters occurred after this date.

Response. While delay in implementing the market-related contract term addition rule is inevitable due to the relationship of the two rules, the Department intends for the periodic payment and market-related contract term addition rules to have retroactive effect so that holders of contracts executed prior to July 31, 1991, may qualify for a market-related contract term addition based upon two consecutive qualifying quarters that may have occurred after the contract was awarded. This is the Department's intent even where these qualifying quarters occurred prior to the January 7, 1991, effective date of the market-related contract term addition final rule or prior to the date on which the purchaser may choose to modify its contract to include contract provisions allowing a market-related contract term addition and requiring periodic payments pursuant to this final rule on periodic payments. The Department notes that such retroactive application of the periodic payment and market-related contract term addition rules is consistent with the Department's implementation of earlier contract term extension programs such as the Multi-Sale Extension Policy. These earlier extension programs were also based upon recognition of a pre-existing market downturn.

Comment. One respondent objected to providing market-related contract term addition to holders of existing contracts.

Response. The final rule, at § 223.50(f) clarifies that a market-related contract term addition is only available to holders of existing contracts through contract modification. The purchaser must consent to a simultaneous modification implementing the periodic payment provisions of this final rule. This requirement is consistent with the historical development of the two rules and with the Comptroller General's longstanding rule that no officer or agent of the Government has the authority to waive contractual rights which have accrued to the United States or to modify existing contracts to the detriment of the Government without legal consideration (44 Comp. Gen. 746, 749 (1965); 5 Comp. Gen. 605 (1926)).

Modification of existing contracts is consistent with the history of the market-related contract term addition and periodic payment rules and beneficial in encouraging the orderly harvest of existing sales. The proposed rule on periodic payments and the final rule on market-related contract term addition were published together in separate part on December 7, 1990. While the proposed rule on periodic payments made no mention of modifying existing contracts, the final rule on market-related contract term addition clearly contemplated that holders of existing contracts would be allowed to participate in the combined periodic payment and market-related contract term addition program (55 FR 50643). That rule recognized that some existing contracts would qualify for the program by specifically excluding contracts that were previously extended under the Multi-Sale Extension Policy.

While the Department intends to make the periodic payment and market-related contract term addition provisions available to existing contract holders, some limits must be established on when purchasers can choose to modify existing contracts. Without some limit on time, purchasers could wait until near the contract termination date to request contract modification. In this way, purchasers would know that their contracts qualified for market-related contract term addition but could avoid the obligation to make additional periodic payment(s) during the unextended contract term. This would be inequitable to holders of most contracts prepared after the effective date of this final rule because those contracts will contain both the market-related contract term addition and periodic payment provisions from their inception. Moreover, allowing holders of existing contracts to avoid immediate implementation of the periodic payment provision would also seriously prejudice the primary purpose of the regulatory initiatives which were to implement the Act and encourage orderly harvest of timber sales.

For these reasons, the final rule, at § 223.50(f), provides that contracts executed before July 31, 1991, shall not be modified to include contract provisions allowing for market-related contract term addition unless the purchaser makes a written request by September 16, 1991, to the Contracting Officer for a simultaneous modification implementing the periodic payment requirements of this final rule. This is 45 days from the effective date of this rule. The Department considered several alternative time limits and concluded that allowing more than 45 days would encroach upon the approaching normal operating season of many existing sales. The Department believes that, where purchasers request modification, it is advantageous to have periodic payment and market-related contract term addition provisions fully implemented into existing contracts before the beginning of the normal operating season. The Department concludes that the 45-day period is more than adequate for purchasers to familiarize themselves with the regulatory program and decide whether to participate. Accordingly, any request to modify an existing contract to incorporate the periodic payment and market-related contract term addition provisions received after the 45-day period has expired will be denied as prejudicial to the effective implementation and administration of the combined periodic payment and market-related contract term addition rulemaking.

Comment. One respondent was concerned that the proposed rule left the amount of the periodic payment to the discretion of the Agency by requiring at, 36 CFR 223.50 (c) and (d), that the stumpage payments equal "at least" 35 or 75 percent, respectively, of the total contract value. This respondent thought that this language would allow the Agency to set the percentage at any level above 35 or 75 percent.

Response. The Department does not intend to allow a sale-by-sale determination of the percentage of the periodic payment amounts and has modified the language of the final rule to clarify this intent. The final rule sets the periodic payments at 35 and 75 percent respectively and provides no discretion to increase that percentage. The contract will specify an exact figure rather than a percentage, and this figure need not precisely reflect the percentage but should be rounded up to the next $100. This is consistent with the proposed changes suggested in the predecessor to this rule at 52 FR 43020 (November 6, 1987).

The Department has made several other changes in the final rule to clarify that the Forest Service will compare stumpage payments made by the purchaser at the periodic payment determination date with the periodic payment required in the contract. If the purchaser's stumpage payments are less than the periodic payment due, the purchaser will have to make a payment equal to the difference between the stumpage payments made and the periodic payment required. If the purchaser's stumpage payments equal or exceed the scheduled periodic payment then the periodic payment requirement is satisfied and no additional payment is necessary.

In discussing § 223.50(d) in the preamble of the proposed rule, the Forest Service specified that the additional periodic payment would be 75 percent of the "bid value" and that the Forest Service would reduce the periodic payment amount due if the payment would result in a purchaser's credit balance for timber charges exceeding the current contract value. The reference to "bid value" in this discussion was ambiguous. Accordingly, the final rule modifies the definition for "total contract value" in § 223.50(a) to clarify the ambiguity and adds a new term and definition for "current contract value." Under the final rule, "current contract value" is defined as the sum of the products of current contract rates, and, in a scaled sale, estimated remaining unscaled volume or, in a tree measurement sale, estimated remaining quantities by species of included timber meeting utilization standards. The revised definitions in the final rule also make clear that both the initial periodic payment and the additional periodic payment will be based on the total contract value at bid date, excluding required deposits, not on "bid value."

Summary

Having fully considered the comments on the proposed rule, the Department is adopting a final rule to amend the downpayment requirements in timber sale contracts, to establish periodic payment requirements and to coordinate implementation of this final rule with its companion provision on market-related contract term additions which was adopted December 7, 1990 (55 FR 50643).

This rule strengthens the current downpayment requirement by increasing both the amount and the period of retention for certain sales. The rule will also fully implement the periodic payment requirement of the Federal Timber Contract Payment Modification Act. The periodic payment requirements are structured to reflect the progression of normal harvest operation. The payment period considers the fact that, in many contracts, purchasers must build roads before harvest can begin. Therefore, the initial periodic payment is halfway through the harvest period. Setting this initial payment at 35 percent of total contract value similarly recognizes normal harvest scheduling. The Department will not require the use of periodic payments on sales having less than one operating season. The Department has determined that requirements for a downpayment, immediate harvest, and advance deposits made the periodic payment

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redundant for sales of such short duration.

The Department considered the total effects of both the downpayment and the periodic payment in this rule. The rule combines various financial requirements to meet the intent of the Act. In so doing, the Department believes this rule will also encourage the prompt and orderly harvest of timber, ensure an orderly flow of revenues from timber sales, and increase financial security during the contract period.

This final rule is effective upon publication. The requirement of the Administrative Procedure Act (APA) for a 30-day waiting period (5 U.S.C. 553(d)) does not apply. The APA specifically exempts rules concerning Agency management, public property or contracts from notice and comment requirements or the 30-day waiting period (5 U.S.C. 553(a)(2)). The Secretary of Agriculture has waived this statutory exemption for USDA agencies solely as to the notice and comment provisions of the APA (36 FR 13804, July 24, 1971); the waiver does not affect the statutory exemption from the waiting period requirement of 5 U.S.C. 553(d). Accordingly, this rule may be made effective upon publication. The Department chooses to make the rule effective upon publication because the companion provision on market-related contract term addition became final on January 7, 1991, and contracts cannot be modified under that rule until this rule takes effect.

The Department notes that the final rule contains several changes from the proposed rule. The Department concludes that these changes from the proposed rule are a logical outgrowth of the proposed rule and comments received and do not require further notice and comment.

Regulatory Impact

This action has been reviewed pursuant to Executive Order 12291 and Department of Agriculture procedures, and it has been determined that this regulation is not a major rule. It implements the requirement of the Federal Timber Contract Payment Modification Act requiring the Secretary of Agriculture to provide for downpayments and periodic payments for Forest Service timber sale contracts. While the final rule would change when certain purchasers would pay for timber, the final rule would not change the total amount of money that purchasers would pay for their sales. Exclusive of the statutory requirements, this rule would not have an annual effect on the economy of $100 million or more and would not result in a major increase in costs for consumers, individual industries, Federal, State, or local Government agencies, or geographic regions. The rule also would not result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The final rule should strengthen the United States forest products industry by implementing Congressional direction to promote orderly harvest and payment for National Forest timber and to deter speculation on Forest Service timber sales and, thereby, should help to preserve the structure of the industry and the employment generated by it.

Moreover, this final rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 605(b)). The downpayment and periodic payments are required by statute and will not adversely affect those small entities who harvest their National Forest timber sales in a timely manner.

The provisions of this rule are limited to administrative and business practices related to contract administration and, therefore, have no effect on forest resources. Each timber sale is subject to analysis of its environmental effects before it is sold. This rule is intended to have a positive economic and social effect by averting defaults, maintaining Treasury receipts, and helping stabilize industry and timber-dependent communities. As such, this rule is strictly procedural and would have no impact on the quality of the human environment, individually or cumulatively. Therefore, documentation of an analysis of environmental effects of this rule in an environmental assessment or an environmental impact statement is not required.

Furthermore, the final rule would not result in additional procedures, paperwork, or other information collection not already required by law and approved for use. Under this rule, only purchasers who wish to modify existing contracts to take advantage of the periodic payment and market-related contract term addition program are required to make a written request. This requirement is a simple election which does not require the purchaser to produce "facts" or "opinions". Therefore, the Department concludes that this requirement does not constitute a "collection of information" (under 5 CFR 1320.7(c) or 44 U.S.C. 3507(a)) and review pursuant to the Paperwork Reduction Act is not required.

Lists of Subjects in 36 CFR Part 223

Exports, Government contracts, National forests, Reporting and recordkeeping requirements, Timber.

Therefore, for the reasons set forth above, subpart B of part 223 of chapter II of title 36 of the Code of Federal Regulations, is amended as follows:

PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER

1. The authority citation for part 223 continues to read as follows:

Authority: 90 Stat. 2958, 16 U.S.C. 472a; 96 Stat. 2213, 16 U.S.C. 618; unless otherwise noted.

Subpart B—Timber Sale Contracts [Amended]

2. Amend § 223.49 by revising paragraph (a) introductory text and paragraphs (a) (1) through (4), (c), (d), and adding a new paragraph (j) to read as follows:

§ 223.49 Downpayment.

(a) For the purposes of this section, the terms listed in this paragraph shall have the following meaning:

(1) *Total bid value* is the sum of the products obtained by multiplying the rate the purchaser bid for each species by the estimated volume listed in the contract.

(2) *Ineffective purchaser credit* is that portion of the credit earned, pursuant to a specific Forest Service timber sale contract for construction of specified roads, or for other purposes in such contract, that exceeds the current contract value, minus base rate value as defined in that contract and, thus, is an amount that cannot be applied toward stumpage charges.

(3) *Bid premium* is the amount in excess of the advertised value that a purchaser bids for timber offered.

(4) *Lump sum timber sales* are premeasured sales where the entire value of the sale is paid in one payment at time of release for cutting.

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(c) The minimum downpayment shall be equivalent to 10 percent of the total advertised value of each sale, plus 20 percent of the bid premium, except in those geographic areas where the Chief of the Forest Service determines that it is necessary to increase the amount of the downpayment in order to deter speculation. To determine the amount of the downpayment due on a sale where the timber is measured in units other than board feet, the Forest Service shall convert the measure to board feet, using appropriate conversion factors with any necessary adjustment.

(d) On scaled sales, a purchaser cannot apply the amount deposited as a downpayment to cover other obligations due on that sale until stumpage value representing 25 percent of the total bid value of the sale has been charged and paid for. On tree measurement sales, a purchaser cannot apply the amount deposited as a downpayment to cover other obligations due on that sale until stumpage value representing 25 percent of the total bid value of the sale is shown on the timber sale statement of account to have been cut, removed, and paid for. For lump sum sales, the downpayment amount may be applied to payment for release of the single payment unit.

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(j) In order to deter speculation, the Chief of the Forest Service may increase the period for retention of the downpayment for future contracts subject to such criteria as the Chief may adopt after giving the public notice and opportunity to comment.

3. Revise § 223.50 to read as follows:

§ 223.50 Periodic payments.

(a) For the purposes of this section, the following terms have the meaning given:

(1) *Total contract value* is the product of the estimated volume of the sale multiplied by the rates bid by the purchaser. Total contract value excludes required deposits and is determined at bid date.

(2) *Current contract value* is the sum of the products of the current contract rates and, in a scaled sale, estimated remaining unscaled volume or, in a tree measurement sale, the estimated remaining quantities by species of included timber meeting utilization standards.

(3) *Normal operating season* is the period so specified in a timber sale contract.

(4) *Periodic payment(s)* is/are amount(s) specified in a timber sale contract that a purchaser must pay by the periodic payment determination date(s) unless reduced by amounts paid as stumpage for volume removed.

(5) *A periodic payment determination date* is a date specified in a timber sale contract upon which the Forest Service will compare the payments made by the timber sale purchaser for timber charges (stumpage), exclusive of required deposits, with the periodic payment amount required as of that date in the contract.

(b) Except for lump sum sales, each timber sale contract of more than one full normal operating season shall provide for periodic payments. The number of periodic payments required will be dependent upon the number of normal operating seasons within the contract, but shall not exceed two such payments during the course of the contract. Periodic payments must be made by the periodic payment determination date, except that the amount of the periodic payment shall be reduced to the extent that timber has been removed and paid for by the periodic payment determination date. Should the payment fall due on a date other than normal billing dates, the contract shall provide that the payment date will be extended to coincide with the next timber sale statement of account billing date.

(1) At a minimum, each such contract shall require an initial periodic payment at the midpoint between the specified road completion date and the termination date. If there is no road construction requirement, payment shall be due at the midpoint between award date and the termination date.

(2) Contracts exceeding 2 full operating seasons shall require an additional periodic payment to be due no later than the midpoint of the last normal operating season or 12 months from the initial periodic payment whichever date is first.

(c) Each timber sale contract shall require the initial periodic payment to equal 35 percent of the total contract value or 50 percent of the bid premium, whichever is greater. The amount of this periodic payment will be reduced if the payment would result in the purchaser's credit balance for timber charges exceeding the current contract value.

(d) Where an additional periodic payment is required by the timber sale contract, this payment will equal 75 percent of the total contract value. The amount of this periodic payment will be reduced if the payment would result in the purchaser's credit balance for timber charges exceeding the current contract value.

(e) Periodic payment determination dates that have not been reached shall be adjusted when contract term adjustments are granted under 36 CFR 223.46 or market-related contract term additions are granted under 36 CFR 223.52. Periodic payment determination dates shall not be adjusted when contract term extension is granted under the general authority of 36 CFR 223.115.

(f) In accordance with 36 CFR 223.52(a), no contract executed before July 31, 1991, shall be modified to include contract provisions allowing for market-related contract term additions unless the purchaser makes a written request to the Contracting Officer by September 16, 1991, for a simultaneous modification implementing the periodic payment requirements of this section. The midpoint payment clause in contracts executed before July 31, 1991, is not the "periodic payment requirement" mandated by 36 CFR 223.52(a).

Dated: July 24, 1991.

John H. Beuter,

Acting Assistant Secretary for Natural Resources and Environment.

[FR Doc. 91-18015 Filed 7-30-91; 8:45 am]

BILLING CODE 3410-11-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1011, 1105, 1106, 1150, 1152, and 1180

[Ex Parte No. 55 (Sub-No. 22A)]

RIN 3120-AB53

Implementation of Environmental Laws

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: We are revising our regulations at 49 CFR parts 1105 et seq. (Guidelines for Implementation of the National Environmental Policy Act of 1929) and 49 CFR 1106 et seq. (Implementation of the Energy Policy and Conservation Act of 1975)[1] to (1) combine the two sets of regulations; (2) revise and clarify the content requirements for environmental and historic reports; (3) provide for service of environmental reports on various state, federal and local agencies; (4) eliminate unnecessary requirements; and (5) reclassify and clarify the types of actions for which environmental and/or historic reports and analyses are required. We are also revising our regulations at 49 CFR parts 1150, 1152, and 1180 with respect to the Commission's implementation of various environmental and energy laws. We published proposed rules in the **Federal Register** on March 30, 1990 at 55 FR 11973. Twenty parties filed comments. Having carefully considered all the comments, we now adopt regulations to enable us to meet our responsibilities under the National Environmental Policy Act of 1969, 42 U.S.C. 4321-43, and related laws, including the Energy Policy

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[1] These regulations were issued in Revision of Natl. Envl. Policy Act Guidelines, 363 I.C.C. 653 (1980), and Implementation of the Energy Policy and Conservation Act, 357 I.C.C. 599 (1978), respectively.

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EFFECTIVE DATE: These rules will become effective on September 29, 1991.

FOR FURTHER INFORMATION CONTACT: Elaine Kaiser, (202) 275–0604, or Harold Johnson, (202) 275–7316. [TDD for hearing impaired: (202) 275–1721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts Inc., room 2229, Interstate Commerce Commission Building, Washington DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services, (202) 275–1721.]

This action will improve our ability to assess whether our decisions will significantly affect either the quality of the human environment or the conservation of energy resources. It will not have a significant overall impact on a substantial number of small entities.

List of Subjects

49 CFR Part 1011

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

49 CFR Part 1105

Environmental impact statements, Reporting and recordkeeping requirements.

49 CFR Part 1106

Energy conservation, Reporting and recordkeeping requirements.

49 CFR Part 1150

Administrative practice and procedure, Railroads.

49 CFR Part 1152

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements, Uniform System of Accounts.

49 CFR Part 1180

Administrative practice and procedure, Bankruptcy, Railroads, Reporting and recordkeeping requirements.

Decided: July 19, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the Preamble, title 49, chapter X, parts 1011, 1105, 1106, 1150, 1152, and 1180 of the Code of Federal Regulations are amended as follows.

PART 1011—COMMISSION ORGANIZATION; DELEGATIONS OF AUTHORITY

1. The authority citation for part 1011 continues to read as follows:

Authority: 49 U.S.C. 10301, 10302, 10304, 10305, 10321; 31 U.S.C. 9701; 5 U.S.C. 553.

2. In § 1011.8, a new paragraph (c)(9) is added to read as follows:

§ 1011.8 Delegations of authority by the Interstate Commerce Commission to specific bureaus and offices of the Commission.

* * * * *

(c) * * *

(9) To issue a decision making a finding of no significant impact in exemption proceedings.

3. Part 1105 is revised to read as follows:

PART 1105—PROCEDURES FOR IMPLEMENTATION OF ENVIRONMENTAL LAWS

Sec.
1105.1 Purpose.
1105.2 Responsibility for administration of these rules.
1105.3 Information and assistance.
1105.4 Definitions.
1105.5 Determinative criteria.
1105.6 Classification of actions.
1105.7 Environmental reports.
1105.8 Historic reports.
1105.9 Coastal Zone Management Act requirements.
1105.10 Commission procedures.
1105.11 Transmittal letter for applicant's report.
1105.12 Sample newspaper notices for abandonment exemption cases.

Authority: 49 U.S.C. 10321, 10505, 10901, 10903–10906, and 11343; 16 U.S.C. 470f, 1451, and 1531; 42 U.S.C. 4332 and 6362(b); and 5 U.S.C. 553 and 559.

§ 1105.1 Purpose.

These rules are designed to assure adequate consideration of environmental and energy factors in the Commission's decisionmaking process pursuant to the National Environmental Policy Act, 42 U.S.C. 4332; the Energy Policy and Conservation Act, 42 U.S.C. 6362(b); and related laws, including the National Historic Preservation Act, 16 U.S.C. 470f, the Coastal Zone Management Act, 16 U.S.C. 1451, and the Endangered Species Act, 16 U.S.C. 1531.

§ 1105.2 Responsibility for administration of these rules.

The Director of the Office of Economics shall have general responsibility for the overall management and functioning of the Section of Energy and Environment. The Director is delegated the authority to sign, on behalf of the Commission, memoranda of agreement entered into pursuant to 36 CFR 800.5(e)(4) regarding historic preservation matters. The Chief of the Section of Energy and Environment is responsible for the preparation of documents under these rules and is delegated the authority to provide interpretations of the Commission's NEPA process, to render initial decisions on requests for waiver or modification of any of these rules for individual proceedings, and to recommend rejection of environmental reports not in compliance with these rules. This delegated authority shall be used only in a manner consistent with Commission policy. The Director may further delegate procedural authority to the Chief of the Section of Energy and Environment as appropriate. Appeals to the Commission will be available as a matter of right.

§ 1105.3 Information and assistance.

Information and assistance regarding the rules and the Commission's environmental and historic review process is available from the Section of Energy and Environment, Interstate Commerce Commission, 12th & Constitution Ave. NW., Washington, DC 20423, Telephone: 202–275–7684.

§ 1105.4 Definitions.

In addition to the definitions contained in the regulations of the Council on Environmental Quality (40 CFR Part 1508), the following definitions apply to these regulations:

(a) *Act* means the Interstate Commerce Act, Subtitle IV of Title 49, U.S. Code, as amended.

(b) *Applicant* means any person or entity seeking Commission action, whether by application, petition, notice of exemption, or any other means that initiates a formal Commission proceeding.

(c) *Commission* means the Interstate Commerce Commission.

(d) *Environmental Assessment* or "EA" means a concise public document for which the Commission is responsible that contains sufficient information for determining whether to prepare an Environmental Impact Statement or to make a finding of no significant environmental impact.

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[1] These regulations were issued in Revision of Natl. Envt. Policy Act Guidelines, 363 I.C.C. 653 (1980), and Implementation of the Energy Policy and Conservation Act, 357 I.C.C. 599 (1978), respectively.

(e) *Environmental documentation* means either an Environmental Impact Statement or an Environmental Assessment.

(f) *Environmental Impact Statement* or "EIS" means the detailed written statement required by the National Environmental Policy Act, 42 U.S.C. 4332(2)(c), for a major Federal action significantly affecting the quality of the human environment.

(g) *Environmental Report* means a document filed by the applicant(s) that:

(1) provides notice of the proposed action; and

(2) evaluates its environmental impacts and any reasonable alternatives to the action. An environmental report may be in the form of a proposed draft Environmental Assessment or proposed draft Environmental Impact Statement.

(h) *Filing* means any request for ICC authority, whether by application, petition, notice of exemption, or any other means that initiates a formal Commission proceeding.

(i) *Section of Energy and Environment* or "SEE" means the Section that prepares the Commission's environmental documents and analyses.

(j) *Third-Party Consultant* means an independent contractor, utilized by the applicant, who works with SEE's approval and under SEE's direction to prepare any necessary environmental documentation. The third party consultant must act on behalf of the Commission. The railroad may participate in the selection process, as well as in the subsequent preparation of environmental documents. However, to avoid any impermissible conflict of interest (*i.e*, essentially any financial or other interest in the outcome of the railroad-sponsored project), the railroad may not be responsible for the selection or control of independent contractors.

§ 1105.5 Determinative criteria.

(a) In determining whether a "major Federal action" (as that term is defined by the Council on Environmental Quality in 40 CFR 1508.18) has the potential to affect significantly the quality of the human environment, the Commission is guided by the definition of "significantly" at 40 CFR 1508.27.

(b) A finding that a service or transaction is not within the ICC's jurisdiction does not require an environmental analysis under the National Environmental Policy Act or historic review under the National Historic Preservation Act.

(c) The environmental laws are not triggered where the ICC's action is nothing more than a ministerial act, as in:

(1) The processing of abandonments proposed under the Northeast Rail Services Act (45 U.S.C. 744(b)(3));

(2) Statutorily-authorized interim trail use arrangements under 16 U.S.C. 1247(d) [*see*, 49 CFR 1152.29]; or

(3) Financial assistance arrangements under 49 U.S.C. 10905 (*see* 49 CFR 1152.27).

Finally, no environmental analysis is necessary for abandonments are authorized by a bankruptcy court, or transfers of rail lines under plans of reorganization, where our function is merely advisory under 11 U.S.C. 1166, 1170, and 1172.

§ 1105.6 Classification of actions.

(a) Environmental Impact Statements will normally be prepared for rail construction proposals other than those described in paragraph (b)(1) of this section.

(b) Environmental Assessments will normally be prepared for the following proposed actions:

(1) Construction of connecting track within existing rail rights-of-way, or on land owned by the connecting railroads;

(2) Abandonment of a rail line (unless proposed under the Northeast Rail Services Act or the Bankruptcy Act);

(3) Discontinuance of passenger train service or freight service (except for discontinuances of freight service under modified certificates issued under 49 CFR 1150.21 and discontinuances of trackage rights where the affected line will continue to be operated);

(4) An acquisition, lease or operation under 49 U.S.C. 10901 or 10910, or consolidation, merger or acquisition of control under 49 U.S.C. 11343, if it will result in either

(i) operational changes that would exceed any of the thresholds established in § 1105.7(e) (4) or (5); or

(ii) an action that would normally require environmental documentation (such as a construction or abandonment);

(5) A rulemaking, policy statement, or legislative proposal that has the potential for significant environmental impacts;

(6) Water carrier licensing under 49 U.S.C. 10922 that:

(i) involves a new operation (*i.e.*, one that adds a significant number of barges to the inland waterway system requiring the addition of towing capacity, or otherwise significantly alters an existing operation, or introduces service to a new waterway that has had no previous traffic, or involves the commencement of a new service that is not statutorily exempt); or

(ii) involves the transportation of hazardous materials; and

(7) Any other proceeding not listed in paragraphs (a) or (c) of this section.

(c) No environmental documentation will normally be prepared (although a Historic Report may be required under section 1105.8) for the following actions:

(1) Motor carrier, broker, or freight forwarder licensing and water carrier licensing not included in section 1105.6(b)(6);

(2) Any action that does not result in significant changes in carrier operations (*i.e.*, changes that do not exceed the thresholds established in section 1105.7(e) (4) or (5)), including (but not limited to) all of the following actions that meet this criterion:

(i) An acquisition, lease, or operation under 49 U.S.C. 10901 or 10910, or consolidation, merger, or acquisition of control under 49 U.S.C. 11343 that does not come within subsection (b)(4) of this section.

(ii) Transactions involving corporate changes (such as a change in the ownership or the operator, or the issuance of securities or reorganization) including grants of authority to hold position as an officer or director;

(iii) Declaratory orders, interpretation or clarification of operating authority, substitution of an applicant, name changes, and waiver of lease and interchange regulations;

(iv) Pooling authorizations, approval of rate bureau agreements, and approval of shipper antitrust immunity;

(v) Approval of motor vehicle rental contracts, and self insurance;

(vi) Determinations of the fact of competition;

(3) Rate, fare, and tariff actions;

(4) Common use of rail terminals and trackage rights;

(5) Discontinuance of rail freight service under a modified certificate issued pursuant to 49 CFR 1150.21;

(6) Discontinuance of trackage rights where the affected line will continue to be operated; and

(7) A rulemaking, policy statement, or legislative proposal that has no potential for significant environmental impacts.

(d) The Commission may reclassify or modify these requirements for individual proceedings. For actions that generally require no environmental documentation, the Commission may decide that a particular action has the potential for significant environmental impacts and that, therefore, the applicant should provide an environmental report and either an EA or an EIS will be prepared. For actions generally requiring an EA, the Commission may prepare a full EIS n a ministerial act, as

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(7) Any other proceeding not listed in paragraphs (a) or (c) of this section.

(c) No environmental documentation will normally be prepared (although a Historic Report may be required under section 1105.8) for the following actions:

(1) Motor carrier, broker, or freight forwarder licensing and water carrier licensing not included in section 1105.6(b)(6);

(2) Any action that does not result in significant changes in carrier operations (*i.e.*, changes that do not exceed the thresholds established in section 1105.7(e) (4) or (5)), including (but not limited to) all of the following actions that meet this criterion:

(i) An acquisition, lease, or operation under 49 U.S.C. 10901 or 10910, or consolidation, merger, or acquisition of control under 49 U.S.C. 11343 that does not come within subsection (b)(4) of this section.

(ii) Transactions involving corporate changes (such as a change in the ownership or the operator, or the issuance of securities or reorganization) including grants of authority to hold position as an officer or director;

(iii) Declaratory orders, interpretation or clarification of operating authority, substitution of an applicant, name changes, and waiver of lease and interchange regulations;

(iv) Pooling authorizations, approval of rate bureau agreements, and approval of shipper antitrust immunity;

(v) Approval of motor vehicle rental contracts, and self insurance;

(vi) Determinations of the fact of competition;

(3) Rate, fare, and tariff actions;

(4) Common use of rail terminals and trackage rights;

(5) Discontinuance of rail freight service under a modified certificate issued pursuant to 49 CFR 1150.21;

(6) Discontinuance of trackage rights where the affected line will continue to be operated; and

(7) A rulemaking, policy statement, or legislative proposal that has no potential for significant environmental impacts.

(d) The Commission may reclassify or modify these requirements for individual proceedings. For actions that generally require no environmental documentation, the Commission may decide that a particular action has the potential for significant environmental impacts and that, therefore, the applicant should provide an environmental report and either an EA or an EIS will be prepared. For actions generally requiring an EA, the Commission may prepare a full EIS

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where the probability of significant impacts from the particular proposal is high enough to warrant an EIS. Alternatively, in a rail construction, an applicant can seek to demonstrate (with supporting information addressing the pertinent aspects of § 1105.7(e)) that an EA, rather than an EIS, will be sufficient because the particular proposal is not likely to have a significant environmental impact. Any request for reclassification must be in writing and, in a rail construction, should be presented with the prefiling notice required by § 1105.10(a)(1) (or a request to waive that prefiling notice period).

(e) The classifications in this section apply without regard to whether the action is proposed by application, petition, notice of exemption, or any other means that initiates a formal Commission proceeding.

§ 1105.7 Environmental reports.

(a) *Filing.* An applicant for an action identified in § 1105.6 (a) or (b) must submit (with or prior to its application, petition or notice of exemption) an Environmental Report on the proposed action containing the information set forth in paragraph (e) of this section.

(b) *Distribution.* The applicant must serve copies of the Environmental Report on:

(1) the State Clearinghouse of each State involved (unless the State has no clearinghouse);

(2) the State Environmental Protection Agency of each State involved;

(3) the State Coastal Zone Management Agency for any state where the proposed activity would affect land or water uses within that State's coastal zone;

(4) the head of each county (or comparable political entity including any Indian reservation) through which the line goes;

(5) the appropriate regional offices of the Environmental Protection Agency;

(6) the U.S. Fish and Wildlife Service;

(7) the U.S. Army Corps of Engineers;

(8) the National Park Service;

(9) the U.S. Soil Conservation Service; and

(10) any other agencies that have been consulted in preparing the report.

For information regarding the names and addresses of the agencies to be contacted, interested parties may contact SEE at the address and telephone number indicated in § 1105.3. Applicants filing a notice of exempt abandonment under 49 CFR 1152.50 must file the information required by paragraph (e)(1) of this section with the appropriate State clearinghouses at least 20 days prior to filing the notice of exemption.

(c) *Certification.* In its Environmental Report, the applicant must certify that it has sent copies of the Environmental Report to the agencies listed in paragraph (b) of this section and that it has consulted with all appropriate agencies in preparing the report. These consultations should be made far enough in advance to afford those agencies a reasonable opportunity to provide meaningful input. In a notice of exempt abandonment, applicant shall also certify that it has notified the appropriate State clearinghouses at least 20 days prior to filing the notice. Finally, in every abandonment exemption case, applicant shall certify that it has published in a newspaper of general circulation in each county through which the line passes a notice that alerts the public to the proposed abandonment, to available reuse alternatives, and to how it may participate in the ICC proceeding.

(d) *Documentation.* Any written responses received from agencies that were contacted in preparing the Environmental Report shall be attached to the report. Oral responses from such agencies shall be briefly summarized in the report and the names, titles, and telephone numbers of the persons contacted shall be supplied. A copy of, or appropriate citation to, any reference materials relied upon also shall be provided.

(e) *Content.* The Environmental Report shall include all of the information specified in this paragraph, except to the extent that applicant explains why any portion(s) are inapplicable. If an historic report is required under § 1105.8, the Environmental Report should also include the Historic Report required by that section.

(1) *Proposed action and alternatives.* Describe the proposed action, including commodities transported, the planned disposition (if any) of any rail line and other structures that may be involved, and any possible changes in current operations or maintenance practices. Also describe any reasonable alternatives to the proposed action. Include a readable, detailed map and drawings clearly delineating the project.

(2) *Transportation system.* Describe the effects of the proposed action on regional or local transportation systems and patterns. Estimate the amount of traffic (passenger or freight) that will be diverted to other transportation systems or modes as a result of the proposed action.

(3) *Land use.* (i) Based on consultation with local and/or regional planning agencies and/or a review of the official planning documents prepared by such agencies, state whether the proposed action is consistent with existing land use plans. Describe any inconsistenci-

(ii) Based on consultation with the U.S. Soil Conservation Service, state the effect of the proposed action on any prime agricultural land.

(iii) If the action affects land or water uses within a designated coastal zone, include the coastal zone information required by § 1105.9.

(iv) If the proposed action is an abandonment, state whether or not the right-of-way is suitable for alternative public use under 49 U.S.C. 10906 and explain why.

(4) *Energy.* (i) Describe the effect of the proposed action on transportation of energy resources.

(ii) Describe the effect of the proposed action on recyclable commodities.

(iii) State whether the proposed action will result in an increase or decrease in overall energy efficiency and explain why.

(iv) If the proposed action will cause diversions from rail to motor carriage of more than:

(A) 1,000 rail carloads a year; or

(B) an average of 50 rail carloads per mile per year for any part of the affected line, quantify the resulting net change in energy consumption and show the data and methodology used to arrive at the figure given. To minimize the production of repetitive data, the information on overall energy efficiency in § 1105.7(e)(4)(iii) need not be supplied if the more detailed information in § 1105.7(e)(4)(iv) is required.

(5) *Air.* (i) If the proposed action will result in either:

(A) An increase in rail traffic of at least 100 percent (measured in gross ton miles annually) or an increase of at least eight trains a day on any segment of rail line affected by the proposal, or

(B) An increase in rail yard activity of at least 100 percent (measured by carload activity), or

(C) An average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on any affected road segment, quantify the anticipated effect on air emissions. For a proposal under 49 U.S.C. 10901 (or 10505) to construct a new line or reinstitute service over a previously abandoned line, only the eight train a day provision in subsection (5)(i)(A) will apply.

(ii) If the proposed action affects a class I or nonattainment area under the Clean Air Act, and will result in either:

(A) An increase in rail traffic of at least 50 percent (measured in gross ton miles annually) or an increase of at least three trains a day on any segment of rail line,

(B) An increase in rail yard activity of at least 20 percent (measured by carload activity), or

(C) An average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on a given road segment, then state whether any expected increased emissions are within the parameters established by the State Implementation Plan. However, for a rail construction under 49 U.S.C. 10901 (or 49 U.S.C. 10505), or a case involving the reinstitution of service over a previously abandoned line, only the three train a day threshold in this item shall apply.

(iii) If transportation of ozone depleting materials (such as nitrogen oxide and freon) is contemplated, identify: the materials and quantity; the frequency of service; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and spills; contingency plans to deal with accidental spills; and the likelihood of an accidental release of ozone depleting materials in the event of a collision or derailment.

(6) *Noise.* If any of the thresholds identified in item (5)(i) of this section are surpassed, state whether the proposed action will cause:

(i) An incremental increase in noise levels of three decibels Ldn or more; or

(ii) An increase to a noise level of 65 decibels Ldn or greater. If so, identify sensitive receptors (*e.g.*, schools, libraries, hospitals, residences, retirement communities, and nursing homes) in the project area, and quantify the noise increase for these receptors if the thresholds are surpassed.

(7) *Safety.* (i) Describe any effects of the proposed action on public health and safety (including vehicle delay time at railroad grade crossings).

(ii) If hazardous materials are expected to be transported, identify: the materials and quantity; the frequency of service; whether chemicals are being transported that, if mixed, could react to form more hazardous compounds; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and hazardous spills; the contingency plans to deal with accidental spills; and the likelihood of an accidental release of hazardous materials.

(iii) If there are any known hazardous waste sites or sites where there have been known hazardous materials spills on the right-of-way, identify the location of those sites and the types of hazardous materials involved.

(8) *Biological resources.* (i) Based on consultation with the U.S. Fish and Wildlife Service, state whether the proposed action is likely to adversely affect endangered or threatened species or areas designated as a critical habitat, and if so, describe the effects.

(ii) State whether wildlife sanctuaries or refuges, National or State parks or forests will be affected, and describe any effects.

(9) *Water.* (i) Based on consultation with State water quality officials, state whether the proposed action is consistent with applicable Federal, State or local water quality standards. Describe any inconsistencies.

(ii) Based on consultation with the U.S. Army Corps of Engineers, state whether permits under section 404 of the Clean Water Act (33 U.S.C. 1344) are required for the proposed action and whether any designated wetlands or 100-year flood plains will be affected. Describe the effects.

(iii) State whether permits under section 402 of the Clean Water Act (33 U.S.C. 1342) are required for the proposed action. (Applicants should contact the U.S. Environmental Protection Agency or the state environmental protection or equivalent agency if they are unsure whether such permits are required.)

(10) *Proposed Mitigation.* Describe any actions that are proposed to mitigate adverse environmental impacts, indicating why the proposed mitigation is appropriate.

(11) *Additional Information for Rail Constructions.* The following additional information should be included for rail construction proposals (including connecting track construction):

(i) Describe the proposed route(s) by State, county, and subdivision, including a plan view, at a scale not to exceed 1:24,000 (7½ minute U.S.G.S. quadrangle map), clearly showing the relationship to the existing transportation network (including the location of all highway and road crossings) and the right-of-way according to ownership and land use requirements.

(ii) Describe any alternative routes considered, and a no-build alternative (or why this would not be applicable), and explain why they were not selected.

(iii) Describe the construction plans, including the effect on the human environment, labor force requirements, the location of borrow pits, if any, and earthwork estimates.

(iv) Describe in detail the rail operations to be conducted upon the line, including estimates of freight (carloads and tonnage) to be transported, the anticipated daily and annual number of train movements, number of cars per train, types of cars, motive power requirements, proposed speeds, labor force, and proposed maintenance-of-way practices.

(v) Describe the effects, including indirect or down-line impacts, of the new or diverted traffic over the line if the thresholds governing energy, noise and air impacts in §§ 1105.7(e)(4), (5), or (6) are met.

(vi) Describe the effects, including impacts on essential public services (e.g., fire, police, ambulance, neighborhood schools), public roads, and adjoining properties, in communities to be traversed by the line.

(vii) Discuss societal impacts, including expected change in employment during and after construction.

(f) *Additional Information.* The Commission may require applicants to submit additional information regarding the environmental or energy effects of the proposed action.

(g) *Waivers.* The Commission may waive or modify, in whole or in part, the provisions of this section where a railroad applicant shows that the information requested is not necessary for the Commission to evaluate the environmental impacts of the proposed action.

§ 1105.8 Historic Reports.

(a) *Filing.* An applicant proposing an action identified in § 1105.6 (a) or (b), or an action in § 1105.6(c) that will result in the lease, transfer, or sale of a railroad's line, sites or structures, must submit (with its application, petition or notice) the Historic Report described in paragraph (d) of this section, unless excepted under paragraph (b) of this section. This report should be combined with the Environmental Report where one is required. The purpose of the Historic Report is to provide the Commission with sufficient information to conduct the consultation process required by the National Historic Preservation Act.

(b) *Exceptions.* The following proposals do not require an historic report:

(1) A sale, lease or transfer of a rail line for the purpose of continued rail operations where further ICC approval is required to abandon any service and there are no plans to dispose of or alter properties subject to ICC jurisdiction that are 50 years old or older.

(2) A sale, lease, or transfer of property between corporate affiliates where there will be no significant change in operations.

(3) Trackage rights, common use of rail terminals, common control through

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(v) Describe the effects, including indirect or down-line impacts, of the new or diverted traffic over the line if the thresholds governing energy, noise and air impacts in §§ 1105.7(e)(4), (5), or (6) are met.

(vi) Describe the effects, including impacts on essential public services (e.g., fire, police, ambulance, neighborhood schools), public roads, and adjoining properties, in communities to be traversed by the line.

(vii) Discuss societal impacts, including expected change in employment during and after construction.

(f) *Additional Information.* The Commission may require applicants to submit additional information regarding the environmental or energy effects of the proposed action.

(g) *Waivers.* The Commission may waive or modify, in whole or in part, the provisions of this section where a railroad applicant shows that the information requested is not necessary for the Commission to evaluate the environmental impacts of the proposed action.

§ 1105.8 Historic Reports.

(a) *Filing.* An applicant proposing an action identified in § 1105.6 (a) or (b), or an action in § 1105.6(c) that will result in the lease, transfer, or sale of a railroad's line, sites or structures, must submit (with its application, petition or notice) the Historic Report described in paragraph (d) of this section, unless excepted under paragraph (b) of this section. This report should be combined with the Environmental Report where one is required. The purpose of the Historic Report is to provide the Commission with sufficient information to conduct the consultation process required by the National Historic Preservation Act.

(b) *Exceptions.* The following proposals do not require an historic report:

(1) A sale, lease or transfer of a rail line for the purpose of continued rail operations where further ICC approval is required to abandon any service and there are no plans to dispose of or alter properties subject to ICC jurisdiction that are 50 years old or older.

(2) A sale, lease, or transfer of property between corporate affiliates where there will be no significant change in operations.

(3) Trackage rights, common use of rail terminals, common control through

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stock ownership or similar action which will not substantially change the level of maintenance of railroad property.

(4) A rulemaking, policy statement, petition for declaratory order, petition for waiver of procedural requirements, or proceeding involving transportation rates or classifications.

(c) *Distribution.* The applicant must send the Historic Report to the appropriate State Historic Preservation Officer(s), preferably at least 60 days in advance of filing the application, petition, or notice, but, at the latest, with the filing.

(d) *Content.* The Historic Report should contain the information required by § 1105.7(e)(1) and the following additional historic information:

(1) A U.S.G.S. topographic map (or an alternate map drawn to scale and sufficiently detailed to show buildings and other structures in the vicinity of the proposed action) showing the location of the proposed action, and the locations and approximate dimensions of railroad structures that are 50 years old or older and are part of the proposed action;

(2) A written description of the right-of-way (including approximate widths, to the extent known), and the topography and urban and/or rural characteristics of the surrounding area;

(3) Good quality photographs (actual photographic prints, not photocopies) of railroad structures on the property that are 50 years old or older and of the immediately surrounding area;

(4) The date(s) of construction of the structure(s), and the date(s) and extent of any major alterations, to the extent such information is known;

(5) A brief narrative history of carrier operations in the area, and an explanation of what, if any, changes are contemplated as a result of the proposed action;

(6) A brief summary of documents in the carrier's possession, such as engineering drawings, that might be useful in documenting a structure that is found to be historic;

(7) An opinion (based on readily available information in the railroad's possession) as to whether the site and/or structures meet the criteria for listing on the National Register of Historic Places (36 CFR 60.4), and whether there is a likelihood of archeological resources or any other previously unknown historic properties in the project area, and the basis for these opinions (including any consultations with the State Historic Preservation Office, local historical societies or universities);

(8) A description (based on readily available information in the railroad's possession) of any known prior subsurface ground disturbance or fill, environmental conditions (naturally occurring or manmade) that might affect the archeological recovery of resources (such as swampy conditions or the presence of toxic wastes), and the surrounding terrain.

(9) Within 30 days of receipt of the historic report, the State Historic Preservation Officer may request the following additional information regarding specified nonrailroad owned properties or groups of properties immediately adjacent to the railroad right-of-way: photographs of specified properties that can be readily seen from the railroad right-of-way (or other public rights-of-way adjacent to the property) and a written description of any previously discovered archeological sites, identifying the location and type of the site (*i.e.*, prehistoric or native American).

(e) Any of these requirements may be waived or modified when the information is not necessary to determine the presence of historic properties and the effect of the proposed action on them.

(f) Historic preservation conditions imposed by the Commission in rail abandonment cases generally will not extend beyond the 330-day statutory time period in 49 U.S.C. 10904 for abandonment proceedings.

§ 1105.9 Coastal Zone Management Act Requirements.

(a) If the proposed action affects land or water uses within a State coastal zone designated pursuant to the Coastal Zone Management Act (16 U.S.C. 1451 *et seq.*) applicant must comply with the following procedures:

(1) If the proposed action is listed as subject to review in the State's coastal zone management plan, applicant (with, or prior to its filing) must certify (pursuant to 15 CFR 930.57 and 930.58) that the proposed action is consistent with the coastal zone management plan.

(2) If the activity is not listed, applicant (with, or prior to its filing) must certify that actual notice of the proposal was given to the State coastal zone manager at least 40 days before the effective date of the requested action.

(b) If there is consistency review under 15 CFR 930.54, the Commission and the applicant will comply with the consistency certification procedures of 15 CFR 930. Also, the Commission will withhold a decision, stay the effective date of a decision, or impose a condition delaying consummation of the action, until the applicant has submitted a consistency certification and either the state has concurred in the consistency certification, or an appeal to the Secretary of Commerce (under 15 CFR 930.64(e)) is successful.

§ 1105.10 Commission procedures.

(a) *Environmental Impact Statements.* (1) *Prefiling Notice.* Where an environmental impact statement is required or contemplated, the prospective applicant must provide the Section of Energy and Environment with written notice of its forthcoming proposal at least 6 months prior to filing its application.

(2) *Notice and Scope of EIS.* When an Environmental Impact Statement is prepared for a proposed action, the Commission will publish in the **Federal Register** a notice of its intent to prepare an EIS, with a description of the proposed action and a request for written comments on the scope of the EIS. Where appropriate, the scoping process may include a meeting open to interested parties and the public. After considering the comments, the Commission will publish a notice of the final scope of the EIS. If the Environmental Impact Statement is to be prepared in cooperation with other agencies, this notice will also indicate which agencies will be responsible for the various parts of the Statement.

(3) *Notice of Availability.* The Commission will serve copies of both the draft Environmental Impact Statement (or an appropriate summary) and the full final Environmental Impact Statement (or an appropriate summary) on all parties to the proceeding and on appropriate Federal, State, and local agencies. A notice that these documents are available to the public will be published (normally by the Environmental Protection Agency) in the **Federal Register.** (Interested persons may obtain copies of the documents by contacting the Section of Energy and Environment.)

(4) *Comments.* The notice of availability of the draft Environmental Impact Statement will establish the time for submitting written comments, which will normally be 45 days following service of the document. When the Commission decides to hold an oral hearing on the merits of a proposal, the draft Environmental Impact Statement will be made available to the public in advance, normally at least 15 days prior to the portion of the hearing relating to the environmental issues. The draft EIS will discuss relevant environmental and historic preservation issues. The final Environmental Impact Statement will discuss the comments received and any changes made in response to them.

(5) *Supplements.* An Environmental Impact Statement may be supplemented

where necessary and appropriate to address substantial changes in the proposed action or significant new and relevant circumstances or information. If so, the notice and comment procedures outlined above will be followed to the extent practicable.

(b) *Environmental Assessments.* In preparing an Environmental Assessment, the Section of Energy and Environment will verify and independently analyze the Environmental Report and/or Historic Report and related material submitted by an applicant pursuant to sections 1105.7 and 1105.8. The Environmental Assessment will discuss relevant environmental and historic preservation issues. SEE will serve copies of the Environmental Assessment on all parties to the proceeding and appropriate federal, state, and local agencies, and will announce its availability to the public through a notice in the **Federal Register**. In the case of abandonment applications processed under 49 U.S.C. 10903, the availability of the Environmental Assessment must be announced in the applicant's Notice of Intent filed under 49 CFR 1152.21. The deadline for submission of comments on the Environmental Assessment will generally be within 30 days of its service (15 days in the case of a notice of abandonment under 49 CFR 1152.50). The comments received will be addressed in the Commission's decision. A supplemental Environmental Assessment may be issued where appropriate.

(c) *Waivers.* (1) The provisions of paragraphs (a)(1) or (a)(4) of this section or any ICC-established time frames in paragraph (b) of this section may be waived or modified where appropriate.

(2) Requests for waiver of § 1105.10(a)(1) must describe as completely as possible the anticipated environmental effects of the proposed action, and the timing of the proposed action, and show that all or part of the six month lead period is not appropriate.

(d) *Third-Party Consultants.* Applicants may utilize independent third-party consultants to prepare any necessary environmental documentation, if approved by SEE. The environmental reporting requirements that would otherwise apply will be waived if a railroad hires a consultant, SEE approves the scope of the consultant's work, and the consultant works under SEE's supervision. In such a case, the consultant acts on behalf of the Commission, working under SEE's direction to collect the needed environmental information and compile it into a draft EA or draft EIS, which is then submitted to SEE for its review, verification, and approval. We encourage the use of third-party consultants.

(e) *Service of Environmental Pleadings.* Agencies and interested parties sending material on environmental and historic preservation issues directly to the Commission should send copies to the applicant. Copies of Commission communications to third-parties involving environmental and historic preservation issues also will be sent to the applicant where appropriate.

(f) *Consideration in Decisionmaking.* The environmental documentation (generally an EA or an EIS) and the comments and responses thereto concerning environmental, historic preservation, CZMA, and endangered species issues will be part of the record considered by the Commission in the proceeding involved. The Commission will decide what, if any, environmental or historic preservation conditions to impose upon the authority it issues based on the environmental record and its substantive responsibilities under the Interstate Commerce Act. The Commission will withhold a decision, stay the effective date of an exemption, or impose appropriate conditions upon any authority granted, when an environmental or historic preservation issue has not yet been resolved.

(g) *Finding of No Significant Impact.* In all exemption cases, if no environmental or historic preservation issues are raised by any party or identified by SEE in its independent investigation, the Commission will issue a separate decision making a Finding of No Significant Impact ("FONSI") to show that it has formally considered the environmental record.

§ 1105.11 Transmittal Letter for Applicant's Report.

A carrier shall send a copy of its Environmental and/or Historic Report to the agencies identified in section 1105.7(b) and/or the appropriate State Historic Preservation Officer(s) and certify to the Commission that it has done this. The form letter contained in the Appendix to this section should be used in transmitting the Environmental and/or Historic Reports.

Appendix to § 1105.11—Transmittal Letter for Applicant's Report

(Carrier Letterhead)
(Addresses)
Re: (Brief description of proposed action with ICC docket number, if available)
(Date)

On (date), we are (or expect to be) filing with the Interstate Commerce Commission a (type of proceeding) seeking authority to (   ) located in (state) (city or town) and (mileposts, if applicable). Attached is an Environmental Report (and/or Historic Report) describing the proposed action and any expected environmental (and/or historic) effects, as well as a map of the affected area.

We are providing this report so that you may review the information that will form the basis for the ICC's independent environmental analysis of this proceeding. If any of the information is misleading or incorrect, if you believe that pertinent information is missing, or if you have any questions about the Commission's environmental review process, please contact the Section of Energy and Environment (SEE), room 3219, Interstate Commerce Commission, Washington, DC 20423, Telephone (202) 275–7684 and refer to the above *Docket No.* (if available). Because the applicable statutes and regulations impose stringent deadlines for processing this action, your written comments to SEE (with a copy to our representative) would be appreciated within 3 weeks.

Your comments will be considered by the Commission in evaluating the environmental and/or historic preservation impacts of the contemplated action. If there are any questions concerning this proposal, please contact our representative directly. Our representative in this matter is (name) who may be contacted by telephone at (telephone number) or by mail at (address).

(Complimentary close)
(Name and title of author of letter)

§ 1105.12 Sample Newspaper Notices for Abandonment Exemption Cases.

In every abandonment exemption case, the applicant shall publish a notice in a newspaper of general circulation in each county in which the line is located and certify to the Commission that it has done this by the date its notice of (or petition for) exemption is filed. The notice shall alert the public to the proposed abandonment, to available reuse alternatives, such as trail use and public use, and to how it may participate in a Commission proceeding. Sample newspaper notices are provided in the Appendix to this section for guidance to the railroads.

Appendix to § 1105.12—Sample Newspaper Notices Sample Local Newspaper Notice For Out-Of-Service Abandonment Exemptions Notice of Intent to Abandon or to Discontinue Rail Service

(Name of railroad) gives notice that on or about (insert date notice of exemption will be filed with the Interstate Commerce Commission), it intends to file with the Interstate Commerce Commission, Washington, DC 20423, a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* permitting the (abandonment of or discontinuance of service on) a ______ mile line of railroad between railroad milepost ______, near (station name), and railroad milepost ______, near (station name) in ______ County(ies), (State). The proceeding will be docketed as No. AB ______ (Sub-No. ______ X).

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Your comments will be considered by the Commission in evaluating the environmental and/or historic preservation impacts of the contemplated action. If there are any questions concerning this proposal, please contact our representative directly. Our representative in this matter is (name) who may be contacted by telephone at (telephone number) or by mail at (address).

(Complimentary close)
(Name and title of author of letter)

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Appendix to § 1105.12—Sample Newspaper Notices Sample Local Newspaper Notice For Out-Of-Service Abandonment Exemptions Notice of Intent to Abandon or to Discontinue Rail Service

(Name of railroad) gives notice that on or about (insert date notice of exemption will be filed with the Interstate Commerce Commission), it intends to file with the Interstate Commerce Commission, Washington, DC 20423, a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* permitting the (abandonment of or discontinuance of service on) a ______ mile line of railroad between railroad milepost ______, near (station name), and railroad milepost ______, near (station name) in ______ County(ies), (State). The proceeding will be docketed as No. AB ______ (Sub-No. ______ X).

The Commission's Section of Energy and Environment (SEE) will generally prepare an Environmental Assessment (EA), which will normally be available 25 days after the filing of the notice of exemption. Comments on environmental and energy matters should be filed no later than 15 days after the EA becomes available to the public and will be addressed in a Commission decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to the Section of Energy and Environment, Interstate Commerce Commission, Washington, DC 20423 or by calling that office at 202-275-7684.

Appropriate offers of financial assistance to continue rail service can be filed with the Commission. Requests for environmental conditions, public use conditions, or rail banking/trails use also can be filed with the Commission. Questions regarding offers of financial assistance, public use or trails use may be directed to the Commission's Office of Public Assistance at 202-275-7597. Copies of any comments or requests for conditions should be served on the applicant's representative (name, address and phone number).

Sample Local Newspaper Notice for Petitions for Abandonment Exemptions Notice of Intent to Abandon or to Discontinue Rail Service

(Name of railroad) gives notice that on or about (insert date petition for abandonment exemption will be filed with the Interstate Commerce Commission) it intends to file with the Interstate Commerce Commission, Washington, DC 20423, a petition for exemption under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 10903, et seq., permitting the (abandonment of or discontinuance of service on) a ______ mile line of railroad between railroad milepost, near (station name), and railroad milepost, near (station name) in County(ies), (State). The proceeding has been docketed as No. AB (Sub-No. X).

The Commission's Section of Energy and Environment (SEE) will generally prepare an Environmental Assessment (EA), which will normally be available 60 days after the filing of the petition for abandonment exemption. Comments on environmental and energy matters should be filed no later than 30 days after the EA becomes available to the public and will be addressed in a Commission decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to SEE, Interstate Commerce Commission, Washington, DC 20423 or by calling SEE at 202-275-7684.

Appropriate offers of financial assistance to continue rail service can be filed with the Commission. Requests for environmental conditions, public use conditions, or rail banking/trails use also can be filed with the Commission. Questions regarding offers of financial assistance, public use or trails use may be directed to the Commission's Office of Public Assistance at 202-275-7597. Copies of any comments or requests for conditions should be served on the applicant's representative (name and address).

PART 1106—[REMOVED]

4. Part 1106 is removed.

PART 1150—CERTIFICATE TO CONSTRUCT, ACQUIRE, OR OPERATE RAILROAD LINES

5. The authority citation for part 1150 continues to read as follows:

Authority: 49 U.S.C. 10321, 10901, and 10505; 5 U.S.C. 553 and 559.

§ 1150.33 [Amended]

6. In § 1150.33, paragraph (g) is removed and paragraph (h) is redesignated paragraph (g).

PART 1152—ABANDONMENT AND DISCONTINUANCE OF RAIL LINES AND RAIL TRANSPORTATION UNDER 49 U.S.C. 10903

7. The authority citation for part 1152 continues to read as follows:

Authority: 5 U.S.C. 553, 559, and 704; 11 U.S.C. 1170; 16 U.S.C. 1247(d) and 1248; and 49 U.S.C. 10321, 10362, 10505 and 10903 et seq., 11161 and 11163.

§ 1152.20 [Amended]

8. In § 1152.20, paragraph (d) is removed.

9. In § 1152.21, the next to last paragraph is revised and a new paragraph is added to the end of the section.

§ 1152.21 Form of notice.

* * * * *

Persons seeking further information concerning abandonment procedures may contact the Interstate Commerce Commission's Office of Proceedings or refer to the full abandonment or discontinuance regulations at 49 CFR Part 1152. Questions concerning environmental issues may be directed to the Commission's Section of Energy and Environment.

* * * * *

An environmental assessment (or environmental impact statement, if necessary) prepared by the Section of Energy and Environment will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Energy and Environment. EA's in these abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Commission's decision. A supplemental EA may be issued where appropriate.

PART 1180—RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION PROJECT, TRACKAGE RIGHTS, AND LEASE PROCEDURES

10. The authority citation for part 1180 continues to read as follows:

Authority: 49 U.S.C. 10321, 10505, 10903-10906, 11341, 11343-11346; 5 U.S.C. 553 and 559; 45 U.S.C. 904 and 915.

11. In § 1180.4, paragraph (g)(3) is revised to read as follows:

§ 1180.4 Procedures.

* * * * *

(g) * * *

(3) Some transactions may be subject to environmental review pursuant to the Commission's environmental rules at 49 CFR part 1105.

* * * * *

[FR Doc. 91-18006 Filed 7-30-91; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 910498-1098]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustments.

SUMMARY: NOAA announces modified possession and landing limits for the two commercial salmon fisheries opening in August 1991 in the exclusive economic zone (EEZ) from the U.S.-Canada border to Cape Falcon, Oregon. The Director, Northwest Region, NMFS (Regional Director) has determined that the preseason possession and landing limits of 10 chinook salmon per opening should be removed in the commercial fisheries scheduled to open in the subarea from the U.S.-Canada border to Carroll Island, Washington, on the earlier of August 16, 1991, or a date recommended by the Pacific Salmon Commission, and in the subarea from Leadbetter Point, Washington, to Cape Falcon, Oregon, on August 10, 1991. The preseason possession and landing limits for coho salmon remain in effect in both fisheries. These modified limits are intended to maximize the harvest of chinook salmon in these subareas without exceeding the ocean share of

salmon allocated to the commercial fishery.

DATES: *Effective:* Removal of the possession and landing limits for chinook salmon in the August commercial fisheries from the U.S.-Canada border to Carroll Island, Washington, and from Leadbetter Point, Washington, to Cape Falcon, Oregon, is effective July 26, 1991. *Comments:* Public comments are invited until August 12, 1991.

ADDRESSES: Comments may be mailed to Rolland A. Schitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: Joe Scordino at 206-526-6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries are published at 50 CFR part 661. In an emergency interim rule and preseason notice of 1991 management measures (56 FR 21311, May 8, 1991), NOAA announced that the 1991 commercial fishery for all salmon species in the subarea from the U.S.-Canada border to Carroll Island, Washington, would open the earlier of August 16 or a date recommended by the Pacific Salmon Commission, and that each vessel participating in this fishery could possess, land, and deliver no more than 80 coho salmon and 10 chinook salmon per open period. NOAA also announced that the 1991 commercial fishery for all salmon species in the subarea from Leadbetter Point, Washington, to Cape Falcon, Oregon, would open August 10, and that each vessel participating in this fishery could possess, land, and deliver no more than 150 coho salmon and 10 chinook salmon per open period. Commercial fisheries north of Cape Falcon, Oregon, are limited by overall quotas of 87,000 coho salmon and 40,000 chinook salmon.

Based on the best available information, the catch during the May 1-June 15, 1991, commercial fishery for all salmon species except coho salmon in the subarea from the U.S.-Canada border to Cape Falcon, Oregon totaled about 27,200 chinook salmon, leaving 4,000 fish of the guideline of 31,200 chinook salmon unharvested. Therefore, these fish are being transferred to the two commercial fisheries opening in August described above.

With these increased chinook guidelines governing the two commercial fisheries opening in August, there is no longer the need for possession and landing limits to restrict chinook salmon harvest. Therefore, the Regional Director has determined that when these two fisheries open as regularly scheduled, their possession and landing limits of 10 chinook salmon per opening should be removed. All other preseason restrictions, including possession and landing limits for coho salmon, remain in effect. Inseason modification of limited retention regulations is authorized by regulations at § 661.21(b)(1)(ii).

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Washington Department of Fisheries, and the Oregon Department of Fish and Wildlife regarding this action affecting the commercial fisheries from the U.S.-Canada border to Cape Falcon, Oregon. The States of Washington and Oregon will manage the commercial fisheries in State waters adjacent to these areas of the EEZ in accordance with this federal action. This notice does not apply to treaty Indian fisheries or to other fisheries which may be operating in other areas.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted until August 12, 1991.

Other Matters

This action is authorized by 50 CFR §§ 661.21 and 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 25, 1991.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-18054 Filed 7-26-91; 10:38 am]

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BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 147
Wednesday, July 31, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 25

RIN 3150–AD66

NRC Licensee Reinvestigation Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission proposes to amend its regulations to require a reinvestigation program for NRC licensee personnel with "Q" and "L" access authorizations and to amend the fee schedule to cover investigative costs. The proposed reinvestigation program is consistent with the Department of Energy's program for its contractors and is consistent with NRC's policy of reinvestigating its own employees, consultants, contractors, experts and panel members. This amendment is necessary to achieve a higher level of assurance that licensee personnel with access to Restricted Data or National Security Information remain eligible for such access.

DATES: Comment period expires September 13, 1991. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to: Secretary, U. S. Nuclear Regulatory Commission, Washington, DC 20555, attention: Docketing and Service Branch.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. Federal workdays.

Copies of the regulatory analysis and comments received may be examined at: room LL6, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Duane G. Kidd, Division of Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–4127.

SUPPLEMENTARY INFORMATION: The NRC currently requires a reinvestigation every five years for its employees, consultants, contractors, experts, and panel members with "Q" or "L" access authorization but does not require a reinvestigation for licensee personnel with the same level of access authorizations. A recommendation was made in the 1988 GAO Report "NRC's Security Clearance Program Can be Strengthened" and amplified in 1989 hearings before Congressman Synar that NRC have a reinvestigation program for its "L" cleared employees, consultants, contractors, experts, and panel members to assure their continued reliability, integrity, and trustworthiness. The rationale behind that recommendation applies equally to licensee personnel with "L" and "Q" access authorizations. The proposed rule will establish the requirement that licensee personnel would be subject to a reinvestigation every five years similar in scope to that required for NRC employees and contractors and consistent with that required by the Department of Energy for its contractors who have access to Restricted Data or National Security Information. The proposed rule would also amend appendix A "Fees for NRC Access Authorization" to recover the costs of the reinvestigations required by these changes. The proposed amendments, however, allow for recognition of other agency's, principally the Department of Energy's, reinvestigations. In cases where NRC can verify an appropriate reinvestigation by another Federal agency, there would be no charge to the licensee or other organization. Where there was no other reinvestigation, or the reinvestigation did not meet NRC requirements, the fee would be assessed. However, the fee would most often be nominal, as reflected in appendix A.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed regulation is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

Public reporting burden for this collection of information is estimated to average 0.6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB–7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019 (3150–0046), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, room LL6, 2120 L Street NW. (lower level), Washington, DC. Single copies of the analysis may be obtained from Duane G. Kidd, Division of Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–4127.

Regulatory Flexibility Certification

Based upon the information available at this stage of the rulemaking proceeding and in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that, if promulgated, this rule will not have a significant economic impact on a substantial number of small entities. This rulemaking only applies to those licensees and others who generate, receive, safeguard and store National Security Information or Restricted Data (as defined in 10 CFR part 25). Approximately 31 NRC licensee and other license related interests would be affected under the provisions of 10 CFR part 25. Because these licensees are not classified as small entities as defined by the NRC's size standards (December 9, 1985; 50 FR 50241), the Commission finds that this rule will not have a significant economic impact upon a substantial number of small entities.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does apply to this rulemaking initiative because it falls within the criteria of 10 CFR part 50.109(a)(l), but that a backfit analysis is not required because this rulemaking qualifies for exemption under 50.109(a)(4)(iii) that reads "That the regulatory action involves * * * redefining what level of protection to the * * * common defense and security should be regarded as adequate."

List of Subjects in 10 CFR Part 25

Classified information, Criminal penalty, Investigations, Penalty, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 25.

PART 25—ACCESS AUTHORIZATION FOR LICENSEE PERSONNEL

1. The authority citation for part 25 continues to read as follows:

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10865, as amended, 3 CFR 1959–1963 COMP., p. 398 (50 U.S.C. 401, note); E.O. 12356, 47 FR 14874, April 6, 1982.

Appendix A also issued under 96 Stat. 1051 (31 U.S.C. 9701).

For the purposes of sec. 223, 68 Stat. 958, as amended, (42 U.S.C. 2273), §§ 25.13, 25.17(a), 25.33 (b) and (c) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 25.13 and 25.33(b) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 25.17, paragraph (e) is revised to read as follows:

§ 25.17 Approval for processing applicants for access authorization.

* * * * *

(e) Applications for access authorization or access authorization renewal processing must be accompanied by a check or money order, payable to the United States Nuclear Regulatory Commission, representing the current cost for the processing of each "Q," "L," access authorization, or renewal request. Access authorization and access authorization renewal fees will be published each time the Office of Personnel Management notifies NRC of a change in the rates it charges NRC for the conduct of investigations. Any such changed access authorization or access authorization renewal fees will be applicable to each access authorization or access authorization renewal request received upon or after the date of publication. Applications from individuals having current Federal access authorizations may be processed more expeditiously and at less cost, since the Commission may accept the certification of access authorization and investigative data from other Federal Government agencies that grant personnel access authorizations.

3. Section 25.19 is revised to read as follows:

§ 25.19 Processing applications.

Each application for access authorization or access authorization renewal, together with its accompanying fee, must be submitted to the NRC Division of Security. If necessary, the NRC Division of Security may obtain approval from the appropriate Commission office exercising licensing or regulatory authority before processing the access authorization or access authorization renewal request. If the applicant is disapproved for processing, the NRC Division of Security shall notify the submitter in writing and return the original application (security packet) and its accompanying fee.

4. In § 25.21, paragraph (a) is revised and paragraph (c) is added to read as follows:

§ 25.21 Determination of initial and continued eligibility for access authorization.

(a) Following receipt by the NRC Division of Security of the reports of the personnel security investigations, the record will be reviewed to determine that granting an access authorization or renewal of access authorization will not endanger the common defense and security and is clearly consistent with the national interest. If such a determination is made, access authorization will be granted or renewed. Questions as to initial or continuing eligibility will be determined in accordance with part 10 of chapter I.

* * * * *

(c) (1) Except as provided in paragraph (c)(2) of this section, NRC "Q" and "L" access authorizations expire five years from the date of issuance. If continued "Q" or "L" access authorization is required, an application for renewal must be submitted at least 120 days prior to its expiration date. Failure to make a timely application will result in expiration of access authorization. Access authorization for which a timely application for renewal has been made may be continued beyond the expiration date pending final action on the application. An application for renewal must include:

(i) A statement by the licensee or other person that the individual continues to require access to classified National Security Information or Restricted Data; and

(ii) A personnel security packet as described in § 25.17(c).

(2) An exception to the access authorization expiration date and the time for submission of renewal applications is provided for:

(i) Those individuals whose original access authorization date of issuance is more than five years old as of the effective date of this rule amendment. For those individuals an application for renewal must be submitted (within 180 days of the effective date of this rule); and,

(ii) Those individuals who have a current and active access authorization from another federal agency, and are subject to a reinvestigation program by that agency that is determined by NRC to meet NRC's requirements (the DOE Reinvestigation Program has been determined to meet NRC's requirements), and for which the licensee or other person has notified NRC of their intention to use this exception at least 120 days prior to the original expiration date of the access authorization. For those individuals, the licensee or other person may submit to NRC, concurrent with its next submission to the other government agency after (the effective date of this rule) (provided that period is no longer than seven years from the date of original issuance or last renewal), a copy of the SF–86 that is dated and bears an original signature, together with a request form (NRC Form 237) signed by a licensee or other official as the supporting documentation for an NRC access authorization renewal application. Any NRC access authorization continued in response to a renewal application submitted pursuant to this paragraph will, thereafter, not expire until the date set by the other government agency for the next reinvestigation of the individual pursuant to the other agency's reinvestigation program provided that period is no longer than seven years from the date of the NRC renewal. At that time (and at the time of each subsequent reinvestigation of the individual), the licensee or other person may again submit, concurrent with its

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result in expiration of access authorization. Access authorization for which a timely application for renewal has been made may be continued beyond the expiration date pending final action on the application. An application for renewal must include:

(i) A statement by the licensee or other person that the individual continues to require access to classified National Security Information or Restricted Data; and

(ii) A personnel security packet as described in § 25.17(c).

(2) An exception to the access authorization expiration date and the time for submission of renewal applications is provided for:

(i) Those individuals whose original access authorization date of issuance is more than five years old as of the effective date of this rule amendment. For those individuals an application for renewal must be submitted (within 180 days of the effective date of this rule); and,

(ii) Those individuals who have a current and active access authorization from another federal agency, and are subject to a reinvestigation program by that agency that is determined by NRC to meet NRC's requirements (the DOE Reinvestigation Program has been determined to meet NRC's requirements), and for which the licensee or other person has notified NRC of their intention to use this exception at least 120 days prior to the original expiration date of the access authorization. For those individuals, the licensee or other person may submit to NRC, concurrent with its next submission to the other government agency after (the effective date of this rule) (provided that period is no longer than seven years from the date of original issuance or last renewal), a copy of the SF–86 that is dated and bears an original signature, together with a request form (NRC Form 237) signed by a licensee or other official as the supporting documentation for an NRC access authorization renewal application. Any NRC access authorization continued in response to a renewal application submitted pursuant to this paragraph will, thereafter, not expire until the date set by the other government agency for the next reinvestigation of the individual pursuant to the other agency's reinvestigation program provided that period is no longer than seven years from the date of the NRC renewal. At that time (and at the time of each subsequent reinvestigation of the individual), the licensee or other person may again submit, concurrent with its submission to the other government agency, a copy of the SF–86 that is dated and bears an original signature together with a request form (NRC Form 237) signed by a licensee or other contractor official as the supporting documentation for an NRC access authorization renewal application. Failure to file a renewal application concurrent with the submission of an individual's SF–86 to the other government agency pursuant to their reinvestigation requirements will result in the expiration of the individual's NRC access authorization.

5. Section § 25.23 is revised to read as follows:

§ 25.23 Notification of grant of access authorization.

The determination to grant or renew access authorization will be furnished in writing to the licensee or other person that initiated the request. Upon receipt of the notification of original grant of access authorization, the licensee or other person shall obtain, as a condition for grant of access authorization and access to classified information, an executed "Classified Information Nondisclosure Agreement" SF 312) from the affected individual. The individual shall also be given a security orientation briefing in accordance with § 95.33 of this chapter. The signed SF 312 must be promptly forwarded to the NRC Division of Security. Records of access authorization grant and renewal notification must be maintained by the licensee or other organization for three years after the access authorization has been terminated by the NRC Division of Security. This information may also be furnished to other representatives of the Commission, to licensees, contractors, or other Federal agencies. Notifications of access authorization will not be given in writing to the affected individual except:

(a) In those cases in which the determination was made as a result of a Personnel Security Hearing or by Personnel Security Review Examiners, or

(b) When the individual also is the official designated by the licensee to whom written NRC notifications are forwarded.

6. Section § 25.25 is revised to read as follows:

§ 25.25 Cancellation of requests for access authorization.

When a request for an individual's access authorization or renewal of access authorization is withdrawn or cancelled, the requestor shall notify the NRC Division of Security immediately by telephone so that the full field investigation, National Agency Check with Credit Investigation or other personnel security action may be discontinued. The requestor shall identify the full name and date of birth of the individual, the date of request, and the type of access authorization ("Q" or "L") or access authorization renewal originally requested. The requestor shall confirm each telephone notification promptly in writing.

7. In 25.27, paragraph (a) is revised to read as follows:

§ 25.27 Reopening of cases in which requests for access authorizations are cancelled.

(a) In conjunction with a new request for access authorization or renewal of access authorization for individuals whose cases were previously cancelled, new fingerprint cards in duplicate and a new Security Acknowledgment (for cases where no final access authorization was previously issued) must be furnished to the NRC Division of Security along with the request.

* * * * *

8. In § 25.31, a new paragraph (d) is added to read as follows:

§ 25.31 Extensions and transfers of access authorizations.

* * * * *

(d) The date of an extension or transfer of access authorization may not be used to determine when a request for renewal of access authorization is required. Access authorization renewal requests must be timely submitted in accordance with § 25.21(c).

9. Appendix A to part 25 is revised to read as follows:

APPENDIX A TO PART 25—FEES FOR NRC ACCESS AUTHORIZATION

Category	Fee
Initial "L" access authorization	[1] $45
Reinstatement of "L" access authorization	[1] 45
Extension or transfer of "L" access authorization	[1] 45
Renewal of "L" access authorization	[1] 45
Initial "Q" access authorization	2,600
Initial "Q" access authorization (expedited processing)	3,000
Reinstatement of "Q" access authorization	[2] 2,600
Reinstatement of "Q" access authorization (expedited processing)	[2] 3,000
Extension or transfer of "Q"	[2] 2,600
Extension or transfer of "Q" (expedited processing)	[2] 3,000
Renewal of "Q" (initial five year reinvestigation)	[1] 1,500
Renewal of "Q" (subsequent five year reinvestigations)	[1] 45

[1] If the NRC determines, based on its review of available data, that a full field investigation is necessary, a fee of $2,600 will be assessed prior to the conduct of the investigation.

[2] Full fee will only be charged if investigation is required.

Dated at Rockville, MD, this 15th day of July 1991.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 91–17995 Filed 7–30–91; 8:45 am]

BILLING CODE 7590-01-M

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10 CFR Part 35

Workshop To Discuss Establishing an "Authorized Radiopharmacist"

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) staff plans to convene a public workshop with representatives of appropriate organizations to discuss key issues related to establishing an "authorized radiopharmacist" in NRC's regulations.

DATES: The workshop will be held Wednesday, August 7, 1991, and will begin at 9 a.m. and end about 5:30 p.m.

ADDRESSES: Sheraton International At O'Hare, 6810 North Mannheim Road, Rosemont, Illinois.

FOR FURTHER INFORMATION CONTACT: Dr. Anthony Tse, Regulation Development Branch, NL/S–129, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3797.

SUPPLEMENTARY INFORMATION: The American College of Nuclear Physicians and the Society of Nuclear Medicine submitted a petition for rulemaking to NRC requesting that the NRC amend its regulations pertaining to the use of byproduct material in medical applications. One of the issues raised in the petition is related to compounding radiopharmaceuticals containing byproduct material.

The objective of the workshop is to conduct a roundtable discussion of the key issues related to establishing an "authorized radiopharmacist" in NRC's regulations. The organizations that will be represented at the workshop include: Board of Pharmaceutical Specialties; American Board of Science in Nuclear Medicine; National Association of Boards of Pharmacy; Committee on Radionuclides and Radiopharmaceuticals of the U.S. Council for Energy Awareness; American Pharmaceutical Association, American Society of Hospital Pharmacists, and selected graduate schools of pharmacy.

Conduct of the Meeting

The workshop will be chaired by the undersigned and moderated by Mr. John L. Telford, Section Chief, Rulemaking Section, Regulation Development Branch, Division of Regulatory Commission. The workshop will be conducted in a manner that will facilitate the orderly conduct of business. The transcript of the workshop will be available for inspection, and copying for a fee, at the NRC Public Document Room, 2120 L Street NW., Washington, DC 20555 on or about August 27, 1991.

The following procedures apply to public attendance at the workshop:

1. Questions or statements from attendees other than participants (i.e., representatives of the organizations listed above and participating NRC staff) will be entertained as time permits.
2. Seating for the public will be on a first-come first-served basis.

Dated at Rockville, Maryland, this 25th day of July 1991.

For the Nuclear Regulatory Commission.

Sher Bahadur,

Chief, Regulation Development Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 91–18104 Filed 7–30–91; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM–61; Notice No. SC–91–9–NM]

Special Conditions: British Aerospace Model 146–100A, –200A and –300A Airplanes Equipped With Phase II Avionics; Lightning and High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the British Aerospace Model 146–100A, –200A and –300A Series airplanes. These airplanes are equipped with British Aerospace 146 Phase II high-technology digital avionics systems which perform critical or essential functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of lightning and high-intensity radiated fields (HIRF). This notice proposes additional safety standards which the Administrator considers necessary to ensure that the critical and essential functions that these systems perform are maintained when the airplane is exposed to lightning and HIRF.

DATES: Comments must be received on or before September 16, 1991.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–61, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM–61. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: William L. Schroeder, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4046; telephone (206) 227–2148.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposal. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM–61." The postcard will be date/time stamped, and returned to the commentor.

Background

On May 6, 1989, and January 6, 1989, British Aerospace applied for amendment to their Type Certificate (TC) No. A49EU for their Model 146 Series airplanes to include the Phase II Avionics package. The 146–100A and –200A were applied for on May 8, 1989, and the 146–300A on January 6, 1989. The Model 146 series is a high wing pressurized 94–108 passenger transport category airplane with a maximum takeoff gross weight of 84,000 to 95,000 pounds (depending on model), maximum cruise speed of 305 knots, and a maximum operating altitude of 31,000 feet. The airplanes are powered by four Avco Lycoming turbofan engines mounted on the wing. The Phase II avionics installation on the airplane incorporates a number of novel or unusual design features, such as digital avionics including, but not necessarily limited to, an electronic flight instrument system (EFIS) including primary airspeed and vertical speed, dual fail passive digital flight guidance system with Category III automatic landing system, dual digital air data computers, and full authority digital engine control (FADEC) with auto throttle system which are vulnerable to lightning and high-intensity radiated fields ((HIRF) external to the airplane.

Type Certification Basis

Under the provisions of § 21.101 of the FAR, British Aerospace must show that the Model 146 meets the applicable provisions of the regulations incorporated by reference in TC No. A49EU, or the applicable regulations in effect on the date of application for the Model 146 unless: (1) otherwise specified by the Administrator; or (2) compliance with later effective amendments is elected or required under § 21.17; and (3) special conditions are prescribed by the Administrator.

The Phase II avionics installation for the Model 146 would be required to comply with part 25, as amended through Amendment 25–66. In addition, part 34 of the FAR through the latest amendments in effect at the time of awarding the type certificate, and part 36 of the FAR through the latest amendment in effect on the date the noise tests are performed, must be met. The special conditions which may be developed as a result of this notice will form an additional part of the type certification basis.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for Model 146 series airplanes with Phase II avionics because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, are required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.17(a)(2). In addition to the applicable airworthiness regulations and special conditions, the Model 146 must comply with the noise certification requirements of part 36 and the engine emission requirements of part 34.

Discussion

The existing lightning protection airworthiness certification requirements are insufficient to provide an acceptable level of safety with the new technology avionic systems. There are two regulations that specifically pertain to lightning protection; one for the airframe in general (§ 25.581), and the other for fuel system protection; (§ 25.954). There are, however, no regulations that deal specifically with protection of electrical and electronic systems from lightning. The loss of a critical function of these systems due to lightning would prevent continued safe flight and landing of the airplane. Although the loss of an essential function would not prevent continued safe flight and landing, it would significantly impact the safety level of the airplane.

There is also no specific regulation that addresses protection requirements for electrical and electronic systems from high-intensity radiated fields (HIRF). Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are proposed for the Model 146 Phase II avionics which would require that the new technology electrical and electronic systems such as the electronic flight instrument system (EFIS), dual fail passive digital flight guidance system with Category III automatic landing, dual digital aid data computers, and full authority digital engine control (FADEC) with auto throttles, be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of lightning and HIRF.

Lightning

To provide a means of compliance with the proposed special conditions, a clarification on the threat definition for lightning is needed. The following "threat definition," based on FAA Advisory Circular 20–136, Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning, dated March 5, 1990, is proposed as a basis to use in demonstrating compliance with the proposed lightning protection special condition.

The lightning current waveforms (Components A, D, and H) defined below, along with the voltage waveforms in Advisory Circular (AC) 20–53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depend upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analyses need to be conducted in order to obtain the resultant internal threat to the installed systems. The electronic systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and/or malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke:* (Severe Strike—Component A, or Restrike—Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents and voltages is sufficiently below the equipment "hardness" level; then

2. *Multiple Stroke Flash:* (1/2 Component D). A lightning strike is often composed of a number of successive strokes, referred to as multiple strokes. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can the be primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of 1/2 magnitude of Component D (peak amplitude of 50,000 amps). The 23 restrikes are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation.

And,

3. *Multiple Burst:* (Component H). In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause physical damage, it is possible that transients resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of short duration, low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is necessary that this component be translated into a internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes each, distributed over a period of 2 seconds. Each set of 20 strokes is made up of 20 repetitive Component H waveforms distributed within a period of one millisecond. The minimum time between individual Component H pulses within a burst is 10ms, the maximum is 50ms. The 24 bursts are distributed over a period of up to 2 seconds according to the following constraints: (1) the minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. The individual "Multiple Burst" Component H waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (1/2 Component D), and the "Multiple burst" (Component H).

These components are defined by the following exponential equation:

$i(t)=I_o\,(e^{-\alpha t}-e^{-\beta t})$

where:

t = time in seconds,

i = current in amperes, and

		Severe strike (component A)	Restrike (component D)	Multiple stroke (1/2 component D)	Multiple burst (component H)
I_o, amp	=	218,810	109,405	54,703	10,572
a, sec^{-1}	=	11,354	22,708	22,708	187,191
b, sec^{-1}	=	647,265	1,294,530	1,294,530	19,105,100
This equation produces the following characteristics:					
i_{peak}	=	200 KA	100 KA	50 KA	10 KA
and					
$(di/dt)_{max}$ (amp/sec)	=	1.4×10^{11} @t=0+sec	1.4×10^{11} @t=0+sec	0.7×10^{11} @t=0+sec	2.0×10^{11} @t=0+sec
di/dt, (amp/sec)	=	1.0×10^{11} @t=.5μs	1.0×10^{11} @t=.25μs	0.5×10^{11} @t=.25μs	
Action Integral (amp^2 sec)	=	2.0×10^6	0.25×10^6	$.0625\times10^6$	

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as EFIS, to HIRF must be established. It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz-500 KHz	50	60
500 KHz- 2 MHz	80	80
2 MHz- 30 MHz	200	200
30 MHz-100 KHz	33	33
100 MHz-200 MHz	33	33
200 MHz-400 MHz	150	33
400 MHz- 1 GHz	8,300	2,000
1 GHz- 2 GHz	5,000	1,500
2 GHz- 4 GHz	17,000	1,200
4 GHz- 6 GHz	14,500	800
6 GHz- 8 GHz	4,000	600
8 GHz- 12 GHz	9,000	2,000
12 GHz- 20 GHz	4,000	500
20 GHz- 40 GHz	4,000	1,000

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S. It will also be adopted by the European Joint Airworthiness Authorities.

Conclusion

This action affects only certain unusual or novel design features on one model of airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the British Aerospace Model 146 Series airplanes with Phase II avionics:

1. Lightning Protection

a. Each electrical and electronic system which performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to lightning.

b. Each essential function of electrical or electronic systems or installations must be protected to ensure that the function can be recovered in a timely manner after the airplane has been exposed to lightning.

2. Protection From Unwanted Effects of High-Intensity Radiated Fields (HIRF)

Each electrical and electronic system which performs critical functions must bedesigned and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to externally radiated electromagnetic energy.

3. The following definitions apply with respect to these special conditions:

Critical Function. Functions whose failure would contribute to or cause a failure condition which would prevent the continued safe flight and landing of the airplane.

Essential Functions. Functions whose failure would contribute to or cause a failure condition which would significantly impct the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions.

Issued in Renton, Washington, on July 9, 1991.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-18076 Filed 7-30-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 22

[Public Notice 1438]

Schedule of Fees for Consular Services, Department of State and Foreign Service of the United States

AGENCY: Bureau of Consular Affairs (DOS).

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend § 22.1 of part 22 of title 22, Code of Federal Regulations by making certain changes in the schedule of fees. The proposed rule would increase some consular fees, remove some no-fee items from the schedule of fees, and add a new fee item for return check processing. Only those fees listed in this proposed rule would be changed. The other fees and services in the schedule of fees remain unchanged. These changes are made to reflect the cost of providing these services.

DATES: Written comments must be received on or before August 30, 1991.

ADDRESSES: Interested persons are invited to submit comments in duplicate to: Office of Executive Director, Bureau of Consular Affairs, Department of State, Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Ted Gong, Office of Executive Director, Bureau of Consular Affairs [202] 647-1148.

SUPPLEMENTARY INFORMATION: The Secretary of State is authorized under E.O. 10718 of June 27, 1957 to prescribe rates of fees to be charged for official services and to designate what is to be regarded as official services, besides what are expressly declared by law. Under this authority, the Secretary has determined that a number of fees for consular services performed overseas, as well as in the United States, should be changed to better reflect the cost of providing those services, within the policy guidelines set by OMB Circular No. A-25. That policy states that services which directly benefit individuals, organizations or groups should be paid for by the users rather than the taxpayers. Services performed for the primary benefit of the general public or the U.S. Government are to be supported by tax revenues. The changes set forth in this proposed rule reflect this policy.

List of Subjects in 22 CFR Part 22

Passports and visas, schedule of consular fees.

This rule is not considered to be a major rule for purposes of E.O. 12291 nor is it expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Accordingly, part 22 would be amended as follows:

PART 22—[AMENDED]

1. The authority citation for part 22 continues to read as follows:

Authority: Sec. 3, 4, 63 Stat. 111, as amended; 22 U.S.C. 211a; 214, 2651, 2658, 3921, 4219; 31 U.S.C. 9701; E.O. 10718, 22 FR 4632; E.O. 11295, 31 FR 10603; 3 CFR, 1954–1958 Comp. p. 507.

§§ 22.1 [Amended]

2. The following consular fees in § 22.1 of part 22 would be revised as follows:

Item number	Current fee	Proposed fee
Passport and Citizenship Services		
1. Execution of application for passport	$7.00	$10.00
2. Examination of passport application executed before a foreign official	7.00	10.00
3. Passport issuance to adult (22 U.S.C. 214)	35.00	55.00
4. Passport issuance to minor	20.00	30.00
5. Issuance of card of identity	5.00	(¹)
12. For delivery to the applicant of a certified copy of an executed form:		
(a) Of repatriation of a native-born American woman whose marital status was an alien terminated prior to January 13, 1941	4.00	(¹)
(b) Of repatriation of a native-born American women under sec. 324 of the Immigration and Nationality Act (8 U.S.C. 1435)	4.00	(¹)
(c) Of repatriation under the Act of July 20, 1954 (8 U.S.C. 1438 Supp.) of a person who while a citizen of the United States lost his citizenship by voting in Japan between September 2, 1945 and April 27, 1952, inclusive	4.00	(¹)
13. (a) Registration of birth of American citizen including furnishing one copy of Form FS-240 "Report of Birth Abroad of a Citizen of the United States of America" and Form FS-545, "Certification of Birth"	13.00	10.00
14. Documents from passport files and related records (except as specified in Item 13):		
(a) For file search	8.00	15.00
(b) For duplicating by photocopy or other such means, per each copy of each page	.20	.25
(c) For certifying of a true copy	3.00	5.00
(d) For certifying by letter under official seal a statement or extract from passport files or a statement that no record of a passport file can be located (plus $8.00 search charge of 14(a))	2.00	² 5.00
16. Granting an exception under 22 CFR 53.2(h) of Travel Control Regulations	80.00	100.00
17. Instant photo service, where offered by a Foreign Service post, for each pair of identical photographs	7.00	(¹)
18. Certified copies of documents in item 13 concerning Pass-Port and Citizenship Services, (may be obtained from Passport Services, Correspondence Branch, Department of State, Washington, DC 20524)	4.00	10.00
VISA Services for Aliens		
20. Furnishing and verification of application and issuance of immigrant visa, including duplicate copy	125.00	170.00
21. Issuance of each immigrant visa	25.00	30.00
24. Visa or supplemental visa of alien crew list: (If item 93 is applicable, only one surcharge shall be applied per group served on the same visit.)		
(a) Up to 40 crew members	37.00	40.00
(b) 41 to 100 crew members	88.00	100.00
(c) 101 to 200 crew members	185.00	210.00
(d) Over 200 crew members	246.00	280.00
Services Relating to Vessels and Seamen		
30. Noting marine protest, when required by a master of a foreign or an undocumented vessel	9.00	18.00
31. Extending marine protest, when required by a master of a foreign or an undocumented vessel	52.00	104.00
32. Protest of a master against charterers or freighters, when required by a master or a foreign or an undocumented vessel	8.00	16.00
33. Shipment or discharge of seamen on undocumented vessel, each seaman (If item 93 is applicable, only one surcharge shall be applied per group served on the same visit	5.00	10.00
34. Recording of bill of sale of vessel purchased abroad, taking of application for provisional certificate or registration or certificate of American ownership, and investigation	40.00	60.00

Item number	Current fee	Proposed fee
35. Issuance of provisional certificate of registry or certificate of American ownership	30.00	60.00
Notarial Services and Authentications		
45. Notarial services:		
(a) Administering an oath and certificate thereof	4.00	25.00
(b) Taking the acknowledgement of the execution of a document, and certificate thereof	4.00	25.00
(c) Certifying under official seal that a copy or extract made from an official or a private document is a true copy	2.00	25.00
(d) Certifying to official character of a foreign notary or other official (i.e., authenticating a document)	2.00	25.00
(e) For affidavit of petitioner or his agent on documents or evidence to be presented to the Federal Government	4.00	25.00
(f) Authenticating a Federal, State or Territorial seal, or certifying to the official status of an officer of the United States Department of State or of a foreign diplomatic or consular officer accredited to or recognized by the United States Government, or any document submitted to the Department for that purpose	4.00	25.00
49. Administering oaths, taking acknowledgements in connection with application for letters patent or registration of trademarks, or with the assignment or transfer of rights thereunder	4.00	(1)
50. Administering an oath and certificate thereof for petition for immediate relative, nonimmigrant fiance(e), temporary worker, nonimmigrant intracompany transferee, or preference immigrant status	4.00	(1)
51. Administering oaths or taking acknowledgements, or authenticating the signatures of officials, in connection with kinsmen's petitions for wages and effects of deceased seamen of the American merchant marine (46 U.S.C. 637)	13.00	(1)
55. Noting of a negotiable instrument for want of acceptance or payment, certifying to protest and giving notice to issuer and endorsers when requested to do so	10.00	20.00
67. Providing seal and certificate for return of letters rogatory executed by foreign officials	16.00	32.00
Copying and Recording		
75. For typing a copy of a document or extract of a document	2.00	5.00
76. For photocopying or otherwise duplicating a document, per copy of each page	.20	.25
Examination Services		
82. Supervising or proctoring an examination at the request of an agency or instrumentality of the Federal or a State Government by a consular or other officer, including completion of a certificate without seal—for each hour or fraction thereof unless the cost is reimbursable to the Department of State by an agency or instrumentality of the Federal or a State government	90.00	140.00
Other Consular Services		
84. Preparing and Sending Interested Party Messages for the primary benefit of nongovernment individuals, organizations, or groups:		
(a) From a Foreign Service post to the Department of State	15.00	30.00
(b) From Department of State to a Foreign Service post	15.00	30.00
(c) From a Foreign Service post to another Foreign Service post	15.00	30.00
88. Searching for and forwarding a document requested from a Foreign Service post by a nongovernment individual, organization or group (for each document)	13.00	(1)
Surcharges		
58. Surcharges for services rendered away from office or after duty hours in the United States or in a foreign country are required for all "FEE" services listed above when performed at the request of an interested party unless specifically exempted, but are not required for "No Fee" services nor for instances of common disaster (i.e. shipwrecks, air crashes, etc.) or for evacuations		
However, whether employees can be made available to perform duties away from office or after hours will be determined by the Consul General, the supervising consular officer, or the Passport Agency Director after considering workload priorities for the staff concerned. The following surcharges, when required, are added to regular fees:		
(a) American employee	20.00	35.00
(b) Foreign Service National employee	10.00	20.00

[1] Eliminate category.

[2] Plus $15.00 search charge of 14(a).

3. The following new fee would be added to § 22.1 of part 22, as follows:

Item No.	Current fee	Proposed fee
95. Return check processing fee.	No fee	25.00

4. The following no-fee categories of services in § 22.1 of part 22 would be removed from the schedule of fees:

Item number	Current fee	Proposed fee
7. Amendment to passport: (b) To correct administrative error	No fee	Eliminate category.
8. Verification of passport	No fee	Eliminate category.
11. Administering the oath of allegiance to a native-born American woman who lost her citizenship	No fee	Eliminate category.
25. Revalidation or transfer of nonimmigrant visa	Reciprocal	Eliminate category.
86. U.S. Selective Service Registration in a foreign country	No fee	Eliminate category.
87. Distribution of U.S. Treasury checks to Federal beneficiaries	No fee	Eliminate category.

Dated: June 20, 1991.
Elizabeth M. Tamposi,
Assistant Secretary Consular Af
[FR Doc. 91-17987 Filed 7-30-91
BILLING CODE 4710-06-M

DEPARTMENT OF TRANSP

Federal Highway Administr

23 CFR Part 650

[FHWA Docket No. 91-13, Noti

RIN 2125-AC73

Highway Bridge Replaceme
Rehabilitation Program

AGENCY: Federal Highway
Administration (FHWA), DC

ACTION: Extension of comme

SUMMARY: The Federal High
Administration (FHWA) issu
of proposed rulemaking (NP
was published in the Federa
June 4, 1991 (56 FR 25392). T
NPRM, the FHWA requeste
on a proposed revision to its
for evaluating existing highw
for eligibility under the High
Replacement and Rehabilita
Program. The comment peri
scheduled to close on Augus
give interested parties adeq
respond to the NPRM, the F
extending the comment peri
September 5, 1991.

DATES: Comments must be r
or before September 5, 1991.

ADDRESSES: Submit written,
comments to FHWA Docket
Federal Highway Administr
of the Chief Counsel, room 4
10, 400 Seventh Street SW.,
DC 20590. All comments rec
available for examination a
address between 8:30 a.m. a
e.t., Monday through Friday,
legal holidays. Those desiri
notification of receipt of co
include a self-addressed, st
postcard.

FOR FURTHER INFORMATION
Mr. Daniel S. O'Connor, Bri
Management Branch, Bridge
Office of Engineering, (202)
Ms. Vivian Philbin, Office o
Counsel, (202) 366-0780, Fed
Highway Administration, 40
SW., Washington, DC 20590.
hours are from 7:45 a.m to 4
Monday through Friday, exc
holidays.

SUPPLEMENTARY INFORMATI
FHWA proposes to impleme
of-service criteria for evalua

Dated: June 20, 1991.

Elizabeth M. Tamposi,

Assistant Secretary Consular Affairs.

[FR Doc. 91-17987 Filed 7-30-91; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 650

[FHWA Docket No. 91-13, Notice No. 2]

RIN 2125-AC73

Highway Bridge Replacement and Rehabilitation Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Extension of comment period.

SUMMARY: The Federal Highway Administration (FHWA) issued a notice of proposed rulemaking (NPRM) which was published in the **Federal Register** on June 4, 1991 (56 FR 25392). Through this NPRM, the FHWA requested comments on a proposed revision to its procedures for evaluating existing highway bridges for eligibility under the Highway Bridge Replacement and Rehabilitation Program. The comment period is scheduled to close on August 5, 1991. To give interested parties adequate time to respond to the NPRM, the FHWA is extending the comment period to September 5, 1991.

DATES: Comments must be received on or before September 5, 1991.

ADDRESSES: Submit written, signed comments to FHWA Docket No. 91-13, Federal Highway Administration, Office of the Chief Counsel, room 4232, HCC-10, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel S. O'Connor, Bridge Management Branch, Bridge Division, Office of Engineering, (202) 366-1567; or Ms. Vivian Philbin, Office of Chief Counsel, (202) 366-0780, Federal Highway Administration, 400 7th Street SW., Washington, DC 20590. Office hours are from 7:45 a.m to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The FHWA proposes to implement a level-of-service criteria for evaluating existing highway bridges for eligibility under the Highway Bridge Replacement and Rehabilitation Program. This criteria would replace the evaluation method described in 23 CFR 650.409 which is based on a Sufficiency Rating formula. The basis of the level-ofservice evaluation will be structural, geometric and inventory information contained in the National Bridge Inventory. Bridges that do not provide the specified level-of-service will be included in calculations for apportioning HBRRP funds under 23 U.S.C. 144.

The FHWA has received a request from the Advocates for Highway and Auto Safety for an extension of the comment period. The Advocates for Highway and Auto Safety are requesting an extension to allow additional time for research and review of records, and to adequately prepare an informed response. The FHWA is granting the request and the comment period is being extended to September 5, 1991.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: July 24, 1991.

T.D. Larson,

Administrator.

[FR Doc. 91-18027 Filed 7-30-91; 8:45 am]

BILLING CODE 4910-22-M

Coast Guard

33 CFR Part 165

[CGD 13-90-03]

RIN 2115-AD86

Regulated Navigation Area; Puget Sound, WA

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the regulations for the Regulated Navigation Area (RNA), 33 CFR 165.1301, in Puget Sound and adjacent waters in northwestern Washington. This action would: (1) Delete the provisions for a Temporary Special Traffic Lane (TSTL); (2) Require vessels occupying the traffic lanes to move out of the way of through traffic in the Traffic Separation Scheme (TSS); (3) Establish prohibited fishing areas in one ferry crossing, and adjacent to the main ship channel draw span of the Hood Canal Bridge; (4) Require vessels fishing in the TSS to monitor the VTS VHF-FM working frequency; (5) Change the characteristic of the existing sound signals for vessels transiting congested areas; (6) Establish a speed limit of 8 knots for vessels transiting congested areas; and (7) Establish provisions for deviations from these rules.

This amendment is needed due to the large number of user conflicts in Puget Sound and potentially hazardous situations which frequently develop during periods of heavy congestion. The intended effect of this proposed action is to prevent vessel collisions and groundings, property loss, loss of life, and environmental damage resulting from conflicts between the varied users of these waters, including fishing vessels, pleasure craft, passenger ferries, towboats, and deep draft vessel traffic.

DATES: Comments must be received on or before August 30, 1991.

ADDRESSES: Written comments should be submitted to Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174. Comments will be available for inspection in room 3410 at the above address. Normal office hours are 8 a.m. to 4 p.m., Monday through Friday, except holidays. Written comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: CDR Michael J. Haucke, USCG, Puget Sound Vessel Traffic Service, 1519 Alaskan Way South, Seattle, Washington 98134. Telephone (206) 286-5640.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 13-90-03), and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed envelope is enclosed. The proposed rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

No public hearing is planned. This does not preclude scheduling a hearing at a later date should the written comments provide significant new information.

Drafting Information

The drafters of this notice are CDR Michael J. Haucke, USCG, Puget Sound Vessel Traffic Service and LT Deborah K. Schram, USCGR project attorney, Thirteenth Coast Guard District Legal Office.

Discussion of Proposed Rulemaking

General

On August 13, 1984 the Coast Guard published a final rule to establish a Regulated Navigation Area in Puget Sound and adjacent waters in northwestern Washington. That rule was preceded by a Notice of Proposed Rulemaking (NPRM) on October 27, 1983 and a Supplemental Notice of Proposed Rulemaking (SNPRM) on May 10, 1984. The final rulemaking reestablished elements of a former U.S. Army Corps of Engineers' regulation and established procedures for Puget Sound Vessel Traffic Service (PSVTS) to activate Temporary Special Traffic Lanes (TSTL) to facilitate a safe and orderly flow of traffic during periods of congestion. The present regulation represents a compromise between commercial fishing and commercial transportation interests. As it currently exists, the TSTL is a temporary, two-way, 1000 yard wide traffic lane that must be vacated for through traffic. The TSTL may be established by the Puget Sound Vessel Traffic Service (PSVTS) when fishing or other operations have reached or may reach such concentrations as to significantly impede navigation or create a hazard. The existing rule provides that fishing vessels and other craft will clear a path within a TSTL when through traffic approaches. Activating the TSTL confines two way ship traffic in a one-half mile wide lane and eliminates the separation zone. After several years of experience the TSTL has proven to be ineffective in reducing user conflicts and defeats the most valuable safety feature of the TSS, the traffic separation zone. Even with Coast Guard law enforcement vessels on scene, the Coast Guard has had difficulty keeping the TSTL clear. Vessels following the temporary traffic lanes are forced to maneuver to avoid concentrations of boats and nets, resulting in frequent close-quarters situations, both wish fishing vessels and with opposing through traffic within the single TSTL lane.

On October 1, 1990 the Coast Guard published a notice of proposed rulemaking (55 FR 39986) to amend the existing rule. This notice of proposed rulemaking (NPRM) proposed to eliminate: Provisions for a Temporary Special Traffic Lane (TSTL); the required sound signal; the requirement for showing a beam light in the direction of intended travel; the requirement for showing a quick flash of light; the requirement to shine a light in the direction of gear in the water; rerouting requirements for avoiding concentrations of vessels south of Lopez Island; and, the requirement for vessels to adjust sailing times to reduce through traffic. The October 1, 1990 NPRM proposed the following new requirements: Non-through traffic to clear the Traffic Lanes 15 minutes before the arrival of through traffic; prohibited fishing areas in the Edmonds-Kingston, Mukilteo-Clinton, and Fauntleroy-Vashon-Southworth ferry crossing; a prohibited fishing area at the Hood Canal bridge; and, vessels in the Traffic Separation Scheme (TSS) to monitor the Vessel Traffic Service (VTS) VHF working frequency. The requirement to tend nets or other gear in the water was rewritten for clarity. Based on oral testimony received at an October 11, 1990 public hearing and written comments received through November 15, 1990, the NPRM is amended and is reissued as this Supplemental Notice of Proposed Rulemaking (SNPRM). The changes resulting from written comments and oral presentations are addressed in the following discussion.

(1) *Elimination of the TSTL.* Three commenters supported elimination of the TSTL and two commenters opposed it. The proposed amendment to the existing rule eliminates provisions for the TSTL. The normal Traffic Separation Scheme, or TSS, is the system of traffic lanes, separation zones, and precautionary areas intended to promote safety by directing vessel traffic through distinct, separated routes. The TSS is clearly shown on all official marine charts of the Puget Sound region. It is described in detail in title 33 Code of Federal Regulations §§ 161.183 through 161.187. Deleting provisions for the TSTL will result in traffic separation between opposing through traffic at all times. The Coast Guard remains convinced that the TSTL created too many close quarters situations and should be eliminated.

(2) *Requirement for Congesting Traffic to Clear the Traffic Lanes.* Five commenters supported the requirement for non-through traffic to clear the lanes at least 15 minutes before the arrival of through traffic rule and one commenter opposed it. The Coast Guard remains convinced that the 15 minute rule is an important safety element in managing traffic, especially in conjunction with the speed limit provision included in this SNPRM. The requirement, for vessels engaged in fishing or other operations, to draw in their gear, maneuver, or otherwise clear the traffic lane no later than 15 minutes before the arrival of through traffic would apply to both lanes of the TSS under the proposed rule. Vessels in the traffic lanes, for purposes other than through traffic, must clear the occupied traffic lane and, when in the TSS East of Port Angeles, the adjacent separation zone, when a through vessel approaches. This 15 minute provision which, under the existing rule, is a provision only during times when the Temporary Special Traffic Lane (TSTL) is implemented by PSVTS would, under this new proposal, be in force at all times. PSVTS will broadcast the Estimated Time of Arrival (ETA) of through traffic in areas of congestion. The ability to clear the lanes will be enhanced by the proposed requirement, below, that vessels in a traffic lane must monitor the PSVTS VHF–FM radio frequency.

(3) *Prohibited Fishing Areas.* Several commenters submitted statements on the proposed prohibited fishing areas. The areas proposed were the Edmonds-Kingston (including the wedge near Apple Cove Point), Mukilteo-Clinton, and Fauntleroy-Vashon-Southworth ferry crossings and an area at the Hood Canal bridge. Three supported the closure of the Edmonds-Kingston ferry crossing. One opposed the Mukilteo-Clinton prohibited fishing area. Two supported the Hood Canal Bridge prohibited fishing zone. Three opposed prohibited fishing in the ferry lanes other than Edmonds-Kingston ferry crossing. Three opposed the prohibited fishing area at Apple Cove Point, commonly referred to as the "wedge." One supported the closure of the "wedge." Ever since 1984, when the Edmonds-Kingston TSTL and the fifteen minute rule were implemented, and through 1989, the fifteen minute rule proved to be absolutely ineffective. Ferries were constantly stopped and experienced inordinate delays. Many commuter complaints were received by the Coast Guard. Members of the Washington Congressional delegation also received many complaints. Members of the delegation also received many complaints. Members of the delegation compelled the Coast Guard to find a solution. During the 1990 fishing season Puget Sound VTS issued a Temporary Special Rule which prohibited fishing in the ferry crossing. This temporary rule was wholly successful. Based on public comment and the experience gained by the Coast Guard in the 1990 fishing season, this supplemental rule proposes a prohibited fishing area in the one-half mile wide ferry lane between Edmonds and Kingston, not included the "wedge." It eliminates the proposal, made in the October 1, 1990 NPRM, for prohibited

fishing areas in the Mukilteo-Clinton and Faunterleroy-Vashon-Southworth ferry lanes. It retains the proposed prohibited fishing area near the Hood Canal Bridge draw span during the transit of a naval combatant. The existing rule calls for vessels operating in the Edmonds-Kingston ferry crossing to clear the lane 15 minutes prior to a ferry arrival. Ferry transit frequency coupled with the time required to set and retrieve nets make fishing in the ferry crossing, for practical purposes, difficult and unsafe. This proposed rule enhances safety of navigation for all users by prohibiting fishing in the ferry crossing during the hours of ferry operation. During the hours that the ferry is not operating, fishing will be allowed in the ferry lane. A prohibited fishing area will also be established within a one half nautical mile radius of the main ship channel draw span of the Hood Canal Bridge. This restriction only applies when naval combatants are transiting the draw span. Trident Submarine commanding officers and the Commander, Submarine Group 9 have expressed grave concern over the safety of fishing vessels that maneuver near the bridge and hamper the passage of submarines.

(4) *Requirment to Listen to the VTS Frequency.* Three commenters supported the requirement for vessels in the TSS to monitor the VTS frequency. Experience has shown that key elements to a safe transit through congested areas are the abilities for vessels to monitor through traffics's location, course, speed, and Estimated Time of Arrival (ETA), and the ability to communicate, bridge to bridge. VTS broadcasts provide information about through traffic transiting the TSS, its location, and projected arrival time. Listening to the VTS frequency and the VTS broadcasts of traffic information will help fishing vessels and other craft clear the traffic lane and comply with this regulation. This is especially true at night when visibility is reduced because of darkness. An alternative to the radio listening requirement would be to stay clear of the TSS.

(5) *Sound Signal for Transiting Congested Areas.* One commenter opposed the elimination of the authorized sound signal for transiting areas of congestion. The requirement of the existing rule, dealing with sound signals, is in conflict with rules 35 and 36 of the collision regulations (72 COLREGS). The October 1, 1990 NPRM proposed to eliminate the signal. Subsequent to publication of the NPRM, and in response to a Coast Guard inquiry, the Navigation Safety Advisory Council (NAVSAC) reviewed and substantiated the conflict with the COLREGS. The intended benefactors of this sound signal, e.g. sailing vessels under sail, have a desire to know whether the through traffic is a tug with tow or not. Under this proposed rule, transiting vessels would sound the restricted visibility sound signal for a vessel of their type, followed by one extra long blast of 10 to 12 seconds duration. The requirement that vessels "shall" sound the signal is proposed to be replaced by the option "may" sound the signal. The extra long blast and the option proposals were recommended by the NAVSAC.

(6) *Speed Limit.* One commenter suggested a speed limit for through traffic. This element of the supplemental rule adds a provision for an 8 knot speed limit for traffic passing through congested areas. It is a new element that was not proposed in the October 1, 1990 NPRM. The Coast Guard is concerned for the safety of lives and property, and believes that a maximum speed of 8 knots will improve safety by providing ample time for non-through traffic to clear the lanes and for through traffic to safely maneuver through areas of congestion. A speed of 8 knots should provide sufficient steerage for the type of vessels transiting within the affected area. If this speed limit is a problem for individual vessels due to harmonic or other propulsion system limitation, a deviation from these rules may be requested in accordance with the proposed new provisions for deviations. In an emergency, any master may deviate from these regulations to avoid endangering persons, property, or the environment.

(7) *Deviations From the Regulation.* This element of the supplemental rule adds a new section regarding deviation from the other requirements of the proposed regulation. It is a new element that was not proposed in the October 1, 1990 NPRM. While every attempt is made to cover all situations that need to be regulated, characteristic problems with vessel traffic management require periodic flexibility. The area covered by this proposed regulation is the same area managed by Puget Sound Vessel Traffic Service (PSVTS). PSVTS has radar coverage of the typically congested areas and has the expertise to grant deviations to the requirements of this proposed rule. This proposed rule grants PSVTS authority for that purpose. It also allows for advance requests for deviations to be submitted to Commander, Thirteenth Coast Guard District. In each case the requested deviation must be safer than the required procedure. It also clarified that the master, pilot, or person directing the movement of a vessel may deviate in emergencies for the protection of life and property.

Economic Assessment and Certification

Three commenters opposed the statement of no significant economic impact of the October 1, 1990, NPRM. Since the changes herein would not prohibit fishing in the apparently productive Apple Cove Pt. "wedge" and two of the tree ferry crossings proposed in the October 1, 1990, NPRM and, would prohibit fishing in only the Edmonds-Kingston one-half mile wide ferry crossing during the hours the ferry is operating and occasional closing of the area in the vicinity of the Hood Canal Bridge draw span, the Coast Guard believes that the statement of no significant economic impact remains correct. This proposed regulation is considered to be nonsignificant in accordance with DOT policy and procedures for simplification, analysis, and review of regulation (DOT Order 2100.5). The economic impact of this proposal is expected to be minimal since only a very small area, compared to the area of Puget Sound and the adjacent waters, is involved. The effect of the prohibited fishing areas is to move the congestion away from a ferry commuter route and a narrow bridge opening. These prohibited fishing areas are not expected to have a significant effect on the overall ability of commercial fishing vessels to catch fish. Therefore, further economic evaluation is not necessary. This economic assessment is subject to change depending on comments received. Further analysis by the Washington Department of Wildlife and Fisheries, in response to inquiries by the Coast Guard, supports the finding of nonsignificance.

Based upon this assessment it is certified, in accordance with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation has been reviewed in accordance with Executive Order 12291 of February 17, 1981, on Federal Regulation and has been determined not to be a major rule under the terms of that order.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it appears that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. No comments were received on federalism concerns during the comment period. However, comments regarding possible impact this proposed change to the rule may have on state fisheries regulations, Native American fishing rights, or other federalism concerns are requested. This assessment may be changed in light of comments received.

Environmental Concerns

The proposed change to the existing Regulated Navigation Area appears to be categorically excluded from environmental assessment requirements. However, comments addressing possible impacts this proposed change may have on the human environment or potential inconsistencies with any Federal, state, or local law or administrative determination relating to the environment are solicited. A final determination regarding the possible need for an environmental assessment will be made after receipt of written comments.

Collection of Information

This proposed rulemaking contains a collection of information requirement in § 165.1301(e)(1), which requires a written request to the Commander, Thirteenth Coast Guard District for authorization to deviate from the Puget Sound regulated navigation area rules. This collection of information requirement is included in the approval for 33 CFR part 165 under OMB control number 2115–0540 as displayed in 33 CFR part 4.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposed to amend Part 165 of Title 33, Code of Federal Regulations as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5 and 49 CFR 1.46.

2. Section 165.1301 is revised to read as follows:

§ 165.1301 Puget Sound, Washington—regulated navigation area.

(a) The following is a regulated navigation area—All the following northwestern Washington waters under the jurisdiction of the Captain of the Port Puget Sound: Puget Sound, Hood Canal, Possession Sound, Elliott Bay, Commencement Bay, the San Juan Archipelago, Rosario Strait, Guemes Channel, Bellingham Bay, U.S. waters of the Strait of Juan de Fuca and Georgia Strait, and all waters adjacent to the above.

(b) This regulation is intended to enhance vessel traffic safety during periods of vessel congestion. Operations potentially creating vessel congestion include, but are not limited to, vessels engaged in fishing, including gillnet or purse seine, recreational fishing derbies, sailboat races or regattas, and marine parades. For the purposes of these rules, the definition of "vessels engaged in fishing" is identical to that found in Rule 3 of the 72 COLREGS.

(c) General regulations.

(1) Vessels transmitting areas occupied by concentrations of vessels engaged in fishing or other operations may indicate their approach by sounding the restricted visibility sound signal for a vessel of their type, followed by one long blast of 10 to 12 seconds duration.

(2) Vessels engaged in fishing or any operation other than through transit of a traffic lane within an established Traffic Separation Scheme (TSS), as defined in 33 CFR 161.183 through 161.187 and 161.262 through 161.264, may not remain in, nor may their gear remain in, a traffic lane when another vessel engaged in through transit of a traffic lane approaches the area of congestion. Vessels not in through transit of a traffic lane within a TSS must draw in their gear, maneuver, or otherwise clear the traffic lane at least fifteen minutes before the arrival of the through vessel. Vessels which are required by this rule to leave the traffic lane must also remain clear of the designated separation zone when in a TSS east of Port Angles, WA.

(3) Vessels in a traffic lane or separation zone, engaged in fishing or operations other than through transit of a traffic lane or separation zone must:

(i) Monitor the Puget Sound Vessel Traffic Service VHF–FM radio frequency in use for the area in which the vessel is operating, and

(ii) At all times tend nets or other gear placed in the water so as to facilitate the movement of the vessel or gear from the lane for approaching vessels.

(4) Vessels engaged in gillnet fishing at any time between sunset and sunrise in any of the above listed waters shall display, at the end of the net most distant from the vessel, an all-round (32 point) white light visible for a minimum of two nautical miles at least three feet above the surface of the water.

(5) Vessels engaged in through transit of areas of congestion may not exceed a speed of 8 knots through the water when transiting areas occupied by concentrations of vessels engaged in fishing or other operations.

(6) Nothing in these rules shall be construed as relieving any party from their responsibility to comply with the applicable rules as set forth in the 72 COLREGS.

(d) Prohibited fishing areas. Vessels engaged in fishing, including gillnet and purse seine fishing, are prohibited in the following areas.

(1) Edmonds—Kingston Ferry lane to include the waters within one-quarter nautical mile on either side of a straight line connecting the Edmonds and Kingston ferry landings during the hours that the ferry is operating.

(2) The Hood Canal Bridge to include the waters within a one-half nautical mile radius of the main ship channel draw span of the Hood Canal Bridge during the transit of the draw span by naval combatants.

(e) Authorization to deviate from these rules.

(1) Commander, Thirteenth Coast Guard District may, upon written request, issue an authorization to deviate from these rules if the proposed deviation provides a level of safety equivalent to or beyond that provided by the required procedure. An application for an authorization must state the need for the deviation and describe the proposed alternative operation.

(2) Puget Sound Vessel Traffic Service may, upon request, authorize a deviation from these rules for a voyage, or part of a voyage, if the proposed deviation provides a level of safety equivalent to or beyond that provided by the required procedure.

(i) The deviation request must be made well in advance to allow the requesting vessel and the Vessel Traffic Center (VTC) sufficient time to assess the safety of the proposed deviation.

(ii) The requesting vessel and the VTC must exchange relevant information on vessel handling characteristics, traffic density, radar contacts, and environmental conditions.

(3) In an emergency, the master, pilot, or person directing the movement of a vessel may deviate from these rules to the extent necessary to avoid endangering persons, property, or the environment, and shall report the deviation to the VTC as soon as possible.

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(5) Vessels engaged in through transit of areas of congestion may not exceed a speed of 8 knots through the water when transiting areas occupied by concentrations of vessels engaged in fishing or other operations.

(6) Nothing in these rules shall be construed as relieving any party from their responsibility to comply with the applicable rules as set forth in the 72 COLREGS.

(d) Prohibited fishing areas. Vessels engaged in fishing, including gillnet and purse seine fishing, are prohibited in the following areas.

(1) Edmonds—Kingston Ferry lane to include the waters within one-quarter nautical mile on either side of a straight line connecting the Edmonds and Kingston ferry landings during the hours that the ferry is operating.

(2) The Hood Canal Bridge to include the waters within a one-half nautical mile radius of the main ship channel draw span of the Hood Canal Bridge during the transit of the draw span by naval combatants.

(e) Authorization to deviate from these rules.

(1) Commander, Thirteenth Coast Guard District may, upon written request, issue an authorization to deviate from these rules if the proposed deviation provides a level of safety equivalent to or beyond that provided by the required procedure. An application for an authorization must state the need for the deviation and describe the proposed alternative operation.

(2) Puget Sound Vessel Traffic Service may, upon request, authorize a deviation from these rules for a voyage, or part of a voyage, if the proposed deviation provides a level of safety equivalent to or beyond that provided by the required procedure.

(i) The deviation request must be made well in advance to allow the requesting vessel and the Vessel Traffic Center (VTC) sufficient time to assess the safety of the proposed deviation.

(ii) The requesting vessel and the VTC must exchange relevant information on vessel handling characteristics, traffic density, radar contacts, and environmental conditions.

(3) In an emergency, the master, pilot, or person directing the movement of a vessel may deviate from these rules to the extent necessary to avoid endangering persons, property, or the environment, and shall report the deviation to the VTC as soon as possible.

Dated: 6 May 1991.

J.E. Vorbach,

Commander, Thirteenth Coast Guard District.

[FR Doc. 91-17319 Filed 7-30-91; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 9E3719-9E3748/P521; FRL-3876-4]

RIN 2070-AC18

Pesticide Tolerances for Zinc Phosphide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that tolerances be established for residues of phosphine resulting from the use of the rodenticide zinc phosphide in or on the raw agricultural commodities artichoke and sugar beet (roots and tops). The proposed regulations to establish maximum permissible levels for residues of the rodenticide in or on the commodities were requested in petitions submitted by the Interregional Research Project No. 4 (IR-4).

DATES: Comments, identified by the document control number [PP 9E3719 and 9E3748/P521], must be received on or before August 30, 1991.

ADDRESSES: By mail, submit written comments to: Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H-7505C), Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-557-2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petitions 9E3719 tand 9E3748 to EPA on behalf of the Agricultural Experiment Station of California.

1. *PP 9E3719*: In or on the raw agricultural commodity globe artichoke at 0.01 part per million (ppm).

2. *PP 9E3748*: In or on the raw agricultural commodities sugarbeet roots at 0.04 ppm and sugar beet tops at 0.02 ppm.

The petitioner proposed that these uses of zinc phosphide be limited to California based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

The data submitted in the petitions and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerances are sought.

Zinc phosphide is formulated as a rodenticide bait. When eaten by rodents in sufficient quantity, zinc phosphide liberates phosphine gas, which is absorbed from the intestinal tract, causing death. Uneaten bait will dissipate into the air as phosphine gas; or into soil or water as non-hazardous zinc or phosphate compounds.

Phosphine is a highly reactive gas that reacts with raw agricultural commodities to form bound phosphate residues. The Agency stated in a Registration Standard for Zinc Phosphide (June 23, 1982) that a tolerance of 0.1 ppm for phosphine resulting from the use of zinc phosphide would be allowable for raw agricultural commodities, provided the bound phosphate residues can be fully characterized. At the time the registration standard was issued, the Agency identified 70 percent of the bound phosphate residues in treated commodities as consisting of oxy-acids of phosphorus, which are considered toxicologically insignificant at the levels found in treated commodities. Data have since been submitted which demonstrate that the remaining 30 percent of residues consists of oxidation products of phosphine (oxyphosphorus acids and/or their salts), which are also considered toxicologically insignificant at the levels found in treated commodities.

The residue of concern from the proposed use of zinc phosphide as a rodenticide bait for artichoke and sugar beet production is any unreacted zinc phosphide that may be present on the treated commodities. Residue data submitted by IR-4 indicate that the proposed tolerances for 0.1 ppm phosphine will not be exceeded as a result of any unreacted zinc phosphide that may be present on the treated commodities. There is no expectation of secondary residues in meat, milk, poultry, and eggs as a result of the proposed use.

A dietary exposure risk evaluation for phosphine uses a reference dose (RfD) of 0.0003 mg/kg/day, based upon an LEL (reduction of food intake and decreased body weight) from a 13-week rat feeding study, of 3.46 mg/kg/day and an uncertainty factor of 10,000. The theoretical maximum residue contribution (TMRC) for the overall U.S. population is calculated to be 0.000020 mg/kg/day (6.5 percent of the RfD) for published tolerances. The estimated increase in TMRC from the proposed use is calculated to be 0.000015 mg/kg/day (4.7 percent of the RfD) for the overall U.S. population. The total dietary exposure estimates for all population groups are well within the acceptable range; therefore, these proposed uses of zinc phosphide do not pose any unreasonable health risk.

The nature of the residues is adequately understood, and an adequate analytical method, spectrophotometric detection of phosphorus, is available for enforcement purposes in the *Pesticide Analytical Manual* (PAM), Vol. II. There are currently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR 180.284 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 9E3719 and 9E3748/P521]. All written comments filed in response to this petition will be available in the Public Information Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 15, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.284 is revised to read as follows:

§ 180.284 Zinc phosphide; tolerances for residues.

(a) Tolerances are established for residues of the phosphine resulting from the use of the rodenticide zinc phosphide in or on the raw agricultural commodities as follows:

Commodity	Parts per million
Grapes	0.01
Grasses (rangeland)	0.1
Sugarcane	0.01

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for residues of phosphine in or on the following raw agricultural commodities as follows:

Commodity	Parts per million
Artichoke (globe)	0.01
Sugar beet (roots)	0.04
Sugar beet (tops)	0.02

[FR Doc. 91-17930 Filed 7-30-91; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL MARITIME COMMISSION

46 CFR Part 586

[Docket No. 91-22]

Actions To Adjust or Meet Conditions Unfavorable to Shipping in the United States/Venezuela Trade

AGENCY: Federal Maritime Commission.

ACTION: Availability of finding of no significant impact.

SUMMARY: The Commission has completed an environmental assessment of a proposed rule in Docket No. 91-22 and found that the resolution of this proceeding will not have a significant impact on the quality of the human environment.

DATES: Petitions for review are due August 12, 1991.

ADDRESSES: Petitions for review (Original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573-0001.

FOR FURTHER INFORMATION CONTACT: Edward R. Meyer, Office of Information Resources Management, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573-0001.

SUPPLEMENTARY INFORMATION: Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Information Resources Management has determined that Docket No. 91-22 will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and that preparation of an environmental impact statement is not required.

In Docket 91-22 the Commission, pursuant to section 19 of the Merchant Marine Act, 1920, proposes a new rule to adjust or meet apparent unfavorable conditions in the United States/Venezuelan trade by imposing a per voyage fee in the amount of $100,000 upon certain named Venezuelan-flag carriers. The effect of the Proposed Rule would be to meet unfavorable shipping conditions by imposing burdens upon Venezuelan carriers which approximate those imposed upon third-flag vessels by Venezuelan law, regulations, policy and practice.

The Finding of No Significant Impact ("FONSI") will become final within 10 days of publication of this notice in the **Federal Register** unless a petition for review is filed pursuant to 46 CFR 504.6(b).

The FONSI and related environmental assessment are available for inspection on request from the office of the Secretary, room 11101, Federal Maritime Commission, Washington, DC 20573-0001, telephone (202) 523-5725.

Joseph C. Polking,

Secretary.

[FR Doc. 91-18058 Filed 7-30-91; 8:45 am]

BILLING CODE 6730-01-M

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46 CFR Part 586

[Docket No. 91-24]

Actions To Adjust or Meet Conditions Unfavorable to Shipping in the United States/Korea Trade

AGENCY: Federal Maritime Commission.

ACTION: Availability of finding of no significant impact.

SUMMARY: The Commission has completed an environmental assessment of a proposed rule in Docket No. 91-24 and found that the resolution of this proceeding will not have a significant impact on the quality of the human environment.

DATES: Petitions for review are due August 12, 1991.

ADDRESSES: Petitions for review (Original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573.

FOR FURTHER INFORMATION CONTACT: Edward R. Meyer, Office of Information Resources Management, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573-0001.

SUPPLEMENTARY INFORMATION: Upon completion of an environmental

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The Finding of No Significant Impact ("FONSI") will become final within 10 days of publication of this notice in the Federal Register unless a petition for review is filed pursuant to 46 CFR 504.6(b).

The FONSI and related environmental assessment are available for inspection on request from the office of the Secretary, room 11101, Federal Maritime Commission, Washington, DC 20573–0001, telephone (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 91–18058 Filed 7–30–91; 8:45 am]

BILLING CODE 6730–01–M

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46 CFR Part 586

[Docket No. 91–24]

Actions To Adjust or Meet Conditions Unfavorable to Shipping in the United States/Korea Trade

AGENCY: Federal Maritime Commission.

ACTION: Availability of finding of no significant impact.

SUMMARY: The Commission has completed an environmental assessment of a proposed rule in Docket No. 91–24 and found that the resolution of this proceeding will not have a significant impact on the quality of the human environment.

DATES: Petitions for review are due August 12, 1991.

ADDRESSES: Petitions for review (Original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573.

FOR FURTHER INFORMATION CONTACT: Edward R. Meyer, Office of Information Resources Management, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

SUPPLEMENTARY INFORMATION: Upon completion of an environmental

assessment, the Federal Maritime Commission's Office of Information Resources Management has determined that Docket No. 91–24 will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and that preparation of an environmental impact statement is not required.

In Docket 91–24 the Commission, in response to apparent unfavorable conditions in the foreign oceanborne trade between the United States and Korea, proposes the imposition of fees on Korean-flag vessels calling at United States ports. Korean law and regulations preclude U.S. carriers operating in the U.S./Korea trade from engaging in trucking activities and directly contracting for rail services in Korea. The effect of the rule will be to adjust or meet unfavorable conditions created by these laws and regulations by imposing countervailing burdens on the Korean-flag carriers.

This Finding of No Significant Impact ("FONSI") will become final within 10 days of publication of this notice in the Federal Register unless a petition for review is filed pursuant to 46 CFR 504.6(b).

The FONSI and related environmental assessment are available for inspection on request from the Office of the Secretary, room 11101, Federal Maritime Commission, Washington, DC 20573–0001, telephone (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 91–18059 Filed 7–30–91; 8:45 am]

BILLING CODE 6730–01–M

Notices

Federal Register
Vol. 56, No. 147
Wednesday, July 31, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TB-91-012]

Burley Tobacco Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App.) announcement is made of the following committee meeting:

Name: Burley Tobacco Advisory Committee.

Date: September 10, 1991.

Time: 10:30 a.m.

Place: Campbell House Inn, 1375 Harrodsburg Road, Lexington, Kentucky 40405.

Purpose: To determine opening dates for the 1991–92 burley marketing season, discuss and adopt new policies and procedures for the 1991–92 burley marketing season, review regulations pursuant to the Tobacco Inspection Act, 7 U.S.C. 511 *et seq.*, and other related issues.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact the Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 502 Annex Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 205–0567, prior to the meeting. Written statements may be submitted to the Committee before, at, or after the meeting.

Dated: July 25, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91–18090 Filed 7–30–91; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

[Docket No. 91-075]

Animal Care; Stipulation Agreements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are giving notice of our intent to employ stipulation procedures where circumstances warrant to resolve certain violations of the Animal Welfare Act (Act) and the regulations and standards issued thereunder, without resorting to formal disciplinary proceedings under the Act.

FURTHER INFORMATION CONTACT: Dr. R.L. Crawford, Director, Animal Care Staff, Regulatory Enforcement and Animal Care, APHIS, USDA, room 565, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 (301) 436–7833.

SUPPLEMENTARY INFORMATION:

Background

Regulations regarding animal welfare are set forth in 9 CFR parts 1, 2, and 3. These regulations are established pursuant to the authority in the Animal Welfare Act (Act), as amended (7 U.S.C. 2131 *et seq.*) This law requires the Secretary of Agriculture (Secretary) to promulgate regulations and standards governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, operators of auction sales, carriers, and intermediate handlers.

Pursuant to its authority under the Act, the Department may initiate formal administrative proceedings against persons whom the Administrator, Animal and Plant Health Inspection Service, has reason to believe have violated the Act or the regulations and standards issued thereunder. The Department has regulations at 9 CFR 4.11 providing that the Administrator may enter into a stipulation, prior to the issuance of a complaint, with any person to resolve violation cases arising under the Act, regulations and standards, without resort to formal disciplinary proceedings. This stipulation procedure does not deprive an alleged violator of notice and opportunity for hearing. An alleged violator may decline to enter into a stipulation, in which case the Department will consider instituting formal disciplinary proceedings under the Act and the regulations.

In this document, we are giving notice that we intend to employ the stipulation procedure for violations where circumstances warrant. We believe that this procedure will enable us to better enforce the Act and the regulations and standards by expediting the resolution of violation cases. Under this stipulation procedure, we will seek civil penalties and, in appropriate cases, license suspensions.

Authority: 7 U.S.C. 2131–2157; 15 U.S.C. 1823, 1824, 1825, and 1828; 44 U.S.C. 3506; 7 CFR 2.17, 2.51, and 371.2(g).

Done in Washington, DC, this 25th day of July, 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[Fr Doc. 91–18087 Filed 7–30–91; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Prototype Cloud Seeding Project; Notice of Intent

AGENCY: Department of Agriculture, Forest Service.

ACTION: Notice of Intent.

SUMMARY: Notice is hereby given that the USDA Forest Service and the State of California will prepare a joint Draft Supplement to the Environmental Impact Statement—Environmental Impact Report (EIS/EIR) for the proposed Cloud Seeding Project to disclose the environmental consequences of specific issues brought forward in an appeal of this project. The Notice of Intent for this project was initially published in the **Federal Register** on February 23, 1990 [6410]. This project would be located in the vicinity of the Lakes Basin Area on the Plumas and Tahoe National Forests, Plumas and Sierra Counties, California. The area under consideration is located in T. 21 to T. 24 N. and Ranges 10 to 14 E. Mt. Diablo Meridian. The Forest Service invites written comments on this proposal. A full environmental analysis of the issues in the appeal and the effects of these issues on the Final EIS/EIR will be conducted. The Record of Decision (ROD) for this project is hereby being withdrawn and a new ROD will be issued with the Final Supplement to the EIS/EIR. The Draft Supplement to the EIS/EIR will be published in August, 1991, and the Final Supplement to the EIS/EIR will be available for review in October, 1990.

ADDRESSES: Submit written comments to John Palmer, Acting Forest Supervisor, Plumas National Forest, PO Box 11500, Quincy, California 95971.

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ATION CONTACT: Dr.
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INFORMATION:

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Authority: 7 U.S.C. 2131–2157; 15 U.S.C. 1823, 1824, 1825, and 1828; 44 U.S.C. 3506; 7 CFR 2.17, 2.51, and 371.2(g).

Done in Washington, DC, this 25th day of July, 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[Fr Doc. 91–18087 Filed 7–30–91; 8:45 am]

BILLING CODE 3410–34–M

Forest Service

Prototype Cloud Seeding Project; Notice of Intent

AGENCY: Department of Agriculture, Forest Service.

ACTION: Notice of Intent.

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ADDRESSES: Submit written comments to John Palmer, Acting Forest Supervisor, Plumas National Forest, PO Box 11500, Quincy, California 95971.

FOR FURTHER INFORMATION CONTACT: R.C. Bennett, Planning Officer, Plumas National Forest, PO Box 11500, Quincy, California 95971, phone 916–283–2050.

SUPPLEMENTARY INFORMATION: The proposed project would use ground-based propane generators to augment snow pack by cloud seeding winter storms. These generators would be located on mountain tops in the vicinity of the Lakes Basin area. The California Department of Water Resources facilities supporting this project would be located on both Forest Service and private lands.

The Forest Supervisor's decision to authorize the cloud seeding was appealed to the Forest Service's Pacific Southwest Regional Forester who affirmed all but five issues raised by the appellants. These issues related to the watershed and fisheries conditions, cumulative watershed effects, sensitive, threatened and endangered species, potential flooding, and effects of the project on municipal supple watersheds. The Draft Supplement will address these issues and will revisit the Final EIS/EIR to assess whether the additional information will effect the initial analysis in this document.

John Palmer, Acting Forest Supervisor, Plumas National Forest, Quincy, California, is the responsible official.

Public participation will be especially important at several points during the analysis. The Forest Service and the California Department of Water Resources will be seeking information, comments and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the Draft Supplement to the EIS/EIR. The scoping includes:

1. Identification of any further issues to be analyzed in depth.
2. Elimination of insignificant issues or those which have been covered by a relevant previous environmental review.
3. Exploring additional alternatives.
4. Identifying potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).
5. Determining potential cooperating agencies and task assignments.

The Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat if any such species are found to exist in the proposed project area.

The Draft Supplement to the EIS/EIR is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by August, 1991. At that time EPA will publish a notice of availability of the Draft EIS/EIR in the **Federal Register**.

The comment period on the Draft Environmental Impact Statement—Environmental Impact Report will be 45 days from the date the Environmental Protection Agency's Notice of Availability appears in the **Federal Register**. It is very important that those interested in the management of the proposed prototype Cloud Seeding Project participate at that time. To be the most helpful, comments on the Draft Supplement to the EIS/EIR should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *Wisconsin Hertiges, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final Supplement to the EIS/EIR.

After the comment period for the Draft Supplement to the EIS/EIR ends, the comments received will be analyzed and considered by the Forest Service and the California Department of Water Resources in the preparation of the Final Supplement to the Environmental Impact Statement-Environmental Impact Report. The Final Supplement to the EIS/EIR is scheduled to be completed by October, 1991. In the Final Supplement to the EIS/EIR the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the Final Supplement to the EIS/EIR, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR part 217.

Dated: July 21, 1991.

John Palmer,

Acting Forest Supervisor, Plumas National Forest.

[FR Doc. 91–18067 Filed 7–30–91; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.
Title: 1992 Census of Agriculture.
Form Number(s): Various.
Agency Approval Number: None.
Type of Request: New collection.
Burden: 1,461,580 hours.
Number of Respondents: 4,100,000.
Avg Hours Per Response: 21 minutes.

Needs and Uses: The Bureau of the Census conducts the census of agriculture every five years in years ending in two and seven. The census provides detailed benchmark data for the agricultural sector of the economy and is the only source of agricultural data comparable and consistent at the national, state, and county levels. The census provides data on the number and type of farms, land use, crop acreage and production, livestock inventory and sales, production expenses, farm-related income, and other characteristics. Census data are used by the Administration, Federal Agencies, and Congress to formulate and evaluate national farm policies and by the Bureau of Economic Analysis to compile the farm sector economic indicators and the national income accounts.

Affected Public: Farms.
Frequency: Every five years.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 26, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91–18134 Filed 7–30–91; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of Income and Program Participation – 1991 Panel Wave 4.

Form Number(s): SIPP–11400, 11403, 11405(L).

Agency Approval Number: 0607–0702.

Type of Request: Revision of a currently approved collection.

Burden: 44,100 hours.

Number of Respondents: 88,200.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The Survey of Income and Program Participation (SIPP) is designed as a continuing series of national panels of interviewed households which are introduced annually with each panel having a duration of about 2 1/2 years in the survey. The survey is molded around a central "core" of labor force and income questions that will remain fixed throughout the life of a panel. The core is periodically supplemented with questions designed to answer specific needs. These supplemental questions are included with the core and are referred to as "topical modules." The topical modules for the 1991 Panel Wave 4 and the 1990 Panel Wave 7 are identical. They are the following: 1) Selected Financial Assets, 2) Medical Expenses and Work Disability, and 3) Real Estate and Shelter Costs, Dependent Care, and Vehicles. Wave 4 interviews will be conducted from February through May of 1992.

Affected Public: Individuals or households.

Frequency: There will be three interview periods for the 1991 Panel in Fiscal Year 1992.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

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Dated: July 26, 1991.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 91–18135 Filed 7–30–91; 8:45 am]

BILLING CODE 3510–07–F

International Trade Administration

[A–583–810]

Final Determination of Sales at Less Than Fair Value: Chrome-Plated Lug Nuts From Taiwan

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: July 31, 1991.

FOR FURTHER INFORMATION CONTACT: Roy A. Malmrose, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–5414.

Final Determination

We determine that chrome-plated lug nuts from Taiwan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of preliminary determination on April 18, 1991 (56 FR 15860), the following events have occurred. Verification of the questionnaire responses was conducted in Taiwan from April 26 through May 3, 1991. On May 29, 1991, Gourmet requested that the final determination in this investigation be postponed until not later than 135 days from the date of publication of the preliminary notice. On June 4, 1991, petitioner opposed the extension. On June 24, 1991, we published a notice postponing our final determination until not later than July 25, 1991 (56 FR 28739). Petitioner and respondents filed case and rebuttal briefs on July 1 and July 8, 1991, respectively. On July 12, 1991, we also received comments from San Shing. A public hearing was held on July 15, 1991.

Scope of Investigation

The merchandise covered by this investigation is one-piece and two-piece chrome-plated lug nuts, finished or unfinished. The subject merchandise includes chrome-plated lug nuts, finished or unfinished, which are more than 1$\frac{11}{16}$ inches (17.45 millimeters) in height and which have a hexagonal (hex) size of at least ¾ inches (19.05 millimeters) but not over one inch (25.4 millimeters). The term "unfinished" refers to unplated and/or unassembled chrome-plated lug nuts. The subject merchandise is used for securing wheels to cars, vans, trucks, utility vehicles, and trailers. Zinc-plated lug nuts, finished or unfinished, and stainless-steel capped lug nuts are not in the scope of this investigation. Chrome-plated lock nuts are also not subject to this investigation.

Chrome-plated lug nuts are currently provided for under subheading 7318.16.00.00 of the Harmonized Tariff Schedule (HTS). Although the HTS subheading is provided for convenience and customs purposes, our written description of the scope of the investigation is dispositive.

Period of Investigation

The period of investigation (POI) is May 1, 1990 through October 31, 1990.

Such or Similar Comparisons

For both respondent companies, in accordance with section 771(16) of the Act, we established two such or similar categories of merchandise: One-piece chrome-plated lug nuts and two-piece chrome-plated lug nuts.

Fair Value Comparisons

To determine whether sales of chrome-plated lug nuts from Taiwan to the United States were made at less than fair value, we compared the United States price to the foreign market value, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

For both San Shing Hardware Works Co., Ltd. (San Shing) and Gourmet Equipment (Taiwan) Corporation (Gourmet), we based the United States price on purchase price, in accordance with section 772(b) of the Act, both because the chrome-plated lug nuts were sold to unrelated purchasers in the United States prior to importation into the United States and because exporter's sales price methodology was not indicated by other circumstances.

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A. San Shing

We calculated purchase price based on packed, FOB Taiwan port prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign brokerage and handling expenses, foreign inland freight, and containerization, in accordance with section 772(d)(2) of the Act.

B. Gourmet

We calculated purchase price based on packed, FOB Taiwan port, FOR Taiwan port, or CIF prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, foreign brokerage, harbor tax, ocean freight, and marine insurance, in accordance with section 772(d)(2) of the Act. We also deducted a discount given as a result of earlier sales of defective merchandise.

Foreign Market Value

A. San Shing

Because San Shing had no home market or third country sales of lugnuts, we calculated foreign market value based on constructed value, in accordance with section 773(e)(1) of the Act. Constructed value includes materials, fabrication, general expenses, profit, and packing. In all cases: (1) Actual general expenses were used, since these exceeded the statutory minimum requirement of ten percent of materials and fabrication; (2) actual profit was applied as it exceeded the statutory minimum of eight percent; and (3) since selling expenses included credit, the interest expense reflected on the company's books was reduced for a portion of the expense related to these costs in order to avoid double counting.

We made an adjustment to constructed value, in accordance with § 353.56(a) of the Department's regulations, for differences in circumstances of sale. This adjustment was made for differences in credit expenses, bank handling charges, and commissions.

B. Gourmet

For those lugnuts where Gourmet had home market sales, we based foreign market value on those sales. Otherwise, we calculated the foreign market value based on constructed value, in accordance with section 773(e)(1) of the Act.

Where foreign market value was based on home market sales, we added U.S. packing costs. We also made a circumstances of sale adjustment for credit expenses, pursuant to 19 CFR 353.56(a). Where foreign market value was based on constructed value, we included materials, fabrication, general expenses, profit, and packing in the constructed value. As described in more detail in the comments below, best information available was used for certain elements of the cost. In all cases: (1) Actual general expenses were used, since these exceeded the statutory minimum of ten percent of materials and fabrication and (2) the statutory eight percent minimum profit was applied.

We made an adjustment to constructed value and home market price in accordance with section 353.56 of the Department's regulations for differences in circumstances of sale. This adjustment was made for differences in credit expenses.

Currency Conversion

We made currency conversions in accordance with section 353.60(a) of the Department's regulations. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we verified all information used in reaching the final determination in this investigation.

We used standard verification procedures including examination of relevant accounting records and original source documents of the respondents.

Public versions of our verification reports are on file in the Central Records Unit (Room B–099) of the Main Commerce Building.

Interested Party Comments

Comment 1: The petitioner states that Gourmet's costs could not be verified and, thus, should not be used to calculate the foreign market value. Petitioner states that there were numerous discrepancies between what was reported by Gourmet and what was traced to the general ledger and then to the financial statement. There were also discrepancies between Gourmet's general ledger and its audited financial statement. Therefore, the Department must base foreign market value on best information available for purposes of the final determination.

Gourmet maintains that its costs were fully verified, with the possible exception of steel material costs for the caps. Thus, the Department should calculate the foreign market value based on the verified information.

DOC position: During verification the Department encountered discrepancies between Gourmet's response and its accounting records. However, in general, the Department was able to verify the most significant elements needed in calculating the foreign market value. In those few instances where we were unable to verify the correct information, we have used the best information available.

Comment 2: Petitioner argues that because Gourmet subcontracts most of its production processes and purchases inputs, such as basenuts, which are themselves subject to the proceeding, it should not be considered the "producer" of the subject merchandise.

DOC position: We disagree. Although Gourmet subcontracts certain processes and purchases major inputs, it does perform processing, *e.g.*, tumbling and welding, and it produces caps. Therefore, we consider Gourmet to be the manufacturer of the merchandise under investigation. Moreover, even if Gourmet purchases inputs which may be considered as unfinished lug nuts, Gourmet uses those inputs to produce the merchandise which is being sold to the United States. Those sales are the subject of this investigation and Gourmet is the seller.

Comment 3: Petitioner argues that for product type 9A, Gourmet was supplied the base nut by its customer and simply performed a tolling function. In addition, retail sales packaging for this lug nut states that it was "made by the customer in Taiwan." Therefore, this type of lugnut should not be considered made by Gourmet and the Department should disregard sales of type 9A.

Gourmet argues that it substantially transforms the basenuts before they are exported to the United States. Thus, Gourmet is the producer of type 9A lug nuts. Furthermore, Gourmet argues that there is no legal authority to exclude these sales and that the Department uses tolled sales in calculating antidumping margins.

DOC position: Regardless of the claims on the package, these are tolled sales which the Department routinely includes in its analysis. See, *e.g.*, Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip from France (52 FR 812, January 9, 1987). U.S. price was based on the tolling charge.

Comment 4: Gourmet argues that since the Department could not confirm its steel costs for the production of caps, the Department should use the price at which Gourmet purchased caps from an unrelated subcontractor during the POI Gourmet states that it would be appropriate to use the price of the caps it bought even though the cost of producing the caps in-house is lower, as best information available.

Petitioner argues that even if the Department uses the cap price in lieu of actual steel cost, the Department should adjust upward the cost to reflect the reject rate in the welding operation, sorting, and inspecting. Petitioner also contends that the Department should use the price that San Shing paid for caps, adjusted upward to reflect the fact that it costs Gourmet more to produce the caps for larger sized lug nuts.

DOC position: We agree with Gourmet in part. We were not able to verify Gourmet's steel input costs or labor for producing caps. However, we did verify that Gourmet purchased caps from an unrelated supplier. This verified price of caps is the best information available for determining Gourmet's costs with respect to caps. We do not see any reason to accept petitioner's suggestion that we use the prices paid by San Shing for caps, with an adjustment for size.

At the same time, we agree with petitioner that this cost must be adjusted upward to reflect yields at the welding stage, i.e., when the caps are welded onto the basenut, and have made such an adjustment.

Comment 5: Gourmet argues that the Department should not increase direct labor costs to correct for what it believes is an omission of overtime. Gourmet states that since the payroll already included overtime, the increase is not warranted. Moreover, there is no evidence in the verification exhibits to support or explain this increase. Finally, Gourmet states that sales volume rather than sales value should be used to allocate the direct labor cost.

Petitioner argues that the direct labor cost should be increased. In addition, petitioner argues that, contrary to Gourmet's assertion, direct labor costs in producing lug nuts approximate sales values rather than sales volume. Thus, the Department should allocate direct labor cost on the basis of sales value and not sales volume.

DOC position: The direct labor cost reported by Gourmet could not be verified. In the process of trying to demonstrate the correct cost of direct labor, Gourmet company officials stated that their payroll records only list straight time. In an attempt to verify the correct total direct labor cost, we examined Gourmet's general ledger which showed that direct labor costs were significantly higher than the cost shown in the payroll. Therefore, we increased the direct labor cost by a percentage represented by the ratio of verified labor costs as reported in the payroll to those reflected in the general ledger.

With respect to the allocation issue, Gourmet has argued that labor costs should be allocated among products based on volume. We note that a value based allocation results in higher costs being assigned to lugnuts. Because we were not able to verify labor costs reported in the response, we have used the more adverse, value-based allocation methodology.

Comment 6: Gourmet argues that the total electricity and other variable expenses should be added together and allocated to lug nuts based on the ratio of the volume of lug nuts sold to the volume of all products sold to arrive at the total variable production overhead costs.

Petitioner argues that variable production overhead should be allocated based on sales value and not sales volume.

DOC position: For the same reasons discussed in response to Comment 5, we have allocated these variable expenses on the basis of value rather than volume.

Comment 7: Petitioner states that Gourmet should have reported the cost of pallets as part of packing material cost. Also, where lug nuts are packed in clam shells, the packing cost should include the cost of clam shells and packing labor. Finally, petitioner argues that packing labor costs should be allocated based on sales value rather than sales volume.

Gourmet states that in calculating the packing expense, although packing materials relates only to those materials used in packing lug nuts, packing labor relates to all products packed by Gourmet. Therefore, only a portion of packing labor is attributable to lug nuts and that portion should be determined by the ratio of sales volume of lug nuts to the sales volume of all products sold.

DOC position: Gourmet claims that its merchandise is not shipped on pallets and we saw no evidence at verification that pallets were used. Therefore, we have not included a cost for pallets.

With respect to packing the lug nuts in clam shells, Gourmet typically does not do this. Instead, the lug nuts and empty clam shells are packed separately in the same carton. On one invoice, however, there is an indication that the lug nuts were pre-packed in clam shells. This invoice also carries a higher unit value in comparison with the other invoices to the same customer. To account for this, we have increased the constructed value to include the extra packing element.

We have allocated the portion of packing labor attributable to lug nuts based on the value of lug nuts and other products sold for the reasons discussed in response to comment 5.

Comment 8: Gourmet argues that the Department should calculate the profit based on the POI. Additionally, the cost of manufacture used in calculating the profit should include the cost of purchasing the caps, consistent with the treatment of purchases from other subcontractors.

Petitioner argues that the Department should use the profit calculated on a semi-annual basis, excluding the cost of purchasing the cap.

DOC position: The Department used the eight percent statutory minimum as best information available.

Comment 9: Petitioner contends that the Department should have examined the sale of the trading companies because (1) Gourmet was not identified as the manufacturer of the subject merchandise until after the trading company received a questionnaire from the Department, (2) Gourmet incurs no direct selling expenses, no short-term bank financing, and no R&D expenses, and (3) most sales are made through the trading companies.

Gourmet argues that the use of sales by trading companies would be contrary to long-standing precedent. The Department uses sales by trading companies only when the ultimate destination of the merchandise is not known by the trading company's supplier. However, in this investigation, Gourmet knew the destination of all exported merchandise, including merchandise sold to trading companies.

DOC position: We agree with Gourmet. It is longstanding Department practice to look at the prices charged by the manufacturer, as opposed to the trading company, where the manufacturer knows the destination of the merchandise (see, Electrolytic Manganese Dioxide from Japan, 54 FR 8778, March 2, 1989). On occasion, the Department has been asked to examine whether trading companies are engaged in "middleman dumping," but petitioner has made no such claim.

Comment 10: Petitioner argues that the number of entries on reports supplied by Customs, compiled for purposes of analyzing the critical circumstances issue pursuant to petitioner's request, does not match the number of entries reported by Gourmet. Additionally, petitioner argues that for direct sales, the unit price in the Customs report is lower than the unit price reported in the response. For indirect sales, *i.e.*, sales through trading companies, the unit price in the Customs report is higher than the unit price reported in the response.

Gourmet argues that the Customs report is inaccurate and should not be relied upon by the Department. In addition, the entered value of indirect sales should be higher on the Customs report, since these sales were made to

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trading companies and the entered value ostensibly includes the profit and expenses of the trading companies. The entered value of direct sales should be lower on the Customs report than the response because the Customs report has the invoice price and the invoice price reflects the allowance for defective goods given for these sales.

DOC position: The Customs report referred to by petitioner was compiled solely for purposes of analyzing the critical circumstances issue. All the sales information used in this final determination was verified. The Department generally will not use any information in place of verified information absent compelling reasons to do so. Gourmet has provided a plausible explanation as to why there are slight discrepancies between the Customs report and the verified information, and we have no compelling reason to disregard the verified information.

Comment 11: Petitioner argues that Gourmet did not account for the cost of sorting and inspection. Gourmet maintains that the costs of sorting and inspection are included in the packing labor costs.

DOC position: Based on our observation during the plant tour at verification, we conclude that the verified packing cost includes the cost of sorting and inspecting.

Comment 12: With respect to the discount given on current sales for defective units sold prior to the POI, petitioner argues that the Department should use the discounted price as U.S. price. Additionally, the constructed value should be increased proportionally to reflect the cost of replacing the defective lug nuts.

Gourmet states that it incurred no loss on the sale of the defective lug nuts. Gourmet was paid in full by its customer in 1989 for the defective merchandise and the allowance is a method of reimbursing the customer. Gourmet asserts that the amount of this allowance was verified, and must be added to the unit price on the invoice to arrive at the gross U.S. price. Gourmet contends that this allowance has nothing to do with the cost of producing the merchandise during the POI.

DOC position: In the Department's judgment, the price reduction at issue appears to be a normal price discount. Therefore, we have treated it as such and deducted it from the United States price. We have not increased the cost of producing the subject merchandise by the amount of the price reduction, in addition to treating the reduction as a price discount, because to do so would be double counting.

Comment 13: Petitioner argues that the interest portion of constructed value should not be adjusted for imputed credit. No adjustment is needed to avoid double counting of interest expense since Gourmet incurred no interest expenses during the POI. Since home market sales were made for cash, the only credit expenses reported by Gourmet were those on its U.S. sales of the covered merchandise.

Gourmet asserts that the Department should not abandon its long-standing practice of reducing the interest expense reflected in a company's books by the amount of imputed credit. Gourmet states that the Department's rationale is that the failure to reduce the interest expense in a company's books would result in double counting. Gourmet further maintains that it does not matter that home market sales were made on a cash basis.

DOC position: We agree with petitioner. As Gourmet did not incur any interest expense, no adjustment was necessary to reduce interest expense for the amount related to imputed credit expense.

Comment 14: Petitioner argues that San Shing's interest rate should be used, as best information available, to calculate Gourmet's imputed interest expense. Petitioner maintains that since Gourmet did not incur any interest expenses from which its own rate could be derived, the information based on the actual experience of another producer should be used.

Gourmet argues that the Department should not use the credit experience of another company with an unknown credit experience and rating to calculate its imputed credit expense. Instead, Gourmet suggests that the Department use the interest rate of its trading company obtained during verification.

DOC position: We have used the weighted-average short-term interest rate (the thirty- to ninety-day rate) for the POI published in the Monthly Statistics by the Central Bank of China to calculate Gourmet's imputed interest expense. We used the thirty- to ninety-day rate because this time period approximates the average amount of time between the date of shipment and the date of payment for Gourmet. We do not believe it is appropriate to apply an interest rate to Gourmet which applies to some other company not similarly situated to Gourmet.

Comment 15: In the Department's preliminary determination, petitioner states that the costs were calculated on the date of exportation and not the date of sale. This treatment, petitioner maintains, is inconsistent with the Department's regulations in relation to calculating constructed value in a purchase price situation. Petitioner states that the cost of producing the subject merchandise is incurred up to 45 days before the merchandise is shipped. Because of production lead times, the exchange rate for the cost of production should reflect a similar lag.

DOC position: We found during verification that Gourmet records its expenses in its general ledger one month after the expenses are actually incurred. Therefore the costs used in this determination reflect the actual costs incurred during the POI.

Additionally, we have no reason to believe that the costs incurred in the period preceding the POI should differ from the costs incurred during the POI. Therefore, we have used the POI costs as a reasonable surrogate.

Section 353.60(a) of our regulations directs us to make currency conversion as of the date of the U.S. sale. We have determined that the invoice date is the date of sale and have made currency conversions as of that date.

Comment 16: Petitioner argues that movement charges were improperly allocated. Petitioner argues that the freight charges should be allocated based on weight and marine insurance and harbor tax by value.

Gourmet states that its allocations, based on volume, more closely approximate the manner in which the charges were incurred.

DOC position: We have allocated all movement charges according to the manner in which the cost was incurred. Therefore, we have allocated freight on the basis of volume and the other charges on the basis of value.

Comment 17: Petitioner argues that information on sales of open-end chrome-plated lug nuts should have been provided.

Gourmet asserts that the number of open-end chrome-plated lug nuts sold during the period of investigation was so small that it can have no material impact on this investigation and should be ignored. Gourmet contends that this small quantity was overlooked because chrome-plated open-end lug nuts are an anomally since a lug nut that exposes the bolt does not serve a decorative purpose. Moreover, most open-end lug nuts sold by Gourmet during the POI were zinc-plated and not chrome-plated. The Department verified over 95.5 percent of Gourmet's sales, and these sales are sufficiently representative of the 0.05 percent inadvertently omitted and disregarded for purposes of the Department's analysis.

DOC position: Due to the insignificant value of sales during the POI represented by open-ended chrome-plated lug nuts, the Department has not analyzed these sales for purposes of calculating United States price.

Comment 18: Petitioner argues that fixed production overhead should be allocated based on sales value and not sales volume.

DOC position: For the reasons stated in response to comment 5, we have allocated fixed overhead among products based on their respective value.

Comment 19: Petitioner argues that "other material" costs are not accurate because the Department did not examine purchases prior to June 1990, which reflect purchases and costs incurred on the covered products sold during the period of investigation.

DOC position: See Comment 15.

Comment 20: Petitioner argues that Gourmet's SG&A should be recalculated based on Gourmet's audited financial statement.

Gourmet does not necessarily agree with the SG&A amount verified by the Department, but argues that recalculation of this amount is not warranted. Because Gourmet's SG&A is less than ten percent, the statutory minimum should be used.

DOC position: We have calculated Gourmet's SG&A based on its annual audited financial statement, since G&A and actual selling expenses would not be verified.

Comment 21: Petitioner argues that San Shing received an export subsidy on its steel input purchases from a state-owned steel supplier.

San Shing argues that the steel company, from which San Shing purchases most of its steel materials, merely sets its prices based on its marketing strategy in promoting its products. The price treatment given by this steel company to its customer should not be viewed as a countervailable subsidy.

DOC position: Consistent with past practice, we have deducted the rebate received by San Shing in calculating the cost of the company's steel costs (see, *United States* v. *European Trading Co.*, 27 CCPA 289). We have not made any adjustments to our calculations to reflect this alleged subsidy.

Comment 22: Petitioner argues that San Shing did not account for the cost of pickling and drawing.

San Shing maintains that all costs associated with pickling and drawing are accounted for in the fixed and variable production overhead.

DOC position: We verified the total cost of producing the subject merchandise. Included within the total cost is the cost of pickling and drawing.

Comment 23: Petitioner argues that San Shing did not account for all waste inherent in each stage of the production process. Accordingly, petitioner argues, the steel cost must be increased to reflect the production of defective nuts (exclusive of cap), with the revenue generated from sale of scrap used to offset production overhead costs only when the scrap is sold.

San Shing asserts that the waste incurred during the manufacturing process is limited, and was accounted for in its calculation of constructed value. In addition, the revenue generated from the sale of scrap was used to offset the cost of production.

DOC position: We agree with San Shing. We verified that all waste experienced during the manufacturing process was accounted for by San Shing. Additionally, we have determined that revenue from scrap should be used to offset cost of manufacture since scrap is generated during the manufacturing process. We have offset the cost of manufacture by the revenue earned by the sale of scrap.

Comment 24: Petitioner argues that packing is unique to the subject merchandise and should be allocated over the subject merchandise only.

DOC position: We verified that San Shing does not keep separate accounting records for each of its several products. We determined that San Shing's methodology for allocating packing cost is reasonable and have accepted its methodology of allocating the packing cost over all products, including the subject merchandise, packed by the packing department

Comment 25: Petitioner argues that the R&D expense incurred by the "Tooling Department" should not be deducted from the fixed production overhead. Petitioner maintains that the benefit derived from this R&D can be attributable to the subject merchandise since San Shing uses the products produced by the Tooling Department to produce the subject merchandise. San Shing argues that its R&D expense is not related to the production of lug nuts. San Shing explained that the R&D expenses related to the production of the basenut were incurred prior to the period of investigation. San Shing maintains that there were no further R&D expenses related to the subject merchandise.

DOC position: We agree with petitioner. San Shing uses the machinery and tools produced by the Tooling Department to produce the subject merchandise. Therefore, research and development in the Tooling Department will benefit the production of the subject merchandise.

Comment 26: Petitioner maintains that R&D expenses attributable to other products and departments should not be deducted from San Shing's G&A expense.

DOC position: We agree with petitioner. We used the audited financial statement in calculating G&A expenses and have not deducted R&D expenses attributable to other products and departments in this calculation.

Comment 27: Petitioner argues that where payment has not been received for a sale, the days for which credit was outstanding should be increased regardless of the terms of the sale.

DOC position: The actual payment dates for each sale were obtained at verification and were used in our final determination.

Critical Circumstances

Petitioner alleges that imports of chrome-plated lug nuts from Taiwan present "critical circumstances." Under section 735(a)(3) (A) and (B) of the Act, critical circumstances exist if we determine that (1) there is history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and (2) there have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

It is our standard practice to impute knowledge of dumping under section 735(a)(3)(A)(ii) of the Act when the estimated margins in our determinations are of such a magnitude that the importer should realize that dumping exists with regard to the subject merchandise. Normally we consider estimated margins of 25 percent or greater to be sufficient. See e.g., Final Determinations of Sales at Less than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany (54 FR 18992, May 3, 1989). The estimated margins in this final determination do not meet the requirements to impute knowledge of dumping under section 735(a)(3)(A)(ii) of the Act. We also examined recent antidumping duty cases and found that there are currently no findings of dumping in the United States or elsewhere of the subject merchandise by Taiwanese manufacturers, producers, and exporters of the subject merchandise.

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DOC position: The actual payment dates for each sale were obtained at verification and were used in our final determination.

Critical Circumstances

Petitioner alleges that imports of chrome-plated lug nuts from Taiwan present "critical circumstances." Under section 735(a)(3) (A) and (B) of the Act, critical circumstances exist if we determine that (1) there is history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and (2) there have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

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On this basis, we find that the requirements of section 735(a)(3)(A) are not met with regard to imports of the subject merchandise. Therefore, we determine that critical circumstances do not exist.

Suspension of Liquidation

We are directing the U.S. Customs Service to suspend liquidation on entries from Gourment and to continue to suspend liquidation of all other entries of chrome-plated lug nuts, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse for consumption, on or after the date of publication of this notice in the Federal Register. The U.S. Customs Service shall require a cash deposit equal to the estimated amounts by which the foreign market value of chrome-plated lug nuts exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice. The margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
San Shing Hardware Works Co., Ltd	11.57
Gourmet Equipment (Taiwan) Corp. (Gourmet)	6.57
All Others	7.12

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: July 25, 1991.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-18136 Filed 7-30-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-351-806]

Antidumping Duty Order: Silicon Metal From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 31, 1991.

FOR FURTHER INFORMATION CONTACT: James Terpstra or James Maeder, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230: (202) 377-3965 or (202) 377-4929.

Order

Scope of Order

The merchandise covered by this investigation is silicon metal containing at least 96.00 but less than 99.99 percent of silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor-grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to this investigation. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Order

In accordance with section 735(a) of the Tariff Act of 1930, as amended (19 USC 1673d(a)) (the Act), on June 5, 1991, the Department made its final determination that silicon metal from Brazil is being sold at less than fair value (56 FR 26977, June 12, 1991). On July 24, 1991, in accordance with section 735(d) of the Act, the ITC notified the Department that such imports materially injure a U.S. industry.

In its final determination, the Department also found that critical circumstances existed with respect to exports from Brazil by Companhia Brasileira Carbureto de Calcio (CBCC). However, on July 24, 1991, the ITC notified the Department that critical circumstances do not exist with respect to any imports from Brazil. As a result of the ITC's negative critical circumstances determination, pursuant to section 735(c)(3) of the Act, the Customs Service will refund all cash deposits and release all bonds collected on silicon metal from Brazil entered, or withdrawn from warehouse, for consumption, on or after December 29, 1991, and before March 29, 1991.

Therefore, in accordance with sections 736 and 751 of the Act, the Department will direct Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of silicon metal from Brazil. These antidumping duties will be assessed on all unliquidated entries of silicon metal from Brazil, entered or withdrawn from warehouse, for consumption on or after March 29, 1991, the date on which the Department published its preliminary determination notice in the **Federal Register**. On or after the date of publication of this notice in the **Federal Register**, Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise:

Producer/manufacturer/exporter	Deposit rate (percent)
Companhia Brasileira Carbureto de Calcio (CBCC)	87.79
Camargo Correa Metais, S.A. (CCM)	93.20
All others	91.06

This notice constitutes the antidumping duty order with respect to silicon metal from Brazil, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: July 23, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-18137 Filed 7-30-91; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 91-00006." A summary of the application follows.

Summary of the Application

Applicant: North America Blueberry Export Corporation, U.S.A. ("NABEC"), c/o P.O. Box 100, Main Street, Milbridge, Maine 04658; Contact: Anthony F. Essaye, Esquire; Telephone (202) 331-7760.

Application No.: 91-00006.

Date Deemed Submitted: July 18, 1991.

Members (in addition to applicant): Allen's Blueberry Freezer, Ellsworth, Maine; Cobi Foods Inc., Port Williams, N.S. BOP 1T0, Canada; Jasper Wyman & Son, Milbridge, Maine; Les Bleuets Sauvages du Quebec, Inc., St. Bruno, Lac-St.-Jean, P.Q., GOW 2L0, Canada; The Maine Wild Blueberry Co., Inc., Machias, Maine; Oxford Frozen Foods, Limited; (including Cherryfield Foods, Inc., Cherryfield, Maine, a subsidiary of Oxford Frozen Foods, Limited), Oxford, N.S., BOM 1P0, Canada.

Export Trade:

Product: Fresh and processed wild blueberries.

Export Trade Facilitation Service (as they relate to the export of Product)

All export-related services, including, but not limited to, exclusive sales representation; international market research; marketing; advertising and sales promotion, including joint promotional, sales and marketing efforts; handling; shipping and other transportation; export licensing, trade documentation; common marking and identification; setting guidelines and export prices; terms of sale and sales negotiations; communication and processing of export orders, financing; foreign exchange; taking title to goods; and legal assistance.

Export Markets: The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands), Canada, and Japan.

Export Trade Activities and Methods of Operation: NABEC and its Members seek certification for the following conduct wherein:

1. NABEC may serve as the Members' exclusive sales representative in the Export Markets, dealing exclusively in wild blueberries produced by its Members.
2. Each member may dedicate a percentage of its annual production of processed wild blueberries to be available for sale to the Export Markets by NABEC.
3. NABEC may establish the quantity of processed wild blueberries to be sold by its Members in the Export Markets.
4. Members may solicit sales in the Export Markets but, in so doing, will act exclusively on behalf of NABEC.
5. NABEC and its members may sponsor joint promotional, sales and marketing efforts in the Export Markets.
6. NABEC may communicate and process export orders on behalf of its Members.
7. NABEC may provide export trade facilitation services and engage in other activities to assist the export of the Members' wild blueberries, including securing financing, legal assistance, foreign exchange and taking title to the Members' wild blueberries.
8. NABEC may require its Members to refuse to deal in the Export Markets with export intermediaries other than NABEC or other members acting on its behalf.
9. NABEC may require common marking of the Members' wild blueberries sold in the Export Markets.
10. NABEC may set guidelines to govern all sales negotiations and sales of the Members' wild blueberries, the Export Markets.
11. NABEC may set export prices for the Members, wild blueberries.
12. NABEC and its Members may exchange information regarding:
    a. market research and sales strategies, including advertising and promotion, in the Export Markets;
    b. expenses related to exporting, including handling and transportation;
    c. legislation and regulations affecting sales to the Export Markets, including applicable licensing and other trade documentation requirements;
    d. common marking and identification;
    e. contract and spot pricing in the Export Markets, including prices and availability of processed wild blueberries or substitute products for competitors in the Export Markets;
    f. customary terms of sale in the Export Markets and specifications from customers in the Export Markets;
    g. export prices for the Members' wild blueberries and projected demand for the Product in the Export Markets;
    h. financing, legal assistance, foreign exchange, and taking title to the Members' wild blueberries; and
    i. efforts and activities undertaken by NABEC on behalf of its Members in connection with the export the Members' wild blueberries to the Export Market.

Dated: July 25, 1991.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 91-18080 Filed 7-30-91; 8:45 am]

BILLING CODE 3510-DR-M

National Institute of Standards and Technology

[Docket No. 910527-1127]

RIN 0693-AA85

Proposed Federal Information Processing Standard (FIPS) for Government Network Management Profile (GNMP)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; Request for comments.

SUMMARY: A Federal Information Processing Standard (FIPS) adopting the Version 1.0 Government Network Management Profile (GNMP) is proposed for Federal agency use. The GNMP specifies the common management information exchange protocol and services, specific

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b. expenses related to exporting, including handling and transportation;

c. legislation and regulations affecting sales to the Export Markets, including applicable licensing and other trade documentation requirements;

d. common marking and identification;

e. contract and spot pricing in the Export Markets, including prices and availability of processed wild blueberries or substitute products for competitors in the Export Markets;

f. customary terms of sale in the Export Markets and specifications from customers in the Export Markets;

g. export prices for the Members' wild blueberries and projected demand for the Product in the Export Markets;

h. financing, legal assistance, foreign exchange, and taking title to the Members' wild blueberries; and

i. efforts and activities undertaken by NABEC on behalf of its Members in connection with the export the Members' wild blueberries to the Export Market.

Dated: July 25, 1991.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 91-18080 Filed 7-30-91; 8:45 am]

BILLING CODE 3510-DR-M

National Institute of Standards and Technology

[Docket No. 910527-1127]

RIN 0693-AA85

Proposed Federal Information Processing Standard (FIPS) for Government Network Management Profile (GNMP)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; Request for comments.

SUMMARY: A Federal Information Processing Standard (FIPS) adopting the Version 1.0 Government Network Management Profile (GNMP) is proposed for Federal agency use. The GNMP specifies the common management information exchange protocol and services, specific management functions and services, and the syntax and semantics of the management information required to support monitoring and control of the network and system components and their resources. The primary source of specifications in the Version 1.0 GNMP is part 18 of the OIW Stable Implementation Agreements, December 1990, developed by the OSI Implementors Workshop sponsored by NIST and IEEE Computer Society. This source provides implementation specifications for network management based on the service and protocol standards issued by the International Organization for Standardization (ISO).

Prior to submission of this proposed standard to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

This proposed FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section, GNMP. Only the announcement section of the standard is provided in this notice. Interested parties may obtain a copy of the GNMP from the Standards Processing Coordinator (ADP), Technology Building, room B-64, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975-2816.

DATES: Comments on this proposed FIPS must be received on or before October 29, 1991.

ADDRESSES: Written comments concerning the adoption of GNMP as a FIPS should be sent to: Director, Computer Systems Laboratory, ATTN: Proposed FIPS for GNMP, Technology Building, room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Ms. Fran Nielsen, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975-3669.

Dated: July 24, 1991.

John W. Lyons,

Director.

Federal Information Processing Standards Publication ______

(date)

Announcing the Standard for Government Network Management Profile (GNMP)

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100-235.

1. *Name of Standard.* Government Network Management Profile (GNMP).

2. *Category of Standard.* Hardware and Software Standards, Computer Network Protocols.

3. *Explanation.* This Federal Information Processing Standard adopts the Version 1.0 GNMP. The Government Network Management Profile (GNMP) specifies the common management information exchange protocol and services, specific management functions and services, and the syntax and semantics of the management information required to support monitoring and control of the network and system components and their resources.

The GNMP builds on FIPS 146-1, Government Open Systems Interconnection Profile (GOSIP), and includes the GOSIP Version 2.0 by reference. The GOSIP specifies lower layers protocols and three applications that support general network management operations. Future versions of the GNMP will add network management functions and services for GOSIP-compliant end systems and intermediate systems. The GNMP and GOSIP are interrelated and will cross-reference each other as required.

The primary source of specifications in the Version 1.0 GNMP is part 18 of the OIW Stable Implementation Agreements, December 1990, developed by the OSI Implementors Workshop sponsored by NIST and IEEE Computer Society. This source provides implementation specifications for network management based on the service and protocol standards issued by the ISO.

4. *Approving Authority.* Secretary of Commerce.

5. *Maintenance Agency.* U.S. Department of Commerce, National Institute of Standards and Technology, Computer Systems Laboratory.

6. *Cross Index.*

a. NBS Special Publication 500-183, Stable Implementation Agreements for Open Systems Interconnection Protocols, Version 4, Edition 1, NIST Workshop for Implementors of Open Systems Interconnection, December 1990.

b. FIPS PUB 146-1, Government Open Systems Interconnection Profile (GOSIP).

7. *Related Documents.* Related documents are listed in the Reference Section of the GNMP document.

8. *Objectives.* The primary objectives of this standard are: to achieve interconnection and interoperability of computers and systems that are acquired from different manufacturers in an open systems environment; to reduce the costs of computer network systems by increasing alternative sources of supply; to facilitate the use of advanced technology by the Federal Government and; to stimulate the development of commercial products compatible with Open Systems Interconnection (OSI) standards.

9. *Specifications.* GNMP (affixed).

10. *Applicability.* GNMP shall be used by Federal Government agencies when acquiring network management functions and services for computer and communications systems and networks.

11. *Implementation.* This standard is effective January 31, 1992. For a period of 18 months after the effective date, agencies are permitted to acquire alternative network management functions and services which provide equivalent functionality to this standard. Agencies are encouraged to use this standard for solicitations and contracts for new network management functions and services to be acquired after the effective date. This standard is compulsory and binding for use in all solicitations and contracts for new network management functions and services to be acquired 18 months after the effective date. Additional management support functions will be added to GNMP as implementation specifications for these functions are developed by the NIST Workshop for Implementors of OSI. For a period of 18 months after these new functions are included in GNMP, agencies are permitted to acquire alternative functions and services which provide equivalent functionality. After the 18-month period, the new functions and services should be cited in solicitations and contracts when systems to be acquired provide equivalent

functionality to the protocols defined in the GNMP document.

12. *Waivers.* Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Government wide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: Director, National Institute of Standards and Technology; ATTN: FIPS Waiver Decisions, Technology Building, room B-154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register.**

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the Commerce Business Daily as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver request, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. Sec. 552(b), shall be part of the procurement documentation and retained by the agency.

13. *Special Information.* The GNMP is being developed in phases. Version 1.0 GNMP specifies the initial phase of the GNMP. Additional management capabilities and managed objects will be included in subsequent releases of the profile. Eventually, as the NM standards all reach technical maturity the GNMP will embrace the full set of management functionality.

14. *Where to Obtain Copies.* Copies of this publication are for sale by the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, VA 22161. When ordering, refer to Federal Information Processing Standards Publication ______ (FIPSPUB ______), and title Specify microfiche if desired. Payment may be made by check, money order, or NTIS deposit account.

[FR Doc. 91-18020 7-30-91; 8:45 am]

BILLING CODE 3510-CN-M

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit: NMFS, Southwest Fisheries Science Center, (P77#52)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531-1544), and the regulations governing endangered fish and wildlife permit (50 CFR parts 217-222).

1. **Applicant:** Dr. Izadore Barrett, Director, Science and Research Director, Southwest Fisheries Science Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, CA 92038.

2. **Type of Permit:** Scientific research under MMPA and scientific purposes under ESA.

3. **Name and Number of Marine Mammals:**

80 Bottlenose dolphin (*Tursicps triuncatus*)
80 Risso's dolphin (*Grampus griseus*)
80 Short-finned pilot whales (*Globicephala macrorhynchus*)
80 Common dolphin (*Delphinus delphis*)
80 Pacific white-sided dolphin (*Lagenorhynchus obliquidens*)
80 Northern right-whale dolphin (*Lissodelphis borealis*)
80 Harbor porpoise (*Phocoena phocoena*)
80 Dall's porpoise (*Phocoenoides dalli*)
20 Baird's beaked whales (*Berardius bairdii*)
20 Sperm whales (*Physeter macrocephalus*)
20 Humpback whales (*Megaptera novaeangliae*)
20 Blue whales (*Balaenopteram usculus*)
20 Fin whales (*B. physalus*)
20 Minke whales (*B. acutorostrata*)
20 Gray whales (*Eschrichtius robustus*)
20 North Pacific right whales (*Eubalaena glacialis*)

4. **Type of Take:** The applicant requests authority to collect tissues samples taken by projectile dart from cetaceans encountered during the California Current cetacean surveys. The immediate goal is the collection of tissue samples during survey activities in the California Current. The samples will be collected, imported and archived for use in genetic analyses.

5. **Date and Location of Activity:** Field work is scheduled to begin July 28, 1991, aboard the NOAA vessel *McArthur.* Permit coverage for the area extending beyond the continental shelf edge to roughly the boundary of the California current and the boundary of the U.S. territorial waters to the south and the Oregon/California state boundary in the north for a period of 5 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, Maryland 20910 within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

By appointment: Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Suite 7324, Silver Spring, Maryland 20910 (301/427-2289);

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731 (213/514-6196);

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE BIN C15700, Seattle, Washington 98115 (206/526-6150); and

Director, National Marine Mammal Laboratory, National Marine Fisheries Service, 7600 Sand Point Way, NE, BIN C15700, Seattle, Washington 98115 (206/516-4020).

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Izadore Barrett,
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4. Type of Take: The applicant requests authority to collect tissues samples taken by projectile dart from cetaceans encountered during the California Current cetacean surveys. The immediate goal is the collection of tissue samples during survey activities in the California Current. The samples will be collected, imported and archived for use in genetic analyses.

5. Date and Location of Activity: Field work is scheduled to begin July 28, 1991, aboard the NOAA vessel *McArthur.* Permit coverage for the area extending beyond the continental shelf edge to roughly the boundary of the California current and the boundary of the U.S. territorial waters to the south and the Oregon/California state boundary in the north for a period of 5 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, Maryland 20910 within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

By appointment: Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Suite 7324, Silver Spring, Maryland 20910 (301/427–2289);

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731 (213/514–6196);

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE BIN C15700, Seattle, Washington 98115 (206/526–6150); and

Director, National Marine Mammal Laboratory, National Marine Fisheries Service, 7600 Sand Point Way, NE, BIN C15700, Seattle, Washington 98115 (206/516–4020).

Dated: July 25, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91–18055 Filed 7–30–91; 8:45 am]

BILLING CODE 3510-22-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange's Proposed New Rule 553—Average Price System

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rule to implement an average pricing system.

SUMMARY: The Chicago Mercantile Exchange ("CME") has submitted a proposed new rule pursuant to section 5a(12) of the Commodity Exchange Act ("Act"). The proposed rule would allow clearing firms to confirm to customers average prices when certain orders or series of orders for futures or options contracts are executed at multiple prices. The proposed pricing system would not alter prices at which trades were cleared or reported, nor alter the handling of liquidations or transfers.

Acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Trading and Markets has determined to publish the CME's proposal for public comment. The Division believes that publication of CME's proposal is in the public interest and will assist the Commission in considering the views of interested persons.

DATES: Comments must be received on or before August 30, 1991.

FOR FURTHER INFORMATION CONTACT: John C. Lawton, Associate Director, or Lois J. Gregory, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Description of Proposed Rule

By letter dated July 15, 1991 and received July 16, 1991, the CME submitted proposed new Rule 553 pursuant to Commission Regulation 1.41(c). Proposed new Rule 553 would put into place an average price system ("APS") which would enable clearing firms to confirm to customers an average price when multiple execution prices were received on an order or series of orders for futures, options or combination transactions. The APS could be used for a single order or an order representing multiple accounts executed only during a regular trading hours session [1] and only if the order was for the same commodity and month for futures contracts and the same commodity, month, put or call and strike price for option contracts. The CME believes that APS would provide a fair allocation method when multiple prices were received on an order for multiple accounts in that each customer would be confirmed an average price which would be no better or worse than any other customer whose order was included.

Under the proposed rule, both the office and floor order for an order that would be averaged in the event of multiple execution prices would be required to include an APS indicator at the time of acceptance in addition to all other current CME order recordation requirements. An APS-indicated order, like other orders, would be transmitted into the pit for execution and if the floor broker was able to execute the order at a single price, no averaging would be necessary. If the APS order was filled at multiple prices, an average price would be computed based on the fill prices, and the average price would be confirmed to the customer.[2] The prices reported to the Clearing House and to quotation services would remain the actual execution prices arrived by open outcry in the pit, and trades subject to APS would be cleared at the execution prices.

The APS system is proposed to be used both when the executing firm also carries the accounts represented by an order and when the executing and carrying firm are different. The proposed rule would require every clearing firm that confirms to customers average prices to include an APS indicator on each customer statement including daily and monthly confirmations.

The CME represents that the proposed system would have no impact on its audit trail or resulting computerized trade reconstruction. With respect to partial fills, allocation would be subject to currently applicable allocation methods. Confirming an average price to a customer would have no impact on margin, settlement, or liquidations or transfers of trades.

II. Request for Comments

The Commission requests comments on any aspect of the proposed new CME rule that members of the public believe may raise issues under the Act or Commission regulations.

Copies of CME's proposed rule submission are available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies also may be obtained through the Office of the Secretariat at the above address or by telephoning (202) 254–6314.

Any person interested in submitting written data, views, or arguments on the proposed rule should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC, on July 25, 1991.

Andrea M. Corcoran,

Director.

[FR Doc. 91–18057 Filed 7–30–91; 8:45 am]

BILLING CODE 6351-01-M

Chicago Mercantile Exchange Proposal To Establish Option Trading for the Globex Trading System Based on Implied Volatility

AGENCY: Commodities Futures Trading Commission.

ACTION: Notice of proposed contract market rule and rule amendments.

SUMMARY: The Chicago Mercantile Exchange ("CME") has submitted to the Commodity Futures Trading Commission ("Commission") a proposal to establish an alternative format for trading option contracts, and combinations involving option contracts, on the Globex trading system. The proposal would permit trading based on the quotation of implied volatility for the underlying futures contract, rather than the actual premium (price) level of the option.

The Division of Trading and Markets ("Division") has determined, pursuant to authority delegated by Commission Regulation 140.96, to publish the CME's proposal for comment. The Division believes that publication of the proposal is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act ("Act").

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[1] The APS system initially would be available only for trades executed during regular trading hours; however, after the system became operational, the CME would propose to permit APS also to be used for GLOBEX transactions.

[2] Pursuant to the proposed rule, if the average price was not consistent with the minimum price increment, the average price would be rounded to the next price increment. Buy orders would be rounded up and sell orders rounded down. This process would create a cash residual which the CME states would be paid to the customer if the confirmed price was the rounded average.

DATES: Comments must be received by August 30, 1991.

FOR FURTHER INFORMATION CONTACT: Clarence R. Sanders, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

By letter dated June 21, 1991, the CME submitted, pursuant to section 5a(12) of the Act and Commission Regulation 1.41(b), a proposal to permit option trading based on the implied volatility of the underlying futures contracts. The CME proposal would apply only to the Globex trading system. The proposal includes newly proposed Rule 584, proposed amendments to Rules 4611, 4612, 4613, 4614, 4615, 4616, 5001, and 5101, a proposed Definition, and a proposed Interpretation and Notice. The proposal would permit trading based on implied volatility for options on the Pound Sterling, Canadian Dollar, Deutsche Mark, Japanese Yen, Swiss Franc, Australian Dollar, Three-Month Eurodollar, and Three-Month U.S. Treasury Bill futures contracts.

II. Description of Proposal

The proposal would establish an additional format for trading option contracts on the Globex system. Under the proposal, Globex terminal operators could enter option contract bid and/or ask quotations in terms of the implied volatility of the option's underlying futures contract, rather than the premium (price) of the option. Following execution, a price would be derived by the CME from a predetermined standard option pricing model. This price would be used to calculate the amount due from the purchaser of the option contract and also would serve as the basis for the clearing of positions. In the case of a combination transaction (i.e., a transaction involving both options and futures contracts) the standard option pricing model also would be used to determine the number of futures contracts for the combination transaction.

The proposed new format would be in addition to, not in place of, the listing of option contracts quoted in the conventional manner. That is, under the proposal, both conventionally priced and volatility-based options would be listed for the same future contract, with the system programmed to display the conventionally-priced and volatility-based options on separate lines of the Globex terminal screen. For purposes of clearing and settlement, the two types of options would be fungible.

The CME believes that adoption of the proposal could encourage trading on the Globex system. According to the CME, traders in an open outcry environment can easily adjust their bid and ask quotations in response to changes in competitive circumstances or other material market variables. The CME contrasts this with the Globex system, where bid and ask quotations are entered via keyboard and are subject to immediate acceptance as market conditions change. Thus, on Globex, a trader with multiple bids and/or offers with the system would run the risk that stale quotes could be picked off before they could be updated. Because many trading decisions are based on volatility estimates, the CME concludes that the proposal could reduce the need of Globex terminal operators to continually cancel and re-enter bid and ask quotations, and thereby facilitate or encourage trading activity. The CME notes that the over-the-counter market in interbank currency options is based on a method similar to the proposal.

III. Request for Comments

The Commission requests comments on any aspect of the proposal that members of the public believe may raise issues under the Act or the Commission's regulations. In particular, the Commission seeks comment on whether the fact that under the proposal there could be a two-tiered pricing structure for the same option raises any issues under the Act or the Commission's regulations.

Copies of the CME's submission are available for inspection of the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies also may be obtained through the Office of the Secretariat at the above address or by telephoning (202) 254-6314.

Any person submitting written data, views or arguments on the proposal should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC on July 25, 1991.

Andrea. M. Corcoran,

Director.

[FR Doc. 91-18056 Filed 7-30-91; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Military Personal Property Symposium

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice of open meeting.

SUMMARY: Announcement is made of meeting of the Military Personal Property Symposium. This meeting will be held on September 19, 1991 at the Best Western Old Colony Inn, 625 First Street, Alexandria, Virginia, and will convene at 0830 hours and adjourn at approximately 1600 hours.

PROPOSED AGENDA: The purpose of the symposium is to provide an open discussion and free exchange of ideas with the public on procedural charges to the Personal Property Traffic Management Regulation, DoD 4500.34R, and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Movement and Storage Program.

FOR FURTHER INFORMATION CONTACT: All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MTPP-M, 5611 Columbia Pike, Falls Church, VA 22041-5050, or at telephone number (703) 756-1600, between 0800-1630 hours. Topics to be discussed should be received on or before August 9, 1991.

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 91-18260 Filed 7-30-91; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

[Special Public Notice 91-4, Permit No. 2-880038, Kamishak Bay 1]

Reevaluation of Permit Decision

AGENCY: Alaska District, U.S. Army Corps of Engineers, DOD.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Alaska District Engineer has determined that a reevaluation of the Paint River fish ladder permit is warranted. Recent information regarding the possible effect of the project on McNeil River State Game Sanctuary and Katmai National Park bear concentrations and behavior; as well as recent legislation passed by the Alaska Legislature expanding the sanctuary and

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DEPARTMENT OF DEFENSE

Department of the Army

Military Personal Property Symposium

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice of open meeting.

SUMMARY: Announcement is made of meeting of the Military Personal Property Symposium. This meeting will be held on September 19, 1991 at the Best Western Old Colony Inn, 625 First Street, Alexandria, Virginia, and will convene at 0830 hours and adjourn at approximately 1600 hours.

PROPOSED AGENDA: The purpose of the symposium is to provide an open discussion and free exchange of ideas with the public on procedural charges to the Personal Property Traffic Management Regulation, DoD 4500.34R, and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Movement and Storage Program.

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Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 91-18260 Filed 7-30-91; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

[Special Public Notice 91-4, Permit No. 2-880036, Kamishak Bay 1]

Reevaluation of Permit Decision

AGENCY: Alaska District, U.S. Army Corps of Engineers, DOD.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Alaska District Engineer has determined that a reevaluation of the Paint River fish ladder permit is warranted. Recent information regarding the possible effect of the project on McNeil River State Game Sanctuary and Katmai National Park bear concentrations and behavior; as well as recent legislation passed by the Alaska Legislature expanding the sanctuary and

establishing the McNeil River State Game Refuge constitutes the need for further review. Substantive comments on the impacts of the project on bear concentrations and behavior will be used to determine whether modification, suspension, or revocation of the permit is appropriate.

DATES: Comments must be received by the Alaska District on or before August 30, 1991.

ADDRESSES: Comments must reference the permit number above and be submitted to the following address: U.S. Army Corps of Engineers Alaska District Regulatory Branch, Post Office Box 898, Anchorage, Alaska 99506-0898.

FOR FURTHER INFORMATION CONTACT: Messrs. Steve Meyers or Kevin Morgan at the Anchorage address above, or by calling (907) 753-2712.

SUPPLEMENTARY INFORMATION:

1. *Permittee:* Cook Inlet Aquaculture Association.

2. *Location:* Paint River, approximately 100 miles west of Homer, Alaska, Section 12, Township 12 South, Range 30 West, Seward Meridian, USGS quadrangle map Iliamna (A-4), Alaska.

3. *Authorized work:* Discharge 237 cubic yards (cy) of fill material, dredge 2,080 cy of gravel and excavate 3,600 cy of solid rock in association with the construction of a fish ladder.

4. *Purpose:* Paint River currently produces no salmon; colonization has been prevented by the steep falls located near the mouth. Fish ladder construction coupled with a 5 year stocking program would allow the development of self-sustaining salmon runs. All 5 Alaskan salmon species would be introduced. Paint River would be expected to produce 600,000 chum, 900,000 pink, 225,000 sockeye, 5,000 kings, and 7,500 coho salmon annually.

5. *Background information:* A completed application was received by the Corps on March 22, 1988, and a 30 day public notice describing the project was issued on April 29, 1988. The Public Notice was sent to all interested parties (on the Corps mailing list) including appropriate State and Federal resource agencies to solicit comments. In response, only letters of no objection to permit issuance were received. An environmental assessment was completed on August 9, 1988, and the permit was issued on August 23, 1988. The time limit for completing the authorized work is August 31, 1991.

6. *Water quality certification:* A Certificate of Reasonable Assurance was issued by the State of Alaska, Department of Environmental Conservation on July 12, 1988.

7. *Coastal Zone Management Act Certification:* A Conclusive Consistency Determination was issued by the State of Alaska, Division of Governmental Coordination on July 11, 1988.

8. *Special area designation:* The project site is located approximately 1 mile north of the north boundary of the McNeil River State Game Sanctuary. This sanctuary is also listed on the National Registry of Natural Landmarks (36 CFR part 62). The project site is approximately 15 miles from the closest boundary of Katmai National Park.

9. *Additional information:* Recent legislation passed by the Alaska Legislature designates the Paint River corridor as part of the McNeil River State Game Sanctuary and establishes the McNeil River State Game Refuge which encompasses the approximate Paint River watershed. This legislation becomes effective the date the fish ladder becomes operational.

10. *Authority:* The permit was issued pursuant to section 10 of the Rivers and Harbors Act of 1899 and section 404 of the Clean Water Act. In accordance with General Condition 5 on the permit form (ENG Form 1721), the District Engineer may reevaluate his decision at any time the circumstances warrant. Reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7.

John O. Roach II,

Department of the Army, Liaison Officer to the Federal Register.

[FR Doc. 91-18175 Filed 7-30-91; 8:45 am]

BILLING CODE 3710-92-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[FAR Case 91-27]

OMB Clearance Request for Standard Form, Performance Bond for Other Than Construction

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a new information collection concerning Standard Form XX, Performance Bond for Other Than Construction.

DATES: Comments may be submitted on or before September 30, 1991.

ADDRESSES: Send comments to Mr. Peter Weiss, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Office of Federal Acquisition Policy, GSA (202) 501-4547.

SUPPLEMENTARY INFORMATION:

A. Purpose

The new standard form, Standard Form XX, Performance Bond for Other Than Construction, is being proposed for establishment. This coincides with the proposed rule, FAR case 91-27, providing a contract clause governing performance bonds for other than construction. The terms and conditions governing performance bonds for construction and other than construction may vary. The SF XX is being created to reflect these different terms and conditions.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 500; responses per respondent, 5; total annual responses, 2500; hours per response, 30; and total response burden hours, 1250.

Obtaining Copies of Proposals: Requester may obtain copies from the General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Clearance Request for Standard Form XX, Performance Bond for Other Than Construction, FAR case 91-27 in all correspondence.

Dated: July 23, 1991.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 91-18029 Filed 7-30-91; 8:45 am]

BILLING CODE [illegible]-JC-M

DEFENSE INFORMATION SYSTEMS AGENCY

Video Teleconferencing Industry; Draft Military Standard

The Department of Defense (DoD) announces the development of a draft military standard, MIL-STD-188-131, entitled Interoperability and Performance Standard for Video Teleconferencing. This draft standard will state DoD's minimum interoperability requirements as well as optional features. Industry is invited to review this document for accuracy and technical feasibility and provide comments. All information shall be provided at no cost to the government. All organizations willing to participate will do so at their own expense. Copies of the draft standard may be obtained from the Joint Tactical Command, Control and Communications Agency (JTC3A), TBBC (JTC3A-STT) (Attn. Mr. Rittenbach), Fort Monmouth, New Jersey 07703-5613, after 22 July 1991. Only written or faxed requests will be honored. Fax numbers are (908)-532-7773 and (908)-532-7752. Request industry comments be submitted to JTC3A no later than 23 September 1991.

Klaus H. Rittenbach,

Electronics Engineer.

[FR Doc. 91-17843 Filed 7-30-91; 8:45 am]

BILLING CODE 3610-05-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before August 30, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above.

Dated: July 25, 1991.

Mary P. Liggett,

Acting Director, Office of Information Resources Management.

Office of Postsecondary Education

Type of Review: New.

Title: Institutional Quality Control Pilot Project: Notice of Deadline Date for Participation and Revision of Selection Criteria.

Frequency: Annually.

Affected Public: Businesses or other for-profit; non-profit institutions.

Reporting Burden—Burden Hours: 50; *Responses:* 50.

Recordkeeping Burden—Burden Hours: 0; *Recordkeepers:* 0.

Abstract: This form will be used by financial aid administrators in demonstrating their commitment to quality control and error reduction in processing and awarding student aid dollars. The Department will use the information to assess an institution's intent and capacity to support the program.

[FR Doc. 91-18050 Filed 07-30-91; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP91-178-001]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

July 24, 1991.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on July 17, 1991, tendered for filing to its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet No. 602 and Substitute First Revised Sheet No. 658 proposed to be effective August 1, 1991.

Algonquin states it is submitting this amended tariff filing to clarify the term "new interruptible agreement" in reference to § 30.2(d) of Algonquin's tariff which simply established the point in time when agreements are subject to the first come, first serviced principles set forth in Order No. 436. Algonquin states its tariff does not contain a precise definition for that term, however, and for purposes of clarification, Algonquin submits this definition in section 1 of its general terms and conditions.

Algonquin notes that copies for this filing were served upon each affected party and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before July 31, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-18040 Filed 7-30-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER90-471-002]

Central Maine Power Co.; Filing

July 25, 1991.

Take notice that on June 10, 1991 Central Maine Power Company tendered for filing, in compliance with prior Commission orders in this docket, a transmission agreement between Central Maine Power Company and Massachusetts Municipal Wholesale Electric Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 2, 1991. Protests will be considered by the Commission in

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Algonquin states it is submitting this amended tariff filing to clarify the term "new interruptible agreement" in reference to § 30.2(d) of Algonquin's tariff which simply established the point in time when agreements are subject to the first come, first serviced principles set forth in Order No. 436. Algonquin states its tariff does not contain a precise definition for that term, however, and for purposes of clarification, Algonquin submits this definition in section 1 of its general terms and conditions.

Algonquin notes that copies for this filing were served upon each affected party and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before July 31, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91–18040 Filed 7–30–91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER90–471–002]

Central Maine Power Co.; Filing

July 25, 1991.

Take notice that on June 10, 1991 Central Maine Power Company tendered for filing, in compliance with prior Commission orders in this docket, a transmission agreement between Central Maine Power Company and Massachusetts Municipal Wholesale Electric Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 2, 1991. Protests will be considered by the Commission in

determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91–18049 Filed 7–30–91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91–1–59–007]

Northern Natural Gas Co., Proposed Changes in F.E.R.C. Gas Tariff

July 24, 1991.

Take notice that Northern Natural Gas Company (Northern), on July 16, 1991, tendered for filing to become part of its F.E.R.C. Gas Tariff, Third Revised Volume No. 1 (Volume No. 1 Tariff) and Original Volume No. 2 (Volume No. 2 Tariff) the following tariff sheets:

Third Revised Volume No. 1

Sixty-Fourth Revised Sheet No. 4A
Ninety-Fourth Revised Sheet No. 4B
Sixty-Third Revised Sheet No. 4B.1
Twenty-First Revised Sheet No. 4G.2
Fourteent-Revised Sheet No. 4H

Original Volume No. 2

One Hundred Second Revised Sheet No. 1C
Eighth Revised Sheet No. 1C.a

Northern proposes an effective date of August 1, 1991, to suspend the ANGTS Cumulative Adjustment from Northern's demand and commodity rates for the period August 1, 1991, through December 31, 1991.

Northern states that copies of the filing were served upon the company's customers and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 31, 1991. Protests will be considered by the Commission in determining the appropriate proceeding, but will not serve to make protestant parties to the proceedings. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91–18038 Filed 7–30–91; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1986 Oregon]

Oregon Trail Electric Consumers Cooperative, Inc.; Intent To File Application for a New License

July 24, 1991.

Take notice that the Oregon Trail Electric Consumers Cooperative, Inc., the existing licensee for the Rock Creek Hydroelectric Project No. 1986, filed a timely notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the Commission's Regulations. The original license for Project No. 1986 was issued effective June 30, 1946, and expires June 29, 1996.

The project is located on Rock Creek, a tributary of the Powder River, in Baker County, Oregon. The principal works of the Rock Creek Project include a low concrete diversion dam; a flume about 8.800 feet long; a regulating forebay of about 7 acre-feet; a 2,720-foot-long penstock; a powerhouse with a total installed capacity of 800 kW; a transmission line connection; and appurtenant facilities.

Pursuant to 18 CFR 16.7, the licensee is required henceforth to make available certain information to the public. This information is now available from the licensee at 3275 Baker St., Baker City, OR 97814 and 2023 Court, Baker City, OR 97814.

Pursuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by June 29, 1994.

Lois D. Cashell,
Secretary.

[FR Doc. 91–18036 Filed 7–30–91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85–60–005]

Overthrust Pipeline Co.; Report of Refunds

July 24, 1991

Take notice that on July 12, 1991, Overthrust Pipeline Company (Overthrust) tendered for filing with the Federal Energy Regulatory Commission (Commission) its Report of Refunds made in accordance with the provisions of the Commission's Order, issued May 21, 1991, Approving Settlement with Modifications in Docket Nos. RP85–60–000, and RP85–60–002.

Overthrust states that it made refunds of $11,444,765 to its customers on June 14, 1991 and June 17, 1991, inclusive of interest calculated in accordance with § 154.67(c) of the Commission's Regulations.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's rules of practice and Procedure (18 CFR 385.211 (1990)). All such protests should be filed on or before July 31, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91–18039 Filed 7–30–91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP91–10–000]

Complaint; Rocky Mountain Natural Gas Co.

Issued July 24, 1991.

Take notice that on July 5, 1991, Rocky Mountain Natural Gas Company, a Division of K N Energy, Inc. (Rocky Mountain) filed a complaint against Jack J. Grynberg, individually and as a general partner for the Greater Green River Basin Drilling Program: 72–73 (Grynberg), because of an alleged failure to refund $749,736.40 as required by § 270.101(e) of the Commission's regulations.[1] Rocky Mountain states that gas sold to it from the six wells in question was produced from gas reserves committed or dedicated to interstate commerce within the meaning of the Natural Gas Policy Act of 1978 (NGPA) and the sales must be made at the applicable NGPA section 104 price. Rocky Mountain requests that the Commission issue an order requiring Grynberg to comply with section 270.101(e) of the Commission's regulations by refunding to Rocky Mountain the amount of $749,736.40 for payments, including interest thereon, which were in excess of the applicable maximum lawful prices for NGPA section 104 gas purchased by Rocky

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[1] 18 CFR 270.101(e).

Mountain from Grynberg under a 1975 contract prior to January 1, 1991.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 or 214 of the Commission's rules of practice and procedure. All such petitions shall be filed within 30 days following publication of this notice in the **Federal Register**. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file with a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Respondent's answer to the complaint is also due on or before 30 days following **Federal Register** publication.

Lois D. Cashell,

Secretary.

[FR Doc. 91-18037 Filed 7-30-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-6-003]

Transcontinental Gas Pipe Line Corp.; Tariff Filing

July 24, 1991.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on July 16, 1991 the following tariff sheets to its FERC Gas Tariff, Original Volume No. 2:

Original volume No. 2	Proposed effective date
Original sheet Nos. 3951 through 3970 constituting Transco's Rate Schedule X-322, a firm gas transportation agreement dated December 15, 1989 by and among Transco and the Public Service Electric & Gas Company (PSE&G).	Dec. 15, 1989.
Original sheet No. 3951-A	Apr. 1, 1990
First revised sheet No. 3951-A	Apr. 10, 1990.

Transco states that the Commission authorized the subject gas transportation agreement by its Order Issuing Certificate issued June 7, 1989 in Docket Nos. CP37-5-000, *et al.* (June 7 order) in which Transco was authorized *inter alia*, to construct facilities and transport certain quantities of natural gas commencing November 15, 1989 pursuant to the terms and conditions of the precedent agreement contained in the Stipulation and Agreement filed by the Associated Penn East Customer Group (APEC).

Transco later determined that certain facilities which were authorized by the Commission in its June 7 order would not be placed in service by November 15, 1989. Therefore, on October 25, 1989, Transco filed an application seeking authority to utilize, on an interim basis, a portion of the facilities authorized by the Commission in conjunction with Transco's SS-2 storage service in order to providee firm tranportation service for the APEC customer group. On December 14, 1989 the Commission issued in Docket No. CP90-131-000 an Order Amending Certificate For Limited Term authorizing the use of the SS-2 facilities until the earlier of March 31, 1990 or the date on which the APEC facilities are placed in service. In its December 14, 1989 order the Commission also authorized interim rates for the APEC service based on the revised cost of service resulting from the utilization of the SS-2 facilities. The tariff sheets submitted in the instant filing proposed to be effective December 15, 1989, the commencement date of the APEC service, reflect the interim rates authorized by the Commission.

Transco states it is submitting Original Sheet No. 3951-A effective April 1, 1990 reflecting the additional APEC facilities which were placed into service on March 31, 1990, and that these April 1, 1990 rates are the rates which are originally authorized by the Commission in its June 7 Order.

Transco states it is also submitting First Revised Sheet No. 3951-A proposed to be effective April 10, 1990 in order to make reference to Substitute Fourth Revised Sheet No. 22 to Transco's Second Revised Volume No. 1 Tariff, which contains rates applicable to the APEC firm transportation service effective April 10, 1990, and that such rates were accepted by the Office of Pipeline and Producer Regulation Letter Order issued May 9, 1990 in Docket No. RP90-8-003.

Transco states that copies of the instant filing are being mailed to PSE&G and CNG Transmission Corporation, and that in accordance with provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Fedeal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 and 385.211. All such motions or protests should be filed on or before July 31, 1991. Protests wil be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-18044 Filed 7-30-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-391-006]

Transcontinental Gas Pipe Line Corp; Compliance Filing

July 24, 1991.

Take notice that on July 22, 1991, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing revised tariff sheets to its Volume No. 1 and Volume No. 2 tariffs in compliance with the Federal Energy Regulatory Commission's (Commission) order issued June 19, 1991 in the reference dockets.

Transco states that included in appendix A to its filing (Book 1) are revised tariff sheets for the locked-in period (April 10, 1990-July 31, 1991). Transco also states that appendix B to its filing contains tariff sheets for the prospective period to be effective August 1, 1991, including (i) An entire new Third Revised Volume No. 1 FERC Gas Tariff superseding Second Revised Volume No. 1 (Book 1) and (ii) revisions to certain tariff sheets contained in Original Volume No. 2 for the prospective period (Book 2).

Transco refers the Commission's and the parties' particular attention to the following aspects of the instant compliance filing:

1. Transco hereby reserves the right to make changes to the enclosed tariff sheets based upon the Commission's rehearing order on the June 19 Order of any successor rehearing orders;

2. Transco has filed fuel retention factors to be effective August 1, 1991 under the fuel tracking mechanism approved as part of the Rate Settlement, which fuel retention factors are based on the date submitted in Transco's fuel tracking filing of March 11, 1991 in Docket No. TM91-7-29-000 and designed on the throughput and allocation methodology underlying the prospective rates under the Rate Settlement. For the period April 10, 1990-July 31, 1991, Transco proposes to utilize the locked-in fuel retention factors included in the Rate Settlement;

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Lois D. Cashell,
Secretary.

[FR Doc. 91–18044 Filed 7–30–91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88–391–006]

Transcontinental Gas Pipe Line Corp; Compliance Filing

July 24, 1991.

Take notice that on July 22, 1991, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing revised tariff sheets to its Volume No. 1 and Volume No. 2 tariffs in compliance with the Federal Energy Regulatory Commission's (Commission) order issued June 19, 1991 in the reference dockets.

Transco states that included in appendix A to its filing (Book 1) are revised tariff sheets for the locked-in period (April 10, 1990–July 31, 1991). Transco also states that appendix B to its filing contains tariff sheets for the prospective period to be effective August 1, 1991, including (i) An entire new Third Revised Volume No. 1 FERC Gas Tariff superseding Second Revised Volume No. 1 (Book 1) and (ii) revisions to certain tariff sheets contained in Original Volume No. 2 for the prospective period (Book 2).

Transco refers the Commission's and the parties' particular attention to the following aspects of the instant compliance filing:

1. Transco hereby reserves the right to make changes to the enclosed tariff sheets based upon the Commission's rehearing order on the June 19 Order of any successor rehearing orders;

2. Transco has filed fuel retention factors to be effective August 1, 1991 under the fuel tracking mechanism approved as part of the Rate Settlement, which fuel retention factors are based on the date submitted in Transco's fuel tracking filing of March 11, 1991 in Docket No. TM91–7–29–000 and designed on the throughput and allocation methodology underlying the prospective rates under the Rate Settlement. For the period April 10, 1990–July 31, 1991, Transco proposes to utilize the locked-in fuel retention factors included in the Rate Settlement;

3. As provided for in the June 19 Order, Transco has proposed in § 6.4 of Rate Schedule FT a formula for withdrawals from Eminenance Storage Service which differs from the formula suggested by the Commission in the June 19 Order, but which, Transco submits, is a more equitable and workable formula because the Commission's formula regarding returns of prior withdrawals would unduly favor customers with larger FT contract demands.

4. Transco has made several changes to the format of the imbalance "cash-out" program set forth in section 5 of the FT and IT Rate Schedules which appear appropriate in view of the modifications required by the June 19 Order.

5. For the prospective period, Transco has removed its former curtailment provisions from its tariff and has included a new section 13 of its General Terms and Conditions which provides a curtailment plan in accord with the requirements of the June 19 Order.

Transco states that copies of the filing were mailed to all parties in the reference GIC Settlement and Rate Settlement.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 31, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91–18042 Filed 7–30–91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-197-000]

United Gas Pipe Line Co.; Tariff Filing

July 24, 1991.

Take notice that on July 16, 1991, United Gas Pipe Line Company ("United") tendered for filing and acceptance, pursuant to part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act, certain tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1, to implement the provisions of an experimental capacity brokering program authorized on the High Island Offshore System ("HIOS") and U-T Offshore System ("UTOS"). United proposes a July 31, 1991 effective date.

United states that on October 30, 1990, in HIOS' Docket No. RP89–37–000, *et al.*, and in UTOS' Docket No. RP89–38–000, *et al.*, respectively the Commission issued an "Order Approving Uncontested Settlement, Amending Blanket Certificate, and Granting a Request for Waiver," which, among other things, authorized an experimental capacity brokering program ("Brokering Program") for firm transportation capacity on the HIOS and UTOS systems.

United states that it currently holds firm transportation capacity rights on the HIOS and UTOS systems and accordingly may choose to broker its firm transportation capacity rights to a third-party assignee pursuant to the provisions of HIOS' and UTOS' Brokering Programs. United states that the October 30, 1990 order and HIOS' and UTOS' respective tariffs require certain preconditions to participation in the brokering programs. First, an interstate pipeline must have accepted a blanket certificate of public convenience and necessity under subparts G and/or K of part 284 of the Commission's Regulations. Second, HIOS' and UTOS' tariffs require that an interstate pipeline must also have on file with the Commission tariff sheets that (i) Reflect the pertinent procedures and conditions set forth in the brokering programs; and (ii) provide for the establishment of an open season for the allocation of assignable capacity. Accordingly, in compliance with the Commission's October 30, 1990 order and HIOS' and UTOS' tariffs, United is tendering certain tariff sheets which, when accepted and permitted to become effective, will provide for the brokering of its firm transportation capacity rights on the HIOS and UTOS systems and provide for an open season to initiate brokering activity.

For good reason shown United requests that the Commission grant waiver of the 30-day minimum notice period as allowed in § 154.51 of the Commission's Regulations. United proposes a 15-day notice period which would facilitate the entry of United and its customers into brokering activity.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 351.211 of 18 CFR. All such motions, or protests should be filed on or before July 31, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 91–18041 Filed 7–30–91; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3979-3]

Invitation for Submittal to the Vendor Information System for Innovative Treatment Technologies (VISITT)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of invitation.

SUMMARY: EPA's Technology Innovation Office (TIO), of the Office of Solid Waste and Emergency Response, is announcing an invitation for Submittal for participation in VISITT. VISITT is a new database being developed by EPA to provide current information on innovative treatment technologies for remediation of contaminated hazardous waste sites, soil, and ground water. This database will contain technology information submitted by developers, manufacturers, and suppliers of innovative treatment technology equipment and services. VISITT will provide a means for treatment technology vendors to make their products and capabilities known. By meeting the below-mentioned requirements and completing the Vendor Information Form, vendors can be included in this database.

DATES: The first release of VISITT is scheduled for early 1992; complete information submitted by September 30, 1991, will be eligible for inclusion in that release.

ADDRESSES: The Vendor Information Form (EPA/540/2–91/011) is available from EPA/ORD Publications at (513) 569–7562. Submit completed Vendor Information Forms to: System Operator, VISITT, PRC Environmental Management, Inc., 1505 Planning Research Drive, McLean, VA 22102.

FOR FURTHER INFORMATION CONTACT: The VISITT Hotline at 1–800–245–4505.

SUPPLEMENTARY INFORMATION: EPA anticipates that VISITT will be used by hundreds of professionals responsible for the cleanup of Superfund sites, RCRA corrective action sites, state-led cleanups, federal facility restoration programs, and remedial actions at leaking underground storage tank (UST) sites. The database will allow users to screen technologies for consideration in engineering feasibility studies, and to identify vendors who provide treatability studies and cleanup services.

The database will contain information on vendors of innovative technologies that treat ground water in situ, as well as soils, sludges, and sediments. Examples of technologies included are soil washing, thermal desorption, bioremediation, solvent extraction, and in situ vitrification. VISITT will not include more-established technologies—incineration, solidification/stabilization, and traditional pump-and-treat ground water remediation. Technologies may be at bench, pilot, or full scale.

VISITT will contain the following minimum vendor information, as submitted in full by vendors: company information (name, address, contacts, and phone number); technology description; technology advantages and limitations; and applicable media, wastes, and contaminants. Additional optional information includes: performance data, waste limitations, unit costs and factors affecting costs, available hardware/capacity, project names and contacts, permits obtained, treatability study capabilities, and references.

Technology vendors will provide information directly to EPA's TIO for insertion in the database, which will be updated at least annually. Vendors must verify or update the information at least once a year to remain in the database. The information contained in this invitation for Submittal is approved by the Office of Management and Budget under OMB Control Number 2050-0114.

Dated: July 23, 1991.

Don R. Clay,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 91-18110 Filed 7-30-91; 8:45 am]

BILLING CODE 6560-50-M

[OPP-100091, FRL-3932-5]

Ultra Technologist; Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Ultra Technologist Inc. has been awarded a contract to perform work for the EPA Office of Pesticide Programs, and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to Ultra Technologist Inc. consistent with the requirements of 40 CFR 2.307 (h)(3) and 2.308(h)(2). This transfer will enable Ultra Technologist Inc. to fulfill the obligations of the contract and serves to notify affected persons.

DATES: Ultra Technologist Inc. will be given access to this information no sooner than August 5, 1991.

FOR FURTHER INFORMATION CONTACT: By mail: Clare Grubbs, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 212, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA (703) 557-4460.

SUPPLEMENTARY INFORMATION: Under Contract No. 68-D1-0017, Ultra Technologist Inc. will provide technical support services to the Office of Pesticide Programs (OPP), Special Review and Registration Division. In support of these services, Ultra Technologist Inc. will assist with the design and development of data systems that will be compatible with other EPA and Office of Pesticide Programs personal computers and office automation. This contract involves no subcontractor.

The Office of Pesticide Programs has determined that access by Ultra Technologist Inc. to information on all pesticide chemicals is necessary for the performance of this contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with Ultra Technologist Inc. prohibits use of the information for any purpose other than purposes specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, Ultra Technologist Inc. is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officer for this contract in the EPA Office of Pesticide Programs. All information supplied to Ultra Technologist Inc. by EPA for use in connection with this contract will be returned to EPA when Ultra Technologist Inc. has completed its work.

Dated: July 11, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 91-17931 Filed 7-30-91; 8:45 am]

BILLING CODE 6560-50-F

[OPP-50716; FRL-3879-3]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

275-EUP-60. Renewal. Abbot Laboratories, Chemical and Agricultural Products Division, 1401 Sheridan Road, North Chicago, IL 60064. This experimental use permit allows the use of 7,249 grams of the plant growth regulator N-[phenylmethyl]-1*H*-purine-6-amine on 390 acres of apples to evaluate its use as a thinning agent. The program is authorized only in the States of California, Georgia, Illinois, Indiana, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Tennessee, Virginia, Washington, West Virginia, and Wisconsin. The experimental use

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21 Jefferson Davis
n, VA (703) 557–4460.

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security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officer for this contract in the EPA Office of Pesticide Programs. All information supplied to Ultra Technologist Inc. by EPA for use in connection with this contract will be returned to EPA when Ultra Technologist Inc. has completed its work.

Dated: July 11, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 91–17931 Filed 7–30–91; 8:45 am]

BILLING CODE 6560-50-F

[OPP–50716; FRL–3879–3]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

275–EUP–60. Renewal. Abbot Laboratories, Chemical and Agricultural Products Division, 1401 Sheridan Road, North Chicago, IL 60064. This experimental use permit allows the use of 7,249 grams of the plant growth regulator N-[phenylmethyl]-1*H*-purine-6-amine on 390 acres of apples to evaluate its use as a thinning agent. The program is authorized only in the States of California, Georgia, Illinois, Indiana, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Tennessee, Virginia, Washington, West Virginia, and Wisconsin. The experimental use

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permit is effective from May 13, 1991 to May 13, 1992. A permanent tolerance for residues of the active ingredient in or on apples has been established (40 CFR 180.376). (Robert Taylor, PM 25, Rm. 245, CM #2, (703–557–1800))

241–EUP–120. Renewal. American Cyanamid Company, P.O. Box 400, Princeton, NJ 08543. This experimental use permit allows the use of 1,440 pounds of the chemical hybridizing agent potassium 3,4-dichloro-5-isothiazolecarboxylate on a maximum of 900 acres of cotton to evaluate the effects of the hybridizing agent on cotton seed. The program is authorized only in the State of Arizona. The experimental use permit is effective from April 12, 1991 to April 12, 1993. (Robert Taylor, PM 25, Rm. 245, CM #2, (703–557–1800))

241–EUP–122. Issuance. American Cyanamid Company, P.O. Box 400, Princeton, NJ 08543. This experimental use permit allows the use of 25 pounds of the herbicide (±)-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-ethyl-3-pyridinecarboxylic acid on 400 acres of field corn to evaluate the control of various broadleaf weeds and grasses. The program is authorized only in the States of Colorado, Illinois, Iowa, Indiana, Kansas, Kentucky, Minnesota, Missouri, Nebraska, Ohio, and Wisconsin. The experimental use permit is effective from March 1, 1991 to March 1, 1993. This permit is issued with the limitation that all treated crops are destroyed or used for research purposes only. (Robert Taylor, PM 25, Rm. 245, CM #2, (703–557–1800))

7969–EUP–25. Renewal. BASF Corporation, Agricultural Chemicals Division, P.O. Box 13528, Research Triangle Park, NC 27709–3528. This experimental use permit allows the use of 1,500 pounds of the herbicide 3,7-dichloro-8-quinolinecarboxylic acid on 4,000 acres of rice to evaluate the control of various weeds. The program is authorized only in the States of Arkansas, Louisiana, Mississippi, Missouri, and Texas. The experimental use permit is effective from March 20, 1991 to March 20, 1992. (Robert Taylor, PM 25, Rm. 245, CM #2, (703–557–1800))

7969–EUP–27. Extension. BASF Corporation, Agricultural Chemicals Division, P.O. Box 13528, Research Triangle Park, NC 27709–3528. This experimental use permit allows the use of 4,575 pounds of the herbicide 3,7-dichloro-8-quinolinecarboxylic acid on 4,575 acres of turf to evaluate the control of various weeds. The program is authorized only in the States of California, Delaware, Georgia, Illinois, Indiana, Kentucky, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, and Virginia. The experimental use permit is effective from January 1, 1991 to December 31, 1991. (Robert Taylor, PM 25, Rm. 245, CM #2, (703–557–1800))

7969–EUP–29. Renewal. BASF Corporation, Agricultural Chemicals Division, P.O. Box 13528, Research Triangle Park, NC 27709–3528. This experimental use permit allows the use of 36 pounds of the herbicide 3,7-dichloro-8-quinolinecarboxylic acid on 180 acres of sorghum, soybeans, and spring wheat to evaluate the control of various weeds. The program is authorized only in the States of Arkansas, Idaho, Illinois, Indiana, Kansas, Minnesota, Mississippi, Missouri, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Tennessee, Texas, and Washington. The experimental use permit is effective from May 21, 1991 to December 1, 1991. This permit is issued with the limitation that all crops are destroyed or used for research purposes only. (Robert Taylor, PM 25, Rm. 245, CM #2, (703–557–1800))

100–EUP–92. Issuance. Ciba-Geigy Corporation, P.O. Box 18300, Greensboro, NC 27419. This experimental use permit allows the use of 1,240 pounds of the plant growth regulator 4-(cyclopropyl-α-hydroxy-methylene)-3,5-dioxo-cyclohexanecarboxylic acid ethyl ester on 615 acres of turf grasses to evaluate the control of the growth of turf grasses. The program is authorized only in the States of Alabama, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, and Wisconsin. The experimental use permit is effective from April 18, 1991 to April 18, 1992. (Joanne Miller, PM 23, Rm. 237, CM #2, (703–557–1830))

56336–EUP–2. Issuance. Consep Membranes, Inc., c/o Walter Talarek, Esq., 1577 Springhill Road, Suite 600, Vienna, VA 22182–7501. This experimental use permit allows the use of 367 pounds of the pheromone (*E,E*)-8,10-dodecadien-1-ol on 3,000 acres of apples, pears, and walnuts to evaluate the control of codling moths. The program is authorized only in the States of California, Colorado, Michigan, New Mexico, New York, Oregon, Texas, Utah, Virginia, Washington, and West Virginia. The experimental use permit is effective from April 10, 1991 to October 1, 1992. (Phil Hutton, PM 17, Rm. 202, CM #2, (703–557–2690))

62719–EUP–13. Issuance. DowElanco, 9002 Purdue Road, Quad IV, Indianapolis, IN 46268–1189. This experimental use permit allows the use of 15.35 pounds of the herbicide N-(2,6-difluorophenyl)-5-methyl(1,2,4)triazolo 1,5-α-pyrimidine-2-sulfonamide on 102 acres of corn and soybeans to evaluate the control of broadleaf weeds. The program is authorized only in the States of Arkansas, Georgia, Illinois, Indiana, Iowa, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, Ohio, South Dakota, Tennessee, and Wisconsin. The experimental use permit is effective from March 8, 1991 to March 8, 1992. This permit is issued with the limitation that all treated crops are destroyed or used for research purposes only. (Joanne Miller, PM 23, Rm. 237, CM #2, (703–557–1830))

352–EUP–146. Extension. E.I. duPont de Nemours & Company, Inc., Agricultural Products Department, Barley Mill Plaza, Wilmington, DE 19880–0038. This experimental use permit allows the use of 2,500 pounds of the herbicide methyl 2[[[[[(4,6-dimethoxypyrimidin-2-yl)amino]carbonyl]amino]sulfonyl]methyl]benzoate, bensulfuron methyl on 2,730 aquatic acres of canals, lakes, ponds, and reservoirs. The program is authorized only in the States of Alabama, Arizona, California, Colorado, Delaware, Florida, Georgia, Idaho, Kentucky, Maryland, Michigan, Minnesota, Mississippi, Montana, New Jersey, North Carolina, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Washington, and Wyoming. The experimental use permit is effective from January 8, 1991 to January 8, 1992. (Joanne Miller, PM 23, Rm. 237, CM #2, (703–557–1830))

352–EUP–152. Extension. E.I. duPont de Nemours & Company, Inc., Agricultural Products Department, Barley Mill Plaza, Wilmington, DE 19880–0038. This experimental use permit allows the use of 500 pounds of the insecticide chloroethoxyphos on 2,000 acres of corn to evaluate the control of various insects. The program is authorized only in the States of Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, New Mexico, Nebraska, Ohio, Pennsylvania, South Dakota, Texas, Virginia, and Wisconsin. The experimental use permit is effective from April 9, 1991 to April 9, 1992. A temporary tolerance for residues of the active ingredient in or on corn has been established. (Dennis Edwards, Jr., PM 12, Rm. 202, CM #2, (703–557–2386))

279–EUP–117. Extension. FMC Corporation, Agricultural Chemicals Group, 2000 Market St., Philadelphia, PA 19103. This experimental use permit allows the use of 850 pounds of the insecticide 2-(2-chlorophenyl)methyl-4,4-dimethyl-3-isoxadinone on 850 acres of cotton to evaluate the control of annual grasses and broadleaf weeds. The program is authorized only in the States of Alabama, Arkansas, Georgia, Louisiana, Michigan, Missouri, North Carolina, South Carolina, Tennessee, and Texas. The experimental use permit is effective from June 12, 1991 to June 12, 1992. This permit is issued with the limitation that all crops are destroyed or used for research purposes only. (Robert Taylor, PM 25, Rm. 245, CM #2, (703–557–1800))

64004–EUP–1. Issuance. Frost Technology Corporation, 6701 San Pablo Avenue, Oakland, CA 94608–1239. This experimental use permit allows the use of 117.3 pounds of Pseudomonas fluorescens A506, Pseudomonas fluorescens 1629RS, and Pseudomonas syringae 742RS on almonds, apples, cherries, pears, potatoes, strawberries, and tomatoes to evaluate the control of frost-forming bacteria on leaves, blossoms, and fruit. The program is authorized only in the States of Arizona, California, Florida, Georgia, Michigan, Missouri, New Jersey, New York, Ohio, Oregon, Washington, and Wisconsin. The experimental use permit is effective from Janaury 29, 1991 to January 29, 1993. (Carl Grable, PM 21, Rm. 223, CM #2, (703–557–1900))

8340–EUP–10. Extension. Hoechst Celanese Corporation, Route 202–205, P.O. Box 2500, Somerville, NJ 08876–1258. This experimental use permit allows the use of 1,953.74 pounds of the herbicide monoammonium 2-amino-4-(hydroxymethylphosphinyl)butanoate on 599 acres of noncrop areas, tree crops, and vine crops to evaluate the control of annual and perennial emerged grasses and broadleaf weeds. The program is authorized in the States of Alabama, Arkansas, California, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, New Jersey, New York, North Dakota, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, and Washington. The experimental use permit is effective from June 6, 1991 to June 6, 1992. A temporary tolerance for residues of the active ingredient in or on citrus, grapes, pome fruit, and stone fruit has been established. (Joanne Miller, PM 23, Rm. 237, CM #2, (703–557–1830))

8340–EUP–11. Extension. Hoechst Celanese Corporation, Route 202–205, P.O. Box 2500, Somerville, NJ 08876–1258. This experimental use permit allows the use of 148.5 pounds of the herbicide (+)-ethyl 2-[4-[(6-chloro-2-benzoxazolyl)oxy]phenoxy]propanoate on 900 acres of rice to evaluate the control of annual and perennial grasses in rice. The program is authorized only in the States of Arkansas, Louisiana, Mississippi, Missouri, and Texas. The experimental use permit is effective from March 30, 1991 to March 30, 1992. A permanent tolerance for residues of the active ingredient in or on rice has been established (40 CFR 180.430). (Joanne Miller, PM 23, Rm. 237, CM #2, (703–557–1830))

8340–EUP–13. Extension. Hoechst Celanese Corporation, Route 202–205, P.O. Box 2500, Somerville, NJ 08876–1258. This experimental use permit allows the use of 661.5 pounds of the herbicides (±)-ethyl 2-[4-[(6-chloro-2-benzoxazolyl)oxy]phenoxy]propanoate; 2-ethylhexyl-2,4-dichlorophenoxyacetate; and isooctyl-2-methyl-4-chlorophenoxyacetate on 3,675 acres of spring barley to evaluate selective postemergence control of green and yellow foxtail, millet species and wild oats. The program is authorized only in the States of Idaho, Minnesota, Montana, North Dakota, and South Dakota. The experimental use permit is effective from April 10, 1991 to April 10, 1992. A temporary tolerance for residues of the active ingredients in or on barley has been established. (Joanne Miller, PM 23, Rm. 237, CM #2, (703–557–1830))

49036–EUP–2. Issuance. Ishihara Sangyo Kaisha, Ltd., c/o Landis Associates, Inc., 3025 Madison Highway, P.O. Box 5126, Valdosta, GA 31603–5126. This experimental use permit allows the use of 5,381.25 pounds of the insecticide/nematicide O-ethyl S-(1-methylpropyl)-(2-oxo-3-thiazolidinyl)-phosphonothionate on 1,435 acres of tobacco and tomatoes to evaluate the control of various insect pests. The program is authorized only in the States of Alabama, California, Florida, Georgia, Indiana, Kentucky, Maryland, Michigan, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, and Virginia. The experimental use permit is effective from March 11, 1991 to March 11, 1992. A temporary tolerance for residues of the active ingredient in or on tomatoes has been established. (Dennis Edwards, Jr., PM 12, Rm. 202, CM #2, (703–557–2386))

49036–EUP–3. Issuance. Ishihara Sangyo Kaisha, Ltd., c/o Landis Associates, Inc., 3025 Madison Highway, P.O. Box 5126, Valdosta, GA 31603–5126. This experimental use permit allows the use of 2006.25 pounds of the insecticide/nematicide O-ethyl S-(1-methylpropyl)-(2-oxo-3-thiazolidinyl)-phosphonothionate on 535 acres of tomatoes to evaluate the control of various insect pests. The program is authorized only in the States of Alabama, California, Florida, Georgia, Indiana, Maryland, Michigan, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, and Virginia. The experimental use permit is effective from March 11, 1991 to March 11, 1992. A temporary tolerance for residues of the active ingredient in or on tomatoes has been established. (Dennis Edwards, Jr., PM 12, Rm. 202, CM #2, (703–557–2386))

264–EUP–79. Extension. Rhone Poulenc Ag Company, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. This experimental use permit allows the use of 2,600 pounds of the insecticide thiodicarb on 350 acres of apples to evaluate the control of various insects. The program is authorized only in the States of Maine, Michigan, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Virginia, and West Virginia. The experimental use permit is effective from February 20, 1991 to February 20, 1992. A temporary tolerance for residues of the active ingredient in or on apples has been established. (Dennis Edwards, Jr., PM 12, Rm. 202, CM #2, (703 557–2386))

55947–EUP–11. Issuance. Sandoz Crop Protection Corporation, 1300 East Touhy Avenue, Des Plaines, IL 60018. This experimental use permit allows the use of 390 pounds of the herbicide 2-chloro-N-[(1-methyl-2-methoxy)ethyl]-N-(2,4-dimethyl-thien-3-yl)-acetamide on 520 acres of corn to evaluate the control of preemergent weeds. The program is authorized only in the States of Iowa, Illinois, Michigan, Minnesota, Nebraska, Indiana, Ohio, South Dakota, and Wisconsin. The experimental use permit is effective from May 2, 1991 to May 2, 1992. This permit is issued with the limitation that all treated crops are destroyed or used for research purposes only. (Cynthia Giles-Parker, PM 22, Rm. 229, CM #2, (703–557–8540))

55947–EUP–12. Issuance. Sandoz Crop Protection Corporation, 1300 East Touhy Avenue, Des Plaines, IL 60018. This experimental use permit allows the use of 224 pounds of the herbicide 2-chloro-N-[(1-methyl-2-methoxy)ethyl]-N-(2,4-dimethyl-thien-3-yl)-acetamide on 300 acres of soybeans to evaluate the control of preemergent weeds. The program is authorized only in the States of Arkansas, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, and Wisconsin. The experimental use permit is effective from May 2, 1991 to May 2, 1992. This permit is issued with the limitation that all crops are destroyed or used for research purposes only. (Cynthia Giles-Parker, PM 22, Rm. 229, CM #2, (703-557-8540))

36029-EUP-1. Issuance. Wilco Distributors, Inc., P.O. Box 291, Lompoc, CA 93438. This experimental use permit allows the use of 300 pounds of the rodenticide strychnine in baits on 150 acres of burrow-builder subterranean applications on rangeland and alfalfa fields (after harvest) to evaluate the control of pocket gophers. The program is authorized only in the State of California. The experimental use permit is effective from April 1, 1991 to April 1, 1992. (Robert Forrest, PM 14, Rm. 211, CM #2, (703- 557-7889))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquires concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

Dated: July 8, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 91-18105 Filed 7-30-91; 8:45 am]

BILLING CODE 6560-50-F

[OPP-50729; FRL-3930-3]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

62719-EUP-1. Renewal. DowElanco, 9002 Purdue Rd., Indianapolis, IN 46268-1189. This experimental use permit allows the use of 48,960 pounds of the herbicide triclopyr on 2,000 acres of canals (drainage and irrigation), ditches, lakes, marshes, ponds, reservoirs, rivers, streams, and wetlands to evaluate the control of woody plants and annual and prennial weeds. The program is authorized only in the States of Alabama, Arizona, California, Florida, Idaho, Indiana, Louisiana, Massachusetts, Michigan, Minnnesota, Montana, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Texas, Washington, and Wisconsin. The experimental use permit is effective from June 11, 1991 to June 11, 1993. A temporary tolerance for residues of the active ingredient in or on potable water has been established. (Robert Tayor, PM 25, Rm. 245, CM #2 , (703-557-1800))

62719-EUP-8. Renewal. DowElanco, 9002 Purdue Rd., Indianapolis, IN 46268-1189. This experimental use permit allows the use of 1,500 pounds (over 2 years) of the herbicide triclopyr on 4,000 acres (over 2 years) of rice to evaluate the control of weeds. The program is authorized only in the States of Arkansas, Louisiana, Mississippi, and Texas. The experimental use permit is effective from June 23, 1991 to June 23, 1993. A temporary tolerance for residues of the active ingredient in or on rice has been established. (Robert Tayor, PM 25, Rm. 245, CM #2, (703-557-1800))

618-EUP-13. Issuance. Merck Sharp Dohme Research Laboratories, Hillsborough Rd., Three Bridges, NJ 08887. This experimental use permit allows the use of 7.5 pounds of the miticide avermectin B^1 on 150 acres of apples to evaluate the control of various mites. The program is authorized only in the States of California, Colorado, Idaho, New Jersey, New York, North Carolina, Maine, Michigan, Ohio, Oregon, Pennsylvania, Virginia, Washington, and West Virginia. The experimental use permit is effective from June 15, 1991 to June 15, 1992. A temporary tolerance for residues of the active ingredient in or on apples has been established. (George LaRocca, PM 15, Rm. 204, CM #2, (703-557-2400))

524-EUP-58. Issuance. Monsanto Company, 700 14th St., NW., Suite 1100, Washington, DC 20005. This experimental use permit allows the use of 8,000 pounds of the herbicide acetochlor on 4,000 acres of corn to evaluate the control of various weeds. The program is authorized only in the States of Iowa, Minnesota, and South Dakota. The experimental use permit is effective from May 1, 1992 to May 1, 1993. A temporary tolerance for residues of the active ingredient in or on corn has been established (Robert Taylor, PM 25, Rm. 245, CM #2, (703-557-1800))

45639-EUP-46. Issuance. Nor-Am Chemical Company, 3509 Silverside Road, P.O. Box 7495, Wilmington, DE 19803. This experimental use permit allows the use of 6,115 pounds of the insecticide amitraz on 6,115 acres of cottonseed to evaluate the control of armyworms, bollworm-tobacco budworms, and pink bollworms. The program is authorized only in the States of Alabama, Arizona, Arkansas, Louisiana, Mississippi, and Texas. The experimental use permit is effective from May 30, 1991 to May 30, 1992. (Dennis Edwards, PM 12, Rm. 202, CM #2, (703-557-2386))

34704-EUP-10. Renewal. Platte Chemical Company, P.O. Box 667, Greeley, CO 80632. This experimental use permit allows the use of 1,306.8 pounds for each of the nematacide/insecticides ethoprop and phorate on 1,200 acres of corn to evaluate the control of corn rootworms, cutworms, larvae, mites, nematodes, seed corn beetles, symphylans, wireworms, and the suppression of white grubs. The program is authorized only in the States of Colorado, Illinois, Indiana, Iowa, Kansas, Minnesota, Nebraska, North Carolina, Ohio, South Dakota, Texas, and Wisconsin. The experimental use permit is effective from May 17, 1991 to May 17, 1992. Permanent tolerances for residues of the active ingredients in or on corn have been established (40 CFR 180.206 and 180.262). (Robert Forrest, PM 14, Rm. 716, CM #2, (703-557-7889)).

64595-EUP-1. Issuance. U.S. Fish and Wildlife Service, Patuxent Wildlife Research Center, Laurel, MD 20708. This experimental use permit allows the use of 0.37 pounds of the insecticide (S)-cyano(3-phenoxyphenyl)methyl-(S)-4-chloro-alpha-(1-methylethyl)benzeneacetate on 12.35 acres of water to evaluate the impact of pesticide induced reduction in aquatic prey availability on duckling growth and survival. The program is authorized only in the State of Minnesota. The experimental use permit is effective from June 6, 1991 to June 6, 1992. (George LaRocca, PM 15, Rm. 204, CM #2, (703–557–2400))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquires concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

Dated: July 21, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 91–18106 Filed 7–30–91; 8:45 am]

BILLING CODE 6560-50-F

[WH–FRL–3979–6]

Availability of Study Plans; Exxon Valdez Oil Spill

AGENCY: Environmental Protection Agency and Alaska Department of Law.

ACTION: Notice of availability of study plans for 1991 restoration science studies and work plans for restoration implementation projects for the *Exxon Valdez* oil spill.

SUMMARY: This notice announces the availability of study plans for restoration science studies and work plans for restoration implementation projects that are in progress or may be carried out in 1991 and invites public comment. This notice is a follow-up to a prior notice, which announced the draft 1991 Restoration Work Plan (56 FR 8898, March 1, 1991).

DATES: Comments on this notice and requests for copies of the study and work plans for 1991 should be received no later than September 16, 1991.

ADDRESSES: All requests for copies of the study and work plans must be submitted in writing to the following address: Restoration Planning Work Group, c/o Oil Spill Public Information Center, 645 G Street, Anchorage, AK 99501.

FOR FURTHER INFORMATION CONTACT: Linda R. Comerci, Environmental Protection Agency, or Stanley E. Senner, Alaska Department of Fish and Game, at 907–271–2461.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 1, 1991 the Environmental Protection Agency (EPA), on behalf of the Federal Trustees (National Oceanic and Atmospheric Administration, Department of Agriculture, Department of the Interior), and the Alaska State Trustees (Department of Law, Department of Environmental Conservation, Department of Fish and Game) published in the **Federal Register** a draft 1991 Restoration Work Plan (56 FR 8898). It described restoration planning and implementation activities being considered by the Trustees for 1991. More details of these activities were to be described subsequently. Today's notice announces the availability of details about specific restoration activities in 1991 and provides additional opportunity for public comment.

The first part of this notice describes restoration science studies in 1991 and announces the availability of detailed study plans for these studies. The second part of this notice lists the titles of restoration implementation projects described in the March 1, 1991, **Federal Register** notice and announces the availability of detailed work plans for two of these projects. Many of the 1991 restoration science studies are being funded either by the State or the Federal government. Efforts are underway to authorize funds for the remaining science studies.

Some Trustee agencies have funds for implementation of restoration projects. Not all Trustee agencies, however, have been able to locate funding for the restoration implementation projects and funds may not be available for these projects in 1991. The Trustees agencies intend to seek costs for restoration projects from responsible parties.

II. Restoration Science Studies

Background

Restoration science studies provide information used to evaluate potential restoration implementation activities. There are three types of studies (individual studies may serve more than one purpose):

—*Feasibility studies* test the practicality and potential success of proposed restoration techniques;

—*Technical support studies* provide biological information or other information necessary to identify, evaluate, or conduct restoration activities;

—*Monitoring studies* document the extent, degree, and pace of natural recovery of an injured resource.

Each of the 12 studies described below and in the detailed study plans has been reviewed by agency staff and outside experts. The Trustee Council also has evaluated each study, taking into account the following factors:

a. Documentation of probable injury;

b. Estimated time needed for natural recovery;

c. Restoration activity or endpoint that may result from this study;

d. Need for the proposed study with respect to the ability to carry out future restoration activities;

e. Technical feasibility of the proposed study and the prospect for success;

f. Importance of conducting the study in 1991 (i.e., would delay beyond 1991 result in a lost opportunity); and

g. The cost of a proposed study relative to the degree of injury or to the cost of the potential restoration outcome.

The timing of this notice is such that all of the studies described below are now underway, with the exception of study number 11, "Pre-Spill and Post-Spill Concentrations of Hydrocarbons in Sediments and Mussels at Intertidal Sites in Prince William Sound". The Trustee Council however invites public review of the plans for all 12 studies. Any comments submitted by September 16, 1991 will be considered as the Trustee Council reviews the progress of these studies in 1991 and develops proposals for 1992. The detailed study plans for any or all of the studies may be obtained by written request to the address above.

Brief descriptions of each of the science studies follow:

1. Habitat Use, Behavior, and Monitoring of Harbor Seals in Prince William Sound

Lead agency: Alaska Department of Fish and Game.

This technical support and feasibility study will delineate habitats used by harbor seals and provide missing life history information. Satellite tagging methods will be tested. This study will identify possible opportunities for habitat protection and other management activities. Cost: $182,000.

2. Killer Whale Monitoring and Habitat

Lead agency: National Oceanic and Atmospheric Administration.

This technical support and monitoring study is designed to identify habitat needs and determine population trends for killer whales and other cetaceans in the spill area. In 1991 this study will analyze existing census and location data (1984 to present) to determine their adequacy in supporting decisions on habitat protection and other

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The timing of this notice is such that all of the studies described below are now underway, with the exception of study number 11, "Pre-Spill and Post-Spill Concentrations of Hydrocarbons in Sediments and Mussels at Intertidal Sites in Prince William Sound". The Trustee Council however invites public review of the plans for all 12 studies. Any comments submitted by September 16, 1991 will be considered as the Trustee Council reviews the progress of these studies in 1991 and develops proposals for 1992. The detailed study plans for any or all of the studies may be obtained by written request to the address above.

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Lead agency: National Oceanic and Atmospheric Administration.

This technical support and monitoring study is designed to identify habitat needs and determine population trends for killer whales and other cetaceans in the spill area. In 1991 this study will analyze existing census and location data (1984 to present) to determine their adequacy in supporting decisions on habitat protection and other

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management activities. This study also will begin development of satellite tagging methods for year-round tracking of killer whales, although no tags will be applied in 1991. Cost: $44,000.

3. Population Assessment of the Prince William Sound Sea Otter Population

Lead agency: U.S. Fish and Wildlife Service.

This feasibility and technical support study will develop a technique for sea otter population census and will gather data on otter habitat use. Development of an efficient and reliable census technique is necessary for tracking the long-term recovery of this injured species. The habitat data will be used to identify opportunities for habitat protection and other management activities. Cost: $150,000.

4. Identification of Upland Habitats Used by Marbled Murrelets in Prince William Sound

Lead agency: U.S. Fish and Wildlife Service, U.S. Forest Service.

This technical support study will further document the presence or absence of marbled murrelets in selected upland habitats and characterize their nest habitats through vegetation mapping. This study may link an injured marine species with adjacent upland habitats and identify possible opportunities for habitat management and protection. Cost: $124,000.

5. Prince William Sound Harlequin Duck Breeding Habitat Analysis

Lead agencies: U.S. Fish and Wildlife Service, U.S. Forest Service, Alaska Department of Fish and Game.

This technical support study will attempt to locate nests of harlequin ducks and characterize their nest sites in relation to streams, vegetation, and other habitat features. This study may link the injured marine bird species with upland riparian habitats and identify possible opportunities for habitat management protection. Cost: $223,000.

6. Feeding Ecology and Reproductive Success of Black Oystercatchers in Prince William Sound

Lead agencies: U.S. Fish and Wildlife Service

This technical support and monitoring study will track the breeding productivity and analyze the feeding ecology of a shorebird species at Herring Bay. It will provide data on the status and recovery of an intertidal predator in relation to the recovery of key intertidal invertebrates. Cost: $60,000.

7. Dolly Varden and Cutthroat Trout Populations in Prince William Sound

Lead agency: Alaska Department of Fish and Game.

This technical support study will identify unoiled streams with Dolly Varden and cutthroat trout and estimate stock sizes. This will enable fisheries managers to redirect sport fishing from oiled to unoiled streams, where the stocks can better sustain harvest, allowing faster recovery of stocks in oiled streams. Cost: $147,000.

8. Salmon Coded-Wire Tagging in Prince William Sound

Lead agency: Alaska Department of Fish and Game.

In this technical support study coded-wire tags will be applied to juvenile wild salmon, which will be recovered as adults the following year, to enable greater separation of wild and hatchery stocks. Separation of wild and hatchery stocks, which are harvested together in an intercept fishery, will enable management actions focused on the restoration of stocks from oiled streams. Cost: $805,000.

9. Prince William Sound Pink Salmon Escapement Enumeration

Lead agency: Alaska Department of Fish and Game.

This technical support study will use weir counts to provide data on salmon escapements to compare with and "calibrate" aerial survey aerial. Streams will be walked to obtain additional information on intertidal spawners and stream enhancement opportunities. This study will provide information needed to determine management and enhancement alternatives to restore stocks from oiled streams. Cost: $230,000.

10. Monitoring Coastal Habitats at Herring Bay

Lead agency: U.S. Forest Service.

This monitoring study will track recovery of intertidal invertebrates and marine plants in oiled, unoiled, and cleaned areas at Herring Bay, Prince William Sound. It will provide information needed to understand the extent, degree, and pace of the natural recovery of the intertidal ecosystem on which many species depend for food and habitat. Cost: $245,000.

11. Pre-Spill and Post-Spill Concentrations of Hydrocarbons in Sediments and Mussels at Intertidal Sites in Prince William Sound

Lead agency: National Oceanic and Atmospheric Administration.

This study will monitor hydrocarbon levels in sediments and mussels at sampling sites for which there are historical data. Sampling supported by this study (a second late-summer sampling) will supplement early-spring sampling supported by the 1991 Natural Resource Damage Assessment Study, Coastal Habitat Intertidal Study 1B. A description of this study may be found in, "The 1991 State/Federal Natural Resource Damage Assessment and Restoration Plan for the Exxon Valdez Oil Spill" p.181–187, available from the Oil Spill Public Information Center whose address is given above. This study will provide a more complete history of exposure from releases of oil buried in intertidal sediments, particularly during biologically active summer months. The proposed second sampling will be conducted only if 1989 and 1990 sampling results indicate that seasonal factors affect levels of residual hydrocarbons in sediments and mussels. Cost: $84,000.

12. Survey of Injured Tidal Marshes in Prince William Sound and the Gulf of Alaska

Lead agency: U.S. Environmental Protection Agency.

This technical support study will review existing data on the extent, relative value of, and injury to marsh-wetland habitats. The review may be supplemented by field surveys. Pending the results of this study, there may be field studies to test the feasibility of using hydrological and transplanting techniques to restore oiled marshes. Cost: $15,000.

III. Restoration Implementation Projects

Four restoration implementation projects were described in the March 1, 1991 **Federal Register** notice (56 FR 8898). Work plans are now available for two of the four projects listed below, projects 2 and 3. Based on the results of the May Shoreline Assessment Program for Prince William Sound and the Gulf of Alaska, conducted by the U.S. Coast Guard, the State of Alaska and Exxon, the Trustees have decided that the need for the first project, "Restoration of the Beach Wild Rye Community, is limited. If any areas of Beach Rye are determined to need replanting, these activities will be carried out under the clean-up/response program.

The Restoration Planning Work Group is currently developing a process by which the fourth project, "Protection of Strategic Fish and Wildlife Habitats and Recreation Sites," could be implemented.

The proposed implementation projects are:

1. Restoration of the Beach Wild Rye Community

Lead agencies: Alaska Department of Environmental Conservation, U.S. Forest Service.

2. Public Information and Education for Recovery and Protection of Alaska's Marine and Coastal Resources

Lead agency: U.S. Department of the Interior.

3. Salmonid Stocks and Habitat Restoration

Lead agencies: Alaska Department of Fish and Game, U.S. Forest Service.

4. Protection of Strategic Fish and Wildlife Habitats and Recreation Sites

Lead agencies: Alaska Department of Fish and Game, Alaska Department of Natural Resources, U.S. Department of the Interior, U.S. Forest Service, U.S. Environmental Protection Agency.

Public comments are invited on all four implementation projects.

Dated: June 19, 1991.

LaJuana S. Wilcher,

Assistant Administrator, Office of Water, U.S. Environmental Protection Agency.

Dated: July 18, 1991.

Charles E. Cole

Attorney General, State of Alaska.

[FR Doc. 91–18107 Filed 7–30–91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Statement of Policy Regarding Treatment of Collateralized Put Obligations After Appointment of the FDIC as Conservator or Receiver

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Policy statement.

SUMMARY: The FDIC has adopted a Statement of Policy which sets forth procedures and guidelines as to how the FDIC, as conservator or receiver of an insured depository institution, will treat collateralized "put" options issued by the insured depository institution. This action is intended to cover collateralized put options issued in connection with capital markets financing transactions.

DATES: This Statement of Policy applies to (1) all collateralized put options originally issued prior to August 9, 1989 by insured depository institutions for which the FDIC is appointed as conservator or receiver and (2) collateralized put options issued on or after that date if the put option was issued in renewal, replacement, or extension of a put option issued prior to that date.

FOR FURTHER INFORMATION CONTACT: Linda L. Stamp, Counsel (202–736–0161), or Martin Roberts, Counsel (202–736–0180), Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The Board of Directors of the FDIC has adopted a Statement of Policy Regarding Treatment of Collateralized Put Options After Appointment of the Federal Deposit Insurance Corporation as Conservator or Receiver. The text of the Policy Statement follows:

Statement of Policy Regarding Treatment of Collateralized Put Obligations After Appointment of the Federal Deposit Insurance Corporation as Conservator or Receiver

This Statement of Policy sets forth the treatment that the Federal Deposit Insurance Corporation (FDIC) as the conservator or receiver of an insured depository institution will give collateralized "put" options issued by the insured depository institution.

Background

On August 9, 1989, the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) was signed into law. This statute amended the Federal Deposit Insurance Act (FDI Act) to clarify the FDIC's rights as conservator or receiver to repudiate contracts. With regard to secured contracts, the FDI Act provides that the repudiation provisions are not to be construed as permitting the avoidance of any legally enforceable or perfected security interest in any assets of the institution except where such interest is taken in contemplation of the institution's insolvency or with the intent to hinder, delay, or defraud the institution or the institution's creditors. 12 U.S.C. 1821(e)(11). Absent this provision for legally enforceable or perfected security interests, the conservator or receiver arguably could avoid such security interests and render any claim on the repudiated contract unsecured.

Reading these statutory provisions as a whole, it is clear that even secured contracts may be repudiated; that damages are limited to the extent set forth in the statute; and that legally enforceable or perfected security agreements must be honored to the extent of such damages but no further or otherwise. In other words, if there is a repudiation, the collateral securing the contract may be liquidated and the proceeds paid to or retained by the creditor up to the damages allowed by the statute, i.e. damages for actual direct compensatory losses measured as of the date of the appointment of the conservator or receiver. The remaining collateral or proceeds must then be remitted or returned to the conservator or receiver as property of the institution or its estate, or to a bona fide junior lienholder to the extent applicable.

While the preceding statement sets forth the existing law and is applicable to all contracts which have been or will be repudiated by a conservator or receiver after August 9, 1989, regardless of when the contract was entered into, certain issues have been raised regarding collateralized put options.

The FDIC has maintained a longstanding position that contingent obligations have no provable damages under the FDI Act's statutory damages limitation, if repudiated by the receiver or conservator, because the damages are not fixed and certain as of the date of the appointment of the receiver or conservator. As FIRREA has made this result more apparent, market certainty and stability have been affected.

Statement of Policy

The FDIC has considered a number of relevant policy factors, including its legal rights and powers under FIRREA; the assurances provided by the Federal Home Loan Bank Board prior to the enactment of FIRREA and market reliance on those assurances; the need for market certainty and stability; the potential long-term cost to the FDIC of outright repudiation of collateralized put options; and the potential for immediate acceleration of the issuer's obligations under these collateralized put options. Based on its consideration and balancing of such factors, the FDIC has determined to adopt and implement the following Policy with respect to the treatment of collateralized put options after its appointment as conservator or receiver of insured depository institutions having these types of obligations:

(1) This Policy will apply to collateralized put options in all respects where the collateralized put options were originally issued by insured depository institutions prior to August 9, 1989.

(2) It is recognized that the FDIC as conservator or receiver has the right to call, redeem or prepay any collateralized put options by repudiation or disaffirmance either directly by cash payment in exchange for release of the collateral or by the repudiation of the contract evidencing such borrowings followed by liquidation of the collateral

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creditor up to the damages allowed by the statute, i.e. damages for actual direct compensatory losses measured as of the date of the appointment of the conservator or receiver. The remaining collateral or proceeds must then be remitted or returned to the conservator or receiver as property of the institution or its estate, or to a bona fide junior lienholder to the extent applicable.

While the preceding statement sets forth the existing law and is applicable to all contracts which have been or will be repudiated by a conservator or receiver after August 9, 1989, regardless of when the contract was entered into, certain issues have been raised regarding collateralized put options.

The FDIC has maintained a longstanding position that contingent obligations have no provable damages under the FDI Act's statutory damages limitation, if repudiated by the receiver or conservator, because the damages are not fixed and certain as of the date of the appointment of the receiver or conservator. As FIRREA has made this result more apparent, market certainty and stability have been affected.

Statement of Policy

The FDIC has considered a number of relevant policy factors, including its legal rights and powers under FIRREA; the assurances provided by the Federal Home Loan Bank Board prior to the enactment of FIRREA and market reliance on those assurances; the need for market certainty and stability; the potential long-term cost to the FDIC of outright repudiation of collateralized put options; and the potential for immediate acceleration of the issuer's obligations under these collateralized put options. Based on its consideration and balancing of such factors, the FDIC has determined to adopt and implement the following Policy with respect to the treatment of collateralized put options after its appointment as conservator or receiver of insured depository institutions having these types of obligations:

(1) This Policy will apply to collateralized put options in all respects where the collateralized put options were originally issued by insured depository institutions prior to August 9, 1989.

(2) It is recognized that the FDIC as conservator or receiver has the right to call, redeem or prepay any collateralized put options by repudiation or disaffirmance either directly by cash payment in exchange for release of the collateral or by the repudiation of the contract evidencing such borrowings followed by liquidation of the collateral

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by a trustee or other secured party. Accordingly, the FDIC in its capacity as conservator or receiver may accelerate the collateralized put options, in which event payment will be made to the extent of available collateral up to an amount equal to the outstanding principal amount or accreted value of the secured obligations, together with interest at the contract rate up to (and including, if so provided in the contract) the date of payment, plus expenses of liquidation, if so provided in the contract. If the holder of the options for any reason fails to accept the amount tendered, the FDIC will deem the options contract and the related collateral arrangement terminated. If the FDIC does not accelerate the contract, the terms of the contract will be enforceable during the pendency of the conservatorship or receivership.

(3) The FDIC shall have a reasonable time, which is specifically defined as 180 days from the date of appointment of any conservator or receiver, to make a determination whether or not to accelerate a collateralized put option. In the case of institutions for which the FDIC already has been so appointed, the 180-day period shall begin to run as of the date of adoption of this Policy.

(4) This Policy is intended to cover only collateralized put options issued in connection with capital markets financing transactions, including the formation of publicly offered unit investment trusts and other sales of insured depository institutions' portfolio securities in capital markets transactions.

(5) This Policy shall apply in all respects to collateralized put options issued on or after August 9, 1989 only if the put option was issued in renewal, replacement or extension of a put option issued prior to the enactment of FIRREA.

(6) This Policy shall only apply to transactions where the underlying security interest is in collateral owned and pledged by the insured depository institution to secure its obligations and the security interest is both perfected and legally enforceable.

(7) It is understood that persons involved in secured transactions with insured depository institutions may reasonably rely upon this Policy Statement.

By order of the Board of Directors.

Dated at Washington, DC, this 9th day of July, 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91–18021 Filed 7–30–91; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

[Notice 1991–14]

Filing Dates for the Virginia Special Elections

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special elections.

SUMMARY: Virginia has scheduled a Special General Election on November 5, 1991. The Republican and Democratic 7th Congressional District Committees have scheduled August 25, and September 7, 1991, respectively, to select nominees for the Special General Election.

Committees required to file reports in connection with the Special Convention of the Republican Party should file a 12-day Pre-Convention Report by August 13, 1991. Committees required to file reports in connection with the Special Convention of the Democratic Party should file a 12-day Pre-Convention Report by August 26, 1991. Committees required to file reports in connection with both the Special Convention and Special General Election to be held on November 5, 1991, must file a 12-day Pre-Convention Report, a 12-day Pre-General Report by October 24, 1991, and a Post-General Report by December 5, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Public Information Office, 999 E Street, NW., Washington, DC 20463, Telephone: (202) 376–3120; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION: All principal campaign committees of candidates who participate in the Virginia special elections must file reports according to the schedules given in Charts I and II. The committee treasurer should consult the chart that corresponds to the candidate's situation.

Party committees and PACs that make contributions or expenditures in connection with the Virginia special elections during the coverage dates listed in the charts must file the appropriate reports. Monthly filers, however, do not have to file the special election reports.

CALENDAR OF REPORTING DATES FOR VIRGINIA SPECIAL ELECTIONS

[Chart I. Democratic Nominating Convention and Special General]

Report	Period covered [1]	Reg./cert. mailing date [2]	Filing date
All Committees Only Involved in the Special Democratic Convention (9/7) Must File:			
Pre-Convention	07/01/91–08/18/91	08/23/91	08/26/91
Year-End	08/19/91–12/31/91	01/31/92	01/31/92
All Committees Involved in the Special Democratic Convention (9/7) and Special General (11/5) Must File:			
Pre-Convention	07/01/91–08/18/91	08/23/91	08/26/91
Pre-General	08/19/91–10/16/91	10/21/91	10/24/91
Post-General	10/17/91–11/25/91	12/05/91	12/05/91
Year-End	11/26/91–12/31/91	01/31/92	01/31/92
All Committees Only Involved in the Special General (11/5) Must File:			
Pre-General	07/01/91–10/16/91	10/21/91	10/24/91
Post-General	10/17/91–11/25/91	12/05/91	12/05/91
Year-End	11/26/91–12/31/91	01/31/92	01/31/92

[1] The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

[2] Reports sent by registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date.

CALENDAR OF REPORTING DATES FOR VIRGINIA SPECIAL ELECTIONS

[Chart II. Republican Nominating Convention and Special General]

Report	Period covered [1]	Reg./cert. mailing date [2]	Filing date
All Committees Only Involved in the Special Republican Convention (8/25) Must File:			
Pre-Convention	07/01/91–08/05/91	08/10/91	08/13/91
Year-End	08/06/91–12/31/91	01/31/92	01/31/92
All Committees Involved in the Special Republican Convention (8/25) and Special General (11/5) Must File:			
Pre-Convention	07/01/91–08/05/91	08/10/91	08/13/91
Pre-General	08/06/91–10/16/91	10/21/91	10/24/91
Post-General	10/17/91–11/25/91	12/05/91	12/05/91

CALENDAR OF REPORTING DATES FOR VIRGINIA SPECIAL ELECTIONS—Continued

[Chart II. Republican Nominating Convention and Special General]

Report	Period covered [1]	Reg./cert. mailing date [2]	Filing date
Year-End	11/26/91–12/31/91	01/31/92	01/31/92
All Committees Only Involved in the Special General (11/5) Must File:			
Pre-General	07/01/91–10/16/91	10/21/91	10/24/91
Post-General	10/17/91–11/25/91	12/05/91	12/05/91
Year-End	11/26/91–12/31/91	01/31/92	01/31/92

[1] The period begins with the close of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

[2] Reports sent by registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date.

Dated: July 25, 1991.

John Warren McGarry,

Chairman, Federal Election Commission.

[FR Doc. 91–18024 Filed 7–30–91; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL RESERVE SYSTEM

Ben Lovell Cundiff, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 19, 1991.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Ben Lovell Cundiff,* Nashville, Tennessee; to acquire an additional 27 percent of the voting shares of Trigg Bancorp, Inc., Cadiz, Kentucky, for a total of 52.53 percent, and thereby indirectly acquire Trigg County Farmers Bank, Cadiz, Kentucky.

B. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Dan H. Cook,* Wilson, Texas; to acquire 25.12 percent of the voting shares of Wilson Bancshares, Inc., Wilson, Texas, and thereby indirectly acquire Wilson State Bank, Wilson, Texas.

2. *Bobby Max Ham,* Crosbyton, Texas, to acquire an additional 18.77 percent for a total of 23.53 percent; and Kimberly Ham Eudy, Austin, Texas, to acquire 18.77 percent of the voting shares of Citizens Bancshares, Inc., Crosbyton, Texas, and thereby indirectly acquire Citizens National Bank of Crosbyton, Crosbyton, Texas.

Board of Governors of the Federal Reserve System, July 25, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-18064 Filed 7-30-91; 8:45 am]

BILLING CODE 6210-01-F

Gifford Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 19, 1991.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Gifford Bancorp, Inc. Employee Stock Ownership Plan,* Gifford, Illinois; to acquire 34.6 percent of the voting shares of Gifford Bancorp, Inc., Gifford, Illinois, and thereby indirectly acquire The Gifford State Bank, Gifford, Illinois.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *The Fischer Corporation,* Lewiston Minnesota; to acquire 66.67 percent of the voting shares of Ostrander Bancshares, Inc., Ostrander, Minnesota, and thereby indirectly acquire Ostrander State Bank, Ostrander, Minnesota.

C. **Federal Reserve Bank of San Francisco** (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. *Commercial Bancorp,* Salem, Oregon; to acquire 100 percent of the voting shares of Farmers & Merchants Bank, Forest Grove, Oregon.

Board of Governors of the Federal Reserve System, July 25, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-18065 Filed 7-30-91; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[Dkt. C-3335]

Alleghany Corp.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, Alleghany Corporation to divest, within twelve months of this order, all rights and interest in either its own title plants and back plants or those of Westwood Equities Corporation, to a Commission-approved acquirer.

DATES: Complaint and Order issued July 11, 1991.[1]

FOR FURTHER INFORMATION CONTACT: Ann Malester, FTC/S–2308, Washington, DC 20580. (202) 326–2682.

SUPPLEMENTARY INFORMATION: On Tuesday, March 5, 1991, there was published in the **Federal Register**, 56 FR

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[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

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Filed 7-30-91; 8:45 am]

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Vice President) 230
eet, Chicago, Illinois

1. Gifford Bancorp, Inc. Employee Stock Ownership Plan, Gifford, Illinois; to acquire 34.6 percent of the voting shares of Gifford Bancorp, Inc., Gifford, Illinois, and thereby indirectly acquire The Gifford State Bank, Gifford, Illinois.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. The Fischer Corporation, Lewiston Minnesota; to acquire 66.67 percent of the voting shares of Ostrander Bancshares, Inc., Ostrander, Minnesota, and thereby indirectly acquire Ostrander State Bank, Ostrander, Minnesota.

C. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Commercial Bancorp, Salem, Oregon; to acquire 100 percent of the voting shares of Farmers & Merchants Bank, Forest Grove, Oregon.

Board of Governors of the Federal Reserve System, July 25, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-18065 Filed 7-30-91; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

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SUPPLEMENTARY INFORMATION: On Tuesday, March 5, 1991, there was published in the **Federal Register**, 56 FR

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9219, *Correction*, 56 FR 12422, a proposed consent agreement with analysis In the Matter of Alleghany Corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 91-18132 Filed 7-30-91; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Public Meeting on Clinical Practice Guidelines for Management of Cancer-Related Pain

A public meeting will be held on clinical practice guidelines for the management of cancer-related pain. The guidelines are under development by a panel of experts and health care consumers, arranged for by the Agency for Health Care Policy and Research. A Notice announcing the development of seven sets of clinical practice guidelines and inviting written comments was published in the **Federal Register** on August 28, 1990 (55 FR 35185).

In addition to the solicitation of written material in the August 28, 1990 **Federal Register**, a series of public meetings is being held to provide an opportunity for interested parties to contribute relevant information and comments concerning the particular guidelines under development.

A public meeting to address guidelines for the management of cancer-related pain will be held on **September 5**, as follows:

September 5, 1991, 9 a.m. to noon
Washington Vista Hotel, 1400 M
Street, NW., Washington, DC 20005
(202) 429-1700

Background

The Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239), enacted on December 19, 1989, added a new title IX to the Public Health Service Act (the Act) (42 U.S.C. 299-299c-6), which established the Agency for Health Care Policy and Research (AHCPR) to enhance the quality, appropriateness, and effectiveness of health care services, and access to such services.

Section 911 of the Act (42 U.S.C. 299b) established, within AHCPR, the Office of the Forum for Quality and Effectiveness in Health Care (the Forum). Through this office, AHCPR is arranging for the development and periodic review and updating of clinically relevant guidelines that may be used by physicians, educators, other health care practitioners, and consumers to assist in determining how diseases, disorders, and other health conditions can most effectively and appropriately be prevented, diagnosed, treated, and managed clinically.

Section 912 of the Act (42 U.S.C. 299b) provides for the development of initial guidelines, standards, performance measures, and reviews criteria that:

1. Account for a significant portion of expenditures under the Medicare program, and have a significant variation in the frequency or the type of treatment provided; or
2. Otherwise meet the needs and priorities of the Medicare program.

Section 914 of the Act lists factors to be considered in establishing priority for guidelines, including the extent to which the proposed guidelines would:

1. Improve methods of prevention, diagnosis, treatment and clinical management, and thereby benefit a significant number of individuals;
2. Reduce clinically significant variations among providers in making diagnoses and providing treatments, or reduce significant variations in the outcomes of health care services or procedures, and
3. Reduce variations in the services and procedures utilized for diagnosis and treatment (and potentially produce savings in health care expenditures).

Based on the statutory criteria, consultation with the Health Care Financing Administration (in accordance with 42 U.S.C. 1320b-12), studies conducted by the Institute of Medicine, availability of reliable research data, and a high degree of professional consensus, the following topics were selected for initial guideline development:

1. Visual Impairment due to Cataract in the Aging Eye.
2. Diagnosis and Treatment of Benign Prostatic Hyperplasia.
3. Urinary Incontinence in the Adult.
4. Risk Assessment, Prevention, and Early Intervention in Management of Pressure Sores.
5. Delivery of Comprehensive Care in Sickle Cell Disease.
6. Management of Acute Post-Operative Pain.
7. Diagnosis and Treatment of Depressed Outpatients in the Primary Care Setting.

In addition, in 1991 the following five new topics have been selected for guideline development:

1. Management of Cancer-Related Pain.
2. Treatment of Stage II and Greater Pressure Ulcers.
3. AIDS and HIV Infection.
4. Low Back Disorders.
5. Development of Quality Determinants of Mammography Screening and Differential Diagnosis.

To assure the development of guidelines, AHCPR, acting through the Forum, has arranged for panels of experts in the above-listed topics and consumers who will develop the specific guidelines. Panel responsibilities include determination of the scope of the guidelines, assessment of the available scientific evidence and clinical consensus, and conducting peer review and pilot testing of drafts of the guidelines. Thus far, public meetings of panels to solicit information and comments from interested parties have been held with respect to benign prostatic hyperplasia, depression, management of post-operative pain, pressure ulcers, urinary incontinence, and cataracts.

Arrangements for September 5 Public Meeting on the Management of Cancer-Related Pain

Representatives of organizations and other individuals are invited to provide relevant written comments and information and make a brief (5 minutes or less) oral statement to the panel. The Office of the Forum for Quality and Effectiveness in Health Care is making the administrative arrangements for this public meeting on behalf of the panel. Individuals and representatives who would like to attend must register with the Forum at the address set out below by August 21 and indicate whether they plan to make an oral statement. Those wishing to make oral statements and provide written comments and information should also submit copies of these on the Forum by August 21. If more requests to make oral statements are received than can be accommodated between 9 a.m. and noon on September 5, the chair person will allocate speaking time in a manner which ensures, to the extent possible, that a range of views of health care professional and providers, health care consumers, and product and pharmaceutical manufacturers is presented. Those who cannot be allocated their requested speaking time because of time constaints can be assured that their written comments will be considered by the panel in developing the guidelines.

Registration should be made with and written materials submitted to: Kathleen A. McCormick, Ph.D., Director, Forum for Quality and Effectiveness in Health Care, Agency for Health Care Policy and Research, Executive Office Center, 2101 East Jefferson Street, Suite 327, Rockville, MD 20852, Phone 301-227-6671, Fax 301-226-6679.

Dated: July 24, 1991.

J. Jarrett Clinton,

Administrator.

[FR Doc. 91-18070 Filed 7-30-91; 8:45 am]

BILLING CODE 4160-90-M

Centers For Disease Control

[Announcement Number 129]

Evaluation and Enhancement of HIV Prevention; Street and Community Outreach Programs That Serve Injecting-Drug Users and Youth in High-Risk Situations

Introduction

The Centers For Disease Control (CDC) announces the availability of Fiscal Year 1991 funds for cooperative agreements to evaluate and enhance the applicant's street and community-based HIV prevention outreach activities (including street, public housing project, and other nontraditional outreach efforts) targeting (a) injecting drug users (IDUs) and their sex partners and (b) youth in high-risk situations (Y-HRS) such as runaways, homeless youth, and youth who are IDUs. This program is being undertaken in consultation with the National Institute on Drug Abuse (NIDA) of the Alcohol and Drug Abuse and Mental Health Administration (ADAMHA).

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives described in Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of HIV Infection. (For ordering a copy of Healthy People 2000, see the Section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program announcement is authorized under the Public Health Service Act, section 301(a) (42 U.S.C. 241(a)), as amended, and section 317(a) (42 U.S.C. 247(a)), as amended.

Eligibility

Eligibile applicants for both IDUs and Y-HRS components are state and local health departments, state and local substance abuse control/treatment agencies, national organizations working at the community level, community-based organizations, universities, and other nonprofit entities that are currently operating street/community outreach programs for either or both of these populations. Because of the disproportionate effect that HIV infection and AIDS have had on certain metropolitan statistical areas (MSAs), eligibility is limited to organizations and agencies where proposed projects serve MSAs that have reported more than 3,000 cumulative AIDS cases to CDC through December 31, 1990. The eligibile MSAs are: Atlanta, GA; Chicago, IL; Houston, TX; Los Angeles, CA; Miami, FL; Newark, NJ; New York, NY; Philadelphia, PA; San Francisco, CA; San Juan, PR; and Washington, DC.

Availability of Funds

A. Approximately $2,800,000 is available in Fiscal Year 1991 to fund as many as nine projects to evaluate IDU street outreach. The average award is expected to be $300,000 (ranging from $175,000 to $600,000) for each 12-month budget period within a three- to five-year project period beginning in September 1991.

B. Approximately $1,800,000 is available in Fiscal Year 1991 to fund as many as five projects to evaluate outreach programs serving Y-HRS. The average award is expected to be $350,000 (ranging from $100,000 to $600,000) for each 12-month budget period within a three- to five-year project period beginning in September 1991.

Continuation of the projects after such 12-month budget period will depend on their progress and the availability of federal funds.

Purpose

The purpose of the assistance provided through this announcement is to conduct a comparative evaluation of the existing and enhanced interventions, including analyses of the impact of the interventions on risk behavior, HIV seroincidence, and STD rates, and the cost effectiveness of the activities and interventions.

Street/community outreach is defined as fact-to-face interactions with persons at risk for HIV infection that occur outside traditional health and drug abuse treatment clinic services. Outreach workers typically are drawn from and reside in the communities which are most heavily affected by AIDS/HIV and many are former IDUs or youth who have engaged in high-risk behavior. The outreach workers provide HIV risk-reduction and drug prevention messages; distribute items such as a literature, condoms, and bleach; and refer persons at risk for HIV infection to needed services, including drug treatment, HIV prevention counseling, HIV-antibody counseling and testing, HIV early intervention, and other physchosocial, social support, and medical services. Street/community outreach typically takes place in neighborhoods, including housing projects, where there is a high prevalence of drug use.

The funds available under this announcement will be used to support community studies to evaluate the coverage, cost, and impact of existing HIV prevention outreach interventions targeting IDUs and their sex partners and Y-HRS. Such evaluations will document the quantity and quality of current activities; the costs to provide services and support associated activities; the changes in sexual practices and drug use behaviors of clients served; and the use of health care and drug treatment services that has resulted from the interventions provided by the applicant.

Program Requirements

Applicants must have demonstrated ability to collect and analyze qualitative and quantitative data to be used to measure intervention effectiveness. A specific objective will be to develop or enhance computer-based systems for monitoring program activities and costs that can be used by other outreach programs. Applicants must have demonstrated collaboration and coordination with government (including PHS and other national and State agencies), health care, research, and community organizations engaged in the development, delivery, and evaluation of targeted interventions.

Applicants must show evidence of (a) ongoing outreach services to at least one of the two priority populations, i.e., IDUs (and their sex partners) and/or Y-HRS; (b) an ability to evaluate these interventions; and (c) an ability to use evaluation data to design and implement enhancements of these interventions so that the interventions can serve as models for other HIV prevention programs that serve similar populations in other locations.

Applicants that target Y-HRS should coordinate plans with the local health agency if the applicant is applying for CDC funds under program announcement number 152, entitled, "Cooperative Agreements to Coordinate Local Programs to Prevent HIV Infection and Related Priority Health Problems Among Youth in High-Risk Situations".

Each applicant must identify and submit to CDC the names of persons (and their professional affiliations) to serve on a local evaluation planning group (LEPG) as advisors and consultants on the scientific aspects of the proposed evaluation activities. The LEPG must include, at a minimum, a behavioral scientist with experience in evaluation of health risk reduction interventions, a biostatistician, an experienced epidemiologist, an anthropologist/ethnographer, and a representative from the state or local health department and the state or local substance abuse control agency. The LEPG for projects targeting Y-HRS must also include representation from the state or local agency responsibile for programs serving these youth. Additionally, LEPGs should include culturally competent representatives from other community-based organizations and agencies serving the target population. CDC project officers or technical staff will frequently attend meetings of the LEPG to provide technical assistance and consultation. All activities and findings must be fully documented and submitted to CDC on an approved timetable so that information can be disseminated to other organizations and agencies serving similar populations.

A. Recipient Activities

Phase I

1. Form an LEPG. Convene the group and develop procedures for compiling existing information and for indenfying unmet HIV prevention needs of the target population. The assessment should address HIV prevention, HIV early intervention, drug abuse treatment, and other relevant needs of the target population. The assessment of unmet needs should include, but not be limited to: a description of the target population (IDUs and/or Y-HRS); descriptions of current interventions and how well they cover the target population; identification of obstacles to HIV prevention, early intervention, drug treatment/detoxification, and other relevant services; epidemiologic, ethnographic, ans seroprevalence data (if available) relevant to the target population; and information on the impact of local HIV prevention efforts directed to the target population.

2. Identify and describe the unmet needs of the target population, compile existing information, and submit a comprehensive report of findings to CDC.

3. Convene the LEPG to assist in designing a scientific protocol for evaluation of the current interventions carried out through outreach efforts. Collaborate with CDC, and NIDA as appropriate, to develop a written plan that contains the following elements:

a. Statement of the questions to be answered (hypotheses to be tested);

b. Description of each intervention to be evaluated;

c. Specific process and outcome data that will be collected and analyzed, including, but not limited to, the following:

(1) Process indicators

(a) Estimated total population of IDUs (and their sex partners), or Y-HRS in the local service area;

(b) Estimated number of persons served and estimated number of encounters (contacts) with each person served, by age, sex, race-ethnicity, and risk behavior;

(c) Number of referrals made and referrals completed (verified) to HIV counseling and testing, HIV early intervention, drug treatment, and social services; and

(d) Costs and expenses associated with conducting the outreach program.

(2) Outcome indicators, including changes in

(a) Intravenous drug practices, such as needle sharing or needle hygiene;

(b) Sexual practices, including numbers and types of partners and use of condoms;

(c) Attitude and knowledge changes;

(d) STD incidence (i.e., syphilis and gonorrhea) in the target population; and

(e) HIV incidence in the target population.

d. Description of methods (both scientific and operational) for collecting process and outcome data;

e. Description of how the data will be maintained (i.e., in what databases), including how duplicate data will be removed. The description should also include computer-based systems for monitoring program activities and costs that can be used by other outreach programs; and

f. Description of statistical techniques that will be used to analyze the data.

4. Implement the evaluation plan and begin the process and outcome evaluation of current outreach interventions.

5. Coordinate evaluation of outreach efforts with appropriate health, substance abuse control/treatment (e.g., NIDA funded grantees), youth, community-based, and minority organizations that serve the target population.

6. Analyze findings, and submit progress and final reports to CDC.

Phase II (Additional Guidance Will Be Provided for Developing Continuation Applications for Phase II)

1. Convene LEPG to help plan existing intervention enhancements based on evaluation findings and feedback from CDC. Applicants will be required to participate with other organizations in a collaborative multisite study.

2. Conduct a comparative evaluation of the existing and enhanced interventions; including analyses of the impact of the interventions on risk behavior, HIV seroincidence, and STD rates; and the cost effectiveness of the activities and interventions.

Phase III (Additional Guidance Will Be Provided for Developing Continuation Applications for Phase III)

Provide training and technical assistance to other organizations that provide HIV prevention outreach services to IDUs and Y–HRS.

B. CDC Activities

1. Provide consultation and technical assistance in assessing the unmet needs of the target population; the evaluation of coverage, cost and impact of current interventions; and design of scientific protocols. Standard protocols will be established for multisite projects that are focused on specific evaluation questions.

2. Collaborate in designing the evaluation of coverage, cost, and impact of existing interventions and in developing intervention enhancements. Provide consultation on data collection instruments and procedures, and coordinate evaluation and intervention activities between sites.

3. Monitor data collection and analysis of information collected from evaluation, and provide technical assistance in establishing standardized data collection and reporting systems to monitor program activities and costs of outreach programs.

4. Provide up-to-date scientific information about HIV prevention and coordinate with related activities of the national HIV prevention program.

5. Assist in the transferring of information and methods developed in these projects to other programs.

Evaluation Criteria

A. *Competing Application* (maximum total 100 points; no application will be considered for funding that scores less than 25 points): Applicants may apply for both components; however, each application must be complete and must stand alone. Each application will be reviewed individually and evaluated according to the following criteria:

1. The scientific quality and feasibility of the applicant's plan for evaluating the coverage, cost, and impact of existing outreach interventions. (20 points)
2. The applicant's ability to use evaluation data to design and implement enhancements of existing outreach interventions so that they can be used as models for other HIV prevention programs. (10 points)
3. The extent to which the target population has been affected by HIV, substance abuse, or STDs. (5 points)
4. The extent of the applicant's history of delivering outreach interventions to the target population using street/community-based outreach. (15 points)
5. The extent to which the applicant has progressed toward achieving realistic process and outcome objectives for current HIV prevention street/community outreach. (15 points)
6. The extent to which the applicant demonstrates collaboration, coordination, and communication with government, health care, drug treatment, youth service, community, and minority organizations and agencies engaged in HIV-prevention. (10 points)
7. Experience of the organization in conducting similar evaluation research organizations or researchers. (15 points)
8. Plan for obtaining continuing scientific input into the design, development, implementation, monitoring, and analysis of evaluation activities including the role of the LEPG and the scientific background and experience of persons on the LEPG, documented by training and education credentials, and publications. (10 points)

In addition, consideration will be given to the appropriateness of the budget and its consistency with the intended purpose of the funding.

B. Continuation Applications

In future years, noncompeting continuation applications within an approved project period will be evaluated on satisfactorily documented progress in meeting established short- and long-range objectives; the extent to which the objectives for the new budget period are consistent with the purposes for which the cooperative agreement was originally approved and are realistic, specific, measurable, and achieved on-time; the extent to which proposed changes in the need for support, long-term objectives, methods of operation, evaluation plans, or personnel are likely to enhance the success of the project; and the availability of federal funds. In addition, consideration will be given to the extent to which the budget request and the proposed use of project funds are appropriate and reasonable.

Funding Priorities

Priority for funding will be given to applicants that demonstrate:

A. A history of providing services to the chosen target population;

B. A capacity to evaluate program activities and interventions during the project period; and

C. Experience in conducting research, especially evaluation research, or experience in collaborating with research organizations or researchers (not necessarily HIV-related research).

Other Requirements

A. Recipients

Must comply with the terms and conditions in the document titled Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, And Educational Sessions [January 1991], a copy of which is included in the application kit. In complying with the requirements for a program review panel, recipients are encouraged to use an existing program review panel such as the one created by the health department's HIV/AIDS prevention program.

B. Paperwork Reduction Act

Projects funded through this cooperative agreement mechanism that involve collection of information from 10 or more individuals will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

C. Human Subjects and Confidentiality

Cooperative agreements will not be awarded for any project involving research on human subjects until an acceptable assurance has been given that the project or activity will be subject to initial and continuing review by an appropriate institutional committee(s) as described in 45 CFR part 46.

In accordance with section 318(e)(5) of the Public Health Service Act (42 U.S.C. 247c(e)(5)) all information obtained on any person by any program that is acting with funds awarded through this cooperative agreement shall not be disclosed unless that person provides written consent. Information may be released only as necessary to provide services to that person or as may be required by a law of a state or the political subdivision of a state. Information derived from any such program may be disclosed (a) in summary, statistical, or similar form that maintains the person's anonymity, or (b) for clinical or research purposes, but only if the persons who received diagnoses or care under such programs are not identified. Recipients of CDC funds that must obtain and retain identifying information as part of their work plan must (a) maintain the physical security of such records and information at all times; (b) have procedures in place and staff trained to prevent unauthorized disclosure of client identifiers; (c) obtain informed consent by explaining the possible risks of disclosure and the recipient's policies and procedures for preventing unauthorized disclosure; and (d) provide written assurance to this effect.

Executive Order 12372 Review

Applications are subject to review as governed by Executive Order (E.O.) 12372, Intergovernmental Review of Federal Programs. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than Federally-recognized Indian tribal government) should contact their state Single Point of Contact (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC for each affected state. A current list of SPOCs is included in the application kit. On or before September 26, 1991, if SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to: Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road N.E., Room 300, Mailstop E-14, Atlanta, GA 30305, ATTN: Eddie L. Wilder. CDC does not guarantee to "accommodate or explain" for state process recommendations it receives after September 26, 1991.

Catalog of Federal Domestic
Number

The catalog of Federal Dom
Assistance number is 93.118,
Immunodeficiency Syndrome
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Application Submission and

The original and two copie
application (PHS 5161–1) mus
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Ferry Road N.E., room 300, M
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A. *Deadline:* Applications
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Where to Obtain Additional I

To receive additional writte
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Eddie L. Wilder, Grants Ma
Specialist, will provide the bu
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be provided by William Darr
Center for Prevention Service
Stop E–44, Centers for Diseas
Atlanta, GA 30333, (404) 639–
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Potential applicants may ob
copy of Healthy People 2000 (
Report; Stock No. 017–001–004
Healthy People 2000 (Summa
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acting with funds awarded through this cooperative agreement shall not be disclosed unless that person provides written consent. Information may be released only as necessary to provide services to that person or as may be required by a law of a state or the political subdivision of a state. Information derived from any such program may be disclosed (a) in summary, statistical, or similar form that maintains the person's anonymity, or (b) for clinical or research purposes, but only if the persons who received diagnoses or care under such programs are not identified. Recipients of CDC funds that must obtain and retain identifying information as part of their work plan must (a) maintain the physical security of such records and information at all times; (b) have procedures in place and staff trained to prevent unauthorized disclosure of client identifiers; (c) obtain informed consent by explaining the possible risks of disclosure and the recipient's policies and procedures for preventing unauthorized disclosure; and (d) provide written assurance to this effect.

Executive Order 12372 Review

Applications are subject to review as governed by Executive Order (E.O.) 12372, Intergovernmental Review of Federal Programs. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than Federally-recognized Indian tribal government) should contact their state Single Point of Contact (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC for each affected state. A current list of SPOCs is included in the application kit. On or before September 26, 1991, if SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to: Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road N.E., Room 300, Mailstop E-14, Atlanta, GA 30305, ATTN: Eddie L. Wilder. CDC does not guarantee to "accommodate or explain" for state process recommendations it receives after September 26, 1991.

Catalog of Federal Domestic Assistance Number

The catalog of Federal Domestic Assistance number is 93.118, Acquired Immunodeficiency Syndrome (AIDS) activities.

Application Submission and Deadline

The original and two copies of the application (PHS 5161-1) must be submitted on or before August 30, 1991, to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road N.E., room 300, Mailstop E-14, Atlanta, GA 30305.

A. *Deadline:* Applications will meet the deadline if they are:

(1) Received on or before the deadline date of August 30, 1991;

(2) or sent on or before the deadline date and received in time for submission to the independent review committee. For proof of timely mailing, applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.

B. *Late Applications:* Applications that do not meet the criteria in A.1. or A.2. are considered late. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

To receive additional written information call (404) 332-4561. You will be asked to leave your name, address and phone number, and will need to refer to Announcement Number 129. You will receive a complete program description, information on application procedures, an application package, and the name and phone number of the business management technical assistance contact assigned to this program announcement.

Eddie L. Wilder, Grants Management Specialist, will provide the business management technical assistance, and programmatic technical assistance will be provided by William Darrow, Ph.D., Center for Prevention Services, Mail Stop E-44, Centers for Disease Control, Atlanta, GA 30333, (404) 639-0829 or FTS 236-0829.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington DC 20402-9325 (Telephone 202-783-3238).

Dated: July 26, 1991.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 91-18216 Filed 7-30-91; 8:45 am]

BILLING CODE 4160-18-M

[Announcement Number 158]

National Institute for Occupational Safety and Health; Cooperative Agreement for Conducting Fatality Surveillance and Field Investigations at the State Level Using the NIOSH Fatal Accident Circumstances and Eipdemiology Model, Availability of Funds for Fiscal Year 1991

Introduction

The Centers for Disease Control (CDC), announces the availability of fiscal year 1991 funds for cooperative agreements to build state capacity for conducting traumatic occupational fatality surveillance and investigations through the National Institute for Occupational Safety and Health (NIOSH) Fatal Accident Circumstances and Epidemiology (FACE) surveillance and investigative models. The cooperative agreement will significantly strengthen the occupational public health infrastructure by integrating resources for occupational safety and health research and public health prevention programs at the state and local levels.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objective of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Occupational Safety and Health and Surveillance and Data Systems. (For ordering a copy of Healthy People 2000, see the section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under section 20(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669(a)) and sections 301 (42 U.S.C. 241) and 317 (42 U.S.C. 247(b)) of the Public Health Service Act as amended.

Eligible Applicants

Eligible applicants are State Departments of Health, Departments of Labor, Departments of Industry, and similar organizations located within any state or territory of the United States. The sole restriction for this cooperative agreement excludes as eligible applicants those agencies which conduct occupational fatality investigations, and in doing so, are legally responsible for the determination of compliance with occupational safety and health standards. Awards will be limited to those organizations which can exercise public health authority for intervention into occupational safety and health problems. Additionally, only one application per state will be accepted under this cooperative agreement.

Availability of Funds

It is expected that approximately $350,000 will be available in fiscal year 1991 to fund four to six state programs with an expected average amount of $70,000 each within a range from $60,000 to $85,000. The awards will be made on or about September 28, 1991, with 12-month budget periods within a project period of up to 5 years. It is anticipated that $60,000 per awardee per year will be available in the second through fifth years. These funding estimates may vary and are subject to change. Continuation awards within the project period will be made annually on the basis of satisfactory progress in meeting the project objectives and on the availability of funds.

Purpose

The purpose of this cooperative agreement is to expand the FACE program into more states. A pilot study for conducting occupational fatality investigations by state-level personnel using the NIOSH FACE model has demonstrated that such programs can be successfully implemented at the state level. The most immediate products of the state level FACE programs have been accurate and verifiable surveillance systems for detecting traumatic occupational fatality events occurring within the state, fatality investigations that identified potential causal factors for occupational trauma, and subsequent recommendations for developing and implementing successful intervention strategies. By stimulating phased development and growth at the state level, this program will permit the states following the FACE model to structure their surveillance and investigative activities to more efficiently capture input from other investigating state agencies and departments.

Additionally, states will be able to target occupational traumatic injury research and prevention programs based on specific state priority areas.

All FACE data will be shared with the recipients.

The specific objectives for this cooperative agreement are as follows:

1. Develop a timely, comprehensive, multiple source state-level surveillance system for identifying and recording basic epidemiologic data on all traumatic occupational fatalities occurring within the state.
2. Conduct investigations of selected traumatic occupational fatalities using the NIOSH FACE investigative model.
3. Identify potential risk factors for selected types of traumatic occupational fatalities which will be useful for targeting intervention strategies and prioritizing research efforts.
4. Develop intervention demonstration projects to reduce traumatic occupational injuries and fatalities.
5. Develop and disseminate preventive recommendations to reduce the risk of fatal traumatic injuries within the state.

Program Requirements

The cooperative agreement recipient shall be responsible for conducting the activities under A. below, and CDC will be responsible for conducting the activities under B. below.

A. Recipient Activities:

1. Identify and develop a multiple source surveillance notification system for timely identification of all traumatic occupational fatalities occurring within the state.
2. Develop a state-based surveillance system for timely collection and recording of epidemiologic (core) data on all occupational fatalities occurring within the state.
3. Interface the state-based surveillance system with a NIOSH on-line communications network for transmitting data to NIOSH.
4. Conduct in-depth investigations of occupational fatalities resulting from falls from elevations, electrocutions, and exposure to confined spaces using the NIOSH FACE model for investigation.
5. Develop and submit to NIOSH a summary report of each fatality investigation which describes the fatal incident and includes recommendations for preventing future occurrences of the specific fatality type.
6. Conduct epidemiologic analysis of common fatal incident circumstances to develop recommendations and information on intervention and prevention techniques and engineering solutions offering effective remedies.
7. Identify sentinel hazards and contributing circumstances with timely dissemination of recommended solutions to the identified problems through various written media.
8. Identify deficiencies, limitations, or absences of safety standards when occupational fatalities occur during circumstances outside the purview of regular state or federal enforcement agencies.

B. CDC Activities:

1. Provide epidemiologic data reporting forms, coding formats, computer-based software programs, and state personnel training for electronically recording and on-line transmission of FACE core data to a central NIOSH database.
2. Provide assistance to awardee staff in establishing traumatic occupational fatality notification networks and for defining roles in providing safety and health referral services.
3. Provide initial training in procedures for conducting on-site fatality investigations using the FACE investigative methodology (including the use of FACE investigative data collection instruments), and provide subsequent on-site technical assistance to state personnel in conducting fatality investigations.
4. Provide assistance in identifying sentinel events resulting from industrial applications of new and emerging technologies.
5. Provide technical assistance and support in the dissemination of summary reports and other published findings to state and local health officials, state and local labor officials, voluntary health groups, workers, management, unions, employers and professional organizations.

Evaluation Criteria

The review of the application will be based on the evidence submitted which specifically describes the applicant's ability to meet the following criteria:

1. Overall quality of the state proposal for identifying, recording and investigating traumatic occupational fatalities within the state using the FACE model. (30%)
2. Quality and completeness of the state's plan and methodology, including a proposed schedule, for accomplishing the activities and objectives for this cooperative agreement. The state should also demonstrate collaborative relationships among the various relevant state agencies in addressing the problem of traumatic occupational fatality surveillance and investigations. (25%)
3. The qualifications and time commitment of the proposed staff, type and quality of facilities and equipment, and administrative support for the state-based FAAC program. (20%)
4. Demonstration of the need for developing and implementing a state-based occupational surveillance and field investigation program based on identification of high risk industries and occupations within the state. (15%)
5. Relevance of the proposal to the scope and objectives announced in the program announcement. (10%)
6. The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

Other Requirements

Paperwork Reduction Act

The projects that will be funded through the cooperative agreement mechanism of this program that involve the collection of information from 10 or more individuals will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Executive Order 12372 Review

Applications are subject to the Intergovernmental Review of Federal Programs as governed by Executive Order 12372. Executive Order 12372 sets up a system for state and local government review of proposed federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact their State Single Point of Contacts (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC for each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305 no later than 30 days after the deadline date for new and competing awards. The granting agency does not guarantee to "accommodate or explain" state process recommendations it receives after that date.

Catalog of Federal Domestic Assistance Number (CFDA)

The Catalog of Federal Domestic Assistance (CFDA) for this program is 93.283.

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Catalog of Federal Domestic Assistance Number (CFDA)

The Catalog of Federal Domestic Assistance (CFDA) for this program is 93.283.

Application Submission and Deadline

The original and two copies of the application (PHS Form 5161-1) must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, room 300, 235 East Paces Ferry Road, NE., Atlanta, Georgia 30305, on or before August 12, 1991.

1. Deadline: Applications shall be considered as meeting the deadline if they are either: a. Received on or before the deadline date, or b. Sent on or before the deadline date and received in time for submission to the review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service as proof of timely mailing.

2. Late Applications: Applications which do not meet the criteria in 1.a. or 1.b. immediately above are considered late applications, will not be considered in the current competition, and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, an application package and business management technical assistance may be obtained from Lisa G. Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, Mailstop E-14, 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305 (404) 842-6630 or FTS 236-6630.

Programmatic technical assistance may be obtained from the following contacts at the sponsoring NIOSH Division in Morgantown, West Virginia: Timothy J. Pizatella, Chief, Surveillance and Field Investigations Branch, NIOSH/Division of Safety Research, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505, (304) 291-4575 or FTS 923-4575 OR John M. Dower, Chief, Trauma Investigations Section, NIOSH/Division of Safety Research, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505-2888 (304) 291-4885 or FTS 923-4885.

Please refer to Announcement Number 158, "Cooperative Agreement for Conducting Fatality Surveillance and Field Investigations at the State Level Using the NIOSH Fatal Accident Circumstances and Epidemiology Model" when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, (Telephone (202) 783-3238).

Dated: July 25, 1991.

Timothy W. Groza,

Acting Director, National Institute for Occupational Safety and Health.

[FR Doc. 91-18061 Filed 7-30-91; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 91M-0243]

A.E. Staley Manufacturing Co.; Premarket Approval of MIRA-FLO™ Starch

AGENCY: Food and Drug Administration HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by A.E. Staley Manufacturing Co., Decatur, IL, for premarket approval, under the Medical Device Amendments of 1976, of the MIRA-FLO™ Starch. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of June 17, 1991, of the approval of the application.

DATES: Petitions for administrative review by August 30, 1991.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: George Jan, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1090.

SUPPLEMENTARY INFORMATION: On March 1, 1990, A.E. Staley Manufacturing Co., Decatur, IL 62525, submitted to CDRH an application for premarket approval of the MIRA-FLO™ Starch. The MIRA-FLO™ Starch device is a biologically absorbable dusting powder which is indicated for use as a lubricating powder for surgical gloves.

On June 17, 1991, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact George Jan (HFZ-410), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 30, 1991, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the hearing of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(b), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: July 17, 1991.

James S. Benson,

Director, Center for Devices and Radiological Health.

[FR Doc. 91-18072 Filed 7-30-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91G-0268]

Takeda Chemical Industries, Ltd.; Filing of Petition for Affirmation of Gras Status

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Takeda Chemical Industries, Ltd., has filed a petition (GRASP 0G0358), proposing to affirm that urease enzyme product derived from *Lactobacillus fermentum* is generally recognized as safe (GRAS) as a direct human food ingredient.

DATES: Written comments by September 30, 1991.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vincent Zenger, Center for Food Safety and Applied Nutrition (HFF-333), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 201(s), 409(b)(5), 21 U.S.C. 321(s), 348(b)(5)) and the regulation for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that Takeda Chemical Industries, Ltd., 12-10 Nihonbashi, 2-Chome, Chuo-ku, Tokyo 103, Japan, has filed a petition (GRASP 0G0358), proposing that urease enzyme product derived from nonpathogenic and nontoxigenic *Lactobacillus fermentum* be affirmed as GRAS for use as a direct human food ingredient to prevent the development of ethyl carbamate in wine products.

The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the requirements outlined in §§ 170.30 and 170.35 is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Interested persons may, on or before September 30, 1991, review the petition and/or file comments (two copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). Comments should include any available information that would be helpful in determining whether the substance is, or is not, GRAS for the proposed use. A copy of the petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 25, 1991.

L. Robert Lake,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-18142 Filed 7-30-91; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory bodies scheduled to meet during the month of September 1991:

Name: Council on Graduate Medical Education.

Time: September 5, 1991, 8:30 a.m.-5 p.m. and September 6, 1991, 1 p.m.-3:30 p.m.

Place: Conference room I, Parklawn Conference Center, 5600 Fishers Lane, Rockville, MD 20857.

Open for entire meeting.

Purpose: Provides advice and recommendations to the Secretary and to the Committees on Labor and Human Resources, and Finance of the Senate and the Committees on Energy and Commerce and Ways and Means of the House of Representatives, with respect to (A) the supply and distribution of physicians in the United States; (B) current and future shortages of physicians in medical and surgical specialties and subspecialties; (C) issues relating to foreign medical graduates; (D) appropriate Federal policies regarding (A), (B), and (C) above; (E) appropriate efforts to be carried out by medical and osteopathic schools, public and private hospitals and accrediting bodies regarding matters in (A), (B), and (C) above; (F) deficiencies in the needs for improvements in, existing data bases concerning supply and distribution of, and training programs for physicians in the United States.

Agenda: The plenary Council will hear and discuss presentations on agency updates from the Health Resources and Services Administration, the Health Care Financing Administration, and the Department of Veterans Affairs; four issue papers on factors affecting the future need for physician manpower; Canadian medical education and physician manpower planning; and issues of access to care in inter-city areas.

Anyone requiring information regarding the subject Council should contact Carol Gleich, Ph.D., Executive Secretary, Council on Graduate Medical Education, Health Resources and Services Administration, room 4C-25, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443-3626.

Name: Subcommittee on Minority Representation in Medicine of the Council on Graduate Medical Education.

Time: September 4, 1991, 8:30 a.m.-5 p.m.

Place: Conference room I, Parklawn Conference Center, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open for entire meeting.

Purpose: To review and discuss final draft of the section on the underrepresentation of minorities in medicine of the COGME Special Report.

Agenda: The subcommittee will hear and discuss observations regarding historically black medical schools, presentations on college and medical school minority preparation and recruitment Programs, and the Indians into Medicine Program (INMED).

Anyone requiring information regarding the subject Subcommittee should contact Mr. Lanardo E. Moody, Subcommittee Principal Staff Liaison, Division of Medicine, Bureau of Health Professions, room 4C-25, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443-6326.

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Name: Subcommittee on Minority Representation in Medicine of the Council on Graduate Medical Education.

Time: September 4, 1991, 8:30 a.m.–5 p.m.

Place: Conference room I, Parklawn Conference Center, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open for entire meeting.

Purpose: To review and discuss final draft of the section on the underrepresentation of minorities in medicine of the COGME Special Report.

Agenda: The subcommittee will hear and discuss observations regarding historically black medical schools, presentations on college and medical school minority preparation and recruitment Programs, and the Indians into Medicine Program (INMED).

Anyone requiring information regarding the subject Subcommittee should contact Mr. Lanardo E. Moody, Subcommittee Principal Staff Liaison, Division of Medicine, Bureau of Health Professions, room 4C–25, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–6326.

Name: Subcommittee on Medical Education Programs and Financing of the Council on Graduate Medical Education.

Time: September 6, 1991, 8:15 a.m.–12 noon.

Place: Conference room J, Parklawn Conference Center, 5600 Fishers Lane, Rockville, MD 20857.

Open for entire meeting.

Purpose: The subcommittee identifies the issues and problems in current methods of financing and support. Assesses the implications of alternative financing policies on medical education programs, service delivery, cost containment, physician supply & distribution, and shortages and excesses of physicians.

Analyzes existing information and data on current and alternative medical education programs of hospitals, schools of medicine and osteopathy, and accrediting bodies; federal policies regarding medical education programs; and their impact on the supply and distribution of physicians.

Agenda: The Subcommittee will discuss Primary Care 2000: HRSA Long-Range Plan for Health Professionals, and a paper on medical education issues and options.

Anyone requiring information regarding the subject Subcommittee should contact Ms. Debbie M. Jackson, Subcommittee Principal Staff Liaison, or F. Lawrence Clare, M.D., M.P.H., Deputy Executive Secretary, Division of Medicine, Bureau of Health Professions, room 4C–25, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–6326.

Name: Subcommittee on Physician Manpower of the Council on Graduate Medical Education.

Time: September 6, 1991, 8:12 a.m.–12 noon.

Place: Conference room I, Parklawn Conference Center, 5600 Fishers Lane, Rockville, MD 20857.

Open for entire meeting.

Purpose: The subcommittee reviews and analyzes currently applicable studies of under and oversupply of physician manpower giving special attention to number and distribution of specialists, primary care physicians and residents. It also is concerned with studies and recommendations regarding the number of undergraduate medical students as well as the need for improving physician manpower data.

Agenda: The subcommittee will discuss a draft paper on the need for more primary care physicians; and review an updated plan for developing the physician manpower report.

Anyone requiring information regarding the subject Subcommittee should contact Jerald M. Katzoff, Subcommittee Principal Staff Liaison, Division of Medicine, Bureau of Health Professions, room 4C–18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–6326.

Agenda Items are subject to change as priorities dictate.

Dated: July 25, 1991.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 91–18069 Filed 7–30–91; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

Office of the Assistant Secretary for Health; Redelegation Concerning Patents and Inventions

Notice is hereby given that, under the authority delegated to the Assistant Secretary for Health by the Secretary under 45 CFR Section 6.2 (31 FR 12842), the Assistant Secretary for Health has amended the July 15, 1988, delegation to PHS Agency Heads concerning patents and inventions. The amendment modified the redelegation of the following authorities, as they pertain to the National Institutes of Health (NIH): 35 U.S.C. 202(c)(7), 35 U.S.C. 202(d), and 35 U.S.C. 202(e), Disposition of Rights, as amended; 35 U.S.C. 204, Preference for United States Industry; 35 U.S.C. 207(a), Domestic and Foreign Protection of Federally Owned Inventions; and 45 CFR 7.3 and 7.7, Determination as to Domestic Rights and Notice to Employee of Determination, as amended.

Redelegation

These authorities may be redelegated within the Office of the Director, NIH.

Prior Delegations

All previous delegations and redelegations shall continue in effect, provided they are consistent with this delegation.

Effective Date

This amendment became effective on July 24, 1991.

Dated: July 24, 1991.

James O. Mason,

Assistant Secretary for Health.

[FR Doc. 91–18025 Filed 7–30–91; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-3285; FR-3091-C-02]

Guidelines for Designation of Consortia in the HOME Investment Partnerships Program; Correction Notice To Extend Dates

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of procedures for designating consortia: HOME investment partnerships program; Correction notice to extend dates.

SUMMARY: On July 25, 1991 (56 FR 34094), the Department published a notice in the **Federal Register** on procedures for designating consortia in the HOME Investment Partnerships Program. The July 25 notice stated that the date by which consortia requests must be received in the appropriate HUD Field Office is August 1, 1991, and the date by which the HUD Field Office must notify HUD Headquarters of consortia requests that they approve is September 1, 1991. The Department has found it necessary to extend those dates.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Director, Rehabilitation Management Division, room 7162, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone (202) 708–2470. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 755–2565. (These are not toll-free numbers).

Accordingly, FR Doc. 91–17638, published in the **Federal Register** on July 25, 1991 (56 FR 34094), is amended by correcting the DATE section, to read as follows:

DATES: For consideration of an allocation of HOME funds in FY 1992, consortia requests must be received in the applicable HUD Field Office by September 3, 1991. Consortia requests which are approved by the HUD Field Offices must be submitted to HUD Headquarters by September 30, 1991 to be considered for funding in FY 1992.

Dated: July 26, 1991.

Anna Kondratas,

Assistant, Secretary for Community Planning and Development.

[FR Doc. 91–18271 Filed 7–30–91; 8:45 am]

BILLING CODE 4210-29-M

[Docket No. N-91-3284; FR-3089-N-02]

NOFA for HUD-Administered State Rental Rehabilitation Programs for Fiscal Year 1991 and Deadlines for Submission of Program Descriptions; Announces Available Funds for Puerto Rico

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding availability for fiscal year 1991 and deadlines for submitting program descriptions for HUD-administered State rental rehabilitation programs; Announces available funds for Puerto Rico.

SUMMARY: On July 25, 1991 (56 FR 34098), the Department published a notice in the **Federal Register** announcing allocations of funds available to localities by competition in States which have not elected to administer the Rental Rehabilitation Program for Fiscal Year 1991. In these States, HUD will administer the program.

The purpose of this notice is to announce that in addition to the funds announced in the July 25 notice, a total of $269,000 in rental rehabilitation grant funds is available in Puerto Rico to localities that did not receive a formula allocation and that are not eligible for Farmers Home Administration assistance under Title V of the Housing act of 1949. The date by which Program Descriptions must be received for localities in Puerto Rico to be considered for funding is August 30, 1991. Except for the different submission date, the notice as published in the July 25 **Federal Register** notice applies.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Director, Rehabilitation Management Division, Room 7162, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-7000; telephone (202) 708-2470. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 755-2565. (These are not toll-free numbers).

Dated: July 26, 1991.

Anna Kondratas,

Assistant Secretary, for Community Planning and Development.

[FR Doc. 91-18272 Filed 7-30-91; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-930-91-4212-13; N-53583]

Realty Action; Exchange of Public Lands in Clark County, NV

The following described public lands administered by the Bureau of Land Management, including the mineral estate with no known values, have been determined to be suitable for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

Mount Diablo Meridian, NV

T. 21 S., R. 60 E.,
  Sec. 20, E½NE¼SE¼SW¼, E½E½NW¼SE¼, SW¼NW¼SE¼, W½NW¼SW¼SE¼, E½SW¼NE¼SE¼.
  Sec. 29, E½NW¼NE¼SE¼, SE¼NW¼NE¼, E½SE¼SW¼NE¼, E½SW¼SE¼NE¼, W½SE¼SE¼NE¼.

Aggregating 65 acres.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.
2. All the oil, gas, sodium, potassium and any other minerals of known value.

and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for Clark County.

In exchange for the above described public lands, the United States will acquire the following described private lands from Rhodes Design and Development Corp. All of Rhodes Design and Development's interest in the private lands will be transferred.

Mount Diablo Meridian, NV

T. 21 S., R. 59 E.,
  Sec. 6, Lot 6.
T. 14 S., R. 69 E.,
  Sec. 28, SW¼SE¼, SE¼SW¼.
  Sec. 32, SE¼NE¼.
  Sec. 33, NE¼NW¼, W½NW¼, W½NW¼NE¼.

Aggregating 300.36 acres.

SUPPLEMENTARY INFORMATION: The exchange is consistent with the Clark County Management Framework Plan. The above described lands will be subject to an appraisal to determine the value of the lands to be exchanged. If necessary, land values may be equalized through an acreage adjustment and/or a payment by the exchange proponent in accordance with 43 CFR 2201.5(c)(2). The lands being disposed of are not within a grazing allotment and therefore no reduction in grazing privileges is necessary.

In accordance with the regulation of 43 CFR 2201.1(b), publication of this Notice shall segregate the parcel described as T. 21 S., R. 60 E., sec. 20, E½SW¼NE¼SE¼ from appropriation under the public land laws, including the mining laws, but not the mineral leasing laws, and from any subsequent land exchange proposals filed by any proponent other than Rhodes Design and Development. The other parcels described above were segregated by publication of a Notice in the **Federal Register** (56 FR 9288) dated March 5, 1991. The segregation of the additional parcel will terminate upon the issuance of patent or two years from the date of publication of this notice, or upon publication of a notice terminating the segregation.

Further information regarding this exchange is available at the Las Vegas District Office, Bureau of Land Management, P.O. Box 26569, Las Vegas, NV 89126. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas, at the above address. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Dated: July 22, 1991.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 91-18068 Filed 7-30-91; 8:45 am]

BILLING CODE 4310-HC-M

Fish and Wildlife Service

Availability of a Draft Environmental Assessment To Amend the Habitat Conservaton Plan of an Incidental Take Permit for Development in Riverside County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the draft environmental assessment (EA) on the proposed amendment to section 10(a)(1)(B) of the Endangered Species Act (Act) to allow incidental take of the endangered Stephens' kangaroo rat (*Dipodomys stephensi*) in Riverside County, California, is available for public review. Comments and suggestions are requested. This notice is provided pursuant to section

10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the EA should be received on or before August 30, 1991.

ADDRESSES: Persons wishing to review the draft EA may obtain a copy by writing the Riverside County Habitat Conservation Agency. Documents will be available for public inspection during normal business hours (8 a.m. to 5 p.m.) at the Riverside County Habitat Conservation Agency and the Riverside Central Library. Written data or comments concerning the proposed permit amendment and draft EA should be submitted to the Laguna Niguel Field Office. Please reference permit number PRT 739678 with your comments.

Laguna Niguel Field Office, U.S. Fish and Wildlife Service, 24000 Avila Road, Room 3106, Laguna Niguel, CA 92656 (714/643–4270 or FTS 796–4270).

Riverside Central Library, Government Publications Section, 3581 Seventh Street, Riverside, CA 92501–3651.

Riverside Central Library, Government Publications Section, 3581 Seventh Street, Riverside, Ca 92501–3651.

FOR FURTHER INFORMATION CONTACT: Mr. Brooks Harper at the above Laguna Niguel Field Office.

SUPPLEMENTARY INFORMATION: The County of Riverside California, has applied to the Fish and Wildlife Service for a proposed amendment to their existing incidental take permit amendment that would authorize changes in the Stephens' kangaroo rat (SKR) reserve study area boundaries. These changes are being promulgated pursuant to the terms and conditions of the existing short-term (2-year) SKR Habitat Conservation Plan (HCP). This short-term plan requires review of the proposed boundary changes every 6 months until such time as the final SKR reserve study area boundaries and the long-term HCP are completed and approved.

The proposed action is to authorize specific modification of the boundaries of the HCP Fee Area and various Study Areas. This proposed action is detailed in section II.B.1 Alternative 1—The Proposed Action and Preferred Alternative. The total changes to the HCP Fee Area would result in the deletion of 3,136 acres including a net decrease of 1,481 acres of SKR occupied habitat. The total changes to the SKR Study areas would result in a net decrease of 3,304.3 acres (in areas unlikely to become a part of the permanent reserve system) while achieving a net gain of 30.8 acres of SKR occupied habitat within the boundaries of the Study Areas. These changes result in a net increase of 3,270.2 acres in the area outside of Study Areas but within the HCP Fee Area.

Dated: July 25, 1991.

Maggie Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 91–18033 Filed 7–30–91; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Proposed Development Concept Plan, Santa Rosa Island, Channel Islands National Park, CA; Intent to Prepare an Environmental Impact Statement

Summary: In accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, Pub. L. 91–190, the National Park Service, Channel Islands National Park is preparing an environmental impact statement to assess the impacts of implementing a proposed development concept plan for Santa Rosa Island. The proposal and alternatives will be based on the general direction provided in the 1985 General Management Plan for the park.

The plan will consider needed actions to protect natural and cultural resources on the island, and to provide for visitor use consistent with the island's carrying capacity. The need for additional support facilities for park management and research will also be evaluated.

Scoping workshops on planning for Santa Rosa Island were held February 12–15, 1990 at Channel Islands National Park. In-depth press briefings on the planning project were provided in the park on July 17, 1990.

Persons wishing to comment upon or provide additional input to the scoping process for the environmental impact statement should provide such comments to the Superintendent, Channel Islands National Park, 1901 Spinnaker, Ventura, California 93001, within 30 days following the publication of this notice. For further information, contact the Superintendent at the above address or telephone number (805) 644–8157.

The responsible official is Stanley T. Albright, Regional Director, Western Region, National Park Service. The draft environmental statement is expected to be completed and available for public review in November 1991, and the final environmental statement and record of decision anticipated in spring 1992.

Dated: July 12, 1991.

Stanley T. Albright,

Regional Director, Western Region.

[FR Doc. 91–18032 Filed 7–30–91; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

Ethyl Alcohol for Fuel Use: Determination of the Base Quantity of Imports

[332-288]

AGENCY: International Trade Commission.

ACTION: Amended notice of determination.

SUMMARY: This notice amends the notice issued December 13, 1990, which preliminarily established the base quantiy for 1991 for U.S. imports of fuel ethyl alcohol from CBI-beneficiary countries as required under section 7 of the Steel Trade Liberalization Program Implementation Act (19 U.S.C. 2253 note). The "base quantity" of imports is the quantity of fuels ethyl alcohol that can be imported with a zero percent local feedstock requirement. Beyond the base quantity of imports, progressively higher local feedstock requirements are placed on imports of fuel ethyl alcohol and mixtures from the CBI-beneficiary countries.

For purposes of making determinations of the U.S. market for ethyl alcohol as required by section 7 of the Act, the Commission instituted investigation No. 332–288, Ethyl Alcohol for Fuel Use: Determination of the Base Quantity of Imports, in March 1990. The Commission uses official statistics of the U.S. Departments of Commerce and Treasury to make these determinations.

For the 12-month period ending September 30, 1990, the Commission preliminarily determined the level of U.S. consumption of ethyl alcohol to be 1.21 billion gallons and the "base quantity" for 1991 to be 84.5 million gallons. It was noted that certain of the data required to make the determination was being estimated by the Commission pending finalization of Treasury statistics through September 1990 for alcohol fuel producers, and in the event that the finalized data changed the base quantity estimate to be used in 1991, the Commission would notify the Customs Service and issue an amended **Federal Register** notice. Final data has been received from the Department of the Treasury, with the result that the estimated U.S. level of consumption is finalized at 1.18 billion gallons and the "base quantity" for 1991 is finalized at 62.6 million gallons.

EFFECTIVE DATE: July 25, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. David G. Michels (202-205-3352) or Mr. James A. Emanuel (202-205-3367) in the Commission's Office of Industries. For information on legal aspects of the investigation contact Mr. William Gearhart of the Commission's Office of the General Counsel at 202-205-3091. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205-1810.

Issued: July 26, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-18121 Filed 7-30-91; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 303-TA-21 (Preliminary) and 731-TA-519 (Preliminary)]

Gray Portland Cement and Cement Clinker From Venezuela

AGENCY: International Trade Commission.

ACTION: Correction to notice of determinations.

SUMMARY: The notice of determinations in the subject investigations, published in the **Federal Register** of July 17, 1991 (56 FR 32589), incorrectly stated that the views of the Commission are contained in USITC publication 2440. The correct publication number is 2400.

EFFECTIVE DATE: July 23, 1991.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk (202-205-3190), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

Issued: July 23, 1991.

By order of the Commission.

Edward G. Carroll,

Acting Secretary.

[FR Doc. 91-18120 Filed 7-30-91; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-522 (Preliminary)

Minivans From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission [2] unanimously determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Japan of minivans, provided for in headings 8703 and 8704 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On May 31, 1991, a petition was filed with the Commission and the Department of Commerce by counsel on behalf of General Motors Corp., Detroit, MI, Ford Motor Co., Dearborn, MI, and Chrysler Motors Corp., Detroit, MI, alleging that an industry in the United States is materially injured and is threatened with material injury by reason of LTFV imports of minivans from Japan. Accordingly, effective May 31, 1991, the Commission instituted antidumping investigation No. 731-TA-522 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 10, 1991 (56 FR 26694). The conference was held in Washington, DC, on June 21, 1991, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 15, 1991. The views of the Commission are contained in USITC Publication 2402 (July 1991), entitled "Minivans from Japan: Determination of the Commission in Investigation No. 522 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: July 15, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-18125 Filed 7-30-91; 8:45 am]

BILLING CODE 7020-02-M

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[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f).

[2] Commissioner Rohr not participating.

[Investigations Nos. 701-TA-305 (Final) and 731-TA-476 and 478-482 (Final)]

Steel Wire Rope From Argentina, India, Mexico, People's Republic of China, Taiwan, and Thailand

AGENCY: International Trade Commission.

ACTION: Limited waiver of rules and revised schedule for the subject investigations.

EFFECTIVE DATE: July 16, 1991.

FOR FURTHER INFORMATION CONTACT: Diane J. Mazur (202-205-1184), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION: On April 18, 1991, the Commission instituted the subject investigations and established a schedule for their conduct (56 FR 20024, May 1, 1991). Subsequently, on May 13, 1991, the Department of Commerce extended the date for its final determinations in the investigations concerning India, the People's Republic of China, Taiwan, and Thailand from July 1, 1991, to September 4, 1991 (56 FR 21988).

In addition, on June 28, 1991, the Commission instituted preliminary investigation No. 731-TA-524 concerning steel wire rope from Canada, pursuant to a petition filed by the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers, alleging that such imports are being sold in the United States at less than fair value, and that an industry in the United States is materially injured and threatened with material injury by reason of such imports (56 FR 30765, July 5, 1991).

The Commission, therefore, is partially waiving its rules and revising its schedule as follows: in the subject final investigations, the Commission is waiving its rules regarding the submission of briefs to allow for the filing of additional briefs (not to exceed 5 pages) to discuss the issue of whether imports from Canada should be cumulated with imports from the subject countries and the impact of any such cumulation, and the deadline for filing such supplemental briefs is July 23, 1991; and in the final investigations concerning India, the People's Republic

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[Investigations Nos. 701-TA-305 (Final) and 731-TA-476 and 478-482 (Final)]

Steel Wire Rope From Argentina, India, Mexico, People's Republic of China, Taiwan, and Thailand

AGENCY: International Trade Commission.

ACTION: Limited waiver of rules and revised schedule for the subject investigations.

EFFECTIVE DATE: July 16, 1991.

FOR FURTHER INFORMATION CONTACT: Diane J. Mazur (202–205–1184), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION: On April 18, 1991, the Commission instituted the subject investigations and established a schedule for their conduct (56 FR 20024, May 1, 1991). Subsequently, on May 13, 1991, the Department of Commerce extended the date for its final determinations in the investigations concerning India, the People's Republic of China, Taiwan, and Thailand from July 1, 1991, to September 4, 1991 (56 FR 21988).

In addition, on June 28, 1991, the Commission instituted preliminary investigation No. 731–TA–524 concerning steel wire rope from Canada, pursuant to a petition filed by the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers, alleging that such imports are being sold in the United States at less than fair value, and that an industry in the United States is materially injured and threatened with material injury by reason of such imports (56 FR 30765, July 5, 1991).

The Commission, therefore, is partially waiving its rules and revising its schedule as follows: in the subject final investigations, the Commission is waiving its rules regarding the submission of briefs to allow for the filing of additional briefs (not to exceed 5 pages) to discuss the issue of whether imports from Canada should be cumulated with imports from the subject countries and the impact of any such cumulation, and the deadline for filing such supplemental briefs is July 23, 1991; and in the final investigations concerning India, the People's Republic

of China, Taiwan, and Thailand, supplemental briefs (not to exceed 10 pages) will be allowed to discuss Commerce's final margins, and the deadline for filing such supplemental briefs is September 13, 1991.

For further information concerning these investigations see the Commission's notices of investigations cited above and the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201, as amended by 56 FR 11918, Mar. 21, 1991), and part 207, subparts A and C (19 CFR part 207, as amended by 56 FR 11918, Mar. 21, 1991).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: July 16, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–18124 Filed 7–30–91; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-497 (Final)]

Tungsten Ore Concentrates From the People's Republic of China

AGENCY: International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–497 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China of tungsten ore concentrates, provided for in subheading 2611.00.00 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201, as amended by 56 FR 11918, Mar. 21, 1991), and part 207, subparts A and C (19 CFR part 207, as amended by 56 FR 11918, Mar. 21, 1991).

EFFECTIVE DATE: July 9, 1991.

FOR FURTHER INFORMATION CONTACT: Mary Trimble (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by conducting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of tungsten ore concentrates from the People's Republic of China are being sold in the United States at less than fair value within the meaning of section 733 of the act (19 U.S.C. 1673b). The investigation was requested in a petition filed on January 23, 1991, by U.S. Tungsten Corp., Danbury, CT.

Participation in the investigation and public service list.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in this investigation will be placed in the nonpublic record on September 13, 1991, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on September 26, 1991, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before September 23, 1991. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on September 24, 1991, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules.

Written submissions.—Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is September 23, 1991. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is October 1, 1991; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before October 1, 1991. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: July 18, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–18119 Filed 7–30–91; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-329]

Certain Vacuum Cleaners; Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint filed with the U.S. International Trade Commission on June 21, 1991, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Amway Corporation, 7575 East Fulton Road, Ada, Michigan 49355 and Bissell, Incorporated, 2345 Walker Avenue, NW., Grand Rapids, Michigan 49504. The complaint alleges a violation of section 337 in the importation into the United States of certain vacuum cleaners by reason of alleged infringement of U.S. Patent Des. 309,203 and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complaint requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., room 112, Washington, DC 20436, telephone (202) 205–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

FOR FURTHER INFORMATION CONTACT: Linda C. Odom, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2574.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12.

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on July 17, 1991, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B)(i) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain vacuum cleaners by reason of alleged infringement of the claim of U.S. Patent Des. 309,203, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this Notice of Investigation shall be served:

(a) The Complainants are:

Amway Corporation, 7575 East Fulton Road, Ada, Michigan 49355
Bissell, Incorporated, 2345 Walker Avenue, NW., Grand Rapids, Michigan 49504

(b) The respondent is the following company alleged to be in violation of section 337, and the party upon which the complaint is to be served:

Iona Appliances, Inc., 1110 Hansler Road, Welland, Ontario L3B 5S1, Canada

(c) Linda C. Odom, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., room 401P, Washington, DC. 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses to the complaint and the Notice of Investigation must be submitted by the named respondent in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.21. Pursuant to §§ 201.16(d) and 210.21(a) of the Commission's rules, 19 CFR 201.16(d) and 210.21(a), such response will be considered by the Commission if received not later than 20 days after the date of service of the complaint and this Notice of Investigation. Extensions of time for submitting responses to the complaint and Notice of Investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this Notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this Notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this Notice, and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order, or a cease and desist order, or both, directed against such respondent.

Issued: July 17, 1991.

By order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 91–18123 Filed 7–30–91; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[I.C.C. Order No. P-111]

Passenger Train Operation

To: Chicago Central & Pacific Railroad Company

The National Railroad Passenger Corporation (AMTRAK) has established through passenger train service between Chicago, Illinois and Seattle, Washington, Train No.s 7 & 8, the Empire Builder. These train operations require the use of tracks and other facilities of the Soo Line Railroad Company (SL). A portion of the SL tracks near Watertown, Wisconsin are out of service because of a derailment. An alternate route is available over the Burlington Northern Railroad Company that requires the use of the Chicago Central & Pacific Railroad Company tracks between East Dubuque and Portage, Illinois.

It is the opinion of the Commission that such an operation is necessary in the interest of the public and the commerce of the people; that notice and public procedure are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

(a) Pursuant to authority vested in me by order of the Commission decided January 13, 1986, and of the authority vested in the Commission by section 402(c) of the Rail Passenger Service Act of 1970 (45 U.S.C. 562(c)), Chicago Central & Pacific Railroad Company is directed to operate or allow the operation of trains of the National Railroad Passenger Corporation between East Dubuque and Portage, Illinois in order to permit a rerouting utilizing the Burlington Northern Railroad Company.

(b) In executing the provisions of this order, the common carriers involved shall proceed even if no agreements or arrangements may now exist between them with reference to the compensation terms and conditions applicable to said operations. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between

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By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-18123 Filed 7-30-91; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[I.C.C. Order No. P-111]

Passenger Train Operation

To: Chicago Central & Pacific Railroad Company

The National Railroad Passenger Corporation (AMTRAK) has established through passenger train service between Chicago, Illinois and Seattle, Washington, Train No.s 7 & 8, the Empire Builder. These train operations require the use of tracks and other facilities of the Soo Line Railroad Company (SL). A portion of the SL tracks near Watertown, Wisconsin are out of service because of a derailment. An alternate route is available over the Burlington Northern Railroad Company that requires the use of the Chicago Central & Pacific Railroad Company tracks between East Dubuque and Portage, Illinois.

It is the opinion of the Commission that such an operation is necessary in the interest of the public and the commerce of the people; that notice and public procedure are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

(a) Pursuant to authority vested in me by order of the Commission decided January 13, 1986, and of the authority vested in the Commission by section 402(c) of the Rail Passenger Service Act of 1970 (45 U.S.C. 562(c)), Chicago Central & Pacific Railroad Company is directed to operate or allow the operation of trains of the National Railroad Passenger Corporation between East Dubuque and Portage, Illinois in order to permit a rerouting utilizing the Burlington Northern Railroad Company.

(b) In executing the provisions of this order, the common carriers involved shall proceed even if no agreements or arrangements may now exist between them with reference to the compensation terms and conditions applicable to said operations. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between

said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of said carriers in accordance with pertinent authority conferred upon it by the Interstate Commerce Act and by the Rail Passenger Service Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign commerce.

(d) *Effective date.* This order shall become effective at 11:15 a.m., (CDT), June 21, 1991.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., (CDT), June 22, 1991, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon the Chicago Central & Pacific Railroad Company and the National Railroad Passenger Corporation, and a copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, DC, June 21, 1991, by Heber P. Hardy, Agent.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-18086 Filed 7-30-91; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-290 Sub-No. 118X]

Norfolk Southern Railway Co. Abandonment Exemption—in Mecklenburg, County, NC

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonments to abandon its 0.13-mile line of railroad between milepost R-0.0, at 2nd Street, and milepost R-0.13, at Stonewall Street, in Charlotte, Mecklenburg County, NC.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on August 30, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance uder 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by August 12, 1991.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by August 20, 1991, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Robert J. Cooney, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by August 5, 1991. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219), Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: July 18, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-18085 Filed 7-30-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-25,988]

Aeroquip Corp.; Herber Springs, AR; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on July 1, 1991 in response to a worker petition which was filed July 1, 1991 on behalf of workers at Aeroquip Corporation, Herber Springs, Arkansas.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 23rd day of July 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-18117 Filed 7-30-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,593]

Goss & Deleeuw Machine Co., Kensington, CT; Negative Determination Regarding Application for Reconsideration

By an application dated June 21, 1991, the petitioners requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on May 16, 1991 and published in the **Federal Register** on May 21, 1991 (56 FR 28577).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petitioners claim that imports of Porta and Trevisan machines from Italy have increased their share of Goss & Deleeuw's market at the expense of domestic production. The petitioners submitted a list of several companies which purchased imported Italian Porta and Trevisan machines from Goss.

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[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist. 4 I.C.C.2d 164(1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

The Department's denial was based on the fact that the increased import criterion of the Group Eligibility Requirements of the Trade Act was not met. U.S. imports of machine tools (metal cutting and metal forming) declined absolutely and relative to domestic shipments in 1990 compared to 1989.

A review of the investigation file shows that company data was collected through 1990. The data show that sales and production of Goss' chucking machines declined in 1990 compared to 1989 while increases in sales and production were shown for rebuilds and other small tools.

Other findings show that the Italian machines were not like or directly competitive with Goss' chucking machines. Goss' marketing agreements for the Italian machines had two phases. In the first phase Goss would do the installation and service work and be the sole U.S. distributor. In the second phase Goss would asemble the machines in Kensington with Italian components.

The findings also show that Goss imported one Porta machine in 1990 and one Trevisan machine in 1989 and built one Trevisan machine in 1990 with a machine base and slides imported from Italy. The components to the Trevisan machine were never produced in Kensington. Goss did not produce the Trevisan machine in 1989 or the Porta machine in 1990 when they were imported. Accordingly, these imports would not provide a basis for a worker group certification.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 23rd day of July 1991.

Stephan A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-18115 Filed 7-30-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,632]

Pennsylvania Shipbuilding Co., Chester, PA; Negative Determination Regarding Application for Reconsideration

By an application dated June 25, 1991, a former company official requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on May 22, 1991 and published in the Federal Register on June 5, 1991 (56 FR 25699).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The former company official stated that construction projects were removed from the shipyard because of foreign competition and that other shipyards (Bethlehem Steel's Sparrow Point and Levingston's shipyards) received worker group certifications. It was also stated that foreign shipyards are subsidized by their governments thereby making the U.S. shipyards non-competitive.

The Department's denial was based on the fact that there was no production during the period applicable to the petition. The Chester facility had only two new construction projects over the past three years—both U.S. Navy ships. All production and repairing at the subject firm ceased in August 1989 when the U.S. Navy pulled the two ships out of the subject shipyard and towed them to a domestic Navy shipyard in Florida. A domestic transfer of production would not provide a basis for a certification.

The last certifications for Bethlehem Steel's Sparrow Point Yard and Levingston Shipbuilding were issued on January 28, 1983 (TA-W-13,270) and July 27, 1983 (TA-W-14,462), respectively. These prior certifications, more than eight years ago, have no bearing on the instant case since those decisions were made in an earlier time period when production and/or sales and import data were different. Each petition is judged on its own merits and in the time period when it was filed.

Lastly, foreign competition from shipyards that are subsidized by their governments would not, in itself, provide a basis for a worker group certification.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 23rd day of July 1991.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-18114 Filed 7-30-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25, 607]

Revere Transducers, Inc., Wallingford, CT; Revised Determination on Reconsideration

On July 19, 1991, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of Revere Transducers, Inc., Wallingford, Connecticut.

The Wallingford plant produces transducers and is expected to close in February 1992 when all production will be transferred to Revere's Breda plant in the Netherlands and to a domestic facility.

Findings on reconsideration show that Revere made a decision in January 1991 to transfer the production of several of its product lines for the domestic market to the Netherlands. The Netherland's production transfer accounted for a substantial portion of Wallingford's total plant production in 1991. This production is now being imported into the U.S. domestic market.

A substantial number of Revere's employees have been adversely affected because of the production transfer. Workers are not separately identifiable by product.

Conclusion

After careful review of the additional facts obtained on reconsideration, it is concluded that increased imports of articles like or directly competitive with transducers produced at Revere Transducers, Inc., Wallingford, Connecticut contributed importantly to the decline in sales or production and to the total or partial separation of workers at Revere Transducers, Inc., Wallingford, Connecticut. In accordance with the provisions of the Trade Act of

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Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 23rd day of July 1991.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91–18114 Filed 7–30–91; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–25, 607]

Revere Transducers, Inc., Wallingford, CT; Revised Determination on Reconsideration

On July 19, 1991, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of Revere Transducers, Inc., Wallingford, Connecticut.

The Wallingford plant produces transducers and is expected to close in February 1992 when all production will be transferred to Revere's Breda plant in the Netherlands and to a domestic facility.

Findings on reconsideration show that Revere made a decision in January 1991 to transfer the production of several of its product lines for the domestic market to the Netherlands. The Netherland's production transfer accounted for a substantial portion of Wallingford's total plant production in 1991. This production is now being imported into the U.S. domestic market.

A substantial number of Revere's employees have been adversely affected because of the production transfer. Workers are not separately identifiable by product.

Conclusion

After careful review of the additional facts obtained on reconsideration, it is concluded that increased imports of articles like or directly competitive with transducers produced at Revere Transducers, Inc., Wallingford, Connecticut contributed importantly to the decline in sales or production and to the total or partial separation of workers at Revere Transducers, Inc., Wallingford, Connecticut. In accordance with the provisions of the Trade Act of

1974, I make the following revised determination:

> All workers of Revere Transducers, Inc., Wallingford, Connecticut who became totally or partially separated from employment on or after January 1, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 23rd day of July 1991.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91–18112 Filed 7–30–91; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–25,635]

Tric-Trac, Ltd., New York, NY; Negative Determination Regarding Application for Reconsideration

By an application dated June 14, 1991, one of the petitioners requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on May 24, 1991 and published in the **Federal Register** on June 11, 1991 (56 FR 26840).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The subject firm ceased operations in November, 1990.

The Department denied the subject firm on the fact that the increased import criterion and the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act were not met. The Department's survey of the subject firm's major customers revealed that none of the respondents reported import purchases in the relevant period. On further review, however, the investigation findings show that the workers' firm did not produce an article within the meaning of the Trade Act. All of Tric-Trac's dresses and tee shirts were produced overseas according to the subject firm's designs and imported.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 23rd day of July 1991.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91–18116 Filed 7–30–91; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–25,759]

Unibar Drilling Fluids, Inc., Rocky Mountain Division, Denver, CO; Affirmative Determination Regarding Application for Reconsideration

By a letter dated June 26, 1991, one of the petitioners requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers and former workers of Unibar Drilling Fluids, Inc., Rocky Mountain Division, Denver, Colorado. The Negative Determination was issued on June 20, 1991, and was published in the **Federal Register** on June 28, 1991 (56 FR 29718).

The petitioner claims that the Rocky Mountain Division does not produce drilling muds but applies the muds at the drilling site and services drilling rigs.

Conclusion

After careful review of the application, I conclude that the claims are of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 23rd day of July 1991.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91–18113 Filed 7–30–91; 8:45 am]

BILLING CODE 4510–30–M

Job Training Partnership Act Title III; State Designations of Entities as Dislocated Worker Units

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor is publishing for public information an update of a listing of names, addresses, and telephone numbers of entities designated by States as Dislocated Worker Units.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Colombo, Director, Office of Employment and Training Programs, Employment and Training Administration, Department of Labor, room N–4469, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: 202–535–0577 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Title III of the Job Training Partnership Act (JTPA) provides that the Department of Labor (Department) shall fund programs for States to assist dislocated workers. Section 311(b)(2) of JTPA provides that a State will designate or create an identifiable State Dislocated Worker Unit (DWU) or office with the capability to respond rapidly, onsite, to permanent plant closures and substantial layoffs throughout the State. The DWU is a key feature of the States' implementation of programs under Title III.

Periodic updates of this listing will be published, based on revisions received by the Department.

Signed at Washington, DC, this 26 day of July 1991.

Roberts T. Jones,

Assistant Secretary of Labor.

July 1991.

Dislocated Worker Units Nationwide

Alabama

Mrs. Ruth Ott, Employment & Training Division, Department of Economic and Community Affairs, P.O. Box 250347, Montgomery, Alabama 36125–0347, Telephone: 205–284–8990

Alaska

Mr. William Mailer, JTPA Program Manager, Rural Development Division, Department of Community and Regional Affairs, 949 East 36th Avenue, Suite 403, Anchorage, Alaska 99508, Telephone: 907–563–1955

Arizona

Mr. Manuel F. Mejia, Assistant Director, Division of Employment and Rehabilitation Services, Department of Economic Security, 1300 West Washington, Site Code 901A, Phoenix, Arizona 85005, Telephone: 602–542–4910

Arkansas

Mr. William D. Gaddy, Administrator, Arkansas Employment Security Division, P.O. Box 2981, Little Rock, Arkansas 72203, Telephone: 501–682–2121

California

Mr. Werner Schink, Chief, Job Training Partnership Division, Employment & Training Branch, Employment Development Department, 800 Capitol Mall, Sacramento, California 95814, Telephone: 916–322–4440

Colorado

Mr. Dick Rautio, Dislocated Worker Unit, Governor's Job Training Office, Suite 550, 720 South Colorado Boulevard, Denver, Colorado 80222, Telephone: 303–758–5020

Connecticut

Mr. Arthur Franklin, Title III Coordinator, State Department of Labor, Dislocated Worker Unit, 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109, Telephone: 203–566–7433

Delaware

Ms. Alice Mitchell, Technical Service Manager, Delaware Department of Labor, Division of Employment & Training, University Plaza, P.O. Box 9499, Newark, Delaware 19714–9499, Telephone: 302–368–6913

District of Columbia

Mrs. Ruby Washington, Chief, Branch of Federal Programs, D.C. Department of Employment Services, Employment Security Building, 500 C Street NW., Suite 300, Washington, DC 20001, Telephone: 202–639–1135

Florida

Mr. Hayden Gray, Asst. Chief, Bureau of Job Training, Division of Labor, Employment & Training, Department of Labor & Employment Security, 1320 Executive Center Drive, Suite 201 Atkins Building, Tallahassee, Florida 32399–0667, Telephone: 904–488–9250

Georgia

Mr. Robert Davis, Title III Coordinator, Georgia Department of Labor, Sussex Place, 148 International Boulevard NE., Atlanta, Georgia 30303, Telephone: 404–656–6336

Hawaii

Mr. Mario R. Ramil, Director, Department of Labor and Industrial Relations, 830 Punchbowl Street, Room 204, Honolulu, Hawaii 96813, Telephone: 808–548–3150

Idaho

Ms. Cheryl Brush, Planning, Employment and Training Programs Bureau, Department of Employment, 317 Main Street, Boise, Idaho 83735–0001, Telephone: 217–785–6006

Illinois

Mr. Herbert Dennis, Manager, Job Training Programs Division, Department of Commerce and Community Affairs, 620 East Adams Street, Springfield, Illinois 62704, Telephone: 217–785–6006

Indiana

Mr. Richard Sewell, Deputy Director, Indiana Department of Employment and Training Services, Program Operations Division, 10 N. Senate Street, Indianapolis, Indiana 48909, Telephone: 317–232–8086

Iowa

Mr. Jeff Nall, Administrator, Div. of Job Training, Iowa Dept. of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone: 515–242–4779

Kansas

Mr. Patrick Prichard, Director of Program and Support Services, Department of Human Resources, Program/Support Services, 401 SW Topeka Boulevard, Topeka, Kansas 66603, Telephone: 913–296–5159

Kentucky

Ms. Jill Day, Asst. Director, Div. of Job Training and Employment, Department of Employment Services, 275 East Main, 2–West, Frankfort Kentucky 40621, Telephone: 502–564–5360

Louisiana

Mr. Dale Miller, Supervisor, Special Programs Section, Office of Labor, Federal Training Program Division, P.O. Box 94094, Baton Rouge, Louisiana 70804–9094, Telephone: 504–342–7637

Maine

Mr. Michael Bourret, Special Assistant to Commissioner, Maine Department of Labor, 20 Union Street, Augusta, Maine 04330, Telephone: 207–289–1292

Maryland

Mr. Ron Windsor, Office of Employment & Training, Department of Economic and Employment Development, 1100 N. Eutaw Street, Room 310, Baltimore, Maryland 21202, Telephone: 301–333–5149

Massachusetts

Ms. Suzanne Teegarden, Director, Industrial Services Program, One Ashburton Place, Room 1413, Boston, Massachusetts 02108, Telephone: 617–727–8158

Michigan

Mr. James Houck, Chief, Rapid Response Unit, Bureau of Employment Training, Victor Center Building, P.O. Box 30015, Lansing, Michigan 48909, Telephone: 517–335–5853

Minnesota

Mr. Edward Retka, Program Coordinator, Employment and Training, Minnesota Department of Jobs & Training, State Job Training Office, 690 American Center Building, 150 East Kellogg, St. Paul, Minnesota 55101, Telephone: 612–296–7918

Mississippi

Ms. Jane Black, DWU Director, Department of Job Development and Training, Governor's Office of Federal-State Programs, 301 West Pearl Street, Jackson, Mississippi 39203–3089, Telephone: 601–949–2128

Missouri

Mr. Larry Earley, Director, Div. of Job Development and Training, 221 Metro Drive, Jefferson City, Missouri 65109, Telephone: 314–751–7796

Montana

Mr. Dan Miles, DWU Supervisor, Research, Safety & Training Division, Montana Department of Labor & Industry, P.O. Box 1728, Helena, Montana 59624 Telephone: 406–444–4500

Nebraska

Mr. Edward Kosark, Nebraska Department of Labor, Job Training Program Division, 550 South 16th Street, Box 95004, Lincoln, Nebraska 68509–5004, Telephone: 402–471–2127

Nevada

Ms. Jan Perozzi, DWU, State Job Training Office, Capitol Complex, 400 West King Street, Carson City, Nevada 89710, Telephone: 702–885–4310

New Hampshire

Mr. James Taylor, DWU Manager, New Hampshire Job Training Coordinating Council, 64B Old Suncock Road, Concord, New Hampshire 03301, Telephone: 603–228–0381

New Jersey

Mr. Thomas Drabik, Response Team Coordinator, New Jersey Department of Labor, John Fitch Plaza, Trenton, New Jersey 08625, Telephone: 609–984–3519

New Mexico

Mr. Kent James, DWU Supervisor, New Mexico Department of Labor, Job Training Division, P.O. Box 4218, Santa Fe, New Mexico 87502, Telephone: 505–827–6866

New York

Mr. Paul Gunn, New York State Department of Labor, State Office Campus—Building 12, Albany, New York 12240, Telephone: 518–457–3101

North Carolina

Mr. Joel C. New, Director, Div. of Employment & Training, Department of Economic and Community Development, 111 Seaboard Avenue, Raleigh, North Carolina 27611, Telephone: 919–733–7546

North Dakota

Mr. James Hirsh, Director, Job Training Division, Job Service North Dakota, 1000 E. Divide, P.O. Box 1537, Bismark, North Dakota 58501, Telephone: 701–224–2843

Ohio

Mr. James Conrad, Administrator, Ohio Bureau of Employment Services, 145 South Front Street, P.O. Box 1618, Columbus, Ohio 43215, Telephone: 614–466–2100

Oregon

Mr. Bill Braly, Manager, Job Training Partnership Adm., Economic Development Department, 775 Summer Street NE., Salem, Oregon 97310, Telephone: 503–373–1995

Pennsylvania

Mr. Robert J. Connolly, Deputy Secretary for Employment, Department of Labor and Industry Bldg., 1700 Labor and Industry Building, 7th & Forster Streets, Harrisburg, Pennsylvania 17120, Telephone: 717–787–1745

Puerto Rico

Mr. Jose Reyes Herrerro, Director, DWU, Right to Employment Administration, 5 Mayaguez Building, Hato Rey, Puerto Rico 00918 Telephone: 809–754–3962

Rhode Island

Mr. Richard D'Iorio, Coordinator, Employer Relations Unit, 109 Main Street, Pawtucket, Rhode Island 02860, Telephone: 401–277–3450

am/Support Services, 401
evard, Topeka, Kansas
: 913–296–5159

Director, Div. of Job
ployment, Department of
ices, 275 East Main, 2–
Kentucky 40621,
34–5360

ervisor, Special Programs
Labor, Federal Training
P.O. Box 94094, Baton
70804–9094, Telephone:

, Special Assistant to
aine Department of Labor,
ugusta, Maine 04330,
9–1292

ffice of Employment &
ent of Economic and
lopment, 1100 N. Eutaw
Baltimore, Maryland
301–333–5149

len, Director, Industrial
One Ashburton Place,
, Massachusetts 02108,
7–8158

ief, Rapid Response
ployment Training,
ding, P.O. Box 30015,
48909, Telephone: 517–

rogram Coordinator,
raining, Minnesota
& Training, State Job
0 American Center
Kellogg, St. Paul,
elephone: 612–296–7918

Director, Department of
nd Training, Governor's
tate Programs, 301 West
n, Mississippi 39203–
1–949–2128

ector, Div. of Job
raining, 221 Metro
y, Missouri 65109,
–7796

Supervisor, Research,
ivision, Montana
r & Industry, P.O. Box
ana 59624 Telephone:

ebraska Department of
Program Division, 550
ox 95004, Lincoln,
4, Telephone: 402–471–

Nevada

Ms. Jan Perozzi, DWU, State Job Training Office, Capitol Complex, 400 West King Street, Carson City, Nevada 89710, Telephone: 702–885–4310

New Hampshire

Mr. James Taylor, DWU Manager, New Hampshire Job Training Coordinating Council, 64B Old Suncock Road, Concord, New Hampshire 03301, Telephone: 603–228–0381

New Jersey

Mr. Thomas Drabik, Response Team Coordinator, New Jersey Department of Labor, John Fitch Plaza, Trenton, New Jersey 08625, Telephone: 609–984–3519

New Mexico

Mr. Kent James, DWU Supervisor, New Mexico Department of Labor, Job Training Division, P.O. Box 4218, Santa Fe, New Mexico 87502, Telephone: 505–827–6866

New York

Mr. Paul Gunn, New York State Department of Labor, State Office Campus—Building 12, Albany, New York 12240, Telephone: 518–457–3101

North Carolina

Mr. Joel C. New, Director, Div. of Employment & Training, Department of Economic and Community Development, 111 Seaboard Avenue, Raleigh, North Carolina 27611, Telephone: 919–733–7546

North Dakota

Mr. James Hirsh, Director, Job Training Division, Job Service North Dakota, 1000 E. Divide, P.O. Box 1537, Bismark, North Dakota 58501, Telephone: 701–224–2843

Ohio

Mr. James Conrad, Administrator, Ohio Bureau of Employment Services, 145 South Front Street, P.O. Box 1618, Columbus, Ohio 43215, Telephone: 614–466–2100

Oregon

Mr. Bill Braly, Manager, Job Training Partnership Adm., Economic Development Department, 775 Summer Street NE., Salem, Oregon 97310, Telephone: 503–373–1995

Pennsylvania

Mr. Robert J. Connolly, Deputy Secretary for Employment, Department of Labor and Industry Bldg., 1700 Labor and Industry Building, 7th & Forster Streets, Harrisburg, Pennsylvania 17120, Telephone: 717–787–1745

Puerto Rico

Mr. Jose Reyes Herrerro, Director, DWU, Right to Employment Administration, 5 Mayaguez Building, Hato Rey, Puerto Rico 00918 Telephone: 809–754–3962

Rhode Island

Mr. Richard D'Iorio, Coordinator, Employer Relations Unit, 109 Main Street, Pawtucket, Rhode Island 02860, Telephone: 401–277–3450

South Carolina

Dr. Robert E. David, Executive Director, South Carolina Employment Security Commission, P.O. Box 995, Columbia, South Carolina 29202, Telephone: 803–737–2817

South Dakota

Mr. Lloyd Schipper, JTPA Administrator, South Dakota Department of Labor, Kneip Building, 700 Governor's Drive, Pierre, South Dakota 57501 Telephone: 605–773–5017

Tennessee

Ms. Brenda Bell, DWU Manager, Tennessee Department of Labor, 501 Union Building, 6th Floor, Nashville, Tennessee 37219–5388, Telephone: 615–741–1031

Texas

Ms. Linda K. Bergeron, Manager, Program Operations, Texas Department of Commerce, 816 Congress Avenue, Austin, Texas 78701, Telephone: 512–320–9800

Utah

Mr. Gary Gardner, Utah Office of Job Training for Economic Development, 324 South State Street, Suite 210, Salt Lake City, Utah 84111, Telephone: 801–538–8750

Vermont

Mr. Thomas Douse, Director, Office of Employment and Training Programs, Department of Employment and Training, P.O. Box 488, Montpelier, Vermont 05602, Telephone: 802–229–0311

Virgin Islands

Ms. Carol M. Burke, Assistant Commissioner, Employment and Training, V.I. Department of Labor, 7 & 8 Queen Street, C'sted, St. Croix, Virgin Island 00820, Telephone: 809–773–1994

Virginia

Dr. James E. Price, Executive Director, Governor's Employment and Training Department, The Commonwealth Building, 4615 West Broad Street, Third Floor, Richmond, Virginia 23230, Telephone: 804–785–[illegible]

Washington

Mr. Larry Malo, Commissioner, Employment Security Department, Training and Employment Analysis Division, 605 Woodview Drive S.E., MS KG11, Olympia, Washington 98504–5311, Telephone: 206–438–4611

West Virginia

Mr. Paul Skaff, Administrative Manager, State DWU, Employment and Training Division, Governor's Office of Community and Industrial Development, 5790–A MacCorkle Avenue, SE., Charleston, West Virginia 25304, Telephone: 304–348–5920

Wisconsin

Mr. Dan Bond, Division of Employment and Training, State Job Training Program, Section/Job Service Bureau, DILRH, 201 E. Washington Avenue, P.O. Box 7972, Madison, Wisconsin 53707, Telephone: 608–266–0745

Wyoming

Mr. Matt Johnson, Deputy Director, JTPA, Department of Employment, 100 West Midwest, P.O. Box 2760, Casper, Wyoming 82602, Telephone: 307–235–3601.

[FR Doc. 91–18118 Filed 7–30–91; 8:45 am]

BILLING CODE 4510-30-M

Labor Surplus Area Classifications Under Executive Orders 12073 and 10582; Additions to the Annual List of Labor Surplus Areas

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

DATE: These additions to the annual list of labor surplus areas are effective August 1, 1991.

SUMMARY: The purpose of this notice is to announce additions to the annual list of labor surplus areas.

FOR FURTHER INFORMATION CONTACT: William J. McGarrity, Labor Economist, Employment and Training Administration, 200 Constitution Avenue NW., room N–4470, Attention: TEESS, Washington, DC 20210. Telephone: 202–535–0189.

SUPPLEMENTARY INFORMATION: Executive Order 12073 requires executive agencies to emphasize procurement set-aside in labor surplus areas. The Secretary of Labor is responsible under that Order for classifying and designating areas as labor surplus areas. Executive agencies should refer to Federal Acquisition Regulation part 20 (48 CFR part 20) in order to assess the impact of the labor surplus area program on particular procurement.

Under Executive Order 10582 executive agencies may reject bids or offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the domestic supplier undertakes to produce substantially all of the materials in areas of substantial unemployment as defined by the Secretary of Labor. The preference given to domestic suppliers under Executive Order 10582 has been modified by Executive Order 12260. Federal Acquisition Regulation part 25 (48 CFR part 25) implements Executive Order 12260. Executive agencies should refer to Federal Acquisition Regulation part 25 in procurements involving foreign businesses or products in order to assess its impact on the particular procurements.

The Department of Labor regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR part 654, subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as labor supplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations the Assistant Secretary of Labor published the annual list of labor surplus areas on October 19, 1990, (55 FR 42509).

Subpart B of part 654 states that an area of substantial unemployment for purposes of Executive order 10582 is any area classified as a labor surplus area under subpart A. Thus, labor surplus areas under Executive Order 12073 are also areas of substantial unemployment under Executive Order 10582.

The areas described below have been classified by the Assistant Secretary of Labor as labor surplus areas pursuant to 20 CFR 654.5(b) (48 FR 15615 April 12, 1983) and are effective August 1, 1991.

The list of labor surplus areas published for the use of all Federal agencies in directing procurement activities and locating new plants or facilities.

Signed at Washington, DC on July 25, 1991.

Roberts T. Jones,

Assistant Secretary of Labor.

Additions to the Annual List of Labor Surplus Areas.

August 1, 1991

Labor surplus areas	Civil jurisdictions included
Massachusetts:	
Lawrence—Haverhill MA-NH PMSA.	Essex County MA (part), Amesbury Town, Andover Town, Boxford Town, Georgetown Town, Groveland Town, Haverhill City, Lawrence City, Merrimac Town, Methuen Town, Newbury Town, Newburyport City, North Andover Town, Salisbury Town, West Newbury. Rockingham County NH (part), Arkinson Town, Brentwood Town, Danville Town, Derry Town, East Kingston Town, Hamstead Town, Kingston Town, Newton Town, Plaiston Town, Salem Town, Sandown Town, Seabrook Town, Windham Town.
Pittsfield MSA	Berkshire County (part), Cheshire Town, Dalton Town, Hinsdale Town, Lanesborough Town, Lee Town, Pittsfield City, Richmond Town, Stockbridge Town.
Rhode Island:	
West Warwick Town.	West Warwick Town.

[FR Doc. 91–18111 Filed 7–30–91; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL COMMUNICATIONS SYSTEM

Meeting; Industry Executive Subcommittee of the National Security Telecommunications Advisory Committee

A meeting of the Industry Executive Subcommittee of the National Security Telecommunications Advisory Committee will be held on Thursday, September 5, 1991. The meeting will be held at the MITRE-Hayes Building, 7525 Colshire Dr., McLean, VA 27006. The meeting will last from 9 a.m. to 2:30 p.m. The agenda is as follows:

A. Opening remarks
B. Administrative remarks
C. Briefings on industry and Government activities

Due to the requirement to discuss classified information, in conjunction with the issues listed above, the meeting will be closed to the public in the interest of National Defense. Any person desiring information about the meeting may telephone (703) 692-9274 or write the Manager, National Communications System, 701 S. Court House Rd., Arlington, VA 22202-2199.

Beverly Sampson,

Federal Register, Liaison Officer.

Dennis I. Parsons,

Captain, USN, Assistant Manager NCS Joint Secretariat.

[FR Doc. 91-18063 Filed 7-30-91; 8:45 am]

BILLING CODE 3610-05-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of the Media Arts Advisory Panel (Media Arts Centers/National Services II Section)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Media Arts Centers/National Services II Section) to the National Council on the Arts will be held on August 14, 1991 from 9 a.m.-6:30 p.m. and August 15 from 9 a.m.-5:30 p.m. in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 15 from 4:30 p.m-5:30 p.m. The topic will be policy discussion.

The remaining portions of this meeting on August 14 from 9 a.m.-6:30 p.m. and August 15 from 9 a.m.-4:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 5, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6), (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: July 25, 1991.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-18026 Filed 7-30-91; 8:45 am]

BILLING CODE 7537-01-M

Meeting of the Music Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Multi-Music Presenters Section) to the National Council on the Arts will be held on August 20-21, 1991 from 9 a.m.-5:30 p.m. and August 22 from 9 a.m.-5 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 22 from 3 p.m.-5 p.m. The topics will be guidelines review and policy discussion.

The remaining portions of this meeting on August 20-21 from 9 a.m.-5:30 p.m. and August 22 from 9 a.m.-3 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applications. In accordance with the determination of the Chairman of June 5, 1991, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-18066 Filed 7-30-91; 8:45 am]

BILLING CODE 7037-01-M

NATIONAL SCIENCE FOUNDATION

Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the

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5532, TTY 202/682-
(7) days prior to the

on with reference to
obtained from Ms.
Advisory Committee
r, National
Arts, Washington,
2) 682-5433.

Panel Operations,
or the Arts.

d 7-30-91; 8:45 am]

ic Advisory Panel

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August 20-21, 1991
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The remaining portions of this meeting on August 20-21 from 9 a.m.-5:30 p.m. and August 22 from 9 a.m.-3 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applications. In accordance with the determination of the Chairman of June 5, 1991, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-18066 Filed 7-30-91; 8:45 am]

BILLING CODE 7037-01-M

NATIONAL SCIENCE FOUNDATION

Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the

Antarctic Conservation Act of 1978. This is the required notice of permits issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On June 19, 1991, the National Science Foundation published notice in the **Federal Register** of permit applications received. Permits were issued to the following individuals on July 24, 1991:

Wayne Trivelpiece, G.A. McFeters, and Deneb Karentz.

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 91-18144 Filed 7-30-91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Withdrawal

The Nuclear Regulatory Commission staff is withdrawing Regulatory Guide 1.2 (Safety Guide 2), "Thermal Shock to Reactor Pressure Vessels." This guide has been superseded by § 50.61, "Fracture Toughness Requirements for Protection Against Pressurized Thermal Shock Events," which is in 10 CFR part 50, "Domestic Licensing of Production and Utilization Facilities," and by Regulatory Guide 1.154, "Format and Content of Plant-Specific Pressurized Thermal Shock Safety Analysis Reports for Pressurized Water Reactors." Section 50.61 establishes screening criteria that effectively limit the extent of irradiation embrittlement permitted for the reactor pressure vessel materials. The pressurized thermal shock requirements are sufficient to address the thermal shock concern.

The withdrawal of Regulatory Guide 1.2 does not alter any prior or existing licensing commitments based on its use. Copies of this guide will continue to be available for inspection or copying for a fee in the NRC Public Document Room, 2120 L Street NW., Washington, DC.

Regulatory guides may be withdrawn when they are superseded by the Commission's regulations, when equivalent recommendations have been incorporated in applicable approved codes and standards, or when changes in methods and techniques or in the need for specific guidance have made them obsolete.

Authority: 5 U.S.C. 552(a).

Dated at Rockville, Maryland this 1st day of July 1991.

For the Nuclear Regulatory Commission.

Eric S. Beckford,

Director, Office of Nuclear Regulatory Research.

Draft Regulatory Guide; Withdrawal

The NRC staff is withdrawing from all consideration Task SG 301-4, "Standard Format and Content Guide for Access Authorization Plans for Nuclear Power Plants," which was issued for public comment in September 1984 as a draft regulatory guide proposed for Division 5, "Materials and Plant Protection."

The access authorization plans proposed in this draft guide are no longer under consideration. Therefore, the NRC staff will not proceed with development of Task SG 301-4.

The Regulatory Guide Series was developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications.

Authority: 5 U.S.C. 552(a).

Dated at Rockville, Maryland, this 11th day of June 1991.

For the Nuclear Regulatory Commission.

Bill M. Morris,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 91-18102 Filed 7-30-91; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guides; Withdrawal

The Nuclear Regulatory Commission staff is withdrawing six regulatory guides because they have become obsolete. The following guides are being withdrawn:

1.58 Qualification of Nuclear Power Plant Inspection, Examination, and Testing Personnel (Revision 1, September 1980), which endorsed ANSI N45.2.6-1978, "Qualifications of Inspection, Examination, and Testing Personnel for Nuclear Power Plants"
1.64 Quality Assurance Requirements for the Design of Nuclear Power Plants (Revision 2, June 1976), which endorsed ANSI N45.2.11-1974, "Quality Assurance Requirements for the Design of Nuclear Power Plants"
1.88 Collection, Storage, and Maintenance of Nuclear Power Plant Quality Assurance Records (Revision 2, October 1976), which endorsed ANSI N45.2.9-1974, "Requirements for Collection, Storage, and Maintenance of Quality Assurance Records for Nuclear Power Plants"
1.123 Quality Assurance Requirements for Control of Procurement of Items and Services for Nuclear Power Plants (Revision 1, July 1977), which endorsed ANSI N45.2.13-1976, "Quality Assurance Requirements for Control of Procurement of Items and Services for Nuclear Power Plants"
1.144 Auditing of Quality Assurance Programs for Nuclear Power Plants (Revision 1, September 1980), which endorsed ANSI N45.2.12-1977, "Requirements for Auditing of Quality Assurance Programs for Nuclear Power Plants"
1.146 Qualification of Quality Assurance Program Audit Personnel for Nuclear Power Plants (August 1980), which endorsed ANSI N45.2.23-1978, "Qualification of Quality Assurance Program Audit Personnel for Nuclear Power Plants"

These regulatory guides are being withdrawn because they have become obsolete. The ANSI standards endorsed by these guides were incorporated into ANSI/ASME NQA-1-1983, "Quality Assurance Program Requirements for Nuclear Facilities." ANSI/ASME NQA-1-1983 was endorsed by Revision 3 of Regulatory Guide 1.28, "Quality Assurance Program Requirements (Design and Construction)," which was issued in August 1985.

The withdrawal of these regulatory guides does not alter any prior or existing licensing commitments based on their use. Copies of these guides will continue to be available for inspection or copying for a fee in the NRC Public Document Room, 2120 L Street NW., Washington, DC.

Regulatory guides may be withdrawn when they are superseded by the Commission's regulations, when equivalent recommendations have been incorporated in applicable approved codes and standards, or when changes in methods and techniques or in the need for specific guidance have made them obsolete.

Authority: 5 U.S.C. 552(a).

Dated at Rockville, Maryland this 17th day of June 1991.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 91-18103 Filed 7-30-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-213]

Connecticut Yankee Atomic Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-61, and issued to Connecticut Yankee Atomic Power Company (CYAPCO/licensee), for operation of the Haddam Neck Plant located in Middlesex County, Connecticut.

During the upcoming refueling outage, CYAPCO will begin to use Zircaloy-clad fuel. The proposed amendment would revise the Technical Specifications to reflect the conversion to a Zircaloy-clad fuel assembly design and the prohibition of three loop operation for Modes 1 and 2.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By August 30, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555; Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499, attorney for licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendments after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated June 27, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Dated at Rockville, Maryland this 25th day of July 1991.

For the Nuclear Regulatory Commission.

Alexander W. Dromerick,

Acting Director, Project Directorate I-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-18099 Filed 7-30-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-333]

Power Authority of the State of New York (James A. FitzPatrick Nuclear Power Plant); Exemption

I

The Power Authority of the State of New York (PASNY/licensee) is the holder of Facility Operating License No. DPR-59, which authorizes operation of the James A. FitzPatrick Nuclear Power Plant (the facility). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a boiling water reactor located at the licensee's site in Oswego County, New York.

II

10 CFR 50.71(e)(4) requires that licensees submit a revision of the Final Safety Analysis Report (FSAR) no less frequently than annually that reflects all changes up to a maximum of 6 months prior to the date of filing. This regulation would require the submittal of the update of the FitzPatrick FSAR by July 22, 1991.

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Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendments after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated June 27, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Dated at Rockville, Maryland this 25th day of July 1991.

For the Nuclear Regulatory Commission.

Alexander W. Dromerick,

Acting Director, Project Directorate I-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-18099 Filed 7-30-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-333]

Power Authority of the State of New York (James A. FitzPatrick Nuclear Power Plant); Exemption

I

The Power Authority of the State of New York (PASNY/licensee) is the holder of Facility Operating License No. DPR-59, which authorizes operation of the James A. FitzPatrick Nuclear Power Plant (the facility). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a boiling water reactor located at the licensee's site in Oswego County, New York.

II

10 CFR 50.71(e)(4) requires that licensees submit a revision of the Final Safety Analysis Report (FSAR) no less frequently than annually that reflects all changes up to a maximum of 6 months prior to the date of filing. This regulation would require the submittal of the update of the FitzPatrick FSAR by July 22, 1991.

10 CFR 50.54(a)(3) requires, in part, that licensees submit changes to the quality assurance description included or referenced in the FSAR at least annually provided these changes do not reduce the commitments in the program description previously accepted by the NRC. This regulation would require the submittal of changes to the quality assurance program description contained in chapter 17 of the FSAR by July 22, 1991.

III

By letter dated June 28, 1991, and supplemented by letter dated July 12, 1991, the licensee requested a one-time schedular exemption from 10 CFR 50.71(e)(4) and 10 CFR 50.54(a)(3). Specifically, the licensee requested that it be permitted to delay the annual update of the FSAR from July 22, 1991, to January 22, 1992, which is a six-month delay. Also, the licensee requested that it be permitted to delay the submittal of changes to the quality assurance program description contained in chapter 17 of the FSAR from July 22, 1991, to January 22, 1992, which is a six-month delay.

The Commission may grant exemptions from the requirements of the regulations which, pursuant to 10 CFR 50.12(a), are: (1) Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) present special circumstances. Section 50.12(a)(2)(v) of 10 CFR part 50 indicates that special circumstances exist when an exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation.

The requested exemption is administrative and would not affect plant equipment, operation, or procedures. The FSAR contains the analysis, assumptions, and technical details of the facility design and operating parameters. Until the FSAR is annually updated, the license amendment process and the reporting requirements of 10 CFR 50.59(b)(2), 10 CFR 50.72, and 10 CFR 50.73 continue to provide the NRC with adequate and timely notification of changes to the plant and its licensing basis. Furthermore, the requested exemption from the schedular requirement of 10 CFR 50.54(a)(3) for annual submittal of changes to the quality assurance program description contained in chapter 17 of the FSAR applies only to those changes that do not reduce the commitments in the program description previously accepted by the NRC. Changes to the quality assurance program description that do reduce the commitments still must be approved by the NRC prior to implementation.

The current licensing workload for the FitzPatrick plant, in addition to difficulties in finding qualified personnel to fill an abnormally high number of vacancies in licensing engineering positions, have contributed to the need for exemption from 10 CFR 50.71(e)(4) and 10 CFR 50.54(a)(3). Furthermore, additional time is necessary to ensure that extensive improvements, designed to enhance the quality and clarity of the FSAR, are incorporated into the next update. These improvements include the complete revision of chapter 14, "Safety Analysis," and the upgrading of many FSAR system drawings.

The licensing workload for the FitzPatrick plant includes the following issues:

1. Individual Plant Evaluation (Generic Letter 88-20)
2. Mark I Containment Hardened Vent
3. Service Water System Evaluation (Generic Letter 89-13)
4. Station Blackout Analysis
5. ATWS Rule diversity
6. Motor Operated Valve Operability (Generic Letter 89-10)
7. Thermal Hydraulic Stability
8. Integranular Stress Corrosion Cracking (Generic Letter 88-01)
9. Spent Fuel Pool Expansion
10. Licensing Actions Required for Refueling
11. Power Uprate
12. 24 Month Operating Cycle

The stated licensing activities are important to the continued safe and efficient operation of the FitzPatrick Plant and have therefore received priority over the annual updates of the FSAR and the quality assurance program description contained in the FSAR, which are administrative requirements.

An increased burden on the FitzPatrick licensing staff has resulted from difficulties in finding qualified personnel to fill an abnormally high number of vacancies in licensing engineering positions. The licensee has made every effort to fill these vacancies as soon as they occurred. In spite of this, vacancies to date in 1991 have exceeded one-third of the authorized licensing engineering positions. The licensee has initiated corrective actions to compensate for this shortage of qualified personnel by hiring three contract engineers and two summer interns. These additional personnel should have a positive impact on the efforts to reduce the current FitzPatrick licensing workload.

Schedular relief is also requested to provide additional time to complete a total revision of FSAR chapter 14, "Safety Analysis," and to facilitate other FSAR improvements. The objective of the safety analyses in chapter 14 of the FSAR is to evaluate the ability of the plant to mitigate the consequences of a postulated accident without undue hazard to the health and safety of the public. The revisions to this chapter will result in the following improvements:

1. The transient response figures will be enlarged for legibility and to make them more suitable for licensed operator training.
2. The transient and accident analyses for the fuel reloads will be added.
3. The existing (cycle 1) analyses will be retained since they are the original licensing basis of the FitzPatrick plant.
4. The format will be revised to facilitate updates required by future reload cores.

Another FSAR improvement which requires additional time to implement is the replacement of many of the FSAR flow diagrams with new drawings which are consistent with current computer generated Operating Procedure (OP) and Process and Instrument (P&ID) drawings. The new OP, P&ID, and FSAR drawings incorporate differing levels of detail overlaid on a common base drawing using computer aided drafting techniques. This improves the consistency of all major plant drawings used for plant operator training.

The licensee has made a good faith effor to comply with the regulations by initiating corrective actions, both short term and long term, to improve its submittals and ensure that similar exemptions will not be necessary in the future. Therefore, the exemption would only provide temporary relief from the applicable regulations. Thus, there are special circumstances present which satisfy 10 CFR 50.12(a)(2)(v).

V

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) The exemption as described in section III is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security, and (2) in this case, special circumstances are present as described in section IV. Therefore, the Commission hereby grants the following exemption:

Accordingly, the Commission hereby grants a one-time exemption, as described in section III above from 10 CFR 50.71(e)(4) from the requirement to submit the annual revision of the FitzPatrick FSAR on July 22, 1991. This revision shall be submitted by January 22, 1992. Furthermore, the Commission hereby grants a one-time exemption, as described in section III above from the 10 CFR 50.54(a)(3) requirement to submit the annual changes to the quality assurance program description contained in the FitzPatrick FSAR on July 22, 1991. These changes shall be submitted by January 22, 1992.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption would have no significant impact on the quality of the human environment (56 FR 33948, July 24, 1991).

A copy of the licensee's request for exemption dated June 28, 1991, and the supplement letter dated July 12, 1991, are available for public inspection at the Commission Public Document Room, in the Gelman Building, 2120 L Street NW., Washington, DC, and at the Reference and Documents Department, Penfield Library, State University College of New York, Oswego, New York. Copies may be obtained upon written request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention, Director, Division of Reactor Projects—I/II.

This exemption is effective upon issuance.

Dated in Rockville, Maryland this 24th day of July 1991.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-18100 Filed 7-30-91; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: John Daley, (202) 606-0950.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on July 2, 1991, (55 FR 12973). Individual authorities established or revoked under Schedules A and B and established under Schedule C between June 1 and June 30, 1991, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30, 1991, will be published in a forthcoming notice.

Schedule A

No Schedule A authorities were established or revoked during June.

Schedule B

No Schedule B authorities were established or revoked during June.

Schedule C

Department of Agriculture

One Executive Assistant to the Secretary. Effective June 6, 1991.

One Confidential Assistant to the Assistant Secretary for Congressional Relations. Effective June 25, 1991.

One Confidential Assistant to the Assistant Secretary for Economics. Effective June 27, 1991.

Agency for International Development

One Special Assistant to the Administrator. Effective June 6, 1991.

Department of Commerce

One Director, Office of Space Commerce to the Deputy Secretary. Effective June 3, 1991.

One Confidential Assistant to the Chief Financial Officer, Office of the Assistant Secretary for Administration. Effective June 7, 1991.

One Congressional Liaison Assistant to the Deputy Assistant Secretary, Office of Legislative and Intergovernmental Affairs. Effective June 13, 1991.

Department of Defense

One Personal and Confidential Assistant to the Defense Advisory, United States Mission to NATO, Brussels, Belgium. Effective June 26, 1991.

One Confidential Assistant to the Under Secretary of Defense for Acquisition. Effective June 26, 1991.

Department of Education

One Special Assistant to the Assistant Secretary, Office for Civil Rights. Effective June 22, 1991.

One Special Assistant to the Deputy Assistant Secretary for Student Financial Assistance Programs, Office of Postsecondary Education. Effective June 27, 1991.

Department of Energy

One Special Assistant to the Director, Division of Public and Intergovernmental Affairs, Office of External Affairs. Effective June 6, 1991.

One Small Business Specialist to the Director, Office of Small and Disadvantaged Business Utilization. Effective June 6, 1991.

One Staff Assistant to the Secretary. Effective June 13, 1991.

One Staff Assistant to the Chief of Staff and Counselor, Office of the Chairman. Effective June 19, 1991.

One Special Assistant to the Assistant Secretary, Office of Conservation and Renewable Energy. Effective June 27, 1991.

Department of Transportation

One Congressional Liaison Officer to the Director, Office of Congressional Affairs, Office of the Assistant Secretary for Governmental Affairs. Effective June 26, 1991.

Federal Emergency Management Agency

One Special Assistant to the Associate Director, National Preparedness Directorate. Effective June 13, 1991.

One Special Assistant to the Associate Director, State and Local Programs and Support Directorate. Effective June 22, 1991.

Federal Mine Safety and Health Review Commission

One Confidential Assistant to a Commissioner. Effective June 27, 1991.

Department of Health and Human Services

One Special Assistant for Media Affairs to the Surgeon General, Public Health Service. Effective June 26, 1991.

One Special Assistant to the Director, Office of Policy, Planning and Legislation, Administration for Children and Families. Effective June 27, 1991.

Department of Housing and Urban Development

One Staff Assistant to the Deputy Assistant Secretary, Office of Public Affairs. Effective June 27, 1991.

One Special Assistant to the Assistant Secretary for Administration. Effective June 28, 1991.

Department of the Interior

One Congressional Liaison Specialist to the Director, Office of Surface Mining, Reclamation and Enforcement. Effective June 13, 1991.

One Special Assistant to the Assistant to the Secretary and Director, External Affairs. Effective June 14, 1991.

One Special Assistant to the Commissioner of Reclamation, Bureau of Reclamation. Effective June 27, 1991.

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One Small Business Specialist to the Director, Office of Small and Disadvantaged Business Utilization. Effective June 6, 1991.

One Staff Assistant to the Secretary. Effective June 13, 1991.

One Staff Assistant to the Chief of Staff and Counselor, Office of the Chairman. Effective June 19, 1991.

One Special Assistant to the Assistant Secretary, Office of Conservation and Renewable Energy. Effective June 27, 1991.

Department of Transportation

One Congressional Liaison Officer to the Director, Office of Congressional Affairs, Office of the Assistant Secretary for Governmental Affairs. Effective June 26, 1991.

Federal Emergency Management Agency

One Special Assistant to the Associate Director, National Preparedness Directorate. Effective June 13, 1991.

One Special Assistant to the Associate Director, State and Local Programs and Support Directorate. Effective June 22, 1991.

Federal Mine Safety and Health Review Commission

One Confidential Assistant to a Commissioner. Effective June 27, 1991.

Department of Health and Human Services

One Special Assistant for Media Affairs to the Surgeon General, Public Health Service. Effective June 26, 1991.

One Special Assistant to the Director, Office of Policy, Planning and Legislation, Administration for Children and Families. Effective June 27, 1991.

Department of Housing and Urban Development

One Staff Assistant to the Deputy Assistant Secretary, Office of Public Affairs. Effective June 27, 1991.

One Special Assistant to the Assistant Secretary for Administration. Effective June 28, 1991.

Department of the Interior

One Congressional Liaison Specialist to the Director, Office of Surface Mining, Reclamation and Enforcement. Effective June 13, 1991.

One Special Assistant to the Assistant to the Secretary and Director, External Affairs. Effective June 14, 1991.

One Special Assistant to the Commissioner of Reclamation, Bureau of Reclamation. Effective June 27, 1991.

One Special Assistant to the Director, Minerals Management Service. Effective June 28, 1991.

International Trade Commission

One Staff Assistant to a Commissioner. Effective June 13, 1991.

Department of Justice

One Special Assistant to the Assistant Attorney General, Civil Division. Effective June 6, 1991.

One Special Assistant to the Director, Office of Congressional and Public Affairs, Office of Justice Programs. Effective June 12, 1991.

One Confidential Assistant to the Assistant Attorney General, Office of Justice Programs. Effective June 12, 1991.

One Special Assistant to the Assistant Commissioner, Refuge, Asylum and Parole. Effective June 19, 1991.

One Special Assistant to the Director of Congressional Affairs, Immigration and Naturalization Service. Effective June 25, 1991.

Office of National Drug Control Policy

One Confidential Assistant to the Special Assistant to the Director. Effective June 11, 1991.

One Legislative Assistant to the Director of Congressional Relations. Effective June 19, 1991.

One Special Assistant to the Director. Effective June 13, 1991.

Small Business Administration

One Public Affairs Advisor to the Administrator. Effective June 6, 1991.

One Special Assistant for External Affairs to the Chief of Staff, Office of the Administrator. Effective June 6, 1991.

One Special Assistant to the Administrator. Effective June 6, 1991.

One Special Assistant to the Associate Administrator for Business Development. Effective June 13, 1991.

One Director of International Trade to the Associate Deputy Administrator for Special Programs. Effective June 19, 1991.

Department of State

One Member to the Director, Policy Planning Staff. Effective June 19, 1991.

Department of the Treasury

One Staff Assistant to the Superintendent, Philadelphia Mint. Effective June 6, 1991.

One Special Assistant (Personnel) to the Secretary. Effective June 13, 1991.

One Special Assistant to the Chief Counsel, Office of Thrift Supervision. Effective June 25, 1991.

One Public Affairs Specialist to the Assistant Secretary for Public Affairs and Public Liaison. Effective June 26, 1991.

United States Information Agency

One White House Liaison Officer to the Director. Effective June 19, 1991.

One Staff Assistant to the Director, Office of Public Liaison. Effective June 28, 1991.

Department of Veterans Affairs

One Special Assistant to the Secretary. Effective June 13, 1991.

One Special Assistant to the Deputy Assistant Secretary for Policy. Effective June 13, 1991.

One Special Assistant to the Assistant Secretary for Finance and Information Resources Management. Effective June 27, 1991.

One Special Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs. Effective June 27, 1991.

One Special Assistant to the Assistant Secretary for Policy and Planning. Effective June 27, 1991.

Authority: 5 U.S.C. 3301; E.O. 10555, 3 CFR 1954–1958 Comp., P. 218.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 91–18023 Filed 7–30–91; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–29468; International Series Release No. 300; File No. SR–Amex–91–17]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by American Stock Exchange, Inc. Relating to Fees for Proprietary Trading

July 24, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 12, 1991, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is amending its transaction charge schedule to provide a discount for proprietary trades effected by members and member organizations in the securities of Canadian companies.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In November, 1990, the Exchange's Board of Governors approved the introduction of a revised transaction charge schedule which included, among other things, the imposition for the first time of a fee for proprietary trading on the part of members and member organizations. The revised fee scheudle became effective on January 17, 1991.[1]

During the past several months that this new schedule has been in place, there has been a change in the regulatory climate applicable to certain Canadian issuers which may enhance the opportunity for arbitrage trading between Canadian and U.S. markets. On May 30, 1991, the Commission approved the Multijurisdictional Disclosure System (the "MJDS"), permitting Canadian issuers to use Canadian disclosure documents in making certain filings with the Commission. The Amex anticipates that the MJDS will encourage and facilitate cross-border securities transactions and hope that it will encourage more Canadian issuers to list on U.S. exchanges.

The Exchange recognizes that the fee for proprietary trading imposed on members and member organizations might discourage intermarket arbitrage, the existence of which also makes the Exchange market attractive to Canadian issuers. Accordingly, the Exchange is providing to members and member organizations a fifty percent (50%) discount in transaction charges for proprietary trades effected in the securities of Canadian issuers traded on the Amex.[2]

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[1] See Securities Exchange Act Release No. 28794 (January 17, 1991), 56 FR 2984 (January 25, 1991) (notice of filing and immediate effectiveness of File No. SR–Amex–90–36).

[2] Currently, the applicable equity transaction charge for member firm proprietary transactions is

Continued

The Exchange's revised transaction charge schedule is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(4) in particular in that it is intended to assure the equitable allocation of reasonable dues, fees and other charges among members, issuers and other persons using the Exchange's facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–91–17 and should be submitted by August 21, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–18083 Filed 7–30–91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–29482; File No. SR–CBOE–91–27]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Modification of Fees Imposed on Members

July 24, 1991

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 20, 1991, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), and amended on July 23, 1991, the proposed rule change as described in items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend the fees imposed on Exchange members by (i) increasing the Member Orientation Fee from $100 to $200; (ii) implementing a new FOCUS report filing fee of $25 per filing; and (iii) implementing new fees and increasing existing fees to recover electrician costs associated with the expense of installing and moving certain systems-related circuitry on the Exchange's floor due to member operations on the trading floor. In addition, the CBOE proposes to establish a three-month pilot program to provide a 50% rebate on transaction and trade match fees for Standard & Poor's 500 Index option ("SPX") customers whose "box" trades total 500 or more contracts for the four sides of the trade.[1]

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Effective July 1, 1991, the CBOE proposes to amend the fees imposed on Exchange members by (i) increasing the Member Orientation Fee from $100 to $200; (ii) implementing a new FOCUS report filing fee of $25 per filing; and (iii) implementing new fees and increasing existing fees to recover electrician costs associated with the expense of installing and moving certain systems-related circuitry on the Exchange's floor due to member operations on the trading floor. These costs involve installing and moving Quotron terminals and data links between the CBOE trading floor and the Exchange's Communications Center ("CC"). More specifically, the new charges, ranging from $10 to $200, will include vendor data line, data circuit disconnection fees, and Quotron terminal installation, disconnection and relocation fees. In addition, the Exchange's existing fees for data circuit relocation to the trading floor, data circuit installation to the trading floor and data circuit installation between the trading floor and the CC will be increased, respectively, as follows: (i) From $125 to $300; (ii) from $200 to $250; and (iii) from $200 to $250.

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calculated by adding together a share-based charge and a value-based charge which are set forth in a sliding scale developed by the Exchange. See Securities Exchange Act Release No. 28794 (note 1, *supra*) for a further description of the transaction charge schedule applicable to member firm proprietary trades.

[1] The CBOE amended its proposal to define a "box" trade as a four-sided option spread involving a long call and a short put at one strike price as well as short call and a long put at another strike price. *See* letter from Robert P. Ackermann, Vice President, Legal Services, CBOE, to Thomas R. Gira, Branch Chief, Options Regulation, SEC, dated July 23, 1991.

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The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Effective July 1, 1991, the CBOE proposes to amend the fees imposed on Exchange members by (i) increasing the Member Orientation Fee from $100 to $200; (ii) implementing a new FOCUS report filing fee of $25 per filing; and (iii) implementing new fees and increasing existing fees to recover electrician costs associated with the expense of installing and moving certain systems-related circuitry on the Exchange's floor due to member operations on the trading floor. These costs involve installing and moving Quotron terminals and data links between the CBOE trading floor and the Exchange's Communications Center ("CC"). More specifically, the new charges, ranging from $10 to $200, will include vendor data line, data circuit disconnection fees, and Quotron terminal installation, disconnection and relocation fees. In addition, the Exchange's existing fees for data circuit relocation to the trading floor, data circuit installation to the trading floor and data circuit installation between the trading floor and the CC will be increased, respectively, as follows: (i) From $125 to $300; (ii) from $200 to $250; and (iii) from $200 to $250.

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[1] The CBOE amended its proposal to define a "box" trade as a four-sided option spread involving a long call and a short put at one strike price as well as short call and a long put at another strike price. *See* letter from Robert P. Ackermann, Vice President, Legal Services, CBOE, to Thomas R. Gira, Branch Chief, Options Regulation, SEC, dated July 23, 1991.

The CBOE also proposes to implement a three-month pilot program, from July 1, 1991, through September 30, 1991, to provide a 50% rebate on transaction and trade match fees for SPX customers whose "box" [2] trades total 500 or more contracts for the four sides of the trade. The rebate will be available to member firms that provide the Exchange with documents evidencing transactions that meet the standards of the pilot program.

(2) Basis

The CBOE believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(4), in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the amendment of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submission should refer to the file number in the caption above and should be submitted by August 21, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–18084 Filed 7–30–91; 8:45 am]

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[2] *See* footnote 1, *supra.*

[Release No. 34–29481; File No. SR–DTC–91–13]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Relating to Expanded Use of the Seg 100 Account

July 24, 1991.

On May 31, 1991, The Depository Trust Company ("DTC") filed a proposed rule change with the Securities and Exchange Commission ("Commission") pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] The proposed rule change would expand DTC's use of the Segregation Account No. 100 ("Seg 100 Account") to include segregation of securities with specialized ownership restrictions based on the residence, domicile, or citizenship of the beneficial owner. Notice of the proposed rule change appeared in the **Federal Register** on June 19, 1991.[2] No comments were received. This order approves the proposal.

I. Background

In 1988, the Commission approved a proposal establishing the procedures for DTC's Seg 100 Account.[3] Currently, participants may deposit into the Seg 100 Account shares of certain United States ("U.S.") communication and maritime issues that have special ownership restrictions.[4] Prior to implementing the Seg 100 procedures, foreign-owned shares of these issues could not be deposited with DTC because DTC did not have a mechanism for identifying the percentage of foreign-owned or restricted shares.

Under the laws of some foreign jurisdictions, investors purchasing specific securities issued in those jurisdictions or indirectly investing in securities issued in those jurisdictions [5] may lose tax benefits if the number of shares beneficially owned by citizens or residents of a particular political or geographical region exceeds a specified percentage of all shares issued and outstanding.[6] In order to monitor the number of such securities that are beneficially owned by persons that are subject to the ownership restrictions (primarily noncitizens or nonresidents of the issuing jurisdiction), the issuer or transfer agent will require the presenter to certify that the securities are not beneficially owned by persons in a restricted group before it will register the securities in the name of the presenter.

Prior to this proposal, DTC did not have a mechanism for assessing the status or identity of beneficial owners of such restricted securities and could not certify that the beneficial owners of the securities were not in a restricted group. DTC, therefore, would not permit participants to deposit securities with specialized ownership restrictions (with the exception of U.S. communication and maritime issues for which the Seg 100 account was created) into their DTC accounts. The proposed rule change will expand the use of the Seg-100 Account and the class of securities that are eligible for deposit at DTC.[7] DTC participants may deposit securities that have special ownership restrictions based on the beneficial owner's residence, domicile, or citizenship and instruct DTC to transfer those securities to the Seg 100 Account.

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[1] 15 U.S.C. 78s(b).

[2] Securities Exchange Act Release No. 29290 (June 13, 1991), 56 FR 28189.

[3] Securities Exchange Act Release No. 25988 (August 10, 1988), 53 FR 30893 (File No. SR–DTC–88–09) (notice of filing and immediate effectiveness of proposed rule change implementing Seg 100); see also, Securities Exchange Act Release No. 27346 (October 6, 1989), 54 FR 43010 (File No. SR–DTC–89–17) (notice of filing and immediate effectiveness of proposed rule change clarifying procedures relating to Seg 100).

[4] The laws of the United States restrict the amount of stock of certain communications and maritime issues that may be owned by persons that are not U.S. citizens. Under the provisions of the Shipping Act of 1916 and the Federal Communications Act of 1934, aggregate shares beneficially owned by non-U.S. citizens may not exceed 25% (for maritime issues) and 20% (for communications issues) of certain stock issues. Shipping Act of 1916, 46 U.S.C. 842 (1916) and Federal Communications Act of 1934, 47 U.S.C. 310 (1934).

[5] *E.g.*, investors purchasing shares of U.S. investment companies (*i.e.*, mutual funds) whose primary investments are in foreign issued securities.

[6] In the case of mutual funds, the tax incentives that exist in the nature of ownership restrictions are intended to promote offshore investment in funds held or traded by the foreign jurisdiction. Telephone conversation between Patricia H. Trainor, Associate Counsel, DTC, and Sonia G. Burnett, Attorney, Division of Market Regulation ("Division"), Commission (May 23, 1991).

II. Description

Under the proposal, DTC will recognize only ownership restrictions that are imposed pursuant to the laws of the United States ("U.S."), the jurisdiction in which the securities are issued, or the jurisdiction in which the U.S. issued securities invest. Consistent with the current Seg 100 procedures, at the time DTC makes an issue with specialized ownership restrictions eligible for deposit, DTC will announce to participants the CUSIP[8] number of the securities and the issuer's description of the type of ownership restrictions.[9] This notification will alert participants that they must enter a segregation instruction at the time of the deposit.

Upon deposit of new securities that have specialized ownership restrictions to its DTC account, a participant will identify the securities with a segregation institution entered through DTC's Participant Terminal System ("PTS").[10] The securities segregated in the participant's Seg 100 Account will be reflected as such on the participant's daily activity statement. In all other respects, Seg 100 transactions will be processed as are other transactions in the participant's general account.

DTC will report periodically to the issuer or transfer agent the aggregate number of shares of each CUSIP deposited in each participant's Seg 100 Account. The transfer agent will advise DTC if any transfer to a participant's Seg 100 Account caused the applicable restriction for a particular CUSIP to be exceeded and of the number of shares by which the aggregate position held at DTC must be reduced. DTC will reverse the credit in participants' accounts on a last in first out basis until the number of restricted shares registered in the name of DTC's nominee, Cede & Co.,[11] are within the specified limit. The affected participants will be required to withdraw those shares from their DTC accounts.

DTC will not monitor compliance with the statutory restrictions. DTC will, however, take steps necessary to ensure that securities are withdrawn from DTC if the transfer agent notifies DTC that securities transferred to the name of Cede & Co. have caused the statutory restriction to be exceeded.[12]

III. Discussion

The Commission believes that DTC's proposal is consistent with section 17A of the Act in that it promotes the prompt and accurate clearance and settlement of securities transactions. In addition, the proposal will further encourage the goal of immobilization of securities and the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions.

Section 17A(a)(1) of the Act states that inefficient procedures for the clearance and settlement of securities transactions impose unnecessary costs on investors and on persons facilitating transactions on behalf of investors.[13] Additionally, that section expressly encourages the use of automation to improve efficiency, effectiveness, and safety with respect to the clearing and settling of securities transactions. Moreover, section 17A(b)(3)(F) states that clearing agency rules must provide for the prompt and efficient processing of securities transactions.[14]

The Commission believes that allowing DTC participants to deposit securities that have special ownership restrictions based on the beneficial owner's residence, domicile, or citizenship into the Seg 100 Account will encourage DTC participants to immobilize those securities at DTC. By facilitating immobilization of securities, which reduces transfer activity, the expanded use of Seg 100 Accounts both improves efficiency, effectiveness, and safety and offers substantial savings to secondary market participants.[15]

The goal of prompt and accurate clearance and settlement of securities transactions and the use of automated system in pursuit of this goal are expressly contemplated in section 17A(a)(1) of the Act.[16] Specifically, sections 17A(a)(1) (B) and (C) articulate findings that new data processing and communications techniques create the opportunity for more efficient, effective, and safe procedures for clearance and settlement and that inefficient procedures for clearance and settlement impose unnecessary costs on investors and person facilitating transactions by and acting on behalf of investors.

Furthermore, section 17A(a)(2) of the Act directs the Commission to establish a safe and efficient national clearance and settlement system.[17] DTC's proposed rule change will offer the benefits of centralized, automated book-entry clearance and settlement of securities with ownership restrictions. The Commission believes that making this and other such services available for participants that invest in such securities will further the goal of perfecting the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

IV. Conclusion

For the foregoing reasons, the Commission finds that DTC's proposed rule change is consistent with the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that DTC's proposed rule change (SR-DTC-91-13) be, and hereby is, approved.

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[7] Prior to instituting the Seg-100 function, DTC's procedures operated to assure that only shares of such issues held by DTC were those that were owned beneficially by U.S. citizens. Securities Exchange Act Release No. 25988 (August 10, 1988), 53 FR 30893.

[8] "CUSIP" is an acronym for Committee on Uniform Securities Identification Procedures ("Committee"). The Committee developed a uniform securities numbering system under the direction of the American Bankers Association. Identifying securities issues by CUSIP number is the industry standard in the U.S.

[9] DTC will inform participants of each issue with specialized ownership restrictions by Important Notice as the issue is made eligible for deposit at DTC.

The first restricted specialized ownership issue that DTC will make eligible for deposit is The Singapore Fund, Inc. ("Fund"). In order to qualify for certain tax exemptions granted by The Singapore Tax Exemption Scheme for Offshore Fund Management, not more than 5% of the issued share capital of the Fund may be beneficially owned directly or indirectly by residents of Singapore. Prospectus, The Singapore Fund, Inc. (July 24, 1990).

[10] *E.g.*, a participant will enter an "F" in the serial number field for each line item to segregate an ownership restricted security. DTC will review the instruction to ensure that the participant holds a sufficient position. If the participant's position is sufficient, DTC will convert the "F" to serial number 100 and will update the participant's account.

[11] As with all securities deposited at DTC, upon deposit the securities are registered in the name of DTC's nominee, Cede & Co. DTC does not have a mechanism for identifying the beneficial owner of securities on deposit.

[12] *E.g.*, if DTC requests a participant to withdraw an overage from DTC and the overage is not promptly withdrawn, DTC will notify the issuer of the identity of the participant and the number of the participant's shares to be withdrawn.

[13] 15 U.S.C. 78q-1(a)(1).

[14] 15 U.S.C. 78q-1(b)(3)(F).

[15] For an analysis of the cost saving advantages associated with the immobilization of securities and book-entry settlement, see Division, Progress and Prospects: Depository Immobilization of Securities and Use of Book-Entry Systems (June 14, 1985).

[16] 15 U.S.C. 78q-1(a)(1).

[17] 15 U.S.C. 78q-1(a)(2).

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Moreover, section 17A(b)(3)(F) states that clearing agency rules must provide for the prompt and efficient processing of securities transactions.[14]

The Commission believes that allowing DTC participants to deposit securities that have special ownership restrictions based on the beneficial owner's residence, domicile, or citizenship into the Seg 100 Account will encourage DTC participants to immobilize those securities at DTC. By facilitating immobilization of securities, which reduces transfer activity, the expanded use of Seg 100 Accounts both improves efficiency, effectiveness, and safety and offers substantial savings to secondary market participants.[15]

The goal of prompt and accurate clearance and settlement of securities transactions and the use of automated system in pursuit of this goal are expressly contemplated in section 17A(a)(1) of the Act.[16] Specifically, sections 17A(a)(1) (B) and (C) articulate findings that new data processing and communications techniques create the opportunity for more efficient, effective, and safe procedures for clearance and settlement and that inefficient procedures for clearance and settlement impose unnecessary costs on investors and person facilitating transactions by and acting on behalf of investors.

Furthermore, section 17A(a)(2) of the Act directs the Commission to establish a safe and efficient national clearance and settlement system.[17] DTC's proposed rule change will offer the benefits of centralized, automated book-entry clearance and settlement of securities with ownership restrictions. The Commission believes that making this and other such services available for participants that invest in such securities will further the goal of perfecting the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

IV. Conclusion

For the foregoing reasons, the Commission finds that DTC's proposed rule change is consistent with the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that DTC's proposed rule change (SR–DTC–91–13) be, and hereby is, approved.

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[14] 15 U.S.C. 78q–1(b)(3)(F).

[15] For an analysis of the cost saving advantages associated with the immobilization of securities and book-entry settlement, see Division, Progress and Prospects: Depository Immobilization of Securities and Use of Book-Entry Systems (June 14, 1985).

[16] 15 U.S.C. 78q–1(a)(1).

[17] 15 U.S.C. 78q–1(a)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 91–18081 Filed 7–30–91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–29479; File No. SR–GSCC–91–02]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Granting Temporary Approval of a Proposed Rule Change Concerning Modifications to Billing Procedures

July 24, 1991.

On April 25, 1991, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (SR–GSCC–91–02) pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] The proposed rule change would extend GSCC's current authority to bill members in advance for the member's anticipated business during the following month.[2] Notice of the proposal was published in the Federal Register on June 5, 1991.[3] No comments were received. This order approves the proposed rule change, on a temporary basis, until July 31, 1992.

I. Description

The proposed rule change would extend GSCC's advance billing procedure for an additional twelve months. The procedure allows GSCC to collect in advance anticipated charges for the next succeeding month based upon a member's past use of comparison and netting services. GSCC computes the anticipated charges based on the member's actual use during the previous month. On, or before, the fifth business day of the month GSCC bills members for the member's anticipated usage and any adjustments necessary to reflect the actual charges for the previous month. For example, GSCC would bill a member on or before the fifth day of August for the member's anticipated usage of GSCC services during September. The August billing also would reflect a credit or additional charges necessary to reflect the member's actual usage during July.

Prior to approval of GSCC's advance billing procedure, GSCC would bill members on or before the fifth business day of the month for charges accrued during the preceding month.

II. Discussion

The Commission believes that the proposed rule change is consistent with section 17A of the Act. Specifically, the Commission believes it is consistent with section 17A(b)(3)(D) because it provides for the equitable allocation of dues, fees and charges among GSCC's members.

The Commission believes that the proposal will help ensure the financial soundness of GSCC by accelerating GSCC's monthly cash-flow while GSCC continues to implement operational and procedural changes. GSCC has expended substantial funds in developing and implementing a system for comparison and netting of member trades in U.S. Government securities.

GSCC's previous billing procedure resulted in GSCC financing its members' operational costs associated with comparison and netting activities until payment was received from members.[4] In addition, over the past 24 months, the U.S. Government securities market has experienced periods of low trading volume. GSCC, therefore, has processed fewer trades than expected. The Commission believes that during GSCC's developmental period, lower than expected trading volume coupled with the financing of GSCC's development costs potentially may adversely affect GSCC's comparison and netting activities. The Commission believes, therefore, that GSCC's advanced billing procedure should be extended for an additional twelve months to help ensure that GSCC remains in a financially sound cash flow position.

III. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the Act.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change, SR–GSCC–91–02, be, and hereby is, approved on a temporary basis until July 31, 1992.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 91–18082 Filed 7–30–91; 8:45 am]

BILLING CODE 8010-01-M

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[1] 15 U.S.C. 78s(b).

[2] On December 22, 1989, GSCC filed a proposed rule change (SR–GSCC–89–15) requesting approval of the advance billing procedure. The Commission approved the proposed rule change on a temporary basis until July 31, 1990. Pursuant to GSCC's request, the Commission subsequently approved the advance billing procedure for an additional year. See Securities Exchange Act Release Nos. 27587 (January 4, 1990), 55 FR 1131; and 28315 (August 6, 1990), 55 FR 32719).

[3] Securities Exchange Release No. 29250 (May 29, 1991), 56 FR 25709.

[4] See Securities Exchange Act Release No. 27587 (January 4, 1990), 55 FR 1131.

[Release No. 34–29475; File No. SR–PSE–91–22]

Self-Regulating Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to an Extension of the Exchange's Lead Market Maker System Pilot Program

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 21, 1991, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to extend for one-year its Lead Market Maker ("LMM") System pilot program. The Exchange's LMM System supplements the standard PSE options trading pit by establishing LMMs for certain options classes. In a separate filing, the Exchange has proposed amendments to its LMM system, but the Commission at this time only is considering an extension of the existing LMM system.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

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[1] See Securities Exchange Act Release No. 29068 (April 5, 1991), 56 FR 14959 (File No. SR–PSE–91–08). The Commission is awaiting a response from the Exchange on several outstanding issues before proceeding with this filing.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On January 17, 1990, the Commission approved, on a pilot basis, a PSE proposal to establish an LMM system in order to enhance the ability of the Exchange to compete in a multiple trading environment.[2] The Exchange's LMM system is designed primarily for new options classes and option classes with comparatively low volume. Under the existing pilot program, members appointed as LMMs assume responsibilities and acquire rights in their appointed options classes beyond the obligations and rights of market makers that trade in the same options class. In addition to the normal obligations of a market maker, the LMM must assume additional obligations designed to strengthen the market making in the designated options classes. The LMM, among other things, is responsible for ensuring the accurate dissemination of market quotations, determining the algorithm for the PSE's Auto-Quote System, assuring that each market quotation is honored consistent with minimum obligations established by Exchange rules, and must participate in applicable automatic execution systems. Moreover, an LMM must be present at the trading post for his LMM-designated options class throughout every trading day.

The PSE believes, based on the pilot's performance over the past year, the LMM system has improved the PSE's options markets, thereby enhancing the Exchange's competitiveness. Moreover, the Exchange indicates that it has experienced an increase in the number of participants in the program. The Exchange, rather than seeking permanent approval of the pilot program, however, proposes a one-year extension in order to be able to evaluate better the effectiveness, impact, and merits of the LMM program as well as the benefits to the public that inure from the operation of the pilot program.

The PSE believes that the proposed rule change is consistent with section 6(b)(5) of the Act in that it will facilitate transactions, enhance competition, and will promote the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested accelerated approval of the proposed rule change pursuant to section 19(b)(2) of the Act in order that the program does not expire. The Commission finds that the proposed rule change to extend the pilot program for an additional year is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 and the rules and requirements thereunder.[3] The Commission concludes, as it did when approving the commencement of the pilot program, that the PSE proposal may enhance the market-making mechanism on the PSE, thereby improving the markets for listed options on the Exchange. Specifically, the Commission believes the LMM pilot may improve the PSE's market making capabilities by creating long-term commitments to options classes. Moreover, the pilot program will continue with adequate due process safeguards in the LMM selection and termination procedures and retain procedures that prevent the misuse of material non-public LMM information by either an LMM or a broker-dealer affiliated with an LMM. The Commission notes, however, that before the pilot program can be approved on a permanent basis, or extended again on a pilot basis, the PSE must provide the Commission with a report on the operation of the pilot program by March 31, 1992.

Specifically, before requesting permanent approval or further extension of the pilot program the PSE must submit by March 31, 1992 a pilot program report that addresses: (1) Whether there have been any complaints regarding the operation of the pilot; (2) whether the PSE has taken any disciplinary or performance action against any member due to the operation of the pilot; (3) the number of LMM's involved in the pilot; (4) the extent to which the pilot has been used on the PSE; (5) whether the PSE has terminated or replaced an LMM and the reasons therefore; (6) the impact of the pilot on the bid/ask spreads, depth and continuity in PSE options markets; and (7) whether the PSE has taken any action or has there been any complaints against LMMs or associated broker-dealers relating to improper activity as a result of LMM affiliations with upstairs firms.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** because the PSE has not indicated that there have been any problems associated with the operation of the LMM system. In addition, because the Commission has not received any adverse comments concerning the Exchange's pilot program, the Commission believes good cause exists to approve the extension of the pilot program on an accelerated basis to allow it to continue uninterrupted.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 21, 1991.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[4] that the proposed rule change (SR–PSE–91–22) is approved and, accordingly, the Lead Market Maker pilot program is extended until July 31, 1992.

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[2] See Securities Exchange Act Release No. 27631 (January 17, 1990), 55 FR 2462.

[3] 15 U.S.C. 78f(b)(5) (1982).

[4] 15 U.S.C. 78s(b)(2) (1982).

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The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** because the PSE has not indicated that there have been any problems associated with the operation of the LMM system. In addition, because the Commission has not received any adverse comments concerning the Exchange's pilot program, the Commission believes good cause exists to approve the extension of the pilot program on an accelerated basis to allow it to continue uninterrupted.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 21, 1991.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[4] that the proposed rule change (SR-PSE-91-22) is approved and, accordingly, the Lead Market Maker pilot program is extended until July 31, 1992.

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[4] 15 U.S.C. 78s(b)(2) (1982).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 23, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-18048 Filed 7-30-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29480; File No. SR-Phlx-91-29]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Philadelphia Stock Exchange, Inc. Relating to Required Staffing of the Equity Floor

July 24, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 12, 1991, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to adopt Phlx Equity Floor Procedure Advice ("EFPA") E-E-1—Required Staffing of Equity Floor.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed advice is to govern the staffing requirements of the Exchange's equity floor. The advice requires that each specialist and floor brokerage unit have a firm representative present on the trading floor thirty (30) minutes prior to the opening of trading as well as thirty (30) minutes after the close of trading.

The proposed advice would further require that the firm representative be authorized to make appropriate changes and corrections to trades made or guaranteed by such specialist unit or floor brokerage unit.

The following fine schedule would be imposed for violations of the above-proposed staffing requirements:

1st Occurrence—Warning
2nd Occurrence—$100.00
3rd Occurrence—$250.00
4th and Thereafter—Sanction is discretionary with Business Conduct Committee

The proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices and to perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-91-29 and should be submitted by August 21, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-18047 Filed 7-30-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-18249; Int'l Series Release No. 299; 812-7406]

Credit Local de France—CAECL, S.A., and CLF Finance Company; Application

July 24, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Credit Local de France—CAECL, S.A. ("Credit Local"), a corporation organized under the laws of the French Republic and the CLF Finance Company ("CLF Finance"), a finance corporation organized under the laws of the State of Delaware as a wholly-owned subsidiary of Credit Local.

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) for an exemption from all provisions of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order under section 6(c) of the 1940 Act exempting each of them from all provisions of the 1940 Act. The requested exemption would permit applicants to issue and sell in the United States dollar denominated commercia' paper notes ("Commercial Paper") and dollar denominated debt securities of nine months or longer ("Long Term Debt").

FILING DATE: The application was filed on September 25, 1989, and amended on August 24, 1990, February 20, 1991, and July 18, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 22, 1991, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of the date of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC. 20549; Applicants, c/o Gerrit Gillis, Mudge Rose Guthrie Alexander & Ferndon, 180 Maiden Lane, New York, New York 10038.

FOR FURTHER INFORMATION CONTACT: Thomas G. Sheehan, Staff Attorney, (202) 272–7324, or Stephanie M. Monaco, Branch Chief, (202) 272–3022 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representatives

1. Credit Local was established in 1982 under French corporate law as a stock corporation ("societe anonyme"), by the Republic of France (the "State") as a successor to Caisse d'Aide a l' Equipement des Collectivites Locales ("CAECL"), an instrumentality of the State, to provide financial resources for local development through credit and financial transactions. Such transactions principally consist of the extension of medium and long-term credit to a variety of public authorities, municipalities, groups of municipalities, departments, overseas territories, public institutions and organizations generally enjoying the guarantee of local authorities, as well as private entities involved in the development, ownership and/or operation of projects intended to benefit these local government entities. Credit Local additionally has the status of a "specialized financial institution" under French banking law, one of six categories of credit establishments, or banking institutions, under the French Banking Act of 1984.

2. Credit Local is the major source of financing for local development in France, accounting for 44% of long term loans to, or for the benefit of, the local sector in 1989. Credit Local was also France's second largest bond issuer (second only to the State) in 1989.

3. As of December 31, 1989, Credit Local had total assets of approximately French Francs ("FF") 214.5 billion (U.S. $37.1 billion), approximately 88.3% of which consisted of customer loans. For the fiscal year ended December 31, 1989, Credit Local had net income (after provisions for income taxes, general and administrative expenses, and net allocation of reserves) of FF 899.0 million (U.S. $155.3 million).

4. The State, directly or through government-controlled entities, including Caisse des Depots et Consignations, an instrumentality of the State and one of the world's largest financial institutions ("CDC"), controls in excess of 72.5% of Credit Local's equity capital. In addition to its equity capital, Credit Local's principal sources of funds are domestic borrowings and proceeds from the issuance and sale of its bonds in French and foreign markets. Credit Local's bonds denominated in French Francs and in other currencies are respectively listed on the Bourse de Paris and the Luxembourg Exchange, and presently have the highest rating of both Moody's Investor Service (Aaa) and Standard & Poor's Corporation (AAA). As of December 31, 1989, Credit Local had approximately FF 161.2 billion (U.S. $27.9 billion) principal amount of bonds outstanding, an amount approximately equal to 71% of its total liabilities and shareholders' equity.

5. Credit Local carries on virtually all of the banking activities carried on by a traditional full service bank in France, but with a more limited customer base comprised of governmental entities and private entities involved in local development. Credit Local is barred from accepting from the general public demand deposits or deposits of less than two years. However, it is permitted to, and does, accept demand and other short-term deposits from other banking and financial institutions.

6. Credit Local operates under the supervision of the National Court of Accounts ("Cour des Comptes") and benefits from the State networks ("Comptables Publics") for the payment and recovery of its loans. Credit Local has two boards, a Supervisory Board ("Counseil de Surveillance"), responsible for the overall supervision of Credit Local, and a Directorate ("Directoire"), responsible for executive management, including strategy and operations. Credit Local also has six monitors who are elected by shareholders for three-year terms to act in an advisory capacity on the Supervisory Board to ensure that Credit Local's activities are in accordance with its public purpose mission. Such monitors attend Supervisory Board meetings in a non-voting capacity. Six of the twelve members of the Supervisory Board of Credit Local are State governmental representatives and three are representatives of instrumentalities of the State. Five of its six monitors are representatives of the State, its instrumentalities, or local governments. In addition, a formal representative of the State ("Commissaire du Gouvernement") is appointed by the Ministry of the Economy, Finance and Budget to attend all meetings of Credit Local's Directorate, its Supervisory Board, and its shareholders to ensure that Credit Local's activities are carried out in accordance with its public interest mission and applicable law. To that end, the Commissaire du Gouvernement has veto power over any decision made by Credit Local's Directorate, Supervisory Board or shareholders.

7. As a specialized financial institution, Credit Local is subject to virtually all of the rules and regulations of the various bank regulatory bodies in France applicable to French banking institutions. These include the following:

a. *Licensing Requirements*—All French credit establishments are subject to licensing requirements, including requirements with regard to an applicant's legal structure, capitalization, program of activities, technical and financial means, the quality of its members and guarantors, and the professional and moral qualifications of prospective management. License applications are considered and determined by the Committee on Credit Establishments, which also has revocation authority.

b. *Restrictions on Non-banking Activities*—Licensed credit establishments may not engage in non-banking activities on a regular basis, other than a limited number of non-banking activities determined by the Bank Regulatory Committee. Regulations limit aggregate revenues from such non-banking activities to 10% of total net revenues from banking activities.

c. *Permanent Resources Ratio*—Beginning December 31, 1991, all credit establishments will be required to maintain a minimum ratio of 60% between amounts representing shareholder equity and related items and amounts representing certain fixed and long-term assets.

d. *Risk Coverage Ratio*—Credit establishments must maintain a minimum ratio of 5% between amounts representing net shareholder equity and the sum of the weighted values of various categories of risks. While the required ratio is presently set at 5%, France is one of 10 nations to approve the report of the European Economic Community's ("E.E.C.") Cooke Committee which would require credit establishments of

Supervisory Board to ensure that Credit Local's activities are in accordance with its public purpose mission. Such monitors attend Supervisory Board meetings in a non-voting capacity. Six of the twelve members of the Supervisory Board of Credit Local are State governmental representatives and three are representatives of instrumentalities of the State. Five of its six monitors are representatives of the State, its instrumentalities, or local governments. In addition, a formal representative of the State ("Commissaire du Gouvernement") is appointed by the Ministry of the Economy, Finance and Budget to attend all meetings of Credit Local's Directorate, its Supervisory Board, and its shareholders to ensure that Credit Local's activities are carried out in accordance with its public interest mission and applicable law. To that end, the Commissaire du Gouvernement has veto power over any decision made by Credit Local's Directorate, Supervisory Board or shareholders.

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E.E.C. member states to maintain, by year end 1992, total capital amounting to at least 8% of risk-adjusted assets. France will implement at least the minimum standard of capital adequacy proposed by the Cooke Committee. Credit Local's capital adequacy as of December 31, 1989 was 21.57%.

e. *Diversification of Risks*—The aggregate of a credit establishment's loans and a portion of certain other credits ("risques") to a single customer may not exceed 40% of the credit establishment's net shareholders' equity. This ratio only applies, however, if the aggregate of the credit establishment's risques with a single customer exceeds (i) 5% of the credit establishment's total risques with all customers or (ii) 50% of the total amount of loans received by such customer. If a credit establishment has risques with any customer exceeding 15% of the credit establishment's net shareholders' equity, the aggregate amount of risques with all such customers may not exceed eight times the credit establishment's shareholders' equity.

f. *Liquidity Ratio*—A liquidity ratio requires all credit establishments to maintain a weighted total of certain short-term and liquid assets at least equal to the weighted total of its demand and short-term liabilities regardless of the currency in which they are denominated.

g. *Solvency Ratio*—Each French credit establishment must maintain a solvency ratio such that shareholders' equity is equal to at least 8% of weighted risks.

h. *Reserve Requirements*—Credit establishments are required to maintain on deposit in non-interest bearing reserve accounts with the Bank of France a percentage of various categories of demand and short-term deposits. These percentages, which are fixed by the Bank of France and calculated monthly, are currently set at 5.5% of demand deposits, 2.0% of passbook account deposits, and 0.5% of various kinds of time deposits with maturities up to two years.

i. *Limitations on Interest*—Credit Local's banking operations are also significantly affected by monetary policies established from time to time by the Ministry of the Economy, Finance and Budget and implemented by the Bank of France. At present, such policies include a prohibition of interest on all demand deposits and on deposits with a maturity of less than one month. Banking operations, particularly the fixing of short-term interest rates, are also affected in practice by the Bank of France's fixing of the rates at which it will intervene in the French domestic interbank market.

j. *Restrictions on Investments*—Credit establishments are subject to retrictions on equity investments. With limited exceptions, such investments may not exceed either of the following ratios: (i) 15% between the amount of each participation and the credit establishments own shareholders' equity; of (ii) 60% between all participations combined and the credit establishment's own shareholders' equity.

k. *Accounting Rules*—Credit establishments are subject to special accounting rules, including: specific methods of presenting financial statements; a requirement to consolidate with other entities controlled singly or jointly by them or in which they control at least 20% of the voting rights; a requirement that the fiscal year correspond to the calendar year; a requirement that audited accounts be available no later than May 31 of the following year; a requirement that financial statements be filed regularly with the Banking Commission; and a requirement that financial statements be published in a legal publication.

l. *Shareholder and Interbank Assistance to Troubled Institutions:* The Bank of France has the right to call on shareholders of troubled credit establishments to fund the credit establishment in an amount which may exceed their initial capital contribution to such credit establishment. Moreover, when warranted to protect the interests of depositors and other third parties, or to assure the functioning of the banking system or preserve the reputation of the financial market, the Bank of France may call on other credit establishments to provide necessary financial assistance.

8. In addition to regulation under French law by French authorities, Credit Local, is also subject to regulations promulgated by the EEC establishing certain minimum requirements (e.g., capital adequacy ratios) which must be applied by member states before they authorize a credit institution to commence operations.

9. CLF Finance is a wholly-owned finance subsidiary to Credit Local established under the laws of the State of Delaware. CLF Finance was established solely to make offerings in the United States of Commercial Paper and Long-Term Debt to assist Credit Local in the financing of its business. CLF Finance will not publicly offer its common stock or any other equity security.

10. Credit Local de France, CAECL S.A., New York agency (the "New York Agency") is an agency of Credit Local established under the New York State Banking Law. The New York Agency was established primarily to provide credit enhancement facilities, by way of letters of credit, to United States municipal bond issuers, as well as liquidity facilities which are frequently incident to such letters of credit. The New York Agency was also established to provide medium and long term loans to large infrastructure projects or commercial projects which are generally designed to promote a public purpose.[1]

11. Applicants seek an order under section 6(c) of the 1940 Act exempting them from all provisions of the 1940 Act to permit them to issue and sell Commercial Paper and Long-Term Debt in the United States. Net proceeds of the issuance of Commercial Paper and Long-Term Debt by Credit Local will be utilized in furtherance of its public purpose. Net proceeds of the issuance of Commercial Paper and Long Term Debt by CLF Finance will be advanced to, or invested in, only Credit Local or entities controlled by Credit Local, including its branches or agencies, or temporary investments of a kind permitted for "finance subsidiaries" under rule 3a–5(a) under the 1940 Act.

12. Each applicant represents that the issuance and sale by either of them of any Commercial Paper will comply with the exemption from registration under the Securities Act of 1933 (the "1933 Act"), afforded by either section 3(a)(3) of the 1933 Act or section 4(2) of the 1933 Act, including regulation D or rule 144A promulgated thereunder or, if carrying the additional guarantee of the New York Agency, the exemption afforded by section 3(a)(2) of the 1933 Act. Each applicant further represents that the issuance and sale by either of them of any Long-Term debt will take the form of one or more privately negotiated transactions structured to comply with the exemption from registration under the 1933 Act afforded by section 4(2) of the 1933 Act, including regulation D or rule 144A promulgated thereunder or, if carrying the additional guarantee of the New York Agency, the exemption afforded by section 3(a)(2) of the 1933 Act, or pursuant to a registration statement filed under the 1933 Act.

13. Each applicant represents that it will not offer, issue or sell any of its Commercial Paper or Long-Term Debt prior to receiving an opinion from United States counsel to the effect that the proposed offering is exempt or that a registration statement with respect to such debt has been declared effective under the 1933 Act. The applicants do not request that the Commission review or approve of counsel's opinion regarding the availability of an exemption for the Commercial Paper or Long-Term Debt under the 1933 Act.

14. Each applicant further represents that prior to its issuance of Commercial Paper or Long-Term Debt the Commercial Paper or Long-Term Debt will have received one of the three highest investment grade ratings from at least one nationally recognized statistical rating organization. No such rating shall be required, however, for placements of applicants' Long-Term

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[1] The New York Agency is not an applicant because, in the opinion of counsel, for the limited purpose of issuing its securities, it qualifies as a "bank" under section 2(a)(5)(C) of the 1940 Act, and is excepted from the registration requirements of the 1940 Act under Investment Company Act Release No. 17681 (August 17, 1990).

Debt made pursuant to an exemption under section 4(2) of the 1933 Act, including regulation D or rule 144A thereunder, or pursuant to an exemption under section 3(a)(2) of the 1933 Act if such Long-Term Debt is additionally guaranteed by the New York Agency.

15. Each applicant represents that each dealer in its Commercial Paper will furnish to each purchaser thereof, at or prior to the time of purchase, a memorandum (the "Dealer Memorandum") (i) describing the business of Credit Local, and, in the case of Commercial Paper issued by CLF Finance, also describing its business, and (ii) providing the most recent financial information for Credit Local and, in the case of CLF Finance, also providing the most recent financial information for CLF Finance based, in each case, to the extent required; on the respective audited financial statements of each. Credit Local's financial information will include its most recent fiscal year-end balance sheet and statement of income for the entire fiscal year, updated as necessary, accompanied by a brief description of the material differences in the accounting principles applied by Credit Local's statutory accountants and generally accepted accounting principles as used in the United States. Such documents will be updated promptly to reflect material changes in the financial status of Credit Local, and in the case of CLF Finance, also updated to reflect material changes in its financial status, and will be at least as comprehensive as memoranda customarily used in offering commercial paper and/or medium or long term debt in the United States. Any offering of Long-Term Debt will be effected on the basis of disclosure documents at least as comprehensive in their description of the applicants, their respective businesses and financial statements, as the Dealer Memorandum. However, in the case of an offering made pursuant to a registration statement under the 1933 Act, the offering will be made on the basis of disclosure documents appropriate for such registration and under an indenture complying with and qualifying under the Trust Indenture Act of 1939, as amended.

Applicants' Legal Conclusions

1. Credit Local is submitting an application for an order exempting it from all provisions of the 1940 Act and covering the offer and sale in the United States of its debt securities, as further described in the application, because of the uncertainty that exists as to whether an entity such as Credit Local could be classified as an "investment company" under the 1940 Act despite its performance of virtually all activities of a traditional commercial bank in France other than the acceptance of demand deposits from the public at large and the fact that it is subject to virtually all of the rules and regulations of the French banking regulatory authorities which are applicable to traditional full service banks in France, and despite its public purpose and institutionalized relationship with, and supervision by departments and agencies of, the State. In addition, CLF Finance's right to receive repayment of the advances made to Credit Local or entities controlled by Credit Local, which would constitute virtually all of CLF Finance's assets, could be deemed to be "investment securities" under the 1940 Act. Since CLF Finance does not qualify as a "finance subsidiary of a foreign bank" under rule 6c–9(b)(1), it may be deemed to be an "investment company" under the 1940 Act.

2. Applicants believe that (a) the banking activities which Credit Local performs and the extensive regulation to which Credit Local is subject under French banking laws, and (b) the public purposes Credit Local serves, the ownership, control and supervision of Credit Local by the French government and Credit Local's status as a major financial institution, each provides an appropriate basis on which the Commission may grant relief to Credit Local and CLF Finance under section 6(c) of the 1940 Act.

3. Applicants further believe that the policy considerations and rationale which formed the basis for the adoption of rule 6c–9 promulgated under the 1940 Act extend equally to Credit Local and CLF Finance, since the only factor which precludes reliance by the applicants upon rule 6c–9 is the prohibition under French law against the acceptance by specialized financial institutions such as Credit Local of demand deposits or deposits of less than two years from the public at large.

4. Applicants contend that the requested exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Conditions to the Requested Relief

Applicants agree to the following as conditions to the requested relief:

1. Any Commercial Paper or Long-Term Debt issued by either applicant will be direct obligations of the applicable applicant.

2. Any Commercial Paper or Long-Term Debt issued by CLF Finance will be unconditionally guaranteed by Credit Local and, under certain circumstances, described below, also by the New York Agency as to the payment of principal, interest and premium and sinking fund payments, if any, on such debt securities (except that the guarantee may be subordinated in right of payment to other debt of Credit Local). Such guarantees will be full, complete and unconditional obligations of Credit Local for which its full faith and credit will be absolutely pledged (whether directly guaranteed by Credit Local or additionally guaranteed by the New York Agency). Securities issued by Credit Local or CLF Finance which will bear the additional separate guarantee of the New York Agency will only be issued under circumstances where the exemption provided for by section 3(a)(2) of the 1933 Act for securities "issued or guaranteed by a bank" is considered necessary to provide a basis for an exemption from the registration requirements of the 1933 Act for the issuance of securities by Credit Local or CLF Finance.

3. Credit Local's and, if applicable, the New York Agency's respective guarantees will provide that in the event of a default in payment of principal, interest and premium and sinking fund payments, if any, in respect of any Commercial Paper or Long-Term Debt issued by CLF Finance, the holders of such securities may institute legal proceedings directly against Credit Local and, if applicable, the New York Agency, to enforce the guarantee without first proceeding against CLF Finance.

4. Credit Local will submit to the jurisdiction of the New York State and United States Federal courts sitting in the City of New York for the purpose of any suit, action, or proceeding arising out of its offering of Commercial Paper or Long-Term Debt in the United States, or arising from its role as guarantor of the payment of principal, interest, and premium and sinking fund payments, if any, of the Commercial Paper or Long-Term Debt issued by CLF Finance in the United States. In that connection, Credit Local will appoint Credit Local de France, New York Agency, 9 West 57th Street, New York, New York 10019, or a corporation with an office in the City of New York engaged in providing corporate services for lawyers, as agent to accept service of process in any such action. Such appointment of an agent to accept service of process and such consent to jurisdictdion shall be irrevocable for as long as Commercial Paper or Long-Term Debt issued by Credit Local or CLF Finance in reliance upon the order being sought hereby is outstanding in the United States. No such submission to jurisdiction or appointment of agent for service of process will affect the right of any holder of such Commercial Paper or Long-Term Debt to bring suit in any court which may have jurisdiction over Credit Local by virtue of the offer or sale of its Commercial Paper or Long-Term Debt or otherwise. The agent for service of process will not be a trustee for the holders of any Commercial Paper or Long-Term Debt issued by Credit Local or CLF Finance or have any responsibilities or duties to act for such holders as would a trustee.

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and, under certain circumstances, described below, also by the New York Agency as to the payment of principal, interest and premium and sinking fund payments, if any, on such debt securities (except that the guarantee may be subordinated in right of payment to other debt of Credit Local). Such guarantees will be full, complete and unconditional obligations of Credit Local for which its full faith and credit will be absolutely pledged (whether directly guaranteed by Credit Local or additionally guaranteed by the New York Agency). Securities issued by Credit Local or CLF Finance which will bear the additional separate guarantee of the New York Agency will only be issued under circumstances where the exemption provided for by section 3(a)(2) of the 1933 Act for securities "issued or guaranteed by a bank" is considered necessary to provide a basis for an exemption from the registration requirements of the 1933 Act for the issuance of securities by Credit Local or CLF Finance.

3. Credit Local's and, if applicable, the New York Agency's respective guarantees will provide that in the event of a default in payment of principal, interest and premium and sinking fund payments, if any, in respect of any Commercial Paper or Long-Term Debt issued by CLF Finance, the holders of such securities may institute legal proceedings directly against Credit Local and, if applicable, the New York Agency, to enforce the guarantee without first proceeding against CLF Finance.

4. Credit Local will submit to the jurisdiction of the New York State and United States Federal courts sitting in the City of New York for the purpose of any suit, action, or proceeding arising out of its offering of Commercial Paper or Long-Term Debt in the United States, or arising from its role as guarantor of the payment of principal, interest, and premium and sinking fund payments, if any, of the Commercial Paper or Long-Term Debt issued by CLF Finance in the United States. In that connection, Credit Local will appoint Credit Local de France, New York Agency, 9 West 57th Street, New York, New York 10019, or a corporation with an office in the City of New York engaged in providing corporate services for lawyers, as agent to accept service of process in any such action. Such appointment of an agent to accept service of process and such consent to jurisdictdion shall be irrevocable for as long as Commercial Paper or Long-Term Debt issued by Credit Local or CLF Finance in reliance upon the order being sought hereby is outstanding in the United States. No such submission to jurisdiction or appointment of agent for service of process will affect the right of any holder of such Commercial Paper or Long-Term Debt to bring suit in any court which may have jurisdiction over Credit Local by virtue of the offer or sale of its Commercial Paper or Long-Term Debt or otherwise. The agent for service of process will not be a trustee for the holders of any Commercial Paper or Long-Term Debt issued by Credit Local or CLF Finance or have any responsibilities or duties to act for such holders as would a trustee.

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5. Except as provided in condition no. 7 below with respect to temporary investments, CLF Finance will advance to, or invest in, only Credit Local or entities controlled by Credit Local, including its branches or agencies, at least 85% of any cash or cash equivalents that it raises through an offering of Commercial Paper or Long-Term Debt or through other borrowings. Such advance or investment will occur as soon as practicable, but in no event later than six months after CLF Finance's receipt of such cash or cash equivalents.

6. Substantially all of CLF Finance's assets will consist of its right to receive repayment from Credit Local and entities controlled by Credit Local. The remaining portion of its assets will consist of funds held to pay administrative costs which it will incur in connection with its issuance of Commercial Paper or Long-Term Debt.

7. CLF Finance will not invest in, reinvest in, own, hold or trade in securities other than government securities (as defined in the 1940 Act), securities of Credit Local or entities controlled by Credit Local, including its branches or agencies, or debt securities (including repurchase agreements) that are exempted from the provisions of the 1933 Act by section 3(a)(3) of the 1933 Act.

8. CLF Finance is and will remain a wholly-owned subsidiary of Credit Local the primary purpose of which is to finance the operations of Credit Local and entities controlled by Credit Local.

9. Although the exemption from registration under the 1940 Act provided by rule 6c–9 promulgated under the 1940 Act is not technically available to the applicants, each of the applicants agree to comply with each of the substantive requirements for an exemption from the provisions of the 1940 Act under rule 6c–9 as presently in effect or under the proposed amendments to rule 6c–9 under the 1940 Act as they are currently proposed, and as they may be reproposed, adopted or amended.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–18046 Filed 7–30–91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1436]

United States Organization for the International Telegraph and Telephone Consultative Committee (CCITT) Study Group A Meeting; Meeting

The Department of State announces that Study Group A (Policy and Services) of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on Thursday, August 22, 1991, in Conference Room 1105, beginning at 9:30 a.m., at the Department of State, 2201 C Street NW., Washington, DC 20520.

The agenda for this meeting will cover (1) activities of the various working parties of the CCITT Study Group III's August 27–September 12, 1991 meeting in Geneva, such as private leased circuits, telephone accounting, one stop shopping, mobile services, directory services, packet switching, and other matters leading to general tariff principles; (2) preparatory activities for upcoming meetings of CCITT Study Group I; (3) preparatory activities for the ad hoc group for CCITT Resolution No. 18; and (4) the future schedule of work activities.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made five (5) days in advance of the meeting. Persons who plan to attend should so advise the Office of Earl S. Barbely, Department of State, (202) 647–2592, FAX (202) 647–7407. The above includes government and non-government attendees. Public visitors will be asked to provide their date of birth and Social Security number at the time they register they register their intention to attend and must carry a valid photo ID with them to the meeting in order to be admitted. All attendees must use the C Street entrance.

Dated: July 12, 1991.

Earl S. Barbely,

Director, Telecommunications, and Information Standards, Chairman U.S. CCITT National Committee.

[FR Doc. 91–18030 Filed 7–30–91; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Artisan Liens on Aircraft; Recordability

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice of legal opinion is issued by the Assistant Chief Counsel for the Aeronautical Center to provide legal advice to the Aircraft Registration Branch, Mike Monroney Aeronautical Center, Oklahoma City, Oklahoma, also identified as the FAA Aircraft Registry. Since December 17, 1981, the Assistant Chief Counsel for the Aeronautical Center has issued opinions in the **Federal Register** of those states from which artisan liens will be accepted for recordation by the FAA Aircraft Registry. This opinion is to advise interested parties of the addition of the State of Iowa to that list.

ADDRESSES: Copies of prior opinions on the recordability of artisan liens from states which have statutes authorizing their recording may be obtained from: Assistant Chief Counsel for the Aeronautical Center, AAC–7, P.O. Box 25082, Oklahoma City, OK 73125–4904.

FOR FURTHER INFORMATION CONTACT: R. Bruce Carter, Office of Assistant Chief Counsel, address above, or by calling (405) 680–3296; (FTS 747–3296).

SUPPLEMENTARY INFORMATION: In the December 17, 1981, **Federal Register**, Vol. 46, No. 242, page 61528, the Federal Aviation Administration, Mike Monroney Aeronautical Center, published its legal opinion on the recordability of Artisan liens, with the identification of those states from which artisan liens would be accepted. In the April 23, 1984, **Federal Register**, Vol. 49, No. 79, page 17112, we advised that Florida, Nevada, and New Jersey had passed legislation which, in our opinion, allows the Aircraft Registry to accept artisan liens from those states. In the June 10, 1986, **Federal Register**, Vol. 51, No. 111, page 21046, we advised that Minnesota and New Mexico had passed legislation which, in our opinion, allows the Aircraft Registry to accept artisan liens from those states. In the June 23, 1988, **Federal Register**, Vol. 53, No. 121, page 23716, we advised that Missouri had passed legislation which, in our opinion, allows the Aircraft Registry to accept artisan liens from that state. In the September 19, 1989, **Federal Register**, Vol. 54, No. 180, page 38584, we advised that Texas was identified as a state from which artisan liens will be accepted. In the December 19, 1989, **Federal Register**, Vol. 54, No. 242, page 51965, we advised that North Dakota was identified as a state from which artisan liens will be accepted.

In the August 6, 1990, **Federal Register**, Vol. 55, No. 151, page 31938, we advised that Michigan and Tennessee were identified as states from which artisan liens will be accepted. In the June 18, 1991, **Federal Register**, Vol. 56, No. 117, page 27989, we advised that Arizona was identified as a state from which artisan liens will be accepted.

The purpose of this opinion is to advise interested parties that in addition to those states identified previously, Iowa is identified as a state from which artisan liens will be accepted.

The complete list of states from which artisan liens on aircraft will be accepted as of this date are:

Alaska
Arizona
Arkansas
Florida
Georgia
Illinois
Indiana
Iowa
Kansas
Kentucky
Maine
Michigan
Minnesota
Missouri
Nebraska
Nevada
New Jersey
New Mexico
North Dakota
Oklahoma
Oregon
South Carolina
South Dakota
Tennessee
Texas
Virgin Islands
Washington
Wyoming

Issued in Oklahoma City on July 21, 1991.

Joseph R. Standell,

Assistant Chief Counsel for the Aeronautical Center.

[FR Doc. 91-18074 Filed 7-30-91; 8:45 am]

BILLING CODE 4910-13-M

Federal Railroad Administration

[FRA Emergency Order No. 15]

Florida East Coast Railway Co.; Emergency Order Requiring Use of Train Borne Audible Warning Devices

The Federal Railroad Administration (FRA) of the United States Department of Transportation has determined that public safety compels issuance of this Emergency Order requiring that the Florida East Coast Railway Company (FEC) sound audible warning devices on lead locomotives of trains approaching public highway-rail grade crossings, and that FEC revoke any operating rules bulletins that restrict the use of these devices at such crossings.

Authority

Authority to enforce the Federal railroad safety laws has been delegated by the Secretary of Transportation to the Federal Railroad Administrator. 49 CFR 1.49. The FEC is a "railroad" subject to FRA's safety jurisdiction pursuant to the Federal Railroad Safety Act of 1970, 45 U.S.C. 421, 431(e), 438. FRA is authorized to issue emergency orders where an unsafe condition or practice creates "an emergency situation involving a hazard of death or injury." These orders may immediately impose "such restrictions or prohibitions as may be necessary to bring about the abatement of such emergency situation." 45 U.S.C. 432(a).

Background

FRA has long identified the train borne audible warning device, commonly referred to as a train whistle, as an important feature in the safe operation of a train. One use of these whistles has been to complement other warning devices to promote safety at highway-rail grade crossings. FRA locomotive safety regulations require that each lead locomotive of a train be equipped with a device that can produce a minimum sound level in the direction of travel. 49 CFR 229.129. FRA's Railroad Noise Emission Standards, based on standards issued by the Environmental Protection Agency, specifically exempt audible warning devices such as "horns, whistles, or bells when operated for the purpose of safety." 49 CFR 210.3(b)(3).

Grade crossing collisions between trains and motor vehicles differ in severity from those that occur on the highways. A crash at a highway-rail crossing is eleven times more likely to result in a fatality, and five and a half times more likely to result in a disabling injury than a collision between two motor vehicles. Approximately 700 lives are lost and 2,400 people seriously injured each year in grade crossing accidents nationwide.

In addition to the threat to motorists, highway-rail crossing accidents can result in death and injury to railroad employees, particularly in collisions with large trucks or other heavy equipment. Collisions and emergency applications of train brakes greatly increase the risk of derailment and consequent injury or death to rail passengers and train crew. Moreover, the presence of hazardous material in the train consist or truck cargo can endanger anyone near the right-of-way.

A highway-rail grade crossing presents a unique traffic environment for motorists, and many drivers do not cross railroad tracks often enough to be familiar with the warning devices designed for their safety. More than 50 percent of highway-rail collisions occur at crossings equipped with bells, flashing lights, or gates. The train whistle enhances the safety effect of these other devices by giving the motorists an indication of a train's proximity.

Motorists are often unaware that trains cannot stop as quickly as motor vehicles to avoid a collision. It takes a 100 car train traveling 30 miles per hour approximately half a mile to come to a stop. At fifty miles per hour that train's stopping distance increases to one and a third miles. The average freight locomotive weighs between 140 and 200 tons, compared to the average car weight of approximately 1 to 2 tons. Any motor vehicle, even a large truck, would be crushed when colliding with the force of a moving train.

In response to the risks of death or injury at grade crossings, FRA will soon initiate a proceeding to collect nationwide data on highway-rail grade crossing safety, including the effect of the use of train borne audible warning devices.

The Florida Whistle Ban

Effective July 1, 1984, a Florida statute authorized counties and municipalities to restrict the nighttime sounding of train whistles on trains operated by intrastate railroads. The law authorizes local governments to ban the use of train borne audible warning devices between the hours of 10 p.m. and 6 a.m. by trains approaching highway-rail crossings that are equipped with train-activated flashing lights, bells, crossing gates, and highway signs indicating that train whistles will not be sounded at night. Fla. Stat. § 351.03(4)(a) (1984). Since enactment of this law, at least eight counties and twelve cities have passed whistle ban ordinances. As detailed below, the result has been an alarming increase in highway-rail grade crossing accidents, with a concomitant increase in fatalities and injuries.

In August 1990, FRA issued a study of the effect of the Florida train whistle ban through 1989. The study compared the FEC's post-ban accident record at crossings subject to a ban with four control groups to determine the impact of the ban and to eliminate variables that may otherwise have affected the results. The study indicated a strong correlation between nighttime bans and the number of accidents at highway-rail crossings subject to bans.

Using the first control group, a comparison of FEC's pre-ban and post-ban accident records was made. FRA found a 195 percent increase in accidents. Based on the experience of the other control groups and the pre-ban trend, it was estimated that 49 post-ban accidents would have been expected. In fact, however, 115 post-ban accidents occurred, which is an increase of 167 percent over the number that would have been consistent with the pre-ban trend, leaving 66 crossing accidents statistically unexplained. Nineteen people died and fifty-nine people were injured in the 115 crossing incidents after establishment of the bans. Proportionally, at least 11 of the fatalities and 34 of the injuries can be attributed to the 66 unexplained accidents.

With the second control group comparison, FRA determined that the pre- and post-ban daytime accident rates remained virtually unchanged for the same highway-rail crossings at which the whistle ban was in effect during nighttime hours.

The third control group showed that at the 89 FEC crossings where the bans were not imposed, the number of

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In August 1990, FRA issued a study of the effect of the Florida train whistle ban through 1989. The study compared the FEC's post-ban accident record at crossings subject to a ban with four control groups to determine the impact of the ban and to eliminate variables that may otherwise have affected the results. The study indicated a strong correlation between nighttime bans and the number of accidents at highway-rail crossings subject to bans.

Using the first control group, a comparison of FEC's pre-ban and post-ban accident records was made. FRA found a 195 percent increase in accidents. Based on the experience of the other control groups and the pre-ban trend, it was estimated that 49 post-ban accidents would have been expected. In fact, however, 115 post-ban accidents occurred, which is an increase of 167 percent over the number that would have been consistent with the pre-ban trend, leaving 66 crossing accidents statistically unexplained. Nineteen people died and fifty-nine people were injured in the 115 crossing incidents after establishment of the bans. Proportionally, at least 11 of the fatalities and 34 of the injuries can be attributed to the 66 unexplained accidents.

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The third control group showed that at the 89 FEC crossings where the bans were not imposed, the number of

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nighttime accidents increased by only 23 percent.

Finally, FRA compared the 1984 through 1989 accident record of the FEC, which is required to comply with local whistle sounding ordinances, with that of the parallel rail line of CSX Transportation Company (CSX), which is not subject to such ordinances because it operates interstate. By December 31, 1989, 511 of the FEC's 600 gate-equipped crossings were affected by whistle bans. Accident data from the same period was available for 224 similarly equipped CSX crossings in the 6 counties in which both railroads operate. FRA found that FEC's nighttime accident rate at impacted crossings increased 195 percent after whistle bans were imposed. At similarly equipped CSX crossings, the number of accidents increased 67 percent.

The only identifiable difference between the crossings subject to the ban and the control groups was the whistle ban itself. Malfunctioning of safety controls at grade crossings would affect both daytime and nighttime accidents rates. An increase in rail traffic might account for a partial increase, but the average annual locomotive miles reported by the FEC increased only 22.3 percent during the period studied. Increased use of highways should also have resulted in higher accident rates at CSX crossings, at crossings in daytime, and at crossings unaffected by the bans.

In August of 1990, in an effort to develop further information and to advise local authorities of the risks apparently posed by the ordinances, FRA provided copies of its study to officials of each county and municipality with bans in effect, to the Florida Department of Transportation, and to fifteen members of the state legislature. No county or municipality acted to repeal or modify its whistle ban ordinance in light of the report. The Florida state legislature also did not act in response to FRA's findings. In fact, the number of FEC highway-rail crossings subject to the ban actually increased to 537.

Nor, so far as FRA has been advised, did state and local authorities take other actions to compensate for the hazard introduced by the whistle bans, such as increased law enforcement, installation of immovable highway dividers, grade separation at high traffic crossings, or closure of low use crossings.

FRA has continued to monitor accident data for FEC crossings. Analysis of the 1990 data shows a continuation of the post-ban trend. There were 23 nighttime accidents at crossings subject to bans, but only one accident at the FEC's remaining 65 grade crossings. The 55 highway-rail crossing accidents reported by the FEC resulted in 15 deaths and 20 injuries. Six of these fatalities and seven injuries occurred at crossings during the ban period of 10 p.m. to 6 a.m.

In 13 of the nighttime accidents at crossings subject to the bans, the highway vehicle went around or through the gate. In the other ten, the highway user failed to clear the crossing prior to the train's arrival, suggesting the motorists were unaware of the proximity of the train.

Preliminary 1991 data for the first six months of the year shows six fatalities and six injuries at whistle ban crossings during nighttime hours. The accumulation of nighttime accidents at crossings subject to the bans in the post-ban period, illustrated below, did not abate during the first six months of 1991. The trend line of accumulated accidents since July 1984 still reflects a major divergence from the pre-ban trend.

BILLING CODE 4910-06-M

FEC Crossing Accidents

Impacted Crossings (10PM-6AM)

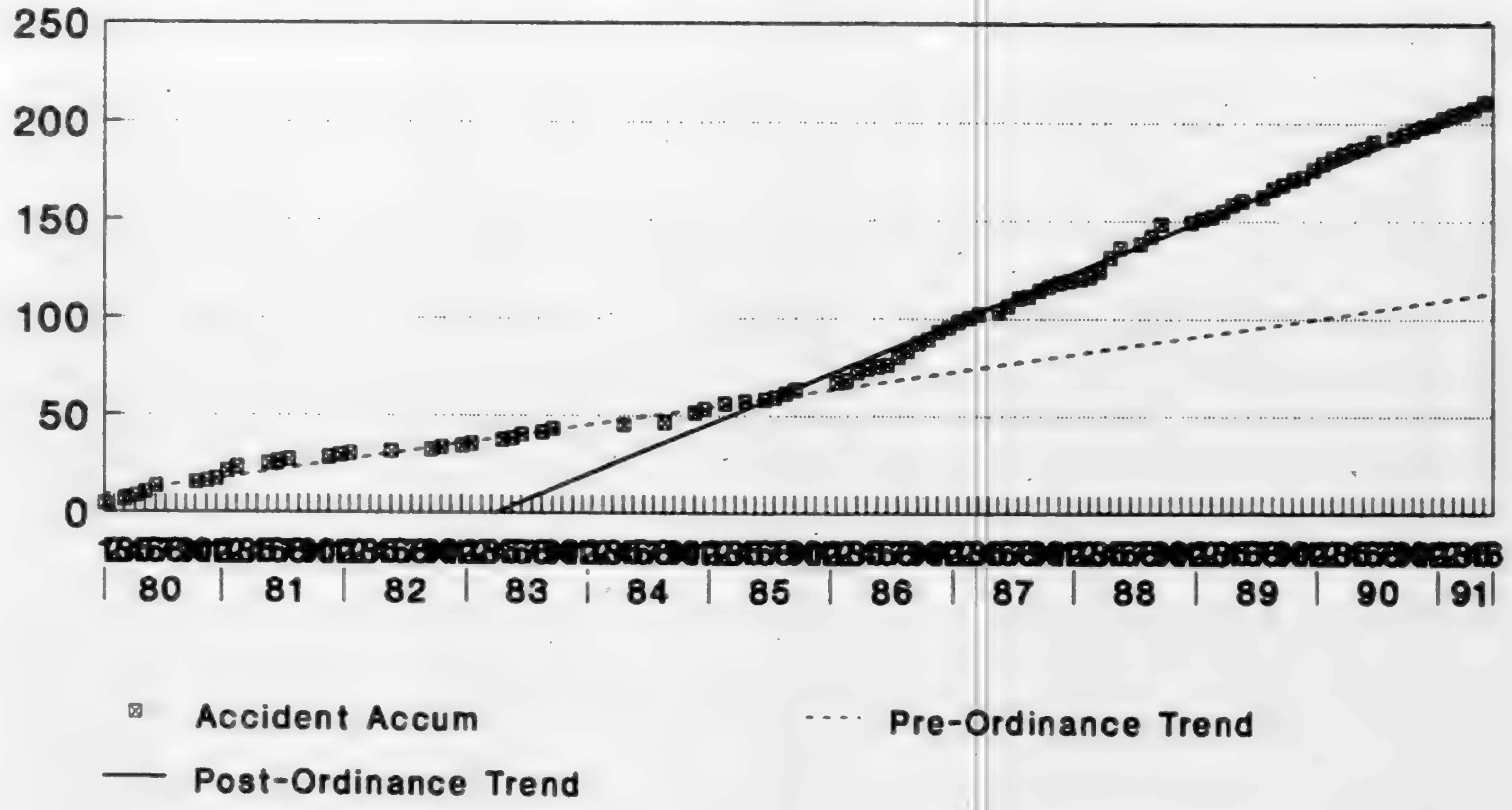

First Ordinance: July 1984
Source: Federal Railroad Administration
1991 data is preliminary.

BILLING CODE 4910-06-C

The Florida ban confuses the public's understanding of grade crossing warning devices. The local ordinances require that intrastate railroads comply with whistle bans while interstate carriers are exempt. This distinction means, for example, that at a CSX grade crossing, locomotive borne audible warning devices are used, but at a similar FEC crossing a short distance away, these devices are not sounded. Motorists will not know whether or not they can expect to hear a train whistle when a train nears a highway-rail crossing. This confusion is further compounded by the existence of whistle ban ordinances in certain counties and municipalities and their absence in others.

FRA is concerned with issues of noise pollution. As noted, FRA enforces noise control regulations on the railroad industry. While the sound of a train whistle can be disturbing to people who live by highway-rail crossings, that same warning note can save lives. The FEC's alarming post-ban grade crossing accident record mandates FRA action despite the inconvenience to people living near the railroad right-of-way.

Preemption

This Emergency Order addresses the same subject matter addressed by the Florida statute and the county and municipal ordinances and, therefore, pursuant to section 205 of the Federal Railroad Safety Act of 1970, 45 U.S.C. 434, preempts state and local requirements pertaining to the sounding of train borne audible warning devices at the highway-rail crossings of the FEC.

Finding and Order

Based on FRA's investigation, I have determined that, given the unsafe conditions at highway-rail grade crossings over which motorists cross the FEC in the State of Florida, the continued failure of the FEC to sound its train borne audible warning devices at night as provided in its operating rules creates an emergency involving a hazard of death or injury to persons. Accordingly, pursuant to the authority of section 203 of the Federal Railroad Safety Act of 1970, 45 U.S.C. 432, delegated to me by the Secretary of Transportation (49 CFR 1.49(m)), it is *Ordered,* effective 10 p.m., July 26, 1991:

That the Florida East Coast Railway Company shall sound its train borne audible warning devices whenever a train approaches a public highway-rail grade crossing, consistent with its operating rules. The pattern of the sounding will be two long notes, a short note, and one long note of the whistle. This pattern can be repeated or the last sound prolonged until the lead locomotive has passed through the crossing.

That the Florida East Coast Railway Company shall revoke any operating rules bulletin that restricts the sounding of train borne audible warning devices on trains approaching highway-rail grade crossings.

Relief

The FEC may obtain relief from this Order by either of the following:

1. By filing a written notification with the Docket Clerk, Federal Railroad Administration, that a highway-rail crossing, or any number of highway-rail crossings, is no longer subject to a municipal or county ordinance that would limit the sounding of train borne audible warning devices. Such filing must include a written representation that the railroad has revoked any restrictive operating rules bulletins and will continue to retain in force its operating rule requiring sounding of locomotive audible warning devices.

2. By filing in writing with the Docket Clerk, Federal Railroad Administration, evidence that sufficient safety measures are planned at a highway-rail crossing, or any number of highway-rail crossings, to alleviate the risk of injury and death created by the failure to use train borne audible warning devices. The measures to be taken at each crossing must be specifically identified, and supported with safety data and/or engineering studies that demonstrate that the planned measures will be effective and will be in place within thirty days of FRA approval of the plans.

Within thirty days of receipt of the notice described in paragraph 2, above, FRA will review the measures planned for each identified highway-rail crossing and evaluate the safety improvements and supporting documentation. FRA will then make a written finding whether the Order will be lifted, in whole or in part. If FRA does not lift the Order, the written response will specifically describe what additional measures need to be taken to abate the hazard. If FRA lifts the Order, this lifting will take effect on the date the planned crossing measures are completed and begin functioning.

Penalties

Each train movement in violation of this Order shall subject the respondent committing such violation to a civil penalty of up to $20,000. 45 U.S.C. 432, 438. FRA may, through the Attorney General, also seek injunctive relief to enforce this order. 45 U.S.C. 439.

Notice

This Emergency Order was hand delivered to the Florida East Coast Railway Company on July 26, 1991. In addition, copies were provided this day by mail or facsimile to the Governor of Florida, the Florida Department of Transportation, St. Johns County, St. Lucie County, Brevard County, Indian River County, Martin County, Palm Beach County, County of Ft. Lauderdale, Dade County, and the cities and towns of Jacksonville, St. Augustine, Ormond Beach, Holly Hill, Daytona Beach, South Daytona, Port Orange, New Smyrna Beach, Malabar, Edgewater, Melbourne, Palm Bay, Titusville, Cocoa, Rockledge, Vero Beach, Sebastian, Fort Pierce, Stuart, Riviera Beach, West Palm Beach, Tequesta, Boynton Beach, Delray Beach, Hypoluxo, North Palm Beach, Lantana, Lake Worth, Boca Raton, Deerfield Beach, Pompano Beach, Oakland Park, Wilton Manors, Fort Lauderdale, Dania, Hollywood, and Hallandale.

Review

Opportunity for formal review of this Emergency Order will be provided in accordance with section 203(b) of the Federal Railroad Safety Act of 1970, 45 U.S.C. 432(b), and section 554 of Title 5 of the United States Code. Administrative procedures governing such review are found 49 CFR part 211 (see § 211.47, .71–.75).

Issued in Washington, DC, on July 26, 1991.

Gilbert E. Carmichael,

Administrator.

[FR Doc. 91–18140 Filed 7–30–91; 8:45 am]

BILLING CODE 4910-06-M

National Highway Traffic Safety Administration

[Docket No. LVM 89–01; Notice 11]

Passenger Automobile Average Fuel Economy Standards; Proposed Denial of Petitions for Exemption from Maserati Automobiles, Inc.

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Proposed denial of petitions for low volume exemption from average fuel economy standards.

SUMMARY: This notice proposes to deny petitions filed by Maserati Automobiles, Inc. (MAI), requesting a low volume exemption from the generally applicable passenger automobile fuel economy standards, and seeking establishment of alternative standards for model years (MY) 1992, 1993, 1994, and 1995. MAI is the exclusive U.S. importer for Maserati S.r.l. (Maserati), a company which manufacturers cars in Italy. The agency proposes to deny MAI's petitions since Maserati's production will exceed 10,000 passenger automobiles and thus make

that company ineligible to qualify as a low volume manufacturer.

DATES: Comments must be received on or before September 30, 1991.

ADDRESSES: Comments should refer to the docket and notice numbers and be submitted to: Docket Section, room 5109, NHTSA, 400 Seventh Street SW., Washington, DC 20590. Docket hours are from 9:30 a.m. to 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Orron Kee, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366–0846.

SUPPLEMENTARY INFORMATION:

Background

In December 1975, Congress enacted the Energy Policy and Conservation Act (EPCA) in response to the energy crisis created by the oil embargo of 1973–1974, and to the level of oil imports. Congress included a provision in that Act establishing an automobile fuel economy regulatory program under which standards are established for the corporate average fuel economy (CAFE) of the annual production fleets of passenger automobiles and light trucks. Responsibility for the automotive fuel economy program was delegated by the Secretary of Transportation to the Administrator of NHTSA.

Compliance with CAFE standards is determined by averaging the fuel economy ratings of the various models produced by each manufacturer, enabling them to produce vehicles with fuel economy below the level of the standard if they produce sufficient numbers of vehicles with fuel economy above the level of the standard. The standards for passenger automobiles for MYs 1992 through 1995 are at present designated in the Cost Savings Act as 27.5 miles per gallon (mpg) of each of these years.

Section 502(c) of the Cost Savings Act provides that a low volume manufacturer of passenger automobiles may be exempted from the generally applicable average fuel economy standards for passenger automobiles if those standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if NHTSA establishes an alternative standard for the manufacturer at its maximum feasible level. Under the Act, a low volume manufacturer is one that manufactures, whether or not in the U.S., fewer than 10,000 passenger automobiles in the second model year before the model year for which an application is made. An exemption applies to a model year only if the manufacturer manufacturers (whether or not in the U.S.) fewer than 10,000 automobiles in that model year. In determining maximum feasible average fuel economy, the agency is required by section 502(d) of the Cost Savings Act to consider:

(1) Technological feasibility;

(2) Economic practicability;

(3) The effect of other Federal motor vehicle standards on fuel economy; and

(4) The need of the Nation to conserve energy.

The Petitions

In a submission dated April 14, 1989, MAI petitioned the agency for an exemption from the generally applicable CAFE standards for MYs 1990, 1991, and 1992. MAI requested an alternate standard of 19.1 mpg for MY 1990, 18.7 mpg for 1991, and 17.8 mpg for 1992. In a **Federal Register** notice dated June 22, 1990 (55 FR 25767), the agency rejected MAI's petitions for exemption from the generally applicable CAFE standards for several years, including MYs 1990 and 1991. The petitions were untimely for MYs 1990 and 1991 and the agency concluded that MAI did not show "good cause" for the late filing of the petitions. However, in the June 1990 notice, the agency acknowledged that the petition for MY 1992 was timely filed and stated that it would separately address MAI's petition for MY 1992.

In a submission dated July 31, 1990, MAI petitioned the agency for an exemption from the generally applicable CAFE standards for MYs 1993, 1994, 1995. MAI requested an alternate standard of 15.5 mpg for MY 1993, 15.2 mpg for MY 1994, and 15.1 mpg for MY 1995. The petition for exemption was timely for each of MYs 1993, 1994, and 1995.

The information provided by MAI in its petition included the following:

MAI is a wholly-owned subsidiary of DeTomaso Industries, Inc. ("DTI"), a Maryland corporation that is publicly traded over-the-counter in the United States. DTI does not manufacture any automobiles, but it controls (i.e., owns 84% of) Officine Alfieri Maserati, S.p.A. (OAM), which controls (i.e., owns 51% of) Maserati S.r.l. (Maserati) that has facilities in Italy that produce Maserati automobiles* * *

Maserati assembles, on a contract basis, Innocenti automobiles (approximate annual production: 10,000 vehicles) and, commencing sometime in 1990, will be assembling Fiat Panda automobiles on the same basis (estimated annual production: 35,000).

MAI argued that these Innocenti and Fiat Panda automobiles should not be counted towards the 10,000 vehicle limitation since Maserati is not considered the manufacturer of the vehicles by the Italian government, the vehicles are not built to comply with U.S. requirements, and no company is authorized to import such automobiles into the United States. MAI concluded it was eligible for an exemption for each of MYs 1993, 1994, and 1995 since, "under sections 502(c) and 503(d) of the Cost Savings Act, the Innocenti and Fiat automobiles are not to be counted towards Maserati's 10,000-vehicle limit."

MAI's petition also indicated that Fiat owns 49 percent of Maserati, as of January 1, 1990.

Agency Analysis

Section 502(c) of the Cost Savings Act limits eligibility for low volume exemptions to those manufacturers "who manufactured (whether or not the United States) fewer than 10,000 passenger automobiles in the second model year preceding the model year for which the application is made * * *". Section 501(9) defines the term "manufacture," except for purposes of section 502(c), as meaning "to produce or assemble in the customs territory of the United States, or to import." A broader definition of "manufacture," derived from section 502(c)'s phrase "manufactured (whether or not in the United States)," applies for purposes of determining eligibility for a low volume exemption under section 502(c). Therefore, in considering whether MAI is eligible for a low volume exemption, the agency must count all of the cars manufactured by Maserati worldwide, and not merely those imported into the U.S. by MAI.

NHTSA notes that, in considering whether a petitioning manufacturer is eligible for a low volume exemption, there is also an issue of whether cars manufactured by other manufacturers within the same control relationship as the petitioner should be counted toward the 10,000 car limitation. Section 503(c) provides that "(a)ny reference in this part to automobiles manufactured by a manufacturer shall be deemed * * * to include all automobiles manufactured by persons who control, are controlled by, or are under common control with, such manufacturer * * *" Thus, under section 503(c), the automobiles produced by all manufacturers within a control relationship are placed into one fleet for purposes of compliance with fuel economy standards. The agency addressed this issue of manufacturer eligibility in a notice published in the **Federal Register** (55 FR 38822) on September 21, 1990, in connection with

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MAI's petition also indicated that Fiat owns 49 percent of Maserati, as of January 1, 1990.

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NHTSA notes that, in considering whether a petitioning manufacturer is eligible for a low volume exemption, there is also an issue of whether cars manufactured by other manufacturers within the same control relationship as the petitioner should be counted toward the 10,000 car limitation. Section 503(c) provides that "(a)ny reference in this part to automobiles manufactured by a manufacturer shall be deemed * * * to include all automobiles manufactured by persons who control, are controlled by, or are under common control with, such manufacturer * * *" Thus, under section 503(c), the automobiles produced by all manufacturers within a control relationship are placed into one fleet for purposes of compliance with fuel economy standards. The agency addressed this issue of manufacturer eligibility in a notice published in the **Federal Register** (55 FR 38822) on September 21, 1990, in connection with

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low volume petitions submitted by Ferrari. The agency tentatively concluded that all cars produced worldwide by all manufacturers within the same control relationship as the petitioning manufacturer should be counted for purposes of low volume exemption eligibility.

In analyzing how this issue affects Maserati/MAI, there is a factual issue of whether Fiat "controls" Maserati, within the meaning of section 503(c) of the Act. If Maserati were considered to be controlled by Fiat, it would clearly be ineligible for a low volume exemption (under the agency's tentative interpretation), since Fiat manufactures far more than 10,000 automobiles each year.

In a letter dated January 16, 1990, Lance R. Tunick, Esq., on behalf of MAI, argued that Fiat does not control Maserati. He noted that while Fiat owns 49 percent of Maserati, another corporation, unrelated to Fiat, owns 51 percent.

NHTSA believes that the issue of whether Fiat controls Maserati should be addressed in the context of the purpose of section 503(c) (i.e., grouping together vehicles produced by related manufacturers) and the overall statutory scheme. Where a company owns 51 percent of a manufacturer and another company owns 49 percent, the 51 percent owner clearly controls the manufacturer. There is an issue of whether the 49 percent owner might also be considered to control the manufacturer. NHTSA notes that if two unrelated manufacturers were deemed to control a third manufacturer under section 503(c), that section could be read as requiring the automobiles of all three manufacturers to be placed into one fleet. The agency believes that such a result would clearly be inconsistent with the statutory scheme, since the fleets of two unrelated major manufacturers could be combined simply as a result of sponsoring a joint venture. Therefore, NHTSA does not believe that a manufacturer should be considered to be controlled by more than one manufacturer under section 503(c), except in a vertical control relationship (such as where manufacturer A controls manufacturer B which controls manufacturer C).

NHTSA therefore agrees with MAI that if one company owns 51 percent of a manufacturer and another, unrelated company has a 49 percent share, the company which owns 51 percent has a controlling interest, for purposes of section 503(c), and the company which owns 49 percent does not control the manufacturer. Thus, Maserati's cars would not be combined (under the agency's tentative interpretation) with those of Fiat for purposes of determining eligibility for a low volume exemption.

There remains the issue of how many cars Maserati itself should be considered to manufacture for purposes of determining section 502(c) eligibility. As discussed below, NHTSA has tentatively concluded that all cars manufactured by Maserati should be counted, including those which it assembles for Innocenti and Fiat. Under this approach, Maserati is not eligible for a low volume exemption since it manufactures more than 10,000 cars each year.

As indicated above, MAI argued that the Innocenti and Fiat automobiles assembled by Maserati should not be counted toward the 10,000 car limitation since (1) Maserati is not considered the manufacturer of these automobiles by the Italian government (Innocenti and Fiat are), and (2) none of these automobiles comply with U.S. requirements or are authorized to be imported into the U.S.

NHTSA does not consider these arguments to be persuasive. MAI's second argument is clearly inconsistent with the special definition of "manufacturer" that applies for purposes of section 502(c). In considering manufacturers' worldwide production for purposes of low volume exemption eligibility, the agency necessarily counts cars that are produced for markets other than the U.S. Such cars typically do not meet U.S. requirements and are not authorized by the manufacturer to be imported into the U.S.

With respect to MAI's first point, the agency notes that, for purposes of applying section 502(c), the determination of whether Maserati is considered a manufacturer of the vehicles in question must be decided under the criteria of the Cost Savings Act, and not Italian law. Since Maserati "assembles" the vehicles, it is clearly a manufacturer of the vehicles under the Cost Savings Act.

NHTSA recognizes that a vehicle may have more than one manufacturer. It is possible, for example, that Innocenti and Fiat might also be considered manufacturers of the vehicles as well as Maserati.

The agency notes that, in an interpretation letter dated February 19, 1987 (name of addressee withheld for confidentiality purposes), it concluded that where more than one company can be considered the manufacturer of a vehicle and the issue of which company is manufacturer of the vehicle for CAFE purposes is not resolved by section 503(c) or regulations issued under section 501(8), the manufacturers can determine by agreement which of them will count a vehicle as its own. NHTSA does not, however, believe that this interpretation is relevant to the issue of counting vehicles for purposes of low volume exemption eligibility. For purposes of determining compliance with CAFE standards, it is important that each vehicle be included in only one manufacturer's fleet. However, there is no reason to resolve which manufacturer should include a vehicle in its fleet prior to considering eligibility for a low volume exemption. Moreover, in this case, since the vehicles which might also be considered to be manufactured by Innocenti and Fiat are not imported into the United States, the issue of attribution is irrelevant.

The legislative history of section 502(c) demonstrates that Congress authorized low volume exemptions to provide relief for small manufacturers. For example, the House Report discussed this provision under the heading "small manufacturers." H.R. Rep. No. 94-340, 94th Cong., 1st Sess. 90 (1975). The Conference Report, in describing the Senate version of this provision, described it as providing the Secretary authority to exempt "small (less than 10,000 vehicles per year) manufacturers" from passenger car standards. S. Rep. No. 94-516, 94th Cong., 1st Sess. 151 (1975).

NHTSA does not believe there is any reason to exclude any vehicles manufactured by a manufacturer from consideration for purposes of low volume exemption eligibility. Congress decided to limit eligibility for low volume exemptions to small manufacturers, using the number of vehicles a company manufactures (worldwide) per year as the measure of whether a company is small. Since Congress chose magnitude of annual worldwide production as the test for whether a manufacturer is small, NHTSA believes it is necessary and appropriate to confide all of a manufacturer's production in making that inquiry.

Accordingly, NHTSA believes that its inquiry concerning eligibility is over once it is established that a company manufactures more than 10,000 vehicles. Maserati's petition indicates that, as of model year 1990, it manufactures close to 50,000 vehicles per year.

For the reasons discussed above, this agency tentatively concludes that MAI is not eligible for an exemption for MYs 1992, 1993, 1994, and 1995. NHTSA therefore proposes to deny MAI's petition for exemption from the generally applicable CAFE standard for those years. If Maserati ceases to manufacture vehicles for Innocenti and Fiat, or if there are other changes that affect its eligibility, it may reapply for an exemption.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted. All comments must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receving the comments, the docket supervisor will return the postcard by mail.

Issued on: July 26, 1991.

Stanley R. Scheiner,

Acting Associate Administrator for Rulemaking.

[FR Doc. 91-18073 Filed 7-30-91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular—Public Debt Series—No. 22-91]

Treasury Notes of July 31, 1993, Series AD-1993

July 18, 1991.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $12,500,000,000 of United States securities, designated Treasury Notes of July 31, 1993, Series AD-1993 (CUSIP No. 912827 B6 8), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated July 31, 1991, and will accrue interest from that date, payable on a semiannual basis on January 31, 1992, and each subsequent 6 months on July 31 and January 31 through the date that the principal becomes payable. They will mature July 31, 1993, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount of $5,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2-86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, Tuesday, July 23, 1991, prior to 12 noon, Eastern Daylight Saving time, for noncompetitive tenders and prior to 10 p.m., Eastern Daylight Saving time, for competitive tenders. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, July 22, 1991, and received no later than Wednesday, July 31, 1991.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue being auctioned prior to the designated closing time for receipt of competitive tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to

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3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue being auctioned prior to the designated closing time for receipt of competitive tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to

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submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of competitive tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Wednesday, July 31, 1991. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Monday, July 29, 1991.

When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 91–18138 Filed 7–26–91; 3:22 pm]

BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 23–91]

Treasury Notes of July 31, 1996, Series R–1996

July 18, 1991.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,250,000,000 of United States securities, designated Treasury Notes of July 31, 1996, Series R–1996 (CUSIP No. 912827 B7 6), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated July 31, 1991, and will accrue interest from that date, payable on a semiannual basis on January 31, 1992, and each subsequent 6 months on July 31 and January 31 through the date that the principal becomes payable. They will mature July 31, 1996, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount of $1,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2–86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500, Wednesday, July 24, 1991, prior to 12 noon, Eastern Daylight Saving time, for noncompetitive tenders and prior to 1 p.m., Eastern Daylight Saving time, for competitive tenders. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, July 23, 1991, and received no later than Wednesday, July 31, 1991.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue being auctioned prior to the designated closing time for receipt of competitive tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of competitive tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Wednesday, July 31, 1991. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the

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3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

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order of the institution to which the tender was submitted, which must be received from institutional investors no later than Monday, July 29, 1991.

When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 91-18139 Filed 7-26-91; 3:22 pm]

BILLING CODE 4810-40-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "Resplendence of the Spanish Monarchy: Renaissance Tapestries and Armor" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the temporary exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art, New York, New York, beginning on or about October 11, 1991, to on or about January 5, 1992, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: July 26, 1991.

Alberto J. Mora,

General Counsel.

[FR Doc. 91-18211 Filed 7-30-91; 8:45 am]

BILLING CODE 8230-01-M

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[1] A copy of this list may be obtained by contacting Ms. Lorie J. Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202/619-6975, and the address is U.S. Information Agency, 301 Fourth Street SW., room 700, Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 56, No. 147
Wednesday, July 31, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

RURAL TELEPHONE BANK

Board of Directors Meeting

DEPARTMENT OF AGRICULTURE

ACTION: Regular Meeting of the Board of Directors.

TIME AND DATE: 1 p.m., Wednesday, August 7, 1991.

PLACE: Room 212 E-Administration Building, U.S. Department of Agriculture, 14th and Independence Avenue, SW, Washington, DC 20250.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Blaine D. Stockton, Jr., Assistant Secretary, Rural Telephone Bank (202) 382–9552.

Agenda

I. Call to Order.
II. Approving Minutes of the May 1 and 2, 1991, RTB Board meeting.
III. Loans Approved in Third Quarter FY 1991.
IV. Financial Statements for Third Quarter FY 1991.
V. Requests for Waiver of Prepayment Premiums.
VI. Sunshine Act—Final Rule.
VII. Election of RTB Board Members.
  a. Requirement for Election Before November 1992.
  b. Proposed resolution to Amend Date for Election.
VIII. Prepayment Premium—Clarification of the Statutory Requirements.
IX. Federal Credit Reform Update.
X. Committee on Privatization—Formation of Committee to Consider Issues Involved in Privatizing the RTB.
XI. Tabled Resolution from the February 7, 1991, RTB Board Meeting Concerning Processing of RTB Loans.
XII. Date and Location of Next RTB Board Meeting.
XIII. Adjournment.

Dated: July 26, 1991.

Blaine D. Stockton, Jr.,

Assistant Secretary, Rural Telephone Bank.

[FR Doc. 91–18208 Filed 7–31–91; 2:27 pm]

BILLING CODE 3410–15–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, August 2, 1991.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91–18323 Filed 7–29–91; 3:22 p.m.]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, August 9, 1991.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91–18324 Filed 7–29–91; 3:22 p.m.]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRAINING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, August 16, 1991.

PLACE: 2033 K St. NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91–18325 Filed 7–29–91; 3:22 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, August 23, 1991.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission..

[FR Doc. 91–18326 Filed 7–29–91; 3:22 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, August 30, 1991.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91–18327 Filed 7–29–91; 3:22 p.m.]

BILLING CODE 6351-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, August 5, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 26, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–18210 Filed 7–26–91; 4:49 pm]

BILLING CODE 6210-01-M

UNITED STATES NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Executive Committee Meeting

DATE AND TIME: August 29 and 30, 1991
9:00 to 5:00 p.m.
9:00 to 4:00 p.m.

PLACE: Canterbury Hotel, 1733 N Street, N.W., Washington, D.C. 20036.

STATUS: Open.

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Federal Register

Vol. 56, No. 147

Wednesday, July 31, 1991

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, August 30, 1991.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 91–18327 Filed 7–29–91; 3:22 p.m.]

BILLING CODE 6351-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, August 5, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 26, 1991.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 91–18210 Filed 7–26–91; 4:49 pm]

BILLING CODE 6210-01-M

UNITED STATES NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Executive Committee Meeting

DATE AND TIME: August 29 and 30, 1991
9:00 to 5:00 p.m.
9:00 to 4:00 p.m.

PLACE: Canterbury Hotel, 1733 N Street, N.W., Washington, D.C. 20036.

STATUS: Open.

MATTERS TO BE DISCUSSED:
Recap of White House Conference
Discussion of Conference Recommendations and Implementation Process
Report, Committee on Library and Information Services for Native Americans
FY 1992 Budget and Technical Amendments
NCLIS Old Business
NCLIS New Business

Special provisions will be made for handicapped individuals by calling Barbara Whiteleather (202) 254–3100, no later than one week in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Barbara Whiteleather, NCLIS, Suite 310, 1111 18th Street, N.W., Washington, D.C. 20036. (202) 254–3100.

Dated: July 26, 1991.

Peter R. Young,
NCLIS Executive Director.

[FR Doc. 91–18270 Filed 7–29–91; 2:14 p.m.]

BILLING CODE 7527-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of July 29, August 5, 12, and 19, 1991.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of July 29

Tuesday, July 30

8:45 a.m.
Consideration of Commission's Options in Yankee Rowe Matters (Closed—Ex. 10)
10:00 a.m.
Briefing on International Nuclear Reactor Safety (Closed—Ex. 1)

Wednesday, July 31

1:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Commission Decision Regarding Yankee Rowe Reactor Vessel (Tentative)

Thursday, August 1

4:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of August 5—Tentative

Monday, August 5

10:00 a.m.
Briefing on AEOD Programs (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
3:00 p.m.
Discussion of Pending Investigations (Closed—Ex. 5 & 7)

Week of August 12—Tentative

Friday, August 16

10:00 a.m.
Briefing on Uncertainties in Implementing the EPA HLW Standards (Public Meeting)
11:30 a.m.
Affirmation/Discussion on Vote (Public Meeting) (if needed)

Week of August 19—Tentative

Wednesday, August 21

10:00 a.m.
Briefing by NUMARC on Program for Inspections, Tests, Analyses, and Criteria (ITAAC) for Advanced Reactors (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
2:00 p.m.
Briefing by NRC Staff on International Programs (Public Meeting)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings Call (Recording)—(301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

July 26, 1991.

William M. Hill, Jr.,
Office of the Secretary.

[FR Doc. 91–18277 Filed 7–29–91; 215 p.m.]

BILLING CODE 7590-01-M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Close Meeting

By telephone vote on July 26, 1991, a majority of the members contacted and voting, the Board of Governors voted to add to the agenda of its meeting closed to public observation on August 8, 1991, in Washington, DC, consideration of 1) a filing with the Postal Rate Commission for a walk sequence discount for third-class mail and 2) the Postal Rate Commission's Decision in Docket No. R90–1.

The meeting is expected to be attended by the following persons: Governors Alvarado, Daniels, del Junco, Griesemer, Hall, Mackie, Nevin, Pace and Setrakian; Postmaster General Frank; Deputy Postmaster General Coughlin; Secretary for the Board Harris; and General Counsel Hughes.

The Board determined that, pursuant to section 552b(c)(3) of title 5, United States Code, and section 7.3(c) of title 39, Code of Federal Regulations, the discussion of these matters is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 522b(b)], because it is likely to disclose information in connection with proceedings under Chapter 36 of title 39, United States Code (having to do with postal ratemaking, mail classification and changes in postal services), which is specifically exempted from disclosure by section 410(c)(4) of title 39, United States Code.

The Board determined further that pursuant to section 522(c)(10) of title 5, United States Code, and section 7.3(j) of title 39, Code of Federal Regulations, these discussions are exempt because they are likely to specifically concern participation of the Postal Service in civil actions or proceedings involving a determination on the record after an opportunity for hearing. The Board further determined that the public interest does not require that the Board's discussion of the matters be open to the public.

In accordance with section 552b(f)(1) of title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation, pursuant to section 552b(c)(3) and (10) of title 5, United States Code; and section 7.3 (c) and (j) of title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary for the Board, David F. Harris, at (202) 268–4800.

David F. Harris,
Secretary.

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Wednesday
July 31, 1991

Part II

Department of Defense

48 CFR Chapter 2

Defense Federal Acquisition Regulations; Revision of Chapter; Final Rules and Interim Rules

DEPARTMENT OF DEFENSE

48 CFR Chapter 2

Department of Defense Acquisition Regulations; Defense Federal Acquisition Regulation Supplement

AGENCY: Department of Defense (DoD).

ACTION: Final rules and interim rules.

SUMMARY: The Secretary of Defense's July 1989 Defense Management Report to the President concluded that much of the stifling burden of Department of Defense (DoD) regulatory guidance, including the Defense Federal Acquisition Regulation Supplement (DFARS), was self-imposed. As a result, the DoD formed a Regulatory Relief Task Force to review DFARS and lower level supplements and recommend revisions. Subsequently, the Defense Acquisition Regulations System, under the direction of the Director of Defense Procurement, conducted an in-depth analysis of DFARS to: Eliminate text and clauses that were unnecessary (e.g., duplicated FAR or other directives, added no value, etc.); eliminate or modify, where possible, thresholds, certifications, approval levels, and other regulatory burdens on contracting officers and contractors; and ultimately rewrite the remaining text and clauses in plain English. The 1991 edition of DFARS is the product of these efforts. It replaces the 1988 edition, including all appendices and supplements.

DATES: *Effective Date:* December 31, 1991. For discussion on Interim Rules, see Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Lucile Hughes (703) 697–7266, Defense Acquisition Regulations System, OUSD(A), Pentagon, Washington, DC 20301–3000.

SUPPLEMENTARY INFORMATION:

A. Background

The rewritten DFARS was published in the **Federal Register** as a proposed rule in four increments. The first increment was published August 14, 1990 (55 FR 33218); the second increment, September 28, 1990 (55 FR 39788); the third increment, October 31, 1990 (55 FR 45904); and the fourth increment, February 14, 1991 (56 FR 6056). Comments were received from a multitude of interested parties, including individuals, industry associations, business concerns, DoD organizations, other Federal agencies, and representatives of the Canadian government. A total of 265 letters offering comments were received on the four increments. All comments were considered in developing this final rule.

The 1991 edition includes some interim rules which were all published independently and separately from the four increments of proposed rules. Unless otherwise stated in the following summaries, these interim rules are not finalized by this notice but are published in their interim form. For example, Part 211, Acquisition and Distribution of Commercial Products, is an interim rule, not yet finalized, which was published for public comment April 23, 1991 (56 FR 18610). Part 211 is published in this notice in its interim version. The 1991 edition will be revised to include the final version of such interim rules as they are finalized.

A summary of the revisions made to the proposed rules as a result of public comments and other changes follows:

Part 201, Federal Acquisition Regulations System. Section 201.301 has been revised as a result of further consideration of the controls necessary to implement section 25(d) of the OFPP Act and to preclude a reemergence of the regulatory burdens eliminated under the DFARS rewrite effort. Section 201.301 requires the Director of Defense Procurement's approval of: class deviations; policies, procedures, clauses, and forms which have a significant impact on the public; individual deviations in certain categories; and department/agency plans for control of all clauses other than those prescribed by FAR or DFARS. Section 201.303 has been modified slightly to clarify the DFARS numbering explanation. All references in part 201, and throughout DFARS, to the Deputy Assistant Secretary of Defense (Procurement) have been changed to the Director of Defense Procurement. Subpart 201.6 has been modified to add a requirement for the contracting officer representative to maintain a file on each contract assigned.

Part 202, Definitions of Words and Terms. The definition of "contracting activities" has been revised and updated. A definition of "departments and agencies" has been added. The definition of "Department of Defense" has been revised. Definitions of "executive agency" and "head of the agency" have been added. A definition of "senior procurement executive" has been substituted for "senior acquisition executive" and revised.

Part 203, Improper Business Practices and Personal Conflicts of Interest. A reference to DoD Directive 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities, has been added to various reporting requirements in this part. Subpart 203.1 has been revised to reflect the prohibition suspensions imposed by section 507 of the Ethics Reform Act of 1989 and section 815 of the fiscal 1991 DoD Authorization Act. Subpart 203.5 and the clause at 252.203–7001 have been revised to limit the 10 U.S.C. 2408 prohibition on employment of convicted felons to prime contractors and first-tier subcontractors. A definition of "negotiation" has been added to the clause at 252.203–7000.

Part 204, Administrative Matters. Most of subpart 204.4, Safeguarding Classified Information Within Industry, has been moved to subpart 239.74. The clause at 252.204–7000, Telecommunications Security Equipment, Devices, Techniques, and Services, has been moved to 252.239–7016. A number of minor editorial and technical changes have been made throughout the part and part 253.

Part 205, Publicizing Contract Actions. Section 205.303 has been revised to clarify the requirements for public announcement of contract awards.

Part 206, Competition Requirements. Limitations on use of the authority at FAR 6.302–4, International agreement, for other than full and open competition have been added at 206.302–4(c), as a result of section 817 of the FY 1990 Defense Authorization Act. Section 206.304, amending the J&A approval level for contract actions over $10 million, has been added as a result of section 818 of the FY 1990 Defense Authorization Act.

Part 207, Acquisition Planning. Section 207.103 has been revised to clarify when written acquisition plans are required. Subpart 207.3 has been deleted because the subject matter is adequately covered in the FAR, and in DoDD 4100.5 and DoDI 4100.33.

Part 208, Required Sources of Supplies and Services. Subpart 208.3, Acquisition of Utility Services, has been moved to part 241. Unusual and compelling urgency has been added at 208.7003–1(a) as an exception to acquisition from the integrated material management manager. Subsection 208.7004–10 has been added to clarify the handling of the administrative costs of coordinated acquisition. The definition at 208.7201 of "planned producer" has been revised. A list of the existing authorities for industrial planning actions has been added at 208.7203. Palladium sponge has been added to the list of refined precious metals at 208.7304.

Part 209, Contractor Qualifications. Factors for consideration by the debarring official in a debarment decision have been deleted as they are being moved to FAR. The clause at 252.209–7001, Disclosure of Ownership

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or Control by a Foreign Government that Supports Terrorism, has been revised to add Iraq and North Korea and delete South Yemen from the list of countries that must be disclosed. The clause at 252.209–7000, Acquisition from Subcontractors Subject to On-Site Inspection Under the Intermediate-Range Nuclear Forces (INF) Treaty, has been revised to apply also to subcontractors subject to on-site inspection under a treaty similar to INF.

Part 210, Specifications, Standards, and Other Purchase Descriptions. Section 210.002 has been revised by deleting guidance on acquisition streamlining that duplicates information contained in DoDI 5000.2.

Part 211, Acquisition and Distribution of Commercial Products. This part is an interim rule, published in the **Federal Register** on April 23, 1991 (56 FR 18610). This part was not published in any of the four proposed rule increments but is included in the 1991 DFARS edition in its interim form.

Part 212, Contract Delivery or Performance. Subpart 212.1, Delivery or Performance Schedules, has been deleted as unnecessary. Other minor revisions have been made for technical and editorial clarity.

Part 213, Small Purchase and Other Simplified Purchase Procedures. Subpart 213.1, General, has been deleted as unnecessary. Other minor revisions have been made for technical and editorial clarity.

Part 214, Sealed Bidding. No significant revisions.

Part 215, Contracting by Negotiation. References to $100,000 in the text and in the clause at 252.215–7000, Pricing Adjustments, have been deleted since the threshold for cost or pricing data has been increased to $500,000. The requirement for field pricing reports for fixed price proposals exceeding $250,000 from offerors with significant estimating system deficiencies has been deleted due to the increase in the threshold for cost or pricing data. Industrial Modernization Incentive Program coverage has been updated for consistency with the DoD Directive and Guide. Language on estimated data prices, currently in DFARS but deleted in the proposed rule, has been restored. Section 215.1003 has been deleted as it is covered by FAR 15.1003. Section 215.1001 has been added to emphasize that acquisitions processed under small purchase procedures are exempt from the requirement for preaward notification of unsuccessful offerors. Other minor revisions have been made for technical and editorial clarity. An exception to the contracting officer's authority to make the determinations required by FAR 215.608 has been added.

Part 216, Types of Contracts. A requirement has been added at 216.203–4–70(a) and (b) for approval at a level above the contracting officer to exceed an adjustment of ten percent in the clauses at 252.216–7000, Economic Price Adjustment—Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products, and 252.216–7001, Economic Price Adjustment—Nonstandard Steel Items. Added language at 216.301–3 permitting the contracting officer to execute the required determinations and findings. Removed language at 215.403(c) on use of fixed-price incentive contracts. Section 216.702, Basic agreements, has been deleted because such agreements are rarely used. Other minor revisions have been made for technical and editorial clarity.

Part 217, Special Contracting Methods. Added guidance at 217.401 encouraging use of small disadvantaged business concerns when leader company contracting is being considered. Deleted the Liquidated Damages clause at 252.217–7009, which was to be used in master agreements for repair and alteration of vessels, and replace it with the Default clause in the current DFARS. Revised the prescription for use of the provision at 252.217–7026, Identification of Sources of Supply, to permit use of substantially the same provisions.

Part 219, Small Business and Small Disadvantaged Business Concerns. The threshold at 219.201(c)(9) for small business specialist review of acquisitions was revised from $25,000 to $10,000. The responsibility (219.201(c)(7)) for appointing a small business technical advisor was delegated to the head of a contracting activity. Several small business specialist duties were added at 219.201(d). Reporting requirements were added at 219.202–5. Evaluation preference procedures were revised to clarify applicability to eligible products under the Trade Agreements Act. The form number of the new form required by 219.201(c)(9)(B) has been added and a copy of the form has been included in part 253. Other minor revisions have been made for technical and editorial clarity.

Part 220, Labor Surplus Area Concerns. This part was proposed for deletion and is deleted.

Part 222, Application of Labor Laws to Government Acquisitions. Guidance on the administrative determination process for Contract Work Hour and Safety Standards Act liquidated damages has been added at subpart 222.3. Guidance on application of Davis Bacon Act and Service Contract Act to installation support contracts has been added at 222.402–70. A requirement for head of the contracting activity approval of a contracting officer's certification under FAR 22.608–4(b)(1) has been added at 222.608–4(b). The clause at 252.222–7000, Wage Determination, has been deleted because it was in conflict with Department of Labor regulations.

Part 223, Environment, Conservation, Occupational Safety, and Drug-Free Workplace. A new clause has been added as 252.223–7001, Hazard Warning Labels.

Part 224, Protection of Privacy and Freedom of Information. No significant changes.

Part 225, Foreign Acquisition. Definitions of "domestic concern," "foreign concern," and "nonqualifying country" have been added at 225.000–70. Table 25–1 has been added to provide examples of offer evaluation under the Buy American Act. Subsection 225.802–70 has been revised to require coordination with the contract administration office instead of the overseas commander. Restrictions on acquisition of night vision tubes, carbonyl iron powders, and anchor and mooring chain have been added to subpart 225.70 as a result of new or revised statutory restrictions. Prescriptions for use of some of the clauses have been revised. Numerous other minor revisions have been made for technical and editorial clarity.

Part 226, Other Socioeconomic Programs. No significant changes.

Part 227, Patents, Data, and Copyrights. This part was not published in any of the four proposed rule increments as major revisions are in process under DAR Case 90–438. Part 227 is included in the 1991 DFARS edition without change from the current DFARS edition except for minor numbering changes to conform with the 1991 edition numbering prescription.

Part 228, Bonds and Insurance. The definition of "self-insurance" at 228.001 has been deleted as it is covered by FAR. The policy on use of bid guarantees at 228.101 has been deleted because FAR is clear. Section 228.170 and the provision at 252.228–7004, Bonds or Other Security, have been revised to provide for a time period for return of executed bonds. The clause at 252.228–7002, Aircraft Flight Risks, has been revised to include a new paragraph on the Disputes clause. Guidance on treatment of liability insurance for construction contract subcontractors has been revised at 228.304(2). Section 228.311 has been added to provide the prescriptions for use within DoD of the clause at FAR 52.228–7, Insurance—

Liability to Third Persons, and the provision at FAR 52.228–6, Insurance—Immunity from Tort Liability.

Part 229, Taxes. No significant changes.

Part 230, Cost Accounting Standards. No changes.

Part 231, Contract Cost Principles and Procedures. The prescription for the clause at 252.231–7000, Supplemental Cost Principles, has been moved from subpart 231.70 to 231.100–70 because the clause applies to contracts with noncommercial as well as commercial entities. Subsections 231.205–1 and 231.205–38 have been removed as additional language has been added to FAR. A definition of "proposal" has been added to the clause at 252.231–7001, Penalties for Unallowable Costs. Other minor revisions have been made for technical and editorial clarity.

Part 232, Contract Financing. Undefinitized orders under indefinite delivery contracts were added to the list of contract actions at 232.102–70 for which the contracting officer may establish provisional delivery payments. Language has been added at 232.108 to address contract finance office responsibilities. Information requirements listed at 232.172–2 for financial reviews have been revised. Language on customary progress payments for small disadvantaged businesses has been added at 232.501–1(a) and 232.502–1(b). Language on the proper use of customary flexible progress payments has been added at 232.502–1–71. Other minor revisions have been made for technical and editorial clarity.

Part 233, Protests, Disputes, and Appeals. The prohibition at 233.210 on price adjustments under shipbuilding contracts has been moved to 243.105(a) to clarify that it applies to all price adjustments and not just to disputed changes. Section 233.7000 and the clause at 252.233–7000, Certification of Claims and Requests for Adjustment or Relief, have been revised to clarify the circumstances under which the certification is required and when a certification under the Contract Disputes Act will satisfy the certification requirements of 10 U.S.C. 2410.

Part 234, Major System Acquisition. The clause in the proposed rule at 252.234–7000, Cost/Schedule Control Systems, has been rewritten into a separate provision and a contract clause.

Part 235, Research and Development Contracting. The cost sharing policy language at 235.003 has been deleted as guidance is being added to FAR. Approval requirements at 235.006 for use of fixed price type contracts for development program efforts have been revised. The lists of clauses at 235.015–71(i) to be used in short form research contracts have been updated and revised. The prescription for and clause at 252.235–7000, Distribution of Final Scientific or Technical Report, have been deleted as the clause is being moved to FAR. Other minor revisions have been made in the text and the clauses for technical and editorial clarity.

Part 236, Construction and Architect-Engineer Contracts. A definition of "network analysis system" has been added at 236.102. A solicitation provision was added as 252.236–7008, Contract Prices—Bidding Schedules. Other minor revisions have been made for technical and editorial clarity.

Part 237, Service Contracting. Subpart 237.74, Communications Services, has been moved to subpart 239.74, Telecommunications Services. The clauses prescribed by subpart 237.74 (252.237–7016 through 252.237–7029) have been moved to 252.239–7002 through 252.239–7015. Subpart 237.75, Audit Services, has been moved to 237.203–70. The level of authorization at 237.203(d)(iii) for personal service contracts for contract field services has been changed from Deputy Assistant Secretary of Defense for Procurement to agency heads. Coverage on master agreements, which was added to DFARS by Defense Acquisition Circular 88–18, has been added at 237.270. Other minor revisions have been made for technical and editorial clarity.

Part 239, Acquisition of Information Resources. Subpart 239.74, Telecommunications Services, has been added. It includes language which was moved from subparts 204.4 and 237.74. Subpart 239.74 prescribes use of clauses at 252.239–7002 through 252.239–7015 (moved from 252.237–7016 through 252.237–7029) and the clause at 252.239–7016 (moved from 252.204–7000). The clauses at 252.239–7001, Rights in Privacy Safeguards, and 252.239–7002, Access to Contractor Facilities and Records—Privacy Safeguards Inspection, have been deleted since the FIRMR clause at 201.39.5202–5 adequately serves these purposes. Other minor revisions have been made for technical and editorial clarity.

Part 241, Acquisition of Utility Services. The definition of "dual franchise area" has been changed to "dual service area" and has been revised.

Part 242, Contract Administration. The list of contracts at 242.203(a) which can be retained for contract administration has been revised. One function has been added at 242.302(b) to those functions listed at FAR 42.302(b) which the contract administration office performs only when authorized by the contracting office. Language has been added at 242.705–1(b)(3) to ensure that costs questioned by DCAA auditors are properly resolved and discussed in the negotiation memorandum and that the contractor is notified of any unallowable costs. The threshold at 242.7002–1 for instituting a formal cost monitoring program has been increased from $50 million to $100 million. Language has also been added to permit monitoring, if appropriate, under the $100 million threshold. The disposition instructions at 242.7102 for voluntary refunds have been revised. Other minor revisions have been made for technical and editorial clarity.

Part 243, Contract Modifications. A prohibition on price adjustments under shipbuilding contracts has been added at 243.105. Guidance on definitization of change orders has been added at 243.204(b). Other minor revisions have been made for technical and editorial clarity.

Part 244, Subcontracting Policies and Procedures. No significant changes.

Part 245, Government Property. A definition of "agency peculiar property" has been added for use within DoD. The definition of "industrial plant equipment" has been revised. Section 245.306 on reviews of special tooling has been deleted since a forthcoming property manual will adequately cover this subject. The guidance at 245.403 on rental charges for use of special tooling and special test equipment has been revised. Subsection 245.505–6 has been revised to make it clear that industrial plant equipment must be reported on DD form 1342 when no longer required for the purpose authorized. Subsection 245.603–70 has been revised to allow contractors to withdraw property from inventory schedules and notify the affected screening activities. Instructions on completion of DD Form 1342, DoD Property Record, have been added at 245.606–70. Subsection 245.607–1(a) has been revised to allow contractors to make a single entry on the inventory schedule when a pre-inventory scrap recommendation is made by the plant clearance officer and the inventory is considered without value. Subsection 245.608–4 on limited screening of surplus property has been deleted. Section 245.613 has been revised to require determinations by the plant clearance officer for abandonment or destruction of property. The instructions in subpart 245.71 on use of the DD Form 1149 have been revised to permit its use for shipment of industrial

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plant equipment for donations. Section 245.7302 has been deleted because it is adequately covered elsewhere. Numerous other revisions have been made for technical and editorial clarity.

Part 246, Quality Assurance. Definitions of "metrology," "quality," "quality assurance," "quality audit," and "quality program" have been added at 246.101. The definitions at 246.407 of "critical nonconformance" and "minor nonconformance" have been revised. Other minor revisions have been made for technical and editorial clarity.

Part 247, Transportation. The clause in the proposed rule at 252.247–7003, Changes, has been deleted. The clause in the proposed rule at 252.247–7023, Extent of Transportation of Supplies by Sea, has been broken out into a solicitation provision and two clauses, now numbered 252.247–7022, 252.247–7023, and 252.247–7024.

Part 248, Value Engineering. No significant changes.

Part 249, Termination of Contracts. No significant changes.

Part 250, Extraordinary Contractual Actions. No significant changes.

Part 251, Use of Government Sources by Contractors. Section 251.100 has been deleted as there is no reason to limit application of part 251 to supplies delivered in the United States. Section 251.103 has been deleted as the FAR is being changed to adopt this language. Other minor revisions have been made for technical and editorial clarity.

Part 252, Solicitation Provisions and Contract Clauses. Revisions in provisions and clauses are identified in the discussion of the part which prescribes use of the provision or clause.

Part 253, Forms. Revisions in forms are identified in the discussion of the part which prescribes use of the form.

Part 270, Recovery of Nonrecurring Costs and Royalty Fees on Commercial Sales. Part 270, Acquisition of Computer Resources, has been moved to part 239. Part 271 has been redesignated as part 270. This redesignated part 270 was not published in any of the four proposed rule increments since major revisions are still under active consideration. This part is included in the 1991 DFARS edition substantially as it appears in the current DFARS edition, except for editorial and numbering changes.

Part 271, Recovery of Nonrecurring Costs on Commercial Sales of Defense Products and Technology and of Royalty Fees for Use of DoD Technical Data. Moved in its entirety to part 270.

Appendix A, Armed Services Board of Contract Appeals. Was not published in one of the four proposed rule increments but no change from appendix A to current DFARS.

Appendix B, Coordinated Acquisition Assignments. This is a new appendix. It was published in the third proposed rule increment. No changes.

Appendix C, Contractor Purchasing System Reviews. This is a new appendix which replaces DFARS Supplement Number 1. It was published in the fourth proposed rule increment. C–205.6 has been revised to provide additional guidance on material estimating reviews. Guidance on value analysis has been added as C–205.7. Other minor revisions have been made for technical and editorial clarity.

Appendix D, Component Breakout. This is a new appendix, published in the fourth proposed rule increment. The text of the current appendix D, Notice of Hearing Under Gratuities Clause, has been deleted. There are no changes from the proposed rule.

Appendix E, DoD Spare Parts Breakout Program. This is a new appendix which replaces DFARS Supplement Number 6. It was not published in one of the four proposed rule increments.

Appendix F, Material Inspection and Receiving Report. This is appendix I, which was published in the second proposed rule increment and has been redesignated as appendix F. Minor revisions have been made for technical and editorial clarity.

Appendix G, Activity Address Numbers. This is appendix N, which was not published in one of the four proposed rule increments, but is redesignated as appendix G.

Appendix I, Material Inspection and Receiving Report. Redesignated as appendix F.

Appendix Q, Department of Defense Foreign Tax Relief Program. Proposed for deletion in the first proposed rule increment and is deleted.

Appendix R, Code of Federal Regulations (Title 41, Public Contracts, Property Management). Proposed for deletion in the third proposed rule increment and is deleted.

Appendix T, International Agreements. Proposed for deletion in the fourth proposed rule increment and is deleted.

DAR Supplement Number 1, Contractor Purchasing System Review (CPSR) Program. Deleted. Text moved to appendix C.

ASPR Supplement Number 2, Contract File Maintenance, Closeout, and Disposition. Deleted.

ASPR Supplement Number 3, Property Administration. Deleted.

ASPR Supplement Number 4, Procedures for Submission of Applications to be Placed on Research and Development Bidders Mailing Lists. Deleted.

ASPR Supplement Number 5, Procurement of Utility Services. Deleted. Text moved to DFARS part 241.

DAR Supplement Number 6, DoD Replenishment Parts Breakout Program. Deleted. Text moved to DFARS appendix E.

Armed Services Pricing Manual. Retained without change.

Small Purchase Manual. Deleted by DAC 88–11.

B. Regulatory Flexibility Act

Parts 202–209, 211–214, 216, 222, 224, 227–231, 233, 234, 236, 243, 247–251, 270, 271, the provisions/clauses in part 252 prescribed by these parts, the instructions in part 253 on forms prescribed by these parts, and appendices A through T. These rules do not constitute significant revisions within the meaning of Public Law 98–577; therefore, the Regulatory Flexibility Act does not apply.

Parts 201, 210, 215, 217, 219, 223, 225, 226, 232, 235, 237, 239, 241, 242, 244, 245, 246, the provisions/clauses in part 252 prescribed by these parts, and the instructions in part 253 on forms prescribed by these parts. These rules will not have a significant economic impact on a substantial number of small entities because the basic policies remain unchanged and with few exceptions, the procedural changes are internal agency operating procedures. All comments received in response to publication of the proposed rules were considered in developing these final rules. No comments were received which addressed the Regulatory Flexibility statement.

Part 220 and the clauses in Part 252 prescribed by Part 220. The deletion of part 220 and the clauses in 252.220–7000 and 252.220–7001 was published in the **Federal Register** for public comment on March 22, 1990 (55 FR 10637), as amended April 6, 1990 (55 FR 12870), and subsequently on August 14, 1990 (55 FR 33216). A Regulatory Flexibility Analysis was not performed because we were unable to quantify the economic impact on small entities. No comments were received which addressed the Regulatory Flexibility statements.

C. Paperwork Reduction Act

Parts 201–217, 222–226, 230, 231, 233–235, 237–246, 248–251, 270, 271, the provisions/clauses in part 252 prescribed by these parts, the *instructions in part 253 on forms prescribed by these parts, and appendices A through T.* These rules do not change or impose any record keeping or information collection requirements beyond that for which OMB approval has previously been obtained.

Part 219. The Paperwork Reduction Act applies. We deleted the combined small business-labor surplus areas set-asides (DFARS 219.502–70 and the clauses at 252.219–7001 and 252.219–7002). A reduction of 402 hours was approved for OMB #0704–0218 on August 27, 1990.

Part 220. The deletion of part 220 results in a reduction of 201 hours under OMB control number 0704–0260, which was approved by OMB on August 31, 1990.

Part 229. The clause at 252.229–7000, Fixed-Price, Into-Plane, Fuel Contracts at Overseas Locations was deleted. A reduction of 372 hours was approved under OMB control number 0704–0249 on August 31, 1990.

Part 232. The Paperwork Reduction Act (Pub. L. 96–511) applies because the final rule contains an information collection requirement requiring OMB approval under 44 U.S.C. 3501, *et seq.* OMB granted approval on February 28, 1991, for a 3-year period ending February 28, 1994, under OMB Control Number 0704–0321.

Part 236. OMB Clearance No. 0704–0255 (expires February 28, 1994) is for 660 hours, and applies to the following clauses:

252.236–7002 Obstruction of Navigable Waterways (formerly 252.236–7006, Misplaced Material)
252.236–7003 Payment for Mobilization and Preparatory Work

The following clauses containing paperwork burden were deleted:

252.236–7005 Salvage Materials and Equipment
252.236–7012 Contractor-Prepared Network Analysis System
252.236–7013 Government-Prepared Network Analysis System
252.236–7017 Approved Construction Plant

Paperwork burden hours were reduced from 280,000 to 660.

Part 247. These rules, through elimination of some clauses and reduction of burdensome requirements in one clause, reduce the burden currently approved for this part. A request for clearance to reflect the reduced burden is being processed to OMB for approval.

List of Subjects in 48 CFR Parts 201 through 253, 270 and 271.

Government procurement.

Claudia L. Naugle,
Executive Editor, Defense Acquisition Regulations System.

Adoption of Amendments

Title 48 of the Code of Federal Regulations, chapter 2, is revised to read as follows:

CHAPTER 2—DEPARTMENT OF DEFENSE

Subchapter A—General

Part
201 Federal Acquisition Regulations System
202 Definitions of words and terms
203 Improper business practices and personal conflicts of interest
204 Administrative matters

Subchapter B—Acquisition Planning

205 Publicizing contract actions
206 Competition requirements
207 Acquisition planning
208 Required sources of supplies and services
209 Contractor qualifications
210 Specifications, standards, and other purchase descriptions
211 Acquisition and distribution of commercial products
212 Contract delivery or performance

Subchapter C—Contracting Methods and Contract Types

213 Small purchase and other simplified purchase procedures
214 Sealed bidding
215 Contracting by negotiation
216 Types of contracts
217 Special contracting methods

Subchapter D—Socioeconomic Programs

219 Small business and small disadvantaged business concerns
222 Application of labor laws to government acquisitions
223 Environment, conservation, occupational safety, and drug-free workplace
224 Protection of privacy and freedom of information
225 Foreign acquisition
226 Other socioeconomic programs

Subchapter E—General Contracting Requirements

227 Patents, data, and copyrights
228 Bonds and insurance
229 Taxes
230 Cost accounting standards
231 Contract cost principles and procedures
232 Contract financing
233 Protests, disputes, and appeals

Subchapter F—Special Categories of Contracting

234 Major system acquisition
235 Research and development contracting
236 Construction and architect-engineer contracts
237 Service contracting
239 Acquisition of information resources

Part
241 Acquisition of utility services

Subchapter G—Contract Management

242 Contract administration
243 Contract modifications
244 Subcontracting policies and procedures
245 Government property
246 Quality assurance
247 Transportation
248 Value engineering
249 Termination of contracts
250 Extraordinary contractual actions
251 Use of government sources by contractors

Subchapter H—Clauses and Forms

252 Solicitation Provisions and Contract Clauses
253 Forms

Subchapter I—Agency Supplementary Regulations

270 Recovery of Nonrecurring Costs and Royalty Fees on Commercial Sales

Appendix A—Armed Services Board of Contract Appeals

Appendix B—Coordinated Acquisition Assignments

Appendix C—Contractor Purchasing System Reviews

Appendix D—Component Breakout

Appendix E—DoD Spare Parts Breakout Program

Appendix F—Material Inspection and Receiving Report

Appendix G—Activity Address Numbers

Note: Although the text of Manuals and Supplements to the Defense FAR Supplement are not published in the Code of Federal Regulations, they were listed for the convenience of the user. All of the Supplements have been deleted. The only manuals which remain in effect are: Armed Services Pricing Manual (1986) and Armed Services Pricing Manual, Volume 2, Price Analysis (1987).

SUBCHAPTER A—GENERAL

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

Sec.

Subpart 201.1—Purpose, Authority, Issuance

201.103 Applicability.
201.104 Issuance.
201.104–3 Copies.

Subpart 201.2—Administration

201.201 Maintenance of the FAR.
201.201–1 The two councils.

Subpart 201.3—Agency Acquisition Regulations

201.301 Policy.
201.303 Publication and codification.
201.304 Agency control and compliance procedures.

48 CFR Parts 201
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Part
241 Acquisition of utility services

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242 Contract administration
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Appendix A—Armed Services Board of Contract Appeals

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Appendix E—DoD Spare Parts Breakout Program

Appendix F—Material Inspection and Receiving Report

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Note: Although the text of Manuals and Supplements to the Defense FAR Supplement are not published in the Code of Federal Regulations, they were listed for the convenience of the user. All of the Supplements have been deleted. The only manuals which remain in effect are: Armed Services Pricing Manual (1986) and Armed Services Pricing Manual, Volume 2, Price Analysis (1987).

SUBCHAPTER A—GENERAL

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

Sec.

Subpart 201.1—Purpose, Authority, Issuance

201.103 Applicability.
201.104 Issuance.
201.104–3 Copies.

Subpart 201.2—Administration

201.201 Maintenance of the FAR.
201.201–1 The two councils.

Subpart 201.3—Agency Acquisition Regulations

201.301 Policy.
201.303 Publication and codification.
201.304 Agency control and compliance procedures.

Subpart 201.4—Deviations from the FAR

201.402 Policy.
201.403 Individual deviations.
201.404 Class deviations.

Subpart 201.6—Contracting Authority and Responsibilities

201.602 Contracting officers.
201.602–2 Responsibilities.
201.602–70 Contract clause.
201.603 Selection, appointment, and termination of appointment.
201.603–3 Appointment.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 201.1—Purpose, Authority, Issuance

201.103 Applicability.

The FAR and the Defense Federal Acquisition Regulation Supplement (DFARS) also apply to purchases and contracts by DoD contracting activities made in support of foreign military sales or North Atlantic Treaty Organization cooperative projects without regard to the nature or sources of funds obligated, unless otherwise specified in this regulation.

201.104 Issuance.

201.104–3 Copies.

Copies of the DFARS in loose-leaf and CFR form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325. Purchase of a copy of DFARS includes a subscription for Defense Acquisition Circulars.

Subpart 201.2—Administration

201.201 Maintenance of the FAR.

201.201–1 The two councils.

(c) The composition and operation of the DAR Council is prescribed in DoD Directive 5000.35, Defense Acquisition Regulatory System.

(d)(i) Departments and agencies process proposed revisions of FAR or DFARS through channels to the Director of the DAR Council. Process the proposed revision as a memorandum in the following format, addressed to the Director, DAR Council, OUSD(A), Pentagon, Washington, DC 20301–3000; datafax (703) 697–9845:

I. Problem: Succinctly state the problem created by current FAR and/or DFARS coverage and describe the factual and/or legal reasons necessitating regulatory change.

II. Recommendation: Identify the FAR and/or DFARS citations to be revised. Attach as TAB A a copy of the text of the existing coverage, conformed to include the proposed additions and deletions. Indicate deleted coverage with dashed lines through the current words being deleted and insert proposed language in brackets at the appropriate locations within the existing coverage. If the proposed deleted portion is extensive, it may be outlined by lines forming a box with diagonal lines drawn connecting the corners.

III. Discussion: Include a complete, convincing explanation of why the change is necessary and how the recommended revision will solve the problem. Address advantages and disadvantages of the proposed revision, as well as any cost or administrative impact on Government activities and contractors. Provide any other background information that would be helpful in explaining the issue.

IV. Collaterals: Address the need for public comment (FAR 1.301(b) and subpart 1.5), the Paperwork Reduction Act, and the Regulatory Flexibility Act (FAR 1.301(c)).

V. Deviations: If a recommended revision of DFARS is a FAR deviation, identify the deviation and include under separate TAB a justification for the deviation, which addresses the requirements of 201.402(3). The justification should be in the form of a memorandum for the USD(A)DP.

(ii) The public may offer proposed revisions of FAR or DFARS by submission of a memorandum, in the format (including all of the information) prescribed in paragraph (d)(i) of this subsection, to the Director of the DAR Council.

Subpart 201.3—Agency Acquisition Regulations

201.301 Policy.

(a) DoD implementation and supplementation of the FAR is issued in the Defense Federal Acquisition Regulation Supplement (DFARS) under authorization and subject to the authority, direction, and control of the Secretary of Defense.

(b) When **Federal Register** publication is required for any policy, procedure, clause, or form, the department or agency requesting USD(A) approval for use of the policy, procedure, clause, or form (see 201.304(1)) must include an analysis of the public comments in the request for approval.

201.303 Publication and codification.

(a)(i) The DFARS is codified under chapter 2 in title 48, Code of Federal Regulations.

(ii) To the extent possible, all DFARS text (whether implemental or supplemental) is numbered as if it were implemental. Supplemental numbering is used only when the text cannot be integrated intelligibly with its FAR counterpart.

(A) Implemental numbering is the same as its FAR counterpart, except when the text exceeds one paragraph, the subdivisions are numbered by skipping a unit in the FAR 1.104–2(b)(2) prescribed numbering sequence. For example, three paragraphs implementing FAR 19.501 would be numbered 219.501 (1), (2), and (3) rather than (a), (b), and (c). Three paragraphs implementing FAR 19.501(a) would be numbered 219.501(a) (i), (ii), and (iii) rather than (a) (1), (2), and (3). Further subdivision of the paragraphs follows the prescribed numbering sequence, e.g., 219.501(1)(i)(A)(*1*)(*i*).

(B) Supplemental numbering is the same as its FAR counterpart, with the addition of a number of 70 and up or (S–70) and up. Parts, subparts, sections, or subsections are supplemented by the addition of a number of 70 and up. Lower divisions are supplemented by the addition of a number of (S–70) and up. When text exceeds one paragraph, the subdivisions are numbered using the FAR 1.104–2(b)(2) prescribed sequence, without skipping a unit. For example, DFARS text supplementing FAR 19.501 would be numbered 219.501–70. Its subdivisions would be numbered 219.501–70 (a), (b), and (c).

(C) Subdivision numbering below the 4th level does not repeat the numbering sequence. It uses italicized Arabic numbers and then italicized lower case Roman numerals.

(D) An example of DFARS numbering is in Table 1–1, DFARS Numbering.

(iii) Department/agency and component supplements must parallel the FAR and DFARS numbering, except department/agency supplemental numbering uses subsection numbering of 90 and up, instead of 70 and up.

TABLE 1–1— DFARS NUMBERING

FAR	Is implemented as	Is supplemented as
19	219	219.70
19.5	219.5	219.570
19.501	219.501	219.501–70
19.501–1	219.501–1	219.501–1–70
19.501–1(a)	219.501–1(a)	219.501–1(a)(S–70)
19.501–1(a)(1)	219.501–1(a)(1)	219.501–1(a)(1)(S–70)

201.304 Agency control and compliance procedures.

Departments/agencies and their component organizations may issue acquisition regulations as necessary to implement or supplement the FAR or DFARS.

(1) Approval of the USD(A) is required, before inclusion in a department/agency or component supplement or any other contracting regulatory document such as a policy letter, or clause book, of any policy, procedure, clause, or form which—

(i) Has a significant effect beyond the internal operating procedures of the agency; or

(ii) Has a significant cost or administrative impact on contractors or offerors.

(2) The USD(A) has delegated authority to the USD(A)DP to approve or disapprove the policies, procedures, clauses, and forms subject to paragraph (1) of this section.

(3) Approval of USD(A)DP is required for any class deviation (as defined in FAR subpart 1.4) from the FAR or DFARS, before its inclusion in a department/agency or component supplement or any other contracting regulatory document such as a policy letter or clause book.

(4) Each department and agency shall develop and, upon approval by USD(A)DP, implement, maintain, and comply with a plan for controlling the use of clauses other than those prescribed by FAR or DFARS.

(5) Departments/agencies submit requests for the USD(A) and USD(A)DP approvals required by this section through the Director of the DAR Council.

(6) Revisions to the DFARS are issued through Defense Acquisition Circulars or Departmental Letters.

(i) Defense Acquisition Circulars—

(A) Are issued on a quarterly basis to all recipients of the DFARS.

(B) Are published in the **Federal Register**.

(C) Include, in addition to DFARS revisions, policies, directives, and informational items.

(D) Include the effective dates for use of the revisions, policies, or directives. The effective date means the date on which the revisions, policies, or directives must be applied. Unless stated otherwise in the circular, any new or revised clauses, provisions, or forms must be included in solicitations issued on or after that date.

(ii) Departmental Letters—

(A) Are issued as necessary to the departments and agencies when time is of essence in disseminating a revision, policy, or directive.

(B) Are effective until the revision, policy, or directive is superseded by publication of the material in a Federal Acquisition Circular, Defense Acquisition Circular, or other directive or is specifically withdrawn.

Subpart 201.4—Deviations from the FAR

201.402 Policy.

(1) The Director of Defense Procurement, Office of the Under Secretary of Defense for Acquisition, USD(A)DP, is the approval authority within the DoD for—

(i) Any individual deviation from—

(A) FAR/DFARS Section 3.104, Procurement integrity;

(B) FAR/DFARS Subpart 27.4, Rights in Data and Copyrights;

(C) FAR/DFARS Subpart 31.1, Applicability (contract cost principles);

(D) FAR/DFARS Subpart 31.2, Contracts with Commercial Organizations; or

(E) FAR/DFARS Part 32, Contract Financing (except 32.7, 32.8, and the payment clauses prescribed by 32.1).

(ii) Any class deviation.

(2) Individual deviations, other than those in paragraph (1)(i) of this section, must be approved in accordance with the department/agency plan prescribed by 201.304(4).

(3) Submit requests for deviation approval through department/agency channels to the approval authority in paragraphs (1) or (2), as appropriate. Submit deviations which require USD(A)DP approval through the Director of the DAR Council. At a minimum, each request must—

(i) Identify the department/agency, and component if applicable, requesting the deviation;

(ii) Identify the FAR or DFARS citation from which a deviation is needed, state what is required by that citation, and indicate whether an individual or class deviation is requested;

(iii) Describe the deviation and indicate which of paragraphs (a) through (f) of FAR 1.401 best categorizes the deviation.

(iv) State whether the deviation will have a significant effect beyond the internal operating procedures of the agency and/or a significant cost or administrative impact on contractors or offerors, and give reasons to support the statement;

(v) State the period of time for which the deviation is required;

(vi) State whether approval for the same deviation has been received previously, and if so, when;

(vii) State whether the proposed deviation was published (see FAR subpart 1.5 for publication requirements) in the **Federal Register** and provide analysis of comments;

(viii) State whether the request for deviation has been reviewed by legal counsel, and if so, state results; and

(ix) Give detailed rationale for the request. State what problem or situation will be avoided, corrected, or improved if request is approved.

201.403 Individual deviations.

See approval requirements in 201.402.

201.404 Class deviations.

See approval requirements in 201.402.

Subpart 201.6—Contracting Authority and Responsibilities

201.602 Contracting officers.

201.602-2 Responsibilities.

Contracting officers may designate qualified personnel as their authorized representatives to assist in the technical monitoring or administration of a contract. A contracting officer's representative (COR)—

(1) Must be a Government employee, unless otherwise authorized in agency regulations.

(2) Must be qualified by training and experience commensurate with the responsibilities to be delegated in accordance with department/agency guidelines.

(3) May not be delegated responsibility to perform functions at a contractor's location that have been delegated under FAR 42.202(a) to a contract administration office.

(4) May not be delegated authority to make any commitments or changes that affect price, quality, quantity, delivery, or other terms and conditions of the contract.

(5) Must be designated in writing, and a copy furnished the contractor and the contract administration office,—

(i) Specifying the extent of the COR's authority to act on behalf of the contracting officer;

(ii) Identifying the limitations on the COR's authority;

(iii) Specifying the period covered by the designation;

(iv) Stating the authority is not redelegable; and

(v) Stating that the COR may be personally liable for unauthorized acts.

(6) Must maintain a file for each contract assigned. This file must include, as a minimum—

(i) A copy of the contracting officer's letter of designation and other documentation describing the COR's duties and responsibilities; and

(ii) Documentation of actions taken in accordance with the delegation of authority.

201.602-70 Contract clause.

Use the clause at 252.201-7000, Contracting Officer's Representative, in solicitations and contracts when appointment of a contracting officer's representative is anticipated.

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201.404 Class deviations.

See approval requirements in 201.402.

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201.602-70 Contract clause.

Use the clause at 252.201-7000, Contracting Officer's Representative, in solicitations and contracts when appointment of a contracting officer's representative is anticipated.

201.603 Selection, appointment, and termination of appointment.

201.603-3 Appointment.

Certificates of Appointment executed under the Armed Services Procurement Regulation or the Defense Acquisition Regulation have the same effect as if they had been issued under FAR.

PART 202—DEFINITIONS OF WORDS AND TERMS

Sec.

Subpart 202.1—Definitions

202.101 Definitions.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 202.1—Definitions

202.101 Definitions.

Contracting activity for DoD also means elements designated by the director of a defense agency which has been delegated contracting authority through its agency charter. DoD contracting activities are—

Department of Defense

Real Estate and Facilities Directorate, Washington Headquarters Services

Army

Contract Support Agency
Office of the Deputy Chief of Staff for Procurement, Headquarters, U.S. Army Materiel Command
Armament Munitions and Chemical Command
Missile Command
Laboratory Command
Communications-Electronics Command
Troop Support Agency
Troop Support Command
Tank-Automotive Command
Aviation Systems Command
Training and Doctrine Command
Test and Evaluation Command
Forces Command
Health Services Command
Military District of Washington
U.S. Army, Europe
National Guard Bureau
Corps of Engineers
Information Systems Command
Medical Research and Development Command
U.S. Army, Pacific
Military Traffic Management Command
Strategic Defense Command
Eighth U.S. Army
Depot System Command
Intelligence and Security Command
U.S. Army South
Defense Supply Service—Washington
Directorate of Information Systems for Command, Control, Communications and Computers, Office of the Secretary of the Army
U.S. Army Special Operations Command

Navy

Deputate, Acquisition Policy, Integrity and Accountability, Office of the Assistant Secretary of the Navy (Research, Development, and Acquisition)
Directorate of Procurement Policy, Office of the Assistant Secretary of the Navy (Research, Development, and Acquisition)
Naval Air Systems Command
Space and Naval Warfare Systems Command
Naval Facilities Engineering Command
Naval Sea Systems Command
Naval Supply Systems Command
Ships Parts Control Center
Navy Aviation Supply Office
Office of Naval Research
Military Sealift Command
Strategic Systems Programs
Headquarters, U.S. Marine Corps
U.S. Marine Corps Research, Development, and Acquisition Command
Installations and Logistics, Headquarters, U.S Marine Corps

Air Force

Office of the Deputy Assistant Secretary (Contracting)
Air Force Logistics Command
Air Force Systems Command
Strategic Air Command
Tactical Air Command
Air Force Communications Command
Military Airlift Command
Air Training Command
Pacific Air Forces
United States Air Forces in Europe
Space Command
Electronic Security Command

Defense Advanced Research Projects Agency

Office of the Deputy Director, Management

Defense Communications Agency

Headquarters, Defense Communications Agency
Defense Commercial Communications Office

Defense Intelligence Agency

Office of Procurement

Defense Logistics Agency

Office of the Executive Director, Contract Management
Office of the Executive Director, Contracting
Defense Supply Centers
Defense Personnel Support Center

Defense Mapping Agency

Headquarters, Logistics Office

Defense Nuclear Agency

Headquarters, Defense Nuclear Agency

National Security Agency

Headquarters, National Security Agency

On-Site Inspection Agency

Headquarters, On-Site Inspection Agency

Strategic Defense Initiative Organization

Headquarters, Strategic Defense Initiative Organization

United States Special Operations Command

Headquarters, United States Special Operations Command

Contracting officer's representative means an individual designated and authorized in writing by the contracting officer to perform specific technical or administrative functions.

Departments and agencies, as used in DFARS, means the military departments and the defense agencies. The military departments are the Departments of the Army, Navy, and Air Force (the Marine Corps is a part of the Department of the Navy). The defense agencies are the Defense Advanced Research Projects Agency, the Defense Commissary Agency, the Defense Communications Agency, the Defense Intelligence Agency, the Defense Investigative Service, the Defense Logistics Agency, the Defense Mapping Agency, the Defense Nuclear Agency, the National Security Agency, the On-Site Inspection Agency, the Strategic Defense Initiative Organization, and the United States Special Operations Command.

Department of Defense (DoD), as used in DFARS, means the Department of Defense, the military departments, and the defense agencies.

Executive agency means for DoD, the Department of Defense, the Department of the Army, the Department of the Navy, and the Department of the Air Force.

Head of the agency, means for DoD, the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force. Subject to the direction of the Secretary of Defense, the Under Secretary of Defense (Acquisition), and the Director of Defense Procurement, the directors of the defense agencies have been delegated authority to act as head of the agency for their respective agencies (i.e., to perform functions under the FAR or DFARS reserved to a head of agency or agency head), except for such actions that by terms of statute, or any delegation, must be exercised within the Office of the Secretary of Defense.

Senior procurement executive, means for DoD—

Department of Defense (including the defense agencies)—Under Secretary of Defense (Acquisition);

Department of the Army—Assistant Secretary of the Army (Research, Development and Acquisition);

Department of the Navy—Assistant Secretary of the Navy (Shipbuilding and Logistics);

Department of the Air Force—Assistant Secretary of the Air Force (Acquisition).

The directors of the defense agencies have been delegated authority to act as senior procurement executive for their respective agencies, except for such actions that by terms of statute, or any delegation, must be exercised by the

Under Secretary of Defense (Acquisition).

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Sec.

Subpart 203.1—Safeguards

203.103 Independent pricing.
203.103–2 Evaluating the certification.
203.104 Procurement integrity.
203.104–4 Definitions.
203.104–5 Disclosure of proprietary and source selection information.
203.170 Statutory prohibitions on compensation to former DoD employees.
203.170–1 Policy.
203.170–2 Reporting requirements.
203.170–3 Penalties.
203.170–4 Contract clause.

Subpart 203.2—Contractor Gratuities to Government Personnel

203.203 Reporting suspected violations of the Gratuities clause.

Subpart 203.3—Reports of Suspected Antitrust Violations

203.301 General.

Subpart 203.4—Contingent Fees

203.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

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Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 203.1—Safeguards

203.103 Independent pricing.

203.103–2 Evaluating the certification.

(b)(3) The contracting officer also shall report the matter in accordance with 209.406–3 and DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities.

203.104 Procurement integrity.

203.104–4 Definitions.

(c)(2) Each order under a basic ordering agreement is a separate procurement action.

203.104–5 Disclosure of proprietary and source selection information.

(e)(4) For purposes of FAR 3.104–5(e)(4) only, DoD follows the notification procedures in FAR 27.404(h). However, the first sentence in FAR 27.404(h) does not apply to DoD.

203.170 Statutory prohibitions on compensation to former DoD employees.

203.170–1 Policy.

(a) 10 U.S.C. 2397b prohibits DoD officials who left DoD service on or after April 16, 1987, and who, while serving with the DoD, performed acquisition related functions in connection with a major defense contractor, from accepting compensation from that contractor for a period of two years after the officials have left service with the DoD. Additional DoD implementation of the statute is in DoD Directive 5500.7, Standards of Conduct. (See the clause at 252.203–7000, Statutory Prohibition on Compensation to Former Department of Defense Employees, for definition of terms.)

(b) Section 507 of the Ethics Reform Act of 1989 suspended the prohibitions of 10 U.S.C. 2397b from December 1, 1989, to November 30, 1990. Section 815 of the 1991 DoD Authorization Act (Pub. L. 101–510) continued the suspension from December 1, 1990, through May 31, 1991. During the period of the suspension, the clause which appeared at 252.203–7002, Statutory Compensation Prohibitions and Reporting Requirements Relating to Certain Former Department of Defense (DoD) Employees, was inserted in solicitations and contracts, but the provision of the clause that prohibited the offering of compensation to a person if the compensation would violate 10 U.S.C. 2397b, and the remedies for violating that provision, were not applied.

203.170–2 Reporting requirements.

Paragraph (c) of the clause at 252.203–7000, Statutory Prohibitions on Compensation to Former Department of Defense Employees, requires major defense contractors to report on the employment of certain former DoD employees.

203.170–3 Penalties.

(a) Major defense contractors are subject to the following penalties for knowing failure to comply with the statute, the contractual prohibition, or the reporting requirements—

(1) Civil fines up to $500,000 for knowingly offering or providing compensation to another person with knowledge that acceptance of that compensation is or would be in violation of the statute.

(2) Liquidated damages in the amount of either $100,000 or three times the amount of compensation paid by the contractor to the former DoD official, whichever is greater, for failure to comply with the contract prohibition.

(3) An administrative penalty not to exceed $10,000 for failure to report as required by the statute and as implemented in the clause at 252.203–7000, Statutory Prohibitions on Compensation to Former Department of Defense Employees.

(b) Liquidated damages will be assessed in accordance with agency procedures in coordination with the Designated Agency Ethics Official.

203.170–4 Contract clause.

Use the clause at 252.203–7000, Statutory Prohibitions on Compensation to Former Department of Defense Employees, in all solicitations and contracts expected to exceed $100,000.

Subpart 203.2—Contractor Gratuities to Government Personnel

203.203 Reporting suspected violations of the Gratuities clause.

Report suspected violations of the Gratuities clause in accordance with 209.406–3 and DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities.

Subpart 203.3—Reports of Suspected Antitrust Violations

203.301 General.

(b) Report suspected antitrust violations in accordance with 209.406–3 and DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities.

Subpart 203.4—Contingent Fees

203.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

(b) Report suspected fraud or other criminal conduct in accordance with 209.406–3 and DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities.

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statute, the contractual prohibition, or the reporting requirements—

(1) Civil fines up to $500,000 for knowingly offering or providing compensation to another person with knowledge that acceptance of that compensation is or would be in violation of the statute.

(2) Liquidated damages in the amount of either $100,000 or three times the amount of compensation paid by the contractor to the former DoD official, whichever is greater, for failure to comply with the contract prohibition.

(3) An administrative penalty not to exceed $10,000 for failure to report as required by the statute and as implemented in the clause at 252.203–7000, Statutory Prohibitions on Compensation to Former Department of Defense Employees.

(b) Liquidated damages will be assessed in accordance with agency procedures in coordination with the Designated Agency Ethics Official.

203.170–4 Contract clause.

Use the clause at 252.203–7000, Statutory Prohibitions on Compensation to Former Department of Defense Employees, in all solicitations and contracts expected to exceed $100,000.

Subpart 203.2—Contractor Gratuities to Government Personnel

203.203 Reporting suspected violations of the Gratuities clause.

Report suspected violations of the Gratuities clause in accordance with 209.406–3 and DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities.

Subpart 203.3—Reports of Suspected Antitrust Violations

203.301 General.

(b) Report suspected antitrust violations in accordance with 209.406–3 and DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities.

Subpart 203.4—Contingent Fees

203.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

(b) Report suspected fraud or other criminal conduct in accordance with 209.406–3 and DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities.

Subpart 203.5—Other Improper Business Practices

203.502 Subcontractor kickbacks.

Report suspected violations of the Anti-Kickback Act in accordance with 209.406–3 and DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities.

203.502–2 General.

(h) The DoD Inspector General has designated Special Agents of the following investigative organizations as representatives for conducting inspections and audits under the Anti-Kickback Act of 1986:

(i) U.S. Army Criminal Investigation Command.

(ii) Naval Investigative Service.

(iii) Air Force Office of Special Investigations.

(iv) Defense Criminal Investigative Service.

203.570 Employment prohibitions on persons convicted of fraud or other DoD contract-related felonies.

203.570–1 Scope.

This subpart prescribes policies and procedures to implement 10 U.S.C. 2408.

203.570–2 Policy.

(a) Contractors or subcontractors shall not knowingly allow a person, convicted after September 29, 1988, of fraud or any other felony arising out of a contract with the DoD, to serve—

(1) In a management or supervisory capacity on any DoD contract or first-tier subcontract; or,

(2) On its board of directors; or

(3) As a consultant, agent, or representative.

(b) The period covered by the prohibition in paragraph (a) of this subsection is for five years from the date of conviction unless waived in the interest of national security by the agency head or designee.

203.570–3 Waiver.

(a) The contracting officer shall—

(1) Review any request for waiver; and

(2) Deny the request if the contracting officer decides the waiver is not required in the interests of national security; or

(3) Forward the request to the head of the agency or designee for approval if the contracting officer decides the waiver may be in the interest of national security.

(b) The head of the agency or designee shall report all waivers granted, and the reasons for granting the waiver, to the Under Secretary of Defense (Acquisition), who will forward the report to Congress as required by 10 U.S.C. 2408(a)(3).

203.570–4 Reporting.

When a Defense contractor or first-tier subcontractor is found in violation of the prohibition in 203.570–2, the contracting officer shall report the matter in accordance with 209.406–3 and DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities.

203.570–5 Contract clause.

Use the clause at 252.203–7001, Special Prohibition on Employment, in all solicitations and contracts, except those which use the small purchase procedures of FAR part 13.

Subpart 203.7—Voiding and Rescinding Contracts

203.703 Authority.

The authority to act for the agency head under this subpart is limited to a level no lower than an official who is appointed by and with the advice of the Senate, without power of redelegation. For the defense agencies, for purposes of this subpart, the agency head designee is the Under Secretary of Defense for Acquisition.

Subpart 203.70—Contractor Standards of Conduct

203.7000 Policy.

Government contractors must conduct themselves with the highest degree of integrity and honesty. Contractors should have standards of conduct and internal control systems that—

(1) Are suitable to the size of the company and the extent of their involvement in Government contracting,

(2) Promote such standards,

(3) Facilitate timely discovery and disclosure of improper conduct in connection with Government contracts, and

(4) Ensure corrective measures are promptly instituted and carried out.

203.7001 Procedures.

(a) A contractor's system of management controls should provide for—

(1) A written code of business ethics and conduct and an ethics training program for all employees;

(2) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with standards of conduct and the special requirements of Government contracting;

(3) A mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports;

(4) Internal and/or external audits, as appropriate;

(5) Disciplinary action for improper conduct;

(6) Timely reporting to appropriate Government officials of any suspected or possible violation of law in connection with Government contracts or any other irregularities in connection with such contracts; and

(7) Full cooperation with any Government agencies responsible for either investigation or corrective actions.

(b) Contractors who are awarded a DoD contract of $5 million or more must display DoD Hotline Posters prepared by the DoD Office of the Inspector General unless—

(1) The contract will be performed in a foreign country; or

(2) The contractor has established an internal reporting mechanism and program, as described in paragraph (a) of this section.

203.7002 Contract clause.

Use the clause at 252.203–7002, Display of DoD Hotline Poster, in solicitations and contracts expected to exceed $5 million, except when performance will take place in a foreign country.

PART 204—ADMINISTRATIVE MATTERS

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Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 204.1—Contract Execution

204.101 Contracting officer's signature.

(a)(i) Include the contracting officer's telephone number on contracts and modifications.

(ii) The contracting officer may sign bilateral modifications of a letter contract before signature by the contractor.

Subpart 204.2—Contract Distribution.

204.201 Procedures.

The procuring contracting officer (PCO) retains the original signed contract for the official contract file. Administrative contracting officers and terminations contracting officers provide the original of each modification to the PCO for retention in the official contract file. Unless otherwise directed by department/agency procedures, the office issuing the orders maintains the original of orders under basic ordering agreements and the original of provisioning orders.

(e)(i) Distribute one copy of each of the following types of contracts or modifications to the appropriate Defense Contract Audit Agency (DCAA) field audit office (listed in the DCAA Directory—Headquarters and Field Offices)—

(A) Cost reimbursement;

(B) Time-and-materials;

(C) Labor-hour;

(D) Fixed price contracts with provisions for redetermination, incentives, economic price adjustment, or cost allowability; and

(E) Any other contract that requires audit service.

(ii) If there is a question as to the appropriate DCAA field audit office, request the assistance of the DCAA procurement liaison auditor or the nearest DCAA field audit office.

(f) Provide two copies to offices performing contract administration support functions.

204.202 Agency distribution requirements.

(1) Distribute copies of contracts as follows—

(i) Four copies to the contract administration office (send simultaneously with the copy furnished under FAR 4.201(b));

(ii) One copy to each consignee indicated in the contract. A transshipping terminal is not a consignee.

(A) Inventory control points that have an automated uniform inventory control point data base that interfaces with consignees may use their automated procedure rather than sending a written copy of the contract. However, when inspection is required at destination, send a written copy to the consignee.

(B) The Defense Logistics Agency is authorized to prescribe alternate procedures for distribution of contract documents in Defense Subsistence Region, Europe;

(iii) Two copies to the military interdepartmental purchase request requiring activity in the case of coordinated acquisition; and

(iv) One copy to the contract administration office (CAO) automatic data processing point, except when the DoDAAD code is the same as that of either the CAO or payment office (see DLAH 4105.4, DoD Directory of Contract Administration Services Components).

(2) The activity executing a contract modification shall furnish a copy of the basic contract and all modifications to—

(i) The new and old payment office when adding or changing a payment office;

(ii) The new contract administration office, a new consignee or other activity, based on the extent to which each activity is concerned with the basic contract and modifications.

(3) Distribution of modifications issued to provide initial or amended shipping instructions under 204.7004(c)(3)(iii) and 204.7004(f) may be limited to the following—

(i) Contractor, one copy;

(ii) Receiving activity, one copy each;

(iii) Contract administration office, one copy;

(iv) Payment office, one copy; and

(v) Contract administration office automatic data processing point, one copy.

(4) Distribution of modifications generated by automated means (computer programs) may be limited to the following—

(i) Contractor, one copy;

(ii) Contract administration office, one copy;

(iii) New payment office, one copy;

(iv) Procuring contracting office, one copy;

(v) Funding activities, one copy to each; and

(vi) Consignee, one copy to each.

Subpart 204.4—Safeguarding Classified Information Within Industry

204.402 General.

Subpart 239.74 contains policy and procedures for securing telecommunications between Government agencies and contractors and subcontractors.

204.404 Contract clause.

204.404–70 Additional contract clause.

Use the clause at 252.204–7000, Disclosure of Information, in solicitations and contracts when the contractor will have access to or generate unclassified information that may be sensitive and inappropriate for release to the public.

Subpart 204.6—Contract Reporting

204.600 Scope of subpart.

The Defense Contract Action Data System (DCADS) (see 204.670) is the DoD reporting system which supports the uniform reporting requirements for—

(1) DD Form 350, Individual Contracting Action Report; and

(2) DD Form 1057, Monthly Summary of Actions $25,000 or Less.

204.601 Record requirements.

(a) The DCADS meets these record retention requirements.

(d) The Directorate for Information, Operation, and Reports (DIOR), of the Washington Headquarters Services (WHS) transmits required DoD information to the Federal Procurement Data System.

204.602 Federal Procurement Data System.

(c) DoD uses the DD Form 350, Individual Contracting Action Report, in lieu of the SF 279, Federal Procurement Data System (FPDS) Individual Contract Action Report. DoD uses the DD Form 1057, Monthly Contracting Summary of Actions $25,000 or Less, in lieu of the SF 281, FPDS Summary Contract Action Report ($25,000 or Less).

204.603 Solicitation provision.

204.603-70 Commercial and Government entity (CAGE) codes.

When the CAGE codes for the prospective offerors are not available to the contracting office, use the provision at 252.204-7001, Commercial and Government Entity (CAGE) Code Reporting.

204.670 Defense Contract Action Data System (DCADS)

204.670-1 Definitions.

As used in this section and 253.204-70 and 253.204-71—

(a) *Contract administration office* means an office, other than the contracting office, which awards or executes contracting actions on behalf of the contracting office, including actions relating to the settlement of terminated contracts.

(b) *Contracting action* means any written action obligating or deobligating funds in connection with the purchasing, renting, or leasing of supplies, services, or construction. The term does not include grants or cooperative agreements. The term includes, but is not limited to—

(1) Definitive contracts, including notices of award;

(2) Letter contracts;

(3) Purchase orders;

(4) Orders under existing contracts or agreements, e.g.—

(i) Orders against basic ordering agreements, including service orders issued on DD Form 1164 by installation transportation offices;

(ii) Calls against blanket purchase agreements;

(iii) Job orders;

(iv) Task orders;

(v) Delivery orders;

(vi) Communication services authorizations; and

(vii) Notices of termination or cancellation.

(5) Contract modifications, e.g.—

(i) Change orders;

(ii) Supplemental agreements;

(iii) Funding actions; and

(iv) Option exercises.

(c) *Departmental data collection points* are—

(1) For the Army (including Corps of Engineers Civil Works): U.S. Army Contracting Support Agency, ATTN: OSA(RDA)SFRD-KS, 5109 Leesburg Pike, Suite 302, Falls Church, VA 22041-3201.

(2) For the Navy: As directed by NAVSUP-026.

(3) For the Air Force: As directed by SAF/AQCP.

(4) For the Defense Logistics Agency: As directed by Headquarters, Defense Logistics Agency.

(5) For other DoD contracting activities: U.S. Army Contracting Support Agency, ATTN: OSA(RDA)SFRD-KS, 5109 Leesburg Pike, Suite 302, Falls Church, VA 22041-3201.

(d) *United States and outlying areas* is defined in Federal Information Processing Standard Publication (FIPS PUB) 55-2, Guideline: Codes for Named Populated Places, Primary County Divisions, and Other Locational Entities of the United States and Outlying Areas. Outlying areas are—

(1) American Samoa;
(2) The Federated States of Micronesia;
(3) Guam;
(4) The Marshall Islands;
(5) Northern Mariana Islands;
(6) The Trust Territory of Palau;
(7) Puerto Rico;
(8) The U.S. Minor Outlying Islands; and
(9) The U.S. Virgin Islands.

204.670-2 Reportable contracting actions.

(a) Except as provided in paragraph (c) of this subsection, complete a DD Form 350 for—

(1) All contracting actions that obligate or deobligate more than $25,000; and

(2) All contracting actions that obligate or deobligate $25,000 or less if the action is in a designated industry group under the small business competitiveness demonstration program (See 204.670-9 and FAR subpart 19.10).

(b) Except as provided in paragraph (c) of this subsection, complete a DD Form 1057 for all contracting actions which obligate or deobligate $25,000 or less, including contracting actions reported on a DD Form 350 under paragraph (a)(2) of this subsection.

(c) The following contracting actions are not subject to reporting on either the DD Form 350 or DD Form 1057—

(1) Transactions that cite only nonappropriated funds (Funds held in trust accounts for foreign governments shall be treated as appropriated funds.);

(2) Transactions for purchase of land, or rental or lease of real property, when the General Services Administration (GSA) executes the contracting action;

(3) Orders from GSA stock and the GSA Consolidated Purchase Program;

(4) Transactions that involve Government bills of lading or transportation requests, except orders placed under Regional Storage Management Office's (RSMO) BOAs;

(5) Requisitions transferring supplies within or among the departments or agencies; and

(6) Pursuant to 204.670-6(b), orders placed by other contracting activities against indefinite delivery contracts awarded by the—

(i) Military Sealift Command;

(ii) Defense Fuel Supply Center for petroleum and petroleum products; or

(iii) Defense General Supply Center for petroleum products.

204.670-3 Contracting office responsibilities.

(a) For DD Form 350, contracting offices—

(1) Prepare the appropriate type of DD Form 350 (see 204.670-5), in accordance with the instructions in 253.204-70, on all reportable contracting actions (see 204.670-2(a)), including actions accomplished by contract administration offices on behalf of the contracting office.

(2) Complete the DD Form 350 in the required format within three working days after the date on which the dollars were actually obligated or deobligated in the required format (see 204.670-7). Submit all contracting actions for the calendar month to the departmental data collection point (see 204.670-1(c)) before the close of the reporting month, in accordance with departmental/agency procedures, except—

(i) For Defense Fuel Supply Center major petroleum acquisitions which result in multiple awards, the due date is ten working days when permitted by the departmental data collection point;

(ii) For actions executed in the month of September, due dates may be extended ten calendar days when permitted by the departmental data collection point; and

(iii) For actions accomplished by a contract administration office, the due date is three working days after the receipt of the contractual instrument annotated "DD FORM 350 REPORTING COPY."

(3) Prepare and submit a corrected or cancelling DD Form 350 as required in accordance with departmental data collection point instructions.

(4) Establish a control system for assigning report numbers to DD Forms 350 (Block A2 of the DD Form 350). The number shall have four positions and may be any combination of alpha or numeric characters. If more than one activity within a contracting office utilizes the same reporting office code, the contracting office shall assign separate blocks of numbers to each activity in order to prevent duplication of report numbers.

(5) Maintain a copy of the DD Form 350 in the contract file, as required by department/agency regulations.

(b) For DD Form 1057, contracting offices—

(1) Prepare a DD Form 1057, in accordance with the instructions in 253.204–71, covering reportable contracting actions (see 204.670–2(b)), including actions accomplished by contract administration offices on behalf of the contracting office. An installation, base, or other activity may have more than one contracting office code to separate the various types of acquisitions, such as base and central contracting, or RDT&E and non-RDT&E acquisition. Each contracting office code must submit its own DD Form 1057.

(2) Complete the DD Form 1057 in the required format within three working days after the cutoff of the reporting month in the required format (see 204.670–7 for alternate formats). Contracting offices are authorized to cutoff the reporting month no earlier than the 25th calendar day. For September only, the cutoff date shall not be later than September 30. Submit the DD Form 1057 to the departmental data collection point to arrive before the close of the reporting month as directed by the department/agency supplement.

(3) Unless otherwise instructed by the departmental data collection point, do not submit revised DD Form 1057 reports. Include any required corrections or adjustments in following month's report.

204.670–4 Contract administration office responsibilities.

Contract administration offices executing actions subject to DD Form 350 or DD Form 1057 reporting must submit an annotated copy of the contractual instrument to the contracting office so that the contracting office can submit the required report.

(a) For DD Form 350, annotate in the heading of the contractual instrument in large block letters "DD FORM 350 REPORTING COPY." Send the annotated copy to the contracting office within one working day after the action date.

(b) For DD Form 1057, annotate in the heading of the contractual instrument in large block letters "DD FORM 1057 REPORTING COPY." Send the annotated copy with the normal distribution.

204.670–5 Departmental data collection point responsibilities.

(a) Collect DD Forms 350 and 1057 data provided by their contracting activities;

(b) Electronically record the data in accordance with the instructions for recording and editing developed by WHS–DIOR with the majority agreement of the departments/agencies and prescribed by the Director of Defense Procurement;

(c) Submit monthly reports (noncumulative) to Washington Headquarters Services, ATTN: DIOR, within 18 days after the close of the reporting period, except the due date for September may be extended for no more than ten days.

(d) Report control symbols DD–P&L(M) 1014 and DD–P&L(M) 1015, respectively apply to reports submitted to WHS–DIOR for DD Form 250 actions and DD Form 1057 actions.

204.670–6 Types of DD Form 350 reports.

There are three types of reports—single, consolidated, and multiple.

(a) A single report is one DD Form 350 report per contracting action.

(b) A consolidated report is one DD Form 350 report which combines several contracting actions. Prepare consolidated reports for—

(1) Awards to individuals in support of dependent schools, e.g., principals and teachers. Consolidate these transactions monthly and report the cumulative dollar amount on one DD Form 350.

(2) Military Airlift Command awards for international airlift services. The Command reports these at the end of each operating month with one DD Form 350 for each airlift contract.

(3) Military Sealift Command awards of indefinite delivery contracts for ocean transportation. The Command reports at the beginning of each fiscal year the estimated value of the orders for that fiscal year on one DD Form 350.

(4) Defense Fuel Supply Center or Defense General Supply Center indefinite delivery contracts for petroleum or petroleum supplies. The Centers, at the time of award, report the estimated value of the orders to be placed against the contract on one DD Form 350.

(5) Orders placed by the military departments for resale items in excess of $25,000 against brand name contracts entered into by the Defense Logistics Agency and published in Supply Bulletin Series 10–500. The military departments consolidate the orders monthly and report the cumulative dollar amounts on one DD Form 350 in accordance with departmental regulations. Defense Logistics Agency activities submit single rather than consolidated reports.

(6) Vouchers processed by the U.S. Army Contracting Command, Europe (USACCE), for the purchase of utilities from municipalities (e.g., gas, electricity, water, sewage, steam, snow removal, and garbage collection). USACCE consolidates these transactions monthly and reports the cumulative dollar amount on one DD Form 350 in accordance with departmental regulations.

(c) A multiple report is more than one DD Form 350 per contracting action. Prepare multiple reports if—

(1) The contracting action includes foreign military sales (FMS) requirements in addition to non-FMS requirements (Block B9 on the DD Form 350). Submit one DD Form 350 report for the FMS requirements and another DD Form 350 report for the non-FMS requirements, except if either of the portions is under $25,000, report the under $25,000 portion on a DD Form 1057 in lieu of a DD Form 350.

(2) The contracting action includes more than one type of contract (Block C5 on the DD Form 350) and the type with the least dollar value exceeds $500,000. Prepare a separate DD Form 350 for each contract type.

204.670–7 Report formats.

Contracting offices submit the signed original DD Forms 350 and 1057, unless the data collection point approves use of an automated facsimile or electronic equivalent containing the information.

204.670–8 Security classification.

Submit DD Forms 350 as unclassified documents Classified contracts are not exempt from reporting solely because the contract is classified. Contact the appropriate departmental data collection points for special instructions if security reasons indicate that it is necessary to modify coding of all or any individual blocks on the DD Form 350. If such contact cannot be made for security reasons, obtain instructions from the Office of the Deputy Under Secretary of Defense for Security Policy, Attn: Deputy Director for Information Security and Special Programs. Telephone number is (703) 614–0578/9 or DSN 224–0578/9.

204.670-9 Individual contract reporting of actions $25,000 or less.

Under the Small Business Competitiveness Demonstration Program (see FAR subpart 19.10), contract actions of $25,000 or less in four designated industry groups (for Army, includes dredging) must be reported in the same manner as if the action were in excess of $25,000.

(a) Report contract actions of $25,000 or less in the designated industry groups on both the DD Form 350 and the DD Form 1057.

(b) The following contracting actions are not subject to the additional DD Form 350 reporting, although they must still be reported on the DD Form 1057—

(1) Contracting actions of $500 or less;

(2) Foreign military sales;

(3) Orders or modifications under a Federal supply schedule;

(4) Actions with another Federal agency;

(5) Actions with non-U.S. business firms; and

(6) Actions where the place of performance is other than the United States and its outlying areas.

Subpart 204.8—Contract Files

204.802 Contract files.

Official contract files shall consist of—

(1) Only original, authenticated or conformed copies of contractual instruments—

(i) *Authenticated copies* means copies that are shown to be genuine in one of two ways—

(A) Certification as true copy by signature of an authorized person; or

(B) Official seal.

(ii) *Conformed copies* means copies that are complete and accurate, including the date signed and the names and titles of the parties who signed them.

(2) Signed or official record copies of correspondence, memoranda, and other documents.

204.804 Closeout of contract files.

Normally, the closeout date for contract files is the date in Block 9d on the DD Form 1594, Contract Completion Statement, or in columns 59–65 on the PK9. If the contracting office must do a major closeout action that will take longer than three months after the date shown in Block 9d of the DD Form 1594, or in columns 59–65 of the PK9—

(1) The closeout date for file purposes will be the date in Block 10e of the DD Form 1594 or the date of the closeout statement executed when the MILSCAP PK9 is received.

(2) The contracting office shall notify the contract administration office of the revised closeout date by either sending a copy of the completed DD Form 1594 or by preparing a MILSCAP Format Identifier PKZ, Contract Closeout Extension.

204.804-1 Closeout by the office administering the contract.

(1) For contracting offices administering their own contracts, locally developed forms or statement of completion may be used instead of the DD Form 1594, Contract Completion Statement. Whichever method is used, the form shall be retained in the official contract file.

(2) For contracts valued above the small purchase threshold, prepare a DD Form 1597, Contract Closeout Check List, (or agency equivalent) to ensure that all required contract actions have been satisfactorily accomplished.

204.804-2 Closeout of the contracting office files if another office administers the contract.

(1) When an office, other than the contracting office, administers the contract, it shall—

(i) Provide the contracting office an interim contract completion statement when the contract is physically completed and accepted. This notice may be in the form of either a DD Form 1594, Contract Completion Statement, or a MILSCAP Format Identifier Interim PK9, Contract Physical Completion. When the DD Form 1594 is used, the contracting officer—

(A) Annotates Block 8, Remarks, with—

(*1*) "Notice of Physical Completion;"

(*2*) Final acceptance date;

(*3*) Signature of a responsible official; and

(*4*) Date signed.

(B) Does not complete Blocks 9 (b), (c), and (d) at this time;

(ii) Prepare a DD Form 1597, Contract Closeout Check List, if necessary, to determine that all the required actions have been done;

(iii) Initiate DD Form 1593, Contract Administration Completion Record, if necessary to obtain statements from other organizational elements that they have completed the actions they are responsible for; and

(iv) Upon final payment—

(A) Process the DD Form 1594 with Blocks 1 through 9 completed or the MILSCAP Format Identifier PK9 verifying that all contract administration office actions have been done; and

(B) Send the original of the DD Form 1594 or the MILSCAP Format Identifier PK9 to the contracting office, and file a copy in the official contract file.

(2) If the administrative contracting officer (ACO) cannot closeout a contract within the specified time period (see FAR 4.804–1), the ACO must notify the procuring contracting officer (PCO) within 45 days after the expiration of the time period of—

(i) The reasons for the delay; and

(ii) New target date for closeout. If MILSCAP procedures apply, the ACO shall use the MILSCAP Format Identifier PKX, Unclosed Contract Status, to provide this notice to the PCO.

(3) If the contract still is not closed out by the new target date, the ACO shall again notify the PCO with the reasons for delay and new target date. If MILSCAP procedures apply, continue to use the MILSCAP Format Identifier PKX, Unclosed Contract Status, to provide this notice.

204.805 Disposal of contract files.

(1) The sources of the period for which official contract files must be retained are General Records Schedule 3 (Procurement, Supply, and Grant Records) and General Records Schedule 6 (Accountable Officers' Accounts Records). Copies of the General Records Schedule may be obtained from the National Archives and Records Administration, Washington, DC 20408.

(2) Deviations from the periods cannot be granted by the Defense Acquisition Regulatory Council. Forward requests for deviations to both the General Accounting Office and the National Archives and Records Administration.

(3) Hold completed contract files in the office responsible for maintaining them for a period of 12 months after completion. After the initial 12 month period, send the records to the local records holding or staging area until they are eligible for destruction. If no space is available locally, transfer the files to the General Services Administration Federal Records Center that services the area.

(4) Duplicate or working contract files should contain no originals of materials

that properly belong in the official files. Destroy working files as soon as practicable once they are no longer needed.

(5) Retain pricing review files, containing documents related to reviews of the contractor's price proposals, subject to certification of cost or pricing data (see FAR 15.804–2), for six years. If it is impossible to determine the final payment date in order to measure the six year period, retain the files for nine years.

Subpart 204.9—Information Reporting to the Internal Revenue Service

204.902 General.

(b) DoD uses the DD Form 350, Individual Contract Action Report, (see 204.670) to meet these reporting requirements.

Subpart 204.70—Uniform Procurement Instrument Identification Numbers

204.7000 Scope.

This subpart prescribes policies and procedures for assigning numbers to all solicitations, contracts, and related instruments. This subpart—

(a) Does not apply to solicitations or contracts issued by the Defense Commercial Communications Office of the Defense Communications Agency; and

(b) Is optional for solicitations and contracts that will be completely administered by the purchasing office or the consignee, except that—

(1) The procurement instrument identification (PII) number, including supplemental modification numbers, shall not exceed 19 characters (excluding hyphens); and

(2) The number shall begin with the purchasing office identifier and the fiscal year in accordance with 204.7003(a) (1) and (2) and appendix G.

204.7001 Policy.

(a) Use the uniform PII numbering system prescribed by this subpart for the solicitation/contract instruments described in 204.7003 and 204.7004.

(b) Retain the basic PII number unchanged for the life of the instrument.

204.7002 Procedures.

(a) In assigning PII numbers—

(1) Use only the alpha-numeric characters, as prescribed in this subpart; and

(2) Do not use the letters "I" or "O," except as noted in 204.7003(a)(1)(i) (J) and (K)."

(b) If department/agency procedures require other identification on the solicitation, contract, or other related instrument forms, enter it in such a location so as to separate it clearly from the PII number.

(c) Enter the basic PII number, including Federal supply contract numbers and any supplementary numbers, in the spaces provided on the solicitation, contract, or related instrument forms. Separate the major elements by dashes, e.g., N00023–90–D–0009. If there is no space provided on the form, enter the number in the upper right corner of the form and identify what it is (e.g., Supplementary Number N00023–90–F–0120).

204.7003 Basic PII number.

(a) *Elements of a number.* The number consists of 13 alpha-numeric characters grouped to convey certain information.

(1) *Positions 1 through 6.* The first of the six positions, in upper case letters, identify the department/agency and office issuing the instrument.

(i) Department/agency identification:

(A) Department of the Army—DA

(B) Department of the Navy (except Marine Corps)—N

(C) Department of the Air Force F—

(D) Defense Communications Agency—DCA

(E) Defense Logistics Agency—DLA

(F) Defense Nuclear Agency—DNA

(G) Defense Mapping Agency—DMA

(H) Miscellaneous Defense Activities—MDA

(I) Marine Corps—M

(J) Strategic Defense Initiative Office—SDIO

(K) On Site Inspection Agency—OSIA

(L) Defense Commissary Agency—DECA

(ii) Issuing office identification. The remaining positions are the alpha-numeric characters that identify the issuing office. These characters are in appendix G.

(iii) Use all six positions. If necessary, enter zeros between the department/agency identifier and the issuing office identifier.

(2) *Positions 7 through 8.* The seventh and eighth positions are the last two digits of the fiscal year in which the PII number was assigned.

(3) *Position 9.* Indicate the type of instrument by entering one of the following upper case letters in position nine—

(i) Blanket purchase agreements—A

(ii) Invitations for bids—B

(iii) Contracts of all types except indefinite delivery contracts, facilities contracts, sales contracts, and contracts placed with or through other Government departments or agencies or against contracts placed by such departments or agencies outside the DoD—C

(iv) Indefinite delivery contracts—D

(v) Facilities contracts—E

(vi) Contracting actions placed with or through other Government departments or agencies or against contracts placed by such departments or agencies outside the DoD (including actions with the National Industries for the Blind (NIB), the National Industries for the Severely Handicapped (NISH), and the Federal Prison Industries (UNICOR))—F

(vii) Basic ordering agreements—G

(viii) Agreements, including basic agreements and loan agreements, but excluding basic purchasing agreements, basic ordering agreements, and leases—H

(ix) Do not use—I

(x) Reserved—J

(xi) Short form research contract—K

(xii) Lease agreement—L

(xiii) Purchase orders—manual (assign W when numbering capacity of M is exhausted during the fiscal year)—M

(xiv) Notice of intent to purchase—N

(xv) Do not use—O

(xvi) Purchase order—automated (assign V when numbering capacity of P is exhausted during a fiscal year)—P

(xvii) Request for quotation—manual—Q

(xviii) Request for proposal—R

(xix) Sales contract—S

(xx) Request for quotation—automated (assign U when numbering capacity of T is exhausted during a fiscal year)—T

(xxi) See T—U

(xxii) See P—V

(xxiii) See M—W

(xxiv) Reserved for departmental use—X

(xxv) Imprest fund—Y

(xxvi) Reserved for departmental use—Z

(4) *Position 10 through 13.* Enter the serial number of the instrument in these positions. A separate series of serial numbers may be used for any type of instrument listed in paragraph (a)(3) of this section. Activities shall assign such series of PII numbers sequentially. An activity may reserve blocks of numbers or alpha-numeric numbers for use by its various components.

(b) *Illustration of PII number.* The following illustrates a properly configured PII number—

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against contracts placed by such departments or agencies outside the DoD—C

(iv) Indefinite delivery contracts—D

(v) Facilities contracts—E

(vi) Contracting actions placed with or through other Government departments or agencies or against contracts placed by such departments or agencies outside the DoD (including actions with the National Industries for the Blind (NIB), the National Industries for the Severely Handicapped (NISH), and the Federal Prison Industries (UNICOR))—F

(vii) Basic ordering agreements—G

(viii) Agreements, including basic agreements and loan agreements, but excluding basic purchasing agreements, basic ordering agreements, and leases—H

(ix) Do not use—I

(x) Reserved—J

(xi) Short form research contract—K

(xii) Lease agreement—L

(xiii) Purchase orders—manual (assign W when numbering capacity of M is exhausted during the fiscal year)—M

(xiv) Notice of intent to purchase—N

(xv) Do not use—O

(xvi) Purchase order—automated (assign V when numbering capacity of P is exhausted during a fiscal year)—P

(xvii) Request for quotation—manual—Q

(xviii) Request for proposal—R

(xix) Sales contract—S

(xx) Request for quotation—automated (assign U when numbering capacity of T is exhausted during a fiscal year)—T

(xxi) See T—U

(xxii) See P—V

(xxiii) See M—W

(xxiv) Reserved for departmental use—X

(xxv) Imprest fund—Y

(xxvi) Reserved for departmental use—Z

(4) *Position 10 through 13.* Enter the serial number of the instrument in these positions. A separate series of serial numbers may be used for any type of instrument listed in paragraph (a)(3) of this section. Activities shall assign such series of PII numbers sequentially. An activity may reserve blocks of numbers or alpha-numeric numbers for use by its various components.

(b) *Illustration of PII number.* The following illustrates a properly configured PII number—

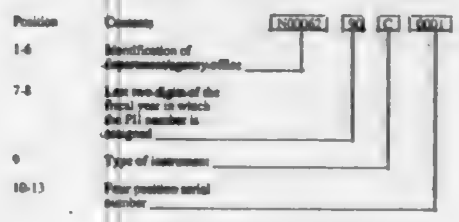
Position
Contents
N00062
90
C
0001
1-6
Identification of department/agency/office
7-8
Last two digits of the fiscal year in which the PII number is assigned
9
Type of instrument
10-13
Four position serial number

204.7004 Supplementary PII numbers.

(a) *Uses of the supplementary number.* Use supplementary numbers with the basic PII number, to identify—

(1) Amendments to solicitations;

(2) Modifications to contracts and agreements, including provisioned item orders; and

(3) Calls or orders under contracts, basic ordering agreements, or blanket purchase agreements, issued by the contracting office or by a DoD activity other than the contracting office, including DoD orders against Federal supply schedules.

(b) *Amendments to solicitations.* Number amendments to solicitations sequentially using a four position numeric serial number added to the basic PII number and beginning with 0001, e.g., N00062-91-R-1234-0001.

(c) *Modifications to contracts and agreements.*

(1) Number modifications to contracts and agreements using a six position alpha-numeric added to the basic PII number.

(2) *Position 1.* Identify the office issuing the modification—

(i) Contract administration office—A

(ii) Contracting office—P

(3) *Positions 2 through 3.* These are the first two digits in a serial number. They may be either alpha or numeric. Use the letters K, L, M, N, P, Q, S, T, U, V, W, X, Y, or Z only in the second position and only in the following circumstances—

(i) Use K, L, M, N, P, and Q in the second position only if the modification is issued by the Air Force and is a provisioned item order.

(ii) Use S, and only S, in the second position to identify modifications issued to provide initial or amended shipping instructions when—

(A) The contract has either FOB origin or destination delivery terms; and

(B) The price changes.

(iii) Use T, U, V, W, X, or Y, and only those characters, in the second position to identify modifications issued to provide initial or amended shipping instructions when—

(A) The contract has FOB origin delivery terms; and

(B) The price does not change.

(iv) Only use Z in the second position to identify a modification which definitizes a letter contract.

(4) *Positions 4 through 6.* These positions are always numeric. Use a separate series of serial numbers for each type of modification listed in paragraph (c)(3) of this section. Examples of proper numbering for positions 2-6 (the first position will be either "A" or "P") are as follows:

Normal modification	Provisioned items order (reserved for exclusive use by the Air Force only)	Shipping instructions
00001-99999	K0001-K9999	S0001-S9999
then	KA001-KZ999	SA001-SZ999
A0001-A9999	L0001-L9999	T0001-T9999
B0001-B9999	LA001-LZ999	TA001-TZ999
and so on to	M0001-M9999	U0001-U9999
H0001-H9999	MA001-MZ999	UA001-UZ999
then	N0001-N9999	V0001-V9999
J0001-J9999	NA001-NZ999	VA001-VZ999
then	P0001-P9999	W0001-W9999
R0001-R9999	PA001-PZ999	WA001-WZ999
then	Q0001-Q9999	X0001-X9999
AA001-HZ999	QA001-QZ999	XA001-XZ999
then		Y0001-Y9999
JA001-JZ999		YA001-YZ999
RA001-RZ999		

(5) If the contract administration office is changing the contract administration or disbursement office for the first time and is using computer generated modifications to notify many offices, it uses the six position supplementary number ARZ999. If either office has to be changed again during the life of the contract, the supplementary number will be ARZ998, and on down as needed.

(6) Each office authorized to issue modifications shall assign the supplementary identification numbers in sequence. Do not assign the numbers until it has been determined that a modification is to be issued.

(d) *Delivery orders under indefinite delivery contracts, orders under basic ordering agreements, and calls under blanket purchase agreements.* (1) Calls or orders issued by the office issuing the contract or agreement. Use a four position alpha-numeric call or order serial number added to the basic PII number. These shall be identified by using serial numbers beginning 0001 through 9999. When the numeric identifiers run out, use alpha characters in the third and fourth positions. Never use alpha characters in the first and second positions.

(2) Orders placed against another activity's contract or agreement.

(i) If the office placing the order or call is different from the office identified in the basic PII number, assign a serial number to the order or call. The first and second positions contain the call/order code assigned to the ordering office by appendix G. Do not use the letters A or P in the first position. The third and fourth positions are a two position serial number assigned by the ordering office. The series will begin with 01. When the numbers exceed 99, the office will assign a uniform series of identifiers containing alpha and/or numeric characters, e.g., Basic #: N00383-91-D-0001 serial #: TU01.

(ii) If an office is placing calls or orders with NIB, NISH, or UNICOR, the office shall identify the instrument with a 13 position supplementary PII number using an F in the 9th position. Modifications to these calls or orders shall be numbered in accordance with paragraph (c) of this section, e.g., Order #: DLA100-91-F-0001 modification #: A00001.

(e) *Modifications to calls or orders.* Use a two position alpha-numeric suffix, known as a call or order modification indicator, to identify a modification to a call or order.

(1) Modifications to a call or order issued by a purchasing office begin with 01, 02, and so on through 99, then B1 through B9, BA through BZ, C1 through C9, and so on through ZZ.

(2) Modifications to a call or order issued by a contract administration office begin with 1A, 1B, and so on through 9Z, followed by A1, A2, and so on to A9, then AA, AB, and so on through AZ.

Subpart 204.71—Uniform Contract Line Item Numbering System

204.7100 Scope.

This subpart prescribes policies and procedures for assigning contract line item numbers.

204.7101 Definitions.

Accounting classification reference number (ACRN) means a two position alpha or alpha/numeric control code used as a method of relating the long line accounting classification citation number to detailed line item information contained in the schedule when the contract is to be assigned to the Defense Contract Management Command for administration.

Attachment means any documentation, appended to a contract or incorporated by reference, which does not establish a requirement for deliverables.

Definitized item, as used in this subpart, means an item for which a firm price has been established in the basic contract or by modification.

Exhibit means a document, referred to in a contract, which is attached and establishes requirements for deliverables. The term shall not be used to refer to any other kind of attachment to a contract. The DD Form 1423, Contract Data Requirements List, is always an exhibit, rather than an attachment.

Undefinitized item, as used in this subpart, means an item for which a price has not been established in the basic contract or by modification.

204.7102 Policy.

(a) The numbering procedures of this subpart shall apply to all—

(1) Solicitations;

(2) Solicitation line and subline item numbers, if practicable;

(3) Contracts as defined in FAR Subpart 2.1;

(4) Contract line and subline item numbers;

(5) Exhibits;

(6) Exhibit line and subline items; and

(7) Any other document expected to become part of the contract.

(b) The numbering procedures are mandatory for all contracts, unless—

(1) There are no postaward contract administration functions that the contracting officer will assign to an office listed in the DoD Directory of Contract Administration Services Components;

(2) The contract is an indefinite delivery type for petroleum products against which posts, camps, and stations issue delivery orders for products to be consumed by them; or

(3) The contract is a communications service authorization issued by the Defense Communications Agency's Office of Defense Commercial Communications.

204.7103 Contract line items.

204.7103-1 Criteria for establishing.

Contracts shall identify the items or services to be acquired as separate contract line items unless it is not feasible to do so.

(a) Contract line items shall have all three of the following characteristics; however, there are exceptions within the characteristics, which may make establishing a separate contract line item appropriate even though one of the characteristics appears to be missing—

(1) *Single unit price.* The item shall have a single unit price or a single total price, except—

(i) If the item is not separately priced (NSP) but the price is included in the unit price of another contract line item, enter NSP instead of the unit price;

(ii) When there are associated subline items, established for other than informational reasons, and those subline items are priced in accordance with 204.7104;

(iii) When the items or services are being acquired on a cost-reimbursement contract;

(iv) When the contract is for maintenance and repair services (e.g., a labor hour contract) and firm prices have been established for elements of the total price of an item but the actual number and quantity of the elements are not known until performance. The contracting officer may structure these contracts to reflect a firm or estimated total amount for each line item;

(v) When the contract line item is established to refer to an exhibit or an attachment (if management needs dictate that a unit price be entered, the price shall be set forth in the item description block and enclosed in parentheses); or

(vi) When the contract is an indefinite delivery type contract and provides that the price of an item shall be determined at the time a delivery order is placed and the price is influenced by such factors as the quantity ordered (e.g., 10–99 @ $1.00, 100–249 @ $.98, 250+ @ $.95), the destination, the FOB point, or the type of packaging required.

(2) *Separately identifiable.* A contract line item must be identified separately from any other items or services on the contract.

(i) Supplies are separately identifiable if they have no more than one—

(A) National stock number (NSN);

(B) Item description; or

(C) Manufacturer's part number.

(ii) Services are separately identifiable if they have no more than one—

(A) Scope of work; or

(B) Description of services.

(iii) This requirement does not apply if there are associated subline items, established for other than informational reasons, and those subline items include the actual detailed identification in accordance with 204.7104. Where this exception applies, use a general narrative description instead of the contract item description.

(3) *Separate delivery schedule.* Each contract line item or service shall have its own delivery schedule, period of performance, or completion date expressly stated ("as required" constitutes an expressly stated delivery term).

(i) The fact that there is more than one delivery date, destination, performance date, or performance point may be a determining factor in the decision as to whether to establish more than one contract line item.

(ii) If a contract line item has more than one destination or delivery date, the contracting officer may create individual contract line items for the different destinations or delivery dates, or may specify the different delivery dates for the units by destination in the delivery schedule.

(b) Exhibits may be used as an alternative to putting a long list of contract line items in the schedule. If exhibits are used, create a contract line item citing the exhibit's identifier. See 204.7105(a).

(c) If the contract involves a test model or a first article which must be approved, establish a separate contract line item or subline item for each item of supply or service which must be approved. If the test model or first article consists of a lot composed of a mixture of items, a single line item or subline item may be used for the lot.

(d) If a supply or service involves ancillary functions, like packaging and handling, transportation, payment of state or local taxes, or use of reusable containers, and these functions are normally performed by the contractor and the contractor is normally entitled to reimbursement for performing these functions, do not establish a separate contract line item solely to account for these functions. However, do identify the functions in the contract schedule. If the offeror separately prices these functions, contracting officers may establish separate contract line items for the functions; however, the separate line items must conform to the requirements of paragraph (a) of this subsection.

204.7103-2 Numbering procedures.

(a) Contract line items shall consist of four numeric digits 0001 through 9999. Do not use numbers beyond 9999. Within a given contract, the item numbers shall be sequential but need not be consecutive.

(b) The contract line item number shall be the same as the solicitation line item number unless there is a valid reason for using different numbers.

(c) Once a contract line item number has been assigned, it shall not be assigned to another, different, contract line item in the same contract.

204.7104 Contract subline items.

204.7104-1 Criteria for establishing.

Contract subline items provide flexibility to further identify elements within a contract line item for tracking performance or simplifying administration. There are only two kinds of subline items: those which are informational in nature and those which

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(ii) If a contract line item has more than one destination or delivery date, the contracting officer may create individual contract line items for the different destinations or delivery dates, or may specify the different delivery dates for the units by destination in the delivery schedule.

(b) Exhibits may be used as an alternative to putting a long list of contract line items in the schedule. If exhibits are used, create a contract line item citing the exhibit's identifier. See 204.7105(a).

(c) If the contract involves a test model or a first article which must be approved, establish a separate contract line item or subline item for each item of supply or service which must be approved. If the test model or first article consists of a lot composed of a mixture of items, a single line item or subline item may be used for the lot.

(d) If a supply or service involves ancillary functions, like packaging and handling, transportation, payment of state or local taxes, or use of reusable containers, and these functions are normally performed by the contractor and the contractor is normally entitled to reimbursement for performing these functions, do not establish a separate contract line item solely to account for these functions. However, do identify the functions in the contract schedule. If the offeror separately prices these functions, contracting officers may establish separate contract line items for the functions; however, the separate line items must conform to the requirements of paragraph (a) of this subsection.

204.7103–2 Numbering procedures.

(a) Contract line items shall consist of four numeric digits 0001 through 9999. Do not use numbers beyond 9999. Within a given contract, the item numbers shall be sequential but need not be consecutive.

(b) The contract line item number shall be the same as the solicitation line item number unless there is a valid reason for using different numbers.

(c) Once a contract line item number has been assigned, it shall not be assigned to another, different, contract line item in the same contract.

204.7104 Contract subline items.

204.7104–1 Criteria for establishing.

Contract subline items provide flexibility to further identify elements within a contract line item for tracking performance or simplifying administration. There are only two kinds of subline items: those which are informational in nature and those which

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consist of more than one item that requires separate identification.

(a) *Informational subline items.* (1) This type of subline item identifies information that relates directly to the contract line item and is an integral part of it (e.g., parts of an assembly or parts of a kit). These subline items shall not be scheduled separately for delivery, identified separately for shipment or performance, or priced separately for payment purposes.

(2) The informational subline item may include quantities, prices, or amounts, if necessary to satisfy management requirements. However, these elements shall be included within the item description in the supplies/services column and enclosed in parentheses to prevent confusing them with quantities, prices, or amounts that have contractual significance. Do not enter these elements in the quantity and price columns.

(b) *Separately identified subline items.* (1) Subline items will be used instead of contract line items to facilitate payment, delivery tracking, contract funds accounting, or other management purposes. Such subline items may be appropriate when items bought under one contract line item number—

(i) Are to be paid from more than one accounting classification;

(ii) Are to be packaged in different sizes, each represented by its own NSN;

(iii) Have collateral costs, such as packaging costs, but those costs are not a part of the unit price of the contract line item;

(iv) Have different delivery dates or destinations or requisitions, or a combination of the three; or

(v) Identify parts of an assembly or kit which—

(A) Have to be separately identified at the time of shipment or performance; and

(B) Are separately priced.

(2) Each separately identified contract subline item shall have its own—

(i) Delivery schedule, period of performance, or completion date;

(ii) Unit price or single total price or amount (not separately priced (NSP) is acceptable as an entry for price or amount if the price is included in another subline item or a different contract line item). This requirement does not apply—

(A) If the subline item was created to refer to an exhibit or an attachment. If management needs dictate that a unit price be entered, the price shall be set forth in the item description block of the schedule and enclosed in parentheses; or

(B) In the case of indefinite delivery contracts described at 204.7103–1(a)(1)(vi).

(iii) Identification (e.g., NSN, item description, manufacturer's part number, scope of work, description of services).

(3) Unit prices and extended amounts.

(i) The unit price and total amount for all subline items may be entered at the contract line item number level if the unit price for the subline items is identical. If there is any variation, the subline item unit prices shall be entered at the subline item level only.

(ii) The unit price and extended amounts may be entered at the subline items level.

(iii) The two methods in paragraphs (b)(3) (i) and (ii) of this subsection shall not be combined in a contract line item.

(iv) When the price for items not separately priced is included in the price of another subline item or contract line item, it may be necessary to withhold payment on the priced subline item until all the related subline items that are not separately priced have been delivered. In those cases, use the clause at 252.204–7002, Payment for Subline Items Not Separately Priced.

204.7104–2 Numbering procedures.

(a) Number subline items by adding either two numeric characters or two alpha characters to the basic contract line item number.

(1) *Information subline item numbers.* Use numeric characters only for information subline items, running 01 through 99. Do not use spaces or special characters to separate the subline item number from the contract line item number that is its root. For example, if the contract line item number is 0001, the first three subline items would be 000101, 000102, and 000103. Do not use a designation more than once within a contract line item.

(2) *Separately identified subline items.* Use alpha characters only for separately identified subline items, running AA through ZZ. Do not use spaces or special characters to separate the subline item number from the contract line item number that is its root. For example, if the contract line item number is 0001, the first three subline items would be 0001AA, 0001AB, and 0001AC.

(i) Do not use the letters I or O as alpha characters.

(ii) Use all 24 available alpha characters in the second position before selecting a different alpha character for the first position. For example, AA, AB, AC, through AZ before beginning BA, BB, and BC.

(b) Within a given contract line item, the subline item numbers shall be sequential but need not be consecutive.

(c) Exhibits may be used as an alternative to setting forth in the schedule a long list of contract subline items. If exhibits are used, create a contract subline item citing the exhibit's identifier. See 204.7105.

(d) If a contract line item involves ancillary functions, like packaging and handling, transportation, payment of state or local taxes, or use of reusable containers, and these functions are normally performed by the contractor and the contractor is normally entitled to reimbursement for performing these functions, do not establish a separate subline item solely to account for these functions. However, do identify the functions in the contract schedule. If offeror separately prices these functions, then contracting officers may establish separate subline items for the functions; however, the separate subline items must conform to the requirements of 204.7104–1.

(e) The following examples illustrate subline items numbering—

(1) Subline items structured to identify destinations for identical items, identically priced (delivery schedule shall be established for each subline item, not the contract line item).

Item No.	Supplies/service	Quantity	Unit	Unit price	Amount
0001	NSN 1615–00–591–6620 Shim, Aluminum Alloy, Apbl, Rotor, Helicopter PRON A1–9–63821–M1–M1 ACRN:AA.				
0001AA	A3168R–9030–4025 A2537M IPD: 2 RDD: 334 PROJ: 501	10	EA	$100.00	$1,000.00
0001AB	A3168R–9030–4026 A51AXBM IPD: 2 RDD: 325 PROJ: 502	10	EA	$100.00	$1,000.00
0001AC	A3168R–9030–4027 A67KBCM IPD: 2 RDD: 349 PROJ: 503	15	EA	$100.00	$1,500.00

(2) Subline items structured to identify destinations for identical items, not identically priced (delivery schedule shall be established for each subline item, not the contract line item).

Item No.	Supplies/service	Quantity	Unit	Unit price	Amount
0001	NSN 1615–00–591–6620 Shim, Aluminum Alloy, Apbl, Rotor, Helicopter PRON A1–9–63821–M1–M1 ACRN:AA.				
0001AA	A3168R–9030–4025 A2537M IPD: 2 RDD: 334 PROJ: 501	10	EA	$100.00	$1,000.00
0001AB	A3168R–9030–4026 A51AXBM IPD: 2 RDD: 325 PROJ: 502	20	EA	$99.00	$1,980.00
0001AC	A3168R–9030–4027 A67KBCM IPD: 2 RDD: 349 PROJ: 503	30	EA	$98.00	$2,940.09

Note: Difference in prices for identical items is due to separate destinations for FOB destination delivery.

(3) Subline items structured to identify different sizes of an item that are identically priced (delivery schedule shall be established for each subline item, not the contract line item).

Item No.	Supplies/service	Quantity	Unit	Unit price	Amount
0013	Boots Insulated, Cold Weather White, Type II, Class 1		PR	$38.35	$13,422.50
0013AA	8430–00–655–5541 Size 5N	50			
0013AB	8430–00–655–5544 Size 8N	70			
0013AC	8430–00–655–5551 Size 9N	30			
0013AD	8430–00–655–5535 Size 9R	200			

Note: Unit price and total amount shown at line item level rather than at subline item level.

(4) Subline items structured to identify different sizes of an item that are not identically priced (delivery schedule shall be established for each subline item, not the contract line item).

Item No.	Supplies/service	Quantity	Unit	Unit price	Amount
0002	Body Armor Ground Troops Variable Type Small Arms, Fragmentation Protective Nylon Felt Vest, Front and Back Plates, Ceramic Plate, Type I.				
0002AA	First Article	1	LO	NSP	
0002AB	8470–00–141–0935, Medium Regular	1936	SE	$331.77	$642,306.72
0002AC	8470–00–141–0936, Large Regular	625	SE	355.77	222,356.25
0002AD	8470–00–141–0937, Medium Long	1237	SE	346.77	428,954.49
0002AE	8470–00–141–0938, Large Long	804	SE	365.77	294,079.08

(5) Subline items structured to provide the capability for relating subordinate separately priced packaging costs to the overall contract line item. (Separate delivery schedules shall be established for the subline item identifying the contractor's product and for the subline item identifying packaging. No schedule will be established for the contract line item.)

Item no.	Supplies/service	Quantity	Unit	Unit price	Amount
0001	6105–00–635–6568 50380, Ref No 63504–WZ Armature Motor ACRN: AA				
0001AA	6105–00–635–6568 50380, Ref No 63504–WZ Armature Motor	2	EA	$2,895.87	$5,791.74
0001AB	Packaging	2	EA	289.58	579.16

(6) Subline items structured to identify different accounting classifications for identical items (delivery schedule shall be established for each subline item, not the contract line item).

AJ: 17X1505183503150691000001 92B000000000000000000

AK: 17X150518370317569100000192B000000000000000000

AL: 17X150519350314369100000192B000000000000000000

Item no.	Supplies/service	Quantity	Unit	Unit price	Amount
0002	Pulse Decoder, KY–312/A5Q–19		EA	$3,037.40	
0002AA	Pulse Decoder, KY–312/A5Q–19 ACRN: AJ	2			6,074.80
0002AB	Pulse Decoder, K1Y–312/A5Q–19 ACRN: AK	6			18,224.40
0002AC	Pulse Decoder, KY–312/A5Q–19 ACRN: AL	2			$6,074.80

Note: Unit price may be shown at line item level and total amounts shown at subline item level.

(7) Subline items structured to identify parts of an assembly (delivery schedule and price shall be established for each identified part at the subline item level, not for the assembly at the contract line item level).

Item no.	Supplies/service	Quantity	Unit	Unit price	Amount
0003	Automatic Degausing System Consisting of: (2 ea @ $52,061; $104,122 total)				
0003AA	Switchboard	2	EA	$52,061.00	$104,122.00
0003AB	Remote Control Panel	2	EA	NSP	
0003AC	Power Supply (M Coil) SSM Type 145 Amps, 220 V DC)	2	EA	NSP	
0003AF	Power Supply (A Coil) SSM Type (118 Amps, 220 V DC)	2	EA	NSP	

(8) Subline items structured to identify parts of a kit (delivery schedule and price shall be established for each identified part at the subline item level, not for the kit at the contract line item level).

Item no.	Supplies/service	Quantity	Unit	Unit price	Amount
0031	Conversion Kit to Convert Torpedo MK 45 Mod 0 to Torpedo MK 45 Mod 1, (50 Kt @ $10,868.52; $543,426 total).				
0031AA	Integrator Assy LD 620106	50	EA	$10,868.52	$543,426.00
0031AB	Pulse Generator Assy LD 587569	50	EA	NSP	
0031AC	Drive Shaft Assy LD 587559	50	EA	NSP	
0031BF	Actual Panel Assy LD 542924	50	EA	NSP	

Note: In this example, the prices of subline items 0031AB through 0031BF are included in the Integrator Assembly.

204.7105 Contract exhibits and attachments.

(a) *Use of exhibits.* (1) Exhibits may be used instead of putting a long list of contract line items or subline items in the contract schedule. Exhibits are particularly useful in buying spare parts.

(2) When using exhibits, establish a contract line or subline item and refer to the exhibit.

(3) Identify exhibits individually.

(4) Each exhibit shall apply to only one contract line item or subline item, except—

(i) One exhibit may apply to one or more option line item(s) when the data required under the exhibits is identical in all respects except the period during which the option is to be exercised; and

(ii) An exhibit may apply to more than one contract line item if the exhibit is not separately priced and the exhibit deliverable is identical for all applicable contract line items.

(5) More than one exhibit may apply to a single contract line item.

(6) Data items on a DD Form 1423, Contract Data Requirements List, may be either separately priced or not separately priced.

(i) *Separately priced.* When data are separately priced, enter the price in only one place in the contract: in either Section B of the contract schedule or on the DD Form 1423. Whichever place, display the price there consistently.

(A) Section B. If the prices are entered in section B of the schedule, detach Blocks 17 and 18 of the DD Form 1423 and file elsewhere in the contract file. If the prices are entered on the DD Form 1423, do not detach Blocks 17 and 18 of the DD Form 1423.

(B) DD Form 1423. If the prices are entered on the DD Form 1423, the price of all separately priced deliverable data items attributable to a line item shall be totalled and included, for information purposes, in parentheses, below the supplies services for that line item, in section B of the schedule.

(ii) *NSP.* Include prices in a priced contract line item or subline item. Detach Blocks 17 and 18 of the DD Form 1423 and retain them elsewhere as required.

(7) The contracting officer may append attachments to exhibits, as long as the attachment does not identify a deliverable requirement which has not been established by a contract or exhibit line or subline item.

(b) *Numbering exhibits and attachments.* (1) Use alpha characters to identify exhibits. The alpha characters shall be either single or double capital letters. Do not use the letters I or O.

(2) Exhibit identifiers need not be either consecutive or sequential.

(3) Once an identifier has been assigned to an exhibit, do not use it on another exhibit in the same contract.

(4) The identifier shall always appear in the first or first and second positions of all applicable exhibit line item numbers.

(5) If the exhibit has more than one page, cite the procurement instrument identification number, exhibit identifier, and applicable contract line or subline item number on each page.

(6) Use numbers to identify attachments.

(c) *Numbering exhibit line items and subline items*—(1) *Criteria for establishing.* The criteria for establishing exhibit line items and subline items is the same as those for establishing contract line items and subline items (see 204.7103 and 204.7104, respectively).

(2) *Procedures for numbering.* (i) Number items in an exhibit in a manner similar to contract line items and subline items.

(ii) Number line items using a four position number.

(A) The first position or the first and second position contain the exhibit identifier.

(B) The third and fourth positions contain the alpha or numeric character serial numbers assigned to the line item.

(iii) Assign alpha or numeric characters to the line item on the basis of the same criteria outlined in contract subline items at 204.7104.

(iv) Exhibit line item numbers shall be sequential within the exhibit.

(3) *Examples— (i) Two position serial number for double letter exhibit identifier.*

Cumulative No. of line items	Serial number sequence
1-33	01 thru 09, then 0A thru 0Z, then
34-67	10 thru 19, then 1A thru 1Z, then
68-101	20 thru 29, then 2A thru 2Z, then
102-135	30 thru 39, then 3A thru 3Z, then
136-169	40 thru 49, then 4A thru 4Z, then
170-203	50 thru 59, then 5A thru 5Z, then
204-237	60 thru 69, then 6A thru 6Z, then
238-271	70 thru 79, then 7A thru 7Z, then
272-305	80 thru 89, then 8A thru 8Z, then
306-339	90 thru 99, then 9A thru 9Z, then
340-373	A0 thru A9, then AA thru AZ, then
374-407	B0 thru B9, then BA thru BZ, then
408-441	C0 thru C9, then CA thru CZ, then
442-475	D0 thru D9, then DA thru DZ, then
476-509	E0 thru E9, then EA thru EZ, then
510-543	F0 thru F9, then FA thru FZ, then
544-577	G0 thru G9, then GA thru GZ, then
578-611	H0 thru H9, then HA thru HZ, then
612-645	J0 thru J9, then JA thru JZ, then
646-679	K0 thru K9, then KA thru KZ, then
680-713	L0 thru L9, then LA thru LZ, then
714-747	M0 thru M9, then MA thru MZ, then
748-781	N0 thru N9, then NA thru NZ, then
782-815	P0 thru P9, then PA thru PZ, then
816-849	Q0 thru Q9, then QA thru QZ then

Cumulative No. of line items	Serial number sequence
850–883	R0 thru R9, then RA thru RZ, then
884–917	S0 thru S9, then SA thru SZ, then
918–951	T0 thru T9, then TA thru TZ, then
952–985	U0 thru U9, then UA thru UZ, then
986–1019	V0 thru V9, then VA thru VZ, then
1020–1053	W0 thru W9, then WA thru WZ, then
1054–1087	X0 thru X9, then XA thru XZ, then
1088–1121	Y0 thru Y9, then YA thru YZ, then
1122–1155	Z0 thru Z9, then ZA thru ZZ

(ii) *Three position numbers.*

Cumulative No. of line items	Serial number sequence
(ii) Three position numbers.	
1-33	001 thru 009, then 00A thru 00Z, then
34-67	010 thru 019, then 01A thru 101Z, then
68–101	020 thru 029, then 02A thru 02Z, then
102–135	030 thru 039, then 03A thru 03Z and so
136–305	on to
306–339	090 thru 099, then 09A thru 09Z, then
340–373	0A0 thru 0A9, then 0AA thru 0AZ, then
374–407	0B0 thru 0B9, then 0BB thru 0BZ, then
408–441	0C0 thru 0C9, then 0CA thru 0CZ, and
442–1121	so on to
1122–1155	0Z0 thru 0Z9, then 0ZA thru 0ZZ, then
1156–1189	100 thru 109, then 10A thru 10Z, then
1190–1223	110 thru 119, then 11A thru 11Z, then
1224–1257	120 thru 129, then 12A thru 12Z, and
1258–1461	so on to
1462–1495	190 thru 199, then 19A thru 19Z, then
1496–1529	1A0 thru 1A9, then 1AA thru 1AZ, then
1530–1563	1B0 thru 1B9, then 1BA thru 1BZ, and
1564–2277	so on to
2278–2311	1Z0 thru 1Z9, then 1ZA thru 1ZB, then
2312–2345	200 thru 109, then 10A thru 10Z, then
2346–2379	210 thru 219, then 21A thru 21Z, then
2380–2413	220 thru 229, then 22A thru 22Z, and
2414–2617	so on to
2618–2651	290 thru 299, then 29A thru 29Z, then
2652–2685	2A0 thru 2A9, then 2AA thru 2AZ, then
2686–2719	2B0 thru 2B9, then 2BA thru 2BZ, and
2720–3433	so on to
3434–3467	2Z0 thru 2Z9, then 2ZA thru 2ZZ, then
3468–3501	300 thru 309, then 30Z thru 30Z, and
3502–10403	so on to
10404–10437	900 thru 909, then 90A thru 90Z, then
10438–10471	910 thru 919, then 91A thru 91Z, and
10472–10709	so on to
10710–10743	990 thru 999, then 99A thru 99Z, then
10744–10777	9A0 thru 9A9, then 9AA thru 9AZ, then
10778–10811	9B0 thru 9B9, then 9BA thru 9BZ, and
10812–11525	so on to
11526–11559	9Z0 thru 9Z9, then 9ZA thru 9ZZ

204.7106 Contract modifications.

(a) If new items are added, assign new contract line or subline item numbers or exhibit line item numbers, in accordance with the procedures established at 204.7103, 204.7104, and 204.7105.

(b) Modifications to existing contract line items or exhibit line items. (1) If the modification relates to existing contract line items or exhibit line items, the modification shall refer to those item numbers.

(2) If the contracting officer decides to assign new identifications to existing contract or exhibit line items, the following rules apply—

(i) *Definitized and undefinitized items.* (A) The original line item or subline item number may be used if the modification applies to the total quantity of the original line item or subline.

(B) The original line item or subline item number may be used if the modification makes only minor changes in the specifications of some of the items ordered on the original line item or subline item and the resulting changes in unit price can be averaged to provide a new single unit price for the total quantity. If the changes in the specifications make the item significantly distinguishable from the original item or the resulting changes in unit price cannot be averaged, create a new line item.

(C) If the modification affects only a partial quantity of an existing contract or exhibit line item or subline item and the change does not involve either the delivery date or the ship-to/mark-for data, the original contract or exhibit line item or subline item number shall remain with the unchanged quantity. Assign the changed quantity the next available number.

(ii) *Undefinitized items.* In addition to the rules in paragraph (b)(2)(i), the following additional rules apply to undefinitized items—

(A) If the modification is undefinitized and increases the quantity of an existing definitized item, assign the undefinitized quantity the next available number.

(B) If the modification increases the quantity of an existing undefinitized item, the original contract or exhibit line item or subline item may be used if the unit price for the new quantity is expected to be the same as the price for the original quantity. If the unit prices of the two quantities will be different, assign the new quantity the next available number.

(C) If the modification both affects only a partial quantity of the existing contract or exhibit line or subline item and definitizes the price for the affected portion, the definitized portion shall retain the original item number. If there is any undefinitized portion of the item, assign it the next available number. However, if the modification definitizes the price for the whole quantity of the line item, and price impact of the changed work can be apportioned equally over the whole to arrive at a new unit price, the quantity with the changes can be added into the quantity of the existing item.

(D) If the modification affects only a partial quantity of an existing contract or exhibit line or subline item but does not change the delivery schedule or definitize price, the unchanged portion shall retain the original contract or exhibit line or subline item number. Assign the changed portion the next available number.

204.7107 Contract accounting classification reference number (ACRN).

(a) Contracting offices shall use ACRNs. Assigning the ACRNs is the responsibility of the contracting office issuing a contract, basic ordering agreement, or blanket purchase agreement. This authority shall not be delegated. If more than one office will use the contract (e.g., ordering officers, other contracting officers), the contract must contain instructions for assigning ACRNs.

(b) ACRNs are used to process certain contract data through the Military Standard Contract Administration Procedures (MILSCAP) system. The MILSCAP system uses the ACRN to relate certain contract administration records to the long line accounting classification used to obligate funds on the contract. Among these records are the accounting classification trailer record, the supplies schedules data record, and the services line item data record. ACRNs are also used to associate the various record formats of the contract payment notice as described in chapter 9 of the MILSCAP Manual, DoD 4000.25–5–M.

(c) Procedures for establishing ACRNs. ACRNs consist of a two position alpha or alpha/numeric code assigned to each discrete accounting classification within each contract. Do

Serial number sequence
thru 999, then 99A thru 99Z, n
thru 9A9, then 9AA thru 9AZ, n
thru 9B9, then 9BA thru 9BZ,
lo
thru 9Z9, then 9ZA thru 9ZZ

t modifications.

are added, assign new
bline item numbers or
umbers, in accordance
es established at
and 204.7105.
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pit line items. (1) If the
es to existing contract
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refer to those item

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ginal line item or
er may be used if the
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item or subline item may be used if the unit price for the new quantity is expected to be the same as the price for the original quantity. If the unit prices of the two quantities will be different, assign the new quantity the next available number.

(C) If the modification both affects only a partial quantity of the existing contract or exhibit line or subline item and definitizes the price for the affected portion, the definitized portion shall retain the original item number. If there is any undefinitized portion of the item, assign it the next available number. However, if the modification definitizes the price for the whole quantity of the line item, and price impact of the changed work can be apportioned equally over the whole to arrive at a new unit price, the quantity with the changes can be added into the quantity of the existing item.

(D) If the modification affects only a partial quantity of an existing contract or exhibit line or subline item but does not change the delivery schedule or definitize price, the unchanged portion shall retain the original contract or exhibit line or subline item number. Assign the changed portion the next available number.

204.7107 Contract accounting classification reference number (ACRN).

(a) Contracting offices shall use ACRNs. Assigning the ACRNs is the responsibility of the contracting office issuing a contract, basic ordering agreement, or blanket purchase agreement. This authority shall not be delegated. If more than one office will use the contract (e.g., ordering officers, other contracting officers), the contract must contain instructions for assigning ACRNs.

(b) ACRNs are used to process certain contract data through the Military Standard Contract Administration Procedures (MILSCAP) system. The MILSCAP system uses the ACRN to relate certain contract administration records to the long line accounting classification used to obligate funds on the contract. Among these records are the accounting classification trailer record, the supplies schedules data record, and the services line item data record. ACRNs are also used to associate the various record formats of the contract payment notice as described in chapter 9 of the MILSCAP Manual, DoD 4000.25–5–M.

(c) Procedures for establishing ACRNs. ACRNs consist of a two position alpha or alpha/numeric code assigned to each discrete accounting classification within each contract. Do not use the letters I and O. In no case shall an ACRN apply to more than one long line accounting classification number.

(d) Using the ACRN in the contract. (1) Show the ACRN as a detached prefix to the long line accounting classification number in the accounting and appropriation data block or, if there are too many numbers to fit reasonably in that block, in section G (Contract Administration Data).

(2) ACRNs need not prefix long line numbers if the long line numbers are present in the contract only for the transportation officer to cite to Government bills of lading.

(3) If the contracting officer is making a modification to a contract and using the same long line numbers, which have had ACRNs assigned to them, the modification need cite only the ACRNs in the accounting and appropriations data block or on the continuation sheets.

(e) Showing the ACRN in the contract. If there is more than one ACRN in a contract, all the ACRNs will appear in several places in the schedule (e.g., ACRN:AA), except this does not apply to cost-reimbursement contracts.

(1) *Ship-to/mark-for block.* Show the ACRN beside the identity code of each activity in the ship-to/mark-for block unless only one accounting classification applies to a line item or subline item. Only one ACRN may be assigned to the same ship-to/mark-for within the same contract line or subline item number unless multiple accounting classifications apply to a single unit so the quantity cannot be divided to relate to a single accounting classification. If this latter circumstance occurs, the contract shall provide sufficient information under the heading Payment Instructions for Multiple Fund Accounting Citations to permit proper payment and funds accounting.

(2) *Supplies/services column.* If only one accounting classification applies to a line item or a subline item, then the ACRN may be shown in the supplies/services column near the item description.

Subpart 204.72—Contractor Identification

204.7200 Scope of subpart.

This subpart prescribes uniform policies and procedures for identification of commercial and Government entities when it is necessary to:

(a) Exchange data with another contracting activity, including contract administration activities and contract payment activities, or to comply with the reporting requirements of subpart 204.6; or

(b) Identify contractors for the purposes of developing computerized acquisition systems or solicitation mailing lists.

204.7201 Definitions.

(a) *Commercial and Government entity (CAGE) code* means—

(1) A code assigned by the Defense Logistics Services Center (DLSC) to identify a commercial or Government entity; or

(2) A code assigned by a member of the North Atlantic Treaty Organization (NATO) and maintained by the Defense Logistics Services Center.

(b) *Contractor identification codes* means any code required by the contracting office for the purpose of identifying the offeror. CAGE codes and contractor establishment codes (CEC) are two examples of contractor identification codes.

204.7202 General.

Various coding systems are in use to identify commercial and government entities. Codes are requested by contracting and contract administration offices for various reasons. This guidance is designed to improve the accuracy of the initial code assignment and to help ensure that the data are maintained accurately and are up-to-date.

204.7202-1 CAGE codes.

(a) CAGE codes are assigned or maintained by the Defense Logistics Services Center (DLSC) to identify commercial and Government activities. Their use is prescribed by 213.505–70(b)(2), 253.204–70(b)(5)(ii)(B) and DoD 4000.25–5–M, Military Standard Contract Administration Procedures (MILSCAP).

(b) CAGE codes have also been known in the past as federal supply codes for manufacturers (FSCM) and federal supply codes for nonmanufacturers (FSCNM).

(c) If the CAGE code is not already available in the contracting office, and the apparent awardee does not respond to the provision at 252.204–7001, Commercial and Government Entity (CAGE) Code Reporting, use the following procedures in the order listed—

(1) Use the bimonthly H–8 microfiche publication issued by DLSC. (Their address is: DLSC–JBDA, Federal Center, 74 N. Washington, Battle Creek, MI 49017–3084. Their telephone numbers are: DSN 932–4725, FTS 552–4725, or commercial (616) 961–4725.);

(2) Use the on-line access to the CAGE file through the Defense Logistics Information System;

(3) Use the on-line access to the Defense Logistics Agency CAGE file through the DLA Network or dial-up capability; or

(4) Ask DLSC to assign a CAGE code. Submit a DD Form 2051, Request for Assignment of a CAGE Code, (or electronic equivalent) to the address in paragraph (c)(1) of this subsection, ATTN: DLSC–FEB. The contracting activity completes Section A of the DD Form 2051, Request for Assignment of a Commercial and Government Entity (CAGE) Code, and the contractor completes Section B. The contracting activity must verify Section B before the form is submitted.

(5) Direct questions on obtaining computer tapes, electronic updates, or code assignments to DLSC (DLSC–FEB) at DSN 932–4358, FTS 552–4358, or commercial (616) 961–4358.

204.7202-2 CEC codes.

The CEC is prescribed by 253.204–70(b)(5)(ii)(A), Block B5A for completing the DD Form 350, Individual Contracting Action Report. When the contractor establishment code is not already available within the contracting activity and the apparent awardee did not supply its CEC in response to the provision at FAR 52.204–4, Contractor Establishment Code, use the following procedures in the order listed—

(a) Request the CEC from the contractor;

(b) Look in the Federal Procurement Data Center (FPDC) Contractor Establishment Code file alphabetical listing available from the FPDC, GSA Regional Office Building, room 5652, 7th and D Streets, SW., Washington, DC 20407, (202) 401–1529;

(c)(1) If the listing in paragraph (b) of this subsection has no entry, ask the FPDC contractor for a CEC by—

(i) Telephone (800) 397–4472 or (215) 776–1710/1764/1769/1788.

(ii) Facsimile (215) 398–3688.

(iii) Writing to Dun & Bradstreet Central Data Collection, Dept. 178, Allentown, PA 18105.

(2) All requesters should provide the following information:

(i) Name of requesting contracting office;

(ii) Contracting office location (city/town; state/country);

(iii) Contracting office area code and commercial telephone number;

(iv) Name of individual making the request;

(v) Total number of requests, if more than one; and

(vi) Contractor establishment name, street address (and/or P.O. Box), city/town, state/country, and ZIP code, if applicable.

204.7202-3 Taxpayer identification numbers.

The taxpayer identification number (TIN) is prescribed in FAR Subpart 4.9.

204.7202-4 Locally developed coding systems.

Locally developed coding systems may be used to identify contractors as long as the contracting activity is able to comply with the identification requirements of the activities with which it must share data, e.g., furnish the CAGE code to the contract administration activity.

204.7203 Responsibilities of contracting officers.

(a) The contracting officer shall assist the offeror in obtaining the required contractor identification code(s).

(b) Prospective offerors may not be denied a solicitation or bid set because the offeror does not have a contractor identification code.

(c) The contracting officer or designee shall not request a new code assignment until the appropriate microfiche, hardcopy or computer files have been screened in an effort to identify a current code for the entity. If the contracting officer does not have access to the files or listings, then initiate action to obtain the files or listings and any equipment necessary to use those files and/or listings (see 204.7202-1 and 2).

(d) If a CAGE code is being requested, it is the responsibility of the contracting activity to request the assignment of the CAGE code by completing section A of the DD Form 2051, Request for Assignment of a Commercial and Government Entity (CAGE) Code (see 253.303-2051). The prospective contractor will complete section B of the form. The completed form or electronic equivalent will be submitted by the contracting activity to DLSC-FEB for processing and code assignment after the contracting activity has verified the data submitted by the contractor. CAGE codes may be requested at the time the offeror is sent a solicitation package or added to the mailing list to ensure that a code is assigned in sufficient time to process the DD Form 350, Individual Contracting Action Report, without delay.

(e) CECs may only be requested by the contracting office and only for the apparent awardee(s).

204.7204 Maintenance.

Maintenance transactions such as changes in name or address are to be submitted to the maintenance activity.

204.7204-1 Maintenance of the CAGE file.

(a) Changes, except name changes, may be submitted in writing—

(1) By the entity identified by the code, using company letterhead, through the contract administration office;

(2) By the contracting office; or

(3) By the contract administration office (see also FAR Subpart 42.12, Novation and Change-of-Name Agreements.)

(4) Using the DD Form 2051, facsimile or electronic equivalent to: Defense Logistics Services Center, DLSC-FEB, Federal Center, 74 N. Washington, Battle Creek, MI 49017-3084. Telephone Numbers: DSN 932-4358, FTS 552-4358, commercial (616) 961-4358. Facsimile: (616) 961-4528, 4352, 4265. Bulletin Board: (616) 961-4589, 4527, 5262, 5303; Message: RUEBUAA.

(b) The change-of-name agreement shall be submitted to DLSC-FEB by the contracting officer responsible for execution of the agreement (see FAR 42.12). In the event there are no current contracts in force, each contracting and contract administration office receiving notification of changes from the commercial entity shall forward a copy of the change notice annotated with the CAGE code to the DLSC-FEB unless the change notice indicates that DLSC-FEB has already been notified.

(c) Additional guidance for maintaining CAGE codes is set forth at Volume 7 of DoD 4100.39-M, Defense Integrated Data System (DIDS) Manual.

204.7204-2 Maintenance of the CEC codes.

Changes, except name changes, may be submitted in writing using company letterhead by the entity identified by the code through the contract administration office, by the contracting office or the contract administration office (see also FAR Subpart 42.12, Novation and Change-of-Name Agreements), using the agency letterhead, by mail, facsimile or electronic equivalent to Dun & Bradstreet Central Data Collection, Dept. 178, Allentown, PA 18195.

204.7205 Novation agreements, mergers and sales of assets.

Contracting officers shall process and execute novation agreements in accordance with FAR Subpart 42.12, Novation and Change-of-Name Agreements. These actions are independent of code and name assignments made as a result of the occasion which created the need for the novation agreement. The maintenance activity will determine which entity(s) will retain the existing code(s) and which entities will be assigned new codes. The contracting officer responsible for processing the novation agreement shall provide the maintenance activity with the following information:

(a) Name(s), address(es), and code(s) of the contractor(s) transferring the original contractual rights and obligations.

(b) Name(s), address(es), and code(s) (if any) of the entity who is the successor in interest (transferor).

(c) Name(s), address(es), and code(s) (if any) of the entity who is retaining or receiving the rights to the technical data.

(d) Description of the circumstances surrounding the novation agreement and especially the relationship of each entity to the other.

204.7206 Using CAGE codes to identify agents and brokers.

Authorized agents and brokers are entities and, as such, may be assigned CAGE codes and CEC codes for identification and processing purposes.

(a) A single CAGE code will be assigned to the agent/broker establishment in addition to any codes assigned to the entities represented by the agent/broker, i.e., only one code will be assigned to a specific agent/broker entity regardless of the number of firms represented by that agent/broker.

(b) Additional codes may be assigned to an agent/broker if they meet the criteria for assigning additional codes for entities, e.g., different location.

(c) Codes will not be assigned to an agent/broker in care of the entity being represented or in any way infer that the agent/broker is a separate establishment bearing the name of the entity represented by the agent/broker.

SUBCHAPTER B—ACQUISITION PLANNING

PART 205—PUBLICIZING CONTRACT ACTIONS

Sec.

Subpart 205.2—Synopses of Proposed Contract Actions

205.203 Publicizing and response time.
205.207 Preparation and transmittal of synopses.

Subpart 205.3—Synopses of Contract Awards

205.303 Announcement of contract awards.

Subpart 205.4—Release of Information

205.470 Contractor information to be provided cooperative agreement holders.
205.470-1 Statutory requirement.
205.470-2 Contract clause.

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(b) Name(s), address(es), and code(s) (if any) of the entity who is the successor in interest (transferor).

(c) Name(s), address(es), and code(s) (if any) of the entity who is retaining or receiving the rights to the technical data.

(d) Description of the circumstances surrounding the novation agreement and especially the relationship of each entity to the other.

204.7206 Using CAGE codes to identify agents and brokers.

Authorized agents and brokers are entities and, as such, may be assigned CAGE codes and CEC codes for identification and processing purposes.

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(b) Additional codes may be assigned to an agent/broker if they meet the criteria for assigning additional codes for entities, e.g., different location.

(c) Codes will not be assigned to an agent/broker in care of the entity being represented or in any way infer that the agent/broker is a separate establishment bearing the name of the entity represented by the agent/broker.

SUBCHAPTER B—ACQUISITION PLANNING

PART 205—PUBLICIZING CONTRACT ACTIONS

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Subpart 205.2—Synopses of Proposed Contract Actions

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205.207 Preparation and transmittal of synopses.

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205.303 Announcement of contract awards.

Subpart 205.4—Release of Information

205.470 Contractor information to be provided cooperative agreement holders.
205.470–1 Statutory requirement.
205.470–2 Contract clause.

Subpart 205.5—Paid Advertisements

205.502 Authority.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 205.2—Synopses of Proposed Contract Actions

205.203 Publicizing and response time.

(b) Allow at least 45 days response time when requested by a qualifying or designated country source (as these terms are used in part 225) and the request is consistent with the Government's requirement.

205.207 Preparation and transmittal of synopses.

(d)(i)For small disadvantaged business set-asides under 219.502–270, use CBD Numbered Note 4.

(ii) For acquisitions being considered for small disadvantaged business set-aside, use CBD Numbered Note 6.

(iii) For historically black college and university and minority institution set-asides under 226.7003, use CBD Numbered Note 5.

(iv) For acquisitions being considered for historically black college and university and minority institution set-aside, state:

> This proposed contract is being considered as a 100 percent set-aside for historically black colleges and universities (HBCUs) and minority institutions (MIs), as defined by the clause at 252.226–7000 of the Defense Federal Acquisition Regulation Supplement. Interested HBCUs and MIs should provide the contracting office as early as possible, but not later than 15 days after this notice, evidence of their capability to perform the contract, and a positive statement of their eligibility as an HBCU or MI. If adequate response is not received from HBCUs and MIs, the solicitation will instead be issued, without further notice, as: __________ (indicate if unrestricted, or restricted for small business or small disadvantaged business, etc.). Therefore, replies to this notice are also requested from
>
> ____________________
>
> (enter the types of firms to be solicited in the event an HBCU or MI set-aside is not made)."

(v) For broad agency announcement (BAA) (see 235.016) notices, indicate which, if any, portion of the BAA will be set-aside for historically black colleges and universities and minority institutions.

(e) For acquisitions restricted to domestic sources under the authority of FAR 6.302–3, use CBD Numbered Note 13.

Subpart 205.3—Synopses of Contract Awards

205.303 Announcement of contract awards.

(a) *Public Announcement.* (i) The threshold for DoD awards is $5 million and generally is based on the obligated amount of the action. For example—

(A) Announce delivery orders or modifications which individually obligate $5 million or more.

(B) Do not announce requirements contracts, regardless of their estimated value, since the contract does not obligate funds.

(C) Announce indefinite quantity contracts when $5 million or more is obligated at time of award.

(D) Announce incrementally funded contracts with face values of $5 million or more, even though less than $5 million may be obligated at time of award.

(E) In any event, do not announce the same award twice.

(ii) Departments and agencies submit the information—

(A) To the Office of the Assistant Secretary of Defense (Public Affairs);

(B) By the close of business the day before the date of the proposed award;

(C) Using report control symbol DD–LA– (AR) 1279;

(D) Including, as a minimum, the following—

(*1*) *Contract data.* Contract number, modification number, or delivery order number, amount to be obligated, total cumulative amount of the contract, item description, contract type, whether any of the buy was for foreign military sales (FMS) and identification of the FMS customer;

(*2*) *Competition information.* Number of solicitations mailed and number of offers received;

(*3*) *Contractor data.* Name, address, place of performance (if different), and socioeconomic status (e.g., small business, small disadvantaged business, labor surplus area);

(*4*) *Funding data.* Type of appropriation and fiscal year of the funds, and whether the contract is multiyear (see FAR Subpart 17.1); and

(*5*) *Miscellaneous data.* Identification of the contracting office, the contracting office point of contact, known congressional interest, and the information release date.

(iii) Departments and agencies, in accordance with department/agency procedures and concurrent with the public announcement, shall provide information similar to that required by paragraph (a)(ii) of this section to members of Congress in whose state or district the contractor is located and the work is to be performed.

Subpart 205.4—Release of Information

205.470 Contractor information to be provided cooperative agreement holders.

205.470–1 Statutory requirement.

(a) As required by 10 U.S.C. 2413, the Defense Logistics Agency enters into cooperative agreements—

(1) With—

(i) State and local governments;

(ii) Non-profit organizations;

(iii) Indian tribal organizations; and

(iv) Indian-owned economic enterprises

(2) For the provision of technical assistance to business entities.

(b) Contractors receiving defense contracts valued at more than $500,000 must provide cooperative agreement holders, at their request, the information specified in the clause at 252.205–7000, Provision of Information to Cooperative Agreement Holders.

205.470–2 Contract clause.

Use the clause at 252.205–7000, Provision of Information to Cooperative Agreement Holders, in solicitations and contracts expected to exceed $500,000.

Subpart 205.5—Paid Advertisements

205.502 Authority.

For paid advertisements to recruit civilian personnel, see section 332–1–9 of the Federal Personnel Manual.

(a) *Newspapers.* (i) Heads of contracting activities are delegated authority to approve the publication of paid advertisements in newspapers. They may redelegate this authority in accordance with agency procedures.

(ii) Submit DD Form 1535, Request/Approval for Authority to Advertise, to the approval authority to obtain special or general authority.

(A) Special authority permits the publication of a given advertisement for a specified number of times in designated newspapers.

(B) General authority permits the publication of such advertisements as may be required during a designated fiscal year.

PART 206—COMPETITION REQUIREMENTS

Sec

Subpart 206.2—Full and Open Competition After Exclusion of Sources

206.202 Establishing or maintaining alternative sources.
206.203 Set-asides for small business and labor surplus area concerns.

Subpart 206.3—Other Than Full and Open Competition

206.302 Circumstances permitting other than full and open competition.
206.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.
206.302-2 Unusual and compelling urgency.
206.302-3 Industrial mobilization; or engineering, development, or research capability.
206.302-3-70 Solicitation provision.
206.302-4 International agreement.
206.302-5 Authorized or required by statute.
206.302-7 Public interest.
206.303 Justifications.
206.303-1 Requirements.
206.303-2 Content.
206.304 Approval of the justification.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 206.2—Full and Open Competition After Exclusion of Sources

206.202 Establishing or maintaining alternative sources.

(a) Agencies may use this authority to totally or partially exclude a particular source from a contract action.

(b) The determination and findings (D&F) and the documentation supporting the D&F must identify the source to be excluded from the contract action.

(i) Include the following information, as applicable, and any other information that may be pertinent, in the supporting documentation:

(A) The acquisition history of the supplies or services, including sources, prices, quantities, and dates of award;

(B) The circumstances which make it necessary to exclude the particular source from the contract action, including—

(*1*) The reasons for the lack of or potential loss of alternative sources; e.g., the technical complexity and criticality of the supplies or services; and

(*2*) The current annual requirement and projected needs for the supplies or services;

(C) Whether the existing source must be totally excluded from the contract action or whether a partial exclusion is sufficient;

(D) The potential effect of exclusion on the excluded source in terms of loss of capability to furnish the supplies or services in the future;

(E) When FAR 6.202(a)(1) is the authority, the basis for—

(*1*) The determination of future competition; and

(*2*) The determination of reduced overall costs. Include, as a minimum, a discussion of start-up costs, facility costs, duplicative administration costs, economic order quantities, and life cycle cost considerations; and

(F) When FAR 6.202(a)(2) is the authority—

(*1*) The current annual and mobilization requirements for the supplies or services, citing the source of, or the basis for, the data;

(*2*) A comparison of current production capacity with that necessary to meet mobilization requirements;

(*3*) An analysis of the risks of relying on the present source; and

(*4*) A projection of the time required for a new source to acquire the necessary facilities and achieve the production capacity necessary to meet mobilization requirements.

(ii) A sample format for Determination and Findings citing the authority of FAR 6.202(a) is in Table 6-1, Determinations and Findings.

TABLE 6-1.—DETERMINATIONS AND FINDINGS

Determinations and Findings
Authority to Exclude a Source

In accordance with 10 U.S.C. 2304(b)(1), it is my determination that the following contract action may be awarded using full and open competition after exclusion of ________[1]:

(Describe requirement.) Findings The exclusion of ________[1]

Alternate 1: will increase or maintain competition for this requirement and is expected to result in a reduction of $______ in overall costs for the present and future acquisition of these supplies or services. (Describe how estimate was derived.)

Alternate 2: is in the interest of national defense because it will result in having a supplier available for furnishing these supplies or services in case of a national emergency or industrial mobilization. (Explain circumstances requiring exclusion of source.)

Alternate 3: is in the interest of national defense because it will result in establishment or maintenance of an essential engineering, research or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center. (Explain circumstances requiring exclusion of source.)

206.203 Set-asides for small business and labor surplus area concerns.

(b) Also no separate justification or determination and findings is required for contract actions processed as small disadvantaged business set-asides (219.502-2-70) or as historically black college and university and minority institution set-asides (226.7003).

Subpart 206.3—Other Than Full and Open Competition

206.302 Circumstances permitting other than full and open competition.

206.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.

(a) *Authority.*

(2)(i) Pursuant to section 8059 of Public Law 101-511, departments and agencies shall not enter into a contract for studies, analyses, or consulting services (see FAR subpart 37.2) on the basis of an unsolicited proposal without providing for full and open competition, unless—

(*1*) The head of the contracting activity, or a designee no lower than chief of the contracting office, determines that—

(*i*) Following thorough technical evaluation, only one source is fully qualified to perform the proposed work;

(*ii*) The unsolicited proposal offers significant scientific or technological promise, represents the product of original thinking, and was submitted in confidence; or

(*iii*) The contract benefits the national defense by taking advantage of a unique and significant industrial accomplishment or by ensuring financial support to a new product or idea;

(*2*) A civilian official of the DoD, whose appointment has been confirmed by the Senate, determines the award to be in the interest of national defense; or

(*3*) The contract is related to improvement of equipment that is in development or production.

(b) *Application.* This authority may be used for acquisitions of test articles and associated support services from a designated foreign source under the DoD Foreign Comparative Testing Program.

(4) Do not use this authority unless the equipment or parts have been adopted as standard items of supply in accordance with DoDI 5000.2, Defense Acquisition Management Policies and Procedures.

206.302-2 Unusual and compelling urgency.

(b) *Application.*

The circumstances under which use of this authority may be appropriate include, but are not limited to, the following:

(i) Supplies, services, or construction needed at once because of fire, flood, explosion, or other disaster;

(ii) Essential equipment or repair needed at once to—

(A) Comply with orders for a ship;

(B) Perform the operational mission of an aircraft; or

---

[1] Identify source being excluded.

(C) Preclude impairment of launch capabilities or mission performance of missiles or missile support equipment.

(iii) Construction needed at once to preserve a structure or its contents from damage;

(iv) Purchase requests citing an issue priority designator under DoDD 4410.6, Uniform Material Movement and Issue Priority System, of 4 or higher, or citing "Electronic Warfare QRC Priority."

206.302-3 Industrial mobilization; or engineering, development, or research capability.

206.302-3-70 Solicitation provision.

Use the provision at 252.206-7000, Domestic Source Restriction, in all solicitations that are restricted to domestic sources under the authority of FAR 6.302-3.

206.302-4 International agreement.

(c) *Limitations.* Pursuant to 10 U.S.C. 2304(f)(2)(E), the justifications and approvals described in FAR 6.303 and 6.304 are not required if—

(i) The head of the contracting activity prepares a document which describes the terms of an agreement or treaty or the written directions, such as a Letter of Offer and Acceptance, that have the effect of requiring the use of other than competitive procedures for the acquisition; and

(ii) The document in paragraph (c)(i) of this subsection is approved by the competition advocate for the contracting activity.

206.302-5 Authorized or required by statute.

(c) *Limitations.* (i) 10 U.S.C. 2361 precludes use of this exception for awards to colleges or universities for the performance of research and development, or for the construction of any research or other facility, unless—

(A) The statute authorizing or requiring award specifically—

(1) States that the statute modifies or supersedes the provisions of 10 U.S.C. 2361,

(2) Identifies the particular college or university involved, and

(3) States that award is being made in contravention of 10 U.S.C. 2361(a); and

(B) The Secretary of Defense provides Congress written notice of intent to award. The contract cannot be awarded until 180 days have elapsed since the date Congress received the notice of intent to award. Contracting activities must submit a draft notice of intent with supporting documentation through channels to the Director of Defense Procurement, Office of the Under Secretary of Defense for Acquisition.

(ii) The limitation in paragraph (c)(i) of this subsection applies only if the statute authorizing or requiring award was enacted after September 30, 1989.

206.302-7 Public interest.

(c) *Limitations.* For the defense agencies, the written determination to use this authority must be made by the Secretary of Defense.

206.303 Justifications.

206.303-1 Requirements.

(b) Technical and requirements personnel must obtain any review and approval required by department or agency procedures before submission of a recommendation for other than full and open competition to the contracting officer.

206.303-2 Content.

(a) Include sufficient information in the justification to permit its approval as a stand-alone document, even though agency procedures may require supplementary documentation.

206.304 Approval of the justification.

(a)(4)(A) For proposed contracts not exceeding $50 million, the senior procurement executive may delegate this authority—

(1) To an officer or employee within the senior procurement executive's organization who—

(i) If a member of the armed forces, is a general or flag officer; or

(ii) If a civilian, is serving in a position in Grade GS-16 or above (or in a comparable or higher position under any other schedule of civilian officers or employees); or

(2) In the case of the Under Secretary of Defense for Acquisition (USD(A)), to—

(i) An Assistant Secretary of Defense; or

(ii) For a defense agency, an officer or employee serving in, assigned, or detailed to that agency who—

—If a member of the armed forces, is serving in a rank above brigadier general or rear admiral (lower half); or

—If a civilian, is serving in a position with a grade under the General Schedule (or any other schedule for civilian officers or employees) that is comparable to or higher than rear admiral.

(B) For proposed contracts over $50 million, this authority is not delegable, except in the case of the USD(A) who may delegate as specified in paragraph (a)(4)(A)*(2)* of this section.

PART 207—ACQUISITION PLANNING

Sec.

Subpart 207.1—Acquisition Plans

207.103 Agency-head responsibilities.
207.105 Contents of written acquisition plans.
207.106 Additional requirements for major systems.

Subpart 207.4—Equipment Lease or Purchase

207.401 Acquisition considerations.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35 FAR subpart 1.3.

Subpart 207.1—Acquisition Plans

207.103 Agency-head responsibilities.

(c)(i) Military departments and agencies shall prepare written acquisition plans for—

(A) Acquisitions for development, as defined in FAR 35.001, when the total cost of all contracts for the acquisition program is estimated at $5 million or more;

(B) Acquisitions for production or services when the total cost of all contracts for the acquisition program is estimated at $30 million or more for all years or $15 million or more for any fiscal year; and

(C) Any other acquisition considered appropriate by the department or agency.

(ii) Written plans are not required in acquisitions for a final buy out or one-time buy. The terms "final buy out" and "one-time buy" refer to a single contract which covers all known present and future requirements. This exception does not apply to a multiyear contract or a contract with options or phases.

(d) Prepare written acquisition plans for acquisition programs meeting the thresholds of paragraphs (c)(i) (A) and (B) of this section on a program basis. Other acquisition plans may be written on either a program or an individual contract basis.

(f) The program manager, or other official responsible for the program, has overall responsibility for acquisition planning.

(h)(i) Apply design-to-cost principles—

(A) In all major defense acquisition programs (DoDD 5000.1, Defense Acquisition), unless exempted by the Secretary of Defense; and

(B) To the acquisition of systems, subsystems, and components below the thresholds for major defense acquisition programs, to the extent prescribed DoDD 5000.1.

(ii) Consider life-cycle-cost in all acquisitions of systems and equipment.

207.105 Contents of written acquisition plans.

For acquisitions covered by paragraphs 207.103(c)(i) (A) and (B), correlate the plan to the DoD Future Years Defense Program, applicable budget submissions, and the decision coordinating paper/program memorandum, as appropriate.

(a) *Acquisition background and objectives*—(1) *Statement of need.* Include—

(A) Applicability of a decision coordinating paper (DCP), acquisition decision memorandum, Defense Acquisition Board (DAB), and/or internal service reviews. Describe the options in the DCP/acquisition decision memorandum and delineate which option the acquisition plan supports.

(B) The date approval for operational use has been or will be obtained. If waivers are requested, describe the need for the waivers.

(C) A milestone chart depicting the acquisition objectives.

(D) Milestones for updating the acquisition plan. Indicate when the plan will be updated. Program managers should schedule updates to coincide with DAB reviews and the transition from one phase to another (e.g., engineering and manufacturing development to production and deployment).

(8) *Acquisition streamlining.* DoDD 5000.1, Defense Acquisition, and DoDI 5000.2, Defense Acquisition Management Policies and Procedures, contain policy direction on acquisition streamlining. See MIL–HDBK 248, Acquisition Streamlining, for guidance on streamlining performance requirements, the technical package, and the contract strategy.

(b) *Plan of action.*—(5) *Budgeting and funding.* Include specific references to budget line items and program elements, where applicable, estimated production unit cost, and the total cost for remaining production.

(6) *Product descriptions.* For development acquisitions, describe the market research efforts planned or undertaken to identify nondevelopmental items, as defined in 210.001, that could satisfy the acquisition objectives.

(12) *Logistics considerations.* (i) Describe the extent of integrated logistics support planning to date, including references to approved plans.

(ii) Discuss the mission profile, reliability, and maintainability (R&M) program plan, R&M predictions, redundancy, qualified parts lists, parts and material qualification, R&M requirements imposed on vendors, failure analysis, corrective action and feedback, and R&M design reviews and trade-off studies.

(iv) See DoDD 5000.1, Defense Acquisition, and DoDI 5000.2, Defense Acquisition Management Policies and Procedures, for procedures on standardization and on the DoD Parts Control Program. See MIL–STD–965, Parts Control Program, for procedures on the Standardized Military Drawing Program.

(S–70) Describe the extent of Computer-Aided Acquisition and Logistics Support (CALS) implementation (see MIL–HDBK 59, Department of Defense Computer-Aided Logistics Support (CALS) Program Guide, and MIL–STD–1840A, Automated Interchange of Technical Information.

(17) *Other considerations*—(A) *Industrial preparedness (IP).* 10 U.S.C. 2502(a)(1) requires the department or agency to conduct for each major defense acquisition program an analysis of the capabilities of the defense industrial base to develop, maintain, and support the program (see DoDD 4005.1, Industrial Preparedness Program).

(1) Provide the program's IP strategy that assesses the capability of the U.S. industrial base to achieve identified surge and mobilization goals. If no IP strategy has been developed, provide supporting rationale for this position.

(2) If in the IP strategy, the development of a detailed IP plan was determined to be applicable, include the plan by text or by reference. If the development of the IP plan was determined not to be applicable, summarize the details of the analysis forming the basis of this decision.

(3) If the program involves peacetime and wartime hardware configurations which are supported by logistics support plans, identify their impact on the IP plan.

(B) Ensure compliance with DoDD 4210.15, Hazardous Material Pollution Prevention.

207.106 Additional requirements for major systems.

(b)(1)(A) The contracting officer is prohibited by 10 U.S.C. 2305(d)(4)(A) from requiring offers for development or production of major systems that would enable the Government to use technical data to competitively reprocure identical items or components of the system if the item or component were developed exclusively at private expense, unless the contracting officer determines that—

(1) The original supplier of the item or component will be unable to satisfy program schedule or delivery requirements;

(2) Proposals by the original supplier of the item or component to meet mobilization requirements are insufficient to meet the agency's mobilization needs; or

(3) The Government is otherwise entitled to unlimited rights in technical data.

(B) If the contracting officer makes a determination, under paragraphs (b)(1)(A) *(1)* and *(2)* of this section, for a competitive solicitation, 10 U.S.C. 2305(d)(4)(B) requires that the evaluation of items developed at private expense be based on an analysis of the total value, in terms of innovative design, life-cycle costs, and other pertinent factors, of incorporating such items in the system.

Subpart 207.4—Equipment Lease or Purchase

207.401 Acquisition considerations.

If the equipment will be leased for more than 60 days, the requiring activity must prepare and provide the contracting officer with the justification supporting the decision to lease or purchase.

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Sec.
208.001 Priorities for use of Government supply sources.
208.002 Use of other Government supply sources.

Subpart 208.4—Ordering from Federal Supply Schedules

208.404 Using schedules.
208.404–1 Mandatory use.
208.404–2 Optional use.
208.405 Ordering office responsibilities.
208.405–2 Order placement.

Subpart 208.7—Acquisition from the Blind and Other Severely Handicapped

208.705 Procedures.

Subpart 208.70—Coordinated Acquisition

208.7000 Scope of subpart.
208.7001 Definitions.
208.7002 Assignment authority.
208.7002–1 Acquiring department responsibilities.
208.7002–2 Requiring department responsibilities.
208.7003 Applicability.
208.7003–1 Assignments under integrated materiel management (IMM).
208.7003–2 Assignments under coordinated acquisition.
208.7004 Procedures.
208.7004–1 Purchase authorization from requiring department.
208.7004–2 Acceptance by acquiring department.
208.7004–3 Use of advance MIPRs.
208.7004–4 Cutoff dates for submission of Category II MIPRs.

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(2) Proposals by the original supplier of the item or component to meet mobilization requirements are insufficient to meet the agency's mobilization needs; or

(3) The Government is otherwise entitled to unlimited rights in technical data.

(B) If the contracting officer makes a determination, under paragraphs (b)(1)(A) *(1)* and *(2)* of this section, for a competitive solicitation, 10 U.S.C. 2305(d)(4)(B) requires that the evaluation of items developed at private expense be based on an analysis of the total value, in terms of innovative design, life-cycle costs, and other pertinent factors, of incorporating such items in the system.

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PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Sec.
208.001 Priorities for use of Government supply sources.
208.002 Use of other Government supply sources.

Subpart 208.4—Ordering from Federal Supply Schedules

208.404 Using schedules.
208.404–1 Mandatory use.
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Subpart 208.7—Acquisition from the Blind and Other Severely Handicapped

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Subpart 208.70—Coordinated Acquisition

208.7000 Scope of subpart.
208.7001 Definitions.
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208.7003 Applicability.
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208.7003–2 Assignments under coordinated acquisition.
208.7004 Procedures.
208.7004–1 Purchase authorization from requiring department.
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208.7004–3 Use of advance MIPRs.
208.7004–4 Cutoff dates for submission of Category II MIPRs.

Sec.
208.7004–5 Notification of inability to obligate on Category II MIPRs.
208.7004–6 Cancellation of requirements.
208.7004–7 Termination for default.
208.7004–8 Transportation funding.
208.7004–9 Status reporting.
208.7004–10 Administrative costs.
208.7005 MIPRs.
208.7006 Coordinated acquisition assignments.

Subpart 208.71—Acquisition for National Aeronautics and Space Administration (NASA)

208.7100 Authorization.
208.7101 Policy.
208.7102 Procedures.
208.7103 Purchase request and acceptance.
208.7104 Changes in estimated total prices.
208.7105 Payments.

Subpart 208.72—Industrial Preparedness Production Planning

208.7201 Definitions.
208.7202 General.
208.7203 Authority.
208.7204 Procedures.

Subpart 208.73—Use of Government-Owned Precious Metals

208.7301 Definitions.
208.7302 Policy.
208.7303 Procedures.
208.7304 Refined precious metals.
208.7305 Contract clause.

Authority: 5 U.S.C., 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

208.001 Priorities for use of Government supply sources.

(a)(1)(v) See subpart 208.70, Coordinated Acquisition.

(2)(iii) Information on General Services Administration (GSA) schedules for maintenance, repair, and rehabilitation of personal property is in the GSA supply catalog. The types of personal property for which GSA, Federal Supply Service has schedule contracts for maintenance, repair, and/or rehabilitation are—

(1) Furniture (office, household, quarters, institutional, and hospital type);

(2) Typewriters (manual, electric, and electronic);

(3) Repair and maintenance of Government owned vehicles; and

(4) Tire retreading and repair (except aircraft).

208.002 Use of other Government supply sources.

(f) Detailed information on strategic and critical materials in excess of national stockpile requirements (e.g., metals, ores, chemicals) is available from the Defense National Stockpile Center, 1745 Jefferson Davis Highway, Crystal Square Bldg #4, suite 100, Arlington, VA 22202.

(g) Acquire helium (Pub. L. 86–777)—

(i) In bulk from—

(A) The Department of Interior (Bureau of Mines); or

(B) Eligible private helium distributors. A list of eligible private helium distributors is maintained by the Bureau of Mines, Helium Field Operations, 1100 South Fillmore Street, Amarillo, TX 79101.

(ii) In cylinders or trailers, from—

(A) The Department of Interior (Bureau of Mines); or

(B) Through GSA Federal Supply Schedule contracts.

Subpart 208.4—Ordering From Federal Supply Schedules

208.404 Using schedules.

(a) When a schedule lists both foreign and domestic items that will meet the needs of the requiring activity, the ordering office must apply the procedures of part 225 and FAR part 25, Foreign Acquisition. When purchase of an item of foreign origin is specifically required, the requiring activity must furnish the ordering office sufficient information to permit the determinations required by part 225 and FAR part 25 to be made.

208.404–1 Mandatory use.

The DoD will not be a mandatory user of any schedule unless individual DoD activities elect to provide annual requirements estimates to GSA and become mandatory users. Examples of areas where this approach may be applied are:

(1) Group 68—gases and chemicals;

(2) Group 26—pneumatic tires and inner tubes;

(3) Maintenance, repair, and/or rehabilitation of personal property; and

(4) "Just-in-time" arrangements for delivery of material directly from vendors to users.

208.404–2 Optional use.

Make maximum use of the schedules. Other procedures may be used if further competition is judged to be in the best interest of the Government in terms of quality, responsiveness, or cost.

208.405 Ordering office responsibilities.

208.405–2 Order placement.

(1) Ordering offices may use DD Form 1155, Order for Supplies or Services, to order items from schedules.

(2) Orders may be placed orally if—

(i) The order does not exceed the small purchase threshold at FAR 13.000;

(ii) The contractor agrees to furnish a delivery ticket for each shipment under the order (in the number of copies required by the ordering office). The ticket must include the—

(A) Contract number;

(B) Order number under the contract;

(C) Date of order;

(D) Name and title of person placing order;

(E) Itemized listing of supplies or services furnished; and

(F) Date of delivery or shipment.

(iii) Invoicing procedures are agreed upon. Optional methods of submitting invoices for payment are permitted, such as—

(A) An individual invoice with a receipted copy of the delivery ticket;

(B) A summarized monthly invoice covering all oral orders made during the month, with receipted copies of the delivery tickets (this option is preferred if there are many oral orders); or

(C) A contracting officer statement that the Government has received the supplies.

(3) For purchases where cash payment is an advantage, the use of imprest funds (see FAR 13.4) is authorized when—

(i) The order does not exceed the threshold at FAR 13.404(a); and

(ii) The contractor agrees to the procedure.

Subpart 208.7—Acquisition From the Blind and Other Severely Handicapped

208.705 Procedures.

Ordering offices may use DD Form 1155, Order for Supplies or Services, to place orders with central nonprofit agencies or workshops.

Subpart 208.70—Coordinated Acquisition

208.7000 Scope of subpart.

This subpart prescribes policy and procedures for acquisition of items for which contracting responsibility is assigned to one or more of the departments/agencies or the General Services Administration. Contracting responsibility is assigned through—

(a) The Coordinated Acquisition Program (commodity assignments are listed in Appendix B); or

(b) The Integrated Materiel Management Program (assignments are in DoD 4140.26–M, Integrated Materiel Management for Consumable Items).

208.7001 Definitions.

For purposes of this subpart—

Acquiring department means the department, agency, or General Services Administration which has contracting responsibility under the Coordinated Acquisition Program.

Integrated materiel management means assignment of acquisition management responsibility to one department, agency, or the General

Service Administration for all of DoD's requirements for the assigned item. Acquisition management normally includes computing requirements, funding, budgeting, storing, issuing, cataloging, standardizing, and contracting functions.

Requiring department means the department or agency which has the requirement for an item.

208.7002 Assignment authority.

(a) Under the DoD Coordinated Acquisition Program, contracting responsibility for certain commodities is assigned to a single department, agency, or the General Services Administration (GSA). Commodity assignments are made—

(1) To the departments and agencies, by the Assistant Secretary of Defense (Production and Logistics);

(2) To the GSA, through agreement with GSA, by the Assistant Secretary of Defense (Production and Logistics);

(3) Outside the continental United States, by the Unified Commanders; and

(4) For acquisitions to be made in the United States for commodities not assigned under paragraphs (a) (1), (2), or (3) of this section, by agreement of agency heads (10 U.S.C. 2308).

(i) Agreement may be on either a one-time or a continuing basis. The submission of a military interdepartmental purchase request (MIPR) by a requiring activity and its acceptance by the contracting activity of another department, even though based on an oral communication, constitutes a one-time agreement.

(ii) Consider repetitive delegated acquisition responsibilities for coordinated acquisition assignment. If not considered suitable for coordinated acquisition assignment, formalize continuing agreements and distribute them to all activities concerned.

(b) Under the Integrated Materiel Management Program, assignments are made by the Assistant Secretary of Defense (Production and Logistics)—

(1) To the departments and agencies; and

(2) To the GSA, through agreement with GSA.

208.7002-1 Acquiring department responsibilities.

The acquiring department generally is responsible under coordinated acquisition for—

(a) Operational aspects of acquisition planning (Phasing the submission of requirements to contracting, consolidating or dividing requirements, analyzing the market, and determining patterns for the phased placement of orders to avoid unnecessary production fluctuations and meet the needs of requiring departments at the lowest price);

(b) Purchasing;

(c) Performing or assigning contract administration, including follow up and expediting of inspection and transportation; and

(d) Obtaining licenses under patents and settling patent infringement claims arising out of the acquisition. (Acquiring departments must obtain approval from the department whose funds are to be charged for obtaining licenses or settling claims.)

208.7002-2 Requiring department responsibilities.

The requiring department is responsible for—

(a) Ensuring compliance with the order of priority in FAR 8.001 for use of Government supply sources before submitting a requirement to the acquiring department for contracting action.

(b) Providing the acquiring department—

(1) The complete and certified documentation required by FAR 6.303-2(b). A requiring department official, equivalent to the appropriate level in FAR 6.304, must approve the documentation before submission of the military interdepartmental purchase request (MIPR) to the acquiring department;

(2) Any additional supporting data which the acquiring department contracting officer requests (e.g., the results of any market survey or why none was conducted, and actions the requiring department will take to overcome barriers to competition in the future);

(3) The executed determination and findings required by FAR 6.302-7(c)(1);

(4) When a requiring department requests an acquiring department to contract for supplies or services using full and open competition after exclusion of sources, all data required by FAR 6.202(b)(2);

(5) When the requiring department specifies a foreign end product, any determinations required by part 225 or FAR part 25;

(6) A complete definition of the requirements, including a list (or copies) of specifications, drawings, and other data required for the acquisition. The requiring department need not furnish Federal, military, departmental, or other specifications or drawings or data which are available to the acquiring department;

(7) Justification required by FAR 17.205(a) for any option quantities requested;

(8) A statement as to whether used or reconditioned material, former Government surplus property, or residual inventory will be acceptable, and if so—

(i) A list of any supplies that need not be new; and

(ii) The basis for determining the acceptability of such supplies, including an analysis of the factors at FAR 10.010(b);

(9) A statement as to whether the acquiring department may exceed the total MIPR estimate, and if so, by what amount;

(10) Unless otherwise agreed between the departments, an original and six copies of each MIPR and its attachments (except specifications, drawings, and other data); and

(11) A list of all persons who have had access to proprietary or source selection information (see FAR 3.104-9(e)).

208.7003 Applicability.

208.7003-1 Assignments under integrated materiel management (IMM).

(a) All items assigned for IMM must be acquired from the IMM manager except—

(1) Items purchased under circumstances of unusual and compelling urgency as defined in FAR 6.302-2. After such a purchase is made, the requiring department must send one copy of the contract and a statement of the emergency to the IMM manager.

(2) Items the IMM manager assigns a supply system code for local purchase;

(3) When purchase by the requiring department is in the best interest of the Government in terms of the combination of quality, timeliness, and cost that best meets the requirement. This exception does not apply to items—

(i) Necessary for war reserve or war mission requirements, required for unit deployment, or to support the industrial base;

(ii) Directly related to the operation of a weapon system or its support equipment;

(iii) With special security characteristics; or

(iv) Which are dangerous (e.g., explosives, munitions).

(b) When an item assigned for IMM is to be acquired by the requiring department under paragraph (a)(3) of this subsection, the contracting officer must—

(1) Document the contract file with a statement of the specific advantage of local purchase for an acquisition over $100 per line item; and

(2) Obtain a waiver from the IMM manager for an acquisition over $5,000

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(8) A statement as to whether used or reconditioned material, former Government surplus property, or residual inventory will be acceptable, and if so—

(i) A list of any supplies that need not be new; and

(ii) The basis for determining the acceptability of such supplies, including an analysis of the factors at FAR 10.010(b);

(9) A statement as to whether the acquiring department may exceed the total MIPR estimate, and if so, by what amount;

(10) Unless otherwise agreed between the departments, an original and six copies of each MIPR and its attachments (except specifications, drawings, and other data); and

(11) A list of all persons who have had access to proprietary or source selection information (see FAR 3.104–9(e)).

208.7003 Applicability.

208.7003–1 Assignments under integrated materiel management (IMM).

(a) All items assigned for IMM must be acquired from the IMM manager except—

(1) Items purchased under circumstances of unusual and compelling urgency as defined in FAR 6.302–2. After such a purchase is made, the requiring department must send one copy of the contract and a statement of the emergency to the IMM manager.

(2) Items the IMM manager assigns a supply system code for local purchase;

(3) When purchase by the requiring department is in the best interest of the Government in terms of the combination of quality, timeliness, and cost that best meets the requirement. This exception does not apply to items—

(i) Necessary for war reserve or war mission requirements, required for unit deployment, or to support the industrial base;

(ii) Directly related to the operation of a weapon system or its support equipment;

(iii) With special security characteristics; or

(iv) Which are dangerous (e.g., explosives, munitions).

(b) When an item assigned for IMM is to be acquired by the requiring department under paragraph (a)(3) of this subsection, the contracting officer must—

(1) Document the contract file with a statement of the specific advantage of local purchase for an acquisition over $100 per line item; and

(2) Obtain a waiver from the IMM manager for an acquisition over $5,000

per line item, if the IMM assignment is to GSA, the Defense Logistics Agency (DLA), or the Army Tank-Automotive Command (TACOM). Submit requests for waiver to—

(i) For GSA: Commissioner (F), Federal Supply Service, Washington, DC 20406.

(ii) For DLA: Director, Defense Logistics Agency, ATTN: DLA–OS, Alexandria, VA 22304–6100.

(iii) For TACOM: U.S. Army Tank-Automotive Command, ATTN: AMSTA–FHC, Warren, MI 48397–5000.

208.7003–2 Assignments under coordinated acquisition.

Requiring departments must submit to the acquiring department all contracting requirements for items assigned for coordinated acquisition, except—

(a) Items obtained through the sources in FAR 8.001(a)(1) (i) through (vii);

(b) Items obtained under 208.7003–1(a);

(c) Small dollar requirements not in excess of the small purchase threshold in FAR 13.000, when contracting by the requiring department is in the best interest of the Government;

(d) In an emergency. When an emergency purchase is made, the requiring department must send one copy of the contract and a statement of the emergency to the contracting activity of the acquiring department;

(e) Requirements for which the acquiring department's contracting activity delegates contracting authority to the requiring department;

(f) Items in a research and development stage (as described in FAR part 35). Under this exception, the military departments may contract for research and development requirements, including quantities for testing purposes and items undergoing in-service evaluation (not yet in actual production, but beyond prototype). Generally, this exception applies only when research and development funds are used.

(g) Items peculiar to nuclear ordnance material where design characteristics or test-inspection requirements are controlled by the Department of Energy (DoE) or by DoD to ensure reliability of nuclear weapons.

(1) This exception applies to all items designed for and peculiar to nuclear ordnance regardless of agency control, or to any item which requires test or inspection conducted or controlled by DoE or DoD.

(2) This exception does not cover items used for both nuclear ordnance and other purposes if the items are not subject to the special testing procedures.

(h) Items to be acquired under FAR 6.302–6 (national security requires limitation of sources);

(i) Items to be acquired under FAR 6.302–1 (supplies available only from the original source for follow-on contract);

(j) Items directly related to a major system and which are design controlled by and acquired from either the system manufacturer or a manufacturer of a major subsystem;

(k) Items subject to rapid design changes, or to continuous redesign or modification during the production and/or operational use phases, which require continual contact between industry and the requiring department to ensure that the item meets the requirements:

(1) This exception permits the requiring department to contract for items of highly unstable design. For use of this exception, it must be clearly impractical, both technically and contractually, to refer the acquisition to the acquiring department. Anticipation that contracting by negotiation will be appropriate, or that a number of design changes may occur during contract performance is not in itself sufficient reason for using this exception.

(2) This exception also applies to items requiring compatibility testing, provided such testing requires continual contact between industry and the requiring department;

(l) Containers acquired only with items for which they are designed;

(m) One-time buy of a noncataloged item.

(1) This exception permits the requiring departments to contract for a nonrecurring requirement for a noncataloged item. This exception could cover a part or component for a prototype which may be stock numbered at a later date.

(2) This exception does not permit acquisitions of recurring requirements for an item, based solely on the fact that the item is not stock numbered, nor may it be used to acquire items which have only slightly different characteristics than previously cataloged items.

208.7004 Procedures.

208.7004–1 Purchase authorization from requiring department.

(a) Requiring departments send their requirements to acquiring departments on either a DD Form 448, Military Interdepartmental Purchase Request (MIPR), or a DD Form 416, Requisition for Coal, Coke or Briquettes. A MIPR or a DD Form 416 is the acquiring department's authority to acquire the supplies or services on behalf of the requiring department.

(b) The acquiring department is authorized to create obligations against the funds cited in a MIPR without further referral to the requiring department. The acquiring department has no responsibility to determine the validity of a stated requirement in an approved MIPR, but it should bring apparent errors in the requirement to the attention of the requiring department.

(c) Changes that affect the contents of the MIPR must be processed as a MIPR amendment regardless of the status of the MIPR. The requiring department may initially transmit changes electronically or by some other expedited means, but must confirm changes by a MIPR amendment.

(d) The requiring department must submit requirements for additional line items of supplies or services not provided for in the original MIPR as a new MIPR. The requiring department may use a MIPR amendment for increased quantities only if—

(1) The original MIPR requirements have not been released for solicitation; and

(2) The acquiring department agrees.

208.7004–2 Acceptance by acquiring department.

(a) Acquiring departments formally accept a MIPR by DD Form 448–2, Acceptance of MIPR, as soon as practicable, but no later than 30 days after receipt of the MIPR. If the 30 day time limit cannot be met, the acquiring department must inform the requiring department of the reason for the delay, and the anticipated date the MIPR will be accepted. The acquiring department must accept MIPRs in writing before expiration of the funds.

(b) The acquiring department in accepting a MIPR will determine whether to use Category I (reimbursable funds citation) or Category II (direct funds citation) methods of funding.

(1) Category I method of funding is used under the following circumstances and results in citing the funds of the acquiring department in the contract—

(i) Delivery is from existing inventories of the acquiring department;

(ii) Delivery is by diversion from existing contracts of the acquiring department;

(iii) Production or assembly is through Government work orders in Government-owned plants;

(iv) Production quantities are allocated among users from one or more contracts, and the identification of specific quantities of the end item to individual contracts is not feasible at the time of MIPR acceptance;

(v) Acquisition of the end items involves separate acquisition of components to be assembled by the acquiring department;

(vi) Payments will be made without reference to deliveries of end items (e.g., cost-reimbursement type contracts and fixed price contracts with progress payment clauses); or

(vii) Category II method of funding is not feasible and economical.

(2) Category II method of funding is used in circumstances other than those in paragraph (b)(1) of this subsection. Category II funding results in citation of the requiring department's funds and MIPR number in the resultant contract.

(c) When the acquiring departments accepts a MIPR for Category I funding—

(1) The DD Form 448–2, Acceptance of MIPR, is the authority for the requiring department to record the obligation of funds;

(2) The acquiring department will annotate the DD Form 448–2 if contingencies, price revisions, or variations in quantities are anticipated. The acquiring department will periodically advise the requiring department, prior to submission of billings, of any changes in the acceptance figure so that the requiring department may issue an amendment to the MIPR, and the recorded obligation may be adjusted to reflect the current price;

(3) If the acquiring department does not qualify the acceptance of a MIPR for anticipated contingencies, the price on the acceptance will be final and will be billed at time of delivery;

(4) Upon receipt of the final billing (SF 1080, Voucher for Transferring Funds), the requiring department may adjust the fiscal records accordingly without authorization from or notice to the acquiring department.

(d) When the MIPR is accepted for Category II funding, a conformed copy of the contract (see 204.802(1)(ii)) is the authority to record the obligation. When all awards have been placed to satisfy the total MIPR requirement, any unused funds remaining on the MIPR become excess to the acquiring department. The acquiring department will immediately notify the requiring department of the excess funds by submitting an Acceptance of MIPR (DD Form 448–2). This amendment is authorization for the requiring department to withdraw the funds. The acquiring department is prohibited from further use of such excess funds.

(e) When the acquiring department requires additional funds to complete the contracting action for the requiring department, the request for additional funds must identify the exact items involved, and the reason why additional funds are required. The requiring department shall act quickly to—

(1) Provide the funds by an amendment of the MIPR; or

(2) Reduce the requirements.

(f) The accepting activity of the acquiring department shall remain responsible for the MIPR even though that activity may split the MIPR into segments for action by other contracting activities.

208.7004–3 Use of advance MIPRs.

(a) An advance MIPR is an unfunded MIPR provided to the acquiring department in advance of the funded MIPR so that initial steps in planning the contract action can begin at an earlier date.

(b) In order to use an advance MIPR, the acquiring department and the requiring department must agree that its use will be beneficial. The departments may execute a blanket agreement to use advance MIPRs.

(c) The requiring department shall not release an advance MIPR to the acquiring department without obtaining proper internal approval of the requirement.

(d) When advance MIPRs are used, mark "ADVANCE MIPR" prominently on the DD Form 448.

(e) For urgent requirements, the advance MIPR may be transmitted electronically.

(f) On the basis of an advance MIPR, the acquiring department may take the initial steps toward awarding a contract, such as obtaining internal coordination and preparing an acquisition plan. Acquiring departments may determine the extent of these initial actions but shall not award contracts on the basis of advance MIPRs.

208.7004–4 Cutoff dates for submission of Category II MIPRs.

(a) Unless otherwise agreed between the departments, May 31 is the cutoff date for the receipt of MIPRs citing expiring appropriations which must be obligated by September 30 of that fiscal year. If circumstances arise which require the submission of MIPRs citing expiring appropriations after the cutoff date, the requiring department will communicate with the acquiring department before submission to find out whether the acquiring department can execute a contract or otherwise obligate the funds by the end of the fiscal year. Acquiring departments will make every effort to obligate funds for all such MIPRs accepted after the cutoff date. However, acceptance of a late MIPR does not constitute assurance by the acquiring department that all such funds will be obligated.

(b) Nothing in these instructions is intended to restrict the processing of MIPRs when the acquiring department is capable of executing contracts or otherwise obligating funds before the end of the fiscal year.

(c) The May 31 cutoff date does not apply to MIPRs citing continuing appropriations.

208.7004–5 Notification of inability to obligate on Category II MIPRs.

On August 1, the acquiring department will advise the requiring department of any Category II MIPRs on hand citing expiring appropriations they will be unable to obligate prior to the fund expiration date. If an unforeseen situation develops after August 1 which will prevent execution of a contract, the acquiring department will notify the requiring department as quickly as possible and return the MIPR. The letter of transmittal returning the MIPR will authorize purchase by the requiring department and state the reason that the acquisition could not be accomplished.

208.7004–6 Cancellation of requirements.

(a) *Category I MIPRs.* The requiring department will notify the acquiring department by electronic or other immediate means when cancelling all or part of the supplies or services requested in the MIPR. Within 30 days, the acquiring department will notify the requiring department of the quantity of items available for termination and the amount of funds in excess of the estimated settlement costs. Upon receipt of this information, the requiring department will issue a MIPR amendment to reduce the quantities and funds accordingly.

(b) *Category II MIPRs.* The requiring department will notify the acquiring department electronically or by other immediate means when cancelling all or any part of the supplies or services requested in the MIPR.

(1) If the acquiring department has not entered into a contract for the supplies or services to be cancelled, the acquiring department will immediately notify the requiring department. Upon receipt of such notification, the requiring department shall initiate a MIPR amendment to revoke the estimated amount shown on the original MIPR for the cancelled items.

(2) If the items to be cancelled have already been placed under contract— (i) As soon as practicable, but in no event more than 45 days after receipt of the cancellation notice from the requiring department, the contracting officer shall

the acquiring department that all such funds will be obligated.

(b) Nothing in these instructions is intended to restrict the processing of MIPRs when the acquiring department is capable of executing contracts or otherwise obligating funds before the end of the fiscal year.

(c) The May 31 cutoff date does not apply to MIPRs citing continuing appropriations.

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(2) If the items to be cancelled have already been placed under contract— (i) As soon as practicable, but in no event more than 45 days after receipt of the cancellation notice from the requiring department, the contracting officer shall issue a termination data letter to the requiring department (original and four copies) containing, as a minimum, the information in Table 8-1, Termination Data Letter.

(ii) The termination contracting officer (TCO) will review the proceedings at least every 60 days to reassess the Government's probable obligation. If any additional funds are excess to the probable settlement requirements, or if it appears that previous release of excess funds will result in a shortage of the amount which will be required for settlement, the TCO will promptly notify the contracting office which will amend the termination data letter. The requiring department will process a MIPR amendment to reflect the reinstatement of funds within 30 days after receiving the amended termination data letter.

(iii) Upon receipt of a copy of the termination settlement agreement, the requiring department will prepare a MIPR amendment, if required, to remove any remaining excess funds.

TABLE 8-1, TERMINATION DATA LETTER

SUBJECT: Termination Data Re:
Contract No. ________
Termination No. ________
Contract ________

(a) As termination action is now in progress on the above contract, the following information is submitted:

(1) Brief Description of items terminated.

(2) You are notified that the sum of $______ is available for release under the subject contract. This sum represents the difference between $______, the value of items terminated under the contract, and $______, estimated to be required for settlement of the terminated contract. The estimated amount available for release is allocated by the appropriations cited on the contract as follows:

MIPR NO. ______ ACCOUNTING CLASSIFICATION ______ AMOUNT ______

Total available for release at this time $______

(b) Request you forward an amendment to MIPR ______ on DD Form 448-2 to reflect the reduced quantity and amount of funds available for release.

(c) Periodic reviews (not less than 60 days) will be made as termination proceedings progress to redetermine the Government's probable obligation.

Contracting Officer

208.7004-7 Termination for default.

(a) When the acquiring department terminates a contract for default, they will ask the requiring department if the supplies or services to be terminated are still required so that repurchase action can be started.

(b) The requiring department will not deobligate funds on a contract terminated for default until receipt of a settlement modification or other written evidence from the acquiring department authorizing release of funds.

(c) On the repurchase action, the acquiring department will not exceed the unliquidated funds on the defaulted contract without receiving additional funds from the requiring department.

208.7004-8 Transportation funding.

The requiring department will advise the acquiring department or the transportation officer in the contract administration office of the fund account to be charged for transportation costs. The requiring department may cite the fund account on each MIPR or provide the funding cite to the transportation officer at the beginning of each fiscal year for use on Government bills of lading. When issuing a Government bill of lading, show the requiring department as the department to be billed and cite the appropriate fund account.

208.7004-9 Status reporting.

(a) The acquiring department will maintain a system of MIPR follow up to inform the requiring department of the current status of its requests. In addition, the contract administration office will maintain a system of follow up in order to advise the acquiring department on contract performance.

(b) If requested by the requiring department, the acquiring department will furnish the requiring department a copy of the solicitation when the MIPR is satisfied through Category II funding.

(c) Any reimbursement billings, shipping document, contractual documents, project orders, or related documentation furnished to the requiring department will identify the requiring department's MIPR number, quantities of items, and funding information.

208.7004-10 Administrative costs.

The acquiring department bears the administrative costs of acquiring supplies for the requiring department. However, when an acquisition responsibility is transferred to another department, funds appropriated or to be appropriated for administrative costs will transfer to the successor acquiring department. The new acquiring department must assume budget cognizance as soon as possible.

208.7005 MIPRs.

Instructions on preparation and use of DD Form 448, Military Interdepartmental Purchase Request, and DD Form 448-2, Acceptance of MIPR, are in 253.208.

208.7006 Coordinated acquisition assignments.

See appendix B for coordinated acquisition assignments.

Subpart 208.71—Acquisition for National Aeronautics and Space Administration (NASA)

208.7100 Authorization.

NASA is authorized by Public Law 85-568 to use the acquisition services, personnel, equipment, and facilities of DoD departments and agencies with their consent, with or without reimbursement, and on a similar basis to cooperate with the departments/agencies in the use of acquisition services, equipment, and facilities.

208.7101 Policy.

Departments and agencies will—

(a) Cooperate fully with NASA in making acquisition services, equipment, personnel, and facilities available on the basis of mutual agreement.

(b) Not claim reimbursement for administrative costs incident to acquisitions for NASA, unless agreed otherwise prior to the time services are performed.

208.7102 Procedures.

(a) When contracting or performing field service functions for NASA, the departments and agencies will use their own methods, except when otherwise required by the terms of the agreement.

(b) Departments and agencies normally will use their own funds when contracting for or performing services for NASA and will not cite NASA funds on any defense obligation or payment document.

208.7103 Purchase request and acceptance.

(a) NASA will use NASA Form 523, NASA-Defense Purchase Request, to request acquisition of supplies or services.

(b) Except as provided in paragraph (d) of this section, departments and agencies will respond within 30 days to a NASA purchase request by forwarding DD Form 448-2, Acceptance of MIPR. Forward each DD Form 448-2 in quadruplicate and indicate action status as well as the name and address of the DoD acquisition activity for future use by the NASA initiator.

(c) To the extent feasible, all documents related to the NASA action will reference the NASA-Defense Purchase Request number and the item number when appropriate.

(d) Departments and agencies are not required to accept NASA-Defense Purchase Requests for common-use standard stock items which the supplying department has on hand or on order for prompt delivery at published prices.

208.7104 Changes in estimated total prices.

When a department or agency determines that the estimated total price (Block 6F, NASA Form 523) for NASA items is not sufficient to cover the required reimbursement, or is in excess of the amount required, the department/agency will forward a request for amendment to the NASA originating office. Indicate in the request a specific dollar amount, rather than a percentage, and include justification for any upward adjustment requested. Upon approval of a request, NASA will forward an amendment of its purchase request to the contracting activity.

208.7105 Payments.

Departments and agencies will submit SF 1080, Voucher for Transferring Funds, billings to the NASA office designated in Block 9 of the NASA-Defense Purchase Request, except where agreements provide that reimbursement is not required. Departments and agencies will support billings in the same manner as billings between departments and agencies.

Subpart 208.72—Industrial Preparedness Production Planning

208.7201 Definitions.

As used in this subpart—

Industrial base means that part of the total privately-owned and Government-owned industrial production and maintenance capacity of the United States and Canada, which will be available during national emergencies to manufacture and repair items required by the departments.

Industrial preparedness production planning means planning designed to maintain an adequate industrial base to support DoD requirements for selected essential military items in a national emergency.

National emergency means a condition declared by the President or the Congress which authorizes certain emergency action in the national interest, including partial or total mobilization of national resources.

Planned item means any item selected for industrial preparedness planning under the criteria of DoDI 4005.3, Industrial Preparedness Planning.

Planned producer means an industrial firm which has agreed by either non-binding memorandum of understanding or binding contract/contract clause to provide production capacity data, to maintain existing capacity for a negotiated period of time, and to accept contracts for planned items upon the request of the Government.

208.7202 General.

(a) Under the Industrial Preparedness Production Planning (IPPP) program, DoD components and industry work together to ensure essential military items are available during an emergency.

(b) Departments and agencies select weapon systems and items for planning in accordance with DoDI 4005.3, Industrial Preparedness Planning. Planning is conducted only with U.S. or Canadian sources.

(c) The use of privately-owned facilities is preferred to minimize the need for Government investment. Departments and agencies will include Government-owned production facilities in the industrial base only when—

(1) Private industry is unable to provide the facilities necessary to support DoD requirements; or

(2) The facilities are necessary—

(i) For reasons of national security; or

(ii) To ensure a quick response capability to meet fluctuating demands.

208.7203 Authority.

Authority under current contracting procedures to accomplish industrial planning actions includes—

(a) Leasing of Government-owned property to planned emergency producers under the authority of the Military Leasing Act of 1947, 10 U.S.C. 2667;

(b) Acquisitions in the interest of national defense under FAR 6.202(a)(2), or in case of a natural emergency or to achieve industrial mobilization under FAR 6.302–3;

(c) Acquisition under 225.71 of—

(1) Miniature and instrument bearings;

(2) Precision components for mechanical time devices;

(3) High-purity silicon;

(4) High-carbon ferrochrome;

(5) Anti-friction bearings; and

(6) Forgings and welded shipboard anchor chain;

(d) Acquisition of jewel bearings (FAR 8.2);

(e) Use of multiyear contracting (FAR 17.1);

(f) Providing Government production and research property to contractors; and

(g) Use of direct payment for idle facilities or idle capacities reserved for defense mobilization production (FAR 31.205–17(d)).

208.7204 Procedures.

(a) Planned producers shall be solicited for all acquisitions of their planned items, when the acquisition is over the small purchase threshold in FAR 13.000, except as provided in FAR or DFARS.

(b) The contracting officer may contract for industrial planning efforts for selected essential military items. These efforts may include, but are not limited to, the maintenance of Government-owned industrial facilities (real and personal property) or production data packages. These planning efforts may be acquired through an individual service contract or as a line item on a contract for a planned item.

Subpart 208.73—Use of Government-Owned Precious Metals

208.7301 Definitions.

As used in this subpart—

Defense Industrial Supply Center (DISC) means the Defense Logistics Agency field activity located at 700 Robbins Avenue, Philadelphia, PA 19111–5096, which is the assigned commodity integrated material manager for refined precious metals and is responsible for the storage and issue of such material.

Dual pricing evaluation procedure means a procedure where offerors submit two prices for precious metals bearing items—one based on Government-furnished precious metals and one based on contractor-furnished precious metals. The contracting officer evaluates the prices to determine which is in the Government's best interest.

Precious Metals Indicator Code (PMIC) means a single digit, alpha-numeric code assigned to national stock numbered items in The Defense Integrated Data System Total Item Record used to indicate the presence or absence of precious metals in the item. PMICs and the content value of corresponding items are listed in DoDD 4100.39M, Defense Integrated Data System (DIDS) Procedures Manual, chapter 10, Table 160.

Refined precious metal means recovered silver, gold, platinum, palladium, iridium, rhodium, or ruthenium, in bullion, granulation or sponge form, which has been purified to at least .999 percentage of fineness.

208.7302 Policy.

DoD policy is for maximum participation in the Precious Metals Recovery Program (PMRP). DoD components shall furnish recovered precious metals contained in the DISC inventory to production contractors rather than use contractor-furnished precious metals whenever the contracting officer determines it to be in the Government's best interest. (See DoDD 4160.22, Recovery and Utilization of Precious Metals.)

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208.7303 Procedures.

(a) Item managers and contracting officers will use the PMIC and/or other relevant data furnished with a purchase request to determine the applicability of this subpart.

(b) When an offeror advises of a precious metals requirement, the contracting officer shall use the procedures in chapter X of DoD 4160.21–M, Defense Utilization and Disposal Manual, to determine availability of required precious metal assets and current government-furnished materiel (GFM) unit prices. If the precious metals are available, the contracting officer shall evaluate offers and award the contract on the basis of the offer which is in the best interest of the Government.

(c) When the clause prescribed by 208.7305 is included in a solicitation, the contracting officer will ensure that section B, Schedule of Supplies or Services and Prices, is structured to—

(1) Permit insertion of alternate prices for each deliverable contract line item number that uses precious metals; and

(2) Use dual pricing evaluation procedures.

208.7304 Refined precious metals.

The following refined precious metals are currently managed by DISC:

Precious metal	National Stock No. (NSN)
Silver Bullion/Granules	9660-00-106-9432
Gold Bullion/Granules	9660-00-042-7733
Platinum Granules	9660-00-042-7768
Platinum Sponge	9560-00-151-4050
Palladium Granules	9660-00-042-7765
Palladium Sponge	9660-01-011-0320
Rhodium Sponge	9660-01-011-2625
Iridium Sponge	9660-01-011-1937
Ruthenium Sponge	9660-01-039-0313

208.7305 Contract clause.

(a) Use the clause at 252.208–7000, Intent to Furnish Precious Metals as Government-Furnished Material, in all solicitations and contracts except—

(1) When the contracting officer has determined that the required precious metals are not available from DISC;

(2) When the contracting officer knows that the items being acquired do not require precious metals in their manufacture; or

(3) For acquisitions below the small purchase threshold in FAR 13.000.

(b) To make the determination in paragraph (a)(1) of this section, the contracting officer shall consult with the end item inventory manager and comply with the procedures in Chapter X, DoD 4160.21–M, Defense Utilization and Disposal Manual.

PART 209—CONTRACTOR QUALIFICATIONS

Sec.

Subpart 209.1—Responsible Prospective Contractors
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209.104 Standards.
209.104–1 General standards.
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Subpart 209.2—Qualifications Requirements
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Subpart 209.4—Debarment, Suspension, and Ineligibility
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209.405 Effect of listing.
209.406 Debarment.
209.406–1 General.
209.406–3 Procedures.
209.406–4 Period of debarment.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 209.1—Responsible Prospective Contractors

209.103 Policy.

(a)(i) Do not deny award to contractors subject to on-site inspection under the Intermediate-Range Nuclear Forces (INF) Treaty, or similar treaty, due to the actual or potential presence of Soviet inspectors at the contractor's facility unless—

(A) Necessary for reasons of national security;

(B) The decision is based on full information, including comment from the potential contractor or subcontractor on the security issues involved; and

(C) The department or agency acquisition executive reviews the decision and the Under Secretary of Defense (Acquisition) approves the decision.

(ii) Make any decision to deny consideration for award under paragraph (a)(i) of this section as early as possible in the acquisition process. Notify the firm in writing of any decision not to consider the firm for award of a contract or subcontract.

209.103–70 Contract clause.

Use the clause at 252.209–7000, Acquisition from Subcontractors Subject to On-Site Inspection Under the Intermediate-Range Nuclear Forces (INF) Treaty, in all solicitations and contracts in excess of the small purchase limitation in FAR 13.000, except solicitations and contracts for commercial or commercial-type products (see FAR 11.001).

209.104 Standards.

209.104–1 General standards.

(e) Also, have the necessary safety programs on contractor or subcontractor materials or services.

(g)(i) Under 10 U.S.C. 2327(b), a contracting officer shall not award a contract to a firm or to a subsidiary of a firm when a foreign government—

(A) Either directly or indirectly—

(1) Has a significant interest in the firm; or

(2) Has a significant interest in the subsidiary, and

(B) Has been determined by the Secretary of State under 50 U.S.C. App. 2405(j)(1)(A) to be a government of a country that has repeatedly provided support for acts of international terrorism.

(ii) The Secretary of Defense may waive the prohibition in paragraph (g)(i) of this subsection in accordance with 10 U.S.C. 2327(c). This waiver authority may not be delegated.

209.104–4 Subcontractor responsibility.

Generally, the Canadian Commercial Corporation's (CCC) proposal of a firm as its subcontractor is sufficient basis for an affirmative determination of responsibility. However, when the CCC determination of responsibility is not consistent with other information available to the contracting officer, the contracting officer shall request from CCC and any other sources whatever additional information is necessary to make the responsibility determination.

209.104–70 Solicitation provision.

Use the provision at 252.209–7001, Disclosure of Ownership or Control by a Foreign Government that Supports Terrorism, in solicitations expected to result in contracts of $100,000 or more.

209.106 Preaward surveys.

209.106–1 Conditions for preaward surveys.

(a) If the contracting officer is unable to make a determination of responsibility for an acquisition, which does not exceed the small purchase limitation in FAR 13.000, because of inconclusive information, contact the cognizant contract administration activity for additional information. If a preaward survey is indicated, include the rationale in block 23 of the SF 1403, Preaward Survey of Prospective Contractor (General).

209.106-2 Requests for preaward surveys.

(1) The surveying activity is the cognizant contract administration office as listed in DLAH 4105.4, DoD Directory of Contract Administration Services Components. When information is required as part of the survey on the adequacy of the contractor's accounting system or its suitability for administration of the proposed type of contract, the surveying activity will obtain the information from the auditor.

(2) Limited information may be requested by telephone.

(3) The contracting officer may request a formal survey by telephone but must confirm immediately with SF 1403, Preaward Survey of Prospective Contractor (General). For a formal survey, send original and three copies of SF 1403, including necessary drawings and specifications.

(a) List additional factors in item H, section III of the SF 1403 and explain them in block 23. For example—

(i) Information needed to determine a prospective contractor's eligibility under the Walsh-Healey Public Contracts Act. (Note that the Walsh-Healey Public Contracts Act, block 12 of section I, only indicates what the contractor has represented its classification to be under Walsh-Healey.)

(ii) Evaluation of a contractor as a planned producer when the offered item is or may appear on the Industrial Preparedness Planning List (IPPL). When the preaward survey results in a recommendation for award, ask the office responsible for industrial preparedness planning to consider designating the prospective contractor as a planned producer. If the item is already on the IPPL or the prospective contractor is already a planned producer, note the information in block 23.

(c) On base level preaward surveys, technical personnel from the requiring installation should participate when there is concern about the ability of a prospective contractor to perform a base level service or construction contract.

(d) Allow more time for—

(i) Complex items;

(ii) New or inexperienced DoD contractors; and

(iii) Surveys with time-consuming requirements, e.g., secondary survey, accounting system review, financial capability analysis, or purchasing office participation.

(e) Only request those factors essential to the determination of responsibility. See 253.209-1(a) for an explanation of the factors in section III, blocks 19 and 20 of the SF 1403.

Subpart 209.2—Qualifications Requirements

209.202 Policy.

(a)(1) The inclusion of qualification requirements in specifications for products which are to be included on a Qualified Products List requires approval of the following—

Army—Headquarters, U.S. Army Materiel Command, AMCCE-PSE
Navy—Office of the Assistant Secretary of the Navy (Research, Development, and Acquisition) (Acquisition Policy, Integrity, and Accountability)
Air Force—Departmental Standardization Office, SAF/AQXL
Defense Advanced Research Projects Agency—Director, Contracts Management Office
Defense Communications Agency—Director, Acquisition Management
Defense Intelligence Agency—Principal Assistant for Acquisition
Defense Logistics Agency—Executive Director, Technical and Logistics Services
Defense Mapping Agency—Director of Acquisition
Defense Nuclear Agency—Director, Acquisition Management
National Security Agency—Director of Procurement
On-Site Inspection Agency—Chief, Acquisition Management
Strategic Defense Initiative Organization—Director

Subpart 209.3—First Article Testing and Approval

209.303 Use.

(d) The contracting officer may require that first articles be manufactured using the same facilities, production processes, methods, and materials to be used for production units under the contract.

209.305 Risk.

The contracting officer may give this authorization to a contractor only after approval by a level higher than the contracting officer.

209.306 Solicitation requirements.

(a)(1) To be sure that the contractor and the Government clearly understand and interpret contract terms and conditions in the same manner, avoid describing first article requirements exclusively in general terms such as "visual," "dimensional," "workmanship," or "specification compliance."

209.308 Contract clauses.

Alternate I of the clauses at FAR 52.209-3, First Article Approval—Contractor Testing, or 52.209-4, First Article Approval—Government Testing, as appropriate, may be used when—

(1) The form, fit, or function of the product would be adversely affected by contractor changes in the production facilities, processes, methods, or materials subsequent to first article approval; and

(2) The Government has relied upon first article testing in the absence of complete design specifications to supplement a performance specification; or

(3) It is essential to have an approved first article to serve as a manufacturing standard.

Subpart 209.4—Debarment, Suspension, and Ineligibility

209.403 Definitions.

Debarring official. (1) For DoD, the designees are—

Army—Commander, U.S. Army Legal Services Agency
Navy—Assistant Secretary of the Navy (Research, Development, and Acquisition)
Air Force—The Deputy Assistant Secretary (Acquisition)
Defense Advanced Research Projects Agency—The Director
Defense Communications Agency—The General Counsel
Defense Logistics Agency—The Special Assistant for Contracting Integrity
Defense Mapping Agency—The General Counsel
Defense Nuclear Agency—The Director
National Security Agency—The Director
Strategic Defense Initiative Organization—The General Counsel
Overseas installations—as designated by the agency head

(2) Overseas debarring officials—

(i) Are authorized to debar or suspend contractors located within the official's geographic area of responsibility under any delegation of authority they receive from their agency head.

(ii) Debar or suspend in accordance with the procedures in FAR Subpart 9.4 or under modified procedures approved by the agency head based on consideration of the laws or customs of the foreign countries concerned.

(iii) In addition to the bases for debarment in FAR 9.406-2, may consider the following additional bases—

(A) The foreign country concerned determines that a contractor has engaged in bid-rigging, price-fixing, or other anti-competitive behavior; or

(B) The foreign country concerned declares the contractor to be formally debarred, suspended, or otherwise ineligible to contract with that foreign government or its instrumentalities.

209.405 Effect of listing.

Under 10 U.S.C. 2393b, when a department or agency determines that a compelling reason exists for it to conduct business with a contractor that is on the list of parties excluded from procurement programs, it shall provide written notice of the determination to the General Services Administration, Office of Acquisition Policy. Examples of compelling reasons are—

(1) Only a listed contractor can provide the supplies or services;

(2) Urgency requires contracting with a listed contractor;

(3) The contractor and a department or agency have an agreement covering the same events which resulted in the listing and the agreement includes the department/agency decision not to debar or suspend the contractor; or

(4) The national defense requires continued business dealings with the listed contractor.

209.406 Debarment.

209.406–1 General.

(a) When debarment consideration involves a felony conviction and the debarring official decides that debarment is not necessary, the official shall require the contractor to enter into a written agreement which includes—

(i) A requirement for the contractor to establish, if not already established, and to maintain the standards of conduct and internal control systems prescribed by Subpart 203.70; and

(ii) Other requirements the debarring official considers appropriate.

209.406–3 Procedures.

(a) *Investigation and referral.* (i) The contracting officer shall prepare a report containing the information required by paragraph (a)(ii) of this subsection when—

(A) A contractor has committed, or is suspected of having committed, any of the acts described in FAR 9.406–2 and 9.407–2;

(B) FAR 49.106 requires a report;

(C) Part 203 requires a report;

(D) The Government suspects a contractor of violating the Buy American Act (see FAR 25.204); or

(E) The Government suspects a contractor of attempting to evade the prohibitions of debarment or suspension by changes of address, multiple addresses, formation of new companies, or by other devices.

(ii) Include the following information, when available, in the report required by paragraph (a)(i) of this subsection—

(A) Name, address, and telephone number of the point of contact for the activity making the report;

(B) Name, contractor and Government entity (CAGE) code, and address of the contractor;

(C) Name and addresses of the members of the board, principal officers, partners, owners, and managers;

(D) Name and addresses of all known affiliates, subsidiaries, or parent firms, and the nature of the business relationship;

(E) For each contract affected by the conduct being reported—

(1) The contract number;

(2) All office identifying numbers or symbols;

(3) Description of supplies or services;

(4) The amount;

(5) The percentage of completion;

(6) The amount paid the contractor;

(7) Whether the contract is assigned under the Assignment of Claims Act and, if so, to whom; and

(8) The amount due the contractor;

(F) For any other contracts outstanding with the contractor or any of its affiliates—

(1) The contract number;

(2) The amount;

(3) The amounts paid the contractor;

(4) Whether the contract is assigned under the Assignment of Claims Act and, if so, to whom; and

(5) The amount due the contractor;

(G) A complete summary of all pertinent evidence and the status of any legal proceedings involving the contractor;

(H) An estimate of any damages sustained by the Government as a result of the contractor's action (explain how the estimate was calculated);

(I) The comments and recommendations of the contracting officer and of each higher level contracting review authority regarding—

(1) Whether to suspend or debar the contractor;

(2) Whether to apply limitations to the suspension or debarment;

(3) The period of any recommended debarment; and

(4) Whether to continue any current contracts with the contractor (explain why a recommendation regarding current contracts is not included);

(J) When appropriate, as an enclosure to the report—

(1) A copy or extracts of each pertinent contract;

(2) Witness statements or affidavits;

(3) Copies of investigative reports;

(4) Certified copies of indictments, judgments, and sentencing actions; and

(5) Any other appropriate exhibits or documentation.

(iii) Send three copies of each report, including enclosures, to the debarring official in 209.403.

209.406–4 Period of debarment.

(a) If a decision is based on a felony conviction, the period generally should be for more than one year. When the debarring official decides not to debar or to debar for one year or less, both that decision and the agreement required by 209.406–1(a) require the written approval of the Secretary concerned or, in the case of the defense agencies, the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition), unless the debarring official determines that the mitigating factors in FAR 9.406–1 are satisfied.

PART 210—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Sec.

210.001 Definitions.
210.002 Policy.
210.002–70 Preference for nondevelopmental items.
210.004 Selecting specifications or descriptions for use.
210.006 Identification and availability of specifications.
210.011 Solicitation provisions and contract clauses.
210.011–70 Solicitation provisions and contract clauses.
210.070 Acquiring bills of materials.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

210.001 Definitions.

Bill of materials means a report by a supplier which specifies the quantities of various materials required to produce a designated quantity of supplies of a particular kind.

Nondevelopmental item means—

(1) Any item of supply that is available in the commercial marketplace;

(2) Any previously-developed item of supply that is in use by a department or agency of the United States, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

(3) Any item of supply described in paragraphs (1) or (2) of this definition that requires only minor modification in order to meet the requirements of the contracting agency; or

(4) Any item of supply that is currently being produced that does not meet the requirements of paragraphs (1), (2), or (3) of this definition solely because the item is not yet in use or is not yet available in the commercial marketplace.

Systems means a combination of elements that will function together to produce the capabilities required to fulfill a mission need.

Systems acquisition means the design, development, and production of new systems. It also includes modifications to existing systems that involve redesign of the system or subsystems.

210.002 Policy.

(c) All systems acquisition programs in the DoD are subject to the acquisition streamlining policies and procedures in DoD 5000.2, Defense Acquisition Management Policies and Procedures.

210.002-70 Preference for nondevelopmental items.

DoD policy is to fulfill requirements for supplies through acquisition of nondevelopmental items to the maximum extent practicable (10 U.S.C. 2325).

210.004 Selecting specifications or descriptions for use.

(b)(3) When a "brand name or equal" purchase description is used—

(A) The purchase description—

(*1*) Should include a complete common generic identification of the item.

(*2*) Should reference all known acceptable brand name products, to include—

(*i*) Name of manufacturer, producer, or distributor of each brand name product referenced (and address if not well known); and

(*ii*) Model, make, or catalog number for each, and identity of the commercial catalog in which it appears.

(*3*) May, if necessary to adequately describe an item, use a commercial catalog description or an extract from the catalog. Ensure that a copy of each catalog referenced (except parts catalogs) is available at the contracting office for review by offerors.

(*4*) Should give prospective offerors the opportunity to offer products other than those specifically referenced by brand name, as long as they meet the needs of the Government in essentially the same manner as the brand name product.

(*5*) Must identify those salient physical, functional, or other characteristics which are essential to the needs of the Government.

(B) The solicitation—

(*1*) May require bid samples for "or equal" offers, but not for "brand name" offers.

(*2*) Must provide for full consideration and evaluation of "or equal" offers against the salient characteristic specified in the purchase description. Do not reject offers for minor differences in design, construction, or features which do not affect the suitability of the product for its intended use.

(*3*) Must include the following immediately after the item description—

Offering:

Manufacturer's
Name________Brand________Model or
Part No.________

(C) The contract shall identify, or incorporate by reference an identification of the specific products the contractor is to furnish. Include any brand name, make or model number, descriptive material, and any modifications of brand name products specified in the offer.

210.008 Identification and availability of specifications.

(a) The DoD index of data item descriptions is DoD 5010.12-L, Acquisition Management Systems and Data Requirements Control List (AMSDL).

(d) Also, furnish data item descriptions which are not listed in the AMSDL, except when it is not feasible, e.g., documents are bulky or only a limited number of copies are available at the contracting activity.

(g) Contracting activities can obtain copies of the DODISS, the AMSDL, all unclassified specifications and standards listed in the DODISS, and data item descriptions listed in the AMSDL by sending a letter or DD Form 1425, Specifications and Standards Requisition, to the DoD single stock point: Standardization Document Order Desk, Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111-5094. Include with the letter or DD Form 1425—

(i) The requestor's customer number; and

(ii) Complete return mailing address, including any "mark for" instructions.

210.011 Solicitation provisions and contract clauses.

(b) When contract performance requires use of specifications and standards which are not listed in the DODISS and data item descriptions which are not listed in the AMSDL, use provisions, as appropriate, substantially the same as those at 252.210-7001, Availability of Specifications and Standards Not Listed in DODISS, Data Item Descriptions Not Listed in DoD 5010.12-L, and Plans, Drawings, and Other Pertinent Documents, and 252.210-7002, Availability for Examination of Specifications, Standards, Plans, Drawings, Data Item Descriptions, and Other Pertinent Documents.

210.011-70 Solicitation provisions and contract clauses.

(a)(1) When a brand name or equal purchase description is to be included in a solicitation, use the provision at 252.210-7000, Brand Name or Equal.

(2) When component parts of an end item are described by brand name or equal purchase descriptions and application of the provision at 252.210-7000 to some or all of the components would be impracticable, either do not use the provision or limit its application to specific components.

(b) Use the clause at 252.210-7003, Acquisition Streamlining, in all solicitations and contracts for systems acquisition programs.

(c) Use the provision at 252.210-7004, Alternate Preservation, Packaging, and Packing, in solicitations which include military preservation, packaging, or packing specifications when it is feasible to evaluate and award using commercial or industrial preservation, packaging, or packing.

(d) Use the clause at 252.210-7005, Bill of Materials, in solicitations and contracts which require delivery of bill(s) of materials.

210.070 Acquiring bills of materials.

(a) DoDI 4210.8, Department of Defense Bills of Materials, requires acquisition of bills of materials for certain items, when necessary—

(1) To develop materials or components requirements for production and maintenance programs;

(2) For industrial mobilization purposes; or

(3) For other specified purposes.

(b) When a bill of materials is required in accordance with paragraph (a) of this section, include the following in the contract—

(1) An identification of the supplies or parts to be covered by the bill of materials;

(2) The type of bill or bills of materials (detailed, modified, expanded summary, or abbreviated summary as defined in MIL-STD-295, Bills of Materials, Preparation of) to be furnished, with instructions, including a requirement for submission, on DD Form 346, Raw (Basic Processed) and Semi-Fabricated Stock Form, and DD Form 347, Bill of Materials for Subcontracted Parts, Purchased Parts, Government Furnished Property;

(3) The price to be paid the contractor for the bill of materials and any revisions, or a statement that the bill of materials is not separately priced;

(4) The number of copies of each bill of materials to be furnished; and

(5) The delivery dates.

the following
he item description—

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a solicitation, use the provision at 252.210–7000, Brand Name or Equal.

(2) When component parts of an end item are described by brand name or equal purchase descriptions and application of the provision at 252.210–7000 to some or all of the components would be impracticable, either do not use the provision or limit its application to specific components.

(b) Use the clause at 252.210–7003, Acquisition Streamlining, in all solicitations and contracts for systems acquisition programs.

(c) Use the provision at 252.210–7004, Alternate Preservation, Packaging, and Packing, in solicitations which include military preservation, packaging, or packing specifications when it is feasible to evaluate and award using commercial or industrial preservation, packaging, or packing.

(d) Use the clause at 252.210–7005, Bill of Materials, in solicitations and contracts which require delivery of bill(s) of materials.

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(2) For industrial mobilization purposes; or

(3) For other specified purposes.

(b) When a bill of materials is required in accordance with paragraph (a) of this section, include the following in the contract—

(1) An identification of the supplies or parts to be covered by the bill of materials;

(2) The type of bill or bills of materials (detailed, modified, expanded summary, or abbreviated summary as defined in MIL–STD–295, Bills of Materials, Preparation of) to be furnished, with instructions, including a requirement for submission, on DD Form 346, Raw (Basic Processed) and Semi-Fabricated Stock Form, and DD Form 347, Bill of Materials for Subcontracted Parts, Purchased Parts, Government Furnished Property;

(3) The price to be paid the contractor for the bill of materials and any revisions, or a statement that the bill of materials is not separately priced;

(4) The number of copies of each bill of materials to be furnished; and

(5) The delivery dates.

PART 211—ACQUISITION AND DISTRIBUTION OF COMMERCIAL PRODUCTS

Sec.
211.7000 Scope of subpart.
211.7001 Definitions.
211.7002 Policy.
211.7003 Applicability.
211.7003–1 General.
211.7003–2 Existing or prior sources.
211.7004 Requirements.
211.7004–1 Precedence of Part 211.
211.7004–2 Format for solicitations and contracts.
211.7004–3 Part I—The Schedule.
211.7004–4 Part II—Contract Clauses.
211.7004–5 Part III—List of Exhibits and Attachments.
211.7004–6 Part IV—Representations and Instructions.
211.7005 Contract clauses.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 211.70—Contracting for Commercial Items

211.7000 Scope of subpart.

This subpart implements section 824(b) of Public Law 101–189 by establishing policies, procedures and a simplified uniform contract format for the acquisition of commercial items.

211.7001 Definitions.

As used in this subpart—

(a) *Commercial items* means items regularly used in the course of normal business operations for other than Government purposes which:

(1) Have been sold or licensed to the general public;

(2) Have not been sold or licensed, but have been offered for sale or license to the general public;

(3) Are not yet available in the commercial marketplace, but will be available for commercial delivery in a reasonable period of time;

(4) Are described in paragraph (1), (2) or (3) that would require only minor modification in order to meet the requirements of the procuring agency.

(b) *Competition* means the solicitation of offers from more than one potential source where award will be made to the responsive, responsible offeror whose bid or proposal is most advantageous to the Government, price and, where appropriate, other factors considered or, when a solicitation contemplates more than one award, the offerors independently compete for a proportionate share (0 to 100 percent) of the award to be determined by the evaluation criteria specified in the solicitation. The term *competition* includes contracting using full and open competition (see FAR 6.1 and FAR 6.2) and other forms of competition authorized in FAR 6.3.

(c) *Existing or prior sources* means entities that are furnishing or previously furnished items to the Government, in accordance with Government unique product descriptions, drawings or specifications, that are being replaced by commercial items.

(d) *Minor modification* means a modification to a commercial item that does not alter the commercial item's function or essential physical characteristics.

(e) *Subcontractor* means an entity producing an item for another entity to the other entity's specifications, designs or drawings. The term does not include entities that produce such items to their own specifications, designs or drawings for sale to others.

(f) *Supplier* means an entity that produces items to its own specifications, designs or drawings for sale to others.

211.7002 Policy.

It is Department of Defense policy to—

(a) Satisfy its requirements, to the maximum extent practicable, through competitive acquisition of commercial items.

(b) Competitively acquire commercial products which best satisfy the Government's requirements, price and other factors considered.

(c) Not require offerors or contractors to submit certified cost or pricing data or require offerors or contractors to obtain certified cost or pricing data from their subcontractors or suppliers when contracting for commercial items under this subpart.

(d) Require prime contractors to include in contracts with their subcontractors or suppliers, as those terms are defined at 211.7001, only the clauses and provisions required by law or executive order to be included in such contracts.

211.7003 Applicability.

211.7003–1 General.

(a) This Subpart shall be used, to the maximum extent practicable, to competitively acquire commercial items.

(b) This Subpart shall not be used to acquire:

(1) Commercial items on a non-competitive basis.

(2) Services (other than the services included in a competitive solicitation for commercial items that are required by the solicitation to be furnished by the successful offeror in direct support of the items being acquired);

(3) Small purchases under FAR part 13 and DFARS part 213.

(4) Bakery and dairy products (See 217.73) and perishable foods;

(5) Petroleum, crude oil, unfinished oils and finished products as defined in FAR 25.108(d)(2);

(6) Items set forth in 225.70 that are subject to Authorization and Appropriations Act Restrictions unless the applicable exceptions set forth in 225.70 apply.

211.7003–2 Existing or prior sources.

(a) The head of a military department or defense agency, or his or her designee, may determine that it is in the Government's interests to permit existing or prior sources of items to participate in a competition for a commercial item when:

(1) A commercial item will replace an item that is being or previously was furnished to the Government in accordance with Government unique product descriptions, drawings or other specifications; and,

(2) The existing or previously furnished item will compete with commercial items under the same terms, conditions and evaluation/award criteria.

(b) The authority and criteria in paragraph (a) of this subsection also apply to minor modifications (as that term is defined at 211.7001) of existing or previously furnished items when the minor modifications are necessary to comply with the Government's solicitation requirements.

(c) The policies, procedures, solicitation provisions and contract clauses applicable to commercial items under this Subpart shall apply also to existing or previously furnished items permitted to participate in a competition conducted under this subpart.

(d) The provision at 252.211–7012, Certifications—Commercial Items—Competitive Acquisitions, shall be used with its Alternate I when the contracting activity has determined that it is in the Government's interests to permit existing or prior sources to participate in a competition for a commercial item.

211.7004 Requirements.

211.7004–1 Precedence of Part 211.

(a) *General.* (1) Contracting officers shall follow the regulatory text contained in part 211 when acquiring commercial items. Guidance and procedures contained in other FAR and DFARS regulatory text shall also be followed provided that the guidance and procedures do not conflict with the regulatory text in part 211. In the event of a conflict among the part 211 regulatory text and any other FAR or DFARS regulatory text, the part 211 regulatory text shall control and have precedence.

(2) Notwithstanding the prescriptions contained in other FAR or DFARS regulatory text, only the contract clauses, solicitations provisions, representations and certifications and special contract requirements prescribed for use under part 211 shall be included in solicitations and contracts under part 211 unless the contracting officer has determined in writing that additional special contract requirements, contract clauses and solicitation provisions are essential for the protection of the Government's interests in a particular contract.

(3) Supplementation of subpart 211.70 is not authorized without the prior written approval of the Director of Defense Procurement.

(b) *Contract type.* Only firm fixed price contracts, or as provided in paragraph (c) of this subsection, fixed price contracts with economic price adjustment provisions, shall be used to acquire commercial items under this subpart. The term "firm fixed price contracts" includes orders under Indefinite-Delivery contracts (see FAR 16.502 through 16.504 and 16.506) when the prices at which items may be acquired are established as firm fixed prices or fixed prices with economic price adjustment.

(c) *Economic price adjustment.* Solicitations for commercial items shall not require contract performance that is extended beyond customary industry practice for the product to be acquired. Contracting officers may consider the use of fixed price contracts with economic price adjustment provisions, subject to the limitations at FAR 16.203-3, if an extended period of performance cannot be avoided and the other conditions described in FAR 16.203-2 exist. Economic price adjustment provisions shall be tailored to the particular contracting situation.

(d) *Specification requirements.* Commercial items shall be acquired using specifications that describe the item in terms of the performance required and form, fit and function or other essential physical characteristics. Specifications shall not include:

(1) Specific designs, manufacturing processes or procedures; or

(2) Military standards or military specifications which would restrict a potential contractor's ability to satisfy the Government's requirements.

(e) *Contract quality requirements.* Contracting officers shall not require contractors to comply with a Government specified quality assurance system or quality program (see FAR 46.202-3). The contractor shall be required to maintain quality assurance systems adequate to assure that the items to be furnished under the contract conform with all contractual requirements. To the extent practicable, quality assurance systems shall be consistent with the contractor's standard commercial practices.

(f) *Inspection requirements.* (1) Government inspection of items acquired under this Subpart shall be limited to verifying that items tendered for acceptance conform to contractual requirements. Inspection and test prior to tender for acceptance is the contractor's responsibility and shall be performed by the contractor in accordance with the contractor's standard practice. Therefore, solicitations and contracts will not provide for inspections or tests to be performed by the Government prior to the time the items are tendered for acceptance. However, contracting officers may tailor inspection requirements when it is determined that the commercial items to be furnished under the contract have critical applications (see FAR 46.203(c)).

(2) The place or places at which inspection and acceptance will be performed, the acceptance criteria and any associated requirements shall be identified in Section E, Inspection and Acceptance, of the solicitation and contract. These requirements may also be included in the specifications used to acquire the items.

(3) The clause at 252.211-7004, Inspection and Acceptance—Commercial Items, shall be included in all solicitations and contracts for commercial items under this Subpart. Paragraph (b)(1) of the clause at 252.211-7004 may be modified appropriately if the contracting officer has determined that the commercial items to be furnished under the contract will have a critical application.

(g) *Packaging and marking.* Commercial items shall be packaged and marked in accordance with the contractor's standard practices unless unique military storage or operational needs require special packaging and marking. Requiring activities shall document the contract file to clearly identify the needs or circumstances which mandate the use of special packaging or marking requirements.

(h) *Technical data, computer software and commercial computer software.* The terms *computer software, computer software documentation, commercial computer software, commercial computer software documentation,* and *technical data* are used in paragraphs (h)(1) through (h)(4) of this subsection to describe the types of technical data or computer software that may be acquired under this Subpart and the conditions placed upon the Government's use of such technical data and computer software. For purposes of paragraphs (h)(1) through (h)(4):

Computer software means a set of instructions, rules, routines or statements that cause a computer to perform a specific operation or series of operations; and, source code listings, object codes, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated or recompiled.

Commercial computer software means computer software that has been developed at private expense for the commercial marketplace and is not in the public domain. The term *commercial computer software* includes any commercial computer software that has been modified or will be modified to satisfy requirements expressed in a competitive procurement solicitation.

Computer software documentation means owner's manuals, user's manuals, and operating instructions and other items, regardless of storage media, that explain the capabilities of the computer software or provide operating instructions for using the software to obtain desired results from a computer.

Commercial computer software documentation means the computer software documentation customarily provided to the public at, or subsequent to, the time the commercial computer software is licensed or provided to the public.

Technical data means recorded information, regardless of format or storage media, of a scientific or technical nature. Technical data includes computer software documentation and computer data bases but does not include computer software, financial data, administrative data, or cost or pricing data.

(1) Technical Data (other than Commercial Computer Software Documentation) and Computer Software (other than Commercial Computer Software).

(i) Contracting officers shall not acquire technical data or computer software except:

(A) Technical data or computer software required to maintain and repair commercial items properly when maintenance or repair is not otherwise the contractor's responsibility under the contract;

(B) Technical data or computer software that describe or provide the proper installation, operating or handling procedures for commercial items when such technical data or computer software are not customarily provided to the public as part of a commercial item's price;

(C) Technical data or computer software that describe the modifications made to commercial items, including the commercial items' related computer software or computer software documentation, in order to meet the requirements of the procurement solicitation;

(D) Technical data or computer software that describe the modifications made to commercial computer software or its related commercial computer software documentation, in order to meet the requirements of the procurement solicitation when the modified commercial computer software and its related documentation are the commercial items being furnished under the contract.

(ii) The Government shall use the technical data and computer software acquired under a contract for commercial items only as provided in paragraph (b) of the clause at 252.211-7015, Technical Data and Computer Software—Commercial Items.

(iii) All technical data to be acquired under the contract shall be listed on DD Form 1423, Contract Data Requirements List.

(2) Commercial Computer Software and Commercial Computer Software Documentation. (i) Contracting officers shall acquire only the commercial computer software and commercial computer software documentation customarily provided to the public. Except as provided in subparagraph (h)(1)(i)(D), contracting officers shall not require offerors or contractors to furnish information related to the commercial computer software or commercial computer software documentation that is not customarily provided to the public.

(ii) Commercial computer software and commercial computer software documentation shall be acquired, to the maximum extent practicable, under the same license provided by the software developer or distributor to the public. Tailored licenses may be included in solicitations for commercial computer software or commercial computer software documentation if the contracting officer has determined, in writing, based upon a thorough market analysis, that the licenses offered to the public are not in the Government's interests (licenses that obligate the licensee to purchase additional quantities of the software, purchase future upgrades of the software or purchase other items or services from the licensor, distributor or any other person as a condition of the license are examples of licenses that may not be in the Government's interests).

(iii) A tailored license shall clearly set forth the conditions under which the Government may use the commercial computer software and any related commercial computer software documentation. Solicitations containing a tailored license must require an offeror who is not the commercial computer software or commercial computer software documentation licensor to obtain, and submit with its offer, the licensor's written agreement to the tailored license as a condition for award. Tailored license agreements shall be included in Section H, "Special Contract Requirements," of the contract.

(iv) The Government shall use commercial computer software or commercial computer software documentation only as provided in paragraph (c) of the clause at 252.211-7015, Technical Data and Computer Software—Commercial Items.

(3) The clause at 252.211-7015, Technical Data and Computer Software—Commercial Items, shall be included in all solicitations and contracts for commercial items.

(4) The clauses at 252.211-7016, Technical Data and Computer Software—Withholding of Payment—Commercial Items, and 252.211-7017, Certification of Technical Data Conformity—Commercial Items, shall be included in solicitations and contracts for commercial items when technical data or computer software, including technical data or computer software that describe modifications to commercial computer software or commercial computer software documentation, will be acquired. These clauses shall not be included in solicitations and contracts that will procure only commercial computer software or commercial computer software documentation.

(i) *Certified cost or pricing data.* (1) Contracting officers shall not require offerors to submit certified cost or pricing data or require offerors to obtain certified cost or pricing data from their subcontractors or suppliers when competitively acquiring commercial items including a sole offer received in response to a competitive solicitation if the criteria at 211.7004-1(o) (3) and (4) are satisfied.

(2) Contracting officers shall require prime contractors to submit certified cost or pricing data for contract modifications which result in a price adjustment involving aggregate increases and/or decreases in costs, plus applicable profits, of more than $500,000, unless the price adjustment is exempt from submission and certification requirements as provided at FAR 15.804-3.

(3) For purposes of this Subpart, the phrase "the cost or pricing data" used in FAR 15.804-2(b) means only the cost or pricing data necessary to price the contract modification.

(4) The clauses at 252.211-7010, Price Reduction for Defective Cost or Pricing Data—Contract Modifications—Commercial Items, and 252.211-7011 Audit of Contract Modifications—Commercial Items, shall be included in all solicitations and contracts for commercial items.

(j) *Warranties*—(1) *Commercial items that are weapon systems.* Contracting officers shall include tailored, cost effective warranties in solicitations and contracts for commercial items that are weapon systems in accordance with the policies and procedures at 246.770. The term "weapon system," as used in 10 U.S.C. 2403 and 246.770, does not include commercial items sold in substantial quantities to the general public.

(2) *Commercial items that are not weapons systems.* Commercial items shall be acquired with the warranties provided to the public as customary trade practice if the customary trade practice warranties adequately protect the Government's interests. Tailored warranties shall be used when customary trade practice warranties do not adequately protect the Government's interests or tailored warranties are necessary to assure that commercial items intended for use as components or subsystems of weapon systems are procured with warranties that do not compromise or invalidate the weapon system warranty. Tailored warranties should be considered when commercial items are not customarily warranted to the public. However, the criteria at FAR 46.703 shall be considered to determine if it is appropriate to require offerors to provide warranties for commercial items that are not customarily warranted to the public.

(i) Customary trade practice warranties. (A) Contracting officers shall consider a warranty to be in the Government's interests when it is customary trade practice to provide a warranty to the general public. Market research and analysis will disclose if a particular class of commercial items (e.g., shoes, radar sets, office equipment, etc.) is customarily offered for sale to the general public with a warranty.

(B) A commercial item warranty that limits the Government's rights under the Inspection and Acceptance—Commercial Items clause (252.211-7004) does not adequately protect the

Government's interests. Similarly, a warranty's duration must be considered when determining whether or not the warranty adequately protects the Government's interests. A warranty period that does not provide a reasonable time for a commercial item's operational use to verify that the item conforms to contractual requirements does not adequately protect the Government's interests. For example, if the Government intends to store the item for a period prior to the item's actual use, the duration of the warranty should cover both the storage time and a reasonable period of actual use.

(C) A warranty is a price related factor. Therefore, the evaluation factors included in competitive solicitations shall be structured to permit consideration of the relative value to the Government of the warranty offered by each offeror.

(ii) Tailored warranties. (A) Contracting officers may tailor a contract specific warranty clause or appropriately tailor the FAR warranty clauses at FAR 52.246–17, Warranty of Supplies of a Non-Complex Nature, 52.246–18, Warranty of Supplies of a Complex Nature, or 52.246–19, Warranty of Systems and Equipment under Performance Specifications or Design Criteria, and their alternates to provide adequate protection of the Government's interests in a particular procurement. A tailored warranty clause shall not limit the Government's rights under the Inspection and Acceptance—Commercial Items clause (252.211–7004) and shall provide that the warranty applies notwithstanding inspection and acceptance or any other terms and conditions of the contract. The FAR warranty clauses or their alternates may be used without modification only if they do not limit the Government's rights under the Inspection and Acceptance—Commercial Items clause (252.211–7004) and provide that the warranty applies notwithstanding inspection and acceptance or other terms and conditions of the contract.

(B) Contracting officers shall assure that warranty provisions are consistent with other contractual requirements (e.g., failure free warranties may not be appropriate when acceptance criteria are stated in terms of Mean Time Between Failure or other probability based requirements that assume an "acceptable" level of discrepancies). The duration of a warranty for an item intended for use as a subsystem or component of a weapon system should be established giving consideration to the duration of the weapon system warranty.

(C) Contracting Officers preparing solicitations requiring offers based upon a Government specified warranty are encouraged to permit offerors to make alternative offers based upon alternative warranty provisions, including an offeror's standard commercial warranty. Solicitations permitting submission of alternative offers shall include evaluation factors that permit a realistic assessment of the relative value to the Government of offers based upon the Government specified warranty and alternative warranty provisions. The solicitations shall clearly advise the offerors that an alternative offer shall be considered for award only if its alternative warranty provision adequately protects the Government's interests.

(k) *Contract administration.* Contracting officers shall not perform, or have performed, Production Surveillance and Reporting procedures at FAR 42.11 when contracting for commercial items.

(l) *Contract changes*—(1) *General.* A change to a contract for a commercial item can have a more disruptive and costly effect on both the contractor and the Government than a corresponding change to an item which has been specifically designed and developed for the Department of Defense. Therefore, the ordering of changes, particularly specification changes, is strongly discouraged. Requirements personnel and contracting officers shall carefully evaluate the need for a change prior to ordering any change. An example of an extraordinary circumstance under which a change may be necessary is a change to the form, fit or function of a commercial item necessitated by a change to other equipment or systems of which the commercial item is, or is intended to be, a component.

(2) *Unilateral changes.* The contracting officer may make unilateral changes only to the method of shipment, packing or place of delivery specified in the contract. The changes must be in writing and may be made at any time during performance of the contract.

(3) *Bilateral changes.* Specification changes shall be made only by a bilateral modification to the contract. The bilateral modification shall be prospectively, definitively priced unless the Government's interests demand that performance begin immediately and negotiation of a definitive price is not possible in sufficient time to meet the Government's requirements. In the latter event, the bilateral modification shall:

(i) Include a maximum price for the change and the contractor's agreement that the definitive price for the change shall not exceed the maximum price; and,

(ii) Contain definitization schedules established in accordance with 217.7503(b)(3).

(4) *Certified cost or pricing data.* Certified cost or pricing data may be required when the definitive price of a contract change results in a price adjustment involving aggregate increases and/or decreases in costs, plus applicable profits, of more than $500,000, as provided at 211.7004–1(i) and FAR 15.804. Certified cost or pricing data are not required when establishing the maximum price for a contract change in accordance with paragraph (l)(3) of this subsection or when the price adjustment for a change is exempt from the requirements for certified cost or pricing data as provided at FAR 15.804–3.

(5) The clause at 252.211–7002, Changes—Commercial Items, shall be included in all solicitations and contracts for commercial items.

(m) *Progress payments.* Contracting officers shall not provide for customary or unusual progress payments when contracting for commercial items. For purposes of this subpart, the term *standard commercial items* as used at FAR 32.502–1(c) includes commercial items requiring minor modifications to meet the requirements of the procuring agency.

(n) *Telegraphic and facsimile submission of offers.* (1) Contracting officers shall authorize the submission of telegraphic or facsimile offers to the maximum extent practicable. Telegraphic offers include offers, modifications of offers, or withdrawals of offers that are delivered to the Government by telegram or mailgram, or transmitted to the Government by telex. The Government's telex number shall be provided to offerors in paragraph (g) of the solicitation provision at 252.211–7007, Telegraphic Submission of Offers—Commercial Items, if telex equipment is available at the location designated in the contract for submission of offers.

(2) Contracting officers shall require offerors submitting telegraphic offers to submit a signed, original offer within five working days from the date specified for receipt of offers in the solicitation. Contracting officers may provide offerors who fail to make a timely response to the contracting officer's request for an original, signed offer an opportunity to cure the deficiency in accordance with the procedures at FAR 14.405 and 15.607. The contracting officer shall specify the time and date by which the deficiency

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shall not exceed the maximum price; and,

(ii) Contain definitization schedules established in accordance with 217.7503(b)(3).

(4) *Certified cost or pricing data.* Certified cost or pricing data may be required when the definitive price of a contract change results in a price adjustment involving aggregate increases and/or decreases in costs, plus applicable profits, of more than $500,000, as provided at 211.7004–1(i) and FAR 15.804. Certified cost or pricing data are not required when establishing the maximum price for a contract change in accordance with paragraph (l)(3) of this subsection or when the price adjustment for a change is exempt from the requirements for certified cost or pricing data as provided at FAR 15.804–3.

(5) The clause at 252.211–7002, Changes—Commercial Items, shall be included in all solicitations and contracts for commercial items.

(m) *Progress payments.* Contracting officers shall not provide for customary or unusual progress payments when contracting for commercial items. For purposes of this subpart, the term *standard commercial items* as used at FAR 32.502–1(c) includes commercial items requiring minor modifications to meet the requirements of the procuring agency.

(n) *Telegraphic and facsimile submission of offers.* (1) Contracting officers shall authorize the submission of telegraphic or facsimile offers to the maximum extent practicable. Telegraphic offers include offers, modifications of offers, or withdrawals of offers that are delivered to the Government by telegram or mailgram, or transmitted to the Government by telex. The Government's telex number shall be provided to offerors in paragraph (g) of the solicitation provision at 252.211–7007, Telegraphic Submission of Offers—Commercial Items, if telex equipment is available at the location designated in the contract for submission of offers.

(2) Contracting officers shall require offerors submitting telegraphic offers to submit a signed, original offer within five working days from the date specified for receipt of offers in the solicitation. Contracting officers may provide offerors who fail to make a timely response to the contracting officer's request for an original, signed offer an opportunity to cure the deficiency in accordance with the procedures at FAR 14.405 and 15.607. The contracting officer shall specify the time and date by which the deficiency

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must be cured. An offeror's failure to cure the deficiency within the time specified by the contracting officer shall render bid submitted in response to an invitation for bids nonresponsive and ineligible for award and shall render a proposal submitted in response to a request for proposals ineligible for award.

(3) Contracting officers may provide offerors who fail to sign a facsimile offer, or who fail to make a timely response to the contracting officer's request for an original, signed solicitation cover sheet an opportunity to cure the deficiency in accordance with the procedures at FAR 14.405 and 15.607. The contracting officer shall specify the time and date by which the deficiency must be cured. An offeror's failure to cure the deficiency within the time specified by the contracting officer shall render a bid submitted in response to an invitation for bids nonresponsive and ineligible for award and shall render a proposal submitted in response to a request for proposals ineligible for award.

(o) *One offer.* (1) When only one offer is received from a responsive, responsible offeror in response to a competitive solicitation, the contracting officer shall re-examine the market analyses and specifications for the commercial item to assure that the initial assumptions of market conditions were valid and the specifications contained in the solicitation did not unduly restrict competition.

(2) The contracting officer shall cancel the solicitation if it is determined that the specifications unduly restricted competition.

(3) The contracting officer shall make an award in accordance with the procedures of this Subpart if the specifications did not unduly restrict competition and the initial assumptions of market conditions were valid. The offer received shall be considered an offer submitted under conditions of full and open competition. The offeror shall not be required to submit certified cost or pricing data or to obtain certified cost and pricing data from its subcontractors and suppliers.

(4) The contracting officer shall, if the specifications did not unduly restrict competition but the initial assumptions of market conditions were not valid:

(i) For sealed bids, proceed with award in accordance with the procedures at FAR 14.407.

(ii) For other than sealed bids, the contracting officer shall perform a price analysis to determine if the price offered is reasonable. If price analysis demonstrates that the price is reasonable, the contracting officer may proceed with award of the contract. The price offered shall be considered a price based upon adequate price competition. The offeror shall not be required to submit certified cost or pricing data or to obtain certified cost or pricing data from its subcontractors and suppliers. If price analysis alone cannot demonstrate price reasonableness, the contracting officer shall either cancel the solicitation or enter into negotiations with the offeror under the procedures at FAR part 15 and DFARS part 215.

(p) *Clauses to be included in contracts with subcontractors and suppliers.* (1) A prime contractor shall not be required to include in its contracts with subcontractors and suppliers, as those terms are defined at 211.7001, or require its subcontractors and suppliers to include in their contracts with lower tier subcontractors and suppliers, any contract clauses except:

(i) Clauses required to implement provisions of law applicable to such contracts; and,

(ii) Clauses determined by the Secretary of Defense to be appropriate for such contracts.

(2) Subparagraphs (p)(2)(i) through (p)(2)(iii) identify the FAR and DFARS clauses that implement provisions of law or Executive Order that may apply to subcontractors and suppliers under certain conditions or monetary thresholds:

(i) All contracts with subcontractors and suppliers:

FAR 52.203–12 Limitation on Payments to Influence Certain Federal Transactions.
FAR 52.222–22 Previous Contracts and Compliance Reports.
FAR 52.222–26 Equal Opportunity.
FAR 52.222–35 Affirmative Action for Special Disabled and Vietnam Era Veterans.
FAR 52.222–36 Affirmative Action for Handicapped Workers.
FAR 52.222–37 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era.
FAR 52.225–12 Notice of Restrictions on Contracting with Sanctioned Persons.
FAR 52.225–13 Restrictions on Contracting with Sanctioned Persons.
252.223–7005 Notice of Radioactive Materials.
252.225–7001 Buy American Act and Balance of Payment Program.
252.225–7006 Buy American Act-Trade Agreement Act and the Balance of Payments Program.
252.225–7015 United States Products Certificate (Military Assistance Program).
252.225–7016 United States Products (Military Assistance Program).

(ii) Only contracts with subcontractors:

FAR 52.220–4 Labor Surplus Area Subcontracting Program.
FAR 52.222–25 Affirmative Action Compliance.
FAR 52.223–1 Clear Air and Water Certification.
FAR 52.223–2 Clean Air and Water.
FAR 52.225–10 Duty-Free Entry
FAR 52.225–11 Certain Communist Areas.
FAR 52.222–21 Certification of Nonsegregated Facilities.
252.211–7011 Audit of Contract Modifications-Commercial Items.
252.225–7009 Preference for Certain Domestic Commodities.
252.247–7203 Transportation of Supplies by Sea.

(iii) Only first tier subcontracts:

FAR 52.209–6 Protecting Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.
FAR 52.215–1 Examination of Records by Comptroller General.
FAR 52.219–8 Utilization of Small Business Concerns and Small Disadvantaged Business Concerns.
FAR 52.219–9 Small Business and Small Disadvantaged Business Subcontracting Plan.
252.203–7001 Special Prohibition on Employment.
252.219–7000 Small Business and Small Disadvantaged Business Subcontracting Plan (DoD Contracts).

(3) The clause at 252.211–7021, Clauses to be included in Contracts with Subcontractors and Suppliers—Commercial Items, shall be included in all solicitations and contracts for commercial items under this Subpart. Paragraph (b)(1) of that clause also includes the clause at FAR 52.222–1, Notice to the Government of Labor Disputes. Accurate information concerning actual or potential labor disputes cannot be obtained unless the clause at 52.222–1, although not required by law or Executive Order, is also included in the prime contractor's contracts with its subcontractors or suppliers.

(q) *Award of contract.* (1) Contracts for commercial items shall be awarded to:

(i) For sealed bids, the responsive, responsible bidder whose bid is most advantageous to the Government considering only price and the price related factors included in the solicitation; and,

(ii) For other than sealed bids, the responsive, responsible offeror whose proposal has been determined, in accordance with the evaluation criteria contained in the solicitation, to be most advantageous to the Government.

(2) Forms. (i) Contracts resulting from invitations for bids shall be awarded on the forms prescribed at FAR 14.407(d)(1).

(ii) Contract awards using procedures other than sealed bidding procedures, including awards contemplated when only one response is received to a competitive request for proposals, shall be made using the award portion of the solicitation document, either SF 33, Solicitation Offer and Award (FAR 53.301–33), or SF 1447, Solicitation/Contract (FAR 53.301–1447), unless the contracting officer has had discussions with the offerors within the competitive range and bilateral execution of an SF 26, Award/Contract (FAR 53.301–26), would more appropriately reflect acceptance of the modified offer resulting from the discussions or negotiations.

(3) Section 802 of the FY91 National Defense Authorization Act (Pub. L. 101–510) requires the Government to state its intention to award with or without discussions. The provision at 252.211–7014, Contract Award—Commercial Items, which states an intention to award without discussions unless discussions prove to be necessary, shall be included in all solicitations for commercial items. The provision shall be appropriately modified if, prior to release of a solicitation, the contracting officer anticipates evaluation and award based on discussions.

211.7004–2 Format for solicitations and contracts.

(a) Invitations for bids and resulting contracts shall be prepared in either the Uniform Contract Format at FAR 14.201 or the simplified contract format described at FAR 14.201–9.

(b) Requests for proposals and resulting contracts shall be prepared in either the Uniform Contract Format at FAR 15.406–1 or the simplified contract format described at FAR 15.416.

211.7004–3 Part I—The Schedule.

The contracting officer shall prepare the Schedule as follows:

(a) *Section A, Solicitation/Contract Form.* Invitations for bids and requests for proposals shall be prepared on either SF 33, Solicitation Offer and Award (FAR 53.301–33), or SF 1447, Solicitation/Contract (FAR 53.301–1447), which serves as the first page of the solicitation.

(b) *Section B, Supplies and Prices.* Provide a brief description of the commercial items or incidental services supporting those items to be acquired under each line item, and the quantities and units of measure (i.e., gross, dozen, etc.) applicable to each line item.

(c) *Section C, Description/Specification.* Include only specifications that describe the item in terms of the performance required and form, fit and function or other essential physical characteristics. Specifications shall not include:

(1) Specific designs, manufacturing processes or procedures; or

(2) Military standards or military specifications which would restrict a potential contractor's ability to satisfy the Government's requirements.

(d) *Section D, Packaging and Marking.* Contracting officers shall require packaging and marking to be accomplished in accordance with the offeror's standard practices unless the use of special packaging and marking has been justified (see 211–7004–1(g)). Any special packaging and marking requirements shall be clearly identified.

(e) *Section E, Inspection and Acceptance.* Solicitations and contracts shall identify the place(s) where inspection and acceptance will be performed and the acceptance criteria.

(f) *Section F. Delivery Schedule.* Solicitations and contracts shall identify the date(s) and place(s) of delivery, and shall provide shipping instructions if necessary.

(g) *Section G. Contract Administration Information.* This section may be used to supplement, if necessary, the contract administration information provided on the cover sheet.

(h) *Section H. Special Contract Requirements.* Contracting officers shall include in this section economic price adjustment provisions, warranty provisions, commercial computer software licensing agreements and any other special contract requirement that the contracting officer has determined, in writing, is essential for the protection of the Government's interests in a particular contract.

211.7004–4 Part II—Contract Clauses.

Section I, Contract Clauses. The contracting officer shall include in all solicitations and contracts under this Subpart: all the clauses included in 211.7005(a); any applicable clauses from 211.7005(b); and, any other contract clauses that the contracting officer has determined, in writing, are essential for the protection of the Government's interests in a particular contract.

211.7004–5 Part III—List of Exhibits and Attachments.

Section J, List of Exhibits and Attachments. The Contracting officer shall list the title, date, and number of pages of each attached document.

211.7004–6 Part IV—Representations and Instructions.

The contracting officer shall prepare the representations and instructions as follows:

(a) *Section K, Representations and Certifications.* (1) Only the representations and certifications, or submissions of other information by offerors which are authorized for use under this subpart (See 211.7005(c)) shall be included in the solicitation.

(2) The certification at 252.211–7012, Certifications—Commercial Items—Competitive Acquisitions, and the representation at 252.211–7013, New Material—Commercial Items, shall be used in all invitations for bids and requests for proposals. Alternate 1 of the certification at 252.211–7012 shall be used as prescribed at 211.7003–2(d).

(3) Solicitations and contracts under this subpart shall include the provision at 252.211–7020, Business Type Certification—Commercial Items, in lieu of the representations and certifications prescribed at FAR part 19 and DFARS parts 219 and 220.

(b) *Section L, Instructions, Conditions, or Notices.* (1) Insert in this section the applicable solicitation provisions from 211.7005(d), any other solicitation provisions that the contracting officer has determined, in writing, are essential for the protection of the Government's interests in a particular contract, and any other information which may be required to facilitate an offeror's understanding of the solicitation.

(2) The solicitation provisions at FAR 52.215–9, Submissions of Offers, FAR 52.215–12, Restriction on Disclosure and Use of Data, FAR 52.215–13, Preparation of Offers, FAR 52.215–14, Explanation to Prospective Offerors, FAR 52.216–1, Type of Contract, 252.211–7009, General Solicitation Information and Definitions—Commercial Items, and 252.211–7014, Contract Award—Commercial Items, shall be included in all invitations for bid and requests for proposals.

(3) The solicitation provision at 252.211–7018, Late Submissions, Modifications and Withdrawals of Offers—Commercial Items, shall be included in all invitations for bid and requests for proposals issued in the United States or Canada that require the submission of offers to a contracting office in the United States or Canada.

(4) The solicitation provision at 252.211–7019, Late Submissions, Modifications and Withdrawals of Offers—Commercial Items (Overseas), shall be included in all invitations for bid and requests for proposals requiring the submission of offers to a contracting office outside the United States and Canada.

(5) The solicitation provision at 252.211–7007, Telegraphic Submission of Offers—Commercial Items, shall be

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(a) *Section K, Representations and Certifications.* (1) Only the representations and certifications, or submissions of other information by offerors which are authorized for use under this subpart (See 211.7005(c)) shall be included in the solicitation.

(2) The certification at 252.211-7012, Certifications—Commercial Items—Competitive Acquisitions, and the representation at 252.211-7013, New Material—Commercial Items, shall be used in all invitations for bids and requests for proposals. Alternate 1 of the certification at 252.211-7012 shall be used as prescribed at 211.7003-2(d).

(3) Solicitations and contracts under this subpart shall include the provision at 252.211-7020, Business Type Certification—Commercial Items, in lieu of the representations and certifications prescribed at FAR part 19 and DFARS parts 219 and 220.

(b) *Section L, Instructions, Conditions, or Notices.* (1) Insert in this section the applicable solicitation provisions from 211.7005(d), any other solicitation provisions that the contracting officer has determined, in writing, are essential for the protection of the Government's interests in a particular contract, and any other information which may be required to facilitate an offeror's understanding of the solicitation.

(2) The solicitation provisions at FAR 52.215-9, Submissions of Offers, FAR 52.215-12, Restriction on Disclosure and Use of Data, FAR 52.215-13, Preparation of Offers, FAR 52.215-14, Explanation to Prospective Offerors, FAR 52.216-1, Type of Contract, 252.211-7009, General Solicitation Information and Definitions—Commercial Items, and 252.211-7014, Contract Award—Commercial Items, shall be included in all invitations for bid and requests for proposals.

(3) The solicitation provision at 252.211-7018, Late Submissions, Modifications and Withdrawals of Offers—Commercial Items, shall be included in all invitations for bid and requests for proposals issued in the United States or Canada that require the submission of offers to a contracting office in the United States or Canada.

(4) The solicitation provision at 252.211-7019, Late Submissions, Modifications and Withdrawals of Offers—Commercial Items (Overseas), shall be included in all invitations for bid and requests for proposals requiring the submission of offers to a contracting office outside the United States and Canada.

(5) The solicitation provision at 252.211-7007, Telegraphic Submission of Offers—Commercial Items, shall be

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incorporated in all invitations for bid and requests for proposals when telegraphic submission of offers is authorized.

(6) The provision at 252.211-7008, Facsimile Submission of Offers—Commercial Items, shall be included in all invitations for bid and requests for proposals when submission of facsimile offers is authorized.

(c) *Section M, Evaluation Factors for Award.* (1) When sealed bids will be solicited, identify the price related factors and subfactors, if any, other than the bid price that will be considered in evaluating bids and awarding the contract.

(2) When proposals will be solicited, the solicitation shall clearly advise offerors that award will be made to the offeror whose offer is most advantageous to the Government. The solicitation shall identify all factors and any subfactors that will be considered in awarding the contract and state the relative importance the Government places on those evaluation factors and subfactors. As prescribed at FAR 15.605(b), price and quality shall be addressed in every source selection.

211.7005 Contract clauses.

(a) The contracting officer shall insert the following required clauses in section I of all solicitations and contracts awarded under this subpart:

(1) FAR 52.203-1 Officials Not to Benefit.
(2) FAR 52.203-3 Gratuities.
(3) FAR 52.203-6 Restriction on Subcontractor Sales to the Government.
(4) FAR 52.203-7 Anti-Kickback Procedures.
(5) FAR 52.203-10 Price or Fee Adjustment for Illegal or Improper Activity.
(6) FAR 52.209-6 Protecting The Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.
(7) FAR 52.219-8 Utilization of Small Business Concerns and Small Disadvantaged Business Concerns.
(8) FAR 52.219-13 Utilization of Women-Owned Small Businesses.
(9) FAR 52.222-26 Equal Opportunity.
(10) FAR 52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans.
(11) FAR 52.222-36 Affirmative Action for Handicapped Workers.
(12) FAR 52.222-37 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era.
(13) FAR 52.223-6 Drug-Free Workplace.
(14) FAR 52.225-13 Restrictions on Contracting with Sanctioned Persons.
(15) FAR 52.229-3 Federal, State, and Local Taxes.
(16) FAR 52.232-23 Assignment of Claims.
(17) FAR 52.233-1 Disputes.
(18) 252.203-7001 Special Prohibition on Employment.
(19) 252.203-7002 Statutory Compensation Prohibitions and Reporting Requirements Relating to Certain Former Department of Defense (DoD) Employees.
(20) 252.211-7000 Termination—Commercial Items.
(21) 252.211-7001 Invoice and Payment—Commercial Items.
(22) 252.211-7002 Changes—Commercial Items.
(23) 252.211-7003 Patents and Copyright Indemnification—Commercial Items.
(24) 252.211-7004 Inspection and Acceptance—Commercial Items.
(25) 252.211-7005 Limitation of Liability—Commercial Items.
(26) 252.211-7006 Title and Risk of Loss—Commercial and Items.
(27) 252.211-7010 Price Reduction for Defective Cost or Pricing Data—Contract Modifications—Commercial Items.
(28) 252.211-7011 Audit of Contract Modifications—Commercial Items.
(29) 252.211-7015 Technical Data and Computer Software—Commercial Items.
(30) 252.211-7021 Clauses to be Included in Contracts with Subcontractors and Suppliers—Commercial Items.
(31) 252.214-7001 Domestic Source Restriction.
(32) 252.225-7009 Preference for Certain Domestic Commodities.
(33) 252.243-7001 Pricing of Adjustments.
(34) 252.247-7203 Transportation of Supplies by Sea.

(b) The contracting officer shall insert the following clauses in Section I of solicitations and contracts awarded under this Subpart as applicable. The prescriptions for the FAR and DFARS clauses other than DFARS part 211 clauses are identified in FAR part 52 and DFARS part 252. The prescriptions for DFARS part 211 clauses are contained in 211.7004-1.

(1) FAR 52.203-5 Covenant Against Contingent Fees.
(2) FAR 52.203-9 Requirement for Certificate of Procurement Integrity—Modification.
(3) FAR 52.203-12 Limitation on Payments to Influence Certain Federal Transactions.
(4) FAR 52.215-1 Examination of Records by Comptroller General.
(5) FAR 52.215-33 Order of Precedence.
(6) FAR 52.216-18 Ordering.
(7) FAR 52.216-19 Delivery Order Limitation.
(8) FAR 52.216-20 Definite Quantity.
(9) FAR 52.216-21 Requirements.
(10) FAR 52.216-22 Indefinite Quantity.
(11) FAR 52.219-6 Notice of Total Small Business Set-Aside.
(12) FAR 52.219-7 Notice of Partial Small Business Set-Aside.
(13) FAR 52.219-9 Small Business and Small Disadvantaged Business Subcontracting Plan.
(14) FAR 52.219-16 Liquidated Damages-Small Business Subcontracting Plan.
(15) FAR 52.220-3 Utilization of Labor Surplus Area Concerns.
(16) FAR 52.220-4 Labor Surplus Area Subcontracting Program.
(17) FAR 52.222-1 Notice to the Government of Labor Disputes.
(18) FAR 52.222-3 Convict Labor.
(19) FAR 52.222-20 Walsh Healy Public Contracts Act.
(20) FAR 52.222-28 Equal Opportunity Preaward Clearance of Subcontract.
(21) FAR 52.223-2 Clean Air and Water.
(22) FAR 52.225-10 Duty-Free Entry.
(23) FAR 52.225-11 Certain Communist Areas.
(24) FAR 52.232-17 Interest.
(25) FAR 52.232-28 Electronic Funds Transfer Payment Methods.
(26) FAR 52.242-10 F.o.b. Origin-Government Bills of Lading or Prepaid Postage.
(27) FAR 52.246-17 Warranty of Supplies of a Non-Complex Nature.
(28) FAR 52.246-18 Warranty of Supplies of a Complex Nature.
(29) FAR 52.246-19 Warranty of Systems and Equipment under Performance Specifications or Design Criteria.
(30) FAR 52.247-1 Commercial Bill of Lading Notations.
(31) FAR 52.247-29 F.o.b. Origin.
(32) FAR 52.247-34 F.o.b. Destination.
(33) 252.205-7000 Release of Information to Cooperative Agreement Holders.
(34) 252.211-7016 Technical Data and Computer Software—Withholding of Payment—Commercial Items.
(35) 252.211-7017 Certification of Technical Data and Computer Software Conformity—Commercial Items.
(36) 252.219-7000 Small Business and Small Disadvantaged Business Subcontracting Plan (DoD Contracts).
(37) 252.219-7001 Notice of Combined Small Business-Labor Surplus Area Set-Aside.
(38) 252.219-7002 Notice of Combined Small Business-Labor Surplus Area Set-Aside—Alternate.
(39) 252.219-7003 Determining the Set-Aside Award Price.
(40) 252.219-7006 Notice of Total Small Disadvantaged Business Set-Aside.
(41) 252.219-7007 Notice of Evaluation Preference for Small Disadvantaged Business (SDB) Concerns.
(42) 252.219-7009 Incentive Program for Subcontracting with Small and Small Disadvantaged Business Concerns, Historically Black Colleges and Universities and Minority Institutions.
(43) 252.219-7010 Notice of Partial Small Business Set-Aside with Preferential Consideration for Small Disadvantaged Business (SDB) Concerns.
(44) 252.219-7011 Determining the Set-Aside Award Price (Preferential Small Disadvantaged Business (SDB) Consideration).
(45) 252.220-7000 Notice of Labor Surplus Area Set-Aside.
(46) 252.220-7001 Notice of Labor Surplus Area Set-Aside—Alternate.
(47) 252.223-7004 Hazardous Material Identification and Material Safety Data.
(48) 252.223-7005 Notice of Radioactive Materials.

(49) 252.225–7001 Buy American Act and Balance of Payment Program.
(50) 252.225–7002 Qualifying Country Sources as Subcontractors.
(51) 252.225–7006 Buy American Act-Trade Agreement Act and the Balance of Payments Program.
(52) 252.225–7010 Domestic Wool Preference.
(53) 252.225–7011 Preference for Domestic Specialty Metals (Major Programs).
(54) 252.225.7012 Preference for Domestic Specialty Metals.
(55) 252.225–7013 Preference for Domestic Hand or Measuring Tools.
(56) 252.225–7015 United States Products Certificate (Military Assistance Program).
(57) 252.225–7016 United States Products (Military Assistance Program).
(58) 252.225–7017 Limitation of Sales Commissions and Fees for Foreign Governments.
(59) 252.225–7019 Exclusionary Policies and Practices of Foreign Governments.
(60) 252.225–7021 Acquisition and Use of Excess and Near-Excess Currency.
(61) 252.225–7023 Restriction on Acquisition of Foreign Machine Tools.
(62) 252.225–7024 Restriction on Acquisition of Foreign Valves.
(63) 252.233–7000 Certification of Request for Adjustment Exceeding $100,000.
(64) 252.242–7000 Submission of Commercial Freight Bill to the General Services Administration for Audit.
(65) 252.247–7204 Notification of Transportation of Supplies by Sea.

(c) The contracting officer shall insert the following representations and certifications in Section K of solicitations as applicable. The prescriptions for the following FAR and DFARS representations and certifications other than DFARS part 211 representations and certifications are identified in FAR part 52 and DFARS part 252. The prescriptions for DFARS part 211 representations and certifications are contained in 211.7004–6(a) and 211.7003–2(d).

(1) FAR 52.203–4 Contingent Fee Representation and Agreement.
(2) FAR 52.203–8 Requirement for Certificate of Procurement Integrity.
(3) FAR 52.203–11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.
(4) FAR 52.204–3 Taxpayer Identification.
(5) FAR 52.209–5 Certification Regarding Debarment, Suspension, Proposed Debarment and Other Responsibility Matters.
(6) FAR 52.222–19 Walsh-Healy Public Contracts Act Representation.
(7) FAR 52.222–21 Certification of Nonsegregated Facilities.
(8) FAR 52.222–22 Previous Contracts and Compliance Reports.
(9) FAR 52.222–25 Affirmative Action Compliance.
(10) FAR 52.223–1 Clear Air and Water Certification.
(11) FAR 52.223–5 Certification Regarding A Drug-Free Workplace.
(12) FAR 52.225–12 Notice of Restrictions on Contracting with Sanctioned Persons.
(13) 252.209–7000 Certification or Disclosure of Ownership or Control by a Foreign Government that Supports Terrorism
(14) 252.211–7012 Certifications—Commercial Items—Competitive Acquisitions.
(15) 252.211–7013 New Material—Commercial Items.
(16) 252.211–7020 Business Type Certification—Commercial Items.
(17) 252.225–7000 Buy American-Balance of Payment Program Certificate.
(18) 252.225–7005 Buy American Act-Trade Agreement Act-Balance of Payments Program Certificate.
(19) 252.247–7202 Representation of Extent of Transportation by Sea.

(d) The contracting officer shall insert the following instructions, conditions or notices in Section L of solicitations as applicable. The prescriptions for the following FAR and DFARS provisions other than FAR 52.215–9, FAR 52.215–12, FAR 52.215–13, FAR 52.215–14, FAR 52.216–1 and DFARS Part 211 provisions are identified in FAR part 52 and DFARS part 252. The prescriptions for FAR 52.215–9, FAR 52.215–12, FAR 52.215–13, FAR 52.215–14, FAR 52.216–1 and DFARS part 211 provisions are contained in 211.7004–6(b).

(1) FAR 52.204–4 Contractor Establishment Code.
(2) FAR 52.214–21 Descriptive Literature.
(3) FAR 52.214–23 Late Submissions, Modifications, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding.
(4) FAR 52.214–25 Step Two of Two-Step Sealed Bidding.
(5) FAR 52.214–33 Late Submissions, Modifications and Withdrawals of Technical Proposals Under Two Step-Sealed Bidding (Overseas).
(6) FAR 52.215–8 Acknowledgment of Amendments to Solicitations.
(7) FAR 52.215–9 Submissions of Offers.
(8) FAR 52.215–12 Restriction on Disclosure and Use of Data.
(9) FAR 52.215–13 Preparation of Offers.
(10) FAR 52.215–14 Explanation to Prospective Offerors.
(11) FAR 52.216–1 Type of Contract.
(12) FAR 52.222–24 Preaward On-Site Equal Opportunity Compliance Review.
(13) 252.211–7007 Telegraphic Submission of Offers—Commercial Items.
(14) 252.211–7008 Facsimile Submission of Offers—Commercial Items.
(15) 252.211–7009 General Solicitation Information and Definitions—Commercial Items.
(16) 252.211–7014 Contract Award—Commercial Items.
(17) 252.211–7018 Late Submissions, Modifications and Withdrawals of Offers— Commercial Items.
(18) 252.211–7019 Late Submissions, Modifications and Withdrawals of Offers— Commercial Items (Overseas).

PART 212—CONTRACT DELIVERY OR PERFORMANCE

Sec.

Subpart 212.2—Liquidated Damages
212.204 Contract clauses.
Subpart 212.3—Priorities and Allocations
212.302 General.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3

Subpart 212.2—Liquidated Damages

212.204 Contract clauses.

(b) Use the clause at FAR 52.212–5, Liquidated Damages—Construction, in all construction contracts exceeding $500,000, except cost-plus-fixed-fee contracts or contracts where the contractor cannot control the pace of the work. Use of the clause in contracts of less than $500,000 is optional.

Subpart 212.3—Priorities and Allocations

212.302 General.

DoD implementation of the Defense Priorities and Allocations System is in DoDI 4400.1, Priorities and Allocations—Delegation of DO and DX Priorities and Allocations Authorities, Rescheduling of Deliveries and Continuance of Related Manuals.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 213—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Sec

Subpart 213.2—Blanket Purchase Agreements
213.203 Establishment of Blanket Purchase Agreements.
213.203–1 General.
213.203–2 Clauses.
213.204 Purchase under Blanket Purchase Agreements.
Subpart 213.3—Fast Payment Procedure
213.302 Conditions for use.
Subpart 213.4—Imprest Fund
213.402 General.
213.403 Agency responsibilities.
213.404 Conditions for use.
Subpart 213.5—Purchase Orders
213.503 Obtaining contractor acceptance and modifying purchase orders.
213.504 Termination or cancellation of purchase orders.
213.505 Purchase order and related forms.
213.505–2 Agency order forms in lieu of Optional Forms 347 and 348.
213.505–3 Standard Form 44, Purchase Order-Invoice-Voucher.
213.507 Clauses.

Certification Regarding A
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Notice of Restrictions on
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PART 212—CONTRACT DELIVERY OR PERFORMANCE

Sec

Subpart 212.2—Liquidated Damages
212.204 Contract clauses.
Subpart 212.3—Priorities and Allocations
212.302 General.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3

Subpart 212.2—Liquidated Damages

212.204 Contract clauses.

(b) Use the clause at FAR 52.212–5, Liquidated Damages—Construction, in all construction contracts exceeding $500,000, except cost-plus-fixed-fee contracts or contracts where the contractor cannot control the pace of the work. Use of the clause in contracts of less than $500,000 is optional.

Subpart 212.3—Priorities and Allocations

212.302 General.

DoD implementation of the Defense Priorities and Allocations System is in DoDI 4400.1, Priorities and Allocations—Delegation of DO and DX Priorities and Allocations Authorities, Rescheduling of Deliveries and Continuance of Related Manuals.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 213—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Sec.

Subpart 213.2—Blanket Purchase Agreements
213.203 Establishment of Blanket Purchase Agreements.
213.203–1 General.
213.203–2 Clauses.
213.204 Purchase under Blanket Purchase Agreements.
Subpart 213.3—Fast Payment Procedure
213.302 Conditions for use.
Subpart 213.4—Imprest Fund
213.402 General.
213.403 Agency responsibilities.
213.404 Conditions for use.
Subpart 213.5—Purchase Orders
213.503 Obtaining contractor acceptance and modifying purchase orders.
213.504 Termination or cancellation of purchase orders.
213.505 Purchase order and related forms.
213.505–2 Agency order forms in lieu of Optional Forms 347 and 348.
213.505–3 Standard Form 44, Purchase Order-Invoice-Voucher.
213.507 Clauses.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 213.2—Blanket Purchase Agreements

213.203 Establishment of Blanket Purchase Agreements.

213.203-1 General.

(i) Prepare and issue blanket purchase agreements (BPAs) on DD Form 1155, Order for Supplies or Services.

213.203-2 Clauses.

(a) The clauses prescribed at 213.507 for purchase orders also apply to BPAs.

213.204 Purchase under Blanket Purchase Agreements.

(b) Individual purchases for subsistence may be made at any dollar value; however, the contracting officer shall satisfy the competition requirements of FAR Part 6 for any action above the dollar threshold at FAR 13.000.

Subpart 213.3—Fast Payment Procedure

§ 213.302 Conditions for use.

(a) Individual orders may exceed $25,000 for—

(i) Brand name commissary resale subsistence; and

(ii) Medical supplies for direct shipment overseas.

Subpart 213.4—Imprest Fund

213.402 General.

See DoDD 7360.10, Disbursing Policies, and chapter 32 of the DoD Accounting Manual, DoD 7220.9–M.

213.403 Agency responsibilities.

(c) Installation commanders and commanders of other activities with contracting authority are responsible for approving the establishment of imprest funds.

213.404 Conditions for use.

(a) Overseas transactions in support of contingencies declared by the Secretary of Defense may use imprest funds up to $2,500.

(c)(i)Additional conditions for use include—

(A) Availability for delivery within 60 days; and

(B) No requirement for detailed technical specifications or technical inspections

(ii) When imprest funds are used for small purchases, the funds may also be used to pay charges for local delivery, parcel post, c.o.d. charges, and line haul or inter-city transportation charges when the supplier is to arrange for delivery.

Subpart 213.5—Purchase Orders

213.503 Obtaining contractor acceptance and modifying purchase orders.

(a) Require written acceptance of purchase orders for classified acquisitions.

(b) Use Standard Form 30, Amendment of Solicitation/Modification of Contract, to modify purchase orders.

(d)(i) Unilateral modifications (see FAR 43.103) may also be used for—

(A) No cost amended shipping instructions (ASI) if—

(*1*) The ASI modifies a unilateral purchase order, and

(*2*) The contractor agrees verbally or in writing.

(B) Any change made before work begins if—

(*1*) The change is within the scope of the original order;

(*2*) The contractor agrees;

(*3*) The modification references the contractor's verbal or written agreement; and

(*4*) Block 13D of the Standard Form 30 is annotated to reflect the authority for issuance of the modification.

(ii) A supplemental agreement converts a unilateral purchase order to a bilateral agreement. If not previously included in the purchase order, incorporate the clauses prescribed in 213.507(a)(ii) in the Standard Form 30, Amendment of Solicitation/Modification of Contract, and obtain the contractor's acceptance by signature on the Standard Form 30.

213.504 Termination or cancellation of purchase orders.

(b) Use Standard Form 30 to cancel a unilateral purchase order.

213.505 Purchase order and related forms.

213.505–2 Agency order forms in lieu of Optional Forms 347 and 348.

Departments and agencies shall not use Optional Forms 347, Order for Supplies or Services, and 348, Order for Supplies or Services-Schedule Continuation.

(b)(i) Use DD Form 1155, Orders for Supplies or Services, (see 253.213(e)), for purchases made using the small purchase procedures of FAR part 13. The DD Form 1155 serves as—

(A) A purchase order or a blanket purchase agreement, when used with the clauses prescribed at 213.507(a);

(B) A delivery order under a Government contract or from Government agencies outside the DoD;

(C) A receiving and inspection report;

(D) A property voucher;

(E) A document for acceptance by the supplier; and

(F) A public voucher, when used as—

(*1*) A delivery order;

(*2*) The basis for payment of an invoice against blanket purchase agreements or basic ordering agreements when a firm price has been established; or

(*3*) A purchase order for not more than the small purchase limitation in FAR 13.000.

(ii) The DD Form 1155 is also authorized for use for—

(A) Classified acquisitions when the purchase is made within the United States, its possessions, and Puerto Rico. Attach the DD Form 254, Contract Security Classification Specification, to the purchase order.

(B) Orders under departmental contracts or from Government agencies outside the DoD (see FAR subparts 8.4, 8.6, 8.7, and 16.5).

213.505-3 Standard Form 44, Purchase Order-Invoice-Voucher.

(b)(1) The $2,500 limitation applies to all purchases except that purchases up to the small purchase limitation in FAR 13.000 may be made for—

(A) Aviation fuel and oil;

(B) Overseas transactions by contracting officers in support of contingencies declared by the Secretary of Defense; and

(C) Transactions in support of intelligence and other specialized activities addressed by part 2.7 of Executive Order 12333.

213.507 Clauses.

(a) Use the clauses in paragraphs (a) (i) through (iii) of this section, as applicable, in all purchase orders and blanket purchase agreements. The clauses listed in the following paragraphs (i) and (ii) may be incorporated by reference, except for FAR 52.252–2, Clauses Incorporated by Reference. Any other clauses included in the purchase order shall be incorporated by reference or in full text as required by the matrix in FAR 52.3.

(i) Unilateral purchase orders—

(A) FAR 52.252–2, Clauses Incorporated by Reference (required only if other clauses are incorporated by reference);

(B) FAR 52.203–1, Officials Not to Benefit;

(C) FAR 52.203–3, Gratuities;

(D) FAR 52.203–5, Covenant Against Contingent Fees;

(E) FAR 52.203–7, Anti-Kickback Procedures;

(F) FAR 52.212–9, Variation in Quantity;

(G) FAR 52.222–3, Convict Labor (unless the order will be subject to the

Walsh-Healey Public Contracts Act (see FAR Subpart 22.6));

(H) FAR 52.222–26, Equal Opportunity (unless exempt under FAR 22.807);

(I) FAR 52.225–3, Buy American Act-Supplies;

(J) FAR 52.232–1, Payments;

(K) FAR 52.232–25, Prompt Payment;

(L) FAR 52.232–28, Electronic Funds Transfer Payment Methods;

(M) FAR 52.233–1, Disputes;

(N) FAR 52.246–1, Contractor Inspection Requirements (except when an alternate level of quality assurance is necessary (see FAR 46.203 and 46.204)); and

(O) FAR 52.246–16, Responsibility for Supplies.

(ii) Bilateral purchase orders—

(A) The clauses in paragraph (a)(i) of this section;

(B) FAR 52.204–2, Security Requirements (if the acquisition is classified);

(C) FAR 52.243–1, Changes—Fixed Price (with appropriate alternate as necessary);

(D) 252.243–7001, Pricing of Contract Modifications;

(E) FAR 52.249–1, 52.249–4, or 52.249–5, Termination for Convenience of the Government; and

(F) FAR 52.249–8, 52.249–9, or 52.249–10, Default.

(iii) Any other clauses required by the prescription for their use.

PART 214—SEALED BIDDING

Sec.

Subpart 214.2—Solicitation of Bids

214.202 General rules for solicitation of bids.
214.202–5 Descriptive literature.

Subpart 214.4—Opening of Bids and Award of Contract

214.404 Rejection of bids.
214–404–1 Cancellation of invitations after opening.
214.406 Mistakes in bids.
214.406–3 Other mistakes disclosed before award.

Subpart 214.5—Two-Step Sealed Bidding

214.503 Procedures.
214.503–1 Step one.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 214.2—Solicitation of Bids

214.202 General rules for solicitation of bids.

214.202–5 Descriptive literature.

(d) *Requirements of invitation for bids.* When brand name or equal purchase descriptions are used, use of the provision at 252.210–7000, Brand Name or Equal, satisfies this requirement.

Subpart 214.4—Opening of Bids and Award of Contract

214.404 Rejection of bids.

214.404–1 Cancellation of invitations after opening.

The contracting officer shall make the written determinations required by FAR 14.404–1 (c) and (e).

214.406 Mistakes in bids.

214.406–3 Other mistakes disclosed before award.

(c) Process cases involving evidence that is less than clear and convincing under paragraph (e) of this subsection.

(e)(i) Departments may delegate authority for making a determination under FAR 14.406–3 (a), (b), and (d), without power of redelegation, as follows:

(A) Department of the Army:

(*1*) Deputy Assistant Secretary (Procurement), Office of the Assistant Secretary of the Army (Research, Development, and Acquisition);

(*2*) General Counsel, U.S. Army Materiel Command;

(*3*) General Counsel, Office of the Chief of Engineers; and

(*4*) Chief, Contract Law Division, Office of The Judge Advocate General, Headquarters, Department of the Army.

(B) Department of the Navy:

(*1*) Assistant Commander for Contracts, Naval Facilities Engineering Command Headquarters; and

(*2*) Deputy Commander, Contracting Management Directorate, Naval Supply Systems Command Headquarters.

(C) Department of the Air Force: The Staff Judge Advocate, Headquarters, Air Force Logistics Command.

(ii) Authority for making a determination under FAR 14.406–3 (a), (b), and (d) is delegated for the defense agencies, without power of redelegation, as follows:

(A) Defense Advanced Research Projects Agency: General Counsel, DARPA.

(B) Defense Communications Agency: General Counsel, DCA.

(C) Defense Intelligence Agency: Principal Assistant for Acquisition.

(D) Defense Logistics Agency:

(*1*) General Counsel, DLA; and

(*2*) Associate General Counsel, DLA.

(E) Defense Mapping Agency: General Counsel, DMA.

(F) Defense Nuclear Agency: General Counsel, DNA.

(G) National Security Agency: Director of Procurement, NSA.

(H) On-Site Inspection Agency: General Counsel, OSIA.

(h) Send a signed copy of the document authorizing correction of the bid to the appropriate finance center with its copy of the contract.

Subpart 214.5—Two-Step Sealed Bidding

214.503 Procedures.

214.503–1 Step one.

(a) Requests for technical proposals may be in the form of a letter.

(4) Include all factors and any significant subfactors.

PART 215—CONTRACTING BY NEGOTIATION

Sec.

Subpart 215.4—Solicitation and Receipt of Proposals and Quotations

215.401 Applicability.
215.414 Forms.

Subpart 215.6—Source Selection

215.605 Evaluation factors.
215.607 Disclosure of mistakes before award.
215.608 Proposal evaluation.
215.611 Best and final offers.
215.613 Alternate source selection procedures.
215.613–70 Four-step source selection procedures.

Subpart 215.7—Make-or-Buy Programs

215.704 Items and work included.

Subpart 215.8—Price Negotiation

215.801 Definitions.
215.804 Cost or pricing data.
215.804–1 General.
215.804–3 Exemptions from or waiver of submission of certified cost or pricing data.
215.804–6 Procedural requirements.
215.804–7 Defective cost or pricing data.
215.804–8 Contract clauses.
215.805 Proposal analysis.
215.805–5 Field pricing support.
215.805–70 Cost realism analysis.
215.806 Subcontract pricing considerations.
215.806–1 General.
215.806–3 Field pricing reports.
215.807 Prenegotiation objectives.
215.808 Price negotiation memorandum.
215.809 Forward pricing rate agreements.
215.810 Should-cost analysis.
215.811 Estimating systems.
215.811–70 Disclosure, maintenance, and review requirements.
215.870 Industrial modernization incentive program.
215.870–1 Policy.
215.870–2 General.
215.870–3 Incentives.
215.870–4 IMIP business agreement.
215.870–5 Contract requirements.
215.870–6 Contract clause.
215.871 Production special tooling and production special test equipment (PST/PSTE).
215.871–1 Definitions.
215.871–2 General.
215.871–3 Contract requirements.

bid to the appropriate finance center with its copy of the contract.

Subpart 214.5—Two-Step Sealed Bidding

214.503 Procedures.

214.503-1 Step one.

(a) Requests for technical proposals may be in the form of a letter.

(4) Include all factors and any significant subfactors.

PART 215—CONTRACTING BY NEGOTIATION

Sec.

Subpart 215.4—Solicitation and Receipt of Proposals and Quotations

215.401 Applicability.
215.414 Forms.

Subpart 215.6—Source Selection

215.605 Evaluation factors.
215.607 Disclosure of mistakes before award.
215.608 Proposal evaluation.
215.611 Best and final offers.
215.613 Alternate source selection procedures.
215.613–70 Four-step source selection procedures.

Subpart 215.7—Make-or-Buy Programs

215.704 Items and work included.

Subpart 215.8—Price Negotiation

215.801 Definitions.
215.804 Cost or pricing data.
215.804–1 General.
215.804–3 Exemptions from or waiver of submission of certified cost or pricing data.
215.804–6 Procedural requirements.
215.804–7 Defective cost or pricing data.
215.804–8 Contract clauses.
215.805 Proposal analysis.
215.805–5 Field pricing support.
215.805–70 Cost realism analysis.
215.806 Subcontract pricing considerations.
215.806–1 General.
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Subpart 215.9—Profit

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Subpart 215.10—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

215.1001 Notifications to unsuccessful offerors.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 215.4—Solicitation and Receipt of Proposals and Quotations

215.401 Applicability.

See 225.872 for additional guidance on procedures for purchasing from qualifying countries.

215.414 Forms.

This does not preclude use of letter RFPs and RFQs, provided their use complies with other requirements of the FAR and this regulation.

Subpart 215.6—Source Selection

215.605 Evaluation factors.

(a) For major systems acquisitions and other complex or sensitive acquisitions involving formal or alternative source selection procedures, see 219.705–2(d).

215.607 Disclosure of mistakes before award.

(c)(3) The designee is the head of the contracting activity, who may redelegate this authority to the chief of the contracting office.

215.608 Proposal evaluation.

(b) Except for determinations based on violations or possible violations of section 27 of the Office of Federal Procurement Policy (OFPP) Act, and unless otherwise specified in department/agency regulations, the contracting officer shall make the written determination. Determinations based on violations or possible violations of section 27 of the OFPP Act shall be made at the level specified in FAR 3.104–11(g).

215.611 Best and final offers.

(c)(i) Before requesting an additional (second or subsequent) best and final offer, the contracting officer shall obtain approval from—

(A) The source selection authority and the senior procurement executive (SPE) for competitive negotiated acquisitions under formal source selection (see FAR 15.612). The SPE may delegate this authority to a level no lower than the head of the contracting activity.

(B) The head of the contracting activity (HCA) for all other competitive negotiated acquisitions. The HCA may delegate this authority to the chief of the contracting office.

(ii) Each HCA shall establish a system for reporting and documenting additional requests for best and final offers. Systems shall include as a minimum—

(A) The total number of competitive negotiated acquisitions awarded;

(B) The number of those acquisitions for which an additional request for best and final offers was approved and issued; and

(C) The reasons for approving each additional request for best and final offers.

(iii) To ensure that additional requests for best and final offers are used only when necessary and unavoidable, HCAs shall—

(A) Periodically analyze data collected under paragraph (c)(ii) of this section;

(B) Take appropriate corrective action, e.g., training, revising approval levels; and

(C) Provide periodic summary reports to the SPE as specified in department/agency regulations.

215.613 Alternate source selection procedures.

215.613–70 Four-step source selection procedures.

(a) *General.* The four-step source selection procedure is designed for those situations where the Government wishes to focus on technical excellence. Proposals are evaluated, a competitive range established, and an apparent successful offeror selected without discussions of proposal deficiencies (a deficiency is defined as that part of an offeror's proposal which would not satisfy the Government's requirements). Negotiations are conducted only in the final step and only with the apparent successful offeror.

(b) *Applicability.* Four-step source selection procedures may be used for—

(1) Competitively negotiated research and development acquisitions with an estimated value of $2 million or more; or

(2) Other acquisitions as permitted by department/agency regulations, except those in paragraph (c) of this subsection.

(c) *Restrictions.* Four-step source selection procedures shall not be used for acquisitions which—

(1) Will require extensive discussion and negotiations;

(2) Use the authority of FAR 6.302–2;

(3) Are solely for personal or nonpersonal services;

(4) Are for architect-engineer services; or

(5) Have an estimated value of less than $2 million.

(d) *Presolicitation.* Establish early and open dialogue with prospective offerors to ensure their understanding of the Government's needs, since the evaluation will be conducted with limited discussions and without disclosing deficiencies in offeror proposals. Ways of establishing this dialogue are—

(1) Presolicitation notices;

(2) Presolicitation conferences;

(3) Preproposal conferences;

(4) Solicitations for information or planning purposes; and

(5) Tailoring of specifications.

(e) *Solicitations.* Include the following special provisions in four-step source selection solicitations—

(1) Explanation of the four-step concept and procedures;

(2) Statement regarding the relative importance of technical/system performance criteria;

(3) Notification that the contracting officer may reject proposals with unrealistic technical, schedule, cost, or price commitments since unrealistic commitments reflect an inherent lack of technical competence or indicate a failure to comprehend the complexity and risks of the requirements;

(4) Schedule of planned source selection events, including specific dates for the sequential submission of separate technical and cost proposal.

(5) Requirement for the technical proposal to include—

(i) Identification, when appropriate, of trade-offs (with illustrative cost estimate impacts) among performance, production costs, operating and support costs, schedule and logistics support factors; and

(ii) Information showing that the goals for design to cost and operating and support costs (when used) will be achieved when the item enters production.

(6) Requirement for the cost proposal to include detailed cost information supporting the technical proposal and the cost factors in the evaluation criteria;

(7) Statement that both technical and cost discussions will be limited as described in paragraphs (f) and (g) of this subsection; and

(8) Notification that the contracting officer will only negotiate with the selected offeror, and that offerors' initial technical and cost proposals should be their best offer.

(f) *Step one—evaluation of technical proposals.* (1) The sequence of step one—

(i) Evaluate all technical proposals;

(ii) Conduct limited discussions with all offerors; and

(iii) Ask for any necessary clarifications and additional supporting data when necessary (normally, ask that this be submitted with the cost proposal).

(2) In conducting step one—

(i) Limit discussions to only what is necessary to ensure that both parties understand each other;

(ii) Do not tell offerors about deficiencies in their proposals; and

(iii) Provide written clarification to all offerors when it appears the Government's requirements have been misinterpreted.

(g) *Step two—evaluation of cost proposals.* (1) The sequence of step two—

(i) Request cost proposals;

(ii) Evaluate all cost proposals;

(iii) Establish the competitive range;

(iv) Eliminate those proposals outside the range and advise those offerors;

(v) Conduct limited discussions with remaining offerors; and

(vi) Eliminate proposals which cannot be made acceptable and advise the offerors.

(2) In conducting step two—

(i) Limit discussions to—

(A) Clarifying inconsistencies or correcting mathematical errors;

(B) Correlating cost elements with technical effort in order to assess cost realism; and

(C) Ensuring a complete understanding of the Government's requirements, the offeror's offer, and other contract terms;

(ii) Do not tell an offeror that any of its cost elements are either too high or too low; and

(iii) Follow the guidelines in paragraph (f) of this subsection if further discussions of technical proposals or clarifications are required.

(h) *Step three—common cut-off and selection of an offeror for final contract negotiations.* (1) The sequence of step three—

(i) Notify offerors of the common cut-off date for receipt of best and final offers (technical and cost);

(ii) Evaluate the offers;

(iii) Select the best offeror (see paragraph (h)(2)(iv) of this subsection for multiple sources);

(iv) Tell the selected source that the decision is conditional based on negotiation of a definitive contract within the time period prescribed by the source selection authority; and

(v) Advise the other offerors of the source selected.

(2) In conducting step three—

(i) Remind offerors, when notifying them of the common cut-off date, that any changes incorporated in the final proposal must be fully documented;

(ii) Do not accept lump sum reductions in final cost proposals without supporting data;

(iii) Do not request additional best and final offers without the approval required by 215.611(c); and

(iv) Do not select two or more offerors, rather than a single source, for final contract negotiations, unless the HCA makes a written determination that final selection of a single source should not be made until the prospective contracts have been tentatively negotiated.

(i) *Step four—final negotiations and contract award.* (1) The sequence of step four (single selectee)—

(i) Negotiate the final contract price, terms, and conditions; and

(ii) Award the contract.

(2) The sequence of step four (multiple selectees)—

(i) Negotiate tentative final contract terms and conditions;

(ii) Select the best source; and

(iii) Award.

(3) In conducting step four—

(i) Complete negotiations and award the contract within the time prescribed by the source selection authority;

(ii) Terminate negotiations and make a new source selection decision if the condition in paragraph (i)(3)(i) cannot be met;

(iii) Do not permit changes in the Government's requirements or the offeror's proposal which would affect the source selection decision; and

(iv) Follow the procedures in FAR 15.606 if changes in the Government's requirements are necessary.

Subpart 215.7—Make-or-Buy Programs

215.704 Items and work included.

The minimum dollar amount is $1 million.

Subpart 215.8—Price Negotiation

215.801 Definitions.

Cost realism analysis means a review of the overall costs in an offeror's proposal to determine if they—

(1) Are realistic for the work to be performed;

(2) Reflect a clear understanding of the requirements; and

(3) Are consistent with the various elements of the offeror's technical proposal.

215.804 Cost or pricing data.

215.804-1 General.

(a) When certified cost or pricing data are not required, the contracting officer may ask for partial or limited data when the data are necessary for the Government's analysis. The contracting officer shall not ask the contractor to certify these data.

215.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

The contracting officer may ask an offeror to submit partial or limited data on proposals under $100,000 when the data are necessary for the Government's cost analysis. The contracting officer need not ask the contractor to certify these data.

(a)(1) The contracting officer rarely should need to require the submission or certification of cost or pricing data on acquisitions where adequate price competition is expected (regardless of the type of contract anticipated).

(b) Adequate price competition. (1) Adequate price competition may exist for any contract, including cost-reimbursement contracts, as long as price is a substantial factor in the evaluation. If, after receipt of proposals, the contracting officer determines that adequate price competition does not exist, the contracting officer shall obtain, as appropriate (see FAR 15.804-2), certified cost or price data.

(3)(A) Examples of a price "based on" adequate price competition are:

(1) Exercise of an option in a contract where adequate price competition existed, if the contracting officer has determined that the option price is reasonable under FAR 17.207(d);

(2) Acquisition of an item that has multiple suppliers, where the contracting officer only solicits or receives one offer, but the price is clearly reasonable in comparison with recent purchases where adequate price competition existed.

(B) Dual or multiple source programs. *(1)* In dual or multiple source programs, the determination of adequate price competition must be made on a case-by-

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(2) Acquisition of an item that has multiple suppliers, where the contracting officer only solicits or receives one offer, but the price is clearly reasonable in comparison with recent purchases where adequate price competition existed.

(B) Dual or multiple source programs. *(1)* In dual or multiple source programs, the determination of adequate price competition must be made on a case-by-case basis. Contracting officers must exercise deliberation and thorough review in making the determination. Even when adequate price competition exists, in certain cases it may be appropriate to obtain some data to assist in price analysis.

(2) Adequate price competition normally exists when prices are solicited across a full range of step quantities, usually including a 0–100 percent split, from at least two offerors who are individually capable of producing the full quantity, and

(i) The award is made to the offeror with the lowest evaluated price;

(ii) When the award is split, the combined price is the lowest evaluated price in the range of offers submitted; or

(iii) When the combined price is not the lowest evaluated price in the range of offers submitted, the price reasonableness of all prices awarded is clearly established on the basis of price analysis.

(i) Waiver for exceptional cases. (i) The DoD has exempted the Canadian Commercial Corporation and its subcontractors from submission and certification of cost or pricing data on all acquisitions.

(ii) The DoD has waived certain cost or pricing data certification requirements for nonprofit organizations (including educational institutions) on cost-reimbursement-no-fee contracts. The contracting officer—

(A) Shall require cost or pricing data, including cost or pricing data from subcontractors;

(B) Shall not require certification of data submitted by the organization on its own behalf or on behalf of subcontractors which are also nonprofit organizations;

(C) Shall require certification of cost or pricing data from subcontractors which are not nonprofit organizations or educational institutions.

(iii) Use the following format when preparing an authorization for waiver in accordance with FAR 15.803-3(i):

(Military Department or Defense Agency)

Authority to Waive Submission of Certified Cost or Pricing Data

1. The (contracting activity) proposes to award a contract to (name of contractor) for acquisition of (brief description of supplies or services).

2. Under FAR 15.804-2, the prospective contractor is required to submit certified cost or pricing data. However, for the following reasons, I am waiving the requirement for certification of the data (The waiver may be partial, e.g., limited to particular cost or pricing data. If so, describe the cost or pricing data for which the certification is to be waived): Explain the circumstances and conditions which make the prospective contract action an exceptional case. State the reasons why the waiver is justified.)

3. I make this waiver under the authority of 10 U.S.C. 2306a(b)(2), as implemented by FAR 15.804-3(i).

Date————————————
Signed————————————

215.804-6 Procedural requirements.

(b)(2)(A) When the solicitation requires contractor compliance with the Contractor Cost Data Reporting (CCDR) System (Army—AMCP 715-8, Navy—NAV PUB P-5241, and Air Force—AFLCP/AFSCP 800-15), require the contractor to submit DD Forms 1921 or 1921-1 with its SF 1411.

(B) Contracting offices may develop contract pricing proposal supporting schedules for use by offerors in providing supporting data for the SF 1411. Schedules should only ask for data that are necessary and reasonable based on industry, company, or commodity practices.

215.804-7 Defective cost or pricing data.

(b)(2) Unless there is clear evidence to the contrary, the contracting officer may presume the defective data were relied on and resulted in a contract price increase equal to the amount of the defect plus related overhead and profit or fee. The contracting officer is not expected to reconstruct the negotiation by speculating as to what would have been the mental attitudes of the negotiating parties if the nondefective data had been known.

215.804-8 Contract clauses.

(1) If the solicitation or contract includes one of the clauses at FAR 52.215-23, FAR 52.215-24, or FAR 52.215-25, also use the clause at 252.215-7000, Pricing Adjustments.

(2) In accordance with 10 U.S.C. 2406, use the clause at 252.215-7001, Availability of Contractor Records, in solicitations and contracts which—

(i) Require the submission and certification of cost or pricing data; and

(ii) Are for the manufacture of end items for a major defense acquisition program, as defined in 10 U.S.C. 2432a.

(a) Also use the clause at FAR 52.215-22, Price Reduction for Defective Cost or Pricing Data, when obtaining partial cost or pricing data.

215.805 Proposal analysis.

215.805-5 Field pricing support.

(a)(1)(A) Contracting officers shall request field pricing reports for—

(*1*) Fixed-price proposals exceeding $500,000;

(*2*) Cost-type proposals exceeding $500,000 from offerors with significant estimating system deficiencies (see 215.811-70(a)(3) and (c)(2)(i)); or

(*3*) Cost-type proposals exceeding $1 million from offerors without significant estimating system deficiencies.

(B) Contracting officers may, with adequate written justification, waive the requirement for these reports.

(2)(A) The contract administration office price/cost analyst supports the administrative contracting officer in preparing a complete and accurate field pricing report for the contracting officer. The analyst—

(*1*) In concert with the auditor and in consideration of the auditor's workload, establishes a deadline for the auditor's input, subject to adjustments when considered necessary;

(*2*) Identifies areas for special consideration;

(*3*) Arranges for exchanges of technical and audit information; and

(*4*) Must be fully responsive to a request for technical information from the auditor.

(B) The pricing report—

(*1*) Details the price/cost analyst's comprehensive review and evaluation of the proposal;

(*2*) Includes information specifically requested by the contracting officer; and

(*3*) Summarizes what was analyzed, how it was analyzed, and the conclusions reached.

(c)(i) In requesting field pricing support—

(A) Mark all requests "FIELD PRICING REQUEST" in bold letters on the mailing envelope;

(B) On urgent requests, provide facsimile numbers to facilitate return of the completed report; and

(C) Send an advance copy to the audit activity.

(ii) When the contracting officer knows in advance that field pricing support will be required, the contracting officer may request field pricing support before the offeror submits a proposal.

(A) Give the administrative contracting officer (ACO) and auditor a copy of the solicitation;

(B) Tell them when to expect the proposal; and

(C) Tell the offeror to provide the ACO and auditor copies of the proposal.

(iii) Where audit reports are received on contracting actions that are subsequently cancelled or unsuccessful, notify the cognizant auditor in writing.

(iv) For spare parts or support equipment, identify all line items where the proposed price exceeds by 25 percent or more the lowest price the Government has paid within the most recent 12-month period. The field pricing report will include, as a minimum—

(A) A detailed analysis of each line item identified by the contracting officer in the request;

(B) A detailed analysis of those line items where a comparison of the item description and the proposed price indicates a potential for overpricing;

(C) An analysis of the significant high-dollar-value items. If there are no obvious high-dollar-value items, include an analysis of a random sample of items; and

(D) An analysis of a random sample of the remaining low-dollar value items. Sample size may be determined by subjective judgment, e.g., experience with the contractor and reliability of its estimating and accounting systems.

(v) For spare parts proposals that have been identified as Spares Acquisition Integrated with Production (SAIP) items (see DoD Instruction 4245.12, Spares Acquisition Integrated with Production (SAIP))—

(A) Include a copy of the data entitled "Contractor's Procurement Schedule for SAIP' (Data Item DI-V-7200), or equivalent, in the request so that the benefits of combining new and in process quantities can be assured (these data are delivered by the contractor on contracts that include SAIP requirements); or

(B) Require the contractor to include these data in its proposal.

(e)(6) The contract administration office price/cost analyst is responsible for providing a complete and accurate field pricing report. This includes quantifying technical findings; however, if the auditor requests a technical analysis, the auditor normally will incorporate the financial effect of the analysis in the audit report.

(7) The contracting officer shall, with the advice of the ACO and auditor, ensure that the contractor initiates necessary corrective action before contract award.

(8) The administrative contracting officer and auditor shall confer with the contractor during the course of the field pricing review to fully understand the basis for each item in the proposal and to remove any doubts as to the validity and accuracy of their conclusions and findings.

(g) The audit activity sends the original to the administrative contracting officer and a copy to the contracting officer.

215.805-70 Cost realism analysis.

(a) In competitive acquisitions, even when adequate price competition exists, to ensure that proposed costs are consistent with the technical proposal, the contracting officer—

(1) Should perform a cost realism analysis when—

(i) A cost-reimbursement contract is anticipated;

(ii) The solicitation contains new requirements that may not be fully understood by competing contractors;

(iii) There are quality concerns; or

(iv) Past experience indicates that contractors proposed costs have resulted in quality or service shortfalls.

(2) May perform a cost realism analysis on other acquisitions.

(b) The contracting officer should determine what data are necessary for the cost realism analysis during acquisition planning and development of the solicitation. Unless these data are already available from Government sources, the contracting officer will need to ask the offerors for them.

(1) Request only necessary data; and

(2) Do not request submission or certification of cost or pricing data.

215.806 Subcontract pricing considerations.

215.806-1 General.

Price redeterminable or fixed-price incentive contracts may include subcontracts placed on the same basis. When the contracting officer wants to reprice the prime contract even though the contractor has not yet established final prices for the subcontracts, the contracting officer may negotiate a firm contract price—

(1) If cost or pricing data on the subcontracts show the amounts to be reasonable and realistic; or

(2) If cost or pricing data on the subcontracts are too indefinite to determine whether the amounts are reasonable and realistic, but—

(i) Circumstances require prompt negotiation; and

(ii) A statement substantially as follows is included in the repricing modification of the prime contract:

> As soon as the Contractor establishes firm prices for each subcontract listed below, the Contractor shall submit (in the format and with the level of detail specified by the Contracting Officer) to the Contracting Officer the subcontractor's cost incurred in performing the subcontract and the final subcontract price. The Contractor and Contracting Officer shall negotiate an equitable adjustment in the total amount paid or to be paid under this contract to reflect the final subcontract price.

(a)(1) If the contractor's analysis is not adequate, return it for correction of deficiencies.

(d) The contracting officer shall make every effort to ensure that fees negotiated by contractors for cost-plus-fixed-fee subcontracts do not exceed the fee limitations in FAR 15.903(d).

215.806-3 Field pricing reports.

(a)(i) If, in the opinion of the contracting officer or auditor, the review of a prime contractor's proposal requires further review of subcontractors' cost estimates at the subcontractors' plants (after due consideration of reviews performed by the prime contractor), these reviews should be fully coordinated with the administrative contracting officer (ACO) having cognizance of the prime contractor before being initiated. The ACO for the prime contractor will initiate the request to the ACO for the subcontractor, with an information copy to the auditor for the subcontractor. The ACO for the subcontractor sends the resulting field pricing report to the prime ACO with an information copy to the prime auditor. Requests for field pricing support on lower tier subcontractors are handled in a like manner.

(ii) Notify the appropriate contract administration activities when extensive, special, or expedited field pricing assistance will be needed to review and evaluate subcontractors' proposals under a major weapon system acquisition.

215.807 Prenegotiation objectives.

(a)(i) Also consider data resulting from application of work measurement systems in developing prenegotiation objectives.

(ii) Consider field pricing support personnel participation in planned prenegotiation and negotiation activities.

215.808 Price negotiation memorandum.

(a)(8) Include the principal factors related to the disposition of findings and recommendations contained in preaward and postaward contract audit and other advisory reports.

(10) The memorandum—

(A) Must document significant deviations from the prenegotiation profit objective;

(B) Should include the DD Form 1547, Record of Weighted Guidelines Application (see subpart 215.9), if used, with supporting rationale; and

(C) Must document the rationale for not using the weighted guidelines method when its use is required by 215.9.

215.809 Forward pricing rate agreements.

(e)(i) Use forward pricing rate agreement (FPRA) rates when such rates are available, unless waived on a case-by-case basis by the head of the contracting activity.

(ii) Advise the ACO of each case waived.

215.806-3 Field pricing reports.

(a)(i) If, in the opinion of the contracting officer or auditor, the review of a prime contractor's proposal requires further review of subcontractors' cost estimates at the subcontractors' plants (after due consideration of reviews performed by the prime contractor), these reviews should be fully coordinated with the administrative contracting officer (ACO) having cognizance of the prime contractor before being initiated. The ACO for the prime contractor will initiate the request to the ACO for the subcontractor, with an information copy to the auditor for the subcontractor. The ACO for the subcontractor sends the resulting field pricing report to the prime ACO with an information copy to the prime auditor. Requests for field pricing support on lower tier subcontractors are handled in a like manner.

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(B) Should include the DD Form 1547, Record of Weighted Guidelines Application (see subpart 215.9), if used, with supporting rationale; and

(C) Must document the rationale for not using the weighted guidelines method when its use is required by 215.9.

215.809 Forward pricing rate agreements.

(e)(i) Use forward pricing rate agreement (FPRA) rates when such rates are available, unless waived on a case-by-case basis by the head of the contracting activity.

(ii) Advise the ACO of each case waived.

(iii) Contact the ACO for questions on FPRAs or recommended rates.

215.810 Should-cost analysis.

(b)(i) DoD contracting activities shall perform a should-cost analysis before award of a definitive major systems contract exceeding $100 million when—

(A) Some initial production has already taken place;

(B) The contract will be awarded on a sole-source basis;

(C) There are future Defense requirements for substantial quantities of like items;

(D) The work is sufficiently defined to permit an effective analysis of what production should cost; and

(E) Major changes in the system are unlikely.

(ii) After the initial should-cost analysis, perform follow-on should-cost analyses as appropriate on contracts meeting the requirements in paragraph (b)(i) of this section.

(iii) Departments/agencies may prescribe procedures for waiving should-cost analysis, but shall not prescribe an approval level lower than a general/flag officer or civilian equivalent.

215.811 Estimating systems.

215.811-70 Disclosure, maintenance, and review requirements.

(a) *Definitions.*

(1) *Adequate estimating system* means an estimating system that—

(i) Is established, maintained, reliable, and consistently applied; and

(ii) Produces verifiable, supportable, and documented cost estimates.

(2) *Contractor* means a business unit as defined in FAR 31.001.

(3) *Estimating system* is as defined in the clause at 252.215-7001, Cost Estimating System Requirements.

(4) *Significant estimating system deficiency* means a shortcoming in the estimating system which is likely to consistently result in proposal estimates for total cost or a major cost element(s) which do not provide an acceptable basis for negotiation of fair and reasonable prices.

(b) *Applicability.* (1) DoD policy is that all contractors have estimating systems that—

(i) Are adequate;

(ii) Consistently produce well supported proposals that are acceptable as a basis for negotiation of fair and reasonable prices;

(iii) Are consistent with and integrated with the contractor's related management systems; and

(iv) Are subject to applicable financial control systems.

(2) A large business contractor is subject to estimating system disclosure, maintenance, and review requirements if—

(i) In its preceding fiscal year the contractor received DoD prime contracts or subcontracts totalling $50 million or more for which certified cost or pricing data were required; or

(ii) If in its preceding fiscal year the contractor received DoD prime contracts or subcontracts totalling $10 million or more (but less than $50 million) for which certified cost or pricing data were required and the contracting officer, with concurrence or at the request of the administrative contracting officer, determines it to be in the best interest of the Government (e.g., significant estimating problems are believed to exist or the contractor's sales are predominantly Government).

(c) *Responsibilities.* (1) The contracting officer shall—

(i) Through use of the clause at 252.215-7001, Cost Estimating System Requirements, apply the disclosure, maintenance and review requirements to large business contractors meeting the criteria in paragraph (b)(2)(i) of this subsection;

(ii) Consider whether to apply the disclosure, maintenance, and review requirements to large business contractors under paragraph (b)(2)(ii) of this subsection; and

(iii) Not apply the disclosure, maintenance, and review requirement to other than large business contractors.

(2) The cognizant administrative contracting officer, for contractors subject to paragraph (b)(2) of this subsection, shall—

(i) Determine the adequacy of the disclosure and system; and

(ii) Pursue correction of any deficiencies.

(3) The cognizant auditor, on behalf of the ACO, serves as team leader in conducting estimating system reviews.

(4) A contractor subject to estimating system disclosure, maintenance, and review requirements shall—

(i) Maintain an adequate system;

(ii) Describe its system to the administrative contracting officer (ACO);

(iii) Provide timely notice of changes in the system; and

(iv) Correct system deficiencies identified by the ACO.

(d) *Characteristics of an adequate estimating system*—(1) *General.* An adequate system should provide for the use of appropriate source data, utilize sound estimating techniques and good judgment, maintain a consistent approach, and adhere to established policies and procedures.

(2) *Evaluation.* In evaluating the adequacy of a contractor's estimating system, the ACO should consider whether the contractor's estimating system, for example—

(i) Establishes clear responsibility for preparation, review and approval of cost estimates;

(ii) Provides a written description of the organization and duties of the personnel responsible for preparing, reviewing, and approving cost estimates;

(iii) Assures that relevant personnel have sufficient training, experience and guidance to perform estimating tasks in accordance with the contractor's established procedures;

(iv) Identifies the sources of data and the estimating methods and rationale used in developing cost estimates;

(v) Provides for appropriate supervision throughout the estimating process;

(vi) Provides for consistent application of estimating techniques;

(vii) Provides for detection and timely correction of errors;

(viii) Protects against cost duplication and omissions;

(ix) Provides for the use of historical experience, including historical vendor pricing information, where appropriate;

(x) Requires use of appropriate analytical methods;

(xi) Integrates information available from other management systems, where appropriate;

(xii) Requires management review including verification that the company's estimating policies, procedures and practices comply with this regulation;

(xiii) Provides for internal review of and accountability for the adequacy of the estimating system, including the comparison of projected results to actual results and an analysis of any differences;

(xiv) Provides procedures to update cost estimates in a timely manner throughout the negotiation process; and

(xv) Addresses responsibility for review and analysis of the reasonableness of subcontract prices.

(3) *Indicators of potentially significant estimating deficiencies.* The following examples indicate conditions that may produce or lead to significant estimating deficiencies—

(i) Failure to ensure that historical experience is available to and utilized by cost estimators, where appropriate;

(ii) Continuing failure to analyze material costs or failure to perform subcontractor cost reviews as required.

(iii) Consistent absence of analytical support for significant proposed cost amounts;

(iv) Excessive reliance on individual personal judgment where historical experience or commonly utilized standards are available;

(v) Recurring significant defective pricing findings within the same cost element(s);

(vi) Failure to integrate relevant parts of other management systems (e.g., production control or cost accounting) with the estimating system so that the ability to generate reliable cost estimates is impaired; and

(vii) Failure to provide established policies, procedures, and practices to persons responsible for preparing and supporting estimates.

(e) *Review Procedures.* Cognizant audit and contract administration activities shall—

(1) Establish and manage regular programs for reviewing selected contractors' estimating systems.

(2) Conduct reviews as a team effort.

(i) The contract auditor will be the team leader.

(ii) The team leader will—

(A) Coordinate with the ACO to ensure that team membership includes qualified contract administration technical specialists.

(B) Advise the ACO and contractor of significant findings during the conduct of the review and during the exit conference.

(C) Prepare a team report.

(*1*) The ACO or a representative should—

(*i*) Coordinate the contract administration activity's review;

(*ii*) Consolidate findings and recommendations; and

(*iii*) When appropriate, prepare a comprehensive written report for submission to the auditor.

(*2*) The contract auditor will attach the ACO's report to the team report.

(3) Tailor reviews to take full advantage of the day-to-day work done by both organizations.

(4) Conduct a review every three years of contractors subject to the disclosure requirements. The ACO and auditor may lengthen or shorten the three-year period based on their joint risk assessment of the contractor's past experience and current vulnerability.

(f) *Disposition of survey team findings*—(1) *Reporting of survey team findings.* The auditor will document the findings and recommendations of the survey team in a report to the ACO. If there are significant estimating deficiencies, the auditor will recommend disapproval of all or portions of the estimating system.

(2) *Initial notification to the contractor.* The ACO will provide a copy of the team report to the contractor and, unless there are no deficiencies mentioned in the report, ask the contractor to submit a written response in 30 days, or a reasonable extension.

(i) If the contractor agrees with the report, the contractor has 60 days from the date of initial notification to correct any identified deficiencies or submit a corrective action plan showing milestones and actions to eliminate the deficiencies.

(ii) If the contractor disagrees, the contractor should provide rationale in its written response.

(3) *Evaluation of contractor's response.* The ACO, in consultation with the auditor, will evaluate the contractor's response to determine whether—

(i) The estimating system contains deficiencies which need correction;

(ii) The deficiencies are significant estimating deficiencies which would result in disapproval of all or a portion of the contractor's estimating system; or

(iii) The contractor's proposed corrective actions are adequate to eliminate the deficiency.

(4) *Notification of ACO determination.* The ACO will notify the contractor and the auditor of the determination and, if appropriate, of the Government's intent to disapprove all or selected portions of the system. The notice shall—

(i) List the cost elements covered;

(ii) Identify any deficiencies requiring correction; and

(iii) Require the contractor to correct the deficiencies within 45 days or submit an action plan showing milestones and actions to eliminate the deficiencies.

(5) *Notice of disapproval.* If the contractor has neither submitted an acceptable corrective action plan nor corrected significant deficiencies within 45 days, the ACO shall disapprove all or selected portions of the contractor's estimating system. The notice of disapproval must—

(i) Identify the cost elements covered;

(ii) List the deficiencies which prompted the disapproval; and

(iii) Be sent to the cognizant auditor, and each contracting and contract administration office having substantial business with the contractor.

(6) *Monitoring contractor's corrective action.* The auditor and ACO will monitor the contractor's progress in correcting deficiencies. If the contractor fails to make adequate progress, the ACO shall take whatever action is necessary to ensure that the contractor corrects the deficiencies. Examples of actions the ACO can take are: Bringing the issue to the attention of higher level management, reducing or suspending progress payments (see FAR 32.503-6), and recommending nonaward of potential contracts.

(7) *Withdrawal of estimating system disapproval.* The ACO will withdraw the disapproval when the ACO determines that the contractor has corrected the significant system deficiencies. The ACO will notify the contractor, the auditor, and affected contracting and contract administration activities of the withdrawal.

(g) *Impact of estimating system deficiencies on specific proposals.* (1) Field pricing teams will discuss identified estimating system deficiencies and their impact in all reports on contractor proposals until the deficiencies are resolved.

(2) The contracting officer responsible for negotiation of a proposal generated by an estimating system with an identified deficiency shall evaluate whether the deficiency impacts the negotiations. If it does not, the contracting officer should proceed with negotiations. If it does, the contracting officer should consider other alternatives, e.g.—

(i) Allowing the contractor additional time to correct the estimating system deficiency and submit a corrected proposal;

(ii) Considering another type of contract, e.g., an FPIF instead of an FFP;

(iii) Using additional cost analysis techniques to determine the reasonableness of the cost elements affected by the system's deficiency;

(iv) Segregating the questionable areas as a cost reimbursable line item;

(v) Reducing the negotiation objective for profit or fee; or

(vi) Including a contract (reopener) clause that provides for adjustment of the contract amount after award.

(3) The contracting officer who incorporates a reopener clause into the contract is responsible for negotiating price adjustments required by the clause. Any reopener clause necessitated by an estimating deficiency should—

(i) Clearly identify the amounts and items which are in question at the time of negotiation;

(ii) Indicate a specific time or subsequent event by which the contractor will submit a supplemental proposal, including cost or pricing data, identifying the cost impact adjustment necessitated by the deficient estimating system. The clause should require that the contractor certify cost or pricing data submitted as part of the supplemental proposal;

(iii) Provide for the contracting officer to unilaterally adjust the contract price

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(i) Allowing the contractor additional time to correct the estimating system deficiency and submit a corrected proposal;

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(ii) Indicate a specific time or subsequent event by which the contractor will submit a supplemental proposal, including cost or pricing data, identifying the cost impact adjustment necessitated by the deficient estimating system. The clause should require that the contractor certify cost or pricing data submitted as part of the supplemental proposal;

(iii) Provide for the contracting officer to unilaterally adjust the contract price

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if the contractor fails to submit the supplemental proposal; and

(iv) Provide that failure of the Government and the contractor to agree to the price adjustment shall be a dispute under the Disputes clause.

(h) *Contract clause.* Use the clause at 252.215-7002, Cost Estimating System Requirements, in all solicitations and contracts to be awarded on the basis of certified cost or pricing data.

215.870 Industrial modernization incentive program.

215.870-1 Policy.

DoD policy permits use of industrial modernization incentives to motivate the contractor to invest in modernization projects beneficial to the Government—

(a) Earlier than it otherwise would have; or

(b) It would not have otherwise undertaken.

215.870-2 General.

When conducting an industrial modernization incentives program (IMIP)—

(a) Follow the guidance in DoD Directive 5000.44, Industrial Modernization Incentives Program (IMIP), and DoD Guide 5000.44-G, Industrial Modernization Incentives Program (IMIP); and

(b) Tailor the IMIP to the requirements of the individual situation.

215.870-3 Incentives.

Incentives may be in the form of—

(a) *Modernization incentives.* The contractor earns negotiated amounts on instant and future contracts by participating in an IMIP.

(b) *Contractor investment protection.* (1) The Government is committed to reimburse the contractor for specifically identified capital assets acquired to support a contract or program which is terminated, or for which funds are not otherwise provided.

(2) Use of this incentive requires high level approval and Congressional notification in accordance with the DoD Guide.

(c) Other appropriate incentives such as award fees or, when it is in the Government's best interest, direct Government funding.

215.870-4 IMIP business agreement.

(a) In order to receive monetary incentives, the contractor must enter into a business agreement with the Government.

(b) The contracting officer—

(1) Shall evaluate the contractor's proposed agreement to determine that benefits are expected and that incentives are necessary to motivate contractor investment.

(2) Shall provide only those incentives needed to motivate the investment.

(3) Should normally negotiate ceilings to establish a maximum incentive amount.

(4) Should encourage flowdown of IMIP requirements to subcontractors, where appropriate.

215.870-5 Contract requirements.

Specific contract requirements, as described in DoD 5000.44-G, may be included in contracts, if appropriate.

215.870-6 Contract clause.

(a) Use the clause at 252.215-7003, Industrial Modernization Incentive Program Productivity Savings Rewards, in all solicitations and contracts which—

(1) Require cost or pricing data; and

(2) Exceed $1 million.

(b) The clause may be used in solicitations and contracts under $1 million.

215.871 Production special tooling and production special test equipment (PST/PSTE).

215.871-1 Definitions.

As used in this section,

Production special tooling and *production special test equipment* are those subsets of *special tooling* and *special test equipment* (see FAR 45.101) that support production rates and quantities.

Maximum amount means the total amount to be paid to the contractor on the instant and any future contracts,as a direct cost for the PST/PSTE to be acquired or fabricated to perform the instant contract. The maximum amount can be a specific dollar amount or dollar ceiling.

215.871-2 General.

(a) Contractors performing a production contract may need to acquire or fabricate PST/PSTE. 10 U.S.C. 2329 places certain restrictions on full payment of PST/PSTE costs under the instant contract.

(b) All contracts with PST/PSTE costs exceeding $1 million are subject to 10 U.S.C. 2329, except contracts—

(1) Where the PST/PSTE will be used solely for final production acceptance testing;

(2) Awarded as a result of sealed bidding;

(3) Where the price is or is based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(4) Where the price is set by law or regulation.

(c) When the cost of the PST/PSTE is under $1 million, the Government generally will reimburse the full amount under the instant contract.

215.871-3 Contract requirements.

In contracts subject to 10 U.S.C. 2329, include a special contractual provision which includes as a minimum—

(a) A listing, or reference to a listing, of the PST/PSTE the contractor will acquire or fabricate to perform the contract;

(b) The maximum amount the Government will pay for the PST/PSTE;

(c) The amount to be paid on the instant contract (see 250.871-4);

(d) The amortization schedule for payment of the balance, subject to availability of funds;

(e) A requirement that costs incurred by the contractor for the acquisition and fabrication of PST/PSTE shall be treated as direct charges under the instant and under future contracts. The requirement should clearly state that cost deferred for payment under future contracts shall not be shifted, assigned to other programs, or charged to indirect cost pools;

(f) A statement that, if the contract or program is terminated (for reasons other than the contractor's failure to perform) before the maximum amount has been paid, the Government, subject to the availability of funds, will pay the balance of the maximum amount or the actual direct cost incurred, whichever is less; and

(g) Designation of the rights to title.

215.871-4 Payment of PST/PSTE on contracts subject to 10 U.S.C. 2329.

Payment under the instant contract depends on whether the contracting officer expects that future contracts will be awarded to the same contractor for the same or similar items.

(a) If future contracts are not expected, allow full payment of the maximum amount under the instant contract.

(b) If future contracts are expected—

(1) Allow for payment of at least 50 percent of the maximum amount on the instant contract. The head of the agency may authorize, before contract award, a lower percentage if the lower percentage is in the Government's best interest and will not cause an undue financial burden on the contractor.

(2) Establish an amortization schedule for payments on future contracts.

215.871-5 Adjustments for profit and facilities capital cost of money.

(a) Do not consider the unamortized portion of PST/PSTE costs in developing the profit objective and do not include these costs in the facilities capital employed base. Only those costs to be paid under the contract are profit-bearing and shall be included in the cost base for performance risk and contract cost risk (including working capital adjustment).

(b) Calculate the cost of money amount for the unamortized portion of PST/PSTE as follows:

Unamortized portion of PST/PSTE
TIMES
Current cost of money rate
TIMES
Period of time (years or portions thereof) until award of next contract on which PST/PSTE will be reimbursed

(1) Do not include this amount on the DD Form 1861, Contract Facilities Capital Cost of Money.

(2) Add this amount to Line 32 of the DD Form 1547, Record of Weighted Guidelines Application.

215.872 Work measurement systems.

215.872-1 Definition.

Work measurement systems (WMS), as used in this section, means systems used—

(a) To analyze the touch labor content of a manufacturing operation,

(b) To establish labor standards for that operation;

(c) To measure and analyze variances from those standards;

(d) To continuously improve both the manufacturing operation and the labor standards used in that operation.

215.872-2 Policy.

DoD policy is to use WMS, when appropriate, to provide data for use in planning, cost estimating, and monitoring contract performance.

215.872-3 General.

(a) The contracting officer, in coordination with the program manager, shall include provisions in the contract to implement the program's work measurement system requirements.

(b) An example of an acceptable set of criteria for WMS is found in MIL-STD-1567A. Tailor either MIL-STD-1567A or the contractor's existing WMS, if acceptable to the Government, for the specific program or contract.

215.872-4 Applicability.

The contracting officer—

(a) Should include provisions for WMS in solicitations and resulting production contracts for major weapons systems or subsystems in excess of—

(1) $100 million total cost; or

(2) $20 million annually.

(b) Should tailor the provisions to be consistent with program requirements and compatible with existing contractor technical and management processes and procedures;

(c) May include WMS requirements in full scale development contracts exceeding $100 million, when appropriate (e.g., to assist in transitioning from full scale development to production).

(d) Should not include WMS when—

(1) Acquiring commercial products (FAR 11.001);

(2) There will be low volume, nonrepetitive production runs;

(3) Submission and certification of cost or pricing data are not required; or

(4) There will be no cost benefit from the imposition of these systems.

215.873 Estimated data prices.

(a) The Department of Defense requires estimates of the prices of data in order to evaluate the cost to the Government of data items in terms of their management, product, or engineering value.

(b) When data are required to be delivered under a contract, the solicitation will include DD Form 1423, Contract Data Requirements List. The form and the provision included in the solicitation request the offeror to state what portion of the total price is estimated to be attributable to the production or development of the listed data for the Government (not to the sale of rights in the data). However, offerors' estimated prices may not reflect all such costs; and different offerors may reflect these costs in a different manner, for the following reasons—

(1) Differences in business practices in competitive situations;

(2) Differences in accounting systems among offerors;

(3) Use of factors or rates on some portions of the data;

(4) Application of common effort to two or more data items; and

(5) Differences in data preparation methods among offerors.

(c) Data price estimates should not be used for contract pricing purposes without further analysis.

(d) The contracting officer shall ensure that the contract does not include a requirement for data which the contractor has delivered or is obligated to deliver to the Government under another contract or subcontract, and that the successful offeror furnishes any certification required by the solicitation. However, where duplicate data are desired, the contract price shall include the costs of duplication, but not of preparation, of such data.

Subpart 215.9—Profit

215.902 Policy.

Departments and agencies shall use a structured approach for developing a prenegotiation profit or fee objective (profit objective) on any negotiated contract action that requires cost analysis, except on cost-plus-award-fee contracts (but see 215.974). There are three approaches—

(1) The weighted guidelines method;

(2) The modified weighted guidelines method; and

(3) An alternate structured approach.

215.903 Contracting officer responsibilities.

(a) Also, do not perform a profit analysis when assessing cost realism in competitive acquisitions.

(b) The contracting officer—

(1) Shall use the weighted guidelines method (see 215.971), unless—

(A) The modified weighted guidelines method applies; or

(B) An alternate approach is justified.

(2) Shall use the modified weighted guidelines method (see 215.972) on contract actions with nonprofit organizations;

(3) May use an alternate structured approach (see 215.973) when—

(i) The contract action is—

(A) Under $500,000;

(B) For architect-engineer or construction work;

(C) Primarily for delivery of material from subcontractors; or

(D) A termination settlement; or

(ii) The weighted guidelines method does not produce a reasonable overall profit objective and the head of the contracting activity approves use of the alternate approach in writing.

(4) Shall use the weighted guidelines method to establish a basic profit rate under a formula type pricing agreement, and may then use the basic rate on all actions under the agreement, provided that conditions affecting profit do not change.

(5) Shall document the profit analysis in the price negotiation memorandum.

(e) Although specific agreement on the applied weights or values for individual profit factors shall not be attempted, the contracting officer may encourage the contractor to—

(1) Present the details of its proposed profit amounts in the weighted guidelines format or similar structured approach; and

(2) Use the weighted guidelines method in developing profit objectives for negotiated subcontracts.

(f) The contracting officer must also verify that relevant variables have not agement processes

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(i) The contract action is—

(A) Under $500,000;

(B) For architect-engineer or construction work;

(C) Primarily for delivery of material from subcontractors; or

(D) A termination settlement; or

(ii) The weighted guidelines method does not produce a reasonable overall profit objective and the head of the contracting activity approves use of the alternate approach in writing.

(4) Shall use the weighted guidelines method to establish a basic profit rate under a formula type pricing agreement, and may then use the basic rate on all actions under the agreement, provided that conditions affecting profit do not change.

(5) Shall document the profit analysis in the price negotiation memorandum.

(e) Although specific agreement on the applied weights or values for individual profit factors shall not be attempted, the contracting officer may encourage the contractor to—

(1) Present the details of its proposed profit amounts in the weighted guidelines format or similar structured approach; and

(2) Use the weighted guidelines method in developing profit objectives for negotiated subcontracts.

(f) The contracting officer must also verify that relevant variables have not materially changed (e.g., performance risk, interest rates, progress payment rates, distribution of facilities capital).

215.905 Profit-analysis factors.

215.905-1 Common factors.

The common factors are embodied in the DoD structured approaches and need not be further considered by the contracting officer.

215.970 DD Form 1547, Record of Weighted Guidelines Method Application.

(a) The DD Form 1547—

(1) Provides a vehicle for performing the analysis necessary to develop a profit objective;

(2) Provides a format for summarizing profit amounts subsequently negotiated as part of the contract price; and

(3) Serves as the principal source document for reporting profit statistics to DoD's management information system.

(b) The Military Departments are responsible for establishing policies and procedures for feeding the DoD-wide management information system on profit and fee statistics (see 215.375).

(c) The contracting officer shall—

(1) Use and prepare a DD Form 1547 whenever a structured approach to profit analysis is required by 215.902. (See 215.971, 215.972, and 215.973 for guidance on using the structured approaches.) Administrative instructions for completing the form are in 253.215-70.

(2) Ensure that the DD Form 1547 is accurately completed. The contracting officer is responsible for the correction of any errors detected by the management system auditing process.

215.971 Weighted guidelines method.

215.971-1 General.

(a) The weighted guidelines method focuses on three profit factors—

(1) Performance risk;

(2) Contract type risk; and

(3) Facilities capital employed.

(b) The contracting officer assigns values to each profit factor; the value multiplied by the base results in the profit objective for that factor. Each profit factor has a normal value and a designated range of values. The normal value is representative of average conditions on the prospective contract when compared to all goods and services acquired by DoD. The designated range provides values based on above normal or below normal conditions. In the price negotiation memorandum, the contracting officer need not explain assignment of the normal value, but should address conditions that justify assignment of other than the normal value.

215.971-2 Performance risk.

(a) *Description.* This profit factor addresses the contractor's degree of risk in fulfilling the contract requirements. The factor consists of three parts—

(1) Technical—the technical uncertainties of performance.

(2) Management—the degree of management effort necessary to ensure that contract requirements are met.

(3) Cost control—the contractor's efforts to reduce and control costs.

(b) *Determination.* The following extract from the DD Form 1547 is annotated to describe the process.

Item	Contractor Risk Factors	Assigned Weighting	Assigned Value	Base (Item 18)	Profit Objective
21	Technical	(1)	(2)	N/A	N/A
22	Management	(1)	(2)	N/A	N/A
23	Cost Control	(1)	(2)	N/A	N/A
24	Performance Risk (Composite)	N/A	[illegible]	(4)	(5)

(1) Assign a weight (percentage) to each element according to its input to the total performance risk. The total of the three weights equals 100%.

(2) Select a value for each element from the list in paragraph (c) of this subsection using the evaluation criteria in paragraphs (d), (e), and (f) of this subsection.

(3) Compute the composite as shown in the following example—

Assigned—	Assigned weighting (percent)	Assigned value (percent)	Weighted value (percent)
Technical	30	5.0	1.5
Management	30	4.0	1.2
Cost Control	40	4.5	1.8
Composite Value	100		4.5

(4) Insert the amount from Block 18 of the DD Form 1547. Block 18 is total contract costs, excluding general and administrative expenses, contractor independent research and development/bid and proposal expenses, and facilities capital cost of money.

(5) Multiply (3) by (4).

(c) *Values:* Normal and designated ranges.

Standard Alternate	Normal value (percent)	Designated range (percent)
Standard	4	2 to 6.
Alternate	6	4 to 8

(1) Standard. The standard designated range should apply to most contracts.

(2) Alternate. Contracting officers may use the alternate designated range for research and development and service contractors when these contractors require relatively low capital investment in buildings and equipment when compared to the defense industry overall. If the alternate designated range is used, do not give any profit for facilities capital employed (see 215.971-4(c)(3)).

(d) *Evaluation criteria for technical.* (1) Review the contract requirements and focus on the critical performance elements in the statement of work or specifications. Factors to consider include—

(i) Technology being applied or developed by the contractor;

(ii) Technical complexity;

(iii) Program maturity;

(iv) Performance specifications and tolerances;

(v) Delivery schedule; and

(vi) Extent of a warranty or guarantee.

(2) Above normal conditions. (i) The contracting officer may assign a higher than normal value in those cases where there is a substantial technical risk. Indicators are—

(A) The contractor is either developing or applying advanced technologies;

(B) Items are being manufactured using specifications with stringent tolerance limits;

(C) The efforts require highly skilled personnel or require the use of state of the art machinery;

(D) The services and analytical efforts are extremely important to the Government and must be performed to exacting standards;

(E) The contractor's independent development and investment has reduced the Government's risk or cost;

(F) The contractor has accepted an accelerated delivery schedule to meet DoD requirements; or

(G) The contractor has assumed additional risk through warranty provisions.

(ii) Extremely complex, vital efforts to overcome difficult technical obstacles which require personnel with exceptional abilities, experience, and professional credentials may justify a value significantly above normal.

(iii) The following may justify a maximum value—

(A) Development or initial production of a new item, particularly if performance or quality specifications are tight; or

(B) A high degree of development or production concurrency.

(3) Below normal conditions.

(i) The contracting officer may assign a lower than normal value in those cases where the technical risk is low. Indicators are—

(A) Acquisition is for off-the-shelf items;

(B) Requirements are relatively simple;

(C) Technology is not complex;

(D) Efforts do not require highly skilled personnel;

(E) Efforts are routine;

(F) Programs are mature; or

(G) Acquisition is a follow-on effort or a repetitive type acquisition.

(ii) The contracting officer may assign a value significantly below normal for—

(A) Routine services;

(B) Production of simple items;

(C) Rote entry or routine integration of Government furnished information; or

(D) Simple operations with Government-furnished property.

(e) *Evaluation criteria for management.* (1) The contracting officer should—

(i) Assess the contractor's management and internal control systems using contracting office information and reviews made by field contract administration offices or other DoD field offices;

(ii) Assess the management involvement expected on the prospective contract action;

(iii) Consider the degree of cost mix as an indication of the types of resources applied and value-added by the contractor; and

(iv) Consider the contractor's support of Federal socioeconomic programs.

(2) Above normal conditions. (i) The contracting officer may assign a higher than normal value when the management effort is intense. Indicators of this are—

(A) The contractor's value-added is both considerable and reasonably difficult;

(B) The effort involves a high degree of integration or coordination; or

(C) The contractor has a substantial record of active participation in Federal socioeconomic programs.

(ii) The contracting officer may justify a maximum value when the effort—

(A) Requires large scale integration of the most complex nature;

(B) Involves major international activities with significant management coordination (e.g., offsets with foreign vendors); or

(C) Has critically important milestones.

(3) Below normal conditions. (i) The contracting officer may assign a lower than normal value when the management effort is minimal. Indicators of this are—

(A) The program is mature and many end item deliveries have been made;

(B) The contractor adds minimum value to an item;

(C) The efforts are routine and require minimal supervision;

(D) The contractor provides poor quality, untimely proposals;

(E) The contractor fails to provide an adequate analysis of subcontractor costs; or

(F) The contractor does not cooperate in the evaluation and negotiation of the proposal.

(ii) The following may justify a value significantly below normal—

(A) Reviews performed by the field contract administration offices disclose unsatisfactory management and internal control systems (e.g., quality assurance, property control, safety, security); or

(B) The effort requires an unusually low degree of management involvement.

(f) *Evaluation criteria for cost control. (1) The contracting officer should evaluate—*

(i) The expected reliability of the contractor's cost estimates (including the contractor's cost estimating system);

(ii) The contractor's cost reduction initiatives (e.g., competition advocacy programs, dual sourcing, spare parts pricing reform, value engineering);

(iii) The adequacy of the contractor's management approach to controlling cost and schedule; and

(iv) Any other factors which affect the contractor's ability to meet the cost targets, e.g., foreign currency exchange rates and inflation rates.

(2) Above normal conditions. The contracting officer may assign a higher than normal value if the contractor can demonstrate a highly effective cost control program. Indicators of this are—

(i) The contractor provides fully documented and reliable cost estimates;

(ii) The contractor has an aggressive cost reduction program that has demonstrable benefits;

(iii) The contractor uses a high degree of subcontract competition (e.g., aggressive dual sourcing); or

(iv) The contractor has a proven record of cost tracking and control.

(3) Below normal conditions. The contracting officer may assign a lower than normal value if the contractor demonstrates minimal concern for cost control. Indicators are—

(i) The contractor's cost estimating system is marginal;

(ii) The contractor has made minimal effort to initiate cost reduction programs;

(iii) The contractor's cost proposal is inadequate;

(iv) The contractor has a record of cost overruns or other indication of unreliable cost estimates and lack of cost control.

215.971-3 Contract type risk and working capital adjustment.

(a) *Description.* The contract type risk factor focuses on the degree of cost risk accepted by the contractor under varying contract types. The working capital adjustment is an adjustment added to the profit objective for contract type risk. It only applies to fixed-price contracts that provide for progress payments. Though it uses a formula approach, it is not intended to be an exact calculation of the cost of working capital. Its purpose is to give general recognition to the contractor's cost of working capital under varying contract circumstances, financing policies, and the economic environment.

(b) *Determination.* The following extract from the DD 1547 is annotated to explain the process.

Item	Contractor risk factors	Assigned value	Base (Item 18)	Profit objective
25	Contract Type Risk	(1)	(2)	(3)

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(iii) The adequacy of the contractor's management approach to controlling cost and schedule; and

(iv) Any other factors which affect the contractor's ability to meet the cost targets, e.g., foreign currency exchange rates and inflation rates.

(2) Above normal conditions. The contracting officer may assign a higher than normal value if the contractor can demonstrate a highly effective cost control program. Indicators of this are—

(i) The contractor provides fully documented and reliable cost estimates;

(ii) The contractor has an aggressive cost reduction program that has demonstrable benefits;

(iii) The contractor uses a high degree of subcontract competition (e.g., aggressive dual sourcing); or

(iv) The contractor has a proven record of cost tracking and control.

(3) Below normal conditions. The contracting officer may assign a lower than normal value if the contractor demonstrates minimal concern for cost control. Indicators are—

(i) The contractor's cost estimating system is marginal;

(ii) The contractor has made minimal effort to initiate cost reduction programs;

(iii) The contractor's cost proposal is inadequate;

(iv) The contractor has a record of cost overruns or other indication of unreliable cost estimates and lack of cost control.

215.971-3 Contract type risk and working capital adjustment.

(a) *Description.* The contract type risk factor focuses on the degree of cost risk accepted by the contractor under varying contract types. The working capital adjustment is an adjustment added to the profit objective for contract type risk. It only applies to fixed-price contracts that provide for progress payments. Though it uses a formula approach, it is not intended to be an exact calculation of the cost of working capital. Its purpose is to give general recognition to the contractor's cost of working capital under varying contract circumstances, financing policies, and the economic environment.

(b) *Determination.* The following extract from the DD 1547 is annotated to explain the process.

	Assigned value	Base (Item 18)	Profit objective
	(1)	(2)	(3)

		Cost financed	Length factor	Interest rate	
26	Working Capital (4)	(5)	(6)	(7)	(8)

(1) Select a value from the list of contract types in paragraph (c) of this subsection using the evaluation criteria in paragraph (d) of this subsection.

(2) Insert the amount from Block 18, i.e., the total allowable costs excluding general and administrative expenses, independent research and development/bid proposal expenses, and facilities capital cost of money.

(3) Multiply (1) by (2).

(4) Only complete this Block when the prospective contract is a fixed-price contract containing provisions for progress payments.

(5) Insert the amount computed per paragraph (e) of this subsection.

(6) Insert the appropriate figure from paragraph (f) of this subsection.

(7) Use the interest rate established by the Secretary of the Treasury (230.7101(a)). Do not use any other interest rate.

(8) Multiply (5) by (6) by (7). This is the working capital adjustment. It shall not exceed 4 percent of the contract costs in Block 20.

(c) *Values:* Normal and designated ranges.

Contract type	Notes	Normal value (percent)	Designated range (percent)
Firm fixed-price, no financing	(1)	5	4 to 6.
Firm fixed-price, with financing	(2)	3	2 to 4.
Fixed-price-incentive, no financing	(1)	3	2 to 4.
Fixed-price with redeterminable provision	(3)		
Fixed-price-incentive, with financing	(2)	1	0 to 2.
Cost-plus-incentive-fee	(4)	1	0 to 2.
Cost-plus-fixed-fee	(4)	.5	0 to 1.
Time and material contracts (including overhaul contracts priced on time and material basis)	(5)	.5	0 to 1.
Labor-hour contracts	(5)	.5	0 to 1.
Firm fixed-price-level-of-effort-term	(5)	.5	0 to 1.

(1) *No financing* means that the contract either does not provide progress payments, or provides them only on a limited basis, such as financing of first articles. Do not compute a working capital adjustment.

(2) *With financing* means progress payments. When progress payments are present, compute a working capital adjustment (Block 26).

(3) For the purposes of assigning profit values, treat a fixed-price contract with redeterminable provisions as if it were a fixed-price-incentive contract with below normal conditions.

(4) Cost-plus contracts shall not receive the working capital adjustment.

(5) These types of contracts are considered cost-plus-fixed-fee contracts for the purposes of assigning profit values. They shall not receive the working capital adjustment in Block 26. However, they may receive higher than normal values within the designated range to the extent that portions of cost are fixed.

(d) *Evaluation criteria*—(1) *General.* The contracting officer should consider elements that affect contract type risk such as—

(i) Length of contract;

(ii) Adequacy of cost data for projections;

(iii) Economic environment;

(iv) Nature and extent of subcontracted activity;

(v) Protection provided to the contractor under contract provisions (e.g., economic price adjustment clauses);

(vi) The ceilings and share lines contained in incentive provisions; and

(vii) Risks associated with contracts for foreign military sales (FMS) which are not funded by U.S. appropriations.

(2) *Mandatory*—The contracting officer shall assess the extent to which costs have been incurred prior to definitization of the contract action (see also 217.7406-6(a)). The assessment shall include any reduced contractor risk on both the contract before definitization and the remaining portion of the contract. When costs have been incurred prior to definitization, generally regard the contract type risk to be in the low end of the designated range. If a substantial portion of the costs have been incurred prior to definitization, the contracting officer may assign a value as low as 0%, regardless of contract type.

(3) *Above normal conditions*—The contracting officer may assign a higher than normal value when there is substantial contract type risk. Indicators of this are—

(i) Efforts where there is minimal cost history;

(ii) Long-term contracts without provisions protecting the contractor, particularly when there is considerable economic uncertainty;

(iii) Incentive provisions (e.g., cost and performance incentives) which place a high degree of risk on the contractor; or

(iv) FMS sales (other than those under DoD cooperative logistics support arrangements or those made from U.S. Government inventories or stocks) where the contractor can demonstrate that there are substantial risks above those normally present in DoD contracts for similar items.

(4) *Below normal conditions.* The contracting officer may assign a lower than normal value when the contract type risk is low. Indicators of this are—

(i) Very mature product line with extensive cost history;

(ii) Relatively short-term contracts;

(iii) Contractual provisions which substantially reduce the contractor's risk; or

(iv) Incentive provisions which place a low degree of risk on the contractor.

(e) *Costs financed.* (1) Costs financed equal total costs multiplied by the portion (percent) of costs financed by the contractor.

(2) Total costs equal Block 20 (i.e., all allowable costs, including general and administrative and independent research and development/bid and proposal, but excluding facilities capital cost of money), reduced as appropriate when—

(i) The contractor has little cash investment (e.g., subcontractor progress payments liquidated late in period of performance);

(ii) Some costs are covered by special financing provisions, such as advance payments; or

(iii) The contract is multiyear and there are special funding arrangements.

(3) The portion financed by the contractor is generally the portion not covered by progress payments, i.e., 100% minus the customary progress payment rate (FAR 32.501). For example, if a contractor receives progress payments at 75%, the portion financed by the contractor is 25%. On contracts that provide flexible progress payments (252.232–7003) or progress payments to small businesses, use the customary progress payment rate for large businesses.

(f) *Contract length factor.* (1) This is the period of time that the contractor has a working capital investment in the contract. It—

(i) Is based on the time necessary for the contractor to complete the substantive portion of the work;

(ii) Is not necessarily the period of time between contract award and final delivery (or final payment), as periods of minimal effort should be excluded;

(iii) Should not include periods of performance contained in option provisions; and

(iv) Should not, for multiyear contracts, include periods of performance beyond that required to complete the initial program year's requirements.

(2) The contracting officer—

(i) Should use the following table to select the contract length factor;

(ii) Should develop a weighted average contract length when the contract has multiple deliveries; and

(iii) May use sampling techniques provided they produce a representative result.

TABLE

Period to perform substantive portion (in months)	Contract length factor
21 or less	.40
22 to 27	.65
28 to 33	.90
34 to 39	1.15
40 to 45	1.40
46 to 51	1.65

TABLE—Continued

Period to perform substantive portion (in months)	Contract length factor
52 to 57	1.90
58 to 63	2.15
64 to 69	2.40
70 to 75	2.65
76 or more	2.90

(3) Example: A prospective contract has a performance period of 40 months with end items being delivered in the 34th, 36th, 38th, and 40th months of the contract. The average period is 37 months and the contract length factor is 1.15.

215.971-4 Facilities capital employed.

(a) *Description.* This factor focuses on encouraging and rewarding aggressive capital investment in facilities that benefit DoD. It recognizes both the facilities capital that the contractor will employ in contract performance and the contractor's commitment to improving productivity.

(b) *Determination.* The following extract from the DD Form 1547 has been annotated to explain the process.

Item	Contractor facilities capital employed	Assigned value	Amount employed	Profit objective
27	Land	N/A	(2)	N/A
28	Buildings	(1)	(2)	(3)
29	Equipment	(1)	(2)	(3)

(1) Select a value from the list in paragraph (c) of this subsection using the evaluation criteria in paragraph (d) of this subsection.

(2) Use the allocated facilities capital attributable to land, buildings, and equipment, as derived in DD Form 1861, "Contract Facilities Capital Cost of Money" (see 215.871–5 and 230.7001).

(i) In addition to the net book value of facilities capital employed, consider facilities capital that is part of a formal investment plan if the contractor submits reasonable evidence that—

(A) Achievable benefits to DoD will result from the investment; and

(B) The benefits of the investment are included in the forward pricing structure.

(ii) If the value of intracompany transfers has been included in Block 18 at cost (i.e., excluding general and administrative (G&A) expenses and profit), add to the contractor's allocated facilities capital the allocated facilities capital attributable to the buildings and equipment of those corporate divisions supplying the intracompany transfers. Do not make this addition if the value of intracompany transfers has been included in Block 18 at price (i.e., including G&A expenses and profit).

(3) Multiply (1) by (2).

(c) *Values: Normal and designated ranges.*

Notes	Asset type	Normal value (percent)	Designated range
(1)	Land	0	N/A.
(1)	Buildings	15	10% to 20%.
(1)	Equipment	35	20% to 50%.
(2)	Land	0	N/A.
(2)	Buildings	5	0% to 10%.
(2)	Equipment	20	15% to 25%.
(3)	Land	0	N/A.
(3)	Buildings	0	0%.
(3)	Equipment	0	0%.

(1) These are the normal values and ranges. They apply to all situations except those noted in (2) and (3).

(2) These alternate values and ranges apply to situations where a highly facilitized manufacturing firm will be performing a research and development or services contract. They balance the method used to allocate facilities capital cost of money, which may produce disproportionate allocation of assets to these types of efforts.

(3) When using a value from the alternate designated range for the performance risk factor (215.971–2(c)(2)), do not allow profit on facilities capital employed.

(d) *Evaluation criteria.* (1) In evaluating facilities capital employed, the contracting officer—

(i) Should relate the usefulness of the facilities capital to the goods or services being acquired under the prospective contract;

(ii) Should analyze the productivity improvements and other anticipated industrial base enhancing benefits resulting from the facilities capital investment, including—

(A) The economic value of the facilities capital, such as physical age, undepreciated value, idleness, and expected contribution to future defense needs; and

(B) The contractor's level of investment in defense related facilities as compared with the portion of the contractor's total business which is derived from DoD;

(iii) Should consider any contractual provisions that reduce the contractor's risk of investment recovery, such as termination protection clause, capital investment indemnification, and productivity saving rewards (215.870–3); and

(iv) Shall ensure that increases in facilities capital investments are not merely asset revaluations attributable to mergers, stock transfers, take-overs, sales of corporate entities, or similar actions.

(2) *Above normal conditions.* (i) The contracting officer may assign a higher than normal value if the facilities capital investment has direct, identifiable, and exceptional benefits. Indicators are—

(A) New investments in state-of-the-art technology which reduce acquisition cost or yield other tangible benefits such as improved product quality or accelerated deliveries;

(B) Investments in new equipment for research and development applications; or

(C) Contractor demonstration that the investments are over and above the normal capital investments necessary to support anticipated requirements of DoD programs.

(ii) The contracting officer may assign a value significantly above normal when there are direct and measurable benefits in efficiency and significantly reduced acquisition costs on the effort being priced. Maximum values apply only to those cases where the benefits of the facilities capital investment are substantially above normal.

(3) *Below normal conditions.* (i) The contracting officer may assign a lower than normal value if the facilities capital investment has little benefit to DoD. Indicators are—

(A) Allocations of capital apply predominantly to commercial product lines;

(B) Investments are for such things as furniture and fixtures, home or group level administrative offices, corporate aircraft and hangars, gymnasiums; or

(C) Facilities are old or extensively idle.

(ii) The contracting officer may assign a value significantly below normal when a significant portion of defense manufacturing is done in an environment characterized by outdated, inefficient, and labor-intensive capital equipment.

215.972 Modified weighted guidelines method for nonprofit organizations.

(a) *Definition.* As used in this subpart, a nonprofit organization is a business entity—

(1) Which operates exclusively for charitable, scientific, or educational purposes;

(2) Whose earnings do not benefit any private shareholder or individual;

(3) Whose activities do not involve influencing legislation or political campaigning for any candidate for public office; and

(4) Which is exempted from Federal income taxation under section 501 of the Internal Revenue Code.

(b) For nonprofit organizations which are Federally funded research and development centers (FFRDCs), the contracting officer—

(1) Should consider whether any fee is appropriate. Considerations shall include the FFRDC's—

(i) Proportion of retained earnings (as established under generally accepted accounting methods) that relates to DoD contracted effort;

(ii) Facilities capital acquisition plans;

(iii) Working capital funding as assessed on operating cycle cash needs;

(iv) Contingency funding; and

(v) Provision for funding unreimbursed costs deemed ordinary and necessary to the FFRDC.

(2) Shall, when a fee is considered appropriate, compute the fee objective using the weighted guidelines method in 215.971, with the following modifications—

(i) *Modifications to performance risk (Blocks 21–24 of the DD Form 1547).* (A) If the contracting officer assigns a value from the standard designated range (215.971–2(c)), reduce the fee objective by an amount equal to 1% of the costs in Block 18 of the DD Form 1547. Show the net (reduced) amount on the DD Form 1547.

(B) If the contracting officer assigns a value from the alternate designated range, reduce the fee objective by an amount equal to 2% of the costs in Block 18 of the DD Form 1547. Show the net (reduced) amount on the DD Form 1547.

(ii) *Modifications to contract type risk (Block 25 of the DD Form 1547).* Use a designated range of −1% to 0% in lieu of the values in 215.971–3. There is no normal value.

(c) For nonprofit organizations which are entities that have been identified by the Secretary of Defense or a Secretary of a Department as receiving sustaining support on a cost-plus-fixed-fee basis from a particular DoD department or agency, compute a fee objective for covered actions using the weighted guidelines method in 215.971, modified as described in paragraph (b)(2) of this section.

(d) For all other nonprofit organizations, compute a fee objective for covered actions using the weighted guidelines method in 215.971, modified as described in paragraph (b)(2)(i) of this section.

215.973 Alternate structured approaches.

(a) The contracting officer may use an alternate structured approach under 215.903.

(b) The contracting officer may design the structure of the alternate, but it shall include—

(1) Consideration of the three basic components of profit—performance risk, contract type risk (including working capital), and facilities capital employed. However, the contracting officer is not required to complete Blocks 21 through 30 of the DD Form 1547.

(2) Offset for facilities capital cost of money.

(i) The contracting officer shall reduce the overall prenegotiation profit objective by the lesser of 1% of total cost or the amount of facilities capital cost of money. The profit amount in the negotiation summary of the DD Form 1547 must be net of the offset.

(ii) This adjustment is needed for the following reason: The values of the profit factors used in the weighted guidelines method were adjusted to recognize the shift in facilities capital cost of money from an element of profit to an element of contract cost (FAR 31.205–10) and reductions were made directly to the profit factors for performance risk. In order to ensure that this policy is applied to all DoD contracts which allow facilities capital cost of money, similar adjustments shall be made to contracts which use alternate structured approaches.

215.974 Fee requirements for cost-plus-award-fee contracts.

In developing a fee objective for cost-plus-award-fee contracts, the contracting officer shall—

(a) Follow the guidance in FAR 16.404–2 and 216.404–2;

(b) Not use the weighted guidelines method or alternate structured approach;

(c) Apply the offset policy in 215.973(b)(2) for facilities capital cost of money, i.e., reduce the base fee by the lesser of 1% of total costs or the amount of facilities capital cost of money; and

(d) Not complete a DD Form 1547.

215.975 Reporting profit and fee statistics.

(a) Contracting officers in contracting offices which participate in the management information system for profit and fee statistics send completed DD Forms 1547 on actions of $500,000 or more, where the contracting officer used either the weighted guidelines method, an alternate structured approach, or the modified weighted guidelines method, to their designated office within 30 days after contract award.

(b) Participating contracting offices and their designated offices are—

Contracting office	Designated office
Army:	
Army Material Command (all field offices)	Army Material Command, ATTN: AMCPP-P, 5001 Eisenhower Avenue, Alexandria, VA 22333-0001.
U.S. Army Corps of Engineers (all field offices)	Office of the Chief of Engineers, ATTN: HQDA (DAEN-PRP), Washington, DC 20314-1000.
All others	Assistant Secretary for Research, Development, and Acquisition, ATTN: SARD-KS, Washington, DC 20310-0600.
Navy:	
Naval Air Systems Command [1]	Commander, Naval Supply Systems Command, ATTN: SUP 026, Washington, DC 20376-5000.
Naval Sea Systems Command [1]	
Space and Naval Warfare Systems Command [1]	
Naval Facilities Engineering Command [1]	
Naval Supply Systems Command [1]	
Office of Naval Research [1]	
Headquarters, United States Marine Corps [1]	
Strategic Systems Programs Office [1]	
Military Sealift Command [1]	
Automatic Data Processing Selection Office [1]	
Navy Regional Data Automation Center [1]	
Naval Research Laboratory [1]	
Navy Commercial Communications Center [1]	
Naval Aviation Depot Operations Center [1]	
Air Force:	
Air Force Systems Command (all field offices)	Air Force Logistics Command, ATTN: HQ AFLC/LMSC/SORS, Wright-Patterson Air Force Base, Ohio 45433.
Air Force Logistics Command (all field offices)	

[1] Includes all subordinate field offices.

(c) When negotiation of a contract action over $500,000 has been delegated to another contracting agency (e.g., to an administrative contracting officer), that agency shall ensure that a copy of the DD Form 1547 is provided to the delegating office for reporting purposes within 30 days from negotiation of the contract action.

(d) Contracting offices outside the United States, its possessions, and Puerto Rico are exempt from reporting.

(e) Designated offices send a quarterly (non-cumulative) report of DD Form 1547 data to: Washington Headquarters Service, Directorate for Information Operations and Reports (WHS/DIOR), 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202-4302.

(f) In preparing/sending the quarterly report, designated offices—

(1) Perform the necessary audits to ensure information accuracy;

(2) Do not enter classified information;

(3) Transmit the report via computer magnetic tape using the procedures, format, and editing process issued by the Director of Defense Procurement; and

(4) Send the reports not later than the 30th day after the close of the quarterly reporting periods.

(g) These reporting requirements have been assigned report control symbol: P&L(Q) 1751.

Subpart 215.10—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

215.1001 Notifications to unsuccessful offerors.

(b) *Preaward notices.*

(2) Acquisitions processed under small purchase procedures are exempt from the requirements of FAR 15.1001(b)(2).

PART 216—TYPES OF CONTRACTS

Sec.

Subpart 216.1—Selecting Contract Types

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216.104-70 Research and development.

Subpart 216.2—Fixed-Price Contracts

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216.203-4 Contract clauses.
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Subpart 216.3—Cost-Reimbursement Contracts

216.301 General.
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Subpart 216.4—Incentive Contracts

216.402 Application of predetermined, formula-type incentives.
216.402-2 Technical performance incentives.
216.403 Fixed-price incentive contracts.
216.403-2 Fixed-price incentive (successive targets) contracts.
216.403-70 Fixed-price contracts with award fees.
216.404 Cost-reimbursement incentive contracts.
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Subpart 216.5—Indefinite-Delivery Contracts

216.501 General.
216.505 Contract clauses.
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Subpart 216.6—Time-and-Materials, Labor-Hour, and Letter Contracts

216.603 Letter contracts.
216.603-3 Limitations.
216.603-4 Contract clauses.

Subpart 216.7—Agreements

216.703 Basic ordering agreements.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 216.1—Selecting Contract Types

216.104 Factors in selecting contract types.

(d) Design stability should also be considered.

216.104-70 Research and development.

(a) *General.* There are several categories of research and development (R&D) contracts: research, exploratory development, advanced development, engineering development, and operational systems development (see 235.001 for definitions). Each category has a primary technical or functional objective. Different parts of a project may fit several categories. The contract type must fit the work required, not just the classification of the overall program.

(b) *Research and exploratory development.* (1) Price is not necessarily the primary factor in determining the contract type.

(2) The nature of the work to be performed will usually result in a cost-plus award fee, cost-plus fixed fee term, cost-no-fee, or cost-sharing contract.

(3) If the Government and the contractor can identify and agree upon the level of contractor effort required, the contracting officer may select a firm fixed-price level-of-effort contract, except see 235.006.

(4) If the Government and the contractor agree that an incentive arrangement is desirable and capable of being evaluated after completion of the work, the contracting officer may use an incentive type contract.

(c) *Advanced development.* (1) The nature of the work to be performed often

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216.403–2 Fixed-price incentive (successive targets) contracts.
216.403–70 Fixed-price contracts with award fees.
216.404 Cost-reimbursement incentive contracts.
216.404–1 Cost-plus-incentive-fee contracts.
216.404–2 Cost-plus-award-fee contracts.
216.470 Other applications of award fees.

Subpart 216.5—Indefinite-Delivery Contracts

216.501 General.
216.505 Contract clauses.
216.506 Ordering.

Subpart 216.6—Time-and-Materials, Labor-Hour, and Letter Contracts

216.603 Letter contracts.
216.603–3 Limitations.
216.603–4 Contract clauses.

Subpart 216.7—Agreements

216.703 Basic ordering agreements.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 216.1—Selecting Contract Types

216.104 Factors in selecting contract types.

(d) Design stability should also be considered.

216.104–70 Research and development.

(a) *General.* There are several categories of research and development (R&D) contracts: research, exploratory development, advanced development, engineering development, and operational systems development (see 235.001 for definitions). Each category has a primary technical or functional objective. Different parts of a project may fit several categories. The contract type must fit the work required, not just the classification of the overall program.

(b) *Research and exploratory development.* (1) Price is not necessarily the primary factor in determining the contract type.

(2) The nature of the work to be performed will usually result in a cost-plus award fee, cost-plus fixed fee term, cost-no-fee, or cost-sharing contract.

(3) If the Government and the contractor can identify and agree upon the level of contractor effort required, the contracting officer may select a firm fixed-price level-of-effort contract, except see 235.006.

(4) If the Government and the contractor agree that an incentive arrangement is desirable and capable of being evaluated after completion of the work, the contracting officer may use an incentive type contract.

(c) *Advanced development.* (1) The nature of the work to be performed often

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results in a cost-plus fixed fee completion type contract.

(2) Contracting officers may select incentive contracts if—

(i) Realistic and measurable targets are identified; and

(ii) Achievement of those targets is predictable with a reasonable degree of accuracy.

(3) Contracting officers should not use contracts with only cost incentives where—

(i) There will be a large number of major technical changes; or

(ii) Actions beyond the control of the contractor may influence the contractor's achievement of cost targets.

(d) *Engineering development and operational systems development.* (1) When selecting contract types, also consider—

(i) The degree to which the project is clearly defined, which in turn affects the contractor's ability to provide accurate cost estimates;

(ii) The need for effort that will overlap that of earlier stages;

(iii) The need for firm technical direction by the Government; and

(iv) The degree of configuration control the Government will exercise.

(2) For development efforts, particularly for major defense systems, the preferred contract type is cost reimbursement.

(3) Contracting officers should use fixed-price type contracts when risk has been reduced to the extent that realistic pricing can occur; e.g., when a program has reached the final stages of development and technical risks are minimal, except see 235.006.

Subpart 216.2—Fixed-Price Contracts

216.203 Fixed-price contracts with economic price adjustment.

216.203–4 Contract clauses.

(a) *Adjustment based on established prices-standard supplies.* Generally, use the clause at FAR 52.216–2, Economic Price Adjustment-Standard Supplies only when—

(i) The total contract price is over the small purchase threshold in FAR 13.000; and

(ii) Delivery will not be completed within 6 months after the contract date.

(b) *Adjustment based on established prices-semistandard supplies.* Generally, use the clause at FAR 52.216–3, Economic Price Adjustment-Semistandard Supplies, only when—

(i) The total contract price is over the small purchase threshold in FAR 13.000; and

(ii) Delivery will not be completed within 6 months after the contract date.

(c) *Adjustments based on actual cost of labor or material.*

(2) Limit use of the clause at FAR 52.216–4, Economic Price Adjustment-Labor and Material, to contracts in which the price exceeds $50,000 and the period of performance exceeds 6 months, unless otherwise approved by the chief of the contracting office. Use an appropriate modification of the clause in sealed bidding.

(4) Apply the full amount of the decrease in the labor rates and fringe benefits or unit prices for materials.

(d) *Adjustments based on cost indexes of labor or material.* Use the following guidelines—

(i) Do not make the clause unnecessarily complex.

(ii) Normally, the clause should not provide either a ceiling or a floor for adjustment unless adjustment is based on indices below the four digit level of the Bureau of Labor Statistics—

(A) Producer Price Index;

(B) Employment Cost Index for wages and salaries, benefits, and compensation costs for aerospace industries; or

(C) Wage and Income Series by Standard Industrial Classification (Labor).

(iii) Normally, the clause should cover all potential economic fluctuations within the original contract period of performance.

(iv) The clause must accurately identify the index(es) upon which adjustments will be based.

(A) It must provide for a means to adjust for appropriate economic fluctuation in the event publication of the movement of the designated index is discontinued. This might include the substitution of another index if the time remaining would justify doing so and an appropriate index is reasonably available, or some other method for repricing the remaining portion of work to be performed.

(B) Normally, there should be no need to make an adjustment if computation of the identified index is altered. However, it may be appropriate to provide for adjustment of the economic fluctuation computations in the event there is such a substantial alteration in the method of computing the index that the original intent of the parties is negated.

(C) When an index to be used is subject to revision (e.g., the Bureau of Labor Statistics Producer Price Indexes), the economic price adjustment clause must specify that any economic price adjustment will be based on a revised index and must identify which revision to the index will be used.

(v) Construct the index to encompass a large sample of relevant items while still bearing a logical relationship to the type of contract costs being measured. The basis of the index should not be so large and diverse that it is significantly affected by fluctuations not relevant to contract performance, but it must be broad enough to minimize the effect of any single company, including the anticipated contractor(s).

(vi) Construction of an index is largely dependent upon three general series published by the U.S. Department of Labor, Bureau of Labor Statistics (BLS). These are the—

(A) Industrial Commodities portion of the Producer Price Index;

(B) Employment Cost Index for wages and salaries, benefits, and compensation costs for aerospace industries; and

(C) Wage and Income Series by Standard Industrial Classification (Labor). Since there is no BLS published series currently available that relates directly to total prices of delivered DoD aircraft, ships, missiles, electronics, etc., it will be necessary to construct composite indices from major portions of the three series identified.

(vii) Normally, do not use more than two indices, i.e., one for labor (direct and indirect) and one for material (direct and indirect).

(viii) The clause must establish and properly identify a base period comparable to the contract periods for which adjustments are to be made as a reference point for application of an index.

(ix) The clause should not provide for an adjustment beyond the original contract performance period, including options. The start date for the adjustment may be the beginning of the contract or a later time, as appropriate, based on the projected rate of expenditures.

(x) The expenditure profile for both labor and material should be based on a predetermined rate of expenditure (expressed as the percentage of material or labor usage as it relates to the total contract price) in lieu of actual cost incurred.

(A) If the clause is to be used in a competitive acquisition, determine the labor and material allocations, with regard to both mix of labor and material and rate of expenditure by percentage, in a manner which will, as nearly as possible, approximate the average expenditure profile of all companies to be solicited so that all companies may compete on an equal basis.

(B) If the clause is to be used in a noncompetitive acquisition, the labor and material allocations may be subject to negotiation and agreement.

(C) For multiyear contracts, establish predetermined expenditure profile tables for each of the annual increments in the multiyear buy. Each of the second and subsequent year tables must be cumulative to reflect the total expenditures for all increments funded through the latest multiyear funding.

(xi) The clause should state the percentage of the contract price subject to price adjustment.

(A) Normally, do not apply adjustments to the profit portion of the contract.

(B) Examine the labor and material portions of the contract to exclude any areas that do not require adjustment. For example, it may be possible to exclude—

(*1*) Subcontracting for short periods of time during the early life of the contract which could be covered by firm-fixed-priced subcontracting;

(*2*) Certain areas of overhead, e.g., depreciation charges, prepaid insurance costs, rental costs, leases, certain taxes, and utility charges;

(*3*) Labor costs for which a definitive union agreement exists; and

(*4*) Those costs not likely to be affected by fluctuation in the economy.

(C) Allocate that part of the contract price subject to adjustment to specific periods of time (e.g., quarterly, semiannually, etc.) based on the most probable expenditure or commitment basis (expenditure profile).

(xii) The clause should provide for definite times or events that trigger-price adjustments. Adjustments should be frequent enough to afford the contractor appropriate economic protection without creating a burdensome administrative effort. The adjustment period should normally range from quarterly to annually.

(xiii) When the contract contains cost incentives, any sums paid to the contractor on account of economic price adjustment provisions must be subtracted from the total of the contractor's allowable costs for the purpose of establishing the total costs to which the cost incentive provisions apply. If the incentive arrangement is cited in percentage ranges, rather than dollar ranges, above and below target costs, structure the economic price adjustment clause to maintain the original contract incentive range in dollars.

(xiv) The economic price adjustment clause should provide that once the labor and material allocations and the portion of the contract price subject to price adjustment have been established, they remain fixed through the life of the contract and shall not be modified except in the event of significant changes in the scope of the contract. The clause should state that pricing actions pursuant to the Changes clause or other provisions of the contract will be priced as though there were no provisions for economic price adjustment. However, subsequent modifications may include a change to the delivery schedule or significantly change the amount of, or mix of, labor or material for the contract. In such cases, it may be appropriate to prospectively apply economic price adjustment coverage. This may be accomplished by—

(A) Using an economic price adjustment (EPA) clause that applies only to the effort covered by the modification;

(B) Revising the baseline data or period in the EPA clause for the basic contract to include the new work; or

(C) Using an entirely new EPA clause for the entire contract, including the new work.

(xv) Consistent with the factors in paragraphs (d)(i) through (xiv) of this subsection, it may also be appropriate to provide in the prime contract for similar economic price adjustment arrangements between the prime contractor and affected subcontractors to allocate risks properly and ensure that those subcontractors are provided similar economic protection.

(xvi) When economic price adjustment clauses are included in contracts that do not require submission of cost or pricing data as provided for in FAR 15.804–3, the contracting officer must obtain adequate information to establish the baseline from which adjustments will be made. The contracting officer may require verification of the data submitted to the extent necessary to permit reliance upon the data as a reasonable baseline.

216.203–4–70 Additional clauses.

(a) *Price adjustment for basic steel, aluminum, brass, bronze, or copper mill products.* (1) The price adjustment clause at 252.216–7000, Economic Price Adjustment—Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products, may be used in fixed-price supply contracts for basic steel, aluminum, brass, bronze, or copper mill products, such as sheets, plates, and bars, when an established catalog or market price—

(i) Exists for the particular product being acquired; and

(ii) Has been verified in accordance with the criteria at FAR 15.804–3(c).

(2) Do not make an adjustment under this clause until the adjustment has been verified in accordance with the criteria set forth in FAR 15.804–3.

(3) The ten percent figure in paragraph (d)(1) of the clause shall not be exceeded unless approval is obtained at a level above the contracting officer.

(b) *Price adjustment for nonstandard steel items.* (1) The price adjustment clause at 252.216–7001, Economic Price Adjustment—Nonstandard Steel Items, may be used in fixed-price supply contracts when—

(i) The contractor is a steel producer and actually manufacture the standard steel mill item referred to in the "base steel index" definition of the clause; and

(ii) The items being acquired are nonstandard steel items made wholly or in part of standard steel mill items.

(2) When this clause is included in invitations for bids, omit Note 6 of the clause and all references to Note 6.

(3) Solicitations shall instruct offerors to complete all blanks in accordance with the applicable notes.

(4) When the clause is to provide for adjustment based on the contractor's "established price" (see paragraphs (a) and (f) and Note 6 of the clause), verify the established price before contract award in accordance with FAR 15.804–3.

(5) When the clause is to provide for adjustment on a basis other than "established price" (see Note 6 of the clause), that price must be verified.

(6) Make no adjustment in contract price under this clause until the requested adjustment has been verified in accordance with the criteria in FAR 15.804–3 (but see Note 6 of the clause) and as required by paragraph (*f*) of the clause.

(7) The ten percent figure in paragraph (e)(4) of the clause shall not be exceeded unless approval is obtained at a level above the contracting officer.

Subpart 216.3—Cost-Reimbursement Contracts

216.301 General.

216.301–3 Limitations.

(c) The contracting officer executes the determination and findings.

Subpart 216.4—Incentive Contracts

216.402 Application of predetermined, formula-type incentives.

216.402–2 Technical performance incentives.

Contractor performance incentives should relate to specific performance areas of milestones, such as delivery or test schedules, quality controls, maintenance requirements, and reliability standards.

216.403 Fixed-price incentive contracts.

(b) *Application.*

(3) Individual line items may have separate incentive provisions; e.g., when dissimilar work calls for separate formulas.

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(b) *Price adjustment for nonstandard steel items.* (1) The price adjustment clause at 252.216–7001, Economic Price Adjustment—Nonstandard Steel Items, may be used in fixed-price supply contracts when—

(i) The contractor is a steel producer and actually manufacture the standard steel mill item referred to in the "base steel index" definition of the clause; and

(ii) The items being acquired are nonstandard steel items made wholly or in part of standard steel mill items.

(2) When this clause is included in invitations for bids, omit Note 6 of the clause and all references to Note 6.

(3) Solicitations shall instruct offerors to complete all blanks in accordance with the applicable notes.

(4) When the clause is to provide for adjustment based on the contractor's "established price" (see paragraphs (a) and (f) and Note 6 of the clause), verify the established price before contract award in accordance with FAR 15.804–3.

(5) When the clause is to provide for adjustment on a basis other than "established price" (see Note 6 of the clause), that price must be verified.

(6) Make no adjustment in contract price under this clause until the requested adjustment has been verified in accordance with the criteria in FAR 15.804–3 (but see Note 6 of the clause) and as required by paragraph (f) of the clause.

(7) The ten percent figure in paragraph (e)(4) of the clause shall not be exceeded unless approval is obtained at a level above the contracting officer.

Subpart 216.3—Cost-Reimbursement Contracts

216.301 General.

216.301–3 Limitations.

(c) The contracting officer executes the determination and findings.

Subpart 216.4—Incentive Contracts

216.402 Application of predetermined, formula-type incentives.

216.402–2 Technical performance incentives.

Contractor performance incentives should relate to specific performance areas of milestones, such as delivery or test schedules, quality controls, maintenance requirements, and reliability standards.

216.403 Fixed-price incentive contracts.

(b) *Application.*

(3) Individual line items may have separate incentive provisions; e.g., when dissimilar work calls for separate formulas.

216.403–2 Fixed-price incentive (successive targets) contracts.

(a) *Description.* (1)(iii) The formula does not apply for the life of the contract. It is used to fix the firm target profit for the contract. To provide an incentive consistent with the circumstances, the formula should reflect the relative risk involved in establishing an incentive arrangement where cost and pricing information were not sufficient to permit the negotiation of firm targets at the outset.

216.403–70 Fixed-price contracts with award fees.

Award fee provisions may be used in fixed price contracts as provided in 216.470.

216.404 Cost-reimbursement incentive contracts.

216.404–1 Cost-plus-incentive-fee contracts.

(b) *Application.*

(3) Give appropriate weight to basic acquisition objectives in negotiating the range of fee and the fee adjustment formula. For example—

(A) In an initial product development contract, it may be appropriate to provide for relatively small adjustments in fee tied to the cost incentive feature, but provide for significant adjustments if the contractor meets or surpasses performance targets.

(B) In subsequent development and test contracts, it may be appropriate to negotiate an incentive formula tied primarily to the contractor's success in controlling costs.

216.404–2 Cost-plus-award-fee contracts.

(a) *Description.* (i) Normally, award fee is not earned when the fee-determining official has determined that contractor performance has been submarginal or unsatisfactory.

(ii) The basis for all award fee determinations shall be documented in the contract file.

(b) *Application.* (1) The cost-plus-award-fee (CPAF) contract is also suitable for level of effort contracts where mission feasibility is established but measurement of achievement must be by subjective evaluation rather than objective measurement. See Table 16–1, Performance Evaluation Criteria, for sample performance evaluation criteria and Table 16–2, Contractor Performance Evaluation Report, for a sample evaluation report.

(2) The contracting activity may—

(A) Establish a board to—

(1) Evaluate the contractor's performance; and

(2) Determine the amount of the award or recommend an amount to the contracting officer.

(B) Afford the contractor an opportunity to present information on its own behalf.

(c) *Limitations.* The CPAF contract shall not be used—

(i) To avoid—

(A) Establishing CPFF contracts when the criteria for CPFF contracts apply, or

(B) Developing objective targets so a CPIF contract can be used.

(ii) For either engineering development or operational system development acquisitions which have specifications suitable for simultaneous research and development and production, except a CPAF contract may be used for individual engineering development or operational system development acquisitions ancillary to the development of a major weapon system or equipment, where—

(A) It is more advantageous; and

(B) The purpose of the acquisition is clearly to determine or solve specific problems associated with the major weapon system or equipment.

(2)(A) Do not apply the weighted guidelines method to CPAF contracts for either the base (fixed) fee or the award fee.

(B) The base fee shall not exceed three percent of the estimated cost of the contract exclusive of the fee.

216.470 Other applications of award fees.

The "award amount" portion of the fee may be used in other types of contracts under the following conditions—

(1) The Government wishes to motivate and reward a contractor for management performance in areas which cannot be measured objectively and where normal incentive provisions cannot be used. For example, logistics support, quality, timeliness, ingenuity, and cost effectiveness are areas under the control of management which may be susceptible only to subjective measurement and evaluation.

(2) The "base fee" (fixed amount portion) is not used.

(3) The chief of the contracting office approves the use of the "award amount."

(4) An award review board and procedures are established for conduct of the evaluation.

(5) The administrative costs of evaluation do not exceed the expected benefits.

TABLE 16–1.—PERFORMANCE EVALUATION CRITERIA

		Submarginal	Marginal	Good	Very good	Excellent
A—Time of Delivery....	(A–1) Adherence to plan schedule.	Consistently late on 20% of plans.	Late on 10% plans w/o prior agreement.	Occasional plan late w/o justification.	Meets plan schedule...	Delivers all plans on schedule & meets prod. change requirements on schedule.
	(A–2) Action on Anticipated delays.	Does not expose changes or resolve them as soon as recognized.	Exposes changes but is dilatory in resolution on plans.	Anticipates changes, advise Shipyard but misses completion of design plans 10%.	Keeps Yard posted on delays, resolves independently on plans.	Anticipates in good time, advises Shipyard, resolves independently and meets production schedule.
	(A–3) Plan Maintenance.	Does not complete interrelated systems studies concurrently.	System studies completed but constr. plan changes delayed.	Major work plans coordinated in time to meet production schedules.	Design changes from studies and interrelated plans issued in time to meet product schedules.	Design changes, studies resolved and test data issued ahead of production requirements

TABLE 16-1.—PERFORMANCE EVALUATION CRITERIA—Continued

		Submarginal	Marginal	Good	Very good	Excellent
B—Quality of Work	(B-1) Work Appearance.	25% dwgs. not compatible with Shipyard repro. processes and use.	20% not compatible with Shipyard repro. processes and use.	10% not compatible with Shipyard repro. processes and use.	0% dwgs. prepared by Des. agent not compatible with Shipyard repro. processes and use.	0% dwgs. presented incl. Des. agent, vendors, subcontr. not compatible with Shipyard repro. processes and use.
	(B-2) Thoroughness and Accuracy of Work.	Is brief on plans tending to leave questionable situations for Shipyard to resolve.	Has followed guidance, type and standard dwgs.	Has followed guidance, type and standard dwgs. questioning and resolving doubtful areas.	Work complete with notes and thorough explanations for anticipated questionable areas.	Work of highest caliber incorporating all pertinent data required including related activities.
	(B-3) Engineering Competence.	Tendency to follow past practice with no variation to meet reqmts. job in hand.	Adequate engrg. to use & adapt existing designs to suit job on hand for routine work.	Engineered to satisfy specs., guidance plans and material provided.	Displays excellent knowledge of constr. reqmts. considering systems aspect, cost, shop capabilities and procurement problems.	Exceptional knowledge of Naval shipwork & adaptability to work process incorporating knowledge of future planning in Design.
	(B-4) Liaison Effectiveness.	Indifferent to requirements of associated activities, related systems, and Shipyard advice.	Satisfactory but dependent on Shipyard to force resolution of problems without constructive recommendations to subcontr. or vendors.	Maintains normal contact with associated activities depending on Shipyard for problems requiring military resolution.	Maintains independent contact with all associated activities, keeping them informed to produce compatible design with little assistance for Yard.	Maintains expert contact, keeping Yard informed, obtaining info from equip., supplies w/o prompting by Shipyard.
	(B-5) Independence and Initiative.	Constant surveillance req'd to keep job from slipping—assign to low priority to satisfy needs.	Requires occasional prodding to stay on schedule & expects Shipyard resolution of most problems.	Normal interest and desire to provide workable plans with average assistance & direction by Shipyard.	Complete & accurate job. Free of incompatibilities with little or no direction by Shipyard.	Develops complete and accurate plans, seeks out problem areas and resolves with assoc. act. ahead of schedule.
C—Effectiveness in Controlling and/or Reducing Costs.	(C-1) Utilization of Personnel.	Planning of work left to designers on drafting boards.	Supervision sets & reviews goals for designers.	System planning by supervisory, personnel, studies checked by engineers.	Design parameters established by system engineers & held in design plans.	Mods. to design plans limited to less than 5% as result lack engrg. system correlation.
	(C-2) Control Direct Charges (Except Labor).	Expenditures not controlled for services.	Expenditures reviewed occasionally by supervision.	Direct charges set & accounted for on each work package.	Provides services as part of normal design function w/o extra charges.	No cost overruns on original estimates absorbs service demands by Shipyard.
	(C-3) Performance to Cost Estimate.	Does not meet cost estimate for original work or changes 30% time.	Does not meet cost estimate for original work or changes 20% time.	Exceeds original est. on change orders 10% time and meets original design costs.	Exceeds original est. on change orders 5% time.	Never exceeds estimates of original package or change orders.

TABLE 16-2.—CONTRACTOR PERFORMANCE EVALUATION REPORT

Category	Criteria	Rating	Item factor	Evaluation rating	Category factor	Efficiency rating
A	TIME OF DELIVERY					
	A-1 Adherence to Plan Schedule	______	× .40 =	______		
	A-2 Action on Anticipated Delays	______	× .30 =	______		
	A-3 Plan Maintenance	______	× .30 =	______		
	Total Item Weighed Rating			______	× .30 =	______
B	QUALITY OF WORK					
	B-1 Work Appearance	______	× .15 =	______		
	B-2 Thoroughness and Accuracy of Work	______	× .30 =	______		
	B-3 Engineering Competence	______	× .20 =	______		
	B-4 Liaison Effectiveness	______	× .15 =	______		
	B-5 Independence and Initiative	______	× .20 =	______		
	Total Item Weighed Rating			______	× .40 =	______
C	EFFECTIVENESS IN CONTROLLING AND/OR REDUCING COSTS.					
	C-1 Utilization of Personnel	______	× .30 =	______		
	C-2 Control of all Direct Charges Other than Labor	______	× .30 =	______		
	C-3 Performance to Cost Estimate	______	× .40 =	______		

TABLE 16-2.—CONTRACTOR PERFORMANCE EVALUATION REPORT—Continued

Category	Criteria	Rating	Item factor	Evaluation rating		Category factor	Efficiency rating
	Total Item Weighed Rating	——		——	×	.30 =	——
TOTAL WEIGHED RATING:							
Rated by:							
Signature(s):							

Ratings—Excellent; Very good; Good; Marginal; Submarginal;
Period of 19
Contract Number
Contractor
Date of Report
PNS Techical Monitor/s
Note: Provide supporting data and/or justification for below average or outstanding item ratings.

Subpart 216.5—Indefinite-Delivery Contracts

216.501 General.

(a)(i) For items with a shelf-life of less than 6 months, consider the use of indefinite delivery type contracts with orders to be placed either—

(A) Directly by the users; or

(B) by central purchasing offices with deliveries direct to users.

(ii) Whenever an indefinite delivery contract is issued, the issuing office must furnish all ordering offices sufficient information for the ordering office to complete its contract reporting responsibilities under 204.670–2. This data must be furnished to the ordering activity in sufficient time for the activity to prepare its report for the action within 3 working days of the order.

216.505 Contract clauses.

(d) If the contract is for the preparation of personal property for shipment or storage (see 247.271–4), substitute paragraph (f) at 252.247–7015, Requirements, for paragraph (f) of the clause at FAR 52.216–21, Requirements.

216.506 Ordering.

Orders placed under indefinite delivery contracts may be issued on DD Form 1155, Order for Supplies or Services.

Subpart 216.6—Time-And-Materials, Labor-Hour, and Letter Contracts

216.603 Letter contracts.

216.603–3 Limitations.

See subpart 217.74 for additional limitations on the use of letter contracts.

216.603–4 Contract clauses.

(b)(2) Use the clause at FAR 52.216–24, Limitation of Government Liability, in all undefinitized contract actions (UCAs) (see subpart 217.74), solicitations associated with UCAs, and basic ordering agreements contemplating the use of undefinitized orders.

(3) Use a clause substantially the same as the clause at FAR 52.216–25, Contract Definitization, in all solicitations and contracts when an undefinitized contract action (see subpart 217.74) is contemplated. If necessary, change the term "letter contract" to a term that describes the particular undefinitized action, e.g., order. Use Alternate I only for letter contracts.

Subpart 216.7—Agreements

216.703 Basic ordering agreements.

(c) *Limitations.* The period during which orders may be placed against a basic ordering agreement may not exceed 3 years. The contracting officer, with the approval of the chief of the contracting office, may grant extensions for up to 2 years. No single extension shall exceed 1 year.

(d) *Orders.* (i) The contracting officer issuing an order under a basic ordering agreement shall be responsible for ensuring compliance with the provisions and limitations of this section.

(ii) Individual orders under a basic ordering agreement shall be individually closed following completion of the orders (see FAR 4.804).

(1)(iii) The office issuing the agreement shall furnish all authorized ordering offices sufficient information for the ordering office to complete its contract reporting responsibilities under 204.670–2 or, in the case of civilian agencies, the Federal Procurement Data System reporting requirement. Data furnished to civilian agencies must contain uncoded information about the data elements and the meanings of the codes to permit these users to translate the data into the federal format. This data must be furnished to the ordering activity in sufficient time for the activity to prepare its report for the action within 3 working days of the order.

(2)(i) Any activity listed in the agreement may issue orders on DD Form 1155, Order for Supplies or Services, or Standard Form 26, Award/Contract.

(3) Incentive provisions consistent with this part are permitted.

PART 217—SPECIAL CONTRACTING METHODS

Sec.

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Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 217.1—Multiyear Contracting

217.102 Policy.

217.102–2 General.

(b) The applicable program year is that shown in the DoD Future Years Defense Program.

217.103 Procedures.

217.103–1 General.

(a) *Criteria.* 10 U.S.C. 2306(h) and annual DoD authorization and appropriations acts have established the following additional criteria:

(i) The use of such a contract will promote the national security of the United States (10 U.S.C. 2306(h)(1)).

(ii) The contract provides for a production rate at not less than minimum economic production rates given the existing tooling and facilities (10 U.S.C. 2306(h)(9));

(iii) The economic order quantity of the advance acquisition which precedes the multiyear acquisition is funded at least to the limits of the Government's liability (section 9021, Pub. L. 101–165).

(b) *Limitations.*

(i) *Public Law 90–378 (10 U.S.C. 2306(g)).*

(A) DoD may enter into multiyear acquisitions for the following services (and items of supply relating to such services), even though funds are limited by statute to obligation during the fiscal year in which the contract is executed:

(*1*) Operation, maintenance, and support of facilities and installations;

(*2*) Maintenance or modification of aircraft, ships, vehicles, and other highly complex military equipment;

(*3*) Specialized training requiring high quality instructor skills (e.g., training for pilots and other aircrew members or foreign language training); and

(*4*) Base services (e.g., ground maintenance, in-plane refueling, bus transportation, and refuse collection and disposal).

(B) This authority may be used as long as the contract—

(*1*) Does not extend beyond five years;

(*2*) Complies with FAR 17.101 through 17.105; and

(*3*) Performance years do not extend beyond the end of any fiscal year.

(ii) Section 512 of Public Law 91–142.

(A) DoD may enter into multiyear acquisitions for supplies and services required for maintenance and operation of family housing even though funds would otherwise be available only within the fiscal year for which appropriated.

(B) This authority may be used as long as the contract—

(*1*) Does not extend beyond four years;

(*2*) Complies with FAR 17.101 through 17.105; and

(*3*) Performance years do not extend beyond the end of any fiscal year.

(iii) Award of a multiyear contract for services requires a written determination by the head of the contracting activity (10 U.S.C. 2306(g)(1)) that—

(A) There will be a continuing need for the services and incidental supplies;

(B) Furnishing the services and incidental supplies will require—

(*1*) A substantial initial investment in plant or equipment;

(*2*) The upfront commitment of substantial financial resources for the assembly, training or transportation of a specialized work force; or

(*3*) Other substantial startup costs; and

(C) Using a multiyear contract will be in the best interest of the United States by encouraging effective competition and promoting economical business operations.

(iv) The appropriate Secretary must provide a 30-day advance notification to the Committees on Appropriations and Armed Services of the House of Representatives and the Senate before the award of any—

(A) Multiyear contract that contains a cancellation ceiling in excess of $100 million (10 U.S.C. 2306(h)(3));

(B) Multiyear contract that provides for economic order quantity purchases in excess of $20 million in any year (section 9021, Pub. L. 101–165);

(C) Multiyear contract that includes an unfunded contingent liability in excess of $20 million (section 9021, Pub. L. 101–165); or

(D) Contract for advance procurement leading to a multiyear contract with an economic order quantity procurement in excess of $20 million in any year (section 9021, Pub. L. 101–165).

(v) Departments/agencies shall establish reporting procedures to meet the requirements of paragraph (b)(iv) of this subsection. Submit copies of the notifications to the Under Secretary of Defense (Acquisition), Director of Defense Procurement (USD(A)DP) and the Deputy Assistant Secretary of Defense (Comptroller) (Program/Budget) (OASD(C)(P/B)).

(vi) Do not initiate a multiyear contract—

(A) In excess of $500 million for any system or component thereof unless—

(*1*) Specifically provided for in a DOD appropriation act (section 9021, Pub. L. 101–165); and

(*2*) The Secretary of Defense certifies to Congress that the current Future Years Defense Program fully funds the support costs associated with the multiyear program. Forward documentation to support this certification to the Under Secretary of Defense (Acquisition), Director of Defense Procurement.

(B) Without using present value analysis to determine the lowest cost to the Government of a multiyear contract compared to annual contracts (section 9021, Pub. L. 101–165).

(vii) Do not terminate a multiyear contract under a program approved by

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(*1*) A substantial initial investment in plant or equipment;

(*2*) The upfront commitment of substantial financial resources for the assembly, training or transportation of a specialized work force; or

(*3*) Other substantial startup costs; and

(C) Using a multiyear contract will be in the best interest of the United States by encouraging effective competition and promoting economical business operations.

(iv) The appropriate Secretary must provide a 30-day advance notification to the Committees on Appropriations and Armed Services of the House of Representatives and the Senate before the award of any—

(A) Multiyear contract that contains a cancellation ceiling in excess of $100 million (10 U.S.C. 2306(h)(3));

(B) Multiyear contract that provides for economic order quantity purchases in excess of $20 million in any year (section 9021, Pub. L. 101–165);

(C) Multiyear contract that includes an unfunded contingent liability in excess of $20 million (section 9021, Pub. L. 101–165); or

(D) Contract for advance procurement leading to a multiyear contract with an economic order quantity procurement in excess of $20 million in any year (section 9021, Pub. L. 101–165).

(v) Departments/agencies shall establish reporting procedures to meet the requirements of paragraph (b)(iv) of this subsection. Submit copies of the notifications to the Under Secretary of Defense (Acquisition), Director of Defense Procurement (USD(A)DP) and the Deputy Assistant Secretary of Defense (Comptroller) (Program/Budget) (OASD(C)(P/B)).

(vi) Do not initiate a multiyear contract—

(A) In excess of $500 million for any system or component thereof unless—

(*1*) Specifically provided for in a DOD appropriation act (section 9021, Pub. L. 101–165); and

(*2*) The Secretary of Defense certifies to Congress that the current Future Years Defense Program fully funds the support costs associated with the multiyear program. Forward documentation to support this certification to the Under Secretary of Defense (Acquisition), Director of Defense Procurement.

(B) Without using present value analysis to determine the lowest cost to the Government of a multiyear contract compared to annual contracts (section 9021, Pub. L. 101–165).

(vii) Do not terminate a multiyear contract under a program approved by

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Congress without providing a ten-day advance notification to the Committees on Appropriations and Armed Services of the House of Representatives and the Senate (section 9021, Pub. L. 101–165).

(viii) The Secretary of Defense may ask Congress for relief from any conditions established by law for that particular procurement program (10 U.S.C. 2306(h)(11)).

(A) A request for relief from the requirement to achieve specific cost savings may be made if it appears, after negotiations with the contractors, that such savings cannot be achieved, but that substantial savings could nevertheless be achieved by using a multiyear contract.

(B) Include in such request details concerning the reasons for requesting use of a multiyear contract as well as details about the negotiated contract terms and conditions.

(C) Forward supporting documentation to the Under Secretary of Defense (Acquisition), Director of Defense Procurement.

(ix) Departments/agencies also must comply with any other restrictions or notification requirements contained in annual authorization or appropriation acts.

(d) *Cancellation.* State cancellation ceilings in the schedule as a not-to-exceed amount.

Subpart 217.2—Options

217.202 Use of options.

(1) Options may be used for foreign military sales requirements.

(2) Consider use of surge options to support the Industrial Preparedness Production Planning program (see subpart 208.72). A surge option allows the Government, prior to final delivery, to—

(i) Accelerate the contractor's production rate in accordance with a surge production plan or a delivery schedule provided by the contractor under the terms of the contract; and

(ii) Purchase additional quantities of supplies or services.

217.208 Solicitation provisions and contract clauses.

Sealed bid solicitations shall not include provisions for evaluations of options unless the contracting officer determines that there is a reasonable likelihood that the options will be exercised (10 U.S.C. 2301(a)(7)). This limitation also applies to sealed bid solicitations for the contracts excluded by FAR 17.200.

217.208–70 Additional clauses.

(a) Use the clause at 252.217–7000, Exercise of Option to Fulfill Foreign Military Sales Commitments, when an option may be used for foreign military sale requirements.

(1) Use Alternate I when the foreign military sale country is not known at the time of solicitation or award.

(2) Do not use this clause in contracts for establishment or replenishment of DoD inventories or stocks, or acquisitions made under DoD cooperative logistics support arrangements.

(b) When a surge option is needed in support of industrial preparedness production planning (see subpart 208.72), use the clause at 252.217–7001, Surge Option, in solicitations and contracts.

(1) Insert the percentage of increase the option represents in paragraph (a) of the clause.

(2) Change 30 days in paragraphs (b)(2) and (d)(1) to longer periods, if appropriate.

(3) Change the 24-month period in paragraph (c)(3), if appropriate.

Subpart 217.4—Leader Company Contracting

217.401 General.

When leader company contracting is to be considered, take special effort to select a small disadvantaged business (SDB) concern as the follower company. Where other than an SDB is selected as the follower company, the contracting officer shall document the contract file to reflect—

(1) The extent of actions taken to identify SDB concerns for participation in the acquisition; and

(2) The rationale for selection of a non-SDB as the follower company.

Subpart 217.5—Interagency Acquisitions Under the Economy Act

217.502 General.

Unless otherwise stated in department or agency regulations, the contracting officer may make the determination.

217.503 Determination requirements.

(b) Also include in the determination a finding that the services cannot be performed as conveniently or more economically by private contractors.

217.504 Ordering procedures.

(b) Do not send invitations for bids or requests for proposals to other Government agencies.

Subpart 217.6—Management and Operating Contracts

217.600 Scope of subpart.

FAR Subpart 17.6 does not apply to DoD.

Subpart 217.70—Exchange of Personal Property

217.7000 Scope of subpart.

This subpart prescribes policy and procedures for exchange of nonexcess personal property concurrent with an acquisition. Section 201(c) of the Federal Property and Administrative Services Act of 1949, 63 Stat. 384, as amended (40 U.S.C. 481(c)) permits exchange of personal property and application of the exchange allowance to the acquisition of similar property. This subpart does not authorize the sale of nonexcess personal property.

217.7001 Definitions.

As used in this subpart,

(a) *Exchange (trade-in) property* means property which—

(1) Is not excess but is eligible for replacement (because of obsolescence, unserviceability, or other reason); and

(2) Is applied as whole or partial payment toward the acquisition of similar items (i.e., items designed and constructed for the same purpose).

(b) *Property* means items which fall within one of the generic categories listed in DoDI 4140.51, Exchange of Nonexcess Personal Property in the Department of Defense.

217.7002 Policy.

DoD policy is to exchange, rather than replace, eligible nonexcess property whenever exchange promotes economical and efficient program accomplishment. Exchange policy, authority, and applicability are governed by—

(a) The Federal Property Management Regulations issued by the Administrator of the General Services Administration; and

(b) DoDI 4140.51, Exchange of Nonexcess Personal Property in the Department of Defense.

217.7003 Purchase request.

Ensure that the requiring activity provides all of the following in support of the purchase request—

(a) A certification that the property is eligible for exchange and complies with all conditions and limitations of DoDI 4140.51;

(b) A written determination of economic advantage indicating—

(1) The anticipated economic advantage to the Government from use of the exchange authority;

(2) That exchange allowances shall be applied toward, or in partial payment of, the items to be acquired; and

(3) That, if required, the exchange property has been rendered safe or innocuous or has been demilitarized;

(c) All applicable approvals for the exchange; and

(d) A description of the property available for exchange (e.g., nomenclature, location, serial number, estimated travel value).

217.7004 Solicitation and award.

(a) Solicitations shall include a request for offerors to state prices—

(1) For the new items being acquired without any exchange; and

(2) For the new items with the exchange (trade-in allowance) for the exchange property listed.

(b) The contracting officer is not obligated to award on an exchange basis. If the lowest evaluated offer is an offer for the new items without any exchange, the contracting officer may award on that basis and forgo the exchange.

(c) Exchanges may be made only with the successful offeror. When the successful offer includes an exchange, award one contract for both the acquisition of the new property and the trade-in of the exchange property. The only exception is when the items must be acquired against a mandatory Federal supply schedule contract, in which case, award a separate contract for the exchange.

217.7005 Solicitation provision.

Use the provision at 252.217-7002, Offering Property for Exchange, when offering nonexcess personal property for exchange. Allow a minimum of 14 calendar days for the inspection period in paragraph (b) of the clause if the exchange property is in the continental United States. Allow at least 21 calendar days outside the United States.

Subpart 217.71—Master Agreement for Repair and Alteration of Vessels

217.7100 Scope of subpart.

This subpart contains acquisition policies and procedures for master agreements for repair and alteration of vessels.

217.7101 Definitions.

(a) *Master agreement for repair and alteration of vessels*—

(1) Is a written instrument of understanding, negotiated between a contracting activity and a contractor that—

(A) Contains contract clauses, terms, and conditions applying to future contracts for repairs, alterations, and/or additions to vessels; and

(B) Contemplates separate future contracts that will incorporate by reference or attachment the required and applicable clauses agreed upon in the master agreement.

(2) Is not a contract.

(b) *Job order*—

(1) Is a fixed price contract incorporating, by reference or attachment, a master agreement for repair and alteration of vessels;

(2) May include clauses pertaining to subjects not covered by the master agreement; but applicable to the job order being awarded; and

(3) Applies to a specific acquisition and sets forth the scope of work, price, delivery date, and other appropriate terms that apply to the particular job order.

217.7102 General.

(a) Activities shall enter into master agreements for repair and alteration of vessels with all prospective contractors located within the United States, its possessions, or Puerto Rico, which—

(1) Request ship repair work; and

(2) Which possess the organization and facilities to perform the work satisfactorily. (Issuance of a master agreement does not indicate approval of the contractor's facility for any particular acquisition and is not an affirmative determination of responsibility under FAR subpart 9.1 for any particular acquisition.)

(b) Activities may use master agreements in work with prospective contractors located outside the United States, its possessions, or Puerto Rico.

(c) Activities may issue job orders under master agreements to effect repairs, alterations, and/or additions to vessels belonging to foreign governments.

(1) Contractors shall treat vessels of a foreign government as if they were vessels of the U.S. Government whenever requested to do so by the contracting officer.

(2) Identify the vessel and the foreign government in the solicitation and job order.

217.7103 Procedures.

217.7103-1 Content and format.

(a) A Master agreement shall contain all clauses required by 217.7104(a), statute and executive order.

(b) The following format may be adapted to fit specific circumstances:

Master Agreement for Repair and Alteration of Vessels

(1) This agreement is entered into this ______ day of __________ 19____, by the United States of America (the "Government":) represented by __________, the Contracting Officer, and, __________ a corporation organized and existing under the laws of the State of __________ (the "Contractor").

(2) The clauses in this agreement, shall be incorporated, by reference or attachment, in job orders issued under this agreement to effect repairs, alterations, and/or additions to vessels.

(3) By giving 30 days written notice, either party to this agreement has the right to cancel it without affecting the rights and liabilities under any job order existing at the time of cancellation. The Contractor shall perform, under the terms of this agreement, all work covered by any job order awarded before the effective date of the cancellation.

(4) This agreement may be modified only by mutual agreement of the parties. A modification of this agreement shall not affect any job order in existence at the time of modification, unless the parties agree otherwise.

(5) The rights and obligations of the parties to this agreement are set forth in this agreement and the clauses of any job orders issued under this agreement. In the event there is an inconsistency between this agreement and any job order, the provisions of this agreement shall govern.

(6) This agreement shall remain in effect until canceled by either party.

THE UNITED STATES OF AMERICA
by ______________________________
(Contracting Officer)
____
(Contractor)
by ______________________________
(Authorized Individual)
____
(Title)

217.7103-2 Period of agreement.

(a) Master agreements remain in effect until canceled by either the contractor or the contracting officer.

(b) Master agreements can be canceled by either the contractor or the contracting officer by giving 30 days written notice to the other.

(c) Cancellation of a master agreement does not affect the rights and liabilities under any job order existing at the time of cancellation. The contractor must continue to perform all work covered by any job order issued before the effective date of cancellation of the master agreement.

217.7103-3 Solicitations for job orders.

(a) When a requirement arises within the United States, its possessions, or Puerto Rico for the type of work covered by the master agreement, solicit offers from prospective contractors that—

(1) Previously executed a master agreement; or

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_ a corporation

organized and existing under the laws of the State of ____________ (the "Contractor").

(2) The clauses in this agreement, shall be incorporated, by reference or attachment, in job orders issued under this agreement to effect repairs, alterations, and/or additions to vessels.

(3) By giving 30 days written notice, either party to this agreement has the right to cancel it without affecting the rights and liabilities under any job order existing at the time of cancellation. The Contractor shall perform, under the terms of this agreement, all work covered by any job order awarded before the effective date of the cancellation.

(4) This agreement may be modified only by mutual agreement of the parties. A modification of this agreement shall not affect any job order in existence at the time of modification, unless the parties agree otherwise.

(5) The rights and obligations of the parties to this agreement are set forth in this agreement and the clauses of any job orders issued under this agreement. In the event there is an inconsistency between this agreement and any job order, the provisions of this agreement shall govern.

(6) This agreement shall remain in effect until canceled by either party.

THE UNITED STATES OF AMERICA
by ____________________
(Contracting Officer)
____
(Contractor)
by ____________________
(Authorized Individual)
____
(Title)

217.7103-2 Period of agreement.

(a) Master agreements remain in effect until canceled by either the contractor or the contracting officer.

(b) Master agreements can be canceled by either the contractor or the contracting officer by giving 30 days written notice to the other.

(c) Cancellation of a master agreement does not affect the rights and liabilities under any job order existing at the time of cancellation. The contractor must continue to perform all work covered by any job order issued before the effective date of cancellation of the master agreement.

217.7103-3 Solicitations for job orders.

(a) When a requirement arises within the United States, its possessions, or Puerto Rico for the type of work covered by the master agreement, solicit offers from prospective contractors that—

(1) Previously executed a master agreement; or

(2) Have not previously executed a master agreement, but possess the necessary qualifications to perform the work and agree to execute a master agreement before award of a job order.

(b) Prepare the solicitation in the uniform contract format and in accordance with FAR subparts 14.2 or 15.4, as applicable.

(c) Include in the solicitation—

(1) The nature of the work to be performed;

(2) The date the vessel will be available to the contractor;

(3) The date the work is to be completed; and

(4) Whether bulk ammunition is aboard the vessel.

(d) Unless the solicitation states otherwise, offers are to be based on performance at the contractor's site.

(e) Solicitations processed under negotiated acquisition procedures shall require offerors to include a breakdown of the price with reasonable supporting detail in whatever format and detail the contracting officer may request.

(f) Where practicable, afford potential offerors an opportunity to inspect the item needing repair or alteration.

217.7103-4 Award of a job order.

Award job orders in accordance with FAR subparts 14.4 or 15.10.

217.7103-5 Emergency work.

(a) The contracting officer, without soliciting offers, may issue a written job order to a contractor that has previously executed a master agreement when—

(i) Delay in the performance of necessary repair work would endanger a vessel, its cargo or stores; or

(ii) Military necessity requires immediate work on a vessel.

(b) Process this type of undefinitized contract action in accordance with subpart 217.74.

(c) Negotiate a price as soon as practicable after the issuance of an undefinitized order and definitize the job order upon completing negotiations.

217.7103-6 Repair costs not readily ascertainable.

If the nature of any repairs is such that their extent and probable cost cannot be ascertained readily, the solicitation should—

(a) Solicit offers for determining the nature and extent of the repairs;

(b) Provide that upon determination by the contracting officer of what work is necessary, the contractor, if requested by the contracting officer, shall negotiate prices for performance of the repairs; and

(c) Provide that prices for the repairs, if ordered, will be set forth in a modification of the job order.

217.7103-7 Modification of master agreements.

(a) Review each master agreement at least annually before the anniversary of its effective date and revise it as necessary to conform to the requirements of the FAR and DFARS. Statutory or other mandatory changes may require review and revision earlier than one year.

(b) A master agreement shall be changed only by modifying the master agreement itself. It shall not be changed through a job order.

(c) A modification to a master agreement shall not affect job orders issued before the effective date of the modification.

217.7104 Contract clauses.

(a) Use the following clauses in solicitations for, and in, master agreements for repair and alteration of vessels:

(1) 252.217-7003, Changes.

(2) 252.217-7004, Job Orders and Compensation.

(3) 252.217-7005, Inspection and Manner of Doing Work.

(4) 252.217-7006, Title.

(5) 252.217-7007, Payments.

(6) 252.217-7008, Bonds.

(7) 252.217-7009, Default.

(8) 252.217-7010, Performance.

(9) 252.217-7011, Access to Vessel.

(10) 252.217-7012, Liability and Insurance.

(11) 252.217-7013, Guarantees.

(12) 252.217-7014, Discharge of Liens.

(13) 252.217-7015, Safety and Health.

(14) 252.217-7016, Plant Protection, as applicable.

(b)(1) Incorporate in solicitations for, and in, job orders, the clauses in the master agreement, and any other clauses on subjects not covered by the master agreement, but applicable to the job order to be awarded.

(2) Use the clause at 252.217-7016, Plant Protection, in job orders where performance is to occur at the contractor's facility.

Subpart 217.72—Bakery and Dairy Products

217.7200 Scope.

This subpart provides special policies and requirements for acquisition of perishable bakery and dairy products.

217.7201 Contract requirements for dairy products.

(a) Include the following chemical and microbiological requirements in solicitations and resulting contracts for milk, milk products, and cultured products (as defined in the Veterinary/Medical Wholesomeness Assurance Program for Fresh and Cultured Dairy Products and Frozen Desserts (AR-40-70/NAVSUPINST 4355.6/AFR 161-46/MCO 10110.44)):

(1) *Chemical requirements.* Products shall meet the chemical requirements for each specification cited in the contract on the date of award.

(2) *Microbiological requirements.* Products shall meet microbiological requirements stated in Public Health Service Publication 229, Grade A Pasteurized Milk Ordnance, in effect on the date of award. In the event of conflict between these requirements and individual product specifications, the requirements of Public Health Service Publication 229 take precedence.

(b) When the contractor is required to furnish its own cabinets for dispensing milk from bulk containers—

(1) Include the following information in the solicitation—

(i) The number (or estimated number) of dispenser cabinets required;

(ii) Whether metal stands for the cabinets are required;

(iii) The number of cabinets required with a capacity of two containers each; and

(iv) The number required with a capacity of three containers each.

(2) Include the contractor's list of cabinet equipment in the schedule of the contract.

(c) The contracting officer shall notify the Government quality assurance representative of code changes approved under the clause at 252.217-7022, Code Dating.

217.7202 Contract type.

Normally use requirements contracts for bakery and dairy products. Other indefinite delivery contracts and other contract types may be used as appropriate.

217.7203 Contract clauses.

(a) Use the following additional clauses in solicitations and contracts for perishable bakery and dairy products—

(1) 252.217-7017, Time of Delivery. Use Alternate I when the contract is other than a requirements contract. Insert the number of hours in paragraph (c) of Alternate I.

(2) 252.217-7018, Change in Plant Location.

(3) 252.217-7019, Sanitary Conditions. Use Alternate I when the contract is other than a requirements contract.

(4) 252.217-7022, Code Dating. Use this clause only when the schedule or a specification requires labels showing the date of pasteurization, manufacture, production, or processing.

(5) 252.217-7023, Marking. Do not use this clause when MIL-STD-129, Marking for Shipment and Storage, is required.

(6) 252.217-7024, Responsibility for Containers and Equipment. Use when contractor is required to provide reusable containers and equipment.

(b) Use the following additional clauses in solicitations and contracts for perishable dairy products—

(1) 252.217-7020, Examination and Testing. Use Alternate I when the contract is an indefinite quantity contract.

(2) 252.217-7021, Deficiency Adjustment.

(3) 252.217-7025, Containers and Equipment.

Subpart 217.73—Identification of Sources of Supply

217.7300 Scope.

This subpart implements 10 U.S.C. 2384. It contains policy and procedures for requiring contractors to identify the actual manufacturer of supplies furnished to DoD.

217.7301 Policy.

Contractors shall identify their sources of supply in contracts for supplies. Contractor identification of sources of supply enables solicitation, in subsequent acquisitions, of actual manufacturers or other suppliers of items. This enhances competition and potentially avoids payment of additional costs for no significant added value.

217.7302 Procedures.

(a) Whenever practicable, include a requirement for contractor identification of sources of supply in all contracts for the delivery of supplies. The identification shall include—

(1) The item's actual manufacturer or producer, or all the contractor's sources for the item;

(2) The item's national stock number (if there is one);

(3) The item identification number used by—

(i) The actual manufacturer or producer of the item; or

(ii) Each of the contractor's sources for the item; and

(4) The source of any technical data delivered under the contract.

(b) The requirement in paragraph (a) of this section does not apply to supplies that are commercial items sold in substantial quantities to the general public if the contract—

(1) Provides for the acquisition of such supplies at established catalog or market prices; or

(2) Is awarded through the use of full and open competition.

217.7303 Solicitation provision.

(a) Use the provision at 252.217-7026, Identification of Sources of Supply, or one substantially the same, in all solicitations for supplies when the acquisition is being conducted under other than full and open competition, except when—

(1) Using FAR 6.302-5;

(2) The contracting officer already has the information required by the provision (e.g., the information was obtained under other acquisitions);

(3) The contract is for subsistence, clothing or textiles, fuels, or supplies purchased and used outside the United States;

(4) The contracting officer determines that it would not be practicable to require offerors/contractors to provide the information, e.g., nonrepetitive local purchases; or

(5) The contracting officer determines that the exception at 217.7302(b) applies to all items under the solicitation.

(b) If appropriate, use the provision at 252.217-7026, Identification of Sources of Supply, or one substantially the same, in service contracts requiring the delivery of supplies.

Subpart 217.74—Undefinitized Contract Actions

217.7400 Scope.

This subpart prescribes policies and procedures implementing 10 U.S.C. 2326.

217.7401 Definitions.

As used in this subpart—

(a) *Contract action* means an action which results in a contract.

(1) It includes contract modifications for additional supplies or services.

(2) It does not include change orders, administrative changes, funding modifications, or any other contract modifications that are within the scope and under the terms of the contract, e.g., engineering change proposals, value engineering change proposals, and over and above work requests as described in subpart 217.77.

(b) *Definitization* means the agreement on, or determination of, contract terms, specifications, and price, which converts the undefinitized contract action to a definitive contract.

(c) *Qualifying proposal* means a proposal containing sufficient information for the DoD to do complete and meaningful analyses and audits of the—

(1) Information in the proposal; and

(2) Any other information that the contracting officer has determined DoD needs to review in connection with the contract.

(d) *Undefinitized contract action* means any contract action for which the contract terms, specifications, or price are not agreed upon before performance is begun under the action. Examples are letter contracts, orders under basic ordering agreements, and provisioned item orders, for which the price has not been agreed upon before performance has begun.

217.7402 Exceptions.

The following undefinitized contract actions (UCA's) are not subject to this subpart, but the contracting officer should apply the policy to them (and to changes under the Changes clause) to the maximum extent practicable—

(a) UCAs for foreign military sales;

(b) Purchases of less than $25,000;

(c) Special access programs;

(d) Congressionally mandated long-lead procurement contracts.

217.7403 Policy.

DoD policy is that undefinitized contract actions shall—

(a) Be used only when—

(1) The negotiation of a definitive contract action is not possible in sufficient time to meet the Government's requirements; and

(2) The Government's interest demands that the contractor be given a binding commitment so that contract performance can begin immediately.

(b) Be as complete and definite as practicable under the particular circumstances.

217.7404 Limitations.

217.7404-1 Authorization.

The contracting officer shall obtain approval from the head of the contracting activity before—

(a) Entering into a UCA. The request for approval must fully explain the need to begin performance before definitization, including the adverse impact on agency requirements resulting from delays in beginning performance.

(b) Including requirements for non-urgent spare parts and support equipment in a UCA. The request should show that inclusion of the non-urgent items is consistent with good business practices and in the best interest of the United States.

(c) Modifying the scope of a UCA when performance has already begun. The request should show that the modification is consistent with good business practices and in the best interests of the United States.

217.7404-2 Price ceiling.

UCAs shall include a not-to-exceed price

217.7404-3 Definitization schedule.

(a) UCAs shall contain definitization schedules which provide for definitization by the earliest of the following dates—

(1) The date which is 180 days after issuance of the action (this date may be extended but may not exceed the date which is 180 days after the contractor submits a qualifying proposal); or

(2) The date on which the amount of funds spent under the contract action is equal to more than 50 percent of the not-to-exceed price.

(b) Submission of a qualifying proposal in accordance with the definitization schedule is a material element of the contract. If the contractor does not submit a timely qualifying proposal, the contacting officer may suspend or reduce progress payments under FAR 32.503-6, or take other appropriate action.

217.7404-4 Limitation on expenditures.

The Government shall not expend more than 50 percent of the not-to-exceed price before definitization. However, if a contractor submits a qualifying proposal before 50 percent of the not-to-exceed price has been expended by the Government, then the limitation on obligations before definitization may be increased to no more than 75 percent (see 232.102-70 for coverage on provisional delivery payments.

217.7404-5 Exception for initial spares.

The limitations in 217.7404-2, -3, and -4 do not apply to UCAs for the purchase of initial spares.

217.7404-6 Allowable profit.

When the final price of a UCA is negotiated after a substantial portion of the required performance has been completed, the head of the agency shall ensure the profit allowed reflects—

(a) Any reduced cost risk to the contractor for costs incurred during contract performance before negotiation of the final price; and

(b) The contractor's reduced cost risk for costs incurred during performance of the remainder of the contract.

217.7405 Contract clause.

Use the clause at 252.217-7027, Price Ceiling, in all undefinitized contract actions and solicitations associated with UCAs. Insert the not-to-exceed amount.

Subpart 217.75—Acquisition of Replenishment Parts

217.7500 Scope of subpart.

This subpart provides guidance on additional requirements related to acquisition of replenishment parts (as defined in Appendix E).

217.7501 General.

Departments and agencies—

(a) May acquire replenishment parts concurrently with production of the end item.

(b) Shall provide for full and open competition when fully adequate drawings and any other needed data are available with the right to use for acquisition purposes (see part 227). However—

(1) When data is not available for a competitive acquisition, use one of the procedures in 217.7503.

(2) Replenishment parts must be acquired so as to ensure the safe, dependable, and effective operation of the equipment. Where this assurance is not possible with new sources, competition may be limited to the original manufacturer of the equipment or other sources that have previously manufactured or furnished the parts as long as the action is justified.

(c) Shall follow the limitations on price increases in 217.7504.

217.7502 Spares acquisition integrated with production (SAIP).

(a) Spares acquisition integrated with production (SAIP) is a technique used to acquire replenishment parts concurrently with parts being produced for the end item.

(b) DoD acquisition managers select parts for SAIP under the criteria in DoDI 4245.12, Spares Acquisition Integrated With Production (SAIP).

(c) Include appropriately tailored provisions in the contract when SAIP is used.

217.7503 Acquisition of parts when data is not available.

When acquiring a part for which the Government does not have necessary data with rights to use in a specification or drawing for competitive acquisition, use one of the following procedures in order of preference—

(a) When items of identical design are not required, the acquisition may still be conducted through full and open competition by using a performance specification or other similar technical requirement or purchase description that does not contain data with restricted rights. Two methods are—

(1) Two-step sealed bidding; and

(2) Brand name or equal purchase descriptions.

(b) When other than full and open competition is authorized under FAR part 6, acquire the part from the firm which developed or designed the item or process, or its licensees, provided productive capacity and quality are adequate and the price is fair and reasonable.

(c) When additional sources are needed and the procedures in paragraph (a) of this section are not practicable, consider the following alternatives—

(1) Encourage the developer to license others to manufacture the parts;

(2) Acquire the necessary rights in data;

(3) Use a leader company acquisition technique (FAR subpart 17.4) when complex technical equipment is involved and establishing satisfactory additional sources will require technical assistance as well as data; or

(4) Incorporate a priced option in the contract which allows the Government to require the contractor to establish a second source.

(d) As a last alternative, the contracting activity may develop a design specification for competitive acquisition through reverse engineering. Contracting activities shall not do reverse engineering unless—

(1) Significant cost savings can be demonstrated; and

(2) The action is authorized by the head of the contracting activity.

217.7504 Limitations on price increases.

This section provides implementing guidance for section 1215 of Public Law 98-94 (10 U.S.C. 2452 note).

(a) The contracting officer shall not award, on a sole source basis, a contract for any centrally managed replenishment part when the price of the part has increased by 25 percent or more over the most recent 12-month period. (1) Before computing the percentage difference between the current price and the prior price, adjust for quantity, escalation, and other factors necessary to achieve comparability.

(2) Departments and agencies may specify an alternate percentage or percentages for contracts within the small purchase limitation in FAR part 13.

(b) The contracting officer may award a contract for a part, the price of which exceeds the limitation in paragraph (a) of this section, if the contracting officer certifies in writing to the head of the contracting activity before award that—

(1) The contracting officer has evaluated the price of the part and concluded that the price increase is fair and reasonable; or

(2) The national security interests of the United States require purchase of the part despite the price increase.

(c) The fact that a particular price has not exceeded the limitation in paragraph (a) of this section does not relieve the contracting officer of the responsibility for obtaining a fair and reasonable price.

(d) Contracting officers may include a provision in sole source solicitations requiring that the offeror supply with its proposal, price and quantity data on any government orders for the replenishment part issued within the most recent 12 months.

Subpart 217.76—Contracts with Provisioning Requirements

217.7600 Scope of subpart.

This subpart contains contract requirements and procedures for items to be provisioned. For technical requirements of provisioning, see DoDD 4140.40, Provisioning of End Items of Material. For breakout requirements, see appendix E.

217.7601 Definitions.

As used in this subpart,

(a) *Provisioning* means the process of determining and acquiring the range and quantity of spare and repair parts, and support and test equipment required to operate and maintain an end item for an initial period of service.

(b) *Provisioned item* means any item selected under provisioning procedures.

(c) *Provisioned items order* (PIO) means an undefinitized order issued under a contract which includes the Government's requirements for provisioned items. (Provisioned items with firm prices are acquired by supplemental agreement or by separate contract.)

(d) *Provisioning activity* means the organization responsible for selecting and determining requirements for provisioned items.

(e) *Provisioning requirements statement* means the contractual document listing the specific provisioning requirements for that contract. The statement normally includes:

(1) Instructions, such as the provisioning method to be used;

(2) The extent of provisioning technical documentation and data needed (including administrative requirements for submission and distribution);

(3) The type and location of provisioning conferences;

(4) Sample article requirements;

(5) The delivery schedule;

(6) Packaging and marking requirements for provisioned items; and

(7) Requirements for provisioning screening.

(f) *Provisioning technical documentation* means the data needed for the identification, selection, determination of initial requirements, and cataloging of support items to be acquired through the provisioning process. It includes such things as provisioning lists and logistics support analysis summaries. Descriptive data such as drawings and photographs are referred to as *supplementary provisioning technical documentation.*

217.7602 Contracting requirements.

217.7602-1 Contractual provisions.

Contracts containing provisioning requirements shall—

(a) List the provisioning functions to be performed and who will perform them;

(b) Include a provisioning requirements statement or specify a time limit for its incorporation into the contract by modification (revisions to the provisioning requirements statement shall also be incorporated by contract modification);

(c) Include on the DD Form 1423, Contract Data Requirements List, a schedule for delivery of provisioning technical documentation, or provide for the schedule to be incorporated later by contract modification;

(d) Require flowdown of the appropriate provisioning technical documentation requirement when the subcontractor prepares the documentation;

(e) Specify any applicable procedures for interim release by the contractor of long lead time items, and include ordering and funding instructions for such items. As a minimum, the instructions shall require the contractor to advise the contracting officer or provisioning activity at least 30 days before release of the items, their estimated costs, and the effective date of release;

(f) Specify the activity designated to issue provisioned items orders, i.e., contracting officer, provisioning activity, or administrative contracting officer. When it is expected that more than one activity will place provisioned items orders against the contract, state the requirements for provisioned items of each activity as separate contract line items;

(g) Provide a definitization schedule (normally 120 days after receipt of the contractor's proposal), and a timeframe for the contractor to furnish price proposals for provisioned items orders (normally 60 days after order issuance);

(h) Specify exhibit identifiers applicable to the contract line/subline items; and

(i) Include procedures for processing changes (including cancellations) in quantities of items ordered.

217.7602-2 Issuance of provisioned items orders.

(a) Use the Standard Form 30, Amendment of Solicitation/Modification of Contract, to—

(1) Issue provisioned items orders;

(2) Decrease or cancel quantities of items ordered; and

(3) Cover the contractor's interim release of long lead items when the contracting officer approves the release (if the release is not approved, the contracting officer shall notify the contractor to cancel the items).

(b) Include in Block 14 of the Standard Form 30—

(1) The term PROVISIONED ITEMS ORDER in capital letters and underlined; and

(2) The appropriate exhibit identifier(s) for all attached exhibits.

(c) Obligate funds to cover the estimated price of the items being ordered. Show individual estimated prices for each exhibit line item on the accounting and payment office copies.

(d) Distribution is the same as for the basic contract (see FAR 4.2). However, if the exhibits are voluminous, the contracting officer may restrict distribution of the exhibits to the contract administration office.

(e) See subpart 217.74 for additional guidance and limitations on the use of undefinitized contract actions.

217.7603 Contract administration requirements.

217.7603-1 Provisioning conferences.

When requested by the contracting officer or provisioning activity, the contract administration office shall assist the contracting officer or provisioning activity in scheduling and determining the types of provisioning conferences required, e.g., guidance meetings, long lead time items conferences, source coding meetings.

217.7603-2 Contract administration office monitoring.

The contract administration office (CAO) shall monitor contracts containing provisioning requirements. As a minimum the CAO shall—

(a) Ensure that the contractor understands the provisioning requirements;

(b) Review contractor progress in the preparation of provisioning technical documentation and, if requested by the contracting officer or provisioning activity, inspect it for format and content;

(c) Ensure the prime contractor flows-down provisioning requirements to any subcontractor charged with preparation of documentation;

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(c) Ensure the prime contractor flows-down provisioning requirements to any subcontractor charged with preparation of documentation;

(d) Advise the contracting office or provisioning activity of delays in delivery of provisioning technical documentation or other related problems (see FAR subpart 42.11);

(e) Ensure contractor compliance with contract requirements concerning the assignment of national stock numbers; and

(f) Ensure that the contractor complies with contractual criteria for release of long lead time items.

217.7603-3 Negotiating and executing supplemental agreements.

(a) The administrative contracting officer (ACO) shall definitize provisioned items orders within the prescribed schedule.

(b) If the provisioned items order does not contain a delivery date, or the contractor cannot meet the date, the ACO shall coordinate the negotiated schedule with the contracting officer or provisioning activity before execution of the supplemental agreement.

(c) The ACO shall maintain records of provisioned items orders showing—

(1) The adequacy of obligated funds;

(2) Due dates for price proposals; and

(3) Actions taken to obtain additional funds or to deobligate excess funds.

Subpart 217.77—Over and Above Work

217.7700 Scope of subpart.

This subpart prescribes policies and procedures for acquisition of over and above work.

217.7701 Procedures.

(a) Contracts for the performance of maintenance, overhaul, modification, and repair of various items (e.g., aircraft, engines, ground support equipment, ships) generally contain over and above work requirements. When they do, the contracting officer shall establish a separate contract line item for the over and above work.

(b) Over and above requirements task the contractor to identify needed repairs and recommend corrective action during contract performance. The contractor submits a work request to identify the over and above work and, as appropriate, the Government authorizes the contractor to proceed.

(c) The clause at 252.217-7028, Over and Above Work, requires the contractor and the contracting officer responsible for administering the contract to negotiate specific procedures for Government administration and contractor performance of over and above work requests.

(d) The contracting officer may issue a blanket work request authorization describing the manner in which individual over and above work requests will be administered and setting forth a dollar limitation for all over and above work under the contract. The blanket work request authorization may be in the form of a letter or contract modification (Standard Form 30).

(e) Over and above work requests are within the scope of the contract. Therefore, procedures in subpart 217.74, Undefinitized Contractual Actions, do not apply.

(f) To the maximum extent practical, over and above work shall be negotiated prior to performance of the work.

217.7702 Contract clause.

Use the clause at 252.217-7028, Over and Above Work, in solicitations and contracts containing requirements for over and above work, except as provided for in subpart 217.71.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

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Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

219.000 Scope of part.

This part also implements section 1207 of Public Law 99-661, section 806 of Public Law 100-180, and section 831 of Public Law 101-189. These laws set a goal for DoD for each of fiscal years 1987–1993 to—

(1) Award five percent of contract and subcontract dollars to small disadvantaged business (SDB) concerns, historically black colleges and universities (HBCUs), and minority institutions (MIs) (See part 226 for policy/procedures on HBCU/MIs); and

(2) Maximize the number of such entities in DoD contracting and subcontracting.

219.001 Definitions.

The definition of *small disadvantaged business concern* to be used for DoD contracts is in the provision at 252.219-7000 and is more restrictive than the definition in FAR 19.001.

Subpart 219.2—Policies

219.201 General policy.

(a) The DoD will use the section 8(a) program, small disadvantaged business set asides and evaluation preferences, advance payments, outreach, and technical assistance to meet its five percent goal for contract and subcontract awards to small disadvantaged businesses.

(c)(2) For the defense agencies, the director of the Office of Small and Disadvantaged Business Utilization shall be appointed by, be responsible to, and report directly to the director deputy director of the defense agency.

(7) The responsibility for assigning small business technical advisors is delegated to the head of the contracting activity.

(9) Contracting activity small business specialists perform this function by—

(A) Reviewing and making recommendations for all acquisitions over $10,000, except small business-small purchase set-asides;

(B) Making the review before issue of the solicitation or contract modification and documenting it on DD Form 2579, Small Business Coordination Record;

(C) Referring recommendations which have been rejected by the contracting officer to the Small Business Administration (SBA) procurement center representative. However, in the case of a rejected small disadvantaged business set-aside recommendation or if an SBA representative is not assigned or available, the specialist refers the matter to the specialist's appointing authority.

(d) Contracting and contract administration activities appoint small business specialists as directed by DoDD 4205.1, DoD Small Business and Small Disadvantaged Business Utilization Programs. Specialists—

(i) Report directly and are responsible only to their appointing authority;

(ii) Make sure that the contracting activity takes the necessary actions to implement small business, historically black college and university/minority institution, and labor surplus area programs;

(iii) Advise and assist contracting, program manager, and requirements personnel on all matters which affect small businesses, historically black colleges and universities or minority institutions, and labor surplus area concerns;

(iv) Aid, counsel, and assist small business, small disadvantaged business, historically black colleges and universities, and minority institutions by providing—

(A) Advice concerning acquisition procedures;

(B) Information regarding proposed acquisitions; and

(C) Instructions on preparation of proposals in the interpretation of standard clauses, representations, and certifications;

(v) Maintain an outreach program (including participation in Government-industry conferences and regional interagency small business councils) designed to locate and develop information on the technical competence of small business, small disadvantaged business concerns, historically black colleges and universities, and minority institutions;

(vi) Ensure that financial assistance, available under existing regulations, is offered and also assist small business concerns in obtaining payments under their contracts, late payment, interest penalties, or information on contractual payment provisions;

(vii) Provide assistance to contracting officers in determining the need for and acceptability of subcontracting plans and assist administrative contracting officers (see 219.706(a)(ii)) in evaluating, monitoring, reviewing, and documenting contract performance to determine compliance with subcontracting plans; and

(viii) Recommend to the appointing authority the activity's small and disadvantaged business program goals, including goal assignments to subordinate contracting offices; monitor the activity's performance against these goals; and recommend action to correct reporting errors/deficiencies.

219.202 Specific policies.

219.202-1 Encouraging small business participation in acquisitions.

The DoD will maximize the use of small business concerns as planned producers in the Industrial Readiness Planning Program.

219.202-5 Data collection and reporting requirements.

Determine the premium percentage to be entered in Item D4E of the Individual Contract Action Report (DD Form 350), (see 253.204-70), as follows —

(1) For small disadvantaged business or historically black college and university/minority institution set-asides, divide the difference between the fair market price and the award price by the fair market price.

(2) For 219.7000 evaluation preference awards, divide the difference between the low responsive offer and the award price by the low responsive offer.

(3) For 219.502-3 preferential consideration awards, divide the difference between the award price on the non-set-aside portion and the award price on the set-aside portion by the award price on the non-set-aside portion.

(b) Within 60 days after the end of each fiscal year, departments and agencies shall submit the report to the Secretary of Defense, who will report to the SBA on behalf of all DoD departments and agencies. Reports must include—

(i) Justification for failure to meet goals established by the Office of the Secretary of Defense; and

(ii) Planned actions for increasing participation by such firms in future contract awards.

Subpart 219.3—Determination of Status as a Small Business Concern

219.301 Representation by the offeror.

(a) A concern must qualify as a small disadvantaged business (SDB) on the date of submission of its offer and at contract award to be eligible for —

(i) Award under a small disadvantaged business set-aside;

(ii) Preferential consideration as an SDB under a partial set-aside; or

(iii) An evaluation preference for SDBs.

(b) The contracting officer shall protest an offeror's representation that it is a small disadvantaged business concern when—

(i) There is conflicting evidence;

(ii) The offeror certifies that the Small Business Administration previously determined the concern to be non-disadvantaged; or

(iii) The offeror represents its ownership as other than Black American, Hispanic American, Native American (including Indian tribes and Native Hawaiian organizations), Asian Pacific American, or Subcontinent Asian American; unless the offeror—

(A) Represents that it currently is in the section 8(a) program; or

(B) Certifies that—

(*1*) Within the six months preceding submission of its offer, the offeror was determined by the Small Business Administration to be socially and economically disadvantaged; and

(*2*) No circumstances have changed to vary that determination.

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(3) For 219.502–3 preferential consideration awards, divide the difference between the award price on the non-set-aside portion and the award price on the set-aside portion by the award price on the non-set-aside portion.

(b) Within 60 days after the end of each fiscal year, departments and agencies shall submit the report to the Secretary of Defense, who will report to the SBA on behalf of all DoD departments and agencies. Reports must include—

(i) Justification for failure to meet goals established by the Office of the Secretary of Defense; and

(ii) Planned actions for increasing participation by such firms in future contract awards.

Subpart 219.3—Determination of Status as a Small Business Concern

219.301 Representation by the offeror.

(a) A concern must qualify as a small disadvantaged business (SDB) on the date of submission of its offer and at contract award to be eligible for —

(i) Award under a small disadvantaged business set-aside;

(ii) Preferential consideration as an SDB under a partial set-aside; or

(iii) An evaluation preference for SDBs.

(b) The contracting officer shall protest an offeror's representation that it is a small disadvantaged business concern when—

(i) There is conflicting evidence;

(ii) The offeror certifies that the Small Business Administration previously determined the concern to be non-disadvantaged; or

(iii) The offeror represents its ownership as other than Black American, Hispanic American, Native American (including Indian tribes and Native Hawaiian organizations), Asian Pacific American, or Subcontinent Asian American; unless the offeror—

(A) Represents that it currently is in the section 8(a) program; or

(B) Certifies that—

(*1*) Within the six months preceding submission of its offer, the offeror was determined by the Small Business Administration to be socially and economically disadvantaged; and

(*2*) No circumstances have changed to vary that determination.

219.302 Protesting a small business representation.

219.302–70 Protesting a small disadvantaged business representation.

This section applies to protests of a small business concern's status as socially and economically disadvantaged. Protests of a concern's size are processed under FAR 19.302. Any offeror, the contracting officer, or the Small Business Administration (SBA) may protest a concern's representation of disadvantaged status.

(a) An offeror may protest a concern's representation of disadvantaged status by filing a protest with the contracting officer. The protest—

(1) Must be filed within the times specified in FAR 19.302(d)(1); and

(2) Must contain specific detailed evidence supporting the basis of protest.

(b) The contracting officer or the SBA may protest a concern's representation of disadvantaged status at any time. (1) If a contracting officer's protest is based on information brought to his/her attention by a party ineligible to protest directly or ineligible to protest under the timeliness standard, the contracting officer must be persuaded by the evidence presented before adopting the grounds for protest as his or her own.

(2) The SBA protests a concern's representation of disadvantaged status by filing directly with its Office of Program Eligibility and notifying the contracting officer.

(c) The contracting officer shall return untimely protests to the protestor. This includes protests filed before bid opening or notification of apparent successful offeror.

(d) Upon receipt of a timely protest, the contracting officer shall withhold award and forward the protest to the SBA Office of Program Eligibility, Office of Minority Small Business and Capitol Ownership Development, 409 3rd Street, SW., Washington, DC 20416. Send SBA—

(1) The protest;

(2) The date the protest was received and a determination of timeliness;

(3) A copy of the protested concern's self-certification of disadvantaged status; and

(4) The date of bid opening or date on which notification of apparent successful offeror was sent to unsuccessful offerors.

(e) Do not withhold award when—

(1) The contracting officer makes a written determination that award must be made to protect the public interest or

(2) The offeror has certified that—

(i) Within the six months preceding submission of its offer, the SBA has determined the concern to be socially and economically disadvantaged; and

(ii) No circumstances have changed to vary that determination.

(f) The SBA Director, Office of Program Eligibility, will determine the disadvantaged status of the challenged offeror and notify the contracting officer, the challenged offeror, and the protestor. Award may be made on the basis of that determination. The determination is final for purposes of the instant acquisition, unless—

(1) It is appealed; and

(2) The contracting officer receives the appeal decision before award.

(g) If the contracting officer does not receive an SBA determination within 15 working days after the SBA's receipt of the protest, the contracting officer shall presume that the challenged offeror is socially and economically disadvantaged. Do not use the presumption as a basis for award without first inquiring as to when a determination can be expected and waiting for the determination, unless further delay in award would be disadvantageous to the Government.

(h) An SBA determination may be appealed by—

(1) The interested party whose protest has been denied;

(2) The concern whose status was protested; or

(3) The contracting officer.

The appeal must be filed with the SBA's Associate Administrator for Minority Small Business and Capital Ownership Development within five working days after receipt of the determination. If the contracting officer receives the SBA's decision on the appeal before award, the decision shall apply to the instant acquisition. If the decision is received after award, it will apply to future acquisitions.

219.304 Solicitation provisions.

(b) Use the provision at 252.219–7000, Small Disadvantaged Business Concern Representation (DoD Contracts) instead of the provision at FAR 52.219–2, Small Disadvantaged Business Concern Representation.

Subpart 219.4—Cooperation With the Small Business Administration

219.401 General.

(b) The contracting activity small business specialist is the primary activity focal point for interface with the SBA.

Subpart 219.5—Set-Asides for Small Business

219.501 General.

(g) This repetitive set-aside procedure applies to DoD.

(S–70) When a product or service has been acquired successfully by a contracting office as a small disadvantaged business set-aside, all future requirements of that office for that product or service shall be acquired as small disadvantaged business set-asides, except those—

(1) Processed under small purchase procedures; or

(2) For which the contracting officer determines there is no reasonable expectation that the criteria for a small disadvantaged business set-aside can be met (see 219.502–2–70(a)).

219.502 Setting aside acquisitions.

219.502–1 Requirements for setting aside acquisitions.

Do not set aside acquisitions for—

(1) Supplies which were developed and financed, in whole or in part, by Canadian sources under the U.S.-Canadian Defense Development Sharing Program; or

(2) Architect-engineer services of $85,000 or more (10 U.S.C. 2855), including indefinite delivery and indefinite quantity contracts if the value of all anticipated orders is expected to total $85,000 or more.

219.502–2 Total set-asides.

(a) Unless the contracting officer determines that the criteria for set-aside cannot be met, set aside for small business concerns acquisitions for—

(i) Construction, including maintenance and repairs, under $2 million;

(ii) Dredging under $1 million; and

(iii) Architect-engineer services under $85,000.

219.502–2–70 Total set-asides for small disadvantaged business concerns.

(a) Except as provided in paragraph (b), the contracting officer shall set aside an acquisition for small disadvantaged businesses when there is a reasonable expectation that—

(1) Offers will be received from at least two responsible small disadvantaged business (SDB) concerns who—

(i) Can comply with the FAR 52.219–14 limitations on subcontracting; or

(ii) In the case of SDB regular dealers, will provide the supplies of SDBs (except as provided in Alternate I of the clause at 252.219–7002, Notice of Small Disadvantaged Business Set-Aside.

(2) Award will be made at not more than ten percent above fair market price; and

(3) Scientific and/or technological talent consistent with the demands of the acquisition will be offered.

(b) Do not set aside acquisitions for SDBs when—

(1) The product or service has been successfully acquired as a small business set-aside (see FAR 19.501(g));

(2) The acquisition is for construction, including maintenance and repairs, and is under $2 million, or is for dredging under $1 million;

(3) The acquisition is for architect-engineer services or construction design for military construction projects, without regard to dollar value;

(4) The acquisition is reserved for the 8(a) program;

(5) The acquisition is processed under small purchase procedures; or

(6) The acquisition is for commissary or exchange resale items.

(c) See 205.207(d) for information on Commerce Business Daily synopsis.

219.502-3 Partial set-asides.

When a portion of an acquisition is to be set aside for small business concerns, except acquisitions for commissary or exchange resale, the contracting officer shall give small disadvantaged business concerns preferential consideration by using the procedures in 252.219-7001, Notice of Partial Small Business Set-Aside with Preferential Consideration for Small Disadvantaged Business (SDB) Concerns.

219.502-4 Methods of conducting set-asides.

(b) Offers on a small disadvantaged business (SDB) set-aside from concerns that do not qualify as SDB concerns shall be considered nonresponsive and shall be rejected.

219.504 Set-aside program order of precedence.

(b) The order of precedence for DoD is (except see 219.803(c))—

(i) Total set-aside for small disadvantaged business concerns;

(ii) Total set-aside for small business concerns;

(iii) Partial set-aside for small business concerns with preferential consideration for small disadvantaged business concerns.

219.505 Rejecting Small Business Administration recommendations.

(b) The designee shall be at a level no lower than chief of the contracting office.

219.506 Withdrawing or modifying set-asides.

(a) Do not withdraw small disadvantaged business set-asides for reasons of price reasonableness unless the low responsive responsible offer exceeds fair market price by more than ten percent.

219.508 Solicitation provisions and contract clauses.

(d) Use the clause at 252.219-7001, Notice of Partial Small Business Set-Aside with Preferential Consideration for Small Disadvantaged Business (SDB) Concerns, instead of the clause in FAR 52.219-7, Notice of Partial Small Business Set-Aside. Use the clause with its Alternate I when the contracting officer determines that there are no small disadvantaged business manufacturers that can meet the requirements of the solicitation.

(e) Use the clause at 52.219-14, Limitations on Subcontracting, also in small disadvantaged business set-asides.

219.508-70 Solicitation provisions and contract clauses.

Use the clause at 252.219-7002, Notice of Small Disadvantaged Business Set-Aside, in solicitations and contracts for small disadvantaged business set-asides. Use the clause with its Alternate I when the contracting officer determines that there are no small disadvantaged business manufacturers that can meet the requirements of the solicitation.

Subpart 219.6—Certificates of Competency and Determinations of Eligibility

219.602 Procedures.

219.602-1 Referral.

When making a nonresponsibility determination on a small business concern, the contracting officer shall notify the contracting activity's small business specialist.

219.602-3 Resolving differences between the agency and the Small Business Administration.

(c)(i) If the contracting officer believes the agency should appeal, the contracting officer shall immediately inform the departmental director of the Office of Small and Disadvantaged Business Utilization, and send the director, through departmental channels—

(A) A request for appeal, summarizing the issues. The request must be sent to arrive within five working days after receipt of the SBA Central Office's written position.

(B) An appeal file, documenting the contracting activity's position. The file must be sent to arrive within five working days after transmission of the request.

(ii) The departmental director will determine whether the agency will appeal and will notify the SBA of the agency's intent.

Subpart 219.7—Subcontracting with Small Business and Small Disadvantaged Business Concerns

219.702 Statutory requirements.

(a) Section 834 of Public Law 101-189 requires the DoD to establish a test program to determine whether comprehensive subcontracting plans on a corporate, division, or plant-wide basis will increase subcontracting opportunities for small business concerns.

(i) The test program—

(A) Will be conducted—

(*1*) Over a three year period, beginning October 1, 1990;

(*2*) In accordance with the DoD test plan, "Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans;" and

(*3*) By the military departments and agencies through specifically designated contracting activities; and

(B) Permits contractors selected by the designated contracting activities to—

(*1*) Negotiate plant, division, or company-wide comprehensive subcontracting plans instead of individual contract subcontracting plans; and

(*2*) Use the comprehensive plans in all DoD contracts which require a subcontracting plan.

(ii) The comprehensive subcontracting plans will—

(A) Be negotiated on an annual basis by the designated contracting activities;

(B) Be incorporated by the contractors' cognizant contract administration activity into all of the contractors' active DoD contracts which require a plan;

(C) Be used by all DoD contracting officers in contracts, which require a plan, awarded the selected contractors during the test period; and

(D) Not be subject to application of liquidated damages during the period of the test program (section 402, Pub. L. 101-574).

219.703 Eligibility requirements for participating in the program.

(a)(2)(A) To be eligible as an SDB subcontractor, a concern must meet the definition in the provision at 252.219-7000, Small Disadvantaged Business

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(*2*) Use the comprehensive plans in all DoD contracts which require a subcontracting plan.

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(A) Be negotiated on an annual basis by the designated contracting activities;

(B) Be incorporated by the contractors' cognizant contract administration activity into all of the contractors' active DoD contracts which require a plan;

(C) Be used by all DoD contracting officers in contracts, which require a plan, awarded the selected contractors during the test period; and

(D) Not be subject to application of liquidated damages during the period of the test program (section 402, Pub. L. 101–574).

219.703 Eligibility requirements for participating in the program.

(a)(2)(A) To be eligible as an SDB subcontractor, a concern must meet the definition in the provision at 252.219–7000, Small Disadvantaged Business

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Concern Representation (DoD Contracts).

(B) To be eligible as a historically black college or university or minority institution subcontractor, such entity must meet the definition in the clause at 252.219–7003, Small Business and Small Disadvantaged Business Subcontracting Plan (DoD Contracts).

(b) A contractor may also rely on the written representation of a historically black college or university or minority institution as to its status.

219.704 Subcontracting plan requirements.

(a)(1) The goal for use of small disadvantaged business concerns shall include subcontracts with historically black colleges and universities and minority institutions (see 226.70), in addition to subcontracts with small disadvantaged business concerns. Subcontracts with historically black colleges and universities and minority institutions do not have to be included in the small disadvantaged business goal in commercial products subcontracting plans.

219.705 Responsibilities of the contracting officer under the subcontracting assistance program.

219.705–2 Determining the need for a subcontracting plan.

(d) The extent to which offerors identify and commit to small disadvantaged business, historically black college and university, or minority institution performance of the contract, whether as joint venture, teaming arrangement, or subcontractor, shall be an evaluation factor in source selection for major systems acquisitions and other complex or sensitive acquisitions which use formal or alternative source selection procedures.

219.705–4 Reviewing the subcontracting plan.

(d) Challenge any subcontracting plan that does not contain positive goals and consider the extent to which an offeror plans to use competition restricted to small disadvantaged business concerns, historically black colleges and universities, or minority institutions. A small disadvantaged business goal of less than five percent must be approved two levels above the contracting officer.

219.706 Responsibilities of the cognizant administrative contracting officer.

(a)(i) The contract administration office also is responsible for reviewing, evaluating, and approving master subcontracting plans.

(ii) The small business specialist supports the administrative contracting officer in evaluating a contractor's performance and compliance with its subcontracting plan.

219.708 Solicitation provisions and contract clauses.

(b)(1)(A) Use the clause at 252.219–7003, Small Business and Small Disadvantaged Business Subcontracting Plan (DoD Contracts), in solicitations and contracts that contain the clause at FAR 52.219–9, Small Business and Small Disadvantaged Business Subcontracting Plan.

(B) In contracts with contractors which have comprehensive subcontracting plans approved under the test program described in 219.702(a), use the clause at 252.219–7004, Small Business and Small Disadvantaged Business Subcontracting Plan (Test Program), instead of the clauses at 252.219–7003, Small Business and Small Disadvantaged Business Subcontracting Plan (DoD Contracts), and FAR 52.219–9, Small Business and Small Disadvantaged Business Subcontracting Plan.

(2) In contracts with contractors which have comprehensive subcontracting plans approved under the test program described in 219.702(a), do not use the clause at FAR 52.219–16, Liquidated Damages—Small Business Subcontracting Plan.

(c)(1) Do not use the clause at FAR 52.219–10, Incentive Subcontracting Program for Small and Small Disadvantaged Business Concerns.

(A) When contracting by negotiation, use the clause at 252.219–7005, Incentive for Subcontracting with Small Businesses, Small Disadvantaged Businesses, Historically Black Colleges and Universities, and Minority Institutions, in all solicitations and contracts that contain the clause at FAR 52.219–9, Small Business and Small Disadvantaged Business Subcontracting Plan.

(B) Use the clause at 252.219–7005 with its Alternate I when, in the judgement of the contracting officer, inclusion of an incentive is necessary to increase subcontracting opportunities for other small businesses.

(C) Determine the percentage to be negotiated and used in the clause by considering the type and extent of effort required to exceed the goal, for example—

(*1*) Unique outreach programs;

(*2*) Use of small disadvantaged businesses, historically black colleges and universities, and minority institutions in nontraditional areas;

(*3*) Technical assistance to qualify or assist these entities; and

(*4*) Proximity of subcontractors to the prime.

(D) Do not use the clauses at 252.219–7005 and FAR 52.219–10 in contracts with contractors which have comprehensive subcontracting plans approved under the test program described in 219.702(a).

(c)(2) For negotiated acquisitions of $10 million or more, the contracting officer may use an award fee provision instead of the incentive provision required by (c)(1)(A). When an award fee provision is used, do not use the clauses at 252.219–7005, Incentive for Subcontracting with Small Businesses, Small Disadvantaged Businesses, Historically Black Colleges and Universities, and Minority Institutions, and FAR 52.219–10, Incentive Subcontracting Program for Small and Small Disadvantaged Business Concerns. Do not use award fee provisions in contracts with contractors which have comprehensive subcontracting plans approved under the test program described in 219.702(a).

Subpart 219.8—Contracting With the Small Business Administration (The 8(a) Program)

219.803 Selecting acquisitions for the 8(a) Program.

(b) Contracting activities should respond to SBA requests for contract support within 30 calendar days after receipt.

(c) Before considering the set-aside order of precedence in 219.504(b), review the acquisition for offering under the 8(a) Program.

219.804 Evaluation, offering, and acceptance.

219.804–1 Agency evaluation.

When SBA asks for a requirement for the 8(a) Program, offer the requirement if appropriate, and do not use the small disadvantaged business set-aside procedure. If an acquisition, other than a repetitive acquisition (as described in FAR 19.804–4), was synopsized using either of the notices in 205.207(d) (i) or (ii) before receipt of the SBA request, the request does not have to be honored.

(f) The 8(a) firms should be offered the opportunity to give a technical presentation.

Subpart 219.10—Small Business Competitiveness Demonstration Program

219.1005 Applicability.

(a) Dredging (SIC 1629, FPDS Y216–Z216) applies only to the Army Corps of Engineers.

(b) The targeted industry categories for DoD are:

Standard industrial classification (SIC)	SIC Code
(1) Pharmaceutical preparations	2834
(2) Ammunition, except for small arms	3483
(3) Ordnance and accessories, not elsewhere classified	3489
(4) Turbines and turbine generator sets	3511
(5) Aircraft engines and engine parts	3724
(6) Guided missiles and space vehicles	3761
(7) Space vehicle equipment, NEC	3769
(8) Tanks and tank components	3795
(9) Search and navigation equipment	3812
(10) Communication services, NEC	4899

219.1006 Procedures.

(b)(1) During the period when small business set-asides cannot be considered for acquisitions in the four designated industry groups—

(A) The 219.502-2(a) requirements for setting aside acquisitions are waived;

(B) The restrictions at 219.502-2-70(b) (1), (2), and (3) do not apply and the acquisitions shall be considered for small disadvantaged business set-asides; and

(C) The evaluation preference at 219.70 shall not be used.

(2) The Office of the Secretary of Defense (OSD) will decide whether to reinstate small business set-asides and will advise the departments and defense agencies. Military departments and defense agencies shall not reinstate small business set-asides unless directed by the OSD.

(d) Reporting requirements are at 204.670-9.

219.1007 Solicitation provisions.

Do not use the clause at 252.219-7003, Notice of Evaluation Preference for Small Disadvantaged Business Concerns, in solicitations or contracts for the four designated industry groups.

Subpart 219.70—Evaluation Preference for Small Disadvantaged Business (SDB) Concerns

219.7000 Policy.

Offers from small disadvantaged business concerns shall be given an evaluation preference in accordance with this subpart.

219.7001 Applicability.

(a) The evaluation preference shall be used in competitive acquisitions where award is based on price and price related factors. The preference may be used at the discretion of the source selection authority in other competitive acquisitions.

(b) Do not use the evaluation preference in acquisitions which—

(1) Use small purchase procedures;

(2) Are set-aside for small disadvantaged businesses;

(3) Are set-aside for small businesses; or

(4) Are for commissary or exchange resale.

219.7002 Procedures.

(a) Give offers from small disadvantaged business concerns a preference in evaluation by adding a factor of ten percent to the price of all offers, except—

(1) Offers from small disadvantaged business concerns, which have not waived the evaluation preference;

(2) Offers from historically black colleges and universities or minority institutions, which have not waived the evaluation preference;

(3) Otherwise successful offers of—

(i) Eligible products under the Trade Agreements Act when the acquisition equals or exceeds the dollar threshold in FAR 25.402; or

(ii) Qualifying country end products (see the definition in 225.101); and

(4) Offers where application of the factor would be inconsistent with a Memorandum of Understanding or other international agreement with a foreign government.

(b) Apply the factor on a line item by line item basis or apply it to any group of items on which award may be made. Add other evaluation factors such as transportation costs or rent-free use of Government facilities to the offers before applying the ten percent factor.

(c) Do not evaluate offers using the preference when it would cause award to be made at a price which exceeds fair market price by more than ten percent.

(d) In partial small business set-asides, use the evaluation preference procedures set forth in the clause at 252.219-7001, Notice of Partial Small Business Set-Aside with Preferential Consideration for Small Disadvantaged Business Concerns, instead of the procedures in paragraphs (a) through (c) of this section.

219.7003 Solicitation provisions and contract clauses.

Use the clause at 252.219-7006, Notice of Evaluation Preference for Small Disadvantaged Business Concerns, in solicitations and contracts involving the evaluation preference, except those which include the clause at 252.219-7001, Notice of Partial Small Business Set-Aside with Preferential Consideration for Small Disadvantaged Business Concerns.. Use the clause with its Alternate I when the contracting officer determines that there are no small disadvantaged business manufacturers that can meet the requirements of the solicitation.

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Sec.
222.001 Definition.

Subpart 222.1—Basic Labor Policies

222.101 Labor relations.
222.101-1 General.
222.101-3 Reporting labor disputes.
222.101-3-70 Impact of labor disputes on defense programs.
222.101-4 Removal of items from contractors' facilities affected by work stoppages.
222.101-70 Acquisition of stevedoring services during labor disputes.
222.102 Federal and State labor requirements.
222.102-1 Policy.
222.103 Overtime.
222.103-4 Approvals.

Subpart 222.3—Contract Work Hours and Safety Standards Act

222.302 Liquidated damages and overtime pay.

Subpart 222.4—Labor Standards for Contracts Involving Construction

222.402 Applicability.
222.402-70 Installation support contracts.
222.403 Statutory and regulatory requirements.
222.403-4 Department of Labor regulations.
222.404 Davis-Bacon Act wage determinations.
222.404-2 General requirements.
222.404-3 Procedures for requesting wage determinations.
222.404-11 Wage determination appeals.
222.406 Administration and enforcement.
222.406-1 Policy.
222.406-6 Payrolls and statements.
222.406-8 Investigations.
222.406-9 Withholding from or suspension of contract payments.
222.406-10 Disposition of disputes concerning construction contract labor standards enforcement.
222.406-13 Semiannual enforcement reports.
222.407 Contract clauses.

Subpart 222.6—Walsh-Healey Public Contracts Act

222.604 Exemptions.
222.604-2 Regulatory exemptions.
222.608 Procedures.
222.608-4 Award pending final determination.

Subpart 222.8—Equal Employment Opportunity

222.804 Affirmative action programs.
222.804-2 Construction.
222.805 Procedures.
222.806 Inquiries.
222.807 Exemptions.

Subpart 222.10—Service Contract Act of 1965, as Amended

222.1003 Applicability.

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PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Sec.
222.001 Definition.

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Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

222.001 Definition.

Labor advisor, as used in this part, means the departmental or agency headquarters labor advisor.

Subpart 222.1—Basic Labor Policies

222,101 Labor relations.

222.101-1 General.

(a) Contracting offices shall—

(i) Obtain departmental approval before contacting a national office of a labor organization, a Government agency headquarters, or any other organization on a labor relations matter;

(ii) Notify departmental headquarters as required in departmental procedures when contacted by the national office of any labor organization or Government agency headquarters;

(iii) Obtain the approval of the agency head on major policy decisions regarding labor relations matters such as recommendations for plant seizure or injunctive action relating to potential or actual work stoppages; and

(iv) Submit questions involving FAR part 22 or other contractor labor relations matters to the labor advisor.

222.101-3 Reporting labor disputes.

The contract administration office shall—

(1) Notify the labor advisor, the contracting officer, and the head of the contracting activity when interference is likely;

(2) Disseminate information on labor disputes in accordance with departmental procedures; and

(3) File an initial labor dispute report using DD Form 1507, Work Stoppage Report, when a work stoppage is imminent or when a work stoppage occurs. File a follow-up report when a significant change occurs in the dispute. This reporting requirement is assigned RCS DD I&L (AR) 1153.

222.101-3-70 Impact of labor disputes on defense programs.

(a) Each department and agency shall determine the degree of impact of potential or actual labor disputes on its own programs and requirements. In making these determinations, consider, for example—

(1) Whether the dispute involves a product, project (including construction), or service which must be obtained in order to meet schedules for urgently needed military programs or requirements; and

(2) Whether alternative sources of supply for the product, project, or service are reasonably available to fulfill the requirement or program in time to maintain essential military schedules.

(b) Each contracting activity involved shall obtain and develop data reflecting the impact of a labor dispute on its requirements and programs. Upon determining the impact, the head of the contracting activity shall submit a report of findings and recommendations to the labor advisor. The report must be in narrative form and include—

(1) Location of dispute and name of contractor or subcontractor involved;

(2) A description of the impact, including how the specific items or services affect the specific programs or requirements;

(3) Identity of alternate sources available to furnish the supply or service within the time required; and

(4) A description of any action taken to reduce the impact.

(c) The head of the contracting activity shall submit impact reports to the agency head when—

(1) Specifically requested; or

(2) The department or agency considers the impact to be of sufficient urgency to warrant the attention of the agency head.

(d) The labor advisor will expand the report submitted under paragraph (c) of this subsection by addressing the following, as appropriate—

(1) *Description of military program, project, or service.* Identify item, project, or service which will be or is being affected by the work stoppage. Describe its normal use and current functions in combat, combat support, or deterrent operations. For components or raw materials, identify the end item(s) for which they are used.

(2) *Requirements and assets.* Identify requirements and assets in appropriate detail in terms commonly used by the DoD component.

(i) For production programs, include requirements for each using military service. Where applicable, state in detail production schedule, inventory objectives, assets against these objectives, and critical shortages. For spares and highly expendable items, such as ground and air ammunition, show usage (consumption) rates and assets in absolute terms and in terms of daily, weekly, or monthly supplies. For components, include requirements for spares.

(ii) For projects, describe the potential adverse effects of a delay in meeting schedules, and its impact on the national security.

(iii) For services, describe how a loss or interruption affects the ability to support Defense operations in terms of traffic requirements, assets, testing programs, etc.

(3) *Possible measures to minimize strike impact.* Describe—

(i) Capabilities, if any, to substitute items or to use alternate sources and indicate the number of other facilities available and the relative capabilities of such facilities in meeting total requirements;

(ii) How much time would be required to replace the loss of the facilities or service affected by a work stoppage; and

(iii) The feasibility of transferring assets from theater to theater to relieve deficits in some areas of urgency.

(4) *Conclusion.* (i) Describe the impact on operations of a 15–30, 30–60, and a 60–90 day work stoppage.

(ii) Project the degree of criticality of a program, project, or service resulting from a work stoppage on a calendar basis, indicating the increased impact, if any, as the stoppage lengthens. Criticality is measured by the number of days required for the work stoppage to have an effect on operational capability. This time must be stated in terms of days.

222.101-4 Removal of items from contractors' facilities affected by work stoppages.

(a) When a contractor is unable to deliver urgent and critical items because of a work stoppage at its facility, the contracting officer, before removing any items from the facility, shall—

(i) Before initiating any action, contact the labor advisor to obtain the opinion of the national office of the Federal

Mediation and Conciliation Service or other mediation agency regarding the effect movement of the items would have on labor negotiations. Normally removals will not be made if they will adversely affect labor negotiations.

(ii) Upon the recommendation of the labor advisor, provide a written request for removal of the material to the cognizant contract administration office. Include the following information in the request—

(A) Contract number;

(B) A statement as to the urgency and criticality of the item needed;

(C) A description of the items to be moved (nature of the item, amount, approximate weight and cubic feet, item number, etc.);

(D) Mode of transportation by which the items are to be moved, if different than in the contract, and whether by Government or commercial bill of lading; and

(E) Destination of the material, if different from that specified in the contract.

(iii) With the assistance of the labor advisor or the commander of the contract administration office, attempt to have both the management and the labor representatives involved agree to shipment of the material by normal means.

(iv) If agreement for removal of the needed items cannot be reached following the procedures in paragraphs (a) (i) through (iii) of this subsection, the commander of the contract administration office, after obtaining approval from the labor advisor, may seek the concurrence of the parties to the dispute to permit movement of the material by military vehicles with military personnel. On receipt of such concurrences, the commander may proceed to make necessary arrangements to move the material.

(v) If agreement for removal of the needed items cannot be reached following any of the procedures in paragraphs (a) (i) through (iv) of this subsection, refer the matter to the labor advisor with the information required by 222.101-3-70(b). If the labor advisor is unsuccessful in obtaining concurrence of the parties for the movement of the material and further action to obtain the material is deemed necessary, refer the matter to the agency head. Upon review and verification that the items are urgently or critically needed and cannot be moved with the consent of the parties, the agency head, on a nondelegable basis, may order removal of the items from the facility.

222.101-70 Acquisition of stevedoring services during labor disputes.

(a) Use the following procedures only in the order listed when a labor dispute delays performance of a contract for stevedoring services which are urgently needed.

(1) Attempt to have management and labor voluntarily agree to exempt military supplies from the labor dispute by continuing the movement of such material.

(2) Divert vessels to alternate ports able to provide necessary stevedoring services.

(3) Consider contracting with reliable alternative sources of supply within the stevedoring industry.

(4) Utilize civil service stevedores to perform the work performed by contract stevedores.

(5) Utilize military personnel to handle the cargo which was being handled by contract stevedores prior to the labor dispute.

(b) Notify the labor advisor when a deviation from the procedures in paragraph (a) of this subsection is required.

222.102 Federal and State labor requirements.

222.102-1 Policy.

(1) The Department of Labor is responsible for the administration and enforcement of the Occupational Safety and Health Act (OSHA) . Contracting officers shall—

(i) Direct all inquiries from contractors or contractor employees regarding the applicability or interpretation of the OSHA regulations to the Department of Labor; and

(ii) Upon request, provide the address of the appropriate field office of the Occupational Safety and Health Administration of the Department of Labor.

(2) Do not initiate any application for the suspension or relaxation of labor requirements without prior coordination with the labor advisor.

222.103 Overtime.

222.103-4 Approvals.

(a) The department/agency approving official shall—

(i) Obtain the concurrence of other appropriate approving officials; and

(ii) Seek agreement as to the contracts under which overtime premiums will be approved when—

(A) Two or more contracting offices have current contracts at the same contractor facility; and

(B) The approval of overtime by one contracting office will affect the performance or cost of contracts of another office. In the absence of evidence to the contrary, a contracting officer may rely on a contractor's statement that approval of overtime premium pay for one contract will not affect performance or payments under any other contract.

Subpart 222.3—Contract Work Hours and Safety Standards Act

222.302 Liquidated damages and overtime pay.

Upon receipt of notification of Contract Work Hours and Safety Standards Act violations, the contracting officer shall—

(1) Immediately withhold such funds as are available;

(2) Give the contractor written notification of the withholding and a statement of the basis for the liquidated damages assessment. The written notification shall also inform the contractor of its 60 days right to appeal the assessment, through the contracting officer, to the agency official responsible for acting on such appeals; and

(3) If funds available for withholding are insufficient to cover liquidated damages, ask the contractor to pay voluntarily such funds as are necessary to cover the total liquidated damage assessment.

(d)(i) The assessment shall become the final administrative determination of contractor liability for liquidated damages when—

(A) The contractor fails to appeal to the contracting agency within 60 days from the date of the withholding of funds;

(B) The department agency, following the contractor's appeals, issues a final order which affirms the assessment of liquidated damages or waives damages of $500 or less; or

(C) The Secretary of Labor takes final action on a recommendation of the agency head to waive or adjust liquidated damages in excess of $500.

(ii) Upon final administrative determination of the contractor's liability for liquidated damages, the contracting officer shall transmit withheld or collected funds determined to be owed the Government as liquidated damages to the servicing finance and accounting officer for crediting to the appropriate Government Treasury account. The contracting officer shall return any excess withheld funds to the contractor.

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(C) The Secretary of Labor takes final action on a recommendation of the agency head to waive or adjust liquidated damages in excess of $500.

(ii) Upon final administrative determination of the contractor's liability for liquidated damages, the contracting officer shall transmit withheld or collected funds determined to be owed the Government as liquidated damages to the servicing finance and accounting officer for crediting to the appropriate Government Treasury account. The contracting officer shall return any excess withheld funds to the contractor.

Subpart 222.4—Labor Standards for Contracts Involving Construction

222.402 Applicability.

222.402-70 Installation support contracts.

(a) Apply both the Service Contract Act (SCA) and the Davis-Bacon Act (DBA) to installation support contracts if—

(1) The contract is principally for services but also requires a substantial and segregable amount of construction, alteration, renovation, painting, or repair work; and

(2) The aggregate dollar value of such construction work exceeds or is expected to exceed $2,000.

(b) SCA coverage under the contract. Contract installation support requirements, such as plant operation and installation services (i.e., custodial, snow removal, etc.) are subject to the SCA. Apply SCA clauses and minimum wage and fringe benefit requirements to all contract service calls or orders for such maintenance and support work.

(c) DBA coverage under the contract. Contract construction, alteration, renovation, painting, and repair requirements (i.e., roof shingling, building structural repair, paving repairs, etc.) are subject to the DBA. Apply DBA clauses and minimum wage requirements to all contract service calls or orders for construction, alteration, renovation, painting, or repairs to buildings or other works.

(d) Repairs versus maintenance. Some contract work may be characterized as either DBA painting/repairs or SCA maintenance. For example, replacing broken windows, spot painting, or minor patching of a wall could be covered by either the DBA or the SCA. In those instances where a contract service call or order requires construction trade skills (i.e., carpenter, plumber, painter, etc.), but it is unclear whether the work required is SCA maintenance or DBA painting/repairs, apply the following rules—

(1) Individual service calls or orders which will require a total of 32 or more work-hours to perform shall be considered to be repair work subject to the DBA.

(2) Individual service calls or orders which will require less than 32 work-hours to perform shall be considered to be maintenance subject to the SCA.

(3) Painting work of 200 square feet or more to be performed under an individual service call or order shall be considered to be subject to the DBA regardless of the total work-hours required.

(e) The determination of labor standards application shall be made at the time the solicitation is prepared in those cases where requirements can be identified. Otherwise, the determination shall be made at the time the service call or order is placed against the contract. The service call or order shall identify the labor standards law and contract wage determination which will apply to the work required.

(f) Contracting officers may not avoid application of the DBA by splitting individual tasks between orders or contracts.

222.403 Statutory and regulatory requirements.

222.403-4 Department of Labor regulations.

Direct all questions regarding Department of Labor regulations to the labor advisor.

222.404 Davis-Bacon Act wage determinations.

Not later than April 1 of each year, each department and agency shall furnish the Administrator, Wage and Hour Division, with a general outline of its proposed construction program for the coming fiscal year. The Department of Labor uses this information to determine where general wage determination surveys will be conducted.

(1) Indicate by individual project of $500,000 or more—

(i) The anticipated type of construction;

(ii) The estimated dollar value; and

(iii) The location in which the work is to be performed (city, town, village, county, or other civil subdivision of the state).

(2) The report format is contained in Department of Labor All Agency Memo 144, December 27, 1985.

(3) The report control number is 1671–DOL–AN.

222.404-2 General requirements.

(c)(5) Information concerning the proper application of wage rate schedules to the type or types of construction involved shall be obtained from the appropriate district commander, Corps of Engineers, for the Army; from the cognizant Naval Facilities Engineering Command division for the Navy; from the appropriate Regional Industrial Relations Office for the Air Force; and from the appropriate Defense Contract Management District, ATTN: Industrial Labor Relations Office, for the Defense Logistics Agency.

222.404-3 Procedures for requesting wage determinations.

(b) *Requests for project wage determinations.* Submit requests for project wage determinations directly to the Department of Labor.

222.404-11 Wage determination appeals.

Send a copy of a petition for review filed by the contracting agency to the labor advisor.

222.406 Administration and enforcement.

222.406-1 Policy.

(a) *General.* The program shall also include—

(i) Training appropriate contract administration, labor relations, inspection, and other labor standards enforcement personnel in their responsibilities; and

(ii) Periodic review of field enforcement activities to ensure compliance with applicable regulations and instructions.

(b) *Preconstruction letters and conferences.* (1) Promptly after award of the contract, the contracting officer shall provide a preconstruction letter to the prime contractor. This letter should accomplish the following, as appropriate—

(A) Indicate that the labor standards requirements contained in the contract are based on the following statutes and regulations—

(1) Davis-Bacon Act;

(2) Contract Work Hours and Safety Standards Act;

(3) Copeland (Anti-Kickback) Act;

(4) Parts 3 and 5 of the Secretary of Labor's Regulations (parts 3 and 5, subtitle A, title 29, CFR); and

(5) Executive Order 11246 (Equal Employment Opportunity);

(B) Call attention to the labor standards requirements in the contract which relate to—

(1) Employment of foremen, laborers, mechanics, and others;

(2) Wages and fringe benefits payments, payrolls, and statements;

(3) Differentiation between subcontractors and suppliers;

(4) Additional classifications;

(5) Benefits to be realized by contractors and subcontractors in keeping complete work records;

(6) Penalties and sanctions for violations of the labor standards provisions; and

(7) The applicable provisions of FAR 22.403; and

(C) Ensure that the contractor sends a copy of the preconstruction letter to each subcontractor.

(2) Before construction begins, the contracting officer shall confer with the

prime contractor and any subcontractor designated by the prime to emphasize their labor standards obligations under the contract when—

(A) The prime contractor has not performed previous Government contracts;

(B) The prime contractor experienced difficulty in complying with labor standards requirements on previous contracts; or

(C) It is necessary to determine whether the contractor and its subcontractors intend to pay any required fringe benefits in the manner specified in the wage determination or to elect a different method of payment. If the latter, inform the contractor of the requirements of FAR 22.406–2.

222.406–6 Payrolls and statements.

(a) *Submission.* Contractors who do not use Department of Labor Form WH 347 or its equivalent must submit a DD Form 879, Statement of Compliance, with each payroll report.

222.406–8 Investigations.

(a) The following guidance and procedures apply to investigations conducted by the contracting activity. (i) *Beginning of the investigation.* The investigator shall—

(A) Inform the contractor of the investigation in advance;

(B) Verify the exact legal name of the contractor, its address, and the names and titles of its principal officers;

(C) Outline the general scope of the investigation and that it includes examining pertinent records and interviewing employees; and

(D) Inform the contractor that the names of the employees to be interviewed will not be divulged to the contractor;

(E) When requested, provide a letter from the contracting officer verifying the investigator's authority.

(ii) *Conduct of the investigation*—(A) *Review of the contract.*

(1) Verify that all required labor standards and clauses and the wage determination are included in the contract.

(2) Review the following items in the contract file, if applicable—

(i) List of subcontractors;

(ii) Payroll statements for the contractor and subcontractors;

(iii) Approvals of additional classifications;

(iv) Data regarding apprentices and trainees as required by FAR 22.406–4;

(v) Daily inspector's report or other inspection reports;

(vi) Employee interview statements; and

(vii) SF 1413, Statement and Acknowledgement.

(B) *Interview of the complainant.* Interview the complainant except when this is impractical. The interview shall cover all aspects of the complaint to ensure that all pertinent information is obtained. Whenever an investigation does not include an interview of the complainant, explain such omission in the investigator's report.

(C) *Interview of employees and former employees. (1)* Interview a sufficient number of employees or former employees, who represent all classifications, to develop information regarding the method and amount of payments, deductions, hours worked, and the type of work performed.

(2) Interview employees at the job site if the interviews can be conducted privately and in such a manner so as to cause the least inconvenience to the employer and employees.

(3) Former employees may be interviewed elsewhere,

(*4*) Do not disclose to any employee any information, finding, recommendation, or conclusion relating to the investigation except to the extent necessary to obtain required information.

(*5*) Do not disclose any employee's statement to anyone, except a Government representative working on the case, without the employee's written permission.

(*6*) Obtain information by mail when personal interviews are impractical.

(*7*) Use SF 1445, Labor Standards Interview, for employee interviews.

(*8*) Request employees to sign their statements and to initial any changes.

(*9*) Provide an evaluation of each employee's credibility.

(D) *Interview of foremen.* Interview foremen to obtain information concerning the contractor's compliance with the labor standards provisions with respect to employees under the foreman's supervision and the correctness of the foreman's classification as a supervisory employee. All procedures established for the conduct of employee interviews, and the recording and use of information obtained, apply to foremen interviews.

(E) *Interview of the contractor.* (*1*) Interview the contractor whenever the investigation indicates the possibility of a violation.

(*2*) Inform the contractor that—

(*i*) The interview does not mean that a violation has been found or that a requirement for corrective action exists; and

(*ii*) The purpose of the interview is to obtain only such data as the contractor may desire to present in connection with the investigation.

(*3*) Do not disclose the identity of any individual who filed a complaint or was interviewed.

(F) *Review of contractor and subcontractor records.* (*1*) Review contractor and subcontractor records such as basic time cards, books, cancelled payroll checks, fringe benefits, and payment records. Compare them with submitted payrolls. When discrepancies are found, include pertinent excerpts or copies of the records in the investigation report with a statement of the discrepancy and any explanation the investigator obtains. When wages include contributions or anticipated costs for fringe payments requiring approval of the Secretary of Labor, examine the contractor records to ensure such approval has been obtained and that any requirements specified in the approval have been met. (See FAR 22.406–2(a)(3)).

(*2*) Review contractor's and subcontractor's weekly payrolls and payroll statements for completeness and accuracy regarding the following—

(*i*) Identification of employees, payroll amount, the contract, contractor, subcontractor, and payroll period;

(*ii*) Inclusion of only job classifications and wage rates specified in the contract specifications, or otherwise established for the contract or subcontract;

(*iii*) Computation of daily and weekly hours;

(*iv*) Computation of time-and-one half for work in excess of 40 hours per week in accordance with FAR 22.406–2(c);

(*v*) Gross weekly wages;

(*vi*) Deductions;

(*vii*) Computation of net weekly wages paid to each employee;

(*viii*) Ratio of helpers, apprentices, and trainees to laborers and mechanics;

(*ix*) Apprenticeship and trainee registration and ratios; and

(*x*) Computation of fringe benefits payments.

(*3*) Transcribe the contractor's records whenever they contain information at variance with payrolls or other submitted documents.

(*i*) Make the transcriptions in sufficient detail to permit them to be used to check computations of restitution and to determine amounts to be withheld from the contractor.

(*ii*) Follow the form used by the contractor.

(*iii*) Place comments or explanations concerning the transcriptions on separate memoranda or in the narrative report.

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(*i*) Identification of employees, payroll amount, the contract, contractor, subcontractor, and payroll period;

(*ii*) Inclusion of only job classifications and wage rates specified in the contract specifications, or otherwise established for the contract or subcontract;

(*iii*) Computation of daily and weekly hours;

(*iv*) Computation of time-and-one half for work in excess of 40 hours per week in accordance with FAR 22.406–2(c);

(*v*) Gross weekly wages;

(*vi*) Deductions;

(*vii*) Computation of net weekly wages paid to each employee;

(*viii*) Ratio of helpers, apprentices, and trainees to laborers and mechanics;

(*ix*) Apprenticeship and trainee registration and ratios; and

(*x*) Computation of fringe benefits payments.

(*3*) Transcribe the contractor's records whenever they contain information at variance with payrolls or other submitted documents.

(*i*) Make the transcriptions in sufficient detail to permit them to be used to check computations of restitution and to determine amounts to be withheld from the contractor.

(*ii*) Follow the form used by the contractor.

(*iii*) Place comments or explanations concerning the transcriptions on separate memoranda or in the narrative report.

(*iv*) Determine whether the wage determination, any modifications of the determination, and any additional classifications are posted as required.

(iii) *Submission of the report of investigation.* The investigator shall submit a report of the investigation in accordance with agency procedures. Each report shall include at least the—

(A) Basis for the investigation, including the name of the complainant;

(B) Names and addresses of prime contractors and subcontractors involved, and names and titles of their principal officers;

(C) Contract number, date, dollar value of prime contract, and date and number of wage determination included in the contract;

(D) Description of the contract and subcontract work involved;

(E) Summary of the findings with respect to each of the items listed in 222.406–8(a)(ii);

(F) Concluding statement concerning—

(*1*) The types of violations, including the amount of kickbacks under the Copeland Act, underpayments of basic hourly rates and fringe benefits under the Davis-Bacon Act, or underpayments and liquidated damages under the Contract Work Hours and Safety Standards Act;

(*2*) Whether violations are considered to be willful or due to the negligence of the contractor or its agent;

(*3*) The amount of funds withheld from the contractor; and

(*4*) Other violations found.

(G) Exhibits indexed and appropriately tabbed, including copies of the following, when applicable—

(*1*) Complaint letter;

(*2*) Contract wage determination;

(*3*) Preconstruction letter and memorandum of preconstruction conference;

(*4*) Payrolls and statements indicating violations;

(*5*) Transcripts of pertinent records of the contractor, and approvals of fringe benefit payments;

(*6*) Employee interview statements;

(*7*) Foreman interview statements;

(*8*) Statements of others interviewed, including Government personnel;

(*9*) Detailed computations showing kickbacks, underpayments, and liquidated damages;

(*10*) Summary of all payments due to each employee or to a fund plan or program, and liquidated damages; and

(*11*) Receipts and cancelled checks.

(c) *Notification to the contractor.*

(4)(A) Notify the contractor by certified mail of any finding that it is liable for liquidated damages under the Contract Work Hours and Safety Standards Act (CWHSSA). The notification shall inform the contractor that—

(*1*) It has 60 days after receipt of the notice to appeal the assessment of liquidated damages; and

(*2*) The appeal must demonstrate either that the alleged violations did not occur at all, occurred inadvertently notwithstanding the exercise of due care, or the assessment was computed improperly.

(B) If an appeal is received, the contracting officer shall process the appeal in accordance with department or agency regulations.

(d) *Contracting officer's report.* (1) In accordance with agency procedures, the contracting officer shall forward a detailed enforcement report or summary report in duplicate. These reports shall include at least the following—

(A) SF 1446, Labor Standards Investigation Summary Sheet;

(B) Contracting officer's findings;

(C) Statement as to the disposition of any contractor rebuttal to the findings;

(D) Statement as to whether the contractor has accepted the findings and has paid any restitution or liquidated damages;

(E) Statement as to the disposition of funds available;

(F) Recommendations as to disposition or further handling of the case (when appropriate, include recommendations as to the reduction, waiver, or assessment of liquidated damages, whether the contractor should be debarred, and whether the file should be referred for possible criminal prosecution); and

(G) When applicable the following exhibits—

(*1*) Investigator's report;

(*2*) Copy of the contractor's written rebuttal or a summary of the contractor's oral rebuttal of the contracting officer's findings;

(*3*) Copies of correspondence between the contractor and contracting officer, including a statement of specific violations found, corrective action requested, and the contractor's letter of acceptance or rejection;

(*4*) Evidence of the contractor's payment of restitution or liquidated damages. (Copies of receipts, canceled checks, or supplemental payrolls); and

(*5*) Letter from the contractor requesting relief from the liquidated damage provisions of the CWHSSA.

222.406–9 Withholding from or suspension of contract payments.

(a) *Withholding from contract payments.* The contracting officer shall contact the labor advisor for assistance when payments due a contractor are not available to satisfy that contractor's liability for Davis-Bacon or CWHSSA wage underpayments or liquidated damages.

(c) *Disposition of contract payments withheld or suspended.*

(3) *Limitation on forwarding or returning funds.* When disposition of withheld funds remains the final action necessary to close out a contract, the Department of Labor has given blanket approval to forward withheld funds to the Comptroller General pending completion of an investigation or other administrative proceedings.

(4) *Liquidated damages.*

(A) The agency head may adjust liquidated damages of $500 or less when the amount assessed is incorrect or waive the assessment when the violations—

(*1*) Were nonwillful or inadvertent; and

(*2*) Occurred notwithstanding the exercise of due care by the contractor, its subcontractor, or their agents.

(B) The agency head may recommend to the Administrator, Wage and Hour Division, that the liquidated damages over $500 be adjusted because the amount assessed is incorrect. The agency head may also recommend the assessment be waived when the violations—

(*1*) Were nonwillful or inadvertent; and

(*2*) Occurred notwithstanding the exercise of due care by the contractor, the subcontractor, or their agents.

222.406–10 Disposition of disputes concerning construction contract labor standards enforcement.

(d) Forward the contracting officer's findings and the contractor's statement through the labor advisor.

222.406–13 Semiannual enforcement reports.

Forward these reports through the head of the contracting activity to the labor advisor within 15 days following the end of the reporting period. These reports shall not include information from investigations conducted by the Department of Labor. These reports shall contain the following information, as applicable, for construction work subject to the Davis-Bacon Act and the CWHSSA—

(1) Period covered;

(2) Number of prime contracts awarded;

(3) Total dollar amount of prime contracts awarded;

(4) Number of contractors/subcontractors against whom complaints were received;

(5) Number of investigations conducted;

(6) Number of contractors/subcontractors found in violation;

(7) Amount of wage restitution found due under—

(i) Davis-Bacon Act

(ii) CWHSSA;

(8) Number of employees due wage restitution under—

(i) Davis-Bacon Act

(ii) CWHSSA;

(9) Amount of liquidated damages assessed under the CWHSSA—

(i) Total amount

(ii) Number of contracts involved;

(10) Number of employees and amount paid/withheld under—

(i) Davis-Bacon Act

(ii) CWHSSA

(iii) Copeland Act; and

(11) Preconstruction activities—

(i) Number of compliance checks performed

(ii) Preconstruction letters sent.

222.407 Contract clauses.

In contracts with a State or political subdivision, use the contract clauses prescribed in FAR 22.407, but preface these clauses with the following—

> The Contractor agrees to comply with the requirements of the Contract Work Hours and Safety Standards Act and to insert the following clauses in all subcontracts under this contract with private persons or firms.

Subpart 222.6—Walsh-Healey Public Contracts Act

222.604 Exemptions.

222.604-2 Regulatory exemptions.

(c) Submit all applications for such exemptions through contracting channels to the labor advisor.

222.608 Procedures.

222.608-4 Award pending final determination.

(b)(1) The head of the contracting activity is the approval authority for the contracting officer's certification.

Subpart 222.8—Equal Employment Opportunity

222.804 Affirmative action programs.

222.804-2 Construction.

(b) Contracting officers forward requests for instructions directly to the servicing Office of Federal Contract Compliance Programs (OFCCP) regional office (see FAR 22.609).

222.805 Procedures.

(a)(2) See FAR 22.609 for a list of OFCCP regional offices.

222.806 Inquires.

(b) Refer inquiries through the labor advisor.

222.807 Exemptions.

(c) Submit the request for exemption with a justification through contracting channels to the labor advisor who will forward them to the agency head. If the request is submitted under FAR 22.807(a)(1), the agency head shall act on the request. If the exemption is granted, the agency head shall notify the Director, OFCCP of such action within 30 days. If the request is submitted under FAR 22.807(a)(2) or (b)(5), the agency head will forward it to the Director, OFCCP for action.

Subpart 222.10—Service Contract Act of 1965, as Amended

222.1003 Applicability.

222.1003-1 General.

For contracts having a substantial amount of construction, alteration, renovation, painting, or repair work, see 222.402-70.

222.1003-7 Questions concerning applicability of the Act.

Contracting officers may contact the labor advisor by telephone for informal advice. Submit requests for formal determinations as to the Act's applicability to the labor advisor in writing through appropriate channels.

222.1008 Procedures for preparing and submitting Notice (SF 98/98a).

222.1008-2 Preparation of SF 98a.

(b)(1) The contracting officer shall secure the assistance of cognizant customer/technical personnel to ensure maximum use of the Service Contract Act Directory of Occupations (Directory) and incorporation of all service employee classes (Directory and nondirectory) expected to be utilized.

(2)(A) When the statement of work job title, for which there is a Directory equivalent, differs from the Directory job title, make a written cross-reference either directly on the SF 98a file copy or on an attached sheet to the SF 98a file copy.

(B) Include and note as such any classifications and minimum hourly wage rates conformed under any predecessor contract. Where a previously conformed classification is not included in the Directory, attach the job description to the SF 98a.

222.1008-7 Required time of submission of notice.

(d) Submit requests for immediate wage determination responses for emergency acquisitions through the labor advisor. If the request is justified, the labor advisor will contact Department of Labor headquarters officials.

222.1014 Delay of acquisition dates over 60 days.

Send update requests in writing directly to the Wage and Hour Division and provide a copy to the labor advisor. The update request shall—

(1) State that one or more dates on the original notice have been delayed more than 60 days;

(2) List the new dates; and

(3) Include a copy of the original notice and SF 98a as enclosures.

Subpart 222.13—Special Disabled and Vietnam Era Veterans

222.1303 Waivers.

(c) The contracting officer shall submit a waiver request through contracting channels to the labor advisor. If the request is justified, the labor advisor will endorse the request and forward it for action to—

(i) The agency head for waivers under FAR 22.1303(a); or

(ii) The Secretary of Defense, without the power of redelegation, for waivers under FAR 22.1303(b).

222.1306 Complaint procedures.

The contracting officer shall—

(1) Forward each complaint received as indicated in FAR 22.1306; and

(2) Notify the complainant of the referral. The contractor in question shall not be advised in any manner or for any reason of the complainant's name, the nature of the complaint, or the fact that the complaint was received.

Subpart 222.14—Employment of the Handicapped

222.1403 Waivers.

(c) The contracting officer shall submit a waiver request through contracting channels to the labor advisor. If the request is justified, the labor advisor will endorse the request and forward it for action to—

(i) The agency head for waivers under FAR 22.1403(a). For the defense agencies, waivers must be approved by the Under Secretary of Defense for Acquisition.

(ii) The Secretary of Defense, without the power of redelegation, for waivers under FAR 22.1403(b).

222.1406 Complaint procedures.

The contracting officer shall—

(1) Forward each complaint received as indicated in FAR 22.1406 (see FAR

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(1) State that one or more dates on the original notice have been delayed more than 60 days;

(2) List the new dates; and

(3) Include a copy of the original notice and SF 98a as enclosures.

Subpart 222.13—Special Disabled and Vietnam Era Veterans

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(1) Forward each complaint received as indicated in FAR 22.1306; and

(2) Notify the complainant of the referral. The contractor in question shall not be advised in any manner or for any reason of the complainant's name, the nature of the complaint, or the fact that the complaint was received.

Subpart 222.14—Employment of the Handicapped

222.1403 Waivers.

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(i) The agency head for waivers under FAR 22.1403(a). For the defense agencies, waivers must be approved by the Under Secretary of Defense for Acquisition.

(ii) The Secretary of Defense, without the power of redelegation, for waivers under FAR 22.1403(b).

222.1406 Complaint procedures.

The contracting officer shall—

(1) Forward each complaint received as indicated in FAR 22.1406 (see FAR

22.609 for a listing of Department of Labor regional/area offices); and

(2) Notify the complainant of such referral. The contractor in question shall not be advised in any manner or for any reason of the complainant's name, the nature of the complaint, or the fact that the complaint was received.

Subpart 222.70—Restrictions on the Employment of Personnel for Work on Construction/Service Contracts in Alaska and Hawaii

222.7000 Scope of subpart.

(a) This subpart implements section 8078 of the 1986 Defense Appropriations Act, Public Law 99-190, section 8067 of Public Law 101-511, and similar sections in subsequent Defense Appropriations Acts.

(b) This subpart applies only—

(1) To construction and service contracts to be performed in whole or in part within the states of Alaska or Hawaii; and

(2) When the unemployment rate in the state is in excess of the national average rate of unemployment as determined by the Secretary of Labor.

222.7001 General.

A contractor awarded a contract subject to this subpart must employ for the purpose of performing that portion of the contract work within the state, individuals who are residents of that state, and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills to perform the contract.

222.7002 Waivers.

Waivers may be granted, in the interest of national security, at a level no lower than the Assistant Secretary of any department.

222.7003 Contract clause.

Use the clause at 252.222-7000, Restrictions on Employment of Personnel, in all solicitations and contracts subject to this subpart.

PART 223—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

Sec.

Subpart 223.1—Pollution Control and Clean Air and Water

223.104 Exemptions.

Subpart 223.3—Hazardous Material Identification and Material Safety Data

223.300 Scope of subpart.
223.301 Definition.
223.302 General.
223.303 Contract clause.
223.370 Safety precautions for ammunition and explosives.
223.370-1 Scope.
223.370-2 Definition.
223.370-3 Policy.
223.370-4 Procedures.
223.370-5 Contract clauses.
223.371 Radioactive material.
223.371-1 Policy.
223.371-2 Procedures.
223.371-3 Contract clause.

Subpart 223.5—Drug-Free Workplace

223.570 Drug-free work force.
223.570-1 Definitions.
223.570-2 Policy.
223.570-3 General.
223.570-4 Contract clause.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 223.1—Pollution Control and Clean Air and Water

223.104 Exemptions.

(c) The authority to act for the agency head under this subpart is limited to a level no lower than an official who is appointed by and with the advice of the Senate. For the defense agencies, this is the Under Secretary of Defense for Acquisition (USD(A)).

Subpart 223.3—Hazardous Material Identification and Material Safety Data

223.300 Scope of subpart.

DoD procedures for use in acquisitions involving ammunition and explosives are in 223.370.

223.301 Definition.

Hazardous material, as used in this subpart, is defined in the latest version of Federal Standard No. 313, "Federal Standard Material Safety Data, Transportation Data, and Disposal Data for Hazardous Materials Furnished to Government Activities."

223.302 General.

Executive Order 12196, dated February 26, 1980, applies the requirements of the Occupational Safety and Health Administration regulations, known as the Hazard Communication Standard, to Federal employees. In order to comply with these requirements, it is necessary to obtain information about the hazardous properties of items bought by the DoD and introduced into the workplace. This information is obtained from material safety data sheets, which manufacturers, importers, and distributors are required to furnish to end users.

(c) Upon receipt of the apparently successful offeror's material safety data sheets (MSDS) and hazard warning labels, the contracting officer shall provide a copy to the cognizant safety officer or other designated official, in order to—

(i) Ensure inclusion of the data in the agency's MSDS information system or label information system; and

(ii) Satisfy any other control, safety, or information objectives.

(3) Technical personnel must identify items that, in their professional opinion, will expose Government personnel to hazardous materials in any manner, e.g., work use, handling, manufacturing, packaging, storage, inspection, disposal, or any other use.

223.303 Contract clause.

DoD activities use the clause at 252.223-7000, Hazardous Material Identification and Material Safety Data, instead of the clause at FAR 52.223-3, Hazardous Material Identification and Material Safety Data. Use the clauses at 252.223-7000 and 252.223-7001, Hazard Warning Labels, in solicitations and contracts for the items described by FAR 23.302(c).

223.370 Safety precautions for ammunition and explosives.

223.370-1 Scope.

(a) This section applies to all acquisitions involving the use of ammunition and explosives, including acquisitions for—

(1) Development;
(2) Testing;
(3) Research;
(4) Manufacturing;
(5) Handling or loading;
(6) Assembling;
(7) Packaging;
(8) Storage;
(9) Transportation;
(10) Renovation;
(11) Demilitarization;
(12) Modification;
(13) Repair;
(14) Disposal;
(15) Inspection; or
(16) Any other use, including acquisitions requiring the use or the incorporation of materials listed in paragraph (b) of this subsection for initiation, propulsion, or detonation as an integral or component part of an explosive, an ammunition, or explosive end item or weapon system.

(b) This section does not apply to acquisitions solely for—

(1) Inert components containing no explosives, propellants, or pyrotechnics;
(2) Flammable liquids;
(3) Acids;
(4) Oxidizers;
(5) Powdered metals; or
(6) Other materials having fire or explosive characteristics.

223.370-2 Definition.

Ammunition and explosives, as used in this section, is defined in the clause at 252.223-7002, Safety Precautions for Ammunition and Explosives.

223.370-3 Policy.

(a) DoD policy is to ensure that its contractors take reasonable precautions in handling ammunition and explosives so as to minimize the potential for mishaps that could—

(1) Interrupt DoD operations;

(2) Delay project or product completion dates;

(3) Adversely impact DoD mission readiness, production base, or production capabilities;

(4) Damage or destroy DoD property; or

(5) Cause injury to DoD personnel.

(b) This policy is implemented by DoD Manual 4145.26-M, DoD Contractors' Safety Manual for Ammunition and Explosives, which is incorporated into contracts under which ammunition and explosives are handled. The manual contains mandatory safety requirements for contractors. When work is to be performed on a Government-owned installation, the contracting officer may use the ammunition and explosives regulation of the DoD component or installation as a substitute for, or supplement to, DoD Manual 4145.26-M, as long as the contract cites these regulations.

223.370-4 Procedures.

(a) *Preaward phase*—(1) *Waiver of the mandatory requirements.* (i) Before either omitting the clause at 252.223-7002, Safety Precautions for Ammunition and Explosives, from solicitations and contracts or waiving the mandatory requirements of the manual, obtain approval of—

(A) The safety personnel responsible for ammunition and explosives safety; and

(B) The head of the contracting activity.

(ii) If the contracting officer decides to waive the mandatory requirements before award, the contracting officer shall set forth in the solicitation, or in an amendment of the solicitation, the specific requirements to be waived.

(iii) If the head of the contracting activity declines to approve a request for waiver, but the prospective contractor agrees to take corrective action to bring the operation into compliance, make the corrective action a part of the resulting contract.

(2) *Transportation considerations*—If shipment of ammunition and explosives is involved in the contract, address in the schedule of the contract the applicable Department of Transportation or Military Traffic Management Command requirements and any other requirements for transportation, packaging, marking, and labeling.

(3) *Disposition of excess*—Include instructions within the contract concerning final disposition of excess Government furnished material containing ammunition and explosives, including defective or rejected supplies.

(4) *Preaward survey*—Before awarding any contract, including purchase orders, involving ammunition and explosives, obtain a preaward ammunition and explosives safety survey. If the prospective contractor proposes subcontracting any ammunitions or explosive work, include a review of the subcontractor's facility in the preaward survey.

(b) *Postaward phase*—(1) *Contract administration office responsibility*—(i) The contract administration office is responsible for verifying that the safety requirements of the clause at 252.223-7002, Safety Precautions for Ammunition and Explosives, are being implemented in a manner that will reduce, to the maximum extent practicable, or eliminate the probability of a mishap occurring.

(ii) The clause at 252.223-7002, Safety Precautions for Ammunition and Explosives, requires the contractor to submit to the administrative contracting officer (ACO) any postaward requests for a waiver of the contract safety standards, a site plan modification, or a construction review. The ACO shall review any request and make recommendations to the contracting officer. The contracting officer shall make a decision after following the procedures in paragraph (a)(1) of this subsection.

(A) If the request arrives at the contracting office without evidence that the ACO has seen it, immediately send it to the ACO for review and recommendations.

(B) When the contracting officer has made a determination approving or disapproving the contractor's request, send the determination to the ACO for transmission to the contractor.

(2) *Subcontracts*—(i) The clause at 252.223-7002, Safety Precautions for Ammunition and Explosives, requires the contractor to notify the contracting officer when placing a subcontract for ammunition and explosives. The contracting officer should coordinate with the safety personnel and request supporting contract administration in accordance with FAR 42.204. If the contracting officer believes the nature of the subcontract work poses a potential danger to Government property, Government personnel, production capability, or contract completion, request supporting contract administration.

(ii) If the preaward safety survey identified areas in which a subcontractor was not complying with the manual, and the subcontractor was supposed to correct the deficiencies before start-up, the contracting officer shall require a preoperations survey to verify that the corrections were made.

(iii) When postaward safety reviews by the Government uncover any safety deficiencies in the subcontractor's operation, the review team shall inform the ACO cognizant of the subcontractor, who shall immediately notify the ACO cognizant of the prime contractor. The ACO cognizant of the prime shall inform the prime contractor of deficiencies requiring correction. The notifications shall be made by the most expeditious means appropriate to the circumstance. If a critical safety deficiency poses an imminent danger, the ACO cognizant of the prime shall make the notifications by the most expeditious means available.

223.370-5 Contract clauses.

Use the clauses at 252.223-7002, Safety Precautions for Ammunition and Explosives, and 252.223-7003, Change in Place of Performance—Ammunition and Explosives, in all solicitations and contracts for acquisition to which this section applies.

223.371 Radioactive material.

223.371-1 Policy.

DoD policy is to require contractors shipping radioactive material to give notice sufficiently in advance of shipment so that receiving activities can take proper health and safety precautions and obtain all legally required licenses.

223.371-2 Procedures.

(a) *Notice of delivery.* (1) The contracting officer shall require contractors supplying radioactive material to notify the contracting officer before delivery.

(2) Upon receipt of contract notification of the impending delivery of radioactive materials, the contracting officer shall notify the receiving activities so that appropriate safeguards can be taken.

(b) *Wavier of notice.* The contracting officer may waive the notification required of the contractor if—

(1) The contractor certifies that a notification on prior deliveries is still accurate; and

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danger to Government property, Government personnel, production capability, or contract completion, request supporting contract administration.

(ii) If the preaward safety survey identified areas in which a subcontractor was not complying with the manual, and the subcontractor was supposed to correct the deficiencies before start-up, the contracting officer shall require a preoperations survey to verify that the corrections were made.

(iii) When postaward safety reviews by the Government uncover any safety deficiencies in the subcontractor's operation, the review team shall inform the ACO cognizant of the subcontractor, who shall immediately notify the ACO cognizant of the prime contractor. The ACO cognizant of the prime shall inform the prime contractor of deficiencies requiring correction. The notifications shall be made by the most expeditious means appropriate to the circumstance. If a critical safety deficiency poses an imminent danger, the ACO cognizant of the prime shall make the notifications by the most expeditious means available.

223.370-5 Contract clauses.

Use the clauses at 252.223–7002, Safety Precautions for Ammunition and Explosives, and 252.223–7003, Change in Place of Performance—Ammunition and Explosives, in all solicitations and contracts for acquisition to which this section applies.

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223.371-1 Policy.

DoD policy is to require contractors shipping radioactive material to give notice sufficiently in advance of shipment so that receiving activities can take proper health and safety precautions and obtain all legally required licenses.

223.371-2 Procedures.

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(2) Upon receipt of contract notification of the impending delivery of radioactive materials, the contracting officer shall notify the receiving activities so that appropriate safeguards can be taken.

(b) *Wavier of notice.* The contracting officer may waive the notification required of the contractor if—

(1) The contractor certifies that a notification on prior deliveries is still accurate; and

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(2) The cognizant technical representatives agree.

223.371-3 Contract clause.

(a) Use the clause at 252.223-7004, Notice of Radioactive Materials, in solicitations and contracts for supplies which are, or which contain—

(1) Radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954; or

(2) Radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram, or the activity per item equals or exceeds 0.01 microcuries.

(b) Such supplies include but are not limited to—

(1) Aircraft;

(2) Ammunition;

(3) Missiles;

(4) Vehicles;

(5) Electronic tubes;

(6) Instrument panel gauges;

(7) Compasses; and

(8) Identification markers.

(c) Insert in paragraph (a) of the clause at 252.223–7004, Notice of Radioactive Materials, the number of days in advance of delivery that the contractor must provide notification. Determine the number of days for the advance notice in coordination with the radiation protection officer, who will ensure that the proper license, authorization or permit is obtained before receipt of the radioactive material.

Subpart 223.5—Drug-Free Workplace

223.570 Drug-free work force.

223.570-1 Definitions.

Employee in a sensitive position and *illegal drugs*, as used in this section, are defined in the clause at 252.223–7005, Drug-Free Work Force.

223.570-2 Policy.

DoD policy is to ensure that its contractors maintain a program for achieving a drug-free work force.

223.570-3 General.

(a) The use of illegal drugs is inconsistent with the law-abiding behavior expected of all citizens. Employees who use illegal drugs tend to be less productive, less reliable, and prone to greater absenteeism. The use of illegal drugs by contractor employees results in the potential for increased cost, delay, and risk in the performance of a Government contract.

(b) If a contractor's employees use illegal drugs at any time, it can—

(1) Impair their ability to perform tasks that are critical to proper contract performance;

(2) Increase the potential for accidents and for failures that can pose a serious threat to the national security, health, and safety;

(3) Cause less than the complete reliability, stability, and good judgment required of an individual who has access to sensitive information;

(4) Create the possibility for coercion, influence, and irresponsible action under pressure that may pose a serious risk to national security, health, and safety.

223.570-4 Contract clause.

(a) Use the clause at 252.223-7005, Drug-Free Work Force, in all solicitations and contracts—

(1) That involve access to classified information; or

(2) When the contracting officer determines that the clause is necessary for reasons of national security or for the purpose of protecting the health or safety of those using or affected by the product of, or performance of, the contract.

(b) Do not use the clause in solicitations and contracts for—

(1) Commercial or commercial-type products (see FAR 11.001); or

(2) Performance or partial performance outside the U.S., its territories, and possessions, unless the contracting officer determines such inclusion to be in the best interest of the Government.

PART 224—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Sec.

Subpart 224.1—Protection of Individual Privacy

224.102 General.
224.103 Procedures.

Subpart 224.2—Freedom of Information Act

224.202 Policy.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 224.1—Protection of Individual Privacy

224.102 General.

The Act does not apply to—

(1) Systems of records the contractor maintains on its employees; or

(2) The records generated by a State or private educational organization under a contract with the Government to provide training, when the records (admission forms, grade reports) are similar to and commingled with those maintained on other students.

224.103 Procedures.

(b)(2) DoD rules and regulations are contained in DoDD 5400.11, Department of Defense Privacy Program, and DoD 5400.11-R, Department of Defense Privacy Program.

Subpart 224.2—Freedom of Information Act

224.202 Policy.

(a) DoD implementation is in DoDD 5400.7, DoD Freedom of Information Act Program, and DoD 5400.7-R, DoD Freedom of Information Act Program.

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225.7200 Scope of subpart.
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225.7308 Contract clauses.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

225.000 Scope of part.

This part also provides policy and procedures for—

(1) Purchasing foreign defense supplies, services, and construction materials;

(2) Foreign military sale acquisitions;

(3) Coordinating acquisitions involving work to be performed in foreign countries;

(4) Cooperative programs.

225.000–70 Definitions.

As used in this part—

(a) *Defense equipment* means any equipment, item of supply, component, or end product purchased by the DoD.

(b) *Domestic concern* means a concern incorporated in the United States or an unincorporated concern having its principal place of business in the United States.

(c) *Domestic end product* has the meaning given in the clause at 252.225–7001, Buy American Act and Balance of Payments Program, instead of the meaning in FAR 25.101.

(d) *Foreign concern* means any concern other than a domestic concern.

(e) *Nondesignated country end product* means any end product which is not a U.S. made end product or a designated country end product.

(f) *Nonqualifying country* means a country other than the United States or a qualifying country.

(g) *Nonqualifying country end product* means an end product which is neither a domestic nor qualifying country end product.

(h) *Nonqualifying country offer* means an offer of a nonqualifying country end product, including the price of transportation to destination.

(i) *Qualifying country* is a term used to describe certain countries with memoranda of understanding or international agreements with the United States. These countries are listed in 225.872–1.

(j) *Qualifying country component* and *qualifying country end product* are defined in the clause at 252.225–7001, Buy American Act and Balance of Payments Program.

(k) *Qualifying country offer* means an offer of a qualifying country end product, including the price of transportation to destination.

(l) *Source,* when restricted by such words as foreign, domestic, qualifying country, etc., refers to the actual manufacturer or producer of the end product or component.

(m) *U.S. made end product* is defined in the clause at 252.225–7007, Trade Agreements Act.

225.000–71 General guidelines.

To apply the policies and procedures of this part, analyze and evaluate offers of foreign end products generally as follows—

(a) *Statutory or policy restrictions.* (1) Determine whether the product is restricted by—

(i) DoD Authorization or Appropriations Acts (see subpart 225.70); or

(ii) DoD policy (see subpart 225.71 and FAR 6.302–3).

(2) Where an exception to or waiver of a restriction would result in award of a foreign end product, apply the policies and procedures of the Buy American Act or the Balance of Payments Program, and, if applicable, the Trade Agreements Act.

(b) *Memoranda of understanding or other international agreements.* (1) Determine whether the offered product is the product of one of the countries (qualifying country), listed in 225.872–1.

(2) If the product is the product of a qualifying country, evaluate the offer under 225.105 and 225.872–4.

(c) *Trade Agreements Act.* (1) Determine whether the product is covered by the Trade Agreements Act (see subpart 225.4).

(2) If the product is an eligible product under subpart 225.4, evaluate the offer under FAR 25.402 and 225.105.

(3) If the product is not an eligible product, a qualifying country end product, or a U.S. made end product, purchase of the foreign end product may be prohibited (see FAR 25.402(c) and 225.402(c)).

(d) *Contractors controlled by terrorist nations.* (1) Determine whether the contractor is controlled by a terrorist nation.

(2) If the contractor is controlled by a terrorist nation, comply with 209.104–1(g).

(e) *Buy American Act and Balance of Payments Program.* See the evaluation procedures in 225.105.

Subpart 225.1—Buy American Act—Supplies

225.102 Policy.

(a)(2) The cost of a domestic end product is unreasonable if it is not the low evaluated offer when evaluated under 225.105.

(3)(A) Specific public interest exceptions for DoD are in 225.105.

(B) Normally, use the evaluation procedures in 225.105, but consider recommending a public interest exception where the purposes of the Buy American Act are not served. For example, a public interest exception may be appropriate if—

(*1*) Accepting the low domestic offer will involve substantial foreign expenditures; or

(*2*) Accepting the low foreign offer will involve substantial domestic expenditures.

(C) A determination to grant a public interest exception under paragraph (a)(3)(B) of this section shall be made by the—

(*1*) Head of the contracting activity for acquisitions under $100,000; or

(*2*) Agency head for acquisitions of $100,000 or more.

(b)(i)A determination that an article, material, or supply is not reasonably available is required where no domestic offer is received or when domestic offers are insufficient to meet the requirement and award is to be made on a nonqualifying country end product.

(ii) The determination must be approved—

(A) At a level above the contracting officer, if the acquisition is estimated not to exceed $25,000;

(B) By the chief of the contracting office if the acquisition is estimated not to exceed $250,000;

(C) By the head of the contracting activity (HCA) or immediate deputy if the acquisition is estimated not to exceed $2 million; or

(D) By the head of the agency, or designee at a level no lower than an HCA, if the acquisition is estimated to exceed $2 million.

(iii) A determination as to whether an article, material, or supply is reasonably available is not required for—

(A) End products or components listed in 225.108(d)(1) or FAR 25.108(d)(1);

(B) Acquisitions for spare/replacement parts when the acquisition is restricted to the original manufacturer or supplier; or

(C) Acquisition of foreign drugs by the Defense Personnel Support Center when the Chief of the Technical Operations Division, Directorate of Medical Materiel, determines that only the requested foreign drug will fulfill the requirements.

(iv) Under coordinated acquisition (see 208.70), the determination is the responsibility of the requiring department when the requiring department specifies acquisition of a foreign end product.

225.103 Agreements with certain foreign governments.

See 225.872.

225.105 Evaluating offers.

Use the following procedures instead of those in FAR 25.105.

(1) Evaluate offers by adding a 50 percent factor to the price (including duty) of each nonqualifying country offer (see Example 1 in Table 25–1, Evaluation).

(i) Nonqualifying country offers include duty in the offered price. When applying the factor, evaluate based on the inclusion of duty, whether or not duty is to be exempted. If award is made on the nonqualifying country offer and duty is to be exempted through inclusion of the clause at FAR 52.225–10, Duty-Free Entry, award at the offered price minus the amount of duty identified in the provision at 252.225–7003, Information for Duty-Free Entry Evaluation. See Example 1, Alternate II, in Table 25–1, Evaluation.

(ii) When a nonqualifying country offer includes more than one line item, apply the 50 percent factor—

(A) On an item-by-item basis; or

(B) On a group of items, if the solicitation specifically provides for award on a group basis.

(2) When application of the factor would not result in the award of a domestic end product, e.g., when no domestic offers are received (see Example 3 of Table 25–1, Evaluation) or when a qualifying country offer is lower than the domestic offer (see Example 2 of Table 25–1, Evaluation), evaluate offers without the 50 percent factor.

(i) If duty is to be exempted through inclusion of the clause at FAR 52.225–10, Duty-Free Entry, evaluate the nonqualifying country offer exclusive of duty by reducing the offered price by the amount of duty identified in the clause at 252.225–7003, Information for Duty-Free Entry Evaluation (see Examples 2 and 3, Alternate II, of Table 25–1, Evaluation). If award is made on the nonqualifying country offer, award at the offered price minus duty.

(ii) If duty is not to be exempted and duty is to be paid by the Government, evaluate the nonqualifying country offer inclusive of duty. (See Examples 2 and 3, Alternate I, of Table 25–1, Evaluation.)

(3) Treat offers of eligible products under acquisitions subject to the Trade Agreements Act as if they were qualifying country offers. (See Example 4 of Table 25–1, Evaluation.)

(4) If these evaluation procedures result in a tie between a nonqualifying country offer and a domestic offer, make award on the domestic offer.

(5)(i) There are two tests that must be met to determine whether a manufactured item is a domestic end product—

(A) The end product must have been manufactured in the United States; and

(B) The cost of its U.S. and qualifying country components must exceed 50 percent of the cost of all of its components. This test is applied to end products only, and not to individual components.

(ii) Because of the component test, the definition of "domestic end product" is more restrictive than the definition for—

(A) "U.S. made end product" under the Trade Agreements Act;

(B) "Domestically produced or manufactured products" under small business set-asides or small business-small purchase set-asides; and

(C) Products of small businesses under FAR part 19.

(iii) If an offer is for a "U.S. made end product," "domestically produced end product," or the product of a small business, but is not a "domestic end product" as defined in the clause at 252.225–7001, Buy American Act and Balance of Payments Program, treat the offer as a nonqualifying country offer. (See Example 4 of Table 25–1, Evaluation.)

Table 25–1, Evaluation

Example 1

Alternate I: Duty Not Exempted for Nonqualifying Country Offers:
Nonqualifying Country Offer (including $100 duty)—$6,000
Domestic Offer—$8,900
Qualifying Country Offer—$9,100

Award on Domestic Offer. The 50% evaluation factor is added to the nonqualifying country offer, inclusive of duty, yielding an evaluated price of $9,000.

Alternate II: Duty Exempted:
Nonqualifying Country Offer (including $1,000 duty)—$600,000
Domestic Offer—$910,000
Qualifying Country Offer—$920,000

Award on Nonqualifying Country Offer. The addition of the evaluation factor yields an evaluated price of $900,000. Since duty is being exempted for nonqualifying country offers, the duty is subtracted from the offered price which is awarded at $599,000.

Example 2

Alternate I: Duty Not Exempted for Nonqualifying Country Offers:
Nonqualifying Country Offer (including $100 duty)—$6,000
Domestic Offer—$8,500
Qualifying Country Offer—$7,800

Award on Nonqualifying Country Offer. In this case, the application of the evaluation factor to the nonqualifying country offer results in a price ($9,000) that is higher than the other two offers, but would not result in award of a domestic offer, since the qualifying country offer is lower. Therefore, all offers are evaluated without the factor. Since duty is not being exempted for nonqualifying country offers, the offer is evaluated and award is made at the price inclusive of duty ($6,000).

Alternate II: Duty Exempted:
Nonqualifying Country Offer (including $1,000 duty)—$880,500
Domestic Offer—$950,000
Qualifying Country Offer—$880,000

Award on Nonqualifying Country Offer. Again, the addition of the evaluation factor would not result in the award of a domestic offer and all offers are evaluated without the factor. Since duty is being exempted for nonqualifying country offers, the duty identified by the offeror is subtracted from the offered price, which is evaluated and awarded at $879,500.

Example 3

Alternate I: Duty Not Exempted for Nonqualifying Country Offers:
Nonqualifying Country Offer (including $1,000 duty)—$10,000
Qualifying Country Offer—$9,500

Award on Qualifying Country Offer. Since no domestic offers are received, the foreign offers are evaluated without the evaluation factor. Since duty is not being exempted and would be paid by the Government, the nonqualifying country offer is evaluated inclusive of duty.

Alternate II: Duty Exempted:
Nonqualifying Country Offer (including $1,000 duty)—$880,500
Qualifying Country Offer—$880,000

Award on Nonqualifying Country Offer. Since duty is being exempted, duty is subtracted from the nonqualifying country offer, which is evaluated and awarded at $879,500.

Example 4

Alternate I:
Offer of U.S. Made End Product which is not a Domestic Offer—$800,000
Domestic Offer—$820,000
Eligible Product—$830,000

Award on Domestic End Product. U.S. made end products which are not also domestic end products are evaluated the same as nonqualifying country end products. Adding the 50% evaluation factor yields an evaluated price of $1,200,000.

Alternate II:
Offer of U.S. Made End Product which is not a Domestic Offer—$800,000
Eligible Product—$820,000
Domestic Offer—$830,000

Award on U.S. Made End Product. Adding the 50% evaluation factor to the U.S. made end product would not result in the award of a domestic end product since the eligible product, which is evaluated the same as a qualifying country offer, is lower. All offers are evaluated without the factor.

225.107 Acquisition from or through other Government agencies.

Contracting activities must apply the evaluation procedures in 225.105 when using Federal supply schedules.

225.108 Excepted articles, materials, and supplies.

(a)(i)DoD has determined that the articles, materials, and supplies listed in FAR 25.108(d)(1) and in paragraph (d)(1) of this section, when purchased as end items or components, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. Regard these items or components as being of domestic origin when incorporated in—

(A) An end product or construction material manufactured in the United States; or

(B) A qualifying country end product or construction material. (For construction material, see FAR 25.2.)

(ii) Scrap is domestic in origin if generated in, collected in, and prepared for processing in the United States.

(d)(1) Aluminum clad steel wire. Sperm oil.

225.109 Solicitation provisions and contract clauses.

(a) Use the provision at 252.225–7000, Buy American Act-Balance of Payments Program Certificate, instead of the provisions at FAR 52.225–1, Buy American Certificate, and FAR 52.225–6, Balance of Payments Program Certificate. Use the provision in any solicitation which includes the clause at 252.225–7001, Buy American Act and Balance of Payments Program, unless the solicitation includes the clause at 252.225–7007, Trade Agreements Act.

(b) For oral solicitations inform prospective vendors that only domestic and qualifying country end products are acceptable, except nonqualifying country end products are acceptable if—

(i) The items are excepted either on a blanket or an individual basis; or

(ii) The price of the nonqualifying country end product is the low offer under the evaluation procedures in 225.105.

(d) Use the clause at 252.225–7001, Buy American Act and Balance of Payments Program, instead of the clauses at FAR 52.225–3, Buy American Act-Supplies,

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$830,000

Award on U.S. Made End Product. Adding the 50% evaluation factor to the U.S. made end product would not result in the award of a domestic end product since the eligible product, which is evaluated the same as a qualifying country offer, is lower. All offers are evaluated without the factor.

225.107 Acquisition from or through other Government agencies.

Contracting activities must apply the evaluation procedures in 225.105 when using Federal supply schedules.

225.108 Excepted articles, materials, and supplies.

(a)(i)DoD has determined that the articles, materials, and supplies listed in FAR 25.108(d)(1) and in paragraph (d)(1) of this section, when purchased as end items or components, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. Regard these items or components as being of domestic origin when incorporated in—

(A) An end product or construction material manufactured in the United States; or

(B) A qualifying country end product or construction material. (For construction material, see FAR 25.2.)

(ii) Scrap is domestic in origin if generated in, collected in, and prepared for processing in the United States.

(d)(1) Aluminum clad steel wire. Sperm oil.

225.109 Solicitation provisions and contract clauses.

(a) Use the provision at 252.225–7000, Buy American Act-Balance of Payments Program Certificate, instead of the provisions at FAR 52.225–1, Buy American Certificate, and FAR 52.225–6, Balance of Payments Program Certificate. Use the provision in any solicitation which includes the clause at 252.225–7001, Buy American Act and Balance of Payments Program, unless the solicitation includes the clause at 252.225–7007, Trade Agreements Act.

(b) For oral solicitations inform prospective vendors that only domestic and qualifying country end products are acceptable, except nonqualifying country end products are acceptable if—

(i) The items are excepted either on a blanket or an individual basis; or

(ii) The price of the nonqualifying country end product is the low offer under the evaluation procedures in 225.105.

(d) Use the clause at 252.225–7001, Buy American Act and Balance of Payments Program, instead of the clauses at FAR 52.225–3, Buy American Act-Supplies,

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and FAR 52.225–7, Balance of Payments Program, in solicitations and contracts for supplies or services which require the furnishing of supplies.

(i) Do not use the clause if an exception to the Buy American Act or Balance of Payments Program is known to apply.

(ii) The clause need not be used if nonqualifying country end products are ineligible for award, including—

(A) End products restricted to domestic or domestic and qualifying country sources under Appropriations and Authorization Act restrictions (see 225.70);

(B) End products restricted to domestic or domestic and Canadian sources (see 225.71); and

(C) End products restricted under the authority of FAR 6.302–3.

(iii) The clause may be used where the restrictions in paragraph (d)(2) of this section apply when the contracting officer anticipates a waiver of the restriction.

225.109–70 Additional provisions and clauses.

(a) Use the clause at 252.225–7002, Qualifying Country Sources as Subcontractors, in all solicitations and contracts that include the clause at 252.225–7001, Buy American Act and Balance of Payments Program.

(b) Use the provision at 252.225–7003, Information for Duty-Free Entry Evaluation, in all solicitations that include the clause at 252.225–7001, Buy American Act and Balance of Payments Program.

(c) When only domestic end products are acceptable, the solicitation must make a statement to that effect.

Subpart 225.2—Buy American Act—Construction Materials 225.202 Policy

(b) A nonavailability determination is not required for construction materials listed in FAR 25.108(d)(1) or in 225.108(d)(1). For other materials, a nonavailability determination must be approved at the levels specified in 225.102(b)(ii). Use the estimated value of the construction materials to determine the approval level.

225.205 Solicitation provision and contract clause.

225.205–70 Additional clause.

Use the clause at 252.225–7004, Nondomestic Construction Materials, in solicitations and contracts if construction materials may be used without regard to the Buy American Act. List the excepted items in the clause.

Subpart 225.3—Balance of Payments Program

225.302 Policy.

(a) DoD implements the Balance of Payments Program using evaluation factors similar to those which implement the Buy American Act. The Balance of Payments Program restrictions—

(i) Apply to acquisitions for foreign military sales;

(ii) Do not apply to services, except services which primarily involve the acquisition of supplies;

(iii) Do not apply to qualifying country end products; and

(iv) Do not apply to articles, materials, or supplies produced or manufactured in Panama when purchased by and for the use of U.S. forces in Panama.

(b)(i) Before solicitation, the determinations required by FAR 25.302(b)(2) and (3), or a determination that the cost of acquiring domestic end products or services is unreasonable (FAR 25.303(b)), may be made by the following individuals or their immediate deputies—

ARMY

Deputy Chief of Staff for Procurement, U.S. Army Material Command
Commander in Chief, U.S. Army, Europe and DCSLOG, U.S. Army, Europe
Commander, Eighth U.S. Army and Chief of Staff, Eighth U.S. Army
Commander, Corps of Engineers Command
Commander, U.S. Army, Japan
Commander, U.S. Army Medical Research and Development Command
Commander, U.S. Army Forces Command
Commander, U.S. Army, South

NAVY

Commander-in-Chief, U.S. Naval Forces, Europe
Commander, U.S. Naval Forces, Japan
Commander, U.S. Naval Forces, Philippines
Commander-in-Chief, U.S. Atlantic Fleet
Commander-in-Chief, U.S. Pacific Fleet
Commander, Military Sealift Command
Commandant, U.S. Marine Corps
Commander, Naval Facilities Engineering Command
Commanding General, III Marine Amphibious Force

AIR FORCE

Commander, U.S. Air Forces in Europe
Commander, Pacific Air Forces
Commander, Military Airlift Command
Commander, Air Force Logistics Command
Commander, Air Force Systems Command
Commander, Strategic Air Command
Commander, Tactical Air Command
Commander, Air Force Communications Command
Commander, Space Command

DEFENSE ADVANCED RESEARCH PROJECTS AGENCY

Director, Contracts Management Office

DEFENSE COMMUNICATIONS AGENCY

Director

DEFENSE LOGISTICS AGENCY

Executive Director, Contracting

DEFENSE MAPPING AGENCY

Deputy Director for Acquisition, Installations and Logistics

ON-SITE INSPECTION AGENCY

Principal Deputy Director

(ii) The authority to make the determinations required by FAR 25.302(b)(2) and (3) may be redelegated below the levels in paragraph (b)(i) of this section for acquisitions estimated at $500,000 or less in foreign cost.

(3)(A) This authority is not intended for use in making repetitive supply acquisitions or acquisitions of total annual supply requirements of items available in the United States but not available within the time required.

(B) DoD has determined that requirements for the items on the lists at FAR 25.108(d)(1) and at 225.108(d)(1) can only be filled by a foreign end product.

(4) DoD has determined the following items can only be acquired or performed in the country concerned—

(A) Maintenance and repair of, and acquisition of spare parts for, foreign-manufactured vehicles, equipment, machinery, and systems; provided, in the case of spare parts, the acquisition is restricted to the original manufacturer or its supplier in accordance with DoD standardization policy (see DoD Directive 4120.3, Defense Standardization and Specification Program);

(B) Industrial gases;

(C) Brand drugs specified by the Defense Medical Materiel Board;

(D) Bulk construction materials: sand, gravel, and other soil materials, stone, concrete masonry units, and fired brick; and

(E) Overhaul and repair of vessels, aircraft, and vehicles which—

(*1*) Are home-ported/stationed/deployed overseas; and

(*2*) Cannot practically return to the United States or to U.S. operated repair facilities.

(F) Ready-mixed asphalt and portland cement concrete, provided that foreign cost is estimated at not more than $100,000.

(c)(i)Purchase of materials, equipment, and supplies for construction overseas shall generally be the responsibility of the contractor performing the work; but where necessary to comply with foreign law, to avoid taxation, or to obtain other advantages, consider direct purchase. Consider savings that may be obtained by exemptions from import and other taxes and, to the extent economical, take advantage of tax exemptions available under existing agreements.

(ii) When purchase of materials is the responsibility of the construction contractor, the evaluation differential is determined through the estimating process and applied before solicitation.

225.303 Procedures.

(a) *Solicitation of offers.* When soliciting orally, advise vendors that only domestic and qualifying country end products are acceptable unless an exception applies or the price of a domestic end product is unreasonable.

(b) *Evaluation.*

(i) Use the evaluation procedures in 225.105 instead of the evaluation procedures in FAR 25.303(b). Treatment of duty may differ when delivery is overseas.

(A) Duty may not be applicable to nonqualifying country offers.

(B) The U.S. Government cannot guarantee the exemption of duty for components or end products imported into foreign countries.

(C) Foreign governments may impose duties, and offers including such duties must be evaluated as offered.

(ii) Where the evaluation procedures in 225.105 result in the award of a nonqualifying country end product, the acquisition of domestic end products is unreasonable or inconsistent with public interest. If no domestic end product offers are received, the determination in FAR 25.302(b)(3) is not required.

225.305 Solicitation provision and contract clause.

225.305-70 Additional clause.

In order to allow accurate reporting, by cognizant accounting and disbursing officers, of foreign and domestic expenditures, use the clause at 252.225-7005, Identification of Expenditures in the United States, in all negotiated contracts over $25,000 where—

(a) For supply contracts, the contract requires end products manufactured or produced in the United States; and

(1) The contractor is a foreign concern; or

(2) The contractor is a domestic concern and the Government will take title outside the United States.

(b) For contracts for construction, repair, and maintenance of real property, or services to be performed outside the United States—

(1) The contractor is a domestic concern; or

(2) The contractor is a foreign concern and the contract requires acquisition of materials, equipment, or services from U.S. sources.

Subpart 225.4—Purchases Under the Trade Agreements Act of 1979

225.401 Definitions.

Eligible product means, instead of the definition at FAR 25.401, a designated or Caribbean Basin country end product in the categories listed in 225.403-70.

225.402 Policy.

(a) For solicitations containing multiple line items, estimate the value of the acquisition as follows:

(i) Total (add together) all line items of eligible products that represent the same item and differ only as to delivery period or location.

(ii) Consider individually (do not add together) essentially different line items of eligible products that are combined in a single solicitation.

(1) See 225.105 for evaluation of eligible products and U.S. made end products.

(c)(i)Except as provided in paragraph (c)(ii) of this section, do not purchase nondesignated country end products subject to the Act unless they are Caribbean Basin country end products or qualifying country end products (see 225.872-1).

(ii) National interest waivers under section 302(b)(2) of the Act are approved on a case-by-case basis. Except as delegated in paragraphs (c)(ii)(A), (B), and (C) of this section, a request for a national interest waiver shall include supporting rationale and be submitted under department/agency procedures to the Director of Defense Procurement.

(A) The chief of the contracting office may approve a national interest waiver on the basis of nonavailability when—

(1) The solicitation is synopsized in accordance with FAR 5.203;

(2) The acquisition is made under full and open competition; and

(3) Offers of U.S. made, qualifying country, or eligible products from responsive, responsible offerors are either—

(i) Not received; or

(ii) Insufficient to fill the Government's requirements. In these cases, accept all responsive, responsible offers of U.S. made, qualifying country, and eligible products before accepting any other offers.

(B) The head of the contracting activity may approve a national interest waiver for a purchase by an overseas purchasing activity of products critical to the support of U.S. forces stationed abroad. The waiver must be supported by a written statement from the requiring activity stating that the requirement is critical for the support of U.S. forces stationed abroad.

(C) The Commander, Defense Fuel Supply Center, may approve national interest waivers for purchases of fuel for use by U.S. forces overseas.

225.403 Exceptions.

(c) The evaluation preference for small disadvantaged businesses in Subpart 219.70 does not displace an offer of an eligible product.

(d)(1)(A) If a department or agency considers an individual acquisition of a product to be indispensable for national security or national defense purposes and appropriate for exclusion from the provisions of FAR Subpart 25.4, it may submit a request with supporting rationale to the Director of Defense Procurement (USD(A)DP).

(B) The following national security/national defense exceptions do not require approval by USD(A)DP—

(1) Where purchase from foreign sources is restricted by the DoD annual Appropriations or Authorization Acts (see subpart 225.70) or by the establishment of required sources of supplies and services under FAR Part 8.

(2) Where competition from foreign sources is restricted under the authority of FAR 6.302-3(a)(2)(i). Provide USD(A)DP a copy of the justification for restricting competition in accordance with FAR 25.402(e) and FAR 6.303-1(d).

(3) Where competition from foreign sources is restricted under 225.71.

225.403-70 Products subject to the Trade Agreements Act.

Foreign end products subject to the Trade Agreements Act are those in the following Federal supply groups (FSG). If a product is not in one of the listed groups, the Trade Agreements Act does not apply. As noted in FAR 25.401, Caribbean Basin country end products are limited to those end products which are eligible for duty-free treatment under 19 U.S.C. 2703(b). The list of products has been annotated to indicate those products which, due to this limitation, are eligible for designated countries, but are not presently eligible for Caribbean Basin countries.

FSG	Category/Description
22	Railway equipment
23	Motor vehicles, trailers, and cycles (except 2350 and buses under 2310)
24	Tractors
25	Vehicular equipment components
26	Tires and tubes
29	Engine accessories
30	Mechanical power transmission equipment
32	Woodworking machinery and equipment

**Purchases Under the
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FSG	Category/Description
22	Railway equipment
23	Motor vehicles, trailers, and cycles (except 2350 and buses under 2310)
24	Tractors
25	Vehicular equipment components
26	Tires and tubes
29	Engine accessories
30	Mechanical power transmission equipment
32	Woodworking machinery and equipment

FSG	Category/Description
34	Metalworking machinery (except 3408, 3410–3419, 3426, 3433, 3441–3443, 3446, 3448, 3449, 3460, 3461)
35	Service and trade equipment
36	Special industry machinery (except 3690)
37	Agricultural machinery and equipment
38	Construction, mining, excavating, and highway maintenance equipment
39	Materials handling equipment
40	Rope, cable, chain and fittings
41	Refrigeration and air conditioning equipment
42	Fire fighting, rescue and safety equipment
43	Pumps and compressors
44	Furnace, steam plant and drying equipment (except 4470)
45	Plumbing, heating, and sanitation equipment
46	Water purification and sewage treatment equipment
47	Piping, tubing, hose, and fitting
48	Valves
49	Maintenance and repair shop equipment (except 4920–4927, 4931–4935, 4960)
52	Measuring tools
53	Hardware and abrasives
54	Prefabricated structures and scaffolding
55	Lumber, millwork, plywood, and veneer
56	Construction and building materials
61	Electric wire, and power and distribution equipment
62	Lighting fixtures and lamps
63	Alarm and signal systems
65	Medical, dental, and veterinary equipment and supplies
66	Instruments and laboratory equipment (except aircraft clocks under 6645)—See FAR 25.401 exclusion of certain watches and watch parts for certain Caribbean Basin countries
67	Photographic equipment
68	Chemicals and chemical products
69	Training aids and devices
70	General purpose ADPE, software, supplies, and support equipment
71	Furniture
72	Household and commercial furnishings and appliances
73	Food preparation and serving equipment
74	Office machines, visible record equipment and ADP equipment
75	Office supplies and devices
76	Books, maps, and other publications
77	Musical instruments, phonographs, and home type radios
78	Recreational and athletic equipment
79	Cleaning equipment and supplies
80	Brushes, paints, sealers, and adhesives
81	Containers, packaging and packing supplies (except 8140)
84	Luggage (only 8460)—See FAR 25.401 for exclusion of luggage for Caribbean Basin countries
85	Toiletries
87	Agricultural supplies
88	Live animals
91	Fuels, lubricants, oils and waxes—See FAR 25.401 for exclusion for Caribbean Basin countries
93	Nonmetallic fabricated materials
94	Nonmetallic crude materials
96	Ores, minerals, and their primary products
99	Miscellaneous

25.405 Procedures.

(d) The requirements of FAR 25.405(d) do not apply to offshore acquisitions or to Defense Fuel Supply Center post, camp, or station overseas requirements.

225.407 Solicitation provision and contract clause.

(a)(1) Use the provision at 252.225–7006, Buy American Act-Trade Agreements Act-Balance of Payments Program Certificate, instead of the provision at FAR 52.225–8, Buy American Act-Trade Agreements Act-Balance of Payments Program Certificate, in all solicitations that include the clause at 252.225–7007, Trade Agreements Act.

(2)(A) Use the clause at 252.225–7007, Trade Agreements Act, instead of the clause at FAR 52.225–9, Buy American Act-Trade Agreements Act-Balance of Payments Program. The clause need not be used where purchase from foreign sources is restricted (see 225.403(d)(i)(B)). The clause may be used where the contracting officer anticipates a waiver of the restriction.

(B) Use the clause in all solicitations and contracts subject to the Trade Agreements Act, including solicitations for multiple line items, if any item is subject to the Act.

(C) Application of the procedures in 225.402 (a) and the acquisition of noneligible and eligible products under the same solicitation may result in the application of the Trade Agreements Act to only some of the items solicited. In such case, indicate in the schedule those items covered by the Act.

Subpart 225.6—Customs and Duties

225.602 Policy.

(1) Section XXII, chapter 98, subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States authorizes duty-free importation of defense supplies.

(2) 19 U.S.C. 1309 authorizes duty-free importation of certain supplies (not including equipment) for vessels or aircraft operated by the United States (see FAR 25.604(b)).

(3) DoD will issue duty-free entry certificates for—

(i) Qualifying country supplies (end products and components) on all defense contracts;

(ii) Eligible products (end products but not components) on defense contracts subject to the Trade Agreements Act; and

(iii) Other foreign supplies, if there is reasonable assurance that the administrative and other costs of processing and controlling the certificates will not exceed the amount of duty that would be paid.

225.603 Procedures.

(1) Issue duty-free entry certificates—

(i) In accordance with the policy in 225.602;

(ii) On contracts containing the clauses in—

(A) FAR 52.225–10, Duty-Free Entry; or

(B) 252.225–7009, Duty-Free Entry—Qualifying Country End Products and Supplies; or

(iii) On other contracts that fall within one of the following categories—

(A) Direct purchases of foreign supplies under a DoD prime contract, whether title passes at point of origin or at destination in the United States; provided, the contract states that the final price is exclusive of duty;

(B) Purchases of foreign supplies by a domestic prime contractor under a cost-reimbursement type contract or by a cost-reimbursement type subcontractor (where no fixed-price prime or fixed-price subcontract intervenes between the purchaser and the Government), whether title passes at point of origin or at destination in the United States. If a fixed-price prime or fixed-price subcontract intervenes, follow the criteria stated in paragraph (1)(iii)(C) of this section; or

(C) Purchases of foreign supplies by a fixed-price domestic prime contractor, a fixed-price subcontractor, or a cost-type subcontractor where a fixed-price prime contract, or fixed-price subcontract intervenes; provided—

(*1*) The fixed-price prime contract and, where applicable, fixed-price subcontract prices are, or are amended to be, exclusive of duty;

(*2*) The prime contractor and, if applicable, the subcontractors concerned certify that—

(*i*) The supplies so purchased will be delivered to the Government or incorporated in Government-owned property or in an end product to be furnished to the Government; and

(*ii*) The duty will be paid if such supplies or any portion are used for other than the performance of the

Government contract or disposed of other than for the benefit of the Government in accordance with the contract terms; and

(3) Such acquisition abroad is authorized by the terms of the contract, the subcontract, or by the contracting officer. In any case, follow the procedures required by the clauses in FAR 52.225–10, Duty-Free Entry, and 252.225–7009, Duty-Free Entry—Qualifying Country End Products and Supplies, to the extent practicable.

(2) Do not issue duty-free entry certificates or exempt duty for end products, components, or supplies already entered into the customs territory of the United States for which duty has already been paid.

(3) If a duty-free entry certificate is issued a contractor under a fixed-price contract based on the contractor's providing a domestic or qualifying country end product, component, or supply, negotiate an equitable reduction in the contract price if the contractor subsequently furnishes a nonqualifying country end product, component, or supply.

(4) Exclude duty from the contract price for end products, components, or supplies that are being accorded duty-free entry.

(5) Except as required under the evaluation procedures in 225.105 for the Buy American Act, do not evaluate duty for items accorded duty-free entry.

(6) Even if duty is evaluated under Subpart 225.1, the supplies may still be authorized duty-free entry if to do so is consistent with the policies in 225.602. However, if the Government will pay a duty, then the cost of the duty must be included in the contract price and evaluated as part of the offer.

(b) *Formal entry and release.*

(i) The administrative contracting officer must—

(A) Ensure that prime contractors are aware of and understand any Duty-Free Entry clause requirements. Contractors should understand that failure by them or their subcontractors to include the data required by the clause will result in treatment of the shipment as without benefit of free entry under section XXII, chapter 98, subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States.

(B) Upon receipt of the required notice of purchase of foreign supplies from the contractor or any tier subcontractor—

(1) Verify the duty-free entitlement of goods entering under the contract; and

(2) Review the prime contract to ensure that performance of the contract requires the foreign supplies (quantity and price) identified in the notice.

(C) Upon receipt of notification from the contractor that it is placing a foreign purchase that was not identified at the time of contract award—

(1) Determine whether a reduction in the contract price is required under the clause at FAR 52.225–10, Duty-Free Entry;

(2) If so, make an equitable adjustment in the contract price, unless the procuring contracting officer waives this adjustment;

(3) Determine the price of the foreign supplies exclusive of duty, and advise the contractor that that amount will be the maximum dollar value of supplies for which duty-free entry certificates will be issued.

(D) Within 20 days after receiving the notification of purchase of foreign supplies, forward the following information in the format indicated to the Commander, DCMAO New York, Attn: Customs Division, International Logistics Office, 201 Varick Street, New York, NY 10014

We have received a contractor notification of the purchase of foreign supplies. I have verified that foreign supplies are required for the performance of the contract. If required, the prime contract price has been or will be adjusted.

Prime Contractor Name and Address:
Prime Contractor CAGE Code:
Prime Contract Number plus Delivery Order Number, if applicable:
Total Dollar Value of the Prime Contract or Delivery Order:
Expiration Date of the Prime Contract or Delivery Order:
Foreign Supplier Name and Address:
Number of Subcontract/Purchase Order for Foreign Supplies:
Total Dollar Value of the Subcontract for Foreign Supplies:
Expiration Date of the Subcontract for Foreign Supplies:
CAO Activity Address Number:
ACO Name and Telephone Number:
ACO Code:
Signature:
Title:

(E) If a contract modification results in a change to any data verifying duty-free entitlement previously furnished, forward a revised notification including the changed data to DCMAO New York.

(ii) The responsibility for issuing duty-free entry certificates for foreign supplies purchased under a DoD contract or subcontract rests with the Chief, Customs Division, International Logistics Office, DCMAO New York. Upon receipt of import documentation for incoming shipments from the contractor, its agent, or the U.S. Customs Service, DCMAO New York will verify the duty-free entitlement and execute the duty-free entry certificate.

(iii) Upon arrival of foreign supplies at ports of entry, the consignee, generally the contractor or its agent (import broker) for shipments to other than a military installation, will file U.S. Customs Forms 7501, 7501A, or 7506, with the District Director of Customs.

(c) *Immediate entry and release.* Importations made in the name of a DoD military facility or being shipped directly to a military facility are entitled to release under the immediate delivery procedure.

(i) A DoD immediate delivery application has been approved and is on file at Customs Headquarters.

(ii) The application is for an indefinite period and is good for all Customs districts, areas, and ports.

225.604 Exempted supplies.

(b)(i) The term "supplies"—

(A) Includes articles known as "stores," such as food, medicines, and toiletries, as well as all consumable articles necessary and appropriate for the propulsion, operation, and maintenance of the vessel or aircraft, such as fuel, oil, gasoline, grease, paint, cleansing compounds, solvents, wiping rags, and polishes.

(B) Does not include portable articles necessary and appropriate for the navigation, operation, or maintenance of vessel or aircraft and for the comfort and safety of the persons on board, such as rope, bolts and nuts, bedding, china and cutlery, which are included in the term "equipment."

(ii) The duty-free certificate shall be printed, stamped, or typed on the face of Customs Form 7501, or attached, and shall be executed by a duly designated officer or civilian official of the appropriate department or agency in the following form—

(Date)____________________

I certify that the acquisition of this material constituted a purchase of supplies by the United States for vessels or aircraft operated by the United States, and is admissible free of duty pursuant to 19 U.S.C. 1309.

(Name)____________________
(Title)____________________
(Organization)____________________

225.605 Contract clause.

(b) The dollar amount in paragraphs (b)(1) and (i)(2) of the FAR 52.225–10 clause may be reduced appropriately in solicitations and contracts of $100,000 or less.

225.605–70 Additional solicitation provisions and contract clauses.

(a) Use the clause at 252.225–7008, Supplies to be Accorded Duty-Free Entry, in all solicitations and contracts when—

(1) Duty-free entry will be granted under the resultant contract; and

(2) The solicitation and contract include the clauses at—

(i) FAR 52.225-10, Duty-Free Entry; or

(ii) 252.225-7009, Duty-Free Entry—Qualifying Country End Products and Supplies.

(b) Use the clause at 252.225-7009, Duty-Free Entry—Qualifying Country End Products and Supplies, in all solicitations and contracts for supplies and in all solicitations and contracts for services involving the furnishing of supplies. Do not use the clause in a contract for supplies for exclusive use outside the United States.

(c) Use the clause at 252.225-7010, Duty-Free Entry—Additional Provisions, in all solicitations and contracts which include the clause at FAR 52.225-10, Duty-Free Entry.

Subpart 225.7—Restrictions on Certain Foreign Purchases

225.702 Restrictions.

(1) See 209.104-1(g) for restrictions on contracting with firms owned or controlled by foreign governments that support terrorism.

(2) Do not purchase petroleum products originating in Angola from companies engaged in production of petroleum products in Angola (Pub. L. 99-661, section 316). "Petroleum products" means—

(i) Natural or synthetic crude;

(ii) Blends of natural or synthetic crude; and

(iii) Products refined or derived from natural or synthetic crude or from such blends.

225.703 Exceptions.

(b)(i) For other than small purchases, the Secretary of the Department concerned may approve an exception. Before approving an exception for other than small purchases, the Secretary shall obtain the advice of the Assistant Secretary of Defense (International Security Affairs), except—

(A) For emergency purchases; or

(B) Where supplies are not available from any other source and substitute supplies are not acceptable.

(ii) The Secretary of Defense, or designee, may waive the restriction in 225.702(2) if the Secretary or designee determines it to be in the best interest of the Government. Designees for this waiver authority are—

(A) Army—Assistant Secretary of the Army (Research, Development, and Acquisition).

(B) Navy—Assistant Secretary of the Navy (Research, Development, and Acquisition).

(C) Air Force—Deputy Assistant Secretary of the Air Force (Contracting).

(D) Defense agencies—Director of Defense Procurement.

225.704 Contract clause.

225.704-70 Additional clause.

Use the clause at 252.225-7011, Certification and Agreement by Contractors Currently Producing Petroleum Products in Angola, in solicitations and contracts involving the supply of petroleum products.

Subpart 225.8—International Agreements and Coordination

225.801 International agreements.

(1) Treaties and agreements between the U.S. and foreign governments affect both—

(i) The way offers from foreign contractors are evaluated in DoD acquisitions; and

(ii) Performance of DoD contracts in foreign countries.

(2) This subpart covers acquisition policy and procedures based on treaties and international agreements.

(3) Information on specific agreements is available as follows—

(i) Memoranda of understanding (MOU) and other international agreements between the United States and the countries listed in 225.872-1 are maintained in the Office of the Deputy Assistant Secretary of Defense (Procurement) (Foreign Contracting) (703) 697-9351, DSN 227-9351).

(ii) Military Assistance Advisory Groups, Naval Missions, and Joint U.S. Military Aid Groups normally have copies of the agreements applicable to the countries concerned.

(iii) Copies of international agreements covering existing agreements in the United Kingdom of Great Britain and Northern Ireland, Western European countries, North Africa, and in the Middle East are filed with the U.S. European Command (EUCOM).

(iv) Agreements with countries in the Pacific and Far East are filed with the U.S. Pacific Command (CINCPAC).

225.802 Procedures.

225.802-70 Contracts for performance outside the United States and Canada.

(a) When a purchasing activity anticipates placement of a contract for performance outside the United States or Canada and the contracting activity is not under the command jurisdiction of a unified or specified command for the country involved, the purchasing activity shall maintain liaison with the cognizant contract administration office (CAO) (as specified in DLAH 4105.5) during preaward negotiations and postaward administration. The CAO will provide pertinent information for contract negotiations, effect appropriate coordination, and obtain required approvals for the performance of the contract.

(b) Where the acquisition requires the performance of work in the foreign country by U.S. personnel or a third country contractor, or where the acquisition will require logistics support for contract employees, source inspection, or additional Government employees—

(1) The contracting activity must coordinate with the cognizant contract administration office before contract award.

(2) The contracting officer shall request the following information from the contract administration office—

(i) The applicability of any international agreements to the acquisition;

(ii) Security requirements applicable to the area;

(iii) The standards of conduct required to be observed by the prospective contractor and its employees, and any action that may be taken in the event required standards are not maintained;

(iv) Requirements for use of foreign currencies, including applicability of U.S. holdings of excess foreign currencies;

(v) Availability of logistics support for contractor employees; and

(vi) Information on taxes and duties from which the Government may be exempt.

(3) The contracting officer shall furnish the following information to the contract administration office—

(i) A synopsis of the work to be performed and, if practical, a copy of the solicitation;

(ii) Any contractor logistical support desired in support of U.S. or foreign military sale requirements;

(iii) Contract performance period and estimated contract value;

(iv) Number and nationality of contractor employees and date of planned arrival of contractor personnel;

(v) Contract security requirements; and

(vi) Other pertinent information to effect complete coordination and cooperation.

225.870 Contracting with Canadian contractors.

225.870-1 General.

(a) The Canadian Government guarantees to the U.S. Government all commitments, obligations, and covenants of the Canadian Commercial Corporation under any contract or order issued to the Corporation by any contracting activity of the U.S. Government. The Canadian Government has waived notice of any change or modification which may be made, from time to time, in these commitments, obligations, or covenants.

(b) For production planning purposes, Canada is considered to be part of the defense industrial base (see 225.870-2(b)).

(c) Contracts with contractors located in Canada should be awarded to and administered by the Canadian Commercial Corporation, except for—

(1) Negotiated purchases for experimental, developmental, or research work unless the contract is for a project under the Defense Development Sharing Program;

(2) Purchases of unusual or compelling urgency;

(3) Small purchases; or

(4) Purchases made by DoD activities located in Canada.

(d) The Canadian Commercial Corporation, in placing contracts with Canadian or U.S. concerns, uses provisions in the contracts that give DoD the same production rights, data, and information that DoD would obtain in contracts with U.S. concerns.

(e) When contracts are placed with the Canadian Commercial Corporation, the government of Canada will provide the following services, without charge to DoD departments and agencies—

(1) *Contract administration services*, including—

(i) Cost and pricing analysis;

(ii) Industrial security;

(iii) Accountability and disposal of Government property;

(iv) Production expediting;

(v) Compliance with Canadian labor laws;

(vi) Processing termination claims and disposing of termination inventory;

(vii) Customs documentation;

(viii) Processing of disputes and appeals; and

(ix) Such other related contract administration functions as may be required with respect to the Canadian Commercial Corporation contract with the Canadian supplier; and

(2) *Audits*. When required, audits are performed by the Audit Service Group, Supply and Services Canada. Requests for audit on non-Canadian Commercial Corporation contracts should be routed through the cognizant contract administration office of Defense Contract Management Command.

(3) *Inspection*. The Department of National Defence (Canada) provides inspection personnel, services, and facilities, at no charge to DoD departments and agencies (see 225.870-7).

225.870-2 Solicitation of Canadian contractors.

(a) Except for the acquisitions in 225.870-1(b) (1) through (4), include Canadian firms on bidders mailing lists and comparable source lists only at the request of the Canadian Commercial Corporation.

(b) Include Canadian planned producers under the Industrial Readiness Planning Program on bidders mailing lists for their planned items (see FAR 14.205-1).

(c) Send solicitations directly to Canadian firms appearing on the appropriate bidders mailing lists. Send a complete copy of the solicitation and a listing of Canadian firms solicited to the Canadian Commercial Corporation, 11th Floor, 50 O'Connor Street, Ottawa, Ontario, K1A-0S6, Canada.

(d) Furnish a solicitation, if requested, to the Canadian Commercial Corporation even if no Canadian firm is solicited.

(e) Handle small purchases (see FAR part 13) directly with Canadian firms and not through the Canadian Commercial Corporation.

225.870-3 Submission of offers.

(a) As indicated in 225.870-4, the Canadian Commercial Corporation is the prime contractor. To indicate acceptance of offers by individual Canadian companies, the Canadian Commercial Corporation issues a letter, supporting the Canadian offer, containing the following information—

(1) Name of the Canadian offeror;

(2) Confirmation and endorsement of the offer in the name of the Canadian Commercial Corporation; and

(3) A statement that the Corporation shall subcontract 100 percent with the offeror.

(b) When a Canadian offer cannot be processed through the Canadian Commercial Corporation in time to meet the bid-opening requirement or the closing date for receipt of proposals, the Corporation may permit Canadian firms to submit offers directly. The Canadian Commercial Corporation's endorsement of award, however, must be received by the contracting officer before contract award.

(c) All sealed bids will be submitted by the Canadian Commercial Corporation in terms of U.S. currency. Do not adjust contracts awarded under sealed bidding for losses or gains from fluctuation in exchange rates.

(d) Except for sealed bids, all offers and quotations submitted by the Canadian Commercial Corporation are normally in terms of Canadian currency. The Corporation may, at the time of submitting an offer, elect to quote and receive payment in terms of U.S. currency, in which case the contract shall—

(1) Provide for payment in U.S. currency; and

(2) Shall not be adjusted for losses or gains from fluctuation in exchange rates.

225.870-4 Contracting procedures.

(a) Award individual contracts covering purchases from suppliers located in Canada, except for those in 225.870-1(b) (1) through (4), to the Canadian Commercial Corporation, 11th Floor, 50 O'Connor Street, Ontario, Canada, K1A-0S6.

(b) Direct communication with the Canadian supplier is authorized and encouraged in connection with all technical aspects of the contract; provided, that the Corporation's approval is obtained on any matters involving changes to the contract.

(c) Identify in the contract, the type of currency, i.e., U.S. or Canadian. Contracts that provide for payment in Canadian currency shall quote the contract price in terms of Canadian dollars and shall identify the amount by the initials CN; e.g., $1,647.23CN. The contract shall clearly indicate on its face the U.S./Canadian conversion rate at the time of award and the U.S. dollar equivalent of the Canadian dollar contract amount.

225.870-5 Contract administration.

(a) Assign contract administration in accordance with part 242. When contract administration is performed in Canada by the cognizant contract administration office of the Defense Contract Management Command, the paying office to be named in the contract for disbursement of DoD funds (DoD Department Code: 17-Navy; 21-Army; 57-Air Force; 97-all other DoD components), whether payment is in Canadian or U.S. dollars, shall be: Disbursing Office, Defense Contract Management Area Office, Cleveland 1240 East 9th Street, Anthony J. Celebrezze Federal Building, Cleveland, Ohio 44199.

(b) For cost-reimbursement type contracts—

(1) Audits on contracts with the Canadian Commercial Corporation (CCC) are automatically arranged by the Department of Supplies and Services (DSS), Canada. Audit reports are furnished to DSS. Upon advice from

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DSS, the CCC will certify the invoice and forward it with SF 1034, Public Voucher, to the administrative contracting officer for further processing and transmittal to the disbursing office.

(2) On contracts placed directly with Canadian firms, the administrative contracting officer requests audits from the Audit Services Bureau (ASB), Ottawa, Ontario, Canada.

(i) Invoices are approved by the ASB/DSS auditor on a provisional basis pending completion of the contract and final audit.

(ii) The ASB/DSS forwards these invoices, accompanied by SF 1034, Public Voucher, to the administrative contracting officer for further processing and transmittal to the disbursing officer.

(iii) ASB/DSS furnishes periodic advisory audit reports directly to the administrative contracting officer.

225.870–6 Termination procedures.

(a) The Canadian Commercial Corporation will continue administering contracts that may be terminated by the U.S. contracting officer.

(b) The Corporation will settle all Canadian subcontracts in accordance with the policies, practices, and procedures of the Canadian Government.

(c) The U.S. agency administering the contract with the Canadian Commercial Corporation shall provide any services required by the Canadian Commercial Corporation, including disposal of inventory, for settlement of any subcontracts placed in the United States. Settlement of such U.S. subcontracts is made under this regulation.

225.870–7 Acceptance of Canadian supplies.

(a) When contracts placed in Canada, either with the Canadian Commercial Corporation or directly with Canadian suppliers, require contract quality assurance (CQA) and/or acceptance before shipment, CQA and/or acceptance, as applicable, will be performed by the Department of National Defence (Canada), under paragraph 6 of the Letter of Agreement.

(b) Signature by the Department of National Defence (Canada) quality assurance representative on the DoD inspection and acceptance form is satisfactory evidence of acceptance for payment purposes.

225.870–8 Industrial security.

Industrial security for Canada shall be in accordance with the U.S.-Canada Industrial Security Agreement of March 31, 1952, as amended.

225.871 North Atlantic Treaty Organization (NATO) cooperative projects.

225.871–1 Scope.

(a) This section provides guidance on awarding contracts based on NATO cooperative projects.

(b) The authority is 22 U.S.C. 2767 and 10 U.S.C. 2350b.

225.871–2 Definitions.

(a) *Cooperative project* means a jointly managed arrangement—

(1) Described in a written agreement between the parties;

(2) Undertaken to further the objectives of standardization, rationalization, and interoperability of the armed forces of North Atlantic Treaty Organization member countries; and

(3) Providing for—

(i) One or more of the other participants to share with the United States the cost of research and development, testing, evaluation, or joint production (including follow-on support) of certain defense articles;

(ii) Concurrent production in the United States and in another member country of a defense article jointly developed; or

(iii) Acquisition by the United States of a defense article or defense service from another member country.

(b) *Other participant* means a cooperative project participant other than the United States.

225.871–3 General.

(a) Cooperative project authority. (1) Departments or agencies, that have authority to do so, may enter into a cooperative project agreement with NATO or with one or more member countries of that organization under DoD Directive 5530.3, International Agreements.

(2) Under laws and regulations governing the negotiation and implementation of cooperative project agreements, departments and agencies may enter into contracts, or incur other obligations, on behalf of other participants without charge to any appropriation or contract authorization.

(3) Agency heads have authority to solicit and award contracts to implement cooperative projects.

(b) Contracts implementing cooperative projects shall comply with all applicable laws relating to Government acquisition, unless a waiver is granted under 225.871–4. A waiver of certain laws and regulations may be obtained if—

(1) Required by the terms of a written cooperative project agreement;

(2) It will significantly further NATO standardization, rationalization, and interoperability; and

(3) It is approved by the appropriate DoD official.

225.871–4 Statutory waivers.

(a) The Deputy Secretary of Defense may waive for contracts or subcontracts placed outside the United States any provision of law that specifically prescribes—

(1) Procedures for the formation of contracts;

(2) Terms and conditions for inclusion in contracts;

(3) Requirements for, or preferences to be given—

(i) To goods grown, produced, or manufactured in the United States or in U.S. Government-owned facilities; or

(ii) For services to be performed in the United States; or

(4) Requirements regulating the performance of contracts.

(b) There is no authority for waiver of—

(1) Any provision of the Arms Export Control Act (22 U.S.C. 2751);

(2) Any provision of 10 U.S.C. 2304;

(3) The cargo preference laws of the United States, including the Military Cargo Preference Act of 1904 (10 U.S.C. 2631) and the Cargo Preference Act of 1954 (46 U.S.C. 1241(b)); or

(4) Any of the financial management responsibilities administered by the Secretary of the Treasury.

(c) If a waiver is contemplated under the terms of a cooperative project agreement, forward a request for the waiver to the Deputy Secretary of Defense, through the Director of Defense Procurement. The waiver request must include a draft Determination and Findings for signature by the Deputy Secretary of Defense establishing that the waiver is necessary to significantly further NATO standardization, rationalization, and interoperability.

(d) The approval of the Deputy Secretary of Defense must be obtained before committing to make waivers in an agreement or an amendment to an agreement or contract.

225.871–5 Directed subcontracting.

(a) The Director of Defense Procurement may authorize the direct placement of subcontracts with particular subcontractors. Directed subcontracting is not authorized unless specifically addressed in the cooperative project agreement.

(b) In some instances, it may not be feasible to name specific subcontractors at the time the agreement is concluded. The general provisions for work sharing at the prime and subcontractor level, however, must be clearly delineated in the agreement. This will provide the authority necessary to implement such arrangements during the acquisition phase.

(c) The agreement is the authority necessary for including a contractual provision requiring the prime contractor to place certain subcontracts with particular subcontractors. No separate justification and approval during the acquisition process is required.

225.871-6 Disposal of property.

Dispose of property that is jointly acquired by the members of a cooperative project under the procedures established in the agreement or in a manner consistent with the terms of the agreement.

225.871-7 Congressional notification.

(a) Congress must be notified whenever DoD determines to award a prime contract or subcontract to a particular contractor if the determination was not part of the certification made under Section 27(f) of the Arms Export Control Act before finalizing the cooperative agreement.

(1) Departments and agencies must provide a proposed Congressional notice to ASD(P&L) in sufficient time to forward to Congress before the time of contract award.

(2) The proposed notice shall include the reason why the authority to designate a particular contractor or subcontractor should be used.

(b) Congressional notification is also required each time a statutory waiver is exercised under 225.871-4, if such information was not provided in the certification to Congress before finalizing the cooperative agreement. Exercise of the waiver means a contract award or modification which provides for a statutory exception.

225.872 Contracting with qualifying country sources.

225.872-1 General.

(a) As a result of memoranda of understanding and other international agreements, the DoD has determined it inconsistent with the public interest to apply restrictions of the Buy American Act/Balance of Payments Program to the acquisition of defense equipment which is mined, produced, or manufactured in any of the following countries (referred to in this part as "qualifying countries")—

Belgium
Canada
Denmark
Egypt
Federal Republic of Germany
France
Greece
Israel
Italy
Luxembourg
Netherlands
Norway
Portugal
Spain
Turkey
United Kingdom of Great Britain and Northern Ireland

(b) Individual acquisitions for products of the following qualifying countries may, on a purchase-by-purchase basis, be exempted from application of the Buy American Act and Balance of Payments Program as inconsistent with the public interest—

Australia
Sweden
Switzerland

(c) The determination in paragraph (a) of this subsection does not limit the authority of the cognizant Secretary to restrict acquisitions to domestic sources or reject an otherwise acceptable offer from a qualifying country source in instances where considered necessary for national defense reasons.

225.872-2 Applicability.

(a) This section applies to all acquisitions of supplies except where restricted by—

(1) Provision of U.S. National Disclosure Policy (NDP), DOD Directive 5230.11, Disclosure of Classified Military Information to Foreign Governments and International Organizations;

(2) U.S. defense mobilization base requirements purchased under the authority of FAR 6.302-3(a)(2)(i) except for quantities in excess of that required to maintain the defense mobilization base. This restriction does not apply to Canadian planned producers—

(i) Review individual solicitations to determine whether this restriction applies.

(ii) Information concerning restricted items may be obtained from OASD(P&L), Office of Industrial Base Assessment;

(3) U.S. laws or regulations (e.g., the annual DoD Appropriations Act); and

(4) U.S. industrial security requirements.

(b) This section does not apply to construction contracts.

225.872-3 Solicitation procedures.

(a) Include qualifying country sources on bidders mailing lists and comparable source lists upon their request (see FAR 14.205).

(b) Except for items developed under the U.S./Canadian Development Sharing Program, use the criteria for soliciting and making awards under FAR Part 19 for small business concerns without regard to whether there are potential qualifying country sources for the end product. Do not consider an offer of a qualifying country end product if the solicitation is identified for the exclusive participation of small business firms.

(c) Send solicitations directly to qualifying country sources. Solicit Canadian sources through the Canadian Commercial Corporation in accordance with 225.870.

(d) Use international air mail if solicitation destinations are outside the United States and security classification permits such use (see FAR 14.202 and FAR 14.203).

(e) If unusual technical or security requirements preclude the acquisition of otherwise acceptable defense equipment from qualifying country sources, review the need for such requirements. Do not impose unusual technical or security requirements solely for the purpose of precluding the acquisition of defense equipment from qualifying countries.

(f) Do not automatically exclude qualifying country sources from submitting offers because their supplies have not been tested and evaluated by the department/agency.

(1) Consider the adequacy of qualifying country service testing on a case-by-case basis. Departments or agencies that must limit solicitations to sources whose items have been service tested and evaluated by the department/agency shall consider supplies from qualifying country sources that have been tested and accepted by the qualifying country for service use.

(2) The department/agency may perform a confirmatory test, if necessary.

(3) Apply U.S. test and evaluation standards, policies, and procedures when the department/agency decides that confirmatory tests of qualifying country end products are necessary.

(4) Where it appears that these provisions might adversely delay service programs, obtain the concurrence of the DoD Acquisition Executive, Under Secretary of Defense (Acquisition), before excluding the qualifying country source from consideration.

(g) Permit industry representatives from a qualifying country to attend symposia, program briefings, prebid conferences (FAR 14.207 and FAR 15.409), and similar meetings that address U.S. defense equipment needs and requirements. When practical, structure these meetings to allow attendance by representatives of qualifying country concerns.

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(g) Permit industry representatives from a qualifying country to attend symposia, program briefings, prebid conferences (FAR 14.207 and FAR 15.409), and similar meetings that address U.S. defense equipment needs and requirements. When practical, structure these meetings to allow attendance by representatives of qualifying country concerns.

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§ 225.872–4 Evaluation of offers.

(a) Qualifying country sources competing for DoD requirements must be responsive to the terms and conditions of DoD solicitations.

(b) Evaluate offers from the qualifying country sources in 225.872–1(a) without application of the 50 percent Buy American Act or Balance of Payments Program evaluation factor, in accordance with 225.105 and 225.303.

(c) Evaluate offers of end products from the qualifying country sources in 225.872–1(b) without application of the 50 percent Buy American Act or Balance of Payments Program evaluation factor. If the offer, as evaluated, is low or otherwise eligible for award, the contracting officer shall request exemption of the Buy American Act as inconsistent with the public interest.

(1) To obtain an exemption, process a Determination and Findings for signature at the appropriate level as set forth at 225.102(a)(3)(C).

(2) The Determination and Findings shall be substantially as follows for end items, or modified as necessary for components—

Service or Agency

Exemption of the Buy American Act (41 U.S.C. 10a–d)

Determination and Findings

Upon the basis of the following findings and determination which I hereby make in accordance with the provisions of FAR 25.102, acquisition of (*qualifying country-identify country*) (*describe item*) may be made as provided below.

Findings

1. The (*contracting activity*) proposes to purchase under contract number, ________, mined, produced, or manufactured in (country of origin). The total estimated cost of this acquisition is ________.

2. The United States Government and the Government of ________ have agreed to remove barriers to procurement at the prime and subcontract level for defense equipment produced in each other's countries insofar as laws and regulations permit.

3. The agreement provides that competitive offers of (*qualifying country*) end products will be evaluated by the Department of Defense without imposing any price differential under the Buy American Act and without taking applicable U.S. customs and duties into consideration so that (*qualifying country*) items may better compete, for sales of defense equipment to the Department of Defense. In addition, the Agreement stipulates that acquisitions of (*qualifying country*) items must fully satisfy Department of Defense requirements for performance, quality, and delivery and shall cost the Department of Defense no more than would comparable U.S. source or other foreign source defense equipment eligible for award.

4. In order to achieve the above objectives, the solicitation contained the Buy American Act and Balance of Payments Program clause, 252.225–7001, or the Buy American Act, Trade Agreements Act, and the Balance of Payments Program clause, 252.225–7006. Offers were solicited from other sources and the offer received for (*qualifying country end item*) is found to be otherwise eligible for award.

Determination

Pursuant to the Buy American Act (41 U.S.C. 10a–d), I hereby determine that it is inconsistent with the public interest to apply the restrictions of the Buy American Act to the proposed offer.

____

(Date)

225.872–5 Contract administration.

(a) Arrangements exist with some qualifying countries to provide reciprocal contract administration services. Some arrangements are at no cost to either government. To determine whether such an arrangement has been negotiated and what contract administration functions are covered, contact the Foreign Contracting Directorate, Office of the Director of Defense Procurement, ((703) 697–9351, DSN 227–9351).

(b) When contract administration services are required on contracts to be performed in qualifying countries, direct the request to the cognizant activity under DLAH 4105.4, section II, part 2 (DoD Directory of Contract Administration Services Components). Contract administration services for DoD subcontracts placed by qualifying country sources in the United States will be arranged by the cognizant activity under DLAH 4105.4, section II, part 2.

(c) The contract administration activity receiving a delegation or secondary delegation shall review the delegation to determine whether any portions of the delegation are covered by memoranda of understanding annexes, and delegate those functions to the appropriate organization in the qualifying country's government.

(d) Information on quality assurance delegations to foreign governments is in subpart 246.4, Government Contract Quality Assurance.

225.872–6 Audit.

(a) Memoranda of understanding with some qualifying countries contain annexes that provide for reciprocal "no-cost" audits of contracts and subcontracts (pre- and post-award).

(b) To determine if such an annex is applicable to a particular qualifying country, contact the Foreign Contracting Directorate, Office of the Director of Defense Procurement ((703) 697–9351, DSN 227–9351).

(c) Handle requests for audits in qualifying countries under 215.805–5(c)(1).

(1) Except for the United Kingdom (UK), send the request to the administrative contracting officer at the cognizant activity listed in DLAH 4105.4, section II, part 2 (DoD Directory of Contract Administration Services Components). Send the request for audit from the UK directly to their Ministry of Defence. See section VII, DLAH 4105.4 for guidance.

(2) Send an advance copy of the request to the focal point identified by the Foreign Contracting Directorate, Office of the Director of Defense Procurement.

225.872–7 Industrial security for qualifying countries.

The required procedures for safeguarding classified defense information necessary for the performance of contracts awarded to qualifying country sources are in the DoD Industrial Security Regulation DoD 5220.22–R (implemented for the Army by AR 380–49; for the Navy by OPNAV Instruction 5540.8L; for the Air Force by AFR 205–4; for the Defense Communications Agency by DCA Instruction 240–110–8; and for the Defense Mapping Agency by DMA Instruction 5220.22).

225.872–8 Subcontracting with qualifying country sources.

In reviewing contractor subcontracting procedures, the contracting officer shall ensure that the prime contract does not preclude qualifying country sources from competing for subcontracts, except when restricted by national security interest reasons, mobilization base considerations, or applicable U.S. laws or regulations. (See the clause at 252.225–7002, Qualifying Country Sources as Subcontractors.)

Subpart 225.9—Additional Foreign Acquisition Clauses

225.901 Omission of the Examination of Records clause.

(c) *Conditions for omission.* (1)(ii) The department or agency shall submit the required report in triplicate to the Director for Information Operations and Reports, Washington Headquarters Services, Washington, DC 20301.

Subpart 225.10—Sanctions for Violations of Export Controls

225.1003 Exceptions.

(a) The authority to act for the agency head is limited to a level no lower than an official who is appointed by and with the advice of the Senate. For the defense agencies, this is the Under Secretary of Defense for Acquisition.

(b) The designee is the contracting officer.

Subpart 225.70—Authorization Acts, Appropriations Acts, and Other Statutory Restrictions on Foreign Purchases

225.7000 Scope of subpart.

(a) This subpart contains restrictions on the acquisition of foreign products, imposed by DoD Appropriations and Authorization Acts and other statutes. Refer to the Acts to verify current applicability of the restrictions.

(b) Nothing in this subpart affects the applicability of the Buy American Act or Balance of Payments Program.

225.7001 Definitions.

As used in this subpart—

(a) "Hand or measuring tools" means those tools listed in Federal supply classifications 51 and 52, respectively.

(b) "Possessions," as used in the phrase "United States or its possessions," includes Puerto Rico.

(c) "Specialty metals" is defined in the clause at 252.225-7014, Preference for Domestic Specialty Metals.

225.7002 Restrictions on food, clothing, fabrics, and specialty metals.

§ 225.7002-1 Restrictions.

(a) Do not acquire supplies consisting in whole or in part of any of the following, that have not been grown or produced in the United States or its possessions—

(1) Food, but this does not restrict acquisition of foods manufactured or processed in the United States or its possessions;

(2) Clothing;

(3) Tents, tarpaulins, or covers;

(4) Cotton and other natural fiber products, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles), but this does not restrict acquisition of cotton or wool reprocessed or reused in the United States or its possessions;

(5) Woven silk or woven silk blends;

(6) Spun silk yarn for cartridge cloth;

(7) Synthetic fabric or coated synthetic fabric;

(8) Canvas products; or

(9) Any item of individual equipment manufactured from or containing any of the listed fibers, yarns, fabrics, or materials.

(b) Do not acquire specialty metals, including stainless steel flatware, that were not melted in steel manufacturing facilities located within the United States or its possessions.

225.7002-2 Exceptions.

Acquisitions in the following categories are not subject to the restrictions in 225.7002-1—

(a) Any of the items in 225.7002-1, if the Secretary concerned, or designee, determines that they cannot be acquired when needed in a satisfactory quality and sufficient quantity grown or produced in the United States or its possessions at U.S. market prices.

(b) Outside the United States—

(1) In support of combat operations;

(2) Perishable foods by activities located outside the United States for their personnel; or

(3) Emergency acquisitions by such activities for their personnel.

(c) Acquisitions by vessels in foreign waters.

(d) Acquisitions of those supplies listed in FAR 25.108(d)(1).

(e) Small purchases (for the purpose of this exception, a small purchase means the contract action, as distinguished from a single line item of $25,000 or less).

(f) Acquisitions of end items incidentally incorporating cotton or wool, for which the estimated value of the cotton or wool is not more than ten percent of the total price of the end item; provided the estimated value of the cotton or wool does not exceed $25,000.

(g) Supplies purchased specifically for commissary resale.

(h) Purchases of specialty metals by subcontractors at any tier for programs, except—

(1) Aircraft;

(2) Missile and space systems;

(3) Ships;

(4) Tank-automotive;

(5) Weapons; and

(6) Ammunition.

(i) Purchases of specialty metals and chemical warfare protective clothing when—

(1) Agreements with foreign governments require the United States to purchase supplies from foreign sources to offset sales made by—

(i) The U.S. Government; or

(ii) U.S. firms under approved programs; or

(2) The acquisition furthers an agreement with a qualifying country (see 225.872).

225.7002-3 Preference for domestic wool.

Use of the procedures in this subsection may result in acquisition of articles of wool (except mohair) not grown, reprocessed, reused, or produced in the United States or its possessions. If so, a secretarial determination under 225.7002-2(a) is not required because the Secretaries have determined that a satisfactory quality and sufficient quantity of such articles cannot be acquired as and when needed at U.S. market prices.

(a) Solicit offers for supplies that are part wool as follows, giving preference in the order listed—

(1) Manufactured in the United States or its possessions from domestic wool;

(2) Manufactured in the United States or its possessions from a blend of domestic wool and foreign wool; and

(3) Manufactured in the United States or its possessions from foreign wool.

(b) Award for domestically produced articles using 100 percent domestic wools if—

(1) On the date offers are opened, the average market price of domestic wool of usable grades is no more than 10 percent above the average of the prices (which reflect the Secretary of Agriculture's current incentive price) of representative types and grades of domestic wools in the wool category that includes the wool required by the specifications; and

(2) Reasonable offers of 100 percent domestic wools are received.

(c) Evaluate offers using a factor computed in accordance with paragraph (d) of this subsection. Base the factor on the portion of foreign wool furnished or used to perform the contract, add the resulting amount to the offered price, and award accordingly. If the evaluation results in tie offers, make award to the offeror proposing to furnish or use the most domestic wool.

(d) The evaluation factor is ten percent of the average price of the representative grade(s) of domestic wool. To determine the representative grade(s) of wool, see the Table 25-2, Representative Grade. (The table prices reflect the current incentive price per pound grease basis converted to clean basis for each grade. Include all grades of Original Bag Texas and Territory wool, and Graded Territory wool and Graded Fleece wool falling within the applicable category as reported in the Department of Agriculture "Market News.")

TABLE 25-2.—Representative Grade

	Price clean basis per pound dollars
Category 1—Grades 60's and finer: The average of the following grades:	
64's	(1)
62's	(1)
60's	(1)

225.7002-2(a) is not required because the Secretaries have determined that a satisfactory quality and sufficient quantity of such articles cannot be acquired as and when needed at U.S. market prices.

(a) Solicit offers for supplies that are part wool as follows, giving preference in the order listed—

(1) Manufactured in the United States or its possessions from domestic wool;

(2) Manufactured in the United States or its possessions from a blend of domestic wool and foreign wool; and

(3) Manufactured in the United States or its possessions from foreign wool.

(b) Award for domestically produced articles using 100 percent domestic wools if—

(1) On the date offers are opened, the average market price of domestic wool of usable grades is no more than 10 percent above the average of the prices (which reflect the Secretary of Agriculture's current incentive price) of representative types and grades of domestic wools in the wool category that includes the wool required by the specifications; and

(2) Reasonable offers of 100 percent domestic wools are received.

(c) Evaluate offers using a factor computed in accordance with paragraph (d) of this subsection. Base the factor on the portion of foreign wool furnished or used to perform the contract, add the resulting amount to the offered price, and award accordingly. If the evaluation results in tie offers, make award to the offeror proposing to furnish or use the most domestic wool.

(d) The evaluation factor is ten percent of the average price of the representative grade(s) of domestic wool. To determine the representative grade(s) of wool, see the Table 25-2, Representative Grade. (The table prices reflect the current incentive price per pound grease basis converted to clean basis for each grade. Include all grades of Original Bag Texas and Territory wool, and Graded Territory wool and Graded Fleece wool falling within the applicable category as reported in the Department of Agriculture "Market News.")

TABLE 25-2.—Representative Grade

	Price clean basis per pound dollars
Category 1—Grades 60's and finer: The average of the following grades:	
64's	(¹)
62's	(¹)
60's	(¹)

TABLE 25-2.—Representative Grade—Continued

	Price clean basis per pound dollars
Category 2—Grades 58's and below: The average of the following grades:	
58's	(¹)
56's	(¹)
54's	(¹)

[1] Determine the price clean basis for each grade by dividing the current incentive price by the first of the two grease percentages for the applicable grades (for which prices are reported) listed in the four issues of the Department of Agriculture "Market News" immediately preceding the date of bid opening or the closing date of requests for proposals. Compute the evaluation factor for solicitations on the basis of the four issues of "Market News" immediately preceding the issuance of bids or proposals, but adjust the factor at the time of bid opening (or the closing date for receipt of proposals) if the incentive prices change during the interim.

225.7002-4 Contract clauses.

(a) Use the clause at 252.225-7012, Preference for Certain Domestic Commodities, in all solicitations and contracts of $25,000 or more.

(b) Use the provision at 252.225-7013, Domestic Wool Preference, in solicitations for supplies if wool is a component part or end product. Compute the evaluation factor in accordance with 225.7002-3(d), and insert the amount of the factor in paragraph (a)(2)(i) of the clause.

(c) Use the clause at 252.225-7014, Preference for Domestic Specialty Metals, in all solicitations and contracts over $25,000 that require delivery of an article containing specialty metals. Use the clause with its Alternate I in all solicitations and contracts over $25,000 requiring delivery, for one of the following major programs, of an article containing specialty metals—

(1) Aircraft;

(2) Missile and space systems;

(3) Ships;

(4) Tank-automotive;

(5) Weapons; or

(6) Ammunition.

225.7003 Restriction on hand or measuring tools.

225.7003-1 Restriction.

Public Law 97-377 and subsequent laws appropriating funds for DoD restrict the acquisition of hand or measuring tools.

225.7003-2 Contract clause.

Use the clause at 252.225-7015, Preference for Domestic Hand or Measuring Tools, in all solicitations and contracts over $25,000 calling for delivery of hand or measuring tools.

225.7004 Restriction on machine tools and powered and non-powered valves.

(a) Public Law 99-591 (DoD Appropriations Act for FY 1987) and subsequent statutes have imposed restrictions on the acquisition of certain classes of machine tools, and on powered and non-powered valves used in piping for naval surface ships and submarines.

(b) Appropriations Act restrictions apply to acquisitions made obligating certain year funds, while Authorization Act restrictions apply to fund obligations made during certain fiscal years regardless of the year for which the funds were appropriated.

(c) When both restrictions apply to an acquisition, the Appropriations Act restrictions take precedence and the procedures of 225.7004-3 apply.

225.7004-1 Applicability.

(a) Machine tools restricted under this section are those tools listed in Federal supply classes of metalworking machinery in the following categories—

Federal supply classification (FSC)	Name
3405 ¹	Saw and filing machines.
3408	Machine centers and way type machines.
3410	Electrical and ultrasonic erosion machines.
3411	Boring machines.
3412	Broaching machines.
3413	Drilling and tapping machines.
3414	Gear cutting and finishing machines.
3415	Grinding machines.
3416	Lathes.
3417	Milling machines.
3418	Planers and shapers.
3419	Miscellaneous machine tools.
3426	Metal finishing equipment.
3433	Gas welding, heat cutting, and metalizing equipment.
3438 ¹	Miscellaneous welding equipment.
3441	Bending and forming machines.
3442	Hydraulic and pneumatic presses, power driven.
3443	Mechanical presses, power driven.
3445 ¹	Punching and shearing machines.
3446	Forging machinery, and hammers.
3448	Riveting machines.
3449	Miscellaneous secondary metal forming and cutting machines.
3460	Machine tool accessories.
3461	Accessories for secondary metalworking machinery.

[1] Not subject to the restrictions of 225.7004-3 for FY 1987 or FY 1988 funds.

(b) Valves restricted under this section are those powered and non-powered valves listed in Federal supply classes 4810 (valves, powered) and 4820 (valves, non-powered) used in piping for naval surface ships and submarines.

225.7004-2 Authorization Act restrictions (FY1990-1991).

(a) Do not purchase the machine tools or powered and non-powered valves in 225.7004-1 unless they are of United States or Canadian origin, or unless an exception in paragraph (b) of this subsection applies.

(b) *Exceptions.* (1) The restriction in paragraph (a) of this subsection is waived for acquisitions of less than $25,000 when small purchase procedures are used.

(2) The head of the agency may waive the restriction in paragraph (a) for other acquisitions on a case-by-case basis if any of the following apply—

(i) The restriction would cause unreasonable costs or delays.

(ii) United States producers of the item would not be jeopardized by competition from a foreign country and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(iii) Satisfactory quality items manufactured in the United States or Canada are not available.

(iv) The restriction would impede cooperative programs entered into between DoD and a foreign country and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(v) The restriction would result in the existence of only one United States or Canadian source for the item.

225.7004-3 Appropriations Act restrictions (FY 1987-1989).

(a) Machine tools listed in 225.7004-1 purchased directly as an end item or indirectly on behalf of the Government using funds appropriated in FY 1989 must be of U.S. or Canadian origin. This restriction also applies to purchases made using FY 1987 and 1988 appropriated funds except for those machine tools asterisked in 225.7004-1.

(b) The restrictions under this subsection may be waived only if supplies of these machine tools of U.S. or Canadian origin are not adequate to meet DoD requirements on a timely basis.

(1) The head of the agency may waive the restriction for acquisitions of $25,000 or more.

(2) The chief of the contracting office may waive for acquisitions less than $25,000.

225.7004-4 U.S. or Canadian origin.

(a) A valve or machine tool shall be considered to be of U.S. or Canadian origin if—

(1) It is manufactured in the United States or Canada; and

(2) The cost of its components manufactured in the United States or Canada exceeds 50 percent of the cost of all its components.

(b) The cost of components shall include transportation costs to the place of incorporation into the end product and duty (whether or not a duty-free certificate may be issued).

225.7004-5 Contract clauses.

(a) Unless a waiver has been granted, use the clause at 252.225-7016, Restriction on Acquisition of Foreign Machine Tools, in all solicitations and contracts for machine tools restricted under 225.7004-2 when the contract is awarded from October 1, 1989, through September 30, 1991. Use the basic clause with its Alternate I when the acquisition is covered either by 225.7004-3 or by both 225.7004-2 and 225.7004-3.

(b) Unless a waiver has been granted, use the clause at 252.225-7017, Restriction on Acquisition of Foreign Valves, in all solicitations and contracts for valves when the contract is awarded from October 1, 1989, through September 30, 1991.

(c) Consider using the clause at 252.225-7001, Buy American Act and Balance of Payments Program, and, if applicable, the clause at 252.225-7007, Trade Agreements Act, whenever an exception or waiver is anticipated. Where these clauses are used, state in the solicitation that offers which do not conform to the restrictions of the more restrictive clause will only be considered if an exception applies or a waiver is granted.

225.7005 Restriction on manual typewriters.

10 U.S.C. 2507(c) states that DoD may not acquire manual typewriters containing one or more components manufactured in a Warsaw Pact member country, unless the products of that country are accorded most favored nation status. Information on Warsaw Pact countries accorded most favored nation status is maintained in the Office of the Director of Defense Procurement (Foreign Contracting) (703)697-9351, DSN 227-9351.

225.7006 Restrictions on construction or repair of vessels in foreign shipyards.

10 U.S.C. 7309 restricts constructing or repairing vessels in foreign shipyards.

(a) Do not award a contract to construct either of the following in a foreign shipyard—

(1) A vessel constructed for any of the armed forces; or

(2) A major component of the hull or superstructure of any such vessel.

(b) Do not overhaul, repair, or maintain in a foreign shipyard, a naval vessel (or any other vessel under the jurisdiction of the Secretary of the Navy) homeported in the United States. This restriction does not apply to voyage repairs.

225.7007 Restriction on acquisition of foreign buses.

(a) Do not use DoD appropriations to acquire a multipassenger motor vehicle (bus) manufactured outside the United States (10 U.S.C. 2507(a)), unless acquiring a U.S. manufactured bus is uneconomical or adversely affects the national interest.

(b) Apply this restriction if the buses are purchased, leased, rented, or made available under contracts for transportation services.

(c) The head of the contracting activity may authorize the use of foreign manufactured buses by determining that the use of U.S. manufactured buses is not economical or will adversely affect the national interest of the United States.

(d) Foreign buses may be acquired without a determination in the following circumstances—

(1) When needed for temporary use because buses in the United States are not available to satisfy requirements that cannot be postponed. Such use may not, however, exceed the lead time required for acquisition and delivery of buses manufactured in the United States.

(2) When the requirement for buses is temporary in nature. For example, to meet a special, nonrecurring requirement or a sporadic and infrequent recurring requirement, foreign-manufactured buses may be used for temporary periods of time. Such use may not, however, exceed the period of time needed to meet the special requirement.

(3) When foreign-manufactured buses are available at no cost to the U.S. Government.

225.7008 Restriction on research and development.

(a) Public Law 92-570 precludes use of DoD appropriations for award to any foreign corporation, organization, person, or entity for research and development in connection with any weapon system or other military equipment if there is a U.S. corporation, organization, person, or entity—

(1) Equally competent; and

(2) Willing to perform at a lower cost.

(b) The statutory restriction in paragraph (a) of this section does not change the rules for selecting research and development contractors in FAR part 35. However, when a U.S. source and a foreign source are equally competent, award to the source that will provide the services at the lower cost.

225.7009 Restriction on aircraft ejection seats.

(a) Do not use funds appropriated for DoD for FY1984 through 1989 to acquire aircraft ejection seats manufactured in a foreign nation if that foreign nation does not permit U.S. manufacturers to compete for its ejection seat requirements.

(b) This limitation applies only to ejection seats acquired for installation on aircraft produced or assembled in the United States.

225.7010 Restriction on certain chemical weapons antidote.

Under 10 U.S.C. 2507(b), DoD appropriations may not be used to acquire chemical weapons antidote contained in automatic injectors, or the components for such injectors, unless—

(a) The injector or component is manufactured in the United States by a company that—

(1) Is a producer under the Industrial Preparedness Program at the time of contract award;

(2) Has received all required regulatory approvals; and

(3) Has the plant, equipment, and personnel to perform the contract in the United States at the time of contract award; or

(b) The Under Secretary of Defense (Acquisition) determines that acquisition from a source not described in paragraph (a) of this section is critical to the national security.

225.7011 Restriction on Strategic Defense Initiative research, development, test, and evaluation.

225.7011-1 Definitions.

Competent, foreign firm, and U.S. firm have the meanings given in the provision at 252.225-7018, Notice of Prohibition of Certain Contracts with Foreign Entities for the Conduct of Strategic Defense Initiative RDT&E.

225.7011-2 Restriction.

(a) Section 222 of the Defense Authorization Act for FY1988 and 1989 (Pub. L. 100-180) prohibits the award of certain contracts for the conduct of

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(1) Equally competent; and

(2) Willing to perform at a lower cost.

(b) The statutory restriction in paragraph (a) of this section does not change the rules for selecting research and development contractors in FAR part 35. However, when a U.S. source and a foreign source are equally competent, award to the source that will provide the services at the lower cost.

225.7009 Restriction on aircraft ejection seats.

(a) Do not use funds appropriated for DoD for FY1984 through 1989 to acquire aircraft ejection seats manufactured in a foreign nation if that foreign nation does not permit U.S. manufacturers to compete for its ejection seat requirements.

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225.7010 Restriction on certain chemical weapons antidote.

Under 10 U.S.C. 2507(b), DoD appropriations may not be used to acquire chemical weapons antidote contained in automatic injectors, or the components for such injectors, unless—

(a) The injector or component is manufactured in the United States by a company that—

(1) Is a producer under the Industrial Preparedness Program at the time of contract award;

(2) Has received all required regulatory approvals; and

(3) Has the plant, equipment, and personnel to perform the contract in the United States at the time of contract award; or

(b) The Under Secretary of Defense (Acquisition) determines that acquisition from a source not described in paragraph (a) of this section is critical to the national security.

225.7011 Restriction on Strategic Defense Initiative research, development, test, and evaluation.

225.7011-1 Definitions.

Competent, foreign firm, and U.S. firm have the meanings given in the provision at 252.225-7018, Notice of Prohibition of Certain Contracts with Foreign Entities for the Conduct of Strategic Defense Initiative RDT&E.

225.7011-2 Restriction.

(a) Section 222 of the Defense Authorization Act for FY1988 and 1989 (Pub. L. 100-180) prohibits the award of certain contracts for the conduct of

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Strategic Defense Initiative (SDI) Program research, development, test, and evaluation (RDT&E), to foreign governments or firms unless the Secretary of Defense certifies to Congress in writing at any time during the applicable fiscal year that work cannot be competently performed by a U.S. firm at a price equal to or less than the price of the foreign government or firm.

(b) For purposes of implementing this section, heads of contracting activities are authorized to make this certification (see 225.7011-3(b)).

(c) Except as provided in 225.7011-3, do not use any funds appropriated to, or for the use of, DoD to enter into or carry out any contract, including any contract awarded as a result of a broad agency announcement, with a foreign government or firm if the contract provides for the conduct of RDT&E in connection with the SDI.

(d) This prohibition is not intended to deny access to foreign expertise when contract performance requires a level of competency unavailable in the United States.

225.7011-3 Exceptions.

This prohibition shall not apply—

(a) To contracts awarded to a foreign government or firm if the contracting officer determines that—

(1) The contract will be performed within the United States;

(2) The contract is exclusively for RDT&E in connection with antitactical ballistic missile systems; or

(3) The foreign government or foreign firm agrees to share a substantial portion of the total contract cost. Consider the foreign share as substantial if it is equitable with respect to the relative benefits to be derived from the contract by the United States and the foreign parties. For example, if the contract is more beneficial to the foreign party, its share of the cost should be correspondingly higher; or

(b) If the head of the contracting activity certifies in writing, before contract award, that a contract for research, development, testing, or evaluation (other than for RDT&E described in paragraph (a)(2) of this subsection) cannot be competently performed by a U.S. firm at a price equal to or less than the price at which the RDT&E would be performed by a foreign government or firm.

225.7011-4 Procedures.

(a) When awarding a prime contract to a foreign government or firm under 225.7011-3(b), the contracting officer or source selection authority, as applicable, shall make a determination that will be the basis for the certification.

(1) The determination must—

(i) Describe the contract effort;

(ii) State the number of proposals solicited and received from both U.S. and foreign firms;

(iii) Identify the proposed awardee and the amount of the contract;

(iv) State that selection of the contractor was based on the evaluation factors contained in the solicitation, or the criteria contained in the broad agency announcement; and

(v) State that the effort cannot be competently performed by a U.S. firm at a price equal to, or less than, the price at which it would be performed by the foreign awardee.

(2) When either a broad agency announcement (BAA) or program research and development announcement (PRDA) is used, or when the determination is otherwise not based on direct competition between foreign and domestic proposals, the determination must not be merely conclusory.

(i) The determination must specifically explain its basis, include a description of the method used to determine the competency of U.S. firms, and describe the cost or price analysis performed.

(ii) Alternately, the determination may contain—

(A) A finding, including the basis for such finding, that the proposal was submitted solely in response to the terms of a BAA or PRDA, or other solicitation document without any technical guidance from the program office; and

(B) A finding, including the basis for such finding, that disclosure of the information in the proposal for the purpose of conducting a competitive acquisition is prohibited.

(b) Forward a copy of the certification (from 225.7011-3(b)) and, as appropriate, the determination or justification and approval (J&A) within 30 days of contract award to the SDI Organization, Attn: SDIO/IPM, The Pentagon, Washington, DC 20301-7100, if award is based on—

(1) A determination under paragraph (a) of this subsection;

(2) Other than full and open competition under FAR Subpart 6.3; or

(3) An unsolicited proposal under FAR Subpart 15.5.

225.7011-5 Solicitation provision.

Use the provision at 252.225-7018, Notice of Prohibition of Certain Contracts With Foreign Entities for the Conduct of Strategic Defense Initiative RDT&E, in all competitively negotiated SDI solicitations for research, development, test, and evaluation, unless foreign participation is otherwise excluded.

225.7012 Restriction on anchor and mooring chain.

225.7012-1 Restriction for fiscal year 1991.

(a) Under Public Law 101-511, section 8041, DoD appropriations may not be used to acquire welded shipboard anchor and mooring chain, four inches in diameter and under, unless—

(1) It is manufactured in the United States, including cutting, heat treating, quality control, testing, and welding (both forging and shot blasting process); and

(2) The cost of the components manufactured in the United States exceeds 50 percent of the total cost of components.

(b) This restriction may be waived by the Secretary of the Department responsible for acquisition, on a case-by-case basis, where sufficient domestic suppliers are not available to meet DoD requirements on a timely basis and the acquisition is necessary to acquire capability for national security purposes.

(1) Document the waiver in a written D&F containing—

(i) The factors supporting the waiver; and

(ii) A certification that the acquisition must be made in order to acquire capability for national security purposes.

(2) Provide a copy of the D&F to the House and Senate Committees on Appropriations.

225.7012-2 Restriction for fiscal years 1989 and 1990..

Under Public Law 100-463, section 8089, and Public Law 101-165, section 9051, no fiscal year 1989 or 1990 funds shall be used to procure welded shipboard anchor and mooring chain (four inches in diameter and under) manufactured outside the United States.

225.7012-3 Restriction for fiscal year 1988.

(a) Under Public Law 100-202, section 8125, no fiscal year 1988 funds shall be used to procure welded shipboard anchor and mooring chain (four inches in diameter and under) manufactured outside the United States, its territories or possessions, or Canada.

(b) When adequate domestic supplies of chain are not available to meet contract requirements on a timely basis, the chain may be procured from other countries on a case-by-case basis as determined by the head of the agency concerned.

225.7012-4 Contract clauses.

(a) Use the clause at 252.225-7019, Restriction on Acquisition of Foreign Anchor and Mooring Chain, in all solicitations and contracts—

(1) Using fiscal year 1991 funds; and

(2) Requiring welded shipboard anchor or mooring chain of four inches in diameter or less.

(b) Use the clause at 252.225-7020, Restriction on Acquisition of Foreign Anchor and Mooring Chain (Fiscal Years 1989 and 1990), in all solicitations and contracts—

(1) Using fiscal year 1989 or 1990 funds; and

(2) Requiring welded shipboard anchor or mooring chain.

(c) Use the clause at 252.225-7021, Restriction on Acquisition of Foreign Anchor and Mooring Chain (Fiscal Year 1988), in all solicitations and contracts—

(1) Using fiscal year 1988 funds; and

(2) Requiring welded shipboard anchor or mooring chain.

225.7013 Restriction on polyacrylonitrile (PAN) based carbon fiber.

225.7013-1 Restriction.

(a) Section 8088, Public Law 100-202, and subsequent appropriations acts, require the Secretary of Defense to take such action as necessary to ensure by FY1992 that a minimum of 50 percent of the annual DoD requirements for PAN carbon fibers is acquired from domestic sources.

(b) To meet this goal, all new major systems must use domestic or Canadian sources for all PAN carbon fiber requirements. "Domestic or Canadian sources" include U.S. and Canadian manufacturers and producers.

225.7013-2 Contract clause.

(a) Use the clause at 252.225-7022, Restriction on Acquisition of Polyacrylonitrile (PAN) Based Carbon Fiber, in all major systems acquisition programs (as defined in FAR Part 34) that are not yet in production (milestone III as defined in DoDI 5000.2, Defense Acquisition Program Procedures).

(b) Contracting officers may, with the approval of the head of the contracting activity, waive, in whole or in part, the requirement in the clause. For example, a waiver is justified if a qualified domestic or Canadian source cannot meet scheduling requirements.

225.7014 Restriction on carbonyl iron powders.

225.7014-1 Restriction.

In accordance with 10 U.S.C. 2507(a), all carbonyl iron powders contained in supplies acquired by DoD shall be manufactured in the United States or Canada by an entity more than 50 percent of which is owned or controlled by citizens of the United States or Canada.

225.7014-2 Waiver.

The restriction may be waived by the Secretary of Defense if its application is determined not to be in the national interest.

225.7014-3 Clause.

Use the clause at 252.225-7023, Restriction on the Acquisition of Carbonyl Iron Powders, in all solicitations and contracts which anticipate the acquisition of supplies which contain carbonyl iron powders.

225.7015 Restriction on night vision image intensifier tubes and devices.

225.7015-1 Restriction.

Under Public Law 101-165 and subsequent Appropriations Acts, DoD appropriations may not be used to acquire second and third generation night vision image intensifier tubes and devices unless they are manufactured in the United States or Canada.

225.7015-2 Exception.

Second and third generation night vision image intensifier tubes and devices manufactured outside the United States or Canada may be acquired if—

(a) Adequate domestic supplies are not available to meet DoD requirements on a timely basis; and

(b) The Secretary of the Department responsible for the acquisition certifies to the House and Senate Committees on Appropriations that the acquisition of tubes and devices manufactured outside the United States or Canada is necessary in order to acquire capability for national security purposes.

225.7015-3 Contract clause.

Use the clause at 252.225-7024, Restriction on Acquisition of Night Vision Image Intensifier Tubes and Devices, in all solicitations and contracts which—

(a) Use fiscal year 1990 or later funds; and

(b) Require second and third generation night vision image intensifier tubes and devices.

Subpart 225.71—Other Restrictions on Foreign Purchases

225.7100 Scope of subpart.

This subpart contains foreign product restrictions which are based on policies designed to protect the defense industrial base.

225.7101 Definitions.

Relevant definitions are in the clause at 252.225-7022, Foreign Source Restrictions.

225.7102 Policy.

DoD requirements for the following, including acquisitions for items containing the following, shall be acquired from U.S. or U.S. and Canadian sources to the maximum extent practicable—

(a) Miniature and instrument ball bearings;

(b) Precision components for mechanical time devices included in fuzes, boosters, and aircraft clocks in the following Federal supply classes:

FSC	Description
1305	Ammunition through 30mm
1310	Ammunition, over 30mm up to 75mm
1315	Ammunition, 75mm through 125mm
1320	Ammunition over 125mm
1325	Bombs
1330	Grenades
1340	Rockets and rocket ammunition
1345	Land mines
1390	Fuzes and primers
6645	Time measuring instruments (aircraft clocks only);

(c) High purity silicon;

(d) High carbon ferrochrome (HCF);

(e) Antifriction bearings and bearing components;

(f) Forging items as follows:

Items	Categories
Shipboard forged anchor chains.	All.
Ship propulsion shafts	Excludes service and landing craft shafts.
Periscope tubes	All.
Ring forgings for bull gears.	All greater than 120 inches in diameter.
Large caliber, thick-walled cannon (105 mm through 8-inch forgings).	Preform, gun tube, muzzle brake, and breach ring forgings.
60mm and 81mm mortar forgings.	Bipod, base plate, and body yoke forgings.
Small caliber weapons forgings.	Barrel extensions, bolts receivers, sights/handles, etc.
Tank and automotive forgings.	Turret rings, road arms, final drive gears, shafts, track shoes, axle shafts flywheels, connecting rods, crankshafts, roadwheels, spindles, torsion bars.

225.7103 Exceptions.

The policy in 225.7102 does not apply to acquisitions—

(a) When using small purchase procedures, unless the restricted item is the end item being purchased;

(b) Of miniature and instrument ball bearings or precision components for mechanical time devices when

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225.7101 Definitions.

Relevant definitions are in the clause at 252.225–7022, Foreign Source Restrictions.

225.7102 Policy.

DoD requirements for the following, including acquisitions for items containing the following, shall be acquired from U.S. or U.S. and Canadian sources to the maximum extent practicable—

(a) Miniature and instrument ball bearings;

(b) Precision components for mechanical time devices included in fuzes, boosters, and aircraft clocks in the following Federal supply classes:

FSC	Description
1305	Ammunition through 30mm
1310	Ammunition, over 30mm up to 75mm
1315	Ammunition, 75mm through 125mm
1320	Ammunition over 125mm
1325	Bombs
1330	Grenades
1340	Rockets and rocket ammunition
1345	Land mines
1390	Fuzes and primers
6645	Time measuring instruments (aircraft clocks only);

(c) High purity silicon;

(d) High carbon ferrochrome (HCF);

(e) Antifriction bearings and bearing components;

(f) Forging items as follows:

Items	Categories
Shipboard forged anchor chains.	All.
Ship propulsion shafts	Excludes service and landing craft shafts.
Periscope tubes	All.
Ring forgings for bull gears.	All greater than 120 inches in diameter.
Large caliber, thick-walled cannon (105 mm through 8-inch forgings).	Preform, gun tube, muzzle brake, and breach ring forgings.
60mm and 81mm mortar forgings.	Bipod, base plate, and body yoke forgings.
Small caliber weapons forgings.	Barrel extensions, bolts receivers, sights/handles, etc.
Tank and automotive forgings.	Turret rings, road arms, final drive gears, shafts, track shoes, axle shafts flywheels, connecting rods, crankshafts, roadwheels, spindles, torsion bars.

225.7103 Exceptions.

The policy in 225.7102 does not apply to acquisitions—

(a) When using small purchase procedures, unless the restricted item is the end item being purchased;

(b) Of miniature and instrument ball bearings or precision components for mechanical time devices when

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necessary to meet urgent military requirements;

(c) Of commercial products—

(1) Except forgings;

(2) Other than miniature and instrument ball bearings or precision components for mechanical time devices for use as components or subassemblies of defense equipment or systems (e.g., repair parts);

(3) Other than steel plate, sheet, ingots or the like that incorporate high carbon ferrochrome; or

(4) Except when the restricted item is the end item;

(d) Overseas for overseas use;

(e) Of forgings—

(1) Used for commercial vehicles or noncombat support military vehicles; or

(2) When the quantity acquired exceeds the amount needed to maintain the U.S. defense mobilization base (provided such quantity is an economical purchase quantity). The restriction to domestic sources does not apply to the quantity above that required to maintain the base, in which case, qualifying country sources may compete;

(f) Of high carbon ferrochrome incorporated in qualifying country end products from North Atlantic Treaty Organization countries; or

(g) For bearings and bearing components or items containing bearings for use in a cooperative or co-production project under an international agreement. (This exception does not apply to miniature and instrument ball bearings.)

225.7104 Waivers.

(a) Upon request from a prime contractor, the contracting officer may waive the requirement for domestic manufacture of the items covered by the policy in 225.7102(a), (b), (c), (d), and (f), provided in the case of (a), (b) and (c) that—

(1) The contractor has on hand subassemblies or end items containing the restricted items;

(2) The waiver is only to the extent and for the period of time necessary to permit the contractor to acquire and use domestic components; and either

(3) The delivery schedule is such that use of other than domestic items is necessary; or

(4) Use of domestic items would interfere with economical or normal production scheduling.

(b) If the waiver is for miniature and instrument ball bearings or precision components for mechanical time devices, the contractor must agree to acquire a like quantity and type for non-Government use.

(c) If the waiver is for antifriction bearings (225.7102(e)), except miniature and instrument ball bearings, the head of the contracting activity, on a nondelegable basis, may waive the requirement for domestic manufacture—

(1) Upon execution of a determination and findings that—

(i) No domestic bearing manufacturer meets the requirement; or

(ii) It is not in the best interest of the United States to qualify a domestic bearing to replace a qualified nondomestic bearing. This determination must be based on a finding that the qualification of a domestically manufactured bearing would cause unreasonable costs or delay. A finding that a cost is unreasonable should take into consideration DoD policy to assist the domestic industrial mobilization base. Contracts should be awarded to domestic bearing manufacturers to increase their capability to reinvest and become more competitive.

(2) For multiyear contracts or contracts exceeding 12 months, if—

(i) The head of the contracting activity executes a D&F in accordance with paragraph (c)(1) of this section;

(ii) The contractor submits a written plan for transitioning from the use of nondomestic to domestically manufactured bearings;

(iii) The plan—

(A) States whether a domestically manufactured bearing can be qualified, at a reasonable cost, for use during the course of the contract period;

(B) Identifies any bearings that are not domestically manufactured, their application, and source of supply; and

(C) Describes, including cost and timetable, the transition to a domestically manufactured bearing. (The timetable for the transition should normally take no longer than 24 months from the date the waiver is granted); and

(iv) The contracting officer accepts the plan and incorporates it in the contract.

225.7105 Contract clause.

(a) Use the clause at 252.225–7025, Foreign Source Restrictions, in all solicitations and contracts, except—

(1) Those in 225.7103; or

(2) Those where the contracting officer knows that the supplies being acquired do not contain the restricted items.

(b) If an exception under 225.7103 applies to any portion of the acquisition, specify the exception in the solicitation and contract.

Subpart 225.72—Reporting of Overseas Subcontracts

225.7200 Scope of subpart.

This subpart discusses DoD monitoring of the volume, type, and nature of certain subcontracts awarded to foreign sources.

225.7201 Applicability.

(a) Except as noted in 225.7202, this subpart applies to any contract that—

(1) Is expected to exceed $500,000;

(2) Exceeds $500,000 at time of award; or

(3) Exceeds $500,000 subsequent to award if a modification increases the amount of the contract to more than $500,000.

(b) Contractors awarded contracts meeting the criteria in paragraph (a) of this section, and their first-tier subcontractors awarded subcontracts exceeding $100,000, must report (using DD Form 2139, Subcontract Report of Foreign Purchases) the volume, type, and nature of—

(1) Subcontracts exceeding $25,000 if the country of origin of the producer of the supplies, or provider of the services, is outside the United States; and

(2) Modifications, exceeding $25,000, of such subcontracts.

(c) Contractors, and their first-tier subcontractors, required by paragraph (a)(3) of this section to report subcontracts awarded to foreign sources are required to report only those subcontracts awarded after the modification is effective.

225.7202 Exception.

This subpart does not apply to contracts for commercial items, ores, natural gas, utilities, petroleum products and crudes, timber (logs), or subsistence.

225.7203 Contract clause.

Except for acquisitions in 225.7202, use the clause at 252.225–7026, Reporting of Overseas Subcontracts, in all solicitations and contracts described in 225.7201(a).

Subpart 225.73—Acquisitions for Foreign Military Sales

225.7300 Scope of subpart.

(a) This subpart contains policies and procedures for acquisitions for foreign military sales (FMS) under the Arms Export Control Act. Section 22 of the Arms Export Control Act (Pub. L. 90-629, as amended) authorizes DoD to enter into contracts for resale to foreign countries or international organizations.

(b) This subpart does not apply to—

(1) Foreign military sales made from inventories or stocks;

(2) Acquisitions for replenishment of inventories or stocks;

(3) Acquisitions made under DoD cooperative logistic supply support arrangements.

225.7301 General.

(a) The U.S. Government sells defense articles and services to foreign governments or international organizations through foreign military sales (FMS) agreements. The agreement is documented on a DD Form 1513, DoD Offer and Acceptance. The DD Form 1513—

(1) Lists the items and services, estimated costs, and terms and conditions of the sale;

(2) Is presented to the foreign customer; and

(3) Provides for signature of the foreign customer to indicate acceptance.

(b) Acquisitions for FMS are conducted under the same acquisition and contract management procedures as other defense acquisitions.

(c) Solicitations shall separately identify known FMS requirements and the FMS customer.

(d) Contracts for known FMS requirements shall clearly be marked "FMS requirement" on the face of the contract along with the FMS customer and the case identifier code.

225.7302 Procedures.

On FMS programs that will require an acquisition, the contracting officer assists the departmental/agency activity responsible for preparing the DoD Offer and Acceptance by—

(a) Working with prospective contractors to—

(1) Identify and review sales commissions and fees;

(2) Identify, in advance of the DoD Offer and Acceptance, any unusual provisions or deviations.

(3) Advise the contractor if the departmental/agency activity expands, modifies, or does not accept any requirements proposed by the contractor;

(4) Identify any logistics support necessary to perform the contract; and

(5) For acquisitions over $10,000 that are to be awarded noncompetitively, asking the prospective contractor(s) for information on price, delivery, and other relevant factors. The request for information must identify the fact that the information is for a potential foreign military sale and must identify the foreign customer.

(b) Working with the departmental/agency activity responsible for preparing the DoD Offer and Acceptance to—

(1) Assist, as necessary, in preparation of the DD Form 1513;

(2) Identify and explain all unusual contractual requirements or requests for deviations; and

(3) Assist in preparing the price and availability data.

225.7303 Pricing acquisitions for foreign military sales.

Price foreign military sale contracts using the same principles as are used in pricing other defense contracts. Application of the pricing principles in FAR parts 15 and 31 to a foreign military sale contract, however, may result in prices that differ from other defense contract prices for the same item due to the considerations in this section.

225.7303-1 Contractor sales to other foreign customers.

If the contractor has made sales of the item required for the foreign military sale to foreign customers under comparable conditions, including quantity and delivery, price the FMS contract in accordance with FAR part 15.

225.7303-2 Cost of doing business with a foreign government or an international organization.

(a) In pricing FMS contracts where non-U.S. Government prices as described in 225.7303-1 do not exist—

(1) Recognize costs of doing business with a foreign government or international organization (even though the form of the transaction is a defense purchase for the purpose of FMS) whenever comparable costs of doing business with the United States would be recognized in pricing other defense contracts.

(2) Recognize reasonable and allocable costs, even though such costs might not be recognized in the same amounts in pricing other defense contracts. Examples of such costs include, but are not limited to—

(i) Selling expenses (not otherwise limited by FAR part 31), e.g.—

(A) Maintaining international sales and service organizations;

(B) Sales commissions and fees in accordance with FAR subpart 3.4;

(C) Sales promotions, demonstrations, and related travel for sales to foreign governments.

(*1*) Such costs may be recovered for U.S. Government requirements under DFARS 231.205-38(c).

(*2*) Paragraph 126.8 of the International Traffic in Arms Regulations (ITAR) (22 CFR Part 121) may require Government approval for these costs to be allowable. If Government approval is required for promotion or demonstration costs to be allowable, the approval must be obtained.

(D) Configuration studies and related technical services undertaken as a direct selling effort to a foreign country.

(ii) Product support and postdelivery service expenses, such as—

(A) Operations or maintenance training, training or tactics films, manuals, or other related data; and

(B) Technical field services provided in a foreign country related to accident investigations, weapon system problems, operations/tactics enhancement, and related travel to foreign countries.

(iii) Costs associated with the implementation of an offset arrangement between DoD and a foreign government. (Costs associated with the implementation of an offset agreement directly between a contractor and a foreign government are not allowable.)

(iv) Costs that are the subject of advance agreement under the appropriate provisions of FAR Part 31; or where the advance understanding places a limit on the amounts of cost that will be recognized as allowable in defense contract pricing, and the agreement contemplated that it will apply only to DoD contracts for the U.S. Government's own requirements (as distinguished from contracts for FMS).

(b) Costs not allowable under FAR Part 31 are not allowable in pricing foreign military sale contracts.

(c) The provisions of 10 U.S.C. 2372 do not apply to contracts for foreign military sales. Therefore, the ceiling limitations or the formula constraints on bid and proposal (B&P) costs in FAR part 31 and on independent research and development (IR&D) costs in part 231 do not apply to contracts for foreign military sales. IR&D and B&P costs allowed on contracts for foreign military sales shall be limited to their allocable share of the total expenditures. In pricing contracts for foreign military sales—

(1) Use the best estimate of reasonable costs in forward pricing.

(2) Use actual expenditures, to the extent that they are reasonable, in determining final cost.

(d) Under section 21(e)(1)(A) of the Arms Export Control Act, as amended, the United States must charge for administrative services to recover the estimated cost of administration of sales made under the Arms Export Control Act.

225.7303-3 Government-to-government agreements.

If a government-to-government agreement between the United States

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(D) Configuration studies and related technical services undertaken as a direct selling effort to a foreign country.

(ii) Product support and postdelivery service expenses, such as—

(A) Operations or maintenance training, training or tactics films, manuals, or other related data; and

(B) Technical field services provided in a foreign country related to accident investigations, weapon system problems, operations/tactics enhancement, and related travel to foreign countries.

(iii) Costs associated with the implementation of an offset arrangement between DoD and a foreign government. (Costs associated with the implementation of an offset agreement directly between a contractor and a foreign government are not allowable.)

(iv) Costs that are the subject of advance agreement under the appropriate provisions of FAR Part 31; or where the advance understanding places a limit on the amounts of cost that will be recognized as allowable in defense contract pricing, and the agreement contemplated that it will apply only to DoD contracts for the U.S. Government's own requirements (as distinguished from contracts for FMS).

(b) Costs not allowable under FAR Part 31 are not allowable in pricing foreign military sale contracts.

(c) The provisions of 10 U.S.C. 2372 do not apply to contracts for foreign military sales. Therefore, the ceiling limitations or the formula constraints on bid and proposal (B&P) costs in FAR part 31 and on independent research and development (IR&D) costs in part 231 do not apply to contracts for foreign military sales. IR&D and B&P costs allowed on contracts for foreign military sales shall be limited to their allocable share of the total expenditures. In pricing contracts for foreign military sales—

(1) Use the best estimate of reasonable costs in forward pricing.

(2) Use actual expenditures, to the extent that they are reasonable, in determining final cost.

(d) Under section 21(e)(1)(A) of the Arms Export Control Act, as amended, the United States must charge for administrative services to recover the estimated cost of administration of sales made under the Arms Export Control Act.

225.7303–3 Government-to-government agreements.

If a government-to-government agreement between the United States and a foreign government for the sale, coproduction, or cooperative logistic support of a specifically defined weapon system, major end item, or support item, contains language in conflict with the provisions of this section, the language of the government-to-government agreement prevails.

225.7303–4 Sales commissions and contingent fees.

Sales commissions and contingent fees are allowable under defense contracts provided that the commissions or fees are paid to a bona fide employee or a bona fide established commercial or selling agency maintained by the prospective contractor for the purpose of securing business (see FAR part 31 and FAR subpart 3.4). For FMS, it is extremely difficult for DoD to verify the services, or the value of the services. Therefore, the cost of allowable sales commissions and contingent fees (as defined in FAR subpart 3.4) is limited to $50,000 and must be identified to the FMS customer before, or at the time of, submitting the DoD Offer and Acceptance (DD Form 1513) to the customer.

(a) When requesting price and availability data for an Offer and Acceptance, require contractors to identify the amount of any sales commissions or fees. The fees, even if under $50,000 per contract, must be justified and supported. Except for those contracts excluded in FAR subpart 3.4—

(1) Require the contractor to submit a Contractor's Statement of Contingent or Other Fees (Standard Form 119) (Including any such fees claimed by subcontractors);

(2) Determine under FAR subpart 3.4 whether a bona fide employee or agency relationship exists (for the purposes of FMS, the definition in FAR subpart 3.4 of improper influence also extends to officials of the foreign government);

(3) Require the contractor to submit a breakdown of the fee for the sales representative's services. Even if a bona fide employee or agency relationship is determined to exist, the fee must be reasonable.

(i) Whether the fee is reasonable requires an assessment of the services provided, or to be provided, compared to the amount of the fee.

(ii) The proposed fee/commission may be compared with known costs for comparable services under non-FMS contracts, or for FMS sales of comparable scope and dollar amounts for the same or similar items.

(iii) In analyzing the fee, give consideration to whether the sale is the initial or a follow-on sale. Effort for follow-on sales of additional quantities, spares, and support equipment is normally not as great as the effort for the initial sale.

(4) The chief of the contracting office must approve the contracting officer's determination—

(i) As to whether there is a bona fide employee or agency relationship; and

(ii) Of the reasonableness of the commission or fee.

(b) If the foreign customer disapproves the fee, or a portion of the fee, the contracting officer must notify the prospective contractor and request that the contractor withdraw the fee for the sales representative from the proposal. If the contractor refuses to withdraw the fee, the contracting officer notifies the department/agency activity responsible for preparation of the DoD Offer and Acceptance, which notifies the foreign customer that DoD is unable to purchase the items or services from that contractor.

(c) It may not be possible to determine whether or not the price to be paid for material or services will include sales commissions and fees (for example, when FMS requirements are to be fulfilled by competitive acquisitions). In such cases, if contract negotiations indicate that costs for a sales representative will be claimed by the contractor, the department/agency responsible for presentation of the Offer and Acceptance notifies the foreign customer as soon as possible and asks for a reply within 30 days as to whether the customer will approve the costs.

(d) Under DoD 5105.38–M, Security Assistance Management Manual, Letters of Offer and Acceptance for requirements for the governments of Australia, Taiwan, Egypt, Greece, Israel, Japan, Jordan, Republic of Korea, Kuwait, Pakistan, Philippines, Saudi Arabia, Turkey, Thailand, or Venezuela (Air Force) must provide that all U.S. Government contracts resulting from the Letters of Offer prohibit the payment of sales commission and fee unless the payments have been identified and payment approved in writing by the foreign customer before contract award. (See 225.7308(a).)

225.7304 Source selection.

(a) FMS customers may request that a defense article or defense service be obtained from a particular contractor. In such cases, FAR 6.302–4 provides authority to contract without full-and-open competition. The FMS customer may also request that a subcontract be placed with a particular firm. The contracting officer shall honor such requests from the FMS customer only if the Letter of Agreement or other written direction sufficiently fulfills the requirements of FAR 6.3.

(b) Do not allow representatives of the FMS customer to—

(1) Direct the deletion of names of firms from bidders mailing lists or slates of proposed A–E firms. (They may suggest the inclusion of certain firms);

(2) Interfere with a contractor's placement of subcontracts; or

(3) Participate in the price negotiations between the U.S. Government and the contractor.

(c) Do not accept directions from the FMS customer on source selection decisions or contract terms (other than the special contract provisions and warranties referred to in Condition A.2 of the DD Form 1513).

(d) Do not honor any requests by the FMS customer to reject any bid or proposal.

225.7305 Limitation of liability.

The contracting officer must advise the contractor whenever the foreign customer will assume the risk for loss or damage under the appropriate limitation of liability clause(s) (see FAR subpart 46.8). Consider the costs of necessary insurance, if any, obtained by the contractor to cover the risk of loss or damage in establishing the FMS contract price.

225.7306 Exercise of options for foreign military sales.

Consider changes to cost and profit attributable to pricing differences between U.S. and FMS requirements when exercising an option to satisfy an FMS requirement. Also consider such changes if the option is already identified for FMS, but it is exercised for country B requirements instead of the country A requirements for which it was priced.

225.7307 Implementation of offset arrangements negotiated pursuant to foreign military sales agreements.

225.7307–1 General.

(a) The purpose of an FMS/offset arrangement is to fulfill commitments negotiated pursuant to an FMS agreement. The general policy in fulfilling these commitments is to exempt the FMS country's products from the requirements of the Buy American Act on a case-by-case basis.

(b) Generally, it is not appropriate to establish an offset goal or objective. If in special circumstances it is in the national interest to establish an offset goal or objective, the goal or objective may be stated as—

(1) A certain percentage of the FMS agreement dollar value;

(2) A specific dollar amount; or

(3) A combination of the two.

(c) The Presidential policy statement of April 16, 1990 provides that DoD shall not encourage, enter directly into, or commit U.S. firms, to any FMS/offset arrangement. The decision whether to engage in offsets, and the responsibility for negotiating and implementing offset arrangements, resides with the companies involved. Exceptions to this policy must be approved by the President through the National Security Council. This does not prevent DoD from fulfilling obligations incurred through international agreements entered into before April 16, 1990.

(d) When authorized, offset provisions typically require the Military Departments or U.S. prime contractors, or both, to provide opportunities for foreign sources to obtain contracts under the terms and conditions of the particular DoD offset agreement. Normally, FMS/offset arrangements are negotiated before the FMS agreement Offer and Acceptance so that—

(1) DoD and its contractors have an opportunity to assess in advance their ability to fulfill the FMS/offset arrangement; and

(2) The offer can include those DoD and contractor costs associated with such arrangements.

(e) If an exception is granted under paragraph (c) of this subsection, the domestic concerns involved in the FMS and the foreign customer will make suitable arrangements to fulfill an FMS/offset arrangement. Only if the Government determines that the FMS/offset arrangement cannot be fulfilled in this fashion will DoD seek to fulfill the offset commitments through other defense purchases. When practical, the U.S. contractor shall be contacted and coordination obtained before the Government commits the contractor's participation.

(f) The Defense Security Assistance Agency (DSAA) acts as the focal point within the Executive Branch for interagency coordination on offset policy. DSAA consults with, and derives its overall policy guidance from, the Office of the Assistant Secretary of Defense (International Security Affairs). The Director of Defense Procurement is responsible for matters pertaining to the fulfillment of the offset portion of FMS agreements. General information regarding the existence of FMS/offset arrangements with particular countries or implementation of such arrangements may be obtained by submitting inquiries to the Directorate for Foreign Contracting, OUSD(A)DP(FC).

225.7307-2 Procedures.

(a) Whenever an FMS agreement involves a single major weapon system, the department responsible for acquisition of the weapon system is responsible for managing any resulting FMS/offset arrangement.

(b) If an FMS agreement involves the sale of items from two or more departments, OASD(P&L) may either direct that one department be responsible for coordinating the implementation of the FMS/offset arrangement, or apportion responsibility for managing the offset program among two or more departments.

225.7308 Contract clauses.

(a) Use the clause at 252.225-7027, Limitation on Sales Commissions and Fees, in all solicitations and contracts for foreign military sales for the countries in 225.7303-4(d), unless payment of sales commissions and fees has been approved by the foreign customer. Insert the name of the foreign country customer in the three blanks of the clause.

(b) Use the clause at 252.225-7028, Exclusionary Policies and Practices of Foreign Governments, in all solicitations and contracts for the purchase of goods and services for international military education training and foreign military sales.

PART 226—OTHER SOCIOECONOMIC PROGRAMS

Sec.

Subpart 226.70—Historically Black Colleges and Universities and Minority Institutions

226.7000 Scope of subpart.
226.7001 Definitions.
226.7002 General policy.
226.7003 Set-asides for HBCUs and MIs.
226.7003-1 Set-aside criteria.
226.7003-2 Set-aside procedures.
226.7004 Evaluation preference for HBCUs and MIs.
226.7005 Eligibility as an HBCU or MI.
226.7006 Protesting an HBCU or MI representation.
226.7007 Goals and incentives for subcontracting with HBCU/MIs.
226.7008 Solicitation provision and contract clause.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 226.70—Historically Black Colleges and Universities and Minority Institutions

226.7000 Scope of subpart.

This subpart implements the historically black college and university (HBCU) and minority institution (MI) aspects of section 1207 of Public Law 99-661, section 806 of Public Law 100-180, and section 831 of Public Law 101-189. These laws set a goal for DoD for each of fiscal years 1987-1993 to—

(a) Award five percent of contract and subcontract dollars to small disadvantaged business concerns and HBCU/MIs; and

(b) Maximize the number of such entities in DoD contracting and subcontracting.

226.7001 Definitions.

Definitions of HBCUs and MIs are in the clause at 252.226-7000.

226.7002 General policy.

The DoD will use outreach efforts, technical assistance programs, advance payments, HBCU/MI set-asides, and evaluation preferences to meet its contract and subcontract goal for use of HBCUs and MIs.

226.7003 Set-asides for HBCUs and MIs.

226.7003-1 Set-aside criteria.

Set-aside acquisitions for exclusive HBCU and MI participation when the acquisition is for research, studies, or services of the type normally acquired from higher educational institutions and there is a reasonable expectation that—

(a) Offers will be submitted by at least two responsible HBCUs or MIs which can comply with the subcontracting limitations in the clause at FAR 52.219-14;

(b) Award will be made at not more than ten percent above fair market price; and

(c) Scientific and/or technological talent consistent with the demands of the acquisition will be offered.

226.7003-2 Set-aside procedures.

(a) As a general rule, use competitive negotiation for HBCU/MI set-asides.

(b) When using a broad agency announcement (FAR 35.016) for basic or applied research, make partial set-asides for HBCU/MIs as explained in 235.016.

(c) Follow the special synopsis instructions in 205.207(d) (iii), (iv), and (v).

(d) Cancel the set-aside if the low responsible offer exceeds the fair market price (defined in FAR Part 19) by more than ten percent,

226.7004 Evaluation preference for HBCUs and MIs.

In acquisitions which use the evaluation preference described in Subpart 219.70 for small disadvantaged business concerns, the preference also applies to offers from HBCUs or MIs.

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189. These laws set a goal for DoD for each of fiscal years 1987–1993 to—

(a) Award five percent of contract and subcontract dollars to small disadvantaged business concerns and HBCU/MIs; and

(b) Maximize the number of such entities in DoD contracting and subcontracting.

226.7001 Definitions.

Definitions of HBCUs and MIs are in the clause at 252.226–7000.

226.7002 General policy.

The DoD will use outreach efforts, technical assistance programs, advance payments, HBCU/MI set-asides, and evaluation preferences to meet its contract and subcontract goal for use of HBCUs and MIs.

226.7003 Set-asides for HBCUs and MIs.

226.7003–1 Set-aside criteria.

Set-aside acquisitions for exclusive HBCU and MI participation when the acquisition is for research, studies, or services of the type normally acquired from higher educational institutions and there is a reasonable expectation that—

(a) Offers will be submitted by at least two responsible HBCUs or MIs which can comply with the subcontracting limitations in the clause at FAR 52.219–14;

(b) Award will be made at not more than ten percent above fair market price; and

(c) Scientific and/or technological talent consistent with the demands of the acquisition will be offered.

226.7003-2 Set-aside procedures.

(a) As a general rule, use competitive negotiation for HBCU/MI set-asides.

(b) When using a broad agency announcement (FAR 35.016) for basic or applied research, make partial set-asides for HBCU/MIs as explained in 235.016.

(c) Follow the special synopsis instructions in 205.207(d) (iii), (iv), and (v).

(d) Cancel the set-aside if the low responsible offer exceeds the fair market price (defined in FAR Part 19) by more than ten percent,

226.7004 Evaluation preference for HBCUs and MIs.

In acquisitions which use the evaluation preference described in Subpart 219.70 for small disadvantaged business concerns, the preference also applies to offers from HBCUs or MIs.

226.7005 Eligibility as an HBCU or MI.

(a) To be eligible for award as an HBCU or MI under the preference procedures of this subpart, an offeror must—

(1) Be an HBCU or MI, as defined in the clause at 252.226–7000, Notice of Historically Black College or University and Minority Institution Set-Aside, both at the time of submission of its offer and at contract award; and

(2) Provide the contracting officer with evidence of its HBCU or MI status upon request.

(b) The contracting officer shall accept an offeror's certification under the provision at 252.226–7001 that it is an HBCU or MI, unless—

(1) Another offeror challenges the certification; or

(2) The contracting officer has reason to question the offeror's HBCU/MI status. (A list of HBCUs is published periodically by the Department of Education.)

226.7006 Protesting an HBCU or MI representation.

Any offeror or other interested party may challenge an offeror's HBCU or MI representation by filing a protest with the contracting officer. The protest must contain specific detailed evidence supporting the basis for the challenge. Such protests are handled in accordance with FAR 33.103 and are decided by the contracting officer.

226.7007 Goals and incentives for subcontracting with HBCU/MIs.

(a) In reviewing subcontracting plans submitted under the clause at FAR 52.219–9, Small Business and Small Disadvantaged Business Subcontracting Plan, the contracting officer shall—

(1) Ensure that the contractor included anticipated awards to HBCU/MIs in the small disadvantaged business goal;

(2) Consider whether subcontracts are contemplated which involve research or studies of the type normally performed by higher educational institutions.

(b) Use of incentives for subcontracting with HBCU/MIs is prescribed in 219.708(c)(1).

226.7008 Solicitation provision and contract clause.

(a) Use the clause at 252.226–7000, Notice of Historically Black College or University and Minority Institution Set-Aside, in solicitations and contracts set-aside for HBCU/MIs.

(b) Use the provision at 252.226–7001, Historically Black College or University and Minority Institution Certification, in solicitations set-aside for HBCU/MIs and in solicitations which contain the clause at 252.219–7003, Notice of Evaluation Preference for Small Disadvantaged Business Concerns.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 227—PATENTS, DATA, AND COPYRIGHTS

Sec.

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Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 227.3—Patent Rights Under Government Contracts

227.303 Contract clauses.

(a) Pursuant to FAR 27.304–1(e), the contracting officer shall insert the clause at 252.227–7039, Patents—Reporting of Subject Inventions, in solicitations and contracts containing the clause at FAR 52.227–11, Patent Rights—Retention by the Contractor (Short Form).

227.304 Procedures.

227.304–1 General.

Interim and final invention reports and notification of all subcontracts for experimental, developmental, or research work (FAR 27.304–1(d)(ii)) may be submitted on DD Form 882, Report of Inventions and Subcontracts.

227.304–4 Subcontracts.

The contracting officer shall insert the clause at 252.227–7034, Patents-Subcontracts, in solicitations and contracts containing the clause at FAR 52.227–11, Patent Rights—Retention by the Contractor (Short Form).

Subpart 227.4—Rights in Data and Copyrights

227.400 Scope of subpart.

This subpart sets forth the Department of Defense policies and procedures relating to the acquisition of technical data and computer software as well as rights in technical data, other data, computer software, and copyrights. This subpart does not apply to rights in computer software acquired under GSA schedule contracts.

227.401 Definitions.

As used in this subpart—

(1) *Commercial computer software* means computer software which is used regularly for other than Government purposes and is sold, licensed, or leased in significant quantities to the general public at established market or catalog prices.

(2) *Computer* means a data processing device capable of accepting data, performing prescribed operations on the data, and supplying the results of these operations; for example, a device that operates on discrete data by performing arithmetic and logic processes on the data, or a device that operates on analog data by performing physical processes on the data.

(3) *Computer data base* means a collection of data in a form capable of being processed and operated on by a computer.

(4) *Computer program* means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. Computer programs include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort-merge programs, and ADPE maintenance/diagnostic programs, as well as applications programs such as payroll, inventory control, and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general-purpose in nature or be designed to satisfy the requirements of a particular user.

(5) *Computer software* means computer programs and computer data bases.

(6) *Computer software documentation* means technical data, including computer listings and printouts, in human-readable form which—

(i) Documents the design or details of computer software;

(ii) Explains the capabilities of the software; or

(iii) Provides operating instructions for using the software to obtain desired results from a computer.

(7) *Data* means recorded information, regardless of form or method of the recording.

(8) *Detailed design data* means technical data that describes the physical configuration and performance characteristics of an item or component in sufficient detail to ensure that an item or component produced in accordance with the technical data will be essentially identical to the original item or component.

(9) *Detailed manufacturing or process data* means technical data that describes the steps, sequences, and conditions of manufacturing, processing or assembly used by the manufacturer to produce an item or component or to perform a process.

(10) *Developed* means that the item, component, or process exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered "developed", the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component or process be actually reduced to practice within the meaning of title 35 of the United States Code.

(11) *Developed exclusively with Government funds* means, in connection with an item, component, or process, that the cost of development was paid for in whole by the Government or that the development was required for the performance of a Government contract or subcontract.

(12) *Developed exclusively at private expense* means, in connection with an item, component, or process, that no part of the cost of development was paid for by the Government and that the development was not required for the performance of a Government contract or subcontract. Independent research and development and bid and proposal costs, as defined in FAR 31.205–18 (whether or not included in a formal independent research and development program), are considered to be at private expense. All other indirect costs of development are considered Government funded when development was required for the performance of a Government contract or subcontract. Indirect costs are considered funded at private expense when development was not required for the performance of a Government contract or subcontract.

(13) *Form, fit, and function data* means technical data that describes the required overall physical, functional, and performance characteristic, (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

(14) *Government purpose license rights (GPLR)* means rights to use, duplicate, or disclose data (and in the SBIR Program, computer software), in whole or in part and in any manner, for Government purposes only, and to have or permit others to do so for Government purposes only. Government purposes include competitive procurement, but do not include the right to have or permit others to use technical data (and in the SBIR Program, computer software) for commercial purposes.

(15) *Limited rights* means rights to use, duplicate, or disclose technical data, in whole or in part, by or for the Government, with the express limitation that such technical data shall not, without the written permission of the party asserting limited rights, be: Released or disclosed outside the Government; used by the Government for manufacture, or in the case of computer software documentation, for preparing the same or similar computer software; or used by a party other than the Government, except that the Government may release or disclose technical data to persons outside the Government, or permit the use of technical data by such persons, if—

(i) Such release, disclosure, or use—

(A) Is necessary for emergency repair and overhaul; or

(B) Is a release or disclosure of technical data (other than detailed manufacturing or process data) to, or use of such data by, a foreign government that is in the interest of the Government and is required for evaluational or informational purposes;

(ii) Such release, disclosure, or use is made subject to a prohibition that the person to whom the data is released or disclosed may not further release, disclose, or use such data; and

(iii) The contractor or subcontractor asserting the restriction is notified of such release, disclosure, or use.

(16) *Required for the performance of a Government contract or subcontract* means, in connection with the development of an item, component, or process, that the development was specified in a Government contract or subcontract or that the development was accomplished during and was necessary for performance of a Government contract or subcontract.

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(14) *Government purpose license rights (GPLR)* means rights to use, duplicate, or disclose data (and in the SBIR Program, computer software), in whole or in part and in any manner, for Government purposes only, and to have or permit others to do so for Government purposes only. Government purposes include competitive procurement, but do not include the right to have or permit others to use technical data (and in the SBIR Program, computer software) for commercial purposes.

(15) *Limited rights* means rights to use, duplicate, or disclose technical data, in whole or in part, by or for the Government, with the express limitation that such technical data shall not, without the written permission of the party asserting limited rights, be: Released or disclosed outside the Government; used by the Government for manufacture, or in the case of computer software documentation, for preparing the same or similar computer software; or used by a party other than the Government, except that the Government may release or disclose technical data to persons outside the Government, or permit the use of technical data by such persons, if—

(i) Such release, disclosure, or use—

(A) Is necessary for emergency repair and overhaul; or

(B) Is a release or disclosure of technical data (other than detailed manufacturing or process data) to, or use of such data by, a foreign government that is in the interest of the Government and is required for evaluational or informational purposes;

(ii) Such release, disclosure, or use is made subject to a prohibition that the person to whom the data is released or disclosed may not further release, disclose, or use such data; and

(iii) The contractor or subcontractor asserting the restriction is notified of such release, disclosure, or use.

(16) *Required for the performance of a Government contract or subcontract* means, in connection with the development of an item, component, or process, that the development was specified in a Government contract or subcontract or that the development was accomplished during and was necessary for performance of a Government contract or subcontract.

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(17) *Restricted rights* means rights that apply only to computer software, and include, as a minimum, the right to—

(i) Use computer software with the computer for which or with which it was acquired, including use at any Government installation to which the computer may be transferred by the Government;

(ii) Use computer software with a backup computer if the computer for which or with which it was acquired is inoperative;

(iii) Copy computer programs for safekeeping (archives) or backup purposes; and

(iv) Modify computer software, or combine it with other software, subject to the provision that those portions of the derivative software incorporating restricted rights software are subject to the same restricted rights.

In addition, restricted rights include any other specific rights not inconsistent with the minimum rights in (1)–(4) above that are listed or described in a contract or described in a license agreement made a part of a contract.

(18) *Technical data* means recorded information, regardless of the form or method of the recording of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

(19) *Unlimited rights* means rights to use, duplicate, release, or disclose, technical data or computer software in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(20) *Unpublished* means that technical data or computer software has not been released to the public or furnished to others without restriction on further use or disclosure. Delivery of other than unlimited rights technical data or computer software to or for the Government under a contract does not, in itself, constitute release to the public.

227.402 Policy.

227.402–70 General.

The acquisition of technical data and the rights to use that data requires a balancing of competing interests.

(a) *The Government's interests.* The Government has extensive needs for many kinds of technical data and the rights to use such data. Its needs may exceed those of private commercial customers. Millions of separate items must be acquired, operated and maintained for defense purposes often at points remote from the source of supply. Technical data are required for training of personnel, overhaul and repair, cataloging, standardization, inspection and quality control, packaging and logistics operations. Technical data resulting from research and development and production contracts must be disseminated to many different users.

The Government must make technical data widely available to increase competition, lower costs and provide for mobilization. Finally, the Government has an interest in encouraging contractors to develop new technologies and to improve existing technologies to satisfy Government and commercial needs. To encourage contractors and subcontractors to expend resources in developing applications of these technologies, it may be appropriate to allow them to exclusively exploit the technology.

(b) *The Contractor's interests.* Commercial and nonprofit organizations have property rights and economic interests in technical data. Technical data are often closely held in the commercial sector because their disclosure to competitors could jeopardize the contractor's competitive advantage. Public disclosure can cause serious economic hardship to the originating company.

(c) *The balancing of interests.* (1) The Government's need for technical data and a contractor's economic interest in it do not necessarily coincide. However, they may coincide. This is true in the case of innovative contractors who can best be encouraged to develop items of military usefulness when their rights in such items are scrupulously protected.

(2) The Government needs to encourage delivery of data essential for military needs, even though that data would not customarily be disclosed in commercial practice. When the Government pays for research and development, it has an obligation to foster technological progress through wide dissemination of the information and, where practicable, to provide competitive opportunities for other interested parties.

(3) Acquiring, maintaining, storing, retrieving, protecting and distributing technical data are costly and burdensome for the Government. Therefore, it is necessary to avoid acquisition of unnecessary technical data.

(d) *Identification of technical data rights.* The Department of Defense is required by 10 U.S.C. 2320 to recognize and protect contractor rights in technical data and to negotiate rights in technical data resulting from mixed private and Government funded development and, under 10 U.S.C. 2321, to perform a thorough review of all restrictions on its right to use or disclose technical data. For these reasons, it is necessary that all contractor and subcontractor assertions of rights be identified in the contract as early in the acquisition process as possible but no later than delivery of the technical data to the Government (see 227.403–70).

227.402–71 Establishing minimum Government needs.

(a) *General.* The Department of Defense shall obtain only the minimum essential technical data and data rights. In establishing the minimum Government needs, the following factors shall be considered: whether the item, component, or process will be competitively acquired; whether repair and overhaul work will be contracted out; whether the repair or replacement parts will be commercial items; or whether the item will be acquired by form, fit and function data, performance specifications, or by detailed design data. In deciding how to acquire data and data rights, the Department of Defense will use the least intrusive procedures in order to protect the contractor's economic interests (see subpart 217.72). DoDD 5010.12, DoD Data Management Program, sets forth policies and procedures to be followed in acquiring technical data.

(b) *Commercial items.* It is DoD policy to encourage the use of commercial items to the maximum practicable extent. To further this policy, it is DoD policy to limit acquisition of technical data and rights in technical data pertaining to commercial items developed at private expense; neither data nor data rights should be acquired for the competitive acquisition of such a commercial item. Therefore for such commercial items, the DoD will normally only obtain technical data and data rights as provided in 10 U.S.C. 2320(a)(2)(C) and (D) (see 227.402–72(a)(1)), such as those needed for operation, maintenance, installation, and training. Additional technical data may not be acquired unless approved by the chief of the contracting office, and greater data rights may not be acquired unless approved by the head of the contracting activity.

227.402–72 Rights in technical data.

There are three basic types of rights which apply to technical data delivered under contract to the Government. These are unlimited rights, limited rights, and Government purpose license rights. The Government is entitled to unlimited rights in technical data as enumerated in (a)(1) of this subsection. The Government will obtain limited rights as discussed in (b)(1) of this subsection. Government purpose license rights may be established in accordance with (a)(2), (b)(2), or (c) of this subsection.

(a) *Unlimited rights.* (1) The Government is entitled to and, except as provided in paragraph (a)(2), will receive unlimited rights in—

(i) Technical data pertaining to items, components, or processes which have been or will be developed exclusively with Government funds;

(ii) Technical data resulting directly from performance of experimental, developmental, or research work specified as an element of performance under a Government contract or subcontract;

(iii) Form, fit, and function data pertaining to items, components, or processes prepared or required to be delivered under any Government contract or subcontract;

(iv) Manuals or instructional materials (other than detailed manufacturing or process data and commercial computer software documentation) prepared or required to be delivered under any Government contract or subcontract necessary for installation, operation, maintenance, or training purposes;

(v) Technical data prepared or required to be delivered under any Government contract or subcontract and constituting corrections or changes to Government-furnished data or computer software;

(vi) Technical data, which are otherwise publicly available, or have been released or disclosed by the contractor or subcontractor, without restriction on further release or disclosure;

(vii) Technical data in which the Government has obtained unlimited rights as a result of negotiations; and

(viii) Technical data previously delivered subject to limited rights or Government purpose license rights which have expired.

(2) *Exception to unlimited rights—Government purpose license rights.* (i) To encourage commercial utilization of technologies developed under Government contracts, the Government may agree to accept technical data subject to Government purpose license rights (GPLR). The Government shall retain the royalty-free right to use, duplicate, and disclose data for Government purposes only and to permit others to do so for Government purposes only for a stated period of time. After the time period has elapsed, the GPLR will expire and the Government will be entitled to unlimited rights.

(ii) The contracting officer should not agree to accept GPLR when—

(A) Technical data are likely to be used for competitive procurement involving large numbers of potential competitors, for items such as spares; and

(B) Technical data must be published (e.g., to disclose the results of research and development efforts).

(b) *Limited rights.* (1) Except as provided in paragraph (b)(2) of this subsection, the Government will obtain limited rights in unpublished technical data pertaining to items, components, or processes developed exclusively at private expense, provided the data are properly marked with the limited rights legend and, provided they are not technical data described in paragraph (a) of this subsection.

(2) *Exception to limited rights—obtaining greater rights in technical data.* (i) If the Government needs data rights pertaining to items, components, or processes developed exclusively at private expense to develop alternative sources, the contracting officer may negotiate with the contractor or subcontractor to acquire additional rights and technical assistance, where appropriate. Before acquiring additional rights, the contracting officer should consider alternatives, such as—

(A) Developing alternate items, components, or processes; or

(B) Obtaining a commitment by the contractor or subcontractor to qualify additional sources.

(ii) Greater rights in technical data may be obtained by negotiation of a lump sum fee, royalty, GPLR or other arrangement. Any greater rights shall be stated as a separate contract line item. The contracting officer shall not acquire any greater rights unless—

(A) There is a need for disclosure outside the Government; and

(B) If the specific rights are required for competitive procurement, the anticipated savings from competition are likely to exceed the acquisition cost of the technical data and the rights therein.

(c) *Rights in technical data pertaining to items, components, and processes developed with mixed funding.* As required by 10 U.S.C. 2320, the contracting officer will negotiate rights in technical data associated with an item, component, or process developed in part with Government funds and in part at private expense (mixed funding) whenever a contractor provides the notice contained in 252.227-7013(j) with respect to such data. Absent the notice, the Government shall have unlimited rights in the technical data and shall have met the obligation to negotiate. Negotiations shall begin at the earliest possible time and the results shall be incorporated into the contract, preferably at time of award, but in any event before delivery of the data.

227.403 Data Rights—General.

227.403-70 Procedures for establishing rights in technical data.

(a) *Notification requirements*—(1) *Background.* Offerors and contractors are required by 252.227-7013(j) to notify the Government of any asserted restrictions on the Government's right to use or disclose technical data or computer software. This notice advises the contracting officer of the contractor's or any subcontractor's intended use of items, components, processes, or computer software that—

(i) Have been developed exclusively at private expense;

(ii) Have been developed in part at private expense; or

(iii) Embody technology developed exclusively with Government funds for which the contractor or subcontractor requests the Government to grant exclusive commercial rights.

(2) *Preaward notification.* (i) The offeror is required to identify, in its proposal, items, components, processes or computer software which it intends to use and which would result in delivery of technical data to the Government with other than unlimited rights. The notification must be accompanied by the representation described in paragraph (a)(5) of this subsection.

(ii) After receipt of the offerors' proposals, the Government must determine if the offerors submitted the information required by 252.227-7013(j). Failure to submit should initially be treated as a correctable, minor irregularity (see FAR 15.607). However, if an offeror refuses to submit the information, then the offer may be deemed to be unacceptable.

(iii) The information provided by the offeror may also be used in the source selection process (e.g., life cycle cost analyses). However, in no event may an offer be found unacceptable, for purposes of contract award, solely because the offeror refuses to sell or otherwise relinquish to the Government rights in technical data to which the offeror is otherwise entitled under applicable law or regulation (see 227.403-71(b)).

(3) *Contract award.* (i) The contractor's notification will serve as the basis for the list to be included in the contract identifying all technical

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227.403 Data Rights—General.

227.403-70 Procedures for establishing rights in technical data.

(a) *Notification requirements*—(1) *Background.* Offerors and contractors are required by 252.227–7013(j) to notify the Government of any asserted restrictions on the Government's right to use or disclose technical data or computer software. This notice advises the contracting officer of the contractor's or any subcontractor's intended use of items, components, processes, or computer software that—

(i) Have been developed exclusively at private expense;

(ii) Have been developed in part at private expense; or

(iii) Embody technology developed exclusively with Government funds for which the contractor or subcontractor requests the Government to grant exclusive commercial rights.

(2) *Preaward notification.* (i) The offeror is required to identify, in its proposal, items, components, processes or computer software which it intends to use and which would result in delivery of technical data to the Government with other than unlimited rights. The notification must be accompanied by the representation described in paragraph (a)(5) of this subsection.

(ii) After receipt of the offerors' proposals, the Government must determine if the offerors submitted the information required by 252.227–7013(j). Failure to submit should initially be treated as a correctable, minor irregularity (see FAR 15.607). However, if an offeror refuses to submit the information, then the offer may be deemed to be unacceptable.

(iii) The information provided by the offeror may also be used in the source selection process (e.g., life cycle cost analyses). However, in no event may an offer be found unacceptable, for purposes of contract award, solely because the offeror refuses to sell or otherwise relinquish to the Government rights in technical data to which the offeror is otherwise entitled under applicable law or regulation (see 227.403–71(b)).

(3) *Contract award.* (i) The contractor's notification will serve as the basis for the list to be included in the contract identifying all technical

data with restrictions on the Government's right of use or disclosure that is required by paragraph (k) of the clause at 252.227–7013, Rights in Technical Data and Computer Software.

(ii) During the life of the contract, this list will be updated as needed to address additional assertions by the contractor or subcontractors under the notification process, to incorporate the results of Government reviews and challenges, and to specifically identify or describe all technical data to be delivered with restrictions on the Government's rights of use or disclosure. Also, during contract performance, changing conditions may require bilateral modification of the list.

(iii) The purpose of the list is to facilitate the review of contractor assertions required by 10 U.S.C. 2321 and to provide a basis for Government acquisition planning. It is not a final determination of rights and does not alter the rights of the parties under 10 U.S.C. 2320 or 2321.

(4) *Postaward notification.* Because it may be impracticable to identify all items, components, processes or computer software that would result in delivery to the Government of technical data with other than unlimited rights prior to contract award, paragraph (j) of the clause at 252.227–7013, Rights in Technical Data and Computer Software, requires the contractor to continue the notification process during performance of the contract by notifying the contracting officer prior to committing to the use of the privately developed item, component, process or computer software. This notification must be accompanied by the representation described in (a)(5) of this subsection.

(5) *Representations.* (i) If pursuant to the preaward or postaward notification procedures the offeror/contractor notifies the Government that technical data or computer software may be delivered with other than unlimited rights, then the notice must be accompanied by the representation at 252.227–7013(j).

(A) This clause authorizes the contracting officer to request additional information needed to evaluate the assertions.

(B) This representation assists the parties to negotiate rights in technical data and computer software to be delivered to the Government with other than unlimited rights, but does not alter the rights of the parties which are contained in the clause at 252.227–7037, Validation of Restrictive Markings on Technical Data.

(ii) If delivery of technical data is expected under a resultant negotiated contract, the provision at 252.227–7028, Requirement for Technical Data Representation, shall be included in the solicitation. The provision requires the contractor to provide the following:

(A) Identification of an existing contract or subcontract under which the technical data were delivered or will be delivered, and the place of delivery; and

(B) Identification of any limitation on the Government's right to use the data, including identification of the earliest expiration date for the limitation.

(6) *Supporting information.* The contracting officer should rely on the representation provided with the contractor's notification. Detailed supporting information, either preaward or postaward, should normally not be requested unless there are reasonable grounds to question the validity of the assertion. While the contractor or subcontractor is obligated to provide sufficient information to fully justify the assertions, the contracting officer should only obtain enough information to determine if the assertion is reasonable and to evaluate its likely impact on the Government.

(b) Establishing rights in technical data. (1) If the offeror or the contractor is asserting limited rights in the technical data, the contracting officer shall include the item, component or process in the list in the contract described at 252.227–7013(k), unless there are grounds to question the validity of the assertion. If appropriate, the procedures at 217.7201 will be followed and greater rights obtained pursuant to 227.402–72(b)(2). Still, the assertions are subject to Government review and possible challenge in accordance with 227.403–73 and 252.227–7037, Validation of Restrictive Markings on Technical Data.

(2) If the offeror or contractor is requesting exclusive commercial rights in technical data that would otherwise be delivered to the Government with unlimited rights, the contracting officer should agree to permit the contractor to establish exclusive commercial rights pursuant to 227.402–72(a)(2), unless the Government's intended use of the data would make protection of the contractor's rights unduly burdensome.

(i) Exclusive commercial rights may be accomplished by either deferring delivery or ordering of the technical data in accordance with 227.405–71 or by agreeing to accept the data with Government purpose license rights for a specified period of time in accordance with 227.402–72(a)(2).

(ii) The item, component, or process and the technical data will be identified in the list in the contract.

(3) If the offeror or contractor is asserting that the item, component, or process is developed with mixed funding, then the respective rights will be negotiated using the guidelines at paragraph (c) below and the results identified in the listing described at 252.227–7013(k).

(i) These negotiations will be conducted to the maximum practicable extent prior to contract award. However, if there are numerous offerors or under urgent circumstances, the contracting officer may determine that preaward negotiations are impracticable. This determination must be approved by the chief of the contracting office. The contracting officer will notify the contractor, stating that the contractor must notify the contracting officer if it elects to use the item, component or process. In that event, the contracting officer shall insert a provision in the contract providing procedures for subsequent negotiation of rights.

(ii) Data rights resulting from mixed funding need not be negotiated for small purchases or contracts awarded using sealed bidding.

(c) *Negotiation of rights.*— (1) *Negotiation factors.* The contracting officer shall consider, as appropriate, the following factors when negotiating rights in technical data developed with mixed funding or when the Government negotiates to relinquish rights or to acquire greater rights:

(i) The acquisition strategy for the item or system (including logistics support);

(ii) Whether the item or system (or related logistics support) will be competed;

(iii) Timing of such competition;

(iv) The economic life of the technology and whether it can be commercialized;

(v) Funding contributions of the respective parties;

(vi) Development of alternative sources for industrial mobilization or other purposes;

(vii) Burden of protecting the contractor's rights in technical data; and

(viii) Other factors, such as unique contractor qualification or expertise contributing to the configuration manegement or development of the item, component or process.

(2) *Negotiation situations.* The following are examples of how the negotiation factors in (c)(1) of this subsection may be applied:

(i) When the Government does not anticipate an early need to use the data for competition and the contractor has requested exclusive rights in the data, the Government may negotiate to establish limited rights which, upon expiration of a time limitation, would become unlimited rights.

(ii) Where the Government requires early use of the data for competition, the contractor has requested exclusive commercial rights in the data, and protecting the contractor's rights is not unduly burdensome, the contracting officer may negotiate GPLR which would expire after a specified period of time and become unlimited rights.

(iii) Where the Government requires early use of the data for competition and the contractor has no interest in commercializing the data, the Government may negotiate to obtain unlimited rights or to establish another suitable arrangement that would satisfy the Government's needs.

(3) *Negotiation of time periods.* When time limitations for either GPLR or limited rights are negotiated, they shall be expressed in the contract as a date certain and should normally be no less than one year nor more than five years after the estimated date of first production delivery to the Government of the item, component, process, or computer software to which the technical data pertains.

(i) Time limitations for GPLR and limited rights greater than five years may be negotiated to provide the contractor a reasonable opportunity to recover its private investment, if:

(A) The technical data will not be needed for competition; and

(B) Longer periods are approved by the chief of the contracting office.

(ii) Time limitations for limited rights and GPLR may be extended, if:

(A) Other interested parties have not requested access to the technical data;

(B) The technical data need not be publicly disclosed to meet a specified Government need; and

(C) The contractor provides adequate consideration for remarking any technical data with revised legends.

(4) *Nonstandard license rights.* Unlimited rights, Government purpose license rights, and limited rights and combinations of these rights (i.e., with time limitations) are considered standard license rights. All other license rights are considered non-standard license rights and shall not be negotiated in technical data resulting from mixed funding unless approved by the chief of the contracting office. Direct licensing arrangements are not considered non-standard license rights unless they involve delivery of technical data with non-standard rights.

(d) *Standard nondisclosure agreements.* (1) Technical data subject to other than unlimited rights shall not be released outside the Government unless the release is subject to a prohibition against further release, use, or disclosure. If the data are subject to GPLR, the recipient must sign the standard nondisclosure agreement shown below. This agreement must be executed by an official authorized to bind the contractor.

(2) Nothing in this section impairs the rights of the developer of the data and third parties from independently entering into agreements concerning commercial uses of the data.

(3) The contracting officer shall require each contractor receiving data subject to GPLR to execute the standard nondisclosure agreement before receipt of the data. If a contractor has previously signed an agreement, the earlier agreement may be provided.

Standard Nondisclosure Agreement

The undersigned, ________ (name)____________ as the authorized representative of ________(company name)____________ (hereinafter, "the licensee"), requests technical data subject to Government Purpose License Rights (hereinafter, "GPLR data") to compete for, perform, or to prepare to compete for, or to perform Government contracts. In consideration therefore:

(1) Licensee agrees that the GPLR data identified in this agreement shall be used only for Government purposes.

(2) Licensee agrees to provide written notice and a copy of the non-disclosure agreement to the contractor whose name appears in the GPLR legend (hereinafter referred to as the "contractor") whenever it receives GPLR data. The notification shall identify the GPLR data, the date and place of its receipt and the source from which the data was received.

(3) Licensee shall not, without prior written permission of the contractor, provide or disclose any GPLR data to any other company, person or entity, except its subcontractors. The Licensee agrees not to disclose GPLR data to any subcontractor or potential subcontractor unless the subcontractor or potential subcontractor has executed the standard nondisclosure agreement.

(4) Licensee agrees not to use GPLR data for commercial purposes.

(5) Licensee agrees to adopt operating procedures and physical security measures designed to protect GPLR data from disclosure or release to unauthorized third parties.

(6) Licensee agrees to indemnify the Government, its agents and employees from all liability arising out of, or in any way related to, the misuse or unauthorized disclosure by the licensee, its employees or agents of any GPLR data it received. Licensee will hold the Government, its agents and employees, harmless against any claim or liability, including attorney fees, costs and expenses, arising out of the misuse or unauthorized disclosure of any GPLR data supplied to the licensee hereunder.

(7) Execution of this non-disclosure agreement by the licensee or any of its authorized subcontractors is for the benefit of the contractor identified in the legend on any GPLR data received. Any such contractor is a third party beneficiary of this agreement who may have the right of direct action against the licensee to enforce the agreement or to seek damages which may result from any material breach of the agreement.

(8) This agreement shall be effective only for so long as the data remains unpublished (or until the GPLR legend expires). Signed this ____ day of ________, 19____.

____

Licensee

(e) *Contract clause.* The contracting officer shall insert the basic data clause at 252.227–7013, Rights in Technical Data and Computer Software, in solicitations and contracts when technical data is specified to be delivered or computer software may be originated, developed, or delivered, provided that such clause shall not be used in solicitations and contracts—

(1) When no data other than existing works are to be acquired in accordance with 227.405–77;

(2) When no data other than special works are to be acquired in accordance with 227.405–76;

(3) When the work will be performed by foreign sources in accordance with 227.405–74; and

(4) For architect-engineer services or construction in accordance with 227.405–78.

227.403–71 Prohibitions.

(a) In accordance with 10 U.S.C. 2320(a)(1), a contractor or subcontractor may not be prohibited from receiving from a third party a fee or royalty for the use of technical data pertaining to an item, component, or process developed exclusively at private expense by the contractor or subcontractor, except as otherwise specifically provided by law.

(b)(1) In accordance with 10 U.S.C. 2320(a)(2)(F), a contractor or a subcontractor (or a prospective contractor or subcontractor) may not be required, as a condition of being responsive to a solicitation or as a condition for the award of a contract or subcontract—

(i) To sell or otherwise relinquish to the United States any rights in technical data beyond those to which the Government is entitled under 10 U.S.C. 2320(a)(2)(C) and (D); or

(ii) To refrain from offering to use, or from using, an item, component, or process to which the contractor is entitled to restrict the Government's rights in technical data under 10 U.S.C. 2320(a)(2)(B).

(2) It is permissible to evaluate such factors as the impact on life cycle costs of limitations on the Government's

ability to use or disclose the technical data. Further, nothing prohibits agreements which provide the Government with greater rights than it would otherwise be entitled to, for a fair and reasonable price (see 227.402-72(b)(2)).

(3) 10 U.S.C. 2305(d)(4) provides that, except where the Government is otherwise entitled to unlimited rights in technical data (see 227.402-72(a)), in solicitations for development or production of major systems, the contracting officer shall not require offers that would enable the Government to competitively reprocure identical items or components of the major system if the item or component was developed exclusively at private expense, unless the contracting officer determines that:

(i) The original supplier of the item or component will be unable to satisfy program schedule or delivery requirements; or

(ii) Proposals by the original supplier of the item or component to meet mobilization requirements are insufficient to meet the agency's mobilization needs.

227.403-72 Marking and identification requirements.

(a) *Clauses.* The contracting officer shall include the clauses at 252.227-7018, Restrictive Markings on Technical Data, and 252.227-7029, Identification of Technical Data, in all contracts which also contain the clause at 252.227-7013, Rights in Technical Data and Computer Software. These clauses contain marking requirements for technical data and computer software and related procedures.

(b) *Contractor marking procedures.* The contractor's procedures required under the clause at 252.227-7018, Restrictive Markings on Technical Data, shall be reviewed by the contract administration office and the contracting officer may withhold payments under the clause at 252.227-7030, Technical Data—Withholding of Payment, for failure to establish, maintain and follow adequate marking procedures.

(c) *Unmarked technical data.* Technical data received with no restrictive markings are deemed to be furnished with unlimited rights. However, within six months after delivery of such data, the contractor may request permission to place restrictive markings on the data at its own expense. The contracting officer may approve the request if the contractor—

(1) Demonstrates that the omission was inadvertent;

(2) Establishes that the use of the markings is authorized; and

(3) Relieves the Government of liability with respect to the technical data.

(d) *Unjustified markings.* If the contracting officer believes that restrictive markings are not justified, the contracting officer will follow the procedures in 227.403-73 and the clause at 252.227-7037, Validation of Restrictive Markings on Technical Data.

(e) *Nonconforming markings.* If technical data which the contractor is authorized by the contract to furnish with restrictive markings is received with non-conforming markings, the technical data shall be used according to the proper restriction, and the contractor shall be required to correct the markings to conform with the contract. If the contractor fails to correct the markings within 60 days after notice, Government personnel may correct the markings at the contractor's expense, notify the contractor in writing, and thereafter may use the technical data accordingly. Copyright notices, which conform to the requirement in 17 U.S.C. 401 and 402 are not considered restrictive markings.

227.403-73 Validation of restrictive markings on technical data.

(a) *General.* The clause at 252.227-7037, Validation of Restrictive Markings on Technical Data, sets forth rights and procedures pertaining to the validation of restrictive markings asserted by contractors and subcontractors on deliverable technical data and shall be included in all solicitations and contracts which require the delivery of technical data. The Government should review the validity of any asserted restriction on technical data deliverable under a contract. This review should be accomplished before acceptance of the technical data, but no later than three years after final payment or three years after delivery of the technical data to the Government, whichever is later. The contracting officer may challenge restrictive markings if there are reasonable grounds to question their validity but only if the three-year period has not expired. However, the Government may challenge a restrictive marking at any time if the technical data—

(1) Is publicly available;

(2) Has been furnished to the United States without restriction; or

(3) Has been otherwise made available without restriction. Only the contracting officer's final decision resolving a formal challenge constitutes "validation" as addressed in 10 U.S.C. 2321. A decision by the Government not to challenge a restrictive marking or asserted restriction does not constitute "validation."

(b) *Prechallenge request for information.* (1) Prior to making a written determination to challenge, the contracting officer must request the contractor or subcontractor to furnish information explaining the basis for any asserted restriction. If this information is incomplete, additional justification should be requested. The contracting officer should provide a reasonable time for submission of the required data.

(2) The contracting officer should request advice from the cognizant Government activity having interest in the validity of the markings.

(3) If the contracting officer, after reviewing all available information, determines that reasonable grounds exist to question the current validity of a restrictive marking, and that continued adherence to the marking would make subsequent competition impracticable or if the contractor or subcontractor fails to respond to the prechallenge request within a reasonable period, the contracting officer shall challenge the restriction following the procedures in the clause at 252.227-7037, Validation of Restrictive Markings on Technical Data.

227.403-74 Remedies for noncomplying technical data.

(a) When data does not comply with the contract, the contracting officer should consider all remedies. These remedies include reduction of progress payments, withholding final payment, contract termination, and a reduction in contract price or fee.

(b) The clause at 252.227-7030, Technical Data—Withholding of Payment, is designed to assure timely delivery of technical data and shall be included in solicitations and contracts requiring delivery of technical data. Unless the contract specifies a lesser withholding limit, the clause permits withholding up to ten percent of the contract price. The contracting officer shall determine the amount to be withheld after considering the estimated value of the technical data to the Government. Payment shall not be withheld when non-delivery results from causes beyond the control and without the fault or negligence of the contractor.

(c) As required by 10 U.S.C. 2320(b)(7), the clause at 252.227-7036, Certification of Technical Data Conformity, shall be included in solicitations and contracts which include the clause at 252.227-7031, Data Requirements.

227.403-75 Subcontractor rights.

(a) Prime contractors must satisfy their contractual obligations to the Government while ensuring that the rights afforded subcontractors under 10 U.S.C. 2320 and 2321 are recognized and protected. In satisfying these obligations, prime contractors must accomplish the balancing of interests described at 227.402-70 in dealing with their subcontractors by ensuring that—

(1) The clauses 252.227-7013, Rights in Technical Data and Computer Software, and 252.227-7018, Restrictive Markings in Technical Data, are included in all subcontracts that call for delivery of technical data to the Government;

(2) A subcontractor is not hampered from furnishing limited rights data directly to the Government rather than through the prime contractor or higher-tier subcontractor;

(3) The economic leverage of the prime or higher-tier subcontractor is not used to acquire rights in technical data from subcontractors; and

(4) Subcontractor rights are recognized and protected in the notification and listing process (see 227.403-70).

(b) The prime contractor may not use its obligation to recognize and protect subcontractor rights in technical data as an excuse for failing to satisfy its contractual obligations to the Government.

227.403-76 Copyrights.

(a) In general, the copyright law gives a copyright owner exclusive rights to—

(1) Reproduce the copyrighted work;

(2) Prepare derivative works;

(3) Distribute copies or phonorecords to the public;

(4) Perform the copyrighted work publicly; and

(5) Display the copyrighted work publicly.

(b) Any material that is protected under the copyright law is not in the public domain, even though it may have been published. Acts inconsistent with the rights in paragraph (a) of this subsection may not be exercised without a license from the copyright owner.

(c) Department of Defense policy allows the contractor to copyright any work of authorship first prepared, produced, originated, developed, or generated under a contract, unless the work is designated a "special work". If the work is a special work, the Government retains ownership and control of the work. The contractor may not assert any rights or claim to copyright in special works. The contractor is required to grant to the Government and authorize the Government to grant to others a nonexclusive, paid-up, worldwide license for Government purposes in any work of authorship (other than a "special work") first prepared, produced, originated, developed, or generated under the contract.

(d) The clause at 252.227-7013, Rights in Technical Data and Computer Software, requires the contractor to grant the Government and authorizes the Government to grant to others a nonexclusive, paid-up, worldwide license for Government purposes, under any copyright owned by the contractor in any technical data or computer software prepared for or acquired by the Government under the contract. The clause at 252.227-7020, Rights in Data—Special Works, requires that any work first produced in the performance of the contract become the sole property of the Government, and the contractor agrees not to assert any rights or establish any claim to copyright in such work. This clause requires that the contractor grant to the Government and authorize the Government to grant to others a nonexclusive, paid-up, worldwide license for Government purposes in any portion of a work which is not first produced in the performance of the contract but in which copyright is owned by the contractor and which is incorporated in the work furnished under the contract.

(e) The clauses at 252.227-7013, Rights in Technical Data and Computer Software, and 252.227-7020, Rights in Data—Special Works, provide that, unless written approval of the contracting officer is obtained, the contractor agrees not to include in any work prepared, produced, originated, developed, generated or acquired under the contract; any work of authorship in which copyright is not owned by the contractor without acquiring for the Government and those acting by or on behalf of the Government a nonexclusive, paid-up, worldwide license for Government purposes in the copyrighted work.

227.403-77 Acquisition of rights in computer software.

(a) *Policy*. (1) The Government shall have unlimited rights in:

(i) Computer software resulting directly from or generated as part of the performance of experimental, developmental, or research work specified as an element of performance in a Government contract or subcontract;

(ii) Computer software required to be originated or developed under a Government contract, or generated as a necessary part of performing a contract;

(iii) Computer data bases, prepared under a Government contract, consisting of—

(A) Information supplied by the Government;

(B) Information in which the Government has unlimited rights; or (iii) information which is in the public domain;

(iv) Computer software prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished software; or

(v) Computer software which is in the public domain or has been or is normally furnished by the contractor or subcontractor without restriction.

(2) When the Government has unlimited rights in computer software in the possession of a contractor, no payment will be made for rights of use of such software in performance of Government contracts or for the later delivery to the Government of such computer software, provided however, that the contractor shall be entitled to compensation for converting the software into the prescribed form for reproduction and delivery to the Government.

(3) It is Department of Defense policy to acquire only such rights to use, duplicate, and disclose computer software developed at private expense as are necessary to meet Government needs. Such rights should be designed to allow the Government flexibility while, at the same time, adequately preserving the rights of the contractor. Computer software developed at private expense may be purchased or leased. Restrictions may be negotiated with respect to the right of the Government to use, duplicate, or disclose computer programs or computer data bases developed at private expense. As a minimum, however, the Government shall have the rights provided in the definition of restricted rights in section 227.401.

(4) Patented or copyrighted computer software will not be subject to any agreement prohibiting the Government from infringing a patent or copyright. Title 28, United States Code, section 1498 provides that the Government is liable only for reasonable compensation for use of a patented invention or for infringement of copyright.

(5) When computer software is developed at private expense and acquired with restricted rights, the associated computer software documentation will be acquired with limited rights to the extent provided in the definition of limited rights in section

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(iii) Computer data bases, prepared under a Government contract, consisting of—

(A) Information supplied by the Government;

(B) Information in which the Government has unlimited rights; or (iii) information which is in the public domain;

(iv) Computer software prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished software; or

(v) Computer software which is in the public domain or has been or is normally furnished by the contractor or subcontractor without restriction.

(2) When the Government has unlimited rights in computer software in the possession of a contractor, no payment will be made for rights of use of such software in performance of Government contracts or for the later delivery to the Government of such computer software, provided however, that the contractor shall be entitled to compensation for converting the software into the prescribed form for reproduction and delivery to the Government.

(3) It is Department of Defense policy to acquire only such rights to use, duplicate, and disclose computer software developed at private expense as are necessary to meet Government needs. Such rights should be designed to allow the Government flexibility while, at the same time, adequately preserving the rights of the contractor. Computer software developed at private expense may be purchased or leased. Restrictions may be negotiated with respect to the right of the Government to use, duplicate, or disclose computer programs or computer data bases developed at private expense. As a minimum, however, the Government shall have the rights provided in the definition of restricted rights in section 227.401.

(4) Patented or copyrighted computer software will not be subject to any agreement prohibiting the Government from infringing a patent or copyright. Title 28, United States Code, section 1498 provides that the Government is liable only for reasonable compensation for use of a patented invention or for infringement of copyright.

(5) When computer software is developed at private expense and acquired with restricted rights, the associated computer software documentation will be acquired with limited rights to the extent provided in the definition of limited rights in section

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227.401, and will not be used for preparing the same or similar computer software.

(6) Commercial computer software and related documentation developed at private expense may be leased, or a license to use may be purchased, by the Government subject to the restrictions in paragraph (c)(1)(ii) of the clause at 252.227-7013, Rights in Technical Data and Computer Software.

(b) *Procedures*—(1) *Deviations.* All requests for deviations from section 227.403-77 shall be submitted to the Director of Defense Procurement in accordance with the procedures in part 201.

(2) *General.* (i) Except as provided under 252.227-7031, Data Requirements, any computer program or computer data base to be acquired under a contract shall be listed on DD Form 1423, Contract Data Requirements List. Also, if a contract requires the conversion of data to machine-readable form, the editing or revision of existing programs, or the preparation of computer software documentation, the products of this work, if required to be delivered, shall be included on the DD Form 1423, Contract Data Requirements List.

(ii) The clause at 252.227-7013, Rights in Technical Data and Computer Software, shall be included in every contract under which computer software may be originated, developed, or delivered. That clause establishes the circumstances under which the Government secures unlimited rights in both technical data and computer software, limited rights in technical data, and restricted rights in computer software. In negotiated contracts where the clause at 252.227-7013, Rights in Technical Data and Computer Software, is required, the provision at 252.227-7019, Identification of Restricted Rights Computer Software, shall be included in the solicitation.

(iii) Contracts under which computer software developed at private expense is acquired or leased shall explicitly set forth the rights necessary to meet Government needs and restrictions applicable to the Government as to use, duplication and disclosure of the software. Thus, for example, such software may be needed, or the owner of such software will only sell or lease it, for specific or limited purposes such as for internal agency use, or for use in a specific activity, installation or service location. In any event, the contract must clearly define any restrictions on the right of the Government to use such computer software, but such restrictions will be acceptable only if they will permit the Government to fulfill the need for which such software is being acquired. The recital of restrictions may be complete within itself or it may reference the contractor's license or other agreement setting forth restrictions. If referencing is employed, a copy of the license or agreement must be attached to the contract. The minimum rights are provided in the Rights in Technical Data and Computer Software clause at 252.227-7013, and need not be included in the recital.

(iv) When computer software developed at private expense is modified or enhanced as a necessary part of performing a contract, only that portion of the resulting product in which the original product is recognizable will be deemed to be computer software developed at private expense to which restricted rights may attach.

(v) The scope of the restrictions on or, conversely, the scope of the use which the Government is permitted to make of such software shall be taken into account in determining the reasonableness of the contract price for the computer software.

(3) *Computer software subject to restricted rights.* (i) Because of the widely-varying restrictions which are likely to be encountered in the purchase or lease of computer software developed at private expense, a standard recital setting forth specific restrictions and rights suitable for all cases is not feasible. If the standard set of restrictions and rights set forth in paragraph (a)(6) of this subsection for commercial computer software is not appropriate, personnel are urged to consult counsel in any case in which the proposed contractor requests the Government to accept other restrictions on the use of such software.

(ii) To apprise user personnel of the restrictions on use, duplication or disclosure agreed to by the Government with respect to such software sold or leased to the Government, the contractor is required to place the following legend on such software:

Restricted Rights Legend

Use, duplication or disclosure is subject to restrictions stated in Contract No.
____________ with
__________________(Name of Contractor).
For commercial computer software and documentation, the contract number may be omitted and replaced by "paragraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at 252.227-7013", and the contractor's address added. The Government shall include the same restrictive markings on all its reproductions of the computer software unless the Government cancels such markings pursuant to the procedures in 227.403-73(c).

(iii) A statement setting forth the restrictions imposed on the Government to use, duplicate, and disclose computer software subject to restricted rights is required to be prominently displayed in human-readable form in the computer software documentation. The reference to the Rights in Technical Data and Computer Software clause in the Restricted Rights Legend on commercial computer software and documentation satisfies this requirement.

(iv) Except as provided in paragraph (b)(2) of this section, computer programs, computer data bases, and computer software documentation delivered to the Government pursuant to a contract requirement must be identified with the number of the prime contract and the name of the contractor.

(v) All markings, (notices, legends, identifications, etc.) concerning restrictions on the use, duplication, or disclosure of computer software required or authorized by the terms of the contract under which delivery is made are required to be in human-readable form that can be readily and visually perceived and, in addition may be in machine-readable form as appropriate and feasible under the circumstances. Such markings shall be affixed by the contractor to the computer software prior to delivery of the software to the Government.

(vi) The human-readable markings may be applied to card decks, magnetic tape reels, or disc packs. This may be, in the case of a card deck, on a notice card even though the cards of the deck do not contain printed material; in the case of a card deck packaged in a container intended as a permanent receptacle for the cards, on the container; in the case of a tape, on the tape reel or on the surface of the leader and trailer of the tape; and in the case of a disc pack, on the hub of the disc.

(4) *Unmarked or improperly marked computer software.* (i) No restrictive markings shall be placed upon computer software unless restrictions are set forth in the contract prior to delivery of the software. Copyright notices as specified in title 17, United States Code, sections 401 and 402 are not considered "restrictive markings". The Government may require the contractor to identify the contractual provision setting forth such restrictions before accepting computer software with restrictive markings. If computer software is received with restrictive markings, and there is a question whether it is authorized by the contract to be furnished with restricted rights, it shall be used subject to the asserted restrictions pending written inquiry to the contractor. If no response to an inquiry has been received within 60

days, or if the response fails to identify the restrictions set forth in the contract, the cognizant Government personnel shall cancel or ignore the markings, notify the contractor accordingly in writing, and thereafter use the software with unlimited rights.

(ii) Computer software received without a restrictive legend shall be deemed to have been furnished with unlimited rights. However, the contractor may request permission to place restrictive markings on such software at its own expense, and the Government may so permit, if the contractor establishes that the markings are authorized by the contract and demonstrates that the omission was inadvertent. Failure of the contractor to mark such computer software prior to delivery to the Government shall relieve the Government of liability for any use, duplication or disclosure of such computer software.

(iii) If computer software authorized by the contract to be furnished with restrictions is received with restrictive markings not in the form prescribed by the contract, the software should be used in accordance with the restrictions provided for in the contract and the contractor shall be required by written notice to correct the markings to conform with those specified in the contract. If the contractor fails to correct the markings within 60 days after notice, Government personnel may correct the markings, and so notify the contractor.

227.405 Other data rights provisions.

227.405-70 Data requirements.

(a) The clause at 252.227-7031, Data Requirements, shall be included in all solicitations and contracts, except that the clause need not be included in—

(1) Any contract or order less than $25,000;

(2) Any contract awarded to a contractor outside the United States, except those awarded under Subpart 225.71, Canadian Purchases;

(3) Any research or exploratory development contract when reports are the only deliverable item(s);

(4) Any service contract, when the contracting officer determines that the use of the DD Form 1423, Contract Data Requirements List, is impractical;

(5) Any contract under which construction and architectural drawings and specifications are the only deliverable items;

(6) Any contract for commercial items when the only deliverable data is such an item, or would be packaged or furnished with such items in accordance with customary trade practices; or

(7) Any contract for items containing potentially dangerous material requiring controls to assure adequate safety, when the only deliverable data is the Materials Safety Data Sheet (MSDS) required by the clause at FAR 52.223-3.

(b) The clause at 252.227-7031, Data Requirements, states that the contractor is required to deliver only data listed on the DD Form 1423, Contract Data Requirements List, and data deliverable under clauses prescribed in the FAR and DFARS.

227.405-71 Deferred delivery and deferred ordering.

(a) *General.* Technical data and computer software are expensive to prepare, maintain and update. By delaying the delivery of technical data or computer software until needed, storage requirements are reduced and the probability of using obsolete technical data and computer software is decreased. Purchase of technical data and computer software which may become obsolete because of hardware changes is also minimized.

(b) *Deferred delivery.* When the contract requires delivery of technical data or computer software, but does not contain a time for delivery, the clause at 252.227-7026, Deferred Delivery of Technical Data and Computer Software, shall be included in the contract. The clause permits the contracting officer to require the delivery of data identified as "deferred delivery" data at any time until two years after acceptance by the Government of all items (other than data or computer software) under the contract or contract termination, whichever is later. The obligation of subcontractors to deliver such technical data expires two years after the date the prime contractor accepts the last item from the subcontractor for use in the performance of the contract. The contract must specify which technical data or computer software will be subject to deferred delivery. The contracting officer should provide sufficient notice to permit timely delivery of the technical data or computer software.

(c) *Deferred ordering.* When a potential need exists for technical data or computer software, but a firm requirement is not established, the clause at 252.227-7027, Deferred Ordering of Technical Data or Computer Software, should be included in the contract. Under this clause, the contracting officer may order any technical data or computer software that has been generated as part of the performance of the contract. The contracting officer may order technical data or computer software under this clause at anytime until three years after acceptance of all items (other than technical data or computer software) under the contract or contract termination, whichever is later. The obligation of subcontractors to deliver such technical data or computer software expires three years after the date the contractor accepts the last item under the subcontract. When the data and computer software are ordered, the delivery dates shall be negotiated and the contractor compensated for converting the technical data or computer software into the prescribed form. Compensation to the contractor shall not include the cost of technical data or computer software which the Government has already paid for.

227.405-72 Warranties of technical data.

The factors contained in Subpart 246.7, Warranties, shall be considered in deciding whether to include warranties of technical data. The basic technical data warranty clause is set forth in the clause at 252.246-7001. There are two alternates to the basic clause. The basic clause and appropriate alternate should be selected in accordance with Section 246.708.

227.405-73 Delivery of technical data to foreign governments.

When the Government proposes to make technical data subject to limited rights available for use by a foreign government, it will, to the maximum extent practicable, give reasonable notice to the contractor or subcontractor asserting rights in the technical data. Any release shall be subject to a prohibition against further release, use or disclosure.

227.405-74 Overseas contracts with foreign sources.

The clause at 252.227-7032, Rights in Technical Data and Computer Software (Foreign), should be used in solicitations and contracts with foreign sources when the Government will acquire unlimited rights in all deliverable technical data, and computer software. However, the clause shall not be used in contracts for special works (see section 227.405-76), contracts for existing works (see section 227.405-77), or contracts for Canadian purchases. However, the clause at 252.227-7013, Rights in Technical Data and Computer Software, shall be used whenever the rights to be obtained are those which would be obtained if contracting with U.S. firms. Either clause may be modified to meet the peculiar requirements of the foreign acquisition; provided, it is consistent with sections 227.402 and 227.403-77.

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227.405–72 Warranties of technical data.

The factors contained in Subpart 246.7, Warranties, shall be considered in deciding whether to include warranties of technical data. The basic technical data warranty clause is set forth in the clause at 252.246–7001. There are two alternates to the basic clause. The basic clause and appropriate alternate should be selected in accordance with Section 246.708.

227.405–73 Delivery of technical data to foreign governments.

When the Government proposes to make technical data subject to limited rights available for use by a foreign government, it will, to the maximum extent practicable, give reasonable notice to the contractor or subcontractor asserting rights in the technical data. Any release shall be subject to a prohibition against further release, use or disclosure.

227.405–74 Overseas contracts with foreign sources.

The clause at 252.227–7032, Rights in Technical Data and Computer Software (Foreign), should be used in solicitations and contracts with foreign sources when the Government will acquire unlimited rights in all deliverable technical data, and computer software. However, the clause shall not be used in contracts for special works (see section 227.405–76), contracts for existing works (see section 227.405–77), or contracts for Canadian purchases. However, the clause at 252.227–7013, Rights in Technical Data and Computer Software, shall be used whenever the rights to be obtained are those which would be obtained if contracting with U.S. firms. Either clause may be modified to meet the peculiar requirements of the foreign acquisition; provided, it is consistent with sections 227.402 and 227.403–77.

227.405–75 Publication for sale.

Alternate I of the clause at 252.227–7013, Rights in Technical Data and Computer Software, may be used in research contracts when the contracting officer determines, in consultation with counsel, that public dissemination by the contractor:

(a) Would be in the interest of the Government;

(b) Would be facilitated by the Government relinquishing its right to publish the work for sale, or to have others publish the work for sale on behalf of the Government.

227.405–76 Special works.

(a) The clause at 252.227–7020, Rights in Data—Special Works, shall be used in all contracts where the Government needs ownership and control of the work to be generated under the contract. Examples include:

(1) Production of audiovisual works including motion pictures;

(2) Television recordings with or without accompanying sound;

(3) Preparation of motion picture scripts, musical compositions, sound tracks, translations, adaptations, and the like;

(4) Histories of the respective Departments for services or units thereof;

(5) Works pertaining to recruiting, morale, training, or career guidance;

(6) Works pertaining to the instruction or guidance of Government officers and employees in the discharge of their official duties; and

(7) Production of technical reports and studies.

(b) Contracts for audiovisual works may include limitations in connection with music licenses, talent releases, and the like which are consistent with the purpose for which the works are acquired.

227.405–77 Contracts for acquisition of existing works.

(a) *Acquisition of existing works.* (1) The clause at 252.227–7021, Rights in Data—Existing Works, shall be used in contracts exclusively for the acquisition of existing motion pictures, television recordings, or other audiovisual works. The contract may contain limitations consistent with the purposes for which the material covered by the contract is being acquired. Examples of these limitations are—

(i) Means of exhibition or transmission;

(ii) Time;

(iii) Type of audience; and

(iv) Geographical location. The indemnity language in paragraph (c) of the clause may be modified to be consistent.

(2) In contracts which call for the modification of existing motion pictures, television records, or other audiovisual works through editing, translation, or addition of subject matter, the clause at 252.227–7020, Rights in Data—Special Works, appropriately modified, shall be used.

(b) *Off-the-shelf acquisition of books and similar items.* Unless the right to reproduce technical data is an objective of the contract, no contract clause prescribed in this part need be included in contracts solely to acquire data, other than motion pictures, which exist before the start of the acquisition (such as the off-the-shelf acquisitions of existing products).

227.405–78 Architect-engineer and construction contracts.

(a) *General.* This subsection sets forth policies and procedures, pertaining to data, copyrights, and restricted designs unique to the acquisition of construction and architect-engineer services.

(b) *Acquisition and use of plans, specifications, and drawings*—(1) *Architectural Designs and Data Clauses for Architect-Engineer or Construction Contracts*—(i) *Plans and Specifications and As-Built Drawings.*

(A) Except as provided in paragraph of this section (a)(1)(ii), use the clause at 252.227–7022, Government Rights (Unlimited), in solicitations and contracts for architect-engineer services and for construction involving architect-engineer services.

(B) When the purpose of a contract for architect-engineer services or for construction involving architect-engineer services is to obtain a unique architectural design of a building, a monument, or construction of similar nature, which for artistic, aesthetic or other special reasons the Government does not want duplicated, the Government may acquire exclusive control of the data pertaining to design by including the clause at 252.227–7023, Drawings and Other Data to Become Property of Government, in solicitations and contracts.

(ii) *Shop Drawings for Construction.* The Government shall obtain unlimited rights in shop drawings for construction. In solicitations and contracts calling for delivery of shop drawings, include the clause at 252.227–7033, Rights in Shop Drawings.

(c) *Contracts for construction supplies and research and development work.* The provisions and clauses required by this section shall not be used when the acquisition is limited to either—

(1) Construction supplies or materials,

(2) Experimental, developmental, or research work, or test and evaluation studies of structures, equipment, processes, or materials for use in construction; or

(3) Both.

(d) *Approval of restricted designs.* The clause at 252.227–7024, Notice and Approval of Restricted Designs, may be included in architect-engineer contracts to permit the Government to make informed decisions concerning noncompetitive aspects of the design.

227.405–79 Small Business Innovative Research Program (SBIR Program).

(a) Public Law 97–219, "Small Business Innovation Development Act of 1982", requires the Department of Defense to establish a Small Business Innovation Research Program (SBIR Program). Small Business Administration (SBA) Policy Directive No. 65–01 provides guidance on the program.

(b)(1) Data and computer software generated under an SBIR program contract shall not be disclosed outside the Government for two years after contract completion, except—

(i) When necessary for program evaluation, or

(ii) When the contractor consents in writing to additional disclosure.

(2) Upon expiration of the period of nondisclosure, the Government shall have a nonexclusive, worldwide, royalty-free license in technical data and computer software for Government use.

(c) Copyrights in technical data and computer software generated under an SBIR program contract shall, when agreed to in writing by the contracting officer, be owned by the contractor. The Government should obtain a royalty-free license under any copyright. Each publication of copyrighted material should contain an appropriate acknowledgement and disclaimer statement.

(d) The clause at 252.227–7013, Rights in Technical Data and Computer Software, with its Alternate II, shall be included in all contracts awarded under the SBIR Program which require delivery of technical data or computer software.

Subpart 227.6—Foreign License and Technical Assistance Agreements

227.670 Scope.

This subpart prescribes policy with respect to foreign license and technical assistance agreements.

227.671 General.

In furtherance of the Military Assistance Program or for other national defense purposes, the Government may undertake to develop or encourage the development of foreign additional sources of supply. The development of such sources may be accomplished by an agreement, often called a foreign licensing agreement or technical assistance agreement, wherein a domestic concern, referred to in this subpart as a "primary source," agrees to furnish to a foreign concern or government, herein referred to as a "second source;" foreign patent rights; technical assistance in the form of data, know-how, trained personnel of the primary source, instruction and guidance of the personnel of the second source, jigs, dies, fixtures, or other manufacturing aids, or such other assistance, information, rights, or licenses as are needed to enable the second source to produce particular supplies or perform particular services. Agreements calling for one or more of the foregoing may be entered into between the primary source and the Government, a foreign government, or a foreign concern. The consideration for providing such foreign license and technical assistance may be in the form of a lump sum payment, payments for each item manufactured by the second source, an agreement to exchange data and patent rights on improvements made to the article or service, capital stock transactions, or any combination of these. The primary source's bases for computing such consideration may include actual costs; charges for the use of patents, data, or know-how reflecting the primary source's investment in developing and engineering and production techniques; and the primary source's "price" for setting up a second source. Such agreements often refer to the compensation to be paid as a royalty or license fee whether or not patent rights are involved.

227.672 Policy.

It is Government policy not to pay in connection with its contracts, and not to allow to be paid in connection with contracts made with funds derived through the Military Assistance Program or otherwise through the United States Government, charges for use of patents in which it holds a royalty-free license or charges for data which it has a right to use and disclose to others, or which is in the public domain, or which the Government has acquired without restriction upon its use and disclosure to others. This policy shall be applied by the Departments in negotiating contract prices for foreign license technical assistance contracts (227.675) or supply contracts with second sources (227.674); and in commenting on such agreements when they are referred to the Department of Defense by the Department of State pursuant to section 414 of the Mutual Security Act of 1954 as amended (22 U.S.C. 1934) and the International Traffic in Arms Regulations (see 227.675).

227.673 Foreign license and technical assistance agreements between the Government and domestic concerns.

(a) Contracts between the Government and a primary source to provide technical assistance or patent rights to a second source for the manufacture of supplies or performance of services shall, to the extent practicable, specify the rights in patents and data and any other rights to be supplied to the second source. Each contract shall provide, in connection with any separate agreement between the primary source and the second source for patent rights or technical assistance relating to the articles or services involved in the contract, that—

(1) The primary source and his subcontractors shall not make, on account of any purchases by the Government or by others with funds derived through the Military Assistance Program or otherwise through the Government, any charge to the second source for royalties or amortization for patents or inventions in which the Government holds a royalty-free license; or data which the Government has the right to possess, use, and disclose to others; or any technical assistance provided to the second source for which the Government has paid under a contract between the Government and the primary source; and

(2) The separate agreement between the primary and second source shall include a statement referring to the contract between the Government and the primary source, and shall conform to the requirements of the International Traffic in Arms Regulations (see 227.675-1).

(b) The following factors, among others, shall be considered in negotiating the price to be paid the primary source under contracts within (a) of this section:

(1) The actual cost of providing data, personnel, manufacturing aids, samples, spare parts, and the like;

(2) The extent to which the Government has contributed to the development of the supplies or services, and to the methods of manufacture or performance, through past contracts for research and development or for manufacture of the supplies or performance of the services; and

(3) The Government's patent rights and rights in data relating to the supplies or services and to the methods of manufacture or of performance.

227.674 Supply contracts between the Government and a foreign government or concern.

In negotiating contract prices with a second source, including the redetermination of contract prices, or in determining the allowability of costs under a cost-reimbursement contract with a second source, the contracting officer:

(a) Shall obtain from the second source a detailed statement (see FAR 27.204-1(a)(2)) of royalties, license fees, and other compensation paid or to be paid to a primary source (or any of his subcontractors) for patent rights, rights in data, and other technical assistance provided to the second source, including identification and description of such patents, data, and technical assistance; and

(b) Shall not accept or allow charges which in effect are—

(1) For royalties or amortization for patents or inventions in which the Government holds a royalty-free license; or

(2) For data which the Government has a right to possess, use, and disclose to others; or

(3) For any technical assistance provided to the second source for which the Government has paid under a contract between the Government and a primary source.

227.675 Foreign license and technical assistance agreements between a domestic concern and a foreign government or concern.

227.675-1 International Traffic in Arms Regulations.

Pursuant to section 414 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1934), the Department of State controls the exportation of data relating to articles designated in the United States Munitions List as arms, ammunition, or munitions of war. (The Munitions List and pertinent procedures are set forth in the International Traffic in Arms Regulations, 22 CFR, et seq.) Before authorizing such exportation, the Department of State generally requests comments from the Department of Defense. On request of the Office of the Assistant Secretary of Defense (International Security Affairs), each Department shall submit comments thereon as the basis for a Department of Defense reply to the Department of State.

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227.674 Supply contracts between the Government and a foreign government or concern.

In negotiating contract prices with a second source, including the redetermination of contract prices, or in determining the allowability of costs under a cost-reimbursement contract with a second source, the contracting officer:

(a) Shall obtain from the second source a detailed statement (see FAR 27.204–1(a)(2)) of royalties, license fees, and other compensation paid or to be paid to a primary source (or any of his subcontractors) for patent rights, rights in data, and other technical assistance provided to the second source, including identification and description of such patents, data, and technical assistance; and

(b) Shall not accept or allow charges which in effect are—

(1) For royalties or amortization for patents or inventions in which the Government holds a royalty-free license; or

(2) For data which the Government has a right to possess, use, and disclose to others; or

(3) For any technical assistance provided to the second source for which the Government has paid under a contract between the Government and a primary source.

227.675 Foreign license and technical assistance agreements between a domestic concern and a foreign government or concern.

227.675–1 International Traffic in Arms Regulations.

Pursuant to section 414 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1934), the Department of State controls the exportation of data relating to articles designated in the United States Munitions List as arms, ammunition, or munitions of war. (The Munitions List and pertinent procedures are set forth in the International Traffic in Arms Regulations, 22 CFR, et seq.) Before authorizing such exportation, the Department of State generally requests comments from the Department of Defense. On request of the Office of the Assistant Secretary of Defense (International Security Affairs), each Department shall submit comments thereon as the basis for a Department of Defense reply to the Department of State.

227.675–2 Review of agreements.

(a) In reviewing foreign license and technical assistance agreements between primary and second sources, the Department concerned shall, insofar as its interests are involved, indicate whether the agreement meets the requirements of sections 124.07–124.10 of the International Traffic in Arms Regulations or in what respects it is deficient. Paragraphs (b) through (g) of this subsection provide general guidance.

(b) When it is reasonably anticipated that the Government will purchase from the second source the supplies or services involved in the agreement, or that Military Assistance Program funds will be provided for the procurement of the supplies or services, the following guidance applies.

(1) If the agreement specifies a reduction in charges thereunder, with respect to purchases by or for the Government or by others with funds derived through the Military Assistance Program or otherwise through the Government, in recognition of the Government's rights in patents and data, the Department concerned shall evaluate the amount of the reduction to determine whether it is fair and reasonable in the circumstances, before indicating its approval.

(2) If the agreement does not specify any reduction in charges or otherwise fails to give recognition to the Government's rights in the patents or data involved, approval shall be conditioned upon amendment of the agreement to reflect a reduction, evaluated by the Department concerned as acceptable to the Government, in any charge thereunder with respect to purchases made by or for the Government or by others with funds derived through the Military Assistance Program or otherwise through the Government, in accordance with Section 124.10 of the International Traffic in Arms Regulations.

(3) If the agreement provides that no charge is to be made to the second source for data or patent rights to the extent of the Government's rights, the Department concerned shall evaluate the acceptability of the provision before indicating its approval.

(4) If time or circumstances do not permit the evaluation called for in (b) (1), (2), or (3) of this subsection, the guidance in (c) of this subsection shall be followed.

(c) When it is not reasonably anticipated that the Government will purchase from the second source the supplies or services involved in the agreement nor that Military Assistance Program funds will be provided for the purchase of the supplies or services, then the following guidance applies.

(1) If the agreement provides for charges to the second source for data or patent rights, it may suffice to fulfill the requirements of Section 124.10 insofar as the Department of Defense is concerned if:

(i) The agreement requires the second source to advise the primary source when he has knowledge of any purchase made or to be made from him by or for the Government or by others with funds derived through the Military Assistance Program or otherwise through the Government;

(ii) The primary source separately agrees with the Government that upon such advice to him from the second source or from the Government or otherwise as to any such a purchase or prospective purchase, he will negotiate with the Department concerned an appropriate reduction in his charges to the second source in recognition of any Government rights in patents or data; and

(iii) The agreement between the primary and second sources further provides that in the event of any such purchase and resulting reduction in charges, the second source shall pass on this reduction to the Government by giving the Government a corresponding reduction in the purchase price of the article or service.

(2) If the agreement provides that no charge is to be made to the second source for data or patent rights to the extent to which the Government has rights, the Department concerned shall:

(i) Evaluate the acceptability of the provision before indicating its approval; or

(ii) Explicitly condition its approval on the right to evaluate the acceptability of the provision at a later time.

(d) When there is a technical assistance agreement between the primary source and the Government related to the agreement between the primary and second sources that is under review, the latter agreement shall reflect the arrangements contemplated with respect thereto by the Government's technical assistance agreement with the primary source.

(e) Every agreement shall provide that any license rights transferred under the agreement are subject to existing rights of the Government.

(f) In connection with every agreement referred to in (b) of this section, a request shall be made to the primary source—

(1) To identify the patents, data, and other technical assistance to be provided to the second source by the primary source or any of his subcontractors,

(2) To identify any such patents and data in which, to the knowledge of the primary source, the Government may have rights, and

(3) To segregate the charges made to the second source for each such category or item of patents, data, and other technical assistance.

Reviewing personnel shall verify this information or, where the primary source does not furnish it, obtain such information from Governmental sources so far as practicable.

(g) The Department concerned shall make it clear that its approval of any agreement does not necessarily recognize the propriety of the charges or the amounts thereof, or constitute approval of any of the business arrangements in the agreement, unless the Department expressly intends by its approval to commit itself to the fairness and reasonableness of a particular charge or charges. In any event, a disclaimer should be made to charges or business terms not affecting any purchase made by or for the Government or by others with funds derived through the Military Assistance Program or otherwise through the Government.

Subpart 227.70—Infringement Claims, Licenses, and Assignments

227.7000 Scope.

This subpart prescribes policy, procedures, and instructions for use of clauses with respect to processing licenses, assignments, and infringement claims.

227.7001 Policy.

Whenever a claim of infringement of privately owned rights in patented inventions or copyrighted works is asserted against any Department or Agency of the Department of Defense, all necessary steps shall be taken to investigate, and to settle administratively, deny, or otherwise dispose of such claim prior to suit against the United States. This subpart 227.70 does not apply to licenses or assignments acquired by the Department of Defense under the Patent Rights clauses.

227.7002 Statutes pertaining to administrative claims of infringement.

Statutes pertaining to administrative claims of infringement in the Department of Defense include the following: the Foreign Assistance Act of 1961, 22 U.S.C. 2356 (formerly the Mutual Security Acts of 1951 and 1954); the Invention Secrecy Act, 35 U.S.C. 181–

188; 10 U.S.C. 2386; 28 U.S.C. 1498; and 35 U.S.C. 286.

227.7003 Claims for copyright infringement.

The procedures set forth herein will be followed, where applicable, in copyright infringement claims.

227.7004 Requirements for filing an administrative claim for patent infringement.

(a) A patent infringement claim for compensation, asserted against the United States under any of the applicable statutes cited in 227.7002, must be actually communicated to and received by a Department, agency, organization, office, or field establishment within the Department of Defense. Claims must be in writing and should include the following:

(1) An allegation of infringement;

(2) A request for compensation, either expressed or implied;

(3) A citation of the patent or patents alleged to be infringed;

(4) A sufficient designation of the alleged infringing item or process to permit identification, giving the military or commercial designation, if known, to the claimant;

(5) A designation of at least one claim of each patent alleged to be infringed; or

(6) As an alternative to (a) (4) and (5) of this section, a certification that the claimant has made a bona fide attempt to determine the item or process which is alleged to infringe, but was unable to do so, giving reasons, and stating a reasonable basis for his belief that his patent or patents are being infringed.

(b) In addition to the information listed in (a) of this section, the following material and information is generally necessary in the course of processing a claim of patent infringement. Claimants are encouraged to furnish this information at the time of filing a claim to permit the most expeditious processing and settlement of the claim.

(1) A copy of the asserted patent(s) and identification of all claims of the patent alleged to be infringed.

(2) Identification of all procurements known to claimant which involve the alleged infringing item or process, including the identity of the vendor or contractor and the Government procuring activity.

(3) A detailed identification of the accused article or process, particularly where the article or process relates to a component or subcomponent of the item procured, an element by element comparison of the representative claims with the accused article or process. If available, this identification should include documentation and drawings to illustrate the accused article or process in suitable detail to enable verification of the infringement comparison.

(4) Names and addresses of all past and present licenses under the patent(s), and copies of all license agreements and releases involving the patent(s).

(5) A brief description of all litigation in which the patent(s) has been or is now involved, and the present status thereof.

(6) A list of all persons to whom notices of infringement have been sent, including all departments and agencies of the Government, and a statement of the ultimate disposition of each.

(7) A description of Government employment or military service, if any, by the inventor and/or patent owner.

(8) A list of all Government contracts under which the inventor, patent owner, or anyone in privity with him performed work relating to the patented subject matter.

(9) Evidence of title to the patent(s) alleged to be infringed or other right to make the claim.

(10) A copy of the Patent Office file of each patent if available to claimant.

(11) Pertinent prior art known to claimant, not contained in the Patent Office file, particularly publications and foreign art.

In addition in the foregoing, if claimant can provide a statement that the investigation may be limited to the specifically identified accused articles or processes, or to a specific procurement, it may materially expedite determination of the claim.

(c) Any Department receiving an allegation of patent infringement which meets the requirements of this paragraph shall acknowledge the same and supply the other Departments which may have an interest therein with a copy of such communication and the acknowledgement thereof.

(1) For the Department of the Army—Chief, Patents, Copyrights, and Trademarks Division, U.S. Army Legal Services Agency;

(2) For the Department of the Navy—The Patent Counsel for Navy, Office of Naval Research;

(3) For the Department of the Air Force—Chief, Patents Division, Office of The Judge Advocate General;

(4) For the Defense Logistics Agency—The Office of Counsel; for the National Security Agency, the General Counsel;

(5) For the Defense Communications Agency—the Counsel;

(6) For the Defense Nuclear Agency—The General Counsel; and

(7) For the Defense Mapping Agency—The Counsel.

(d) If a communication alleging patent infringement is received which does not meet the requirements set forth in paragraph (c) of this section, the sender shall be advised in writing—

(1) That his claim for infringement has not been satisfactorily presented, and

(2) Of the elements considered necessary to establish a claim.

(e) A communication making a proffer of a license in which no infringement is alleged shall not be considered as a claim for infringement.

227.7005 Indirect notice of patent infringement claims.

(a) A communication by a patent owner to a Department of Defense contractor alleging that the contractor has committed acts of infringement in performance of a Government contract shall not be considered a claim within the meaning of 227.7004 until it meets the requirements specified therein.

(b) Any Department receiving an allegation of patent infringement which meets the requirements of 227.7004 shall acknowledge the same and supply the other Departments (see 227.7004(c)) which may have an interest therein with a copy of such communication and the acknowledgement thereof.

(c) If a communication covering an infringement claim or notice which does not meet the requirements of 227.7004(a) is received from a contractor, the patent owner shall be advised in writing as covered by the instructions of 227.7004(d).

227.7006 Investigation and administrative disposition of claims.

An investigation and administrative determination (denial or settlement) of each claim shall be made in accordance with instructions and procedures established by each Department, subject to the following:

(a) When the procurement responsibility for the alleged infringing item or process is assigned to a single Department or only one Department is the purchaser of the alleged infringing item or process, and the funds of that Department only are to be charged in the settlement of the claim, that Department shall have the sole responsibility for the investigation and administrative determination of the claim and for the execution of any agreement in settlement of the claim. Where, however, funds of another Department are to be charged, in whole or in part, the approval of such Department shall be obtained as required by 208.7002. Any agreement in settlement of the claim, approved pursuant to 208.7002 shall be executed by each of the Departments concerned.

(b) When two or more Departments are the respective purchasers of alleged infringing items or processes and the funds of those Departments are to be charged in the settlement of the claim, the investigation and administrative determination shall be the responsibility of the Department having the predominant financial interest in the claim or of the Department or Departments as jointly agreed upon by the Departments concerned. The Department responsible for negotiation shall, throughout the negotiation, coordinate with the other Departments concerned and keep them advised of the status of the negotiation. Any agreement in the settlement of the claim shall be executed by each Department concerned.

227.7007 Notification and disclosure to claimants.

When a claim is denied, the Department responsible for the administrative determination of the claim shall so notify the claimant or his authorized representative and provide the claimant a reasonable rationale of the basis for denying the claim. Disclosure of information or the rationale referred to above shall be subject to applicable statutes, regulations, and directives pertaining to security, access to official records, and the rights of others.

227.7008 Settlement of indemnified claims.

Settlement of claims involving payment for past infringement shall not be made without the consent of, and equitable contribution by, each indemnifying contractor involved, unless such settlement is determined to be in the best interests of the Government and is coordinated with the Department of Justice with a view to preserving any rights of the Government against the contractors involved. If consent of and equitable contribution by the contractors are obtained, the settlement need not be coordinated with the Department of Justice.

227.7009 Patent releases, license agreements, and assignments.

This section contains clauses for use in patent release and settlement agreements, license agreements, and assignments, executed by the Government, under which the Government acquires rights. Minor modifications of language (e.g., pluralization of "Secretary" or "Contracting Officer") in multi-departmental agreements may be made if necessary.

227.7009-1 Required clauses.

(a) Officials Not To Benefit. Insert the clause at FAR 52.203-1.

(b) Covenant Against Contingent Fees. Insert the clause at FAR 52.203-5.

(c) Gratuities. Insert the clause at FAR 52.203-3.

(d) Assignment of Claims. Insert the clause at FAR 52.232-23.

(e) Disputes. Pursuant to FAR 33.014, insert the clause at FAR 52.233-1.

(f) Non-Estoppel. Insert the clause at 252.227-7000.

227.7009-2 Clauses to be used when applicable.

(a) *Release of past infringement.* The clause at 252.227-7001, Release of Past Infringement, is an example which may be modified or omitted as appropriate for particular circumstances, but only upon the advice of cognizant patent or legal counsel. (See footnotes at end of clause.)

(b) *Readjustment of payments.* The clause at 252.227-7002, Readjustment of Payments, shall be inserted in contracts providing for payment of a running royalty.

(c) *Termination.* The clause at 252.227-7003, Termination, is an example for use in contracts providing for the payment of a running royalty. This clause may be modified or omitted as appropriate for particular circumstances, but only upon the advice of cognizant patent or legal counsel (see 227.7004(c)).

227.7009-3 Additional clauses—contracts except running royalty contracts.

The following clauses are examples for use in patent release and settlement agreements, and license agreements not providing for payment by the Government of a running royalty.

(a) License Grant. Insert the clause at 252.227-7004.

(b) License Term. Insert one of the clauses at 252.227-7005 Alternate I or Alternate II, as appropriate.

227.7009-4 Additional clauses—contracts providing for payment of a running royalty.

The clauses set forth below are examples which may be used in patent release and settlement agreements, and license agreements, when it is desired to cover the subject matter thereof and the contract provides for payment of a running royalty.

(a) *License grant—running royalty.* No Department shall be obligated to pay royalties unless the contract is signed on behalf of such Department. Accordingly, the License Grant clause at 252.227-7006 should be limited to the practice of the invention by or for the signatory Department or Departments.

(b) *License term—running royalty.* The clause at 252.227-7007 is a sample form for expressing the license term.

(c) *Computation of royalties.* The clause at 252.227-7008 providing for the computation of royalties, may be of varying scope depending upon the nature of the royalty bearing article, the volume of procurement, and the type of contract pursuant to which the procurement is to be accomplished.

(d) *Reporting and payment of royalties.* (1) The contract should contain a provision specifying the office designated within the specific Department involved to make any necessary reports to the contractor of the extent of use of the licensed subject matter by the entire Department, and such office shall be charged with the responsibility of obtaining from all procuring offices of that Department the information necessary to make the required reports and corresponding vouchers necessary to make the required payments. The clause at 252.227-7009 is a sample for expressing reporting and payment of royalties requirements.

(2) Where more than one Department or Government Agency is licensed and there is a ceiling on the royalties payable in any reporting period, the licensing Departments or Agencies shall coordinate with respect to the pro rata share of royalties to be paid by each.

(e) *License to other government agencies.* When it is intended that a license on the same terms and conditions be available to other departments and agencies of the Government, the clause at 252.227-7010 is an example which may be used.

227.7010 Assignments.

(a) The clause at 252.227-7011 is an example which may be used in contracts of assignment of patent rights to the Government.

(b) To facilitate proof of contracts of assignments, the acknowledgement of the contractor should be executed before a notary public or other officer authorized to administer oaths (35 U.S.C. 261).

227.7011 Procurement of rights in inventions, patents, and copyrights.

Even though no infringement has occurred or been alleged, it is the policy of the Department of Defense to procure rights under patents, patent applications, and copyrights whenever it is in the Government's interest to do so and the desired rights can be obtained at a fair price. The required and suggested clauses at 252.227-7004 and 252.227-7010 shall be required and suggested clauses.

respectively, for license agreements and assignments made under this paragraph. The instructions at 227.7009–3 and 227.7010 concerning the applicability and use of those clauses shall be followed insofar as they are pertinent.

227.7012 Contract format.

The format at 252.227–7012 appropriately modified where necessary, may be used for contracts of release, license, or assignment.

227.7013 Recordation.

Executive Order No. 9424 of 18 February 1944 requires all executive Departments and agencies of the Government to forward through appropriate channels to the Commissioner of Patents and Trademarks, for recording, all Government interests in patents or applications for patents.

PART 228—BONDS AND INSURANCE

Sec.

Subpart 228.1—Bonds

228.102 Performance and payment bonds for construction contracts.
228.102–1 General.
228.105 Other types of bonds.
228.170 Solicitation provision.

Subpart 228.3—Insurance

228.304 Risk-pooling arrangement.
228.305 Overseas workers' compensation and war-hazard insurance.
228.307 Insurance under cost-reimbursement contracts.
228.307–1 Group insurance plans.
228.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.
228.311–1 Solicitation provision.
228.311–2 Contract clause.
228.370 Contract clauses.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 228.1—Bonds

228.102 Performance and payment bonds for construction contracts.

228.102–1 General.

(a) The requirement for performance and payment bonds is waived for cost-reimbursement contracts. However, for cost type contracts with fixed-price construction subcontracts over $25,000, require the prime contractor to obtain from each of its construction subcontractors—

(i) A payment bond in favor of the prime contractor sufficient to pay labor and material costs; and

(ii) A performance bond in an equal amount if available at no additional cost.

228.105 Other types of bonds.

Fidelity and forgery bonds generally are not required but may be used when—

(1) Necessary for the protection of the Government or the contractor; or

(2) The investigative and claims services of a surety company are desired.

228.170 Solicitation provision.

When a requirement for a performance bond or other security is included in a solicitation for dismantling, demolition, or removal of improvements (see FAR 37.300), use the provision at 252.228–7004, Bonds or Other Security. Set a period of time (normally ten days) for return of executed bonds.

Subpart 228.3—Insurance

228.304 Risk-pooling arrangements.

The DoD has established the National Defense Projects Rating Plan, also known as the Special Casualty Insurance Rating Plan, as a risk-pooling arrangement to minimize the cost to the Government of purchasing the liability insurance listed in FAR 28.307–2. Use the plan in accordance with the following guidelines when it provides the necessary coverage more advantageously than commercially available coverage.

(1) The plan—

(i) Is implemented by attaching an endorsement to standard insurance policy forms for workers' compensation, employer's liability, comprehensive general, and automobile liability. The endorsement states that the instant policy is subject to the National Defense Projects Rating Plan.

(ii) Applies to eligible Defense projects of one or more departments/agencies. For purposes of this section, a Defense project is any eligible contract or group of contracts with the same contractor.

(A) A Defense project is eligible when—

(*1*) Eligible contracts represent, at the inception of the plan, at least 90 percent of the payroll for the total operations at project locations; and

(*2*) The annual insurance premium is estimated to be at least $10,000.

(B) A contract is eligible when it is—

(*1*) Either domestic or foreign;

(*2*) Cost-reimbursement type; or

(*3*) Fixed price with redetermination provisions.

(2) Under construction contracts, include construction subcontractors in the prime contractor's plan only when subcontractor operations are at the project site, and the subcontract provides that the prime contractor will furnish insurance.

(3) Use the agreement in Table 28–1, Insurance Rating Plan Agreement, when the Government assumes contractor premium payments upon contract termination or completion.

(4) The Federal Tort Claims Act provides protection for Government employees while driving Government-owned vehicles in the performance of their assigned duties. Include the endorsement in Table 28–2, Automobile Insurance Policy Endorsement, in automobile liability insurance policies provided under the National Defense Projects Rating Plan.

Table 28–1.—Insurance Rating Plan Rating Agreement

Special Casualty Insurance Rating Plan
Assignment-Assumption of Premium Obligations

It is agreed that 100 percent [*] of the return premiums and premium refunds (and dividends) due or to become due the prime contractor under the policies to which the National Defense Projects Rating Plan Endorsement made a part of policy ________ applies are hereby assigned to and shall be paid to the United States of America, and the prime contractor directs the Company to make such payments to the office designated for contract administration acting for and on account of the United States of America.

The United States of America hereby assumes and agrees to fulfill all present and future obligations of the prime contractor with respect to the payment of 100 percent of the premiums under said policies.

This agreement, upon acceptance by the prime contractor, the United States of America, and the Company shall be effective from ________

Accepted ________________
(Date)
(Name of Insurance Company) ________
By ________________
(Title of Official Signing)
Accepted ________________
(Date)
United States of America
By ________________
(Authorized Representative)
Accepted ________________
(Date)
(Prime Contractor) ________
By ________________
(Authorized Representative)

Table 28–2.—Automobile Insurance Policy Endorsement

It is agreed that insurance provided by the policy with respect to the ownership, maintenance, or use of automobiles, including loading and unloading thereof, does not apply to the following as insureds: The United

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[*] In the event the Government has less than a 100 percent interest in premium funds or dividends, modify the assignment to reflect the percentage of interest and extent of the Government's assumption of additional premium obligation.

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(3) Use the agreement in Table 28–1, Insurance Rating Plan Agreement, when the Government assumes contractor premium payments upon contract termination or completion.

(4) The Federal Tort Claims Act provides protection for Government employees while driving Government-owned vehicles in the performance of their assigned duties. Include the endorsement in Table 28–2, Automobile Insurance Policy Endorsement, in automobile liability insurance policies provided under the National Defense Projects Rating Plan.

Table 28–1.—Insurance Rating Plan Rating Agreement

Special Casualty Insurance Rating Plan Assignment-Assumption of Premium Obligations

It is agreed that 100 percent [*] of the return premiums and premium refunds (and dividends) due or to become due the prime contractor under the policies to which the National Defense Projects Rating Plan Endorsement made a part of policy __________ applies are hereby assigned to and shall be paid to the United States of America, and the prime contractor directs the Company to make such payments to the office designated for contract administration acting for and on account of the United States of America.

The United States of America hereby assumes and agrees to fulfill all present and future obligations of the prime contractor with respect to the payment of 100 percent of the premiums under said policies.

This agreement, upon acceptance by the prime contractor, the United States of America, and the Company shall be effective from ________

Accepted ______________________
(Date)
(Name of Insurance Company)__________
By ______________________
(Title of Official Signing)
Accepted ______________________
(Date)
United States of America
By ______________________
(Authorized Representative)
Accepted ______________________
(Date)
(Prime Contractor) ______________
By ______________________
(Authorized Representative)

Table 28–2.—Automobile Insurance Policy Endorsement

It is agreed that insurance provided by the policy with respect to the ownership, maintenance, or use of automobiles, including loading and unloading thereof, does not apply to the following as insureds: The United

---

[*] In the event the Government has less than a 100 percent interest in premium funds or dividends, modify the assignment to reflect the percentage of interest and extent of the Government's assumption of additional premium obligation.

States of America, any of its agencies, or any of its officers or employees.

228.305 Overseas workers' compensation and war-hazard insurance.

(d) Submit requests for waiver through department/agency channels. Include the following—

(i) Name and address of contractor;
(ii) Contract number;
(iii) Date of award;
(iv) Place of performance;
(v) Name of insurance company providing Defense Base Act coverage;
(vi) Nationality of employees to whom waiver is to apply; and
(vii) Reason for waiver.

228.307 Insurance under cost-reimbursement contracts.

228.307-1 Group insurance plans.

The Defense Department Group Term Insurance Plan is available for contractor use under cost-reimbursement type contracts when approved as provided in department or agency regulations. A contractor is eligible if—

(a) The number of covered employees is 500 or more; and

(b) The contractor has all cost-reimbursement contracts; or

(c) At least 90 percent of the payroll for contractor operations to be covered by the Plan is under cost-reimbursement contracts.

228.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

228.311-1 Solicitation provision.

Use the provision at FAR 52.228–6, Insurance—Immunity from Tort Liability, in solicitations for research and development when a cost-reimbursement contract is contemplated, unless the head of the contracting activity waives the requirement for use of the clause at FAR 52.228–7, Insurance—Liability to Third Persons.

228.311-2 Contract clause.

Use the clause at FAR 52.228–7, Insurance—Liability to Third Persons, in solicitations and contracts, other than those for construction and those for architect-engineer services, when a cost-reimbursement contract is contemplated, unless the head of the contracting activity waives the requirement for use of the clause.

228.370 Contract clauses.

(a) Use the clause at 252.228–7000, Reimbursement for War-Hazard Losses, when—

(1) The clause at FAR 52.228–4, Worker's Compensation and War-Hazard Insurance Overseas, is used; and

(2) The head of the contracting activity decides not to allow the contractor to buy insurance for war-hazard losses.

(b)(1) Use the clause at 252.228–7001, Ground and Flight Risk, in negotiated fixed-price contracts for aircraft production, modification, maintenance, repair, or overhaul, unless—

(i) The aircraft is being acquired for a foreign military sale and the foreign government has not agreed to assume the risk; or

(ii) The cost of insurance for damage, loss, or destruction of aircraft does not exceed $500, and the contracting officer agrees to recognize the insurance costs.

(2) If appropriate, revise the clause at 252.228–7001, Ground and Flight Risk, as follows—

(i) Include a modified definition of "aircraft" if the contract covers other than conventional types of winged aircraft, i.e., helicopters, vertical take-off aircraft, lighter-than-air airships or other nonconventional aircraft. The modified definition should describe a stage of manufacture comparable to the standard definition.

(ii) Modify "in the open" to include "hush houses," test hangars and comparable structures, and other designated areas.

(iii) Expressly define the "contractor's premises" where the aircraft will be located during and for contract performance. These locations may include contract premises which are owned, leased, or premises where the contractor is a permittee or licensee or has a right to use, including Government airfields.

(iv) Revise paragraph (d)(iii) of the clause to provide Government assumption of risk for transportation by conveyance on streets or highways when transportation is—

(A) Limited to the vicinity of contractor premises; and

(B) Incidental to work performed under the contract.

(c)(1) Use the clause at 252.228–7002, Aircraft Flight Risk, in cost reimbursement contracts—

(i) For the development, production, modification, maintenance, repair, or overhaul of aircraft; or

(ii) Otherwise involving the furnishing of aircraft to the contractor by the Government.

(iii) With the definition of "aircraft" modified, if appropriate, to include helicopters, vertical take-off aircraft, lighter-than-air airships or other nonconventional aircraft.

(2) Use the clause at 252.228–7002, Aircraft Flight Risk, appropriately modified, in fixed price contracts when—

(i) The clause at 252.228–7001, Ground and Flight Risk, is not used; and

(ii) Contract performance involves the flight of Government furnished aircraft.

(d) The clause at 252.228–7003, Capture and Detention, may be used when contractor employees are subject to capture and detention and may not be covered by the War-Hazard Compensation Act (42 U.S.C. 1701 et seq.).

(e) The clause at 252.228–7005, Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles, may be used in solicitations and contracts which involve the manufacture, modification, overhaul, or repair of these items.

PART 229—TAXES

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 229.1—General

229.101 Resolving tax problems.

(a) Within DoD, the agency-designated legal counsels are the defense agency General Counsels, the General Counsels of the Navy and Air Force, and for the Army, the Chief, Contract Law Division, Office of the Judge Advocate General.

(c) The contracting officer may direct the contractor to litigate the applicability of a particular tax if—

(i) The contract is either a cost reimbursement type or a fixed price type with a tax escalation clause; and

(ii) The direction is coordinated with the agency-designated legal counsel through the DoD Tax Policy and Advisory Group.

(d)(i) Review DoDD 5100.64, Department of Defense Foreign Tax Relief Program, before contracting with a foreign source. Refer questions on implementation of the program to the Commanding Officers in Table 29–1, Designated Commanding Officers, which have been designated under subsection E.7 of DoDD 5100.64 to serve as—

(A) Single point of contact for U.S. contracting offices for investigation and resolution of specific foreign tax relief matters; and

(B) Liaison with responsible diplomatic mission and local foreign tax authorities.

(ii) Refer foreign tax relief questions which have not been resolved by the designated Commanding Officer to the agency-designated legal counsel.

(iii) When an acquisition is for a contract to be performed in a country or area listed in Table 29-1, Designated Commanding Officers—

(A) Obtain from the designated Commanding Officer detailed information concerning the taxes and duties from which the Government of the United States is exempt, and

(B) Provide the information to prospective offerors.

(C) Do not provide prospective offerors any other information about foreign taxes or duties.

(D) Issue tax exemption certificates, as appropriate, to assist the contractor in obtaining relief from foreign taxes and duties which were excluded from the contract price.

(E) Seek advice and assistance from the designated Commanding Officer and, if necessary, the agency-designated legal counsel if the contractor notifies the contracting officer that it has been assessed a tax or duty by a foreign government which could increase the contract price.

TABLE 29-1.—DESIGNATED COMMANDING OFFICERS

Country or area	Designated commanding officer
Australia	Commander in Chief, Pacific Representative, Australia.
Azores	Commander, U.S. Forces, Azores.
Bahrain	Commander in Chief, U.S. Naval Forces, Europe.
Belgium	Commander in Chief, U.S. Army, Europe.
Bermuda	Commanding Officer, U.S. Naval Air Station, Bermuda.
Canada	Commander, Space Command.
Caribbean Islands (including Bahamas).	Commander, Antilles Defense Command.
Denmark	Commander in Chief, U.S. Air Forces, Europe.
Ethiopia	Commander in Chief, U.S. Army, Europe.
France	Commander in Chief, U.S. Army, Europe.
Germany	Commander in Chief, U.S. Army, Europe.
Greece	Commander in Chief, U.S. Air Forces, Europe.
Greenland	Commander, Space Command.
Iceland	Commander, Iceland Defense Force.
Iran	Commander in Chief, U.S. Army, Europe.
Italy	Commander in Chief, U.S. Naval Forces, Europe.
Japan	Commander, U.S. Forces, Japan.
Korea	Commander, U.S. Forces, Korea.
Luxembourg	Commander in Chief, U.S. Army, Europe.
Morocco	Commander in Chief, U.S. Naval Forces, Europe.
Netherlands	Commander in Chief, U.S. Air Forces, Europe.
New Zealand	Commander, U.S. Naval Support Forces, Antarctica.
Norway	Commander in Chief, U.S. Air Forces, Europe.
Philippines	Commander in Chief, Pacific Representative, Philippines.
Portugal	Commander in Chief, U.S. Naval Forces, Europe.
Spain	Commander in Chief, U.S. Air Forces, Europe.
Taiwan	Commander, U.S. Military Assistance Command, Thailand.
Turkey	Commander in Chief, U.S. Air Forces, Europe.
United Kingdom	Commander in Chief, U.S. Air Forces, Europe.

PART 230—COST ACCOUNTING STANDARDS

Sec.

Subpart 230.70—Facilities Capital Employed for Facilities in Use

230.7000 Contract facilities capital estimates.
230.7001 Use of DD Form 1861.
230.7001-1 Purpose.
230.7001-2 Completion instructions.
230.7002 Preaward facilities capital applications.
230.7003 Postaward facilities capital applications.
230.7003-1 Interim billings based on costs incurred.
230.7003-2 Final settlement.
230.7004 Administrative procedures.
230.7004-1 Forms CASB-CMF.
230.7004-2 DD Form 1861.

Subpart 230.71—Facilities Capital Employed for Facilities Under Construction

230.7100 Definitions.
230.7101 Calculations.
230.7101-1 Cost of money.
230.7101-2 Representative investment.
230.7102 Determining imputed cost of money.
230.7103 Preaward capital employed application.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 230.70—Facilities Capital Employed for Facilities in Use

230.7000 Contract facilities capital estimates.

(a) The contracting officer will estimate the facilities capital cost of money and capital employed using—

(1) An analysis of the appropriate Forms CASB-CMF and cost of money factors; and

(2) DD Form 1861, Contract Facilities Capital Cost of Money.

230.7001 Use of DD Form 1861.

230.7001-1 Purpose.

The DD Form 1861 provides a means of linking the Form CASB-CMF and DD Form 1547, Record of Weighted Guidelines Application. It—

(a) Enables the contracting officer to differentiate profit objectives for various types of assets (land, buildings, equipment). The procedure is similar to applying overhead rates to appropriate overhead allocation bases to determine contract overhead costs.

(b) Is designed to record and compute the contract facilities capital cost of money and capital employed which is carried forward to DD Form 1547.

230.7001-2 Completion instructions.

Complete a DD Form 1861 only after evaluating the contractor's cost proposal, establishing cost of money factors, and establishing a prenegotiation objective on cost. Complete the form as follows:

(a) List overhead pools and direct-charging service centers (if used) in the same structure as they appear on the contractor's cost proposal and Form CASB-CMF. The structure and allocation base units-of-measure must be compatible on all three displays.

(b) Extract appropriate contract overhead allocation base data, by year, from the evaluated cost breakdown or prenegotiation cost objective and list against each overhead pool and direct-charging service center.

(c) Multiply each allocation base by its corresponding cost of money factor to get the facilities capital cost of money estimated to be incurred each year. The sum of these products represents the estimated contract facilities capital cost of money for the year's effort.

(d) Total contract facilities cost of money is the sum of the yearly amounts.

(e) Since the facilities capital cost of money factors reflect the applicable cost of money rate in Column 1 of Form CASB-CMF, divide the contract cost of money by that same rate to determine the contract facilities capital employed.

230.7002 Preaward facilities capital applications.

To establish cost and price objectives, apply the facilities capital cost of money and capital employed, as determined under 230.7000, as follows:

(a) *Cost of Money*—(1) *Cost Objective.* Use the imputed facilities capital cost of money, with normal, booked costs, to establish a cost objective or the target cost when structuring an incentive type contract. Do not adjust target costs established at the outset even though actual cost of money rates become available during the period of contract performance.

(2) *Profit Objective.* When measuring the contractor's effort for the purpose of

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Representative, Philippines.
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Naval Forces, Europe.
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Form 1547, Record of Weighted Guidelines Application. It—

(a) Enables the contracting officer to differentiate profit objectives for variou types of assets (land, buildings, equipment). The procedure is similar to applying overhead rates to appropriate overhead allocation bases to determine contract overhead costs.

(b) Is designed to record and compute the contract facilities capital cost of money and capital employed which is carried forward to DD Form 1547.

230.7001-2 Completion instructions.

Complete a DD Form 1861 only after evaluating the contractor's cost proposal, establishing cost of money factors, and establishing a prenegotiation objective on cost. Complete the form as follows:

(a) List overhead pools and direct-charging service centers (if used) in the same structure as they appear on the contractor's cost proposal and Form CASB–CMF. The structure and allocation base units-of-measure must be compatible on all three displays.

(b) Extract appropriate contract overhead allocation base data, by year, from the evaluated cost breakdown or prenegotiation cost objective and list against each overhead pool and direct-charging service center.

(c) Multiply each allocation base by its corresponding cost of money factor to get the facilities capital cost of money estimated to be incurred each year. The sum of these products represents the estimated contract facilities capital cost of money for the year's effort.

(d) Total contract facilities cost of money is the sum of the yearly amounts.

(e) Since the facilities capital cost of money factors reflect the applicable cost of money rate in Column 1 of Form CASB–CMF, divide the contract cost of money by that same rate to determine the contract facilities capital employed.

230.7002 Preaward facilities capital applications.

To establish cost and price objectives, apply the facilities capital cost of money and capital employed, as determined under 230.7000, as follows:

(a) *Cost of Money*—(1) *Cost Objective.* Use the imputed facilities capital cost of money, with normal, booked costs, to establish a cost objective or the target cost when structuring an incentive type contract. Do not adjust target costs established at the outset even though actual cost of money rates become available during the period of contract performance.

(2) *Profit Objective.* When measuring the contractor's effort for the purpose of

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establishing a prenegotiation profit objective, restrict the cost base to normal, booked costs. Do not include cost of money as part of the cost base.

(b) *Facilities Capital Employed.* Assess and weight the profit objective or risk associated with facilities capital employed in accordance with the profit guidelines at 215.970–1(c).

230.7003 Postaward facilities capital applications.

230.7003-1 Interim billings based on costs incurred.

(a) The contractor may include contract facilities capital cost of money in cost reimbursement and progress payment invoices. To determine the amount that qualifies as cost incurred, multiply the incurred portions of the overhead pool allocation bases by the latest available cost of money factors. These cost of money calculations are interim estimates subject to adjustment.

(b) As actual cost of money factors under CAS 414 and FAR 31.205–10 are finalized, use the new factors to calculate contract facilities cost of money for the next accounting period.

230.7003-2 Final settlement.

(a) Contract facilities capital cost of money for final cost determination or repricing is based on each year's final cost of money factors determined under CAS 414 and supported by separate Forms CASB–CMF.

(b) Separately compute contract facilities cost of money in a manner similar to yearly final overhead rates. Also like overhead costs, include in the final settlement an adjustment from interim to final contract cost of money. Do not, however, adjust estimated or target cost.

230.7004 Administrative procedures.

230.7004-1 Forms CASB–CMF

(a) Forms CASB–CMF are normally initiated by the contractor under the same circumstances as Forward Pricing Rate Agreements (see FAR 15.809) and evaluated as complementary documents and procedures.

(b) Separate forms are required for each prospective cost accounting period of contract performance.

(c) The contractor may submit annually or with individual contract price proposals, as agreed with the administrative contracting officer (ACO).

(d) The contractor must submit a final form under CAS 414 as soon as possible after the end of each accounting period, together with a proposal for actual overhead costs and rates.

230.7004-2 DD Form 1861.

(a) The contracting officer may ask the ACO to complete the forms as part of field pricing support.

(b) When the Weighted Guidelines Method is used, completion of the DD Form 1861 requires information not included on the Form CASB–CMF, i.e., distribution percentages of land, building, and equipment for the business unit performing the contract. Choose the most practical method for obtaining this information, for example—

(1) Contract administration offices could obtain the information through the process used to establish factors for facilities capital cost of money or could establish advance agreements on distribution percentages for inclusion in field pricing reports;

(2) The corporate ACO could obtain distribution percentages; or

(3) The contracting officer could request the information through a solicitation provision.

Subpart 230.71—Facilities Capital Employed for Facilities Under Construction

230.7100 Definitions.

(a) *Intangible capital asset* is an asset that has no physical substance, has more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the benefit it yields.

(b) *Tangible capital asset* is an asset that has physical substance, more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the service it yields.

(c) *Cost of money rate* is either—

(1) The interest rate determined by the Secretary of the Treasury under Public Law 92–41 (85 Stat. 97); or

(2) The time-weighted average of the interest rate for each cost accounting period during which the asset is being constructed, fabricated, or developed.

(d) *Representative investment* is the calculated amount considered invested by the contractor during the cost accounting period to construct, fabricate, or develop the asset.

230.7101 Calculations.

230.7101-1 Cost of money.

(a) The interest rate in 230.7100(c)(1) is established semi-annually and is published in the **Federal Register** during the fourth week of December and June.

(b) To calculate the time-weighted average interest rate—

(1) Multiply the various rates in effect during the months of construction by the number of months each rate was in effect; and

(2) Divide the sum of the products by the total number of months in which the rates were experienced.

230.7101-2 Representative investment.

(a) The calculation of the representative investment requires consideration of the rate or expenditure pattern of the costs to construct, fabricate, or develop a capital asset.

(b) If a majority of the costs were incurred toward the beginning, middle, or end of the cost accounting period, the contractor shall either—

(1) Determine a representative investment amount for the cost accounting period by calculating the average of the month-end balances for that cost accounting period; or

(2) Treat month-end balances as individual representative investment amounts.

(c) If the costs were incurred in a fairly uniform expenditure pattern throughout the construction, fabrication, or development period, the contractor may—

(1) Determine a representative investment amount for the cost accounting period by averaging the beginning and ending balances of the construction, fabrication, or development cost account for the cost accounting period; or

(2) Treat month-end balances as individual representative investment amounts.

230.7102 Determining imputed cost of money.

(a) Determine the imputed cost of money for an asset under construction, fabrication, or development by applying a cost of money rate (see 230.7101–1) to the representative investment amount (see 230.7101–2).

(1) When a representative investment amount is determined for a cost accounting period in accordance with 230.7101–2(b)(1) or 230.7101–2(c)(1), the cost of money will be the time-weighted average rate.

(2) When a monthly representative investment amount is used in accordance with 230.7101–2(b)(2) or 230.7101–2(c)(2), the cost of money will be the interest rate in effect each month. (Under this method, the cost of money is determined monthly and the total for the cost accounting period is the sum of the monthly amounts.)

(b) The imputed cost of money will be capitalized only once in any cost accounting period, either at the end of the period or at the end of the construction, fabrication, or development period, whichever comes first.

(c) When the construction of an asset takes more than one cost accounting period, the cost of money capitalized for the first cost accounting period will be included in determining the representative investment amount for any future cost accounting periods.

230.7103 Preaward capital employed application.

An offset to the profit objectives as set forth in FAR Subpart 15.9 is not required for CAS 417 cost of money.

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

Sec.

Subpart 231.1 Applicability
231.100 Scope of subpart.
231.100-70 Contract clause.

Subpart 231.2 Contracts with Commercial Organizations
231.205 Selected costs.
231.205-10 Cost of money.
231.205-18 Independent research and development and bid and proposal costs.

Subpart 231.3 Contracts with Educational Institutions
231.303 Requirements.

Subpart 231.6 Contracts with State, Local, and Federally Recognized Indian Tribal Governments
231.603 Requirements.

Subpart 231.7 Contracts with Nonprofit Organizations
231.703 Requirements.

Subpart 231.70 Penalties for Unallowable Costs
231.7000 Scope of subpart.
231.7001 General.
231.7002 Responsibilities.
231.7003 Procedures
231.7003-1 Assessing the penalty.
231.7003-2 Computing the penalty.
231.7004 Contract clause.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 231.1—Applicability

231.100 Scope of subpart.

231.100-70 Contract clause.

Use the clause at 252.231-7000, Supplemental Cost Principles, in all solicitations and contracts, except those which use the small purchase procedures of FAR part 13.

Subpart 231.2—Contracts with Commercial Organizations

231.205 Selected costs.

231.205-10 Cost of money.

The contractor also must comply with subpart 230.70 and maintain records to demonstrate compliance.

231.205-18 Independent research and development and bid and proposal costs.

(c) The total amount of IR&D/B&P costs allocated to DoD contracts shall not exceed the total of expenditures for IR&D/B&P projects with a potential military relationship.

(i) For contracts where costs are not determined on a historical basis, estimated IR&D/B&P costs allocated to the contract must not exceed their proportionate share of the total estimated costs of IR&D/B&P with a potential military relationship.

(ii) IR&D/B&P costs are considered to satisfy the potential military relationship requirement when the contractor can demonstrate that the effort under a proposed contract or grant would have a potential relationship to a military function or operation.

(iii) The contracting officer will—

(A) Determine the potential military relationship of IR&D/B&P; and

(B) Provide the results of the determination to the contractor.

(iv) See section 225.7303 for additional allowability provisions affecting foreign military sale contracts.

Subpart 231.3—Contracts with Educational Institutions

231.303 Requirements.

Under 10 U.S.C. 2324(e), the following costs are unallowable—

(1) Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities).

(2) Costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress or a State legislature.

(3) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of any false certification) brought by the United States where the contractor is found liable or has pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of a false certification).

(4) Payments of fines and penalties resulting from violations of, or failure to comply with, Federal, State, local, or foreign laws and regulations, except when incurred as a result of compliance with specific terms and conditions of the contract or specific written instructions from the contracting officer authorizing in advance such payments in accordance with applicable regulations of the Secretary of Defense.

(5) Costs of any membership in any social, dining, or country club or organization.

(6) Costs of alcoholic beverages.

(7) Contributions or donations, regardless of the recipient.

(8) Costs of advertising designed to promote the contractor or its products.

(9) Costs of promotional items and memorabilia, including models, gifts, and souvenirs.

(10) Costs for travel by commercial aircraft which exceed the amount of the standard commercial fare.

(11) Costs incurred in making any payment (commonly known as a "golden parachute payment") which is—

(i) In an amount in excess of the normal severance pay paid by the contractor to an employee upon termination of employment; and

(ii) Is paid to the employee contingent upon, and following, a change in management control over, or ownership of, the contractor or a substantial portion of the contractor's assets.

(12) Costs of commercial insurance that protects against the costs of the contractor for correction of the contractor's own defects in materials or workmanship.

(13) Costs of severance pay paid by the contractor to foreign nationals employed by the contractor under a service contract performed outside the United States, to the extent that the amount of the severance pay paid in any case exceeds the amount paid in the industry involved under the customary or prevailing practice for firms in that industry providing similar services in the United States, as determined by regulations prescribed by the Secretary of Defense.

(14) Costs of severance pay paid by the contractor to a foreign national employed by the contractor under a service contract performed in a foreign country if the termination of the employment of the foreign national is the result of the closing of, or curtailment of activities at a United States military facility in that country at the request of the government of that country.

(15) Costs incurred by a contractor in connection with any criminal, civil, or administrative proceedings commenced by the United States or a State, to the extent provided in 10 U.S.C. 2324(k).

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(i) In an amount in excess of the normal severance pay paid by the contractor to an employee upon termination of employment; and

(ii) Is paid to the employee contingent upon, and following, a change in management control over, or ownership of, the contractor or a substantial portion of the contractor's assets.

(12) Costs of commercial insurance that protects against the costs of the contractor for correction of the contractor's own defects in materials or workmanship.

(13) Costs of severance pay paid by the contractor to foreign nationals employed by the contractor under a service contract performed outside the United States, to the extent that the amount of the severance pay paid in any case exceeds the amount paid in the industry involved under the customary or prevailing practice for firms in that industry providing similar services in the United States, as determined by regulations prescribed by the Secretary of Defense.

(14) Costs of severance pay paid by the contractor to a foreign national employed by the contractor under a service contract performed in a foreign country if the termination of the employment of the foreign national is the result of the closing of, or curtailment of activities at a United States military facility in that country at the request of the government of that country.

(15) Costs incurred by a contractor in connection with any criminal, civil, or administrative proceedings commenced by the United States or a State, to the extent provided in 10 U.S.C. 2324(k).

Subpart 231.6—Contracts with State, Local, and Federally Recognized Indian Tribal Governments

231.603 Requirements.

Under 10 U.S.C. 2324(e), the costs cited in 231.303 are unallowable.

Subpart 231.7—Contracts with Nonprofit Organizations

231.703 Requirements.

Under 10 U.S.C. 2324(e), the costs cited in 231.303 are unallowable.

Subpart 231.70—Penalties for Unallowable Costs

231.7000 Scope of subpart.

(a) This subpart implements 10 U.S.C. 2324 (a) through (d), regarding the assessment of penalties against contractors which include unallowable costs in a final indirect cost rate proposal or in the final statement of costs incurred or estimated to be incurred under a fixed-price incentive contract.

(b) This subpart applies to all DoD contracts awarded after February 26, 1987, in excess of $100,000, except fixed-price contracts without cost incentives.

231.7001 General.

(a) The law provides for the following penalties:

(1) If the cost is unallowable based on clear and convincing evidence, the penalty is equal to—

(i) The amount of the disallowed costs, plus

(ii) Interest on the paid portion, if any, of the disallowance.

(2) If the cost was determined to be unallowable before proposal submission, the penalty is the amount in paragraph (a)(1) of this section, plus two times the amount of the disallowed cost.

(3) If a penalty is assessed under paragraph (a)(1) or (2) of this section, the department or agency may assess an additional penalty of not more than $10,000 per proposal.

(b) These penalties are in addition to other civil and criminal penalties provided by law.

(c) It is not necessary for unallowable costs to have been paid to the contractor in order to assess a penalty.

231.7002 Responsibilities.

(a) Departments and agencies are responsible for—

(1) Designating officials authorized to assess the penalty in 231.7001(a)(3).

(2) Establishing requirements for documentation and review of administrative contracting officer (ACO) determinations and recommendations to assess the penalties in paragraph 231.7001(a).

(b) The cognizant ACO is responsible for—

(1) Determining whether the penalties in paragraphs 231.7001(a)(1) and (2) should be assessed.

(2) Initiating recommendations to assess the penalty under paragraph 231.7001(a)(3).

(3) If there is evidence that the contractor knowingly submitted unallowable costs—

(i) Referring the matter to the appropriate defense criminal investigative organization for review; and

(ii) Taking the actions indicated in DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Relating to Procurement Activities.

(c) The contract auditor, in the review and/or the determination of final rate proposals for contracts subject to this Subpart, is responsible for—

(1) Recommending to the ACO which costs may be unallowable and subject to the penalties in paragraphs 231.7001(a)(1) and (2).

(2) Providing rationale and supporting documentation for any recommendation.

231.7003 Procedures.

231.7003-1 Assessing the penalty.

(a) The cognizant ACO shall—

(1) Assess the penalty in 231.7001(a)(1) when the submitted cost is unallowable based on clear and convincing evidence; or

(2) Assess the penalty in 231.7001(a)(2) when the submitted cost was determined to be unallowable prior to submission of the proposal. Prior determinations of unallowability may be evidenced by—

(i) A DCAA Form 1, Notice of Contract Costs Suspended and/or Disapproved, (see FAR 42.705-2) which—

(A) The contractor elected not to appeal; or

(B) Was not withdrawn by DCAA.

(ii) A contracting officer final decision which was not appealed.

(iii) Prior ASBCA or court decision involving the contractor, which upheld the cost disallowance.

(iv) Any determination of unallowability under FAR 31.201-6.

(3) Issue a final decision (see FAR 33.211) which includes a demand for payment of any penalty assessed under paragraphs 231.7001(a)(1) or (2). The letter shall state that the determination is a final decision under the Disputes clause of the contract. (Demanding payment of the penalty is separate from demanding repayment of any paid portion of the disallowed cost.)

(b) The designated department/agency official, after receiving the ACO's recommendation and where circumstances warrant the additional penalty, may assess the penalty in paragraph 231.7001(a)(3). Appropriate circumstances may include contractor's repeated submissions of unallowable costs.

231.7003-2 Computing the penalty.

(a) The amount of the disallowed costs subject to penalty is the amount submitted in the contractor's proposal which—

(1) Is allocated to contracts subject to this subpart (see 231.7000(b)); and

(2) Is determined to be unallowable based on clear and convincing evidence.

(b) Compute interest on the paid portion of the disallowed cost.

(1) Consider the overpayment to have occurred, and interest to have begun accumulating, from the midpoint of the contractor's fiscal year. Use an alternate equitable method if the cost was not incurred and paid evenly over the fiscal year.

(2) Use the interest rate specified by the Secretary of Treasury pursuant to Pub. L. 92-41.

(3) Compute interest from the date of overpayment to the date of the demand letter for payment of the penalty.

(4) Determine the paid portion of the disallowed cost in consultation with the contract auditor.

231.7004 Contract clause.

Use the clause at 252.231-7001, Penalties for Unallowable Costs, in all solicitations and contracts over $100,000, which contain the clauses at FAR 52.216-7, 52.216-13, 52.216-16, or 52.216-17.

PART 232—CONTRACT FINANCING

Sec.

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232.172 Financial responsibility of contractors.
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232.903 Policy.
232.905 Invoice payments.
232.906 Contract financing payments.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 232.1—General

232.102 Description of contract financing methods.

(e)(2) Progress payments based on percentage or stage of completion are authorized only for contracts for construction (as defined in FAR 36.102), shipbuilding, and ship conversion, alteration, or repair.

232.102–70 Provisional delivery payments.

(a) The contracting officer may establish provisional delivery payments to pay contractors for the costs of supplies and services delivered to and accepted by the Government under the following contract actions, if undefinitized—

(1) Letter contracts contemplating a fixed-price contract;

(2) Orders under basic ordering agreements;

(3) Spares provisioning documents annexed to contracts;

(4) Unpriced equitable adjustments on fixed-price contracts; and

(5) Orders under indefinite delivery contracts.

(b) Provisional delivery payments shall be—

(1) Used sparingly;

(2) Priced conservatively; and

(3) Reduced by liquidating previous progress payments in accordance with the Progress Payments clause.

(c) Provisional delivery payments shall not—

(1) Include profit;

(2) Exceed funds obligated for the undefinitized contract action; or

(3) Influence the definitized contract price.

232.108 Financial consultation.

(1) Department/agency contract financing offices are—

(i) Army—Chief of Contract Financing, Office of the Comptroller;

(ii) Navy—Executive Comptroller for Banking, Cash Management, Contract Financing and Compensation Systems, Assistant Comptroller of the Navy for Financial Management;

(iii) Air Force—Chief of Banking and Contract Financing, Directorate of Accounting, Air Force Accounting and Finance Center;

(iv) Defense agencies—Office of the agency comptroller.

(2) The Under or Assistant Secretary, or other designated official, responsible for the comptroller function within the department or agency is the focal point for financing matters at the departmental/agency headquarters. Departments/agencies may establish contract financing offices at operational levels.

(3) Contract financing offices should participate in—

(i) Developing regulations for contract financing;

(ii) Developing contract provisions for contract financing; and

(iii) Resolving specific cases which involve unusual contract financing requirements.

232.170 Responsibilities.

(a) The Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition), USD(A)DP, is responsible for ensuring uniform administration of DoD contract financing, including DoD contract financing policies and important related procedures.

(b) The departments and agencies are responsible for their day-to-day contract financing operations. Refer specific cases involving financing policy or important procedural issues to USD(A)DP for consideration (see also 201.24 for deviation request and approval procedures).

232.171 Contract Finance Committee.

(a) The Contract Finance Committee consists of—

(1) A representative of the USD(A)DP, serving as chairman;

(2) A representative of the Comptroller of the Department of Defense; and

(3) Two representatives of each military department and the Defense Logistics Agency (one representing contracting and one representing the contract finance office).

(b) The Committee—

(1) Advises and assists the USD(A)DP in ensuring proper and uniform application of policies, procedures, and forms;

(2) Is responsible for formulating, revising, and promulgating uniform contract financing regulations;

(3) May recommend to the Secretary of Defense through the USD(A)DP further policy directives on financing; and

(4) Meets at the request of the Chair or a member.

232.172 Financial responsibility of contractors.

Use the policies and procedures in this section in determining the financial capability of current or prospective contractors.

232.172–1 Required financial reviews.

The contracting officer shall perform a financial review when the contracting officer does not otherwise have sufficient information to make a positive determination of financial responsibility. In addition, the contracting officer shall consider performing a financial review—

(a) Prior to award of a contract, when—

(1) The contractor is on a list requiring preaward clearance or other special clearance before award;

(2) The contractor is listed on the Consolidated List of Contractors Indebted to the Government (Hold-Up List), or is otherwise known to be indebted to the Government;

(3) The contractor may receive Government assets such as contract financing payments or Government property;

(4) The contractor is experiencing performance difficulties on other work; or

(5) The contractor is a new company or a new supplier of the item.

(b) At periodic intervals after award of a contract, when—

(1) Any of the conditions of paragraphs (a) (2) through (5) of this subsection are applicable; or

(2) There is any other reason to question the contractor's ability to finance performance and completion of the contract.

232.172-2 Appropriate information.

(a) The contracting officer shall obtain whatever type and depth of financial and other information is required to establish a contractor's financial capability or disclose a contractor's financial condition. While the contracting officer should not request information that is not necessary for the protection of the Government's interests, the contracting officer must insist upon obtaining that information which is necessary. The unwillingness or inability of a contractor to present reasonably requested information in a timely manner, especially information that a prudent business person would be expected to have and use in the professional management of a business, may be a material fact in the determination of the contractor's responsibility and prospects for contract completion.

(b) Obtain the following information to the extent required to protect the Government's interest. In addition, if the contracting officer concludes that information not listed below is required to comply with 232.172-1, that information should be requested. The information must be for the person(s) who are legally liable for contract performance. If the contractor is not a corporation, obtain the required information for each individual/joint venturer/partner—

(1) Balance sheet and income statement—

(i) For the current fiscal year (interim);

(ii) For the most recent fiscal year and preferably, for the two preceding fiscal years. These should be certified by an independent public accountant or by an appropriate officer of the firm; and

(iii) Forecasted for each fiscal year for the remainder of the period of contract performance;

(2) Summary history of the contractor and its principal managers, disclosing any previous insolvencies—corporate or personal, and describing its products or services;

(3) Statement of all affiliations disclosing—

(i) Material financial interests of the contractor;

(ii) Material financial interests in the contractor;

(iii) Material affiliations of owners, officers, directors, major stockholders; and

(iv) The major stockholders if the contractor is not a widely-traded, publicly-held corporation;

(4) Statement of all forms of compensation to each officer, manager, partner, joint venturer, or proprietor, as appropriate—

(i) Planned for the current year;

(ii) Paid during the past 2 years; and

(iii) Deferred to future periods.

(5) Business base and forecast which—

(i) Shows, by significant markets, existing contracts and outstanding offers, including those under negotiation; and

(ii) Is reconcilable to indirect cost rate projections.

(6) Cash forecast for the duration of the contract (see 232.172-3).

(7) Financing arrangement information which discloses—

(i) Availability of cash to finance contract performance;

(ii) Contractor's exposure to financial crisis from creditor's demands;

(iii) Degree to which credit security provisions could conflict with Government title terms under contract financing;

(iv) Clearly stated confirmations of credit with no unacceptable qualifications; and

(v) Unambiguous written agreement by a creditor if credit arrangements include deferred trade payments or creditor subordinations/repayment suspensions.

(8) Statement of all state, local, and Federal tax accounts, including special mandatory contributions, e.g., environmental superfund.

(9) Description and explanation of the financial effect of issues such as—

(i) Leases, deferred purchase arrangements, patent or royalty arrangements;

(ii) Insurance, when relevant to the contract;

(iii) Contemplated capital expenditures, changes in equity, or contractor debt load;

(iv) Pending claims either by or against the contractor;

(v) Contingent liabilities such as guarantees, litigation, environmental, or product liabilities;

(vi) Validity of accounts receivable and actual value of inventory, as assets; and

(vii) Status and aging of accounts payable.

(10) Significant ratios such as—

(i) Inventory to annual sales;

(ii) Inventory to current assets;

(iii) Liquid assets to current assets;

(iv) Liquid assets to current liabilities;

(v) Current assets to current liabilities; and

(vi) Net worth to net debt.

232.172-3 Cash flow forecasts.

(a) A contractor must be able to sustain a sufficient cash flow to perform the contract. Whenever there is a doubt about the sufficiency of a contractor's cash flow, the contracting officer should require the contractor to submit a cash flow forecast covering the duration of the contract.

(b) A contractor's inability or refusal to prepare and provide cash flow forecasts or to reconcile actual cash flow with previous forecasts is a strong indicator of serious managerial deficiencies or potential contract cost or performance problems.

(c) Single or one-time cash flow forecasts are of limited forecasting power. As such, they should be limited to preaward survey situations. Reliability of cash flow forecasts can be established only by comparing a series of previous actual cash flows with the corresponding forecasts and examining the causes of any differences.

(d) Cash flow forecasts must—

(1) Show the origin and use of all material amounts of cash within the entire business unit responsible for contract performance, period by period, for the length of the contract (or until the risk of a cash crisis ends); and

(2) Provide an audit trail to the data and assumptions used to prepare it.

(e) Cash flow forecasts can be no more reliable than the assumptions on which they are based. Most important of these assumptions are—

(1) Estimated amounts and timing of purchases and payments for materials, parts, components, subassemblies, and services;

(2) Estimated amounts and timing of payments for purchase or production of capital assets, test facilities, and tooling;

(3) Amounts and timing of fixed cash charges such as debt installments, interest, rentals, taxes, and indirect costs;

(4) Estimated amounts and timing of payments for projected labor, both direct and indirect;

(5) Reasonableness of projected manufacturing and production schedules;

(6) Estimated amounts and timing of billings to customers (including progress payments), and customer payments;

(7) Estimated amounts and timing of cash receipts from lenders or other

credit sources, and liquidation of loans; and

(8) Estimated amounts and timing of cash receipts from other sources.

(f) The contracting officer should review the assumptions underlying the cash flow forecasts. In determining whether the assumptions are reasonable and realistic, the contracting officer should consult with—

(1) The contractor;

(2) Government personnel in the areas of finance, engineering, production, cost, and price analysis; or

(3) Prospective supply, subcontract, and loan or credit sources.

Subpart 232.3—Loan Guarantees for Defense Production

232.302 Authority.

(a) The use of guaranteed loans as a contract financing mechanism requires the availability of certain congressional authority. The DoD has not requested such authority in recent years, and none is now available.

Subpart 232.4—Advance Payments

232.404 Exclusions.

(a)(9) The requirements of FAR Subpart 32.4 do not apply to advertisements in high school and college publications for military recruitment efforts under 10 U.S.C. 503 when the contract cost does not exceed $500.

232.409 Contracting officer action.

232.409-1 Recommendation for approval.

To ensure uniform application of this subpart (see FAR 32.402(e)(1)), the departmental/agency contract financing office shall prepare the documents required by FAR 32.409-1 (e) and (f).

232.410 Findings, determination, and authorization.

(b) If an advance payment procedure is used without a special bank account, replace paragraph (a)(4) of the Findings, Determination, and Authorization for Advance Payments at FAR 32.410 with:

> (4) The proposed advance payment clause contains appropriate provisions as security for advance payments. These provisions include a requirement that the outstanding advance payments will be liquidated from cost reimbursements as they become due the contractor. This security is considered adequate to protect the interest of the Government.

232.412 Contract clause.

232.412-70 Additional clauses.

(a) Use the clause at 252.232-7000, Advance Payment Pool, in any contract that will be subject to the terms of an advance payment pool agreement with a nonprofit organization or educational institution. Normally, use the clause in all cost reimbursement type contracts with the organization or institution.

(b) Use the clause at 252.232-7001, Disposition of Payments, in contracts when payments under the contract are to be made by a disbursing office not designated in the advance payment pool agreement.

232.470 Advance payment pool.

(a) An advance payment pool agreement—

(1) Is a means of financing the performance of more than one contract held by a single contractor;

(2) Is especially convenient for the financing of cost-type contracts with nonprofit educational or research institutions for experimental or research and development work when several contracts require financing by advance payments. When appropriate, pooled advance payments may also be used to finance other types of contracts held by a single contractor; and

(3) May be established—

(i) Without regard to the number of appropriations involved;

(ii) To finance contracts for one or more department(s) or contracting activity(ies); or

(iii) In addition to any other advance payment pool agreement at a single contractor location when it is more convenient or otherwise preferable to have more than one agreement.

Subpart 232.5—Progress Payments Based on Costs

232.501 General.

In DoD, customary progress payments may be either uniform or flexible (FAR 32.501-1(a)). See also 232.501-1 and 232.502-1-71.

232.501-1 Customary progress payment rates.

(a)(i) For contracts with small disadvantaged businesses, the uniform customary progress payment rate is 90 percent. For single contracts using multiple progress payment rates, see FAR 32.502-4(d). For contracts funded with FY87 and other fiscal year appropriations, the contracting officer may—

(A) Apply the customary uniform progress payment rate for FY87 appropriations to all contract line items (see Table at 232.205-1-71(a)(7)); or

(B) Apply the customary uniform rate for FY87 appropriations to only those contract line items funded with FY87 appropriations, applying the different customary uniform rate to all other line items, provided the requirements of FAR 32.502-4(d) are met.

(ii) The progress payment rates applicable to foreign military sale requirements are the same rates applicable to DoD requirements.

(iii) For customary flexible progress payments, determine the appropriate rate using the appropriate CASH computer program (see 232.502-1-71).

232.501-2 Unusual progress payments.

(a) Unusual progress payment arrangements require the advance approval of the USD(A)DP. Contracting officers shall submit all unusual progress payment requests to the department or agency contract financing office for approval, coordination with the Contract Finance Committee (232.171), and submission to the USD(A)DP.

232.501-3 Contract price.

(b) The contracting officer may approve progress payments when the contract price exceeds the funds obligated under the contract; provided, the contract contains an appropriate Limitation of Funds clause. However, the contracting officer shall limit such payments to the lesser of—

(i) The applicable rate (i.e., the lower of the progress payment rate, the liquidation rate, or the loss-ratio adjusted rate); or

(ii) 100 percent of the funds obligated.

232.502 Preaward matters.

232.502-1 Use of customary progress payments.

(b)(1) If the contractor is a small disadvantaged business, progress payments may be provided when the contract will involve $50,000 or more.

232.502-1-70 Customary foreign military sale progress payments.

(a) Foreign military sale (FMS) progress payments apply to DoD acquisitions on behalf of foreign governments or international organizations (Section 22 of the Arms Export Control Act).

(b) FMS progress payments do not apply to acquisitions—

(1) For replenishing U.S. Government inventories or stocks; and

(2) Made under DoD cooperative logistic support arrangements.

232.502-1-71 Customary flexible progress payments.

(a) *General.* (1) Progress payments reduce contractor investment in work in process inventory. In addition to progress payments, other factors influence a contractor's actual

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(ii) The progress payment rates applicable to foreign military sale requirements are the same rates applicable to DoD requirements.

(iii) For customary flexible progress payments, determine the appropriate rate using the appropriate CASH computer program (see 232.502–1–71).

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(a) Unusual progress payment arrangements require the advance approval of the USD(A)DP. Contracting officers shall submit all unusual progress payment requests to the department or agency contract financing office for approval, coordination with the Contract Finance Committee (232.171), and submission to the USD(A)DP.

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(b) FMS progress payments do not apply to acquisitions—

(1) For replenishing U.S. Government inventories or stocks; and

(2) Made under DoD cooperative logistic support arrangements.

232.502–1–71 Customary flexible progress payments.

(a) *General.* (1) Progress payments reduce contractor investment in work in process inventory. In addition to progress payments, other factors influence a contractor's actual

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investment in work in process inventory, e.g., delivery schedules, cash management practices, and Government payment practices.

(2) Progress payment amounts that are determined by using customary uniform rates are insensitive to the other factors influencing contractor investment in work in process inventory. Consequently, contractor investments in work in process inventory vary among contractors and contracts.

(3) Flexible progress payment rates are designed to tailor the progress payment rate to more closely match the contractor's cash needs for financing contract performance. The flexible rate is expressed as a percentage which is applied to costs to determine the amount payable as a progress payment, in the same manner as customary uniform rates are applied.

(4) For flexible progress payments, cash needs are measured and projected based on the investment required for the work in process inventory over the life of the contract. Total investment is measured by a weighted average of total costs paid by the contractor. The contractor's investment is the weighted average of the amount not paid by the Government.

(5) DoD, as a matter of policy, requires contractors to retain a minimum investment level in work in process inventory over the life of the contract (see Table 32–1, Customary Uniform Progress Payment Rates). This minimum investment level is based on the customary uniform progress payment rate and its related investment percentage. Accordingly, the DoD will make progress payments at a rate (expressed as a whole number) that is the highest rate which yields a corresponding investment by the contractor in work in process inventory of not less than the minimum investment percentage.

(6) The customary flexible progress payment rate will be determined by using the DoD Cash Flow Computer Model. The rate computed shall not—

(i) Exceed 100 percent; or

(ii) Be less than the customary uniform progress payment rate that would have been applied to the contract in the absence of customary flexible progress payments.

(7) Table 32–1, Customary Uniform Progress Payment Rates, shows the customary uniform progress payment rates, minimum contractor investment (except for contracts funded with FY87 appropriations), and the applicable DoD Cash Flow Computer Model. For contracts funded with FY87 appropriations, a contractor must retain at least a 25 percent investment in work in process inventory over the life of the contract.

TABLE 32–1.—CUSTOMARY UNIFORM PROGRESS PAYMENT RATES

Contract award date	Uniform rate	Investment percentage	Cash flow model
Prior to May 1, 1985	90	5	CASH–II
May 1, 1985 through October 18, 1986	80	15	CASH–III
October 19, 1986 through September 30, 1988	75	25	CASH–IV
After September 30, 1988	80	20	CASH–V

(b) *Using customary flexible progress payments.* (1) Use a flexible progress payment rate at the time of award or definitization instead of the customary uniform rate if—

(i) The contractor requests flexible progress payments;

(ii) The contractor agrees to the requirements of this section;

(iii) The contract contains the clause at FAR 52.232–16, Progress Payments. However, small business contractors may get flexible progress payments if they agree to use the clause at FAR 52.232–16 without its Alternate I; and

(iv) The criteria in paragraphs (b)(2) and (3) of this subsection are met.

(2) Do not use flexible progress payments for—

(i) Sealed bid contracts;

(ii) Undefinitized contract actions; or

(iii) Contracts awarded and performed entirely outside of the United States, its possessions or territories.

(3) Contractors who submit certified cost or pricing data, as defined in FAR 15.804–2, for negotiated fixed-price contracts in excess of $1 million may request flexible progress payments.

(4) Subcontractors who request flexible progress payments, meet the criteria in paragraph (b)(3) of this subsection, and agree to the requirements of this subsection are to receive flexible progress payments. The prime contractor determines the flexible progress payment rate without regard to the rate in the prime contract. In determining the appropriate customary flexible rate, the prime contractor will use the DoD Cash Flow Computer Model and review the cash flow data provided by the subcontractor.

(5) Prior to contract award, the contracting officer shall determine the customary flexible progress payment rate by applying the appropriate version of the DoD Cash Flow Computer Model. The model takes into account key cash flow factors including contract cost profile, delivery schedules, subcontractor progress payments, liquidation rates, and payment/reimbursement cycles. For contracts funded with FY87 appropriations, use the CASH-IV model.

(6) If the contractor requests flexible progress payments after contract award or definitization, the contracting officer may, if warranted, grant their use. However, the contractor must provide adequate new consideration (see FAR 32.501–4).

(c) *Contractor cash flow and cost information.* (1) Contractors shall furnish to the contracting officer cash flow data in the form and context specified for use in the DoD Cash Flow Computer Model. Contractors should furnish cash flow data prior to the start of negotiations. This data includes—

(i) Actual and projected incurred cost, broken down by element of cost and by month, for the duration of the contract;

(ii) Float times for each element of cost;

(iii) Dates and lag times of actual and projected progress payment and delivery payment receipts; and

(iv) Associated contract price and profit percentage.

(2) Contracting officers shall verify the cash flow data using the procedures normally used to verify contractor cost and pricing data, and establish the customary flexible progress payment rate during the negotiation of the contract price.

(3) If any customary flexible progress payment rate is later determined to be overstated because factual data submitted in support of the rate computation was not current, accurate, or complete at the time the rate was established, the flexible progress payment clause at 252.232–7003 provides for—

(i) Reduction of the flexible progress payment rate; and

(ii) Contractor payment of interest.

(4) The contracting officer will assess the interest charge on the amount of the overpayment resulting from facts that were not current, accurate, or complete, whether or not the overpayment has been liquidated. Calculate the interest from the date of the overpayment to the date of liquidation of the overpayment. In determining the amount of interest, the contracting officer may determine an average overpayment amount and duration as the basis for the interest computation. Interest rates change periodically; therefore, calculate average amounts and durations separately for each interest period that has a different interest rate.

(5) Administrative contracting officers are encouraged to establish advance agreements at contractor locations for payment float and lag times which are common to several contracts. Float and lag times may vary significantly from one contract to another due to variances in efficiency at different payment offices or due to differing procedures for high dollar versus low dollar value contracts. It may, therefore, be appropriate to establish advance agreements on several different float and lag profiles to suit different contract situations.

(d) *Rate review.* (1) The flexible progress payment clause at 252.232–7003 provides for redetermination of the customary flexible progress payment rate whenever the computed investment percentage is more than two points above or below the specific minimum investment in work in process inventory (see Table at 232.502–1–71(a)(7)). When such a redetermination is made—

(i) Apply the new customary flexible progress payment rate to the next contractor progress payment request; and

(ii) Adjust the unliquidated progress payment balance.

(2) Either the Government or the contractor may request a rate review at any time to determine if the computed investment percentage in work in process inventory is outside of the investment tolerance in paragraph (d)(1) of this subsection. For contracts funded with FY87 appropriations, the investment range is 23 to 27 percent with a target of 25 percent.

(3) The administrative contracting officer shall assess changes in the following factors during each periodic review required by FAR 32.503–5 and shall review the customary flexible progress payment rate whenever there has been—

(i) A significant change in the float or lag factors;

(ii) A significant change in the delivery schedule; or

(iii) Substantial work added to or deleted from the contract.

(e) *Letter contracts and undefinitized orders.* When flexible progress payments are contemplated for use on a definitized contract superseding a letter contract or an unpriced BOA order, the applicable uniform customary progress payment rate shall be used until definitization. The flexible progress payment rate shall be determined by the contracting officer before definitizing the contract or order.

(f) *Availability of CASH program and user's guide.* The flexible progress payment program CASH and the user's guide are available to offerors and contractors from the contracting officer.

232.502–4 Contract clauses.

(b) If the contractor is a small disadvantaged business, use the FAR 52.232–16, Progress Payment, clause with its Alternate I and change each mention of the progress payment rate and liquidation rate (except paragraph (k)) to the DoD uniform customary progress payment rate of 90 percent for small disadvantaged businesses.

232.502–4–70 Additional clauses.

(a) Use the clause at 252.232–7002, Progress Payments for Foreign Military Sales Acquisitions, in any contract that provides for progress payments and contains foreign military sale requirements.

(b) Use the clause at 252.232–7003, Flexible Progress Payments, in contracts using a customary flexible progress payment rate.

232.503 Postaward matters.

232.503–6 Suspension or reduction of payments.

(g) *Loss contracts.* Use the following loss ratio adjustment procedures for making adjustments required by FAR 32.503–6(f) and (g)—

(i) Except as provided in paragraph (g)(ii) of this subsection, the contracting officer shall prepare a supplementary analysis of the contractor's request for progress payments and calculate the loss ratio adjustment using the procedures in FAR 32.503–6(g).

(ii) The contracting officer may request the contractor to prepare the supplementary analysis as an attachment to the progress payment request when the contracting officer determines that the contractor's methods of estimating the "Costs to Complete" are reliable, accurate, and not susceptible to improper influences.

(iii) To maintain an audit trail and permit verification of calculations, do not make the loss ratio adjustments by altering or replacing data on the contractor's original request for progress payment (SF 1443, Contractor's Request for Progress Payment, or computer generated equivalent).

232.503–15 Application of Government title terms.

(d) An administrative contracting officer (ACO) determination that the contractor's material management and accounting system conforms to the standard at 242.7206(b)(7) constitutes the contracting officer approval requirement of FAR 32.503–15(d). Prior to granting blanket approval of cost transfers between contracts, the ACO should determine that—

(i) The contractor retains records of the transfer activity that took place in the prior month;

(ii) The contractor prepares, at least monthly, a summary of the transfer activity that took place in the prior month; and

(iii) The summary report includes as a minimum, the total number and dollar value of transfers.

Subpart 232.6—Contract Debts

232.605 Responsibilities and cooperation among Government officials.

(b) Disbursing officers are those officials designated to make payments under a contract or to receive payments of amounts due under a contract. At installations where integrated accounting is in effect, the finance and accounting officer is a disbursing officer. The disbursing officer is responsible for determining the amount and collecting contract debts whenever overpayments or erroneous payments have been made. The disbursing officer also has primary responsibility when the amounts due and dates for payment are contained in the contract, and a copy of the contract has been furnished to the disbursing officer with notice to collect as amounts become due.

232.606 Debt determination and collection.

(c)(9)(vii) Upon transfer of a case to the contract financing office, the contracting officer shall close the debt record by reference to the date of transfer.

232.610 Demand for payment of contract debt.

(a)(i) For contract debts resulting from other than a termination for default, the office which first determines an amount due, whether it be the contract administration office, the contracting

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(i) The contractor retains records of the transfer activity that took place in the prior month;

(ii) The contractor prepares, at least monthly, a summary of the transfer activity that took place in the prior month; and

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Subpart 232.6—Contract Debts

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232.606 Debt determination and collection.

(c)(9)(vii) Upon transfer of a case to the contract financing office, the contracting officer shall close the debt record by reference to the date of transfer.

232.610 Demand for payment of contract debt.

(a)(i) For contract debts resulting from other than a termination for default, the office which first determines an amount due, whether it be the contract administration office, the contracting

office, the disbursing office, or the selling office/agency, shall—

(A) Make a demand for payment; and

(B) Provide a copy of the demand to the payment office cited in the contract.

(ii) For contract debts resulting from a termination for default, the contracting officer shall make the demand and direct the debtor to make such payment to the designated office.

(b)(3) The contracting office shall forward deferment requests to the contract financing office of the contracting department or agency for a decision on granting the deferment.

232.616 Compromise actions.

Only the department/agency contract financing offices (232.108(1)) are authorized to compromise debts covered by this subpart.

232.617 Contract clause.

(a) The DoD Contract Finance Committee, with the approval of the USD(A)DP, may exempt the contracts in FAR 32.617(a) (2) through (5) and other contracts, in exceptional circumstances, from the administrative interest charges required by this subpart.

(a)(7) Other exceptions—

(A) Contracts for instructions of military or ROTC personnel at civilian schools, colleges, and universities;

(B) Basic agreements with telephone companies for communications services and facilities, and purchases under such agreements; and

(C) Transportation contracts with common carriers for common carrier services.

232.670 Transfer of responsibility for debt collection.

Disbursing officers will transfer responsibility for debt collection to departmental/agency contract financing offices in accordance with comptroller regulations. Notwithstanding the transfer of the debt collection responsibility, contracting officers shall continue to provide assistance as requested by the debt collection office.

232.671 Bankruptcy reporting.

(a) For those debts covered by this subpart, the department or agency which awarded the contract shall furnish the Department of Justice any claims in bankruptcy, insolvency, or in proceedings for reorganization or arrangement. Furnish claims which—

(1) Have been transferred to a contract financing office;

(2) Are on the way to a contract financing office at the inception of bankruptcy or insolvency proceedings;

(3) Are pending and not forwarded to a contract financing office at the inception of bankruptcy or insolvency proceedings; and

(4) Are the result of bankruptcy or insolvency proceedings.

(b) The contract financing office or other office designated within a department or agency will furnish proof of claims to the Department of Justice.

(c) The office of origin of a debt will provide, as soon as possible, information on a bankruptcy, insolvency, reorganization, or rearrangement to the office designated within a department/agency to receive this information.

(d) The information and proof of claim requirements in paragraphs (b) and (c) of this section do not apply to debts of less than $600.

Subpart 232.8—Assignment of Claims

232.803 Policies.

(b) Only contracts for personal services may prohibit the assignment of claims.

(d) Under 50 U.S.C. 1651(a) (4) and (5), a national emergency exists for contract purposes. Nevertheless, if departments/agencies decide it is in the Government's interest, they may exclude the no-setoff commitment.

232.805 Procedure.

(b) The assignee shall forward—

(i) To the administrative contracting officer (ACO), a true copy of the instrument of assignment and an original and three copies of the notice of assignment. The ACO shall acknowledge receipt by signing and dating all copies of the notice of assignment and shall—

(A) File the true copy of the instrument of assignment and the original of the notice in the contract file;

(B) Forward two copies of the notice to the disbursing officer of the payment office cited in the contract;

(C) Return a copy of the notice to the assignee; and

(D) Advise the contracting officer of the assignment.

(ii) To the surety or sureties, if any, a true copy of the instrument of assignment and an original and three copies of the notice of assignment. The surety shall return three acknowledged copies of the notice to the assignee, who shall forward two copies to the disbursing officer designated in the contract.

(iii) To the disbursing officer of the payment office cited in the contract, a true copy of the instrument of assignment and an original and one copy of the notice of assignment. The disbursing officer shall acknowledge and return to the assignee the copy of the notice and shall file the true copy of the instrument end original notice.

232.806 Contract clause.

(a)(2) The contracting officer shall use Alternate I with the clause at FAR 52.232–23, Assignment of Claims, unless otherwise authorized under 232.803(d).

Subpart 232.9—Prompt Payment

232.903 Policy.

DoD policy is to assist small disadvantaged business concerns by paying them as quickly as possible after invoices are received and before normal payment due dates established in the contract (see 232.905(2)).

232.905 Invoice payments.

(1) In most cases, Government acceptance or approval can occur within the 7 day constructive acceptance period specified in the FAR Prompt Payment clauses. Government payment of construction progress payments can, in most cases, be made within the 14 day period allowed by the Prompt Payment for Construction Contracts clause. While the contracting officer may specify a longer period because the period specified in the contract is not reasonable or practical, such change should be coordinated with the Government offices responsible for acceptance or approval and for payment. Reasons for specifying a longer period include but are not limited to: the nature of the work or supplies or services, inspection or testing requirements, shipping and acceptance terms, and resources available at the acceptance activity. A constructive acceptance period of less than the cited 7 or 14 days is not authorized.

(2) Designated payment offices are encouraged to pay small disadvantaged business (SDB) concerns as quickly as possible after invoices are received and before normal payment due dates established in the contract. The restrictions of FAR 32.903 prohibiting early payment do not apply to invoice payments made to SDBs. Contractors shall not, however, be entitled to interest penalties if invoice payments are not made before the normal payment due dates established in the contract.

(f)(6) DoD Manual 4000.25–5–M, Military Standard Contract Administration Procedures (MILSCAP), authorizes electronic signature of receiving reports.

232.906 Contract financing payments.

(a)(i) DoD policy is to make contract financing payments as quickly as possible. Generally, the contracting officer shall insert the standard due dates of 7 days for progress payments and 14 days for interim payments on cost type contracts in subparagraphs (b)(2) of the Prompt Payment clauses at FAR 52.232–25, 52.232–26, and 52.232–27.

(ii) The contracting officer should coordinate payment terms with offices that will be involved in the payment process to ensure that terms specified can be met. Where justified, the contracting officer may insert a due date greater than but not less than the standard. In determining payment terms, consider—

(A) Geographical separation;

(B) Workload;

(C) Contractor ability to submit a proper request; and

(D) Other factors that could affect timing of payment.

PART 233—PROTESTS, DISPUTES, AND APPEALS

Sec.

Subpart 233.2—Disputes and Appeals

233.204 Policy.
233.210 Contracting officer's authority.
233.214 Contract clause.

Subpart 233.70—Certification of Claims and Requests for Adjustment or Relief

233.7000 Policy.
233.7001 Contract clause.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 233.2—Disputes and Appeals

233.204 Policy.

When it would be helpful in reviewing the current claim, the contracting officer should get information on claims previously filed by the contractor with other contracting officers.

233.210 Contracting officer's authority.

DFARS 243.105(a) limits contracting officer authority.

233.214 Contract clause.

Use Alternate I of the clause at FAR 52.233–1, Disputes, when—

(1) The acquisition is for—

(i) Aircraft

(ii) Spacecraft and launch vehicles

(iii) Naval vessels

(iv) Missile systems

(v) Tracked combat vehicles

(vi) Related electronic systems;

(2) The contracting officer determines that continued performance is—

(i) Vital to the national security, or

(ii) Vital to the public health and welfare; or

(3) The head of the contracting activity determines that continued performance is necessary pending resolution of any claim that might arise under or be related to the contract.

Subpart 233.70—Certification of Claims and Requests for Adjustment or Relief

233.7000 Policy.

(a) 10 U.S.C. 2410 requires contractors to certify in good faith that all supporting data submitted in connection with a claim (see definition in FAR 33.201), a request for equitable adjustment to contract terms, a request for relief under Public Law 85–804 (see FAR part 50), or another similar request that exceeds $100,000 are accurate and complete to the best of the certifying official's knowledge and belief. The certification must be signed by a senior company official in charge at the contractor's plant or location involved.

(b) Submission of the certification in paragraph (a) of this section is in addition to any certification required by FAR part 15 or FAR part 33. However, when the first assertion of a claim or request for relief coincides with the inception of a contract dispute, the certification requirement in FAR 33.207 will satisfy the requirement in 233.7000(a) for certification of a claim if the certification is signed by a senior company official in charge at the contractor's plant or location involved.

(c) The aggregate amount of both the increased and decreased costs shall be used in determining when the dollar threshold requiring certification are met (see example in FAR 15.804–2(a)(1)(ii)).

233.7001 Contract clause.

Use the clause at 252.233–7000, Certification of Claims and Requests for Adjustment or Relief, in all contracts expected to exceed $100,000.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 234—MAJOR SYSTEM ACQUISITION

Sec.

234.003 Responsibilities.
234.005 General Requirements.
234.005–70 Solicitation provision and contract clause.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

234.003 Responsibilities.

DoDD 5000.1, Defense Acquisition, and DoDI 5000.2, Defense Acquisition Management Policies and Procedures, contain the DoD implementation of OMB Circular A–109.

234.005 General requirements.

234.005–70 Solicitation provision and contract clause.

When the Government requires contractor compliance with DoD cost/schedule control systems criteria, use the provision at 252.234–7000, Notice of Cost/Schedule Control Systems, in solicitations and the clause at 252.234-7001, Cost/Schedule Control Systems, in solicitations and contracts.

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.

235.001 Definitions.
235.002 General.
235.006 Contracting methods and contract type.
235.007 Solicitations
235.010 Scientific and technical reports.
235.015 Contracts for research with educational institutions and nonprofit organizations.
235.015–70 Special use allowances for research facilities acquired by educational institutions.
235.015–71 Short form research contract (SFRC).
235.016 Broad agency announcement.
235.070 Indemnification against unusually hazardous risks.
235.070–1 Indemnification under research and development contracts.
235.070–2 Indemnification under contracts involving both research and development and other work.
235.070–3 Contract clauses.
235.071 Additional contract clauses.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

235.001 Definitions.

The following terms are defined in DoD 7110–1–M, Budget Guidance Manual. As used in this part—

Advanced development means all effort directed toward projects which have moved into the development of hardware for test. The prime proof of this type of effort is proof of design concept rather than the development of hardware. Projects in this category have a potential military application.

Engineering development means those projects in full-scale engineering development but which have not yet received approval for production or had production funds included in the DoD budget submission for the budget or subsequent fiscal year. This area is characterized by major line item projects where program control is exercised by review of individual projects.

Exploratory development means all effort directed toward the solution of specific military problems, short of major development projects. This type of effort may vary from fairly fundamental applied research to quite sophisticated bread-board hardware, study, programming, and planning efforts. It would thus include studies, investigations, and minor development effort. The dominant characteristic of

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235.001 Definitions.

The following terms are defined in DoD 7110–1–M, Budget Guidance Manual. As used in this part—

Advanced development means all effort directed toward projects which have moved into the development of hardware for test. The prime proof of this type of effort is proof of design concept rather than the development of hardware. Projects in this category have a potential military application.

Engineering development means those projects in full-scale engineering development but which have not yet received approval for production or had production funds included in the DoD budget submission for the budget or subsequent fiscal year. This area is characterized by major line item projects where program control is exercised by review of individual projects.

Exploratory development means all effort directed toward the solution of specific military problems, short of major development projects. This type of effort may vary from fairly fundamental applied research to quite sophisticated bread-board hardware, study, programming, and planning efforts. It would thus include studies, investigations, and minor development effort. The dominant characteristic of

this category of effort is that it be pointed toward specific military problem areas with a view toward developing and evaluating the feasibility and practicability of proposed solutions and determining their parameters.

Management and support means all effort directed toward support of installations and operations required for general research and development use. This includes military construction of a general nature unrelated to specific programs, maintenance support of laboratories, operation and maintenance of test ranges, and maintenance of test aircraft and ships. Costs of laboratory personnel, either in-house or contracted, would be assigned to projects or as a line item in the research, exploratory development, or advanced development program areas, as appropriate. Management and support is not *research and development* except in exceptional cases. For example, construction of recreational facilities at an installation is not *research and development* work, even if the installation is used only for research and development work.

Operational system development means those projects still in full-scale engineering development, but which have received approval for production through Defense Acquisition Board or other action, or production funds have been included in the DoD budget submission for the budget or subsequent year. All items in this area are major line item projects which appear as RDT&E costs of weapons systems elements in other programs. Program control is exercised by review of the individual projects.

Research means all effort of scientific study and experimentation directed toward increasing knowledge and understanding in those fields of the physical, engineering, environmental, and life sciences related to long-term national security needs. It provides fundamental knowledge required for the solution of military problems. It forms a part of the base for—

(1) Subsequent exploratory and advanced developments in Defense related technologies; and

(2) New or improved military functional capabilities in areas such as communications, detection, tracking, surveillance, propulsion, mobility, guidance and control, navigation, energy conversion, materials and structures, and personnel support.

Research and development ordinarily covers only the following categories—

(1) Research;
(2) Exploratory development;
(3) Advanced development;
(4) Engineering development; and
(5) Operational systems development.

235.002 General.

Contracts for services or the use of facilities for research, development, or research and development may be for a term of not more than five years and may be extended for a term of not more than five years (10 U.S.C. 2352).

235.006 Contracting methods and contract type.

(b)(i) A fixed-price type contract shall not be awarded for a development program effort unless—

(A) The level of program risk permits realistic pricing;

(B) The use of a fixed-price type contract permits an equitable and sensible allocation of program risk between the Government and the contractor; and

(C) A written determination that the criteria of paragraphs (b)(i)(A) and (B) of this section have been met is executed—

(*1*) By the Under Secretary of Defense for Acquisition (USD(A)) for—

(*i*) Research and development for non-major systems, if the contract is over $25 million;

(*ii*) The lead ship of a class;

(*iii*) The development of a major system (as defined in FAR 34.001) or subsystem thereof, if the contract is over $25 million, or is over $10 million and is funded with FY90 funds (Pub. L. 101–165, Section 9048) or FY91 funds (Pub. L. 101–511).

(*2*) By the contracting officer for any development not covered by paragraphs (b)(i)(C)(*1*) of this section.

(ii) Before award, submit the Government's prenegotiation position, and the proposed (and unexecuted) agreement with the contractor to the USD(A) for any action which is—

(A) An increase of more than $250 million in the price of a fixed-price type development contract, or a fixed-price type contract for the lead ship of a class;

(B) A reduction in the amount of work under a fixed-price type development contract or a fixed-price type contract for the lead ship of a class, when the contract action is valued at more than $100 million; or

(C) A repricing of fixed-price type production options to a development contract, or a contract for the lead ship of a class, which increases the price by more than $250 million for equivalent quantities.

(iii) Notify the USD(A) of an intent not to exercise a fixed-price production option on a development contract for a major weapon system reasonably in advance of the expiration of the option exercise period.

235.007 Solicitations.

(g) To ensure that prospective offerors fully understand the details of the work, the contracting officer may include the Government's estimate of the man-year effort under a research contract.

235.010 Scientific and technical reports.

(b) The Defense Technical Information Center (DTIC)—

(A) Has eligibility requirements for use of its services. Requests for information on eligibility should be addressed to DTIC-FDRB.

(B) Requires registration for use of its services. Instructions for registration are in Defense Logistics Agency Regulation 4185.10, Certification and Registration for Access to DoD Scientific and Technical Information.

235.015 Contracts for research with educational institutions and nonprofit organizations.

(b) *Basic agreements.* (1)(A) The Office of Naval Research has responsibility on behalf of all of DoD for negotiating these basic agreements, except for basic agreements with Federally Funded Research and Development Centers;

(B) When using a basic agreement—

(*1*) Incorporate it by reference in section I of the contract; and

(*2*) Incorporate any special clause requirements in section H.

235.015–70 Special use allowances for research facilities acquired by educational institutions.

(a) *Definitions.* As used in this subsection—

(1) *Research facility* means—

(i) Real property, other than land; and

(ii) Includes structures, alterations, and improvements, acquired for the purpose of conducting scientific research under contracts with departments and agencies of the DoD.

(2) *Special use allowance* means a negotiated direct or indirect allowance—

(i) For construction or acquisition of buildings, structures, and real property, other than land; and

(ii) Where the allowance is computed at an annual rate exceeding the rate which normally would be allowed under FAR subpart 31.3.

(b) *Policy.* (1) Educational institutions are to furnish the facilities necessary to perform Defense contracts. FAR 31.3 governs how much the Government will reimburse the institution for the research programs. However, in extraordinary situations, the Government may give special use allowances to an educational institution when the institution is unable to provide the capital for new laboratories or expanded facilities needed for Defense contracts.

(2) Decisions to provide a special use allowance must be made on a case-by-case basis, using the criteria in paragraph (c) of this subsection.

(c) *Authorization for special use allowance.* The head of a contracting activity may approve special use allowances only when all of the following conditions are met—

(1) The research facility is essential to the performance of DoD contracts;

(2) Existing facilities, either Government or nongovernment, cannot meet program requirements practically or effectively;

(3) The proposed agreement for special use allowances is a sound business arrangement;

(4) The Government's furnishing of Government-owned facilities is undesirable or impractical; and

(5) The proposed use of the research facility is to conduct essential Government research which requires the new or expanded facilities.

(d) *Application of the special use allowance.* (1) In negotiating a special use allowance—

(i) Compare the needs of DoD and of the institution for the research facility to determine the amount of the special use allowance;

(ii) Consider rental costs for similar space in the area where the research facility is or will be located to establish the annual special use allowance;

(iii) Do not include or allow—

(A) The costs of land; or

(B) Interest charges on capital;

(iv) Do not include maintenance, utilities, or other operational costs;

(v) The period of allowance generally will be—

(A) At least ten years; or

(B) A shorter period if the total amount to be allowed is less than the construction or acquisition cost for the research facility;

(vi) Generally, provide for allocation of the special use allowance equitably among the Government contracts using the research facility;

(vii) Special use allowances apply only in the years in which the Government has contracts in effect with the institution. However, if in any given year there is a reduced level of Government research effort which results in the special use allowance being excessive compared to the Government research funding, a separate special use allowance may be negotiated for that year;

(viii) Special use allowances may be adjusted for the period before construction is complete if the facility is partially occupied and used for Government research during that period.

(2) A special use allowance may be based on either total or partial cost of construction or acquisition of the research facility.

(i) When based on total cost neither the normal use allowance nor depreciation will apply—

(A) During the special use allowance period; and

(B) After the educational institution has recovered the total construction or acquisition cost from the Government or other users.

(ii) When based on partial cost, normal use allowance and depreciation—

(A) Apply to the balance of costs during the special use allowance period to the extent negotiated in the special use allowance agreement; and

(B) Do not apply after the special use allowance period, except for normal use allowance applied to the balance.

(3) During the special use allowance period, the research facility—

(i) Shall be available for Government research use on a priority basis over nongovernment use; and

(ii) Cannot be put to any significant use other than that which justified the special use allowance, unless the head of the contracting activity, which approved the special use allowance, consents.

(4) The Government will pay only an allocable share of the special use allowance when the institution makes any substantial use of the research facility for parties other than the Government during the period when the special use allowance is in effect.

(5) In no event shall the institution be paid more than the acquisition costs.

235.015–71 Short form research contract (SFRC).

(a) *Scope.* This section prescribes procedures for contracting within the U.S. for research on a cost-reimbursement basis with educational institutions or nonprofit organizations whose primary purpose is the conduct of scientific research.

(b) *Definitions.* As used in this section—

(1) *Educational institution* means an institution of higher learning which—

(i) Provides facilities for teaching and research; and

(ii) Is authorized to grant academic degrees.

(2) *Nonprofit organization* means—

(i) Organizations of the type—

(A) Described in section 501 (c)(3) and (d) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)); and

(B) Exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)); or

(ii) Any nonprofit scientific organization qualified under a state nonprofit organization statute.

(3) *Research* includes all effort described as research in 235.001, including that part of exploratory development applicable to applied research.

(c) *Applicability.* (1) Do not use the SFRC for any purpose other than as described in this section.

(2) The procedures in this section may be used if—

(i) The principal purpose of the acquisition is research from an educational institution or a nonprofit organization;

(ii) The effort will be on a cost-reimbursement basis;

(iii) The basis for award is—

(A) A basic research proposal responding to a broad agency announcement (FAR 6.102(d)(2)); or

(B) An unsolicited research proposal (FAR 6.302–1); or

(C) A proposal establishing or maintaining an essential engineering, research, or development capability (FAR 6.302–3); and

(iv) The contract requires the delivery of designs, drawings, or reports as end items.

(d) *Content of research proposal.* Research proposals submitted under this section must contain—

(1) All the information in FAR 15.505;

(2) A statement of work complying with FAR 35.005, and a breakdown of the time the principal investigator and any associates will devote to the contract (see FAR 35.015(a)). The breakdown will be by work-days, work-months, or work-years;

(3) The executed representations on DD Form 2222–1, Representations and Certifications from Offerors Submitting Proposals Under DFARS 235.70. (Representations and certifications submitted on a one-time basis to each contracting office are valid for all SFRC contract awards made by that office only if the offeror in each proposal references the one-time submission and confirms its validity.);

(4) A statement that the Government may award a contract under the procedures of this section;

(5)(i) Identification of property in the Contractor-Acquired Property clause by showing for each item, when possible—

(A) The description of the property; and

(B) The estimated or known cost;

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(B) Exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)); or

(ii) Any nonprofit scientific organization qualified under a state nonprofit organization statute.

(3) *Research* includes all effort described as research in 235.001, including that part of exploratory development applicable to applied research.

(c) *Applicability.* (1) Do not use the SFRC for any purpose other than as described in this section.

(2) The procedures in this section may be used if—

(i) The principal purpose of the acquisition is research from an educational institution or a nonprofit organization;

(ii) The effort will be on a cost-reimbursement basis;

(iii) The basis for award is—

(A) A basic research proposal responding to a broad agency announcement (FAR 6.102(d)(2)); or

(B) An unsolicited research proposal (FAR 6.302–1); or

(C) A proposal establishing or maintaining an essential engineering, research, or development capability (FAR 6.302–3); and

(iv) The contract requires the delivery of designs, drawings, or reports as end items.

(d) *Content of research proposal.* Research proposals submitted under this section must contain—

(1) All the information in FAR 15.505;

(2) A statement of work complying with FAR 35.005, and a breakdown of the time the principal investigator and any associates will devote to the contract (see FAR 35.015(a)). The breakdown will be by work-days, work-months, or work-years;

(3) The executed representations on DD Form 2222–1, Representations and Certifications from Offerors Submitting Proposals Under DFARS 235.70. (Representations and certifications submitted on a one-time basis to each contracting office are valid for all SFRC contract awards made by that office only if the offeror in each proposal references the one-time submission and confirms its validity.);

(4) A statement that the Government may award a contract under the procedures of this section;

(5)(i) Identification of property in the Contractor-Acquired Property clause by showing for each item, when possible—

(A) The description of the property; and

(B) The estimated or known cost;

(ii) The description of the property should be detailed enough to enable the contracting officer—

(A) To determine whether the Government will furnish such property under FAR 35.014 and FAR 45.302–1; and

(B) For property which may be contractor-acquired (versus Government-furnished)—

(*1*) To accept it as advance notification required by FAR 52.244–2; and

(*2*) To authorize acquisition at time of award;

(iii) If the offeror proposes to acquire facilities (FAR 45.301), the offeror shall include a written statement which—

(A) Explains why acquiring these items with contract funds is necessary; and

(B) Expresses the offeror's unwillingness or financial inability to acquire the items with the offeror's own resources;

(iv) Special test equipment or components proposed. Individual items of less than $1,000 may be grouped by category (FAR 45.307–2);

(6) A SF 1411, Contract Pricing Proposal Cover Sheet, or acceptable substitute. FAR 52.244–2(b) prescribes information required for subcontracts;

(7) Markings complying with FAR 15.509 on the title page and each restricted sheet if the proposal includes data that the offeror does not want disclosed for any purpose other than evaluation. In addition, the offeror should state in the offer or check Block A on page 2 of the DD Form 2222–2 if the offeror grants the Government permission to have nongovernment evaluators review the proposal;

(8) The following statement:

"This proposal incorporates by reference, and makes a part thereof, all applicable clauses in DFARS 235.015–71(i) in effect on the effective date of the contract or such other dates as may be mutually agreed upon."

(9) Any other applicable FAR or DFARS clauses agreed to by the parties;

(10) Monthly expenditure estimates by which incremental funding periods may be calculated; and

(11) An executed DD Form 2222–2, Short Form Research Contract Research Proposal Cover Page.

(e) *Contracting procedures.*

(1) The contracting officer may award a SFRC under full and open competition (FAR Subpart 6.1) when the proposal—

(i) Is in response to a broad agency announcement under FAR 6.102(d)(2);

(ii) Contains the information required by 235.015–71(d); and

(iii) Has been recommended for award under the peer or scientific review procedures of FAR 6.102(d)(2).

(2) The contracting officer may award an SFRC under other than full and open competition (FAR subpart 6.3) when—

(i) The proposal is an unsolicited research proposal submitted, evaluated, and accepted under FAR subpart 15.5, which meets the criteria of FAR 6.302–1; or

(ii) Award is necessary to establish or maintain an essential engineering research or development capability under FAR 6.302–1.

(3) When a research proposal (solicited or unsolicited) is satisfactory to the Government, the contracting officer should accept the proposal by executing a SFRC incorporating—

(i) The proposal by reference, or

(ii) The statement of work by reference.

(4) When acceptance of the entire research proposal is not advantageous to the Government, the contracting officer should use the acceptable parts of the research proposal. These parts may be either attached or incorporated by reference to develop a contract for execution by both parties. In this event, the contractor must sign the SFRC before the Government signs.

(5) Use the DD Form 2222, Short Form Research Center (SFRC) Modification, to effect modifications.

(6) The initial dollar amount and period of performance specified in the award document shall include the initial research program only. The SFRC shall identify separately the options, periods of performance, and costs, if appropriate.

(7) FAR 35.014 applies to vesting of title in property to organizations defined in 235.015–71(b). DD Form 2222 shall identify property, title to which is not vested in the contractor, or for which a determination of title is deferred.

(8) The offeror's submission of its proposal under this section 235.015–71 constitutes the offeror's agreement to be bound by all terms and conditions of the resulting contract.

(f) *Advance payments.* The contracting officer shall ensure that SFRCs awarded to institutions and organizations authorized to receive advance payments under FAR Subpart 32.4 are clearly marked to read "Advance Payment Pool Contract."

(g) *Method of funding.* If incrementally funded, the SFRC shall specify—

(1) The total estimated cost for the full period of the research program, both funded and unfunded; and

(2) The amount of funds currently obligated.

(h) *Uniform contract format.* The SFRC is exempt from uniform contract format requirements (FAR 15.406).

(i) *SFRC clauses.* (1) Include in the contract any FAR or DFARS clause agreed to by the parties and incorporate it by reference or full text, as appropriate.

(2) The following clauses should be incorporated by reference in all SFRC awards of $25,000 or more. Clauses with a single asterisk (*) apply to educational institutions only. Clauses with a double asterisk (**) apply to nonprofit organizations only.

FAR 52.202–1 Definitions
FAR 52.203–1 Officials Not to Benefit
FAR 52.203–3 Gratuities
FAR 52.203–5 Covenant Against Contingent Fees
FAR 52.203–6 Restrictions on Subcontractor Sales to the Government
FAR 52.203–7 Anti-Kickback Procedures
252.203–7001 Special Prohibition on Employment
**FAR 52.203–10 Price or Fee Adjustment for Illegal or Improper Activity
FAR 52.209–6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment
252.209–7000 Acquisitions from Subcontractors Subject to On-Site Inspection Under the Intermediate-Range Nuclear Forces (INF) Treaty
FAR 52.215–1 Examination of Records by Comptroller General
FAR 52.215–2 Audit—Negotiation
FAR 52.215–26 Integrity of Unit Prices
**FAR 52.215–30 Facilities Capital Cost of Money (Applies if contract is subject to commercial cost principles, FAR Subpart 31.2)
**FAR 52.215–31 Waiver of Facilities Capital Cost of Money (Applies if contractor does not propose facilities capital cost of money.)
FAR 52.215–33 Order of Precedence
FAR 52.216–7 Allowable Cost and Payment
*FAR 52.216–15 Predetermined Indirect Cost Rates (Applies only when the contractor has an executed negotiation agreement with the cognizant contract administration office. Predetermined rate agreements in effect on the date of the contract shall be incorporated in the contract schedule.)
FAR 52.219–8 Utilization of Small Business and Small Disadvantaged Business Concerns
FAR 52.219–13 Utilization of Women-Owned Small Businesses
FAR 52.220–3 Utilization of Labor Surplus Area Concerns
FAR 52.222–3 Convict Labor
FAR 52.222–26 Equal Opportunity (Add Alternate I as a special provision when applicable.)
FAR 52.222–35 Affirmative Action for Special Disabled and Vietnam Era Veterans
FAR 52.222–36 Affirmative Action for Handicapped Workers
FAR 52.222–37 Employment Reports on Special Disabled Veterans and Veterans of Vietnam Era
FAR 52.223–6 Drug-Free Workplace

FAR 52.225–13 Restrictions on Contracting with Sanctioned Persons
252.225–7016 and Restriction on Acquisition of Foreign Machine Tools
and Alternate I (if applicable)
FAR 52.227–1 and Alternate I Authorization and Consent
FAR 52.227–2 Notice and Assistance Regarding Patent and Copyright Infringement
FAR 52.227–14 Rights in Data—General (Specify applicable Alternate in contract.)
252.227–7013 and Alternate I Rights in Technical Data and Computer Software
252.227–7018 Restrictive Markings on Technical Data
252.227–7029 Identification of Technical Data
**252.227–7030 Technical Data—Withholding of Payment
FAR 52.228–7 Insurance—Liability to Third Persons Alternates I and II, if applicable)
**252.231–7000 Supplemental Cost Principles (Applies to nonprofit institutions, when allowability of costs is determined under FAR Subpart 31.2)
FAR 52.232–23 Assignment of Claims
FAR 52.232–25 Prompt Payment
FAR 52.233–1 Disputes
FAR 52.233–3 and Alternate I Protest After Award
252.235–7004 Option to Extend the Term of the Contract
252.235–7005 Contractor-Acquired Property
252.235–7006 Title to Contractor-Acquired Property
252.235–7007 Advance Payments
252.235–7008 Inspection and Acceptance
252.235–7009 Restriction on Printing
FAR 52.242–1 Notice of Intent to Disallow Costs
252.242–7001 Certification of Indirect Cost
252.242–7004 Material Management and Accounting System
FAR 52.243–2 and Alternate V Changes—Cost-Reimbursement
FAR 52.244–2 and Alternate I Subcontracts (Cost-Reimbursement and Letter Contracts)
FAR 52.244–5 Competition in Subcontracting
FAR 52.245–5 and Alternate I Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts.)
FAR 52.247–63 Preference for U.S.-Flag Air Carriers
FAR 52.251–1 Government Supply Sources
252.251–7000 Ordering from Government Supply Sources
FAR 52.253–1 Computer Generation of Forms by the Public

(3) The following clauses should be incorporated by reference in all SFRC contracts of $100,000 or more. Clauses with a double asterisk (**) apply to nonprofit organizations only.

FAR 52.203–12 Limitation on Payments to Influence Certain Federal Transactions
252.203–7000 Statutory Prohibitions on Compensation to Former Department of Defense Employees
FAR 52.222–2 Payment for Overtime Premiums (The word "zero" is inserted in the blank space indicated by an asterisk.)
FAR 52.223–2 Clean Air and Water Act (Applies if contract amount exceeds the dollar amount set forth in the preamble to the clause.)
**FAR 52.230–3 Cost Accounting Standards (If contract is not exempt under FAR 30.201.)
**FAR 52.230–4 Administration of Cost Accounting Standards (If contract is not exempt under FAR 30.201.)
**FAR 52.230–5 Disclosure and Consistency of Cost Accounting Practices (If contract is not exempt under FAR 30.201.)
252.231–7001 Penalties for Unallowable Costs
252.233–7000 Certification of Claims and Requests for Adjustment or Relief

(4) The following clauses should be incorporated by reference, if applicable.

FAR 52.215–22 Price Reduction for Defective Cost or Pricing Data
FAR 52.215–24 Subcontractor Cost or Pricing Data (Applies only if FAR 52.215–22 applies.)
FAR 52.215–27 Termination of Defined Benefit Pension Plans (Applies if certified cost and pricing data are required and cost determinations are subject to FAR Subpart 31.2.)
252.215–7000 Pricing Adjustments (Applicable if FAR 52.215–23, 24, or 25 applies.)
FAR 52.216–8 Fixed Fee (Applies in cost-plus-fixed-fee contracts.)
FAR 52.216–11 and Alternate I Cost Contract—No Fee
FAR 52.216–12 and Alternate I Cost Sharing Contract—No Fee
252.225–7000 Pricing Adjustments (Applies if FAR 52.215–23, 24, or 25 applies.)
252.225–7023 Reporting of Subcontracts (Applies only when contract action exceeds $500,000, or when any modification increases contract amount to more than $500,000.)
FAR 52.227–11 Patents Rights—Retention by the Contractor (Short Form)
252.227–7034 Patents—Subcontracts
252.227–7039 Patents—Reporting of Subject Inventions
FAR 52.232–9 Limitation on Withholding of Payments
FAR 52.232–17 Interest
FAR 52.232–20 Limitation of Cost (Applies only when contract is fully funded.)
FAR 52.232–22 Limitation of Funds (Applies only when contract is incrementally funded.)
FAR 52.232–28 Electronic Funds Transfer Payment Methods
FAR 52.246–23 Limitation of Liability
FAR 52.246–24 Limitation of Liability—High Value Items
FAR 52.246–25 Limitation of Liability—Services
FAR 52.249–5 Termination for Convenience of the Government (Educational and Other Nonprofit Institutions). (Applies if work is done on a no-profit or no-fee basis)
FAR 52.249–6 Termination (Cost Reimbursement) (Applies if work is performed on a fee or profit basis.)
FAR 52.249–14 Excusable Delays (Applies only to contracts in which FAR 52.249–6 applies.)

235.016 Broad agency announcement.

To help achieve the goals of Section 1207 of Public Law 99–661 (see part 226), contracting officers shall—

(1) Whenever practicable, reserve discrete or severable areas of research interest contained in broad agency announcements for exclusive competition among historically black colleges and universities and minority institutions;

(2) Indicate such reservation—

(i) In the broad agency announcement; and

(ii) In the announcement synopsis (see 205.207(d)(v)).

235.070 Indemnification against unusually hazardous risks.

235.070–1 Indemnification under research and development contracts.

(a) Under 10 U.S.C. 2354 and if authorized by the Secretary concerned, or designee under 10 U.S.C. 2356, contracts for research and/or development may provide for indemnification of the contractor or subcontractors for—

(1) Claims by third persons (including employees) for death, bodily injury, or loss of or damage to property; and

(2) Loss of or damage to the contractor's property to the extent that the liability, loss, or damage—

(i) Results from a risk that the contract defines as "unusually hazardous;"

(ii) Arises from the direct performance of the contract; and

(iii) Is not compensated by insurance or other means.

(b) Clearly define the specific unusually hazardous risks to be indemnified. Submit this definition for approval with the request for authorization to grant indemnification. Include the approved definition in the contract.

235.070–2 Indemnification under contracts involving both research and development and other work.

These contracts may provide for indemnification under the authority of both 10 U.S.C. 2354 and Public Law 85–804. Public Law 85–804 will apply only to work to which 10 U.S.C. 2354 does not apply. Actions under Public Law 85–804 must also comply with FAR subpart 50.4.

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(2) Loss of or damage to the contractor's property to the extent that the liability, loss, or damage—

(i) Results from a risk that the contract defines as "unusually hazardous;"

(ii) Arises from the direct performance of the contract; and

(iii) Is not compensated by insurance or other means.

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These contracts may provide for indemnification under the authority or both 10 U.S.C. 2354 and Public Law 85–804. Public Law 85–804 will apply only to work to which 10 U.S.C. 2354 does not apply. Actions under Public Law 85–804 must also comply with FAR subpart 50.4.

235.070–3 Contract clauses.

When the contractor is to be indemnified in accordance with 235.070–1, use either—

(a) The clause at 252.235–7000, Indemnification Under 10 U.S.C. 2354—Fixed Price; or

(b) The clause at 252.235–7001, Indemnification Under 10 U.S.C. 2354—Cost-Reimbursement, as appropriate.

235.071 Additional contract clauses.

(a) Use the clause at 252.235–7002, Animal Welfare, or one substantially the same, in solicitations and contracts awarded in the United States, its possessions, and Puerto Rico involving research on live vertebrate animals.

(b) Use the clause at 252.235–7003, Frequency Authorization, in solicitations and contracts for developing, producing, constructing, testing, or operating a device requiring a frequency authorization.

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Sec.

Subpart 236.1—General
236.102 Definitions.

Subpart 236.2—Special Aspects of Contracting for Construction
236.201 Evaluation of contractor performance.
236.203 Government estimate of construction costs.
236.206 Liquidated damages.
236.270 Expediting construction contracts.
236.271 Cost-plus-fixed-fee contracts.
236.272 Prequalification of sources.
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236.303 Invitations for bids.
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236.403 Cost-reimbursement contracts.

Subpart 236.5—Contract Clauses
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Subpart 236.6—Architect-Engineer Services
236.601 Policy.
236.602 Selection of firms for architect-engineer contracts.
236.602–1 Selection criteria.
236.602–2 Evaluation boards.
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236.606 Negotiations.
236.606–70 Statutory fee limitation.
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Subpart 236.7—Standard and Optional Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements
236.701 Standard and optional forms for use in contracting for construction or dismantling, demolition, or removal of improvements.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 236.1—General

236.102 Definitions.

(1) A–E means architect-engineer.

(2) *Construction activity* means an activity at any organizational level of the DoD that—

(i) Is responsible for the architectural, engineering, and other related technical aspects of the planning, design, and construction of facilities; and

(ii) Receives its technical guidance from the Army Office of the Chief of Engineers, Naval Facilities Engineering Command, or Air Force Directorate of Civil Engineering.

(3) *Network analysis system* means recognized scheduling systems that show the duration, sequential relationship, and interdependence of various work activities, e.g., critical path method.

Subpart 236.2—Special Aspects of Contracting for Construction

236.201 Evaluation of contractor performance.

(a) *Preparation of performance evaluation reports.*

(i) In Block 2 of the SF 1420, Performance Evaluation—Construction Contracts, enter the contractor establishment code from Item B5A of the DD 350, Contracting Action Report, Individual.

(ii) In Block 5 of the SF 1420, enter the telephone number of the Government office that will retain the official record copy of the report.

(c) *Distribution and use of performance reports.* (1) Send each contractor performance evaluation report to the central data base immediately upon its completion.

(A) The central data base—

(*1*) Is operated by—

U.S. Army Engineer Division, North Pacific, ATTN: CENPD–CT, P.O. Box 2870, Portland, OR 97208–2870, Telephone: (503)326–3459/4910

(*2*) Keeps reports on file for six years.

(B) For computer access to the files, contact the North Pacific Division for user log-on and procedures.

(2) Use performance records when making responsibility determinations under FAR 9.1.

(A) For each contract expected to exceed $1,000,000, retrieve all performance records on file in the central data base for all prospective contractors that have a reasonable chance of being selected for award. The central data base will provide—

(*1*) Overall current performance ratings;

(*2*) Descriptions of contracts on which ratings are based (e.g., type of facility, contract value, applicable performance elements); and

(*3*) A telephone number to obtain transcripts and documentation of pertinent evaluation details.

(B) Consider using the performance records in the data base for lower value contracts and to assess a contractor's performance record for reasons other than an award decision, such as subcontractor approval and awards for excellence.

236.203 Government estimate of construction costs.

(c)(i) Designate the Government estimate as "For Official Use Only," unless the information is classified. If it is, handle the estimate in accordance with security regulations.

(ii) For sealed bid acquisitions—

(A) File a sealed copy of the Government estimate with the bids. (In the case of two-step acquisitions, this is done in the second step.)

(B) After the bids are read and recorded, remove the "For Official Use Only" designation and read and record the estimate as if it were a bid, in the same detail as the bids.

236.206 Liquidated damages.

See 212.204 for instructions on use of liquidated damages.

236.270 Expediting construction contracts.

(a) 10 U.S.C. 2858 requires agency head approval to expedite the completion date of a contract funded by a Military Construction Appropriations Act, if additional costs are involved. This approval authority may not be redelegated. The approval authority must—

(1) Certify that the additional expenditures are necessary to protect the National interest; and

(2) Establish a reasonable completion date for the project.

(b) The contracting officer may approve an expedited completion date if no additional costs are involved.

236.271 Cost-plus-fixed-fee contracts.

Annual military construction appropriation acts restrict the use of cost-plus-fixed fee contracts for construction and A–E services. The Assistant Secretary of Defense (Production and Logistics) must specifically approve such contracts in writing when—

(a) They are estimated to exceed $25,000;

(b) They will be performed within the U.S., except Alaska; and

(c) They are funded by a military construction appropriation act.

236.272 Prequalification of sources.

(a) Prequalification procedures may be used when necessary to ensure timely and efficient performance of critical construction projects. Prequalification—

(1) Results in a list of sources determined to be qualified to perform a specific construction contract; and

(2) Limits offerors to those with proven competence to perform in the required manner.

(b) The head of the contracting activity must—

(1) Authorize the use of prequalification by determining, in writing, that a construction project is of an urgency or complexity that requires prequalification; and

(2) Approve the prequalification procedures.

(c) For small businesses, the prequalification procedures must require the qualifying authority to—

(1) Request a preliminary recommendation from the appropriate Small Business Administration regional office, if the qualifying authority believes a small business is not responsible;

(2) Permit the small business to submit a bid or proposal if the preliminary recommendation is that the small business is responsible; and

(3) Follow the procedures in FAR 19.6, if the small business is in line for award and is found nonresponsible.

236.273 Network analysis systems.

Use head of the contracting activity approved procedures for preparing and using network analysis systems, whether contractor prepared, or Government prepared.

236.274 Construction in foreign countries.

When a technical working agreement with a foreign government is required for a construction contract—

(a) Consider inviting the Army Office of the Chief of Engineers, or the Naval Facilities Engineering Command to participate in the negotiations.

(b) The agreement should, as feasible and where not otherwise provided for in other agreements, cover all elements necessary for the construction that are required by laws, regulations, and customs of the United States and the foreign government, including—

(1) Acquisition of all necessary rights;

(2) Expeditious, duty-free importation of labor, material, and equipment;

(3) Payment of taxes applicable to contractors, personnel, materials, and equipment;

(4) Applicability of workers' compensation and other labor laws to citizens of the U.S., the host country, and other countries;

(5) Provision of utility services;

(6) Disposition of surplus materials and equipment;

(7) Handling of claims and litigation; and

(8) Resolution of any other foreseeable problems which can appropriately be included in the agreement.

Subpart 236.3—Special Aspects of Sealed Bidding in Construction Contracting

236.303 Invitations for bids.

236.303–70 Additive or deductive items.

(a) If it appears that sufficient funds may not be available for all the desired construction features, consider using a bid schedule with—

(1) A first or base bid item covering the work generally as specified; and

(2) A list of priorities that contains one or more additive or deductive bid items which progressively add or omit specified features of the work in a stated order of priority. (Normally, do not mix additive and deductive bid items in the same solicitation.)

(b) Before opening the bids, record in the contract file the amount of funds available for the project.

(c) Determine the low bidder and the bid items to be awarded as follows—

(1) Use the recorded amount of available funds to determine the low bidder, which will be the bidder that—

(i) Is otherwise eligible for award; and

(ii) Offers the lowest aggregate amount for the first or base bid item, plus or minus (in order of listed priority), those additive or deductive bid items that provide the most features within the funds available.

(2) Evaluate all bids on the basis of the same additive or deductive bid items.

(i) If adding another item from the bid schedule list of priorities would make the award exceed the available funds, skip that item and go to the next item from the list of priorities.

(ii) Add the next item if an award can be made that includes the item and is still within the available funds.

(3) Use the list of priorities only to determine the low bidder. After determining the low bidder, an award may be made on any combination if—

(i) It is in the best interests of the Government;

(ii) Funds are available at time of award; and

(iii) The low bidder's price for the combination is less than the price offered by any other responsive, responsible bidder.

Subpart 236.4—Special Procedures for Negotiation of Construction Contracts

236.403 Cost-reimbursement contracts.

(1) For cost-plus-fixed-fee contracts, negotiate the fee for a prime contractor using departmental procedures approved by the Assistant Secretary of Defense (Production and Logistics).

(2) For cost-plus-incentive-fee contracts, negotiate the target fee for a prime contractor using the criteria and fee schedule in departmental procedures to determine—

(i) The reasonableness of the target cost;

(ii) The maximum and minimum fees to be established; and

(iii) The fee adjustment formula.

Subpart 236.5—Contract Clauses

236.570 Additional provisions and clauses.

(a) Use the following clauses in all fixed-price construction solicitations and contracts—

(1) 252.236–7000, Modification Proposals-Price Breakdown; and

(2) 252.236–7001, Contract Drawings, Maps, and Specifications.

(b) Use the following provisions and clauses in fixed-price construction contracts and solicitations as applicable—

(1) 252.236–7002, Obstruction of Navigable Waterways, when the contract will involve work near or on navigable waterways.

(2) When the head of the contracting activity has approved use of a separate bid item for mobilization and preparatory work, use either—

(i) 252.236–7003, Payment for Mobilization and Preparatory Work. Use this clause for major construction contracts that require—

(A) Major or special items of plant and equipment; or

(B) Large stockpiles of material which are in excess of the type, kind, and quantity which would be normal for a contractor qualified to undertake the work; or

(ii) 252.236–7004, Payment for Mobilization and Demobilization. Use

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(B) Large stockpiles of material which are in excess of the type, kind, and quantity which would be normal for a contractor qualified to undertake the work; or

(ii) 252.236-7004, Payment for Mobilization and Demobilization. Use

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this clause for contracts involving major mobilization expense, or plant equipment and material (other than the situations covered in paragraph (b)(2)(i) of this section) made necessary by the location or nature of the work.

(A) Generally, allocate 60 percent of the lump sum price in paragraph (a) of the clause to the cost of mobilization.

(B) Vary this percentage to reflect the circumstances of the particular contract, but in no event should mobilization exceed 80 percent of the payment item.

(3) 252.236-7005, Airfield Safety Precautions, when construction will be performed on or near airfields.

(4) 252.236-7006, Cost Limitations, if the solicitation's bid schedule contains one or more items subject to statutory cost limitations, and if a waiver has not been granted (FAR 36.205).

(5) 252.236-7007, Additive or Deductive Items, if the procedures in 236.303-70 are being used.

(6) 252.236-7008, Contract Prices—Bidding Schedule, if the contract will contain only unit prices for some items.

Subpart 236.6—Architect-Engineer Services.

236.601 Policy.

(1) 10 U.S.C. 2807(b) requires notice to Congress 21 days before the initial obligation of funds if a contract is for—

(i) A-E services or construction design for military construction, military family housing, or restoration or replacement of damaged or destroyed facilities; and

(ii) An estimated total contract price of $300,000 or more.

(2) During the 21 day period, synopsis of the proposed contract action and administrative actions leading to the award may be started.

236.602 Selection of firms for architect-engineer contracts.

236.602-1 Selection criteria.

(a)(i) Establish the evaluation criteria before making the public announcement required by FAR 5.205(c) and include the criteria and their relative order of importance in the announcement. The evaluation criteria should be project specific. Use the information in the DD Form 1391, FY—— Military Construction Project Data, when available, and other pertinent project data in preparing the evaluation criteria.

(4) Use performance evaluation data from the central data base identified in 236.201.

(6) The primary factor in A-E selection is the determination of the most highly qualified firm. Also consider secondary factors such as geographic proximity and equitable distribution of work, but do not attribute greater significance to the secondary factors than to qualifications and past performance. Do not reject the overall most highly qualified firm solely in the interest of equitable distribution of contracts.

(A) Consider the volume of work awarded by DoD during the previous 12 months. In considering equitable distribution of work among A-E firms, include small and small disadvantaged business firms and firms that have not had prior DoD contracts—

(*1*) Use data extracted from the Defense Contract Action Data System (DCADS) compiled from DD Form 350, Individual Contracting Action Report. DCADS data may be obtained from the central data base identified in 236.201(c)(1).

(*2*) Do not consider awards to overseas offices for projects outside the United States, its territories and possessions. Do not consider awards to a subsidiary if the subsidiary is not normally subject to management decisions, bookkeeping, and policies of a holding or parent company or an incorporated subsidiary that operates under a firm name different from the parent company. This allows greater competition.

(B) Consider as appropriate superior performance evaluations on recently completed DoD contracts.

236.602-2 Evaluation boards.

(a) Preselection boards are authorized, if the lists they develop are approved by the head of the construction activity. If used, preselection boards will—

(i) Be formally constituted;

(ii) Consist of at least three members; and

(iii) Prepare a preselection list of the maximum practicable number of qualified firms using data described in FAR 36.603, and any other pertinent information.

236.602-4 Selection authority.

(a)(i) The following selections require special approval—

(A) The estimated contract price exceeds $500,000;

(B) The firm to be selected has already been awarded contracts totaling over $500,000 during the current calendar year by the construction activity; or

(C) Supplemental work added to an existing contract causes the total contract price to exceed $500,000. Special approval is not, however, required for supplemental work added to a contract under the clause at FAR 52.243-1, Changes-Fixed Price.

(ii) Special approval means approval by the next higher organizational level above the construction activity or as established in contracting activity procedures and must be obtained prior to negotiation with the A-E firm.

(c) A finding that some of the firms on the selection report are unqualified does not preclude approval of the report, provided that a minimum of three firms remains. The reasons for finding a firm or firms unqualified must be recorded.

236.604 Performance evaluation.

(a)(2) Prepare a separate performance evaluation after actual construction of the project. Ordinarily, the evaluating official should be the person most familiar with the A-E's performance.

(c) Distribution and use of performance reports.

(i) Forward each performance report to the central data base identified in 236.201(c) after completing the review. The procedures in 236.201 also apply to A-E contracts.

(ii) File and use the SF 1421, Performance Evaluation (Architect-Engineer), in a manner similar to the SF 254, Architect-Engineer and Related Services Questionnaire.

236.606 Negotiations.

236.606-70 Statutory fee limitation.

(a) 10 U.S.C. 4540, 7212, and 9540 limit the contract price (or fee) for A-E services for the preparation of designs, plans, drawings, and specifications to six percent of the project's estimated construction cost.

(b) The six percent limit also applies to contract modifications, including modifications involving—

(1) Work not initially included in the contract. Apply the six percent limit to the revised total estimated construction cost.

(2) Redesign. Apply the six percent limit as follows—

(i) Add the estimated construction cost of the redesign features to the original estimated construction cost;

(ii) Add the contract cost for the original design to the contract cost for redesign; and

(iii) Divide the total contract design cost by the total estimated construction cost. The resulting percentage may not exceed the six percent statutory limitation.

(c) The six percent limit applies only to that portion of the contract (or modification) price attributable to the preparation of designs, plans, drawings, and specifications. If a contract or modification also includes other services, the part of the price attributable to the other services is not subject to the six percent limit.

236.609 Contract clauses.

236.609–70 Option for supervision and inspection services.

(a) Use the clause at 252.236–7009, Option for Supervision and Inspection Services, in solicitations and contracts for A–E services when—

(1) The contract will be fixed price; and

(2) Supervision and inspection services by the A–E may be required during construction.

(b) Include the scope of such services in appendix A of the contract.

Subpart 236.7—Standard and Optional Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements

236.701 Standard and optional forms for use in contracting for construction or dismantling, demolition, or removal of improvements.

(c) Do not use Optional Form 347, Order for Supplies and Services, (see 213.505–2).

PART 237—SERVICE CONTRACTING

Sec.

Subpart 237.1—Service Contracts—General

237.104 Personal services contracts.
237.106 Funding and term of service contracts.

Subpart 237.2—Advisory and Assistance Services

237.203 Types of advisory and assistance services.
237.203–70 Acquisition of audit services.
237.205 Management controls.
237.206 Requesting activity responsibilities.
237.270 Master agreements.
237.270–1 Establishing agreements.
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Subpart 237.70—Mortuary Services

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Subpart 237.71—Laundry and Dry Cleaning Services

237.7100 Scope.
237.7101 General.
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Subpart 237.72—Educational Service Agreements

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237.7201 Educational service agreement.
237.7202 Limitations.
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237.7204 Format and clauses for educational service agreements.

Subpart 237.73—Services of Students at Research and Development Laboratories

237.7300 Scope.
237.7301 Definitions.
237.7302 General.
237.7303 Contract clauses.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 237.1—Service Contracts—General

237.104 Personal services contracts.

(b)(i)Authorization to acquire the personal services of experts and consultants is included in Public Law 101–165, section 9002. Personal service contracts for expert and consultant services must also be authorized by a determination and findings (D&F) in accordance with department/agency regulations.

(A) Generally, the D&F should authorize one contract at a time; however, an authorizing official may issue a blanket D&F for classes of contracts.

(B) Prepare each D&F in accordance with FAR 1.7 and include a determination that—

(*1*) The duties are of a temporary or intermittent nature;

(*2*)Acquisition of the services is advantageous to the national defense;

(*3*) DoD personnel with necessary skills are not available;

(*4*)Excepted appointment cannot be obtained;

(*5*) A nonpersonal services contract is not practicable;

(*6*)Statutory authority, 5 U.S.C. 3109 and other legislation, apply; and

(*7*) Any other determination required by statues has been made.

(ii) Personal service contracts for direct health care services are authorized by 10 U.S.C. 1091. Policy and procedures including the applicable pay cap and approval requirements are in DoDI 6025.5, Personal Services Contracting Authority for Direct Health Care Providers. The contracting officer must ensure that the requiring activity provides the contracting officer with a copy of the approval to enter into a personal services contract for direct health care.

(f)(i) Payment to each expert or consultant for personal services under 5 U.S.C. 3109 shall not exceed the highest rate fixed by the Classification Act Schedules for grade GS–15, except the following which shall not exceed the highest rate payable to a GS–18—

(A) Professional engineering services primarily involving research and development; or

(B) Professional services involving physical sciences, natural sciences, or medicine.

(ii) The contract may provide for the same per diem and travel expenses authorized for a Government employee, including actual transportation and per diem in lieu of subsistence for travel between home or place of business and official duty station.

(iii) Coordinate with the civilian personnel office on benefits, taxes, personnel ceilings, and maintenance of records.

237.106 Funding and term of service contracts.

(1) Personal service contracts for expert or consultant services shall not exceed one year.

The nature of the duties must be—

(i) Temporary (not more than one year); or

(ii) Intermittent (not cumulatively more than 130 days in one year).

(2) The following categories of service contracts, funded by annual appropriations, are authorized to extend beyond the end of the fiscal year—

(i) One year contracts for maintenance of tools or facilities (see 10 U.S.C. 2410a(1));

(A) Tools generally are items found in supply groups 51 and 52, such as hand and power tools, gauges, measuring devices, etc.

(B) Examples of facilities maintenance services include—

(*1*) Custodial or housekeeping services;

(*2*) Security or fire protection services;

(*3*) Refuse collection;

(*4*) Grounds or surfaced area maintenance;

(*5*) Heating systems operation and maintenance;

(*6*) Military family housing maintenance;

(*7*) Energy monitoring control systems maintenance and repair;

(*8*) Commissary refrigeration maintenance and repair;

(*9*) Medical facility real property maintenance management;

(*10*) Hospital aseptic maintenance management; and

(*11*) Animal or pest control;

(ii) One year contracts for depot maintenance (see 10 U.S.C. 2410a(3));

(iii) Multi-year service contracts;

(iv) One year requirements or indefinite quantity contracts, as defined in FAR 16.503 and FAR 16.504, in which the minimum quantities are certain to be ordered in the fiscal year current at the

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(A) Professional engineering services primarily involving research and development; or

(B) Professional services involving physical sciences, natural sciences, or medicine.

(ii) The contract may provide for the same per diem and travel expenses authorized for a Government employee, including actual transportation and per diem in lieu of subsistence for travel between home or place of business and official duty station.

(iii) Coordinate with the civilian personnel office on benefits, taxes, personnel ceilings, and maintenance of records.

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(i) One year contracts for maintenance of tools or facilities (see 10 U.S.C. 2410a(1));

(A) Tools generally are items found in supply groups 51 and 52, such as hand and power tools, gauges, measuring devices, etc.

(B) Examples of facilities maintenance services include—

(*1*) Custodial or housekeeping services;

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(*8*) Commissary refrigeration maintenance and repair;

(*9*) Medical facility real property maintenance management;

(*10*) Hospital aseptic maintenance management; and

(*11*) Animal or pest control;

(ii) One year contracts for depot maintenance (see 10 U.S.C. 2410a(3));

(iii) Multi-year service contracts;

(iv) One year requirements or indefinite quantity contracts, as defined in FAR 16.503 and FAR 16.504, in which the minimum quantities are certain to be ordered in the fiscal year current at the

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beginning of the contract term (but see FAR 32.705–1(b));

(v) Personal service contracts for experts or consultants; or

(vi) Contracts for educational services, which cannot feasibly be subdivided for separate performance in each fiscal year.

Subpart 237.2—Advisory and Assistance Services

237.203 Types of advisory and assistance services.

(d) *Engineering and technical service.*

(i) Engineering and technical services consist of—

(A) Contract field services, which are engineering and technical services provided on site at Defense locations by the trained and qualified engineers and technicians of commercial or industrial companies;

(B) Contract plant services, which are engineering and technical services provided by the trained and qualified engineers and technicians of a manufacturer of military equipment or components, in the manufacturer's own plants and facilities; and

(C) Field service representatives, which are employees of a manufacturer of military equipment or components who provide a liaison or advisory service between their company and the military users of their company's equipment or components.

(ii) Every contract for engineering and technical services alone or as part of an end item, shall—

(A) Show those services as a separately priced line item;

(B) Contain definitive specifications for the services; and

(C) Show the work-months involved.

(iii) Agency heads may authorize personal service contracts for contract field services to meet an unusual essential mission need. The authorization will be for an interim period only.

237.203-70 Acquisition of audit services.

(a) *General policy.* (1) Departments and agencies shall not contract for audit services unless the cognizant DoD audit organization determines that expertise required to perform the audit is not available within the DoD audit organization, or temporary audit assistance is required to meet audit reporting requirements mandated by law or DoD regulation.

(2) DoDD 7600.2, Audit Policies, provides DoD audit policies.

(3) DoDD 7600.6, Audit of Nonappropriated Fund Instrumentalities and Related Activities, provides guidance to audit organizations for audits of nonappropriated fund organizations.

(4) DoDD 7600.7–M, Internal Audit Manual, chapter 20, provides policy and guidance to DoD audit organizations for the monitoring of audit services provided by non-Federal auditors.

(b) *Contract period.* Except in unusual circumstances, contracts for recurring audit services shall be awarded for a one year period with at least two option years.

(c) *Approvals.* Contracting officers shall not issue a solicitation for audit services unless the requiring activity provides evidence that the cognizant DoD audit organization has approved the statement of work. The requiring agency shall obtain the same evidence of approval for subsequent material changes to the statement of work.

(d) *Solicitation provisions and contract clauses.* (1) Use the provision of 252.237–7000, Notice of Special Standards of Responsibility, in solicitations for audit services.

(2) Use the clause at 252.237–7001, Compliance with Audit Standards, in solicitations and contracts for audit services.

237.205 Management controls.

DoD procedures are in DoDD 4205.2, DoD Contracted Advisory and Assistance Services.

237.206 Requesting activity responsibilities.

(b) On acquisitions for studies, the purchase request package must contain a signed statement from the technical officer responsible for the study stating that the Defense Technical Information Center (DTIC) and other information sources have been queried, that evidence of those queries are on file, and no existing scientific or technical report could fulfill the requirement.

(c) The authority, without redelegation authority (see DoDD 4205.2), to approve the use of advisory and assistance services in contracts over $50,000 is—

(i) An SES manager;

(ii) A general or flag officer;

(iii) An officer in 0–6 grade filling a general or flag officer level position; or

(iv) An officer in 0–6 grade who has subordinate SES personnel.

237.270 Master agreements.

Section 2304 of title 10, U.S.C., authorizes award of master agreements under which orders may be issued for specific contract advisory and assistance services (CAAS). The authority to award master agreements expires April 15, 1994.

237.270-1 Establishing agreements.

(a) Use this section only for types of advisory and assistance services described in FAR 37.203.

(b) Establish agreements using competitive procedures.

(c) Use the procedures for basic ordering agreements (see FAR 16.703) except—

(1) Synopsize solicitations for agreements as if they were service contracts expected to exceed $25,000;

(2) Establish agreements with at least three of the sources submitting offers; and

(3) Establish agreements for a period not to exceed two years, and do not extend them.

237.270-2 Ordering procedures.

(a) Ordering procedures for master agreements are the same as for basic ordering agreements, except that requests for proposals for individual orders need not be synopsized, nor is a justification and approval required. Orders under master agreements are an additional circumstance permitting full and open competition after exclusion of sources (FAR subpart 6.2).

(b) Before placing an order under a master agreement, the contracting officer—

(1) Must reasonably expect that at least two sources with established agreements will submit offers or an order cannot be placed against an agreement;

(2) Shall request offers from all agreements holders;

(3) Shall ensure the statement of work clearly specifies the tasks to be performed;

(4) Shall accept the offer most advantageous to the Government, considering all relevant factors specified in the request for offers;

(5) Shall synopsize issued orders in accordance with FAR 5.302; and

(6) Shall ensure orders have an identifiable deliverable.

237.270-3 Limitation.

The total value of orders issued under master agreements in a fiscal year by any contracting activity (as defined in 202.101) shall not exceed 30 percent of the value of all contracts for advisory and assistance services awarded by that activity during fiscal year 1989. This limitation may be increased from 30 percent to not more than 50 percent if—

(a) The head of the contracting activity (HCA) waives the 30 percent limitation. Each waiver shall be in the form of a determination and finding prepared and processed in accordance with department/agency procedures.

The determination and finding must specify that the use of master agreements is necessary to further the policy of acquiring advisory and assistance services on the basis of the task to be performed rather than on the basis of the number of hours provided; and

(b) The agency publishes a notice of the waiver in the **Federal Register** and 60 days have passed since the notice of the HCA waiver appeared in the **Federal Register**. **Federal Register** notices shall be forwarded for publication in accordance with agency procedures.

237.270-4 Reporting requirements.

(a) Each department and agency shall provide an annual report to OSD, ATTN: OUSD(A)DP(CPA), not later than November 15 of each year. The report control symbol is DD-P&L(A) 1849. The report shall include—

(1) The total number of master agreements awarded (with names of contractors and type of CAAS being acquired) and estimated dollar value of each agreement;

(2) The number of task orders awarded under each master agreement (by contractor) and dollar value of each (including modifications); and

(3) The period covered by the report.

(b) Each department and agency shall centrally maintain the following information, for all master agreements expected to involve work in excess of $2 million (including modifications), on a fiscal year basis—

(1) The number of bid protests filed, number sustained, and number of awards terminated during the competition for master agreements and task orders;

(2) The program's effect on the procurement administrative leadtime for CAAS;

(3) Statements of work describing the services contracted for and the source evaluation criteria used to evaluate proposals for award;

(4) The level of small business participation in the program; and

(5) The number of contracts where a contractor certified that a conflict of interest exists under the regulations implementing section 8141 of the National Defense Authorization Act for FY89, the nature of the conflict of interest, and the steps taken to resolve such conflicts of interest among firms that qualify for master agreements.

Subpart 237.70—Mortuary Services

237.7000 Scope.

This subpart contains acquisition procedures for contracts for mortuary services (the care of remains) for military personnel within the U.S. Departments/agencies may use these procedures as guidance in areas outside the U.S. for both deceased military and civilian personnel.

237.7001 Method of acquisition.

(a) *Requirements type contract.* By agreement among the military activities, one activity in each geographical area will contract for the estimated requirements for the care of remains for all military activities in the area. Use a requirements type contract (see FAR 16.503) when the estimated annual requirements for the activities in the area are ten or more.

(b) *Purchase order.* Where no contract exists, use DD Form 1155, Order for Supplies and Services/Request for Quotations, to obtain mortuary services.

237.7002 Area of performance.

Determine and define the geographical area to be covered by the contract using the following general guidelines—

(a) Use political boundaries, streets, or other features as demarcation lines.

(b) The size should be roughly equivalent to the contiguous metropolitan or municipal area enlarged to include the activities served.

(c) If the area of performance best suited to the needs of a particular contract is not large enough to include a carrier terminal commonly used by people within such area, the contract area of performance shall specifically state that it includes such terminal as a pickup or delivery point.

237.7003 Distribution of contracts.

In addition to normal contract distribution, send three copies of each contract to each activity authorized to use the contract, and two copies to each of the following—

(a) HQDA (TAPC-PEC-D), Alexandria, VA 22331.
(b) Commander, Naval Medical Command, Department of the Navy (MED 3141), 23rd and E Streets, NW, Washington, DC 20372.
(c) Headquarters, AFMPC-MPCCM, Randolph AFB, TX 78150.

237.7004 Solicitation provisions and contract clauses.

(a) Use the provision at 252.237-7002, Award to Single Offeror, in all sealed bid solicitations for mortuary services. Use the basic provision with its Alternate I in all negotiated solicitations for mortuary services.

(b) Use the following clauses in all mortuary service solicitations and contracts, except do not use the clauses at 252.237-7004, Area of Performance, and 252.237-7010, Facility Requirements, in solicitations or contracts that include port of entry requirements—

(1) 252.237-7003, Requirements, (insert activities authorized to place orders in paragraph (e) of the clause);
(2) 252.237-7004, Area of Performance;
(3) 252.237-7005, Performance and Delivery;
(4) 252.237-7006, Subcontracting;
(5) 252.237-7007, Termination for Default;
(6) 252.237-7008, Group Interment;
(7) 252.237-7009, Permits;
(8) 252.237-7010, Facility Requirements; and
(9) 252.237-7011, Preparation History.

(c) Use the clause at FAR 52.245-4, Government-Furnished Property (Short Form), in solicitations and contracts that include port of entry requirements.

Subpart 237.71—Laundry and Dry Cleaning Services

237.7100 Scope.

This subpart contains acquisition procedures for laundry and dry cleaning services within the United States. It may be used as guidance in all other locations.

237.7101 General.

(a) Except for hospital requirements, acquire laundry and dry cleaning services on a count-of-articles basis.

(b) Laundry services in support of hospitals may be acquired on the basis of a count-of-articles or by bulk weight.

(1) Acquisitions by weight may be on either a presorted (bag type) or unsorted (simple bulk weight) basis.

(2) In selecting the basis, consider such factors as price, administrative costs, aseptic requirements, risk of contamination or cross-contamination, and volume and nature of articles to be serviced.

237.7102 Solicitation provisions and contract clauses.

(a) Use the provision at 252.237-7012, Instructions to Offerors (Count-of-Articles), in solicitations for laundry and dry cleaning services to be provided on a count-of-articles basis.

(b) Use the provision at 252.237-7013, Instructions to Offerors (Bulk Weight), in solicitations for laundry services to be provided on a bulk weight basis.

(c) Use the clause at 252.237-7014, Loss or Damage (Count-of-Articles), in solicitations and contracts for laundry and dry cleaning services to be provided on a count-of-articles basis.

(d) Use the clause at 252.237-7015, Loss or Damage (Weight of Articles), in solicitations and contracts for laundry and dry cleaning services to be provided on a bulk weight basis.

(1) Insert a reasonable per pound price in paragraph (b) of the clause, based on the average per pound value.

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(1) 252.237–7003, Requirements, (insert activities authorized to place orders in paragraph (e) of the clause);
(2) 252.237–7004, Area of Performance;
(3) 252.237–7005, Performance and Delivery;
(4) 252.237–7006, Subcontracting;
(5) 252.237–7007, Termination for Default;
(6) 252.237–7008, Group Interment;
(7) 252.237–7009, Permits;
(8) 252.237–7010, Facility Requirements; and
(9) 252.237–7011, Preparation History.

(c) Use the clause at FAR 52.245–4, Government-Furnished Property (Short Form), in solicitations and contracts that include port of entry requirements.

Subpart 237.71—Laundry and Dry Cleaning Services

237.7100 Scope.

This subpart contains acquisition procedures for laundry and dry cleaning services within the United States. It may be used as guidance in all other locations.

237.7101 General.

(a) Except for hospital requirements, acquire laundry and dry cleaning services on a count-of-articles basis.

(b) Laundry services in support of hospitals may be acquired on the basis of a count-of-articles or by bulk weight.

(1) Acquisitions by weight may be on either a presorted (bag type) or unsorted (simple bulk weight) basis.

(2) In selecting the basis, consider such factors as price, administrative costs, aseptic requirements, risk of contamination or cross-contamination, and volume and nature of articles to be serviced.

237.7102 Solicitation provisions and contract clauses.

(a) Use the provision at 252.237–7012, Instructions to Offerors (Count-of-Articles), in solicitations for laundry and dry cleaning services to be provided on a count-of-articles basis.

(b) Use the provision at 252.237–7013, Instructions to Offerors (Bulk Weight), in solicitations for laundry services to be provided on a bulk weight basis.

(c) Use the clause at 252.237–7014, Loss or Damage (Count-of-Articles), in solicitations and contracts for laundry and dry cleaning services to be provided on a count-of-articles basis.

(d) Use the clause at 252.237–7015, Loss or Damage (Weight of Articles), in solicitations and contracts for laundry and dry cleaning services to be provided on a bulk weight basis.

(1) Insert a reasonable per pound price in paragraph (b) of the clause, based on the average per pound value.

When the contract requires laundry services on a bag type basis, insert reasonable per pound prices by bag type.

(2) Insert an appropriate percentage in paragraph (e) of the clause, not to exceed eight percent.

(e) Use the clause at 252.237–7016, Delivery Tickets, in all solicitations and contracts for laundry and dry cleaning services.

(1) Use the clause with its Alternate I when services are for bag type laundry to be provided on a bulk weight basis.

(2) Use the clause with its Alternate II when services are unsorted laundry to be provided on a bulk weight basis.

(f) Use the clause at 252.237–7017, Individual Laundry, in solicitations and contracts for laundry and dry cleaning services to be provided to individual personnel.

(1) Insert the number of pieces of outer garments in paragraphs (d) (1) and (2) of the clause.

(2) The number of pieces and composition of a bundle in paragraphs (d) (1) and (2) of the clause may be modified to meet local conditions.

(g) Use the clause at 252.237–7018, Special Definitions of Government Property, in all solicitations and contracts for laundry and dry cleaning services.

Subpart 237.72—Educational Service Agreements

237.7200 Scope.

(a) This subpart prescribes acquisition procedures for educational services from schools, colleges, universities, or other educational institutions. This subpart does not include tuition assistance agreements, i.e., payment by the Government of partial tuition under the off-duty educational program.

(b) As used in the subpart—

(1) "*Facilities*" do not include the institution's dining rooms or dormitories; and

(2) "*Fees*" does not include charges for meals or lodging.

237.7201 Educational service agreement.

(a) An educational service agreement is not a contract, but is an ordering agreement under which the Government may order educational services.

(b) Educational service agreements provide for ordering educational services when—

(1) The Government pays normal tuition and fees for educational services provided to a student by the institution under its normal schedule of tuition and fees applicable to all students generally; and

(2) Enrollment is at the institution under the institution's normal rules and in courses and curricula which the institution offers to all students meeting admission requirements.

237.7202 Limitations.

(a) Make no agreement under this subpart which will result in payment of Government funds for tuition or other expenses for training in any legal profession, except in connection with the detailing of commissioned officers to law schools under 10 U.S.C. 2004.

(b) Educational service agreements are not used to provide special courses or special fees for Government students.

237.7203 Duration.

(a) Educational service agreements are for an indefinite duration and remain in effect until terminated.

(b) The issuing activity must establish procedures to review each educational service agreement at least once each year. Review dates should consider the institution's academic calendar and occur at least 30 days before the beginning of a term. The purpose of the review is to incorporate changes to reflect requirements of any statute, Executive Order, FAR, or DFARS.

(c) If the contracting officer and the institution do not agree on required changes, terminate the agreement.

237.7204 Format and clauses for educational service agreements.

Educational service agreements under this subpart shall be in the following format. Add to the schedule any other provisions necessary to describe the requirements, if they are consistent with the following provisions and the policy of acquiring educational services in the form of standard course offerings at the prevailing rates of the institution.

Educational Service Agreement

Agreement No. ______

1. This agreement entered into on the ______ day of ______ 19___, is between the Government, represented by the Contracting Officer, and the Contractor, (name of institution), an educational institution located in ______ (city), ______ (state).

2. This agreement is for educational services to be provided by the Contractor to Government personnel at the Contractor's institution. The Contractor shall provide instruction with standard offerings of courses available to the public.

3. The Government shall pay for services under the Contractor's normal schedule of tuition and fees applicable to the public and in effect at the time the services are performed.

4. The Government will review this agreement annually before the anniversary of its effective date for the purpose of incorporating changes required by statutes, executive orders, the Federal Acquisition Regulation, or the Defense Federal Acquisition Regulation Supplement. Changes required to be made by modification to this agreement or by issuance of a superseding agreement. If mutual agreement on the changes cannot be reached, the Government will terminate this agreement.

5. The parties may amend this agreement only by mutual consent.

6. This agreement shall start on the date in paragraph 1 and shall continue until terminated.

7. The estimated annual cost of this agreement is $______. This estimate is for administrative purposes only and does not impose any obligation on the Government to request any services or make any payment.

8. Advance payments are authorized by 10 U.S.C. 2396(a)(3).

9. Submit invoices to: ______ (name and address of activity).

Schedule Provisions

1. *Ordering procedures and services to be provided.* (a) The Contractor shall promptly deliver to the Contracting Officer one copy of each catalog applicable to this agreement, and one copy of any subsequent revision.

(b) The Government will request educational services under this agreement by a (insert type of request, such as, delivery order, official Government order, or other written communication). The (insert type of request, such as, delivery order, official Government order, or other written communication) will contain the number of this agreement and will designate as students at the Contractor's institution one or more Government-selected persons who have already been accepted for admission under the Contractor's usual admission standards.

(c) All students under this agreement shall register in the same manner, be subject to the same academic regulations, and have the same privileges, including the use of all facilities and equipment as any other students enrolled in the institution.

(d) Upon enrolling each student under this agreement, the Contractor shall, where the resident or nonresident status involves a difference in tuition or fees—

(i) Determine the resident or nonresident status of the student;

(ii) Notify the student and the Contracting Officer of the determination. If there is an appeal of the determination;

(iii) If there is an appeal of the determination, process the appeal under the Contractor's standard procedures;

(iv) Notify the student and Contracting Officer of the result; and

(v) Make the determination a part of the student's permanent record.

(e) The Contractor shall not furnish any instruction or other services to any student under this agreement before the effective date of a request for services in the form specified in paragraph (b) of this schedule.

2. *Change in curriculum.* The Contracting Officer may vary the curriculum for any student enrolled under this agreement but shall not require or make any change in any course without the Contractor's consent.

3. *Payment.* (a) The Government shall pay the Contractor the normal tuition and fees which the Contractor charges any students pursuing the same or similar curricula, except for any tuition and fees which this agreement excludes. The Contractor may change any tuition and fees, provided—

(1) The Contractor publishes the revisions in a catalog or otherwise publicly announces the revisions;

(2) Applies the revisions uniformly to all students studying the same or similar curricula;

(3) Provides the Contracting Officer notice of changes before their effective date.

(b) The Contractor shall not establish any tuition or fees which apply solely to students under this agreement.

(c) If the Contractor regularly charges higher tuition and fees for nonresident students, the Contractor may charge the Government the normal nonresident tuition and fees for students under this agreement who are nonresidents. The Government shall not claim resident tuition and fees for any student solely on the basis of the student residing in the State as a consequence of enrollment under this agreement.

(d) The Contractor shall charge the Government only the tuition and fees which relate directly to enrollment as a student. Tuition and fees may include—

(i) Penalty fees for late registration or change of course caused by the Government;

(ii) Mandatory health fees and health insurance charges; and

(iii) Any flat rate charge applicable to all students registered for research that appears in the Contractor's publicly announced fee schedule.

(e) The Contractor shall not charge the Government for—

(i) Permit charges, such as vehicle registration or parking fees, unless specifically authorized in the request for service; and

(ii) Any equipment, refundable deposits, or any items or services (such as computer time) related to student research.

(f) Normally, the Contractor shall not directly charge individual students for application fees or any other fee chargeable to this agreement. However, if the Contractor's standard procedures require payment of any fee before the student is enrolled under this agreement, the Contractor may charge the student. When the Contractor receives payment from the Government, the Contractor shall fully reimburse the student.

(g) For each term the Contractor enrolls students under this agreement, the Contractor shall submit ________ copies of an invoice listing charges for each student separately. The Contractor shall submit invoices within ________ days after the start of the term and shall include—

(i) Agreement number and inclusive dates of the term;

(ii) Name of each student;

(iii) A list showing each course for each student if the school charges by credit hour;

(iv) The resident or nonresident status of each student (if applicable to the Contractor's school); and

(v) A breakdown of charges for each student, including credit hours, tuition, application fee, and other fees. Provide a total for each student and a grand total for all students listed on the invoice.

(h) If unforeseen events require additional charges that are otherwise payable under the Contractor's normal tuition and fee schedule, the Contractor may submit a supplemental invoice or make the adjustment on the next regular invoice under this agreement. The Contractor shall clearly identify and explain the supplemental invoice or the adjustment.

(i) The Contractor shall apply any credits resulting from withdrawal of students, or from any other cause under its standard procedures, to subsequent invoices submitted under this agreement. Credits should appear on the first invoice submitted after the action resulting in the credits. If no subsequent invoice is submitted, the Contractor shall deliver to the Contracting Officer a check drawn to the order of the office designated for contract administration. The Contractor shall identify the reason for the credit and the applicable term dates in all cases.

4. *Withdrawal of students.* (a) The Government may, at its option and at any time, withdraw financial support for any student by issuing official orders. The Government will furnish ________ copies of the orders to the Contractor within a reasonable time after publication.

(b) The Contractor may request withdrawal by the Government of any student for academic or disciplinary reasons.

(c) If withdrawal occurs before the end of a term, the Government will pay any tuition and fees due for the current term. The Contractor shall credit the Government with any charges eligible for refund under the Contractor's standard procedures for any students in effect on the date of withdrawal.

(d) Withdrawal of students by the Government will not be the basis for any special charge or claim by the Contractor other than charges under the Contractor's standard procedures.

5. *Transcripts.* Within a reasonable time after withdrawal of a student for any reason, or after graduation, the Contractor shall send to the Contracting Officer (or to an address supplied by the Contracting Officer) one copy of an official transcript showing all work by the student at the institution until such withdrawal or graduation.

6. *Student teaching.* The Government does not anticipate the Contractor awarding fellowships and assistantships to students attending school under this agreement. However, for graduate students, should both the student and the Contractor decide it to be in the student's best interests to assist in the institution's teaching program, the Contractor may provide nominal compensation for part-time service. Base the compensation on the Contractor's practices and procedures for other students of similar accomplishment in that department or field. The Contractor shall apply the compensation as a credit against any invoices presented for payment for any period in which the student performed the part-time teaching service.

7. *Termination of agreement.* (a) Either party may terminate this agreement by giving 30 days advance written notice of the effective date of termination. In the event of termination, the Government shall have the right, at its option, to continue to receive educational services for those students already enrolled in the contractor's institution under this agreement until such time that the students complete their courses or curricula or the Government withdraws them from the Contractor's institution. The terms and conditions of this agreement in effect on the effective date of the termination shall continue to apply to such students remaining in the Contractor's institution.

(b) Withdrawal of students under Schedule provision 4 shall not be considered a termination within the meaning of this provision 7.

(c) Termination by either party shall not be the basis for any special charge or claim by the Contractor, other than as provided by the Contractor's standard procedures.

General Provisions

Use the following clauses in educational service agreements—

1. FAR 52.202–1, Definitions, and add the following paragraphs (d) through (i).

(d) *Term* means the period of time into which the Contractor divides the academic year for purposes of instruction. This includes *semester, trimester, quarter,* or any similar word the Contractor may use.

(e) *Course* means a series of lectures or instructions, and laboratory periods, relating to one specific representation of subject matter, such as Elementary College Algebra, German 401, or Surveying. Normally, a student completes a course in one term and receives a certain number of semester hours credit (or equivalent) upon successful completion.

(f) *Curriculum* means a series of courses having a unified purpose and belonging primarily to one major academic field. It will usually include certain required courses and elective courses within established criteria. Examples include Business Administration, Civil Engineering, Fine and Applied Arts, and Physics. A curriculum normally covers more than one term and leads to a degree or diploma upon successful completion.

(g) *Catalog* means any medium by which the Contractor publicly announces terms and conditions for enrollment in the Contractor's institution, including tuition and fees to be charged. This includes "bulletin," "announcement," or any other similar word the Contractor may use.

(h) *Tuition* means the amount of money charged by an educational institution for instruction, not including fees.

(i) *Fees* means those applicable charges directly related to enrollment in the Contractor's institution. Unless specifically allowed in the request for services, fees shall not include—

(1) Any permit charge, such as parking and vehicle registration; or

(2) Charges for services of a personal nature, such as food, housing, and laundry.

2. FAR 52.203–1, Officials Not To Benefit.

3. FAR 52.203–3, Gratuities.

4. FAR 52.203–5, Covenant Against Contingent Fees.

5. FAR 52.204–1, Approval of Contract, if required by department/agency procedures.

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(b) Withdrawal of students under Schedule provision 4 shall not be considered a termination within the meaning of this provision 7.

(c) Termination by either party shall not be the basis for any special charge or claim by the Contractor, other than as provided by the Contractor's standard procedures.

General Provisions

Use the following clauses in educational service agreements—

1. FAR 52.202–1, Definitions, and add the following paragraphs (d) through (i).

(d) *Term* means the period of time into which the Contractor divides the academic year for purposes of instruction. This includes *semester, trimester, quarter,* or any similar word the Contractor may use.

(e) *Course* means a series of lectures or instructions, and laboratory periods, relating to one specific representation of subject matter, such as Elementary College Algebra, German 401, or Surveying. Normally, a student completes a course in one term and receives a certain number of semester hours credit (or equivalent) upon successful completion.

(f) *Curriculum* means a series of courses having a unified purpose and belonging primarily to one major academic field. It will usually include certain required courses and elective courses within established criteria. Examples include Business Administration, Civil Engineering, Fine and Applied Arts, and Physics. A curriculum normally covers more than one term and leads to a degree or diploma upon successful completion.

(g) *Catalog* means any medium by which the Contractor publicly announces terms and conditions for enrollment in the Contractor's institution, including tuition and fees to be charged. This includes "bulletin," "announcement," or any other similar word the Contractor may use.

(h) *Tuition* means the amount of money charged by an educational institution for instruction, not including fees.

(i) *Fees* means those applicable charges directly related to enrollment in the Contractor's institution. Unless specifically allowed in the request for services, fees shall not include—

(1) Any permit charge, such as parking and vehicle registration; or

(2) Charges for services of a personal nature, such as food, housing, and laundry.

2. FAR 52.203–1, Officials Not To Benefit.

3. FAR 52.203–3, Gratuities.

4. FAR 52.203–5, Covenant Against Contingent Fees.

5. FAR 52.204–1, Approval of Contract, if required by department/agency procedures.

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6. FAR 52.215–1, Examination of Records by Comptroller General.

7. FAR 52.215–18, Order of Precedence.

8. Conflicts Between Agreement and Catalog. Insert the following clause—

Conflicts Between Agreement and Catalog

If there is any inconsistency between this agreement and any catalog or other document incorporated in this agreement by reference or any of the Contractor's rules and regulations, the provisions of this agreement shall govern.

9. FAR 52.222–3, Convict Labor.

10. Under FAR 22.802, FAR 22.807, and FAR 22.810, use the appropriate clause from FAR 52.222–26, Equal Opportunity.

11. FAR 52.233–1, Disputes.

12. Assignment of Claims. Insert the following clause:

Assignment of Claims

No claim under this agreement shall be assigned.

13. FAR 52.252–4, Alterations in Contract, if required by department/agency procedure.

Signature Page

Agreement No.________________________
Date ________________________

The United States of America

BY: ________________________
(Contracting Officer)
Activity ________________________
Location________________________
(Name of Contractor)
BY: ________________________
(Title) ________________________

Subpart 237.73—Services of Students at Research and Development Laboratories

237.7300 Scope.

This subpart prescribes procedures for acquisition of temporary or intermittent services of students at institutions of higher learning for the purpose of providing technical support at Defense research and development laboratories (10 U.S.C. 2360).

237.7301 Definitions.

As used in this subpart—

(a) *Institution of higher learning* means any public or private post-secondary school, junior college, college, university, or other degree granting educational institution that—

(1) Is located in the United States, its possessions, and Puerto Rico;

(2) Has an accredited education program approved by an appropriate accrediting body; and

(3) Offers a program of study at any level beyond high school.

(b) *Nonprofit organization* means any organization described by section 501(c)(3) of title 26 of the U.S.C. which is exempt from taxation under section 501(a) of title 26.

(c) *Student* means an individual enrolled (or accepted for enrollment) at an institution of higher learning before the term of the student technical support contract. The individual shall remain in good standing in a curriculum designed to lead to the granting of a recognized degree, during the term of the contract.

(d) *Technical support* means any scientific or engineering work in support of the mission of the DoD laboratory involved. It does not include administrative or clerical services.

237.7302 General.

Generally, agencies will acquire services of students at institutions of higher learning by contract between a nonprofit organization employing the student and the Government. When it is in the best interest of the Government, contracts may be made directly with students. These services are not subject to the requirements of FAR part 19, FAR 13.105, or DFARS part 219. Award authority for these contracts is 10 U.S.C. 2304(a)(i) and 10 U.S.C. 2360.

237.7303 Contract clauses.

Contracts made directly with students are nonpersonal service contracts but shall include the clauses at FAR 52.232–3, Payments Under Personal Services Contracts, and FAR 52.249–12, Termination (Personal Services).

PART 239—ACQUISITION OF INFORMATION RESOURCES

Sec.

239.001 Policy.
239.001–70 Warner Amendment exemptions for Federal information processing (FIP) resources.
239.002 Delegations of procurement authority.

Subpart 239.70—Exchange or Sale of Federal Information Processing (FIP) Resources

239.7000 Scope of subpart.
239.7001 Policy.
239.7002 Conditions for using exchange/sale.
239.7003 Procedures.

Subpart 239.71—Security and Privacy for Computer Systems

239.7100 Scope of subpart.
239.7101 General.
239.7102 Security against compromising emanations.
239.7102–1 General.
239.7102–2 Validation of TEMPEST compliance.
239.7102–3 Solicitation provisions and contract clauses.

Subpart 239.72—Standards

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239.7202 Waivers.

Subpart 239.73—Acquisition of Automatic Data Processing Equipment by DoD Contractors

239.7300 Scope of subpart.
239.7301 Applicability.
239.7302 Approvals and screening.
239.7303 Review and approval of leasing costs.
239.7304 Purchase option credits.
239.7305 Contractor documentation.

Subpart 239.74—Telecommunications Services

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239.7401 Definitions.
239.7402 Policy.
239.7403 Regulatory bodies.
239.7404 Foreign carriers.
239.7405 Authority to contract for telecommunications services.
239.7406 Cost or pricing data.
239.7407 Type of contract.
239.7407–1 General.
239.7407–2 Communication service authorizations (CSAs).
239.7408 Special construction.
239.7408–1 General.
239.7408–2 Applicability of construction labor standards for special construction.
239.7409 Special assembly.
239.7410 Cancellation and termination.
239.7411 Contract clauses.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

239.001 Policy.

(a) The General Services Administration (GSA) implements its authority for the acquisition of Federal information processing (FIP) resources in the Federal Information Resources Management Regulation (FIRMR), which is codified in 41 CFR part 201. FIP resources are defined in the FIRMR at 201–4.001. Unless one of the exemptions of the Warner Amendment (10 U.S.C. 2315) applies, or unless otherwise specifically exempted, DoD must comply with FIRMR requirements.

(b) When the acquisition is subject to "The Brooks Act" (40 U.S.C. 759), the FIRMR takes precedence over this part.

(c) The Warner Amendment (10 U.S.C. 315), exempts certain DoD information resource acquisitions from the requirements of "The Brooks Act" and GSA's implementing regulations. If an acquisition is exempt under the Warner Amendment, clauses from the FIRMR do not have to be included in the solicitation or contract. However, all acquisitions for FIP resources, including those exempt under the Warner Amendment, must comply with Federal standards (see subpart 239.72).

239.001–70 Warner Amendment exemptions for Federal information processing (FIP) resources.

(a) *Exemptions.* Acquisitions for FIP resources are exempt from application of "The Brooks Act" if the function, operation, or use of such resources—

(1) Involves intelligence activities.

(2) Involves cryptologic activities related to national security.

(3) Involves command and control of the military forces.

(4) Involves equipment as an integral part of a weapon system.

(5) Is critical to the direct fulfillment of military or intelligence missions, provided that this exclusion shall not include FIP resources used for routine administrative and business applications such as payroll, finance, logistics, and personnel management.

(b) *General application.* (1) The term "involves" as used in paragraphs (a) (1) through (4) of this subsection is important in determining whether an acquisition is exempt under the Warner Amendment.

(i) To be exempt, at least one of the actual intended purposes of the function, operation, or use of the equipment or service being acquired must directly relate to the activities, functions, or equipment specified in paragraphs (a) (1) through (4) of this subsection.

(ii) The equipment and services may have additional purpose(s) related to activities, functions, and equipment other than those specified in (a) (1) through (4) of this subsection, e.g., routine business and administrative purposes.

(2) In contrast to paragraphs (a) (1) through (4) of this subsection, paragraph (a)(5) exempts acquisitions for ADPE (FIP resources) used for purposes that are critical to the direct fulfillment of military or intelligence missions and which do not include ADPE (FIP resources) used for routine administrative and business applications.

(c) Determinations as to applicability of the Warner Amendment shall be made in accordance with department/agency procedures.

239.002 Delegations of procurement authority.

(1) When a delegation of procurement authority (DPA) is required, the contracting officer shall obtain the DPA before issuing the solicitation.

(2) The contracting officer shall include a clause in the solicitation and resulting contract which identifies whether the contracting action is being conducted under the regulatory DPA, a specific agency DPA, or a specific acquisition DPA. (See FIRMR 201-39.106-4.)

Subpart 239.70—Exchange or Sale of Federal Information Processing (FIP) Resources

239.7000 Scope of subpart.

This Subpart contains unique DoD procedures for the exchange or sale of FIP resources using the exchange authority of the General Services Administration (GSA).

239.7001 Policy.

Agencies should consider exchange/sale when replacing Government-owned FIP resources. Exchange/sale is a method of—

(a) Transferring the equipment to be replaced to—

(1) Another Government agency, with reimbursement (sale); or

(2) The supplier of the replacement FIP resources for a trade-in allowance (exchange).

(b) Applying the proceeds of sale or the exchange allowance toward the purchase of replacement FIP resources.

239.7002 Conditions for using exchange/sale.

(a) The requiring activity must make a written determination that—

(1) The trade-in allowance of the exchange or the proceeds of the sale will be applied to acquire the replacement FIP resources; and

(2) The exchange/sale transaction will foster the economic and efficient accomplishment of a continuing requirement.

(b) The replacement equipment must be a FIP resource—

(1) Similar to the resource being sold or exchanged;

(2) Which will satisfy the continuing requirement currently met by the resource being replaced.

239.7003 Procedures.

(a) Comply with—

(1) This subpart;

(2) Subpart 217.70; and

(3) DoD 7950.1-M, Defense Automation Resources Management Manual.

(b) Solicit offers both on an exchange (trade-in for allowance) or no exchange (no trade-in) basis.

(c) Retain the option to exercise any exchange offer at the time of award.

(d) List and describe the exchange FIP resource in the solicitation. At a minimum include—

(1) A brief description of each item;

(2) Name of manufacturer;

(3) Equipment type;

(4) Model number; and

(5) The condition code and explanation of the code.

(e) Allow sufficient time in the contracting schedule to permit screening of the exchange FIP resource within the Government prior to contract award.

(f) Immediately upon receipt of offers, determine the highest exchange offer (if any) and use it to initiate screening under DoD 7950.1-M.

(1) Send an SF 120, Report of Excess Personal Property, to the Defense Automation Resources Information Center (ATTN: DARIC-R). Prominently display the following note on the original and five copies of the SF 120.

> Exchange/"Sale" Property
>
> A written administrative determination has been (will be) made to apply the exchange allowance or proceeds of "sale" to the acquisition of similar items.

(2) Include the following additional information with the SF 120—

(i) The identity of the offeror of the exchange;

(ii) The type of replacement equipment;

(iii) The acquisition method for the replacement equipment;

(iv) The anticipated purchase price for the replacement equipment;

(v) The delegation of procurement authority number assigned by GSA for the replacement equipment, if applicable; and

(vi) The name and telephone number of the contracting officer.

(g) Evaluate offers using the solicitation criteria, including consideration of any exchange allowance offers. Award can be made whether or not the replaced FIP resource is exchanged.

(h) Before a contract is awarded, consider the results of the screening. Do not make an exchange if another Government agency wants to acquire the replaced equipment.

(1) If another agency is going to acquire the replaced equipment, do not include the exchange allowance in the contract price.

(2) The actual sale price to the agency acquiring the replaced equipment will be the exchange allowance (if any) of the successful offeror.

(i) If no Government agency wants to acquire the replaced equipment, the contract price shall include the exchange allowance, if any.

(j) If no exchange allowance was offered by the successful contractor, see DoD 7950.1-M for disposal instructions.

Subpart 239.71—Security and Privacy for Computer Systems

239.7100 Scope of subpart.

This subpart applies to all acquisitions for computer systems. It covers both security and Privacy Act considerations.

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Exchange/"Sale" Property

A written administrative determination has been (will be) made to apply the exchange allowance or proceeds of "sale" to the acquisition of similar items.

(2) Include the following additional information with the SF 120—

(i) The identity of the offeror of the exchange;

(ii) The type of replacement equipment;

(iii) The acquisition method for the replacement equipment;

(iv) The anticipated purchase price for the replacement equipment;

(v) The delegation of procurement authority number assigned by GSA for the replacement equipment, if applicable; and

(vi) The name and telephone number of the contracting officer.

(g) Evaluate offers using the solicitation criteria, including consideration of any exchange allowance offers. Award can be made whether or not the replaced FIP resource is exchanged.

(h) Before a contract is awarded, consider the results of the screening. Do not make an exchange if another Government agency wants to acquire the replaced equipment.

(1) If another agency is going to acquire the replaced equipment, do not include the exchange allowance in the contract price.

(2) The actual sale price to the agency acquiring the replaced equipment will be the exchange allowance (if any) of the successful offeror.

(i) If no Government agency wants to acquire the replaced equipment, the contract price shall include the exchange allowance, if any.

(j) If no exchange allowance was offered by the successful contractor, see DoD 7950.1–M for disposal instructions.

Subpart 239.71—Security and Privacy for Computer Systems

239.7100 Scope of subpart.

This subpart applies to all acquisitions for computer systems. It covers both security and Privacy Act considerations.

239.7101 General.

Security requirements are in addition to provisions concerning protection of privacy of individuals (see FAR subpart 24.1).

239.7102 Security against compromising emanations.

239.7102-1 General.

(a) The National Security or Atomic Energy Acts, as amended, may require protection of information that is—

(1) Processed;
(2) Transmitted;
(3) Stored;
(4) Retrieved; or
(5) Displayed.

(b) When acquiring computer equipment to be used to process classified information, the contracting officer shall obtain from the requiring activity—

(1) A determination as to whether the equipment must provide protection against compromising emanations; and

(2) Identification of an established National TEMPEST standard (e.g., NACSEM 5100, NACSIM 5100A) or a standard used by other authority.

(c) When contracts will require the use of FIP resources involving classified data, programs, etc., the contracting officer shall obtain from the requiring activity—

(1) Advice to whether to require contractors performing these services to use equipment meeting the requirements in paragraph (a) of this subsection (as prescribed in the clause at 252.239–7000, Protection Against Compromising Emanations;

(2) Information concerning any requirement for marking of TEMPEST—certified equipment (especially if to be reused); and

(3) Information on how to validate TEMPEST equipment compliance with required standards.

239.7102–2 Validation of TEMPEST compliance.

Include requirements for validation of TEMPEST compliance in section E (Inspection and Acceptance) of the contract.

239.7102–3 Solicitation provisions and contract clauses

(a) When contracting for computer equipment or systems which are to be used to process classified information, use the clause at 252.239–7000, Protection Against Compromising Emanations.

(b) When acquiring computer equipment, software, or services subject to the Privacy Act, the FIRMR clause 201.39.5202–5, Privacy or Security Safeguards, may be used in solicitations and contracts in addition to the clause at FAR 52.224–2, Privacy Act.

Subpart 239.72—Standards

239.7200 Scope of subpart.

This subpart contains guidance for implementing—

(a) Federal Information Processing Standards (FIPS); and

(b) Federal Telecommunications Standards (FED-STD).

239.7201 General.

GSA publishes a handbook titled "Federal ADP and Telecommunications Standards Index" which provides guidance to agencies on the use of Federal standards which apply to FIP resources. The index contains information about applicability for each standard and terminology for including standards in solicitations. FIRMR Bulletin C–3 contains additional information about the index. See FIRMR 201–20.303 and 201–39.1002 for guidance.

239.7202 Waivers.

(a) The Secretary of Commerce has delegated to the Secretary of Defense the authority to waive FIP standards, in accordance with procedures established by the Secretary of Commerce. The Secretary of Defense redelegated that waiver authority to the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ASD(C3I)), as the DoD senior information resources management (IRM) official, designated pursuant to section 3506(b) of title 44 of the U.S. Code (i.e., the Paperwork Reduction Act of 1980, as amended). The ASD(C3I) has redelegated to the senior IRM official of each military department the authority to approve waivers to FIP standards that are applicable to military department requirements. Waivers to FIP standards that are applicable to the requirements of DoD components outside the military departments must be approved by the ASD(C3I).

(b) Contracting officers shall ensure that all applicable FIP standards are incorporated into solicitations in accordance with FIRMR procedures, except for those FIP standards for which the requiring activity has obtained a waiver from the appropriate military department or DoD senior IRM official.

(c) As part of the Commerce Business Daily synopsis of a solicitation, contracting officers shall publish a notice of any determinations to waive any FIP standards that are applicable to the solicitation. If the waiver determination is made after the notice of the solicitation is published, the contracting officer shall amend the notice to announce the waiver determination.

Subpart 239.73—Acquisition of Automatic Data Processing Equipment by DoD Contractors

239.7300 Scope of subpart.

This subpart prescribes approval requirements for automatic data processing equipment (ADPE) acquired (purchased or leased) by contractors for use in performing DoD contracts.

239.7301 Applicability.

(a) This subpart applies when—

(1) The contractor acquires ADPE for the account of the Government;

(2) The contractor acquires ADPE and title will pass to the Government; or

(3) The contractor leases ADPE and—

(i) The ADPE is not for the account of the Government;

(ii) Title will not pass to the Government; and

(iii) The contractor will charge the total cost of the lease to one or more Government contracts requiring the negotiation or determination of costs.

(b) This subpart does not apply to ADPE acquired as a component of an end item.

239.7302 Approvals and screening.

(a) The requirements of this section highlight the redistribution requirements of DoD 7950.1–M, Defense Automation Resources Management Manual, and are in addition to those at FAR 45.302.

(b) If the contractor proposes acquiring ADPE subject to 239.7301(a) (1) and (2)—

(1) The contracting officer shall require the contractor to submit, through the administrative contracting officer, the documentation in 239.7305.

(2) The administrative contracting officer—

(i) Submits a request for screening the requirement against the pool of Government-owned ADPE to determine if available excess equipment could satisfy the contractor's needs. The request should include the contractor's supporting documentation. The request is sent to: Director, Defense Automation Resources Information Center (DARIC), Attn: DARIC-R, Cameron Station, Alexandria, VA 22304–6100.

(ii) Upon receipt of and based on screening results from DARIC, advises the contractor that excess ADPE—

(A) Is available pursuant to DoD 7950.1–M; or

(B) Is not available and contractor may proceed with acquisition of the equipment.

(3) The contracting officer—

(i) Reviews the contractor's documentation;

(ii) Decides whether to authorize the acquisition; and

(iii) Advises—

(A) The contractor if authorization is not granted; and

(B) The administrative contracting officer if authorization is granted.

239.7303 Review and approval of leasing costs.

The cost principle in FAR 31.205–2, automatic data processing equipment leasing costs, requires the contractor to obtain contracting officer approval before incurring certain leasing costs.

(a) Before approving lease costs, meeting the criteria of FAR 31.205–2(b)(2)(iii), the contracting officer shall request and review the contractor supporting documentation described in 239.7305.

(b) The contracting officer shall conduct an annual review of leasing costs, meeting the criteria of FAR 31.205–2(d), to determine the continued need for leasing. In performing the review, the contracting officer shall request the contractor to update its supporting documentation.

(c) If the initial or annual reviews disclose no basis for nonconcurrence, the contracting officer will advise the contractor and, as appropriate—

(1) Enter into an advance agreement (see FAR 31.109);

(2) Obtain purchase option credits (see 239.7304).

239.7304 Purchase option credits.

(a) If 100 percent of the lease costs are charged to Government cost-reimbursement contracts, the rental contract shall give the Government the initial option to use any purchase credits or other benefits earned through rental payments.

(b) If less than 100 percent of the lease costs are charged to Government cost-reimbursement contracts, the contracting officer shall—

(1) Encourage the contractor to incorporate in its rental contract the right to assign accrued purchase credits to the Government;

(2) Obtain for the Government the right of first refusal on accrued purchase credits if the contractor elects not to exercise its purchase option; and

(3) Get the contractor's commitment to give the administrative contracting officer a 120-day advance notice of its intent to terminate a lease where the Government has rights in accrued purchase credits.

(c) Report purchase option credits as prescribed in DoD 7950.1–M.

239.7305 Contractor documentation.

Contracting officers may tailor the documentation requirements in paragraphs (a) through (e) of this section.

(a) *List of existing ADPE and an analysis of its use.* (1) List of each component identified by manufacturer, type, model number, location, date of installation, and how acquired (lease, purchase, Government-furnished). Identify those acquired specifically to perform a Government contract.

(2) Reliability and usage data on each component for the past 12 months.

(3) Identification of users supported by each component, including how much time each user requires the component and the related contract or task involved.

(b) *List of new ADPE needed and reasons why it is needed.* (1) Estimates of the new equipment's useful life.

(2) List of tasks the new equipment is needed for and why, including estimated monthly usage for each major task or project.

(3) Anticipated software and telecommunications requirements.

(c) *Selection of computer equipment.* (1) If the acquisition is competitive—

(i) List sources solicited and proposals received;

(ii) Show how the evaluation was performed;

(iii) Provide an explanation if the selected offer is not the lowest evaluated offer.

(2) If the acquisition is not competitive, state why.

(d) *Cost.* (1) For purchases, state the ADPE cost.

(2) For leases, state the increase or decrease in monthly costs to the Government.

(e) *Lease versus purchase analysis.* When the proposed acquisition is a lease, provide a lease/purchase analysis using the format in Table 39–1, Suggested Purchase/Lease Analysis Format, or one substantially similar.

TABLE 39-1.—SUGGESTED PURCHASE/LEASE ANALYSIS FORMAT

(1) ADPS components	(2) Qty.	(3) Vendor	(4) Other avg. monthly rental/lease		(5) Instal. date	(6) Useful life (C)	(7) Orig. purchase price	(8) Equity (D)	(9) Current purchase price
			(A)	(B)					
ADP system as of date									(7–8)

	(11)	(9–11 10–11)		(12+13)	(4×6)	(14–15)
(10) Vendors purchase price	Residual value (E)	(12) Owner depreciation costs	(13) Other costs (F)	(14) Total owner costs	(15) Total rental/lease costs (G)	(16) Differential (H)
ADP system as of date						(7–8)

(A) Includes projected extra shift where necessary.

(B) Includes other costs (taxes, maintenance, insurance, etc.).

(C) Documentation must be provided and attached per FAR 31.205–2.

(D) Accrued equity on rented/leased equipment (accumulated rental credits).

(E) Residual value forecast at end of useful life.

(F) Includes taxes, maintenance, insurance, selling costs, lease cancellation costs, etc.

(G) When considering annual justification for retention of existing ADPE capacity and the need to continue leasing, only the remaining rental costs to be paid under the lease should be shown.

(H) If lease is favorable, bracket differential figures.

Subpart 239.74—Telecommunications Services

239.7400 Scope.

This subpart prescribes policy and procedures for acquisition of telecommunications services and maintenance of telecommunications security. Telecommunications services may also meet the definition of automatic data processing equipment.

239.7401 Definitions.

As used in this subpart—

(a) *Common carrier* means any entity engaged in the business of providing telecommunications services which are regulated by the Federal Communications Commission or other governmental body.

(b) *Foreign carrier* means any person, partnership, association, joint-stock company, trust, governmental body, or corporation not subject to regulation by a U.S. governmental regulatory body and not doing business as a citizen of the United States, providing telecommunications services outside the territorial limits of the United States.

(c) *Governmental regulatory body* means the Federal Communications Commission, any statewide regulatory body, or any body with less than statewide jurisdiction when operating under the State authority. The following are not "governmental regulatory bodies"—

(1) Regulatory bodies whose decisions are not subject to judicial appeal; and

(2) Regulatory bodies which regulate a company owned by the same entity which creates the regulatory body.

(d) *Noncommon carrier* means any entity other than a common carrier offering telecommunications facilities, services, or equipment for lease.

(e) *Security, sensitive information,* and *telecommunications systems* have the meaning given in the clause at 252.239-7016, Telecommunications Security Equipment, Devices, Techniques, and Services.

(f) *Telecommunications* means the transmission, emission, or reception of signals, signs, writing, images, sounds, or intelligence of any nature, by wire, cable, satellite, fiber optics, laser, radio, or any other electronic, electric, electromagnetic, or acoustically coupled means.

(g) *Telecommunications services* means the services acquired, whether by lease or contract, to meet the Government's telecommunications needs. The term includes the telecommunications facilities and equipment necessary to provide such services.

239.7402 Policy.

(a) *Acquisition.* (1) DoD policy is to acquire telecommunications services from common and noncommon telecommunications carriers—

(i) On a competitive basis, except when acquisition using other than full and open competition is justified.

(ii) Recognizing the regulations, practices, and decisions of the Federal Communications Commission (FCC) and other governmental regulatory bodies on rates, cost principles, and accounting practices;

(iii) Making provision in telecommunications services contracts for adoption of—

(A) FCC approved practices; or

(B) The generally accepted practices of the industry on those issues concerning common carrier services where—

(*1*) The governmental regulatory body has not expressed itself;

(*2*) The governmental regulatory body has declined jurisdiction; or

(*3*) There is no governmental regulatory body to decide.

(2) DoD's unique consumer needs in both volume and technology require DoD to participate actively in the rule making process of cognizant governmental regulatory bodies. DoD also must work with the government regulatory bodies and common carriers to be sure that in those areas in which the FCC cannot or will not rule, sound regulatory practices are followed. DoD should make every effort to avoid the time and expense of litigation by full and fair disclosure of both the carrier's and the DoD's position in advance.

(3) If actions do not produce reasonable or lawful rates, or when there is a refusal to provide required services or file appropriate tariffs, DoD should litigate. All contracts with the regulatory bodies should be through counsel under department/agency and Defense Communications Agency procedures.

(b) *Security.* (1) The contracting officer shall ensure, in accordance with agency procedures, that purchase requests identify—

(i) The nature and extent of information requiring security during telecommunications;

(ii) The requirement for the contractor to secure telecommunications systems;

(iii) The telecommunications security equipment, devices, techniques, or services with which the contractor's telecommunications security equipment, devices, techniques, or services must be interoperable; and

(iv) The approved telecommunications security equipment, devices, techniques, or services, such as found in the National Security Agency's Information Systems Security Products and Services Catalogue.

(2) Contractors and subcontractors shall provide all telecommunications security techniques or services required for performance of Government contracts.

(3) Except as provided in paragraph (b)(4) of this subsection, contractors and subcontractors shall normally provide all required telecommunications security equipment or devices as plant equipment in accordance with FAR part 45. In some cases, such as for communications security (COMSEC) equipment designated as controlled cryptographic item (CCI), contractors or subcontractors must also meet ownership eligibility conditions.

(4) When the contractor or subcontractor does not meet ownership eligibility conditions, the head of the agency may authorize provision of the necessary facilities as Government-furnished property or acquisition as contractor-acquired property, as long as conditions of FAR 45.303-1(a) are met.

239.7403 Regulatory bodies.

The FCC and other governmental regulatory bodies publish rules and regulations on the operations of common carriers and prescribe accounting principles to use to establish rates.

239.7404 Foreign carriers.

(a) Frequently, foreign carriers are owned by the government of the country in which they operate. The foreign governments often prescribe the methods of doing business. In many countries, an international agreement with the host country sets guidelines for acquiring communication services. In some countries, a corporate subsidiary of a carrier not indigenous to the country (often a U.S. parent) is the sole source for telecommunications services.

(b) Contracts for telecommunications services in foreign countries should describe rates and practices in as much detail as possible. It is DoD policy not to pay discriminatory rates. DoD should pay a reasonable rate for telecommunications services or the rate charged the military of that country, whichever is less.

(c) Refer special problems with telecommunications acquisition in foreign countries to higher headquarters for resolution with appropriate State Department representatives.

239.7405 Authority to contract for telecommunications services.

(a) The General Services Administration (GSA) has exclusive procurement authority for telecommunications services that meet the definition of Federal information processing resources in FIRMR 201–4 and that meet the applicability criteria in FIRMR 201–1. However, GSA may authorize agencies to contract for telecommunications services in certain instances under a delegation of GSA's exclusive procurement authority (see FIRMR 201–20.305).

(b) Under FIRMR 201–20.306, GSA authorizes the senior information resources management (IRM) officials of each military department and the senior IRM official of DoD to enter into multiyear contracts for telecommunications services under certain conditions. Contracting activities may enter into multiyear contracts for telecommunications services if—

(1) The senior IRM official has redelegated to the contracting office, GSA's exclusive procurement authority for FIP sources;

(2) The contract life, including options, does not exceed ten years; and

(3) The contracting activity complies with OMB budget and accounting procedures relating to appropriated funds.

(c) The senior IRM officials are—

(1) *Army.*

The Assistant Secretary of the Army (Research, Development, and Acquisition);

(2) *Navy.*

The Assistant Secretary of the Navy (Research, Development, and Acquisition);

(3) *Air Force.*

The Assistant Secretary of the Air Force (Acquisition); and

(4) *The defense agencies.*

Assistant Secretary of Defense for Command, Control, Communications, and Intelligence.

(d) The ten year authority in paragraph (b) of this section applies to communications service authorizations (239.7407–2) and other types of telecommunications contracts. It does not apply to basic agreements.

239.7406 Cost or pricing data.

(a) Common carriers are not required to submit cost or pricing data before award of contracts for tariffed services, except as provided in paragraph (c) of this subsection. Rates or preliminary estimates quoted by a common carrier for tariffed telecommunications services are considered to be prices set by regulation within the provisions of 10 U.S.C. 2306a. This is true even if the tariff is set after execution of the contract.

(b) Rates or preliminary estimates quoted by a common carrier for nontariffed telecommunications services or by a noncommon carrier for any telecommunications service are not considered prices set by law or regulation. The provisions of 10 U.S.C. 2306a and FAR 15.804 apply in these circumstances.

(c) Even when not required by 10 U.S.C. 2306a, contracting officers shall obtain certified cost or pricing data when unable to determine that the prices are reasonable on the basis of price analysis (see FAR 15.805–2). Situations in which cost or pricing data may be necessary are described in the clause at 252.239–7009, Submission of Cost or Pricing Data—Common Carriers.

(d) The contracting officer need not get cost or pricing data for each delivery order under a basic agreement which is negotiated for use by Government ordering activities and includes detailed and approved price schedules.

(e) The contracting officer shall specify the form and detail of the cost or pricing data (see FAR 15.804–6(a)). However, for data submitted by common carriers, the data may be in the same form and detail normally submitted to the governmental regulatory body having jurisdiction over the carrier if sufficient for cost or price analysis purposes.

(f) When obtaining cost or pricing data under this section, the contracting officer shall obtain a certificate of current cost and pricing data in the format shown at FAR 15.804–4(a). However, if the contracting officer is requesting cost or pricing data under paragraph (c) of this section from a common carrier furnishing telecommunications services under a tariff filed or to be filed, substitute the following certificate for that at FAR 15.804–4(a):

Certificate of Current Cost or Pricing Data

(Common Carriers)

This is to certify that to the best of my knowledge and belief, the cost or pricing data submitted, either actually or by specific identification in writing, to the contracting officer or to the contracting officer's representative in support of ________* are accurate, complete, and current as of ________**. Rates are based on the data which will be used or are currently being used to justify tariffs, or rates for telecommunications services which are not based on the data, but are based on filed tariffs. I understand that the Government will use this cost and pricing data and this certification, if appropriate, in any proceedings relative to this tariffed service.

Firm ________________

Name ________________

Title ________________

Date of execution*** ________________

*Identify the proposal, quotation, request for price adjustment, or other submission involved, giving the appropriate identifying number.

**Insert the day, month, and year when price negotiations were concluded and price agreement was reached.

***Insert the day, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.

(End of certification)

239.7407 Type of contract.

239.7407–1 General.

In addition to acquisition methods described in the FAR, the method described in this section may be used to acquire telecommunications services.

239.7407–2 Communication service authorizations (CSAs).

Basic agreements (see FAR 16.702) are used widely in conjunction with communication service authorizations to facilitate award of telecommunications services.

(a) Use DD Form 428, Communication Service Authorization (CSA), or an electronic data processing substitute to award, modify, cancel, or terminate telecommunications services. The CSA shall—

(1) Refer to the basic agreement;

(2) Specify the types and quantities and equipment to be provided as well as the tariff (or other price if a tariff is not available) of those services and equipment;

(3) Specify the premises involved;

(4) Cite the address for billing;

(5) Identify the disbursing office; and

(6) Provide funding information.

(b) Before awarding a CSA, comply with the requirements in FAR and DFARS, e.g., for competition, reviews, approvals, and determinations and findings.

(c) Include an expiration date in each CSA.

(d) Modify CSAs to reflect any price increases.

239.7408 Special construction.

239.7408–1 General.

(a) Special construction normally involves a common carrier giving a special service or facility related to the performance of the basic telecommunications service requirements.

This may include—

(1) Moving or relocating equipment;

(2) Providing temporary facilities;

(3) Expediting provision of facilities; or

(4) Providing specially constructed channel facilities to meet Government requirements.

(b) Use this subpart instead of FAR part 36 for acquisition of "special construction."

(c) Special construction costs may be—

(1) A contingent liability for using telecommunications services for a shorter time than the minimum to reimburse the contractor for unamortized nonrecoverable costs. These costs are usually expressed in terms of a termination liability, as provided in the contract or by tariff;

(2) A onetime special construction charge;

(3) Recurring charges for constructed facilities;

(4) A minimum service charge;

(5) An expediting charge; or

(6) A move or relocation charge.

(d) When a common carrier submits a proposal or quotation which has special construction requirements, the contracting officer shall require a detailed special construction proposal. Analyze all special construction proposals to—

(1) Determine the adequacy of the proposed construction;

(2) Disclose excessive or duplicative construction; and

(3) When different forms of charge are possible, provide for the form of charge most advantageous to the Government.

(e) When possible, analyze and approve special construction charges before receiving the service. Impose a ceiling on the special construction costs before authorizing the contractor to proceed, if prior approval is not possible. Do not make final payment for special construction charges unless the charges are approved by the contracting officer.

239.7408-2 Applicability of construction labor standards for special construction.

(a) The construction labor standards in FAR 22.4 ordinarily do not apply to special construction. However, if the special construction includes construction (as defined in FAR 36.102) of a public building or public work, the construction labor standards may apply. Determine applicability under FAR 22.402.

(b) Each CSA or other type contract which is subject to construction labor standards under FAR 22.402 shall cite that fact.

239.7409 Special assembly.

(a) Special assembly is the designing, manufacturing, arranging, assembling, or wiring of equipment to provide telecommunications services that cannot be provided with general use equipment.

(b) Special assembly rates and charges shall be based on estimated costs. The contracting officer shall negotiate special assembly rates and charges before starting service whenever possible. When it is not possible to negotiate in advance, use provisional rates and charges subject to adjustment, until final rates and charges are negotiated. The CSAs authorizing the special assembly shall be modified to reflect negotiated final rates and charges.

239.7410 Cancellation and termination.

(a)(1) Cancellation is stopping a requirement after placing of an order but before service starts.

(2) Termination is stopping a requirement after placing an order and after service starts.

(b) Determine cancellation or termination charges under the provisions of the applicable tariff or agreement/contract.

239.7411 Contract clauses.

(a) In addition to other appropriate FAR and DFARS clauses, use the following clauses in solicitations, contracts, and basic agreements for telecommunications services. Modify the clauses only if necessary to meet the requirements of a governmental regulatory agency—

(1) 252.239-7002, Access;
(2) 252.239-7003, Facilities and Services to be Furnished—Common Carriers;
(3) 252.239-7004, Orders for Facilities and Services—Common Carriers;
(4) 252.239-7005, Rates, Charges, and Services—Common Carriers;
(5) 252.239-7006, Tariff Information;
(6) 252.239-7007, Cancellation or Termination of Orders—Common Carriers;
(7) 252.239-7008, Reuse Arrangements;
(8) 252.239-7009, Submission of Cost or Pricing Data—Common Carriers; and
(9) 252.239-7010, Audit and Records—Common Carriers.

(b) Use the following clauses in solicitations, contracts, and basic agreements for telecommunications services when the acquisition includes or may include special construction. Modify the clauses only if necessary to meet the requirements of a governmental regulatory agency—

(1) 252.239-7011, Special Construction and Equipment Charges; and
(2) 252.239-7012, Title to Communication Facilities and Equipment.

(c) Use the following clauses in basic agreements for telecommunications services—

(1) 252.239-7013, Obligation of the Government;
(2) 252.239-7014, Term of Agreement, and insert the effective date of the agreement in paragraph (a) of the clause; and
(3) 252.239-7015, Continuation of Orders, as appropriate, and insert in paragraph (a) of the clause, the name of the contracting office and the basic agreement or contract number which is being superseded.

(d) Use the clause at 252.239-7016, Telecommunications Security Equipment, Devices, Techniques, and Services, in solicitations and contracts when performance of a contract requires a securing telecommunications.

PART 241—ACQUISITION OF UTILITY SERVICES

Sec.

241.001 Definitions.
241.002 Applicability.
241.004 Acquiring utility services.
241.004-1 Policy.
241.004-2 Procedures.
241.004-3 GSA assistance and approval.
241.004-5 Separate contracts.
241.005 Pre-award contract review.
241.007 Contract clauses.
241.007-70 Additional clauses.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

241.001 Definitions.

As used in this part—

Definite term contract means a contract for utility services for a definite period of not less than one nor more than ten years.

Dual service area means a geographical area in which two or more utility suppliers are authorized under State law to provide services.

Indefinite term contract means a month-to-month contract for utility services which may be terminated by the Government upon proper notice.

Independent regulatory body means the Federal Energy Regulatory Commission, a state-wide agency, or an agency with less than state-wide jurisdiction when operating pursuant to state authority. The body has the power to fix, establish, or control the rates and services of utility suppliers.

Nonindependent regulatory body means a body that regulates a utility supplier which is owned or operated by the same entity that created the regulatory body, e.g., a municipal utility.

Regulated utility supplier means a utility supplier regulated by an independent regulatory body.

Service power procurement officer means for the—

Army, the Chief of Engineers;
Navy, the Commander, Naval Facilities Engineering Command;
Air Force, the head of a contracting activity; and
Defense Logistics Agency, the Executive Director of Contracting.

241.002 Applicability.

(a) This part applies to purchases of utility services from nonregulated and regulated utility suppliers. It includes the acquisition of liquified petroleum gas as a utility service when purchased from regulated utility suppliers.

(b)(7) This part does not apply to third party financed projects. However, it may be used for any purchased utility services directly resulting from such projects, including those authorized by—

(A) 10 U.S.C. 2394 for energy, fuels, and energy production facilities for periods not to exceed 30 years;

(B) 10 U.S.C. 2394(a) for renewable energy for periods not to exceed 25 years;

(C) 10 U.S.C. 2689 for geothermal resources that result in energy production facilities;

(D) 10 U.S.C. 2809 for potable and waste water treatment plants for periods not to exceed 32 years; and

(E) 10 U.S.C. 2812 for lease/purchase of energy production facilities for periods not to exceed 32 years.

241.004 Acquiring utility services.

241.004-1 Policy.

(1) Except as provided in FAR 41.004, DoD, as a matter of comity, will comply with the current regulations, practices and decisions of independent regulatory bodies which are subject to judicial appeal. This policy does not extend to regulatory bodies whose decisions are not subject to appeal nor does it extend to nonindependent regulatory bodies.

(2) Purchases of utility services outside the U.S. may use—

(i) Formats and technical provisions consistent with local practice; and

(ii) Dual language forms and contracts.

(3) Rates established by an independent regulatory body are considered "prices set by law or regulation" and do not require submission of cost or pricing data (see FAR subpart 15.8).

241.004-2 Procedures.

(a)(i) *Competitive proposals.* When a new major utility service load develops or a new military installation is established, the contracting officer shall—

(A) Determine whether more than one supplier can provide the required utility services.

(*1*) Competition may be possible where dual franchises exist or where no franchise exists.

(*2*) Competition should also be considered when an installation is served by one supplier and other potential suppliers exist even though one supplier has entered into a General Services Administration area-wide contract.

(B) Where competition exists, solicit competitive proposals from all potential suppliers.

(ii) Periodic reviews for competition. Conduct periodic review of ongoing contracts to determine the availability of competition. If available, evaluate the need to rewrite the contract considering—

(A) The possible loss of rights vested in the Government under the existing contract;

(B) The age and quality of the contract; and

(C) The number of contract modifications and the ease of administration with the existing contract documents.

(iii) Connection and service charges. The Government may pay a connection charge when required to cover the cost of the necessary connecting facilities. A connection charge based on the estimated labor cost of installing and removing the facility shall not include salvage cost. A lump-sum connection charge shall be no more than the agreed cost of the connecting facilities less net salvage. The order of precedence for contractual treatment of connection and service charges is—

(A) No connection charge.

(B) Termination liability.

Use when an obligation is necessary to secure the required services. The obligation must be not more than the agreed connection charge, less any net salvage material costs. Use of a termination liability instead of a connection charge requires the approval of the service power procurement officer or designee.

(C) Connection charge, refundable.

Use a refundable connection charge when the supplier refuses to provide the facilities based on lack of capital or published rules which prohibit providing up-front funding. The contract should provide for refund of the connection charge within five years unless a longer period or omission of the refund requirement is authorized by the service power procurement officer or designee.

(D) Connection and service charges, nonrefundable.

The Government may pay certain nonrefundable, nonrecurring charges including service initiation charges, a contribution in aid of construction, membership fees, and charges required by the supplier's rules and regulations to be paid by the customer. If possible, consider sharing with other than Government users the use of (and costs for) facilities when large nonrefundable charges are required.

(iv) Construction and labor requirements.

(A) Do not use the connection charge provisions for the installation of Government-owned distribution lines and facilities. The acquisition of such facilities must be authorized by legislation and accomplished in accordance with FAR part 36. Also, do not use the connection charge provisions for the installation of new facilities related to the supplier's production and general "backbone" system unless authorized by legislation.

(B) Construction labor standards ordinarily do not apply to construction accomplished under the connection charge provisions of this part. However, if installation includes construction of a public building or public work as defined in FAR 36.102, construction labor standards may apply.

241.004-3 GSA assistance and approval.

The General Services Administration (GSA) has delegated DoD authority to enter into utility service contracts (FAR 41.003(b)); thus, contracting officers need not seek assistance or approval from GSA.

241.004-5 Separate contracts.

(a)(i) Requests for proposals shall state the anticipated service period in terms of months or years. Where the period extends beyond the current fiscal year, evaluate offers of incentives for a definite term contract.

(ii) The solicitation may permit offerors the choice of proposing on the basis of—

(A) A definite term not to exceed the anticipated service period; or

(B) An indefinite term contract.

(iii) Where the expected service period is less than the current fiscal year, the solicitation shall be on the basis of an indefinite term contract.

(iv) Contracts for utility services for leased premises shall identify the lease document on the face of the contract.

(d) Use an indefinite term utility service contract when it is considered to be in the Government's best interest to—

(i) Have the right to terminate on a 30-day (or longer) notice. A notice of up to one year may be granted by an installation if needed to obtain a more favorable rate, more advantageous conditions, or for other valid reasons; or

(ii) Grant the supplier the right to terminate the contract when of benefit to the Government in the form of lower rates, larger discounts or more favorable terms and conditions.

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(i) Have the right to terminate on a 30-day (or longer) notice. A notice of up to one year may be granted by an installation if needed to obtain a more favorable rate, more advantageous conditions, or for other valid reasons; or

(ii) Grant the supplier the right to terminate the contract when of benefit to the Government in the form of lower rates, larger discounts or more favorable terms and conditions.

241.005 Pre-award contract review.

(d) Departments/agencies shall conduct their own pre-award contract reviews. FAR 41.005 (a) through (c) may be used as a guide.

241.007 Contract clauses.

241.007-70 Additional clauses.

(a) If the Government must execute a superseding contract and capital credits, connection charge credits, or termination liability exist, use the clause at 252.241-7000, Superseding Contract.

(b) Use the clause at 252.241-7001, Government Access, when the clause at FAR 52.241-4, Contractor's Facilities, is used.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 242—CONTRACT ADMINISTRATION

Sec.

Subpart 242.1—Interagency Contract Administration and Audit Services

242.101 Policy.
242.102 Procedures.

Subpart 242.2—Assignment of Contract Administration

242.200 Scope of subpart.
242.203 Retention of contract administration.
242.204 Supporting contract administration.
242.205 Designation of the paying office.

Subpart 242.3—Contract Administration Office Functions

242.301 General.
242.302 Contract administration functions.

Subpart 242.4—Correspondence and Visits

242.402 Visits to contractors' facilities.

Subpart 242.5—Postaward Orientation

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242.503-2 Postaward conference procedure.
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Subpart 242.6—Corporate Administrative Contracting Officer

242.602 Assignment and location.

Subpart 242.7—Indirect Cost Rates

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242.705 Final indirect cost rates.
242.705-1 Contracting officer determination procedure.
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242.770 Certificate of indirect costs.
242.770-1 General.
242.770-2 Procedure.
242.770-3 Waiver of certification.
242.770-4 Failure to certify.
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Subpart 242.8—Disallowance of Costs

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Subpart 242.10—Negotiating Advance Agreements for Independent Research and Development/Bid and Proposal Costs

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242.1005 Lead negotiating agency responsibilities.
242.1006 Conducting negotiations.
242.1007 Content of advance agreements.
242.1008 Administrative appeals.

Subpart 242.11—Production Surveillance and Reporting

242.1104 Surveillance requirements.
242.1105 Assignment of criticality designator.
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242.7003 Annual cost monitoring plan.
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242.7004 Reviews.

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242.7102 Disposition of voluntary refunds.

Subpart 242.72—Contractor Material Management and Accounting System

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242.7201 Definitions.
242.7202 Policy.
242.7203 MMAS disclosure, demonstration, and maintenance requirements.
242.7204 Responsibilities.
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242.7206 Contract clause.

Subpart 242.73—Contractor Insurance/Pension Review

242.7300 Scope of subpart.
242.7301 General.
242.7302 Requirements.
242.7303 Responsibilities.

Subpart 242.74—Technical Representation at Contractor Facilities

Sec.
242.7400 General.
242.7401 Procedures.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 242.1—Interagency Contract Administration and Audit Services

242.101 Policy.

(a) Foreign governments and international organizations may request contract administration services on their direct purchases from U.S. producers. Direct purchase is the purchase of defense supplies in the United States through commercial channels for use by the foreign government or international organization.

(d)(i) DoD requires reimbursement, at a rate set by the Assistant Secretary of Defense (Comptroller), from non-DoD organizations, except for—

(A) Quality assurance and audit services provided under a no-charge reciprocal agreement;

(B) Services performed under subcontracts awarded by the Small Business Administration under FAR subpart 19.8; and

(C) Quality assurance and pricing services performed for the Supply and Services Canada.

(ii) Departments and agencies may request an exception from the reimbursement policy in paragraph (d)(i) of this section from the Assistant Secretary of Defense (Comptroller). A request must show that an exception is in the best interest of the Government.

(iii) Departments and agencies must pay for services performed by non-DoD activities, foreign governments, or international organizations, unless otherwise provided by reciprocal agreements.

242.102 Procedures.

(b)(i) Supply and Services Canada (SSC) is permitted to submit its requests for contract administration services directly to the cognizant contract administration office.

(ii) Other foreign governments (including Canadian government organizations other than SSC) and international organizations send their requests for contract administration services to the DoD Central Control Point (CCP) at the Defense Contract Management Area Operations (DCMAO), New York, NY. Contract administration offices provide services only upon request from the CCP. The CCP shall—

(A) Determine whether the request is from a friendly foreign government or an international agency in which the United States is a participant;

(B) Determine whether the services are consistent with the DoD mutual security program policies (the Assistant Secretary of Defense (International Security Affairs) is the source of information for questions as to the eligibility of foreign governments to receive services);

(C) Ensure that the reimbursement arrangements are consistent with 242.101(d);

(D) Coordinate with appropriate contract administration offices to determine whether DoD can provide the services;

(E) Notify the requestor that the request is accepted, or provide reasons why it cannot be accepted;

(F) Distribute the acquisition documents and related materials to contract administration offices; and

(G) Receive statements of costs incurred by contract administration offices for reimbursable services and forward them for billing to the Security Assistance Accounting Center.

Subpart 242.2—Assignment of Contract Administration

242.200 Scope of subpart.

This subpart does not address the contract administration role of a contracting officer's representative (see 201.602).

242.203 Retention of contract administration.

(a)(i) DoD activities shall not retain any contract for administration that requires performance of any contract administration function at or near contractor facilities, except contracts for—

(A) The National Security Agency;

(B) Research and development with universities;

(C) Flight training;

(D) Consultant support services;

(E) Mapping, charting, and geodesy services;

(F) Base, post, camp, and station purchases;

(G) Operation or maintenance of, or installation of equipment at radar or communication network sites;

(H) Communications services;

(I) Installation, operation, and maintenance of space-track sensors and relays;

(J) Dependents Medicare program contracts;

(K) Stevedoring contracts;

(L) Construction and maintenance of military and civil public works, including harbors, docks, port facilities, military housing, development of recreational facilities, water resources, flood control, and public utilities;

(M) Architect-engineer services;

(N) Airlift and sealift services (Military Airlift Command and Military Sealift Command may perform contract administration services at contractor locations involved solely in performance of airlift or sealift contracts);

(O) Subsistence supplies;

(P) Ballistic missile sites (contract administration offices may perform supporting administration of these contracts at missile activation sites during the installation, test, and checkout of the missiles and associated equipment); and

(Q) Operation and maintenance of, or installation of equipment at, military test ranges, facilities, and installations.

(R) Purchase orders issued via written telecommunications (See FAR 13.506).

(ii) Contract administration functions on a military installation are normally the responsibility of the installation or tenant commander. This includes contract administration responsibility for base, post, camp, or station contracts—

(A) OMB Circular A–76 type contracts;

(B) Contracts awarded by, or on behalf of, on-base activities (e.g., laboratories) and research and test facilities;

(C) Contracts for the operation and maintenance of simulators; and

(D) Contracts for contractor field teams.

(iii) The Defense Contract Management Command (DCMC) shall, upon request of the military department, perform contract administration services on a military installation provided—

(A) The contract statement of work is unrelated to the mission of the installation or on base activity, such as—

(*1*) Activation of a new weapon system;

(*2*) Major modification of an existing weapon system; or

(*3*) When a contractor's industrial operation is located on a military base because of the availability of real estate or an industrial facility; and

(B) Full contract administration responsibility is delegated to DCMC to prevent mixed CAS (i.e., more than one CAS organization performing contract administration functions at the contractor's place of performance).

(iv) DCMC shall provide preaward survey assistance for post, camp, and station work performed on a military installation. The contracting office and the DCMC preaward survey monitor should jointly determine the scope of the survey and individual responsibilities.

(v) To avoid duplication, contracting offices shall not locate their personnel at contractor facilities, except—

(A) In support of contracts retained for administration in accordance with paragraph (a)(i) of this section; or

(B) As permitted under subpart 242.74.

242.204 Supporting contract administration.

(a) In special circumstances, a contract administration office may request support from a component not listed in the DoD Directory of Contract Administration Services Components (DLAH 4105.4). An example is where the contractor's work site is on a military base and a base organization is asked to provide support. Before formally sending the request, coordinate with the office concerned to ensure that resources are available for, and capable of, providing the support.

(b) When requesting support on a subcontract which includes foreign military sale (FMS) requirements, the contract administration office shall—

(i) Mark "FMS Requirement" on the face of the documents;

(ii) For each FMS case involved, provide the FMS case identifier, associated item quantities, DoD prime contract number, and prime contract line/subline item number.

242.205 Designation of the paying office.

(1) For contracts assigned to the Defense Contract Management Command (DCMC), designate as the paying office—

(i) The cognizant Defense Finance and Accounting Service (DFAS) payment office as specified in the DoD Directory of Contract Administration Services Components (DLAH 4105.4), for contracts funded with DoD funds.

(ii) The department or agency payment office—if the contract is funded with non-DoD funds.

(iii) The Air Force payment office (63rd MAW/ACFMP, Norton AFB, CA)—if the contract is an Air Force contract for missile propellants.

(iv) Multiple paying offices under paragraphs (1) (i) and (ii) of this section—if the contract is funded with both DoD and non-DoD funds.

(2) For contracts not assigned to DCMC, select a paying office or offices under department/agency procedures.

Subpart 242.3—Contract Administration Office Functions

242.301 General.

Contract administration services performed outside the U.S. should be performed in accordance with FAR 42.301 unless there are no policies and

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(v) To avoid duplication, contracting offices shall not locate their personnel at contractor facilities, except—

(A) In support of contracts retained for administration in accordance with paragraph (a)(i) of this section; or

(B) As permitted under subpart 242.74.

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(ii) The department or agency payment office—if the contract is funded with non-DoD funds.

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(iv) Multiple paying offices under paragraphs (1) (i) and (ii) of this section—if the contract is funded with both DoD and non-DoD funds.

(2) For contracts not assigned to DCMC, select a paying office or offices under department/agency procedures.

Subpart 242.3—Contract Administration Office Functions

242.301 General.

Contract administration services performed outside the U.S. should be performed in accordance with FAR 42.301 unless there are no policies and

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procedures covering a given situation. In this case, coordinate proposed actions with the appropriate U.S. country teams or commanders of unified and specified commands.

242.302 Contract administration functions.

(a)(4) Also, review and evaluate—

(A) Contractor estimating systems (see FAR 15.811); and

(B) Contractor material management and accounting systems under subpart 242.72.

(8) Monitor contractor costs under subpart 242.70.

(11) The DoD lead negotiating agency under FAR subpart 42.10 (i.e., the tri-service contracting office) shall make all determinations under FAR 42.302(a)(11) (ii) and (iii) related to Cost Accounting Standard 420 for contractors requiring advance agreements for independent research and development/bid and proposal costs.

(19) Also negotiate and issue contract modifications reducing contract prices in connection with the provisions of paragraph (b) of the clause at FAR 52.225–10, Duty-Free Entry, and paragraph (c) of the clause at 252.225–7008, Duty-Free Entry—Qualifying Country End Products and Supplies.

(33) Also perform industrial readiness and mobilization production planning field surveys and negotiate schedules.

(39) See 223.370 for safety requirements on contracts for ammunition and explosives.

(41) In contracts with cost schedule control systems requirements (see 234.005–70)—

(A) Perform postaward surveillance of contractor progress in demonstrating that its cost schedule control systems meet the cost schedule control systems criteria;

(B) Provide assistance in the review and acceptance of the contractor's cost schedule control systems; and

(C) After acceptance of the systems, perform surveillance to monitor their continuing acceptable operation.

(b)(S–70) Issue, negotiate and execute orders under basic ordering agreements for overhaul, maintenance and repair.

Subpart 242.4—Correspondence and Visits

242.402 Visits to contractors' facilities.

(a) If a visit to a contractor facility will require access to classified information, the visitors must give the contractor advance written notice (DoD 5220.22–R, Industrial Security Regulation).

Subpart 242.5—Postaward Orientation

242.503 Postaward conferences.

242.503–2 Postaward conference procedure.

Use the conference program outlined on the DD Form 1484, Post-Award Conference Record, in conducting the conference.

242.503–3 Postaward conference report.

The DD Form 1484, Post-Award Conference Record, may be used for this report.

242.570 Contract clause.

Use the clause at 252.242–7000, Postaward Conference, in solicitations and contracts.

Subpart 242.6—Corporate Administrative Contracting Officer

242.602 Assignment and location.

(c)(2) If the agencies cannot agree, refer the matter to the Director of Defense Procurement.

Subpart 242.7—Indirect Cost Rates

242.704 Billing rates.

(c) The administrative contracting officer or auditor shall periodically review billing rates for continued applicability. Billing rates should be established on a year-to-year basis.

242.705 Final indirect cost rates.

242.705–1 Contracting officer determination procedure.

(a) *Applicability and responsibility.* (1) The corporate administrative contracting officer (CACO) and individual administrative contracting officers (ACO) shall jointly decide whether negotiations will be conducted on a coordinated or centralized basis. When they are conducted on a coordinated basis, individual ACOs are responsible for coordinating with the CACO to ensure consistency of cost determinations.

(b) *Procedures.* (1) Require DoD contractors to submit a copy of their final indirect cost rate proposals to the contract auditor.

(3) The contracting officer shall (10 U.S.C. 2324(f))—

(A) Not resolve any questioned costs until obtaining—

(*1*) Adequate documentation on the costs;

(*2*) The contract auditor's opinion on the allowability of the costs.

(B) Whenever possible, invite the contract auditor to serve as an advisor at any negotiation or meeting with the contractor on the determination of the contractor's final indirect cost rates.

(C) Ensure that all categories of costs designated in the report of the defense contract auditor, as questioned with respect to a proposal for settlement, are resolved in such a manner that the amount of the individual questioned costs considered allowable will be reflected in the negotiation memorandum.

(4) Notify the contractor of the individual costs which were considered unallowable and the respective amounts of the disallowance.

242.705–2 Auditor determination procedure.

(b) *Procedures.*

(2)(iii) The contractor and the auditor shall sign the agreement.

(v) When agreement cannot be reached with the contractor, the auditor will issue a DCAA Form 1, Notice of Contract Costs Suspended and/or Disapproved, in addition to the advisory report to the administrative contracting officer. The DCAA Form 1 details the items of exception and advises the contractor that requests for reconsideration should be submitted in writing to the administrative contracting officer.

242.770 Certificate of indirect costs.

242.770–1 General.

This section implements 10 U.S.C. 2324(h).

242.770–2 Procedure.

(a) Do not accept any proposal to establish billing rates or final indirect cost rates unless the costs have been certified by the contractor using the certificate of indirect costs in the clause at 252.242–7001, Certification of Indirect Costs.

(b) Do not agree to billing rates or final indirect cost rates unless they are based on a certified proposal.

242.770–3 Waiver of certification.

(a) The agency head may waive the certification requirement when—

(1) It is determined to be in the interest of the United States; and

(2) The reasons for the determination are put in writing and made available to the public.

(b) Waivers may be appropriate for contracts with—

(1) Foreign governments or international organizations, such as subsidiary bodies of the North Atlantic Treaty Organization;

(2) State and local governments that are subject to OMB Circular A-87;

(3) Educational institutions subject to OMB Circular A-21; and

(4) Nonprofit organizations subject to OMB Circular A-122.

242.770-4 Failure to certify.

(a) If the contractor has not certified its proposal for billing rates or indirect cost rates and a waiver is not appropriate, the contracting officer shall unilaterally establish the rates if they are necessary for continuation of the contract.

(b) Rates established unilaterally should be—

(1) Based on audited historical data or other available data as long as unallowable costs are excluded; and

(2) Set low enough to ensure that potentially unallowable costs will not be reimbursed.

242.770-5 Penalties for unallowable costs.

10 U.S.C. 2324 (a) through (d) prescribes penalties for submission of unallowable costs in final indirect cost rate proposals (see subpart 231.70 for penalties and administrative contracting officer responsibilities).

242.770-6 Contract clause.

Use the clause at 252.242-7001, Certification of Indirect Costs, in all solicitations and contracts which provide for—

(a) Interim reimbursement of indirect costs;

(b) Establishment of final indirect cost rates; or

(c) Contract financing that includes interim payment of indirect costs, e.g., progress payments based on cost (FAR subpart 32.5) or progress payments based on percentage or stage of physical completion.

Subpart 242.8—Disallowance of Costs

242.801 Notice of intent to disallow costs.

(e) A corporate administrative contracting officer need not obtain the approval of the individual administrative contracting officers to disallow items of corporate expense.

242.803 Disallowing costs after incurrence.

(a) *Contracting officer receipt of vouchers.* Contracting officer receipt of vouchers is applicable only for cost-reimbursement contracts with the Canadian Commercial Corporation. See 225.870-5(b) for invoice procedures.

(b) *Auditor receipt of voucher.*

(i) The contract auditor is the authorized representative of the contracting officer for—

(A) Receiving vouchers from contractors;

(B) Approving interim vouchers for provisional payment (this includes approving the fee portion of vouchers in accordance with the contract schedule and administrative contracting officer instructions) and sending them to the disbursing office;

(C) Reviewing completion/final vouchers and sending them to the administrative contracting officer; and

(D) Issuing DCAA Forms 1, Notice of Contract Costs Suspended and/or Disapproved, to deduct costs where allowability is questionable.

(ii) The administrative contracting officer—

(A) Approves all completion/final vouchers and sends them to the disbursing officer; and

(B) May issue or direct the issuance of DCAA Form 1 on any cost when there is reason to believe it should be suspended or disallowed.

Subpart 242.10—Negotiating Advance Agreements for Independent Research and Development/Bid and Proposal Costs

242.1005 Lead negotiating agency responsibilities.

(b) Include in the technical evaluation an opinion on the potential relationship of proposed IR&D/B&P projects to relevancy requirements in 231.205-18.

(c) Include in the determination the potential relationship of proposed IR&D/B&P projects to the relevancy requirements in 231.205-18.

242.1006 Conducting negotiations.

(a)(5) Ensure that the requirements of 231.205-18 are met.

242.1007 Content of advance agreements.

(e) The agreement shall specifically note that—

(i) A relevancy review was performed; and

(ii) A determination was made that the Government's allocable share of the negotiated ceiling met the relevancy test at the time of negotiation.

(f)(2) Only costs incurred for IR&D/B&P projects meeting the ceiling requirements of FAR 31.205-18 and the relevancy requirements of 231.205-18 are allowable.

242.1008 Administrative appeals.

Department/agency appeals hearing groups shall have three members—acquisition, technical, and legal. The acquisition member shall be the chairperson. Determinations of the appeals hearing groups are final decisions.

Subpart 242.11—Production Surveillance and Reporting

242.1104 Surveillance requirements.

(a)(i) During its initial review of the contract, the contract administration office (CAO) determines the extent of production surveillance to be performed by assigning contracts to one of three surveillance categories—

(A) Category 1 surveillance consists of review and evaluation of the contractor's plan for production and progress toward successful accomplishment of the plan. Contracts needing category 1 surveillance are normally—

(*1*) Criticality designator A; and

(*2*) Complex; or

(*3*) With contractors having a poor performance history in general or on the same or similar items or services.

(B)(*1*) Category 2 surveillance consists of inquiries to or meetings with the contractor to—

(*i*) Determine whether the contractor will perform on schedule;

(*ii*) Investigate the cause and duration of any anticipated delay; and

(*iii*) Perform periodic follow-up and expediting of supplies or services not delivered on time.

(*2*) Contracts needing category 2 surveillance are normally—

(*i*) Criticality designator A contracts not assigned to category 1; or

(*ii*) Criticality designator B contracts where the contractor has a poor production performance history.

(C) Category 3 surveillance includes inquiry and expediting effort 30 days after the contractor fails to deliver or perform within the schedule, and periodically thereafter. Contracts not otherwise assigned belong in category 3, i.e.—

(*1*) Criticality designator B contracts not assigned to category 2; and

(*2*) Criticality C contracts.

(ii) Regardless of assigned category, if the contract administration office (CAO) sends the contracting office a report on an actual or anticipated delinquency, the CAO shall provide continuous information on the problems causing the delinquency and the corrective actions being taken. Delinquency includes the contractor's failure, regardless of reason, to—

(A) Meet the contract delivery or performance schedule; or

(B) Maintain performance progress necessary to meet the contract delivery or performance schedule.

(b) The CAO shall assign a surveillance category regardless of the contract's dollar value.

242.1105 Assignment of criticality designator.

(1) Contracting officers shall—

(i) Assign criticality designator A to items with a priority 01, 02, 03, or 06 (if emergency supply of clothing) under DoD Directive 4410.6, Uniform Materiel Movement and Issue Priority System; and

(ii) Ordinarily assign criticality designator C to unilateral purchase orders.

(2) Only the contracting officer shall change the assigned designator.

242.1106 Reporting requirements.

(a) See also—

(i) DoDI 7000.10, Contract Cost Performance, Funds Status and Cost/Schedule Status Reports; and

(ii) For cost/schedule control system requirements on major systems acquisitions, 234.005–70.

(b)(i) Within 4 working days after receipt of the contractor's report, the contract administration office (CAO) shall provide the report and any required comments to the contracting officer and, unless otherwise specified in the contract, the inventory control manager.

(ii) If the contractor's report indicates that the contract is on schedule and the CAO agrees, the CAO does not need to add further comments. In all other cases, the CAO shall add comments and recommend a course of action.

(c)(i) CAOs may report using—

(A) DD Form 375–2, Delay in Delivery (Flash Notice);

(B) DD Form 375, Production Progress Report;

(C) MILSCAP Revised Delivery Forecast (RDF) system; or

(D) Message, letters, or facsimile.

(ii) The contracting office shall acknowledge receipt of the CAO report.

242.1107 Contract clause.

(b) When using the clause at FAR 52.242–2, include the following instructions in the contract schedule—

(i) Frequency and timing of reporting (normally 5 working days after each reporting period);

(ii) Contract line items, exhibits, or exhibit line items requiring reports;

(iii) Offices (with addressees/codes) where reports should be sent (always include the contracting office and contract administration office); and

(iv) The following requirements for report content—

(A) The problem, actual or potential, and its cause;

(B) Items and quantities affected;

(C) When the delinquency started or will start;

(D) Actions taken to overcome the delinquency;

(E) Estimated recovery date; and/or

(F) Proposed schedule revision.

242.1107-70 Additional clauses.

When cost/schedule status reporting (C/SSR) is required on acquisitions for other than major systems (i.e., the Contract Data Requirements List includes DI–F–6010A), use in solicitations and resulting contracts the clause at 252.242–7005, Cost/Schedule Status Report. Cost/schedule status reporting normally is not imposed on contracts of less than $10 million.

Subpart 242.12—Novation and Change-of-Name Agreements

242.1203 Processing agreements.

(b)(1) For contracts awarded by the Military Departments, provide notices to the following addressees instead of individual contracting or contract administration offices—

Army	HQ, U.S. Army Material Command, ATTN: AMOCC-P, 5001 Eisenhower Avenue, Alexandria, VA 22333-0001.
Navy	Office of the Assistant Secretary of the Navy (RDA) Procurement Policy, Washington, DC 20350–1000.
Air Force	HQ, U.S. Air Force Systems Command, ATTN: PKCP, Andrews AFB, DC 20334-5000.
National Aeronautics and Space Administration.	National Aeronautics and Space Administration, Assistant Administrator for Procurement, ATTN: HP, Washington, DC 20546.

(2)(A) Lists for notices of a successor in interest should include the information at FAR 42.1204(c)(2).

(B) Lists for notices of a name change should include the information at FAR 42.1205(a)(3).

(C) On notices sent to the addressees in paragraph (b)(1) of this section, include a consolidated list for all subordinate contracting offices of the addressee.

(d)(i) Before making any substantial alterations or additions to the novation agreement format at FAR 42.1204(e), coordinate with those addressees in paragraph (b)(1) of this section that have contracts with the contractor. Resolve any objections before executing the agreement.

(ii) If the National Aeronautics and Space Administration (NASA) wants a separate agreement with the contractor, continue to process the agreement only for DoD.

(e) Also, make distribution to—

(i) The addressees in paragraph (b)(1) of this section—two copies; and

(ii) The appropriate Military Traffic Management Command (MTMC) area command for agreements affecting contracts and basic agreements for storage and related services for personal property of military and civilian personnel—two copies—

Commander	Commander.
Eastern Area	Western Area.
Military Traffic Management Command.	Military Traffic Management Command.
ATTN: MTE-LO	Oakland Army Base.
Bayonne, NJ 07002	ATTN: MTW-LO, Oakland, CA 94626.

(f)(4)Additional distribution instructions—

(A) Send two copies to the address in paragraph (b)(1) of this section. The list of contracts may be confined to those issued by that department.

(B) Do not send copies to NASA or the MTMC commands in paragraph (e)(ii). They will issue their own modifications.

Subpart 242.14—Traffic and Transportation Management

242.1401 General.

(b)(12) Chapter 39 of the Defense Traffic Management Regulation (DTMR) (AR 55–355, NAVSUPINST 4600.70, AFM 75–2, MCO P4600 14A, DLAR 4500.3) contains methods for tracing and expediting shipments.

242.1402 Volume movements within the continental United States.

(a)(2) In reporting planned and actual volume movements—

(A) The contracting officer—

(*1*) Provides production schedules and planned destinations to the servicing transportation office as soon as the information is available to permit the transportation office to determine if volume movements will occur. If a volume movement appears likely, the transportation office reports a planned volume movement under chapters 12 and 13 of the DTMR.

(*2*) Sends a copy of the volume movement report to the contract administration office.

(B) The contract administration office submits a volume movement report when—

(*1*) Significant changes are made to the movement requirements; or

(*2*) The contracting office did not submit a report.

(C) Include the destination country, foreign forwarder, and, if known, port of embarkation on volume movement reports for foreign military sale shipments.

242.1403 Shipping documents covering f.o.b. origin shipments.

(a)(i) Procedures for the contractor to obtain Government bills of lading are in the clause at 252.242-7003, Application for U.S. Government Shipping Documentation/Instructions.

(ii) The term commercial bills of lading includes the use of any commercial form or procedure. Appendix J of the DTMR lists carriers and carrier associations that provide transportation within the continental United States under commercial forms and procedures.

242.1404 Shipments by parcel post or other classes of mail.

242.1404-2 Contract clauses.

When using FAR 52.213-1, Fast Payment Procedures, do not use FAR clauses 52.242-10, F.o.b. Origin—Government Bills of Lading or Prepaid Postage, or 52.242-11, F.o.b. Origin—Government Bills of Lading or Indicia Mail.

242.1404-2-70 Additional clauses.

(a) Use the clause at 252.242-7002, Submission of Commercial Freight Bills for Audit, when the Government will reimburse contractor transportation costs under a cost reimbursement contract.

(b) Use the clause at 252.242-7003, Application for U.S. Government Shipping Documentation/Instructions, when using the clause at FAR 52.242-10, F.o.b. Origin—Government Bills of Lading or Prepaid Postage, or FAR 52.242-11, F.o.b. Origin—Government Bills of Lading or Indicia Mail.

242.1405 Discrepancies incident to shipment of supplies.

(a) See also chapter 41 of the Defense Traffic Management Regulation (DTMR) for discrepancy procedures.

242.1470 Demurrage and detention charges.

(a) Procedures for payment or collection of demurrage or detention charges are contained in chapter 38 of the DTMR.

(b) Carrier demurrage rules usually allow for a "free time" for loading or unloading cars or for any other purpose, and impose charges for cars held beyond this period. If a contractor detains railroad cars beyond the "free time," the contractor has to pay the carrier's published tariff charges for demurrage.

(c) Detention results when a shipper or consignee holds motor carrier equipment beyond a reasonable period for loading, unloading, forwarding directions, or any other reason. Detention rules and charges are not uniform; they are published in individual carrier or agency tenders.

Subpart 242.70—Monitoring Contractor Costs

242.7000 Scope.

This subpart provides guidelines for—

(a) Monitoring the policies, procedures, and practices used by contractors to control direct and indirect costs related to Government business; and

(b) Eliminating duplication in Government monitoring of contractors' costs.

242.7001 Policy.

Effective management of contract costs is essential to the efficient and economical performance of Government contracts. Contractors are responsible for managing and controlling their direct and indirect costs; however, DoD must systematically monitor the management of contractors' costs to ensure these responsibilities are met.

242.7002 Responsibilities.

242.7002-1 Departments and agencies.

(a) Departments and agencies should conduct a formal program of Government monitoring of contractor policies, procedures, and practices for controlling costs (cost monitoring) at—

(1) All major contractor locations when—

(i) Sales to the Government during the contractor's next fiscal year are expected to exceed $100 million on other than firm fixed-price and fixed-price with escalation contracts;

(ii) The contract administration office determines the cost benefits to be derived from monitoring the individual contractors with less than $100 million in other than firm fixed-price and fixed-price with escalation contracts would be warranted; or

(iii) The Government's share of indirect costs for these sales is at least 50 percent of the total indirect costs.

(2) Other critical locations with significant Government business where specifically directed by the head of the contracting activity.

(b) Departments and agencies are responsible for designating the cost monitoring sites and discontinuing them when the criteria are no longer met.

242.7002-2 Contract administration offices.

(a) Contract administration offices (CAOs) which are designated as cost monitoring sites are responsible for assigning a cost monitoring specialist (CMS) to conduct the program. The CMS may be the administrative contracting officer or any other CAO employee whose normal function relates to evaluation of contractor performance.

(b) The administrative contracting officer is responsible for—

(1) Forwarding cost monitoring review reports to the contractor;

(2) Considering review results in contract negotiations;

(3) Ensuring the contractor implements corrective action recommended in the cost monitoring review reports; and

(4) Resolving disputes with the contractor regarding cost monitoring review findings, conclusions, or recommendations.

(c) The cost monitoring coordinator is responsible for managing the cost monitoring effort within the CAO and coordinating planned effort with the contract auditor. This includes—

(1) Preparing and maintaining an annual written cost monitoring plan for reviewing contractor operations (see 242.7003);

(2) Maintaining an inventory of CAO, Defense Contract Audit Agency, and other Government reports on significant issues relating to monitoring costs;

(3) Performing in-depth functional reviews of contractor activities, including assisting Government personnel in obtaining access to pertinent contractor policies, procedures, and related data;

(4) Advising the administrative contracting officer (ACO) and CAO management of corrective action recommended to improve inefficient or uneconomical contractor conditions, policies, or practices, including preparing, for the ACO's consideration when appropriate, a Notice of Intent to Disallow or Not Recognize Costs;

(5) Continuously tracking the status of recommendations made to the contractor concerning cost performance stemming from all Government reports;

(6) Keeping the contracting officer, program manager, contract auditor, and other responsible officials informed of issues affecting economical contract performance; and

(7) Maintaining current organizational charts of the operations identifiable to the contractor's functional centers of its cost control functions.

242.7002-3 Audit and other organizations.

(a) The contract auditor is responsible for assisting the CMS by performing the portion of cost monitoring reviews and related analyses which requires access

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(1) Preparing and maintaining an annual written cost monitoring plan for reviewing contractor operations (see 242.7003);

(2) Maintaining an inventory of CAO, Defense Contract Audit Agency, and other Government reports on significant issues relating to monitoring costs;

(3) Performing in-depth functional reviews of contractor activities, including assisting Government personnel in obtaining access to pertinent contractor policies, procedures, and related data;

(4) Advising the administrative contracting officer (ACO) and CAO management of corrective action recommended to improve inefficient or uneconomical contractor conditions, policies, or practices, including preparing, for the ACO's consideration when appropriate, a Notice of Intent to Disallow or Not Recognize Costs;

(5) Continuously tracking the status of recommendations made to the contractor concerning cost performance stemming from all Government reports;

(6) Keeping the contracting officer, program manager, contract auditor, and other responsible officials informed of issues affecting economical contract performance; and

(7) Maintaining current organizational charts of the operations identifiable to the contractor's functional centers of its cost control functions.

242.7002-3 Audit and other organizations.

(a) The contract auditor is responsible for assisting the CMS by performing the portion of cost monitoring reviews and related analyses which requires access

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to the contractor's financial and accounting records supporting proposed cost or pricing data. (This does not preclude the program manager, contracting officer, ACO, cost monitoring coordinator, or other representatives from reviewing contractor records and data necessary to the performance of their duties.)

(b) Audit organizations, program offices, contracting activities, and any other organizations within DoD with responsibility for reviewing contractor operations for the purpose of monitoring contractor policies, procedures, and practices to control costs, shall submit to the cost monitoring coordinator—

(1) An annual schedule of planned and tentative visits, oversight reviews, and audits to be performed at cost monitoring locations (see 242.7003); and

(2) Revisions to scheduled visits or audit plans, within 30 days of issuance.

242.7003 Annual cost monitoring plan.

242.7003-1 Description.

The annual cost monitoring plan—

(a) Is a schedule for reviewing contractor activities that have the greatest potential for charging Government contracts with significant amounts of unacceptable costs; and

(b) Should stress the performance of in-depth functional reviews to detect deficiencies in policies, practices, and procedures.

242.7003-2 Selecting the activities.

(a) The cost monitoring specialist (CMS), assisted by the contract auditor, ultimately selects the activities for the plan. To ensure that all Government interests are considered in the selection, the CMS should invite contract administration office (CAO), Defense Contract Audit Agency (DCAA), and other interested Government representatives to a meeting before the beginning of each Government fiscal year to identify areas to be reviewed during the coming year.

(b) The selection team should consider the following data in the selection process—

(1) Contractor forecasts for the coming year supporting direct and indirect costs by functional centers of its cost control system and the results of the latest survey performed of such systems (DCAA responsibility);

(2) Organizational charts for the contractor's entire operation (CAO responsibility);

(3) Outline of the contractor's accounting system showing the flow of costs by function (DCAA responsibility);

(4) Determination of Government participation in the dollars attributable to the operations and cost accounts under consideration (DCAA responsibility);

(5) List of recent reviews and audits performed by CAO, DCAA, and other Government representatives that would affect the selection; list should show outstanding weakness and deficiencies in the contractor's operations (CAO responsibility);

(6) Evidence of under and over staffing (CAO-DCAA responsibility);

(7) Significant departures from established contractor productivity standards (CAO responsibility);

(8) Major financial variances from forecasts in prior years (DCAA responsibility);

(9) Evidences of idle or under-used capacity (CAO-DCAA responsibility); and

(10) Any visits or audit plans scheduled by other Government organizations and identified to the CMC (CAO responsibility).

242.7003-3 Tailoring the plan.

The cost monitoring specialist should tailor the plan to review contractor activity, considering—

(a) The extent of competition in awarded contracts;

(b) The contractor's operating methods;

(c) The nature of the work;

(d) Acquisition cycle stage;

(e) Business and industry practices;

(f) Types of contracts involved;

(g) Degree of technical and financial risk;

(h) Ratio of Government/commercial work; and

(i) Extent that performance efficiencies have been previously demonstrated.

242.7003-4 Contents of the plan.

(a) The plan should—

(1) Provide coverage for each significant activity of the contractor over a period of two to three years;

(2) Be updated to reflect changed conditions as the year progresses; and

(3) Be consistent with any schedule and resource limitations of participating organizations.

(b) The plan must identify the organizations having the primary responsibility for performing the reviews—

(1) The contract administration office (CAO) reviews, and signs reports on, the technical aspects of contractor activities requiring minimal or no access to contractor financial and accounting records;

(2) DCAA reviews, and signs reports on, the financial and accounting aspects of contractor operations requiring minimal or no technical consideration; and

(3) The cost monitoring specialist and DCAA jointly review, and jointly sign reports on, activities requiring significant CAO and DCAA expertise.

(c) The plan should include reviews required by the contracting officer and DFARS. Reviews will be performed by the assigned organization in paragraph (b) of this subsection, except when DFARS makes a specific organizational assignment. For example, Subpart 244.3 makes the CAO responsible for leading contractor purchasing system reviews and 215.811 makes the DCAA auditor responsible for leading estimating system reviews.

242.7003-5 Plan approval.

The heads of the local contract administration and Defense Contract Audit Agency offices approve the annual cost monitoring plan.

242.7004 Reviews.

(a) Perform reviews as scheduled in accordance with the plan.

(b) Hold interim meetings with the contractor as necessary to clarify information. Hold an exit conference at the conclusion of reviews.

(c) Prepare reports at the conclusion of reviews. Reports on joint reviews shall represent the mutually agreed upon findings, conclusion, and recommendations of the Defense Contract Audit Agency auditor and the contract administration office. Forward all reports through the administrative contracting officer to the contractor.

Subpart 242.71—Voluntary Refunds

242.7100 General.

(a) A voluntary refund is a payment or credit (adjustment under one or more contracts or subcontracts) to the Government from a contractor or subcontractor which is not required by any contractual or other legal obligation.

(b) A voluntary refund may be solicited (requested by the Government) or unsolicited.

(1) Generally, request voluntary refunds only after determining that no contractual remedy is readily available to recover the amount sought.

(2) Acceptance of unsolicited refunds does not prejudice remedies otherwise available to the Government.

(c) Before soliciting a voluntary refund or accepting an unsolicited one, the contracting officer should have legal counsel review the contract and related data to—

(1) Confirm that there are no readily available contractual remedies; and

(2) Advise whether the proposed action would jeopardize or impair the Government's rights.

242.7101 Solicited refunds.

(a) Request voluntary refunds only when—

(1) The contracting officer concludes that the contractor overcharged under a contract, or inadequately compensated the Government for the use of Government-owned property, or inadequately compensated the Government in the disposition of contractor inventory; and

(2) Retention of the amount in question by the contractor or subcontractor would be contrary to good conscience and equity.

(b) Do not solicit voluntary refunds without approval of the head of the contracting activity, or as provided in department/agency regulations.

(c) Voluntary refunds may be requested during or after contract performance.

242.7102 Disposition of voluntary refunds.

A contract modification, rather than a check, is the preferred means of effecting a solicited or unsolicited refund transacted before final payment.

(a) For modifications, adjust the price for the refund and credit the refund to the applicable appropriation cited in the contract.

(b) For checks—

(1) Advise the contractor to—

(i) Make the check payable to the agency which awarded the contract;

(ii) Forward the check to the contracting officer or when the contract is assigned to another office for administration, to that office; and

(iii) Include a letter with the check—

(A) Identifying it as a voluntary refund;

(B) Giving the contract number involved; and

(C) Where possible, giving the appropriation and account number to be credited.

(2) Forward the check to the office responsible for control of funds.

Subpart 242.72—Contractor Material Management and Accounting System

242.7200 Scope of subpart.

This subpart provides policies, procedures, and standards for use in the evaluation of a contractor's material management and accounting system (MMAS).

242.7201 Definitions.

Material management and accounting system and *valid time-phased requirements* are defined in the clause at 252.242-7004, Material Management and Accounting System.

242.7202 Policy.

DoD policy is for all contractors to have an MMAS that—

(a) Reasonably forecasts material requirements;

(b) Ensures the costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements;

(c) Maintains a consistent, equitable, and unbiased logic for costing of material transactions; and

(d) Conforms to the standards at 252.242-7004(f), except when all of the contracts and subcontracts are—

(1) Awarded under the set-aside procedures of FAR part 19;

(2) Greater than the small purchase threshold set forth in FAR part 13; and

(3) Cost reimbursement or fixed-price contracts with progress or other contract financing provisions.

242.7203 MMAS disclosure, demonstration, and maintenance requirements.

A large business contractor is subject to MMAS disclosure, demonstration, and maintenance if in its preceding fiscal year the contractor received DoD prime contracts or subcontracts (including modifications) totaling—

(a) $50 million or more; or

(b) $10 million or more (but less than $50 million); and

(c) The contracting officer determines it to be in the best interests of the Government (e.g., significant MMAS problems are believed to exist).

242.7204 Responsibilities.

(a) The contracting officer shall—

(1) Through use of the clause at 252.242-7004, Material Management and Accounting System, apply the disclosure, demonstration, and maintenance requirements to large business contractors meeting the criteria in 242.7203;

(2) Consider whether to apply the disclosure, demonstration, and maintenance requirements to other large business contractors under 242.7203(b) after concurrence from, or at the request of, the administrative contracting officer; and

(3) Not apply the disclosure, demonstration, and maintenance requirements to small businesses, educational institutions, or nonprofit organizations.

(b) For contractors subject to the disclosure, demonstration, and maintenance requirements, the administrative contracting officer (ACO) determines the adequacy of the contractor's MMAS and pursues correction of deficiencies.

(c) The contract auditor shall—

(1) Assist the ACO in evaluating the contractor's MMAS;

(2) Assess the significance of contractor deficiencies and provide the ACO an estimate of the resulting adverse material impact to the Government; and

(3) Assist the ACO in evaluating the contractor's correction of deficiencies.

242.7205 Review procedures.

(a) *System Evaluation.* Cognizant contract administration and audit activities shall jointly establish and manage programs for evaluating the MMAS systems of contractors subject to disclosure, demonstration, and maintenance requirements and annually establish a schedule of contractors to be reviewed. They shall—

(1) Conduct reviews as a team effort.

(i) The administrative contracting officer—

(A) Appoints a team leader; and

(B) Ensures that the team includes appropriate functional specialists (i.e., industrial specialists, engineer, property administrator, auditor, etc.).

(ii) The team leader—

(A) Advises the ACO and contractor of findings during the review and at the exit conference.

(B) Makes every effort to resolve differences regarding questions of fact during the review.

(2) Tailor reviews to take full advantage of the day-to-day work done by both organizations.

(3) Prepare a review report.

(4) Conduct a review every 3 years. The ACO, with advice from the auditor, may lengthen or shorten the 3 year period based on a risk assessment of the contractor's past experience and current vulnerability.

(b) *Disposition of evaluation team findings.* The team leader shall document the evaluation team findings and recommendations in a report to the ACO. If there are significant MMAS deficiencies, the report must provide an estimate of the adverse impact on the Government resulting from those deficiencies.

(1) *Initial notification to the contractor.* The ACO shall immediately provide a copy of the report to the contractor upon receipt from the team leader.

(i) The ACO shall notify the contractor in a timely manner if there are no deficiencies.

(ii) If there are deficiencies, the ACO shall request the contractor to provide a

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(c) The contract auditor shall—

(1) Assist the ACO in evaluating the contractor's MMAS;

(2) Assess the significance of contractor deficiencies and provide the ACO an estimate of the resulting adverse material impact to the Government; and

(3) Assist the ACO in evaluating the contractor's correction of deficiencies.

242.7205 Review procedures.

(a) *System Evaluation.* Cognizant contract administration and audit activities shall jointly establish and manage programs for evaluating the MMAS systems of contractors subject to disclosure, demonstration, and maintenance requirements and annually establish a schedule of contractors to be reviewed. They shall—

(1) Conduct reviews as a team effort.

(i) The administrative contracting officer—

(A) Appoints a team leader; and

(B) Ensures that the team includes appropriate functional specialists (i.e., industrial specialists, engineer, property administrator, auditor, etc.).

(ii) The team leader—

(A) Advises the ACO and contractor of findings during the review and at the exit conference.

(B) Makes every effort to resolve differences regarding questions of fact during the review.

(2) Tailor reviews to take full advantage of the day-to-day work done by both organizations.

(3) Prepare a review report.

(4) Conduct a review every 3 years. The ACO, with advice from the auditor, may lengthen or shorten the 3 year period based on a risk assessment of the contractor's past experience and current vulnerability.

(b) *Disposition of evaluation team findings.* The team leader shall document the evaluation team findings and recommendations in a report to the ACO. If there are significant MMAS deficiencies, the report must provide an estimate of the adverse impact on the Government resulting from those deficiencies.

(1) *Initial notification to the contractor.* The ACO shall immediately provide a copy of the report to the contractor upon receipt from the team leader.

(i) The ACO shall notify the contractor in a timely manner if there are no deficiencies.

(ii) If there are deficiencies, the ACO shall request the contractor to provide a

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written response within 30 days from the date of initial notification.

(iii) If the contractor agrees with the report, the contractor has 60 days to correct any identified deficiencies or submit a corrective action plan showing milestones and actions to eliminate the deficiencies.

(iv) If the contractor disagrees, request rationale in the written response.

(2) *Evaluation of the contractor's response.* The administrative contracting officer, in consultation with the auditor, evaluates the contractor's response and determines whether—

(i) The MMAS contains deficiencies which need correction;

(ii) The deficiencies are significant enough to result in the reduction or suspension of progress payments or of payments under public vouchers; and

(iii) Proposed corrective actions (if the contractor submitted them) are adequate to correct the deficiencies.

(3) *Reduction or Suspension of payments.* (i) When the administrative contracting officer (ACO) determines that there is a significant MMAS deficiency, the ACO shall reduce progress payment claims by an appropriate percentage based on affected costs (in accordance with FAR 32.503–6) and/or suspend questionable costs on public vouchers in accordance with FAR 42.803). The reductions or suspensions shall remain in effect until the ACO determines that—

(A) The deficiencies are corrected; or

(B) The amount of the impact is immaterial.

(ii) The maximum payment adjustment is the adverse material impact to the Government as specified in the team's report. The ACO should use the maximum adjustment when the contractor did not submit a corrective action plan with its response, or the plan is unacceptable. In other cases, the ACO should consider the quality of the contractor's self-assessment, demonstration, and corrective action plan in determining the appropriate percentage.

(iii) As the contractor implements its accepted corrective action plan, the ACO should reinstate a portion of withheld amounts commensurate with the contractor's progress in making corrections. However, the ACO shall not fully reinstate withheld amounts until the contractor corrects the deficiency, or until the impact of the deficiency becomes immaterial.

(4) *Notification of administrative contracting officer determination.* (i) The administrative contracting officer (ACO) shall notify the contractor in writing (copy to auditor and functional specialists) of—

(A) Deficiencies needing correction;

(B) Acceptability of the contractor's corrective action plan (if one was submitted) or the need for a corrective action plan; and

(C) Any decision to reduce or suspend progress payments or public vouchers because of significant deficiencies.

(ii) The Government does not approve or disapprove the contractor's MMAS system. ACO notifications should avoid any such implications.

(iii) From the time the ACO determines that there is a significant material management and accounting system deficiency until the time the deficiency is corrected, all field pricing reports for that contractor shall contain a recommendation relating to proposed cost or pricing data adjustments necessary to protect the Government's interests.

(iv) The ACO should consider the effect of significant MMAS deficiencies in reviews of the contractor's estimating system (215.811).

(5) *Monitoring contractor's corrective action.* The administrative contracting officer (ACO) and auditor shall monitor the contractor's progress in correcting deficiencies. If the contractor fails to make adequate progress, the ACO shall take further action. Actions for consideration may include—

(i) Elevate the issue to higher level management;

(ii) Further reduce or suspend progress payments;

(iii) Notify the contractor of the inadequacy of the contractor's cost estimating system and/or cost accounting system.

(iv) Take appropriate contractual action, i.e., disallow charges as unreasonable; and

(v) Issue cautions to contracting activities regarding the award of future contracts.

242.7206 Contract clause.

Use the clause at 252.242–7004, Material Management and Accounting System, in all solicitations and contracts which exceed the small purchase limitation in FAR 13.000 and—

(a) Are not awarded under the set-aside or section 8(a) procedures of FAR part 19; and

(b) Are either—

(1) Cost-reimbursement contracts; or

(2) Fixed-price contracts with progress payments or other Government financing.

Subpart 242.73—Contractor Insurance/Pension Review

242.7300 Scope of subpart.

This subpart provides the requirements for conducting a Contractor Insurance/Pension Review (CIPR).

242.7301 General.

(a) The administrative contracting officer (ACO) is responsible for determining the reasonableness of insurance/pension costs in Government contracts. Insurance/pension specialists assist ACOs in making these determinations by conducting CIPRs. A CIPR is an in-depth evaluation of a contractor's—

(1) Insurance program;

(2) Pension plan;

(3) Other deferred compensation plans; and

(4) Related policies, procedures, practices, and costs.

(b) As the DoD Executive Agency, the Defense Logistics Agency performs CIPRs at all contractor locations meeting criteria in 242.7302.

(c) Insurance/pension specialists are located at the Defense Contract Management Districts in Los Angeles and Chicago and at the Defense Contract Management Area Operations in New York.

(d) The CIPR should be the only formal review of a contractor's insurance/pension program except for periodic tests of the system performed by contract administration and DCAA, or any special reviews initiated by the administrative contracting officer. If any organization believes that additional reviews of the contractor's insurance/pension program should be performed, that request should be conveyed to the ACO. The ACO should perform the review as part of an ACO-initiated special review, or if possible, as part of the CIPR if one is scheduled to be conducted in the near future.

242.7302 Requirements.

(a) A CIPR shall be conducted for each contractor whose sales to the Government, using other than sealed bid procedures, are expected to exceed $10 million during the next 12 months. Such sales include those represented by prime contracts, subcontracts under Government prime contracts, and modifications to either (except when the negotiated price is based on established catalog or market prices). Reviews of selected insurance and pension elements may be conducted for contractors not meeting these criteria if significant problems have been identified.

(b) A CIPR shall be conducted at least every two years for contractors who continue to meet the requirements. A more or less frequent cycle may be appropriate under certain circumstances, e.g., prior to a major contract award, in conjunction with in-depth overhead review, or subsequent to mergers or divestitures.

(c) Special reviews may be performed in the intervening period—

(1) To follow-up contractor implementation of recommendations and verify Government recovery of credits; or

(2) When information reveals a deficiency or major change in the contractor's insurance/pension program.

242.7303 Responsibilities.

(a) The administrative contracting officer is responsible for—

(1) Determining the need for a CIPR or special review under 242.7302;

(2) Requesting and scheduling the reviews with the appropriate Defense Logistics Agency activity;

(3) Notifying the contractor of the proposed date and purpose of the review, and obtaining any preliminary data needed by the insurance/pension specialist;

(4) Reviewing the CIPR report, advising the contractor of the results, and telling the contractor to submit any significant changes in insurance/pension plans for review and acceptance prior to making the change;

(5) Providing other interested contracting officers copies of documents related to the CIPR; and

(6) Ensuring adequate follow-up on all CIPR recommendations.

(b) The insurance/pension specialist is responsible for—

(1) Preparing and maintaining the schedule of CIPRs to be performed during the next 12 months and providing the Military Departments and Defense Contract Audit Agency a copy of the schedule;

(2) Heading the team that conducts the review;

(3) Maintaining complete documentation for CIPR reports;

(4) To the extent possible, resolving discrepancies between audit reports and CIPR draft reports prior to releasing the final CIPR report;

(5) Preparing and distributing the final CIPR report;

(6) Providing the final audit report as an attachment to the CIPR report;

(7) Preparing a draft letter for the administrative contracting officer's use in notifying the contractor of CIPR results; and

(8) When requested, advising administrative contracting officers and other Government representatives concerning contractor insurance/pension matters.

(c) The Defense Contract Audit Agency auditor is responsible for—

(1) Participating as a member of the CIPR team;

(2) Submitting information and advice to the team based on analysis of the contractor's books, accounting records, and other related data; and

(3) Issuing an audit report to the insurance/pension specialist for incorporation into the final CIPR report.

Subpart 242.74—Technical Representation at Contractor Facilities

242.7400 General.

(a) Contract administration offices (CAOs) are the designated representatives of DoD for the administration of contracts (see FAR 42.202 and 42.302). DoD activities shall use CAOs to perform contract administration service functions at or near contractor facilities (see 242.203(a)(i) and (v).

(b) Program managers may conclude that they need technical representation in contractor facilities to perform non-contract administration service (CAS) technical duties and to provide liaison, guidance, and assistance on systems and programs. In these cases, the program manager may assign technical representatives under the procedures in 242.7401.

(c) Program managers should carefully assess the number of technical representatives required to perform the non-CAS technical functions so as to keep the total assigned in-plant to the minimum necessary.

(d) A technical representative is a representative of a DoD program, project, or system office performing non-CAS technical duties at or near a contractor facility. A technical representative is not—

(1) A representative of a contract administration or contract audit component; or

(2) A contracting officer's representative (COR) (see 201.602).

242.7401 Procedures.

(a) When the program, project, or system manager determines that a technical representative is required, the manager shall issue a letter of intent to the contract administration office commander listing the assignment location, starting and ending assignment dates, technical duties assigned, delegated authority, and support required from the contract administration office. Any issues regarding the assignment of a technical representative should be resolved promptly. However, final decision on the assignment remains with the program manager. Issues regarding the assignment of technical duties which cannot be resolved between the program office and the defense plant representative office will be escalated.

(b) The program, project, or system manager shall furnish the designated technical representative a letter of assignment of delegated technical duties, with copies to the contract administration office, the contracting officer, and contractor, at least 30 days before the assignment date (or termination date). Any changes to the requirements of the assignment letter will be made by a new letter of intent and processed in accordance with paragraph (a) of this section.

(c) The contract administration office normally provides the technical representative with office space, equipment, supplies, and part-time clerical support. The program, project, or system manager provides supervision, technical direction, administrative services (e.g., pay, travel, maintenance of personnel records), and, when required, full-time clerical support.

(d) The program manager or designee and the contract administration office, at the local level, shall negotiate a memorandum of agreement (MOA) delineating their functional administrative interrelationships, with annual updates as necessary. The agreements may be included in an existing MOA, if one exists, or as a separate MOA.

(e) The technical representative shall keep the contract administration office commander fully informed of matters discussed with the contractor. The contract administration office shall also keep the technical representative fully informed of contractor discussions which relate to technical matters within the purview of the technical representative's assigned duties.

PART 243—CONTRACT MODIFICATIONS

Sec.

Subpart 243.1—General

243.102 Policy.
243.105 Availability of funds.
243.107 Contract clause.
243.107–70 Identification of foreign military sale (FMS) requirements.

Subpart 243.2—Change Orders

243.204 Administration.
243.205 Contract clauses.
243.205–70 Engineering change proposals.

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Subpart 243.2—Change Orders

243.204 Administration.
243.205 Contract clauses.
243.205–70 Engineering change proposals.

243.205–71 Pricing of contract modifications.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DOD Directive 5000.35, FAR subpart 1.3.

Subpart 243.1—General

243.102 Policy.

(b)(i) See subpart 217.74 for limitations on issuing undefinitized contract actions.

(ii) Modifications of letter contracts are subject to the same policies and procedures as modifications of definitive contracts.

243.105 Availability of funds.

(a) 10 U.S.C. 2405 prohibits adjustments in price under a shipbuilding contract entered into after December 7, 1983, for a claim, request for equitable adjustment, or demand for payment under the contract, arising out of events occurring more than 18 months before submission of the claim, request, or demand.

243.107 Contract clause.

For DoD, the *specifically authorized representative* (SAR) referred to in the clause at FAR 52.243–7, Notification of Changes, is a *contracting officer's representative* as defined in 202.101 and as discussed in subpart 201.6.

243.107–70 Identification of foreign military sale (FMS) requirements.

Identify contract modifications that add FMS requirements by clearly marking "FMS Requirement" on the front. Within the modification, cite each FMS case identifier code by line/subline item number, e.g., FMS Case Identifier GY–D–DCA.

Subpart 243.2—Change Orders

243.204 Administration.

(b) *Definitization.* The administrative contracting officer (ACO) must review change orders issued by the contracting officer to ensure compatibility with the status of performance. If the contractor has progressed beyond the effective point specified in the change order, the ACO must determine the earliest practical point at which the change order could be made effective and advise the contracting officer. The contracting officer must issue another change order to correct, revise, or supersede the first change order, then definitize by supplemental agreement citing both change orders.

243.205 Contract clauses.

243.205–70 Engineering change proposals.

Engineering changes can originate with either the contractor or the Government. In either case, the Government will need detailed information from the contractor for evaluation of the technical, cost, and schedule effects of implementing the change. When the contracting officer wants this information submitted in the format prescribed by MIL–STD–480 or 481, use the clause at 252.243–7000, Engineering Change Proposals. (The contracting officer must consult technical personnel before determining which MIL–STD to use.) Use the clause with its Alternate I, when appropriate, to discourage submission of a large number of small dollar, contractor originated engineering change proposals.

243.205–71 Pricing of contract modifications.

Use the clause at 252.243–7001, Pricing of Contract Modifications, in solicitations and contracts when anticipating and using a fixed price type contract.

PART 244—SUBCONTRACTING POLICIES AND PROCEDURES

Sec.

Subpart 244.3—Contractors' Purchasing Systems Reviews

244.301 Objective.
244.303 Extent of review.
244.304 Surveillance.
244.305 Granting, withholding, or withdrawing approval.
244.305–70 Granting, withholding, or withdrawing approval.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 244.3—Contractors' Purchasing Systems Reviews

244.301 Objective.

The administrative contracting officer (ACO) is responsible for reviewing the contractor's purchasing systems. Members of other organizations such as audit or program management activities should not conduct separate reviews of a contractor's purchasing system, but may participate in a review conducted for the ACO. These organizations may, if they suspect a problem, recommend that the ACO initiate a special review.

244.303 Extent of review.

Appendix C contains additional guidance for conducting contractor's purchasing systems reviews (CPSR) and other purchasing system reviews. Normally, the purchasing system analyst (PSA) conducts these reviews on behalf of the ACO. Departments/agencies may establish review boards to evaluate CPSR reports before the PSA submits them to the ACO.

244.304 Surveillance.

(b) The ACO, or the PSA with the concurrence of the ACO, may initiate a special review of specific weaknesses in the contractor's purchasing system. The weaknesses, for example—

(i) May arise because of—

(A) Major changes in the contractor's purchasing policies, procedures, or key personnel; or

(B) Changes in plant workload or type of work.

(ii) May be discovered—

(A) During reviews of subcontracts submitted under advance notification and consent (FAR subpart 44.2); or

(B) From information provided by Government personnel.

244.305 Granting, withholding, or withdrawing approval.

244.305–70 Granting, withholding, or withdrawing approval.

Use this subsection instead of FAR 44.305–2(c) and 44.305–3(b).

(a) At the completion of the in-plant portion of the review, the ACO shall hold an exit conference with the contractor. At the conference, the ACO should—

(1) Present the review team's recommendations, signed by the ACO;

(2) Request the contractor submit its plan for correcting deficiencies or making improvements within 15 days; and

(3) Not comment on the pending or planned decision to grant or withhold approval of the contractor's purchasing system.

(b) The PSA should submit the complete report to the ACO, or any department or agency established review board, within ten days after receipt of the contractor's response under paragraph (a)(2) of this subsection.

(c) The ACO should completely review the report and consider the contractor's response before making a decision on granting, withholding, or withdrawing purchasing system approval. The ACO shall notify the contractor of the decision within ten days after receipt of the report with a copy of the decision to the PSA and the contracting office, when requested.

(d) When a contractor advises that it has corrected deficiencies that led the ACO to withhold or withdraw the purchasing system approval, the ACO—

(1) Shall request the PSA to verify that the contractor has—

(i) Corrected the deficiencies; and

(ii) Implemented any other ACO recommendations.

(2) Should ask for a review of purchasing policies and procedures issued since the last review.

PART 245—GOVERNMENT PROPERTY

Sec.

Subpart 245.1—General

245.104 Review and correction of contractor's property control systems.

Subpart 245.3—Providing Government Property to Contractors

245.301 Definitions.
245.302 Providing facilities.
245.302–1 Policy.
245.302–2 Facilities contracts.
245.303 Providing material.
245.303–2 Procedures.
245.307 Providing special test equipment.
245.307–2 Acquiring special test equipment.
245.310 Providing agency-peculiar property.
245.310–70 Contract clause.

Subpart 245.4—Use and Rental of Government Property

245.401 Policy.
245.403 Rental—Use and charges clause.
245.405 Contracts with foreign governments or international organizations.
245.407 Non-Government use of plant equipment.

Subpart 245.5—Management of Government Property in the Possession of Contractors

245.505 Records and reports of Government property.
245.505–3 Records of material.
245.505–5 Records of plant equipment.
245.505–6 Special reports of plant equipment.
245.505–14 Reports of Government property.

Subpart 245.6—Reporting, Redistribution, and Disposal of Contractor Inventory

245.601 Definitions.
245.603 Disposal methods.
245.603–70 Contractor performance of plant clearance duties.
245.603-71 Disposal of contractor inventory for NATO cooperative projects.
245.604 Restrictions on purchase or retention of contractor inventory.
245.606 Inventory schedules.
245.606–3 Acceptance.
245.606–5 Instructions for preparing and submitting schedules of contractor inventory.
245.606–70 Instructions for completing DD Form 1342, DoD Property Record.
245.607 Scrap.
245.607–1 General.
245.607–2 Recovering precious metals.
245.607–70 Scrap warranty.
245.608 Screening of contractor inventory.
245.608–1 General.
245.608–2 Standard screening.
245.608–5 Special items screening.
245.608–7 Reimbursement of cost for transfer of contractor inventory.
245.608–70 Contractor inventory redistribution system (CIRS).
245.608–71 Screening industrial plant equipment.
245.609 Donations.

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245.610 Sale of surplus contractor inventory.
245.610–1 Responsibility.
245.610–3 Proceeds of sale.
245.610–4 Contractor inventory in foreign countries.
245.612 Removal and storage.
245.612–3 Special storage at the Government's expense.
245.613 Property disposal determinations.

Subpart 245.70—Appointment of Property Administrators and Plant Clearance Officers

245.7001 Selection, appointment, and termination.
245.7002 Duties and responsibilities of plant clearance officers.

Subpart 245.71—Plant Clearance Forms

245.7101 Forms.
245.7101–1 Standard Form 97, Certificate of Release of a Motor Vehicle (Agency Record Copy).
245.7101–2 DD Form 1149, Requisition and Invoice Shipping Document.
245.7101–3 DD Form 1348–1, DoD Single Line Item Release/Receipt Document.
245.7101–4 DD Form 1640, Request for Plant Clearance.

Subpart 245.72—Special Instructions

245.7201 Performing inventory verifications and determination of allocability.
245.7202 Establishing a plant clearance case.
245.7203 Assigning plant clearance case numbers.
245.7204 Preparing inventory disposal report.
245.7205 Reporting excess and surplus contractor inventory.
245.7206 Transmitting DD Form 1342, DoD Property Record.

Subpart 245.73—Sale of Surplus Contractor Inventory

245.7301 Policy.
245.7302 Competitive sales.
245.7302–1 Property descriptions.
245.7302–2 Lotting.
245.7302–3 Alternate bids.
245.7302–4 Basis for sale.
245.7302–5 Mailing lists.
245.7303 Formal bid procedures.
245.7304 Informal bid procedures.
245.7305 Sale approval and award.
245.7306 Sales services.
245.7307 Non-competitive sales.
245.7307–1 General.
245.7307–2 Justification.
245.7308 Antitrust notification.
245.7309 Mandatory terms and conditions—formal invitations.
245.7309–1 Inspection.
245.7309–2 Condition and location of property.
245.7309–3 Consideration of bids.
245.7309–4 Payment.
245.7309–5 Title.
245.7309–6 Delivery and removal of property.
245.7309–7 Default.
245.7309–8 Variations in quantity or weight.
245.7309–9 Weighing.
245.7309–10 Risk of loss.
245.7309–11 Liability.
245.7309–12 Oral statements.

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245.7309–13 Eligibility of bidders.
245.7309–14 Claims liability.
245.7310 Special term and conditions.
245.7310–1 Demilitarization.
245.7310–2 Performance bond.
245.7310–3 Liability and insurance.
245.7310–4 Dangerous property.
245.7310–5 Controlled substances.
245.7310–6 Radioactive material.
245.7310–7 Scrap warranty.
245.7310–8 Antitrust clearance.
245.7311 Optional conditions.
245.7311–1 Sales and use tax liability.
245.7311–2 Safety, security, and fire regulations.
245.7311–3 Bid deposits.
245.7311–4 Other special conditions.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 245.1—General

245.104 Review and correction of contractor's property control systems.

(a) The property administrator shall perform property administration in accordance with DoD 4275.5–M, Manual for the Performance of Contract Property Administration.

Subpart 245.3—Providing Government Property to Contractors

245.301 Definitions.

Agency-peculiar property, as used in DoD, means military property and includes end items and integral components of military weapons systems, along with the related peculiar support equipment which is not readily available as a commercial item.

Facilities project means a Government project to provide, modernize or replace facilities for use by a contractor in performing a Government contract or subcontract.

Industrial plant equipment (IPE) means plant equipment in Federal stock group 34 with an acquisition cost of $15,000 or more used for cutting, abrading, grinding, shaping, forming, joining, heating, treating, or otherwise altering the physical properties of materials, components or end items entailed in manufacturing, maintenance, supply, processing, assembly, or research and development operations. IPE is further identified in AR 700–43/NAVSUP PUB 5009/AFM 78–9/DLAM 4215.1, Management of Defense-Owned Industrial Plant Equipment.

Mapping, charting, and geodesy (MC&G) property is defined in the clause at 252.245–7000, Government Furnished Mapping, Charting and Geodesy Property.

Other plant equipment (OPE) means plant equipment regardless of dollar value, used in or in conjunction with the manufacture of components or end items

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245.7309–13 Eligibility of bidders.
245.7309–14 Claims liability.
245.7310 Special term and conditions.
245.7310–1 Demilitarization.
245.7310–2 Performance bond.
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Mapping, charting, and geodesy (MC&G) property is defined in the clause at 252.245–7000, Government Furnished Mapping, Charting and Geodesy Property.

Other plant equipment (OPE) means plant equipment regardless of dollar value, used in or in conjunction with the manufacture of components or end items relative to maintenance, supply, processing, assembly or research and development operations. OPE excludes equipment categorized as IPE.

Provide means either to furnish, as in Government-furnished property, or to acquire, as in contractor-acquired property.

245.302 Providing facilities.

245.302–1 Policy.

(a)(4)(A) Comply with DoD Directive 4275.5, Acquisition and Management of Industrial Resources, in processing a request for facilities. Submit requests for approval of facilities projects—

(*1*) To the Secretaries of the Military Departments and the directors of defense agencies for Government-owned facilities projects if the project—

(*i*) Is a research and development-funded effort not exceeding $3 million per fiscal year; or

(*ii*) Is funded from procurement appropriations, approved on a location basis, and does not exceed $5 million for all property efforts during one fiscal year; or

(*iii*) Is in support of a major system or subsystem (including ammunition-related projects) and the total investment will not exceed $25 million during the projected acquisition or maintenance effort.

(*2*) To DASD(P&L)(PR) for projects exceeding the limitations in paragraphs (a)(4)(A)(*1*).

(B) The contracting officer shall coordinate the Determination and Finding with the program or project manager.

(C) Departments and agencies must submit reports or facilities projects to the House and Senate Armed Services Committees—

(*1*) At least 30 days before starting facilities projects involving real property (10 U.S.C. 2662); and

(*2*) In advance of starting construction for a facilities project regardless of cost. Use DD Form 1391, Fiscal Year 19____, Military Construction Project Data, to notify congressional committees of projects which are not included in the annual budget.

(b)(1)(A) *Industrial plant equipment.* Before acquiring industrial plant equipment—

(*1*) Submit a DD Form 1419, DoD Industrial Plant Equipment Requisition, to the Defense Industrial Plant Equipment Center (DIPEC), Memphis, TN 38114, in accordance with AR 700–43/NAVSUP PUB 5009/AFM 78–9/DLAM 4215.1, Management of Defense-Owned Industrial Plant Equipment, to determine whether existing, reallocable Government-owned facilities can be used.

(*2*) Do not acquire any item listed on the DD Form 1419 until a certificate of nonavailability is received from DIPEC.

(B) *Automatic data processing equipment.* The administrative contracting officer submits contractor requests to acquire automatic data processing equipment to the Director, Defense Automation Resources Information Center (Attn: DARIC–R), Cameron Station, Alexandria, VA 22304–6100, in accordance with DoD 7950.1–M, Defense Automation Resources Management Manual.

245.302–2 Facilities contracts.

Terminate facilities contracts when Government production and research property is no longer required for the performance of Government contracts or subcontracts, unless termination is not in the best interest of the Government. The contractor is not allowed to extend the time for use of property provided under the facilities contract without Government authorization.

245.303 Providing material.

245.303–2 Procedures.

When a contractor will be responsible for preparing requisitioning documentation, include in the contract the requirement to prepare the documentation in accordance with DoD 4000.25–1–M, Military Standard Requisitioning and Issue Procedures (MILSTRIP). Copies are available from the address cited at 251.102(e)2.b(2).

245.307 Providing special test equipment.

245.307–2 Acquiring special test equipment.

(b) *Notice and approval.* (1) The review requires a written evaluation from the appropriate technical specialist.

245.310 Providing agency-peculiar property.

(c) All Government-furnished mapping, charting and geodesy (MC&G) property is under the control of the Director, Defense Mapping Agency (DMA). (See DoDD 5105.40, Defense Mapping Agency (DMA)).

(i) MC&G property shall not be duplicated, copied, or otherwise reproduced for purposes other than those necessary for contract performance.

(ii) Upon completion of contract performance, the contracting officer shall—

(A) Contract the Director, DMA(PP), 8613 Lee Highway, Fairfax, VA, 22031–2137 for disposition instructions;

(B) Direct the contractor to destroy or return all Government-furnished MC&G property not consumed during contract performance; and

(C) Specify the destination and means of shipment for material to be returned to the Government.

245.310–70 Contract clause.

Use the clause at 252.245–7000, Government-Furnished Mapping, Charting and Geodesy (MC&G) property, in solicitations and contracts when MC&G property is to be furnished.

Subpart 245.4—Use and Rental of Government Property

245.401 Policy.

Government use includes use on contracts for foreign military sales. Use on contracts for foreign military sales shall be on a rent-free basis.

245.403 Rental—Use and charges clause.

(1) The DoD normally recovers a fair share of nonrecurring costs of special tooling and special test equipment by including these costs in its calculation of the nonrecurring cost recoupment charge when major defense equipment is sold by foreign military sales or direct commercial sales to foreign governments or international organizations. Major defense equipment is defined in DODD 2140.2, Recoupment of Nonrecurring Costs on Sales of U.S. Products and Technology, as any item of significant combat equipment on the United States Munitions List having a nonrecurring RDT&E cost of more than $50 million or a total production cost of more than $200 million.

(2) When these cost thresholds are not met, the contracting officer shall assess rental charges for use of special tooling and special test equipment pursuant to the Use and Charges clause when administratively practicable.

245.405 Contracts with foreign governments or international organizations.

(1) *Approval.* A contractor may use Government production and research property on work for foreign governments and international organizations only when approved in writing by the contracting officer having cognizance of the property. The contracting officer shall grant approval only if—

(i) The use will not interfere with foreseeable requirements of the United States;

(ii) The work is undertaken as a DoD foreign military sale; or

(iii) For a direct commercial sale, the foreign country or international organization would be authorized to contract with the department concerned under the Arms Export Control Act.

(2) *Use charges.* (i) The Use and Charges clause is applicable on direct commercial sales to foreign governments or international organizations.

(ii) When a particular foreign government or international organization has funded the acquisition of specific production and research property, do not assess the foreign government or international organization rental charges or nonrecurring recoupments for the use of such property.

(3) *Waivers.* (i) Rental charges for use of U.S. production and research property on commercial sales transactions to the Government of Canada are waived for all commercial contracts. This waiver is based on an understanding wherein the Government of Canada has agreed to waive its rental charges.

(ii) Requests for waivers or reduction of charges for the use of Government facilities on work for foreign governments or international organizations shall be submitted to the contracting officer who shall refer the matter through contracting channels. In response to these requests, approvals may be granted only by the Director, Defense Security Assistance Agency for particular sales which are consistent with paragraph (1)(iii) of this section.

245.407 Non-Government use of plant equipment.

(a)(i) Non-Government use of industrial plant equipment (IPE) exceeding 25 percent requires prior approval of the—

(A) Assistant Secretary of the Army (RD&A);

(B) Assistant Secretary of the Navy (RD&A);

(C) Assistant Secretary of the Air Force (Acquisition); or

(D) Director, Defense Logistics Agency.

(ii) The authority in paragraph (a)(i) of this section may be delegated to the head of a contracting activity. Any redelegation requires the approval of OASD(P&L)(PR).

(iii) To determine percentage—

(A) Compute the percentage of non-Government use on time available for use. Use contractor's normal work schedule as represented by the scheduled production shift hours.

(B) Use a base time period which is neither less than three months nor more than one year.

(C) Use may be averaged at a single plant for all items costing less than $25,000.

(iv) Contractors should submit requests for non-Government use of IPE to the contract administration office at least six weeks before the projected use. The requests shall include:

(A) Total number and acquisition cost of IPE items; and

(B) For each unit of IPE with an acquisition cost of $25,000 or more, an itemized list including nomenclature, plant equipment code, year of manufacture and acquisition cost.

(v) Approving officials shall retain for periodic review, documentation of the circumstances justifying non-Government use of IPE.

Subpart 245.5—Management of Government Property in the Possession of Contractors

245.505 Records and reports of Government property.

245.505-3 Records of material.

If adequate controls are in place to meet the requirements of the clause at 252.242-7004, Material Management and Accounting System, the contractor's material control system may physically commingle inventories that may include materials for which costs are charged or allocated to fixed-price, cost-reimbursement, and commercial contracts. Government-furnished material (GFM) may not be physically commingled with other material, nor may GFM be used on contractor's commercial work.

245.505-5 Records of plant equipment.

(a) The contractor may use DD Form 1342, DoD Property Record, as a source document for setting up prescribed records.

245.505-6 Special reports of plant equipment.

The contractor shall prepare a DD Form 1342 in accordance with instructions contained in AR 700-43/NAVSUP PUB 5009/AFM 78-9/DLAM 4215.1, Management of Defense-Owned Industrial Plant Equipment (IPE)—

(1) Upon receipt and acceptance of each item of IPE including items which, though part of a manufacturing system, would otherwise qualify as IPE;

(2) Whenever major changes occur in the data initially submitted to DIPEC (as specified by DLAM 4215.1);

(3) When IPE, including general purpose components of special test equipment which otherwise qualify as IPE, is no longer required for the purpose authorized or provided; or

(4) When disposal is completed.

245.505-14 Reports of Government property.

(1) The contractor's property control system shall provide an annual report, for contracts with Government property—

(i) For all DoD property for which the contractor is accountable;

(ii) Prepared in accordance with the requirements of DD Form 1662, DoD Property in the Custody of Contractors, or approved substitute, including instructions on the reverse of the form; and

(iii) Furnished, in duplicate, to the property administrator no later than October 31 of each year.

(2) Prime contractors are responsible for reporting all Government property accountable to the contract, including that at subcontractor and alternate locations.

Subpart 245.6—Reporting, Redistribution, and Disposal of Contractor Inventory

245.601 Definitions.

(1) *Controlled substances* means—

(i) Narcotic, depressant, stimulant, or hallucinogenic drug or substance;

(ii) Any other drug or substance controlled under Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970; or

(iii) A drug or substance required to be controlled by international treaty, convention or protocol.

(2) *Demilitarization* means the act of destroying the offensive or defensive characteristics of equipment or material to prevent its further military or lethal use.

(3) *Production scrap* means material left over from the normal production process that has only remelting or reprocessing value, e.g., textile and metal clippings, borings, and faulty castings and forgings.

(4) *Serviceable or usable property* means property that has a potential for use or sale value "as is" or with minor repairs or alterations; only property in Federal Condition Codes A1, A2, A4, A5, B1, B2, B4, B5, F7, or F8.

245.603 Disposal methods.

245.603-70 Contractor performance of plant clearance duties.

(a) *Authorization.* (1) Contract administration offices (CAOs) may, with head of the contracting activity approval and contractor concurrence, authorize selected contractors to perform certain plant clearance functions if—

(i) A plant clearance officer is on site at the facility where the contractor's property disposal function operates; and

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245.505–14 Reports of Government property.

(1) The contractor's property control system shall provide an annual report, for contracts with Government property—

(i) For all DoD property for which the contractor is accountable;

(ii) Prepared in accordance with the requirements of DD Form 1662, DoD Property in the Custody of Contractors, or approved substitute, including instructions on the reverse of the form; and

(iii) Furnished, in duplicate, to the property administrator no later than October 31 of each year.

(2) Prime contractors are responsible for reporting all Government property accountable to the contract, including that at subcontractor and alternate locations.

Subpart 245.6—Reporting, Redistribution, and Disposal of Contractor Inventory

245.601 Definitions.

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245.603 Disposal methods.

245.603–70 Contractor performance of plant clearance duties.

(a) *Authorization.* (1) Contract administration offices (CAOs) may, with head of the contracting activity approval and contractor concurrence, authorize selected contractors to perform certain plant clearance functions if—

(i) A plant clearance officer is on site at the facility where the contractor's property disposal function operates; and

(ii) The volume of plant clearance warrants performance by the contractor.

(2) The written authorization shall, as a minimum—

(i) Designate the contractor as an "accredited contractor";

(ii) Identify the plant clearance actions to be performed;

(iii) State that the Government may cancel part of or all of the authorization to perform plant clearance actions; and

(iv) Provide for plant clearance officer participation when required.

(b) *Government oversight and assistance.* (1) The contract administration office will ensure regular evaluation of the contractor's performance of the plant clearance function and any corrective action required.

(2) The plant clearance officer shall—

(i) Evaluate the adequacy and ensure compliance with contractor procedures;

(ii) Ensure discrepancies are promptly resolved;

(iii) Advise the contractor of screening and inventory schedule requirements;

(iv) Respond to contractor requests to withdraw Government-furnished property from inventory schedules;

(v) Evaluate physical, quantitative, and technical allocability of contractor inventory prior to disposal using Standard Form 1423, Inventory Verification Survey, as a guide;

(vi) Direct contractor to delay disposition of nonallocable inventory pending a contracting officer decision;

(vii) With the contractor's assistance, establish criteria for review and approval of selected contractor disposal decisions;

(viii) Complete first endorsement section of DD Form 1640, Request for Plant Clearance, on referrals from plant clearance officers at prime contract administration offices for the disposal of subcontractor inventory; forward inventory schedules to the contractor for processing; and forward completed case file to the referring activity; and

(ix) Work with the contractor, screeners, and buyers to ensure that the Government receives maximum reutilization and disposal proceeds.

(c) *Accredited contractor plant clearance duties.* The accredited contractor shall—

(1) Ensure inventory schedule acceptability. Use DD Form 1637, Notice of Acceptance of Inventory, if desired;

(2) Suspend disposition of property when assets are determined nonallocable (FAR 45.606–3);

(3) Withdraw property from inventory schedules and notify the affected screening activities. Obtain plant clearance officer approval for withdrawal of Government furnished property from inventory schedules (FAR 45.606–4);

(4) Determine method of disposal under established priorities and document disposal decisions and actions;

(5) Assign the automatic release date and the surplus release date;

(6) Initiate prescribed screening and effect resulting transfers and donations;

(7) Account for disposal of all contractor inventory and application of proceeds and submit to the plant clearance officer a Standard Form 1424, Inventory Disposal Report, or equivalent;

(8) Maintain the donable file and release property to eligible donees (FAR 45.609);

(9) Prepare, approve, sign, and maintain official plant clearance files and required forms (245.7101);

(10) Not conduct noncompetitive sales of surplus contractor inventory; and

(11) Notify the plant clearance officer in advance when bidding on property.

245.603–71 Disposal of contractor inventory for NATO cooperative projects.

(a) North Atlantic Treaty Organization (NATO) cooperative project agreements may include disposal provisions of jointly acquired property without regard to any applicable disposal laws of the United States.

(b) Disposal of such property may include a transfer of the U.S. interest in the property to one of the other governments participating in the agreement, or the sale of the property.

(c) Payment for the transfer or sale of any U.S. interest shall be made in accordance with the terms of the project agreement.

245.604 Restrictions on purchase or retention of contractor inventory.

(1) Contractors authorized to sell inventory may not knowingly sell the inventory to any person or that person's agent, employee, or household member if that person—

(i) Is a civilian employee of the DoD or the U.S. Coast Guard; or

(ii) Is a member of the armed forces of the United States, including the Coast Guard; and

(iii) Has any functional or supervisory responsibilities for or within the Defense Reutilization and Marketing Program, or for the disposal of contractor inventory.

(2)(i) A contractor's authority to approve a subcontractor's sale, purchase, or retention at less than cost, and the subcontractor's authority to sell, purchase, or retain at less than cost if approved by a higher-tier contractor, does not include authority to approve—

(A) A sale by a subcontractor to the next-higher tier contractor or to an affiliate of such contractor or of the subcontractor; or

(B) A sale, purchase, or retention at less than cost, by a subcontractor affiliated with the next higher-tier contractor.

(ii) The written approval of the plant clearance officer is required for each excluded sale, purchase, or retention at less than cost.

(3) *Demilitarization.* The contractor shall demilitarize contractor inventory possessing offensive or defense characteristics, and not required within the DoD, in accordance with Defense Demilitarization Manual, DoD 4160.21–M–1. In unusual cases the plant clearance officer may authorize the purchaser to perform the demilitarization; however, the purchaser shall not be granted such authorization if the inventory is dangerous.

(4) *Classified inventory.* Classified contractor inventory shall be disposed of in accordance with applicable security regulations or as directed by the contracting officer.

(5) *Dangerous inventory.* Contractor inventory dangerous to public health or safety shall not be donated or otherwise disposed of unless rendered innocuous or until adequate safeguards have been provided.

245.606 Inventory schedules.

245.606–3 Acceptance.

(a) If the schedules are acceptable, the plant clearance officer shall, within 15 days, complete and send the contractor a DD Form 1637, Notice of Acceptance of Inventory.

(b) To assist in verifying inventory allocability, the plant clearance officer shall follow the instructions in 245.7201.

245.606–5 Instructions for preparing and submitting schedules of contractor inventory.

(d) *General instructions for completing forms.*

(4) The contractor shall use the following codes together with the disposal codes 1 through 9, X, and S (e.g., A1, F7, SS) to indicate the condition of the property—

A—New, used, repaired, or reconditioned property; serviceable and issuable to all customers without limitations or restrictions; includes material with remaining shelf life of more than six months.

B—New, used, repaired, or reconditioned property; serviceable and issuable or for its intended purpose but restricted from issue to specific units, activities, or geographical areas because of its limited usefulness or short service-life expectancy; includes material and remaining shelf life of three to six months.

F—Economically reparable property which requires repair, overhaul or reconditioning; includes reparable items which are radioactively contaminated.

H—Property which has been determined to be unserviceable and does not meet repair criteria.

S—Property that has no value except for its basic material content.

(e) *Instructions for completing specific forms.*

(4) *Inventory Schedule D (Special Tooling and Special Test Equipment) (SF 1432).*

(ii) *Description.*

For termination inventory included in a settlement proposal, include cost of inventory acquired for performance of the entire contract in column F1 and cost of inventory acquired solely for the terminated portion of the contract in column F2. Cost of inventory acquired for the entire contract must be prorated between the terminated and nonterminated portions.

245.606-70 Instructions for completing DD Form 1342, DoD Property Record.

(a) The contractor shall list excess industrial plant equipment (IPE) on DD Form 1342, DoD Property Record, and submit it to the Government property administrator for review and transmittal to the plant clearance officer. For numerically controlled IPE, the contractor shall prepare and submit DD Form 1342, section VI, (page 2), Numerically Controlled Machine Data.

(b) Upon receipt of the DD Form 1342, the plant clearance officer will—

(1) Designate the 75th day from the date of receipt as the automatic release date (ARD) and the 90th day as the screening completion date (SCD); and

(2) Enter the ARD in Block 24 of the DD Form 1342.

245.607 Scrap.

245.607-1 General.

(a)(i) The contractor may request a pre-inventory scrap determination, made by the plant clearance officer after an on-site survey, if inventory is considered without value except for scrap. If approved, the contractor may make a single descriptive entry on an inventory schedule, generally describing the property and indicating its approximate total cost. The plant clearance officer will establish a plant clearance case and perform limited screening.

(ii) If the contractor has an approved scrap procedure, routine disposal of production scrap and spoilage is authorized, and a plant clearance case is unnecessary. The contractor may similarly dispose of worn, broken, mutilated, or otherwise rejected parts from overhaul and repair contracts with the approval of the plant clearance officer.

(iii) In addition to segregating scrap to maximize proceeds, the contractor may also consolidate sales of Government and contractor scrap if approved by the plant clearance officer. When a consolidated sale is approved, the plant clearance officer shall waive the scrap warranty required at 245.607-70.

(iv) When a contractor's approved scrap procedure does not require physical segregation of Government and contractor scrap, the plant clearance officer shall ensure the proceeds of scrap sale are equitably distributed.

245.607-2 Recovering precious metals.

(b) The plant clearance officer shall obtain disposition instructions from the Defense Reutilization and Marketing Service, Attn: DRMS-OCR, 74 N. Washington Avenue, Battle Creek, MI 49017-3092, for precious metals (i.e., silver, gold, platinum, palladium, rhodium, iridium, osmium, and ruthenium), including scrap and items containing recoverable quantities of these metals.

245.607-70 Scrap warranty.

(a) If the contractor sells its inventory as scrap to anyone, including a holding contractor, the contractor shall include in the sales contract a signed copy of DD Form 1639, Scrap Warranty.

(b) The contracting officer may release the contractor from the terms of the scrap warranty in return for consideration paid to the Government. The consideration will represent the difference between—

(1) The sale price of the scrap; and

(2) A fair and reasonable price for the material if it had been sold for purposes other than scrap.

(c) The contractor shall pay the consideration to the Government and the Government may execute the release even though the contract containing the warranty was not made directly with the Government.

(d) If the scrap is resold to a second buyer, the first buyer shall obtain a scrap warranty from the second buyer. Upon receipt of the second buyer's scrap warranty, the Government will release the first buyer from liability under the original warranty.

245.608 Screening of contractor inventory.

245.608-1 General.

(a) The plant clearance officer shall arrange for inspection of property at the contractor's plant if requested by a prospective transferee, in such a manner as to avoid interruption of the contractor's operations.

245.608-2 Standard screening.

(b)(1) For the first 30 days, property screening will be limited to the contracting agency and the requiring agency, when they are not the same. The requiring agency shall have priority for retention of listed items.

245.608-5 Special items screening.

(a) *Special test equipment with standard components.* (1) The contractor shall report any excess special test equipment (STE) using SF 1432, Inventory Schedule D (Special Tooling and Special Test Equipment). The contractor shall list and describe on the inventory schedule all general-purpose components which, if economically severable from the STE, would otherwise be classified as industrial plant equipment (IPE), other plant equipment (OPE), or automatic data processing equipment (ADPE).

(2) The plant clearance officer will perform the initial screening of the composite STE unit.

(A) If the contracting department/agency and the requiring department/agency decline the STE or the standard components or do not approve their transfer to another contract; then,

(B) The plant clearance officer will screen the STE and any severable components with the—

(*1*) General Services Administration—STE unit, less any standard components, and nonreportable standard components;

(*2*) Defense Industrial Plant Equipment Center—IPE components;

(*3*) Contractor Inventory Redistribution System—OPE components; and

(*4*) Defense Automation Resources Information Center—ADPE components.

(d) *Procedures for Automatic Data Processing Equipment (ADPE).* (1) Report ADPE that is Government-owned or leased by the contractor (with Government purchase option or other interests, including use rights) to the Defense Automation Resources Information Center (DARIC). DARIC does all required screening, including General Services Administration screening for ADPE. (See DoD 7950.1-M, Defense Automation Resources Management Manual.)

245.608-7 Reimbursement of cost to transfer of contractor inventory.

The Defense Logistics Agency will pay for the movement of industrial plant equipment under the direction and

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245.608–5 Special items screening.

(a) *Special test equipment with standard components.* (1) The contractor shall report any excess special test equipment (STE) using SF 1432, Inventory Schedule D (Special Tooling and Special Test Equipment). The contractor shall list and describe on the inventory schedule all general-purpose components which, if economically severable from the STE, would otherwise be classified as industrial plant equipment (IPE), other plant equipment (OPE), or automatic data processing equipment (ADPE).

(2) The plant clearance officer will perform the initial screening of the composite STE unit.

(A) If the contracting department/agency and the requiring department/agency decline the STE or the standard components or do not approve their transfer to another contract; then,

(B) The plant clearance officer will screen the STE and any severable components with the—

(*1*) General Services Administration—STE unit, less any standard components, and nonreportable standard components;

(*2*) Defense Industrial Plant Equipment Center—IPE components;

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245.608–7 Reimbursement of cost to transfer of contractor inventory.

The Defense Logistics Agency will pay for the movement of industrial plant equipment under the direction and

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control of the Defense Industrial Plant Equipment Center.

245.608–70 Contractor inventory redistribution system (CIRS).

(a) Screen serviceable and usable contractor inventory through CIRS when it—

(1) Is listed on SF 1428, Inventory Schedule B, or SF 1434, Inventory Schedule E; and

(2) Has a national stock number, and line item acquisition value in excess of $50; or

(3) Has a line item acquisition value in excess of $500 but no national stock number.

(b) Using Standard Form 120, Report of Excess Personal Property, the plant clearance officer will send two copies of SF 1428 or SF 1434 (or authorized substitutes) to the Defense Reutilization and Marketing Service (DRMS). DRMS will notify the plant clearance officer of items processed, not accepted, or available for local area screening.

(c) Property subject to CIRS processing will be screened within DoD for 30 days. On the 31st day, unless otherwise specified on SF Form 120, appropriate items not requisitioned by DoD will be reported to the General Services Administration (GSA) for standard Federal agency and donation screening. Examples of items which are not reportable to GSA include usable hazardous cleaners and solvents.

(d) For requisitioned items, DRMS will issue shipping instructions to the plant clearance officer. During the first 45 days of the screening period, the plant clearance officer forwards any requisitions received to DRMS. After 45 days, the plant clearance officer forwards the requisition directly to GSA.

(e) The contractor sends one copy of the shipping document to DRMS when shipment has been made.

(f) Unless directed by the contracting officer, motor vehicles excess to Army and Navy contracts shall not be screened through CIRS.

245.608–71 Screening industrial plant equipment.

(a) *Reporting.* Within 15 days of receipt, the plant clearance officer will forward two copies of the DD Form 1342, DoD Property Record, to the Defense Industrial Plant Equipment Center (DIPEC), Memphis, TN 38114, for all IPE not condition coded "X" or "S". Process IPE condition coded "X" or "S" in accordance with department or agency procedures.

(b) *Screening*—(1) First 30 days. DIPEC will—

(i) Screen excess IPE against all DoD requirements with priority given to requirements of the owning department/agency through the 30th day.

(ii) For items selected, issue shipping instructions containing accounting, funding, transportation, routing recommendations, and preservation instructions.

(2) *31st through 75th day.* (i) DIPEC will report excess IPE to GSA on 31st day.

(ii) GSA will—

(A) Approve department/agency requests on first come-first served basis;

(B) Approve and forward transfer orders to the contract administration office; and

(C) Forward copies of approved transfer orders to DIPEC.

(3) *76th through 90th day.* GSA will—

(i) Provide for screening for donation;

(ii) Receive, approve and forward donation applications to the contract administration office; and

(iii) Send copies of approved applications to DIPEC.

(4) *After 90th day.* If DoD requirement is identified, and item is available, ship item against the requirement unless compelling reasons exist for not shipping item.

(c) The plant clearance officer shall ensure that a copy of the shipping document is submitted to DIPEC when IPE is transferred use-to-use or use-to-storage within DoD.

(d) When GSA sells IPE that is excess to ownership but not to DoD requirements, report the sale to DIPEC in accordance with department/agency procedures.

245.609 Donations.

Agencies may donate, with GSA approval and without expense to the United States, certain material not needed by DoD to certain organizations such as veterans' organizations, soldiers' monument associations, State museums, and incorporated educational, not for profit museums. For further guidance, see DoD 4160 .21–M, Defense Reutilization and Disposal Manual.

245.610 Sale of surplus contractor inventory.

245.610–1 Responsibility.

(a) See Subpart 245.73 for sales of contractor inventory under the control of DoD.

245.610–3 Proceeds of sale.

(1) Unless otherwise provided in the contract, the proceeds of any sale, purchase, or retention shall be—

(i) Credited to the Government as part of the settlement agreement;

(ii) Credited to the price or cost of the contract;

(iii) Applied as otherwise directed by the contracting officer; or

(iv) Forwarded to the plant clearance officer. The plant clearance officer—

(A) Within two days after receipt will send the proceeds and a DD Form 1131, Cash Collection Voucher, to the designated disbursing officer. Identify on the DD Form 1131 the contractor name and contract number; or

(B) For contractors with an approved scrap procedure, will ensure the proceeds are appropriately applied to an overhead account. The plant clearance officer may assign a representative who, with the assistance of the contract auditor, shall periodically validate that proceeds from sales of production generated scrap are collected and applied to the appropriate account.

(2) Except as prescribed in paragraph (1)(iv)(B) of this subsection, the plant clearance officer will not close the plant clearance case until verification is received that the credit has, in fact, been properly applied.

245.610–4 Contractor inventory in foreign countries.

(1) Normally, DRMS disposal activities shall be used to dispose of surplus contractor inventory located outside the United States or Canada. However, if authorized by the contracting officer, a contractor may sell or make other disposition of inventory in foreign countries.

(2) Sale or other disposition of foreign inventory by the contractor, including sale to foreign governments, requires that—

(i) The sales contract or other document transferring title include the following certificate:

> The Purchaser certifies that the property covered by this contract will be used in (*name of country*). In the event of resale or export by the Purchaser of any of the property acquired at a price in excess of $1,000 United States dollars or equivalent in other currency at the official exchange rate, the Purchaser agrees to obtain the approval of (*name and address of Contracting Officer*), and

(ii) The contracting officer approve sales contracts, resales, or exports. Approval is permitted only if—

(A) The proposed purchaser's name is not on the list of Parties Excluded from Procurement Programs; and

(B) The sales contract or other document forbids exports by purchasers and subpurchasers to communist areas (FAR 25.702) or other prohibited destinations.

245.612 Removal and storage.

245.612-3 Special storage at the Government's expense.

(a) Before authorizing storage, the contracting officer shall ensure funds are available to pay for the storage and related tasks. In addition, the contracting officer shall ensure an annual review of the need for continued storage at Government expense.

(b) All storage contracts or agreements shall be fully funded and separately priced and shall include all allocable costs.

245.613 Property disposal determinations.

The plant clearance officer shall—

(1) Record the reason for disposing of the property—

(i) As scrap and salvage;

(ii) By abandonment or destruction; and

(iii) By noncompetitive sale;

(2) Use DD Form 1641, Disposal Determination/Approval, to record disposal determinations; and

(3) File the completed form in the plant clearance case file.

Subpart 245.70—Appointment of Property Administrators and Plant Clearance Officers

245.7001 Selection, appointment, and termination.

(a) The head of a contracting activity for the Defense Logistics Agency, or the head of the contract administration office for other departments and agencies shall select, appoint, or terminate (in writing) property administrators and plant clearance officers.

(b) In selecting qualified property administrators and plant clearance officers, the appointment authority shall consider experience, training, education, business acumen, judgment, character, and ethics.

245.7002 Duties and responsibilities of plant clearance officers.

The plant clearance officer shall—

(a) Instruct the contractor on the preparation of inventory schedules;

(b) Accept or reject inventory schedules and DD Forms 1342, DoD Property Record;

(c) Conduct or arrange for inventory verification;

(d) Initiate screening and process resulting transfer and donation actions;

(e) Perform final plant clearance of contractor inventory;

(f) Conduct pre-inventory scrap determinations;

(g) Evaluate the contractor's procedures for property disposal;

(h) Determine the appropriate method of disposal;

(i) Survey contractor-conducted sales;

(j) Account for all contractor inventory reported by the contractor;

(k) Advise and assist the contractor, inventory control manager, other Federal agencies, or higher headquarters in actions regarding disposal of contractor inventory;

(l) Approve method of sale, evaluate bids, and approve sale prices for contractor-conducted sales;

(m) Recommend the reasonableness of selling expenses on contractor-conducted sales;

(n) Secure antitrust clearance, if required; and

(o) Advise the contracting officer on all property disposal matters.

Subpart 245.71—Plant Clearance Forms

245.7101 Forms.

Use the forms listed below in performance of plant clearance actions.

245.7101-1 Standard Form 97, Certificate of Release of a Motor Vehicle (Agency Record Copy).

Use for transfers, donations, and sales of motor vehicles. The contracting officer shall execute the SF 97 and furnish it to the purchaser.

245.7101-2 DD Form 1149, Requisition and Invoice Shipping Document.

Use for transfer and donation of contractor inventory. Donations of industrial plant equipment may be shipped via DD Form 1149. This form may also be used to consolidate contractor inventory redistribution system-directed shipments going to the same destination.

245.7101-3 DD Form 1348-1, DoD Single Line Item Release/Receipt Document.

Use for shipments of excess industrial plant equipment and contractor inventory redistribution system (CIRS) inventory.

245.7101-4 DD Form 1640, Request for Plant Clearance.

Use to request plant clearance assistance or transfer plant clearance.

Subpart 245.72—Special Instructions

245.7201 Performing inventory verification and determination of allocability.

Use the following guidance for verifying inventory schedules—

(a) *Allocability.* (1) Review contract requirements, delivery schedules, bills of material, and other pertinent material. Determine whether schedules include material which—

(i) Is more than required or reasonably expected to be required for completion of the contract; or

(ii) Might be usable on the current contract, or diverted to other commercial work or Government use.

(2) Review the contractor's—

(i) Recent purchases of similar material;

(ii) Plans for current and scheduled production;

(iii) Stock record entries; and

(iv) Bills of material for similar items.

(b) *Quantity.* Ensure available inventory is in accordance with quantities listed on the inventory schedules. While a complete physical count of each item is not required, perform sufficient checks to ensure accurate quantities.

(c) *Condition.* Ensure the inventory condition matches that shown on the inventory schedules.

245.7202 Establishing a plant clearance case.

(a) Upon receipt of an acceptable inventory schedule or a DD Form 1342, DoD Property Record, the plant clearance officer shall establish a plant clearance case file. The case folder will—

(1) Identify the case number (see 245.7203);

(2) Indicate the contractor's name and contract number;

(3) Note the word "Termination" if applicable; and

(4) Consolidate all inventory schedules applicable to one contract at the same location, if possible.

(b) As a minimum, include in the plant clearance case file—

(1) Inventory schedules or DD Form 1342, DoD Property Record, annotated to show all disposal actions;

(2) Copies of documents forwarding inventory schedules to the appropriate screening activity;

(3) Shipping or other instructions and correspondence directing disposition of contractor inventory;

(4) Shipping documents transferring inventory;

(5) Inventory verification survey or other documents showing completion of allocability review;

(6) Forms authorizing donation or sale;

(7) Document showing disposition of proceeds from plant clearance actions; and

(8) Any other documents pertinent to disposal actions, including review board cases, antitrust clearances, and inventory disposal reports.

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Special Instructions

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(1) Review contract
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her pertinent material.

Determine whether schedules include material which—

(i) Is more than required or reasonably expected to be required for completion of the contract; or

(ii) Might be usable on the current contract, or diverted to other commercial work or Government use.

(2) Review the contractor's—

(i) Recent purchases of similar material;

(ii) Plans for current and scheduled production;

(iii) Stock record entries; and

(iv) Bills of material for similar items.

(b) *Quantity.* Ensure available inventory is in accordance with quantities listed on the inventory schedules. While a complete physical count of each item is not required, perform sufficient checks to ensure accurate quantities.

(c) *Condition.* Ensure the inventory condition matches that shown on the inventory schedules.

245.7202 Establishing a plant clearance case.

(a) Upon receipt of an acceptable inventory schedule or a DD Form 1342, DoD Property Record, the plant clearance officer shall establish a plant clearance case file. The case folder will—

(1) Identify the case number (see 245.7203);

(2) Indicate the contractor's name and contract number;

(3) Note the word "Termination" if applicable; and

(4) Consolidate all inventory schedules applicable to one contract at the same location, if possible.

(b) As a minimum, include in the plant clearance case file—

(1) Inventory schedules or DD Form 1342, DoD Property Record, annotated to show all disposal actions;

(2) Copies of documents forwarding inventory schedules to the appropriate screening activity;

(3) Shipping or other instructions and correspondence directing disposition of contractor inventory;

(4) Shipping documents transferring inventory;

(5) Inventory verification survey or other documents showing completion of allocability review;

(6) Forms authorizing donation or sale;

(7) Document showing disposition of proceeds from plant clearance actions; and

(8) Any other documents pertinent to disposal actions, including review board cases, antitrust clearances, and inventory disposal reports.

245.7203 Assigning plant clearance case numbers.

(a) Use a three-part, 11-character number constructed as follows:

(1) Part 1: DoD Activity Address Number (6-character alphanumeric code) assigned to the contract administering activity.

(2) Part 2: Locally assigned 4-character consecutive alphanumeric code, beginning each calendar year with 001 continuing as necessary through ZZZ. The fourth digit is the last number of the calendar year.

(3) Part 3: The 11th character is a single letter identifying the department/agency:

C—Army
Q—Navy
E—Air Force
L—Marine Corps
U—Defense Logistics Agency
N—Defense Nuclear Agency
M—Defense Mapping Agency
S—NASA
D—Other DoD Activities
O—Non-DoD Activities

(b) Record the plant clearance number on DD Form 1635, Plant Clearance Case Register, or mechanized equivalent.

245.7204 Preparing inventory disposal report.

(a) Prepare Standard Form 1424, Inventory Disposal Report, for each completed plant clearance case. For terminated contracts, prepare a consolidated Inventory Disposal Report for each termination docket.

(b) Distribute the report to the contracting officer and to any other activities having an interest in the inventory disposal.

(c) Items on the form are self-explanatory except:

(1) Item 12—Insert net change due to shortages, overages, errors, pricing, or withdrawals, etc. Explain in item 16, Remarks.

(2) Item 14—Insert amount contractor is retaining or purchasing at full acquisition cost (see FAR 45.605–1).

(3) Item 15—Insert acquisition cost and net credit (full credit less approved handling, transportation, and restocking charges for items returned to supplier).

(4) Item 16—Insert the acquisition cost for all transfers accomplished. For lines 16A and 16B, insert subtotals as indicated.

(5) Item 18—Insert acquisition cost and gross proceeds. When approved sale costs are reimbursed from proceeds, show net proceeds in Item 26, Remarks.

(6) Items 20 and 21—Use to identify and report transactions not otherwise identified, such as assets shipped to a Government precious metals reclamation activity, etc. Further explanation may be provided in Item 26, Remarks, if necessary.

(7) Item 25—Totals dispositions must equal amounts on line 13 and must reflect all disposal actions within the case.

(8) Item 26—Show the specific disposition of proceeds reported in Items 14, 15, and 18. Also indicate amounts deleted for specific contractor claims, or applied as a credit to the claim. Explain any entry requiring explanation.

245.7205 Reporting excess and surplus contractor inventory.

(a) Contract administration offices with plant clearance responsibilities will—

(1) Use DD Form 1638, Report of Excess and Surplus Contractor Inventory, or mechanized equivalent, to report the disposition of contractor inventory. Do not include disposition actions transferred to other offices. Unless headquarters of the administering activity directs otherwise, complete only the column total for each line of this report.

(2) Prepare quarterly reports for periods ending March 31, June 30, September 30, and December 31. Activities preparing manual reports will submit duplicate reports to the headquarters of the administering activity within ten working days after the close of the report period. (Report Control Symbol DD(I&L)(Q)1430).

(b) Items on the report are self-explanatory except:

(1) Line 1—Insert totals from line 7 of the preceding report.

(2) Line 2—Insert net changes due to shortages, overages, errors, or withdrawals (other than purchases or retention at cost).

(3) Line 3—Insert total excess inventory reported by contractors during the report period.

(4) Line 5—Insert total plant clearance cases completed during the report period. Do not report cases as completed until all property is disposed. Acquisition cost must equal line 19.

(5) Line 8—Insert amount retained or withdrawn at full cost.

(6) Line 9—Insert acquisition cost in the "Acquisition Cost" column and insert acquisition cost less handling, transportation, or restocking charges, in the "Proceeds" column.

(7) Line 10—Insert acquisition cost of all transfers completed during the report period. On lines 10A through 10H, insert subtotals representing transfers to the agency indicated. Exclude amounts on lines 10A through 10H when computing line 19 totals.

(8) Line 12—Insert the acquisition cost and gross proceeds. When sale costs are reimbursed from proceeds, show net proceeds in remarks.

(9) Lines 14 and 15—Used to identify and report other transactions.

(10) Line 18—Insert Section II totals. Line 18 acquisition cost must equal acquisition cost on line 5.

245.7206 Transmitting DD Form 1342, DoD Property Record.

As a minimum, the plant clearance officer will provide the following information in a letter forwarding DD Forms 1342 to DIPEC—

(a) Number of DD Forms 1342 included;

(b) Automatic release date;

(c) Screening complete date;

(d) Contractor's name and address;

(e) Contract number;

(f) Contracting activity that awarded the contract under which the contractor acquired the equipment;

(g) Location of the industrial plant equipment;

(h) Total acquisition cost;

(i) A statement advising that the automatic release date will not be extended;

(j) A note stating that—

(1) Request for transfer or shipment must include appropriate fund citations for packing, crating, and handling charges; and

(2) Government bills of lading (GBLs) should be furnished or, if shipment will be accomplished by other than GBL, DIPEC must cite transportation funds; and

(k) The plant clearance officer's signature block.

Subpart 245.73—Sale of Surplus Contractor Inventory

245.7301 Policy.

(a) Screening must be completed before any surplus contractor inventory sale.

(b) Except as provided in 245.7307, sales of surplus contractor inventory shall be competitive.

(c) The headquarters of the contract administration activity must approve the use of auctions, spot bids, or retail sales.

245.7302 Competitive sales.

245.7302-1 Property descriptions.

(a) Describe the property as "used" or "unused." Indicate if unused property is still in the manufacturer's original containers. Qualifying statements such as "well-preserved" or "repairs required" are authorized. Do not use condition codes or the terms "new" or "salvage."

(b) Property descriptions must be accurate and adequate for identification by prospective bidders. Use commercial terminology and original manufacturer and brand name, if applicable.

245.7302-2 Lotting.

(a) Consider combining property into lots when the quantities, value, or nature of the property makes it uneconomical to sell separately.

(b) When lotting is appropriate and economically practical—

(1) Size the lots to encourage bidding by small businesses or individuals;

(2) Lot unused items by make or manufacturer, except when quantities or dollar values are small;

(3) Lot commercially similar items when practicable;

(4) Lot used and unused items separately unless quantities, value, or nature of property makes it uneconomical to sell separately;

(5) Size lots large enough to ensure the selling costs are not disproportionate to the anticipated proceeds.

245.7302-3 Alternate bids.

Offerors may be solicited to bid for groups or for the entire offering by use of the following:

Item ________ (Alternate Bid)

This item consists of all property listed and described in Items ________ to ________, inclusive. Award under this item will be made only if the highest acceptable bid on this item is equal to, or greater than, the total of the highest acceptable bids on Items ________ to ________, inclusive.

245.7302-4 Basis for sale.

(a) *Unit price basis*—requires the offeror to state the bid price in terms of the quantity or weight generally applied in commercial sales of similar items.

(b) *Lot price basis*—requires the offeror to submit a bid for the entire lot. Use the lot price basis of sale only when property cannot be sold by unit measure or the potential sales return is small.

245.7302-5 Mailing lists.

(a) The plant clearance officer will ensure the contractor solicits a sufficient number of bidders to obtain adequate competition.

(b) When large quantities of property, special commodities, or unusual geographic locations are involved, the plant clearance officer is encouraged to obtain additional listings from: Defense Reutilization and Marketing Service, Attn: DRMS-OCR, 74 North Washington Avenue, Battle Creek, MI 49017-3092.

245.7303 Formal bid procedures.

(a) The contractor will use formal invitations for bid unless the plant clearance officer approves use of informal bid procedures.

(b) The contractor shall solicit bids at least 15 calendar days before bid opening to allow adequate opportunity to inspect property and prepare bids.

(c) For large sales, the contractor may use summary lists of items offered as bid sheets with detailed descriptions attached.

(d) In addition to mailing or delivering notice of the proposed sale to prospective bidders, the contractor may, when the results are expected to justify the additional expense—

(1) Display a notice of the proposed sale in appropriate public places.

(2) Publish a sales notice in appropriate trade journals or magazines and local newspapers.

(e) When the acquisition cost of the property to be sold at one time, in one place, is $250,000 or more, the contractor shall send a notice of the proposed sale to: U.S. Department of Commerce, Commerce Business Daily, Sales Section, P.O. Box 5999, Chicago, IL 60680.

(1) The contractor shall send the CBD notice at least 20 days before bid opening, or date of sale.

(2) CBD notices shall be—

(i) Double spaced and in synopsis form suitable for printing;

(ii) Transmitted by fastest mail available; and

(iii) Contain the following information in the order listed:

(A) Name and address of contractor issuing the invitation for bids;

(B) Name or title, address, and telephone number of the official from whom copies of the sales offering and other information can be obtained;

(C) Description of the property to be sold including, when desired, the total estimated acquisition cost;

(D) The number of the invitation or sale;

(E) The date of the sale or bid opening;

(F) The type of sale, i.e., sealed bid, spot bid, auction; and

(G) The location of the property.

(f) The plant clearance officer or representative will witness the bid opening. Within two working days after bid opening, the contractor will submit to the plant clearance officer two copies of an abstract of all bids, signed by the witnessing Government representative.

245.7304 Informal bid procedures.

(a) Upon approval of the plant clearance officer, the contractor may issue informal invitations to bid (orally, telephonically, or by other informal media), provided—

(1) Maximum practical competition is maintained;

(2) Sources solicited are recorded; and

(3) Informal bids are confirmed in writing.

(b) Bids by the contractor or its employees shall be submitted to the plant clearance officer prior to soliciting bids from other prospective bidders.

245.7305 Sale approval and award.

The plant clearance officer will—

(1) Evaluate bids to establish that the sale price is fair and reasonable, taking into consideration—

(i) Knowledge or tests of the market;

(ii) Current published prices for the property;

(iii) The nature, condition, quantity, and location of the property; and

(iv) Information from the Defense Reutilization and Marketing Service.

(2) Approve award to the responsible bidder whose bid is most advantageous to the Government, price and other factors considered. Award shall not be approved to any bidder who is not eligible to enter into a contract with the DoD due to inclusion on the list of Parties Excluded from Procurement Programs. If a compelling reason exists to award to a bidder on the excluded list, the plant clearance officer shall request approval from the headquarters of the administering activity.

(3) Notify the contractor within five working days of the bidder to whom an award shall be made. The contractor shall make the award, collect the proceeds of the sale, and release the property to the purchaser. The contractor shall provide the plant clearance officer with evidence of delivery reflecting actual quantities released to the purchaser.

245.7306 Sales services.

When sale services are needed, the plant clearance officer will document the reasons in the case file and make arrangements directly with the Defense Reutilization and Marketing Service (DRMS) or General Services Administration (GSA). The arrangements will include a requirement to return all proceeds to the plant clearance officer for crediting in compliance with FAR 45.610-3.

245.7307 Non-competitive sales.

245.7307-1 General.

(a) Non-competitive sales include purchases or retention at less than cost by the contractor.

(b) Non-competitive sales may be made when—

(1) The contracting department/agency or the plant clearance officer

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(1) Evaluate bids to establish that the sale price is fair and reasonable, taking into consideration—

(i) Knowledge or tests of the market;

(ii) Current published prices for the property;

(iii) The nature, condition, quantity, and location of the property; and

(iv) Information from the Defense Reutilization and Marketing Service.

(2) Approve award to the responsible bidder whose bid is most advantageous to the Government, price and other factors considered. Award shall not be approved to any bidder who is not eligible to enter into a contract with the DoD due to inclusion on the list of Parties Excluded from Procurement Programs. If a compelling reason exists to award to a bidder on the excluded list, the plant clearance officer shall request approval from the headquarters of the administering activity.

(3) Notify the contractor within five working days of the bidder to whom an award shall be made. The contractor shall make the award, collect the proceeds of the sale, and release the property to the purchaser. The contractor shall provide the plant clearance officer with evidence of delivery reflecting actual quantities released to the purchaser.

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245.7307 Non-competitive sales.

245.7307–1 General.

(a) Non-competitive sales include purchases or retention at less than cost by the contractor.

(b) Non-competitive sales may be made when—

(1) The contracting department/agency or the plant clearance officer

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determines that this method is essential to expeditious plant clearance;

(2) The sale is otherwise justified on the basis of circumstances listed in 245.7307–2;

(3) The Government's interests are adequately protected; and

(4) FAR subpart 1.7 requirements are met.

(c) Non-competitive sales shall be at fair and reasonable prices not less than those reasonably expected under competitive sale.

245.7307–2 Justification.

(a) Conditions justifying non-competitive sales are—

(1) Scientific equipment allocated to terminated research and development contracts with educational institutions;

(2) No acceptable bids received under an advertised competitive sale;

(3) Property value so small that anticipated proceeds would not warrant formal competitive sale;

(4) Sale to States, territories, possessions, political subdivisions thereof, or tax-supported agencies therein, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained;

(5) Specialized nature of the property would not create bidder interest;

(6) Removal of the property would reduce its value or result in disproportionate handling expenses; or

(7) Such action is essential to the Government's interests.

(b) The contracting department/agency will provide the contract administration office the sales justification and any special sales provisions when the department/agency decides to sell production equipment to the contractor by non-competitive sale.

245.7308 Antitrust notification.

(a) When contractor inventory with an acquisition cost of $3 million or more; or any patents, processes, techniques, or inventions, regardless of cost, are sold or otherwise disposed of to private interests notify the Attorney General and the General Services Administration (GSA) of the proposed terms and conditions of disposal. Submit the following information to the Department of Justice and the GSA through the contract administration agency channels. Report Control Symbol DD-P&L(AR) 1492 applies.

(1) Location and description of property (specify tonnage if scrap);

(2) Proposed sale price (explain if the proposed purchaser was not highest bidder);

(3) Acquisition cost of property;

(4) Manner of sale, indicating whether by—

(i) Sealed bid (specify number of bidders solicited and bids received);

(ii) Auction or spot bid (state how sale was advertised); or

(iii) Negotiation (explain why property was not sold competitively);

(5) Proposed purchaser's name, address, and trade name (if any) under which proposed purchaser is doing business;

(6) If a corporation, provide state and date of incorporation, and name and address of—

(i) Each holder of 25 percent or more of the corporate stock;

(ii) Each subsidiary; and

(iii) Each company under common control with proposed purchaser;

(7) If a partnership, provide—

(i) Name and address of each partner; and

(ii) Other business connections of each partner;

(8) Nature of proposed purchaser's business (indicate whether its scope is local, statewide, regional, or national);

(9) Estimated dollar volume of sales of proposed purchaser (as of latest calendar or fiscal year);

(10) Estimated net worth of proposed purchaser; and

(11) Intended use of property.

(b) Do not dispose of property until the Attorney General determines whether the proposed disposal action would tend to create or maintain a situation inconsistent with the antitrust laws.

(c) If the Attorney General advises that the proposed disposition is inconsistent with the antitrust laws, do not continue with the proposed disposition.

(d) Under non-competitive sales, the prospective purchaser shall be informed that final consummation of the sale is subject to determination by the Attorney General.

(e) Under competitive or non-competitive sales, the purchaser is required to provide the information required in paragraph (a) of this subsection.

245.7309 Mandatory terms and conditions—formal invitations.

Sale by formal invitation shall include, as a minimum, the terms and conditions in this section.

245.7309–1 Inspection.

The Bidder is invited to inspect the property prior to submitting a bid. Property will be available for inspection at the places and times specified in the Invitation. Failure to inspect property does not constitute grounds for the withdrawal of a bid after opening.

245.7309–2 Condition and location of property.

(a) Unless otherwise specifically provided in the Invitation, all property is offered for sale "as is" and "where is." If the Invitation provides that the Contractor will load, then "where is" means f.o.b. conveyance at the point specified in the Invitation.

(b) The description is based on the best available information. However, the Contractor makes no warranty, express or implied, as to quantity, kind, character, quality, weight, size, or description of the property or its fitness for any use or purpose.

(c) Except as provided in Conditions 245.7306–8, Variations in Quantity or Weight, and 245.7306–10, Risk of Loss, no request for adjustment in price or for rescission of the sale will be considered. This is not a sale by sample.

245.7309–3 Consideration of bids.

(a) Bidder agrees that this bid is firm and irrevocable within the acceptance period specified in the Invitation (or, if not specified, not less than ten or more than 60 days).

(b) The right is reserved to reject any or all bids, to waive any technical defects in bids, and, unless otherwise specified in the offering or by the Bidder, to accept any one item or group of items in the bid. Unless the invitation provides otherwise, bids—

(1) May be on any or all items;

(2) Must be submitted on the unit basis specified for that item;

(3) Must cover the total number of units designated for that item; and

(4) Unit prices govern.

245.7309–4 Payment.

(a) Purchaser agrees to pay the full purchase price for awarded property at the prices quoted in the bid. Unless an adjustment is required pursuant to Condition 245.7306–8, Variations in Quantity or Weight, payment must be made within the time specified for removal and prior to delivery of any of the property. In the event that any adjustment is made, payment must be made immediately after such adjustment.

(b) The full purchase price, or balance if a bid deposit was required, shall be paid to the Contractor in cash or by certified check, cashier's check, traveler's check, bank draft, or postal or express money order. The Contractor is not required to extend credit to any purchaser.

(c) The Contractor reserves the right to apply any bid deposits made under this Invitation by a bidder against any amounts due under a contract awarded by the Contractor under this Invitation. If the total sum due to the contractor is less than the amount deposited with the bid, the difference shall be promptly refunded. Deposits accompanying bids which are not accepted shall be promptly returned.

245.7309-5 Title.

(a) Unless otherwise specified in the Invitation, title to property sold under this Invitation shall vest in the Purchaser when full payment is made. If the Invitation provides for loading by the Contractor, title shall not vest until payment and loading are completed.

(b) A Standard Form 97, Certificate of Release of a Motor Vehicle, (or a State certificate of title) shall be furnished for motor vehicles and motor-propelled or motor-drawn equipment requiring licensing.

245.7309-6 Delivery and removal of property.

(a) Unless otherwise specified in the Invitation, the Purchaser shall be entitled to obtain the property upon vesting of title in the Purchaser. Delivery shall be made at the designated location, and removal will be at the Purchaser's expense within the time frame specified in the Invitation or any additional time allowed by the Contractor.

(b) The Purchaser shall reimburse the Contractor for any damage to the Contractor's property caused by Purchaser's removal operations. If additional time is required to remove the property, the Contractor, without limiting any other rights, may require the Purchaser to pay reasonable storage charges.

245.7309-7 Default.

If the successful Bidder fails to make full payment, remove property by the specified date, or comply with any other terms and conditions of sale, the Contractor reserves the right to sell or otherwise dispose of any or all such property and to charge losses and incidental expenses to the defaulting Bidder. Bid deposits received (if required in the Invitation) shall be applied against such losses and expenses.

245.7309-8 Variations in quantity or weight.

When property is sold on a "unit price" basis, the Contractor reserves the right to vary by up to 15 percent the quantity or weight listed in the Invitation and the Purchaser agrees to accept delivery of any quantity or weight within these limits. The purchase price shall be adjusted in accordance with the unit price and on the basis of the quantity or weight delivered.

245.7309-9 Weighing.

(a) When weighing is necessary to determine the exact purchase price, the Purchaser shall arrange for and pay all weighing expenses. When removal is by truck, weighing shall be subject to supervision and accomplished on—

(1) Contractor scales;

(2) Certified scales; or

(3) Other scales acceptable to both parties.

(b) When removal is by rail, weighing shall be on railroad scales or by other means acceptable to the railroad for freight purposes. The Purchaser shall pay switching charges.

245.7309-10 Risk of loss.

The Contractor is responsible for reasonable care and protection of the property until the date specified for removal. All risk of loss, damage, or destruction from any cause whatsoever shall be borne by the Purchaser after passage of title.

245.7309-11 Liability.

Contractor and Government liability, when liability has been established, shall not exceed the refund of any portion of the purchase price already received by the Contractor.

245.7309-12 Oral statements.

Any oral statement by the Contractor changing or supplementing the contract or any condition thereof is unauthorized.

245.7309-13 Eligibility of bidders.

The Bidder shall certify that the Bidder is not—

(a) A civilian employee of the Department of Defense or the United States Coast Guard whose duties include any functional or supervisory responsibility for disposal of contractor inventory;

(b) A member of the United States Armed Forces, including the Coast Guard, whose duties include any functional or supervisory responsibility for disposal of contractor inventory;

(c) An agent, employee or immediate member of the household of personnel in paragraphs (a) and (b).

245.7309-14 Claims liability.

The Purchaser or Bidder agrees to save the Contractor and Government harmless from any and all claims, demands, actions, debts, liabilities, judgments, costs, and attorney's fees arising out of, claimed on account of, or in any manner predicated upon loss of or damage to property of, and injuries to or the death of any and all persons whatsoever, in any manner caused or contributed to by the Purchaser or Bidder, their agents, servants or employees, while in, upon, or about the sale site on which the property sold or offered for sale is located, or while going to or departing from such areas; and to save the Contractor and Government harmless from and on account of damages of any kind which the Contractor may suffer as the result of the acts of any of the Purchaser's agents, servants, or employees while in or about the said sites.

245.7310 Special term and conditions.

When necessary, include the special conditions of this section in formal invitations.

245.7310-1 Demilitarization.

When demilitarization of property is required, whether on or off contractor or Government premises, the invitation must include the following clause:

(a) *Demilitarization.*

Item(s) ________ require demilitarization by the Purchaser in the manner and to the degree set forth below:

(1) For property located in the United States insert item number(s) and specific demilitarization requirements for item(s) shown in Attachment 1, Part 2 of Defense, Demilitarization Manual;

(2) For property located outside the United States, insert item number(s) and specific demilitarization requirements for item(s) shown in Attachment 1, Part 3 of DoD 4160.21-M-1, Defense Demilitarization Manual.

(b) *Demilitarization on Government Premises.*

Property requiring demilitarization shall not be removed, and title shall not pass to the Purchaser, until demilitarization has been completed and approved by an authorized Contractor and Government representative. Demilitarization will be accomplished as specified in the contract. Component parts vital to the military or lethal purpose of the property shall be rendered unusable. The Purchaser agrees to assume all cost incident to the demilitarization and to restore the working area to its present condition after removing the demilitarized property.

(c) *Demilitarization on Non-Government Premises.* Property requiring demilitarization shall be demilitarized by the Purchaser under supervision of qualified Department of Defense personnel. Title shall not pass to the Purchaser until demilitarization has been completed by the Purchaser and approved by an authorized Contractor and Government representative. Demilitarization will be accomplished as specified in the contract. Component parts vital to the military or lethal purpose of the property shall be rendered unusable. The Purchaser agrees to assume all costs incident to the demilitarization.

(d) *Failure to Demilitarize.* If the Purchaser fails to demilitarize the property as specified in the contract, the Contractor may, upon giving ten days written notice from date of mailing to the Purchaser—

(1) Repossess, demilitarize, and return the property to the Purchaser. The Purchaser hereby agrees to pay to the Contractor, prior to the return of the property, all costs incurred by the Contractor in repossessing, demilitarizing, and returning the property to the Purchaser.

(2) Repossess, demilitarize, and resell the property, and charge the defaulting Purchaser will all excess costs incurred by the Contractor. The Contractor shall deduct these costs from the purchase price and refund the balance of the purchase price, if any, to the Purchaser. In the event the excess costs exceed the purchase price, the defaulting Purchaser hereby agrees to pay these excess costs to the Contractor.

(3) Repossess and resell the property under similar terms and conditions. In the event this option is exercised, the Contractor shall charge the defaulting Purchaser with all excess costs incurred by the Contractor. The Contractor shall deduct these excess costs from the original purchase price and refund the balance of the purchase price, if any, to the defaulting Purchaser. Should the excess costs to the Contractor exceed the purchase price, the defaulting Purchaser hereby agrees to pay these excess costs to the Contractor.

245.7310-2 Performance bond.

Performance bonds are required when work, other than loading, is to be performed by the purchaser and a bond is considered necessary to ensure performance. Generally, performance bonds shall be 100 percent of the estimated cost of the work to be performed. If a 100 percent performance bond would be disadvantageous to the Contractor or to the Government, the amount may be reduced to not less than 50 percent of the estimated cost of the work. Include the following condition when performance bonds are required:

Performance Bond

Within ten days after notice of award, the Purchaser shall furnish a performance bond in the sum of $_______ to cover the Purchaser's obligations. Such bond shall remain in full force and effect during the term of the contract and any extensions as may be agreed upon. The Purchaser shall not be permitted to begin performance until the bond has been received.

245.7310-3 Liability and Insurance

When the work to be performed by the purchaser warrants, use the following:

Liability and Insurance

The Purchaser shall at the Purchaser's own expense purchase and maintain during the term of the contract insurance as follows:

(a) Standard workers' compensation and employer's liability insurance required under State and Federal statutes. However, the Contractor may waive this requirement upon receipt of satisfactory evidence that the Purchaser is qualified as a self-insurer under applicable provisions of law.

(b) Bodily injury liability insurance in an amount not less than $300,000 for any one occurrence; and

(c) Property damage liability insurance.

245.7310-4 Dangerous property.

The following warning shall be included when it cannot be certified that the property is completely harmless:

Dangerous Property

Purchasers are warned that the property purchased may contain items of an explosive, toxic, or inflammable nature, notwithstanding reasonable care exercised by the Contractor to render the property harmless. The Contractor and the Government assume no liability for damage to the property of the Purchaser, or for personal injuries or disabilities to the Purchaser or the Purchaser's employees, or to any other person, arising from or incident to the purchase of the property, or its use or disposition by the Purchaser. The Purchaser shall save the Contractor and the Government harmless from any and all such claims.

245.7310-5 Controlled substances.

The sale of controlled substances, e.g., narcotics, stimulants, depressants, or hallucinogenic drugs, shall be subject to the following special conditions:

(a) *Controlled Substances.* Bids will be rejected unless the Bidder submits the following certification with its bid:

The undersigned represents and warrants that it is registered under The Comprehensive Drug Abuse Prevention and Control Act of 1970, and is authorized under the law and by the Attorney General, U.S. Department of Justice (Bureau of Narcotics and Dangerous Drugs) to buy controlled substances as a medical practitioner, dealer or manufacturer of controlled substances.

(b) *Narcotic Drugs and Chemicals.* Bids will be rejected unless the Bidder submits the following certification with its bid:

The undersigned represents and warrants that it is registered under Federal narcotics laws and is authorized by law and by the Bureau of Narcotics, United States Treasury Department, as a manufacturer of narcotics.

245.7310-6 Radioactive material

The following shall be used whenever the property offered for sale is capable of emitting ionized radiation:

Radioactive Material

Purchasers are warned that the property may be capable of emitting ionized radiation. The Contractor and the Government assume no liability for damage to the property of the Purchaser, or for personal injuries or disabilities to the Purchaser or the Purchaser's employees, or to any other person arising from or incident to the purchase of the property or its use or disposition by the Purchaser. The Purchaser shall hold the Contractor and the Government harmless from all such claims. The Purchase should warn possessors or users of the property that it may be capable of emitting ionized radiation.

245.7310-7 Scrap warranty.

The following condition shall be used whenever property, other than production scrap, is offered for sale as scrap:

Scrap Warranty

The Purchaser represents and warrants that the property will be used only as scrap, and will not be resold until—

(a) Scrapping has been accomplished; or

(b) The Purchaser obtains an identical warranty from any subsequent purchaser.

245.7310-8 Antitrust clearance.

When property with an acquisition cost of $3 million or more is to be sold, include the following in the invitation:

Antitrust

When the property offered for sale has an acquisition cost of $3 million or more, or consists of patents, processes, techniques, or inventions, irrespective of cost, the successful Bidder shall be required to furnish additional information and shall allow up to 60 days for acceptance of its bid. Award shall be made only upon advice from the Department of Justice that the proposed sale would not create or maintain a situation inconsistent with the antitrust laws.

245.7311 Optional conditions.

The following special conditions of sale may be added at the option of the contractor:

245.7311-1 Sales and use tax liability.

For purchases of property subject to a state sales or use tax, a special condition of sale may stipulate that the Purchaser shall pay and the Contractor shall collect the amount of the tax, which shall be itemized separately on the billing document.

245.7311-2 Safety, security, and fire regulations.

245.7311-3 Bid deposits.

245.7311-4 Other special conditions.

Other special conditions considered necessary by the Contractor are subject to the prior approval of the plant clearance officer. Approval will normally be granted provided the prescribed conditions of sale are not altered or affected and the interest of the Government is not adversely affected.

PART 246—QUALITY ASSURANCE

Sec.

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Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 246.1—General

246.101 Definitions.

Metrology is the science of weights and measures used to determine conformance to technical requirements including the development of standards and systems for absolute and relative measurements.

Quality means the composite of material attributes including performance features and characteristics of a product or service to satisfy a given need.

Quality assurance is a planned and systematic pattern of all actions necessary to provide adequate confidence that adequate technical requirements are established; products and services conform to established technical requirements; and satisfactory performance is achieved.

Quality audit is a systematic examination of the acts and decisions with respect to quality in order to independently verify or evaluate the operational requirements of the quality program or the specification or contract requirements of the product or service.

Quality program is a program which is developed, planned, and managed to carry out cost effectively all efforts to effect the quality of materials and services from concept through validation, full-scale development, production, deployment, and disposal.

246.102 Policy.

Departments and agencies shall also—

(1) Develop and manage a cost effective quality program to ensure that contract performance conforms to specified requirements. Apply the quality program to all contracts for services and products designed, developed, purchased, produced, stored, distributed, operated, maintained, or disposed of by contractors.

(2) Conduct quality audits to ensure the quality of products and services meet contractual requirements.

(3) Base the type and extent of Government contract quality assurance actions on the particular acquisition.

(4) Provide contractors the maximum flexibility in establishing efficient and effective quality programs to meet contractual requirements.

246.103 Contracting office responsibilities.

The contracting office may conduct product-oriented surveys and evaluations to determine—

(1) The adequacy of the technical requirements relating to quality; and

(2) Product conformance to design intent. Consider conducting the surveys and evaluations in conjunction with the activity responsible for technical requirements.

(a) Contracting offices are also responsible for—

(i) Assisting the technical activity in improving the quality requirements for contracts when first identified for competitive acquisition; and

(ii) Assisting in determining the cause of problems noted in user experience reports.

(b) The contracting office must coordinate with the quality assurance activity before changing any quality requirement.

(c) The activity responsible for technical requirements may prepare instructions covering the type and extent of Government inspections for acquisitions that are complex, have critical applications, or have unusual requirements.

(i) In preparing the instructions, the technical activity shall consider, as applicable—

(A) The past quality history of the contractor;

(B) The criticality of the material procured in relation to its intended use, considering such factors as—

(1) Reliability;
(2) Safety;
(3) Interchangeability; and
(4) Maintainability;

(C) Problems encountered in the development of the material;

(D) Problems encountered in other procurements of the same or similar material;

(E) Available feed-back data from contract administration, receiving, testing, or using activities; and

(F) The experience of other contractors in overcoming manufacturing problems.

(ii) The instructions shall—

(A) Be kept to a minimum;

(B) Comply with 246.470-2; and

(C) Be prepared on a contract-by-contract basis.

(iii) The instructions shall not—

(A) Serve as a substitute for incomplete contract quality requirements;

(B) Impose greater inspection requirements than are in the contract;

(C) Use broad or general designations such as—

(1) All requirements;
(2) All characteristics; or
(3) All characteristics in the classification of defects;

(D) Be used for routine administrative procedures; or

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(c) The activity responsible for technical requirements may prepare instructions covering the type and extent of Government inspections for acquisitions that are complex, have critical applications, or have unusual requirements.

(i) In preparing the instructions, the technical activity shall consider, as applicable—

(A) The past quality history of the contractor;

(B) The criticality of the material procured in relation to its intended use, considering such factors as—

(1) Reliability;

(2) Safety;

(3) Interchangeability; and

(4) Maintainability;

(C) Problems encountered in the development of the material;

(D) Problems encountered in other procurements of the same or similar material;

(E) Available feed-back data from contract administration, receiving, testing, or using activities; and

(F) The experience of other contractors in overcoming manufacturing problems.

(ii) The instructions shall—

(A) Be kept to a minimum;

(B) Comply with 246.470-2; and

(C) Be prepared on a contract-by-contract basis.

(iii) The instructions shall not—

(A) Serve as a substitute for incomplete contract quality requirements;

(B) Impose greater inspection requirements than are in the contract;

(C) Use broad or general designations such as—

(1) All requirements;

(2) All characteristics; or

(3) All characteristics in the classification of defects;

(D) Be used for routine administrative procedures; or

(E) Specify continued inspection requirements when statistically sound sampling will provide an adequate degree of protection.

(iv) After issuing the instructions, the technical activity—

(A) Must provide the contract administration office available information regarding those factors which resulted in the requirement for Government inspection;

(B) Must periodically analyze the need to continue, change, or discontinue the instructions; and

(C) Must advise the contract administration office of the results of the periodic analyses.

246.104 Contract administration office responsibilities.

(f) The contract administration office shall continue to follow any specific written instructions received from the contracting office until the contracting office acts on a recommendation.

Subpart 246.2—Contract Quality Requirements

246.202 Types of contract quality requirements.

246.202-3 Higher-level contract quality requirements.

(b)(i) *Inspection System Requirements.* MIL-I-45208 requires that the contractor establish and maintain an inspection system.

MIL-I-45208 is used in contracts—

(A) In addition to a standard inspection requirement; and

(B) When technical requirements require control of quality by both in-process and final end-item inspection, including such elements of the manufacturing process as—

(1) Measuring and testing equipment;

(2) Drawings and changes;

(3) Inspection; and

(4) Documentation and records.

(ii) *Quality Program Requirements.* MIL-Q-9858 requires that the contractor establish and maintain a quality program.

MIL-Q-9858 is used in contracts—

(A) In addition to a standard inspection requirement; and

(B) When the technical requirements of the contract require—

(1) Control of work operations;

(2) In-process controls and inspection; and

(3) Attention to other factors such as—

(i) Organizations;

(ii) Planning;

(iii) Work instructions;

(iv) Documentation control; and

(v) Advanced metrology.

246.203 Criteria for use of contract quality requirements.

(c) *Criticality.* Acquisitions of critical items, whether peculiar or common, shall have contract quality requirements.

246.204 Application of criteria.

(1) Use the following Table 46-1, Contract Quality Requirements Guide, to implement FAR 46.204 Table 46-1 for higher-level contract quality requirements.

TABLE 46-1—CONTRACT QUALITY REQUIREMENTS GUIDE

Item		Type of Contract	
Technical Description	Complexity	Application	Quality Requirement
Commercial	Complex	Critical	MIL-I-45208
Military-Federal	Non-Complex	Critical	MIL-I-45208
Military-Federal	Complex	Non-Critical Peculiar	MIL-I-45208
Military-Federal	Complex	Critical	MIL-Q-9858

(2) When purchasing a commercial item, the technical, quality assurance, and contracting activities must work together to tailor contract quality requirements to—

(i) Eliminate or minimize special Government testing, quality control, and inspection requirements. Consider—

(A) The item's application;

(B) The cost objectives of the acquisition; and

(C) The item's reliability as established in the commercial market;

(ii) Maximize use of the certificate of conformance consistent with FAR 46.504; and

(iii) Provide for examination and acceptance at the most economical point (source or destination).

Subpart 246.3—Contract Clauses

246.370 Material inspection and receiving report.

(a) Use the clause at 252.246-7000, Material Inspection and Receiving Report, in solicitations and contracts when there will be separate and distinct deliverables, even if the deliverables are not separately priced.

(b) When contract administration is retained by the contracting office, the clause at 252.246-7000, Material Inspection and Receiving Report, is not required for—

(1) Contracts awarded using small and other simplified purchase procedures (FAR part 13);

(2) Negotiated subsistence contracts;

(3) Contracts for fresh milk and related fresh dairy products;

(4) Contracts for which the deliverable is a scientific or technical report;

(5) Research and development contracts not requiring the delivery of separately priced end items;

(6) Base, post, camp, or station contracts;

(7) Contracts in overseas areas when the preparation and distribution of the DD Form 250, Material Inspection and Receiving Report, by the contractor would not be practicable. In these cases, arrange for the contractor to provide the information necessary for the contracting office to prepare the DD Form 250;

(8) Contracts for services when hardware is not acquired as an item in the contract; and

(9) Indefinite delivery type contracts placed by central contracting offices which authorize only base, post, camp, or station activities to issue orders.

Subpart 246.4—Government Contract Quality Assurance

246.406 Foreign governments.

(1) *Quality assurance among North Atlantic Treaty Organization (NATO) countries.—(i) NATO Standardization Agreement (STANAG) 4107, Mutual Acceptance of Government Quality Assurance.* (A) STANAG 4107—

(1) Contains procedures, terms, and conditions under which one NATO country will perform quality assurance for another NATO country, or for a NATO organization.

(*2*) With certain reservations, has been ratified by the U.S. and other nations in NATO.

(B) Departments and agencies—

(*1*) May ask NATO countries to perform quality assurance;

(*2*) Shall perform quality assurance when requested by a NATO country.

(C) The U.S. Government reserves the right to require reimbursement for work it performs for other NATO countries and organizations.

(ii) *NATO Standardization Agreement (STANAG) 4108, Allied Quality Assurance Publications.* (A) STANAG 4108 provides for the application of Allied Quality Assurance Publications (AQAPs).

(B) Its annexes list AQAPs and the criteria for applying those AQAPs which are required in contracts between NATO countries.

(2) *International military sales (non-NATO).* Departments and agencies shall—

(i) Perform quality assurance services on international military sales contracts or in accordance with existing agreements;

(ii) Ensure conformance to the technical and quality requirements of international military sales contracts;

(iii) Inform host or U.S. Government personnel and contractors on the use of quality assurance publications;

(iv) Specify appropriate quality requirements in contracts awarded to other countries; and

(v) Delegate quality assurance to the host government when satisfactory services are available.

(3) *Reciprocal quality assurance agreements.* A Memorandum of Understanding (MOU) with a foreign country may contain an annex that provides for the reciprocal performance of quality assurance services. MOUs should be checked to determine whether such an annex exists for the country where a defense contract will be performed. (See Subpart 225.74 for more information about MOUs.)

246.407 Nonconforming supplies or services.

(1) Contracting officers shall use the following MIL–STD–109 definitions in determining conformance with contract requirements—

(i) *Critical nonconformance* is a nonconformance that judgment and experience indicate—

(A) Is likely to result in hazardous or unsafe conditions for individuals using, maintaining, or depending upon the supplies or services; or

(B) Is likely to prevent performance of a vital agency mission.

(ii) *Major nonconformance* is a nonconformance, other than critical, that is likely to result in failure, or to materially reduce the usability of the supplies or services for their intended purpose.

(iii) *Minor nonconformance* is a nonconformance that is not likely to materially reduce the usability of the supplies or services for their intended purpose, or is a departure from established standards having little bearing on the effective use or operation of the supplies or services.

(2) Contracting officers shall ensure that—

(i) Nonconformances are identified; and

(ii) The significance of a nonconformance is established when considering the acceptability of supplies or services which do not meet contract requirements.

(f) If nonconforming material or services are discovered after acceptance, the defect appears to be the fault of the contractor, any warranty has expired, and there are no other contractual remedies, the contracting officer—

(i) Shall notify the contractor in writing of the nonconforming material or service;

(ii) Shall request that the contractor repair or replace the material, or perform the service, at no cost to the Government; and

(iii) May accept consideration if offered. For guidance on solicitation of a refund, see subpart 242.71.

246.408 Single-agency assignments of Government contract quality assurance.

246.408–70 Subsistence.

(a) The Surgeons General of the military departments are responsible for—

(1) Acceptance criteria;

(2) Technical requirements; and

(3) Inspection procedures needed to assure wholesomeness of foods.

(b) The contracting office may designate any Federal activity, capable of assuring wholesomeness and quality in food, to perform quality assurance for subsistence contract items. The designation may—

(1) Include medical service personnel of the military departments; and

(2) Be on a reimbursable basis.

246.408–71 Aircraft.

(a) The Federal Aviation Administration (FAA) has certain responsibilities and prerogatives in connection with some commercial aircraft and of aircraft equipment and accessories (Pub. L. 85–726 (72 Stat 776, 49 U.S.C. 1423)). This includes the issuance of various certificates applicable to design, manufacture, and airworthiness.

(b) FAA evaluations are not a substitute for normal DoD evaluations of the contractor's quality assurance measures. Actual records of FAA evaluations may be of use to the contract administration office (CAO) and should be used to their maximum advantage.

(c) The CAO shall ensure that—

(1) The supplies and services conform to the terms of the contract; and

(2) The contractor possesses any required FAA certificates and approvals prior to acceptance.

246.408–72 Construction projects.

(a) The department or agency responsible for the construction of a building or other structure is normally responsible for on-site inspection.

(b) The contract administration office performs quality assurance for construction materials and supplies acquired for military and civil works projects.

(c) The offices responsible for on-site inspection and for quality assurance of materials and supplies must coordinate their efforts to ensure the compatibility of buildings and structures and installed equipment.

246.470 Government contract quality assurance actions.

246.470–1 Planning.

In systematically planning Government contract quality assurance actions used to determine a contractor's compliance with contract quality requirements, consider—

(a) The relative importance of the product; and

(b) The variety of tasks required of the available resources.

246.470–2 Evidence of conformance.

Use objective evidence of quality to determine conformance to contract quality requirements.

246.470–3 Assessment of additional costs.

(a) Under the clause at FAR 52.246–2, Inspection of Supplies—Fixed-Price, the Government may charge the contractor for additional costs incurred by the Government due to delays in tests or inspections caused by the contractor, or due to the necessity for reinspection or retest. This action may be necessary when—

(1) Supplies are not ready at the time such inspection and test are requested by the contractor; or

(2) Reinspection or retest is necessitated by prior rejection.

(b) After considering the factors in paragraph (d) of this subsection, the quality assurance representative (QAR) may believe that the assessment of additional costs is warranted. If so, the representative shall recommend that the contracting officer take the necessary action and provide a recommendation as to the amount of additional costs. Costs are based on the applicable Federal agency, foreign military sale, or public rate in effect at the time of the delay, reinspection, or retest.

(c) If the contracting officer agrees with the QAR, the contracting officer shall—

(1) Notify the contractor, in writing, of the determination to exercise the Government's right under the clause at FAR 52.246-2, Inspection of Supplies—Fixed Price; and

(2) Demand payment of the costs in accordance with the collection procedures contained in FAR subpart 32.6.

(d) In making a determination to assess additional costs, the contracting officer shall consider—

(1) The frequency of delays, reinspection, or retest under both current and prior contracts;

(2) The cause of such delay, reinspection, or retest; and

(3) The expense of recovering the additional costs.

246.470-4 Maintenance of Government records.

The contract administration office shall maintain suitable records of the quality assurance performance of contractors.

246.470-5 Quality evaluation data.

The contract administration office shall establish a system that provides, as a minimum, for the collection, evaluation, and use of—

(a) Quality data developed by the contractor during performance;

(b) Data developed by the Government through contract quality assurance actions; and

(c) Reports by users and customers.

246.471 Authorizing shipment of supplies.

(a) *General.* (1) Ordinarily, a representative of the contract administration office signs or stamps the shipping papers that accompany Government source-inspected supplies to release them for shipment. This is done for both prime and subcontracts.

(2) An alternative procedure (see paragraph (b) of this section) permits the contractor to assume the responsibility for releasing the supplies for shipment.

(3) The alternative procedure may include prime contractor release of supplies inspected at a subcontractor's facility.

(4) The use of the alternative procedure releases DoD manpower to perform technical functions by eliminating routine signing or stamping of the papers accompanying each shipment.

(b) *Alternative Procedures—Contract Release for Shipment.* (1) The contract administration office may authorize, in writing, the contractor to release supplies for shipment when—

(i) The stamping or signing of the shipping papers by a representative of the contract administration office interferes with the operation of the Government contract quality assurance program or takes too much of the Government representative's time;

(ii) There is sufficient continuity of production to permit the Government to establish a systematic and continuing evaluation of the contractor's control of quality; and

(iii) The contractor has a record of satisfactory quality, including that pertaining to preparation for shipment.

(2) The contract administration office shall withdraw, in writing, the authorization when there is an indication that the conditions in paragraph (b)(1) of this subsection no longer exist.

(3) When the alternative procedure is used, require the contractor to—

(i) Type or stamp, and sign, the following statement on the required copy or copies of the shipping paper(s), or on an attachment—

The supplies in this shipment—

1. Have been subjected to and have passed all examinations and tests required by the contract;

2. Were shipped in accordance with authorized shipping instructions;

3. Conform to the quality, identity, and condition called for by the contract; and

4. Are of the quantity shown on this document.

This shipment was—

1. Released in accordance with section 246.471 of the Defense FAR Supplement; and

2. Authorized by (name and title of the authorized representative of the contract administration office) in a letter dated (date of authorizing letter). (Signature and title of contractor's designated official.)

(ii) Release and process, in accordance with established instructions, the DD Form 250, Material Inspection and Receiving Report, or other authorized receiving report.

246.472 Inspection stamping.

(a) There are two DoD quality inspection approval marking designs (stamps). Both stamps are used—

(1) Only by, or under the direct supervision of, the Government representative; and

(2) For both prime and subcontracts.

(b) The designs of the two stamps and the differences in their uses are—

(1) *Partial (Circle) Inspection Approval Stamp.* (i) This circular stamp is used to identify material inspected for conformance to only a portion of the contract quality requirements.

(ii) Further inspection is to be performed at another time and/or place.

(iii) Material not inspected is so listed on the associated DD Form 250 (Material Inspection and Receiving Report), packing list, or comparable document.

(2) *Complete (Square) Inspection Approval Stamp.* (i) This square stamp is used to identify material completely inspected for all contract quality requirements at source.

(ii) The material satisfies all contract quality requirements and is in complete conformance with all contract quality requirements applicable at the time and place of inspection.

(iii) Complete inspection approval establishes that material which once was partially approved has subsequently been completely approved.

(iv) One imprint of the square stamp voids multiple imprints of the circle stamp.

(c) The marking of each item is neither required nor prohibited. Ordinarily, the stamping of shipping containers, packing lists, or routing tickets serves to adequately indicate the status of the material and to control or facilitate its movement.

(d) Stamping material does not mean that it has been accepted by the Government. Evidence of acceptance is ordinarily a signed acceptance certificate on the DD Form 250, Material Inspection and Receiving Report.

(e) Policies and procedures regarding the use of National Aeronautics and Space Administration (NASA) quality status stamps are contained in NASA publications. When requested by NASA centers, the DoD inspector shall use NASA quality status stamps in accordance with current NASA requirements.

Subpart 246.6—Material Inspection and Receiving Reports

246.670 General.

(a) Material Inspection and Receiving Reports (MIRRs) are used to document—

(1) Contract quality assurance;

(2) Acceptance of supplies and services; and

(3) Shipments.

(b) MIRRs are used by activities responsible for—

(1) Receiving;

(2) Status control;

(3) Technical requirements;

(4) Contracting;

(5) Inventory control;

(6) Requisitioning; and

(7) Payment.

246.671 Procedures.

See Appendix F, Material Inspection and Receiving Report, for procedures and instructions for the use, preparation, and distribution of—

(a) The Material Inspection and Receiving Report (DD Form 250 series) and;

(b) Supplier's commercial shipping/packing lists used to evidence Government contract quality assurance.

Subpart 246.7—Warranties

246.701 Definitions.

Acceptance, as defined in FAR 46.701 and as used in this subpart and in the warranty clauses at FAR 52.246–17, Warranty of Supplies of a Noncomplex Nature; FAR 52.246–18, Warranty of Supplies of a Complex Nature; FAR 52.246–19, Warranty of Systems and Equipment Under Performance Specifications or Design Criteria; and FAR 52.246–20, Warranty of Services, includes the execution of an official document (e.g., DD Form 250, Material Inspection and Receiving Report) by an authorized representative of the Government.

Defect, as used in this subpart, means any condition or characteristic in any supply or service furnished by the contractor under the contract that is not in compliance with the requirements of the contract.

246.702 General

(c) Departments and agencies shall establish procedures to track and accumulate data on warranty costs.

246.703 Criteria for use of warranties.

The use of warranties in the acquisition of weapon systems is mandatory (10 U.S.C. 2403) unless a waiver is authorized (see 246.770–8).

(b) *Cost.* Contracting officers may include the cost of a warranty as part of an item's price or as a separate contract line item.

246.704 Authority for use of warranties.

The chief of the contracting office must approve use of a warranty, except in acquisitions for—

(1) Weapon systems (see 246.770);

(2) Commercial supplies or services (see FAR 46.709);

(3) Technical data, unless the warranty provides for extended liability (see 246.708);

(4) Supplies and services in fixed price type contracts containing quality assurance provisions that reference MIL–I–45208, Inspection System Requirement, or MIL–Q–9858, Quality Program Requirements; or

(5) Supplies and services in construction contracts when using the warranties that are contained in Federal, military, or construction guide specifications.

246.705 Limitations.

(a) Warranties in the clause at 252.246–7001, Warranty of Data, are also an exception to the prohibition on use of warranties in cost-reimbursement contracts.

246.706 Warranty terms and conditions.

(b)(5) *Markings.* Use MIL Standard 129, Marking for Shipments and Storage, and MIL Standard 130, Identification Marking of U.S. Military Property, when marking warranty items.

246.708 Warranties of data.

Obtain warranties on technical data when practicable and cost effective. Consider the factors in FAR 46.703 in deciding whether to obtain warranties of technical data. Consider the following in deciding whether to use extended liability provisions—

(1) The likelihood that correction or replacement of the nonconforming data, or a price adjustment, will not give adequate protection to the Government; and

(2) The effectiveness of the additional remedy as a deterrent against furnishing nonconforming data.

246.710 Contract clauses.

(1) Use a clause substantially the same as the clause at 252.246–7001, Warranty of Data, in solicitations and contracts that include the clause at 252.227–7013, Rights in Technical Data and Computer Software, and there is a need for greater protection or period of liability than provided by other contract clauses, such as the clauses at—

(i) FAR 52.246–3, Inspection of Supplies—Cost-Reimbursement;

(ii) FAR 52.246–6, Inspection—Time-and-Material and Labor-Hour;

(iii) FAR 52.246–8, Inspection of Research and Development—Cost-Reimbursement; and

(iv) FAR 52.246–19, Warranty of Systems and Equipment Under Performance Specifications or Design Criteria.

(2) Use the clause at 252.246–7001, Warranty of Data, with its Alternate I when extended liability is desired and a fixed price incentive contract is contemplated.

(3) Use the clause at 252.246–7001, Warranty of Data, with its Alternate II when extended liability is desired and a firm fixed price contract is contemplated.

246.770 Warranties in weapon system acquisitions.

This section sets forth policies and procedures for use of warranties in contracts for weapon system production.

246.770–1 Definitions.

As used in this section—

(a) *At no additional cost to the Government* means—

(1) At no increase in price for firm fixed price contracts;

(2) At no increase in target or ceiling price for fixed price incentive contracts (see also FAR 46.707); or

(3) At no increase in estimated cost or fee for cost-reimbursement contracts.

(b) *Design and manufacturing requirements* means structural and engineering plans and manufacturing particulars, including precise measurements, tolerances, materials and finished product tests for the weapon system being produced.

(c) *Essential performance requirements* means the operating capabilities and maintenance and reliability characteristics of a weapon system that the agency head determines to be necessary to fulfill the military requirement.

(d) *Initial production quantity* means the number of units of a weapon system contracted for in the first program year of full-scale production.

(e) *Mature full-scale production* means follow-on production of a weapon system after manufacture of the lesser of the initial production quantity or one-tenth of the eventual total production quantity.

(f) *Weapon system* means a system or major subsystem used directly by the Armed Forces to carry out combat missions.

(1) The term includes, but is not limited to, the following (if intended for use in carrying out combat missions)—

(i) Tracked and wheeled combat vehicles;

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(iii) FAR 52.246–8, Inspection of Research and Development—Cost-Reimbursement; and

(iv) FAR 52.246–19, Warranty of Systems and Equipment Under Performance Specifications or Design Criteria.

(2) Use the clause at 252.246–7001, Warranty of Data, with its Alternate I when extended liability is desired and a fixed price incentive contract is contemplated.

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(e) *Mature full-scale production* means follow-on production of a weapon system after manufacture of the lesser of the initial production quantity or one-tenth of the eventual total production quantity.

(f) *Weapon system* means a system or major subsystem used directly by the Armed Forces to carry out combat missions.

(1) The term includes, but is not limited to, the following (if intended for use in carrying out combat missions)—

(i) Tracked and wheeled combat vehicles;

(ii) Self-propelled, towed and fixed guns, howitzers and mortars;

(iii) Helicopters;

(iv) Naval vessels;

(v) Bomber, fighter, reconnaissance and electronic warfare aircraft;

(vi) Strategic and tactical missiles including launching systems;

(vii) Guided munitions;

(viii) Military surveillance, command, control, and communication systems;

(ix) Military cargo vehicles and aircraft;

(x) Mines;

(xi) Torpedoes;

(xii) Fire control systems;

(xiii)Propulsion systems;

(xiv) Electronic warfare systems; and

(xv) Safety and survival systems.

(2) The term does not include—

(i) Commercial items sold in substantial quantities to the general public (see FAR 15.804–3(c)); or

(ii) Spares, repairs, or replenishment parts; or

(iii) Related support equipment (e.g., ground-handling equipment, training devices and accessories, ammunition), unless an effective warranty would require inclusion of such items.

246.770–2 Policy.

(a) Under 10 U.S.C. 2403, departments and agencies may not contract for the production of a weapon system with a unit weapon system cost of more than $100,000 or an estimated total procurement cost in excess of $10 million unless—

(1) Each contractor for the weapon system provides the Government written warranties that—

(i) The weapon system conforms to the design and manufacturing requirements in the contract (or any modifications to that contract),

(ii) The weapon system is free from all defects in materials and workmanship at the time of acceptance or delivery as specified in the contract; and

(iii) The weapon system, if manufactured in mature full-scale production, conforms to the essential performance requirements of the contract (or any modification to that contract); and

(2) The contract terms provide that, in the event the weapon system fails to meet the terms of the above warranties, the contracting officer may—

(i) Require the contractor to promptly take necessary corrective action (e.g., repair, replace, and/or redesign) at no additional cost to the Government;

(ii) Require the contractor to pay costs reasonably incurred by the Government in taking necessary corrective action, or

(iii) Equitably reduce the contract price; or

(3) A waiver is granted under 246.770–8.

(b) Contracting officers may require warranties that provide greater coverage and remedies than specified in paragraph (a) of this subsection, such as including an essential performance requirement warranty in other than a mature full-scale production contract.

(c) When the contract includes an essential performance requirement warranty, the warranty must identify redesign as a remedy available to the Government.

(1) The period during which redesign must be available as a remedy shall not end before operational use, operational testing, or a combination of operational use and operational testing has demonstrated that the warranted item's design has satisfied the essential performance requirements.

(2) When essential performance requirements are warranted in contracts with alternate source contractors, do not include redesign as a remedy available to the Government under those contracts until the alternate source has manufactured the first ten percent of the eventual total production quantity anticipated to be acquired from that contractor (see 246.770–5).

246.770–3 Tailoring warranty terms and conditions.

(a) Since the objectives and circumstances vary considerably among weapon system acquisition programs, contracting officers must tailor the required warranties on a case-by-case basis. The purpose of tailoring is to get a cost-effective warranty in light of the technical risk, or other program uncertainties, while ensuring that the Government still acquires the basic warranties described in 246.770–2. Tailoring shall not be used as a substitute for acquiring a warranty waiver.

(1) Tailoring may affect remedies, exclusions, limitations, and duration provided such are consistent with the specific requirements of this section (see also FAR 46.706).

(2) Clearly relate the duration of any warranty to the contract requirements and allow sufficient time to demonstrate achievement of the requirements after acceptance.

(3) Tailor the terms of the warranty, if appropriate, to exclude certain defects for specified supplies (exclusions) or to limit the contractor's liability under the terms of the warranty (limitations).

(4) Structure broader and more comprehensive warranties when advantageous or narrow the scope when appropriate. For example, it may be inappropriate to require warranty of all essential performance requirements for a contractor that did not design the system.

(b) DoD policy is to exclude any terms that cover contractor liability for loss, damage, or injury to third parties from warranty clauses.

(c) Ensure acquisition of subsystems and components in a manner which does not affect the validity of the weapon system warranty.

246.770–4 Warranties on Government-furnished property.

Contracting officers shall not require contractors to provide the warranties specified in 246.770–2 on any property furnished the contractor by the Government, except for—

(a) Defects in installation;

(b) Installation or modification in such a manner that invalidates a warranty provided by the manufacturer of the property; or

(c) Modifications made to the property by the contractor.

246.770–5 Exemption for alternate source contractor(s).

Agency heads may exempt alternate source contractor(s) from the essential performance warranty requirements of 246.770–2(a)(1)(iii) until that contractor manufactures the first ten percent of its anticipated total production quantity.

246.770–6 Applicability to foreign military sales (FMS).

(a) The warranty requirements of 246.770–2 are not mandatory for FMS production contracts. DoD policy is to obtain the same warranties on conformance to design and manufacturing requirements and against defects in material and workmanship as it gets for U.S. supplies.

(b) DoD normally will not obtain essential performance warranties for FMS purchasers. However, where contracting officer cannot separately identify the cost for the warranty of essential performance requirements, the foreign purchaser shall be given the same warranty that the United States gets.

(c) If an FMS purchaser expressly requests a performance warranty in the letter of acceptance, the Government will exert its best efforts to obtain the same warranty obtained for U.S. equipment. Or, if specifically requested by the FMS purchaser, obtain a unique warranty.

(d) The costs for warranties for FMS purchasers may be different from the costs for such warranties for the Government due to factors such as overseas transportation and any tailoring to reflect the unique aspects of the FMS purchaser.

(e) Ensure that FMS purchasers bear all of the acquisition and administrative costs of any warranties.

246.770-7 Cost-benefit analysis.

(a) In assessing the cost effectiveness of a proposed warranty, perform an analysis which considers both the quantitative and qualitative costs and benefits of the warranty. Consider—

(1) Costs of warranty acquisition, administration, enforcement, and user costs, and any costs resulting from limitations imposed by the warranty provisions;

(2) Costs incurred during development specifically for the purpose of reducing production warranty risks;

(3) Logistical and operational benefits as a result of the warranty as well as the impact of the additional contractor motivation provided by the warranty.

(b) Where possible, make a comparison with the costs of obtaining and enforcing similar warranties on similar systems.

(c) Document the analysis in the contract file. If the warranty is not cost effective, initiate a waiver request under 246.770-8.

246.770-8 Waiver and notification procedures.

(a) The Secretary of Defense has delegated waiver authority within the limits specified in 10 U.S.C. 2403. The waiving authority for the defense agencies is the Assistant Secretary of Defense (Production and Logistics). The waiving authority for the military departments is the Secretary of the department with authority to redelegate no lower than an Assistant Secretary. The waiving authority may waive one or more of the weapons system warranties required by 246.770-2 if—

(1) The waiver is in the interests of national defense; or

(2) The warranty would not be cost effective.

(b) Waiving authorities must make the following notifications or reports to the Senate and House Committees on Armed Services and Appropriations for all waivers—

(1) *Major Weapon Systems.* For a weapon system that is a major Defense acquisition program for the purpose of 10 U.S.C. 2432, the waiving official must notify the Committees in writing of an intention to waive one or more of the required warranties. Include an explanation of the reasons for the waiver in the notice. Ordinarily provide the notice 30 days before granting a waiver.

(2) *Other Weapon Systems.* For weapon systems that are not major Defense acquisition programs for the purpose of 10 U.S.C. 2432, waiving officials must submit an annual report not later than February 1 of each year. List the waivers granted in the preceding calendar year in the report and include an explanation of the reasons for granting each waiver.

(3) *Weapon Systems Not in Mature Full-Scale Production.* Although a waiver is not required, if a production contract for a major weapon system not yet in mature full-scale production will not include a warranty on essential performance requirements, the waiving officials must comply with the notice requirements for major weapon systems.

(c) Departments and agencies shall issue procedures for processing waivers, notifications, and reports to Congress.

(1) Requests for waiver shall include—

(i) A brief description of the weapon system and its stage of production, e.g., the number of units delivered and anticipated to be delivered during the life of the program;

(ii) Identification of the specific warranty or warranties required by 246.770-2(a)(1) for which the waiver is requested;

(iii) The duration of the waiver if it is to go beyond the contract;

(iv) The rationale for the waiver (if the waiver request is based on cost effectiveness, include the results of the cost-benefit analysis);

(v) A description of the warranties or other techniques used to ensure acceptable field performance of the weapon system, e.g., warranties, commercial or other guarantees obtained on individual components; and

(vi) Exercise date of the warranty option, if applicable.

(2) Notifications and reports shall include—

(i) A brief description of the weapon system and its stage of production; and

(ii) Rationale for not obtaining a warranty.

(3) Keep a written record of each waiver granted and notification and report made, together with supporting documentation such as a cost-benefit analysis, for use in answering inquiries.

PART 247—TRANSPORTATION

Sec.

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247.104 Government rate tenders under section 10721 of the Interstate Commerce Act.
247.104-3 Cost-reimbursement contracts.
247.104-5 Citation of Government rate tenders.
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247.270-2 Definitions.
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Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 247.1—General

247.103 Transportation Documentation and Audit Regulation (TDA).

(b)(2) Appendix J of the Defense Traffic Management Regulation lists the carriers and carrier associations that have agreed to provide transportation under commercial forms and procedures within CONUS.

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247.104 Government rate tenders under section 10721 of the Interstate Commerce Act.

247.104–3 Cost-reimbursement contracts.

(a) Section 10721 rates do not apply to foreign military sale (FMS) shipments.

(i) On shipments of stock fund items from a contractor to a depot, when some of the items in a specific transportation unit are clearly for FMS—

(A) Section 10721 rates do not apply to FMS items shipped on a separate bill of lading; and

(B) Section 10721 rates do apply to the non-FMS items.

247.104–5 Citation of Government rate tenders.

(a) See section XI, chapter 32 of the Defense Traffic Management Regulation for instructions on converting commercial bills of lading to Government bills of lading within CONUS.

247.105 Transportation assistance.

(a)(i) Transportation assistance includes all transportation factors, such as—

(A) Freight rates (for evaluation of bids or routing purposes);

(B) Other transportation costs;

(C) Transit agreements;

(D) Time in transit;

(E) Port handling charges; and

(F) Port capabilities.

(ii) Within CONUS, the Military Traffic Management Command (MTMC), through its eastern and western area commands, is responsible for the performance of traffic management functions. These functions include the direction, control, and supervision of all functions incident to the acquisition and use of commercial freight and passenger transportation services. See chapters 1 and 2 of the Defense Traffic Management Regulation for the locations and geographical areas of jurisdiction of each area headquarters.

(iii) For assistance with international shipments—

(A) Originating in CONUS, request assistance from the appropriate military activity; i.e., the Military Airlift Command (MAC), Military Sealift Command (MSC), MTMC, or the military service sponsoring the cargo;

(B) For all modes of transportation originating overseas, request assistance from the overseas Theater Commander assigned responsibility for common-user, military-operated land transportation;

(C) Of bulk petroleum via ocean tanker, request assistance, rates, or ther costs from the MSC;

(D) Of supplies between points outside the CONUS, including Alaska and Hawaii, request assistance, rates, or other costs from the military service sponsoring the cargo. Direct the requests to:

Army: Deputy Chief of Staff for Logistics, Department of the Army, Attn: DALO-TSP, Washington, DC 20310–0570
Navy: Naval Supply Systems Command, Code 051, Washington, DC 20390–5000
Air Force: Applicable overseas Air Force Command, Pacific Air Forces/LGT, Hickam AFB, HI 96853, Space Command/LKT, Peterson AFB, CO 80914, U.S. Air Forces in Europe/LGT, APO NY 09012
Marine Corps: Director, Transportation Division, HQ, U.S. Marine Corps, COS, Washington, DC 20380

(E) When requesting rates and related costs for the evaluation of bids or proposals, include the bid opening or proposal due date and the expected date of initial shipment, if established.

Subpart 247.2—Contracts for Transportation or for Transportation-Related Services

247.270 Stevedoring contracts.

247.270-1 Scope of section.

This section contains procedures peculiar to stevedoring. Other portions of the FAR and DFARS dealing with service contracting also apply to stevedoring contracts.

247.270-2 Definitions.

Commodity rate is—

(1) The price quoted for handling a ton (weight or measurement) of a specified commodity.

(2) Computed by dividing the hourly stevedoring gang cost by the estimated number of tons of the specified commodity which can be handled in 1 hour.

Gang cost is—

(1) The total hourly wages paid to the workers in the gang, in accordance with the collective bargaining agreement between the maritime industry and the unions at a specific port; and

(2) Payments for workmen's compensation, social security taxes, unemployment insurance, taxes, liability and property damage insurance, general and administrative expenses, and profit.

Stevedoring is the—

(1) Loading of cargo from an agreed point of rest on a pier or lighter and its storage aboard a vessel; or

(2) Breaking out and discharging of cargo from any space in the vessel to an agreed point of rest dockside or in a lighter.

247.270–3 Type of contract.

Normally, use an indefinite-quantity type contract.

247.270–4 Technical provisions.

(a) Because conditions vary at different ports, and sometimes within the same port, it is not practical to develop standard technical provisions covering all phases of stevedoring operations.

(b) When including car loading and unloading or other dock and terminal work under a stevedoring contract, include these requirements as separate items of work.

247.270–5 Evaluation of bids and proposals.

Require that offers include and evaluate on the basis of—

(a) Tonnage or commodity rates which apply to the bulk of the cargo worked under normal conditions;

(b) Labor-hour rates which apply to services not covered by commodity rates, or to work performed under hardship conditions; and

(c) Rates for equipment rental.

247.270–6 Award of contract.

Make the award to the contractor that is otherwise eligible for award and offers the lowest overall acceptable bid or proposal after evaluating the—

(a) Total estimated cost of tonnage to be moved at commodity rates;

(b) Estimated cost at labor-hour rates; and

(c) Cost of equipment rental.

247.270–7 Contract clauses.

Use the following clauses in solicitations and contracts for stevedoring services as indicated—

(a) 252.247–7000, Hardship Conditions, as appropriate;

(b) 252.247–7001, Price Adjustment, when using sealed bidding;

(c) 252.247–7002, Revision of Prices, when using negotiation;

(d) 252.247–7003, Termination, when it is desirable to permit either party to terminate the contract;

(e) 252.247–7004, Indefinite Quantities-Fixed Charges, when the contract will provide for the payment of fixed charges;

(f) 252.247–7005, Indefinite Quantities-No Fixed Charges, when the contract will not provide for the payment of fixed charges;

(g) 252.247–7006, Removal of Contractor's Employees; and

(h) 252.247–7007, Liability and Insurance.

247.271 Contracts for the preparation of personal property for shipment or storage.

247.271-1 Scope of section.

This section contains procedures peculiar to the preparation of personal property for shipment or storage, and for the performance of intra-area or intra-city movement. Other portions of the FAR and DFARS dealing with service contracting also apply to these services.

247.271-2 Policy.

(a) *Annual contracts.* Normally—

(1) Use requirements contracts awarded through sealed bidding to acquire services for the—

(i) Preparation of personal property for shipment or storage; and

(ii) Performance of intra-area movement.

(2) Award contracts on a calendar year basis.

(3) Provide for option years.

(4) Award contracts, or exercise option years, before November 1 of each year, if possible.

(b) *Areas of performance.* Define clearly in the solicitation each area of performance.

(1) Establish one or more areas; however, hold the number to a minimum consistent with local conditions.

(2) Each schedule may provide for the same or different areas of performance. Determine the areas as follows—

(i) Use political boundaries, streets, or any other features as lines of demarcation. Consider such matters as—

(A) Total volume;

(B) Size of overall area; and

(C) The need to service isolated areas of high population density.

(ii) Specifically identify frequently used terminals, and consider them as being included in each area of performance described in the solicitation.

(c) *Maximum requirements-minimum capability.* The contracting officer shall—

(1) Establish realistic quantities on the Estimated Quantities Report in DoD 4500.34-R, Personal Property Traffic Management Regulation;

(2) Ensure that the Government's minimum acceptable daily capability—

(i) Will at least equal the maximum authorized individual weight allowance as prescribed by the Joint Federal Travel Regulations; and

(ii) Will not preclude bidding by small business firms.

247.271-3 Procedures.

(a) *CONUS military activities assigned multi-service personal property areas of responsibility.* (1) When two or more military installations or activities have personal property responsibilities in a given area, one activity shall contract for the estimated requirements of all activities in the area. The installation commanders concerned shall designate the activity by mutual agreement.

(2) The Commander, MTMC, shall designate the contracting activity when local commanders are unable to reach agreement.

(b) *Additional services and excess requirements.* (1) Excess requirements are those services which exceed contractor capabilities available under contracts. Use small purchase procedures to satisfy excess requirements.

(2) Additional services are those not specified in the bid items.

(i) Additional services may include—

(A) Hoisting or lowering of articles;

(B) Waiting time;

(C) Special packaging; and

(D) Stuffing or unstuffing of sea van containers.

(ii) Consider contracting for local moves that do not require drayage by using hourly rate or constructive weight methods. The rate will include those services necessary for completion of the movement, including—

(A) Packing and unpacking;

(B) Movement;

(C) Inventorying; and

(D) Removal of debris.

(iii) Each personal property shipping activity shall determine if local requirements exist for any additional services.

(iv) The contracting officer may obtain additional services by—

(A) Including them as items within the contract; provided, they are not used in the evaluation of bids (see 252.247-7008, Evaluation of Bids); or

(B) Using small purchase procedures.

(v) Either predetermine prices for additional services with the contractor, or negotiate them on a case-by-case basis.

(vi) The contracting officer must authorize the contractor to perform any additional services, other than attempted pick up or delivery, regardless of the contracting method.

(vii) To the maximum extent possible, identify additional services required that are incidental to an order before placing the order; or, when applicable, during the premove survey.

(c) *Contract distribution.* In addition to the distribution requirements of FAR subpart 4.2, furnish one copy of each contract as follows—

(1) CONUS personal property shipping activities shall send the copy to the Commander, Military Traffic Management Command, Attn: MTPP-CI, Room 408, 5611 Columbia Pike, Falls Church, VA 22041-5050.

(2) In the European and Pacific areas, personal property shipping activities shall send the copy to either the Property Directorate, MTMC Europe, or the MTMC Field Office-Pacific.

(3) Other overseas personal property shipping activities shall send the copy to the Commander, Military Traffic Management Command, Attn: MTPP-Q, 5611 Columbia Pike, Falls Church, VA 22041-5050.

247.271-4 Solicitation provisions, schedule formats, and contract clauses.

When acquiring services for the preparation of personal property for movement or storage, and for performance of intra-city or intra-area movement, use the following provisions, clauses, and schedules. Revise solicitation provisions and schedules, as appropriate, if using negotiation rather than sealed bidding. Overseas commands, except those in Alaska and Hawaii, may modify these clauses to conform to local practices, laws, and regulations.

(a) The provision at 252.247-7008, Evaluation of Bids. When adding "additional services" items to any schedule, use the basic clause with Alternate I.

(b) The provision at 252.247-7009, Award.

(c) In solicitations and resulting contracts, the schedules contained in DoD 4500.34-R, Personal Property Traffic Management Regulation, as provided by the installation personal property shipping office.

(1) When there is no requirement for an item or subitem in a schedule, indicate that item or subitem number, in its proper numerical sequence, and add the statement "No Requirement."

(2) Within Schedules I (Outbound) and II (Inbound), item numbers are reserved to permit inclusion of additional items as required by local conditions.

(3) Overseas activities, except those in Alaska and Hawaii, may modify the schedules when necessary to conform with local trade practices, laws, and regulations.

(4) All generic terminology, schedule, and item numbers in proper sequence shall follow those contained in the basic format.

(5) When it is in the Government's best interest to have both outbound and inbound services within a given area of performance furnished by the same contractor, modify the schedule format to combine both services in a single schedule. However, items shall follow the same sequential order as in the basic format.

(6) Process any modification of schedule format, other than those authorized in paragraphs (c) (1) through

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(3) Other overseas personal property shipping activities shall send the copy to the Commander, Military Traffic Management Command, Attn: MTPP-Q, 5611 Columbia Pike, Falls Church, VA 22041-5050.

247.271-4 Solicitation provisions, schedule formats, and contract clauses.

When acquiring services for the preparation of personal property for movement or storage, and for performance of intra-city or intra-area movement, use the following provisions, clauses, and schedules. Revise solicitation provisions and schedules, as appropriate, if using negotiation rather than sealed bidding. Overseas commands, except those in Alaska and Hawaii, may modify these clauses to conform to local practices, laws, and regulations.

(a) The provision at 252.247-7008, Evaluation of Bids. When adding "additional services" items to any schedule, use the basic clause with Alternate I.

(b) The provision at 252.247-7009, Award.

(c) In solicitations and resulting contracts, the schedules contained in DoD 4500.34-R, Personal Property Traffic Management Regulation, as provided by the installation personal property shipping office.

(1) When there is no requirement for an item or subitem in a schedule, indicate that item or subitem number, in its proper numerical sequence, and add the statement "No Requirement."

(2) Within Schedules I (Outbound) and II (Inbound), item numbers are reserved to permit inclusion of additional items as required by local conditions.

(3) Overseas activities, except those in Alaska and Hawaii, may modify the schedules when necessary to conform with local trade practices, laws, and regulations.

(4) All generic terminology, schedule, and item numbers in proper sequence shall follow those contained in the basic format.

(5) When it is in the Government's best interest to have both outbound and inbound services within a given area of performance furnished by the same contractor, modify the schedule format to combine both services in a single schedule. However, items shall follow the same sequential order as in the basic format.

(6) Process any modification of schedule format, other than those authorized in paragraphs (c) (1) through

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(5) of this subsection, as a request for deviation through MTMC area commands/field offices to HQ, MTMC.

(d) The clause at 252.247-7010, Scope of Contract.

(e) The clause at 252.247-7011, Period of Contract. When the period of performance is less than a calendar year, modify the clause to indicate the beginning and ending dates. However, the contract period shall not end later than December 31 of the year in which the contract is awarded.

(f) In addition to designating each ordering activity, as required by the clause at FAR 52.216-18, Ordering, identify by name or position title the individuals authorized to place orders for each activity. When provisions are made for placing oral orders in accordance with FAR 16.506(b), document the oral orders in accordance with departmental/agency instructions.

(g) The clause at 252.247-7012, Ordering Limitation.

(h) The clause at 252.247-7013, Contract Areas of Performance.

(i) The clause at 252.247-7014, Demurrage.

(j) When using the clause at FAR 52.216-21, Requirements, see 216.505(d) which prescribes use of Alternate I at 252.247-7015.

(k) The clause at 252.247-7016, Contractor Liability for Loss and Damage.

(l) The clause at 252.247-7017, Erroneous Shipments.

(m) The clause at 252.247-7018, Subcontracting.

(n) The clause at 252.247-7019, Drayage.

(o) The clause at 252.247-7020, Additional Services.

(p) The clauses at FAR 52.247-2, Permits, Authorities, or Franchises; FAR 52.247-8, Estimated Weight or Quantities Not Guaranteed; FAR 52.247-13, Accessorial Services—Moving Contracts; and FAR 52.247-17, Charges.

Subpart 247.3—Transportation in Supply Contracts

247.305 Solicitation provisions, contract clauses, and transportation factors.

247.305-10 Packing, marking, and consignment instructions.

(b) Consignment instructions shall include, as a minimum—

(i) The clear text and coded MILSTRIP data as follows—

(A) Consignee code and clear text identification of consignee and destination as published in—

(1) DoD 4000.25-6-M, Department of Defense Activity Address Directory (DoDAAD);

(2) DoD 4000.25-8-M, Military Assistance Program Address Directory (MAPAD);

(3) Commercial and Government Entity (CAGE) Handbook H4/H8; or

(4) Transportation Control and Movement Document.

Reporting procedures and instructions shall comply with DoD Regulation 4500.32-R, MILSTAMP.

(B) Project code, when applicable;

(C) Transportation priority;

(D) Required delivery date; and

(E) Coded MILSTRIP document number, demand/suffix code, a supplementary address and signal code.

(ii) Non-MILSTRIP shipments shall include data similar to paragraph (b)(i) (A) through (D) of this subsection and the applicable portion of paragraph (b)(i)(E) with the notation "Non-MILSTRIP."

(iii) In amended shipping instructions include, in addition to the data requirements of paragraphs (b)(i) (A) through (E) of this subsection, the following, when appropriate—

(A) Name of the activity originally designated, from which the stated quantities are to be deducted; and

(B) Any other features of the amended instructions not contained in the basic contract.

(iv) If a contract is assigned for any contract administration function listed in FAR Subpart 42.3, to any office listed in DoD 4105.4, DoD Directory of Contract Administration Services Components, then include in instructions the—

(A) Modification serial number; and, if a new line item is created by the issuance of shipping instructions;

(B) New line item number; and

(C) Existing line item number, if affected.

(v) For petroleum, oil and lubricant products, instructions for diversions need not include the modification serial number and new line item number, when the instructions are—

(A) For diversions overseas to new destinations;

(B) Issued by an office other than that issuing the contract or delivery order; and

(C) Issued by telephone, teletype, or telegram.

247.305-70 Returnable cylinders and other containers.

(a) Use the clause at 252.247-7021, Returnable Cylinders and Other Containers, in a solicitation and contract whenever the contract involves the purchase of gas in contractor-furnished returnable cylinders and the contractor retains title to the cylinders. A variation of the clause may also be used in contracts for other supplies involving reels, spools, drums, carboys, liquid petroleum gas containers, or other returnable containers when the contractor is to retain title to the containers.

(b) The contracting officer may modify the 30 day time period specified in the clause to comply with customary commercial practice.

247.370 Use of Standard Form 30 for consignment instructions.

When complete consignment instructions are not known initially, use the Standard Form 30, Amendment of Solicitation/Modification of Contract, to issue or amend consignment instructions, and when necessary, to confirm consignment instructions issued by telephone, teletype, or telegram.

(a) When using the SF 30 to confirm delivery instructions—

(1) Stamp or mark "CONFIRMATION" in block letters on the form, and specify in detail those instructions being confirmed.

(2) Do not change the instructions being confirmed.

(b) Process the confirming SF 30 as follows—

(1) For contracts assigned for any contract administration function listed in subpart 247.3 to any office listed in DoD 4105.4, DoD Directory of Contract Administration Services Components, within five working days;

(2) For diversions of petroleum, oil, and lubricant products overseas to new destinations, within 30 days of instructions being confirmed; and

(3) Other contracts—

(i) Telephone—within five working days; and

(ii) Teletype or telegraph—consolidate on a monthly basis.

247.371 DD Form 1384, Transportation Control and Movement Document.

Reporting procedures and instructions for this form will be in compliance with DoD Regulation 4500.32-R, MILSTAMP.

247.372 DD Form 1653, Transportation Data for Solicitations.

(a) The transportation specialist prepares the DD Form 1653 at the request of the contracting officer. The completed form will contain recommendations concerning f.o.b. terms best suited for a particular acquisition, and other suggested transportation provisions for inclusion in the solicitation.

(b) When appropriate, the DD Form 1653 will also include information on combined port handling and transportation charges for inclusion in the solicitation in connection with export shipments.

247.373 DD Form 1654, Evaluation of Transportation Cost Factors.

Contracting personnel may use the DD Form 1654 to furnish information to the transportation office for development of cost factors for use by the contracting officer in the evaluation of f.o.b. origin offers.

Subpart 247.5—Ocean Transportation by U.S.-Flag Vessels

247.570 Scope.

This subpart—

(a) Implements the Cargo Preference Act of 1904, 10 U.S.C. 2631, which applies to the ocean transportation of cargo owned by, or destined for use by, the DoD.

(b) Does not specifically implement the Cargo Preference Act of 1954, 46 U.S.C. 1241(b). The 1954 Act is applicable to the DoD, but DFARS coverage is not required because compliance with the 1904 Act historically has resulted in the DoD exceeding the 1954 Act's requirements.

(c) Is an approved class deviation from FAR subpart 47.5 in its entirety (but see 247.571(c)).

247.571 Policy.

(a) DoD contractors shall transport supplies, as defined in the clause at 252.247–7023, Transportation of Supplies by Sea, exclusively on U.S.-flag vessels unless—

(1) Those vessels are not available, and notices are given and approvals received in accordance with this subpart;

(2) The Secretary of the Navy determines that the freight charged is excessive or unreasonable; or

(3) The contracting officer finds that the charges to the Government are higher than charges to private persons for the transportation of like goods.

(b) Contracts shall provide for the use of Government-owned vessels when security classifications prohibit the use of other than Government-owned vessels.

(c) The Cargo Preference Act of 1904 does not apply to ocean transportation of—

(1) Products obtained for contributions to foreign assistance programs; or

(2) Products owned by agencies other than the DoD. In these cases, FAR subpart 47.5 applies.

247.572 Procedures.

247.572-1 Ocean transportation incidental to a contract for supplies, services, or construction.

(a) This subsection applies when ocean transportation is not the purpose of the contract.

(b) The contracting officer shall obtain assistance from the cognizant transportation activity (see 247.105), in developing—

(1) The Government estimate for transportation costs, irrespective of whether freight will be paid directly by the Government;

(2) Shipping instructions and delivery terms for inclusion in solicitations and contracts that may involve transportation of supplies by sea.

(c) The contracting officer shall ask each offeror whether it will transport supplies by sea if awarded the contract (see 247.573(a)). Even if the successful offeror responds that it does not anticipate sea transport of supplies, it may discover during contract performance that ocean transportation is required. In that event, the Act will apply to the contract, and it must—

(1) Notify the Government that it now intends to use ocean transportation;

(2) Use U.S.-flag vessels unless certain conditions exist (see 247.571(a)); and

(3) Comply with the other requirements of the clause at 252.247–7023, Transportation of Supplies by Sea.

(d) When the contracting officer is notified that the contractor or subcontractor considers that—

(1) No U.S.-flag vessels are available, the contracting officer shall request confirmation of the nonavailability from the Director, Office of Contracts and Business Management, Military Sealift Command (MSC).

(2) The freight charges to the Government, the contractor or any subcontractor, are higher than charges for transportation of like goods to private persons, the contracting officer may approve any request for a waiver of the requirement to ship on U.S.-flag vessels for a particular shipment.

(i) Prior to granting a waiver, the contracting officer shall request advice, oral or written, from the Commander, MSC.

(ii) In advising the contracting officer whether to grant the waiver, the Commander, MSC, shall consider, as appropriate, evidence from—

(A) Published tariffs;

(B) Industry publications;

(C) The Maritime Administration; and

(D) Any other available sources.

(3) The freight charged by U.S.-flag carriers is considered excessive or otherwise unreasonable, the contracting officer shall forward a report to the Commander, MSC, through the head of the contracting activity, and the Director, Office of Contracts and Business Management, MSC.

(i) The report shall be in determination and finding format, and—

(A) Take into consideration that the 1904 Act is, in part, a subsidy of the U.S.-flag commercial shipping industry that recognizes that lower prices may be available from foreign shippers;

(B) Consider, accordingly, not only excessive profits to the vessel owner, if ascertainable, but also excessive costs (i.e., costs beyond the economic penalty normally incurred by excluding foreign competition) resulting from the use of U.S.-flag vessels in extraordinarily inefficient circumstances;

(C) Include, as appropriate—

(1) An analysis of whether the cost is excessive, taking into account factors such as the differential between freight charges by the U.S.-flag carrier and an estimate of what foreign-flag carriers would charge based upon a price analysis;

(2) A comparison of U.S.-flag rates charged on comparable routes;

(3) Efficiency of operation regardless of rate differential (i.e., suitability of the vessel for the required transportation in terms of cargo requirements/vessel capacity; the commercial reasonableness of vessel positioning required, etc.); and

(4) Any other relevant economic and financial considerations.

(D) Consider that the fact that it would be less expensive to use a foreign-flag vessel is not a sufficient basis, on its own, to determine that the freight rate proposed by the U.S.-flag carrier is excessive or otherwise unreasonable. However, such a differential may indicate a need for further review.

(ii) If the Commander, MSC, concurs with the contracting officer, the Commander will forward the report to the Secretary of the Navy, via ASN(RDA)(PP), for a determination as to whether the freight charges are excessive or otherwise unreasonable.

247.572-2 Direct purchase of ocean transportation services.

(a) This subsection applies when ocean transportation is the principal purpose of the contract, including—

(1) Time charters;

(2) Voyage charters;

(3) Contracts of affreightment;

(4) Dedicated contractor contracts of affreightment; and

(5) Ocean bills of lading.

officer shall forward a report to the Commander, MSC, through the head of the contracting activity, and the Director, Office of Contracts and Business Management, MSC.

(i) The report shall be in determination and finding format, and—

(A) Take into consideration that the 1904 Act is, in part, a subsidy of the U.S.-flag commercial shipping industry that recognizes that lower prices may be available from foreign shippers;

(B) Consider, accordingly, not only excessive profits to the vessel owner, if ascertainable, but also excessive costs (i.e., costs beyond the economic penalty normally incurred by excluding foreign competition) resulting from the use of U.S.-flag vessels in extraordinarily inefficient circumstances;

(C) Include, as appropriate—

(1) An analysis of whether the cost is excessive, taking into account factors such as the differential between freight charges by the U.S.-flag carrier and an estimate of what foreign-flag carriers would charge based upon a price analysis;

(2) A comparison of U.S.-flag rates charged on comparable routes;

(3) Efficiency of operation regardless of rate differential (i.e., suitability of the vessel for the required transportation in terms of cargo requirements/vessel capacity; the commercial reasonableness of vessel positioning required, etc.); and

(4) Any other relevant economic and financial considerations.

(D) Consider that the fact that it would be less expensive to use a foreign-flag vessel is not a sufficient basis, on its own, to determine that the freight rate proposed by the U.S.-flag carrier is excessive or otherwise unreasonable. However, such a differential may indicate a need for further review.

(ii) If the Commander, MSC, concurs with the contracting officer, the Commander will forward the report to the Secretary of the Navy, via ASN(RDA)(PP), for a determination as to whether the freight charges are excessive or otherwise unreasonable.

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(2) Voyage charters;

(3) Contracts of affreightment;

(4) Dedicated contractor contracts of affreightment; and

(5) Ocean bills of lading.

(b) Coordinate these acquisitions, as appropriate, with the MSC in accordance with DoDD 5160.10, Single Manager Assignment for Ocean Transportation.

(c) The Commander, MSC, is authorized to make any determination as to the availability of U.S.-flag vessels, in order to ensure the proper utilization of Government and private U.S. vessels.

(d) All solicitations for ocean transportation services for supplies owned by the military departments shall provide a preference for U.S.-flag vessels as an evaluation factor.

(e) The contracting officer shall not award a contract of the type described in paragraph (a) of this subsection for a foreign-flag vessel unless—

(1) The contracting officer determines that no U.S.-flag vessels are available, and obtains approval of the Commander, MSC; or

(2) The contracting officer determines that the freight charges proposed by U.S.-flag vessels to the Government are higher than charges to private persons for transportation of like goods, and obtains the approval of the Commander, MSC; or

(3) The Secretary of the Navy determines (see paragraph (f) of this subsection) that the freight charges for U.S.-flag vessels are excessive or otherwise unreasonable.

(f) When the contracting officer concludes, based solely on economic considerations, that the charge offered for a U.S.-flag vessel is excessive or otherwise unreasonable, the contracting officer will send a report through the head of the contracting activity to the Commander, MSC.

(1) The fact that it would be less expensive to use a foreign-flag vessel is an insufficient basis, on its own, to determine that the freight rate proposed by the U.S.-flag carrier is excessive or otherwise unreasonable. However, such a differential may indicate a need for further review.

(2) The Commander, MSC, will forward the report, if in agreement with the contracting officer, to the Secretary of the Navy for a determination.

(3) The report shall be in determination and finding format; take into consideration the factors in 247.572-1(d)(3); and include, as appropriate—

(i) An analysis of the carrier's cost in accordance with FAR subpart 15.8, or profit in accordance with DFARS Subpart 215.9. The costs or profit should not be so high as to make it unreasonable to apply the preference for U.S.-flag vessels;

(ii) A description of efforts taken pursuant to FAR 15.803(d), to negotiate a reasonable price. For the purpose of FAR 15.803(d), this report is the referral to higher authority; and

(iii) An analysis of whether the cost is excessive (i.e., cost beyond the economic penalty normally incurred by excluding foreign competition), taking into consideration such factors as—

(A) The differential between freight charges by the U.S.-flag carrier and an estimate of what foreign-flag carriers would charge based upon a price analysis;

(B) A comparison of rates charged by other U.S.-flag carriers on comparable routes;

(C) Efficiency of operation regardless of rate differential (i.e., suitability of the vessel capacity/cargo requirements; the commercial reasonableness of the vessel positioning required, etc.); and

(D) Any other relevant economic and financial considerations affecting the Government.

247.573 Solicitation provision and contract clauses.

(a) Use the provision at 252.247-7022, Representation of Extent of Transportation by Sea, in full text, in all solicitations except—

(1) Those for direct purchase of ocean transportation services; or

(2) Those with an anticipated value below the small purchase limitation at FAR 13.000.

(b) Use the clause at 252.247-7023, Transportation of Supplies by Sea, in all solicitations and resultant contracts, in full text, except—

(1) Those for direct purchase of ocean transportation services; or

(2) Those with an anticipated value below the small purchase limitation at FAR 13.000.

(c) Use the clause at 252.247-7024, Notification of Transportation of Supplies by Sea, in full text, in all contracts for which the offeror made a negative response to the inquiry in the provision at 252.247-7022, Representation of Extent of Transportation by Sea.

PART 248—VALUE ENGINEERING

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 248.2—Contract Clauses

248.270 Supplemental clause.

When one of the clauses prescribed by FAR subpart 48.2 is used and the contracting officer wants value engineering change proposals submitted in the format prescribed by MIL-STD-480 or 481, use the clause at 252.248-7000, Preparation of Value Engineering Change Proposals.

PART 249—TERMINATION OF CONTRACTS

Sec.

Subpart 249.1—General Principles

249.102 Notice of termination.
249.105 Duties of termination contracting officer after issuance of notice of termination.
249.105-1 Termination status report.
249.105-2 Release of excess funds.
249.108 Settlement of subcontract settlement proposals.
249.108-4 Authorization for subcontract settlements without approval or ratification.
249.109 Settlement agreements.
249.109-7 Settlement by determination.
249.110 Negotiation memorandum.

Subpart 249.5—Contract Termination Clauses

249.501 General.
249.501-70 Special termination costs.

Subpart 249.70—Special Termination Requirements

249.7000 Terminated contracts with Canadian Commercial Corporation.
249.7001 Congressional notification on significant contract terminations.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 249.1—General Principles.

249.102 Notice of termination.

Use Standard Form 30, Amendment of Solicitation/Modification of Contract, to confirm all notices and amendments of notices of termination.

249.105 Duties of termination contracting officer after issuance of notice of termination.

249.105-1 Termination status report.

When the contract administration office receives a termination notice, it will under RCS:DD(I&L)(Q&AR)1411—

(i) Prepare a DD Form 1598, Contract Termination Status Report;

(ii) Within 30 days, send one copy to the purchasing office and one copy to the headquarters office to which the contract administration office is directly responsible;

(iii) Continue reporting semiannually to cover the 6 month periods ending March and September. The semiannual reports must be submitted within 30 days after the end of the reporting period; and

(iv) Submit a final report within 30 days after closing the termination case.

249.105-2 Release of excess funds.

The DD Form 1598, Contract Termination Status Report, may be used to recommend the release of excess funds. The final recommendation to release excess funds should include the appropriations and allocated amounts.

249.108 Settlement of subcontract settlement proposals.

249.108-4 Authorization for subcontract settlements without approval or ratification.

(a)(1)(ii) Industrial plant equipment included in the inventory—

(1) Is subject to the screening requirements in FAR 45.608.

(2) Shall not be disposed of until screening is completed when the cost of that equipment is used in determining the amount of the claim.

249.109 Settlement agreements.

249.109-7 Settlement by determination.

(a)(i) Use a Standard Form 30 (SF 30), Amendment of Solicitation/Modification of Contract, to settle a convenience termination by determination—

(A) When the contractor has lost its right of appeal because it failed to submit a timely settlement proposal; and

(B) To confirm the determination when the contractor does not appeal the termination contracting officer's decision.

(ii) The effective date of the SF 30 shall be the same as the date of the letter of determination. Do not assign a supplementary procurement instrument number to the letter of determination. Send a copy of the SF 30 to the contractor by certified mail return receipt requested.

249.110 Negotiation memorandum.

(a)(i) *Fixed price contracts.* Use the format in Table 49–1, Settlement Memorandum-Fixed Price Contracts, for the termination contracting officer's settlement memorandum for fixed price contracts terminated for the convenience of the Government. Encourage contractors and subcontractors to use this format, appropriately modified, for subcontract settlements submitted for review and approval.

(ii) *Cost-reimbursement contracts.* Use Part I of the format in Table 49–1 and Part II of the format in Table 49–2, Settlement Memorandum for Cost-Reimbursement Contracts, for the termination contracting officer's settlement memorandum for cost-reimbursement contracts:

TABLE 49–1.—SETTLEMENT MEMORANDUM-FIXED PRICE CONTRACTS

Part I—General Information

1. Identification. (Identify memorandum as to its purpose and content.)
   a. Name and address of the contractor. Comment on any pertinent affiliation between prime and subcontractors relative to the overall settlement.
   b. Names and titles of both contractor and Government personnel who participated in the negotiation.
2. Description of terminated contract.
   a. Date of contract and contract number.
   b. Type of contract (e.g., fixed price, fixed price incentive).
   c. General description of contract items.
   d. Total contract price.
   e. Furnish reference to the contract termination clauses (cite FAR/DFARS designation or other special provisions).
3. Termination notice.
   a. Reference termination notice and state effective date of termination.
   b. Scope and nature of termination (complete or partial), items terminated, unit price and total price of items terminated.
   c. State whether termination notice was amended, and explain any amendment.
   d. State whether contractor stopped work on effective termination date. If not, furnish details.
   e. State whether the contractor promptly terminated subcontracts.
   f. Statement as to the diversion of common items and return of goods to suppliers, if any.
   g. Furnish information as to contract performance and timeliness of deliveries by the contractor.
4. Contractor's settlement proposal.
   a. Date and amount. Indicate date and location where claim was filed. State gross amount of claim. (If interim settlement proposals were filed, furnished information for each claim.)
   b. Basis of claim. State whether claim was filed on inventory, total cost or other basis. Explain rationale for approval when claim is filed on other than inventory basis.
   c. Examination of proposal. State type of reviews made and by whom (audit, engineering, legal, or other).

Part II—Summary of Contractor's Claim and Negotiated Settlement

Prepare a summary substantially as follows:

Item claimed	Contractor's proposal	Dollars accepted	Costs questioned	Unresolved items	TCO negotiated amount
1. Contractor's costs as set forth on settlement proposal. Metals, raw materials, etc..					
Total					
2. Profit					
3. Settlement expenses					
4. Total					
5. Settlement with subs					
6. Acceptable finished product					
7. Gross Total					
8. Disposal and other credits					
9. Net settlement					
10. Partial, progress & advance payments					
11. Net payments requested					

Part III—Discussion of Settlement

1. Contractor's cost.
   a. If the settlement was negotiated on the basis of individual items, specify the factors and consideration for each item.
   b. In the case of a lump sum settlement, comment on the general basis for and major for and major factors concerning each element of cost and profit included.
   c. Comment on any important adjustments made to costs claimed or any significant amounts in relation to the total claim.
   d. If a partial termination is involved, state whether the contractor has requested an equitable adjustment in the price of the continued portion of the contract.
   e. Comment on any unadjusted contractual changes which are included in the settlement.
   f. Comment on whether or not a loss would have been incurred and explain adjustment for loss, if any.
   g. Furnish other information believed helpful to any reviewing authority in understanding the recommended settlement.
2. Profit. Explain the basis and factors considered in arriving at a fair profit.
3. Settlement expenses. Comment on and summarize those expenses not included in the audit review.
4. Subcontractor's settlements. Include the number of no costs settlements, settlements concluded by the contractor under delegation of authority and those approved by the terminations contracting officer, as well as the net amount of each.
5. Partial payments. Furnish the total amount of partial payments, if any.
6. Progress or advance payments. Furnish the total of unliquidated amounts, if any.
7. Claims of the Government against the contractor included in settlement agreement reservations. List all outstanding claims, if any, which the Government has against the contractor in connection with the terminated contract or terminated portion of the contract.
8. Assignments. List any assignments, giving name and address of assignee.
9. Disposal credits. Furnish information as to applicable disposal credits and give dollar amounts of all disposal credits.
10. Plant clearance. State whether plant clearance action has been completed and all inventory sold, retained, or otherwise properly disposed of in accordance with applicable plant clearance regulations. Comment on any unusual matters pertaining to plant clearances. Attach consolidated closing plant clearance report.
11. Government property. State whether all Government property has been accounted for.
12. Special tooling. If involved, furnish comment on disposition.
13. Summary of settlement. Summarize the settlement in tabular form substantially as follows:

Tabular Summary for Complete or Partial Termination

	Amount claimed	Amount allowed
Prime contractors charges (before disposal credits)		
Plus: Subcontractor charges (after disposal credits)		
Gross settlement:		
Less: disposal credits—Prime		
Net settlement—Less:		
Prior payment credits (this settlement)		
Previous partial settlements		
Other credits or deductions		
Net payment:		
Total contract price (complete termination)		
Contract Price of Items Terminated (for partial termination)—Less:		
Total payments to date		
Net payment from this settlement		
Fund reserved for reservations		
Reduction in contract price		

14. Exclusions. Describe any proposed reservation of rights to the Government or to the contractor.
15. Include statement that the settlement is fair and reasonable for the Government and the contractor. The contracting officer shall sign and date the memorandum.

(End of memorandum)

TABLE 49-2.—SETTLEMENT MEMORANDUM FOR COST-REIMBURSEMENT CONTRACTS

Part II—Summary of Settlement

1. Summary. Summarize the proposed settlement in tabular form substantially as shown in Tables 49-3 and 49-4. Partial settlements may be summarized on Table 49-4.
2. Comments. Explain tabular summaries.
   a. Summary of final settlement (see Table 49-3).
      (1) Explain why the auditor's final report was not available for consideration, if applicable.
      (2) Explain how the fixed fee was adjusted. Identify basis used such as percentage of completion. Include a description of factors considered and how they were considered. Include any tabular summaries and breakdowns deemed helpful to an understanding of the process. Factors which may be given consideration are outlined in FAR 49.305.
      (3) Briefly identify matters included in liability for property and other charges against the contractor arising from the contract.
      (4) Identify reservations included in the settlement that are other than standard reservations required by regulations and which are concerned with pending claims and refunds.
      (5) Explain substantial or otherwise important adjustments made in cost figures submitted by the contractor in arriving at the proposed settlement.
      (6) If unreimbursed costs were settled on a lump sum basis, explain the general basis for and the major factors considered in arriving at this settlement.
      (7) Comment on any unusual items of cost included in the claim and on any phase of cost allocation requiring particular attention and not covered above.
      (8) If auditor's recommendations for nonacceptance were not followed, explain briefly the main reasons why such recommendations were not followed.
      (9) On items recommended for further consideration by the auditor, explain, in general, the basis for the action taken.
      (10) If any cost previously disallowed by a contracting officer is included in the proposed settlement, identify and explain the reason for inclusion of such costs.
      (11) Show number and amounts of settlements with subcontractors.

(12) Use the following summary where settlement includes costs and fixed fee in a complete termination:

Gross settlement		$____
Less: Disposal credits		____
Net settlement		____
Less: Prior payments	____	
Other credits or deductions	____	
Total		____
Net payment		$____
Total contract estimated cost plus fixed fee		____
Less: Net settlement	____	
Estimated reserve for exclusions	____	

Final contract price:
(Consisting of $______ for reimbursement of costs and $_______ for adjusted fixed fee) .... ______ ______
Reduction in contract price (credit) .... ______

(13) Plant clearance. Indicate dollar value of termination inventory and state whether plant clearance has been completed. Attach consolidated plant clearance report (SF 1424, Inventory Disposal Report).

(14) Government property. State whether all Government property has been accounted for.

(15) Include a statement that the settlement is fair and reasonable to the Government and the contractor. The contracting officer shall sign and date the memorandum.

(End of memorandum)

TABLE 49-3.—SUMMARY OF SETTLEMENT

		Amount claimed	Amount allowed
1. Previous reimbursed costs—Prime and Subs		$	$
2. Previous unreimbursed costs			
3. Total cost settlement		$	$
4. Previous fees paid—Prime		$	$
5. Previous fees unpaid—Prime			
6. Total fee settlement		$	$
7. Gross settlement		$______	$______
Less: Deductions not reflected in Items 1-7			
a. Disposal credits	$______		
b. Other charges against contractor arising from contract	$______		
8. Net settlement			$
Less: Prior payment credits			
9. Net payment			$
10. Recapitulation of previous settlements (insert number of previous partial settlements effected on account of this particular termination):			
Aggregate gross amount of previous settlements			$______
Aggregate net amount of previous partial settlements			$______
Aggregate net payment provided in previous partial settlements			$______
Aggregate amount allowed for prime contractor acquired property taken over by the Government in connection with previous partial settlements.			$______

TABLE 49-4.—UNREIMBURSED COSTS SUBMITTED ON SF 1437 *

Costs	Amounts claimed by contractor's proposal	Auditor's recommendation		TCO's computation
		Cost questioned	Unresolved items	
1. Direct material				
2. Direct labor				
3. Indirect factory expense				
4. Dies, jigs, fixtures and special tools				
5. Other costs				
6. General and administrative expenses				
7. Fee				
8. Settlement expense				
9. Settlement with subs				
10. Total costs (Items 1-9)				

* Expand the format to include recommendations of technical personnel as required.

Subpart 249.5—Contract Termination Clauses

249.501 General.

249.501-70 Special termination costs.

(a) The clause at 252.249-7000, Special Termination Costs, may be used in an incrementally funded contract when its use is approved by the agency head.

(b) The clause is authorized when—

(1) The contract term is 2 years or more;

(2) The contract is estimated to require—

(i) Total RDT&E financing in excess of $25 million; or

(ii) Total production investment in excess of $100 million; and

(3) Adequate funds are available to cover the contingent reserve liability for special termination costs.

(c) The contractor and the contracting officer must agree upon an amount that represents their best estimate of the total special termination costs to which the contractor would be entitled in the event of termination of the contract. Insert this amount in paragraph (c) of the clause.

(d)(1) Consider substituting an alternate paragraph (c) for paragraph (c) of the basic clause when—

(i) The contract covers an unusually long performance period; or

(ii) The contractor's cost risk associated with contingent special termination costs is expected to fluctuate extensively over the period of the contract.

(2) The alternate paragraph (c) should provide for periodic negotiation and adjustment of the amount reserved for special termination costs. Occasions for periodic adjustment may include—

(i) The Government's incremental assignment of funds to the contract;

(ii) The time when certain performance milestones are accomplished by the contractor; or

(iii) Other specific time periods agreed upon by the contracting officer and the contractor.

Subpart 249.70—Special Termination Requirements

249.7000 Terminated contracts with Canadian Commercial Corporation.

(a) Terminate contracts with the Canadian Commercial Corporation in accordance with—

(1) The Letter of Agreement (LOA) between the Department of Defence Production (Canada) and the U.S. DoD, "Canadian Agreement" (for a copy of the LOA or for questions on its currency, contact the Foreign Contracting Directorate, Office of the Director of Defense Procurement, (703) 697–9351, DSN 227–9351));

(2) Policies in the Canadian Agreement and part 249; and

(3) The Manual of Procedure on Termination of Contracts, Department of Supply and Services (Canada).

(b) Contracting officers shall ensure that the Canadian Commercial Corporation submits termination settlement proposals in the format prescribed in FAR 49.602 and that they contain the amount of settlements with subcontractors. The termination contracting officer (TCO) shall prepare an appropriate settlement agreement. (See FAR 49.603.) The letter transmitting a settlement proposal must certify—

(1) That disposition of inventory has been completed; and

(2) That the Contracts Settlement Committee of the Supply and Services Canada (SSC) has approved settlements with Canadian subcontractors when the Manual of Procedure on Termination of Contracts, SSC, requires such approval.

(c)(1) The Canadian Commercial Corporation will—

(i) Settle all Canadian subcontractor termination claims under the Canadian Agreement; and

(ii) Submit schedules listing serviceable and usable contractor inventory for screening to the TCO (see FAR 45.6).

(2) After screening, the TCO must provide guidance to the Canadian Commercial Corporation for disposition of the contractor inventory.

(3) Settlement of Canadian subcontractor claims are not subject to the approval and ratification of the TCO. However, when the proposed negotiated settlement exceeds the total contract price of the prime contract, the TCO shall obtain from the U.S. contracting officer prior to final settlement—

(i) Ratification of the proposed settlement; and

(ii) A contract modification increasing the contract price and obligating the additional funds.

(d) The Canadian Commercial Corporation (CCC) should send all termination settlement proposals submitted by U.S. subcontractors and suppliers to the TCO, Defense Contract Management Area Operations, Ottawa, for settlement. The TCO will inform the CCC of the amount of the net settlement of U.S. subcontractors and suppliers so that this amount can be included in the CCC termination proposal. The Canadian Commercial Corporation is responsible for execution of the settlement agreement with these subcontractors.

249.7001 Congressional notification on significant contract terminations.

(a) Congressional notification is required for any termination involving a reduction in employment of 100 or more contractor employees. Proposed terminations must be cleared through department/agency liaison offices before release of the termination notice, or any information on the proposed termination, to the contractor.

(b) Department and agency liaison offices will coordinate timing of the congressional notification and public release of the information with release of the termination notice to the contractor. Department and agency liaison offices are—

(1) Army—OSA, OCLL, (SACLL), ASA (I&L)

(2) Navy—Chief of Legislative Affairs (OLA–N)

(3) Air Force—SAF/AQC

(4) Defense Advanced Research Projects Agency—CMO

(5) Defense Communications Agency—Contract Management Division (Code 260)

(6) Defense Intelligence Agency—RSQ

(7) Defense Logistics Agency—DLA–PP

(8) Defense Mapping Agency—HQ DMA (AQ)

(9) Defense Nuclear Agency—Chief, Office of Procurement, OATR

(10) National Security Agency/Central Security Service—Chief, Office of Contracting

(11) On-Site Inspection Agency—Acquisition Management Office (AM)

(12) Strategic Defense Initiative Organization—Director of Contracts (Code CT)

(c) Request clearance to release information in accordance with departmental procedures as soon as possible after the decision to terminate is made. Until clearance has been obtained, treat this information as "For Official Use Only" unless the information is classified.

(d) Include the following in the request for clearance—

(1) Contract number, date, and type of contract;

(2) Name of the company;

(3) Nature of contract or end item;

(4) The reason for the termination;

(5) Contract price of the items terminated;

(6) Total number of contractor employees involved, including the Government's estimate of the number who may be discharged;

(7) Statement of anticipated impact on the company and the community;

(8) The area labor category, whether the contractor is a large or small business, and any known impact on hard core disadvantaged employment programs;

(9) Total number of subcontractors involved and the impact in this area; and

(10) An unclassified draft of a suggested press release.

(e) To minimize termination costs, liaison offices will act promptly on all requests for clearances and provide a response not later than two working days after receipt of the request.

(f) This reporting requirement is assigned RCS:DD(I&L)(AR) 1412.

PART 250—EXTRAORDINARY CONTRACTUAL ACTIONS

Sec.
250.001 Definitions.

Subpart 250.1—General

250.104 Reports.
250.105 Records.

Subpart 250.2—Delegation of and Limitations on Exercise of Authority

250.201 Delegation of authority.
250.201–70 Delegations.
250.202 Contract adjustment boards.

Subpart 250.3—Contract Adjustments

250.303 Contractor requests.
250.305 Processing cases.
250.305–70 Record of request.
250.305–71 Processing cases to contract adjustment boards.
250.305–72 Processing by the board.
250.306 Disposition.
250.306–70 Record of disposition.

Subpart 250.4—Residual Powers

250.403 Special procedures for unusually hazardous or nuclear risks.
250.403–70 Indemnification under contracts involving both research and development and other work.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

250.001 Definitions.

As used in this part,

Secretarial level means—

(1) An official at or above the level of an Assistant Secretary (or Deputy) of Defense or of the Army, Navy, or Air Force; and

(2) A contract adjustment board established by the Secretary concerned.

Subpart 250.1—General

250.104 Reports.

Prepare reports required by this section in accordance with DoDI 4105.69, Miscellaneous Procurement Report. Department and agency supplements identify officials responsible for preparing and processing the reports required by this section.

250.105 Records.

(1) Departments and agencies will—

(i) Prepare a preliminary record when a request for a contract adjustment under FAR 50.3 is filed (see 250.305–70).

(ii) Prepare a final record stating the disposition of the request (see 250.306–70).

(iii) Designate the offices or officials responsible for preparing, submitting, and receiving all records required by this Part 250. Records shall be maintained by the contract adjustment boards of the Army, Navy, and Air Force, respectively, and by the headquarters of the defense agencies.

(2) A suggested format for the record is in Table 50–1, Record of Request for Adjustment. This format permits the information required for the preliminary and final records to be combined on one form.

(3) The following instructions are provided for those items which are not self-explanatory:

(i) *Extent of performance as of date of request.* State degree of completion of contract; e.g., 50 percent completed or performance not yet begun. If work is completed, state date of completion and whether final payment has been made.

(ii) *Award procedure.* State whether contract was awarded under sealed bidding or negotiated procedures. Cite specific authority for using other than full and open competition, if applicable, e.g., 10 U.S.C. 2304(c)(1).

(iii) *Type of contract.* State type of contract (see FAR Part 16): e.g., FFP (firm fixed-price).

(iv) *Category of case.* State whether the request involves a modification without consideration, a mistake, or an informal commitment. If the case involves more than one category, identify both; list the most significant category first.

(v) *Amount or description of request.* If the request is expressed in dollars, state the amount and whether it is an increase or decrease. If the request cannot be expressed in monetary terms, provide a brief description; e.g., "Cancellation" or "Modification." Even if the adjustment is not easily expressed in terms of dollars, if the contractor has made an estimate in the request, that estimate should be stated.

(vi) *Action below Secretarial level.* State the disposition of the case, the office that took the action and the date the action was taken. The disposition should be stated as "Withdrawn," "Denied," "Approved," or "Forwarded." If the request was approved, in whole or in part, state the dollar amount or nature of the action (as explained in paragraph (v) of this section). The date should correspond with the date of the memorandum of decision or of the letter forwarding the request to the contract adjustment board or other deciding body.

(vii) *Action by contract adjustment board and date.* State the disposition and date of disposition of the case by the contract adjustment board. Provide the same information as for paragraph (vi).

(viii) *Implementation and date.* State the appropriate action; e.g., "Modification," "New Contract," or "Letter of Denial."

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provide a brief description; e.g., "Cancellation" or "Modification." Even if the adjustment is not easily expressed in terms of dollars, if the contractor has made an estimate in the request, that estimate should be stated.

(vi) *Action below Secretarial level.* State the disposition of the case, the office that took the action and the date the action was taken. The disposition should be stated as "Withdrawn," "Denied," "Approved," or "Forwarded." If the request was approved, in whole or in part, state the dollar amount or nature of the action (as explained in paragraph (v) of this section). The date should correspond with the date of the memorandum of decision or of the letter forwarding the request to the contract adjustment board or other deciding body.

(vii) *Action by contract adjustment board and date.* State the disposition and date of disposition of the case by the contract adjustment board. Provide the same information as for paragraph (vi).

(viii) *Implementation and date.* State the appropriate action; e.g., "Modification," "New Contract," or "Letter of Denial."

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☐ PRELIMINARY	RECORD OF REQUEST FOR ADJUSTMENT PUBLIC LAW 85-804		FINAL ☐
DATE OF REQUEST			DATE RECEIVED BY GOVERNMENT
CONTRACTOR'S NAME AND ADDRESS			☐ SMALL BUSINESS
NAME AND ADDRESS OF CONTRACTOR'S REPRESENTATIVE, IF ANY			
COGNIZANT CONTRACTING OFFICER OR OFFICE		PROCURING ACTIVITY	
PROPERTY OR SERVICE INVOLVED		EXTENT OF PERFORMANCE AS OF DATE OF REQUEST	
CONTRACT NUMBER	DATE	ADVERTISED OR NEGOTIATED	TYPE OF CONTRACT
CATEGORY OF CASE		AMOUNT OR DESCRIPTION OF REQUEST	
ACTION BELOW SECRETARIAL LEVEL			DATE
ACTION BY CAB			DATE
IMPLEMENTATION			DATE
ADDITIONAL DATA OR REMARKS			
DATE THIS RECORD SIGNED		SIGNATURE	

BILLING CODE 3810-01-C

Subpart 250.2—Delegation of and Limitations on Exercise of Authority

250.201 Delegation of authority.

(b) Authority under FAR Subpart 50.4 to approve actions obligating $50,000 or less may not be delegated below the level of the head of the contracting activity; however, see FAR 50.201(d) for indemnification authority.

250.201-70 Delegations.

(a) *Military Departments.* The Departments of the Army, Navy and Air Force will specify delegations and levels of authority for actions under the Act and the Executive Order in departmental supplements.

(b) *Defense Agencies.* Subject to the restrictions on delegations of authority in 250.201(b) and FAR 50.201, the directors of the defense agencies may exercise and redelegate the authority contained in the Act and the Executive Order. The agency supplements shall specify the delegations and levels of authority.

(1) Requests to obligate the Government in excess of $50,000 must be submitted to the Under Secretary of Defense (Acquisition) (USD(A)) for approval.

(2) Requests for indemnification against unusually hazardous or nuclear risks must be submitted through the Director of Defense Procurement, Office of the USD(A), to the Secretary of Defense for approval before using the indemnification clause at FAR 52.250-1, Indemnification Under Public Law 85-804.

(c) *Approvals.* The service Secretary or agency director must approve any delegations in writing.

250.202 Contract adjustment boards.

The Departments of the Army, Navy, and Air Force each have a contract adjustment board. The board consists of a Chair and not less than two nor more than six other members, one of whom may be designated the Vice-Chair. A majority constitutes a quorum for any purpose and the concurring vote of a majority of the total board membership constitutes an action of the board. Alternates may be appointed to act in the absence of any member.

Subpart 250.3—Contract Adjustments

250.303 Contractor requests.

Requests should be filed with the procuring contracting officer (PCO). If a request is filed with an administrative contracting officer (ACO), the ACO shall promptly forward it to the PCO for appropriate action. If filing with the PCO is impracticable, requests may be filed with the following addresses for forwarding to the cognizant PCO:

(1) Office of the Secretary of Defense—Washington Headquarters Service, Attn: RE&F-AM.

(2) Army—Forward to the head of the contracting activity listed in Part 202 that appears to be the cognizant office for the contract or commitment involved.

(3) Navy—Assistant Secretary of the Navy (RD&A), Attn: Procurement Policy.

(4) Air Force—Deputy Assistant Secretary (Contracting), Attn: SAF/AQCX.

(5) Defense Advanced Research Projects Agency—Director, CMO.

(6) Defense Communications Agency—Attn: Code PA.

(7) Defense Intelligence Agency—Assistant Deputy Director for Procurement, Attn: RSQ.

(8) Defense Logistics Agency—The Commander of the Defense Supply Center involved.

(9) Defense Mapping Agency—Director, DMA, Attn: AQ.

(10) Defense Nuclear Agency—Director, DNA, Attn: OAPR.

(11) National Security Agency—Director, NSA.

(12) On-Site Inspection Agency—Director, OSIA, Attn: DSP.

(13) Strategic Defense Initiative Organization—Director, SDIO.

250.305 Processing cases.

250.305-70 Record of request.

At the time the request is filed, the activity will prepare the record described at 250.105(1)(i) and forward it to the appropriate official within 30 days after the close of the month in which the record is prepared.

250.305-71 Processing cases to contract adjustment boards.

(a) The officer or official responsible for the case shall forward to the contract adjustment board, through departmental channels, two copies of the following:

(1) A letter stating—

(i) The nature of the case;

(ii) The basis for the board's authority to act;

(iii) The findings of fact essential to the case (see FAR 50.304). Arrange the findings chronologically with cross references to supporting enclosures;

(iv) The conclusions drawn;

(v) The recommended disposition; and

(vi) If contractual action is recommended, a statement by the signer that the action will facilitate the national defense.

(2) The contractor's request

(3) All evidentiary materials

(4) All endorsements, reports and comments of cognizant Government officials

(b) A letter to the Board recommending an amendment without consideration where essentiality is a factor (see FAR 50.302-1(a)) should also provide—

(1) The information required by FAR 50.304 (a) and (b), and

(2) Findings as to—

(i) The contractor's performance record, including the quality of product, rate of production, and promptness of deliveries;

(ii) The importance to the Government, particularly to the active duty military, of the performance of the contract and the importance of the contractor to the national defense;

(iii) The forecast of future contracts with the contractor; and

(iv) Other available sources of supply for the supplies or services covered by the contract, and the time and cost of having contract performance completed by such other sources.

250.305-72 Processing by the board.

Contract adjustment boards will render decisions as expeditiously as practicable. The Chair shall sign a memorandum of decision disposing of the case. The decision shall be dated and shall contain the information required by FAR 50.306. The memorandum of decision shall not contain any information classified "Confidential" or higher. The board's decision will be sent to the appropriate official for implementation.

250.306 Disposition.

250.306-70 Record of disposition.

(a) When the request for relief is denied or approved below the Secretarial level, submit the following documents to the appropriate office within 30 days after the close of the month in which the decision is executed:

(1) Two copies of the memorandum of decision;

(2) Except for the Army, one copy of the contractual document implementing any decision approving contractual action; and

(3) One copy of a final record, as described at 250.105.

(b) When a contract adjustment board decision is implemented, the activity which forwarded the case to the board shall prepare and submit to the board the documents identified in paragraphs (a) (2) and (3) of this subsection.

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(4) All endorsements, reports and comments of cognizant Government officials

(b) A letter to the Board recommending an amendment without consideration where essentiality is a factor (see FAR 50.302–1(a)) should also provide—

(1) The information required by FAR 50.304 (a) and (b), and

(2) Findings as to—

(i) The contractor's performance record, including the quality of product, rate of production, and promptness of deliveries;

(ii) The importance to the Government, particularly to the active duty military, of the performance of the contract and the importance of the contractor to the national defense;

(iii) The forecast of future contracts with the contractor; and

(iv) Other available sources of supply for the supplies or services covered by the contract, and the time and cost of having contract performance completed by such other sources.

250.305–72 Processing by the board.

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250.306 Disposition.

250.306–70 Record of disposition.

(a) When the request for relief is denied or approved below the Secretarial level, submit the following documents to the appropriate office within 30 days after the close of the month in which the decision is executed:

(1) Two copies of the memorandum of decision;

(2) Except for the Army, one copy of the contractual document implementing any decision approving contractual action; and

(3) One copy of a final record, as described at 250.105.

(b) When a contract adjustment board decision is implemented, the activity which forwarded the case to the board shall prepare and submit to the board the documents identified in paragraphs (a) (2) and (3) of this subsection.

Subpart 250.4—Residual Powers

250.403 Special procedures for unusually hazardous or nuclear risks.

250.403–70 Indemnification under contracts involving both research and development and other work.

When indemnification is to be provided on contracts requiring both research and development work and other work, the contracting officer shall insert an appropriate clause using the authority of both 10 U.S.C. 2354 and Public Law 85–804.

(a) The use of Public Law 85–804 is limited to work which cannot be indemnified under 10 U.S.C. 2354 and is subject to compliance with FAR subpart 50.4.

(b) Indemnification under 10 U.S.C. 2354 is covered by 235.070.

PART 251—USE OF GOVERNMENT SOURCES BY CONTRACTORS

Sec.

Subpart 251.1—Contractor Use of Government Supply Sources

251.102 Authorization to use Government supply sources.
251.106 Title.
251.107 Contract clause.

Subpart 251.2—Contractor Use of Interagency Fleet Management System (IFMS) Vehicles

251.202 Authorization.
251.205 Contract clause.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 251.1—Contractor Use of Government Supply Sources

251.102 Authorization to use Government supply sources.

(e) Use the format in Table 51–1, Authorization to Purchase form Government Supply Sources.

(3)(ii) In addition to the procedure and form authorized by FAR 51.102(e)(3)(ii), contractors may use the DD Form 1155 when requisitioning from the Department of Veterans Affairs.

TABLE 51–1.—AUTHORIZATION TO PURCHASE FROM GOVERNMENT SUPPLY SOURCES

Subject: Authorization to Purchase from Government Supply Sources

(Contractor's Name)

(Contractor's Address)

1. You are hereby authorized to use Government sources in performing Contract No. ______ for the Department of ______, as follows: (Insert applicable purchasing authority given to the contractor.)

2.a. Purchase Orders Under Federal Supply Schedules or Personal Property Rehabilitation Price Schedules. Place orders in accordance with the terms and conditions of the attached Schedule(s) and this authorization. Attach a copy of this authorization to the order (unless a copy was previously furnished to the Federal Supply Schedule or Personal Property Rehabilitation Price Schedule contractor). Insert the following statement in the order:

This order is placed under written authorization from ______dated ______ ([1] ____).

In the event of any inconsistency between the terms and conditions of this order and those of the Federal Supply Schedule or Personal Property Rehabilitation Price Schedule contract, the latter will govern.

b. Requisitioning from the General Services Administration (GSA) or the Department of Defense (DoD). Place orders in accordance with this authorization and, as appropriate, the:

(1) Federal Standard Requisitioning and Issue Procedures (FEDSTRIP) (GSAFEDSTRIP Operating Guide: FPMR 101–26.2 (41 CFR 101–26.2); copies are available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402); or

(2) Military Standard Requisitioning and Issue Procedures (MILSTRIP) (DoD 4000.25–1–M; copies are available from the Defense Logistics Agency, ATTN: DLA–XPD, Bldg. 6, Dr. 21, Cameron Station, Alexandria, VA 22304–6100).

3. ([3])
4. This authority is not transferable or assignable.
5. The DoD Activity Address Directory (DoDAAD) (DoD 4000.25–6–M) Activity Address Code[2] to which this Authorization applies is ______.
6. This Authorization expires ______.

(Contracting Officer)

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[1] Insert "a copy of which is attached," "a copy of which you have on file," or other suitable language, as appropriate.

[2] The sponsoring service assumes responsibility for monitoring and controlling all activity address codes used in the letters of authority.

[3] Insert other provisions, as necessary.

251.106 Title.

(b) Title to property having an acquisition cost of less than $5,000 shall vest in the contractor under the circumstances described in FAR 51.106(b).

251.107 Contract clause.

Use the clause at 252.251–7000, Ordering From Government Supply Sources, in solicitations and contracts which include the clause at FAR 52.251–1, Government Supply Sources.

Subpart 251.2—Contractor Use of Interagency Fleet Management System (IFMS) Vehicles

251.202 Authorization.

(a)(2)(A) See FAR 28.307–2(c) for policy on contractor insurance.

(B) See FAR 28.308 for policy on self-insurance.

(C) See FAR 31.205–19 for allowability of insurance costs.

(5) Paragraph (d) of the clause at 252.251–7001 satisfies the requirement of FAR 51.202(a)(5) for a written statement.

251.205 Contract clause.

Use the clause at 252.251–7001, Use of Interagency Fleet Management System (IFMS)Vehicles and Related Services, in solicitations and contracts which include the clause at FAR 52.251–2, Interagency Fleet Management System (IFMS) Vehicles and Related Services.

SUBCHAPTER H—CLAUSES AND FORMS

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.

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Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 13.

Subpart 252.1—Instructions for Using Provisions and Clauses

252.101 Using Part 252.

(b) *Numbering.*

(2) *Provisions or clauses that supplement the FAR.*

(ii)(B) DFARS provisions or clauses use a four digit sequential number in the 7000 series, e.g., –7000, –7001, –7002. Department or agency supplemental provisions or clauses use four digit sequential numbers in the 9000 series.

Subpart 252.2—Text of Provisions And Clauses

252.201-7000 Contracting officer's representative.

As prescribed in 201.602–70, use the following clause:

Contracting Officer's Representative (Dec. 1991)

(a) *Definition. Contracting officer's representative* means an individual designated in accordance with subsection 201.602–2 of the Defense Federal Acquisition Regulation Supplement and authorized in writing by the contracting officer to perform specific technical or administrative functions.

(b) If the Contracting Officer designates a contracting officer's representative (COR), the Contractor will receive a copy of the written designation. It will specify the extent of the COR's authority to act on behalf of the contracting officer. The COR is not authorized to make any commitments or changes that will affect price, quality, quantity, delivery, or any other term or condition of the contract.

252.203-7000 Statutory prohibitions on compensation to former Department of Defense employees.

As prescribed in 203.170–4, use the following clause:

Statutory Prohibition on Compensation to Former Department of Defense Employees (Dec. 1991)

(a) *Definitions.*

As used in this clause—

(1) *Armed Forces* means the uniformed military services, excluding the U.S. Coast Guard.

(2) *Compensation* means any payment, gift, benefit, reward, favor, or gratuity which is provided directly or indirectly for services rendered by the person accepting such payment, gift, benefit, reward, favor, or gratuity, and which has a fair market value in excess of $250. Compensation is indirectly provided if it is paid to an entity other than the individual, specifically in exchange for services performed by the individual.

(3) *Defense contractor* means an entity (including affiliates and subsidiaries which clearly engage in the performance of Department of Defense (DoD) contracts) that contracts directly with the DoD to supply goods or services. "Defense contractor" does not include a State or local government.

(4) *Designated agency ethics official* means a DoD officer or employee who has been appointed to administer the provisions of the Ethics in Government Act, as amended.

(5) *Former DoD employee* means a person who served in the DoD in a civilian position for which the rate of pay was equal to or greater than the minimum rate of pay for grade GS–13 of the General Schedule, or served in the Armed Forces in a pay grade of 04 or higher.

(6) *Former DoD official* means—

(i) A former DoD employee who spent the majority of working days during the last two years of DoD service performing a procurement function relating to:

(A) A DoD contract, at a site or plant that was owned or operated by the Contractor, and which was the principal location of such person's performance of that procurement function; or

(B) A major defense system and, in the performance of such function, participated on any occasion personally and substantially in a manner involving decision making responsibilities with respect to a contract for that system through contact with the Contractor;

(ii) An individual who served in a civilian position for which the rate of pay is equal to or greater than the minimum rate of pay for a Senior Executive Service position or other executive position at the same or higher level, and an individual who served in the Armed Forces in the pay grade of 07 or higher, if such individual during the last two years of DoD service—

(A) Acted as one of the primary Government representatives in the negotiation with a defense contractor of a DoD contractual action in an amount in excess of $10 million; or

(B) Acted as one of the primary Government representatives in the negotiation of a settlement of an unresolved claim of such a defense contractor in an amount in excess of $10 million. An unresolved claim shall be, for the purposes of this section, valued by the greater of the amount of the claim or the amount of the settlement.

(7) *Major defense contractor* means any business entity which, during the Government fiscal year preceding the Government fiscal year in which compensation was first provided to a former DoD employee, was awarded DoD contracts in a total amount of $10 million or more.

(8) *Major defense system* means a combination of elements that will function together to produce the capability required to fulfill a mission need. Elements may include hardware, equipment, software, or any combination thereof, but exclude construction or other improvements to real property. A system shall be considered a major defense system if—

(i) The DoD is responsible for the system and the total expenditures (based on fiscal year 1980 constant dollars) for research, development, test and evaluation for the system, are estimated to exceed $75 million or the eventual total expenditure for procurement is estimated to exceed $300 million; or

(ii) The system is designated a major system by the head of the agency responsible for the system.

(9) *Negotiation* means exchanges of positions between representatives of the Government and a contractor with the view of reaching agreement regarding respective liabilities of the parties on a particular contract or claim. It includes deliberations regarding contract specifications, terms of delivery, allowability of costs, pricing of change orders, etc.

(10) *Primary Government representative* means, if more than one Government representative is involved in any particular transaction, the official or officials supervising the Government's effort in the matter. To act as a "representative" requires personal and substantial participation in the transaction, by personal presence, telephone conversation, or similar involvement with representatives of a contractor.

(11) *Procurement-related function* (or *procurement function*) means any function relating to—

(i) The negotiation, award, administration, or approval of a contract;

(ii) The selection of a contractor;

(iii) The approval of a change in a contract;

(iv) The performance of quality assurance, operational and developmental testing, the approval of payment, or auditing under a contract; or

(v) The management of a procurement program.

(b) *Prohibition on compensation.* (1) 10 U.S.C. 2397b and 2397c prohibit a major defense contractor from offering or providing any compensation valued in excess of $250 to a former DoD official who left DoD service on or after April 16, 1987, and who, while employed by DoD, performed procurement-related functions in connection with that defense contractor. This prohibition runs for the two year period beginning on the date of the official's separation from service in DoD.

(2) The Contractor, if a major defense contractor, agrees not to provide, for the two year period, any compensation to the former DoD official.

(3) DoD employees may request from their Designated Agency Ethics Official (DAEO) a written opinion on the applicability of 10 U.S.C. 2397b prior to the acceptance of compensation. If the opinion of the DAEO is that the law is not applicable, and that the individual may accept compensation from the Contractor, there shall be a conclusive presumption that the offering and the acceptance of such compensation is not a violation of the statute.

(c) *Report concerning former DoD employees.* (1) The Contractor shall submit a separate written report, as described in paragraph (c)(2) of this clause, for each calendar year covered by this contract (extending through final payment) if the calendar year commenced after the end of a Government fiscal year in which the Contractor was awarded one or more DoD contracts aggregating $10 million or more. In multidivisional corporations, the corporate headquarters, and each segment which contracts directly with the Government, shall report separately. Each report shall list those persons employed or otherwise compensated, who are former DoD employees who left service on or after April 16, 1987, if—

(i) They were compensated by the Contractor during the reporting period; and

(ii) The compensation was provided within two years after the person left service in the DoD.

(2) The report shall contain:

(i) Each person's name and the agency in which the person was employed or served on active duty during the last two years of service with DoD;

(ii) Each person's job title(s) during the last two years of service with DoD, and a list of

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(11) *Procurement-related function* (or *procurement function*) means any function relating to—

(i) The negotiation, award, administration, or approval of a contract;

(ii) The selection of a contractor;

(iii) The approval of a change in a contract;

(iv) The performance of quality assurance, operational and developmental testing, the approval of payment, or auditing under a contract; or

(v) The management of a procurement program.

(b) *Prohibition on compensation.* (1) 10 U.S.C. 2397b and 2397c prohibit a major defense contractor from offering or providing any compensation valued in excess of $250 to a former DoD official who left DoD service on or after April 16, 1987, and who, while employed by DoD, performed procurement-related functions in connection with that defense contractor. This prohibition runs for the two year period beginning on the date of the official's separation from service in DoD.

(2) The Contractor, if a major defense contractor, agrees not to provide, for the two year period, any compensation to the former DoD official.

(3) DoD employees may request from their Designated Agency Ethics Official (DAEO) a written opinion on the applicability of 10 U.S.C. 2397b prior to the acceptance of compensation. If the opinion of the DAEO is that the law is not applicable, and that the individual may accept compensation from the Contractor, there shall be a conclusive presumption that the offering and the acceptance of such compensation is not a violation of the statute.

(c) *Report concerning former DoD employees.* (1) The Contractor shall submit a separate written report, as described in paragraph (c)(2) of this clause, for each calendar year covered by this contract (extending through final payment) if the calendar year commenced after the end of a Government fiscal year in which the Contractor was awarded one or more DoD contracts aggregating $10 million or more. In multidivisional corporations, the corporate headquarters, and each segment which contracts directly with the Government, shall report separately. Each report shall list those persons employed or otherwise compensated, who are former DoD employees who left service on or after April 16, 1987, if—

(i) They were compensated by the Contractor during the reporting period; and

(ii) The compensation was provided within two years after the person left service in the DoD.

(2) The report shall contain:

(i) Each person's name and the agency in which the person was employed or served on active duty during the last two years of service with DoD;

(ii) Each person's job title(s) during the last two years of service with DoD, and a list of

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major defense systems on which each person performed any work;

(iii) A complete description (exclusive of proprietary information) of any work that each person is performing, or did perform, on behalf of the Contractor during the calendar year covered by the report. If the work is classified, the Contractor may use a generalized description which will not compromise its classified nature;

(iv) An identification of each major defense system on which each individual has performed any work on behalf of the Contractor.

(3) Submit each report not later than April 1 of the year following the end of the calendar year for which the report is being made. Send reports to the Office of the Assistant General Counsel (Legal Counsel), Standards of Conduct Office, Attn: OAGC/LC, Pentagon, Washington, DC 20301–1600.

(4) A properly executed DD Form 1787 (Employment, Report of DoD and Defense Related) may be submitted to satisfy the reporting requirement as to any single person.

(5) The Contractor need not submit duplicate reports to the Government. Submission of a report meeting the requirements of this clause, under another, concurrent contract with DoD will satisfy the reporting requirement of this contract.

(d) *Penalties for failure to comply*—(1) *Civil fines.* A Contractor who knowingly offers or provides any compensation to a former DoD official in violation of the statute, and who knew or should have known that the acceptance of such compensation would be in violation of such statute, shall be subject to a civil fine, not to exceed $500,000.

(2) *Liquidated damages.*

(i) For each knowing violation of the statutory prohibition on providing compensation, the Contractor agrees to pay to the Government as liquidated damages the greater of either $100,000, or three times the total amount of compensation paid by the Contractor to the former DoD official during the period in which such compensation was in violation of the statutory prohibition.

(ii) Liability for liquidated damages under this clause survives final payment under this contract and may be recouped against payments due under other contracts with the Contractor.

(iii) Liquidated damages will be computed based upon the number of actual violations by the Contractor, and not on the number of contracts in which this clause appears.

(3) *Administrative penalty.* If the Contractor knowingly fails to file a report in accordance with paragraph (c) of this clause, the Contractor shall be subject to an administrative penalty not to exceed $10,000. The final determination of the penalty to be charged to the Contractor shall be made by the Secretary of Defense or designee after the Contractor is afforded an opportunity for an agency hearing on the record in accordance with agency hearing procedures. The Secretary's determination shall form a part of the record and shall be subject to judicial review under chapter 7 of title 5, United States Code.

(e) The rights and remedies under this clause are in addition to, and do not limit, any rights afforded the Government under this contract or as otherwise provided by law.

(End of clause)

252.203-7001 Special prohibition on employment.

As prescribed in 203.570–5, use the following clause:

Special Prohibition on Employment (Dec. 1991)

(a) *Definitions.*

As used in this clause—

(1) *Arising out of a contract with the DoD* means any act in connection with—

(i) Attempting to obtain,

(ii) Obtaining, or

(iii) Performing a contract or first-tier subcontract of any agency, department, or component of the Department of Defense (DoD).

(2) *Conviction of fraud or any other felony* means any conviction for fraud or a felony in violation of state or Federal criminal statutes, whether entered on a verdict or plea, including a plea of *nolo contendere,* for which sentence has been imposed.

(3) *Date of conviction* means the date judgment was entered against the individual.

(b) 10 U.S.C. 2408 provides that any individual who is convicted after September 29, 1988, of fraud or any other felony arising out of a contract with the DoD is prohibited from:

(1) Working in a management or supervisory capacity on any DoD contract or first-tier subcontract;

(2) Serving on the board of directors of any DoD contractor or first-tier subcontractor; or

(3) Serving as a consultant to any DoD contractor or first-tier subcontractor.

(c) Unless waived, the prohibition in paragraph (b) applies for five years from the date of conviction.

(d) 10 U.S.C. 2408 further provides that a defense contractor or first-tier subcontractor shall be subject to a criminal penalty of not more than $500,000 if convicted of knowingly—

(1) Employing a person under a prohibition specified in paragraph (b) of this clause; or

(2) Allowing such a person to serve on the board of directors of the contractor or first-tier subcontractor.

(e) In addition to the criminal penalties contained in 10 U.S.C. 2408, the Government may consider other available remedies, such as—

(1) Suspension or debarment;

(2) Cancellation of the contract at no cost to the Government; or

(3) Termination of the contract for default.

(f) The Contractor may submit written requests for waiver of the prohibitions in paragraph (b) of this clause to the Contracting Officer. Requests shall clearly identify—

(1) The person involved;

(2) The nature of the conviction and resultant sentence or punishment imposed;

(3) The reasons for the requested waiver; and,

(4) An explanation of why a waiver is in the interest of national security.

(g) The Contractor agrees to include the substance of this clause, appropriately modified to reflect the identity and relationship of the parties, in all first-tier subcontracts exceeding $25,000.

(End of clause)

252.203-7002 Display of DoD hotline poster.

As prescribed in 203.7002, use the following clause:

Display of DOD Hotline Poster (Dec. 1991)

(a) The Contractor shall display prominently in common work areas within business segments performing work under Department of Defense (DoD) contracts, DoD Hotline Posters prepared by the DoD Office of the Inspector General.

(b) DoD Hotline Posters may be obtained from the DoD Inspector General, Attn: Defense Hotline, 400 Army Navy Drive, Washington, DC 22202–2884.

(c) The Contractor need not comply with paragraph (a) of this clause if it has established a mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

(End of clause)

252.204-7000 Disclosure of information.

As prescribed in 204.404–70, use the following clause:

Disclosure of Information (Dec. 1991)

(a) The Contractor shall not release to anyone outside the Contractor's organization any unclassified information, regardless of medium (e.g., film, tape, document), pertaining to any part of this contract or any program related to this contract, unless—

(1) The Contracting Officer has given prior written approval; or

(2) The information is otherwise in the public domain before the date of release.

(b) Requests for approval shall identify the specific information to be released, the medium to be used, and the purpose for the release. The Contractor shall submit its request to the Contracting Officer at least 45 days before the proposed date for release.

(c) The Contractor agrees to include a similar requirement in each subcontract under this contract. Subcontractors shall submit requests for authorization to release through the prime contractor to the Contracting Officer.

(End of clause)

252.204-7001 Commercial and Government entity (CAGE) code reporting.

As prescribed in 204.603–70, use the following provision:

Commercial and Government Entity (CAGE) Code Reporting (Dec. 1991)

(a) The Offeror is requested to enter its CAGE code on its offer in the block with its name and address. The CAGE code entered must be for that name and address. Enter CAGE before the number.

(b) If the Offeror does not have a CAGE code, it may ask the Contracting Officer to request one from the Defense Logistics

Services Center (DLSC). The Contracting Officer will—

(1) Ask the Contractor to complete section B of a DD Form 2051, Request for Assignment of a Commercial and Government Entity (CAGE) Code;

(2) Complete section A and forward the form to DLSC; and

(3) Notify the Contractor of its assigned CAGE code.

(c) Do not delay submission of the offer pending receipt of a CAGE code.

(End of provision)

252.204-7002 Payment for subline items not separately priced.

As prescribed in 204.7104-1(b)(3)(iv), use the following clause:

Payment for Subline Items not Separately Priced (Dec. 1991)

(a) If the schedule in this contract contains any contract subline items or exhibit subline items identified as not separately priced (NSP), it means that the unit price for that subline item is included in the unit price of another, related line or subline item.

(b) The Contractor shall not invoice the Government for any portion of a contract line item or exhibit line item which contains an NSP until—

(1) The Contractor has delivered the total quantity of all related contract subline items or exhibit subline items; and

(2) The Government has accepted them.

(c) This clause does not apply to technical data.

(End of clause)

252.205-7000 Provision of information to cooperative agreement holders.

As prescribed in 205.470-2, use the following clause:

Provision of Information to Cooperative Agreement Holders (Dec. 1991)

(a) Definition.

Cooperative agreement holder means a State or local government; a private, nonprofit organization; a tribal organization (as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-268; 25 U.S.C. 450(c))); or an economic enterprise (as defined in section 3(e) of the Indian Financing Act of 1974 (Pub. L. 93-362; 25 U.S.C. 1452(e))) whether such economic enterprise is organized for profit or nonprofit purposes; which has an agreement with the Defense Logistics Agency to furnish procurement technical assistance to business entities.

(b) The Contractor shall provide cooperative agreement holders, upon their request, with a list of those appropriate employees or offices responsible for entering into subcontracts under defense contracts. The list shall include the business address, telephone number, and area of responsibility of each employee or office.

(c) The Contractor need not provide the listing to a particular cooperative agreement holder more frequently than once a year.

(End of clause)

252.206-7000 Domestic source restriction.

As prescribed at 206.302-3-70, use the following provision:

Domestic Source Restriction (Dec. 1991)

This solicitation is restricted to domestic sources under the authority of 10 U.S.C. 2304(c)(3). Foreign sources, except Canadian sources, are not eligible for award.

(End of provision)

252.208-7000 Intent to furnish precious metals as Government-furnished material.

As prescribed in 208.7305(a), use the following clause:

Intent To Furnish Precious Metals as Government-Furnished Material (Dec. 1991)

(a) The Government intends to furnish precious metals required in the manufacture of items to be delivered under the contract if the Contracting Officer determines it to be in the Government's best interest. The use of Government-furnished silver is mandatory when the quantity required is one hundred troy ounces or more. The precious metal(s) will be furnished pursuant to the Government Furnished Property clause of the contract.

(b) The Offeror shall cite the type (silver, gold, platinum, palladium, iridium, rhodium, and ruthenium) and quantity in whole troy ounces of precious metals required in the performance of this contract (including precious metals required for any first article or production sample), and shall specify the national stock number (NSN) and nomenclature, if known, of the deliverable item requiring precious metals.

Precious metal*	Quantity	Deliverable item (NSN and nomenclature)

*If platinum or palladium, specify whether sponge or granules are required.

(c) Offerors shall submit two prices for each deliverable item which contains precious metals—one based on the Government furnishing precious metals, and one based on the Contractor furnishing precious metals. Award will be made on the basis which is in the best interest of the Government.

(d) The Contractor agrees to insert this clause, including this paragraph (d), in solicitations for subcontracts and purchase orders issued in performance of this contract, unless the Contractor knows that the item being purchased contains no precious metals.

(End of clause)

252.209-7000 Acquisition From subcontractors subject to on-site inspection under the Intermediate-Range Nuclear Forces (INF) Treaty.

As prescribed in 209.103-70, use the following clause:

Acquisition from Subcontractors Subject to On-Site Inspection Under the Intermediate-Range Nuclear Forces (INF) Treaty (Dec. 1991)

(a) The Contractor shall not deny consideration for a subcontract award under this contract to a potential subcontractor subject to on-site inspection under the INF Treaty, or a similar treaty, solely or in part because of the actual or potential presence of Soviet inspectors at the subcontractor's facility, unless the decision is approved by the Contracting Officer.

(b) The Contractor shall incorporate this clause, including this paragraph (b), in all solicitations and contracts over the dollar limitation in section 13.000 of the Federal Acquisition Regulation, except those for commercial or commercial-type products.

(End of clause)

252.209-7001 Disclosure of ownership or control by a foreign government that supports terrorism.

As prescribed in 209.104-70, use the following provision:

Disclosure of Ownership or Control by a Foreign Government that Supports Terrorism (Dec. 1991)

(a) *Definitions.*

(1) *Significant interest*, as used in this provision, means—

(i) Ownership of or beneficial interest in five percent or more of the firm's or subsidiary's securities. Beneficial interest includes holding five percent or more of any class of the firm's securities in "nominee shares," "street names," or some other method of holding securities that does not disclose the beneficial owner;

(ii) Holding a management position in the firm, such as a director or officer;

(iii) Ability to control or influence the election, appointment, or tenure of directors or officers in the firm;

(iv) Ownership of ten percent or more of the assets of a firm such as equipment, buildings, real estate, or other tangible assets of the firm; or

(v) Holding 50 percent or more of the indebtedness of a firm.

(2) *Government*, as used in this provision, includes any agent or instrumentality of that government.

(b) *Disclosure*. The Offeror shall disclose any significant interest the government of each of the following countries has in the Offeror or a subsidiary of the Offeror. If the Offeror is a subsidiary, it shall also disclose any significant interest each government has in any firm that owns or controls the subsidiary. If none, leave blank.

Country	Significant interest
(1) Cuba	
(2) Iran	
(3) Iraq	
(4) Libya	
(5) North Korea	
(6) Syria	

(End of provision)

252.210-7000 Brand name or equal.

As prescribed in 210.011-70(a), use the following provision:

Brand Name or Equal (Dec. 1991)

(a) If items in this solicitation are identified as "brand name or equal," the term is intended to be descriptive not restrictive. The "brand name or equal" description is used to portray the characteristics and level of quality that will satisfy the Government's needs. The salient physical, functional, and other characteristics which "equal" products must meet are specified in the solicitation.

(b) To be considered for award, offers of "equal" products, including products (other than the "brand name" item) of the brand name manufacturer, must—

(1) Meet the salient physical, functional, and other characteristics specified in this solicitation;

(2) Clearly identify the item by—

(i) Brand name, if any; and

(ii) Make or model number;

(3) Include descriptive literature such as cuts, illustrations, drawings, or a clear reference to previously furnished descriptive data or information available to the Contracting Officer; and

(4) Clearly describe any modifications the Offeror plans to make in a product to make it conform to the solicitation requirements. Mark any descriptive material to clearly show the modifications.

(c) The Contracting Officer will evaluate "equal" products on the basis of information furnished by the Offeror or identified in the offer and reasonably available to the Contracting Officer. The Contracting Officer is not responsible for locating or securing any information not identified in the offer and reasonably available.

(d) Unless the Offeror clearly indicates in the offer that the product being offered is an "equal" product, the Contracting Officer will consider the offer as offering a brand name product referenced in the solicitation.

(End of provision)

252.210-7001 Availability of specifications and standards Not listed in DODISS, data item descriptions Not listed in DoD 5010.12-L, and plans, drawings, and other pertinent documents.

As prescribed in 210-011(b), use the following provision:

Availability of Specifications and Standards Not Listed in DODISS, Data Item Descriptions Not Listed in DOD 5010.12-L, and Plans, Drawings, and Other Pertinent Documents (Dec. 1991)

Offerors may obtain the specifications, standards, plans, drawings, data item descriptions, and other pertinent documents cited in this solicitation by submitting a request to:

(Activity) ______

(Complete Address) ______

Include the number of the solicitation and the title and number of the specification, standard, plan, drawing, or other pertinent document.

(End of provision)

252.210-7002 Availability for examination of specifications, standards, plans, drawings, data item descriptions, and other pertinent documents.

As prescribed in 210.011(b), use the following provision:

Availability for Examination of Specifications, Standards, Plans, Drawings, Data Item Descriptions, and Other Pertinent Documents (Dec. 1991)

The specifications, standards, plans, drawings, data item descriptions, and other pertinent documents cited in this solicitation are not available for distribution but may be examined at the following location:

______

(Insert complete address)

(End of provision)

252.210-7003 Acquisition streamlining.

As prescribed in 210.011-70(b), use the following clause.

Acquisition Streamlining (Dec. 1991)

(a) The Government's acquisition streamlining objectives are to—

(1) Acquire systems that meet stated performance requirements;

(2) Avoid over-specification; and

(3) Ensure that cost effective requirements are included in future acquisitions.

(b) The Contractor shall—

(1) Prepare and submit acquisition streamlining recommendations in accordance with the statement of work of this contract; and

(2) Format and submit the recommendations as prescribed by data requirements on the contract data requirements list of this contract.

(c) The Government has the right to accept, modify, or reject the Contractor's recommendations.

(d) The Contractor shall insert this clause, including this paragraph (d), in all subcontracts over $1 million, awarded in the performance of this contract.

(End of clause)

252.210-7004 Alternate preservation, packaging, and packing.

As prescribed in 210.011-70(c), use the following provision:

Alternate Preservation, Packaging, and Packing (Dec. 1991)

(a) The Offeror may submit two unit prices for each item—one based on use of the military preservation, packaging, or packing requirements of the solicitation; and an alternate based on use of commercial or industrial preservation, packaging, or packing of equal or better protection than the military.

(b) If the Offeror submits two unit prices, the following information, as a minimum, shall be submitted with the offer to allow evaluation of the alternate—

(1) The per unit/item cost of commercial or industrial preservation, packaging, and packing;

(2) The per unit/item cost of military preservation, packaging, and packing;

(3) The description of commercial or industrial preservation, packaging, and packing procedures, including material specifications, when applicable, to include—

(i) Method of preservation;

(ii) Quantity per unit package;

(iii) Cleaning/drying treatment;

(iv) Preservation treatment;

(v) Wrapping materials;

(vi) Cushioning/dunnage material;

(vii) Thickness of cushioning;

(viii) Unit container;

(ix) Unit package gross weight and dimensions;

(x) Packing; and

(xi) Packing gross weight and dimensions; and

(4) Item characteristics, to include—

(i) Material and finish;

(ii) Net weight;

(iii) Net dimensions; and

(iv) Fragility.

(c) If the Contracting Officer does not evaluate or accept the Offeror's proposed alternate commercial or industrial preservation, packaging, or packing, the Offeror agrees to preserve, package, or pack in accordance with the specified military requirements.

(End of provision)

252.210-7005 Bill of materials.

As prescribed in 210.011-70(d), use the following clause:

Bill of Materials (Dec. 1991)

(a) The Contractor shall furnish a Bill of Materials for the supplies designated in the schedule of this contract—

(1) In the required number of copies;

(2) On DD Forms 346, Raw (Basic Processed) and Semi-Fabricated Stock Form, and 347, Bill of Materials for Subcontracted Parts, Purchased Parts, Government Furnished Property, if applicable; and

(3) In accordance with the instructions in the schedule.

(b) The Contractor shall furnish revised pages of the Bill of Materials—

(1) At intervals designated in the schedule; and

(2) Incorporating the effect of any changes under the "Changes" clause.

(c) The Contractor shall furnish a final revision of the Bill of Materials, or statement that no revision is necessary, at contract completion.

(d) The Bill of Materials and all revisions or statements are subject to inspection and acceptance by the Government.

(End of clause)

252.211-7000 Termination—commercial items.

As prescribed at 211.7005(a), insert the following clause:

Termination—Commercial Items (May 1991)

(a) The Government may terminate all or any part of this contract, at any time and for any reason, by giving written or electronic notice to contractor. The termination notice shall specify whether termination is for the convenience of the Government or default by the contractor and shall specify the effective date and time for such termination. Immediately upon receipt of the termination notice, the contractor shall take all reasonable actions to minimize the costs of the termination, including notifying its subcontractors and suppliers to take all reasonable actions. Upon termination, the contractor shall stop all work on the terminated portion of the contract and shall immediately cause its suppliers or subcontractors to cease such work.

(b) Termination for Convenience of the Government. If this contract is terminated for the convenience of the Government:

(1) The contractor shall submit its final termination settlement proposal within 90 days following receipt of the termination notice, unless extended in writing by the contracting officer upon written request of the contractor within such 90 day period.

(2) The contracting officer shall have the unilateral right to determine the amount payable, if any, under this clause if the contractor fails to submit a timely termination settlement proposal or make a timely written request for extension of the time to submit the proposal as required by paragraph (b)(1) of this clause. The contractor shall have no right of appeal regarding the contracting officer's unilateral determination if the contractor has failed to submit a timely termination settlement proposal and has failed to make a timely request for an extension of the time for proposal submission.

(3) Notwithstanding any other provision of this contract, the Government shall have the right to audit and examine all books, records, facilities, work, material, inventories and other items relating to the termination proposal.

(4) The Government shall pay:

(i) The reasonable, allowable and allocable costs, determined in accordance with FAR part 31, incurred by the contractor, its subcontractors and suppliers prior to the date of termination for completed work that has not previously been paid for; for work in process and materials directly related to the terminated portion of the contract, excluding the cost of any work in process or materials that can be used by, canceled or sold without cost to the contractor, its subcontractors, or suppliers; for orderly phase out of performance if requested by the Government; and, for preparation and settlement of the contractor's, its subcontractor's and supplier's termination claims; and,

(ii) A reasonable profit on the terminated portion of the work.

(5) In no event shall the sum of the termination amounts payable and any amounts paid for items delivered under the contract exceed the total contract price.

(6) The contracting officer shall deduct the amount of any claim which the Government has against the contractor under this contract from any amount due the contractor under this clause.

(7) The Government will make no payment for:

(i) Any undelivered items which are in the contractor's, a subcontractor's or a supplier's standard stock or which are readily marketable;

(ii) Finished goods, work in process or raw materials fabricated or procured by the contractor in excess of the amounts reasonably required for this contract;

(iii) Except as provided in paragraph (b)(4) of this clause, any costs which would not have been charged had the contract not been terminated; or

(iv) Claims by the contractor, its subcontractors or suppliers for any loss of anticipated profit, unabsorbed overhead, facilities rearrangement costs or rental, incident to the termination action.

(v) An amount which exceeds the product of the unit price of the terminated units multiplied by the number of units in process under this contract at the time of termination.

(8) Except for a unilateral determination under paragraph (b)(2) of this clause, if the contracting officer and the contractor fail to agree on the whole amount to be paid because of the termination of work, the contracting officer shall make a final decision regarding the amount payable under paragraphs (b) (4) through (6) of this clause and shall pay the contractor such amount. Notwithstanding the contractor's acceptance of such payment, the contractor shall have the right to appeal the contracting officer's final decision under the Disputes clause of this contract, unless the contractor has no right of appeal as provided in paragraph (b)(2) of this clause.

(9) The contractor shall protect, preserve and store, as necessary, all completed items, work in process and materials paid for by the Government as part of a termination for convenience settlement under this clause, including settlement amounts unilaterally determined by the contracting officer, pending disposition instructions from the contracting officer. The parties shall negotiate an amount for the costs, if any, for such protection, preservation and storage. Failure to agree on an amount shall be a dispute under the disputes clause of this contract.

(c) *Termination for Default.* (1) Except as provided in paragraph (c)(2) of this clause, the Government may terminate this contract or any part thereof, for default if the contractor:

(i) Repudiates or breaches any of the terms of this contract, including the contractor's warranties;

(ii) Fails to deliver items at the times and places required by the contract;

(iii) Fails to deliver items which conform to contractual requirements;

(iv) Fails to make progress so as to endanger timely delivery of items or proper completion of the contract; or,

(v) Fails to provide the Government reasonable assurances of future performance.

(2)(i) Neither party shall be liable for default caused by any occurrence beyond the reasonable control of the party and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers.

(ii) If the failure to perform is caused by the default of a subcontractor or supplier at any tier, and if the cause of the default is beyond the control of both the contractor and the subcontractor/supplier, and without the fault or negligence of the contractor and its subcontractors and suppliers, the contractor shall not be liable for any excess costs for failure to perform, unless the items were obtainable from other sources in sufficient time for the contractor to meet the required delivery schedule.

(3) The Government shall provide the contractor written or electronic notice of its intent to terminate the contract for default and the specific reason therefor. If the contractor does not cure the failure within 10 days following receipt of the notice, or such longer period as may be authorized in writing by the contracting officer, the Government may terminate the contract in whole or in part. The termination shall be by written notice and shall specify the effective date and time of the termination. The contractor shall continue the work not terminated. The Government shall have no liability to the contractor incident to such termination. The contractor shall be liable to the Government for any and all damages including any costs to procure items similar to those terminated which are in excess of the costs for the terminated portion of the contract.

(4) If, after termination, it is determined that the contractor was not in default, or that the default was excusable as provided in paragraph (c)(2) of this clause, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(5) The Government shall pay for any items delivered by the contractor and accepted by the Government for which payment has not been made.

(d) The rights and remedies of the Government provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of Clause)

252.211-7001 Invoice and payment—commercial items.

As prescribed at 211.7005(a), insert the following clause:

Invoice and Prompt Payment—Commercial Items (May 1991)

(a) *Payments.* (1) Payment shall be made only for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

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(v) Fails to provide the Government reasonable assurances of future performance.

(2)(i) Neither party shall be liable for default caused by any occurrence beyond the reasonable control of the party and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers.

(ii) If the failure to perform is caused by the default of a subcontractor or supplier at any tier, and if the cause of the default is beyond the control of both the contractor and the subcontractor/supplier, and without the fault or negligence of the contractor and its subcontractors and suppliers, the contractor shall not be liable for any excess costs for failure to perform, unless the items were obtainable from other sources in sufficient time for the contractor to meet the required delivery schedule.

(3) The Government shall provide the contractor written or electronic notice of its intent to terminate the contract for default and the specific reason therefor. If the contractor does not cure the failure within 10 days following receipt of the notice, or such longer period as may be authorized in writing by the contracting officer, the Government may terminate the contract in whole or in part. The termination shall be by written notice and shall specify the effective date and time of the termination. The contractor shall continue the work not terminated. The Government shall have no liability to the contractor incident to such termination. The contractor shall be liable to the Government for any and all damages including any costs to procure items similar to those terminated which are in excess of the costs for the terminated portion of the contract.

(4) If, after termination, it is determined that the contractor was not in default, or that the default was excusable as provided in paragraph (c)(2) of this clause, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(5) The Government shall pay for any items delivered by the contractor and accepted by the Government for which payment has not been made.

(d) The rights and remedies of the Government provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of Clause)

252.211-7001 Invoice and payment—commercial items.

As prescribed at 211.7005(a), insert the following clause:

Invoice and Prompt Payment—Commercial Items (May 1991)

(a) *Payments.* (1) Payment shall be made only for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

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(2) The Government shall pay for accepted and delivered items no later than the 30th day following receipt of a proper invoice for such items.

(3) The contracting officer, at his or her discretion and notwithstanding any other provision of this contract, may adjust any payment owed to the contractor for accepted items delivered under this contract if the contracting officer determines that previously accepted items, for which payment had been made, did not conform to the requirements of the contract or were not in the quantity or quantities stated on any prior invoice. The amount of the contracting officer's adjustment shall not exceed an amount necessary to assure that the total payments to the contractor under the contract do not exceed the amounts payable for conforming items. If the payment in question is the final payment under the contract, the contractor agrees to promptly refund the amount necessary to correct the discrepancy between the total amount payable for conforming items and the amount actually paid by the Government.

(b) *Interest penalty for late Government payments.* (1) An interest penalty will be paid to the contractor if the Government does not make payment on or before the 30th day following receipt of a proper invoice. Interest shall accrue on a daily basis beginning the 31st day following receipt of a proper invoice and ending on the date payment is made. The date payment is made shall be the date appearing on the payment check or the date an electronic funds transfer is made. The amount of interest shall be computed using the rate of interest established by the Secretary of the Treasury (published in the **Federal Register** semiannually) for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), that is in effect on the day the penalty begins.

(2) The interest penalty shall be applied only to the portion of the invoice amount approved for payment by the Government and shall be compounded in 30 day increments. Interest accrued and not paid during any 30 day period to which the interest penalty applies (the 31st through 60th, 61st through 90th, etc. day periods following receipt of a proper invoice) shall be added to the amount approved for payment and the adjusted amount shall earn interest until payment is made by the Government.

(3) The following periods of time will not be included in the determination of an interest penalty:

(i) The period taken to notify the contractor of defects in invoices submitted to the Government, but this may not exceed 7 days.

(ii) The period between the defects notice and resubmission of the corrected invoice by the contractor.

(iii) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at FAR 52.233–1, Disputes, or for more than 1 year. Interest penalties of less than $1.00 need not be paid.

(iv) Interest penalties are not required on payment delays due to disagreement between the Government and contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable will be resolved in accordance with the clause at FAR 52.233–1, Disputes.

(4) An interest penalty shall also be paid automatically by the designated payment office, without request from the contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the contractor is paid.

(5) A penalty amount, calculated in accordance with regulations issued by the Office of Management and Budget, shall be paid in addition to the interest penalty amount if the contractor—

(i) Is owed an interest penalty;

(ii) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and

(iii) Makes a written demand, not later than 40 days after the date the invoice amount is paid, that the agency pay such a penalty.

(6) For the sole purpose of determining the date upon which entitlement to an interest penalty payment for late payment by the Government begins, the date of receipt of a proper invoice shall be:

(i) If the designated billing office fails to notify the contractor of a defective invoice within the period prescribed in subparagraph (c)(4) of this clause, the date of the corrected invoice shall be adjusted by subtracting from the date of the corrected invoice the number of days taken to provide such notification which are in excess of the number of days prescribed in subparagraph (c)(4); (i.e., 7 day notification period, 10 days taken to notify the contractor, corrected invoice date of July 1, the date of submission of a proper invoice shall be June 28).

(ii) If the Government fails to accept or reject items within a 7 day period following tender for acceptance, the Government shall be considered to have received a proper invoice from the contractor on the 7th day following the date items were tendered for acceptance; provided that such items were properly tendered in accordance with the terms of the contract clause entitled, Inspection and Acceptance—Commercial Items. This constructive receipt of an invoice shall not obligate the Government to accept the items, perform contract administration functions, or make payment for the items.

(7) Adjustments will be made by the designated payment office for errors in calculating interest penalties, if requested by the contractor.

(c) *Invoices*—(1) Acceptance and delivery at contractor's facility. The contractor may invoice for payment upon the Government's execution of a completed DD Form 250, Material Inspection and Receiving Report, by an authorized Government official or upon receipt of any other documentation authorized in the contract to signify Government acceptance of the items.

(2) Acceptance at contractor's facility, delivery at other sites. The contractor may submit an invoice for items accepted at the contractor's facility that are required to be delivered to another site or sites specified in the contract:

(i) Upon receipt at the other site or sites if the contractor is contractually responsible for physically transporting the items to such sites; or,

(ii) Upon execution of the DD Form 250 or other documentation signifying acceptance of the items at the contractor's facility by an authorized Government official if the Government is responsible for physically transporting the items to such sites.

(3) Delivery to sites other than the contractor's facility for acceptance. The contractor may invoice for items delivered to a site or sites other than the contractor's facility for acceptance at that site or sites upon execution by an authorized Government official of a DD Form 250, or such other documentation as may be authorized in the contract, signifying that the delivered items have been accepted by the Government.

(4) The contractor shall submit an original invoice and three copies to the address designated in the contract to receive invoices. A proper invoice must include:

(i) Name and address of the contractor;

(ii) Invoice date;

(iii) Contract number, contract line item number and, if applicable, the order number;

(iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;

(v) Shipping number and date of shipment including the bill of lading number and weight of shipment if shipped on Government bill of lading;

(vi) Terms of any prompt payment discount offered;

(vii) Name and address of official to whom payment is to be sent; and,

(viii) Name, title, phone number of person to be notified in event of defective invoice. If the invoice does not comply with these requirements, the contractor will be notified of the defect within 7 days after receipt of the invoice at the designated office.

(d) *Discounts for Prompt Payment.* (1) Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a prompt payment discount in conjunction with the offer, offerors awarded contracts may include prompt payment discounts on individual invoices.

(2) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the date on which an electronic funds transfer was made.

(End of Clause)

252.211-7002 Changes—commercial items.

As prescribed at 211.7005(a), insert the following clause:

Changes—Commercial Items (May 1991)

(a) Neither party to this contract may change the contract specifications, without the written consent of the other. The contractor may submit a proposal for specification changes to the contracting officer, or the Government may request the contractor to submit such a proposal in the format specified by the contracting officer.

(b) *Unilateral Changes.* (1) The contracting officer may make changes at any time, by written order, within the general scope of this contract in the method of shipment, packaging and packing or place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for, delivery of items ordered under this contract, the contracting officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract accordingly.

(2) The contractor must assert its right to an equitable adjustment within 30 days, or such other longer period as may be specified by the contracting officer, after receipt of a written change order under paragraph (b)(1) of this clause, by submitting to the contracting officer a proposal containing sufficient, detailed information to permit the contracting officer to negotiate an equitable adjustment to the price and other terms of the contract affected by the change order.

(c) *Bilateral Changes.* Specification changes may be made only within the general scope of this contract and by the written agreement of the parties. The contracting officer and the contractor shall promptly negotiate the scope and equitable adjustment, if any, to the contract price, delivery schedule or both, prior to commencement of work on each change. If the Government's interests demand that performance begin immediately and negotiation of a definitive price is not possible in sufficient time to meet the Government's requirement, the contractor agrees to promptly negotiate a maximum price for the change. If the Government decides to proceed with a maximum priced change, the contractor agrees:

(i) To immediately commence work on the change as ordered;

(ii) To submit a proposal for establishing the definitive price for the change no later than the time specified by the contracting officer; and

(iii) That the definitive price for the change shall not exceed the agreed upon maximum price.

(d) If any change under this contract will result in a price adjustment involving aggregate increases and/or decreases in costs, plus applicable profits, of more than $500,000, the contractor shall submit cost and pricing data in support of its proposal and to execute the certificate of current cost and pricing data at FAR 15.804–4 prior to execution of the contract modification establishing the definitive price adjustment, unless the price is exempt from the requirement to submit certified cost or pricing data in accordance with FAR 15.804–3.

(e) Nothing in this clause shall excuse the contractor from proceeding with the contract as changed.

(End of Clause)

252.211-7003 Patent and Copyright Indemnification—Commercial Items.

As prescribed at 211.7005(a), insert the following clause:

Patent and Copyright Indemnification—Commercial Items (May 1991)

The contractor shall indemnify the Government, against all claims and proceedings for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright arising under this contract, and the contractor shall hold the Government harmless from any resulting liabilities and losses, provided the contractor is reasonably notified of such claims and proceedings. The contractor's obligation shall not apply to any infringement arising from the use or sale of the items in combination with items not delivered by the contractor if such infringement would not have occurred from the use or sale of such items solely for the purpose for which they were designed or sold to the Government.

(End of Clause)

252.211-7004 Inspection and Acceptance—Commercial Items.

As prescribed at 211.7005(a), insert the following clause:

Inspection and Acceptance—Commercial Items (May 1991)

(a) *Contractor Inspection and Test Responsibilities.* (1) The contractor shall maintain testing, inspection and quality assurance systems sufficient to assure that the items to be furnished under this contract shall conform with all contractual requirements. To the extent practicable, the testing, inspection and quality assurance systems shall be consistent with the contractor's standard commercial practices for such items.

(2) The contractor shall provide the contracting officer 5 working days notice of its intent to tender items for acceptance. If the items are not ready for inspection or test at the time specified by the contractor, the contractor shall reimburse the Government for any costs incurred by the Government as a result of the contractor's failure to have the items available for test and inspection.

(3) The contractor shall tender to the Government for acceptance only items that have been inspected in accordance with the contractor's inspection system and have been found by the contractor to be in conformity with contract requirements.

(4) If inspection or test will be performed at the contractor's facility or at a supplier's or subcontractor's facility, the contractor shall furnish, and shall require the suppliers or subcontractors to furnish, at no change to the price of this contract, all reasonable facilities and assistance for the safe and convenient performance of all inspections and tests.

(b) *Government Inspection and Test.* (1) The Government has the right to inspect and test all items called for by the contract when such items have been tendered for acceptance. Government inspection and/or testing shall be performed as soon as practicable following tender for acceptance. The Government assumes no contractual obligation to perform any inspection or test for the benefit of the contractor unless specifically set forth elsewhere in this contract.

(2) Except as otherwise provided in the contract, the Government shall bear the expense of Government inspections or tests made at other than the contractor's or its suppliers' or subcontractors' facilities.

(3) The Government shall not be liable for any reduction in the value of any items, including test samples, resulting from inspection or test.

(c) *Acceptance of Conforming Items.* (1) The Government shall accept conforming items as soon as practicable following tender for acceptance, unless otherwise provided in the contract. Government failure to accept or reject the items shall not relieve the contractor from responsibility, nor impose liability on the Government, for nonconforming items.

(2) Acceptance shall be conclusive, except for patent defects, latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.

(d) *Rejection, replacement or correction of nonconforming items.* (1) Items are nonconforming when they are defective in material or workmanship, fail to comply with contractual performance requirements or are otherwise not in conformity with contract requirements.

(2) The Government, at its sole election and as promptly as practicable after tender for acceptance, may:

(i) Reject nonconforming items, or a nonconforming lot of items, based upon the acceptance criteria contained in the contract, with or without disposition instructions;

(ii) Require the correction or replacement of nonconforming items;

(iii) Conditionally accept nonconforming items (see paragraph (e) of this clause); or,

(iv) Require an equitable reduction in the price of the contract in lieu of correction or replacement of nonconforming items.

(3) The contracting officer shall promptly notify the contractor of the Government's election regarding the nonconforming items and the contractor shall promptly remove all items rejected or required to be corrected or replaced. The contracting officer may require or permit correction or replacement in place.

(4) The contractor shall replace or correct nonconforming items within 10 days (or such longer period as may be authorized in writing by the contracting officer) following receipt of the contracting officer's notification.

(5) If the contractor fails to promptly remove rejected items that are required to be removed or fails to replace or correct the nonconforming items within 10 days or such other period specified by the contracting officer, the Government may:

(i) Remove, replace, or have the items corrected, either by itself or a third party, and charge the costs of removal, replacement or correction to the contractor; or

(ii) Terminate the contract for default.

(6) All corrections or replacements of nonconforming items shall be accomplished by the contractor at no change to the contract price including, but not limited to, all costs to make such corrected or replaced items ready for inspection, test and acceptance by the Government and all transportation costs from the original place of acceptance to the contractor's facility and return to the original

(2) Except as otherwise provided in the contract, the Government shall bear the expense of Government inspections or tests made at other than the contractor's or its suppliers' or subcontractors' facilities.

(3) The Government shall not be liable for any reduction in the value of any items, including test samples, resulting from inspection or test.

(c) *Acceptance of Conforming Items.* (1) The Government shall accept conforming items as soon as practicable following tender for acceptance, unless otherwise provided in the contract. Government failure to accept or reject the items shall not relieve the contractor from responsibility, nor impose liability on the Government, for nonconforming items.

(2) Acceptance shall be conclusive, except for patent defects, latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.

(d) *Rejection, replacement or correction of nonconforming items.* (1) Items are nonconforming when they are defective in material or workmanship, fail to comply with contractual performance requirements or are otherwise not in conformity with contract requirements.

(2) The Government, at its sole election and as promptly as practicable after tender for acceptance, may:

(i) Reject nonconforming items, or a nonconforming lot of items, based upon the acceptance criteria contained in the contract, with or without disposition instructions;

(ii) Require the correction or replacement of nonconforming items;

(iii) Conditionally accept nonconforming items (see paragraph (e) of this clause); or,

(iv) Require an equitable reduction in the price of the contract in lieu of correction or replacement of nonconforming items.

(3) The contracting officer shall promptly notify the contractor of the Government's election regarding the nonconforming items and the contractor shall promptly remove all items rejected or required to be corrected or replaced. The contracting officer may require or permit correction or replacement in place.

(4) The contractor shall replace or correct nonconforming items within 10 days (or such longer period as may be authorized in writing by the contracting officer) following receipt of the contracting officer's notification.

(5) If the contractor fails to promptly remove rejected items that are required to be removed or fails to replace or correct the nonconforming items within 10 days or such other period specified by the contracting officer, the Government may:

(i) Remove, replace, or have the items corrected, either by itself or a third party, and charge the costs of removal, replacement or correction to the contractor; or

(ii) Terminate the contract for default.

(6) All corrections or replacements of nonconforming items shall be accomplished by the contractor at no change to the contract price including, but not limited to, all costs to make such corrected or replaced items ready for inspection, test and acceptance by the Government and all transportation costs from the original place of acceptance to the contractor's facility and return to the original

place or such other place for acceptance as may be permitted by the contracting officer, when those places are not the contractor's facility.

(7) Corrected or replaced items shall be tendered for acceptance at the place stipulated in the contract, or at such other place permitted by the contracting officer, in accordance with a reasonable delivery schedule as may be agreed upon between the contractor and the contracting officer. The contracting officer may require a reduction in contract price if the contractor fails to meet such delivery schedule.

(e) *Acceptance under Special Conditions.* The contracting officer reserves the right to require the contractor to deliver nonconforming items prior to their correction. Such items shall be conditionally accepted by the Government and subsequently re-tendered by the contractor for final acceptance following correction of the nonconformity. The contractor and the contracting officer shall negotiate an amount to be withheld from the price of items conditionally accepted pending their correction. The amount negotiated shall represent equitably the value of such correction and such amount shall be returned to the contractor upon correction of the nonconforming items. The Government shall be responsible for all risks of loss or damage to such items while they are in the Government's possession. Risk of loss shall remain with the Government until the conditionally accepted items are returned to the contractor for correction. The Government shall be responsible for all transportation costs associated with return of the conditionally accepted items to the contractor. The contractor shall be responsible for the correction of the nonconformities identified at the time of conditional acceptance, correotion of any other nonconformities prior to final acceptance and for any costs associated with the return of corrected items to the Government. The schedule for such correction and return shall be negotiated between the contractor and the contracting officer.

(End of Clause)

252.211-7005 Limitation of Liability—Commercial Items.

As prescribed at 211.7005(a), insert the following clause:

Limitation of Liability—Commercial Items (May 1991)

The contractor shall indemnify and hold harmless the Government, its agents, consignees, employees and representatives from and against all expenses, losses, claims, demands, or causes of action of whatever kind; including negligence, breach of express or implied warranty, failure to warn, or strict liability, and from and against all special, indirect, incidental, or consequential damages, including lost profits, of every kind whatsoever arising out of, by reason of, or in any way connected with, accidents, occurrences, injuries or losses to or of any person or property, including the Government or the Government's property, which may occur before or after acceptance of the completed items by the Government, in any way due or resulting from in whole or in part, the design, preparation, manufacture, construction, completion, warning, or failure to warn, delivery or non-delivery of items, including such as are caused by any subcontractor or supplier of the contractor.

The contractor shall pay for or reimburse the Government for all costs and expenses, including attorney's fees, arising out of any suit or claim relating to any risk described in the first paragraph of this clause.

(End of Clause)

252.211-7006 Title and risk of loss—commercial items.

As prescribed at 211.7005(a), insert the following clause:

Title and Risk of Loss—Commercial Items (May 1991)

(a) Title to items furnished under this contract, except for commercial computer software, shall pass to the Government upon final acceptance, regardless of when or where the Government takes physical possession, unless the contract specifically provides for earlier passage of title. Title to commercial computer software shall remain with the contractor.

(b) Unless the contract specifically provides otherwise, risk of loss or damage to items shall remain with the contractor until, and shall pass to the Government upon—

(1) Delivery of the items to a carrier, if transportation is f.o.b. origin; or

(2) Acceptance by the Government or delivery of the items to the Government at the destination specified in the contract, whichever is later, if transportation is f.o.b. destination.

(c) Paragraph (b) above shall not apply to items that so fail to conform to contract requirements as to give a right of rejection. Except as provided in paragraph (e) of the clause at 252.211–7004, Inspection and Acceptance—Commercial Items, the risk of loss of or damage to such nonconforming items remains with the contractor until cure or acceptance. After cure or acceptance, paragraph (b) of this clause shall apply.

(d) Under paragraph (b) above, the contractor shall not be liable for loss of or damage to items caused by the negligence of officers, agents, or employees of the Government acting within the scope of their employment.

(End of clause)

252.211-7007 Telegraphic submission of offers—commercial items.

As prescribed at 211.7004–6(b)(5), insert the following provision:

Telegraphic Submission of Offers—Commercial Items (May 1991)

(a) *Definition.*

Telegraphic offer means an offer, modification of an offer, or withdrawal of an offer that is delivered to the Government by telegram or mailgram; or, if a telex number has been provided in paragraph (g) of this provision, transmitted to the Government by telex.

(b) Telegraphic offers may be submitted in response to this solicitation. Such offers must be received at the place, and prior to the time, specified in the solicitation for the submission of offers.

(c) Telegraphic offers shall refer to this solicitation and include the items or sub-items, quantities, unit prices, time and place of delivery, and all representations and other information required by this solicitation. Offers in response to an invitation for bids shall include a statement of agreement with all the terms, conditions, and provisions of the solicitation. Offers in response to a request for proposals shall include a statement specifying the extent of agreement with all the terms, conditions, and provisions of the solicitations.

(d) Telegraphic offers that fail to furnish required representations or information, or that reject any of the terms, conditions and provisions of the solicitation, may be excluded from consideration.

(e) Offerors must submit a complete, signed, original offer in confirmation of their telegraphic offer within five (5) working days from the time specified in the solicitation for receipt of offers. Failure to submit the complete, signed, original offer within the time specified may render a bid submitted in response to an invitation for bids non-responsive and ineligible for award and may render a proposal submitted in response to a request for proposals ineligible for award. An offeror's failure to cure that deficiency within the time specified by the contracting officer shall render a bid submitted in response to an invitation for bids non-responsive and ineligible for award and shall render a proposal submitted in response to a request for proposals ineligible for award.

(f) The Government shall not be responsible for any deficiencies in telegraphic offers including, but not limited to, the following:

(1) Receipt of illegible, garbled, or incomplete offers.

(2) Availability of the Government's telex equipment.

(3) Incompatibility between the sending and receiving equipment.

(4) Delay in transmission or receipt of the offer.

(5) Failure of the offeror to properly identify the offer.

(g) The Government's telex number is ____________.

(h) The Government shall not be responsible for physical security of a telegraphic offer prior to receipt of the offer.

(End of provision)

252.211-7008 Facsimile submission of offers—commercial items.

As prescribed at 211.7004–6(b)(6), insert the following provision:

Facsimile Submission of Offers—Commercial Items (May 1991)

(a) *Definition.*

Facsimile offer means an offer, modification of an offer, or withdrawal of an offer that is transmitted to and received by the Government via electronic equipment that communicates and reproduces both printed and handwritten material.

(b) Facsimile offers may be submitted in response to this solicitation. Facsimile offers must be received at the place, and prior to the time, specified in the solicitation for the submission of offers.

(c) Facsimile offers that fail to furnish required representations or information, or reject any of the terms conditions and provisions of the solicitation, may be excluded from consideration.

(d) Facsimile offers must contain the required signatures. The offeror agrees that its facsimile signature has the same force and effect as a handwritten signature on an original document and fully signifies its intent to contract in accordance with the facsimile offer.

(e) The Government reserves the right, at its sole discretion, to accept an offer and enter into a contract solely on the basis of the facsimile offer. The Government also reserves the right to require the offeror to submit, prior to the Government's acceptance of the offer, an original, signed solicitation cover sheet. The offeror agrees to provide the original, signed, solicitation cover sheet to the contracting officer within 5 working days following the Government's request.

(f) The offeror's failure to sign a facsimile offer or to make timely submission of the original, signed, solicitation cover sheet in accordance with paragraph (e) of this provision may render a bid submitted in response to an invitation for bids non-responsive and ineligible for award and may render a proposal submitted in response to a request for proposals ineligible for award. An offeror's failure to cure that deficiency within the time specified by the contracting officer shall render a bid submitted in response to an invitation for bids non-responsive and ineligible for award and shall render a proposal submitted in response to a request for proposals ineligible for award.

(g) The Government shall not be responsible for any deficiencies in facsimile offers including, but not limited to, the following:

(1) Receipt of illegible, garbled, or incomplete offers.

(2) Availability of the receiving electronic equipment.

(3) Incompatibility between the sending and receiving equipment.

(4) Delay in transmission or receipt of the offer.

(5) Failure of the offeror to properly identify the offer.

(h) The Government's facsimile compatibility characteristics are as follows:

(1) Telephone number of receiving equipment: ____________

(2) Compatibility characteristics. (e.g., make and model number, receiving speed, communications protocol): ____________

(i) The Government shall not be responsible for physical security of a facsimile offer prior to receipt of the offer.

(End of provision)

252.211-7009 General solicitation information and definitions—commercial items.

As prescribed at 211.7004-6(b)(2), insert the following provision:

General Solicitation Information and Definitions—Commercial Items (May 1991)

(a) *General Solicitation Information.* If this solicitation has been made using Standard Form 33 the reference to solicitation provisions at FAR 52.214-7, Late Submissions, Modifications, and Withdrawals of Bids, and FAR 52.215-10, Late Submissions, Modifications, and Withdrawals of Proposals, means the solicitation provision at 252.211-7018, Late Submissions, Modifications and Withdrawals of Offers—Commercial Items, and reference to the clause at FAR 52.232-8, Discounts for Prompt Payment, means paragraph (d) of the clause at 252.211-7001, Invoice and Payment—Commercial Items.

(b) *Definitions.*

(1) *Contracting officer* means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the contracting officer.

(2) *Offer* means either *bid* in sealed bidding or *proposal* in other than sealed bidding.

(3) *Solicitation* means an invitation for bids in sealed bidding or a request for proposal in other than sealed bidding.

(End of Provision)

252.211-7010 Price reduction for defective cost or pricing data—contract modifications—commercial items.

As prescribed at 211.7005(a), insert the following clause:

Price Reduction for Defective Cost or Pricing Data—Contract Modifications—Commercial Items (May 1991)

(a) This clause is applicable only to contract modifications involving aggregate increases and/or decreases in costs, plus applicable profits, of more than $500,000, except that it does not apply to any modification for which the price is:

(1) Based on adequate price competition;

(2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or,

(3) Set by law or regulation.

(b) If the amount of any price adjustment, either a price increase or decrease, negotiated for any modification to this contract was based upon defective data, because—

(1) The contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data,

(2) A subcontractor or prospective subcontractor furnished the contractor cost or pricing data that were not complete, accurate, and current as certified in the contractor's Certificate of Current Cost or Pricing Data, or

(3) Any of these parties furnished data that were not accurate, complete and current, the contract price shall be reduced accordingly and the contract shall be modified to reflect the reduction.

(c) Any reduction in the contract price under paragraph (b) of this clause due to defective cost or pricing data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which the actual subcontract, or the actual cost to the contractor if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

(End of clause)

252.211-7011 Audit of contract modifications—commercial items.

As prescribed at 211.7005(a), insert the following clause:

Audit of Contract Modifications—Commercial Items (May 1991)

(a) If the contractor has submitted cost or pricing data in connection with the pricing of any modification to this contract, the contracting officer or a representative who is an employee of the Government shall have the right to examine and audit all books, records, documents, and other data of the contractor (including computations and projections) related to negotiating, pricing or performing the modification, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data. The Comptroller General of the United States or a representative who is an employee of the Government shall have the same rights.

(b) The contractor shall make available at its office at all reasonable times the materials described in paragraph (a) above, for examination, audit, or reproduction, until 3 years after final payment under this contract. Except that records pertaining to appeals, litigation or the settlement of claims arising under or relating to the performance of this contract shall be made available until disposition of such appeals, litigation, or claims.

(c) The contractor shall insert a clause containing all the provisions of this clause, including this paragraph (c), in all subcontracts over $500,000 under this contract, altering the clause only as necessary to identify properly the contracting parties and the contracting office under the Government prime contract.

(End of clause)

252.211-7012 Certifications—commercial items—competitive acquisitions.

As prescribed at 211.7004-6(a)(2), insert the following provision:

Certifications—Commercial Items—Competitive Acquisitions (May 1991)

(a)(1) This is a solicitation for commercial items as defined in paragraph (b) of this clause. Offers received in response to this solicitation that do not offer commercial items SHALL NOT BE CONSIDERED FOR AWARD.

(2) If an offer containing the following certifications results in a contract award, the certifications shall form a material part of the contract whether or not physically attached to the contract.

(b) Definitions.

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(End of clause)

252.211–7011 Audit of contract modifications—commercial items.

As prescribed at 211.7005(a), insert the following clause:

Audit of Contract Modifications—Commercial Items (May 1991)

(a) If the contractor has submitted cost or pricing data in connection with the pricing of any modification to this contract, the contracting officer or a representative who is an employee of the Government shall have the right to examine and audit all books, records, documents, and other data of the contractor (including computations and projections) related to negotiating, pricing or performing the modification, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data. The Comptroller General of the United States or a representative who is an employee of the Government shall have the same rights.

(b) The contractor shall make available at its office at all reasonable times the materials described in paragraph (a) above, for examination, audit, or reproduction, until 3 years after final payment under this contract. Except that records pertaining to appeals, litigation or the settlement of claims arising under or relating to the performance of this contract shall be made available until disposition of such appeals, litigation, or claims.

(c) The contractor shall insert a clause containing all the provisions of this clause, including this paragraph (c), in all subcontracts over $500,000 under this contract, altering the clause only as necessary to identify properly the contracting parties and the contracting office under the Government prime contract.

(End of clause)

252.211–7012 Certifications—commercial items—competitive acquisitions.

As prescribed at 211.7004–6(a)(2), insert the following provision:

Certifications—Commercial Items—Competitive Acquisitions (May 1991)

(a)(1) This is a solicitation for commercial items as defined in paragraph (b) of this clause. Offers received in response to this solicitation that do not offer commercial items SHALL NOT BE CONSIDERED FOR AWARD.

(2) If an offer containing the following certifications results in a contract award, the certifications shall form a material part of the contract whether or not physically attached to the contract.

(b) Definitions.

As used in this certification:

(1) *Commercial items* means items regularly used in the course of normal business operations for other than Government purposes which:

(i) Have been sold or licensed to the general public;

(ii) Have not been sold or licensed, but have been offered for sale or license to the general public;

(iii) Are not yet available in the commercial marketplace, but will be available for commercial delivery in a reasonable period of time;

(iv) Are described in paragraphs (i), (ii) or (iii) that would require only minor modification in order to meet the requirements of the procuring agency.

(2) "Minor modification" means a modification to a commercial item that does not alter the commercial item's function or essential physical characteristics.

(c) The offeror, (insert name of offeror), hereby certifies that:

(1) The items(s) offered in response to solicitation number ________ (insert solicitation number) is (are):

________ Commercial item(s) as defined in (b)(1)(i).*

________ Commercial item(s) as defined in (b)(1)(ii).*

________ Commercial item(s) as defined in (b)(1)(iii).*

________ Commercial item(s) as defined in (b)(1)(iv).*

________ Not a commercial item, but the item(s) offered are, or were, previously furnished to the Government and are being replaced by the commercial items to be acquired under this solicitation.*

________ Not a commercial item, but the item(s) offered are minor modifications of items that are, or were, previously furnished to the Government and are being replaced by the commercial items to be acquired under this solicitation.*

________ Not a commercial item.*

(2) The commercial item(s) offered in response to this solicitation:

(i) ________ will not be produced using Government production and research property (see FAR 45.301).

(ii) ________ will be produced using the Government production and research property (see FAR 45.301) identified below:

Government production and research property	Use authorized under contract No.	Cognizant contracting officer or contracting activity

(End of Certification)

(d) Failure to complete the certifications required in paragraph (c) of this clause shall render an offer submitted in response to an invitation for bids non-responsive and ineligible for award and shall render a proposal ineligible for award.

(End of Provision)

Alternate I (May 1991)

As prescribed at 211.7003–2(d), substitute the following for paragraph (a)(1) of the basic provision:

(a)(1) This is a solicitation for commercial items as defined in paragraph (b) of this clause. Offers received in response to this solicitation that do not offer commercial items shall not be considered for award unless the offeror has certified that the item(s) offered in response to this solicitation are or were previously furnished to the Government and are being replaced by the commercial items to be acquired under this solicitation.

252.211–7013 New material—commercial items.

As prescribed at 211.7004–6(a)(2), insert the following provision:

New Material—Commercial Items (May 1991)

The offeror represents that, unless this solicitation specifies otherwise, the items to be furnished under this contract are new and are not of such age or so deteriorated as to impair their usefulness or safety. If the offeror believes that furnishing used or reconditioned items or components thereof will be in the Government's interest, the offeror shall so notify the contracting officer in writing. The offeror's notice shall include the reasons for the request along with a proposal for any consideration to the Government if the contracting officer authorizes the use of used or reconditioned items or components.

(End of Provision)

252.211–7014 Contract award—commercial items.

As prescribed at 211.7004–6(b)(2), insert the following provision:

Contract Award—Commercial Items (May 1991)

(a) The Government will evaluate offers in response to invitations for bid without discussions and will award a contract to the responsible offeror whose offer, conforming to the solicitation, will be most advantageous to the Government considering only price and the price related factors specified in the solicitation.

(b) The Government will award a contract resulting from a request for proposals to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors specified in the solicitation, considered. The Government intends to award a contract on the basis of initial offers received in Response to a request for proposals without discussions unless discussions are necessary. Therefore, the offeror's initial offer should contain the offeror's best terms from a price and technical standpoint.

(c) The Government may:

(1) Reject any or all offers if such action is in the public interest;

(2) Accept other than the lowest offer; and

(3) Waive informalities and minor irregularities in offers received.

(d) The Government may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the Schedule, offers may be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the offeror specifies otherwise in the offer.

(e) A written award or acceptance of offer mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer or any extension thereof shall result in a binding contract without further action by either party unless the offer was withdrawn:

(i) Prior to the date for bid opening if the offer was submitted in response to an invitation for bid; or,

(ii) Prior to contract award if the offer was submitted in response to a request for proposal.

(End of Provision)

252.211–7015 Technical data and computer software—commercial items.

As prescribed at 211.7005(a), insert the following clause:

Technical Data and Computer Software—Commercial Items (May 1991)

(a) *Definitions.*

The terms *computer software, commercial computer software, computer software documentation, commercial computer software documentation* and *technical data* are used in this clause to establish the conditions under which the contractor shall furnish, and the Government may use, technical data and computer software to be provided under this contract. As used in this clause:

(1) *Computer software* means a set of instructions, rules, routines or statements that cause a computer to perform a specific operation or series of operations; and, source code listings, object codes, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated or recompiled.

(2) *Commercial computer software* means software that has been developed at private expense for the commercial marketplace and is not in the public domain. The term "commercial computer software" includes commercial computer software that has been modified or will be modified to satisfy the requirements expressed in the solicitation for this contract.

(3) *Computer software documentation* means owner's manuals, user's manuals, and operating instructions and other items, regardless of storage media, which explain the capabilities of the computer software or provide operating instructions for using the software to obtain desired results from a computer.

(4) *Commercial computer software documentation* means the computer software documentation customarily provided to the public at, or subsequent to, the time the

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* Note: Check one or more as appropriate. If more than one box is checked identify the items and quantities within each category.

commercial computer software is licensed or provided to the public.

(5) *Technical data* means recorded information, regardless of format or storage media, of a scientific or technical nature. Technical data includes computer software documentation and computer data bases but does not include computer software, financial or administrative data, or cost or pricing data.

(b) Technical Data (other than commercial computer software documentation) and Computer Software (other than commercial computer software).

(1) The Government may use without restrictions and for whatever purpose, technical data and computer software:

(i) Customarily provided to the public without restrictions or that are in the public domain; or,

(ii) Purchased by the Government to document the modifications to the contractor's standard commercial item configuration, its related computer software or related computer software documentation if a modified commercial item is being furnished under this contract.

(2) The Government's use of technical data and computer software purchased under this contract, other than the technical data and computer software described in paragraph (b)(1) of this clause, shall be subject to the following restrictions only:

(i) The Government shall not release or disclose the technical data and computer software to other parties without the contractor's permission except for emergency repair or overhaul of the commercial items furnished under this contract or to contractors or subcontractors who are providing support to the Government for this contract or a related contract, require access to the technical data or computer software to provide such support and who sign a non-disclosure statement; and,

(ii) The Government shall not use the technical data and computer software to manufacture additional quantities of the commercial items to be furnished under this contract or, in the case of computer software, to prepare the same or similar computer software.

(3) The Government, including contractors or subcontractors who are providing support to the Government for this contract or a related contract, may use computer software and related documentation purchased under this contract at any other facility to which the software or related documentation may be transferred; use the software and documentation with a backup computer when a primary computer is inoperative; use the software and documentation at multiple facilities, by multiple users or on a local area network; copy the computer software for safekeeping (archive) or backup purposes; and, modify the software and documentation or combine either with other software and documentation provided that the unmodified portions shall remain subject to these restrictions.

(4) The contractor shall not mark any technical data or computer software that is in the public domain; is available to the public without restrictions on its use; or, has been purchased by the Government under this contract in any manner that would restrict the Government's use, in accordance with this clause, of the technical data or computer software.

(c) *Commercial Computer Software and Commercial Computer Software Documentation.* (1) The contractor shall furnish commercial computer software or commercial computer software documentation to the Government without restrictions on the use of the software or documentation if the commercial computer software or commercial computer software documentation is customarily provided to the public without restrictions or is in the public domain. The Government shall use such commercial computer software or commercial computer software documentation for any purpose.

(2) Commercial computer software or commercial computer software documentation that is customarily provided to the public under a licensing agreement shall be furnished to the Government under the same licensing agreement that is provided by the licensor to the public or, if a specific license has been negotiated for this contract, the commercial computer software or commercial computer software documentation shall be furnished in accordance with the negotiated license. The Government shall use licensed commercial computer software or licensed commercial computer software documentation in accordance with the terms of the license.

(3) The contractor shall not place any markings on the commercial computer software or commercial computer software documentation that restrict the Government's use of such software or documentation except as provided in the license under which the commercial computer software or commercial computer software documentation shall be furnished to the Government.

(End of Clause)

252.211-7016 Technical data and computer software—withholding of payment—commercial items.

As prescribed at 211.7004–1(h)(4), insert the following clause:

Technical Data and Computer Software—Withholding of Payment—Commercial Items (May 1991)

(a) This clause applies to technical data and computer software other than commercial computer software documentation and commercial computer software as those terms are defined in the clause at 252.211–7015, Technical Data and Computer Software—Commercial Items, of this contract.

(b) If the technical data or computer software to be delivered under this contract are not delivered within the time(s) specified by this contract or are incomplete, inadequate or otherwise not in conformance with contractual requirements, the contracting officer may withhold payment of 10 percent of the contract price (unless a lesser withholding is specified in paragraph (c)) pending correction of the nonconformity(ies) by the contractor. Payments shall not be withheld nor any other action taken pursuant to this paragraph when the contractor's failure to make timely delivery or to deliver technical data or computer software that conform to contractual requirements arises out of causes beyond the control and without the fault or negligence of the contractor.

(c) The withholding percentage in paragraph (b) of this clause shall be ________ percent.

(d) The withholding of any amount, or subsequent payment to the contractor, shall not be construed as a waiver of any rights accruing to the Government under this contract.

(End of clause)

252.211-7017 Certification of technical data and computer software conformity—commercial items.

As prescribed at 211.7004–1(h)(4), insert the following clause:

Certification of Technical Data and Computer Software Conformity—Commercial Items (May 1991)

(a) This clause applies to technical data and computer software other than commercial computer software documentation and commercial computer software as defined in the clause at 252.211-7015, Technical Data and Computer Software—Commercial Items, of this contract.

(b) All technical data and computer software delivered under this contract shall be accompanied by the following written certification:

The contractor, (name of contractor), hereby certifies that, to the best of its knowledge and belief, the technical data or computer software delivered herewith under contract number (insert contract number) are complete, accurate, and comply with all requirements of the contract.

Date: ________________________________

Name and Title of Certifying Official: ______

(End of Certification)

This written certification shall be dated. The certifying official (identified by name and title) shall be an individual who has been authorized by the contractor to execute a binding certification on behalf of the contractor.

(c) The contractor shall identify, and provide to the contracting officer as soon as practicable following contract award but in no event later than the time of first data submission and certification, by name and title, each individual (official) authorized by the contractor to certify in writing that the technical data and computer software is complete, accurate, and complies with all requirements of the contract. The contractor hereby authorizes direct contact with the authorized individual responsible for certification of technical data and computer software. The authorized individual shall be familiar with the contractor's technical data and computer software conformity procedures and their application to the technical data and computer software to be certified and delivered.

(End of Clause)

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(c) The withholding percentage in paragraph (b) of this clause shall be ______ percent.

(d) The withholding of any amount, or subsequent payment to the contractor, shall not be construed as a waiver of any rights accruing to the Government under this contract.

(End of clause)

252.211-7017 Certification of technical data and computer software conformity—commercial items.

As prescribed at 211.7004–1(h)(4), insert the following clause:

Certification of Technical Data and Computer Software Conformity—Commercial Items (May 1991)

(a) This clause applies to technical data and computer software other than commercial computer software documentation and commercial computer software as defined in the clause at 252.211–7015, Technical Data and Computer Software—Commercial Items, of this contract.

(b) All technical data and computer software delivered under this contract shall be accompanied by the following written certification:

The contractor, (name of contractor), hereby certifies that, to the best of its knowledge and belief, the technical data or computer software delivered herewith under contract number (insert contract number) are complete, accurate, and comply with all requirements of the contract.

Date: ______

Name and Title of Certifying Official: ______

(End of Certification)

This written certification shall be dated. The certifying official (identified by name and title) shall be an individual who has been authorized by the contractor to execute a binding certification on behalf of the contractor.

(c) The contractor shall identify, and provide to the contracting officer as soon as practicable following contract award but in no event later than the time of first data submission and certification, by name and title, each individual (official) authorized by the contractor to certify in writing that the technical data and computer software is complete, accurate, and complies with all requirements of the contract. The contractor hereby authorizes direct contact with the authorized individual responsible for certification of technical data and computer software. The authorized individual shall be familiar with the contractor's technical data and computer software conformity procedures and their application to the technical data and computer software to be certified and delivered.

(End of Clause)

252.211-7018 Late submissions—modifications and withdrawals of offers—commercial items.

As prescribed at 211.7004–6(b)(3), insert the following provision:

Late Submissions—Modifications and Withdrawals of Offers—Commercial Items (May 1991)

(a) Any offer received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it—

(1) Was sent by registered or certified mail not later than the 5th calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);

(2) Was sent by mail or, if authorized by the solicitation, was sent by telegram or via facsimile and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation:

(3) Was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5 p.m., at the place of mailing 2 working days prior to the date specified for receipt of offers. The term "working days" excludes weekends and U.S. Federal holidays; or,

(4) Is the only offer received.

(b) Any modification of an offer, except a modification resulting from the contracting officer's request for "best and final" offers under other than sealed bidding procedures, is subject to the conditions in subparagraphs (a) (1), (2), and (3) of this provision.

(c) A modification resulting from the contracting officer's request for "best and final" offers under other than sealed bidding procedures received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the Government after receipt at the Government installation.

(d) The only acceptable evidence to establish the date of mailing of a late offer or modification sent either by U.S. or Canadian Postal Service registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the offer or modification shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(e) The only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of that installation on the proposal wrapper or other documentary evidence of receipt maintained by the installation.

(f) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by Express Mail Next Day Service Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service—Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (d) of this provision, excluding the postmarks of the Canadian Postal Service. Therefore, offerors should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(g) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful offer that makes its terms more favorable to the government will be considered at any time it is received and may be accepted.

(h)(1) Offers may be withdrawn by written notice (including signed facsimile copies) or telegram (including mailgram) received:

(i) Prior to the date for bid opening if the offer was submitted in response to an invitation for bid; or

(ii) At anytime prior to award if the offer was submitted in response to a request for Proposal.

(2) Offers may be withdrawn in person by an offeror or an authorized representative, if the representative's identity is made known and:

(i) For offers submitted in response to an invitation for bid, the representative signs a receipt for the offer before award; or

(ii) For other than sealed bidding, the offeror or its representative delivers a written or facsimile notice of withdrawal to the contracting officer.

(End of provision)

252.211-7019 Late submissions—modifications and withdrawal of offers—commercial items (Overseas).

As prescribed at 211.7004–6(b)(4), insert the following provision:

Late Submissions—Modifications and Withdrawal of Offers—Commercial Items (Overseas)

(a) Any offer received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it—

(1) Was sent by mail or, if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the Government the late receipt was due solely to mishandling by the Government after receipt at the Government installation; or

(2) Is the only offer received.

(b) Any modification of an offer, except a modification resulting from the contracting officer's request for "best and final" offers under other than sealed bidding is subject to the same conditions as in subparagraph (a)(1) of this provision.

(c) A modification resulting from the contracting officer's request for "best and final" offers under other than sealed bidding received after the time and date specified in the request will not be considered unless received before award and the late receipt was due solely to mishandling by the Government after receipt at the installation.

(d) The only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of the installation on the offer wrapper or other documentary evidence of receipt maintained by the installation.

(e) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful offer that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(f)(1) Offers may be withdrawn by written notice (including signed facsimile copies) or telegram (including mailgram) received:

(i) prior to the date for bid opening if the offer was submitted in response to an invitation for bid; or

(ii) at anytime prior to award if the offer was submitted in response to a request for proposal.

(2) Offers may be withdrawn in person by an offeror or an authorized representative, if the representative's identity is made known and:

(i) for offers submitted in response to an invitation for bid, the representative signs a receipt for the offer before award; or

(ii) for other than sealed bidding, the offeror or its representative delivers a written or facsimile notice of withdrawal to the contracting officer.

(End of provision)

252.211-7020 Business type certification—commercial items.

As prescribed at 211.7004–6(a)(3), insert the following provision:

Business Type Certification—Commercial Items (May 1991)

(a) *Definitions:* (1) *Handicapped individual* means a person who has a physical, mental, or emotional impairment, defect, ailment, disease, or disability of a permanent nature which in any way limits the selection of any type of employment for which the person would otherwise be qualified or qualifiable.

(2) *Public or private organization for the handicapped* means one which:

(i) is organized under the laws of the United States or of any State, operated in the interest of handicapped individuals, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual;

(ii) complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and

(iii) employs in the production of commodities and in the provision of services, handicapped individuals for not less than 75 percent of the direct labor required for the production or provision of the commodities or services.

(3) *Small business concern,* as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominate in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards in 13 CFR part 121.

(4) *Small disadvantaged business concern*, as used in this provision, means a small business concern, including mass media, owned and controlled by individuals who are both socially and economically disadvantaged, as defined in regulations prescribed by the U.S. Small Business Administration at 13 CFR part 124, the majority of earnings of which directly accrue to such individuals. (13 CFR part 124 generally provides that a small disadvantaged business concern is a small business concern (1) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals; or in the case of any publicly owned business, at least 51 percent of the voting stock of which is owned by one or more socially and economically disadvantaged individuals, and (2) whose management and daily business operations are controlled by one or more such individuals.) (See 13 CFR 124.01 through 124.110.)

(5) *Women-owned*, as used in this provision, means a small business that is at least 51 percent owned by a woman or women who is or are U.S. citizens and who also control and operate the business.

(b) *Representations*—(1) *Type of Business Organization*. The offeror represents that—

(i) If the offeror is a U.S. entity, it operates as: ________ a corporation incorporated under the laws of the State of ________; ________ an individual; ________ a partnership; ________ a nonprofit organization; or, ________ a joint venture; or,

(ii) If the offeror is a foreign entity, it operates as: ________ a corporation, registered for business in ________ (country); ________ an individual; ________ a partnership; ________ a nonprofit organization; or, ________ a joint venture.

(2) *Small Business Concern Representation*. The offeror represents and certifies as part of its offer that it ________ is, ________ is not a small business concern and that ________ all, ________ not all end items to be furnished will be manufactured or produced by a small business concern in the United States, its territories or possessions, Puerto Rico, or the Trust Territory of the Pacific Islands.

Note: Offerors who have represented that they are not small business concerns are not required to complete the representations and certifications in paragraphs (b)(3) through (b)(7) of this clause.

(3) *Small Disadvantaged Business Concern Representation*. (i) The offeror represents and certifies that it ________ is, ________ is not a small disadvantaged business concern.

(ii) The offeror represents that its ownership falls within at least one of the following categories (check the applicable categories):

________ Subcontinent Asian (Asian-Indian) American (U.S. Citizen with origins from India, Pakistan, Bangladesh, or Sri Lanka);

________ Asian-Pacific American (U.S. Citizen with origins from Japan, China, The Philippines, Vietnam, Korea, Samoa, Guam, U.S. Trust Territory of the Pacific Islands, Northern Mariana Islands, Laos, Cambodia, or Taiwan);

________ Black American (U.S. Citizen);

________ Hispanic American (U.S. Citizen with origins from South America, Central America, Mexico, Cuba, the Dominican Republic, Puerto Rico, Spain or Portugal);

________ Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians);

________ Individual/concern currently certified for participation in the Minority Small Business and Capital Ownership Development Program under section 8(a) of the Small Business Act (15 U.S.C. 637(a)); or,

________ Other (The offeror must complete (3)(iii) below if this block is checked).

(iii) Complete only if item (3)(ii) above is checked "Other."

The offeror represents and certifies, as part of its offer, that the Small Business Administration (SBA) ________ has, ________ has not made a determination concerning the offeror's status as a small disadvantaged business concern. If the SBA has made such a determination, the date of the determination was ________ and the offeror certifies that it ________ was, ________ was not found by the SBA to be socially and economically disadvantaged as a result of that determination and that no circumstances have changed to vary that determination.

(4) *Women-Owned Small Business Representation*. The offeror represents and certifies that it ________ is, ________ is not a women-owned small business concern.

(5) *Organization for the Handicapped Representation*. (i) The offeror represents and certifies that it ________ is, ________ is not a public or private organization for the handicapped and agrees that at least 75 percent of the direct labor required in the performance of any resultant contract will be performed by handicapped individuals.

(ii) An offeror certifying in the affirmative in (5)(i) is eligible to participate in any resultant contract as if it were a small business concern.

(6) *Subcontracting Limitation*. The offeror represents and certifies that in performance of the contract it ________ will, ________ will not perform work for at least 50 percent of the cost of manufacturing the items, not including the cost of materials.

(7) Complete only if the offer has certified itself to be a small business in one of the categories of this subparagraph:

Offeror's number of employees for the past 12 months or offeror's average annual gross revenue for the last 3 fiscal years. (Check one of the following.)

No. of employees	Average annual gross revenues
________ 50 or fewer	________ $1 million or less.
________ 51-100	________ $1,000,001-$2 million.
________ 101-250	________ $2,000,001-$3.5 million.
________ 251-500	________ $3,500,001-$5 million.
________ 501-750	________ $5,000,001-$10 million.
________ 751-1,000	________ $10,000,001-$17 million.
________ Over 1,000	________ Over $17 million.

(c) *Labor Surplus Area Representation*. (1) Each offeror desiring to be considered as a labor surplus area (LSA) concern shall indicate below the address(es) where costs incurred on account of manufacturing or production (by offeror or first tier subcontractor) will amount to more than 50 percent of the contract price. If more than one location is to be used, list each location and the costs to be incurred at each, stated as a percentage of the contract price:

Name of Company:
Street Address:
City/County:
State:

(2) The offeror's status as a labor surplus area concern may affect:

(i) entitlement to award in case of tie offers; or

(ii) offer evaluation in accordance with the Buy American Act clause, if included in this solicitation.

(3) Failure to list the location(s) of manufacture or production and the percentage(s) of cost to be incurred at each location will preclude consideration of the offeror as an LSA concern. If the offeror is awarded a contract as a LSA concern and would not have otherwise qualified for award, the offeror shall perform the contract or cause the contract to be performed in accordance with the obligations of a LSA concern.

(End of Certification)

(End of Provision)

252.211-7021 Clauses to be included in contracts with subcontractors and suppliers—commercial items.

As prescribed at 211.7005(a), insert the following clause:

Clauses To Be Included in Contracts With Subcontractors and Suppliers—Commercial Items (May 1991)

(a) *Definitions*.

Subcontractor means an entity producing an item for another entity to the other entity's specifications, designs or drawings. The term does not include entities that produce such items to their own specifications, designs or drawings for sale to others.

Suppliers means an entity that produces items to its own specifications, designs, or drawings for sale to others.

(b) The contractor shall not include any FAR or DFARS clause in its contracts with its subcontractors and suppliers or require its subcontractors or suppliers to include FAR or

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Average annual gross revenues
______ $1 million or less.

No. of employees	Average annual gross revenues
______ 51-100	______ $1,000,001-$2 million.
______ 101-250	______ $2,000,001-$3.5 million.
______ 251-500	______ $3,500,001-$5 million.
______ 501-750	______ $5,000,001-$10 million.
______ 751-1,000	______ $10,000,001-$17 million.
______ Over 1,000	______ Over $17 million.

(c) *Labor Surplus Area Representation.* (1) Each offeror desiring to be considered as a labor surplus area (LSA) concern shall indicate below the address(es) where costs incurred on account of manufacturing or production (by offeror or first tier subcontractor) will amount to more than 50 percent of the contract price. If more than one location is to be used, list each location and the costs to be incurred at each, stated as a percentage of the contract price:

Name of Company:
Street Address:
City/County:
State:

(2) The offeror's status as a labor surplus area concern may affect:

(i) entitlement to award in case of tie offers; or

(ii) offer evaluation in accordance with the Buy American Act clause, if included in this solicitation.

(3) Failure to list the location(s) of manufacture or production and the percentage(s) of cost to be incurred at each location will preclude consideration of the offeror as an LSA concern. If the offeror is awarded a contract as a LSA concern and would not have otherwise qualified for award, the offeror shall perform the contract or cause the contract to be performed in accordance with the obligations of a LSA concern.

(End of Certification)

(End of Provision)

252.211-7021 Clauses to be included in contracts with subcontractors and suppliers—commercial items.

As prescribed at 211.7005(a), insert the following clause:

Clauses To Be Included in Contracts With Subcontractors and Suppliers—Commercial Items (May 1991)

(a) *Definitions.*

Subcontractor means an entity producing an item for another entity to the other entity's specifications, designs or drawings. The term does not include entities that produce such items to their own specifications, designs or drawings for sale to others.

Suppliers means an entity that produces items to its own specifications, designs, or drawings for sale to others.

(b) The contractor shall not include any FAR or DFARS clause in its contracts with its subcontractors and suppliers or require its subcontractors or suppliers to include FAR or

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DFARS clauses in contracts with lower tier subcontractors or suppliers unless the clause is listed in paragraphs (b)(1) through (b)(3) of this clause, is applicable at the lower tier and is included in the prime contract.

(1) *All contracts with subcontractors and suppliers.* The prime contractor shall include the following clauses in all contracts with its subcontractors and suppliers, if the clauses are applicable to such contracts, and shall require its subcontractors and suppliers to include these clauses in lower tier contracts if the clauses are applicable to a particular lower tier contract:

FAR 52.203-12 Limitation on Payments to Influence Certain Federal Transactions.
FAR 52.222-1 Notice to the Government of Labor Disputes.
FAR 52.222-22 Previous Contracts and Compliance Reports.
FAR 52.222-26 Equal Opportunity.
FAR 52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans.
FAR 52.222-36 Affirmative Action for Handicapped Workers.
FAR 52.222-37 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era.
FAR 52.225-12 Notice of Restrictions on Contracting with Sanctioned Persons.
FAR 52.225-13 Restrictions on Contracting with Sanctioned Persons.
252.223-7005 Notice of Radioactive Materials.
252.225-7001 Buy American Act and Balance of Payment Program.
252.225-7006 Buy American Act-Trade Agreement Act and the Balance of Payments Program.
252.225-7015 United States Products Certificate (Military Assistance Program).
252.225-7016 United States Products (Military Assistance Program).

(2) *Only contracts with subcontractors.* The prime contractor shall include the following clauses in all contracts with its subcontractors, if the clauses are applicable to such contracts, and shall require its subcontractors to include these clauses in lower tier subcontracts when the clauses are applicable to a particular lower tier contract:

FAR 52.220-4 Labor Surplus Area Subcontracting Program.
FAR 52.222-25 Affirmative Action Compliance.
FAR 52.223-1 Clear Air and Water Certification.
FAR 52.223-2 Clean Air and Water.
FAR 52.225-10 Duty-Free Entry
FAR 52.225-11 Certain Communist Areas.
FAR 52.222-21 Certification of Nonsegregated Facilities.
252.211-7011 Audit of Contract Modifications—Commercial Items.
252.247-7208 Transportation of Supplies by Sea.

(3) *Only contracts with first tier subcontractors.* The prime contractor shall include the following clauses only in its first tier subcontracts if the clauses are applicable to a particular first tier subcontract:

FAR 52.209-6 Protecting Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.
FAR 52.215-1 Examination of Records by Comptroller General.
FAR 52.219-8 Utilization of Small Business Concerns and Small Disadvantaged Business Concerns.
FAR 52.219-9 Small Business and Small Disadvantaged Business Subcontracting Plan.
252.203-7001 Special Prohibition on Employment.
252.219-7000 Small Business and Small Disadvantaged Business Subcontracting Plan (DoD Contracts).

(End of Clause)

252.215-7000 Pricing Adjustments.

As prescribed in 215.804-8(1), use the following clause:

Pricing Adjustments (Dec. 1991)

The term "pricing adjustment," as used in paragraph (a) of the clauses entitled "Price Reduction for Defective Cost or Pricing Data—Modifications," "Subcontractor Cost or Pricing Data," and "Subcontractor Cost or Pricing Data—Modifications," means the aggregate increases and/or decreases in cost plus applicable profits.

(End of clause)

252.215-7001 Availability of contractor records.

As prescribed in 215.804-8(2), use the following clause:

Availability of Contractor Records (Dec. 1991)

(a) Upon request by the Contracting Officer, the Contractor shall make available in a timely manner to the Contracting Officer all records, documents, and other data related to—

(1) The proposed, negotiated, and incurred costs and related profit or fee;

(2) Bills of material; and

(3) Work measurement system data (and any revision to such data), including standard hours of work content. These work measurement system data are those generated from time standard setting, time monitoring and variance analysis, produced for such purposes as planning, cost estimating, and productivity improvement. Availability includes access to proposed and negotiated work measurement system data (and any revision to such data).

(b) Nothing in this clause requires the Contractor—

(1) To collect or maintain data not otherwise collected or maintained; or

(2) To maintain data in a form or manner different from that in which the Contractor maintains such data.

(c) The records, documents, and other data shall be available for review until three years after final payment under this contract.

(End of clause)

252.215-7002 Cost estimating system requirements.

As prescribed in 215.811-70(h), use the following clause:

Cost Estimating System Requirements (Dec. 1991)

(a) *Definition.*

Estimating system means the Contractor's policies, procedures, and practices for generating estimates of costs and other data included in proposals submitted to customers in the expectation of receiving contract awards. Estimating system includes the Contractor's—

(1) Organizational structure;

(2) Established lines of authority, duties, and responsibilities;

(3) Internal controls and managerial reviews;

(4) Flow of work, coordination, and communication; and

(5) Estimating methods, techniques, accumulation of historical costs, and other analyses used to generate cost estimates.

(b) *General.* (1) The Contractor shall establish, maintain, and comply with an estimating system that is consistently applied and produces reliable, verifiable, supportable, and documented cost estimates that are an acceptable basis for negotiation of fair and reasonable prices.

(2) The system should be—

(i) Consistent and integrated with the Contractor's related management systems; and

(ii) Subject to applicable financial control systems.

(c) *Applicability.* Paragraphs (d) and (e) of this clause apply if the contractor is a large business and either—

(1) In its fiscal year preceding award of this contract, received Department of Defense (DoD) prime contracts or subcontracts, totaling $50 million or more for which certified cost or pricing data were required; or

(2) In its fiscal year preceding award of this contract—

(i) Received DoD prime contracts or subcontracts totaling $10 million or more (but less than $50 million) for which certified cost or pricing data were required; and

(ii) Was notified in writing by the Contracting Officer that paragraphs (d) and (e) of this clause apply.

(d) *System requirements.* (1) The Contractor shall disclose its estimating system to the Administrative Contracting Officer (ACO) in writing. If the Contractor wishes the Government to protect the information as privileged or confidential, the Contractor must mark the documents with the appropriate legends before submission.

(2) An estimating system disclosure is adequate when the Contractor has provided the ACO with documentation which—

(i) Accurately describes those policies, procedures, and practices that the Contractor currently uses in preparing cost proposals; and

(ii) Provides sufficient detail for the Government to reasonably make an informed judgment regarding the adequacy of the contractor's estimating practices.

(3) The Contractor shall—

(i) Comply with its disclosed estimating system; and

(ii) Disclose significant changes to the cost estimating system to the ACO on a timely basis.

(e) *Estimating system deficiencies.* (1) The Contractor shall respond to a written report from the Government which identifies deficiencies in the Contractor's estimating system as follows:

(i) If the Contractor agrees with the report findings and recommendations, the Contractor shall—

(A) Within 30 days, state its agreement in writing; and

(B) Within 60 days, correct the deficiencies or submit a corrective action plan showing proposed milestones and actions leading to elimination of the deficiencies.

(ii) If the Contractor disagrees with the report, the Contractor shall, within 30 days, state its rationale for disagreeing.

(2) The ACO will evaluate the Contractor's response and notify the Contractor of the determination concerning remaining deficiencies and/or the adequacy of any proposed or completed corrective action.

(End of clause)

252.215-7003 Industrial modernization incentive program.

As prescribed in 215.870-6, use the following clause:

Industrial Modernization Incentive Program (Dec. 1991)

(a) This clause applies if the Contractor has an Industrial Modernization Incentives Program (IMIP) business agreement which benefits the Government. This agreement may be directly between the Government and the Contractor, or between the Contractor and a lower-tier subcontractor, as long as Government approval has been obtained for the subcontract program.

(b) The Contractor may earn modernization incentives in accordance with the terms of its IMIP business agreement.

(c) The Contractor shall keep records of all modernization incentives earned under each IMIP business agreement.

(d) The Contractor shall include this clause in all subcontracts where the subcontractor is participating in a Government approved IMIP business agreement.

(End of clause)

252.216-7000 Economic price adjustment—basic steel, aluminum, brass, bronze, or copper mill products.

As prescribed in 216.203-4-70(a), use the following clause:

Economic Price Adjustment—Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products (Dec. 1991)

(a) *Definitions.*

As used in this clause,

Established price means a price which—

(1) Is an established catalog or market price for a commercial item sold in substantial quantities to the general public; and

(2) Meets the criteria of FAR 15.804-3.

Unit price excludes any part of the price which reflects requirements for preservation, packaging, and packing beyond standard commercial practice.

(b) The Contractor warrants that the unit price stated for (*Identify the item*) is not in excess of the Contractor's established price in effect on the date set for opening of bids (or the contract date if this is a negotiated contract) for like quantities of the same item. This price is the net price after applying any applicable standard trade discounts offered by the Contractor from its catalog, list, or schedule price.

(c) The Contractor shall promptly notify the Contracting Officer of the amount and effective date of each decrease in any established price.

(1) Each corresponding contract unit price shall be decreased by the same percentage that the established price is decreased.

(2) This decrease shall apply to items delivered on or after the effective date of the decrease in the Contractor's established price.

(3) This contract shall be modified accordingly.

(4) The Contractor shall certify on each invoice that each unit price stated reflects all decreases required by this clause, or shall certify on the final invoice that all price decreases required by this clause have been applied as required.

(d) If the Contractor's established price is increased after the date set for opening of bids (or the contract date if this is a negotiated contract), upon the Contractor's written request to the Contracting Officer, the corresponding contract unit price shall be increased by the same percentage that the established price is increased, and this contract shall be modified accordingly, provided—

(1) The aggregate of the increases in any contract unit price under this contract shall not exceed 10 percent of the original contract unit price;

(2) The increased contract unit price shall be effective on the effective date of the increase in the applicable established price if the Contractor's written request is received by the Contracting Officer within ten days of the change. If it is not, the effective date of the increased unit price shall be the date of receipt of the request by the Contracting Officer; and

(3) The increased contract unit price shall not apply to quantities scheduled for delivery before the effective date of the increased contract unit price unless the Contractor's failure to deliver before that date results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the Default clause of this contract.

(4) The Contracting Officer shall not execute a modification incorporating an increase in a contract unit price under this clause until the increase is verified.

(e) Within 30 days after receipt of the Contractor's written request, the Contracting Officer may cancel, without liability to either party, any portion of the contract affected by the requested increase and not delivered at the time of such cancellation, except as follows—

(1) The Contractor may after that time deliver any items which the Contractor certifies, by notice received by the Contracting Officer within ten days after the Contractor receives the cancellation notice, were completed or in the process of manufacture at the time of receipt of the cancellation notice.

(2) The Government shall pay for those items at the contract unit price increased to the extent provided by paragraph (d) of this clause.

(3) Any standard steel supply item shall be deemed to be in the process of manufacture when the steel for that item is in the state of processing after the beginning of the furnace melt.

(f) Pending any cancellation of this contract under paragraph (e) of this clause, or if there is no cancellation, the Contractor shall continue deliveries according to the delivery schedule of the contract. The Contractor shall be paid for those deliveries at the contract unit price increased to the extent provided by paragraph (d) of this clause.

(End of clause)

252.216-7001 Economic price adjustment—nonstandard steel items.

As prescribed in 216.203-4-70(b), use the following clause:

Economic Price Adjustment—Nonstandard Steel Items (Dec. 1991)

(a) *Definitions.*

As used in this clause—

Base labor index means the average of the labor indices for the three months which consist of the month of bid opening (or offer submission) and the months immediately preceding and following that month.

Base steel index means the Contractor's established price (see note 6) including all applicable extras of $________ per ________ (see note 1) for ________ (see note 2) on the date set for bid opening (or the date of submission of the offer).

Current labor index means the average of the labor indices for the month in which delivery of supplies is required to be made and the month preceding.

Current steel index means the Contractor's established price (see note 6) for that item, including all applicable extras in effect ________ days (see note 3) prior to the first day of the month in which delivery is required.

Established price is—

(1) A price which—

(i) Is an established catalog or market price of a commercial item sold in substantial quantities to the general public; and

(ii) Meets the criteria of FAR 15.804-3; and

(2) The net price after applying any applicable standard trade discounts offered by the Contractor from its catalog, list, or schedule price. (But see note 6.)

Labor index means the average straight time hourly earnings of the Contractor's employees in the ________ shop of the Contractor's ________ plant (see note 4) for any particular month.

Month means calendar month. However, if the Contractor's accounting period does not coincide with the calendar month, then that accounting period shall be used in lieu of *month*.

(b) Each contract unit price shall be subject to revision, under the terms of this clause, to reflect changes in the cost of labor and steel. For purpose of this price revision, the proportion of the contract unit price attributable to costs of labor not otherwise included in the price of the steel item identified under the *base steel index* definition in paragraph (a) shall be ______ percent, and the proportion of the contract unit price attributable to the cost of steel shall be ______ percent. (See note 5.)

(c)(1) Unless otherwise specified in this contract, the labor index shall be computed by dividing the total straight time earnings of the Contractor's employees in the shop identified in paragraph (a) for any given month by the total number of straight time hours worked by those employees in that month.

(2) Any revision in a contract unit price to reflect changes in the cost of labor shall be computed solely by reference to the "*base labor index*" and the "*current labor index*."

(d) Any revision in a contract unit price to reflect changes in the cost of steel shall be computed solely by reference to the "*base steel index*" and the "*current steel index*."

(e)(1) Each contract unit price shall be revised for each month in which delivery of supplies is required to be made.

(2) The revised contract unit price shall apply to the deliveries of those quantities required to be made in that month regardless of when actual delivery is made.

(3) Each revised contract unit price shall be computed by adding—

(i) The adjusted cost of labor (obtained by multiplying ______ percent of the contract unit price by a fraction, of which the numerator shall be the current labor index and the denominator shall be the base labor index);

(ii) The adjusted cost of steel (obtained by multiplying ______ percent of the contract unit price by a fraction, of which the numerator shall be the current steel index and the denominator shall be the base steel index); and

(iii) The amount equal to ______ percent of the original contract unit price (representing that portion of the unit price which relates neither to the cost of labor nor the cost of steel, and which is therefore not subject to revision (see note 5)).

(4) The aggregate of the increases in any contract unit price under this contract shall not exceed ten percent of the original contract unit price.

(5) Computations shall be made to the nearest one-hundredth of one cent.

(f)(1) Pending any revisions of the contract unit prices, the Contractor shall be paid the contract unit price for deliveries made.

(2) Within 30 days after final delivery (or such other period as may be authorized by the Contracting Officer), the Contractor shall furnish a statement identifying and certifying the correctness of—

(i) The average straight time hourly earnings of the Contractor's employees in the shop identified in paragraph (a) that are relevant to the computations of the *base labor index* and the *current labor index;* and

(ii) The Contractor's established prices (see note 6), including all applicable extras for like quantities of the item that are relevant to the computation of the *base steel index* and the *current steel index.*

(3) Upon request of the Contracting Officer, the Contractor shall make available all records used in the computation of the labor indices.

(4) Upon receipt of the certified statement, the Contracting Officer will compute the revised contract unit prices and modify the contract accordingly. No modification to this contract will be made pursuant to this clause until the Contracting Officer has verified the revised established price (see note 6).

(g)(1) In the event any item of this contract is subject to a total or partial termination for convenience, the month in which the Contractor receives notice of the termination, if prior to the month in which delivery is required, shall be considered the month in which delivery of the terminated item is required for the purposes of determining the current labor and steel indices under paragraphs (c) and (d).

(2) For any item which is not terminated for convenience, the month in which delivery is required under the contract shall continue to apply for determining those indices with respect to the quantity of the non-terminated item.

(3) If this contract is terminated for default, any price revision shall be limited to the quantity of the item which has been delivered by the Contractor and accepted by the Government prior to receipt by the Contractor of the notice of termination.

(h) If the Contractor's failure to make delivery of any required quantity arises out of causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the clause of this contract entitled "*Default,*" the quantity not delivered shall be delivered as promptly as possible after the cessation of the cause of the failure, and the delivery schedule set forth in this contract shall be amended accordingly.

Notes:

1 Offeror insert the unit price and unit measure of the standard steel mill item to be used in the manufacture of the contract item.

2 Offeror identify the standard steel mill item to be used in the manufacture of the contract item.

3 Offeror insert best estimate of the number of days required for processing the standard steel mill item in the shop identified under the *labor index* definition.

4 Offeror identify the shop and plant in which the standard steel mill item identified under the *base steel index* definition will be finally fabricated or processed into the contract item.

5 Offeror insert the same percentage figures for the corresponding blanks in paragraphs (b), (e)(3)(i), and (e)(3)(ii). In paragraph (e)(3)(iii), insert the percentage representing the difference between the sum of the percentages inserted in paragraph (b) and 100 percent.

6 In negotiated acquisitions of nonstandard steel items, when there is no *established price* or when it is not desirable to use this price, this paragraph may refer to another appropriate price basis, e.g., an established interplant price.

(End of clause)

252.217-7000 Exercise of option to fulfill foreign military sales commitments.

As prescribed in 217.208-70(a), use the following clause:

Exercise of Option To Fulfill Foreign Military Sales Commitments (Dec. 1991)

(a) The Government may exercise the option(s) of this contract to fulfill foreign military sales commitments.

(b) The foreign military sales commitments are for:

(Insert name of country, or To Be Determined)

(Insert applicable CLIN)

(End of clause)

Alternate I (Dec. 1991)

As prescribed in 217.208-70(a)(1), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) On the date the option is exercised, the Government shall identify the foreign country for the purpose of negotiating any equitable adjustment attributable to foreign military sales. Failure to agree on an equitable adjustment shall be treated as a dispute under the Disputes clause of this contract.

252.217-7001 Surge option.

As prescribed in 217.208-70(b), use the following clause:

Surge Option (Dec. 1991)

(a) *General.* The Government has the option to—

(1) Increase the quantity of supplies or services called for under this contract by no more than ______ percent; and/or

(2) Accelerate the rate of delivery called for under this contract, at a price or cost established before contract award or to be established by negotiation as provided in this clause.

(b) *Schedule.* (1) When the Production Surge Plan (DI-P-1634A) is included in the contract, the option delivery schedule shall be the production rate provided with the Plan. If the Plan was negotiated before contract award, then the negotiated schedule shall be used.

(2) If there is no Production Surge Plan in the contract, the Contractor shall, within 30 days from the date of award, furnish the Contracting Officer a delivery schedule showing the maximum sustainable rate of delivery for items in this contract. This delivery schedule shall provide acceleration by month up to the maximum sustainable rate of delivery achievable within the Contractor's existing facilities, equipment, and subcontracting structure.

(3) The Contractor shall not revise the option delivery schedule without approval from the Contracting Officer.

(c) *Exercise of option.* (1) The Contracting Officer may exercise this option at any time before acceptance by the Government of the final scheduled delivery.

(2) The Contracting Officer will provide a preliminary oral or written notice to the Contractor stating the quantities to be added or accelerated under the terms of this clause, followed by a contract modification incorporating the transmitted information and instructions. The notice and modification will establish a not-to-exceed price equal to the highest contract unit price or cost of the added or accelerated items as of the date of the notice.

(3) The Contractor will not be required to deliver at a rate greater than the maximum sustainable delivery rate under paragraph (b)(2) of this clause, nor will the exercise of this option extend delivery more than 24 months beyond the scheduled final delivery.

(d) *Price negotiation.* (1) Unless the option cost or price was previously agreed upon, the Contractor shall, within 30 days from the date of option exercise, submit to the Contracting Officer a cost or price proposal (including a cost breakdown) for the added or accelerated items.

(2) Failure to agree on a cost or price in negotiations resulting from the exercise of this option shall constitute a dispute concerning a question of fact within the meaning of the Disputes clause of this contract. However, nothing in this clause shall excuse the Contractor from proceeding with the performance of the contract, as modified, while any resulting claim is being settled.

(End of clause)

252.217-7002 Offering property for exchange.

As prescribed in 217.7005, use the following provision:

Offering Property for Exchange (Dec. 1991)

(a) The property described in item number ______, is being offered in accordance with the exchange provisions of Section 201(c) of the Federal Property and Administrative Services Act of 1949, 63 Stat. 384 (40 U.S.C. 481(c)).

(b) The property is located at (insert address). Offerors may inspect the property during the period (insert beginning and ending dates and insert hours during day).

(End of provision)

252.217-7003 Changes.

As prescribed in 217.7104(a), use the following clause:

Changes (Dec. 1991)

(a) The Contracting Officer may, at any time and without notice to the sureties, by written change order, make changes within the general scope of any job order issued under the Master Agreement in—

(1) Drawings, designs, plans, and specifications;

(2) Work itemized;

(3) Place of performance of the work;

(4) Time of commencement or completion of the work; and

(5) Any other requirement of the job order.

(b) If a change causes an increase or decrease in the cost of, or time required for, performance of the job order, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the price or date of completion, or both, and shall modify the job order in writing.

(1) Within ten days after the Contractor receives notification of the change, the Contractor shall submit to the Contracting Officer a request for price adjustment, together with a written estimate of the increased cost.

(2) The Contracting Officer may grant an extension of this period if the Contractor requests it within the ten day period.

(3) If the circumstances justify it, the Contracting Officer may accept and grant a request for equitable adjustment at any later time prior to final payment under the job order, except that the Contractor may not receive profit on a payment under a late request.

(c) If the Contractor includes in its claim the cost of property made obsolete or excess as a result of a change, the Contracting Officer shall have the right to prescribe the manner of disposition of that property.

(d) Failure to agree to any adjustment shall be a dispute within the meaning of the Disputes clause.

(e) Nothing in this clause shall excuse the Contractor from proceeding with the job order as changed.

(End of clause)

252.217-7004 Job orders and compensation.

As prescribed in 217.7104(a), use the following clause:

Job Orders and Compensation (Dec. 1991)

(a) The Contracting Officer shall solicit bids or proposals and make award of job orders in accordance with FAR Part 14 or 15, as applicable. The issuance of a job order signed by the Contracting Officer constitutes award. The job order shall incorporate the terms and conditions of the Master Agreement.

(b) Whenever the Contracting Officer determines that a vessel, its cargo or stores, would be endangered by delay, or whenever the Contracting Officer determines that military necessity requires that immediate work on a vessel is necessary, the Contracting Officer may issue a written order to perform that work and the Contractor hereby agrees to comply with that order and to perform work on such vessel within its capabilities.

(1) As soon as practicable after the issuance of the order, the Contracting Officer and the Contractor shall negotiate a price for the work and the Contracting Officer shall issue a job order covering the work.

(2) The Contractor shall, upon request, furnish the Contracting Officer with a breakdown of costs incurred by the Contractor and an estimate of costs expected to be incurred in the performance of the work. The Contractor shall maintain, and make available for inspection by the Contracting Officer or the Contracting Officer's representative, records supporting the cost of performing the work.

(3) Failure of the parties to agree upon the price of the work shall constitute a dispute within the meaning of the Disputes clause of the Master Agreement. In the meantime, the Contractor shall diligently proceed to perform the work ordered.

(c)(1) If the nature of any repairs is such that their extent and probable cost cannot be ascertained readily, the Contracting Officer may issue a job order (on a sealed bid or negotiated basis) to determine the nature and extent of required repairs.

(2) Upon determination by the Contracting Officer of what work is necessary, the Contractor, if requested by the Contracting Officer, shall negotiate prices for performance of that work. The prices agreed upon shall be set forth in a modification of the job order.

(3) Failure of the parties to agree upon the price shall constitute a dispute under the Disputes clause. In the meantime, the Contractor shall diligently proceed to perform the work ordered.

(End of clause)

252.217-7005 Inspection and manner of doing work.

As prescribed in 217.7104(a), use the following clause:

Inspection and Manner of Doing Work (Dec. 1991)

(a) The Contractor shall perform work in accordance with the job order, any drawings and specifications made a part of the job order, and any change or modification issued under the Changes clause of the Master Agreement.

(b)(1) Except as provided in paragraph (b)(2) of this clause, and unless otherwise specifically provided in the job order, all operational practices of the Contractor and all workmanship, material, equipment, and articles used in the performance of work under the Master Agreement shall be in accordance with the best commercial marine practices and the rules and requirements of the American Bureau of Shipping, the U.S. Coast Guard, and the Institute of Electrical and Electronic Engineers, in effect at the time of Contractor's submission of bid (or acceptance of the job order, if negotiated).

(2) When Navy specifications are specified in the job order, the Contractor shall follow Navy standards of material and workmanship. The solicitation shall prescribe the Navy standard whenever applicable.

(c) The Government may inspect and test all material and workmanship at any time during the Contractor's performance of the work.

(1) If, prior to delivery, the Government finds any material or workmanship is defective or not in accordance with the job order, in addition to its rights under the Guarantees clause of the Master Agreement, the Government may reject the defective or nonconforming material or workmanship and require the Contractor to correct or replace it at the Contractor's expense.

(2) If the Contractor fails to proceed promptly with the replacement or correction of the material or workmanship, the Government may replace or correct the defective or nonconforming material or workmanship and charge the Contractor the excess costs incurred.

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(c)(1) If the nature of any repairs is such that their extent and probable cost cannot be ascertained readily, the Contracting Officer may issue a job order (on a sealed bid or negotiated basis) to determine the nature and extent of required repairs.

(2) Upon determination by the Contracting Officer of what work is necessary, the Contractor, if requested by the Contracting Officer, shall negotiate prices for performance of that work. The prices agreed upon shall be set forth in a modification of the job order.

(3) Failure of the parties to agree upon the price shall constitute a dispute under the Disputes clause. In the meantime, the Contractor shall diligently proceed to perform the work ordered.

(End of clause)

252.217-7005 Inspection and manner of doing work.

As prescribed in 217.7104(a), use the following clause:

Inspection and Manner of Doing Work (Dec. 1991)

(a) The Contractor shall perform work in accordance with the job order, any drawings and specifications made a part of the job order, and any change or modification issued under the Changes clause of the Master Agreement.

(b)(1) Except as provided in paragraph (b)(2) of this clause, and unless otherwise specifically provided in the job order, all operational practices of the Contractor and all workmanship, material, equipment, and articles used in the performance of work under the Master Agreement shall be in accordance with the best commercial marine practices and the rules and requirements of the American Bureau of Shipping, the U.S. Coast Guard, and the Institute of Electrical and Electronic Engineers, in effect at the time of Contractor's submission of bid (or acceptance of the job order, if negotiated).

(2) When Navy specifications are specified in the job order, the Contractor shall follow Navy standards of material and workmanship. The solicitation shall prescribe the Navy standard whenever applicable.

(c) The Government may inspect and test all material and workmanship at any time during the Contractor's performance of the work.

(1) If, prior to delivery, the Government finds any material or workmanship is defective or not in accordance with the job order, in addition to its rights under the Guarantees clause of the Master Agreement, the Government may reject the defective or nonconforming material or workmanship and require the Contractor to correct or replace it at the Contractor's expense.

(2) If the Contractor fails to proceed promptly with the replacement or correction of the material or workmanship, the Government may replace or correct the defective or nonconforming material or workmanship and charge the Contractor the excess costs incurred.

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(3) As specified in the job order, the Contractor shall provide and maintain an inspection system acceptable to the Government.

(4) The Contractor shall maintain complete records of all inspection work and shall make them available to the Government during performance of the job order and for 90 days after the completion of all work required.

(d) The Contractor shall not permit any welder to work on a vessel unless the welder is, at the time of the work, qualified to the standards established by the U.S. Coast Guard, American Bureau of Shipping, or Department of the Navy for the type of welding being performed. Qualifications of a welder shall be as specified in the job order.

(e) The Contractor shall—

(1) Exercise reasonable care to protect the vessel from fire;

(2) Maintain a reasonable system of inspection over activities taking place in the vicinity of the vessel's magazines, fuel oil tanks, or storerooms containing flammable materials;

(3) Maintain a reasonable number of hose lines ready for immediate use on the vessel at all times while the vessel is berthed alongside the Contractor's pier or in dry dock or on a marine railway;

(4) Unless otherwise provided in a job order, provide sufficient security patrols to reasonably maintain a fire watch for protection of the vessel when it is in the Contractor's custody;

(5) To the extent necessary, clean, wash, and steam out or otherwise make safe, all tanks under alteration or repair;

(6) Furnish the Contracting Officer a "gas-free" or "safe-for-hotwork" certificate before any hot work is done on a tank;

(7) Treat the contents of any tank as Government property in accordance with the Government Property (Fixed-Price Contracts) clause; and

(8) Dispose of the contents of any tank only at the direction, or with the concurrence, of the Contracting Officer.

(f) Except as otherwise provided in the job order, when the vessel is in the custody of the Contractor or in dry dock or on a marine railway and the temperature is expected to go as low as 35 °F, the Contractor shall take all necessary steps to—

(1) Keep all hose pipe lines, fixtures, traps, tanks, and other receptacles on the vessel from freezing; and

(2) Protect the stern tube and propeller hubs from frost damage.

(g) The Contractor shall, whenever practicable—

(1) Perform the required work in a manner that will not interfere with the berthing and messing of Government personnel attached to the vessel; and

(2) Provide Government personnel attached to the vessel access to the vessel at all times.

(h) Government personnel attached to the vessel shall not interfere with the Contractor's work or workers.

(i)(1) The Government does not guarantee the correctness of the dimensions, sizes, and shapes set forth in any job order, sketches, drawings, plans, or specifications prepared or furnished by the Government, unless the job order requires that the Contractor perform the work prior to any opportunity to inspect.

(2) Except as stated in paragraph (i)(1) of this clause, and other than those parts furnished by the Government, the Contractor shall be responsible for the correctness of the dimensions, sizes, and shapes of parts furnished under this agreement.

(j) The Contractor shall at all times keep the site of the work on the vessel free from accumulation of waste material or rubbish caused by its employees or the work. At the completion of the work, unless the job order specifies otherwise, the Contractor shall remove all rubbish from the site of the work and leave the immediate vicinity of the work area "broom clean."

(End of clause)

252.217-7006 Title.

As prescribed in 217.7104(a), use the following clause:

Title (Dec. 1991)

(a) Unless otherwise provided, title to all materials and equipment to be incorporated in a vessel in the performance of a job order shall vest in the Government upon delivery at the location specified for the performance of the work.

(b) Upon completion of the job order, or with the approval of the Contracting Officer during performance of the job order, all Contractor-furnished materials and equipment not incorporated in, or placed on, any vessel, shall become the property of the Contractor, unless the Government has reimbursed the Contractor for the cost of the materials and equipment.

(c) The vessel, its equipment, movable stores, cargo, or other ship's materials shall not be considered Government-furnished property.

(End of clause)

252.217-7007 Payments.

As prescribed in 217.7104(a), use the following clause:

Payments (Dec. 1991)

(a) *Progress payments,* as used in this clause, means payments made before completion of work in progress under a job order.

(b) Upon submission by the Contractor of invoices in the form and number of copies directed by the Contracting Officer, and as approved by the Contracting Officer, the Government will make progress payments as work progresses under the job order.

(1) Generally, the Contractor may submit invoices on a semi-monthly basis, unless expenditures justify a more frequent submission.

(2) The Government need not make progress payments for invoices aggregating less than $5,000.

(3) The Contracting Officer shall approve progress payments based on the value, computed on the price of the job order, of labor and materials incorporated in the work, materials suitably stored at the site of the work, and preparatory work completed, less the aggregate of any previous payments.

(4) Upon request, the Contractor will furnish the Contracting Officer any reports concerning expenditures on the work to date that the Contracting Officer may require.

(c) The Government will retain until final completion and acceptance of all work covered by the job order, an amount estimated or approved by the Contracting Officer under paragraph (b) of this clause. The amount retained will be in accordance with the rate authorized by Congress for Naval vessel repair contracts at the time of job order award.

(d) The Contracting Officer may direct that progress payments be based on the price of the job order as adjusted as a result of change orders under the Changes clause of the Master Agreement. If the Contracting Officer does not so direct—

(1) Payments of any increases shall be made from time to time after the amount of the increase is determined under the Changes clause of the Master Agreement; and

(2) Reductions resulting from decreases shall be made for the purposes of subsequent progress payments as soon as the amounts are determined under the Changes clause of the Master Agreement.

(e) Upon completion of the work under a job order and final inspection and acceptance, and upon submission of invoices in such form and with such copies as the Contracting Officer may prescribe, the Contractor shall be paid for the price of the job order, as adjusted pursuant to the Changes clause of the Master Agreement, less any performance reserves deemed necessary by the Contracting Officer, and less the amount of any previous payments.

(f) All materials, equipment, or any other property or work in process covered by the progress payments made by the Government, upon the making of those progress payments, shall become the sole property of the Government, and are subject to the provisions of the Title clause of the Master Agreement.

(End of clause)

252.217-7008 Bonds.

As prescribed in 217.7104(a), use the following clause:

Bonds (Dec. 1991)

(a) If the solicitation requires an offeror to submit a bid bond, the Offeror may furnish, instead, an annual bid bond (or evidence thereof) or an annual performance and payment bond (or evidence thereof).

(b) If the solicitation does not require a bid bond, the Offeror shall not include in the price any contingency to cover the premium of such a bond.

(c) Even if the solicitation does not require bonds, the Contracting Officer may nevertheless require a performance and payment bond, in form, amount, and with a surety acceptable to the Contracting Officer. Where performance and payment bond is required, the offer price shall be increased upon the award of the job order in an amount not to exceed the premium of a corporate surety bond.

(d) If any surety upon any bond furnished in connection with a job order under this agreement fails to submit requested reports as to its financial condition or otherwise becomes unacceptable to the Government, the Contracting Officer may require the

Contractor to furnish whatever additional security the Contracting Officer determines necessary to protect the interests of the Government and of persons supplying labor or materials in the performance of the work contemplated under the Master Agreement.

(End of clause)

252.217-7009 Default.

As prescribed in 217.7104(a), use the following clause:

Default (Dec. 1991)

(a) The Government may, subject to the provisions of paragraph (b) of this clause, by written notice of default to the Contractor, terminate the whole or any part of a job order if the Contractor fails to—

(1) Make delivery of the supplies or to perform the services within the time specified in a job order or any extension;

(2) Make progress, so as to endanger performance of the job order; or

(3) Perform any of the other provisions of this agreement or a job order.

(b) Except for defaults of subcontractors, the Contractor shall not be liable for any excess costs if failure to perform the job order arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

(c) If the Contractor's failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to perform the job order within the time specified.

(d) If the Government terminates the job order in whole or in part as provided in paragraph (a) of this clause—

(1) The Government may, upon such terms and in such manner as the Contracting Officer may deem appropriate, arrange for the completion of the work so terminated, at such plant or plants, including that of the Contractor, as may be designated by the Contracting Officer.

(i) The Contractor shall continue the performance of the job order to the extent not terminated under the provisions of this clause.

(ii) If the work is to be completed at the plant, the Government may use all tools, machinery, facilities, and equipment of the Contractor determined by the Contracting Office to be necessary for that purpose.

(iii) If the cost to the Government of the work procured or completed (after adjusting such cost to exclude the effect of changes in the plans and specifications made subsequent to the date of termination) exceeds the price fixed for work under the job order (after adjusting such price on account of changes in the plans and specifications made before the date of termination), the Contractor, or the Contractor's surety, if any, shall be liable for such excess.

(2) The Government, in addition to any other rights provided in this clause, may require the Contractor to transfer title and delivery to the Government, in the manner and to the extent directed by the Contracting Officer, any completed supplies and such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of the terminated part of the job order.

(i) The Contractor shall, upon direction of the Contracting Officer, protect and preserve property in possession of the Contractor in which the Government has an interest.

(ii) The Government shall pay to the Contractor the job order price for completed items of work delivered to and accepted by the Government, and the amount agreed upon by the Contractor and the Contracting Officer for manufacturing materials delivered to and accepted by the Government, and for the protection and preservation of property. Failure to agree shall be a dispute concerning a question of fact within the meaning of the Disputes clause.

(e) If, after notice of termination of the job order, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued for the convenience of the Government.

(f) If the Contractor fails to complete the performance of a job order within the time specified, or any extension, the actual damage to the Government for the delay will be difficult or impossible to determine.

(1) In lieu of actual damage, the Contractor shall pay to the Government as fixed, agreed, and liquidated damages for each calendar day of delay the amount, if any, set forth in the job order (prorated to the nearest hour for fractional days).

(2) If the Government terminates the job order, the Contractor shall be liable, in addition to the excess costs provided in paragraph (d) of this clause, for liquidated damages accruing until such time as the Government may reasonably obtain completion of the work.

(3) The Contractor shall not be charged with liquidated damages when the delay arises out of causes beyond the control and without the fault or negligence of the Contractor. Subject to the provisions of the Disputes clause of the Master Agreement, the Contracting Officer shall ascertain the facts and the extent of the delay and shall extend the time for performance when in the judgment of the Contracting Officer, the findings of fact justify an extension.

(g) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law under this agreement.

(End of clause)

252.217-7010 Performance.

As prescribed in 217.7104(a), use the following clause:

Performance (Dec. 1991)

(a) Upon the award of a job order, the Contractor shall promptly start the work specified and shall diligently prosecute the work to completion. The Contractor shall not start work until the job order has been awarded except in the case of emergency work ordered by the Contracting Officer under the Job Orders and Compensation clause of the Master Agreement.

(b) The Government shall deliver the vessel described in the job order at the time and location specified in the job order. Upon completion of the work, the Government shall accept delivery of the vessel at the time and location specified in the job order.

(c) The Contractor shall, without charge and without specific requirement in a job order,—

(1) Make available at the plant to personnel of the vessel while in dry dock or on a marine railway, sanitary lavatory and similar facilities acceptable to the Contracting Officer;

(2) Supply and maintain suitable brows and gangways from the pier, dry dock, or marine railway to the vessel;

(3) Treat salvage, scrap or other ship's material of the Government resulting from performance of the work as items of Government-furnished property, in accordance with the Government Property (Fixed Price Contracts) clause;

(4) Perform, or pay the cost of, any repair, reconditioning or replacement made necessary as the result of the use by the Contractor of any of the vessel's machinery, equipment or fittings, including, but not limited to, winches, pumps, rigging, or pipe lines; and

(5) Furnish suitable offices, office equipment and telephones at or near the site of the work for the Government's use.

(d) The job order will state whether dock and sea trials are required to determine whether or not the Contractor has satisfactorily performed the work.

(1) If dock and sea trials are required, the vessel shall be under the control of the vessel's commander and crew.

(2) The Contractor shall not conduct dock and sea trials not specified in the job order without advance approval of the Contracting Officer. Dock and sea trials not specified in the job order shall be at the Contractor's expense and risk.

(3) The Contractor shall provide and install all fittings and appliances necessary for dock and sea trials. The Contractor shall be responsible for care, installation, and removal of instruments and apparatus furnished by the Government for use in the trials.

(End of clause)

252.217-7011 Access to vessel.

As prescribed at 217.7104(a), use the following clause:

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(End of clause)

252.217-7010 Performance.

As prescribed in 217.7104(a), use the following clause:

Performance (Dec. 1991)

(a) Upon the award of a job order, the Contractor shall promptly start the work specified and shall diligently prosecute the work to completion. The Contractor shall not start work until the job order has been awarded except in the case of emergency work ordered by the Contracting Officer under the Job Orders and Compensation clause of the Master Agreement.

(b) The Government shall deliver the vessel described in the job order at the time and location specified in the job order. Upon completion of the work, the Government shall accept delivery of the vessel at the time and location specified in the job order.

(c) The Contractor shall, without charge and without specific requirement in a job order,—

(1) Make available at the plant to personnel of the vessel while in dry dock or on a marine railway, sanitary lavatory and similar facilities acceptable to the Contracting Officer;

(2) Supply and maintain suitable brows and gangways from the pier, dry dock, or marine railway to the vessel;

(3) Treat salvage, scrap or other ship's material of the Government resulting from performance of the work as items of Government-furnished property, in accordance with the Government Property (Fixed Price Contracts) clause;

(4) Perform, or pay the cost of, any repair, reconditioning or replacement made necessary as the result of the use by the Contractor of any of the vessel's machinery, equipment or fittings, including, but not limited to, winches, pumps, rigging, or pipe lines; and

(5) Furnish suitable offices, office equipment and telephones at or near the site of the work for the Government's use.

(d) The job order will state whether dock and sea trials are required to determine whether or not the Contractor has satisfactorily performed the work.

(1) If dock and sea trials are required, the vessel shall be under the control of the vessel's commander and crew.

(2) The Contractor shall not conduct dock and sea trials not specified in the job order without advance approval of the Contracting Officer. Dock and sea trials not specified in the job order shall be at the Contractor's expense and risk.

(3) The Contractor shall provide and install all fittings and appliances necessary for dock and sea trials. The Contractor shall be responsible for care, installation, and removal of instruments and apparatus furnished by the Government for use in the trials.

(End of clause)

252.217-7011 Access to vessel.

As prescribed at 217.7104(a), use the following clause:

Access to Vessel (Dec. 1991)

(a) Upon the request of the Contracting Officer, the Contractor shall grant admission to the Contractor's facilities and access to vessel, on a non-interference basis, as necessary to perform their respective responsibilities, to a reasonable number of:

(1) Government and other Government contractor employees (in addition to those Government employees attached to the vessel); and

(2) Representatives of offerors on other contemplated Government work.

(b) All personnel granted access shall comply with Contractor rules governing personnel at its shipyard.

(End of clause)

252.217-7012 Liability and insurance.

As prescribed in 217.7104(a), use the following clause:

Liability and Insurance (Dec. 1991)

(a) The Contractor shall exercise its best efforts to prevent accidents, injury, or damage to all employees, persons, and property, in and about the work, and to the vessel or part of the vessel upon which work is done.

(b) *Loss or damage to the vessel, materials, or equipment.* (1) Unless otherwise directed or approved in writing by the Contracting Officer, the Contractor shall not carry insurance against any form of loss or damage to the vessel(s) or to the materials or equipment to which the Government has title or which have been furnished by the Government for installation by the Contractor. The Government assumes the risks of loss of and damage to that property.

(2) The Government does not assume any risk with respect to loss or damage compensated for by insurance or otherwise or resulting from risks with respect to which the Contractor has failed to maintain insurance, if available, as required or approved by the Contracting Officer.

(3) The Government does not assume risk of and will not pay for any costs of the following:

(i) Inspection, repair, replacement, or renewal of any defects in the vessel(s) or material and equipment due to—

(A) Defective workmanship performed by the Contractor or its subcontractors;

(B) Defective materials or equipment furnished by the Contractor or its subcontracts; or

(C) Workmanship, materials, or equipment which do not conform to the requirements of the contract, whether or not the defect is latent or whether or not the nonconformance is the result of negligence.

(ii) Loss, damage, liability, or expense caused by, resulting from, or incurred as a consequence of any delay or disruption, willful misconduct or lack of good faith by the Contractor or any of its representatives that have supervision or direction of—

(A) All or substantially all of the Contractor's business; or

(B) All or substantially all of the Contractor's operation at any one plant.

(4) As to any risk that is assumed by the Government, the Government shall be subrogated to any claim, demand or cause of action against third parties that exists in favor of the Contractor. If required by the Contracting Officer, the Contractor shall execute a formal assignment or transfer of the claim, demand, or cause of action.

(5) No party other than the Contractor shall have any right to proceed directly against the Government or join the Government as a co-defendant in any action.

(6) Notwithstanding the foregoing, the Contractor shall bear the first $5,000 of loss or damage from each occurrence or incident, the risk of which the Government would have assumed under the provisions of this paragraph (b).

(c) *Indemnification.* The Contractor indemnifies the Government and the vessel and its owners against all claims, demands, or causes of action to which the Government, the vessel or its owner(s) might be subject as a result of damage or injury (including death) to the property or person of anyone other than the Government or its employees, or the vessel or its owner, arising in whole or in part from the negligence or other wrongful act of the Contractor or its agents or employees, or any subcontractor, or its agents or employees.

(1) The Contractor's obligation to indemnify under this paragraph shall not exceed the sum of $300,000 as a consequence of any single occurrence with respect to any one vessel.

(2) The indemnity includes, without limitation, suits, actions, claims, costs, or demands of any kind, resulting from death, personal injury, or property damage occurring during the period of performance of work on the vessel or within 90 days after redelivery of the vessel. For any claim, etc., made after 90 days, the rights of the parties shall be as determined by other provisions of this agreement and by law. The indemnity does apply to death occurring after 90 days where the injury was received during the period covered by the indemnity.

(d) *Insurance.* (1) The Contractor shall, at its own expense, obtain and maintain the following insurance—

(i) Casualty, accident, and liability insurance, as approved by the Contracting Officer, insuring the performance of its obligations under paragraph (c) of this clause.

(ii) Workers Compensation Insurance (or its equivalent) covering the employees engaged on the work.

(2) The Contractor shall ensure that all subcontractors engaged on the work obtain and maintain the insurance required in paragraph (d)(1) of this clause.

(3) Upon request of the Contracting Officer, the Contractor shall provide evidence of the insurance required by paragraph (d) of this clause.

(e) The Contractor shall not make any allowance in the job order price for the inclusion of any premium expense or charge for any reserve made on account of self-insurance for coverage against any risk assumed by the Government under this clause.

(f) The Contractor shall give the Contracting Officer written notice as soon as practicable after the occurrence of a loss or damage for which the Government has assumed the risk.

(1) The notice shall contain full details of the loss or damage.

(2) If a claim or suit is later filed against the Contractor as a result of the event, the Contractor shall immediately deliver to the Government every demand, notice, summons, or other process received by the Contractor or its employees or representatives.

(3) The Contractor shall cooperate with the Government and, upon request, shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses, and in the conduct of suits. The Government shall reimburse the Contractor for expenses incurred in this effort, other than the cost of maintaining the Contractor's usual organization.

(4) The Contractor shall not, except at its own expense, voluntarily make any payment, assume any obligation, or incur any expense other than what would be imperative for the protection of the vessel(s) at the time of the event.

(g) In the event or loss of or damage to any vessel(s), material, or equipment which may result in a claim against the Government under the insurance provisions of this contract, the Contractor shall promptly notify the Contracting Officer of the loss or damage. The Contracting Officer may, without prejudice to any other right of the Government, either—

(1) Order the Contractor to proceed with replacement or repair, in which event the Contractor shall effect the replacement or repair;

(i) The Contractor shall submit to the Contracting Officer a request for reimbursement of the cost of the replacement or repair together with whatever supporting documentation the Contracting Officer may reasonably require, and shall identify the request as being submitted under the Insurance clause of the agreement.

(ii) If the Government determines that the risk of the loss or damage is within the scope of the risks assumed by the Government under this clause, the Government will reimburse the Contractor for the reasonable, allowable cost of the replacement or repair, plus a reasonable profit (if the work or replacement or repair was performed by the Contractor) less the deductible amount specified in paragraph (b) of this clause.

(iii) Payments by the Government to the Contractor under this clause are outside the scope of and shall not affect the pricing structure of the contract, and are additional to the compensation otherwise payable to the Contractor under this contract; or

(2) In the event the Contracting Officer decides that the loss or damage shall not be replaced or repaired, the Contracting Officer shall—

(i) Modify the contract appropriately, consistent with the reduced requirements reflected by the unreplaced or unrepaired loss or damage; or

(ii) Terminate the repair of any part or all of the vessel(s) under the Termination for Convenience of the Government clause of this agreement.

(End of clause)

252.217-7013 Guarantees.

As prescribed in 217.7104(a), use the following clause:

Guarantees (Dec. 1991)

(a) In the event any work performed or materials furnished by the contractor under the Master Agreement prove defective or deficient within 90 days from the date of redelivery of the vessel(s), the Contractor, as directed by the Contracting Officer and at its own expense, shall correct and repair the deficiency to the satisfaction of the Contracting Officer.

(b) If the Contractor or any subcontractor has a guarantee for work performed or materials furnished that exceeds the 90 day period, the Government shall be entitled to rely upon the longer guarantee until its expiration.

(c) With respect to any individual work item identified as incomplete at the time of redelivery of the vessel(s), the guarantee period shall run from the date the item is completed.

(d) If practicable, the Government shall give the Contractor an opportunity to correct the deficiency.

(1) If the Contracting Officer determines it is not practicable or is otherwise not advisable to return the vessel(s) to the Contractor, or the Contractor fails to proceed with the repairs promptly, the Contracting Officer may direct that the repairs be performed elsewhere, at the Contractor's expense.

(2) If correction and repairs are performed by other than the Contractor, the Contracting Officer may discharge the Contractor's liability by making an equitable deduction in the price of the job order.

(e) The Contractor's liability shall extend for an additional 90 day guarantee period on those defects or deficiencies that the Contractor corrected.

(f) At the option of the Contracting Officer, defects and deficiencies may be left uncorrected. In that event, the Contractor and Contracting Officer shall negotiate an equitable reduction in the job price. Failure to agree upon an equitable reduction shall constitute a dispute under the Disputes clause of this agreement.

(End of clause)

252.217-7014 Discharge of liens.

As prescribed in 217.7104(a), use the following clause:

Discharge of Liens (Dec. 1991)

(a) The Contractor shall immediately discharge, or cause to be discharged, any lien or right *in rem* of any kind, other than in favor of the Government, that exists or arises in connection with work done or material furnished under any job order under this agreement.

(b) If any lien or right *in rem* is not immediately discharged, the Government, at the expense of the Contractor, may discharge, or cause to be discharged, the lien or right.

(End of clause)

252.217-7015 Safety and health.

As prescribed in 217.7104(a), use the following clause:

Safety and Health (Dec. 1991)

Nothing contained in the Master Agreement or any job order shall relieve the Contractor of any obligations it may have to comply with—

(a) The Occupational Safety and Health Act of 1970 (29 U.S.C. 651, *et seq.*);

(b) The Safety and Health Regulations for Ship Repairing (29 CFR part 1915); or

(c) Any other applicable Federal, State, and local laws, codes, ordinances, and regulations.

(End of clause)

252.217-7016 Plant protection.

As prescribed in 217.7104(a), use the following clause:

Plant Protection (Dec. 1991)

(a) The Contractor shall provide, for the plant and work in process, reasonable safeguards against all hazards, including unauthorized entry, malicious mischief, theft, vandalism, and fire.

(b) The Contractor shall also provide whatever additional safeguards are necessary to protect the plant and work in process from espionage, sabotage, and enemy action.

(1) The Government shall reimburse the Contractor for that portion of the costs of the additional safeguards that is allocable to the contract in the same manner as if the Contracting Officer had issued a change order for the additional safeguards.

(2) The costs reimbursed shall not include any overhead allowance, unless the overhead is incident to the construction or installation of necessary security devices or equipment.

(c) Upon payment by the Government of the cost of any device or equipment required or approved under paragraph (b) of this clause, title shall vest in the Government.

(1) The Contractor shall comply with the instructions of the Contracting Officer concerning its identification and disposition.

(2) No such device or equipment shall become a fixture as a result of its being affixed to realty not owned by the Government.

(End of clause)

252.217-7017 Time of delivery.

As prescribed in 217.7203(a)(1), use the following clause:

Time of Delivery (Dec. 1991)

(a) Ordering offices shall specify delivery locations and quantities in all oral or written delivery orders under this contract.

(b) The Contractor shall complete deliveries within the hours prescribed in the schedule of this contract and on the days specified by the order.

(c) Orders requiring delivery within 24 hours from Contractor receipt are governed by paragraph (e) of the Requirements clause of this contract.

(End of clause)

Alternate I (Dec. 1991)

As prescribed in 217.7203(a)(1), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The Contractor shall not be required to deliver within less than _____ hours from the time the Contractor receives a delivery order.

252.217-7018 Change in plant location—bakery and dairy products.

As prescribed in 217.7203(a)(2), use the following clause:

Change in Plant Location—Bakery and Dairy Products (Dec. 1991)

(a) The Offeror shall identify in the clause in this solicitation entitled Place of Performance, all plants to be used for manufacturing, processing, and shipment. Failure to furnish this information with the offer may result in rejection of the offer.

(b) The Offeror shall not change any place of performance between the date set for receipt of offers and the award, except where time permits and then only after receipt of the Contracting Officer's written approval.

(c) The Contractor shall not change any place of performance after contract award without advance approval by the Contracting Officer.

(End of clause)

252.217-7019 Sanitary conditions.

As prescribed in 217.7203(a)(3), use the following clause:

Sanitary Conditions (Dec. 1991)

(a) The Contractor shall ensure that all supplies delivered under this contract, and all plant facilities, machinery, equipment, and apparatus used in the production, processing, handling, storage, or delivery of these supplies, meet the sanitary standards (including bacteriological requirements) prescribed by the specifications cited in this contract.

(b) The Government reserves the right to inspect and test at any reasonable times all plant facilities, machinery, equipment, and parts used in the production, processing, handling, storage, transportation, or delivery of supplies under this contract.

(c) The Contracting Officer or representative shall notify the Contractor in writing of any failure to meet the sanitary standards (including bacteriological requirements) prescribed by this contract. If the Contractor does not correct the failure within three days from receipt of notice, the Contracting Officer may—

(1) Terminate for default all or part of this contract; or

(2) Suspend work (wholly or partially) under the contract for ten days or any longer period considered necessary to allow correction of the failure.

(d) The suspension does not extend the life of this contract and shall not be considered sufficient reason for extending the delivery time.

(e) During the suspension period, the Government reserves the right to acquire similar supplies from other sources, on

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Alternate I (Dec. 1991)

As prescribed in 217.7203(a)(1), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The Contractor shall not be required to deliver within less than ______ hours from the time the Contractor receives a delivery order.

252.217-7018 Change in plant location—bakery and dairy products.

As prescribed in 217.7203(a)(2), use the following clause:

Change in Plant Location—Bakery and Dairy Products (Dec. 1991)

(a) The Offeror shall identify in the clause in this solicitation entitled Place of Performance, all plants to be used for manufacturing, processing, and shipment. Failure to furnish this information with the offer may result in rejection of the offer.

(b) The Offeror shall not change any place of performance between the date set for receipt of offers and the award, except where time permits and then only after receipt of the Contracting Officer's written approval.

(c) The Contractor shall not change any place of performance after contract award without advance approval by the Contracting Officer.

(End of clause)

252.217-7019 Sanitary conditions.

As prescribed in 217.7203(a)(3), use the following clause:

Sanitary Conditions (Dec. 1991)

(a) The Contractor shall ensure that all supplies delivered under this contract, and all plant facilities, machinery, equipment, and apparatus used in the production, processing, handling, storage, or delivery of these supplies, meet the sanitary standards (including bacteriological requirements) prescribed by the specifications cited in this contract.

(b) The Government reserves the right to inspect and test at any reasonable times all plant facilities, machinery, equipment, and parts used in the production, processing, handling, storage, transportation, or delivery of supplies under this contract.

(c) The Contracting Officer or representative shall notify the Contractor in writing of any failure to meet the sanitary standards (including bacteriological requirements) prescribed by this contract. If the Contractor does not correct the failure within three days from receipt of notice, the Contracting Officer may—

(1) Terminate for default all or part of this contract; or

(2) Suspend work (wholly or partially) under the contract for ten days or any longer period considered necessary to allow correction of the failure.

(d) The suspension does not extend the life of this contract and shall not be considered sufficient reason for extending the delivery time.

(e) During the suspension period, the Government reserves the right to acquire similar supplies from other sources, on

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whatever terms and in whatever manner the Contracting Officer considers appropriate. The Contractor shall be liable to the Government for any excess costs for those similar supplies.

(f) If the Contractor does not correct the failure within the suspension period, the Contracting Officer may terminate for default the unexpired portion of this contract without allowing additional time for correction, notwithstanding paragraph (a)(2) of the Default (Fixed-Price Supply and Service) clause of this contract.

(End of clause)

Alternate I (Dec. 1991)

As prescribed in 217.7203(a)(3), add the following to paragraph (d) of the basic clause: In a suspension, the quantity of supplies designated in the schedule as a minimum shall be reduced by an amount proportionate to the ratio between (1) the number of days the work is suspended; and (2) the number of days in the contract period. The quantity of supplies designated as maximum shall not be reduced.

252.217-7020 Examination and testing.

As prescribed in 217.7203(b)(1), use the following clause:

Examination and Testing (Dec. 1991)

(a) The Government reserves the right to examine and test all products to be delivered under the contract. Examination and testing of dairy products shall be in accordance with the Veterinary/Medical Wholesomeness Assurance Program for Fresh and Cultured Dairy Products and Frozen Desserts (AR 40-70; NAVSUPINST 4355.6; AFR 161-46; and MCO 10110.44).

(b) Samples. (1) The Government shall select the samples. For purposes of this clause, the Contractor agrees that a lot consists of a day's production of the type of product delivered, or intended to be delivered, under this contract.

(2) Samples selected at origin shall be furnished at the Contractor's expense, and shall be considered representative of all the products delivered to the Government from the lot sampled.

(3) Samples selected at destination shall be furnished at Government expense, and shall be considered representative of all of that type product delivered to the Government on the date sampled.

(4) When samples are selected from containers of 1/2 gallon size or smaller, the entire contents of the container shall constitute the sample. When samples are selected from containers larger than 1/2 gallon, a 1/2 pint sample shall be taken for laboratory analysis.

(c) Deficiencies in amounts. The Contractor shall reimburse the Government for deficiencies (i.e., amounts less than required in this contract) in the amount of butterfat, milk solids non-fat, or total solids of any type of product as determined by chemical analysis. The amount of the reimbursement shall be determined in accordance with the Deficiency Adjustment clause of this contract. The Government shall not reimburse the Contractor for butterfat, milk solids non-fat, and total solids content in excess of the amount required by this contract.

(d) Deficiencies in products. (1) The Contracting Officer or representative shall notify the Contractor orally (with written confirmation) or in writing when two of the last four consecutive lots tested are nonconforming for the same specification requirements. The notice shall be in effect as long as two of the last four consecutive lots tested exceed the same limit of the specification. The Government will take additional samples between 3 and 14 days after the date of the notice.

(2) The Contracting Officer may suspend work under this contract for up to ten days when three out of the last five consecutive lots tested are nonconforming for the same specification requirement, or when any deficiency causes the production of a product which is considered to be a health hazard.

(e) Suspension. (1) During the suspension period, the Government reserves the right to acquire similar supplies from other sources, on whatever terms and in whatever manner the Contracting Officer considers appropriate. The Contractor shall be liable to the Government for any excess costs for those similar supplies.

(2) The Contractor shall use the suspension period to correct the deficiencies. The Contractor shall notify the Government when corrective action is complete.

(3) The Contracting Officer shall lift the suspension only after the Government has verified the corrective action and notified the Contractor in writing.

(4) The suspension does not extend the life of this contract and shall not be considered sufficient reason for extending the delivery time.

(5) If the Contractor does not correct the failure within the suspension period, the Contracting Officer may terminate for default the unexpired portion of this contract without allowing additional time for correction, notwithstanding paragraph (a)(2) of the Default (Fixed-Price Supply and Service) clause of this contract.

(End of clause)

Alternate I (Dec. 1991)

As prescribed in 217.7203(b)(1), add the following to paragraph (d)(2) of the basic clause:

In a suspension, the quantity of supplies designated in the schedule as minimum shall be reduced by an amount proportionate to the ratio between (i) the number of days the work is suspended; and (ii) the number of days in the contract period. The quantity of supplies designated as maximum shall not be reduced.

252.217-7021 Deficiency adjustment.

As prescribed in 217.7203(b)(2), use the following clause:

Deficiency Adjustment (Dec. 1991)

(a) When the Contractor is required under the Examination and Testing clause of the contract to reimburse the Government for deficiencies in the amount of butterfat, milk solids non-fat, or total solids, reimbursement shall be determined by the following formula—

(1) *Butterfat.* Subtract the total pounds of butterfat delivered from the total pounds of butterfat required to be delivered, and multiply the remainder by the butterfat value. The butterfat value is 1.30 multiplied by the average Central States top "Wholesale Selling Price" of Grade A, 92 score butter during the monthly period for which the deficiency is computed, as reported in the Dairy Market News, published by the Department of Agriculture, Agricultural Marketing Service, Madison, Wisconsin.

(2) *Milk solids nonfat.* Subtract the total pounds of milk solids non-fat delivered from the total pounds of milk solids non-fat required to be delivered, and multiply the remainder by the milk solids non-fat value. The milk solids non-fat value is 1.45 multiplied by the average Central States top price for "Extra Grade, Non-fat Dry Milk, Spray (bags)" during the monthly period for which the deficiency is computed, as reported in the Dairy Market News.

(3) *Total solids.* Add to the total solids delivered the total amount of any shortages for butterfat and milk solids non-fat that the Contractor has already reimbursed. Subtract this amount from the total solids required to be delivered. Multiply the remainder by the milk solids non-fat value.

(b) The Government will not assess amounts totaling $25 or less during a monthly accounting period. Monthly periods begin on the first day of the contract period and on the same day of each succeeding month.

(c) The butterfat, milk solids non-fat, and total solids content of one type of product shall not be averaged with or offset against the content of another type of product, and the content of products delivered in any one monthly period will not be averaged with or offset against the content of products delivered in any other monthly period.

(d) The Contractor shall identify the tare weights of all containers on the shipping documents, and furnish a copy to the Government inspector at destination. The tare weight of dispenser containers shall include all parts of the container delivered as a unit, including lids, tubes, and seals. If different types of containers with different tares are included in a single delivery, the Contractor shall furnish the tare weight and identifying characteristics of each type of container.

(e) The Government shall inspect a representative sample of the line item. If volume and net weight shortages are found, the Government will adjust the entire quantity of the line item delivered on the day the shortage is discovered. For the purpose of determining net weight, the following weight factors apply:

Product	Weight factor
Chocolate flavored milk or drink.	8.8 pounds/gallon.
Milk whole fresh, buttermilk fluid, milk whole fresh, cultured, and milk skim fresh.	8.6 pounds/gallon.
Fresh cream (18 percent butterfat or less), half-and-half fresh, and cream sour cultured.	8.5 pounds/gallon.

Product	Weight factor
Fresh cream (more than 18 percent butterfat).	8.4 pounds/gallon.
Cottage cheese, butter, and other non-frozen products.	Weight on container.
Ice cream and frozen desserts.	Applicable commodity specification.

(f) Contractor reimbursement for deficient supplies does not prejudice the Government's right to terminate for default or to pursue any other remedy under this contract or as provided by law.

(End of clause)

252.217-7022 Code dating.

As prescribed in 217.7203(a)(4), use the following clause:

Code Dating (Dec. 1991)

(a) The Contractor may use a code to comply with the requirement stated in the schedule or specifications of this contract for showing a date on the labels of delivered items.

(b) Before using a code, the Contractor shall—

(1) Provide a written explanation to the Contracting Officer; and

(2) Obtain the Contracting Officer's approval in writing.

(c) The Contractor shall also obtain the Contracting Officer's written approval before making any changes in the code symbols, system, or explanation.

(End of clause)

252.217-7023 Marking.

As prescribed in 217.7203(a)(5), use the following clause:

Marking (Dec. 1991)

Commercial markings are acceptable, notwithstanding any specification references to MIL-STD-129.

(End of clause)

252.217-7024 Responsibility for containers and equipment.

As prescribed in 217.7203(a)(6), use the following clause:

Responsibility for Containers and Equipment (Dec. 1991)

(a) The Contractor shall—

(1) Maintain all reusable containers and equipment in a sanitary condition and in a good state of repair and working order; and

(2) Remove all empty, reusable containers from Government premises at the time of each delivery, unless the Contracting Officer grants permission in writing for less frequent removal.

(b) The Government shall not be liable for any damage to, or loss or destruction of, containers and equipment furnished by the Contractor.

(End of clause)

252.217-7025 Containers and equipment.

As prescribed in 217.7203(b)(3), use the following clause:

Containers and Equipment (Dec. 1991)

(a) The Contractor shall ensure that dispenser containers and filling equipment used in the performance of this contract, and any Contractor-furnished refrigerated bulk milk dispenser cabinets, comply with MIL-STD-175, Minimum Sanitary Standards for the Equipment and Methods for Handling of Milk and Milk Products in Bulk Milk Dispensing Operations.

(b) The Contractor shall install, service, and maintain any Contractor-furnished bulk milk dispenser cabinets to the Contracting Officer's satisfaction. The Contractor has sole responsibility for the supply, installation, maintenance, and removal of the cabinets, including labor and material costs, and for any damage to, or loss or destruction of, such cabinets.

(c) When the Contractor fails to furnish milk dispenser cabinets or milk dispenser containers as required in the schedule, or does not properly service, maintain, and repair such dispenser cabinets, so that milk cannot be dispensed as needed by the Government, the Contractor shall, for as long as such conditions exist, deliver a sufficient quantity of milk in half-pint containers to satisfy orders for milk dispenser containers. The price per gallon for milk dispenser containers shall apply.

(d) When any loss of contents of a dispenser container occurs (including loss due to contamination, spoilage, or leakage) as a result of functional failure of the dispenser cabinet or dispenser containers, the Contractor shall immediately replace the lost contents without cost to the Government, unless such functional failure was due to a general power failure at the Government installation.

(End of clause)

252.217-7026 Identification of sources of supply.

As prescribed in 217.7303, use the following provision:

Identification of Sources of Supply (Dec. 1991)

(a) The Government is required under 10 U.S.C. 2384 to obtain certain information on the actual manufacturer or sources of supplies it acquires.

(b) The apparently successful Offeror agrees to complete and submit the following table before award:

TABLE

Line items (1)	National stock No. (2)	Commercial item (Y or N) (3)	Source of supply			Actual mfg? (6)
			Company (4)	Address (4)	Part No. (5)	

(1) List each deliverable item of supply and item of technical data.
(2) If there is no national stock number, list "none."
(3) Use "Y" if the item is a commercial item sold in substantial quantities to the general public and was priced in the offer using established catalog or market price; otherwise, use "N". If "Y" is listed, the Offeror need not complete the remaining columns in the table.
(4) For items of supply, list all sources. For technical data, list the source.
(5) For items of supply, list each source's part number for the item.
(6) Use "Y" if the source of supply is the actual manufacturer; "N" if it is not; and "U" if unknown.

(End of clause)

252.217-7027 Price ceiling.

As prescribed in 217.7405, use the following clause:

Price Ceiling (Dec. 1991)

The definitive contract resulting from this undefinitized action shall not exceed (______).

(End of clause)

252.217-7028 Over and above work.

As prescribed in 217.7702, use a clause substantially as follows:

Over and Above Work (Dec. 1991)

(a) *Definitions.*

As used in this clause—

(1) *Over and above work* means work discovered during the course of performing overhaul, maintenance, and repair efforts that is—

(i) Within the general scope of the contract;

(ii) Not covered by the line item(s) for the basic work under the contract; and

(iii) Necessary in order to satisfactorily complete the contract.

(2) *Work request* means a document prepared by the Contractor which describes over and above work being proposed.

(b) The Contractor and Administrative Contracting Officer shall mutually agree to procedures for Government administration and Contractor performance of over and above work requests. If the parties cannot agree upon the procedures, the

Administrative Contracting Officer has the unilateral right to direct the over and above work procedures to be followed. These procedures shall, as a minimum, cover—

(1) The format, content, and submission of work requests by the Contractor. Work requests shall contain data on the type of discrepancy disclosed, the specific location of the discrepancy, and the estimated labor hours and material required to correct the discrepancy. Data shall be sufficient to satisfy contract requirements and obtain the authorization of the Contracting Officer to perform the proposed work;

(2) Government review, verification, and authorization of the work; and

(3) Proposal pricing, submission, negotiation, and definitization.

(c) Upon discovery of the need for over and above work, the Contractor shall prepare and furnish to the Government a work request in accordance with the agreed-to procedures.

(d) The Government shall—

(1) Promptly review the work request;

(2) Verify that the proposed work is required and not covered under the basic contract line item(s);

(3) Verify that the proposed corrective action is appropriate; and

(4) Authorize over and above work as necessary.

(e) The Contractor shall promptly submit to the Contracting Officer, a proposal for the over and above work. The Government and Contractor will then negotiate a settlement for the over and above work. Contract modifications will be executed to definitize all over and above work.

(f) Failure to agree on the price of over and above work shall be a dispute within the meaning of the Disputes clause of this contract.

(End of clause)

252.219-7000 Small disadvantaged business concern representation (DoD contracts).

As prescribed in 219.304(b), use the following provision:

Small Disadvantaged Business Concern Representation (DoD Contracts) (Dec. 1991)

(a) *Definition. Small disadvantaged business concern*, as used in this provision, means a small business concern, owned and controlled by individuals who are both socially and economically disadvantaged, as defined by the Small Business Administration at 13 CFR part 124, the majority of earnings of which directly accrue to such individuals. This term also means a small business concern owned and controlled by an economically disadvantaged Indian tribe or Native Hawaiian organization which meets the requirements of 13 CFR 124.112 or 13 CFR 124.113, respectively. In general, 13 CFR part 124 describes a small disadvantaged business concern as a small business concern—

(1) Which is at least 51 percent unconditionally owned by one or more socially and economically disadvantaged individuals; or

(2) In the case of any publicly owned business, at least 51 percent of the voting stock is unconditionally owned by one or more socially and economically disadvantaged individuals; and

(3) Whose management and daily business operations are controlled by one or more such individuals.

(b) *Representations*. Check the category in which your ownership falls—

________Subcontinent Asian (Asian-Indian) American (U.S. citizen with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, or Nepal)

________Asian-Pacific American (U.S. citizen with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, U.S. Trust Territory of the Pacific Islands (Republic of Palau), the Northern Mariana Islands, Laos, Kampuchea (Cambodia), Taiwan, Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Republic of the Marshall Islands, or the Federated States of Micronesia)

________Black American (U.S. citizen)

________Hispanic American (U.S. citizen with origins from South America, Central America, Mexico, Cuba, the Dominican Republic, Puerto Rico, Spain, or Portugal)

________Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians, including Indian tribes or Native Hawaiian organizations)

________Individual/concern, other than one of the preceding, currently certified for participation in the Minority Small Business and Capital Ownership Development Program under section 8(a) of the Small Business Act

________Other

(c) *Certifications*. Complete the following—

(1) The offeror is ____ is not ____ a small disadvantaged business concern.

(2) The Small Business Administration (SBA) has ____ has not ____ made a determination concerning the offeror's status as a small disadvantaged business concern. If the SBA has made a determination, the date of the determination was ____ and the offeror—

________Was found by SBA to be socially and economically disadvantaged and no circumstances have changed to vary that determination.

________Was found by SBA not to be socially and economically disadvantaged but circumstances which caused the determination have changed.

(d) *Notification*. Notify the Contracting Officer before contract award if your status as a small disadvantaged business concern changes.

(e) *Penalties and Remedies*. Anyone who misrepresents the status of a concern as a small disadvantaged business for the purpose of securing a contract or subcontract shall—

(1) Be punished by imposition of a fine, imprisonment, or both;

(2) Be subject to administrative remedies, including suspension and debarment; and

(3) Be ineligible for participation in programs conducted under authority of the Small Business Act.

(End of provision)

252.219-7001 Notice of partial small business set-aside with preferential consideration for small disadvantaged business concerns.

As prescribed in 219.508(d), use the following clause:

Notice of Partial Small Business Set-Aside With Preferential Consideration for Small Disadvantaged Business Concerns (Dec. 1991)

(a) *Definitions*.

Labor surplus area, as used in this clause, means a geographical area identified by the Department of Labor as an area of labor surplus.

Labor surplus area concern, as used in this clause, means a concern that, together with its first tier subcontractors, will perform substantially in labor surplus areas.

Perform substantially in labor surplus areas, as used in this clause, means that the costs incurred under the contract on account of manufacturing, production, and performance of services in labor surplus areas exceed 50 percent of the contract price.

Small business concern, as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.

Small disadvantaged business concern, as used in this clause, means a small business concern, owned and controlled by individuals who are both socially and economically disadvantaged, as defined by the Small Business Administration at 13 CFR part 124, the majority of earnings of which directly accrue to such individuals. This term also means a small business concern owned and controlled by an economically disadvantaged Indian tribe or Native Hawaiian organization which meets the requirements of 13 CFR 124.112 or 13 CFR 124.113, respectively.

(b) *General*. A portion of this requirement, identified elsewhere in this solicitation, has been set-aside for award to one or more small business concerns. After offers for the non-set-aside portion have been evaluated, negotiations will be conducted for the set-aside portion.

(1) Offers on the non-set-aside portion will be evaluated and award made in accordance with the other provisions of this solicitation.

(2) The set-aside portion will be negotiated, in accordance with this clause, with small business concerns which submitted offers on the non-set-aside portion.

(c) *Award of the set-aside portion*. (1) Small business offerors on the non-set-aside portion will be selected for negotiation of the set-aside portion based on their standing—first in terms of group and then in terms of lowest responsive offer on the non-set-aside portion.

(i) Group 1—Small disadvantaged business concerns which are also labor surplus area concerns.

(ii) Group 2—Small business concerns which are also labor surplus area concerns.

(iii) Group 3—Other small disadvantaged business concerns.

(iv) Group 4—Other small business concerns.

(2) The set-aside portion will be awarded at the highest unit price(s) in the contract(s) for the non-set-aside portion, adjusted to reflect transportation and other costs appropriate for the selected contractor(s), except—

(i) Award of the set-aside portion to a small disadvantaged business concern will be at the lower of—

(A) The price offered by the concern on the non-set-aside portion; or

(B) A price that does not exceed the award price on the non-set-aside portion by more than ten percent.

(ii) When award under the set-aside portion is to a concern offering a nonqualifying country end product and the highest unit price in the contract(s) is for a domestic or qualifying country end product, the set-aside price will be the higher of—

(A) The highest award price for a nonqualifying country end product under the nonset-aside; or

(B) A price which, when adjusted by the Buy American Act evaluation factor, would equal the highest unit price in the contract(s).

(iii) When award under the set-aside portion is to a concern offering a domestic end product and the highest unit price in the contract(s) is for a nonqualifying country end product which was evaluated using the Buy American Act evaluation factor, the set-aside price will be awarded at the evaluated price of the non-qualifying country.

(iv) When award under the set-aside portion is to a concern offering a domestic end product and the highest unit price in the contract(s) is for a nonqualifying country end product which was evaluated without the Buy American Act factor—

(A) And award was made to a domestic or qualifying country offer at a price lower than the high contract price, the set-aside price will be the highest unit price in the contract(s).

(B) And award was not made to a domestic or qualifying country offer at a price lower than the high contract price, the set-aside price will be the lower of—

(*1*) The highest unit price under the contract(s) as adjusted by the Buy American Act evaluation factor; or

(*2*) The lowest offered price for a domestic or qualifying country end product which was not awarded under the nonset-aside.

(v) Where the Trade Agreements Act applies to the nonset-aside portion, offers of eligible products will be treated as if they were qualifying country end products.

(vi) Discount terms used in evaluation of the highest non-set-aside award price will apply to the set-aside award price.

(3) If negotiations are not successful for any part of the set-aside portion, the set-aside will be dissolved for that part and the requirement will be resolicited.

(d) *Token offers.* The Government reserves the right to not consider token offers or offers designed to secure an unfair advantage over other offerors eligible for the set-aside portion.

(e) *Eligibility for preference as a labor surplus area concern.* Small business or small disadvantaged business offerors which claim preference for the set-aside portion as a labor surplus area concern, must list the labor surplus area location(s) of offeror or first tier subcontractors, which account for more than 50 percent of the contract price.

Name of Company:
Street Address:
City/County:
State:

(f) *Agreements.*

(1) If awarded a contract as a small disadvantaged business-labor surplus area concern or as a small business-labor surplus area concern, the offeror—

(i) Will perform the contract, or cause it to be performed, substantially in areas classified as labor surplus areas.

(ii) If the contract is in excess of $25,000, will submit a report to the Contracting Officer within 30 days after award that contains the following information—

(A) The dollar amount of the contract.

(B) Identification of each labor surplus area in which contract and subcontract performance is taking or will take place.

(C) The total costs incurred and to be incurred under the contract in each of the labor surplus areas by the contractor and first tier subcontractors.

(D) The total dollar amount attributable to performance in labor surplus areas.

(2) A manufacturer or regular dealer, which claims preference as a small disadvantaged business and submits an offer in its own name, agrees to furnish in performing this contract only end items manufactured or produced by small disadvantaged business concerns in the United States, its territories and possessions, the Commonwealth of Puerto Rico, the U.S. Trust Territory of the Pacific Islands, or the District of Columbia.

(End of clause)

Alternate I (Dec. 1991)

As prescribed in 219.508(d), substitute the following paragraph (f)(2) for paragraph (f)(2) of the basic clause:

(f)(2) A regular dealer, which claims preference as a small disadvantaged business and submits an offer in its own name, agrees to furnish in performing this contract only end items manufactured or produced by small business concerns in the United States, its territories and possessions, the Commonwealth of Puerto Rico, the U.S. Trust Territory of the Pacific Islands, or the District of Columbia.

252.219–7002 Notice of small disadvantaged business set-aside.

As prescribed in 219.508–70, use the following clause:

Notice of Small Disadvantaged Business Set-Aside (Dec. 1991)

(a) *Definition. Small disadvantaged business concern,* as used in this clause, means a small business concern, owned and controlled by individuals who are both socially and economically disadvantaged, as defined by the Small Business Administration at 13 CFR Part 124, the majority of earnings of which directly accrue to such individuals. This term also means a small business concern owned and controlled by an economically disadvantaged Indian tribe or Native Hawaiian organization which meets the requirements of 13 CFR 124.112 or 13 CFR 124.113, respectively.

(b) *General.* Offers are solicited only from small disadvantaged business concerns. Offers received from concerns that are not small disadvantaged businesses are nonresponsive and will be rejected.

(c) *Agreement.* A small disadvantaged business manufacturer or regular dealer, which submits an offer in its own name, agrees to furnish in performing this contract only end items manufactured or produced by small disadvantaged business concerns in the United States, its territories and possessions, the Commonwealth of Puerto Rico, the U.S. Trust Territory of the Pacific Islands, or the District of Columbia.

(End of clause)

Alternate I (Dec. 1991)

As prescribed in 219.508–70, substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) *Agreement.* A small disadvantaged business regular dealer submitting an offer in its own name agrees to furnish in performing this contract only end items manufactured or produced by small business concerns in the United States, its territories and possessions, the Commonwealth of Puerto Rico, the U.S. Trust Territory of the Pacific Islands, or the District of Columbia.

252.219–7003 Small business and small disadvantaged business subcontracting plan (DoD contracts).

As prescribed in 219.708(b)(1)(A), use the following clause:

Small Business and Small Disadvantaged Business Subcontracting Plan (DoD Contracts) (Dec. 1991)

This clause supplements the Federal Acquisition Regulation 52.219–9, Small Business and Small Disadvantaged Business Subcontracting Plan, clause of this contract.

(a) *Definitions. Historically black colleges and universities,* as used in this clause, means institutions determined by the Secretary of Education to meet the requirements of 34 CFR § 608.2.

Minority institutions, as used in this clause, means institutions meeting the requirements of paragraphs (3), (4), and (5) of section 312(b) of the Higher Education Act of 1965 (20 U.S.C. 1058). The term also means any nonprofit research institution that was an integral part of a historically black college or university before November 14, 1986.

(b) Except for company or division-wide commercial products subcontracting plans, the term *small disadvantaged business,* when used in the FAR 52.219–9 clause, includes historically black colleges and universities and minority institutions, in addition to small disadvantaged business concerns.

(c) Work under the contract or its subcontracts shall be credited toward meeting the small disadvantaged business concern goal required by paragraph (d) of the FAR 52.219–9 clause when:

(1) It is performed on Indian lands or in joint venture with an Indian tribe or a tribally-owned corporation, and

(2) It meets the requirements of section 832 of the FY 90 DoD Authorization Act, Public Law 101–189.

(d) The master plan approval referred to in paragraph (f) of the FAR 52.219–9 clause is approval by the contractor's cognizant contract administration activity.

(End of clause)

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(c) *Agreement.* A small disadvantaged business manufacturer or regular dealer, which submits an offer in its own name, agrees to furnish in performing this contract only end items manufactured or produced by small disadvantaged business concerns in the United States, its territories and possessions, the Commonwealth of Puerto Rico, the U.S. Trust Territory of the Pacific Islands, or the District of Columbia.

(End of clause)

Alternate I (Dec. 1991)

As prescribed in 219.508–70, substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) *Agreement.* A small disadvantaged business regular dealer submitting an offer in its own name agrees to furnish in performing this contract only end items manufactured or produced by small business concerns in the United States, its territories and possessions, the Commonwealth of Puerto Rico, the U.S. Trust Territory of the Pacific Islands, or the District of Columbia.

252.219–7003 Small business and small disadvantaged business subcontracting plan (DoD contracts).

As prescribed in 219.708(b)(1)(A), use the following clause:

Small Business and Small Disadvantaged Business Subcontracting Plan (DoD Contracts) (Dec. 1991)

This clause supplements the Federal Acquisition Regulation 52.219–9, Small Business and Small Disadvantaged Business Subcontracting Plan, clause of this contract.

(a) *Definitions. Historically black colleges and universities,* as used in this clause, means institutions determined by the Secretary of Education to meet the requirements of 34 CFR § 608.2.

Minority institutions, as used in this clause, means institutions meeting the requirements of paragraphs (3), (4), and (5) of section 312(b) of the Higher Education Act of 1965 (20 U.S.C. 1058). The term also means any nonprofit research institution that was an integral part of a historically black college or university before November 14, 1986.

(b) Except for company or division-wide commercial products subcontracting plans, the term *small disadvantaged business,* when used in the FAR 52.219–9 clause, includes historically black colleges and universities and minority institutions, in addition to small disadvantaged business concerns.

(c) Work under the contract or its subcontracts shall be credited toward meeting the small disadvantaged business concern goal required by paragraph (d) of the FAR 52.219–9 clause when:

(1) It is performed on Indian lands or in joint venture with an Indian tribe or a tribally-owned corporation, and

(2) It meets the requirements of section 832 of the FY 90 DoD Authorization Act, Public Law 101–189.

(d) The master plan approval referred to in paragraph (f) of the FAR 52.219–9 clause is approval by the contractor's cognizant contract administration activity.

(End of clause)

252.219–7004 Small business and small disadvantaged business subcontracting plan (test program).

As prescribed in 219.708(b)(1)(B), use the following clause:

Small Business and Small Disadvantaged Business Subcontracting Plan (Test Program) (Dec. 1991)

(a) *Definition. Subcontract,* as used in this clause, means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(b) The Offeror's comprehensive small business subcontracting plan and its successors, which are authorized by and approved under the test program of section 834 of Public Law 101–189, shall be included in and made a part of the resultant contract. Upon expulsion from the test program or expiration of the test program, the Contractor shall negotiate an individual subcontracting plan for all future contracts that meet the requirements of section 211 of Public Law 95–507.

(c) The Contractor shall submit Standard Form 295, Summary Subcontract Report, in accordance with the instructions on the form, except (1) Items 17 and 18 shall not be completed; (2) Item 16, Remarks, shall be completed to include small business and small disadvantaged business goals, actual accomplishments, and percentages and small business and small disadvantaged business goals, actual accomplishments, and percentages for each of the two designated industry categories.

(d) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns," or (2) an approved plan required by this clause, shall be a material breach of the contract.

(End of clause)

252.219–7005 Incentive for subcontracting with small businesses, small disadvantaged businesses, historically black colleges and universities, and minority institutions.

As prescribed in 219.708(c)(1), use the following clause:

Incentive for Subcontracting With Small Businesses, Small Disadvantaged Businesses, Historically Black Colleges and Universities, and Minority Institutions (Dec. 1991)

(a) If the Contractor exceeds the small disadvantaged business, historically black college and university, minority institution goal of its subcontracting plan, at completion of contract performance, the Contractor will receive (Insert appropriate number between 1 and 10) percent of the excess.

(b) The Contractor will not receive this incentive if the Contracting Officer determines that exceeding the goal was not due to the Contractor's efforts (e.g., a subcontractor cost overrun or award of subcontracts planned but not disclosed in the subcontracting plan). Determinations made under this paragraph are not subject to the Disputes clause.

(c) If this is a cost contract, the limitations in FAR Subpart 15.9 may not be exceeded.

(d) This clause does not apply if the subcontracting plan is a plant, division, or company-wide commercial products plan.

(End of clause)

Alternate I (Dec. 1991)

As prescribed in 219.708(c)(1), add the following paragraph (b) to the basic clause and renumber the existing paragraphs (b), (c), and (d) as (c), (d), and (e).

(b) If the Contractor exceeds the small business goal of its subcontracting plan, at completion of contract performance, the Contractor will receive (Insert appropriate number between 1 and 10) percent of the excess.

252.219–7006 Notice of evaluation preference for small disadvantaged business concerns.

As prescribed in 219.7003, use the following clause:

Notice of Evaluation Preference for Small Disadvantaged Business Concerns (Dec. 1991)

(a) *Definitions. Historically black colleges and universities,* as used in this clause, means institutions determined by the Secretary of Education to meet the requirements of 34 CFR 608.2.

Minority institutions, as used in this clause, means institutions meeting the requirements of paragraphs (3), (4), and (5) of section 312(b) of the Higher Education Act of 1965 (20 U.S.C. 1058). The term also means any nonprofit research institution that was an integral part of a historically black college or university before November 14, 1986.

Small disadvantaged business concern, as used in this clause, means a small business concern, owned and controlled by individuals who are both socially and economically disadvantaged, as defined by the Small Business Administration at 13 CFR part 124, the majority of earnings of which directly accrue to such individuals: This term also means a small business concern owned and controlled by an economically disadvantaged Indian tribe or Native Hawaiian organization which meets the requirements of 13 CFR 124.112 or 13 CFR 124.113, respectively.

(b) *Evaluation preference.* (1) Offers will be evaluated by adding a factor of ten percent to the price of all offers, except—

(i) Offers from small disadvantaged business concerns, which have not waived the preference;

(ii) Offers from historically black colleges and universities or minority institutions, which have not waived the preference;

(iii) Otherwise successful offers of—

(A) Eligible products under the Trade Agreements Act when the dollar threshold for application of the Act is exceeded;

(B) Qualifying country end products (as defined in the Defense Federal Acquisition Regulation Supplement clause at 252.225–7001, Buy American Act and Balance of Payments Program); and

(iv) Offers where application of the factor would be inconsistent with a Memorandum of Understanding or other international agreement with a foreign government.

(2) The ten percent factor will be applied on a line item by line item basis or to any group of items on which award may be made. Other evaluation factors described in the solicitation will be applied before application of the ten percent factor. The ten percent factor will not be applied if using the preference would cause the contract award to be made at a price which exceeds the fair market price by more than ten percent.

(c) *Waiver of evaluation preference.* A small disadvantaged business, historically black college or university, or minority institution offeror may elect to waive the preference, in which case the ten percent factor will be added to its offer for evaluation purposes. The agreements in paragraph (d) do not apply to offers which waive the preference.

______ Offeror elects to waive the preference

(d) *Agreements.* (1) A small disadvantaged business concern, historically black college or university, or minority institution offeror, which did not waive the preference, agrees that in performance of the contract, in the case of a contract for—

(i) Services, except construction, at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern.

(ii) Supplies, at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern.

(iii) General construction, at least 15 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern.

(iv) Construction by special trade contractors, at least 25 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern.

(2) A small disadvantaged business, historically black college or university, or minority institution regular dealer submitting an offer in its own name agrees to furnish in performing this contract only end items manufactured or produced by small disadvantaged business concerns, historically black colleges or universities, or minority institutions in the United States, its territories and possessions, the Commonwealth of Puerto Rico, the U.S. Trust Territory of the Pacific Islands, or the District of Columbia.

(3) Upon request, a historically black college or university or minority institution offeror will provide the Contracting Officer evidence that it has been determined to be an HBCU or MI by the Secretary of Education.

(End of clause)

Alternate I (Dec. 1991)

As prescribed in 219.7003, substitute the following paragraph (d)(2) for paragraph (d)(2) of the basic clause:

(d)(2) A small disadvantaged business, historically black college or university, or minority institution regular dealer submitting an offer in its own name agrees to furnish in performing this contract only end items manufactured or produced by small business concerns, historically black colleges or universities, or minority institutions in the United States, its territories and possessions, the Commonwealth of Puerto Rico, the U.S. Trust Territory of the Pacific Islands, or the District of Columbia.

252.222-7000 Restrictions on employment of personnel.

As prescribed in 222.7003, use the following clause:

Restrictions on Employment of Personnel (Dec. 1991)

(a) The Contractor shall employ, for the purposes of performing that portion of the contract work in the State of (insert appropriate State), individuals who are residents of the State, and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills to perform the contract.

(b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in each subcontract.

(End of clause)

252.223-7000 Hazardous material identification and material safety data.

As prescribed in 223.303, use the following clause:

Hazardous Material Identification and Material Safety Data (Dec. 1991)

(a) *Hazardous material,* as used in this clause, means—

(1) All items contained in or ordinarily cataloged under the Federal supply classes listed in table I of appendix A of the latest version of Federal Standard No. 313 (including revisions adopted during the term of this contract);

(2) Items identified as having hazardous characteristics in the Federal supply classes listed in table II of appendix A of the latest version of Federal Standard No. 313 (including revisions adopted during the term of this contract); and,

(3) Any other items to be delivered under this contract which will contain hazardous materials or expose Government personnel to those materials.

(b) The Offeror agrees that, if it is the apparently successful offeror as a result of this solicitation, it will submit before award a material safety data sheet (MSDS) meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313 for all hazardous materials which it proposes to supply under the contract.

(c) If none of the items the Offeror proposes to supply under the contract are hazardous materials, the offeror must complete the following certification:

________ The Offeror certifies that the material to be delivered under the contract is not a hazardous material as defined in paragraph (a) of this clause.

(d) Failure either to certify the items as not hazardous or to furnish the required MSDSs prior to award will result in the Offeror's being considered nonresponsible and ineligible for award.

(e) The Contractor agrees to notify the Contracting Officer promptly and to submit correct data on a new MSDS if—

(1) The composition of the items to be supplied under the contract changes after award of the contract and renders either the hazardous material data furnished in accordance with paragraph (b) of this clause or the certification furnished in accordance with paragraph (c) incomplete or inaccurate; or

(2) A revision to Federal Standard No. 313 after award of the contract renders either the hazardous material data furnished in accordance with paragraph (b) of this clause or the certification furnished in accordance with paragraph (c) incomplete or inaccurate.

(f) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.

(g) Nothing in this clause shall relieve the Contractor from complying with applicable Federal, State, or local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

(h) Notwithstanding any other clause in this contract, the Government's rights in data furnished under this contract on the MSDSs with respect to hazardous material are—

(1) To use, duplicate, and disclose any data to which this clause applies for the purposes of—

(i) Notifying personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;

(ii) Obtaining effective medical treatment for those affected by the material; and

(iii) Enabling others to use, duplicate, and disclose the data for these purposes on behalf of the Government.

(2) To ensure that the Government is not precluded from using similar or identical data acquired from other sources.

(End of clause)

252.223-7001 Hazard warning labels.

As prescribed in 223.303, use the following clause:

Hazard Warning Labels (Dec. 1991)

(a) "Hazardous material," as used in this clause, is defined in the Hazardous Material Identification and Material Safety Data clause of this contract.

(b) The Contractor shall label the item package (unit container) of any hazardous material to be delivered under this contract in accordance with the Hazard Communication Standard (29 CFR 1910.1200 *et seq*). The Standard requires that the hazard warning label conform to the requirements of the standard unless the material is otherwise subject to the labelling requirements of one of the following statutes:

(1) Federal Insecticide, Fungicide and Rodenticide Act;

(2) Federal Food, Drug and Cosmetics Act;

(3) Consumer Product Safety Act;

(4) Federal Hazardous Substances Act; or

(5) Federal Alcohol Administration Act.

(c) The Offeror shall list which hazardous material listed in the Hazardous Material Identification and Material Safety Data clause of this contract will be labelled in accordance with one of the Acts in paragraphs (b) (1) through (5) of this clause instead of the Hazard Communication Standard. Any hazardous material not listed will be interpreted to mean that a label is required in accordance with the Hazard Communication Standard.

Material (if none, insert "none.")	Act
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(d) The apparently successful Offeror agrees to submit, before award, a copy of the hazard warning label for all hazardous materials not listed in paragraph (c) of this clause. The Offeror shall submit the label with the Material Safety Data Sheet being furnished under the Hazardous Material Identification and Material Safety Data clause of this contract.

(e) The Contractor shall also comply with MIL–STD–129, Marking for Shipment and Storage (including revisions adopted during the term of this contract).

(End of clause)

252.223-7002 Safety precautions for ammunition and explosives.

As prescribed in 223.370–5, use the following clause:

Safety Precautions for Ammunition and Explosives (Dec. 1991)

(a) *Definition. "Ammunition and explosives,"* as used in this clause—

(1) Means liquid and solid propellants and explosives, pyrotechnics, incendiaries and smokes in the following forms:

(i) Bulk,

(ii) Ammunition;

(iii) Rockets;

(iv) Missiles;

(v) Warheads;

(vi) Devices; and

(vii) Components of (i) through (vi), except for wholly inert items.

(2) This definition does not include the following, unless the Contractor is using or incorporating these materials for initiation, propulsion, or detonation as an integral or component part of an explosive, an ammunition or explosive end item, or of a weapon system—

(i) Inert components containing no explosives, propellants, or pyrotechnics;

(ii) Flammable liquids;

(iii) Acids;

(iv) Powdered metals; or

(v) Other materials having fire or explosive characteristics.

(b) *Safety requirements.* (1) The Contractor shall comply with the requirements of the DoD Contractors' Safety Manual for Ammunition and Explosives, DoD 4145.26–M hereafter referred to as "the manual", in effect on the date of this contract. The Contractor shall also comply with any other additional requirements included in the schedule of this contract.

(2) The Contractor shall allow the Government access to the Contractor's facilities, personnel, and safety program documentation. The Contractor shall allow

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Material (if none, insert "none.")	Act
______	______
______	______

(d) The apparently successful Offeror agrees to submit, before award, a copy of the hazard warning label for all hazardous materials not listed in paragraph (c) of this clause. The Offeror shall submit the label with the Material Safety Data Sheet being furnished under the Hazardous Material Identification and Material Safety Data clause of this contract.

(e) The Contractor shall also comply with MIL–STD–129, Marking for Shipment and Storage (including revisions adopted during the term of this contract).

(End of clause)

252.223–7002 Safety precautions for ammunition and explosives.

As prescribed in 223.370–5, use the following clause:

Safety Precautions for Ammunition and Explosives (Dec. 1991)

(a) *Definition. "Ammunition and explosives,"* as used in this clause—

(1) Means liquid and solid propellants and explosives, pyrotechnics, incendiaries and smokes in the following forms:

(i) Bulk,

(ii) Ammunition;

(iii) Rockets;

(iv) Missiles;

(v) Warheads;

(vi) Devices; and

(vii) Components of (i) through (vi), except for wholly inert items.

(2) This definition does not include the following, unless the Contractor is using or incorporating these materials for initiation, propulsion, or detonation as an integral or component part of an explosive, an ammunition or explosive end item, or of a weapon system—

(i) Inert components containing no explosives, propellants, or pyrotechnics;

(ii) Flammable liquids;

(iii) Acids;

(iv) Powdered metals; or

(v) Other materials having fire or explosive characteristics.

(b) *Safety requirements.* (1) The Contractor shall comply with the requirements of the DoD Contractors' Safety Manual for Ammunition and Explosives, DoD 4145.26–M hereafter referred to as "the manual", in effect on the date of this contract. The Contractor shall also comply with any other additional requirements included in the schedule of this contract.

(2) The Contractor shall allow the Government access to the Contractor's facilities, personnel, and safety program documentation. The Contractor shall allow

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authorized Government representatives to evaluate safety programs, implementation, and facilities.

(c) *Noncompliance with the manual.* (1) If the Contracting Officer notifies the Contractor of any noncompliance with the manual or schedule provisions, the Contractor shall take immediate steps to correct the noncompliance. The Contractor is not entitled to reimbursement of costs incurred to correct noncompliances unless such reimbursement is specified elsewhere in the contract.

(2) The Contractor has 30 days from the date of notification by the Contracting Officer to correct the noncompliance and inform the Contracting Officer of the actions taken. The Contracting Officer may direct a different time period for the correction of noncompliances.

(3) If the Contractor refuses or fails to correct noncompliances within the time period specified by the Contracting Officer, the Government has the right to direct the Contractor to cease performance on all or part of this contract. The Contractor shall not resume performance until the Contracting Officer is satisfied that the corrective action was effective and the Contracting Officer so informs the Contractor.

(4) The Contracting Officer may remove Government personnel at any time the Contractor is in noncompliance with any safety requirement of this clause.

(5) If the direction to cease work or the removal of Government personnel results in increased costs to the Contractor, the Contractor shall not be entitled to an adjustment in the contract price or a change in the delivery or performance schedule unless the Contracting Officer later determines that the Contractor had in fact complied with the manual or schedule provisions. If the Contractor is entitled to an equitable adjustment, it shall be made in accordance with the Changes clause of this contract.

(d) *Mishaps.* If a mishap involving ammunition or explosives occurs, the Contractor shall—

(1) Notify the Contracting Officer immediately;

(2) Conduct an investigation in accordance with other provisions of this contract or as required by the Contracting Officer; and

(3) Submit a written report to the Contracting Officer.

(e) *Contractor responsibility for safety.* (1) Nothing in this clause, nor any Government action or failure to act in surveillance of this contract, shall relieve the Contractor of its responsibility for the safety of—

(i) The Contractor's personnel and property;

(ii) The Government's personnel and property; or

(iii) The general public.

(2) Nothing in this clause shall relieve the Contractor of its responsibility for complying with applicable Federal, State, and local laws, ordinances, codes, and regulations (including those requiring the obtaining of licenses and permits) in connection with the performance of this contract.

(f) *Contractor responsibility for contract performance.* (1) Neither the number or frequency of inspections performed by the Government, nor the degree of surveillance exercised by the Government, relieve the Contractor of its responsibility for contract performance.

(2) If the Government acts or fails to act in surveillance or enforcement of the safety requirements of this contract, this does not impose or add to any liability of the Government.

(g) *Subcontractors.* (1) The Contractor shall insert this clause, including this paragraph (g), in every subcontract that involves ammunition or explosives.

(i) The clause shall include a provision allowing authorized Government safety representatives to evaluate subcontractor safety programs, implementation, and facilities as the Government determines necessary.

(ii) **Note:** The Government Contracting Officer or authorized representative shall notify the prime Contractor of all findings concerning subcontractor safety and compliance with the manual. The Contracting Officer or authorized representative may furnish copies to the subcontractor. The Contractor in turn shall communicate directly with the subcontractor, substituting its name for references to "the Government". The Contractor and higher tier subcontractors shall also include provisions to allow direction to cease performance of the subcontract if a serious uncorrected or recurring safety deficiency potentially causes an imminent hazard to DoD personnel, property, or contract performance.

(2) The Contractor agrees to ensure that the subcontractor complies with all contract safety requirements. The Contractor will determine the best method for verifying the adequacy of the subcontractor's compliance.

(3) The Contractor shall ensure that the subcontractor understands and agrees to the Government's right to access to the subcontractor's facilities, personnel, and safety program documentation to perform safety surveys. The Government performs these safety surveys of subcontractor facilities solely to prevent the occurrence of any mishap which would endanger the safety of DoD personnel or otherwise adversely impact upon the Government's contractual interests.

(4) The Contractor shall notify the Contracting Officer or authorized representative before issuing any subcontract when it involves ammunition or explosives. If the proposed subcontract represents a change in the place of performance, the Contractor shall request approval for such change in accordance with the clause of this contract entitled "Change in Place of Performance—Ammunition and Explosives".

(End of clause)

252.223–7003 Change in place of performance—ammunition and explosives.

As prescribed in 223.370–5, use the following clause:

Change in Place of Performance—Ammunition and Explosives (Dec. 1991)

(a) The Offeror shall identify, in the "Place of Performance" provision of this solicitation, the place of performance of all ammunition and explosives work covered by the Safety Precautions for Ammunition and Explosives clause of this solicitation. Failure to furnish this information with the offer may result in rejection of the offer.

(b) The Offeror agrees not to change the place of performance of any portion of the offer covered by the Safety Precautions for Ammunition and Explosives clause contained in this solicitation after the date set for receipt of offers without the written approval of the Contracting Officer. The Contracting Officer shall grant approval only if there is enough time for the Government to perform the necessary safety reviews on the new proposed place of performance.

(c) If a contract results from this offer, the Contractor agrees not to change any place of performance previously cited without the advance written approval of the Contracting Officer.

(End of clause)

252.223–7004 Notice of radioactive materials.

As prescribed in 223.371–3, use the following clause and insert the number of days in paragraph (a).

Notice of Radioactive Materials (Dec. 1991)

(a) *Contractor notification.* The Contractor shall notify the Contracting Officer in writing (______) days before the delivery of items containing—

(1) Radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in title 10 CFR, in effect on the date of this contract; or

(2) Other radioactive material not requiring specific licensing, but in which—

(i) The specific activity is greater than 0.002 microcurie(s) per gram; or

(ii) The activity per item equals or exceeds 0.01 microcuries.

(b) *Content of the Notice.* The Contractor's notice shall specify—

(1) The part or parts of the item(s) which contain radioactive materials;

(2) A description of the materials;

(3) The name and activity of the isotope;

(4) The manufacturer of the materials; and

(5) Any other information known to the Contractor which will put users of the items on notice of the hazards involved.

(c) *Waiver of Notice.* The Contractor may request the Contracting Officer to waive the notice requirement in paragraph (a) of this clause if there has been no change affecting the quantity of activity or the characteristics and composition of the radioactive material from previous deliveries under this contract or prior contracts. The request shall—

(1) Be submitted in writing;

(2) Contain a certification that the quantity of activity, characteristics, and composition of the radioactive material have not changed;

(3) Cite the contract number on which the Contractor submitted the prior notification; and

(4) Cite the contracting office to which the Contractor submitted the prior notification.

(d) The Contractor agrees to insert this clause, including this paragraph (d), in all subcontracts for items containing radioactive material meeting the criteria in paragraph (a) of this clause.

(End of clause)

252.223-7005 Drug-Free work force.

As prescribed in 223.570-4, use the following clause:

Drug-Free Work Force (Sep. 1988)

(a) Definitions. (1) *Employee in a sensitive position*, as used in this clause, means an employe who has been granted access to classified information; or employees in other positions that the Contractor determines involve national security, health or safety, or functions other than the foregoing requiring a high degree of trust and confidence.

(2) *Illegal drugs*, as used in this clause, means controlled substances included in schedules I and II, as defined by section 802(6) of title 21 of the United States Code, the possession of which is unlawful under chapter 13 of that title. The term *illegal drugs* does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

(b) The Contractor agrees to institute and maintain a program for achieving the objective of a drug-free work force. While this clause defines criteria for such a program, contractors are encouraged to implement alternative approaches comparable to the criteria in paragraph (c) that are designed to achieve the objectives of this clause.

(c) Contractor programs shall include the following, or appropriate alternatives:

(1) Employee assistance programs emphasizing high level direction, education, counseling, rehabilitation, and coordination with available community resources;

(2) Supervisory training to assist in identifying and addressing illegal drug use by Contractor employees;

(3) Provision for self-referrals as well as supervisory referrals to treatment with maximum respect for individual confidentiality consistent with safety and security issues;

(4) Provision for identifying illegal drug users, including testing on a controlled and carefully monitored basis. Employee drug testing programs shall be established taking account of the following:

(i) The Contractor shall establish a program that provides for testing for the use of illegal drugs by employees in sensitive positions. The extent of and criteria for such testing shall be determined by the Contractor based on considerations that include the nature of the work being performed under the contract, the employee's duties, the efficient use of Contractor resources, and the risks to health, safety, or national security that could result from the failure of an employee adequately to discharge his or her position.

(ii) In addition, the Contractor may establish a program for employee drug testing—

(A) When there is a reasonable suspicion that an employee uses illegal drugs; or

(B) When an employee has been involved in an accident or unsafe practice;

(C) As part of or as a follow-up to counseling or rehabilitation for illegal drug use;

(D) As part of a voluntary employee drug testing program.

(iii) The Contractor may establish a program to test applicants for employment for illegal drug use.

(iv) For the purpose of administering this clause, testing for illegal drugs may be limited to those substances for which testing is prescribed by section 2.1 of subpart B of the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" (53 FR 11980 (April 11, 1988)), issued by the Department of Health and Human Services.

(d) Contractors shall adopt appropriate personnel procedures to deal with employees who are found to be using drugs illegally. Contractors shall not allow any employee to remain on duty or perform in a sensitive position who is found to use illegal drugs until such time as the Contractor, in accordance with procedures established by the Contractor, determines that the employee may perform in such a position.

(e) The provisions of this clause pertaining to drug testing programs shall not apply to the extent they are inconsistent with State or local law, or with an existing collective bargaining agreement; provided that with respect to the latter, the Contractor agrees that those issues that are in conflict will be a subject of negotiation at the next collective bargaining session.

(End of clause)

252.225-7000 Buy American Act—balance of payments program certificate.

As prescribed in 225.109(a), use the following provision:

Buy American Act—Balance of Payments Program Certificate (Dec. 1991)

(a) *Definitions. Domestic end product, qualifying country, qualifying country end product*, and *qualifying country end product* have the meanings given in the Buy American Act and Balance of Payments Program clause of this solicitation.

(b) *Evaluation.* Offers will be evaluated by giving preference to domestic end products and qualifying country end products over nonqualifying country end products.

(c) *Certifications.* (1) The Offeror certifies that—

(i) Each end product, except those listed in paragraphs (c) (2) or (3) of this clause, is a domestic end product; and

(ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The Offeror certifies that the following end products are qualifying country end products:

QUALIFYING COUNTRY END PRODUCTS

Line item No.	Country of origin
———	———

(List only qualifying country end products.)

(3) The Offeror certifies that the following end products are nonqualifying country end products:

NONQUALIFYING COUNTRY END PRODUCTS

Line item No.	Country of origin (If known)
———	———

(End of provision)

252.225-7001 Buy American Act and balance of payments program.

As prescribed in 225.109(d), use the following clause:

Buy American Act and Balance of Payments Program (Dec. 1991)

(a) *Definitions.* (1) *Components* means those articles, materials, and supplies directly incorporated into end products.

(2) *Qualifying country* means any country set forth in subsection 225.872-1 of the Defense FAR Supplement.

(3) *Qualifying country component* means an item mined, produced, or manufactured in a qualifying country.

(4) *End product* means those articles, materials, and supplies to be acquired for public use under the contract. For this contract, the end products are the line items to be delivered to the Government (including supplies to be acquired by the Government for public use in connection with service contracts, but excluding installation and other services to be performed after delivery).

(5) *Domestic end product* means—

(i) An unmanufactured end product which has been mined or produced in the United States; or

(ii) An end product manufactured in the United States if the cost of its qualifying country components and its components which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate may be issued). Consider a component to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind—

(A) Determined to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality; or

(B) Which the Secretary concerned determines would be inconsistent with the public interest to apply the restrictions of the Buy American Act.

(6) *Nonqualifying country end product* means an end product which is neither a domestic end product nor a qualifying country end product.

(7) *Qualifying country end product* means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if the cost of the components mined, produced, or manufactured in the qualifying country and its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components.

(b) This clause implements the Buy American Act (41 U.S.C. 10a–d) in a manner that will encourage a favorable international balance of payments by providing a preference to domestic end products over other end products, except for end products which are qualifying country end products.

(c) The Contractor agrees that it will deliver only domestic end products unless, in its offer, it specified delivery of other end products in the Buy American Act and Balance of Payments Certificate or the Buy American Act-Trade Agreements Act-Balance of Payments Program Certificate. An offer certifying that a qualifying country end product will be supplied requires the Contractor to deliver a qualifying country end product or a domestic end product.

(d) The offered price of nonqualifying country end products must include all applicable duty. Generally, when the Buy American Act is applicable, each nonqualifying country offer is adjusted for the purpose of evaluation by adding 50 percent of the offer, inclusive of duty.

(End of clause)

252.225-7002 Qualifying country sources as subcontractors.

As prescribed in 225.109–70(a), use the following clause:

Qualifying Country Sources as Subcontractors (Dec. 1991)

Subject to the restrictions in section 225.872 of the Defense FAR Supplement, the Contractor shall not preclude qualifying country sources and U.S. sources from competing for subcontracts under this contract.

(End of clause)

252.225-7003 Information for duty-free entry evaluation.

As prescribed in 225.109–70(b), use the following provision:

Information for Duty-Free Entry Evaluation (Dec. 1991)

(a) Is the offer based on furnishing any supplies (i.e., end items, components, or material) of foreign origin other than those for which duty-free entry is to be accorded pursuant to the Duty-Free Entry—Qualifying Country End Products and Supplies clause of this solicitation?

Yes ( )
No ( )

(b) If the answer in paragraph (a) is yes, answer the following questions:

(1) Are such foreign supplies now in the United States?

Yes ( )
No ( )

(2) Has the duty on such foreign supplies been paid?

Yes ( )
No ( )

(3) If the answer to paragraph (b)(2) is no, what amount is included in the offer to cover such duty? $______

(c) If the duty has not been paid, the Government may elect to make award on a duty-free basis. If so, the offered price will be reduced in the contract award by the amount specified in paragraph (b)(3). The Offeror agrees to identify, at the request of the Contracting Officer, the foreign supplies which are subject to duty-free entry.

(d) Offers will be evaluated on a duty included basis except to the extent that—

(1) The supplies are qualifying country end products as defined in either the Buy American Act and Balance of Payments Program or in the Buy American Act, Trade Agreements Act, and Balance of Payments Program clause of this solicitation; or

(2) The duty-free price is specified for use in the evaluation procedure.

(End of provision)

252.225-7004 Nondomestic construction materials.

As prescribed in 225.205–70, use the following clause:

Nondomestic Construction Materials (Dec. 1991)

The requirements of the Buy American Act clause of this contract do not apply to the following items:

______

______

(End of clause)

252.225-7005 Identification of expenditures in the United States.

As prescribed in 225.305–70, use the following clause:

Identification of Expenditures in the United States (Dec. 1991)

(a) On each invoice, voucher, or other request for payment under this contract, the Contractor shall identify that part of the requested payment which represents estimated expenditures in the United States. The identification—

(1) May be expressed either as dollar amounts or as percentages of the total amount of the request for payment.

(2) Should be based on reasonable estimates.

(3) Shall consist of stating the full amount of the payment requested, subdivided into the following categories:

(i) U.S. products—expenditures for material and equipment manufactured or produced in the United States, excluding transportation;

(ii) U.S. services—expenditures for services performed in the United States, including charges for overhead, other indirect costs, and profit;

(iii) Transportation on U.S. carriers—expenditures for transportation furnished by U.S. flag, ocean, surface, and air carriers; and

(iv) Expenditures not identified under paragraphs (a) (1), (2), and (3).

(b) If this contract is principally for supplies or if the Contractor is not an incorporated concern incorporated in the United States, or an unincorporated concern having its principal place of business in the United States, the amounts identified under paragraphs (a)(3) (i), (ii), and (iii) will be limited to payments made pursuant to the requirements either of the United States Products and Services clause, if any, or of any other specific provision of this contract that obligates the Contractor to acquire certain materials, equipment, transportation, or services from U.S. sources.

(c) Nothing in this clause requires the establishment or maintenance of detailed accounting records or gives the U.S. Government any right to audit the Contractor's books or records.

(End of clause)

252.225-7006 Buy American Act—Trade Agreements Act—balance of payments program certificate.

As prescribed in 225.407(a)(1), use the following provision:

Buy American Act—Trade Agreements Act—Balance of Payments Program Certificate (Dec. 1991)

(a) *Definitions. Caribbean Basin country end product, designated country end product, domestic end product, nondesignated country end product, qualifying country end product,* and *U.S. made end product* have the meanings given in the Trade Agreements Act or Buy American Act and Balance of Payments Program clauses of this solicitation.

(b) *Evaluation.* Offers will be evaluated by giving preference to U.S. made end products, qualifying country end products, designated country end products, and Caribbean Basin country end products over other end products.

(c) *Certifications.* (1) The Offeror certifies that—

(i) Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product (as defined in the Trade Agreements Act clause of this solicitation); and

(ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The Offeror must identify and certify all end products that are not domestic end products.

(i) The Offeror certifies that the following supplies qualify as *U.S. made end products* but do not meet the definition of *domestic end product:*

______

(insert line item number)

(ii) The Offeror certifies that the following supplies are qualifying country end products:

______

(insert line item number)

______

(insert country of origin)

(iii) The Offeror certifies that the following supplies qualify as designated country end products:

______

(insert line item number)

______

(insert country of origin)

(iv) The Offeror certifies that the following supplies qualify as Caribbean Basin country end products:

______

(insert line item number)

____

(insert country of origin)

(v) The Offeror certifies that the following supplies are other nondesignated country end products.

____

(insert line item number)

____

(insert country of origin)

(End of provision)

252.225–7007 Trade Agreements Act.

As prescribed in 225.407(a)(2), use the following clause:

Trade Agreements Act (Dec. 1991)

(a) *Definitions.*

(1) *Caribbean Basin country end product*—

(i) Means an article that—

(A) Is wholly the growth, product, or manufacture of a Caribbean Basin country (as defined in section 25.401 of the FAR); or

(B) Has, in the case of an article which consists in whole or in part of materials from another country or instrumentality, been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself. It does not include service contracts as such.

(ii) Excludes products that are excluded from the duty-free treatment for Caribbean countries under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)). These exclusions presently consist of—

(A) Textiles and apparel articles that are subject to textile agreements;

(B) Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel not designated as eligible articles for the purpose of the Generalized System of Preferences under title V of the Trade Act of 1974;

(C) Tuna, prepared or preserved in any manner in airtight containers;

(D) Petroleum, or any product derived from petroleum; and

(E) Watches and watch parts (including cases, bracelets, and straps), of whatever type including, but not limited to mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material which is the product of any country to which TSUS column 2 rates of duty apply.

(2) *Components, domestic end product, end product, nonqualifying country, qualifying country,* and *qualifying country end product* have the meanings given in the Buy American Act and Balance of Payments Program clause of this contract.

(3) *Designated country* means a country or instrumentality designated under the Trade Agreements Act of 1979 and listed in section 25.401 of the Federal Acquisition Regulation (FAR).

(4) *Designated country end product* means an article that—

(i) Is wholly the growth, product, or manufacture of the designated country; or

(ii) Has, in the case of an article which consists in whole or in part of materials from another country or instrumentality, been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself. It does not include service contracts as such.

(5) *Nondesignated country end product* means any end product which is not a U.S. made end product or a designated country end product.

(6) *United States* means the United States, its possessions, Puerto Rico, and any other place subject to its jurisdiction, but does not include leased bases or trust territories.

(7) *U.S. made end product* means an article which is—

(i) Wholly the growth, product or manufacture of the United States, or

(ii) In the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and distinct article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

(b) This clause implements the Trade Agreements Act of 1979 (19 U.S.C. 2501 *et seq.*), and the Caribbean Basin Initiative as provided for in Executive Order 12260 by providing a preference for U.S. made end products and designated country end products over nondesignated country end products, except nondesignated country end products which are qualifying country end products or Caribbean Basin end products.

(c) The Contractor agrees to deliver under this contract only U.S. made end products unless, in its offer, it specified delivery of qualifying country, designated country, or nondesignated country end products in the Buy American Act-Trade Agreements Act-Balance of Payments Program Certificate provision.

(1) Offerors may not supply a nondesignated country end product unless it is a qualifying country end product or a Caribbean Basin country end product, or a national interest waiver has been granted under section 302 of the Trade Agreements Act of 1979 (see FAR 25.402(c)).

(2) An offer certifying that a qualifying country end product, a designated country end product, or a Caribbean Basin country end product will be supplied requires the Contractor to supply a qualifying country end product, a designated country end product, or a Caribbean Basin country end product, whichever is certified, or, at the Contractor's option, a U.S. made end product.

(d) The offered price of end products listed and certified under paragraphs (c)(2) (i) and (v) of the Buy American Act-Trade Agreements Act-Balance of Payments Program Certificate provision of the solicitation must include all applicable duty. The offered price of qualifying country end products, designated country end products, and Caribbean Basin country end products for line items subject to the Trade Agreements Act, should not include custom fees or duty.

(End of clause)

252.225–7008 Supplies to be accorded duty-free entry.

As prescribed in 225.605–70(a), use the following clause:

Supplies To Be Accorded Duty-Free Entry (Dec. 1991)

In accordance with paragraph (a) of the Duty-Free Entry clause and/or paragraph (b) of the Duty-Free Entry—Qualifying Country End Products and Supplies clause of this contract, the following supplies are accorded duty-free entry:

____

____

____

(End of clause)

252.225–7009 Duty-free entry—qualifying country end products and supplies.

As prescribed in 225.605–70(b), use the following clause:

Duty-Free Entry—Qualifying Country End Products and Supplies (Dec. 1991)

(a) *Definitions.*

Qualifying country and *qualifying country end products* have the meaning given in the Buy American Act and Balance of Payments Program clause of this contract.

(b) The requirements of this clause apply to this contract and subcontracts, including purchase orders, that involve supplies to be accorded duty-free entry whether—

(1) Placed directly with a foreign concern as a prime contract; or

(2) As a subcontract or purchase order under a contract placed with a domestic concern.

(c) Except as otherwise approved by the Contracting Officer, no amount is or will be included in the contract price for duty for—

(1) End items that are qualifying country end products; or

(2) Supplies (including without limitation, raw materials, components, and intermediate assemblies) produced or made in qualifying countries, that are to be incorporated in the end items to be delivered under this contract, provided that the end items are manufactured in the United States or in a qualifying country, except supplies imported into the United States before the date of this contract or, in the case of supplies imported by a first or lower tier subcontractor, before the date of the subcontract.

(d) The Contractor warrants that—

(1) All qualifying country supplies, for which duty-free entry is to be claimed, are intended to be delivered to the Government or incorporated in the end items to be delivered under this contract; and

(2) The Contractor will pay duty to the extent that such supplies, or any portion thereof (if not scrap or salvage) are diverted to nongovernmental use, other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer.

(e) The Government agrees to execute duty-free entry certificates and to afford such assistance as appropriate to obtain the duty-free entry of qualifying country supplies for which the shipping documents bear the

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(End of clause)

252.225-7008 Supplies to be accorded duty-free entry.

As prescribed in 225.605-70(a), use the following clause:

Supplies To Be Accorded Duty-Free Entry (Dec. 1991)

In accordance with paragraph (a) of the Duty-Free Entry clause and/or paragraph (b) of the Duty-Free Entry—Qualifying Country End Products and Supplies clause of this contract, the following supplies are accorded duty-free entry:

____

____

____

(End of clause)

252.225-7009 Duty-free entry—qualifying country end products and supplies.

As prescribed in 225.605-70(b), use the following clause:

Duty-Free Entry—Qualifying Country End Products and Supplies (Dec. 1991)

(a) *Definitions.*

Qualifying country and *qualifying country end products* have the meaning given in the Buy American Act and Balance of Payments Program clause of this contract.

(b) The requirements of this clause apply to this contract and subcontracts, including purchase orders, that involve supplies to be accorded duty-free entry whether—

(1) Placed directly with a foreign concern as a prime contract; or

(2) As a subcontract or purchase order under a contract placed with a domestic concern.

(c) Except as otherwise approved by the Contracting Officer, no amount is or will be included in the contract price for duty for—

(1) End items that are qualifying country end products; or

(2) Supplies (including without limitation, raw materials, components, and intermediate assemblies) produced or made in qualifying countries, that are to be incorporated in the end items to be delivered under this contract, provided that the end items are manufactured in the United States or in a qualifying country, except supplies imported into the United States before the date of this contract or, in the case of supplies imported by a first or lower tier subcontractor, before the date of the subcontract.

(d) The Contractor warrants that—

(1) All qualifying country supplies, for which duty-free entry is to be claimed, are intended to be delivered to the Government or incorporated in the end items to be delivered under this contract; and

(2) The Contractor will pay duty to the extent that such supplies, or any portion thereof (if not scrap or salvage) are diverted to nongovernmental use, other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer.

(e) The Government agrees to execute duty-free entry certificates and to afford such assistance as appropriate to obtain the duty-free entry of qualifying country supplies for which the shipping documents bear the

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notation specified in paragraph (f) of this clause, except as the Contractor may otherwise agree.

(f) All shipping documents submitted to Customs, covering foreign end products or supplies for which duty-free entry certificates are to be issued under this clause, shall—

(1) Consign the shipments to the appropriate—

(i) Military department in care of the Contractor, including the Contractor's delivery address; or

(ii) Military installation; and

(2) Include the following information—

(i) Prime contract number, and delivery order if applicable;

(ii) Number of the subcontract/purchase order for foreign supplies if applicable;

(iii) Identification of carrier;

(iv) The notation: UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE Duty-Free Entry to be claimed pursuant to section XXII, chapter 98, subchapter VIII, item 9808.00.30 of the Harmonized Tariff Schedule of the United States. Upon arrival of shipment at the appropriate port of entry, District Director of Customs, please release shipment under 19 CFR part 142 and notify Commander, Defense Contract Management Area Operations (DCMAO) New York, attn: Customs Division, International Logistics Office, 201 Varick Street, New York, New York 10014, for execution of Customs Forms 7501, 7501A, or 7506 and any required duty-free entry certificates." (Note: This notation shall be used only for direct shipments to a U.S. military installation. In cases where the shipment will be consigned to other than a military installation, e.g., a domestic contractor's plant, the shipping document notation shall be altered to insert the name and address of the contractor, agent or broker who will notify Commander, Defense Contract Management Area Operations (DCMAO) New York, for execution of the duty-free certificate.)

(v) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight);

(vi) Estimated value in U.S. dollars; and

(vii) Activity Address Number of the contract administration office actually administering the prime contract, e.g., for DCMAO Dayton, DLA8DP.

(g) *Preparation of customs forms.* (1) Except for shipments consigned to a military installation, the Contractor shall prepare, or authorize an agent to prepare, any customs forms required for the entry of foreign supplies in connection with DoD contracts into the United States, its possessions, or Puerto Rico. Submit the completed customs forms to the District Director of Customs with a copy to DCMAO NY for execution of any required duty-free entry certificates. Shipments consigned directly to a military installation will be released in accordance with 10.101 and 10.102 of the U.S. Custom regulations.

(2) For shipments containing both supplies which are to be accorded duty-free entry and supplies which are not, the Contractor shall identify on the customs forms those items that are eligible for duty-free entry.

(h) The contractor agrees—

(1) To prepare (if this contract is placed directly with a foreign supplier), or to instruct the foreign supplier to prepare, a sufficient number of copies of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the District Director of Customs at the port of entry;

(2) To consign the shipment as specified in paragraph (f) of this clause; and

(3) To mark the exterior of all packages as follows:

(i) "UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE;" and

(ii) The activity address number of the contract administration office actually administering the prime contract.

(i) The Contractor agrees to notify the Contracting Officer administering the prime contract in writing of any purchase under the contract of qualifying country supplies to be accorded duty-free entry that are to be imported into the United States for delivery to the Government or for incorporation in end items to be delivered to the Government. The notice shall be furnished to the contract administration office immediately upon award to the qualifying country supplier. The notice shall contain—

(1) Prime contractor's name, address, and CAGE code;

(2) Prime contract number, and delivery order number if applicable;

(3) Total dollar value of the prime contract or delivery order;

(4) Expiration date of the prime contract or delivery order;

(5) Foreign supplier's name and address;

(6) Number of the subcontract/purchase order for foreign supplies;

(7) Total dollar value of the subcontract for foreign supplies;

(8) Expiration date of the subcontract for foreign supplies;

(9) List of items purchased; and

(10) Certification by the purchaser of foreign supplies as follows: I certify that all supplies for which duty-free entry is to be claimed are intended to be delivered to the Government or incorporated in the end items to be delivered under this contract, and that duty shall be paid by the Contractor to the extent that such supplies, or any portion (if not scrap or salvage) are diverted to nongovernmental use other than as a result of a competitive sale made, directed or authorized by the Contracting Officer;

(11) The qualifying country; and

(12) The scheduled delivery date(s).

(j) This clause does not apply to purchases of qualifying country supplies in connection with this contract if—

(1) The qualifying country supplies are identical in nature to supplies purchased by the Contractor or any subcontractor in connection with its commercial business; and

(2) It is not economical or feasible to account for such supplies so as to ensure that the amount of the supplies for which duty-free entry is claimed does not exceed the amount purchased in connection with this contract.

(k) The Contractor agrees to insert the substance of this clause, including this paragraph (k) in all subcontracts for supplies. Each subcontract shall require the subcontractor to identify this contract by including its contract number on any shipping documents submitted to Customs covering supplies for which duty-free entry is to be claimed pursuant to this clause. The Contractor also agrees that the name and address of the Contracting Officer administering the prime contract (name and address of the contract administration office cognizant of the prime contract), and its activity address number (appendix G of the Defense FAR Supplement), and the information required by paragraphs (i) (1), (2), and (3) of this clause will be included in applicable subcontracts.

(End of clause)

252.225-7010 Duty-free entry—additional provisions.

As prescribed in 225.605-70(c), use the following clause:

Duty-free Entry—Additional Provisions (Dec. 1991)

(a) The requirements of this clause supplement the Duty-Free Entry clause of this contract.

Both of these clauses apply to this contract and subcontracts, including purchase orders, that involve supplies to be accorded duty-free entry whether placed—

(1) Directly with a foreign concern as a prime contract; or

(2) As a subcontractor purchase order under a contract with a domestic concern.

(b) The Contractor shall send the notification required by paragraph (b)(1) of the Duty-Free Entry clause of this contract to the Contracting Officer administering this contract.

(c) In addition to any data required by paragraph (b)(1) of the Duty-Free Entry clause, the Contractor shall furnish the following for all foreign supplies to be imported pursuant to paragraphs (a) or (b) of the Duty-Free Entry clause. Furnish this information to the Contracting Officer administering the prime contract immediately upon award of any contract or subcontract involving supplies to be accorded duty-free entry.

(1) Prime contractor's name, address, and CAGE code;

(2) Prime contract number plus delivery order number, if applicable;

(3) Total dollar value of the prime contract or delivery order;

(4) Expiration date of the prime contract or delivery order;

(5) Foreign supplier's name and address;

(6) Number of the subcontract/purchase order for foreign supplies;

(7) Total dollar value of the subcontract for foreign supplies;

(8) Expiration date of the subcontract for foreign supplies;

(9) List of items purchased; and

(10) Certification by the purchaser of foreign supplies as follows: I certify that all supplies for which duty-free entry is to be claimed are to be delivered to the Government or incorporated in the end items to be delivered under this contract, and that duty shall be paid by the Contractor to the extent that such supplies, or any portion (if

not scrap or salvage) are diverted to nongovernmental use other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer.

(d) The Contractor agrees to incorporate the substance of this clause, including this paragraph (d), in any subcontract (including purchase orders) in accordance with paragraph (i) of the Duty-Free Entry clause of this contract. The Contractor agrees that the name and address of the Contracting Officer administering the prime contract (name and address of the contract administration office cognizant of the prime contract and its activity address number (appendix G of the Defense FAR Supplement)) and the information required by paragraphs (c)(1), (2), and (3) of this clause will be included in applicable subcontracts.

(e) To properly complete the shipping document instructions as required by paragraph (f) of the Duty-Free Entry clause, the Contractor shall insert Defense Contract Management Area Operations (DCMAO) New York, attn: Chief, Customs Division, International Logistics Office, 201 Varick Street, New York, New York 10014, as the cognizant contract administration office (for paragraph (f) only) in those cases when the shipment is consigned directly to a military installation. When the shipment will be consigned to a location other than a military installation, e.g., a domestic contractor's plant, change the shipping document notation required by paragraph (f) of the clause to insert the name and address of the Contractor, agent or broker that will prepare the customs documentation for execution of the Duty-Free Entry certificates. In either case, the shipping documents will contain the following items in addition to those required by paragraph (f) of the Duty-Free Entry clause:

(1) Delivery order number on the Government prime contract, if applicable;

(2) Number of the subcontract/purchase order for foreign supplies, if applicable;

(3) Activity address number of the contract administration office actually administering the prime contract, e.g., for DCMAO Dayton, DLA8DP.

(f) Except for shipments consigned to a military installation, the Contractor shall prepare, or authorize an agent to prepare, any customs forms required for the entry into the United States, its possessions, or Puerto Rico of foreign supplies in connection with DoD contracts. The Contractor shall submit the completed customs forms to the District Director of Customs with a copy to DCMAO New York for execution of any required duty-free entry certificates. For shipments containing both supplies which are to be accorded duty-free entry and supplies which are not, the Contractor shall identify on the customs forms those items which are eligible for duty-free entry under the provisions of the Duty-Free Entry clause. Shipments consigned directly to a military installation will be released in accordance with §§ 10.101 and 10.102 of the U.S. Customs regulations.

(g) The Contractor shall ensure that all exterior containers are marked in accordance with paragraph (g) of the Duty-Free Entry clause, including the following additional data—

(1) "UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE:" and

(2) The activity address number for the contract administration office actually administering the prime contract.

(End of clause)

252.225-7011 Certification and agreement by contractors currently producing petroleum products in Angola.

As prescribed in 225.704-70, use the following clause:

Certification and Agreement by Contractors Currently Producing Petroleum Products in Angola (Dec. 1991)

(a) Definition.

Petroleum product means natural or synthetic crude; blends of natural or synthetic crude; and products refined or derived from natural or synthetic crude or from such blends.

(b) Under section 316 of the National Defense Authorization Act for Fiscal Year 1987, Public Law 99-661, the Department of Defense may not purchase Angolan petroleum products from companies producing oil in Angola unless a waiver is granted by the Secretary of Defense, or designee.

(c) Any Offeror producing a petroleum product in Angola, or who has an affiliate, subsidiary, or partnership enterprise producing a petroleum product in Angola, may be ineligible for award under this solicitation if it intends to use a petroleum product of Angolan origin in the performance of any resultant contract. An Offeror producing a petroleum product in Angola or who has an affiliate, subsidiary, or partnership enterprise producing oil in Angola must complete the certification in paragraph (d) of this clause.

(d) *Certification.* The Offeror certifies that the petroleum product to be supplied under any contract resulting from this solicitation (________) DOES (________) DOES NOT contain any Angolan petroleum product or any product derived from Angolan oil.

(e) *Agreement.* Offerors required by paragraph (c) of this clause to complete the certification in paragraph (d) and who certify in paragraph (d) that the petroleum product to be supplied does not contain any Angolan petroleum product agree that the petroleum product to be supplied under any resulting contract will not contain any Angolan petroleum product or any product derived from Angolan oil.

(End of clause)

252.225-7012 Preference for certain domestic commodities.

As prescribed in 225.7002-4(a), use the following clause:

Preference for Certain Domestic Commodities (Dec. 1991)

(a) The Contractor agrees to deliver under this contract only such of the following articles that have been grown, reprocessed, reused, or produced in the United States, its possessions, or Puerto Rico—

(1) Food;

(2) Clothing;

(3) Tents, tarpaulins, or covers;

(4) Cotton and other natural fiber products;

(5) Woven silk or woven silk blends;

(6) Spun silk yarn for cartridge cloth;

(7) Synthetic fabric, and coated synthetic fabric;

(8) Canvas products;

(9) Wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles); or

(10) Any item of individual equipment manufactured from or containing such fibers, yarns, fabrics, or materials.

(b) This clause does not apply—

(1) To the extent the Secretary has determined that a satisfactory quality and sufficient quantity of such articles cannot be acquired as and when needed at U.S. market prices;

(2) To foods which have been manufactured or processed in the United States, its possessions, or Puerto Rico; or

(3) To chemical warfare protective clothing produced in the countries listed in subsection 225.872-1 of the Defense FAR Supplement.

(End of clause)

252.225-7013 Domestic wool preference.

As prescribed in 225.7002-4(b), use the following provision:

Domestic Wool Preference (Dec. 1991)

Preference will be given in evaluation of offers under this solicitation to wool grown, reprocessed, reused, or produced in the United States, its possessions, or Puerto Rico, to the extent that articles containing such wool can be acquired when needed at U.S. market prices.

(a) If, on the date set for receipt of offers the average market price of domestic wool of usable grades (as reported by grade in the four issues of the Department of Agriculture Market News immediately preceding the date for receipt of offers) is—

(1) Not more than ten percent above the average of the prices (for usable grades) which reflect the current incentive price established by the Secretary of Agriculture, award will be made only on offers for domestically produced articles of which the wool component is 100 percent domestic wool; provided, that such offers are reasonable and otherwise acceptable.

(2) More than ten percent above the average of the prices (for usable grades) which reflect the current incentive price, or to the extent that the Government's requirement cannot be filled by awards based on paragraph (a)(1) of this provision, offers will be evaluated by—

(i) Adding a factor of $________ per yard or per item to offers of articles of wool of which the wool component is 100 percent foreign wool; and

(ii) Adding that part of the factor in paragraph (a)(2)(i) of this provision which is in direct proportion to the percentage of foreign wool to offers of articles of which the wool component is a blend of domestic and foreign wool.

(b) For the purpose of paragraph (a) of this provision—

(1) The average market price of domestic wool of usable grades is the average market price of the representative grades in

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(4) Cotton and other natural fiber products;

(5) Woven silk or woven silk blends;

(6) Spun silk yarn for cartridge cloth;

(7) Synthetic fabric, and coated synthetic fabric;

(8) Canvas products;

(9) Wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles); or

(10) Any item of individual equipment manufactured from or containing such fibers, yarns, fabrics, or materials.

(b) This clause does not apply—

(1) To the extent the Secretary has determined that a satisfactory quality and sufficient quantity of such articles cannot be acquired as and when needed at U.S. market prices;

(2) To foods which have been manufactured or processed in the United States, its possessions, or Puerto Rico; or

(3) To chemical warfare protective clothing produced in the countries listed in subsection 225.872–1 of the Defense FAR Supplement.

(End of clause)

252.225–7013 Domestic wool preference.

As prescribed in 225.7002–4(b), use the following provision:

Domestic Wool Preference (Dec. 1991)

Preference will be given in evaluation of offers under this solicitation to wool grown, reprocessed, reused, or produced in the United States, its possessions, or Puerto Rico, to the extent that articles containing such wool can be acquired when needed at U.S. market prices.

(a) If, on the date set for receipt of offers the average market price of domestic wool of usable grades (as reported by grade in the four issues of the Department of Agriculture Market News immediately preceding the date for receipt of offers) is—

(1) Not more than ten percent above the average of the prices (for usable grades) which reflect the current incentive price established by the Secretary of Agriculture, award will be made only on offers for domestically produced articles of which the wool component is 100 percent domestic wool; provided, that such offers are reasonable and otherwise acceptable.

(2) More than ten percent above the average of the prices (for usable grades) which reflect the current incentive price, or to the extent that the Government's requirement cannot be filled by awards based on paragraph (a)(1) of this provision, offers will be evaluated by—

(i) Adding a factor of $________ per yard or per item to offers of articles of wool of which the wool component is 100 percent foreign wool; and

(ii) Adding that part of the factor in paragraph (a)(2)(i) of this provision which is in direct proportion to the percentage of foreign wool to offers of articles of which the wool component is a blend of domestic and foreign wool.

(b) For the purpose of paragraph (a) of this provision—

(1) The average market price of domestic wool of usable grades is the average market price of the representative grades in

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subsection 225.7002–3 of the Defense FAR Supplement.

(2) The average of the prices which reflect the current incentive price established by the Secretary of Agriculture is the average of the prices in subsection 225.7002–3 of the Defense FAR Supplement for the category of wool.

(3) The evaluation factor is subject to adjustment at the date set for receipt of offers in accordance with subsection 225.7002–3 of the Defense FAR Supplement.

(c) While offers of articles of wool may be considered and evaluated, all stages of manufacturing of wool (whether foreign or domestic) must be performed in the United States, its possessions, or Puerto Rico, as required by the Preference for Certain Domestic Commodities clause of this contract. This requirement is satisfied as to wool noils, reprocessed or reused wool if the reprocessing (i.e., garnetting or combing) and ensuing manufacture is performed in the United States, its possessions, or Puerto Rico.

(d) The Secretary has determined that, to the extent that any foreign wool is used under an award made pursuant to paragraph (a) of this provision, a satisfactory quality and sufficient quantity of domestic wool cannot be acquired as and when needed at U.S. market prices.

(End of provision)

252.225–7014 Preference for domestic specialty metals.

As prescribed in 225.7002–4(c), use the following clause:

Preference for Domestic Specialty Metals (Dec. 1991)

(a) Definition.

Specialty metals means—

(1) Steel—

(i) Where the maximum alloy content exceeds one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or

(ii) Which contains more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium;

(2) Metal alloys consisting of nickel, iron-nickel, and cobalt base alloys containing a total of other alloying metals (except iron) in excess of ten percent;

(3) Titanium and titanium alloys; or

(4) Zirconium and zirconium base alloys.

(b) The Contractor agrees that any specialty metals incorporated in articles delivered under this contract will be melted in the United States, its possessions, or Puerto Rico.

(c) This clause does not apply to the extent that—

(1) The Secretary or designee determines that a satisfactory quality and sufficient quantity of such articles cannot be acquired when needed at U.S. market prices;

(2) The acquisition is for an end product of a country listed in subsection 225.872–1 of the Defense FAR Supplement; or

(3) The acquisition is necessary to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources to offset sales made by the U.S. Government or U.S. firms under approved programs.

(End of clause)

Alternate I (Dec. 1991)

As prescribed in 225.7002–4(c), use the basic clause with the following paragraph (d):

(d) The Contractor agrees to include this clause, including this paragraph (d), in every subcontract or purchase order unless the item being purchased contains no specialty metals.

252.225–7015 Preference for domestic hand or measuring tools.

As prescribed in 225.7003–2, use the following clause:

Preference for Domestic Hand or Measuring Tools (Dec. 1991)

The Contractor agrees to deliver under this contract only hand or measuring tools produced in the United States or its possessions.

(End of clause)

252.225–7016 Restriction on acquisition of foreign machine tools.

As prescribed in 225.7004–5(a), use the following clause:

Restriction on Acquisition of Foreign Machine Tools (Dec. 1991)

(a) For the purpose of this clause, a machine tool is considered to be of United States or Canadian origin if—

(1) It is manufactured in the United States or Canada; and

(2) The cost of its components manufactured in the United States or Canada exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end item and duty (whether or not a duty-free entry certificate may be issued).

(b) Machine tools within the Federal supply classifications listed in 225.7004–1(a) of the Defense FAR Supplement, delivered as end items, shall be of United States or Canadian origin.

(End of clause)

Alternate I (Dec. 1991)

As prescribed in 225.7004–5(a), substitute the following paragraph (b) for paragraph (b) of the basic clause.

(b) Machine tools within the Federal supply classifications listed in 225.7004–1(a) of the Defense FAR Supplement, to be delivered as an end item or acquired by the Contractor on behalf of the Government, and to which title will vest in the Government, shall be of United States or Canadian origin.

252.225–7017 Restriction on acquisition of foreign valves.

As prescribed in 225.7004–5(b), use the following clause:

Restriction on Acquisition of Foreign Valves (Dec. 1991)

(a) For the purpose of this clause, a valve is considered to be of United States or Canadian origin if—

(1) It is manufactured in the United States or Canada; and

(2) The cost of its components manufactured in the United States or Canada exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end item and duty (whether or not a duty-free entry certificate may be issued).

(b) The Contractor agrees that valves used in piping for naval surface ships and submarines within Federal supply classifications 4810 (valves, powered) and 4820 (valves, non-powered) delivered as end items under this contract shall be of United States or Canadian origin.

(End of clause)

252.225–7018 Notice of prohibition of certain contracts with foreign entities for the conduct of strategic defense initiative RDT&E.

As prescribed in 225.7011–5, use the following provision:

Notice of Prohibition of Certain Contracts With Foreign Entities for the Conduct of Strategic Defense Initiative RDT&E (Dec. 1991)

(a) Definitions.

(1) *Competent* means the ability of an offeror to satisfy the requirements of the solicitation. This determination is based on a comprehensive assessment of each offeror's proposal including consideration of the specific areas of evaluation criteria in the relative order of importance described in the solicitation.

(2) *Foreign firm* means a business entity owned or controlled by one or more foreign nationals or a business entity in which more than 50 percent of the stock is owned or controlled by one or more foreign nationals.

(3) *U.S. firm* means a business entity other than a foreign firm.

(b) This provision implements section 222 of the Defense Authorization Act for FYs 1988 and 1989 (Pub. L. 100–180) prohibiting the award of certain contracts, for the conduct of Strategic Defense Initiative (SDI) Program research, development, test, or evaluation (RDT&E), to foreign governments or firms.

(c) Except as provided in paragraph (d) of this provision, any funds appropriated to, or for the use of, the DoD, may not be used to enter into or carry out any contract, including any contract awarded as a result of a broad agency announcement (BAA), with a foreign government or firm if the contract provides for the conduct of RDT&E in connection with the SDI. Foreign governments and firms, however, are encouraged to submit offers since this provision is not intended to restrict SDI access to unique foreign expertise when contract performance requires a level of competency unavailable in the United States.

(d) The prohibition does not apply to a foreign government or firm if—

(1) The contract will be performed within the United States;

(2) The contract is exclusively for RDT&E in connection with antitactical ballistic missile systems;

(3) The foreign government or firm agrees to share a substantial portion of the total contract cost. The foreign share is considered

substantial where it is equitable with respect to the relative benefits to be derived from the contract by the United States and the foreign parties. For example, if the contract is more beneficial to the foreign party, its share of the costs should be correspondingly higher; or

(4) The U.S. Government determines that the contract cannot be competently performed by a U.S. firm at a price equal to or less than the price at which the RDT&E can be performed by a foreign government or firm.

(e) The Offeror hereby certifies that (________) it is (________) is not a U.S. firm.

(End of provision)

252.225-7019 Restriction on acquisition of foreign anchor and mooring Chain.

As prescribed in 225.7012-4(a), use the following clause:

Restriction on Acquisition of Foreign Anchor and Mooring chain (Dec. 1991)

(a) Welded shipboard anchor and mooring chain, four inches in diameter and under, delivered under this contract—

(1) Shall be manufactured in the United States, including cutting, heat treating, quality control, testing, and welding (both forging and shot blasting process); and

(2) The cost of the components manufactured in the United States shall exceed 50 percent of the total cost of components.

(b) The Contractor may request a waiver of this restriction if adequate domestic supplies meeting the above requirements are not available to meet the contract delivery schedule.

(c) The Contractor shall include this clause, including this paragraph (c), in all subcontracts, unless the items acquired contain none of the restricted welded shipboard anchor and mooring chain.

(End of clause)

252.225-7020 Restriction on acquisition of foreign anchor and mooring chain—Fiscal Years 1989 and 1990.

As prescribed in 225.7012-4(b), use the following clause:

Restriction on Acquisition of Foreign Anchor and Mooring Chain—Fiscal Years 1989 and 1990 (Dec. 1991)

(a) Welded shipboard anchor and mooring chain (four inches in diameter and under) contained in items delivered under this contract shall be manufactured in the United States.

(b) The Contractor shall include this clause, including this paragraph (b), in all subcontracts, unless the items acquired contain none of the restricted welded shipboard anchor and mooring chain.

(End of clause)

252.225-7021 Restriction on acquisition of foreign anchor and mooring chain (Fiscal Year 1988).

As prescribed in 225.7012-4(c), use the following clause:

Restriction on Acquisition of Foreign Anchor and Mooring Chain (Fiscal Year 1988) (Dec. 1991)

(a) Welded shipboard anchor and mooring chain (four inches in diameter and under) contained in items delivered under this contract shall be manufactured in the United States, its territories or possessions, or Canada except as provided in paragraph (b) of this clause.

(b) The Contractor may request a waiver under subsection 225.7012-3 of the Defense FAR Supplement if adequate domestic supplies of welded shipboard anchor and mooring chain are unavailable to meet the contract delivery schedule.

(c) The Contractor shall include this clause, including this paragraph (c), in all subcontracts, unless the items acquired contain none of the restricted welded shipboard anchor and mooring chain.

(End of clause)

252-225.7022 Restriction on acquisition of polyacrylonitrile (PAN) based carbon fiber.

As prescribed in 225.7013-2, use the following clause:

Restriction on Acquisition of Polyacrylonitrile (PAN) Based Carbon Fiber (Dec. 1991)

(a) This clause applies only if the end product furnished under this contract contains polyacrylonitrile carbon fibers (alternatively referred to as PAN-based fibers or PAN-based graphite fibers).

(b) PAN carbon fibers contained in the end product shall be manufactured in the United States or Canada using PAN precursor produced in the United States or Canada.

(c) The Contracting Officer may waive the requirement in paragraph (b) in whole or in part. The Contractor may request a waiver from the Contracting Officer by identifying the circumstances and including a plan to qualify domestic or Canadian sources expeditiously.

(End of clause)

252.225-7023 Restriction on acquisition of carbonyl iron powders.

As prescribed in 225.7014-3, use the following clause:

Restriction on Acquisition of Carbonyl Iron Powders (Dec. 1991)

(a) *Definition.*

Carbonyl iron powders are particles produced from the thermal decomposition of iron penta carbonyl.

(b) *Restriction.*

The Contractor agrees that all carbonyl iron powders contained in supplies provided under this contract shall be manufactured in the United States or Canada by an entity more than 50 percent of which is owned or controlled by citizens of the United States or Canada.

(End of clause)

252.225-7024 Restriction on acquisition of night vision image intensifier tubes and devices.

As prescribed in 225.7015-3, use the following clause:

Restriction on Acquisition of Night Vision Image Intensifier Tubes and Devices (Dec. 1991)

All second and third generation night vision image intensifier tubes and devices provided under this contract shall be manufactured in the United States or Canada.

(End of clause)

252.225-7025 Foreign source restrictions.

As prescribed in 225.7105, use the following clause:

Foreign Source Restrictions (Dec. 1991)

(a) *Definitions.*

(1) *Antifriction bearings* means bearings.

(2) *Commercial product* means a product, such as an item, material, component, subsystem, or system sold or traded to the general public in the course of normal business operations at prices based on established catalog or market prices. It does not include items designed or developed under a Government contract or bearings and bearing components.

(3) *Domestic manufacture* means—

(i) For antifriction bearings, wholly manufactured in the United States or Canada. When a bearing assembly is involved, all components of the assembly must be wholly manufactured in the United States or Canada. Unless otherwise specified, raw materials, such as preformed bar, tube, or rod stock and lubricants, need not be domestically mined or produced.

(ii) For forging items, manufactured in the United States or Canada if the Canadian firm—

(A) Normally produces similar items or is currently producing the item in support of DoD contracts (as prime or subcontractor); and

(B) Agrees to become (upon receiving a contract/order) a planned producer under DoD's Industrial Preparedness Program (IPP), if it is not already a planned producer for the item.

(iii) For high carbon ferrochrome (HCF), manufactured in the United States regardless of source of the chrome ore.

(iv) For high-purity silicon, manufactured in the United States or Canada. When an item or subassembly containing high-purity silicon is involved, all such high-purity silicon incorporated in the item or subassembly must also have been manufactured in the United States or Canada.

(v) For miniature and instrument ball bearings, manufactured in the United States or Canada and, when a ball bearing assembly is involved, all components of the bearing must also have been manufactured in the United States or Canada; and

(vi) For precision components for mechanical time devices, manufacture in the United States or Canada, and, when a mechanical timing assembly is involved, all precision components of the assembly must also have been manufactured in the United States or Canada.

(4) *Forging items* means—

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225.7015–3, use the

Restriction on Acquisition of Night Vision Image Intensifier Tubes and Devices (Dec. 1991)

All second and third generation night vision image intensifier tubes and devices provided under this contract shall be manufactured in the United States or Canada.

(End of clause)

252.225–7025 Foreign source restrictions.

As prescribed in 225.7105, use the following clause:

Foreign Source Restrictions (Dec. 1991)

(a) *Definitions.*

(1) *Antifriction bearings* means bearings.

(2) *Commercial product* means a product, such as an item, material, component, subsystem, or system sold or traded to the general public in the course of normal business operations at prices based on established catalog or market prices. It does not include items designed or developed under a Government contract or bearings and bearing components.

(3) *Domestic manufacture* means—

(i) For antifriction bearings, wholly manufactured in the United States or Canada. When a bearing assembly is involved, all components of the assembly must be wholly manufactured in the United States or Canada. Unless otherwise specified, raw materials, such as preformed bar, tube, or rod stock and lubricants, need not be domestically mined or produced.

(ii) For forging items, manufactured in the United States or Canada if the Canadian firm—

(A) Normally produces similar items or is currently producing the item in support of DoD contracts (as prime or subcontractor); and

(B) Agrees to become (upon receiving a contract/order) a planned producer under DoD's Industrial Preparedness Program (IPP), if it is not already a planned producer for the item.

(iii) For high carbon ferrochrome (HCF), manufactured in the United States regardless of source of the chrome ore.

(iv) For high-purity silicon, manufactured in the United States or Canada. When an item or subassembly containing high-purity silicon is involved, all such high-purity silicon incorporated in the item or subassembly must also have been manufactured in the United States or Canada.

(v) For miniature and instrument ball bearings, manufactured in the United States or Canada and, when a ball bearing assembly is involved, all components of the bearing must also have been manufactured in the United States or Canada; and

(vi) For precision components for mechanical time devices, manufacture in the United States or Canada, and, when a mechanical timing assembly is involved, all precision components of the assembly must also have been manufactured in the United States or Canada.

(4) *Forging items* means—

Items	Categories
Shipboard forged anchor chain.	All.
Ship propulsion shafts	Excludes service and landing craft shafts.
Periscope tubes	All.
Ring forgings for bull gears.	All greater than 120 inches in diameter.
Large caliber, thick-walled cannon (105mm through 8-inch forgings).	Preform, gun tube, muzzle brake, and breach ring forgings.
60mm and 81mm mortar forgings.	Bipod, base plate, and body yoke forgings.
Small caliber weapons forgings.	Barrel extensions, bolts, receivers, sights/handles, etc.
Tank and automotive forgings.	Turret rings, road arms, final drive gears, shafts, track shoes, axle shafts, flywheels, connecting rods, crankshafts, roadwheels, spindles, torsion bars.

(5) *High carbon ferrochrome (HCF)* means ferrochromium alloy that contains three percent or more carbon and 50 percent or more chromium.

(6) *High-purity silicon* means N or P type with a resistivity greater than 3000 ohm-centimeter.

(7) *Miniature and instrument ball bearings* means all rolling contact ball bearings with a basic outside diameter (exclusive of flange diameters) of 30 millimeters or less, irrespective of material, tolerance, performance, or quality characteristics.

(8) *Precision components for mechanical time devices* are parts which closely relate so that precise control and selection of working production tolerances can be maintained to accomplish the desired function and reliability. In terms of accuracy, such precision components have total tolerances under 0.003 inches, eccentricities less than 0.0015 inches, and surface finishes better than 65 rms. Examples of such precision components include: Gears, pinions, posts, and plates.

(b) The Contractor agrees that end items and their components delivered under this contract shall contain antifriction bearings, forging items, high carbon ferrochrome, high-purity silicon, miniature and instrument ball bearings, and precision components for mechanical time devices that are of domestic manufacture only.

(c) The restriction in paragraph (b) of this clause does not apply to the extent that the end items or components containing antifriction bearings are commercial products.

(d) The restrictions in paragraph (b) of this clause may be waived upon request from the Contractor in accordance with the provisions of section 225.7104 of the Defense FAR Supplement. If the restriction is waived for miniature and instrument ball bearings or precision components for mechanical time devices, the Contractor agrees to acquire a like quantity and type of domestic manufacture for nongovernment use.

(e) The restrictions in paragraph (b) do not include forgings incorporated in commercial vehicles, such as commercial cars and trucks, or noncombat support military vehicles.

(f) The Contractor agrees to retain records showing compliance with these restrictions until three years after final payment and to make records available upon request of the Contracting Officer.

(g) The Contractor agrees to insert this clause, including this paragraph (g), in every subcontract and purchase order issued in performance of this contract, unless items purchased contain none of the restricted items.

(End of clause)

252.225–7026 Reporting of overseas subcontracts.

As prescribed in 225.7203, use the following clause:

Reporting of Overseas Subcontracts (Dec. 1991)

(a) The Contractor shall submit a Subcontract Report of Foreign Purchases on DD Form 2139 for each subcontract over $25,000 and subcontract modification over $25,000, if the location of the producer of the supplies, or provider of the services, is outside the United States.

(b) Submit the report to: Office of Foreign Contracting, OUSD(A)DP(FC), Pentagon, Washington, DC 20301–3060.

(c) Copies of DD Form 2139 may be obtained from the Contracting Officer.

(d) If the Contractor maintains information on foreign subcontracts in an automated data base, it may submit the information required in paragraph (a) in a report format compatible with its automated system. In all cases, however, the report shall include all of the information required by the DD Form 2139.

(e) The Contractor shall submit the report within ten days of the end of each calendar year quarter, current as of the last day of such quarter.

(f) The Contractor shall include a clause substantially similar to this in all first-tier subcontracts over $100,000 except subcontracts for ores, natural gases, utilities, petroleum products and crudes, timber (logs), and subsistence. Identify the prime contract number to the subcontractor for reporting purposes.

(End of clause)

252.225–7027 Limitation on sales commissions and fees.

As prescribed in 225.7308(a), use the following clause:

Limitation on Sales Commissions and Fees (Dec. 1991)

Unless the sales commission and fee have been identified and payment approved in writing by the Government of __________ before contract award, the following provisions, as appropriate, shall apply—

(a) For firm-fixed-price contracts or fixed-price contracts with economic price adjustment, the Contractor certifies that the contract price (including any subcontracts) does not include any direct or indirect cost of sales commissions or fees for contractor sales representatives for solicitation or promotion or otherwise to secure the conclusion of the sale of any of the supplies or services called for by this contract to the Government of __________.

(b) For all other types of contracts, notwithstanding any other provision of this contract, any direct or indirect cost of sales commissions or fees for Contractor (or subcontractor) sales representatives for solicitation or promotion or otherwise to secure the conclusion of the sale of any of the supplies or services called for by this contract to the Government of __________ are an unallowable item of cost under this contract.

(End of clause)

252.225–7028 Exclusionary policies and practices of foreign governments.

As prescribed in 225.7308(b), use the following clause:

Exclusionary Policies and Practices of Foreign Governments (Dec. 1991)

No person, partnership, corporation, or other entity performing functions pursuant to this contract, shall, in employing or assigning personnel to participate in the performance of any such function, whether in the United States or abroad, take into account the exclusionary policies or practices of any foreign government where such policies or practices are based on race, religion, national origin, or sex.

(End of clause)

252.226–7000 Notice of historically black college or university and minority institution set-aside.

As prescribed in 226.7008(a), use the following clause:

Notice of Historically Black College or University and Minority Institution Set-Aside (Dec. 1991)

(a) Definitions. Historically black colleges and universities, as used in this clause, means institutions determined by the Secretary of Education to meet the requirements of 34 CFR 608.2.

Minority institutions, as used in this clause, means institutions meeting the requirements of paragraphs (3), (4), and (5) of section 312(b) of the Higher Education Act of 1965 (20 U.S.C. 1058). The term also means any nonprofit research institution that was an integral part of a historically black college or university before November 14, 1986.

(b) General. (1) Offers are solicited only from historically black colleges or universities and minority institutions.

(2) Any award resulting from this solicitation will be made only to an offeror which is a historically black college or university or a minority institution both at the time of submission of its offer and at contract award.

(c) Agreements. The offeror will—

(1) Perform at least 50 percent of the cost of contract performance incurred for personnel with its own employees; and

(2) Upon request by the Contracting Officer, provide evidence prior to award that the Secretary of Education has determined the offeror to be a historically black college or university or minority institution.

(End of clause)

252.226-7001 Historically black college or university and minority institution certification.

As prescribed in 226.7008(b), use the following provision:

Historically Black College or University and Minority Institution Certification (Dec. 1991)

(a) *Definitions.*

Historically black colleges and universities, as used in this provision, means institutions determined by the Secretary of Education to meet the requirements of 34 CFR 608.2.

Minority institutions, as used in this provision, means institutions meeting the requirements of paragraphs (3), (4), and (5) of section 312(b) of the Higher Education Act of 1965 (20 U.S.C. 1058). The term also means any nonprofit research institution that was an integral part of a historically black college or university before November 14, 1986.

(b) *Certification.* The offeror certifies that it is—

______ A historically black college or university.

______ A minority institution.

(c) *Notification.* Notify the Contracting Officer before award if your status as a historically black college or university or minority institution changes.

(End of provision)

252.227-7000 Non-estoppel.

As prescribed at 227.7009-1, insert the following clause in patent releases, license agreements, and assignments:

Non-Estoppel (Oct. 1966)

The Government reserves the right at any time to contest the enforceability, validity, scope of, or the title to any patent or patent application herein licensed without waiving or forfeiting any right under this contract.

(End of clause)

252.227-7001 Release of past infringement.

As prescribed at 227.7009-2(a), insert the following clause in patent releases, license agreements, and assignments:

Release of Past Infringement (Aug. 1984)

The Contractor hereby releases each and every claim and demand which he now has or may hereafter have against the Government for the manufacture or use by or for the Government prior to the effective date of this contract, of any inventions covered by (i) any of the patents and applications for patent identified in this contract, and (ii) any other patent or application for patent owned or hereafter acquired by him, insofar as and only to the extent that such other patent or patent application covers the manufacture, use, or disposition of (description of subject matter).[*]

End of clause)

252.227-7002 Readjustment of payments.

As prescribed at 227.7009-2(b), insert the following clause in patent releases, license agreements, and assignments:

Readjustment of Payments (Oct. 1966)

(a) If any license, under substantially the same patents and authorizing substantially the same acts which are authorized under this contract, has been or shall hereafter be granted within the United States, on royalty terms which are more favorable to the licensee than those contained herein, the Government shall be entitled to the benefit of such more favorable terms with respect to all royalties accruing under this contract after the date such more favorable terms become effective, and the Contractor shall promptly notify the Secretary in writing of the granting of such more favorable terms.

(b) In the event any claim of any patent hereby licensed is construed or held invalid by decision of a court of competent jurisdiction, the requirement to pay royalties under this contract insofar as its arises solely by reason of such claim, and any other claim not materially different therefrom, shall be interpreted in conformity with the court's decision as to the scope of validity of such claims: *Provided,* however, that in the event such decision is modified or reversed on appeal, the requirement to pay royalties under this contract shall be interpreted in conformity with the final decision rendered on such appeal.

(End of clause)

252.227-7003 Termination.

As prescribed at 227.7009-2(c), insert the following clause in patent releases, license agreements, and assignments:

Termination (Aug. 1984)

Notwithstanding any other provision of this contract, the Government shall have the right to terminate the within license, in whole or in part, by giving the Contractor not less than thirty (30) days notice in writing of the date such termination is to be effective; provided, however, that such termination shall not affect the obligation of the Government to pay royalties which have accrued prior to the effective date of such termination.

(End of clause)

252.227-7004 License grant.

As prescribed at 227.7009-3(a), insert the following clause in patent releases, license agreements, and assignments:

License Grant (Aug. 1984)

(a) The Contractor hereby grants to the Government an irrevocable, nonexclusive, nontransferable, and paid up license under the following patents, applications for patent, and any patents granted on such applications, and under any patents which may issue as the result of any reissue, division or continuation thereof, to practice by or cause to be practiced for the Government throughout the world, any and all of the inventions thereunder, in the manufacture and use of any article or material, in the use of any method or process, and in the disposition of any article or material in accordance with law:

U.S. Patent No. ______
Date ______
Application Serial No. ______
Filing Date ______

together with corresponding foreign patents and foreign applications for patents, insofar as the Contractor has the right to grant licenses thereunder without incurring an obligation to pay royalties or other compensation to others solely on account of such grant.

(b) No rights are granted or implied by the agreement under any other patents other than as provided above or by operation of law.

(c) Nothing contained herein shall limit any rights which the Government may have obtained by virtue of prior contracts or by operation of law or otherwise.

(End of clause)

252.227-7005 License term.

As prescribed at 227.7009-3(b), insert one of the following clauses in patent releases, license agreements, and assignments:

License Term (Aug. 1984)

Alternate I (Aug. 1984)

The license hereby granted shall remain in full force and effect for the full term of each of the patents referred to in the "License Grant" clause of this contract and any and all patents hereafter issued on applications for patent referred to in such "License Grant" clause.

Alternate II (Aug. 1984)

The license hereby granted shall terminate on the ______ day of ______ 19______; *Provided,* however, that said termination shall be without prejudice to the completion of any contract entered into by the Government prior to said date of termination or to the use or disposition thereafter of any articles or materials manufactured by or for the Government under this license.

252.227-7006 License grant—running royalty.

As prescribed at 227.7009-4(a), insert the following clause in patent releases, license agreements, and assignments:

License Grant—Running Royalty (Aug. 1984)

(a) The Contractor hereby grants to the Government, as represented by the Secretary of ______, an irrevocable, nonexclusive, nontransferable license under the following patents, applications for patent, and any patents granted on such applications, and under any patents which may issue as the result of any reissue, division, or continuation thereunder to practice by or cause to be practiced for the Department of ______, throughout the world, any and all of the inventions thereunder in the manufacture and use of any article or material, in the use of any method or process, and in the disposition of any article or material in accordance with law:

U.S. Patent No. ______
Date ______ ______

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[*] Bracketed portions of the clause may be omitted when not appropriate or not encompassed by the release as negotiated.

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material, in the use of any method or process, and in the disposition of any article or material in accordance with law:

U.S. Patent No. ____________
Date ____________
Application Serial No. ____________
Filing Date ____________

together with corresponding foreign patents and foreign applications for patents, insofar as the Contractor has the right to grant licenses thereunder without incurring an obligation to pay royalties or other compensation to others solely on account of such grant.

(b) No rights are granted or implied by the agreement under any other patents other than as provided above or by operation of law.

(c) Nothing contained herein shall limit any rights which the Government may have obtained by virtue of prior contracts or by operation of law or otherwise.

(End of clause)

252.227-7005 License term.

As prescribed at 227.7009–3(b), insert one of the following clauses in patent releases, license agreements, and assignments:

License Term (Aug. 1984)

Alternate I (Aug. 1984)

The license hereby granted shall remain in full force and effect for the full term of each of the patents referred to in the "License Grant" clause of this contract and any and all patents hereafter issued on applications for patent referred to in such "License Grant" clause.

Alternate II (Aug. 1984)

The license hereby granted shall terminate on the ________ day of ________ 19________: *Provided*, however, that said termination shall be without prejudice to the completion of any contract entered into by the Government prior to said date of termination or to the use or disposition thereafter of any articles or materials manufactured by or for the Government under this license.

252.227-7006 License grant—running royalty.

As prescribed at 227.7009–4(a), insert the following clause in patent releases, license agreements, and assignments:

License Grant—Running Royalty (Aug. 1984)

(a) The Contractor hereby grants to the Government, as represented by the Secretary of ________, an irrevocable, nonexclusive, nontransferable license under the following patents, applications for patent, and any patents granted on such applications, and under any patents which may issue as the result of any reissue, division, or continuation thereunder to practice by or cause to be practiced for the Department of ________, throughout the world, any and all of the inventions thereunder in the manufacture and use of any article or material, in the use of any method or process, and in the disposition of any article or material in accordance with law:

U.S. Patent No. ____________
Date ____________ ____________

Application Serial No. ____________
Filing Date ____________

together with corresponding foreign patents and foreign applications for patent, insofar as the Contractor has the right to grant licenses thereunder without incurring an obligation to pay royalties or other compensation to others solely on account of such grant.

(b) No rights are granted or implied by the agreement under any other patents other than as provided above or by operation of law.

(c) Nothing contained herein shall limit any rights which the Government may have obtained by virtue of prior contracts or by operation of law or otherwise.

(End of clause)

252.227-7007 License term—running royalty.

As prescribed at 227.7009–4(b), insert the following clause in patent releases, license agreements, and assignments:

License Term—Running Royalty (Aug. 1984)

The license hereby granted shall remain in full force and effect for the full term of each of the patents referred to in the "License Grant" clause of this contract and any and all patents hereafter issued on applications for patent referred to above unless sooner terminated as elsewhere herein provided.

(End of clause)

252.227-7008 Computation of royalties.

As prescribed at 227.7009–4(c), insert the following clause in patent releases, license agreements, and assignments:

Computation of Royalties (Aug. 1984)

Subject to the conditions hereinafter stated, royalties shall accrue to the Contractor under this agreement on all articles or materials embodying, or manufactured by the use of, any or all inventions claimed under any unexpired United States patent licensed herein, upon acceptance thereof by the Department of ____________, at the rate of ________ percent of the net selling price of such articles or materials (amount) per (name of item) * whether manufactured by the Government or procured under a fixed price contract, and at the rate of (amount) per (name of item) acquired or manufactured by a Contractor performing under a cost-reimbursement contract. With respect to such articles or materials made by the Department of ____________, "net selling price," as used in this paragraph, means the actual cost of direct labor and materials without allowance for overhead and supervision.

(End of clause)

252.227-7009 Reporting and payment of royalties.

As prescribed at 227.7009–4(d), insert the following clause in patent releases, license agreements, and assignments:

Reporting and Payment of Royalties (Aug. 1984)

(a) The (procuring office) shall, on or before the sixtieth (60th) day next following the end of each yearly* period ending ____________ during which royalties have accrued under this license, deliver to the Contractor, subject to military security regulations, a report in writing furnishing necessary information relative to royalties which have accrued under this contract.

(b) Royalties which have accrued under this contract during the yearly* period ending ____________ shall be paid to the Contractor (if appropriations therefor are available or become available) within sixty (60) days next following the receipt of a voucher from the Contractor submitted in accordance with the report referred to in (a) of this clause; *Provided*, that the Government shall not be obligated to pay, in respect of any such yearly period, on account of the combined royalties accruing under this contract directly and under any separate licenses granted pursuant to the "License to Other Government Agencies" clause (if any) of this contract, an amount greater than ____________ dollars ($____________), and if such combined royalties exceed the said maximum yearly obligation, each department or agency shall pay a pro rata share of the said maximum yearly obligation as determined by the proportion its accrued royalties bear to the combined total of accrued royalties.

(End of clause)

252.227-7010 License to other Government agencies.

As prescribed at 227.7009–4(e), insert the following clause in patent releases, license agreements, and assignments:

License to Other Government Agencies (Aug. 1984)

The Contractor hereby agrees to grant a separate license under the patents, applications for patents, and improvements referred to in the "License Grant" clause of this contract, on the same terms and conditions as appear in this license contract, to any other department or agency of the Government at any time on receipt of a written request for such a license from such department or agency; *Provided*, however, that as to royalties which accrue under such separate licenses, reports and payments shall be made directly to the Contractor by each such other department or agency pursuant to the terms of such separate licenses. The Contractor shall notify the Licensee hereunder promptly upon receipt of any request for license hereunder.

(End of clause)

252.227-7011 Assignments.

As prescribed at 227.7010, insert the following clause in assignments.

Assignment (Aug. 1984)

The Contractor hereby conveys to the Government, as represented by the Secretary of ____________, the entire right, title, and interest in and to the following patents (and applications for patent), in and to the inventions thereof, and in and to all claims and demands whatsoever for infringement thereof heretofore accrued, the same to be held and enjoyed by the Government through its duly appointed representatives to the full end of the term of said patents (and to the full end of the terms of all patents which may be granted upon said applications for patent, or upon any division, continuation-in-part or continuation thereof):

U.S. Patent No. ____________
Date ____________
Name of Inventor ____________
U.S. Application Serial No. ____________
Filing Date ____________
Name of Inventor ____________

together with corresponding foreign patents and applications for patent insofar as the Contractor has the right to assign the same.

(End of clause)

252.227-7012 Patent license and release contract.

As prescribed at 227.7012, insert the following clause in patent releases, license agreements, and assignments:

____________ (Contract No.)

Patent License and Release Contract (Aug. 1984)

THIS CONTRACT is effective as of the ____________ day of ____________ 19____________, between the UNITED STATES OF AMERICA (hereinafter called the Government), and ____________ (hereinafter called the Contractor), (a corporation organized and existing under the laws of the State of ____________), (a partnership consisting of ____________), (an individual trading as ____________), of the City of ____________, in the State of ____________.

Whereas, Contractor warrants that he has the right to grant the within license and release, and the Government desires to procure the same, and

Whereas, this contract is authorized by law, including 10 U.S.C. 2386.

Now Therefore, in consideration of the grant, release and agreements hereinafter recited, the parties have agreed as follows:

Article 1. License Grant.*

(Insert the clause at 252.227–7004 for a paid up license, or the clause at 252.227–7006 for a license on a running royalty basis.)

Article 2. License Term.*

(Insert the appropriate alternative clause at 252.227–7005 for a paid up license, or the clause at 252.227–7007 for a license on a running royalty basis.)

Article 3. Release of Past Infringement.

(Insert the clause at 252.227–7001.)

Article 4. Non-Estoppel.

(Insert the clause at 252.227–7000.)

Article 5. Payment.

The Contractor shall be paid the sum of ________ Dollars ($____________) in full compensation for the rights herein granted and agreed to be granted. (For a license on a running royalty basis, insert the clause at

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* Use bracketed matter as appropriate.

* The frequency, date, and length of reporting periods should be selected as appropriate to the particular circumstances of the contract.

* If only a release is procured, delete this article; if an assignment is procured, use the clause at 252.227–7011.

252.227-7006 in accordance with the instructions therein, and also the clause as specified at 252.227-7002 and 252.227-7009 and 252.227-7010.)

Article 6. Officials Not to Benefit.

(Insert the clause at FAR 52.203-1.)

Article 7. Covenant Against Contingent Fees.

(Insert the clause at FAR 52.203-5.)

Article 8. Assignment of Claims.

(Insert the clause at FAR 52.232-23.)

Article 9. Gratuities.

(Insert the clause at FAR 52.203-3.)

Article 10. Disputes.

(Insert the clause at FAR 52.233-1.)

Article 11. Successors and Assignees.

This Agreement shall be binding upon the Contractor, his successors** and assignees, but nothing contained in this Article shall authorize an assignment of any claim against the Government otherwise than as permitted by law.

In Witness Whereof, the parties hereto have executed this contract.

THE UNITED STATES OF AMERICA

By ______________________________
Date ______________________________
(Signature and Title of Contractor) ______________
By ______________________________
Date ______________________________
(End of clause)

252.227-7013 Rights in technical data and computer software.

As prescribed at 227.403-70(e) and 227.403-77(b)(2)(i), insert the following clause:

Rights in Technical Data and Computer Software (Oct. 1988)

(a) *Definitions*. (1) *Commercial computer software*, as used in this clause, means computer software which is used regularly for other than Government purposes and is sold, licensed, or leased in significant quantities to the general public at established market or catalog prices.

(2) *Computer*, as used in this clause, means a data processing device capable of accepting data, performing prescribed operations on the data, and supplying the results of these operations; for example, a device that operates on discrete data by performing arithmetic and logic processes on the data, or a device that operates on analog data by performing physical processes on the data.

(3) *Computer data base*, as used in this clause, means a collection of data in a form capable of being processed and operated on by a computer.

(4) *Computer program*, as used in this clause, means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. Computer programs include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort-merge programs, and ADPE maintenance/diagnostic programs, as well as applications programs such as payroll, inventory control, and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general-purpose in nature or be designed to satisfy the requirements of a particular user.

(5) *Computer software*, as used in this clause, means computer programs and computer data bases.

(6) *Computer software documentation*, as used in this clause, means technical data, including computer listings and printouts, in human-readable form which (i) documents the design or details of computer software, (ii) explains the capabilities of the software, or (iii) provides operating instructions for using the software to obtain desired results from a computer.

(7) *Data*, as used in this clause, means recorded information, regardless of form or method of the recording.

(8) *Detailed design data*, as used in this clause, means technical data that describes the physical configuration and performance characteristics of an item or component in sufficient detail to ensure that an item or component produced in accordance with the technical data will be essentially identical to the original item or component.

(9) *Detailed manufacturing or process data*, as used in this clause, means technical data that describes the steps, sequences, and conditions of manufacturing, processing or assembly used by the manufacturer to produce an item or component or to perform a process.

(10) *Developed*, as used in this clause, means that the item, component, or process exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered "developed", the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component or process be actually reduced to practice within the meaning of title 35 of the United States Code.

(11) *Developed Exclusively with Government Funds*, as used in this clause, means, in connection with an item, component, or process, that the cost of development was paid for in whole by the Government or that the development was required for the performance of a Government contract or subcontract.

(12) *Developed Exclusively at Private Expense*, as used in this clause, means, in connection with an item, component, or process, that no part of the cost of development was paid for by the Government and that the development was not required for the performance of a Government contract or subcontract. Independent research and development and bid and proposal costs, as defined in FAR 31.205-18 (whether or not included in a formal independent research and development program), are considered to be at private expense. All other indirect costs of development are considered Government funded when development was required for the performance of a Government contract or subcontract. They are considered funded at private expense when development was not required for the performance of a Government contract or subcontract.

(13) *Form, fit, and function data*, as used in this clause, means technical data that describes the required overall physical, functional, and performance characteristics, (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

(14) *Government purpose license rights (GPLR)*, as used in this clause, means rights to use, duplicate, or disclose data (and in the SBIR Program, computer software), in whole or in part and in any manner, for Government purposes only, and to have or permit others to do so for Government purposes only. Government purposes include competitive procurement, but do not include the right to have or permit others to use technical data (and in the SBIR Program, computer software) for commercial purposes.

(15) *Limited rights*, as used in this clause, means rights to use, duplicate, or disclose technical data, in whole or in part, by or for the Government, with the express limitation that such technical data shall not, without the written permission of the party asserting limited rights, be: released or disclosed outside the Government; used by the Government for manufacture, or in the case of computer software documentation, for preparing the same or similar computer software; or used by a party other than the Government, except that the Government may release or disclose technical data to persons outside the Government, or permit the use of technical data by such persons, if—

(i) Such release, disclosure, or use—

(A) Is necessary for emergency repair and overhaul; or

(B) Is a release or disclosure of technical data (other than detailed manufacturing or process data) to, or use of such data by, a foreign government that is in the interest of the Government and is required for evaluational or informational purposes;

(ii) Such release, disclosure, or use is made subject to a prohibition that the person to whom the data is released or disclosed may not further release, disclose, or use such data; and

(iii) The contractor or subcontractor asserting the restriction is notified of such release, disclosure, or use.

(16) *Required for the Performance of a Government Contract or Subcontract*, as used in this clause, means, in connection with the development of an item, component, or process, that the development was specified in a Government contract or subcontract or that the development was accomplished during and was necessary for performance of a Government contract or subcontract.

** When the Contractor is an individual, change "successors" to "heirs"; if a partnership, modify appropriately.

(17) *Restricted rights,* as used in this clause, means rights that apply only to computer software, and include, as a minimum, the right to—

(i) Use computer software with the computer for which or with which it was acquired, including use at any Government installation to which the computer may be transferred by the Government;

(ii) Use computer software with a backup computer if the computer for which or with which it was acquired is inoperative;

(iii) Copy computer programs for safekeeping (archives) or backup purposes; and

(iv) Modify computer software, or combine it with other software, subject to the provision that those portions of the derivative software incorporating restricted rights software are subject to the same restricted rights.

In addition, restricted rights include any other specific rights not inconsistent with the minimum rights in (a)(17)(i)–(iv) above that are listed or described in the contract or described in a license agreement made a part of the contract.

(18) *Technical data,* as used in this clause, means recorded information, regardless of the form or method of the recording of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

(19) *Unlimited rights,* as used in this clause, means rights to use, duplicate, release, or disclose, technical data or computer software in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(20) *Unpublished,* as used in this clause, means that technical data or computer software has not been released to the public or furnished to others without restriction on further use or disclosure. Delivery of other than unlimited rights technical data or computer software to or for the Government under the contract does not, in itself, constitute release to the public.

(b) *Rights in Technical Data*—(1) *Unlimited Rights.* Unless otherwise agreed in writing, the Government is entitled to and will receive unlimited rights in:

(i) Technical data pertaining to an item, component, or process which has been or will be developed exclusively with Government funds;

(ii) Technical data resulting directly from performance of experimental, developmental, or research work which was specified as an element of performance under this or any other Government contract or subcontract;

(iii) Form, fit, and function data pertaining to items, components, or processes prepared or required to be delivered under this or any other Government contract or subcontract;

(iv) Manuals or instructional materials (other than detailed manufacturing or process data and commercial computer software documentation) prepared or required to be delivered under this or any other contract or any subcontract hereunder necessary for installation, operation, maintenance, or training purposes;

(v) Technical data prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished data or computer software;

(vi) Technical data which is otherwise publicly available, or has been released or disclosed by the Contractor or subcontractor, without restriction on further release or disclosure;

(vii) Technical data in which the Government has obtained unlimited rights as a result of negotiations; and

(viii) Technical data previously delivered subject to either GPLR or limited rights and the restrictive condition has expired.

(2) *Government Purpose License Rights.* The Government shall have Government purpose license rights (GPLR) in technical data which the parties have agreed will be furnished with GPLR. The Government may disclose or provide GPLR data to a person or corporation that has executed the Standard Non-Disclosure Agreement. This agreement establishes the third party beneficiary status of the Contractor identified in the GPLR legend. If the recipient of GPLR data has executed the Standard Non-Disclosure Agreement, the Contractor shall have no claim or right of action against the Government for damages related to misuse or unauthorized disclosure of the data. GPLR shall be effective, during the time period specified in the contract, only when the portion or portions of each piece of data subject to such rights are identified (for example, by circling, underscoring, or a note), and are marked with the legend below containing:

(i) The number of the prime contract under which the technical data is to be delivered;

(ii) The name of the Contractor and/or any subcontractor asserting Government purpose license rights; and

(iii) The date when the data will be subject to unlimited rights.

Government Purpose License Rights Legend

Contract No. ____________________
Contractor: ____________________
____
____

Government purpose license rights shall be effective until ______(insert date certain); thereafter, the Government purpose license rights will expire and the Government shall have unlimited rights in the technical data. The restrictions governing use of technical data marked with this legend are set forth in the definition of "Government Purpose License Rights" in paragraph (a)(14) of the clause at 252.227–7013 of the contract listed above. This legend, together with the indications of the portions of this data which are subject to Government purpose license rights, shall be included on any reproduction hereof which includes any part of the portions subject to such limitations.

(3) *Limited Rights.* Unless otherwise agreed, the Government shall have limited rights in:

(i) Technical data pertaining to items, components, processes or computer software developed exclusively at private expense, except for data in the categories in (b)(1) above;

(ii) Technical data that the parties have agreed will be subject to limited rights for a specified period of time; and

(iii) Technical data listed or described in a license agreement made a part of the contract and subject to conditions other than those described in the definitions of limited rights. Notwithstanding any contrary provision in the license agreement, the Government shall have the rights included in the definition of "limited rights" in paragraph (a)(15) above.

Limited rights will remain in effect so long as the technical data remains unpublished and provided that only the portions of each piece of data subject to limited rights are identified (for example, by circling, underscoring, or a note), and the piece of data is marked with the legend below containing:

(A) The number of the prime contract under which the technical data is to be delivered; and

(B) The name of the Contractor and/or any subcontractor asserting limited rights.

(C) The date the data will be subject to unlimited rights (if applicable).

Limited Rights Legend

Contract No. ____________________
Contractor: ____________________
____
____

Limited rights shall be effective until ______(insert date certain), thereafter the limited rights will expire and the Government shall have unlimited rights in the technical data.

The restrictions governing the use and disclosure of technical data marked with this legend are set forth in the definition of "limited rights" in paragraph (a)(15) of the clause at 252.227–7013 of the contract listed above.

For technical data which the parties have agreed will be subject to limited rights for a specified time period, insert the agreed upon date. If the limited rights are not subject to an expiration date, so indicate. For technical data which the parties have agreed will be subject to rights other than those described in the definitions of limited rights or GPLR in paragraph (a)(15) and (a)(14) above, insert the following statement:

"In addition to the minimum rights described in the definition of limited rights in DFARS clause at 252.227–7013, the Government shall have the rights described in the license or agreement made a part of Contract No.______."

This legend, together with the indications of the portions of this data which are subject to limited rights, shall be included on any reproduction hereof which includes any part of the portions subject to such limitations. This technical data will remain subject to limited rights only so long as it remains "unpublished" as defined in paragraph (a) above.

(c) *Rights in Computer Software*—(1) *Restricted Rights.* (i) The Government shall have restricted rights in computer software, listed or described in a license agreement made a part of this contract, which the parties have agreed will be furnished with restricted rights. Notwithstanding any contrary provision in any such license agreement, the Government shall have the rights included in the definition of "restricted rights" in paragraph (a)(17) above. Unless the computer software is marked by the Contractor with the following legend:

Restricted Rights Legend

Use, duplication or disclosure is subject to restrictions stated in Contract No. ______ with ______(Name of Contractor) and the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software, the Government shall have unlimited rights in the software. The Contractor may not place any legend on computer software restricting the Government's rights in such software unless the restrictions are set forth in a license agreement made a part of this contract prior to the delivery date of the software. Failure of the Contractor to apply a restricted rights legend to the computer software shall relieve the Government of liability with respect to the unmarked software.

(ii) Notwithstanding subparagraph (c)(1)(i) above, commercial computer software and related documentation developed at private expense and not in the public domain may be marked with the following Legend:

Restricted Rights Legend

Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013.

(Name of Contractor and Address)

When acquired by the Government, commercial computer software and related documentation so legended shall be subject to the following:

(A) Title to and ownership of the software and documentation shall remain with the Contractor.

(B) User of the software and documentation shall be limited to the facility for which it is acquired.

(C) The Government shall not provide or otherwise make available the software or documentation, or any portion thereof, in any form, to any third party without the prior written approval of the Contractor. Third parties do not include prime contractors, subcontractors and agents of the Government who have the Government's permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed software and documentation only in accordance with these restrictions. This provision does not limit the right of the Government to use software, documentation, or information therein, which the Government has or may obtain without restrictions.

(D) The Government shall have the right to use the computer software and documentation with the computer for which it is acquired at any other facility to which that computer may be transferred; to use the computer software and documentation with a backup computer when the primary computer is inoperative; to copy computer programs for safekeeping (archives) or backup purposes; and to modify the software and documentation or combine it with other software, Provided, that the unmodified portions shall remain subject to these restrictions.

(2) *Unlimited Rights.* The Government shall have unlimited rights in:

(i) Computer software resulting directly from performance of experimental, developmental or research work which was specified as an element of performance in this or any other Government contract or subcontract;

(ii) Computer software required to be originated or developed under a Government contract, or generated as a necessary part of performing a contract;

(iii) Computer data bases, prepared under a Government contract, consisting of information supplied by the Government, information in which the Government has unlimited rights, or information which is in the public domain;

(iv) Computer software prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished computer software; and

(v) Computer software which is otherwise publicly available, or has been, or is normally released, or disclosed by the Contractor or subcontractor without restriction on further release or disclosure.

(d) *Technical Data and Computer Software Previously Provided Without Restriction.* Contractor shall assert no restrictions on the Government's rights to use or disclose any data or computer software which the Contractor has previously delivered to the Government without restriction. The limited or restricted rights provided for by this clause shall not impair the right of the Government to use similar or identical data or computer software acquired from other sources.

(e) *Copyrights.* (1) In addition to the rights granted under the provisions of paragraphs (b) and (c) above, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world, of the scope set forth below, under any copyright owned by the Contractor, in any work of authorship prepared for or acquired by the Government under this contract, to reproduce the work in copies or phonorecords, to distribute copies or phonorecords to the public, to perform or display the work publicly, and to prepare derivative works thereof, and to have others do so for Government purposes. With respect to technical data and computer software in which the Government has unlimited rights, the license shall be of the same scope as the rights set forth in the definition of *unlimited rights* in (a)(19) above. With respect to technical data in which the Government has limited rights, the scope of the license is limited to the rights set forth in the definition of *limited rights*. With respect to computer software which the parties have agreed will be furnished with restricted rights, the scope of the license is limited to such rights.

(2) Unless written approval of the Contracting Officer is obtained, the Contractor shall not include (in technical data or computer software prepared for or acquired by the Government under this contract) any works of authorship in which copyright is not owned by the Contractor without acquiring for the Government any rights necessary to perfect a copyright license of the scope specified herein.

(3) The Contractor shall be considered the *person for whom the work was prepared* for the purpose of determining authorship under 17 U.S.C. 201(b).

(4) Technical data delivered under this contract bearing a copyright notice shall also include the following statement: This material may be reproduced by or for the U.S. Government pursuant to the copyright license under the clause at DFARS 252.227-7013 (date).

(f) *Removal of Unjustified and Nonconforming Markings.*—(1) *Unjustified Technical Data Markings.* Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may, at the Contractor's expense, correct, cancel, or ignore any marking not justified by the terms of this contract on any technical data furnished hereunder in accordance with the clause of this contract entitled "Validation of Restrictive Markings on Technical Data", DFARS 252.227-7037.

(2) *Nonconforming Technical Data Markings.* Correction of nonconforming markings is not subject to DFARS 252.227-7037. The Government may, at the Contractor's expense, correct any nonconforming markings if the Contracting Officer notifies the Contractor and the Contractor fails to correct the nonconforming markings within sixty (60) days.

(3) *Unjustified and Nonconforming Computer Software Markings.* Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may correct, cancel, or ignore any marking not authorized by the terms of this contract on any computer software furnished hereunder, if:

(i) The Contractor fails to respond within sixty (60) days to a written inquiry by the Government concerning the propriety of the markings; or

(ii) The Contractor's response fails to substantiate, within sixty (60) days after written notice, the propriety of restricted rights markings.

In either case, the Government shall give written notice to the Contractor of the action taken.

(g) *Relation to Patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(h) *Limitation on Charges for Data and Computer Software.* The Contractor recognizes that the Government is not obligated to pay, or to allow to be paid, any charges for data or computer software which the Government has a right to use and disclose to others without restriction and Contractor agrees to refund any such payments. This provision applies to contracts that involve payments by subcontractors and those entered into through the Military Assistance Program, in addition to U.S. Government prime contracts. It does not apply to reasonable reproduction, handling, mailing, and similar administrative costs.

(i) *Acquisition of Technical Data and Computer Software from Subcontractors.* (1) The Contractor must satisfy its contractual obligation to the Government while ensuring that the rights afforded its subcontractors under 10 U.S.C. 2320 and 2321 are recognized and protected. In satisfying its obligation, the Contractor must accomplish the balancing of interests described at DFARS 227.402–70 in dealing with its subcontractors.

(2) Whenever any technical data or computer software is to be obtained from a subcontractor under this contract, the Contractor shall use this same clause in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the Government's or the Contractor's rights in the subcontractor data or computer software.

(3) Technical data required to be delivered by a subcontractor shall normally be delivered to the next higher-tier contractor. However, when there is a requirement in the prime contract for data which may be submitted with other than unlimited rights by a subcontractor, then said subcontractor may fulfill its requirement by submitting such data directly to the Government, rather than through the prime Contractor.

(4) The Contractor and higher-tier subcontractors will not use their power to award subcontracts as economic leverage to obtain rights in technical data or computer software from their subcontractors.

(5) The Contractor shall ensure that subcontractor rights are recognized and protected in the notification and listing process at paragraphs (j) and (k) below.

(6) In no event shall the Contractor use its obligation to recognize and protect subcontractor rights in technical data as an excuse for failing to satisfy its contractual obligation to the Government.

(j) *Notice of Limitations on Government Rights.* (1) The Offeror/Contractor shall notify the Contracting Officer of its or its potential subcontractor's use in the performance of the contract or subcontract of items, components, processes and computer software that—

(i) Have been developed exclusively at private expense;

(ii) Have been developed in part at private expense; or

(iii) Embody technology that has been developed exclusively with Government funds which the Offeror or Contractor or subcontractor desires exclusive rights to commercialize, with Government approval.

(2) Such notification is not required with respect to items, components, processes or computer software if no technical data is required to be delivered or if the required technical data is delivered with unlimited rights.

(3) Such notification shall be accompanied by the following representation:

Representation of Private Development

The Offeror/Contractor/Subcontractor represents that, to the best of its knowledge and belief, the information contained in this notification is current, accurate, and complete.

Date ______

Name and Title ______

Official ______

This representation shall be dated and the signing official (identified by name and title) shall be duly authorized to bind the Contractor.

(4) Upon request by the Contracting Officer, the Offeror or Contractor shall provide sufficient information to enable the Contracting Officer to identify and evaluate the Contractor's or subcontractor's assertions made in (j)(1) above.

(k) *Identification of restrictions on Government rights.* Technical data and computer software shall not be tendered to the Government with other than unlimited rights, unless the technical data or computer software are identified in a list made part of this contract. This list is intended to facilitate review and acceptance of the technical data and computer software by the Government and does not change, waive, or otherwise modify the rights or obligations of the parties under the clause at DFARS 252.227–7037. As a minimum, this list must—

(1) Identify the items, components, processes, or computer software to which the restrictions on the Government apply;

(2) Identify or describe the technical data or computer software subject to other than unlimited rights; and

(3) Identify or describe, as appropriate, the category or categories of Government rights, the agreed-to time limitations, or any special restrictions on the use of disclosure of the technical data or computer software.

(l) *Postaward Negotiation—Disputes.* In the case of an item, component, or process that is developed in part with Government funds and in part at private expense, if, after exhausting all reasonable efforts, the parties fail to agree on the apportionment of the rights in technical data furnished under this contract by the date established in the contract for agreement, or within any extension established by the Contracting Officer, then the Contracting Officer may establish the respective data rights of the parties, subject to Contractor appeal as provided in the Disputes clause. In any event, the Contractor shall proceed with completion of the contract.

(End of clause)

Alternate I (Oct. 1988)

As prescribed at 227.405–75, add the following paragraph to the basic clause:

(m) Publication for sale. If, prior to publication for sale by the Government and within the period designated in the contract or task order, but in no event later than twenty-four (24) months after delivery of such data, the Contractor publishes for sale any data (1) designated in the contract as being subject to this paragraph and (2) delivered under this contract, and promptly notifies the Contracting Officer of these publications, the Government shall not publish such data for sale or authorize others to do so. This limitation on the Government's right to publish for sale any such data so published by the Contractor shall continue as long as the data is protected as a published work under the copyright law of the United States and is reasonably available to the public for purchase. Any such publication shall include a notice identifying this contract and recognizing the license rights of the Government under this clause. As to all such data not so published by the Contractor, this paragraph shall be of no force or effect.

Alternate II (Oct. 1988)

As prescribed at 227.405–79(d), substitute the following paragraphs (b) and (c) for the existing paragraphs (b) and (c) in the basic clause.

(b) *Rights in Technical Data.*—(1) *Unlimited Rights.* The Government is entitled to and will receive unlimited rights in:

(i) Form, fit, and function data pertaining to items, components, or processes prepared or required to be delivered under this or any other Government contract or subcontract;

(ii) Manuals or instructional materials (other than detailed manufacturing or process data or commercial computer software documentation) prepared or required to be delivered under this or any other contract or any subcontract hereunder necessary for installation, operation, maintenance, or training purposes;

(iii) Technical data prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished data; and

(iv) Technical data which is otherwise publicly available, or has been released or disclosed by the contractor or subcontractor, without restriction on further release or disclosure.

(2) *Limited Rights.* The Government shall have limited rights in:

(i) Unpublished technical data pertaining to items, components or processes developed exclusively at private expense, and unpublished computer software documentation related to computer software that is acquired with restricted rights, other than such data included in (b)(1) above. Limited rights shall be effective provided that only the portion or portions of each piece of data to which limited rights are to be asserted are identified (for example, by circling, underscoring, or a note), and that the piece of data is marked with the legend below containing:

(A) The number of the prime contract under which the technical data is to be delivered; and

(B) The name of the Contractor and/or any subcontractor asserting limited rights.

Limited Rights Legend

Contract No. ______

Contractor: ______

______

______

The restrictions governing the use of technical data marked with this legend are set forth in the definition of "Limited Rights" in DFARS clause at 252.227–7013. This legend, together with the indications of the portions of this data, shall be included on any reproduction hereof which includes any part of the portions subject to limited rights. The limited rights legend shall be honored only as long as the data continues to meet the definition of limited rights.

(3) *Government Purpose License Rights.* For a period of two (2) years (or such other

period as may be authorized by the Contracting Officer for good cause shown) after the delivery and acceptance of the last deliverable item under the contract, the Government shall have limited rights and, after the expiration of the two-year period, shall have Government purpose license rights in any technical data prepared or required to be delivered under this contract or subcontract hereunder, which is not otherwise subject to unlimited or limited rights pursuant to subparagraph (b)(1) or (b)(2) above. The Government shall not be liable for unauthorized use or disclosure of the data by third parties. Government Purpose License Rights shall be effective provided that only the portion or portions of each piece of data to which such rights are to be asserted are identified (for example, by circling, underscoring, or a note), and that the piece of data is marked with the legend below:

(i) The number of the prime contract under which the technical data is to be delivered; and

(ii) The name of the contractor and/or any subcontractor asserting Government Purpose License Rights.

Government Purpose License Rights (SBIR Program)

Contract No. ____________________

Contractor: ____________________

For a period of two (2) years after delivery and acceptance of the last deliverable item under the above contract, this technical data shall be subject to the restrictions contained in the definition of *Limited Rights* in DFARS clause at 252.227–7013. After the two-year period, the data shall be subject to the restrictions contained in the definition of *Government Purpose License Rights* in DFARS clause at 252.227–7013. The Government assumes no liability for unauthorized use or disclosure by others. This legend, together with the indications of the portions of the data which are subject to such limitations, shall be included on any reproduction hereof which contains any portions subject to such limitations and shall be honored only as long as the data continues to meet the definition on Government purpose license rights.

(c) *Rights in Computer Software.*—(1) *Restricted Rights.* (i) The Government shall have restricted rights in computer software, listed or described in a license agreement made a part of this contract, which the parties have agreed will be furnished with restricted rights. Notwithstanding any contrary provision in any such license agreement, the Government shall have the rights included in the definition of *restricted rights* in paragraph (a)(17) above. Unless the computer software is marked by the Contractor with the following legend:

Restricted Rights Legend

Use, duplication or disclosure is subject to restrictions stated in Contract No. ______ with ________ (Name of Contractor).

and the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software, the Government shall have unlimited rights in the software. The Contractor may not place any legend on computer software indicating restrictions on the Government's rights in such software unless the restrictions are set forth in a license agreement made a part of this contract prior to the delivery date of the software. Failure of the Contractor to apply a restricted rights legend to such computer software shall relieve the Government of liability with respect to this unmarked software.

(ii) Notwithstanding subparagraph (c)(1)(i) above, commercial computer software and related documentation developed at private expense and not in the public domain may be marked with the following legend:

Restricted Rights Legend

Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227–7013.

(Name of Contractor and Address)

When acquired by the Government, commercial computer software and related documentation so legended shall be subject to the following:

(A) Title to and ownership of the software and documentation shall remain with the Contractor.

(B) User of the software and documentation shall be limited to the facility for which it is acquired.

(C) The Government shall not provide or otherwise make available the software or documentation, or any portion thereof, in any form, to any third party without the prior written approval of the Contractor. Third parties do not include prime contractors, subcontractors and agents of the Government who have the Government's permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed software and documentation only in accordance with these restrictions. This provision does not limit the right of the Government to use software, documentation, or information therein, which the Government has or may obtain without restrictions.

(D) The Government shall have the right to use the computer software and documentation with the computer for which it is acquired at any other facility to which that computer may be transferred; to use the computer software and documentation with a backup computer when the primary computer is inoperative; to copy computer programs for safekeeping (archives) or backup purposes; and to modify the software and documentation or combine it with other software, Provided, that the unmodified portions shall remain subject to these restrictions.

(2) *Government Purpose License Rights.* For a period of two (2) years (or such other period as may be authorized by the Contracting Officer for good cause shown) after the delivery and acceptance of the last deliverable item under the contract, the Government shall have restricted rights and, after expiration of the two-year period, shall have Government purpose license rights in:

(i) Computer software resulting directly from performance of experimental, developmental or research work which was specified as an element of performance in this or any Government contract or subcontract;

(ii) Computer software required to be originated or developed under a Government contract, or generated as a necessary part of performing a contract; and

(iii) Any other computer software required to be prepared or delivered under this contract or subcontract hereunder, which is not otherwise subject to restricted or unlimited rights pursuant to subparagraph (c)(1) or (c)(3) herein. Government purpose license rights shall be effective provided that each unit of software is marked with an abbreviated license rights legend reciting that the use, duplication, or disclosure of the software is subject to the same restrictions included in the same contract (identified by number) with the same contractor (identified by name). The Government assumes no liability for unauthorized use, duplication, or disclosure by others.

(3) *Unlimited Rights.* The Government shall have unlimited rights in:

(i) Computer software required to be prepared or delivered under this or any subcontract hereunder that was previously delivered or previously required to be delivered to the Government under any contract or subcontract with unlimited rights;

(ii) Computer software that is publicly available or has been or is normally released or disclosed by the Contractor without restriction on further use or disclosure; and

(iii) Computer data bases, consisting of information supplied by the Government, information in which the Government has unlimited rights, or information which is in the public domain.

252.227-7014 [Reserved]

252.227-7015 [Reserved]

252.227-7016 [Reserved]

252.227-7017 [Reserved]

252.227-7018 Restrictive markings on technical data.

As prescribed at 227.403–72(a), insert the following clause:

Restrictive Markings on Technical Data (Oct. 1988)

(a) The Contractor or any subcontractor that delivers technical data with other than unlimited rights shall have, maintain, and follow throughout the performance of this contract, written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of the "Rights in Technical Data and Computer Software" clause of this contract. The Contractor or subcontractor shall also maintain a quality assurance system to assure compliance with this clause.

(b) As part of the procedures, the Contractor shall as a minimum:

(1) Maintain records to show how the procedures of paragraph (a) above were applied in determining that the markings are authorized;

(2) Maintain records sufficient to justify the validity of any restrictive markings on technical data delivered under this contract;

(3) Provide for review of subcontractor procedures for controlling the restrictive markings on technical data. Where appropriate, the Contractor may request Government assistance in evaluating subcontractor procedures; and

(4) Establish and maintain operating procedures and physical security designed to protect any technical data subject to other than unlimited rights from inadvertent or unauthorized marking, disclosure or release to third parties.

(c) The Contractor shall, within sixty (60) days after award of this contract, identify in writing to the Contracting Officer by name or title the person(s) having the final responsibility within the Contractor's organization for determining whether restrictive markings are to be placed on technical data to be delivered under this contract. The Government is authorized to contact such person(s) to resolve questions involving restrictive markings.

(d) The Contracting Officer may evaluate, verify and obtain a copy of the Contractor's procedures. The failure of the Contracting Officer to evaluate or verify such procedures shall not relieve the Contractor of the responsibility for complying with paragraphs (a) and (b) above.

(e) If the Contracting Officer gives written notification of any failure to maintain or follow the established procedures, or of any deficiency in the procedures, corrective action shall be accomplished within the time specified by the Contracting Officer.

(f) This clause shall be included in each subcontract under which technical data is required to be delivered. When so inserted, *Contractor* shall be changed to *Subcontractor*.

(End of clause)

252.227-7019 Identification of restricted rights computer software.

As prescribed at 227.403-77(b)(2)(ii), insert the following provision:

Identification of Restricted Rights Computer Software (Apr. 1988)

The Offeror is required to identify in his proposal, to the extent feasible, any such computer software which was developed at private expense and upon the use of which it desires to negotiate restrictions, and to state the nature of the proposed restrictions.

Any restrictions on the Government's use or disclosure of computer software developed at private expense and to be delivered under the contract must be set forth in an agreement made a part of the contract, either negotiated prior to award or included in a modification of the contract before such delivery. If no such computer software is identified, all deliverable computer software will be subject to unlimited rights.

(End of provision)

252.227-7020 Rights in data—special works.

As prescribed at 227.405-76(a), insert the following clause:

Rights in Data—Special Works (Mar. 1979)

(a) The term *works* as used herein includes literary, musical, and dramatic works; pantomimes and choreographic works; pictorial, graphic, and sculptural works; motion pictures and other audiovisual works; sound recordings; and works of similar nature. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) All works first produced in the performance of this contract shall be the sole property of the Government, which shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under 17 U.S.C. 201(b), and the Government shall own all of the rights comprised in the copyright. The Contractor agrees not to assert or authorize others to assert any rights, or establish any claim to copyright, in such works. The Contractor, unless directed to the contrary by the Contracting Officer, shall place on any such works delivered under this contract the following notice: ©(*Year date of delivery*) United States Government as represented by the Secretary of (*department*). All rights reserved.

In the case of a phonorecord, the © will be replaced by P.

(c) Except as otherwise provided in this contract, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world (1) to reproduce in copies or phonorecords, to prepare derivative works, to distribute copies or phonorecords, and to perform or display publicly any portion of a work which is not first produced in the performance of this contract but in which copyright is owned by the Contractor and which is incorporated in the work furnished under this contract, and (2) to authorize others to do so for Government purposes.

(d) Unless written approval of the Contracting Officer is obtained, the Contractor shall not include in any works prepared for or delivered to the Government under this contract any works of authorship in which copyright is not owned by the Contractor or the Government without acquiring for the Government any rights necessary to perfect a license of the scope set forth in paragraph (c) above.

(e) The Contractor shall indemnify and save and hold harmless the Government, and its officers, agents and employees acting for the Government, against any liability, including costs and expenses, (1) for violation of proprietary rights, copyrights, or rights of privacy or publicity, arising out of the creation, delivery, or use of any works furnished under this contract, or (2) based upon any libelous or other unlawful matter contained in such works.

(f) Nothing contained in this clause shall imply a license to the Government under any patent, or be construed as affecting the scope of any license of other right otherwise granted to the Government under any patent.

(g) Paragraphs (c) and (d) above are not applicable to material furnished to the Contractor by the Government and incorporated in the work furnished under the contract; *Provided*, such incorporated material is identified by the Contractor at the time of delivery of such work.

(End of clause)

252.227-7021 Rights in data—existing works.

As prescribed at 227.405-77(a), insert the following clause:

Rights in Data—Existing Works (Mar. 1979)

(a) The term *works* as used herein includes literary, musical, and dramatic works; pantomimes and choreographic works; pictorial, graphic and sculptural works; motion pictures and other audiovisual works; sound recordings; and works of a similar nature. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) Except as otherwise provided in this contract, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world (1) to distribute, perform publicly, and display publicly the works called for under this contract and (2) to authorize others to do so for Government purposes.

(c) The Contractor shall indemnify and save and hold harmless the Government, and its officers, agents, and employees acting for the Government, against any liability, including costs and expenses, (1) for violation of proprietary rights, copyrights, or rights of privacy or publicity arising out of the creation, delivery, or use, of any works furnished under this contract, or (2) based upon any libelous or other unlawful matter contained in same works.

(End of clause)

252.227-7022 Government rights (unlimited).

As prescribed at 227.405-78(b)(1)(i)(A), insert the following clause:

Government Rights (Unlimited) (Mar. 1979)

The Government shall have unlimited rights, in all drawings, designs, specifications, notes and other works developed in the performance of this contract, including the right to use same on any other Government design or construction without additional compensation to the Contractor. The Contractor hereby grants to the Government a paid-up license throughout the world to all such works to which he may assert or establish any claim under design patent or copyright laws. The Contractor for a period of three (3) years after completion of the project agrees to furnish the original or copies of all such works on the request of the Contracting Officer.

(End of clause)

252.227-7023 Drawings and other data to become property of government.

As prescribed at 227.405-78(b)(1)(i)(B), insert the following clause:

Drawings and Other Data to Become Property of Government (Mar. 1979)

All designs, drawings, specifications, notes and other works developed in the performance of this contract shall become the sole property of the Government and may be used on any other design or construction without additional compensation to the Contractor. The Government shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under 17 U.S.C. 201(b). With respect thereto, the Contractor agrees not to assert or authorize others to assert any rights nor establish any claim under the design patent or copyright laws. The Contractor for a period of three (3) years after completion of the project agrees to furnish all retained works on the request of the Contracting Officer. Unless otherwise provided in this contract, the Contractor shall have the right to retain copies of all works beyond such period.

(End of clause)

252.227-7024 Notice and Approval of Restricted Designs.

As prescribed at 227.405-78(d), insert the following clause:

Notice and Approval of Restricted Designs (Apr. 1984)

In the performance of this contract, the Contractor shall, to the extent practicable, make maximum use of structures, machines, products, materials, construction methods, and equipment that are readily available through Government or competitive commercial channels, or through standard or proven production techniques, methods, and processes. Unless approved by the Contracting Officer, the Contractor shall not produce a design or specification that requires in this construction work the use of structures, products, materials, construction equipment, or processes that are known by the Contractor to be available only from a sole source. The Contractor shall promptly report any such design or specification to the Contracting Officer and give the reason why it is considered necessary to so restrict the design or specification.

(End of clause)

252.227-7025 [Reserved]

252.227-7026 Deferred Delivery of Technical Data or Computer Software.

As prescribed at 227.405-71(b), insert the following clause:

Deferred Delivery of Technical Data or Computer Software (Apr. 1988)

The Government shall have the right to require, at any time during the performance of this contract, within two (2) years after either acceptance of all items (other than data or computer software) to be delivered under this contract or termination of this contract, whichever is later, delivery of any technical data or computer software item identified in this contract as "deferred delivery" data or computer software. The obligation to furnish such technical data required to be prepared by a subcontractor and pertaining to an item obtained from him shall expire two (2) years after the date Contractor accepts the last delivery of that item from that subcontractor for use in performing this contract.

(End of clause)

252.227-7027 Deferred Ordering of Technical Data or Computer Software.

As prescribed at 227.405-71(c), insert the following clause:

Deferred Ordering of Technical Data or Computer Software (Apr. 1988)

In addition to technical data or computer software specified elsewhere in this contract to be delivered hereunder, the Government may, at any time during the performance of this contract or within a period of three (3) years after acceptance of all items (other than technical data or computer software) to be delivered under this contract or the termination of this contract, order any technical data or computer software generated in the performance of this contract or any subcontract hereunder. When the technical data or computer software is ordered, the Contractor shall be compensated for converting the data or computer software into the prescribed form, for reproduction and delivery. The obligation to deliver the technical data of a subcontractor and pertaining to an item obtained from him shall expire three (3) years after the date the Contractor accepts the last delivery of that item from that subcontractor under this contract. The Government's rights to use said data or computer software shall be pursuant to the "Rights in Technical Data and Computer Software" clause of this contract.

(End of clause)

252.227-7028 Requirement for Technical Data Representation.

As prescribed at 227.403-70(a)(5)(ii), insert the following provision:

Requirement for Technical Data Representation (Oct. 1988)

The Offeror shall submit with its offer a representation as to whether the Offeror has delivered or is obligated to deliver to the Government under any contract or subcontract the same or substantially the same technical data included in its offer; if so, the Offeror shall identify:

(a) One existing contract or subcontract under which the technical data were delivered or will be delivered, and the place of delivery; and

(b) Any limitation on the Government's right to use or disclose the data, including, when applicable, identification of the earliest date the limitation expires.

(End of provision)

252.227-7029 Identification of Technical Data.

As prescribed at 227.403-72(a), insert the following clause:

Identification of Technical Data (Apr. 1988)

Technical data delivered under this contract shall be marked with the number of this contract, name of Contractor, and name of any subcontractor who generated the data.

(End of clause)

252.227-7030 Technical Data—Withholding of Payment.

As prescribed at 227.403-74(b), insert the following clause:

Technical Data—Withholding of Payment (Oct. 1988)

(a) If technical data specified to be delivered under this contract, is not delivered within the time specified by this contract or is deficient upon delivery (including having restrictive markings not identified in the list described in the clause at 252.227-7013(k) of this contract), the Contracting Officer may until such data is accepted by the Government, withhold payment to the Contractor of ten percent (10%) of the total contract price or amount unless a lesser withholding is specified in the contract. Payments shall not be withheld nor any other action taken pursuant to this paragraph when the Contractor's failure to make timely delivery or to deliver such data without deficiencies arises out of causes beyond the control and without the fault or negligence of the Contractor.

(b) The withholding of any amount or subsequent payment to the Contractor shall not be construed as a waiver of any rights accruing to the Government under this contract.

(End of clause)

252.227-7031 Data Requirements.

As prescribed at 227.405-70(a), insert the following clause:

Data Requirements (Oct. 1988)

The Contractor is required to deliver only the data items listed on the DD Form 1423 (Contract Data Requirements List) and data items identified in and deliverable under any contract clause of FAR Subpart 52.2 and DoD FAR Supplement Subpart 252.2 made a part of the contract.

(End of clause)

252.227-7032 Rights in Technical Data and Computer Software (foreign).

As prescribed in 227.405-74, insert the following clause:

Rights in Technical Data and Computer Software (Foreign) (June 1975)

The United States Government may duplicate, use, and disclose in any manner for any purposes whatsoever, including delivery to other governments for the furtherance of mutual defense of the United States Government and other governments, all technical data including reports, drawings and blueprints, and all computer software, specified to be delivered by the Contractor to the United States Government under this contract.

(End of clause)

252.227-7033 Rights in Shop Drawings.

As prescribed at 227.405-78(b)(1)(ii), insert the following clause:

Rights in Shop Drawings (Apr. 1966)

(a) Shop drawings for construction means drawings, submitted to the Government by the Construction Contractor, subcontractor or any lower-tier subcontractor pursuant to a construction contract, showing in detail (i) the proposed fabrication and assembly of structural elements and (ii) the installation

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Technical Data—Withholding of Payment (Oct. 1988)

(a) If technical data specified to be delivered under this contract, is not delivered within the time specified by this contract or is deficient upon delivery (including having restrictive markings not identified in the list described in the clause at 252.227–7013(k) of this contract), the Contracting Officer may until such data is accepted by the Government, withhold payment to the Contractor of ten percent (10%) of the total contract price or amount unless a lesser withholding is specified in the contract. Payments shall not be withheld nor any other action taken pursuant to this paragraph when the Contractor's failure to make timely delivery or to deliver such data without deficiencies arises out of causes beyond the control and without the fault or negligence of the Contractor.

(b) The withholding of any amount or subsequent payment to the Contractor shall not be construed as a waiver of any rights accruing to the Government under this contract.

(End of clause)

252.227-7031 Data Requirements.

As prescribed at 227.405–70(a), insert the following clause:

Data Requirements (Oct. 1988)

The Contractor is required to deliver only the data items listed on the DD Form 1423 (Contract Data Requirements List) and data items identified in and deliverable under any contract clause of FAR Subpart 52.2 and DoD FAR Supplement Subpart 252.2 made a part of the contract.

(End of clause)

252.227-7032 Rights in Technical Data and Computer Software (foreign).

As prescribed in 227.405–74, insert the following clause:

Rights in Technical Data and Computer Software (Foreign) (June 1975)

The United States Government may duplicate, use, and disclose in any manner for any purposes whatsoever, including delivery to other governments for the furtherance of mutual defense of the United States Government and other governments, all technical data including reports, drawings and blueprints, and all computer software, specified to be delivered by the Contractor to the United States Government under this contract.

(End of clause)

252.227-7033 Rights in Shop Drawings.

As prescribed at 227.405–78(b)(1)(ii), insert the following clause:

Rights in Shop Drawings (Apr. 1966)

(a) Shop drawings for construction means drawings, submitted to the Government by the Construction Contractor, subcontractor or any lower-tier subcontractor pursuant to a construction contract, showing in detail (i) the proposed fabrication and assembly of structural elements and (ii) the installation

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(i.e., form, fit, and attachment details) of materials or equipment. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(b) This clause, including this paragraph (b), shall be included in all subcontracts hereunder at any tier.

(End of clause)

252.227-7034 Patents—Subcontracts.

As prescribed at 227.304–4, insert the following clause:

Patents—Subcontracts (Apr. 1984)

The Contractor will include the clause at FAR 52.227–12, Patent Rights—Retention by the Contractor (Long Form), suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by other than a small business firm or nonprofit organization.

(End of clause)

252.227-7035 [Reserved]

252.227-7036 Certification of Technical Data Conformity.

As prescribed at 227.403–74(c), insert the following clause:

Certification of Technical Data Conformity (May 1987)

(a) All technical data delivered under this contract shall be accompanied by the following written certification:

The Contractor, ________, hereby certifies that, to the best of its knowledge and belief, the technical data delivered herewith under Contract No. ________ is complete, accurate, and complies with all requirements of the contract. ____________________

Date ____________________

Name and Title of Certifying Official ________

This written certification shall be dated and the certifying official (identified by name and title) shall be duly authorized to bind the Contractor by the certification.

(b) The Contractor shall identify, by name and title, each individual (official) authorized by the Contractor to certify in writing that the technical data is complete, accurate, and complies with all requirements of the contract. The Contractor hereby authorizes direct contact with the authorized individual responsible for certification of technical data. The authorized individual shall be familiar with the Contractor's technical data conformity procedures and their application to the technical data to be certified and delivered.

(c) Technical data delivered under this contract may be subject to reviews by the Government during preparation and prior to acceptance. Technical data is also subject to reviews by the Government subsequent to acceptance. Such reviews may be conducted as a function ancillary to other reviews, such as in-process reviews or configuration audit reviews.

(End of clause)

252.227-7037 Validation of restrictive markings on technical data.

As prescribed in 227.403–73(a) insert the following clause:

Validation of Restrictive Markings on Technical Data (Apr. 1988)

(a) *Definitions.* The terms used in this clause are defined in the clause at DFARS 252.227–7013 of the Department of Defense Federal Acquisition Regulation Supplement (DFARS).

(b) *Justification.* The Contractor or subcontractor at any tier is responsible for maintaining records sufficient to justify the validity of its markings that impose restrictions on the Government and others to use, duplicate, or disclose technical data delivered or required to be delivered under the contract or subcontract, and shall be prepared to furnish to the Contracting Officer a written justification for such restrictive markings in response to a challenge under paragraph (d) below.

(c) *Prechallenge Request for Information.* (1) The Contracting Officer may request the Contractor or subcontractor to furnish a written explanation for any restriction asserted by the Contractor or subcontractor on the right of the United States or others to use technical data. If, upon review of the explanation submitted, the Contracting Officer remains unable to ascertain the basis of the restrictive marking, the Contracting Officer may further request the Contractor or subcontractor to furnish additional information in the records of, or otherwise in the possession of or reasonably available to, the Contractor or subcontractor to justify the validity of any restrictive marking on technical data delivered or to be delivered under the contract or subcontract (e.g., a statement of facts accompanied with supporting documentation). The Contractor or subcontractor shall submit such written data as requested by the Contracting Officer within the time required or such longer period as may be mutually agreed.

(2) If the Contracting Officer, after reviewing the written data furnished pursuant to paragraph (c)(1) above, or any other available information pertaining to the validity of a restrictive marking, determines that reasonable grounds exist to question the current validity of the marking and that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data relates, the Contracting Officer shall follow the procedures in (d) below.

(3) If the Contractor or subcontractor fails to respond to the Contracting Officer's request for information under paragraph (c)(1) above, and the Contracting Officer determines that continued adherence to the marking would make impracticable the subsequent compeitive acquisition of the item, component, or process to which the technical data relates, the Contracting Officer may challenge the validity of the marking as described in paragraph (d) below.

(d) *Challenge.* (1) Notwithstanding any provision of this contract concerning inspection and acceptance, if the Contracting Officer determines that a challenge to the restrictive marking is warranted, the Contracting Officer shall send a written challenge notice to the Contractor or subcontractor asserting the restrictive markings. Such challenge shall:

(i) State the specific grounds for challenging the asserted restriction;

(ii) Require a response within sixty (60) days justifying and providing sufficient evidence as to the current validity of the asserted restriction; and

(iii) State that a DoD Contracting Officer's final decision, issued pursuant to paragraph (f) below, sustaining the validity of a restrictive marking identical to the asserted restriction, within the three-year period preceding the challenge, shall serve as justification for the asserted restriction if the validated restriction was asserted by the same Contractor or subcontractor (or any licensee of such Contractor or subcontractor) to which such notice is being provided.

(iv) State that failure to respond to the challenge notice may result in issuance of a final decision pursuant to paragraph (e) below.

(2) The Contracting Officer shall extend the time for response as appropriate if the Contractor or subcontractor submits a written request showing the need for additional time to prepare a response.

(3) The Contractor's or subcontractor's written response shall be considered a claim within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601 *et seq.*), and shall be certified in the form prescribed by FAR 33.207, regardless of dollar amount.

(4) A Contractor or subcontractor receiving challenges to the same restrictive markings from more than one Contracting Officer shall notify each Contracting Officer of the existence of more than one challenge. The notice shall also state which Contracting Officer initiated the first in time unanswered challenge. The Contracting Officer initiating the first in time unanswered challenge after consultation with the Contractor or subcontractor and the other Contracting Officers, shall formulate and distribute a schedule for responding to each of the challenge notices to all interested parties. The schedule shall afford the Contractor or subcontractor an opportunity to respond to each challenge notice. All parties will be bound by this schedule.

(e) *Final Decision When Contractor or Subcontractor Fails to Respond.* Upon a failure of a Contractor or subcontractor to submit any response to the challenge notice, the Contracting Officer will issue a final decision to the Contractor or subcontractor in accordance with the Disputes clause at FAR 52.233–1, pertaining to the validity of the asserted restriction. This final decision shall be issued as soon as possible after the expiration of the time period of paragraph (d)(1)(ii) or (d)(2) above. Following the issuance of the final decision, the Contracting Officer will comply with the procedures in (f)(2) (ii) through (iv) below.

(f) *Final Decision When Contractor or Subcontractor Responds.* (1) If the Contracting Officer determines that the Contractor or subcontractor has justified the validity of the restrictive marking, the

Contracting Officer shall issue a final decision to the Contractor or subcontractor sustaining the validity of the restrictive marking, and stating that the Government will continue to be bound by the restrictive marking. This final decision shall be issued within sixty (60) days after receipt of the Contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor that the Government will require. The notification of a longer period for issuance of a final decision will be made within sixty (60) days after receipt of the response to the challenge notice.

(2)(i) If the Contracting Officer determines that the validity of the restrictive marking is not justified, the Contracting Officer shall issue a final decision to the Contractor or subcontractor in accordance with the Disputes clause at FAR 52.233–1. Notwithstanding paragraph (e) of the Disputes clause, the final decision shall be issued within sixty (60) days after receipt of the Contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor of the longer period that the Government will require. The notification of a longer period for issuance of a final decision will be made within sixty (60) days after receipt of the response to the challenge notice.

(ii) The Government agrees that it will continue to be bound by the restrictive marking for a period of ninety (90) days from the issuance of the Contracting Officer's final decision under paragraph (f)(2)(i) of this clause. The Contractor or subcontractor agrees that, if it intends to file suit in the United States Claims Court it will provide a notice of intent to file suit to the Contracting Officer within ninety (90) days from the issuance of the Contracting Officer's final decision under paragraph (f)(2)(i) of this clause. If the Contractor or subcontractor fails to appeal, file suit, or provide a notice of intent to file suit to the Contracting Officer within the ninety (90)-day period, the Government may cancel or ignore the restrictive markings, and the failure of the Contractor or subcontractor to take the required action constitutes agreement with such Government action.

(iii) The Government agrees that it will continue to be bound by the restrictive marking where a notice of intent to file suit in the United States Claims Court is provided to the Contracting Officer within ninety (90) days from the issuance of the final decision under paragraph (f)(2)(i) of this clause. The Government will no longer be bound, and the Contractor or subcontractor agrees that the Government may strike or ignore the restrictive markings, if the Contractor or subcontractor fails to file its suit within one (1) year after issuance of the final decision. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, that urgent or compelling circumstances will not permit waiting for the filing of a suit in the United States Claims Court, the Contractor or subcontractor agrees that the agency may, following notice to the Contractor or subcontractor, authorize release or disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect the Contractor's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(iv) The Government agrees that it will be bound by the restrictive marking where an appeal or suit is filed pursuant to the Contract Disputes Act until final disposition by an agency Board of Contract Appeals or the United States Claims Court. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, following notice to the Contractor that urgent or compelling circumstances will not permit awaiting the decision by such Board of Contract Appeals or the United States Claims Court, the Contractor or subcontractor agrees that the agency may authorize release or disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect the Contractor's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(g) *Final Disposition of Appeal or Suit.* (1) If the Contractor or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is sustained—

(i) The restrictive marking on the technical data shall be canceled, corrected or ignored; and

(ii) If the restrictive marking is found not to be substantially justified, the Contractor or subcontractor, as appropriate, shall be liable to the Government for payment of the cost to the Government of reviewing the restrictive marking and the fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Government in challenging the marking, unless special circumstances would make such payment unjust.

(2) If the Contractor or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is not sustained—

(i) The Government shall continue to be bound by the restrictive marking; and

(ii) The Government shall be liable to the Contractor or subcontractor for payment of fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Contractor or subcontractor in defending the marking, if the challenge by the Government is found not to have been made in good faith.

(h) *Duration of Right to Challenge.* The Government may review the validity of any restriction on technical data, delivered or to be delivered under a contract, asserted by the Contractor or subcontractor. During the period within three (3) years of final payment on a contract or within three (3) years of delivery of the technical data to the Government, whichever is later, the Contracting Officer may review and make a written determination to challenge the restriction. The Government may, however, challenge a restriction on the release, disclosure or use of technical data at any time if such technical data—

(1) Is publicly available;

(2) Has been furnished to the United States without restriction; or

(3) Has been otherwise made available without restriction. Only the Contracting Officer's final decision resolving a formal challenge by sustaining the validity of a restrictive marking constitutes "validation" as addressed in 10 U.S.C. 2321.

A decision by the Government, or a determination by the Contracting Officer, to not challenge the restrictive marking or asserted restriction shall not constitute "validation".

(i) *Privity of Contract.* The Contractor or subcontractor agrees that the Contracting Officer may transact matters under this clause directly with subcontractors at any tier that assert restrictive markings. However, this clause neither creates nor implies privity of contract between the Government and subcontractors.

(j) *Flowdown.* The Contractor or subcontractor agrees to insert this clause in subcontracts at any tier requiring the delivery of technical data.

(End of clause)

252.227-7038 [Reserved]

252.227-7039 Patents—reporting of subject inventions.

As prescribed at 227.303(a), insert the following clause:

Patents—Reporting of Subject Inventions (Apr. 1990)

The Contractor shall furnish the Contracting Officer the following:

(a) Interim reports every twelve (12) months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing subject inventions during that period and stating that all subject inventions have been disclosed or that there are no such inventions.

(b) A final report, within three (3) months after completion of the contracted work, listing all subject inventions or stating that there were no such inventions.

(c) Upon request, the filing date, serial number and title, a copy of the patent application and patent number, and issue data for any subject invention for which the Contractor has retained title.

(d) Upon request, the Contractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(End of clause)

252.228-7000 Reimbursement for war-hazard losses.

As prescribed in 228.370(a), use the following clause:

Reimbursement For War-Hazard Losses (Dec. 1991)

(a) Costs for providing employee war-hazard benefits in accordance with paragraph (b) of the Workers' Compensation and War-Hazard Insurance clause of this contract are allowable if the Contractor—

(1) Submits proof of loss files to support payment or denial of each claim;

(2) Subject to Contracting Officer approval, makes lump sum final settlement of any open claims and obtains necessary release documents within one year of the expiration or termination of this contract, unless otherwise extended by the Contracting Officer; and

(3) Provides the Contracting Officer at the time of final settlement of this contract—

(i) An investigation report and evaluation of any potential claim; and

(ii) An estimate of the dollar amount involved should the potential claim mature.

(b) The cost of insurance for liabilities reimbursable under this clause is not allowable.

(c) The Contracting Officer may require the Contractor to assign to the Government all right, title, and interest to any refund, rebate, or recapture arising out of any claim settlements.

(d) The Contractor agrees to—

(1) Investigate and promptly notify the Contracting Officer in writing of any occurrence which may give rise to a claim or potential claim, including the estimated amount of the claim;

(2) Give the Contracting Officer immediate written notice of any suit or action filed which may result in a payment under this clause; and

(3) Provide assistance to the Government in connection with any third party suit or claim relating to this clause which the Government elects to prosecute or defend in its own behalf.

(End of clause)

252.228-7001 Ground and flight risk.

As prescribed in 228.370(b), use the following clause:

Ground and Flight Risk (Dec. 1991)

(a) Definitions. As used in this clause—

(1) *Aircraft,* unless otherwise provided in the Schedule, means—

(i) Aircraft to be delivered to the Government under this contract (either before or after Government acceptance), including complete aircraft and aircraft in the process of being manufactured, disassembled, or reassembled; provided that an engine, portion of a wing or a wing is attached to a fuselage of the aircraft; and

(ii) Aircraft, whether in a state of disassembly or reassembly, furnished by the Government to the Contractor under this contract, including all property installed, in the process of installation, or temporarily removed; provided that the aircraft and property are not covered by a separate bailment agreement.

(2) *Contractor's premises* means those premises designated in the Schedule or in writing by the Contracting Officer, and any other place the aircraft is moved for safeguarding.

(3) *Flight* means any flight demonstration, flight test, taxi test, or other flight made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer. (i) For land based aircraft, *flight* begins with the taxi roll from a flight line on the Contractor's premises and continues until the aircraft has completed the taxi roll in returning to a flight line on the Contractor's premises;

(ii) For seaplanes, *flight* begins with the launching from a ramp on the Contractor's premises and continues until the aircraft has completed its landing run and is beached at a ramp on the Contractor's premises;

(iii) For helicopters, *flight* begins upon engagement of the rotors for the purpose of take-off from the Contractor's premises and continues until the aircraft has returned to the ground on the Contractor's premises and the rotors are disengaged; and

(iv) For vertical take-off aircraft, *flight* begins upon disengagement from any launching platform or device on the Contractor's premises and continues until the aircraft has been engaged to any launching platform or device on the Contractor's premises;

(v) All aircraft off the Contractor's premises shall be considered to be in flight when on the ground or water for reasonable periods of time following emergency landings, landings made in performance of this contract, or landings approved in writing by the Contracting Officer.

(4) *Flight crew member* means the pilot, the co-pilot, and, unless otherwise provided in the Schedule, the flight engineer, navigator, and bombardier-navigator when assigned to their respective crew positions for the purpose of conducting any flight on behalf of the Contractor. If required, a defense systems operator may also be assigned as a flight crew member.

(5) *In the open* means located wholly outside of buildings on the Contractor's premises or other places described in the Schedule as being *in the open.* Government furnished aircraft shall be considered to be located *in the open* at all times while in the Contractor's possession, care, custody, or control.

(6) *Operation* means operations and tests of the aircraft and its installed equipment, accessories, and power plants, while the aircraft is in the open or in motion. The term does not apply to aircraft on any production line or in flight.

(b) Except as may be specifically provided in the Schedule as an exception to this clause, the Government assumes the risk of damage to, or loss or destruction of aircraft *in the open,* during *operation,* and in *flight.* The Contractor shall not be liable to the Government for such damage, loss, or destruction.

(c) The Government's assumption of risk for aircraft in the open shall continue unless the Contracting Officer finds that the aircraft is in the open under unreasonable conditions, and the Contractor fails to take prompt corrective action. (1) The Contracting Officer, when finding aircraft in the open under unreasonable conditions, shall notify the Contractor in writing of the unreasonable conditions and require the Contractor to make corrections within a reasonable time.

(2) Upon receipt of the notice, the Contractor shall promptly correct the cited conditions, regardless of whether there is agreement that the conditions are unreasonable. If the Contracting Officer later determines that the cited conditions were not unreasonable, an equitable adjustment shall be made in the contract price for any additional costs incurred in correcting the conditions. Any dispute as to the unreasonableness of the conditions or the equitable adjustment shall be considered a dispute under the Disputes clause of this contract.

(3) If the Contracting Officer finds that the Contractor failed to act promptly to correct the cited conditions or failed to correct the conditions within a reasonable time, the Contracting Officer may terminate the Government's assumption of risk for any aircraft in the open under the cited conditions. The termination will be effective at 12:01 am on the fifteenth day following the day the written notice is received by the Contractor. If the Contracting Officer later determines that the Contractor acted promptly to correct the cited conditions or that the time taken by the Contractor was not unreasonable, an equitable adjustment shall be made in the contract price for any additional costs incurred as a result of termination of the Government's assumption of risk. Any dispute as to the timeliness of the Contractor's action or the equitable adjustment shall be considered a dispute under the Disputes clause of this contract.

(4) If the Government terminates its assumption of risk, the risk of loss for Government-furnished property shall be determined in accordance with the Government Property clause of this contract.

(5) The Contractor shall promptly notify the Contracting Officer when unreasonable conditions have been corrected. If the Government elects to again assume the risk of loss and relieve the Contractor of liabilities, the Contracting Officer will notify the Contractor. The Contractor shall be entitled to an equitable adjustment in the contract price for any insurance costs extending from the end of the third working day after the Contractor notice of correction until the Contractor is notified that the Government will assume the risk of loss. If the Government does not again assume the risk of loss and conditions have been corrected, the Contractor shall be entitled to an equitable adjustment for insurance costs, if any, extending after the third working day.

(d) The Government's assumption of risk shall not extend to damage, loss, or destruction of aircraft which—

(1) Results from failure of the Contractor, due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel, to maintain and administer a program for the protection and preservation of aircraft in the open and during operation in accordance with sound industrial practice. The term *Contractor's managerial personnel* means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or other equivalent representatives who supervise or direct all or substantially all of the Contractor's business; or all or substantially all of the Contractor's operations at any one plant or separate location at which this contract is performed; or a separate and complete major industrial

operation in connection with the performance of this contract;

(2) Is sustained during flight if the flight crew members have not been approved in writing by the Contracting Officer;

(3) Occurs in the course of transportation by rail, or by conveyance on public streets, highways, or waterways, except for Government-furnished property;

(4) Is covered by insurance;

(5) Consists of wear and tear; deterioration (including rust and corrosion); freezing; or mechanical, structural, or electrical breakdown or failure, unless these are the result of other loss, damage or destruction covered by this clause. (This exclusion does not apply to Government-furnished property if damage consists of reasonable wear and tear or deterioration, or results from inherent vice in the property.); or

(6) Is sustained while the aircraft is being worked on and is a direct result of the work unless such damage, loss, or destruction would be covered by insurance which would have been maintained by the Contractor, but for the Government's assumption of risk.

(e) With the exception of damage, loss, or destruction in flight, the Contractor assumes the risk and shall be responsible for the first $1,000 of loss or damage to aircraft in the open or during operation resulting from each separate event, except for reasonable wear and tear and to the extent the loss or damage is caused by negligence of Government personnel. If the Government elects to require that the aircraft be replaced or restored by the Contractor to its condition immediately prior to the damage, the equitable adjustment in the price authorized by paragraph (i) of this clause shall not include the dollar amount of the risk assumed by the Contractor. In the event the Government does not elect repair or replacement, the Contractor agrees to credit the contract price or pay the Government $1,000 (or the amount of the loss, if less) as directed by the Contracting Officer.

(f) A subcontractor shall not be relieved from liability for damage, loss, or destruction of aircraft while in its possession or control, except to the extent that the subcontract, with the written approval of the Contracting Officer, provides for relief from each liability. In the absence of approval, the subcontract shall contain provisions requiring the return of aircraft in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this contract. Where a subcontractor has not been relieved from liability, and damage, loss, or destruction occurs, the Contractor shall enforce liability against the subcontractor for the benefit of the Government.

(g) The Contractor warrants that the contract price does not and will not include, except as may be authorized in this clause, any charge or contingency reserve for insurance covering damage, loss, or destruction of aircraft while in the open, during operation, or in flight when the risk has been assumed by the Government, even if the assumption may be terminated for aircraft in the open.

(h) In the event the damage, loss, or destruction of aircraft in the open, during operation, or in flight, the Contractor shall take all reasonable steps to protect the aircraft from further damage, to separate damaged and undamaged aircraft, to put all aircraft in the best possible order and further, except in cases covered by paragraph (e) of this clause, the Contractor shall furnish to the Contracting Officer a statement of—

(1) The damaged, lost, or destroyed aircraft;

(2) The time and origin of the damage, loss, or destruction;

(3) All known interests in commingled property of which aircraft are a part; and

(4) The insurance, if any, covering the interest in commingled property.

Except in cases covered by paragraph (e) of this clause, the Contracting Officer will make an equitable adjustment in the contract price for expenditures made by the Contractor in performing the obligations under this paragraph.

(i) If prior to delivery and acceptance by the Government, aircraft is damaged, lost, or destroyed and the Government assumed the risk, the Government shall either—

(1) Require that the aircraft be replaced or restored by the Contractor to the condition immediately prior to the damage; or

(2) Terminate this contract with respect to the aircraft. In the event the Government requires that the aircraft be replaced or restored, the Contracting Officer will make an equitable adjustment in the contract price and the time for contract performance. If this contract is terminated with respect to the aircraft and the Government has assumed the risk of damage, loss, or destruction, the Contractor shall be paid the contract price for the aircraft (or if applicable, any work to be performed on the aircraft) less any amount the Contracting Officer determines—

(i) It would have cost the Contractor to complete the aircraft (or any work to be performed on the aircraft) together with anticipated profit on uncompleted work; and

(ii) Would be the value of the damage aircraft or any salvage retained by the Contractor.

The Contracting Officer shall prescribe the manner of disposition of the damaged, lost, or destroyed aircraft, or any parts of the aircraft. If any additional costs of such disposition are incurred by the Contractor, a further equitable adjustment will be made in the amount due the Contractor. Failure of the parties to agree upon termination costs or an equitable adjustment with respect to any aircraft shall be considered a dispute under the Disputes clause.

(j) In the event the Contractor is reimbursed or compensated by a third person for damage, loss, or destruction of aircraft and has also been compensated by the Government, the Contractor shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's right to recover against third parties for damage, loss, or destruction. Upon the request of the Contracting Officer or authorized representative, the Contractor shall at Government expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment of subrogation) in obtaining recovery.

(k) The Contractor agrees to be bound by the operating procedures contained in the combined regulation: "Contractor Flight Operation" in effect on the date of contract award (Air Force Regulation 55–22, Army Regulation 95–20, NAVAIR Instruction 3710.1; and Defense Logistics Agency Regulation 8210.1).

(End of clause)

252.228–7002 Aircraft flight risks.

As prescribed in 228.370(c), use the following clause:

Aircraft Flight Risk (Dec. 1991)

(a) Definitions. As used in this clause—

(1) *Aircraft*, unless otherwise provided in the Schedule, means—

(i) Aircraft furnished by the Contractor under this contract (either before or after Government acceptance); or

(ii) Aircraft furnished by the Government to the Contractor, including all Government property placed on, installed or attached to the aircraft; provided that the aircraft and property are not covered by a separate bailment agreement.

(2) *Flight* means any flight demonstration, flight test, taxi test, or other flight made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer.

(i) For land-based aircraft, *flight* begins with the taxi roll from a flight line and continues until the aircraft has completed the taxi roll to a flight line.

(ii) For seaplanes, *flight* begins with the launching from a ramp and continues until the aircraft has completed its landing run and is beached at a ramp.

(iii) For helicopters, *flight* begins upon engagement of the rotors for the purpose of take-off and continues until the aircraft has returned to the ground and rotors are disengaged.

(iv) For vertical take-off aircraft, *flight* begins upon disengagement from any launching platform or device and continues until the aircraft has been reengaged to any launching platform or device.

(3) *Flight crew members* means the pilot, co-pilot, and unless otherwise provided in the Schedule, the flight engineer, navigator, bombardier-navigator, and defense systems operator as required, when assigned to their respective crew positions to conduct any flight on behalf of the Contractor.

(b) This clause takes precedence over any other provision of this contract (particularly paragraph (g) of the Government Property (Cost-Reimbursement, Time-and-Materials, or Labor-Hour Contracts) clause and paragraph (c) of the Insurance—Liability to Third Persons clause).

(c) Unless the flight crew members previously have been approved in writing by the Contracting Officer, the Contractor shall not be—

(1) Relieved of liability for damage, loss, or destruction of aircraft sustained during flight; or

(2) Reimbursed for liabilities to third persons for loss or damage to property or for

death or bodily injury caused by aircraft during flight.

(d)(1) The loss, damage, or destruction of aircraft during flight in an amount exceeding $100,000 or 20 percent of the estimated cost of this contract, whichever is less, is subject to an equitable adjustment when the Contractor is not liable under—

(i) The Government Property (Cost-Reimbursement, Time-and-Materials, or Labor-Hour Contracts) clause, and

(ii) Paragraph (c) of this clause.

(2) The equitable adjustment under this contract for the resulting repair, restoration, or replacement of aircraft shall be made—

(i) In the estimated cost, the delivery schedule, or both; and

(ii) In the amount of any fee to be paid to the Contractor.

(3) In determining the amount of equitable adjustment in the fee, the Contracting Officer will consider any fault of the Contractor, its employees, or any subcontractor that materially contributed to the damage, loss, or destruction.

(4) Failure to agree on any adjustment shall be a dispute concerning a question of fact within the meaning of the Disputes clause of this contract.

(e) The Contractor agrees to be bound by the operating procedures contained in the combined regulation: "Contractor Flight Operations" in effect on the date of contract award (Air Force Regulation 55–22, Army Regulation 95–20, NAVAIR Instruction 3710.1; and Defense Logistics Agency Regulation 8210.1).

(End of clause)

252.228–7003 Capture and detention.

As prescribed in 228.370(d), use the following clause:

Capture and Detention (Dec. 1991)

(a) As used in this clause—

(1) *Captured person* means any employee of the Contractor who is—

(i) Assigned to duty outside the United States for the performance of this contract; and

(ii) Found to be missing from his or her place of employment under circumstances that make it appear probable that the absence is due to the action of the force of any power not allied with the United States in a common military effort; or

(iii) Known to have been taken prisoner, hostage, or otherwise detained by the force of such power, whether or not actually engaged in employment at the time of capture; provided, that at the time of capture or detention, the person was either—

(A) Engaged in activity directly arising out of and in the course of employment under this contract; or

(B) Captured in an area where required to be only in order to perform this contract.

(2) A *period of detention* begins with the day of capture and continues until the captured person is returned to the place of employment, the United States, or is able to be returned to the jurisdiction of the United States, or until the person's death is established or legally presumed to have occurred by evidence satisfactory to the Contracting Officer, whichever occurs first.

(3) *United States* comprises geographically the 50 states and the District of Columbia.

(4) *War Risk Hazards Compensation Act* refers to the statute compiled in chapter 12 of title 42, U.S. Code (sections 1701–1717), as amended.

(b) If pursuant to an agreement entered into prior to capture, the Contractor is obligated to pay and has paid detention benefits to a captured person, or the person's dependents, the Government will reimburse the Contractor up to an amount equal to the lesser of—

(1) Total wage or salary being paid at the time of capture due from the Contractor to the captured person for the period of detention; or

(2) That amount which would have been payable if the detention had occurred under circumstances covered by the War Risk Hazards Compensation Act.

(c) The period of detention shall not be considered as time spent in contract performance, and the Government shall not be obligated to make payment for that time except as provided in this clause.

(d) The obligation of the Government shall apply to the entire period of detention, except that it is subject to the availability of funds from which payment can be made. The rights and obligations of the parties under this clause shall survive prior expiration, completion, or termination of this contract.

(e) The Contractor shall not be reimbursed under this clause for payments made if the employees were entitled to compensation for capture and detention under the War Risk Hazards Compensation Act, as amended.

(End of clause)

252.228–7004 Bonds or other security.

As prescribed in 228.170, use the following provision:

Bonds or Other Security (Dec. 1991)

(a) Offerors shall furnish a bid guarantee in the amount of $________ with their bids. The offeror receiving notice of award shall furnish—

(1) A performance bond in the penal amount of $________; and

(2) Payment in full of any sum due the Government.

(b) The Contractor shall furnish the performance bond to the Contracting Officer within ____ days after receipt of the notice of award. The Contracting Officer will not issue the notice to proceed until receipt of an acceptable performance bond and payment of any sum due the Government.

(c) Bonds supported by sureties whose names appear on the list contained in Treasury Department Circular 570 are acceptable. Performance bonds from individual sureties are acceptable if each person acting as a surety provides a SF 28, Affidavit of Individual Surety, and a pledge of assets acceptable to the Contracting Officer.

(End of provision)

252.228–7005 Accident reporting and investigation involving aircraft, missiles, and space launch vehicles.

As prescribed in 228.370(e), use the following clause:

Accident reporting and investigation involving aircraft, missiles, and space launch vehicles (Dec. 1991)

(a) The Contractor shall report promptly to the Administrative Contracting Officer all pertinent facts relating to each accident involving an aircraft, missile, or space launch vehicle being manufactured, modified, repaired, or overhauled in connection with this contract.

(b) If the Government conducts an investigation of the accident, the Contractor will cooperate and assist the Government's personnel until the investigation is complete.

(c) The Contractor will include a clause in subcontracts under this contract to require subcontractor cooperation and assistance in accident investigations.

(End of clause)

252.231–7000 Supplemental cost principles.

As prescribed in 231.100–70, use the following clause:

Supplemental Cost Principles (Dec. 1991)

When the allowability of costs under this contract is determined in accordance with part 31 of the Federal Acquisition Regulation (FAR), allowability shall also be determined in accordance with part 231 of the Defense FAR Supplement, in effect on the date of this contract.

(End of clause)

252.231–7001 Penalties for unallowable costs.

As prescribed in 231.7004, use the following clause:

Penalties for Unallowable Costs (Dec. 1991)

(a) *Definition.—Proposal* means—

(1) A final indirect cost rate proposal submitted by the Contractor after the expiration of its fiscal year which—

(i) Relates to any payment made on the basis of billing rates; or

(ii) Will be used in negotiating the final contract price.

(2) The final statement of costs incurred and estimated to be incurred under the Incentive Price Revision clause (if applicable), which is used to establish the final contract price.

(b) Contractors which include unallowable costs in a proposal are subject to assessment of penalties. The penalties are prescribed in 10 U.S.C. 2324, which is implemented in subpart 231.70 of the Defense FAR Supplement.

(c) The Contractor shall not include in any proposal any cost which is unallowable, as defined in FAR part 31.

(d) If the Contracting Officer determines by clear and convincing evidence that a cost submitted by the Contractor in its proposal is unallowable, the Contractor shall be assessed a penalty equal to—

(1) The amount of the disallowed cost allocated to this contract; plus

(2) Simple interest, to be computed—

(i) On the amount the Contractor was paid (whether as a progress or billing payment) in excess of the amount to which the Contractor was entitled.

(ii) Using the applicable rate effective for each six month interval prescribed by the Secretary of the Treasury pursuant to Public Law 92–41 (85 Stat. 97).

(e) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal includes a cost previously determined to be unallowable for the Contractor, then the Contractor will be assessed an additional penalty in an amount equal to two times the amount of the unallowable cost.

(f) Determinations under (d) and (e) of this clause are final decisions within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 604, *et seq.*).

(g) The Government is entitled to assess an additional penalty of not more than $10,000 per proposal, if any penalty is assessed under paragraphs (d) or (e) of this clause.

(h) Contractor submission of unallowable costs is also subject to the provisions of 18 U.S.C. 287 and 31 U.S.C. 3729.

(i) Payment by the Contractor of any penalty assessed under this clause does not constitute repayment to the Government of any unallowable cost which has been paid by the Government to the Contractor.

(End of clause)

252.232-7000 Advance payment pool.

As prescribed in 232.412–70(a), use the following clause:

Advance Payment Pool (Dec. 1991)

(a) Notwithstanding any other provision of this contract, advance payments will be made for contract performance in accordance with the Determinations, Findings, and Authorization for Advance payment dated

____

(b) Payments made in accordance with this clause shall be governed by the terms and conditions of the Advance Payment Pool Agreement between the United States of America and (*insert the name of the contractor*). The Agreement is incorporated in the contract by reference.

(End of clause)

252.232-7001 Disposition of payments.

As prescribed in 232.412–70(b), use the following clause:

Disposition of Payment (Dec. 1991)

Payment will be by a dual payee Treasury check made payable to the contractor or the (*insert the name of the disbursing office in the advance payment pool agreement*), and will be forwarded to that disbursing office for appropriate disposition.

(End of clause)

252.232-7002 Progress payments for foreign military sales acquisitions.

As prescribed in 232.502–4–70(a), use the following clause:

Progress Payments for Foreign Military Sales Acquisitions (Dec. 1991)

If this contract includes foreign military sales (FMS) requirements, the Contractor shall—

(a) Submit a separate progress payment request for each progress payment rate; and

(b) Submit a supporting schedule showing—

(1) The amount of each request distributed to each country's requirements; and

(2) Total price per contract line item applicable to each separate progress payment rate.

(c) Identify in each progress payment request the contract requirements to which it applies (i.e., FMS or U.S.);

(d) Calculate each request on the basis of the prices, costs (including costs to complete), subcontractor progress payments, and progress payment liquidations of the contract requirements to which it applies; and

(e) Distribute costs among contract line items and countries in a manner acceptable to the Administrative Contracting Officer.

(End of clause)

252.232-7003 Flexible progress payments.

As prescribed in 232.502–4–70(b), use the following clause:

Flexible Progress Payments (Dec. 1991)

(a) This contract is subject to flexible progress payment procedures as set forth in this clause and Defense FAR Supplement 232.502–1–71.

(1) The progress payment rate of this contract is ________ percent. This percentage applies instead of the customary uniform progress payment rate and liquidation rate of the Progress Payments clause.

(2) The progress payment rate of this contract was determined by the DoD Cash Flow Computer Model (*name*) dated ____________, using percent as the minimum rate for the Contractor's investment (as a weighted average of costs) in its work in process inventory over the life of the contract.

(b) If actual and projected cash flow data generated during contract performance reveal that the customary flexible progress payment rate will result in a Contractor investment in work in process inventory more than two percentage points higher or lower than the minimum rate of Contractor investment specified in paragraph (a)(2) of this clause, the progress payment rate shall be redetermined by using the DoD Cash Flow Computer Model. Unless it contained an error, the version of the DoD Cash Flow Computer Model identified in paragraph (a)(2) of this clause shall be used for any redetermination. The customary flexible progress payment rate shall not be less than the customary uniform progress payment rate that would have applied to this contract absent flexible progress payment procedures, and the progress payment rate shall not be greater than 100 percent.

(c) Notwithstanding paragraph (b) of this clause, if at any time the flexible progress payment rate is determined to be overstated because any factual data submitted by the Contractor in support of the rate computation was not current, accurate, and complete at the time the flexible progress payment rate was established, the progress payment rate shall be reduced to the rate that should have been calculated using the model specified in paragraph (a)(2) of this clause. The Contractor shall pay interest in accordance with paragraph (d) of this clause on all resulting overpayments, computed from the date of the Government's overpayment, to the date of liquidation of the overpayment. Payment of any unliquidated overpayment and interest shall be due 30 days after the date of the first written demand for payment.

(d) Interest shall be simple interest at the rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Pub. L. 95–563), which is applicable at the time the Government made the overpayment, and then at the rate applicable for each six month period as fixed by the Secretary, until the overpayment is liquidated.

(e) Flexible progress payment terms will be made available to subcontractors in accordance with paragraph (j) of the Progress Payments clause and Defense FAR Supplement 232.502–1–71(b)(4).

(End of clause)

252.233-7000 Certification of claims and requests for adjustment or relief.

As prescribed in 233.7001, use the following clause:

Certification of Claims and Requests for Adjustment or Relief (Dec. 1991)

(a) Any contract claim, request for equitable adjustment to contract terms, request for relief under Public Law 85–804, or other similar request exceeding $100,000 shall bear, at the time of submission, the following certificate given by a senior company official in charge at the plant or location involved:

I certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief; and that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable.

____

(Official's Name)

____

(Title)

(b) The certification in paragraph (a) of this clause requires full disclosure of all relevant facts, including cost and pricing data.

(c) The certification requirement in paragraph (a) of this clause does not apply to:

(1) Requests for routine contract payments; for example, those for payment for accepted supplies and services, routine vouchers under cost-reimbursement type contracts, and progress payment invoices; or

(2) Final adjustments under incentive provisions of contracts.

(d) In those situations where no claim certification for the purposes of 10 U.S.C. 2410 has been submitted prior to the inception of a contract dispute, a single certification, using the language prescribed by the Contract Disputes Act but signed by a senior company official in charge at the plant or location involved, will satisfy the certification requirements of both statutes.

(e) If this is a request for equitable adjustment under a substantially completed contract or a completed contract, the certification will be expanded to include the following:

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Payments (Dec. 1991)

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Contractor shall pay interest in accordance with paragraph (d) of this clause on all resulting overpayments, computed from the date of the Government's overpayment, to the date of liquidation of the overpayment. Payment of any unliquidated overpayment and interest shall be due 30 days after the date of the first written demand for payment.

(d) Interest shall be simple interest at the rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Pub. L. 95-563), which is applicable at the time the Government made the overpayment, and then at the rate applicable for each six month period as fixed by the Secretary, until the overpayment is liquidated.

(e) Flexible progress payment terms will be made available to subcontractors in accordance with paragraph (j) of the Progress Payments clause and Defense FAR Supplement 232.502-1-71(b)(4).

(End of clause)

252.233-7000 Certification of claims and requests for adjustment or relief.

As prescribed in 233.7001, use the following clause:

Certification of Claims and Requests for Adjustment or Relief (Dec. 1991)

(a) Any contract claim, request for equitable adjustment to contract terms, request for relief under Public Law 85-804, or other similar request exceeding $100,000 shall bear, at the time of submission, the following certificate given by a senior company official in charge at the plant or location involved:

I certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief; and that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable.

(Official's Name)

(Title)

(b) The certification in paragraph (a) of this clause requires full disclosure of all relevant facts, including cost and pricing data.

(c) The certification requirement in paragraph (a) of this clause does not apply to:

(1) Requests for routine contract payments; for example, those for payment for accepted supplies and services, routine vouchers under cost-reimbursement type contracts, and progress payment invoices; or

(2) Final adjustments under incentive provisions of contracts.

(d) In those situations where no claim certification for the purposes of 10 U.S.C. 2410 has been submitted prior to the inception of a contract dispute, a single certification, using the language prescribed by the Contract Disputes Act but signed by a senior company official in charge at the plant or location involved, will satisfy the certification requirements of both statutes.

(e) If this is a request for equitable adjustment under a substantially completed contract or a completed contract, the certification will be expanded to include the following:

This claim includes only costs for performing the alleged change, and does not include any costs which have already been reimbursed or which have been separately claimed. All indirect costs claimed are properly allocable to the alleged change in accordance with applicable acquisition regulations. I am aware that the submission of a false claim to the Government can result in the assessment of significant criminal and civil penalties and fines.

(End of clause)

252.234-7000 Notice of cost/schedule control systems.

As prescribed by 234.005-70, use the following provision:

Cost/Schedule Control Systems (Dec. 1991)

(a) The Offeror shall submit a comprehensive plan for compliance with the cost/schedule control systems criteria of DoDI 5000.2, Defense Acquisition Management Policies and Procedures. The plan shall—

(1) Describe the cost/schedule control systems (C/SCS) the Offeror intends to use in performance of the contract.

(2) Distinguish between the Offeror's existing management systems and modifications proposed to meet the criteria.

(3) Describe the management systems and their application in all major functional cost areas in terms of:

(i) The work breakdown structure,

(ii) Planning,

(iii) Budgeting,

(iv) Scheduling,

(v) Work authorization,

(vi) Cost accumulation,

(vii) Measurement and reporting of cost and schedule performance,

(viii) Variance analysis, and

(ix) Baseline control.

(4) Describe compliance with each of the criteria. (Preferably, cross-reference appropriate elements in the description of systems with the items in the checklist for the C/SCS criteria in AFSCP 173-5, AMC-P 715-5, NAVSO P3627, DLAH 8400.2, DCAA P7641.47, Cost/Schedule Control Systems Criteria Joint Implementation Guide.)

(5) Identify the major subcontractors, or major subcontracted effort if major subcontractors have not been selected, planned for application of the criteria.

(6) Describe the proposed procedure for administration of the criteria as applied to subcontractors.

(b) If the Offeror is using C/SCS which have been accepted by the Government, or is operating C/SCS under a current Memorandum of Understanding, the Offeror may submit either instead of the comprehensive plan.

(c) The Offeror shall provide information and assistance as requested by the Contracting Officer for evaluation of compliance with the cited criteria.

(d) The Government will evaluate the Offeror's plan for C/SCS before contract award.

(e) The prime contractor and the Government shall agree to subcontractors selected for application of the C/SCS criteria. The Contractor will contractually require the selected subcontractors to comply with the criteria. If either the prime or subcontractor requests, the Government, at its option, may conduct demonstrations and reviews of these selected subcontractors' management systems.

(End of provision)

252.234-7001 Cost/schedule control systems.

As prescribed in 234.005-70, use the following clause:

Cost/Schedule Control Systems (Dec. 1991)

(a) The Contractor shall establish, maintain, and use in the performance of this contract cost/schedule control systems (C/SCS) meeting the criteria of DoDI 5000.2, Defense Acquisition Management Policies and Procedures.

(b) Within 90 calendar days of contract award, or a longer period if the Contracting Officer agrees, the Contractor shall—

(1) Furnish the Contracting Officer a description of the C/SCS applicable to this contract. The description shall—

(i) Be in the form and detail as indicated by the AFSCP 173-5, AMC-P 715-5, NAVSO P3627, DLAH 8400.2, DCAA P7641.47 Cost Schedule Control Systems Criteria Joint Implementation Guide (the Guide); or

(ii) Be in the form and detail required by the Contracting Officer.

(2) Be prepared to demonstrate the operation of the Contractor's C/SCS to the Government for compliance with the criteria of DoDI 5000.2.

(c) The Contracting Officer shall reference the description of the accepted C/SCS in the contract. The Contractor shall maintain and use the accepted C/SCS in the performance of this contract.

(d) The Contractor shall submit proposed changes to the accepted C/SCS to the Contracting Officer for review and approval. The Contracting Officer shall advise the Contractor of the acceptability of such changes within 60 days after receipt.

(e) When systems existing at time of contract award do not comply with the criteria, the Contractor shall make adjustments necessary to ensure compliance at no change in contract price or fee.

(f) The Contractor agrees to provide access to all pertinent records and data requested by the Contracting Officer or duly authorized representative. Access is for the purpose of reviewing the demonstration in paragraph (b) of this clause and also to permit Government surveillance to ensure continuing application of the accepted systems to this contract.

(g) The Contractor shall correct deviations from accepted systems discovered during contract performance, as directed by the Contracting Officer.

(h) The Contractor shall require that each selected subcontractor, as agreed to by the Contracting Officer, shall meet the C/SCS criteria as set forth in the Guide. All such subcontracts shall have provisions for demonstration, review, acceptance, and surveillance of systems, to be conducted by the Government, at its option, when requested by the Contractor or subcontractor.

(i) If the Contractor or subcontractor is utilizing C/SCS which have been previously accepted, or is operating such systems under a current Memorandum of Understanding, the Contracting Officer may waive all or part of the provisions concerning demonstration and review.

(End of clause)

252.235-7000 Indemnification under 10 U.S.C. 2354—fixed price.

As prescribed in 235.070-3, use the following clause:

Indemnification Under 10 U.S.C. 2354—Fixed Price (Dec. 1991)

(a) This clause provides for indemnification under 10 U.S.C. 2354 if the Contractor meets all the terms and conditions of this clause.

(b) Claims, losses, and damages covered—

(1) Claims by third persons for death, bodily injury, sickness, or disease, or the loss, damage, or lost use of property. Claims include those for reasonable expenses of litigation or settlement. The term *third persons* includes employees of the contractor;

(2) The loss, damage, and lost use of the Contractor's property, but excluding lost profit; and

(3) Loss, damage, or lost use of the Government's property.

(c) The claim, loss, or damage—

(1) Must arise from the direct performance of this contract;

(2) Must not be compensated by insurance or other means, or be within deductible amounts of the Contractor's insurance;

(3) Must result from an unusually hazardous risk as specifically defined in the contract;

(4) Must not result from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, managers, superintendents, or other equivalent representatives who have supervision or direction of—

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operations at any one plant or separate location where this contract is being performed; or

(iii) A separate and complete major industrial operation connected with the performance of this contract;

(5) Must not be a liability assumed under any contract or agreement (except for subcontracts covered by paragraph (h) of this clause), unless the Contracting Officer (or in contracts with the Department of the Navy, the Department) specifically approved the assumption of liability; and

(6) Must be certified as just and reasonable by the Secretary of the department or designated representative.

(d) The Contractor shall buy and maintain, to the extent available, insurance against unusually hazardous risks in the form, amount, period(s) of time, at the rate(s), and with such insurers, as the Contracting Officer (or, for Navy contracts, the Department) may from time to time require and approve. If the cost of this insurance is higher than the cost of the insurance the Contractor had as of the date of the contract, the Government shall reimburse the Contractor for the difference in cost, as long as it is properly allocable to this contract and is not included in the contract price. The Government shall not be liable for claims, loss, or damage if insurance was available and is either required or approved under this paragraph.

(e) A reduction of the insurance coverage maintained by the Contractor on the date of the execution of this contract shall not increase the Government's liability under this clause unless the Contracting Officer consents, and the contract price is equitably adjusted, if appropriate, to reflect the Contractor's consideration for the Government's assumption of increased liability.

(f) *Notice.* The Contractor shall—

(1) Promptly notify the Contracting Officer of any occurrence, action, or claim that might trigger the Government's liability under this clause;

(2) Furnish the proof or evidence of any claim, loss, or damage in the form and manner that the Government requires; and

(3) Immediately provide copies of all pertinent papers that the Contractor receives or has received.

(g) The Government may direct, participate in, and supervise the settlement or defense of the claim or action. The Contractor shall comply with the Government's directions and execute any authorizations required.

(h) *Flowdown.* The Government shall indemnify the Contractor if the Contractor has an obligation to indemnify a subcontractor under any subcontract at any tier under this contract for the unusually hazardous risk identified in this contract only if—

(1) The Contracting Officer gave prior written approval for the Contractor to provide in a subcontract for the Contractor to indemnify the subcontractor for unusually hazardous risks defined in this contract;

(2) The Contracting Officer approved those indemnification provisions;

(3) The subcontract indemnification provisions entitle the Contractor, or the Government, or both, to direct, participate in, and supervise the settlement or defense of relevant actions and claims; and

(4) The subcontract provides the same rights and duties, the same provisions for notice, furnishing of papers and the like, between the Contractor and the subcontractor, as exist between the Government and the Contractor under this clause.

(i) The Government may discharge its obligations under paragraph (h) of this clause by making payments directly to subcontractors or to persons to whom the subcontractors may be liable.

(j) The rights and obligations of the parties under this clause shall survive the termination, expiration, or completion of this contract.

(End of clause)

252.235-7001 Indemnification under 10 U.S.C. 2354—cost reimbursement.

As prescribed in 235.070-3, use the following clause:

Indemnification Under 10 U.S.C. 2354—Cost Reimbursement (Dec. 1991)

(a) This clause provides for indemnification under 10 U.S.C. 2354 if the Contractor meets all the terms and conditions of this clause.

(b) Claims, losses, and damages covered—

(1) Claims by third persons for death, bodily injury, sickness, or disease, or the loss, damage, or lost use of property. Claims include those for reasonable expenses of litigation or settlement. The term "third persons" includes employees of the Contractor;

(2) The loss, damage, and lost use of the Contractor's property, but excluding lost profit; and

(3) Loss, damage, or lost use of the Government's property.

(c) The claim, loss, or damage—

(1) Must arise from the direct performance of this contract;

(2) Must not be compensated by insurance or other means, or be within deductible amounts of the Contractor's insurance;

(3) Must result from an unusually hazardous risk as specifically defined in the contract;

(4) Must not result from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, managers, superintendents, or other equivalent representatives who have supervision or direction of—

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operations at any one plant or separate location where this contract is being performed; or

(iii) A separate and complete major industrial operation connected with the performance of this contract;

(5) Must not be a liability assumed under any contract or agreement (except for subcontracts covered by paragraph (i) of this clause), unless the Contracting Officer (or in contracts with the Department of the Navy, the Department) specifically approved the assumption of liability; and

(6) Must be certified as just and reasonable by the Secretary of the department or designated representative.

(d) A reduction of the insurance coverage maintained by the Contractor on the date of the execution of this contract shall not increase the Government's liability under this clause unless the Contracting Officer consents, and the contract price is equitably adjusted, if appropriate, to reflect the Contractor's consideration for the Government's assumption of increased liability.

(e) *Notice.* The Insurance—Liability to Third Persons clause of this contract applies also to claims under this clause. In addition, the Contractor shall—

(1) Promptly notify the Contracting Officer of any occurrence, action, or claim that might trigger the Government's liability under this clause;

(2) Furnish the proof or evidence of any claim, loss, or damage in the form and manner that the Government requires; and

(3) Immediately provide copies of all pertinent papers that the contractor receives or has received.

(f) The Government may direct, participate in, and supervise the settlement or defense of the claim or action. The Contractor shall comply with the Government's directions, and execute any authorizations required.

(g) The Limitation of Cost clause of this contract does not apply to the Government's obligations under this clause. The obligations under this clause are excepted from the release required by the Allowable Cost, Fee, and Payment clause of this contract.

(h) Under this clause, a claim, loss, or damage arises from the direct performance of this contract if the cause of the claim, loss, or damage occurred during the period of performance of this contract or as a result of the performance of this contract.

(i) *Flowdown.* The Government shall indemnify the Contractor if the Contractor has an obligation to indemnify a subcontractor under any subcontract at any tier under this contract for the unusually hazardous risk identified in this contract only if—

(1) The Contracting Officer gave prior written approval for the Contractor to provide in a subcontract for the Contractor to indemnify the subcontractor for unusually hazardous risks defined in this contract;

(2) The Contracting Officer approved those indemnification provisions;

(3) The subcontract indemnification provisions entitle the Contractor, or the Government, or both, to direct, participate in, and supervise the settlement or defense of relevant actions and claims; and

(4) The subcontract provides the same rights and duties, the same provisions for notice, furnishing of paper and the like, between the Contractor and the subcontractor, as exist between the Government and the Contractor under this clause.

(j) The Government may discharge its obligations under paragraph (i) of this clause by making payments directly to subcontractors or to persons to whom the subcontractors may be liable.

(k) The rights and obligations of the parties under this clause shall survive the termination, expiration, or completion of this contract.

(End of clause)

252.235-7002 Animal welfare.

As prescribed in 235.071(a), use the following clause:

Animal Welfare (Dec. 1991)

(a) The Contractor shall register its research facility with the Secretary of Agriculture in accordance with 7 U.S.C. 2316 and 9 CFR subpart C, and § 2.30, and furnish evidence of such registration to the Contracting Officer before beginning work under this contract.

(b) The Contractor shall acquire animals only from dealers licensed by the Secretary of Agriculture under 7 U.S.C. 2133 and 9 CFR subpart A, §§ 2.1 through 2.11, or from sources that are exempt from licensing under those sections.

(c) The Contractor agrees that the care and use of animals will conform with the pertinent laws of the United States and

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(f) The Government may direct, participate in, and supervise the settlement or defense of the claim or action. The Contractor shall comply with the Government's directions, and execute any authorizations required.

(g) The Limitation of Cost clause of this contract does not apply to the Government's obligations under this clause. The obligations under this clause are excepted from the release required by the Allowable Cost, Fee, and Payment clause of this contract.

(h) Under this clause, a claim, loss, or damage arises from the direct performance of this contract if the cause of the claim, loss, or damage occurred during the period of performance of this contract or as a result of the performance of this contract.

(i) *Flowdown.* The Government shall indemnify the Contractor if the Contractor has an obligation to indemnify a subcontractor under any subcontract at any tier under this contract for the unusually hazardous risk identified in this contract only if—

(1) The Contracting Officer gave prior written approval for the Contractor to provide in a subcontract for the Contractor to indemnify the subcontractor for unusually hazardous risks defined in this contract;

(2) The Contracting Officer approved those indemnification provisions;

(3) The subcontract indemnification provisions entitle the Contractor, or the Government, or both, to direct, participate in, and supervise the settlement or defense of relevant actions and claims; and

(4) The subcontract provides the same rights and duties, the same provisions for notice, furnishing of paper and the like, between the Contractor and the subcontractor, as exist between the Government and the Contractor under this clause.

(j) The Government may discharge its obligations under paragraph (i) of this clause by making payments directly to subcontractors or to persons to whom the subcontractors may be liable.

(k) The rights and obligations of the parties under this clause shall survive the termination, expiration, or completion of this contract.

(End of clause)

252.235-7002 Animal welfare.

As prescribed in 235.071(a), use the following clause:

Animal Welfare (Dec. 1991)

(a) The Contractor shall register its research facility with the Secretary of Agriculture in accordance with 7 U.S.C. 2316 and 9 CFR subpart C, and § 2.30, and furnish evidence of such registration to the Contracting Officer before beginning work under this contract.

(b) The Contractor shall acquire animals only from dealers licensed by the Secretary of Agriculture under 7 U.S.C. 2133 and 9 CFR subpart A, §§ 2.1 through 2.11, or from sources that are exempt from licensing under those sections.

(c) The Contractor agrees that the care and use of animals will conform with the pertinent laws of the United States and

regulations of the Department of Agriculture (see 7 U.S.C. 2131 et. seq. and 9 CFR subchapter A, parts 1 through 4).

(d) The Contracting Officer may immediately suspend, in whole or in part, work and further payments under this contract for failure to comply with the requirements of paragraphs (a) through (c) of this clause.

(1) The suspension will stay in effect until the Contractor complies with the requirements.

(2) Failure to complete corrective action within the time specified by the Contracting Officer may result in termination of this contract and removal of the Contractor's name from the list of contractors with approved Public Health Service Welfare Assurances.

(e) The Contractor may request registration of its facility and a current listing of licensed dealers from the Regional Office of the Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture (USDA), for the region in which its research facility is located. The location of the appropriate APHIS regional office, as well as information concerning this program may be obtained by contacting the Senior Staff Officer, Animal Care Staff, USDA/APHIS, Federal Center Building, Hyattsville, MD 20782.

(f) The Contractor shall include this clause, including this paragraph (f), in all subcontracts involving research of live vertebrate animals.

(End of clause)

252.235-7003 Frequency authorization.

As prescribed in 235.071(b), use the following clause:

Frequency Authorization (Dec. 1991)

(a) The Contractor shall obtain authorization for radio frequencies required in support of this contract.

(b) For any experimental, developmental, or operational equipment for which the appropriate frequency allocation has not been made, the Contractor shall provide the technical operating characteristics of the proposed electromagnetic radiating device to the Contracting Officer during the initial planning, experimental, or developmental phase of contract performance.

(c) The Contracting Officer shall furnish the procedures for obtaining radio frequency authorization.

(d) The Contractor shall include this clause, including this paragraph (d), in all subcontracts requiring the development, production, construction, testing, or operation of a device for which a radio frequency authorization is required.

(End of clause)

Alternate I (Dec. 1991)

Substitute the following paragraph (c) for paragraph (c) of the basic clause if agency procedures authorize use of DD Form 1494, Application for Frequency Authorization:

(c) The Contractor shall use DD Form 1494, Application for Frequency Authorization, to obtain radio frequency authorization.

252.235-7004 Option to extend the term of the contract.

As prescribed in 235.015-71(i)(2), use the following clause:

Option to Extend the Term of the Contract (Dec. 1991)

If the Contractor's proposal covers an additional period(s) which could be treated as an optional period(s), the Contracting Officer may—

(a) Add the additional period(s) to the contract as an option(s); and

(b) Exercise such option(s) by written notice of exercise at any time during the performance period or any extensions thereof.

(End of clause)

252.235-7005 Contractor-acquired property.

As prescribed in 235.015-71(i)(2), use the following clause:

Contractor-Acquired Property (Dec. 1991)

(a) *Definition. Property,* as used in this clause, means all nonexpendable tangible personal property (except material)—

(1) Described in FAR 45.101, including automatic data processing equipment as defined in FAR 31.001, and facilities as defined in FAR 45.301;

(2) Which is acquired with funds provided under this contract for the conduct of research;

(3) Which the Contractor has specifically identified in its proposal; and

(4) Which the Contracting Officer has authorized the Contractor to acquire.

(b) The Contracting Officer may accept the identification and description in the Contractor's proposal of property to be Contractor-acquired property as advance notification required by subparagraphs (a) and (b) of the clause of this contract entitled "Subcontracts Under Cost-Reimbursement and Letter Contracts."

(c) Except for those items specifically identified in the contract as required by Block 27a of the DD Form 2222 (Research Contract (SFRC)/Modification, Short Form), award of this contract constitutes the Contracting Officer's written consent to acquire property in the Contractor's proposal.

(d) The Contracting Officer will approve or disapprove subcontracts to acquire the items listed in Block 27a of the DD Form 2222 after the award of any contract resulting from this solicitation.

(End of clause)

252.235-7006 Title to contractor-acquired property.

As prescribed in 235.015-71(i)(2), use the following clause:

Title to Contractor-Acquired Property (Dec. 1991)

(a) *Definition. Property,* as used in this clause, has the meaning given in the Contractor-Acquired Property clause of this contract.

(b) Title shall vest in the Contractor without further obligation when the property—

(1) Has an acquisition cost of $1,000 or more;

(2) Was specifically identified in the Contractor's proposal; and

(3) Is property other than that property for which a determination of title is deferred. Property for which the determination of title is deferred shall be identified in Block 27b of the DD Form 2222, Research Contract (SFRC)/Modification, Short Form.

(c) Title in all property which—

(1) Has an acquisition cost of $1,000 or more; and

(2) Was not specifically identified in the Contractor's proposal; or

(3) Is property for which a determination of title is deferred, may vest—

(i) In the Government;

(ii) In the Contractor; or

(iii) In the Contractor, subject to the right of the Government to direct transfer of the title back to the Government or third parties. The Government may exercise this right at any time up to and including the twelfth month after completion or termination of the contract. The Government at any time may remove an item of property from this category, give up the right to direct transfer of the title back to the Government or third parties, and transfer title to the Contractor.

(d) Transfer of title back to the Government or third parties shall not be the basis for any claim by the Contractor. The Government Property (Cost-Reimbursement, Time and Material, or Labor Hour Contracts) clause and its Alternate I of this contract apply to any changes in property.

(e) Property acquired with funds made available under this contract shall be considered Government property subject to the Government Property clause until title to such property vests in the Contractor without right of the Government to direct transfer of the title back to the Government or third parties.

(f) Within 45 days following the end of the calendar year or the Contractor's fiscal year, the Contractor shall furnish the Contracting Officer a list of all property with an acquisition cost of $1,000 or more which the Contractor acquired under this contract during that year and to which title has not vested in the Contractor.

(End of clause)

252.235-7007 Advance payments.

As prescribed in 235.015-71(i)(2), use the following clause:

Advance Payments (Dec. 1991)

The advance payment pool agreement between the Contractor and one or more military departments which is in effect as of the date of, and applies to, this contract shall govern advance payments made under this contract. If such an agreement is not in effect as of the date of this contract, the Allowable Cost and Payment clause of this contract shall govern payments to the Contractor.

(End of clause)

252.235-7008 Inspection and acceptance.

As prescribed in 235.015-71(i)(2), use the following clause:

Inspection and Acceptance (Dec. 1991)

The Scientific Program Officer designated in Block 11 on the DD Form 2222 (Research Contract (SFRC)/Modification, Short Form) of this contract shall conduct inspection and acceptance of the final delivery. The Scientific Program Officer shall have at least 30 days after contractual delivery for acceptance.

(End of clause)

252.235-7009 Restriction on printing.

As prescribed in 235.015-71(i)(2), use the following clause:

Restriction on Printing (Dec. 1991)

The Contractor is authorized to reproduce reports, data, or other written materials, if required, provided the material produced does not exceed 5,000 production units of any page, and items consisting of multiple pages do not exceed 25,000 production units in the aggregate. The Contractor shall obtain the express prior written authorization of the Contracting Officer to reproduce material in excess of these quantities.

(End of clause)

252.236-7000 Modification proposals—price breakdown.

As prescribed in 236.570(a), use the following clause:

Modification Proposals—Price Breakdown (Dec. 1991)

(a) The Contractor shall furnish a price breakdown, itemized as required and within the time specified by the Contracting Officer, with any proposal for a contract modification.

(b) The price breakdown—

(1) Must include sufficient detail to permit an analysis of profit, and of all costs for—

(i) Material;

(ii) Labor;

(iii) Equipment;

(iv) Subcontracts; and

(v) Overhead; and

(2) Must cover all work involved in the modification, whether the work was deleted, added, or changed.

(c) The Contractor shall provide similar price breakdowns to support any amounts claimed for subcontracts.

(d) The Contractor's proposal shall include a justification for any time extension proposed.

(End of clause)

252.236-7001 Contract drawings, maps, and specifications.

As prescribed in 236.570(a), use the following clause:

Contract Drawings, Maps, and Specifications (Dec. 1991)

(a) The Government—

(1) Will provide the Contractor, without charge, ________ sets (five unless otherwise specified) of large-scale contract drawings and specifications except publications incorporated into the technical provisions by reference;

(2) Will furnish additional sets on request, for the cost of reproduction; and

(3) May, at its option, furnish the Contractor one set of reproducibles, or half-size drawings, in lieu of the drawings in paragraph (a)(1) of this clause.

(b) The Contractor shall—

(1) Check all drawings furnished immediately upon receipt;

(2) Compare all drawings and verify the figures before laying out the work;

(3) Promptly notify the Contracting Officer of any discrepancies; and

(4) Be responsible for any errors which might have been avoided by complying with this paragraph (b).

(c) Large scale drawings shall, in general, govern small scale drawings. Figures marked on drawings shall, in general, be followed in preference to scale measurements.

(d) Omissions from the drawings or specifications or the misdescription of details of work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall not relieve the contractor from performing such omitted or misdescribed details of the work, but shall be performed as if fully and correctly set forth and described in the drawings and specifications.

(e) The work shall conform to the specifications and the contract drawings identified on the following index of drawings:

Title	File and Drawing No.

(End of clause)

252.236-7002 Obstruction of navigable waterways.

As prescribed in 236.570(b)(1), use the following clause:

Obstruction of Navigable Waterways (Dec. 1991)

(a) The Contractor shall—

(1) Promptly recover and remove any material, plant, machinery, or appliance which the contractor loses, dumps, throws overboard, sinks, or misplaces, and which, in the opinion of the Contracting Officer, may be dangerous to or obstruct navigation;

(2) Give immediate notice, with description and locations of any such obstructions, to the Contracting Officer; and

(3) When required by the Contracting Officer, mark or buoy such obstructions until the same are removed.

(b) The Contracting Officer may—

(1) Remove the obstructions by contract or otherwise should the Contractor refuse, neglect, or delay compliance with paragraph (a) of this clause; and

(2) Deduct the cost of removal from any monies due or to become due to the Contractor; or

(3) Recover the cost of removal under the Contractor's bond.

(c) The Contractor's liability for the removal of a vessel wrecked or sunk without fault or negligence is limited to that provided in sections 15, 19, and 20 of the River and Harbor Act of March 3, 1899 (33 U.S.C. 410 *et. seq.*).

(End of clause)

252.236-7003 Payment for mobilization and preparatory work.

As prescribed in 236.570(b)(2), use the following clause:

Payment for Mobilization and Preparatory Work (Dec. 1991)

(a) The Government will make payment to the Contractor under the procedures in this clause for mobilization and preparatory work under item no. ________.

(b) Payments will be made for actual payments by the Contractor on work preparatory to commencing actual work on the construction items for which payment is provided under the terms of this contract, as follows—

(1) For construction plant and equipment exceeding $25,000 in value per unit (as appraised by the Contracting Officer at the work site) acquired for the execution of the work;

(2) Transportation of all plant and equipment to the site;

(3) Material purchased for the prosecution of the contract, but not to be incorporated in the work;

(4) Construction of access roads or railroads, camps, trailer courts, mess halls, dormitories or living quarters, field headquarters facilities, and construction yards;

(5) Personal services; and

(6) Hire of plant.

(c) Requests for payment must include—

(1) A certified account of the Contractor's actual expenditures;

(2) Supporting documentation, including receipted bills or certified copies of payrolls and freight bills; and

(3) The Contractor's certificate—

(i) Showing that it has acquired the construction plant, equipment, and material free from all encumbrances;

(ii) Agreeing that the construction plant, equipment, and material will not be removed from the site without the written permission of the Contracting Officer; and

(iii) Agreeing that structures and facilities prepared or erected for the prosecution of the contract work will be maintained and not dismantled prior to the completion and acceptance of the entire work, without the written permission of the Contracting Officer.

(d) Upon receiving a request for payment, the Government will make payment, less any prescribed retained percentage, if—

(1) The Contracting Officer finds the—

(i) Construction plant, material, equipment, and the mobilization and preparatory work performed are suitable and necessary to the efficient prosecution of the contract; and

(ii) Preparatory work has been done with proper economy and efficiency.

(2) Payments for construction plant, equipment, material, and structures and facilities prepared or erected for prosecution of the contract work do not exceed—

(i) The Contractor's cost for the work performed less the estimated value upon completion of the contract; and

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(End of clause)

252.236-7003 Payment for mobilization and preparatory work.

As prescribed in 236.570(b)(2), use the following clause:

Payment for Mobilization and Preparatory Work (Dec. 1991)

(a) The Government will make payment to the Contractor under the procedures in this clause for mobilization and preparatory work under item no. ________.

(b) Payments will be made for actual payments by the Contractor on work preparatory to commencing actual work on the construction items for which payment is provided under the terms of this contract, as follows—

(1) For construction plant and equipment exceeding $25,000 in value per unit (as appraised by the Contracting Officer at the work site) acquired for the execution of the work;

(2) Transportation of all plant and equipment to the site;

(3) Material purchased for the prosecution of the contract, but not to be incorporated in the work;

(4) Construction of access roads or railroads, camps, trailer courts, mess halls, dormitories or living quarters, field headquarters facilities, and construction yards;

(5) Personal services; and

(6) Hire of plant.

(c) Requests for payment must include—

(1) A certified account of the Contractor's actual expenditures;

(2) Supporting documentation, including receipted bills or certified copies of payrolls and freight bills; and

(3) The Contractor's certificate—

(i) Showing that it has acquired the construction plant, equipment, and material free from all encumbrances;

(ii) Agreeing that the construction plant, equipment, and material will not be removed from the site without the written permission of the Contracting Officer; and

(iii) Agreeing that structures and facilities prepared or erected for the prosecution of the contract work will be maintained and not dismantled prior to the completion and acceptance of the entire work, without the written permission of the Contracting Officer.

(d) Upon receiving a request for payment, the Government will make payment, less any prescribed retained percentage, if—

(1) The Contracting Officer finds the—

(i) Construction plant, material, equipment, and the mobilization and preparatory work performed are suitable and necessary to the efficient prosecution of the contract; and

(ii) Preparatory work has been done with proper economy and efficiency.

(2) Payments for construction plant, equipment, material, and structures and facilities prepared or erected for prosecution of the contract work do not exceed—

(i) The Contractor's cost for the work performed less the estimated value upon completion of the contract; and

(ii) 100 percent of the cost to the contractor of any items having no appreciable salvage value; and

(iii) 75 percent of the cost to the contractor of items which do have an appreciable salvage value.

(e) (1) Payments will continue to be made for item no. ________, and all payments will be deducted from the contract price for this item, until the total deductions reduce this item to zero, after which no further payments will be made under this item.

(2) If the total of payments so made does not reduce this item to zero, the balance will be paid to the Contractor in the final payment under the contract.

(3) The retained percentage will be paid in accordance with the Payments to Contractor clause of this contract.

(f) The Contracting Officer shall determine the value and suitability of the construction plant, equipment, materials, structures and facilities. The Contracting Officer's determinations are not subject to appeal.

(End of clause)

252.236-7004 Payment for mobilization and demobilization.

As prescribed in 236.570(b)(2), use the following clause:

Payment for Mobilization and Demobilization (Dec. 1991)

(a) The Government will pay all costs for the mobilization and demobilization of all of the Contractor's plant and equipment at the contract lump sum price for this item.

(1) ________ percent of the lump sum price upon completion of the contractor's mobilization at the work site.

(2) The remaining ________ percent upon completion of demobilization.

(b) The Contracting Officer may require the Contractor to furnish cost data to justify this portion of the bid if the Contracting Officer believes that the percentages in paragraphs (a) (1) and (2) of this clause do not bear a reasonable relation to the cost of the work in this contract.

(1) Failure to justify such price to the satisfaction of the Contracting Officer will result in payment, as determined by the Contracting Officer, of—

(i) Actual mobilization costs at completion of mobilization;

(ii) Actual demobilization costs at completion of demobilization; and

(iii) The remainder of this item in the final payment under this contract.

(2) The Contracting Officer's determination of the actual costs in paragraph (b)(1) of this clause is not subject to appeal.

(End of clause)

252.236-7005 Airfield safety precautions.

As prescribed in 236.570(b)(3), use the following clause. At some airfields, the width of the primary surface is 1,500 feet (750 feet on each side of the runway centerline). In such instances, substitute the proper width in the clause.

Airfield Safety Precautions (Dec. 1991)

(a) Definitions. As used in this clause—

(1) *Landing areas* means—

(i) The primary surfaces, comprising the surface of the runway, runway shoulders, and lateral safety zones. The length of each primary surface is the same as the runway length. The width of each primary surface is 2,000 feet (1,000 feet on each side of the runway centerline);

(ii) The *clear zone* beyond the ends of each runway, i.e., the extension of the primary surface for a distance of 1,000 feet beyond each end of each runway;

(iii) All taxiways, plus the lateral clearance zones along each side for the length of the taxiways (the outer edge of each lateral clearance zone is laterally 250 feet from the far or opposite edge of the taxiway, e.g., a 75-foot-wide taxiway would have a combined width of taxiway and lateral clearance zones of 425 feet); and

(iv) All aircraft parking aprons, plus the area 125 feet in width extending beyond each edge all around the aprons.

(2) *Safety precaution areas* means those portions of approach-departure clearance zones and transitional zones where placement of objects incident to contract performance might result in vertical projections at or above the approach-departure clearance, or the transitional surface.

(i) The *approach-departure clearance surface* is an extension of the primary surface and the clear zone at each end of each runway, for a distance of 50,000 feet, first along an inclined (glide angle) and then along a horizontal plane, both flaring symmetrically about the runway centerline extended.

(A) The inclined plane (glide angle) begins in the clear zone 200 feet past the end of the runway (and primary surface) at the same elevation as the end of the runway. It continues upward at a slope of 50:1 (1 foot vertically for each 50 feet horizontally) to an elevation of 500 feet above the established airfield elevation. At that point the plane becomes horizontal, continuing at that same uniform elevation to a point 50,000 feet longitudinally from the beginning of the inclined plane (glide angle) and ending there.

(B) The width of the surface at the beginning of the inclined plane (glide angle) is the same as the width of the clear zone. It then flares uniformly, reaching the maximum width of 16,000 feet at the end.

(ii) The *approach-departure clearance zone* is the ground area under the approach-departure clearance surface.

(iii) The *transitional surface* is a sideways extension of all primary surfaces, clear zones, and approach-departure clearance surfaces along inclined planes.

(A) The inclined plane in each case begins at the edge of the surface.

(B) The slope of the incline plane is 7:1 (1 foot vertically for each 7 feet horizontally). It continues to the point of intersection with the—

(*1*) Inner horizontal surface (which is the horizontal plane 150 feet above the established airfield elevation); or

(*2*) Outer horizontal surface (which is the horizontal plane 500 feet above the established airfield elevation), whichever is applicable.

(iv) The "transitional zone" is the ground area under the transitional surface. (It adjoins the primary surface, clear zone, and approach-departure clearance zone.)

(b) General. (1) The Contractor shall comply with the requirements of this clause while—

(i) Operating all ground equipment (mobile or stationary);

(ii) Placing all materials; and

(iii) Performing all work, upon and around all airfields.

(2) The requirements of this clause are in addition to any other safety requirements of this contract.

(c) The Contractor shall—

(1) Report to the Contracting Officer before initiating any work;

(2) Notify the Contracting Officer of proposed changes to locations and operations;

(3) Not permit either its equipment or personnel to use any runway for purposes other than aircraft operation without permission of the Contracting Officer, unless the runway is—

(i) Closed by order of the Contracting Officer; and

(ii) Marked as provided in paragraph (d)(2) of this clause;

(4) Keep all paved surfaces, such as runways, taxiways, and hardstands, clean at all times and, specifically, free from small stones which might damage aircraft propellers or jet aircraft;

(5) Operate mobile equipment according to the safety provisions of this clause, while actually performing work on the airfield. At all other times, the Contractor shall remove all mobile equipment to locations—

(i) Approved by the Contracting Officer;

(ii) At a distance of at least 750 feet from the runway centerline, plus any additional distance; and

(iii) Necessary to ensure compliance with the other provisions of this clause; and

(6) Not open a trench unless material is on hand and ready for placing in the trench. As soon as practicable after material has been placed and work approved, the Contractor shall backfill and compact trenches as required by the contract. Meanwhile, all hazardous conditions shall be marked and lighted in accordance with the other provisions of this clause.

(d) Landing areas. The Contractor shall—

(1) Place nothing upon the landing areas without the authorization of the Contracting Officer;

(2) Outline those landing areas hazardous to aircraft, using (unless otherwise authorized by the Contracting Officer) red flags by day, and electric, battery-operated low-intensity red flasher lights by night;

(3) Obtain, at an airfield where flying is controlled, additional permission from the control tower operator every time before entering any landing area, unless the landing area is marked as hazardous in accordance with paragraph (d)(2) of this clause;

(4) Identify all vehicles it operates in landing areas by means of a flag on a staff attached to, and flying above, the vehicle. The flag shall be three feet square, and consist of a checkered pattern of international orange and white squares of 1 foot on each side (except that the flag may

vary up to ten percent from each of these dimensions);

(5) Mark all other equipment and materials in the landing areas, using the same marking devices as in paragraph (d)(2) of this clause; and

(6) Perform work so as to leave that portion of the landing area which is available to aircraft free from hazards, holes, piles of material, and projecting shoulders that might damage an airplane tire.

(e) Safety precaution areas. The Contractor shall—

(1) Place nothing upon the safety precaution areas without authorization of the Contracting Officer;

(2) Mark all equipment and materials in safety precaution areas, using (unless otherwise authorized by the Contracting Officer) red flags by day, and electric, battery-operated, low-intensity red flasher lights by night; and

(3) Provide all objects placed in safety precaution areas with a red light or red lantern at night, if the objects project above the approach-departure clearance surface or above the transitional surface.

(End of clause)

252.236-7006 Cost limitation.

As prescribed in 236.570(b)(4), use the following provision:

Cost Limitation (Dec. 1991)

(a) Certain items in this solicitation are subject to statutory cost limitations. The limitations are stated in the Schedule.

(b) An offer which does not state separate prices for the items identified in the Schedule as subject to a cost limitation may be considered nonresponsive.

(c) By signing its offer, the Offeror certifies that each price stated on items identified as subject to a cost limitation includes an appropriate apportionment of all costs, direct and indirect, overhead, and profit.

(d) Offers may be rejected which—

(1) Are materially unbalanced for the purpose of bringing items within cost limitations; or

(2) Exceed the cost limitations, unless the limitations have been waived by the Government prior to award.

(End of provision)

252.236-7007 Additive or deductive items.

As prescribed in 236.570(b)(5), use the following provision:

Additive or Deductive Items (Dec. 1991)

(a) The low offeror and the items to be awarded shall be determined as follows—

(1) Prior to the opening of bids, the Government will determine the amount of funds available for the project.

(2) The low offeror shall be the Offeror that—

(i) Is otherwise eligible for award; and

(ii) Offers the lowest aggregate amount for the first or base bid item, plus or minus (in the order stated in the list of priorities in the bid schedule) those additive or deductive items that provide the most features within the funds determined available.

(3) The Contracting Officer shall evaluate all bids on the basis of the same additive or deductive items.

(i) If adding another item from the bid schedule list of priorities would make the award exceed the available funds for all offerors, the Contracting Officer will skip that item and go to the next item from the bid schedule of priorities; and

(ii) Add that next item if an award may be made that includes that item and is within the available funds.

(b) The Contracting Officer will use the list of priorities in the bid schedule only to determine the low offeror. After determining the low offeror, an award may be made on any combination of items if—

(1) It is in the best interest of the Government;

(2) Funds are available at the time of award; and

(3) The low offeror's price for the combination to be awarded is less than the price offered by any other responsive, responsible offeror.

(c) *Example.* The amount available is $100,000. Offeror A's base bid and four additives (in the order stated in the list of priorities in the bid Schedule) are $85,000, $10,000, $8,000, $6,000, and $4,000. Offeror B's base bid and four additives are $80,000, $16,000, $9,000, $7,000, and $4,000. Offeror A is the low offeror. The aggregate amount of offeror A's bid for purposes of award would be $99,000, which includes a base bid plus the first and fourth additives. The second and third additives were skipped because each of them would cause the aggregate bid to exceed $100,000.

(End of provision)

252.236-7008 Contract prices—bidding schedules.

As prescribed in 236.570(b)(6), use the following provision:

Contract Prices—Bidding Schedules (Dec. 1991)

(a) The Government's payment for the items listed in the Bidding Schedule shall constitute full compensation to the Contractor for—

(1) Furnishing all plant, labor, equipment, appliances, and materials; and

(2) Performing all operations required to complete the work in conformity with the drawings and specifications.

(b) The Contractor shall include in the prices for the items listed in the Bidding Schedule all costs for work in the specifications, whether or not specifically listed in the Bidding Schedule.

(End of provision)

252.236-7009 Option for supervision and inspection services.

As prescribed in 236.609-70, use the following clause:

Option for Supervision and Inspection Services (Dec. 1991)

(a) The Government may—

(1) At its option, direct the Contractor to perform any part or all of the supervision and inspection services for the construction contract as provided under Appendix A of this contract; and

(2) Exercise its option, by written order, at any time prior to six months after satisfactory completion and acceptance of the work under this contract.

(b) Upon receipt of the Contracting Officer's written order, the Contractor shall proceed with the supervision and inspection services.

(End of clause)

252.237-7000 Notice of special standards of responsibility.

As prescribed in 237.203-70(d)(1), use the following provision:

Notice of Special Standards of Responsibility (Dec. 1991)

(a) To be determined responsible, the Offeror must meet the general standards of responsibility set forth at FAR 9.104-1 and the following criteria, as described in Chapter 3, General Standards, of "Government Auditing Standards."

(1) Qualifications;

(2) Independence; and

(3) Quality Control.

(b) "Government Auditing Standards" is issued by the Comptroller General of the United States and is available for sale from the: Superintendent of Documents, U.S. Government Printing Office. Washington, DC 20401, Stock number 020-000-00243-3.

(c) The apparently successful Offeror, before award, shall give the Contracting Officer evidence that it is licensed by the cognizant licensing authority in the state or other political jurisdiction where the Offeror operates its professional practice.

(End of provision)

252.237-7001 Compliance with audit standards.

As prescribed in 237.203-70(d)(2), use the following clause:

Compliance With Audit Standards (Dec. 1991)

The Contractor, in performance of all audit services under this contract, shall comply with—

(a) Government Auditing Standards set forth in "Government Auditing Standards" issued by the Comptroller General of the United States.

(b) Office of Management and Budget Circular No. A-73, Audit of Federal Operations and Programs.

(End of clause)

252.237-7002 Award to single offeror.

As prescribed in 237.7004(a), use the following provision:

Award to Single Offeror (Dec. 1991)

(a) Award shall be made to a single offeror.

(b) Offerors shall include unit prices for each item. Failure to include unit prices for each item will be cause for rejection of the entire offer.

(c) The Government will evaluate offers on the basis of the estimated quantities shown.

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(2) Exercise its option, by written order, at any time prior to six months after satisfactory completion and acceptance of the work under this contract.

(b) Upon receipt of the Contracting Officer's written order, the Contractor shall proceed with the supervision and inspection services.

(End of clause)

252.237-7000 Notice of special standards of responsibility.

As prescribed in 237.203-70(d)(1), use the following provision:

Notice of Special Standards of Responsibility (Dec. 1991)

(a) To be determined responsible, the Offeror must meet the general standards of responsibility set forth at FAR 9.104-1 and the following criteria, as described in Chapter 3, General Standards, of "Government Auditing Standards."

(1) Qualifications;
(2) Independence; and
(3) Quality Control.

(b) "Government Auditing Standards" is issued by the Comptroller General of the United States and is available for sale from the: Superintendent of Documents, U.S. Government Printing Office. Washington, DC 20401, Stock number 020-000-00243-3.

(c) The apparently successful Offeror, before award, shall give the Contracting Officer evidence that it is licensed by the cognizant licensing authority in the state or other political jurisdiction where the Offeror operates its professional practice.

(End of provision)

252.237-7001 Compliance with audit standards.

As prescribed in 237.203-70(d)(2), use the following clause:

Compliance With Audit Standards (Dec. 1991)

The Contractor, in performance of all audit services under this contract, shall comply with—

(a) Government Auditing Standards set forth in "Government Auditing Standards" issued by the Comptroller General of the United States.

(b) Office of Management and Budget Circular No. A-73, Audit of Federal Operations and Programs.

(End of clause)

252.237-7002 Award to single offeror.

As prescribed in 237.7004(a), use the following provision:

Award to Single Offeror (Dec. 1991)

(a) Award shall be made to a single offeror.

(b) Offerors shall include unit prices for each item. Failure to include unit prices for each item will be cause for rejection of the entire offer.

(c) The Government will evaluate offers on the basis of the estimated quantities shown.

(d) Award will be made to that responsive, responsible offeror whose total aggregate offer is the lowest price to the Government.

(End of provision)

Alternate I (Dec. 1991)

As prescribed in 237.7004(a), substitute the following paragraph (d) for paragraph (d) of the basic provision:

(d) Award will be made to that responsive, responsible offeror whose total aggregate offer is in the best interest of the Government.

252.237-7003 Requirements.

As prescribed in 237.7004(b), use the following clause:

Requirements (Dec. 1991)

(a) Except as provided in paragraphs (c) and (d) of this clause, the Government will order from the Contractor all of its requirements in the area of performance for the supplies and services listed in the schedule of this contract.

(b) Each order will be issued as a delivery order and will list—

(1) The supplies or services being ordered;
(2) The quantities to be furnished;
(3) Delivery or performance dates;
(4) Place of delivery or performance;
(5) Packing and shipping instructions;
(6) The address to send invoices; and
(7) The funds from which payment will be made.

(c) The Government may elect not to order supplies and services under this contract in instances where the body is removed from the area for medical, scientific, or other reason.

(d) In an epidemic or other emergency, the contracting activity may obtain services beyond the capacity of the Contractor's facilities from other sources.

(e) Contracting Officers of the following activities may order services and supplies under this contract—

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(End of clause)

252.237-7004 Area of performance.

As prescribed in 237.7004(b), use the following clause:

Area of Performance (Dec. 1991)

(a) The area of performance is as specified in the contract.

(b) The Contractor shall take possession of the remains at the place where they are located, transport them to the Contractor's place of preparation, and later transport them to a place designated by the Contracting Officer.

(c) The Contractor will not be reimbursed for transportation when both the place where the remains were located and the delivery point are within the area of performance.

(d) If remains are located outside the area of performance, the Contracting Officer may place an order with the Contractor under this contract or may obtain the services elsewhere. If the Contracting Officer requires the Contractor to transport the remains into the area of performance, the Contractor shall be paid the amount per mile in the schedule for the number of miles required to transport the remains by a reasonable route from the point where located to the boundary of the area of performance.

(e) The Contracting Officer may require the Contractor to deliver remains to any point within 100 miles of the area of performance. In this case, the Contractor shall be paid the amount per mile in the schedule for the number of miles required to transport the remains by a reasonable route from the boundary of the area of performance to the delivery point.

(End of clause)

252.237-7005 Performance and delivery.

As prescribed in 237.7004(b), use the following clause:

Performance and Delivery (Dec. 1991)

(a) The Contractor shall furnish the material ordered and perform the services specified as promptly as possible but not later than 36 hours after receiving notification to remove the remains, excluding the time necessary for the Government to inspect and check results of preparation.

(b) The Government may, at no additional charge, require the Contractor to hold the remains for an additional period not to exceed 72 hours from the time the remains are casketed and final inspection completed.

(End of clause)

252.237-7006 Subcontracting.

As prescribed in 237.7004(b), use the following clause:

Subcontracting (Dec. 1991)

The Contractor shall not subcontract any work under this contract without the Contracting Officer's written approval. This clause does not apply to contracts of employment between the Contractor and its personnel.

(End of clause)

252.237-7007 Termination for default.

As prescribed in 237.7004(b), use the following clause:

Termination for Default (Dec. 1991)

(a) This clause supplements and is in addition to the Default clause of this contract.

(b) The Contracting Officer may terminate this contract for default by written notice without the ten day notice required by paragraph (a)(2) of the Default clause if—

(1) The Contractor, through circumstances reasonably within its control or that of its employees, performs any act under or in connection with this contract, or fails in the performance of any service under this contract and the act or failures may reasonably be considered to reflect discredit upon the Department of Defense in fulfilling its responsibility for proper care of remains;

(2) The Contractor, or its employees, solicits relatives or friends of the deceased to purchase supplies or services not under this contract. (The Contractor may furnish supplies or arrange for services not under this contract, only if representatives of the deceased voluntarily request, select, and pay for them.);

(3) The services or any part of the services are performed by anyone other than the Contractor or the Contractor's employees without the written authorization of the Contracting Officer;

(4) The Contractor refuses to perform the services required for any particular remains; or

(5) The Contractor mentions or otherwise uses this contract in its advertising in any way.

(End of clause)

252.237-7008 Group interment.

As prescribed in 237.7004(b), use the following clause:

Group Interment (Dec. 1991)

The Government will pay the Contractor for supplies and services provided for remains interred as a group on the basis of the number of caskets furnished, rather than on the basis of the number of persons in the group.

(End of clause)

252.237-7009 Permits.

As prescribed in 237.7004(b), use the following clause:

Permits (Dec. 1991)

The Contractor shall meet all State and local licensing requirements and obtain and furnish all necessary health department and shipping permits at no additional cost to the Government. The Contractor shall ensure that all necessary health department permits are in order for disposition of the remains.

(End of clause)

252.237-7010 Facility requirements.

As prescribed in 237.7004(b), use the following clause:

Facility Requirements (Dec. 1991)

(a) The Contractor's building shall have complete facilities for maintaining the highest standards of solemnity, reverence, assistance to the family, and prescribed ceremonial services.

(b) The Contractor's preparation room shall be clean, sanitary, and adequately equipped.

(c) The Contractor shall have, or be able to get, catafalques, church trucks, and equipment for Protestant, Catholic, and Jewish services.

(d) The Contractor's funeral home, furnishings, grounds, and surrounding area shall present a clean and well-kept appearance.

(End of clause)

252.237-7011 Preparation history.

As prescribed in 237.7004(b), use the following clause:

Preparation History (Dec. 1991)

For each body prepared, or for each casket handled in a group interment, the Contractor shall state briefly the results of the embalming process on a certificate furnished by the Contracting Officer.

(End of clause)

252.237-7012 Instruction to offerors (count-of-articles).

As prescribed in 237.7102(a), use the following provision:

Instruction to Offerors (Count-of-Articles) (Dec. 1991)

(a) The Offeror shall include unit prices for each item in a lot. Unit prices shall include all costs to the Government of providing the services, including pickup and delivery charges.

(b) Failure to offer on any item in a lot shall be cause for rejection of the offer on that lot. The Contracting Officer will evaluate offers based on the estimated quantities in the solicitation.

(c) Award generally will be made to a single offeror for all lots. However, the Contracting Officer may award by individual lot when it is more advantageous to the Government.

(d) Prospective offerors may inspect the types of articles to be serviced. Contact the Contracting Officer to make inspection arrangements.

(End of provision)

252.237-7013 Instruction to offerors (bulk weight).

As prescribed in 237.7102(b), use the following provision:

Instruction to Offerors (Bulk Weight) (Dec. 1991)

(a) Offers shall be submitted on a unit price per pound of serviced laundry. Unit prices shall include all costs to the Government of providing the service, including pickup and delivery charges.

(b) The Contracting Officer will evaluate bids based on the estimated pounds of serviced laundry stated in the solicitation.

(c) Award generally will be made to a single offeror for all lots. However, the Contracting Officer may award by individual lot when it is more advantageous to the Government.

(d) Prospective offerors may inspect the types of articles to be serviced. Contact the Contracting Officer to make inspection arrangements.

(End of provision)

252.237-7014 Loss or damage (count-of-articles).

As prescribed in 237.7102(c), use the following clause:

Loss or Damage (Count-of-Articles) (Dec. 1991)

(a) The count-of-articles will be—

(1) The count of the Contracting Officer; or

(2) The count agreed upon as a result of a joint count by the Contractor and the Contracting Officer at the time of delivery to the Contractor.

(b) The Contractor shall—

(1) Be liable for return of the number and kind of articles furnished for service under this contract; and

(2) Shall indemnify the Government for any loss or damage to such articles.

(c) The Contractor shall pay to the Government the value of any lost or damaged property using Federal supply schedule price lists. If the property is not on these price lists, the Contracting Officer shall determine a fair and reasonable price.

(d) The Contracting Officer will allow credit for any depreciation in the value of the property at the time of loss or damage. The Contracting Officer and the Contractor shall mutually determine the amount of the allowable credit.

(e) Failure to agree upon the value of the property or on the amount of credit due will be treated as a dispute under the Disputes clause of this contract.

(f) In case of damage to any property that the Contracting Officer and the Contractor agree can be satisfactorily repaired, the Contractor may repair the property at its expense in a manner satisfactory to the Contracting Officer, rather than make payment under paragraph (c) of this clause.

(End of clause)

252.237-7015 Loss or damage (weight of articles).

As prescribed in 237.7102(d), use the following clause:

Loss or Damage (Weight of Articles) (Dec. 1991)

(a) The Contractor shall—

(1) Be liable for return of the articles furnished for service under this contract; and

(2) Indemnify the Government for any articles delivered to the Contractor for servicing under this contract that are lost or damaged, and in the opinion of the Contracting Officer, cannot be repaired satisfactorily.

(b) The Contractor shall pay to the Government ________ per pound for lost or damaged articles. The Contractor shall pay the Government only for losses which exceed the maximum weight loss in paragraph (e) of this clause.

(c) Failure to agree on the amount of credit due will be treated as a dispute under the Disputes clause of this contract.

(d) In the case of damage to any articles that the Contracting Officer and the Contractor agree can be satisfactorily repaired, the Contractor shall repair the articles at its expense in a manner satisfactory to the Contracting Officer.

(e) The maximum weight loss allowable in servicing the laundry is ________ percent of the weight recorded on delivery tickets when the laundry is picked up. Any weight loss in excess of this amount shall be subject to the loss provisions of this clause.

(End of clause)

252.237-7016 Delivery tickets.

As prescribed in 237.7102(e), use the following clause:

Delivery Tickets (Dec. 1991)

(a) The Contractor shall complete delivery tickets in the number of copies required and in the form approved by the Contracting Officer, when it receives the articles to be serviced.

(b) The Contractor shall include one copy of each delivery ticket with its invoice for payment.

(End of clause)

Alternate I (Dec. 1991)

As prescribed 237.7102(e)(1), add the following paragraphs (c), (d), and (e) to the basic clause:

(c) Before the Contractor picks up articles for service under this contract, the Contracting Officer will ensure that—

(1) Each bag contains only articles within a single bag type as specified in the schedule; and

(2) Each bag is weighed and the weight and bag type are identified on the bag.

(d) The Contractor shall, at time of pickup—

(1) Verify the weight and bag type and record them on the delivery ticket; and

(2) Provide the Contracting Officer, or representative, a copy of the delivery ticket.

(e) At the time of delivery, the Contractor shall record the weight and bag type of serviced laundry on the delivery ticket. The Contracting Officer will ensure that this weight and bag type are verified at time of delivery.

Alternate II (Dec. 1991)

As prescribed in 237.7102(e)(2), add the following paragraphs (c), (d), and (e) to the basic clause—

(c) Before the Contractor picks up articles for service under this contract, the Contracting Officer will ensure that each bag is weighed and that the weight is identified on the bag.

(d) The Contractor, at time of pickup, shall verify and record the weight on the delivery ticket and shall provide the Contracting Officer, or representative, a copy of the delivery ticket.

(e) At the time of delivery, the Contractor shall record the weight of serviced laundry on the delivery ticket. The Contracting Officer will ensure that this weight is verified at time of delivery.

252.237-7017 Individual Laundry.

As prescribed in 237.7102(f), use the following clause:

Individual Laundry (Dec. 1991)

(a) The Contractor shall provide laundry service under this contract on both a unit bundle and on a piece-rate bundle basis for individual personnel.

(b) The total number of pieces listed in the "Estimated Quantity" column in the schedule is the estimated amount of individual laundry for this contract. The estimate is for information only and is not a representation of the amount of individual laundry to be ordered. Individuals may elect whether or not to use the laundry services.

(c) Charges for individual laundry will be on a per unit bundle or a piece-rate basis. The Contractor shall provide individual laundry bundle delivery tickets for use by the individuals in designating whether the laundry is a unit bundle or a piece-rate bundle. An individual laundry bundle will be

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(b) The Contractor shall include one copy of each delivery ticket with its invoice for payment.

(End of clause)

Alternate I (Dec. 1991)

As prescribed 237.7102(e)(1), add the following paragraphs (c), (d), and (e) to the basic clause:

(c) Before the Contractor picks up articles for service under this contract, the Contracting Officer will ensure that—

(1) Each bag contains only articles within a single bag type as specified in the schedule; and

(2) Each bag is weighed and the weight and bag type are identified on the bag.

(d) The Contractor shall, at time of pickup—

(1) Verify the weight and bag type and record them on the delivery ticket; and

(2) Provide the Contracting Officer, or representative, a copy of the delivery ticket.

(e) At the time of delivery, the Contractor shall record the weight and bag type of serviced laundry on the delivery ticket. The Contracting Officer will ensure that this weight and bag type are verified at time of delivery.

Alternate II (Dec. 1991)

As prescribed in 237.7102(e)(2), add the following paragraphs (c), (d), and (e) to the basic clause—

(c) Before the Contractor picks up articles for service under this contract, the Contracting Officer will ensure that each bag is weighed and that the weight is identified on the bag.

(d) The Contractor, at time of pickup, shall verify and record the weight on the delivery ticket and shall provide the Contracting Officer, or representative, a copy of the delivery ticket.

(e) At the time of delivery, the Contractor shall record the weight of serviced laundry on the delivery ticket. The Contracting Officer will ensure that this weight is verified at time of delivery.

252.237-7017 Individual Laundry.

As prescribed in 237.7102(f), use the following clause:

Individual Laundry (Dec. 1991)

(a) The Contractor shall provide laundry service under this contract on both a unit bundle and on a piece-rate bundle basis for individual personnel.

(b) The total number of pieces listed in the "Estimated Quantity" column in the schedule is the estimated amount of individual laundry for this contract. The estimate is for information only and is not a representation of the amount of individual laundry to be ordered. Individuals may elect whether or not to use the laundry services.

(c) Charges for individual laundry will be on a per unit bundle or a piece-rate basis. The Contractor shall provide individual laundry bundle delivery tickets for use by the individuals in designating whether the laundry is a unit bundle or a piece-rate bundle. An individual laundry bundle will be

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accompanied by a delivery ticket listing the contents of the bundle.

(d) The maximum number of pieces to be allowed per bundle is as specified in the schedule and as follows—

(1) Bundle consisting of 26 pieces, including laundry bag. This bundle will contain approximately ______ pieces of outer garments which shall be starched and pressed. Outer garments include, but are not limited to, shirts, trousers, jackets, dresses, and coats.

(2) Bundle consisting of 13 pieces, including laundry bag. This bundle will contain approximately ______ pieces of outer garments which shall be starched and pressed. Outer garments include, but are not limited to, shirts, trousers, jackets, dresses, and coats.

(End of clause)

252.237-7018 Special definitions of government property.

As prescribed in 237.7102(g), use the following clause:

Special Definitions of Government Property (Dec. 1991)

Articles delivered to the Contractor to be laundered or dry-cleaned, including any articles which are actually owned by individual Government personnel, are Government-owned property, not Government-furnished property. Government-owned property does not fall under the requirements of any Government-furnished property clause of this contract.

(End of clause)

252.239-7000 Protection against compromising emanations.

As prescribed in 239.7102–3(a), use the following clause:

Protection Against Compromising Emanations (Dec. 1991)

(a) The Contractor shall provide or use only computer equipment, as specified by the Government, that has been accredited to meet the appropriate security requirements of—

(1) The National Security Agency National TEMPEST Standards (NACSEM No. 5100 or NACSIM No. 5100A, Compromising Emanations Laboratory Test Standard, Electromagnetics (U)); or

(2) Other standard specified by this contract.

(b) Upon request of the Contracting Officer, the Contractor shall provide documentation supporting the accreditation.

(c) The Government may, as part of its inspection and acceptance, conduct additional tests to ensure that equipment or systems delivered under this contract satisfy the security standards specified. The Government may conduct additional tests—

(1) At the installation site or contractor's facility.

(2) Notwithstanding the existence of valid accreditations of equipment prior to the award of this contract.

(d) Unless otherwise provided in this contract under the Warranty of Supplies or Warranty of Systems and Equipment clauses, the Contractor shall correct or replace accepted equipment or systems found to be deficient within one year after proper installations.

(1) The correction or replacement shall be at no cost to the Government.

(2) Should a modification to the delivered equipment be made by the Contractor, the one year period applies to the modification upon its proper installation.

(3) This paragraph (d) applies regardless of f.o.b. point or the point of acceptance of the deficient equipment/systems.

(End of clause)

252.239-7001 [Reserved]

252.239-7002 Access.

As prescribed in 239.7411(a), use the following clause:

Access (Dec. 1991)

(a) Subject to military security regulations, the Government shall permit the Contractor access at all reasonable times to Contractor furnished facilities. However, if the Government is unable to permit access, the Government at its own risk and expense shall maintain these facilities and the Contractor shall not be responsible for the service involving any of these facilities during the period of nonaccess, unless the service failure results from the Contractor's fault or negligence.

(b) During periods when the Government does not permit Contractor access, the Government will reimburse the Contractor at mutually acceptable rates for the loss of or damage to the equipment due to the fault or negligence of the Government. Failure to agree shall be a dispute concerning a question of fact within the meaning of the Disputes clause of this contract.

(End of clause)

252.239-7003 Facilities and services to be furnished—common carriers.

As prescribed in 239.7411(a), use the following clause:

Facilities and Services To Be Furnished—Common Carriers (Dec. 1991)

(a) The Contractor shall furnish any classes of services or facilities that the Contractor offers or furnishes under published tariffs.

(b) When it is mutually agreed that the Contractor shall furnish nontariffed services, the Government shall order them under the Ordering of Facilities and Services clause of this agreement/contract. These nontariffed services may include the engineering, installation, alteration, or maintenance of facilities owned either by the Contractor or the Government, wherever located.

(c) Upon request of the Contracting Officer, the Contractor agrees to interconnect its facilities with any Government-owned or furnished telecommunications equipment, facilities, or transmission media. The Contractor shall use established technical criteria for ensuring continuity of service and traffic without damage to or degradation of commercial facilities.

(End of clause)

252.239-7004 Orders for facilities and services—common carriers.

As prescribed in 239.7411(a), use the following clause:

Orders for Facilities and Services—Common Carriers (Dec. 1991)

The Contractor shall acknowledge a communication service authorization or other type order for supplies and facilities by—

(a) Commencing performance; or

(b) Written acceptance by a duly authorized representative.

(End of clause)

252.239-7005 Rates, charges, and services—common carriers.

As prescribed in 239.7411(a), use the following clause:

Rates, Charges, and Services—Common Carriers (Dec. 1991)

(a) *Definition—Governmental regulatory body* means the Federal Communications Commission, any statewide regulatory body, or any body with less than statewide jurisdiction when operating under the state authority. Regulatory bodies whose decisions are not subject to judicial appeal and regulatory bodies which regulate a company owned by the same entity which creates the regulatory body are not "governmental regulatory bodies."

(b) The Contractor shall furnish the services and facilities under this agreement/contract in accordance with—

(1) All applicable tariffs, rates, charges, rules, regulations, or requirements;

(i) Lawfully established by a governmental regulatory body; and

(ii) Applicable to service and facilities furnished or offered by the Contractor to the general public or the Contractor's subscribers;

(2) Rates, terms, and conditions of service and facilities furnished or offered by the Contractor to the general public or the Contractor's subscribers; or

(3) Rates, terms, and conditions of service as may be agreed upon, subject, when appropriate, to jurisdiction of a governmental regulatory body.

(c) The Government shall not prepay for services.

(d) For nontariffed services, the Contractor shall charge the Government at the lowest rate and under the most favorable terms and conditions for similar service and facilities offered to any other customer.

(e) Recurring charges for services and facilities shall, in each case, start with the satisfactory beginning of service or provision of facilities or equipment and are payable monthly in arrears.

(f) Subject to the Cancellation or Termination of Orders—Common Carriers clause, of this agreement/contract, the Government may stop the use of any service or facilities furnished under this agreement/contract at any time. The Government shall pay the contractor all charges for services and facilities adjusted to the effective date of discontinuance.

(g) Expediting charges are costs necessary to get services earlier than normal. Examples are overtime pay or special shipment. When authorized, expediting charges shall be the additional costs incurred by the Contractor and the subcontractor. The Government shall pay expediting charges only when—

(1) They are provided for in the tariff established by a governmental regulatory body; or

(2) They are authorized in a communication service authorization or other contractual document.

(h) When services normally provided are technically unacceptable and the development, fabrication, or manufacture of special equipment is required, the Government may—

(1) Provide the equipment; or

(2) Direct the Contractor to acquire the equipment or facilities. If the Contractor acquires the equipment or facilities, the acquisition shall be competitive, if practicable.

(i) If at any time the Government defers or changes its orders for any of the services but does not cancel or terminate them, the amount paid or payable to the Contractor for the services deferred or modified shall be equitably adjusted under applicable tariffs filed by the Contractor with the regulatory commission in effect at the time of deferral or change. If no tariffs are in effect, the Government and the Contractor shall equitably adjust the rates by mutual agreement. Failure to agree on any adjustment shall be a dispute concerning a question of fact within the meaning of the Disputes clause of this contract.

(End of clause)

252.239-7006 Tariff information.

As prescribed in 239.7411(a), use the following clause:

Tariff Information (Dec. 1991)

(a) The Contractor shall provide to the Contracting Officer—

(1) Upon request, a copy of the Contractor's current existing tariffs (including changes);

(2) Before filing any application to a Federal, State, or any other regulatory agency for new or changes to, rates, charges, services, or regulations relating to any tariff or any of the facilities or services to be furnished solely or primarily to the Government; and

(3) Upon request, a copy of all information, material, and data developed or prepared in support of or in connection with an application under paragraph (a)(2) of this clause.

(b) The Contractor shall notify the Contracting Officer of any application that anyone other than the Contractor files with a governmental regulatory body which affects or will affect the rate or conditions of services under this agreement/contract. These requirements also apply to applications pending on the effective date of this agreement/contract.

(End of clause)

252.239-7007 Cancellation or termination of orders—common carriers.

As prescribed in 239.7411(a), use the following clause:

Cancellation or Termination of Orders—Common Carriers (Dec. 1991)

(a) If the Government cancels any of the services ordered under this agreement/contract, before the services are made available to the Government, or terminates any of these services after they are made available to the Government, the Government shall reimburse the Contractor for the actual nonrecoverable costs the Contractor has reasonably incurred in providing facilities and equipment for which the Contractor has no foreseeable reuse.

(b) The amount of the Government's liability upon cancellation or termination of any of the services ordered under this agreement/contract will be determined under applicable tariffs governing cancellation and termination charges which—

(1) Are filed by the Contractor with a governmental regulatory body, as defined in the Rates, Charges, and Services—Common Carriers clause of this agreement/contract;

(2) Are in effect on the date of termination; and

(3) Provide specific cancellation or termination charges for the facilities and equipment involved or show how to determine the charges.

(c) The amount of the Government's liability upon cancellation or termination of any of the services ordered under this agreement/contract, which are not subject to a governmental regulatory body, will be determined under a mutually agreed schedule in the communication services authorization (CSA) or other contractual document.

(d) If no applicable tariffs are in effect on the date of cancellation or termination or set forth in the applicable CSA or other contractual document, the Government's liability will be determined under the following settlement procedures—

(1) The Contractor agrees to provide the Contracting Officer, in such reasonable detail as the Contracting Officer may require, certified inventory schedules covering all items of property or facilities in the Contractor's possession, the cost of which is included in the Basic Cancellation or Termination Liability for which the Contractor has no foreseeable reuse.

(2) The Contractor shall use its best efforts to sell property or facilities when the Contractor has no foreseeable reuse or when the Government has not exercised its option to take title under the Title to Telecommunications Facilities and Equipment clause of this agreement/contract. The Contractor shall apply any proceeds of the sale to reduce any payments by the Government to the Contractor under a cancellation or termination settlement.

(3) The Contractor shall record actual nonrecoverable costs under established accounting procedures prescribed by the cognizant governmental regulatory authority or, if no such procedures have been prescribed, under generally accepted accounting procedures applicable to the provision of telecommunication services for public use.

(4) The actual nonrecoverable costs are the installed costs of the facilities and equipment, less cost of reusable materials, and less net salvage value. Installed costs shall include the actual cost of equipment and materials specifically provided or used, plus the actual cost of installing (including engineering, labor, supervision, transportation, rights-of-way, and any other items which are chargeable to the capital accounts of the Contractor) less any costs the Government may have directly reimbursed the Contractor under the Special Construction and Equipment Charges clause of this agreement/contract. Deduct from the Contractor's installed cost, the net salvage value (salvage value less cost of removal). In determining net salvage value, give consideration to foreseeable reuse of the facilities and equipment by the Contractor. Make allowance for the cost of dismantling, removal, reconditioning, and disposal of the facilities and equipment when necessary either to the sale of facilities or their reuse by the Contractor in another location.

(5) The Basic Cancellation Liability is defined as the actual nonrecoverable cost which the Government shall reimburse the Contractor at the time services are cancelled. The Basic Termination Liability is defined as the nonrecoverable cost amortized in equal monthly increments throughout the liability period. Upon termination of services, the Government shall reimburse the Contractor for the nonrecoverable cost less such costs amortized to the date services are terminated. Establish the liability period as mutually agreed to but not to exceed ten years.

(6) When the Basic Cancellation or Termination Liability established by the CSA or other contractual document is based on estimated costs, the Contractor agrees to settle on the basis of actual cost at the time of termination or cancellation.

(7) The Contractor agrees that, if after settlement but within the termination liability period of the services, should the Contractor make reuse of equipment or facilities which were treated as nonreusable or nonsalvagable in the settlement, the Contractor shall reimburse the Government for the value of the equipment or facilities.

(8) The Contractor agrees to exclude—

(i) Any costs which are not included in determining cancellation and termination charges under the Contractor's standard practices or procedures; and

(ii) Charges not ordinarily made by the Contractor for similar facilities or equipment, furnished under similar circumstances.

(e) The Government may, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the canceled or terminated portion of this agreement/contract. The Government may make these payments if in the opinion of the Contracting Officer the total of the payments is within the amount the Contractor is entitled. If the total of the payments is in excess of the amount finally agreed or determined to be due under this clause, the Contractor shall pay the excess to the Government upon demand.

(f) Failure to agree shall be a dispute concerning a question of fact within the meaning of the Disputes clause.

(End of clause)

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(5) The Basic Cancellation Liability is defined as the actual nonrecoverable cost which the Government shall reimburse the Contractor at the time services are cancelled. The Basic Termination Liability is defined as the nonrecoverable cost amortized in equal monthly increments throughout the liability period. Upon termination of services, the Government shall reimburse the Contractor for the nonrecoverable cost less such costs amortized to the date services are terminated. Establish the liability period as mutually agreed to but not to exceed ten years.

(6) When the Basic Cancellation or Termination Liability established by the CSA or other contractual document is based on estimated costs, the Contractor agrees to settle on the basis of actual cost at the time of termination or cancellation.

(7) The Contractor agrees that, if after settlement but within the termination liability period of the services, should the Contractor make reuse of equipment or facilities which were treated as nonreusable or nonsalvagable in the settlement, the Contractor shall reimburse the Government for the value of the equipment or facilities.

(8) The Contractor agrees to exclude—

(i) Any costs which are not included in determining cancellation and termination charges under the Contractor's standard practices or procedures; and

(ii) Charges not ordinarily made by the Contractor for similar facilities or equipment, furnished under similar circumstances.

(e) The Government may, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the canceled or terminated portion of this agreement/contract. The Government may make these payments if in the opinion of the Contracting Officer the total of the payments is within the amount the Contractor is entitled. If the total of the payments is in excess of the amount finally agreed or determined to be due under this clause, the Contractor shall pay the excess to the Government upon demand.

(f) Failure to agree shall be a dispute concerning a question of fact within the meaning of the Disputes clause.

(End of clause)

252.239-7008 Reuse arrangements.

As prescribed in 239.7411(a), use the following clause:

Reuse Arrangements (Dec. 1991)

(a) When feasible, the Contractor shall reuse canceled or terminated facilities or equipment to minimize the charges to the Government.

(b) If at any time the Government requires that telecommunications facilities or equipment be relocated within the Contractor's service area, the Government shall have the option of paying the costs of relocating the facilities or equipment in lieu of paying any termination or cancellation charge under the Cancellation or Termination of Orders-Common Carriers clause of this agreement/contract. The Basic Termination Liability applicable to the facilities or equipment in their former location shall continue to apply to the facilities and equipment in their new location. Monthly rental charges shall continue to be paid during the period.

(c) When there is another requirement or foreseeable reuse in place of canceled or terminated facilities or equipment, no charge shall apply and the Basic Cancellation or Termination Liability shall be appropriately reduced. When feasible, the Contractor shall promptly reuse discontinued channels or facilities, including equipment for which the Government is obligated to pay a minimum service charge.

(End of clause)

252.239-7009 Submission of cost or pricing data—common carriers.

As prescribed in 239.7411(a), use the following clause:

Submission of Cost or Pricing Data—Common Carriers (Dec. 1991)

The Contractor agrees to provide certified cost or pricing data, upon request by the Contracting Officer, whenever—

(a) The services are nontariffed services;

(b) A tariff, whether filed or to be filed, is for new services installed or developed primarily for Government use;

(c) A tariff, whether filed or to be filed, does not include the special rates and charges;

(d) More than one commercial source (one or more of which is a common carrier) can offer the service but price competition is not adequate;

(e) Required to support the reasonableness of special assembly rates and charges;

(f) Required to support the reasonableness of special construction and equipment charges;

(g) Required to support the reasonableness of those contingent liabilities which are fixed at the outset of the service;

(h) Required to support proposed cancellation and termination charges (under the Cancellation or Termination Orders clause) and reuse arrangements (under the Reuse Arrangements clause); or

(i) Required to support rates contained in voluntary tariffs filed by nondominant common carriers.

(End of clause)

252.239-7010 Audit and records—common carriers.

As prescribed in 239.7411(a), use the following clause:

Audit and Records—Common Carriers (Dec. 1991)

(a) For the purpose of verifying the accuracy of the cost or pricing data submitted under the Submission of Cost or Pricing Data—Common Carriers clause of this agreement/contract, the Contracting Officer or authorized representative shall have the right to examine the Contractor's books, records, documents, the computations and projections used, and other supporting data which will permit adequate evaluation of the cost or pricing data. This right applies to cost and pricing data which were available to the Contractor as of the date of the certification and shall last—

(1) Until the expiration of three years from the date of the submission of the data which forms the basis for a recurring or nonrecurring charge; or

(2) Until the expiration of the period of contingent liability with respect to that contingent liability.

(b) The Contractor shall maintain books, records, documents, and other evidence; and accounting procedures and practices, sufficient to show the direct and indirect costs which were the basis for pricing the communication service authorization.

(c) The Contractor shall insert the substance of this clause in subcontracts which furnish the basis for charges referred to in paragraph (a) of this clause unless the Contracting Officer authorizes its omission.

(End of clause)

252.239-7011 Special construction and equipment charges.

As prescribed in 239.7411(b), use the following clause:

Special Construction and Equipment Charges (Dec. 1991)

(a) The Government will not directly reimburse the Contractor for the cost of constructing any facilities or providing any equipment, unless the Contracting Officer authorizes direct reimbursement.

(b) If the Contractor stops using facilities or equipment which the Government has, in whole or part, directly reimbursed, the Contractor shall allow the Government credit for the value of the facilities or equipment attributable to the Government's contribution. Determine the value of the facilities and equipment on the basis of their foreseeable reuse by the Contractor at the time their use is discontinued or on the basis of the net salvage value, whichever is greater. The Contractor shall promptly pay the Government the amount of any credit.

(c) The amount of the direct special construction charge shall not exceed—

(1) The actual costs to the Contractor; and

(2) An amount properly allocable to the services to be provided to the Government.

(d) The amount of the direct special construction charge shall not include costs incurred by the Contractor which are covered by—

(1) A cancellation or termination liability; or

(2) The Contractor's recurring or other nonrecurring charges.

(e) The Contractor represents that—

(1) Recurring charges for the services, facilities, and equipment do not include in the rate base any costs that have been reimbursed by the Government to the Contractor; and

(2) Depreciation charges are based only on the cost of facilities and equipment paid by the Contractor and not reimbursed by the Government.

(f) If it becomes necessary for the Contractor to incur costs to replace any facilities or equipment, the Government shall assume those costs or reimburse the Contractor for replacement costs at mutually acceptable rates under the following circumstances—

(1) The Government paid direct special construction charges; or

(2) The Government reimbursed the Contractor for those facilities or equipment as a part of the recurring charges; and

(3) The need for replacement was due to circumstances beyond the control and without the fault of the Contractor.

(g) Before incurring any costs under paragraph (f) of this clause, the Government shall have the right to terminate the service under the Cancellation or Termination of Orders clause of this contract.

(End of clause)

252.239-7012 Title to telecommunication facilities and equipment.

As prescribed in 239.7411(b), use the following clause:

Title to Telecommunication Facilities and Equipment (Dec. 1991)

(a) Title to all Contractor furnished facilities and equipment used under this agreement/contract shall remain with the Contractor even if the Government paid the costs of constructing the facilities or equipment. A mutually accepted communications service authorization may provide for exceptions.

(b) The Contractor shall operate and maintain all telecommunication facilities and equipment used under this agreement/contract whether the Government or the Contractor has title.

(End of clause)

252.239-7013 Obligation of the government.

As prescribed in 239.7411(c), use the following clause:

Obligation of the Government (Dec. 1991)

(a) This basic agreement is not a contract. The Government incurs no monetary liability under this agreement.

(b) The Government incurs liability only upon issuance of a communications service authorization under the terms of this agreement.

(End of clause)

252.239-7014 Term of agreement.

As prescribed in 239.7411(c), use the following clause:

Term of Agreement (Dec. 1991)

(a) This agreement shall continue in force from year to year, unless terminated by either party by 60 days written notice.

(b) Termination of this agreement does not cancel any communication service authorizations previously issued.

(End of clause)

252.239-7015 Continuation of communication service authorizations.

As prescribed in 239.7411(c), use the following clause:

Continuaton of Communication Service Authorizations (Dec. 1991)

(a) All communication service authorizations (CSAs) issued by ______under Basic Agreement Number ____, dated ____, are transferred to this basic agreement. The CSAs shall continue in full force and effect as though placed under this agreement.

(b) Communication service authorizations currently in effect which were issued by the activity in paragraph (a) of this clause under other agreements with the Contractor may also be transferred to this agreement.

(End of clause)

252.239-7016 Telecommunications security equipment, devices, techniques, and services.

As prescribed in 239.7411(d), use the following clause:

Telecommunications Security Equipment, Devices, Techniques, and Services (Dec. 1991)

(a) *Definitions.* As used in this clause—

(1) *Securing* means the application of Government-approved telecommunications security equipment, devices, techniques, or services to contractor telecommunications systems.

(2) *Sensitive information* means any information the loss, misuse, or modification of which, or unauthorized access to, could adversely affect the national interest or the conduct of Federal programs, or the privacy to which individuals are entitled under 5 U.S.C. 552a (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or Act of Congress to be kept secret in the interest of national defense or foreign policy.

(3) *Telecommunications systems* means voice, record, and data communications, including management information systems and local data networks that connect to external transmission media, when employed by Government agencies, contractors, and subcontractors to transmit—

(i) Classified or sensitive information;

(ii) Matters involving intelligence activities, cryptologic activities related to national security, the command and control of military forces, or equipment that is an integral part of a weapon or weapons system; or

(iii) Matters critical to the direct fulfillment of military or intelligence missions.

(b) This solicitation/contract identifies classified or sensitive information that requires securing during telecommunications and requires the Contractor to secure telecommunications systems. The Contractor agrees to secure information and systems at the following location: (Identify the location.)

(c) To provide the security, the Contractor shall use Government-approved telecommunications equipment, devices, techniques, or services. A list of the approved equipment, etc. may be obtained from (identify where list can be obtained). Equipment, devices, techniques, or services used by the Contractor must be compatible or interoperable with (list and identify the location of any telecommunications security equipment, device, technique, or service currently being used by the technical or requirements organization or other offices with which the Contractor must communicate).

(d) Except as may be provided elsewhere in this contract, the Contractor shall furnish all telecommunications security equipment, devices, techniques, or services necessary to perform this contract. The Contractor must meet ownership eligibility conditions for communications security equipment designated as controlled cryptographic items.

(e) The Contractor agrees to include this clause, including this paragraph (e), in all subcontracts which require securing telecommunications.

(End of clause)

252.241-7000 Superseding contract.

As prescribed in 241.007-70(a), use the following clause:

Superseding Contract (Dec. 1991)

This contract supersedes contract No. ______, dated ____ which provided similar services. Any capital credits accrued to the Government, any remaining credits due to the Government under the connection charge, or any termination liability are transferred to this contract, as follows:

Capital Credits

(List years and accrued credits by year and separate delivery points.)

Outstanding Connection Charge Credits

(List by month and year the amount credited and show the remaining amount of outstanding credits due the Government.)

Termination Liability Charges

(List by month and year the amount of monthly facility cost recovered and show the remaining amount of facility cost to be recovered.)

(End of clause)

252.241-7001 Government access.

As prescribed in 241.007-70(b), use the following clause:

Government Access (Dec. 1991)

Authorized representatives of the Government may have access to the Contractor's on-base facilities upon reasonable notice or in case of emergency.

(End of clause)

252.242-7000 Postaward conference.

As prescribed in 242.570, use the following clause:

Postaward Conference (Dec. 1991)

The Contractor agrees to attend any postaward conference convened by the contracting activity or contract administration office in accordance with Federal Acquisition Regulation subpart 42.5.

(End of clause)

252.242-7001 Certification of indirect costs.

As prescribed in 242.770-6, use the following clause:

Certification of Indirect Costs (Dec. 1991)

(a) The Contractor shall—

(1) Certify any proposal to establish or modify billing rates or to establish final indirect cost rates;

(2) Use the format in paragraph (c) of this clause to certify; and

(3) Have the certificate signed by an individual of the Contractor's organization at a level no lower than a vice president or chief financial officer of the business segment of the Contractor that submits the proposal.

(b) Failure by the Contractor to submit a signed certificate, as described in this clause, shall result in payment of indirect costs at rates unilaterally established by the Government.

(c) The certificate of indirect costs shall read as follows:

Certificate of Indirect Costs

This is to certify that to the best of my knowledge and belief:

1. I have reviewed this indirect cost proposal;

2. All costs included in this proposal (identify proposal and date) to establish billing or final indirect cost rates for (identify period covered by rate) are allowable in accordance with the requirements of contracts to which they apply and with the cost principles of the Department of Defense applicable to those contracts;

3. This proposal does not include any costs which are unallowable under applicable cost principles of the Department of Defense, such as (without limitation): advertising and public relations costs, contributions and donations, entertainment costs, fines and penalties, lobbying costs, defense or fraud proceedings, and goodwill; and

4. All costs included in this proposal are properly allocable to Defense contracts on the basis of a beneficial or causal relationship between the expenses incurred and the contracts to which they are allocated in accordance with applicable acquisition regulations.

I declare under penalty of perjury that the foregoing is true and correct.

Firm: ______________________
Signature ______________________
Name of Corporation Official: ______________
Title: ______________________
Date of Execution: ______________

(End of clause)

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252.242-7000 Postaward conference.

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(End of clause)

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As prescribed in 242.770-6, use the following clause:

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(a) The Contractor shall—

(1) Certify any proposal to establish or modify billing rates or to establish final indirect cost rates;

(2) Use the format in paragraph (c) of this clause to certify; and

(3) Have the certificate signed by an individual of the Contractor's organization at a level no lower than a vice president or chief financial officer of the business segment of the Contractor that submits the proposal.

(b) Failure by the Contractor to submit a signed certificate, as described in this clause, shall result in payment of indirect costs at rates unilaterally established by the Government.

(c) The certificate of indirect costs shall read as follows:

Certificate of Indirect Costs

This is to certify that to the best of my knowledge and belief:

1. I have reviewed this indirect cost proposal;

2. All costs included in this proposal (identify proposal and date) to establish billing or final indirect cost rates for (identify period covered by rate) are allowable in accordance with the requirements of contracts to which they apply and with the cost principles of the Department of Defense applicable to those contracts;

3. This proposal does not include any costs which are unallowable under applicable cost principles of the Department of Defense, such as (without limitation): advertising and public relations costs, contributions and donations, entertainment costs, fines and penalties, lobbying costs, defense or fraud proceedings, and goodwill; and

4. All costs included in this proposal are properly allocable to Defense contracts on the basis of a beneficial or causal relationship between the expenses incurred and the contracts to which they are allocated in accordance with applicable acquisition regulations.

I declare under penalty of perjury that the foregoing is true and correct.

Firm: ______________________
Signature ______________________
Name of Corporation Official: ______________
Title: ______________________
Date of Execution: ______________

(End of clause)

252.242-7002 Submission of commercial freight bills for audit.

As prescribed in 242.1404-2-70(a), use the following clause:

Submission of Commercial Freight Bills for Audit (Dec. 1991)

When the Government reimburses the Contractor's transportation costs, the Contractor shall furnish individual freight bills (or equivalent shipment data and evidence of payments) for transportation charges in excess of $500 to the following address:

General Services Administration—BWQAA
GSA Building
18th and F Streets, NW.
Washington, DC 20405

(End of clause)

252.242-7003 Application for U.S. government shipping documentation/instructions.

As prescribed in 242.1404-2-70(b), use the following clause:

Application for U.S. Government Shipping Documentation/Instructions (Dec. 1991)

The Contractor shall request Government bills of lading by submitting a DD Form 1659, Application for U.S. Government Shipping Documentation/Instructions, to the—

(a) Transportation Officer, if named in the contract schedule; or

(b) Contract administration office.

(End of clause)

252.242-7004 Material management and accounting system.

As prescribed in 242.7206, use the following clause:

Material Management and Accounting System (Dec. 1991)

(a) *Definitions.* As used in this clause—

(1) *Material management and accounting system* means the Contractor's system or systems for planning, controlling, and accounting for the acquisition, use, issuing, and disposition of material. Material management and accounting systems may be manual or automated. They may be stand-alone systems or they may be integrated with planning, engineering, estimating, purchasing, inventory, accounting, or other systems.

(2) *Valid time-phased requirements* means material which is—

(i) Needed to fulfill the production plan, including reasonable quantities for scrap, shrinkage, yield, etc.; and

(ii) Charged/billed to contracts or other cost objectives in a manner consistent with the need to fulfill the production plan.

(b) *General.* The Contractor agrees to—

(1) Maintain a material management and accounting system (MMAS) that—

(i) Reasonably forecasts material requirements;

(ii) Ensures that costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements; and

(iii) Maintains a consistent, equitable, and unbiased logic for costing of material transactions.

(2) Assess its MMAS and take reasonable action to comply with the MMAS standards in paragraph (f) of this clause.

(c) *Applicability.* Paragraphs (d) and (e) of this clause apply only if the Contractor—

(1) Is a large business; and

(2) Received, in its fiscal year preceding award of this contract, Department of Defense prime contracts or subcontracts, and their modifications totaling—

(i) $50 million or more; or

(ii) $10 million or more (but less than $50 million), and is notified in writing by the Contracting Officer that paragraphs (d) and (e) apply.

(d) *Disclosure, demonstration, and maintenance requirements.* (1) The Contractor shall—

(i) Disclose its MMAS to the Administrative Contracting Officer in writing; and

(ii) If requested by the Administrative Contracting Officer, demonstrate that the MMAS conforms to the standards in paragraph (f) of this clause.

(2) An MMAS disclosure is adequate when the Contractor has provided the Administrative Contracting Officer with documentation which—

(i) Accurately describes those policies, procedures, and practices that the Contractor currently uses in its MMAS; and

(ii) Provides sufficient detail for the Government to reasonably make an informed judgment regarding the adequacy of the MMAS.

(3) An MMAS demonstration is adequate when the Contractor has provided the Administrative Contracting Officer—

(i) Sufficient evidence to demonstrate the degree of compliance of its MMAS with the standards at paragraph (f) of this clause; and

(ii) Identification of any significant deficiencies, the estimated cost impact of the deficiency, and a comprehensive corrective action plan.

(4) The Contractor shall disclose significant changes in its MMAS to the Administrative Contracting Officer within 30 days of implementation.

(5) If the contractor desires the Government to protect such information as privileged or confidential, the Contractor shall—

(i) Notify the Government representative to whom the information is submitted, i.e., the ACO, or the auditor; and

(ii) Ensure an appropriate legend is on the face of the document(s) at the time of submission.

(e) *Deficiencies.* (1) If the Contractor receives a report which identifies deficiencies in its MMAS, the Contractor agrees to respond as follows—

(i) If the Contractor agrees with the report findings and recommendations, the Contractor shall—

(A) Within 30 days, state its agreement in writing; and

(B) Within 60 days, correct the deficiencies or submit a corrective action plan.

(ii) If the Contractor disagrees with the report findings and recommendations, the Contractor shall, within 30 days, state its rationale for each area of disagreement.

(2) The Administrative Contracting Officer shall evaluate the Contractor's response and notify the Contractor of the—

(i) Determination concerning remaining deficiencies;

(ii) Adequacy of any proposed or completed corrective action plan; and

(iii) Need for any new or revised corrective action plan.

(f) *MMAS standards.* MMAS systems shall have adequate internal accounting and administrative controls to ensure system and data integrity, and comply with the following:

(1) Have an adequate system description including policies, procedures, and operating instructions which comply with the Federal Acquisition Regulation and Defense FAR Supplement;

(2) Ensure that costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements as impacted by minimum/economic order quantity restrictions—

(i) A 98 percent bill of material accuracy and a 95 percent master production schedule accuracy are desirable as a goal in order to ensure that requirements are both valid and appropriately time-phased.

(ii) If systems have accuracy levels below these, the Contractor shall demonstrate that—

(A) There is no material harm to the Government due to lower accuracy levels; and

(B) The cost to meet the accuracy goals is excessive in relation to the impact on the Government;

(3) Provide a mechanism to identify, report, and resolve system control weaknesses and manual override. Systems should identify operational exceptions such as excess/residual inventory as soon as known;

(4) Provide audit trails and maintain records (manual and those in machine readable form) necessary to evaluate system logic and to verify through transaction testing that the system is operating as desired;

(5) Establish and maintain adequate levels of record accuracy, and include reconciliation of recorded inventory quantities to physical inventory by part number on a periodic basis. A 95 percent accuracy level is desirable. If systems have an accuracy level below 95 percent, the Contractor shall demonstrate that—

(i) There is no material harm to the Government due to lower accuracy levels; and

(ii) The cost to meet the accuracy goal is excessive in relation to the impact on the Government;

(6) Provide detailed descriptions of circumstances which will result in manual or system generated transfers of parts;

(7) Maintain a consistent, equitable, and unbiased logic for costing of material transactions—

(i) The Contractor shall maintain and disclose a written policy describing the transfer methodologies.

(ii) The costing methodology may be standard or actual cost, or any of the inventory costing methods in FAR 30.411-50(b). Consistency shall be maintained across all contract and customer types, and from accounting period to accounting period for initial charging and transfer charging.

(iii) The system should transfer parts and associated costs within the same billing period. In the few circumstances where this may not be appropriate, the Contractor may use a loan/pay back technique only if approved by the administrative contracting officer. When the technique is used, the Contractor shall have controls to ensure—

(A) Parts are paid back expeditiously;

(B) Procedures and controls are in place to correct any overbilling that might occur;

(C) Monthly, at a minimum, identification of the borrowing contract and the date the part was borrowed; and

(D) The cost of the replacement part is charged to the borrowing contract;

(8) Where allocations from common inventory accounts are used, have controls (in addition to those in paragraphs (b)(2) and (7) of this clause) to ensure that—

(i) Reallocations and any credit due are processed no less frequently than the routine billing cycle;

(ii) Inventories retained for requirements which are not under contract are not allocated to contracts; and

(iii) Algorithms are maintained based on valid and current data;

(9) Notwithstanding FAR 45.505–3(f)(1)(ii), have adequate controls to ensure that physically commingled inventories that may include material for which costs are charged or allocated to fixed-price, cost-reimbursement, and commercial contracts do not compromise requirements of any of the standards in paragraphs (f)(1) through (8) of this clause. Government furnished material shall not be—

(i) Physically commingled with other material; or

(ii) Used on commercial work; and

(10) Be subjected to periodic internal audits to ensure compliance with established policies and procedures.

(End of clause)

252.242–7005 Cost/schedule status report.

As prescribed in 242.1107–70, use the following clause:

Cost/Schedule Status Report (Dec. 1991)

(a) The Offeror shall submit a written summary of the management procedures it will establish, maintain, and use in the performance of any resultant contract that provides for—

(1) Planning and control of costs;

(2) Measurement of performance (value for completed tasks); and

(3) Generation of timely and reliable information for the cost/schedule status report (C/SSR).

(b) As a minimum, the Contractor's management procedures must provide for—

(1) Establishing the time-phased budgeted cost of work scheduled (including work authorization, budgeting, and scheduling), the budgeted cost for work performed, the actual cost of work performed, the budget at completion, the estimate at completion, and provisions for subcontractor performance measurement and reporting;

(2) Applying all direct and indirect costs and provisions for use and control of management reserve and undistributed budget;

(3) Incorporating changes to the contract budget base for both Government directed changes and internal replanning;

(4) Establishing constraints to preclude subjective adjustment of data to ensure performance measurement remains realistic. Unless the Contracting Officer provides prior written approval, in no case shall the total allocated budget exceed the contract budget base. For cost reimbursement contracts, the contract budget base shall exclude changes for cost growth increases, other than for authorized changes to the contract scope; and

(5) Establishing the capability to accurately identify and explain significant cost and schedule variances, both on a cumulative basis and projected at completion basis.

(c) The Offeror/Contractor may use a cost/schedule control system that has been accepted by a DoD component as complying with DoD cost/schedule control systems criteria (C/SCSC) of a contract of the same nature (e.g., development, production, etc.). The Offeror shall submit a copy of the Memorandum of Understanding instead of the written summary required in paragraph (a) of this clause.

(d) The Contracting Officer or designated representative shall visit the Contractor's facility to review implementation of the Contractor's procedures used to satisfy the C/SSR requirements and to verify that the procedures employed provide timely and reliable data. The Contractor shall provide necessary documents and data which describe the methods of planning, control and data generation in actual operation and satisfy the requirements of paragraph (a) of this clause.

(e) The Contractor shall provide access to all pertinent records, company procedures, and data requested by the Contracting Officer, or authorized representative, to—

(1) Show proper implementation of the procedures generating the cost schedule information being used to satisfy the C/SSR contractual data requirements to the Government; and

(2) Ensure continuing application of the accepted company procedures in satisfying the C/SSR data item.

(f) The Contractor shall submit any substantive changes to the procedures and their impact to the Contracting Officer for review.

(g) The Contractor shall require a subcontractor to furnish C/SSR in each case where the subcontract is other than firm fixed-price, is 12 months or more in duration, and has critical or significant tasks related to the prime contract. Critical or significant tasks shall be defined by mutual agreement between the Government and Contractor. Each subcontractor's reported cost and schedule information shall be incorporated into the Contractor's C/SSR.

(End of clause)

252.243–7000 Engineering change proposals.

As prescribed in 243.205–70, use the following clause:

Engineering Change Proposals (Dec. 1991)

(a) The Contracting Officer may ask the Contractor to prepare engineering change proposals for engineering changes within the scope of this contract. Upon receipt of a written request from the Contracting Officer, the Contractor shall prepare and submit an engineering change proposal in accordance with the instructions of ____________ *, in effect on the date of contract award.

(b) The Contractor may initiate engineering change proposals. Contractor initiated engineering change proposals shall include a "not to exceed" price ** or a "not less than" price ** and delivery adjustment. If the Contracting Officer orders the engineering change, the increase shall not exceed nor the decrease be less than the "not to exceed" or "not less than" amounts ***

(c) When the price ** of the engineering change is $100,000 or more, the Contractor shall submit

(1) A completed SF 1411, Contract Pricing Proposal Cover Sheet, and

(2) At the time of agreement on price **, a signed Certificate of Current Cost or Pricing Data.

(End of clause)

Alternate I (Dec. 1991)

As prescribed in 243.205–70, add the following paragraph (d) to the basic clause:

(d) If the price ** of a Contractor initiated engineering change is ____________**** or less, the change, if ordered, shall be made at no adjustment in the contract price **

252.243–7001 Pricing of contract modifications.

As prescribed in 243.205–71, use the following clause:

Pricing of Contract Modifications (Dec. 1991)

When costs are a factor in any price adjustment under this contract, the contract cost principles and procedures in FAR part 31 and DFARS part 231, in effect on the date of this contract, apply.

(End of clause)

252.245–7000 Government-furnished mapping, charting, and geodesy property.

As prescribed in 245.310–70, use the following clause:

Government-Furnished Mapping, Charting, and Geodesy Property (Dec. 1991)

(a) *Definition—Mapping, charting, and geodesy (MC&G) property* means geodetic, geomagnetic, gravimetric, aeronautical, topographic, hydrographic, cultural, and toponymic data presented in the form of topographic, planimetric, relief, or thematic

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* Insert MIL–STD–480 or MIL–STD–481

** Use a term suitable for the type of contract

*** In cost reimbursement type contracts, replace this sentence with the following: "Change orders issued under the Changes clause of this contract are not an authorization to exceed the estimated cost in the schedule unless there is a statement in the change order, or other contract modification, increasing the estimated cost."

**** Insert a percentage of the contract price or a dollar amount.

Engineering Change Proposals (Dec. 1991)

(a) The Contracting Officer may ask the Contractor to prepare engineering change proposals for engineering changes within the scope of this contract. Upon receipt of a written request from the Contracting Officer, the Contractor shall prepare and submit an engineering change proposal in accordance with the instructions of ___________ *, in effect on the date of contract award.

(b) The Contractor may initiate engineering change proposals. Contractor initiated engineering change proposals shall include a "not to exceed" price ** or a "not less than" price ** and delivery adjustment. If the Contracting Officer orders the engineering change, the increase shall not exceed nor the decrease be less than the "not to exceed" or "not less than" amounts ***

(c) When the price ** of the engineering change is $100,000 or more, the Contractor shall submit

(1) A completed SF 1411, Contract Pricing Proposal Cover Sheet, and

(2) At the time of agreement on price **, a signed Certificate of Current Cost or Pricing Data.

(End of clause)

Alternate I (Dec. 1991)

As prescribed in 243.205-70, add the following paragraph (d) to the basic clause:

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When costs are a factor in any price adjustment under this contract, the contract cost principles and procedures in FAR part 31 and DFARS part 231, in effect on the date of this contract, apply.

(End of clause)

252.245-7000 Government-furnished mapping, charting, and geodesy property.

As prescribed in 245.310–70, use the following clause:

Government-Furnished Mapping, Charting, and Geodesy Property (Dec. 1991)

(a) *Definition—Mapping, charting, and geodesy (MC&G) property* means geodetic, geomagnetic, gravimetric, aeronautical, topographic, hydrographic, cultural, and toponymic data presented in the form of topographic, planimetric, relief, or thematic

maps and graphics; nautical and aeronautical charts and publications; and in simulated, photographic, digital, or computerized formats.

(b) The Contractor shall not duplicate, copy, or otherwise reproduce MC&G property for purposes other than those necessary for performance of the contract.

(c) At the completion of performance of the contract, the Contractor, as directed by the Contracting Officer, shall either destroy or return to the Government all Government-furnished MC&G property not consumed in the performance of this contract.

(End of clause)

252.246-7000 Material inspection and receiving report.

As prescribed in 246.370, use the following clause:

Material Inspection and Receiving Report (Dec. 1991)

At the time of each delivery of supplies or services under this contract, the Contractor shall prepare and furnish to the Government a material inspection and receiving report in the manner and to the extent required by appendix F, Material Inspection and Receiving Report, of the Defense FAR Supplement.

(End of clause)

252.246-7001 Warranty of data.

As prescribed in 246.710 (1), use the following clause:

Warranty of Data (Dec. 1991)

(a) *Definition—Technical data* has the same meaning as given in the clause in this contract entitled, Rights in Technical Data and Computer Software.

(b) *Warranty.* Notwithstanding inspection and acceptance by the Government of technical data furnished under this contract, and notwithstanding any provision of this contract concerning the conclusiveness of acceptance, the Contractor warrants that all technical data delivered under this contract will at the time of delivery conform with the specifications and all other requirements of this contract. The warranty period shall extend for three years after completion of the delivery of the line item of data (as identified in DD Form 1423, Contract Data Requirements List) of which the data forms a part; or any longer period specified in the contract.

(c) *Contractor Notification.* The Contractor agrees to notify the Contracting Officer in writing immediately of any breach of the above warranty which the Contractor discovers within the warranty period.

(d) *Remedies.* The following remedies shall apply to all breaches of the warranty, whether the Contractor notifies the Contracting Officer in accordance with paragraph (c) of this clause or if the Government notifies the Contractor of the breach in writing within the warranty period:

(1) Within a reasonable time after such notification, the Contracting Officer may—

(i) By written notice, direct the Contractor to correct or replace at the Contractor's expense the nonconforming technical data promptly; or

(ii) If the Contracting Officer determines that the Government no longer has a requirement for correction or replacement of the data, or that the data can be more reasonably corrected by the Government, inform the Contractor by written notice that the Government elects a price or fee adjustment instead of correction or replacement.

(2) If the Contractor refuses or fails to comply with a direction under paragraph (d)(1)(i) of this clause, the Contracting Officer may, within a reasonable time of the refusal or failure—

(i) By contract or otherwise, correct or replace the nonconforming technical data and charge the cost to the Contractor; or

(ii) Elect a price or fee adjustment instead of correction or replacement.

(3) The remedies in this clause represent the only way to enforce the Government's rights under this clause.

(e) The provisions of this clause apply anew to that portion of any corrected or replaced technical data furnished to the Government under paragraph (d)(1)(i) of this clause.

(End of clause)

Alternate I (Dec. 1991)

As prescribed in 246.710(2), substitute the following for paragraph (d)(3) of the basic clause:

(3) In addition to the remedies under paragraphs (d)(1) and (2) of this clause, the Contractor shall be liable to the Government for all damages to the Government as a result of the breach of warranty.

(i) The additional liability under paragraph (d)(3) of this clause shall not exceed 75 percent of the target profit.

(ii) If the breach of the warranty is with respect to the data supplied by an equipment subcontractor, the limit of the Contractor's liability shall be—

(A) Ten percent of the total subcontract price in a firm fixed price subcontract;

(B) Seventy-five percent of the total subcontract fee in a cost-plus-fixed-fee or cost-plus-award-fee subcontract; or

(C) Seventy-five percent of the total subcontract target profit or fee in a fixed-price or cost-plus-incentive-type contract.

(iii) Damages due the Government under the provisions of this warranty are not an allowable cost.

(iv) The additional liability in paragraph (d)(3) of this clause shall not apply—

(A) With respect to the requirements for product drawings and associated lists, special inspection equipment (SIE) drawings and associated lists, special tooling drawings and associated lists, SIE operating instructions, SIE descriptive documentation, and SIE calibration procedures under MIL–T–31000, General Specification for Technical Data Packages, Amendment 1, or MIL–T–47500, General Specification for Technical Data Packages, Supp 1, or drawings and associated lists under level 2 or level 3 of MIL–D–1000A, Engineering and Associated Data Drawings, or DoD–D–1000B, Engineering and Associated Lists Drawings (Inactive for New Design) Amendment 4, Notice 1; or drawings and associated lists under category E or I of MIL–D–1000, Engineering and Associated Lists Drawings, provided that the data furnished by the Contractor was current, accurate at time of submission, and did not involve a significant omission of data necessary to comply with the requirements; or

(B) To defects the Contractor discovers and gives written notice to the Government before the Government discovers the error.

Alternate II (Dec. 1991)

As prescribed at 246.710(3), substitute the following paragraph for paragraph (d)(3) of the basic clause:

(3) In addition to the remedies under paragraphs (d)(1) and (2) of this clause, the Contractor shall be liable to the Government for all damages to the Government as a result of the breach of the warranty.

(i) The additional liability under paragraph (d)(3) of this clause shall not exceed ten percent of the total contract price.

(ii) If the breach of the warranty is with respect to the data supplied by an equipment subcontractor, the limit of the Contractor's liability shall be—

(A) Ten percent of the total subcontract price in a firm fixed-price subcontract;

(B) Seventy-five percent of the total subcontract fee in a cost-plus-fixed-fee or cost-plus-award-fee subcontract; or

(C) Seventy-five percent of the total subcontract target profit or fee in a fixed-price or cost-plus-incentive-type contract.

(iii) The additional liability specified in paragraph (d)(3) of this clause shall not apply—

(A) With respect to the requirements for product drawings and associated lists, special inspection equipment (SIE) drawings and associated lists, special tooling drawings and associated lists, SIE operating instructions, SIE descriptive documentation, and SIE calibration procedures under MIL–T–31000, General Specification for Technical Data Packages, Amendment 1, or MIL–T–47500, General Specification for Technical Data Packages, Supp 1, or drawings and associated lists under level 2 or level 3 of MIL–D–1000A, Engineering and Associated Data Drawings, or DoD–D–1000B, Engineering and Associated Lists Drawings (Inactive for New Design) Amendment 4, Notice 1; or drawings and associated lists under category E or I of MIL–D–1000, Engineering and Associated Lists Drawings, provided that the data furnished by the Contractor was current, accurate at time of submission, and did not involve a significant omission of data necessary to comply with the requirements; or

(B) To defects the Contractor discovers and gives written notice to the Government before the Government discovers the error.

252.247-7000 Hardship conditions.

As prescribed in 247.270–7(a), use the following clause:

Hardship Conditions (Dec. 1991)

(a) The Contractor shall promptly notify the Contracting Officer of unusual conditions associated with loading or unloading a particular cargo, which will work a hardship on the Contractor if loaded or unloaded at the basic commodity rates.

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* Insert MIL–STD–480 or MIL–STD–481

** Use a term suitable for the type of contract

*** In cost reimbursement type contracts, replace this sentence with the following: "Change orders issued under the Changes clause of this contract are not an authorization to exceed the estimated cost in the schedule unless there is a statement in the change order, or other contract modification, increasing the estimated cost."

**** Insert a percentage of the contract price or a dollar amount.

(b) Unusual conditions include, but are not limited to, inaccessibility of place of stowage to the ship's cargo gear, side port operations, and small quantities of cargo in any one hatch.

(c) The Contracting Officer shall investigate the conditions promptly after receiving the notice. If the Contracting Officer finds that the conditions are unusual and do materially affect the cost of loading or unloading, the Contracting Officer will authorize payment at the extra-labor rates set forth in the schedule of rates of this contract.

(End of clause)

252.247-7001 Price adjustment.

As prescribed in 247.270-7(b), use the following clause:

Price Adjustment (Dec. 1991)

(a) The Contractor warrants that the prices set forth in this contract—

(1) Are based upon the wage rates, allowances, and conditions set forth in the collective bargaining agreements between the Contractor and its employees, in effect as of (*insert date*), and which are generally applicable to the ports where work under this contract is performed;

(2) Apply to operations by the Contractor on non-Government work as well as under this contract; and

(3) Do not include any allowance for cost increases that may—

(i) Become effective under the terms of the collective bargaining agreements after the date in paragraph (a)(1) of this clause; or

(ii) Result from modification of the collective bargaining agreements after the date in paragraph (a)(1).

(b) The Contractor shall notify the Contracting Officer within 60 days of receipt of notice of any changes (increase or decrease) in the wage rates, allowances, fringe benefits, and conditions that apply to its direct labor employees, if the changes—

(1) Are pursuant to the provisions of the collective bargaining agreements; or

(2) Are a result of effective modifications to the agreements; and

(3) Would change the Contractor's costs to perform this contract.

(c) The Contractor shall include in its notification—

(1) A proposal for an adjustment in the contract commodity, activity, or work-hour prices; and

(2) Data, in such form as the Contracting Officer may require, explaining the—

(i) Causes;

(ii) Effective date; and

(iii) Amount of the increase or decrease in the Contractor's proposal for the adjustment.

(d) Promptly upon receipt of any notice and data described in paragraph (c), the Contractor and the Contracting Officer shall negotiate an adjustment in the existing contract commodity, activity, or man-hour prices. However, no upward adjustment of the existing commodity, activity, or work-hour prices will be allowed in excess of ________ percent per year, except as provided in the Changes clause of this contract.

(1) Changes in the contract prices shall reflect, in addition to the direct and variable indirect labor costs, the associated changes in the costs for social security, unemployment compensation, taxes, and workman's compensation insurance.

(2) There will be no adjustment to increase the dollar amount allowances of the Contractor's profit.

(3) The agreed upon adjustment, its effective date, and the revised commodity, activity, or work-hour prices for services set forth in the schedule of rates, shall be incorporated in the contract by supplemental agreement.

(e) There will be no adjustment for any changes in the quantities of labor that the Contractor contemplated for each specific commodity, except as may result from modifications of the collective bargaining agreements. For the purpose of administering this clause, the Contractor shall submit to the Contracting Officer, within five days after award, the accounting data and computations the Contractor used to determine its estimated efficiency rate in the performance of this contract, to include the Contractor's computation of the costs apportioned for each rate set forth in the schedule of rates.

(f) Failure of the parties to agree to an adjustment under this clause will be deemed to be a dispute concerning a question of fact within the meaning of the Disputes clause of this contract. The Contractor shall continue performance pending agreement on, or determination of, any such adjustment and its effective date.

(g) The Contractor shall include with the final invoice submitted under this contract a certification that the Contractor has not experienced a decrease in rates of pay for labor, or that the Contractor has given notice of all such decreases in compliance with paragraph (b) of this clause.

(End of clause)

252.247-7002 Revision of prices.

As prescribed in 247.270-7(c), use the following clause:

Revision of Prices (Dec. 1991)

(a) *Definition. Wage adjustment*, as used in this clause, means a change in the wages, salaries, or other terms or conditions of employment which—

(1) Substantially affects the cost of performing this contract;

(2) Is generally applicable to the port where work under this contract is performed; and

(3) Applies to operations by the Contractor on non-Government work as well as to work under this contract.

(b) *General.* The prices fixed in this contract are based on wages and working conditions established by collective bargaining agreements, and on other conditions in effect on the date of this contract. The Contracting Officer and the Contractor may agree to increase or decrease such prices in accordance with this clause.

(c) *Demand for negotiation.* (1) At any time, subject to the limitations specified in this clause, either the Contracting Officer or the Contractor may deliver to the other a written demand that the parties negotiate to revise the prices under this contract.

(2) No such demand shall be made before 90 days after the date of this contract, and thereafter neither party shall make a demand having an effective date within 90 days of the effective date of any prior demand. However, this limitation does not apply to a wage adjustment during the 90 day period.

(3) Each demand shall specify a date (the same as or subsequent to the date of the delivery of the demand) as to when the revised prices shall be effective. This date is the effective date of the price revision.

(i) If the Contractor makes a demand under this clause, the demand shall briefly state the basis of the demand and include the statements and data referred to in paragraph (d) of this clause.

(ii) If the demand is made by the Contracting Officer, the Contractor shall furnish the statements and data within 30 days of the delivery of the demand.

(d) *Submission of data.* At the times specified in paragraphs (c)(3)(i) and (ii) of this clause, the Contractor shall submit—

(1) A new estimate and breakdown of the unit cost and the proposed prices for the services the Contractor will perform under this contract after the effective date of the price revision, itemized to be consistent with the original negotiations of the contract;

(2) An explanation of the difference between the original (or last preceding) estimate and the new estimate;

(3) Such relevant operating data, cost records, overhead absorption reports, and accounting statements as may be of assistance in determining the accuracy and reliability of the new estimate;

(4) A statement of the actual costs of performance under this contract to the extent that they are available at the time of the negotiation of the revision of prices under this clause; and

(5) Any other relevant data usually furnished in the case of negotiations of prices under a new contract. The Government may examine and audit the Contractor's accounts, records, and books as the Contracting Officer considers necessary.

(e) *Negotiations.* (1) Upon the filing of the statements and data required by paragraph (d) of this clause, the Contractor and the Contracting Officer shall negotiate promptly in good faith to agree upon prices for services the Contractor will perform on and after the effective date of the price revision.

(2) If the prices in this contract were established by competitive negotiation, they shall not be revised upward unless justified by changes in conditions occurring after the contract was awarded.

(3) The agreement reached after each negotiation will be incorporated into the contract by supplemental agreement.

(f) *Disagreements.* If, within 30 days after the date on which statements and data are required pursuant to paragraph (c) of this clause, the Contracting Officer and the Contractor fail to agree to revised prices, the failure to agree shall be resolved in accordance with the Disputes clause of this contract. The prices fixed by the Contracting Officer will remain in effect for the balance of the contract, and the Contractor shall continue performance.

(g) *Retroactive changes in wages or working conditions.* (1) In the event of a retroactive wage adjustment, the Contractor or the Contracting Officer may request an equitable adjustment in the prices in this contract.

(2) The Contractor shall request a price adjustment within 30 days of any retroactive wage adjustment. The Contractor shall support its request with—

(i) An estimate of the changes in cost resulting from the retroactive wage adjustment;

(ii) Complete information upon which the estimate is based; and

(iii) A certified copy of the collective bargaining agreement, arbitration award, or other document evidencing the retroactive wage adjustment.

(3) Subject to the limitation in paragraph (g)(2) of this clause as to the time of making a request, completion or termination of this contract shall not affect the Contractor's right under paragraph (g) of this clause.

(4) In case of disagreement concerning any question of fact, including whether any adjustment should be made, or the amount of such adjustment, the disagreement will be resolved in accordance with the Disputes clause of this contract.

(5) The Contractor shall notify the Contracting Officer in writing of any request by or on behalf of the employees of the Contractor which may result in a retroactive wage adjustment. The notice shall be given within 20 days after the request, or if the request occurs before contract execution, at the time of execution.

(End of clause)

252.247-7003 Termination.

As prescribed in 247.270-7(d), use the following clause:

Termination (Dec. 1991)

(a) Either the Contracting Officer or the Contractor may terminate this contract at any time upon 60 days (or such other number of days provided in the Schedule) written notice to the other. Termination under this clause does not affect any obligation or liability that may have accrued before the termination.

(b) Upon termination of this contract under either paragraph (a) or the Default clause of this contract, the Government shall pay the Contractor any amount due for services performed under this contract to the date of termination.

(c) In the event of partial termination, payment for services furnished under the portion of the contract not terminated shall be in accordance with the terms of this contract.

(d) Any payments under this clause shall be without prejudice to any Government claim against the Contractor. The Government has the right to offset any such claims against any such payment.

(End of clause)

252.247-7004 Indefinite quantities—fixed charges.

As prescribed in 247.270-7(e), use the following clause:

Indefinite Quantities—Fixed Charges (Dec. 1991)

The amount of work and services the Contractor may be ordered to furnish shall be the amount the Contracting Officer may order from time to time. In any event, the Government is obligated to compensate the Contractor the monthly lump sum specified in the Schedule entitled Fixed Charges, for each month or portion of a month the contract remains in effect.

(End of clause)

252.247-7005 Indefinite quantities—no fixed charges.

As prescribed in 247.270-7(f), use the following clause:

Indefinite Quantities—No Fixed Charges (Dec. 1991)

The amount of work and services the Contractor may be ordered to furnish shall be the amount the Contracting Officer may order from time to time. In any event, the Government shall order, during the term of this contract, work or services having an aggregate value of not less than $100.

(End of clause)

252.247-7006 Removal of contractor's employees.

As prescribed in 247.270-7(g), use the following clause:

Removal of Contractor's Employees (Dec. 1991)

The Contractor agrees to use only experienced, responsible, and capable people to perform the work. The Contracting Officer may require that the Contractor remove from the job, employees who endanger persons or property, or whose continued employment under this contract is inconsistent with the interest of military security.

(End of clause)

252.247-7007 Liability and insurance.

As prescribed in 247.270-7(h), use the following clause:

Liability and Insurance (Dec. 1991)

(a) The Contractor shall be—

(1) Liable to the Government for loss or damage to property, real and personal, owned by the Government or for which the Government is liable;

(2) Responsible for, and hold the Government harmless from, loss of or damage to property not included in paragraph (a)(1); and

(3) Responsible for, and hold the Government harmless from, bodily injury and death of persons, resulting either in whole or in part from the negligence or fault of the Contractor, its officers, agents, or employees in the performance of work under this contract.

(b) For the purpose of this clause, all cargo loaded or unloaded under this contract is agreed to be property owned by the Government or property for which the Government is liable.

(1) The amount of the loss or damage as determined by the Contracting Officer will be withheld from payments otherwise due the Contractor.

(2) Determination of liability and responsibility by the Contracting Officer will constitute questions of fact within the meaning of the Disputes clause of this contract.

(c) The general liability and responsibility of the Contractor under this clause are subject only to the following specific limitations. The Contractor is not responsible to the Government for, and does not agree to hold the Government harmless from, loss or damage to property or bodily injury to or death of persons if—

(1) The unseaworthiness of the vessel, or failure or defect of the gear or equipment furnished by the Government, contributed jointly with the fault or negligence of the Contractor in causing such damage, injury, or death; and

(i) The Contractor, his officers, agents, and employees, by the exercise of due diligence, could not have discovered such unseaworthiness or defect of gear or equipment; or

(ii) Through the exercise of due diligence could not otherwise have avoided such damage, injury, or death.

(2) The damage, injury, or death resulted solely from an act or omission of the Government or its employees, or resulted solely from proper compliance by officers, agents, or employees of the Contractor with specific directions of the Contracting Officer.

(d) The Contractor shall at its own expense acquire and maintain insurance during the term of this contract, as follows—

(1) Standard workmen's compensation and employer's liability insurance and longshoremen's and harbor workers' compensation insurance, or such of these as may be proper under applicable state or Federal statutes.

(i) The Contractor may, with the prior approval of the Contracting Officer, be a self-insurer against the risk of this paragraph (d)(1).

(ii) This approval will be given upon receipt of satisfactory evidence that the Contractor has qualified as a self-insurer under applicable provision of law.

(2) Bodily injury liability insurance in an amount of not less than $300,000 on account of any one occurrence.

(3) Property damage liability insurance (which shall include any and all property, whether or not in the care, custody, or control of the Contractor) in an amount of not less than $300,000 for any one occurrence.

(e) Each policy shall provide, by appropriate endorsement or otherwise, that cancellation or material change in the policy shall not be effective until after a 30 day written notice is furnished the Contracting Officer.

(f) The Contractor shall furnish the Contracting Officer with satisfactory evidence of the insurance required in paragraph (d) before performance of any work under this contract.

(g) The Contractor shall, at its own cost and expense, defend any suits, demands, claims, or actions, in which the United States might be named as a co-defendant of the Contractor, resulting from the Contractor's performance of work under this contract.

This requirement is without regard to whether such suit, demand, claim, or action was the result of the Contractor's negligence. The Government shall have the right to appear in such suit, participate in defense, and take such actions as may be necessary to protect the interest of the United States.

(h) It is expressly agreed that the provisions in paragraphs (d) through (g) of this clause shall not in any manner limit the liability or extend the liability of the Contractor as provided in paragraphs (a) through (c) of this clause.

(i) The Contractor shall—

(1) Equitably reimburse the Government if the Contractor is indemnified, reimbursed, or relieved of any loss or damage to Government property;

(2) Do nothing to prevent the Government's right to recover against third parties for any such loss or damage; and

(3) Furnish the Government, upon the request of the Contracting Officer, at the Government's expense, all reasonable assistance and cooperation in obtaining recovery, including the prosecution of suit and the execution of instruments of assignment in favor of the Government.

(End of clause)

252.247-7008 Evaluation of bids.

As prescribed in 247.271-4(a), use the following provision:

Evaluation of Bids (Dec. 1991)

(a) The Government will evaluate bids on the basis of total aggregate price of all items within an area of performance under a given schedule.

(1) An offeror must bid on all items within a specified area of performance for a given schedule. Failure to do so shall be cause for rejection of the bid for that area of performance of that Schedule. If there is to be no charge for an item, an entry such as "No Charge," or the letters "N/C" or "0," must be made in the unit price column of the Schedule.

(2) Any bid which stipulates minimum charges or graduated prices for any or all items shall be rejected for that area of performance within the Schedule.

(b) In addition to other factors, the Contracting Officer will evaluate bids on the basis of advantages or disadvantages to the Government that might result from making more than one award (multiple awards).

(1) In making this evaluation, the Contracting Officer will assume that the administrative cost to the Government for issuing and administering each contract awarded under this solicitation would be $500.

(2) Individual awards will be for the items and combinations of items which result in the lowest aggregate cost to the Government, including the administrative costs in paragraph (b)(1).

(c) When drayage is necessary for the accomplishment of any item in the bid schedule, the Offeror shall include in the unit price any costs for bridge or ferry tolls, road use charges or similar expenses.

(d) Unless otherwise provided in this solicitation, the Offeror shall state prices in amounts per hundred pounds on gross or net weights, whichever is applicable. All charges shall be subject to, and payable on, the basis of 100 pounds minimum weight for unaccompanied baggage and a 500 pound minimum weight for household goods, net or gross weight, whichever is applicable.

(End of provision)

Alternate I (Dec. 1991)

As prescribed in 247.271-4(a), add the following paragraph (e) to the basic clause:

(e) Notwithstanding paragraph (a), when "additional services" are added to any schedule, such "additional services" items will not be considered in the evaluation of bids.

252.247-7009 Award.

As prescribed in 247.271-4(b), use the following provision:

Award (Dec. 1991)

(a) The Government shall make award by area to the qualified low bidder under each of the specified schedules to the extent of the bidder's stated guaranteed daily capability as provided in this solicitation and the Estimated Quantities Schedule.

(b) The Government reserves the right to make an award of two or more areas to a single bidder if such award will result in an overall lower estimated cost to the Government.

(c) The Government also reserves the right to award additional contracts, as a result of this solicitation, to the extent necessary to meet its estimated maximum daily requirements.

(End of provision)

252.247-7010 Scope of contract.

As prescribed in 247.271-4(d), use the following clause:

Scope of Contract (Dec. 1991)

(a) The Contractor shall furnish services and materials for the preparation of personal property (including servicing of appliances) for movement or storage, drayage and related services. Unless otherwise indicated in the Schedule, the Contractor shall—

(1) Furnish all materials except Government-owned containers (Federal Specification PPP-B-580), all equipment, plant and labor; and

(2) Perform all work in accomplishing containerization of personal property for overseas or domestic movement or storage, including—

(i) Stenciling;

(ii) Cooperage;

(iii) Drayage of personal property in connection with other services;

(iv) Decontainerization of inbound shipments of personal property; and

(v) The handling of shipments into and out of the Contractor's facility.

(b) Excluded from the scope of this contract is the furnishing of like services or materials which are provided incident to complete movement of personal property when purchased by the Through Government Bill of Lading or other method/mode of shipment or property to be moved under the Do-It-Yourself moving program or otherwise moved by the owner.

(End of clause)

252.247-7011 Period of contract.

As prescribed in 247.271-4(e), use the following clause:

Period of Contract (Dec. 1991)

(a) This contract begins January 1, 19____, and ends December 31, 19____, both dates inclusive. Any work ordered before, and not completed by the expiration date shall be governed by the terms of this contract.

(b) The Government will not place new orders under this contract that require that performance commence more than 15 days after the expiration date.

(c) The Government may place orders required for the completion of services (for shipments in the Contractor's possession) for 180 days past the expiration date.

(End of clause)

252.247-7012 Ordering limitation.

As prescribed in 247.271-4(g), use the following clause:

Ordering Limitation (Dec. 1991)

(a) The Government will place orders for items of supplies or services with the contractor awarded the initial contract to the extent of the contractor's guaranteed maximum daily capability. However, the contractor may accept an additional quantity in excess of its capability to accommodate a single order.

(b) Orders for additional requirements will be placed in a like manner with the next higher contractor to the extent of its guaranteed maximum daily capability. The Government will repeat this procedure until its total daily requirement is fulfilled.

(c) In the event the procedure in paragraphs (a) and (b) does not fulfill the Government's total daily requirement, the Government may offer additional orders under the contract to contractors without regard to their guaranteed maximum daily capability.

(End of clause)

252.247-7013 Contract areas of performance.

As prescribed in 247.271-4(h), use the following clause and complete paragraph (b) by defining each area of performance as required (see 247.271-2(b)):

Contract Areas of Performance (Dec. 1991)

(a) The Government will consider all areas of performance described in paragraph (b) as including the Contractor's facility, regardless of geographical location.

(b) The Contractor shall perform services within the following defined areas of performance, which include terminals identified therein: ________.

(End of clause)

252.247-7014 Demurrage.

As prescribed in 247.271-4(i) use the following clause:

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(End of clause)

252.247-7011 Period of contract.

As prescribed in 247.271–4(e), use the following clause:

Period of Contract (Dec. 1991)

(a) This contract begins January 1, 19____, and ends December 31, 19____, both dates inclusive. Any work ordered before, and not completed by the expiration date shall be governed by the terms of this contract.

(b) The Government will not place new orders under this contract that require that performance commence more than 15 days after the expiration date.

(c) The Government may place orders required for the completion of services (for shipments in the Contractor's possession) for 180 days past the expiration date.

(End of clause)

252.247-7012 Ordering limitation.

As prescribed in 247.271–4(g), use the following clause:

Ordering Limitation (Dec. 1991)

(a) The Government will place orders for items of supplies or services with the contractor awarded the initial contract to the extent of the contractor's guaranteed maximum daily capability. However, the contractor may accept an additional quantity in excess of its capability to accommodate a single order.

(b) Orders for additional requirements will be placed in a like manner with the next higher contractor to the extent of its guaranteed maximum daily capability. The Government will repeat this procedure until its total daily requirement is fulfilled.

(c) In the event the procedure in paragraphs (a) and (b) does not fulfill the Government's total daily requirement, the Government may offer additional orders under the contract to contractors without regard to their guaranteed maximum daily capability.

(End of clause)

252.247-7013 Contract areas of performance.

As prescribed in 247.271–4(h), use the following clause and complete paragraph (b) by defining each area of performance as required (see 247.271–2(b)):

Contract Areas of Performance (Dec. 1991)

(a) The Government will consider all areas of performance described in paragraph (b) as including the Contractor's facility, regardless of geographical location.

(b) The Contractor shall perform services within the following defined areas of performance, which include terminals identified therein: ________.

(End of clause)

252.247-7014 Demurrage.

As prescribed in 247.271-4(i) use the following clause:

Demurrage (Dec. 1991)

The Contractor shall be liable for all demurrage, detention, or other charges as a result of its failure to load or unload trucks, freight cars, freight terminals, vessel piers, or warehouses within the free time allowed under applicable rules and tariffs.

(End of clause)

252.247-7015 Requirements.

As prescribed in 216.505(d), substitute the following paragraph (f) for paragraph (f) of the basic clause at FAR 52.216–21.

Alternate I (Dec. 1991)

(f) Orders issued during the effective period of this contract and not completed within that time shall be completed by the Contractor within the time specified in the order. The rights and obligations of the Contractor and the Government for those orders shall be governed by the terms of this contract to the same extent as if completed during the effective period.

252.247-7016 Contractor liability for loss or damage.

As prescribed in 247.271–4(k), use the following clause:

Contractor Liability for Loss or Damage (Dec. 1991)

(a) Definitions.

As used in this clause—

Article means any shipping piece or package and its contents.

Schedule means the level of service for which specific types of traffic apply as described in DoD 4500.34–R, Personal Property Traffic Management Regulation.

(b) For shipments picked up under Schedule I, Outbound Services, or delivered under Schedule II, Inbound Services—

(1) If notified within one year after delivery that the owner has discovered loss or damage to the owner's property, the Contractor agrees to indemnify the Government for loss or damage to the property which arises from any cause while it is in the Contractor's possession. The Contractor's liability is—

(i) *Non-negligent damage.* For any cause, other than the Contractor's negligence, indemnification shall be at a rate not to exceed sixty cents per pound per article.

(ii) *Negligent damage.* When loss or damage is caused by the negligence of the Contractor, the liability is for the full cost of satisfactory repair or for the current replacement value of the article.

(2) The Contractor shall make prompt payment to the owner of the property for any loss or damage for which the Contractor is liable.

(3) In the absence of evidence or supporting documentation which places liability on a carrier or another contractor, the destination contractor shall be presumed to be liable for the loss or damage, if timely notified.

(c) For shipments picked up or delivered under Schedule III, Intra-City and Intra-Area—

(1) If notified of loss or damage within 75 days following delivery, the Contractor agrees to indemnify the Government for loss or damage to the owner's property.

(2) The Contractor's liability shall be for the full cost of satisfactory repair, or for the current replacement value of the article less depreciation, up to a maximum liability of $1.25 per pound times the net weight of the shipment.

(3) The Contractor has full salvage rights to damaged items which are not repairable and for which the Government has received compensation at replacement value.

(End of clause)

252.247-7017 Erroneous shipments.

As prescribed in 247.271–4(l), use the following clause:

Erroneous shipments (Dec. 1991)

(a) The Contractor shall—

(1) Forward to the rightful owner, articles of personal property inadvertently packed with goods of other than the rightful owner.

(2) Ensure that all shipments are stenciled correctly. When a shipment is sent to an incorrect address due to incorrect stenciling by the Contractor, the Contractor shall forward it to its rightful owner.

(3) Deliver to the designated air or surface terminal all pieces of a shipment, in one lot, at the same time. The Contractor shall forward to the owner any pieces of one lot not included in delivery, and remaining at its facility after departure of the original shipment.

(b) Forwarding under paragraph (a) shall be—

(1) With the least possible delay;

(2) By a mode of transportation selected by the Contracting Officer; and

(3) At the Contractor's expense.

(End of clause)

252.247-7018 Subcontracting.

As prescribed in 247.271–4(m), use the following clause:

Subcontracting (Dec. 1991)

The Contractor shall not subcontract without the prior written approval of the Contracting Officer. The facilities of any approved subcontractor shall meet the minimum standards required by this contract.

(End of clause)

252.247-7019 Drayage.

As prescribed in 247.271–4(n), use the following clause:

Drayage (Dec. 1991)

(a) Drayage included for Schedule I, Outbound, applies in those instances when a shipment requires drayage to an air, water, or other terminal for onward movement after completion of shipment preparation by the Contractor. Drayage not included is when it is being moved from a residence or other pickup point to the Contractor's warehouse for onward movement by another freight company, carrier, etc.

(b) Drayage included for Schedule II, Inbound, applies in those instances when shipment is delivered, as ordered, from a destination Contractor's facility or other destination point to the final delivery point. Drayage not included is when shipment or partial removal of items from shipment is performed and prepared for member's pickup at destination delivery point.

(c) The Contractor will reposition empty Government containers—

(1) Within the area of performance;

(2) As directed by the Contracting Officer; and

(3) At no additional cost to the Government.

(End of clause)

252.247-7020 Additional services.

As prescribed in 247.271–4(o), use the following clause:

Additional Services (Dec. 1991)

The Contractor shall provide additional services not included in the schedule, but required for satisfactory completion of the services ordered under this contract, at a rate comparable to the rate for like services as contained in tenders on file with the Interstate Commerce Commission, state regulatory bodies, or the Military Traffic Management Command, in effect at time of order.

(End of clause)

252.247-7021 Returnable cylinders and other containers.

As prescribed in 247.305–70, use the following clause:

Returnable Cylinders and Other Containers (Dec. 1991)

(a) Cylinders/containers shall remain the Contractor's property but shall be loaned without charge to the Government for a period of 30 days after deliver to the f.o.b. point specified in the contract. Beginning with the first day after the loan period expires, to and including the day the cylinders/containers are delivered to the Contractor (if the original delivery was f.o.b. origin) or are delivered or are made available for delivery to the Contractor's designated carrier (if the original delivery was f.o.b. destination), the Government shall pay the Contractor a rental of $______ (Insert dollar amount for rental) per cylinder/container per day, regardless of type or capacity.

(b) This rental charge will be computed separately for cylinders/containers for each type, size, and capacity, and for each point of delivery named in the contract. A credit of 30 cylinder/container days will accrue to the Government for each cylinder/container, regardless of type or capacity, delivered by the Contractor. After the initial 30 day period, a debit of one cylinder/container day will accrue to the Government for each cylinder/container for each day after delivery to the f.o.b. point specified in this contract. At the end of the contract, if the debit total exceeds the credit total, rental shall be charged for the difference. If the credit total equals or exceeds the debit total, no rental shall be charged. No rental shall accrue to the Contractor in excess of replacement value per cylinder/container specified in (c) below.

(c) For each cylinder/container lost or damaged beyond repair while in the Government's possession, the Government shall pay to the Contractor the replacement value as follows, less the allocable rental paid for that cylinder/container: (Insert the cylinder/container types, sizes, capacities, and associated replacement values.)

(d) Cylinders/containers lost or damaged beyond repair and paid for by the Government shall become Government property, subject to the following:

If any lost cylinder/container is located within ____ (insert number of days) calendar days after payment of the Government, it may be returned to the Contractor by the Government, and the Contractor shall pay to the Government the replacement value, less rental computed in accordance with paragraph (a) of this clause, beginning at the expiration of the 30 day loan period specified in paragraph (a), and continuing to the date on which the cylinder/container was delivered to the Contractor.

(End of clause)

252.247-7022 Representation of extent of transportation by sea.

As prescribed in 247.573(a), use the following provision:

Representation of Extent of Transportation By Sea (Dec. 1991)

(a) The Offeror shall indicate by checking the appropriate blank in paragraph (b) of this clause whether transportation of supplies by sea is anticipated under the resultant contract. The term *supplies* is defined in the Transportation of Supplies by Sea clause of this solicitation.

(b) *Representation.* The Offeror represents that it—

________Does anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

________Does not anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

(c) Any contract resulting from this solicitation will include the Transportation of Supplies by Sea clause. If the Offeror represents that it will not use ocean transportation, the resulting contract will also include the Defense FAR Supplement clause at 252.247-7024, Notification of Transportation of Supplies by Sea.

(End of provision)

252.247-7023 Transportation of supplies by sea.

As prescribed in 247.573(b), use the following clause:

Transportation of Supplies by Sea (Dec. 1991)

(a) Definitions. As used in this clause—

(1) *Components* means articles, materials, and supplies incorporated directly into end products at any level of manufacture, fabrication, or assembly by the Contractor or any subcontractor.

(2) *Department of Defense* (DoD) means the Army, Navy, Air Force, Marine Corps, and defense agencies.

(3) *Foreign flag vessel* means any vessel that is not a U.S.-flag vessel.

(4) *Ocean transportation* means any transportation aboard a ship, vessel, boat, barge, or ferry through international waters.

(5) *Subcontractor* means a supplier, materialman, distributor, or vendor at any level below the prime contractor whose contractual obligation to perform results from, or is conditioned upon, award of the prime contract and who is performing any part of the work or other requirement of the prime contract.

(6) *Supplies* means all property, except land and interests in land, that is clearly identifiable for eventual use by or owned by the DoD at the time of transportation by sea. (i) An item is clearly identifiable for eventual use by the DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.

(ii) *Supplies* includes (but is not limited to) public works; buildings and facilities; ships; floating equipment and vessels of every character, type, and description, with parts, subassemblies, accessories, and equipment; machine tools; material; equipment; stores of all kinds; end items; construction materials; and components of the foregoing.

(7) *U.S.-flag vessel* means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

(b) The Contractor shall employ U.S.-flag vessels in the transportation by sea of any supplies to be furnished in the performance of this contract. The Contractor and its subcontractors may request that the Contracting Officer authorize shipment in foreign-flag vessels, or designate available U.S.-flag vessels, if the Contractor or a subcontractor believes that—

(1) U.S.-flag vessels are not available for timely shipment;

(2) The freight charges are inordinately excessive or unreasonable; or

(3) Freight charges are higher than charges to private persons for transportation of like goods.

(c) The Contractor must submit any request for use of other than U.S.-flag vessels in writing to the Contracting Officer at least 45 days prior to the sailing date necessary to meet its delivery schedules. The Contracting Officer will process requests submitted after such date(s) as expeditiously as possible, but the Contracting Officer's failure to grant approvals to meet the shipper's sailing date will not of itself constitute a compensable delay under this or any other clause of this contract. Requests shall contain at a minimum—

(1) Type, weight, and cube of cargo;

(2) Required shipping date;

(3) Special handling and discharge requirements;

(4) Loading and discharge points;

(5) Name of shipper and consignee;

(6) Prime contract number; and

(7) A documented description of efforts made to secure U.S.-flag vessels, including points of contact (with names and telephone numbers) with at least two U.S.-flag carriers contacted. Copies of telephone notes, telegraphic and facsimile message or letters will be sufficient for this purpose.

(d) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information—

(1) Prime contract number;

(2) Name of vessel;

(3) Vessel flag of registry;

(4) Date of loading;

(5) Port of loading;

(6) Port of final discharge;

(7) Description of commodity;

(8) Gross weight in pounds and cubic feet if available;

(9) Total ocean freight in U.S. dollars; and

(10) Name of the steamship company.

(e) The Contractor agrees to provide with its final invoice under this contract a representation that to the best of its knowledge and belief—

(1) No ocean transportation was used in the performance of this contract;

(2) Ocean transportation was used and only U.S.-flag vessels were used for all ocean shipments under the contract;

(3) Ocean transportation was used, and the Contractor had the written consent of the Contracting Officer for all non-U.S.-flag ocean transportation; or

(4) Ocean transportation was used and some or all of the shipments were made on non-U.S.-flag vessels without the written consent of the Contracting Officer. The Contractor shall describe these shipments in the following format:

	Item Description	Contract Line Items	Quantity
Total........			

(f) If the final invoice does not include the required representation, the Government will reject and return it to the Contractor as an improper invoice for the purposes of the Prompt Payment clause of this contract. In the event there has been unauthorized use of non-U.S.-flag vessels in the performance of this contract, the Contracting Officer is entitled to equitably adjust the contract, based on the unauthorized use.

(g) The Contractor shall include this clause, including this paragraph (g) in all subcontracts under this contract, which exceed the small purchase limitation of section 13.000 of the Federal Acquisition Regulation.

(End of clause)

252.247-7024 Notification of transportation of supplies by sea.

As prescribed in 247.573(c), use the following clause:

Notification of Transportation of Supplies by Sea (Dec. 1991)

(a) The Contractor has indicated by the response to the solicitation provision, Representation of Extent of Transportation by Sea, that it did not anticipate transporting by sea any supplies. If, however, after the award of this contract, the Contractor learns that supplies, as defined in the

Transportation of Supplies by Sea clause of this contract, will be transported by sea, the Contractor—

(1) Shall notify the Contracting Officer of that fact; and

(2) Hereby agrees to comply with all the terms and conditions of the Transportation of Supplies by Sea clause of this contract.

(b) The Contractor shall include this clause, including this paragraph (b), revised as necessary to reflect the relationship of the contracting parties, in all subcontracts hereunder.

(End of clause)

252.248-7000 Preparation of value engineering change proposals.

As prescribed in 248.270, use the following clause and insert either "MIL–STD–480" or "MIL–STD–481 (Short form)" in the blank:

Preparation of Value Engineering Change Proposals (Dec. 1991)

Prepare value engineering change proposals, for submission pursuant to the value engineering clause of this contract, in the format prescribed by the version of ________ in effect on the date of contract award.

(End of clause)

252.249-7000 Special termination costs.

As prescribed in 249.501–70, use the following clause:

Special Termination Costs (Dec. 1991)

(a) Definition.—*Special termination costs,* as used in this clause, means only costs in the following categories as defined in part 31 of the Federal Acquisition Regulation (FAR)—

(1) Severance pay, as provided in FAR 31.205–6(g);

(2) Reasonable costs continuing after termination, as provided in FAR 31.205–42(b);

(3) Settlement of expenses, as provided in FAR 31.205–42(g);

(4) Costs of return of field service personnel from sites, as provided in FAR 31.205–35 and FAR 31.205–46(c); and

(5) Costs in paragraphs (a) (1), (2), (3), and (4) of this clause to which subcontractors may be entitled in the event of termination.

(b) Notwithstanding the Limitation of Cost/Limitation of Funds clause of this contract, the Contractor shall not include in its estimate of costs incurred or to be incurred, any amount for special termination costs to which the Contractor may be entitled in the event this contract is terminated for the convenience of the Government.

(c) The Contractor agrees to perform this contract in such a manner that the Contractor's claim for special termination costs will not exceed $________. The Government shall have no obligation to pay the Contractor any amount for the special termination costs in excess of this amount.

(d) In the event of termination for the convenience of the Government, this clause shall not be construed as affecting the allowability of special termination costs in any manner other than limiting the maximum amount of the costs payable by the Government.

(e) This clause shall remain in full force and effect until this contract is fully funded.

(End of clause)

252.251-7000 Ordering from government supply sources.

As prescribed in 251.107, use the following clause:

Ordering From Government Supply Sources (Dec. 1991)

(a) When placing orders under Federal Supply Schedules or Personal Property Rehabilitation Price Schedules, the Contractor shall follow the terms of the applicable schedule and authorization. Include in each order:

(1) A copy of the authorization (unless a copy was previously furnished to the Federal Supply Schedule or Personal Property Rehabilitation Price Schedule contractor).

(2) The following statement: This order is placed under written authorization from ____________ dated ____________.

In the event of any inconsistency between the terms and conditions of this order and those of your Federal Supply Schedule contract or Personal Property Rehabilitation Price Schedule contract, the latter will govern.

(3) The completed address(es) to which the Contractor's mail, freight, and billing documents are to be directed.

(b) If a Federal Supply Schedule contractor refuses to honor an order placed by a Government contractor under an agency authorization, the Contractor shall report the circumstances to the General Services Administration, FFN, Washington, DC 20406, with a copy to the authorizing office.

(c) When placing orders under nonmandatory schedule contracts and requirements contracts, issued by the General Services Administration (GSA) Office of Information Resources Management, for automated data processing equipment, software and maintenance, communications equipment and supplies, and teleprocessing services, the Contractor shall follow the terms of the applicable contract and the procedures in paragraph (a) of this clause.

(d) When placing orders for Government stock, the Contractor shall—

(1) Comply with the requirements of the Contracting Officer's authorization, using FEDSTRIP or MILSTRIP procedures, as appropriate;

(2) Use only the GSA Form 1948–A, Retail Services Shopping Plate, when ordering from GSA Self-Service Stores;

(3) Order only those items required in the performance of Government contracts; and

(4) Pay bills from Government supply sources promptly.

(e) Only the Contractor may request authorization for subcontractor use of Government supply sources. The Contracting Officer will not grant authorizations for subcontractor use without approval of the Contractor.

(End of clause)

252.251-7001 Use of interagency fleet management system (IFMS) vehicles and related services.

As prescribed in 251.205, use the following clause:

Use of Interagency Fleet Management System (IFMS) Vehicles and Related Services (Dec. 1991)

(a) The Contractor, if authorized use of IFMS vehicles, shall submit requests for five or fewer vehicles and related services in writing to the appropriate General Services Administration (GSA) Regional Customer Service Bureau, Attention: Motor Equipment Activity. Submit requests for more than five vehicles to GSA headquarters: General Services Administration, FTM, Washington, DC 20406. Include the following in each request:

(1) Two copies of the agency authorization to obtain vehicles and related services from GSA.

(2) The number of vehicles and related services required and the period of use.

(3) A list of the Contractor's employees authorized to request vehicles and related services.

(4) A list of the makes, models, and serial numbers of Contractor-owned or leased equipment authorized to be serviced.

(5) Billing instructions and address.

(b) The Contractor should make requests for any unusual quantities of vehicles as far in advance as possible.

(c) The Contractor shall establish and enforce suitable penalties for employees who use or authorize the use of Government vehicles for other than performance of Government contracts.

(d) The Contractor shall assume, without the right of reimbursement from the Government, the cost or expense of any use of IFMS vehicles and services not related to the performance of the contract.

(e) Only the Contractor may request authorization for subcontractor use of IFMS vehicles. The Contracting Officer will not grant authorization for subcontractor use without approval of the Contractor.

(End of clause)

252.270-7000 Recovery of nonrecurring costs and royalty fees on commercial sales.

As prescribed in 270.007, use the following clause:

Recovery of Nonrecurring Costs and Royalty Fees on Commercial Sales (Dec. 1991)

(a) *Definitions.* As used in this clause—

(1) *Derivative item* means an item derived from a defense item which consists of common parts equal to, or more than, ten percent of the defense item.

(2) *Direct sale* means a commercial sale to a non-U.S. Government customer, either foreign or domestic, by a defense contractor of products, technology, material, services, or development or production techniques that originally were developed, or improved using DoD appropriations or funds.

(3) *DoD focal points* are identified in section 270.006 of the Defense Federal Acquisition Regulation Supplement (DFARS).

(4) *Foreign military sale (FMS)* means a sale, by the DoD, or defense articles or defense services to a foreign government or international organization under authority of the Arms Export Control Act.

(5) *License* means the legal right to use technical data with or without compensation and with or without restrictions.

(6) *Nonrecurring costs (NC)* include DoD costs as follows:

(i) The costs funded by a research, development, test, and evaluation (RDT&E) appropriation to develop or improve the product or technology under consideration either through contract or DoD in-house effort. This includes costs of any engineering change proposal initiated before the date of calculation of the NC recoupment charges as well as projections of such costs, to the extent additional effort applicable to the sale model or technology is necessary or planned.

(ii) The costs funded by either procurement or operation and maintenance (O&M) appropriations in support of production. These are one-time costs incurred in support of previous production of the model specified and those costs specifically incurred in support of the total projected production run. These NC include DoD expenditures for preproduction engineering; rate and special tooling; special test equipment; production engineering; product improvement; destructive testing; and pilot model production, testing, and evaluation. This includes costs of any engineering change proposals initiated before the date of calculations of the NC recoupment charge. Nonrecurring production costs do not include DoD expenditures for machine tools, capital equipment, or facilities for which contractor rental payments are made in accordance with the Federal Acquisition Regulation or DFARS.

(7) *Non-U.S. contractor* means a contractor or subcontractor organized or existing under the laws of a country other than the United States, its territories, or possessions.

(8) *Pro rata recovery of nonrecurring costs* means equal distribution (proration) of a pool of nonrecurring costs to a specific number of units that benefit from the investment so that a DoD component will collect from a customer a fair (pro rata) share of the investment in the product being sold.

(9) *Royalty fee* means a charge that is assessed for the use of DoD technical data for the purpose of manufacturing an item for a non-U.S. Government customer. The purpose of the charge is to recoup an appropriate share of the DoD NC incurred to develop the technical data and technology.

(10) *Scheduled nonrecurring recoupment charges* means charges published in a DoD directive, instruction, or manual. Royalty fee percentages are published in DoD Directive 2140.2, Recoupment of Nonrecurring Costs on Sales of U.S. Products and Technology. Unit charges on specific items of equipment are published in DoD 5105.38–M, Security Assistance Management Manual, and DoD 7290.3–M, FMS Financial Management Manual.

(11) *Special RDT&E and nonrecurring production costs* means costs incurred at the request of, or for the benefit of, a foreign customer to develop a special feature or unique requirement.

(12) *Technical data* is defined in DFARS 227.471.

(13) *Technology* means information of any kind that can be used or adapted for use in the design, production, manufacture, utilization, or reconstruction of articles or material. The data may take a tangible form, such as a scale model, prototype, blueprint, or an operating manual, or may take an intangible form, such as technical advice to implement DoDD 2140.2, Recoupment of Nonrecurring Costs on Sales of U.S. Products and Technology.

(b) The Contractor agrees to reimburse the U.S. Government for a fair share of the U.S. Government's investment in special RDT&E and nonrecurring production costs on domestic or foreign commercial sales of defense articles and technology subject to a recoupment charge. The fair share is determined by the DoD following procedures set forth in DoDD 2140.2, Recoupment of Nonrecurring Costs on Sales of U.S. Products and Technology.

(c) Sales where the U.S. Government is the eventual purchaser are not subject to this clause.

(d) In the event the Contractor intends to enter into domestic or foreign commercial sales for items in this contract, or essentially similar items, or to enter into license or technical assistance agreements for the technology developed under this contract, the Contractor shall—

(1) Determine if the DoD has a scheduled nonrecurring recoupment charge for the article or technology being sold or transferred.

(i) Where a charge has been established, the Contractor may request that a charge be reviewed if significant changes in factors or assumptions have occurred.

(ii) If the DoD focal point has not responded to the Contractor's request within 30 days, the recoupment charge will be four percent of the sales price.

(2) Provide the DoD focal point with commercial sales forecasts of articles and technology subject to a recoupment charge when required.

(3) Notify the DoD focal point of all commercial sales (either foreign or domestic), that are subject to a recoupment charge. The notification will identify the product or technology being sold or licensed for production, the purchaser, the quantity sold, the applicable recoupment charges, the time frame for delivery, and the identification of the export license (commercial or State) if sale is for export. The notification will be made when each agreement for sale of a defense article or technology is made.

(4) Pay the established recoupment charges to the DoD focal point within 30 days following delivery to or acceptance of the item by a purchaser (whichever comes first) or such other time as may be agreed to by the parties.

(5) Certify, on or before the 60th day following the end of each calendar year during which recoupment amounts were due, to the applicable DoD focal point that proper notification to the U.S. Government of all commercial sales subject to this clause has been accomplished. The certificate to be executed by the Contractor is as follows—

Certificate of Notification of Commercial Sales

This is to certify that, to the best of my knowledge and belief, all notices required by the clause at Defense Federal Acquisition Regulation Supplement 252.270–7000, Recovery of Nonrecurring Costs and Royalty Fees on Commercial Sales, have been provided and are accurate, complete, and current as of the end of the calendar year ______ [*]

Firm ______

Name ______

Title ______

Date of execution [**] ______

(End of certificate)

(e) In the case of a commercial sale to a foreign government or international organization that qualifies for U.S. Government foreign military sales, the Contractor agrees to inform its customer that any defense-furnished goods, services, and transportation (i.e., DoD support costs) can be provided only by means of a foreign military sales case (DoD Offer and Acceptance, DD Form 1513), executed by the U.S. Government and the customer.

(f) In the event of a commercial sale of items developed under this contract, or essentially similar items, or sale or license of technology relating thereto, the Contractor agrees to relieve the Government of any and all loss or liability that might result from the Contractor's use of Government data, tooling, test equipment, or facilities.

(g) The Contractor shall include the substance of this clause in all subcontracts for components or items which can be sold commercially and which meet, or are expected to meet, the thresholds set forth herein.

(End of clause)

PART 253—FORMS

Sec.

Subpart 253.2—Prescription of Forms

253.204 Administrative matters.
253.204–70 DD Form 350, Individual Contracting Action Report.
253.204–71 DD Form 1057, Monthly Contracting Summary of Actions $25,000 or Less.
253.208 Required sources of supplies and services.
253.208–1 DD Form 448, Military Interdepartmental Purchase Request.
253.208–2 DD Form 448–2, Acceptance of MIPR.
253.209 Contractor qualifications.
253.209–1 Responsible prospective contractors.
253.213 Small purchase and other simplified purchase procedures (SF's 18, 30, 44, 1165, OF's 347, 348).
253.213–70 Instructions for completion of DD Form 1155.
253.215 Contracting by negotiation.

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[*] Insert the current calendar year.

[**] Insert the day, month, and year of signing, which shall be on or before the 60th day following the end of each calendar year during which recoupment amounts were due.

Sec.

Subpart 253.2—Prescription of Forms

253.215–70 DD Form 1547, Record of Weighted Guidelines Application.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 253.2—Prescription of Forms

253.204 Administrative matters.

253.204–70 DD Form 350, Individual Contracting Action Report.

Policy on use of a DD Form 350 is in 204.670–2. This subsection 253.204–70 contains instructions for completion of parts A through F of the DD Form 350. Paragraph (g) of this subsection contains special instructions for completing a DD Form 350 for an action of $25,000 or less under the Small Business Competitiveness Demonstration Program.

(a) *Part A of the DD Form 350.* Part A identifies the report and the reporting activity. Complete all four blocks.

(1) Block A1, Type of Report. Enter one of three codes.

(i) *Code 0—Original.* Enter code 0 unless code 1 or code 2 applies.

(ii) *Code 1—Cancelling.* A cancelling action cancels an existing DD Form 350 in accordance with departmental data collection point instructions.

(iii) *Code 2—Correcting.* A correcting action corrects an existing DD Form 350 action in accordance with departmental data collection point instructions.

(2) Block A2, Report No. Enter the four digit local control number (see 204.670–3(a)(4)). If Block A1 is coded 1 or 2, use the prior report number rather than a new one.

(3) Block A3, Contracting Office Code. Enter the code assigned the contracting office by the departmental data collection point in 204.670–1(c).

(4) Block A4, Name of Contracting Office. Enter sufficient detail to establish the identity of the contracting office.

(b) *Part B of the DD Form 350.* Part B identifies the transaction.

(1) Block B1, Contract Number. (i) Enter—

(A) The DoD contract number; or

(B) For orders under contracts awarded by other Federal agencies, the contract number of that Federal agency as it appears in the contractual instrument.

(ii) Do not leave spaces between characters, and do not enter dashes, slants, or any other punctuation marks.

(iii) The DoD contract number is the basic (13 alphanumeric character) procurement instrument identification number (PIIN) that was assigned in accordance with 204.7001 or constructed under an exception permitted by 204.7000. Do not enter any supplementary procurement instrument numbers as part of the contract number (these go in Block B2).

(2) Block B2, Mod. Order or Other ID Number. Enter the supplemental procurement identification number (if there is one) that was assigned in accordance with 204.7004 or as permitted by 204.7000. It can be up to 19 characters. Usually calls and orders have a four-position number (see 204.7004–4) and modifications (including modifications of calls or orders) have a six-position modification number (see 204.7003 or 204.7004(b)).

(3) Block B3, Action Date. (i) Enter the year, month, and day of the effective date for fiscal obligation purposes. When contract actions are awarded contingent on the availability of funds, enter the date funds are obligated.

(ii) Enter each segment as a two digit number. Use 01 through 12 for January through December. For example, enter January 2, 1999 as 990102.

(4) Block B4, Completion Date. (i) Enter the year, month, and day of the last contract delivery date or the end of the performance period.

(ii) Enter each segment as a two digit number. Use 01 through 12 for January through December. For example, enter January 2, 1999 as 990102.

(5) Block B5, Contractor Identification Information. (i) Use data that relates to the contractor whose name and address appears in the contract document (Block 7 of the SF 26, Award/Contract; Block 8 of the SF 30, Amendment of Solicitation/Modification of Contract; Block 15A of the SF 33, Solicitation, Offer and Award; or Block 9 of the DD Form 1155, Order for Supplies or Services), except—

(A) For contracts placed with the Small Business Administration under Section 8(a) of the Small Business Act, use data that relates to the company that will be performing the work.

(B) For orders placed against a contract awarded by another agency, also use data that relates to the company that will be performing the work.

(C) For Federal supply schedule orders, use data that applies to the contractor whose name appears on the schedule (not the data for the agent to whom orders may be sent).

(D) For contracts with the Canadian Commercial Corporation (CCC), use data for the appropriate CCC office, except as noted in Block B5B.

(ii) Block B5 has seven parts. Some of the parts may not apply to the action being reported.

(A) Block B5A, Establishment Code. Enter the contractor's 9-position contractor establishment code. If the contractor establishment code (CEC) is not available within the contracting activity and the apparent awardee did not supply its CEC in response to the provision at FAR 52.204–4, Contractor Establishment Code, use the procedures at 204.7202–2 to obtain one.

(B) Block B5B, CAGE Code. Enter the 5-position commercial and Government entity (CAGE) code that identifies the contractor plant or establishment. If the CAGE code is not already available in the contracting office and the apparent awardee does not respond to the provision at 252.204–7001, Commercial and Government Entity (CAGE) Code Reporting, use the procedures at 204.7202–1 to obtain one.

(C) Block B5C, Contractor Name and Division Name. Enter the contractor's name. Include its division name.

(D) Block B5D, Contractor Address. Enter the contractor's address. Include street address (and/or P.O. Box), city/town, state/country, and ZIP code, if applicable. Do not enter foreign postal codes.

(E) Block B5E, TIN. Enter the contractor's taxpayer identification number (see FAR subpart 4.9). Leave Block B5E blank if the contractor is—

(*1*) A nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the trade or business in the United States; and does not have an office or place of business or a fiscal paying agent in the United States;

(*2*) An agency or instrumentality of a foreign government; or

(*3*) An agency or instrumentality of a Federal, State, or local government.

(F) Block B5F, Parent TIN. Enter the contractor's parent company (common parent) TIN (see FAR 4.9 and 52.204–3). If the contractor does not have a parent company or the parent company meets the exemption for Block B5E, leave Block B5F blank.

(G) Block B5G, Parent Name. If a parent company TIN is entered in Block B5F, enter in Block B5G the name of the parent company (common parent). Leave Block B5G blank if there is no parent company or the parent company is exempted from the requirement to have a TIN.

(6) Block B6, Principal Place of Performance. (i) The place, or places, where the contract will be performed are either specified by the Government or listed by the contractor in response to the solicitation provision at FAR 52.214–14, Place of Performance—Sealed Bidding, or FAR 52.215–20, Place of Performance. Use data for the

contractor's principal place of performance, which is generally the—

(A) Final assembly point for supply contracts with manufacturers.

(B) Dealer's location for supply contracts with regular dealers (FAR 22.601) where shipment is made from stock.

(C) Subcontractor's location for supply contracts with regular dealers (FAR 22.601) where shipment is made from a subcontractor's plant.

(D) Actual construction site for construction contracts.

(E) Planned construction site for architect-engineer contracts.

(F) Place of mining for mined supplies.

(G) Place (including military installations) where a service is performed for service contracts.

(ii) When there is more than one location for any of paragraphs (i)(A) through (G) (e.g., more than one construction site), use the location involving the largest dollar amount of the acquisition. Do not show more than one location in Block B6.

(iii) If places of performance are too varied or not known, enter the contractor's home office location.

(iv) Block B6 has three parts. Some of the parts may not apply to the action being reported.

(A) Block B6A, City or Place Code. (*1*) For places in the United States and outlying areas, enter the numeric place code, which can be found in the Federal Information Processing Standards (FIPS) Publication (PUB) 55–2, ("Guideline: Codes for named Populated Places, Primary Country Divisions, and Other Locational Entities of the United States and Outlying Areas"). Leave Block B6A blank for places outside the United States and outlying areas.

(*2*) If the city or locality is not listed, look in FIPS PUB 55–2 for the county code of the principal place of performance. Enter that in Block B6A. Use 50000 for Washington, DC, with a State code of 11.

(*3*) Paragraph 5.2, Entry Selection With the Aid of the Class Code, of FIPS PUB 55–2 will help in selecting the correct code. Sometimes, a class code should be used in addition to a place code to accurately identify the place of performance. Do not use place codes where the first position of the class code is X or Z.

(B) Block B6B, State or Country Code. (*1*) For places in the United States and outlying areas, enter the numeric State code, which can be found in FIPS PUB 55–2 or FIPS PUB 5–2, Codes for the Identification of the States, the District of Columbia and the Outlying Areas of the United States and Associated Areas.

(*2*) For places outside the United States and outlying areas, enter the alpha country code from FIPS PUB 10–3, Countries, Dependencies, Areas of Special Sovereignty, and Their Principal Administrative Divisions.

(C) Block B6C, City or Place State or Country Name. Enter the name of the principal place of performance. Do not leave Block B6C blank.

(7) Block B7, Type Obligation. Enter one of two codes.

(i) *Code 1—Obligation.* Enter code 1 if the contracting action obligates funds.

(ii) *Code 2—Deobligation.* Enter code 2 if the contracting action deobligates funds.

(8) Block B8, Total Dollars. Enter the net amount of funds (whole dollars only) obligated or deobligated by the contracting action. Do not leave Block B8 blank.

(9) Block B9, Foreign Military Sale. Enter one of the two codes. If only part of the contracting action is foreign military sale, separately report the parts (see 204.670–6(c)).

(i) *Code Y—Yes.* Enter code Y when the contracting action is under a foreign military sales arrangement, or under any other arrangement where a foreign country or international organization is bearing the cost of the acquisition.

(ii) *Code N—No.* Enter code N when code Y does not apply.

(10) Block B10, Multiyear Contract. Enter one of the two codes.

(i) *Code Y—Yes.* Enter code Y when the contracting action is a multiyear contract under FAR 17.1.

(ii) *Code N—No.* Enter code N when code Y does not apply.

(11) Block B11, Total Multiyear Value. (i) Complete Block B11 if the contracting action is—

(A) A multiyear contract (B10 is coded Y); and

(B) Either a new letter contract or a new definitive contract (Block B13 is coded 1 or 3). Otherwise, leave Block B11 blank.

(ii) Enter the estimated multiyear contract value (whole dollars only).

(12) Block B12, Principal Product or Service. B12 contains five parts. Do not leave any blocks blank.

(i) Block B12A, FSC or SVC Code. Enter the 4-character federal stock class or service code that describes the contract effort. To find the code, look in section I of the Department of Defense (DoD) Procurement Coding Manual (MN02). There are three categories of codes to choose from. In some cases, use a 4-character code from a list of 4-character codes; in other cases, construct a code using the instructions in the Manual. If more than one category or code applies to the contract action, enter the one that best identifies the product or service representing the largest dollar value.

(A) *Supplies.* If the contracting action is for the purchase (not lease or rental) of supplies, enter a federal supply classification (FSC) code in Block B12A. FSC codes are all numeric. Look in section 1, part C, of the DoD Procurement Coding Manual (MN02). The Department of Defense Federal Supply Classification Cataloging Handbooks H2–1, H2–2, and H2–3 may also help with the correct 4-character code.

(B) *Services.* If the contracting action is for services (except research, development, test, and evaluation), construction, or lease or rental of equipment or facilities, enter a service code in Block B12A.

(C) *Research, Development, Test and Evaluation (RDT&E).* If the contracting action is for RDT&E (as defined in FAR 35.001 and 235.001), enter an RDT&E code in Block B12A. Look in section 1, part A of the DoD Procurement Coding Manual (MN02). All RDT&E codes should begin with the letter "A". Do not use an RDT&E code for—

(*1*) Purchase, lease, or rental of equipment, supplies, or services separately purchased in support of RDT&E work, even if RDT&E funds are cited. Instead, use an FSC or Service code under the instructions in paragraphs (i) (A) or (B).

(*2*) Orders under Federal supply schedule contracts. Instead use an FSC or Service code under the instructions in paragraphs (i) (A) or (B).

(ii) Block B12B, DOD Claimant Prog. No. Enter a code that identifies the commodity described in Block B12E. These codes are in section III of the DoD Procurement Coding Manual (MN02). If more than one code applies to the contracting action, enter the one that best identifies the product or service representing the largest dollar value. If the description in Block B12E is for—

(A) Research and development (R&D), enter the code that best represents the objective of the R&D. For example, if the objective of the research and development is a guided missile, enter code A20. If the R&D cannot be identified to any particular objective, enter code S10.

(B) Ship repair, inspect and repair as necessary (IRAN), modification of aircraft, overhaul of engines, or similar maintenance, repair or modification services, enter the code that best identifies the program.

(C) Equipment rental (including rental of automated data processing equipment), enter code S10.

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(A) *Supplies.* If the contracting action is for the purchase (not lease or rental) of supplies, enter a federal supply classification (FSC) code in Block B12A. FSC codes are all numeric. Look in section 1, part C, of the DoD Procurement Coding Manual (MN02). The Department of Defense Federal Supply Classification Cataloging Handbooks H2–1, H2–2, and H2–3 may also help with the correct 4-character code.

(B) *Services.* If the contracting action is for services (except research, development, test, and evaluation), construction, or lease or rental of equipment or facilities, enter a service code in Block B12A.

(C) *Research, Development, Test and Evaluation (RDT&E).* If the contracting action is for RDT&E (as defined in FAR 35.001 and 235.001), enter an RDT&E code in Block B12A. Look in section 1, part A of the DoD Procurement Coding Manual (MN02). All RDT&E codes should begin with the letter "A". Do not use an RDT&E code for—

(*1*) Purchase, lease, or rental of equipment, supplies, or services separately purchased in support of RDT&E work, even if RDT&E funds are cited. Instead, use an FSC or Service code under the instructions in paragraphs (i) (A) or (B).

(*2*) Orders under Federal supply schedule contracts. Instead use an FSC or Service code under the instructions in paragraphs (i) (A) or (B).

(ii) Block B12B, DOD Claimant Prog. No. Enter a code that identifies the commodity described in Block B12E. These codes are in section III of the DoD Procurement Coding Manual (MN02). If more than one code applies to the contracting action, enter the one that best identifies the product or service representing the largest dollar value. If the description in Block B12E is for—

(A) Research and development (R&D), enter the code that best represents the objective of the R&D. For example, if the objective of the research and development is a guided missile, enter code A20. If the R&D cannot be identified to any particular objective, enter code S10.

(B) Ship repair, inspect and repair as necessary (IRAN), modification of aircraft, overhaul of engines, or similar maintenance, repair or modification services, enter the code that best identifies the program.

(C) Equipment rental (including rental of automated data processing equipment), enter code S10.

(D) Utility services, enter code S10.

(E) Services that cannot be identified to any listed program, enter code S10.

(F) Supplies or equipment that cannot be identified to any listed program, enter code C9E.

(iii) Block B12C, System or Equip Code. (A) Enter a code that describes the weapons system or equipment. These codes are in Section II of the DoD Procurement Coding Manual (MN02). If there is no code that applies to the contracting action, enter three zeros. If more than one code applies to the action, enter the one that best identifies the product or service representing the largest dollar value.

(B) If the contracting action is funded by the Strategic Defense Initiative (SDI), enter code CAA rather than any other code.

(C) Defense Logistics Agency activities must use the code assigned by the sponsoring service.

(iv) Block B12D, SIC Code. Enter the standard industrial classification (SIC) code for the acquisition (as opposed to the SIC of the manufacturer or dealer). Use the SIC code in effect at the time of award. These codes are in the OMB Standard Industrial Classification Manual. If more than one code applies to the contracting action, enter the one that best identifies the product or service representing the largest dollar value.

(v) Block B12E, Name Description. Enter the name or brief description of the commodity or service. If the description is classified, enter only the word "Classified." Do not, however, use "Classified" when a code name (e.g., Minuteman, Polaris, Trident, Pershing, etc.) or an identifying program number (e.g., WS–107A) can be used.

(13) Block B13, Kind of Contracting Action. Enter one of the 16 codes.

(i) *Code 1—Initial Letter Contract.* Enter code 1 when the contracting action is a new letter contract. Do not use code 1 for a letter modification to an existing contract—use code A instead.

(ii) *Code 2—Definitive Contract Superseding Letter Contract.* Enter code 2 when the contracting action is the definitization of a letter contract. Do not use code 2 for an action which is a definitization of a letter modification—use code A instead.

(iii) *Code 3—Definitive Contract.* Enter code 3 when the contracting action is the first binding document containing all the terms and conditions. Code 3 also includes—

(A) Definitive contract awards under the Small Business Administration 8(a) program;

(B) Orders from the procurement list with workshops for the blind or other severely handicapped;

(C) Notices of award;

(D) Funding actions which are initial obligations (but see code C—Funding Action); and

(E) Lease or loan agreements.

(iv) *Code 4—Order Against DoD BOA.* Enter code 4 when the contracting action is an order or definitization of an order (not a modification of an order). Examples include orders against a basic ordering agreement, or blanket purchase agreements, priced exhibit, or production list entered into by a DoD component (see code 3 for actions which are not orders or modifications of orders).

(v) *Code 5—Order Under DoD Contract.* Enter code 5 when the contracting action is—

(A) An order (not a modification or definitization of an order) against an indefinite delivery type contract;

(B) A job order, task order, or the like where firm obligations are created by issuance of the order against a contract awarded by a DoD component (not a modification or definitization of an order); or

(C) An order (not a modification of an order) placed against DoD contracts with the Small Business Administration under the 8(a) program.

(vi) *Code 6—Order/Modification Under Federal Schedule.* Do not use for GSA area contracts for utility services, use code 7 instead. Enter code 6 if the contracting action is an order, or a modification of an order, under—

(A) Federal supply schedule, e.g., GSA, VA, or OPM, contract (FAR 8.401); or

(B) GSA ADP schedule contract.

(vii) *Code 7—Order Under Another Agency's Contract.* Enter code 7 if the contracting action is an order, or a modification of an order other than those in code 6, under a contract awarded by another Federal agency or Government corporation. Include GSA area contracts for utility services (FAR 8.301) Do not use code 7 if the Federal agency or Government corporation is the contractor (i.e., is doing the work)—use code 8 instead.

(viii) *Code 8—Action With Another Federal Agency.* Enter code 8 if the contracting action is an action, or a modification of an action, placed directly with another Federal agency or Government corporation (e.g., Government Printing Office, Federal Printing Office, Federal Prison Industries (UNICOR), Tennessee Valley Authority, or the Department of Treasury, Agriculture or Energy) where the Federal agency or Government corporation is acting as the contractor (i.e., doing the work).

(ix) *Code 9—Small Purchase Procedure.* Enter code 9 if the contracting action—

(A) Is in a designated industry group under the Small Business Competitiveness Demonstration Program (FAR 19.10); and

(B) Used small purchase procedures (see FAR part 13).

(x) *Code A—Additional Work (new agreement).* Enter code A when the contracting action is a bilateral supplemental agreement which—

(A) Adds work to an existing contract (including a letter contract); and

(B) Requires a justification and approval (J&A), except see FAR 6.302–4(c) and 6.302–5(c)(2)(ii).

(xi) *Code B—Additional Work (other).* Enter code B when the contracting action is a modification of an existing contract (including a letter contract) which is not covered by code A or by codes C through F. Code B includes actions which—

(A) Exercise an option;

(B) Initiate an incremental yearly buy under a multiyear contract; and

(C) Amend a letter or other contract to add work that does not require a J&A.

(xii) *Code C—Funding Action.* Enter code C when the contracting action is a modification (to a letter or other contract) for the sole purpose of obligating or deobligating funds.

(A) This includes—

(1) Incremental funding (other than incremental yearly buys under multiyear contracts which are code B);

(2) Increases to the estimated cost on cost-reimbursement contracts;

(3) Repricing actions covering incentive price revisions; and

(4) Economic price adjustments.

(B) This does not include modifications that have the initial citation and obligation of funds for a contract or modification awarded in one fiscal year but not effective until a subsequent fiscal year. Code these—

(1) 3—definitive contract, if they are the initial obligation for the acquisition, or

(2) A or B—additional work, if they are the initial obligation for the modification.

(xiii) *Code D—Change Order.* Enter code D when the contracting action is a change order issued under the "Changes," "Differing Site Conditions," or other similar clauses in existing contracts.

(xiv) *Code E—Termination for Default.* Enter code E if the contracting action is a modification which terminates all or part of the contract for default.

(xv) *Code F—Termination for Convenience.* Enter code F if the contracting action is a modification which terminates all or part of the contract for convenience.

(xvi) *Code G—Cancellation.* Enter code G if the contracting action is a modification which cancels the contract. Do not use code G to cancel a prior DD Form 350—see Block A1.

(c) *Part C of the DD Form 350.* (1) Part C gathers data concerning contracting procedures, use of competition, financing, and statutory requirements other than socioeconomic (which are in part D).

(2) Do not complete part C if the contracting action is—

(i) A foreign military sale, i.e., Block B9 (Foreign Military Sale) is coded Y (Yes); or

(ii) An action with another Federal agency, i.e., Block B13 (Kind of Contracting Action) is coded 8 (Action With Another Federal Agency).

(3) In completing part C, the codes to be used describe either the contracting action being reported or the original contract, depending on the codes reported for "Kind of Contracting Action" in Block B13. The following chart provides overall instructions. There are some exceptions for various part C blocks. These are listed at the beginning of the instructions for the block.

If block B13 is: Code	Title	Then code part C block:
1	Initial Letter Contract.	Action being reported.
2	Definitive Contract Superseding Letter Contract.	Action being reported.
3	Definitive Contract	Action being reported.
4	Order Under DoD Agreement.	Action being reported.
5	Order Under DoD Contract.	Original contract.[1]
6	Order/Modification Under Federal Supply Schedule.	Action being reported (but see Blocks C3, C6, C7, C11, and C13).
7	Order Under Another Agency's Contract.	Original contract (information provided by other agency) (but see Blocks C4, C6, C11, C12, and C13).
8	Action With Another Federal Agency.	Leave all of Part C blank.
9	Small Purchase Procedure.	Action being reported.
A	Additional Work (new agreement).	Action being reported.
B	Additional Work (other).	Original contract (but see Blocks C6 and C7).[1]
C	Funding Action	Original contract (but see Blocks C6 and C7).[1]
D	Change Order	Original contract (but see Blocks C6 and C7).[1]
E	Termination for Default.	Original contract (but see Blocks C6 and C7).[1]
F	Termination for Convenience.	Original contract (but see Blocks C6 and C7).[1]
G	Cancellation	Original contract (but see Blocks C6 and C7).[1]

[1] If there are no codes for the original contract because a DD Form 350 was not required at the time, the original action is no longer available, the definition of the original code has changed, or a data element has been added to the system after the original contract report, then use codes that best describe the original contracting action.

(4) Complete part C blocks as follows—

(i) Block C1, Synopsis. Enter one of the two codes.

(A) *Code Y—Yes.* Enter code Y if a synopsis of the proposed action was prepared and transmitted to the Commerce Business Daily in accordance with FAR 5.2.

(B) *Code N—No.* Enter code N if a synopsis was not prepared.

(ii) Block C2, Reason Not Synopsized. Enter one of the two codes if Block C1 is "N." Otherwise, leave Block C2 blank.

(A) *Code A—Urgency.* Enter code A if the action was not synopsized due to urgency (see FAR 6.302–2).

(B) *Code B—Other than Urgency.* Enter code B if the action was not synopsized due to some other reason.

(iii) Block C3, Extent Competed. Enter one of the four codes. As an exception to the chart in paragraph (c)(3) of this subsection, when Block B13 is coded 6, enter code A in Block C3.

(A) *Code A—Competed Action.* Enter code A when—

(1) The contracting action is an action under a Federal supply schedule contract (Block B13 is coded 6).

(2) Competitive procedures were used to fulfill the requirement for full and open competition (FAR 6.1).

(3) Full and open competition procedures after exclusion of sources were used in order to establish/maintain alternative sources, to set aside an acquisition for small business, or to compete section 8(a) awards (FAR 6.2).

(4) Statutory authorities for other than full and open competition were used (FAR 6.3) and more than one offer was received (if only one offer was received, use code D).

(5) Contracting action resulted from a contract awarded prior to the Competition in Contracting Act that used two-step sealed bidding or other sealed bidding, or that was negotiated competitively.

(B) *Code B—Not Available for Competition.* Enter code B for—

(1) Awards for utilities or utility systems when only one supplier can furnish the service (FAR 6.302–1(b)(3)).

(2) Brand name commercial products for authorized resale.

(3) Acquisitions authorized or required by statute to be awarded to a specific source pursuant to FAR 6.302–5(b)(2) or (4), e.g., qualified nonprofit agencies for the blind or other severely handicapped (see FAR 8.7) or 8(a) program (see FAR 19.8).

(4) International agreements.

(5) Other contract actions where the Director of Defense Procurement has determined that there is no opportunity for competition.

Note: Even though part C is not completed for foreign military sales or actions with another Federal agency, the database will automatically include these actions in the category of not available for competition.

(C) *Code C—Follow-on to Competed Action.* Enter code C when the action pertains to an acquisition placed with a particular contractor to continue or augment a specific competed program where such placement was necessitated by prior acquisition decisions.

(D) *Code D—Not Competed.* Enter code D when codes A, B, or C do not apply.

(iv) Block C4, Sea Transportation. Enter one of the three codes. As an exception to the chart in paragraph (c)(3) of this subsection, when Block B13 is coded 7, leave Block C4 blank.

(A) *Code Y—Yes—Positive Response to DFARS 252.247–7023.* Enter code Y when the contractor's response to the clause at 252.247–7023, Extent of Transportation of Supplies by Sea, indicates the contractor anticipates that some of the supplies being provided may be transported by sea.

(B) *Code N—No—Negative Response to DFARS 252.247–7023.* Enter code N when the contractor's response to the clause at 252.247–7023 indicates that the contractor anticipates that none of the supplies being provided will be transported by sea.

(C) *Code U—Unknown—No Response or Clause Not Included in Solicitation.* Enter code U when the contractor did not complete the representation at

	Then code part C block:
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(5) Contracting action resulted from a contract awarded prior to the Competition in Contracting Act that used two-step sealed bidding or other sealed bidding, or that was negotiated competitively.

(B) *Code B—Not Available for Competition.* Enter code B for—

(1) Awards for utilities or utility systems when only one supplier can furnish the service (FAR 6.302–1(b)(3)).

(2) Brand name commercial products for authorized resale.

(3) Acquisitions authorized or required by statute to be awarded to a specific source pursuant to FAR 6.302–5(b)(2) or (4), e.g., qualified nonprofit agencies for the blind or other severely handicapped (see FAR 8.7) or 8(a) program (see FAR 19.8).

(4) International agreements.

(5) Other contract actions where the Director of Defense Procurement has determined that there is no opportunity for competition.

Note: Even though part C is not completed for foreign military sales or actions with another Federal agency, the database will automatically include these actions in the category of not available for competition.

(C) *Code C—Follow-on to Competed Action.* Enter code C when the action pertains to an acquisition placed with a particular contractor to continue or augment a specific competed program where such placement was necessitated by prior acquisition decisions.

(D) *Code D—Not Competed.* Enter code D when codes A, B, or C do not apply.

(iv) Block C4, Sea Transportation. Enter one of the three codes. As an exception to the chart in paragraph (c)(3) of this subsection, when Block B13 is coded 7, leave Block C4 blank.

(A) *Code Y—Yes—Positive Response to DFARS 252.247–7023.* Enter code Y when the contractor's response to the clause at 252.247–7023, Extent of Transportation of Supplies by Sea, indicates the contractor anticipates that some of the supplies being provided may be transported by sea.

(B) *Code N—No—Negative Response to DFARS 252.247–7023.* Enter code N when the contractor's response to the clause at 252.247–7023 indicates that the contractor anticipates that none of the supplies being provided will be transported by sea.

(C) *Code U—Unknown—No Response or Clause Not Included in Solicitation.* Enter code U when the contractor did not complete the representation at

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252.247–7023 or the solicitation did not include it.

(v) Block C5, Type of Contract. (A) If the action is a letter contract, including modifications and amendments to letter contracts, enter the code that describes the anticipated type of contract the letter contract will become when it is definitized.

(B) If there is more than one type of contract involved in the contracting action, enter the code that matches the type with the most dollars. If the type with the least dollars exceeds $500,000, fill out separate DD Forms 350 (with different report numbers) for each type.

(C) Enter one of the 11 codes—

(1) Code A—Fixed Price Redetermination.

(2) Code J—Firm Fixed Price.

(3) Code K—Fixed Price Economic Price Adjustment.

(4) Code L—Fixed Price Incentive.

(5) Code R—Cost Plus Award Fee.

(6) Code S—Cost Contract.

(7) Code T—Cost Sharing.

(8) Code U—Cost Plus Fixed Fee.

(9) Code V—Cost Plus Incentive Fee.

(10) Code Y—Time and Materials.

(11) Code Z—Labor Hour.

(vi) Block C6, Number of Offerors Solicited. Leave Block C6 blank if the original contract resulted from a solicitation issued before April 1, 1985 (i.e., before the effective date of the Competition in Contracting Act). As an exception to the chart in paragraph (c)(3) of this subsection—

If block B13 is coded:	Then:
6	Enter code 2 in Block C6.
7	Leave Block C6 blank, otherwise enter one of the two codes— (A) *Code 1—One.* Enter code 1 if only one offeror was solicited. (B) *Code 2—More than one.* Enter code 2 if more than one offeror was solicited.

(vii) Block C7, Number of Offers Received. Leave Block C7 blank if the original contract resulted from a solicitation issued before April 1, 1985 (i.e., before the effective date of the Competition in Contracting Act). As an exception to the chart in paragraph (c)(3) of this subsection—

If block B13 is coded:	Then:
6	Enter code 2 in Block C7; otherwise, enter one of the two codes— (A) *Code 1—One.* Enter code 1 if only one offer was received. (B) *Code 2—More than one.* Enter code 2 if more than one offer was received.

(viii) Block C8, Solicitation Procedures. Leave Block C8 blank if the original contract resulted from a solicitation issued before April 1, 1985 (i.e., before the effective date of the Competition in Contracting Act). If Block B13 is coded 6, use code B for single award schedules and code F for multiple award schedules. Otherwise, enter one of the 12 codes—

(A) *Code A—Full and Open Competition—Sealed Bid.* Enter code A if the action resulted from an award pursuant to FAR 6.102(a).

(B) *Code B—Full and Open Competition—Competitive Proposal.* Enter code B if the action resulted from an award pursuant to FAR 6.102(b).

(C) *Code C—Full and Open Competition—Combination.* Enter code C if the action resulted from an award using a combination of competitive procedures (e.g., two-step sealed bidding) pursuant to FAR 6.102(c).

(D) *Code D—Architect-Engineer.* Enter code D if the action resulted from selection of sources for architect-engineer contracts pursuant to FAR 6.102(d)(1).

(E) *Code E—Basic Research.* Enter code E if the action resulted from competitive selection of basic research proposals pursuant to FAR 6.102(d)(2).

(F) *Code F—Multiple Award Schedule.* Enter code F if the action is an award of a multiple award schedule pursuant to FAR 6.102(d)(3) or an order against such a schedule.

(G) *Code G—Alternate Source—Reduced Cost.* Enter code G if the action resulted from use of procedures to reduce overall cost pursuant to FAR 6.202(a)(1).

(H) *Code H—Alternate Source—Mobilization.* Enter code H if the action resulted from use of procedures for having a facility available for national defense or industrial mobilization pursuant to FAR 6.202(a)(2).

(I) *Code J—Alternate Source—Eng/R&D Capability.* Enter code J if the action resulted from use of procedures for establishing or maintaining an essential engineering, research, or development capability pursuant to FAR 6.202(a)(3).

(J) *Code K—Set Aside.* Enter code K if the action resulted from any:

(*1*) Set-aside for small business concerns (FAR 6.203 including small business innovation research (SBIR) actions and awards to blind or other severely handicapped organizations which were participating in a set-aside for small business concerns (see FAR 19.501(k)).

(*2*) Set-aside for small disadvantaged business concerns (206.203).

(*3*) Total or partial set-asides (including portions of broad agency announcements (BAAs)) for historically black colleges and universities of minority institutions (see 206.203 and 235.016).

(*4*) Competition among section 8(a) firms under FAR 19.805 (report noncompetitive 8(a) awards as code N).

(K) *Code M—Otherwise Authorized by Statute.* Enter code M if using contracting procedures that are expressly authorized by statute and not addressed in FAR part 6.302–5 (see FAR 6.001(b)). Do not use code M for statutes addressed in FAR 6.302–5 (instead use code N in this Block and code 5A in Block C9).

(L) *Code N—Other Than Full and Open Competition.* Enter code N if the action resulted from use of other than full and open competition pursuant to FAR 6.3. This includes awards to qualified nonprofit agencies for the blind or other severely handicapped (NIB/NISH or other workshops) or noncompetitive awards to the Small Business Administration under Section 8(a) of the Small Business Act (FAR 6.302–5(b).

(ix) Block C9, Authority for Other Than Full and Open Competition. (A) Leave Block C9 blank if the original contract resulted from a solicitation issued before April 1, 1985 (i.e., before the effective date of the Competition in Contracting Act).

(B) Enter one of the 15 codes if Block C8 is coded "N." Otherwise, leave Block C9 blank. *(1) Code 1A—Unique Source.* Enter code 1A if the action was justified pursuant to FAR 6.302–1(b)(1).

(2) Code 1B—Follow-on Contract. Enter code 1B if the action was justified pursuant to FAR 6.302–1(a)(2)(ii).

(3) Code 1C—Unsolicited Research Prop. Enter code 1C if the action was justified pursuant to FAR 6.302–1(a)(2)(i).

(4) Code 1D—Patent/Data Rights. Enter code 1D if action was justified pursuant to FAR 6.302–1(b)(2).

(5) Code 1E—Utilities. Enter code 1E if action was justified pursuant to FAR 6.302–1(b)(3).

(*6*) *Code 1F—Standardization.* Enter code 1F if action was justified pursuant to FAR 6.302–1(b)(4).

(*7*) *Code 1G—Only One Source—Other.* Enter code 1G if the action was justified pursuant to FAR 6.302–1 in a situation other than the examples cited in codes 1A through 1F.

(*8*) *Code 2A—Urgency.* Enter code 2A if action was justified pursuant to FAR 6.302–2.

(*9*) *Code 3A—Mobilization.* Enter code 3A if action was justified pursuant to FAR 6.302–3(a)(2)(i).

(*10*) *Code 3B—Essential R&D Capability.* Enter code 3B if action was justified pursuant to FAR 6.302–3(a)(2)(ii)).

(*11*) *Code 4A—International Agreement.* Enter code 4A if action was justified pursuant to FAR 6.302–4.

(*12*) *Code 5A—Authorized by Statute.* Enter code 5A if action was justified pursuant to FAR 6.302–5(a)(2)(i).

(*13*) *Code 5B—Authorized Resale.* Enter code 5B if action was justified pursuant to FAR 6.302–5(a)(2)(ii).

(*14*) *Code 6A—National Security.* Enter code 6A if action was justified pursuant to FAR 6.302–6.

(*15*) *Code 7A—Public Interest.* Enter code 7A if action was taken pursuant to FAR 6.302–7.

(x) Block C10, Subject to Labor Standards Statutes. Enter one of the five codes. As an exception to the chart in paragraph (c)(3) of this subsection, when Block B13 is coded 6, leave Block C10 blank.

(A) *Code A—Walsh-Healy Act, Manufacturer.* Enter code A when the contracting action is subject to the provisions of FAR 22.6 and the offeror represents that it is a manufacturer.

(B) *Code B—Walsh-Healy Act, Regular Dealer.* Enter code B when the contracting action is subject to the provisions of FAR 22.6, and the offeror represents that it is a regular dealer.

(C) *Code C—Service Contract Act.* Enter code C when the contracting action is subject to the provisions of the Service Contract Act (see FAR part 37).

(D) *Code D—Davis-Bacon Act.* Enter code D when the contracting action is subject to the Davis-Bacon Act (see FAR 22.403–1).

(E) *Code Z—Not Subject to Above.* Enter code Z when the contracting action is not subject to any of the statutory requirements in paragraphs (A) through (D).

(xi) Block C11, Certified Cost or Pricing Data. Enter one of the three codes. As an exception to the chart in paragraph (c)(3) of this subsection, when Block B13 is coded 6 or 7, leave Block C11 blank.

(A) *Code Y—Yes—Obtained.* Enter code Y when certified cost or pricing data were obtained for the contracting action (see FAR 15.804–2).

(B) *Code N—No—Not Obtained.* Enter code N when certified cost or pricing data were not obtained because data were not required (see FAR 15.804–2) or an exemption was granted (see FAR 15.804–3(a)–(g)).

(C) *Code W—Not Obtained—Waived.* Enter code W when certified cost or pricing data were not obtained because the requirement was waived (see FAR 15.804–3(i) and DFARS 215.804–3(i)).

(xii) Block C12, Contract Financing. Enter one of the five codes identifying whether or not progress payments (PP) or advance payments (AP) were used. As an exception to the chart in paragraph (c)(3) of this subsection, when Block B13 is coded 7, enter the code for the action being reported.

(A) *Code A—FAR Clause 52.232–16.* Enter code A if the contracting action contains the clause at FAR 52.232–16, Progress Payments.

(B) *Code B—DFARS Clause 252.232–7003.* Enter code B if the contracting action contains the clause at 252.232–7003, Flexible Progress Payments.

(C) *Code C—Percentage of Completion PP.* Enter code C if the contracting action provides for progress payments based on percentage or stage of completion, which is only permitted on contracts for construction, for shipbuilding, or for ship conversion, alteration, or repair (see 232.102(e)(2)).

(D) *Code D—Unusual PP or AP.* Enter code D if the action provides unusual progress payments or advance payments (see FAR 32.4 and 32.501–2).

(E) *Code Z—None of the Above.* Enter code Z if codes A through D do not apply.

(xiii) Block C13, Foreign Trade Data. (A) The term "United States" (U.S.), as used in Block C13 excludes the Trust Territory of Palau (see 204.670–1 for definition of United States and outlying areas).

(B) As an exception to the chart in paragraph (c)(3) of this subsection:

If block B13 is coded:	Then:
6	Enter the code for the action being reported but leave Block C13C blank.
7	Enter the code for the original contract, but leave Block C13C blank.

(C) Block C13A, Number of Offerors. Enter the number of offers of foreign end products as defined in FAR 25 or services performed by foreign concerns. If zero, enter 0; if 9 or greater than 9, enter 9.

(D) Block C13B, Buy American Act Percent Difference. (*1*) If the contracting action is with a firm offering a domestic end product, and award to the firm resulted from use of the evaluation factor under the Buy American Act (225.105–70), enter the percent difference between the award price and the lowest price for a foreign end product. Compute the percent as follows:

The award price (AP) minus the lowest price for a foreign end product (LPFEP) divided by the lowest price for a foreign end product (LPFEP) times 100 equals the Buy American Act percent difference (BAAPD); or expressed mathematically:

$$\frac{(AP-LPFEP)}{LPFEP}\times 100=BAAPD$$

(*2*) Enter the percentage as a two position whole number (e.g., for 5%, enter 05; for 11%, enter 11).

(*3*) Enter two zeros (00) if the evaluation factor was not used.

(E) Block C13C, Place of Manufacture. Complete Block C13C only if the contracting action is for a foreign end product or a service provided by a foreign concern. Otherwise, leave Block C13C blank.

(*1*) *Code A—U.S.* Enter code A if the contracting action is for—

(*i*) A foreign end product that is manufactured in the United States but still determined to be foreign because 50 percent or more of the cost of its components is not mined, produced, or manufactured inside the United States or inside qualifying countries; or

(*ii*) Services performed in the United States by a foreign concern.

(*2*) *Code B—Foreign.* Enter code B if the contracting action is for—

(*i*) Any other foreign end product; or

(*ii*) Services performed outside the United States by a foreign concern.

(F) Block C13D, Country of Origin Code. (*1*) Complete Block C13D only if Block C13C is coded A or B. Otherwise, leave Block C13D blank.

(*2*) Enter the code from FIPS PUB 10–3 (Countries, Dependencies, Areas of Special Sovereignty, and Their Principal Administrative Divisions) that identifies the country where the foreign product is coming from or the foreign company providing the services is located. If more than one foreign country is involved, enter the code of the foreign country with the largest dollar value.

(d) *Part D of the DD Form 350.* (1) Part D gathers data on the various socioeconomic programs that apply to defense acquisitions.

(2) Do NOT complete Part D if the contracting action is a:

(i) Foreign military sale, i.e., Block B9 (Foreign Military Sale) is coded Y (Yes);

(ii) Order/modification under a Federal supply schedule, i.e., Item B13 (Kind of Contracting Action) is coded 6 (Order/Modification Under Federal Supply Schedule); or

(iii) Action with another Federal agency, i.e., Item B13 (Kind of Contracting Action) is coded 8 (Action With Another Federal Agency).

(3) Determine the status of the concern (e.g., size and ownership), by referring to FAR/DFARS part 19.

(4) In completing part D, the codes to be used describe either the contracting action being reported or the original contract depending on the codes reported in B13 (Kind of Contracting Action). The following chart provides overall instructions. There are some exceptions for various part D Blocks. The exceptions are listed at the beginning of the instructions for the individual blocks.

If block B13 is:		Then use the block D code for the:
Code	Title	
1	Initial Letter Contract.	Action being reported.
2	Definitive Contract Superseding Letter Contract.	Action being reported.
3	Definitive Contract	Action being reported.
4	Order Under DoD Agreement.	Action being reported.
5	Order Under DoD Contract.	Original contract.[1]
6	Order/Modification Under Federal Supply Schedule.	Leave all of Part D blank.
7	Order Under Another Agency's Contract.	Original contract (obtain from other agency, but see Blocks D2, D3, D4, D7, and D9).[1]
8	Action With Another Federal Agency.	Leave all of Part D blank.
9	Small Purchase Procedure.	Action being reported.
A	Additional Work (new agreement).	Action being reported.
B	Additional Work (other).	Original contract (but see Block D9).[1]
C	Funding Action	Original contract (but see Block D9).[1]
D	Change Order	Original contract (but see Block D9).[1]
E	Termination for Default.	Original contract (but see Block D9).[1]
F	Termination for Convenience.	Original contract (but see Block D9).[1]
G	Cancellation	Original contract (but see Block D9).[1]

[1] If there are no codes for the original contract because a DD Form 350 was not required at the time, the original action is no longer available, the definition of the original code has changed, or a data element has been added to the system after the original contract report, then use codes that best describe the original contracting action.

(5) Complete part D blocks as follows—

(i) Block D1, Type of Business. Enter one of the ten codes.

(A) *Code A—Small Disadvantaged Business Performing in U.S.* Enter code A if the contractor is an SDB concern as defined in 219.001 and the place of performance is within the United States and outlying areas.

(B) *Code B—Other Small Business Performing in U.S.* Enter code B if the contractor is a small business concern as defined in FAR 19.001, other than a small disadvantaged business concern, and the place of performance is within the United States and outlying areas.

(C) *Code C—Large Business Performing in U.S.* Enter code C if the contractor is a domestic large business concern, and the place of performance is within the United States and outlying areas.

(D) *Code D—Workshop for the Blind or Other Severely Handicapped.* Enter code D if the contractor is a workshop for the blind or other severely handicapped (FAR 8.701), and the place of performance is within the United States and outlying areas.

(E) *Code F—Hospital.* Enter code F if the contractor is a hospital, and the place of performance is within the United States and outlying areas.

(F) *Code L—Foreign Concern/Entity.* Enter code L if the contractor is a foreign concern, the Canadian Commercial Corporation, or a non-U.S. chartered nonprofit institution.

(G) *Code M—Domestic Firm Performing Outside U.S.* Enter code M if the contractor is a domestic concern or a domestic nonprofit institution and the place of performance is outside the United States and outlying areas.

(H) *Code N—Historically Black Colleges and Universities or Minority Institutions (HBCU/MI).* Enter code H if the contractor is an HBCU/MI as defined at 252.226–7000 and the place of performance is within the United States and outlying areas.

(I) *Code P—Other Educational.* Enter code P if the contractor is an educational institution which does not qualify as an HBCU/MI, and the place of performance is within the United States and outlying areas.

(J) *Code Z—Other Nonprofit.* Enter code Z if the contractor is a nonprofit institution (defined in FAR 31.701) which does not meet any of the criteria in codes A through I and the place of performance is in the United States and outlying areas.

(ii) Block D2, Reason Not Awarded to Small Disadvantaged Business (SDB). Enter one of the five codes when Block D1 is coded B or C. Otherwise leave D2 blank. As an exception to the chart in paragraph (d)(4) of this subsection, when Block B13 is coded 7, enter code Z in Block D2.

(A) *Code A—No Known SDB Source.* Enter code A when applicable.

(B) *Code B—SDB Not Solicited.* Enter code B when there was a known SDB source but it was not solicited.

(C) *Code C—SDB Solicited No Offer.* Enter code C when an SDB was solicited but it did not submit an offer or its offer was not sufficient to cover the total quantity requirement so it received a separate award for the quantity offered.

(D) *Code D—SDB Solicited Offer Not Low.* Enter code D when an SDB offer was not the low offer or an SDB was not willing to accept award of a partial small business set-aside portion of an action at the price offered.

(E) *Code Z—Other Reason.* Enter code Z when an SDB did not receive the award for any other reason.

(iii) Block D3, Reason Not Awarded to Small Business (SB). Enter one of the five codes when Block D1 is coded C. Otherwise leave D3 blank. (The term "Small Business" includes small disadvantaged businesses.) As an exception to the chart in paragraph (d)(4) of this subsection, when Block B13 is coded 7, enter code Z in Block D3.

(A) *Code A—No Known SB Source.* Enter code A when applicable.

(B) *Code B—SB Not Solicited.* Enter code B when there was a known small business source but it was not solicited.

(C) *SB Solicited No Offer.* Enter code C when a small business concern was solicited but it did not submit an offer or its offer was not sufficient to cover the total quantity requirement so it received a separate award for the quantity offered.

(D) *Code D—SB Solicited Offer Not Low.* Enter code D when a small business offer was not the low or most advantageous offer or a small business concern was not willing to accept award of a set-aside portion of an action at the price offered by the Government.

(E) *Code Z—Other Reason.* Enter code Z when a small business did not receive the award for any other reason.

(iv) Block D4, Preference Program. As an exception to the chart in paragraph (d)(4) of this subsection, when Block B13 is coded 7, enter the code describing the action being reported for Block D4C, and leave Block D4E blank.

(A) Block D4A, Type of SB Set-Aside. Enter one of the six available codes.

(1) Code A—None. Enter code A if there was no small business set-aside (FAR 19.502). Note that set-asides for historically black colleges and

universities and minority institutions (HBCUs/MIs) are not small business set-asides. Use code A for HBCU/MI set-asides and complete Block D4C.

(2) Code B—Total SB Set-Aside. Enter code B if the action was a total set-aside for small business (FAR 19.502–2) or the action resulted from the Small Business Innovation Research Program.

(3) Code C—Partial SB Set-Aside. Enter code C if the action was a partial set-aside for small business (219.502–3).

(4) Code D—Reserved.

(5) Code E—Total SDB Set-Aside. Enter code E if the action was a total set-aside for small disadvantaged businesses (219.502–2–70).

(6) Code Y—Small Emerging Business Set-Aside. Enter code Y if the action is an emerging small business set-aside within a designated industry group under the Small Business Competitiveness Demonstration Program (see FAR subpart 19.10 and 204.670–9).

(7) Code Z—Small Business-Small Purchase Set-Aside. Enter code Z if the action is reserved exclusively for small business concerns pursuant to FAR 13.105 and is in a designated industry group under the Small Business Competitiveness Demonstration Program (204.670–9).

(B) Block D4B—Type of SDB Set-Aside/SDB Preference. Enter one of the five codes, even if Block D4A is coded E.

(1) Code A—None. Enter code A if no SDB preference was given or award was not to an SDB.

(2) Code B—Section 8(a). Enter code B if the contract was awarded to the Small Business Administration (SBA) under section 8(a) of the Small Business Act (FAR 19.8).

(3) Code C—Total SDB Set-Aside. Enter code C if the action was an SDB set-aside (219.502–2–70) and award was to an SDB.

(4) Code D—SDB Evaluation Preference—Unrestricted. Enter code D if the action was unrestricted but an SDB received an award as a result of an evaluation preference (219.70).

(5) Code E—SDB Preferential Consideration—Partial SB Set-Aside. Enter code E if the action was a partial set-aside for small business and preferential consideration resulted in an award to an SDB (219.502–3).

(C) Block D4C—HBCU/MI Set-Aside. Enter one of the three codes.

(1) Code A—None. Enter code A if the action was not set-aside for HBCUs or MIs.

(2) Code B—HBCU or MI—Total Set-Aside. Enter code B if the action was a total set-aside for HBCUs and MIs (226.7003).

(3) Code C—HBCU or MI—Partial Set-Aside. Enter code C if the action was a partial set-aside for HBCUs or MIs under a broad agency announcement (235.016).

(D) Block D4D—Other Preference Program. Enter either code A or B.

(1) Code A—None. Enter code A if no other preference program applied.

(2) Code B—Directed to Workshops. Enter code B for an action with a workshop for the blind or a workshop for the other severely handicapped or an item on the Procurement List which was awarded under FAR 8.7.

(E) Block D4E, Premium Percent. *(1)* Complete Block D4E if Block D4B is coded C, D, or E, or Block D4C is coded B or C.

(2) Calculate the premium percentage per 219.202–5 and enter it as a three-digit number rounded to the nearest tenth, e.g., enter 7.55% as 076. If no premium was paid, enter three zeros (000).

(3) Otherwise leave blank.

(v) Block D5—Ethnic Group. (A) Complete Block D5 if the action is with an SDB. Otherwise leave it blank.

(B) Enter the code from the following list which corresponds to the ethnic group marked by the contractor in the solicitation provision at 252.219–7000 (Small Disadvantaged Business Concern Representation (DoD Contracts)).

(1) Code A—Asian-Indian American.

(2) Code B—Asian-Pacific American.

(3) Code C—Black American.

(4) Code D—Hispanic American.

(5) Code E—Native American.

(6) Code F—Other SDB certified/determined by SBA.

(7) Code Z—No representation.

(vi) Block D6, Women-Owned Small Business. Enter one of the three codes.

(A) *Code Y—Yes.* Enter code Y if the response to FAR 52.219–3 (Women-Owned Small Business Representation) indicates that it is a woman-owned small business.

(B) *Code N—No.* Enter code N if the contractor's response to FAR 52.219–3 indicates that it is not a woman-owned small business.

(C) *Code U—Uncertified.* Enter code U if the information is not available because the contractor did not complete the representation under FAR 52.219–3.

(vii) Block D7—Small Business Innovation Research (SBIR) Program. Enter one of the three codes. As an exception to the chart in paragraph (d)(4) of this subsection, when Block B13 is coded 7, leave Block D7 blank.

(A) *Code A—Not an SBIR Phase I–II.* Enter code A if the action is not in support of a Phase I or II SBIR Program.

(B) *Code B—SBIR Program Phase I Action.* Enter code B if the action is related to a Phase I contract in support of the SBIR Program.

(C) *Code C—SBIR Program Phase II Action.* Enter code C if the action is related to a Phase II contract in support of the SBIR Program.

(viii) Block D8, Subcontracting Plan–SB, SDB, or HBCU/MI. Enter one of the four codes.

(A) *Code A—Plan Not Included.* No Subcontracting Possibilities. Enter code A if a subcontracting plan was not included in the contract because subcontracting possibilities do not exist (FAR 19.705–2(c)).

(B) *Code B—Plan Not Required.* Enter code B if no subcontracting plan was required (because the action did not meet the dollar thresholds in FAR 19.702(b)).

(C) *Code C—Plan Required, Incentive Not Included.* Enter code C if the action includes a subcontracting plan, but does not include additional incentives (FAR 19.708(c)).

(D) *Code D—Plan Required, Incentive Included.* Enter code D if the action includes a subcontracting plan and also includes additional incentives (FAR 19.708(c), 219.708(c)).

(ix) Block D9, Demonstration Test Program. Enter one of the two codes. As exceptions to the chart in paragraph (d)(4) of this subsection, when Block B13 is coded 5, B, C, D, E, F, or G and the original action was awarded before the program began, enter code N in Block D9. When Block B13 is coded 7, enter code N in Block D9.

(A) *Code Y—Yes.* Enter code Y if this is an action with a U.S. business concern, in either the four designated industry groups or the ten targeted industry categories under the Small Business Competitiveness Demonstration Program (FAR 19.10 and 219.10), where the principal place of performance is in the United States or outlying areas.

(B) *Code N—No.* Enter code N if code Y does not apply.

(x) Block D10, Size of Small Business. (A) Complete Block D10 only when Block D9 is coded "Y" and the contractor is a small business (Block D1 is coded A or B). Otherwise, leave Block D10 blank.

(B) Enter one of fourteen codes of the size of the business as represented by the contractor in the solicitation provision at FAR 52.219–19, Small Business Concern Representation for the Small Business Competitiveness Demonstration Program.

(xi) Block D11, Emerging Small Business. (A) Complete this block only if Block D9 is coded "Y" and the contracting action is in one of the four

HBCU or MI—Partial
r code C if the action
et-aside for HBCUs or
oad agency
(235.016).
D—Other Preference
either code A or B.
None. Enter code A if no
e program applied.
Directed to Workshops.
r an action with a
e blind or a workshop
verely handicapped or an
curement List which was
FAR 8.7.
, Premium Percent. *(1)*
D4E if Block D4B is
, or Block D4C is coded

the premium percentage
nd enter it as a three-digit
d to the nearest tenth,
as 076. If no premium
three zeros (000).
leave blank.
-Ethnic Group. (A)
D5 if the action is with
ise leave it blank.
code from the following
sponds to the ethnic
y the contractor in the
ision at 252.219–7000
taged Business Concern
DoD Contracts)).
Asian-Indian American.
Asian-Pacific American.
Black American.
Hispanic American.
Native American.
Other SDB certified/
BA.
No representation.
Women-Owned Small
one of the three codes.
Yes. Enter code Y if the
52.219–3 (Women-
siness Representation)
is a woman-owned

No. Enter code N if the
ponse to FAR 52.219–3
is not a woman-owned

Uncertified. Enter code
ion is not available
ractor did not complete
on under FAR 52.219–3.
—Small Business
arch (SBIR) Program.
three codes. As an
chart in paragraph
section, when Block B13
Block D7 blank.
Not an SBIR Phase I–II.
he action is not in
se I or II SBIR Program.
SBIR Program Phase I
de B if the action is

related to a Phase I contract in support of the SBIR Program.

(C) *Code C—SBIR Program Phase II Action.* Enter code C if the action is related to a Phase II contract in support of the SBIR Program.

(viii) Block D8, Subcontracting Plan–SB, SDB, or HBCU/MI. Enter one of the four codes.

(A) *Code A—Plan Not Included.* No Subcontracting Possibilities. Enter code A if a subcontracting plan was not included in the contract because subcontracting possibilities do not exist (FAR 19.705–2(c)).

(B) *Code B—Plan Not Required.* Enter code B if no subcontracting plan was required (because the action did not meet the dollar thresholds in FAR 19.702(b)).

(C) *Code C—Plan Required, Incentive Not Included.* Enter code C if the action includes a subcontracting plan, but does not include additional incentives (FAR 19.708(c)).

(D) *Code D—Plan Required, Incentive Included.* Enter code D if the action includes a subcontracting plan and also includes additional incentives (FAR 19.708(c), 219.708(c)).

(ix) Block D9, Demonstration Test Program. Enter one of the two codes. As exceptions to the chart in paragraph (d)(4) of this subsection, when Block B13 is coded 5, B, C, D, E, F, or G and the original action was awarded before the program began, enter code N in Block D9. When Block B13 is coded 7, enter code N in Block D9.

(A) *Code Y—Yes.* Enter code Y if this is an action with a U.S. business concern, in either the four designated industry groups or the ten targeted industry categories under the Small Business Competitiveness Demonstration Program (FAR 19.10 and 219.10), where the principal place of performance is in the United States or outlying areas.

(B) *Code N—No.* Enter code N if code Y does not apply.

(x) Block D10, Size of Small Business. (A) Complete Block D10 only when Block D9 is coded "Y" and the contractor is a small business (Block D1 is coded A or B). Otherwise, leave Block D10 blank.

(B) Enter one of fourteen codes of the size of the business as represented by the contractor in the solicitation provision at FAR 52.219–19, Small Business Concern Representation for the Small Business Competitiveness Demonstration Program.

(xi) Block D11, Emerging Small Business. (A) Complete this block only if Block D9 is coded "Y" and the contracting action is in one of the four

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designated industry groups, not one of the targeted industry categories. Otherwise, leave Block D11 blank.

(B) Enter one of the two codes. *(1) Code Y—Yes.* Enter code Y if the contractor represents in the provision at FAR 52.219–7019, Small Business Concern Representation for the Small Business Competitiveness Demonstration Program, that it is an emerging small business concern.

(2) Code N—No. Enter code N if code Y does not apply.

(e) *Part E of the DD Form 350.* Part E gathers data on specialized items that may not become permanent reporting elements.

(1) Block E1, Contracted Advisory and Assistance Services. Enter one of the two codes.

(i) *Code Y—Yes.* Enter code Y if the action includes any contracted advisory and assistance services (CAAS) as defined in FAR 37.2.

(ii) *Code N—No.* Enter code N if code Y does not apply.

(2) Block E2, Set-Aside Value. (i) Complete Block E2 only if the contracting action is with a public or private organization for the blind or other severely handicapped and was awarded as a result of the organization's participation in a total or partial small business set-aside (FAR 19.501(k)). Otherwise, leave Block E2 blank.

(ii) Enter the dollar amount (i.e., contract face value) of the set-aside portion of the award. Use whole dollars.

(3) Block E3, Next Low Offer. (i) Complete Block E3 only if Block E2 is completed. Otherwise, leave Block E3 blank.

(ii) Enter the difference between the award price to the organization for the blind or other severely handicapped and the offered price from the small business firm that would have been the low offeror if organizations for the blind or other severely handicapped had not participated in the acquisition. Enter the amount in whole dollars.

(4) Blocks E4 Through E8, Reserved. Leave these blocks blank unless agency regulations specify otherwise.

(f) *Part F of the DD Form 350.* Part F identifies the reporting official.

(1) Block F1, Name of Contracting Officer or Representative. Enter the name (Last, First, Middle Initial) of the contracting officer or representative.

(2) Block F2, Signature. The person identified in Block F1 must sign.

(3) Block F3, Telephone Number. Enter the telephone number (with area code) for the individual in Block F1. Installations with Defense Switched Network (DSN) must enter the DSN number.

(4) Block F4, Date. Enter date (YYMMDD) that the DD Form 350 Report is submitted. Use two digits for each segment; use 01 through 12 for January through December. For example, enter January 2, 1999 as 990102.

(g) *Special Instructions for DD Forms 350 on Actions of $25,000 or Less Under the Small Business Competitiveness Demonstration Program.* (1) Policy on when a DD Form 350 is required on actions of $25,000 or less under the Small Business Competitiveness Demonstration Program is in 204.670–9.

(2) In general, complete these DD Forms 350 using the "regular" instructions in paragraphs (a) through (f) of this subsection. However, there are special instructions for certain blocks. The following matrix tells which apply.

DD 350 block	Regular instructions	Leave blank	Special instructions
PART A	X		
B1	X		
B2	X		
B3	X		
B4		X	
B5A	X		
B5B		X	
B5C	X		
B5D	X		
B5E		X	
B5F		X	
B5G		X	
B6	X		
B6A	X		
B6B	X		
B6C	X		
B7	X		
B8	X		
B9	X		
B10		X	
B11		X	
B12A	X		
B12B		X	
B12C		X	
B12D	X		
B12E	X		
B13	X		Use Code 9 if small purchase procedures were used.
C1	X		
C2	X		
C3	X		
C4		X	
C5	X		
C6		X	
C7	X		
C8	X		Leave blank if small purchase procedures were used.
C9	X		Leave blank if small purchase procedures were used.
C10	X		
C11		X	
C12		X	
C13A	X		
C13B	X		
C13C	X		
C13D	X		
D1	X		
D2		X	
D3		X	
D4A	X		If small purchase procedures were used, use only codes Y or Z
D4B	X		
D4C	X		
D4D	X		
D4E		X	
D5		X	
D6	X		
D7		X	
D8		X	
D9	X		
D10	X		
D11	X		
E1		X	
E2		X	
E3		X	
E4–8	X		
PART F	X		

253.204–71 DD Form 1057, Monthly contracting summary of actions $25,000 or less.

(a) *Scope of subsection.* Policy on use of a DD Form 1057 is in 204.670. This subsection 253.204–71 contains instructions on completion of the DD Form 1057.

(1) Report actions in the month they are awarded, issued, executed, or placed, except—

(i) When the price of an order or call cannot be determined when it is placed, count the action and its dollars when it is paid.

(ii) Count the following actions when the voucher is paid (count each voucher as one action)—

(A) Meals and lodging.

(B) Automatic deliveries, e.g., bread, milk, and ice cream.

(iii) The Navy Facilities Engineering Command shall use departmental procedures to report vouchers it processes on Naval shore establishment contracts for electricity and gas.

(2) Enter all dollar amounts in whole dollars only. Do not enter cents. If the net amount is a decrease, enter a minus sign (−) immediately preceding the amount to indicate a credit entry. Do not enter parentheses.

(b) *Definitions.* For purposes of this subsection—

Delivery Orders—GSA Federal Supply Schedules means only orders, and modifications of such orders, under Federal supply schedules awarded by GSA.

Delivery Orders—Other Federal Supply Schedules means only orders, and modifications of such orders, under Federal supply schedules awarded by an agency other than GSA, e.g., awarded by VA or OPM.

Delivery Orders—All Others means orders, and modifications of such orders, under basic ordering agreements (BOAs) or indefinite delivery contracts.

Other Contracting Actions means all actions that do not meet the definitions in this paragraph (b) of a delivery order.

Small Purchase Procedures is defined in FAR part 13. It includes purchase orders and orders under blanket purchase agreements (BPAs) and modifications to small purchase actions.

(c) *Section A, General Information.* (1) Block, A1, Report for Month Ending. Enter the last day of the month in which the report is submitted. Enter it as year, month, and day, using a two digit number for each segment and 01 through 12 for January through December. For example, for the month ending April 30, 1999, enter 990430.

(2) Block A2, Contracting Office. Enter sufficient detail to establish the identity of the contracting office submitting the report in Blocks 2 a and b.

(3) Block A3, Reporting Office Code. Enter the code assigned to the contracting office by the departmental data collection point in 204.670-8.

(d) *Section B, Contracting Actions.* (1) Block B1, Tariff or Regulated Acquisitions. Enter the number and dollar value of contracting actions (including modifications that will also be reported in Block B8) with tariff or regulated industries (industries with sole source and service rates which are fixed or adjusted by a Federal, State, or other public regulatory body).

(2) Block B2, Foreign/Interagency. (i) Enter the total number and dollar value of contracting actions (including modifications that will also be reported in Block B8)—

(A) For foreign military sales (FMS) or other arrangement where the foreign government or international organization is paying all or part of the cost of the action.

(B) Placed directly with foreign governments under the terms of an international agreement, e.g., base maintenance performed with the foreign government acting as the contractor (any other actions directly with foreign governments go in Block B5).

(C) With another Federal agency or Government corporation, e.g., Federal Prison Industries.

(ii) Enter the subtotals in Blocks B2 a and b for the number and dollar value of contracting actions, including modifications that will also be reported in Block B8 for—

(A) Block B2a, FMS/International Agreements. Enter subtotals for paragraphs (d)(2)(i) (A) and (B) of this subsection.

(B) Block B2b, Action with Another Federal Agency. Enter subtotal for paragraph (d)(2)(i)(C) of this subsection.

(3) Block B3, Small Business. (i) Enter the total number and total dollar value of contracting actions (including modifications which will also be reported in Block B8) where the—

(A) Contractor is a small business concern: and

(B) Place of performance is in the United States and outlying areas (see 204.670-1).

(ii) Enter the subtotals for the number and dollar value of contracting actions (including modifications that will also be reported in Block B8) for—

(A) Block B3a, Small Purchase Procedures.

(B) Block B3b, Delivery Orders—GSA FSS.

(C) Block B3c, Delivery Orders—Other FSS.

(D) Block B3d, Deliver Orders—Other.

(E) Block B3e, Other Contracting Actions.

(4) Block B4, Large Business. (i) Enter the total number and dollar value of contracting actions (including modifications which will also be reported in Block B8) where the—

(A) Contractor is a large business concern; and

(B) Place of performance is in the United States and outlying areas.

(ii) Enter the subtotals for the number and dollar value of contracting actions (including modifications that will also be reported in Block B8) for—

(A) Block B4a, Small Purchase Procedures.

(B) Block B4b, Delivery Orders—GSA FSS.

(C) Block B4c, Delivery Orders—Other FSS.

(D) Block B4d, Delivery Orders—Other.

(E) Block B4e, Other Contracting Actions.

(5) Block B5, Domestic or Foreign Entities Performing Outside the United States. (i) Enter the total number and dollar value of contracting actions (including modifications that will also be reported in Block B8) where the place of performance is outside the United States and outlying areas (see 204.670-1(c)). This includes actions placed directly with a foreign government that are not under international agreements (see paragraph (d)(2)(i)(B) of this subsection). It does not matter whether the contractor is domestic or foreign.

(ii) Enter the subtotals for the number and dollar value of actions (including modifications that will also be reported in Block B8) for—

(A) Block B5a, Small Purchase Procedures.

(B) Block B5b, Delivery Orders—GSA FSS.

(C) Block B5c, Delivery Orders—Other FSS.

(D) Block B5d, Delivery Orders—Other.

(E) Block B5e, Other Contracting Actions.

(6) Block B6, Educational, Nonprofit & Other. (i) Enter the total number and dollar value of contracting actions (including modifications that will also be reported in Block B8) with—

(A) Educational institutions;

(B) Not-for-profit and nonprofit institutions (defined in FAR 31.107);

(C) Organizations for the blind and other severely handicapped; and

(D) Any other entities not listed in Blocks B1 through B5.

(ii) Enter the subtotals for the number and dollar value of contracting actions (including modifications that will also be reported in B) for—

(A) Block B6a, Small Purchase Procedures.

(B) Block B6b, Delivery Orders—GSA FSS.

(C) Block B6c, Delivery Orders—Other FSS.

(D) Block B6d, Delivery Orders—Other.

(E) Block B6e, Other Contracting Actions. Use this B6e to report actions with organizations for the blind and other severely handicapped.

(7) Block B7, Total Contracting Actions. (i) Add Blocks B1 through B6 and enter the totals in Block B7.

(ii) If directed by data collection point procedures, also enter the subtotals for the number and dollar value of contracting actions for—

(A) Block B7a, Small Purchase Procedures, sum of sub-blocks 3a + 4a + 5a + 6a.

(B) Block B7b, Delivery Orders—GSA FSS, sum of sub-blocks 3b + 4b + 5b + 6b.

(C) Block B7c, Delivery Orders—Other FSS, sum of sub-blocks 3c + 4c + 5c + 6c.

(D) Block B7d, Delivery Orders—Other, sum of sub-blocks 3d + 4d + 5d + 6d.

(E) Block B7e, Other Contracting Actions, sum of sub-blocks 3e + 4e + 5e + 6e.

(8) Block B8, Total Modifications Excluding Small Purchase Procedures. Enter the total number of actions and dollar value of contracting actions

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Action with Another
Enter subtotal for
(i)(C) of this subsection.
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Small Purchase

Delivery Orders—GSA

Delivery Orders—Other

Deliver Orders—Other.
Other Contracting

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Delivery Orders—GSA

Delivery Orders—Other

Delivery Orders—

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(ii) Enter the subtotals for the number and dollar value of actions (including modifications that will also be reported in Block B8) for—

(A) Block B5a, Small Purchase Procedures.

(B) Block B5b, Delivery Orders—GSA FSS.

(C) Block B5c, Delivery Orders—Other FSS.

(D) Block B5d, Delivery Orders—Other.

(E) Block B5e, Other Contracting Actions.

(6) Block B6, Educational, Nonprofit & Other. (i) Enter the total number and dollar value of contracting actions (including modifications that will also be reported in Block B8) with—

(A) Educational institutions;

(B) Not-for-profit and nonprofit institutions (defined in FAR 31.107);

(C) Organizations for the blind and other severely handicapped; and

(D) Any other entities not listed in Blocks B1 through B5.

(ii) Enter the subtotals for the number and dollar value of contracting actions (including modifications that will also be reported in B) for—

(A) Block B6a, Small Purchase Procedures.

(B) Block B6b, Delivery Orders—GSA FSS.

(C) Block B6c, Delivery Orders—Other FSS.

(D) Block B6d, Delivery Orders—Other.

(E) Block B6e, Other Contracting Actions. Use this B6e to report actions with organizations for the blind and other severely handicapped.

(7) Block B7, Total Contracting Actions. (i) Add Blocks B1 through B6 and enter the totals in Block B7.

(ii) If directed by data collection point procedures, also enter the subtotals for the number and dollar value of contracting actions for—

(A) Block B7a, Small Purchase Procedures, sum of sub-blocks 3a + 4a + 5a + 6a.

(B) Block B7b, Delivery Orders—GSA FSS, sum of sub-blocks 3b + 4b + 5b + 6b.

(C) Block B7c, Delivery Orders—Other FSS, sum of sub-blocks 3c + 4c+ 5c + 6c.

(D) Block B7d, Delivery Orders—Other, sum of sub-blocks 3d + 4d + 5d + 6d.

(E) Block B7e, Other Contracting Actions, sum of sub-blocks 3e + 4e + 5e + 6e.

(8) Block B8, Total Modifications Excluding Small Purchase Procedures. Enter the total number of actions and dollar value of contracting actions

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which are modification actions. This includes modifications to delivery orders or other contracting actions which also may be counted in other blocks in section B.

(e) *Section C, Extent Competed.* (1) Block C1, Competed.

(i) Enter the total number and dollar value of contracting actions which were competed.

(A) Include in Block C1—

(*1*) Actions not subject to Competition in Contract Act (CICA) (see FAR 6.001) where at least two quotations or offers were received;

(*2*) Small business-small purchase set-asides over the competition and price reasonableness threshold in FAR 13.106(a);

(*3*) Actions where competitive procedures were used to fulfill the requirement for full and open competition (FAR subpart 6.1);

(*4*) Actions where full and open competition was provided for after exclusion of sources, in order to establish/maintain alternative sources or to set aside an acquisition for small business (FAR subpart 6.2);

(*5*) Actions where statutory authorities for other than full and open competition (FAR subpart 6.3) were used and more than one offer was received, except as provided in paragraphs (B) (2) and (3).

(*6*) Actions resulting from a contract awarded competitively before CICA (including two-step formal advertising);

(*7*) Delivery orders/modifications under a federal supply schedule; and

(*8*) Section 8(a) awards competed under FAR 6.204.

(B) Do not include—

(*1*) Actions that meet the criteria for section C, Block C2;

(*2*) Actions awarded under the authority of FAR 6.302–5(b) (2) or (4), authorized or required by statute (report these in Section C, Block C2);

(*3*) Actions reported in section B, Blocks B1 and B2, including actions with the Federal Prison Industries. These actions are treated as not available for competition in published competition reports.

(ii) Enter the subtotals for the number and dollar value of contracting actions for—

(A) Block C1a, Small Business Concerns.

(B) Block C1b, Large Business Concerns.

(C) Block C1c, Domestic or Foreign Entities Performing Outside the United States and Outlying Areas.

(D) Block C1d, Educational, Nonprofit and Other.

(2) Block C2, Not Available for Competition. (i) Enter the total number and dollar value of contracting actions which were not available for competition.

(A) Include in Block C2—

(*1*) Actions for brand name commercial products for authorized resale;

(*2*) Actions authorized or required by statute to be awarded to a specific source or through another agency in accordance with FAR 6.302–5(b) (2) or (4); e.g., actions with qualified nonprofit agencies for the blind or other severely handicapped and noncompetitive 8(a) actions;

(*3*) Actions (including modifications) below ten percent of the small purchase threshold at FAR 13.000 made pursuant to FAR 13.106(a);

(*4*) Other contract actions where the Director of Defense Procurement has determined that there is no opportunity for competition.

(B) Do not include any actions reported in section B, Blocks B1 or B2 (e.g., actions with regulated monopolies, actions under foreign military sales or international agreements, and actions with another Federal agency or Government corporation). These actions are treated as not available for competition in published competition reports.

(ii) Enter the subtotals for the number and dollar value of contracting actions for—

(A) Block C2a, Small Business Concerns.

(B) Block C2b, Large Business Concerns.

(C) Block C2c, Domestic or Foreign Entities Performing Outside the United States.

(D) Block C2d, Educational, Nonprofit and Other.

(3) Block C3, Not Competed. (i) Enter the total number and dollar value of contracting actions which were not competed, i.e., any actions not reported in Blocks B1 or B2. Do not include actions reported in section B, Blocks B1 or B2. These actions are treated as not available for competition in published competition reports.

(ii) Enter the subtotals for the number and dollar value of actions for—

(A) Block C3a, Small Business Concerns.

(B) Block C3b, Large Business Concerns.

(C) Block C3c, Domestic or Foreign Entities Performing Outside the United States and Outlying Areas.

(D) Block C3d, Educational, Nonprofit and Other.

(f) *Section D, Research, Development, Test, and Evaluation Actions.* Do not include actions for supplies or services in support of RDT&E work that do not require the contractor to perform RDT&E.

(1) Block D1, Small Business. Enter the total number and dollar values of RDT&E actions with small business concerns.

(2) Block D2, Large Business. Enter the total number and dollar value of RDT&E actions with large business concerns.

(3) Block D3, Domestic or Foreign Entities Performing Outside the United States and Outlying Areas. Enter the total number and dollar value of RDT&E actions where the principal place of performance is outside the United States or outlying areas (see 204.670–1).

(4) Block D4, Historically Black Colleges and Universities or Minority Institutions (HBCU/MI). Enter the total number and dollar value of RDT&E actions with HBCUs or MIs.

(5) Block D5, Other Entities. Enter the total number and dollar value of RDT&E actions that were not reported in Blocks D1 through D4.

(g) *Section E, Selected Socioeconomic Statistics.* (1) Block E1, Small Business (SB) Set-Aside. (i) Enter the total number and dollar value of contracting actions which were small business set-aside actions, including awards to SDBs reported in Blocks E2, E2c, and E2d.

(ii) If the action is an emerging small business set aside (FAR 19.1002), use the most appropriate sub-block.

(iii) Enter the subtotals for the number and total dollar value of actions for—

(A) Block E1a, SB—Small Purchase Set-Aside. Enter actions pursuant to FAR 13.105.

(B) Block E1b, SB Set-Aside. Enter actions pursuant to FAR 19.502.

(2) Block E2, Small Disadvantaged Business (SDB) Actions. (i) Enter the total number and doller value of actions which were small disadvantaged business actions.

(ii) Enter the subtotals for the number and dollar value for—

(A) Block E2a, through SBA—section 8(a). Enter actions with the Small Business Administration pursuant to section 8(a) of the Small Business Act (FAR 19.8).

(B) Block E2b, SDB Set-Aside/SDB Preference. Enter actions resulting from—

(*1*) A set-aside for small disadvantaged business (SDB) (219.502–2–70);

(*2*) Application of an SDB evaluation preference (219.70); or

(*3*) SDB preferential consideration (219.502–3).

(C) Block E2c, SB—Small Purchase Set-Aside. Enter actions under FAR 13.105 where award is to an SDB, but a preference was not applied.

(D) Block E2d, SB Set-Aside. Enter actions under FAR 19.502 where award is to an SDB, but a preference was not applied nor was preferential consideration given.

(E) Block E2e, Other. Enter awards to SDB concerns where award is to an SDB not reported in Blocks E2a through E2d.

(3) Block E3, Woman-Owned Small Business. Enter total number and dollar value of contracting actions with women-owned small businesses.

(4) Block E4, HBCU/MI. Enter the total number and dollar value of contracting actions with HBCU/MIs pursuant to 226.70.

(5) Block E5, Sheltered Workshop. Enter the total number and dollar value of contracting actions with a workshop for the blind or other severely handicapped for supplies or services from the procurement list pursuant to FAR subpart 8.7.

(h) *Section F, Small Purchase Procedures—Dollar Value Ranges.* Enter in each of the dollar ranges the total number and dollar value of contracting actions which used small purchase procedures (FAR part 13). The total of section F is normally the sum of Blocks B3a, B4a, B5a, and B6a.

(i) *Section G, Remarks and Authentication.* (1) Block G1, Remarks. Enter any remarks applicable to this report.

(2) Block G2, Contracting Officer.

(i) Block G2a, Typed Name. Enter the name (last, first, middle initial) of the contracting officer or representative.

(ii) Block G2b, Signature. The person identified in Block G2a must sign.

(iii) Block G2c, Telephone Number. Enter the telephone number (with area code) of the person identified in Block G2a. Installations with Defense Switched Network (DSN) must enter their DSN number.

(3) Block G3, Date Report Submitted. Enter the date (YYMMDD) that the DD Form 1057 is submitted. Use two digits for each segment; use 01 through 12 for January through December. For example, enter January 2, 1999 as 990102.

253.208 Required sources of supplies and services.

253.208–1 DD Form 448, Military Interdepartmental Purchase Request.

(a) Use the DD Form 448 as prescribed in subpart 208.70.

(b) Prepare MIPR information in uniform contract format when possible. Overprint of fixed repetitive information is authorized.

(c) Instructions for completion of DD Form 448. (1) BLOCK 5—MIPR Number. Number the MIPR by using—

(i) The requiring department identification code as prescribed in DoD 4000.25–6–M, Department of Defense Activity Address Directory (DoDAAD);

(ii) The last digit of the fiscal year; and

(iii) The number of the particular MIPR (numbered consecutively by the requiring activity).

(2) Block 6—Amend No. Assign a suffix number. Assign amendments of the same MIPR consecutive suffix numbers.

(3) Block 9. (i) Conduct interdepartmental screening of items in accordance with FAR 8.001. Requisition items which are available from stocks of other departments as follows:

(A) Obtain items within the scope of MILSTRIP (see DoD 4000.25–1–M, Military Standard Requisitioning and Issue Procedures (MILSTRIP)) by use of DD Form 1348 (Single Line Item Requisition System Document (Manual), DoD))/1348M (Single Line Item Requisition System Document, DoD (Mechanical)).

(B) Obtain items not covered by MILSTRIP using DD Form 1149, Requisition and Invoice/Shipping Document.

(C) If, after receipt of a MIPR, it is determined the requested items are available from stock, the acquiring department shall use the MIPR to obtain the item.

(ii) Normally restrict a MIPR to one major end item, including its required spare parts, ground support equipment, and similar related items. For other than major end items, limit MIPRs to items within a single Federal supply class when possible.

(4) Block 10. (i) *Delivery Schedules.* (A) The requiring department must clearly state the required time of delivery or performance in each MIPR, taking into consideration the normal administrative lead time of the particular commodity. Delivery and performance schedules on MIPRs must be realistic (see FAR 12.1). If the acquiring department cannot accept the delivery schedule in the MIPR, the acquiring department will note that on DD Form 448–2, Acceptance of MIPR. Changes in the requested delivery schedule must be made by MIPR amendment.

(B) When a short delivery schedule is mandatory, the requiring department shall mark the MIPR "URGENT" in bold letters and provide justification for the marking.

(ii) Requiring activities must provide MILSTRIP requisition data prescribed in Appendix B of the MILSTRIP Manual for each line item which is to be delivered to each "ship to" address. Repetitive data applicable to all lines on the MIPR may be overprinted.

(iii) The requiring activity will furnish estimated weight, cube, and dimensions for each line item or a statement explaining why these data are not available.

(iv) The requiring activity shall include the name and telephone number of an individual who is thoroughly familiar with the MIPR, its attachments, and technical requirements.

(v) Prepare attachments to MIPRs in sufficient numbers so that each copy of a MIPR submitted to the acquiring department is complete with a copy of all attachments. "Ship To and Mark For" addresses in shipping instructions must include the clear text identification and DoDAAD code if assigned.

(5) Block 12—Transportation Allotment. Enter allotment data for transportation of supplies at Government expense if appropriate.

(6) Block 13—Mail Invoices to. Use this block to identify the name and address of the office to receive invoices and make payment. (i) Complete the block only if—

(A) The resulting contract is not to be paid by the Defense Contract Management Command or the Defense Finance Center; and

(B) The office to receive invoices and make payment is known at the time of preparation of the MIPR.

(ii) If payment is to be made by an office designated to receive invoices, also enter the DoDAAD code of that office.

(iii) If payment is to be made by an office other than the office to which the invoice is to be mailed, include the name, address, and DoDAAD code of the payment office as an attachment to the MIPR.

(iv) If multiple offices are to receive invoices and make payment, include the names and addresses of those offices as an attachment to the MIPR. Also include the DoDAAD code of each payment office.

(v) Whenever the payment office is included in an attachment, include a reference to the attachment in this block.

(vi) If the names and addresses of invoicing and payment offices are provided the acquiring department after submission of the MIPR, the requiring department also must provide the DoDAAD code for each payment office.

(7) Block 14. Enter allotment data for the acquisition of supplies. Enter each citation in Item 14 in the appropriate space as follows—

(i) *Accounting Classification Reference Number (ACRN).* If the

ACRN procedures of 204.7108 are used in the MIPR to relate allotment data to the MIPR item or delivery, enter the ACRN for each fund citation. (The acquiring department, when preparing the coassigned to a fund citation in the MIPR.)

(ii) *Appropriation.* Enter the ten positions as follows:

(A) First and second—Treasury Department number identifying the department or agency to which the appropriation applies or has been transferred.

(B) Third and fourth—Treasury Department number identifying the department or agency from which an appropriation has been transferred; leave blank if no transfer is involved.

(C) Fifth and sixth—Identify the appropriation fiscal year. For multiple-year appropriations, the fifth position shall be the last digit of the first year of availability, and the sixth position shall be the last digit of the final year of availability. For annual appropriations, the fifth position shall be blank, and the sixth position shall be the last digit of the fiscal year. For no-year (continuing) appropriations, the fifth position shall be blank, and the sixth position shall be "X."

(D) Seventh through tenth—Treasury Department appropriation serial number.

(iii) *Limit/Subhead.* Up to four characters; if less than four characters, leave empty spaces blank.

(iv) *Supplemental Accounting Classification Data.* Not to exceed 36 characters. Enter in accordance with departmental or agency regulations.

(v) *Accounting Station.* Enter the six character DoDAAD code of the accounting station (not used with Navy and Marine Corps funds).

(vi) *Amount.* Enter the amount for each fund citation if more than one allotment is cited.

(vii) *Additional Citations.* If space is required for additional fund citations, include as an attachment and reference the attachment on the form.

(d) When preparing a MIPR amendment, always fill out the basic information in Blocks 1 through 8. Fill out only those other blocks which vary from the data shown on the basic MIPR or a prior amendment. Insert "n/c" in items where there is no change.

(e) Change of a disbursing office cited on a DoD funded MIPR does not require a MIPR amendment when the resultant contract is assigned for administration to the Defense Contract Management Command. The administrative contracting office may issue an administrative change order, copies of which will be provided to the contracting officer for transmittal to the requiring activity.

253.208-2 DD Form 448-2, acceptance of MIPR.

(a) Use the DD Form 448-2 as prescribed in subpart 208.70.

(b) Instructions for completion of DD Form 448-2. (Complete only the applicable blocks.) (1) Block 6. Check the specific terms under which the MIPR is being accepted.

(2) Block 7. If any one of the MIPR line items is not accepted, check Block 7 and record the affected MIPR line item number and reason in Block 13.

(3) Blocks 8 and 9. Use Blocks 8 and 9 only—

(i) When Block 6c acceptance is indicated (indicate the MIPR line item numbers that will be provided under each method of financing in Blocks 8a and 9a, respectively); or

(ii) If quantities or estimated costs cited in a MIPR require adjustment (list the affected MIPR line item numbers together with the adjusted quantities or estimated costs in the columns provided under Blocks 8 and 9, as appropriate).

(4) Block 10. Whenever a MIPR is accepted in part or in total under Category II funding, forecast the estimated date of contract award.

(5) Block 11. Enter the total amount of funds required to fund the MIPR items, as accepted.

(6) Block 12. (i) Complete this block only in those cases where the amount recorded in Block 11 is not in agreement with the amount recorded in Block 5. This will serve either—

(A) As a request to the requiring department to issue a MIPR amendment to provide the additional funds; or

(B) Authority for the requiring department to withdraw the available excess funds.

(ii) When funds of two or more appropriations are involved, provide proper breakdown information in Block 13.

(7) Block 13. Use this block to record—

(i) Justification, by MIPR line item, for any additional funds required;

(ii) Explanation for rejection of MIPR whether in part or in total;

(iii) Appropriation and subhead data cited on the MIPR; and

(iv) Other pertinent data.

(c) Complete a DD Form 448-2 for all MIPR amendments involving an adjustment of funds or delivery schedule, or if requested by the requiring department.

(d) Unless otherwise agreed, provide the requiring department an original and three copies of each DD Form 448-2.

253.209 Contractor qualifications.

253.209-1 Responsible prospective contractors.

(a) *SF 1403, Preaward Survey of Prospective Contractor (General).* (i) The factors in Section III, Block 19, generally mean—

(A) *Technical Capability.* An assessment of the prospective contractor's key management personnel to determine if they have the basic technical knowledge, experience, and understanding of the requirements necessary to produce the required product or provide the required service.

(B) *Production Capability.* An evaluation of the prospective contractor's ability to plan, control, and integrate manpower, facilities, and other resources necessary for successful contract completion. This includes—

(*1*) An assessment of the prospective contractor's possession of, or the ability to acquire, the necessary facilities, material, equipment, and labor; and

(*2*) A determination that the prospective contractor's system provides for timely placement of orders and for vendor follow-up and control.

(C) *Quality Assurance Capability.* An assessment of the prospective contractor's capability to meet the quality assurance requirements of the proposed contract. It may involve an evaluation of the prospective contractor's quality assurance system, personnel, facilities, and equipment.

(D) *Financial Capability.* A determination that the prospective contractor has or can get adequate financial resources to obtain needed facilities, equipment, materials, etc.

(E) *Accounting System.* An assessment by the Defense Contract Audit Agency (DCAA) of the adequacy of the prospective contractor's accounting system. Normally, a contracting officer will request an accounting system review when soliciting contracts with progress payments or cost or incentive type contracts.

(ii) The factors in section III, Block 20, generally mean—

(A) *Government Property Control.* An assessment of the prospective contractor's capability to manage and control Government property.

(B) *Transportation.* An assessment of the prospective contractor's capability to follow the laws and regulations applicable to the movement of Government material, or overweight, oversized, hazardous cargo, etc.

(C) *Packaging.* An assessment of the prospective contractor's ability to meet all contractual packaging requirements including preservation, unit pack, packing, marking, and unitizing for shipment.

(D) *Security Clearance.* A determination that the prospective contractor's facility security clearance is adequate and current. (When checked, the surveying activity will refer this factor to the Defense Investigative Service (DIS)).

(E) *Plant Safety.* An assessment of the prospective contractor's ability to meet the safety requirements in the solicitation.

(F) *Environmental/Energy Consideration.* An evaluation of the prospective contractor's ability to meet specific environmental and energy requirements in the solicitation.

(G) *Flight Operations and Flight Safety.* An evaluation of the prospective contractor's ability to meet flight operation and flight safety requirements on solicitations involving the overhaul and repair of aircraft.

(H) *Other.* If the contracting officer wants an assessment of other than major factors A–E and other factors A–G, check this factor. Explain the desired information in the Remarks sections.

253.213 Small purchase and other simplified purchase procedures (SF's 18, 30, 44, 1165, OF's 347, 348).

(e) *OF 347 (10/83), Order for Supplies or Services, and OF 348 (10/83), Order for Supplies or Services-Schedule Continuation.* DoD uses the DD Form 1155, Order for Supplies or Services, instead of OF 347. DoD uses Optional Form 336, Continuation Sheet, instead of OF 348.

(i) Use the DD Form 1155 as prescribed in 213.505–2(b) and in accordance with the instructions at 253.213–70.

(ii) Use the OF 336, or a sheet of paper, as a continuation sheet for the DD Form 1155. Continuation sheets may be printed on the reverse of the DD Form 1155.

(iii) DD Form 1155c–1, Order for Supplies or Services (Commissary Continuation Sheet) may be used for commissary acquisitions.

253.213–70 Instructions for Completion of DD Form 1155.

(a) These instructions are mandatory if—

(1) Contract administration has been assigned outside the purchasing office; or

(2) The contractor is located in the continental United States or Canada.

(b) The entity codes (address codes) referenced in this subsection are codes published in—

(1) *DoD Activity Address Directory (DODAAD), DoD 4000.25–6–M.*

(2) *Military Assistance Program Address Directory System (MAPAD), DoD 4000.25–8–M.*

(3) *Commercial and Government Entity (CAGE) Codes Handbook H4/H8.*

(c) For orders requiring payment in Canadian currency—

(1) State the contract price in terms of Canadian dollars, followed by the initials CN; e.g., $1,647.23CN.

(2) Indicate on the face of the order—

(i) The U.S./Canadian conversion rate in effect at the time of the award; and

(ii) The U.S. dollar equivalent of the Canadian dollar amount.

(d) When the DD Form 1155 includes FMS requirements, clearly mark FMS requirement on its face. Specify within the order each FMS case identifier code by line or subline item number.

(e) Instructions for DD Form 1155 entries. (Instructions apply to both purchase orders and delivery orders, except Block 2, which applies only to delivery orders, and Block 12, which applies only to purchase orders.)

Block

1 Contract/Purch Order No.—

Enter the Procurement Instrument Identification (PII) number and, when applicable, the supplementary identification number for contracts and purchase orders as prescribed in subpart 204.70.

2 Delivery Order No.—

Enter PII number for delivery orders, when applicable, as prescribed in subpart 204.70.

3 Date of Order—

Enter the two position numeric year, three position alpha month, and two position numeric day.

4 Requisition/Purch Request No.—

Enter the number authorizing the purchase. When the number differs by line item, list it in the schedule and annotate this block, "see schedule."

5 Priority—

Enter the appropriate Program Identification Code as identified in Schedule I to the Defense Priorities and Allocations System Regulation.

6 Issued by—

Enter the name and address of the issuing office. In the code block, enter the DODAAD code for the issuing office. Directly below the address, enter: Buyer/Symbol: followed by the buyer's name and routing symbol. Directly below the buyer/symbol, enter: Phone: followed by the buyer's phone number and extension.

7 Administered by—

Enter the name and address of the contract administration activity. On purchase orders retained by purchasing offices for administration, mark this block, "see block 6." Enter in the code block the DODAAD code of the contract administration activity. In the lower right or left-hand corner, enter the criticality designator code from FAR 42.1105.

8 Delivery FOB—

Check the applicable box.

9 Contractor—

(i) Enter the full business name and address of the contractor. Enter in the first code block, the CAGE code of the contractor.

(ii) If it is known that all the work covered by the order is to be performed at an address different from the address represented by the contractor's code, and any contract administration function will be required at that facility, enter in the facility code block the organizational entity code for that facility, i.e., H8–1/H8–2 code for a non-Government entity or DODAAD code for a Government entity. (Use DODAAD codes only to indicate "performed at" locations for orders specifying services at a Government location.) If it is known that multiple facilities are involved, enter the codes for all facilities at which work is to be performed, including the contractor's code if work is performed at that address, in the Optional Form 336 Continuation Sheet and mark the facility code block with "see schedule."

10 Deliver to FOB Point by (Date)—

If a single date of delivery applies to the entire order, enter date in this block. List multiple delivery dates in the schedule and mark this block "see schedule."

11 Mark if Business—

Check all applicable blocks.

12 Discount Terms—

Enter the discount for prompt payment in terms of percentages and corresponding days. Express the percentages in whole numbers and decimals, e.g., 3.25%—10 days; 0.50%—20 days.

13 Mail Invoices to—

Enter a reference to the block number containing the address to which invoices are to be mailed. When not in Blocks 6, 7, 14, or 15, insert in Block 13, "see schedule."

14 Ship to—

If a single ship-to point applies to the entire order, enter the name and address of that point in this block. In the code block, enter the DODAAD code or for FMS shipments, enter the MAPAD code. Enter multiple ship-to points in the schedule and mark this block, "See Schedule."

15 Payment Will be Made by—

Enter the name and address of the activity making payment. Enter in the code block, the DODAAD code of the paying activity.

16 Type of Order—

Check the appropriate box. If a purchase order:

(i) Identify the type of quotation, i.e., oral, letter or TWX, on which the order is based.

(ii) Check the box when acceptance of the purchase order is required and enter the number of copies of the order to be returned to the issuing office.

17 Accounting and Appropriation Data/Local Use—

Enter the accounting classification and the accounting classification reference number(s) in accordance with 204.7106.

Block

18 Item No.—

Enter an item number for each item of supply or service in accordance with subpart 204.71.

19 Schedule of Supplies/Services—

The schedule contains several elements of data. The order and arrangement of data in the schedule is mandatory for purchase and delivery orders assigned to DCMC or the military departments for administration and is encouraged for all orders.

(1) *National Stock Number (NSN)*—

Total item quantity for the line or subline item number followed by the appropriate national stock number or the word "none" if an NSN has not been assigned. On the same line and adjacent to NSN, enter the words "Total Item Quantity." This phrase is used in conjunction with the total quantity, unit of issue, unit price, and dollar amount of the stock number or item cited (see entries for Blocks 20, 21, 22, and 23).

(2) *Item Identification*—

Enter first the most descriptive noun or verb of the supplies or services to be furnished, supplemented by additional description as prescribed in FAR part 10. If multiple accounting classifications apply to the contract, enter the accounting classification reference number.

(3) *Quantity Variance*—

Enter the quantity variance permitted for the line item in terms of percentages, indicating whether the percentage is plus or minus and if applicable to each destination.

(4) *Inspection/Acceptance*—

Enter the point at which inspection/acceptance will take place.

(5) *Preservation and Packaging*—

Enter the preservation requirements for the item described. These requirements may be expressed in terms of MIL-STD-2073-1, DoD Material Procedures for Development and Application of Packaging Requirements, and MIL-STD-2073-2, Packaging Requirements, codes. They may also be expressed by reference to applicable specifications.

(6) *Packing*—

When required, enter the packing level designator and specification, standard, or document in which the requirements are stated or state the specific requirements.

(7) *Unitization*—

When desired by the requiring activity, a requirement for cargo unitization for a particular destination should be specified for shipments involving two or more shipping containers having an aggregate total of not less than 20 cubic feet or 200 pounds.

(8) *Ship To*—

Enter the DODAAD or MILSCAP H8-1/H8-2 (cage) as appropriate for the entity code of the ship-to point on the first line and the corresponding name and address on succeeding lines. If multiple accounting classifications apply to the same line or subline item, enter the accounting classification reference number. When several items are to be shipped to the same point, the code will be listed; but it will not be necessary to repeat the address.

(9) *Delivery Date*—

When multiple delivery dates apply, enter the required date of delivery on the same line with ship-to code.

(10) *Mark For*—

Enter the DODAAD or MILSCAP H8-1/H8-2 (cage) as appropriate for the entity code on the first line and name and address of the ultimate recipient of the supplies and services on succeeding lines.

20 Quantity Ordered/Accepted—

Enter the total quantity ordered for the line item. If applicable, enter the breakdown on quantities for each ship-to point within the line item.

21 Unit—

Enter the unit of measure applicable to the line item.

22 Unit Price—

Enter the unit price applicable to the line item.

23 Amount—

Enter the extended dollar amount (quantity x unit price) for each line item.

24 Contracting/Ordering Officer—

Enter the contracting/ordering officer's signature.

25 Total Amount—

Enter the total dollar amount for all line items on the order.

26 thru 42 These blocks are used in the receiving and payment functions. Procedures for making entries are prescribed by the respective departments.

253.215 Contracting by negotiation.

253.215-70 DD Form 1547, Record of Weighted Guidelines Application.

(a) Use the DD Form 1547 as prescribed in 215.970.

(b) *General instructions.* (1) Report amounts as they relate to the price of the contract action without regard to funding status (e.g., amounts obligated).

(2) Express all dollar values to the nearest whole value (e.g., $200,008.55=$200,009).

(3) Express all percentages to the nearest hundredth or thousandth as appropriate (e.g., interest rate—8.25% or 8.257%).

(4) If the contracting office is exempt from reporting to the DoD management information system on profit and fee statistics (see 215.975), do not complete Blocks 1, 4, 5, 6, 7, 8, 9, 10, 11, or 12.

(5) Report an option amount for additional quantities as a separate contract action when exercised.

(6) Even though fixed-price type contract actions are negotiated on the basis of total price, prepare the negotiation summary portion of the DD Form 1547 showing the contracting officer's best estimates of cost and profit.

(7) Ensure compliance with 215.871-5.

(8) For indefinite delivery-type contracts, prepare a consolidated DD Form 1547 for annual requirements expected to exceed $500,000.

(9) Prepare a consolidated DD Form 1547, if possible, when multiple profit rates apply to a single negotiation.

(c) *Specific instructions for completion of DD Form 1547.* (1) Block 1—Report No. Enter the four-digit local control number followed by a dash and the last two digits of the fiscal year (e.g., 0004-90 for 4th action in fiscal year 1990). Each field contracting office participating in profit reporting shall establish a control system for consecutively numbering completed DD Forms 1547. Always start with 0001 at the beginning of each fiscal year and always use four digits. This number will identify the specific DD Form 1547 in DoD's management information system and will be used for follow-up actions.

(2) Block 2—Basic Procurement Instrument Identification No. Enter the identifying contract number assigned per 204.70, (Block B1 of the DD 350).

(3) Block 3—SPIIN. Enter the supplemental procurement instrument identification number for supplemental agreements or other modifications, assigned per 204.70, (Block B2 of the DD 350).

(4) Block 4—Date of Action. (i) Year. Enter the last two digits of the year the action was negotiated (e.g., 90 for 1990).

(ii) Month. Enter the two digit number for the month the action was negotiated (e.g., 09 for September).

(5) Block 5—Contracting Office Code. Enter the code assigned the contracting office per DoD Procurement Coding Manual, Volume III, (Block A3 of the DD 350).

(6) Block 6—Name of Contractor. Enter the contractor's name (including division name). (Block B5C of the DD 350).

(7) Block 7—DUNS Number. Enter the contractor establishment code number, (Block B5A of the DD 350).

(8) Block 8—Federal Supply Code. Enter the code used in Block B12A of the DD 350.

(9) Block 9—DOD Claimant Program. Enter the code used in Block B12B of the DD 350.

(10) Block 10—Contract Type Code. Enter the appropriate code—

Description	Code
FPR (all types)	A
FPI (all types)	L
FFP	J
FP(E)	K
CPFF	U

Description	Code
CPIF (all types)	V

(11) Block 11—Type Effort. Enter the appropriate code—

Description	Code
Manufacturing	1
Research and Development	2
Services	3

(12) Block 12—Use Code. Enter the appropriate code for use of the weighted guidelines method—

Description	Code
Standard weighted guidelines method (215.971)	2
Alternate performance risk, no facilities employed (215.971-2(c)(2))	1
Alternate facilities capital employed (215.971-4(c)(2))	3
Alternate structured approach (215.973)	4
Modified weighted guidelines approach (215.972)	5

(13) Blocks 13 through 20—Cost Category Objective. Enter the prenegotiation objectives. Include contractor independent research and development/bid and proposal in the general and administrative expenses in Block 19.

(14) Blocks 21 through 29—Weighted Guidelines Profit Factors. Enter the amounts determined in 215.971 or 215.972. This section is not required to be completed when using an alternate structured approach (215.973).

(15) Block 30—Total Profit Objective. Enter the total of Blocks 24, 25, 26, 28, and 29. This section is not required to be completed when using an alternate structured approach (215.973).

(16) Blocks 31 through 35—Negotiation Summary. Complete as indicated on the form. For fixed-price type contracts negotiated on a total price basis, enter the contracting officer's best estimates of cost and profit. When using an alternate structured approach, see 215.973(b)(2) for offsets.

(17) Blocks 36 through 39—Contracting Officer Approval. The contracting officer shall sign the form. Include a complete (with area code) commercial telephone number to facilitate any follow-up actions.

(18) Blocks 96 through 99—Optional Use. Complete in accordance with department/agency procedures, if any.

Note: Department of Defense Acquisition Forms are not published in the **Federal Register** or the Code of Federal Regulations. For the convenience of the user, the list set forth below includes section numbers, form numbers, and titles.

253.303–250 Material Inspection and Receiving Report.
253.303–250c Material Inspection and Receiving Report-Continuation Sheet.
253.303–250–1 Tanker/Barge Material Inspection and Receiving Report.
253.303–346 Raw (Basic Processed) and Semi-Fabricated Stock Form.
253.303–347 Bill of Materials for—Sub-Contracted Parts—Purchased Parts—Government-Furnished Property.
253.303–350 Individual Contracting Action Report.
253.303–375 Production Progress Report.
253.303–375c Production Progress Report (Continuation).
253.303–375–2 Delay in Delivery.
253.303–416 Purchase Request for Coal, Coke or Briquettes.
253.303–428 Communication Service Authorization.
253.303–448 Military Interdepartmental Purchase Request.
253.303–448–2 Acceptance of MIPR.
253.303–879 Statement of Compliance.
253.303–882 Report of Inventions and Subcontracts.
253.303–1057 Monthly Contracting Summary of Actions $25,000 or Less.
253.303–1114 Instructions for Use of Contract Termination Settlement and Inventory Schedule Forms.
253.303–1131 Cash Collection Voucher.
253.303–1149 Requisition and Invoice/Shipping Document.
253.303–1155 Order for Supplies or Services.
253.303–1155c–1 Order for Supplies or Services (Commissary Continuation Sheet).
253.303–1342 Property Record.
253.303–1348 Single Line Item Requisition System Document (Manual).
253.303–1348m Single Line Item Requisition System Document (Mechanical).
253.303–1348–1 Single Line Item Release/Receipt Document.
253.303–1384 Transportation Control and Movement Document.
253.303–1391 FY 19____ Military Construction Project Data.
253.303–1419 Industrial Plant Equipment Requisition.
253.303–1423 Contract Data Requirements List
253.303–1423–1 Contract Data Requirements List (1 Data Item).
253.303–1423–2 Contract Data Requirements List (2 Data Items).
243.303–1425 Specifications and Standards Requisition.
253.303–1484 Post-Award Conference Record.
253.303–1507 Work Stoppage Report.
253.303–1513 United States Department of Defense Offer and Acceptance.
253.303–1535 Request/Approval for Authority to Advertise.
253.303–1547 Record of Weighted Guidelines Application.
253.303–1568 Labor Standards Investigation Summary Sheet.
253.303–1592 Contract Cross Reference Data.
253.303–1593 Contract Administration Completion Record.
253.303–1594 Contract Completion Statement.
253.303–1597 Contract Closeout Check-List.
253.303–1598 Contract Termination Status Report.
253.303–1635 Plant Clearance Case Register.
253.303–1637 Notice of Acceptance of Inventory Schedules.
253.303–1638 Report of Disposition of Contractor Inventory.
253.303–1639 Scrap Warranty.
253.303–1640 Request for Plant Clearance.
253.303–1641 Disposal Determination Approval.
253.303–1651 Industrial Equipment Modernization Program Post Analysis Report.
253.303–1653 Transportation Data for Solicitations.
253.303–1654 Evaluation of Transportation Cost Factors.
253.303–1659 Application for U.S. Government Shipping Documentation/Instructions.
253.303–1662 Property in the Custody of Contractors.
253.303–1664 Data Item Description.
253.303–1707 Information to Offerors or Quoters.
253.303–1851 Automation Equipment Requirement.
253.303–1861 Contract Facilities Capital Cost of Money.
253.303–1921 Cost Data Summary Report.
253.303–1921–1 Functional Cost-Hour Report.
253.303–2025 Packaging Change Recommendation/Approval.
253.303–2051 Request for Assignment of a Commercial and Government Entity (CAGE) Code.
253.303–2051–1 Request for Information/Verification of Commercial and Government Entity (CAGE) Code
253.303–2139 Subcontract Report of Foreign Purchases.
253.303–2222 Short Form Research Contract (SFRC) Modification.
253.330–2222–1 Representations and Certifications from Offerors Submitting Proposals Under DFARS 35.70.
253.303–2222–2 Short Form Research Contract Research Proposal Cover Page.
253.303–2579 Small Business Coordination Record.

SUBCHAPTER I—AGENCY SUPPLEMENTARY REGULATIONS

PART 270—RECOVERY OF NONRECURRING COSTS AND ROYALTY FEES ON COMMERCIAL SALES

Sec.
270.000 Scope.
270.001 Definitions.
270.002 Policy.
270.003 Applicability.
270.004 Determining recoupment charges.
270.005 Waivers (including reductions).
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253.303–1593 Contract Administration Completion Record.
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253.303–1597 Contract Closeout Check-List.
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253.303–1635 Plant Clearance Case Register.
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253.303–1638 Report of Disposition of Contractor Inventory.
253.303–1639 Scrap Warranty.
253.303–1640 Request for Plant Clearance.
253.303–1641 Disposal Determination Approval.
253.303–1651 Industrial Equipment Modernization Program Post Analysis Report.
253.303–1653 Transportation Data for Solicitations.
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253.303–1664 Data Item Description.
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253.303–1861 Contract Facilities Capital Cost of Money.
253.303–1921 Cost Data Summary Report.
253.303–1921–1 Functional Cost-Hour Report.
253.303–2025 Packaging Change Recommendation/Approval.
253.303–2051 Request for Assignment of a Commercial and Government Entity (CAGE) Code.
253.303–2051–1 Request for Information/Verification of Commercial and Government Entity (CAGE) Code
253.303–2139 Subcontract Report of Foreign Purchases.
253.303–2222 Short Form Research Contract (SFRC) Modification.
253.330–2222–1 Representations and Certifications from Offerors Submitting Proposals Under DFARS 35.70.
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SUBCHAPTER I—AGENCY SUPPLEMENTARY REGULATIONS

PART 270—RECOVERY OF NONRECURRING COSTS AND ROYALTY FEES ON COMMERCIAL SALES

Sec.

270.000 Scope.
270.001 Definitions.
270.002 Policy.
270.003 Applicability.
270.004 Determining recoupment charges.
270.005 Waivers (including reductions).
270.006 Department of Defense (DoD) focal points.
270.007 Contract clause.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

270.000 Scope.

(a) This part sets forth policy and procedures established in DoDD 2140.2, Recoupment of Nonrecurring Costs on Sales of U.S. Products and Technology, for the recovery of nonrecurring costs and royalty fees on commercial sales by contractors of products, components, and related technology developed with DoD appropriations or, in special cases, with foreign military sale (FMS) customer funds.

(b) The policy applies to material, equipment, licenses, derivative items, computer software, and technical data.

(c) The objective of recovery is to ensure that a non-U.S. Government customer pays a fair share of the nonrecurring investment costs incurred by the DoD or a foreign government.

270.001 Definitions.

Definitions of terms used in this part are in the clause at 252.270–7000, Recovery of Nonrecurring Costs and Royalty Fees on Commercial Sales.

270.002 Policy.

(a) DoD policy is to recover a fair share of its investment in nonrecurring costs related to products, and/or a fair price for its contribution to the development of related technology, when the products are sold, and/or when technology is transferred to a foreign government, international organization, foreign commercial firm, or domestic organization (hereafter referred to collectively as "customers") for coproduction, assembly or licensed production for the same or derivative items. This fair share is recovered through the assessment of nonrecurring recoupment charges or royalty fees established by the DoD.

(b) In selected cases, DoD policy is to recover, on behalf of a foreign government or international organization, a fair share of the nonrecurring costs for a special feature or product paid by the foreign government or international organization under an FMS case where subsequent non-U.S. Government customers purchase the same specialized feature(s). The U.S. Government normally will not collect this recoupment on behalf of a foreign government beyond eight years from the date of the acceptance of the original DoD Offer and Acceptance (DD Form 1513) that included the nonrecurring investment.

270.003 Applicability.

(a) These policies apply to those products and technologies that were developed with DoD appropriations or funds, and in special cases foreign customer funds, on which a nonrecurring recoupment charge or royalty fee has been or will be established.

(b) In the absence of an established recoupment amount, full recovery of the nonrecurring cost charge/royalty fee is required. It is incumbent upon the contractor to notify the U.S. Government of all pending commercial sales that may be subject to a recoupment charge so that the appropriate charge may be established and identified to the contractor.

(c) Revised charges shall be effective as of the date of revision and shall not be retroactively applied to past sales or to sales consummated by a written contract between the parties before the effective date of the revised charge.

(d) The policies do not apply when the sale is to a U.S. Government organization or when a contract is awarded by DoD under the FMS Program. When a sale is made under authority of the FMS Program, charges prescribed by DoDD 2140.2, Recoupment of Nonrecurring Costs on Sales of U.S. Products and Technology, shall be assessed by the DoD official responsible for the presentation of the DD Form 1513. Such charges shall not be included in the contract price.

270.004 Determining recoupment charges.

(a) The recoupment charge is based on information recorded in DoD accounting records or DoD budget justification documents and DoD estimates of quantities to be produced. The military department may consult with the contractor to obtain contractor marketing assessments. The charge will be established by the DoD in accordance with DoDD 2140.2, Recoupment of Nonrecurring Costs on Sales of U.S. Products and Technology.

(b) If an issue concerning the amount cannot be resolved, the military department will, within 90 days, request guidance from the Director, Defense Security Assistance Agency. The contractor may request that a charge be reviewed if significant changes in factors or assumptions have occurred.

(c) When a contractor negotiates the sale, coproduction or licensed production, or transfer of technology, of a DoD developed item or a derivative of a DoD developed item, the contractor will request the appropriate charge from the DoD focal point in 270.006.

270.005 Waivers (including reductions).

(a) Waiver or reduction of the charges prescribed may be approved for a commercial sale based on the same criteria for waivers granted under FMS or if the domestic sale is in the best interest of the United States to satisfy a demonstrable right of the manufacturer or the purchaser or to obtain advantage to the U.S. Government.

(b) A waiver shall not be approved for a sale once consummated, unless the acceptance was conditional upon approval of the waiver. A waiver shall not be granted in connection with a direct commercial sale if such a waiver could not have been granted legally in connection with a sale made under the FMS Program.

(c) Requests for waivers associated with foreign sales should originate with the foreign government and shall be submitted to the Director of the Defense Security Assistance Agency. The request shall contain information regarding the extent of standardization and a statement of facts regarding the program, benefits expected and other justification, and any calculations necessary to quantify the waiver and the benefits to the U.S. Government. Waivers will be evaluated on a case-by-case basis only, and blanket waivers will not be considered. Any waiver approved for a direct commercial sale to a foreign government requires a certification by the contractor that reductions have been passed on to the customer. The Director of the Defense Security Assistance Agency is the only waiver approval authority.

(d) Requests for waivers associated with domestic sales may originate with a DoD component, or a defense contractor (vice president or higher) and shall be submitted to the Under Secretary of Defense for Acquisition. The request shall contain information regarding the dollar value of the waiver, benefit to be derived by the DoD, the names of foreign and domestic competitors, impact on the U.S. Government balance of payments, demonstrable rights of the manufacturer or purchaser, and any other justification for the waiver. Blanket waiver requests are discouraged, but may be granted in extraordinary circumstances.

270.006 Department of Defense (DoD) focal points.

DoD focal points maintain a central data base on established charges. The DoD focal points are as follows—

(a) *Army:* U.S. Army Security Affairs Command, ATTN: AMSAC–RP, 5001 Eisenhower Avenue, Alexandria, VA 22333–0001.

(b) *Navy:* Commanding Officer, Navy International Logistics Control Office, 700 Robbins Avenue (Code 10), Philadelphia, PA 19111–5095.

(c) *Air Force:* Chief, Security Assistance Division, Deputy Comptroller Cost and Economics, Department of the Air Force, Washington, DC 20330–5018.

270.007 Contract clause.

To ensure the recovery of an appropriate share of DoD investment in nonrecurring costs, use the clause at 252.270–7000, Recovery of Nonrecurring Costs and Royalty Fees on Commercial Sales, in all research, development, test, and evaluation, and production contracts and subcontracts of $1 million or more. This clause requires the contractor and qualifying subcontractors to pay the U.S. Government the amounts established by the U.S. Government in the event of the contractor's commercial sale or transfer of products or related technology, that meet the criteria of 270.003.

Appendix A—Armed Services Board of Contract Appeals

Sec.
Part 1—Charter
Part 2—Rules

Authority: 5 U.S.C. 301, U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Armed Services Board of Contract Appeals

Approved 1 May 1962.
Revised 1 May 1969.
Revised 1 September 1973.
Revised 1 July 1979.

Part 1—Charter

1. There is created the Armed Services Board of Contract Appeals which is hereby designated as the authorized representative of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy and the Secretary of the Air Force, in hearing, considering and determining appeals by contractors from decisions of contracting officers or their authorized representatives or other authorities on disputed questions. These appeals may be taken (a) pursuant to the Contract Disputes Act of 1978 (41 U.S.C. Sec. 601, et seq.), (b) pursuant to the provisions of contracts requiring the decision by the Secretary of Defense or by a Secretary of a Military Department or their duly authorized representative or board, or (c) pursuant to the provisions of any directive whereby the Secretary of Defense or the Secretary of a Military Department has granted a right of appeal not contained in the contract on any matter consistent with the contract appeals procedure. The Board may determine contract disputes for other departments and agencies by agreement. The Board shall operate under general policies established or approved by the Under Secretary of Defense (Research and Engineering).

2. Membership of the Board shall consist of attorneys at law who have been qualified in the manner prescribed by the Contract Disputes Act of 1978. Members of the Board are hereby designated Administrative Judges. There shall be appointed from members of the Board a chairman and two or more vice-chairmen. Appointment of the chairman and vice-chairmen and other members of the Board shall be made by the Under Secretary of Defense (Research and Engineering) and the Assistant Secretaries of the Military Departments responsible for procurement The chairman and vice-chairmen shall serve in that capacity for a two-year term unless sooner removed or reappointed for an additional term or terms. The Under Secretary will also designate the order in which the vice-chairmen will act for the chairman in his absence. In the absence of a vice-chairman, the chairman or acting chairman may designate a member of the Board to serve as a temporary vice-chairman.

3. It shall be the duty and obligation of the members of the Armed Services Board of Contract Appeals to decide appeals on the record of the appeal to the best of their knowledge and ability in accordance with applicable contract provisions and in accordance with law and regulation pertinent thereto.

4. The chairman of the Board shall be responsible for establishing appropriate divisions of the Board to provide for the most effective and expeditous handling of appeals. He shall be reponsible for assigning appeals to the divisions for decision without regard to the military department or other procuring agency which entered into the contract. A division may consist of one or more members of the Board. The chairman shall designate one member of each division as the division head. The division heads and the chairman and vice-chairmen shall constitute the senior deciding group of the Board. A majority of the members of a division or of the senior deciding group shall constitute a quorum for the transaction of the business of each, respectively. Decisions of the Board shall be by majority vote of the members of a division participating and the chairman and a vice-chairman, unless the chairman refers the appeal for decision by the senior deciding group. The decision of the Board in cases so referred to the senior deciding group shall be by majority vote of the participating members of that group. The chairman may refer an appeal of unusual difficulty, significant precedential importance, or serious dispute within the normal decision process for decision by the senior deciding group. An appeal involving $50,000 or less may be decided by a single member or fewer members of the Board than hereinbefore provided for cases of unlimited dollar amount, under accelerated or expedited procedures as provided in the Rules of the Board and the Contract Disputes Act of 1978.

5. The Board shall have all powers necessary and incident to the proper performance of its duties. Subject to the approval of the Under Secretary of Defense (Research and Engineering) and the Assistant Secretaries of the Military Departments responsible for procurement, the Board shall adopt its own methods of procedure, and rules and regulations for its conduct and for the preparation and presentation of appeals and issuance of opinions. The Military Departments and other procuring agencies shall provide legal personnel to prepare and present the contentions of the departments or agencies in relation to appeals filed with the Board. It shall not be necessary for the Board, unless it otherwise desires, to communicate with more than one trial attorney in each of the departments or agencies concerning the preparation and presentation of appeals and the obtaining of all records deemed by the Board to be pertinent thereto.

6. Any member of the Board or any examiner, designated by the chairman, shall be authorized to hold hearings, examine witnesses, and receive evidence and argument for consideration and determination of the appeal by the designated division. A member of the Board shall have authority to administer oaths and issue subpoenas as specified in section 11 of the Contract Disputes Act of 1978. The chairman may request orders of the court in cases of contumacy or refusal to obey a subpoena in the manner prescribed in that section.

7. The chairman shall be responsible for the internal organization of the Board and for its administration. He shall provide within approved ceilings for the staffing of the Board with non-member personnel, including hearing examiners, as may be required for the performance of the functions of the Board. The chairman shall appoint a recorder of the Board. Such personnel shall be responsible to and shall function under the direction, supervision and control of the chairman.

8. The Board will be serviced by the Department of the Army for administrative support for its operations as required. Administrative support will include budgeting, funding, fiscal control, manpower control and utilization, personnel administration, security administration, supplies, and other administrative services. The Departments of the Army, Navy, Air Force and the Office of the Secretary of Defense will participate in financing the Board's operations on an equal basis and to the extent determined by the Assistant Secretary of Defense (Comptroller). The cost of processing appeals for departments and agencies other than those in the Department of Defense will be reimbursed.

9. The chairman of the Board will furnish the Secretary of Defense and to the Secretaries of the Military Departments by October 31 of each year a report containing an account of the Board's transactions and proceedings for the preceding fiscal year. Within 30 days following the close of a calendar quarter, the chairman shall forward a report of the Board's proceedings for the quarter to the Under Secretary of Defense (Research and Engineering), the Assistant Secretaries of the Military Departments responsible for procurement, and to the Director of the Defense Logistics Agency. Such reports shall disclose the number of appeals received, cases heard, opinions rendered, current reserve of pending matters, and such other information as may be required.

10. The Board shall have a seal bearing the following inscription: "Armed Services Board of Contract Appeals." This seal shall be affixed to all authentications of copies of records and to such other instruments as the Board may determine.

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7. The chairman shall be responsible for the internal organization of the Board and for its administration. He shall provide within approved ceilings for the staffing of the Board with non-member personnel, including hearing examiners, as may be required for the performance of the functions of the Board. The chairman shall appoint a recorder of the Board. Such personnel shall be responsible to and shall function under the direction, supervision and control of the chairman.

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10. The Board shall have a seal bearing the following inscription: "Armed Services Board of Contract Appeals." This seal shall be affixed to all authentications of copies of records and to such other instruments as the Board may determine.

11. This revised charter is effective April 21, 1980.

Approved:

W. Graham Claytor, Jr.
Deputy Secretary of Defense
Clifford L. Alexander, Jr.
Secretary of the Army
E. Hidalgo
Secretary of the Navy
Hans M. Mark
Secretary of the Air Force

Part 2—Rules

Approved 15 July 1963.
Revised 1 May 1969.
Revised 1 September 1973.
Revised 30 June 1980.

Preface

I. Jurisdiction for Considering Appeals

The Armed Services Board of Contract Appeals (referred to herein as the Board) shall consider and determine appeals from decisions of contracting officers pursuant to the Contract Disputes Act of 1978 Pub. L. 95-563, 41 U.S.C. 601–613) relating to contracts made by (i) the Departments of Defense, Army, Navy and Air Force or (ii) any other executive agency when such agency or the Administrator for Federal Procurement Policy has designated the Board to decide the appeal.

II. Location and Organization of the Board

(a) The Board's address is Skyline Six, 5109 Leesburg Pike, 7th Floor, Falls Church, VA 22041, telephone (202) 756–8500 (receptionist), 756–8502 (recorder).

(b) The Board consists of a chairman, two or more vice chairmen, and other members, all of whom are attorneys at law duly licensed by a state, commonwealth, territory, or the District of Columbia. Board members are designated Administrative Judges.

(c) There are a number of divisions of the Armed Services Board of Contract Appeals, established by the Chairman of the Board in such manner as to provide for the most effective and expeditious handling of appeals. The Chairman and a Vice Chairman of the Board act as members of each division. Appeals are assigned to the divisions for decision without regard to the military department or other procuring agency which entered into the contract involved. Hearing may be held by a designated member (Administrative Judge), or by a duly authorized examiner. Except for appeals processed under the expedited or accelerated procedure, the decision of a majority of a division constitutes the decision of the Board, unless the chairman refers the appeal to the Board's Senior Deciding Group (consisting of the chairman, vice chairmen and all division heads), in which event a decision of a majority of that group constitutes the decision of the Board. Appeals referred to the Senior Deciding Group are those of unusual difficulty, significant precedential importance, or serious dispute within the normal division decision process. For decisions of appeals processed under the expedited or accelerated procedure, see rules 12.2(c) and 12.3(b).

Preliminary Procedures

1. *Appeals, How Taken.* (a) Notice of an appeal shall be in writing and mailed or otherwise furnished to the Board within 90 days from the date of receipt of a contracting officer's decision. A copy thereof shall be furnished to the contracting officer from whose decision the appeal is taken.

(b) Where the contractor has submitted a claim of $50,000 or less to the contracting officer and has requested a written decision within 60 days from receipt of the request, and the contracting officer has not done so, the contractor may file a notice of appeal as provided in subparagraph (a) above, citing the failure of the contracting officer to issue a decision.

(c) Where the contractor has submitted a properly certified claim over $50,000 to the contracting officer or has requested a decision by the contracting officer which presently involves no monetary amount pursuant to the Disputes clause, and the contracting officer has failed to issue a decision within a reasonable time, taking into account such factors as the size and complexity of the claim, the contractor may file a notice of appeal as provided in subparagraph (a) above, citing the failure of the contracting officer to issue a decision.

(d) Upon docketing of appeals filed pursuant to (b) or (c) hereof, the Board may, at its option, stay further proceedings pending issuance of a final decision by the contracting officer within such period of time as is determined by the Board.

(e) In lieu of filing a notice of appeal under (b) or (c) hereof, the contractor may request the Board to direct the contracting officer to issue a decision in a specified period of time, as determined by the Board, in the event of undue delay on the part of the contracting officer.

2. *Notice of Appeal, Contents of.* A notice of appeal should indicate that an appeal is being taken and should identify the contract (by number), the department and/or agency involved in the dispute, the decision from which the appeal is taken, and the amount in dispute, if known. The notice of appeal should be signed personally by the appellant (the contractor taking the appeal), or by the appellant's duly authorized representative or attorney. The complaint referred to in rule 6 may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

3. *Docketing of Appeals.* When a notice of appeal in any form has been received by the Board, it shall be docketed promptly. Notice in writing shall be given to the appellant with a copy of these rules, and to the contracting officer.

4. *Preparation, Content, Organization, Forwarding, and Status of Appeal File*— (a) *Duties of Contracting Officer*—Within 30 days of receipt of an appeal, or notice that an appeal has been filed, the contracting officer shall assemble and transmit to the Board an appeal file consisting of all documents pertinent to the appeal, including:

(1) The decision from which the appeal is taken;

(2) The contract, including pertinent specifications, amendments, plans and drawings;

(3) All correspondence between the parties relevant to the appeal, including the letter or letters of claim in response to which the decision was issued;

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) Any additional information considered relevant to the appeal.

Within the same time above specified the contracting officer shall furnish the appellant a copy of each document he transmits to the Board, except those in subparagraph (a)(2) above. As to the latter, a list furnished appellant indicating specific contractual documents transmitted will suffice.

(b) *Duties of the Appellant*—Within 30 days after receipt of a copy of the appeal file assembled by the contracting officer, the appellant shall transmit to the Board any documents not contained therein which he considers relevant to the appeal, and furnish two copies of such documents to the government trial attorney.

(c) *Organization of Appeal File*—Documents in the appeal file may be originals or legible facsimiles or authenticated copies, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file.

(d) *Lengthy Documents*—Upon request by either party, the Board may waive the requirement to furnish to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file when inclusion would be burdensome. At the time a party files with the Board a document as to which such a waiver has been granted he shall notify the other party that the document or a copy is available for inspection at the offices of the Board or of the party filing same.

(e) *Status of Documents in Appeal File*—Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision. However, a party may object, for reasons stated, to consideration of a particular document or documents reasonably in advance of hearing or, if there is no hearing, of settling the record. If such objection is made, the Board shall remove the document or documents from the appeal file and permit the party offering the document to move its admission as evidence in accordance with rules 13 and 20.

(f) Notwithstanding the foregoing, the filing of the rule 4 (a) and (b) documents may be dispensed with by the Board either upon request of the appellant in his notice of appeal or thereafter upon stipulation of the parties.

5. *Motions.* (a) Any motion addressed to the jurisdiction of the Board shall be promptly filed. Hearing on the motion shall be afforded on application of either party. However, the Board may defer its decision on the motion pending hearing on both the merits and the motion. The Board shall have the right at any time and on its own initiative to raise the issue of its jurisdiction to proceed with a particular case, and shall do so by an

appropriate order, affording the parties an opportunity to be heard thereon.

(b) The Board may entertain and rule upon other appropriate motions.

6. *Pleadings*—(a) *Appellant*—Within 30 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board an original and two copies of a complaint setting forth simple, concise and direct statements of each of its claims. Appellant shall also set forth the basis, with appropriate reference to contract provisions, of each claim and the dollar amount claimed, to the extent known. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form is required. Upon receipt of the complaint, the Board shall serve a copy of it upon the Government. Should the complaint not be received within 30 days, appellant's claim and appeal may, if in the opinion of the Board the issues before the Board are sufficiently defined, be deemed to set forth its complaint and the Government shall be so notified.

(b) *Government*—Within 30 days from receipt of the complaint, or the aforesaid notice from the Board, the Government shall prepare and file with the Board an original and two copies of an answer thereto. The answer shall set forth simple, concise and direct statements of Government's defenses to each claim asserted by appellant, including any affirmative defenses available. Upon receipt of the answer, the Board shall serve a copy upon appellant. Should the answer not be received within 30 days, the Board may, in its discretion, enter a general denial on behalf of the Government, and the appellant shall be so notified.

(c) A party who intends to raise an issue concerning the law of a foreign country shall give notice in his pleadings or other reasonable written notice. The Board, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under Rules 11, 13 or 20. The determination of foreign law shall be treated as a ruling on a question of law.

7. *Amendments of Pleadings or Record.* The Board upon its own initiative or upon application by a party may order a party to make a more definite statement of the complaint or answer, or to reply to an answer. The Board may, in its discretion, and within the proper scope of the appeal, permit either party to amend its pleading upon conditions fair to both parties. When issues within the proper scope of the appeal, but not raised by the pleadings, are tried by express or implied consent of the parties, or by permission of the Board, they shall be treated in all respects as if they had been raised therein. In such instances, motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings, it may be admitted within the proper scope of the appeal, provided, however, that the objecting party may be granted a continuance if necessary to enable it to meet such evidence.

8. *Hearing Election.* After filing of the Government's answer or notice from the Board that it has entered a general denial on behalf of the Government, each party shall advise whether it desires a hearing as prescribed in Rules 17 through 25, or whether it elects to submit its case on the record without a hearing, as prescribed in Rule 11.

9. *Prehearing Briefs.* Based on an examination of the pleadings, and its determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been elected pursuant to Rule 8. If the Board does not require prehearing briefs either party may, in its discretion and upon appropriate and sufficient notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall simultaneously be furnished to the other party as previously arranged.

10. *Prehearing or Presubmission Conference.* (a) Whether the case is to be submitted pursuant to Rule 11, or heard pursuant to Rules 17 through 25, the Board may upon its own initiative, or upon the application of either party, arrange a telephone conference or call upon the parties to appear before an administrative judge or examiner of the Board for a conference to consider:

(1) Simplification, clarification, or severing of the issues;

(2) The possibility of obtaining stipulations, admissions, agreements and rulings on admissibility of docments, understandings on matters already of record, or similar agreements that will avoid unnecessary proof;

(3) Agreements and rulings to facilitate discovery;

(4) Limitation of the number of expert witnesses, or avoidance of similar cumulative evidence;

(5) The possibility of agreement disposing of any or all of the issues in dispute; and

(6) Such other matters as may aid in the disposition of the appeal.

(b) The administrative judge or examiner of the Board shall make such rulings and orders as may be appropriate to aid in the disposition of the appeal. The results of pretrial conferences, including any rulings and orders, shall be reduced to writing by the administrative judge or examiner and this writing shall thereater constitute a part of the record.

11. *Submission Without a Hearing.* Either party may elect to waive a hearing and to submit its case upon the record before the Board, as settled pursuant to Rule 13. Submission of a case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, depositions, admissions, answers to interrogatories, and stipulations may be employed to supplement other documentary evidence in the Board record. The Board may permit such submissions to be supplemented by oral argument (transcribed if requested), and by briefs arranged in accordance with Rule 23.

12. *Optional SMALL CLAIMS (EXPEDITED) and ACCELERATED Procedures.* These procedures are available solely at the election of the appellant.

12.1 *Elections to Utilize SMALL CLAIMS (EXPEDITED) and ACCELERATED Procedures.* (a) In appeals where the amount in dispute is $10,000 or less, the appellant may elect to have the appeal processed under a SMALL CLAIMS (EXPEDITED) procedure requiring decision of the appeal, whenever possible, within 120 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in section 12.2 of this Rule. An appellant may elect the ACCELERATED procedure rather than the SMALL CLAIMS (EXPEDITED) procedure for any appeal eligible for the SMALL CLAIMS (EXPEDITED) procedure.

(b) In appeals where the amount in dispute is $50,000 or less, the appellant may elect to have the appeal processed under an ACCELERATED procedure requiring decision of the appeal, whenever possible, within 180 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in section 12.3 of this Rule.

(c) The appellant's election of either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure may be made by written notice within 60 days after receipt of notice of docketing, unless such period is extended by the Board for good cause. The election may not be withdrawn except with permission of the Board and for good cause.

12.2 *The Small Claims (Expedited) Procedure.* (a) In cases proceeding under the SMALL CLAIMS (EXPEDITED) procedure, the following time periods shall apply:

(1) Within 10 days from the Government's first receipt from either the appellant or the Board of a copy of the appellant's notice of election of the SMALL CLAIMS (EXPEDITED) procedure, the Government shall send the Board a copy of the contract, the contracting officer's final decision, and the appellant's claim letter or letters, if any; remaining documents required under Rule 4 shall be submitted in accordance with times specified in that rule unless the Board otherwise directs.

(2) Within 15 days after the Board has acknowledged receipt of appellant's notice of election, the assigned administrative judge shall take the following actions, if feasible, in an informal meeting or a telephone conference with both parties: (i) Identify and simplify the issues; (ii) establish a simplified procedure appropriate to the particular appeal involved; (iii) determine whether either party wants a hearing, and if so, fix a time and place therefor; (iv) require the Government to furnish all the additional documents relevant to the appeal; and (v) establish an expedited schedule for resolution of the appeal.

(b) Pleadings, discovery, and other prehearing activity will be allowed only as consistent with the requirement to conduct the hearing on the date scheduled, or if no hearing is scheduled, to close the record on a date that will allow decisions within the 120-day limit. The Board, in its discretion, may impose shortened time periods for any actions prescribed or allowed under these

Procedures. These procedures are available solely at the election of the appellant.

12.1 *Elections to Utilize SMALL CLAIMS (EXPEDITED) and ACCELERATED Procedures.* (a) In appeals where the amount in dispute is $10,000 or less, the appellant may elect to have the appeal processed under a SMALL CLAIMS (EXPEDITED) procedure requiring decision of the appeal, whenever possible, within 120 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in section 12.2 of this Rule. An appellant may elect the ACCELERATED procedure rather than the SMALL CLAIMS (EXPEDITED) procedure for any appeal eligible for the SMALL CLAIMS (EXPEDITED) procedure.

(b) In appeals where the amount in dispute is $50,000 or less, the appellant may elect to have the appeal processed under an ACCELERATED procedure requiring decision of the appeal, whenever possible, within 180 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in section 12.3 of this Rule.

(c) The appellant's election of either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure may be made by written notice within 60 days after receipt of notice of docketing, unless such period is extended by the Board for good cause. The election may not be withdrawn except with permission of the Board and for good cause.

12.2 *The Small Claims (Expedited) Procedure.* (a) In cases proceeding under the SMALL CLAIMS (EXPEDITED) procedure, the following time periods shall apply:

(1) Within 10 days from the Government's first receipt from either the appellant or the Board of a copy of the appellant's notice of election of the SMALL CLAIMS (EXPEDITED) procedure, the Government shall send the Board a copy of the contract, the contracting officer's final decision, and the appellant's claim letter or letters, if any; remaining documents required under Rule 4 shall be submitted in accordance with times specified in that rule unless the Board otherwise directs.

(2) Within 15 days after the Board has acknowledged receipt of appellant's notice of election, the assigned administrative judge shall take the following actions, if feasible, in an informal meeting or a telephone conference with both parties: (i) Identify and simplify the issues; (ii) establish a simplified procedure appropriate to the particular appeal involved; (iii) determine whether either party wants a hearing, and if so, fix a time and place therefor; (iv) require the Government to furnish all the additional documents relevant to the appeal; and (v) establish an expedited schedule for resolution of the appeal.

(b) Pleadings, discovery, and other prehearing activity will be allowed only as consistent with the requirement to conduct the hearing on the date scheduled, or if no hearing is scheduled, to close the record on a date that will allow decisions within the 120-day limit. The Board, in its discretion, may impose shortened time periods for any actions prescribed or allowed under these

rules, as necessary to enable the Board to decide the appeal within the 120-day limit, allowing whatever time, up to 30 days, that the Board considers necessary for the preparation of the decision after closing the record and the filing of briefs, if any.

(c) Written decision by the Board in cases processed under the SMALL CLAIMS (EXPEDITED) procedure will be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single administrative judge. If there has been a hearing, the administrative judge presiding at the hearing may, in the judge's discretion, at the conclusion of the hearing and after entertaining such oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes and to establish the starting date for the period for filing a motion for reconsideration under rule 29.

(d) A decision against the Government or the contractor shall have no value as precedent, and in the absence of fraud shall be final and conclusive and may not be appealed or set aside.

12.3 *The Accelerated Procedure.* (a) In cases proceeding under the Accelerated procedure, the parties are encouraged, to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs. The Board, in its discretion, may shorten time periods prescribed or allowed elsewhere in these rules, including rule 4, as necessary to enable the Board to decide the appeal within 180 days after the Board has received the appellant's notice of election of the ACCELERATED procedure, and may reserve 30 days for preparation of the decision.

(b) Written decision by the Board in cases processed under the ACCELERATED procedure will normally be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single administrative judge with the concurrence of a vice chairman, or by a majority among these two and the chairman in case of disagreement. Alternatively, in cases where the amount in dispute is $10,000 or less as to which the ACCELERATED procedure has been elected and in which there has been a hearing, the single administrative judge presiding at the hearing may, with the concurrence of both parties, at the conclusion of the hearing and after entertaining such oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes, and to establish the starting date for the period of filing a motion for reconsideration under Rule 29.

12.4 *Motions for Reconsideration in Rule 12 Cases.* Motions for Reconsideration of cases decided under either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure need not be decided within the original 120-day or 180-day limit, but all such motions shall be processed and decided rapidly so as to fulfill the intent of this Rule.

13. *Settling the Record.* (a) The record upon which the Board's decision will be rendered consists of the documents furnished under Rules 4 and 12, to the extent admitted in evidence, and the following items, if any: pleadings, prehearing conference memoranda or orders, prehearing briefs, depositions or interrogatories received in evidence, admissions, stipulations, transcripts of conferences and hearings, hearing exhibits, post-hearing briefs, and documents which the Board has specifically designated be made a part of the record. The record will, at all reasonable times, be available for inspection by the parties at the office of the Board.

(b) Except as the Board may otherwise order in its discretion, no proof shall be received in evidence after completion of an oral hearing or, in cases submitted on the record, after notification by the Board that the case is ready for decision.

(c) The weight to be attached to any evidence of record will rest within the sound discretion of the Board. The Board may in any case require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

14. *Discovery—Depositions*—(a) *General Policy and Protective Orders*—The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the Board may make any order required to protect a party or person from annoyance, embarrassment, or undue burden or expense. Those orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

(b) *When Depositions Permitted*—After an appeal has been docketed and complaint filed, the parties may mutually agree to, or the Board may, upon application of either party, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purpose of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(c) *Orders on Depositions*—The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the Board.

(d) *Use as Evidence*—No testimony taken by depositions shall be considered as part of the evidence in the hearing of an appeal until such testimony is offered and received in evidence at such hearing. It will not ordinarily be received in evidence if the deponent is present and can testify at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the deponent given at the hearing. In cases submitted on the record, the Board may, in its discretion, receive depositions to supplement the record.

(e) *Expenses*—Each party shall bear its own expenses associated with the taking of any deposition.

(f) *Subpoenas*—Where appropriate, a party may request the issuance of a subpoena under the provisions of Rule 21.

15. *Interrogatories to Parties, Admission of Facts, and Production and Inspection of Documents.* After an appeal has been docketed and complaint filed with the Board, a party may serve on the other party: (a) Written interrogatories to be answered separately in writing, signed under oath and answered or objected to within 45 days after service; (b) a request for the admission of specified facts and/or the authenticity of any documents, to be answered or objected to within 45 days after service; the factual statements and the authenticity of the documents to be deemed admitted upon failure of a party to respond to the request; and (c) a request for the production, inspection and copying of any documents or objects not privileged, which reasonably may lead to the discovery of admissible evidence, to be answered or objected to within 45 days after service. The Board may allow a shorter or longer time. Any discovery engaged in under this Rule shall be subject to the provisions of Rule 14(a) with respect to general policy and protective orders, and of Rule 35 with respect to sanctions.

16. *Service of Papers Other Than Subpoenas.* Papers shall be served personally or by mail, addressed to the party upon whom service is to be made. Copies of complaints, answers and briefs shall be filed directly with the Board. The party filing any other paper with the Board shall send a copy thereof to the opposing party, noting on the paper filed with the Board that a copy has been so furnished. Subpoenas shall be served as provided in Rule 21.

Hearings

17. *Where and When Held.* Hearings will be held at such places determined by the Board to best serve the interests of the parties and the Board. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals, Rule 12 requirements, and other pertinent factors. On request or motion by either party and for good cause, the Board may, in its discretion, adjust the date of a hearing.

18. *Notice of Hearings.* The parties shall be given at least 15 days notice of the time and place set for hearings. In scheduling hearings, the Board will consider the desires of the parties and the requirement for just and inexpensive determination of appeals without unnecessary delay. Notices of hearings shall be promptly acknowledged by the parties.

19. *Unexcused Absence of a Party.* The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in Rule 11.

20. *Hearings: Nature, Examination of Witnesses*—(a) *Nature of Hearings*—Hearings shall be as informal as may be reasonable and appropriate under the

circumstances. Appellant and the Government may offer such evidence as they deem appropriate and as would be admissible under the Federal Rules of Evidence or in the sound discretion of the presiding administrative judge or examiner. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may require evidence in addition to that offered by the parties.

(b) *Examination of Witnesses*—Witnesses before the Board will be examined orally under oath or affirmation, unless the presiding administrative judge or examiner shall otherwise order. If the testimony of a witness is not given under oath, the Board may advise the witness that his statements may be subject to the provisions of title 18, United States Code, sections 287 and 1001, and any other provision of law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof.

21. *Subpoenas*—(a) *General*—Upon written request of either party filed with the recorder, or on his own initiative, the administrative judge to whom a case is assigned or who is otherwise designated by the chairman may issue a subpoena requiring:

(i) Testimony at a deposition—the deposing of a witness in the city or county where he resides or is employed or transacts his business in person, or at another location convenient for him that is specifically determined by the Board;

(ii) Testimony at a hearing—the attendance of a witness for the purpose of taking testimony at a hearing; and

(iii) Production of books and papers—in addition to (i) or (ii), the production by the witness at the deposition or hearing of books and papers designated in the subpoena.

(b) *Voluntary Cooperation*—Each party is expected (i) to cooperate and make available witnesses and evidence under its control as requested by the other party, without issuance of a subpoena, and (ii) to secure voluntary attendance of desired third-party witnesses and production of desired third-party books, papers, documents, or tangible things whenever possible.

(c) *Requests for Subpoenas*—(1) A request for subpoena shall normally be filed at least:

(i) 15 days before a scheduled deposition where the attendance of a witness at a deposition is sought; or

(ii) 30 days before a scheduled hearing where the attendance of a witness at a hearing is sought.

In its discretion the Board may honor requests for subpoenas not made within these time limitations.

(2) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any books and papers sought.

(d) *Requests to Quash or Modify*—Upon written request by the person subpoenaed or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the Board may (i) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (ii) require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed books and papers. Where circumstances require, the Board may act upon such a request at any time after a copy has been served upon the opposing party.

(e) *Form; Issuance*—(1) Every subpoena shall state the name of the Board and the title of the appeal, and shall command each person to whom it is directed to attend and give testimony, and if appropriate, to produce specified books and papers at a time and place therein specified. In issuing a subpoena to a requesting party, the administrative judge shall sign the subpoena and may, in his discretion, enter the name of the witness and otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(2) Where the witness is located in a foreign country, a letter rogatory or subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781–1784.

(f) *Service*—(1) The party requesting issuance of a subpoena shall arrange for service.

(2) A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place. A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law; however, where the subpoena is issued on behalf of the Government, money payments need not be tendered in advance of attendance.

(3) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Board as a sufficient ground for striking the testimony of the witness and the books or papers the witness has produced.

(g) *Contumacy or Refusal to Obey a Subpoena*—In case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States District Court, the Board will apply to the Court through the Attorney General of the United States for an order requiring the person to appear before the Board or a member thereof to give testimony or produce evidence or both. Any failure of any such person to obey the order of the Court may be punished by the Court as a contempt thereof.

22. *Copies of Papers.* When books, records, papers, or documents have been received in evidence, a true copy thereof or of such part thereof as may be material or relevant may be substituted therefor, during the hearing or at the conclusion thereof.

23. *Post-Hearing Briefs.* Post-hearing briefs may be submitted upon such terms as may be directed by the presiding administrative judge or examiner at the conclusion of the hearing.

24. *Transcript of Proceedings.* Testimony and argument at hearings shall be reported verbatim, unless the Board otherwise orders. Waiver of transcript may be especially suitable for hearings under Rule 12.2. Transcripts of the proceedings shall be supplied to the parties at such rates as may be established by contract between the Board and the reporter, provided that ordinary copy of transcript shall be supplied to the appellant at an amount no greater than the cost of duplication.

25. *Withdrawal of Exhibits.* After a decision has become final the Board may, upon request and after notice to the other party, in its discretion permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The substitition of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition of granting permission for such withdrawal.

Representation

26. *The Appellant.* An individual appellant may appear before the Board in person, a corporation by one of its officers; and a partnership or joint venture by one of its members; or any of these by an attorney at law duly licensed in any state, commonwealth, territory, the District of Columbia, or in a foreign country. An attorney representing an appellant shall file a written notice of appearance with the Board.

27. *The Government.* Government counsel may, in accordance with their authority, represent the interest of the Government before the Board. They shall file notices of appearance with the Board, and notice thereof will be given appellant or appellant's attorney in the form specified by the Board from time to time.

Decisions

28. *Decisions.* (a) Decisions of the Board will be made in writing and authenticated copies of the decision will be forwarded simultaneously to both parties. The rules of the Board and all final orders and decisions (except those required for good cause to be held confidential and not cited as precedents) shall be open for public inspection at the offices of the Board. Decisions of the Board will be made solely upon the record, as described in Rule 13.

(b) Any monetary award to a contractor by the Board shall be promptly paid in accordance with the procedures provided by section 1302 of the Act of July 27, 1956 (70 Stat. 694, as amended; 31 U.S.C. 724a). To assure prompt payment the Recorder will forward a waiver form to each party with the decision. If the parties do not contemplate an appeal or motion for reconsideration, they will execute waivers which so state, and return them to the Recorder. The Recorder will forward the waivers and a certified copy of the award decision to the General Accounting Office for certification for payment.

Motion for Reconsideration

29. *Motion for Reconsideration.* A motion for reconsideration may be filed by either party. It shall set forth specifically the grounds relied upon to sustain the motion. The motion shall be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion.

Suspensions, Dismissals and Defaults: Remands

30. *Suspensions; Dismissal Without Prejudice.* The Board may suspend the proceedings by agreement of counsel for settlement discussions, or for good cause shown. In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. Where the suspension has continued, or may continue, for an inordinate length of time, the Board may, in its discretion, dismiss such appeals from its docket without prejudice to their restoration when the cause of suspension has been removed. Unless either party or the Board acts within three years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed with prejudice.

31. *Dismissal or Default for Failure to Prosecute or Defend.* Whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may, in the case of a default by the appellant, issue an order to show cause why the appeal should not be dismissed or, in the case of a default by the Government, issue an order to show cause why the Board should not act thereon pursuant to Rule 35. If good cause is not shown, the Board may take appropriate action.

32. *Remand from Court.* Whenever any court remands a case to the Board for further proceedings, each of the parties shall, within 20 days of such remand, submit a report to the Board recommending procedures to be followed so as to comply with the court's order. The Board shall consider the reports and enter special orders governing the handling of the remanded case. To the extent the court's directive and time limitations permit, such orders shall conform to these rules.

Time, Computation and Extensions

33. *Time, Computation and Extensions.* (a) Where possible, procedural actions should be taken in less time than the maximum time allowed. Where appropriate and justified, however, extensions of time will be granted. All requests for extensions of time shall be in writing.

(b) In computing any period of time, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a legal holiday, in which event the period shall run to the end of the next business day.

Ex Parte Communications

34. *Ex parte Communications.* No member of the Board or the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal, submit to the Board or the Board's staff, off the record, any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation among Board members or to ex parte communications concerning the Board's administrative functions or procedures.

Sanctions

35. *Sanctions.* If any party fails or refuses to obey an order issued by the Board, the Board may then make such order as it considers necessary to the just and expeditious conduct of the appeal.

Effective Date and Applicability

36. *Effective Date.* These rules shall apply (i) mandatorily, to all appeals relating to contracts entered into on or after 1 March 1979, and (ii) at the contractor's election, to appeals relating to earlier contracts, with respect to claims pending before the contracting officer on 1 March 1979 or initiated thereafter.

Pursuant to the Charter of the Armed Services Board of Contract Appeals, the attached rules are hereby approved for use and application to appeals to the Armed Services Board of Contract Appeals under the Contract Disputes Act of 1978.

(signed) William J. Perry (30 JUN 1980),
Under Secretary of Defense for Research and Engineering.
(signed) Percy A. Pierre,
Assistant Secretary of the Army (Research, Development and Acquisition).
(signed) J.A. Doyle,
Assistant Secretary of the Navy (Manpower, Reserve Affairs and Logistics).
(signed) Eugene H. Kopf,
(Acting) Assistant Secretary of the Air Force (Research, Development and Logistics).

Appendix B—Coordinated Acquisition Assignments

Part 1—Army Assignments

Part 2—Navy Assignments

Part 3—Air Force Assignments

Part 4—Defense Logistics Agency Assignments

Part 5—Defense Nuclear Agency Assignments

Part 6—General Services Administration Assignments

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Part 1—Army Assignments

Federal supply class code	Commodity
	Electronic Equipment. Each department is assigned acquisition responsibility for those items which the department either designed or for which it sponsored development. See FSC 5821 under Navy listings for assignment of certain commercially developed radio sets (i.e., developed without the use of Government funds).
1005 P [1]	Guns, through 30mm. This partial assignment applies to guns, through 30mm, and parts and equipment therefor, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to Navy ordnance type guns; MK 11 and MK 12, 20mm gun; and aircraft gun mounts.
1010 P [1]	Guns, over 30mm up to 75mm. This partial assignment applies to guns, over 30mm and up to 75mm, and parts and equipment therefor, as listed in Department of the Army Supply Manuals/Catalogs. It does not apply to Naval ordnance type guns and aircraft gun mounts.
1015 P [1]	Guns, 75mm through 125mm. This partial assignment applies to guns, 75mm through 125mm, and parts and equipment therefor, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to Naval ordnance type guns.
1020 P [1]	Guns over 125mm through 150mm.
1025 P [1]	Guns over 150mm through 200mm.
1030 P [1]	Guns over 200mm through 300mm.
1035 P [1]	Guns over 300mm. These partial assignments apply to guns, over 125mm, and parts and equipment therefor, as listed in Department of Army Supply Manuals/Catalogs. They do not apply to Naval ordnance type guns.
1040	Chemical Weapons and Equipment.
1055 P [1]	Launchers, Rocket and Pyrotechnic. This partial assignment applies to launchers, rocket and pyrotechnic, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to Naval ordnance type and airborne type, with the exception of 2.75 inch rocket launchers which are included in this partial FSC assignment to the Department of the Army.
1090 P	Assemblies Interchangeable Between Weapons in Two or More Classes. This partial assignment applies to the following items:
	National stock number nomenclature. 1090-563-7232 Staff Section, Class. 1090-699-0633 Staff Section. 1090-796-8760 Power Supply. 1090-885-8451 Wrench Corrector. 1090-986-9707 Reticle Assembly.
1095 P [1]	Miscellaneous Weapons.

NOTE: ("P" after the FSC number indicates a partial FSC assignment)

Federal supply class code	Commodity
	This partial assignment applies to miscellaneous weapons, and parts and equipment therefor, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to Naval ordnance type; line throwing guns (which are under DoD Coordinated Acquisition assignment to the Department of the Navy); and aircraft type miscellaneous weapons.
1210 P [1]	Fire Control Directors.
1220 P [1]	Fire Control Computing Sights and Devices.
1230 P [1]	Fire Control Systems, Complete.
1240 P [1]	Optical Sighting and Ranging Equipment.
1250 P [1]	Fire Control Stabilizing Mechanisms.
1260 P [1]	Fire Control Designating and Indicating Equipment.
1265 P [1]	Fire Control Transmitting and Receiving Equipment, Except Airborne.
1285 P [1]	Fire Control Radar Equipment, Except Airborne.
1290 P [1]	Miscellaneous Fire Control Equipment.
	The above nine partial FSC assignments apply to fire control equipment, as listed in Department of the Army Supply Manuals/Catalogs. They do not apply to Naval ordnance type and aircraft type.
1305 P [1]	Ammunition, through 30mm.
	This partial assignment applies to ammunition through 30mm as listed in Department of Army Supply Manuals/Catalogs. It does not apply to Naval ordnance type and ammunition for the MK 11 and MK 12, 20mm gun.
1310 P [1]	Ammunition, over 30mm up to 75mm.
	This partial assignment applies to ammunition, over 30mm up to 75mm, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to Naval ordnance type and to 40mm ammunition (which is under DoD Coordinated Acquisition assignment to the Navy). The Army is responsible for the acquisition of fillers and the loading, assembling, and packing of toxicological, incapacitating riot control, smoke and incendiary munitions.
1315 P [1]	Ammunition, 75mm through 125mm.
	This partial assignment applies to ammunition, 75mm through 125mm, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to Naval ordnance type. The Army is responsible for the acquisition of fillers and the loading, assembling, and packing of toxicological, incapacitating riot control, smoke and incendiary munitions.
1320 P [1]	Ammunition, over 125mm.
	This partial assignment applies to ammunition over 125mm, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to Naval ordnance type. The Army is responsible for the acquisition of fillers and the loading, assembling, and packing of toxicological, incapacitating riot control, smoke and incendiary munitions.
1325 P	Bombs.
	This partial assignment applies to bombs as listed in Department of Army Supply Manuals/Catalogs. It does not apply to Navy assigned bombs as shown in list of assignments to the Navy; however, the Department of the Army is responsible for the acquisition of fillers and the loading, assembling, and packing of toxicological, incapacitating riot control, smoke and incendiary munitions, and for other loading, assembling, and packing in excess of Navy owned capacity.
1330	Grenades.
1340 P	Rockets and Rocket Ammunition.
	This partial assignment applies to: 66mm Rocket, HEAT, M72. 2.75" Rocket FFAR, Service and Practice. Heads MK5 and Mods (HEAT). HE, M151. HE, XM229 (17 lb Warhead) HE, XM157 (Spotting Red). HE, XM158 (Spotting Yellow). MK61 Practice (5 lb Slug). XM230 Practice (10 lb). Motors MK4 and Mods (High Performance Aircraft). MK40 and Mods (Low Performance Aircraft). 3.5 inch Rocket Heat, M35. Practice, M36. Smoke, WP, M30. 4.5 inch Motor, Drill, M24. HE, M32. Practice, M33. Incendiary and toxicological rockets, as listed in Army Supply Bulletins. It does not apply to Navy assigned rockets as shown in the list of assignments to the Navy. However, the Department of the Army is responsible for acquisition of filler and for filling of all smoke and toxicological rockets.
1345	Land Mines.
1365	Military Chemical Agents.
1370 P	Pyrotechnics.
	This partial assignment does not apply to shipboard and aircraft pyrotechnics.
1375 P	Demolition Materials.
	This partial assignment applies to Blasting Agents and supplies such as: Bangalore torpedo. Blocks, demolition. Caps, blasting, electric and nonelectric. Charge, cratering. Charge, shaped and demolition. Chests, demolition platoon and squad. Cord detonating. Demolition equipment sets, with ancillary items. Detonators, all types. Dynamite. Firing devices. Fuze, safety. Kit, demolition. Lighter, fuse. Machine, blasting. Primer, percussion cap. It does not apply to Navy underwater demolition requirements.
1376 P	Bulk Explosives.
	This partial assignment applies to solid propellants and explosives such as: Ammonium Picrate (Explosive D) JAN–A–166A. Trinitrotoluene (TNT) MIL–T–248A. Tetryl JAN–T–339. Pantaerythrite Tetranitrate (PETN) JAN–P–387. RDX. Composition B. Composition B–3. Pentolite, 50. Composition C–3. Composition A–3. Composition A–4. Nitroguanidine (Picrate). It does not apply to production capacity for any of the above listed explosives at the U.S. Naval Propellant Plant, Indian Head, Maryland.
1377 P	Cartridge and Propellant Actuated Devices and Components.
	This partial assignment is reserved pending Services agreement as to items to be included in the assignment.
1380	Military Biological Agents.
1390 P [1]	Fuzes and Primers.
	This partial assignment applies to Fuzes and Primers for Army assigned ammunition. It does not apply to Naval ordnance type, which is under DoD Coordinated Acquisition assignment to the Department of the Navy; and guided missile fuzes.
2210	Locomotives.
2220	Rail Cars.
2240	Locomotive and Rail Car Accessories and Components.
2250	Track Materials, Railroad.
2310 P	Passenger Motor Vehicles.
2320 P	Trucks and Truck Tractors.
	These two partial assignments apply to tactical vehicles; trucks over 10,000 pounds gross vehicle weight (GVW); and the following types of vehicles: Bus, convertible to ambulance. Truck, 4×4, convertible to ambulance. Truck 4×4 dump, 9,000 GVW, with cut-down cab. These assignments do not apply to tracked landing vehicles which are not under DoD Coordinated Acquisition assignment, and airport crash rescue vehicles, which are under DoD Coordinated Acquisition assignment to the Department of the Air Force. With the exception of the types enumerated above, these assignments do not apply to commercial passenger carrying vehicles and trucks up to 10,000 pounds GVW, which are assigned for DoD Coordinated Acquisition to the General Services Administration.
2330 P	Trailers.

Commodity

rtial assignment applies to
as listed in Department of
Supply Manuals/Catalogs. It
not apply to Navy assigned
as shown in list of assign-
to the Navy; however, the
ment of the Army is respon-
or the acquisition of fillers
e loading, assembling, and
g of toxicological, incapaci-
riot control, smoke and in-
y munitions, and for other
, assembling, and packing in
of Navy owned capacity.
and Rocket Ammunition.
al assignment applies to:
Rocket, HEAT, M72.
Rocket FFAR, Service and
MK5 and Mods (HEAT).
51.
M229 (17 lb Warhead)
M157 (Spotting Red).
M158 (Spotting Yellow).
Practice (5 lb Slug).
Practice (10 lb).
MK4 and Mods (High Per-
ce Aircraft).
and Mods (Low Performance
).
Rocket Heat, M35.
e, M36.
, WP, M30.
Motor, Drill, M24.
M33.
y and toxicological rockets,
d in Army Supply Bulletins.
not apply to Navy assigned
as shown in the list of
nents to the Navy. However,
partment of the Army is re-
le for acquisition of filler
r filling of all smoke and
gical rockets.
hemical Agents.
ics.
tial assignment does not
o shipboard and aircraft py-
ics.
n Materials.
tial assignment applies to
g Agents and supplies such
ore torpedo.
demolition.
blasting, electric and non-
, cratering.
, shaped and demolition.
demolition platoon and
etonating.
ion equipment sets, with an-
ems.
tors, all types.
evices.
afety.
nolition.
fuse.
e, blasting.
percussion cap.
ot apply to Navy underwater
on requirements.

Federal supply class code	Commodity
	This partial assignment applies to solid propellants and explosives such as:
	Ammonium Picrate (Explosive D) JAN–A–166A.
	Trinitrotoluene (TNT) MIL–T–248A.
	Tetryl JAN–T–339.
	Pantaerythrite Tetranitrate (PETN) JAN–P–387.
	RDX.
	Composition B.
	Composition B–3.
	Pentolite, 50.
	Composition C–3.
	Composition A–3.
	Composition A–4.
	Nitroguanidine (Picrate).
	It does not apply to production capacity for any of the above listed explosives at the U.S. Naval Propellant Plant, Indian Head, Maryland.
1377 P	Cartridge and Propellant Actuated Devices and Components.
	This partial assignment is reserved pending Services agreement as to items to be included in the assignment.
1380	Military Biological Agents.
1390 P [1]	Fuzes and Primers.
	This partial assignment applies to Fuzes and Primers for Army assigned ammunition. It does not apply to Naval ordnance type, which is under DoD Coordinated Acquisition assignment to the Department of the Navy; and guided missile fuzes.
2210	Locomotives.
2220	Rail Cars.
2240	Locomotive and Rail Car Accessories and Components.
2250	Track Materials, Railroad.
2310 P	Passenger Motor Vehicles.
2320 P	Trucks and Truck Tractors.
	These two partial assignments apply to tactical vehicles; trucks over 10,000 pounds gross vehicle weight (GVW); and the following types of vehicles:
	Bus, convertible to ambulance.
	Truck, 4×4, convertible to ambulance.
	Truck 4×4 dump, 9,000 GVW, with cut-down cab.
	These assignments do not apply to tracked landing vehicles which are not under DoD Coordinated Acquisition assignment, and airport crash rescue vehicles, which are under DoD Coordinated Acquisition assignment to the Department of the Air Force. With the exception of the types enumerated above, these assignments do not apply to commercial passenger carrying vehicles and trucks up to 10,000 pounds GVW, which are assigned for DoD Coordinated Acquisition to the General Services Administration.
2330 P	Trailers.

Federal supply class code	Commodity
	This partial assignment does not apply to two wheel lubrication trailers, two wheel steam cleaning trailers, and troop transporter semitrailers which are not under DoD Coordinated Acquisition assignment, and airport crash rescue trailer units which are under DoD Coordinated Acquisition assignment to the Department of the Air Force.
2340 P	Motorcycles, Motor Scooters, and Bicycles.
	This partial assignment does not apply to bicycles and tricycles.
2350	Tanks and Self-propelled Weapons.
2430	Tractors, Track Laying, High-Speed.
2510 P [2]	Vehicular Cab, Body, and Frame Structural Components.
2520 P [2]	Vehicular Power Transmission Components.
2530 P [2]	Vehicular Brake, Steering, Axle, Wheel, and Track Components.
2540 P [2]	Vehicular Furniture and Accessories.
2590 P [2]	Miscellaneous Vehicular Components.
2610	Tires and Tubes, Pneumatic, except Aircraft.
2630	Tires, solid and cushion.
2640	Tire Rebuilding and Tire and Tube Repair Materials.
2805 P [2]	Gasoline Reciprocating Engines, except Aircraft and Components.
2910 P [2]	Engine Fuel System Components, Nonaircraft.
2920 P [2]	Engine Electrical System
2330 P [2]	Engine Cooling System Components, Nonaircraft.
2940 P [2]	Engine Air and Oil Filters, Strainers and Cleaners, Nonaircraft.
2990 P [2]	Miscellaneous Engine Accessories, Nonaircraft.
4210 P	Fire Fighting Equipment.
	This partial assignment applies only to equipment developed by or under the sponsorship of the Department of the Army.
4230 P	Decontaminating and Impregnating Equipment.
	This partial assignment applies only to items peculiar to chemical warfare.
4240 P	Safety and Rescue Equipment.
	This partial assignment applies only to military respiratory protective equipment for chemical warfare.
5805 P	Telephone and Telegraph Equipment.
	This partial assignment applies only to military (wire) equipment, field type.
5815 P	Teletype and Facsimile Equipment.
	This partial assignment applies only to military (wire) equipment, field type.
5820 P	Radio and Television Communication Equipment, except Airborne.
	This partial assignment applies to nontactical, off-the-shelf, commercially available radio and television equipment and supplies used by the Armed Forces Radio and Television Stations including equipment and supplies used by the Armed Forces for closed TV circuit educational and training programs.
5830 P	Intercommunication and Public Address Systems; except Airborne.
	This partial assignment applies only to military (wire) equipment, field type.
6135 P	Batteries, Primary.
	This partial assignment applies to MIL type, dry cell batteries, only.
6625 P	Electrical and Electronic Properties Measuring and Testing Instruments.
	This partial assignment applies only to instruments for testing military (wire) equipment, field type.
6645 P	Time Measuring Instruments.
	This partial assignment applies to the following watches; aircraft instrument panel clocks; cases and spare parts therefor:
	Master navigation watches; pocket watches; stop watches; second setting wrist watches; wrist watches; athletic timers; aircraft clocks; aircraft panel clocks; mechanical aircraft clocks; navigation watch cases; pocket watch cases; watch holders; watch case assemblies and watch movements.
6660 P	Meteorological Instruments and Apparatus.
	Each department is assigned acquisition responsibility for those systems, instruments and end items in FSC 6660 which the department either designed or sponsored development. For purposes of this assignment, the developing department is the department which awarded the developmental contract, notwithstanding that other departments may have provided funds for the development.
6665 P	Hazard-Detecting Instruments and Apparatus.
	This partial assignment applies only to items peculiar to chemical warfare.
6695 P	Combination and Miscellaneous Instruments.
	This partial assignment applies to jewel bearings only.
6820 P	Dyes.
	This partial assignment applies only to items peculiar to chemical warfare.
6910 P	Training Aids.
	This partial assignment applies only to items peculiar to Army assignments under weapons, fire control equipment, ammunition and explosives, and chemical and biological warfare.
6920 P	Armament Training Devices.
	This partial assignment applies to armament training devices as listed in Department of Army Catalogs SC 6910, ML/IL and SC 6920 ML/IL. It does not apply to clay pigeons in Department of Army Catalogs SC 6910, ML/IL and SC 6920 ML/IL. It does not apply to clay pigeons.
6940 P	Communication Training Devices.
	This partial assignment applies only to code training sets, code practice equipment, and other telephone and telegraph training devices.
8130 P	Reels and Spools.
	This partial assignment applies only to reels and spools for military (wire) equipment, field type.
8140 P	Ammunition Boxes, Packages, and Special Containers.
	This partial assignment applies only to boxes, packages, and containers peculiar to Army assignments under ammunitions, explosives, and chemical and biological warfare as listed in Department of Army Catalog SC 8140 IL and SC 8140 ML.

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[1] For contracting purposes, Naval ordnance comprises all arms, armor, and armament for the Department of the Navy and includes all offensive and defensive weapons, together with their components, controlling devices and ammunition used in executing the Navy's mission in National Defense (except small arms and those items of aviation ordnance acquired from the Army).

[2] These partial FSC assignments apply only to repair parts peculiar to combat and tactical vehicles. In addition, the assignment in FSC 2805 applies to military standard engines 1.5 HP through 20 HP and parts peculiar therefor. Balance of these FSCs are assigned to the Defense Logistics Agency (Defense Construction Supply Center).

Part 2—Navy Assignments

Federal supply class code	Commodity
	Electronic Equipment.
	Each department is assigned acquisition responsibility for those items which the department either designed or sponsored development. See FSC 5821 for assignment of certain commercially developed radio sets to the Department of the Navy (i.e., developed without the use of Government funds).
1095 P	Miscellaneous Weapons.
	This partial assignment applies to line throwing guns only.
1310 P	Ammunition, over 30mm up to 75mm.
	This partial assignment applies only to reels and spools for military.
1325 P	Bombs.
	This partial assignment applies to armor-piercing; depth bombs; externally suspended low drag bombs; and components and practice bombs therefor, as listed in Ord Pamphlets, and the MK 43, Target Detecting Device. The Department of the Army is responsible for the acquisition of fillers and the loading, assembling, and packing of toxicological, incapacitating riot control, smoke and incendiary munitions, and for other loading, assembling, and packing in excess of Navy-owned capacity.
1340 P	Rockets and Rocket Ammunition.
	This partial assignment applies to:
	Fuze, Rocket, V.T., MK93–0.
	2.25 inch Rocket SCAR, Practice.
	Heads MK3 and Mods.
	Motors MK15 and Mods.
	MK16 and Mods.
	5 inch Rocket HVAR, service and practice.
	Heads MK2 and Mods (common) MK6 and Mods (GP).
	MK4 and Mods (smoke) MK25 and Mods (ATAR).
	Motors MK10 and Mods.
	5 inch Rocket FFAR service and practice.
	Heads MK24 and Mods (General Purposes).

NOTE: ("P" after the FSC number indicates a partial FSC assignment).

Federal supply class code	Commodity
	MK32 and Mods (Shaped Charged). MK26 and Mods (Illum). Motor MK16 and Mods.
	The Department of the Army is responsible for acquisition of filler and for filling of all smoke and toxicological rockets.
1390 P	Fuzes and Primers.
	This partial assignment applies to fuzes and primers for Navy assigned ammunition.
1550 P	Drones.
	This partial assignment applies only to Drone, Model BQM34E.
1905 P	Combat Ships and Landing Vessels.
	This partial assignment applies to landing vessels only.
1910 P	Transport Vessels, Passenger and Troop.
	This partial assignment applies to ferryboats only.
1920	Fishing Vessels.
1925	Special Service Vessels.
1930	Barges and Lighters, Cargo.
1935 P	Barges and Lighters, Special Purpose.
	This partial assignment does not apply to derricks, pile drivers, rock cutters, concrete mixing plants, mechanical bank grader barges, other bank revetment barges, and barge power plants.
1940	Small Craft.
1945 P	Pontoons and Floating Docks.
	This partial assignment applies only to Naval Facilities Engineering Command type pontoons.
1950	Floating Drydocks.
1990 P	Miscellaneous Vessels.
	This partial assignment applies to commercial sailing vessels only.
2010	Ship and Boat Propulsion Components.
2020	Rigging and Rigging Gear.
2030	Deck Machinery.
2040	Marine Hardware and Hull Items.
2060	Commercial Fishing Equipment.
2090	Miscellaneous Ship and Marine Equipment.
2820 P	Steam Engines, Reciprocating and Components.
	This partial assignment applies to marine main propulsion steam engines only.
2825 P	Steam Turbines and Components.
	This partial assignment applies to marine steam turbines only.
4210 P	Fire Fighting Equipment.
	This partial assignment applies only to fire fighting equipment developed by or under the sponsorship of the Department of Navy.
4410 P	Industrial Boilers.
	This partial assignment applies only to boilers for use aboard those ships assigned to the Navy for coordinated acquisition.
4420 P	Heat Exchangers and Steam Condensers.
	This partial assignment applies only to heat exchangers for use aboard those ships assigned to the Navy for coordinated acquisition.
4925 P	Ammunition Maintenance and Repair Shop Specialized Equipment.
	This partial assignment applies to sets, kits, and outfits of tools and equipment for explosive ordnance as defined in military service regulations and documents.
5821 P	Radio and Television Communication Equipment, Airborne.
	This partial assignment applies only to the following commercially developed radio sets. (The term "commercially developed" means that no Government funds were provided for development purposes.) HF-101, 102, 103, 104, 105, 106, 107, 108, 109, 111, 113, ARC-94, 102, 105, 110, 112, 119, 120; MRC-95, 108; VC-102, 104, 105, 106, 109, 110; and components of the foregoing including the 490T antenna coupler.
6125 P	Converters, Electrical, Rotating.
	This partial assignment applies only to motor-generated sets for use aboard ships assigned to the Navy for coordinated acquisition.
6320 P	Shipboard Alarm and Signal System.
	This partial assignment applies only to alarm systems, fire alarm systems, indicating systems, telegraph systems (signal and signaling) (less electronic type) for use aboard ships assigned to the Navy for coordinated acquisition.
6605 P	Navigational Instruments.
	This partial assignment applies only to lifeboat and raft compasses, aircraft sextants, hand leads (soundings), lead reels, sounding machines and pelorus stands for use aboard ships assigned to the Navy for coordinated acquisition.
6645 P	Time Measuring Instruments.
	This partial assignment applies to the following instruments, cases, and spare parts therefor:
	Chronometers including gimbal, padded and make break circuit.
	Clocks, alarm, boat, deck, direct reading, electrical, floor, interval timer, marine, mechanical, master control, master program, master regulating, mechanical message center, nurses, program, shelf, stop, wall, watchman's.
	Counters, time period.
	Meters, engine running time, hour recording, and electrical time totalizing.
	Timers; bombing, engine hours, sequential, stop, and program.
	Program control instrument.
	Cases; chronometer, including gimbal and padded, chronometer carrying; makebreak circuit chronometer.
	Cans, chronometer shipping and storage.
	Clock keys; clock movements, clock motors.
6650 P	Optical Instruments.
	This partial assignment applies only to stands, telescope, for use aboard ships assigned to the Navy for coordinated acquisition.
6660 P	Meteorological Instruments and Apparatus.
	Each department is assigned acquisition responsibility for those systems, instruments, and end items in FSC 6660 for which the department either designed or sponsored development. For purposes of this assignment, the developing department is the department which awarded the developmental contract, notwithstanding that other departments may have provided funds for the development.
6665 P	Hazard-Detecting Instruments and Apparatus.
	This partial assignment applies only to hazard determining safety devices, for use aboard ships assigned to the Navy for coordinated acquisition.
8140 P	Ammunition Boxes, Packages, and Special Containers.
	This partial assignment applies only to boxes, packages, and containers for 40mm ammunition.

Part 3—Air Force Assignments

Federal supply class code	Commodity
	Electronic Equipment.
	Each department is assigned acquisition responsibility for those items which the department either designed or sponsored development. See FSC 5821 under Navy listing for assignment of certain commercially developed radio sets (i.e., developed without the use of Government funds).
1550 P	Drones.
	This partial assignment applies only to the following model drones: Model 147. Model 154. BQM 34A. MQM 34D.
2320 P	Trucks and Truck Tractors.
	This partial assignment applies only to airport crash rescue vehicles.
2330 P	Trailers.
	This partial assignment applies only to airport crash rescue trailer units.
4210 P	Fire Fighting Equipment.
	This partial assignment applies only to fire fighting equipment developed by or under the sponsorship of the Department of the Air Force.
6660 P	Meteorological Instruments and Apparatus.
	Each department is assigned acquisition responsibility for those systems, instruments, and end items in FSC 6660 for which the department either designed or sponsored development. The developing department is the department which awarded the developmental contract, notwithstanding that other departments may have provided funds for the development.
6710 P [1]	Cameras, Motion Picture.
	This partial assignment does not apply to submarine periscope and underwater cameras.
6720 P [1]	Cameras, Still Picture.

Commodity

rtial assignment applies to
kits, and outfits of tools and
nent for explosive ordnance
fined in military service regu-
s and documents.
nd Television Communication
ment, Airborne.
rtial assignment applies only
o following commercially de-
d radio sets. (The term
nercially developed" means
o Government funds were
ed for development pur-
.) HF-101, 102, 103, 104,
06, 107, 108, 109, 111, 113,
94, 102, 105, 110, 112, 119,
MRC-95, 108; VC-102, 104,
106, 109, 110; and compo-
of the foregoing including the
antenna coupler.
ers, Electrical, Rotating.
rtial assignment applies only
otor-generated sets for use
d ships assigned to the Navy
ordinated acquisition.
rd Alarm and Signal System.
rtial assignment applies only
rm systems, fire alarm sys-
indicating systems, telegraph
ns (signal and signaling) (less
nic type) for use aboard
assigned to the Navy for co-
ted acquisition.
onal Instruments.
rtial assignment applies only
boat and raft compasses, air-
sextants, hand leads (sound-
lead reels, sounding ma-
and pelorus stands for use
d ships assigned to the Navy
ordinated acquisition.
easuring Instruments.
tial assignment applies to the
ng instruments, cases, and
parts therefor:
neters including gimbal,
d and make break circuit.
alarm, boat, deck, direct
g, electrical, floor, interval
marine, mechanical, master
l, master program, master
ding, mechanical message
, nurses, program, shelf,
rail, watchman's.
s, time period.
engine running time, hour re-
g, and electrical time totaliz-

bombing, engine hours, se-
al, stop, and program.
control instrument.
chronometer, including gimbal
edded, chronometer carrying;
reak circuit chronometer.
ronometer shipping and stor-

ys; clock movements, clock
s.
nstruments.
tial assignment applies only
ands, telescope, for use
d ships assigned to the Navy
ordinated acquisition.
ogical Instruments and Ap-
s.

Federal supply class code	Commodity
	Each department is assigned acquisition responsibility for those systems, instruments, and end items in FSC 6660 for which the department either designed or sponsored development. For purposes of this assignment, the developing department is the department which awarded the developmental contract, notwithstanding that other departments may have provided funds for the development.
6665 P	Hazard-Detecting Instruments and Apparatus.
	This partial assignment applies only to hazard determining safety devices, for use aboard ships assigned to the Navy for coordinated acquisition.
8140 P	Ammunition Boxes, Packages, and Special Containers.
	This partial assignment applies only to boxes, packages, and containers for 40mm ammunition.

Part 3—Air Force Assignments

Federal supply class code	Commodity
	Electronic Equipment.
	Each department is assigned acquisition responsibility for those items which the department either designed or sponsored development. See FSC 5821 under Navy listing for assignment of certain commercially developed radio sets (i.e., developed without the use of Government funds).
1550 P	Drones.
	This partial assignment applies only to the following model drones: Model 147. Model 154. BQM 34A. MQM 34D.
2320 P	Trucks and Truck Tractors.
	This partial assignment applies only to airport crash rescue vehicles.
2330 P	Trailers.
	This partial assignment applies only to airport crash rescue trailer units.
4210 P	Fire Fighting Equipment.
	This partial assignment applies only to fire fighting equipment developed by or under the sponsorship of the Department of the Air Force.
6660 P	Meteorological Instruments and Apparatus.
	Each department is assigned acquisition responsibility for those systems, instruments, and end items in FSC 6660 for which the department either designed or sponsored development. The developing department is the department which awarded the developmental contract, notwithstanding that other departments may have provided funds for the development.
6710 P [1]	Cameras, Motion Picture.
	This partial assignment does not apply to submarine periscope and underwater cameras.
6720 P [1]	Cameras, Still Picture.

Federal supply class code	Commodity
	This partial assignment does not apply to submarine periscope and underwater cameras.
6730 P [1]	Photographic Projection Equipment.
	This partial assignment does not apply to 35mm theater projectors.
6740 [1]	Photographic Developing and Finishing Equipment.
6760 [1]	Photographic Equipment and Accessories.
6780 [1]	Photographic Sets, Kits, and Outfits.
8820 P	Live Animals Not Raised for Food.
	This partial assignment applies only to the following types of working dogs: Scout. Sentry. Patrol. Mine/tunnel. Tracker. Detector-narcotic/contraband. Sledge. Bloodhound. Water dog. Patrol/detector.

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[1] This partial FSC assignment does not apply to photographic equipment controlled by the Congressional Joint Committee on Printing and Micro-Film Equipment and Supplies.

Part 4—Defense Logistics Agency Assignments

Federal supply class code	Commodity	DLA center *
2230	Right of Way Construction and Maintenance Equipment, Railroad.	DCSC
2410	Tractor, Full Track, Low-Speed.	DCSC
2420	Tractor, Wheeled	DCSC
2510 P [2]	Vehicular Cab, Body, and Frame, Structural Components.	DCSC
2520 P [2]	Vehicular Power Transmission Components.	DCSC
2530 P [2]	Vehicular Brake, Steering, Axle, Wheel, and Track Components.	DCSC
2540 P [2]	Vehicular Furniture and Accessories.	DCSC
2590 P [2]	Miscellaneous Vehicular Components.	DCSC
2805 P [2]	Gasoline Reciprocating Engines, Except Aircraft; and Components.	DCSC
2815	Diesel Engines and Components.	DCSC
2895	Miscellaneous Engines and Components.	DCSC
2910 P [2]	Engine Fuel System Components, Nonaircraft.	DCSC
2920 P [2]	Engine Electrical System Components, Nonaircraft.	DCSC
2930 P [2]	Engine Cooling System Components, Nonaircraft.	DCSC
2940 P [2]	Engine Air and Oil Filters, Strainers and Cleaners, Nonaircraft.	DCSC
2990 P [2]	Miscellaneous Engine Accessories, Nonaircraft.	DCSC
3020	Gears, Pulleys, Sprockets and Transmission Chain.	DCSC
3030	Belting, Drive Belts, Fan Belts, and Accessories.	DCSC
3040	Miscellaneous Power Transmission Equipment.	DCSC
3110	Bearings, Antifriction, Unmounted.	DISC
3120	Bearings, Plain Unmounted.	DISC
3130	Bearings, Mounted	DISC
3210	Sawmill and Planing Mill Machinery.	DGSC
3220	Woodworking Machines	DGSC
3230	Tools and Attachments for Woodworking Machinery.	DGSC
3405 P [3]	Saws and Filing Machines.	DGSC
3408 P [3]	Machining Centers and Way-Type Machines.	DGSC
3410 P [3]	Electrical and Ultrasonic Erosion Machines.	DGSC
3411 P [3]	Boring Machines	DGSC
3412 P [3]	Broaching Machines	DGSC
3413 P [3]	Drilling and Tapping Machines.	DGSC
3414 P [3]	Gear Cutting and Finishing Machines.	DGSC
3415 P [3]	Grinding Machines	DGSC
3416 P [3]	Lathes	DGSC
3417 P [3]	Milling Machines	DGSC
3418 P [3]	Planers and Shapers	DGSC
3419 P [3]	Miscellaneous Machine Tools.	DGSC
3422 P [3]	Rolling Mills and Drawing Machines.	DGSC
3424 P [3]	Metal Heat Treating Equipment.	DGSC
3426 P [3]	Metal Finishing Equipment.	DGSC
3431	Electric Arc Welding Equipment.	DGSC
3432 P [3]	Electric Resistance Welding Equipment.	DGSC
3433 P [3]	Gas Welding, Heat Cutting & Metalizing Equipment.	DGSC
3436 P [3]	Welding Positioners and Manipulators.	DGSC
3438 P [3]	Miscellaneous Welding Equipment.	DGSC
3439 P [3]	Miscellaneous Welding, Soldering and Brazing Supplies and Accessories.	DGSC
3441 P [3]	Bending and Forming Machines.	DGSC
3442 P [3]	Hydraulic and Pneumatic Presses, Power Driven.	DGSC
3443 P [3]	Mechanical Presses, Power Driven.	DGSC
3444 P [3]	Manual Presses	DGSC
3445 P [3]	Punching and Shearing Machines.	DGSC
3446 P [3]	Forging Machinery and Hammers.	DGSC
3447 P [3]	Wire and Metal Ribbon Forming Machinery.	DGSC
3448 P [3]	Riveting Machines	DGSC
3449 P [3]	Misc. Secondary Metal Forming and Cutting Machines.	DGSC
3450 P [3]	Machine Tools, Portable	DGSC
3455 P [3]	Cutting Tools for Machine Tools.	DGSC
3456 P [3]	Cutting and Forming Tools for Secondary Metal Working Machines.	DGSC
3460 P [3]	Machine Tool Accessories.	DGSC
3461 P [3]	Accessories for Secondary Metal Working Machinery.	DGSC
3465 P [3]	Production Jigs, Fixtures and Templates.	DGSC
3470 P [3]	Machine Shop Sets, Kits, and Outfits.	DGSC
3510	Laundry and Dry Cleaning Equipment.	DGSC
3520	Shoe Repairing Equipment.	DGSC
3530	Industrial Sewing Machines & Mobile Textile Repair Shops.	DGSC
3610	Printing, Duplicating, and Bookbinding Equipment.	DGSC
3611 P [3]	Industrial Marking Machines.	DGSC
3620 P [3]	Rubber and Plastics Working Machinery.	DGSC
3635 P [3]	Crystal and Glass Industries Machinery.	DGSC
3650 P [3]	Chemical & Pharmaceutical Products Manufacturing Machinery.	DGSC
3655	Gas Generating and Dispensing Systems, Fixed or Mobile.	DGSC
3660 P [3]	Industrial Size Reduction Machinery.	DGSC
3680 P [3]	Foundry Machinery, Related Equipment and Supplies.	DGSC
3685 P [3]	Specialized Metal Container Manufacturing Machinery and Related Equipment.	DGSC
3693 P [3]	Industrial Assembly Machines.	DGSC
3694 P [3]	Clean Work Stations, Controlled Environment & Related Equipment.	DGSC
3695	Miscellaneous Special Industry Machinery.	DGSC
3710	Soil Preparation Equipment.	DCSC
3720	Harvesting Equipment	DCSC
3740	Pest, Disease, and Frost Control Equipment.	DCSC
3770	Saddlery, Harness, Whips and Related Animal Furnishings.	DCSC
3805	Earth Moving and Excavating Equipment.	DCSC
3810	Cranes and Crane-Shovels.	DCSC
3815	Crane and Crane-Shovel Attachments.	DCSC
3820	Mining, Rock Drilling, Earth Boring, and Related Equipment.	DCSC
3825	Road Clearing and Cleaning Equipment.	DCSC

NOTE: ("P" after the FSC number indicates a partial FSC assignment)

Federal supply class code	Commodity	DLA center [2]
3830	Truck and Tractor Attachments.	DCSC
3835	Petroleum Production and Distribution Equipment.	DCSC
3895	Miscellaneous Construction Equipment.	DCSC
3910	Conveyors	DCSC
3920	Materials Handling Equipment, Nonself-Propelled.	DGSC
3930	Warehouse Trucks and Tractors, Self-Propelled.	DCSC
3940	Blocks, Tackle, Rigging, and Slings.	DISC
3950	Winches, Hoists, Cranes, and Derricks.	DCSC
3990	Miscellaneous Materials Handling Equipment.	DGSC
4010	Chain and Wire Rope	DISC
4020	Fiber Rope, Cordage and Twine.	DISC
4030	Fittings for Rope, Cable, and Chain.	DISC
4110	Refrigeration Equipment	DGSC
4120	Air Conditioning Equipment.	DGSC
4130	Refrigeration and Air Conditioning Components.	DGSC
4140	Fans, Air Circulators, and Blower Equipment.	DGSC
4210 P [3]	Fire Fighting Equipment	DCSC
4220	Marine Lifesaving and Diving Equipment.	DCSC
4310	Compressors and Vacuum Pumps.	DCSC
4320	Power and Hand Pumps	DCSC
4330	Centrifugals, Separators, and Pressure and Vacuum Filters.	DCSC
4440	Driers, Dehydrators, and Anhydrators.	DCSC
4450	Industrial Fan and Blower Equipment.	DCSC
4460	Air Purification Equipment.	DCSC
4510	Plumbing Fixtures and Accessories.	DCSC
4520	Space Heating Equipment and Domestic Water Heaters.	DCSC
4530	Fuel Burning Equipment Units.	DCSC
4540	Miscellaneous Plumbing, Heating, and Sanitation Equipment.	DCSC
4610	Water Purification Equipment.	DCSC
4620	Water Distillation Equipment, Marine and Industrial.	DCSC
4630	Sewage Treatment Equipment.	DCSC
4710	Pipe and Tube	DCSC
4720	Hose and Tubing, Flexible.	DCSC
4730	Fittings and Specialities; Hose, Pipe, and Tube.	DCSC
4810	Valves, Powered	DCSC
4820	Valves, Nonpowered	DCSC
4930	Lubrication and Fuel Dispensing Equipment.	DCSC
5280	Sets, Kits, and Outfits of Measuring Tools.	DGSC
5305	Screws	DISC
5306	Bolts	DISC
5307	Studs	DISC
5310	Nuts and Washers	DISC
5315	Nails, Keys, and Pins	DISC
5320	Rivets	DISC
5325	Fastening Devices	DISC
5330	Packing and Gasket Materials.	DISC
5335	Metal Screening	DISC
5340	Miscellaneous Hardware	DISC
5355	Knobs and Pointers	DISC
5360	Coil, Flat and Wire Springs.	DISC
5365	Rings, Shims, and Spacers.	DISC
5410	Prefabricated and Portable Buildings.	DCSC
5420	Bridges, Fixed and Floating.	DCSC
5430	Storage Tanks	DCSC
5440	Scaffolding Equipment and Concrete Forms.	DCSC
5445	Prefabricated Tower Structures.	DCSC
5450	Miscellaneous Prefabricated Structures.	DCSC
5510	Lumber and Related Basic Wood Materials.	DCSC
5520	Millwork	DCSC
5530	Plywood and Veneer	DCSC
5660	Fencing, Fences and Gates.	DCSC
5680 P	Miscellaneous Construction Materials. This partial assignment applies only to airplane landing mat. (Also, see footnote 1 at end of list relative to purchase of DLA managed items in GSA assigned classes.).	DCSC
5905	Resistors	DESC
5910	Capacitors	DESC
5915	Filters and Networks	DESC
5920	Fuses and Lightning Arrestors.	DESC
5925	Circuit Breakers	DESC
5930	Switches	DESC
5935	Connectors, Electrical	DESC
5940	Lugs, Terminals, and Terminals Strips.	DGSC
5945	Relays, Contractors, and Solenoids.	DESC
5950	Coils and Transformers	DESC
5955	Piezoelectric Crystals	DESC
5960	Electron Tubes and Associated Hardware.	DESC
5961	Semiconductor Devices and Associated Hardware.	DESC
5962	Microelectronic Circuit Devices.	DESC
5965	Headsets, Handsets, Microphones, and Speakers.	DESC
5970	Electrical Insulators and Insulating Materials.	DGSC
5975	Electrical Hardware and Supplies.	DGSC
5977	Electrical Contact Brushes and Electrodes.	DGSC
5985	Antennas, Waveguides, and Related Equipment.	DESC
5990	Synchros and Resolvers	DESC
5995	Cable, Cord, and Wire Assemblies; Communication Equipment.	DGSC
5999	Miscellaneous Electrical and Electronic Components.	DESC
6105	Motors, Electrical	DGSC
6110	Electrical Control Equipment.	DGSC
6115 P [3]	Generators and Generator Sets, Electrical.	DGSC
6120	Transformers; Distribution and Power Station.	DGSC
6145	Wire and Cable, Electrical.	DISC
6150	Miscellaneous Electric Power and Distribution Equipment.	DGSC
6210	Indoor and Outdoor Electric Lighting Fixtures.	DGSC
6220	Electric Vehicular Lights and Fixtures.	DGSC
6230	Electric Portable and Hand Lighting Equipment.	DGSC
6240	Electric Lamps	DGSC
6250	Ballasts, Lampholders and Starters.	DGSC
6260	Nonelectrical Lighting Fixtures.	DGSC
6350	Miscellaneous Alarm and Signal Systems.	DGSC
6505 [4]	Drugs, Biologicals; and Official Reagents.	DPSC
6508 [4]	Medicated Cosmetics and Toiletries.	DPSC
6510 [4]	Surgical Dressing Materials.	DPSC
6515 [4]	Medical and Surgical Instruments, Equipment and Supplies.	DPSC
6520 [4]	Dental Instruments, Equipment and Supplies.	DPSC
6525 [4]	X-Ray Equipment and Supplies; Medical, Dental and Veterinary.	DPSC
6530 [4]	Hospital Furniture, Equipment, Utensils, and Supplies.	DPSC
6532	Hospital and Surgical Clothing and Textile Special Purpose Items.	DPSC
6540 [4]	Opticians' Instruments, Equipment and Supplies.	DPSC
6545 [4]	Medical Sets, Kits, and Outfits.	DPSC
6630	Chemical Analysis Instruments.	DPSC
6635	Physical Properties Testing Equipment.	DGSC
6640	Laboratory Equipment and Supplies.	DPSC
6655	Geophysical and Astronomical Instruments.	DGSC
6670	Scales and Balances	DGSC
6675	Drafting, Surveying, and Mapping Instruments.	DGSC
6680	Liquid and Gas Flow, Liquid Level and Mechanical Motion Measuring Instruments.	DGSC
6750	Photographic Supplies	DGSC

ommodity	DLA center [6]
	DISC
Washers	DISC
ys, and Pins	DISC
	DISC
g Devices	DISC
and Gasket als.	DISC
reening	DISC
eous Hardware	DISC
d Pointers	DISC
and Wire s.	DISC
ims, and s.	DISC
ated and e Buildings.	DCSC
Fixed and g.	DCSC
Tanks	DCSC
g Equipment ncrete Forms.	DCSC
ated Tower res.	DCSC
eous icated res.	DCSC
nd Related Wood Materials.	DCSC
	DCSC
and Veneer	DCSC
Fences and	DCSC
eous ction Materials. al assignment only to airplane mat. (Also, see e 1 at end of tive to se of DLA ed items in GSA d classes.).	DCSC
	DESC
s	DESC
d Networks	DESC
d Lightning rs.	DESC
eakers	DESC
	DESC
rs, Electrical	DESC
minals, and als Strips.	DGSC
ontractors, and ts.	DESC
Transformers	DESC
tric Crystals	DESC
Tubes and ted Hardware.	DESC
uctor Devices sociated re.	DESC
tronic Circuit .	DESC
Handsets, ones, and rs.	DESC
Insulators and ng Materials.	DGSC
Hardware and s.	DGSC
Contact s and des.	DGSC
Waveguides, ated ent.	DESC
and Resolvers	DESC

Federal supply class code	Commodity	DLA center [6]
5995	Cable, Cord, and Wire Assemblies; Communication Equipment.	DGSC
5999	Miscellaneous Electrical and Electronic Components.	DESC
6105	Motors, Electrical	DGSC
6110	Electrical Control Equipment.	DGSC
6115 P [9]	Generators and Generator Sets, Electrical.	DGSC
6120	Transformers; Distribution and Power Station.	DGSC
6145	Wire and Cable, Electrical.	DISC
6150	Miscellaneous Electric Power and Distribution Equipment.	DGSC
6210	Indoor and Outdoor Electric Lighting Fixtures.	DGSC
6220	Electric Vehicular Lights and Fixtures.	DGSC
6230	Electric Portable and Hand Lighting Equipment.	DGSC
6240	Electric Lamps	DGSC
6250	Ballasts, Lampholders and Starters.	DGSC
6260	Nonelectrical Lighting Fixtures.	DGSC
6350	Miscellaneous Alarm and Signal Systems.	DGSC
6505 [4]	Drugs, Biologicals; and Official Reagents.	DPSC
6508 [4]	Medicated Cosmetics and Toiletries.	DPSC
6510 [4]	Surgical Dressing Materials.	DPSC
6515 [4]	Medical and Surgical Instruments, Equipment and Supplies.	DPSC
6520 [4]	Dental Instruments, Equipment and Supplies.	DPSC
6525 [4]	X-Ray Equipment and Supplies; Medical, Dental and Veterinary.	DPSC
6530 [4]	Hospital Furniture, Equipment, Utensils, and Supplies.	DPSC
6532	Hospital and Surgical Clothing and Textile Special Purpose Items.	DPSC
6540 [4]	Opticians' Instruments, Equipment and Supplies.	DPSC
6545 [4]	Medical Sets, Kits, and Outfits.	DPSC
6630	Chemical Analysis Instruments.	DPSC
6635	Physical Properties Testing Equipment.	DGSC
6640	Laboratory Equipment and Supplies.	DPSC
6655	Geophysical and Astronomical Instruments.	DGSC
6670	Scales and Balances	DGSC
6675	Drafting, Surveying, and Mapping Instruments.	DGSC
6680	Liquid and Gas Flow, Liquid Level and Mechanical Motion Measuring Instruments.	DGSC
6750	Photographic Supplies	DGSC

Federal supply class code	Commodity	DLA center [6]
6810 [7]	Chemicals	DFSC & DGSC
6820	Dyes	DGSC
6830	Gases; Compressed and Liquified.	DGSC
6840	Pest Control Agents and Disinfectants.	DGSC
6850 [7]	Miscellaneous Chemical Specialties.	DFSC & DGSC
7210	Household Furnishings	DPSC
7310	Food Cooking, Baking, and Serving Equipment.	DGSC
7320	Kitchen Equipment and Appliances.	DGSC
7360	Sets, Kits, and Outfits; Food Preparation and Serving.	DGSC
7610	Books and Pamphlets	DGSC
7660	Sheet and Book Music	DGSC
7690	Miscellaneous Printed Matter.	DGSC
8110	Drums and Cans	DGSC
8120	Commercial and Industrial Gas Cylinders.	DGSC
8125	Bottles and Jars	DGSC
8305	Textile Fabrics	
	FSC 8305 does not include laminated cloth used exclusively in the repair of lighter than air envelopes.	DPSC
8310	Yarn and Thread	DPSC
8315	Notions and Apparel Findings.	
	FSC 8315 does not include coated cloth tape used exclusively in the repair of lighter than air envelopes.	DPSC
8320	Padding and Stuffing Materials.	DPSC
8325	Fur Materials	DPSC
8330	Leather	DPSC
8335	Shoe Findings and Soling Materials.	DPSC
8340	Tents and Tarpaulins	DPSC
8345	Flags and Pennants	DPSC
8405	Outerwear, Men's	DPSC
8410	Outerwear, Women's	DPSC
8415	Clothing, Special Purpose.	
	FSC 8415 includes all submarine clothing.	DPSC
8420	Underwear and Nightwear, Men's.	DPSC
8425	Underwear and Nightwear, Women's.	DPSC
8430	Footwear, Men's	DPSC
8435	Footwear, Women's	DPSC
8440	Hosiery, Handwear, and Clothing Accessories, Men's.	DPSC
8445	Hosiery, Handwear, and Clothing Accessories, Women's.	DPSC
8450	Children's and Infant's Apparel and Accessories.	DPSC
8455	Badges and Insignia	DPSC
8460	Luggage	DPSC
8465	Individual Equipment	DPSC
8470	Armor, Personal	DPSC
8475	Specialized Flight Clothing and Accessories.	DPSC
8905 [5]	Meat, Poultry, and Fish	DPSC
8910 [5]	Dairy Foods and Eggs	DPSC
8915 [5]	Fruits and Vegetables	DPSC
8920 [5]	Bakery and Cereal Products.	DPSC
8925 [5]	Sugar, Confectionery, and Nuts.	DPSC
8930 [5]	Jams, Jellies, and Preserves.	DPSC
8935 [5]	Soups and Bouillons	DPSC
8940 [5]	Special Dietary Foods and Food Specialty Preparations.	DPSC
8945 [5]	Food Oils and Fats	DPSC
8950 [5]	Condiments and Related Products.	DPSC
8955 [5]	Coffee, Tea, and Cocoa	DPSC
8960 [5]	Beverages, Nonalcoholic	DPSC
8970 [5]	Composite Food Packages.	DPSC
8975 [5]	Tobacco Products	DPSC
9110	Fuels, Solid	DFSC
9130	Liquid Propellants and Fuels, Petroleum Base.	DFSC
9140	Fuel Oils	DFSC
9150	Oils and Greases; Cutting, Lubricating, and Hydraulic.	DFSC
9160	Miscellaneous Waxes, Oils, and Fats.	DFSC
9320	Rubber Fabricated Materials.	DGSC
9330	Plastic Fabricated Materials.	DGSC
9340	Glass Fabricated Materials.	DGSC
9350	Refractories and Fire Surfacing Materials.	DGSC
9390	Miscellaneous Fabricated Nonmetallic Materials.	DGSC
9420 P	Fibers; Vegetable, Animal, and Synthetic.	DPSC
	This partial FSC assignment applies only to raw cotton and raw wool.	
9430 P	Miscellaneous Crude Animal Products, Inedible.	DPSC
	This partial assignment applies only to crude hides.	
9505	Wire, Nonelectrical, Iron and Steel.	DISC
9510	Bars and Rods, Iron and Steel.	DISC
9515	Plate, Sheet, and Strip, Iron and Steel.	DISC
9520	Structural Shapes, Iron and Steel.	DISC
9525	Wire, Nonelectrical, Nonferrous Base Metal.	DISC
9530	Bars and Rods, Nonferrous Base Metal.	DISC
9535	Plate, Sheet, Strip, and Foil, Nonferrous Base Metal.	DISC
9540	Structural Shapes, Nonferrous Base Metal.	DISC
9545	Plate, Sheet, Strip, Foil and Wire, Precious Metal.	DISC
9620 P	Minerals, Natural and Synthetic.	DFSC
	This partial assignment applies only to crude petroleum and crude shale oil.	
9925	Ecclesiastical Equipment, Furnishings and Supplies.	DGSC
9930	Memorials, Cemeterial and Mortuary Equipment and Supplies.	DGSC
9999	Miscellaneous Items	DGSC

Footnotes:

[1] These assignments do not apply to items decentralized by the DLA Center Commander, i.e., designated for purchase by each military department, and to those items in DLA assigned federal supply classes, which may be assigned to GSA for supply management. In addition, see subpart 208.70 which describes conditions under which a military service may purchase (contract for) military service supply managed items in DLA assigned federal supply classes. See notes 2 and 3 for further exceptions pertaining to certain DLA assignments.

[2] DLA assignments in FSC 2510, 2520, 2530, 2540, 2590, 2805, 2910, 2920, 2930, 2940, and 2990 do not apply to repair parts peculiar to combat and tactical vehicles, which are assigned for coordinated acquisition to the Department of the Army. In addition, the assignment in FSC 2805 does not apply to military standard engines 1.5 HP through 20 HP and parts peculiar therefor, which are assigned for coordinated acquisition to the Department of the Army.

[3] This partial FSC assignment in FSC 4210 does not apply to Fire Fighting Equipment developed by or under the sponsorship of a military department. The contracting responsibility for such equipment is assigned to the department which developed or sponsored its development.

[4] DLA has contracting responsibility for all the items in the classes of FS Group 65. In addition, DLA has contracting responsibility for all equipment and supplies related to the medical, dental, veterinary professions in Non-group 65 classes where the military medical services have the sole or prime interest in such items. The specific item coverage of these Non-group 65 items is published in the DoD section of the Federal Supply Catalog for medical material C3-1 through C3-12, inclusive.

[5] This assignment includes health and comfort items listed in AR 700-23. It also includes resale items for commissary stores (including brand name items).

[6] DLA centers are identified as follows—DCSC—Defense Construction Supply Center; DESC—Defense Electronics Supply Center; DFSC—Defense Fuel Supply Center; DGSC—Defense General Supply Center; DISC—Defense Industrial Supply Center; DPSC—Defense Personnel Support Center.

[7] DFSC is responsible for contracting for only petroleum base items in FSC 6810 and 6850.

[8] This partial assignment applies only to secondary items not identified as IPE. Such secondary items are listed in the applicable Federal Supply Catalog Management Data lists of each respective service.

[9] This partial FSC assignment in FSC 6115 does not apply to Mobile Electric Power Generating Sources (MEPGS). The contracting direction responsibility for MEPGS is assigned to the DoD Project Manager, Mobile Electric Power, by DoDD 4120.11. DoD components desiring to use other than the DoD Standard Family of Generator Sets, contained in MIL-STD 633, shall process a Request for Deviation in accordance with Joint Operating Procedures, AR 700-101, AFR 400-50, NAVMATINST 4120.100A, MCO 11310.8c and DLAR 4120.7, Subject: Management and Standardization of Mobile Electric Power Generating Sources, prior to initiating an acquisition.

Part 5—Defense Nuclear Agency Assignments

Federal supply class code	Commodity
1105	Nuclear Bombs.
1110	Nuclear Projectiles.
1115	Nuclear Warheads and Warhead Sections.
1125	Nuclear Demolition Charges.

Federal supply class code	Commodity
1127	Nuclear Rockets.
1130	Conversion Kits, Nuclear Ordnance.
1135	Fuzing and Firing Devices, Nuclear Ordnance.
1140	Nuclear Components.
1145	High Explosive Charges, Propellants, and Detonators; Nuclear Ordnance.
1190	Specialized Test and Handling Equipment, Nuclear Ordnance.
1195	Miscellaneous Nuclear Ordnance.
	In addition to the above, assignments to DNA include all items for which DNA has integrated management responsibility in accordance with DoD Directive 5105.31.

Part 6—General Services Administration Assignments

Federal supply class code	Commodity
2310 P	Passenger Motor Vehicles.
2320 P	Trucks and Truck Tractors.
	These two partial assignments apply to all commercial passenger carrying vehicles and trucks up to 10,000 pounds Gross Vehicle Weight (GVW) except the following types which are assigned for DoD Coordinated Acquisition to the Department of the Army— Bus, convertible to ambulance. Truck, 4x4, convertible to ambulance. Truck, 4x4, dump, 9,000 pounds GVW, with cut-down cab. (See Army Coordinated Acquisition assignments in FSC 2310 and 2320)
3540	Wrapping and Packaging Machinery.
3550	Vending and Coin Operated Machines.
3590	Miscellaneous Service and Trade Equipment.
3750	Gardening Implements and Tools.
5110	Hand Tools, Edged, Nonpowered.
5120	Hand Tools, Nonedged, Nonpowered
5130	Hand Tools, Power Driven.
5133	Drill Bits, Counterbores, and Countersinks; Hand and Machine.
5136	Taps, Dies, and Collects; Hand and Machine.
5140	Tool and Hardware Boxes.
5180	Sets, Kits, and Outfits of Hand Tools.
5210	Measuring Tools, Craftmen's.
5345	Disks and Stones, Abrasive.
5350	Abrasive Materials.
5610	Mineral Construction Materials, Bulk.
5620	Building Glass, Tile, Brick, and Block.
5630	Pipe and Conduit, Nonmetallic.
5640	Wallboard, Building Paper, and Thermal Insulation Materials.
5650	Roofing and Siding Materials.
5670	Architectural and Related Metal Products.
5680 P[1]	Miscellaneous Construction Materials.
7105	Household Furniture.
7110	Office Furniture.
7125	Cabinets, Lockers, Bins, and Shelving.
7195	Miscellaneous Furniture and Fixtures.
7220	Floor Coverings.
7230	Draperies, Awnings, and Shades.
7240	Household and Commercial Utility Containers.
7290	Miscellaneous Household and Commercial Furnishings and Appliances.
7330	Kitchen Hand Tools and Utensils.
7340	Cutlery and Flatware.
7350	Tableware.
7410	Punched Card System Machines.
7420	Accounting and Calculating Machines.
7430	Typewriters and Office-type Composing Machines.
	This assignment does not apply to machines controlled by the Congressional Joint Committee on Printing.
7450	Office-type Sound Recording and Reproducing Machines.
7460	Visible Record Equipment.
7490	Miscellaneous Office Machines.
	This assignment does not apply to equipment controlled by the Congressional Joint Committee on Printing.
7510	Office Supplies.
	This assignment does not apply to office supplies, including special inks, when DoD requirements of such items are acquired through Government Printing Office channels.
7520	Office Devices and Accessories.
	This assignment does not apply to office devices and accessories when DoD requirements of such items are acquired through Government Printing Office channels.
7530	Stationery and Record Forms.
	This assignment does not apply to stationery and record forms when DoD requirements of such items are acquired through Government Printing Office channels including those items covered by term contracts issued by GPO for tabulating cards and marginally punched continuous forms.
7710	Musical Instruments.
7720	Musical Instrument Parts and Accessories.
7730	Phonographs, Radios, and Television Sets; Home Type.
7740	Phonograph Records.
7810	Athletic and Sporting Equipment.
7820	Games, Toys, and Wheeled Goods.
7830	Recreational and Gymnastic Equipment.
7910	Floor Polishers and Vacuum Cleaning Equipment.
7920	Brooms, Brushes, Mops, and Sponges.
7930	Cleaning and Polishing Compounds and Preparations.
8010	Paints, Dopes, Varnishes, and Related Products.
8020	Paint and Artists Brushes.
8030	Preservative and Sealing Compounds.
8040	Adhesives.
8105	Bags and Sacks.
8115	Boxes, Cartons and Crates.
8135	Packaging and Packing Bulk Materials.
8510	Perfumes, Toilet Preparations and Powders.
8520	Toilet Soap, Shaving Preparations and Dentifrices.
8530	Personal Toiletry Articles.
8540	Toiletry Paper Products.
8710	Forage and Feed.
8720	Fertilizers.
8730	Seeds and Nursery Stock.
9310	Paper and Paperboard.
9905	Signs, Advertising Displays, and Identification Plates.
9910	Jewelry.
9915	Collector's Items.
9920	Smokers' Articles and Matches.

NOTE: ("P" after FSC number indicates partial FSC assignment.)

FOOTNOTES: These GSA assignments do not apply to items as described under FSC 7430, 7490, 7510, 7520, and 7530, and those items in the GSA assigned federal supply classes which have been retained for DLA supply management as listed in the applicable Federal Supply Catalog Management Data lists. In addition, see subpart 208.70 which describes conditions under which a military service may contract for military service managed items in GSA assigned federal supply classes.

[1] This partial FSC assignment does not include landing mats which are assigned to the Defense Logistics Agency.

Appendix C—Contractor Purchasing System Reviews

Sec.

Part 1—General

C-100 Scope
C-101 Planning a Purchasing System Review
  C-101.1 Team Captain
  C-101.2 Review Team
  C-101.3 Notification to Contractor
  C-101.4 Obtaining Preliminary Data
C-102 In-Plant Review
C-103 Report Preparation
  C-103.1 Report Content

Part 2—Analytical Procedures

C-200 Scope
C-201 Conducting the Review
  C-201.1 Purpose of the Review
  C-201.2 Review Team Members and Review Methods
  C-201.3 Summary of Purchases Examined
C-202 Company History and Purchasing Organization
  C-202.1 Background Data and Scope of Purchasing Organization
  C-202.2 Management's Attitude Toward Purchasing
  C-202.3 Purchasing Organization
  C-202.4 Interdepartmental Relations
  C-202.5 Internal Purchasing Organization
  C-202.6 Purchasing Personnel
  C-202.7 Conflict of Interest/Gifts and Gratuities
C-203 Purchasing Policies and Procedures
  C-203.1 Evaluation of Written Policies and Procedures
  C-203.2 Analysis of Purchasing Forms
C-204 Subcontract Clauses
  C-204.1 Analysis of Purchase Order Clauses
  C-204.2 Restrictive Clauses
  C-204.3 Special Clauses
  C-204.4 Side Agreements
  C-204.5 ACO Consent
  C-204.6 Cost Accounting Standards
C-205 Management of Purchasing
  C-205.1 Documentation of Purchasing Files
  C-205.2 Reports and Controls

Commodity
eous Household and Com- Furnishings and Appli-
Hand Tools and Utensils.
nd Flatware.
s.
Card System Machines.
g and Calculating Ma-
rs and Office-type Compos- chines.
gnment does not apply to es controlled by the Con- nal Joint Committee on
e Sound Recording and Re- ng Machines.
cord Equipment.
eous Office Machines.
gnment does not apply to ent controlled by the Con- nal Joint Committee on
plies.
gnment does not apply to supplies, including special hen DoD requirements of ems are acquired through ment Printing Office chan-
ices and Accessories.
gnment does not apply to devices and accessories DoD requirements of such e acquired through Govern- nting Office channels.
and Record Forms.
nment does not apply to y and record forms when quirements of such items uired through Government Office channels including ems covered by term con- sued by GPO for tabulating d marginally punched con- orms.
struments.
strument Parts and Acces-
hs, Radios, and Television me Type.
h Records.
d Sporting Equipment.
oys, and Wheeled Goods.
l and Gymnastic Equip-
ners and Vacuum Cleaning nt.
Brushes, Mops, and
nd Polishing Compounds arations.
es, Varnishes, and Relat- cts.
rtists Brushes.
e and Sealing Com-
acks.
ons and Crates.
and Packing Bulk Materi-
Toilet Preparations and
p, Shaving Preparations frices.
iletry Articles.
er Products.

Federal supply class code	Commodity
8710	Forage and Feed.
8720	Fertilizers.
8730	Seeds and Nursery Stock.
9310	Paper and Paperboard.
9905	Signs, Advertising Displays, and Identification Plates.
9910	Jewelry.
9915	Collector's Items.
9920	Smokers' Articles and Matches.

FOOTNOTES: These GSA assignments do not apply to items as described under FSC 7430, 7490, 7510, 7520, and 7530, and those items in the GSA assigned federal supply classes which have been retained for DLA supply management as listed in the applicable Federal Supply Catalog Management Data lists. In addition, see subpart 208.70 which describes conditions under which a military service may contract for military service managed items in GSA assigned federal supply classes.

[1] This partial FSC assignment does not include landing mats which are assigned to the Defense Logistics Agency.

Appendix C—Contractor Purchasing System Reviews

Sec.

Part 1—General

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Part 2—Analytical Procedures

C–200 Scope
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  C–202.2 Management's Attitude Toward Purchasing
  C–202.3 Purchasing Organization
  C–202.4 Interdepartmental Relations
  C–202.5 Internal Purchasing Organization
  C–202.6 Purchasing Personnel
  C–202.7 Conflict of Interest/Gifts and Gratuities
C–203 Purchasing Policies anu Proceuures
  C–203.1 Evaluation of Written Policies and Procedures
  C–203.2 Analysis of Purchasing Forms
C–204 Subcontract Clauses
  C–204.1 Analysis of Purchase Order Clauses
  C–204.2 Restrictive Clauses
  C–204.3 Special Clauses
  C–204.4 Side Agreements
  C–204.5 ACO Consent
  C–204.6 Cost Accounting Standards
C–205 Management of Purchasing
  C–205.1 Documentation of Purchasing Files
  C–205.2 Reports and Controls

  C–205.3 Standardization Program
  C–205.4 Value Engineering Program
  C–205.5 Make-or-Buy Program
  C–205.6 Material Estimating—Budget Control
  C–205.7 Value Analysis Program
C–206 Development of Purchase Requirements
  C–206.1 Advance Purchasing Planning
  C–206.2 Identification of the Purchase Requirement
  C–206.3 Establishment of Schedules—Purchasing Lead Time
  C–206.4 Inventory Control
  C–206.5 Material Control Methods
  C–206.6 Expediting and Follow-up of Purchase Orders
  C–206.7 Receiving
  C–206.8 Transportation
  C–206.9 Packaging
C–207 Selecting Sources
  C–207.1 Competition
  C–207.2 Intra-Company Transactions
  C–207.3 Single-Source and Sole-Source Purchasing
  C–207.4 Small Business and Small Disadvantaged Business Utilization
  C–207.5 Subcontractor Responsibility and Vendor Performance Rating System
C–208 Pricing and Negotiation
  C–208.1 Statistical Information
  C–208.2 Truth in Negotiations Act
  C–208.3 Adequate Price Competition
  C–208.4 Price Analysis and Cost Analysis
  C–208.5 Negotiations
  C–208.6 Cash Discounts and Terms
  C–208.7 Handling Low Dollar Orders
  C–208.8 Selection of Contract Types
C–209 Subcontract Award and Administration
  C–209.1 Solicitation, Receipt, and Evaluation of Proposals
  C–209.2 Awarding the Subcontract or Purchase Order
  C–209.3 Subcontract Administration
  C–209.4 Changes to Subcontracts
  C–209.5 Terminated Subcontracts
  C–209.6 Closing Out Subcontracts
C–210 Appendices, Exhibits Case Histories

Part 3—Report Formats.

C–300 Scope
C–301 Cover Page and Part I
C–302 Part II
C–303 Attachments

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Part 1—General

C–100 Scope.

This appendix provides guidance and procedures for evaluating contractor purchasing systems (see FAR Subpart 44.3 and DFARS Subpart 244.3) and preparing the review reports. It applies to follow-up and special reviews as well as comprehensive contractor purchasing system reviews (CPSRs).

C–101 Planning a purchasing system review.

C–101.1 Team captain.

Departments/agencies shall appoint a team captain for each comprehensive contractor purchasing system review (CPSR), follow-up review, or special review. The team captain normally shall be a senior purchasing system analyst (PSA) who has wide experience in the conduct of CPSRs and who is not assigned at the contractor's plant. The team captain—

(a) Determines the scope and depth of the review;

(b) Plans and schedules the review;

(c) Sets up the review team;

(d) Manages the team effort, including assigning work to members;

(e) Is the team's primary interface with the contractor;

(f) Is responsible for preparation of the report;

(g) Sits on the CPSR Board of Review (if established) as a non-voting member; and

(h) Prepares the summary report and signs the complete report.

C–101.2 Review team.

(a) The team captain decides the size and composition of the team. The size of the team may vary with the size of the contractor and the scope of the review. The team should be large enough to permit an adequate review in a reasonable time.

(b) For contractors with major defense systems, the review team should include specialists in production, quality assurance, engineering, and acquisition management functions.

(c) The contract audit office shall appoint an auditor to participate as a team member.

(d) The team captain shall notify affected contracting offices of planned reviews and invite input or participation on the review team.

C–101.3 Notification to contractor.

The team captain will prepare a letter for the administrative contracting officer's (ACO) signature that notifies the contractor of the proposed review and requests preliminary data for planning purposes.

C–101.4 Obtaining preliminary data.

The team captain normally uses the following data in planning the scope of the CPSR review. Preplanning data for other reviews should be tailored to the circumstances. If any of these data are not already available from Government sources, the team captain will ask the ACO to request them from the contractor. Pre-review planning normally starts 4 to 8 weeks prior to the scheduled in-plant review starting date.

(a) *Organization charts.* (1) For the plant being reviewed, show management structure down to at least the department-head level.

(2) For the purchasing department, show structure down to at least the first level of supervision, and show, either in the chart itself or in an accompanying table, the number and job classification (or assignment) of personnel reporting to each first-level and higher supervisor.

(b) *Purchasing.* (1) Policy statements.

(2) Procedures.

(3) Forms.

(c) Data on sales and subcontracts similar to that at C–202.1.

(d) Weekly or monthly management reports, such as shortage reports, workload and work backlog reports, scrap and salvage reports, and repetitive reports to company management and the Government.

(e) List of affiliates and autonomous or semi-autonomous departments and divisions.

(f) Pertinent reports on the contractor's purchasing system.

C–102 In-plant review.

The review team shall have an entrance conference with the contractor. Part 2 of this appendix contains detailed guidance on conducting the analytical part of the CPSR. Also use relevant portions of Part 2 for performing follow-up or special reviews. The in-plant review normally takes between 10 to 20 days.

C–103 Report preparation.

C–103.1 Report content.

(a) A complete CPSR report consists of Part I, Summary Report, and Part II, CPSR Supporting and Statistical Data. The report format is at Part 3 of this appendix. Part 1 is self-explanatory. Part 2 of this appendix contains detailed guidance on obtaining and analyzing information to be included in Part II.

(b) At locations having a resident PSA, the review team may prepare only Part I, Summary Report, in lieu of a complete report.

(c) For follow-up or special reviews, review teams need only complete Part I. However, they should use the procedures in Part 2 of this appendix for analyzing the areas under review.

(d) The report is an action document which the contracting officer uses to support the decision concerning the effectiveness of a contractor's purchasing system. Consequently, focus on significant areas for corrective action. Do not include material which is not needed to support findings and recommendations. Whether a specific operation is satisfactory or unsatisfactory, state the pertinent facts and circumstances.

Include only those details and statistics necessary to support findings and recommendations.

Part 2—Analytical Procedures

C–200 Scope.

This part explains the analytical procedures to be used in conducting a CPSR and documenting the analysis in the report. Organization of this part parallels Part II (Supporting and Statistical Data) of the report format in Part 3 of this appendix.

C–201 Conducting the review (Section IIA)

C–201.1 Purpose of the review (IIA1).

State the reason for conducting the review. List the in-plant review period.

C–201.2 Review team members and review methods (IIA2).

List the members and their title and organizations. State the review methods used, i.e., examination of the contractor's written policies and procedures on purchasing/subcontracting, evaluation of actual operating practices and methods through review of subcontract purchase order files, and interviews with contractor and Government personnel.

C-201.3 Summary of purchases examined (IIA3).

(a) Explain the method used to select the sample. Also list the sample period, universe, and what was examined as follows:

SUMMARY OF PURCHASES EXAMINED

[Period Sampled (in months or specific dates)]

Universe	$100,000 and over	$25,000 to $100,000	Under $25,000	Total
Number of Purchase Orders (POs)				
Value ($000)				
Sample Selected:				
Number of POs				
Value ($000)				
Percentage (Sample to Universe Dollars)				
Special Categories Included in Sample				

Description of category	No. of purchase orders	Total value
Major Subcontracts		
Blanket Orders		
Intra-Company		
Engineering Service		
Consultant Contracts or Agreements		
Total		

(b) *Selecting the Universe.* Use the most current period of at least six months. Do not use a period older than one year.

(c) *Selecting the sample.* (1) The team captain—

(i) Selects the sample;

(ii) Can use a sampling method based on judgment, in lieu of random sampling techniques, as long as it produces results representative of all subcontracts; and

(iii) Ensures that the sampling procedure is compatible with the contractor's existing systems and is used consistently in all CPSRs on a given contractor.

(2) The sample should include orders below the small purchase limitation in proportion to their representation in the universe.

(3) The initial sample of intermediate ($25,000 to $100,000) and high dollar ($100,000 and over) subcontracts should ordinarily add up to a combined total of at least 150 subcontracts. The team captain can later vary the number depending on the extent of deficiencies observed as the review progresses. If there are less than 150 intermediate and high dollar subcontracts, review all issued in the last 12 months.

(4) Review all high dollar subcontracts for compliance with Public Law 87-653, Truth In Negotiations Act.

(d) *Analyzing the sample.*

(1) Analyze the sample and record the result on the analysis spread sheet, Attachment 1 to the CPSR report (see Part 3 of this appendix).

(2) Explain indicated problem areas or unusual trends.

C-202 Company history and purchasing organization (IIB).

C-202.1 Background data and scope of purchasing organization (IIB1).

Briefly summarize the history of the corporation and division or plant and include the following statistical information:

BACKGROUND DATA

Personnel	Prior year (date)	Current (date)
Total Division		
Material Department		
Purchasing Department		

Sales data	Prior year ($)	Current year ($)
Prime Contracts:		
Army		
Navy		
Air Force		
NASA		
DLA		
Other		
Total Government (Prime)		
Total Commercial (Prime)		
Total Prime Sales		
Subcontracts		
Government		
Commercial		
Total Subcontract Sales		
Total Prime and Subcontract Sales		

Government sales	Prior year ($)	Current year ($)	Estimate for next year ($)
Prime			
Firm Fixed-Price:			
Competitive			
Not Competitive			
Other Fixed-Price			
Cost Type			
Total			
Subcontract			
Firm Fixed-Price:			
Competitive			
Not Competitive			
Other Fixed-Price			
Cost Type			
Total			

Contractor purchases	Prior year	Current year
	No. Dollars	No. Dollars
$0-$25,000		
$25,000-$100,000		
$100,000 and Over		
Total		
Percent of Sales		

Principal Government Contracts and Subcontracts Held

Contract number	Type	Description	Face value	ULO

C-202.2 Management's attitude toward purchasing (IIB2).

Explain the extent to which management officials are—

(a) Aware of the policies and practices of their purchasing organization;

(b) Familiar with their key subcontractors, including the basis for awards and the effectiveness of purchases; and

(c) Responsive to operating problems in the purchasing area.

C-202.3 Purchasing organization (IIB3).

Determine whether the organizational placement of the department allows it to operate at maximum effectiveness. Unclear lines of responsibility or placement of the purchasing function under another management function generally impairs the purchasing department's capability to make objective decisions.

C-202.4 Interdepartmental relations (IIB5).

Describe the functional relationships of purchasing to other departments. Pay particular attention to the relationship between engineering and purchasing. Comment on any relationships which are not harmonious, or which do not evidence a free, fast, and accurate flow of information.

C-202.5 Internal purchasing organization (IIB6).

Determine if the organization can efficiently accomplish its function. Describe the various buying sections, identifying commodity assignments, numbers of personnel, and division of responsibility (e.g., price/cost analysis, market research, expediting). Explain whether a contractor with major subsystems has, or should have, a separate systems purchasing group to provide

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ion or plant and include
al information:

OUND DATA

Prior year (date)	Current (date)

Prior year ($)	Current year ($)

ar	Current year ($)	Estimate for next year ($)

Government sales	Prior year ($)	Current year ($)	Estimate for next year ($)
Not Competitive			
Other Fixed-Price			
Cost Type			
Total			

Contractor purchases	Prior year	Current year
	No. Dollars	No. Dollars
$0–$25,000		
$25,000–$100,000		
$100,000 and Over		
Total		
Percent of Sales		

Principal Government Contracts and Subcontracts Held

Contract number	Type	Description	Face value	ULO

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Determine if the organization can efficiently accomplish its function. Describe the various buying sections, identifying commodity assignments, numbers of personnel, and division of responsibility (e.g., price/cost analysis, market research, expediting). Explain whether a contractor with major subsystems has, or should have, a separate systems purchasing group to provide the specialized purchasing administration efforts needed for these products.

C–202.6 Purchasing personnel (IIB7).

Determine the adequacy of the contractor's standards for the qualification, training, experience, and performance of its purchasing staff.

C–202.7 Conflict of interest gifts and gratuities (IIB8).

Determine whether the contractor—

(a) Policies on conflict of interest/gifts and gratuities are consistent with DoD policy (including the Anti-Kickback Act).

(b) Is complying with its policies.

C–203 Purchasing policies and procedures (IIC).

C–203.1 Evaluation of written policies and procedures (IIC1).

(a) Evaluate the—

(1) Scope and effectiveness of the contractor's purchasing policies and procedures; and

(2) Methods for formulating, issuing, updating, and changing them.

(b) Determine whether the contractor's policies and procedures are—

(1) In writing;

(2) Adequate in terms of acceptable purchasing practice;

(3) Consistent with DoD policy and contractual provisions; and

(4) Known and followed.

(c) As a minimum, the contractor should have policies and procedures covering the following areas—

(1) *Management of purchasing.* (i) Who has the authority to make commitments and to question quality and quantity of material requisitioned or received.

(ii) Assuring that purchasing personnel are complying with applicable public laws and implementing government regulations (e.g., Truth in Negotiations).

(iii) Control and restriction of reciprocity (e.g., trade agreements, side agreements, etc:).

(iv) Purchasing file requirements.

(v) Controlling the use of nonstandard parts and components by subcontracts.

(vi) A make-or-buy program, including cost considerations as well as assessments of subcontract and in-house engineering, manufacturing, and quality assurance capabilities.

(vii) Federal information processing resources.

(2) *Development of purchase requirements.* (i) Timely preparation and appropriate review, approval, and transmission of an accurate and complete technical data package and purchase requisitions.

(ii) Reviewing requisitions to consolidate all requirements (Government and commercial) for the same or similar items—reviewing requirements against available stocks and surpluses.

(iii) Inventory control.

(iv) Transportation and packaging.

(v) Preparation, processing, and issuance of purchase orders.

(vi) Assuring that purchasing documents include appropriate source inspection requirements (prime contractor and Government).

(vii) Assuring flow down to purchase orders and subcontracts of applicable prime contract terms and conditions.

(3) *Selecting sources.* (i) Developing and soliciting potential subcontractors.

(ii) Obtaining competition.

(iii) Controlling intra-company transactions with affiliates, subsidiaries, or parent company.

(iv) Requiring written justification of sole source purchasing.

(v) Assuring that the subcontractor's quality system complies with the prime contractor's quality assurance program requirements and product testing.

(vi) Preaward survey of prospective suppliers.

(vii) Complying with the small business and small and disadvantaged business subcontracting program contract clauses.

(viii) A vendor rating system and vendor case histories.

(ix) Fully justifying purchases from suspended or debarred firms.

(4) *Pricing.* (i) Cost or price analysis.

(ii) Timely furnishing of current supplier quotes and negotiated price data for use in proposal preparation.

(iii) Establishing and documenting negotiation objectives and their difference with the negotiated price.

(iv) Requiring written justification of second or subsequent best and final offers and split awards.

(v) Obtaining prompt payment discounts from subcontractors.

(vi) Effectively processing a high volume of low dollar value orders and calls against blanket orders and open-end subcontracts.

(vii) Spare parts pricing.

(viii) Selecting the proper contract type.

(ix) Controlling cost reimbursement, time and material, and labor-hour subcontracts.

(x) Consultant contracts or agreements.

(5) *Subcontract award and administration.* (i) ACO advance notification and consent.

(ii) Timely definitization of undefinitized actions (e.g., letter contracts) and changes.

(iii) Subcontractor reporting requirements for postaward management.

(iv) Maintaining visibility of subcontracts in the areas of cost, schedule, and performance.

(v) Monitoring progress payments to subcontractors.

(vi) Requiring subcontractors to identify and record nonconformance, determine cause of defects, implement timely corrective action, and provide appropriate notification.

(vii) Verifying subcontractors' control of calibration, measuring, and test equipment.

(viii) Controlling subcontractor acquisition of special tooling and test equipments.

(ix) Use of Government property.

(x) Receiving, inspecting, accepting, and returning material.

(xi) Adequate review and processing of terminations.

(xii) Subcontract closeout.

C–203.2 Analysis of purchasing forms (IIC2).

Determine whether the contractor's forms (including automated formats) effectively support the purchasing operation.

C–204 Subcontract clauses (IID).

The team captain should have the team's legal specialist perform the clause review. This part of the review can be done after the in-plant review, if necessary.

C–204–1 Analysis of purchase order clauses (IID1).

Ensure that the contractor—

(a) Uses standard clauses for like situations;

(b) Has a system that provides for special or nonstandard clauses when conditions warrant;

(c) Flows down required prime contract clauses and requirements; and

(d) Uses clauses appropriate to the action.

C–204–2 Restrictive clauses (IID2).

(a) Restrictive clauses limit subcontractor use of prime contractor furnished materials or data. Example—

"All special tooling, drawings, data, designs, engineering instructions, specifications, or other information supplied by or in behalf of the buyer, or prepared by seller, shall be and remain the property of buyer, and seller shall not use or disclose any special tooling, drawings, data, design, engineering instructions, specification, or other information, except in the performance of orders for buyer and upon buyer's request, such special tooling, drawings, data, design, engineering instructions, specifications, or other information, and all copies thereof shall be returned to buyer."

(b) The Government does not permit use of these clauses in cases where the materials or data furnished by the prime contractor to the subcontractor came from the Government and the Government has title, a vested interest, or data rights. This is to prevent what otherwise could happen—prime contractor could restrict competition by preventing subcontractors from using the (Government) furnished material or data in direct sales to the Government.

(c) The review team shall ensure that the contractor does not use "restrictive" clauses which limit subcontractor use of Government furnished data or material in direct dealings with the Government. If there are any, the team should recommend that the ACO withhold system approval until the clauses are modified.

C–204.3 Special clauses (IID3).

Contractors frequently use the same purchase order forms for both commercial and Government subcontracts. This is fine, but the review team should ensure that the terms and conditions are consistent with Government policies. Pay special attention to the following provisions—

(a) *Pricing and payments.* Ensure that provisions do not allow—

(1) Establishment of prices "after the fact" or on an "advise price" basis;

(2) Unilateral adjustment by the prime contractor; or

(3) Escalation inconsistent with the prime contract provision.

(b) *Patent rights.* Ensure that the subcontract clause is consistent with the prime contract. Particularly ensure that the prime does not require greater rights from the subcontractor than the Government requires from the prime.

(c) *Disputes.* Do not approve any subcontract clause which allows subcontractors a right of direct appeal to the contracting officer and the Board of Contract Appeals. Ensure that flow down clauses are appropriately modified to reflect this. Clauses which provide that the prime contractor will prosecute an appeal on behalf of the subcontractor or in the name of the prime are fine.

(d) *Warranty.* Standard commercial type warranty requirements are acceptable, provided they are consistent with any prime contract requirements.

(e) *Equal opportunity.* Make sure the contractor flows down the applicable provisions of the clause at FAR 52.222-26, Equal Opportunity, to every subcontract or purchase order, unless exempted by rules, regulations, or orders of the Secretary of Labor (41 CFR, chapter 60).

(f) *Subcontractor cost or pricing data.* Make sure the appropriate clauses are flowed down. Check for the following—

(1) FAR 52.214-26, Audit—Sealed Bidding;

(2) FAR 52.214-28, Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding;

(3) FAR 52.215-2, Audit—Negotiation;

(4) FAR 52.215-24, Subcontractor Cost or Pricing Data; and

(5) FAR 52.215-25, Subcontractor Cost or Pricing Data—Modifications.

(g) *Termination for convenience of the Government.* Subcontracts should include a termination for convenience clause since the prime contract requires the contractor, on receipt of a notice of termination, to terminate subcontracts if they relate to the terminated part of the prime contract (see FAR subpart 49).

(h) *Government property.* Subcontracts should include a clause that—

(1) Holds subcontractors responsible for loss or damage to Government property in their possession and control under the subcontracts;

(2) Unless otherwise authorized by specific approval of the contracting officer, requires the subcontractor to return the property in the same condition as when received, except for reasonable wear and tear and use in accordance with the contract; and

(3) Requires any other controls over Government property required by the prime contract or FAR Part 45.

(i) *Limitation of payment provision of certain subcontracts.* (1) Certain prime contract clauses require contractors to—

(i) Insert a limitation of payment provision in each price redeterminable or incentive subcontract; or

(ii) Insert in each cost-reimbursement subcontract a requirement for these subcontractors to include a limitation of payment provision in each price-redeterminable or incentive subcontract under their subcontract.

(2) The prime contract clauses that require the above are—

(i) FAR 52.216-5, Price Redetermination—Prospective;

(ii) FAR 52.216-6, Price Redetermination—Retroactive;

(iii) FAR 52.216-16, Incentive Price Revision—Firm Target;

(iv) FAR 52.216-17, Incentive Price Revision—Successive Targets; and

(v) FAR 52.244-2, Subcontracts (Cost-Reimbursement and Letter Contracts).

C-204.4 Side agreements (IID5).

Ask the contractor if there are any side agreements that negate clauses used in the standard formats.

C-204.5 ACO consent (IID5).

(a) Ensure that the contractor—

(1) Requests ACO consent or submits advance notification when required; and

(2) Submits consent packages with information necessary to perform the review.

(b) Include the following statistical data in the report.

	$100,000 and over	$25,000 to $100,000	Under $25,000	Total
No. of POs Reviewed:				
Advance Notification				
No. Required				
Dollar Value				
No. Obtained				
Dollar Value				
No. Inadequate				
Dollar Value				
Prior Written Consent:				
No. Required				
Dollar Value				
No. Obtained				
Dollar Value				
No. Documentation-Inadequate				
Dollar Value				

(c) The following table summarizes advance notification and consent requirements.

ADVANCE NOTIFICATION, WRITTEN JUSTIFICATION, AND CONSENT TO SUBCONTRACT SUMMARY

Type of subcontract	Type of prime contract (and subcontract clause)				
	Fixed price	Cost reimbursement & letter contracts		Time & material	Facilities
		Supply	R&D		
Fixed Price	52.244-1		52.244-2	52.244-3	52.244-2
1. All except those below					
2. Experimental, Development, or Research Work			A J C		
3. Over $25,000 or 5% of contract		A J C*	A C*		
4. Over $100,000	A* J* C* +	A J C*	A C*		
5. Family of subs over $100,000	A* J* C* +	A J	A J		
6. Industrial facilities		A J C	A J C		
7. For other than raw material or commercial stock				A J C	
Cost-Reimbursement, Time and Material, and Labor Hour:					
1. All except those below		A C*	A C*		
2. Experimental, development, or research work			A C		
3. Over $25,000 (including fee) or 5% of contract	A* J* C*	A J+ + C**	A J+ + C*		
4. Over $100,000		A J C*			
5. Family of subs over $100,000		A J			
6. Industrial facilities		A J C	A J C		A J C

ADVANCE NOTIFICATION, WRITTEN JUSTIFICATION, AND CONSENT TO SUBCONTRACT SUMMARY—Continued

Type of subcontract	Type of prime contract (and subcontract clause)				
	Fixed price	Cost reimbursement & letter contracts		Time & material	Facilities
		Supply	R&D		
7. Special test equipment over $10,000		A J · C	A J C		
8. Subs other than raw material or commercial stock				A J C	

* Waived when purchasing system approved.
+ Normally this does not apply unless there is an unpriced modification.
+ + $10,000 (including fee) for cost-reimbursement, time-and-materials, or labor-hour subcontracts
Code: A = Advance notification; J = Written justification; C = ACO consent.

C-204.6 Cost accounting standards, Public Law 91-379 (IID6).

(a) Examine the prime contract to determine if the subcontract is subject to cost accounting standards (CAS) (see the clauses at FAR 52.230-3, Cost Accounting Standards, 52.230-4, Administration of Cost Accounting Standards, 52.230-5, Disclosure and Consistency of Cost Accounting Practices). If the subcontract is subject, determine if the contractor is complying with CAS when awarding such subcontracts. The contractor complies by—

(1) Obtaining a subcontractor disclosure statement or a certificate that a disclosure statement is not required; and

(2) Flowing down the applicable clauses to covered subcontractors.

(3) Notifying the ACO of subcontracts subject to the CAS clause or the Disclosure and Consistency of Cost Accounting Practices clause.

(b) Consistent noncompliance with CAS when awarding subcontracts is cause for recommending that system approval be withheld. Isolated instances of noncompliance are not sufficient cause.

(c) Include the following statistical data in the report—

	No. POs	Total $ value
Over $100,000		
Cost Accounting Standards Applicable.		
Disclosure Statement or Certificate Obtained.		
Percent of Obtained to Applicable.		

C-205 Management of purchasing (IIE).

C-205.1 Documentation of purchasing files (IIE1).

Determine whether file documentation is sufficient, but not excessive, to provide a complete and accurate history of the transactions and consistent with the contractor policies. Documents included in the files would be those necessary to evidence compliance with Government requirements and the contractor's policies and procedures. In reviewing automated purchasing system files, only review printed material when absolutely necessary.

C-205.2 Reports and controls (IIE2).

Review the system of reports and controls to determine if management is receiving and evaluating pertinent information for effective control and management of the department.

C-205.3 Standardization program (IIE3).

A standardization program is an organized effort to establish, to the extent practical, fixed standards of quality, size, and description for material in order to minimize the number of different parts purchased or manufactured, and to make certain that all materials and parts purchased are standard military or commercial items. Evaluate the contractor's program.

C-205.4 Value engineering program (IIE4).

Ensure that the contractor—

(a) Flows down the value engineering clause (FAR 52.248-1, Value Engineering, 52.248-2, Value Engineering—Architect-Engineer, or 52.248-3, Value Engineering—Construction) when it is in the prime contract; and

(b) Has an adequate system for handling, review, evaluation, and pricing subcontract value engineering change proposals before submitting them to the ACO.

C-205.5 Make or buy program.

(a) Evaluate the contractor's procedures for making make or buy decisions. Ensure that procedures are followed and decisions are documented. Evaluate any deviations from established practice.

(b) For contracts with specific make or buy programs, determine compliance comparing the contractual provisions with the orders placed by purchasing. Review any changes for compliance with the contractual program.

C-205.6 Material estimating—budget control (IIE6).

(a) Analyze the estimating system review (see 215.811-70) to determine its impact, if any, on the purchasing system. Determine the adequacy of the contractor's method for establishing and issuing material budgets. Comment on whether the contractor has, or should have, a separate budget for developing alternate sources of supply.

(b) The review team must determine what department within the contractor's organization has the responsibility for compiling the cost estimate for material, purchased parts, and subcontracted items to be used in establishing new business proposals and engineering change proposals, and how the estimates are developed.

(1) The complete cycle—the estimate, the budgeted amount, and control to ensure staying within the budgeted amount—must be understood and evaluated.

(2) A representative number of high dollar value orders should be selected for comparison of prices paid and estimates received by the Government.

(3) A variation between the actual price paid and the estimate to the Government does not in itself indicate poor material estimating or a lack of compliance with Pub. L. 87-653; however, the reasons for the variations should be determined.

(4) Review the report for, or determine if, the variations are provided to the Government for use in decrement factors.

C-205.7 Value analysis program.

(a) Value analysis is used to determine if the material to be purchased is the optimum for its intended use.

(b) Questions such as the following should be asked—

(1) Would a less expensive item do the job or could redesign of the product result in a lower cost?

(2) Have life cycle costs been considered?

C-206 Development of purchase requirements (IIF).

C-206.1 Advance purchasing planning (IIF1).

Determine whether the contractor has an effective advance planning system, i.e., one that leads to competitive purchasing to the maximum extent possible. Some areas to look at are—

(a) Procedures for purchasing department input in design and purchase specifications;

(b) Procedures for obtaining information on all available sources, e.g., market research;

(c) Policies for reviewing noncompetitive items for conversion to competition: and

(d) Procedures for forecasting future acquisitions (i.e., second source development).

C-206.2 Identification of the purchase requirement (IIF2).

Determine whether the contractor's procedures for identifying items to purchase identify all that are needed and do not identify those not needed.

C-206.3 Establishment of schedules—purchase lead time (IIF3).

Determine whether the contractor's scheduling system allows sufficient purchasing lead time. Review how lead times are established, and how they are checked for realism. Material shortages, work stoppages, or a substantial volume of purchasing requiring premium pay are reliable indicators of inadequate lead times. State in the report, what portion of the subcontract samples reflect adequate purchasing lead time. Include the following statistical information in the report—

	$100,000 and Over	$25,000 to $100,000	Under $25,000	Total
Number of POs Reviewed				
Number of Requisitions Reviewed				
Lead Time Provided:*				
0–15 days				
16–30 days				
31–90 days				
Over 90 days				

*Lead Time Provided: Date receipt of requisition versus vendor promised date.

C-206.4 Inventory control (IIF4).

(a) Evaluate the effectiveness of the contractor's inventory control system in purchasing common items and in controlling physical inventories. Review the contractor's policies and procedures for—

(1) Deciding which material should be purchased and maintained in stock; and

(2) Controlling stocked inventory.

(b) Ensure that the inventory control policies and procedures—

(1) Only keep in stock what is regularly needed. In evaluating this, look at—

(i) The turnover rate;

(ii) How often an inventory is taken;

(iii) Whether the inventory has large amounts of excess materials; and

(iv) Whether and how obsolete and excess quantities of material are disposed of.

(2) Keep the stocks at level sufficient to meet demands. In evaluating this, look at—

(i) The system for deciding when to reorder.

(A) If the contractor utilizes a minimum/maximum inventory control system for common items, how are reorder points established? Does the contractor consider economic order quantities? Are there any procedures for reevaluating the soundness of reorder points on a systematic basis? How does the contractor assure that items which reach minimum levels are reordered in a timely manner?

(B) If the contractor does not use such a system, how is the decision made?

(ii) The normal elapsed time between issuance of the stock item and update of stock control records.

C-206.5 Material control methods (IIF5).

Evaluate the contractor's material control system as it relates to the purchasing function. A material control system includes determining the need, packing and packaging, scheduling deliveries, expediting, transportation, receiving, and controlling material. Determine the effectiveness of the contractor's procedures for combining requirements and for screening them against quantities on hand and surplus inventories.

C-206.6 Expediting and follow-up of purchase orders (IIF6).

(a) Evaluate the contractor's system for assuring delivery of materials prior to the date needed in production. Look at—

(1) How often and how much the contractor pays premiums to ensure timely delivery (how efficient the contractor is);

(2) Expediting policies, procedures, and responsibilities;

(3) Reports kept and used to identify scheduled material deliveries, late and due material, critical and urgent material, and any changes; and

(4) Management controls, e.g., tickler files.

(b) Also include in the report the statistics developed from the sampled subcontracts on reasons for late deliveries, as follows:

	$100.000 and over	$25,000 to $100,000	Under $25,000	Total
Number of POs Reviewed				
Number of POs Delinquent*				
Number of POs Delinquent in excess of 15 days				

*Actual delivery date versus required delivery date.

Deliveries in excess of 15 calendar days are not satisfactory. Investigate and explain all instances where vendors are continually delinquent in their deliveries.

C-206.7 Receiving (IIF7).

Evaluate the receiving function as it relates to purchasing. Review—

(a) Receiving policies, procedures, and relationships with other departments;

(b) Methods used to identify incoming material and to notify purchasing and other affected departments about receipt;

(c) Suitability of arrangements of separating material in the receiving area (e.g., inspected or not, accepted or rejected) and for storing classified material; and

(d) How long it takes to get the material to storage or other disposition (returned, etc.).

C-206.8 Transportation (IIF8).

(a) Evaluate the transportation function as it relates to purchasing. In particular, ensure that the contractor has and follows effective procedures for—

(1) Controlling premium transportation;

(2) Selecting proper freight classification;

(3) Developing full load shipments;

(4) Recovering excess transportation charges when vendors fail to follow shipping instructions; and

(5) Complying with contractual requirements for duty-free entry (see subpart 225.6) and cargo preference (see subpart 247.5).

(b) Also ensure that transportation and shipping instructions in subcontracts and purchase orders are clear.

C-206.9 Packaging (IIF9).

Ensure that packaging specifications given to vendors are clear and in accordance with contract requirements.

C-207 Selecting sources (IIG).

C-207.1 Competition (IIG1).

(a) Determining whether the contractor uses competition to the maximum extent practical as required by the clause at FAR 52.244–5, Competition in Subcontracting, (which is in most negotiated contracts). In making this determination, evaluate the contractor's—

(1) Source selection policies and procedures, which—

(i) Shall be in written form; and

(ii) Should include both commercial practices and the Government requirements that modify them.

(2) Attitudes toward and actual practice in placing subcontracts on a competitive basis. Regular reports provided to top management on competitive buying may be evidence of the contractor's commitment.

(3) Methods for compiling lists of potential sources. Review the—

(i) Existence and usefulness of the historical records on parts and vendors; and

(ii) The extent of market survey efforts.

(4) Policies and procedures for determining whether source lists contain an optimum number of qualified sources for maximum practical competition.

(b) In evaluating sampled subcontracts, identify whether there was maximum competition in soliciting sources (but see FAR 13.106). There is no magic number of sources that must be solicited—it is a judgment call. A subcontract may be competitive even when only one source submits an offer, if offers are solicited from at least two responsible sources who normally contend for subcontracts for the same or similar items. Note, however, that this does not constitute "adequate price competition" (see C–208.3) and thus does not exempt submission of subcontractor cost or pricing data when required.

(c) Note that contractors are not precluded from limiting competition to small disadvantaged business concerns or historically black colleges and universities.

(d) Include the following statistical data in the report.

	$100,000 and over	$25,000 to $100,000	Under $25,000	Total
Number of POs Reviewed				
POs Awarded on Competitive Basis				
Quotations Solicited				
Quotations Received				
Responsive Quotations Received				
Depth of Competition (POs Reviewed/Responsive Quotes Received).				
Awarded to Lowest Evaluated Offer				
Awarded to Other Than Low Offer				
Total Awarded Competitively				
Percent of Competitive Orders Reviewed				

C–207.2 Intra-company transactions (IIG2).

Ensure that the contractor has written policies on intra-company transactions, including a policy on—

(a) Competition of affiliates and divisions with outside subcontractors. Ensure that any policies giving "preference" to affiliate or divisions are not resulting in unacceptable practices, e.g., obtaining final offers only from affiliates when the affiliate offers are higher in price than those received from outside subcontractors.

(b) Whether cost or normal selling prices are used when items or services are obtained from affiliates or division. Ensure that the contractor's policies are consistent with FAR 31.205–26. Also ensure that the contractor has measures to prevent pyramided profits on work performed within the company.

C–207.3 Single-source and sole-source purchasing (IIG3).

(a) Determine whether the contractor has an effective and continuing program to review single and sole-source items for competition or second sourcing. The program should include—

(1) Technical participation;

(2) Competition advocate, if any, participation;

(3) Identification and elimination of inhibitors to competition, e.g., specifications that are not definitive; restrictive tolerances; production limitations;

(4) Written documentation of reviews;

(5) Goals for improving competitive dollars and percentages; and

(6) Analysis of results.

(b) Contractor policies should view each single or sole-source purchase as an exception.

Policies should require—

(1) Justification for the single or sole-source by the management of the department which has the requirements; and

(2) Cost and price analysis when required.

(c) In evaluating sampled subcontracts, evaluate whether the contractor has an adequate justification for single and sole-source buys. Single source is a purchase where competition is available but which is awarded without it because of limiting circumstances. Sole source is a purchase that can only be placed with one vendor. Verify the contractor's reasons with the buyer, supervisor, or other personnel who provided the justification.

(d) Include the following statistical data in the report:

	$100,000 and over	$25,000 to $100,000	Under $25,000	Total
Customer Directed[1]				
Engineering Directed[2]				
Proprietary Items				
Only Supplier Qualified				
Economically Justified[3]				
Other Justifiable Reasons				
No Justification Given				
Total				

[1] For example, when an end item contains an item on a qualified products list (QPL), the item on the QPL must be purchased from a source on the QPL (see FAR 9.2).

[2] Caution: When the contractor's engineering department marks sources on drawings, it does not necessarily mean that the source is directed. It may only mean the vendor has an acceptable product.

[3] Economic justification may include life cycle cost impact, configuration control impact, tooling cost, qualification test, delivery, etc.

C–207.4 Small business and small disadvantaged business utilization performance (IIG4).

Determine whether the contractor is complying with the clause at FAR 52.219–8, Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (in most contracts over $10,000), which requires contractors to give these concerns the maximum practical opportunity to participate in subcontracts. The team captain shall ask the team's small and disadvantaged business utilization specialist to do this part of the review. Include the following statistical data in the report:

	Prior year	Current year
Total Purchasing and Subcontracting.		
Small Business		
Small Disadvantaged Business.		

C-207.5 Subcontractor responsibility and vendor performance rating system (IIG5).

(a) *Responsibility.* Before awarding a subcontract, the prime contractor should determine the subcontractor responsible using the same standards of responsibility the Government uses (see FAR 9.104-4). The team should pay particular attention to the contractor's use of the list of parties excluded from procurement programs (see FAR 9.404) and, if the contractor has subcontracts with parties on the list, the documentation, systems, and procedures the contractor has established to protect the Government's interests (see FAR 9.405-2).

(b) *Vendor performance rating.* State in the report whether the contractor has or should have a vendor rating system. If the contractor has a system, determine its efficiency by reviewing—

(1) What aspects of performance it rates (a detailed system may evaluate several aspects—price, quality, delivery, and service);

(2) Who evaluates vendor performance (a good system draws together evaluations by all knowledgeable contractor personnel);

(3) Whether the information is kept current (a good system is); and

(4) How it is used in selecting sources.

C-208 Pricing and negotiation (IIH).

C-208.1 Statistical information (IIH1).

Include the following information in the report:

	$100,000 and over	$25,000 to $100,000	Under $25,000	Total
Number of POs Reviewed				
Cost or Pricing Data:				
Applicable				
Obtained				
Certificate of Current Cost or Pricing Data:				
Applicable				
Obtained				
Cost Analysis:				
Applicable				
Accomplished				
Done Effectively				
Contractor Audit Assistance:				
Applicable				
Used Effectively				
Government Pricing Assistance:				
Requested				
Received				
Price Analysis:				
Applicable				
Accomplished				
Done Effectively				

C-208.2 Pub. L. 87-653, Truth in Negotiations (IIH2).

(a) The requirements of Public Law 87-653 are spelled out in FAR 15.804-2. Make sure the buyers fully understand the policy and procedures for obtaining certified cost or pricing data.

(b) Do not recommend approval of the contractor's purchasing system if the contractor's procedures do not result in compliance with Public Law 87-653, i.e., the procedures do not result in receipt of cost or pricing data, execution of the certificate, and incorporation of the appropriate clauses in the subcontract. One or two isolated cases of noncompliances are not ordinarily grounds for system disapproval, unless these were the only two purchases subject to the law.

C-208.3 Adequate price competition (IIH2).

(a) Adequate price competition may be the most common reason used for not getting cost or pricing data. FAR 15.804-3(b) describes when price competition exists and how to determine whether its adequate.

(b) The review team shall carefully review the contractor's documentation for adequate price competition to validate its validity. If the documentation does not support the determination of adequate price competition and the buy is otherwise subject to Public Law 87-653, then the review team will consider the contractor in noncompliance for that action.

C-208.4 Price analysis and cost analysis (IIH4).

(a) Determine whether the contractor is performing some form of price analysis on every subcontract (but see FAR 13.106) and evaluate whether the analysis is adequate for the facts and circumstances of the purchase. Contractors frequently use the existence of competition as a reason for limiting the extent of price analysis performed. The Armed Services Pricing Manual (ASPM), Volume 1, Contract Pricing, and Volume 2, Price Analysis, has additional guidance on applying pricing policies to pricing situations.

(b) Determine whether the contractor is (see FAR 15.806)—

(1) Performing required cost analysis on subcontractor cost or pricing data;

(2) Performing an adequate analysis; and

(3) Supplying the results of analyses to the Government in time to negotiate the prime contract price.

(c) The prime contractor is responsible for using its own resources to perform cost analysis and pricing reviews on its subcontractors. However, in limited circumstances (see FAR 15.806-3), the Government may perform the review.

C-208.5 Negotiations (IIH5).

(a) Evaluate whether the contractor's evaluation and negotiation decisions and methods are based on the principles the Government uses (see FAR subpart 15.8 and 15.807).

(b) Ensure that the buyer knows that he or she is responsible for the subcontract price, even when supported by other specialists. Ensure that the buyer determines the subcontract price fair and reasonable, and documents the basis for the determination.

C-208.6 Cash discounts and terms (IIH6).

Determine whether the contractor seeks and takes advantage of discounts. State in the report any instances of lost discounts and the reason.

C-208.7 Handling low dollar orders (IIH7).

Determine whether the contractor has or should have procedures to keep the number of low dollar orders from becoming excessive and to streamline handling of low dollar orders.

C-208.8 Selection of contract types (IIH8).

(a) Evaluate the types of subcontracts to determine if the contractor is using appropriate types of contracts. The contractor should be following the same principles in selection of subcontract type as the Government follows in selecting the prime contract type (see FAR part 16 and ASPM No. 1). Explain any extensive use of inappropriate contract types.

(b) Carefully review the contractor's use of undefinitized actions (e.g., letter contracts) and determine the frequency of use, conditions under which used, and the timeliness of definitization. Their use should be consistent with the conditions for Government use (see subpart 217.74). They should contain a definitization schedule which meets the limitations of 217.7404-3

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(2) Who evaluates vendor performance (a good system draws together evaluations by all knowledgeable contractor personnel);

(3) Whether the information is kept current (a good system is); and

(4) How it is used in selecting sources.

C–208 Pricing and negotiation (IIH).

C–208.1 Statistical information (IIH1).

Include the following information in the report:

	$25,000 to $100,000	Under $25,000	Total

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(b) Carefully review the contractor's use of undefinitized actions (e.g., letter contracts) and determine the frequency of use, conditions under which used, and the timeliness of definitization. Their use should be consistent with the conditions for Government use (see subpart 217.74). They should contain a definitization schedule which meets the limitations of 217.7404–3

C–209 Subcontract award and administration (II–I).

C–209.1 Solicitation, receipt, and evaluation of proposals (II–I1).

(a) Review the file and check to make sure there's documentation showing that—

(1) Purchasing and engineering review jointly agree to the technical specifications and statement of work; and

(2) Prime contract clauses are reviewed and make or buy aspects considered.

(b) Review the request for proposal and determination if—

(1) It is definitive; and

(2) It contains the appropriate clauses and provisions.

(c) Review the contractor's evaluation methods to determine—

(1) If purchasing and engineering review proposals received to ensure they meet requirements;

(2) How preaward surveys are used; and

(3) If the evaluation method ensures impartiality.

C–209.2 Awarding the subcontract or purchase order (II–I2). Determine if the contractor's procedures ensure that the final subcontract package—

(a) Contains all the necessary instructions, requirements, and clauses; and

(b) Has been reviewed and approved by all the necessary functions.

C–209.3 Subcontract administration (II–I3).

(a) Evaluate the contractor's system for managing subcontracts to ensure that the Government's interests are protected. Determine whether—

(1) A subcontract surveillance program has been properly instituted, e.g.—

(i) The subcontract administrator and project engineering personnel work closely together in the resolution of design, production, reliability, and delivery problems;

(ii) The subcontract administrator monitors and correlates cost and progress of the subcontracts; and

(iii) There is an awareness of the subcontractor's problem together with effective action to resolve any problems.

(2) The contractor promptly notifies the contracting officer of potential subcontract problems which may impact the delivery, quality, or price of the prime contract.

(b) For sampled subcontracts—

(1) Review the type and frequency of reports required and if action is taken when required;

(2) Explain any overruns or delinquencies.

(3) Review actions relating to the award of lower tier subcontracts when the subcontract requires advance notice and consent.

(4) Ensure that the flow down clauses are being properly accomplished.

C–209.4 Changes to subcontracts (II–I4).

For sampled subcontracts, evaluate contractor—

(a) Compliance with advance notification, consent, and Public Law 87–653, Truth in Negotiations.

(b) Control over change orders and negotiations. Analyze the reasons for any unusually large number of change orders.

C–209.5 Terminated subcontracts (II–I5).

Check with the cognizant termination contracting officer (TCO) to determine if the TCO has experienced any problems with the contractor in terminating subcontracts.

C–209.6 Closing out subcontracts (II–I6).

Review the contractor's policies, procedures, and practices. Ensure that files are not closed until all appropriate actions have been taken and necessary closeout actions are timely.

C–210 Appendices, exhibits, case histories (IIJ).

Use this section to attach and explain any special materials, to mention any special accomplishments, or to report cost savings/avoidances as a result of CPSR recommendations.

Part 3—Report Formats

C–300 Scope.

This part provides report formats for contractor purchasing system reviews (CPSRs), follow-up reviews, and special reviews.

C–301 Cover Page and Part I.

Use the following format for the Cover Page and Part I for CPSRs, follow-up reviews, and special reviews:

(a) *Cover page of report.*

CONTRACTOR PURCHASING SYSTEM REVIEW (TYPE OF REVIEW)

CONTRACTOR'S COMPLETE NAME AND ADDRESS

Corporation Name:
Division Name:
Group/Plant Name:
Subdivision Name:
Street Address:
City, State, and Zip Code:

ORGANIZATION CONDUCTING THE REVIEW

Name:
Address:
Name/Title of Team Captain:
Period of In-Plant Review:
Period Covered for this Review:
Date of Review Board (if required):
Copy Number:
Report Date:

____

Signature of Team Captain

UNLESS PERMISSION IS RECEIVED FROM THE ACO, THIS REPORT SHALL ONLY BE DISTRIBUTED IN ACCORDANCE WITH FAR 44.307.

RELEASE OF THIS REPORT IS GOVERNED UNDER THE FREEDOM OF INFORMATION ACT, 5 U.S.C. 552. NOTIFY HEADQUARTERS, ____________ IF THIS REPORT IS RELEASED.

THE SUPPORTING WORKPAPERS APPLICABLE TO THIS REPORT ARE RETAINED IN THE FILES OF

____

(b) *Part I.*

Use the following format for Part I:

PART I

Summary Report

Section
1. Contractor's complete name and address
2. Statement on previous status of purchasing system, comments on adequacy of implementation of previous recommendations, and identification of repeat recommendations
3. Comments on contractor's effectiveness in major purchasing areas including:
   a. Extent of competition
   b. Control of sole-source and single-source purchasing
   c. Small business and small disadvantaged business programs
   d. Price and cost analysis methods
   e. Subcontract administration
   f. Make or buy program
   g. Justification for use of suspended/debarred subcontractors
   h. Other areas
4. Recommendations:
   a. Recommendations made to the contractor
   b. Contractor's reply to the recommendations
   c. Evaluation of contractor's reply
5. Attach copy of ACO letter to contractor

C–302 Part II.

Use the following format for Part II for CPSRs:

PART II

Supporting and Statistical Data

Section
A Conducting the Review
  1. Purpose of Review
  2. Review Team Members and Review Methods
  3. Summary of Purchases Examined
B Company History and Purchasing Organization
  1. Background Data and Scope of Purchasing Operation
  2. Management Attitude Toward Purchasing
  3. Purchasing Organization
  4. Interdepartmental Relations
  5. Internal Purchasing Organization
  6. Purchasing Personnel
  7. Conflict of Interest
C Purchasing Policies and Procedures
  1. Evaluation of Written Policies and Procedures
  2. Analysis of Purchasing Forms
D Subcontract Clauses
  1. Analysis of Purchase Order Clauses
  2. Restrictive Clauses
  3. Special Clauses
  4. Side Agreements
  5. ACO Consent, Advance Notification, and Written Justification
  6. Cost Accounting Standards
E Management of Purchasing
  1. Documentation of Purchasing Files
  2. Reports and Controls
  3. Standardization Program
  4. Value Analysis Program
  5. Make or Buy Program
  6. Material Estimating—Budget Control
F Development of Purchase Requirements
  1. Advance Purchasing Planning

   2. Identification of the Purchase Requirement
   3. Establishment of Schedule—Purchasing Lead Time
   4. Inventory Control
   5. Material Control Methods
   6. Expediting and Follow-up of Purchase Orders
   7. Receiving
   8. Transportation
   9. Packaging

G Selecting Sources
   1. Competition
   2. Intra-Company Transactions
   3. Single-Source and Sole-Source Purchasing
   4. Small Business and Small Disadvantaged Business Programs
   5. Subcontractor Responsibility and Vendor Performance Rating System

H Pricing
   1. Statistical Information
   2. Truth in Negotiations
   3. Adequate Price Competition
   4. Price Analysis and Cost Analysis
   5. Negotiations
   6. Cash Discounts and Terms
   7. Handling Low Dollar Orders
   8. Selection of Contract Types

I Subcontract Award and Administration
   1. Solicitation, Receipt, and Evaluation of Proposals
   2. Awarding the Subcontract or Purchase Order
   3. Letter Subcontracts and Advance Authorizations
   4. Subcontract Administration
   5. Changes to Subcontracts or Purchase Orders
   6. Terminated Subcontracts
   7. Closing-Out Subcontracts

J Appendices, Exhibits, Case History

C-303 Attachments.

Departments and agencies may develop formats for arraying data or contact the Defense Logistics Agency, Directorate of Contract Management, Financial Services Division (ATTN: DLA-AF), Cameron Station, Alexandria, VA 22304-6100, for information on a computerized purchase order and subcontract analysis form.

Appendix D—Component Breakout

Sec.
D-100 Scope.
D-101 Definition.
D-102 Policy.
D-103 Responsibility.
D-104 Procedures.
D-105 Records.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

D-100 Scope.

(a) This appendix provides policy and procedures for breaking out components of end items for future acquisitions so that the Government can purchase the components directly from the manufacturer or supplier and furnish them to the end item manufacturer as Government-furnished material.

(b) This appendix does not apply to—

(1) The initial decisions on Government-furnished equipment/contractor-furnished equipment that are made at the inception of an acquisition program; or

(2) Breakout of parts for replenishment (see Appendix E).

D-101 Definition.

"Component," as used in this appendix, includes subsystems, assemblies, subassemblies, and other major elements of an end item; it does not include elements of relatively small annual acquisition value.

D-102 Policy.

DoD policy is to breakout components of weapons systems or other major end items under certain circumstances.

(a) When it is anticipated that a prime contract will be awarded without adequate price competition, and the prime contractor is expected to acquire any component without adequate price competition, breakout that component if—

(1) Substantial net cost savings probably will be achieved; and

(2) Breakout action will not jeopardize the quality, reliability, performance, or timely delivery of the end item.

(b) Even when either or both the prime contract and the component will be acquired with adequate price competition, consider breakout of the component if substantial net cost savings will result from—

(1) Greater quantity acquisitions; or

(2) Such factors as improved logistics support (through reduction in varieties of spare parts) and economies in operations and training (through standardization of design).

(c) Breakout normally is not justified for a component that is not expected to exceed $1 million for the current year's requirement.

D-103 Responsibility.

(a) Agencies are responsible for ensuring that—

(1) Breakout reviews are performed on components meeting the criteria in D-102(a) and (b);

(2) Components susceptible to breakout are earmarked for consideration in future acquisitions;

(3) Components earmarked for breakout are considered during requirements determination and appropriate decisions are made; and

(4) Components are broken out when required.

(b) The program manager or other official responsible for the material program concerned is responsible for breakout selection, review, and decision.

(c) The contracting officer or buyer and other specialists (e.g., small business specialist, engineering, production, logistics, and maintenance) support the program manager in implementing the breakout program.

D-104 Procedures.

(a) A breakout review and decision includes—

(1) An assessment of the potential risks to the end item from possibilities such as delayed delivery and reduced reliability of the component;

(2) A calculation of estimated net cost savings (i.e., estimated acquisition savings less any offsetting costs); and

(3) An analysis of the technical, operational, logistics, and administrative factors involved.

(b) The decision must be supported by adequate explanatory information, including an assessment by the end item contractor when feasible.

(c) The following questions should be used in the decision process—

(1) Is the end item contractor likely to do further design or engineering effort on the component?

(2) Is a suitable data package available with rights to use it for Government acquisition? (Note that breakout may be warranted even though competitive acquisition is not possible.)

(3) Can any quality control and reliability problems of the component be resolved without requiring effort by the end item contractor?

(4) Will the component require further technical support (e.g., development of specifications, testing requirements, or quality assurance requirements)? If so, does the Government have the resources (manpower, technical competence, facilities, etc.) to provide such support? Or, can the support be obtained from the end item contractor (even though the component is broken out) or other source?

(5) Will breakout impair logistics support (e.g., by jeopardizing standardization of components)?

(6) Will breakout unduly fragment administration, management, or performance of the end item contract (e.g., by complicating production scheduling or preventing identification of responsibility for end item failure caused by a defective component)?

(7) Can breakout be accomplished without jeopardizing delivery requirements of the end item?

(8) If a decision is made to breakout a component, can advance acquisition funds be made available to provide the new source any necessary additional lead time?

(9) Is there a source other than the present manufacturer capable of supplying the component?

(10) Has the component been (or is it going to be) acquired directly by the Government as a support item in the supply system or as Government-furnished equipment in other end items?

(11) Will the financial risks and other responsibilities assumed by the Government after breakout be acceptable?

(12) Will breakout result in substantial net cost savings? Develop estimates of probable savings in cost considering all offsetting costs such as increases in the cost of requirements determination and control, contracting, contract administration, data package purchase, material inspection, qualification or preproduction testing, ground support and test equipment, transportation, security, storage, distribution, and technical support.

(d) If answers to the questions reveal conditions unfavorable to breakout, the program manager should explore whether the unfavorable conditions can be eliminated. For example, where adequate technical support is not available from Government resources, consider contracting for the necessary services from the end item contractor or other qualified source.

D-105 Records.

(a) The contracting activity shall maintain records on components reviewed for breakout. Records should evidence whether the components—

(1) Have no potential for breakout;

(2) Have been earmarked as potential breakout candidates;

(3) Have been, or will be, broken out.

(b) The program manager or other designated official must sign the records.

(c) Records must reflect the facts and conditions of the case, including any assessment by the contractor, and the basis for the decision.

D-100 Scope.

(a) This appendix provides policy and procedures for breaking out components of end items for future acquisitions so that the Government can purchase the components directly from the manufacturer or supplier and furnish them to the end item manufacturer as Government-furnished material.

(b) This appendix does not apply to—

(1) The initial decisions on Government-furnished equipment/contractor-furnished equipment that are made at the inception of an acquisition program; or

(2) Breakout of parts for replenishment (see Appendix E).

D-101 Definition.

Component, as used in this appendix, includes subsystems, assemblies, subassemblies, and other major elements of an end item; it does not include elements of relatively small annual acquisition value.

D-102 Policy.

DoD policy is to breakout components of weapons systems or other major end items under certain circumstances.

(a) When it is anticipated that a prime contract will be awarded without adequate price competition, and the prime contractor is expected to acquire any component without adequate price competition, breakout that component if—

(1) Substantial net cost savings probably will be achieved; and

(2) Breakout action will not jeopardize the quality, reliability, performance, or timely delivery of the end item.

(b) Even when either or both the prime contract and the component will be acquired with adequate price competition, consider breakout of the component if substantial net cost savings will result from—

(1) Greater quantity acquisitions; or

(2) Such factors as improved logistics support (through reduction in varieties of spare parts) and economies in operations and training (through standardization of design).

(c) Breakout normally is not justified for a component that is not expected to exceed $1 million for the current year's requirement.

D-103 Responsibility.

(a) Agencies are responsible for ensuring that—

(1) Breakout reviews are performed on components meeting the criteria in D-102(a) and (b);

(2) Components susceptible to breakout are earmarked for consideration in future acquisitions;

(3) Components earmarked for breakout are considered during requirements determination and appropriate decisions are made; and

(4) Components are broken out when required.

(b) The program manager or other official responsible for the material program concerned is responsible for breakout selection, review, and decision.

(c) The contracting officer or buyer and other specialists (e.g., small business specialist, engineering, production, logistics, and maintenance) support the program manager in implementing the breakout program.

D-104 Procedures.

(a) A breakout review and decision includes—

(1) An assessment of the potential risks to the end item from possibilities such as delayed delivery and reduced reliability of the component;

(2) A calculation of estimated net cost savings (i.e., estimated acquisition savings less any offsetting costs); and

(3) An analysis of the technical, operational, logistics, and administrative factors involved.

(b) The decision must be supported by adequate explanatory information, including an assessment by the end item contractor when feasible.

(c) The following questions should be used in the decision process—

(1) Is the end item contractor likely to do further design or engineering effort on the component?

(2) Is a suitable data package available with rights to use it for Government acquisition? (Note that breakout may be warranted even though competitive acquisition is not possible.)

(3) Can any quality control and reliability problems of the component be resolved without requiring effort by the end item contractor?

(4) Will the component require further technical support (e.g., development of specifications, testing requirements, or quality assurance requirements)? If so, does the Government have the resources (manpower, technical competence, facilities, etc.) to provide such support? Or, can the support be obtained from the end item contractor (even though the component is broken out) or other source?

(5) Will breakout impair logistics support (e.g., by jeopardizing standardization of components)?

(6) Will breakout unduly fragment administration, management, or performance of the end item contract (e.g., by complicating production scheduling or preventing identification of responsibility for end item failure caused by a defective component)?

(7) Can breakout be accomplished without jeopardizing delivery requirements of the end item?

(8) If a decision is made to breakout a component, can advance acquisition funds be made available to provide the new source any necessary additional lead time?

(9) Is there a source other than the present manufacturer capable of supplying the component?

(10) Has the component been (or is it going to be) acquired directly by the Government as a support item in the supply system or as Government-furnished equipment in other end items?

(11) Will the financial risks and other responsibilities assumed by the Government after breakout be acceptable?

(12) Will breakout result in substantial net cost savings? Develop estimates of probable savings in cost considering all offsetting costs such as increases in the cost of requirements determination and control, contracting, contract administration, data package purchase, material inspection, qualification or preproduction testing, ground support and test equipment, transportation, security, storage, distribution, and technical support.

(d) If answers to the questions reveal conditions unfavorable to breakout, the program manager should explore whether the unfavorable conditions can be eliminated. For example, where adequate technical support is not available from Government resources, consider contracting for the necessary services from the end item contractor or other qualified source.

D-105 Records.

(a) The contracting activity shall maintain records on components reviewed for breakout. Records should evidence whether the components—

(1) Have no potential for breakout;

(2) Have been earmarked as potential breakout candidates;

(3) Have been, or will be, broken out.

(b) The program manager or other designated official must sign the records.

(c) Records must reflect the facts and conditions of the case, including any assessment by the contractor, and the basis for the decision.

Appendix E—DOD Spare Parts Breakout Program

Sec.

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  E-103.2 Acquisition Method Code Conference
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  E-103.10 Competition

E-103.11 Contractor Technical Information Code (CTIC)
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Exhibit V Spare Parts Acquisition Report

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Part 1—General

E-100 Scope.

This appendix established the DoD Spare Parts Breakout Program and provides uniform policies and procedures for management and conduct of the program within and between the departments and agencies.

E-101 Applicability.

(a) This appendix applies to—

(1) Any centrally managed replenishment or provisioned part (hereinafter referred to as "part") for military systems and equipment; and

(2) All DoD personnel involved with design control, acquisition, and management of such parts including, but not limited to, project/program/system managers, technical personnel, contracting officers, legal counsel, inventory managers, inspectors, and small business specialists and technical advisors.

(b) This appendix does not apply to—

(1) Component breakout (see Appendix D);

(2) Foreign military sale peculiar items;

(3) Insurance items (e.g., one-time buy);

(4) Obsolete items;

(5) Phase out items (e.g., life of type buy);

(6) Items with annual buy values below the thresholds developed by DoD components or field activities;

(7) Parts being acquired under other specifically defined initial support programs; or

(8) Parts acquired through local purchase.

E-102 General.

(a) Significant resources are dedicated to the acquisition and management of parts for military systems and equipment. The ability to competitively buy spares must be considered early in a weapon system acquisition. Initially, repairable or consumable parts are identified and acquired through a provisioning process; repairable or consumable parts acquired thereafter are for replenishment.

(b) The objective of the DoD Spare Parts Breakout Program is to reduce costs through the use of competitive procurement methods, or the purchase of parts directly from the actual manufacturer rather than the prime contractor, while maintaining the integrity of the systems and equipment in which the parts are to be used. The program is based on the application of sound management and engineering judgement in—

(1) Determining the feasibility of acquiring parts by competitive procedures or direct purchase from actual manufacturers; and

(2) Overcoming or removing constraints to breakout identified through the screening process (technical review) described in E-302.

(c) This Appendix sets forth procedures to screen and code parts in order to provide contracting officers summary information regarding technical data and sources of supply to meet the Government's minimum requirements. This information assists the contracting officer in selecting the method of contracting, identifying sources of supply, and making other decisions in the preaward and award phases, with consideration for established parameters of system and equipment integrity, readiness, and the opportunities to competitively acquire parts (see FAR/DFARS Part 6). The identification of sources for parts, for example, requires knowledge of manufacturing sources, additional operations performed after manufacture of parts possessing safety or other critical characteristics, and the availability of technical data.

(d) The result of the screening process (technical review is indicated by an acquisition method code (AMC) and an acquisition method suffix code (AMSC). This program provides procedures for both the initial assignment of an AMC and an AMSC to a part, and for the recurring review of these codes (see E-202 and E-203(b)(1)).

E-103 Definitions.

E-103.1 Acquisition method code (AMC).

A single digit numeric code, assigned by a DoD activity, to describe to the contracting officer and other Government personnel the results of a technical review of a part and its suitability for breakout.

E-103.2 Acquisition method code conference.

A conference which is generally held at the contractor's facility for the purpose of reviewing contractor technical information codes (CTICs) and corresponding substantiating data for breakout.

E-103.3 Acquisition method suffix code (AMSC).

A single digit alpha code, assigned by a DoD activity, which provides the contracting officer and other Government personnel with engineering, manufacturing, and technical information.

E-103.4 Actual manufacturer.

An individual, activity, or organization that performs the physical fabrication processes that produce the deliverable part or other items of supply for the Government. The actual manufacturer must produce the part in-house. The actual manufacturer may or may not be the design control activity.

E-103.5 Altered item drawing.

See current version of DoD STD-100, paragraphs 201.4.4 and 703.

E-103.6 Annual buy quantity.

The forecast quantity of a part required for the next 12 months.

E-103.7 Annual buy value (ABV).

The annual buy quantity of a part multiplied by its unit price.

E-103.8 Bailment.

The process whereby a part is loaned to a recipient with the agreement that the part will be returned at an appointed time. The

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The forecast quantity of a part required for the next 12 months.

E–103.7 Annual buy value (ABV).

The annual buy quantity of a part multiplied by its unit price.

E–103.8 Bailment.

The process whereby a part is loaned to a recipient with the agreement that the part will be returned at an appointed time. The

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government retains legal title to such material even though the borrowing organization has possession during the stated period.

E–103.9 Breakout.

The improvement of the acquisition status of a part resulting from a technical review and a deliberate management decision. Examples are—

(a) The competitive acquisition of a part previously purchased noncompetitively; and

(b) The direct purchase of a part previously purchased from a prime contractor who is not the actual manufacturer of the part.

E–103.10 Competition.

A contract action where two or more responsible sources, acting independently, can be solicited to satisfy the Government's requirement.

E–103.11 Contractor technical information code (CTIC).

A two digit alpha code assigned to a part by a prime contractor to furnish specific information regarding the engineering, manufacturing, and technical aspects of that part.

E–103.12 Design control activity.

A contractor or Government activity having responsibility for the design of a given part, and for the preparation and currency of engineering drawings and other technical data for that part. The design control activity may or may not be the actual manufacturer. The design control activity is synonymous with design activity as used by DoD STD–100.

E–103.13 Direct purchase.

The acquisition of a part from the actual manufacturer, including a prime contractor who is an actual manufacturer of the part.

E–103.14 Engineering drawings.

See current versions of DoD STD–100 and DoDD 1000.

E–103.15 Extended dollar value.

The contract unit price of a part multiplied by the quantity purchased.

E–103.16 Full and open competition.

A contract action where all responsible sources are permitted to compete.

E–103.17 Full screening.

A detailed parts breakout process, including data collection, data evaluation, data completion, technical evaluation, economic evaluation, and supply feedback, used to determine if parts can be purchased directly from the actual manufacturer(s) or can be competed.

E–103.18 Immediate (live) buy.

A buy which must be executed as soon as possible to prevent unacceptable equipment readiness reduction, unacceptable disruption in operational capability, and increased safety risks, or to avoid other costs.

E–103.19 Life cycle buy value.

The total dollar value of all acquisitions that are estimated to occur over a part's remaining life cycle.

E–103.20 Limited competition.

A competitive contract action where the provisions of full and open competition do not exist.

E–103.21 Limited screening.

A parts breakout process covering only selected points of data and technical evaluations, and should only be used to support immediate buy requirements (see E–301.3).

E–103.22 Manufacture.

The physical fabrication process that produces a part, or other item of supply. The physical fabrication processes include, but are not limited to machining, welding, soldering, brazing, heat treating, braking, riveting, pressing, chemical treatment, etc.

E–103.23 Prime contractor.

A contractor having responsibility for design control and/or delivery of a system/equipment such as aircraft, engines, ships, tanks, vehicles, guns and missiles, ground communications and electronics systems, and test equipment.

E–103.24 Provisioning.

The process of determining and acquiring the range and quantity (depth) of spare and repair parts, and support and test equipment required to operate and maintain an end item of materiel for an initial period of service.

E–103.25 Qualification.

Any action (contractual or precontractual) that results in approval for a firm to supply items to the Government without further testing beyond quality assurance demonstrations incident to acceptance of an item. When prequalification is required, the Government must have a justification on file—

(a) Stating the need for qualification and why it must be done prior to award;

(b) Estimating likely cost of qualification; and

(c) Specifying all qualification requirements.

E–103.26 Replenishment part.

A part, repairable or consumable, purchased after provisioning of that part, for: replacement; replenishment of stock; or use in the maintenance, overhaul, and repair of equipment such as aircraft, engines, ships, tanks, vehicles, guns and missiles, ground communications and electronic systems, ground support, and test equipment. As used in this appendix, except when distinction is necessary, the term "part" includes subassemblies, components, and subsystems as defined by the current version of MIL–STD–280.

E–103.27 Reverse engineering.

A process by which parts are examined and analyzed to determine how they were manufactured, for the purpose of developing a complete technical data package. The normal, expected result of reverse engineering is the creation of a technical data package suitable for manufacture of an item by new sources.

E–103.28 Selected item drawing.

See current version of DoD–STD–100, paragraph 201.4.5.

E–103.29 Source.

Any commercial or noncommercial organization which can supply a specified part. For coding purposes, sources include actual manufacturers, prime contractors, vendors, dealers, surplus dealers, distributors, and other firms.

E–103.30 Source approval.

The Government review that must be completed before contract award.

E–103.31 Source control drawing.

See the current version of DoD–STD–100, paragraph 201.4.3.

E–103.32 Technical data.

Specifications, plans, drawings, standards, purchase descriptions, and such other data to describe the Government's requirements for acquisition.

E–104 General policies.

(a) The identification, selection, and screening of parts for breakout shall be made as early as possible to determine the technical and economic considerations of the opportunities for breakout to competition or direct purchase. Full and open competition is the preferred result of breakout screening.

(b) A part shall be made a candidate for breakout screening based on its cost effectiveness for breakout. Resources should be assigned and priority given to those parts with the greatest expected return given their annual buy value, life cycle buy value, and likelihood of successful breakout, given technical characteristics such as design and performance stability. Consideration of all such factors is necessary to ensure the maximum return on investment in a given breakout program. Occasionally, an item will not meet strict economic considerations for breakout, but action may be required due to other considerations to avoid overpricing situations. Accordingly, there is no minimum DoD threshold for breakout screening actions. DoD components and field activities will develop annual buy thresholds for breakout screening which are consistent with economic considerations and resources. Every effort should be made to complete the full screening of parts that are expected to be subsequently replenished as they enter the inventory.

(c) Breakout improvement efforts shall continue through the life cycle of a part to improve its breakout status (see E–203) or until such time as the part is coded 1G, 2G, 1K, 2K, 1M, 2M, 1N, 2N, 1T, 2T, 1Z, or 2Z.

(d) No firm shall be denied the opportunity to demonstrate its ability to furnish a part which meets the Government's needs, without regard to a part's annual buy value, where a restrictive AMC/AMSC is assigned (see FAR 9.202). A firm must clearly demonstrate, normally at its own expense, that it can satisfy the Government's requirements. The Government shall make a vigorous effort to expedite its evaluation of such demonstration and to furnish a decision to the demonstrating firm within a reasonable period of time. If a resolution cannot be made within 60 days, the offeror must be advised of the status of the request and be provided with a good faith estimate of the date the evaluation will be completed. Every reasonable effort shall be made to complete the review before a subsequent acquisition is made. Also, restrictive codes and low annual buy value do not preclude consideration of a surplus dealer or other nonmanufacturing source when the part offered was manufactured by an approved source (see FAR 10.010). A potential surplus dealer or other nonmanufacturing source must provide the Government with all the necessary evidence which proves the proposed part meets the Government's requirements.

(e) The experience and knowledge accrued by contractors in the development, design, manufacture and test of equipment may enhance the breakout decision making process. DoD activities may obtain technical information from contractors when it is considered requisite to an informed coding decision. The procedure for contracting for this information is provided in Part 4 of this appendix. Contractor's technical information will be designated by CTICs. Only DoD activities shall assign AMCs and AMSCs.

(f) DoD activities with breakout screening responsibilities shall develop, document, and advertise programs which promote the development of qualified sources for parts that are currently being purchased sole source. These programs should provide fair and reasonable technical assistance (engineering or other technical data, parts on bailment, etc.) to contractors who prove they have potential for becoming a qualified second source for an item. These programs should also provide specially tailored incentives to successful firms so as to stimulate their investment in becoming qualified, e.g., Government furnished equipment (GFE) or Government furnished material (GFM) for reverse engineering and technical data package review and assistance.

(g) Departments and agencies shall identify the engineering support activity, design control activity, actual manufacturer, and prime contractor for each part such that the information is readily available to breakout and acquisition personnel.

E-105 Responsibilities.

(a) The Assistant Secretary of Defense (Production and Logistics) has authority for direction and management of the DoD Spare Parts Breakout Program, including the establishment and maintenance of implementing regulations.

(b) Departments and agencies shall perform audits to ensure that their respective activities comply with the provisions of this program.

(c) Commanders of DoD activities with breakout screening responsibility shall—

(1) Implement a breakout program consistent with the requirements of this appendix.

(2) Assist in the identification and acquisition of necessary data rights and technical data, and the review of restrictive legends on technical data, during system/equipment development and production to allow, when feasible, breakout of parts.

(3) Designate a program manager to serve as the central focal point, communicate breakout policy, ensure cost effectiveness of screening actions and breakout program, provide assistance in implementing breakout screening, monitor ongoing breakout efforts and achievements, and provide surveillance over implementation of this appendix. The program manager shall report only to the Commander, or deputy, of the activity with breakout screening responsibility.

(4) Ensure that actions to remove impediments to breakout are continued so long as it is cost effective, or until no further breakout improvements can be made.

(5) Invite the activity's small business specialist and the resident small business administration's procurement center representative (PCR), if any, to participate in all acquisition method coding conferences at Government and contractor locations.

(6) Ensure timely engineering and technical support to other breakout activities regardless of location.

(i) In the case of parts where contracting or inventory management responsibility has been transferred, support shall include—

(A) Assignment of an AMC/AMSC prior to the transfer;

(B) Assignment of an AMC/AMSC when requested by the receiving activity to parts transferred without such codes. The requesting activity may recommend an AMC/AMSC; and

(C) Full support of the receiving activities' breakout effort by providing timely engineering support in revising existing AMC/AMSCs.

(ii) In all cases, support shall include, but not be limited to, furnishing all necessary technical data and other information (such as code suspense date and procurement history) to permit acquisition in accordance with the assigned AMC/AMSC (see E-105(d)(6)).

(7) Ensure that appropriate surveillance is given to first time breakout parts.

(d) Breakout program managers shall be responsible for—

(1) Initiating the breakout process during the early phases of development and continue the process during the life of the part;

(2) Considering the need for contractor technical information codes (CTICs) and, when needed, initiating a contract data requirement;

(3) Identifying, selecting, and screening in accordance with Part 3 of this appendix;

(4) Assigning an AMC/AMSC, using all available data, including CTICs;

(5) Responding promptly to a request for evaluation of additional sources or a review of assigned codes. An evaluation not completed prior to an immediate buy shall be promptly completed for future buys; and

(6) Documenting all assignments and changes, to include rationale for assigning the chosen code, in a permanent file for each part. As a minimum, the file should identify the engineering support activity, cognizant design control activity, actual manufacturer, prime contractor, known sources of supply, and any other information needed to support AMC/AMSC assignments.

(e) Contracting officers responsible for the acquisition of replenishment parts shall—

(1) Consider the AMC/AMSC when developing the method of contracting, the list of sources to be solicited, the type of contract, etc.; and

(2) Provide information which is inconsistent with the assigned AMC/AMSC (e.g., availability of technical data or possible sources) to the activity responsible for code assignment with a request for timely evaluation of the additional information. An urgent immediate buy need not be delayed if an evaluation of the additional information cannot be completed in time to meet the required delivery date.

Part 2—Breakout Coding

E-200 Scope.

This part provides parts breakout codes and prescribes responsibilities for their assignment and management.

E-201 Coding.

Three types of codes are used in the breakout program.

E-201.1 Acquisition method codes.

The following codes shall be assigned by DoD activities to describe the results of the spare parts breakout screening:

(a) *AMC 0.* The part was not assigned AMC 1 through 5 when it entered the inventory, nor has it ever completed screening. Use of this code is sometimes necessary but discouraged. Maximum effort to determine the applicability of an alternate AMC is the objective. This code will never be used to recode a part that already has AMC 1 through 5 assigned, and shall never be assigned as a result of breakout screening. Maximum effort to determine the applicability of AMC 1 through 5 is the objective.

(b) *AMC 1.* Suitable for competitive acquisition for the second or subsequent time.

(c) *AMC 2.* Suitable for competitive acquisition for the first time.

(d) *AMC 3.* Acquire, for the second or subsequent time, directly from the actual manufacturer.

(e) *AMC 4.* Acquire, for the first time, directly from the actual manufacturer.

(f) *AMC 5.* Acquire directly from a sole source contractor which is not the actual manufacturer.

E-201.2 Acquisition method suffix codes.

The following codes shall be assigned by DoD activities to further describe the acquisition method code. Valid combinations of AMCs/AMSCs are indicated in paragraphs (a) through (z) of this subsection and summarized in Exhibit I.

(a) *AMSC A.* The Government's right to use data in its possession is questionable. This

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chosen code, in a permanent file for each part. As a minimum, the file should identify the engineering support activity, cognizant design control activity, actual manufacturer, prime contractor, known sources of supply, and any other information needed to support AMC/AMSC assignments.

(e) Contracting officers responsible for the acquisition of replenishment parts shall—

(1) Consider the AMC/AMSC when developing the method of contracting, the list of sources to be solicited, the type of contract, etc.; and

(2) Provide information which is inconsistent with the assigned AMC/AMSC (e.g., availability of technical data or possible sources) to the activity responsible for code assignment with a request for timely evaluation of the additional information. An urgent immediate buy need not be delayed if an evaluation of the additional information cannot be completed in time to meet the required delivery date.

Part 2—Breakout Coding

E-200 Scope.

This part provides parts breakout codes and prescribes responsibilities for their assignment and management.

E-201 Coding.

Three types of codes are used in the breakout program.

E-201.1 Acquisition method codes.

The following codes shall be assigned by DoD activities to describe the results of the spare parts breakout screening:

(a) *AMC 0.* The part was not assigned AMC 1 through 5 when it entered the inventory, nor has it ever completed screening. Use of this code is sometimes necessary but discouraged. Maximum effort to determine the applicability of an alternate AMC is the objective. This code will never be used to recode a part that already has AMC 1 through 5 assigned, and shall never be assigned as a result of breakout screening. Maximum effort to determine the applicability of AMC 1 through 5 is the objective.

(b) *AMC 1.* Suitable for competitive acquisition for the second or subsequent time.

(c) *AMC 2.* Suitable for competitive acquisition for the first time.

(d) *AMC 3.* Acquire, for the second or subsequent time, directly from the actual manufacturer.

(e) *AMC 4.* Acquire, for the first time, directly from the actual manufacturer.

(f) *AMC 5.* Acquire directly from a sole source contractor which is not the actual manufacturer.

E-201.2 Acquisition method suffix codes.

The following codes shall be assigned by DoD activities to further describe the acquisition method code. Valid combinations of AMCs/AMSCs are indicated in paragraphs (a) through (z) of this subsection and summarized in Exhibit I.

(a) *AMSC A.* The Government's right to use data in its possession is questionable. This

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code is only applicable to parts under immediate buy requirements and for as long thereafter as rights to data are still under review for resolution and appropriate coding. This code is assigned only at the conclusion of limited screening, and it remains assigned until the full screening process resolves the Government's rights to use data and results in assignment of a different AMSC. If one source is available, AMCs 3, 4, or 5 are valid. If at least two sources exist, or if the data is adequate for an alternate source to qualify in accordance with the design control activity's procedures, AMCs 1 or 2 are valid.

(b) *AMSC B.* This part must be acquired from a manufacturing source(s) specified on a source control or selected item drawing as defined by the current version of DoD–STD–100. Suitable technical data, Government data rights, or manufacturing knowledge are not available to permit acquisition from other sources, nor qualification testing of another part, nor use of a second source part in the intended application. Although, by DoD–STD–100 definition, altered and selected items shall have an adequate technical data package, data review discloses that required data or data rights are not in Government possession and cannot be economically obtained. If one source is available, AMCs 3, 4, or 5 are valid. If at least two sources exist, AMCs 1 or 2 are valid.

(c) *AMSC C.* This part requires engineering source approval by the design control activity in order to maintain the quality of the part. Existing unique design capability, engineering skills, and manufacturing knowledge by the qualified source(s) require acquisition of the part from the approved source(s). The approved source(s) retain data rights, manufacturing knowledge, or technical data that are not economically available to the Government, and the data or knowledge is essential to maintaining the quality of the part. An alternate source must qualify in accordance with the design control activity's procedures, as approved by the cognizant Government engineering activity. The qualification procedures must be approved by the Government engineering activity having jurisdiction over the part in the intended application. If one source is approved, AMCs 3, 4, or 5 are valid. If at least two sources are approved or if data is adequate for an alternate source to qualify in accordance with the design control activity's procedures, AMCs 1 or 2 are valid.

(d) *AMSC D.* The data needed to acquire this part competitively is not physically available, it cannot be obtained economically, nor is it possible to draft adequate specifications or any other adequate, economical description of the material for a competitive solicitation. AMSC 3, 4, or 5 are valid.

(e) *AMSC E.* (Reserved).

(f) *AMSC F.* (Reserved).

(g) *AMSC G.* The Government has rights to the technical data, the data package is complete, and there are no technical data, engineering, tooling or manufacturing restrictions. (This is the only AMSC that implies that parts are candidates for full and open competition. Other AMSCs such as K, M, N, Q, and S may imply limited competition when two or more independent sources exist yet the technical data package is inadequate for full and open competition.) AMCs 1 or 2 are valid.

(h) *AMSC H.* The Government physically does not have in its possession sufficient, accurate, or legible data to purchase this part from other than the current source(s). This code is applicable only to parts under immediate buy requirements and only for as long thereafter as the deficiency is under review for resolution and appropriate recoding. This code is only assigned at the conclusion of limited screening, and it remains assigned until the full screening process resolves physical data questions and results in assignment of a different AMSC. If one source is available, AMCs 3, 4, or 5 are valid. If at least two sources exist, AMCs 1 or 2 are valid.

(i) *AMSC I.* (Not authorized.)

(j) *AMSC J.* (Reserved.)

(k) *AMSC K.* This part must be produced from class 1 castings and similar type forgings as approved (controlled) by procedures contained in the current version of MIL–STD–2175. If one source has such castings and cannot provide them to other sources, AMCs 3, 4, or 5 are valid. If at least two sources have such castings or they can be provided to other sources AMCs 1 or 2 or valid.

(l) *AMSC L.* The annual buy value of this part falls below the screening threshold established by DoD components and field activities. However, this part has been screened for additional known sources, resulting in either confirmation that the initial source exists or that other sources may supply the part. No additional screening was performed to identify the competitive or noncompetitive conditions that would result in assignment of a different AMSC. This code shall not be used when screening parts entering the inventory. This code shall be used only to replace AMSC O for parts under the established screening threshold. If one source is available, AMCs 3, 4, or 5 are valid. If at least two sources exist, AMCs 1 or 2 are valid.

(m) *AMSC M.* Manufacture of this part requires use of master or coordinated tooling. If only one set of tooling exists and cannot be made available to another source for manufacture of this part, AMCs 3, 4, or 5 are valid. When the availability of existent or refurbishable tooling is available to two or more sources, then AMCs 1 or 2 are valid.

(n) *AMSC N.* Manufacture of this part requires special test and/or inspection facilities to determine and maintain ultra-precision quality for its function or system integrity. Substantiation and inspection of the precision or quality cannot be accomplished without such specialized test or inspection facilities. If the test cannot be made available for the competitive manufacture of the part, the required test or inspection knowledge cannot be documented for reliable replication, or the required physical test or inspection facilities and processes cannot be economically documented in a TDP, valid AMCs are 3, 4, or 5. If the facilities or tests can be made available to two or more competitive sources, AMCs 1 or 2 are valid.

(o) *AMSC O.* The part was not assigned an AMSC when it entered the inventory, nor has it ever completed screening. Use of this code in conjunction with AMC 0 is sometimes necessary but discouraged. Maximum effort to determine the applicability of an alternate AMSC is the objective. Only AMC O is valid.

(p) *AMSC P.* The rights to use the data needed to purchase this part from additional source(s) are not owned by the Government and cannot be purchased, developed, or otherwise obtained. It is uneconomical to reverse engineer this part. This code is used in situations where the Government has the data but does not own the rights to the data. If only one source has the rights or data to manufacture this item, AMCs 3, 4, or 5 are valid. If two or more sources have the rights or data to manufacture this item, AMCs 1 or 2 are valid.

(q) *AMSC Q.* The Government does not have adequate data, lacks rights to data, or both needed to purchase this part from additional sources. The Government has been unable to economically buy the data or rights to the data, although the part has been undergoing full screening for 12 or more months. Breakout to competition has not been achieved, but current, continuing actions to obtain necessary rights to data or adequate, reprocuremen. technical data indicate breakout to competition is expected to be achieved. This part may be a candidate for reverse engineering or other techniques to obtain technical data. All AMSC Q items are required to be reviewed within the timeframes cited in E–203(b). If one source is available, AMCs 3, 4, or 5 are valid. If at least two sources exist, AMCs 1 or 2 are valid.

(r) *AMSC R.* The Government does not own the data or the rights to the data needed to purchase this part from additional sources. It has been determined to be uneconomical to buy the data or rights to the data. It is uneconomical to reverse engineer the part. This code is used when the Government did not initially purchase the data and/or rights. If only one source has the rights or data to manufacture this item, AMCs 3, 4, or 5 are valid. If two or more sources have the rights or data to manufacture this item, AMCs 1 or 2 are valid.

(s) *AMSC S.* Acquisition of this item is restricted to Government approved source(s) because the production of this item involves unclassified but militarily sensitive technology (see FAR 6.3). If one source is approved, AMCs 3, 4, or 5 are valid. If at least two sources are approved, AMCs 1 or 2 are valid.

(t) *AMSC T.* Acquisition of this part is controlled by qualified products list (QPL) procedures. Competition for this part is limited to sources which are listed on or are qualified for listing on the QPL at the time of award (see FAR Part 9 and DFARS Part 209). AMCs 1 or 2 are valid.

(u) *AMSC U.* The cost to the Government to breakout this part and acquire it competitively has been determined to exceed the projected savings over the life span of the part. If one source is available, AMCs 3, 4, or 5 are valid. If at least two sources exist, AMCs 1 or 2 are valid.

(v) *AMSC V.* This part has been designated a high reliability part under a formal reliability program. Probability of failure would be unacceptable from the standpoint of safety of personnel and/or equipment. The cognizant engineering activity has determined that data to define and control reliability limits cannot be obtained nor is it possible to draft adequate specifications for this purpose. If one source is available, AMCs 3, 4, or 5 are valid. If at least two sources are available, AMCs 1 or 2 are valid.

(w) *AMSC W.* (Reserved.)

(x) *AMSC X.* (Not authorized.)

(y) *AMSC Y.* The design of this part is unstable. Engineering, manufacturing, or performance characteristics indicate that the required design objectives have not been achieved. Major changes are contemplated because the part has a low process yield or has demonstrated marginal performance during tests or service use. These changes will render the present part obsolete and unusable in its present configuration. Limited acquisition from the present source is anticipated pending configuration changes. If one source is available, AMCs 3, 4, or 5 are valid. If at least two sources exist, AMCs 1 or 2 are valid.

(z) *AMSC Z.* This part is a commercial/nondevelopmental/off-the-shelf item. Commercial item descriptions, commercial vendor catalog or price lists or commercial manuals assigned a technical manual number apply. If one source is available, AMCs 3, 4, or 5 are valid. If at least two sources are available, AMCs 1 or 2 are valid.

E-201.3 Contractor technical information codes.

The following two digit alpha codes shall be used by contractors, when contractor's assistance is requested. These codes are assigned in accordance with the current version of MIL-STD-789 and shall be considered during the initial assignment of an AMC/AMSC. For spare parts breakout, requirements for contractor assistance through CTIC submission shall be accomplished as stated in Part 4 of this appendix. Each CTIC submitted by a contractor must be accompanied by supporting documentation which justifies the proposed code. These codes and supporting documentation, transmitted by DD Form 1418, Contractor Technical Information Record, and DD Form 1418-1, Technical Data Identification Checklist, are useful not only for code assignment during acquisition coding conferences, but also for personnel conducting both full and limited screening of breakout candidates. Personnel conducting full and limited screening of breakout candidates should use the supporting documentation provided with CTICs as a source of information. However, they should not allow this information to substitute for careful analysis and further investigation of the possibilities of acquiring a part through competition or by direct purchase. The definitions for CTICs are—

(a) *CTIC CB.* Source(s) are specified on source control, altered item, or selected item drawings/documents. (The contractor shall furnish a list of the sources with this code.)

(b) *CTIC CC.* Requires engineering source approval by the design control activity in order to maintain the quality of the part. An alternate source must qualify in accordance with the design control activity's procedures, as approved by the cognizant Government engineering activity.

(c) *CTIC CG.* There are no technical restrictions to competition.

(d) *CTIC CK.* Produced from class 1 castings (see the current version of MIL-STD-2175) and similar type forgings. The process of developing and proving the acceptability of high-integrity castings and forgings requires repetitive performance by a controlled source. Each casting or forging must be produced along identical lines to those which resulted in initial acceptability of the part. (The contractor shall furnish a list of known sources for obtaining castings/forgings with this code.)

(e) *CTIC CM.* Master or coordinated tooling is required to produce this part. This tooling is not owned by the Government or, where owned, cannot be made available to other sources. (The contractor shall furnish a list of the firms possessing the master or coordinated tooling with this code.)

(f) *CTIC CN.* Requires special test and/or inspection facilities to determine and maintain ultra-precision quality for function or system integrity. Substantiation and inspection of the precision or quality cannot be accomplished without such specialized test or inspection facilities. Other sources in industry do not possess, nor would it be economically feasible for them to acquire facilities. (The contractor shall furnish a list of the required facilities and their locations with this code.)

(g) *CTIC CP.* The rights to use the data needed to purchase this part from additional sources are not owned by the Government and cannot be purchased.

(h) *CTIC CV.* A high reliability part under a formal reliability program. Probability of failure would be unacceptable from the standpoint of safety of personnel and/or equipment. The cognizant engineering activity has determined that data to define and control reliability limits cannot be obtained nor is it possible to draft adequate specifications for this purpose. Continued control by the existing source is necessary to ensure acceptable reliability. (The contractor shall identify the existing source with this code.)

(i) *CTIC CY.* The design of this part is unstable. Engineering, manufacturing, or performance characteristics indicate that the required design objectives have not been achieved. Major changes are contemplated because the part has a low process yield or has demonstrated marginal performance during tests or service use. These changes will render the present part obsolete and unusable in its present configuration. Limited acquisition from the present source is anticipated pending configuration changes. (The contractor shall identify the existing source with this code.)

E-202 Assignment of codes.

The purpose of AMC/AMSC assignments is to provide the best possible technical assessment of how a part can be acquired. The technical assessment should not be based on issues such as: are the known sources actual manufacturers, or are there two actual manufacturers in existence; but rather on factors such as the availability of adequate technical data, the Government's rights to use the data, technical restrictions placed on the hardware (criticality, reliability, special testing, master tooling, source approval, etc.) and the cost to breakout vice projected savings. In cases where there is additional technical information which affects the way a part can be acquired, it should be made available to the contracting officer, with the AMC/AMSC. Concerning the assignment of AMCs and AMSCs, it is DoD policy that—

(a) The assignment of AMC/AMSCs to parts is the responsibility of the DoD component introducing the equipment or system for which the parts are needed in the inventory. Subsequent screening is the responsibility of the DoD component assigned technical responsibility.

(b) When two or more AMSCs apply, the most technically restrictive code will be assigned.

(c) Restricted combinations of AMC/AMSCs are reflected in the AMSC definitions. The Defense Logistics Service Center will reject invalid code combinations, as shown in Exhibit I, submitted for entry into the Federal catalog program (see E-204.2).

(d) One-time acquisition of a part by a method other than indicated by the code does not require a change to the AMC (e.g., when only one of a number of sources can meet a short delivery date, or when only one manufacturing source is known but acceptable surplus parts are available from other sources).

(e) After the first acquisition under AMC 2 or 4, the AMC shall be recoded 1 or 3 respectively.

(f) Both full and limited screening will result in the assignment or reassignment of an AMC/AMSC. This assignment shall be based on the best technical judgment of breakout personnel and on information gathered during the screening process.

(g) A part need not be coded as noncompetitive based on an initial market survey which only uncovers one interested source. If the Government has sufficient technical data in its possession to enable other sources to manufacture an acceptable part, and there are no technical restrictions on the part which would preclude other sources from manufacturing it, the part should be coded competitive.

E-203 Improving part status.

(a) *General.* An effective breakout program requires that all reasonable actions be taken to improve the acquisition status of parts. The potential for improvement of the acquisition status will vary with individual circumstances. On one end of the spectrum are those parts with acquisition method suffix codes of a temporary nature requiring vigorous follow-through improvement action (e.g., AMSCs A and H); on the other end are those parts with codes suggesting a relative degree of permanence (e.g., AMSCP). A code assigned to a part should never be considered fixed with respect to either technical circumstance or time; today's technical constraint may be overcome by tomorrow's technology and a contractor's rights to data, so zealously protected today, often become less important with time. The application of breakout improvement effort must always consider individual circumstances and overall benefits expected to be obtained.

(b) *Code suspense dates.* Every part whose breakout status can be improved shall be suspensed for reacreening as appropriate. In general, the following codes cannot be improved: 1G, 2G, 1K, 2K, 1M, 2M, 1N, 2N, 1T, 2T, 1Z, or 2Z. The period between suspenses is a period for which an assigned AMC/AMSC is considered active, and routine rescreening of parts with "valid" codes is not required. Suspense dates may vary with the circumstance surrounding each part. A code reached as a result of limited screening (E-304) shall not be assigned a suspense date exceeding 12 months; a code reached as a result of full screening (E-303) shall not be assigned a suspense date exceeding three years. In exceptional cases, where circumstances indicate that no change can be expected in a code over an extended period, a suspense date not exceeding five years may be assigned in accordance with controls established by the breakout activity. Items with a 1G or 2G code do not require a suspense date.

E-204 Communication of codes.

E-204.1 Communication media.

Use the Federal catalog program formats, set forth in DoD Manual 4100.39-M, Defense Integrated Data System (DIDS) Procedural Manual, communication media and operating instructions as augmented by this appendix to disseminate AMCs and AMSCs.

E-204.2 Responsibilities.

(a) The Defense Logistics Service Center (DLSC) shall—

(1) Receive and disseminate AMCs and AMSCs for each national stock number (NSN) to all appropriate Government activities in consonance with scheduled Federal catalog program computer cycles;

(2) Make the AMCs and AMSCs a part of the data bank of NSN item intelligence;

(3) Perpetuate the codes in all subsequent Federal catalog program transactions; e.g., entry of new NSNs and Federal supply code (FSC) changes; and

(4) Reject invalid code combinations submitted for entry into the Federal catalog program.

(b) DoD activities responsible for the assignment of AMCs and AMSCs shall—

(1) Transmit assigned codes for each NSN through normal cataloging channels to DLSC under existing Federal catalog program procedures; and

(2) Notify DLSC by normal Federal catalog program maintenance procedures when a change in coding is made.

Part 3—Identification, selection, and screening of parts

E-300 General.

This part sets forth procedures for the identification, selection, and screening of parts.

E-301 Identification and selection procedures.

E-301.1 Parts entering the inventory.

The breakout process should begin at the earliest possible stage of weapon systems acquisition. Generally, a provisioned part will require subsequent replenishment. Provisioning or similar lists of new parts are, therefore, the appropriate bases for selecting parts for screening. This is not to imply that breakout must be done on all items as part of the provisioning process. Priorities shall be applied to those parts offering the greatest opportunity for breakout and potential savings. The major factors in making this determination are—

(a) The unit price;

(b) The projected quantity to be purchased óver the part's life cycle; and

(c) The potential for screening to result in a part being successfully broken out, e.g., item stability, cost, and completeness of technical data, etc.

E-301.2 Annual buy forecasts.

Annually, lists shall be prepared that identify all parts projected for purchase during the subsequent 12-month period. Priority should be given to those parts with the greatest expected return given their annual buy value, life cycle buy value, and likelihood of successful breakout, given technical characteristics such as design and performance stability and the availability of technical data. Parts with an expired suspense date or a suspense date which will expire during the forecast period (see E-203(b)), need only be subjected to the necessary steps of the full screening procedure (see E-303). Parts with a valid code that will not expire during the forecast period need not be screened. Parts coded 0O shall be selected for full screening.

E-301.3 Immediate buy requirements.

An immediate buy requirement will be identified by the user or the item manager in consonance with department/agency regulations. When an immediate buy requirement meeting the screening criteria (see E-104(b)) is generated for a part not assigned a current AMC/AMSC, the part shall be promptly screened in accordance with either the full or limited screening procedures (see E-303 and E-304).

E-301.4 Suspect AMC/AMSC.

Whenever an AMC/AMSC is suspected of being inaccurate by anyone, including the contracting officer, a rescreening shall be conducted for that part. Suspect codes include codes composed of invalid combinations of AMCs and AMSCs, those which do not truly reflect how a part is actually being acquired, and those suspected of being more restrictive than necessary for the next buy.

E-302 Screening.

(a) Screening procedures include consideration and recording of the relevant facts pertaining to breakout decisions. The objective of screening is to improve the acquisition status by determining the potential for competition, or purchase from an actual manufacturer. Consideration of any reasonable approach to establishing competition should be an integral part of the breakout process.

(b) Screening procedures may vary depending on circumstances related to the parts. No set rules will provide complete guidance for making acquisition method decisions under all conditions encountered in actual practice. An informed coding decision can be made without following the procedures step by step in every case.

(c) Activities involved in screening are encouraged to develop supplemental procedures which prove effective in meeting this regulation's objectives. These procedures should be tailored to the particular activity's operating environment and the characteristics of the parts for which it is responsible. Nevertheless, care should be taken in all cases to assure that—

(1) Responsible judgment is applied to all elements involved in the review of a part;

(2) The necessary supporting facts are produced, considered, and recorded in the breakout screening file. The breakout screening file contains technical data and other documents concerning screening of the part;

(3) All cost effective alternatives are considered for establishing competition, or purchase from an actual manufacturer (see E-105(d)(6)); and

(4) When possible, the sequence of the review allows for accomplishing several screening steps concurrently.

(d) Contractor participation in the decision making process extends only to providing technical information. This technical information is provided by supporting documentation (DD Forms 1418, Contractor Technical Information Record, and DD Form 1418-1, Technical Data Identification Checklist) which includes the CTIC assignment. Government personnel shall substantiate the breakout decision by reference to the CTIC and by careful review of the supporting documentation. However, the CTIC provides guidance only, and it should be used as one of the inputs to arrive at an acceptable AMC and AMSC coding.

(e) Contractor's technical information furnished in accordance with MIL-STD-789 may indicate areas requiring additional research by the Government before screening can be completed. Seldom will industry's contribution to the screening process enable the Government to assign an AMC or AMSC without additional review.

(f) During the screening process, it may be appropriate to communicate with industry, particularly potential manufacturers of a part, to determine the feasibility of establishing a competitive source and to estimate the costs and technical risks involved.

(g) Coding conferences with industry shall be documented.

(h) Screening may disclose a part is not suitable for competitive acquisition, but it may be possible to breakout the part for direct purchase from the actual manufacturer or to establish a second source. Parts particularly suited to direct purchase are those where neither the design control activity nor the prime contractor contribute additional value or whose data belong to the actual manufacturer and will not be acquired by the Government, and where that manufacturer exercises total responsibility for the part (design and quality control, testing, etc.), and where additional operations performed by the prime contractor can be performed by the actual manufacturer or by the Government.

(i) For each part that is screened, a file shall be established to document and justify the decisions and results of all screening effort (see E–105(d)(6)).

(j) Full and limited screening procedures are two elements of breakout programs. Other spare parts initiatives to enhance breakout are reverse engineering, bailment, data rights challenges, and publication of intended buy lists. Integration of other initiatives within the screening processes developed at each activity is encouraged.

E–303 Full screening procedures.

(a) Full screening procedures should be developed so that the potential is fully evaluated for establishing competition or purchase from an actual manufacturer. Also, full screening procedures should facilitate accurate and consistent acquisition method code assignment. It is expected that each activity will develop its own operational screening procedures. A general model, full screening decision process is provided below to support the development of activity level procedures and to provide guidance regarding the general scope of these procedures. The full screening procedures involve 65 steps in the decision process, and are divided into the following phases—

(1) Data collection;
(2) Data evaluation;
(3) Data completion;
(4) Technical evaluation;
(5) Economic evaluation; and
(6) Supply feedback.

(b) The six phases describe different functions that must be achieved during screening. The nature of the screening process does not permit clear distinction of one phase from another. Further, the order of performance of these phases may not correspond to the order listed here. In fact, the phases will often overlap and may be performed simultaneously. Their purpose is to identify the different functions comprising the screening process.

(c) A summary flow chart of the decision steps is provided as Exhibit II to assist in understanding the logical order of the full screening steps for various conditions. Use of the flow chart in connection with the text that follows is essential to fully understand the order of the steps in the process.

E–303.1 Data collection phase (step 1).

(a) Assemble all available data and establish a file for each part. Collect identification data, relevant data obtained from industry, contracting and technical history data and current status of the part, including—

(1) Normal identification required for cataloging and standardization review;

(2) All known sources;

(3) Historical contracting information, including the more recent awards, date of awards, and unit price(s) for the quantities prescribed;

(4) Identification of the actual manufacturer(s), the latest unit price and the quantity on which the price is based. (When the actual manufacturer is not the design control activity, the design control activity may be consulted to ensure the latest version of the item is being procured from the actual manufacturer);

(5) Identification of the activity, Government or industry, having design control over the part and, if industry, the cognizant Government engineering activity;

(6) The expected life in the military supply system;

(7) Record of any prior review for breakout, with results or findings; and

(8) Annual demand.

(b) In the case of complex items requiring large numbers of drawings, collection of a reasonable technical data sample is sufficient for the initial technical data evaluation phase (steps 2–14).

E–303.2 Data evaluation phase (steps 2–14).

(a) Data evaluation is crucial to the whole review procedure. It involves determination of the adequacy of the technical data package and the Government's rights to use the data for acquisition purposes.

(b) The data evaluation process may be divided into two stages—

(1) A brief but intensive analysis of available data and documents regarding both technical matters and data rights, leading to a decision whether to proceed with screening; and

(2) If the decision is to proceed with screening, further work is necessary to produce an adequate technical data package, such as research of contract provisions, engineering work on data and drawings, and requests to contractors for additional data.

(c) The steps in this phase are—(1) *Step 2.* Are full Government rights established by the available data package? Evidence for an affirmative answer would include the identification of Government drawings, incorporation by reference of Government specifications or process descriptions in the public domain, or reference to contract provisions giving the Government rights to data. If the answer is negative, proceed to step 3; if positive, proceed to step 6.

(2) *Step 3.* Are the contractor's limitations of the Government's rights to data established by the available data package?

(i) The questions in step 2 and 3 are not exclusive. The incorporation in a drawing of contract provisions reserving rights to the manufacturer, either in the whole design or in certain manufacturing processes, would establish a clear affirmative answer to step 3 where there is substantiating Government documentation. Parts not in this group shall be retained for further processing (see step 20). Data rights that cannot be substantiated shall be challenged (see DFARS Part 227, validation procedures).

(ii) In the case of clear contractor ownership of rights, proceed with steps 4 and 5.

(3) *Step 4.* Are there bases for competitive acquisition without using data subject to limitations on use? This question requires consideration, for example, of the possibility of using performance specifications or substitution of military or commercial specifications or bulletins for limited elements of the manufacturing process. The use of sample copies is another possibility.

(4) *Step 5.* Can the Government buy the necessary rights to data? This is a preliminary question to the full analysis (in steps 20 and 21 below) and is designed primarily to eliminate from further consideration those items which incorporate established data restrictions and for which there are no other bases for competitive acquisition nor is purchase of rights possible or feasible.

(5) *Steps 6 and 7.* Is the present technical data package adequate for competitive acquisition of a reliable part?

(6) *Steps 8 and 9.* Specify omissions. The question in steps 6 and 7 requires a critical engineering evaluation and should deal first with the physical completeness of the date—are any essential dimensions, tolerances, processes, finishes, material specifications, or other vital elements of data lacking from the package? If so, these omissions should be specified. A second element deals with adequacy of the existing package to produce a part of the required performance, compatibility, quality, and reliability. This will, of course, be related to the completeness of data. In some cases, qualified engineering judgment may decide that in spite of apparently complete data, the high performance or other critical characteristics of the item require retention of the present source. If such decision is made, the file shall include documentation in the form of specific information, such as difficulties experienced by the present manufacturer in producing a satisfactory item or the existence of unique production skills in the present source.

(7) *Steps 10 and 11.* Can the data be developed to make up a reliable technical data package? This implies a survey of the specified omissions with careful consideration to determine the resources available to supply each missing element. Such resources will vary from simple referencing of standard engineering publications to more complex development of drawings with the alternatives of either obtaining such drawings or developing performance specifications. In some cases, certain elements of data are missing because they have been properly restricted. If, however, there has been no advance substantiation of the right to restrict, the part should be further researched. If the answer to this question is negative, proceed to step 12; if positive, proceed to step 13 or 14.

(8) *Step 12.* If the answer to the question in steps 10 and 11 is no, which condition is the prime element in this decision, the lack of data or the unreliability of the data? Specific documentation is needed to support this decision.

(9) *Steps 13 and 14.* Estimate the time required to complete the data package. In those cases where the data package is found inadequate and specific additions need to be developed, an estimate of the time required for completion must be made in order to

determine if breakout of the part is feasible during this review cycle and to estimate at what point in the remaining life of the part the data package could be available.

E-303.3 Data completion phase (steps 15-21).

(a) The data completion phase involves acquiring or developing the missing elements of information to reach a determination on both adequacy of the technical data package and the restriction of rights to data. It may involve various functional responsibilities, such as examination of past contracts, queries directed to industry or to other Government agencies, inspection of the part, reverse or other engineering work to develop drawings and write specifications, arrangements with the present source for licensing or technical assistance to new manufacturers, and negotiations for purchase of rights to data. Additional research and information requests should be expeditiously initiated on those parts where there is a reasonable expectation of breakout. Because this phase is time-consuming, it should take place concurrently with other phases of the review.

(b) At the beginning of the data completion phase, the part falls into one of the following four steps—

(1) *Step 15.* The data package is complete and adequate and the Government has sufficient rights for acquisition purposes. Such parts require no further data analysis. Proceed to step 22.

(2) *Step 16.* The Government has rights to existing data. The data package is incomplete but there is a reasonable expectation that the missing elements can be supplied. Proceed to step 19.

(3) *Step 17.* The data package is complete, but suitable Government rights to the data have not been established. Proceed to step 20.

(4) *Step 18.* Neither rights nor completeness of data is adequately established; therefore, the part requires further research. Proceed to step 20.

(c) *Step 19.* Obtain or develop the necessary data for a suitable data package. Reverse engineering to develop acquisition data may be used if there is a clear indication that the costs of reverse engineering will be less than the savings anticipated from competitive acquisition. If there is a choice between reverse engineering and the purchase of data (step 21), the decision shall be made on the basis of relative costs, quality, time, and other pertinent factors.

(d) *Step 20.* Establish the Government's and contractor's rights to the data. Where drawings and data cannot be identified to a contract, the following guidelines should be applied—

(1) Where drawings and data bear legends which warn of copyright or patent rights, the effect of such legends shall be resolved according to law and policy; however, the existence of patent or copyright restrictions does not per se preclude securing competition with respect to the parts described (see FAR Subpart 27.3/DFARS Subpart 227.3).

(2) If the technical data bears legends which limit the Government's right to use the data for breakout and it is determined that reasonable grounds exist to question the current validity of the restrictive markings, the contracting officer will be notified to initiate the validation procedures at DFARS Subpart 227.4.

(3) Where drawings and data are unmarked and, therefore, free of limitation on their use, they shall be considered available for use in acquisition, unless the acquiring office has clear evidence to the contrary (see DFARS Subpart 227.4).

(4) The decision process in situations described in paragraphs (d) (1), (2), and (3) of this subsection requires the exercise of sound discretion and judgment and embraces legal considerations. In no case shall a decision be made without review and approval of that decision by legal counsel.

(5) If the validation procedures in paragraph (d)(2) of this subsection establish the Government's right to use the data for breakout, the Government shall attempt to obtain competition pursuant to the decisions resulting from concurrent technical and economic evaluation.

(e) *Step 21.* If restrictions on the use of data are established, determine whether the Government can buy rights to the required data. Use the procedure in DFARS Subpart 227.4.

E-303.4 Technical evaluation phase (steps 22-37).

(a) *Introduction.* (1) The purposes of technical evaluation are to determine the development status, design stability, high performance, and/or critical characteristics such as safety of personnel and equipment; the reliability and effective operation of the system and equipment in which the parts are to be used; and to exercise technical judgment as to the feasibility of breaking out the parts. No simple and universal rules apply to each determination. The application of experience and responsible judgment is required. Technical considerations arise in several elements of the decision process, e.g., in determining adequacy of the data package (steps 6-14).

(2) Certain manufacturing conditions may reduce the field of potential sources. However, these conditions do not justify the restriction of competition by the assignment of restrictive AMCs for the following reasons—

(i) *Parts produced from class 1 castings and similar type forgings.* The process of developing and providing the acceptability of high-integrity castings and forgings requires repetitive performance by a controlled source for each casting or forging along identical lines to those which result in initial acceptability of the item. The particular manufacturer's process becomes the controlling factor with regard to the acceptability of any such item. However, other firms can produce class 1 castings and similar type forgings and provide the necessary inspection, or the part may be acquired from other sources which use castings or forgings from approved (controlled) source(s).

(ii) *Parts produced from master or coordinated tooling, e.g., numerically controlled tapes.* Such parts have features (contoured surfaces, hole locations, etc.) delineated according to unique master tooling or tapes and are manufactured to minimum/maximum limits and must be replaceable without additional tailoring or fitting. These parts cannot be manufactured or configured by a secondary pattern or jigs independent of the master tooling and cannot be manufactured to requisite tolerances of fit by use of commercial precision machinery. In this context, jigs and fixtures used only for ease of production are not considered master tooling. However, master tooling may be reproduced.

(iii) *Parts requiring special test and/or inspection facilities to determine and maintain ultra-precision quality for the function or system integrity.* Substantiation and inspection of the precision or quality cannot be accomplished without specialized test or inspection facilities. Testing is often done by the actual manufacturer under actual operating use. However, such special test inspection facilities may be available at other firms.

(b) *Design procedures (steps 22-31).* (1) *Step 22.* Will a design change occur during anticipated lead time? If affirmative, proceed to step 23; if negative, proceed to step 24.

(2) *Step 23.* Specify the design change and assign an appropriate code.

(3) *Step 24.* Is a satisfactory part now being produced? Concurrently with the research and completion of data, a technical determination is required as to the developmental status of the part. With the frequent telescoping of the development/production cycle as well as constant product improvement throughout the active life of equipment, parts are frequently subject to design changes. The present source, if a prime contractor, is usually committed to incorporate the latest changes in any deliveries under a production order. In considering the part for breakout, an assessment must be made of the stability of design, so that in buying from a new source the Government will not be purchasing an obsolete or incompatible part. The question of obsolescence or noncompatibility is to some extent under Government control. Screening for breakout on parts that are anticipated to undergo design change should be deferred until design stability is attained.

(4) *Step 25.* Can a satisfactory part be produced by a new source? Determine whether technical reasons prohibit seeking a new source. The fact that the present source has not yet been able to produce a satisfactory part (step 24) does not preclude another source from being successful. If the answer to step 24 or 25 is affirmative, proceed simultaneously to steps 27 and 38. If the answer to step 25 is negative, proceed to step 26.

(5) *Step 26.* If the present source is producing an unsatisfactory part, but technical reasons prohibit seeking a new source, specify the reasons.

(6) *Step 27.* Does the part require prior qualification or other approval testing? If the answer is positive, proceed to step 28; if negative, proceed to step 32.

(8) *Step 28.* Specify the requirement.

(9) *Step 29.* Estimate the time required to qualify a new source.

(10) *Step 30.* Is there currently a qualified source?

(11) *Step 31.* Who is responsible for qualifications of the subcontractor, present prime contractor, the Government, or an independent testing agency?

(i) If a qualified source is currently in existence, the review should consider who will be responsible for qualification in the event of competitive acquisition. If qualification testing is such that it can be performed by the selected source under a preproduction or first article clause in the contract, the costs of initial approval should be reflected in the offers received. If the part requires initial qualification tests by some other agency such as the present prime contractor, the Government, an independent testing agent outside the Government, or by technical facilities within the departments, out-of-pocket costs may be incurred if the part is competed. An estimate of qualification costs should then be made and recorded in such cases.

(ii) Where facilities within the Government are not adequate for testing or qualification, or outside agencies such as the equipment contractor cannot or will not do the job, the economics of qualification may be unreasonable, and a narrative statement of these facts should replace the cost estimate. Whenever possible, such as in the case of engine qualification tests, economy of combined qualification tests should be considered.

(c) *Quality assurance procedures (steps 32–33).* Quality control and inspection is a primary consideration when making a decision to breakout. Where the prime contractor performs quality assurance functions beyond those of the part manufacturer or other sources, the Government may—

(1) Develop the same quality control and inspection capability in the manufacturer's plant;

(2) Assume the responsibility for quality; or

(3) Undertake to obtain the quality assurance services from another source, possibly the prime contractor.

(4) *Step 32.* Who is now responsible for quality control and inspection of the part?

(5) *Step 33.* Can a new source be assigned responsibility for quality control? Is the level of the quality assurance requirements specified in the system contract necessary for the screened part? The minimum quality assurance procedures for each part shall be confirmed.

(i) A new source shall be considered if—

(A) Any essential responsibility (e.g., burn-in, reliability, maintainability) retained by the prime contractor for the part and its relationship to the end item can be eliminated, shifted to the new source, or assumed by the Government;

(B) The prime contractor will provide the needed quality assurance services;

(C) The Government can obtain competent, impartial services to perform quality assurance responsibility; or

(D) The new source can maintain an adequate quality assurance program, inspection system, or inspection appropriate for the part.

(ii) If the prime contractor has responsibility for quality that a new source cannot assume or obtain, or that the Government cannot undertake or eliminate, consideration of the new source is precluded.

(d) *Tooling procedures (steps 34–37).* (1) *Step 34.* Is tooling or other special equipment required?

(2) *Step 35.* Specify the type of tooling.

(3) *Step 36.* Estimate additional acquisition leadtime for setup and for tooling.

(4) *Step 37.* Does the Government possess this tooling? If tooling or special equipment is required for production of the part, the types and quantities should be specified. Investigation can then be made as to whether the Government possesses such tooling and can make it available to a new source. A requirement for special tooling is not necessarily a deterrent to competitive solicitation for parts. The Government may find it desirable to purchase the needed tooling and furnish it to the new source. In this case, the costs can be determined with reasonable accuracy. However, if new sources can provide the tooling or special equipment, this will be reflected in competitive prices and should not normally require further analysis.

E–303.5 Economic evaluation phase (steps 38–56).

(a) Economic evaluation concerns identification and estimation of breakout savings and direct cost offsets to breakout. The economic evaluation phase is composed of the three segments detailed in paragraphs (b) through (d) of this subsection.

(b) *Development of savings data (steps 38–40).* (1) *Step 38.* Estimate remaining program life cycle buy value.

(2) *Step 39.* Apply either a savings factor of 25 percent or one determined under local conditions and experience.

(3) *Step 40.* Multiply the remaining program life cycle buy value by the savings factor to obtain the expected future savings, if the part is coded for breakout.

(c) *Computation of breakout costs (steps 41–47).* Several groups of costs must be collected, summarized and compared to estimated savings to properly determine the economics of breakout. These costs include—

(1) *Direct costs (steps 41–45).* Direct costs of breakout normally include all expenditures which are direct and wholly identifiable to a specific, successful breakout action, and which are not reflected in the part unit price. Examples of direct costs include Government tooling or special test equipment, qualification testing, quality control expenses, and industry participation costs (such as completion of the Contractor Technical Information Data Record) if borne by the Government.

(i) Step 41. Estimate the cost to the Government for tooling or special equipment.

(ii) Step 42. Estimate the cost, if any, to the Government for qualifying the new source.

(iii) Step 43. Estimate the cost, if any, to the Government for assuring quality control, or the cost of contracting for quality control.

(iv) Step 44. Estimate the cost to the Government for purchasing rights to data.

(v) Step 45. Add estimated total direct costs to the Government to breakout the item.

(2) *Performance specification costs (steps 46–47).* (i) Step 46. Is the breakout candidate constructed to a performance specification?

(ii) Step 47. If the answer is yes in step 46, add performance specification breakout cost estimate elements to the result of step 45. The addition of an unknown number of nonstocked parts which must be stocked by the supply system for repairs is a significant element of cost associated with the decision to compete a performance specification assembly. (The same situation does not arise with respect to a design specification assembly since virtually all spare parts used to repair such an assembly are essentially identical to parts already in the assembly.) The cost of introducing these nonstocked parts into the system includes—

(A) Additional catalog costs. The number of nonstocked parts forecasted to be in the competed assembly, multiplied by the variable cost of cataloging per line item.

(B) Additional bin opening costs.

The number of nonstocked parts forecasted to be in the competed assembly, multiplied by the variable cost of a bin opening at each of the locations where the part is to be stocked.

(C) Additional management costs. The number of nonstocked parts forecasted to be in the competed assembly, multiplied by the variable cost of management per line item.

(D) Additional technical data costs. The cost of a new set of technical data for the competed assembly, including the variable expenses of its production, reproduction, and distribution.

(E) Additional repair tools and test equipment costs. The costs of additional special tools and test equipment not otherwise required by the existing assembly.

(F) Additional logistics support costs. The costs associated with the new item such as spare and repair parts, technical manuals, and training.

(d) *Comparison of savings and costs (steps 48–56).* Compare estimated breakout costs to forecasted breakout savings. If costs exceed estimated savings, it will be uneconomical to compete the part. Performance specification parts should be analyzed to ensure that pertinent breakout costs have been considered and, if it is not economical to breakout the part, whether an appropriate detailed design data package reduces costs sufficiently to make breakout economical.

(1) *Step 48.* Compare total costs of breakout (step 47) to estimated savings (step 40).

(2) *Step 49.* Are costs of breakout greater or less than estimated savings? If greater, proceed to step 50; if yes, proceed to step 51.

(3) *Step 50.* Is the breakout candidate constructed to a performance specification? If no, proceed to step 54; if yes, proceed to step 57.

(4) *Step 51.* Is it appropriate to obtain a detailed design data package? If yes, proceed to step 52; if no, proceed to step 54. The decision to change a performance specification part to a detailed design part obviously requires a critical engineering examination of the part itself, as well as a review of the impact such a change might have on the operational effectiveness of the system in which the equipment is to be employed. Acquisition of a performance specification part by a subsequently acquired design specification subjects the Government

to the additional hazard of losing the money paid for the development of the design specification, should the design be altered during the contracting leadtime period. Accordingly, the engineering evaluation should closely review design stability over the anticipated contracting leadtime in order to avoid acquiring an obsolete or nonstandard part if the decision is made to compete it.

(5) *Step 52.* Add the estimated cost of obtaining a detailed design data package to the results of step 45.

(6) *Step 53.* If the results of step 52 are less than the estimated savings, initiate action to obtain a detailed design data package. Proceed to step 54 to code the part for a period until it can be rescreened using the design specification package. The code determined in this screening shall be assigned a suspense date commensurate with the leadtime required to obtain the detailed design data package (see E–203(b)).

(7) *Step 54.* Is the part manufactured by the prime contractor? If yes, code the part AMC 3; if no, proceed to step 55.

(8) *Step 55.* Can the part be acquired directly from the actual manufacturer? If no, proceed to step 56; if yes, code the part AMC 3 or 4, as applicable.

(9) *Step 56.* Specify the reasons for inability to obtain the part from the actual manufacturer. Code the part AMC 5.

E–303.6 Supply feedback phase (steps 57–65).

(a) The supply feedback phase of the analysis is the final screening phase for breakout parts. This phase in completed for all AMC 2 parts to determine if sufficient time is available to breakout on the immediate buy and to communicate this information to the inventory manager responsible for the requirement. First, all additional time factors required to breakout the part are added. Total time is subtracted from the immediate and future buy date and the result compared to the current date. (Note: Not all time factors listed apply to each part screened.) If the result is the same or earlier than the required contract date, the part is coded competitive and action is begun to qualify additional sources as necessary. If the result is later than the required contract date, action to compete the immediate buy quantity should be initiated if the inventory manager can find some means of accepting later delivery. If this is impossible, the appropriate records should be annotated for competitive acquisition of the next replenishment buy quantity. If late delivery is acceptable, the inventory manager should compute requirements for the part and initiate an appropriate purchase requisition.

(b) *Procedures.* (1) *Step 57.* Add all additional time factors required to breakout the part (steps 13, 14, 29, and 36).

(2) *Step 58.* Add the results of step 57 to the date of this review.

(3) *Step 59.* Compare the result of step 58 to the date that the contract or order must be placed.

(4) *Step 60.* Is the result of step 59 earlier than, later than, or the same as the contract or order date? (If earlier or the same, proceed to step 61; if later, proceed to step 63.)

(5) *Step 61.* Can supply accept late delivery? If yes, proceed to step 62; if no, proceed to step 63.

(6) *Step 62.* Notify the inventory manager to compute requirements and initiate a purchase requisition. Proceed to step 64.

(7) *Step 63.* Code the part AMC 2. Insufficient time to compete on this buy.

(8) *Step 64.* Code the part AMC 2.

(9) *Step 65.* Begin actions to qualify new sources, if required and possible.

E–304 Limited screening procedures.

(a) Limited screening procedures are only appropriate when the full screening process cannot be completed for a part in sufficient time to support an immediate buy requirement. If limited screening does not result in a competitive AMC and the part is characterized by a high buy value and high buy quantity in the annual buy forecast, full screening procedures shall be immediately initiated.

(b) Limited screening procedures cover only the essential points of data and technical evaluations more completely described in full screening procedures (see E–303). Extensive legal review of rights or technical review of data is not required; nor is backup information on type and extent of qualification testing, quality control procedures and master tooling required. A summary flow chart of the limited screening decision steps is provided at Exhibit III.

(c) The limited screening decision steps are followed sequentially if the answer to the question in each step is affirmative. If any step is answered in the negative, proceed directly to step 10.

(1) *Step 1.* Assemble all available data and establish a file for each part. Collect identification data, relevant data obtained from industry, contracting and technical history data and current status of the part (see E–303.1).

(2) *Step 2.* Do the available documents establish Government rights to use the data for acquisition purposes? If the Government's rights to use data in its possession is questionable, resolution of the rights must continue beyond award of the immediate buy.

(3) *Step 3.* Is the data package sufficient, accurate, and legible? If the Government does not have in its possession sufficient, accurate, or legible data, action shall be promptly initiated to resolve the deficiency for the next buy.

(4) *Step 4.* Is the design of the part stable over the anticipated acquisition leadtime?

(5) *Step 5.* Is a satisfactory part now being produced?

(6) *Step 6.* Can the part be acquired from a new source without prior qualification testing or other approval testing?

(7) *Step 7.* Can the Government or a new source be responsible for quality assurance?

(8) *Step 8.* Can the part be manufactured without master or coordinated tooling or other special equipment; if no, is there more than one source which has the tooling or special equipment?

(9) *Step 9.* Assign AMC 2. Proceed to step 11.

(10) *Step 10.* Assign AMC 3, 4, or 5, as appropriate.

(11) *Step 11.* Establish the date of the next review (see E–104(c) and E–203(b)).

Part 4—Contractor's Assistance

E–400 General.

(a) Contractor's assistance in screening shall be requested on provisioned and replenishment parts after consideration of the benefit expected from the contractor's technical information and the cost to the Government of obtaining such assistance.

(b) Contractor's assistance shall not be requested for parts covered by Government/industry specifications, commercially available parts or parts for which data is already available.

(c) Arrangements entered into with contractor to obtain technical information shall provide that—

(1) Contractors will exert their best effort to make impartial technical evaluations using applicable technical data and the experience of competent personnel; and

(2) No costs to the Government will be incurred for duplicate screening of parts.

E–401 Contractor's technical evaluation procedures.

(a) Contractor's technical evaluation for the screening process shall be required contractually by incorporating MIL–STD–789, which delineates the contractor's responsibilities and procedures and prescribes use of the contractor DD Form 1418, Technical Information Record, and the DD Form 1418–1, Technical Data Identification Checklist, a copy of each document listed on DD Form 1418–1, and other substantive data that was used in developing the contractor's recommendations.

(b) When MIL–STD–789 is incorporated in a contract, the DD Form 1423, Contract Data Requirements List, shall specify the requirement for the submission of DD Form 1418, Technical Information Record, and DD Form 1418–1, Technical Data Identification Checklist, in accordance with MIL–STD–789.

Part 5—Reporting System

E–500 General.

This part prescribes reports regarding the breakout program which cannot be obtained from other sources. These reports are used to evaluate the effectiveness of breakout programs, establish a baseline for all spare part acquisitions, and identify trends in spare parts acquisition.

E–501 Reports.

(a) *Spare Parts Breakout Screening Report (RCS DD P&L(Q&SA)714A).* This is a cumulative semi-annual report reflecting the accomplishments of the breakout program. The report describes the results of full and limited screening for provisioning and replenishment parts by number of different NSNs for each AMC. Departments and agencies shall also maintain actual cost data attributable to the Spare Parts Breakout Program which shall be forwarded on this report semi-annually.

(b) *Spare Parts Acquisition Report (RCS DD P&L(Q&SA) 714B).* This is a cumulative semi-annual report for all purchases made of spare parts during the current fiscal year. This report describes the number and extended dollar value of different NSNs purchased for each AMC. Departments and agencies shall also maintain actual savings (or cost avoidance) data attributable to the Spare Parts Breakout Program which shall be forwarded on this report semi-annually. Because of extraneous factors such as contracting leadtimes and changes in spare parts requirements, this report will not always reflect the acquisition of the parts screened during a reporting period (contained on the Spare Parts Breakout Screening Report). Also, it will not show in all instances how the part was actually acquired. This report is intended to be an indication of the success of the breakout program, and designed to show trends in the coding and data available to buyers in the acquisition package.

E-502 Reporting procedures.

(a) Departments and agencies shall maintain and forward semi-annual reports. The second semi-annual report in a fiscal year shall reflect cumulative totals for the current fiscal year using the formats in Exhibits IV and V.

(b) The reports will be due no later than 45 days after the end of each period designated.

(c) Submissions will be made to the Assistant Secretary of Defense (Production and Logistics), ATTN: Deputy Assistant Secretary for Logistics.

E-503 Reporting instructions.

(a) *Spare parts breakout screening report.* Using the format in Exhibit IV, provide the following—

(1) Enter reporting activity name, fiscal year, and period ending.

(2) For each AMC/AMSC listed, enter the number of different NSNs for which screening was completed during the period. Show zeros where applicable. This should be done for both full and limited screening.

(3) Report the total costs of the breakout program incurred for the period. Although this will be primarily labor costs, it should also include appropriate prorated costs of ADP services, office overhead, data retrieval service costs, etc. (see E-303.5).

(b) *Spare parts acquisition report.* Using the format in Exhibit V, provide the following—

(1) Enter reporting activity name, fiscal year, and period ending.

(2) For each AMC/AMSC listed, enter the number of different NSNs purchased during the current fiscal year and their extended dollar value.

(3) Report the actual breakout program savings or cost avoidances as measured by completed acquisition (not anticipated acquisitions). Price differentials should be measured on each acquisition where a breakout action has taken place. They should equal the difference between the previous contract unit price and the current contract unit price, times the number of units purchased.

EXHIBIT I—VALID AMC/AMSC COMBINATIONS

Acquisition Method Code (AMC)

AMSC	0	1	2	3	4	5
A	X	o	o	o	o	o
B	X	o	o	o	o	o
C	X	o	o	o	o	o
D	X	X	X	o	o	o
G	X	o	o	X	X	X
H	X	o	o	o	o	o
K	X	o	o	o	o	o
L	X	o	o	o	o	o
M	X	o	o	o	o	o
N	X	o	o	o	o	o
O	o	X	X	X	X	X
P	X	o	o	o	o	o
Q	X	o	o	o	o	o
R	X	o	o	o	o	o
S	X	o	o	o	o	o
T	X	o	o	X	X	X
U	X	o	o	o	o	o
V	X	o	o	o	o	o
Y	X	o	o	o	o	o
Z	X	o	o	o	o	o

o = Valid Combinations.
X = Invalid Combinations.

Exhibit II—Full Screening Decision Process Summary Flow Chart

Note: Exhibit II appears in the 1991 Looseleaf Edition of the Defense FAR Supplement. Copies can be obtained from: Defense Acquisition Regulations System, OUSD(A), Washington, DC 20301-3000.

BILLING CODE 3810-01-M

EXHIBIT III--LIMITED SCREENING DECISION PROCESS SUMMARY FLOW CHART

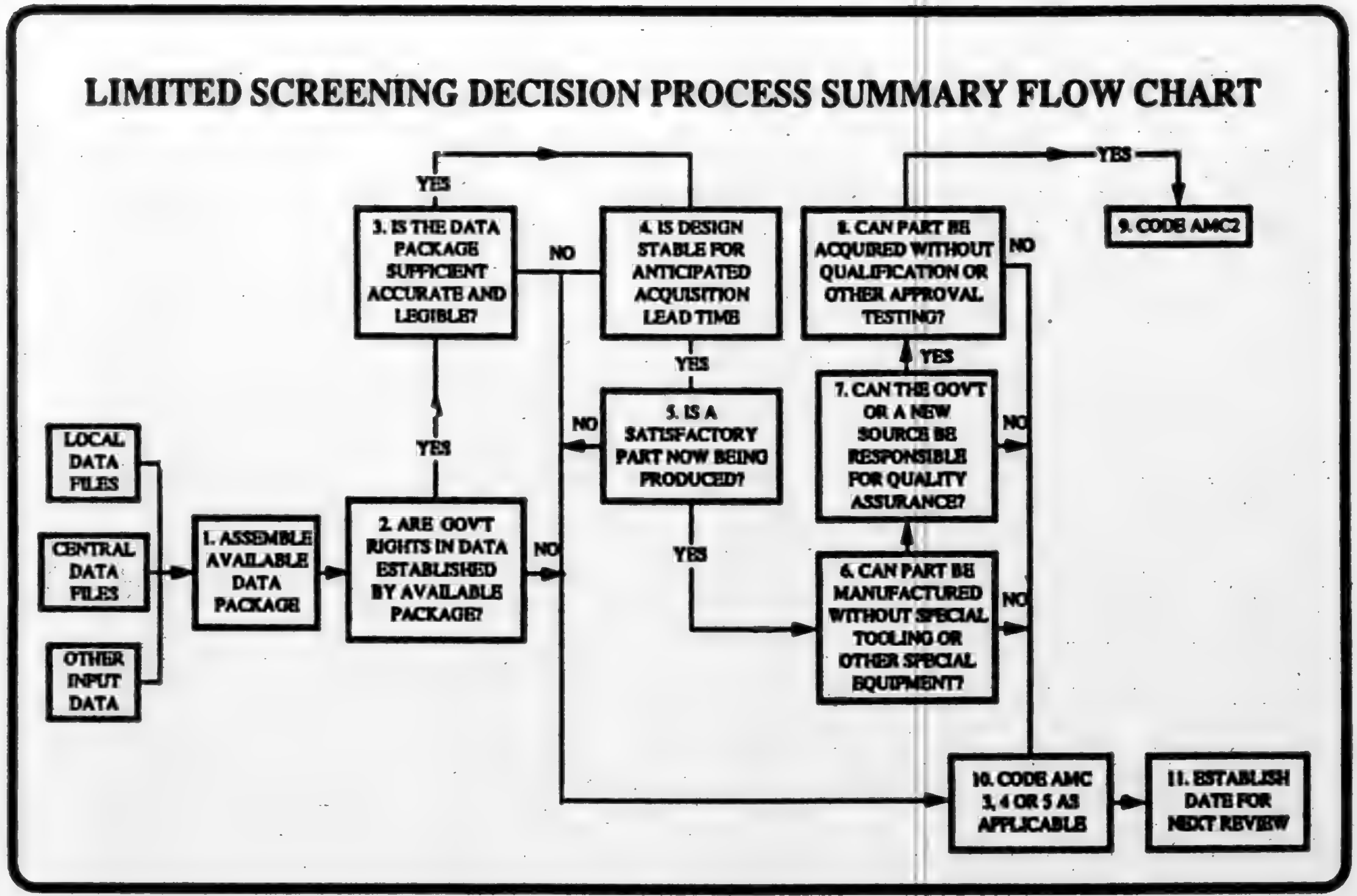
LIMITED SCREENING DECISION PROCESS SUMMARY FLOW CHART
LOCAL DATA FILES
CENTRAL DATA FILES
OTHER INPUT DATA
1. ASSEMBLE AVAILABLE DATA PACKAGE
2. ARE GOV'T RIGHTS IN DATA ESTABLISHED BY AVAILABLE PACKAGE?
YES
NO
3. IS THE DATA PACKAGE SUFFICIENT ACCURATE AND LEGIBLE?
YES
NO
4. IS DESIGN STABLE FOR ANTICIPATED ACQUISITION LEAD TIME
YES
5. IS A SATISFACTORY PART NOW BEING PRODUCED?
NO
YES
6. CAN PART BE MANUFACTURED WITHOUT SPECIAL TOOLING OR OTHER SPECIAL EQUIPMENT?
NO
7. CAN THE GOV'T OR A NEW SOURCE BE RESPONSIBLE FOR QUALITY ASSURANCE?
NO
YES
8. CAN PART BE ACQUIRED WITHOUT QUALIFICATION OR OTHER APPROVAL TESTING?
NO
YES
9. CODE AMC2
10. CODE AMC 3, 4 OR 5 AS APPLICABLE
11. ESTABLISH DATE FOR NEXT REVIEW

EXHIBIT IV--SPARE PARTS BREAKOUT SCREENING REPORT

SPARE PARTS BREAKOUT SCREENING REPORT

Report Activity_______________ Fiscal Year_______________ Period Ending_______________

NUMBER OF NSNs

AMC/AMSC	LIMITED SCREENING	FULL SCREENING	TOTAL SCREENING
*1G Only			
1			
**2G Only			
2			
3			
4			
5			
TOTAL			

SPARE PARTS BREAKOUT PROGRAM COSTS $_______________

*Excluded from AMC 1 data
**Excluded from AMC 2 data

EXHIBIT V--SPARE PARTS ACQUISITION REPORT

SPARE PARTS ACQUISITION REPORT

Report Activity____________ **Fiscal Year**____________ **Period Ending**____________

PURCHASE MADE

AMC/AMSC	NUMBER OF NSNs	EXTENDED DOLLAR VALUE
*1G Only		
1		
**2G Only		
2		
3		
4		
5		
TOTAL		

SPARE PARTS BREAKOUT PROGRAM
SAVINGS OR COST AVOIDANCES $____________

*Excluded from AMC 1 data
**Excluded from AMC 2 data

BILLING CODE 3810-01-C

Appendix F—Material Inspection and Receiving Report

Sec.
Part 1—Introduction.
  F-101 General.
  F-102 Applicability.
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  F-301 Preparation instructions.
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Part 7—Distribution of the DD Form 250-1.
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Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Part 1—Introduction

F-101 General.

This appendix contains procedures and instructions for the use, preparation, and distribution of the material inspection and receiving report (MIRR) (DD Form 250 series) and commercial shipping/packing lists used to document Government contract quality assurance.

F-102 Applicability.

(a) The provisions of this appendix apply to supplies or services acquired by DoD when the clause at 252.246-7000, Material Inspection and Receiving Report, is included in the contract. If the contract contains the clause at FAR 52.213-1, Fast Payment Procedure, the contractor may elect not to prepare a DD Form 250.

(b) When DoD provides quality assurance or acceptance services for non-DoD activities, prepare a MIRR using the instructions in this appendix, unless otherwise specified in the contract.

F-103 Use.

(a) The DD Form 250 is a multipurpose report used—(1) To provide evidence of Government contract quality assurance at origin or destination;

(2) To provide evidence of acceptance at origin or destination;

(3) For packing lists;

(4) For receiving;

(5) For shipping;

(6) As a contractor invoice; and

(7) As commercial invoice support.

(b) Do not use the DD Form 250 for shipments—(1) By subcontractors, unless the subcontractor is shipping directly to the Government; or

(2) Of contract inventory.

(c) The contractor prepares the MIRR, except for entries that an authorized Government representative is required to complete.

(d) Use the DD Form 250-1—(1) For bulk movements of petroleum products by tanker or barge to cover—

(i) Origin or destination acceptance of cargo; or

(ii) Shipment or receipt of Government owned products.

(2) To send quality data to the point of acceptance in the case of origin inspection on FOB destination deliveries or preinspection at product source. Annotate the forms with the words "INSPECTED FOR QUALITY ONLY."

F-104 Application.

(a) *DD Form 250.* (1) Use the DD Form 250 for delivery of contract line, subline, exhibit line, or exhibit subline items. Do not use the DD Form 250 for those exhibit line or exhibit subline items on a DD Form 1423, Contract Data Requirements List, that indicate no DD Form 250 is required.

(2) If the shipped to, marked for, shipped from, mode of shipment, contract quality assurance and acceptance data are the same for more than one shipment made on the same day under the same contract, contractors may prepare one MIRR to cover all such shipments.

(3) If the volume of the shipment precludes the use of a single car, truck, or other vehicle, prepare a separate MIRR for the contents of each vehicle.

(4) When a shipment is consigned to an Air Force activity and the shipment includes items of more than one federal supply class (FSC) or material management code (MMC), prepare a separate DD Form 250 for items of each of the FSCs or MMCs in the shipment. However, the cognizant Government representative may authorize a single DD Form 250, listing each of the FSCs or MMCs included in the shipment on a separate continuation sheet. The MMC appears as a suffix to the national stock number applicable to the item.

(5) Consolidation of Petroleum Shipments on a Single MIRR—(i) *Continental United States.* Contractors may consolidate multiple car or truck load shipments of petroleum made on the same day, to the same destination, against the same contract line item, on one MIRR. To permit verification of motor deliveries, assign each load a load number which can be identified to the shipment number in Block 2 of the DD Form 250. Include a shipping document (commercial or government) with each individual load showing as a minimum—

(A) The shipper;

(B) Shipping point;

(C) Consignee;

(D) Contract and line item number;

(E) Product identification;

(F) Gross gallons (bulk only);

(G) Loading temperature (bulk only);

(H) American Petroleum Institute gravity (bulk only);

(I) Identification of carrier's equipment;

(J) Serial number of all seals applied; and

(K) Signature of supplier's representative.

When acceptance is at destination, the receiving activity retains the shipping document(s) to verify the entries on the consignee copy of the DD Form 250 forwarded by the contractor (reference F-401, Table 1) before signing Block 21B.

(ii) *Overseas.* The same criteria as for continental U.S. applies, except the consolidation period may be extended, if acceptable to the receiving activity, shipping activity, Government finance office, and the authorized Government representative having cognizance at the contractor's facility. In addition, the contractor may include more than one contract line item in each DD Form 250 if the shipped to, marked for, shipped from, mode of shipment, contract quality assurance, and acceptance data are the same for all line items.

(6) *Consolidation of Coal Shipments on a Single MIRR.* Contractors may consolidate multiple railcar or truck shipments of coal made on the same day, to the same destination, against the same contract line items, on one MIRR. To permit verification of truck deliveries, assign each load a load number which can be identified to the shipment number in Block 2 of the DD Form 250 and the analytical test report. Include a commercial shipping document with each individual truck load showing as a minimum—

(i) The shipper;

(ii) The name or names;

(iii) Location and shipping point of the mine or mines from which the coal originates;

(iv) The contract number;

(v) The exact size of the coal shipped; and

(vi) A certified weighmaster's certification of weight for the truckload.

Include a waybill with each rail shipment showing the identical information. To permit verification of rail deliveries, identify each railcar number comprising the shipment to the shipment number in Block 2 of the DD Form 250 and the analytical test report. When acceptance is at destination, the receiving activity must retain the shipping document(s) to verify the entries on the consignee copy of the DD Form 250.

(b) *DD Form 250-1.* (1) Use a separate form for each tanker or barge cargo loaded.

(2) The contractor may report more than one barge in the same tow on a single form if on the same contract and consigned to the same destination.

(3) When liftings involve more than one contract, prepare separate forms to cover the portion of cargo loaded on each contract.

(4) Prepare a separate form for each product or grade of product loaded.

(5) Use a separate document for each tanker or barge cargo and each grade of product discharged.

(6) For discharge, the contractor may report more than one barge in the same tow on a single form if from the same loading source.

F-105 Forms.

(a) Contractors may get MIRR forms from the contract administration office at no cost.

DD Form 250 for
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ED FOR QUALITY

1) Use the DD Form 250
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D Form 1423, Contract
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D Form 250 for items of
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(I) Identification of carrier's equipment;

(J) Serial number of all seals applied; and

(K) Signature of supplier's representative.

When acceptance is at destination, the receiving activity retains the shipping document(s) to verify the entries on the consignee copy of the DD Form 250 forwarded by the contractor (reference F-401, Table 1) before signing Block 21B.

(ii) *Overseas.* The same criteria as for continental U.S. applies, except the consolidation period may be extended, if acceptable to the receiving activity, shipping activity, Government finance office, and the authorized Government representative having cognizance at the contractor's facility. In addition, the contractor may include more than one contract line item in each DD Form 250 if the shipped to, marked for, shipped from, mode of shipment, contract quality assurance, and acceptance data are the same for all line items.

(6) *Consolidation of Coal Shipments on a Single MIRR.* Contractors may consolidate multiple railcar or truck shipments of coal made on the same day, to the same destination, against the same contract line items, on one MIRR. To permit verification of truck deliveries, assign each load a load number which can be identified to the shipment number in Block 2 of the DD Form 250 and the analytical test report. Include a commercial shipping document with each individual truck load showing as a minimum—

(i) The shipper;

(ii) The name or names;

(iii) Location and shipping point of the mine or mines from which the coal originates;

(iv) The contract number;

(v) The exact size of the coal shipped; and

(vi) A certified weighmaster's certification of weight for the truckload.

Include a waybill with each rail shipment showing the identical information. To permit verification of rail deliveries, identify each railcar number comprising the shipment to the shipment number in Block 2 of the DD Form 250 and the analytical test report. When acceptance is at destination, the receiving activity must retain the shipping document(s) to verify the entries on the consignee copy of the DD Form 250.

(b) *DD Form 250-1.* (1) Use a separate form for each tanker or barge cargo loaded.

(2) The contractor may report more than one barge in the same tow on a single form if on the same contract and consigned to the same destination.

(3) When liftings involve more than one contract, prepare separate forms to cover the portion of cargo loaded on each contract.

(4) Prepare a separate form for each product or grade of product loaded.

(5) Use a separate document for each tanker or barge cargo and each grade of product discharged.

(6) For discharge, the contractor may report more than one barge in the same tow on a single form if from the same loading source.

F-105 Forms.

(a) Contractors may get MIRR forms from the contract administration office at no cost.

(b) Contractors may print forms provided that the format and dimensions (DD Forms 250 and 250c: 8 1/2 inches x 11 inches, DD Form 250-1: 8 1/2 inches x 14 inches) are identical to the MIRR forms printed by the Government and that the forms are cast to provide for 78 characters per printed image horizontally and 62 lines vertically border to border for the DD Form 250, and 61 lines vertically border to border for the DD Form 250c.

Part 2—Contract Quality Assurance (CQA) on Shipments Between Contractors

F-201 Instructions.

(a) Use the supplier's commercial shipping document/packing list to enter performance of required CQA actions at subcontract level. Make the following entries on the supplier's commercial shipping document/packing list:

Required CQA of listed items has been performed.

(Signature of Authorized Govt. Rep. or DoD Stamp)

(Date)

(Typed Name and Office)

(b) Distribution for Government purposes shall be—

(1) One copy with shipment;

(2) One copy for the Government representative at consignee (via mail); and

(3) One copy for the Government representative at consignor.

Part 3—Preparation of the DD Form 250 and DD Form 250c

F-301 Preparation Instructions.

(a) *General.*

(1) Dates shall use seven spaces consisting of the last two digits of the year, three alphabetic month abbreviation, and two digits for the day. For example, 90AUG07, 90SEP24.

(2) Addresses shall consist of the name, street address/P.O. box, city, state, and ZIP code.

(3) Enter to the right of and on the same line as the word "Code" in Blocks 9 through 12 and in Block 14—(i) The Commercial and Government Entity Handbook (H4/H8) code,

(ii) DoD Activity Address Directory (DODAAD) code, or

(iii) The Military Assistance Program Address Directory (MAPAD) code.

(4) Enter the DODAAD, CAGE (H4/H8), or MAPAD code in Block 13.

(5) The data entered in the blocks at the top of the DD Form 250c must be identical to the comparable entries in Blocks 1, 2, 3, and 6 of the DD Form 250.

(6) Enter overflow data from the DD Form 250 in Block 16 or in the body of the DD Form 250c with an appropriate cross reference. Do not number or distribute additional DD Form 250c sheets, solely for continuation of Block 23 data as part of the MIRR.

(7) Do not include classified information in the MIRR. MIRRs shall not be classified.

(b) Completion instructions—

(1) Block 1—Proc instrument iden (contract).

(i) Enter the 13 position alpha-numeric basic Procurement Instrument Identification Number (PIIN) of the contract. When applicable, enter the four alpha-numeric call/order serial number which is supplementary to the 13 position basic PIIN. This number is also referred to as the Supplementary Procurement Instrument Identification Number (SPIIN). Use SPIINs for (also see 204.70)—

(A) Delivery orders under indefinite delivery type contracts;

(B) Orders under basic ordering agreements; and

(C) Calls under blanket purchase agreements.

(ii) Except as indicated in paragraph (iii), do not enter supplementary numbers used in conjunction with basic PIINs to identify—

(A) Modifications of contracts and agreements;

(B) Modifications to calls/orders; or

(C) Document numbers representing contracts written between contractors.

(iii) When shipping instructions are furnished by telephone or TWX message and shipment is made before receipt of the confirming contract modification (SF 30, Amendment of Solicitation /Modification of Contract), enter the contract modification six digit number or the two digit call or order number immediately following the PIIN or call/order four digit SPIIN.

(iv) For DoD delivery orders on non-DoD contracts, enter the non-DoD contract number immediately below the PII number.

1. Proc instrument iden (contract)	(Order) No.
DSA400-90-F-1684 .... GS-000S-61917	

(v) When a contract number other than PII number is used, enter that contract number.

(2) Block 2—Shipment No. (i) The shipment number has a three alpha character prefix and a four numeric or alpha-numeric serial number.

(A) The prime contractor shall control and assign the shipment number prefix. The shipment number shall consist of three alphabetic characters for each "Shipped From" address (Block 11). The shipment number prefix shall be different for each "Shipped From" address and shall remain constant throughout the life of the contract. The prime contractor may assign separate prefixes when shipments are made from different locations within a facility identified by one "Shipped From" address.

(B) Number the first shipment 0001 for shipments made under the contract or contract and order number shown in Block 1 from each "Shipped From" address, or shipping location within the "Shipped From" address. Consecutively number all subsequent shipments with the identical shipment number prefix.

(1) Use alpha-numeric serial numbers when more than 9,999 numbers are required. Serially assign alpha-numeric numbers with the alpha in the first position (the letters I and O shall not be used) followed by the three position numeric serial number. Use the following alpha-numeric sequence:

A000 through A999 (10,000 through 10,999)
B000 through B999 (11,000 through 11,999)
Z000 through Z999 (34,000 through 34,999)

(2) When this series is completely used, start over with 0001.

(ii) Reassign the shipment number of the initial shipment where a "Replacement Shipment" is involved (Block 16(d)(6)).

(iii) The prime contractor shall control deliveries and on the final shipment of the contract shall end the shipment number with a "Z." Where the final shipment is from other than the prime contractor's plant, the prime contractor may elect either to:

(A) Direct the subcontractor making the final shipment to end that shipment number with a "Z"; or

(B) Upon determination that all subcontractors have completed their shipments, to correct the DD Form 250 (see F-306) covering the final shipment made from the prime contractor's plant by addition of a "Z" to that shipment number.

(iv) Contractors follow the procedures in F-306 to use commercial invoices.

(3) Block 3—Date Shipped. Enter the date the shipment is released to the carrier or the date the services are completed. If the shipment will be released after the date of CQA and/or acceptance, enter the estimated date of release. When the date is estimated, enter an "E" after the date. Do not delay distribution of the MIRR for entry of the actual shipping date. Reissuance of the MIRR is not required to show the actual shipping date.

(4) Block 4—B/L TCN. When applicable, enter—

(i) The commercial or Government bill of lading number after "B/L;"

(ii) The transportation control number after "TCN" (when a TCN is assigned for each line item on the DD Form 250 under Block 16 instructions, insert "See Block 16"); and

(iii) The initial (line haul) mode of shipment code in the lower right corner of the block (see F-302).

(5) Block 5—Discount Terms. (i) The contractor may enter the discount in terms of percentages on all copies of the MIRR.

(ii) Use the procedures in F-306 when the MIRR is used as an invoice.

(6) Block 6—Invoice No./date. (i) The contractor may enter the invoice number and actual or estimated date of invoice submission on all copies of the MIRR. When the date is estimated, enter an "E" after the date. Do not correct MIRRs other than invoice copies to reflect the actual date of invoice submission.

(ii) Use the procedures in F-306 when the MIRR is used as an invoice.

(7) Block 7—Page/of.

Consecutively number the pages of the MIRR. On each page enter the total number of pages of the MIRR.

(8) Block 8—Acceptance point.

Enter an "S" for Origin or "D" for destination.

(9) Block 9—Prime contractor/code.

Enter the code and address.

(10) Block 10—Administered by/code.

Enter the code and address of the contract administration office (CAO) cited in the contract.

(11) Block 11—Shipped from/code/FOB.

(i) Enter the code and address of the "Shipped From" location. If identical to Block 9, enter "See Block 9."

(ii) For performance of services line items which do not require delivery of items upon completion of services, enter the code and address of the location at which the services were performed. If the DD Form 250 covers performance at multiple locations, or if identical to Block 9, enter "See Block 9."

(iii) Enter on the same line and to the right of "FOB" an "S" for Origin or "D" for Destination as specified in the contract. Enter an alphabetic "O" if the "FOB" point cited in the contract is other than origin or destination.

(iv) For destination or origin acceptance shipments involving discount terms, enter "DISCOUNT EXPEDITE" in at least one-half inch outline-type style letters across Blocks 11 and 12. Do not obliterate other information in these blocks.

(12) Block 12—Payment will be made by/code. Enter the code and address of the payment office cited in the contract.

(13) Block 13—Shipped to/code. Enter the code and address from the contract or shipping instructions.

(14) Block 14—Marked for/code. Enter the code and address from the contract or shipping instructions. When three-character project codes are provided in the contract or shipping instructions, enter the code in the body of the block, prefixed by "Proj"; do not enter in the code block.

(15) Block 15—Item No. Enter the item number used in the contract.

(i) Use item numbers under the Uniform Contract Line Item Numbering System (see 204.71).

(ii) Position the item numbers as follows—

(A) For item numbers with four or less digits, enter the number immediately to the left of the vertical dashed line and prefix them with zeros, to achieve four digits.

(B) For item numbers with six digits, with alpha digits in the final two positions, enter the last two digits to the right of the vertical dashed line.

(C) For item numbers with six digits, with numbers in the final two positions, enter the first four digits immediately to the left of the vertical dashed line. Do not use the last two digits.

(iii) Line item numbers not in accordance with the Uniform Contract Line Item Numbering System may be entered without regard to positioning.

(16) Block 16—Stock/part No./description. (i) Use single or double spacing between line items when there are less than four line items. Use double spacing when there are four or more line items. Enter the following for each line item:

(A) The national stock number (NSN) or noncatalog number. Where applicable, include a prefix or suffix. If a number is not provided, or it is necessary to supplement the number, include other identification such as the manufacturer's name or federal supply code (as published in Cataloging Handbook H4–1), and the part number. Show additional part numbers in parentheses or slashes. Show the descriptive noun of the item nomenclature and if provided, the Government assigned management/material control code. The contractor may use the following technique in the case of equal kind supply items. The first entry shall be the description without regard to kind. For example, "Shoe-Low Quarter-Black," "Resistor," "Vacuum Tube," etc. Below this description, enter the contract line item number in Block 15 and Stock/Part number followed by the size or type in Block 16.

(B) On the next printing line, if required by the contract for control purposes, enter: the make, model, serial number, lot, batch, hazard indicator, or similar description.

(C) On the next printing lines enter—

(1) The MIPR number prefixed by "MIPR" or the MILSTRIP requisition number(s) when provided in the contract; or

(2) Shipping instructions followed on the same line (when more than one requisition is entered) by the unit for payment and the quantity shipped against each requisition.

Example:

V04696–185–750XY19059A—EA 5
N0018801776038XY3211BA—EA 200
AT650803050051AAT6391J—EA 1000

(D) When a TCN is assigned for each line item, enter on the next line the transportation control number prefixed by "TCN."

(ii) For service line items, enter the word "SERVICE" followed by as short a description as is possible in no more than 20 additional characters. Some examples of service line items are maintenance, repair, alteration, rehabilitation, engineering, research, development, training, and testing. Do not complete Blocks 4, 13, and 14 when there is no shipment of material.

(iii) For all contracts administered by Defense Contract Management Command, with the exception of fast pay procedures, enter and complete the following:

Gross Shipping Wt. ____________
State weight in pounds only.

(iv) Starting with the next line, enter the following as appropriate (entries may be extended through Block 20). When entries apply to more than one line item in the MIRR, enter them only once after the last line item entry, Reference applicable line item numbers.

(A) Enter in capital letters any special handling instructions/limits for material environmental control, such as temperature, humidity, aging, freezing, shock, etc.

(B) When a shipment is chargeable to Navy appropriation 17X4911, enter the appropriation, bureau control number (BCN), and authorization accounting activity (AAA) number (e.g., 17X4911–14003–104).

(C) When the Navy transaction type code (TC), "2T" or "7T" is included in the appropriation data, enter "TC 2T" or "TC 7T."

(D) When an NSN is required by but not cited in a contract and has not been furnished by the Government, the contractor may make shipment without the NSN at the direction of the contracting officer. Enter the authority for such shipment.

(E) When Government furnished property (GFP) is included with or incorporated into the line item, enter the letters "GFP."

(F) When shipment consists of replacements for supplies previously furnished, enter in capital letters "REPLACEMENT SHIPMENT." (See F–301, Block 17, for replacement indicators).

(G) On shipments of Government furnished aeronautical equipment (GFAE) under Air Force contracts, enter the assignment AERNO control number, e.g., "AERNO 60–6354."

(H) For items shipped with missing components, enter and complete the following:

"Item(s) shipped short of the following component(s): NSN or comparable identification ____________, Quantity ____________, Estimated Value ____________, Authority ____________"

(I) When shipment is made of components which were short on a prior shipment, enter and complete the following:

"These components were listed as shortages on shipment number ____________, date shipped ____________"

(J) When shipments involve drums, cylinders, reels, containers, skids, etc., designated as returnable under contract provisions, enter and complete the following:

"Return to ____________, Quantity ____________, Item ____________, Ownership (Government/contractor)."

(K) Enter the total number of shipping containers, the type of containers, and the container number(s) assigned for the shipment.

(L) On foreign military sales (FMS) shipments, enter the special markings, and FMS case identifier from the contract. Also enter the gross weight.

(M) When test/evaluation results are a condition of acceptance and are not available prior to shipment, the following note shall be entered if the shipment is approved by the contracting officer:

"**Note:** Acceptance and payment are contingent upon receipt of approved test/evaluation results."

The contracting officer will advise—

(1) The consignee of the results (approval/disapproval); and

(2) The contractor to withhold invoicing pending attachment of the approved test/evaluation results.

(N) The copy of the DD Form 250 required to support payment for destination acceptance (top copy of those with shipment) or ARP origin acceptance shall be identified as follows: enter "PAYMENT COPY" in approximately one-half inch outline type style letters with "FORWARD TO BLOCK 12 ADDRESS" in approximately one-quarter inch letters immediately below. Do not obliterate any other entries.

(O) For clothing and textile contracts containing a bailment clause, enter the words "GFP UNIT VALUE."

(P) When the initial unit incorporating an approved value engineering change proposal (VECP) is shipped, enter the following statement:

This is the initial unit delivered which incorporates VECP No. ____________, Contract Modification No. ____________, dated ____________

(17) Block 17—Quantity shipped/received. (i) Enter the quantity shipped, using the unit of measure in the contract for payment. When a second unit of measure is used for

the following technique in
nd supply items. The first
escription without regard
, "Shoe-Low Quarter-
"Vacuum Tube," etc.
on, enter the contract line
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the size or type in Block

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rol purposes, enter: the
number, lot, batch,
similar description.
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ctions followed on the
e than one requisition is
for payment and the
inst each requisition.

Y19059A—EA 5
Y3211BA—EA 200
AT6391J—EA 1000

s assigned for each line
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items, enter the word
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. Some examples of
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nt, training, and testing.
ks 4, 13, and 14 when
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nds only.

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letters any special
/limits for material
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control number (BCN),
counting activity (AAA)
–14003–104).
transaction type code
included in the
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NSN at the direction of
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"REPLACEMENT SHIPMENT." (See F–301, Block 17, for replacement indicators).

(G) On shipments of Government furnished aeronautical equipment (GFAE) under Air Force contracts, enter the assignment AERNO control number, e.g., "AERNO 60-6354."

(H) For items shipped with missing components, enter and complete the following:

"Item(s) shipped short of the following component(s): NSN or comparable identification __________, Quantity __________, Estimated Value __________, Authority __________"

(I) When shipment is made of components which were short on a prior shipment, enter and complete the following:

"These components were listed as shortages on shipment number __________, date shipped __________"

(J) When shipments involve drums, cylinders, reels, containers, skids, etc., designated as returnable under contract provisions, enter and complete the following:

"Return to __________, Quantity __________, Item __________, Ownership (Government/contractor)."

(K) Enter the total number of shipping containers, the type of containers, and the container number(s) assigned for the shipment.

(L) On foreign military sales (FMS) shipments, enter the special markings, and FMS case identifier from the contract. Also enter the gross weight.

(M) When test/evaluation results are a condition of acceptance and are not available prior to shipment, the following note shall be entered if the shipment is approved by the contracting officer:

"**Note:** Acceptance and payment are contingent upon receipt of approved test/evaluation results."

The contracting officer will advise—

(1) The consignee of the results (approval/disapproval); and

(2) The contractor to withhold invoicing pending attachment of the approved test/evaluation results.

(N) The copy of the DD Form 250 required to support payment for destination acceptance (top copy of those with shipment) or ARP origin acceptance shall be identified as follows: enter "PAYMENT COPY" in approximately one-half inch outline type style letters with "FORWARD TO BLOCK 12 ADDRESS" in approximately one-quarter inch letters immediately below. Do not obliterate any other entries.

(O) For clothing and textile contracts containing a bailment clause, enter the words "GFP UNIT VALUE."

(P) When the initial unit incorporating an approved value engineering change proposal (VECP) is shipped, enter the following statement:

This is the initial unit delivered which incorporates VECP No. __________, Contract Modification No. __________, dated __________

(17) Block 17—Quantity shipped/received. (i) Enter the quantity shipped, using the unit of measure in the contract for payment. When a second unit of measure is used for purposes other than payment, enter the appropriate quantity directly below in parentheses.

(ii) On the final shipment of a line item of a contract containing a clause permitting a variation of quantity and an underrun condition exists, the prime contractor shall enter a "Z" below the last digit of the quantity. Where the final shipment is from other than the prime contractor's plant and an underrun condition exists, the prime contractor may elect either to—

(A) Direct the subcontractor making the final shipment to enter a "Z" below the quantity; or

(B) Upon determination that all subcontractors have completed their shipments, correct the DD Form 250 (see F–305) covering the final shipment of the line item from the prime contractor's plant by addition of a "Z" below the quantity. Do not use the "Z" on deliveries which equal or exceed the contract line item quantity.

(iii) For replacement shipments, enter "A" below the last digit of the quantity, to designate first replacement, "B" for second replacement, etc. Do not use the final shipment indicator "Z" on underrun deliveries when a final line item shipment is replaced.

17. Quantity
Ship/rec'd
1000
(10)
Z

(iv) If the quantity received is the same quantity shipped and all items are in apparent good condition, enter by a check mark. If different, enter actual quantity received in apparent good condition below quantity shipped and circle. The receiving activity will annotate the DD Form 250 stating the reason for the difference.

(18) Block 18—Unit. Enter the abbreviation of the unit measure as indicated in the contract for payment. Where a second unit of measure is indicated in the contract for purposes other than payment or used for shipping purposes, enter the second unit of measure directly below in parentheses. Authorized abbreviations are listed in MIL–STD–129, Marking for Shipping and Storage. For example, LB for pound, SH for sheet.

18. Unit
LB
(SH)

(19) Block 19—Unit price. The contractor may, at its option, enter unit prices on all MIRR copies, except as a minimum:

(i) The contractor shall enter unit prices on all MIRR copies for each item of property fabricated or acquired for the Government and delivered to a contractor as Government furnished property (GFP). Get the unit price from Section B of the contract. If the unit price is not available, use an estimate. The estimated price should be the contractor's estimate of what the items will cost the Government. When the price is estimated, enter an "E" after the unit price.

(ii) Use the procedures in F–306 when the MIRR is used as an invoice.

(iii) For clothing and textile contracts containing a bailment clause, enter the cited Government furnished property unit value opposite "GFP UNIT VALUE" entry in Block 16.

(iv) Price all copies of DD Forms 250 for FMS shipments with actual prices, if available. If actual prices are not available, use estimated prices. When the price is estimated, enter an "E" after the price.

(20) Block 20—Amount. Enter the extended amount when the unit price is entered in Block 19.

(21) Block 21—Contract quality assurance (CQA). (i) The words "conform to contract" contained in the printed statements in Blocks A and B relate to quality and to the quantity of the items on the report. Do not modify the statements. Enter notes taking exception in Block 16 or on attached supporting documents with an appropriate block cross reference.

(ii) When a shipment is authorized under alternative release procedure, attach or include the appropriate contractor signed certificate on the top copy of the DD Form 250 copies distributed to the payment office or attach or include the appropriate contractor certificate on the contract administration office copy when contract administration (Block 10 of the DD Form 250) is performed by the Defense Contract Management Command (DCMC).

(iii) When contract terms provide for use of Certificate of Conformance and shipment is made under these terms, the contractor shall enter "Certificate of Conformance" in Block 21A on the next line following the CQA and acceptance statements. Attach or include the appropriate contractor signed certificate on the top copy of the DD Form 250 copies distributed to the payment office or attach or include the appropriate certificate on the contract administration office copy when contract administration (Block 10 of the DD Form 250) is performed by DCMC. In addition, attach a copy of the signed certificate to, or enter on, copies of the MIRR sent with shipment.

(iv) Origin. (A) The authorized Government representative shall—

(1) Place an "X" in the appropriate CQA and/or acceptance box(es) to show origin CQA and/or acceptance. When the contract requires CQA at destination in addition to origin CQA, enter an asterisk at the end of the statement and an explanatory note in Block 16;

(2) Sign and date;

(3) Enter the typed, stamped, or printed name and office DODAAD code.

(B) When alternative release procedures apply—

(1) The contractor or subcontractor shall complete the entries required under paragraph (A) and enter in capital letters "ALTERNATIVE RELEASE PROCEDURE" on the next line following the printed CQA/acceptance statement.

(2) When acceptance is at origin and contract administration is performed by an office other than DCMC, the contractor shall furnish the four payment office copies of the MIRR to the authorized Government representative for dating and signing of one copy and forwarding of all copies to the payment office.

(3) When acceptance is at origin and contract administration is performed by DCMC, furnish the contract administration office copy of the MIRR to the authorized Government representative for dating and signing and forwarding to the contract administration office (see F–401, Table 1).

(C) When fast pay procedures apply, the contractor or subcontractor shall enter in capital letters "FAST PAY" on the next line following the printed CQA/acceptance statement. When CQA is required, the authorized Government representative shall execute the block as required by paragraph (A).

(D) When Certificate of Conformance procedures apply, inspection or inspection and acceptance are at source, and the contractor's Certificate of Conformance is required, the contractor shall make entries required by paragraph (iv)(A).

(1) For contracts administered by an office other than DCMC, furnish the four payment office copies of the MIRR to the authorized Government representative for dating and signing of one copy, and forwarding of all copies to the payment office.

(2) For contracts administered by DCMC, furnish the contract administration office copy of the MIRR to the authorized Government representative for dating and signing and forwarding to the contract administration office (see F–401, Table 1).

(3) When acceptance is at destination, no entry shall be made other than "CERTIFICATE OF CONFORMANCE."

(v) Destination. (A) When acceptance at origin is indicated in Block 21A, no entries shall be made in Block 21B.

(B) When CQA and acceptance or acceptance is at destination, the authorized Government representative shall—

(1) Place an "X" in the appropriate box(es);

(2) Sign and date; and

(3) Enter typed, stamped, or printed name and title.

(C) When "ALTERNATIVE RELEASE PROCEDURE" is entered in Block 21A and acceptance is at destination, the authorized Government representative shall complete the entries required by paragraph (B).

(D) Forward the executed payment copy or MILSCAP format identifier PKN or PKP to the payment office cited in Block 12 within 4 work days (5 days when MILSCAP Format is used) after delivery and acceptance of the shipment by the receiving activity. Forward one executed copy of the final DD Form 250 to the contract administration office cited in Block 10 for implementing contract closeout procedures, except where a Defense Contract Management Region or the DLA Finance Center is cited as the payment office in Block 12.

(E) When "FAST PAY" is entered in Block 21A, make no entries in this block.

(22) Block 22—Receiver's use. The receiving activity (Government or contractor) shall use this block to show receipt, quantity, and condition. The receiving activity shall enter the date the supplies arrived. For example, when off-loading or in-checking

occurs subsequent to the day of arrival of the carrier at the installation, the date of the carrier's arrival is the date received for purposes of this block.

(23) Block 23—Contractor use only. Self explanatory.

F-302 Mode/method of shipment codes.

Code	Description
A	Motor, truckload.
B	Motor, less than truckload.
C	Van (unpacked, uncrated personal or Government property).
D	Driveaway, truckaway, towaway.
E	Bus.
F	Military Airlift Command (Channel and Special Assignment Airlift Mission).
G	Surface parcel post.
H	Air parcel post.
I	Government trucks, for shipment outside local delivery area.
J	Air, small package carrier.
K	Rail, carload.[1]
L	Rail, less than carload.[1]
M	Surface, freight forwarder.
N	LOGAIR.
O	Organic military air (including aircraft of foreign governments).
P	Through Government Bill of Lading (TGBL).
Q	Commercial air freight (includes regular and expedited service provided by major airlines; charters and air taxis).
R	European Distribution System or Pacific Distribution System.
S	Scheduled Truck Service (STS) (applies to contract carriage, guaranteed traffic routings and/or scheduled service).
T	Air freight forwarder.
U	QUICKTRANS.
V	SEAVAN.
W	Water, river, lake, coastal (commercial).
X	Bearer, walk-thru (customer pickup of material).
Y	Military Intratheater Airlift Service.
Z	Military Sealift Command (MSC) (controlled contract or arranged space).
2	Government watercraft, barge, lighter.
3	Roll-on Roll-off (RORO) service.
4	Armed Forces Courier Service (ARFCOS).
5	Surface, small package carrier.
6	Military official mail (MOM).
7	Express mail.
8	Pipeline.
9	Local delivery by Government or commercial truck (includes on base transfers; deliveries between air, water, or motor terminals; and adjacent activities). Local delivery areas are identified in commercial carriers' tariffs which are filed and approved by regulatory authorities.

[1] Includes trailer/container-on-flat-car (excluding SEAVAN).

F-303 Consolidated shipments.

When individual shipments are held at the contractor's plant for authorized transportation consolidation to a single bill of lading, the contractor may prepare the DD Forms 250 at the time of CQA or acceptance prior to the time of actual shipment (see Block 3).

F-304 Multiple consignee instructions.

The contractor may prepare one MIRR when the identical line item(s) of a contract are to be shipped to more than one consignee, with the same or varying quantities, and the shipment requires origin acceptance. Prepare the MIRR using the procedures in this appendix with the following changes—

(a) Blocks 2, 4, 13, and, if applicable, 14—Enter "See Attached Distribution List."

(b) Block 15—The contractor may group item numbers for identical stock/part number and description.

(c) Block 17—Enter the "total" quantity shipped by line item or, if applicable, grouped identical line items.

(d) Use the DD Form 250c to list each individual "Shipped To" and "Marked For" with—

(1) Code(s) and complete shipping address and a sequential shipment number for each;

(2) Line item number(s);

(3) Quantity;

(4) MIPR number(s), preceded by "MIPR," or the MILSTRIP requisition number, and quantity for each when provided in the contract or shipping instructions; and

(5) If applicable, bill of lading number, TCN, and mode of shipment code.

(e) The contractor may omit those distribution list pages of the DD Form 250c that are not applicable to the consignee. Provide a complete MIRR for all other distribution.

F-305 Correction instructions.

Make a new revised MIRR or correct the original when, because of errors or omissions, it is necessary to correct the MIRR after distribution has been made. Use data identical to that of the original MIRR. Do not correct MIRRs for Blocks 19 and 20 entries. Make the corrections as follows—

(a) Circle the error and place the corrected information in the same block; if space is limited, enter the corrected information in Block 16 referencing the error page and block. Enter omissions in Block 16 referencing omission page and block. For example—

2. SHIPMENT NO.
(AAA0001)
See Block 16

17. QUANTITY
SHIP/REC'D
19
(17)

16. STOCK/PART NO. DESCRIPTION
CORRECTIONS:
Refer Block 2: Change shipment No. AAA001 to AAA0010 on all pages of the MIRR.
Refer Blocks 15, 16, 17, and 18, page 2: Delete in entirety Line Item No. 0006. This item was not shipped.

(b) When corrections have been made to entries for line items (Block 15) or quantity (Block 17) enter the words "CORRECTIONS HAVE BEEN VERIFIED" on page 1. The authorized Government representative will date and sign immediately below the statement. This verification statement and signature are not required for other corrections.

(c) Clearly mark the pages of the MIRR requiring correction with the words "CORRECTED COPY." Avoid obliterating any other entries. Where corrections are made only on continuation sheets, also mark page number 1 with the words "CORRECTED COPY."

(d) Page 1 and only those continuation pages marked "CORRECTED COPY" shall be distributed to the initial distribution. A complete MIRR with corrections shall be distributed to new addressee(s) created by error corrections.

F-306 Invoice instructions.

The Government encourages, but does not require, contractors to use copies of the MIRR as an invoice, in lieu of a commercial form. If commercial forms are used, identify the related MIRR shipment number(s) on the form. If using the MIRR as an invoice, prepare and forward four copies to the payment office as follows—

(a) Complete Blocks 5, 6, 19, and 20. Block 6 shall contain the invoice number and date. Column 20 shall be totaled.

(b) Mark in letters approximately one inch high, first copy: "ORIGINAL INVOICE;" three copies "INVOICE COPY."

(c) Forward the four copies to the payment office (Block 12 address), except when acceptance is at destination and a Navy finance office will make payment, forward to destination.

(d) Be sure to separate the four copies of the MIRR used as an invoice from the copies the MIRR used as a receiving report.

F-307 Packing list instructions.

Contractors may use copies of the MIRR as a packing list. The packing list copies are in addition to the copies of the MIRR required for standard distribution (see F-401). Mark them "PACKING LIST."

F-308 Receiving instructions.

When the MIRR is used for receiving purposes, local directives shall prescribe procedures. If CQA and acceptance or acceptance of supplies is required upon arrival at destination, see Block 21B for instructions.

Part 4—Distribution of DD Form 250 and DD Form 250c

F-401 Distribution.

(a) The contractor is responsible for distributing the DD Form 250, including mailing and payment of postage.

(b) Contractors shall distribute MIRRs using the instructions in Tables 1 and 2.

(c) Contractors shall distribute MIRRs on non-DoD contracts using this appendix as amended by the contract.

(d) Contractors shall make distribution promptly, but no later than the close of business of the work day following—

(1) Signing of the DD Form 250 (Block 21A) by the authorized Government representative; or

(2) Shipment when authorized under terms of alternative release, certificate of conformance, or fast pay procedures; or

(3) Shipment when CQA and acceptance are to be performed at destination.

(e) Do not send the consignee copies (via mail) on overseas shipments to port of embarkation (POE). Send them to consignee at APO/FPO address.

(f) Copies of the MIRR forwarded to a location for more than one recipient shall clearly identify each recipient.

Material Inspection and Receiving Report

TABLE 1.—STANDARD DISTRIBUTION

With Shipment *	4
Consignee (via mail)	2
(For Navy procurement, include unit price) (For foreign military sales, consignee copies are not required)	
Contract Administration Office	1
(Forward direct to address in Block 10 except when addressee is a DCMR, DCMAO, or a DPRO and a certificate of conformance or the alternate release procedures (see F-301, Block 21) is involved, and acceptance is at origin; then, forward through the authorized Government representative.)	
Purchasing Office	1
Payment Office ** 4	
(Forward direct to address in Block 12 except— (i) When address in Block 10 is a DCMR or DCMAO and payment office in Block 12 is a DCMR or the DLA Finance Center, do not make distribution to the Block 12 addressee; (ii) When address in Block 12 is Defense Contract Management Operations Office (DCMOO), Kirtland AFB, NM, attach only one copy to the required number of copies of the contractor's invoice; (iii) When acceptance is at destination and a Navy finance office will make payment, forward to destination; and (iv) When a certificate of conformance or the alternative release procedures (see F-301, Block 21) are involved and acceptance is at origin, forward the copies through the authorized Government representative.	
ADP Point for CAO (applicable to Air Force only)	1
(When DCMOO is the payment office in Block 12, send one copy to DCMOO immediately after signature. If submission of delivery data is made electronically, distribution of this hard copy need not be made to DCMOO.)	
CAO of Contractor Receiving GFP	1
(For items fabricated or acquired for the Government and shipped to a contractor as Government furnished property, send one copy directly to the CAO cognizant of the receiving contractor, ATTN: Property Administrator (see DoD 4105.59–H).)	

*Attach as follows:

Type of Shipment	Location
Carload or truckload	Affix to the shipment where it will be readily visible and available upon receipt.
Less than carload or truckload.	Affix to container number one or container bearing lowest number.
Mail, including parcel post	Attach to outside or include in the package. Include a copy in each additional package of multi-package shipments.
Pipeline, tank car, or railroad cars for coal movements.	Forward with consignee copies.

** Payment by DCMRs or the DLA Finance Center will be based on the source acceptance copies of DD Forms 250 forwarded to the contract administration office, except when distribution will be made to DCMR or DLA Finance Center payment offices.

Material Inspection And Receiving Report

TABLE 2.—SPECIAL DISTRIBUTION

As required	Address	Number of copies
Each: Navy Status Control Activity, Army, Air Force, DLA Inventory Control Manager.	Address specified in contract	1 Each addressee.
Quality Assurance Representative	Address specified by the assigned quality assurance representative	1
Transportation Office issuing GBL (attach to GBL memorandum copy).	CAO address unless otherwise specified in the contract	1
Purchasing Office other than office issuing contract	Address specified in the contract	1
Foreign Military Sales Representative	Address specified in the contract	5
Military Assistance Advisory Group (Grant Aid shipments)	U.S. Military Advisory Group, Military Attache, Mission, or other designated agency address as specified in the contract.	1
Army:		
Foreign Military Sales	Commander, US Army Security Asst. Center, ATTN: (See *), 3rd Street and "M" Avenue, New Cumberland Army Depot, New Cumberland, PA 17070–5096.	1
* Director, AMSAC-OE for these country codes	AG, AU, A2, AID, BC, BE, BY, CD, CI, CM, CN, CV, CX, DA, DE, DK, EG, EI, FI, FR, GA, GB, GH, GR, GV, GY, IS, IT, IV, KE, LI, LX, MI, MO, MR, NE, NI, NK, NO, NATO, PT, PU, RM, RW, SK, SL, SO, SP, SU, SW, SZ, SECPO, TK, TO, TU, UG, UK, UV.	
* Director, AMSAC-OX for these country codes	AC, AR, AT, A1, BA, BB, BD, BF, BG, BH, BL, BM, BR, BX, CB, CE, CH, CO, CS, DO, DR, EC, ES, FJ, GJ, GT, GU, HA, HO, ID, IN, IR, JA, JM, JO, KS, KU, LE, MF, MU, MX, NP, NU, NS, NZ, PA, PE, PI, PK, PN, PP, QA, SC, SI, SN, SR, ST, TC, TD, TH, TW, UY, VC, VE, YE.	
Air Force:		
On shipments of new production of aircraft and missiles, class 1410 missiles, 1510 aircraft (fixed wing, all types), 1520 aircraft (rotary wing), 1540 gliders, 1550 target drones.		
When above items are delivered to aircraft modification centers	Air Force Logistics Command, Aerospace Vehicle Distribution Office, (MCNAPV), Wright-Patterson AFB, OH 45433.	1
	DPRO	1
Foreign Military Sales/Military Assistance Program (Grant Aid) shipments to Canada.	National Defence Headquarters, Ottawa, Ontario, Canada, K1A OK4, ATTN: DPSUPS3.	1
Other than Canada	Address in the contract	1
When consignee is an Air National Guard Activity	Consignee address (Block 13), ATTN: Property Officer	3
Navy:		
Navy Foreign Military Sales	U.S. Navy International Logistics Control Office (NAVILCO), 700 Robbins Avenue, Philadelphia, PA 19111–5095.	2
When typed code (TC) 2T or 7T is shown in Block 16, or when shipment is consigned to another contractor's plant for a Government representative or when Block 16 indicates shipment includes GFP.	Aviation Supply Office (ASO), (Code 0142) for aviation type material, 700 Robbins Avenue, Philadelphia, PA 19111–5098.	2
	and	
	Ships Parts Control Center (SPCC) (Code 0143) for all other material, 5450 Carlisle Pike, PO Box 2020, Mechanicsburg, PA 17055–0788.	2

TABLE 2.—SPECIAL DISTRIBUTION—Continued

As required	Address	Number of copies
Marine Corps:		
All shipments consigned to a Marine Corps Activity (excluding aeronautical spares).	Commandant of the Marine Corps, Headquarters, USMC, Washington, DC 20380-0001.	1
	Commanding General, Marine Corps Logistics Base, Albany, GA 31704-5000.	3
Bulk Petroleum Shipments	Cognizant Defense Fuel Region (see Table 4)	1

Part 5—Preparation of the DD Form 250-1 (Loading Report)

F-501 Instructions.

Prepare the DD Form 250-1 using the following instructions when applied to a tanker or barge cargo lifting. If space is limited, use abbreviations. The block numbers correspond to those on the form.

(a) Block 1—Tanker/Barge. Line out "TANKER" or "BARGE" as appropriate and place an "X" to indicate loading report.

(b) Block 2—Inspection Office. Enter the name and location of the Government office conducting the inspection.

(c) Block 3—Report No. Number each form consecutively, starting with number 1, to correspond to the number of shipments made against the contract. If shipment is made from more than one location against the same contract, use this numbering system at each location.

(d) Block 4—Agency Placing Order on shipper, city, State and/or local address (loading). Enter the applicable Government activity.

(e) Block 5—Department. Enter military department owning product being shipped.

(f) Block 6—Prime contract or P.O. No. Enter the contract or purchase order number.

(g) Block 7—Name of prime contractor, city, State and/or local address (loading). Enter the name and address of the contractor as shown in the contract.

(h) Block 8—Storage contract. Enter storage contract number if applicable.

(i) Block 9—Terminal or refinery shipped from, city, State and/or local address. Enter the name and location of the contractor facility from which shipment is made. Also enter delivery point in this space as either "FOB Origin" or "FOB Destination."

(j) Block 10—Order No. on supplier. Enter number of the delivery order, purchase order, subcontract or suborder placed on the supplier.

(k) Block 11—Shipped to: (receiving activity, city, State and/or local address. Enter the name and geographical address of the consignee as shown on the shipping order.

(l) Block 12—B/L Number. If applicable, enter the initials and number of the bill of lading. If a commercial bill of lading is later authorized to be converted to a Government bill of lading, show "Com. B/L to GB/L."

(m) Block 13—Reqn. or request No. Enter number and date from the shipping instructions.

(n) Block 14—Cargo No. Enter the cargo number furnished by the ordering office.

(o) Block 15—Vessel. Enter the name of tanker or barge.

(p) Block 16—Draft arrival. Enter the vessel's draft on arrival.

(q) Block 17—Draft sailing. Enter the vessel's draft on completion of loading.

(r) Block 18—Previous two cargoes. Enter the type of product constituting previous two cargoes.

(s) Block 19—Prior inspection. Leave blank.

(t) Block 20—Condition of shore pipeline. Enter condition of line (full or empty) before and after loading.

(u) Block 21—Appropriation (loading). Enter the appropriation number shown on the contract, purchase order or distribution plan. If the shipment is made from departmentally owned stock, show "Army, Navy, or Air Force (as appropriate) owned stock."

(v) Block 22—Contract item No. Enter the contract item number applicable to the shipment.

(w) Block 23—Product. Enter the product nomenclature and grade as shown in the contract or specification, the stock or class number, and the NATO symbol.

(x) Block 24—Specifications. Enter the specification and amendment number shown in the contract.

(y) Block 25—Statement of quantity. Enter in the "LOADED" column, the net barrels, net gallons, and long tons for the cargo loaded. NOTE: If more than ½ of 1 percent difference exists between the ship and shore quantity figures, the contractor shall immediately investigate to determine the cause of the difference. If necessary, prepare corrected documents; otherwise, put a statement in Block 28 as to the probable or actual cause of the difference.

(z) Block 26—Statement of quality. (1) Under the heading "TESTS" list all inspection acceptance tests of the specification and any other quality requirements of the contract.

(2) Under the heading "SPECIFICATION LIMITS" list the limits or requirements as stated in the specification or contract directly opposite each entry in the "TESTS" column. List waivers to technical requirements.

(3) Under the heading "TEST RESULTS" list the test results applicable to the storage tank or tanks from which the cargo was lifted. If more than one storage tank is involved, list the tests applicable to each tank in separate columns headed by the tank number, the date the product in the tank was approved, and the quantity loaded from the tank. Each column shall also list such product characteristics as amount and type of corrosion inhibitor, etc.

(aa) Block 27—Time statement. Line out "DISCHARGE" and "DISCHARGING." Complete all applicable entries of the time statement using local time. Take these dates and times from either the vessel or shore facility log. The Government representative shall ensure that the logs are in agreement on those entries used. If the vessel and shore facility logs are not in agreement, the Government representative will explain the reasons in Block 28—REMARKS. Do not enter the date and time the vessel left berth on documents placed aboard the vessel. The date and time shall appear on all other copies. Express all dates in sequence of day, month, and year with the month spelled out or abbreviated (e.g., 10 Sept. 67). The term FINISHED BALLAST DISCHARGE is meant to include all times needed to complete deballasting and mopping/drying of ship's tanks. The inspection of ship's tanks for loading is normally performed immediately upon completion of drying tanks.

(bb) Block 28—Remarks. Use this space for reporting—(1) All delays, their cause and responsible party (vessel, shore facility, Government representative, or other).

(2) Details of loading abnormalities such as product losses due to overflow, leaks, delivery of product from low level in shore tanks, etc.

(3) In the case of multiple consignees, enter each consignee, the amount consigned to each, and if applicable, the storage contract numbers appearing on the delivery order.

(4) When product title is vested in the U.S. Government, insert in capital letters "U.S. GOVERNMENT OWNED CARGO." If title to the product remains with the contractor and inspection is performed at source with acceptance at destination, insert in capital letters "CONTRACTOR OWNED CARGO."

(5) Seal numbers and location of seals. If space is not adequate, place this information on the ullage report or an attached supplemental sheet.

(cc) Block 29—Company or receiving terminal. Line out "OR RECEIVING TERMINAL" and get the signature of the supplier's representative.

(dd) Block 30—Certification by government representative. Line out "DISCHARGED." The Government representative shall date and sign the form to certify inspection and acceptance, as applicable, by the Government. The name of the individual signing this certification, as well as the names applied in Blocks 29 and 31, shall be typed or hand lettered. The signature in Block 30 must agree with the typed or lettered name to be acceptable to the paying office.

(ee) Block 31—Certification by master or agent. Obtain the signature of the master of the vessel or its agent.

Part 6—Preparation of the DD form 250–1 (Discharge Report)

F–601 Instructions.

Prepare the DD Form 250–1 using the following instructions when applied to a tanker or barge discharge. If space is limited, use abbreviations. The block numbers correspond to those on the form.

(a) Block 1—Tanker/barge. Line out "TANKER" or "BARGE" as applicable and place an "X" to enter discharge report.

(b) Block 2—Inspection office. Enter Government activity performing inspection on the cargo received.

(c) Block 3—Report No. Leave blank.

(d) Block 4—Agency placing order on shipper, city, state and/or local address (loading). Enter Government agency shown on loading report.

(e) Block 5—Department. Enter Department owning product being received.

(f) Block 6—Prime contract or P.O. No. Enter the contract or purchase order number shown on the loading report.

(g) Block 7—Name of prime contractor, city, state and/or local address (loading). Enter the name and location of contractor who loaded the cargo.

(h) Block 8—Storage contract. Enter the number of the contract under which material is placed in commercial storage where applicable.

(i) Block 9—Terminal or refinery shipped from, city, state and/or local address. Enter source of cargo.

(j) Block 10—Order no. on supplier. Make same entry appearing on loading report.

(k) Block 11—Shipped to: (receiving activity, city, state and/or local address). Enter receiving activity's name and location.

(l) Block 12—B/L Number. Enter as appears on loading report.

(m) Block 13—Reqn. or Request No. Leave blank.

(n) Block 14—Cargo No. Enter cargo number shown on loading report.

(o) Block 15—Vessel. Enter name of tanker or barge discharging cargo.

(p) Block 16—Draft arrival. Enter draft of vessel upon arrival at dock.

(q) Block 17—Draft sailing. Enter draft of vessel after discharging.

(r) Block 18—Previous two cargoes. Leave blank.

(s) Block 19—Prior inspection. Enter the name and location of the Government office which inspected the cargo loading.

(t) Block 20—Condition of shore pipeline. Enter condition of line (full or empty) before and after discharging.

(u) Block 21—Appropriation (loading). Leave blank.

(v) Block 22—Contract item no. Enter the item number shown on the loading report.

(w) Block 23—Product. Enter information appearing in Block 23 of the loading report.

(x) Block 24—Specifications. Enter information appearing in Block 24 of the loading report.

(y) Block 25—Statement of quantity. Enter applicable data in proper columns.

(1) Take "LOADED" figures from the loading report.

(2) Determine quantities discharged from shore tank gauges at destination.

(3) If a grade of product is discharged at more than one point, calculate the loss or gain for that product by the final discharge point. Report amounts previously discharged on discharge reports prepared by the previous discharge points. Transmit volume figures by routine message to the final discharge point in advance of mailed documents to expedite the loss or gain calculation and provide proration data when more than one department is involved.

(4) The loss or gain percentage shall be entered in the "PERCENT" column followed by "LOSS" or "GAIN," as applicable.

(5) On destination acceptance shipments, accomplish the "DISCHARGED" column only, unless instructed to the contrary.

(z) Block 26—Statement of quality. (1) Under the heading "TESTS" enter the verification tests performed on the cargo preparatory to discharge.

(2) Under "SPECIFICATION LIMITS" enter the limits, including authorized departures (if any) appearing on the loading report, for the tests performed.

(3) Enter the results of tests performed under the heading "TEST RESULTS."

(aa) Block 27—Time statement. Line out "LOAD" and "LOADING." Complete all applicable entries of the time statement using local time. Take the dates and times from either the vessel or shore facility log. The Government representative shall ensure that these logs are in agreement with entries used. If the vessel and shore facility logs are not in agreement, the Government representative will explain the reason(s) in Block 28—REMARKS. Do not enter the date and time the vessel left berth on documents placed aboard the vessel. The date and time shall appear on all other copies. Express all dates in sequence of day, month, and year with the month spelled out or abbreviated (e.g., 10 Sept. 67).

(bb) Block 28—Remarks. Use this space for reporting important facts such as—

(1) Delays, their cause, and responsible party (vessel, shore facility, Government representative, or others).

(2) Abnormal individual losses contributing to the total loss. Enter the cause of such losses as well as actual or estimated volumes involved. Such losses shall include, but not be restricted to, product remaining aboard (enter tanks in which contained), spillages, line breaks, etc. Note where gravity group change of receiving tank contents results in a fictitious loss or gain. Note irregularities observed on comparing vessel ullages obtained at loading point with those at the discharge point if they indicate an abnormal transportation loss or contamination.

(cc) Block 29—Company or receiving terminal. Line out "COMPANY OR." Secure the signature of a representative of the receiving terminal.

(dd) Block 30—Certification by government representative. Line out "LOADED." The Government representative shall date and sign the form to certify inspection and acceptance, as applicable, by the Government. The name of the individual signing the certification as well as the names applied in Blocks 29 and 31, shall be typed or hand lettered on the master or all copies of the form. The signature in Block 30 must agree with the typed or lettered name to be acceptable to the paying office.

(ee) Block 31—Certification by master or agent. Obtain the signature of the master of the vessel or the vessel's agent.

Part 7—Distribution of the DD Form 250–1

F–701 Distribution.

(a) The Government representative shall distribute the completed DD Form 250–1 using Table 3 of this appendix as amended by the provisions of the contract or shipping order.

(b) The contractor shall furnish the Government representative sufficient copies of the completed form to permit the required distribution.

(c) Distribution of the form shall be made as soon as possible, but not later than 24 hours following completion of the form. (See Table 3 on following pages)

F–702 Corrected DD Form 250–1.

When errors are made in entries on the form which would affect payment or accountability, make corrected copies. Circle the corrected entries on all copies and mark the form "CORRECTED COPY." Enter the statement, "Corrections Have Been Verified," in Block 26 with the authorized Government representative's dated signature directly below. Make distribution of the certified corrected copy to all recipients of the original distribution.

Type of Shipment	Recipient of DD form 250-1	No. of copies			
		Loading (prepared by shipper or government representative)		Discharge (prepared by receiving activity)	
		Tanker	Barge	Tanker	Barge
All (On all overseas shipments provide for a minimum of 4 consignees. Place 1 copy, attached to ullage report, in each of 4 envelopes. Mark the envelopes, "Consignee—First Destination," Consignee—Second Destination," etc. Deliver via the vessel.)	Each Consignee (By mail CONUS only)	2	1	As Required	As Required
	With Shipment	1	1	As Required	As Required
	Master of Vessel	1	1	1	1
	Tanker or Barge Agent	2	2	2	2
	Contractor	As Required	As Required	As Required	As Required
	Cognizant Inspection Office	1	1	1	1
	Government Representative responsible for quality at each destination.	1	1	1	1
	Government Representative at Cargo Loading Point.	1	1	*1	*1
On all USNS tankers and all MSC chartered tankers and MSC chartered barges.	Military Sealift Command, Code N322, Washington, DC 20398-5100.	2	2	2	2
See the contract or shipping order for finance documentation and any supplemental requirements for Government-owned product shipments and receipts.	Payment Office: if this is DASC-F send copies to: Defense Fuels Supply Center, ATTN: DFSC-RDX, Cameron Station, Bldg. 5, Alexandria, Va 22304-6160 (do not send copies to DASC-F).	2	2	2	2
For shipments and receipts of DFSC financed cargos for which DASC-F is not the paying office.	Defense Fuels Supply Center, Attn: DFSC-RF, Cameron Station, Alexandria, VA 22304-6160.	1	1	1	1
For shipments on all USNS tankers, MSC chartered tankers and barges, and FOB destination tankers with copy of ullage report.	Defense Fuels Supply Center, ATTN: DFSC-01, Cameron Station, Alexandria, VA 22304-6160.	1	1	**1	1
On Army ILP shipments	U.S. Army International Logistics Center, New Cumberland Army Depot, New Cumberland, PA 17070-5001.	2	2	2	2
Navy—On all shipments to Navy Operated Terminals.	Navy Fuels Petroleum Office, Cameron Station, Alexandria, Va 22304-6180.	2	1	2	1
On all shipments to AF Bases	Directorate of Energy management, SA ALC(SFT), Kelly AFB, TX 78241-5000.	1	1	1	1
On all Conus loadings	DFSC Fuels Region(s) cognizant of shiping point.	1	1	1	1
On all shipments to CONUS Destinations	DFSC Fuel Region(s) cognizant of shipping and receiving point****.	1	1	0	0
For all discharges of cargos originating at DFSPs and discharging at activities not a Defense Fuel Support Point.	Defense Fuels Supply Center, ATTN: DFSC-RF, Cameron Station, Alexandria, VA 22304-6160.			***1	***1

*With copy of ullage report.

**Dry tank certificate to accompany DD Form 250-1 and ullage report.

***Copies of the DD Form 250-1, forwarded by bases, will include the following in block 11: Shipped to: Supplementary Address, if applicable; Signal Code; and Fund Code.

****See Table 4.

TABLE 4.—FUEL REGION LOCATIONS AND AREAS OF RESPONSIBILITY

a. DFR Northeast	Defense Fuel Region Northeast, Building 2404, McGuire AFB, NJ 08641-5000.
Area of Responsibility	Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia.
b. DFR Central	Defense Fuel Region Central, 8900 S. Broadway, Building 2, St. Louis, MO 63125-1513.
Area of Responsibility	Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Wisconsin, and Wyoming.
c. DFR South	Defense Fuel Region South, Federal Office Building, 2320 La Branch, Room 1213, Houston, TX 77004-1091.
Area of Responsibility	Alabama, Arizona, Arkansas, Caribbean Area, Florida, Georgia, Louisiana, Mexico, Mississippi, New Mexico, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, Texas, West Indies, Central America, and South America.
d. DFR West	Defense Fuel Region West, 3171 N. Gaffney Street, San Pedro, CA 90731-1099.
Area of Responsibility	California, Idaho, Montana, Nevada, Oregon, Utah, and Washington.
e. DFR Alaska	Defense Fuel Region Alaska, Elmendorf AFB, Alaska 99506-5000.
Area of Responsibility	Alaska and Aleutians.
f. DFR Europe	Defense Fuel Region Europe, Building 2304, APO New York 09128-4105.
Area of Responsibility	Continental Europe, United Kingdom, Mediterranean Area, Turkey, and Africa (less Djibouti, Egypt, Ethiopia, Kenya, Somalia).
g. DFR Mideast	Defense Fuels Region, Middle East, P.O. Box 386, Awali, Bahrain, APO New York 09526-2830.
Area of Responsibility	Afghanistan, Bahrain, Djibouti, Egypt, Ethiopia, Iran, Iraq, Jordan, Kenya, Kuwait, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, United Arab Emirates, and Yemen.
h. DFR Pacific	Defense Fuel Region, Pacific, Camp H. M. Smith, Honolulu, HI 96861-5000.
Area of Responsibility	Australia, Burma, East Indies, Hawaii, Indian Ocean, Japan, Korea, Malaya, Marianas, New Zealand, Philippines, Ryukyu Islands, South Pacific Islands, Sri Lanka, Taiwan, and Thailand.

Appendix G—Activity Address Numbers

Sec.
Part 1—General.
  G–100 Scope.
  G–101 Assignment and use of a number.
  G–102 Activity address number data base maintenance.
Part 2—Army Activity Address Numbers.
Part 3—Navy Activity Address Numbers.
Part 4—Marine Corps Activity Address Numbers.
Part 5—Air Force Activity Address Numbers.
Part 6—Defense Logistics Agency Activity Address Numbers.
Part 7—Defense Communications Agency Activity Address Numbers.
Part 8—Defense Mapping Agency Activity Address Numbers.
Part 9—Defense Nuclear Agency Activity Address Numbers.
Part 10—Miscellaneous Defense Activities Activity Address Numbers.
Part 11—On-Site Inspection Agency Activity Number.
Part 12—Strategic Defense Initiative Organization Activity Number.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Part 1—General

G–100 Scope.

This appendix identifies the activity address numbers to be used with the uniform procurement instrument identification numbering system prescribed in DFARS subpart 204.70.

G–101 Assignment and use of a number.

(a) Activities coding solicitations, contracts and related instruments shall use only those codes assigned by their respective department/agency activity address monitor(s).

(b) The six-character code is used in the first six positions of the procurement instrument identification number (PIIN). When required, activities also will be assigned a two position code. The two position code is used in the first two positions of the call/order serial number.

(c) Activity address monitors are—

Army—US Army Contracting Support Agency, Attn: Contract Support Office (SFRD–KS), 5109 Leesburg Pike, suite 302, Falls Church, VA 22041–3201
Navy—*Navy Accounting and Finance Center, (NAFC–5511), Washington, DC 20376–5001
Air Force—SAF/AQCX, Directorate of Contracting and Manufacturing Policy, Washington, DC 20330–5040
Defense Logistics Agency—Defense Logistics Agency, Contracting Systems Support Office (DLA-DCSSO), Cameron Station, Alexandria, VA 22304–6100
Marine Corps—*Headquarters, US Marine Corps, (Code LBP), Washington, DC 20380–0001
**Defense Mapping Agency—Director of Acquisition, Defense Mapping Agency, Washington, DC 20305–3000
**Defense Nuclear Agency—Chief, Contract Division, Defense Nuclear Agency, Washington, DC 20305–1000
**Defense Communications Agency—Chief, Logistics Management Office, Code 202, Defense Communications Agency, Washington, DC 20305–2000

* The Navy and Marine Corps Activity Address Monitor for assignment of two-character call/order serial numbers is: Office of the Assistant Secretary of the Navy (RD&A), room 536, Crystal Plaza 5, Washington, DC 20350–1000.

** Agency activity address monitors forward requests for appendix G maintenance to the U.S. Army Contracting Support Agency (SFRD–KS).

G–102 Activity address number data base maintenance.

(a) The Defense Logistics Agency, DLA–DCSSO, Cameron Station, Alexandria, VA 22304–6100 is the executive agent for maintenance of six and two character code assignments. The executive agency distributes blocks of two character codes to department/agency activity address monitors for further assignment.

(b) Contracting activities submit requests for assignment of or changes in either the six character or two character codes to their activity address monitor in accordance with department/agency procedures. Activity address monitors—

(1) Approve requests for additions, deletions, or changes;

(2) Notify the executive editor, Defense Acquisition Regulations System, OUSD(A)DP(DARS), Washington, DC 20301–3000; and

(3) Provide a copy of the notification to the executive agent.

(c) A copy of the Appendix G data base is available on tape or MS-DOS compatible floppy diskettes from the executive agent.

Part 2—Army Activity Address Numbers

DAAA03,B1—Pine Bluff Arsenal, attn: SMCPB–PO, Pine Bluff, AR 71602–9500
DAAA05, B2—Directorate of Contracting, Rocky Mountain Arsenal, attn: XRMAC–DOC, Commerce City, CO 80022–2180
DAAA08, B7—Rock Island Arsenal, attn: SMCRI–CT, Rock Island, IL 61299–5000
DAAA09, BA—HQ, AMCCOM, attn: AMSMC–PC (R), Rock Island, IL 61299–6000
DAAA15, ZU—HQ, AMCCOM, attn: AMSMC–PC (A), Aberdeen Proving Ground, MD 21010–5423
DAAA21, 2T—HQ, AMCCOM, attn: AMSMC–PC (D), Picatinny Arsenal, NJ 07806–5000
DAAA22, BV—Watervliet Arsenal, attn: SMCWV–PP, Watervliet, NY 12189–4050
DAAA31, GJ—McAlester Army Ammunition Plant, attn: SMCMC–PC, McAlester, OK 74501–6000
DAAB07, BG—USA Communications-Electronics Command, attn: AMSEL–PC, Fort Monmouth, NJ 07703–5000
DAAB08, 2V—USA Communications-Electronics Command, attn: Procurement Directorate, Base Ops, Fort Monmouth, NJ 07703–5000
DAAB10, ZP—Headquarters, U.S. Army Garrison, Vint Hill Farms Station, attn: SELVH–PC–OP, Warrenton, VA 22186–5172
DAAC01, BH—Anniston Army Depot, attn: SDSAN–DOC, Anniston, AL 36201–5003
DAAC09, ZR—Sacramento Army Depot, attn: SDSSA–K, Sacramento, CA 95813–5021
DAAC67, ZN—Letterkenny Army Depot, attn: SDSLE–P, Chambersburg, PA 17201–4152
DAAC69, D2—New Cumberland Army Depot, attn: SDSNC–P, New Cumberland, PA 17070–5001
DAAC71, ZS—Tobyhanna Army Depot, attn: SDSTO–K, Tobyhanna, PA 18466–5100
DAAC79, D7—Red River Army Depot, attn: SDSRR–P, Texarkana, TX 75507–5000
DAAC83, BJ—Corpus Christi Army Depot, attn: SDSCC–C, Corpus Christi, TX 78419–5170
DAAC89, BK—Tooele Army Depot, attn: SDSTE–CD, Tooele, UT 84074–0839
DAAD01, B5—USA Yuma Proving Ground, Procurement Directorate, attn: STEYP–CR, Yuma, AZ 85365–9103
DAAD03, B6—USA Jefferson Proving Ground, attn: STEJP–LG–C, Madison, IN 47250–5100
DAAD05, BM—USA Aberdeen Proving Ground, Support Activity, attn: STEAP–PR/(Bldg No. 314), Aberdeen Proving Ground, MD 21005–5001
DAAD07, BN—USA White Sands Missile Range, Directorate of Contracting, attn: STEWS–PR, White Sands Missile Range, NM 88002–5201
DAAD09, BP—USA Dugway Proving Ground, Procurement Directorate, attn: STEDP–DOC, Dugway, UT 84022–0538
DAAD10, ZX—USA Test & Evaluation Command, attn: AMSTE–PR, Aberdeen Proving Ground, MD 21005–5055
DAAE07, BR—USA Tank-Automotive Command, Warren, MI 48397–5000
DAAG60, G8—USA Military Academy, Purchasing & Contracting Division, Bldg 667A, attn: MAPC, West Point, NY 10996–1594
DAAG99, ZY—USA Program Manager-SANG, attn: AMCPM–NGA–A, APO New York, NY 09038–5005
DAAH01, CC—USA Missile Command, attn: AMSMI–PC, Redstone Arsenal, AL 35898–5280
DAAH03, D8—USA Missile Command, attn: AMSMI–PC–PC (Lab/Base Ops), Redstone Arsenal, AL 35898–5280
DAAJ02, D9—Aviation Applied Technology Directorate, attn: SAVRT–TY–CD, Fort Eustis, VA 23604–5577
DAAJ04—USA Charles Melvin Price Support Center, attn: AMSAV–PHI, Granite City, IL 62040–1801
DAAJ05, ZF—USA Aviation Systems Command, Building 404, attn: I.A.S. 21-Working Group, Fort Eustis, VA 23604–5577
DAAJ09, BS—USA Aviation Systems Command, 4300 Goodfellow Blvd., attn: AMSAV–PR, St. Louis, MO 63120–1798
DAAK01, BB—USA Troop Support Command (TROSCOM) 4300 Goodfellow Blvd., attn: AMSTR–PYMB, St. Louis, MO 63120–1798
DAAK60, C5—USA Natick Research, Development and Engineering Center, Directorate of Procurement, attn: AMSTR–PN, Natick, MA 01760–5011
DAAK70, E1—USA Belvoir Research, Development and Engineering Center, Procurement & Production Directorate, attn: AMSTR–PBP, Fort Belvoir, VA 22060–5606

DAAL01, 1Y—Electronics Technology & Devices Laboratory, attn: SLCET–DP, Fort Monmouth, NJ 07703–5302

DAAL02, D3—USA Laboratory Command Installation, Support Activity, 2800 Powder Mill Road, attn: SLCIS–C, Adelphia, MD 20783–1145

DAAL03—U.S. Army Research Laboratory, P.O. Box 12211, attn: SLCRO–PR, Research Triangle Park, NC 27709–2211

DAAL04, D6—USA Materials Technology Laboratory, Arsenal Street, attn: SLCMT–PR, Watertown, MA 02172–0001

DABT01, F6—Commander, U.S. Army Aviation Center, Contracting Office, Building T–00116, attn: ATZQ–C, Fort Rucker, AL 36362–5000

DABT02, 2A—Commander, U.S. Army Chemical and Military Police Centers and Fort McClellan, attn: ATZN–DOC, Fort McClellan, AL 36205–5000

DABT10, 2B—Commander, U.S. Army Infantry Center and Fort Benning, Bldg. 35, attn: ATZB–KTC, Fort Benning, GA 31905–5000

DABT11, 2C—Commander, U.S. Army Signal Center and Fort Gordon, Building 2050, attn: ATZI–CT, Fort Gordon, GA 30905–5041

DABT15, F9—Commander, U.S. Army Soldier Support Center and Fort Benjamin Harrison, attn: ATZI–CT, Fort Benjamin Harrison, IN 46216–5230

DABT19, 2D—Commander, U.S. Army Combined Arms Center and Fort Leavenworth, attn: ATZL–GDC, Fort Leavenworth, KS 66027–5000

DABT23, 2E—Commander, U.S. Army Armor Center and Fort Knox, Bldg. 4022, attn: ATZK–DC, Fort Knox, KY 40121–5000

DABT31, 2F—Commander, U.S. Army Engineer Center and Fort Leonard Wood, attn: ATZT–DOC, Fort Leonard Wood, MO 65473–5000

DABT35, 2G—Commander, U.S. Army Training Center and Fort Dix, Bldg. 5418, attn: ATZD–CO, Fort Dix, NJ 08640–6150

DABT39, 2H—Commander, U.S. Army Field Artillery Center and Fort Sill, attn: ATZR–Q, Fort Sill, OK 73503–0501

DABT43, 2J—Commander, Carlisle Barracks Bldg. 46, attn: ATZE–DOC, Carlisle Barracks, PA 17013–5002

DABT47, 2K—Commander, U.S. Army Training Center and Fort Jackson, Bldg. 4350, attn: ATZJ–DOC, Fort Jackson, SC 29207–5490

DABT51, 2L—Commander, U.S. Army Air Defense Artillery Center & Fort Bliss, P.O. Box 6078, attn: ATZC–DOC, Fort Bliss, TX 79906–0078

DABT57, 2N—Commander, U.S. Army Transportation Center and Fort Eustis, Bldg. 2746, attn: ATZF–CO, Fort Eustis, VA 23604–5000

DABT58, 2P—Commander, Fort Monroe, Bldg. T–195, attn: ATZG–C #62, Fort Monroe, VA 23651–6000

DABT59, 2Q—Commander, U.S. Army Quartermaster Center and Fort Lee, Bldg. T–7124, attn: ATZM–DC, Fort Lee, VA 23801–5000

DABT60, 1L—Director, TRADOC Contracting Activity, attn: ATCA, Fort Eustis, VA 23604–5538

DABT61, BF—Commandant, The Judge Advocate General's School, USA, attn: JAGS–SSL, Charlottesville, VA 22904–1781

DABT63, BL—Commander, U.S. Army Information Systems Command, attn: ASQH–DOC, Fort Huachuca, AZ 85613–5000

DABT64, YV—Chief, Purchasing and Contracting Office, Bldg. 440, attn: ATZR–ZQ, Fort Chaffee, AR 72905–5000

DABT65—Mission Contracting Activity at Fort Leavenworth, attn: MCAL, Fort Leavenworth, KS 66027–5000

DACA01, DACW01, CK—USA Engineer District, Mobile, P.O. Box 2288, Mobile, AL 36628–0001

DACA03, DACW03, CL—USA Engineer District, Little Rock, P.O. Box 867, Little Rock, AR 72203–0867

DACA05, DACW05, CM—USA Engineer District, Sacramento, 650 Capital Mall, Sacramento, CA 95814–4794

DACA06, DACW06, CN—USA Engineer Division, South Pacific, 630 Sansone Street, room 1216, San Francisco, CA 94111–2206

DACA07, DACW07, CP—USA Engineer District, San Francisco, 211 Main Street, San Francisco, CA 94105–1905

DACA09, DACW09, CQ—USA Engineer District, Los Angeles, P.O. Box 2711, Los Angeles, CA 90053–2325

DACA17, DACW17, CS—USA Engineer District, Jacksonville, P.O. Box 4970, Jacksonville, FL 32232–0019

DACA19, DACW19, CU—USA Engineer Division, South Atlantic, 77 Forsyth Street, S.W., room 313, Atlanta, GA 30335–6801

DACA21, DACW21, CV—USA Engineer District, Savannah, P.O. Box 889, Savannah, GA 31402–0889

DACA22, DACW22, CW—USA Engineer Division, North Central, 536 South Clark Street, Chicago, IL 60605–1592

DACA23, DACW23, CX—USA Engineer District, Chicago, 219 South Dearborn Street, Chicago, IL 60604–1797

DACA25, DACW25, CD—USA Engineer District, Rock Island, P.O. Box 2004, Rock Island, IL 61204–2004

DACA27, DACW27, CY—USA Engineer District, Louisville, P.O. Box 59, Louisville, KY 40201–0059

DACA29, DACW29, CZ—USA Engineer District, New Orleans, P.O. Box 60267, New Orleans, LA 70160–0267

DACA31, DACW31, DA—USA Engineer District, Baltimore, P.O. Box 1715, Baltimore, MD 21203–1715

DACA33, DACW33, DB—USA Engineer District, New England, 424 Trapelo Road, Waltham, MA 02254–9149

DACA35, DACW35, DC—USA Engineer District, Detroit, P.O. Box 1027, Detroit, MI 48231–1027

DACA37, DACW37, DD—USA Engineer District, St. Paul, 1421 USPO a Custom House, 180 East Kellogg Boulevard, St. Paul, MN 55101–1427

DACA38, DACW38, DE—USA Engineer District, Vicksburg, P.O. Box 60, Vicksburg, MS 39180–0060

DACA39, DACW39, DF—USA Engineer Water-Ways Experiment Station, P.O. Box 631, Vicksburg, MS 39181–0631

DACA40, DACW40, DG—USA Engineer Division, Lower Mississippi Valley, P.O. Box 80, Vicksburg, MS 39181–0080

DACA41, DACW41, DH—USA Engineer District, Kansas City, 700 Federal Bldg., 601 East 12th Street, Kansas City, MO 64106–2896

DACA43, DACW43, DJ—USA Engineer District, St. Louis, 210 Tucker Boulevard North, St. Louis, MO 63101–1986

DACA45, DACW45, DK—USA Engineer District, Omaha, 215 North 17th Street, Omaha, NE 68102–4978

DACA46, DACW46, DL—USA Engineer Division, Missouri River, P.O. Box 103, Downtown Station, Omaha, NE 68101–0103

DACA47, DACW47, DM—USA Engineer District, Albuquerque, P.O. Box 1580, Albuquerque, NM 87103–1580

DACA49, DACW49, DN—USA Engineer District, Buffalo, 1776 Niagara Street, Buffalo, NY 14207–3199

DACA51, DACW51, CE—USA Engineer District, New York, 26 Federal Plaza, New York, NY 10278–0090

DACA52, DACW52, DP—USA Engineer Division, North Atlantic, 90 Church Street, New York, NY 10007–2979

DACA54, DACW54, DQ—USA Engineer District, Wilmington, P.O. Box 1890, Wilmington, NC 28402–1890

DACA55, DACW55, DR—USA Engineer Division, Ohio River, P.O. Box 1159, Cincinnati, OH 45201–1159

DACA56, DACW56, DS—USA Engineer District, Tulsa, P.O. Box 61, Tulsa, OK 74121–0061

DACA57, DACW57, DT—USA Engineer District, Portland, P.O. Box 2496, Portland, OR 97229–2946

DACA58, DACW58, DU—USA Engineer Division, North Pacific, P.O. Box 2870, Portland, OR 97208–2870

DACA59, DACW59, DV—USA Engineer District, Pittsburgh, William S. Moorehead Federal Bldg., 1000 Liberty Avenue, Pittsburgh, PA 15222–4186

DACA60, DACW60, DW—USA Engineer District, Charleston, P.O. Box 919, Charleston, SC 29402–0919

DACA61, DACW61, CF—USA Engineer District, Philadelphia Custom House, 2nd & Chestnut Streets, Philadelphia, PA 19106–2991

DACA62, DACW62, DX—USA Engineer District, Nashville, P.O. Box 1070, Nashville, TN 37202–1070

DACA63, DACW63, DY—USA Engineer District, Fort Worth, P.O. Box 17300, Fort Worth, TX 76102–0300

DACA64, DACW64, DZ—USA Engineer District, Galveston, P.O. Box 1229, Galveston, TX 77553

DACA65, DACW65, EA—USA Engineer District, Norfolk, 803 Front Street, Norfolk, VA 23510–1096

DACA66, DACW66, EB—USA Engineer District, Memphis, 167 N. Mid–America Mall, B–202, Clifford Davis Federal Bldg., Memphis, TN 38103–1894

DACA67, DACW67, EC—USA Engineer District, Seattle, P.O. Box C–3755, Seattle, WA 98124–2255

DACA68, DACW68, YW—USA Engineer District, Walla Walla, Building 602, City-County Airport, Walla Walla, WA 99362–9265

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al's School, USA, attn:
ottesville, VA 22904–1781
mander, U.S. Army
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t Huachuca, AZ 85613–

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e, Bldg. 440, attn: ATZR–
, AR 72905–5000
Contracting Activity at
n, attn: MCAL, Fort
86027–5000
, CK—USA Engineer
P.O. Box 2288, Mobile, AL

, CL—USA Engineer
ck, P.O. Box 867, Little
8867
, CM—USA Engineer
nto, 650 Capital Mall,
95814–4794
, CN—USA Engineer
acific, 630 Sansome Street,
rancisco, CA 94111–2206
, CP—USA Engineer
cisco, 211 Main Street,
A 94105–1905
, CQ—USA Engineer
les, P.O. Box 2711, Los
3–2325
CS—USA Engineer
ille, P.O. Box 4970,
2232–0019
CU—USA Engineer
tlantic, 77 Forsyth Street,
tlanta, GA 30335–6801
CV—USA Engineer
n, P.O. Box 889,
402–0889
CW—USA Engineer
entral, 536 South Clark
, 60605–1592
CX—USA Engineer
219 South Dearborn
, 60604–1797
CD—USA Engineer
nd, P.O. Box 2004, Rock
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CY—USA Engineer
, P.O. Box 59, Louisville,

CZ—USA Engineer
ans, P.O. Box 60267, New
–0267
DA—USA Engineer
, P.O. Box 1715,
03–1715
DB—USA Engineer
and, 424 Trapelo Road,
54–9149
DC—USA Engineer
O. Box 1027, Detroit, MI

DD—USA Engineer
421 USPO a Custom
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27
DE—USA Engineer
, P.O. Box 60, Vicksburg,

DF—USA Engineer
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S 39181–0631
DG—USA Engineer
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MS 39181–0060

DACA41, DACW41, DH—USA Engineer District, Kansas City, 700 Federal Bldg., 601 East 12th Street, Kansas City, MO 64106–2896
DACA43, DACW43, DJ—USA Engineer District, St. Louis, 210 Tucker Boulevard North, St. Louis, MO 63101–1986
DACA45, DACW45, DK—USA Engineer District, Omaha, 215 North 17th Street, Omaha, NE 68102–4978
DACA46, DACW46, DL—USA Engineer Division, Missouri River, P.O. Box 103, Downtown Station, Omaha, NE 68101–0103
DACA47, DACW47, DM—USA Engineer District, Albuquerque, P.O. Box 1580, Albuquerque, NM 87103–1580
DACA49, DACW49, DN—USA Engineer District, Buffalo, 1776 Niagara Street, Buffalo, NY 14207–3199
DACA51, DACW51, CE—USA Engineer District, New York, 26 Federal Plaza, New York, NY 10278–0090
DACA52, DACW52, DP—USA Engineer Division, North Atlantic, 90 Church Street, New York, NY 10007–2979
DACA54, DACW54, DQ—USA Engineer District, Wilmington, P.O. Box 1890, Wilmington, NC 28402–1890
DACA55, DACW55, DR—USA Engineer Division, Ohio River, P.O. Box 1159, Cincinnati, OH 45201–1159
DACA56, DACW56, DS—USA Engineer District, Tulsa, P.O. Box 61, Tulsa, OK 74121–0061
DACA57, DACW57, DT—USA Engineer District, Portland, P.O. Box 2496, Portland, OR 97229–2946
DACA58, DACW58, DU—USA Engineer Division, North Pacific, P.O. Box 2870, Portland, OR 97208–2870
DACA59, DACW59, DV—USA Engineer District, Pittsburgh, William S. Moorehead Federal Bldg., 1000 Liberty Avenue, Pittsburgh, PA 15222–4186
DACA60, DACW60, DW—USA Engineer District, Charleston, P.O. Box 919, Charleston, SC 29402–0919
DACA61, DACW61, CF—USA Engineer District, Philadelphia Custom House, 2nd & Chestnut Streets, Philadelphia, PA 19106–2991
DACA62, DACW62, DX—USA Engineer District, Nashville, P.O. Box 1070, Nashville, TN 37202–1070
DACA63, DACW63, DY—USA Engineer District, Fort Worth, P.O. Box 17300, Fort Worth, TX 76102–0300
DACA64, DACW64, DZ—USA Engineer District, Galveston, P.O. Box 1229, Galveston, TX 77553
DACA65, DACW65, EA—USA Engineer District, Norfolk, 803 Front Street, Norfolk, VA 23510–1096
DACA66, DACW66, EB—USA Engineer District, Memphis, 167 N. Mid-America Mall, B–202, Clifford Davis Federal Bldg., Memphis, TN 38103–1894
DACA67, DACW67, EC—USA Engineer District, Seattle, P.O. Box C–3755, Seattle, WA 98124–2255
DACA68, DACW68, YW—USA Engineer District, Walla Walla, Building 602, City-County Airport, Walla Walla, WA 99362–9265

DACA69, DACW69, CG—USA Engineer District, Huntington, 502 8th Street, Huntington, WV 25701–2070
DACA70, DACW70, YX—USA Engineer Division, Southwestern, 1114 Commerce Street, Dallas, TX 75242–0216
DACA72, DACW72, ZA—USA Humphreys Engineer Center, Support Activity, Kingman Building, Fort Belvoir, VA 22060
DACA73, DACW73, CH—Headquarters, U.S. Army Corps of Engineers, 20 Massachusetts Avenue, NW., attn: CEPR, Washington, DC 20314–1000
DACA75, DACW75, ZC—USA Engineer Division, Middle East, APO New York, NY 09038
DACA76, DACW76, ZD—USA Engineer Topographic Laboratories, Cude Bldg. #2592, Fort Belvoir, VA 22060–5546
DACA78, DACW78, 9V—USA Engineer Middle East/Africa, Projects Office, P.O. Box 2250, Winchester, VA 22601–1450
DACA79, DACW79, 2R—USA Engineer District, Japan, APO San Francisco, CA 96343–0061
DACA81, DACW81—USA Engineer District, Far East, APO San Francisco, CA 96301–0427
DACA84, DACW84, ZH—USA Engineer Division, Pacific Ocean, Building 230, Fort Shafter, HI 96858–5440
DACA85, DACW85, ZJ—USA Engineer District, Alaska, P.O. Box 898, Anchorage, AK 99506–0898
DACA86, DACW86—USA Engineer District, Riyadh, APO New York, NY 09038
DACA87, DACW87, ZW—USA Engineer Division, Huntsville, P.O. Box 1600, Huntsville, AL 35807–4301
DACA88, DACW88, 0S—USA Construction Engineering Research Laboratory, P.O. Box 4005, Champaign, IL 61824–4005
DACA89, DACW89, Z—USA Cold Regions Research and Engineering Laboratory, 72 Lyme Road, Hanover, NH 03755–1290
DACA90, DACW90—USA Engineer Division, Europe, attn: CEEUD–CT, APO New York, NY 09757–5301
DADA01, 2S—Letterman Army Medical Center, Bldg 1060, attn: HSHH–LCP, Presidio of San Francisco, CA 94129–6700
DADA03, 8W—Fitzsimons Army Medical Center, Directorate of Contracting, Bldg 205, attn: HSHG–LOC, Aurora, CO 80045–5001
DADA09, YY—William Beaumont Army Medical Center, P.O. Box 70003, attn: HSAA–W, El Paso, TX 79920–5001
DADA10, ZQ—USA Health Services Command, Bldg 129, Central Contracting Activity, attn: HSAA–C, Fort Sam Houston, TX 78234–6000
DADA11, 0V—Brooke Army Medical Center, Contracting Branch, Log Div, attn: HSHE–LOC, Fort Sam Houston, TX 78234–6200
DADA13, 0W—Madigan Army Medical Center, Purchasing and Contracting Office, attn: HSAA–M, Tacoma, WA 98431–5100
DADA15, 0X—Walter Reed Army Medical Center, Directorate of Industrial Operations, Bldg T–20, 1st Floor, attn: HSHL–ZF(SD), Washington, DC 20307–5001
DADA16, 0Y—Tripler Army Medical Center, Contracting Office, Bldg 160, attn: HSHK–LD–PC, Tripler AMC, HI 96859–5000
DAEA08, E4—Headquarters, 7th Signal Command & Ft Ritchie, Office of Acquisition, Bldg 148, attn: ASN–OA–PC, Fort Ritchie, MD 21719–5010
DAEA16, E7—Headquarters, 5th Signal Command, DCSLOG, attn: ASE–LG–CT, APO New York, NY 09056–3104
DAEA20, E8—Commander, HQ, 1st Signal Brigade, attn: ASQK–AM, APO San Francisco, CA 96301–0044
DAEA31, 1K—USAISC, Directorate of Contracting, Fort Devens, attn: ASPC–D, Ayers, MA 01433–5340
DAEA32, Y6—HQ, USAISC, Office of Acquisition Management, attn: ASPC–T, Fort Huachuca, AZ 85613–5000
DAHA01, 9B—USPFO for Alabama, P.O. Box 3715, Montgomery, AL 36193–4801
DAHA02, 0G—USPFO for Arizona, 5636 E. McDowell Road, Phoenix, AZ 85008–3495
DAHA03, 9D—USPFO for Arkansas, Camp Robinson, North Little Rock, AR 72118–2200
DAHA04, 9N—USPFO for California, P.O Box 8104, San Luis Obispo, CA 93403–8104
DAHA05, Z0—USPFO for Colorado, Camp George West, Golden, CO 80401–3997
DAHA06, 1S—USPFO for Connecticut, State Armory, 360 Broad Street, attn: Contracting Officer, Hartford, CT 06105–3795
DAHA07, 9A—USPFO for Delaware, Grier Bldg., 1161 River Road, New Castle, DE 19720–5199
DAHA08, 2W—USPFO for Florida, P.O. Box 1008, St. Augustine, FL 32085–1008
DAHA09—USPFO for Georgia, P.O. Box 17882, Atlanta, GA 30316–0882
DAHA10, 2Y—USPFO for Idaho, P.O. Box 45, Boise, ID 83707–4501
DAHA11, 9E—USPFO for Illinois, 1301 North McArthur Blvd., Springfield, IL 62702–2399
DAHA12, 4E—USPFO for Indiana, P.O. Box 41346, Indianapolis, IN 46241–0346
DAHA13, 9L—USPFO for Iowa, Camp Dodge, 7700 NW Beaver Drive, Johnston, IA 50131–1902
DAHA14, 4Z—USPFO for Kansas, P.O. Box 2099, Topeka, KS 66601–2099
DAHA15, 6P—USPFO for Kentucky, Boone National Guard Center, Frankfort, KY 40601–6192
DAHA16, 0A—USPFO for Louisiana, Jackson Barracks, New Orleans, LA 70146–0330
DAHA17, 0B—USPFO for Maine, Camp Keys, Augusta, ME 04333–0032
DAHA18, 0C—USPFO for Maryland, State Mil Reservation, 301 Old Bay Lane, Havre de Grace, MD 21078–4094
DAHA19, 0D—USPFO for Massachusetts, 143 Speen Street, ATTN: Contracting Officer, Natick, MA 01760–2599
DAHA20, 9F—USPFO for Michigan, 3111 W St. Joseph Street, Lansing, MI 48913–5102
DAHA21, 9K—USPFO for Minnesota, P.O. Box 288, Camp Ripley, Little Falls, MN 56345–0288
DAHA22—USPFO for Mississippi, 144 Military Drive, Jackson, MS 39208–8880
DAHA23, 9H—USPFO for Missouri, 1715 Industrial Avenue, Jefferson City, MO 65101–1468
DAHA24, 9P—USPFO for Montana, P.O. Box 1157, Helena, MT 59624–1157
DAHA25—USPFO for Nebraska, 1234 Military Road, Lincoln, NE 68508–1092
DAHA26—USPFO for Nevada, 2601 South Carson Street, Carson City, NV 89701–5596
DAHA27—USPFO for New Hampshire, P.O. Box 2003, Concord, NH 03301–2003
DAHA28, ZK—USPFO for New Jersey, 131 Eggert Crossing Road, Lawrenceville, NJ 08648–2805
DAHA29—USPFO for New Mexico, P.O. Box 4277, ATTN: Contracting Officer, Santa Fe, NM 87502–4277
DAHA30—USPFO for New York, 330 Old Niskayuna Road, Latham, NY 12110–2224
DAHA31—USPFO for North Carolina, 4201 Reedy Creek Road, Raleigh, NC 27607–6412
DAHA32—USPFO for North Dakota, P.O. Box 5511, Bismarck, ND 58502–5511
DAHA33, 9M—USPFO for Ohio, 2811 W. Granville Road, Columbus, OH 43235–2712
DAHA34, 9J—USPFO for Oklahoma, 3501 Military Circle, N.E., Oklahoma City, OK 73111–4398
DAHA35—USPFO for Oregon, P.O. Box 14840, ATTN: USPFO–P, Salem, OR 97309–5008
DAHA36—USPFO for Pennsylvania, Dept. of Military Affairs, ATTN: Contracting Officer, Annville, PA 17003–5003
DAHA37—USPFO for Rhode Island, 330 Camp Street, Providence, RI 02906–1954
DAHA38—USPFO for South Carolina, 9 National Guard Road, Columbia, SC 29201–4706
DAHA39—USPFO for South Dakota, Camp Rapid, Rapid City, SD 57702–8186
DAHA40—USPFO for Tennessee, Powell Avenue, P.O. Box 40748, Nashville, TN 37204–0748
DAHA41, 9C—USPFO for Texas, P.O. Box 5218, ATTN: Contracting Officer, Austin, TX 78563–5218
DAHA42, ZE—USPFO for Utah, P.O. Box 2000 Draper, UT 84020–2000
DAHA43—USPFO for Vermont, Camp Johnson, Bldg. #3, Colchester, VT 05446–3004
DAHA44—USPFO for Virginia, 501 East Franklin Street, Richmond, VA 23219–2317
DAHA45—USPFO for Washington, Camp Murray, Tacoma, WA 98430–5000
DAHA46—USPFO for West Virginia, 50 Armory Road, Buckhannon, WV 26201–2396
DAHA47, 9G—USPFO for Wisconsin, Camp Douglas, WI 54618–9002
DAHA48—USPFO for Wyoming, P.O. Box 1709, Cheyenne, WY 82003–1709
DAHA49—USPFO for the District of Columbia, Bldg. 350, Anacostia Naval Air Station, Washington, DC 20315–0001
DAHA50—USPFO for Hawaii, 3949 Diamond Head Road, Honolulu, HI 96816–4495
DAHA51—USPFO for Alaska, 800 E. Diamond Blvd. #3–580, Anchorage, AK 99515–2097
DAHA70—USPFO for Puerto Rico, P.O. Box 3786, San Juan, PR 00904–3786
DAHA72—USPFO for Virgin Islands, #11–12 Golden Rock, Christiansted, St. Croix, VI 00820–1050
DAHA74—USPFO for Guam, P.O. Box 56, NAS, FPO San Francisco, CA 96637–1256
DAHA90—National Guard Bureau, Contracting Support, 5109 Leesburg Pike, Suite 401–B, Falls Church, VA 22041–3201
DAHC21, G3—MTMC Eastern Area, Acquisition Division, Bldg 42, Military Ocean Terminal, ATTN: MTEA–LOA, Bayonne, NJ 07002–5302

DAHC22—HQ MTMC, Directorate of Passenger Traffic, 5611 Columbia Pike, ATTN: MTPT, Falls Church, VA 22041–5050
DAHC23, G4—MTMC, Western Area, Oakland Army Base, ATTN: MTWA–LOA, Oakland, CA 94026–5000
DAHC24, 1B—HQ MTMC Acquisition Division, 5611 Columbia Pike, ATTN: MT–LOA, Falls Church, VA 22041–5050
DAHC26, 0E—HQ MTMC, TOPS Project Management Office, ATTN: MT–TP, Fort Belvoir, VA 22060–5898
DAHC30, 0F—MDW, DCS for Acquisition, Bldg 15, Cameron Station, Alexandria, VA 22304–5050
DAHC32, 0M—National Defense University, Bldg. 59/Contracting Office rm 113, Fort Lesie J. McNair, Washington, DC 20319
DAHC35, 2M—Ft Belvoir Directorate of Contracting, Bldg T742, Fort Belvoir, VA 22060–5075
DAHC40, 9T—USA TSA Southeast Commissary Region, Contracting Division, ATTN: LOTA–SE–C, Fort Lee, VA 23801–6025
DAHC41, 0H—USA TSA Northeast Commissary Region, Contracting Division, ATTN: LOTA–NE–C, Fort George G. Meade, MD 20755–5220
DAHC42, 0J—USA TSA Midwest Commissary Region, Contracting Division, ATTN: LOTA–MW–C, Fort Sam Houston, TX 78234–5000
DAHC43, 0K—USA TSA Western Commissary Region, Contracting Division, ATTN: LOTA–WE–C, Fort Lewis, WA 98433–7300
DAHC44, ZG—US TSA Contracting Group, Bldg P–12400, P.O. Box 5310, ATTN: LOTA–AM–C, Fort Lee, VA 23801–6020
DAHC76, 8U—HQS, 6th Inf Div(L) & USA Garrison, AK, Directorate of Contracting, P.O. Box 5–525, ATTN: APVR–DOC, Fort Richardson, AK 99505–0525
DAHC77, CJ—US Army Support Command, Hawaii, ATTN: APZV–KO, Fort Shafter, HI 96858–5025
DAHC90, YJ—U.S. Army Intelligence and Security Command (INSCOM), Contract Support Activity, attn: IAPARC–CSA, Fort Belvoir, VA 22060–5368
DAHC92, 1V, ZT—U.S. Army South, U.S. Army Garrison—Panama Directorate of Contracting, attn: SOCO–CO, APO Miami, FL 34002–5000
DAHC94, BD—U.S. Army, Information Systems Selection and Acquisition Agency (ISSAA), 2461 Eisenhower Avenue, Alexandria, VA 22331–0700
DAJA01, 9Q—Regional Contracting Office, Vicenza, attn: AEUCC–I, APO New York, NY 09221–5122
DAJA02, G5—Regional Contracting Office, Seckenheim, attn: AEUCC–S, APO New York, NY 09333–5000
DAJA04, 9R—Regional Contracting Office, Fuerth, attn: AEUCC–FU, APO New York, NY 09696–5345
DAJA06, 9S—Regional Contracting Office, Stuttgart, attn: AEUCC–ST, APO New York, NY 09154–0503
DAJA09, BT—Giessen Suboffice, RCO Frankfurt, attn: AEUCC–F–G, APO New York, NY 09169
DAJA10, 9U—Regional Contracting Office, Augsburg, attn: AEUCC–A, APO New York, NY 09178–0505
DAJA16, 8X—Regional Contracting Office, Grafenwoehr, attn: AEUCC–G, APO New York, NY 09114–5413
DAJA23, 9W—Directorate of Contracting, USA Berlin, attn: AEBA–C, APO New York, NY 09742–5003
DAJA25, 9X—Regional Contracting Office, Bremerhaven, attn: AEUCC–BR, APO New York, NY 09069–5505
DAJA37, G6—USAREUR Contracting Center, attn: AEUCC–C, APO New York, NY 09710–5345
DAJA45, 9Y—Regional Contracting Office, Burtonwood, attn: AEUCC–BW, APO New York, NY 09075–3738
DAJA61, 9Z—HQ USAREUR & 7th Army, attn: Regional Contracting Office Benelux, APO New York, NY 09667–5005
DAJA76, 8V—Regional Contracting Office, Frankfurt, Box 73, attn: AEUCC–F, APO New York, NY 09710–5345
DAJA83, 2Z—Rheinberg Suboffice, RCO Bremerhaven, attn: AEUCC–BR–R, APO New York, NY 09712–5511
DAJA84, B0—Fulda Suboffice, RCO Frankfurt, attn: AEUCC–F–FD, APO New York, NY 09146
DAJA85, B8—Hanau Suboffice, RCO Frankfurt, attn: AEUCC–F–H, APO New York, NY 09165–5345
DAJA86, C0—Mainz-Kastel Suboffice, RCO Frankfurt, attn: AEUCC–F–MK, APO New York, NY 09457
DAJA87, D0—Mid-East CAS Branch, USAREUR Contract Center, attn: AEUCC–C–CI, APO New York, NY 09672–0008
DAJA88, E0—United Kingdom CAS Branch, USAREUR Contract Center, attn: AEUCC–C–CU, APO New York, NY 09083–5000
DAJA89, F0—Wuerzburg Suboffice, RCO Fuerth, attn: AEUCC–FU–W, APO New York, NY 09800–2013
DAJA90, 0T—Bad Kreuznach Suboffice, RCO Frankfurt, attn: AEUCC–F–BK, APO New York, NY 09252–0029
DAJB03, F4—U.S. Army Korea Contracting Agency, attn: EAKC–CO, APO San Francisco, CA 96301–0062
DAKF01, 1A—Directorate of Contracting, attn: AFKC–ZM–DOC, Presidio of San Francisco, CA 94129–5000
DAKF03, 0Q—Directorate of Contracting, P.O. Box 27, attn: AFZW–DOC, Fort Ord, CA 93941–0027
DAKF04, ZE—Directorate of Contracting, P.O. Box 10039, attn: AFZJ–DC, Fort Irwin, CA 92310–5000
DAKF06, 1C—Directorate of Contracting, Building 6222, attn: AFZC–DOC, Fort Carson, CO 80913–5022
DAKF10, 1D—Directorate of Contracting, attn: AFZP–DC, Fort Stewart, GA 31314–5189
DAKF11, 1E—Directorate of Contracting, attn: AFZK–DOC, Fort McPherson, GA 30330–5000
DAKF12, BC—FORSCOM Central Contracting Office, attn: FCJ4–PRC, Fort McPherson, GA 30330–6000
DAKF15, 1F—Directorate of Contracting, attn: AFKE–ZO–DOC, Fort Sheridan, IL 60037–5000
DAKF19, 1G—Directorate of Contracting, attn: AFZN–DOC, Fort Riley, KS 66442–0248
DAKF23, 1H—Directorate of Contracting, attn: AFZB–DOC, Fort Campbell, KY 42223–1100
DAKF24, G1—Directorate of Contracting, attn: AFZX–DOC, Fort Polk, LA 71459–5000
DAKF27, 1J—Directorate of Contracting, attn: AFKA–ZI–DOC, Fort George G. Meade, MD 20755–5081
DAKF36, 1M—Directorate of Contracting, attn: AFZS–DOC, Fort Drum, NY 13602–5220
DAKF40, 1N—Directorate of Contracting, Drawer 70120, attn: AFZA–DC, Fort Bragg, NC 28307–0120
DAKF48, 1Q—Directorate of Contracting, attn: AFZF–DOC, Fort Hood, TX 76544–5059
DAKF49, 1R—Directorate of Contracting, attn: AFZG–DOC, Fort Sam Houston, TX 78234–5000
DAKF57, 1T—Directorate of Contracting, attn: AFZH–DOC, Fort Lewis, WA 98433–5000
DAKF61, 1U—Directorate of Contracting, attn: AFZR–DOC, Fort McCoy, WI 54656–5000
DAMD17, B3—US Army Medical Research, Acquisition Activity, Fort Detrick, attn: SGRD–RMA, Frederick, MD 21702–5014
DASG60, CB—USA Strategic Defense Command, Deputy Commander, P.O. Box 1500, attn: CSSD–CM–AC, Huntsville, AL 35807–3801

Part 3—Navy Activity Address Numbers

* An asterisk indicates a two-digit code of a major command, which is shared with subordinate activities. Such subordinate activities will indicate the Unit Identification Code of the major command in parentheses, e.g. (MAJ00011).

N00011, LB*, LBZ—Chief of Naval Operations, Washington, DC 20350–2000
N00013, MR—Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332
N00014, EE—Office of Naval Research, Arlington, VA 22217
N00015, L0*, L0Z—Naval Intelligence Command HQ, (Suitland, MD), 4600 Silver Hill Road, Washington, DC 20389
N00018, MC*, MD*, J5*, QA*, MCZ—Naval Medical Command, Washington, DC 20372–5120
N00019, EF*, GU*, EF0–9—Naval Air Systems Command, Washington, DC 20361
N00023, 4J*, L5*, 4J0–9—Commander, Naval Supply Systems Command, Washington, DC 20376
N00024, EH*, U0*, EH0–9—Naval Sea Systems Command, Washington, DC 20360
N00025, EJ*, FZ*, EJ0–9—Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332
N00030, EK*, EK0–9—Strategic Systems Programs, Department of the Navy, Washington, DC 20376–5002
N00033, EL*, EL0–9—Commander, Military Sealift Command, Washington, DC 20390
N00039, NS*, NS0–9—Space and Naval Warfare Systems Command, Washington, DC 20360
N00060, LH*, J0*, LHZ—Commander-in-Chief, Atlantic Fleet, Norfolk, VA 23511

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AEBA–C, APO New York,

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tn: AEUCC–BR, APO New
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712–5511
Suboffice, RCO
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EUCC–F–H, APO New
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EUCC–F–MK, APO New

East CAS Branch,
act Center, attn: AEUCC–
York, NY 09672–0008
d Kingdom CAS Branch,
act Center, attn: AEUCC–
York, NY 09083–5000
zburg Suboffice, RCO
CC–FU–W, APO New
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reuznach Suboffice, RCO
EUCC–F–BK, APO New
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AFZW–DOC, Fort Ord,

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tn: AFZJ–DC, Fort Irwin,

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: AFZC–DOC, Fort
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ort Stewart, GA 31314–

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Fort McPherson, GA

COM Central
, attn: FCJ4–PRC, Fort
3330–6000
orate of Contracting,
OC, Fort Sheridan, IL

torate of Contracting,
Fort Riley, KS 66442–

DAKF23, 1H—Directorate of Contracting, attn: AFZB–DOC, Fort Campbell, KY 42223–1100

DAKF24, G1—Directorate of Contracting, attn: AFZX–DOC, Fort Polk, LA 71459–5000

DAKF27, 1J—Directorate of Contracting, attn: AFKA–ZI–DOC, Fort George G. Meade, MD 20755–5081

DAKF36, 1M—Directorate of Contracting, attn: AFZS–DOC, Fort Drum, NY 13602–5220

DAKF40, 1N—Directorate of Contracting, Drawer 70120, attn: AFZA–DC, Fort Bragg, NC 28307–0120

DAKF48, 1Q—Directorate of Contracting, attn: AFZF–DOC, Fort Hood, TX 76544–5050

DAKF49, 1R—Directorate of Contracting, attn: AFZG–DOC, Fort Sam Houston, TX 78234–5000

DAKF57, 1T—Directorate of Contracting, attn: AFZH–DOC, Fort Lewis, WA 98433–5000

DAKF61, 1U—Directorate of Contracting, attn: AFZR–DOC, Fort McCoy, WI 54656–5000

DAMD17, B3—US Army Medical Research, Acquisition Activity, Fort Detrick, attn: SGRD–RMA, Frederick, MD 21702–5014

DASG60, CB—USA Strategic Defense Command, Deputy Commander, P.O. Box 1500, attn: CSSD–CM–AC, Huntsville, AL 35807–3801

Part 3—Navy Activity Address Numbers

* An asterisk indicates a two-digit code of a major command, which is shared with subordinate activities. Such subordinate activities will indicate the Unit Identification Code of the major command in parentheses, e.g. (MAJ00011).

N00011, LB*, LBZ—Chief of Naval Operations, Washington, DC 20350–2000

N00013, MR—Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332

N00014, EE—Office of Naval Research, Arlington, VA 22217

N00015, L0*, L0Z—Naval Intelligence Command HQ, (Suitland, MD), 4600 Silver Hill Road, Washington, DC 20389

N00018, MC*, MD*, J5*, QA*, MCZ—Naval Medical Command, Washington, DC 20372–5120

N00019, EF*, GU*, EF0–0—Naval Air Systems Command, Washington, DC 20361

N00023, 4J*, L5*, 4J0–0—Commander, Naval Supply Systems Command, Washington, DC 20376

N00024, EH*, U0*, EH0–0—Naval Sea Systems Command, Washington, DC 20360

N00025, EJ*, FZ*, EJ0–0—Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332

N00030, EK*, EK0–0—Strategic Systems Programs, Department of the Navy, Washington, DC 20376–5002

N00033, EL*, EL0–0—Commander, Military Sealift Command, Washington, DC 20390

N00039, NS*, NS0–0—Space and Naval Warfare Systems Command, Washington, DC 20360

N00060, LH*, J0*, LHZ—Commander-in-Chief, Atlantic Fleet, Norfolk, VA 23511

N00061, NL*, NLZ—Commander-in-Chief, U.S. Naval Forces, Europe, (London, U.K.) FPO New York 09510

N00062, 8A*, L9*, R0*, 8A0–0—Chief of Naval Education and Training, Code 013, NAS, Pensacola, FL 32508–5100

N00063, NT*, NTZ—Naval Telecommunications Command, 4401 Massachusetts Avenue NW., Washington, DC 20394–5290

N00065, S0*, S0Z—Naval Oceanography Command, NSTL, MS 39529–5000

N00069, 8Q*, 8QZ—Naval Security Group HQ, 3801 Nebraska Avenue NW., Washington, DC 20390–0008

N00070, LP*, V5*, 4L*, LPZ—Commander in Chief, Pacific Fleet, Pearl Harbor, HI 96860–7000

N00072, 9T*, LC*, 9TZ—Commander, Naval Reserve Force, Code 17, New Orleans, LA 70146

N00074, QH*, QHZ—Naval Special Warfare Command, NAVPHIBASE Coronado, San Diego, CA 92155

N00101, 3R—Naval Air Station, South Weymouth, MA 02190

N00102, EN—Portsmouth Naval Shipyard, Portsmouth, NH 03801

N00104, EP, EQ—Navy Ships Parts Control Center, Mechanicsburg, PA 17055

N00105, JT—Naval Medical Clinic, NAVSHIPYD, Portsmouth, NH 03801

N00109, F1—Naval Weapons Station, Yorktown, VA 23491

N00123, ES—Commanding Officer, Naval Regional Contracting Center, 937 N. Harbor Drive, San Diego, CA 92132–5106

N00124, M5—Naval War College, Newport, RI 02840

N00127, H1—Naval Air Station, Quonset Point, RI 02819

N00128, EU—Supply Department, Naval Administrative Command, Naval Training Station, Great Lakes, IL 60088

N00129, EV—Submarine Base, New London, Groton, CT 06340

N00140, EX, LA—Commanding Officer, Naval Regional Contracting Center, Naval Base Bldg. No. 600, Philadelphia, PA 19112

N00146, QK—Marine Corps Air Station, Cherry Point, NC 28533

N00151, EY—Philadelphia Naval Shipyard, Philadelphia, PA 19112

N00153, N0—Governor, Naval Home, 01800 East Beach Blvd., Gulfport, MS 39501

N00158, 3V—Naval Air Station, Willow Grove, PA 19090

N00161, FA—Naval Academy, Annapolis, MD 21402

N00162 (MAJ00018), MDG–H—Naval Medical Clinic, Annapolis, MD 21402–5050

N00163, FB—Naval Avionics Center, 21st and Arlington Avenue, Indianapolis, IN 46218

N00164, FC—Naval Weapons Support Center, Crane, IN 47522

N00166 (MAJ00072), LC0–1—Naval Air Facility, Bldg. 3086, Andrews AFB, Washington, DC 20396–5130

N00167, FD—David W. Taylor Naval Ship, Research & Development Center, Carderock Laboratory, Bethesda, MD 20084–5000

N00168, FE—Naval Medical Command, National Capital Region, Bethesda, MD 20014

N0017A—Atlantic Fleet Weapons Training Facility (Code 51) (Roosevelt Roads, PR), Naval Station, Box 3023, FPO Miami 34051

N00171, N5—HQ, Naval District Washington, Washington Navy Yard, Washington, DC 20374

N00173, FF—Naval Research Laboratory, Washington, DC 20390

N00174, FG—Naval Ordnance Station, Indian Head, MD 20640

N00181, FJ—Norfolk Naval Shipyard, Portsmouth, VA 23709

N00183, JX—Commanding Officer, Naval Hospital, Portsmouth, Norfolk, VA 23708–5100

N00187, 3J—Navy Public Works Center, Norfolk, VA 23511

N00188, H2—Naval Air Station, Norfolk, VA 23511

N00189, FK, H3—Naval Supply Center, Norfolk, VA 23512

N00191, FL—Charleston Naval Shipyard, Naval Base, Charleston, SC 29408

N00193 (MAJ00024), EHD–G—Commanding Officer (Code 11), Naval Weapons Station, Charleston, SC 29408–7000

N00196, 3K—Commanding Officer (Code 60), Naval Air Station, Atlanta, Marietta, GA 30060

N00197, FM—Naval Ordnance Station, Louisville, KY 40214

N00203 (MAJ00018), MCL—Commanding Officer, Naval Hospital, Pensacola, FL 32512

N00204, FN—Naval Air Station (Code 19P10), Pensacola, FL 32508

N00205, FP—Naval Support Activity (Code N443), New Orleans, LA 70146

N00206—Naval Air Station, New Orleans, LA 70146

N00207, FQ—Naval Air Station, Jacksonville, FL 32212

N00211 (MAJ00018), MCQ–S—Naval Hospital, Great Lakes, IL 60088–5230

N00213, H4—Naval Air Station, Key West, FL 33040

N00215, 3W—Naval Air Station (Code 60), Dallas, TX 75211

N00216, FR—Commanding Officer (Code 194), Naval Air Station, Bldg. 10, Corpus Christi, TX 78419

N00221, K5—Mare Island Naval Shipyard, Vallejo, CA 94592

N00228, FU—Naval Supply Center, Oakland, CA 94625

N00231—Commanding Officer, Naval Medical Clinic, Quantico, VA 22134

N00232, (MAJ00018), MCC–E—Naval Hospital, Jacksonville, FL 32214–5222

N00236, NX—Naval Air Station, Alameda, CA 94501

N00244, NW—Naval Supply Center, Naval Base, 937 North Harbor Drive, San Diego, CA 92132

N00245, (MAJ00070), LPN—Naval Station, San Diego, CA 92136–5000

N00246, H5—Naval Air Station, North Island, San Diego, CA 92135

N00247, HC—Naval Training Center, San Diego, CA 92133

N00249—Commanding Officer, Civil Engineer Support Office, Naval Construction Battalion Center, Port Hueneme, CA 93043

N00250, FW—Commander, Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, NY 10305

N00251, FX—Puget Sound Naval Shipyard, Bremerton, WA 98314

N00253, FY—Commanding Officer, Naval Undersea Warfare EngineeringStation, Keyport, WA 98345

N00255, (MAJ00070), LPS–T, LPW–Y—Naval Station Puget Sound, Seattle, WA 98115–5000

N00262, (MAJ00027), MUT—Marine Corps Combat Development Command, Quantico, VA 22134–5001

N00267, (MAJ00018), MC0–1—Commanding Officer, Navy Medical Clinic, Key West, FL 33040

N00274, (MAJ00072), LCA–B—Naval Air Facility, Detroit, Selfridge Air Force Base, Supply Department, Mt. Clemens, MI 48045

N00275, 3M—Naval Air Station, Glenview, IL 60026

N00276—Naval Air Station, Twin Cities, Minneapolis, MN 55450

N00281, (MAJ00062), L90–1—Commanding Officer, Fleet Combat Training Center, Atlantic, Dam Neck, Virginia Beach, VA 23461

N00285, (MAJ00018), MDR—Commanding Officer, Naval Hospital, Corpus Christi TX 78419

N00288—Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120

N00296, NY—Naval Air Station, Moffett Field, CA 94035

N00311, GA—Pearl Harbor Naval Shipyard, Box 400, Pearl Harbor, HI 96860

N00314, M7—Submarine Base, Pearl Harbor, HI 96860

N00334, N6—Naval Air Station, Barbers Point, HI 96862

N00383, GB, GC—Navy Aviation Supply Office, 700 Robbins Avenue, Philadelphia, PA 19111

N00389, KL, MM—Contracting Officer (Code 192), U.S. Naval Station (Roosevelt Roads, PR), Box 3002, FPO Miami 34051

N00406, GE—Naval Supply Center, Puget Sound, Bremerton, WA 98314

N00421, M8—Naval Air Test Center, Patuxent River, MD 20670

N00600, GG—Naval Regional Contracting Center, Washington Navy Yard, Washington, DC 20374

N00604, NQ—Naval Supply Center, Pearl Harbor, Pearl Harbor, HI 96860

N00612, GH—Commanding Officer, Naval Supply Center, RCD, Code 200M, Charleston, SC 29408

N00619, (MAJ00018), QA0–0—Naval Hospital, Oakland, CA 94627–5000

N00620, H6—Naval Air Station, Whidbey Island, Oak Harbor, WA 98277

N00639, H7—Commanding Officer, Naval Air Station, Memphis (84), Millington, TN 38054

N00651, H8—Naval Supply Depot, Subic Bay (Philippines), Box 33, FPO San Francisco, CA 96651

N00702, (MAJ00069), 8QM–N—Naval Security Group Activity, Winter Harbor, ME 04693

N00743, 8N—Commanding Officer, Naval Communication Station (Roosevelt Roads, PR), Box 3022, FPO Miami 34051

N00788, (MAJ00063), NTR–S—Commanding Officer, Naval Communication Unit, Washington, (Cheltenham, MD), Washington, DC 20390

N00849, (MAJ00069), 8QC—Naval Security Group Activity, Skaggs Island, Sonoma, CA 95476–5000

N00886, QB—Naval Communication Station, San Francisco, Rough and Ready Island, Stockton, CA 95203

N00927, (MAJ00063), NTA—U.S. Naval Communication Station (San Miguel), FPO San Francisco, CA 96656–1803

N00950, 8R—Naval Communication Area, Master Station, EASTPAC, Wahiawa, HI 96786

N0417A, (MAJ00025), EJA—Naval Support Facility, P.O. Box 1000, Thurmont, MD 21788

N0428A, 3Q—Naval Air Station, Patuxent River, MD 20670

N0429A, 3A—Naval Air Station, Point Mugu, CA 93042

N0434A, (N62980) MQL—United States Navy Band, Washington Navy Yard, Washington, DC 20374–1052

N0463A, (MAJ00024), EHC—Commanding Officer, Navy Experimental Diving Unit, NAVCOASTSYSCEN, Bldg 321, Panama City, FL 32401

V04697, (MAJ00060), LHA—USS Simon Lake, FPO Miami, FL 34085–2590

N0488A, HS—Navy Manpower Engineering Center Detachment, San Diego, CA 92147

N0597A, (MAJ31699), HXP–W—Director, Office of Civilian Personnel Management, ,Southeast Region, Bldg. A–67, Naval Base, Norfolk, VA 23511–6098

N0598A, (MAJ31699), HXN—Director, Office of Civilian Personnel Management, Pacific Division, Box 119 Pearl Harbor, HI 96860–5060

N0604A, (MAJ31699), HXJ–L—Director, Office of Civilian Personnel Management, Northwest Region, 2890 North Main Street, Suite 301; Walnut Creek, CA 94596–2739

N0605A, (MAJ31699), HXG–H—Director, Office of Civilian Personnel Management, Northeast Region, Bldg. 75–3 Naval Base, Philadelphia, PA 19112–5006

N0618A, (MAJ00062), 8AE—School of Music, Naval Amphibious Base, Little Creek, Norfolk, VA 23521–5240

N0619A, 8E—Naval Health Sciences Education & Training Command, NAVMEDCOM NATCAPREG, Bethesda, MD 20814

N08939—Navy Section, US Military Group (Caracas, Venezuela), Department of State, Washington, DC 20521

N09534—Navy Section, US Military Group (Lima, Peru), APO Miami, 34031

N09550, 4G—Commander Fleet Air Mediterranean (Naples, Italy), FPO New York, NY 09521

N30492, (MAJ00039), NSC—David W. Taylor, Naval Ship Research and Development Center, Detachment Puget Sound, Bremerton, WA 98324–5215

N30776, 4N—Naval Air Station, Kingsville Auxiliary Landing Field Detachment, Orange Grove, TX 77630

N30779, 3Z—Naval Auxiliary Landing Field, Goliad, TX 77963

N30829, (MAJ00061), NL0–2—Officer in Charge, Naval Support Activity, Naples Detachment (Gaeta, Italy), FPO New York 09522

N30929—Commanding Officer, Navy Flight Demonstration Squadron (Blue Angels), Naval Air Station, (Attn: Supply Officer), Pensacola, FL 32508

N31149, (MAJ00024), EHA–B—Naval Sea Logistics Center, Det Philadelphia Naval Base, Philadelphia, PA

N31699, V8*, HX*, V8Z—Office of Under Secretary of the Navy, Washington, DC 20350–1000

N31701, (MAJ31699), V80–1—Assistant Secretary of the Navy, (Shipbuilding & Logistics), Washington, DC 20360–5000

N31863—Director, Naval Audit Service, Capital Region, P.O. Box 1206, Falls Church, VA 22041

N31954, (MAJ00062), R0X—Submarine Training Facility, San Diego, CA 92106

N32525, 8S—U.S. Naval Communication Detachment, Naples Detachment, (Sigonella, Italy), FPO New York 09523

N32778, (MAJ00070), 4LE—Fleet Activities, Chinhae (Korea), FPO San Francisco 96769–1100

N32832, 7K—Naval Aviation Logistics Center, European Repair and Rework, Activity Representative, (Alverca, Portugal), APO New York, NY 09285

N32960, K2—Navy Support Office, La Maddelena, (Sardinia Italy) FPO New York 09533

N33137, (MAJ00015), L0A–C—Naval Intelligence Operations Group, DET CTG 168.4, (Munich, Germany), APO New York 09108

N35316, (MAJ00060), J0G—Patrol Combatant Mission, Squadron Two, Mobile Logistics Support Group, Trumbo Point Annex, NAS Key West, FL 33040

N35949, (MAJ00018), J5S—Naval Hospital, Twentynine Palms, CA 92278–5008

N39167—Commanding Officer, Naval Branch Medical Clinic, Naval Air Station, Meridian, MS 39309

N39353, GV—Commanding Officer, Integrated Combat Systems Test Facility, San Diego, CA 92152

N41756, LE—Navy Engineering Logistics Office, Washington, DC 20000

N42237, 7A—Commanding Officer, Naval Submarine Base, Code N411, Kings Bay, GA 31547

N44405, (MAJ00062), 8AA—Antilles Consolidated School System, Box 3200 (Roosevelt Roads, PR), FPO Miami 34051

N44416, (MAJ00023), 4JL—Navy Publishing and Printing Service, Northern Area, 700 Robbins Avenue, Philadelphia, PA 19111–5093

N44930, KN—Intra-Fleet Supply Support Operations Program, Norfolk, VA 23512

N44967, KP—Naval Sea Systems Command Detachment, (PERA CSS), San Francisco, CA 94124–2995

N45045, (MAJ31699), V8A—Navy Comptroller Standard Systems Activity Det., Raleigh Oaks Plaza Office Bldg., 3606 Austin Peay Highway, Memphis, TN 38128–3757

N45406, LD—Officer in Charge, Naval Sea Systems Command Detachment, (PERA CV), Bremerton, WA 98310–0206

N45411, (MAJ00070), LPE—Assault Craft #5, MCB Camp Pendleton, CA 92055–5003

N45854, (MAJ00011), LBE—Fleet Surveillance Support Command, Chesapeake,Chesapeake, VA 23322–5010

N46079—Military Sealift Command Office, Northern Europe, (Bremerhaven, Germany), APO New York 09069–0006

N46450, (MAJ00023), L50–0—Naval Supply Center, Charleston Detachment, Naval Submarine Base, Kings Bay, GA 31547

N46531, (MAJ31699), HX0–E—Office of Civilian Personnel Management, National Capital Region, 801 N. Randolph Street, Arlington, VA 22203

N46656, NP—Telecommunication Management Detachment West, 937 North Harbor Drive, San Diego, CA 92132–5104

N46657, (MAJ00063), NT0–NT1—Telecommunication Management Detachment Pacific, Wahiawa, HI 96786–3050

N46658, LQ—Telephone Management Detachment East, Wards Corner Executive Center, Suite 222, 138 E. Little Creek Road, Norfolk, VA 23505

N46659, KJ—Telephone Management Detachment Europe, (Naples, Italy), FPO New York 09524

N46904, (MAJ00060), J00–1—Commanding Officer, Precommissioned Unit, Antisubmarine Warfare Training Group Atlantic, Bldg. CEP 104, Naval Station, Norfolk, VA 23511–6495

N47408, (MAJ00025), EJP–W—Naval Construction Battalion Center, Naval Facilities Engineering Command Contracts Office, Port Hueneme, CA 93043–5000

N47427, (MAJ00070), V5G—Naval Air Pacific Repair Activity Detachment, New Zealand, c/o U.S. Naval Support Force Antarctic Det., FPO San Francisco 96690–2900

N47875, (MAJ00019), GUP–S—Naval Technical Representative Detachment Bethpage, Grumman Aerospace Corporation, Bethpage, NY 11714–3593

N47876, (MAJ00019), GUJ–L—Naval Technical Representative Detachment Burbank, Lockheed Aeronautical Systems Company, P.O. Box 551, Burbank, CA 91503

N47877, GD—Naval Technical Representative Detachment St. Louis, McDonnell Douglas Corporation, P.O. Box 516, St. Louis, MO 63166–0516

N47878, (MAJ00019), GUV—Naval Technical Representative Detachment Lynn, General Electric Company, Aircraft Engine Business Group, 1000 Western Avenue, Lynn, MA 01910–0445

N47879, (MAJ00019), GU0–B—Naval Technical Representative Detachment Stratford, United Technologies Corporation, Sikorsky Aircraft Division, Stratford, CT 06497

N48521, (MAJ00019), GUX—Naval Technical Representative Detachment Bell, Bell Helicopter Textron, P.O. Box 482, Bldg. 2, Fort Worth, TX 76101

N48758, (MAJ00070), V5R—Naval Air Pacific Repair Activity, Plant Rep. Office, Box 30, FPO Seattle 98767–2710

N52846, (MAJ00019), EFA–B—Naval Aviation Depot Operations Center Detachment, European Repair and Rework Activity (NERRA), (Naples, Italy), Box 50, FPO New York 09520–5000

N52855, LZ—Special Boat Unit 11, FPO San Francisco 96601–4517

N53210, (MAJ00060), LHJ–K—Assault Craft Unit 2, Naval Amphibious Base, Little Creek, Norfolk, VA 23520

N53825, GY—Naval Surface Force, US LANTFLT, Norfolk, VA 23511–6002

, (Attn: Supply Officer),
508
, EHA-B—Naval Sea
Det Philadelphia Naval
e, PA
V8Z—Office of Under
Navy, Washington, DC

, V80-1—Assistant
Navy, (Shipbuilding &
ngton, DC 20360-5000
Naval Audit Service,
.O. Box 1206, Falls

, R0X—Submarine
San Diego, CA 92106
aval Communication
les Detachment,
FPO New York 09523
, 4LE—Fleet Activities,
FPO San Francisco

Aviation Logistics Center,
and Rework, Activity
Alverca, Portugal), APO
285
Support Office, La
inia Italy) FPO New York

, L0A-C—Naval
ations Group, DET CTG
ermany), APO New York

, J0G—Patrol Combatant
n Two, Mobile Logistics
rumbo Point Annex, NAS
40
, J5S—Naval Hospital,
s, CA 92278-5008
ng Officer, Naval Branch
aval Air Station,

anding Officer,
t Systems Test Facility,
152
Engineering Logistics
n, DC 20000
anding Officer, Naval
Code N411, Kings Bay,

8AA—Antilles
ool System, Box 3200
PR), FPO Miami 34051
4JL—Navy Publishing
ce, Northern Area, 700
Philadelphia, PA 19111-

Fleet Supply Support
m, Norfolk, VA 23512
Sea Systems Command
A CSS), San Francisco,

V8A—Navy Comptroller
Activity Det., Raleigh
Bldg., 3606 Austin Peay
s, TN 38128-3757
in Charge, Naval Sea
d Detachment, (PERA
VA 98310-0206
LPE—Assault Craft #5,
ton, CA 92055-5003
LBE—Fleet Surveillance
,
peake, VA 23322-5010
alift Command Office,
Bremerhaven, Germany),
069-0006

N46450, (MAJ00023), L50-0—Naval Supply Center, Charleston Detachment, Naval Submarine Base, Kings Bay, GA 31547

N46531, (MAJ31699), HX0-E—Office of Civilian Personnel Management, National Capital Region, 801 N. Randolph Street, Arlington, VA 22203

N46656, NP—Telecommunication Management Detachment West, 937 North Harbor Drive, San Diego, CA 92132-5104

N46657, (MAJ00063), NT0-NT1—Telecommunication Management Detachment Pacific, Wahiawa, HI 96786-8050

N46658, LQ—Telephone Management Detachment East, Wards Corner Executive Center, Suite 222, 138 E. Little Creek Road, Norfolk, VA 23505

N46659, KJ—Telephone Management Detachment Europe, (Naples, Italy), FPO New York 09524

N46904, (MAJ00060), J00-1—Commanding Officer, Precommissioned Unit, Antisubmarine Warfare Training Group Atlantic, Bldg. CEP 104, Naval Station, Norfolk, VA 23511-6495

N47408, (MAJ00025), EJP-W—Naval Construction Battalion Center, Naval Facilities Engineering Command Contracts Office, Port Hueneme, CA 93043-5000

N47427, (MAJ00070), V5G—Naval Air Pacific Repair Activity Detachment, New Zealand, c/o U.S. Naval Support Force Antarctic Det., FPO San Francisco 96690-2900

N47875, (MAJ00019), GUP-S—Naval Technical Representative Detachment Bethpage, Grumman Aerospace Corporation, Bethpage, NY 11714-3593

N47876, (MAJ00019), GUJ-L—Naval Technical Representative Detachment Burbank, Lockheed Aeronautical Systems Company, P.O. Box 551, Burbank, CA 91503

N47877, GD—Naval Technical Representative Detachment St. Louis, McDonnell Douglas Corporation, P.O. Box 516, St. Louis, MO 63166-0516

N47878, (MAJ00019), GUV—Naval Technical Representative Detachment Lynn, General Electric Company, Aircraft Engine Business Group, 1000 Western Avenue, Lynn, MA 01910-0445

N47879, (MAJ00019), GU0-B—Naval Technical Representative Detachment Stratford, United Technologies Corporation, Sikorsky Aircraft Division, Stratford, CT 06497

N48521, (MAJ00019), GUX—Naval Technical Representative Detachment Bell, Bell Helicopter Textron, P.O. Box 482, Bldg. 2, Fort Worth, TX 76101

N48758, (MAJ00070), V5R—Naval Air Pacific Repair Activity, Plant Rep. Office, Box 39, FPO Seattle 98767-2710

N52846, (MAJ00019), EFA-B—Naval Aviation Depot Operations Center Detachment, European Repair and Rework Activity (NERRA), (Naples, Italy), Box 50, FPO New York 09520-5000

N52855, LZ—Special Boat Unit 11, FPO San Francisco 96601-4517

N53210, (MAJ00060), LHJ-K—Assault Craft Unit 2, Naval Amphibious Base, Little Creek, Norfolk, VA 23520

N53825, GY—Naval Surface Force, US LANTFLT, Norfolk, VA 23511-6002

N53999, (MAJ00060), J0Q-R—Seal Team Six, Naval Amphibious Company, Norfolk, VA 23521

N55131, (MAJ00060), J0A-B—Cargo Handling and Port Group, Williamsburg, VA 23187-5702

N55322, (MAJ00060), LHN—Explosive Ordnance Disposal Group Two, Fort Story, VA 23459-5024

N55418, (MAJ00070), V50—Naval Support Force, Antarctica, Detachment Christchurch, (Christchurch, New Zealand), FPO San Francisco 96690

N57007, V0—Commander, Middle East Force, (Jufair, Bahrain), FPO New York 09501-6008

N57012, GQ—Commander Naval Air Force, U.S. Atlantic Fleet, Naval Air Station, Norfolk, VA 23511

N57016, (MAJ00060), J0N—Commander Submarine Force, U.S. Atlantic Fleet, Norfolk, VA 23511-6296

N57023, GT—Commander, Operational Test and Evaluation Force, Naval Base, Norfolk, VA 23511

N57032, (MAJ00061), NLF-H—Naval Air Facility, (Mildenhall, UK), FPO New York 09127-5000

N57049, (MAJ00060), J0E-F, V-X—Naval Support Facility (Antiqua, West Indies), FPO Miami 34054

N57053, (MAJ00070), LPQ—Naval Facility, Centreville Beach, Ferndale, CA 95536-9760

N57070, (MAJ00060), LH7—Oceanographic System Atlantic, Norfolk, VA 23511-6687

N57075, (MAJ00060), LH9—Commanding Officer, Naval Facility Argentia (Canada), FPO New York 09597-1051

N57095, (MAJ00060), LH0-1—Atlantic Fleet Headquarters Support Activity, CINLANTFLEET, Norfolk, VA 23511

N57100, (MAJ00070), LP0-1—Naval Special Warfare Group One, NAVPHIBASE Coronado, San Diego, CA 92155

N60002, (MAJ00018), QAD—Commanding Officer, Naval Hospital, Millington, TN 38054

N60028, QC—Naval Station, Treasure Island, San Francisco, CA 94130

N60036, QD—Naval Weapons Station, Concord, CA 94520

N60042, (MAJ00070), LPU—Naval Air Facility, El Centro, CA 92243

N60050, HD—Marine Corps Air Station, El Toro, Santa Ana, CA 92709

N60087, 3P—Naval Air Station, Brunswick, ME 04011

N60169, W0—Commanding Officer, Marine Corps Air Station, Beaufort, SC 29904

N60191, 4A—Naval Air Station, Oceana, Virginia Beach, VA 23460

N60200, 3G—Commanding Officer, Naval Air Station, Cecil Field, FL 32215

N60201, L7—Commanding Officer, Naval Station, P.O. Box M, Mayport, FL 32228

N60211, 3D—Naval Auxiliary Landing Field, Crows Landing, CA 95313

N60234, 4R—Naval Air Station, Whiting Field, OLF Saufley Field, Pensacola, FL 32508

N60241, 3X—Commanding Officer, Naval Air Station, Bldg. 2701, Kingsville, TX 78363

N60258, GK—Long Beach Naval Shipyard, Long Beach, CA 90801

N60259, H9—Naval Air Station, Miramar, San Diego, CA 92145-5000

N60268, (MAJ62980), MQ0-1—Navy Recruiting District Chicago, Glenview, IL 60026-5200

N60376, 3Y—Commanding Officer, Naval Air Station, Chase Field, Beeville, TX 78103

N60462, WE—Naval Air Station, Adak (Alaska), FPO Seattle, WA 98791-1200

N60478, 3C—U.S. Naval Weapons Station, Earle, Colts Neck, NJ 07722

N60495, 3T—Naval Air Station, Fallon, NV 89406

N60508, 4Q—Commanding Officer, Naval Air Station, Whiting Field, Milton, FL 32570

N60514, GL—Commanding Officer, Naval Station (Guantanamo Bay, Cuba), Box 33 FPO New York 09593

N60530, GM—Naval Weapons Center, China Lake, CA 93555

N60656, GN—Navy Resale Activity, Naval Station, Annapolis, MD 21402

N60663, GR—Officer in Charge, Navy Resale Activity, Commissary Support Office, Naval Base, Bldg 2600, Great Lakes, IL 60088

N60666, GS—Navy Resale Activity, Naval Air Station, Key West, FL 33040

N60676, GX—Navy Resale and Services Support Office, Field Support Office Commissary Div., Naval Air Station, Mechanicsburg, PA 17055

N60681, HA—Commissary Store Division, NAVRESSOFSO, Naval Station, San Diego, CA 92136

N60693, HB—Navy Resale Activity, Commissary Support Office, Naval Base Pearl Harbor, Box 110, Pearl Harbor, HI 96860

N60701, 4M—Naval Weapons Station, Seal Beach, CA 90740

N60865, (MAJ00070), V5X—Naval Forces, Marianas, (Guam), FPO San Francisco 96630

N60872, (MAJ0070), V5T—Naval Magazine (Guam), FPO San Francisco 96630-1300

N60895, HF—Commissary Store Division, NAVRESSOFSO, Naval Air Station, Alameda, CA 94501

N60921, HG, FH—Commander, Naval Surface Weapons Center, Headquarters, Dahlgren, VA 22448

N60935, HH—Commissary Store Div, NAVRESSOFSO, Naval Air Station, Jacksonville, FL 32212

N60936, HJ—Navy Resale Activity Commissary Region Support Office, Naval Air Station, Pensacola, FL 32508

N60937, HK—Navy Resale Activity Det Commissary Store, Naval Support Activity, New Orleans, LA 70140

N60938, HL—Navy Resale Activity, Commissary Support Office, Naval Air Station, Corpus Christi, TX 78419

N60939, HM—Navy Resale Activity Commissary Store, Naval Air Station, Memphis 32, Millington, TN 38054

N60951, (MAJ00060), LHU—Fleet Accounting and Disbursing Center, U.S. Atlantic Fleet, Norfolk, VA 23511-6096

N60956, (MAJ31699), V8J-N—Navy Regional Finance Center, Great Lakes, IL 60088-5797

N61115, HN—Navy Resale Activity, Submarine Base, New London, Groton, CT 06340

N61119, HP—Naval Supply Depot, Guam, FPO San Francisco, CA 96630

N61165, NN—Supply Officer, Bldg NS46, Naval Station, Charleston, SC 29408-5000

N61174, 7B—Naval Station, New York, Brooklyn, NY 11251

N61189, (MAJ00060), J0T—Naval Station, Philadelphia, PA 19112

N61217, HQ—Navy Resale Activity, Naval Air Station, Bermuda, FPO New York 09560

N61331, HR—Commanding Officer, Naval Coastal Systems Center, Panama City, FL 32407

N61337, H0—Commanding Officer, Naval Hospital, Beaufort, SC 29904

N61339, HT—Commanding Officer, Naval Training Systems Center (N-001), 12350 Research Parkway, Orlando, FL 32826-3275

N61414, 4B—Naval Amphibious Base, Little Creek, Norfolk, VA 23521

N61463, (MAJ00060), LHC—Naval Base, Norfolk, VA 23511-6002

N61466—Commander, Naval Base, Bldg NH48, Charleston, SC 29408

N61510, HU—Navy Resale Activity, Naval Station, Guam, Box 179, FPO San Francisco, CA 96630

N61533, HW—David W. Taylor, Naval Ship Research, and Development Laboratory, Annapolis, MD 21402

N61564, FS—Naval Hospital, NAVBASE (Guantanamo Bay, Cuba), FPO New York 09593

N61577, (MAJ00070), V5P—Naval Air Station, Agana (Guam), Box 60, FPO San Francisco 96630-1200

N61581, (MAJ00070), 4LT—Fleet Activities, (Yokosuka, Japan), FPO Seattle 98762-1100

N61685, (MAJ00065), S0A—Naval Oceanography Command Center (Guam), Box 12, FPO San Francisco 96630-2926

N61726, QL—Naval Hospital, Naval Submarine Base New London, Groton, CT 06340

N61751, (MAJ00018), MCN—Naval Medical Research Unit No. 3, Cairo (Egypt), FPO New York 09527-1600

N61755, (MAJ00070), V5E—Naval Station (Guam) FPO San Francisco 96630-1000

N61762, HY—Naval Ordnance Missile Test Facility, White Sands Missile Range, NM 88002

N62021, 7V—Naval Amphibious Base, Coronado, 7V San Diego, CA 92155

N62161, HZ—Navy Resale Activity Det, Rough and Ready Island, Stockton, CA 95203

N62190—Commanding Officer, Naval Research Laboratory, Underwater Sound Reference Detachment, P.O. Box 8337, Orlando, FL 32856

N62191, (MAJ00062), L97—Commanding Officer, Naval Reserve Officers Training Corps, and Naval Administrative Unit, Room 20E-125, Massachusetts Institute of Technology, Cambridge, MA 02139

N62254, (MAJ00070), 4LX—Commander Fleet Activities, Okinawa, Naval Air Facility, Kadena (Ryukyu Islands Southern), Box SU/CR, FPO Seattle 98770-1100

N62269, JC—Commander, Naval Air Development, Center, Johnsville, Warminster, PA 18974

N62271, QE—Naval Postgraduate School, Monterey, CA 93940

N62285, (MAJ00065), S00-1—Naval Observatory, Washington, DC, 34th and Massachusetts Avenue, NW, Washington, DC 20390-5100

N62306, 7C—Commanding Officer (Code 4410), Naval Oceanographic Office National Space Technology Laboratory, Bay St. Louis, MS 39552

N62367, (MAJ00023), 4JC—Navy Clothing and Textile Research Facility, 21 Strathmore Road, Natick, MA 01760–2490

N62376, 4K—Commanding Officer, Naval Air Propulsion Center, P.O. Box 7176, Trenton, NJ 08628

N62381, JG—Military Sealift Command, Atlantic, Military Ocean Terminal, Building 42, Bayonne, NJ 07002

N62382—Military Sealift Command Office, Gulf Subarea, 4400 Dauphin Street, New Orleans, LA 70146

N62383, JH—Military Sealift Command, Pacific, Naval Supply Center, Oakland, CA 94625

N62387—Commander, Military Sealift Command (Code M10–3), 4228 Wisconsin Avenue, Washington, DC 20016

N62395, JK—Navy Public Works Center, Mariana Island Guam (U.S.), FPO San Francisco 96630–2937

N62401, 3F—Navy Publication and Printing Service Office, Defense Printing Service, The Pentagon, Washington, DC 20350–3000

N62404, JJ—Military Sealift Command, Far East, (Yokahama, Japan), FPO Seattle 98760

N62410, (MAJ62980), MQ6—Navy Recruiting District, P.O. Box 8667, Albuquerque, NM 87198–8667

N62412, (MAJ62980), MLR—Commanding Officer, Navy Recruiting District, Perry Hill Office Park, 3815 Interstate Court, Montgomery, AL 36109–5294

N62415, (MAJ62980), MLX—Commanding Officer, Navy Recruiting District, Strom Thurmond Federal Bldg., suite 771, 1835 Assembly Street, Columbia, SC 29201–2430

N62416, NV—Navy Recruiting District Columbus, Room 609 Federal Bldg., 200 North High Street, Columbus, OH 44142–2474

N62419—Commanding Officer, Navy Recruiting District, Melrose Bldg., 1121 Walker Street, Houston, TX 77002

N62421, (MAJ62980), MQM—Commanding Officer, Navy Recruiting District, 8925 North Meredian Street, Room 250 Indianapolis, IN 46260

N62422—Commanding Officer, Navy Recruiting District, 2974 Woodcock Drive, Jacksonville, FL 32207

N62423—Commanding Officer, Navy Recruiting District, 301 Center Street, Little Rock, AR 72201

N62425—Commanding Officer, Navy Recruiting District, 1808 West End Ave., Suite 1312, Nashville, TN 37203

N62427, (MAJ62980), MLP—Navy Recruiting District Omaha, Overland-Wolf Bldg, 6910 Pacific, Omaha, NE 68106

N62429, (MAJ62980), MLE—Navy Recruiting District Portland, 1220 SW Third Avenue, Suite 576, Portland, OR 97204

N62430—Commanding Officer, Navy Recruiting District, 1001 Navaho Drive, Raleigh, NC 27609

N62432, (MAJ62980), MQG—Navy Recruiting District, St. Louis, 1222 Spruce Street, St. Louis, MO 63103–2814

N62435, (MAJ62980), MQE—Navy Recruiting District Boston, 495 Summer Street, Boston, MA 02210–2103

N62437, (MAJ62980), MQ4—Commanding Officer, Navy Recruiting District, 918 So. Ervay Street, Dallas, TX 75201

N62438, (MAJ62980), MLQ—Navy Recruiting District Denver, Capital Life Center, 3rd Floor, 1600 Sherman Street, Denver, CO 80203–1668

N62440, (MAJ62980), MLT—Navy Recruiting District, 2420 Broadway, Kansas City, MO 64108

N62441, (MAJ62980), MLG—Navy Recruiting District Los Angeles, 5051 Rodeo Road, Los Angeles, CA 90016

N62442—Commanding Officer, Navy Recruiting District Atlanta, 612 Tinker Street, Suite C, Marietta, GA 30060

N62443 (MAJ62980), MLV—Navy Recruiting District, Federal Office Bldg., 2nd & Washington Avenues, S., Minneapolis, MN 55401

N62444—Commanding Officer (Code 602–2C), Navy Recruiting District, 4400 Dauphine Street, New Orleans, LA 70146

N62448 (MAJ62980), MLN—Navy Recruiting District San Francisco, 1500 Broadway, Room 210, Oakland, CA 94612–1430

N62449 (MAJ62980), MLC—Navy Recruiting District Seattle, Naval Station, Bldg 30, Seattle, WA 98115–5105

N62467, JM—Commanding Officer, Naval Facilities Engineering Command, Southern Division (SOUTHNAVFACENGCOM), 2155 Eagle Drive, P.O. Box 10068, Charleston, SC 29411–0068

N62470, N7—Naval Facilities Engineering Command, Atlantic Division, Norfolk, VA 23511

N62471, JN—Officer in Charge of Construction, Naval Facilities Engineering Command, Contracts, Mid-Pacific, Pearl Harbor, HI 96860

N62472, JP—Naval Facilities Engineering Command, Northern Division U.S. Naval Base, Philadelphia, PA 19112

N62474, JR—Naval Facilities Engineering Command, Western Division, San Bruno, CA 94066

N62477, JU—Naval Facilities Engineering Command, Chesapeake Division, Washington Navy Yard, Washington, DC 20374

N62481, N8—Naval Air Station, Bermuda, FPO New York 09560

N62507 (MAJ00070), 4LJ—Commanding Officer, Naval Air Facility, Atsugi, Japan, Box 3, FPO Seattle 98767–1200

N62522, JV—Military Sealift Command, Europe, (London, UK), Box 3, FPO New York 09510–3700

N62535, HE—Marine Corps Air Station (HELO), Tustin, CA 92710

N62537—Military Sealift Command, Mediterranean Sub-Area (Naples, Italy), Box 23, FPO New York 09521–0600

N62538, K1—Military Sealift Command Office, NSC, Bldg Y100A, Norfolk, VA 23512

N62539—Military Sealift Command Office, United Kingdom, (London, UK), Box 29, FPO New York 09510–3700

N62573, K8—Marine Corps Air Station, New River Plaza, Jacksonville, NC 28540

N62576, (MAJ00023), 4JG—Navy Publishing and Printing Service, 700 Robbins Avenue, Philadelphia, PA 19111–5094

N62578, J2—Naval Construction Battalion Center, Davisville, RI 02854

N62583, J3—Naval Construction Battalion Center, Port Heuneme, CA 93041

N62585, K3—Commander, Naval Activities, United Kingdom, (London, UK), FPO New York 09510

N62586 (MAJ00070), V5A–B—Naval Ship Repair Facility (Guam), FPO San Francisco 96630–1400

N62588, NR—Naval Support Activity, Naples (Italy), FPO New York 09521

N62593—Director, Navy Publications & Printing Service Det Office, Southeast Div., 4400 Dauphine St., Unit 601–3–B, New Orleans, LA 70146

N62603—Commanding Officer, Fleet & Mine Warfare Training Center, Naval Base, Bldg 647, Charleston, SC 29408

N62604, J4—Commanding Officer, Naval Construction Battalion Center, Gulfport, MS 39501

N62613 (MAJ00027), MUE—Commanding Officer, Marine Corps Air Station(Iwakuni, Japan), FPO Seattle 98764–5001

N62638 (MAJ00072), LCN—Naval Inshore Undersea Warfare, Group Two, NSC Cheatham Annex, Bldg. 111, Williamsburg, VA 23187–8792

N62645, EG—Naval Medical Materiel Support Command, Fort Detrick, Frederick, MD 21701–5015

N62649, JY—Naval Supply Depot, Yokosuka (Japan), FPO Seattle 98762

N62651—Director, Navy Publications & Printing Service Detachment Office, Southeast Division, Pensacola, FL 32508

N62653 (MAJ00023), 4JW–X—Director, Navy Publications & Printing Service Office, Southeast Division, Bldg. 1628, Naval Base, Charleston, SC 29408

N62654 (MAJ00019), EFE—Naval Weapons Evaluation Facility, Kirtland AFB, Albuquerque, NM 87117

N62661 (MAJ00062), L97—Naval Education Training Center, Newport, RI 02841–5000

N62665, JQ—Supervisor of Shipbuilding, Conversion, and Repair, USN, Barnes Building—6th Floor, 495 Summer Street, Boston, MA 02210

N62670, 8B—Supervisor of Shipbuilding, Conversion and Repair, USN, Drawer T, Mayport Naval Station, Jacksonville, FL 32228

N62673, 8P—Supervisor of Shipbuilding, Conversion and Repair, USN, Naval Base, Charleston, SC 29408

N62678, 8C—Supervisor of Shipbuilding, Conversion and Repair, USN, P.O. Box 215, Portsmouth, VA 23705

N62686, T0—Navy Publishing and Printing Service Office, Naval District Washington, Building 157–2, Washington Naval Yard, Washington, DC 20374–1572

N62688, GW—Naval Station, Naval Base, Norfolk, VA 23511–6002

N62695—Auditor General of the Navy, Naval Audit Services Headquarters, P.O. Box 1206, Falls Church, VA 22041

N62700 (MAJ00023), 4JJ—Navy Publications and Printing Service Detachment Office, Northern Division, Bldg 2A, Great Lakes, IL 60088–5706

N62703 (MAJ00023), 4JA—Navy Publications and Printing Service, Detachment Office, Bldg 530, Puget Sound Naval Shipyard, Bremerton, WA 98314

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cruiting District, 918 So.
las, TX 75201
), MLQ—Navy Recruiting
Capital Life Center, 3rd
nan Street, Denver, CO

), MLT—Navy Recruiting
adway, Kansas City, MO

), MLG—Navy Recruiting
les, 5051 Rodeo Road, Los
6
ing Officer, Navy
t Atlanta, 612 Tinker
arietta, GA 30060
MLV—Navy Recruiting
Office Bldg., 2nd &
ues, S., Minneapolis, MN

ing Officer (Code 602–2C),
District, 4400 Dauphine
ns, LA 70146
MLN—Navy Recruiting
cisco, 1500 Broadway,
nd, CA 94612–1430
MLC—Navy Recruiting
aval Station, Bldg 30,
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ring Command, Southern
NAVFACENGCOM), 2155
Box 10068, Charleston, SC

Facilities Engineering
ic Division, Norfolk, VA

in Charge of
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cts, Mid-Pacific, Pearl

Facilities Engineering
rn Division U.S. Naval
, PA 19112
Facilities Engineering
rn Division, San Bruno,

Facilities Engineering
peake Division,
Yard, Washington, DC

Air Station, Bermuda,
560
4LJ—Commanding
Facility, Atsugi, Japan,
e 98767–1200
y Sealift Command,
UK), Box 3, FPO New

e Corps Air Station
A 92710
ealift Command,
b-Area (Naples, Italy),
York 09521–0600
y Sealift Command
Y100A, Norfolk, VA

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London, UK), Box 29,
510–3700
Corps Air Station, New
onville, NC 28540
4JG—Navy Publishing
ce, 700 Robbins Avenue,
9111–5094
onstruction Battalion
RI 02854

N62583, J3—Naval Construction Battalion Center, Port Heuneme, CA 93041

N62585, K3—Commander, Naval Activities, United Kingdom, (London, UK), FPO New York 09510

N62586 (MAJ00070), V5A–B—Naval Ship Repair Facility (Guam), FPO San Francisco 96630–1400

N62588, NR—Naval Support Activity, Naples (Italy), FPO New York 09521

N62593—Director, Navy Publications & Printing Service Det Office, Southeast Div., 4400 Dauphine St., Unit 601–3–B, New Orleans, LA 70146

N62603—Commanding Officer, Fleet & Mine Warfare Training Center, Naval Base, Bldg 647, Charleston, SC 29408

N62604, J4—Commanding Officer, Naval Construction Battalion Center, Gulfport, MS 39501

N62613 (MAJ00027), MUE—Commanding Officer, Marine Corps Air Station(Iwakuni, Japan), FPO Seattle 98764–5001

N62638 (MAJ00072), LCN—Naval Inshore Undersea Warfare, Group Two, NSC Cheatham Annex, Bldg. 111, Williamsburg, VA 23187–8792

N62645, EG—Naval Medical Materiel Support Command, Fort Detrick, Frederick, MD 21701–5015

N62649, JY—Naval Supply Depot, Yokosuka (Japan), FPO Seattle 98762

N62651—Director, Navy Publications & Printing Service Detachment Office, Southeast Division, Pensacola, FL 32508

N62653 (MAJ00023), 4JW–X—Director, Navy Publications & Printing Service Office, Southeast Division, Bldg. 1628, Naval Base, Charleston, SC 29408

N62654 (MAJ00019), EFE—Naval Weapons Evaluation Facility, Kirtland AFB, Albuquerque, NM 87117

N62661 (MAJ00062), L97—Naval Education Training Center, Newport, RI 02841–5000

N62665, JQ—Supervisor of Shipbuilding, Conversion, and Repair, USN, Barnes Building—6th Floor, 495 Summer Street, Boston, MA 02210

N62670, 8B—Supervisor of Shipbuilding, Conversion and Repair, USN, Drawer T, Mayport Naval Station, Jacksonville, FL 32228

N62673, 8P—Supervisor of Shipbuilding, Conversion and Repair, USN, Naval Base, Charleston, SC 29408

N62678, 8C—Supervisor of Shipbuilding, Conversion and Repair, USN, P.O. Box 215, Portsmouth, VA 23705

N62686, T0—Navy Publishing and Printing Service Office, Naval District Washington, Building 157–2, Washington Naval Yard, Washington, DC 20374–1572

N62688, GW—Naval Station, Naval Base, Norfolk, VA 23511–6002

N62695—Auditor General of the Navy, Naval Audit Services Headquarters, P.O. Box 1206, Falls Church, VA 22041

N62700 (MAJ00023), 4JJ—Navy Publications and Printing Service Detachment Office, Northern Division, Bldg 2A, Great Lakes, IL 60088–5708

N62703 (MAJ00023), 4JA—Navy Publications and Printing Service, Detachment Office, Bldg 530, Puget Sound Naval Shipyard, Bremerton, WA 98314

N62705 (MAJ00023), 4JN—Navy Publications and Printing Service Detachment Office, Naval Supply Center, Oakland, CA 94625–5045

N62706, JS—Navy Publications and Printing Service Office, Western Division, Bldg. 154, San Diego, CA 92136–5148

N62707 (MAJ00023), 4JS–U—Navy Publishing & Printing Service Detachment Office, Western Area, Pearl Harbor, Box 126, Pearl Harbor, HI 96860–5120

N62735 (MAJ00070), 4LP—Commander, Fleet Activities, (Sasebo, Japan), FPO Seattle 98766–1100

N62741, MB—Commanding Officer, Navy Supply Corps School, Code 60, Athens, GA 30606

N62742, KB—Naval Facilities Engineering Command, Pacific Division, Pearl Harbor, HI 96860

N62745, (MAJ00025), FZC–E—Officer in Charge of Construction, Naval Facilities Engineering Command Contracts, Mediterranean (Madrid, Spain), APO New York 09285

N62755, J7—Commanding Officer, Navy Public Works Center, Pearl Harbor, HI 96860–5470

N62757, (MAJ00072), 9TW–X—Naval Reserve Center, 7410 West Roosevelt Road, Forest Park, IL 60130–2592

N62762, (MAJ00024), EHU–W—Navy Shipbuilding Liaison Office, Spain, Box 36, (Madrid, Spain), APO New York 09285

N62766, L1—Officer in Charge of Construction, Naval Facilities Engineering Command Contracts, (Guam), FPO San Francisco, CA 96630

N62770, (MAJ00070), LPJ–L—Naval Ship Repair Facility, (Subic Bay, Philippines), Box 34, FPO San Francisco 96651–1400

N62786, ER—Supervisor of Shipbuilding, Conversion and Repair, USN, 574 Washington Street, Bath, ME 04530–0998

N62789, L8—Supervisor of Shipbuilding, Conversion and Repair, USN, Groton, CT 06340

N62791, NU—Supervisor of Shipbuilding, Conversion and Repair, USN, Naval Station, Box 119, San Diego, CA 92136–5119

N62793, 4T—Supervisor of Shipbuilding, Conversion and Repair, USN, Newport News, VA 23607–2785

N62794, 7D—Supervisor of Shipbuilding, Conversion and Repair, USN, Flushing & Washington Avenues, Brooklyn, NY 11251–9000

N62795, 7F—Supervisor of Shipbuilding, Conversion and Repair, USN, Pascagoula, MS 39568–2210

N62798, 4X—Supervisor of Shipbuilding, Conversion and Repair, USN, San Francisco, CA 94124–2996

N62799, 7M—Supervisor of Shipbuilding, Conversion and Repair, USN, Seattle, WA 98115–5001

N62808, (MAJ00025), FZ0—Public Works Center, Subic Bay (Luzon, Republic of the Philippines), FPO San Francisco 96651–2900

N62816, (MAJ00023), L5A–C—Navy Publishing & Printing Services Det. Br. Office, Southeast Area (Naples, Italy), Box 108, FPO New York 09524–1400

N62832—Naval Activities, Rota, Spain, FPO New York 09540

N62836, L4—Officer in Charge of Construction, Naval Facilities Engineering Command Contracts, Far East, Yokosuka, Box 61, FPO Seattle, WA 98762

N62841, (MAJ00030), EKA—Commanding Officer, Naval Ordnance Test Unit, Cape Canaveral, FL 32920–1623

N62844, K0—Naval Imaging Command, Washington Navy Yard, Washington, DC 20350–2000

N62849, (MAJ00019), EFC—Naval Aviation Engineering Service Unit, Philadelphia, PA 19112–5088

N62852—Naval Electronic System Security Engineering Center, Naval Security Station, 3801 Nebraska Avenue, NW, Washington, DC 20390

N62856, (MAJ00060), LHW–X—Naval Air Facility (Lajes, Azores), APO New York 09406–5000

N62863, K4—Naval Station, Rota, Spain, FPO New York 09540

N62864, L2—Officer in Charge of Construction, Naval Facilities Engineering Command Contracts, Southwest Pacific (Manilla, Philippines), APO San Francisco, CA 96528

N62892, (MAJ00069), 8QA—Commanding Officer, Naval Security Group Activity, Site "B", Card Sound Road, Homestead, FL 33039–6428

R62894, (MAJ00070), 4LA—Commander, U.S. Naval Forces Korea, (Yongsan, South Korea), APO San Francisco, CA 96301–0023

N62907, KG—Naval Plant Representative Office, Applied Physics Laboratory, Johns Hopkins Road, Laurel, MD 20810

N62908, 8D—Naval Weapons Engineering Support Activity, Washington Navy Yard, Washington, DC 20374

N62911, (MAJ62980), MQC—Navy Recruiting Area One, Scotia, NY 12302–9462

N62913, (MAJ62980), MLL—Commander, Naval Recruiting Area Three, 451 College Street, P.O. Box 4887, Macon, GA 31208–4887

N62915, (MAJ 62980), MQJ—Navy Recruiting Area Five, Building 3, NTC, Great Lakes, IL 60088–5135

N62917, (MAJ62980), ML0–1—Commander, Navy Recruiting Area Seven, 1499 Regal Row, suite 501, Dallas, TX 75247

N62918, (MAJ62980), MLA—Navy Recruiting Area Eight, 7677 Oakport Street, suite 650, Oakland CA 94621–1929

N62922, 7W—Resident Officer in Charge of Construction, Pacific, Department of the Navy, P.O. Box 418, San Bruno, CA 94067

N62954, (MAJ62980), MQN—Navy Recruiting District Cleveland, 17535 Rosbough Boulevard, Middleburgh Heights, OH 44130

N62974, JB—Marine Corps Air Station, Yuma, AZ 85364

N62980, ML*, MQ*, MQR–Z—Naval Military Personnel Command, Washington, DC 20370

N62990, L3—Supervisor of Shipbuilding, Conversion and Repair, USN, P.O. Box 29, Sturgeon Bay, WI 54235

N62995, 4H—Naval Air Station, Sigonella (Italy), FPO New York 09523

N63005, (MAJ00011), LBL–N—Commanding Officer, Administrative Support Unit, Bahrain, FPO New York 09526

N63007, (MAJ00060), LHS—Nuclear Weapons Training Group, Atlantic, Norfolk, VA 23511

N63015, 7Y—Naval Education and Training Support Center, Pacific, Fleet Station PO Bldg, San Diego, CA 92132

N63026, (MAJ00027), MUJ—Marine Corps Air Station, (Futenma, Japan), FPO Seattle 98772–5001

N63028, U2—Polaris Missile Facility Atlantic, Charleston, SC 29408

N63032, KS—U.S. Naval Station, Keflavik (Iceland), FPO New York 09571

N63038, 8M—U.S. Naval Communication Unit, Cutler, East Machias, ME 04630

N63042, NZ—Naval Air Station, Lemoore, CA 93245

N63043, 3S—Commanding Officer, Naval Air Station, Meridian, MS 39301

N63051—Commanding Officer, Naval Investigative Service, Southeast Region, Naval Base, Bldg NH 53, Charleston, SC 29408

N63053—Commanding Officer, Naval Investigative Service Office, P.O. Box 6438, New Orleans, LA 70174

N63055, (MAJ00011), LBJ—Naval Investigative Service, Mid-Atlanta Region Norfolk, 293 Independence Blvd, Suite 525, Pembroke 5, Virginia Beach, VA 23462

N63058 (MAJ00011), LBC—Naval Investigative Service, Northwest Region, Bldg 7, NAVSTA Treasure Island, San Francisco, CA 94130

N63073, (MAJ00069), 8Q6–8—U.S. Naval Security Group Activity RAF, (Edzell UK), FPO New York 09518

N63080, KT—Navy Resale Activity, Chinhae (South Korea), FPO Seattle, WA 98769

N63082—Commanding Officer, Naval Technical Training Center, Corry Station (Code 4460), Pensacola, FL 32511

N63110—Commanding Officer, Chief of Naval Air Training (Code N–73), Naval Air Station, Corpus Christi, TX 78419

N63111—Commanding Officer, Chief of Naval Technical Training, Naval Air Station, Memphis, Millington, TN 38054

N63124 (MAJ00023) U00–9—Supervisor of Shipbuilding, Conversion and Repair, USN, New Orleans, LA 70146

N63134, 7R—Fleet Numerical Oceanography Center, Monterey, CA 93940

N63135 (MAJ00023) 4JD–E—Navy Publishing & Printing Service Management Office, Washington, DC 20374–1762

N63136—Navy Section, U.S. Military Group, Argentina (Buenos Aires), Department of State, Washington, DC 20521

N63143, 8K—Naval Communication Station (Keflavik, Iceland), Box 22, FPO New York 09571

N63152, GZ—Fleet Combat Direction Systems, Support Activity, San Diego, CA 92147–5001

N63165, 7U—Navy Regional Data Automation Center, Washington, Washington Navy Yard, Washington, DC 20374

N63182, 6T—Naval Communication Station, (Rota, Spain), FPO New York 09539

N63204, KV—Naval Plant Representative Office, Goodyear Aerospace Corp., Akron, OH 44305

N63209 (MAJ00062) L9A—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of New Mexico, Albuquerque, NM 87106

N63210 (MAJ00062) L9B—Commanding Officer, Naval Reserve Officers Training Corps Unit, Iowa State University of Science and Technology, Ames, IA 50011-3010

N63211 (MAJ00062) L9C—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Michigan, Ann Arbor, MI 48109-1085

N63212 (MAJ00062) L9G—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Texas at Austin, Austin, TX 78712

N63213 (MAJ00062) L9J—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of California, Berkeley, CA 94720-0001

N63214 (MAJ00062) L9M—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Colorado, Box 374, Boulder, CO 80309-0374

N63215 (MAJ00062) L9U—Commanding Officer, Naval Reserve Officers Training Corps Unit, Illinois Institute of Technology, 3300 S. Federal Street, Chicago, IL 60616-3793

N63216 (MAJ00062) L9W—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Missouri, Columbia, MO 65201

N63217 (MAJ00062) L9Z—Commanding Officer Naval Reserve Officers Training Corps Unit, Oregon State University, Corvallis, OR 97331

N63218 (MAJ00062) R0B—Commanding Officer, Naval Reserve Officers Training Corps Unit, Northwestern University, Evanston, IL 60201

N63219 (MAJ00062) R0E, L99—Commanding Officer, Naval Reserve Officers Training Corps Unit, Rice University, P.O. Box 1892, Houston, TX 77001

N63220 (MAJ00062) R0L—Commanding Officer, Naval Reserve Officers, Training Corps Unit, UCLA, Mens Gym Room 123, 405 Milgard Avenue, Los Angeles, CA 90024-1399

N63221 (MAJ00062) 8AB—Commanding Officer, Naval Reserve Officers Training Corps Unit, PED 101, University Park MC 0654, University of Southern California, Los Angeles, CA 90089-0654

N63222 (MAJ00062) R0H—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Kansas, Lawrence, KS 66044

N63223 (MAJ00062) R0K—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Nebraska, Lincoln, NE 68508

N63224 (MAJ00062) 8AD—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Wisconsin, 1610 University Avenue, Madison, WI 53705

N63225 (MAJ00062) 8AH—Commanding Officer, Naval Reserve Officers Training Corps Unit, Marquette University, Milwaukee, WI 53233

N63226 (MAJ00062) 8AJ—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Minnesota, Minneapolis, MN 55455-0108

N63227 (MAJ00062) 8AK—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Idaho, Moscow, ID 83843-3244

N63228 (MAJ00062) 8AM—Commanding Officer, Naval Reserve Officers Training Corps Unit, Tulane University, New Orleans, LA 70118

N63229 (MAJ00062) 8AN—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Oklahoma, Norman, Oklahoma 73019

N63230 (MAJ00062) 8AR—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Notre Dame Notre Dame, IN 46556-5601

N63231 (MAJ00062) 8AW—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Utah, Salt Lake City, UT 84112-1107

N63232 (MAJ00062) 8AY—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Washington, Seattle, WA 98195

N63234 (MAJ00062) L9Q—Commanding Officer, Naval Reserve Officers Training Corps Unit, 505 East Armory Street, University of Illinois, Champaign, IL 61820-5258

N63235 (MAJ00062) R05—Commanding Officer, Naval Reserve Officers Training Corps Unit, Purdue University, West Lafayette, IN 47907-0001

N63273, 4S—Fleet Combat Direction Systems Support Activity, Dam Neck, Virginia Beach, VA 23461

N63274, 4F, 4W—Naval Electronic Systems Engineering Center, Vallejo, CA 94592

N63285 (MAJ00011) LB0—Naval Security and Investigative Command, Washington, DC 20388

N63290 (MAJ00062) R00-1—Commanding Officer, Combat Systems Technical Schools Command, Mare Island, Vallejo, CA 94592

N63291 (MAJ00062) R0F—Commanding Officer, Naval Reserve Officers Training Corps Unit, Barton Hall, Cornell University, Ithaca, NY 14853

N63294 (MAJ00062) 8AV—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Rochester, Rochester, NY 14627

N63295 (MAJ00062) R0M—Commanding Officer,Naval Reserve Officers Training Corps unit, Rensselaer Polytechnic Institute, Troy, NY 12180-3590

N63296 (MAJ00062), L9F—Commanding Officer, Naval Reserve Officers Training Corps Unit, Auburn University, Auburn, AL 36830

N63299 (MAJ00062), R0A—Commanding Officer, Naval Reserve Officers Training Corps Unit, Duke University, Durham, NC 27706

N63301 (MAJ00062), L9D—Commanding Officer, Naval Reserve Officers Training Corps Unit, Georgia Tech, Atlanta, GA 30313

N63303 (MAJ00062), R0U—Commanding Officer, Naval Reserve Officers Training Corps Unit, College of the Holy Cross, Worcester, MA 01610-2389

N63306 (MAJ00062), 8AS—Commanding Officer, Naval Reserve Officers Training Corps Unit, Miami University, Oxford, OH 45056-1698

N63307 (MAJ00062), R0N—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Mississippi, Box 69, University, MS 38677

N63308 (MAJ00062), L9R—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of North Carolina, Chapel Hill, NC 27515

N63309 (MAJ00062), L9Y—Commanding Officer, Naval Reserve Officers Training Corps Unit, The Ohio State University, Columbus, OH 43210-1169

N63310 (MAJ00062), R0P—Commanding Officer, Naval Reserve Officers Training Corps Unit, Wagner Bldg., The Pennsylvania State University, University Park, PA 16802

N63311 (MAJ00062), 8AT—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Pennsylvania, Philadelphia, PA 19104

N63313 (MAJ00062), L9X—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of South Carolina, Columbia, SC 29208

N63315 (MAJ00062), 8AL—Commanding Officer, Naval Reserve Officers Training Corps Unit, Vanderbilt University (Westside Hall), Nashville, TN 37240

N63316 (MAJ00062), R0R—Commanding Officer, Naval Reserve Officers Training Corps Unit, Villanova University, Villanova, PA 19085-1699

N63317 (MAJ00062), L9T—Commanding Officer, Naval Reserve Officers Training Corps Unit, Maury Hall, University of Virginia, Charlottesville, VA 22903-3194

N63325, 7X—Naval Education & Training Support Center, Atlantic, Bldg. Z-86, Naval Station, Norfolk, VA 23511

N63339, LL—Navy Resale Activity, Naval Station, Adak (Alaska), FPO Seattle, WA 98791

N63340, LM—Navy Resale Activity, Naval Station, Argentia (Canada), FPO New York 09597

N63341, LN—Navy Resale Activity Det. Commissary Store, Naval Air Station, Chase Field, Beeville, TX 78102

N63344, LR—Navy Commissary Store Region, Naval Station, Charleston, SC 29408

N63345, LS—Navy Resale Activity, Naval Station, Guantanamo Bay (Cuba), FPO New York 09598

N63346, LT—Navy Resale Activity, Naval Station, Keflavik (Iceland), FPO New York 09571

N63348, LV—Navy Resale Activity Det Commissary Store, Naval Air Station, Kingsville, TX 78364

N63349, LW—Navy Resale Activity, Naval Air Station, Lemoore, CA 93246

N63350, 3L—Navy Resale Activity, COMNAVACT, Dunstable, UK, FPO New York 09510

N63351, LY—Navy Commissary Store Region, Naval Station, Long Beach, CA 90802

N63352, KE—Navy Resale Activity Det Commissary Store, Naval Air Station, Meridian, MS 39301

N63353, MA—Officer in Charge, Navy Resale Activity, Commissary Support Office, Naval Support Activity, Naples (Italy), FPO New York 09521

N63357, ME—Navy Resale Activity, Naval Station, Rota (Spain), FPO New York 09540

N63362, MK—Officer in Charge, Navy Resale Activity, Commissary Support Office

) 8AM—Commanding
eserve Officers Training
ane University, New
18
) 8AN—Commanding
eserve Officers Training
versity of Oklahoma,
oma 73019
) 8AR—Commanding
eserve Officers Training
versity of Notre Dame
46556–5601
) 8AW—Commanding
eserve Officers Training
versity of Utah, Salt Lake
107
) 8AY—Commanding
eserve Officers Training
versity of Washington,
95
) L9Q—Commanding
eserve Officers Training
East Armory Street,
nois, Champaign, IL 61820-

) R05—Commanding
eserve Officers Training
ue University, West
07–0001
Combat Direction Systems
, Dam Neck, Virginia

aval Electronic Systems
er, Vallejo, CA 94592
LB0—Naval Security and
nmand, Washington, DC

R00-1—Commanding
Systems Technical
d, Mare Island, Vallejo,

R0F—Commanding
eserve Officers Training
on Hall, Cornell University,

8AV—Commanding
eserve Officers Training
ersity of Rochester,
627
R0M—Commanding
serve Officers Training
selaer Polytechnic
Y 12180–3590
, L9F—Commanding
serve Officers Training
rn University, Auburn, AL

, R0A—Commanding
serve Officers Training
University, Durham, NC

L9D—Commanding
serve Officers Training
gia Tech, Atlanta, GA

R0U—Commanding
serve Officers Training
ge of the Holy Cross,
1610–2389
8AS—Commanding
serve Officers Training
i University, Oxford, OH

R0N—Commanding
serve Officers Training
rsity of Mississippi, Box
S 38677

N63308 (MAJ00062), L9R—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of North Carolina, Chapel Hill, NC 27515

N63309 (MAJ00062), L9Y—Commanding Officer, Naval Reserve Officers Training Corps Unit, The Ohio State University, Columbus, OH 43210–1169

N63310 (MAJ00062), R0P—Commanding Officer, Naval Reserve Officers Training Corps Unit, Wagner Bldg., The Pennsylvania State University, University Park, PA 16802

N63311 (MAJ00062), 8AT—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Pennsylvania, Philadelphia, PA 19104

N63313 (MAJ00062), L9X—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of South Carolina, Columbia, SC 29208

N63315 (MAJ00062), 8AL—Commanding Officer, Naval Reserve Officers Training Corps Unit, Vanderbilt University (Westside Hall), Nashville, TN 37240

N63316 (MAJ00062), R0R—Commanding Officer, Naval Reserve Officers Training Corps Unit, Villanova University, Villanova, PA 19085–1699

N63317 (MAJ00062), L9T—Commanding Officer, Naval Reserve Officers Training Corps Unit, Maury Hall, University of Virginia, Charlottesville, VA 22903–3194

N63325, 7X—Naval Education & Training Support Center, Atlantic, Bldg. Z–86, Naval Station, Norfolk, VA 23511

N63339, LL—Navy Resale Activity, Naval Station, Adak (Alaska), FPO Seattle, WA 98791

N63340, LM—Navy Resale Activity, Naval Station, Argentia (Canada), FPO New York 09597

N63341, LN—Navy Resale Activity Det. Commissary Store, Naval Air Station, Chase Field, Beeville, TX 78102

N63344, LR—Navy Commissary Store Region, Naval Station, Charleston, SC 29408

N63345, LS—Navy Resale Activity, Naval Station, Guantanamo Bay (Cuba), FPO New York 09598

N63346, LT—Navy Resale Activity, Naval Station, Keflavik (Iceland), FPO New York 09571

N63348, LV—Navy Resale Activity Det Commissary Store, Naval Air Station, Kingsville, TX 78364

N63349, LW—Navy Resale Activity, Naval Air Station, Lemoore, CA 93246

N63350, 3L—Navy Resale Activity, COMNAVACT, Dunstable, UK, FPO New York 09510

N63351, LY—Navy Commissary Store Region, Naval Station, Long Beach, CA 90802

N63352, KE—Navy Resale Activity Det Commissary Store, Naval Air Station, Meridian, MS 39301

N63353, MA—Officer in Charge, Navy Resale Activity, Commissary Support Office, Naval Support Activity, Naples (Italy), FPO New York 09521

N63357, ME—Navy Resale Activity, Naval Station, Rota (Spain), FPO New York 09540

N63362, MK—Officer in Charge, Navy Resale Activity, Commissary Support Office

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(Subic Bay, Philippines), P.O. Box 28, FPO San Francisco 96651

N63365, MN—Navy Resale Activity, Commissary Support Office (Yokosuka, Japan) Box 33, FPO Seattle 98762

N63367, MP—Officer in Charge, Commissary Div., Navy Resale and Services Support Office, Field Support Office, Norfolk, VA 23511

N63369—Military Sealift Command Office, Benelux (Rotterdam, Netherlands), APO New York 09159

N63381 (MAJ00011), LBA—Joint U.S. Military Advisory Group, Thailand, APO San Francisco 96346

N63387, JD—Navy Public Works Center, Naval Base, San Diego, CA 92136

N63394, L6—Naval Ship Weapon Systems Engineering Station, Port Hueneme, CA 93043

N63395, 8L—U.S. Naval Communication Station, Thurso (Caithness, UK), FPO New York 09516

N63402, K7—Commanding Officer, Strategic Weapons Facility, Pacific, Bremerton, WA 98383

N63406 (MAJ00070), V5C—Naval Submarine Base San Diego, 140 Sylvester Road, San Diego, CA 92106–3521

N63408, HV—Navy Material Transportation Office, Norfolk, VA 23511–6691

N63410, KA—Navy Manpower and Material Analysis Center, Atlantic, Norfolk, VA 23511

N63427, 8F—U.S. Naval Communication Station, Harold E. Holt, Exmouth, Western Australia, FPO San Francisco 96680

N63429, MH—Naval Communication Unit London (UK), FPO New York 10000

N63439, K9—Naval Ophthalmic Support and Training Activity, Yorktown, VA 23690

N63543 (MAJ00072), 9TC—Naval Reserve Center, 3070 Ross Lane, Central Point, OR 97502–1399

N63821 (MAJ00039), NSA–B—Officer in Charge, Naval Underwater Systems Center, AUTEC Andros Range Detachment, Andros Island, Bahama Islands, FPO New York 09559

N63886 (MAJ00069), 8Q0–1—Naval Security Group Activity (Adak, AK), FPO Seattle 98777

N63891 (MAJ00069), 8QC—Naval Security Group, Northwest, Chesapeake, VA 23322

N64165 (MAJ00062), R0Z—Naval Unit, Lowry Air Force Base, CO 80230

N64181 (MAJ00062), R0W—Department of Naval Science, Texas Maritime Academy, Galveston, TX 77553–1675

N64267, M9—Naval Weapons Station, Seal Beach Detachment, Fleet Analysis Center, Corona Annex, Corona, CA 91720

N64281, 3U, KX—Commanding Officer, Naval Sea Combat Systems Engineering Station, Naval Station, Norfolk, VA 23511

N64356, KF—Commanding Officer, Naval Administrative Command, Armed Forces Staff College, Norfolk, VA 23511–6097

N64960 (MAJ00061), NLA–C—Officer in Charge, Naval Weapons Facility, Detachment Machrihanish, UK, FPO New York 09515

N64981 (MAJ00061), NL5–7—Commanding Officer, Naval Weapons Facility (St. Mawgan UK), FPO New York 09511–0511

N65113, EZ—Navy Public Works Center, Bldg 1A, Great Lakes, IL 60088–5600

N65114 (MAJ00025), EJC—Commanding Officer, Navy Public Works Center, Naval Air Station, Pensacola, FL 32508–6500

N65115 (MAJ00025), FZA—Navy Public Works Center, Box 13 (Yokosuka, Japan), FPO Seattle 98762–3100

N65116, MZ—Officer in Charge, Navy-Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Washington Navy Yard, Washington, DC 20374–2001

N65146, 7E—Procurement Branch, OP–09B31, Office of the Chief of Naval Operations Support Activity, Washington, DC 20350

N65198, 3H—Naval Administrative Unit, 550 First Street, Idaho Falls, ID 83401

N65202—Supervisor of Shipbuilding, Conversion and Repair, USN, Box 400, Pearl Harbor, HI 96860

N65236, V7—Naval Electronic Systems Engineering Center, 4600 Goer Road, North Charleston, SC 29406

N65256 (MAJ31699), V8C—Navy Office of Information, East, 133 East 58th Street, 1st Floor, New York, NY 10022

N65428 (MAJ00018), MDP—Commanding Officer, Naval Hospital (Roosevelt Roads, PR), FPO Miami 34051–8100

N65440, 4V—Officer in Charge, Navy Resale Activity, Exmouth, Western Australia, FPO San Francisco 96680

N65491 (MAJ00018), J5P—Naval Hospital (Subic Bay, Philippines), FPO San Francisco 96652–1600

N65492 (MAJ00018), MCA—Commanding Officer, Naval Hospital, Fiscal & Supply Service, Code 32C, Orlando, FL 32813–5200

N65497, 4U—Commissary Store Division, NAVRESSO, Field Support Office, 2801 "C" Street, SW., Auburn, WA 98001

N65540 (MAJ00024), EHP–S—Naval Ship Systems Engineering Station, Philadelphia, PA 19112–5083

N65575 (MAJ00018), MCY—Naval Medical Clinic, Seattle, WA 98115

N65576—Navy Space Systems Activity, P.O. Box 92960, Worldway Postal Center, Los Angeles, CA 90009

N65580, M2—Naval Electronic Systems Engineering Center, P.O. Box 55, Portsmouth, VA 23705

N65584, EW, 3E, KU, 3B—Naval Electronic Systems Engineering Center, P.O. Box 80337—Building #4, Code 104, San Diego, CA 92138

N65849 (MAJ31699), HXY–Z—Office of Civilian Personnel Management, Southwest Region, San Diego, CA 92186

N65870, M4—Supervisor of Shipbuilding, Conversion and Repair, USN, Long Beach Naval Shipyard, Long Beach, CA 90822

N65886—Commanding Officer, Aviation Depot, Naval Air Station, Jacksonville, FL 32212

N65888, ED—Aviation Depot, North Island, San Diego, CA 92135

N65889—Commanding Officer, Aviation Depot, Naval Air Station, Code 56000, Pensacola, FL 32508

N65912, GP—Commanding Officer, Naval Sea Support Center, Atlantic, St. Juliens Creek Annex, Portsmouth, VA 23702

N65913, 7L—Naval Sea Support Center, Pacific, San Diego, CA 92138

N65918, FT—Shore Intermediate Maintenance Activity, Naval Station, San Diego, CA 92136–5000

N65926 (MAJ00039), NSA–B—Officer in Charge, Naval Underwater Systems Center Detachment, AUTEC, West Palm Beach Detachment, West Palm Beach, FL 33402

N65928, N3—Naval Training Systems Center, Orlando, FL 32813

N65980 (MAJ00039), NSL–NSN—Naval Electronic Systems Engineering Activity, St. Inigoes, MD 20684

N65995, KM—Officer in Charge, Naval Support Activity (Holy Loch, UK), FPO New York 09514

N66001, 7N—Naval Ocean Systems Center, San Diego, CA 92152

N66021, 7G—Commander Fleet Air, Western Pacific (Atsugi, Japan), FPO Seattle, WA 98767

N66022 (MAJ00018), MDW—Naval Dental Clinic, San Diego, CA

N66032, LK—Navy Automatic Data Processing Selection Office, Building 218, Washington Navy Yard, Washington, DC 20374

N66074 (MAJ00062), 8AU—Commanding Officer, Naval Reserve Officers Training Corps Unit, Prairie View A&M University, Prairie View, TX 77445

N66094 (MAJ00018), QAA–B—Naval Hospital, Cherry Point, NC 28533–5008

N66095 (MAJ00018), J5E—Naval Hospital, NAS, Lemoore, CA 93246

N66097 (MAJ00018), MDE—Naval Hospital, Oak Harbor, WA 98278–8800

N66125 (MAJ00070), V5J—Naval Facility (Guam), FPO San Francisco 96630–2903

N66231 (MAJ00072), 9TS—Naval Reserve Readiness Center, Bldg 2711, Naval Training Center, Great Lakes, IL 60088–5707

N66398 (MAJ62980), ML6–7—Navy Motion Picture Service, Flushing & Washington Avenues, Brooklyn, NY 11251–8400

N66458 (MAJ00065), S0C—Naval Oceanography Command, NAS, Brunswick, ME 04011–5000

N66604, N4—Naval Underwater Systems Center, Newport, RI 02840

N66612 (MAJ00062), L95—Commanding Officer, Naval Reserve Officers Training Corps Unit, The Citadel, Charleston, SC 29409–0770

N66630 (MAJ00072), LCS—Naval Air Reserve Point Mugu, Naval Air Station, Point Mugu, CA 93042–5018

N66691, 4P—Commanding Officer, Naval Support Activity, Souda Bay, Crete, Greece, FPO New York 09528

N66715, VJ—Commander, Navy Recruiting Command, Washington, DC 22203–1191

N66753 (MAJ00062), R0C—Commanding Officer, Naval Reserve Officers Training Corps Unit, Jacksonville University, Jacksonville, FL 32211

N66754 (MAJ00069), 8QX—Commanding Officer, Naval Security Group Activity (Sabana Seca, PR), FPO Miami 34053

N66809 (MAJ00062) R0V—Commanding Officer, Naval Reserve Officers Training Corps Unit, Savannah State College, Savannah, GA 31404

N66810 (MAJ00062) L9H—Commanding Officer, Naval Reserve Officers Training Corps Unit, Southern University and A&M College, Baton Rouge, LA 70813

N66833 (MAJ00060) LHL—Commanding Officer, U.S. Naval Station Panama

(Rodman, Canal Zone), FPO Miami 34061-1000

N66863 (MAJ00018) MCU-X—Commanding Officer, Naval Biodynamics Laboratory, 13800 Old Gentilly Road, Michout Assembly Facility, New Orleans, LA 70189

N66890, LJ—Naval Station, Mare Island, Supply and Fiscal Code 90, Bldg 851, Vallejo, CA 94592

N66898 (MAJ00018) QAF—Commanding Officer, Naval Medical Clinic, New Orleans, LA 70142

N66957—Director, Navy Publications and Printing Service Det Branch Southeast Division, Bldg. 2049, NTC, Orlando, FL 32813

N66959 (MAJ00023) 4JR—Director, Navy Publications and Printing Service Det Office Southeast Division, P.O. Box 3, NAS, Jacksonville, FL 32212

N66965 (MAJ00023) 4JQ—Navy Publishing and Printing Service Det Office, Western Area, Point Mugu, CA 93042-5027

N66972—Commanding Officer, Navy Recruiting District, 5901 S.W. 74th Street, Miami, FL 33143

N67596—Commanding Officer, Navy Recruiting District, 102 W Rector Street, San Antonio, TX 78216

N68011—Commanding Officer, Navy Recruiting District, 8 North Third Street, Sterick Bldg., Memphis, TN 38103

N68047 (MAJ00070) 4L0—Navy Office, Singapore, FPO San Francisco, CA 96699-2100

N68056, JE—Naval Medical Command, Southwest Region, San Diego, CA 92134

N68057, VZ—Commanding Officer, Naval Regional Data Automation Center Norfolk, Code 212, Norfolk, VA 23511

N68064 (MAJ00062) R0D—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Florida, Van Fleet Hall, Room 26, Gainesville, FL 32601

N68072 (MAJ00062) L9V—Commanding Officer, Naval Reserve Officers Training Corps Unit, Texas A&M University, College Station, TX 77843

N68084 (MAJ00018) MDJ-M—Commanding Officer (Code 206), Naval Hospital, Charleston, SC 29408-6900

N68086, 7S—Naval Hospital, Newport, RI 02841

N68088 (MAJ00061) NLL-N—National Support Unit Headquarters, Commander-in-Chief Iberian Atlantic Area (Lisbon, Portugal), APO New York 09678-001

N68090 (MAJ00018) MD0-9—Naval Hospital, Long Beach, CA 90822-5199

N68092—Naval Medical Command, Northeast Region, Great Lakes, IL 60088

N68093 (MAJ00018) MCG-H—Naval Hospital, Camp LeJeune, NC 28542-5008

N68094, V9—Naval Hospital, Camp Pendleton, CA 92055-5008

N68095, JF—Naval Hospital, Boone Road, Bremerton, WA 98312-1898

N68096 (MAJ00018) J50—Commanding Officer, Naval Hospital (Guam), FPO San Francisco 96630-1600

N68097—Naval Medical Command, Northwest Region, Oakland, CA 94627

N68101 (MAJ00018) MDT-V—Naval Hospital, 17th Street and Pattison Avenue, Philadelphia, PA 19145-5199

N68139 (MAJ00062) 8AZ—Commanding Officer, Naval Reserve Officers Training Corps Unit, Florida A&M University, Tallahassee, FL 32307

N68141 (MAJ00062) L9P—Commanding Officer, Naval Reserve Officers Training Corps Unit, Maine Maritime Academy, Castine, ME 04421-0902

N68142, NK—Naval Computer & Telecommunications Station, Naval Air Station, Pensacola, FL 32508-6100

N68165 (MAJ00060) J06-8—Naval Facility Brawdy (Brawdy, Wales, UK), FPO New York 09519

N68166 (MAJ00015) L01-2—Naval Technical Intelligence Support Center, 4301 Suitland Road, Washington, DC 20390

N68171, M3—Commanding Officer, Naval Regional Contracting Center (Naples, Italy), FPO New York 09521

N68175 (MAJ62980) MQA—Navy Recruiting District New Jersey, Parkway Towers, Bldg A, 485 US Route 1, So., Iselin, NJ 08830-5012

N68199—Commanding Officer, Navy Office of Information, Southeast, 1459 Peachtree Street, NE—Suite 300, Atlanta, GA 30309

N68200, VM—Director, Navy Office of Information, Southwest, 1114 Commerce Street, Suite 811, Dallas, TX 75242

N68221, 7J—Commanding Officer, Naval Personnel Research and Development Center, San Diego, CA 92152

N68246 (MAJ00070) 4LL—Officer in Charge, U.S. Naval Supply Depot Yokosuka Det. (Sasebo, Japan), FPO Seattle 98766-2900

N68248, V6—Officer in Charge of Construction, Naval Facilities Engineering Command Contracts, Naval Submarine Base, Kings Bay, GA 31547

R68251 (MAJ00070) LPC—Shore Intermediate Maintenance Activity, Pearl Harbor, Box 141, Pearl Harbor, HI 96860

N68292 (MAJ00018) J5A—Naval Hospital (Yokosuka, Japan), FPO Seattle 98765-1615

N68297, ET—Naval Magazine, Lualualei, Oahu HI 96792-4301

N68303 (MAJ00062) R0C—Commanding Officer, Naval Reserve Officers Training Corps Unit, State University of New York, Maritime College, Fort Schuyler, Bronx, NY 10465-4198

N68306 (MAJ00072) 9TF—Commander, Naval Reserve Readiness Command, Region Six, WNY Bldg 200, Washington, DC 20374-2003

N68307 (MAJ00072) LCJ—Commander, Code 431, Naval Reserve Readiness Command Region Ten, New Orleans, LA 70142

N68308 (MAJ00072) 9TQ—Naval Reserve Readiness Command, Region 20, Bldg 1, NAVSTA Treasure Island, San Francisco, CA 94130-5032

N68311, JL—Naval Station, Long Beach, CA 90822

N68322, 7Z—Naval Education & Training Program Management Support Activity, Code SU1, Saufley Field, Pensacola, FL 32509

N68323 (MAJ00011) LBC—Naval Legal Service Office, 200 Stovall Street, Alexandria, VA 22332-2400

N68327 (MAJ62980) ML8—Commanding Officer, Naval Reserve Personnel Center, New Orleans, LA 70149-7800

N68328, (MAJ00072) 9TJ—Naval Reserve Readiness Command, Region 22, Bldg. 9, Naval Station, Seattle, WA 98115-5009

N68329, (MAJ00072), LCL—Naval Reserve Readiness Command, Region Five, Bldg. 1033, USAAP, Ravenna, OH 44266-9211

N68330, (MAJ00072), 9TN—Naval Reserve Readiness Command, Region 13, Bldg 1, Code 712, NTC, Great Lakes, IL 60088-5026

N68331, (MAJ00072), LCE-F—Naval Reserve Readiness Command, Region Four, Bldg. 662, Naval Base, Philadelphia, PA 19112

N68331, (MAJ00072) LCE-F—Naval Reserve Readiness Command, Region Four, Bldg. 662, Naval Base, Philadelphia, PA 19112

N68332, (MAJ00072), 9T0-1—Commander, Naval Reserve Readiness Command, Region 18, 301 Navy Drive, Industrial Airport, KS 66031-0031

N68335, 4Y—Commanding Officer, Naval Air Engineering Center, Supply Dept., Purchase Division, Lakehurst, NJ 08733

N68348, (MAJ00072), 9TG—Commander, Naval Reserve Readiness Command, Region Nine, NAS Memphis (76), Bldg E-35, Millington, TN 38054

N68349—Commander, Naval Reserve Readiness Command, Region 16, Bldg. 715, Minneapolis-St. Paul IAP, Minneapolis, MN 55450-2996

N68351, (MAJ00072), LCQ—Naval Reserve Readiness Command, Region One, Newport, RI 02840-5016

N68355, (MAJ00062), R0J—Commanding Officer, Naval Reserve Officers Training Corps Unit, Virginia Military Institute, Lexington, VA 24450-2697

N68356, (MAJ00072) 9TD—Commander, Naval Reserve Readiness Command, Region Seven, Naval Base, Charleston, SC 29408

N68357, (MAJ00072), 9TL—Commander, Naval Reserve Readiness Command, Region Two, Scotia, NY 12302-9465

N68358, (MAJ00072), 9TA—Commander, Naval Reserve Readiness Command, Region Eight, Naval Air Station, Jacksonville, FL 32212

N68359—Commander, Naval Reserve Readiness Command, Region Eleven, Bldg 11, Naval Air Station, Dallas, TX 75211

N68378, KQ—Navy Public Works Center, San Francisco Bay, Oakland, CA 94623

N68391, (MAJ62980), MLB—Navy Recruiting District, Harrisburg, 310 North Second Street, Harrisburg, PA 17101-1304

N68401, (MAJ62980) MLJ—Navy Recruiting District, San Diego, Naval Training Center, Bldg 335, San Diego, CA 92133-6800

N68402, (MAJ31699), V8E—Navy Office of Information, New England Branch, 408 Atlantic Avenue, Boston, MA 02210-2203

N68409, (MAJ00018), MDC—Naval Dental Clinic, San Francisco, CA 94130-5030

N68436, KC, J6—Naval Submarine Base, Bangor, Code 863, KC Bremerton, WA 98315

N68441—Commanding Officer, Naval Dental Clinic, Naval Air Station, Pensacola, FL 32508

N68443, 7T—Commanding Officer, Naval Dental Clinic, Bremerton, WA 98314

N68451, MF—Navy Regional Data Automation Center, San Francisco, Naval Air Station, Alameda, CA 94501

N68470, (MAJ00018), J5J-M—Naval Hospital, (Okinawa, Japan), FPO Seattle 98778-1610

ida A&M University,
32307
) L9P—Commanding
eserve Officers Training
ne Maritime Academy,
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l Computer &
tions Station, Naval Air
la, FL 32508–6100
) J06–8—Naval Facility
y, Wales, UK), FPO New

) L01–2—Naval Technical
port Center, 4301 Suitland
on, DC 20390
manding Officer, Naval
cting Center (Naples, Italy),
09521
) MQA—Navy Recruiting
sey, Parkway Towers, Bldg
1, So., Iselin, NJ 08830–

ding Officer, Navy Office
outheast, 1459 Peachtree
e 300, Atlanta, GA 30309
ctor, Navy Office of
thwest, 1114 Commerce
Dallas, TX 75242
anding Officer, Naval
rch and Development
o, CA 92152
4LL—Officer in Charge,
y Depot Yokosuka Det.
FPO Seattle 98766–2900
r in Charge of
val Facilities Engineering
acts, Naval Submarine
GA 31547
LPC—Shore Intermediate
tivity, Pearl Harbor, Box
, HI 96860
J5A—Naval Hospital
), FPO Seattle 98765–1615
Magazine, Lualualei,
301
R0C—Commanding
eserve Officers Training
University of New York,
, Fort Schuyler, Bronx, NY

9TF—Commander, Naval
s Command, Region Six,
Washington, DC 20374–2003
LCJ—Commander, Code
e Readiness Command
Orleans, LA 70142
9TQ—Naval Reserve
and, Region 20, Bldg 1,
e Island, San Francisco,

Station, Long Beach, CA

Education & Training
ment Support Activity,
y Field, Pensacola, FL

LBC—Naval Legal
0 Stovall Street,
2332–2400
ML8—Commanding
serve Personnel Center,
70149–7800
9TJ—Naval Reserve
and, Region 22, Bldg. 9,
attle, WA 98115–5009

N68329, (MAJ00072), LCL—Naval Reserve Readiness Command, Region Five, Bldg. 1033, USAAP, Ravenna, OH 44266–9211
N68330, (MAJ00072), 9TN—Naval Reserve Readiness Command, Region 13, Bldg 1, Code 712, NTC, Great Lakes, IL 60088–5026
N68331, (MAJ00072), LCE–F—Naval Reserve Readiness Command, Region Four, Bldg. 662, Naval Base, Philadelphia, PA 19112
N68331, (MAJ00072) LCE–F—Naval Reserve Readiness Command, Region Four, Bldg. 662, Naval Base, Philadelphia, PA 19112
N68332, (MAJ00072), 9T0–1—Commander, Naval Reserve Readiness Command, Region 18, 301 Navy Drive, Industrial Airport, KS 66031–0031
N68335, 4Y—Commanding Officer, Naval Air Engineering Center, Supply Dept., Purchase Division, Lakehurst, NJ 08733
N68348, (MAJ00072), 9TG—Commander, Naval Reserve Readiness Command, Region Nine, NAS Memphis (76), Bldg E–35, Millington, TN 38054
N68349—Commander, Naval Reserve Readiness Command, Region 16, Bldg. 715, Minneapolis-St. Paul IAP, Minneapolis, MN 55450–2906
N68351, (MAJ00072), LCQ—Naval Reserve Readiness Command, Region One, Newport, RI 02840–5016
N68355, (MAJ00062), R0J—Commanding Officer, Naval Reserve Officers Training Corps Unit, Virginia Military Institute, Lexington, VA 24450–2697
N68356, (MAJ00072) 9TD—Commander, Naval Reserve Readiness Command, Region Seven, Naval Base, Charleston, SC 29408
N68357, (MAJ00072), 9TL—Commander, Naval Reserve Readiness Command, Region Two, Scotia, NY 12302–9465
N68358, (MAJ00072), 9TA—Commander, Naval Reserve Readiness Command, Region Eight, Naval Air Station, Jacksonville, FL 32212
N68359—Commander, Naval Reserve Readiness Command, Region Eleven, Bldg 11, Naval Air Station, Dallas, TX 75211
N68378, KQ—Navy Public Works Center, San Francisco Bay, Oakland, CA 94623
N68391, (MAJ62980), MLB—Navy Recruiting District, Harrisburg, 310 North Second Street, Harrisburg, PA 17101–1304
N68401, (MAJ62980) MLJ—Navy Recruiting District, San Diego, Naval Training Center, Bldg 335, San Diego, CA 92133–6800
N68402, (MAJ31699), V8E—Navy Office of Information, New England Branch, 408 Atlantic Avenue, Boston, MA 02210–2203
N68409, (MAJ00018), MDC—Naval Dental Clinic, San Francisco, CA 94130–5030
N68436, KC, J6—Naval Submarine Base, Bangor, Code 863, KC Bremerton, WA 98315
N68441—Commanding Officer, Naval Dental Clinic, Naval Air Station, Pensacola, FL 32506
N68443, 7T—Commanding Officer, Naval Dental Clinic, Bremerton, WA 98314
N68451, MF—Navy Regional Data Automation Center, San Francisco, Naval Air Station, Alameda, CA 94501
N68470, (MAJ00018), J5J–M—Naval Hospital, (Okinawa, Japan), FPO Seattle 98778–1610

N68497—Commanding Officer, Code 40, Naval Administrative Command, Naval Training Center, Orlando, FL 32813
N68499, LX—Director, Naval Council of Personnel Boards, Ballston Center Tower #2, 801 North Randolph Street, Arlington, VA 22203–1989
N68518—Commanding Officer, Naval Reserve Support Office, Internal Supply, Code S43, 4400 Dauphine Street, New Orleans, LA 70146
N68520, 7P—Aviation Depot Operations Center, Naval Air Station, Patuxent River, MD 20670
N68527, (MAJ00072), 9TT—Naval & MC Reserve Readiness Center, Armed Forces Reserve Center, Floyd Bennett Field, Brooklyn, NY 11234–7097
N68546, QG—Navy Environmental Health Center, Naval Station, Norfolk, VA 23511
N68547, (MAJ00060), LHQ—Personnel Support Activity, Norfolk, VA 23511–5115
N68560, (MAJ00063), NTC–H—Naval Computer & Telecommunications Station, Jacksonville, FL 32212–0111
N68561, (MAJ00039), NSE—Navy Management Systems Support Office, Norfolk, VA 23511–6694
N68593, (MAJ00060), LHE—Naval Ocean Processing Facility, Dam Neck, VA 23461–5450
N68606, (MAJ00011), LBP–Y—Navy Regional Data Automation Center, 4400 Dauphine Street, New Orleans, LA 70145–7700
N68610, GF—Officer in Charge, Fleet Hospital Support Office, 620 Central Ave., Bldg #5, Alameda, CA 94501–3874
N68646, (MAJ00024), EHJ–K—Naval Sea Systems Command, Automated Data Systems Activity, P.O. Box 100, Indian Head, MD 20640–0100
N68691, JW—Naval Plant Representative Office, (Melbourne, Australia), APO San Francisco 96405
N68692, (MAJ00062), 8AX—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of San Diego/San Diego State University, Alcala Park, San Diego, CA 92110–2496
N68695, (MAJ00060), LHG—Shore Intermediate Maintenance Activity, Naval Reserve Maintenance Facility, Bldg 133, Naval Base, Philadelphia, PA 19112–5066
N68699, (MAJ00062), 8AP—Commanding Officer, Naval Reserve Officers Training Corps Unit, Hampton Roads, 5215 Hampton Blvd., Norfolk, VA 23508–8556
N68707, (MAJ00072), 9TU—Naval Reserve Maintenance Training Facility, Puget Sound, Tacoma, WA
N68709, (MAJ00060), J0C—Naval Air Station Mayport, Mayport, FL 32228
N68710, (MAJ00062), L9K—Commanding Officer, Naval Reserve Officers Training Corps Unit, Virginia Polytechnic Institute and State University, Blacksburg, VA 24061–2306
N68717, (MAJ00062), L9L—Commanding Officer, Naval Reserve Officers Training Corps Unit, Boston University, 116 Bay State Road, Boston, MA 02215
N68725, (MAJ00062), R0Q—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Arizona, Tucson, AZ 85721
N68726, (MAJ00062), R0T—Commanding Officer, Naval Reserve Officers Training Corps Unit, The George Washington University, Washington, DC 20052
N68727, (MAJ00062), 8AF—Commanding Officer, Naval Reserve Officers Training Corps Unit, Memphis State University, Memphis, TN 38152–0001
N68728, (MAJ00062), 8AQ—Commanding Officer, Naval Reserve Officers Training Corps Unit, Norwich University, Northfield, VT 05663–1097
N68733, (MAJ00030), EKC—Strategic Weapons Facility, Atlantic, Kings Bay, GA 31547–8600
N68742, (MAJ00070), LPA—Naval Base, Seattle, WA 98115–5012
N68753, (MAJ00070), V5L—Naval Pacific Repair Activity Det., Singapore, SAE Singapore, FPO San Francisco 96699–2700
N68790—Officer in Charge of Construction, Naval Facilities Engineering Command Contracts, Diego Garcia, FPO San Francisco 96685
N68829, (MAJ00060), J0J—Shore Intermediate Maintenance Activity (NRMF), Pier 2, Bldg. 68 NETC, Newport, RI 02841–5001
N68831, (MAJ00070), LPG—Shore Intermediate Maintenance Activity San Francisco, Bldg 162, NAS, Alameda, CA 94501–5065
N68836, J9—Commanding Officer, Naval Supply Center, Jacksonville, FL 32212
N68857, (MAJ00062), 8AC—Commanding Officer, Naval Reserve Officers Training Corps Unit, Texas Tech University, Lubbock, TX 79409–4559
N68860, KR—Naval Supply Center—Pensacola, Pensacola, FL 32508–6200
N68863, LU—Naval Commercial Communications Office, 4401 Mass Avenue, NW., Washington, DC 20390–5290
N68877, (MAJ00062), R0Y—Commanding Officer, Naval Reserve Officers Training Corps Unit, Carnegie Mellon University, Pittsburgh, PA 15213
N68881, (MAJ00062), L9E—Commanding Officer, Naval Reserve Officers Training Corps Unit, Morehouse College, Atlanta, GA 30314
N68891, (MAJ00060), LH5—Naval Station, Ingleside, TX 78362–5000
N70092, (MAJ00069), 8QJ–K, Q–R—Naval Security Station, 3801 Nebraska Avenue, NW.,Washington, DC 20390–6230
N70240, M6—Commanding Officer, Naval Communication Station, San Diego, 937 N. Harbor Drive, San Diego, CA 92132
N70272, 8G, ND—Naval Communication Area, Master Station Atlantic, Norfolk, VA 23511–6898
N70273, V3—Naval Radio Station, Jim Creek, Oso, WA 98223
N70278, V4—Naval Communication Station (Yokosuka, Japan), Box 3, FPO Seattle 98762
N70283, (MAJ00069), 8QE—Commanding Officer, Code 30, Naval Security Group Activity (Galeta Island, Canal Zone), FPO Miami 34060–9998
N70294, 8H—U.S. Naval Communication Area, Master Station MED (Naples, Italy), FPO New York 09524
N70295, 8J—U.S. Naval Communication Station (Nea Makri, Greece), FPO New York 09525
N70310, N2—Naval Radio Station R, Sugar Grove, WV 26815.

Part 4—Marine Corps Activity Address Numbers

M00027, MS*, MU*, MS0–9—Headquarters, U.S. Marine Corps, Washington, DC 20380
M00146, MT—Marine Corps Air Station, Cherry Point, NC 28533
M00243, NE—Marine Corps Recruit Depot, San Diego, CA 92140
M00263, MX—Marine Corps Recruit Depot, Parris Island, SC 29905
M00264, MY—Marine Corps Development and Education Command, Quantico, VA 22134
M00318—Marine Corps Air Station (Kaneohe Bay, Oahu, HI), FPO San Francisco, CA 96628
M00681, NC—Marine Corps Base, Camp Pendleton, Oceanside, CA 92054
M60050, MV—Marine Corps Air Station, El Toro (Santa Ana), CA 92709
M62204, MW—Marine Corps Logistics Base, Barstow, CA 92311
M62974, NA—Marine Corps Air Station, Yuma, AZ 85364
M67001, NB—Marine Corps Base, Camp Lejeune, NC 28542
M67004, NC—Marine Corps Logistics Base, Albany, GA 31704
M67011, (MAJ00027), MSA—Director, 1st Marine Corps District, Garden City, Long Island, NY 11530
M67013, (MAJ00027), MSC—Director, 4th Marine Corps District, Philadelphia, PA 19112–5072
M67015, (MAJ00027), MSE—Director, 6th Marine Corps District, Atlanta, GA 30303
M67016, (MAJ00027), MSG—Director, 8th Marine Corps District, New Orleans, LA 70113
M67017, (MAJ00027), MSJ—Director, 9th Marine Corps District, Shawnee Mission, KA 66204
M67019, (MAJ00027), MSL—Director, 12th Marine Corps District, San Francisco, CA 94130
M67021, (MAJ00027), MUC—Marine Aircraft Wing 4, New Orleans, 4400 Dauphine Street, New Orleans, LA 70146–9125
M67025—Headquarters, Fleet Marine Force, Pacific, Oahu, FPO San Francisco 96610
M67029, (MAJ00027), MSN—Marine Barracks, Washington, DC 20003
M67030, (MAJ00027), MUP—Marine Corps Security Force Battalion Pacific, NAVSTA Mare Island, Vallejo, CA 94592–5022
M67290 (MAJ00027), MSY—Marine Aviation Training Support Group-90, NATTC, NAS Memphis, Millington, TN 38054–5123
M67351—Marine Detachment, London, APO New York 09510
M67353 (MAJ00027), MSQ—Headquarters Battalion, Marine Corps, Henderson Hall, Arlington, VA 22214
M67354—Post Supply Officer, Headquarters Marine Corps, Navy Annex, Arlington, VA 20380
M67355 (MAJ00027), MUN—Landing Force Training Command Atlantic, Naval Surface Force, U.S. Atlantic Fleet, Naval Amphibious Base, Little Creek, Norfolk, VA 23521–2350
M67385 (MAJ00027), MUO–1—Camp H. M. Smith, U.S. Marine Corps, Halawa Heights, Oahu, Hawaii 96861

M67391, KY—Marine Corps Camp Det. (Camp Elmore), Norfolk, VA 23511
M67399, NF—Marine Corps Air-Ground Combat Center, Twentynine Palms, CA 92278
M67400 (MAJ00027), QJ, MUA—Marine Corps Procurement Office, Okinawa, Marine Corps Base, Camp Smedley D. Butler (Ryuku Island, Southern), FPO Seattle, WA 96773
M67428, JA—Marine Corps Air Bases Western Area, MCAS El Toro, Santa Ana, CA 92709
M67443, LG—Marine Corps Finance Center, Kansas City, MO 64197
M67842, K6—East Coast Commissary Complex, Marine Corps Base, Camp LeJeune, NC 28542
M67853 (MAJ00027), MUR—Marine Corps Security Force Battalion Atlantic, Naval Base, Norfolk, VA 23511-5697
M67854 (MAJ00027), MU6-9—Marine Corps Research, Development and Acquisition Command, Washington, DC
M68479 (MAJ00027), MSU—4th Marine Division (Rein), FMF, USMCR, 4400 Dauphine Street, New Orleans, LA 70146-5400
M68522 (MAJ00027), MSW—Marine Corps Reserve Support Center, Purchasing Department, 16950 El Monte, Overland Park, KS 66211-1408

Part 5—Air Force Activity Address Numbers

(C) Denotes a Central Contracting Activity.

F01600, 5A—3800 ABW/LGC, Maxwell AFB, AL 36112-5320
F01620, 6K—HQ SSC/PK, Gunter AFS, AL 36114-6345
F02600, 5B—82 FTW/LGC, Williams AFB, AZ 85340-5004
F02601, 5C—836 AD/LGC, Davis-Monthan AFB, AZ 85707-5320
F02604, 5D—832 AD/LGC, Luke AFB, AZ 85309-5320
F02610, SR—AFPRO, Hughes Missile Systems Group, P.O. Box 11337, Emery Park Station, Tucson, AZ 85734-1337
F03601, 5E—97 BMW/LGC, Eaker AFB, AR 72317-5320
F03602, 5F—314 TAW/LGC, Little Rock AFB, AR 72076-5320
F04604, 5G—93 BMW/LGC, Castle AFB, CA 95342-5320
F04605, 5H—22 AREFW/LGC, March AFB, CA 92518-5320
F04606, SM—SM-ALC/PM, Sacramento Air Logistics Center, McClellan AFB, CA 95652-5320
F04607, 5J—63 MAW/LGC, Norton AFB, CA 92409-5320
F04609, 5K—831 AD/LGC, George AFB, CA 92394-5320
F04611, QQ—AFFTC/PK (C), Edwards AFB, CA 93523-5320
F04612, 5L—323 FTW/LGC, Mather AFB, CA 95655-5320
F04620, S6—AFPRO, TRW Electronics & Defense Sector, One Space Park, Redondo Beach, CA 90278-1078
F04626, 5M—60 MAW/LGC, Travis AFB, CA 94535-5320
F04630, RY—AFPRO, RI Rocketdyne Division, 6633 Canoga Avenue, Canoga Park, CA 91303-2790
F04666, 5N—9 SRW/LGC, Beale AFB, CA 95903-5320
F04679, QR—AFPRO, Northrop Corp, One Northrup Avenue, Hawthorne, CA 90250-3296
F04681, QS—AFPRO, RI Corp, Los Angeles Division, P.O. Box 92098, Los Angeles, CA 90009-2098
F04682, QT—AFPRO, Hughes Aircraft Company, P.O. Box 92463, Los Angeles, CA 90009-2463
F04684, QW—4392 AEROSW/LGC, Vandenberg AFB, CA 93437-5320
F04688, QV—AFPRO, Aerojet-General Corp, P.O. Box 15846, Sacramento, CA 95852-1846
F04689, RN—2nd Satellite Tracking Group/LKD, Onizuka Air Force Base, P.O. Box 3430, Sunnyvale, CA 94088-3430
F04690—CSTC/PM, P.O. Box 3430, Sunnyvale, CA 94088-3430
F04691, QX—AFPRO, Lockheed Missile & Space Corp, 1111 Lockheed Way, P.O. Box 3504, Sunnyvale, CA 94088-3504
F04693, MG—SSD/PMB, Base Contracts, P.O. Box 92960, Worldway Postal Center, Los Angeles, CA 90009-9260
F04696, RB—AFPRO, RI Anaheim, 3370 Miraloma Ave., Anaheim, CA 92803-3110
F04699, Q5—SM-ALC/PMK, Base Contracts, McClellan AFB, CA 95652-5320
F04700, Q2—AFFTC/PKB, Base Contracts, Edwards AFB, CA 93523-5000
F04701, TB—SSD/PM (C), Space Systems Division, P.O. Box 92960, Worldway Postal Center, Los Angeles, CA 90009-9260
F04702—HQ AAVS/LGC, Norton AFB, CA 92409-5409
F04703, R8—WSMC/PM (C), Western Space and Missile Center, Vandenberg AFB, CA 93437-6021
F04704, R9—BSD/PK (C), Ballistic Systems Division, Norton AFB, CA 92409-6463
F04705, RT—Det 6, 2762 Logistics Sq. (AFLC), Norton AFB, CA 92409
F04709, S5—Det 42, SM-ALC, Norton AFB, CA 92409-6447
F04710, TC—AFPRO, Douglas Aircraft Company, 3855 Lakewood Boulevard, Long Beach, CA 90846-0001
F04720, RD—AFPRO RI NAAO, OL-AA, 2825 East Avenue P, Palmdale, CA 93550-0319
F05600, 5P—LTTC/LGC, Lowry AFB, CO 80230-5320
F05603—HQ Air Force Space Command/PKD, Director of Systems Contracting, Stop 7, Peterson AFB, CO 80914-5001
F05604, SX—3d Space Support Wing/PKB, Stop 20, Peterson AFB, CO 80914-5000
F05611, 5Q—USAFA/LGC, USAF Academy, CO 80840-0189
F05617, RE—AFPRO, Martin Marietta Denver Aerospace, P.O. Box 179, Denver, CO 80201-0179
F06700, T5—AFPRO, Pratt & Whitney, 400 Main Street, East Hartford, CT 06108-0969
F07603, 5R—436 MAW/LGC, Dover AFB, DE 19902-5320
F08602, 5S—56 TTW/LGC, MacDill AFB, FL 33608-5320
F08606, RC—ESMC/PM (C), Eastern Space & Missile Center, Patrick AFB, FL 32925-5472
F08620, 5T—1 SOW/LGC, Hurlburt Field, FL 32544-5320
F08621, 5U—31 TFW/LGC, Homestead AFB, FL 33039-5320
F08626, QU—ASD/PK-1, Aeronautical Systems Division, Eglin AFB, FL 32542-5000
F08630, S1—ASD/PKRL, Eglin AFB, FL 32542-5000
F08635, RH—AFDTC/PK (C), Air Force Development Test Center, Eglin AFB, FL 32542-5000
F08637, 5V—HQ USAF ADWC/LGC, Tyndall AFB, FL 32403-5320
F08650, TJ—ESMC/PMK, Base Contracts, Patrick AFB, FL 32925-5472
F08651, Q3—AFDTC/PKO, Operational Contracting, Eglin AFB, FL 32542-5320
F08675, T2—AFPRO, Pratt & Whitney Aircraft, P.O. Box 109600, West Palm Beach, FL 33412-9600
F09603, RJ—WR-ALC/PM, Warner Robins Air Logistics Center, Robins AFB, GA 31098-5320
F09604, RU—Det 8, 2762 Logistics Sq (AFLC), Robins AFB, GA 31098
F09607, 5W—347 TFW/LGC, Moody AFB, GA 31699-5320
F09609, 5X—94 CSG/LGC, Dobbins AFB, GA 30069-5320
F09632, RK—AFPRO, Lockheed-GA Co., Marietta, GA 30063-0001
F09634, 5Y—HQ AFRES/LGC, Robins AFB, GA 31098-6001
F09650, Q6—WR-ALC/PMK, Base Contracts, Robins AFB, GA 31098-5320
F10603, 5Z—366 TFW/LGC, Mountain Home AFB, ID 83648-5320
F11602, 6A—CTTC/LGC, Chanute AFB, IL 61868-5320
F11603, 6B—928 TAG/LGC, Chicago O'Hare ARFF IL 60666-5000
F11623, 6C—375 AAW/LGC, Scott AFB, IL 62225-5320
F11624, X4—2026 CS/PGZ, Scott AFB, IL 62225-6001
F11626, RL—HQ MAC/TRC, Scott AFB, IL 62225-5001
F12617, 6D—05 AREFW/LGC, Grissom AFB, IN 46971-5320
F14614, 6E—384 BMW/LGC, McConnell AFB, KS 67221-5320
F14615, RP—AFPRO, Boeing Military Airplane Company, 3801 South Oliver Street, Wichita, KS 67277-7730
F16600, 6F—23 TFW/LGC, England AFB, LA 71311-5320
F16602, 6G—2 BMW/LGC, Barksdale AFB, LA 71110-5320
F17600, 6H—42 BMW/LGC, Loring AFB, ME 0475-5320
F17608—101 AREFW/LGC, Bangor International Airport, ME 04401-5320
F18400, S2—AFPRO, Westinghouse Defense and Electronics Systems Center, P.O. Box 1693, Baltimore, MD 21203-1693
F18600, RQ—AFSC/PK (C), Andrews AFB, DC 20334-5000
F19617, X0—439 CSG/LGC, Westover AFB MA 01022-5320
F19620, SQ—AFPRO, Textron Defense Systems, 201 Lowell Street, Wilmington, MA 01887-2941
F19628, RS—ESD/PK (C), Electronic Systems Division, Hanscom AFB, MA 01731-5000
F19630, RV—AFCAC/PK (C), Hanscom AFB, MA 01731-6340
F19650, SH—ESD/PKU, Base Contracts, Hanscom AFB, MA 01731-5320
F20603, 6J—379 BMW/LGC, Wurtsmith AFB, MI 48753-5320

RO, Northrop Corp, One
ue, Hawthorne, CA 90250–
RO, RI Corp, Los Angeles
ox 92098, Los Angeles, CA
RO, Hughes Aircraft
Box 92463, Los Angeles, CA
2 AEROSW/LGC,
B, CA 93437–5320
RO, Aerojet-General Corp,
Sacramento, CA 95852–
Satellite Tracking Group/
Air Force Base, P.O. Box
, CA 94088–3430
M, P.O. Box 3430,
94088–3430
RO, Lockheed Missile &
1 Lockheed Way, P.O. Box
, CA 94088–3504
/PMB, Base Contracts, P.O.
ldway Postal Center, Los
009–9250
RO, RI Anaheim, 3370
Anaheim, CA 92803–3110
ALC/PMK, Base Contracts,
CA 95652–5320
TC/PKB, Base Contracts,
CA 93523–5000
PM (C), Space Systems
ox 92960, Worldway Postal
geles, CA 90009–9260
S/LGC, Norton AFB, CA
C/PM (C), Western Space
ter, Vandenberg AFB, CA
PK (C), Ballistic Systems
n AFB, CA 92409–6463
, 2762 Logistics Sq. (AFLC),
92409
2, SM–ALC, Norton AFB,
RO, Douglas Aircraft
Lakewood Boulevard, Long
–0001
RO RI NAAO, OL–AA, 2825
Palmdale, CA 93550–0319
/LGC, Lowry AFB, CO
orce Space Command/
f Systems Contracting, Stop
, CO 80914–5001
ace Support Wing/PKB,
n AFB, CO 80914–5000
FA/LGC, USAF Academy,
RO, Martin Marietta Denver
Box 179, Denver, CO
O, Pratt & Whitney, 400
t Hartford, CT 06108–0969
AW/LGC, Dover AFB, DE
W/LGC, MacDill AFB, FL
C/PM (C), Eastern Space &
Patrick AFB, FL 32925–5472
W/LGC, Hurlburt Field, FL
W/LGC, Homestead AFB,
/PK–1, Aeronautical
n, Eglin AFB, FL 32542–5000

F08630, S1—ASD/PKRL, Eglin AFB, FL 32542–5000
F08635, RH—AFDTC/PK (C), Air Force Development Test Center, Eglin AFB, FL 32542–5000
F08637, 5V—HQ USAF ADWC/LGC, Tyndall AFB, FL 32403–5320
F08650, TJ—ESMC/PMK, Base Contracts, Patrick AFB, FL 32925–5472
F08651, Q3—AFDTC/PKO, Operational Contracting, Eglin AFB, FL 32542–5320
F08675, T2—AFPRO, Pratt & Whitney Aircraft, P.O. Box 109600, West Palm Beach, FL 33412–9600
F09603, RJ—WR–ALC/PM, Warner Robins Air Logistics Center, Robins AFB, GA 31098–5320
F09604, RU—Det 8, 2762 Logistics Sq (AFLC), Robins AFB, GA 31098
F09607, 5W—347 TFW/LGC, Moody AFB, GA 31699–5320
F09609, 5X—94 CSG/LGC, Dobbins AFB, GA 30069–5320
F09632, RK—AFPRO, Lockheed–GA Co., Marietta, GA 30063–0001
F09634, 5Y—HQ AFRES/LGC, Robins AFB, GA 31098–6001
F09650, Q6—WR–ALC/PMK, Base Contracts, Robins AFB, GA 31098–5320
F10603, 5Z—366 TFW/LGC, Mountain Home AFB, ID 83648–5320
F11602, 6A—CTTC/LGC, Chanute AFB, IL 61868–5320
F11603, 6B—928 TAG/LGC, Chicago O'Hare ARFF IL 60666–5000
F11623, 6C—375 AAW/LGC, Scott AFB, IL 62225–5320
F11624, X4—2026 CS/PGZ, Scott AFB, IL 62225–6001
F11626, RL—HQ MAC/TRC, Scott AFB, IL 62225–5001
F12617, 6D—05 AREFW/LGC, Grissom AFB, IN 46971–5320
F14614, 6E—384 BMW/LGC, McConnell AFB, KS 67221–5320
F14615, RP—AFPRO, Boeing Military Airplane Company, 3801 South Oliver Street, Wichita, KS 67277–7730
F16600, 6F—23 TFW/LGC, England AFB, LA 71311–5320
F16602, 6G—2 BMW/LGC, Barksdale AFB, LA 71110–5320
F17600, 6H—42 BMW/LGC, Loring AFB, ME 0475–5320
F17608—101 AREFW/LGC, Bangor International Airport, ME 04401–5320
F18400, S2—AFPRO, Westinghouse Defense and Electronics Systems Center, P.O. Box 1693, Baltimore, MD 21203–1693
F18600, RQ—AFSC/PK (C), Andrews AFB, DC 20334–5000
F19617, X0—439 CSG/LGC, Westover AFB MA 01022–5320
F19620, SQ—AFPRO, Textron Defense Systems, 201 Lowell Street, Wilmington, MA 01887–2941
F19628, RS—ESD/PK (C), Electronic Systems Division, Hanscom AFB, MA 01731–5000
F19630, RV—AFCAC/PK (C), Hanscom AFB, MA 01731–6340
F19650, SH—ESD/PKU, Base Contracts, Hanscom AFB, MA 01731–5320
F20603, 6J—379 BMW/LGC, Wurtsmith AFB, MI 48753–5320

F20613, 6L—410 BMW/LGC, K.I. Sawyer AFB, MI 49843–5320
F21611, 6N—934 TAG/LGC, Minneapolis-St. Paul IAP, MN 55450–5000
F22600, RC—KTTC/LGC, Keesler AFB, MS 39534–5000
F22606, 6Q—4 FTW/LGC, Columbus AFB, MS 39701–5000
F23606, 6R—351 SMW/LGC, Whiteman AFB, MO 65305–5320
F23608, 6S—442 CSG/LGC, Richards-Gebaur AFB, MO 64030–5000
F24604, 6T—341 SMW/LGC, Malmstrom AFB, MT 59402–5320
F25600, 6U—55 SRW/LGC, Offutt AFB, NE 68113–5320
F25606, TD—3908 CONS/LGC, Offutt AFB, NE 68113–5000
F26600, S4—554 OSW/LGC, Nellis AFB, NV 89191–5320
F26606, 6M—37 Tactical Fighter Wing/LGC, Nellis AFB, NV 89191–5320
F27604, R5—509 BMW/LGC, Pease AFB, NH 03803–5320
F28609, 6V—438 MAW/LGC, McGuire AFB, NJ 08641–5320
F28620, S8—OL–A, 1605 MASW/LGC, McGuire AFB, NJ 08641–5000
F29601, RW—Air Force Space Technology Center (AFSC)/PKR, Kirtland AFB, NM 87117–5320
F29605, 6W—27 TFW/LGC, Cannon AFB, NM 88103–5320
F29650, R3—Air Force Space Technology Center (AFSC)/PKB, Kirtland AFB, NM 87117–5320
F29651, 6X—833 AD/LGC, Holloman AFB, NM 88330–5320
F30602, RX—RADC/PK (C), Rome Air Development Center, Griffiss AFB, NY 13441–5700
F30617, 6Y—914 TAG/LGC, Niagara Falls IAP, NY 14304–5320
F30625, ST—AFPRO, Eaton AIL, Eaton Corporation, AIL Div., Commack Road, Deer Park, Long Island, NY 11729–9998
F30635, S3—416 BMW/LGC, Griffiss AFB, NY 13441–5320
F30636, 6Z—380 BMW/LGC, Plattsburgh AFB, NY 12903–5320
F31601, BU—317 TAW/LGC, Pope AFB, NC 28308–5320
F31610, BW—4 TFW/LGC, Seymour Johnson AFB, NC 27531–5320
F32604, BX—57 AD/LGC, Minot AFB, ND 58705–5320
F32605, BY—321 SMW/LGC, Grand Forks AFB, ND 58205–5320
F33600, RZ—WPCC/PMR, PMS, PMT & PMY, Wright-Patterson AFB, OH 45433–5320
F33601, Q7—WPCC/PMK, Base Contracts, Wright-Patterson AFB, OH 45433–5320
F33615, SG—ASD/PMR, Directorate of R&D Contracting, Wright Patterson AFB, OH 45433–6503
F33620, SN—AFPRO RI NAAO, OL–AB, Rockwell International, P.O. Box 1259, Columbus, OH 43216–1259
F33630, C1—910 TAG/LGC, Youngstown MAP, OH 44473–0910
F33654, SB—AFPRO, General Electric Company, Cincinnati, OH 45215–6303
F33657, SC—ASD/PM (C), Aeronautical Systems Division, Wright-Patterson AFB, OH 45433–6503
F33659, Q8—2803 ABG/PM, Newark AFS, OH 43055–5320
F33660, TA—2083 ABG/PM6, Newark AFB, OH 43057–5320
F33661—Air Force Contract Maintenance Center (AFCMC), Wright-Patterson AFB, OH 45433–5000
F33661, S1—AFCMC/CM, Wright-Patterson AFB, OH 45433–5000
F33661, MJ—Det 33, AF Contr. Maint. Center, APO New York 09667–6207
F33661, SS—Det 16 AFCMC, APO New York 09633–5000
F33661, S6—AFLC Logistics Support Group—Saudi Arabia, AFCMC Contract Management Division, APO New York 09238–5002
F33661, SV—Det 17 AFCMC, APO New York 09378–5000
F33661, R1—Det 28 AFCMC, APO SF 96214–0005
F33661, SU—Det 19 AFCMC, APO New York 09285–0001
F33661, YE—Det 32 AFCMC, APO New York 09672–0008
F33661, TQ—Det 34 AFCMC, APO New York 09254–5365
F33661, VF—Det 36 AFCMC, APO New York 09240–5000
F33733, J8—HQ AFSC/PLMM, Wright-Patterson AFB, OH 45433–6503
F34600, C2—71 FTW/LGC, Vance AFB, OK 73705–5000
F34601, SD, TA—OC–ALC/PM, Oklahoma City Air Logistics Center, Tinker AFB, OK 73145–5320
F34608, TF—HQ EID/PK, Tinker AFB, OK 73145–6343
F34612, C3—443 MAW/LGC, Altus AFB, OK 73523–5320
F34650, Q9—OC–ALC–PMK, Base Contracts, Tinker AFB, OK 73145–5320
F35610, C4—114 TFTS/LGC, Kingsley Field, Klamath Falls, OR 97601
F36629, C7—911 TAG/LGC, Greater Pittsburgh IAP, PA 15231–5320
F36700, C8—913 TAG/LGC, Willow Grove ARF, PA 19090–5130
F36701, SF—AFPRO, GE Re-Entry Div, P.O. Box 8555, Philadelphia, PA 19101–8555
F38601, C9—363 TFW/LGC, Shaw AFB, SC 29152–5320
F38604, T3—HQ USCENTAF/LGC, Shaw AFB, SC 29152–5002
F38606, CA—354 TFW/LGC, Myrtle Beach AFB, SC 29579–5320
F38610, CR—437 MAW/LGC, Charleston AFB, SC 29404–5320
F39601, CT—44 SMW/LGC, Ellsworth AFB, SD 57706–5320
F40600, Q4—AEDC/PK (C), Arnold Engineering Development Center, Arnold AFB, TN 37389–5000
F40650, D1—AEDC/PKP, Base Contracts, Arnold AFB, TN 37389–5000
F41608, SA, QU—SA–ALC/PM, San Antonio Air Logistics Center, Kelly AFB, TX 78241–5320
F41612, D4—STTC/LGC, Sheppard AFB TX 76311–5000
F41613, D5—7 BMW/LGC, Carswell AFB, TX 76127–5320
F41614, E2—GTTC/LGC, Goodfellow AFB TX 76908–5000
F41620, E3—64 FTW/LGC, Reese AFB TX 79489–5000
F41621, SJ—HQ ESC/LEC, San Antonio, TX 78243–5000
F41622, QY—HSDPKO, Brooks AFB, TX 78235–5320
F41624 HSD/PK(C), Brooks AFB, TX 78235–5320
F41636, ZV—3700 Contracting Squadron, Lackland AFB, TX 78236–5000
F41640—HQ AFCOMS/DOC, Kelly AFB, TX 78241–6290
F41650, YA—SA–ALC/PMK, Base Contracts, Kelly AFB, TX 78241–5320
F41652, E5—96 BMW/LGC, Dyess AFB, TX 79607–5320
F41685, E6—47 FTW/LGC, Laughlin AFB TX 78840–5000
F41687, E9—67 TRW/LGC, Bergstrom AFB, TX 78743–5320
F41689, SK—3303 CS, Randolph AFB, TX 78150–5001
F41691, Y0—12 CONS/LGC, Randolph AFB, TX 78150–5000
F41695, SL, TH—AFPRO, General Dynamics, P.O. Box 371, Fort Worth, TX 76101–0371.,
F41800, T9—San Antonio Contracting Center, Ft Sam Houston AIN, P.O. Box 8218, San Antonio, TX 78208–8218
F41853, WP—AFPRO LTV, LTV Aerospace and Defense Co, P.O. Box 655907, Dallas, TX 75265–5907
F41999—AFNAF Purchasing Office, HQ AFMPC/DPMSK, 9504 IH 35 North, Rm 330, San Antonio, TX 78233
F42600, QP, SY—OO–ALC/PM, Ogden Air Logistics Center, Hill AFB, UT 84056–5320
F42610, TE—OO–ALC/PM, ICBM Directorate Contracting, Ogden Air Logistics Center, Hill AFB, UT 84056–5320
F42620, TG—OO–ALC/PM, Aircraft Directorate Contracting, Ogden Air Logistics Center, Hill AFB, UT 84056–5320
F42630, XP—OO–ALC/PM, Commodities Directorate Contracting, Ogden Air Logistics Center, Hill AFB, UT 84056–5320
F42650, R2—OO–ALC/PMK, Base Contracts, Hill AFB, UT 84056–5320
F42651, R6—AFPRO, Morton Thiokol Corp, P.O. Box 524/MS Z–10, Brigham City, UT 84302–0524
F44600, F3—1 TFW/LGC, Langley AFB, VA 23665–5320
F44650, Q1—4400 CONS/LGCN (C), Langley AFB, VA 23665–5000
F45603, F5—62 MAW/LGC, McChord AFB, WA 98438–5320
F45613, F8—92 BMW/LGC, Fairchild AFB, WA 99011–5320
F45632, SP—AFPRO, The Boeing Company, P.O. Box 3707, Seattle, WA 98124–3707,
F47606, G7—440 TAW/LGC, Gen. Billy Mitchell Field, 00 College Ave., Milwaukee, WI 53207–5000
F48608, G9—90 SMW/LGC, F.E. Warren AFB, WY 82001–5320
F49620—AFOSR/PK (C), Bolling AFB, DC 20332–6448
F49642, J1—1100 CNS/CN (AFDW), Operational Contracting, Andrews AFB, DC 20331–5320
F49650, X0—1100 CNS/SP (AFDW), Specialized Contracting, Andrews AFB, DC 20331–5320
F61040, M1—1605 MASW/LGC, APO New York 09406–5320
F61051—USDAO, American Embassy—Brussels, APO New York 09667

F61060—USDAO, American Embassy—Sofia, APO New York 09757
F61080—USDAO, American Consulate General—Prague, APO New York 09757
F61100—USDAO, American Embassy—Copenhagen, APO New York 09170
F61101, T1—Det 1, Space Combat Operations Staff/LGC, APO New York 09170-5000
F61121, RF—USAFE Contracting Office, OL A DET 4, 7000 CONS/LGC, APO New York 09193-5320
F61130—USDAO, American Embassy—Helsinki, APO New York 09664
F61171—USDAO, American Embassy—Athens, APO New York 09223
F61173, N1—USAFE Contracting Region—Greece, Det 7, 7000 CONS/LGC, APO New York 09223-5320
F61180—USDAO, American Consulate General—Budapest, APO New York 09757
F61210—USDAO, American Embassy—Rome, APO New York 09794
F61211, N9—USAFE Contracting Region—Italy, Det 6, 7000 CONS/LGC, APO New York 09293-5320
F61214, U9—USAFE Contracting Office, OL–A Det 6, 7000 CONS/LGC, APO New York 09340-5320
F61220, BZ—AFLC/SCE-FM, Support Center Europe, APO New York 09240-5320
F61230, XV—AFLC SGE/RMP, APO New York 09243-5000
F61250, TP—USAFE Contracting Office, OL–B DET 6, 7000 CONS/LGC, APO New York 09694-5320
F61256—USAFE Contracting Office, OL–C DET 6, 7000 CONS/LGC, APO New York 09161-5320
F61260—USDAO, American Embassy—The Hague, APO New York 09159
F61264—USAFE Contracting Office, OL–B DET 10, 7000 CONS/LGC, APO New York 09669-5320
F61270—USDAO, American Embassy—Oslo, APO New York 09085
F61271, T8—USAFE Contracting Office, OL–A Det 2, 7000 CONS/LGC, APO New York 09085-5320
F61280—USDAO, American Consulate General—Belgrade, APO New York 09757
F61290—USDAO, American Embassy—Lisbon, APO New York 09678
F61301—USDAO, American Embassy—Bucharest, APO New York 09757
F61306, W3—USAFE Contracting Region—Spain, Det 5, 7000 CONS/LGC, APO New York 09283-5320
F61310—USDAO, American Embassy—Madrid, APO New York, NY 09285
F61354, W8—7241 ABG/LGC, APO New York 09224-5320
F61355, T4—HQ TUSLOG/LGC, APO New York 09254-5320
F61358, W9—39 TACG/LGC, APO New York 09286-5320
F61503, UC—435 TAW/LGC, APO New York 09057-5320
F61504, T6—7350 ABG/LGC, APO New York 09611-5320
F61517, UF—USAFE Contracting Region—Eifel, Det 3, 7000 CONS/LGC, APO New York 09132-5320
F61519, R4—USAFE Contracting Region—Mosel, Det 10, 7000 CONS/LGC, APO New York 09109-5320
F61521, UH—USAFE Contracting Office—Rhineland Pfalz, Det 2, 7000 CONS/LGC, APO New York 09012-5320
F61527—USAFE Contracting Office, OL–C Det 10, 7000 CONS/LGC, APO New York 09027-5320
F61546, UJ—USAFE Contracting Center, Det 1, 7000 CONS/LGC, APO New York 09633-5320
F61560, 4C—AFLC Logistics Support Group—Europe, APO New York 09012
F61700, TM—USAFE Contracting Office, OL–A Det 9, 7000 CONS/LGC, APO New York 09150-5320
F61708, UK—USAFE Contracting Region—Thames Valley, Det 9, 7000 CONS/LGC, APO New York 09194-5320
F61712, UM—USAFE Contracting Office, OL–B Det 4, 7000 CONS/LGC, APO New York 09755-5320
F61730, UQ—USAFE Contracting Office, OL–C Det 4, 7000 CONS/LGC, APO New York 09236-5320
F61775, UV—USAFE Contracting Region—UK North, Det 4, 7000 CONS/LGC, APO New York 09179-5320
F61815, T7—USAFE Contracting Office, OL–A Det 10, 7000 CONS/LGC, APO New York 09292-5320
F61817, UW—USAFE Contracting Office, OL–A Det 5, 7000 CONS/LGC, APO New York, NY 09286-5320
F61910, WJ—USAFE Contracting Office, OL–A Det 3, 7000 CONS/LGC, APO New York 09188-5320
F62032, 4D—HQ USMTM/SAS-LGC, APO New York 09616-5320
F62321, RA—313 AD Contracting Center/LGC, APO SF 96239-5320
F62509, QZ—432 TFW Base Contracting Division/LGC, APO SF 96519-5000
F62562, SW—475 ABW Contracting Center/LGC, APO SF 96328-5320
F62600—5 DSCS/LGC, APO SF 96287-5000
F63197, UX—USAFE Contracting Office, OL–A Det 7, 7000 CONS/LGC, APO New York 09291-5320
F64133, S9—633ABW/LGC, APO SF 96334-5320
F64605, TN—15 ABW Contracting Center/LGC, Hickam AFB, HI 96853-5320
F64608—Communications/ADPE Branch, 15ABW Contracting Center, Hickam AFB, HI 96853-5320
F64620, SZ—HQ PACAF/LGC, Hickam AFB, HI 96853-5001
F64719, TK—13 AF Contracting Center/LGC, APO SF 96274-5320
F65501, WF—Det 2, 5000 CONS/LGC, Elmendorf AFB, AK 99506-5001
F65503, WH—Det 1, 5000 CONS/LGC, Eielson AFB, AK 99702-5320
F65517, QN—HQ AAC/LGC, Elmendorf AFB, AK 99506-5001
F66501—USAFSO/LGC
R7—APO Miami 34001-5320

Part 6—Defense Logistics Agency Activity Address Numbers

DLAH00, YK—Defense Logistics Agency, ADP/Telecommunications Contracting Office, Cameron Station, Alexandria, VA 22304-6100
DLA002, TS—Defense Industrial Plant Equipment Center, Defense Depot Memphis, Memphis, TN 38114-5297
DLA003, TT—Defense Depot Ogden, Ogden, UT 84407-5000
DLA004, WX—Defense Distribution Region East (DDRE), Office of Contracting, New Cumberland, PA 17070-5001
DLA005, TV—Defense Depot Tracy, South Chrisman Road, Tracy, CA 95376-5000
DLA100, TW—Defense Personnel Support Center, Directorate of Clothing & Textiles, 2800 South 20th Street, Philadelphia, PA 19101-8419
DLA120, TX—Defense Personnel Support Center, Directorate of Medical Materiel, 2800 South 20th Street, Philadelphia, PA 19101-8419
DLA13H, UE—Defense Personnel Support Center, Directorate of Subsistence, 2800 South 20th Street, Philadelphia, PA 19101-8419
DLA132, U8—Defense Subsistence Office, Kansas City, 601 E. 12th Street, Room 1768, Kansas City, MO 64106-2895
DLA135, W4—Defense Subsistence Office, New Orleans, 4400 Dauphine Street, New Orleans, LA 70146-5210
DLA136, W5—Defense Subsistence Office, Cheatham, Cheatham Annex, Bldg 113, Williamsburg, VA 23185-0001
DLA137, W6—Defense Subsistence Region, Pacific, 2155 Mariner Square Loop, Alameda, CA 94501-1022
DLA139, U6—Defense Subsistence Region, Europe, APO New York, NY 09052
DLA140, W7—Defense Personnel Support Center (Installation Support), 2800 South 20th Street, Philadelphia, PA 19101-8419
DLA200, X1—Defense Reutilization and Marketing Service, Federal Center, Battle Creek, MI 49017-3092
DLA300, VS—Defense National Stockpile Center, 1745 Jefferson Davis Hwy, Suite 100, Arlington, VA 22202-5000
DLA301, VT—Defense National Stockpile Center, Zone 1 Management Office, Room 19-116, 26 Federal Plaza, New York, NY 10078-5000
DLA302, VU—Defense National Stockpile Center, Zone 2 Management Office, 3200 Sheffield Avenue, Hammond, IN 46327-5000
DLA303, VY—Defense National Stockpile Center, Zone 3 Management Office, 819 Taylor Street, Fort Worth, TX 76102-5000
DLA400, TY—Defense General Supply Center, Richmond, VA 23297-5000
DLA410, XH—Defense General Supply Center, Base Support Branch, Richmond, VA 23297-5000
DLA420, XK—Defense General Supply Center, Educational Supplies Branch, Richmond, VA 23297-5000
DLA430—Defense General Supply Center, COPS, Richmond, VA 23297-5000
DLA500, TZ—Defense Industrial Supply Center, 700 Robbins Avenue, Philadelphia, PA 19111-5096
DLA510, W2—Defense Industrial Supply Center, Base Operating Support System (BOSS), 700 Robbins Avenue, Philadelphia, PA 19111-5096
DLA520—Defense Industrial Supply Center, Product Verification Testing (PVT) Acquisitions, 700 Robbins Avenue, Philadelphia, PA 19111-5096

AFE Contracting Office—
z, Det 2, 7000 CONS/LGC,
09012–5320
Contracting Office, OL–C
DNS/LGC, APO New York

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AFE Contracting Office, OL–
ONS/LGC, APO New York

AFE Contracting Region—
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DNS/LGC, APO New York

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FE Contracting Office, OL–
DNS/LGC, APO New York

JSMTM/SAS–LGC, APO
–5320
AD Contracting Center/
3239–5320
TFW Base Contracting
APO SF 96519–5000
ABW Contracting Center/
3328–5320
LGC, APO SF 96287–5000
FE Contracting Office, OL–
DNS/LGC, APO New York

3W/LGC, APO SF 96334–

3W Contracting Center/
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DLA003, TT—Defense Depot Ogden, Ogden, UT 84407–5000
DLA004, WX—Defense Distribution Region East (DDRE), Office of Contracting, New Cumberland, PA 17070–5001
DLA005, TV—Defense Depot Tracy, South Chrisman Road, Tracy, CA 95376–5000
DLA100, TW—Defense Personnel Support Center, Directorate of Clothing & Textiles, 2800 South 20th Street, Philadelphia, PA 19101–8419
DLA120, TX—Defense Personnel Support Center, Directorate of Medical Materiel, 2800 South 20th Street, Philadelphia, PA 19101–8419
DLA13H, UE—Defense Personnel Support Center, Directorate of Subsistence, 2800 South 20th Street, Philadelphia, PA 19101–8419
DLA132, U8—Defense Subsistence Office, Kansas City, 601 E. 12th Street, Room 1768, Kansas City, MO 64106–2895
DLA135, W4—Defense Subsistence Office, New Orleans, 4400 Dauphine Street, New Orleans, LA 70146–5210
DLA136, W5—Defense Subsistence Office, Cheatham, Cheatham Annex, Bldg 113, Williamsburg, VA 23185–0001
DLA137, W6—Defense Subsistence Region, Pacific, 2155 Mariner Square Loop, Alameda, CA 94501–1022
DLA139, U6—Defense Subsistence Region, Europe, APO New York, NY 09052
DLA140, W7—Defense Personnel Support Center (Installation Support), 2800 South 20th Street, Philadelphia, PA 19101–8419
DLA200, X1—Defense Reutilization and Marketing Service, Federal Center, Battle Creek, MI 49017–3092
DLA300, VS—Defense National Stockpile Center, 1745 Jefferson Davis Hwy, Suite 100, Arlington, VA 22202–5000
DLA301, VT—Defense National Stockpile Center, Zone 1 Management Office, Room 19–116, 26 Federal Plaza, New York, NY 10078–5000
DLA302, VU—Defense National Stockpile Center, Zone 2 Management Office, 3200 Sheffield Avenue, Hammond, IN 46327–5000
DLA303, VY—Defense National Stockpile Center, Zone 3 Management Office, 819 Taylor Street, Fort Worth, TX 76102–5000
DLA400, TY—Defense General Supply Center, Richmond, VA 23297–5000
DLA410, XH—Defense General Supply Center, Base Support Branch, Richmond, VA 23297–5000
DLA420, XK—Defense General Supply Center, Educational Supplies Branch, Richmond, VA 23297–5000
DLA430—Defense General Supply Center, COPS, Richmond, VA 23297–5000
DLA500, TZ—Defense Industrial Supply Center, 700 Robbins Avenue, Philadelphia, PA 19111–5096
DLA510, W2—Defense Industrial Supply Center, Base Operating Support System (BOSS), 700 Robbins Avenue, Philadelphia, PA 19111–5096
DLA520—Defense Industrial Supply Center, Product Verification Testing (PVT) Acquisitions, 700 Robbins Avenue, Philadelphia, PA 19111–5096

DLA600, UA—Defense Fuel Supply Center, Cameron Station, Alexandria, VA 22304–6160
DLA700, UB—Defense Construction Supply Center, P.O. Box 3990, Columbus, OH 43216–5000
DLA710, YL—Defense Construction Supply Center, Commercial Activities & Services Branch, P.O. Box 16704, Columbus, OH 43216–5010
DLA720, YM—Defense Construction Supply Center, Wood Products Branch, P.O. Box 16704, Columbus, OH 43216–5010
DLA730, WZ—Defense Construction Supply Center, Military Interdepartmental Purchase Request, MIPR Division, P.O. Box 3990, Columbus, OH 43216–5000
DLA740, XJ—Defense Construction Supply Center, High Demand Group (MINI–ICP), P.O. Box 3990, Columbus, OH 43216–5000
DLA750, UB—Defense Construction Supply Center, Contracts Division I, P.O. Box 16704, Columbus, OH 43216–5010
DLA760, UB—Defense Construction Supply Center, Contracts Division II, P.O. Box 16704, Columbus, OH 43216–5010
DLA770, UB—Defense Construction Supply Center, Contracts Division III, P.O. Box 16704, Columbus, OH 43216–5010
DLA8AC, UG—DCMAO, Santa Ana, 34 Civic Center Plaza, P.O. Box C 12700, Santa Ana, CA 92712–2700
DLA8AL, Y1—DCMAO, Atlanta, 805 Walker Street, Marietta, GA 30060–2789
DLA8AM, YQ—DPRO McDonnell Douglas, P.O. Box 5669, Titusville, FL 32783–5669
DLA8AN, Z4—DCMAO Clearwater, 1100 Cleveland Street, suite 200, Clearwater, FL 34615–4822
DLA8AP, Z5—DPRO Grumman St. Augustine, 5000 US HWY 1, North, P.O. Drawer 3447, St. Augustine, FL 32085–3447
DLA8AQ—DCMC Aircraft Program Management Office, 805 Walker Street, Marietta, GA 30060–2789
DLA8AR—DPRO Michoud, 13800 Old Gentilly Highway, Bldg. 350, P.O. Box 29503, New Orleans, LA 70189–0503
DLA8AS—DCMR Atlanta, Termination Settlement Division, 805 Walker Street, Marietta, GA 30060–2789
DLA8AT, UL—DCMR, Atlanta, 805 Walker Street, Marietta, GA 30060–2789
DLA8AU, QV—DPRO Aerojet, Sacramento, P.O. Box 15846, Sacramento, CA 95852–1846
DLA8BA, UN—DCMAO Birmingham, 2121 8th Avenue North, Room 104, Birmingham, AL 35203–2376
DLA8BC, UP—DCMAO Bridgeport, 555 Lordship Blvd., Stratford, CT 06497–5000
DLA8BF, W1—DPRO Bell Helicopter Textron, P.O. Box 1605, Fort Worth, TX 76101–1605
DLA8BK, Z3—DPRO Boeing Louisiana, Inc., 4300 Legion Street, Lake Charles, LA 70601–5166
DLA8BL, Y4—DPRO Textron Lycoming Division, 550 South Main Street, Stratford, CT 06497–7593
DLA8BM, UR—DCMAO Baltimore, 200 Towsontown Blvd., West, Towson, MD 21204–5299
DLA8BN, US—DPRO AT&T Technologies, Inc., 204 Graham Hopedale Road, Burlington, NC 27217–2941
DLA8BP, UT—DCMR Boston, 495 Summer Street, Boston, MA 02210–2184
DLA8BQ, TU—DPRO Boeing Helicopter, P.O. Box 16859, Philadelphia, PA 19142–0859
DLA8BR, SP—DPRO Boeing, Seattle, P.O. Box 3707, Seattle, WA 98124–3707
DLA8BS, Y3—DCMAO Boston, 495 Summer Street, Boston, MA 02210–2184
DLA8BT, UU—DPRO Allied Signal, Route 46, Teterboro, NJ 07068–1173
DLA8BU, XC—DCMAO Buffalo, 1103 Federal Building, 111 W. Huron Street, Buffalo, NY 14202–2392
DLA8BV, YT—DPRO General Electric, Lakeside Avenue, Burlington, VT 05401–4064
DL8BW, RP—DPRO Boeing Military Airplanes, P.O. Box 7730, Wichita, KS 62777–7730
DLA8CD, UZ—DCMAO Cedar Rapids, 1231 Park Place, NE, Cedar Rapids, IA 52402–2023
DLA8CH, UY—DCMR Chicago, O'Hare International Airport, P.O. Box 66475 Chicago, IL 60666–0475
DLA8CL, VB—DCMR Cleveland, J. Celebrezze Federal Building, 1240 East Ninth Street, Cleveland, OH 44199–2033
DLA8CM, U5—DPRO BMY Marysville, 13311 Industrial Parkway, Marysville, OH 43040–0599
DLA8CN, Y5—DCMAO Cleveland, J. Celebrezze Federal Building, 1240 East Ninth St, Cleveland, OH 44199–2064
DLA8CO, X6—DPRO Loral, 1432 Exeter Road, Akron, OH 44306–3893
DLA8CS, VE—DPRO General Dynamics, 5001 Kearny Villa Road, P.O. Box 85375, San Diego, CA 92138–5357
DLA8DA, VG—DCMR Dallas, 1200 Main Street, Dallas, TX 75202–4399
DLA8DB, Z7—DCMAO Dallas, P.O. Box 50500, Dallas, TX 75250–5050
DLA8DC, VH—DCMAO San Diego, 7675 Dagget Street, Suite 200, San Diego, CA 92111–2241
DLA8DD, U4—DPRO Rockwell International, 3200 E Renner Road, MS 462–115, Richardson, TX 75082–2402
DLA8DL, TC—DPRO Douglas, Long Beach, 3855 Lakewood Boulevard, Long Beach, CA 90846–0001
DLA8DM, Y7—DCMAO Detroit, McNamara Federal Building, 477 Michigan Avenue, Detroit, MI 48226–2506
DLA8DN, VK—DCAMO, Denver, 750 W Hampden Avenue, Suite 250, Englewood, CO 80110–2199
DLA8DP, VL—DCMAO, Dayton, c/o Defense Electronics Supply Center, Building 1, Dayton, OH 45444–5300
DLA8EC, YP—DCAMO, Chicago, O'Hare International Airport, P.O. Box 66911, Chicago, IL 60666–0911
DLA8EG, ST—DPRO, Eaton, AIL DIV, Commack Road, Deer Park, NY 11729–9998
DLA8FL, VN—DPRO, ITT, Defense Group, 500 Washington Ave, Nutley, NJ 07110–3698
DLA8FM, 3N—DPRO, FMC, Minneapolis, 4800 East River Road, Minneapolis, MN 55421–1402
DLA8FS, VR—DPRO, FMC, 1125 Coleman Avenue, P.O. Box 367, San Jose, CA 95103–0367
DLA8FT, Y2—DPRO, Ford Newport Beach, Administration Building, Room 313, Ford Road, Newport Beach, CA 92658–8900
DLA8GB, KK—DPRO, Grumman Aerospace, Bethpage, Bethpage, NY 11714–3531
DLA8GC, SB—DPRO, GE Aircraft Engines, Cincinnati, Mail Drop N–1, Cincinnati, OH 45215–6303
DLA8GD, YB—DPRO, Westinghouse, 18901 Euclid Ave, Cleveland, OH 44117–1388
DLA8GE, 7Q—DPRO, General Electric, Aircraft Engines, Lynn, 1000 Western Avenue, Lynn, MA 0910–0445
DLA8GF, SL, TH—DPRO, General Dynamics, Fort Worth, P.O. Box 371, Fort Worth, TX 76101–0371
DLA8GG, KD—DPRO, General Dynamics, Pomona, P.O. Box 2505, Pomona, CA 91769–2505
DLA8GL, VV—DPRO, General Electric Company, M/S 9–2 Automated Systems Department, Bedford Street, P.O. Box 588, Burlington, MA 01803–0949
DLA8GM, VW—DCMAO, Grand Rapids, Riverview Center Building, 678 Front Street, NW, Grand Rapids, MI 49504–5352
DLA8GN, VX—DCMAO, Garden City, 605 Stewart Avenue, Garden City, NY 11530–4761
DLA8GP, YF—DPRO, General Dynamics, Lima, 1155 Buckeye Road, Lima, OH 45804–1896
DLA8GQ, SF—DPRO, General Electric, Philadelphia, 230 Goddard Boulevard, King of Prussia, PA 19406–2902
DLA8GR, M0, NJ—DPRO, General Electric, Pittsfield, 100 Plastics Avenue, Pittsfield, MA 01201–3696
DLA8GW, Z2—DPRO, General Dynamics, Warren, 28251 Van Dyke Street, Warren, MI 48090–5000
DLA8HB, WA—DPRO, PEMCO Aeroplex, Inc., P.O. Box 12447, Birmingham, AL 35202–2447
DLA8HC, WB—DCMAO, Hartford, 130 Darlin Street, East Hartford, CT 06108–3234
DLA8HD, WC—DPRO, Kearfott/Plessey, 164 Totowa Road, M/S 11A30, Wayne, NJ 07474–0975
DLA8HL, QT—DPRO, Hughes, Los Angeles, P.O. Box 92463, Los Angeles, CA 90009–2463
DLA8HM, WD—DPRO, Honeywell, Honeywell Plaza, 2701 Fourth Avenue, South Minneapolis, MN 54408–1792
DLA8HN—DPRO, Hercules, Magna, P.O. Box 157, Magna, UT 84044–0157
DLA8HR, Z9—DCMC Residence Hawaii, Federal Building, Room 4115, 300 Ala Moana Boulevard., Honolulu, HI 96813–4908
DLA8HS, XT—DPRO, Hamilton Standard, 1 Hamilton Road, Windsor Locks, CT 06096–0463
DLA8HT, SR—DPRO, Hughes Missile Systems Group, P.O. Box 11337, M/S E–4, Tucson, AZ 85734–1337
DLA8HU, XG—DPRO, Hughes, Building 600, Mail Station C107, P.O. Box 3310, Fullerton, CA 92634–3310
DLA8JJ, WG—DCMAO, Indianapolis, Building 1, Fort Benjamin Harrison, IN 46249–5701
DLA8JK, Z8—DPRO, GMC Allison, 2001 South Tibbs Avenue, Indianapolis, IN 46241–4812
DLA8JL, X2—DPRO, Magnavox, 1616 Directors Row, Fort Wayne, IN 46808–1286

DLA8KA, XY—DPRO, Kaman Aerospace, Old Windsor Road, P.O. Box 2, Bloomfield, CT 06002–0002
DLA8LA, WL—DCMR, Los Angeles, 222 N Sepulveda Boulevard, El Segundo, CA 90245–4320
DLA8LB, WM—DPRO, Litton, 5490A Canoga Ave, Woodland Hills, CA 91367–6619
DLA8LC, Y8—DCMAO, El Segundo, 222 North Sepulveda Boulevard, El Segundo, CA 90245–4320
DLA8LD, WP—DPRO, LTV Aerospace and Defense, P.O. Box 655907, M/S 4915, Dallas, TX 75265–5907
DLA8LE, KZ— DPRO, Lockheed, Burbank, P.O. Box 551, Burbank, CA 91520–1070
DLA8LF, QX—DPRO, Lockheed, Sunnyvale, P.O. Box 3504, Sunnyvale, CA 94088–3504
DLA8LG, RK— DPRO, Lockheed Aeronautical Systems Company—Georgia, 865 Cobb Drive, Marietta, GA 30063–0260
DLA8LS, KH—DPRO, Lockheed Missiles, Sunnyvale, P.O. Box 3504, Sunnyvale, CA 94088–3504
DLA8LT, WN—DPRO, E-Systems, Inc., P.O. Box 379, Greenville, TX 75401–0379
DLA8MB, V1—DPRO, Harris, Melbourne, 1425 Troutman Boulevard, N.E., Palm Bay, FL 32905–4102
DLA8MC, V2—DPRO, Rockwell International-MSD, P.O. Box 1357, Duluth, GA 30136–4099
DLA8MD, RE—DPRO, Martin Marietta, Denver, P.O. Box 179, Denver, CO 80201–0179
DLA8MF, QF—DCMAO, Puerto Rico, Box DLA N S G A, FPO Miami, FL 34053–0007
DLA8MH, X9—DPRO, McDonnell Douglas Space Systems Company, 5301 Bolsa Avenue, Huntington Beach, CA 92647–2048
DLA8ML, TR—DPRO, McDonnell Douglas Helicopter, 5000 East McDowell Road, Mesa, AZ 85025–9797
DLA8MM, XL—DPRO, Martin Marietta, Orlando, P.O. Box 55837, Mail Point 49, Orlando, FL 32855–5837
DLA8MN, WQ—DCMAO, Twin Cities, 2305 Ford Parkway, St. Paul, MN 55116–1893
DLA8MS, JZ—DPRO, McDonnell Douglas, St. Louis, P.O. Box 516, St. Louis, MO 63166–0516
DLA8MW, WR—DCMAO, Milwaukee, H. S. Reuss Federal Building, suite 340, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2282
DLA8NC, WV—DCMAO, Ottawa, P.O. Box 3416, Station D, Ottawa, On Canada K1P 6L4
DLA8NF, WW—DCMAO, Orlando, 3555 Maguire Boulevard, Orlando, FL 32803–3726
DLA8NH, YS—DPRO, Lockheed Sanders, Inc., Daniel Webster Highway, South, P.O. Box 868, Nashua, NH 03061–0868
DLA8NJ, WT—DCMAO, Springfield, 240 Route 22, Springfield, NJ 07081–3170
DLA8NK, QR—DPRO, Northrop, Hawthorne, One Northrop Avenue, Hawthorne, CA 90250–3296
DLA8NL, Z1—DCMAO, New Orleans, P.O. Box 29283, New Orleans, LA 70189–0283
DLA8NM, YR—DCASPRO, IBM, Route 17C, Owego, NY 13827–1298
DLA8NN, YN—DPRO, Harris, 6801 Jericho Turnpike, Syosset, NY 11791–4465
DLA8NY, WU—DCMR, New York, 201 Varick Street, New York, NY 10014–4811
DLA8NZ, Y9—DCMAO, New York, 201 Varick Street, New York, NY 10014–4811
DLA8PA, WY—DCMAO, Phoenix, The Monroe School, 215 N 7th Street, Phoenix, AZ 85034–1012
DLA8PE, T5—DPRO, Pratt & Whitney, East Hartford, 400 Main Street, East Hartford, CT 06108–0969
DLA8PH, XA—DCMR, Philadelphia, P.O. Box 7478, Philadelphia, PA 19101–7478
DLA8PL, X3—DCMAO, Philadelphia, P.O. Box 7699, Philadelphia, PA 19101–7699
DLA8PM, XB—DPRO, IBM Manassas, 9500 Godwin Drive, Manassas, VA 22110–4198
DLA8PP, XD—DCMAO, Pittsburgh, 1612 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222–4190
DLA8PR, X7—DPRO, GE Aerospace, Marne Highway and, Borton Landing Road, Moorestown, NJ 08057–3095
DLA8PW, T2—DPRO, Pratt & Whitney, West Palm Beach, P.O. Box 109600, West Palm Beach, FL 33410–9600
DLA8RA, 7H—DCMC Residency, Annapolis, P.O. Box 1488, Annapolis, MD 21404–1488
DLA8RB, XF—DPRO, Raytheon, Spencer Laboratory, Wayside Ave, Burlington, MA 01803–0901
DLA8RC, RY—DPRO, Rockwell, Canoga Park, 6633 Canoga Avenue, Canoga Park, CA 91303–2790
DLA8RD, RB—DPRO, Rockwell, Anaheim, 3370 Miraloma Avenue M/SAB02A, Anaheim, CA 92803–3110
DLA8RL, QS—DPRO, Rockwell, Los Angeles, P.O Box 92098, Los Angeles, CA 9009–2098
DLA8RP, XM—DCMAO, Reading, 45 South Front Street, Reading, PA 19602–1094
DLA8SA, XN—DCMAO, San Antonio, 615 East Houston, P.O. Box 1040, San Antonio, TX 78294–1040
DLA8SD, X8—DPRO, Sundstrand, P.O. Box 5066, Rockford, IL 61125–0066
DLA8SF, XR—DCMAO, San Francisco, 1250 Bayhill Drive, San Bruno, CA 94066–3070
DLA8SK, XQ—DPRO, Link Flight Simulation, Kirkwood Plant, Binghamton, NY 13902–1237
DLA8SL, XS—DCMR, St. Louis, 1222 Spruce Street, St. Louis, MO 63103–2811
DLA8SN, XU—DCMAO, Syracuse, 615 Erie Boulevard, West, Syracuse, NY 13204–2408
DLA8SS, LF—DPRO, UTC Silorsky Aircraft Division, Stratford, CT 06497–7553
DLA8ST, X5—DCMAO, St. Louis, 1222 Spruce Street, St. Louis, MO 63103–2812
DLA8SW, XW—DCMAO, Seattle, Building 5D, Naval Station Puget Sound, Seattle, WA 98115–5010
DLA8SY, XX—DPRO, GTE Government Systems Corporation, 200 First Ave, Needham, MA 02194–9123
DLA8TB, R6—DPRO, Thiokol, P.O. Box 524, Mail Stop X–10, Brigham City, UT 84302–0524
DLA8TE, XZ—DPRO, Texas Instruments, Inc., P.O. Box 660246, M/S 256, Dallas, TX 75266–0246
DLA8T0, U3—DPRO, McDonnell Douglas/Rockwell, 2000 North Memorial Drive, Tulsa, OK 74115–3833
DLA8TR, S6—DPRO, TRW, Redondo Beach, One Space Park, Redondo Beach, CA 90278–1078
DLA8TW, SQ—DPRO, Textron Defense Systems, 201 Lowell Street, Wilmington, MA 01887–2941
DLA8UG, NH—DPRO, Unisys, Great Neck, Long Island, Great Neck, NY 11020–7001
DLA8VC, YC—DCMAO, Van Nuys, 6230 Van Nuys Boulevard, Van Nuys, CA 91401–2713
DLA8WB, S2—DPRO, Westinghouse Electric, Baltimore, P.O. Box 1693, M/S 1285, Baltimore, MD 21203–1693
DLA8WK, YD—DCMAO, Wichita, U.S. Courthouse, suite B–34, 401 North Market, Wichita, KS 67202–2095
DLA8WR, YH—DPRO, Williams International, c/o Williams International Corporation, 2280 West Maple Road, Walled Lake, MI 48088–0200
DLA8WS, YG—DPRO, Westinghouse, 401 East Hendy Avenue, P.O. Box 3499, M/S 11–7, Sunnyvale, CA 94088–3499
DLA8WT, Z8—DPRO, Grumman Aerospace Corporation, P.O. Box 9015, Stuart, FL 33495–9015
DLA8WU, VA—DPRO, Northrop, 600 Hicks Rd, Rolling Meadows, IL 60008–1098
DLA900, UD—Defense Electronics Supply Center, 1507 Wilmington Pike, Dayton, OH 45444–5000
DLA910, U7—Defense Electronics Supply Center, Base Contracting Section, 1507 Wilmington Pike, Dayton, OH 45444–5000

Part 7—Defense Communications Agency Activity Address Numbers

DCA100, VC—Defense Communications Agency, (ZD10), Contract Management Division, attn: PL, Washington, DC 20305–2000
DCA200, VP—DECCO (ZD11), attn: RGC, Scott AFB, IL 62225–8300
DCA400—DECCO-Europe (ZD13), attn: RS, APO New York, NY 09136–5000

Part 8—Defense Mapping Agency Activity Address Numbers

DMA600, BQ—Defense Mapping Agency System Center, (ZD40), 12100 Sunset Hills Road, Suite 200, Reston, VA 22090–3207
DMA650—Defense Mapping Agency, (ZD43), Hydrographic/Topographic Center *SXO*, Building 4011, Ft. Sam Houston, TX 78234–5000
DMA700, 8Y—Defense Mapping Agency, (ZD41), Aerospace Center, 3200 South Second Street, attn: AQI, St. Louis, MO 63118–3399
DMA800, YZ—Defense Mapping Agency, (ZD42), Hydrographic/Topographic Center AQ, 6500 Brookes Lane, Washington, DC 20315–0030

Part 9—Defense Nuclear Agency Activity Address Numbers

DNA001, 8Z—Defense Nuclear Agency, (ZD30), Headquarters, 6801 Telegraph Road, attn: AM, Washington, DC 22310
DNA002, 0N—Defense Nuclear Agency, (ZD31), Field Command, attn: Office of Procurement, Kirtland AFB, NM 87115–5000
DNA004—DNA Armed Forces Radiobiology Research Institute, (ZD32), attn: Building 42, Bethesda, MD 20814–5145

Part 10—Miscellaneous Defense Activities Activity Address Numbers

MDA902—Armed Forces Radio and Television Service, (ZD02), 10888 La Tuna Canyon Road, Sun Valley CA 91352–2058

MAO, New York, 201
ew York, NY 10014–4611
CMAO, Phoenix, The
215 N 7th Street, Phoenix,

O, Pratt & Whitney, East
in Street, East Hartford,

MR, Philadelphia, P.O. Box
a, PA 19101–7478
IAO, Philadelphia, P.O.
elphia, PA 19101–7699
RO, IBM Manassas, 9500
Manassas, VA 22110–4198
MAO, Pittsburgh, 1612
1000 Liberty Avenue,
222–4190
O, GE Aerospace, Marne
rton Landing Road,
08057–3095
O, Pratt & Whitney, West
Box 109600, West Palm
9600
MC Residency, Annapolis,
nnapolis, MD 21404–1488
O, Raytheon, Spencer
side Ave, Burlington, MA

O, Rockwell, Canoga
a Avenue, Canoga Park,

O, Rockwell, Anaheim,
venue M/SAB02A,
03–3110
O, Rockwell, Los Angeles,
s Angeles, CA 9009–2098
MAO, Reading, 45 South
ding, PA 19602–1094
MAO, San Antonio, 615
D. Box 1040, San Antonio,

O, Sundstrand, P.O. Box
, 61125–0066
AO, San Francisco, 1250
n Bruno, CA 94066–3070
O, Link Flight Simulation,
Binghamton, NY 13902–

R, St. Louis, 1222 Spruce
MO 63103–2811
MAO, Syracuse, 615 Erie
Syracuse, NY 13204–2408
O, UTC Silorsky Aircraft
d, CT 06497–7553
AO, St. Louis, 1222
Louis, MO 63103–2812
MAO, Seattle, Building
Puget Sound, Seattle,

O, GTE Government
ion, 200 First Ave,
194–9123
O, Thiokol, P.O. Box 524,
righam City, UT 84302–

O, Texas Instruments,
246, M/S 256, Dallas, TX

O, McDonnell Douglas/
orth Memorial Drive,
833
O, TRW, Redondo Beach,
Redondo Beach, CA

O, Textron Defense
ell Street, Wilmington,

DLA8UG, NH—DPRO, Unisys, Great Neck, Long Island, Great Neck, NY 11020–7001
DLA8VC, YC—DCMAO, Van Nuys, 6230 Van Nuys Boulevard, Van Nuys, CA 91401–2713
DLA8WB, S2—DPRO, Westinghouse Electric, Baltimore, P.O. Box 1693, M/S 1265, Baltimore, MD 21203–1693
DLA8WK, YD—DCMAO, Wichita, U.S. Courthouse, suite B–34, 401 North Market, Wichita, KS 67202–2095
DLA8WR, YH—DPRO, Williams International, c/o Williams International Corporation, 2280 West Maple Road, Walled Lake, MI 48088–0200
DLA8WS, YG—DPRO, Westinghouse, 401 East Hendy Avenue, P.O. Box 3499, M/S 11–7, Sunnyvale, CA 94088–3499
DLA8WT, Z8—DPRO, Grumman Aerospace Corporation, P.O. Box 9015, Stuart, FL 33495–9015
DLA8WU, VA—DPRO, Northrop, 600 Hicks Rd, Rolling Meadows, IL 60008–1098
DLA900, UD—Defense Electronics Supply Center, 1507 Wilmington Pike, Dayton, OH 45444–5000
DLA910, U7—Defense Electronics Supply Center, Base Contracting Section, 1507 Wilmington Pike, Dayton, OH 45444–5000

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DCA200, VP—DECCO (ZD11), attn: RGC, Scott AFB, IL 62225–6300
DCA400—DECCO-Europe (ZD13), attn: RS, APO New York, NY 09136–5000

Part 8—Defense Mapping Agency Activity Address Numbers

DMA600, BQ—Defense Mapping Agency System Center, (ZD40), 12100 Sunset Hills Road, Suite 200, Reston, VA 22090–3207
DMA650—Defense Mapping Agency, (ZD43), Hydrographic/Topographic Center "SXO", Building 4011, Ft. Sam Houston, TX 78234–5000
DMA700, 8Y—Defense Mapping Agency, (ZD41), Aerospace Center, 3200 South Second Street, attn: AQI, St. Louis, MO 63118–3399
DMA800, YZ—Defense Mapping Agency, (ZD42), Hydrographic/Topographic Center AQ, 6500 Brookes Lane, Washington, DC 20315–0030

Part 9—Defense Nuclear Agency Activity Address Numbers

DNA001, 8Z—Defense Nuclear Agency, (ZD30), Headquarters, 6801 Telegraph Road, attn: AM, Washington, DC 22310
DNA002, 0N—Defense Nuclear Agency, (ZD31), Field Command, attn: Office of Procurement, Kirtland AFB, NM 87115–5000
DNA004—DNA Armed Forces Radiobiology Research Institute, (ZD32), attn: Building 42, Bethesda, MD 20814–5145

Part 10—Miscellaneous Defense Activities Activity Address Numbers

MDA902—Armed Forces Radio and Television Service, (ZD02), 10888 La Tuna Canyon Road, Sun Valley CA 91352–2058

MDA903, F7—Defense Supply Service—Washington, (ZD03), Room 1D245, The Pentagon, Washington, DC 20310–5200
MDA904, BE—Maryland Procurement Office, (ZD04), 9800 Savage Road, attn: L411, Ft George G. Meade, MD 20755–6000
MDA905, B4—Uniformed Services University of the Health Sciences, (ZD05), 4301 Jones Bridge Road, Bethesda, MD 20814–4799
MDA906—Office for the Civilian Health & Medical, Program of the Uniformed Services (CHAMPUS) (ZD06), attn: Contract Management, Aurora, CO 80045–6900
MDA907—Purchasing and Contracting Office, (ZD07), Menwith Hill Station, APO New York 09210
MDA908, 2X—Virginia Contracting Activity, (ZD50), P.O. Box 46563, attn: RSQ, Washington, DC 20050–6563
MDA946—WHS Contracting Office, (ZD46), Real Estate/Facilities Directorate, The Pentagon, room 2E174, Washington, DC 20301–1155
MDA911, 2U—Headquarters, U.S. Special Operations Command, (ZD22), attn: SOKO, MacDill Air Force Base, FL 33608–6001
MDA970, ZL—Defense Evaluation Support Activity, (ZD70), Building 20451, attn: DESA–PD, Kirtland AFB, NM 87117–5000
MDA972, WS—DARPA Contract Management Office, (ZD72), 1400 Wilson Blvd, Arlington, VA 22209–2309

Part 11—On-Site Inspection Agency Activity Number

0S1A01—On-Site Inspection Agency, (ZD74), Washington/Dulles International Airport, Washington, DC 20041–0498

Part 12—Strategic Defense Initiative Organization Activity Number

SDIO84—Strategic Defense Initiative Organization, (ZD60), The Pentagon, room 1E1019, attn: SDIO/CT (Mrs. Wilhelm), Washington, DC 20301–7100

[FR Doc. 91–16999 Filed 6–30–91; 8:45 am]

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federal register

Wednesday
July 31, 1991

Part III

Department of Health and Human Services

Social Security Administration

Supplemental Security Income Modernization Project Issue Paper; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Supplemental Security Income Modernization Project Issue Paper

AGENCY: Social Security Administration, HHS.

ACTION: Publication of SSI Modernization Project Issue Paper.

SUMMARY: The Social Security Administration (SSA) takes this opportunity to publish an issues paper produced as a result of the public meetings of the Supplemental Security Income (SSI) Modernization Project. A 60-day comment period is allowed from the date of publication in the **Federal Register**.

DATES: Comments must be submitted on or before September 30, 1991.

TO SUBMIT COMMENTS OR REQUEST FURTHER INFORMATION CONTACT: SSI Modernization Project Staff, room 311, Altmeyer Bldg., P.O. Box 17073, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–3571.

SUPPLEMENTARY INFORMATION: SSA has undertaken a comprehensive examination of the SSI program, reviewing its fundamental structure and purpose. The SSI program has been in operation for over 17 years. The purpose of the Project is to determine if the SSI program is meeting and will continue to meet the needs of the population it is intended to serve in an efficient and caring manner, recognizing the constraints in the current fiscal climate.

The first phase of the Project is intended to create a dialogue that provides a full examination of how well the SSI law and the policies developed by SSA to implement the law serve the needy aged, blind, and disabled. To begin this dialogue, the Commissioner involved 24 people who are experts in the SSI program and/or related public policy areas. The experts represent a wide range of interests regarding programs that serve aged, blind, and disabled persons. Dr. Arthur S. Flemming, former Secretary of Health, Education and Welfare, is the chairperson. The Project held public meetings in Baltimore, Maryland; Washington, DC; New York City, New York; Chicago, Illinois; Los Angeles, California; Montgomery, Alabama; and Atlanta, Georgia. These meetings were announced in the **Federal Register** and individuals were invited to testify either in person or through correspondence to the Project staff. During these meetings, the public as well as the experts have expressed their individual views and concerns about the SSI program. The purpose of this initial dialogue was to exchange ideas and information about the program. This exchange facilitated the sharing of ideas among attendees' constituencies, including advocacy groups, state and local governments and academicians.

The SSI Modernization Project Staff now publishes the following paper in the **Federal Register** which identifies the major issues that have surfaced, summarizes the testimony growing out of the public meetings and includes the options for change that have been identified as a result of the public testimony. These options reflect possibilities for solution of issues by participants in the public meetings of the experts and through correspondence with the project. They should not be identified as the views of SSA or of the SSI Modernization Project experts. During the public meetings, 239 individuals testified on their own behalf or on behalf of organizations which they represented. In addition, approximately 100 individuals or groups wrote to the Project to provide testimony regarding the problems with the SSI program and to offer options to resolve these problems.

In some cases, the status quo is an option which has been advocated by the public. The status quo is discussed in each section under the heading, "Current Approach." It should also be noted that all the options for change would require legislation unless they are specifically identified as requiring a regulatory change only.

SSA invites the public to comment on the issues and options by September 30, 1991. Comments should be sent to the address shown above for the SSI Modernization Project. Commenters need not limit their remarks to the issues or options presented in the paper; additional issues with proposed solutions and additional options to address the issues contained herein may be submitted. Commenters should also feel free to state their support for the status quo as described in "Current Approach." Commenters may choose to respond only to specific topics rather than to the entire paper. It would be helpful if individuals or groups would indicate the order in which they would like to see implemented the various options they support. Responses may be hand written.

The responses will be used by the SSI Modernization Project experts at their November meeting to formulate their individual points of view concerning which options they support and which deserve priority consideration.

Dated: July 19, 1991.

Peter D. Spencer,

Executive Staff Director, SSI Modernization Project.

Topical Listing

- Services Provided by the Social Security Administration
- Adequacy of the Income Floor in the SSI Program
- State Supplementation With an Increased Federal Benefit
- Assets/Resources
- Unearned Income
- In-kind Support and Maintenance
- Couples
- Definition of "Substantial Gainful Activity"
- Work Incentives
- Role of SSA Field Office versus Role of Disability Determination Services in Initial Disability Claims Intake Process
- Processing Disability Appeals
- The Definition of "Aged"
- Accounting Issues:
  - Test Annual Prospective Accounting Model(s)
  - Triple Counting and Termination of Income
  - Five Paydays
  - Monthly Verification of Wages
  - State Supplementation Payments Computation
- Linkage of the SSI and Medicaid Programs
- Linkage of the SSI and Food Stamp Programs
- Representative Payment
- Funding for Outreach Activities
- Information and Referral Services
- Homelessness
- Advisory Council Review

Services Provided by the Social Security Administration

Background: Between 1984 and 1990, SSA underwent a planned staff reduction in excess of 17,000 positions. The downsizing ended in 1990 but current staffing levels remain approximately 21 percent below the pre-1984 levels. Over the same period, SSA's overall workloads either remained constant or increased. SSI claims based on disability, for example, increased by more than 20 percent.

The Chairman of the House Ways and Means' Subcommittee on Social Security recently asked the Commissioner of Social Security how a staff increase of 6,000 would improve SSA's services. The Commissioner responded that funds for additional staff would be devoted to priority workloads such as processing additional disability and appellate cases; processing additional workloads generated by provisions of recent

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Peter D. Spencer,

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legislation; reducing the busy rate on the 800 number service; and increasing time spent in field offices on new claims, postentitlement actions, and continuing eligibility reviews.

Summary of Testimony from Public Hearings: Witnesses alleged that—

Service in General. The loss of employees has affected SSA's ability to do what the public has grown to expect. SSA claims representatives no longer seem to want to help people.

"[T]he lines are long, the minutes spent with each applicant are short." (Legal services representative)

"[T]he single most important change that can be made to humanize the SSI program is to increase staffing levels." (Legal services panel)

There is a need for more outreach. However, receipt of additional claims without adequate resources will have a negative impact on program objectives, staff morale, and service delivery.

Staff Qualifications and Training. SSA needs more and better trained bilingual workers. Field staff need disability sensitivity awareness training and better understanding of the SSI program and its work incentives.

Processing Delays. The most obvious result of SSA understaffing is the severe delay in processing claims at all stages.

Field Offices Lack Privacy. For the sake of employees and claimants alike, relatively soundproof privacy screens are needed around claims representatives' desks.

"It is undignified to ask people to talk about . . . intimate details of their lives without any privacy . . . . perhaps this seems insignificant, yet individual dignity is never insignificant." (Law school advocate coordinator)

Computer Modernization Needed. There are "repeated input errors" (legal services attorney) and staff often does not have time to repeat the procedure until it is correct.

"So many problems are caused by mix-ups on the computer." (Health clinic worker)

Program Integrity.

"We regret that the oversight and enforcement of the representative payee program seems to have virtually disappeared." (Adult protective services administrator)

Teleservice (800 Number) System. The toll-free number system is not working. Staff shortages have brought more busy signals, calls not being returned, and lack of consistency in information provided.

What Readers May Wish to Consider: Those responding to this document are encouraged to share their views, especially those growing out of actual experiences, regarding service deficiencies and their recommendations for overcoming these deficiencies.

Adequacy of the Income Floor in the SSI Program

Current Approach: The Report of the Senate Finance Committee dated September 26, 1972 stated that the legislation which created the SSI program would "create a new Federal program administered by the Social Security Administration, designed to provide a positive assurance that the Nation's aged, blind, and disabled people would no longer have to subsist on below-poverty-level incomes." The initial Federal SSI benefit standard specified that all individual benefits would be determined on the basis of their relationship to a uniform Federal floor. The first income floor, established in 1972, was below the poverty guideline.

Although the SSI program created a new, uniform benefit standard, Congress recognized that, because of variations in living costs, nationwide uniformity of assistance levels was not necessarily appropriate or desirable. States were authorized to provide benefits which would bring the income of beneficiaries in their States above the Federal income floor. Because Federal SSI benefits are indexed annually, their real (and relative) value remains largely unchanged from the levels established in 1974.

The current Federal benefit standard or income floor for single SSI recipients with no other income is $407 per month ($4,884 annually). It is $610 per month ($7,320 annually) for couples with no other income.

Summary of Testimony From Public Hearings: Witnesses alleged that—

Current benefits are inadequate. The current Federal SSI benefit levels are substantially below the Federal poverty levels.

"The amount allowed under the SSI program is simply inadequate to meet basic human needs (food, shelter, clothing, etc.)" (State mental health administrator)

"The amount of money SSI recipients receive is not enough to live on, even in rural areas." (Legal services attorney)

Costs in today's economy have increased. The increase in the cost of living for the aged, blind and disabled is much greater than the annual increase in the SSI benefit levels.

"There is no way in today's economy that one can meet his basic needs for food, shelter and clothing on that income." (Senior citizens activities administrator)

"There are many clients who are existing on minimal financial resources, who are in financial crisis due to high rents and inflammatory costs, including medical expenses." (Private social services coordinator)

Quality of life is diminished. An independent, quality life style cannot be maintained at the current SSI benefit level.

"We find it very difficult to purchase clothing or enjoy some diversified entertainment other than going to a senior center." (Senior center representative)

Many SSI recipients "live in constant fear" (SSI recipient) that rent, electric and phone bills will be raised or that costly household repairs will be needed. Many have to "choose between medicine, food, and a decent place to live." (State social services committee)

SSI benefit should be raised. Participants must not continue to subsist with income below the poverty line.

"We urge [SSA] to fulfill the original intent of the SSI program by increasing benefits to the poverty level in three steps beginning in the next fiscal year* * *" (Parent volunteer)

Poverty guidelines understate costs but may be the only useable measure. The poverty guidelines, an overall standard of the poverty threshold, are used for administrative determinations. While they understate the true costs of a minimal standard of living, the poverty guidelines, as a measure of SSI benefit adequacy, are useful because they are readily available and they are widely recognized. The annual 1991 poverty guidelines are $6,620 for one person and $8,880 for two persons.

Options for Change

1. *Raise the SSI Federal benefit standards to 100 percent of the poverty guideline for individuals and couples, and achieve that by three equal incremental increases over a 3-year period.*

The annual 1991 SSI Federal benefit standard for an individual ($4,884) is 73.78 percent of the $6,620 annual 1991 Federal poverty guideline for one person. The annual 1991 SSI Federal benefit standard for a couple ($7,320) is 82.43 percent of the $8,880 annual 1991 Federal poverty guideline for two persons. In 1991 dollars, the SSI Federal benefit standards for 1991–1994 would be:

	Dollars per year		Dollars per month	
	Individual	Couple	Individual	Couple
1991	$4,884	$7,320	$407	$610
1992	5,463	7,839	455	653
1993	6,041	8,359	503	696
1994	6,620	8,880	551	740

Note: The actual 1992–1994 benefit standards would be adjusted for increases in the cost of living relative to 1991.

2. *Same as option 1 above, but raise the SSI Federal benefit standards to 110 percent of the poverty guideline.*

In 1991 dollars, the SSI Federal benefit standards for 1991–1994 would be:

	Dollars per year		Dollars per month	
	Individual	Couple	Individual	Couple
1991	$4,884	$7,320	$407	$610
1992	5,683	8,055	473	671
1993	6,482	8,959	540	746
1994	7,282	9,768	606	814

Note: The actual 1992–1994 benefit standards would be adjusted for increases in the cost of living relative to 1991.

3. *Same as options 1 and 2 above, but raise the SSI Federal benefit standard to 120 percent of the poverty guideline.*

In 1991 dollars, the SSI Federal benefit standards for 1991–1994 would be:

	Dollars per year		Dollars per month	
	Individual	Couple	Individual	Couple
1991	$4,884	$7,320	$407	$610
1992	5,904	8,431	492	702
1993	6,925	9,543	577	795
1994	7,944	10,656	662	888

Note: The actual 1992–1994 benefit standards would be adjusted for increases in the cost of living relative to 1991.

State Supplementation With an Increased Federal Benefit

Current Approach: States use supplementary payments to achieve more adequate benefits for their aged, blind and disabled. State supplementary payments allow a State to provide a minimum income floor, subsidize certain living arrangements, and serve as a link to Medicaid eligibility in many States. Over 2 million SSI recipients (more than 40 percent) receive State supplementary payments.

The amount of supplementation varies significantly from State to State as do the conditions under which States provide supplementary payments. For example, California has a number of supplementation levels and supplements nearly all of its SSI recipients in a variety of living arrangements; in that State, most total benefits (SSI plus State supplementary payments) are greater than the Federal poverty level. In contrast, Texas pays no supplementation, and several States only supplement individuals in protected living arrangements.

When the SSI program began, some States reduced their costs by reducing the amount of supplementation they paid when SSI benefits were adjusted for the cost of living. Some recipients were no better off after the SSI benefit was increased. To avoid this benefit erosion, the SSI statute was amended in 1976 to require States to pass along any SSI increases. That is, States must maintain their supplementary payment levels or the total amount of supplementation that they pay from year to year regardless of any SSI benefit adjustment for the cost of living.

Summary of Testimony From Public Hearings: There was no specific testimony about State supplementation of SSI benefits increased to reflect an increment of the Federal poverty level. However, witnesses did allege that recipients are not able to keep up with the cost of living in Michigan and California. Those States reduced some of their supplementary payments levels in 1991.

Option for Change

Eliminate the requirement for States to maintain State supplementary payments

Most State payment levels, added to the current SSI level, do not exceed the Federal poverty level. Increased SSI benefits tied to the Federal poverty level would subsume most of the needs that are met at present by State supplementary payments. However, 36 States and the District of Columbia currently have at least one supplementation level which brings some total benefit levels above the Federal poverty level.

Assets/Resources

Current Approach: The SSI program uses the value of a person's assets as one of two measures of need in determining eligibility. The other measure of need is income. Assets are things a person owns. "Resources" is the name the SSI program uses to identify the assets that are considered when determining eligibility. An individual or a couple whose countable resources are higher than the limit in the statute are ineligible for SSI. The statutory limit for an individual is $2,000. The limit for a couple is $3,000.

Meaning of resources. Resources are cash, other personal property and real property that an individual owns and has the right to turn into cash to use for his own basic needs of food, clothing, and shelter. Not everything a person owns is a resource. A person may own something that he does not have the right to turn into cash or use for his basic needs. These things are a person's assets, but they are not resources that the SSI program uses to determine eligibility.

Countable and excludable resources. Resources that count against the limits are called "countable resources." Examples of common types of countable resources are cash, nonhome real property, checking and savings accounts, time deposits, stocks and bonds, and property agreements and property rights. Not all resources count against the statutory limits of $2,000 and $3,000.

The statute provides that some items, called resource exclusions, will be excluded in whole or in part in determining whether resources are within the $2,000/$3,000 limits. A partial list of these items includes: the home, household goods and personal effects, an essential automobile, burial spaces and funds, life insurance, retroactive SSI and Social Security benefits, property essential to self-support, and resources set aside as part of a plan for achieving self-support.

Treatment of trusts. Money in a trust is treated according to the basic rules concerning what makes an asset a resource and which resources count. In order for the money to be considered the person's resource, the person must be legally able to go into the trust and use the money for his support. If the person cannot legally go into the trust and use the money for his support, the money is not considered to be his resource. These rules allow money in any amount to be put in trust for an individual while he or she remains eligible for SSI.

Transfer of assets. If a person gives away something he owns or sells it for less than it is worth, there is no effect on his SSI eligibility. However, the Medicaid statute provides that if a person gives away a resource or sells it for less than its value, he may not be eligible for Medicaid covered nursing services for up to 30 months.

Before July 1, 1988, if a person gave away something or sold it for less than it was worth, the difference between the fair market value and what the person received was counted as the person's SSI resource for 24 months.

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Before July 1, 1988, if a person gave away something or sold it for less than it was worth, the difference between the fair market value and what the person received was counted as the person's SSI resource for 24 months.

Time-limited resource exclusions. Some resources are not counted for a limited number of months, ranging from 1 to 9 months. These time-limited exclusions give people extra time to use the resources before they are counted toward the SSI limit. Examples of these time-limited exclusions are: Retroactive SSI and Social Security payments which are excluded for 6 months, and payments from a fund established by a State to aid victims of crime or certain relocation assistance provided by a State or local government which are excluded for 9 months.

Overpayments due to excess resources. When a person is paid too much SSI because resources exceeded the statutory limit by $50 or less, the person usually does not have to pay back the SSI unless the failure to report the excess resources in a timely manner was willful and knowing.

Reasons for resource limits and exclusions. People are expected to use any other means of support, including personal savings and property, before receiving SSI.

The SSI statute and regulations single out certain assets and resources for special treatment. The idea behind the resource exclusions is that certain property is so essential to one's well-being (for example, the home a person lives in) that its owner should not be expected to sell it and use the cash to meet day-to-day living expenses. In addition, certain funds which are paid for, or set aside for, special purposes are not counted in the SSI program (for example, money paid to a victim of a crime or set aside for burial expenses).

There is a crucial connection between the statutory resource limits and the amount and variety of resource exclusions. The role of resource exclusions in the future must be considered in light of how sufficient the resource limits are.

Summary of Testimony From Public Hearings: Witnesses alleged that—

Limits are too low. Savings of $2,000 or $3,000 do not make a person economically secure. The SSI limits restrict a recipient's ability to rely upon savings for financial support and emergencies. Increases in the resource limits have not kept pace with increases in the Federal benefit rate.

Exclusions are not adequate. The current resource exclusions do not allow a person to hold enough in reserve for future needs. The burial fund exclusion of $1,500 does not realistically reflect the price of a funeral today. Many young disabled people have not had the opportunity to acquire the types of resources that are excluded in the SSI program, such as a home.

Individual vs. couple limit. A couple should be allowed to have as much countable resources as currently allowed for two individuals (or $4,000). On the other hand, while a couple may have more unforeseen expenses than an individual, those expenses are not always twice those of an individual.

Too complicated. The resource rules are too complicated and prevent people from understanding and participating in the SSI program. The complexity contributes to a sense of helplessness that can prevent a person from seeking assistance in the first place, or that can discourage a recipient from seeking a new path to economic independence. SSA personnel find the rules are so complicated that it is often difficult for them to provide clear and simple explanations to the public.

Dignity cannot be maintained. The current resource limits require that a person sacrifice dignity in exchange for public assistance.

"* * * [t]he limitations posed on assets virtually assure that a person on SSI will continue to live below the poverty level * * *." (Outreach program director)

"You go round in circles trying to figure out what you can legally do to help your own child cope with a very stingy SSI system." (Mental health alliance chairperson)

Disadvantages the elderly. The current resources test disadvantages the elderly who, after many years of struggling to save, may have accumulated modest savings. Elderly persons are often forced to spend assets to gain, or retain, SSI eligibility.

Trust policy. Families should be allowed to set up trusts to provide supplemental support and care not covered by public funds. The range of purposes for which trust disbursements can be used without those disbursements being considered income should be broader, e.g., education, medical care, social services, and housing costs.

On the other hand, questions were raised with regard to the fairness and appropriateness of allowing individuals with large amounts of property to have the property "sheltered" to gain SSI eligibility. Current policy favors individuals in families with large amounts of disposable assets and those who can obtain the legal assistance needed to set up a trust.

Transfer of assets policy. It is not appropriate to permit individuals to "give away" large amounts of assets and become eligible for SSI. On the other hand, people are not motivated to do this for SSI; they really do it for Medicaid, where penalties do apply.

Options for Change

1. Resource Limits

(a) Increase resource limits to $5,000 and $7,500 with additional changes in exclusions

Raise the resource level to $5,000 for an individual and $7,500 for a couple. In addition, exclude up to $5,000 of funds in a trust and count the rest, regardless of how the trust is set up. Eliminate the current exclusions for life insurance and burial funds—such items would offset the $5,000 trust limit. Maintain all other resource exclusions.

(b) Increase resource limits to $7,000 and $10,500 with little change in other rules

Raise the resource level to $7,000 for an individual and $10,500 for a couple. Count all funds in a trust, regardless of how the trust is set up. Maintain all current resource exclusions, including the life insurance and burial fund exclusions.

(c) Increase resource limits to $12,000 and $15,000 with fewer resource exclusions

Raise the assets level to $12,000 for an individual and $15,000 for a couple. Exclude a home, an essential car, business property essential for self-support, and household goods and personal effects. Eliminate all other exclusions, including the exclusions for life insurance and burial funds. Do not count an asset that is not readily convertible to cash, such as real property. Count as resources funds in a trust established with an individual's (or spouse's) own money and funds in a trust established with judgment payments when the settlement order requires that the funds be made available for general needs.

In light of the higher assets limits, this option restricts the types of trusts that would be excluded from countable resources. Funds and property in certain trusts would be excluded only when trust assets are intended to meet the individual's special needs beyond the basic needs for which SSI provides.

2. Time-Limited Resource Exclusions

(a) Change the current periods for the time-limited exclusions to 9 months

(b) Change the current periods for the time-limited exclusions to 12 months

3. A "Sliding Scale" approach to excess resources

Resources over the limit would result in a reduced SSI benefit, as opposed to across-the-board ineligibility. Only when resources were significantly higher would a person lose all eligibility.

This option can be implemented using a formula. For example, using the current limit of $2,000 for an individual, if a recipient's countable assets were valued at $2,001–$3,000, the Federal benefit otherwise payable would be reduced by 20 percent. If assets totaled $3,001–$4,000, benefits would be reduced by 30 percent, and so forth. Using the above formula, the individual would become ineligible for any Federal benefit if countable assets exceeded $10,000. The percentages can be higher or lower to reflect a higher or lower asset level.

4. Calculating overpayments that result from excess resources

The amount of an overpayment resulting from excess resources would not be greater than the maximum amount that the individual's resources exceeded the resource limit. Upon notification that countable resources exceed the limit, the individual would reduce resources below the limit or lose SSI eligibility on a prospective basis.

Unearned Income

Current Approach: The SSI program uses two measures of need: income and resources. Income is used to determine whether someone is eligible for benefits as well as how much the benefits should be. By contrast, resources (certain things people own) only determine whether someone is eligible for benefits; they do not affect the actual amount of benefits paid.

Meaning of income. Income, in general, is anything a person receives that can provide food, clothing, or shelter. Sometimes, income takes the direct form of food, clothing, or shelter. More often, it comes in the form of cash (including checks and electronic funds transfers).

Income, under the statute, is either earned or unearned. Earned income comes from wages, self-employment, and similar sources. Unearned income is every other kind of income. Examples of common types of unearned income are Social Security benefits, veterans benefits, rental and lease income, interest and dividend income, and "in-kind support and maintenance" (food, clothing, and shelter).

Income from a spouse or parent. When a married person applies for SSI benefits, part of the husband's or wife's income may count as if it belonged to the applicant. Similarly, if a child applies for SSI benefits, part of the parents' income may count as if it belonged to the child. This process of counting some of a husband's, wife's, or parent's income is called "deeming," because the SSI program "deems" part of the relative's income to be available for the support of the applicant or recipient.

Exclusions from income. Income exclusions provide a financial advantage to persons who receive certain kinds of income. The Social Security Act provides many exclusions from income. Other exclusions, however, are found in other statutes relating to specific types of income. There are more than 50 income exclusions provided by law.

The $20 monthly general income exclusion. The first $20 of monthly income does not count. The $20 was set at the beginning of the program. It has never been increased, although the Federal benefit standard has more than tripled since it was first set in 1972. The $20 is subtracted first from any unearned income a person has. If the person has less than $20 in unearned income (or none at all), any remaining amount of the $20 is subtracted from any earned income.

Interest and dividends. The amounts of interest and dividends received usually are quite small. These amounts count as income unless they can be excluded under a provision that allows for exclusion of income that is "infrequent or irregular" or under the $20 monthly general income exclusion.

Often, the "infrequent or irregular" exclusion cannot apply, even when the amount of the interest or dividend is very small. This is because interest and dividends often are received both "regularly" and "frequently." To be considered "infrequent," the income must be received no more than once every three months and in an amount not greater than $20.

Parent-to-child deeming of income. The Secretary of Health and Human Services determines, through regulations, how much of a parent's income counts as an SSI child's income.

The regulations provide three different formulas for deeming income from the parents to the child. In all three formulas, an amount is first subtracted from the parents' income for any other children they may have. This allows the parents to use some of their money to support these other children. After this subtraction is done, the three formulas take over. If all remaining income of the parents is earned income, one formula applies. If all remaining income is unearned income, a second formula applies. If the remaining income is a mixture of earned and unearned income, a third formula applies.

Income from individually held Indian trust land. Many Federal statutes provide for the exclusion from income of payments made to members of Indian tribes and groups. There is, however, no specific exclusion that applies to income derived from individually held Indian trust land.

Individually held Indian trust land is managed by the Bureau of Indian Affairs for the benefit of individual Indian landowners. It may generate income, typically from agricultural leases. Indians receive a portion of the lease income in proportion to the amount of land they own.

Summary of Testimony From Public Hearings: Witnesses alleged that—

The $20 General Income Exclusion

(a) *Has lost value.* The exclusion has lost much of its value since 1972, when the amount was fixed in the statute.

It should be increased to reflect the increased cost of living since 1972. The increased amount should be adjusted in the future for inflation, so that the new amount does not lose its relative value as prices rise in the years to come.

(b) *Should apply only to unearned income.* The concept of the $20 general income exclusion should be changed. Instead of applying it to either unearned or earned income, the exclusion would be much more understandable to the public if it applied only to unearned income.

Interest and Dividends

(a) *Should be excluded.* Interest and dividends should be excluded from income, especially given the current $2,000 limit on resources an individual recipient may own to be eligible for SSI benefits. The very small amount of interest and dividends that usually comes from such resources is not worth the administrative burden of keeping track of it. The exclusion of interest and dividends would reward SSI recipients who are thrifty and who try to save money.

Some interest and dividends get excluded under the "infrequent or irregular" exclusion, while other interest and dividends must be counted, when the only difference is how often the bank or company chooses to pay its interest or dividends. Quarterly and monthly payments should be excluded.

(b) *Should count.* Interest and dividends should continue to count as income. Counting them helps to distinguish the greater need. If the resource limits are increased in the future, it will be even more important to count interest and dividends as income because the possible amounts received will be larger.

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It should be increased to reflect the increased cost of living since 1972. The increased amount should be adjusted in the future for inflation, so that the new amount does not lose its relative value as prices rise in the years to come.

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(b) *Should count.* Interest and dividends should continue to count as income. Counting them helps to distinguish the greater need. If the resource limits are increased in the future, it will be even more important to count interest and dividends as income because the possible amounts received will be larger.

Parent-to-Child Deeming of Income

(a) The three formulas currently in use do not always produce equitable and reasonable results. Often, a slight change in the breakdown of the parents, income (e.g., from a mixture of earned and unearned income to only earned income) can produce a major increase in the amount of income deemed to the SSI child. This happens because of the differences between the formulas used in these two situations.

(b) A change in the number of non-SSI children in the household (e.g., when the parents have a baby) can have an effect on the SSI benefit that is opposite from what a reasonable person might expect should happen. Often, instead of deeming less money to the SSI child after the baby's birth, more money must be deemed because of the way the formulas work.

"Social Security should treat a parent's earned income in the same way it treats earned income received by an SSI recipient. [SSA] should not penalize a disabled child because the parent has only earned income and not both earned and unearned income. [SSA] should not penalize a disabled child because he or she has siblings in the home." (Advocacy group attorney)

Individual Indian Trust Income

SSI's treatment of such income is one of the most chronic and complex SSI problems faced by Indian elderly. They are confused by the inconsistency of having such money count as income, while monies from other excluded Indian lands are excluded from income. The income virtually always is unpredictable, and SSI benefits based on estimates of such income are, therefore, often inaccurate. Further, tribal elders may assign their rights to the income to a tribal credit program as repayment of a previous loan, leaving these individuals with neither the trust income nor SSI.

Options for Change

1. The $20 General Income Exclusion

(a) Index the general income exclusion for inflation

Set its value at one-seventh of the Federal benefit standard, which already is indexed for inflation. To avoid odd amounts, round the resulting value to the nearest multiple of $10.

The original $20 general income exclusion represented one-seventh of the Federal benefit standard that took effect in January 1974, when the program began. This option would restore the 1:7 ratio that existed then.

This option would result in an immediate increase in the exclusion to $60, based on the current 1991 Federal benefit standard. If the Federal benefit standard were increased to 100, 110, or 120 percent of the 1991 poverty guideline of $6,620 for one person, the general exclusion would rise as follows:

Year	100 percent	110 percent	120 percent
1992	$60	$70	$70
1993	70	80	80
1994	80	90	90

Note: The actual 1992–1994 exclusion amounts would be adjusted for increases in the cost of living relative to 1991. (See "Adequacy of the Income Floor".)

(b) Index the exclusion for inflation as in Option 1.a. above, but apply the exclusion only to unearned income

This option assumes a companion increase in the basic earned income exclusion, so that no recipient would lose SSI benefits as a result of the change.

2. Interest and Dividends

(a) Exclude from income all interest and dividends

Under current resource limits ($2,000 for an individual, $3,000 for a couple), monthly interest at a 5 percent rate of return would yield less than $9 for an individual and $13 for a couple.

(b) Count interest and dividends, but only if the resource limits are increased significantly or the Federal benefit standard is increased to the poverty level or higher

3. Parent-to-Child Deeming

Adopt, for use in all parent-to-child deeming situations, the current formula used when the parents have both earned and unearned income.

The single formula would provide the same exclusions to the parental income as apply to a recipient's own. It also would provide a deduction equal to the Federal benefit standard for an individual or a couple in recognition of the needs of the parent or parents. This formula would yield deemed income no greater than that obtained using the other two methods now in use.

Only a regulatory change is needed to implement this option. On July 8, 1991, the Secretary of Health and Human Services published a Notice of Proposed Rulemaking in the **Federal Register** (56 FR 30884) to initiate such a change. The period for public comment on the proposed rule closes September 6, 1991.

4. Individual Indian Trust Income

Exclude up to $4,000 per year per individual of income derived from individually held Indian land (as proposed in S. 754, a bill now pending in Congress).

In-Kind Support and Maintenance

Current Approach: One type of income that the SSI program considers is "in-kind support and maintenance." In-kind support and maintenance is any food, clothing, or shelter that is given to a person or that the person receives because someone else pays for it. Shelter means room, rent, mortgage payments, real property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection services. There are two rules for valuing in-kind support and maintenance: The one-third reduction rule and the presumed maximum value rule.

One-third reduction rule. The one-third reduction rule applies when an SSI individual lives in someone else's household and receives both food and shelter from that person. The value of one-third of the Federal benefit rate is counted as additional income, instead of determining the actual dollar value of the food and shelter received. The result is that the SSI benefit is reduced by one-third.

An SSI claimant is not living in another person's household if he owns the home he lives in, has rental liability, is receiving noninstitutional care such as in a foster care home, pays his pro rata share of household operating expenses, or if all the people who live in the household receive public assistance payments. In addition, a person is not living in another person's household if he only receives food or shelter (but not both) from the other person.

Presumed maximum value rule. When an SSI individual receives food, clothing, or shelter (from someone with whom he lives or does not live) but the one-third reduction rule does not apply, the presumed maximum value rule is used. The value of any food, clothing, or shelter a person receives is presumed to be worth a maximum of one-third the Federal benefit rate plus the amount of the general income exclusion ($20).

This amount is counted as unearned income unless the presumed maximum value is higher than the actual value of the food, clothing, or shelter received. In such a case, the actual amount received is counted as unearned income.

Discovering in-kind support and maintenance. To make determinations about in-kind support and maintenance, many personal questions are asked about the person's living arrangements when he applies for SSI and periodically thereafter when his eligibility is redetermined. These include questions about the household operating expenses, the number and relationship of other household members, and any help the household may receive to meet expenses. Questions are also asked of and statements obtained from other household members, even though these other people may not be applying for SSI benefits themselves. Because of an infinite variety of living arrangements, it is very complicated for SSA to figure the amounts of in-kind support and maintenance to charge and for recipients to understand why they are being charged those amounts.

Summary of Testimony From Public Hearings: Witnesses alleged that—

Family support. The in-kind support and maintenance rules act as a disincentive to family members helping each other. The rules are in direct conflict with other government programs which encourage family involvement.

"Because SSI reduces benefits or denies eligibility to people who are living in the home of another, this only serves to create further financial hardship for the family of the elderly or disabled and discourages family support. This situation encourages institutionalization, which is a much more expensive alternative to home caregiving."
(Outreach program coordinator)

Intimidation. Potential SSI eligibles do not apply because they fear the loss of financial support they currently receive from their families, and because they do not wish to go through the application process that intrudes into their families' lives.

Unmet needs. Individuals have other expenses in addition to food, clothing, and shelter. When they are charged in-kind support and maintenance because they fail to pay their pro rata share of the household operating expenses, they are often placed in the position of having to choose between paying these other expenses or paying their full pro rata share of household expenses leaving little or no money left to cover their other expenses. For recipients in high-cost areas the reduction in benefits only puts them further behind economically. This makes them more dependent on others for their support, and often lowers their self-esteem.

Distinguishing private from public support. Public support, such as a public housing subsidy or food stamps, is excluded from income. Counting support and maintenance provided by family or friends is unfair because it penalizes those who get help from private rather than public sources.

Consistency with other programs. Other public assistance programs like Aid to Families with Dependent Children do not count in-kind support and maintenance. It is confusing that this type of help is counted for SSI but not for other Federal assistance.

Administrative relief. SSA employees find that determining whether an SSI claimant receives in-kind support and maintenance and its value is one of the most complex and time-consuming tasks they face. An inordinate amount of time is spent developing this area. The complexity of the rules makes it very difficult to explain to recipients the effect of in-kind support and maintenance on the amount of their benefits.

Target available funds. In-kind support and maintenance does provide the SSI program with a way to account for provision of an individual's needs by others. It should not be ignored when program dollars are limited. It is a way of directing available funds to those who are in greatest need.

Options for Change

1. Eliminate Counting In-kind Support and Maintenance

The SSI income test would include only a claimant's actual cash income. There would be no reduced benefit based on receipt of food, clothing, or shelter.

2. Adopt a "Flat Fee" Approach

Under this option, when a person pays an amount at least equal to one-fourth the Federal benefit rate toward food and/or shelter, there would be no in-kind support and maintenance counted as income to an SSI individual. If the individual does not pay that amount, the difference between one-fourth the Federal benefit and what he pays would be charged as in-kind support and maintenance.

Couples

Current Approach: The statute has always distinguished between eligibility for individuals with and without eligible spouses. An individual with an eligible spouse is paid based on a Federal benefit standard which is one and a half times the individual standard. An eligible couple has a resource limit which is one and a half times the resource limit for an individual. This distinction can be traced to the Social Security benefit programs in which a spouse is entitled to a benefit equal to half the benefit paid to the wage earner. The difference is also based on the premise that two people can live together more economically than if each lived alone. As a result, some members of a couple receive less SSI benefits than if they were eligible as two individuals.

Holding out. The SSI statute also provides that two people who are not legally married but who hold themselves out to the community as married are treated as a couple. This provision is known as "holding out."

Eligibility unit. The couple as an eligibility unit is a concept that carries throughout the program. When two members apply for SSI, they do so with a single application. When SSA determines eligibility for a couple, they add together all countable income and subtract it from the couple's benefit standard to determine payment amount. The total is divided equally and paid in separate checks.

Income exclusions are applied differently to couples than they are to individuals. Each individual receives a $20 general income exclusion and a $65 earned income exclusion. In contrast, a couple, as a unit, receives one $20 general exclusion and one $65 earned income exclusion.

Couples are also treated differently with respect to resource exclusions. A couple may have, for example, only one automobile excluded for necessary transportation and have a total of $2,000 excluded in household goods and personal effects. In contrast, two individuals may each have an automobile excluded and may each have $2,000 in excluded personal items.

When members of a couple separate. When members of a couple separate, they are treated as individuals the first full month of separation. If the members of a couple separate and get back together frequently, SSA must make adjustments to payment and eligibility status.

Some advantages. Some people are better off as a result of the "couples" rules. A person whose income or resources are too high for eligibility as an individual may be eligible as a member of a couple. This can happen when the spouse's income and resources are low. For example, Mr. Johnson receives a Social Security benefit of $550. His disabled wife has no income. Mr. Johnson is not eligible for SSI as an individual because his income is too high for the Federal benefit standard of $407. But, if Mr. and Mrs. Johnson are treated as a couple, they are eligible for a monthly benefit of $80. ($550 less $20 general income exclusion=$530; $610 (couple's Federal benefit standard)−$530=$80.) The second advantage is that (in most States) treating Mr. and Mrs. Johnson as a couple allows them both to be eligible for Medicaid.

Summary of Testimony From Public Hearings: Witnesses alleged that—

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Summary of Testimony From Public Hearings: Witnesses alleged that—

Marriage penalty. The couple's benefit standard creates a significant disincentive to marriage. This is especially true when two individual recipients who receive full benefits consider getting married. These individuals would probably have to reduce their level of resources as well as adjust to the lower couple's benefit standard. Others testified that some married couples who are unable to survive financially divorce each other so they each can receive an individual's benefit.

"Choose between economic survival and living in a morally and legally sanctioned relationship." (Mental retardation director)

Work disincentive. Both members of a couple are discouraged from working because a couple gets only one $65 earned income exclusion.

Individual expenses. Two people actually have double expenses: both get sick, both need clothes, both may have work expenses.

Social norms. Continued treatment of married individuals as couples is consistent with social expectations. Married couples traditionally provide support to each other and pool their assets to pay expenses. It may be inappropriate to break the link between the SSI couple's benefit and the Social Security spouse's benefit.

Options for Change

1. Change the Definition of a Couple

(a) *Eliminate the concept of "holding out."*

Individuals who live together but are not legally married would be treated as two individuals. The current treatment of married couples would continue.

(b) *Treat any two individuals who live together as a couple.*

Any two individuals who share a household would be treated as a couple regardless of their marital status.

(c) *Eliminate the idea of couple.*

Members of couples would be treated as individuals.

2. Increase the Income Exclusions for Couples

The current couple structure would be maintained but each member of a couple would have a full set of exclusions.

3. Retain the Couple Structure But With an Increased Benefit Standard and Increased Exclusions

The couple structure would remain but each member would get a full set of exclusions and the couple's benefit standard would be increased.

This option is based on increasing the benefit payable to an individual to a percentage of the poverty guideline; for example: 100 percent, 110 percent, or 120 percent. A comparable increase would apply to couples by basing the couple's benefit on the "poverty guideline for two persons" and raising that benefit to the same percentage of the poverty guideline as the individual benefit. (See "Adequacy of the Income Floor".)

This option would make the couple's benefit approximately 134 percent of the individual's benefit standard.

Definition of "Substantial Gainful Activity"

Current Approach: To be eligible for supplemental security income benefits based on disability, a person must be disabled or blind as defined in the SSI statute. The law defines disability as the inability to do "substantial gainful activity" by reason of a medically determinable physical or mental impairment(s) which can be expected to result in death or which has lasted or is expected to last for a continuous period of not less than 12 months.

Once a person meets the initial supplemental security income eligibility requirements, however, substantial gainful activity is no longer part of the definition of disability. Work impacts SSI post-eligibility only from the standpoint of benefit offset. Cash payments are offset $1 for every $2 of earned income after applying appropriate income exclusions.

Substantial gainful activity, as defined by the Secretary, is any significant physical or mental activity in employment or self-employment. Generally, earnings above a specific amount, currently $500 per month after deducting the cost of impairment-related work expenses and subsidized earnings, represent work at the substantial gainful activity level.

Earnings that are not directly related to a person's productivity are treated as subsidized earnings because the true value of the person's services is significantly less than the earnings received. Work in special employment situations such as sheltered workshop, transitional, and supported employment is evaluated under the substantial gainful activity guidelines only after deducting the cost of impairment-related work expenses and subsidized earnings. However, such work can be substantial gainful activity if the value of a person's services is over $500 per month despite these deductions.

Summary of Testimony From Public Hearings: Witnesses alleged that—

Working disabled poor are denied benefits. The Supplemental Security Income Program is an inadequate maintenance program designed to keep the disabled poor and dependent, with penalties for finding work or other outside resources. The medical field encourages people with disabilities to live and work as normal a life as possible, but when a person follows this advice, it has an adverse effect on meeting SSA's eligibility requirements.

"[W]orking men who are seriously ill with verified terminal diseases have been rejected by the system sometimes two or three times." (Outreach worker)

"[W]e have a growing phenomenon in America called the working poor who are disabled * * * have no insurance * * * do not have very much in terms of medical documentation." (Legal service attorney)

"[T]he client currently is earning $660 net wages. We requested an initial SSI application for this client and * * * [were] advised that we could not apply for SSI benefits. If the client stopped working she could reapply for SSI and based on her disability of mental retardation could return to work; receive SSI benefits at a reduced rate with medical card and still be entitled to earn over $1,300 per month." (Representative payee agency)

Policy is contradictory. Although work under a certain level does not count as substantial gainful activity under current rules, this exclusion does not address the contradiction in policy which now exists: To get on the supplemental security income rolls, an individual must not be able to work; but, once on the supplemental security income rolls, an individual is encouraged to work. A change to the definition of substantial gainful activity will make the eligibility test for disability closer to the post-eligibility test. This would create more equality in the program and encourage more supplemental security income people to remain at work.

Option for Change

Change the definition of "substantial gainful activity" in the SSI program to recognize that persons with disabilities may work. To establish initial eligibility to SSI an individual would be considered to be earning at the substantial gainful activity level only if he/she is earning above the substantial gainful earnings level (generally $500 per month), without the significant support services.

Under this proposal, SSI recipients who work using significant supports would not be considered to be doing substantial gainful activity. Work activity with significant support services would be disregarded, without consideration of the actual value of the person's services in employment or self-employment in terms of disability evaluation. Wages and self-employment income would still count in terms of evaluating need and determining the benefit amount.

Significant support services can include, but are not limited to:

(a) Attendant care on-the-job or substantial attendant care to prepare for work;

(b) Use of a job coach in a sheltered employment situation;

(c) Job-related support services, such as those furnished through transitional employment programs for persons with mental illness; and

(d) Employer accommodations which create a highly specialized environment not normally found in the competitive job market.

In determining if work is substantial gainful activity, SSA would continue to disregard the cost of impairment-related work expenses when calculating the individual's earnings.

Work Incentives

Current Approach: Work incentives are rules which are meant to encourage people who want to work to do so by allowing them to keep some of their SSI and Medicaid. Many of the current SSI work incentives are exceptions to the regular income and resource counting rules. Under the work incentive rules, portions of a recipient's income and resources are excluded. Specifically, the Social Security Act allows for the exclusion of:

(a) The earned income of a child who is a student subject to limits set by the Secretary (currently $400 per month and $1,620 per year).

(b) The first $65 of a person's earned income, plus any portion of the $20 general income exclusion not applied to the person's unearned income.

(c) Amounts of earned income a person with a disability uses to pay for certain work expenses the person has because of the disability. These expenses are known as impairment-related work expenses and may include things like special equipment or certain transportation costs.

(d) Half of a person's remaining earned income after the above exclusions are applied.

(e) Any portion of the earned income of a person who is blind which is used to pay expenses related to earning the income. These are called blind work expenses. The expenses do not have to be related to the person's blindness—they only have to be work related. Examples of these expenses include taxes, dog guide expenses, meals bought during work hours, etc.

(f) Income (earned or unearned) or resources which a blind or disabled person uses to fulfill an approved plan for achieving self-support. This plan is written specifically for the individual. The plan allows the person to set aside income or resources for a period of time to pay for things needed to reach a job goal. A plan may be used to pay for things like training, an education, job coaching, equipment, etc.

Summary of Testimony From Public Hearings: Witnesses alleged that—

Difficult rules to understand. The income and resource counting rules are complex and difficult for SSI recipients to understand.

Two sets of rules apply. People who get both SSI and Social Security must deal with different rules under each program, making it doubly difficult to understand the consequences of working.

Rules vary. Different rules apply to each category (i.e., aged, blind, and disabled) of SSI beneficiaries.

Need for transition. A recipient should be allowed a period of time to get use to a job before his or her benefits are reduced. The Social Security Disability Insurance Program has a trial work period during which a person may earn over $200 for 9 months without losing any benefits. However, this may result in a sudden reduction in benefits at the end of the period.

Earned income exclusion is low. The $65 earned income exclusion is too low. It should be increased to $200 which is the same as the amount needed to earn a Social Security trial work period month. Also, $200 is approximately the amount the earned income exclusion would be if the original $65 figure were indexed for inflation.

Continuing disability reviews. Some recipients are afraid to go back to work because they fear that they could lose their benefits when a continuing disability review is conducted.

Note: Continuing disability reviews are conducted to determine if a person is still disabled. Some reviews are triggered by a work attempt. Other reviews are conducted periodically based on the nature of the person's disability; in these reviews, the fact that a person has worked or is working can affect the review decision.

Impairment-related work expenses. The impairment-related work expense rule should be changed so it is more like the blind work expense rule.

Note: Under current rules, a person who is disabled may only exclude expenses he or she has because of the disability. A person who is blind may exclude any work expense, regardless of whether it is related to the person's blindness. For example, a person who is blind may exclude any transportation expense but a person with a disability may only exclude transportation costs which a non-disabled person would not have. In addition, a person who is blind may exclude the amount of the taxes deducted from his or her pay; a person who is disabled cannot exclude taxes.

Unemployment and workers' compensation. When a person loses his or her job and collects unemployment compensation or workers' compensation, the SSI benefit is lowered. This happens because these other benefits are considered unearned income and are not subject to the same exclusions as the person's earnings had been. The effect is that the person loses his or her job and is then worse off financially because the unemployment or workers' compensation is counted differently than the prior earnings.

Rules don't apply to aged. Aged, blind, and disabled individuals all should be permitted to benefit from the same work incentives.

A plan for achieving self-support is time-limited. The SSI regulations limit the length of a plan for achieving self-support to 36 months (48 months if a lengthy educational or training program is involved). This is not enough time for some people, especially when their disability interferes with completion of the plan.

Options for Change

1. Conduct a Demonstration to Determine the Impact of the Following Rule Changes

(a) Recipients would be entitled to a work attempt period during which all of their earnings are excluded.

(b) The earned income exclusion would be raised from $65 to $200 and the SSI benefit would be reduced by $1 for every $3 (instead of the current $1 for every $2) earned over the $200 level.

The increased exclusion amount would be intended to compensate for work expenses which the recipient has. Therefore, this exclusion would replace all of the existing earned income exclusions except for the student earned income exclusion and plans for achieving self-support. Individuals whose actual work expenses are more than the amount of earnings excluded (i.e., more than $200 plus two-thirds of the remaining income) could have an individual exclusion computed which would exclude the person's actual work expenses. All work-related expenses would be excluded regardless of whether they are disability related, similar to the current blind work expense exclusion, and they would be available to all SSI recipients.

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(c) Continuing disability reviews triggered by work activity would be eliminated and scheduled medical reviews for working recipients would be deferred for 3 years after beginning work.

(d) Unemployment compensation, workers' compensation, sick pay, and other similar benefits received because of recent work activity would be treated as earned income rather than unearned income.

(e) The time limit for completing a plan for achieving self-support would be eliminated.

(f) Individuals who receive benefits based on age would be eligible for all work incentives.

These elements are intended to be used together. However, comments are invited as to whether a particular element should or should not be included in the revised package of work incentives.

Under this option, the Social Security Administration would test the new package of work incentives on a small scale to determine if it would actually result in more recipients working. At the end of the test, the Social Security Administration could then make changes to the package as necessary before seeking legislation for national implementation.

2. Pursue Legislation Without Conducting a Demonstration

Under this option, the Social Security Administration would not test the new package, but would seek legislation to implement it nationwide.

Other Work Incentives Changes

Current Approach: In addition to the various exceptions to the income counting rules, the SSI program has other work incentives which do not affect the benefit amount. The most significant are sections 1619 (a) and (b) of the Social Security Act. These rules allow a working SSI recipient to maintain eligibility for SSI and/or Medicaid.

To establish SSI eligibility, a person cannot be performing significant physical or mental activities for pay or profit. This is known as substantial gainful activity. Usually, earnings of over $500 per month indicate substantial gainful activity. Once a person has received at least 1 month of "regular" SSI benefits, he or she can continue to qualify under section 1619(a) when earnings are more than the substantial gainful activity level (i.e., earnings are over $500 per month). Section 1619(a) allows recipients who earn more than the substantial gainful activity level to continue to receive cash benefits as long as their disability continues and they meet all other SSI program requirements. Unlike the Social Security Disability Insurance program, benefits are not stopped because the person shows the ability to work.

If a working SSI recipient's total income is too high to allow a payment, the recipient may continue to qualify for Medicaid under section 1619(b). To qualify, the person's unearned income (including the income of a spouse which is deemed to the recipient) must be low enough that the person would receive an SSI payment if he or she was not working. The person must also need Medicaid in order to work and not have enough earnings to replace the benefits he or she would lose if SSI eligibility were lost.

Some States make their own Medicaid eligibility decisions. In these States, if the person loses Medicaid eligibility under the State's rules before qualifying for section 1619, the State is not required to provide Medicaid when the person becomes eligible under section 1619. In addition, when determining Medicaid eligibility, these States do not always exclude income or resources which are excluded for SSI purposes.

States are not required to pay a supplementary payment to someone who receives benefits under section 1619(a). Currently, most States which supplement regular SSI payments pay a supplement in section 1619(a) cases; eight do not.

Summary of Testimony from Public Hearings: Witnesses alleged that—

Some lose Medicaid. Working recipients in certain States do not benefit from section 1619 since they may actually lose their Medicaid before qualifying for section 1619.

Spousal income should not count. A spouse's income should not be counted when determining a person's eligibility under section 1619(b).

States should supplement 1619 payments. States should be required to supplement 1619(a) payments if they supplement regular SSI payments.

Prior month of regular eligibility required. A person must first receive a regular SSI payment for 1 month before qualifying for section 1619. Because of this rule, many persons who lose their Social Security benefits because they are earning above the substantial gainful activity level are not able to establish SSI eligibility under section 1619 if they had not already received a regular SSI payment.

State Medicaid exclusions may differ. Twelve States make their own Medicaid eligibility decisions according to their own rules instead of the Social Security Administration making the Medicaid decision based on SSI eligibility rules. When making Medicaid eligibility decisions, those States may count resources which are excluded for SSI under a plan for achieving self-support.

Recipients cannot save earnings. Recipients are not able to save money from their earnings for future life needs such as buying a home.

Options for Change

1. Provide Medicaid Under Section 1619 to all Working Individuals.

This option would modify section 1619 to provide Medicaid to all individuals with earned income, as opposed to just those who exceed the substantial gainful activity level or who are ineligible due to earnings, which are the current section 1619 eligibility criteria.

2. Disregard Deemed Income of a Spouse When Determining an Individual's Continued Medicaid Eligibility Under Section 1619(b)

Under this option, only the person's own income would be considered to determine if he or she were eligible under section 1619(b).

3. Require States Which Supplement Regular SSI Payments to Supplement Payments Under Section 1619(a)

4. Provide SSI Benefits for Individuals Who Lose Their Social Security Benefits Due to Substantial Gainful Activity

5. Do not Count Resources Set Aside Under a Plan for Achieving Self-Support When Determining Medicaid Eligibility in States Which Make Their Own Medicaid Eligibility Decisions Using Their Own Rules

Currently, in the 12 States which make Medicaid eligibility decisions using their own rules, a person can set aside resources under a plan for achieving self-support and become eligible for SSI. However, the State may still count the resource when making the Medicaid eligibility decision and the person may not be eligible for Medicaid even though he or she gets SSI. This change would eliminate that consequence.

6. Allow Working Recipients to Put Some of Their Earnings in an Excluded "Independence Account" Which Could Be Used Only for Specified Purposes Such as Purchasing a Home or Vehicle

Role of SSA Field Office Versus Role of Disability Determination Services in Initial Disability Claims Intake Process

Current Approach: The initial SSI disability claims intake process involves the information gathering activities by

SSA field offices when a person files an application for disability benefits. The information gathered during this process is essential to claims adjudication and the disability decision. It includes the claimant's statement regarding how the alleged impairment affects work and daily activities. Additionally, critical SSA field office employee observations of the claimant are recorded. The information not only allows the State disability determination services to initiate medical development, it helps them tailor development requests for information from both medical and, if appropriate, nonmedical sources.

Claims for SSI disability benefits are usually initiated through contact with a teleservice center. The teleservice center, in most instances, mails the Disability Report (Form SSA-3368) to the claimant for completion and schedules an interview at the local field office. The interview is conducted by a claims representative, either in person or by telephone.

During the interview the basic application forms are reviewed with the claimant and completed. These forms are designed primarily to elicit nondisability factors of entitlement. Form SSA-3368 also is finally completed at this time. Information provided on the SSA-3368 includes descriptions of the claimant's impairments and activities of daily living, the claimant's medical sources, and the interviewer's observations regarding the claimant's overall condition. Along with the SSA-3368, the applicant completes a form authorizing SSA to obtain medical evidence from the claimant's treating sources. The disability claims file is then forwarded to the disability determination services for review and a disability determination. Although State organizations, the disability determination services are funded by SSA and base their determinations on Federal statutes and SSA rules and regulations governing the disability program.

Summary of Testimony From Public Hearings: Witnesses alleged that—

Delays in the process: Delays in the disability adjudicative process are caused, in part, by nonspecific or incomplete disability information obtained from the claimant by SSA field office employees at the time of claims intake. To complete the informational requirements, the disability determination services must often recontact the claimant by telephone. In some cases, impairments go undiscovered, resulting in inappropriate decisions, or are discovered late in the process, resulting in processing delays. At the same time, claimants' failure to provide all information relevant to their claims is caused by a lack of understanding as to what is required to establish disability under the Social Security Act.

Face-to-face contact: A face-to-face interview between the claimant and a knowledgeable public employee is a means of improving the process. It would provide a more complete assessment of the claimant's overall condition.

"[T]hese interviews are especially important for evaluating a claimant's subjective allegations of pain." (Legal assistance attorney)

"[S]ome claimants deny psychological problems and only indicate minor physical ailments on their application * * *We have clients who are delusional and indicate on their application jobs and training they have never had or they overstate the training or job experience making them appear to be more functional than they really are. Upon personal contact it becomes quite clear that they suffer from psychological problems or are delusional." (Advocate and paralegal)

Disability decision-makers often do not have the most complete or pertinent medical information on which to base their decisions, especially with regard to mental impairments or residual functional capacity. An early face-to-face interview could help to ensure the development of all pertinent medical information.

Options for Change

1. Field Office Disability Expert Conducts Disability Interview

The differences between this option and the current process are the degree of disability expertise on the part of SSA claims representatives and the return to SSA field offices of the initial development of medical evidence. Claims representatives would receive disability program training similar to that provided disability determination services disability examiners. They would become disability experts who would be responsible for all aspects of the initial application process. Responsibilities would include taking the basic application forms and assuring that the nondisability factors of entitlement/eligibility are met, as well as conducting the disability interview and other disability functions listed below:

—Complete all applicable forms during the interview;

—Provide the claimant a complete explanation of the disability process, as well as prompt, accurate answers to the claimant's disability-related questions;

—Explain how claimants can assist in the claims development process (e.g., by urging their doctors to provide prompt responses to requests from disability determination services for medical evidence);

—Initiate requests for medical evidence from treating sources;

—Identify cases for terminal illness and other emergency or priority processing;

—Make presumptive disability decisions using expanded criteria;

—Make observations about the claimant;

—Route the claim to the disability determination services in the usual manner following completion of the interview; and

—Act as a liaison between the claimant, the field office, and the disability determination services.

2. State Disability Determination Services Employee Conducts Disability Interview

Under this option, the interviewers would be disability examiners from the State disability determination services. They would be assigned to SSA field offices permanently or on a rotational basis (daily or weekly) to conduct the disability interview.

The case flow process would begin with the claims representative. However, after taking the basic application forms, the claims representative would refer the claimant to a State disability examiner who would perform all of the functions performed by the SSA disability expert in option 1.

Processing Disability Appeals

Current Approach: Claimants who appeal their disability claims frequently wait a year before they receive a final decision. There are no time limits for deciding the case.

Each time a decision is made on a claim for benefits, a written notice is sent to the claimant. If the claimant does not agree with the decision, he or she has a right to appeal. Each time an appeal is filed, a new decision is made and the claimant is provided a written notice of the appeal decision. There are three appeals steps in the administrative review process. The claimant usually has 60 days from the date he or she receives a notice to appeal the decision.

Claims for disability benefits under Social Security or Supplemental Security Income are first decided by State Agencies according to Federal/State regulations. If a claimant disagrees with

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Claims for disability benefits under Social Security or Supplemental Security Income are first decided by State Agencies according to Federal/State regulations. If a claimant disagrees with

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an initial determination, he or she may ask for a reconsideration. To ensure that the claimant receives a new and independent determination, persons in the State agencies other than those who made the initial determination review all of the evidence in file when the initial determination was made plus any additional evidence which is obtained.

If the claimant does not agree with the results of the reconsideration, he or she may ask for a hearing before an Administrative Law Judge. At the hearing, the Administrative Law Judge reviews what has gone on before in the case, states what issues must be decided, and asks the claimant and any witnesses questions. Claimants frequently get a representative for the first time at this level. The claimant and his or her representative may question the witnesses, present new evidence, and examine the evidence on which the Administrative Law Judge's decision is based. The Administrative Law Judge makes a new decision based on all the evidence including the information presented at the hearing.

If the claimant disagrees with the decision made by the administrative law judge, he or she can ask for a review of that decision by the Appeals Council. The Appeals Council may deny or dismiss the request for review, or it may grant the request and either issue a decision or remand the case to an Administrative Law Judge. The Appeals Council will send the claimant a notice explaining its action.

If the claimant does not agree with the Appeals Council decision, or if the Appeals Council declines to review the Administrative Law Judges' decision, the claimant may bring a civil action in the appropriate Federal district court.

Summary of Testimony From Public Hearings: Witnesses alleged that—

Changes in the disability determination process needed. The disability determination process should be restructured so that the process is more caring and efficient. While applicants await a final decision, essential services (e.g., Medicaid, in-home support services administered by the State) are often withheld.

"The process these people have to go through is not handled in a caring manner nor is it efficient." (Support group director)

Low allowance rates. One problem with the current reconsideration process is the low allowance rate (16 percent). Denials at the reconsideration level result in appeals to the next step in the appeals process—the SSA Administrative Law Judge—and a high number of disability determination services decisions are overturned at that level.

"[O]ne of the reasons [the] Project was established was the State's concern with the low percentage of clients found disabled at the initial and reconsideration stages of the application process." (SSI Advisory Project attorney)

"In all the years that I have been representing SSI claimants, not one has ever obtained a reversal at the recon[sideration] level. Certainly any appropriate process worthy of its name must reverse some cases, but I have never encountered one." (Legal services attorney)

Face-to-face contact at reconsideration. There is a lack of first hand observation by the initial and reconsideration level decision-makers of the claimant's impairment-related limitations.

"[Reconsideration claims are] not being reviewed properly, ultimately being rubber stamped." (Support group director)

"An informal or formal conference should be a part of every reconsideration request. Often, face-to-face testimony and/or claimant input can affirm what documents can only allude to." (SSI advocate)

Eliminate the reconsideration step. Given the prevalence of low allowance rates at the reconsideration level and the length of time it adds to the adjudicative process, reconsideration should be eliminated.

"* * * instead of recon[sideration], let's permit claimants to go directly to a hearing and let them be seen by a person who has the authority to make a decision about their case." (Legal services attorney)

Delays in the appeals process. By the time a case gets to the hearing level, the administrative law judge considers the evidence too old to make a decision and the judge then fails to order the necessary tests to update the file. It is then up to the applicant to provide new evidence and these individuals often cannot afford to do so. Time limits should be set up for SSA to make a final decision on a claim.

"We propose that a fund be set up so that when the SSA is at fault, the recipient can be reimbursed at once and will not have to wait." (Senior citizen advocate)

"I hope that this panel will reorganize the appeal process so that a person who applies for SSI and/or Social Security will have their case heard in an expeditious manner. I know personally of a case that has been on appeal for years." (Advocacy group representative)

Options for Change

1. Face-to-Face Predenial Interview; Eliminate Reconsideration

For this option, the State disability determination services would process the SSI claim under current procedures up to the point where an unfavorable decision is indicated. However, unlike the current process, the disability determination services would prepare and release a personalized predenial notice. This notice would tell the claimant what evidence is in file and that based on this evidence the claimant cannot be found eligible for disability benefits/payments under the Social Security Act. The notice would also offer the claimant an opportunity for a face-to-face interview before the formal denial is issued. If the claimant declines the interview, the disability determination services would release the denial decision with appeal rights to the Administrative Law Judge hearing level. There would be no reconsideration step.

If the claimant chooses to have a face-to-face interview, it would be an informal meeting between the claimant and the decision-maker. The claimant would have an opportunity to review the claims folder prior to the face-to-face interview, ask questions, explain why his or her impairment(s) prevents him or her from working, submit additional evidence in support of the claim, and present witnesses. Following this interview, the decision-maker would obtain any additional evidence if indicated by the results of the interview and make a formal decision. If the decision is a denial, the claimant would receive a denial notice explaining the decision and offering appeal rights to the Administrative Law Judge.

2. Eliminate the Reconsideration Step

This option would eliminate the reconsideration step altogether in SSI disability issues. It would retain the current decision process up to the point of an initial disallowance. However, in the denial notice the claimant would be offered the opportunity to appeal directly to an Administrative Law Judge. This is consistent with the handling of some SSI posteligibility issues.

3. Establish Time Limits To Complete Cases Under Appeal

This proposal would establish time limits to process SSI cases at each successive level of appeal. For example, when an individual requests reconsideration of the initial denial the disability determination services would be required to make a reconsidered decision within a set period of time. Time limits would apply to cases processed at every level of appeal. If the time limits are not met, payments would begin.

The Definition of "Aged"

Current Approach: From the beginning of the program, the SSI statute has defined an aged individual as age 65 or older. This originated from the definition used in the former programs under titles I and XVI of the Social Security Act. It is also currently the age at which full retirement benefits are payable under the old-age and survivor's insurance program (title II). The Medicare and Medicaid programs use age 65 as an entrance point for the nondisabled.

In other situations, other ages have a role in eligibility determinations. For example, under Social Security, an insured individual can collect "early retirement" benefits at age 62, and older women may begin collecting widows' benefits at age 60. The Older Americans Act sets age 60 as the point of eligibility for programs it funds. On the other hand, beginning with the year 2000, the age for unreduced title II retirement benefits (age 65) will increase gradually until it reaches age 67 in the year 2022.

Summary of Testimony From Public Hearings: Witnesses alleged that—

Physical aging. Some needy individuals approaching age 65 may be physically "aged" even though they have not chronologically reached age 65. For example, some minority groups have shorter life spans than the general population.

Need for a "bridge." There is a need for a "bridge" for individuals under age 65 who have worked for many years and have exhausted their unemployment compensation benefits, but are not old enough for social security retirement benefits and pensions. Such individuals may be unable to find work because of the job market or because of declining health even though they do not meet the eligibility requirements for disability benefits. Others who might benefit from a bridge starting as early as age 50 include "displaced homemakers" and widows who have been out of the workforce for a number of years and are unable to find work due to their age or a lack of marketable skills. Such persons are particularly vulnerable to poverty.

Need for health insurance. If earlier eligibility for SSI would bring along with it eligibility for Medicaid, it would provide much-needed health coverage for older persons who are unlikely to have insurance at a time when health problems may start or become more severe.

Impact on other options. If money available for program expansion is limited, providing benefits to new groups of eligibles could limit increased benefits to those already on the rolls.

Options for Change

1. Lower the Age Requirement to Age 62

Under this option, needy individuals could be eligible to receive benefits upon attainment of age 62, without having to meet the tests for disability or blindness.

This would provide a minimum income level to needy older people who may not have worked long enough to be eligible for early retirement pensions or social security benefits, or those whose earnings have been so low that benefits are minimal.

Adoption of this option would increase the initial claims and postentitlement workloads for SSA. On the other hand, there would be some decrease in the disability determination workload.

As a result of this option, people who become eligible for SSI could become eligible for Medicaid in the same way current aged SSI recipients do now, unless Congress specified otherwise.

2. Lower the Age Requirement to Age 60

Under this option, needy individuals could be eligible to receive benefits upon attainment of age 60, without having to meet the tests for disability or blindness.

The considerations listed under option 1 also apply here. The number of people affected would be larger (and, therefore, the workload for SSA would be larger).

Accounting Issues

The following five subsections of this paper address issues which have been raised regarding the benefit computation period and the frequency of computing benefits.

Test Annual Prospective Accounting Model(s)

Current Approach: SSA now uses a system known as retrospective monthly accounting when determining SSI payment amounts. Generally, the current month's payment amount is based on the recipient's income from two months earlier. (There are special rules for new eligibles and recipients who lost eligibility for one or more months.)

Summary of Testimony From Public Hearings: Witnesses alleged that—

Termination of Income and Triple Counting of Income

Because the retrospective monthly accounting computation bases payment on income received two months earlier, the SSI payment continues to be reduced for two months after countable income is terminated or reduced. There are particular problems when the income being charged is noncash, in-kind support or income deemed from a spouse or parent, since the income is not cash and there is no opportunity for the recipient to save income to carry him/her through the shortfall months.

Five paydays. Recipients who have other income that is paid weekly or biweekly have benefits cut off in months with five or three paydays. While they are able to get an SSI benefit in the next month, this creates problems in maintaining Medicaid eligibility.

Annual accounting. Annual accounting would eliminate the problems peculiar to retrospective monthly accounting and could offer other advantages. For example, it might be possible to rely more completely on the Internal Revenue Service's income data rather than having to contact the SSI recipient's employer for month-by-month breakouts of wage data.

Benefit amounts are hard to understand. People cannot understand how benefits are computed.

Option for Change

Test one or more methods of annual accounting, beginning with prospective annual accounting, by running a computer simulation of the method or methods proposed. Prospective annual accounting would involve obtaining an estimate of annual income based in part on income in the previous year and basing monthly payments on this estimate. Payments would be reconciled against actual income after the close of the year. Provision would be made for making adjustments during the year if income changed by a certain percentage.

The computer simulation of the model would be designed to provide information regarding the potential costs of annual accounting. It will identify that part of the SSI population most affected by annual accounting and the extent to which they are affected. It will identify any inequities or complexities in the computation of benefits and the maintenance of that computation.

Triple Counting and Termination of Income

Current Approach: Under the rules of retrospective monthly accounting, the current month's payment amount is usually based on the recipient's income from two months earlier. However, when a recipient becomes initially eligible or reeligible for SSI benefits, the countable income received in the first

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month of eligibility or reeligibility is used to compute the payment amount for the first, second, and third months. This is true even when income terminates after the first month. In initial eligibility cases, the individual must choose between delaying the month of eligibility or taking the reduced benefit for three months. There is no way to avoid the benefit reduction in reeligibility situations.

When countable income terminates or is reduced, the retrospective feature of the current accounting system yields the following result. Because the computation bases payment on income received two months earlier, the SSI payment continues to be reduced for two months after the income terminates or is reduced.

Summary of Testimony From Public Hearings: Witnesses alleged that—

There is a problem with income continuing to affect the benefit amount even after it has been terminated or reduced. This can create difficulties for the recipients in meeting expenses for months before the SSI benefit is increased to reflect the lower income level.

Option for Change

Change the computation method from retrospective monthly accounting to prospective monthly accounting. Under prospective monthly accounting both eligibility for and the amount of payment would be based on the current (payment) month's income as contained in SSA records. Triple counting would not occur since an increased benefit resulting from a decrease in income would be effective for the month in which the income decreased. Also, payment increases resulting from reduction or termination of income would occur in the same month the income change was effective.

If the change were to stop here, the negative effect of triple counting would be resolved but the overpayment prevention advantages of retrospective monthly accounting would be lost. Therefore, as part of the change, a "payment effectuation period" could be established. Under this concept, when a change will result in a reduction in payment, that change will be effectuated two months later than the month in which the income changed. This will have the same two month's lead time for preventing overpayments that now exists under retrospective monthly accounting.

Five Paydays

Current Approach: A recipient (or a parent or spouse whose wages are deemed as income to a child or spouse recipient) earning wages close to the cut-off point may be paid once a week. For those four-payday months, income remains under the eligibility limit. However, the extra earnings in a five-payday month are enough to result in ineligibility.

Summary of Testimony From Public Hearings: Witnesses alleged that—

The five paydays phenomenon is most serious when it results in the loss of Medicaid coverage. Disabled recipients who are working and would be eligible except for their earned income continue to be entitled to Medicaid under the provisions of section 1619(b) of the act. However, this protection is not available to others or in unearned income cases.

Month-by-month income changes resulting in month-by-month changes from eligibility to ineligibility and vice versa are inevitable features of a monthly process. However, the problem is not with the dollar payment changes, which in a true five paydays case tend to be rather small since the payment is already close to the cut-off point, but rather with the loss of Medicaid eligibility.

Option for Change

Continue Medicaid coverage when SSI eligibility is lost solely due to a calendar-related income fluctuation.

Monthly Verification of Wages

Current Approach: Because eligibility is determined monthly and benefits are computed monthly, the beneficiary's monthly earnings must be obtained. The law states: "relevant information will be verified from independent or collateral sources * * *." Monthly wage information is obtained from employers when the beneficiary does not have copies of pay slips. SSA data show that fluctuating wages are one of the most frequent causes of overpayments and underpayments.

Summary of Testimony From Public Hearings: Witnesses alleged that—

The verification requirement has proved burdensome, particularly for employers of SSI recipients who may not maintain records in the correct format. Since employers provide wage information to the Internal Revenue Service, why must they provide the same information to SSA?

Option for Change

When it is not cost-effective, verification would not be required. SSA would test a system that relies on regular recipient reporting. Regular computer matching with timely wage data would provide backup to identify recipients who do not report or report incorrectly. Other verification would not be done routinely.

State Supplementation Payments Computation

Current Approach: SSA administers State supplementary payments for some States. However, persons whose incomes are too high to receive federal SSI benefits but low enough to permit federally-administered State supplementary payments are not "eligible" for federal SSI under the law. This can lead to some unusual payment computations that are very difficult to explain either orally or in written notices.

For example, a recipient may be receiving both a partial federal payment and a full State supplementary payment. This individual's income may increase in a month to the point at which it exceeds the Federal benefit rate but is below the combined federal plus State supplementary payment level. In this instance, the recipient will receive no federal payment because he/she is not eligible for a federal payment, but he/she will still receive a full State supplementary payment, because the computation for the State supplement will be based on income from two months ago. Only after two months will the State payment be reduced. In this situation, one change in income produces two payment changes.

Summary of Testimony From Public Hearings: Witnesses alleged that—

These payment changes and other complications resulting from the way eligibility is defined result in confusing notices in States where SSA administers the supplement.

Option for Change

Eligibility for SSI could be defined in terms of income below the total federal plus State supplementary payment level for recipients in States for which SSA administers the supplement. This would remove the double payment change effect described above. As long as the recipient's income remained below the total federal plus State supplementary level, the recipient would remain eligible, and the payment would change once (usually two months after the income change under retrospective monthly accounting).

Linkage of the SSI and Medicaid Programs

Current Approach: All States provide Medicaid to at least some SSI recipients. Current law permits the States to limit the number of aged, blind and disabled cash assistance recipients who receive Medicaid coverage.

Under Medicaid law, States must provide Medicaid for their mandatory categorically needy. Most States define that group as cash assistance recipients and individuals who are by law considered to be receiving cash assistance for Medicaid purposes. Twelve States use a more restrictive eligibility standard or set of standards than the SSI program does to define their mandatory categorically needy aged, blind and disabled. The law allows States to employ more restrictive standards if the standards are not more stringent than those used in the predecessor programs immediately before the SSI program. States which have more restrictive eligibility criteria than those of the SSI program may use some or all of the following: lower income limits, lower resources limits, and more stringent definitions of disability. A State which elects the more restrictive option must deduct incurred medical expenses from countable income in its eligibility process.

States may elect to provide Medicaid to all persons who meet the SSI requirements. Seven States and the Northern Mariana Islands use the SSI standards to determine Medicaid eligibility, but require a separate Medicaid application. Thirty-one States and the District of Columbia have agreements for SSA to make Medicaid eligibility determinations for SSI recipients.

Testimony: Witnesses alleged that—

States which take their own Medicaid applications have fewer Medicaid eligibles. States which require separate Medicaid applications, especially those States which use more restrictive Medicaid eligibility criteria than those of the SSI program, have significantly fewer Medicaid eligibles than SSI eligibles.

In some cases, individuals who file for the Federal benefit fail to file for Medicaid with their State agencies. In others, a State's more restrictive criteria may result in Medicaid ineligibility.

Medical coverage should not depend on small changes in income. Relatively small changes in income which result in a loss of SSI can also result in Medicaid ineligibility.

In these situations, the recipient has acquired replacement income for the cash assistance. However, there is frequently no analogous replacement for Medicaid based upon the receipt of cash assistance. A loss of SSI can result in a temporary or permanent loss of all medical coverage. It is not unusual for a recipient's interest in SSI to be actually driven by a need for medical assistance. The loss of SSI in and of itself may be of relatively little consequence to the recipient; however, the resulting Medicaid loss can be devastating.

Options for Change

(Variability of income and other income changes which can affect SSI eligibility and Medicaid based on that eligibility are addressed in the Benefit Adequacy and Annual Prospective Accounting Model sections.)

1. Eliminate More Restrictive Criteria

This option would require States to use eligibility criteria no more restrictive than those of the SSI program. States could still retain the option to require separate Medicaid applications and could still limit their categorically needy by choosing not to provide Medicaid to recipients of only optional State supplementary payments.

In order for this option to be equitable, States which now use the deduction of incurred medical expenses from countable income in lieu of some optional Medicaid categories would have to continue their deductions to the extent that those deductions would also exceed any higher SSI benefit.

2. Mandate Federal Determinations for All States That Use the SSI Criteria

This intermediate option would require SSA determinations of Medicaid eligibility in all States currently using the SSI eligibility criteria. No separate application for Medicaid would be required.

3. Mandate Federal Determinations for All States

This option would extend SSA determinations of Medicaid eligibility using SSI criteria to all States.

Linkage of the SSI and Food Stamp Programs

Current Approach: Food Stamp law requires SSA offices to inform SSI applicants and recipients they may be able to get food stamps. SSA offices assist applicants and recipients who are members of a household in which all members are applicants or recipients of SSI (referred to as a pure SSI household) in making application for food stamps. Recipients in pure SSI households in most cases are automatically eligible for at least a minimum food stamp benefit of $10. Some, however, may not be eligible for anything, depending on household size and the resources and income of others in the household. Also, before their eligibility can be established, members of pure SSI households often have to go to the food stamp office in order to provide the necessary household verification documentation.

SSI applicants and recipients who are not members of a household in which all members are applicants or recipients of SSI benefits (referred to as a mixed household) have to meet the food stamp program resource and income eligibility requirements to be eligible for food stamps. Recipients in mixed households must file for benefits at the food stamp office.

Food stamp offices make eligibility determinations and issue food stamp coupons.

Summary of Testimony From Public Hearings: Witnesses alleged that—

Application Process. The current application processes for filing for SSI and food stamps are confusing, too time consuming and needlessly complicated. Application forms and instructions are too complicated and should be written in easy to understand language. The processes should be streamlined to ensure recipients receive their benefits in a timely manner. A short food stamp application form would improve the SSI participation rate in the food stamp program.

Individuals referred to State agencies for food stamps often do not follow through on the referral due to a lack of understanding of how the system works, inability to access appropriate transportation and fear that disclosure of information to another office will jeopardize other program benefits.

Application forms. Effective SSA processing of food stamp applications is impeded by the form itself. Many States use a multi-program type application form. These forms cover all the assistance programs they administer, making it difficult to complete for just food stamps. Also, States are being urged to go to an on-line automated application process. States may find it difficult to transcribe the application SSA sends them to their on-line process.

Categorical Eligibility for Program Benefits. Establishing categorical eligibility for food stamps for SSI recipients would be a simple way to link the two programs. This would be similar to the linkage of Medicaid eligibility to SSI eligibility.

Options for Change

1. Social Security Offices Complete a Short Food Stamp Application for all Interested Applicants

SSA would complete a short food stamp application and mail it to the food stamp office within a 24 hour period. The short-form application would contain minimal information and the applicant's signature. Although this would be incomplete for determining food stamp eligibility, it would establish the individual's intent to file a claim.

2. Treat SSI Recipients as Separate Food Stamp Households and Establish a Flat Food Stamp Allotment for SSI Recipients

The food stamp program would treat all SSI recipients as being categorically eligible for food stamps regardless of the household makeup. However, in some instances, the flat food stamp allotment could be a smaller amount than certain individuals receive today.

3. Cash Out the Food Stamp Benefit

SSI recipients would be considered categorically eligible to receive food stamps. Anyone receiving SSI and/or a federally administered State supplement would have their SSI check increased by a flat amount in lieu of receiving food stamps. In some instances, the flat food stamp allotment to be included in the SSI check would be a smaller amount than individuals receive today.

Representative Payment

Current Approach: Some Social Security and SSI beneficiaries are paid through representative payees who manage the funds for them. Representative payment occurs when a beneficiary is not able to manage his or her own funds adequately. It applies to anyone who has been declared legally incompetent and to most children under 18. In addition, it is mandatory for anyone whose SSI disability entitlement is based on alcoholism or drug addiction.

Under all its programs, SSA pays 1.6 billion dollars each month to some 5 million beneficiaries through representative payees.

Payee Responsibility. A representative payee is required to use the benefits solely in the best interests of the beneficiary. The payee must also act on behalf of the beneficiary in dealing with SSA. For example, the payee must report changes and decide whether to appeal any SSA decisions.

Payee Recruitment. Many beneficiaries have payees who are family members or close friends. However, SSA experiences difficulty in finding volunteer payees for those who do not have such traditional sources of support or are disabled by substance abuse or serious mental illness. Some individuals are reluctant to try to cope as payees for certain beneficiaries. In many States, social service agencies are precluded by law or policy from serving as payees. In others, budget constraints prevent the agencies from serving.

Payment for Services. Beginning July 1, 1991, the law permits certain nonprofit community-based social service organizations to collect a fee for expenses incurred in performing payee services. Such organizations may deduct from a beneficiary's social security and/or SSI monthly payment the lesser of 10 percent of that payment or $25. This is a first-time authority to collect fees of any kind for payee services. It is also a temporary authority which expires on July 1, 1994.

Payee Monitoring. Certain State institutions are subject to onsite reviews of their payee functions. All other payees are required to submit an annual accountability report. There is no routine audit of these reports and there are questions about their effectiveness in detecting misuse. However, use of sampling techniques to audit use of funds by payees has shown little misuse.

When a payee misuses a beneficiary's funds, the payee is liable to the beneficiary for restitution. In these cases, SSA usually appoints a new payee and tries to recover the misused funds from the former one. Cases may be referred for prosecution but success levels are low.

Study. SSA has commissioned the Administrative Congress of the United States, an independent Federal agency, to review the representative payee program. The results of that study will be published in the **Federal Register**.

Summary of Testimony From Public Hearings: Witnesses alleged that—

Payment for Services. When families are not available or willing to serve as payees, private agencies may best fill the need. However, there are no incentives for agencies to provide this service. SSA should either pay agencies directly or increase payments to beneficiaries to cover fees to agency payees.

"There must be a way for SSA to pay for payee services directly. This payment should not come out of an individual recipient's check." (Advocate, drop-in center for homeless people)

Even when family is available, a paid payee may be a better choice since relationships can deteriorate because of verbal and physical assaults directed toward the payee resulting in the payee's acting simply as a conduit for funds. For the same reasons, volunteers are not appropriate payees for beneficiaries with a history of abusive behavior.

Payee Training. Representative payees should be trained to understand their responsibilities both for disbursing funds and for making appropriate reports to SSA. If the payee is not a social service professional, the training should include how to work with difficult persons such as substance abusers and those with serious mental illnesses.

Payee Monitoring. SSA should monitor more closely payees' use of funds, including contacting payees for documentation of expenditures and conserved funds. If a payee misuses funds, SSA should be able to enforce restitution.

"Strong financial penalties should be applied to the [abusive] payee * * *." (Mental health commissioner)

"[T]he most flagrant abusers should be tried for fraud." (Elder abuse council director)

Reevaluate Capability. SSA should provide for periodic formal reevaluations of capability of all beneficiaries with payees to ensure that none is unnecessarily deprived of the right to receive and manage benefits without interference.

Option for Change

Develop legislation that would mandate specific recruitment, training and monitoring of representative payees and authorize the appropriation of funds to implement the program.

Under this option, Congress would state its expectations for program administration. Given those expectations, legislation would establish an appropriate funding level to support them.

The following capsulizes some provisions that might be part of a broad-based representative payment program.

(a) Payments by the Federal Government of reasonable compensation to representative payees for their services.

(b) Contracting by SSA with agencies to provide payee services at Government expense when suitable volunteers are not available. Alternatively, if an SSI beneficiary is required to pay some or all of the fees of a representative payee, he or she would be reimbursed for them.

(c) Requirement for payees, other than parents with custody of minor children, to provide periodic documentation to support their annual accountings. This would supplement the existing annual payee reports and would not require legislation.

(d) Recovery of misused funds by SSA from the monthly payment of any representative payee currently receiving benefits in his or her own rights. Under current law, SSA cannot attach a payee's own benefits and a beneficiary has little recourse when a payee refuses to make restitution.

(e) Prosecution of representative payees who have misused funds, regardless of the amount. At present, SSA can refer a case to the U.S. Attorney only if the amount involved is $3,000 or more.

Funding for Outreach Activities

Current Approach: SSA has undertaken an outreach campaign through its field offices, working with community based agencies. For example, offices have used other agencies' lists to send letters to potentially eligible individuals; workers regularly visit homeless shelters, facilities for the elderly, and other sites where needy individuals would be found; and computer matches between SPA and other agencies identify potential recipients. Information and referral agreements with advocacy and service groups have been a key aspect of outreach. However, many groups within the population, including the homeless, the frail isolated elderly, children, and Native Americans, have been underserved. (For additional discussion on this issue, see the "Homelessness" and "Information and Referral" sections.)

In Fiscal Year 1990, Congress appropriated $3 million for SSI outreach demonstrations. Currently, there are 25 research demonstration projects operating in 34 sites nationwide which are testing methods of overcoming the barriers that prevent potentially eligible individuals from filing for SSI. In Fiscal Year 1991, Congress appropriated $6 million to continue this outreach program, and SSA will fund additional cooperative agreements based on what has been learned from the first group of projects. The most successful methods from all of the projects will be incorporated into future outreach initiatives.

Summary of Testimony From Public Hearings: Witnesses alleged that—

Problems With Documents

"We are dealing with patients who have limited education. Among the older clients, some have no birth certificates, no Social Security card, no other legal documents to prove their age or status, yet they come to us asking for help. We need a troubleshooter that we could call to cut the red tape." (Outreach Worker)

SSA Not Accessible

"One of the things that has happened as a result of cutback in travel, too, local offices used to at least monthly go into each rural community * * *. If the district office was supposed to cover 16 counties, they would go in, they would be available for consultation, and they were always at an accessible location, and they did a good job of publicizing their arrival so people could ask the kinds of questions they should * * *. Since that no longer exists, we are finding a lot of people technically falling through the so-called loopholes. This also applies to the mentally disabled and the homeless who are also mentally disabled * * *" (Legal Services Attorney) (For additional discussion on this issue, see "Service" section.)

Language Barriers

"The language barriers for Indian elders with limited English proficiency are complicated by the fact that Indian languages are typically not written languages, thus bilingual written notices and communications are not possible. There are, however, interpreters available who could be hired to do outreach work to tribal elders with limited English reading skills. I have seen no effort by SSI to assure that information is conveyed to tribal elders in their own language * * *" (Legal Services Attorney)

"National studies estimate that only 44% of eligible Hispanics receive SSI. Despite high need, Hispanic elders are less likely to receive SSI than the rest of the eligible population. There may be many reasons for the low participation of Hispanics in SSI, but it is my estimation that lack of outreach is a primary cause." (Advocacy Program Director)

"If an outreach position was instituted as was suggested by Dr. Flemming, one area in which it would be most helpful would be for patients in the State Mental Hospitals." (Community Mental Health Center Official)

Many Techniques Needed

"SSI outreach should be an ongoing, expanded priority, and should be funded to allow for a wide range of outreach techniques. An establishment of information sharing networks between the various methods would serve as a means to develop the most successful techniques." (Local SSI Outreach Director)

Option for Change

Establish Specific Funding for Outreach

If this option were adopted, a percentage of the SSI administrative budget would be dedicated solely to outreach. (For example, 5 percent for FY 91 would be $80 million.) These funds could not be used for other purposes.

Information and Referral Services

Current Approach: When Congress established the SSI program, it separated responsibility for income maintenance and social services. The new program placed cash assistance payments delivery in SSA and kept social service assessment and delivery in the hands of State, local, and private nonprofit agencies. This separation of payment delivery and social service delivery was consistent with the operation of most State programs in the early 1970's. SSA initiated information and referral activities to help link claimants and beneficiaries with other public and private agencies that could meet other needs, as it had previously done for Social Security claimants/beneficiaries. The Social Security Act also requires SSA to provide referral to vocational rehabilitation programs for certain categories of SSI and Social Security disability beneficiaries.

Other than mandatory vocational rehabilitation referrals, SSA does not follow up with the individual or the organization to determine if the requested service was received or if the need was met.

Summary of Testimony From Public Hearings: Witnesses alleged that—

Claimants/beneficiaries need assistance. Outside SSA there is a proliferation of programs and services available but it is difficult to negotiate this system of services without the assistance of an advocate or professional social worker. Many poor people are not in contact with other agencies that can help them negotiate the system. Different providers are not aware of the various available resources for the mentally ill client. There should not be a way of centralizing the available resources and require all providers to know what's available.

Process creates stress. Clients experience stress because of fragmented services in the community and the accompanying process which they have difficulty negotiating alone.

SSA can perform this function. Many SSI recipients are in need of social services; and SSI workers, if properly trained, could provide the linkage/referral for the SSI individual to the appropriate services.

Clients should be asked if they object to having their names referred to designated agencies that could provide resources and services. SSA could then make a direct contact and ask the agency to contact the client. This is a way to resolve the problem of reluctance on the part of clients to contact other organizations for help.

SSA Needs To Dedicate Staff To Provide Assistance

Increased coordination by SSA field office personnel with other community organizations is needed and more human resources should be provided to

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Clients should be asked if they object to having their names referred to designated agencies that could provide resources and services. SSA could then make a direct contact and ask the agency to contact the client. This is a way to resolve the problem of reluctance on the part of clients to contact other organizations for help.

SSA Needs To Dedicate Staff To Provide Assistance

Increased coordination by SSA field office personnel with other community organizations is needed and more human resources should be provided to accomplish this task. SSA field offices need a specific employee on staff responsible for working with community agencies, facilitating cooperative activity and ensuring that clients make the right connections.

Information and Referral Services Are Available Outside SSA

"We hope that the information and referral services and case management offered by professionals in the community will be seen as vital components of the SSI system of the future. If the technical interpretations of SSI can be the continued focus of SSA, the Aging Network can provide the presence and support needed in helping SSI beneficiaries" (Area Agency on Aging).

SSA should not perform social service functions. SSA has been forced, inappropriately, to assume a number of social service functions. Problems could result if SSA becomes a social service agency or becomes involved in general case management. Problems arise, such as conflicts of interest and questions of confidentiality, when entitlement agencies perform social service functions. The need for additional human resources to provide these services would be great. Case management is available from many other organizations and SSA would be duplicating such service.

Options for Change

1. The Expanded Community Liaison Model

The Expanded Community Liaison Model would broaden the scope of the functional statement for Social Security Administration field offices to include more in-depth community liaison activities. This model would provide expanded linkage with community organizations. It would not provide case management services, but would try to ensure that clients who need such services receive them through another organization, e.g., the mental health system, local charity or cultural groups, state agencies, etc.

SSA field offices would dedicate additional staff resources to contact community agencies and institutions and to work with them on a continuing basis. The goal would be to use community organizations in concert with the local SSA office. SSA would ask organizations to help individuals apply for SSI, to help applicants and recipients deal with any problems that arise and to provide case management when needed. Special emphasis would be placed on assisting the homeless to make meaningful connections with organizations that could provide other assistance and services. (Refer to the section labeled "Homeless.") In order for this model to be effective, an increase in human resources in SSA field offices would be necessary and the resources would have to be dedicated specifically to this function.

2. The Case Manager Model

In this model, SSA would work closely with claimants and beneficiaries and their families and care givers, taking responsibility for the progress of each person trying to overcome the obstacles and problems presented by disability, blindness or age. SSA would provide an active and ongoing link between clients who want or need social services and organizations who provide those services. SSA would develop and maintain a network of providers, employers, and other public agencies with which it would collaborate to improve the health, work status and quality of life of clients. Specialized assistance would be provided to the homeless in order to ensure that they are able to complete the SSI application process and connect with organizations that provide other assistance and services. (Refer to the topic labeled "Homelessness".) Case management is very labor intensive and would require a major increase in staff for field offices.

Homelessness

Current Approach: Homelessness makes the SSI application process more difficult. This population is usually not connected to any of the social agencies which routinely refer people to Social Security offices. Their lack of a fixed mailing address makes them difficult to reach. They also lack transportation to SSA offices, and their lack of identification and other evidence needed to establish eligibility makes the application process slower.

SSA district offices have homeless coordinators who work with local service and advocacy groups. As a result, many local social service agencies, soup kitchens, shelters, churches, etc., screen homeless people for possible SSI eligibility, refer them to the local SSA office, and help them through the system. Also, in many areas of the country local SSA offices, sometimes assisted by the Disability Determination Service, visit homeless shelters, clinics, and hospitals to take applications. SSA is investigating methods of continuous funding for these activities. (For additional discussion on this issue, see the sections on "Outreach," "Services Provided by the Social Security Administration," and "Information and Referral.")

In addition, SSA does not require a fixed mailing address before issuing a check; homeless individuals can pick up their checks at the local Social Security office, or at a shelter. Benefits are usually paid when a person lives in a privately operated shelter. Although an individual generally is not eligible for SSI benefits for any month throughout which he or she is a resident of a public institution, there is an exception for public emergency shelters. In any nine month period, an individual may be eligible for SSI for any six months throughout which he or she resides in a public emergency shelter.

Further, SSI payments are made for certain individuals who are admitted to a public medical institution or a facility in which Medicaid is paying more than 50 percent of the cost of care. A physician must certify that the individual will be confined for 90 days or less, and the individual needs to pay some or all of the expenses of maintaining the home or living arrangement to which he may return after discharge.

SSA has also instituted a policy to ensure that an individual's payments are not inappropriately terminated because of failure to respond to a request for evidence. SSA recognizes that a person's age or medical condition, or homelessness, may make it impossible for him or her to respond on a timely basis. Failure to furnish this information does not automatically result in a loss of benefits. SSA makes every effort to locate the individual, including contacting homeless shelters, to assist them in obtaining the necessary documents.

Another effort to prevent homelessness is the pre-release program which begins payments to persons as soon as possible after discharge from public institutions or private institutions where Medicaid pays over half the cost of care. Each SSA office establishes agreements with all appropriate public and private institutions. The institutions identify individuals who appear likely to meet the criteria for SSI eligibility, and who could be released within 30 days. The SSA office takes claims from these individuals, and potential eligibility and payment amount are determined based on the individual's anticipated living arrangement upon release. The payment starts upon release from the institution when possible.

Summary of Testimony From Public Hearings: Witnesses alleged that—

The Application Process. The application process should be simplified so that processing time is shortened. Frequently, by the time the decision is reached, the claimant's whereabouts are unknown.

The Disability Process. SSA should make decisions based on lay evidence (e.g., observations of shelter workers and mental health workers) when medical records are non-existent and the applicant refuses to see a doctor for fear of institutionalization.

Third Party Assistance. Agencies involved with the homeless mentally ill should be educated regarding the disability application process. Further, the homeless mentally ill should be provided with advocates to help them through the system. (For additional discussion on this issue, see the "Information and Referral" section.)

Payees. SSA should identify a pool of reputable people who are willing to serve as representative payees for the homeless mentally ill. This would assure that the individual is using the payments for basic needs. (For additional discussion on this issue, see the "Representative Payment" section.)

Hospitalization/Institutionalization. SSA should allow indefinite SSI payment for individuals residing in public emergency shelters for the homeless. Further, a means should be found to maintain a person's rent while he/she is hospitalized.

Outreach. SSA should increase outreach activities, especially to the homeless mentally ill. (For additional discussion on this issue, see the "Outreach" section.)

Options for Change

1. Provide Emergency Payments to Individuals With Mental Illness

Under this provision, emergency payments would be provided to individuals who file an application and:

(a) Are homeless, as defined by the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100–77), and

(b) In the judgment of a qualified mental health professional, exhibit symptoms of severe mental illness.

The McKinney Act defines a homeless person as someone without a fixed, adequate nighttime residence or whose primary nighttime residence is a shelter, a temporary holding place for individuals intended to be institutionalized, or a place not intended as sleeping accommodation for human beings.

These applications would be processed for a final decision within 30 days, *or* benefits would be continued until a final decision is reached. These payments would not be considered overpayments if it is decided that these individuals are not disabled or blind.

2. Provide Continued Payment Protection for All Hospitalized Individuals

The law would be changed to remove current restrictions. A physician would no longer be required to certify that the eligible individual is expected to stay for three months or less. Further, the individual would no longer be required to demonstrate that the SSI payment is needed to maintain the living arrangement to which he or she may return upon discharge. Payments could be made to all individuals for the first three months of hospitalization.

3. Pay SSI Benefits to Individuals in Public Emergency Shelters for the Homeless Without any Time Limit

Residents of these shelters would be eligible for SSI indefinitely.

4. Provide. Nationwide, Outreach Services Now Being Tested

SSA is testing models for helping the homeless through the application process. Travelers and Immigrants Aid in Chicago, with funding from SSA, provides all necessary application processing services during a single interview, including on-the-spot consultative examinations. It also provides case management throughout the application process, and assists the homeless individual in arranging representative payee services.

SSA is beginning an initiative with the Department of Veterans Affairs' successful Homeless and Chronic Mentally Ill Program. The initiative will involve SSA and Disability Determination Service staff in Homeless and Chronic Mentally Ill sites working as a team to take and develop applications.

Under this option, SSA would expand these integrated services models across the country. (For additional discussion on this issue, see the "Outreach" section.)

Advisory Council Review

Current Approach: Although the SSI program has undergone numerous refinements and modifications since enactment, the basic structure has not changed. Over the years, a number of reviews have been done, but not on a regular basis and few involved independent experts who reported to the Secretary, as is the case with the Advisory Council on Social Security.

Congress authorized the Social Security Board to appoint the first Social Security Advisory Council in 1937 to study the advisability of amending the program to ensure that its benefits were adequate and equitable and that its financing was sound. The Advisory Council consisted of representatives of employees, employers, and the general public. In 1969, the Advisory Council's charter was expanded to reflect a broader scope of review. Currently, under the law, a new Council is appointed every four years and submits a comprehensive report to the Secretary on designated issues. At the time of the statutory mandate, the SSI program had not yet been established, and the Act has never been modified to specifically include review of the SSI program. Only one Social Security Advisory Council has addressed SSI program issues.

Summary of Testimony From Public Hearings: Witnesses alleged that—

There are fundamental differences between the Social Security trust fund programs and SSI. Some of the differences involve issues that require extensive review and consideration of other social and domestic programs.

The SSI program would benefit from a periodic, independent review, similar to but separate from the process afforded the four trust fund programs by the Social Security Advisory Council, because of the fundamental differences between the SSI and trust fund programs, and because the scope of the review would be too great to be manageable if it were combined with a review of the trust fund programs.

Options for Change

1. Amend the Social Security Act to Include SSI in Social Security Advisory Council Jurisdiction

This option would include the SSI program as an integral part of the Advisory Council's mandate. While this approach would not guarantee that the SSI program would be reviewed every four years, it would, nevertheless, include SSI in the Council's jurisdiction and allow the program to be reviewed singly or jointly with the trust fund programs, as determined by the Secretary.

2. Establish a Separate Advisory Council on SSI

This option would guarantee that the SSI program receives a regular, comprehensive review by an independent group of experts who would report to the Secretary. The mandate could include a very broad charter, in which SSI would be

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considered with other Federal and State income maintenance programs (other than trust fund programs). A separate Advisory Council would be expected to take into account actions of the most recent or existing Advisory Council on Social Security on issues of mutual interest.

[FR Doc. 91-17990 Filed 7-30-91; 8:45 am]

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Wednesday
July 31, 1991

Part IV

Department of Education

Office of Special Education and Rehabilitative Services

National Institute on Disability and Rehabilitation Research; Notice Inviting Applications

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

[CFDA Nos.: 84.133C, 84.133F, and 84.133G]

National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Awards Under Certain Programs for Fiscal Year 1992

Note to Applicants: This notice is a complete application package. The notice contains information, application forms, and instructions needed to apply for a grant under these competitions.

The estimates of funding levels in this notice do not bind the Department of Education to make awards in any of these categories, or to any specific number of awards or funding levels, unless otherwise specified in statute.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86; and the following program regulations:

Field Initiated Research—34 CFR parts 350 and 357.

Rehabilitation Research Fellowships—34 CFR part 356.

Innovation Grants—34 CFR parts 350 and 358.

Applications Available: July 31, 1991.

NATIONAL INSTITUTE ON DISABILITY AND REHABILITATION RESEARCH—INFORMATION FOR TRANSMITTAL OF APPLICATIONS UNDER CERTAIN PROGRAMS FOR FISCAL YEAR 1992

CFDA No.	Program title	Deadline for transmittal of applications	Estimated available funds	Estimated No. of awards	Estimated average awards	Project period
84.133C	Innovation Grants	3/16/92	$750,000	15	$50,000	12
84.133F	Rehabilitation Research Fellowships	12/15/91	400,000	10	40,000	12
84.133G	Field-Initiated Research	10/15/91	2,500,000	20	125,000	36

Title of Program: Innovation Grants.

CFDA No: 84.133C

Purpose: This program is designed to provide financial support to projects that: (a) Test new concepts and innovative ideas; (b) demonstrate research results of high potential benefits; (c) purchase and evaluate prototype aids and devices; (d) develop and test unique rehabilitation training curricula; and (3) conduct feasibility, planning, and evaluation studies and conferences, and other activities to disseminate specific research findings as described in program regulations at 34 CFR part 358.

The Secretary is particularly interested in applications that meet the following invitational priority: Projects that will facilitate implementation of the Americans with Disabilities Act, including but not limited to curriculum development for training of affected parties on issues related to the ADA, development and testing of assessment and measurement surveys, related to job accommodations for persons with disabilities, and development of adaptive devices.

However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over the applications.

Selection Criteria: The Secretary uses the following selection criteria, 34 CFR 358.32, to evaluate applications under this program.

(a) *Importance of the project (50 points):* The Secretary reviews each application to determine to what degree the proposed activity will address a significant need of the target population and will meet the purposes of this part.

(b) *Project or methodology (25 points).* The Secretary reviews each application to determine to what degree the underlying hypothesis or conceptual model is sound; the project design is likely to achieve the desired objectives; and the evaluation plan is appropriate.

(c) *Plan of operation (25 points).* The Secretary reviews each application to determine the extent to which the qualifications and background of the key personnel, the management and financial plan, and the capability and resources of the applicant organization demonstrate that the applicant will be able to carry out the proposed project.

Eligible Applicants: State and public agencies, private agencies or organizations, including institutions of higher education and Indian tribes and tribal organizations, are eligible to apply for award in this program.

Program Authority: 29 U.S.C. 762(b)(13).

Program Title: Rehabilitation Research Fellowships.

CFDA No: 84.133F.

Purpose: The purpose of this program is to build research capacity by providing support to highly qualified individuals to perform research on the rehabilitation of disabled persons as described in program regulations at 34 CFR part 356:

Selection Criteria: The Secretary evaluates applications for fellowships according to the following criteria in 34 CFR 356.30:

(a) Quality and level of formal education, previous work experience, and recommendations, of present or former supervisors or colleagues that include an indication of the applicant's ability to work creatively in scientific research; and

(b) The quality of a research proposal of no more than 12 pages containing the following information:

(1) The importance of the problem to be investigated to the purpose of the Rehabilitation Act and the mission of the National Institute on disability and Rehabilitation Research (NIDRR).

(2) The research hypotheses or related objectives and the methodology and design to be followed.

(3) Assurance of the availability of any necessary data resources, equipment, or institutional support, including technical consultation and support where appropriate, required to carry out the proposed activity.

Eligible Applicants: Individuals only are eligible to apply for research fellowships under the program.

Program Authority: 29 U.S.C. 761a(d).

Program Title: Field-Initiated Research.

CFDA No: 84.133G.

Purpose: This program is designed to encourage eligible parties to originate valuable ideas for research and demonstration, development, or knowledge dissemination projects to improve the lives of individuals with disabilities, and to support research and demonstration, development, or knowledge dissemination projects as described in program regulations at 34

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pecified in statute.
ulations: The
nent General
gulations (EDGAR), 34
7, 80, 81, 82, 85, and

86; and the following program regulations:

Field Initiated Research—34 CFR parts 350 and 357.

Rehabilitation Research Fellowships—34 CFR part 356.

Innovation Grants—34 CFR parts 350 and 358.

. *Applications Available:* July 31, 1991.

EARCH—INFORMATION FOR TRANSMITTAL OF APPLICATIONS UNDER
FOR FISCAL YEAR 1992

	Deadline for transmittal of applications	Estimated available funds	Estimated No. of awards	Estimated average awards	Project period
	3/16/92	$750,000	15	$50,000	12
ps	12/15/91	400,000	10	40,000	12
	10/15/91	2,500,000	20	125,000	36

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(a) Quality and level of formal education, previous work experience, and recommendations, of present or former supervisors or colleagues that include an indication of the applicant's ability to work creatively in scientific research; and

(b) The quality of a research proposal of no more than 12 pages containing the following information:

(1) The importance of the problem to be investigated to the purpose of the Rehabilitation Act and the mission of the National Institute on disability and Rehabilitation Research (NIDRR).

(2) The research hypotheses or related objectives and the methodology and design to be followed.

(3) Assurance of the availability of any necessary data resources, equipment, or institutional support, including technical consultation and support where appropriate, required to carry out the proposed activity.

Eligible Applicants: Individuals only are eligible to apply for research fellowships under the program.

Program Authority: 29 U.S.C. 761a(d).

Program Title: Field-Initiated Research.

CFDA No: 84.133G.

Purpose: This program is designed to encourage eligible parties to originate valuable ideas for research and demonstration, development, or knowledge dissemination projects to improve the lives of individuals with disabilities, and to support research and demonstration, development, or knowledge dissemination projects as described in program regulations at 34

CFR part 357 that address important activities not supported by Institute-funded research or that complement that research in a promising way.

The Secretary is particularly interested in applications that meet the following invitational priorities: Projects that facilitate awareness, understanding, implementation, and assessment of the impact of the Americans with Disabilities Act (ADA); projects that address the successful rehabilitation, improved family relationships, or enhanced employability of persons with epilepsy; projects that address the successful rehabilitation and continued employment of individuals with repetitive motion syndrome; projects to develop strategies that promote employment and independent living for adults with autism. Projects that address socialization skills, family relations, and employment for individuals with attention deficit disorders; projects to develop innovative strategies for rehabilitation counselors to enhance job placement, career choice and independence of clients; and strategies to increase the number of persons with disabilities who pursue careers in science and math and to increase the career opportunities available to them.

However, under 34 CFR 75.105(c)(1) an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over the applications.

Selection Criteria: The Secretary uses the following criteria, 34 CFR 357.32, to evaluate an application under this program.

(a) *Importance of the problem.* (20 points) The Secretary reviews each application to determine the extent to which—

(1) The proposed project addresses a problem that is significant to persons with disabilities or to those who provide services to them; and

(2) The proposed project is likely to produce new and useful knowledge, techniques, or devices that will develop or disseminate solutions to problems confronting persons with disabilities.

(b) *Design of the project.* (45 points)

(1) The Secretary reviews each application for a research and demonstration project to determine the extent to which—

(i) The review of the literature is appropriate and indicates familiarity with the relevant current research;

(ii) The research hypotheses are theoretically sound and based on current knowledge;

(iii) The sample populations are adequate and appropriately selected;

(iv) The data collection instruments and methods are appropriate and likely to be successful;

(v) The data analysis measures are appropriate; and

(vi) The application discusses the anticipated research results and demonstrates how those results would satisfy the original hypotheses.

(2) The Secretary reviews each application for a knowledge dissemination project to determine the extent to which—

(i) The need for the information has been demonstrated;

(ii) The target populations are appropriately specified;

(iii) The dissemination methods are appropriate to the target populations;

(iv) The materials for dissemination are prepared in media accessible to the target population;

(v) There are adequate means of documenting and evaluating the effectiveness of the dissemination activity.

(3) The Secretary reviews each application for a development project to determine the extent to which—

(i) The proposed project will use the most effective and appropriate technology available in developing the new device or technique;

(ii) The proposed development is based on a sound conceptual model that demonstrates an awareness of the state-of-the-art technology;

(iii) Devices or techniques will be developed and tested in an appropriate environment;

(iv) The applicant considers the cost-effectiveness and usefulness of the device or technique to be developed for persons with disabilities; and

(v) The applicant discusses the potential for commercial or private manufacture, marketing, and distribution of the product.

(c) *Personnel.* (20 points) The Secretary reviews each application to determine the extent to which—

(1) The key personnel have adequate training and experience in the required discipline to conduct the proposed activities;

(2) The allotment of staff time is adequate to accomplish the proposed activities; and

(3) The applicant ensures that personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(d) *Management and Evaluation.* (15 points) The Secretary reviews each application to determine the extent to which—

(1) The resources of the applicant are adequate, appropriate, and accessible to individuals with disabilities;

(2) The proposed budget is adequate and appropriate for the activities to be carried out;

(3) There is a plan, appropriate to the type of field-initiated project, to evaluate the effectiveness of the project in accomplishing its goals and objectives;

(4) The applicant provides a plan of operations, appropriate to the type of field-initiated project, indicating that it will achieve the project objectives in a timely and effective manner; and

(5) Appropriate collaboration with other agencies is assured.

Eligible Applicants: State and public agencies, private organizations, including institutions of higher education and Indian tribes and tribal organizations, are eligible to apply for awards under this program.

Program Authority: 29 U.S.C. 762.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Washington, DC 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. [Washington, DC time] on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), room # 3633, Regional Office Building # 3, 7th and D Streets SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Forms and Instructions

The appendix to this notice is divided into four parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4-88)) and instructions.

Part II: Budget Form—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden

Assurances—Non-Construction Program (Standard Form 42B). Certification Regarding Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Work-place Requirements (ED Form 80-0013) and instructions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form GCS-009) and instructions.

Note: ED Form GCS-009 is intended for the use of primary participants and should not be transmitted to the Department.)

Disclosure of Lobbying Activities

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an *original signature.* No grant may be awarded unless a completed application form has been received. Include general letters of support or endorsement in the application.

FOR FURTHER INFORMATION CONTACT: The National Institute on Disability and Rehabilitation Research, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: (200) 732-1141; deaf and hearing impaired-persons may call (202) 732-5372 for TDD services.

Authority: 29 U.S.C. 760762.

Dated: July 25, 1991.

Philip S. Link,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

Appendix

Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this Section. Applicants are required to submit an original and two copies of each application as provided in this section.

Frequent Questions

1. Can I get an extension of the due date?

No. On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

2. What must be included in the application?

The application must include a project narrative, requirements of 75.112, vitae of key personnel, and a budget, as well as the Assurances forms included in the package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and subsequent project years must include requirements in 34 CFR 75.117.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is not useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies or publications, or descriptions of other projects completed by the applicant.

3. What format should be used for the application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific programs, and are contained in this Consolidated Application Package.

4. May I submit applications to more than one NIDRR program competition or more than one application to a program?

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. What is the allowable indirect cost rate?

The limits on indirect costs vary according to the program and the type of application.

Applicants in the FIR, and Innovation grants programs should limit indirect charges to the organization's approved rate. If the organization does not have an approved rate, the application should include an estimated actual rate.

6. Can profit-making businesses apply for grants?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and some programs will be required to share in the costs of the project.

7. Can individuals apply for grants?

No. Only organizations are eligible to apply for *grants* under NIDRR programs. Individuals may apply for fellowships.

8. Can NIDRR staff advise me whether my project is of interest to NIDRR or likely to be funded?

No. NIDRR staff can advise you of the requirements for the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

9. How do I assure that my application will be referred to the most appropriate panel for review?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424.

10. How soon after submitting my application can I find out if it will be funded.

The time from the closing date to the grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from

1991.

Secretary, Office of Special
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the closing date, but no later than the following September 30th.

11. Can I call NIDRR to find out if my application is being funded?

No. When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

12. If my application is successful, can I assume I will get the requested budget amount in subsequent years?

No. Those budget projections are necessary and helpful for planning purposes. However, a complete budget and budget justification must be submitted for each year of the project and there will be negotiations on the budget each year.

13. Will all approved applications be funded?

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000-01-M

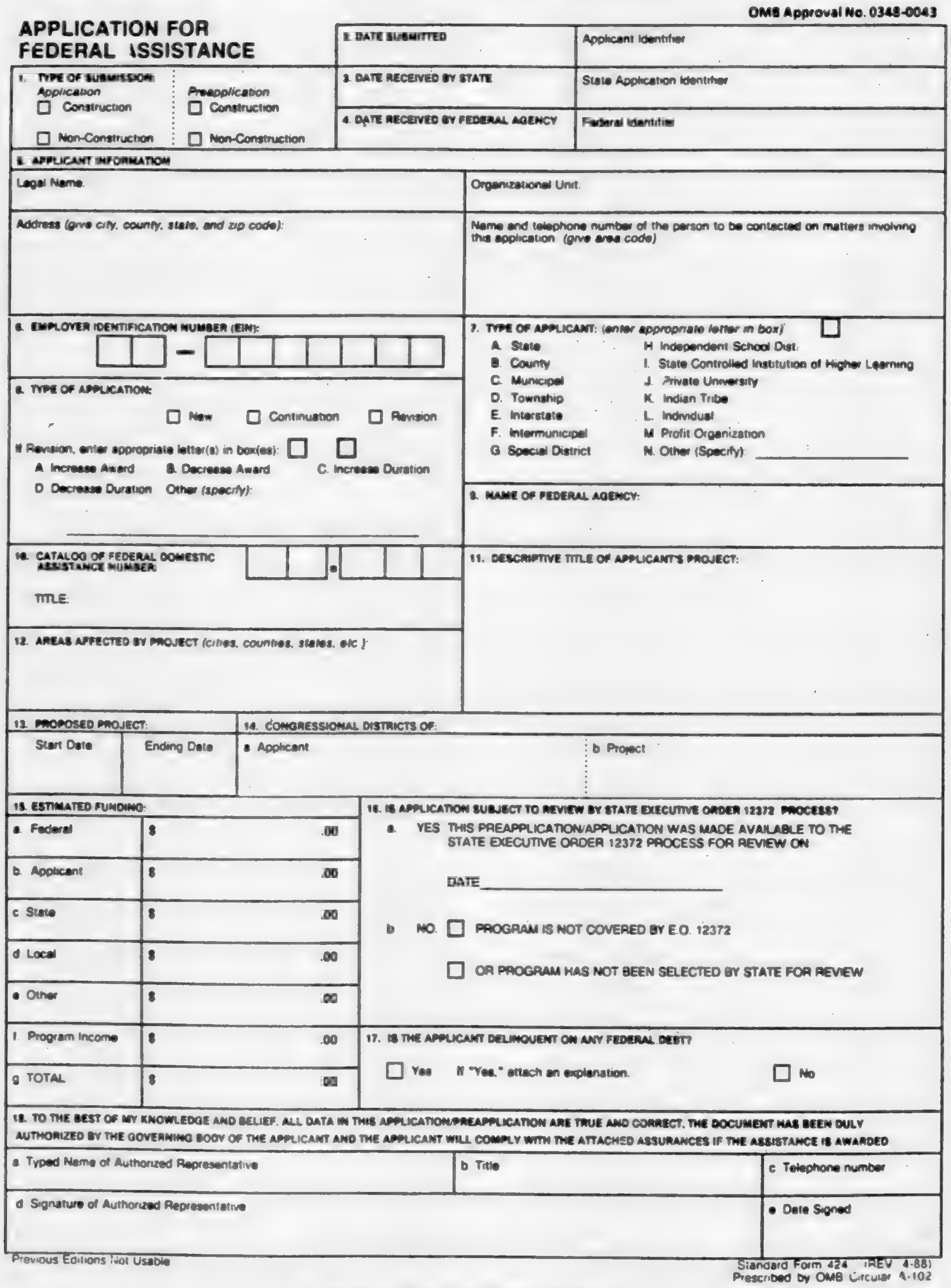

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION:
Application
☐ Construction
☐ Non-Construction
Preapplication
☐ Construction
☐ Non-Construction

2. DATE SUBMITTED
Applicant Identifier

3. DATE RECEIVED BY STATE
State Application Identifier

4. DATE RECEIVED BY FEDERAL AGENCY
Federal Identifier

5. APPLICANT INFORMATION

Legal Name:
Organizational Unit:
Address *(give city, county, state, and zip code):*
Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN):
☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State	H. Independent School Dist.
B. County	I. State Controlled Institution of Higher Learning
C. Municipal	J. Private University
D. Township	K. Indian Tribe
E. Interstate	L. Individual
F. Intermunicipal	M. Profit Organization
G. Special District	N. Other (Specify): ____________________

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify):*
____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐-☐☐☐
TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.):*

13. PROPOSED PROJECT:
Start Date
Ending Date

14. CONGRESSIONAL DISTRICTS OF:
a. Applicant
b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE ______________________
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative
b. Title
c. Telephone number
d. Signature of Authorized Representative
e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: —"New" means a new assistance award. —"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. —"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11	Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16-19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. **Direct Charges:**

22. **Indirect Charges:**

23. **Remarks**

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

FOR THE SF-424A

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

> **Column (a)** – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.
>
> **Column (b)** – Enter the contribution to be made by the applicant.
>
> **Column (c)** – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.
>
> **Column (d)** – Enter the amount of cash and in-kind contributions to be made from all other sources.
>
> **Column (e)** – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

BILLING CODE 4000-01-C

Instructions for Completion of Part III National Institute of Disability and Rehabilitation Research Project Narrative for New Applications

Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820–0027, Washington, DC 20503.

The successful narrative should include the basic information described below and, excluding resumes of key personnel, should be limited to:

- 40 pages for application under the Field-Initiated Research programs
- 20 pages for applications under the Innovation Grants program
- 12 pages, which is the regulatory limit, for applications under the Fellowship program

Should the proposed project be funded, the information provided in the "project narrative" will form the basis for evaluating progress for continuation funding. The narrative for continuation applications must include the accomplishments, unanticipated obstacles and future plans of the project. The applicant must also revise budget statements for the program. Please refer to 34 CFR 75.118(b).

The narrative for new applications may be organized under the major heading in the regulations governing the specific programs. The applicant must respond to the selection criteria for each program listed below:

Innovation Projects—34 CFR 358.32;
Research Fellowships Program—34 CFR 356.30;
Field-Initiated Projects—34 CFR 357.32.

Instructions for Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invited comment on the public reporting burden in this collection of information. Public reporting burden for these collections of information is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to: U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820–0027, Washington, DC 20503.

Innovation Grants Program (CFDA No. 84.133C) 34 CFR parts 350 and 358.

Rehabilitation Research Fellowships (CFDA No. 84.133F) 34 CFR part 356.

Field-Initiated Research (CFDA No. 84.133G) 34 CFR parts 350 and 357.

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Innovation Grants Program (CFDA No. 84.133C) 34 CFR parts 350 and 358.

Rehabilitation Research Fellowships (CFDA No. 84.133F) 34 CFR part 356.

Field-Initiated Research (CFDA No. 84.133G) 34 CFR parts 350 and 357.

BILLING CODE 4000-01-M

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11 Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
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TITLE	
	DATE SUBMITTED

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

____

____

____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

hat the applicant will comply with the above certifications.

PR/AWARD NUMBER AND/OR PROJECT NAME
DATE

. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion–Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 **(Replaces GCS-009 (REV. 12/88), which is obsolete)**

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change

For Material Change Only:
year ______ quarter ____
date of last report ________

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known:*

Congressional District, *if known:*

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Congressional District, *if known:*

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, *if applicable:* __________

8. Federal Action Number, *if known:*

9. Award Amount, *if known:*
$

10. a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

b. Individuals Performing Services *(including address if different from No. 10a)*
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*
$ __________ ☐ actual ☐ planned

12. Form of Payment *(check all that apply):*
☐ a. cash
☐ b. in-kind; specify: nature __________
value __________

13. Type of Payment *(check all that apply):*
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: __________

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: __________
Print Name: __________
Title: __________
Telephone No.: ________ **Date:** ________

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BYING ACTIVITIES

Approved by OMB 0348-0046

activities pursuant to 31 U.S.C. 1352
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3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year ________ quarter ____
date of last report ________

If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Congressional District, *if known*:

Federal Program Name/Description:

CFDA Number, *if applicable*: ____________

Award Amount, *if known*:
$

Individuals Performing Services *(including address if different from No. 10a)*
(last name, first name, MI):

SF-LLL-A, if necessary)

Type of Payment *(check all that apply)*:
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: ____________

and Date(s) of Service, including officer(s), employee(s),

F-LLL-A, if necessary)

No

nature: ____________
t Name: ____________
: ____________
phone No.: ____________ Date: ____________

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INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: ______________________________ **Page** _____ **of** _____

[FR Doc. 91-18053 Filed 7-30-91; 8:45 am]

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BYING ACTIVITIES
ON SHEET

Approved by OMB
0348-0046

Page _____ of ______

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federal register

Wednesday,
July 31, 1991

Part V

Department of Education

34 CFR Parts 600 and 668

Institutional Eligibility; Student Assistance General Provisions; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Parts 600 and 668

RIN 1840-AB18

Institutional Eligibility; Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing Institutional Eligibility under the Higher Education Act of 1965, as Amended (HEA), and the Student Assistance General Provisions regulations. These regulations implement the Secretary's initiative to improve the monitoring and accountability of institutions participating in the student financial assistance programs authorized under title IV of the HEA (title IV, HEA programs). The purpose of these regulations is to reduce the potential for abuse in the title IV, HEA programs by strengthening the means of enforcing the title IV, HEA program requirements.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments, with the exception of § 600.30. Section 600.30 will become effective after the information collection requirements contained in that section have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. A document announcing the effective date will be published in the **Federal Register**. After § 668.51 becomes effective, that section applies to award years beginning July 1, 1991, or later. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: John De Cleene, Pell Grant Branch, Division of Policy and Program Development, U.S. Department of Education, 400 Maryland Avenue, SW., (room 4318, ROB-3), Washington, DC 20202, (202) 708-7888. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC, 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The regulations for Institutional Eligibility under the Higher Education Act of 1965, as Amended (34 CFR part 600), apply to all postsecondary educational institutions that seek to participate in programs administered under the HEA (HEA programs) by the Department of Education. The Student Assistance General Provisions regulations (34 CFR part 688) apply to all institutions that seek to participate in the title IV, HEA programs.

The changes in these regulations result from a review of current policies and procedures. The review identified possible legislative, regulatory, and administrative changes necessary to protect, enhance, and improve the integrity of the title IV, HEA programs.

On March 17, 1989, the Secretary published a notice of proposed rulemaking (NPRM) for parts 600 and 668 in the **Federal Register** (54 FR 11354). On November 3, 1989, the Secretary published as final regulations § 668.12 of the Student Assistance General Provisions regulations (54 FR 46536). Under the changes in § 668.12, certain officials of educational institutions seeking to begin participation in a title IV, HEA program for the first time are required to complete title IV, HEA program training provided by the Secretary. The November 3, 1989, regulations were published separately from these regulations so that the changes in § 668.12 would be effective for the 1989-90 and subsequent award years.

The NPRM included a discussion of the major issues surrounding the proposed changes. The following list summarizes those issues and identifies the pages of the preamble to the NPRM on which discussion of those issues may be found:

New reporting requirements in § 600.30 for certain institutional ownership changes (page 11354);

A new § 600.32 governing the eligibility of additional locations of an institution (pages 11354 and 11355);

A requirement in § 668.7 for students to furnish credible identification to their institutions in certain circumstances (page 11355);

Changes in § 668.13 affecting the factors of financial responsibility governing an institution that undergoes a change in ownership that allows a person to own at least 25 percent of the stock of the institution or the institution's parent corporation (page 11355);

A requirement in § 668.20 that to be eligible under the title IV, HEA programs, remedial education must be provided at least at the secondary educational level (page 11355);

Clarifications in § 668.23 concerning access by certain Federal officials to institutional records and personnel involved in the administration of title IV, HEA program funds (page 11356); and

New provisions in § 668.90 governing the procedures for the termination of the participation of institutions in the Title IV, HEA programs (page 11356).

Major Changes to the NPRM

As a result of the comments received in response to the NPRM, the Secretary has made several major changes to the proposed regulations. The reporting requirements in § 600.30 and the factors of financial responsibility in § 668.13 are revised to reflect those circumstances (explained in detail in the Analysis of Comments and Changes) other than the ownership by a person of at least 25% of the stock of an institution or an institution's parent corporation that enable a person to affect substantially the actions of that institution. The Secretary has removed the proposed requirement in § 668.7 for an eligible student to furnish credible identification to his or her institution when he or she is about to receive cash for the first time from the title IV, HEA programs. Courses in English as a second language (ESL) are exempted from the requirement in § 668.20 that remedial education must be provided at least at the secondary level to be included in title IV, HEA program eligibility. The requirements in proposed § 668.23 have been expanded to require an institution to cooperate with independent auditors in the conduct of audits, investigations, and program reviews. The Secretary has modified the provisions in proposed § 668.90 concerning a termination action against an institution for missing an audit report deadline and either having a history of missing audit report deadlines or ignoring the Department of Education's attempts to obtain an explanation or impose a fine. The modification now requires an administrative law judge to uphold any termination action taken against an institution for a violation of § 668.23(c)(4) (governing the timely submission of audit reports). A more detailed discussion of these changes is found in the *Analysis of Comments and Changes.*

These regulations also contain technical changes in §§ 600.32, 668.1, 668.2, 668.7, 668.13, 668.44, and 668.95 that conform to changes made by regulations for the Guaranteed Student Loan and PLUS programs published in the **Federal Register** on November 10, 1986 (51 FR 40886), and June 5, 1989 (54 FR 24114); the Student Assistance General Provisions published in the **Federal Register** on December 1, 1987 (52 FR 45712); Institutional Eligibility under the Higher Education Act of 1965, as Amended, published in the **Federal**

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With respect to the changes concerning the Byrd Scholarship Program, the Secretary is amending §§ 668.1 and 668.2 to remove the definition of the Byrd Scholarship Program and to reflect that the program is not covered by the Student Assistance General Provisions regulations. Although the Byrd Scholarship Program is authorized by title IV of the HEA, the program bears no relationship to the other title IV, HEA programs. It provides a one-time prize to those high school seniors who demonstrate outstanding academic achievement and show promise of continued academic achievement. Furthermore, while the Student Assistance General Provisions regulations implement the requirements that are general to all the title IV, HEA programs, only two provisions of the Student Assistance General Provisions regulations appropriately apply to the Byrd Scholarship Program—that an eligible student must be a U.S. citizen, national, or eligible noncitizen as defined in § 668.7(a)(4), and that he or she must complete a Statement of Selective Service Registration Status. Both of these requirements have been incorporated into the Byrd Scholarship Program regulations (34 CFR 654.41(a)(3) and (4)).

In addition, these regulations include technical changes in § 668.51 to extend the Institutional Quality Control Project through the 1993–94 award year and to reflect that the Secretary no longer considers the project to be a "pilot" program. The project, which establishes a methodology that participating institutions use to assess their management practices in the delivery of title IV, HEA program aid, measure their error rates, and design corrective actions aimed at the reduction of error, was introduced as a pilot project in 1985. The Secretary's most recent evaluation showed that some of the institutions that were studied have implemented corrective actions and planned for long-term corrective actions to reduce error in potential problem areas that might not have been addressed or even discovered through the standard regulatory procedures for verification of information submitted by applicants for student aid. The Secretary extends the project for an additional three years to continue to evaluate the success of this management approach.

Paragraphs (c) through (f) of § 668.44, governing an institution's disclosure of information on State licensure and certification requirements for occupations, pass rates on State licensure or certification examinations, placement rates, graduation or completion rates, and the procedures for an institution to report that information to the institution's students, are removed. Appendix A, containing the Track Record Disclosure Forms required for reporting the applicable information in § 668.44 (c) through (f) is also removed. These changes are required by the Student Right-to-Know and Campus Security Act (Pub. L. 101–542), signed by the President on November 8, 1990. However, the Secretary reminds readers that an institution is still required, under section 487(a)(8) of the HEA, to make available to prospective students, at or before the time that those prospective students apply for admission, the most recent available data concerning employment statistics, graduation statistics, and any other information necessary to substantiate the truthfulness of the institution's advertisements, if the institution advertises job placement rates as a means of attracting students to enroll in the institution.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 95 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes that the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Section 600.30 Institutional Changes Requiring Review by the Secretary

Comments: Several commenters asked whether the reporting requirements in this section apply to institutions owned by partnerships as well as institutions in which individuals own stock. A commenter urged the Secretary to ensure that this reporting requirement applies to institutions owned by publicly traded corporations.

Discussion: The reporting requirement in this section applies to any institution that is subject to the Institutional Eligibility regulations, regardless of whether the institution is owned by an individual, partnership, or publicly traded corporation. However, the Secretary agrees that a modification is necessary to clarify that this reporting requirement does not apply only to institutions in which persons own stock.

The Secretary recognizes that persons who do not own stock in an institution may have the ability to affect substantially the actions of the institution. Therefore, the Secretary believes that it is more accurate to refer to holders of an ownership interest in an institution, rather than to owners, and to define an ownership interest. The Secretary also recognizes that certain persons may have the ability to affect substantially the actions of an institution without actually holding an ownership interest in the institution. Institutions must be held accountable for those persons, as well as holders of an ownership interest, if those persons were also responsible for incurring unpaid liabilities of HEA program funds at defunct institutions, as defined in § 668.13. Therefore, an institution must report any change (described below) under which a person acquires the ability to affect substantially the actions of the institution. A more detailed description of the reasons for inclusion of these changes is found in the discussion of the changes made in § 668.13.

The Secretary agrees that another modification is necessary to clarify that an institution owned by a publicly traded corporation must also report any changes under which a person acquires the ability to affect substantially the actions of the institution, even though the executive officers of a publicly traded corporation may not learn of the changes at the time that those changes occur.

Changes: The Secretary has removed the proposed requirement for an institution to report changes in ownership that result in the ownership of at least 25% of the stock of the institution or the institution's parent corporation. Instead, the Secretary has added a requirement that an institution report any change under which a person obtains the ability to affect substantially the actions of the institution. The Secretary has listed those circumstances under which the Secretary generally considers a person to have the ability to affect substantially the actions of an institution. Accordingly, the revised regulations require an institution to report:

(1) Any change under which a person holds at least a 25% ownership interest in the institution, if the person did not previously do so (§ 600.30(a)(6)(i));

(2) Any change under which a person and any member or members of his or her family together hold at least a 25% ownership interest in the institution, if

they did not previously do so (§ 600.30(a)(6)(ii));

(3) Any change under which a person may represent under a voting trust, power of attorney, proxy, or similar agreement others who hold at least a 25% ownership interest in the institution, if the person previously did not have that authority (§ 600.30(a)(6) (iii) and (iv)). Note that an institution must report not only the new authority of a person to vote for others, but also the existing authority of that person, at the point at which those represented in the voting authority acquire enough interest to constitute at least a 25% ownership interest in the institution;

(4) Any change under which a person, together with any member or members of his or her family, may vote on behalf of others who hold at least a 25% ownership interest, if the person previously did not have that authority (§ 600.30(a)(5)(v)); and

(5) Any change under which a person becomes a member of the board of directors, chief executive officer, or other executive officer of the institution, or of an entity that has at least a 25% ownership interest in the institution (§ 600.30(a)(5)(vi)).

The Secretary has added a new paragraph (b), in response to comments on § 668.13, to provide that an institution owned by a publicly traded corporation must report, within ten days of the date that the corporation learns of the change, the applicable change in a person's ability to affect substantially the actions of the institution.

The Secretary has also added a new paragraph (e) to define ownership interest. An "ownership interest" is a share of the legal or beneficial ownership or control of an institution or institution's parent corporation or a right to share in the proceeds of the operation of the institution or institution's parent corporation. The term includes (1) An interest as tenant in common, joint tenant, or tenant by the entireties; (2) a partnership; and (3) an interest in a trust.

The Secretary has excluded from that definition any share or right to share in the proceeds of the operation of (1) A mutual fund that is regularly and publicly traded; (2) an institutional investor; or (3) a profit-sharing plan, provided that all employees are covered by the plan.

Finally, the Secretary has added a new paragraph (f) to reflect that the Secretary considers a member of a person's family to be a parent, sibling, spouse, or child; spouse's parent or sibling; or sibling's or child's spouse.

Comments: One commenter contended that these requirements should not apply to public stock corporations regulated by the Securities and Exchange Commission (SEC) under the Securities Act of 1933 and the Securities and Exchange Act of 1934, because such corporations already provide to the SEC the information required by this section. Another commenter suggested that as an additional safeguard, each institution should be required annually to furnish the Secretary with a list of the institution's owners. A commenter requested the Secretary to clarify whether this reporting requirement is triggered by the acquisition of at least 25% ownership or the acquisition of any percentage of ownership, however small, that results in at least 25% of the ownership. Another commenter asked for clarification on whether an institution that undergoes this type of ownership change is subject to the same procedures as those required for an institution that undergoes a change in ownership that results in a change of control.

Discussion: The SEC requires owners of stock in public corporations to report acquisitions of stock but does not require the reporting of other acquisitions of ownership interest that enable a person to affect substantially the actions of an institution. An annual reporting requirement would be too burdensome for institutions, especially in view of the relatively few institutions whose abuses have prompted the adoption of these provisions. Any increase in a person's ownership interest that results in a person's holding at least a 25% ownership interest in an institution must be reported under this requirement. For example, if a person owns 24% of an institution and acquires an additional 1% of the institution, thus totalling 25%, the institution must report that change to the Secretary. However, unless that change also results in a change of control, the change does not cause the institution to be regarded as a new institution under § 600.31.

Under the Department's current policy, with respect to the ownership of stock or interest in an institution or the institution's parent corporation, the acquisition of any stock or interest that results in the ownership of a controlling interest constitutes a change in ownership that results in a change of control. The institution must report that change under § 600.30(a)(4). Under the provisions of parts 600 and 668, the institution is considered a new institution unless the institution: (1) Submits an application for confirmation of the institution's eligibility under the new ownership; (2) meets the applicable requirements of § 600.31 and all other applicable requirements of part 600; and (3), with regard to the institution's participation in the title IV, HEA programs, reapplies for certification, demonstrates again the institution's financial responsibility and administrative capability, and enters into a new participation agreement with the Secretary.

However, as noted in the preamble to the NPRM (52 FR 11355), there are circumstances under which the Secretary considers a person to have the ability to affect substantially the actions of an institution even when that person does not have a controlling interest in that institution or the institution's parent corporation. A person's ability to affect substantially the actions of an institution is one factor in the Secretary's determination of whether an institution satisfies the factors of financial responsibility contained in § 668.13. In particular, the Secretary does not consider an institution to be financially responsible if a person who was previously associated with a defunct institution that owes a liability on title IV, HEA program funds or refunds of institutional charges to students (1) Acquires the ability to affect substantially the actions of the institution and (2) otherwise meets the conditions of § 668.13. Therefore, any change in a person's relationship with an institution that enables the person to have the ability to affect substantially the actions of the institution must be reported to the Secretary so that the Secretary may evaluate whether circumstances exist that would cause an institution not to be considered financially responsible.

The following example illustrates an institution's responsibilities under the new reporting requirements in this section and how the reported information will affect the institution's eligibility for and participation in HEA programs. A stockholder owns 22% of the stock of a proprietary institution of higher education. The stockholder purchases an additional 4% of the stock of the institution and now owns 26% of the stock. Within ten days of that purchase, the institution must notify the Division of Eligibility and Certification (DEC), preferably in writing, of the purchase. DEC furnishes the institution with a new application for eligibility (ED Form E40–34P). However, assuming that the stock purchase did not result in a change of control of the institution, the institution need not complete the entire application nor reapply for eligibility. The change at this point has not affected the institution's eligibility for participation in any HEA program.

In addition to the general data in Part I and the certification in Item 31, the institution completes only Item 11, providing the name of each stockholder that owns at least 5% of the stock of the institution. The institution must also report which stockholder purchased the 4% of stock that resulted in the ownership of 26%. The institution returns the application to DEC. Until the institution is informed otherwise, it may assume that the purchase has had no impact either on the institution's eligibility or on the institution's participation in any HEA program.

DEC compares the information reported by the institution with information available to the Department on defunct institutions. The Department reviews its records to identify, for example, whether the stockholder or any member of the stockholder's family had the ability to affect substantially the actions of a defunct institution and whether the stockholder, family member, or defunct institution owes a liability on title IV, HEA program funds or refunds of institutional charges to students. If the Department's records do not contain information that might call into question the institution's financial responsibility for purposes of participation in the title IV, HEA programs, DEC notifies the institution that no further action is necessary.

If, however, the Department's records show that the institution might not be considered financially responsible under the new provisions in § 668.13, DEC requests further information from the institution and notifies the institution that the institution may be subject to a fine, or the limitation, suspension, or termination of the institution's participation in the title IV, HEA programs.

Changes: None.

Comments: Two commenters requested clarification on the effective date of any determination that an institution is not financially responsible under § 668.13 as a result of the information provided under this section (§ 600.30). They were particularly concerned that the Secretary might suspend the participation of the institution in the title IV, HEA programs beginning with the date that the Secretary receives the information under this section.

Discussion: As noted in the preceding discussion, the mere reporting of the information required under this section does not affect an institution's participation in any HEA program. If an institution participates in a title IV, HEA program, and the information reported under this section leads the Secretary to determine that an institution is not financially responsible under § 668.13, that determination is grounds for a fine, limitation, suspension, or termination proceeding under subpart G of the Student Assistance General Provisions regulations; subpart G also contains procedures for institutions to appeal decisions of an administrative law judge.

Changes: None.

Section 600.32 Eligibility of Additional Locations

Comments: Several commenters supported the addition of this section: A few commenters expressed concern that the provisions governing the acquisition of a closed institution that owes a liability on improperly expended or unspent HEA funds would discourage the practice of "teaching out" or would otherwise have an adverse impact on students or potential students at the acquired site. A few other commenters claimed that it is unfair to require the acquiring institution in such situations to assume the liabilities of the previous owner. Another commenter recommended that in situations subject to the provisions of this section, liabilities incurred under the previous owner should remain the responsibility of the closed institution unless the acquiring institution agrees to be responsible for those liabilities jointly with the closed institution.

Discussion: A "teach out" is the completion by another institution of an educational program offered, but not completed, by an institution that closes. Students who are being taught-out may receive title IV, HEA program funds only if the institution providing a teach-out has in place eligible programs suitable for completing the education of students of a closed institution and offers those programs at a properly accredited and licensed eligible location. Because those requirements are normally burdensome and time consuming, most institutions that teach-out students do so with the full knowledge that title IV, HEA program funds are usually not available to those students. Thus, the fact that an acquired site might not qualify for eligibility under the provisions of this section for two years will have virtually no impact on the ability of the acquiring institution to provide teach-out services.

The Secretary recognizes that delaying the eligibility of a location affected by these provisions may have some adverse impact on prospective students who might otherwise consider enrolling at that location if title IV, HEA program assistance were available there. However, the Secretary believes that this potential adverse impact is outweighed by the need to address serious abuses of the type described in the preamble to the NPRM (54 FR 11354) that have involved the misuse of tens of millions of dollars of HEA program funds.

The Secretary does not agree with those commenters who contend that it is unfair for an institution to be required to assume the liabilities of a closed institution in order to acquire the closed institution and establish its immediate eligibility as an additional location. Under § 600.31, the purchaser of an eligible or previously eligible institution is required to assume sole responsibility, or joint responsibility with the previous owner, for all liabilities resulting from the improper administration of HEA program funds at the institution in order for that institution to continue to qualify for eligibility. However, as explained in detail in the preamble to the NPRM, if that purchaser already owns another eligible institution, he or she can avoid assuming responsibility for the liabilities by converting the newly acquired institution into an additional location of the currently eligible institution. Therefore, the Secretary is merely applying to individual locations essentially the same rules that, under § 600.31, he applies to institutions. In addition, under § 600.31, the new owner of an institution must also agree to be liable for refunds of institutional charges to students. The Secretary recognizes the need to revise the proposed regulations to be consistent with the requirements of § 600.31 and to clarify that an institution's liabilities under the HEA programs are not limited to misspent or unspent HEA funds, but encompass any liabilities for refunds of institutional charges to students.

Furthermore, a responsible purchaser should be well aware of the liabilities of an institution before acquiring that institution and take those liabilities into account in agreeing on the terms of the purchase. The Secretary has consistently advised those interested in acquiring an institution to ascertain the financial condition of that institution through such measures as obtaining an audit of the institution's administration of HEA programs and contacting appropriate officials of the Department of Education and guarantee agencies for information on whether the institution owes any liabilities resulting from program or audit reviews.

The last recommendation virtually restates the existing situation—a situation that led to the abuses described in the NPRM and that these regulations are designed to correct.

Changes: The Secretary has revised paragraph (c)(3)(i) and added paragraph (d)(2) to include references to liabilities owed for refunds of institutional charges. The Secretary has added a similar reference to § 668.13(c)(5)(iii)(A).

Comments: A number of commenters recommended that the Secretary take additional steps to prevent unscrupulous owners from escaping responsibility for the liabilities incurred at those owners' institutions. A commenter suggested that the Secretary require an institution to post a performance bond against liabilities incurred in the event that the institution closes. Other commenters suggested that the Secretary should simply require all liabilities owed by a closed institution on HEA program funds to be settled before that institution may qualify as an eligible additional location, without permitting the alternative of a two-year delay in eligibility. Another commenter suggested that the Secretary apply the requirements of § 600.32(c) to situations involving the acquisition of an institution that has not closed but that owes a liability on the misuse of HEA program funds.

One commenter suggested that the Secretary assign a separate vendor code number for each eligible location of an institution to facilitate the monitoring of HEA program funds used at each location. Another commenter recommended that the Secretary establish a two-year probationary period for those locations that may become eligible without being in existence for two years. During that period, the Secretary would monitor the use of HEA funds at those locations through the review of regularly submitted reports and other information. Another commenter suggested that the Secretary conduct a title IV, HEA program review at each institution that closes or is sold and require each institution to disclose all HEA program fund liabilities and the results of audit and program reviews in the event that an individual or organization contemplates the purchase of the institution.

Discussion: Many of these suggestions are well-taken, but none of them requires the Secretary to modify the proposed regulations. The Secretary currently requires both fidelity bonds and, where financial responsibility is not clearly demonstrated, performance bonds, to guard against liabilities incurred in the event that institutions close (see 34 CFR 668.13(d) and (g)). The alternative of the two-year delay in eligibility has served as an effective incentive for new owners to assume responsibility for the liabilities owed by previous owners in situations involving changes in ownership that result in a change of control. The Secretary expects that alternative to be an equally effective incentive for an acquiring institution to assume responsibility for liabilities in the parallel circumstances governed by these new regulations.

In most instances in which an eligible institution acquires another eligible institution that is still open, the acquired institution undergoes a change of ownership that results in a change of control. Therefore, in most cases the owner of the acquiring institution must, under the provisions of § 600.31, assume responsibility either alone or jointly with the owner of the other institution for the liabilities owed by the acquired institution. If that assumption of liability does not occur, the acquired institution remains ineligible for at least two years. In the few instances in which the acquisition does not involve a change in ownership that results in a change of control, the requirements of § 600.32(c) do not apply. However, the Secretary is continuing to examine all of the Department's policies concerning the acquisition by eligible institutions of additional locations and may propose further regulations governing the acquisition of open institutions as part of the contemplated NPRM mentioned at the end of this discussion.

With regard to the suggestion concerning the assignment of a separate Office of Postsecondary Education identification number (OPE ID number—formerly called the vendor code number) to each eligible location of an institution, the Secretary is examining methods, other than regulatory approaches, for identifying and monitoring the use of HEA program funds at individual eligible locations. While the Secretary does not now have a formal requirement for a two-year probationary period for newly eligible additional locations, the Secretary may at any time request information from an institution concerning the administration of HEA program funds at any of the institution's locations. In addition, the Secretary has established new safeguards to control the availability of HEA program funds at additional locations through such measures as a requirement for the reexamination of an institution's administrative capability and financial responsibility each time that the institution applies for eligibility for a new location.

The Secretary already requires an institution that closes or loses eligibility to arrange for an audit report of all title IV, HEA program funds that the institution has received (see 34 CFR 668.25). The Secretary may conduct a program review at any institution that changes ownership resulting in a change of control. A person interested in purchasing all or part of an eligible or previously eligible institution may obtain from the Department of Education information on any HEA-program-related liabilities owed by that institution or the results of audits or program reviews of that institution.

These regulations essentially restate the Department's current policy that to be included in an institution's eligibility, an additional location need not be in existence for two years. In light of the serious abuses connected with the practices of some closed institutions that contrive to become eligible additional locations of participating institutions while avoiding responsibility for liabilities incurred at those closed institutions, the Secretary considers it critical to revise his current policy to require such an additional location to wait two years to qualify for eligibility, unless the acquiring institution assumes the liabilities incurred at the closed institution. However, the Secretary is concerned over other serious abuses that can be related directly to the general policy exempting additional locations from the two-year rule. Therefore, while the Secretary considers these regulations to be necessary to correct one type of abuse, the Secretary has been reexamining the current policy of generally exempting additional locations from the two-year rule and soon intends to publish an NPRM to request public comment on proposals to place strict limitations on that exemption.

Changes: None.

Comments: Several commenters objected to the concept in § 600.32(c) that to qualify an acquired location of a closed institution for immediate eligibility, an acquiring institution must be responsible for liabilities of the closed institution even if the assets of the closed institution were acquired indirectly. Specifically, these commenters recommended that the two-year delay in eligibility not be applied to indirect acquisitions of assets of the closed institution. They also identified the criteria that they consider to constitute a direct acquisition, and they described the steps that an institution should take to ensure the responsible administration of student aid funds at a directly acquired location. They suggested that direct acquisitions by institutions that take those steps be exempt from the two-year delay. According to these suggestions, a direct

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These regulations essentially restate the Department's current policy that to be included in an institution's eligibility, an additional location need not be in existence for two years. In light of the serious abuses connected with the practices of some closed institutions that contrive to become eligible additional locations of participating institutions while avoiding responsibility for liabilities incurred at those closed institutions, the Secretary considers it critical to revise his current policy to require such an additional location to wait two years to qualify for eligibility, unless the acquiring institution assumes the liabilities incurred at the closed institution. However, the Secretary is concerned over other serious abuses that can be related directly to the general policy exempting additional locations from the two-year rule. Therefore, while the Secretary considers these regulations to be necessary to correct one type of abuse, the Secretary has been reexamining the current policy of generally exempting additional locations from the two-year rule and soon intends to publish an NPRM to request public comment on proposals to place strict limitations on that exemption.

Changes: None.

Comments: Several commenters objected to the concept in § 600.32(c) that to qualify an acquired location of a closed institution for immediate eligibility, an acquiring institution must be responsible for liabilities of the closed institution even if the assets of the closed institution were acquired indirectly. Specifically, these commenters recommended that the two-year delay in eligibility not be applied to indirect acquisitions of assets of the closed institution. They also identified the criteria that they consider to constitute a direct acquisition, and they described the steps that an institution should take to ensure the responsible administration of student aid funds at a directly acquired location. They suggested that direct acquisitions by institutions that take those steps be exempt from the two-year delay. According to these suggestions, a direct

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acquisition would occur only if any transfer of assets is through a contractual relationship between the buyer and the seller, actual money or other consideration is paid by the buyer to the seller, and the assets are not obtained through a third party. The steps that an institution would take to exempt that acquisition from the two-year delay would include an arrangement for the buyer to teach out the seller's students and a requirement that the buyer provide at the acquired location generally the same educational program as the one provided by the seller at that location.

Discussion: The Secretary does not agree with these commenters. These regulations are intended to prevent situations in which a buyer can acquire the assets of a closed institution, either directly or indirectly, without assuming responsibility for the institution's liabilities and still qualify that institution for immediate eligibility. The commenters recommend establishing criteria that would permit a continuation of the current practice through which owners of closed institutions too easily attempt to escape responsibility for liabilities at those institutions, and buyers of those institutions also avoid that responsibility. For example, under the commenters' suggested criteria, a seller could avoid a direct acquisition by refusing to enter into a contractual relationship with a buyer, arranging for the transfer of assets through a third party, and arranging that no money be given directly by the buyer to the seller. The buyer could then acquire the additional site, under the commenters' suggested criteria, without accepting responsibility for the seller's liabilities and without waiting two years for the new acquisition to qualify for eligibility.

The Secretary is convinced, however, that a modification is necessary to clarify that even if an acquired institution did not own the facility in which the institution was located, the provisions of this section must be satisfied before the institution may qualify for eligibility as a component of another institution.

Changes: The reference in paragraph (c)(3) is changed from an institution that previously owned a location to an institution from which the applicant institution acquired the assets of a location.

Comments: One commenter, concluding that the provisions in § 600.32(c) are aimed at proprietary institutions, urged the Secretary to clarify that these provisions would not be used to inhibit the ability of public institutions to develop additional locations to serve widespread populations.

Discussion: While it is true that the acquisitions that are the subject of these regulations are most common among proprietary institutions, public institutions are also affected. A public institution that meets the definition of a postsecondary vocational institution or a vocational school, as those terms are defined in the HEA and these regulations, is required to be in existence for at least two years. Thus, if a public institution were to acquire a closed institution and request eligibility for that location, the public institution would have to satisfy the requirements of this section. While these provisions may inhibit some institutions, whether they are public, private nonprofit, or proprietary, from acquiring certain institutions with substantial HEA program liabilities, these provisions do not prevent an institution from undertaking most types of expansion to serve the needs of its population. The Secretary believes that these provisions are necessary as a means of preventing a particular abuse under which some institutions that have mismanaged HEA program funds avoid repaying liabilities for those funds and contrive to continue to participate in HEA programs as additional locations of, and with the full knowledge of the owners of, other institutions. Any institution seeking to acquire a closed institution with the intention of qualifying that location for eligibility need only exercise the ordinary responsible precautions of ascertaining the financial condition of the closed institution and whether the closed institution owes liabilities related to the administration of the HEA programs. In those instances where such a closed institution owes liabilities, the acquiring institution may either accept responsibility for those liabilities or defer eligibility for two years.

Changes: None.

Section 668.7 Eligible Student

Comments: The proposed revisions to this section drew the largest number (71) of comments on the NPRM. Some commenters supported the changes, but many questioned the need for, or potential effectiveness of, the changes. Some commenters doubted that there is a problem that needs to be addressed through regulation. Some commenters suggested that rather than implement regulations affecting all participating institutions, the Secretary take appropriate action against those few that do not administer the title IV, HEA programs properly. One commenter suggested that before implementing regulations in this area, the Secretary conduct a quality control study to identify the extent and severity of fraudulent receipt of title IV, HEA program funds through the use of false identities. Two commenters suggested that the Secretary recommend these procedures for establishing the identity of recipients of title IV, HEA program aid rather than require them through regulations.

A large number of commenters objected to the provision that would require an institution to document that a student had presented credible identification. They contended that the documentation requirement would impose an unnecessary additional administrative burden on institutions that are already required under existing regulations to document the same type of information on applicants for title IV, HEA program aid (for example, the requirement in 34 CFR 690.82 governing records of a student's name and social security number). Many commenters similarly objected that this documentation burden would be a recurring administrative burden disguised as a one-time requirement by language referring only to the first time that a student receives cash from the title IV, HEA programs. They claimed that, in effect, an institution would be required to search the student's records for documentation to confirm that initial identification each time that the institution disburses or delivers cash from the title IV, HEA programs to the student. Many other commenters opposed the provisions because the provisions would prevent them from delivering checks to students, including students abroad and correspondence students, through the mail. Other commenters opposed these provisions as duplicative of other requirements, such as those required for identification of eligible noncitizens. Many commenters observed that the need to have students report for a cash disbursement or delivery in person, the need to review records each time a student is about to receive cash, and the requirement to review and document the student's identification would contribute to delays in the delivery of title IV, HEA program aid to all students.

Discussion: The Secretary recognizes the additional administrative burden that would be imposed on institutions by the adoption of this proposal. The Secretary believes that the potential benefits resulting from the additional safeguards established by this proposal do not outweigh the considerations offered by these commenters. The Secretary, after further review, has concluded that existing statutes, regulations, and procedures provide sufficient safeguards against individuals receiving title IV, HEA program aid through false identities. In those few instances where violations have occurred, the Secretary finds that enforcement measures taken against violators have been effective.

Changes: Section 668.7(a)(11) of the NPRM is withdrawn from these final regulations.

Section 668.13 Factors of Financial Responsibility

Comments: Most of those who commented on the changes in this section supported those changes. Several commenters expressed concern that the threshold of 25% of ownership as indicative of the ability to affect substantially the actions of an institution is too high. Some of those commenters urged the Secretary to adopt a threshold of 10% instead, maintaining that that is the percentage relied upon by the SEC. One commenter recommended that the Secretary not use any precise percentage as an indicator of that ability. One commenter suggested that instead of 25%, the controlling interest in a corporation, as defined by the SEC, should trigger the application of these changes.

Discussion: As noted in the preamble to the NPRM, the Secretary considers the ownership (modifications in the concept of "ownership" are discussed below) of at least 25% of an institution or its parent corporation generally to constitute the ability to affect substantially the actions of the institution. The Secretary chose the threshold of 25% to serve purely as a guideline for administrative convenience. The percentage, which is relatively conservative, is not intended to be an accurate reflection of all degrees of ownership that could constitute the ability to affect substantially the actions of an institution. However, if actual experience with application of these provisions should reveal that a different percentage is more reflective of that ability, the Secretary would consider changing that percentage.

Changes: None.

Comments: A commenter opposed the concept of holding individuals with substantial ownership responsible for the actions of an institution on the grounds that, for public stock corporations, SEC regulations and some State laws prevent individuals with substantial ownership from exercising control over the actions of the corporation. Another commenter pointed out that certain types of limited partnership arrangements also have legal limitations on the degree of control that the partners may directly or indirectly exercise. One commenter suggested that these provisions conflict with certain SEC regulations and State laws that define corporations as "individuals" and hold the corporations rather than stockholders responsible for the actions of institutions. Another commenter was concerned about the vulnerability of an institution owned by a publicly traded corporation to loss of participation in the title IV, HEA programs when the corporation may have no control over which individuals purchase the corporation's stock.

Discussion: It is not the purpose of SEC regulations to determine whether, or the degree to which, individual stockholders are responsible for the actions of their corporations. Further, it is not true that State laws never hold individual stockholders responsible for the actions of their corporations or the institutions owned by those corporations. These regulations reflect the natural consequences of the ownership of substantial percentages of stock in a corporation. Obviously, shareholders elect a corporate board of directors. The board of directors hires the corporation's or institution's executive officials. Control or substantial influence in choosing the board of directors therefore does confer control or influence over the actions of the corporation itself or the institutions owned by that corporation.

If the Secretary determines an institution not to be financially responsible under these new provisions, the institution may respond with evidence that applicable Federal and State statutes and regulations limiting the control of owners over the actions of their institutions have not been violated and other convincing evidence that owners lack the ability to affect substantially the actions of the institution or lacked that ability at a defunct institution. DEC's procedures for determining an institution's financial responsibility provide an opportunity for the institution to respond with that evidence. If the proceedings in subparts G and H apply, the institution may also provide that evidence through those proceedings.

Finally, the Secretary has provided alternatives to loss of participation in the title IV, HEA programs for any institution, including an institution owned by a publicly traded corporation, that the Secretary considers not to be financially responsible as a result of a person's acquisition of the ability to affect substantially the actions of the institution. The institution may demonstrate that the person who would normally be considered to have the ability to affect substantially the actions of the institution nevertheless could not affect substantially the actions of either the defunct institution or the currently participating institution in which the person acquired that ability. Alternatively, the person may repay the appropriate percentage of the liability incurred by the defunct institution.

Changes: None.

Comments: One commenter suggested that, instead of adopting this proposal, the Secretary pursue a course of seizing the assets of a defunct institution that owes liabilities on mishandled title IV, HEA program funds. Another commenter was concerned that the application of these provisions would interrupt the delivery of aid in the same manner that a change of ownership resulting in a change of control interrupts the delivery of aid. Another commenter was concerned that these provisions are seriously weakened by allowing an institution to show that a person did not have the ability to affect substantially the actions of the defunct institution or does not have the ability to affect substantially the actions of the current participating institution. That commenter maintained that the proper use of title IV, HEA program aid is endangered any time that an institution permits 25% ownership by a person so strongly affiliated with an institution that owes liabilities on improperly administered title IV, HEA program aid. The applicable proportion of those liabilities ought, in this commenter's view, be repaid in every such instance. Two commenters were concerned that these provisions leave an opening for a person who was responsible for the actions of a defunct institution to avoid the consequences of liabilities resulting from those actions. They contended that such a person could continue to benefit from the title IV, HEA programs by using family members to purchase ownership in a participating institution.

Discussion: The Secretary adopts this rule because defunct institutions have ordinarily had no attachable assets from which outstanding liabilities could be satisfied. Moreover, existing regulations did not prevent a person who was responsible for incurring those liabilities from acquiring control of another institution and jeopardizing the administration of title IV, HEA programs there.

As noted in the discussion on § 600.30, there is no interruption in the delivery of aid to an institution's students during the period in which a reported acquisition of ability to affect substantially the institution's actions is under review by the Secretary. While the Secretary believes that a person holding at least a 25% ownership interest in an institution generally has the ability to affect substantially the actions of the institution, the Secretary recognizes that this may not always be true. The Secretary believes that, under some circumstances, a person who held a greater than 25% ownership interest in a defunct institution may not have had sufficient influence or authority over the institution to bear responsibility for the mishandling of title IV, HEA program aid there. The Secretary believes that it is possible for a currently participating institution to safeguard against the exercise of such influence or authority by a person who was probably in a position to affect substantially the actions of a defunct institution that owes a liability on the misuse of title IV, HEA program funds. Thus, the Secretary believes that there must be an opportunity for an institution whose participation may ultimately be affected by these provisions to show that that person lacked or lacks that influence or authority with respect to either the defunct institution or the currently participating institution.

The Secretary agrees with those commenters who are concerned that a person who had the ability to affect substantially by the actions of a defunct institution may circumvent these provisions by having family members acquire an ownership interest in a participating institution or by authorizing someone else to represent him or her by proxy. For example, a woman might have held a 25% ownership interest in a defunct institution that owes liabilities on improperly spent title IV, HEA program aid. Her husband, alone or together with his wife, may subsequently purchase at least 25% of a currently participating institution. The Secretary believes that it is reasonable to expect the woman to be able, through her husband, to have an ability to affect substantially the actions of the participating institution.

Similarly, a person who did not own stock in a defunct institution that owes liabilities on improperly spent title IV, HEA program funds might, nevertheless, have had the ability substantially to affect the actions of the institution by obtaining the authority to vote on behalf of a group of other persons who owned at least 25% of the stock of the institution. The person who had that authority could subsequently purchase at least 25% of a currently participating institution, acquire similar authority on behalf of persons who own 25% of the participating institution, or arrange to have a relative purchase at least 25% of the participating institution.

Finally, the Secretary notes that a member of the board of directors of an institution clearly has the ability to influence the actions of the institution. Further, the chief executive officer, or another executive officer, of a defunct institution that owes liabilities on misspent title IV, HEA program funds may, without the knowledge or even the authority of the owner or board of directors of the institution, have influenced the activities of a defunct institution to a degree that resulted in the assessment of those liabilities, even if that officer did not hold an ownership interest in the institution. That person could be appointed to the same position at a currently participating institution, obtain at least a 25% ownership interest in the participating institution, or in one of the other ways described above acquire the ability to affect substantially the actions of the participating institution.

In any of these instances, the Secretary believes that it is reasonable to expect that the person who had the authority in the defunct institution will have an important influence in the actions of the participating institution. The Secretary therefore agrees that revisions in the proposed regulations are necessary to reflect not only the holding of a 25% ownership interest as an indicator of a person's ability to affect substantially the actions of an institution, but also related circumstances involving the holding of an ownership interest by family members, the exercise of voting authority on behalf of others who hold an ownership interest, or the exercise of executive authority.

In addition, the Secretary is aware that a person who had the ability to affect substantially the actions of a defunct institution may attempt to circumvent these provisions by disassociating himself or herself from the institution prior to the date that the institution becomes defunct. Therefore, to prevent a person from undermining the intent of these provisions, the Secretary recognizes the need to clarify that these provisions are applicable to those persons who had the ability to affect substantially the actions of a defunct institution within a reasonable period of time prior to the date that the institution became defunct. The Secretary considers that reasonable period to be 90 days.

The Secretary recognizes that there are many instances in which a person may have the ability to affect substantially the actions of an institution without owning at least 25% of the stock of the institution or the institution's parent corporation. Therefore, the Secretary believes that, for purposes of considering ability to affect substantially the actions of an institution, it is important to refer to the more inclusive term "ownership interest," rather than "ownership." The Secretary considers an "ownership interest" to be a share of the legal or beneficial ownership or control of, or a right to share in the proceeds of the operation of, an institution or institution's parent corporation. The Secretary considers it useful to provide a list of examples of possible kinds of ownership interest, although that list is not exhaustive.

Obviously, one type of ownership that need not be listed is a sole proprietorship. An example that is listed includes three kinds of tenancy (combinations of two or more persons). A tenancy in common includes two or more persons who have an undivided interest in the whole, and whose heirs have the right to inherit the interest in the tenancy. A joint tenancy is similar to a tenancy in common except that the tenants' heirs do not have the right to inherit the interest in the tenancy, but instead the tenants themselves have the right of survivorship. A tenancy by the entireties is a joint tenancy by a husband and wife. A second example of an ownership interest is a partnership, which is a combination of two or more persons to conduct a business for profit. A third example includes the beneficiary of a trust.

The Secretary also believes that the term "ownership interest" must exclude interest in certain investments in which the investors, while clearly beneficiaries, have no control over the investments. Thus, for example, a person may have a right to share in the proceeds of mutual funds that are regularly and publicly traded. However, those funds may be invested in a corporation that owns an institution that subsequently becomes defunct while owing liabilities on misspent title IV, HEA program funds. The Secretary does not believe that that person had the ability to affect substantially the actions of the institution, even if those mutual funds constituted at least 25% of the stock of that corporation. Similarly, the Secretary does not consider an ownership interest to include shares in the ownership of, or the right to share in the proceeds of the operation of, institutional investors or a profit-sharing plan that covers all employees.

Changes: The Secretary has made major revisions in proposed

§ 668.13(c)(5) that remove the references to the ownership by an individual of at least 25% of the stock of an institution or institution's parent corporation and replace those references with references to a person who has the ability to affect substantially the actions of an institution. The Secretary considers the institution not to be financially responsible if the person acquires that ability and the following conditions also exist:

(1) On or before the date that the person acquired that ability, he or she or any member or members of his or her family had the ability to affect substantially the actions of a defunct institution within 90 days of the date that the institution became defunct.

(2) The person, family member, or defunct institution owes a liability on mishandled Title IV, HEA program funds or for refunds of institutional charges to students, and any agreement to repay that liability is not being honored.

Proposed § 668.13(d)(3) is revised to reflect that even if an institution would not be considered financially responsible because of the existence of the conditions described in paragraph (c)(5), the Secretary may determine the institution to be financially responsible, provided that the institution properly notifies the Secretary of the existence of those conditions and either—

(1) The liability incurred at the defunct institution is being properly repaid;

(2) The person who is generally considered to have the ability to affect substantially the institution's actions repays a portion of the defunct institution's liability proportionate to the ability of that person or those family members to affect substantially the actions of the defunct institution; or

(3) The institution can demonstrate either that the person who would generally be considered to have the ability to affect substantially the institution's actions nevertheless does not have that ability, or that neither the person nor any member of his or her family had that ability at the defunct institution.

The changes in paragraph (d)(3) require that the proportion described in item 2 above must equal or exceed the greater of—

(1) The total percentage of the ownership interest held in the defunct institution either alone or together by that person or any member or members of that person's family;

(2) The total percentage of the ownership interest held in the defunct institution that that person and any member or members of that person's family represented under a voting trust, power of attorney, proxy, or similar agreement;

(3) The total percentage of the ownership interest held in the defunct institution that any member or members of that person's family represented under a voting trust, power of attorney, proxy, or similar agreement; or

(4) Twenty-five percent, if that person or any member of that person's family was a member of the board of trustees, chief executive officer, or other executive officer of the defunct institution or of an entity holding at least a 25% ownership interest in the defunct institution.

The definition of a defunct institution has been moved from proposed paragraph (d)(4) to a new paragraph (h). The Secretary has added two new paragraphs (i) and (j), the former to define "ownership interest" for the purposes of § 668.13, and the latter to list examples of the circumstances under which the Secretary generally considers a person to have the ability to affect substantially the actions of an institution.

Paragraph (i) defines an "ownership interest" as a share of the legal or beneficial ownership or control of, or a right to share in the proceeds of the operation of, an institution. That term includes, but is not limited to (1) An interest as tenant in common, joint tenant, or tenant by the entireties; (2) a partnership; and (3) an interest in a trust. The term "ownership interest" specifically excludes any share of the ownership or control of, or any right to share in the proceeds of the operation of (1) A mutual fund that is regularly and publicly traded, (2) an institutional investor, and (3) a profit-sharing plan, provided that all employees are covered by the plan.

Under paragraph (j), the Secretary generally considers a person to have the ability to affect substantially the actions of an institution if the person—

(1) Holds, either alone or together with another member or members of his or her family, at least a 25% ownership interest in the institution;

(2) Is authorized to represent under a voting trust, power of attorney, proxy, or similar agreement one or more persons holding, alone or together, at least a 25% ownership interest in the institution;

(3) Is authorized, together with another member or members of his or her family, to represent under a voting trust, power of attorney, proxy, or similar agreement one or more persons holding, alone or together, at least a 25% ownership interest in the institution; or

(4) Is a member of the board of directors, the chief executive officer, or other executive officer of the institution or of an entity holding at least a 25% ownership interest in the institution.

Finally, paragraph (k) has been added to reflect that the Secretary considers a member of a person's family to be a parent, sibling, spouse, or child; spouse's parent or sibling; or sibling's or child's spouse.

Comments: One commenter asked the Secretary to clarify what constitutes "ability to affect substantially the actions of an institution." Another commenter asked the Secretary to clarify who is considered to be legally responsible for the liabilities of a defunct institution, especially in institutions where there is more than one owner or more than one campus.

Discussion: The Secretary agrees that clarification is needed to explain the circumstances under which the Secretary generally considers a person to have the ability to affect substantially the actions of an institution. The discussion immediately preceding this one contains information on that matter. However, the Secretary emphasizes that it is the responsibility of the institution to demonstrate that for some other reason a particular person whom the Secretary considers to have or to have had that ability nevertheless lacks or lacked that ability.

The Secretary considers the person (whether an individual or a corporation) who executes the institution's participation agreement with the Secretary to be the party liable for an institution's debts arising out of the title IV, HEA programs. That liability may be shared or passed on to other persons by subsequent agreements with the Secretary. If the institution becomes defunct, that liability is retained by the person or persons who assumed the liability under the institution's most recent agreement.

The person with the responsibility for an institution's liabilities under the institution's agreement is responsible for all liabilities incurred by the institution through the administration of title IV, HEA program funds at any of the institution's campuses. If ownership of a particular campus is transferred to another institution, the responsibility for any liabilities incurred at that campus before the transfer remains with the owner of the institution that relinquished that campus. Even if the owner of the acquiring institution repays a portion of those liabilities, the ultimate responsibility of the original owner for those liabilities is not excused. If more than one person has assumed that responsibility, and one of those persons repays a portion of the liability in order

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other executive officer of the institution or of an entity holding at least a 25% ownership interest in the institution.

Finally, paragraph (k) has been added to reflect that the Secretary considers a member of a person's family to be a parent, sibling, spouse, or child; spouse's parent or sibling; or sibling's or child's spouse.

Comments: One commenter asked the Secretary to clarify what constitutes "ability to affect substantially the actions of an institution." Another commenter asked the Secretary to clarify who is considered to be legally responsible for the liabilities of a defunct institution, especially in institutions where there is more than one owner or more than one campus.

Discussion: The Secretary agrees that clarification is needed to explain the circumstances under which the Secretary generally considers a person to have the ability to affect substantially the actions of an institution. The discussion immediately preceding this one contains information on that matter. However, the Secretary emphasizes that it is the responsibility of the institution to demonstrate that for some other reason a particular person whom the Secretary considers to have or to have had that ability nevertheless lacks or lacked that ability.

The Secretary considers the person (whether an individual or a corporation) who executes the institution's participation agreement with the Secretary to be the party liable for an institution's debts arising out of the title IV, HEA programs. That liability may be shared or passed on to other persons by subsequent agreements with the Secretary. If the institution becomes defunct, that liability is retained by the person or persons who assumed the liability under the institution's most recent agreement.

The person with the responsibility for an institution's liabilities under the institution's agreement is responsible for all liabilities incurred by the institution through the administration of title IV, HEA program funds at any of the institution's campuses. If ownership of a particular campus is transferred to another institution, the responsibility for any liabilities incurred at that campus before the transfer remains with the owner of the institution that relinquished that campus. Even if the owner of the acquiring institution repays a portion of those liabilities, the ultimate responsibility of the original owner for those liabilities is not excused. If more than one person has assumed that responsibility, and one of those persons repays a portion of the liability in order

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to qualify a newly purchased institution for eligibility, he or she continues to share the responsibility of repaying the remaining liabilities.

Changes: Paragraph (j) has been added to describe the circumstances under which the Secretary generally considers a person to have the ability to affect substantially the actions of the institution (see the preceding discussion).

Section 668.20 Limitations on Remedial Coursework That Is Eligible for Title IV, HEA Program Assistance

Comments: A few commenters supported these provisions. Many more objected. A number of commenters claimed that the requirement for remedial coursework to be at least at the secondary level to qualify for title IV, HEA program eligibility represents an unwarranted intrusion on institutional policies governing curriculum. Other commenters complained that this provision would have the effect of restricting access to postsecondary education by adults, students who received inadequate elementary and high school training, and economically disadvantaged students. Others claimed that these provisions conflict with efforts to improve adult literacy. One commenter claimed that because these provisions inhibit the ability of institutions to provide remedial education, and because remedial education encourages students to remain enrolled and reduces attrition rates, these provisions conflict with efforts to reduce default rates.

Discussion: The Secretary did not propose these provisions with the intention of inhibiting institutions from providing remedial education, nor of restricting access to postsecondary education by any group of students. The Secretary has always considered the title IV, HEA programs to be programs of aid for postsecondary education and has permitted such aid for a minimal amount of remedial education only as an adjunct to postsecondary education. The need for remedial training at the elementary level indicates to the Secretary a need for more than a minimal amount of remedial training.

The Secretary is concerned that funds appropriated for the title IV, HEA programs, which are intended by the Congress to be used for postsecondary education, not be misdirected to provide elementary training. The Congress has emphasized that postsecondary purpose by requiring, in the "Student Loan Reconciliation Amendments of 1989" and the Higher Education Technical Amendments of 1991, a student to obtain a high school diploma or the equivalent before qualifying for eligibility for Supplemental Loans for Students (SLS). In addition, the Congress elsewhere has already appropriated funds that are specifically intended to provide aid to elementary, secondary, and adult literacy programs. The Secretary supports the goal of reducing adult illiteracy but recognizes that many of the efforts in this area are being and need to be addressed by local communities and the providers of elementary and secondary education. The Secretary also notes that aid for elementary educational purposes from a variety of sources other than the title IV, HEA programs is available to postsecondary institutions. Therefore, the Secretary does not believe that these provisions will significantly reduce any institution's ability to provide remedial education for those who can benefit from that education.

With regard to the impact of these provisions on reduction of default rates, in the regulations published on June 5, 1989 (54 FR 24114), and in other communications provided to institutions, the Secretary has indicated that an institution has an obligation to take necessary steps to prevent or to reduce high default rates. If the institution is convinced that providing elementary remedial education will achieve this result, then the institution may do so. However, title IV, HEA program funds intended for postsecondary purposes may not be used for that remedial education.

Changes: None.

Comments: Two commenters supported these provisions and suggested further that the Secretary should propose regulations to provide aid for remedial coursework that is at least at the secondary level and leads to the General Education Development certificate (GED). Two commenters suggested that the one-academic-year limitation on remedial coursework is a more effective limitation than any attempt to restrict remedial education to at least the secondary level. One commenter proposed that the Secretary conduct a study to determine appropriate goals and objectives of remedial education before imposing the new limitation. Another commenter suggested that the Secretary eliminate these provisions and replace them with a requirement for institutions to have counselors to evaluate whether students in remedial education have the ability to succeed at the postsecondary level within one academic year. One commenter asked how this provision applies to coursework that begins at the elementary level but ends at the secondary level. Several commenters suggested that title IV, HEA program assistance be available for a single or a limited number of elementary courses if the student is deficient in a single subject or limited number of subjects, or if the student's remedial needs are predominantly at the secondary level. A large number of commenters recommended that ESL coursework be exempted from these provisions.

Discussion: The Secretary does not intend to propose that title IV, HEA program assistance be available for a course solely because that course leads to the GED. The purpose of such a course is to provide a student with the equivalent of a high school diploma, not to enable a student to pursue a postsecondary degree or certificate program. The one-academic-year limitation on remedial coursework has been established to allow a limited amount of remedial coursework to be included in a student's postsecondary education. The Secretary believes, however, that the remedial coursework that the student pursues during that one-year period still needs to be sufficiently close to the postsecondary level that funds appropriated for postsecondary education are not used to finance coursework aimed at the elementary or secondary educational level. Coursework at the elementary level does not fulfill this requirement. Outside the very limited allowable uses described above, funds intended for postsecondary education cannot be diverted to other types of education, including remedial education, regardless of the results of any research on the goals and objectives of remedial education.

With respect to the recommendation for a requirement for an institutional evaluation of a remedial student's ability to pursue postsecondary education within one academic year of the student's enrollment, this concept already exists in § 668.20(c)(2). Under § 668.20(c)(2), title IV, HEA program assistance may not be used for any remedial coursework for a student if it would take more than one academic year's worth of that coursework to bring the student to the postsecondary level. These new provisions do not permit any remedial coursework below the secondary level to be included for purposes of eligibility for title IV, HEA program assistance. Thus, if coursework begins at the elementary level and ends at the secondary level, only that portion that is provided at the secondary level may be included for purposes of that assistance. The Secretary does not agree that even a limited amount of elementary coursework should be eligible for funds intended for postsecondary education, unless that coursework is in ESL.

The Secretary agrees with those commenters who suggested that ESL coursework should be excluded from the new provisions. The purpose of ESL coursework is to enable students to pursue postsecondary education when the major obstacle to that pursuit is the student's inability to speak English. The Congress expressed a similar intent when it authorized, under limited circumstances, Pell Grants for students enrolled solely in ESL courses. Since many non-English speakers may have the skills to pursue postsecondary education, but may be required to begin their English instruction at a very elementary level, the Secretary believes that the use of postsecondary funds for that purpose does not violate the intended purpose of those funds.

Changes: Courses in ESL are excluded from the requirement that remedial education be at least at the secondary level to qualify for title IV, HEA program assistance.

Comments: Several commenters suggested that the distinction between elementary and secondary education is often difficult to define and may vary from State to State. Two commenters asked how these provisions will apply if an institution's nationally recognized accrediting agency considers a remedial course to be secondary, but the institution's State licensing body considers the course to be elementary. Two other commenters wanted the Secretary's assurance that an institution's determination concerning the level of remedial education will be respected by the Department of Education and will not be questioned by the Department's program reviews and audits.

Discussion: The Secretary acknowledges that it may be difficult at times to distinguish between elementary and secondary education. For this reason, the Secretary has generally left those determinations in the hands of those most qualified to do so: State education officials and officials of the nationally recognized accrediting agencies and associations. If an institution's accrediting agency considers a remedial course to be secondary and the institution's State licensing body considers the course to be elementary, or vice versa, the Secretary, under these regulations, accepts the judgment of the body that considers the course to be below the secondary level. In cases where neither body judges the level of the course, the Secretary accepts the judgment of the institution. Department of Education officials charged with enforcing regulations may question any determination made by an institution concerning the administration of title IV, HEA program funds, and the institution must be prepared to demonstrate satisfactorily to those officials the institution's rationale for making that determination. Of course, if the institution disagrees with an audit or program review finding, the institution may appeal that finding.

Changes: None.

Section 668.23 Audits, Records, and Examination

Comments: A few commenters supported the changes in this section. Several commenters suggested that the Secretary should recognize the right of an institution to have representatives present at or tape recordings made of interviews with the institutions's personnel. One commenter suggested that the Secretary should permit either the attendance of representatives or tape recordings. Several commenters claimed that the clarification concerning institutional cooperation and the changes concerning the presence of institutional representatives at or tape recordings of interviews are unconstitutional or illegal. Some commenters asserted that the appropriate route for the Secretary to obtain access to records and personnel is through subpoena. One commenter claimed that having an institutional representative present during an interview does not restrict or deny access. Two commenters were concerned that denying institutional representation or tape recording at interviews increases the potential for Federal officials to intimidate employees. Two commenters claimed that an interviewer might obtain incorrect or incomplete information by interviewing an employee without the presence of a more knowledgeable institutional representative. One commenter expressed the concern that an institution would be unable to challenge inaccuracies without having the presence of an institutional representative during an interview. Another commenter asked the Secretary to clarify that an individual has the right to be represented by legal counsel during an interview.

Discussion: These changes are neither illegal nor unconstitutional. These regulations generally articulate current Department policy that the effective monitoring of expenditures of public funds requires routine and direct access to those employees, agents, and records that pertain in any way to the administration of the title IV, HEA programs. Obviously, any examination of an institution's records and staff entails some amount of inconvenience, which is a reasonable and necessary incident of accepting the benefits of public support by Federal student aid. The Secretary agrees that subpoenas are an appropriate method of seeking access to institutional personnel and records. However, the Secretary notes that in its participation agreement, an institution agrees to comply with all applicable title IV, HEA program regulations, including those governing access. Accordingly, there is no need for the Department to seek subpoenas for documents and testimony unless refusal to cooperate by an institution makes recourse to compelled production necessary.

The commenters voice an understandable concern that the information secured by Department reviewers and auditors from subordinate institutional employees be accurate. That concern is shared completely by the Department, and the audit and review process affords management both informal and formal opportunities to learn the substance of any representation on which the Department would rely in any proposed adverse action or finding, and to correct or rebut any statements deemed inaccurate. These opportunities include the routine informal dialogue that accompanies the conduct of the review on-site, the more formal exit interview, opportunities to respond to draft audit reports before the Department issues a final determination, and the opportunity for a hearing on the record before an administrative law judge at which the institution may contest any such finding and submit its own evidence.

In light of these procedural protections, the Department does not believe that an institution's interest in presenting its position requires that it be permitted to deny access to its records or employees unless an attorney or other representative of institutional management is present or the interview is recorded. On the contrary, the potential threat of retaliatory dismissal or demotion posed by such presence or recording can reasonably be expected to have a chilling effect on a subordinate's desire to disclose important facts. The Secretary regards this rule, which forbids such interference in the fact-gathering process, as on balance a reasonable means of avoiding an intolerable restriction on the Department's responsibility to oversee administration of public funds.

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The commenters voice an understandable concern that the information secured by Department reviewers and auditors from subordinate institutional employees be accurate. That concern is shared completely by the Department, and the audit and review process affords management both informal and formal opportunities to learn the substance of any representation on which the Department would rely in any proposed adverse action or finding, and to correct or rebut any statements deemed inaccurate. These opportunities include the routine informal dialogue that accompanies the conduct of the review on-site, the more formal exit interview, opportunities to respond to draft audit reports before the Department issues a final determination, and the opportunity for a hearing on the record before an administrative law judge at which the institution may contest any such finding and submit its own evidence.

In light of these procedural protections, the Department does not believe that an institution's interest in presenting its position requires that it be permitted to deny access to its records or employees unless an attorney or other representative of institutional management is present or the interview is recorded. On the contrary, the potential threat of retaliatory dismissal or demotion posed by such presence or recording can reasonably be expected to have a chilling effect on a subordinate's desire to disclose important facts. The Secretary regards this rule, which forbids such interference in the fact-gathering process, as on balance a reasonable means of avoiding an intolerable restriction on the Department's responsibility to oversee administration of public funds.

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a subordinate and to demand a record of such an interview rest on a misunderstanding of the nature of the inquiry and the applicable law. The rule addresses institutional responsibilities at a relatively early stage in the audit or program review process, a stage that is exclusively devoted to fact-gathering. Moreover, at this stage, the Department has not compelled the testimony of any employee or the production of any documents; the Department could compel testimony or document production only by the issuance of a subpoena, a power generally reserved to the Office of Inspector General. The case law is clear that neither the Constitution nor applicable statutes assure a person either the right to legal representation at this stage in an administrative review, or the right to a record of the information disclosed. These rights clearly apply when a person is served with a subpoena, or when the person is appealing an audit or program review to a formal hearing on the record, but not at these early, fact-gathering stages of the process.

Changes: None.

Comments: Two commenters recommended that representatives of guarantee agencies be given access to records and personnel to the same degree that representatives of the Secretary, Inspector General, and Comptroller General of the United States are given access. A commenter suggested that the provisions of § 668.23(e) and 34 CFR 682.515(c) be modified to conform to the changes proposed in these regulations. A commenter was concerned that these regulations might authorize unrestricted access by a contracted auditor who may not be sufficiently qualified in matters concerning the title IV, HEA programs, or who may be overzealous. Several commenters asked that the term "timely access" be clarified. Some of these proposed various time frames, including advance written notice from the Secretary of five days, two weeks, or 30 days. One commenter urged the Secretary to recognize that certain inconvenient periods, such as registration, might justify advance notice to the institution. A commenter suggested that the term "reasonable access" is ambiguous and suggested that the terms of reasonable access be arranged between the institution and the Department of Education several days in advance of a visit by the Secretary's representatives. Two commenters suggested that an exit interview should be required when an institutional representative is not permitted to attend an interview with an employee. Several commenters recommended that access to student records be accompanied by an appropriate written request from the Secretary identifying names and titles of investigators or reviewers, their agency, their legal authority, and the process by which the institution is informed of the results of the review or investigation. A commenter was concerned that agents of the Federal Bureau of Investigation or the Immigration and Naturalization Service who are representing the Secretary be required to Present proper identification.

Discussion: The Secretary agrees with those commenters concerning access by guarantee agencies and, in an NPRM published on November 20, 1990 (55 FR 48324), proposed amendments to §§ 682.414, 682.515, and 682.610 of the GSL and PLUS program regulations that conform to the changes in these final regulations. Similarly, in a future NPRM, the Secretary will propose amendments that will consolidate paragraphs (b) and (e) of § 668.23. The Secretary recognizes that the fact-gathering responsibilities discussed earlier require an addition to these provisions to emphasize that a contracted auditor be given the same access to an institution's records and personnel available to the Secretary, the Inspector General, and the Comptroller General of the United States. These regulations do not authorize unrestricted access to an institution's records and personnel; rather, these regulations require access to the extent necessary to monitor compliance with applicable statutes, regulations, special arrangements, agreements, and limitations. With regard to the commenter's concern about the competence of independent auditors, determining the adequacy of an auditor's qualifications is the responsibility of the institution that engages the auditor.

The Secretary is not defining "timely access" or establishing rigid time frames. Ordinarily, program reviews and audits are conducted according to an established schedule. If an institution is on that schedule, the Department contacts the institution in advance and requests access to the institution's personnel and records. Every effort is made to accommodate the institution's own schedule. However, at times immediate access to an institution is warranted. An institution is expected to have its records organized and readily available and should not object to providing prompt access to those records, even during periods when a financial aid, admissions, or other office of the institution experiences increased activity. It is often during just such periods that irregularities in the administration of title IV, HEA program funds are most likely to occur, and the institution's administrative capability is best measured. It is essential to proper accountability that the Secretary, the Inspector General, the Comptroller of the United States, or their representatives have immediate access to institutional records and personnel. Exit interviews are a routine part of all program and audit reviews. Access to student records for purposes of these regulations is authorized under the Family Educational Rights and Privacy Act and its implementing regulations. Authorized representatives of the Secretary, the Inspector General, or the Comptroller General of the United States are routinely prepared with documentation to substantiate their identities and the purpose of their reviews or examinations.

Finally, the Secretary notes that the intention of these regulations is to ensure that an institution give Federal officials and independent auditors reasonable access to all personnel who are associated with the institution's administration of the title IV, HEA programs. The Secretary is concerned that the term "institutional personnel" could be misinterpreted to apply only to an institution's immediate employees. The Secretary accordingly clarifies the current Department policy that reasonable access must be given not only to institutional personnel, but also to the personnel of those independent contractors and servicers who have been retained by the institution to administer or provide specific services related to the title IV, HEA programs.

Changes: Section 668.23(b) is revised to include an independent auditor among those to whom the institution is required to give cooperation in the conduct of audits. Section 668.23(b) is also revised to clarify that reasonable access must be given to any personnel associated with the institution's administration of the title IV, HEA programs, and not just "institutional" personnel.

Section 668.90 Initial and Final Decisions—Appeals

Comments: The majority of those who commented on the changes in this section supported those changes. Two commenters opposed the requirement for an administrative law judge to uphold terminations as unfair. A number of commenters maintained that the provisions for termination of institutions that repeatedly miss the deadline dates for filing audit reports and for the administrative law judge to uphold those terminations are too severe. They also maintained that these provisions do not take into account factors beyond the control of institutions, such as unfair deadline dates for submission of audit reports, deadline dates that conflict with the dates that Pell Grant closure reports are provided, difficulties in engaging private auditors during the times that audit reports are due, and numerous administrative changes in the Department's audit report requirements and procedures. Some of these commenters suggested instead that an institution be allowed to demonstrate to an administrative law judge that its failure to meet a deadline was beyond the control of the institution, or that the Secretary devise alternative penalties such as fines. One commenter claimed that failure to take into account those factors, coupled with the severity of the penalty imposed by these provisions, could leave these provisions open to legal challenge. Two commenters suggested that in view of the 1,500 institutions that had missed audit report deadline dates, there is a widespread problem for which termination is not a realistic solution.

Discussion: The proposed § 668.90, while not actually providing for the automatic termination of an institution for a violation of the audit report deadlines in § 668.23 if the institution had a history of missing those deadlines or if the institution failed to respond to the Department's reminders or fine notices, gave the impression that the Secretary would frequently be bringing termination actions against such institutions. The Secretary is hopeful, however, that failure to submit audit reports will soon become rare. The Secretary has taken additional steps, including improvements in monitoring, to encourage institutions to submit audit reports in a timely manner. However, the Secretary is persuaded that the fine, limitation, suspension, and termination proceedings in §§ 668.83, 668.84, 668.85, and 668.86 provide a broad and effective range of sanctions to deal with violations of the deadlines in § 668.23 for submission of audit reports. Both the Department's routine procedures for the review of audit reports and the more formal proceedings in subpart G offer ample opportunity for an institution to demonstrate that factors beyond the institution's control contributed to a failure to meet a regulatory deadline. The proceedings in subpart G give the Secretary discretion to impose sanctions suitable to the severity of a violation ranging from the fining of an institution to its termination from participation in the title IV, HEA programs.

The Secretary anticipates that rarely will violations of those deadlines be so flagrant as to justify the termination of an institution's participation. However, should the Secretary find it necessary to take a termination action against an institution for such a violation, the Secretary considers that type of violation to be sufficiently detrimental to effective monitoring of an institution's title IV, HEA program activities to merit the placing of restrictions on an administrative law judge's discretion to modify the decision to terminate the institution's participation. The Secretary considers the fact that a large number of institutions have ignored deadlines and refused to take the simple steps to explain why those deadlines were ignored is a strong justification for adopting the changes in this section.

Changes: Section 668.90(a)(3)(iv) is revised to provide that an administrative law judge must uphold any termination action imposed against an institution for a violation of the deadlines for submission of audit reports in § 668.23(c)(4).

Comments: A commenter suggested that instead of amending regulations, the Secretary improve the Department's internal monitoring procedures to prevent future situations in which approximately 1,500 institutions could fail to submit audit reports within required deadlines and remain undetected. Another commenter asked the Secretary to include provisions to notify an institution of its failure to submit an audit report within a required deadline and to provide the institution an opportunity to appeal corrective action. Another commenter suggested that the effective date for § 668.90(a)(3)(iv)(B) be delayed for four years beyond the effective date for the rest of this section. Two commenters asked for clarification that an institution will not be subject to termination for a single late submission of an audit report. Two commenters recommended that the Secretary apply these provisions or emergency limitation, suspension, or termination action to instances in which an institution fails to provide timely access to records and personnel under the provisions of § 668.23. One commenter asked the Secretary to apply these provisions to schools that fail to cooperate with guarantee agencies under the provisions of 34 CFR 682.610(e) in the conduct of program reviews.

Discussion: The Department of Education's internal procedures for tracking institutions that have failed to meet the audit report deadlines have been improved, as was noted in the preamble for the NPRM. That improvement was a factor in the Secretary's decision to make the changes noted above. The provisions governing fine, limitation, suspension, and termination actions by the Secretary already require the Secretary to notify institutions concerning the basis for those actions and the institutions' appeal rights. Because most institutions are able to comply with the deadline dates, the Secretary sees no reason to delay the effective date of these new provisions. As noted above, proposed § 668.90 seemed to state that a termination action would result whenever an institution missed a deadline and neglected to respond to the Department's attempts to obtain an explanation and ignored the imposition of a fine for that violation. Under the changes made to the proposed § 668.90, the requirement for an administrative law judge to uphold a termination could apply to an institution that misses a single audit report deadline, but only if the Secretary believes that the circumstances surrounding the violation justify the Secretary's bringing a termination action against the institution. Ordinarily, disputes concerning violations of that nature are resolved long before the dispute reaches the stage of a proceeding under subpart G. The Secretary believes that current regulations provide sufficient authority to initiate administrative proceedings against institutions that fail to comply with the provisions in § 668.23 concerning timely access. Under the provisions of § 682.410 of the GSL and PLUS regulations, a guarantee agency is required to take appropriate measures to ensure the enforcement of all Federal, State, and guarantee agency requirements applicable to its loan guarantee program. Specifically, the guarantee agency is required to conduct on-site program reviews and report any allegations and indications having a substantial basis in fact and the scope, progress, and results of the agency's investigations to the Secretary. The Secretary believes that the provisions of § 682.401 of the GSL and PLUS program regulations provide guarantee agencies with sufficient authority to establish effective standards and procedures for the limitation, suspension, or termination of school and lender participation in those programs.

Changes: None.

Comments: A commenter opposed § 668.90(a)(3)(v) on the grounds that it does not take into consideration the impact of the new provisions of § 668.13 on public corporations. Another commenter claimed that this provision

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Changes: None.

Comments: A commenter opposed § 668.90(a)(3)(v) on the grounds that it does not take into consideration the impact of the new provisions of § 668.13 on public corporations. Another commenter claimed that this provision

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was weakened by permitting an institution to establish that a person who owns a substantial part of an institution does not have the ability to affect substantially the actions of that institution or the institution of which he previously was a substantial owner.

Discussion: Similar concerns are addressed in the discussion on § 668.13.

Changes: None.

Waiver of Notice of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the changes made in §§ 668.1, 668.2, 668.7, 668.44, and 668.95 and the changes in §§ 600.32 and 668.13 pertaining to refunds of institutional charges are merely technical corrections or changes made to bring the Student Assistance General Provisions regulations into conformity with the regulations for the GSL and PLUS programs published in the **Federal Register** on November 10, 1986 (51 FR 40886); regulations for Institutional Eligibility under the Higher Education Act of 1965, as Amended, published in the **Federal Register** on April 5, 1988 (53 FR 11208); regulations for the Robert C. Byrd Honors Scholarship Program, published in the **Federal Register** on June 20, 1989 (54 FR 26006); and the Student Right-to-Know and Campus Security Act (Pub. L. 101–542), signed on November 8, 1990. The changes made in § 668.51 are also technical changes that reflect merely that the Secretary is extending the Institutional Quality Control Project for an additional three years and no longer considers the project a "pilot" program. The changes affect neither the participants in the project nor the requirements for participation in the project. Public comment could have no effect on the content of these changes. Therefore, the Secretary has determined that publication of a proposed rule is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 600

Administrative practice and procedure, Colleges and universities, Education, Reporting and recordkeeping requirements.

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

Dated: July 25, 1991.

Lamar Alexander,

Secretary of Education.

Catalog of Federal Domestic Assistance Numbers: 84.007 Supplemental Educational Opportunity Grant Program; 84.032 Guaranteed Student Loan Program; 84.032 PLUS Program; 84.032 Supplemental Loans for Students Program; 84.033 College Work-Study Program; 84.038 Perkins Loan Program; 84.063 Pell Grant Program; 84.069 State Student Incentive Program; 84.185 Robert C. Byrd Honors Scholarship Program; and 84.226 Income Contingent Loan Program.

The Secretary amends parts 600 and 668 of title 34 of the Code of Federal Regulations as follows:

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

1. The authority citation for part 600 is revised to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1094, and 1141, unless otherwise noted.

2. In § 600.30, paragraphs (b) and (c) are redesignated as paragraphs (c) and (d) respectively; paragraph (a) introductory text is revised; and new paragraphs (a)(6), (b), (e), and (f) are added to read as follows:

§ 600.30 Institutional changes requiring review by the Secretary.

(a) Except as provided in paragraph (b) of this section, an eligible institution shall notify the Secretary at the same time that it notifies its accrediting agency or association, but not later than ten days after the change occurs, of any change in the following information provided in the institution's eligibility application:

* * * * *

(6) A person's ability to affect substantially the actions of the institution, if the person did not previously have that ability. The Secretary generally considers a person to have the ability to affect substantially the actions of an institution if the person—

(i) Holds at least a 25% ownership interest in the institution;

(ii) Holds, together with another member or members of his or her family, at least a 25% ownership interest in the institution;

(iii) Represents under a voting trust, power of attorney, proxy, or similar agreement a person who holds at least a 25% ownership interest in the institution;

(iv) Represents under a voting trust, power of attorney, proxy, or similar agreement two or more persons who together hold at least a 25% ownership interest in the institution;

(v) Together with another member or members of his or her family, represents under a voting trust, power of attorney, proxy, or similar agreement a person who holds, or two or more persons who together hold, at least a 25% ownership interest in the institution; or

(vi) Is a member of the board of directors, the chief executive officer, or other executive officer of—

(A) The institution; or

(B) An entity that holds at least a 25% ownership interest in the institution.

(b) In the case of any change in the information that is described in paragraph (a)(6) of this section, an eligible institution that is owned by a publicly traded corporation shall notify the Secretary at the same time that the institution notifies the institution's accrediting agency or association, but not later than ten days after the corporation learns of the change.

* * * * *

(e) For the purposes of this section, an *ownership interest* is a share of the legal or beneficial ownership or control of, or a right to share in the proceeds of the operation of, an institution or institution's parent corporation.

(1) The term *ownership interest* includes, but is not limited to—

(i) An interest as tenant in common, joint tenant, or tenant by the entireties;

(ii) A partnership; and

(iii) An interest in a trust.

(2) The term "ownership interest" does not include any share of the ownership or control of, or any right to

share in the proceeds of the operation of—

(i) A mutual fund that is regularly and publicly traded;

(ii) An institutional investor; or

(iii) A profit-sharing plan, provided that all employees are covered by the plan.

(f) For the purposes of this section, the Secretary considers a member of a person's family to be a parent, sibling, spouse, or child; spouse's parent or sibling; or sibling's or child's spouse.

3. A new § 600.32 is added to read as follows:

§ 600.32 Eligibility of additional locations.

(a) If an eligible institution seeks to establish eligibility for an additional location, the institution shall apply under § 600.20 for a determination of whether the location qualifies as an eligible location.

(b) Except as provided in paragraphs (c) and (d) of this section, to qualify as an eligible location, the additional location must satisfy the applicable requirements of this section and §§ 600.4 through 600.7.

(c) To qualify as an eligible location, an additional location is not required to satisfy the requirement under § 600.5(a)(7), § 600.6(a)(6), or § 600.7(a)(5)(i), unless—

(1) The location is a facility of an institution that has closed or ceased to provide educational programs (except during normal vacation periods);

(2) The applicant institution acquired, either directly from the institution that has closed or ceased to provide educational programs or through an intermediary, the assets at that location; and

(3) The institution from which the applicant institution acquired the assets of the location—

(i) Owes a liability on improperly expended or unspent HEA program funds or for refunds of institutional charges to students; and

(ii) Is not making payments in accordance with an agreement to repay that liability, if the institution has entered into such an agreement.

(d) Notwithstanding paragraph (c) of this section, an additional location is not required to satisfy the requirement under § 600.5(a)(7), 600.6(a)(6), or 600.7(a)(5)(i) if the applicant institution agrees—

(1) To be liable for all improperly expended or unspent HEA program funds received by the institution that has closed or ceased to provide educational programs; and

(2) To abide by the policy of the institution that has closed or ceased to provide educational programs regarding refunds of institutional charges to students in effect before the date of the acquisition of the assets of the additional location for the students who were enrolled before that date.

(e) For purposes of this section, an "additional location" is a location of an institution that was not designated as an eligible location in the eligibility notification provided to an institution under § 600.21.

(Authority: 20 U.S.C. 1085, 1088, and 1141)

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

4. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141, unless otherwise noted.

5. In § 668.1, paragraph (c)(4) is removed; paragraphs (c)(5) through (c)(11) are redesignated as paragraphs (c)(4) through (c)(10) respectively; paragraph (c)(3) is amended by removing, after the semicolon, the number "4"; redesignated paragraph (c)(9) is amended by removing the term "1087aa" and adding, in its place, the term "1087a"; redesignated paragraph (c)(10) is amended by removing the term "1087a" and adding, in its place, the term "1087aa"; and paragraph (b) is revised to read as follows:

§ 668.1 Scope.

* * * * *

(b) As used in this part, an "institution" includes—

(1) An institution of higher education as defined in 34 CFR 600.4;

(2) A proprietary institution of higher education as defined in 34 CFR 600.5;

(3) A postsecondary vocational institution as defined in 34 CFR 600.6; and

(4) A vocational school as defined in 34 CFR 600.7.

* * * * *

6. Section 668.2 is revised to read as follows:

§ 668.2 General definitions.

(a) The following definitions are contained in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as Amended, 34 CFR part 600:

Accredited
Clock hour
Educational program
Eligible institution
Institution of higher education
Nationally recognized accrediting agency or association
One-Year training program
Postsecondary vocational institution
Program of study by correspondence
Proprietary institution of higher education
Recognized equivalent of a high school diploma
Secretary
Six-month training program
Vocational school

(b) The following definitions apply to all title IV, HEA programs:

Academic year: (1) A period of time in which a full-time student is expected to complete the equivalent of at least two semesters, two trimesters, or three quarters at an institution that measures academic progress in credit hours and uses a semester, trimester, or quarter system;

(2) A period of time in which a full-time student is expected to complete at least 24 semester hours or 36 quarter hours at an institution that measures academic progress in credit hours but does not use a semester, trimester, or quarter system; or

(3) At least 900 clock hours at an institution that measures academic progress in clock hours.

(Authority: 20 U.S.C. 1088)

Award year: The period of time from July 1 of one year through June 30 of the following year.

Campus-based programs: (1) The Perkins Loan Program (34 CFR part 674);

(2) The College Work-Study (CWS) Program (34 CFR part 675); and

(3) The Supplemental Educational Opportunity Grant (SEOG) Program (34 CFR part 676).

College Work-Study (CWS) Program: The part-time employment program for students authorized by title IV–C of the HEA.

(Authority: 42 U.S.C. 2751–2756b)

Consolidation Loan Program: The loan program authorized by title IV–B of the HEA.

(Authority: 20 U.S.C. 1078–3)

Defense loan: A loan made before July 1, 1972, under title II of the National Defense Education Act of 1958.

(Authority: 20 U.S.C. 421–429)

Dependent student: Any student who does not qualify as an independent student (see independent student).

Direct loan: A loan made under title IV–E of the HEA after June 30, 1972, that does not satisfy the definition of "Perkins loan."

(Authority: 20 U.S.C. 1087aa *et seq.*)

Enrolled: The status of a student who—

(1) Has completed the registration requirements (except for the payment of

tuition and fees) at the institution he or she is attending; or

(2) Has been admitted into a program of study by correspondence and has submitted one lesson, completed by him or her after acceptance for enrollment and without the help of a representative of the institution.

Guaranteed Student Loan (GSL) Program: The student loan program authorized by title IV–B of the HEA.

(Authority: 20 U.S.C. 1071 *et seq.*)

HEA: The Higher Education Act of 1965, as amended.

(Authority: 20 U.S.C. 1070 *et seq.*)

Income Contingent Loan (ICL) Program: The student loan program authorized by title IV–D of the HEA.

(Authority: 20 U.S.C. 1087a *et seq.*)

Independent student: A student who qualifies as an independent student under section 411F(12) of the HEA for the Pell Grant Program and section 480(d) of the HEA for all the other title IV, HEA programs.

(Authority: 20 U.S.C. 1070a–6; 20 U.S.C. 1087vv).

National Defense Student Loan Program: The student loan program authorized by title II of the National Defense Education Act of 1958.

(Authority: 20 U.S.C. 421–429)

National Direct Student Loan (NDSL) Program: The student loan program authorized by title IV–E of the HEA between July 1, 1972, and October 16, 1986.

(Authority: 20 U.S.C. 1087aa–1087ii)

Parent: A student's natural or adoptive mother or father. A parent also includes a student's legal guardian who has been appointed by a court and who is specifically required by the court to use his or her own resources to support the student.

Pell Grant Program: The grant program authorized by title IV–A–1 of the HEA.

(Authority: 20 U.S.C. 1070a)

Perkins loan: A loan made under title IV–E of the HEA to cover the cost of attendance for a period of enrollment beginning on or after July 1, 1987, to an individual who on July 1, 1987, had no outstanding balance of principal or interest owing on any loan previously made under title IV–E of the HEA.

(Authority: 20 U.S.C. 1087aa *et seq.*)

Perkins Loan Program: The student loan program authorized by title IV–E of the HEA after October 16, 1986.

(Authority: 20 U.S.C. 1087aa–1087ii)

PLUS Program: The loan program authorized by title IV–B of the HEA.

(Authority: 20 U.S.C. 1078–2)

Regular student: A person who is enrolled or accepted for enrollment at an institution for the purpose of obtaining a degree, certificate, or other recognized educational credential offered by that institution.

State: Each State of the Union, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands.

(Authority: 20 U.S.C. 1141(b); 20 U.S.C. 1088(a); 20 U.S.C. 1070d–32)

State Student Incentive Grant (SSIG) Program: The grant program authorized by title IV–A–3 of the HEA.

(Authority: 20 U.S.C. 1070c *et seq.*)

Supplemental Educational Opportunity Grant (SEOG) Program: The grant program authorized by title IV–A–2 of the HEA.

(Authority: 20 U.S.C. 1070b *et seq.*)

Supplemental Loans for Students (SLS) Program: The loan program authorized by title IV–B of the HEA and formerly called the ALAS Program.

(Authority: 20 U.S.C. 1078–1)

U.S. citizen or national: (1) A citizen of the United States; or

(2) A person defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a)(22), who, though not a citizen of the United States, owes permanent allegiance to the United States.

(Authority: 20 U.S.C. 1101)

(Authority: 20 U.S.C. 1070 *et seq.*, unless otherwise noted)

§ 668.7 [Amended]

7. In § 668.7 the authority citation is amended by removing the term "078–1–3" and adding, in its place, the term "1078–1–3".

8. Section 668.13 is amended by removing the word "or" after the semicolon in paragraph (c)(3); removing the period in paragraph (c)(4)(iii)(B) and adding, in its place, a semicolon; and adding new paragraphs (c)(5), (d)(3), (h), (i), (j), and (k) to read as follows:

§ 668.13 Factors of financial responsibility.

* * * * *

(c) * * *

(5) A person acquires the ability to affect substantially the actions of the institution, and the following conditions apply:

(i) On or before the date that the person acquired that ability—

(A) The person had the ability to affect substantially the actions of a defunct institution within 90 days of the date that the defunct institution became defunct; or

(B) Any member or members of the person's family, alone or together, had the ability to affect substantially the actions of a defunct institution within 90 days of the date that the defunct institution became defunct; and

(ii) The person, any family member referred to in paragraph (c)(5)(i) of this section, or the defunct institution—

(A) Owes a liability on improperly expended or unspent title IV, HEA program funds received by the defunct institution or for refunds of institutional charges to students of the defunct institution; and

(B) If that person, family member, or defunct institution has agreed to repay that liability, is not making payments in accordance with that agreement.

(d) * * *

(3) The Secretary may determine that an institution is financially responsible even if it would otherwise be considered not to be financially responsible under paragraph (c)(5) of this section if—

(i) The institution notifies the Secretary, in accordance with 34 CFR 600.30, that the person acquired the ability to affect substantially the actions of the institution; and

(ii)(A) The person repaid to the Secretary a portion of the applicable liability, and the portion repaid equals or exceeds the greater of—

(*1*) The total percentage of the ownership interest held in the defunct institution by that person and any member or members of that person's family;

(*2*) The total percentage of the ownership interest held in the defunct institution by any member or members of that person's family;

(*3*) The total percentage of the ownership interest held in the defunct institution that that person and any member or members of that person's family represented under a voting trust, power of attorney, proxy, or similar agreement;

(*4*) The total percentage of the ownership interest held in the defunct institution that any member or members of that person's family represented under a voting trust, power of attorney, proxy, or similar agreement; or

(*5*) Twenty-five percent, if that person or any member of that person's family was a member of the board of directors, chief executive officer, or other executive officer of the defunct institution or of an entity holding at least a 25% ownership interest in the defunct institution;

(B) The applicable liability described in paragraph (c)(5)(iii) of this section is currently being repaid in accordance with a written agreement with the Secretary; or

(C) The institution demonstrates why—

(*1*) The person who acquired the ability to affect substantially the institution's actions should nevertheless be considered to lack that ability; or

(*2*) The person who acquired the ability to affect substantially the institution's actions and each member of that person's family nevertheless lacked the ability to affect substantially the actions of the defunct institution within 90 days of the date that that institution became defunct.

* * * * *

(h) For purposes of this section, a "defunct institution" is an institution that permanently closed or ceased to provide educational programs (except during normal vacation periods).

(i) For the purposes of this section, an "ownership interest" is a share of the legal or beneficial ownership or control of, or a right to share in the proceeds of the operation of, an institution or institution's parent corporation.

(1) The term *ownership interest* includes, but is not limited to—

(A) An interest as tenant in common, joint tenant, or tenant by the entireties;

(B) A partnership; and

(C) An interest in a trust.

(2) The term *ownership interest* does not include any share of the ownership or control of, or any right to share in the proceeds of the operation of—

(A) A mutual fund that is regularly and publicly traded;

(B) An institutional investor; or

(C) A profit-sharing plan, provided that all employees are covered by the plan.

(j) For the purposes of this section, the Secretary generally considers a person to have the ability to affect substantially the actions of an institution if the person—

(1) Holds at least a 25% ownership interest in the institution;

(2) Holds, together with another member or members of his or her family, at least a 25% ownership interest in the institution;

(3) Represents under a voting trust, power of attorney, proxy, or similar agreement a person who holds at least a 25% ownership interest in the institution;

(4) Represents under a voting trust, power of attorney, proxy, or similar agreement two or more persons who together hold at least a 25% ownership interest in the institution;

(5) Together with another member or members of his or her family, represents under a voting trust, power of attorney, proxy, or similar agreement a person who holds, or two or more persons who together hold, at least a 25% ownership interest in the institution; or

(6) Is a member of the board of directors, the chief executive officer, or other executive officer of—

(i) The institution; or

(ii) An entity that holds at least a 25% ownership interest in the institution.

(k) For the purposes of this section, the Secretary considers a member of a person's family to be a parent, sibling, spouse, or child; spouse's parent or sibling; or sibling's or child's spouse.

9. Section 668.20 is amended by removing the word "or" after the semicolon in paragraph (c)(1); removing the period in paragraph (c)(2) and adding, in its place, the term "; or"; and revising the section heading and adding a new paragraph (c)(3) to read as follows:

§ 668.20 Limitations on remedial coursework that is eligible for Title IV, HEA program assistance.

* * * * *

(c) * * *

(3) Except for a course in English as a second language, the educational level of instruction provided in that course is below the secondary level. For purposes of this section, the Secretary considers a course to be below the secondary level if any of the following entities determine that course to be below the secondary level:

(i) The State agency that legally authorized the institution to provide postsecondary education.

(ii) In the case of an accredited or preaccredited institution, the nationally recognized accrediting agency or association that accredits or preaccredits the institution.

(iii) In the case of a public postsecondary vocational institution that is approved by a State agency recognized for the approval of public postsecondary vocational education, the State agency recognized for the approval of public postsecondary vocational education that approves the institution.

(iv) The institution.

* * * * *

10. In § 668.23, paragraph (b) is revised to read as follows:

§ 668.23 Audits, records, and examination.

* * * * *

(b) An institution that participates in any title IV, HEA program shall cooperate with an independent auditor, the Secretary, the Education Department's Inspector General, and the Comptroller General of the United States, or their authorized representatives, in the conduct of audits, investigations, and program reviews authorized by law. This cooperation must include—

(1) Providing timely access, for examination and copying, to the records (including computerized records) required by the applicable regulations and to any other pertinent books, documents, papers, computer programs, and records; and

(2) Providing reasonable access to personnel associated with the institution's administration of the title IV, HEA programs for the purpose of obtaining relevant information. In providing reasonable access, the institution shall not—

(i) Refuse to supply any relevant information;

(ii) Refuse to permit interviews with those personnel that do not include the presence of representatives of the institution's management; and

(iii) Refuse to permit interviews with those personnel that are not tape recorded by the institution.

* * * * *

§ 668.44 [Amended]

11. In § 668.44, paragraphs (c) through (f) are removed, and paragraph (a)(3) is amended by removing the term "§ 668.21" and adding, in its place, the term "§ 668.22".

§ 668.51 [Amended]

12. Section 668.51 is amended by removing the words *"Pilot"* and "Pilot" everywhere that they appear in paragraph (c), and removing the term "1990–91" in paragraph (c)(1) and adding, in its place, the term "1993–94".

13. Section 668.90 is amended by removing the word "or" after the semicolon in paragraph (a)(3)(i); removing the period at the end of paragraph (a)(3)(ii) and adding, in its place, a semicolon; removing the period at the end of paragraph (a)(3)(iii) and adding, in its place, a semicolon; and adding new paragraphs (a)(3) (iv) and (v) to read as follows:

§ 668.90 Initial and final decisions—Appeals.

(a) * * *

(3) * * *

(iv) In a termination action taken against an institution based on the grounds that an institution has failed to comply with the requirements of § 668.23(c)(4), the administrative law judge must find that the termination is warranted; or

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(v) In a termination actio
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institution is not financially
under § 668.13(c)(5), the adm
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is warranted unless the inst
demonstrates that all applic
conditions described in § 66
have been met.

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§ 668.95 [Amended]

14. In § 668.95, paragraph
amended by removing the te

Appendix A to Part 668 [Res

15. Appendix A to part 66
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Department's Inspector General, and the Comptroller General of the United States, or their authorized representatives, in the conduct of audits, investigations, and program reviews authorized by law. This cooperation must include—

(1) Providing timely access, for examination and copying, to the records (including computerized records) required by the applicable regulations and to any other pertinent books, documents, papers, computer programs, and records; and

(2) Providing reasonable access to personnel associated with the institution's administration of the title IV, HEA programs for the purpose of obtaining relevant information. In providing reasonable access, the institution shall not—

(i) Refuse to supply any relevant information;

(ii) Refuse to permit interviews with those personnel that do not include the presence of representatives of the institution's management; and

(iii) Refuse to permit interviews with those personnel that are not tape recorded by the institution.

* * * * *

§ 668.44 [Amended]

11. In § 668.44, paragraphs (c) through (f) are removed, and paragraph (a)(3) is amended by removing the term "§ 668.21" and adding, in its place, the term "§ 668.22".

§ 668.51 [Amended]

12. Section 668.51 is amended by removing the words *"Pilot"* and "Pilot" everywhere that they appear in paragraph (c), and removing the term "1990–91" in paragraph (c)(1) and adding, in its place, the term "1993–94".

13. Section 668.90 is amended by removing the word "or" after the semicolon in paragraph (a)(3)(i); removing the period at the end of paragraph (a)(3)(ii) and adding, in its place, a semicolon; removing the period at the end of paragraph (a)(3)(iii) and adding, in its place, a semicolon; and adding new paragraphs (a)(3) (iv) and (v) to read as follows:

§ 668.90 Initial and final decisions—Appeals.

(a) * * *

(3) * * *

(iv) In a termination action taken against an institution based on the grounds that an institution has failed to comply with the requirements of § 668.23(c)(4), the administrative law judge must find that the termination is warranted; or

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(v) In a termination action against an institution based on the grounds that the institution is not financially responsible under § 668.13(c)(5), the administrative law judge must find that the termination is warranted unless the institution demonstrates that all applicable conditions described in § 668.13(d)(3) have been met.

* * * * *

§ 668.95 [Amended]

14. In § 668.95, paragraph (b)(1)(ii) is amended by removing the term "or 683".

Appendix A to Part 668 [Reserved]

15. Appendix A to part 668 is removed and reserved.

[FR Doc. 91-18052 Filed 7-30-91; 8:45 am]

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Wednesday
July 31, 1991

Part VI

Department of the Treasury

Internal Revenue Service

26 CFR Parts 1 and 602

Treatment of Partnership Liabilities; Temporary Regulations and Proposed Rules

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8355]

RIN 1545–AH26

Treatment of Partnership Liabilities

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations, relating to treatment of partnership liabilities, that amend § 1.752–4T. The temporary regulations reflect changes to the applicable tax law made by section 79 of the Tax Reform Act of 1984. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register**.

DATES: The amendments to § 1.752–4T are effective as of December 29, 1988.

FOR FURTHER INFORMATION CONTACT: Mary A. Berman at (202) 566–3440 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1545–1090. The estimated annual burden per respondent varies from 3 minutes to 8 minutes, depending on individual circumstances, with an estimated average of 5 minutes.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

For further information concerning this collection of information, and where to submit comments on this collection of information, the accuracy of the estimated burden and suggestions for reducing this burden, please refer to the preamble to the cross-reference notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Background

Proposed and temporary regulations under section 752 were published on December 30, 1988, and amended on November 21, 1989 ("temporary regulations"). This document amends the temporary regulations in response to comments with respect to the temporary regulations. New proposed regulations are issued concurrently with this amendment to the temporary regulations. The temporary regulations added by this document will remain in effect until superseded by later temporary or final regulations relating to these matters.

Explanation of Provisions

The effective dates in the temporary regulations are amended in three respects. First, partnerships are given another opportunity to elect to apply the temporary regulations as of the first taxable year of the partnership ending after December 29, 1988, to all liabilities to which the temporary regulations did not otherwise apply. The election is made by filing a statement with an amended partnership return for the first taxable year of the partnership ending after December 29, 1988. As a result, if a partnership makes the election, adjustments may be necessary on subsequent partnership returns.

Second, a transitional election has been added for partnerships to elect to apply the temporary regulations to liabilities incurred or assumed by the partnership on or after December 28, 1991 and before January 1, 1992.

Finally, for purposes of applying the effective date rules, the temporary regulations clarify that a termination of a partnership under section 708(b)(1)(B) will not cause any partnership liabilities incurred or assumed prior to the termination to be treated as incurred or assumed on the date of the termination.

Drafting Information

The principal author of these regulations is Mary A. Berman of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in their development.

List of Subjects in 26 CFR 1.751–1 Through 1.755–2T

Income taxes.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAX, TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *.

§ 1.752–0T [Amended]

Par. 2. Section 1.752–0T is amended as follows:

1. The captions listed under "*§ 1.752–4T Effective dates and transition rules (temporary)*" are revised to read as follows:

§ 1.752–4T Effective dates and transition rules (temporary).

(a) In general.
(b) Partner loans and guarantees.
(c) Duty of consistency.
(d) Election.
(1) In general.
(2) Transitional election.
(3) Time and manner of election.
(e) Coordination with amendments to section 704(b) regulations.
(f) Effect of sections 708(b)(1)(B) termination on determining date liabilities are incurred.
(g) Cross reference.

§ 1.752–4T [Amended]

Par. 3. Section 1.752–4T is amended as follows:

1. Paragraph (d)(2) is redesignated as paragraph (d)(3) and revised and new paragraph (d)(2) is added as set forth below.

2. Paragraph (f) is redesignated as paragraph (g) and the following new paragraph (f) is added as set forth below.

§ 1.752–4T Effective dates and transition rules (temporary).

* * * * *

(d) * * *

(2) *Transitional election.* A partnership may elect to apply the provisions of §§ 1.752–1T, –2T, and –3T to liabilities incurred or assumed by the partnership on or after December 28, 1991 but before January 1, 1992.

(3) *Time and manner of election.* An election under paragraph (d)(1) of this section is made by attaching a written statement to the amended partnership return for the first taxable year of the partnership ending after December 29, 1988. An election under paragraph (d)(2) of this section is made by attaching a written statement to the partnership return for the first taxable year of the partnership ending on or after December 28, 1991. A written statement required pursuant to this paragraph (d)(3) must include the name, address, and taxpayer identification number of the partnership making the statement and contain a

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PART 1—INCOME TAX, TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *.

§ 1.752-0T [Amended]

Par. 2. Section 1.752-0T is amended as follows:

1. The captions listed under "*§ 1.752-4T Effective dates and transition rules (temporary)*" are revised to read as follows:

§ 1.752-4T Effective dates and transition rules (temporary).

(a) In general.
(b) Partner loans and guarantees.
(c) Duty of consistency.
(d) Election.
(1) In general.
(2) Transitional election.
(3) Time and manner of election.
(e) Coordination with amendments to section 704(b) regulations.
(f) Effect of sections 708(b)(1)(B) termination on determining date liabilities are incurred.
(g) Cross reference.

§ 1.752-4T [Amended]

Par. 3. Section 1.752-4T is amended as follows:

1. Paragraph (d)(2) is redesignated as paragraph (d)(3) and revised and new paragraph (d)(2) is added as set forth below.

2. Paragraph (f) is redesignated as paragraph (g) and the following new paragraph (f) is added as set forth below.

§ 1.752-4T Effective dates and transition rules (temporary).

* * * * *

(d) * * *

(2) *Transitional election.* A partnership may elect to apply the provisions of §§ 1.752-1T, -2T, and -3T to liabilities incurred or assumed by the partnership on or after December 28, 1991 but before January 1, 1992.

(3) *Time and manner of election.* An election under paragraph (d)(1) of this section is made by attaching a written statement to the amended partnership return for the first taxable year of the partnership ending after December 29, 1988. An election under paragraph (d)(2) of this section is made by attaching a written statement to the partnership return for the first taxable year of the partnership ending on or after December 28, 1991. A written statement required pursuant to this paragraph (d)(3) must include the name, address, and taxpayer identification number of the partnership making the statement and contain a

declaration that an election is being made under this paragraph (d).

* * * * *

(f) *Effect of section 708(b)(1)(B) termination on determining date liabilities are incurred or assumed.* For purposes of applying this section, a termination of a partnership under section 708(b)(1)(B) will not cause partnership liabilities incurred or assumed prior to the termination to be treated as incurred or assumed on the date of the termination.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 5. Section 602.101(c) continues to read as follows:

"1.752-4T..1545-1090"

Fred T. Goldberg, Jr.,
Commissioner of Internal Revenue.

Approved: July 12, 1991.

Kenneth W. Gideon,
Assistant Secretary of the Treasury

[FR Doc. 91-17945 Filed 7-26-91; 2:27 pm]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS-229-84]

RIN 1545-AP75

Treatment of Partnership Liabilities

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations concerning the treatment of partnership liabilities. The temporary regulations reflect changes to the applicable tax law made by section 79 of the Tax Reform Act of 1984. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments must be received by September 9, 1991. Requests to appear and outlines of oral comments for the public hearing scheduled for September 17, 1991, at 10 a.m. must be received by September 3, 1991. See notice of hearing published elsewhere in this issue of the **Federal Register**.

ADDRESSES: Send comments, requests to appear at the public hearing, and outlines to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, attn: CC:CORP:T:R (PS-229-84), room 5228, Washington, DC 20044. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the hearing, Felicia Daniels, Regulations Unit (202) 377-9231 (not a toll-free number); concerning a particular regulation section, Mary A. Berman at (202) 566-3440 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504 (h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224.

The collection of information in these regulations is in § 1.752-4T. This information is required by the Internal Revenue Service to administer section 752. This information will be used to determine whether partners or partnerships are complying with section 752 and the regulations thereunder. The respondents are partnerships who wish to make the election under § 1.752-4T(d).

The following estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Estimated total annual reporting burden: 417 hours.

The estimated annual burden per respondent varies from 3 minutes to 8 minutes, depending on individual circumstances, with an estimated average of 5 minutes.

Estimated number of respondents: 5,000.

Estimated frequency of responses: 1.

Background

The temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) under section 752 of the Internal Revenue Code of 1986.

For the text of the temporary regulations, see T.D. 8355, published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations explains the amendments to the regulations.

Proposed regulations (PS-49-91) issued concurrently with this amendment to the temporary regulations are to be effective for liabilities incurred or assumed on or after December 28, 1991. When the proposed regulations are finalized, the Internal Revenue Service intends to withdraw the temporary regulations effective December 27, 1991.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held on September 17, 1991, beginning at 10 a.m. See notice of hearing published elsewhere in this issue of the **Federal Register**.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91-17946 Filed 7-26-91; 2:27 pm]

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DEPARTMENT OF THE TREASURY

26 CFR Part 1

[PS-49-91]

RIN 1545-AP76

Treatment of Partnership Liabilities

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the treatment of partnership liabilities. The proposed regulations reflect changes to the applicable tax law made by section 79 of the Tax Reform Act of 1984. The proposed regulations affect partnerships and their partners, and are necessary to provide them with guidance needed to comply with the applicable tax law.

DATES: Written comments must be received by September 9, 1991. Requests to appear and outlines of oral comments for the public hearing scheduled for September 17, 1991, at 10 a.m. must be received by September 3, 1991. See notice of hearing published elsewhere in this issue of the **Federal Register**.

ADDRESSES: Send comments, requests to appear at the public hearing, and outlines to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, attn: CC:CORP:T:R (PS-229-84), room 5228, Washington, DC 20044. The public hearing will be held in room 2615, Internal Revenue Building, 1111

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Comments and Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held on September 17, 1991, beginning at 10 a.m. See notice of hearing published elsewhere in this issue of the **Federal Register.**

Fred T. Goldberg, Jr.,
Commissioner of Internal Revenue.

[FR Doc. 91–17946 Filed 7–26–91; 2:27 pm]

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DEPARTMENT OF THE TREASURY

26 CFR Part 1

[PS–49–91]

RIN 1545–AP76

Treatment of Partnership Liabilities

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the treatment of partnership liabilities. The proposed regulations reflect changes to the applicable tax law made by section 79 of the Tax Reform Act of 1984. The proposed regulations affect partnerships and their partners, and are necessary to provide them with guidance needed to comply with the applicable tax law.

DATES: Written comments must be received by September 9, 1991. Requests to appear and outlines of oral comments for the public hearing scheduled for September 17, 1991, at 10 a.m. must be received by September 3, 1991. See notice of hearing published elsewhere in this issue of the **Federal Register**.

ADDRESSES: Send comments, requests to appear at the public hearing, and outlines to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, attn: CC:CORP:T:R (PS–229–84), room 5228, Washington, DC 20044. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the hearing, Felicia Daniels, Regulations Unit, (202) 377–9231 (not a toll-free number); concerning a particular regulation section, Mary A. Berman at (202) 566–3440 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504 (h)). Comments on the collection of information should be sent to the Office of Management and Budget, attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224.

The collection of information in these proposed regulations is in § 1.752–5. This information is required by the Internal Revenue Service to administer section 752. This information will be used to determine whether partners or partnerships are complying with section 752 and the regulations thereunder. The respondents are partnerships who wish to make the election under § 1.752–5(b).

The following estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Estimated total annual reporting burden: 417 hours.

The estimated annual burden per respondent varies from 3 minutes to 8 minutes, depending on individual circumstances, with an estimated average of 5 minutes.

Estimated number of respondents: 5,000.

Estimated frequency of responses: 1.

Introduction

This document proposes to add new regulation §§ 1.752–0 through 1.752–5 to the Income Tax Regulations (26 CFR part 1) under section 752 of the Internal Revenue Code of 1986 and to remove existing §§ 1.752–0T through 1.752–4T.

Background

Proposed and temporary regulations under section 752 were published on December 30, 1988, and amended on November 21, 1989 ("temporary regulations"). This document simplifies the temporary regulations and addresses several issues raised by commentators with respect to the temporary regulations. The major substantive changes incorporated in the proposed regulations are discussed in part III of the explanation section of this document.

Explanation of Provisions

I. Sharing Recourse Liabilities

The proposed regulations provide that a partnership liability is a recourse liability to the extent that any partner bears the economic risk of loss for that liability, and a partner's share of any recourse liability of the partnership equals the portion, if any, of the economic risk of loss for the liability that is borne by the partner. The proposed regulations also provide that a partner bears the economic risk of loss for a partnership liability to the extent that the partner or related person would be obligated to make a payment with respect to a partnership liability (and would not be entitled to be reimbursed for the contribution or payment by another partner, a person related to another partner, or the partnership) if the partnership constructively liquidates. In a constructive liquidation the following events are deemed to occur: (A) all of the partnership's liabilities become due and payable in full, (B) all of the partnership's assets (including money) become worthless, (C) the partnership disposes of all of its assets in a fully taxable transaction for no consideration (other than relief from certain liabilities), (D) the partnership allocates its items of income, gain, loss, deduction, and credit for the year among the partners, and (E) the partnership completely liquidates. The constructive liquidation is a means of testing who bears the economic risk of loss for a partnership liability taking into account the manner in which the partners have agreed to share economic losses relating to the liabilities of the partnership under all the arrangements among the partners, related persons, and the partnership.

II. Sharing Nonrecourse Liabilities

The proposed regulations provide that, if no partner bears the economic risk of loss for a partnership liability, the liability is a nonrecourse liability of the partnership. The partners generally share nonrecourse liabilities in accordance with their interests in partnership profits. However, the proposed regulations require that the nonrecourse liabilities of a partnership be allocated among the partners first to reflect the partners' shares of any partnership minimum gain (within the meaning of section 704(b)) and any tax gain that would be allocated to the partners under section 704(c) (or in the same manner as section 704(c) in connection with a revaluation of partnership property) if the partnership disposed of (in a taxable transaction) all partnership property subject to one or more nonrecourse liabilities of the partnership in full satisfaction of the liabilities and for no other consideration.

III. Modifications To Temporary Regulations

The proposed regulations reflect several modifications of rules found in the temporary regulations in response to comments received on the temporary regulations.

A. General Anti-abuse Rules

A new section, "Anti-abuse rules," has been added which provides a general rule that an obligation of a partner or related person to make a payment may be disregarded or treated as an obligation of another person if the facts and circumstances indicate that a principal purpose of an arrangement between the parties is to eliminate the partner's economic risk of loss with respect to that obligation or create the appearance of the partner or related person bearing the economic risk of loss when, in fact, the substance of the arrangement is otherwise.

B. Guarantee of Interest Rule

Section 1.752–1T(d)(3)(v) of the temporary regulations contains a guarantee of interest rule. This rule generally provides that if one or more partners guarantee the payment of more than 20 percent of the total interest that accrues on an otherwise nonrecourse partnership liability during its term, the loan is deemed to be recourse to those partners to the extent of the present value of the guaranteed future interest payments. The proposed regulations retain the guarantee of interest rule, but increase the threshold percentage from 20 percent to 25 percent to better coordinate the general rule with the safe harbor discussed below. The guarantee of interest rule applies when a partner or related person has guaranteed more than 25 percent of the total interest that accrues, and the rule continues to apply even if the total guaranteed interest falls below the initial 25 percent threshold. The proposed regulations also add a safe harbor, providing that a guarantee of interest for a period not in excess of the lesser of five years or one-third of the term of the loan is not subject to the general rule. Finally, the rule is clarified with respect to its application when the interest rate varies.

C. Valuation of Pledged Property

The proposed regulations revise the rule concerning the valuation of pledged assets in § 1.752–1T(d)(3)(ii) of the temporary regulations. Under the temporary regulations, the value of property with a readily ascertainable fair market value is recomputed from time to time over the life of the loan, but the value of property without a readily ascertainable fair market value is computed only at the time of the pledge. Under the proposed regulations, the value of all pledged property is the fair market value of the property at the time of the pledge.

D. De Minimis Rule

The de minimis rule in § 1.752–1T(d)(3)(vii) of the temporary regulations provides an exception to the general economic risk of loss rule. Under the de minimis rule, a partner is not treated as bearing the economic risk of loss with respect to a nonrecourse loan made by the partner or related person if the partner owns a ten percent or less interest in each item of income, gain, loss, deduction, or credit of the partnership and the loan constitutes qualified nonrecourse financing within the meaning of section 465(b)(6) (determined without regard to the type of activity financed). The proposed regulations expand this rule to include certain guarantees by partners or related persons. Under the expanded rule, a partner is not treated as bearing the economic risk of loss with respect to a guarantee of a partnership nonrecourse loan by the partner or related person if the guarantor's interest in each partnership item of income, gain, loss, deduction, or credit for any taxable year is ten percent or less, and the loan would meet the requirements of section 465(b)(6) (determined without regard to the type of activity financed) if the guarantor had made the loan to the partnership.

E. Partner's Share of Nonrecourse Liabilities

The proposed regulations require that the nonrecourse liabilities of a partnership be allocated among the partners first to reflect the partners' shares of any partnership minimum gain, then to reflect any tax gain that would be allocated to the partners under section 704(c), and finally in accordance with the partners' interest in partnership profits. Section 1.752–1T(e) of the temporary regulations provides, in part, that the partnership agreement may specify the partners' interests in partnership profits provided the interests so specified are reasonably consistent with allocations (which have substantial economic effect under the section 704(b) regulations) of some significant item of partnership income or gain. The proposed regulations retain this provision, but also provide an alternative under which nonrecourse liabilities in excess of those allocated to reflect partnership minimum gain and section 704(c) gain may be allocated among the partners in accordance with the manner in which it is reasonably expected that the deductions attributable to those nonrecourse liabilities will be allocated.

F. Effective Dates

Amendments to the effective dates of the temporary regulations are being issued concurrently with the proposed regulations. One amendment provides a transitional election allowing partnerships to elect to apply the temporary regulations to liabilities incurred or assumed by the partnership on or after December 28, 1991 and before January 1, 1992.

The proposed regulations are effective for liabilities incurred or assumed by the partnership on or after December 28, 1991. The proposed regulations provide taxpayers with the opportunity to elect to apply the regulations as of the beginning of the first taxable year of the partnership ending on or after December 28, 1991. In addition, the proposed regulations clarify that a termination of a partnership under section 708(b)(1)(B) will not cause any partnership liabilities incurred or assumed prior to the termination to be treated as incurred or assumed on the date of the termination.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805 (f) of the Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. Written comments must be received by September 9, 1991. A public hearing will be held on September 17, 1991, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by September 3, 1991. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Comments, requests to speak, and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, attn: CC:CORP:T:R (PS–49–91), room 5228, Washington, DC 20044. See notice of hearing published elsewhere in this issue of the **Federal Register**.

List of Subjects in 26 CFR 1.751–1 Through 1.755–2T

Income taxes.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR part 1 are as follows:

PART 1–INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§§ 1.752–0T through 1.752–4T [Removed]

Par. 2. Sections 1.752–0T through 1.752–4T are removed.

Par. 3. Sections 1.752–0 through 1.752–5 are added to read as follows:

§ 1.752–0 Table of Contents.

This section lists the captions that appear in §§ 1.752–1 through 1.752–5.

§ 1.752–1 Treatment of partnership liabilities.

(a) Definitions.
(1) Recourse liability defined.
(2) Nonrecourse liability defined.
(3) Related person.
(b) Increase in partner's share of liabilities.
(c) Decrease in partner's share of liabilities.
(d) Assumption of liability.
(e) Property subject to a liability.
(f) Netting of increases and decreases in liabilities resulting from same transaction.
(g) Sale or exchange of partnership interest.
(h) Bifurcation of partnership liabilities.

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Comments and Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. Written comments must be received by September 9, 1991. A public hearing will be held on September 17, 1991, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by September 3, 1991. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Comments, requests to speak, and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, attn: CC:CORP:T:R (PS–49–91), room 5228, Washington, DC 20044. See notice of hearing published elsewhere in this issue of the **Federal Register**.

List of Subjects in 26 CFR 1.751–1 Through 1.755–2T

Income taxes.

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Authority: 26 U.S.C. 7805 * * *

§§ 1.752–0T through 1.752–4T [Removed]

Par. 2. Sections 1.752–0T through 1.752–4T are removed.

Par. 3. Sections 1.752–0 through 1.752–5 are added to read as follows:

§ 1.752–0 Table of Contents.

This section lists the captions that appear in §§ 1.752–1 through 1.752–5.

§ 1.752–1 Treatment of partnership liabilities.

(a) Definitions.
(1) Recourse liability defined.
(2) Nonrecourse liability defined.
(3) Related person.
(b) Increase in partner's share of liabilities.
(c) Decrease in partner's share of liabilities.
(d) Assumption of liability.
(e) Property subject to a liability.
(f) Netting of increases and decreases in liabilities resulting from same transaction.
(g) Sale or exchange of partnership interest.
(h) Bifurcation of partnership liabilities.

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§ 1.752–2 Partner's share of recourse liabilities.

(a) In general.
(b) Obligation to make a payment.
(1) In general.
(2) Treatment upon deemed disposition.
(3) Obligations recognized.
(4) Contingent obligations.
(5) Reimbursement rights.
(6) Deemed satisfaction of obligation.
(c) Partner or related person as lender.
(1) In general.
(2) Wrapped debt.
(d) De minimis exceptions.
(1) Partner as lender.
(2) Partner as guarantor.
(e) Special rule for nonrecourse liability with interest guaranteed by a partner.
(1) In general.
(2) Computation of present value.
(3) Safe harbor.
(f) Examples.
(g) Time-value-of-money considerations.
(1) In general.
(2) Valuation of an obligation.
(3) Satisfaction of obligation with partner's promissory note.
(h) Partner providing property as security for partnership liability.
(1) Direct pledge.
(2) Indirect pledge.
(3) Valuation.
(4) Partner's promissory note.
(i) Treatment of recourse liabilities in tiered partnerships.
(j) Anti-abuse rules.
(1) In general.
(2) Arrangements tantamount to a guarantee.
(3) Plan to circumvent or avoid the regulations.
(4) Example.

§ 1.752–3 Partner's share of nonrecourse liabilities.

(a) In general.
(b) Examples.

§ 1.752–4 Special rules.

(a) Tiered partnerships.
(b) Related person definition.
(1) In general.
(2) Person related to more than one partner.
(i) In general.
(ii) Natural persons.
(iii) Related partner exception.
(iv) Special rule where entity structured to avoid related person status.
(A) In general.
(B) Ownership interest.
(C) Example.
(c) Limitation.
(d) Time of determination.

§ 1.752–5 Effective dates and transition rules.

(a) In general.
(b) Election.
(1) In general.
(2) Time and manner of election.
(c) Effect of section 708(b)(1)(B) termination on determining date liabilities are incurred or assumed.

§ 1.752–1 Treatment of Partnership Liabilities.

(a) *Definitions.* For purposes of section 752, the following definitions apply:

(1) *Recourse liability defined.* A partnership liability is a recourse liability to the extent that any partner or related person bears the economic risk of loss for that liability under § 1.752–2.

(2) *Nonrecourse liability defined.* A partnership liability is a nonrecourse liability to the extent that no partner or related person bears the economic risk of loss for that liability under § 1.752–2.

(3) *Related person.* Related person means a person having a relationship to a partner that is described in § 1.752–4(b).

(b) *Increase in partner's share of liabilities.* Any increase in a partner's share of partnership liabilities, or any increase in a partner's individual liabilities by reason of the partner's assumption of partnership liabilities, is treated as a contribution of money by that partner to the partnership.

(c) *Decrease in partner's share of liabilities.* Any decrease in a partner's share of partnership liabilities, or any decrease in a partner's individual liabilities by reason of the partnership's assumption of the individual liabilities of the partner, is treated as a distribution of money by the partnership to that partner.

(d) *Assumption of liability.* Except as otherwise provided in paragraph (e) of this section, a person is considered to assume a liability only to the extent that:

(1) The assuming person is personally obligated to pay the liability; and

(2) If a partner or related person assumes a partnership liability, the person to whom the liability is owed knows of the assumption and can directly enforce the partner's or related person's obligation for the liability, and no other partner or person that is a related person to another partner would bear the economic risk of loss for the liability immediately after the assumption.

(3) *Property subject to a liability.* If property is contributed by a partner to the partnership or distributed by the partnership to a partner and the property is subject to a liability of the transferor, the transferee is treated as having assumed the liability, to the extent that the amount of the liability does not exceed the fair market value of the property at the time of the contribution or distribution.

(f) *Netting of increases and decreases in liabilities resulting from same transaction.* If, as a result of a single transaction, a partner incurs both an increase in the partner's share of the partnership liabilities (or the partner's individual liabilities) and a decrease in the partner's share of the partnership liabilities (or the partner's individual liabilities), only the net decrease is treated as a distribution from the partnership and only the net increase is treated as a contribution of money to the partnership. Generally, the contribution to or distribution from a partnership of property subject to a liability or the termination of the partnership under section 708(b) will require that increases and decreases in liabilities associated with the transaction be netted to determine if a partner will be deemed to have made a contribution or received a distribution as a result of the transaction.

(g) *Sale or exchange of a partnership interest.* If a partnership interest is sold or exchanged, the reduction in the transferor partner's share of partnership liabilities is treated as an amount realized under section 1001 and the regulations thereunder. For example, if a partner sells an interest in a partnership for $750 cash and transfers to the purchaser the partner's share of partnership liabilities in the amount of $250, the seller realizes $1,000 on the transaction.

(h) *Bifurcation of partnership liabilities.* If one or more partners bears the economic risk of loss as to part, but not all, of a partnership liability represented by a single contractual obligation, then that liability is treated as two or more separate liabilities for purposes of section 752. The portion of the liability as to which one or more partners bear the economic risk of loss is a recourse liability and the remainder of the liability, if any, is a nonrecourse liability.

§ 1.752–2 Partner's share of recourse liabilities.

(a) *In general.* A partner's share of a recourse partnership liability equals the portion of that liability, if any, for which the partner or related person bears the economic risk of loss. The determination of the extent to which a partner bears the economic risk of loss for a partnership liability is made under the rules in paragraphs (b) through (j) of this section.

(b) *Obligation to make a payment*—(1) *In general.* Except as otherwise provided in this section, a partner bears the economic risk of loss for a partnership liability to the extent that, if the partnership constructively liquidated, the partner or related person would be obligated to make a payment to any person (or a contribution to the partnership) because that liability becomes due and payable and the partner or related person would not be entitled to reimbursement from another partner or person that is a related person to another partner. Upon a constructive liquidation, all of the following events are deemed to occur simultaneously:

(i) All of the partnership's liabilities become payable in full;

(ii) With the exception of property contributed to secure a partnership liability (see § 1.752–2(h)), all of the partnership's assets, including cash, have a value of zero;

(iii) The partnership disposes of all of its property in a fully taxable transaction for no consideration (except relief from liabilities for which the creditor's right to repayment is limited solely to one or more assets of the partnership);

(iv) All items of income, gain, loss, or deduction are allocated among the partners; and

(v) The partnership liquidates.

(2) *Treatment upon deemed disposition.* For purposes of paragraph (b)(1) of this section, gain or loss on the deemed disposition of the partnership's assets is computed in accordance with the following:

(i) If the creditor's right to repayment of a partnership liability is limited solely to one or more assets of the partnership, gain or loss is recognized in an amount equal to the difference between the amount of the liability that is extinguished by the deemed disposition and the tax basis in those assets.

(ii) A loss is recognized equal to the remaining tax basis of all of the partnership's assets not taken into account in paragraph (b)(2)(i) of this section.

(3) *Obligations recognized.* The determination of the extent to which a partner or related person has an obligation to make a payment under paragraph (b)(1) of this section is based on the facts and circumstances at the time of the determination. All statutory and contractual obligations relating to the partnership liability are taken into account for purposes of applying this section, including:

(i) Contractual obligations outside the partnership agreement such as guarantees, indemnifications, reimbursement agreements, and other obligations running directly to creditors or to other partners, or to the partnership;

(ii) Obligations to the partnership that are imposed by the partnership agreement, including the obligation to make a capital contribution and to restore a deficit capital account upon liquidation of the partnership; and

(iii) Payment obligations (whether in the form of direct remittances to another partner or a contribution to the partnership) imposed by state law, including the governing state partnership statute. To the extent that the obligation of a partner to make a payment with respect to a partnership liability is not recognized under this paragraph (b)(3), paragraph (b) of this section is applied as if the obligation did not exist.

(4) *Contingent obligations.* A payment obligation is disregarded if, taking into account all the facts and circumstances, the obligation is subject to contingencies that make it unlikely that the obligation will ever be discharged. If a payment obligation would arise at a future time after the occurrence of an event that is not determinable with reasonable certainty, the obligation is ignored until the event occurs.

(5) *Reimbursement rights.* A partner's or related person's obligation to make a payment with respect to a partnership liability is reduced to the extent that the partner or related person is entitled to reimbursement from another partner or a person who is a related person to another partner.

(6) *Deemed satisfaction of obligation.* For purposes of determining the extent to which a partner or related person has a payment obligation and the economic risk of loss, it is assumed that all partners and related persons who have obligations to make payments actually perform those obligations, irrespective of their actual net worth, unless the facts and circumstances indicate a plan to circumvent or avoid the obligation. See § 1.752–2(j).

(c) *Partner or related person as lender*—(1) *In general.* A partner bears the economic risk of loss for a partnership liability to the extent that the partner or a related person makes (or acquires an interest in) a nonrecourse loan to the partnership and the economic risk of loss for the liability is not borne by another partner.

(2) *Wrapped debt.* If a partnership liability is owed to a partner or related person and that liability includes (*i.e.*, is "wrapped" around) a nonrecourse obligation encumbering partnership property that is owed to another person, the partnership liability will be treated as two separate liabilities. The portion of the partnership liability corresponding to the wrapped debt is treated as a liability owed to another person.

(d) *De minimis exceptions*—(1) *Partner as lender.* The general rule contained in paragraph (c)(1) of this section does not apply if a partner or related person whose interest (directly or indirectly through one or more partnerships including the interest of any related person) in each item of partnership income, gain, loss, deduction, or credit for any taxable year is 10 percent or less, makes a loan to the partnership which constitutes qualified nonrecourse financing within the meaning of section 465(b)(6) (determined without regard to the type of activity financed).

(2) *Partner as guarantor.* The general rule contained in paragraph (b)(1) of this section does not apply if a partner or related person whose interest (directly or indirectly through one or more partnerships including the interest of any related person) in each item of partnership income, gain, loss, deduction, or credit for any taxable year is 10 percent or less, guarantees a loan that would otherwise be a nonrecourse loan of the partnership and which would constitute qualified nonrecourse financing within the meaning of section 465(b)(6) (without regard to the type of activity financed) if the guarantor had made the loan to the partnership.

(e) *Special rule for nonrecourse liability with interest guaranteed by a partner*—(1) *In general.* For purposes of this section, if one or more partners or related persons have guaranteed the payment of more than 25 percent of the total interest that will accrue on a partnership nonrecourse liability over its remaining term, and it is reasonable to expect that the guarantor will be required to pay substantially all of the guaranteed future interest if the partnership fails to do so, then the liability is treated as two separate partnership liabilities. If this rule applies, the partner or related person that has guaranteed the payment of interest is treated as bearing the economic risk of loss for the partnership liability to the extent of the present value of the guaranteed future interest payments. The remainder of the stated principal amount of the partnership liability constitutes a nonrecourse liability. Generally, in applying this rule, it is reasonable to expect that the guarantor will be required to pay substantially all of the guaranteed future interest if, upon a default in payment by the partnership, the lender can enforce the interest guaranty without foreclosing on the property and thereby extinguishing the underlying debt.

(2) *Computation of present value.* The present value of the guaranteed future interest payments is computed using a discount rate equal to either the interest rate stated in the loan documents, or if

interest is imputed under either section 483 or section 1274, the applicable federal rate, compounded semi-annually. The computation takes into account any payment of interest that the partner or related person may be required to make only to the extent that the interest will accrue economically (determined in accordance with section 446 and the regulations thereunder) after the date of the interest guarantee. If the loan document contains a variable rate of interest that is an interest rate based on current values of an objective interest index, the present value is computed on the assumption that the interest determined under the objective interest index on the date of the computation will remain constant over the term of the loan. The term "objective interest index" has the meaning given to it in section 1275 and the regulations thereunder (relating to variable rate debt instruments). Examples of an objective interest index include the prime rate of a designated financial institution, LIBOR (London Interbank Offered Rate), and the applicable federal rate under section 1274(d).

(3) *Safe harbor.* Paragraph (e) of this section does not apply to a partnership nonrecourse liability if the guarantee of interest by the partner or related person is for a period not in excess of the lesser of five years or one-third of the term of the liability.

(f) *Examples.* The following examples illustrate the principles of paragraphs (a) through (e) of this section.

Example 1: Determining when a partner bears the economic risk of loss. A and B form a general partnership with each contributing $100 in cash. The partnership purchases an office building on leased land for $1,000 from an unrelated seller, paying $200 in cash and executing a note to the seller for the balance of $800. The note is a general obligation of the partnership, *i.e.*, no partner has been relieved from personal liability. The partnership agreement provides that all items are allocated equally except that tax losses are specially allocated 90% to A and 10% to B and that capital accounts will be maintained in accordance with the regulations under section 704(b), including a deficit capital account restoration obligation on liquidation. In a constructive liquidation, the $800 liability becomes due and payable. All of the partnership's assets, including the building, are deemed to be worthless. The building is deemed sold for a value of zero. Capital accounts are adjusted to reflect the loss on the hypothetical disposition, as follows:

	A	B
Initial contribution	$100	$100
Loss on hypothetical sale	(900)	(100)
Total	($800)	$0

Other than the partners' obligation to fund negative capital accounts on liquidation, there are no other contractual or statutory payment obligations existing between the partners, the partnership and the lender. Therefore, $800 of the partnership liability is classified as a recourse liability because one or more partners bears the economic risk of loss for non-payment B has no share of the $800 liability since the constructive liquidation produces no payment obligation for B. A's share of the partnership liability is $800 because A would have an obligation in that amount to make a contribution to the partnership.

Example 2: Recourse liability; deficit restoration obligation. C and D each contribute $500 in cash to the capital of a new general partnership, CD. CD purchases property from an unrelated seller for $1,000 in cash and a $9,000 mortgage note. The note is a general obligation of the partnership, *i.e.*, no partner has been relived from personal liability. The partnership agreement provides that profits and losses are to be divided 40% to C and 60% D. C and D are required to make up any deficit in their capital accounts. In a constructive liquidation, all partnership assets are deemed to become worthless and all partnership liabilities become due and payable in full. The partnership is deemed to dispose of all its assets in a fully taxable transaction for no consideration. Capital accounts are adjusted to reflect the loss on the hypothetical disposition, as follows:

	C	D
Initial contribution	$500	$500
Loss on hypothetical sale	(4,000)	(6,000)
Total	($3,500)	($5,500)

C's capital account reflects a deficit that C would have to make up of $3,500 and D's capital account reflects a deficit that D would have to make up of $5,500. Therefore, the $9,000 mortgage note is a recourse liability because one or more partners bears the economic risk of loss for the liability. C's share of the recourse liability is $3,500 and D's share is $5,500.

Example 3: Guarantee by limited partner: partner deemed to satisfy obligation. E and F form a limited partnership. E, the general partner, contributes $2,000 and F, the limited partner, contributes $8,000 in cash to the partnership. The partnership agreement allocates losses 20% to E and 80% to F until F's capital account is reduced to zero, after which all losses are allocated to E. The partnership purchases depreciable property for $25,000 using its $10,000 cash and a $15,000 recourse loan from a bank. F guarantees payment of the $15,000 loan to the extent the loan remains unpaid after the bank has exhausted its remedies against the partnership. In a constructive liquidation, the $15,000 liability becomes due and payable. All of the partnership's assets, including the depreciable property, are deemed to be worthless. The depreciable property is deemed sold for a value of zero. Capital accounts are adjusted to reflect the loss on the hypothetical disposition, as follows:

	E	F
Initial contribution	$2,000	$8,000
Loss on hypothetical sale	(17,000)	(8,000)
Total	($15,000)	0

E, as a general partner, would be obligated by operation of law to make a net contribution to the partnership of $15,000. Because E is assumed to satisfy that obligation, it is also assumed that F would not have to satisfy F's guarantee. The $15,000 mortgage is treated as a recourse liability because one or more partners bears the economic risk of loss. E's share of the liability is $15,000, and F's share is zero. This would be so even if E's net worth at the time of the determination is less than $15,000, unless the facts and circumstances indicate a plan to circumvent or avoid E's obligation to contribute to the partnership.

Example 4: Partner guarantee with right of subrogation. G, a limited partner in the GH partnership, guarantees a portion of a partnership liability. The liability is a general obligation of the partnership, *i.e.*, no partner has been relieved from personal liability. If under state law G is subrogated to the rights of the lender, G would have the right to recover the amount G paid to the recourse lender from the general partners. Therefore, G does not bear the economic risk of loss for the partnership liability.

Example 5: Bifurcation of partnership liability; guarantee of part of nonrecourse liability. A partnership borrows $10,000, secured by a mortgage on real property. The mortgage note contains an exoneration clause which provides that in the event of default, the holder's only remedy is to foreclose on the property. The holder may not look to any other partnership asset or to any partner to pay the liability. However, to induce the lender to make the loan, a partner guarantees payment of $200 of the loan principal. The exoneration clause does not apply to the partner's guarantee. If the partner paid pursuant to the guarantee, the partner would be subrogated to the rights of the lender with respect to $200 of the mortgage debt, but the partner is not otherwise entitled to reimbursement from the partnership or any partner. For purposes of section 752, $200 of the $10,000 mortgage liability is treated as a recourse liability of the partnership and $9,800 is treated as a nonrecourse liability of the partnership. The partner's share of the recourse liability of the partnership is $200.

Example 6: Wrapped debt. I, an individual, purchases real estate from an unrelated seller for $10,000, paying $1,000 in cash and giving a $9,000 purchase mortgage note on which I has no personal liability and as to which the seller can look only to the property for satisfaction. At a time when the property is worth $15,000, I sells the property to a partnership in which I is a general partner. The partnership pays for the property with a partnership purchase money mortgage note of $15,000 on which neither the partnership nor any partner (or person related to a partner) has personal liability. The $15,000 mortgage note is wrapped debt that includes the $9,000 obligation to the original seller. The liability is a recourse liability to the extent of $6,000 because I is the creditor with respect to the loan and I bears the economic risk of loss for $6,000. I's share of the recourse liability is $6,000. The remaining $9,000 is treated as a partnership nonrecourse liability that is owed to the unrelated seller.

Example 7: Guarantee of interest by partner treated as part recourse and part nonrecourse. On January 1, 1992, a partnership obtains a $4,000,000 loan secured by a shopping center owned by the partnership. Neither the partnership nor any partner has any personal liability under the loan documents for repayment of the stated principal amount. Interest accrues at a 15 percent annual rate and is payable on December 31 of each year. The principal is payable in a lump sum on December 31, 2006. A partner guarantees payment of 50 percent of each interest payment required by the loan. The guarantee can be enforced without first foreclosing on the property. When the partnership obtains the loan, the present value (discounted at 15 percent, compounded annually) of the future interest payments is $3,508,422, and of the future principal payment is $491,578. If tested on that date, the loan would be treated as a partnership liability of $1,754,211 ($3,508,422 × .5) for which the guaranteeing partner bears the economic risk of loss and a partnership nonrecourse liability of $2,245,789 ($1,754,211 + $491,578).

Example 8: Contingent obligation not recognized. J and K form a general partnership with cash contributions of $2,500 each. J and K share partnership profits and losses equally. The partnership purchases an apartment building for its $5,000 of cash and a $20,000 nonrecourse loan from a commercial bank. The nonrecourse loan is secured by a mortgage on the building. The loan documents provide that the partnership will be liable for the outstanding balance of the loan on a recourse basis to the extent of any decrease in the value of the apartment building resulting from the partnership's failure properly to maintain the property. There are no facts that establish with reasonable certainty the existence of any liability on the part of the partnership (and its partners) for damages resulting from the partnership's failure properly to maintain the building. Therefore, no partner bears the economic risk of loss, and the liability constitutes a nonrecourse liability. Under § 1.752–3, J and K shares this nonrecourse liability equally because they share all profits and losses equally.

(g) *Time-value-of-money considerations*—(1) *In general.* The extent to which a partner or related person bears the economic risk of loss is determined by taking into account any delay in the time when a payment or contribution obligation with respect to a partnership liability is to be satisfied. If a payment obligation with respect to a partnership liability is not required to be satisfied within a reasonable time after the liability becomes due and payable, or if the obligation to make a contribution to the partnership is not required to be satisfied before the later of—

(i) the end of the year in which the partner's interest is liquidated, or

(ii) 90 days after the liquidation, the obligation is recognized only to the extent of the value of the obligation.

(2) *Valuation of an obligation.* The value of a payment or contribution obligation that is not required to be satisfied within the time period specified in paragraph (g)(1) of this section equals the entire principal balance of the obligation only if the obligation bears interest equal to or greater than the applicable federal rate under section 1274(d) at the time of valuation, commencing on—

(i) In the case of a payment obligation, the date that the partnership liability to a creditor or other person to whom the obligation relates becomes due and payable, or

(ii) In the case of a contribution obligation, the date of the liquidation of the partner's interest in the partnership.

If the obligation does not bear interest at a rate at least equal to the applicable federal rate at the time of valuation, the value of the obligation is discounted to the present value of all payments due from the partner or related person (*i.e.*, the imputed principal amount computed under section 1274(b)). For purposes of making this present value determination, the partnership is deemed to have constructively liquidated as of the date on which the payment obligation is valued and the payment obligation is assumed to be a debt instrument subject to the rules of section 1274 (*i.e.*, the debt instrument is treated as if it were issued for property at the time of the valuation).

(3) *Satisfaction of obligation with partner's promissory note.* An obligation is not satisfied by the transfer to the obligee of a promissory note by a partner or related person unless the note is readily tradeable on an established securities market.

(h) *Partner providing property as security for partnership liability*—(1) *Direct pledge.* A partner is considered to bear the economic risk of loss for a partnership liability to the extent of the value of any of the partner's separate property (other than an interest in the partnership) that is pledged as security for the partnership liability.

(2) *Indirect pledge.* A partner is considered to bear the economic risk of loss for a partnership liability to the extent of the value of any property that the partner contributes to the partnership solely for the purpose of securing a partnership liability. Contributed property is treated as contributed solely for the purpose of securing a partnership liability if substantially all of the items of income, gain, loss, and deduction attributable to the contributed property are allocated to the contributing partner, and this allocation is greater than the partner's share of any other significant item of partnership income, gain, loss, or deduction.

(3) *Valuation.* The extent to which a partner bears the economic risk of loss as a result of a direct pledge described in paragraph (h)(1) of this section or an indirect pledge described in paragraph (h)(2) of this section is limited to the fair market value of the property at the time of the pledge or contribution.

(4) *Partner's promissory note.* For purposes of paragraphs (h)(1) and (h)(2) of this section, a promissory note of the partner or related person that is pledged or contributed to the partnership shall not be taken into account unless the note is readily tradeable on an established securities market.

(i) *Treatment of recourse liabilities in tiered partnerships.* If a partnership (the "upper-tier partnership") owns (directly or indirectly through one or more partnerships) an interest in another partnership (the "subsidiary partnership"), the liabilities of the subsidiary partnership are allocated to the upper-tier partnership in an amount equal to the sum of the following—

(1) The amount of the economic risk of loss that the upper-tier partnership bears with respect to the liabilities; and

(2) Any other amount of the liabilities with respect to which partners of the upper-tier partnership bear the economic risk of loss.

(j) *Anti-abuse rules*—(1) *In general.* An obligation of a partner or related person to make a payment may be disregarded or treated as an obligation of another person for purposes of this section if facts and circumstances indicate that a principal purpose of the arrangement between the parties is to eliminate the partner's economic risk of loss with respect to that obligation or create the appearance of the partner or related person bearing the economic risk of loss when, in fact, the substance of the arrangement is otherwise. Circumstances with respect to which a payment obligation may be disregarded include, but are not limited to, the situations described in paragraphs (j) (2) and (j) (3) of this section.

(2) *Arrangements tantamount to a guarantee.* Irrespective of the form of a contractual obligation, a partner is considered to bear the economic risk of loss with respect to a partnership

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(3) *Valuation.* The extent to which a partner bears the economic risk of loss as a result of a direct pledge described in paragraph (h)(1) of this section or an indirect pledge described in paragraph (h)(2) of this section is limited to the fair market value of the property at the time of the pledge or contribution.

(4) *Partner's promissory note.* For purposes of paragraphs (h)(1) and (h)(2) of this section, a promissory note of the partner or related person that is pledged or contributed to the partnership shall not be taken into account unless the note is readily tradeable on an established securities market.

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(1) The amount of the economic risk of loss that the upper-tier partnership bears with respect to the liabilities; and

(2) Any other amount of the liabilities with respect to which partners of the upper-tier partnership bear the economic risk of loss.

(j) *Anti-abuse rules*—(1) *In general.* An obligation of a partner or related person to make a payment may be disregarded or treated as an obligation of another person for purposes of this section if facts and circumstances indicate that a principal purpose of the arrangement between the parties is to eliminate the partner's economic risk of loss with respect to that obligation or create the appearance of the partner or related person bearing the economic risk of loss when, in fact, the substance of the arrangement is otherwise. Circumstances with respect to which a payment obligation may be disregarded include, but are not limited to, the situations described in paragraphs (j) (2) and (j) (3) of this section.

(2) *Arrangements tantamount to a guarantee.* Irrespective of the form of a contractual obligation, a partner is considered to bear the economic risk of loss with respect to a partnership

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liability, or a portion thereof, to the extent that:

(i) The partner or related person undertakes one or more contractual obligations so that the partnership may obtain a loan;

(ii) The contractual obligations of the partner or related person eliminate substantially all the risk to the lender that the partnership will not satisfy its obligations under the loan; and

(iii) One of the principal purposes of using the contractual obligations is to attempt to permit partners (other than those who are directly or indirectly liable for the obligation) to include a portion of the loan in the basis of their partnership interests. The partners are considered to bear the economic risk of loss for the liability in accordance with their relative economic burdens for the liability pursuant to the contractual obligations. For example, a lease between a partner and a partnership which is not on commercially reasonable terms may be tantamount to a guarantee by the partner of a partnership liability.

(3) *Plan to circumvent or avoid the regulations.* An obligation of a partner to make a payment is not recognized if the facts and circumstances evidence a plan to circumvent or avoid the obligation.

(4) *Example.* The following example illustrates the principle of paragraph (j) (3) of this section.

Example: Plan to circumvent or avoid obligation. A and B form a general partnership. A, a corporation, contributes $20,000 and B contributes $80,000 to the partnership. A is obligated to restore any deficit in its partnership capital account. The partnership agreement allocates losses 20% to A and 80% to B until B's capital account is reduced to zero, after which all losses are allocated to A. The partnership purchases depreciable property for $250,000 using its $100,000 cash and a $150,000 recourse loan from a bank. B guarantees payment of the $150,000 loan to the extent the loan remains unpaid after the bank has exhausted its remedies against the partnership. A is a subsidiary, formed by a parent of a consolidated group, with capital limited to $20,000 to allow the consolidated group to enjoy the tax losses generated by the property while at the same time limiting its monetary exposure for such losses. These facts, when considered together with B's guarantee, indicate a plan to circumvent or avoid A's obligation to contribute to the partnership. The rules of section 752 must be applied as if A's obligation to contribute did not exist. Accordingly, the $150,000 liability is a recourse liability that is allocated entirely to B.

§ 1.752–3 Partner's share of nonrecourse liabilities.

(a) *In general.* A partner's share of the nonrecourse liabilities of a partnership equals the sum of paragraphs (a) (1) through (a) (3) of this section as follows—

(1) The partner's share of partnership minimum gain determined in accordance with the rules of section 704 (b) and the regulations thereunder;

(2) The amount of any taxable gain that would be allocated to the partner under section 704 (c) (or in the same manner as section 704 (c) in connection with a revaluation of partnership property) if the partnership disposed of (in a taxable transaction) all partnership property subject to one or more nonrecourse liabilities of the partnership in full satisfaction of the liabilities and for no other consideration; and

(3) The partner's share of the excess nonrecourse liabilities (those not allocated under paragraphs (a) (1) and (a) (2) of this section) of the partnership as determined in accordance with the partner's share of partnership profits. The partner's interest in partnership profits is determined by taking into account all facts and circumstances relating to the economic arrangement of the partners. The partnership agreement may specify the partners' interests in partnership profits for purposes of allocating excess nonrecourse liabilities provided the interests so specified are reasonably consistent with allocations (that have substantial economic effect under the section 704(b) regulations) of some other significant item of partnership income or gain. Alternatively, excess nonrecourse liabilities may be allocated among the partners in accordance with the manner in which it is reasonably expected that the deductions attributable to those nonrecourse liabilities will be allocated.

(b) *Examples.* The following examples illustrate the principles of paragraph (a) of this section.

Example 1: Partner's share of nonrecourse liabilities. The AB partnership purchases depreciable property for a $1,000 purchase money note that is a nonrecourse liability under the rules of this section. Assume that this is the only nonrecourse liability of the partnership, and that no principal payments are due on the purchase money note for a year. The partnership agreement provides that all items of income, gain, loss, and deduction are allocated equally. Immediately after purchasing the depreciable property, the partners share the nonrecourse liability equally because they have equal interests in partnership profits. A and B are each treated as if they contributed $500 to the partnership to reflect each partners's increase in his or her share of partnership liabilities (from $0 to $500). The minimum gain with respect to an item of partnership property subject to a nonrecourse liability equals the amount of gain that would be recognized if the partnership disposed of the property in full satisfaction of the nonrecourse liability and for no other consideration. Therefore, if the partnership claims a depreciation deduction of $200 for the depreciable property for the year it acquires that property, partnership minimum gain for the year will increase by $200 (the excess of the $1,000 nonrecourse liability over the $800 adjusted tax basis of the property). See § 1.704–1T (b) (4) (iv (*c*). A and B each have a $100 share of partnership minimum gain at the end of that year because the depreciation deduction is treated as a nonrecourse deduction. See § 1.704–1T (b) (4) (iv) (*b*) and (*f*). Accordingly, at the end of that year, A and B are allocated $100 each of the nonrecourse liability to match their shares of partnership minimum gain. The remaining $800 of the nonrecourse liability will be allocated equally between A and B ($400 each).

Example 2: Excess nonrecourse liabilities allocated consistently with reasonably expected deductions. The facts are the same as in *Example 1* except that the partnership agreement provides that depreciation deductions will be allocated to A. The partners agree to allocated excess nonrecourse liabilities in accordance with the manner in which it is reasonably expected that the deductions attributable to those non recourse liabilities will be allocated. Assuming that the allocation of all of the depreciation deductions to A is valid under section 704(b), immediately after purchasing the depreciable property, A's share of the nonrecourse liability is $1,000. Accordingly, A is treated as if A contributed $1,000 to the partnership.

§ 1.752–4 Special rules.

(a) *Tiered partnerships.* An upper-tier partnership's share of the liabilities of a subsidiary partnership (other than any liability of the subsidiary partnership that is owed to the upper-tier partnership) is treated as liabilities of the upper-tier partnership for purposes of applying section 752 and the regulations thereunder to the partners of the upper-tier partnership.

(b) *Related person definition*—(1) *In general.* A person is related to a partner if the person and the partner bear a relationship to each other that is specified in sections 267(b) or 707(b)(1), subject to the following modifications:

(i) Substitute "80 percent or more" for "more than 50 percent" each place it appears in those sections;

(ii) A person's family is determined by excluding brothers and sisters; and

(iii) Disregard sections 267(e)(1) and 267(f)(1)(A).

(2) *Person related to more than one partner*—(i) *In general.* If, in applying the related person rules in paragraph (b)(1) of this section, a person is related to more than one partner, paragraph (b)(1) of this section is applied by treating the person as related only to the partner with whom there is the highest percentage of related ownership. If two or more partners have the same

percentage of related ownership and no other partner has a greater percentage, the liability is allocated equally among the partners having the equal percentages of related ownership.

(ii) *Natural persons.* For purposes of determining the percentage of related ownership between a person and a partner, natural persons who are related by virtue of being members of the same family are treated as having a percentage relationship of 100 percent with respect to each other.

(iii) *Related partner exception.* Notwithstanding paragraph (b)(1) of this section (which defines related person), persons owning interests directly or indirectly in the same partnership are not treated as related persons for purposes of determining the economic risk of loss borne by each of them for the liabilities of the partnership. This paragraph (iii) does not apply when determining a partner's interest under the de minimis rules in § 1.752–2(d).

(iv) *Special rule where entity structured to avoid related persons status*—(A) *In general.* If—

(*1*) A partnership liability is owed to or guaranteed by another entity that is a partnership, an S corporation, a C corporation, or a trust;

(*2*) A partner or related person owns (directly or indirectly) a 20 percent or more ownership interest in the other entity; and

(*3*) A principal purpose of having the other entity act as a lender or guarantor of the liability was to avoid the determination that the partner that owns the interest bears the economic risk of loss for federal income tax purposes for all or part of the liability; then the partner is treated as holding the other entity's interest as a creditor or guarantor to the extent of the partner's or related person's ownership interest in the entity.

(B) *Ownership interest.* For purposes of paragraph (b)(2)(iv)(A) of this section, a person's ownership interest in:

(*1*) a partnership equals the partner's highest percentage interest in any item of partnership loss or deduction for any taxable year;

(*2*) an S corporation equals the percentage of the outstanding stock in the S corporation owned by the shareholder;

(*3*) a C corporation equals the percentage of the fair market value of the issued and outstanding stock owned by the shareholder; and

(*4*) a trust equals the percentage of the actuarial interests owned by the beneficial owner of the trust.

(C) *Example. Entity structured to avoid related person status.* A, B, and C form a general partnership, ABC. A, B, and C equal partners, each contributing $1,000 to the partnership. A and B want to loan money to ABC and have the loan treated as nonrecourse for purposes of section 752. A and B form partnership AB to which each contributes $50,000. A and B share losses equally in partnership AB. Partnership AB loans partnership ABC $100,000 on a nonrecourse basis secured by the property ABC buys with the loan. Under these facts and circumstances, A and B bear the economic risk of loss with respect to the partnership liability equally based on their percentage interest in losses of partnership AB.

(c) *Limitation.* The amount of an indebtedness is taken into account only once, even though a partner (in addition to the partner's liability for the indebtedness as a partner) may be separately liable therefor in a capacity other than as a partner.

(d) *Time of determination.* A partner's share of partnership liabilities must be determined whenever the determination is necessary in order to determine the tax liability of the partner or any other person. See § 1.705–1(a) for rules regarding when the adjusted basis of a partner's interest in the partnership must be determined.

§ 1.752–5 Effective dates and transition rules.

(a) *In general.* Unless a partnership makes an election under paragraph (b)(1) of this section to apply the provisions of §§ 1.752–1 through 1.752–4 earlier, §§ 1.752–1 through 1.752–4 apply to any liability incurred or assumed by a partnership on or after December 28, 1991, other than a liability incurred or assumed by the partnership pursuant to a written binding contract in effect prior to December 28, 1991 and at all times thereafter.

(b) *Election*—(1) *In general.* A partnership may elect to apply the provisions of §§ 1.752–1 through 1.752–4 as of the beginning of the first taxable year of the partnership ending on or after December 28, 1991.

(2) *Time and manner of election.* An election under this paragraph (b) is made by attaching a written statement to the partnership return for the first taxable year of the partnership ending on or after December 28, 1991. The written statement must include the name, address, and taxpayer identification number of the partnership making the statement and contain a declaration that an election is being made under this paragraph (b).

(c) *Effect of section 708(b)(1)(B) termination on determining date liabilities are incurred or assumed.* For purposes of applying this section, a termination of the partnership under section 708(b)(1)(B) will not cause partnership liabilities incurred or assumed prior to the termination to be treated as incurred or assumed on the date of the termination.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91–17947 Filed 7–26–91; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 1

[PS–229–84 and PS–049–91]

RIN 1545–AP75 and 1545–AP76

Treatment of Partnership Liabilities; Public Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing relating to the treatment of partnership liabilities. These regulations reflect changes to the applicable tax law made by section 79 of the Tax Reform Act of 1984.

DATES: The public hearing will be held on September 17, 1991, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by September 3, 1991.

ADDRESSES: The public hearing will be in the Internal Revenue Building, Second Floor, room 2615, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (PS–229–84 & PS–49–91), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Felicia A. Daniels of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–566–3935 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 752 of the Internal Revenue Code. The proposed regulations appear in the proposed rules section of this issue of the **Federal Register.**

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the

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Commissioner of Internal Revenue.

[FR Doc. 91-17947 Filed 7-26-91; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 1

[PS-229-84 and PS-049-91]

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The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Monday, September 3, 1991, an outline of oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Building until 9:15 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of the Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91-17948 Filed 7-26-91; 2:27 pm]

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federal register

Wednesday
July 31, 1991

Part VII

Office of Management and Budget

Budget Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith report one proposed rescission totaling $5,000,000 and one revised deferral of budget authority now totaling $127,036,000. Including the revised deferral, funds reported as withheld now total $10.3 billion.

The proposed rescission affects the Department of Defense. The deferral affects the Department of State. The details of the deferral and proposed rescission are contained in the attached report.

The White House,
July 24, 1991.

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The White House,
July 24, 1991.

BILLING CODE 3110-01-M

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

RESCISSION NO.	ITEM	BUDGET AUTHORITY
	Department of Defense:	
	Research, Development, Test, and Evaluation:	
D91-30	Research, development, test, and evaluation, Defense Agencies	5,000
	Total rescissions	5,000

DEFERRAL NO.	ITEM	BUDGET AUTHORITY
	Department of State:	
	Bureau for Refugee Programs:	
D91-6B	United States emergency refugee and migration fund	127,036
	Total deferral	127,036

SUMMARY OF SPECIAL MESSAGES
FISCAL YEAR 1991
(in thousands of dollars)

	RESCISSIONS	DEFERRALS
Sixth special message:		
New items	5,000	---
Revisions to previous special messages	---	68,000
Effects of the Sixth special message	5,000	68,000
Amounts from previous special messages	4,854,251	10,192,836
TOTAL amount proposed to date in all special messages	4,859,251	10,260,836

R91-30

DEPARTMENT OF DEFENSE - MILITARY

Research, Development, Test, and Evaluation

Research, development, test, and evaluation, Defense Agencies

Of the funds made available under this heading in Public Law 101-511, $5,000,000 are rescinded: Provided, That Subsection (g) of Section 822 of P.L. 101-510 is repealed.

Rescission Proposal No. R91-30

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense	New budget authority....... 9,079,201,000 (P.L. 101-511)
BUREAU: Research, Development, Test, and Evaluation	Other budgetary resources.. 810,772,202
Appropriation title and symbol: Research, development, test, and evaluation, Defense Agencies 971/20400	Total budgetary resources... 9,889,973,202
	Amount proposed for rescission...................... 5,000,000
OMB identification code: 97-0400-0-1-051	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other ______
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☒ Multi-year September 30, 1992 (expiration date) ☐ No-Year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other ______

JUSTIFICATION: This appropriation provides for basic and applied scientific research, development, test, and evaluation, including maintenance, rehabilitation, lease and operation of facilities and equipment. The funds proposed for rescission were made available for initial operation of the Critical Technologies Institute, a quasi-governmental organization chaired by the Director of the Office of Science and Technology Policy (OSTP), to conduct analyses of critical technology issues. The funds are proposed for rescission based on the findings and recommendations of the Director of OSTP that the Institute is both: (1) unnecessary, in light of other on-going Administration activities with respect to critical technologies and (2) unworkable, as authorized, because it cannot participate effectively in policy development.

ESTIMATED PROGRAM EFFECT: The DoD's ability to accomplish its mission successfully would not be affected by this rescission proposal because the purpose of the Critical Technologies Institute is not directly related to the DoD mission.

OUTLAY EFFECT: (in thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
8,471,060	8,468,460	-2,600	-1,925	-345	-95	...	...

Deferral No. D91-6B

Supplemental Report
Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D91-6A transmitted to Congress on January 9, 1991.

This revision to a deferral of the Department of State's Emergency refugee and migration assistance fund increases the amount previously reported as deferred from $59,036,000 to $127,036,000. This increase of $68,000,000 results from the withholding of funds made available by the Dire Emergency Supplemental Appropriations Act (P.L. 102-55). Of the $127,036,000 reported as deferred, $54,683,350 has been made available, making the current deferral $72,352,650.

Deferral No. 91-6B

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of State	New budget authority..............* $ 103,000,000 (P.L. 101-513 and 102-55)
BUREAU: Bureau of Refugee Programs	Other budgetary resources...... * 26,202,650
Appropriation title and symbol: United States emergency refugee and migration assistance fund 1/ 11X0040	Total budgetary resources....... * 129,202,650
	Amount to be deferred: Part of year........................2/ * $ 127,036,000 Entire year.............................
OMB identification code: 11-0040-0-1-151	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act ☐ Other
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multi-year: (expiration date) ☒ No-Year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

JUSTIFICATION: Section 501(a) of the Foreign Relations Authorization Act, 1976 (Public Law 94-141) and Section 414(b) (1) of the Refugee Act of 1980 (Public Law 96-212) amended Section 2(c) of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2601) by authorizing a fund to enable the President to provide emergency assistance for unexpected urgent refugee and migration needs.

Executive Order No. 11922 of June 16, 1976, allocated all funds appropriated to the President for the Emergency Fund to the Secretary of State but reserved for the President the determination of assistance to be furnished and the designation of refugees to be assisted by the Fund.

These funds have been deferred pending Presidential decisions required by Executive Order No. 11922. Funds will be released as the President determines assistance to be furnished and designates refugees to be assisted by the Fund. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1990 (D90-6B).

2/ The deferred amount has been reduced to $72,352,650 due to subsequent releases.

* Revised from previous report.

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UTHORITY
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dget authority..............* $	103,000,000
-513 and 102-55)	
dgetary resources...... *	26,202,650
dgetary resources....... *	129,202,650
o be deferred:	
year........................2/ * $	127,036,000
ear.............................	________
thority (in addition to sec. 1013):	
Antideficiency Act	
Other	________
udget authority:	
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Authorization Act, 1976 (Public Law 94-141) and
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authorizing a fund to enable the President to
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H.J. Res. 279/Pub. L. 102–74

To declare it to be the policy of the United States that there should be a renewed and sustained commitment by the Federal Government and the American people to the importance of adult education. (July 26, 1991; 105 Stat. 363; 2 pages) Price: $1.00

H.R. 427/Pub. L. 102–75

To disclaim any interests of the United States in certain lands on San Juan Island, Washington, and for other purposes. (July 26, 1991; 105 Stat. 365; 3 pages) Price: $1.00

H.R. 998/Pub. L. 102–76

To designate the building in Vacherie, Louisiana, which houses the primary operations of the United States Postal Service as the "John Richard Haydel Post Office Building". (July 26, 1991; 105 Stat. 368; 1 page) Price: $1.00

H.R. 2347/Pub. L. 102–77

To redesignate the Midland General Mail Facility in Midland, Texas, as the "Carl O. Hyde General Mail Facility", and for other purposes. (July 26, 1991; 105 Stat. 369; 1 page) Price: $1.00

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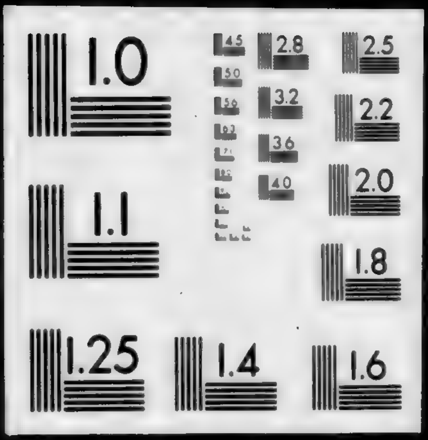
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Rules and Regulations

Federal Register
Vol. 56, No. 148
Thursday, August 1, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 581

Processing Garnishment Orders for Child Support and/or Alimony

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is amending its regulations concerning the processing of garnishment orders for child support and/or alimony. The amendments significantly broaden the conditions under which compensation received from the Department of Veterans Affairs will be subject to garnishment. The amendments also clarify the status for purposes of garnishment of Supplemental Security Income (SSI) benefits paid by the Social Security Administration. OPM is also making additional technical changes.

DATES: These amendments will become effective on September 3, 1991.

FOR FURTHER INFORMATION CONTACT: Murray M. Meeker (202) 606–1980, or FTS 266–1980.

SUPPLEMENTARY INFORMATION: On September 14, 1990, OPM published a notice of proposed rulemaking (55 FR 37881). As explained in that notice, on December 19, 1989, the Office of Legal Counsel (OLC) of the Department of Justice, issued an opinion concerning compensation received from the Department of Veterans Affairs (VA). The OLC's opinion concluded that OPM's regulations were too narrow concerning the garnishment of VA compensation. This amendment, consistent with the OLC opinion, significantly broadens the circumstances in which VA compensation will be subject to garnishment. The September 14, 1990, notice also proposed an amendment to clarify the fact that Supplemental Security Income (SSI) benefits under the Social Security Act are not remuneration for employment and, therefore, are not subject to garnishment. OPM previously had been advised by the Department of Health and Human Services and the Center on Children and the Law of the American Bar Association that a State court in Tennessee had held that SSI benefits were subject to garnishment, which OPM believed was in error.

OPM received three comments. The Director of a State agency in New Jersey wrote in support of both proposals. The Managing Attorney of a legal service office in Tennessee submitted a written comment which expressed agreement with the proposed amendment concerning SSI benefits and subsequently notified us that the Supreme Court of Tennessee had issued a unanimous opinion in which the Tennessee Supreme Court expressly referred to OPM's proposed clarifying regulation, noted the conflict between the lower Tennessee court decision and contrary decisions issued in Wisconsin and New York, and concluded that SSI benefits are not remuneration for employment and thus not subject to garnishment under Federal law. *Tennessee Department of Human Services, ex. rel.* v. *Young*, 802 S.W.2d 594 (Tenn. Sup. Ct. 1990).

While several individuals, including both State and Federal officials, orally requested information concerning the status of the proposed amendment regarding garnishment of VA compensation, only one of these individuals actually commented concerning the proposal, explaining that the proposed amendment was inconsistent because it applied to obligors "in receipt of" military retired pay who had "totally waived" their military retired pay. In response to this comment, we have amended 5 CFR 581.103(c)(6)(iv), the regulatory provision concerning the garnishment of VA benefits, in an effort to avoid any confusion that otherwise might occur if there were reference to a total waiver and to the provision that the obligor be in receipt of military retired pay.

The Department of Veterans Affairs and several individuals have requested that OPM expedite the publication of this notice of final rulemaking. OPM, therefore, has determined that it will not revise the list of designated agents in Appendix A at this time.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have significant economic impact on a substantial number of small entities because their effects are limited primarily to Federal employees.

List of Subjects in 5 CFR Part 581

Alimony, Child welfare, Government employees, Wages.

U.S. Office of Personnel Management.
Constance Berry Newman,
Director.

Accordingly, OPM is amending 5 CFR part 581 as follows:

PART 581—PROCESSING GARNISHMENT ORDERS FOR CHILD SUPPORT AND/OR ALIMONY

1. The authority citation for part 581 continues to read as follows:

Authority: 42 U.S.C. 659, 661–662; 15 U.S.C. 1673; 5 U.S.C. 8437; E.O. 12105.

2. In § 581.103 paragraphs (c) and (c)(6) introductory text and paragraph (c)(6)(iv) are revised to read as follows:

§ 581.103 Moneys which are subject to garnishment.

* * * * *

(c) For obligors generally:

* * * * *

(6) *Exceptions.* Remuneration would not include:

* * * * *

(iv) Any payment by the Department of Veterans Affairs as compensation for a service-connected disability or death, except any compensation paid by the Department of Veterans Affairs to a former member of the Armed Forces where the former member has waived either the entire amount or a portion of his/her retired/retainer pay in order to receive such compensation. In this case, only that part of the Department of Veterans Affairs payment that is in lieu of the waived retired/retainer pay is subject to garnishment.

3. Section 581.104 is amended by revising paragraphs (h); introductory

text, (h)(3) and (i) and by adding paragraphs (j) and (k) to read as follows:

§ 581.104 Moneys which are not subject to garnishment.

* * * * *

(h) Reimbursement for expenses incurred by an individual in connection with his/her employment, or allowances in lieu thereof, and other payments and allowances, including, but not limited to:

* * * * *

(3) In the case of volunteers serving under either the Domestic Volunteer Service Act or the Peace Corps Act, all allowances, including, but not limited to, readjustment allowances, stipends, and reimbursements for out-of-pocket expenses.

* * * * *

(i) Moneys due a deceased employee obligor where the amounts are reimbursement for expenses incurred by the deceased employee in connection with his/her employment, or allowances in lieu thereof, including:

(1) Per diem instead of subsistence, mileage, and amounts due in reimbursement of travel expenses, including incidental and miscellaneous expenses in connection therewith;

(2) Allowances on change of official station;

(3) Quarters allowances; and

(4) Cost-of-living allowances (COLA), when applicable as a result of the deceased employee obligor's having been in a foreign area or stationed outside of the continental United States or in Alaska.

(j) Amounts due for payment of cash awards for employees' suggestions.

(k) Supplemental Security Income (SSI) payments made pursuant to sections 1381 et seq., of title 42 of the United States Code (title XVI of the Social Security Act).

[FR Doc. 91–18247 Filed 7–31–91; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 318 and 354

[Docket No. 91-113]

User Fees—Hawaii and Puerto Rico; Postponement of Effective Date

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; postponement of effective date.

SUMMARY: We are postponing until October 1, 1991, the effective date for the final rule published on April 23, 1991 (56 FR 18496–18502, Docket Number 91–054) which was previously scheduled to become effective on August 1, 1991. The rule established user fees for agricultural quarantine and inspection services we provide in connection with the departure of passengers from Puerto Rico and Hawaii on certain domestic airline flights.

EFFECTIVE DATE: Effective July 30, 1991, APHIS is postponing the effective date of the final rule published on April 23, 1991, (56 FR 18496–18502, Docket Number 91–054) until October 1, 1991.

FOR FURTHER INFORMATION CONTACT: Charles A. Havens, Chief Operations Officer, Port Operations, PPQ, APHIS, USDA, Federal Building, room 635, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8295.

SUPPLEMENTARY INFORMATION:

Background

On April 23, 1991 (56 FR 18496–18502, Docket Number 91–054), we published a final rule under authority of 31 U.S.C. 9701 establishing user fees for agricultural quarantine and inspection (AQI) services provided in connection with the departure of passengers from Puerto Rico and Hawaii on certain domestic airline flights. None of the fees collected can be credited directly to the Animal and Plant Health Inspection Service (APHIS) but must be deposited in the general fund of the U.S. Treasury. The rule was scheduled to become effective August 1, 1991.

We have determined that affected parties require additional time to address fee implementation concerns. Therefore, we are postponing the August 1 effective date until October 1, 1991.

Accordingly, the effective date for the amendments to 7 CFR parts 318 and 354, published at 56 FR 18496–18502 on April 23, 1991, which were scheduled to become effective on August 1, 1991, is postponed until October 1, 1991.

Authority for Part 318: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, 164a, 167; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(c).

Authority for Part 354: 7 U.S.C. 2260, 21 U.S.C. 136 and 136a, 31 U.S.C. 9701, 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 30th day of July 1991.

Robert Melland,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–18396 Filed 7–30–91; 2:13 pm]

BILLING CODE 3410-34-M

Federal Crop Insurance Corporation

7 CFR Part 401

[Amendment No. 65; Doc. No. 8291S]

General Crop Insurance Regulations; Soybean Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby adopts, as a final rule, an interim rule which was published in the **Federal Register** on December 11, 1990, at 55 FR 50812. The interim rule amended the Soybean Endorsement (7 CFR 401.117) to provide conditions for the retention of premium reduction based on good insuring experience. The intended effect of this rule is to restore provisions to the Soybean Endorsement that set out conditions to be met by eligible insureds for the retention of premium discount earned through good insuring experience.

DATES: This final rule is effective on August 1, 1991.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of the Soybean Endorsement regulations affected by this rule under those procedures. The sunset review date established is October 1, 1992.

James E. Cason, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

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318: 7 U.S.C. 150bb,
.61, 162, 164a, 167; 31
17, 2.51, and 371.2(c).

354: 7 U.S.C. 2260, 21
31 U.S.C. 9701, 49 U.S.C.
, and 371.2(c).

on, DC, this 30th day of

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led 7–30–91; 2:13 pm]

Federal Crop Insurance Corporation

7 CFR Part 401

[Amendment No. 65; Doc. No. 8291S]

General Crop Insurance Regulations; Soybean Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby adopts, as a final rule, an interim rule which was published in the **Federal Register** on December 11, 1990, at 55 FR 50812. The interim rule amended the Soybean Endorsement (7 CFR 401.117) to provide conditions for the retention of premium reduction based on good insuring experience. The intended effect of this rule is to restore provisions to the Soybean Endorsement that set out conditions to be met by eligible insureds for the retention of premium discount earned through good insuring experience.

DATES: This final rule is effective on August 1, 1991.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of the Soybean Endorsement regulations affected by this rule under those procedures. The sunset review date established is October 1, 1992.

James E. Cason, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On November 21, 1989, FCIC published a final rule at 54 FR 48071 amending the Soybean crop insurance policy with respect to: (1) Allowing a discount to those who elected not to divide their insured acreage into optional units; and (2) removing restrictions in existing unit division language to standardize the unit structure for soybeans. In this rule, a portion of section 3 of the policy dealing with criteria for premium reduction eligibility was inadvertently omitted. In order to restore the missing criteria which were mistakenly removed in the rule published at 54 FR 48071, FCIC published an interim general rule in the **Federal Register** on December 11, 1990, at 55 FR 50812, to provide the conditions to be met by eligible insureds for retaining the premium discount for good insuring experience. This action does not detract from the benefit of premium discount; merely adding those missing requirements necessary to receive such benefit.

Written comments were solicited for 60 days after publication in the **Federal Register** and the rule was scheduled for review so that any amendment made necessary by public comments be published as soon as possible.

No comments were received, therefore, the interim rule published at 55 FR 50812 is hereby adopted without change in this final rule.

List of Subjects in 7 CFR Part 401

Crop insurance, Soybeans.

Final Rule

Accordingly, the interim rule published in the **Federal Register** on December 11, 1990 at 55 FR 50812, is hereby adopted as a final rule without change.

Authority: 7 U.S.C. 1506, 1516.

Done in Washington, DC, on June 10, 1991.

James E. Cason,
Manager, Federal Crop Insurance Corporation.

[FR Doc. 91–18170 Filed 7–31–91; 8:45 am]

BILLING CODE 3410-08-M

INTERNATIONAL TRADE COMMISSION

19 CFR Part 200

Employee Responsibilities and Conduct

AGENCY: U.S. International Trade Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its regulation regarding the review of financial disclosure reports filed by Commissioners. 19 CFR 200.735–103(c)(2). The change is being made pursuant to 5 CFR 2638.103 and 2638.201.

The amendment permits the Commission's Designated Agency Ethics Official (DAEO) to review financial disclosure reports filed by all Commissioners. Currently, financial disclosure reports filed by Commissioners are reviewed by the Chairman and reports filed by the Chairman are reviewed by the Vice Chairman.

Part 200 of the Commission regulations will also be amended to use the term Designated Agency Ethics Official (DAEO) in place of Ethics Counselor and Deputy DAEO in place of Deputy Ethics Counselor.

EFFECTIVE DATES: This rule is effective June 20, 1991, and applies to all financial disclosure reports filed by Commissioners for calendar year 1990 or any part thereof.

ADDRESSES: Kenneth R. Mason, Secretary, U.S. International Trade Commission, 500 E Street, SW., room 112, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Deputy Agency Ethics Official, Office of the General Counsel, telephone 202–252–1088, FAX 202–252–1111. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

SUPPLEMENTARY INFORMATION: The International Trade Commission is revising the procedure used for review of financial disclosure reports filed by Commissioners. Under the current rule (19 CFR 200.735–103(c)(2)), the Chairman of the Commission reviews financial disclosure reports filed by Commissioners. The Vice Chairman reviews the Chairman's report. The change will allow the Commission's Designated Agency Ethics Official (DAEO) to review financial disclosure reports filed by all Commissioners.

This amendment is desirable because it will bring the Commission's review process into conformity with most other agencies. In addition, the amendment avoids the difficulties presented when there is no Chairman and the Vice Chairman is serving as the Acting Chairman. In those instances, a waiver of § 200.735–103(c)(2) of the Commission's rules is necessary allowing the DAEO to review the Vice Chairman's report. It is deemed inappropriate for the Vice Chairman to review his/her own financial disclosure report.

The Commission is also revising part 200 to use the term Designated Agency Ethics Official (DAEO) in place of Ethics Counselor and Deputy DAEO instead of Deputy Ethics Counselor. The term DAEO is the official title of the head of the ethics program in each agency and it is the term used in the ethics rules issued by the Office of Government Ethics. Use of that term in the rule will bring it into conformity with most other agencies.

Under the Ethics in Government Act of 1978, as amended, the Director of the Office of Government Ethics administers the statute requiring certain federal personnel to file public financial disclosure reports. 5 U.S.C. App. 111. Under that authority OGE has issued government-wide regulations that permit each agency to issue their own ethics regulations. The agency regulations must generally conform to the model regulations issued by OGE, and they must be approved by OGE. These rule changes are being issued under that authority; the changes have been approved by OGE. 5 CFR 2638.103 and 5 CFR 2638.201.

Administrative Procedure Act

The Commission has determined that this regulation concerns matters solely of Federal agency organization and procedure. Thus, it is exempt from the notice, opportunity for public comment, and delayed effective date requirements of the Administrative Procedure Act. 5 U.S.C. 553.

Executive Order 12291

The Commission has concluded that this is not a major rule as defined in section 1(b) of Executive Order 12291, Federal Regulation. Since the amendment is not a change in a major rule, the further requirements of the Order do not apply.

Regulatory Flexibility Act

The Commission certifies that this change in regulation will not have a significant economic impact on a substantial number of small business entities since the change involves merely an adjustment in Commission procedure. 5 U.S.C. 605(b).

PART 200—EMPLOYEE RESPONSIBILITIES AND CONDUCT

1. The authority citation for part 200 is revised to read as follows:

Authority: E.O. 11222, 30 FR 6469, 3 CFR, 1965 Supp.; 5 CFR 735.101 et seq., 5 CFR 2638.101 et seq., unless otherwise noted.

§ 200.735–102 [Amended]

2. Section 200.735–102 is amended by removing paragraph (g).

3. In § 200.735–103 paragraph (a) is amended by revising the first and third sentences to read as follows:

§ 200.735–103 Counseling Service

(a) The Chairman shall appoint a Designated Agency Ethics Official (DAEO) who serves as liaison to the Office of Government Ethics and who is responsible for carrying out the Commission's ethics program.

* * * * *

The DAEO will be a senior Commission employee with experience demonstrating the ability to review financial disclosure reports and counsel employees with regard to resolving conflicts of interest, review the financial disclosures of Presidential nominees to the Commission prior to confirmation hearings, counsel employees with regard to ethics standards, assist supervisors in implementing the Commission's ethics program, and periodically evaluate the ethics program.

* * * * *

§ 200.735–103 [Amended]

4. Section 200.735–103(b) is revised to read as follows:

* * * * *

(b) The Chairman shall select an Alternate Agency Ethics Official who will serve as Deputy DAEO to whom any of the DAEO's statutory and regulatory duties may be delegated.

* * * * *

5. In 200.735–103(c) introductory text change the terms "Ethics Counselor" and "Counselor's" where it appears to "DAEO," and revise paragraph (c)(2) to read as follows:

* * * * *

(c) * * *

(2) Review of financial disclosure reports, including reports filed by Presidential nominees to the Commission;

* * * * *

§ 200.735–114 [Amended]
§ 200.735–115 [Amended]
§ 200.735–121 [Amended]

6. Sections 200.735–114, 200.735–115, and 200.735–121 are amended to change the term "Deputy Counselor," where it appears, to "Deputy DAEO."

§ 200.735–116 [Amended]

7. Section 200.735–116(b) is revised to read as follows:

* * * * *

(b) Each such statement shall be submitted to the Office of the General Counsel of the Commission and shall be marked "Submitted in Confidence to the Deputy DAEO.": *Provided,* That the statement of the Deputy DAEO shall be submitted directly to the DAEO.

By order of the Commission.

Issued: July 18, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–18122 Filed 7–31–91; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1301

Registration of Manufacturers, Distributors, and Dispensers of Controlled Substances

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final rule.

SUMMARY: The DEA is amending its regulations by revising the definition of "detoxification" to bring it into conformity with the current statutory definition for this term found under the Controlled Substances Act (21 U.S.C. 801 et seq.). The Alcohol Abuse, Drug Abuse, and Mental Health Amendments of 1984 (Pub. L. 98–509) revised the definition of "detoxification treatment" as it applies to the treatment of heroin addiction. The amendment extends from 21 days to 180 days the maximum period a patient may participate in a detoxification program.

EFFECTIVE DATE: August 1, 1991.

FOR FURTHER INFORMATION CONTACT: G. Thomas Gitchel, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION: The final rule amends the regulations that accompany the Controlled Substances Act (21 U.S.C. 801 *et seq.*), which was revised by the Alcohol Abuse, Drug Abuse, and Mental Health Amendments of 1984. The rule provides standards for long-term detoxification as mandated by Public Law 98–509, which revised the statutory definition for detoxification treatment from 21 days to 180 days. The revision permits short-term detoxification for 30 days and long-term detoxification for up to 180 days. In a **Federal Register** notice published on March 2, 1989 (54 FR 8954), the Food and Drug Administration amended its definition to bring it into conformity with the new statutory definition. The DEA published a notice in the **Federal Register** on February 1, 1991 (56 FR 3987), proposing to amend the definition of detoxification. There were no comments received in response to that notice.

The Deputy Assistant Administrator, Office of Diversion Control, hereby certifies that this final rule will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This final rule is not a major rule for the purposes of Executive Order (E.O.) 12291 of February 17, 1981.

Pursuant to sections 3(c)(3) and 3(e)(2)(C) of E.O. 12291, this final rule has been submitted to the Office of Management and Budget for review, and approval of that office has been requested pursuant to the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq.

This action has been analyzed in accordance with the principles and criteria in E.O. 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1301

Administrative practice and procedure, Drug Enforcement Administration, Drug traffic control, Security measures.

For reasons set out above, 21 CFR part 1301 is amended as follows:

PART 1301—[AMENDED]

1. The authority citation for part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877.

2. Section 1301.02, paragraph (e) is revised to read as follows:

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SUPPLEMENTARY INFORMATION: The final rule amends the regulations that accompany the Controlled Substances Act (21 U.S.C. 801 *et seq.*), which was revised by the Alcohol Abuse, Drug Abuse, and Mental Health Amendments of 1984. The rule provides standards for long-term detoxification as mandated by Public Law 98–509, which revised the statutory definition for detoxification treatment from 21 days to 180 days. The revision permits short-term detoxification for 30 days and long-term detoxification for up to 180 days. In a **Federal Register** notice published on March 2, 1989 (54 FR 8954), the Food and Drug Administration amended its definition to bring it into conformity with the new statutory definition. The DEA published a notice in the **Federal Register** on February 1, 1991 (56 FR 3987), proposing to amend the definition of detoxification. There were no comments received in response to that notice.

The Deputy Assistant Administrator, Office of Diversion Control, hereby certifies that this final rule will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This final rule is not a major rule for the purposes of Executive Order (E.O.) 12291 of February 17, 1981.

Pursuant to sections 3(c)(3) and 3(e)(2)(C) of E.O. 12291, this final rule has been submitted to the Office of Management and Budget for review, and approval of that office has been requested pursuant to the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq.

This action has been analyzed in accordance with the principles and criteria in E.O. 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1301

Administrative practice and procedure, Drug Enforcement Administration, Drug traffic control, Security measures.

For reasons set out above, 21 CFR part 1301 is amended as follows:

PART 1301—[AMENDED]

1. The authority citation for part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877.

2. Section 1301.02, paragraph (e) is revised to read as follows:

§ 1301.02 Definitions.

* * * * *

(e) The term *detoxification treatment* means the dispensing, for a period of time as specified below, of a narcotic drug or narcotic drugs in decreasing doses to an individual to alleviate adverse physiological or psychological effects incident to withdrawal from the continuous or sustained use of a narcotic drug and as a method of bringing the individual to a narcotic drug-free state within such period of time. There are two types of detoxification treatment: Short-term detoxification treatment and long-term detoxification treatment.

(1) *Short-term detoxification treatment* is for a period not in excess of 30 days.

(2) *Long-term detoxification treatment* is for a period more than 30 days but not in excess of 180 days.

* * * * *

Dated: July 3, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91–18167 Filed 7–31–91; 8:45 am]

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21 CFR Part 1301

Registration of Manufacturers, Distributors, and Dispensers of Controlled Substances

AGENCY: Drug Enforcement Administration (DEA); Justice.

ACTION: Final rule.

SUMMARY: This final rule modifies the existing language found in 21 CFR 1301.76(a) regarding the employment by any registrant of any person who has had an application for registration denied, or has had a registration revoked, at any time. This final rule extends that prohibition to any person who has been convicted of a felony relating to controlled substances or who has surrendered a registration as a consequence of a controlled substance investigation.

EFFECTIVE DATE: August 1, 1991.

FOR FURTHER INFORMATION CONTACT: G. Thomas Gitchel, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was published in the **Federal Register** on February 4, 1991 (56 FR 4182) to modify 21 CFR 1301.76(a) by adding additional grounds which would prohibit a registrant from hiring an individual for a position which would require access to controlled substances. The additional conditions which would preclude employment cited were the conviction of a felony relating to controlled substances, or the surrender of a registration as a consequence of controlled substance investigation. The proposed rulemaking provided an opportunity for interested parties to comment in writing on or before April 5, 1991.

A total of seven comments were received regarding this proposal. One strongly supported the proposed rule, and encouraged that it be expanded to include the exclusion of anyone convicted of a drug related misdemeanor from a position which would require access to controlled substances. The basis for this recommendation is that a person convicted of a drug related misdemeanor has demonstrated that he or she should not be entrusted with access to controlled substances. The commenter's point is well taken. Application of this regulation should not hinge on a quirk of law under which a particular crime may be a felony in one state and a misdemeanor in another. However, since the Notice of Proposed Rulemaking mentioned only felonies, expanding its scope would cause undue delay of this final rule. Therefore, DEA is reviewing this comment for consideration as a future proposal.

It should be noted that the existing regulation, as well as the proposed amendment, is intended to prevent a DEA registrant from hiring, as an agent or employee, an individual who would probably be denied a DEA registration if he or she applied for his or her own registration as a practitioner or applied on behalf of a pharmacy owned or principally operated by the individual. To hire such a person, the registrant must obtain a waiver under circumstances which clearly show that the registrant has been fully informed about the proposed employee's past experience with controlled substances and that the registrant intends to take adequate measures to ensure that no increased risk of diversion is occasioned by the proposed employment.

The decision not to include persons convicted of misdemeanors should not create a loophole through which many individuals will attempt to evade coverage by the regulation. 21 U.S.C. 823(f) and 824(a)(4) authorize the DEA to revoke or deny a registration upon a finding that such registration would be inconsistent with the public interest. One factor in ascertaining whether a registration is in the public interest is the registrant's or applicant's past conviction record under Federal or State laws regarding the manufacture, distribution or dispensing of controlled substances. The statutory sections cited above do not differentiate between felonies and misdemeanors. Furthermore, the statute permits DEA to revoke or deny a registration based upon the underlying conduct which led to the criminal charges, without respect to conviction. Hence, any registrant who has been convicted of a drug related crime, or whose conduct has led to consideration of criminal charges, is likely to have had a registration revoked, an application denied or surrendered a registration for cause.

The remaining six comments, which were received from a number of associations and licensing boards representing both the nursing and pharmacy professions, concerned the effect that the proposed rule would have on pharmacists or nurses who were successfully participating in a state sanctioned recovery program from chemical dependency. Most concluded that if such an individual either surrendered a state license to practice while suffering from chemical dependency or had such a license suspended for the same cause, that they would be precluded by this proposed rule from future employment within their profession. On this basis, they opposed the proposal, and recommended that it be amended to contain an exemption for individuals participating in monitored recovery programs. These objections appear to be based on a misinterpretation of the proposal. It would appear from the comments that the term "registration" was interpreted to mean any form of registration or licensure which may be required for an individual nurse or pharmacist to practice in a state or other jurisdiction. In fact, the proposed regulation refers only to individuals who have had a DEA registration denied, revoked, or have surrendered a DEA registration for cause. Since the majority of nurses and pharmacists are not DEA registrants, but rather agents of the DEA registered hospitals, pharmacies, physicians, or other entities by whom or by which they are employed, this argument is moot. In addition, the regulation would have no effect on an individual who voluntarily ceased practice due to retirement, etc. or who temporarily surrendered a state license which participating in a recovery program, since the DEA registration, if any, would not routinely be affected by such an action alone. The wording of the final rule will be modified to clarify this point.

General Comments

This amendment will not require any additional paperwork or recordkeeping burden beyond normal business practices and is intended to clarify the present requirements and to extend the prohibition against hiring individuals who had previously had a DEA registration revoked, or had an application for registration denied to individuals who have been convicted of a drug related felony, or who have surrendered a DEA registration for cause.

The Deputy Assistant Administrator, Office of Diversion Control, hereby certifies that the final rule will not have significant impact upon entities whose interest must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The changes will not impose any additional regulatory requirements. They will clarify and extend the conditions which preclude a registrant from hiring certain individuals for positions which require access to controlled substances. The final rule is not a major rule for the purposes of Executive Order (E.O.) 12291 of February 17, 1981. Pursuant to section 3(c)(3) and 3(e)(2)(C) of E.O. 12292, this final rule has been submitted for review to the Office of Management and Budget.

This action has been analyzed in accordance with the principles and criteria contained in E.O. 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of Federalism Assessment.

List of Subjects in 21 CFR Part 1301

Drug Enforcement Administration, Drug traffic control, Registration of manufacturers, distributors, and dispensers of controlled substances.

For reasons set out above, 21 CFR part 1301 is amended as follows:

PART 1301—[AMENDED]

1. The authority citation for part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877.

2. Section 1301.76 is amended by revising paragraph (a) to read as follows:

§ 1301.76 Other security controls for practitioners.

(a) The registrant shall not employ, as an agent or employee who has access to controlled substances, any person who has been convicted of a felony offense relating to controlled substances or who, at any time, had an application for registration with the DEA denied, had a DEA registration revoked or has surrendered a DEA registration for cause. For purposes of this subsection, the term "for cause" means a surrender in lieu of, or as a consequence of, any federal or state administrative, civil or criminal action resulting from an investigation of the individual's handling of controlled substances.

* * * * *

Dated: June 20, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91-18168 Filed 7-31-91; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 889

[Docket No. R-91-1524; FR-2956-C-02]

RIN 2502-AF19

Supportive Housing for the Elderly, Interim Rule; Correction

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interim rule; Correction.

SUMMARY: On June 12, 1991, the Department published an interim rule (56 FR 27104) for Supportive Housing for the Elderly. In previous section 202 NOFAs (*e.g.*, 55 FR 14062, 14065, April 13, 1990), the Department has had a minimum project size limitation in metropolitan areas. In the Invitation for Applications for Section 202 Supportive Housing for the Elderly Fund Reservation for this year (HUD Handbook 4571.3, Supportive Housing for the Elderly, appendix 10; and HUD notice 91-45, appendix 4), a 40-unit minimum project size limitation is stated. The Department failed to place this minimum limitation in the interim rule and is publishing this correction to provide notice of this limitation for FY 1991 applicants. This limitation is also being published in today's **Federal Register** as a correction to the Notice of Funding Availability for Supportive Housing for the Elderly. This limitation is also being publicized by the Field Offices at their workshops and is contained in the application package.

EFFECTIVE DATE: August 1, 1991.

FOR FURTHER INFORMATION CONTACT: Robert Wilden, Director, Housing for the Elderly and Handicapped People Division, Department of Housing and Urban Development, 451 Seventh Street, SW., room 6116, Washington, DC 20410, telephone (202) 708-2730. (This is not a toll-free number).

Hearing or speech impaired individuals may call HUD's TDD number (202) 708-4594. (This is not a toll-free number).

List of Subjects in 24 CFR Part 889

Aged, Low and moderate income housing, capital advance programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, in FR Doc. 91-13635, published in the **Federal Register** on June 12, 1991, at 56 FR 27104, 24 CFR part 889 is amended by correcting § 889.215(a), to read as follows:

PART 889—SUPPORTIVE HOUSING FOR THE ELDERLY

1. The authority citation for 24 CFR part 889 continues to read as follows:

Authority: Section 202, Housing Act of 1959, as amended (12 U.S.C. 1701q); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. On page 27116, in the second column, § 889.215(a) is corrected to read as follows:

§ 889.215 Limits on number of units.

(a) No organization shall participate as Sponsor or Co-sponsor in the filing of an application or applications for a reservation of section 202 funds under this subpart in a single region in a single fiscal year in excess of that necessary to finance the construction or rehabilitation of a structure or portion of a structure, or acquisition from the Resolution Trust Corporation of 300 units of housing and related facilities. This limit shall apply to organizations that participate as Co-sponsors regardless of whether the Co-sponsors are affiliated or non-affiliated entities. The Secretary may also by notice in the **Federal Register** set the minimum size of a single project.

* * * * *

Dated: July 25, 1991.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 91-18291 Filed 7-31-91; 8:45 am]

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* * * * *

Dated: July 25, 1991.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 91–18291 Filed 7–31–91; 8:45 am]

BILLING CODE 4210–27–M

POSTAL SERVICE

39 CFR Part 111

Nonmailability of Deceptive Solicitations

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service is amending its regulations on solicitations deceptively implying Federal connection, approval, or endorsement. The purpose of the amendment is merely to reflect that, as provided by recent legislation, the mailing of any solicitation not satisfying the regulations' requirements constitutes *prima facie* evidence that the anti-false-representations provisions of 39 U.S.C. 3005 have been violated.

EFFECTIVE DATE: August 1, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Ventresco, (202) 268–3085.

SUPPLEMENTARY INFORMATION: On May 8, 1991, the Postal Service adopted regulations (56 FR 21304, as corrected at 56 FR 23736) implementing the Deceptive Mailings Prevention Act of 1990 (Public Law No. 101–524, November 6, 1990). The Act added new subsections to section 3001 of title 39, United States Code. These subsections deal with any solicitation by a nongovernmental entity containing terms or symbols that reasonably could be interpreted or construed as implying a Federal Government connection, approval, or endorsement.

If the soliciting entity does not have such connection, approval, or endorsement, the solicitation is nonmailable unless it: (1) Is contained in a publication the addressee has ordered, and is not on behalf of the publisher; or (2) displays prescribed disclaimers, both on its envelope or outside cover or wrapper, and on the face of the solicitation itself. Further legislation (Public Law No. 102–71, July 10, 1991) has made the mailing of any such nonmailable solicitation actionable as a false-representation scheme, and *prima facie* evidence to support the Postal Service's issuing the remedial orders authorized by section 3005(a) of title 39, United States Code. Section 123.421 of the implementing regulations is being amended to reflect this legislation.

Accordingly, the Postal Service adopts the following amendment to part 123 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for part 111 continues to read as follows:

Authority: 5 U.S.C. 552 (a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

PART 123—NONMAILABLE MATTER—WRITTEN, PRINTED, AND GRAPHIC

2. In § 123.421, insert the following sentence after the first sentence: A nonconforming solicitation constitutes *prima facie* evidence of violation of 39 U.S.C. 3005.

A transmittal letter making this change in the Domestic Mail Manual will be published and transmitted automatically to subscribers. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 111.3.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 91–18156 Filed 7–31–91; 8:45 am]

BILLING CODE 7710–12–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 64

[CC Docket No. 90–571; FCC 91–213]

Telecommunications Services for Hearing and Speech Disabled

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Part 0 of the rules of the Federal Communications Commission (Commission) governing "Commission Organization", 47 CFR part 0, and subpart F of part 64 titled "Furnishing of Customer Premises Equipment and Related Services Needed by Persons with Impaired Hearing, Speech, Vision or Mobility", 47 CFR 64, are amended as set forth in this Report and Order (R&O). The purpose of the R&O is to implement title IV of the Americans with Disabilities Act of 1990 (ADA) which amends title II of the Communications Act of 1934, as amended, by adding new section 225, amending existing section 711, and conforming sections 2(b) and 221(b). See Public Law 101–336, 104 Stat. 327, 366–69 (July 26, 1990). Title IV mandates that the Commission prescribe regulations to implement section 225 not later than one year after the ADA's enactment date of July 26, 1990, and requires each common carrier providing telephone voice transmission services to provide, throughout the area in which it offers service, telecommunications relay services (TRS) for individuals with hearing or speech disabilities, not later than three years after the ADA's enactment date.

EFFECTIVE DATE: September 30, 1991.

FOR FURTHER INFORMATION CONTACT: Linda B. Dubroof, (202) 634–1808 (Voice) and (202) 634–1855 (TT).

SUPPLEMENTARY INFORMATION: This summarizes the Commission's R&O in the matter of Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990 (CC Docket 90–571, FCC 91–213 adopted July 11, 1991 and released July 26, 1991. The R&O and supporting file may be examined in the Commission's Public Reference Room, room 239, 1919 M Street, NW., Washington, DC, during business hours or purchased from the duplicating contractor, Downtown Copy Center, 1114 21st, NW., Washington, DC 20036, (202) 452–1422. The R&O also will be published in the FCC Record.

This proceeding was initiated by the Commission's Notice of Proposed Rulemaking (NPRM) in CC Docket 90–571, FCC 90–376, 5 FCC Rcd 7187 (1990), [55 FR 50037, December 4, 1990], which proposed amendments to parts 0 and 64 of its rules to implement title IV of the ADA. The ADA provides a clear national mandate for the elimination of discrimination against individuals with disabilities and ensures that the Commission play an active role in enforcing the standards established in title IV. The primary purpose of title IV is to further the Communications Act's goal of universal telecommunications services by ensuring that interstate and intrastate TRS are available nationwide, to the extent possible and in the most efficient manner, to individuals in the United States with hearing or speech disabilities.

In its NPRM, the Commission proposed minimum standards designed to implement the provisions of title IV. Interested parties were invited to offer alternative language, additional provisions, or any other suggestions that might foster the intent of Congress to bring functionally equivalent telecommunications services to individuals with hearing or speech disabilities. After reviewing the sixty-one comments and/or reply comments submitted by interested parties, the Commission has modified some of the proposed rules and fashioned a comprehensive set of rules which (a) set forth terminology and definitions; (b) prescribe operational, technical, and functional minimum standards required

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of all TRS providers; and (c) delineate the state certification process. The rules are made a part of this publication.

Request for Comments on Funding Mechanisms

The ADA mandates that the Commission prescribe regulations governing the jurisdictional separation of costs, and that costs caused by interstate TRS be recovered from all subscribers for every interstate service and costs caused by intrastate TRS be recovered from the intrastate jurisdiction. The majority of commenters concur that existing accounting and separations rules are adequate to deal with interstate relay services. In order to achieve the goals of the ADA without unnecessarily disrupting TRS as currently provided, the Commission finds that current separations rules are adequate. However, the record is not adequate to determine a specific cost recovery mechanism. Therefore, the Commission seeks specific proposals from interested parties on cost recovery to be submitted to the Common Carrier Bureau no later than 60 days from the release date of this R&O. Responses to these proposals shall be filed not later than 30 days thereafter. All proposals and other comments must reference CC Docket No. 90–571. In particular, parties should address various proposed funding mechanisms and both the advantages and disadvantages of each proposal, including relative administrative costs of various mechanisms, the likely relative costs that would be borne by various interstate carriers under each proposal, and the impact on quality, if any, of the proposals. The Commission notes that in this proceeding some commenters have argued that the costs associated with interstate relay services should be shared. These commenters must make a well reasoned showing that self-funding would be inappropriate. The Commission is also especially interested in learning about different possible funding mechanisms from the experiences of the states.

Final Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. section 601, *et seq.*, the Commission's final analysis in this Report and Order is as follows:

I. Need and Purpose of This Action

This Report and Order amends the Commission's rules to require that each common carrier engaged in interstate and/or intrastate telephone voice transmission services shall, no later than July 26, 1993, provide telecommunications relay services throughout the area in which it offers service. The rule amendments are required by the Americans with Disabilities Act of 1990, which, *inter alia*, adds section 225 to the communications Act of 1934, as amended, 47 U.S.C. 225. The rules are intended to ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to persons in the United States with speech and/or hearing disabilities.

II. Summary of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

No comments were submitted in direct response to the Initial Regulatory Flexibility Analysis.

III. Significant Alternatives Considered

The notice of proposed rulemaking in this proceeding (55 FR 50037, December 4, 1990) offered several proposals and requested comments as well as the views of commenters on other possibilities. The Commission has considered all comments, and has adopted most of its proposals in addition to some alternatives recommended by commenters. The Commission considers its Report and Order to be the most reasonable course of action under the mandate of section 225 of the Communications Act.

Paperwork Reduction Act Statement

Average reporting burdens for the collections of information are estimated as follows:

State certification: Respondent burden for complying with the certification requirement is 160 hours per submission. Certification remains in effect for five years; one year prior to expiration of certification, a state may apply for renewal as prescribed in the Commission's rules.

Complaints: Five burden hours to file a complaint.

The foregoing estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding burden estimates or any other aspect of the collections of information, including suggestions for reducing the burdens, to the Federal Communications Commission, Office of Managing Director, Paperwork Reduction Project (3060–0463), Washington, DC 20554, and also to the Office of Management and Budget, Paperwork Reduction Project (3060–0463), Washington, DC 20503.

Ordering Clauses

Accordingly, It is Ordered, That, pursuant to sections 1, 4(i), 4(j), 201–205, 225 and 403 of the Communications Act of 1934, as amended, parts 0 and 64 of the Commission's Rules and Regulations *are amended* as set forth below, effective 60 days after publication in the **Federal Register**.

It is Further Ordered, That specific proposals from interested parties on cost recovery shall be submitted to the Common Carrier Bureau, referencing CC Docket No. 90–571, no later than 60 days from the release date of this Report and Order, and responses to these proposals shall be filed not later than 30 days thereafter.

It is Further Ordered, That authority is delegated to the Chief, Common Carrier Bureau to implement the state certification and complaint process provided in the rules adopted herein, and to review specific proposals on cost recovery mechanisms submitted by interested parties.

It is Further Ordered, That, pursuant to the requirements of section 604 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Secretary shall: (a) Make copies of this Report and Order available to members of the public and (b) shall cause a summary of this Report and Order to be published in the **Federal Register** which shall include a statement describing how members of the public may obtain such copies. The Secretary shall also provide a copy of this Report and Order to each state utility commission.

List of Subjects

47 CFR Part 0

Organization and functions (Government agencies).

47 CFR Part 64

Communications common carriers, Individuals with hearing and speech disabilities, Telecommunications relay services.

Amended Rules

Parts 0 and 64 of the Commission's Rules and Regulations (chapter I of title 47 of the Code of Federal Regulations, parts 0 and 64) are amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 is revised to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

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It is Further Ordered, That authority is delegated to the Chief, Common Carrier Bureau to implement the state certification and complaint process provided in the rules adopted herein, and to review specific proposals on cost recovery mechanisms submitted by interested parties.

It is Further Ordered, That, pursuant to the requirements of section 604 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Secretary shall: (a) Make copies of this Report and Order available to members of the public and (b) shall cause a summary of this Report and Order to be published in the **Federal Register** which shall include a statement describing how members of the public may obtain such copies. The Secretary shall also provide a copy of this Report and Order to each state utility commission.

List of Subjects

47 CFR Part 0

Organization and functions (Government agencies).

47 CFR Part 64

Communications common carriers, Individuals with hearing and speech disabilities, Telecommunications relay services.

Amended Rules

Parts 0 and 64 of the Commission's Rules and Regulations (chapter I of title 47 of the Code of Federal Regulations, parts 0 and 64) are amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 is revised to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

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2. Section 0.91 is amended by adding new paragraph (m) to read as follows:

§ 0.91 Functions of the Bureau.

* * * * *

(m) Acts upon matters involving telecommunications relay services complaints and certification.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 is revised to read as follows:

Authority: Section 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 225, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, 225 unless otherwise noted.

2. Subpart F of part 64 (consisting of §§ 64.601–64.608) is revised in its entirety to read as follows:

Subpart F—Telecommunications Relay Services and Related Customer Premises Equipment for Persons With Disabilities

Sec.

64.601 Definitions.
64.602 Jurisdiction.
64.603 Provision of services.
64.604 Mandatory minimum standards.
64.605 State certification.
64.606 Furnishing related customer premises equipment.
64.607 Provision of hearing aid compatible telephones by exchange carriers.
64.608 Enforcement of related customer premises equipment rules.

Subpart F—Telecommunications Relay Services and Related Customer Premises Equipment for Persons With Disabilities

§ 64.601 Definitions.

As used in this subpart, the following definitions apply:

(1) American Sign Language (ASL): A visual language based on hand shape, position, movement, and orientation of the hands in relation to each other and the body.

(2) ASCII: An acronym for American Standard Code for Information Interexchange which employs an eight bit code and can operate at any standard transmission baud rate including 300, 1200, 2400, and higher.

(3) Baudot: A seven bit code, only five of which are information bits. Baudot is used by some text telephones to communicate with each other at a 45.5 baud rate.

(4) Common carrier or carrier: Any common carrier engaged in interstate communication by wire or radio as defined in section 3(h) of the Communications Act of 1934, as amended (the Act), and any common carrier engaged in intrastate communication by wire or radio, notwithstanding sections 2(b) and 221(b) of the Act.

(5) Communications assistant (CA): A person who transliterates conversation from text to voice and from voice to text between two end users of TRS. CA supersedes the term "TDD operator."

(6) Hearing carry over (HCO): A reduced form of TRS where the person with the speech disability is able to listen to the other end user and, in reply, the CA speaks the text as typed by the person with the speech disability. The CA does not type any conversation.

(7) Telecommunications relay services (TRS): Telephone transmission services that provide the ability for an individual who has a hearing or speech disability to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech disability to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a text telephone or other nonvoice terminal device and an individual who does not use such a device. TRS supersedes the terms "dual party relay system," "message relay services," and "TDD Relay."

(8) Text telephone (TT): A machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system. TT supersedes the term "TDD" or "telecommunications device for the deaf."

(9) Voice carry over (VCO): A reduced form of TRS where the person with the hearing disability is able to speak directly to the other end user. The CA types the response back to the person with the hearing disability. The CA does not voice the conversation.

§ 64.602 Jurisdiction.

Any violation of this subpart by any common carrier engaged in intrastate communication shall be subject to the same remedies, penalties, and procedures as are applicable to a violation of the Act by a common carrier engaged in interstate communication.

§ 64.603 Provision of services.

Each common carrier providing telephone voice transmission services shall provide, not later than July 26, 1993, in compliance with the regulations prescribed herein, throughout the area in which it offers services, telecommunications relay services, individually, through designees, through a competitively selected vendor, or in concert with other carriers. A common carrier shall be considered to be in compliance with these regulations:

(a) With respect to intrastate telecommunications relay services in any state that does not have a certified program under § 64.605 and with respect to interstate telecommunications relay services, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with § 64.604; or

(b) With respect to intrastate telecommunications relay services in any state that has a certified program under § 64.605 for such state, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with the program certified under § 64.605 for such state.

§ 64.604 Mandatory minimum standards.

(a) Operational standards.

(1) Communications assistant (CA). TRS providers are responsible for requiring that CAs be sufficiently trained to effectively meet the specialized communications needs of individuals with hearing and speech disabilities; and that CAs have competent skills in typing, grammar, spelling, interpretation of typewritten ASL, and familiarity with hearing and speech disability cultures, languages and etiquette.

(2) Confidentiality and conversation content. Consistent with the obligations of common carrier operators, CAs are prohibited from disclosing the content of any relayed conversation regardless of content and from keeping records of the content of any conversation beyond the duration of a call. CAs are prohibited from intentionally altering a relayed conversation and must relay all conversation verbatim unless the relay user specifically requests summarization.

(3) Types of calls. Consistent with the obligations of common carrier operators, CAs are prohibited from refusing single or sequential calls or limiting the length of calls utilizing relay services. TRS shall be capable of handling any type of call normally provided by common carriers and the burden of proving the infeasibility of handling any type of call will be placed on the carriers. Providers of TRS are permitted to decline to complete a call because credit authorization is denied. CAs shall handle emergency calls in the same manner as they handle any other TRS calls.

(b) Technical standards.

(1) ASCII and Baudot. TRS shall be capable of communicating with ASCII and Baudot format, at any speed generally in use.

(2) Speed of answer. TRS shall include adequate staffing to provide callers with efficient access under projected calling volumes, so that the probability of a busy response due to CA unavailability shall be functionally equivalent to what a voice caller would experience in attempting to reach a party through the voice telephone network. TRS shall, except during network failure, answer 85% of all calls within 10 seconds and no more than 30 seconds shall elapse between receipt of dialing information and the dialing of the requested number.

(3) Equal access to interexchange carriers. TRS users shall have access to their chosen interexchange carrier through the TRS, and to all other operator services, to the same extent that such access is provided to voice users.

(4) TRS facilities. TRS shall operate every day, 24 hours a day. TRS shall have redundancy features functionally equivalent to the equipment in normal central offices, including uninterruptible power for emergency use. TRS shall transmit conversations between TT and voice callers in real time. Adequate network facilities shall be used in conjunction with TRS so that under projected calling volume the probability of a busy response due to loop trunk congestion shall be functionally equivalent to what a voice caller would experience in attempting to reach a party through the voice telephone network.

(5) Technology. No regulation set forth in this subpart is intended to discourage or impair the development of improved technology that fosters the availability of telecommunications to person with disabilities. VCO and HCO technology are required to be standard features of TRS.

(c) Functional standards.

(1) Enforcement. Subject to § 64.603, the Commission shall resolve any complaint alleging a violation of this section within 180 days after the complaint is filed.

(2) Public access to information. Carriers, through publication in their directories, periodic billing inserts, placement of TRS instructions in telephone directories, through directory assistance services, and incorporation of TT numbers in telephone directories, shall assure that callers in their service areas are aware of the availability and use of TRS.

(3) Rates. TRS users shall pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from the point of origination to the point of termination.

(4) Jurisdictional separation of costs.

(i) General. Where appropriate, costs of providing TRS shall be separated in accordance with the jurisdictional separation procedures and standards set forth in the Commission's regulations adopted pursuant to section 410 of the Communications Act of 1934, as amended.

(ii) Cost recovery. Costs caused by interstate TRS shall be recovered from all subscribers for every interstate service. Costs caused by intrastate TRS providers shall be recovered from the intrastate jurisdiction. In a state that has a certified program under § 64.605, the state agency providing TRS shall, through the state's regulatory agency, permit a common carrier to recover costs incurred in providing TRS by a method consistent with the requirements of this section.

(5) Complaints.

(i) Referral of complaint. If a complaint to the Commission alleges a violation of this subpart with respect to intrastate TRS within a state and certification of the program of such state under § 64.605 is in effect, the Commission shall refer such complaint to such state expeditiously.

(ii) Jurisdiction of Commission. After referring a complaint to a state under paragraph (c)(5)(i) of this section, or if a complaint is filed directly with a state, the Commission shall exercise jurisdiction over such complaint only if:

(A) final action under such state program has not been taken within:

(*1*) 180 days after the complaint is filed with such state; or

(*2*) a shorter period as prescribed by the regulations of such state; or

(B) the Commission determines that such state program is no longer qualified for certification under § 64.605.

(iii) Complaint procedures.

(A) Content. A complaint shall be in writing, addressed to the Federal Communications Commission, Common Carrier Bureau, TRS Complaints, Washington, DC 20554, or addressed to the appropriate state office, and shall contain:

(*1*) the name and address of the complainant,

(*2*) the name and address of the defendant against whom the complaint is made,

(*3*) a complete statement of the facts, including supporting data, where available, showing that such defendant did or omitted to do anything in contravention of this subpart, and

(*4*) the relief sought.

(B) Amended complaints. An amended complaint setting forth transactions, occurrences or events which have happened since the filing of the original complaint and which relate to the original cause of action may be filed with the Commission.

(C) Number of copies. An original and two copies of all pleadings shall be filed.

(D) Service.

(*1*) Except where a complaint is referred to a state pursuant to § 64.604(c)(5)(i), or where a complaint is filed directly with a state, the Commission will serve on the named party a copy of any complaint or amended complaint filed with it, together with a notice of the filing of the complaint. Such notice shall call upon the defendant to satisfy or answer the complaint in writing within the time specified in said notice of complaint.

(*2*) All subsequent pleadings and briefs shall be served by the filing party on all other parties to the proceeding in accordance with the requirements of § 1.47 of this chapter. Proof of such service shall also be made in accordance with the requirements of said section.

(E) Answers to complaints and amended complaints. Any party upon whom a copy of a complaint or amended complaint is served under this subpart shall serve an answer within the time specified by the Commission in its notice of complaint. The answer shall advise the parties and the Commission fully and completely of the nature of the defense and shall respond specifically to all material allegations of the complaint. In cases involving allegations of harm, the answer shall indicate what action has been taken or is proposed to be taken to stop the occurrence of such harm. Collateral or immaterial issues shall be avoided in answers and every effort should be made to narrow the issues. Matters alleged as affirmative defenses shall be separately stated and numbered. Any defendant failing to file and serve an answer within the time and in the manner prescribed may be deemed in default.

(F) Replies to answers or amended answers. Within 10 days after service of an answer or an amended answer, a complainant may file and serve a reply which shall be responsive to matters contained in such answer or amended answer and shall not contain new matter. Failure to reply will not be deemed an admission of any allegation

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(*4*) the relief sought.

(B) Amended complaints. An amended complaint setting forth transactions, occurrences or events which have happened since the filing of the original complaint and which relate to the original cause of action may be filed with the Commission.

(C) Number of copies. An original and two copies of all pleadings shall be filed.

(D) Service.

(*1*) Except where a complaint is referred to a state pursuant to § 64.604(c)(5)(i), or where a complaint is filed directly with a state, the Commission will serve on the named party a copy of any complaint or amended complaint filed with it, together with a notice of the filing of the complaint. Such notice shall call upon the defendant to satisfy or answer the complaint in writing within the time specified in said notice of complaint.

(*2*) All subsequent pleadings and briefs shall be served by the filing party on all other parties to the proceeding in accordance with the requirements of § 1.47 of this chapter. Proof of such service shall also be made in accordance with the requirements of said section.

(E) Answers to complaints and amended complaints. Any party upon whom a copy of a complaint or amended complaint is served under this subpart shall serve an answer within the time specified by the Commission in its notice of complaint. The answer shall advise the parties and the Commission fully and completely of the nature of the defense and shall respond specifically to all material allegations of the complaint. In cases involving allegations of harm, the answer shall indicate what action has been taken or is proposed to be taken to stop the occurrence of such harm. Collateral or immaterial issues shall be avoided in answers and every effort should be made to narrow the issues. Matters alleged as affirmative defenses shall be separately stated and numbered. Any defendant failing to file and serve an answer within the time and in the manner prescribed may be deemed in default.

(F) Replies to answers or amended answers. Within 10 days after service of an answer or an amended answer, a complainant may file and serve a reply which shall be responsive to matters contained in such answer or amended answer and shall not contain new matter. Failure to reply will not be deemed an admission of any allegation

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contained in such answer or amended answer.

(G) Defective pleadings. Any pleading filed in a complaint proceeding that is not in substantial conformity with the requirements of the applicable rules in this subpart may be dismissed.

§ 64.605 State certification.

(a) State documentation. Any state, through its office of the governor or other delegated executive office empowered to provide TRS, desiring to establish a state program under this section shall submit, not later than October 1, 1992, documentation to the Commission addressed to the Federal Communications Commission, Chief, Common Carrier Bureau, TRS Certification Program, Washington, DC 20554, and captioned "TRS State Certification Application." All documentation shall be submitted in narrative form, shall clearly describe the state program for implementing intrastate TRS, and the procedures and remedies for enforcing any requirements imposed by the state program. The Commission shall give public notice of states filing for certification including notification in the **Federal Register**.

(b) Requirements for certification. After review of state documentation, the Commission shall certify, by letter, or order, the state program if the Commission determines that the state certification documentation:

(1) Establishes that the state program meets or exceeds all operational, technical, and functional minimum standards contained in § 64.604;

(2) Establishes that the state program makes available adequate procedures and remedies for enforcing the requirements of the state program; and

(3) Where a state program exceeds the mandatory minimum standards contained in § 64.604, the state establishes that its program in no way conflicts with federal law.

(c) Certification period. State certification shall remain in effect for five years. One year prior to expiration of certification, a state may apply for renewal of its certification by filing documentation as prescribed by paragraphs (a) and (b) of this section.

(d) Method of funding. Except as provided in § 64.604, the Commission shall not refuse to certify a state program based solely on the method such state will implement for funding intrastate TRS, but funding mechanisms, if labeled, shall be labeled in a manner that promote national understanding of TRS and do not offend the public.

(e) Suspension or revocation of certification. The Commission may suspend or revoke such certification if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted. In a state whose program has been suspended or revoked, the Commission shall take such steps as may be necessary, consistent with this subpart, to ensure continuity of TRS.

§ 64.606 Furnishing related customer premises equipment.

(a) Any communications common carrier may provide, under tariff, customer premises equipment (other than hearing aid compatible telephones as defined in part 68 of this chapter, needed by persons with hearing, speech, vision or mobility disabilities. Such equipment may be provided to persons with those disabilities or to associations or institutions who require such equipment regularly to communicate with persons with disabilities. Examples of such equipment include, but are not limited to, artificial larynxes, bone conductor receivers and TTs.

(b) Any carrier which provides telecommunications devices for persons with hearing and/or speech disabilities, whether or not pursuant to tariff, shall respond to any inquiry concerning:

(1) The availability (including general price levels) of TTs using ASCII, Baudot, or both formats; and

(2) The compatibility of any TT with other such devices and computers.

§ 64.607 Provision of hearing aid compatible telephones by exchange carriers.

In the absence of alternative suppliers in an exchange area, an exchange carrier must provide a hearing aid compatible telephone, as defined in part 68 of this chapter, and provide related installation and maintenance services for such telephones on a detariffed basis to any customer with a hearing disability who requests such equipment or services.

§ 64.608 Enforcement of related customer premises equipment rules.

Enforcement of §§ 64.606 and 64.607 is delegated to those state public utility or public service commissions which adopt those sections and provide for their enforcement.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 91-18153 Filed 7-31-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-117; RM-7670]

Radio Broadcasting Services; Edgewater, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 226C3 for Channel 226A at Edgewater, Florida, and modifies the construction permit (BPH-880406MI) to specify operation on the higher class channel, at the request of deHaro Radio, Ltd. See 56 FR 19827, April 30, 1991. Channel 226C3 can be allotted to Edgewater in compliance with the Commission's minimum distance separation requirements at the site specified in the construction permit, with a site restriction of 8.4 kilometers (5.2 miles) south of the community. The coordinates are North Latitude 28-54-52 and West Longitude 80-53-48. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 9, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-117, adopted July 17, 1991, and released July 26, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 226A and adding Channel 226C3 at Edgewater.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-18150 Filed 7-31-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-74; RM-7163]

Radio Broadcasting Services; West Palm Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 221C3 for Channel 221A at West Palm Beach, Florida, and modifies the license for Station WNGS(FM) to specify operation on the higher class channel, at the request of Pearl Broadcasting, Inc. See 56 FR 14052, April 5, 1991. Channel 221C3 can be allotted to West Palm Beach in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.6 kilometers (7.2 miles) north, in order to avoid a short-spacing to a construction permit for Station WZZR(FM), Channel 224C2, Stuart, Florida. The coordinates are North Latitude 26-49-14 and West Longitude 80-02-26. In accordance with Section 1.420(g) of the Commission's Rules, the license of Station WNGS(FM) will be modified to specify operation on Channel 221C3. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 9, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-74, adopted July 11, 1991; and released July 26, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 221A and adding Channel 221C3 at West Palm Beach.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-18147 Filed 7-31-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-123; RM-7693]

Radio Broadcasting Services; Newton, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 278B1 for Channel 278A at Newton, Illinois, and modifies the construction permit (BPH-880727MI) for Station WIKK to specify operation on the higher class channel, at the request of S. Kent Lankford. See 56 FR 19828, April 30, 1991. Channel 278B1 can be allotted to Newton in compliance with the Commission's minimum distance separation requirements at the site specified in the construction permit, with a site restriction of 9.9 kilometers (6 miles) northwest of the community. The site restriction is necessary in order to avoid short-spacings to a construction permit for Station WUEZ(FM), Channel 278A, Christopher, Illinois, and the licensed sites of Station WFIU(FM), Channel 279B, Bloomington, Illinois, and Station WDBR(FM), Channel 279B, Springfield, Illinois. The coordinates are North Latitude 39-04-31 and West Longitude 88-11-19. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 9, 1991

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-123, adopted July 17, 1991, and released July 26, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (232) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by removing Channel 278A and adding Channel 278B1 at Newton.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-18149 Filed 7-31-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-42; RM-7616]

Radio Broadcasting Services; Eldon, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Rivertown Communications Company, allots Channel 282C3 to Eldon, Iowa, as the community's first local FM service. See 56 FR 9190, March 5, 1991. Channel 282C3 can be allotted to Eldon in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.6 kilometers (4.7 miles) south to avoid a short-spacing to Station KTOF, Channel 283C1, Cedar Rapids, Iowa, at coordinates North Latitude 40-51-15 and West Longitude 92-15-15. With this action, this proceeding is terminated.

DATES: Effective September 9, 1991. The window period for filing applications will open on September 10, 1991, and close on October 10, 1991.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-42, adopted July 8, 1991, and released July 26, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

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PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by removing Channel 278A and adding Channel 278B1 at Newton.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–18149 Filed 7–31–91; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 91–42; RM–7616]

Radio Broadcasting Services; Eldon, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Rivertown Communications Company, allots Channel 282C3 to Eldon, Iowa, as the community's first local FM service. See 56 FR 9190, March 5, 1991. Channel 282C3 can be allotted to Eldon in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.6 kilometers (4.7 miles) south to avoid a short-spacing to Station KTOF, Channel 283C1, Cedar Rapids, Iowa, at coordinates North Latitude 40–51–15 and West Longitude 92–15–15. With this action, this proceeding is terminated.

DATES: Effective September 9, 1991. The window period for filing applications will open on September 10, 1991, and close on October 10, 1991.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91–42, adopted July 8, 1991, and released July 26, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by adding Eldon, Channel 282C3.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–18146 Filed 7–31–91; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 90–619; RM–7565]

Radio Broadcasting Services; Houston and Thayer, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 257C2 for Channel 257A, Houston, Missouri, and modifies the license for Station KUNQ(FM) to specify operation on Channel 257C2. This action is taken in response to a petition filed by Texas County Radio, Inc. See 55 FR 53316, December 28, 1990. The coordinates for Channel 257C2 at Houston are 37–06–15 and 91–50–30. To accommodate the upgrade at Houston we will substitute Channel 222A for vacant Channel 257A, Thayer, Missouri. Channel 222A is site restricted 5.6 kilometers (3.5 miles) east of Thayer at coordinates 36–30–13 and 91–28–56. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 9, 1991. The window period for filing applications for Channel 222A at Thayer will open on September 10, 1991, and close on October 10, 1991.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 90–619, adopted July 11, 1991, and released July 26, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW., Washington, DC 20036, (202) 452–1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 257A and adding Channel 257C2 at Houston and by removing Channel 257A and adding Channel 222A at Thayer.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–18148 Filed 7–31–91; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 215

[Docket No. 910492–1191]

Subsistence Taking of Northern Fur Seals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final notice of estimates of subsistence need; request for comments.

SUMMARY: Regulations on subsistence taking of northern fur seals require NMFS to publish a summary of the previous year's fur seal harvest and a discussion of the number of seals expected to be taken in the current year to meet the subsistence needs of the Aleut residents of the Pribilof Islands. NMFS published that notice on May 1, 1991. Following a 30-day public comment period and two public meetings, NMFS is publishing this final notice of the expected harvest levels for 1991 as follows: St. George Island: 161–500; St. Paul Island: 1145–1800.

NMFS is considering methods to determine subsistence needs more accurately and to define or quantify wasteful use more precisely. Comments are invited on these issues.

DATES: The final notice of estimates of subsistence needs is effective upon filing and applies to the harvest beginning after June 30, 1991. Comments concerning methods to determine subsistence needs and to define wasteful use are invited through September 31, 1991.

ADDRESSES: Comments should be addressed to Lynne Harris or Dr. Aleta A. Hohn, NMFS Office of Protected Resources, 1335 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Lynne Harris, (301) 427–2289, Dr. Aleta A. Hohn, (301) 427–2289, or Dr. Steve Zimmerman, (907) 586–7235.

SUPPLEMENTARY INFORMATION:

Background

The subsistence harvest of northern fur seals (*Callorhinus ursinus*) on the Pribilof Islands, Alaska, is governed by regulations found at 50 CFR part 215 subpart D—Taking for Subsistence Purposes. Those regulations were promulgated under the authority of the Fur Seal Act, 16 U.S.C. 1151 *et seq.*, and the Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.* (see 51 FR 24828, July 9, 1986). The purpose of these regulations is to limit the take of fur seals to a level providing for the legitimate subsistence requirements of the Pribilovians using humane and non-wasteful harvesting methods, and to restrict taking by sex, age, and season for herd management purposes.

The purpose of the annual notice is to provide subsistence estimates for the current year harvest for St. Paul and St. George Islands. The estimates are given as a range, the lower end of which can be exceeded if NMFS is given notice and the Assistant Administrator for Fisheries, NOAA (Assistant Administrator) determines that the subsistence needs of the Pribilovians have not been satisfied. Conversely, the harvest can be terminated before the lower range of the estimate is reached if it is determined that the subsistence needs of the Pribilovians have been met or the harvest has been conducted in a wasteful manner.

The following subsistence harvest estimates and actual harvest levels have been recorded on the Pribilof Islands since 1985:

Year	Subsistence Estimates		Actual Harvest Levels		
	St. Paul Island	St. George Island	St. Paul Island	St. George Island	Total
1985	—	—	3,384	329	3,713
1986	2,400–8,000	800–1,800	1,299	124	1,423
1987	1,600–3,000	530–1,000	1,710	92	1,802
1988	1,800–2,200	600–725	1,145	113	1,258
1989	1,600–1,800	533–600	1,340	181	1,521
1990	1,145–1,800	181–500	1,077	164	1,241

Subsistence Harvest Estimates for 1991

NMFS published a notice of proposed harvest levels summarizing the 1990 harvest and estimating for 1991 a range of subsistence needs of 1,314–1,560 seals on St. Paul Island and 135–172 seals on St. George Island (56 FR 19970, May 1, 1991). These estimates represented, for each island, the average number of seals taken during each of the past five harvests plus one standard deviation. This method, i.e., the use of an average and standard deviation for estimating subsistence needs, was chosen because NMFS thought previous harvest levels (excluding 1985) reflected the best available information on subsistence needs for fur seals by the Pribilovians, and the method incorporated annual variation in need, allowed for somewhat changing circumstances on the islands, and considered that the population on the Pribilofs has remained stable over the past several years. The method was unsatisfactory to all commenters, however, and was abandoned. The objections to the averaging technique are fully discussed later in this notice.

The subsistence harvest estimates are intended as estimates of need, not quotas. One consequence of the averaging technique described above was to restrict estimated levels of need to a very small range, inferring the existence of a more precise technique for estimating need than is currently available and giving the estimates an appearance of a quota. Some modification of the proposed estimates was required to broaden the range to encompass previous harvest levels while including information from the Pribilovians about their current-year subsistence needs.

NMFS has determined that a more acceptable method for estimating current-year needs is to use last year's harvest levels as a baseline. The baseline can then be adjusted to account for changing conditions, such as storage capability, employment, and utilization of the animals, if sufficient evidence is provided to warrant an adjustment. NMFS stresses that past harvest levels are not the controlling factor in determining current estimates of subsistence needs. Evidence of increasing subsistence need will be weighed more heavily than other factors.

For 1991, NMFS has estimated that the subsistence needs are the same as those estimated for 1990: St. George Island: 181–500; St. Paul Island: 1,145–1,800. While the lower end of the range represents a slight increase over the number of seals harvested in 1990 (the baseline number), the number harvested in 1990 was very close to the lower end of the estimated levels. In addition, residents on St. Paul and St. George Islands have stated that more seals are needed in 1991, although there was not enough new, factual evidence presented to NMFS to warrant, *a priori*, an increase in the lower end of the 1990 estimated range. The upper bound of the harvest estimates reflects the number of animals requested by the Pribilovians.

The estimated levels for 1991 encompass the proposed level of 1,314–1,560 seals on St. Paul Island, and are greater than the proposed level of 135–172 seals on St. George Island, because of the change from the averaging method to using levels from the previous year as a baseline. For both islands, the final range is greater than the proposed range, acknowledging, as discussed above, the current difficulty in estimating with the precision suggested by use of the standard deviation.

From June 30 through August 8 of each year the Pribilovians may harvest up to the lower bound of the estimate. Beyond August 8, additional harvesting requires authorization from the Assistant Administrator and is subject to specific requirements to guard against the take of females. At any time during the harvest season, once the lower bound is reached, the harvest must be suspended for no longer than 48 hours pursuant to 50 CFR 215.32(e)(1)(iii), pending a review of the harvest data to determine if the subsistence needs of the island residents have been met. If the Pribilovians can substantiate additional need for seals and there has been no indication of waste or the commercial use of fur seal parts, the Assistant Administrator will authorize additional takes up to the number required for subsistence purposes. Criteria on which to base a decision on whether or not to resume the harvest include assessments of: (1) The number of subsistence users needing additional meat; (2) the number of unfilled orders; and (3) whether wasteful take has occurred.

The primary mechanism for determining whether waste has occurred is through direct supervision. For the harvest to be considered non-wasteful, NMFS requires, in addition to removal of the most prized portions of the seal (flippers, shoulders, chests, livers, and hearts), the use of "other readily utilizable tissues and organs, a limited number of backbones, and some, but not necessarily all, rib sections." On the basis of this definition, NMFS has monitored each daily harvest on St. Paul Island to determine whether all flippers, shoulders, hearts, chests, livers, some ribs and backbones, and most other readily usable tissues and organs are being taken.

A second measure that may be relevant in determining whether the harvest is wasteful is the percent of a carcass that is used for subsistence purposes (percent use). Studies in 1985 and 1986 indicated that, on average, the maximum percentage of a fur seal (by weight) that potentially could be used for food is approximately 53.3 percent, including those parts not traditionally eaten by the Pribilovians. The same studies showed that when the Pribilovians butcher a fur seal in a way that removes only the most highly prized portions, about 30 percent of the seal is used. NMFS has indicated (51 FR 24832, July 9, 1986) that the taking of only these parts constitutes wasteful taking and has encouraged the highest possible levels of utilization. In the past, when the level of utilization has fallen below certain levels, NMFS has expressed concern. Nonetheless, NMFS has never specified a precise percent utilization that is required. It may be difficult to objectively quantify or substantiate a minimum percent-use requirement; under certain circumstances, a low level of utilization may not be indicative of waste. However, prolonged levels of low utilization without an adequate

	Subsistence Estimates		Actual Harvest Levels		
	St. Paul Island	St. George Island	St. Paul Island	St. George Island	Total
	—	—	3,384	329	3,713
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explanation may justify increased scrutiny. Until a better method is developed, NMFS will continue to monitor the percent use.

NMFS reiterates that it expects the use of harvested animals to be non-wasteful and will continue its supervision and monitoring program during 1991.

NMFS acknowledges that a method to determine subsistence needs more accurately should be developed. NMFS also recognizes that there may be a need for a better or more quantifiable definition of wasteful use. The existing regime was proposed in 1986 on an emergency basis. The 1986 emergency rule stated that the regime could be re-evaluated at a later date. As this regime is not fully satisfactory to all interest groups, NMFS hereby provides notice that the regime will be re-evaluated. The goals are (1) to find a better method for estimating the subsistence needs of Pribilof Island residents and (2) to find a better method for determining what constitutes wasteful use. NMFS welcomes input from interested parties in meeting these goals so that the decision-making process will be more straight-forward and predictable for all concerned. Comments are invited through September 31, 1991 (see **ADDRESSES**).

Response to Public Comments

During the public comment period, the following groups provided comments on the 1991 proposed harvest levels: City of St. Paul, Aleut Community of St. Paul, St. George Traditional Council, St. Paul Traditional Council, Aleutian Pribilof Island Association, Central Bering Sea Association, Alaska Federation of Natives, Friends of Animals, and Humane Society of the United States.

Comments focused mainly on the following issues: Whether the use of seals has been wasteful, the effect of the harvest on the fur seal population, the humaneness of the harvest, the commercial use of bacula or "seal sticks", the method used for determining subsistence needs in the notice of proposed levels, and the levels proposed for 1991.

Efficient Use

The issue of whether past harvests have been wasteful was one of the most contentious points from the notice of proposed subsistence needs. Some of the commenters pointed to the average percent-use figures from the 1989 (38.2 percent) and 1990 (39.9 percent) harvests as evidence of wasteful taking. One commenter expressed the opinion that significantly higher proportions of the seals could be utilized and NMFS should require these higher utilization levels in order for the harvest to continue. The commenter based these remarks on use levels recorded during the 1986 subsistence harvest where (1) percent use reached 50 percent or higher on approximately half of the harvest days, (2) on one day, a percent-use figure of 63.6 percent was attained, and (3) the average percent use for the 1986 subsistence harvest was 47.8 percent. On the basis of these data, the commenter believes that NMFS should set a minimum percent-use level of 60 percent. NMFS responds that the 50 percent and higher utilization levels reported during the 1986 harvest resulted from a significant number of harvesters completing only minimal butchering on the fields, removing only the head, skin, and blubber from the seals before taking the entire carcass home for further butchering. On those days, it is unknown what percentage of the animals was actually retained for subsistence use; it is only known what average percentage of the animals was removed from the harvest fields.

Some of the comments maintained that the fur seal harvest should be curtailed or halted because NMFS has failed to ensure that the harvest be conducted in a non-wasteful manner. They pointed to the statutory mandate at 16 U.S.C. 1371(b)(3), and the regulations at 50 CFR 215.2, which prohibit "taking of fur seals beyond those needed for subsistence uses or which results in the waste of a substantial portion of the fur seal." In addition, NMFS was charged with "failing to take steps to deter obvious and demonstrable waste" with respect to previous harvests. One set of comments referred to statements made by NMFS in a letter to the Aleut Community Council of St. Paul in July 1990 recognizing apparently falling use levels in the 1989 and 1990 harvest. The letter noted that the 1988 and 1989 harvests yielded approximately the same amount of meat in pounds, but 195 fewer seals were taken in 1988. The purpose of the letter was to request from the Pribilovians an explanation of falling use levels. The commenter suggested that NMFS make a policy statement reflecting its intent to shut down the harvest if use levels fall.

NMFS is unaware of "obvious and demonstrable waste" in the harvest, overseas the harvest on St. Paul to ensure that the mandated parts of the animal are harvested, and thinks that the harvest needs to be conducted in a non-wasteful manner. NMFS continues to accept that the maximum percent available for food is 53.3 percent. Taking of the minimum parts required results in the use of at least 30 percent of an animal, or about 56 percent of that part of the animal available for food. Studies have not been conducted, however, to objectively determine a lower bound on acceptable percent-use levels or, therefore, what constitutes a "substantial portion" of a fur seal for subsistence use. As stated earlier, NMFS has not specified a precise percent utilization that is required and it may be difficult to quantify objectively that level. NMFS will continue, however, to monitor percent use.

Some commenters criticized the use of the "butterfly" butchering technique, claiming the use of this technique results in the waste of some useable portions of the seal. The Pribilovians do not use the "butterfly" technique exclusively, but do regard it as a skilled method for obtaining certain cuts of meat. Some useable, but less desirable, portions of the seal are not removed when the "butterfly" technique is used, but other techniques that remove greater amounts of meat are also frequently used. NMFS encourages the fullest possible use of each animal, but does not agree that the "butterfly" technique must be eliminated.

NMFS appreciates that part of the criticism about full utilization of the fur seals in a carry-over from the commercial harvest when the large number of animals taken allowed the Pribilovians to take only the most prized portions from each animal for subsistence. With the cessation of the commercial harvest, this practice is no longer an option because the animals are taken for subsistence only. An invitation has been extended to the Humane Society of the United States to observe the harvest and the use of the butchering techniques to demonstrate their efficiency.

Effect on the Status of the Fur Seal Population

Some comments focused on the effect of the subsistence harvest on a depleted stock. One commenter suggested that NMFS begin research initiatives into the effects of removal of sub-adult males from the subsistence harvest.

NMFS has calculated the effects of removal of relatively small numbers of sub-adult males on long-term population trends. Specifically, NMFS has evaluated the removal of approximately 1,000–2,000 sub-adult males from the population of over 800,000 seals. Seals taken in the harvest are generally 2 to 3 years of age. On the basis of the estimated number of seals in the 1987–1988 cohorts on St. Paul (1987—171,600; 1988—202,300) and on life tables for males of this species (survival rates in 1987=0.296 and in 1988=0.38), it is estimated that a pool of approximately 60,000–70,000 males in age classes 2 and 3 existed in the population on St. Paul in 1990. Consequently, the 1990 harvest of 1,077 seals removed only about 1.5 percent of the males in those age classes. Pup production has remained relatively stable in recent years.

One commenter remarked that it is an insult for NMFS to consider sub-adult male seals as "surplus" (commenter's wording) animals that can be harvested without concern for the reproductive future of the species. The commenter mentioned "recent studies by Soviet scientists" that "apparently indicate" that sub-adult males may occasionally be mating with females and therefore possibly contributing to population growth. Contrary to this contention, male fur seals do not achieve sexual maturity until 5 years of age; sub-adult male seals are biologically incapable of inseminating females and are not, therefore, contributing to the current reproductive potential of the population.

NMFS acknowledges that other known sources of human-induced mortality are also removing individuals from the depleted stock of northern fur seals. This mortality includes an incidental take, encompassing both sexes and all ages, of an estimated 14,000 fur seals per year in marine debris and about 3,400–4,800 in high seas drift gillnets, plus an additional unknown number in large-mesh gillnets. The subsistence harvest is regulated to minimize further negative effects on the population by limiting the harvest to sub-adult males. In addition, NMFS has proposed (56 FR 25066, June 3, 1991) that the option of extending the harvest into the time when females use haul-outs be removed to virtually eliminate the possibility that females will be taken.

Humane Taking

A question was raised about the humaneness of the harvest, particularly as regards the incidence of heat stress among seals during harvest activity. The commenters questioned the legitimacy of NMFS reporting only one seal death due to heat stress during the 1990 harvest and asked the following: (1) How many seals exhibited signs of heat stress during the 1990 harvest? (2) Could any seals die of heat stress unobserved? (3) What has NMFS done to eliminate heat stress? (4) Does NMFS monitor animal temperatures and stop the harvest as the risk of heat stress increases?

NMFS employs a veterinary pathologist as a humane observer during all harvest activities. This observer monitors rectal temperatures of animals taken and has the authority to suspend harvest activities if the temperatures indicate heat-stress potential, or if signs of heat stress are observed among the animals being herded. If an animal is suffering from heat stress, or dies as a result of heat stress, that animal is taken as part of the subsistence harvest. Of the animals rounded up during the 1990 harvest, six exhibited signs of heat stress and five of these were taken for subsistence. Some animals appear to be more susceptible to heat-stress than others, and instances of heat stress related mortality also occur in non-harvest situations with similarly low frequency. NMFS evaluation of the one seal that died of heat stress after a harvest revealed that its blubber layer was nearly four times as thick as the average for the other seals taken in the harvest. A similar finding was noted in the evaluation of a heat stress mortality from a non-harvest situation.

Commerce in Seal Sticks

Commenters expressed concern over the potential sale of seal sticks and, particularly, that the potential for monetary gain provides the incentive for increased harvest levels over and above what is needed for subsistence if the animals are taken in a non-wasteful manner. Seal sticks (bacula or penis bones) are used in the Orient as aphrodisiacs. Last year, the Pribilovians reported to NMFS the presence of foreign merchants on the Pribilofs attempting to purchase seal sticks during the harvests. Commenters wanted to know what was being done to prevent the Pribilovians from illegally selling seal sticks to these foreign merchants. These commenters also suggested that NMFS minimize the potential for illegal trade by collecting and destroying the seal sticks from each animal harvested. NMFS believes that such a requirement is unnecessary, especially in light of efforts taken in recent years to ensure no such commercial activity would occur. Last year NMFS observers visited the carcass dumps daily and reported that there was no indication that seal sticks were being removed.

NMFS believes no other monitoring is necessary, absent a sufficient indication of commercial sale of seal sticks. NMFS is concerned about the potential problem, however, and will continue to monitor seal stick disposition and increase enforcement efforts, if necessary. In addition, any evidence of the commercial use of seal sticks or other parts of fur seals will result in termination of the harvest.

Method for Setting Harvest Levels

Almost all commenters expressed dissatisfaction with NMFS' use of a 5-year average to set the 1991 proposed harvest estimates. Objections included: An average has no relation to actual need this year; past harvests have been wasteful and therefore the number of animals taken was unnecessarily high; an average has no link to economic treads; past years' harvests have reflected only circumstances and not need and, therefore, the levels are too low. NMFS used an average to set this year's proposed harvest estimate because past years' takes offer the one factual indication of subsistence need. On the basis of the comments received, NMFS has decided not to use an average as the final harvest estimate. All other indicators of need, however, have proven highly contradictory or subjective. NMFS welcomes suggestions on an objective, accurate method to determine subsistence needs on a yearly basis.

The same commenters objected to the use of a standard deviation to set the upper range of the harvest estimate. The standard deviation of the mean quantifies the variability of the annual harvest data. One standard deviation will account for 67 percent of the variability associated with the mean. This level was selected as a conservative measure of the variability that might be expected. However, based on comments received, NMFS has decided not to use standard deviation to determine the final harvest estimate.

Commenters that objected to the proposed level for 1991 because it was much higher than the 1990 level cited that the actual take of seals in 1990 was lower than the lower harvest estimate, their belief that economic conditions on the Pribilofs were unchanged or improved from previous years, and their belief that 'wasteful harvesting' has occurred, as evidenced by decreasing percent-use levels in recent harvests. These commenters used a 60-percent use figure and pounds of meat taken in previous harvests to claim that the Pribilovians subsistence needs could be met by taking 715 seals.

Commenters from the Pribilof Islands requested that the proposed harvest estimates be higher. St. Paul requested 1,800 seals; St. George requested 500. The Pribilovians thought that they were being penalized because recent actual harvest levels have been below estimated levels even though these low levels of take reflected certain circumstances (no available freezers to store meat, lack of experienced sealers

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because of employment in seasonal fisheries, etc.) rather than their actual need. The Pribilovians stated, as they have in previous years, that they have had a chronic shortage of long-term storage space for perishable food stuffs, effectively restricting harvest levels to what could be used for immediate consumption. Commenters from St. George pointed out that recent harvest levels on St. George have averaged less than one seal per year per person, far below traditional subsistence levels and enough to satisfy only immediate need. These commenters remarked that this circumstance will be remedied in 1991 because St. George Island will have modern freezer capacity and will be able to store more meat than in the past. For both islands, it was argued that subsistence needs are greater in 1991 than in 1990 because the fish processing plants are not operating or doing so only intermittently. In addition, on St. George, no commercial halibut fishing (the chief source of income on this island) will take place.

The Pribilovians attested that their true annual need for seal meat has never been fully satisfied. The timing of the harvest coincides with the peak of the summer fisheries and construction activities. Most experienced sealers are also heads of households and must therefore take advantage of what limited employment opportunities arise on the islands and are often unavailable to carry out subsistence harvest activities. The limited 6-week harvest is the only time during the year that fur seals may be harvested, so there is no apparent way to eliminate the competition between summer fishery and construction employment and subsistence harvest volunteers, thereby, they argued, reducing the number of seals physically able to be harvested.

The Pribilovians also commented that critics of the harvest do not make any provision for the cultural aspects of the fur seal harvest and the Pribilovians' desire to preserve some semblance of their Aleutian heritage. Even if economic conditions were greatly improved, they felt that they would still be entitled to some animals for subsistence and that until accurate information is available to guide a determination of subsistence need, NMFS must set harvest levels that are sufficient to meet the stated needs of the Pribilovians while not disadvantaging the seal population.

To the above comments on harvest levels, NMFS responds that no evidence exists about whether or not the Pribilovians' true annual subsistence needs have been met during the 6-week harvest or, conversely, that if all the circumstances that have purportedly limited the harvest to levels below those stated as needed by the Pribilovians were removed, more seals would actually be harvested for subsistence use. Although some of the arguments by the Pribilovians have been similar from one year to the next, the lower bound of the subsistence estimate has been reached in only one of 5 years since 1986 and a greater need has not been indicated when the end of the harvest approached. At this time, NMFS is looking for a better way to ascertain need.

Aleut representatives are concerned that assessments to decide whether the harvest may resume if the lower bound has been reached may not be accomplished within the 48-hour period required by the regulations. They believe that the distance between the Pribilofs and the Washington, DC, area, the difference in time zones, and the possibility that decision-makers may be away from the office could cause delays that may result in the loss of some part of their subsistence harvest. The Assistant Administrator will make every effort to ensure that necessary determinations are made within 48 hours.

Dated: July 26, 1991.

Samuel W. McKeen,

Executive Director, National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

[FR Doc. 91–18224 Filed 7–29–91; 11:48 am]

BILLING CODE 3510-22-M

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50 CFR Part 672

[Docket No. 901184–1042]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment, request for comments.

SUMMARY: NMFS is taking measures to prevent overfishing of demersal shelf rockfish (DSR) in the Southeast Outside (SEO) District of the Gulf of Alaska (GOA) by closing the SEO District to vessels using trawl gear for all groundfish. This action is necessary to prevent overfishing of DSR. It is intended to promote fishery conservation and management goals of the North Pacific Fishery Management Council (Council).

DATES: Effective 12 noon Alaska local time (A.l.t.), on July 29, 1991, through 12 midnight A.l.t., December 31, 1991. Comments are invited through August 13, 1991.

ADDRESSES: Comments should be mailed to Dale R. Evans, Chief, Fisheries Management Division, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802–1668, or be delivered to 9109 Mendenhall Mall Road, Federal Building Annex, suite 6, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg, Fishery Management Biologist, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The domestic and foreign groundfish fisheries in the exclusive economic zone of the GOA are managed by the Secretary under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The FMP was prepared by the Council under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations for the foreign fishery at 50 CFR part 611 and for the U.S. fishery at 50 CFR part 672. Additional regulations pertaining to U.S. fishermen are found at 50 CFR part 620.

The Council recommended at its December 3–7, 1990, meeting, that the acceptable biological catch (ABC) and total allowable catch (TAC) specifications for DSR be set at 445 and 425 metric tons (mt), respectively. The Secretary of Commerce (Secretary) implemented the Council recommendations (56 FR 8723; March 1, 1991).

The FMP requires that conservation and management measures prevent overfishing. The Guidelines for Fishery Management Plans, 50 CFR 602.11(c)(1), define overfishing as a level or rate of fishing mortality that jeopardizes the long term capacity of a stock or stock complex to produce its maximum sustainable yield on a continuing basis.

The FMP describes the maximum fishing mortality rate that would result in a catch constituting overfishing of a target species category within the meaning of the FMP. The ABC specification of 445 mt for DSR is numerically equal to the definition of overfishing defined in the FMP. Incidental catches of DSR could result in the DSR ABC being exceeded and, therefore, overfished because only 164 mt remain of the DSR ABC.

Under § 672.22(a)(2) (i) and (ii), the Secretary is authorized to implement an inseason adjustment that closes all of a management area if the Secretary has determined that such an adjustment is necessary to prevent the overfishing of any species or stock of fish or shellfish. In order to implement such an inseason adjustment, the Regional Director must determine, and the Secretary concur, that the management adjustment selected is the least restrictive necessary to achieve the purpose of the adjustment. Section 672.22(a)(3) lists several factors the Regional Director may consider in making such a determination. As required by § 672.22(a)(3), the Secretary has considered all information relevant to the following factors:

(1) *The effect of overall fishing effort within a regulatory area*—The SEO District, as well as the rest of the GOA, is closed to vessels using hook-and-line gear for the remainder of the year as a result of reaching the Pacific halibut (halibut) prohibited species catch allowance allocated to hook-and-line gear (56 FR 32119, July 15, 1991). Vessels using pot gear may commence fishing the Pacific cod in the SEO District, which could result in DSR incidental catches, but this gear type has not been used in the SEO District in recent years. NMFS has no information to indicate that such fishing would commence. NMFS anticipates that any pot fishing effort would be minimal, because certain amounts of lost hook-and-line gear might cause gear entanglements with pot gear. Nonetheless, NMFS anticipates that if pot gear is used in a directed cod fishery, any incidental catches of DSR would be insignificant.

Vessels using trawl gear, however, could expend considerable fishing effort for target species categories of groundfish that are available in the Eastern Regulatory Area, which encompasses the SEO District. Through July 14, 1991, the following amounts are available for harvest: Arrowtooth flounder—4,717 mt; deep water flatfish—2,890 mt; shallow water flatfish—1,997 mt; flathead sole—2,999 mt; Pacific cod—2,773 mt; "other rockfish"—3,030 mt; and thornyhead rockfish—479 mt. Thornyhead rockfish is a target species category with a GOA-wide TAC, all of which could be harvested in the SEO District.

Only 144 mt and 164 mt of DSR remain before the TAC and the ABC, respectively, are reached. NMFS anticipates that incidental catches of DSR in these fisheries could result in the DSR ABC being exceeded.

(2) *Catch per unit of effort and rate of harvest*—Except for deep water flatfish, "other rockfish," and thornyhead rockfish, trawling for the other groundfish species could result in substantial incidental amounts of DSR because these species cohabit areas with DSR and incidental catch rates could be high. Also, incidental catch rates of DSR while fishing for deep water flatfish, "other rockfish," and thornyhead rockfish could be high because the State of Alaska allows a ten percent bycatch rate (see 5 AAC 28.170) of DSR by trawl vessels under the authority of the FMP. If trawl vessels topped off their catches, substantial amounts of DSR could be caught.

(3) *Relative abundance of stocks within the area*—DSR in the SEO District represents only a small fraction of harvestable groundfish compared to the Eastern Regulatory Area. The ABC of 445 mt is only 0.7 percent of the total ABC for all other groundfish of 67,392 mt for the Eastern Regulatory Area.

(4) *The condition of the stock within all or part of a regulatory area*—NMFS has determined the status of DSR stocks to be depressed and declining. This determination is based on information contained in the Council's Stock Assessment and Fishery Evaluation Report, dated November 1990.

(5) *Economic impacts on fishing businesses being affected*—The second opening of the hook-and-line halibut fishery is scheduled for September 3, 1991. About 2.4 million pounds of halibut with an exvessel value of about $3,690,000 are expected to be harvested in that fishery. If the amount of DSR needed to support bycatch needs in that fishery is not available, the halibut fishery might be closed to prevent overfishing of DSR. Fishermen could forgo the exvessel value of the halibut fishery. Trawl fishermen could forgo the value of the "other rockfish" and thornyhead rockfish which is estimated at $2.3 million. NMFS anticipates that these fisheries would have been pursued in the SEO District. NMFS does not anticipate other trawl fisheries in the SEO District. If other trawl fisheries had been prosecuted, losses to fishermen would be higher than those estimated.

(6) *Other factors relevant to the conservation and management of groundfish species for which a TAC has been specified*—Following the September 3, 1991, halibut fishery, NMFS will reassess the amount of the DSR TAC remaining. If sufficient amounts remain, the Secretary may rescind or modify this inseason action.

The Secretary has determined that the closure of the SEO District of the GOA to vessels using trawl gear for all groundfish is the least restrictive management adjustment necessary to prevent overfishing of DSR in the GOA because this action accounts for the effects on DSR of different gears, areas, and groundfish targets, and does not close all GOA fisheries. This action will allow other fisheries to continue during noncritical time periods. Therefore, under § 672.22(a)(1)(i), the Secretary is issuing an inseason adjustment closing the SEO District to directed fishing for groundfish by vessels using trawl gear from July 29, 1991, for the remainder of the 1991 fishing year.

Classification

This action is taken under 50 CFR 672.22 and is in compliance with Executive Order 12291.

Immediate effectiveness of this notice is necessary to prevent overfishing of DSR stocks. Therefore, the Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment on this notice or to delay its effective date. However, interested persons are invited to submit comments in writing to the above address through August 13, 1991.

List of Subjects in 50 CFR Part 672

Fish, Fisheries, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 26, 1991.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-18213 Filed 7-29-91; 11:48 am]

BILLING CODE 3510-22-M

Proposed Rule

This section of the FEDERAL R
contains notices to the public o
proposed issuance of rules and
regulations. The purpose of thes
is to give interested persons an
opportunity to participate in the
making prior to the adoption of
rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 333

Passing Over Preference Eligi
Appointments Outside Regist

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Person
Management (OPM) proposes t
its regulations governing proce
used to select candidates for te
and term appointments outside
The revised regulations would
public notice requirements and
respective responsibilities of ag
and OPM for approving selectio
candidates not eligible for veter
preference when preference eli
with equal or higher ranking ar
available.

DATES: Comments must be rece
September 30, 1991.

ADDRESSES: Send or deliver wri
comments to Leonard R. Klein,
Associate Director for Career E
Office of Personnel Managemen
6F08, 1900 E Street NW., Washi
DC 20415.

FOR FURTHER INFORMATION CON
Tracy E. Spencer (202) 606-0960

SUPPLEMENTARY INFORMATION:
3318 of title 5, United States Co
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of eligibles in order to select a c
who is not eligible for veterans
preference. The law requires th
selecting official give reasons fo
passing over any preference eli
that selection of the nonveteran
approved by OPM. In the case o
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service-connected disability of
percent or more, the law further
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of the proposed passover and gi
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based on information
Council's Stock
Fishery Evaluation
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been prosecuted, losses to fishermen would be higher than those estimated.

(6) *Other factors relevant to the conservation and management of groundfish species for which a TAC has been specified*—Following the September 3, 1991, halibut fishery, NMFS will reassess the amount of the DSR TAC remaining. If sufficient amounts remain, the Secretary may rescind or modify this inseason action.

The Secretary has determined that the closure of the SEO District of the GOA to vessels using trawl gear for all groundfish is the least restrictive management adjustment necessary to prevent overfishing of DSR in the GOA because this action accounts for the effects on DSR of different gears, areas, and groundfish targets, and does not close all GOA fisheries. This action will allow other fisheries to continue during noncritical time periods. Therefore, under § 672.22(a)(1)(i), the Secretary is issuing an inseason adjustment closing the SEO District to directed fishing for groundfish by vessels using trawl gear from July 29, 1991, for the remainder of the 1991 fishing year.

Classification

This action is taken under 50 CFR 672.22 and is in compliance with Executive Order 12291.

Immediate effectiveness of this notice is necessary to prevent overfishing of DSR stocks. Therefore, the Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment on this notice or to delay its effective date. However, interested persons are invited to submit comments in writing to the above address through August 13, 1991.

List of Subjects in 50 CFR Part 672

Fish, Fisheries, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 26, 1991.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-18213 Filed 7-29-91; 11:48 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 148
Thursday, August 1, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 333

Passing Over Preference Eligibles for Appointments Outside Registers

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) proposes to revise its regulations governing procedures used to select candidates for temporary and term appointments outside registers. The revised regulations would clarify public notice requirements and the respective responsibilities of agencies and OPM for approving selections of candidates not eligible for veterans preference when preference eligibles with equal or higher ranking are available.

DATES: Comments must be received by September 30, 1991.

ADDRESSES: Send or deliver written comments to Leonard R. Klein, Associate Director for Career Entry, Office of Personnel Management, room 6F08, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Tracy E. Spencer (202) 606-0960.

SUPPLEMENTARY INFORMATION: Section 3318 of title 5, United States Code, sets out procedures agencies must follow to pass over a preference eligible on a list of eligibles in order to select a candidate who is not eligible for veterans preference. The law requires that a selecting official give reasons for passing over any preference eligible and that selection of the nonveteran be approved by OPM. In the case of a preference eligible with a compensable service-connected disability of 30 percent or more, the law further requires that he or she be notified by the agency of the proposed passover and given 15 days to reply to OPM and prohibits OPM from delegating its authority to approve the passover.

Section 3327 of title 5, United States Code, requires agencies to give public notice through OPM and State Employment Service offices whenever they are accepting outside applications for positions in the competitive service.

All of these requirements apply to temporary and term positions for which agencies recruit and make appointments outside registers. Instructions for administering them have generally been issued through the Federal Personnel Manual system. However, because of their statutory basis, OPM has determined that basic procedures should be set out in regulations.

The proposed regulations would add the statutory public notice and passover requirements to the procedures for making temporary and term appointments outside registers contained in 5 CFR part 333. The regulations would also delegate to agencies authority to approve passover of preference eligibles other than those with compensable service-connected disabilities of 30 percent or more. The procedures in 5 CFR part 333 apply only when OPM has authorized an agency to conduct recruiting, rank candidates, and make appointments outside registers. Delegation of authority to pass over preference eligibles on resulting lists of eligibles would be a logical adjunct to the outside-register appointing authority.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation affects only the procedures used to appoint certain Federal employees.

List of Subjects in 5 CFR Part 333

Administrative practice and procedure, Government employees.

Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM proposes to amend 5 CFR part 333, as follows:

PART 333—RECRUITMENT AND SELECTION FOR TEMPORARY AND TERM APPOINTMENTS OUTSIDE THE REGISTER

1. The authority citation for part 333 is revised to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR 1954-1958 Comp., p. 218; § 333.203 also issued under 5 U.S.C. 1104, Pub. L. 95-454, sec. 3(5).

§ 333.103 [Redesignated from § 333.102]

2. Section 333.102 is redesignated as § 333.103 and a new § 333.102 is added to read as follows:

§ 333.102 Public notice for temporary and term appointments outside the register.

An agency must notify appropriate OPM Service Centers and State Employment Service offices about vacant positions they plan to fill under procedures in this part. The notices must describe the positions (including qualification requirements), application procedures, and filing deadline. The notice must also specify that the U.S. Government is an Equal Opportunity Employer, and that eligible applicants are entitled to veterans preference in employment. OPM will issued specific instructions for preparing notices in chapter 333 of the Federal Personne' Manual.

3. In § 333.201, paragraph (c) is revised to read as follows:

§ 333.201 Making appointments from an unranked list.

* * * * *

(c) Except as provided in paragraph (b) of § 333.202 and in § 333.203 of this part, qualified candidates not eligible for veteran preference may be selected only when no qualified veteran preference eligibles are available.

4. In § 333.202, paragraph (b)(2) is revised to read as follows, and paragraph (c) is removed:

§ 333.202 Making appointments from a numerically ranked list.

* * * * *

(b) * * *

(2) Consider a preference eligible whose eligibility for further consideration for the position has been discontinued as provided in § 333.203.

5. A new § 333.203 is added to read as follows:

§ 333.203 Passing over and discontinuing consideration of preference eligibles.

(a) *Preference eligibles with compensable service-connected disabilities of 30 percent or more.* When an agency making an appointment proposes to pass over a preference eligible who has a compensable service-connected disability of 30 percent or more and proposes to select a nonpreference eligible, the agency must—

(1) Submit its reasons for so doing to the OPM office with examining jurisdiction over the position;

(2) Notify the preference eligible of the proposed passover, the reasons for it, and his or her right to respond to those reasons to OPM within 15 days after the date of notification; and

(3) Obtain OPM's approval for the proposed passover before selecting the nonpreference eligible.

(b) *Other preference eligibles.* When an agency making an appointment proposes to pass over a preference eligible other than one described in paragraph (a) of this section and proposes to select a nonpreference eligible, the agency must record its reasons for doing so and must furnish a copy of those reasons to the preference eligible and to his or her representative on request.

(c) *Discontinuing consideration.* An agency may discontinue consideration of a preference eligible for a position only under the following conditions. (Position, for this purpose, refers to a specific set of duties, responsibilities, and qualification requirements under a single appointing official. Positions having different specific qualification requirements are considered separately under this paragraph, even if they are classified under the same title, series, and grade.) The agency may discontinue consideration if—

(1) On three occasions, the agency has considered and nonselected the candidate for the position in competition with other preference eligibles;

(2) The agency has obtained OPM's approval to pass over his or her name and select a nonpreference eligible in accordance with paragraph (a) of this section; or

(3) The agency has passed over his or her name and recorded its reasons for so doing as provided in paragraph (b) of this section.

[FR Doc. 91-18248 filed 7-31-91; 8:45 am]

BILLING CODE [illegible]-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 967

[FV-91-407PR]

Proposed Handling Regulation for Celery Grown in Florida

AGENCY: Agricultural Marketing Service.

ACTION: Proposed rule.

SUMMARY: This action proposes establishing the quantity of Florida celery which handlers may ship to fresh markets during the 1991-92 season at 6,789,738 crates or 100 percent of producers' base quantities. This proposal is intended to lend stability to the industry and, thus, help to provide consumers with an adequate supply of the product. As in past seasons, the limitation on the quantity of Florida celery handled for fresh shipment is not expected to restrict the quantity of Florida celery actually produced or shipped to fresh markets, since production and shipments are anticipated to be less than the allotment. This proposal was recommended by the Florida Celery Committee (Committee), the agency responsible for local administration of the order.

DATES: Comments must be received by August 12, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Christian D. Nissen, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2522-S, Washington, DC 20090-6456; telephone: (202) 382-1754.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Order No. 967 (7 CFR part 967), both as amended, regulating the handling of celery grown in Florida. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This proposed rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are an estimated 7 handlers of celery grown in Florida subject to regulation under the celery marketing order and approximately 13 producers of celery in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The minority of celery handlers and producers may be classified as small entities.

This proposal is based upon the recommendation and information submitted by the Committee and upon other available information. The Committee met on June 11, 1991, and recommended a marketable quantity of 6,789,738 crates of fresh celery for the 1991-92 season beginning August 1, 1991. Additionally, a uniform percentage of 100 percent was recommended which would allow each producer registered pursuant to § 967.37(f) of the order to market 100 percent of such producer's base quantity. These recommendations were based on an appraisal of expected 1991-92 supplies and prospective demand.

As required by § 967.37(d)(1) of the order, a reserve of 6 percent (407,384 crates) of the 1991-92 total base quantities is authorized for new producers and increases for existing producers. There were no applications for new base quantities or any requests for adjustments in base quantities from producers with existing base quantities.

The proposal would limit the quantity of Florida celery which handlers may purchase from producers and ship to fresh markets during the 1991-92 season to 6,789,738 crates. It is expected that

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INFORMATION: This
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Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are an estimated 7 handlers of celery grown in Florida subject to regulation under the celery marketing order and approximately 13 producers of celery in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The minority of celery handlers and producers may be classified as small entities.

This proposal is based upon the recommendation and information submitted by the Committee and upon other available information. The Committee met on June 11, 1991, and recommended a marketable quantity of 6,789,738 crates of fresh celery for the 1991–92 season beginning August 1, 1991. Additionally, a uniform percentage of 100 percent was recommended which would allow each producer registered pursuant to § 967.37(f) of the order to market 100 percent of such producer's base quantity. These recommendations were based on an appraisal of expected 1991–92 supplies and prospective demand.

As required by § 967.37(d)(1) of the order, a reserve of 6 percent (407,384 crates) of the 1991–92 total base quantities is authorized for new producers and increases for existing producers. There were no applications for new base quantities or any requests for adjustments in base quantities from producers with existing base quantities.

The proposal would limit the quantity of Florida celery which handlers may purchase from producers and ship to fresh markets during the 1991–92 season to 6,789,738 crates. It is expected that the 6,789,738 crate marketable quantity will be above actual shipments for the 1991–92 season. Thus, the 6,789,738 crate marketable quantity is not expected to restrict the amount of Florida celery which growers produce or the amount of celery which handlers ship. For these reasons, the proposal should lend stability to the industry and thus, help to provide consumers with an adequate supply of the product.

Based on available information, the Administrator of the AMS has determined that issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

Interested persons are invited to submit their views and comments on this proposal. A 10-day comment period is deemed appropriate because the new marketing season begins on August 1.

List of Subjects in 7 CFR Part 967

Celery, Florida, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 967 is proposed to be amended as follows:

PART 967—CELERY GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 967 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Subpart—Administrative Rules and Regulations

2. A new section 967.327 is added to read as follows:

[Note: This section will not appear in the Code of Federal Regulations.]

§ 967.327 Handling regulation, marketable quantity, and uniform percentage for the 1991–92 season beginning on August 1, 1991.

(a) The marketable quantity established under § 967.36(a) is 6,789,738 crates of celery.

(b) As provided in § 967.38(a), the uniform percentage shall be 100 percent.

(c) Pursuant to § 967.36(b), no handler shall handle any harvested celery unless it is within the marketable allotment of a producer who has a base quantity and such producer authorizes the first handler thereof to handle it.

(d) As required by § 967.37(d)(1), a reserve of six percent of the total base quantities is hereby authorized for: (1) New producers and (2) increases for existing base quantity holders.

(e) Terms used herein shall have the same meaning as when used in the said marketing agreement and order.

Dated: July 25, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–18089 Filed 7–31–91; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF ENERGY

Office Of Fossil Energy

10 CFR Part 1049

Guidelines for the Exercise of Limited Arrest Authority and Use of Force by Protective Force Officers of the Strategic Petroleum Reserve

AGENCY: Strategic Petroleum Reserve Office, Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) is issuing a notice of proposed rulemaking to prescribe guidelines pertaining to the exercise of limited arrest authority and use of force by Protective Force Officers of the Strategic Petroleum Reserve (SPR). These guidelines, which have been concurred in by the Attorney General, are in accordance with section 661 of the Department of Energy Organization Act (42 U.S.C. 7270a), which authorizes officers guarding the SPR to carry firearms while discharging their official duties, and in certain instances to make arrests without warrant.

DATES: Written comments must be received on or before September 3, 1991.

ADDRESSES: Send comments to: Durinda Robinson, Office of the Chief Counsel, Department of Energy, Project Management Office, Strategic Petroleum Reserve, 900 Commerce Road East, New Orleans, Louisiana 70123.

FOR FURTHER INFORMATION CONTACT:

Ralph LaMonda, Office of the Strategic Petroleum Reserve, Department of Energy, Mail Stop FE–421, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4692.

Durinda Robinson, Office of Chief Counsel, Department of Energy, Strategic Petroleum Reserve, 900 Commerce Road East, New Orleans, Louisiana 70123, (504) 734–4312.

SUPPLEMENTARY INFORMATION:

I. Background

Due to the lack of Federal authority to adequately protect the storage and other facilities of the SPR and persons in or upon the SPR, Congress enacted section 661 of the Department of Energy Organization Act. (42 U.S.C. 7270a). Section 661 authorizes SPR guards who are designated by the Secretary of Energy to carry firearms and to make warrantless arrests of persons reasonably believed to have committed offenses against the United States. Section 661 of the Act authorizes employees of the Department of Energy and Department of Energy contractors or subcontractors (hereinafter "Protective Force Officers") guarding the Strategic Petroleum Reserve established under part B of title I of the Energy Policy and Conservation Act, or its storage and related facilities, to carry firearms and make such arrests while discharging their official duties. These guidelines set forth procedures uniformly applicable to the exercise of such authority at all SPR sites, and are intended to assist officers in assuring the adequate protection of the SPR and persons and property in or upon the SPR and to assure the reasonable exercise of arrest authority and the reasonable use of force in the course of exercising such arrest authority.

II. Discussion

This section briefly discusses the contents and discusses the intended effect of each subpart of the proposed rule.

Section 1049.1 Purpose

Section 661 of the Act states that, under these guidelines, DOE employees and employees of DOE contractors and subcontractors have limited arrest authority and are authorized to carry firearms while discharging official duties. Section 1049.1 states that these guidelines establish policies and procedures regarding that authority.

Section 1049.2 Scope

Section 661 of the Act describes "official duties" as protecting the SPR or its storage or related facilities and protecting persons upon the SPR or its storage or related facilities. Thus, § 1049.2 states that these guidelines apply to the exercise of these official duties.

Section 1049.3 Definitions

Section 1049.3(b) and (d), which define "arrest" and "deadly force" respectively, are based on current case law. Section 1049.3(c) and (f), which define "contractor" and "SPR" respectively, are based on section 661 of the Act. The definitions of "Act," "Protective Force Officer," and "suspect" are self-explanatory.

Section 1049.4 Arrest Authority

Under section 661 of the Act, a Protective Force Officer while discharging official duties may arrest any person without warrant for an offense against the United States if the officer has "reasonable cause" to believe that the person: (1) has committed or is committing a felony and is in or is fleeing from the immediate area of the crime; or (2) is committing a felony or misdemeanor in the officer's presence. Section 1049.4 restates section 661 of the Act and defines "reasonable grounds" to arrest based on current case law.

Section 1049.5 Exercise of Arrest Authority—General Guidelines

Section 1049.5(a) directs the officer to follow certain arrest procedures to ensure that the suspect is informed of the arrest and the reason for the arrest. However, this guidance is not intended to restrict the officer's ability to protect the SPR or persons upon SPR premises.

Section 1049.5(b) addresses the officer's authority to search the suspect or the area into which the suspect might reach to obtain a weapon or to destroy evidence. This section is based upon current case law.

Section 1049.5(c) mandates that the officer advise the suspect of the constitutional right against self-incrimination (*"Miranda"* warnings). However, this requirement is not intended to prevent the officer from responding to an imminent danger to himself or to other persons. Therefore, to protect the suspect and the officer in these circumstances, the officer must advise the suspect of this right as soon as practicable after the imminent danger has passed. This section is in accordance with current case law.

Section 1049.5(d) directs the transfer of custody to other law enforcement personnel to ensure the protection of the suspect's procedural rights. Section 1049.5(e) also is intended to protect the suspect's procedural rights. This subsection permits limited questioning by the officer as necessary to protect the SPR and persons upon the SPR, and also permits such questioning as authorized by other law enforcement personnel. This section is intended to restrict the officer from undertaking investigatory activities, a function which is not explicitly authorized by section 661 of the Act.

Section 1049.6 Exercise of Arrest Authority—Use of Non-Deadly Force

Section 1049.6 limits the officer's authority to use non-deadly force to force that is "reasonable and necessary" to apprehend or arrest the suspect to prevent escape or to defend the officer or other persons from what the officer "reasonably believes" to be the use or threat of imminent use of non-deadly force by the suspect. As opposed to the use or threat of imminent non-deadly force by the suspect, verbal abuse is not the basis for use of non-deadly force by the officer. This section is in accordance with current case law. To assure the use of uniform policy among SPR sites, § 1049.6 directs the officer to consult with DOE counsel and contractor counsel, as appropriate.

Section 1049.7 Exercise of Arrest Authority—Use of Deadly Force

In accordance with current case law and law enforcement practice, § 1049.7 limits the officer's authority to use deadly force, and states that the officer shall give a verbal warning if feasible, and shall not fire warning shots.

Section 1049.8 Training of SPR Protective Force Officers and Qualification to Carry Firearms

Section 661 of the Act authorizes Protective Force Officers to carry firearms if designated by the Secretary and qualified to use firearms under these guidelines. Section 1049.8 authorizes officers that have completed the basic training course to carry firearms and to use arrest authority. Sections 1049.8(b) contains a general, non-inclusive list of subject areas of the course. Section 1049.8(d) requires officers to maintain competency by subsequent annual training. Sections 1049.8(e) and (f) address qualification for the use of firearms. Section 1049.8 is a statement of departmental policy.

Section 1049.9 Firearms and Firearms Incidents

Section 1049.9 sets forth departmental policy regarding: (1) the type of firearms used; (2) security, inventory, and maintenance of firearms; (3) suspension of officers due to incidents involving use of firearms; and (4) reporting and investigation of firearms incidents.

Section 1049.10 Disclaimer

Section 1049.10 precludes any action by any person based upon these guidelines, which are prescribed solely for internal guidance Thus, these guidelines do not, and may not be relied upon to create, any substantive or procedural rights enforceable at law by any party in any civil or criminal proceeding.

III. Procedural Requirements

A. Section 501 of the DOE Organization Act

Under section 501(c) of the DOE Organization Act, we are promulgating this notice in accordance with section 553 of title 5, United States Code, based upon our finding that no substantial issue of fact or law exists and that this rule is unlikely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses.

B. Environmental Review

This rulemaking is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

C. Review Under Executive Order 12291

DOE has determined that the incremental effect of today's proposed rule, if finalized, will not have the magnitude of effects on the economy to bring the rule within the definition of a "major rule" contained in Executive Order 12291. The proposed rule would impose no regulatory burden on the economy, on individuals, public or private organizations, or state and local governments. The proposed rule is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) A major increase in costs or prices for consumers, individual industries, Federal, State, and local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the Executive Order, the proposed rule was reviewed by the Office of Management and Budget (OMB).

D. Review Under Executive Order 12612

Executive Order 12612 requires that rules be reviewed for Federalism effects on the institutional interest of states and local governments, and if the effects are sufficiently substantial, preparation of a Federalism assessment is required to assist senior policymakers. The rulemaking to implement section 661 of the DOE Organization Act will not have any substantial direct effects on state and local governments within the meaning of the Executive Order. The rulemaking will affect Federal agency property that is not subject to direct State regulation.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, Public Law No. 96–345 (5 U.S.C. 601–612),

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requires that an agency prepare an initial regulatory flexibility analysis to be published at the time the rule is published. The requirement (which appears in section 603 of the Act) does not apply if the agency "certifies that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." This rule will not have any economic impact.

IV. Opportunity for Written Comment

Interested persons are invited to participate in this rulemaking by submitting data, views or arguments with respect to the matters set forth in this notice to: U.S. Department of Energy, Strategic Petroleum Reserve, Office of Chief Counsel, 900 Commerce Road East, New Orleans, Louisiana 70123, (504) 734-4312.

Comments (5 copies) should be identified on the outside of the envelope, and on the documents themselves, with the designation: "Guidelines For the Exercise of Limited Arrest Authority and Use of Force by Protective Force Officers of the Strategic Petroleum Reserve, Notice of Proposed Rulemaking." Five copies should be submitted. In the event that any person wishing to submit a written comment cannot provide five copies, alternative arrangements can be made with the Office of Chief Counsel.

All comments received will be available for public inspection in the Project Management Office, 900 Commerce Road East, New Orleans, Louisiana 70123, (504) 734-4312, between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Any person submitting information which that person believes to be confidential, and which may be exempt by law from public disclosure, should submit one complete copy, as well as two copies from which the information claimed to be confidential has been deleted. DOE shall make a determination of any such claim. This procedure is set forth in 10 CFR 1004.11 (53 FR 15661, May 3, 1988).

List of Subjects in 10 CFR Part 1049

Security measures, Government contracts, Arrest authority, Use of force.

In consideration of the foregoing, it is proposed to add a new part 1049 to chapter X, title 10 of the Code of Federal Regulations, as set forth below:

Issued in Washington, DC on July 25, 1991.

Linda G. Stuntz,
Acting Assistant Secretary, Office of Fossil Energy.

PART 1049—LIMITED ARREST AUTHORITY AND USE OF FORCE BY PROTECTIVE FORCE OFFICERS OF THE STRATEGIC PETROLEUM RESERVE

Sec.
1049.1 Purpose.
1049.2 Scope.
1049.3 Definitions.
1049.4 Arrest Authority.
1049.5 Exercise of arrest authority—general guidelines.
1049.6 Exercise of arrest authority—use of non-deadly force.
1049.7 Exercise of arrest authority—use of deadly force.
1049.8 Training of SPR Protective Force Officers and Qualification to carry firearms.
1049.9 Firearms and firearms incidents.
1049.10 Disclaimer.

Authority: Department of Energy Organization Act, as amended, 42 U.S.C. 7101 *et seq.*

§ 1049.1 Purpose.

The purpose of these guidelines is to set forth internal Department of Energy (DOE) security policies and procedures regarding the exercise of arrest authority and the use of force by DOE employees and DOE contractor and subcontractor employees while discharging their official duties pursuant to section 661 of the Department of Energy Organization Act.

§ 1049.2 Scope.

These guidelines apply to the exercise of arrest authority and the use of force, as authorized by Section 661 of the Department of Energy Organization Act, as amended, 42 U.S.C. 7101 *et seq.*, by employees of DOE and employees of DOE's SPR security contractor and subcontractor. These policies and procedures apply with respect to the protection of:

(a) The SPR and its storage or related facilities; and

(b) Persons upon the SPR or its storage or related facilities.

§ 1049.3 Definitions.

(a) *Act* means sections 661 of the Department of Energy Organization Act, as amended, (42 U.S.C. 7270a).

(b) *Arrest* means an act resulting in the restriction of a person's movement, other than a brief consensual detention for purposes of questioning about a person's identity and requesting identification, accomplished by means of force or show of authority under circumstances that would lead a reasonable person to believe that he was not free to leave the presence of the officer.

(c) *Contractor* means a contractor or subcontractor at any tier.

(d) *Deadly force* means that force which a reasonable person would consider likely to cause death or serious bodily harm.

(e) *Protective Force Officer* means a person designated by DOE to carry firearms pursuant to section 661 of the Act.

(f) *SPR* means the Strategic Petroleum Reserve, its storage or related facilities, and real property subject to the jurisdiction or administration, or in the custody of the Department of Energy under part B of title I of the Energy Policy and Conservation Act (42 U.S.C. 6231-6247).

(g) *Suspect* means a person who is subject to arrest by a Protective Force Officer as provided in these guidelines.

§ 1049.4 Arrest authority.

(a) Under the Act, the authority of a DOE Protective Force Officer to arrest without warrant is to be exercised only in the performance of official duties of protecting the SPR and persons within or upon the SPR.

(b) A Protective Force Officer is authorized to make an arrest for a felony committed in violation of laws of the United States, or for a misdemeanor committed in violation of laws of the United States if the offense is committed in the officer's presence.

(c) A Protective Force Officer also is authorized to make an arrest for a felony committed in violation of laws of the United States if the Officer has reasonable grounds to believe that the felony has been committed, or that the suspect is committing the felony, and is in the immediate area of the felony or is fleeing the immediate area of the felony. "Reasonable grounds to believe" means that the facts and circumstances within the knowledge of the Protective Force Officer at the moment of arrest, and of which the Protective Force Officer has reasonably trustworthy information, would be sufficient to cause a prudent person to believe that the suspect had committed or was committing a felony.

§ 1019.5 Exercise of arrest authority—general guidelines.

(a) In making an arrest, and before taking a person into custody, the Protective Force Officer should:

(1) Announce the Protective Force Officer's authority (*e.g.*, by identifying himself as an SPR Protective Force Officer);

(2) State that the suspect is under arrest; and

(3) Inform the suspect of the crime for which the suspect is being arrested. If the circumstances are such that making these announcements would be useless or dangerous to the Officer or to another person, the Protective Force Officer may dispense with these announcements.

(b) At the time and place of arrest, the Protective Force Officer may search the person arrested for weapons and criminal evidence, and may search the area into which the person arrested might reach to obtain a weapon or to destroy evidence.

(c) After the arrest is effected, the person arrested shall be advised of his constitutional right against self-incrimination ("Miranda warnings"). If the circumstances are such that immediately advising the person arrested of this right would result in imminent danger to the Officer or other persons, the Protective Force Officer may postpone this requirement. The person arrested shall be advised of this right as soon as practicable after the imminent danger has passed.

(d) As soon as practicable after the arrest is effected, custody of the person arrested should be transferred to other Federal law enforcement personnel (*e.g.*, U.S. Marshals or FBI agents) or to local law enforcement personnel, as appropriate, in order to ensure that the person is brought before a magistrate without unnecessary delay.

(e) Ordinarily, the person arrested shall not be questioned or required to sign written statements unless such questioning is:

(1) Necessary to establish the identity of the person arrested and the purpose for which such person is within or upon the SPR;

(2) Necessary to avert an immediate threat to security or safety (*e.g.*, to locate a bomb): or

(3) Authorized by other Federal law enforcement personnel or local law enforcement personnel responsible for investigating the alleged crime.

§ 1049.6 Exercise of arrest authority—use of nondeadly force.

(a) When a Protective Force Officer is authorized to make an arrest as provided in the Act, the Protective Force Officer may use only that degree of non-deadly force that is reasonable and necessary to apprehend and arrest the suspect in order to prevent escape or to defend the Protective Force Officer or other persons from what the Officer reasonably believes to be the use or threat of imminent use of non-deadly force by the suspect. Verbal abuse by the suspect, in itself, is not a basis for the use of non-deadly force by a Protective Force Officer under any circumstances.

(b) Protective Force Officers should consult the local DOE Office of Chief Counsel and contractor legal counsel for additional guidance on the use of non-deadly force in the exercise of arrest authority, as appropriate.

§ 1049.7 Exercise of arrest authority—use of deadly force.

(a) The use of deadly force is authorized only under exigent circumstances where the Protective Force Officer reasonably believes that such force is necessary to:

(1) Protect himself from an imminent threat of death or from serious bodily harm;

(2) Protect any person or persons in or upon the SPR from an imminent threat of death or serious bodily harm.

(b) If circumstances require the use of a firearm by a Protectived Force Officer, the Officer shall give a verbal warning (*e.g.*, an order to halt), if feasible. A Protective Force Officer shall not fire warning shots under any circumstances.

§ 1049.8 Training of SPR Protective Force Officers and qualification to carry firearms.

(a) Protective Force Officers shall successfully complete training required by applicable Department of Energy orders prior to receiving authorization to carry firearms. The Department of Energy Office of Safeguards and Security shall approve the course.

(b) Prior to initial assignment to duty, Protective Force Officers shall successfully complete a basic qualification training course which equips them with at least the minimum level of competence to perform tasks associated with their responsibilities. The basic course shall include the following subject areas:

(1) Legal authority, including use of deadly force and exercise of limited arrest authority;

(2) Security operations, including policies and procedures;

(3) Security tactics, including tactics for Protective Force Officers acting alone or as a group;

(4) Use of firearms, including firearms safety and proficiency with all types of weapons expected to be used:

(5) Use of non-deadly weapons, weaponless self-defense, and physical conditioning:

(6) Use of vehicles, including vehicle safety in routine and emergency situations:

(7) Safety, first aid, and elementary firefighting procedures:

(8) Operating in such a manner as to preserve SPR sites and facilities:

(9) Communications, including methods and procedures.

(c) After completing training, and receiving the appropriate security clearance, Protective Force Officers shall be authorized to carry firearms and exercise limited arrest authority. Protective Force Officers shall receive an identification card, which must be carried whenever on duty and whenever armed.

(d) On an annual basis, each Protective Force Officer must successfully complete training sufficient to maintain at least the minimum level of competency required for the successful performance of all assigned tasks identified for Protective Force Officers.

(e) Protective Force Officers shall be qualified in the use of firearms by demonstrating proficiency in the use of firearms on a semiannual basis prior to receiving authorization to carry firearms. Protective Force Officers shall demonstrate proficiency in the use of all types of weapons expected to be used while on duty under both day and night conditions. In demonstrating firearms proficiency. Protective Force Officers shall use firearms of the same type and barrel length as firearms used by Protective Force Officers while on duty, and the same type of ammunition as that used by Protective Force Officers on duty. Before a Protective Force Officer is qualified in the use of firearms, the Officer shall complete a review of the basic principles of firearms safety.

(f) Protective Force Officers shall be allowed two attempts to qualify in the use of firearms. Protective Force Officers shall qualify in the use of firearms within six months of failing to qualify. If an Officer fails to qualify, the Officer shall complete a remedial firearms training program. A Protective Force Officer who fails to qualify in the use of firearms after completion of a remedial program. and after two further attempts to qualify shall not be authorized to carry firearms or to exercise limited arrest authority.

§ 1049.9 Firearms and firearms incidents.

(a) Protective Force Officers shall receive firearms of a type suitable to adequately protect persons and property within or upon the SPR. Firearms and ammunition shall be secured, inventoried, and maintained in accordance with applicable Department of Energy orders, when not in use.

(b) The authority of a Protective Force Officer to carry firearms and to exercise limited arrest authority shall be suspended if the Officer participates in an incident involving the use of fficer under any

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(e) Protective Force Officers shall be qualified in the use of firearms by demonstrating proficiency in the use of firearms on a semiannual basis prior to receiving authorization to carry firearms. Protective Force Officers shall demonstrate proficiency in the use of all types of weapons expected to be used while on duty under both day and night conditions. In demonstrating firearms proficiency. Protective Force Officers shall use firearms of the same type and barrel length as firearms used by Protective Force Officers while on duty, and the same type of ammunition as that used by Protective Force Officers on duty. Before a Protective Force Officer is qualified in the use of firearms, the Officer shall complete a review of the basic principles of firearms safety.

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§ 1049.9 Firearms and firearms incidents.

(a) Protective Force Officers shall receive firearms of a type suitable to adequately protect persons and property within or upon the SPR. Firearms and ammunition shall be secured, inventoried, and maintained in accordance with applicable Department of Energy orders, when not in use.

(b) The authority of a Protective Force Officer to carry firearms and to exercise limited arrest authority shall be suspended if the Officer participates in an incident involving the use of firearms. In such circumstances, the Officer shall be assigned to other duties, pending completion of an investigation.

(c) Incidents involving the discharge of firearms shall be reported to the Department of Energy Headquarters Emergency Operations Center immediately, and to the SPR Project Management Office Security Division within 24 hours. The Strategic Petroleum Reserve Project Manager shall appoint a committee to investigate the incident.

§ 1049.10 Disclaimer.

These guidelines are set forth solely for the purpose of internal Department of Energy guidance. These guidelines do not, and are not intended to, and may not be relied upon to, create any substantive or procedural rights enforceable at law by any party in any matter, civil or criminal. These guidelines do not place any limitations on otherwise lawful activities of Protective Force Officers or the Department of Energy.

[FR Doc. 91–18158 Filed 7–31–91; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-CE-54-AD]

Airworthiness Directives; Aviat (formerly Christen Industries) Christen Model A–1 Husky Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would be applicable to certain Aviat Christen Model A–1 airplanes. The proposed action would require the replacement of the engine carburetor air intake box. Reports of valve failure on several carburetor air intake boxes that are installed on early models of the affected airplanes have been reported. The actions specified by the proposed AD are intended to prevent loss of airflow to the carburetor and possible loss of engine power, which could result in loss of control of the airplane.

DATES: Comments must be received on or before September 27, 1991.

ADDRESSES: Information that is related to this AD may be examined at Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, attention: Rules Docket No. 91–CE–54–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Roman Gabrys, Aerospace Engineer, FAA, Denver Aircraft Certification Field Office, 2390 Syracuse Street, Denver, Colorado 80207; telephone (303) 396–0841; facsimile (303) 388–2903.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, attention: Rules Docket No. 91–CE–54–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion:

Valve failure on several carburetor air intake boxes that are installed on Aviat Christen Model A–1 airplanes have been reported. The valve on these carburetor air intake boxes controls the flow of cold air and warm air to the carburetor. The carburetor air intake box valve on two of the affected airplanes separated from the actuator arm and blocked the airflow into the carburetor. The result of the above incidents was decreased engine power and emergency non-runway landings.

The manufacturer has designed an improved carburetor air intake box for the affected airplanes. After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent loss of airflow to the carburetor and possible loss of engine power, which could result in loss of control of the airplane.

Since the condition described is likely to exist or develop in other Aviat Christen Model A–1 Husky airplanes of the same type design that are equipped with the same type of carburetor air intake box, the proposed AD would require the replacement of the engine carburetor air intake box with an improved part. The manufacturer, Aviat, would provide these improved carburetor air intake boxes free of charge on an exchange basis.

It is estimated that 45 airplanes in the U.S. registry would be affected by the proposed AD, that it will take approximately 1 hour per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts are provided free of charge by the manufacturer on an exchange basis. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,475.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Aviat (formerly Christen Industries): Docket No. 91-CE-54-AD.

Applicability: Christen Model A-1 Husky airplanes (serial numbers 1001 through 1045), certificated in any category.

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent loss of airflow to the carburetor and possible loss of engine power, which could result in loss of control of the airplane, accomplish the following:

(a) Remove the carburetor air intake box and replace it with a new carburetor air intake box, part number 35453. Reinstall the same bolts and safety wire. Ensure that there is at least a 0.25-inch clearance between the actuating arm and the side of the air intake scoop and that the box and intake screen fit properly at the forward end of the scoop.

Note: Carburetor air intake boxes, part number 35453, are available free of charge on an exchange basis from the manufacturer at the address specified in paragraph (d) of this AD.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Denver Aircraft Certification Field Office, FAA, 2390 Syracuse Street, Denver, Colorado 80207. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Denver Aircraft Certification Field Office.

(d) All persons affected by this directive may obtain a new carburetor air intake box, part number 35453, on an exchange basis by contacting Aviat, Inc., P.O. Box 1149, Afton, Wyoming 83110; telephone (307) 886-3151. Information that is related to this AD may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on July 17, 1991.

Don C. Jacobsen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-18240 Filed 7-31-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-137-AD]

Airworthiness Directives; McDonnell Douglas Model DC-9-80 (MD-80) Series Airplanes and Model MD-88 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to McDonnell Douglas Model DC-9-80 (MD-80) series airplanes and Model MD-88 airplanes, which currently requires repetitive inspections and functional checks of the tailcone release system for proper operation. This action would require replacement or modification of the external tailcone release system cable and handle assemblies. This proposal is prompted by reports of the tailcone failing to drop away when release activation was attempted. This condition, if not corrected, could result in the inability of passengers and crew members to exit through the tail of the airplane during an emergency evacuation.

DATES: Comments must be received no later than September 23, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, attention: Airworthiness Rules Docket No. 91-NM-137-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from McDonnell Douglas Corporation, Post Office Box 1771, Long Beach, California 90801, Attn: Business Unit Manager, Technical Publications & Technical Administration Support, C1-L5B(45-60).

This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Andrew Gfrerer, Aerospace Engineer, ANM-131L, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California, 90806-2425; telephone (213) 988-5338.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-137-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On March 1, 1991, the FAA issued AD 91-07-06, amendment 39-6934 (56 FR 11359, March 18, 1991), to require repetitive inspections and functional checks for proper operation of the tailcone release system on McDonnell Douglas Model DC-9-80 series and Model MD-88 airplanes. That action was prompted by reports of discrepancies within the tailcone release system that prevented, or could prevent, the tailcone from releasing from the airplane when actuated. This condition, if not corrected, could result in the inability of passengers and crew members to exit through the tail of the airplane during an emergency evacuation.

Since issuance of that AD, there have been a number of tailcone release handles that have been found broken or cracked. The McDonnell Douglas Corporation and the FAA have investigated this problem and have ity, Missouri, on July 17,

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RMATION CONTACT:
Aerospace Engineer,

ANM-131L, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California, 90806-2425; telephone (213) 988-5338.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-137-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On March 1, 1991, the FAA issued AD 91-07-06, amendment 39-6934 (56 FR 11359, March 18, 1991), to require repetitive inspections and functional checks for proper operation of the tailcone release system on McDonnell Douglas Model DC-9-80 series and Model MD-88 airplanes. That action was prompted by reports of discrepancies within the tailcone release system that prevented, or could prevent, the tailcone from releasing from the airplane when actuated. This condition, if not corrected, could result in the inability of passengers and crew members to exit through the tail of the airplane during an emergency evacuation.

Since issuance of that AD, there have been a number of tailcone release handles that have been found broken or cracked. The McDonnell Douglas Corporation and the FAA have investigated this problem and have

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determined that the currently-installed external tailcone release system handles cannot adequately support a sideload. A modified handle recently has been developed, the design of which precludes the addressed cracking problems.

The FAA has also received reports of a number of other discrepancies with the tailcone release system, which are currently being evaluated for a possible mandatory corrective action.

The FAA has reviewed and approved McDonnell Douglas Service Bulletin 53-245, Revision 1, dated June 12, 1991, which describes procedures for replacing or modifying the external tailcone release system cable and handle assemblies.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede AD 91-07-06 with a new airworthiness directive that would continue to require inspections of the tailcone release handles for cracks, and functional testing of the tailcone release system; and would require eventual replacement or modification of the external tailcone release system cable and handle assemblies, in accordance with the service bulletin previously described.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

There are approximately 870 Model DC-9-80 (MD-80) series airplanes and MD-88 Series Airplanes of the affected design in the worldwide fleet. It is estimated that 500 airplanes of U.S. registry would be affected by this AD, that it would take approximately 4.5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. The cost of parts to accomplish the modification is approximately $1,310 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $778,750.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-6934 and by adding the following new airworthiness directive:

McDonnell Douglas: Docket No. 91-NM-137-AD. Supersedes AD 91-07-06.

Applicability: Model DC-9-80 (MD-80) series airplanes and Model MD-88 airplanes, operating in a passenger or passenger/cargo configuration certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

Note: The requirements of this AD become applicable at the time an airplane in an all-cargo configuration is converted to a passenger or passenger/cargo configuration.

To confirm proper operation and maintenance, and to prevent failure of the tailcone release system, accomplish the following:

(a) Prior to 12 months in service since new, or within 90 days after March 26, 1991 (the effective date of AD 91-07-06), whichever occurs later, accomplish a tailcone release system functional test and inspection in accordance with the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin A53-244, Revision 1, dated February 8, 1991.

(b) Discrepancies in the operation of the tailcone release system found as result of the functional test must be repaired prior to further flight.

(c) Repeat the tailcone release system functional test and inspection required by paragraph (a) of this AD at intervals not to exceed 3,500 flight hours or 18 months, whichever occurs first.

(d) Report any discrepancies found during the accomplishment of the inspection and functional tests required by paragraph (a) of this AD to the Manager, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425, within 30 days after discovery. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Public Law 96-511) and have been assigned OMB Control Number 2120-0056.

(e) Within 9 months after the effective date of this AD, replace or modify the external tailcone release system cable and handle assemblies in accordance with the Accomplishment Instructions of McDonnell Douglas Service Bulletin 53-245, Revision 1, dated June 12, 1991. Accomplishment of such replacement or modification constitutes terminating action for the repetitive inspection of the interior and exterior tailcone release handles for cracks, as required by paragraph (c) of this AD. However, the repetitive functional checks of the tailcone release system required by paragraph (c) of this AD must continue to be accomplished.

(f) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, Post Office Box 1771, Long Beach, California 90801, attn: Business Unit Manager, Technical Publications, Technical Administration Support, C1-L5B. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

Issued in Renton, Washington, on July 23, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-18241 Filed 7-31-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2510

Pension Benefit Guaranty Corporation

29 CFR Part 2617

Selection of Annuity Providers for Pension Plans

AGENCY: Pension and Welfare Benefits Administration and Pension Benefit Guaranty Corporation, Department of Labor.

ACTION: Advance notices of proposed rulemaking, notice of extension of comment periods.

SUMMARY: This document extends the comment periods with respect to advance notices of proposed rulemaking under the Employee Retirement Income and Security Act of 1974 (ERISA) relating to the selection of annuity providers by pension plans, published in the **Federal Register** on June 21, 1991, by the Department of Labor (the Department) and the Pension Benefit Guaranty Corporation (PBGC).

DATES: The comment periods are extended through September 19, 1991.

ADDRESSES: Comments (preferably at least three copies) regarding the advance notice of proposed rulemaking issued by the Department should be addressed to the Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, room N-5669, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, Attention: "Annuity Standards Notice." All comments received will be available for public inspection at the Public Documents Room, Pension Welfare Benefits Administration, U.S. Department of Labor, room N-5507, 200 Constitution Avenue NW., Washington, DC 20210.

Comments (preferably at least three copies) regarding the advance notice of proposed rulemaking issued by PBGC should be addressed to the Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington DC, 20006. Written comments will be available for public inspection at the PBGC's Communications and Public Affairs Department, suite 7100, 2020 K Street NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Regarding the advance notice of proposed rulemaking issued by the Department, Mark Connor, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC 20210; telephone (202) 523-8671; or, regarding the advance notice of proposed rulemaking issued by the PBGC, Angela Arnett, Assistant General Counsel, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, Washington, DC 20006; telephone (202) 778-8820 (202-778-8859 for TTY and TDD only). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: On June 21, 1991, the Department issued an advance notice of proposed rulemaking in the **Federal Register** (56 FR 28638) soliciting comments and information concerning whether the Department should publish a proposed regulation under title I of ERISA establishing minimum standards for purposes of determining whether an annuity contract purchased from a particular insurance company serves to relieve a plan of future liability with respect to the participant or beneficiary on whose behalf the annuity is purchased. On the same date, the PBGC issued an advance notice of proposed rulemaking in the **Federal Register** (56 FR 28642) soliciting comments and information concerning possible regulatory action by the PBGC that would apply to the selection by pension plan administrators of annuity providers as part of the plan termination process under title IV of ERISA. In the notices, the agencies invited all interested persons to submit written comments concerning the notices on or before August 20, 1991.

The agencies have received a request from the American Council of Life Insurance (ACLI) for an additional thirty days to prepare comments. The ACLI states that such time is necessary to adequately consider the large number of significant issues affecting the insurance industry, as well as to prepare an economic impact analysis. The agencies believe that it is appropriate to grant the requested extension. Accordingly, this notice extends through September 19, 1991, the comment periods during which comments on the advance notices of proposed rulemaking will be received.

Notice of Extension of Comment Period

Notice is hereby given that the period of time for the submission of public comments on the above cited advance notices of proposed rulemaking (published at 56 FR 28638 and 56 FR 28642 on June 21, 1991) is hereby extended through Thursday, September 19, 1991.

Signed at Washington, DC, this 26th day of July 1991.

David George Ball,

Assistant Secretary for Pension and Welfare Benefits, U.S. Department of Labor.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 91-18286 Filed 7-31-91; 8:45 am]

BILLING CODE 4510-29-M

POSTAL SERVICE

39 CFR Part 111

Mailability of Sharps and Unsterilized Containers and Devices

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service is proposing to amend its regulations to require that sharps and unsterilized containers as described in Environmental Protection Agency rules (see item (4) in the table entitled "Regulated Medical Waste" included in 40 CFR 259.30a) be sent as registered First-Class Mail or registered Priority Mail, with return receipt requested service.

The Postal Service is also proposing that, effective 90 days after publishing its final rule, sharps and unsterilized containers must be packaged with a primary container that is securely sealed, leak resistant, and puncture resistant. The primary container must be enclosed in a secondary sealed, watertight container. Each primary and secondary container (or sets of primary containers in a secondary container) must be enclosed in a shipping container constructed of 275-pound grade fiberboard or similar material of equivalent strength. Enough absorbent material must be encased in the primary and secondary containers to absorb the entire liquid contents of the primary container in case of breakage or leakage. The total liquid volume of the primary and secondary containers or set of primary containers in a secondary container may not exceed 50 ml., and there will be a maximum weight limit of 25 pounds for each mailed parcel.

DATES: Comments must be received on or before September 3, 1991.

ADDRESSES: Written comments should be mailed or delivered to the Director, Office of Classification and Rates Administration, Marketing and Customer Service Group, Room 8430, 475 L'Enfant Plaza West SW., Washington, DC 20260-5903 Copies of all written comments will be available for

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Signed at Washington, DC, this 26th day of July 1991.

David George Ball,

Assistant Secretary for Pension and Welfare Benefits, U.S. Department of Labor.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 91–18288 Filed 7–31–91; 8:45 am]

BILLING CODE 4510–29–M

POSTAL SERVICE

39 CFR Part 111

Mailability of Sharps and Unsterilized Containers and Devices

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service is proposing to amend its regulations to require that sharps and unsterilized containers as described in Environmental Protection Agency rules (see item (4) in the table entitled "Regulated Medical Waste" included in 40 CFR 259.30a) be sent as registered First-Class Mail or registered Priority Mail, with return receipt requested service.

The Postal Service is also proposing that, effective 90 days after publishing its final rule, sharps and unsterilized containers must be packaged with a primary container that is securely sealed, leak resistant, and puncture resistant. The primary container must be enclosed in a secondary sealed, watertight container. Each primary and secondary container (or sets of primary containers in a secondary container) must be enclosed in a shipping container constructed of 275-pound grade fiberboard or similar material of equivalent strength. Enough absorbent material must be encased in the primary and secondary containers to absorb the entire liquid contents of the primary container in case of breakage or leakage. The total liquid volume of the primary and secondary containers or set of primary containers in a secondary container may not exceed 50 ml., and there will be a maximum weight limit of 25 pounds for each mailed parcel.

DATES: Comments must be received on or before September 3, 1991.

ADDRESSES: Written comments should be mailed or delivered to the Director, Office of Classification and Rates Administration, Marketing and Customer Service Group, Room 8430, 475 L'Enfant Plaza West SW., Washington, DC 20260–5903 Copies of all written comments will be available for

inspection and photo copying between 9 a.m. and 4 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Earl B. Hohbein, (202) 268–5309.

SUPPLEMENTARY INFORMATION: While the risk, at this time, appears low, the potentially serious consequences of infection acquired from mailed medical sharps requires that the Postal Service take every reasonable precaution to prevent customer and employee exposure to the hazard. The majority of parcels that contain sharps or unsterilized containers are mailed at the fourth-class rates of postage and, therefore, are processed through the mechanical parcel sorting systems in the Postal Service's bulk mail centers. Sometimes parcels break open or leak during this mechanical processing operation.

It is expected that requiring sharps and unsterilized containers to be sent as registered First-Class Mail or registered Priority Mail, with return receipt requested service, will reduce or eliminate potential employee exposure to leaking or broken mailed medical sharp containers. Taking these parcels out of the fourth-class mechanical processing mailstream will reduce mechanized handling, and limit the likelihood of breakage or leakage. Since these First-Class or Priority parcels will be in the registered mail network, there will be proof of delivery of the parcels and an automatic tracking system. By requiring these parcels to be registered, the mailpieces would remain under tight control and be stored and handled in specific locations.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553 (b) and (c)) regarding proposed rulemaking by 39 U.S.C. 420(a), the Postal Service invites public comments on the following proposed amendments of Part 124 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal service.

Part 111—[AMENDED]

1. The authority citation for 39 CFR continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. Amend § 124.3 by adding new § 124.384 (c), (d), and (e) to read as follows:

124 NONMAILABLE MATTER—ARTICLES AND SUBSTANCES; SPECIAL MAILING RULES

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.38 Disease Germs and Biological Products

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.384 Sharps and Unsterilized Containers

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c. A mailed parcel containing the types of materials in 124.384a is nonmailable unless it bears the "Etiologic Agents/Biohazard Products-Biohazard" label, required by 42 CFR 72.3d, and is sent by registered First-Class Mail or registered Priority Mail, with return receipt requested service.

d. Effective October 30, 1991 sharps and unsterilized containers as further described in item (4) in the table following 40 CFR 259.30a, and unsterilized containers and devices used in laboratory or surgical procedures, are nonmailable except when packaged and marked as specified in the following paragraphs.

(1) Sharps, unsterilized containers or devices must meet the packaging requirements listed below and as required by 42 CFR 72.3a.

(2) The material must be packaged in a securely sealed, leak resistant and puncture resistant primary container enclosed in a second sealed and watertight, durable container (secondary container). Several primary containers may be enclosed in a secondary container if there is adequate shock-absorbent material between them to prevent breakage during ordinary handling in transit and processing and if the total liquid volume of all the enclosed primary containers does not exceed 50 ml.

(3) The space at the top, bottom, and sides between the primary and secondary containers must contain sufficient absorbent material to absorb the entire contents of the primary containers in case of leakage.

(4) Each set of primary and secondary containers must be enclosed in an outer shipping container constructed of 275-pound grade fiberboard or similar material of equivalent strength.

(5) Each parcel containing sharps and other unsterilized containers must not weigh more than 25 pounds.

(6) Each package as prepared for mailing must be designed and constructed so that, if it were subjected to the environmental and test conditions prescribed in 49 CFR 178.609, there would be no release of the contents to the environment, and no significant reduction in the effectiveness of the packaging.

e. Full responsibility rests with the mailer for any violation of section 1716 of title 18, United States Code, which may result from placing these items in the mail. Until further notice, a copy of all Forms 1770, Hazardous Materials Incident Report, involving sharps and unsterilized containers packaging should be furnished to the Business Requirements Division, Office of Classification and Rates Administration.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 91–18155 Filed 7–31–91; 8:45 am]

BILLING CODE 7710–12–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91–219, RM–7729]

Radio Broadcasting Services; Brillion, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Brillion Radio Company proposing the substitution of Channel 298C3 for Channel 298A, Brillion, Wisconsin, and modification of the construction permit for Station WEZR(FM) to specify operation on the higher class channel. The construction permit for Station WEZR(FM), Channel 242A, was modified in MM Docket No. 89–282 to specify operation on Channel 298A. See 56 FR 23663, May 23, 1991. The coordinates for Channel 298C3 are 44–19–10 and 87–57–30. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in the use of the higher powered channel at Brillion or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such interested parties.

DATES: Comments must be filed on or before September 16, 1991, and reply comments on or before October 1, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Lyle R. Evans, Brillion Radio Company, 1296 Marian Lane, Green Bay, Wisconsin 54304.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No.91–219 adopted July 8, 1991, and released July 26, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW., Washington, DC 20036, (202) 452–1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–18152 Filed 7–31–91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91–220, RM–7746]

Radio Broadcasting Services; Bishop, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Cismek Corporation ("petitioner"), licensee of Station KFLZ(FM), Channel 296A, Bishop, Texas, seeking the substitution of Channel 299C3 for Channel 296A at Bishop, Texas, and the modification of its license accordingly. Channel 299C3 can be allotted to Bishop in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.7 kilometers (6.0 miles) northeast to accommodate petitioner's desired transmitter site. The coordinates for Channel 299C3 at Bishop are North Latitude 27–36–27 and West Longitude 97–43–33. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 299C3 at Bishop or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties. Mexican concurrence will be requested for this proposal.

DATES: Comments must be filed on or before September 16, 1991, and reply comments on or before October 1, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Joe Cisneros, 110 East Main Street, Bishop, Texas 78343 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–220, adopted July 8, 1991, and released July 26, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–18151 Filed 7–31–91; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1037

[Ex Parte No. 502]

Bulk Grain and Grain Products; Loss and Damage Claims

AGENCY: Interstate Commerce Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission is considering revocation of the part 1037 regulations because they no longer appear to serve a useful purpose. The Commission is seeking comment from interested persons before deciding to institute a proceeding.

DATES: Comments are due by September 16, 1991.

ADDRESSES: Send an original and 10 copies of all comments to: Office of the Secretary, Case Control Branch, Attn: Ex Parte No. 502, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. (TDD for hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION: Part 1037, Rules for the Handling of Bulk Grain and Grain Products in Interstate Commerce, and the Filing, Investigation, and Disposition of Claims for Loss and Damage Incident Thereto, Which Supersede the Rules Prescribed in Ex Parte No. 263, Loss and Damage Claims, 340 I.C.C. 515 (37 FR 20943), is an adjunct to the Commission's general loss and damage rules at 49 CFR part 1005. The part 1037 regulations apply only to bulk grain and grain products and only to matters not covered by the part 1005 regulations.

The part 1005 regulations contain the procedural mechanisms for handling loss and damage claims (*e.g.*, the procedures for filing, acknowledging,

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List of Subjects in 47 CFR Part 73

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[FR Doc. 91–18151 Filed 7–31–91; 8:45 am]

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The part 1005 regulations contain the procedural mechanisms for handling loss and damage claims (*e.g.*, the procedures for filing, acknowledging,

investigating, and disposing of claims). They are generally applicable to the disposition by regulated carriers of all freight related claims, whether or not they involve bulk grain and grain products. The part 1037 regulations center upon matters relating to the weighing of grain and grain products at origin and destination points. They apply to "shipments of bulk grain and grain products transported solely in railroad-owned and railroad-leased cars" [§ 1037.2(b)], and set forth various circumstances that establish "*prima facie* that the loss occurred in transit and that the railroad is liable" [§ 1037.1(e)]]

In 1974, when the part 1037 regulations were adopted, bulk grain and grain products moved primarily in boxcars. Loss of lading frequently occurred in transit resulting in numerous loss and damage claims. Because these claims were not uniformly handled and settled by the railroads, the part 1037 regulations were adopted. *Loss and Damage Claims*, 346 I.C.C. 33, 60 (1974).

Since grain and grain products now move primarily by covered hopper car, it appears that the part 1037 regulations may no longer play a significant role in the handling of loss and damage claims. Casting further doubt on the usefulness of the regulations is the decision in *Continental Grain Co.* v. *Frank Seitzinger Storage*, 837 F. 2d 836, 840 (8th Cir. 1988). There the Eighth Circuit found 1037.1 applicable only to the voluntary settlement of claims and "not applicable in civil litigation to recover the value of property lost in transit."

Interested persons are invited to comment on whether the part 1037 regulations presently serve any useful purpose and whether they should be revoked, retained, or retained with modifications.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1037

Claims, Grains, Railroads.

Authority: 49 U.S.C. 12, 16, and 10321.

Decided: July 24, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald. Commissioner Simmons was absent and did not participate in the disposition of this proceeding.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–18245 Filed 7–31–91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Critical Habitat Designation for the Lower Keys Population of the Rice Rat (Silver Rice Rat)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: The Service announces its intention to propose critical habitat for the endangered Lower Keys population of the rice rat, or silver rice rat (Oryzomys palustris natator (=Oryzomys argentatus)), a small mammal found in Monroe County, Florida.

DATES: The Service anticipates that a critical habitat proposal will be published in the **Federal Register** by September 30, 1991. The proposed rule will provide for a 60-day comment period.

ADDRESSES: U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216.

FOR FURTHER INFORMATION CONTACT: David J. Wesley, Field Supervisor, at the above address (telephone: 904/791–2580 or FTS 946–2580).

SUPPLEMENTARY INFORMATION:

Background

In a final rule published April 30, 1991 (56 FR 19809), the Service classified the Lower Keys population of the rice rat as endangered, but critical habitat designation was considered to be not prudent at the time of listing. The "not prudent" determination was based on the perception that publication of precise locations for the species would increase enforcement problems and expose the species to undesirable collecting and other human-related disturbances or threats, placing its survival in further jeopardy.

Since publication of the final rule, the Service has given further consideration to its decision regarding critical habitat designation. Section 7 of the Endangered Species Act of 1973, as amended, requires all Federal agencies to insure that any action that they authorize, fund or carry out is not likely to jeopardize the continued existence of any endangered or threatened species, or result in the destruction or adverse modification of critical habitat. The presence of the rice rat on Federal land and other lands subject to Federal involvement, and the potential for further habitat loss due to Federal actions, suggest that critical habitat designation for the rice rat may be prudent despite the potential for increasing the other threats noted above.

In determining what areas are critical habitat, the Service will consider those physical and biological features that are essential to the conservation of the rice rat and may require special management considerations for protection. This will include the rice rat's requirements for space, food, water, cover or shelter, reproduction and population growth. Section 4(b)(2) of the Act requires the Service to consider economic and other relevant impacts of designating a particular area as critical habitat on the basis of the best scientific data available. The Service will be seeking comments and data from the public as part of the proposed rule for designating critical habitat for the rice rat.

Author

The primary author of this notice is Dr. Michael M. Bentzien (see **ADDRESSES** section).

Authority

The authority for this notice is the Endangered Species Act (16 U.S.C. 1531–1544).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: July 26, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91–18222 Filed 7–31–91; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217 and 227

[Docket No. 910775–1175]

Sea Turtle Conservation; Shrimp Trawling Requirements

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS proposes to impose the present May 1 through August 31 seasonal sea turtle conservation requirements for shrimp trawlers off the southeastern U.S. Atlantic coastal states for the September 1, 1991 through April 30, 1992 off season. Under the proposed

rule, shrimp trawlers 25 feet (7.6 meters (m)) or longer in length, trawling in offshore waters from North Carolina through Florida (NMFS statistical zones 24–36) would have to use NMFS-approved turtle excluder devices (TEDs) in their nets during the 1991–1992 off season, and shrimp trawlers of all sizes trawling in inshore waters and vessels less than 25 feet (7.6 m) in length trawling in offshore waters would either have to restrict their tow times to 90 minutes or use NMFS-approved TEDs during the 1991–1992 off season. Under the present regulations these restrictions apply only from May 1 through August 31 of each year.

This rule is being proposed because of a significant risk to the well-being of endangered and threatened sea turtles because of the seasonal nature of the present requirements. The intended effect is to reduce the mortality of turtles taken incidental to shrimp trawl fishing between September 1, 1991 and April 30, 1992, when the measures to conserve sea turtles would otherwise not be in effect in waters off North Carolina through the Atlantic coast of Florida.

DATES: Written comments will be accepted until August 16, 1991.

ADDRESSES: Comments on this rule should be addressed to Dr. Nancy Foster, Director, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Phil Williams (301–427–2322) or Charles Oravetz (813–893–3366).

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.* (ESA). Incidental capture by shrimp trawlers has been documented for loggerhead, Kemp's ridley, green, leatherback, and hawksbill turtles in coastal waters of the southeastern United States and Gulf of Mexico. NMFS estimated that, prior to 1987, commercial shrimp trawlers killed at least 11,000 sea turtles annually in waters off the south Atlantic and Gulf of Mexico states (Henwood and Stuntz, 1987). A more recent review of existing information by the National Academy of Sciences (NAS, 1990) found that the NMFS estimates were conservative, and that the number of turtles killed by shrimp trawlers could be as high as 55,000 each year.

NMFS issued regulations on June 29, 1987 (52 FR 24244), that require shrimp trawlers to comply with certain conservation measures to reduce sea turtle mortalities. Those regulations, hereinafter referred to as the sea turtle conservation regulations, require shrimp trawlers to use NMFS-approved TEDs or restrict their tow times in specific areas at certain times of the year. These regulations appear in 50 CFR parts 217, 222, and 227.

Effect of Seasonal Conservation Requirements in the Atlantic Area

Since the sea turtle conservation regulations have been in effect, evidence suggests that sea turtle mortalities associated with shrimp trawling have been significantly reduced. The current regulations, however, do not require use of TEDs or restrict tow times at all times in all areas. When TEDs or restricted tow times are not used, sea turtle mortalities are likely wherever trawling activities occur and sea turtles are present.

The current sea turtle conservation regulations require vessels 25 feet (7.6 m) or longer trawling for shrimp in offshore Atlantic waters of North Carolina, South Carolina, Georgia, and Florida to use TEDs from May 1 through August 31. Vessels 25 feet (7.6 m) or longer trawling for shrimp in the Cape Canaveral Area of Florida are required to use TEDs year-round. For Atlantic Area inshore waters, vessels are required to restrict tow times to 90 minutes or use TEDs from May 1 through August 31 each year.

NMFS recently estimated annual turtle captures and mortalities by shrimp trawlers under the existing sea turtle conservation regulations assuming 100 percent compliance and 100 percent mortality of all comatose turtles recovered (Henwood, *et al.*, 1990). NMFS estimates that in the Atlantic Area offshore fishery, 2,204 sea turtles are killed annually in shrimp trawls. Of these, 2,128 are estimated to be killed in shrimp trawls during the months of September through April, when TEDs or restricted tow times are not required. NMFS also estimated that 996 turtles are killed in shrimp trawls in inshore Atlantic waters under the 90-minute tow time requirement and present seasonality of the conservation requirements. Thus, assuming 100 percent compliance with the regulations, and 100 percent mortality of comatose turtles recovered, an estimated 3,200 turtles are killed annually in U.S. Atlantic shrimp trawl fisheries under implementation of the current sea turtle conservation regulations. It should be noted, however, that enforcement of the sea turtle conservation regulations indicates less than 100 percent compliance.

Studies and recent events show a strong correlation between sea turtle mortality and shrimp and other bottom trawling effort along the Atlantic coast For instance, high levels of turtle strandings in the fall and spring when TEDs or restricted tow times are not required have consistently been reported from North Carolina, South Carolina, Georgia and Florida.

Murphy and Hopkins-Murphy (1989) found that the total number of sea turtle strandings in South Carolina after the opening of the shrimping season was five times as larger than the number of strandings prior to the opening of the season. The increase in the number of strandings was correlated to the fishery, rather than to yearly and seasonal fluctuations, because the data came from openings and closings on different dates in different years. Although this does not demonstrate a causal relationship, the correlation of large increases in strandings after the opening of the shrimping season year after year strongly suggests that shrimp trawling is responsible for the increased turtle mortality.

Sea turtle stranding data from North Carolina also show a pattern that closely tracks the State's offshore trawl fisheries. Sea turtle strandings increase in summer south of Cape Hatteras (Cape) when the shrimp fleet is active (Street, 1987). South of the Cape, 66 percent of the strandings during 1980–1986 occurred in areas where shrimp trawling took place from May through September. This suggests that shrimp trawls were the primary cause of strandings.

Between October 1 and December 31, 1988, 171 dead turtles washed ashore in Georgia and Florida, during a period of heavy shrimping activity. This record number of strandings led to NMFS' issuing emergency regulations requiring the use of TEDs in the Atlantic inshore and offshore waters of southern Georgia and Florida in statistical zones 29 and 30 (54 FR 7773, Feb. 23, 1989). At that time, record numbers of Kemp's ridley turtles (70) and significant numbers of loggerhead and leatherback turtles stranded along the coastal beaches. These strandings were much more numerous than in the same area in 1987. The increased number of strandings was shown to coincide with an increased level of shrimp trawling (Schroeder and Maley, 1989).

In April 1991, 93 sea turtles were reported stranded in Georgia just prior to the May 1 annual start of the Federal sea turtle conservation requirements. Thirty strandings were reported in Georgia from May 1–May 17, and most

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Murphy and Hopkins-Murphy (1989) found that the total number of sea turtle strandings in South Carolina after the opening of the shrimping season was five times as larger than the number of strandings prior to the opening of the season. The increase in the number of strandings was correlated to the fishery, rather than to yearly and seasonal fluctuations, because the data came from openings and closings on different dates in different years. Although this does not demonstrate a causal relationship, the correlation of large increases in strandings after the opening of the shrimping season year after year strongly suggests that shrimp trawling is responsible for the increased turtle mortality.

Sea turtle stranding data from North Carolina also show a pattern that closely tracks the State's offshore trawl fisheries. Sea turtle strandings increase in summer south of Cape Hatteras (Cape) when the shrimp fleet is active (Street, 1987). South of the Cape, 86 percent of the strandings during 1980–1986 occurred in areas where shrimp trawling took place from May through September. This suggests that shrimp trawls were the primary cause of strandings.

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In April 1991, 93 sea turtles were reported stranded in Georgia just prior to the May 1 annual start of the Federal sea turtle conservation requirements. Thirty strandings were reported in Georgia from May 1–May 17, and most

of the carcasses were in an advanced state of decomposition, indicating the sea turtles died prior to May 1.

Actions by Atlantic States

Florida, Georgia, and South Carolina have adopted regulations that are at least as restrictive as the Federal sea turtle conservation regulations. Florida requires TEDs year-round in all State waters on most trawls, and Georgia requires use of TEDs from April through December in waters south of 31°20′ N. latitude. South Carolina regulations are patterned after Federal regulations, except that TEDs are required in certain inshore areas where the 90-minute tow time would apply under the Federal requirements.

Directors of the State resource management agencies in Florida, Georgia and South Carolina have repeatedly requested that NMFS revise the sea turtle conservation regulations to expand the duration of the conservation requirements. These agencies, which enforce State sea turtle conservation regulations, have requested that NMFS expand the conservation measures beyond the May 1 to August 31 annual season.

Proposed Rule

NMFS proposes to require all shrimp trawlers with vessels 25 feet (7.6 m) or longer, except those fishing for rock shrimp or royal red shrimp, to use NMFS-approved TEDs while shrimping from September 1, 1991 through April 30, 1992 in the offshore Atlantic Area as defined in the sea turtle conservation regulations. Shrimp trawlers in inshore waters or with vessels less than 25 feet (7.6 m) in length not using a NMFS-approved TED in each net, would be required to limit each tow time to 90 minutes during this period in the Atlantic Area. The restrictions for the period May 1 through August 31 of each year would be unaffected by this rule.

NMFS prepared a supplemental regulatory impact review for this proposed rule which concluded that, if adopted, it would not have a significant economic impact on the Atlantic commercial shrimp trawling industry. Shrimpers in the Atlantic Area are currently required to use TEDs or restricted tow times under the 1987 sea turtle conservation regulations from May 1 through August 31, except in the Cape Canaveral Area. Thus shrimpers already have the necessary gear purchased and installed in their nets, and they are familiar with the requirements of the regulations. Further the proposed regulation would not change the number of shrimp trawlers affected by these conservation requirements.

Because shrimpers required to use TEDs under the current regulations have already purchased them, the only additional associated costs will be replacement of used TEDs and any loss in shrimp catch resulting from TED use. NMFS has assumed that the TEDs may be used for two years (NMFS, 1987a). The two year life takes into consideration the probability of losing a net and hence a TED when it is still serviceable. It also takes into account TED repair cost.

Thus, the costs to shrimpers of this proposed action will likely increase somewhat because of the cost associated with replacing TEDs that will be used year round rather than from only May 1 through August 31. NMFS has estimated that approximately 10,695 TEDs (including spares) are used by 2,992 shrimp trawlers in the Atlantic Area under the current regulations (NMFS, 1987a). NMFS has estimated that the increase in annual operating costs to shrimp trawlers to install and use TEDs is between .1 and 18.2 percent, with the largest percentage increases being borne by small trawlers with relatively low operating costs.

Changes in shrimp catch by individual shrimpers are difficult to predict. They are affected by the type of TED used, season fished, area fished, and the skill of the fisher. In promulgating the 1987 sea turtle conservation regulations, NMFS estimated a range in catch loss by shrimp trawlers of zero to 5 percent. This was based on extensive testing of the NMFS TED and limited testing of other TEDs.

NMFS estimated that the annual gross revenue for a shrimp trawler was between $25,414 and $173,072. A 5 percent loss in shrimp catch would result in a loss in annual gross revenue ranging from $1,271 to $8,654 (NMFS, 1987a). Recently NMFS completed a study in cooperation with the shrimp industry to determine the impacts of using a NMFS-approved TED on commercial shrimp trawlers operating in the U.S. Atlantic and Gulf of Mexico. The results of this study will be used in a comprehensive economic analysis of the impact of TEDs on the shrimp industry. However, the results of comparisons of standard and TED-equipped nets demonstrated a 0.7 percent loss by the TED-equipped nets (Renaud, *et al.*, 1990), thereby lowering the annual 1987 estimated loss in revenue by over 80 percent.

NMFS is prepared to find that the present situation poses a significant risk to the well-being of endangered and threatened sea turtles in the waters of the Atlantic Area, and those participating in the fishery already use NMFS-approved TEDs, and they will not have to purchase new TEDs in order to comply, that there is good cause to make this rule effective as of September 1 without a 30-day delay in effective date as is otherwise required under section 553(d) of the Administrative Procedure Act.

Future Actions By NMFS

NMFS is considering the proposal of two sets of regulations to amend the sea turtle conservation regulations. The first would make revisions in order to facilitate enforcement. The second would expand the conservation requirements and impose additional ones. In the context of the second, NMFS is considering making the May 1 through August 31 seasonal requirements in the Atlantic Area applicable year round rather than just for the September 1, 1991 through April 30, 1992 period here proposed. The reason NMFS did not here propose year round applicability was that the need for a September 1, 1991 effective date did not allow for a long public comment period. It is NMFS' intention to allow significant periods for public comment on its future sea turtle conservation regulatory actions.

Classification

The Assistant Administrator determined that this rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. The basic regulations which this rule would amend were determined not to be major.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The rule extends for the 1991–1992 off season the May 1 through August 31 seasonal requirement for TEDs and restricted tow times. The net effect is to reduce the incidental capture and mortality of sea turtles associated with shrimp trawling. The costs of implementing these provisions are considered minor in relation to the costs that were discussed in the regulatory impact review/regulatory flexibility analysis of the sea turtle conservation regulations (NMFS, 1987a). Consequently, a regulatory flexibility analysis was not prepared for this proposed rule.

An environmental impact statement (EIS) (NMFS, 1978) prepared for the listing of three species of sea turtles, the green, loggerhead, and olive ridley, also addressed the development of gear and procedures to reduce the incidental take and mortality of sea turtles in shrimp trawls. An environmental assessment that described a voluntary program to encourage the use of TEDs was prepared in 1983. A supplemental EIS covering the mandatory TED and tow-time requirements was prepared in 1987 (NMFS, 1987b). This rule would extend the requirements for TED use and restricted tow times in the southeastern Atlantic Area for the 1991–1992 off season and will not result in a significant change in the environmental impact statements previously prepared for the TED requirements and, thus, is categorically excluded by NOAA Directive 02-10 from the requirement to prepare an environmental assessment.

In the final rule that implemented the sea turtle conservation regulations (52 FR 24244, June 29, 1987), NOAA concluded that, to the maximum extent practicable, the regulations were consistent with the coastal zone management programs of each of the southeastern states that has an approved program under the Coastal Zone Management Act. Since this rule, if adopted, does not directly affect the coastal zone in a manner not already fully evaluated in the initial consistency determination, a new consistency determination is not required. Neither this rule nor the ESA precludes any state from adopting more stringent sea turtle protection measures.

This rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

References

Henwood, T.A., W.E. Stuntz, and N.B. Thompson. 1991. Preliminary evaluation of U.S. turtle protective measures under existing TED regulations. Unpublished Document.

Henwood, T.A., and W.E. Stuntz. 1987. Analysis of sea turtle captures and mortalities during commercial shrimp trawling. Fish Bulletin. 85:813–817.

Murphy, T.M., and S.R. Hopkins-Murphy. 1989. Sea Turtle and Shrimp Fishing Interactions: A Summary and Critique of Relevant Information. Washington, DC: Center for Marine Conservation. 60 pp.

National Academy of Sciences, National Research Council. 1990. Decline of the Sea Turtles: Causes and Prevention. Washington, DC National Academy Press. 189 pp.

National Marine Fisheries Service. 1987a. Regulatory impact review and regulatory flexibility analysis for regulations which require the use of turtle excluder devices by shrimpers to conserve sea turtles. 24 pp. IN: Draft supplement to the final environmental impact statement on listing and protecting the green turtle, loggerhead sea turtle, and pacific ridley sea turtle under the Endangered Species Act of 1973 and regulatory impact review and regulatory flexibility analysis for regulations which require the use of turtle excluder devices by shrimpers to conserve sea turtles. February 1987.

National Marine Fisheries Service. 1987b. Final supplement to the final environmental impact statement on listing and protecting the green turtle, loggerhead sea turtle, and pacific ridley sea turtle under the Endangered Species Act of 1973. June 1987.

National Marine Fisheries Service. 1978. Final environmental impact statement on listing and protecting the green turtle *(Cheloni a mydas)*, loggerhead sea turtle *(Caretta caretta)*, and pacific ridley sea turtle *(Lepidochelys olivacea)* under the Endangered Species Act of 1973. 144 pp. July 1978.

Schroeder, B.A., and C.A. Maley. 1989. 1988 fall/winters strandings of marine turtles along the northeast Florida and Georgia coasts. Pp. 159–161 in Proceedings of the Ninth Annual Workshop on Sea Turtle Conservation and Biology held 7–11 February, 1989 at Jekyll Island, Georgia. S.A. Eckert, and T.H. Richardson, comp. NOAATM–NMFS–SEFC–232. Miami, Fla.: Southeast Fisheries Center, National Marine Fisheries Service.

Street, M.W. 1987. Evaluation of Reported Sea Turtle Strandings and Shrimp Trawl Data for North Carolina. Report No. 166. Raleigh: Division of Marine Fisheries, North Carolina Department of Natural Resources and Community Development.

List of Subjects in 50 CFR Parts 217 and 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: July 26, 1991.

William W. Fox, Jr.,

Assistant Administrator for Fisheries.

For the reasons set forth in the preamble, 50 CFR parts 217 and 227 are proposed to be amended as follows:

PART 217—GENERAL PROVISIONS

1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1521–1543; and 16 U.S.C. 742a *et seq.*

§ 217.12 [Amended]

2. In § 217.12, in the definition for *"Atlantic Area"*, the phrase "36°33′00.8′ N. latitude (North Carolina or Virginia border)" is revised to read "36°33′00.8″ N. latitude (North Carolina/Virginia border)."

PART 227—THREATENED FISH AND WILDLIFE

3. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 2531 *et seq.*

4. In § 227.72, Maps 1 through 4 are removed; and paragraphs (e)(2)(i), (e)(3)(i), and (e)(3)(ii) and Tables 1 and 2 are revised to read as follows:

§ 227.72 Exceptions to prohibitions.

* * * * *

(e) * * *

(2) * * *

(i) Except as provided in paragraphs (e)(2)(ii), (e)(2)(iii), and (e)(2)(iv) of this section, a qualified turtle excluder device (TED) must be carried and used in each net during trawling by a shrimp trawler 25 feet (7.6 meters) or longer in length fishing for white, brown, pink, or seabob shrimp (or for rock shrimp in the Gulf of Mexico) in areas and during periods as follows (see Table 1 for a summary of the requirements):

(A) Atlantic Ocean:

(*1*) Canaveral Area, offshore—all year.

(*2*) Atlantic Area, offshore—September 1, 1991 through April 30, 1992; May 1 through August 31, each year.

(B) Gulf of Mexico:

(*1*) Southwest Florida Area, offshore—all year.

(*2*) Gulf Area, offshore—March 1 through November 30, each year.

* * * * *

(3) * * *

(i) Except for a shrimp trawler carrying and using a qualified TED in each net during trawling, a shrimp trawler, regardless of length, fishing for white, brown, pink, or seabob shrimp (or rock shrimp in or from the Gulf or Southwest Florida Areas) must limit each tow time to 90 minutes in areas and during periods as follows (see Table 2 for a summary of the requirements):

(A) Atlantic Ocean:

(*1*) Canaveral Area, inshore—all year.

(*2*) Atlantic Area, inshore—September 1, 1991 through April 30, 1992; May 1 through August 31, each year.

(B) Gulf of Mexico:

(*1*) Southwest Florida Area, inshore—all year.

(*2*) Gulf Area inshore—March 1 through November 30, each year.

(ii) Except for a shrimp trawler carrying and using a qualified TED in each net during trawling, a shrimp trawler less than 25 feet (7.6 meters) in length fishing for white, brown, pink, or seabob shrimp must limit each tow time to 90 minutes in areas and during

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cies Act of 1973. 144 pp.
C.A. Maley. 1989. 1988
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S–SEFC–232. Miami.
isheries Center, National
Service.
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dings and Shrimp Trawl
Carolina. Report No. 166.
n of Marine Fisheries,
Department of Natural
Community Development.

50 CFR Parts 217 and

threatened species,
Marine mammals,

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set forth in the
parts 217 and 227 are
ended as follows:

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d to read "36°33'00.8"
Carolina/Virginia

PART 227—THREATENED FISH AND WILDLIFE

3. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 2531 *et seq.*

4. In § 227.72, Maps 1 through 4 are removed; and paragraphs (e)(2)(i), (e)(3)(i), and (e)(3)(ii) and Tables 1 and 2 are revised to read as follows:

§ 227.72 Exceptions to prohibitions.

* * * * *

(e) * * *

(2) * * *

(i) Except as provided in paragraphs (e)(2)(ii), (e)(2)(iii), and (e)(2)(iv) of this section, a qualified turtle excluder device (TED) must be carried and used in each net during trawling by a shrimp trawler 25 feet (7.6 meters) or longer in length fishing for white, brown, pink, or seabob shrimp (or for rock shrimp in the Gulf of Mexico) in areas and during periods as follows (see Table 1 for a summary of the requirements):

(A) Atlantic Ocean:

(*1*) Canaveral Area, offshore—all year.

(*2*) Atlantic Area, offshore—September 1, 1991 through April 30, 1992; May 1 through August 31, each year.

(B) Gulf of Mexico:

(*1*) Southwest Florida Area, offshore—all year.

(*2*) Gulf Area, offshore—March 1 through November 30, each year.

* * * * *

(3) * * *

(i) Except for a shrimp trawler carrying and using a qualified TED in each net during trawling, a shrimp trawler, regardless of length, fishing for white, brown, pink, or seabob shrimp (or rock shrimp in or from the Gulf or Southwest Florida Areas) must limit each tow time to 90 minutes in areas and during periods as follows (see Table 2 for a summary of the requirements):

(A) Atlantic Ocean:

(*1*) Canaveral Area, inshore—all year.

(*2*) Atlantic Area, inshore—September 1, 1991 through April 30, 1992; May 1 through August 31, each year.

(B) Gulf of Mexico:

(*1*) Southwest Florida Area, inshore—all year.

(*2*) Gulf Area inshore—March 1 through November 30, each year.

(ii) Except for a shrimp trawler carrying and using a qualified TED in each net during trawling, a shrimp trawler less than 25 feet (7.6 meters) in length fishing for white, brown, pink, or seabob shrimp must limit each tow time to 90 minutes in areas and during periods as follows (see Table 2 for a summary of the requirements):

(A) Atlantic Ocean:

(*1*) Canaveral Area, offshore—all year.

(*2*) Atlantic Area, offshore—September 1, 1991 through April 30, 1992; May 1 through August 31, each year.

(B) Gulf of Mexico:

(*1*) Southwest Florida Area, offshore—all year.

(*2*) Gulf Area, offshore—March 1 through November 30, each year.

* * * * *

TABLE 1.—WATERS WHERE TEDs ARE REQUIRED ON SHRIMP TRAWLERS 25 FEET (7.6 METERS) OR LONGER IN LENGTH

Area	Season
Atlantic Ocean:	
Canaveral Area—offshore	All year.
Atlantic Area—offshore	Sept. 1, 1991–Apr. 30, 1992; May 1–Aug. 31, each year.
Gulf of Mexico:	
Southwest Florida Area—offshore.	All year.
Gulf Area—offshore	Mar. 1–Nov. 30, each year.

TABLE 2.—90-MINUTE TOW TIMES [1]

Area	Season	Vessel sizes
Atlantic Ocean:		
Canaveral Area—inshore.	All year	All.
Atlantic Area—inshore.	Sept. 1, 1991–April 30, 1992; May 1–Aug. 31, each year.	All.
Gulf of Mexico:		
Southwest Florida Area—inshore.	All year	All.
Gulf Area—inshore.	Mar. 1–Nov. 1, each year.	All.
Atlantic Ocean:		
Canaveral Area—offshore.	All year	<25 ft. (7.6 m).
Atlantic Area—offshore.	Sept. 1, 1991–Apr. 30, 1992; May 1–Aug. 31, each year.	<25 ft. (7.6 m).
Gulf of Mexico:		
Southwest Florida Area—offshore.	All year	<25 ft. (7.6 m).
Gulf Area—offshore.	Mar. 1–Nov. 30, each year.	<25 ft. (7.6 m).

[1] Tow time restrictions do not apply to shrimp trawlers using a qualified TED in each net during trawling.

* * * * *

[FR Doc. 91-18131 Filed 7-31-91; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 56, No. 148
Thursday, August 1, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

July 26, 1991.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Revision

- Farmers Home Administration

7 CFR 1942-K, Emergency Community Water Assistance Grants
FmHA 1942-31
On occasion
State or local governments; Non-profit institutions; Small businesses or organizations; 1,470 responses; 2,940 hours
Jack Holston (202) 382-9736

New Collection

- Agricultural Research Service

Record of Shipment/Release of Exotic Microorganisms for Biological Control
AD-944 and -944A
On occasion
State or local governments; Federal agencies or employees; 420 responses; 105 hours
Jack R. Coulson (301) 344-1748

Extension

- Agricultural Marketing Service

Navel Oranges Grown in Arizona and Designated Parts of California—M.O. No. 907
Recordkeeping; On occasion; Weekly; Annually; Daily
Farms; Businesses or other for-profit; Small businesses or organizations; 210,486 responses; 25,232 hours
Beatriz Rodriguez (202) 475-3861

Existing

- Food and Nutrition Service

State Options Contract (SOC) Program
Recordkeeping; On occasion; Annually
State or local governments; 20 responses; 40 hours
Ron Johnson (703) 756-3888

Donald E. Hulcher,
Deputy Departmental Clearance Officer.

[FR Doc. 91-18209 Filed 7-31-91; 8:45 am]

BILLING CODE 3410-01-M

Federal Grain Inspection Service

Designation of Denver Grain Inspection, Inc. (Denver)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Service announces the designation of Denver Grain Inspection, Inc., dba Denver Grain Inspection (Denver), to provide official services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: September 1, 1991.

ADDRESSES: Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-447-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the March 8 1991, **Federal Register** (56 FR 9933), the Service announced that the designation of Hutchings, Inc., dba Denver Grain Inspection (Denver) will terminate on August 31, 1991, and asked persons interested in providing official services within the specified geographic area to submit an application for designation. Applications were to be postmarked by April 8, 1991.

Randy J. McCormick, proposing to incorporate as Denver Grain Inspection, Inc. and do business as Denver Grain Inspection, the only applicant, applied for the entire Denver area as described in the March 8 **Federal Register.**

The Service named and requested comments on the applicant for designation in the May 1, 1991, **Federal Register** (56 FR 19978). Comments were to be postmarked by June 17, 1991. The Service received three favorable comments from grain firms in the Denver geographic area by that deadline.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and according to section 7(f)(1)(B), determined that Denver Grain Inspection, Inc., is able to provide official services in the geographic area for which they applied.

Effective September 1, 1991, and terminating August 31, 1994, Denver Grain Inspection, Inc., is designated to provide official grain inspection services in the geographic area specified in the March 8 **Federal Register.**

Interested persons may obtain official services by contacting Denver at 317-289-1200.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: July 22, 1991.

J. T. Abshier,
Director, Compliance Division.

[FR Doc. 91-18097 Filed 7-31-91; 8:45 am]

BILLING CODE 3410-EN-F

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In the March 8 1991, **Federal Register** (56 FR 9933), the Service announced that the designation of Hutchings, Inc., dba Denver Grain Inspection (Denver) will terminate on August 31, 1991, and asked persons interested in providing official services within the specified geographic area to submit an application for designation. Applications were to be postmarked by April 8, 1991.

Randy J. McCormick, proposing to incorporate as Denver Grain Inspection, Inc. and do business as Denver Grain Inspection, the only applicant, applied for the entire Denver area as described in the March 8 **Federal Register**.

The Service named and requested comments on the applicant for designation in the May 1, 1991, **Federal Register** (56 FR 19978). Comments were to be postmarked by June 17, 1991. The Service received three favorable comments from grain firms in the Denver geographic area by that deadline.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and according to section 7(f)(1)(B), determined that Denver Grain Inspection, Inc., is able to provide official services in the geographic area for which they applied.

Effective September 1, 1991, and terminating August 31, 1994, Denver Grain Inspection, Inc., is designated to provide official grain inspection services in the geographic area specified in the March 8 **Federal Register**.

Interested persons may obtain official services by contacting Denver at 317-289-1200.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: July 22, 1991.

J. T. Abshier,
Director, Compliance Division.

[FR Doc. 91-18097 Filed 7–31–91; 8:45 am]

BILLING CODE 3410-EN-F

Request for Comments on the Designation Applicants in the Geographic Areas Currently Assigned to the Idaho (ID) and Lewiston (ID) Agencies, and the State of Utah (UT)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Service requests interested persons to submit comments on the applicants for designation to provide official services in the geographic areas currently assigned to Idaho Grain Inspection Service, Inc. (Idaho), Lewiston Grain Inspection Service, Inc. (Lewiston), and the Utah Department of Agriculture (Utah).

DATES: Comments must be postmarked on or before September 16, 1991.

ADDRESSES: Comments must be submitted in writing to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. SprintMail users may respond to (HDUNN/FGIS/USDA).Telecopier users may send responses to the automatic telecopier machine at 202-447-4628, attention: Homer E. Dunn. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-447-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the May 30, 1991, **Federal Register** (56 FR 24366), the Service asked persons interested in providing official services within the Idaho, Lewiston, and Utah geographic areas to submit an application for designation. Applications were to be postmarked by July 1, 1991. Idaho, Lewiston, and Utah, the only applicants, each applied for the entire area currently assigned to them.

The Service is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants for designation. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of these applicants. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. The Service will publish notice of the final decision in the **Federal Register**, and the Service will send the applicants written notification of the decision.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: July 22, 1991.

J. T. Abshier,
Director, Compliance Division.

[FR Doc. 91-18094 Filed 7–31–91; 8:45 am]

BILLING CODE 3410-EN-F

Request for Comments on the Applicants for Designation to Provide Official Services in Portions of Illinois (IL) and Indiana (IN)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Service requests interested persons to submit comments on the applicants for designation to provide official services in portions of Illinois and Indiana.

DATES: Comments must be postmarked on or before September 16, 1991.

ADDRESSES: Comments must be submitted in writing to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. SprintMail users may respond to (HDUNN/FGIS/USDA).Telecopier users may send responses to the automatic telecopier machine at 202-447-4628, attention: Homer E. Dunn. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-447-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the May 30, 1991, **Federal Register** (56 FR 24366), the Service asked persons interested in providing official services within portions of Illinois and Indiana to submit an application for designation. Applications were to be postmarked by July 1, 1991. There were three applicants; Schneider Inspection Service, Inc. (Schneider), Eastern Iowa Grain Inspection and Weighing Service, Inc. (Eastern Iowa), and Kankakee Grain Inspection, Inc. (Kankakee). Schneider and Kankakee applied for the entire available area and Eastern Iowa applied for all or any portion of the area. Each is a neighboring official agency.

The Service is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants for designation. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of these applicants. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. The Service will publish notice of the final decision in the **Federal Register**, and the Service will send the applicants written notification of the decision.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: July 22, 1991.

J. T. Abshier,
Director, Compliance Division.

[FR Doc. 91-18095 Filed 7–31–91; 8:45 am]

BILLING CODE 3410-EN-F

Designation of East Indiana (IN) and the State of Kansas (KS)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Service announces the designation of East Indiana Grain Inspection, Inc. (East Indiana), and the Kansas State Grain Inspection Department (Kansas), to provide official grain inspection services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: September 1, 1991.

ADDRESSES: Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-447-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the March 8, 1991, **Federal Register** (56 FR 9933), the Service announced that the designations of East Indiana and

Kansas will terminate on August 31, 1991, and asked persons interested in providing official services within a specified geographic area to submit an application for designation. Applications were to be postmarked by April 8, 1991.

East Indiana and Kansas, the only applicants, each applied for the entire area currently assigned to them.

The Service named and requested comments on the applicants for designation in the May 1, 1991, **Federal Register** (56 FR 19978). Comments were to be postmarked by June 17, 1991. The Service received two comments on Kansas; one from a trade group pleased with the service provided by Kansas, and one from a grain firm expressing concern with the level of Kansas' inspection fees. The Service received one comment on East Indiana, from a grain firm expressing concern over the timeliness of service.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and according to section 7(f)(1)(B), determined that East Indiana and Kansas are able to provide official services in the geographic areas for which they applied.

Effective September 1, 1991, and terminating August 31, 1994, East Indiana and Kansas are designated to provide official grain inspection services in the geographic areas specified in the March 8 **Federal Register**.

Interested persons may obtain official services by contacting East Indiana at 317-289-1206 and Kansas at 913-296-3451.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: July 22, 1991.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 91-18098 Filed 7-31-91; 8:45 am]

BILLING CODE 3410-EN-F

Cancellation of the Grand Forks (ND) Agency's Designation and Request for Designation Applications

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: Robert J. Bohlman dba Grand Forks Grain Inspection Department (Grand Forks) asked the Service to cancel his designation, effective January 31, 1992. The Service asks persons interested in providing official services in the geographic area presently assigned to Grand Forks to submit an application for designation.

DATES: Applications must be postmarked on or before September 3, 1991.

ADDRESSES: Applications must be submitted to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. All applications will be made available for public inspection at this address at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-447-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the United States Grain Standards Act, as amended (Act), authorizes the Administrator of the Service, to designate any qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

Section 7(g)(1) of the Act provides that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in section 7(f) of the Act.

The Service designated Grand Forks, located at 1504 State Mill Road, Grand Forks, ND 58206-0639, for the period beginning April 1, 1990, and ending March 31, 1993. Grand Forks requested voluntary cancellation of its designation, effective January 31, 1992.

The geographic area presently assigned to Grand Forks, in the State of North Dakota, pursuant to section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation is as follows:

Bounded on the North by the North Dakota State line;

Bounded on the East by the North Dakota State line south to State Route 200;

Bounded on the South by State Route 200 west-northwest to the western Traill County line; the western Traill County line; the southern Grand Forks and Nelson County lines; the southern Eddy County line west to U.S. Route 281; U.S. Route 281 north to State Route 15; State Route 15 west to U.S. Route 52; U.S. Route 52 northeast to State Route 3; and

Bounded on the West by State Route 3 north to State Route 60; State Route 60 west-northwest to State Route 5; State Route 5 west to State Route 14; State Route 14 north to the North Dakota State line.

Exceptions to Grand Fork's assigned geographic area are the following locations inside Grand Fork's area which have been and will continue to be serviced by the following official agencies:

1. Grain Inspection, Inc.: Farmers Coop Elevator, Fessenden; Farmers Union Elevator, and Manfred Grain, both in Manfred; all in Wells County; and
2. Minot Grain Inspection, Inc.: Farmers Feed & Grain, and Farmers Union, both in Harvey, Wells County.

Interested persons are hereby given an opportunity to apply for designation to provide official services in the specified area under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in the specified area is for the period beginning February 1, 1992, and ending January 31, 1995. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in the Grand Forks area.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: July 22, 1991.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 91-18091 Filed 7-31-91; 8:45 am]

BILLING CODE 3410-EN-F

Correction of the List of Applicants for Designation in the Ohio Valley (OH) Area, and Extension of the Comment Period

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice correction and extension of comment period.

SUMMARY: The July 1, 1991, **Federal Register** inadvertently omitted the name of one designation applicant for the geographic area presently assigned to James L. Goodge, Sr., dba Ohio Valley Grain Inspection (Ohio Valley). The Service is correcting that notice by adding J. W. Barton Grain Inspection Service, Inc. (Barton), to the list of applicants. The Service also is extending the comment period to September 1, 1991, to provide interested persons sufficient time to submit comments on the two applicants.

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Exceptions to Grand Fork's assigned geographic area are the following locations inside Grand Fork's area which have been and will continue to be serviced by the following official agencies:

1. Grain Inspection, Inc.: Farmers Coop Elevator, Fessenden; Farmers Union Elevator, and Manfred Grain, both in Manfred; all in Wells County; and

2. Minot Grain Inspection, Inc.: Farmers Feed & Grain, and Farmers Union, both in Harvey, Wells County.

Interested persons are hereby given an opportunity to apply for designation to provide official services in the specified area under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in the specified area is for the period beginning February 1, 1992, and ending January 31, 1995. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in the Grand Forks area.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: July 22, 1991.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 91-18091 Filed 7-31-91; 8:45 am]

BILLING CODE 3410-EN-F

Correction of the List of Applicants for Designation in the Ohio Valley (OH) Area, and Extension of the Comment Period

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice correction and extension of comment period.

SUMMARY: The July 1, 1991, **Federal Register** inadvertently omitted the name of one designation applicant for the geographic area presently assigned to James L. Goodge, Sr., dba Ohio Valley Grain Inspection (Ohio Valley). The Service is correcting that notice by adding J. W. Barton Grain Inspection Service, Inc. (Barton), to the list of applicants. The Service also is extending the comment period to September 1, 1991, to provide interested persons sufficient time to submit comments on the two applicants.

DATES: Comments must be postmarked on or before September 1, 1991.

ADDRESSES: Comments must be submitted in writing to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. SprintMail users may respond to (HDUNN/FGIS/USDA).Telecopier users may send responses to the automatic telecopier machine at 202-447-4628, attention: Homer E. Dunn. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-447-8525.

SUPPLEMENTARY INFORMATION:

In the July 1, 1991, **Federal Register** (56 FR 29936), the Service named and asked interested persons to submit comments on the applicant for designation in the Ohio Valley area. Comments were to be postmarked on or before August 15, 1991. The July **Federal Register** listed Ohio Valley as the only applicant. The name of the second applicant, Barton, was omitted. Barton applied for designation to service Henderson and Union Counties.

The Service is publishing this notice to correct the omission and extend the comment period to provide interested persons the opportunity to present comments concerning both applicants for designation. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of these applicants. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. The Service will publish notice of the final decision in the **Federal Register**, and the Service will send the applicants written notification of the decision.

The Service is extending the comment period to September 1, 1991, to provide interested persons sufficient time to submit comments on the two applicants.

CORRECTION: In FR Doc. 91-15459, beginning on page 29936 (56 FR 29936) in the issue of Monday July 1, 1991, make the following corrections:

1. on page 29936, in the second column, in the Title, the word "Applicant" should read "Applicants";

2. on page 29936, in the second column, under "SUMMARY", in the first paragraph, the word "applicant" should read "applicants";

3. on page 29936, in the third column, under "SUPPLEMENTARY INFORMATION", in the second paragraph, insert the following as the new third sentence. "Ohio Valley Grain Inspection, Inc., applied for the entire available area, and J. W. Barton Grain Inspection Service, Inc., applied for Henderson and Union Counties."

4. on page 29936, in the third column, under "SUPPLEMENTARY INFORMATION:", in the third paragraph, in the first and second sentences, the word "applicant" should read "applicants"; and

5. on page 29936, in the third column, under "SUPPLEMENTARY INFORMATION:", in the third paragraph, in the second sentence, the word "this" should read "these".

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: July 22, 1991.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 91-18092 Filed 7-31-91; 8:45 am]

BILLING CODE 3410-EN-F

Request for Comments on the Applicants for Designation to Provide Official Services in the Northwestern Ohio (OH) Area

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Service requests interested persons to submit comments on the applicants for designation to provide official services in the geographic area currently assigned to Robert B. Whitta dba Fostoria Grain Inspection (Fostoria).

DATES: Comments must be postmarked on or before September 16, 1991.

ADDRESSES: Comments must be submitted in writing to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. SprintMail users may respond to (HDUNN/FGIS/USDA).Telecopier users may send responses to the automatic telecopier machine at 202-447-4628, attention: Homer E. Dunn. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-447-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the May 30, 1991, **Federal Register** (56 FR 24368), the Service announced that Robert B. Whitta dba Fostoria Grain Inspection (Fostoria) had requested the cancellation of his designation, effective November 30, 1991. The Service also, in the same **Federal Register**, asked persons interested in providing official services within the Northwestern Ohio area served by Fostoria to submit an application for designation. Applications were to be postmarked by July 1, 1991. Robert B. Whitta, proposing to incorporate as Fostoria Grain Inspection, Inc., and Dennis L. Boltenhouse dba Erie Grain Inspection Service, a neighboring official agency, each applied for the entire available area.

The Service is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants for designation. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of these applicants. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. The Service will publish notice of the final decision in the **Federal Register**, and the Service will send the applicants written notification of the decision.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: July 22, 1991.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 91-18096 Filed 7-31-91; 8:45 am]

BILLING CODE 3410-EN-F

Request for Applications from Persons Interested in Designation to Provide Official Services in the Geographic Areas Currently Assigned to the Lima (OH) Agency and the State of Virginia (VA)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency

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designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. The Service announces that the designations of Lima Grain Inspection Service, Inc. (Lima), and the State of Virginia Department of Agriculture and Consumer Services (Virginia), will terminate, according to the Act, and asks persons interested in providing official services in the specified geographic areas to submit an application for designation.

DATES: Applications must be postmarked on or before September 3, 1991.

ADDRESSES: Applications must be submitted to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-447-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes the Administrator of the Service to designate any qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

The Service designated Lima, located at 2242 Arcadia Avenue, Lima, OH 45805, to provide official inspection services, and Virginia, located at 704 Washington Building, 1100 Bank Street, Richmond, VA 23219, to provide official inspection and Class X or Class Y weighing services under the Act on February 1, 1989.

Section 7(g)(1) of the Act provides that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in section 7(f) of the Act. The designations of Lima and Virginia terminate on January 31, 1992.

The geographic area presently assigned to Lima, in the State of Ohio, pursuant to section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation, is as follows:

Bounded on the North by the northern and eastern Williams County lines; the northern and eastern Defiance County lines south to U.S. Route 24; U.S. Route 24 northeast to State Route 108;

Bounded on the East by State Route 108 south to Putnam County; the northern and eastern Putnam County lines; the eastern Allen County line; the northern Hardin County line east to U.S. Route 68; U.S. Route 68 south to U.S. Route 47;

Bounded on the South by U.S. Route 47 west-southwest to Interstate 75; Interstate 75 south to the Shelby County line; the southern and western Shelby County lines; the southern Mercer County line; and

Bounded on the West by the Ohio-Indiana State line from the southern Mercer County line to the northern Williams County line.

Payne Cooperative Association, Payne, Paulding County, an exception to Lima's assigned geographic area, is inside Lima's area but has been and will continue to be serviced by East Indiana Grain Inspection, Inc.

The geographic area presently assigned to Virginia, pursuant to section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation, is the entire State of Virginia, except those export port locations within the State.

Interested persons, including Lima and Virginia, are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning February 1, 1992, and ending January 31, 1995. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: July 22, 1991.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 91-18093 Filed 7-31-91; 8:45 am]

BILLING CODE 3410-EN-F

Forest Service

Grand Island National Recreation Area Advisory Commission Meeting; Hiawatha National Forest

AGENCY: Forest Service, USDA.

ACTION: Grand Island Advisory Commission Meeting.

SUMMARY: The Grand Island Advisory Commission will meet on August 12 at 8:30 a.m. at the Forest Inn on M-28 in Munising, Michigan. An agenda for the two day meeting includes updating members on the Island planning progress to date, a review of laws and regulations governing Forest Service management, development of internal operating procedures, election of a chairperson, and developing an action plan for future meetings.

Interested members of the public are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions about this meeting to Art Easterbrook, Staff Officer, Hiawatha National Forest, 2727 N. Lincoln Road, Escanaba, Michigan 49829, (906) 786-4062.

Dated: July 25, 1991.

William F. Spinner,

Forest Supervisor.

[FR Doc. 91-18243 Filed 7-31-91; 8:45 am]

BILLING CODE 3410-11-M

Replacements for Honeycomb Core Materials in High Performance Composite Sandwich Constructions; Notice of Intent to Enter Into a Cooperative Research and Development Agreement

The Department of Agriculture, Forest Service, Forest Products Laboratory intents to award a Cooperative Research and Development Agreement under the authority of the Technology Transfer Act of 1986 (15 United States Code 3710a) to a Research Partner for the joint development and commercialization of novel materials and products based on wood fibers and, in particular, to produce replacements for honeycomb structures in high performance composite materials such as are used in the transportation and construction industries. The research will be based on Spaceboard I (three dimensional structural components formed from wood fiber as detailed in U.S. Patent number 4,702,870 (October 27, 1987) and U.S. Patent Office 07/711,221 (Series No.) filed June 6, 1991, "Method and Apparatus for Making Open Grids from Fibers"). It is anticipated that fiber chemistry modification will be involved. This is not a solicitation for an acquisition (procurement) contract nor a request for proposals. No solicitation documents exist. The award is based on an unsolicited proposal.

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Dated: July 25, 1991.

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Forest Supervisor.

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Written comments concerning the award should be sent to John G. Bachhuber, Grants and Agreements Officer, USDA, Forest Service, Forest Products Laboratory, One Gifford Pinchot Drive, Madison, Wisconsin 53705–2398, by August 26, 1991.

Dated: July 23, 1991.

John G. Bachhuber,

Grants and Agreements Officer.

[FR Doc. 91–18267 Filed 7–31–91; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Finding of No Significant Impact; Lake Bloomington Watershed, IL

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Lake Bloomington Watershed, McLean County, Illinois.

FOR FURTHER INFORMATION CONTACT: Mark W. Berkland, Acting State Conservationist, Soil Conservation Service, 1902 Fox Drive, Champaign, Illinois, 61820, telephone (217) 398–5267.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mark W. Berkland, Acting State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project covers a plan for water quality improvement. The planned works of improvement include two sediment basins.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mark W. Berkland.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Dated: July 24, 1991.

Mark W. Berkland,

Acting State Conservationist.

[FR Doc. 91–18264 Filed 7–31–91; 8:45 am]

BILLING CODE 3410-16-M

Cobb Brook Watershed, MA; Deauthorization of Federal Funding

Pursuant to the Watershed Protection and Flood Prevention Act, Public Law 83–566, and the Soil Conservation Service Guidelines (7 CFR part 622), the Soil Conservation Service gives notice of deauthorization of federal funding for the Cobb Brook Watershed, Massachusetts, effective on June 28, 1991.

A notice of intent to deauthorize federal funding was published on February 8, 1991 (43 CFR 27574). Concerned local, state, and federal agencies were notified of the proposed deauthorization at least 60 days prior to the effective date. No objections to deauthorization or expressions of support to complete the project have been made known to the Soil Conservation Service.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program-Public Law 83–566, 16 U.S.C. 1001–1008)

Dated: July 23, 1991.

Richard A. Gallo,

State Conservationist.

[FR Doc. 91–18268 Filed 7–31–91; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 42–91]

Foreign-Trade Zone 77—Memphis, TN; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Memphis, Tennessee, grantee of FTZ 77, requesting authority to expand its zone to include a site in Shelby County, within the Memphis Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 10, 1991.

FTZ 77 was approved on April 2, 1982 (Board Order 189, 47 FR 16191, 4/15/82), and currently involves two sites in Memphis. Site 1 (22 acres, 20,000 sq. ft.) is located at the intersection of Port Street and Channel Avenue within the 2,000-acre President's Island Industrial Park. Site 2 (10 acres) is located at Republican and Tchulahoma Roads at Memphis International Airport.

The grantee now requests authority to expand the zone to include an additional site (proposed Site 3) in southeast Shelby County, some 7 miles east of Memphis International Airport. This site (126 acres) involves a warehouse complex on two nearby parcels: one at 4834 South Mendenhall Road and the other at 4836 Hickory Hill Road. The first parcel (20 acres), owned by Vantage Memphis, Inc., has a 400,000 square-foot warehouse. The second parcel (106 acres), owned by Southern States Distribution, Inc. (SSD) contains an existing warehouse (706,000 sq. ft.) with two more planned. Both facilities are operated by SSD, which has also been designated as zone operator for the new site.

No manufacturing authority is being sought at this time. such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Joanne C. Cornelison, District Director, U.S. Customs Service, South Central Region, 423 Canal Street, Suite 245, New Orleans, LA 70130–2341; and, Colonel Clinton W. Willer, District Engineer, U.S. Army Engineer District Memphis, 167 N. Main, Clifford David Federal Building, B–202, Memphis, TN 38103–1894.

Comments concerning the proposed expansion are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before September 16, 1991.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, 22 North Front Street, Falls Building, Memphis, Tennessee 38101

Office of the Executive Secretary,
Foreign-Trade Zones Board, U.S.
Department of Commerce, 14th &
Pennsylvania Avenue NW., room
3716, Washington, DC 20230

Dated: July 24, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91-18233 Filed 7-31-91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-588-055]

Acrylic Sheet from Japan; Intent to Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on acrylic sheet from Japan. Interested parties who object to this revocation must submit their comments in writing no later than August 31, 1991.

EFFECTIVE DATE: August 1, 1991.

FOR FURTHER INFORMATION CONTACT: Sheila Forbes or Thomas Futtner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-8120.

SUPPLEMENTARY INFORMATION:

Background

On August 30, 1976, the Department of Treasury published an antidumping finding on acrylic sheet from Japan (41 FR 36497). The Department of Commerce ("the Department") has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interested to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this finding.

Opportunity to Object

No later than August 31, 1991, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by August 31, 1991, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by August 31, 1991, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)

Dated: July 25, 1991.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 91-18228 Filed 7-31-91; 8:45 am]

BILLING CODE 3510-DS-M

Sanctions for Violations of Administrative Protective Orders

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of status of investigation into charges of violation of administrative protective orders in antidumping and countervailing duty proceedings.

SUMMARY: This is a notice of the status of investigations into charges of violations of administrative protective orders in antidumping and countervailing duty proceedings.

EFFECTIVE DATE: August 1, 1991.

FOR FURTHER INFORMATION CONTACT: Stephen J. Powell, Chief Counsel for Import Administration, (202) 377-8916.

SUPPLEMENTARY INFORMATION: The International Trade Administration, U.S. Department of Commerce (ITA), wishes to remind those members of the bar who appear before it in antidumping and countervailing duty proceedings of the extreme importance of protecting the confidentiality of business proprietary information obtained pursuant to an administrative protective order (APO) during the course of those proceedings. In order that the gravity with which ITA views violations of its APO's might be better appreciated, ITA is publishing the following report on a violation of an APO.

Two individuals violated their APO by failing to bracket or delete certain business proprietary information in the nonconfidential version of a document submitted to the Department as a part of a countervailing duty administrative review. By failing to bracket or delete the APO-covered information, the individuals violated the application for access to business proprietary information filed by the individuals, which was incorporated by reference into the APO.

In this case, the individuals involved were (1) issued a private reprimand that warned that future violations by them would be treated more severely; (2) required to attend a training session on procedures for protecting proprietary data; (3) required to set up procedures regarding protection of proprietary information in future APO's; and (4) required to send a letter of apology to the party whose business proprietary information was mishandled.

Although it is clear that a violation occurred, we consider these sanctions appropriate for the following reasons: First, the violation appears to have been inadvertent and the error was voluntarily reported to the Import Administration. Second, there appears to be no harm to the submitter of the information caused by the failure to protect the information; the only unauthorized recipient of the submission did not disseminate the material to anyone. Third, the individuals cooperated fully with ITA's investigation.

Serious harm can result from failure to properly protect business proprietary information received under APO. ITA will continue to investigate vigorously allegations that the provisions of APO's have been violated, and is prepared to impose sanctions commensurate with the nature of the violations, including letters of reprimand, denial of access to business proprietary information, and debarment from practice before the ITA.

Dated: July 19, 1991.

Roger W. Wallace,

Deputy Under Secretary for International Trade.

[FR Doc. 91-18231 Filed 7-31-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-035]

Cadmium from Japan; Intent to Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on cadmium from Japan. Interested parties who object to this revocation

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the APO-covered information, the individuals violated the application for access to business proprietary information filed by the individuals, which was incorporated by reference into the APO.

In this case, the individuals involved were (1) issued a private reprimand that warned that future violations by them would be treated more severely; (2) required to attend a training session on procedures for protecting proprietary data; (3) required to set up procedures regarding protection of proprietary information in future APO's; and (4) required to send a letter of apology to the party whose business proprietary information was mishandled.

Although it is clear that a violation occurred, we consider these sanctions appropriate for the following reasons: First, the violation appears to have been inadvertent and the error was voluntarily reported to the Import Administration. Second, there appears to be no harm to the submitter of the information caused by the failure to protect the information; the only unauthorized recipient of the submission did not disseminate the material to anyone. Third, the individuals cooperated fully with ITA's investigation.

Serious harm can result from failure to properly protect business proprietary information received under APO. ITA will continue to investigate vigorously allegations that the provisions of APO's have been violated, and is prepared to impose sanctions commensurate with the nature of the violations, including letters of reprimand, denial of access to business proprietary information, and debarment from practice before the ITA.

Dated: July 19, 1991.

Roger W. Wallace,

Deputy Under Secretary for International Trade.

[FR Doc. 91–18231 Filed 7–31–91; 8:45 am]

BILLING CODE 3510-DS-M

[A–588–035]

Cadmium from Japan; Intent to Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on cadmium from Japan. Interested parties who object to this revocation

must submit their comments in writing no later than August 31, 1991.

EFFECTIVE DATE: August 1, 1991.

FOR FURTHER INFORMATION CONTACT: Dennis Askey, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–3601.

SUPPLEMENTARY INFORMATION:

Background

On August 4, 1972, the Department of Treasury published an antidumping finding on cadmium from Japan (37 FR 14700). The Department of Commerce ("the Department") has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interested to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this finding.

Opportunity to Object

No later than August 31, 1991, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by August 31, 1991, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by August 31, 1991, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)

Dated: July 25, 1991.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 91–18229 Filed 7–31–91; 8:45 am]

BILLING CODE 3510-DS-M

[A–583–009]

Color Television Receivers, Except for Video Monitors, From Taiwan; Preliminary Results and Termination in Part of Antidumping Duty Administrative Review

AGENCY: Import Administration/International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results and termination in part of antidumping duty administrative review.

SUMMARY: In response to requests by the petitioner, a domestic interested party, and certain respondents, the Department of Commerce has conducted an administrative review of the antidumping duty order on color television receivers, except for video monitors, from Taiwan. This notice covers 15 manufacturers/exporters for the period April 1, 1987 through March 31, 1988, and 16 manufacturers/exporters for the period April 1, 1989 through March 31, 1990. We are terminating the review for Capetronic (BSR) Ltd., since the order was revoked with regard to that firm effective May 29, 1987. Capetronic's sales made between April 1, 1987, and May 29, 1987, were reviewed in the final results of the 1986–87 review (third review), published on November 9, 1990 (55 FR 47093). The review indicates the existence of dumping margins for certain firms during these periods.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 1, 1991.

FOR FURTHER INFORMATION CONTACT: Philip Marchal, Leon McNeill, or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2923.

SUPPLEMENTARY INFORMATION:

Background

On July 10, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 31378) the final results of the 1988–89 (fifth) administrative review of the antidumping duty order on color television receivers, except for video monitors, from Taiwan (49 FR 18336, April 30, 1984). In April 1988, the petitioner, a domestic interested party, and certain respondents requested, in accordance with § 353.53(a) of the Commerce Regulations, that we conduct an administrative review for the period April 1, 1987 through March 31, 1988. We published a notice of initiation of the antidumping duty administrative review on May 23, 1988 (53 FR 18324). In April 1990, the petitioner, a domestic interested party, and certain respondents requested that we conduct an administrative review of the period April 1, 1989 through March 31, 1990. We published a notice of initiation of the antidumping duty administrative review on June 1, 1990 (55 FR 22366).

The Department initiated a review for Action Electronics Co., Ltd. (Action), AOC International, Inc. (AOC), Capetronic (BSR) Ltd. (Capetronic), Funai Electric Co. Ltd. (Funai), Hitachi Television (Taiwan) Ltd. (Hitachi), Kuang Yuan Co., Ltd. (Kuang Yuan), Nettek Corp., Ltd. (Nettek), Paramount Electronics (Paramount), Philips Electronic Industries (Taiwan), Ltd. (Philips), Fulet Electronic Industrial Co., Ltd. (Fulet), RCA Taiwan Ltd. (RCA), Sampo Corp. (Sampo), Sanyo Electric (Taiwan) Co., Ltd. (Sanyo), Shin-Shirasuna Electric Corp. (Shirasuna), and Tatung Co. (Tatung) for the 1987–88 period.

Fulet changed its name to Proton Electronic Industrial Co. (Proton) prior to initiation of the 1989–90 review. For the period April 1, 1989 through March 31, 1990, we therefore refer to the company as Proton. By letter dated April 26, 1991, Shirasuna notified the Department that it had changed its name to Technol-Ace Corporation. For purposes of this review, we will continue to use the name Shirasuna because that was the name of the company during the period of review.

The Department initiated a review for Action, AOC, Capetronic, Funai, Hitachi, Kuang Yuan, Nettek, Paramount, Philips, Proton, RCA, Sampo, Sanyo, Shinlee Corp. (Shinlee), Shirasuna, Tatung, and Teco Electric and Machinery Co., Ltd. (Teco) for the 1989–90 period.

The Department has now conducted a review for both periods in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

For the April 1, 1989 through March 31, 1990 period, a domestic interested party, Zenith, alleged that Proton sold color televisions in the home market at prices below the cost of production. As a result of our review of this allegation, we have decided to initiate an investigation of possible home market sales by Proton at prices below the cost of production. We will therefore publish a separate notice of preliminary results for Proton for this period upon completion of the sales below the cost of production investigation.

Scope of the Review

Imports covered by the review are shipments of color television receivers, except for video monitors, complete or incomplete, from Taiwan. The order covers all color television receivers regardless of tariff classification. Effective January 1, 1989, this merchandise is classified under the Harmonized Tariff Schedule (HTS) items 8528.10.80, 8529.90.15, 8529.90.20, and 8540.11.00. Prior to January 1, 1989, the merchandise was classifiable under item numbers 684.9246, 684.9248, 684.9250, 684.9252, 684.9253, 684.9255, 684.9256, 684.9258, 684.9262, 684.9263, 684.9270, 684.9275, 684.9655, 684.9656, 684.9658, 684.9660, 684.9663, 684.9864, 684.9866, 687.3512, 687.3513, 687.3514, 687.3516, 687.3518, and 687.3520 of the Tariff Schedules of the United States Annotated (TSUSA). TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This review covers the periods April 1, 1987 through March 31, 1988, and April 1, 1989 through March 31, 1990.

For the period April 1, 1987 through March 31, 1988, Kuang Yuan, Nettek, Sampo, and Sanyo had no shipments of the subject merchandise, and Funai and Paramount failed to respond to our questionnaire. For the period April 1, 1989 through March 31, 1990, Funai, Hitachi, Philips, Sampo, Sanyo and Shirasuna had no shipments of the subject merchandise, and Paramount, Nettek, Shinlee and Teco failed to respond to our questionnaire. For those firms which had no shipments, we assigned the rate for each firm for the last period for which a review has been completed in which that firm had shipments. For those firms that failed to respond to our questionnaire, we used the best information available (BIA), which was the highest margin among respondent firms in the relevant period, or the subject firm's most recent margin, whichever was higher. Since Capetronic was revoked from the order effective May 29, 1987, and its transactions for the period April 1, 1987 through May 28, 1987 were covered in a prior review (55 FR 47093, November 9, 1990), we are terminating this review for Capetronic.

United States Price

In calculating United States price (U.S. price), we used purchase price or exporter's sales price (ESP), both as defined in section 772 of the Tariff Act. Purchase price and ESP were based on the packed f.o.b., c.i.f., or delivered prices to the first unrelated purchasers in the United States.

We made deductions, where appropriate, for export charges, ocean freight, marine insurance, U.S. and foreign inland freight and insurance, U.S. and foreign brokerage fees, bank charges, shipping charges, U.S. customs duties, inspection fees, finder's fees, harbor fees, discounts, rebates, credit expenses, warranty expenses, advertising and sales promotion expenses, after-sale warehousing, technical service expenses, royalties, bonuses, commissions to unrelated parties, selling expenses incurred in Taiwan, and the U.S. subsidiary's indirect selling expenses. Where applicable, we made an addition for import duties not collected on imported raw materials used to produce subsequently exported merchandise.

We accounted for commodity tax imposed in Taiwan or a third country (when foreign market value (FMV) was based on sales to a third country), but not collected by reason of exportation to the United States, by multiplying the appropriate duty paying value (DPV) of the merchandise sold in the United States by the tax rate in Taiwan or the third country, respectively, and adding the result to the U.S. price. In Taiwan, the DPV is the ex-factory price for merchandise produced in a bonded factory; for merchandise produced in an unbonded factory, the DPV is the price to the first unrelated purchaser in the United States. Among third countries, only in Japan was there an uncollected commodity tax for which we made an addition to U.S. price. In Japan, the DPV is the invoice amount shown on entry documentation.

We accounted for the value-added tax (VAT) imposed in Taiwan (or a third country), but not collected by reason of exportation to the United States, by multiplying the U.S. invoice value by the VAT rate, and adding the result to U.S. price.

No other adjustments were claimed or allowed.

Foreign Market Value

In calculating FMV, we used home market price, third-country price, or constructed value, as defined in section 773 of the Tariff Act, as appropriate.

Home market prices were used when sufficient quantities of such or similar merchandise were sold in the home market to provide a reliable basis for comparison. We used home market sales as the basis for FMV for Action in both periods, for Tatung in both periods, and for Fulet in the April 1, 1987 through March 31, 1988 period.

Since we determined that the home market sales of Kuang Yuan in the April 1, 1989 through March 31, 1990 period, and the home market sales of Philips in the April 1, 1987 through March 31, 1988 period were insufficient to use as a basis for FMV, we used third-country sales as the basis for FMV for these two companies. For certain sales, Philips did not provide constructed value information data for U.S. sales without contemporaneous third-country matches. For these sales, we used, as BIA, the highest weighted-average margin from any company during the relevant period.

For the April 1, 1987 through March 31, 1988 period, petitioner alleged that AOC sold color televisions in the home market at prices below the cost of production. As a result of our review of AOC, we found substantial quantities of below-cost sales in the home market. Therefore, pursuant to § 353.51 of the Commerce Regulations, we did not use AOC's home market sales as a basis for FMV. For models for which there were no home market sales of such or similar merchandise, we used third-country sales as the basis for FMV. For all other sales, that is, sales that would have been compared to home market sales if there had been adequate above-cost home market sales, we used constructed value as the basis for FMV. Finally, for sales made by AOC in the prior review period, but shipped during the period April 1, 1987 through March 31, 1988, we used contemporaneous home market sales of such or similar merchandise as the basis for FMV. When such sales did not exist, we used contemporaneous sales of such or similar merchandise in third-country markets.

For the April 1, 1989 through March 31, 1990 period, we used home market sales for AOC when AOC had contemporaneous sales of such or similar merchandise. We used third-country sales as a basis for FMV when contemporaneous sales of such or similar merchandise did not exist in the home market.

For the April 1, 1987 through March 31, 1988 period, since we determined that the home market sales of Shirasuna were insufficient to use as a basis for FMV, we used Shirasuna's third-country sales as the basis for FMV. Petitioner alleged that Shirasuna sold color televisions in home and third country markets at prices below the cost of production during this period. As a result of our review of Shirasuna, we eliminated from our calculations those third-country sales sold at prices below the cost of production. We used constructed value as the basis for FMV

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Since we determined that the home market sales of Kuang Yuan in the April 1, 1989 through March 31, 1990 period, and the home market sales of Philips in the April 1, 1987 through March 31, 1988 period were insufficient to use as a basis for FMV, we used third-country sales as the basis for FMV for these two companies. For certain sales, Philips did not provide constructed value information data for U.S. sales without contemporaneous third-country matches. For these sales, we used, as BIA, the highest weighted-average margin from any company during the relevant period.

For the April 1, 1987 through March 31, 1988 period, petitioner alleged that AOC sold color televisions in the home market at prices below the cost of production. As a result of our review of AOC, we found substantial quantities of below-cost sales in the home market. Therefore, pursuant to § 353.51 of the Commerce Regulations, we did not use AOC's home market sales as a basis for FMV. For models for which there were no home market sales of such or similar merchandise, we used third-country sales as the basis for FMV. For all other sales, that is, sales that would have been compared to home market sales if there had been adequate above-cost home market sales, we used constructed value as the basis for FMV. Finally, for sales made by AOC in the prior review period, but shipped during the period April 1, 1987 through March 31, 1988, we used contemporaneous home market sales of such or similar merchandise as the basis for FMV. When such sales did not exist, we used contemporaneous sales of such or similar merchandise in third-country markets.

For the April 1, 1989 through March 31, 1990 period, we used home market sales for AOC when AOC had contemporaneous sales of such or similar merchandise. We used third-country sales as a basis for FMV when contemporaneous sales of such or similar merchandise did not exist in the home market.

For the April 1, 1987 through March 31, 1988 period, since we determined that the home market sales of Shirasuna were insufficient to use as a basis for FMV, we used Shirasuna's third-country sales as the basis for FMV. Petitioner alleged that Shirasuna sold color televisions in home and third country markets at prices below the cost of production during this period. As a result of our review of Shirasuna, we eliminated from our calculations those third-country sales sold at prices below the cost of production. We used constructed value as the basis for FMV

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for Shirasuna when Shirasuna had no third-country sales of such or similar merchandise, and when Shirasuna had insufficient above-cost sales of such or similar merchandise in third-country markets.

We used constructed value for RCA for both periods, and for Hitachi for the April 1, 1987 through March 31, 1988 period, since these companies had insufficient sales of such or similar merchandise in both the home and third-country markets.

Home market price was based on the packed, delivered price to unrelated purchasers in the home market. Where applicable, we made adjustments for inland freight, insurance, commissions to unrelated parties, rebates, credit expenses, discounts, warranty expenses, advertising and sales promotion expenses, royalties, after-sale warehousing, differences in the physical characteristics of the merchandise, and differences in packing.

We also made adjustments, where applicable, for indirect selling expenses to offset commissions, and to offset U.S. selling expenses deducted in ESP calculations, but not for amounts exceeding the U.S. commissions and expenses. Finally, we made circumstance-of-sale adjustments for commodity tax differences and VAT differences, where appropriate.

Third-country price was based on the packed f.o.b., c.i.f., or delivered price to unrelated purchasers. We made adjustments, where applicable, for ocean freight, brokerage and handling, marine insurance, foreign import duty, Taiwan inland freight and insurance, bank charges, harbor taxes, import charges, shipping charges, credit expenses, royalties, selling expenses incurred in Taiwan, differences in the physical characteristics of the merchandise, and differences in packing.

We also made adjustments, where applicable, for indirect selling expenses to offset commissions, and to offset U.S. selling expenses deducted in ESP calculations, for amounts not exceeding the U.S. commission and expenses. Finally, we made circumstance-of-sale adjustments for commodity tax differences and VAT differences, where appropriate.

No other adjustments were claimed or allowed.

Constructed value consisted of the sum of the costs of materials, fabrication, and general expenses; profit; and the cost of export packing. Where the statutory minimum of 10 percent of the cost of materials and fabrication exceeded the actual amount of general expenses, we added the statutory minimum amount, in accordance with section 773(e) of the Tariff Act. Where the statutory minimum of eight percent of the sum of the cost of materials, fabrication, and general expenses exceeded the actual profit, we added the statutory minimum.

We made adjustments to constructed value, where applicable, for differences in merchandise. We also made circumstance-of-sale adjustments, where applicable, for royalty, warranty, and credit.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine the dumping margins to be:

Manufacturer/Exporter	Time period	Margin (percent)
Action Electronics Co., Ltd.	04/01/87–03/31/88 04/01/89–03/31/90	0.30 7.07
AOC International, Inc.	04/01/87–03/31/88 04/01/89–03/31/90	8.57 0.23
Funai Electric Co. Ltd.	04/01/87–03/31/88 04/01/89–03/31/90	[2] 23.90 [1] 4.44
Fulet Electronic Industrial Co., Ltd.	04/01/87–03/31/88	0.52
Hitachi Television (Taiwan) Ltd.	04/01/87–03/31/88 04/01/89–03/31/90	23.90 [1] 10.82
Kuang Yuan Co., Ltd.	04/01/87–03/31/88 04/01/89–03/31/90	[1] 0.00 0.00
Nettek Corp., Ltd.	04/01/87–03/31/88 04/01/89–03/31/90	[2] 23.90 [2] 10.82
Paramount Electronics	04/01/87–03/31/88 04/01/89–03/31/90	[2] 23.90 [2] 10.82
Philips Electronic Industries (Taiwan), Ltd.	04/01/87–03/31/88 04/01/89–03/31/90	6.65 [1] 10.82
RCA Taiwan, Ltd.	04/01/87–03/31/88 04/01/89–03/31/90	6.46 1.94
Sampo Corp.	04/01/87–03/31/88 04/01/89–03/31/90	[1] 0.78 [1] 0.78
Sanyo Electric (Taiwan) Co., Ltd.	04/01/87–03/31/88 04/01/89–03/31/90	[1] 4.66 [1] 4.66
Shinlee Corp.	04/01/89–03/31/90	[2] 10.14
Shin-Shirasuna Electric Corp.	04/01/87–03/31/88 04/01/89–03/31/90	8.08 [1] 10.82
Tatung Co.	04/01/87–03/31/88 04/01/89–03/31/90	1.86
Teco Electric and Machinery Co., Ltd.	04/01/89–03/31/90	[2] 8.57

[1] No shipments during the period; rate is from the last review in which there were shipments.

[2] No response; we therefore used the best information available, which was either the highest rate among respondent firms in the relevant review, or the subject firm's most recent margin, whichever was higher.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first workday thereafter.

Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the most recent of the above margins shall be required for these firms. Since the dumping margin for Kuang Yuan is zero, and the margin for AOC is less than 0.5% and, therefore, *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of estimated antidumping duties for these firms. For Proton, the rate established in the review of the 1988/89 period (56 FR 31378, July 10, 1991) will remain in effect. For all other manufacturers/exporters of this merchandise, not covered in this or prior reviews, a cash deposit of estimated antidumping duties of 8.57 percent shall be required. This figure is the highest non-BIA rate for the most recent period for any firm in this case. These deposit requirements and waiver are effective for all shipments of color television receivers, except video

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monitors, from Taiwan, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's regulations (19 CFR 353.22) (1990).

Dated: July 24, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-18227 Filed 7-31-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-007]

High Capacity Pagers From Japan; Intent to Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on high capacity pagers from Japan. Interested parties who object to this revocation must submit their comments in writing no later than August 31, 1991.

EFFECTIVE DATE: August 1, 1991.

FOR FURTHER INFORMATION CONTACT: Melissa Skinner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-4851.

SUPPLEMENTARY INFORMATION:

Background

On August 16, 1983, the Department of Commerce published an antidumping duty order on high capacity pagers from Japan (48 FR 37058). The Department of Commerce ("the Department") has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity to Object

No later than August 31, 1991, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by August 31, 1991, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by August 31, 1991, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: July 25, 1991.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 91-18230 Filed 7-31-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-461-008]

Titanium Sponge from the U.S.S.R.; Intent to Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on titanium sponge from the U.S.S.R. Interested parties who object to this revocation must submit their comments in writing no later than August 31, 1991.

EFFECTIVE DATE: August 1, 1991.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On August 28, 1968, the Department of Treasury published an antidumping finding on titanium sponge from the U.S.S.R. (33 FR 12136). The Department of Commerce ("the Department") has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this finding.

Opportunity to Object

No later than August 31, 1991, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by August 31, 1991, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by August 31, 1991, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: July 25, 1991.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 91-18226 Filed 7-31-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-802]

Notice of Preliminary Results and Termination in Part of Antidumping Duty Administrative Review: 3.5" Microdisks and Coated Media Thereof From Japan

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

EFFECTIVE DATE: August 1, 1991.

FOR FURTHER INFORMATION CONTACT: James Terpstra, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, SW., Washington, DC 20230; telephone: (202) 377-3965.

Period of Review: September 29, 1988, through March 31, 1990.

Preliminary Results and Termination in Part of Antidumping Duty Administrative Review:

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The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this finding.

Opportunity to Object

No later than August 31, 1991, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by August 31, 1991, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by August 31, 1991, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: July 25, 1991.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 91-18226 Filed 7-31-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-802]

Notice of Preliminary Results and Termination in Part of Antidumping Duty Administrative Review: 3.5" Microdisks and Coated Media Thereof From Japan

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

EFFECTIVE DATE: August 1, 1991.

FOR FURTHER INFORMATION CONTACT: James Terpstra, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, SW., Washington, DC 20230; telephone: (202) 377-3965.

Period of Review: September 29, 1988, through March 31, 1990.

Preliminary Results and Termination in Part of Antidumping Duty Administrative Review:

Background

On April 3, 1989, the Department published in the **Federal Register** (54 FR 13406) an antidumping duty order on 3.5" microdiscs and coated media thereof from Japan. On June 1, 1990, we published notice of our initiation of antidumping administrative reviews (55 FR 22366) for the folowing firms:

- Fuji Photo Film (Fuji)
- Kasei Verbatim
- Konica Corporation (Konica)
- Memorex Telex Japan (Memorex)
- Sanken Plastics Co. (Sanken)
- Sony Corporation (Sony)
- TDK Corporation (TDK)
- Teijin Memorimedia (TMC)
- Tokyo Materials Co.

Each of the firms listed above received questionnaires by June 28, 1990.

On June 14, 1990, Sanken USA withdrew its requests for reviews of TDK and Tokyo Materials Co. However, TDK is still being reviewed at its own request. On July 25, 1990, we published notice of our termination of the administrative review of Tokyo Materials Co. (55 FR 30260).

On July 18, 1990, Magmedia, an importer, argued that Sanken USA's requst for review of Konica be limited to entries of the subject merchandise produced by Konica for which the requester, Sanken, is the importer of record. On August 16, 1990, Sanken USA withdrew its requests for reviews of Konica Corporation and Sanken Plastics Co. On August 13, 1990, Verbatim withdrew its request for review of Kasei Verbatim. Accordingly, the Department of Commerce (the Department) is terminating the administrative review for these companies.

The Department is now conducting the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act), for the following companies: Fuji, Memorex, Sony, TMC, and TDK.

All five companies requested and received extension dates for submission of their questionnaire responses. Responses to the Department's questionnaire were received from Memorex, TDK, and TMC on September 4, 1990. Sony's questionnaire response was received on September 5, 1990, and Fuji's questionnaire response was received on September 10, 1990. We issued a deficiency letter to TMC on April 30, 1991. On April 29, 1991, we issued deficiency letters to Fuji, Memorex, and Sony, and on May 3 and May 7, 1991, we issued deficiency letters to TDK. All five companies requested and were granted extensions. TMC submitted its response to the Department's deficiency letter on May 24, 1991. We received an additional submission from TMC on June 25, 1991. Sony submitted its response on May 28, 1991, and additional supplemental submissions on June 3, 1991. We received responses from Fuji on May 20, 1991, and Memorex on May 17, 1991. We received deficiency responses from TDK on May 28, 1991, in reference to our May 1 and May 7, 1991, deficiency letters. On June 18, 1991, we issued deficiency letters to all respondents. On June 26, 1991, responses to these deficiency letters were received from all five respondents.

Scope of Review

The products covered by this review are 3.5" microdiscs and coated media thereof from Japan and are currently provided for under subheading 8523.20.0000 of the Harmonized Tariff Schedules (HTS). These products were previously provided for in item 724.4570 of the Tariff Schedules of the United States (TSUS). Although the HTS and TSUS item numbers are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

A 3.5" microdisc is a tested or untested magnetically coated polyester disk with a steel hub encased in a hard plastic jacket. These microdisks are used to record and store encoded digital computer information for access by 3.5" floppy disk drives. The 3.5" microdisc includes single-sided, double-sided, or high-density formats.

Coated media is the flexible recording material used in the finished microdisk. Media consists of a polyester base film to which a coating of magnetically charged particles is bonded. The 3.5" microdisc is intended for use specifically in a 3.5" floppy disk drive.

Such or Similar Merchandise

For all respondent companies, in accordance with section 771(16) of the Act, we established two categories of such or similar merchandise: (1) 3.5" microdiscs and (2) coated media.

We made adjustments for differences in the physical characteristics of the merchandise (difmers), where appropriate, in accordance with section 773(a)(4)(c) of the Act.

United States Price

Fuji

For Fuji, we based United States price (USP) on purchase price, in accordance with section 772(b) of the Act, where sales were made directly to unrelated parties prior to importation into the United States and because exporter's sales price (ESP) methodology was not indicated by other circumstances. Where sales to the first unrelated purchaser took place after importation into the United States, we based USP on ESP, in accordance with section 772(c) of the Act.

We calculated purchase price based on packed, f.o.b. Japanese port prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight and foreign inland insurance. In accordance with section 772(d)(1)(C) of the Act, we added to the net unit price the amount of the consumption tax that is not collected by reason of exportation of the merchandise.

We calculated ESP based on packed, delivered prices to unrelated customers in the United States. We made deductions for foreign brokerage, foreign inland freight, foreign inland insurance, ocean freight, marine insurance, U.S. duty, U.S. inland freight, U.S. inland insurance, and U.S. brokerage and, where appropriate, for other deductions.

In accordance with section 772(e)(2) of the Act, we made further deductions, where appropriate, for advertising, and credit expenses. We made further deductions for commissions and indirect selling expenses in the home market and United States, including inventory carrying costs, warehousing expenses, and indirect selling expenses in Japan. We recalculated U.S. indirect selling expenses based on information on the record. In accordance with section 772(d)(1)(C) of the Act, we added to net unit price the amount of consumption tax that is not collected by reason of exportation of the merchandise.

In addition to the aforementioned deductions, we deducted all value added to the microdisk, pursuant to section 772(e)(3) of the Act. The value added consists of the costs associated with the production and sale of the completed microdisk, other than the costs associated with the imported media, and a proportional amount of profit or loss related to the value added. Profit or loss was calculated by deducting from the sales price of the microdisk all production and selling costs incurred by the company for the microdisk. The total profit or loss was then allocated proportionately to all components of cost.

In determining the costs incurred to produce the microdisk, the Department included (1) the costs of manufacture, (2) movement and packing expenses, and (3) general expenses including selling and administrative expenses, R&D expense and interest expense.

We used Fuji's data where the costs were not appropriately quantified or valued. We adjusted the manufacturing costs in Japan for production of the magnetic media by including interest expense because it was not included in the submission. We calculated interest expense using our normal methodology, *i.e.*, computing the ratio of Fuji's interest expense to cost of sales from the consolidated financial statements and applying it to the cost of manufacture. We also adjusted the further manufacturing costs incurred in the United States for production of the 2.5" microdisks by including interest expense because it was not included in the submission. We calculated interest expense using our normal methodology.

Memorex

Memorex reported entries of the subject merchandise that were subsequently re-exported. Because this subject merchandise was re-exported without an intervening sale to an unrelated party in the United States, we have not included it in our calculations. Memorex also reported some entries of the subject merchandise that were used for internal purposes. Because this subject merchandise was never sold to an unrelated party in the United States, we have not included it in our calculations.

For Memorex, we based USP on ESP, in accordance with section 772(c) of the Act, because all sales to the first unrelated purchaser took place after importation into the United States. We calculated ESP based on packed, delivered prices to unrelated customers in the United States. We made deductions for foreign inland freight, foreign inland insurance, foreign brokerage, ocean freight, U.S. brokerage, U.S. duty, U.S. inland freight, and U.S. inland insurance and, where appropriate, for discounts, price protection rebates, and volume rebates. For certain transactions, Memorex had no values reported for movement charges even though the terms of sale indicated that such charges were incurred. Because Memorex provided no explanation for the unreported movement charges on these transactions, we have used the highest charge or expense reported on other sales as BIA. We also recalculated inventory carrying expenses using the period from when the merchandise left the warehouse in Japan to when it was delivered to the final customer.

In accordance with section 772(e)(2) of the Act, we made further deductions, where appropriate, for advertising, commissions and credit expenses. We made further deductions for indirect selling expenses, including inventory carrying costs and indirect selling expenses in Japan. In accordance with section 772(d)(1)(C) of the Act, we added to net unit price the amount of consumption tax that is not collected by reason of exportation of the merchandise.

Sony

Sony reported entries of the subject merchandise that were subsequently re-exported. Because this subject merchandise was re-exported without an intervening sale to an unrelated party in the United States, we have not included it in our calculations.

For Sony Corporation, we based USP on purchase price, in accordance with section 772(b) of the Act, where sales were made directly to unrelated parties prior to importation into the United States and because ESP methodology was not indicated by other circumstances. Where sales to the first unrelated purchaser took place after importation into the United States, we based USP on ESP, in accordance with section 772(c) of the Act.

We calculated purchase price based on packed, f.o.b. Japanese port prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, foreign inland insurance, and foreign brokerage. In accordance with section 772(d)(1)(C) of the Act, we added to the net unit price the amount of the consumption tax that is not collected by reason of exportation of the merchandise.

We calculated ESP based on packed, delivered prices to unrelated customers in the United States. For some sales, Sony reported an amount to account for billing errors. We applied the reported amount to the reported price in order to arrive at a price adjusted for billing errors. We made deductions for foreign brokerage, foreign inland freight, ocean freight, marine insurance, duty, U.S. inland freight, U.S. inland insurance, U.S. brokerage and, where appropriate, for discounts, price protection rebates, and volume rebates.

In accordance with section 772(e)(2) of the Act, we made further deductions, where appropriate, for packing expenses incurred in the United States, advertising, warranty expenses, and credit expenses. We also made deductions for indirect selling expenses, including inventory carrying costs and indirect selling expenses in Japan. In accordance with section 772(e)(1) of the Act, we also deducted commissions. In accordance with section 772(d)(1)(C) of the Act, we added to net unit price the amount of consumption tax that is not collected by reason of exportation of the merchandise.

Because Sony failed to report further manufacturing costs, as requested in both the original questionnaire and supplemental request, we used the average of the positive margins calculated for Sony transactions for these sales, as best information available (BIA) in accordance with section 776(c) of the Act. In addition, certain transactions had no values reported for movement charges even though the terms of sale indicated that such charges were incurred. Similarly, certain transactions contained no selling expenses even though the narrative portion of the questionnaire response indicated that these expenses were incurred on all sales. Because Sony provided no explanation for the unreported movement charges and expenses on these transactions, we have used the highest charge or expense reported by Sony on other sales as BIA.

TDK

For TDK, we based USP on purchase price, in accordance with section 772(b) of the Act, where sales were made directly to unrelated parties prior to importation into the United States and because ESP methodology was not indicated by other circumstances. TDK made certain sales in Japan which it knew would be exported to the United States. We have treated such sales as purchase price sales. Where sales to the first unrelated purchaser took place after importation into the United States, we based USP on ESP, in accordance with section 772(c) of the Act.

We calculated purchase price based on packed prices to unrelated customers in the United States delivered to their Japanese warehouses. We made deductions for loading, foreign inland freight, and foreign inland insurance and, where appropriate, for ship and debit rebates. In accordance with section 772(d)(1)(C) of the Act, we added to the net unit price the amount of the consumption tax that is not collected by reason of exportation of the merchandise.

We calculated ESP based on packed, delivered, duty paid, prices to unrelated customers in the United States. We made deductions for ocean freight, marine insurance, duty, U.S. harbor maintenance fees, U.S. inland freight, U.S. brokerage, foreign brokerage, foreign inland insurance, foreign inland freight and, where appropriate, for discounts, price protection rebates, volume rebates, and ship and debit rebates. TDK failed to provide an adequate response to our request for data used in deriving foreign inland freight. Therefore, in accordance with

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Because Sony failed to report further manufacturing costs, as requested in both the original questionnaire and supplemental request, we used the average of the positive margins calculated for Sony transactions for these sales, as best information available (BIA) in accordance with section 776(c) of the Act. In addition, certain transactions had no values reported for movement charges even though the terms of sale indicated that such charges were incurred. Similarly, certain transactions contained no selling expenses even though the narrative portion of the questionnaire response indicated that these expenses were incurred on all sales. Because Sony provided no explanation for the unreported movement charges and expenses on these transactions, we have used the highest charge or expense reported by Sony on other sales as BIA.

TDK

For TDK, we based USP on purchase price, in accordance with section 772(b) of the Act, where sales were made directly to unrelated parties prior to importation into the United States and because ESP methodology was not indicated by other circumstances. TDK made certain sales in Japan which it knew would be exported to the United States. We have treated such sales as purchase price sales. Where sales to the first unrelated purchaser took place after importation into the United States, we based USP on ESP, in accordance with section 772(c) of the Act.

We calculated purchase price based on packed prices to unrelated customers in the United States delivered to their Japanese warehouses. We made deductions for loading, foreign inland freight, and foreign inland insurance and, where appropriate, for ship and debit rebates. In accordance with section 772(d)(1)(C) of the Act, we added to the net unit price the amount of the consumption tax that is not collected by reason of exportation of the merchandise.

We calculated ESP based on packed, delivered, duty paid, prices to unrelated customers in the United States. We made deductions for ocean freight, marine insurance, duty, U.S. harbor maintenance fees, U.S. inland freight, U.S. brokerage, foreign brokerage, foreign inland insurance, foreign inland freight and, where appropriate, for discounts, price protection rebates, volume rebates, and ship and debit rebates. TDK failed to provide an adequate response to our request for data used in deriving foreign inland freight. Therefore, in accordance with

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section 776(c) of the Act, as BIA, we used the highest monthly per-unit amount reported by TDK for home market inland freight charges and applied this amount toward ESP sales.

In accordance with section 772(e)(2) of the Act, we made further deductions, where appropriate, for packing expenses incurred in the United States, direct advertising expenses, cooperative advertising expenses, promotional expenses, samples, warranty expenses, credit expenses, and indirect selling expenses consisting of indirect advertising expenses, inventory carrying costs, and indirect selling expenses incurred in Japan and in the United States. In accordance with section 772(e)(1) of the Act, we also deducted commissions. In accordance with section 772(d)(1)(C) of the Act, we added to net unit price the amount of consumption tax that is not collected by reason of exportation of the merchandise.

In addition to the aforementioned deductions, we deducted all value added to the microdisk, pursuant to section 772(e)(3) of the Act. The value added consists of the costs associated with the production and sale of the completed microdisk, other than the costs associated with the imported media, and a proportional amount of profit or loss related to the value added. Profit or loss was calculated by deducting from the sales price of the microdisk all production and selling costs incurred by the company for the microdisk. The total profit or loss was than allocated proportionately to all components of cost.

In determining the costs incurred to produce the microdisk, the Department included (1) the costs of manufacture, (2) movement and packing expenses, and (3) general expenses, including selling and administrative expenses, R&D expense, and interest expense.

We used TDK's data, except in the following instances where the costs were not appropriately quantified or valued: we adjusted the manufacturing costs in Japan for production of the magnetic media by including interest expense because it was not included in the submission. We calculated interest expense using our normal methodology, *i.e.*, computing the ratio of TDK's interest expense to cost of sales from the consolidated financial statements and applying it to the cost of manufacture. We also adjusted the further manufacturing costs incurred in the U.S. for production of the 3.5" microdisks by recalculating interest expense. Since TDK did not explain how interest expense was calculated for further manufacturing costs, the Department recalculated interest expense using its normal methodology.

TMC

For TMC, we based USP on purchase price, in accordance with section 772(b) of the Act, where sales were made directly to unrelated parties prior to importation into the United States and because ESP methodology was not indicated by other circumstances. Where sales to the first unrelated purchaser took place after importation into the United States, we based USP on ESP, in accordance with section 772(c) of the Act.

There were two shipments of the subject merchandise during the period of review (POR) which entered the United States where the sale was subsequently cancelled. TMC used some of the micordisks from these shipments to fill two orders that were placed with TMC Japan prior to the importation of merchandise. The remainder of the microdisks from the two original shipments were used to fill six orders placed with TMC's U.S. subsidiary after importation of the two original shipments. Because the first two orders of microdisks were made prior to importation we are treating them as purchase price sales. However, because the remaining six orders were made after importation we have treated them as ESP sales.

We calculated purchase price based on packed, f.o.b. Japnese port prices and C&F prices to unrelated customers in the United States. We made deductions for foreign inland freight, foreign brokerage, foreign inland insurance, ocean freight, U.S. inland freight, duty, U.S. brokerage and, where appropriate, for rebates. In accordance with section 772(d)(1)(C) of the Act, we added to the net until price the amount of the consumption tax that is not collected by reason of exportation of the merchandise.

We calculated ESP based on packed, delivered prices to unrelated customers in the United States. We made deductions for foreign brokerage, foreign inland freight, foreign inland insurance, ocean, freight, marine insurance, duty, U.S. inland freight, and U.S. brokeage.

In accordance with section 772(e)(2) of the Act, we made further deductions, where appropriate, for U.S. bank charges and credit expenses. We also made deductions for U.S. indirect selling expeneses, including inventory carrying costs in Japan and in the United States. In accordance with section 772(d)(1)(C) of the Act, we added to net unit price the amount of consumption tax that is not collected by reason of exportation of the merchandise.

Foreign Market Value

In order to determine whether there were sufficient sales of microdisks in the home market to serve as a viable basis for calculating foreign market value (FMV), we compared the volume of home market sales in each such or similar category to the volume of third country sales in the same such or similar category, in accordance with section 773 (a)(1)(B) of the Act. Fuji, Memorex, Sony, TDK, and TMC all had viable home markets.

Fuji

We calculated FMV based on packed, delivered prices to related and unrelated customers in the home market. We included related-party sales because the prices to related parties were at or above the prices to unrelated parties and, therefore, were determined to be at arm's-length.

For comparisons to purchase price sales, we made deductions for inland freight and inland insurance and, where appropriate, for other deductions. We recalculated inalnd freight based on information on the record. We made circumstance of sale adjustments pursuant to 19 CFR 353.56, where appropriate, for differences in advertising, credit, and promotional expenses. We deducted home market packing costs and added U.S. packing costs. We made a circumstance of sale adjustment for consumption taxes incurred on home market sales and not on export sales.

For comparisons to ESP sales, we made deductions for inland freight and inland insurance and, where appropriate, for other deductions. We made further deductions, where appropriate, for advertising, credit, and promotional expenses. We also deducted indirect selling expenses, including inventory carrying expenses. We recalculated home market indirect selling expenses based on information on the record. This deduction for home market indirect selling expenses was capped by the amount of indirect selling expenses and commissions incurred in the U.S. market, in accordance with 19 CFR 353.56(b)(2). We deducted home market packing costs and added U.S. packing costs. We made a circumstance of sale adjustment for differences in consumption taxes incurred on home market sales and not on export sales.

Fuji did not report the requested difmer information for the entire POR. Therefore, we used the difmer data submitted for the period April through October 1989, as BIA in accordance with section 776(c) of the Act. We compared

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data from this period with difmer data submitted for the period October 1989 through April 1990. April through October 1989 is the earliest portion of the POR for which difmer information is available. Furthermore, information from this period yields the highest difmer value to be applied to FMV.

Memorex

We calculated FMV based on packed, delivered prices to related and unrelated home market customers. For comparisons with U.S. microdisk sales, we included home market sales of microdisks to related parties because the prices to related parties were at or above the prices to unrelated parties and, therefore, were determined to be at arm's-length. Although Memorex stated that the reported charges and adjustments applied to all sales, there were numerous sales transactions for which no amounts were reported for many of the charges and adjustments. Furthermore, Memorex did not provide an explanation of price protection rebates in response to our questionnaire and deficiency letter. In our deficiency letter we also asked Memorex to clarify the charges and adjustments for which no amounts were reported. In accordance with section 776(c) of the Act, we are disallowing Memorex's claim for price protection rebates, and, as BIA, we are using the zero amounts reported for charges and adjustments. When making comparisons with ESP sales, we made deductions for inland freight, inland insurance and, where appropriate, for volume rebates. We made deductions, where appropriate, for royalties, technical services, warranty expenses, and credit expenses.

We made additional deductions from FMV for home market indirect selling expenses, which consisted of inventory carrying costs and other indirect selling expenses. In accordance with 19 CFR 353.56(b), the deduction for home market indirect selling expenses was capped by the amount of indirect selling expenses and commissions incurred in the U.S. market. We deducted home market packing costs and added U.S. packing costs. We made a circumstance of sale adjustment for differences in consumption taxes incurred on home market sales and not on export sales.

For U.S. sales of media, there were no sales of such or similar merchandise in the home market or in any third-country markets during the POR. Therefore, for media sold in the United States, we calculated FMV based on constructed value (CV), in accordance with section 773(e) of the Act. The CV includes the cost of materials and fabrication of the merchandise exported to the United States, plus general expenses, profit, and packing. We used Memorex's CV data except in the following instances where the costs were not reported in its submission:

1. To calculate general expenses, we computed the ratio of Memorex's general and administrative expenses to cost of sales as reported on its financial statements, as BIA, and applied this ratio to the reported cost of manufacture.
2. We calculated selling expenses for CV as the weighted-average direct and indirect selling expenses reported for all sales of the subject merchandise during the POR.
3. For media packing costs, we used the lowest amount for media packing reported for U.S. sales of disks as BIA.

After the adjustments, we used actual general expenses (as described above), in accordance with section 773(e)(1)(B)(i) of the Act, because these expenses exceeded the statutory minimum of ten percent. For profit, we applied eight percent of the combined cost of materials, fabrication, and general expenses, pursuant to section 773(e)(1)(B)(ii) of the Act, because the actual amount was less than the statutory minimum of eight percent. Then we added U.S. packing costs.

We made circumstance of sale adjustments, where appropriate, for royalties, technical services, warranty expenses, and credit expenses. We made further deductions from FMV for home market indirect selling expenses, which consisted of inventory carrying costs and other indirect selling expenses. This deduction for home market indirect selling expenses was capped by the amount of indirect selling expenes and commissions incurred in the U.S. market, in accordance with 19 CFR 353.56(b).

Sony

We calculated FMV based on delivered prices to related and unrelated customers in the home market. We included related-party sales because the prices to related parties were at or above the prices to unrelated parties and, therefore, were determined to be at arm's-length.

For comparisons to purchase price sales, we made deductions for inland freight and inland insurance. We made circumstance of sale adjustments pursuant to 19 CFR 353.56, where appropriate, for differences in advertising, credit, and promotional expenses. We deducted home market packing costs and added U.S. packing costs. We made a circumstance of sale adjustment for differences in consumption taxes incurred on home market sales and not on export sales.

For comparisons to ESP sales, we made deductions for inland freight and inland insurance and, where appropriate, for price protection and volume rebates. We made deductions, where appropriate, for advertising, credit, and promotional expenses. We also deducted indirect selling expenses, including inventory carrying expenses. This deduction for home market indirect selling expenses was capped by the amount of indirect selling expenses and commissions incurred in the U.S. market, in accordance with 19 CFR 353.56(b). We deducted home market packing costs and added U.S. packing costs. We made a circumstance of sale adjustment for differences in consumption taxes incurred on home market sales and not on export sales.

TDK

We calculated FMV based on delivered prices to related and unrelated customers in the home market. We included related-party sales because the prices to related parties were at or above the prices to unrelated parties and, therefore, were determined to be at arm's length.

For comparisons to purchase price sales, we made deductions for loading, inland freight, storage fees, inland insurance and, where appropriate, for ship and debit rebates and volume incentive rebates. We made circumstance of sale adjustments pursuant to 19 CFR 353.56, where appropriate, for differences in credit and direct advertising expenses. We deducted home market packing costs and added U.S. packing costs. TDK failed to provide an adequate response to our request for data to be used in deriving home market packing material costs. Therefore, we used, as BIA, the lowest monthly per-unit ESP packing materials costs and used this amount for home market sales. We made a circumstance of sale adjustment for differences in consumption taxes incurred on home market sales and not on export sales.

For comparisons to ESP sales, we made deductions for loading, inland freight, inland insurance and, where appropriate, for price protection rebates, ship and debit rebates, and volume incentive rebates. We made deductions, where appropriate, for credit and direct advertising expenses. We also deducted indirect selling expenses, including inventory carrying expenses. This deduction for home market indirect selling expenses was capped by the amount of indirect selling expenses and commissions incurred in the U.S. market, in accordance with 19 CFR

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For comparisons to ESP sales, we made deductions for inland freight and inland insurance and, where appropriate, for price protection and volume rebates. We made deductions, where appropriate, for advertising, credit, and promotional expenses. We also deducted indirect selling expenses, including inventory carrying expenses. This deduction for home market indirect selling expenses was capped by the amount of indirect selling expenses and commissions incurred in the U.S. market, in accordance with 19 CFR 353.56(b). We deducted home market packing costs and added U.S. packing costs. We made a circumstance of sale adjustment for differences in consumption taxes incurred on home market sales and not on export sales.

TDK

We calculated FMV based on delivered prices to related and unrelated customers in the home market. We included related-party sales because the prices to related parties were at or above the prices to unrelated parties and, therefore, were determined to be at arm's length.

For comparisons to purchase price sales, we made deductions for loading, inland freight, storage fees, inland insurance and, where appropriate, for ship and debit rebates and volume incentive rebates. We made circumstance of sale adjustments pursuant to 19 CFR 353.56, where appropriate, for differences in credit and direct advertising expenses. We deducted home market packing costs and added U.S. packing costs. TDK failed to provide an adequate response to our request for data to be used in deriving home market packing material costs. Therefore, we used, as BIA, the lowest monthly per-unit ESP packing materials costs and used this amount for home market sales. We made a circumstance of sale adjustment for differences in consumption taxes incurred on home market sales and not on export sales.

For comparisons to ESP sales, we made deductions for loading, inland freight, inland insurance and, where appropriate, for price protection rebates, ship and debit rebates, and volume incentive rebates. We made deductions, where appropriate, for credit and direct advertising expenses. We also deducted indirect selling expenses, including inventory carrying expenses. This deduction for home market indirect selling expenses was capped by the amount of indirect selling expenses and commissions incurred in the U.S. market, in accordance with 19 CFR

353.56(b). We deducted home market packing costs and added U.S. packing costs. We made a circumstance of sale adjustment for differences in consumption taxes incurred on home market sales and not on export sales.

TMC

We calculated FMV based on packed, delivered prices to related and unrelated customers in the home market. We included related-party sales because the prices to related parties were at or above the prices to unrelated parties and, therefore, were determined to be at arm's-length.

For comparisons to purchase price sales, we made deductions for inland freight and inland insurance. For some sales TMC reported an amount to account for errors in billing freight charges. We applied the reported amount to the reported price in order to arrive at a price adjusted for billing errors. We made circumstance of sale adjustments pursuant to 19 CFR 353.56, where appropriate, for differences in credit, technical services, warranties, and promotional expenses. We deducted home market packing costs and added U.S. packing costs. We made a circumstance of sale adjustment for differences in consumption taxes incurred on home market sales and not on export sales.

For comparisons to ESP sales, we made deductions for inland freight and inland insurance. We made deductions, where appropriate, for credit, technical services, warranties, and promotional expenses. TMC made no claim for home market indirect selling expenses. We deducted home market packing costs and added U.S. packing costs. We made a circumstance of sale adjustment for differences in consumption taxes incurred on home market sales and not on export sales.

TMC had sold certain media to an unrelated customer in the home market. TMC then stated that because this unrelated customer exported the subject merchandise to its U.S. subsidiary, sales by TMC to the unrelated customer should be treated as purchase price sales. However, we disregard these sales since any media shipped by the unrelated customer to the U.S. during the POR was in the form of completed microdisks.

Results of the Review

As a result of our review, we preliminarily determine that the following margins exist for the period September 29, 1988, through March 31, 1990:

Manufacturer/Exporter	Margin (percent)
Fuji	15.65
Memorex	16.96
Sony	7.55
TDK	17.31
TMC	5.82

The Department will issue appraisement instructions concerning these companies directly to the Customs Service upon completion of this administrative review.

Furthermore, the following deposit requirements will be effective upon publication of our final results of this administrative review for all shipments of the subject merchandise from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for any shipments of this merchandise produced or exported by any of the reviewed companies will be that established in the final results of this review; (2) if the exporter is not a firm covered in this review or any previous review, or the original investigation, but the producer is, the cash deposit rate will be that established for the producer of the merchandise in the most recent review or investigation; (3) the cash deposit rate for all other producers/exporters not covered in this review, or in the original investigation, who are unrelated to the reviewed firms or any firms which were subject to the original investigation, shall be 11.60 percent.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Public Comment

In accordance with 19 CFR 353.38, case briefs or any other written comments must be submitted in at least ten copies of the proprietary version and five copies of the public version, including the public summary required under 19 CFR 353.32, to the Assistant Secretary for Import Administration no later than August 12, 1991, and rebuttal briefs no later than 10 a.m. on August 19, 1991. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, such a hearing will be held on August 26, 1991, at 2 p.m. at the U.S. Department of Commerce, room 4830, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Persons interested in attending the hearing should ascertain with the Department the date and time of the hearing as the scheduled date approaches to ensure that circumstances have not required a change in plans.

Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reasons for attending; (4) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), an interested party may make an affirmative oral presentation only on arguments included in its briefs.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22 (c)(5).

Dated: July 22, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-18300 Filed 7-31-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-549-803]

Malleable Iron Pipe Fittings from Thailand; Termination of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of termination of countervailing duty administrative review.

SUMMARY: The Department of Commerce ("the Department") has terminated the countervailing duty administrative review of malleable iron pipe fittings from Thailand, initiated on March 15, 1991.

EFFECTIVE DATE: August 1, 1991.

FOR FURTHER INFORMATION CONTACT: Mark Spellun or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: On February 27, 1991, the petitioner requested a countervailing duty administrative review of malleable iron pipe fittings from Thailand for the period January 1, 1990, through December 31, 1991. No other interested party requested the review. On March 15, 1991, the Department initiated the administrative review for that period (56

FR 11177). The petitioner withdrew its request for review on June 13, 1991. The respondent did not object to the termination of the review. As a result, the Department has determined to terminate the review.

This notice is published in accordance with 19 CFR 355.22(a)(3).

Dated: July 23, 1991.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 91-18234 Filed 7-31-91; 8:45 am]

BILLING CODE 3510-DS-M

Notice of Scope Rulings

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of scope rulings.

SUMMARY: The International Trade Administration (ITA) hereby publishes a list of scope rulings completed between April 1, 1991, and June 30, 1991. In conjunction with this list, the ITA is also publishing a list of pending scope inquiries. The ITA intends to publish future lists within thirty days of the end of each quarter.

EFFECTIVE DATE: August 1, 1991.

FOR FURTHER INFORMATION CONTACT: Melissa G. Skinner, Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-4851.

Background

Sections 353.29(d)(8) and 355.29(d)(8) of the Department's regulations (19 CFR 353.29(d)(8) and 355.29(d)(8)) provide that on a quarterly basis the Secretary will publish in the **Federal Register** a list of scope rulings completed within the last three months. The lists are to include the case name, reference number, and brief description of the ruling.

This notice lists scope rulings completed between April 1, 1991, and June 30, 1991, and pending scope clarification requests. The ITA intends to publish in October 1991 a notice of scope rulings completed between July 1, 1991, and September 30, 1991.

The following lists provide the country, case reference number, requester(s), and a brief description of either the ruling or product subject to the request.

Scope Rulings Completed Between April 1, 1991, and June 30, 1991

Country: Federal Republic of Germany.

A-428-801: Antifriction Bearings.

FAG Kugelfischer Georg Schaefer KGaA—certain products including false twist spindles, belt guide rollers, separator rollers, damping units, rotor units, and tension pulleys are textile machinery components (model numbers 12.127, 12.128, 12.155, 12.157, 12.158, 12.205, 12.264, 12.265, 12.301, 326.27, VR 2147-3, VR 2158-1, VR 2158, VR 2158-3, VR 2177, VR 2177-01, VR 2177-13, TL 2256-04.00000.01, TL 2256-04.00101, TL 2256-04.00101.01, TL 2256-18.00.240.19, TL 2256-14.00.100, 12.150, 12.270, 12.272, 12.273, 12.274, LR 2396, 12.200, SW 18202-1, SW 18261-1, SW 23180-6, SW 23227-6, SW23277-6, FR 3.21, FR 1310, RZ 70-9, RZ 70-20, RZ 90, and SL 1625) are not within the scope of the order—5/23/91.

Country: Italy

A-475-801: Antifriction Bearings:

Meter S.p.A.—"load rollers" (forklift truck mast components), "thrust rollers" (forklift truck mast components), "trolley wheels" (conveyor system components), and "chain wheels" (conveyor system components) are bearings within the scope of the order—6/28/91 [7/11/91—FR].

Country: Republic of Korea.

A-580-008: Color Television Receivers:

Gold Star Co., Ltd.—combination television/radio model RCV-0615 is within the scope of the order—6/18/91.

Gold Star Co., Ltd.—television/VCR model KMV-9002 is within the scope of the order—6/18/91.

A-580-803: Certain Small Business Telephone Systems and Subassemblies Thereof:

TT Systems Corporation—Simtel 420 telephone set is within the scope of the order—4/23/91.

Country: Japan.

A-588-087: Portable Electric Typewriters:

Swintec/Nakajima—typewriter models 8000, 800SP, 8011, 8011SP, 8012, 8014S, 8014KSR, 8016, 8017, 1145CM, 1146CM, 1146CMA, 1146CMP, 1146CMSp, 1186CM, and 1186CMP are "office" typewriters outside the scope of the order—6/5/91.

A-588-405: Cellular Mobile Telephones and Subassemblies:

Mitsubishi Electric Corporation—RF power amplifiers are subassemblies within the scope of the order—4/15/91—§ 353.29(i)(1).

Murata Manufacturing Co., Ltd., and Murata Erie North America, Inc.—voltage control oscillators (VCOs), active filters, and duplexers are preliminary within the scope of the order—5/31/91.

A-588-802: 3.5" Microdisks and Coated Media Thereof:

Kao Infosystems Company—certain unprepared media/unburnished media are "coated media" within the scope of the order—6/26/91.

Pending Scope Inquiries as of June 30, 1991

Country: Canada.

A-122-506: Oil Country Tubular Goods:

Algoma Steel Corporation, Ltd.—entries prior to March 28, 1991 scope ruling eliminating end use certifications.

County: Sweden.

A-401-801: Antifriction Bearings:

Lindsay Forest Products, Inc.—patented design, square wires for debarker rotors.

Country: United Kingdom.

A-412-801: Antifriction Bearings:

Essco Inc.—"linear motion bearings".

Country: Federal Republic of Germany.

A-428-801: Antifriction Bearings:

FAG Kugelfischer Georg Schaefer KGaA—certain needle roller bearings.

SKF Textilmaschinen-Komponenten GmbH and SKF Textile Products, Inc.—textile machinery component (rotor assembly number TE 226-0036225).

Wafios Machinery Corporation—"machines parts".

Reifenshuser-Van Dorn Co.—spare parts (bearings) to rebuild gear box.

GMN—bearings for use in machine tool spindles.

Oilgear—specialized bearings.

Schelegel Durbal, Inc.—rod ends.

A-428-802: Industrial Belts:

Ernst Siegling and Siegling America—nylon core flat belts.

Country: USSR.

A-461-008: Titanium Sponge:

Hi-Temp Specialty Metals, Inc.—compacted (or compressed) titanium scrap fines.

Country: Italy.

A-475-801: Antifriction Bearings:

Wolf D. Barth Co., Inc., and SKF Component System Co.—7/32" chrome steel balls.

Meter S.p.A.—"chain sheaves" (forklift truck mast components).

Country: Thailand.

C-549-501: Pipe and Tube:

Intrepid; British Standard Pipe.

Country: Singapore.

A-559-801: Antifriction Bearings:

SKF—loose ball rollers used in textile drafting machinery (top rollers).

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cher Georg Schaefer
tain products including
pindles, belt guide
rator rollers, damping
units, and tension
extile machinery
(model numbers 12.127,
5, 12.157, 12.158, 12.205,
5, 12.301, 326.27, VR
2158-1, VR 2158, VR
2177, VR 2177-01, VR
2256-04.00000.01, TL
1, TL 2256-04.00101.01,
0.240.19, TL 2256-
150, 12.270, 12.272,
4, LR 2396, 12.200, SW
18261-1, SW 23180-6,
SW23277-6, FR 3.21,
70-9, RZ 70-20, RZ 90,
are not within the
order—5/23/91.

riction Bearings:
'load rollers" (forklift
omponents), "thrust
lift truck mast
, "trolley wheels"
stem components), and
s" (conveyor system
are bearings within
the order—6/28/91 [7/

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Television Receivers:
Ltd.—combination
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td.—television/VCR
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n Small Business
stems and
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poration—Simtel 420
is within the scope of
23/91.

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300SP, 8011, 8011SP,
014KSR, 8016, 8017,
CM, 1146CMA,
3CMSp, 1186CM, and
"office" typewriters
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ric Corporation—RF
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turing Co., Ltd., and
orth America, Inc.—
l oscillators (VCOs),

active filters, and duplexers are preliminary within the scope of the order—5/31/91.

A-588-802: 3.5" Microdisks and Coated Media Thereof:

Kao Infosystems Company—certain unprepared media/unburnished media are "coated media" within the scope of the order—6/26/91.

Pending Scope Inquiries as of June 30, 1991

Country: Canada.

A-122-506: Oil Country Tubular Goods:

Algoma Steel Corporation, Ltd.—entries prior to March 28, 1991 scope ruling eliminating end use certifications.

County: Sweden.

A-401-801: Antifriction Bearings:

Lindsay Forest Products, Inc.—patented design, square wires for debarker rotors.

Country: United Kingdom.

A-412-801: Antifriction Bearings:

Essco Inc.—"linear motion bearings".

Country: Federal Republic of Germany.

A-428-801: Antifriction Bearings:

FAG Kugelfischer Georg Schaefer KGaA—certain needle roller bearings.

SKF Textilmaschinen-Komponenten GmbH and SKF Textile Products, Inc.—textile machinery component (rotor assembly number TE 226-0036225).

Wafios Machinery Corporation—"machines parts".

Reifenshuser-Van Dorn Co.—spare parts (bearings) to rebuild gear box.

GMN—bearings for use in machine tool spindles.

Oilgear—specialized bearings.

Schelegel Durbal, Inc.—rod ends.

A-428-802: Industrial Belts:

Ernst Siegling and Siegling America—nylon core flat belts.

Country: USSR.

A-461-008: Titanium Sponge:

Hi-Temp Specialty Metals, Inc.—compacted (or compressed) titanium scrap fines.

Country: Italy.

A-475-801: Antifriction Bearings:

Wolf D. Barth Co., Inc., and SKF Component System Co.—7/32" chrome steel balls.

Meter S.p.A.—"chain sheaves" (forklift truck mast components).

Country: Thailand.

C-549-501: Pipe and Tube:

Intrepid; British Standard Pipe.

Country: Singapore.

A-559-801: Antifriction Bearings:

SKF—loose ball rollers used in textile drafting machinery (top rollers).

C-559-802: Antifriction Bearings:

SKF—loose ball rollers used in textile drafting machinery (top rollers).

Country: People's Republic of China.

A-570-003: Cotton Shop Towels:

Win-Tex Products, Inc.—towels assembled in Honduras.

A-570-504: Petroleum Wax Candles:

Fabri-centers of America, Inc.—citronella candles.

Country: Korea.

A-580-008: Color Television Receivers:

Commodore Business Machines—computer monitor model 1084(D).

Granada Hospital Group—Spectrum C-10 Interactive Receiver.

A-580-605: Color Picture Tubes:

Penn-Ray Sutra Corp.—video game displays.

A-580-803: Certain Small Business Telephone Systems and Subassemblies Thereof:

Cord Electronics, Inc.—Digital Display Set telephone set (DDS).

Country: Japan.

A-588-007: Certain High Capacity Pagers:

Motorola—components and subassemblies.

A-588-015: Television Receiving Sets, Monochrome and Color:

NEC—Subassemblies: W5A-1 (HE), W4A-1 (HE), W3A-1 (HE), W5A-1, and W4A-1.

Sharp—LCD TV/Radio/Cassette model JC-AV1.

Teknika Electronics Corp.—P.C.B. subassemblies.

Sharp—LCD TV/VCR model VC-V542U.

Casio Computer Co., Ltd., Casio, Inc., Citizen Watch Co., Ltd, Hitachi, Ltd., Hitachi Sales Corporation of America, Hitachi Sales Corporation of Hawaii, Inc., Matsushita Electric Industrial Co., Ltd., Matsushita Electric Corporation of America, NEC Corporation, NEC Home Electronics (U.S.A.), Inc., Seiko Epson Corporation, Toshiba Corporation, and Toshiba America, Inc.—certain hand-held liquid crystal display televisions (Casio Computer Co., Ltd. models TV-400T, TV-500, TV-1400, TV-3100, TV-8500; Citizen Watch Co., Ltd. models 06TA, 08TA, TB20, TA60, TC50, TC53, DD-T126, DD-P226, TC52; Matsushita Electric Industrial Co., Inc. models CT-301E/302B, CT-311E/312B; and Seiko Epson Corporation models LVD-602, LVD-702, LVD-802) and all other LCD TVs under 6" in screen size imported into the United States.

P.T. Imports, Inc.—multiple voltage and receiving system TVs, JVC series "ME" and "MU".

Synergistic Technologies, Inc.—TV monitors manufactured by Victor Company of Japan.

A-588-087: Portable Electric Typewriters:

Tokyo Juki—"office" typewriter models: Juki Sierra 4500, Sierra 3300, Sierra 3400, Sierra 3400C, Sierra 3500, Sierra 3500XL, Sierra Officewriter, Remington Rand 770, Remington Rand 775, Remington Rand 880, Avanti 1400, and Avanti 1500.

Smith Corona Corporation—anti-circumvention inquiry to determine whether Brother Industries, Ltd. and Brother Industries (USA), Inc., by importing parts and components from Japan, and assembling them into finished portable electric typewriters for sale in the U.S., is circumventing the order.

Nakajima, Canon, and Smith Corona—portable electric typewriters with computer interface.

A-588-405: Cellular Mobile Telephones and Subassemblies:

Murata Manufacturing Co., Ltd., and Murata Erie North America, Inc.—voltage control oscillators (VCOs), active filters, and duplexers.

A-588-504: Erasable Programmable Read Only Memories:

Intel Corporation, Advanced Micro Devices, Inc., and National Semiconductor Corporation—flash memory EPROM.

A-588-804: Antifriction Bearings:

DHL Worldwide Express—certain bearings.

A-588-806: Electrolytic Manganese Dioxide:

Sumitomo—High-grade chemical manganese dioxide (CMD-U).

A-588-807: Industrial Belts:

Dataplex—belts for magnetic ink character recognition.

A-588-809: Certain Small Business Telephone Systems and Subassemblies Thereof:

Iwatsu Electric and Iwatsu America—subassemblies including: common and expansion modules, circuit cards, power supplies, and stations.

Kyushu Matsushita Electric Co., Ltd.—KME 336, certain subassemblies, and accessories.

A-588-810: Mechanical Transfer Presses:

Aida Engineering—spare and replacement parts.

Customs—destack sheet feeder.

Central States Can Co.—"production line" for half size tray food cans.

General Request: Customs requested the Department determine whether ceramic bearings are within the scope of the orders on antifriction bearings.

Interested parties are invited to comment on the accuracy of the list of pending scope clarification requests. Any comments should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

Dated: July 25, 1991.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 91-18232 Filed 7-31-91; 8:45 am]

BILLING CODE 3510-DS-M

Colgate University; Notice of Decision on Application For Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 91-018. *Applicant:* Colgate University, Hamilton, NY 13346. *Instrument:* Rapid Kinetics Accessory Sample Handling Unit. *Manufacturer:* Hi-Tech Scientific Ltd., United Kingdom. *Intended Use:* See notice at 56 FR 8185, February 27, 1991.

Comments: No comments have been received with respect to this application. *Decision:* Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, was being manufactured in the United States at the time the foreign instrument was ordered (December 20, 1990). *Reasons:* The foreign instrument provides quantitation of elemental species by mass detection of singly charged ions from an inductively coupled argon plasma with ppt detection limits. The National Institutes of Health advises in its memorandum dated May 30, 1991 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use which was being manufactured in the United States at the time the foreign instrument was ordered.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, which was being manufactured in the United States at the time the foreign instrument was ordered.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91-18301 Filed 7-31-91; 8:45 am]

BILLING CODE 3510-DS-M

Louisiana State University, et al.; Notice of Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Program Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 145th Street and Constitution Avenue NW., Washington, DC.

Docket Number: 91–100.

Applicant: Louisiana State University, Baton Rouge, LA 70803.

Instrument: Mass Spectrometer, Model 262V.

Manufacturer: Finnigan MAT, West Germany.

Intended Use: The instrument will be used to study geological materials including rocks, minerals, sediments, natural waters and fossils. The objectives of these investigations will be to:

(1) Determine the source of natural waters and their interaction with rocks and sediments through which they flow,

(2) Understand the origin of rocks and their alteration and deformation history and

(3) Date rocks and sediment strata and determine the timing of geological events.

Application Received by Commissioner of Customs: July 2, 1991.

Docket Number: 91–102.

Applicant: California Institute of Technology, 1201 E. California Boulevard, Pasadena, CA 91125.

Instrument: Mass Spectrometer System, Model 252.

Manufacturer: Finnigan MAT, West Germany.

Intended Use: The instrument will be used for oxygen and carbon isotope analyses of minerals, rocks, atmospheric gases, organic substances and natural waters from the Earth, the Moon and meteorities.

Application Received by Commissioner of Customs: July 2, 1991.

Docket Number: 91–103.

Applicant: Seattle University, 12th and East Columbia, Seattle, WA 98122.

Instrument: Electron Microscope, Model Em 900.

Manufacturer: Carl Zeiss, West Germany.

Intended Use: The instrument will be used to study mitotically active cells in invertebrate animals and algae, to examine relationships between motile structures and other parts of the cell, and to study the structural relationships between symbiotic organisms. There is particular interest in evidence of polyploidy, complex cell-cell interactions and comparative studies of structure and orientation of numerous nuclei in the same large cell. In addition, the instrument will be used in several courses taught within the Biology Department.

Application Received by Commissioner of Customs: July 3, 1991.

Docket Number: 91–104.

Applicant: Rutgers University, Department of Physics, P.O. Box 849, Piscataway, NJ 08855–0849.

Instrument: 2 Dimensional Ion Energy Analyzer.

Manufacturer: High Voltage Engineering, The Netherlands.

Intended Use: The instrument will be used for studies of copper, nickel, gold, platinum and silicon, either atomically clean or with adsorbed layers of common adsorbates (for example, sulfur, oxygen, hydrogen and carbon monoxide), or other metals. The phenomenon to be studied is in all cases the atomic geometry of the surface of the material in question, i.e., the coordinates of the atoms at the surface.

Application Received by Commissioner of Customs: July 9, 1991.

Docket Number: 91–105.

Applicant: University of Cincinnati, Center Hill Research Facility, 5955 Center Hill Road, Cincinnati, OH 45224.

Instrument: Mass Spectrometer, Model ICP200LA.

Manufacturer: Turner Scientific, United Kingdom.

Intended Use: The instrument will be used for studies of soils from hazardous waste sites to determine the types and classes of metal complexes in the soil, before and after treatment with environmental remediation.

Application Received by Commissioner of Customs: July 10, 1991.

Docket Number: 91–106.

Applicant: University of Illinois at Urbana-Champaign, Purchasing Division, 207 Administration Building, 506 S. Wright Street, Urbana, IL 61801.

Instrument: Electron Microscope., Model H–9000.

Manufacturer: Hitachi Scientific Instruments, Japan.

Intended Use: The instrument will be used to study the atomic structure of interfaces between materials, including semiconductors, metals, insulators and superconductors.

Application Received by Commissioner of Customs: July 11, 1991.

Docket Number: 91–107.

Applicant: University of Rochester, Purchasing Services, 70 Galer House, Rochester, NY 14620.

Instrument: Eye Movement Tracker, Model 2020.

Manufacturer: EL–MAR Inc., Canada.

Intended Use: The instrument will be used for studies of movements of the right and left eyes in human subjects in response to controlled whole-body rotatory and/or linear motion profiles. Experiments will be conducted to determine how the balance system of the inner ear detects head motion and properly drives eye position to maintain binocular fixation on visual targets, thereby maintaining a stable image on the retinal fovea. A particular thrust of our research is to determine potential deteriorations in the balance system and eye movement control with aging; an important public health concern.

Application Received by Commissioner of Customs: July 16, 1991.

Docket Number: 91–108.

Applicant: Kent State University, Kent, OH 44242.

Instrument: Rotating Anode X-ray Generator, Model RU–200H.

Manufacturer: Rigaku, Japan.

Intended Use: The instrument will be used for the study of the structure and very subtle structural changes that take place in a class of materials known as Liquid Crystals as the temperature is changed.

Application Received by Commissioner of Customs:

Dated: July 17, 1991.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91-18302 Filed 7-31-91; 8:45 am]

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Application Received by Commissioner of Customs: July 10, 1991.

Docket Number: 91–106.

Applicant: University of Illinois at Urbana-Champaign, Purchasing Division, 207 Administration Building, 506 S. Wright Street, Urbana, IL 61801.

Instrument: Electron Microscope., Model H–9000.

Manufacturer: Hitachi Scientific Instruments, Japan.

Intended Use: The instrument will be used to study the atomic structure of interfaces between materials, including semiconductors, metals, insulators and superconductors.

Application Received by Commissioner of Customs: July 11, 1991.

Docket Number: 91–107.

Applicant: University of Rochester, Purchasing Services, 70 Galer House, Rochester, NY 14620.

Instrument: Eye Movement Tracker, Model 2020.

Manufacturer: EL–MAR Inc., Canada.

Intended Use: The instrument will be used for studies of movements of the right and left eyes in human subjects in response to controlled whole-body rotatory and/or linear motion profiles. Experiments will be conducted to determine how the balance system of the inner ear detects head motion and properly drives eye position to maintain binocular fixation on visual targets, thereby maintaining a stable image on the retinal fovea. A particular thrust of our research is to determine potential deteriorations in the balance system and eye movement control with aging; an important public health concern.

Application Received by Commissioner of Customs: July 16, 1991.

Docket Number: 91–108.

Applicant: Kent State University, Kent, OH 44242.

Instrument: Rotating Anode X-ray Generator, Model RU–200H.

Manufacturer: Rigaku, Japan.

Intended Use: The instrument will be used for the study of the structure and very subtle structural changes that take place in a class of materials known as Liquid Crystals as the temperature is changed.

Application Received by Commissioner of Customs:

Dated: July 17, 1991.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91–18302 Filed 7–31–91; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

South Atlantic Fishery Management Council; Wreckfish Limited Entry Public Hearing; Correction

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearing; correction.

SUMMARY: This document corrects a notice of a public hearing on proposed changes to Amendment 5 to the Snapper-Grouper Fishery Management Plan that was published on July 10, 1991 (56 FR 31390).

FOR FURTHER INFORMATION CONTACT: Carrie Knight, Public Information Officer, South Atlantic Fishery Management Council, 803–571–4699.

In notice document 91–16319 beginning on page 31390 in the issue of Wednesday, July 10, 1991, in the second column under **SUPPLEMENTARY INFORMATION** in the 4th line, "August 16, 1992" should read "April 16, 1992".

Dated: July 26, 1991.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–18194 Filed 7–31–91; 8:45 am]

BILLING CODE 3510–22–M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Oregon Coastal Natural Coho Review Group (OCNCRG) will hold its second public meeting. The meeting will be held on August 13, 1991, beginning at 9:30 a.m., at the Oregon State University Campus, in room 200 of the Forestry Sciences Laboratory, 3200 SW. Jefferson Way, Corvallis, Oregon.

The OCNCRG will examine the causes that have led to failure in attaining the spawning escapement objective for the Oregon coastal natural coho stock. The OCNCRG will report its findings and recommendations to the Pacific Fishery Management Council in November 1991.

FOR MORE INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: July 26, 1991.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–18214 Filed 7–31–91; 8:45 am]

BILLING CODE 3510–22–M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council (Council) will hold a public meeting of its Groundfish Management Team (GMT). The meeting will be held on August 13–15, 1991, at the Pacific States Marine Fisheries Commission, in the Oregon Department of Fish and Wildlife (ODFW) building, 2501 SW. First Avenue, suite 200, Portland, Oregon. The meeting will begin on August 13 at 9 a.m., continue to August 14 and adjourn on August 15 at 3 p.m. On August 15 only, the meeting will move to the ODFW Director's conference room in the ODFW building.

The GMT will discuss groundfish landings projections, stock assessments for three important groundfish species, and draft social, economic and biological analyses of proposed management changes for 1992. The GMT also will prepare recommendations to the Council on these and other issues pertaining to management of the West Coast groundfish fisheries.

FOR MORE INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: July 26, 1991.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–18215 Filed 7–31–91; 8:45 am]

BILLING CODE 3510–22–M

COMMISSION OF FINE ARTS

Notice of Meeting

The Commission of Fine Arts' next meeting is scheduled for Thursday, 19 September 1991 at 10 a.m. in the Commission's offices in the Pension Building, suite 312, Judiciary Square, 441 F Street, NW., Washington, DC 20001 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the Commission offices (202–504–2200) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC 26 July 1991.

Charles H. Atherton,

Secretary.

[FR Doc. 91–17283 Filed 7–31–91; 8:45 am]

BILLING CODE 6330–01–M

COMMISSION ON MINORITY BUSINESS DEVELOPMENT

[91–N–5]

Commission on Minority Business Development, Hearing

AGENCY: Commission on Minority Business Development.

ACTION: Notice of meeting and public hearing.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act that a public hearing of the United States Commission on Minority Business Development will be held on Friday, August 16, 1991 in Kansas City, Missouri with a meeting of the Commissioners on Thursday, August 15, 1991. The meeting and hearing are open to the public.

The August 16th hearing will convene at 9 a.m. in the City Council Chambers, 26th Floor of City Hall, 414 E. 12th St., Kansas City, MO. The public hearing is for the purpose of receiving testimony from public and private sector decision-makers and entrepreneurs, professional experts, corporate leaders and representatives of key interest groups and organizations concerned about minority business development and participation in Federal programs and contracting opportunities. Issues of concern will be all issues of the 7(a) and 504 loan programs, 7(j) technical support and 8(a) contracting programs of the Small Business Administration. The meeting of the Commissioners will be held on Thursday, August 15th at the same location commencing at 2 p.m.

The Commission was established by Public Law 100–656, for purposes of reviewing and assessing Federal programs intended to promote minority business and making recommendations to the President and the Congress for such changes in laws or regulations as may be necessary to further the growth and development of minority businesses.

FOR FURTHER INFORMATION AND TESTIMONY INFORMATION: Contact Connie K. McCracken or Leo Salazar at 202–523–0030 at the Commission on Minority Business Development, 750 17th Street NW., suite 300, Washington, DC 20006.

SUPPLEMENTARY INFORMATION: Transcripts of hearings will be available for public inspection during regular working hours at The Commission Office approximately 30 days following the hearing.

André M. Carrington,

Executive Director.

[FR Doc. 91–18171 Filed 7–31–91; 8:45 am]

BILLING CODE 6820-PG-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States: Changes to the 1991 Correlation

July 26, 1991.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Changes to the 1991 Correlation.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202)377–3400.

The Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (1991) presents the Harmonized Tariff Schedule numbers under each of the cotton, wool, man-made fiber, silk blend and other vegetable fiber categories used by the United States in monitoring imports of these textile products and in the administration of the bilateral agreement program. A notice was published in the **Federal Register** on June 25, 1991 (56 FR 28870) announcing changes to this Correlation, which were published in the first supplement of the Harmonized Tariff Schedule of the United States. The Correlation should be amended further to reflect the changes indicated below:

Category	Changes to the 1991 Correlation
350	Delete 6107.91.0010.
	Add 6107.91.0040—men's bathrobes, dressing gowns and similar articles of cotton, knitted or crocheted.
	Delete 6107.91.0020.
	Add 6107.91.0090—boys' bathrobes, dressing gowns and similar articles of cotton, knitted or crocheted.
351	Add 6107.91.0030—men's or boys' sleepwear of cotton, knitted or crocheted.
	Add 6207.91.3010—men's or boys' sleepwear of cotton.
352	Delete 6207.91.3000.
	Add 6207.91.3020—men's or boys' singlets and other undershirts of cotton.
650	Delete 6107.92.0010.
	Add 6107.92.0040—men's bathrobes, dressing gowns and similar articles of MMF, knitted or crocheted.
	Delete 6107.92.0020.
	Add 6107.92.0090—boys' bathrobes, dressing gowns and similar articles of MMF, knitted or crocheted.
651	Add 6107.92.0030—men's or boys' sleepwear of MMF, knitted or crocheted.
	Add 6207.92.4010—men's or boys' sleepwear of MMF.
652	Delete 6207.92.4000.
	Add 6207.92.4020—men's or boys' singlets and other undershirts of MMF.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91–18235 Filed 7–31–91; 8:45 am]

BILLING CODE 3510-DR-F

COMMODITY FUTURES TRADING COMMISSION

New York Mercantile Exchange Proposed Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The New York Mercantile Exchange (NYMEX or Exchange) has applied for designation as a contract market in sour crude oil futures. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before September 3, 1991.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the NYMEX sour crude oil futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact Joseph Storer of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, at (202) 254–7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions of the proposed contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the NYMEX in support of the application by contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or argument on the terms and conditions of the proposed contract, or with respect to other materials submitted by the NYMEX in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on July 29, 1991.

Gerald Gay,

Director.

[FR Doc. 91–18236 Filed 7–31–91; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Environmental Assessment; Lightweight ExoAtmospheric Projectile

AGENCY: Strategic Defense Initiative Organization (SDIO), Department of Defense.

ACTION: Environmental Assessment for Lightweight ExoAtmospheric Projectile (LEAP) Test Program.

SUMMARY: The Department of Defense (DoD) has prepared a Finding of No Significant Impact based on an es to the 1991 Correlation

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Other materials submitted by the NYMEX in support of the application by contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or argument on the terms and conditions of the proposed contract, or with respect to other materials submitted by the NYMEX in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on July 29, 1991.

Gerald Gay,

Director.

[FR Doc. 91–18236 Filed 7–31–91; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Environmental Assessment; Lightweight ExoAtmospheric Projectile

AGENCY: Strategic Defense Initiative Organization (SDIO), Department of Defense.

ACTION: Environmental Assessment for Lightweight ExoAtmospheric Projectile (LEAP) Test Program.

SUMMARY: The Department of Defense (DoD) has prepared a Finding of No Significant Impact based on an assessment of the potential environmental consequences of conducting LEAP Test Program activities to design, develop, and demonstrate space test projectiles capable of intercepting targets in the exoatmosphere.

Background

Pursuant to Council on Environmental Quality Regulations (40 CFR 1500–1508) for implementing the procedural provisions of the National Environmental Policy Act (42 U.S.C. 4321 et seq.), and DoD directives on environmental effects of DoD actions, SDIO has conducted an assessment of the potential environmental consequences of conducting the LEAP Test Program to demonstrate the viability of this technology and its applicability to a Strategic Defense System. A series of flight tests is needed to demonstrate and evaluate the advanced technologies necessary to determine whether this potential exoatmospheric interceptor system is feasible. Such a determination cannot be made based on analysis, simulations or ground testing alone.

As currently configured, the LEAP Program will consist of flight experiments with Aries rocket vehicles launched from White Sands Missile Range (WSMR), and U.S. Army Kwajalein Atoll (USAKA); and Castor IV rocket vehicles from Wake Island. Existing launch facilities will be used at these locations. WSMR and USAKA have previously been used to launch Aries vehicles.

Additional activities will be conducted at several locations in the United States in preparation for final assembly and checkout of the launch vehicles. These activities are categorized as component/assembly ground tests (including design, fabrication, and component environmental tests), preflight activities and tests (including component, final assembly and integration), and flight tests. Test activities for the proposed activities will be performed at the following locations:

Installation	Test type
Space Data Division, Orbital Sciences Corporation, Chandler, AZ.	Component/assembly ground tests.
Hughes Aircraft Company, Missile Systems Group, Canoga Park, CA.	Component/assembly ground tests.
Phillips Laboratory, Edwards Air Force Base, CA.	Component/assembly ground tests.
Boeing Aerospace and Electronics, Kent, WA.	Component/assembly ground tests.
White Sands Missile Range, NM.	Preflight, flight tests.
U.S. Army Kwajalein Atoll, Marshall Islands.	Preflight, flight tests.
Wake Island	Preflight, flight tests.

The potential for significant impacts from launches at WSMR, USAKA, and Wake Island, was determined through an analysis of the activities that would be conducted at the proposed locations, compared to current activities and existing conditions at those locations. The impacts of the proposed action were assessed against the following environmental media: physical setting and built environment; geology and water reserves; air quality; noise; biological resources, threatened and endangered species; cultural resources; infrastructure; hazardous materials and waste; and safety.

Finding of No Significant Impact

All potentially significant impacts from LEAP construction/modification, ground, preflight, and flight test activities will be mitigated to non-significant levels by implementing standard plan safeguards. These mitigations have been incorporated into the LEAP Test Program as an integral part of program-related operations at WSMR, USAKA, and Wake Island. Potential land use, water resources, biological, soils, and safety issues could occur as a result of the presence of the liquid fuels.

The LEAP Test Program has adopted spill control, containment and handling and disposal practices that will reduce the risks of releasing liquid propellant into the environment. Appropriate personal protection devices will be used during fueling/defueling and purging operations.

Potential noise impacts from LEAP launches and ground activities will be mitigated by ensuring that personnel wear hearing protection equipment that will reduce noise levels to the prescribed health and safety levels. Furthermore, personnel will be protected from blast noise during launches by moving beyond the calculated safety distance. Base personnel at WSMR, USAKA and Wake Island will not be exposed to noise levels in excess of OSHA allowable short-term limits. Accidental explosion of a rocket booster on the launch pad or shortly after launch could pose a hazard to personnel in the vicinity of the launch area. The Range Safety Officer (RSO) will mitigate the potential for such a hazard by ensuring that the explosive quantity safety distance for each rocket launch is implemented and monitoring the hazard area to prevent unauthorized entry.

In order to minimize potentially significant impacts on the biological environment at WSMR, LEAP launches will operate within operational criteria of on-going activities at the range.

Potential impact from debris recovery will be prevented by retrieving debris by way of access corridors which will be surveyed for threatened and endangered species and cultural resources prior to the recovery of the debris. The corridors will be realigned if necessary to avoid impacts. If unacceptable impacts cannot be avoided, debris will be recovered by helicopter or left in place. Other mitigation measures that will be implemented include: ensuring that no recovery operation will be undertaken at the Salt Creek area, where the White Sands Pupfish is located, without the concurrence of the Chief, Range Support Section, and the Chief, Environmental and Natural Resources Division at WSMR. Under no circumstances will any vehicles enter within 400 meters of Salt Creek unless the Officer in Charge or Noncommissioned Officer in Charge of the recovery team has personally coordinated the matter with the Environmental Chief or his authorized representative.

The No Action Alternative is to discontinue the LEAP Test Program. Additional flights associated with LEAP would not occur at WSMR, USAKA and Wake Island installations. The No Action Alternative for the proposed activity would preclude a series of flight tests needed to demonstrate and evaluate the advanced technologies necessary to determine whether a potential exoatmospheric interceptor system is feasible.

Overall, no significant impacts would result from conducting the LEAP Test Program at WSMR, USAKA, Wake Island, or ground support locations. Therefore, no environmental impact statement will be prepared for the proposed action.

For Further Information Contact: Martha J. Cenkci, Major, USAF, Public Affairs Staff Officer, SDIO/IEA, Washington, DC 20301–7100, (703) 695–8743.

Dated: July 26, 1991.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 91–18190 Filed 7–31–91; 8:45 am]

BILLING CODE 3810-01-M

VOL 56
ISS 148
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Department of the Army

Board of Visitors, United States Military Academy; Open Meeting

In accordance with section 10(a)(20) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following meeting.

Name of Committee: Board of Visitors, United States Military Academy.

Date of Meeting: 12–14 September 1991.

Place of Meeting: West Point, New York.

Start Time of Meeting: 2000 hours, 12 September 1991.

Proposed Agenda: The Board will observe the Academy academic programs in a classroom environment and quality of cadet life with visits and discussions in the cadet barracks. They will discuss the Eisenhower Master Degree Program with the current class of Fellows. The Board will also discuss level of Board participation in achieving the passage of pending legislation. They will receive update briefings on the Cadet Leader Development Program; Military Intersession Program; Project Enrichment; Privatization, and the GAO surveys of the service academies. They will receive a report by the Association of Graduates on plans for the Academy Bicentennial and fund raising.

All proceedings are open. For further information, contact Lieutenant Colonel Stephen R. Furr, United States Military Academy, West Point, NY 10996–5000, (914) 938–4200.

Stephen R. Furr,

Lieutenant Colonel, U.S. Army, Executive Secretary, USMA Board of Visitors.

[FR Doc. 91–18176 Filed 7–31–91; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

[CFDA No. 84.031A, CFDA No. 84.031G]

Notice Inviting Applications for Designation as an Eligible Institution for Fiscal Year 1992 for the Strengthening Institutions Program and the Endowment Challenge Grant Program

Purpose: Institutions of higher education must meet specific statutory and regulatory requirements to be designated eligible to receive funds under the Strengthening Institutions Program and the Endowment Challenge Grant Program.

Deadline for Transmittal of Applications: September 20, 1991.

Applications Available: August 16, 1991.

Eligibility Information: Under section 312 of the Higher Education Act of 1965, as amended (HEA), an institution of higher education qualifies as an eligible institution under the Strengthening Institutions and Endowment Challenge Grant Programs if, among other requirements, it has a high enrollment of needy students, and its Educational and General (E&G) expenditures are low per full-time equivalent (FTE) undergraduate student, in comparison with the average E&G expenditures per FTE student of institutions that offer similar instruction. The complete eligibility requirements are found in 34 CFR 607.2 through 607.4 of the Strengthening Institutions Program regulations.

Enrollment of Needy Students: Under 34 CFR 607.3(a), an institution is considered to have a high enrollment of needy students if—

(1) At least 50 percent of its degree students received financial assistance under one or more of the following programs: Pell Grant, Supplemental Educational Opportunity Grant, College Work Study, or Perkins Loan Program; or (2) the percentage of its undergraduate degree students who were enrolled on at least a half-time basis and received Pell Grants exceeded the median percentage of undergraduate degree students who were enrolled on at least a half-time basis and received Pell Grants at comparable institutions that offer similar instruction. To qualify under the second criterion, an applicant's Pell grant percentage must be more than the median for its category provided on the table in this notice.

E&G Expenditures Per FTE Students: An applicant should compare its average E&G expenditure/FTE student to the average E&G expenditure/FTE student for its category of institution contained in the table in this notice. If the applicant's average E&G expenditure for 1989–90 is less than the average for its category, the applicant meets this eligibility requirement.

The applicant's E&G expenditures are the total amount expended by the institution during the base year for instruction, research, public service, academic support, student services, institutional support, operation and maintenance, scholarships and fellowships, and mandatory transfers.

The following table identifies the relevant median Pell Grant percentages and the average E&G expenditures per FTE for the 1989–90 base year.

	Median Pell grant percentage	Average E&G per FTE student
2-year Public Institutions	27.30	5,006
2-year Non-Profit Private Institutions	35.60	9,293
4-year Public Institutions	28.75	10,605
4-year Non-Profit Private Institutions	27.20	13,319

Waiver Information: Applicants unable to meet the high needy student enrollment requirement and/or the low E&G expenditure requirement may apply to the Secretary for waiver of these requirements under various options described in 34 CFR 607.3(b) and 34 CFR 607.4 (c) and (d) respectively.

For the purpose of 34 CFR 607.3(b)(2), under which an applicant must demonstrate that at least 30 percent of the students it served in base year 1989–90 were from low-income families, "low-income" is defined as an amount which does not exceed 150 percent of the amount equal to the poverty level as established by the U.S. Bureau of the Census. The following table sets forth the low-income levels for various sizes of families. For the purposes of this waiver provision, low-income families are identified according to the following:

Size of family	Gross annual family income must be less than
1	$8,970
2	12,030
3	15,090
4	18,150
5	21,210
6	24,270
7	27,330
8	30,390

For all families with more than 8 members, and $3,060 for each additional member.

Size of family	Family income must be less than
1	$11,220
2	15,045
3	18,870
4	22,695
5	26,520
6	30,345
7	34,170
8	37,995

For family units with more than 8 members, add $3,825 for each additional member.

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6	24,270
7	27,330
8	30,390

For all families with more than 8 members, and $3,060 for each additional member.

Size of family	Family income must be less than
1	$11,220
2	15,045
3	18,870
4	22,695
5	26,520
6	30,345
7	34,170
8	37,995

For family units with more than 8 members, add $3,825 for each additional member.

Size of family	Family income must be less than
1	$10,305
2	13,830
3	17,355
4	20,880
5	24,405
6	27,930
7	31,455
8	34,980

For family units with more than 8 members, add $3,525 for each additional member.

The figures shown under family income represent amounts equal to 150% of the family income levels established by the U.S. Bureau of the Census for determining poverty status. These levels were published by the U.S. Department of Health and Human Services in the **Federal Register** of February 16, 1989, Volume 54, Number 31, pages 7097–7098.

In reference to the waiver option specified in section 607.3(b)(4) of the regulation, information about "metropolitan statistical areas" may be obtained by contacting: *National Technical Information Services,* Document Sales, 5285 Port Royal Road, Springfield, Virginia 22161, or call (703) 487–4650. Title METROPOLITAN STATISTICAL AREAS, 1989 #PB89–192546.

Applicable Regulations: Regulations applicable to the eligibility process include: (a) the Strengthening Institutions Programs, 34 CFR part 607; (b) the Endowment Challenge Grant Program Regulations, 34 CFR part 628; and (c) the Education Department General Administrative Regulations, 34 CFR parts 74, 75, 77, 82, 85, and 86.

For Applications or Information Contact: Strengthening Institutions Program Branch, Division of Institutional Development, U.S. Department of Education, Maryland Avenue, SW., room 3042, ROB#3, Washington, DC 20202–5335, telephone: (202) 708–8839. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m. Eastern time.

Program Authority: 20 U.S.C. 1057 and 1065a.

Dated: July 25, 1991.

John B. Childers,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 91–18207 Filed 7–31–91; 8:45 am]

BILLING CODE 4000-01-M

National Council on Education Standards and Testing; Meeting

AGENCY: National Council on Education Standards and Testing; Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and agenda of a forthcoming meeting of the National Council on Education Standards and Testing. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE AND TIME: Augst 15, 1991 from approximately 10 a.m. to 4:30 p.m.

ADDRESS: Hyatt Regency on Capitol Hill, 400 New Jersey Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: David Stevenson, 1650 M Street, NW., suite 270, Washington, DC 20036. Telephone: (202) 632–0952.

SUPPLEMENTARY INFORMATION: The National Council on Education Standards and Testing is established under section 403 of the Education Council Act of 1991 (20 U.S.C. 1221–1 note). The Council is established to provide advice on whether suitable specific education standards should and can be established and whether an appropriate system of voluntary national tests or examinations should and can be established.

The meeting of the Council is open to the public. The agenda is likely to include an update on the Council's activities and general discussion on standards assessment, including a discussion of professional teaching standards.

Records are kept of all Council proceedings, and are available for public inspection at the Office of the Council, 1850 M Street, NW., Washington, DC 20036 from the hours of 9 a.m. to 4 p.m.

Dated: July 29, 1991.

Diane Ravitch,

Assistant Secretary and Counselor to the Secretary, Educational Research and Improvement.

[FR Doc. 91–18330 Filed 7–31–91; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award Grant to J. Hilbert Anderson

AGENCY: Department of Energy.

ACTION: Notice of unsolicited application financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(2), it is making a discretionary financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) to J. Hilbert Anderson, a licensor, under Grant Number DE–FG01–91CE15535. The proposed grant will provide funding in the estimated amount of $99,970 to the proposed grantee to analyze and optimize the Anderson-Quin Cycle to determine its technical performance and economic value. Sufficient data will be generated to demonstrate the feasibility of taking the next step, which will be to construct and test a prototype Anderson Quin-Cycle system. The Anderson-Quin Cycle is a combined cycle for power generation and consists of five sub-cycles: A refrigeration cycle, a gas turbine cycle, a Rankine steam cycle, a bottoming cycle, and a heat pump. The five cycles combine to give increased power production at a greater overall efficiency. However, at this stage, until a prototype is built and tested, it is difficult to quantify the magnitude of the energy savings. The purpose of the grant will be to assess feasibility of building the prototype.

The Department of Energy has determined in accordance with 10 CFR 600.14(f) that the application submitted by J. Hilbert Anderson is meritorious based on the general evaluation required by 10 CFR 600.14(d) and that the proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current or planned solicitation. The proposed grantee is using a technique for which a patent has been obtained. The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the funding program, The Energy-Related Inventions Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation. The proposed technology has a possibility of adding to the national energy resources by utilizing low-temperature heat. This will therefore reduce electrical power generation costs.

The anticipated term of the proposed grant is eighteen months from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of

Placement and Administration, ATTN: Phyllis P. Morgan, PR–322.2, 1000 Independence Avenue SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Operations Division "B", Office of Placement and Administration.

[FR Doc. 91–18293 Filed 7–31–91; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award Intent to Award Grant to The University of Kansas

AGENCY: Department of Energy.

ACTION: Notice of unsolicited application financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(2), it is making a discretionary financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(l) to the University of Kansas under Grant Number DE-FG01–91CE15511. The proposed grant will provide funding in the estimated amount of $95,000 for the University of Kansas to complete the development leading to commercialization of a highly promising new enhanced oil recovery technology that can more selectively block off non-producing channels in the oil-bearing strata, improving the ability to sweep oil toward the production zone, and thus cause more oil to be brought to the surface. The invention is a polymer that reversibly gels in an acidic environment or becomes soluble in water and that can be easily initiated and simply controlled by changing its acidity, i.e., its physical condition. It does not require chemically modifying the polymer, which is difficult to control and which competitive processes require, and would have particular application in enhanced oil recovery.

The Department of Energy has determined in accordance with 10 CFR 600.14(f) that the application submitted by the University of Kansas is meritorious based on the general evaluation required by 10 CFR 600.14(d) and that the proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current or planned soliciation. The University of Kansas, a licensor of Columbia Resources, Inc., is using a technique for which one patent has been issued, and another is pending for developing the process that would improve the yield in enhanced oil recovery. The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the funding program, the Energy-Related Inventions Program (ERIP) has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation. The proposed technology has the possibility of adding to the national energy resources. Secondary recovery, including water polymer flooding, accounts for about one-third of the domestic crude oil production, i.e., 10 bbl of oil per year. If applying the proposed polymer process causes only a 1 percent increased sweep efficiently, the domestic oil productioin would be increased by 10 bbl of oil per year.

The anticipated term of the proposed grant is eighteen months from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy Office of Placement and Administration ATTN: Phyllis P. Morgan, PR–322.2 1000 Independence Avenue, S.W. Washington, DC 20585.

Thomas S. Keefe,

Director, Operations Division "B", Office of Placement and Administration.

[FR Doc. 91–18294 Filed 7–31–91; 8:45 am]

BILLING CODE 6450-01-M

Notice of Proposed Power Rate; Opportunities for Public Review and Comment

AGENCY: Southwestern Power Administration (Southwestern), Department of Energy (DOE).

ACTION: Notice of Robert D. Willis Power Rate and opportunities for public review and comment.

SUMMARY: The Administrator, Southwestern, has prepared Current and Revised 1991 Power Repayment Studies for the Robert D. Willis project which show the need for increases in annual revenues to meet cost recovery criteria. These increased revenues are needed to cover increased annual expenses for marketing, additions to plant, major replacements and the operation and maintenance of the generating facilities. The amortized expenses incurred for the project's design and construction are not included in the Robert D. Willis cost recovery rate calculation because those project costs were financed in total by the project's sponsor, Sam Rayburn Municipal Power Agency (SRMPA). The Administrator has also developed a proposed rate schedule for the isolated Robert D. Willis project to recover the required revenues. The proposed rate for the Robert D. Willis project would increase annual revenues approximately 9.5 percent from $373,068 to $408,648 beginning October 1, 1991.

DATES: Written comments are due on or before September 3, 1991.

ADDRESSES: Ten copies of the written comments should be submitted to the Administrator, Southwestern Power Administration, U.S. Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Morin, Acting Director, Administration and Rates, Southwestern Power Administration, U.S. Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101, (918) 581–7439.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy was created by an Act of the U.S. Congress, Department of Energy Organization Act, Public Law 95–91, dated August 4, 1977, and Southwestern's power marketing activities were transferred from the Department of the Interior to the Department of Energy, effective October 1, 1977.

Southwestern markets power from 24 multiple-purpose reservoir projects with power facilities constructed and operated by the U.S. Army Corps of Engineers. These projects are located in the States of Arkansas, Missouri, Oklahoma and Texas. Southwestern's marketing area includes these states plus Kansas and Louisiana. Of the total, 22 projects comprise an Integrated System and are interconnected through Southwestern's transmission system and exchange agreements with other utilities. The Sam Rayburn Dam project, located in eastern Texas, is not interconnected with Southwestern's Integrated System hydraulically, electrically, or financially. Instead, the power produced by the Sam Rayburn Dam project is marketed by Southwestern as an isolated project under a contract through which the customer purchases the entire power output of the project at the dam. The Robert D. Willis project, located on the Neches River downstream from the Sam Rayburn Dam, consists of two 4,000 kW hydroelectric generating units. It, like the Sam Rayburn Dam project, is marketed as an isolated project under a contract through which the customer, SRMPA, receives the entire output of the project for a period of 50 years as a result of funding the construction of the hydroelectric facilities at the project. A separate power repayment study is prepared for each project which has a special rate based on its being

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hydraulically, electrically, or financially isolated operation.

Following Department of Energy Order Number RA 6120.2, the Administrator, Southwestern, prepared a current power repayment study for the Robert D. Willis project using the existing annual rate of $373,068. The study indicated that the legal requirements to repay the power investment with interest will not be met without additional revenue, primarily as a result of increased annual expenses experienced by the Corps of Engineers at the project. The Reviewed Power Repayment Study for the isolated Robert D. Willis project shows that an additional $35,580 (a 9.5 percent increase) annually is needed to satisfy repayment criteria. This increase would change annual revenues produced by the Robert D. Willis project from $373,068 to $408,648 and satisfy the present financial criteria for repayment of the project.

Opportunity is presented for customers and interested parties to receive copies of the studies and proposed rate schedule for the Robert D. Willis project. If you desire a copy of the Repayment Study Data Package for the Robert D. Willis project, please do not hesitate to submit your request to: Mr. Richard F. Morin, Acting Director, Administration and Rates, P.O. Box 1619, Tulsa, OK 74101, (918) 581–7439.

Following review of the written comments, the Administrator will submit the rate proposal and the Power Repayment Studies for the Robert D. Willis project, in support of the proposed rates, to the Deputy Secretary of Energy for confirmation and approval on an interim basis to the Federal Energy Regulatory Commission (FERC) for confirmation and approval on a final basis. The FERC will allow the public an opportunity to provide written comments on the proposed rate increases before making a final decision.

Issued in Tulsa, Oklahoma, this 24th day of July, 1991.

Charles A. Borchardt,

Acting Administrator, Southwestern Power Administration.

[FR Doc. 91–18161 Filed 7–31–91; 8:45 am]

BILLING CODE 6450–01–M

Bonneville Power Administration

Benton County Public Utility District, Point of Delivery at Prosser Substation; Notice of Proposed Floodplain Action

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of proposal by customer to construct a substation within the Yakima River floodplain in the City of Prosser, Benton County, Washington.

SUMMARY: To serve the expanding industrial loads in the west end of the City of Prosser, Washington, BPA is proposing to grant a new Point of Delivery (POD) at BPA's existing Prosser Substation in response to a request by Public Utility District No. 1 of Benton County (BCPUD). BCPUD is proposing to construct a 115-kV/12.5 kV, 25-MVA Substation in west Prosser and to connect that substation to BPA's Prosser Substation with a ¾-mile, 115-kV transmission line. BCPUD's proposed substation site is within the 100-year floodplain of the Yakima River..

FOR FURTHER INFORMATION CONTACT: John M. Taves, Environmental Coordinator for Engineering, Bonneville Power Administration, P.O. Box 3621-EFBG, Portland, Oregon 97208; telephone (503) 230–4995.

SUPPLEMENTARY INFORMATION: BCPUD is proposing to build the substation within the 100-year floodplain because there are only two qualified sites available close to the load to be served. It would be much more difficult to get transmission lines to the other site and it may contain hazardous waste from a former cement plant.

Impact to the floodplain can be avoided. BCPUD plans to shift existing soil, rather than add any new fill. BCPUD will construct an oil containment structure around the transformer.

BPA is preparing an Environmental Assessment (EA) to meet National Environmental Policy Act requirements. The EA will include BCPUD's (Washington) State Environmental Policy Act (SEPA) checklist and will be available for public review by August 9, 1991.

Issued in Portland, Oregon, on July 17, 1991.

Steve Hickok,

Acting Administrator, Bonneville Power Administration.

[FR Doc. 91–18296 Filed 7–31–91; 8:45 am]

BILLING CODE 6450–01–M

Record of Decision on a Contract To Effect a Joint Venture Among the Bonneville Power Administration and the Pacific Northwest Generating Company

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Record of decision (ROD).

SUMMARY: BPA has decided to enter into a new contract with the Pacific Northwest Generating Company (PNGC). The contract principally involves the transfer of power from a thermal resource, which because of its variable cost is likely to operate in any event, to a market outside of the region. This contract will be part of a joint venture power transaction in which BPA will be providing 52 megawatts (MW) of assured delivery over the Intertie to PNGC beginning on June 15, 1991, and ending on September 30, 1991, the first year, and from June 15 through August 31 in the remaining 3 years. The first year, PNGC will use this assured delivery to sell its share of the Boardman coal-fired generating plant to the Sacramento Municipal Utility District (SMUD). PNGC will have to secure other purchasers of this power for the remaining years of the contract. When the Intertie is being operated under Conditions 1 or 2, BPA can offer to PNGC and PNGC must accept energy in an amount equal to the amount PNGC is selling to a California utility. BPA will also continue deliveries to the California utility in the event of an outage at the Boardman plant for up to 4 hours. In the event PNGC finds a long-term (i.e., 20 years) purchaser of its share of the Boardman plant, PNGC can terminate the agreement by giving notice by January 15 of any year. At those times of year when PNGC is not provided with assured delivery under terms of this contract, PNGC's share of Boardman output will be purchased by BPA at rates beginning at 20 mills per kilowatt-hour and escalating to 22 mills per kilowatt-hour.

The potential environmental effects of this decision to participate in this joint venture and enter into these contracts are addressed in the Intertie Development and Use Final Environmental Impact Statement (IDU Final EIS, DOE/EIS–0125F). The IDU Final EIS analyzed the environmental effects of various extraregional firm marketing activities, such as the contract effecting this joint venture. The alternative actions considered in the EIS were: (1) To take no action, i.e., not to enter into firm contracts with extraregional entities or for joint ventures involving regional and extraregional utilities; and (2) to enter into a variety of firm contracts including joint ventures with features like those contained in the contracts with PNGC. In making this decision, full consideration was given to environmental, economic, and legal factors.

Except for potential effects on resident fish and cultural resources, the IDU analyses indicated no significant

adverse environmental impacts in the Pacific Northwest (PNW), California, Inland Southwest (ISW), or British Columbia as a result of BPA's proposal to participate in joint ventures for firm sales or exchanges outside the PNW. In consultation with the U.S. Fish and Wildlife Service and the State of Montana, BPA is funding imprint planting and habitat improvements on Hungry Horse Reservoir tributaries to preclude potential adverse impacts on resident fish, an important food source for bald eagles. To mitigate for potential adverse effects on cultural resources at the five major Federal storage reservoirs studied, BPA is developing a Programmatic Memorandum of Agreement (PMOA) with appropriate parties. This PMOA will fully satisfy BPA's National Historic Preservation Act obligations. All other consultation, review, and permit requirements have been met. All practicable means to avoid or minimize environmental harm from BPA's firm marketing activities identified in the IDU EIS have been, or are in the process of being, adopted.

The joint venture with PNGC has a net benefit to BPA of about $450,000 per year from wheeling revenues and being able to purchase energy for 2 to 5 mills per kilowatt-hour below the market value of Boardman power.

BPA's contract with PNGC is consistent with applicable legislation, including Public Law (Pub. L.) 88–552, 16 U.S.C. 837–837h (Northwest Preference Act), and the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839–839h (Northwest Power Act). It is also consistent with Contract No. DE–MS79–89BP92022 (Settlement Agreement) which settled litigation related to Intertie access by nonscheduling utilities.

Entering into the joint venture with PNGC is the environmentally preferred alternative because of slight near-term reductions in air pollution in densely populated areas in California, reduced near-term consumption of nonrenewable oil and gas fuels, and the added potential to defer building new resources in California.

FOR FURTHER INFORMATION CONTACT: Nanci Tester, Chief, Environmental Compliance Section—PGA, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208; telephone (503) 230–3078. For copies of documents mentioned in this notice (the IDU Draft and Final EISs), the Hydro Operations Information Paper, the Long-Term Intertie Access Policy (LTIAP) and its ROD, the DC (Direct Current) Terminal Expansion ROD, the Third AC (Alternating Current) ROD, the Southern California Edison ROD, and the M-S-R Public Power Agency (representing the cities of Modesto, Santa Clara and Redding, California ROD), you may contact BPA's Public Involvement office at 503–230–2378. Oregon callers may use 800–452–8429; caller in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800–547–6048.

SUPPLEMENTARY INFORMATION:

I. Major Features of the Contracts

Term. The contract will terminate on April 30, 1995, unless terminated earlier by PNGC. BPA will provide firm transmission over the Intertie to PNGC beginning on June 15, 1991, and ending on September 30, 1991 the first year, and from June 15 through August 31 in 1992, 1993, and 1994. BPA will purchase energy from PNGC from October 1, 1991 through April 30, 1992, the first year, and September 1, through April 30 in the remaining 3 years. PNGC can give BPA written notice by January 15 and this agreement will terminate April 30 of that year. If PNGC terminates the purchase the Intertie transmission also terminates.

Amount. The Intertie transmission demand is 52/MW. The share of Boardman being purchased by BPA is approximately the same amount.

Conditions. During the periods that BPA is providing Intertie transmission to PNGC and the Intertie is being operated under Conditions 1 or 2 as defined in BPA's LTIAP, BPA can offer to PNGC and PNGC must accept an amount of energy equal to the amount PNGC is selling to a California utility. BPA will also continue deliveries to the California utility for up to 4 hours in the event Boardman generation is forced off, and, at BPA's option, PNGC will purchase that energy at the standard rate or return the energy to BPA on the same hours 24 hours later.

Rate. The rate BPA initially will pay for purchasing energy from PNGC is 20 mills per kilowatt-hour. This rate escalates to 21 mills per kilowatt-hour in the third year and to 22 mills per kilowatt-hour in the fourth.

II. Decision

BPA has decided to sign a contract, as described above, with PNGC to effect a joint venture under which PNGC would deliver energy to California utilities (initially SMUD) using BPA's Intertie for part of the year, and BPA would purchase that energy for the remainder of the year.

III. Background

In the fall of 1984, BPA began preparing the IDU Draft EIS to address actions related to several power system proposals: (1) Adoption of a LTIAP; (2) potential export marketing arrangements; and (3) expansion of Intertie capacity. The IDU Draft EIS was issued on October 31, 1986. The need for the actions addressed by the IDU Draft EIS included managing the transfer of surplus power between the PNW and California (see IDU Draft EIS, p. 1–1). The joint venture BPA is participating in with PNGC is an export marketing arrangement of a type analyzed in the IDU Draft EIS.

The IDU Draft EIS used computer models to simulate the operation of the PNW combined thermal and hydropower system and the resulting potential impacts of fish, recreational resources, cultural resources, irrigation, air and water quality, land use, and nonrenewable resources. As a result of comments received during a 78-day public comment period, some changes were made in the models.

On November 13, 1987, BPA published the Hydro Operations Information Paper. This paper was based on an analysis of computer simulations produced by the revised, updated computer models. The paper included analyses of the effects of long-term extraregional firm marketing on anadromous and resident fish, recreational resources, and cultural resources. The results of these analyses were similar to the results shown in the IDU Draft EIS. Public review and further BPA analysis did not reveal any significant new information, so BPA completed its IDU Final EIS and filed it with the U.S. Environmental Protection Agency on April 8, 1988. A ROD on one of the proposed IDU Draft EIS actions, the adoption of a LTIAP, was signed by the Administrator on May 17, 1988.

IV. Alternatives

BPA considered two alternatives: (1) take no action—do not enter into such agreements as the contracts effecting the joint venture with PNGC; and (2) enter into contracts for marketing capacity in a manner which would effect joint ventures such as that with PNGC.

V. Decision Factors and Issues

In arriving at the decision to enter into the contract with PNGC, environmental, economic, and legal factors were considered.

A. Environmental Factors

In the IDU Final EIS, BPA analyzed how various extraregional long-term firm contract scenarios, including Federal marketing, could be expected to affect the quality of the human environment. The joint venture with

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IV. Alternatives

BPA considered two alternatives: (1) take no action—do not enter into such agreements as the contracts effecting the joint venture with PNGC; and (2) enter into contracts for marketing capacity in a manner which would effect joint ventures such as that with PNGC.

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In the IDU Final EIS, BPA analyzed how various extraregional long-term firm contract scenarios, including Federal marketing, could be expected to affect the quality of the human environment. The joint venture with

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PNGC represents only a small portion of the 3150 MW (capacity) of generic firm contracts analyzed in the EIS. Therefore, only a small portion of any environmental impacts from Federal marketing activities could be attributed to the joint venture. On the other hand, if BPA took no action, there would be no change in the environmental status quo in the Northwest. The Boardman plant is likely to operate in either event because of its competitive variable cost.

1. Impacts on Fish, Wildlife, and Vegetation Related to Operation of Pacific Northwest Hydroelectric Resources

Under the Northwest Power Act, BPA must protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, of the Columbia River and its tributaries. BPA must conduct its river operations in a manner that provides for equitble treatment for fish and wildlife. Firm extraregional marketing activities were found in general to have no significant effect on anadromous fish and vegetation. Potential adverse effects on resident fish, an important food source for bald eagles, at Hungry Horse Reservoir will be mitigated by imprint planting, habitat improvement, and monitoring.

Commenters on the IDU Draft EIS and Hydro Operations Information Paper stated that the potential for significant adverse effects on resident and anadromous fish, wildlife, and cultural resources from firm marketing activities was a major environmental concern. Some expressed concern that the methodology BPA used to analyze impacts on anadromous fish underpredicts, incorrectly predicts, or is too uncertain to predict these impacts.

BPA performed extensive analyses on how various firm marketing activities could affect fish. Results are reported in the IDU Final EIS. BPA believes that the System Analysis Model (SAM) and the FISHPASS model used for the IDU Final EIS constitute the best available methodology for analysis of impacts on anadromous fish caused by operation of the hydrosystem. Sensitivity analyses were performed to test the uncertainty of the model results with respect to key FISHPASS model parameters, bypass system assumptions, and key SAM assumptions. These analyses showed that, when used for a comparative analysis (i.e., when comparing fish survival under one alternative versus another), variations in the key assumptions tested made little difference. Therefore, much of the uncertainty of the FISHPASS model parameters is not critical to the study results for changes in survival associated with the alternatives addressed in the IDU Final EIS (see IDU Final EIS, pp. 4.2.3-23 through 4.2.3-32, and Appendix E, Part 6). The effects of firm marketing activities on anadromous fish survival were found to be small and are not expected to be significant provided planned fish passage improvements are made at the mid-Columbia Public Utility District (PUD) projects (see IDU Final EIS, pp. 4.2.3-35).

BPA's reliance on the accomplishment of planned fish passage improvements at Federal and public utility dams on the Columbia and Snake Rivers, to preclude potential significant impacts on anadromous fish, was an issue raised by several commenters in the IDU Draft EIS process. The potential effects of failure to install planned fish passage facilities were addressed in four sensitivity analyses (see IDU Final EIS, pp. 4.2.3-33 through 2.3-34). In the first, bypass installation was delayed 3 years beyond the dates assumed in BPA's principal analysis. In the second, planned new bypass systems at The Dalles and Ice Harbor Dams were assumed to be forgone. In the third, an assumption was made of no new planned bypass systems at The Dalles, Ice Harbor, and Lower Monumental Dams. The fourth sensitivity test assumed no additional new bypass systems and no improvements of existing systems at any of the dams.

The predicted effects of firm marketing activities under these various conditions were not significantly different from what was described in the IDU Final EIS. However, sensitivity analyses did indicate that failure to construct the planned mid-Columbia bypass facilities, in conjunction with firm marketing activities, could impact Methow River spring chinook (see IDU Final EIS, p. 4.2.3-35).

Since the Final EIS was prepared, bypass installation has been delayed beyond what was assumed in the IDU FEIS Base Case for Wanapum and Priest Rapids. Prototype testing of fish screens began April 1990, at Wanapum Dam. Construction of the bypass facility is scheduled to begin in 1992, and is expected to be completed at Wanapum in 1997. Screens may not be installed at Priest Rapids Dam pending a Federal Energy Regulatory Commission hearing which began in March 1991, and is currently in progress, to determine whether or not screens must be installed at Priest Rapids, or if transportation is acceptable for moving fish from Wanapum to below Priest Rapids Dam. If transportation around Priest Rapids is acceptable, it can begin as soon as screened units come on line at Wanapum. Otherwise, screens will still be installed at Priest Rapids but at a later time.

In addition, the installation of a bypass facility will not be feasible at the Rock Island second powerhouse. It should be noted that studies have shown the mortality of juvenile fish passing through the bulb turbines at Rock Island to be only 3 to 5 percent, compared to the estimated mortality of 15 percent at other dams. The impact to Methow River spring chinook from delayed installation of bypass at Wanapum and Priest Rapids is not quantifiable, but is thought to be very small, especially in view of the fact that prototype testing of screens at Priest Rapids, which is expected to be the same or better at Wanapum, has shown a fish guidance efficiency averaging 78 percent for yearling chinook.

Adult spring chinook returning to the Methow River are a mixture of fish from the Winthrop National Fish Hatchery and wild fish. The stocks have shown improvements in recent years with each years' run having about 600 returning adults. Although improvements are promising, Methow stocks, like many upriver stocks, are still considered depressed and unavailable for harvest. There has not been direct sport or Indian harvest of the Methow River spring chinook stocks. Columbia River sport, commercial, and Indian spring chinook fisheries are regulated to harvest minimum numbers of upriver stocks. Therefore, it is assumed that no significant numbers of Methow spring chinook are taken in any fishery. The Methow River wild stock is managed throughout its life-cycle as a potentially critical hatchery supplemented stock.

An analysis also was conducted to assess the impacts of firm marketing activities on the ability to coordinate fall and spring flow levels to facilitate successful adult spawning and fry emergence within the Hanford Reach. No significant effects were found (see IDU Final EIS, p. 4.2.3-41).

The Shoshone-Bannock Indian Tribes have petitioned the National Marine Fisheries Service (NMFS) to list Snake River sockeye salmon as a threatened or endangered species under the Endangered Species Act (ESA). Oregon Trout and others have also petitioned NMFS to list Snake River chinook and lower Columbia River coho salmon. NMFS has requested BPA to consider the status of Snake River sockeye salmon in each of the agency's actions that could affect the sockeye.

On April 2, 1991, NMFS announced its intent to propose the Snake River sockeye be listed as an endangered

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species. BPA is committed to working with others in the region to rebuild the salmon runs. BPA has developed a comprehensive action plan for actions it is willing to undertake in 1991, and is in the process of developing a long-term strategy.

BPA's stock assessment, in the IDU Final EIS, did not include Snake River sockeye salmon because they were not considered a viable population. However, the FISHPASS analyses did evaluate changes in relative survival of sockeye salmon entering Lower Granite pool. Firm marketing actions had no effect on Snake River sockeye salmon (see IDU Final EIS, Appendix E, part 5). BPA finds that NMFS' proposal is not a significant change in circumstances and does not constitute significant new information since the IDU FEIS was published. No supplement to the FEIS is necessary. NMFS' proposal to list the Snake River sockeye salmon as an endangered species does not change the conclusion drawn from the IDU FEIS that firm marketing actions would not affect the species. The proposed listing would not change any of the assumptions or data used in the analysis for the IDU FEIS, nor make the analytic methodology any less valid.

BPA also examined the impacts of firm marketing actions on Snake River spring, summer and fall chinook salmon, and coho salmon originating in the Bonneville pool. It was determined that firm marketing actions did not significantly impact these stocks.

BPA is working closely with NMFS to develop a comprehensive strategy. The work to date has been designed to fit within the NMFS schedule and to meet the needs of the Northwest's salmon and steelhead in as timely a fashion as possible.

With regard to resident fish production in PNW reservoirs, long-term firm power contracts, such as Federal marketing, do affect reservoir elevations. Elevations generally are lower in the fall and winter months. There are potential adverse impacts on resident fish in Hungry Horse Reservoir, where monthly average reservoir levels drop by as much as about 5 feet during the critical months of September through November (see IDU Final EIS, pp. 4.2.3-12 through 4.2.3-14). Mitigation to avoid these impacts is discussed later in this ROD.

Wildlife and vegetation around the reservoirs are not expected to be affected significantly, since changes in reservoir operations are expected to be small and are within reservoir operating constraints (see IDU Final EIS, p. 4.2.5-1). BPA completed informal consultation with the U.S. Fish and Wildlife Service on endangered and threatened species. BPA determined that firm marketing activities were not likely to adversely affect any threatened and endangered species. The U.S. Fish and Wildlife Service concurred with BPA's biological assessment.

2. Impacts on Water Quality and Fish in British Columbia

BPA found no adverse impacts on water quality and fish in British Columbia due to firm marketing activities. Anadromous fish do not exist in the Columbia or Peace River systems within British Columbia. Because firm marketing activities have only minor effects on reservoir levels and flows on the Peace River reservoirs and Columbia River reservoirs in British Columbia, impacts on resident fish are not expected to be significant (see IDU Final EIS, pp. 4.2.4-4 through 4.2.4-9).

3. Impacts on Irrigation

BPA found no adverse impacts on irrigation due to firm marketing activities. Levels of allowable irrigation withdrawals are determined by the States and are established water rights. Hydro operations planning is developed around flows that include authorized irrigation withdrawals. Therefore, firm marketing activities would not affect the amount of water available for irrigation (see IDU Final EIS, pp. 4.2.2-4 through 4.2.2-6).

4. Impacts on Recreation

No adverse impacts on recreation were found from firm marketing activities. Projected changes in reservoir levels associated with firm marketing are small, especially during the summer recreation season, and result in minimal recreation impacts at all the reservoirs studied. Changes in downstream flows also are projected to have no significant effects (see IDU Final EIS, p. 4.2.2-4).

5. Impacts on Cultural Resources

Changes in reservoir levels (within existing constraints) at hydroelectric projects might have effects on cultural resources in and around Federal storage reservoirs in the PNW. These reservoirs are Grand Coulee (Lake Roosevelt); Dworshak; Libby (Lake Koocanusa); Albeni Falls (Lake Pend Oreille); and Hungry Horse. Many cultural resource sites in the areas of potential effect already have been and continue to be affected by erosion and vandalism. Changes in reservoir elevations may change the rate of site erosion and may make sites more or less accessible to vandals.

Known properties on or eligible for the National Register of Historic Places on these reservoirs are the Middle Kootenai River Archeological District at Lake Koocanusa, Montana, and the Kettle Falls Archeological District and the Fort Spokane Historic District at Lake Roosevelt, Washington.

Information about the existence and significance of cultural resources within the area of potential effect is incomplete. It is possible that other potentially affected properties may be eligible for the National Register.

Analysis of the data in the IDU Final EIS indicates that increased erosion of cultural resource sites at Libby Reservoir could have been a potential problem with firm marketing activities in 1988, the earliest year studied. Analyses were conducted to address both wave erosion effects and effects on site accessibility for vandals and relic collectors. Libby will continue to be operated according to project constraints used in Coordination Agreement planning and constraints provided by the U.S. Army Corps of Engineers (Corps). The initiation of a Programmatic Agreement to mitigate potential impacts on cultural resources caused by firm marketing activities, as well as other power marketing activities analyzed in the IDU Final EIS, is discussed later in this ROD under Mitigation and Monitoring.

Other hydroelectric project reservoirs in the Federal Columbia River Power System are operated either as run-of-river or primarily for flood control and are generally independent of power marketing activities. Therefore, Federal marketing activities will not affect cultural resources at these projects (see IDU Final EIS, pp. 4.2.2–7 through 4.2.2–8, and 4.6–1 through 4.6–2).

6. Nonrenewable Resource Use and Land Use Impacts

No adverse impacts on nonrenewable resource use and land use were found from firm marketing activities. Differing levels of long-term firm contracts have negligible impacts on PNW coal generation. Hence, impacts on coal consumption and associated land disturbance also are negligible (see IDU Final EIS, p. 4.3.1–3).

Annual coal use in the ISW is projected to increase slightly with firm marketing (see IDU Final EIS, pp. 4.3.1–5 and 4.3.1–20). Gas and oil consumption in California is not significantly affected by firm marketing activities. During the early years, however, there is a slight reduction in consumption of gas and oil fuels (see IDU Final EIS, pp. 4.3.1–4 and 4.3.1–15).

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7. Air Quality and Solid Waste Impacts

No adverse impacts were found in the PNW, California, or the ISW. Air quality impacts related to power system operational effects of firm marketing activities were found to derive from changes in the operation of coal-fired power plants in the PNW and the ISW and changes in the operation of gas- and oil-fired generating plants in California. All projected ambient air quality changes due to firm marketing activities are small (see IDU Final EIS p. 4.3.2–13). In the early years, these changes do include small reductions in air pollution in densely populated air basins in California.

Solid waste impacts vary with changes in annual generation at coal-fired plants. Solid waste impacts from altering coal plant operations to accommodate firm marketing activities are not considered significant (see IDU Final EIS, p. 4.3.2–7 and appendix G).

8. Water Use and Quality Impacts of Thermal Plants

No adverse impacts on water use and water quality in the PNW, California, or the ISW were found. The only potentially significant problem areas identified were entrainment at the Pittsburg and Contra Costa thermal plants in California. It was not possible to determine quantitatively how firm marketing activities would affect these entrainment problems. However, since the average annual generation at these plants is reduced with firm marketing activities, it is unlikely that the entrainment would be made worse (see IDU Final EIS, pp. 4.3.3–8 through 4.3.3–13).

9. Impacts on Vegetation and Wildlife Related to Thermal Plant Operational Changes

No adverse impacts in the PNW, California, or the ISW were found from firm marketing activities. This is primarily because air quality, acid deposition, solid waste, and water consumption impacts of the coal-fired plants considered in the analysis are not significant. In addition, because of permit requirements, enforcement of compliance with permits, and the fact that effects on threatened and endangered species must be considered before permits are granted, firm marketing activities will not cause significant adverse effects to any threatened or endangered species (see IDU Final EIS, p 4.3.4–2).

Nuclear plant operations are not expected to be affected (see IDU Final EIS, p. 4.1–14). Therefore, firm marketing should not change the impacts on vegetation and wildlife from operation of nuclear plants.

10. Impacts Related to Development of New Power Resources

Firm marketing activities were found to have virtually no effect on the development of future PNW resources (see IDU Final EIS, p. 4.4–7). Joint ventures of the nature of that with PNGC may slightly delay the need for development of new resources in California.

11. Consultation, Review, and Permit Requirements

In addition to their responsibilities under the National Environmental Policy Act (NEPA), Federal agencies are required to carry out the provisions of other Federal environmental laws. The Federal government is required to take State and local government environmental and land-use laws and regulations into consideration when making its decisions (see IDU Final EIS pp. 4.6–1 through 4.6–3). Throughout preparation of the IDU Drafts EIS, the Hydro Operations Information Paper, IDU Final EIS, and the LTIAP, BPA worked closely with the Corps, the Bureau of Reclamation, the U.S. Fish and Wildlife Service, and the Columbia River Inter-Tribal Fish Commission to ensure that its responsibilities under NEPA and other appropriate laws and regulations were fulfilled.

B. Economic Factors

The joint venture with PNGC has a net benefit to BPA of about $450,000 per year. The benefit arises from wheeling revenues and ability to purchase Boardman power at 2 to 5 mills per kilowatt-hour below its normal market price.

C. Legal Factors

BPA's contract with PNGC is consistent with applicable legislation, including Public Law (Pub. L.) 88–552, 16 U.S.C. 837–837h (Northwest Preference Act), and the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839–839h (Northwest Power Act). It is also consistent with Contract No. DE–MS79–89BP92022 (Settlement Agreement) which settled litigation related to Intertie access by nonscheduling utilities.

VI. Environmentally Preferred Alternative

The environmentally preferred alternative is for BPA to enter into the proposed contract effecting the joint venture with PNGC. In the event a BPA deficit does occur and the resource is needed to serve BPA loads, deliveries of power would occur largely outside the periods most critical to fish passage on the Columbia and Snake River systems. However, the fact that, with the joint venture, a share of Boardman power is available to BPA for part of the year will make operating the FCRPS to meet the needs of fish easier rather than more difficult. There will be no significant adverse impacts from this action. Even with the delay of bypass facilities at Wanapum until 1997; the delay of, or possible substitution of transportation for, bypass facilities at Priest Rapids; and the infeasibility of bypass at Rock Island, significant adverse impacts on anadromous fish are not expected. Mitigation activities are being implemented for resident fish at Hungry Horse Reservoir to preclude significant adverse impacts on bald eagles which rely on the fish for food. And impacts on cultural resources at the five Federal storage projects from power generation in general will be mitigated through the conduct of critical resource surveys and, where indicated, excavation or preservation of artifacts. In addition, this alternative has some slight environmental benefits not achievable under the No-Action Alternative. These benefits are: (1) Small reductions in air pollution in densely populated air basins in California; (2) reduced consumption of nonrenewable gas and oil fuels in the early years; and (3) slight potential for additional deferral of the construction of new generating resources in California and their subsequent operation.

VII. Conclusion

Because the proposed joint venture is the environmentally preferred alternative, would achieve economic benefits for BPA and presumably others, and is consistent with statutory guidelines, BPA's decision is to enter into the previously described contract.

VIII. Environmental Mitigation and Monitoring

Several mitigation and monitoring actions are being adopted to preclude potential environmental impacts from this decision. These actions include programs to: (1) Survey resident fish populations at Hungry Horse Reservoir to assure that an adequate food supply is maintained for the bald eagles living in or passing through the area; and (2) survey and evaluate cultural resource sites surrounding Federal storage reservoirs on tributaries to the Snake and Columbia Rivers (Dworshak, Albeni Falls, Libby, and Hungry Horse) and on the mainstem Columbia (Lake Roosevelt, behind Grand Coulee Dam).

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BPA expects to preclude significant adverse impacts to resident fish at Hungry Horse Reservoir by undertaking measures to increase use of Hungry Horse tributaries by resident fish. BPA consulted with the U.S. Fish and Wildlife Service and the Montana Department of Fish, Wildlife, and Parks in developing these measures. Measures include funding for imprint planting of westslope cutthroat trout and mountain whitefish in four Hungry Horse Reservoir tributaries over a 5-year period. Also included is funding for offsite fish habitat improvements on Flathead River sloughs, including cleaning of spawning gravels and imprint planting of cutthroat trout, kokanee, and mountain whitefish (see IDU Final EIS, p. 4.2.3–13). If monitoring studies at Hungry Horse Reservoir indicate that significant adverse effects on resident fish are occurring as a result of Intertie actions, including Federal marketing activities, information from these monitoring studies will be used to develop and implement additional effective mitigation measures.

In order to mitigate for potential adverse effects on cultural resources at the Federal storage reservoirs, BPA has initiated procedures to develop a Programmatic Agreement with the Advisory Council on Historic Preservation; the Idaho, Montana, and Washington State Historic Preservation Officers; the Bureau of Reclamation; and the Corps. Also involved in developing the Programmatic Agreement are the Confederated Tribes of the Colville Reservation in Washington; the Spokane Tribe of the Spokane Reservation in Washington; the Kalispel Indian Community of the Kalispel Reservation in Washington; the Coeur D'Alene Tribe of the Coeur D'Alene Reservation in Idaho; the Nez Perce Tribe of Idaho; the Kootenai Tribe of Idaho; the Confederated Salish and Kootenai Tribes of the Flathead Reservation in Montana; the Blackfeet Tribe of the Blackfeet Indian Reservation of Montana; the Bureau of Indian Affairs; the U.S. Forest Service; and the National Park Service.

The Programmatic Agreement was initiated as mitigation for potential effects of firm marketing transactions. It will, however, satisfy BPA's responsibilities under section 106 of the National Historic Preservation Act (16 U.S.C. 470, *et seq.*) for all Federal actions taken with respect to operation of the five major Federal storage reservoirs mentioned above. Terms of the Agreement may include provisions for further identification and evaluation of potentially affected cultural resources.

The Programmatic Agreement also is being designed to ensure consistency with the American Indian Religious Freedom Act (42 U.S.C. 1996). It provides for BPA participation in the relocation of Native American burials when such sites are discovered through the resource survey and evaluation that will occur as part of the Agreement.

Issued in Portland, Oregon, on May 21, 1991.

Edward W. Sienkiewicz,

Senior Assistant Administrator.

[FR Doc. 91–18297 Filed 7–31–91; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Information Collections Under Review

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents

DATES: Comments must be filed on or before September 3, 1991. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below).

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 586–2171.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Assistant Secretary for Fossil Energy.
2. FE–781R.
3. 1901–0296.
4. Annual Report of International Electrical Export/Import Data.
5. Extension.
6. Annually.
7. Mandatory.
8. Businesses or other for profit.
9. 36 respondents.
10. 1 response.
11. 10 hours per response.
12. 360 hours.
13. FE–781R collects electrical import/export data from entities authorized to export electric energy, to construct, connect, operate, or maintain facilities for the transmission of electric energy at an international boundary as required by 10 CFR 205.308 and 205.325. The data are also used by EIA for publications. Holders of Presidential Permits are required to report.

Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. § 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, July 25, 1991.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 91–18160 Filed 7–31–91; 8:45 am]

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Issued in Washington, DC, July 25, 1991.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 91-18160 Filed 7-31-91; 8:45 am]

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Federal Energy Regulatory Commission

[Docket Nos. QF91-138-000, et al.]

Hadson Power Partners of Rensselaer, et al.; Electric rate, Small power production, and Interlocking Directorate filings

Take notice that the following filings have been made with the Commission:

1. Hadson Power Partners of Rensselaer

[Docket No. QF91-138-000]

July 22, 1991.

On July 17, 1991, Hadson Power Partners of Rensselaer tendered for filing an amendment to its filing in this docket.

The amendment clarifies certain aspects of the ownership organizational structure of the facility and the uses of steam provided to BASF Corporation.

Comment date: August 22, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Arkansas Power & Light Company

[Docket No. ER91-548-000]

July 23, 1991.

Take notice that Arkansas Power & Light Company (AP&L) filed on July 22, 1991, proposed Agreements for Wholesale Power Service ("Agreements") between AP&L and the City of Benton, Arkansas, the city of Prescott, Arkansas and Farmers Electric Cooperative Corporation ("Customers"). The proposed Agreements supersede and replace existing Agreement for the Customers' power requirements. The proposed Agreements reduce the rates that would have become effective under the existing Agreements and extend the term for service until December 31, 2000.

The proposed Agreements will effect a savings for the Customers.

Comment date: August 8, 1991 in accordance with Standard Paragraph E at the end of this notice.

3. Interstate Power Company

[Docket No. ES91-43-000]

July 23, 1991.

Take notice that on July 18, 1991, Interstate Power Company filed an application with the Federal Energy Regulatory Commission pursuant to section 204 of the Federal Power Act seeking authorization to issue not more than $50 million of fixed rate debt and for exemption from the Commission's competitive bidding requirements.

Comment date: August 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. Montaup Electric Company

[Docket No. ER91-301-000]

July 23, 1991.

Take notice that on June 28, 1991, Montaup Electric Company (Montaup) tendered for filing an amendment in the above-reference docket in response to staff's May 1, 1991 letter requesting additional information.

Comment date: August 5, 1991, in accordance with Standard Paragraph E end of this notice.

5. Philadelphia Electric Company Pennsylvania Power & Light Company

[Docket No. ER91-544-000]

July 23, 1991.

Take notice that on July 17, 1991, Philadelphia Electric Company (PE) on behalf of itself and Pennsylvania Power & Light Company (PL) tendered for filing as an initial rate under section 205 of the Federal Power Act and part 35 of the regulations issued thereunder, an Agreement between PE and PL dated July 8, 1991.

PE states that the Agreement sets forth the terms and conditions for the sale of import capability which each party expects to have available for sale from time to time and the purchase of which will be economically advantageous to the other party. The rates for these services are negotiated but will not exceed $5.50 per MWH. In order to optimize the economic advantages to both PE and PL, PE requests that the Commission waive its customary notice period and allow this Agreement to become effective on July 22, 1991.

PE states that a copy of this filing has been sent to PL and will be furnished to the Pennsylvania Public Utility Commission.

Comment date: August 6, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. Michigan Power Company

[Docket No. ER90-297-001]

July 23, 1991.

Take notice that on July 17, 1991, Michigan Power Company (Michigan Power) tendered for filing proposed changes to its tariff MRS for service to the City of Dowagiac, Michigan (Dowagiac) and the Village of Paw Paw, Michigan (Paw Paw).

The purpose of the rate filing is to pass through to Michigan Power's wholesale customers, in accordance with a settlement agreement approved by the Commission in this Docket on November 2, 1990, a decrease in the cost of power purchased by Michigan Power from its wholesale supplier, Indiana Michigan Power Company, resulting from a final order in Docket No. ER90-269-000. Michigan Power requests an effective date of October 21, 1990.

A copy of Michigan Power's filing was served upon Dowagiac, Paw Paw and the Michigan Public Service Commission.

Comment date: August 6, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. Allegheny Electric Cooperative, Inc. v. Niagara Mohawk Power Corporation

[Docket No. EL91-44-000]

July 23, 1991.

Take notice that on July 2, 1991, Allegheny Electric Cooperative, Inc. (Allegheny) tendered for filing a complaint and request for establishment of refund effective date against Niagara Mohawk Power Corporation (NiMo). Allegheny states that its complaint relates to transmission service rendered by NiMo pursuant to NiMo's Rate Schedule No. 138. Allegheny asserts that the rates currently charged by NiMo under Rate Schedule No. 138 are excessive and unduly discriminatory.

Comment date: August 22, 1991, in accordance with Standard Paragraph E at the end of this notice.

8. Niagara Mohawk Power Corporation

[Docket No. ER91-546-000]

July 23, 1991.

Take notice that Niagara Mohawk Power Corporation (Niagara Mohawk) on July 18, 1991, tendered for filing an agreement between Niagara Mohawk and Rochester Gas and Electric Corporation ("RGE") dated May 28, 1991, providing for certain transmission services to RGE. This agreement, Rate Schedule No. supersedes Niagara Mohawk FERC Rate Schedule Nos. 76, 92, 114 and 120.

The May 28, 1991 agreement, provides for the addition of the new service of the transmission and delivery to RGE of energy generated at the Nine Mile Point Unit #2 plant ("Nine Mile #2") and for a change in the rate charged RGE for the transmission and delivery to RGE of certain power and energy generated at the Nine Mile #2 plant and at the New York Power Authority's ("NYPA") Fitzpatrick plant and from NYPA's Blenheim-Gilboa Project and from RGE's share of Oswego Unit #6 and for the delivery of diversity power and energy from NYPA. RGE has consented to these changes.

Effective dates of August 1, 1987 (for the commencement of transmission and delivery of Nine Mile #2 energy) and April 1, 987 (for the change in rates) are proposed. Niagara Mohawk states that waiver of the notice requirements of 18 CFR 35.3 is warranted because RGE, the only customer under this Rate Schedule, has requested the additional service and has consented to the effective dates.

Copies of this filing were served upon RGE and the New York State Public Service Commission.

Comment date: August 8, 1991, in accordance with Standard Paragraph E at the end of this notice.

9. Public Service Company of Oklahoma

[Docket No. ER91-454-000]

July 23, 1991.

Take notice that on July 17, 1991, Public Service Company of Oklahoma ("PSO") tendered for filing a Contract for Electric Service, dated January 21, 1991, between PSO and South Coffeyville Public Works Authority ("Authority"). The Contract will supersede the present full-requirements wholesale service contract between PSO and Authority. The Contract provides for a five-year term and thereby qualifies Authority for PSO's lowest rates for full-requirements service.

PSO seeks an effective date of January 21, 1991 and, accordingly, seeks waiver of the Commission's notice requirements. Copies of the filing were upon Authority and the Oklahoma Corporation Commission.

Comment date: August 8, 1991, in accordance with Standard Paragraph E at the end of this notice.

10. PacifiCorp Electric Corporation

[Docket No. ER91-494-000]

July 23, 1991.

Take notice that on July 19, 1991, Pacific Electric Operations ("PacifiCorp"), tendered for filing an amendment to its filing for Supplement No. 2 dated April 18, 1990 to the May 17, 1962 Contract for Interconnections and Transmission Service, Contract No. 14-06-400-2436, as amended, between Western Area Power Administration ("Western") and PacifiCorp and currently before the Commission under FERC Docket No. ER91-494-000.

Copies of this filing amendment have been supplied to Western, the Public Utility Commission of Oregon and the Utah Public Service Commission.

Comment date: August 8, 1991, in accordance with Standard Paragraph E at the end of this notice.

11. Central Illinois Public Service Company

[Docket No. ER91-547-000]

July 23, 1991.

Take notice that on July 9, 1991, Central Illinois Public Service Company (CIPS) tendered for filing a "Supplemental Agreement for the Purchase of Power by Norris Electric Cooperative from Central Illinois Public Service Company," dated July 10, 1991, and Seventh Revised Schedule A, Points of Delivery, to the underlying supply agreement between CIPS and Norris Electric Cooperative ("Norris"). CIPS provides Norris full-requirements service under a long-standing supply agreement. The Supplemental Agreement provides for an additional delivery point for Norris to contract for unused capacity at the CIPS distribution substation serving the Robinson Correctional Center.

CIPS requests an effective date of July 10, 1991, and, accordingly, seeks waiver of the Commission's notice requirements. Copies of the filing were served upon Norris and the Illinois Commerce Commission.

Comment date: August 8, 1991, in accordance with Standard Paragraph E at the end of this notice.

12. Arkansas Power & Light Company

[Docket No. ER91-331-000

July 23, 1991.

Take notice that on July 16, 1991, Arkansas Power & Light Company (AP&L) tendered for filing an Amendment to the Agreement for Wholesale Power Service between Arkansas Power & Light Company and Union Electric Company. The Amendment corrects a technical error contained in the formula rates in the original filing. All aspects of the Agreement remain unchanged.

Comment date: August 6, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D.Cashell,

Secretary.

[FR Doc. 91-18203 Filed 7-31-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-2535-000, et al.]

Florida Gas Transmission Company, et al.; Natural Gas Certificate Filings

July 25, 1991.

Take notice that the following filings have been made with the Commission:

1. Florida Gas Transmission Co.

[Docket No. CP91-2535-000]

Take notice that on July 19, 1991, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP91-2535-000 a request pursuant to §§ 157.205, 157.211 and 157.223 of the Commission's Regulations for authorization to: (1) To transport natural gas on behalf of Hardee Power Partners Limited (HPP) under tow rate Schedule ITS-1 service agreements pursuant to FGT's part 284 blanket certificate issued in Docket No. CP89-555-000, and (2) construct and operate a new meter station and appurtenant facilities to deliver gas pursuant to FGT's blanket authority granted in Docket No. CP82-553-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

FGT states that the proposed delivery point to be located in Polk County, Florida, would accommodate the deliveries of 54,000 MMBtu on a peak day to HPP, 45,0000 MMBtu on an average day and 16,425,000 MMBtu annually. It is also stated that HPP would reimburse FGT for all costs of these facilities, estimated to be $726,500.

Comment date: September 9, 1991, in accordance with Standard Paragraph G at the end of this notice.

2. Air Products and Chemicals, Inc.

[Docket No. CP91-2527-000]

Take notice that on July 18, 1991, Air Products and Chemicals, Inc. (Air Products), 7201 Hamilton Boulevard, Allentown, Pennsylvania 18195, filed in Docket No. CP91-2527-000 pursuant to § 385.207 of the Commission's Rules of Practice and Procedure a petition for declaratory order disclaiming jurisdiction over certain proposed refrigerated liquid methane (RLM) that would be used to process natural gas into fuel for railroad locomotives, all as

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Lois D.Cashell,

Secretary.

[FR Doc. 91-18203 Filed 7-31-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-2535-000, et al.]

Florida Gas Transmission Company, et al.; Natural Gas Certificate Filings

July 25, 1991.

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1. Florida Gas Transmission Co.

[Docket No. CP91-2535-000]

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FGT states that the proposed delivery point to be located in Polk County, Florida, would accommodate the deliveries of 54,000 MMBtu on a peak day to HPP, 45,0000 MMBtu on an average day and 16,425,000 MMBtu annually. It is also stated that HPP would reimburse FGT for all costs of these facilities, estimated to be $726,500.

Comment date: September 9, 1991, in accordance with Standard Paragraph G at the end of this notice.

2. Air Products and Chemicals, Inc.

[Docket No. CP91-2527-000]

Take notice that on July 18, 1991, Air Products and Chemicals, Inc. (Air Products), 7201 Hamilton Boulevard, Allentown, Pennsylvania 18195, filed in Docket No. CP91-2527-000 pursuant to § 385.207 of the Commission's Rules of Practice and Procedure a petition for declaratory order disclaiming jurisdiction over certain proposed refrigerated liquid methane (RLM) that would be used to process natural gas into fuel for railroad locomotives, all as

more fully set forth in the petition which is on file with the Commission and open to public inspection.

Air Products states that, together with the Burlington Northern Railroad, Air Products has undertaken the development of technology whereby natural gas would be liquefied, the RLM would be stored, and then injected into tender cars for use as locomotive fuel. Air Products states that it expects to build, own and operate six to eight RLM plants to provide fuel for long-haul trains that carry coal eastward from Wyoming and Montana. It is indicated that the average plant would liquefy approximately 20,000 Mcf of natural gas per day and have a storage capability of one to three days' production. It is stated that the gas would be delivered to the facilities by interstate pipelines or local distribution companies. Air Products states that it expects to begin construction of the liquefaction plants in 1992.

Comment date: August 12, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Arkla Energy Resources, a division of Arkla, Inc.

[Docket No. CP91-2548-000]

Take notice that on July 22, 1991, Arkla Energy Resources (AER), a division of Arkla, Inc. (Arkla), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP91-2548-000 a request pursuant to §§ 157.205, 157.211 and 157.212 of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate sales taps and related facilities in Oklahoma, under Arkla's blanket certificate issued in Docket No. CP82-384-000, as amended, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Arkla requests authorization to construct and operate three sales taps for delivery of natural gas to Arkansas Louisiana Gas Company, also a division of Arkla, Inc., for resale to three residential customers in Grady, Seminole and Custer Counties, Oklahoma. Arkla states that the additional taps would have no significant impact on its peak day and annual deliveries.

Comment date: September 9, 1991, in accordance with Standard Paragraph G at the end of this notice.

4. Williams Natural Gas Co.

[Docket No. CP91-2523-000]

Take notice that on July 18, 1991, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma, 74101, filed in Docket No. CP91-2523 an application pursuant to section 7(b) of the Natural Gas Act (NGA) for authority to abandon its Rate Schedule IRG, a sales service rate schedule, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

WNG states that the requested authorization is appropriate because Southern Union Gas Company, Peoples Natural Gas Company and Consolidated Utilities Company, the only customers under Rate Schedule IRG, have terminated their service agreements and no longer require service under that rate schedule. It is explained that these customers have executed new sales service agreements with WNG and that future gas sales to them will be made under WNG's new sales Rate Schedule PR(A).

Comment date: August 15, 1991, in accordance with Standard Paragraph F at the end of this notice.

5. Williston Basin Pipeline Co.; Sea Robin Pipeline Co., et al.

[Docket Nos. CP91-2477-000,[1] CP91-2478-000, CP91-2479-000, CP91-2481-000.]

Take notice that the above referenced companies (Applicants) filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: September 9, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (Date filed)	Applicant	Shipper name	Peak Day,[1] avg, annual	Points of[2]		Start up date, rate schedule	Related[3] dockets
				Receipt	Delivery		
CP91-2477-000 (7-15-91)	Williston Basin Interstate Pipeline Company, suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501.	Rainbow Gas company.		0 0 0		ND, MT, WY, SD	04-04-91, IT-'
CP91-2478-000 (7-15-91)	Williston Basin Interstate Pipeline Company, suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501.	North Canadian Resources.		0 0 0		ND, MT, WY, SD	03-27-91, IT-1

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[1] These prior notices requests are not consolidated.

Docket No. (Date filed)	Applicant	Shipper name	Peak Day,[1] avg, annual	Points of[2]		Start up date, rate schedule	Related[3] dockets
				Receipt	Delivery		
CP91-2479-000 (7-15-91)	Sea Robin Pipeline Company, P.O. Box 2563, Birmingham, Alabama.	Amerada Hess Corporation.	10,000 10,000 3,650,000	OLA	LA	06-01-91, ITS	ST91-9456-000, CP88-824-000.

[1] No quantities are shown for Williston since the requests are for additional delivery points only. Quantities are shown in Mcf for Sea Robin.
[2] Offshore Louisiana is shown as OLA.
[3] The CP and RP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

Docket No. (date filed)	Applicant	Shipper name	Peak day,[4] avg, annual	Points of[5]		Start up date, rate schedule	Related[6] dockets
				receipt	delivery		
CP91-2481-000 (7-15-91)	Sea Robin Pipeline Company, P.O. Box 2563, Birmingham, Alabama 35202-2563.	Citrus Marketing, Inc..	60,000 60,000 21,900,000	OLA	LA	05-28-91, ITS	ST91-9455-000, RP88-824-000.

[4] No quantities are shown for Williston since the requests are for additional delivery points only. Quantities are shown in Mcf for Sea Robin.
[5] Offshore Louisiana is shown as OLA.
[6] The CP and RP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

6. Transcontinental Gas Pipe Line Corp.

[Docket Nos. CP91-2529-000[2] et al]

Take notice that on July 19, 1991, Applicants filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

Applicants state that each of the proposed services would be provided under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: September 9, 1991, in accordance with Standard Paragraph G at the end of this notice.

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[2] These prior notice requests are not consolidated.

Docket No. (date filed).	Applicant	Shipper name	Peak day,[1] avg. annual	Points of[2]		Start up date rate schedule	Related[3] dockets
				Receipt	Delivery		
CP91-2529-000 (7-19-91)	Transcontinental Gas Pipe Line Corporation P.O. Box 1396 Houston, TX 77251.	Texas-Ohio Gas, Inc.	30,000Dt 30,000Dt 10,950,000Dt	LA, MD, MS, NJ, PA, OLA, OTX.	NJ, PA	6-1-91, IT	CP88-328-000, ST91-9200-000.
CP91-2530-000 (7-19-91)	Transcontinental Gas Pipe Line Corporation.	Energy Marketing Exchange, Inc.	150,000Dt 50,000Dt 18,250,000Dt	LA, MS, NJ, PA, TX, OLA, OTX.	NY	6-4-91, IT	CP88-328-000, ST91-9343-000.
CP91-2531-000 (7-19-91)	Transcontinental Gas Pipe Line Corporation.	Power Authority of the State of New York.	400,000Dt 200,000Dt 73,000,000Dt	LA, MS, PA, TX, OLA, OTX.	NY	6-7-91, IT	CP88-328-000, ST91-9201-000.
CP91-2532-000 (7-19-91)	United Gas Pipe Line Company P.O. Box 1478 Houston, TX 77251-1478.	Texas School Land Board.	1,030 1,030 375,950	TX	TX	6-26-91, ITS	CP88-6-000, ST91-9465-000.
CP91-2533-000 (7-19-91)	United Gas Pipe Line Company.	Pennzoil Gas Marketing Company.	206,000 206,000 24,720,000	LA, MS, TX, OLA, OTX.	AL, FL, LA, MS, TX, OLA.	6-19-91, ITS	CP88-6-000, ST91-9385-000.

[1] Quantities are shown in MMBtu unless otherwise noted.
[2] Offshore Louisiana and Offshore Texas are shown as OLA and OTX.
[3] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

Points of [3]		Start up date, rate schedule	Related [3] dockets
Receipt	Delivery		
LA	LA	06-01-91, ITS	ST91-9456-000, CP88-824-000.

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Points of [3]		Start up date, rate schedule	Related [3] dockets
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LA	LA	05-28-91, ITS	ST91-9455-000, RP88-824-000.

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Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

Applicants state that each of the proposed services would be provided under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: September 9, 1991, in accordance with Standard Paragraph G at the end of this notice.

Points of [3]		Start up date rate schedule	Related [3] dockets
Receipt	Delivery		
A, MD, MS, NJ, PA, OLA, OTX.	NJ, PA	6-1-91, IT	CP88-328-000, ST91-9200-000.
A, MS, NJ, PA, TX, OLA, OTX.	NY	6-4-91, IT	CP88-328-000, ST91-9343-000.
A, MS, PA, TX, OLA, OTX.	NY	6-7-91, IT	CP88-328-000, ST91-9201-000.
X	TX	6-26-91, ITS	CP88-6-000, ST91-9465-000.
A, MS, TX, OLA, OTX.	AL, FL, LA, MS, TX, OLA.	6-19-91, ITS	CP88-6-000, ST91-9385-000.

te. If an ST docket is shown, 120-day transportation service was reported in it.

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7. Northern Natural Gas Co., Natural Gas Pipeline Co. of America et al.

[Docket No. CP91-2543-000, CP91-2544-000, CP91-2545-000]

Take notice that on July 22, 1991, Northern Natural Gas Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, and Natural Gas Pipeline Company of America, 701 East 22nd Street, Lombard, Illinois 60148, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§-157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued in Docket No. CP86-435-000 and Docket No. CP86-582-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: September 9, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2543-000 (7-22-91)	Centran Corporation (Marketer).	50,000 37,500 18,250,000	Various	Various	6-28-91, IT-1, Interruptible.	ST91-9538-000, 6-25-91.
CP91-2544-000 (7-22-91)	CNG Producing Company (Producer).	2,000 1,500 547,500	OLA	OLA	5-13-91, ITS, Interruptible.	ST91-9003-000, 5-17-91.
CP91-2545-000 (7-22-91)	CNG Producing Company (Producer).	20,000 10,000 3,650,000	OLA	OLA	11-7-90, ITS Interruptible.	ST91-9004-000, 5-17-91.

[1] Offshore Louisiana is shown as OLA.

8. Northwest Pipeline Corp., Panhandle Eastern Pipe Line Co., Tennessee Gas Pipeline Co., Williston Basin Interstate Pipeline Co., Mississippi River Transmission Corp.

[Docket Nos. CP91-2549-000, CP91-2558-000, CP91-2559-000, CP91-2560-000, CP91-2561-000, CP91-2563-000, CP91-2564-000.]

Take notice that Applicants filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued to Applicants all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix A. Applicant's addresses and transportation blanket certificates are shown in the attached appendix B.

Comment date: September 9, 1991, in accordance with Standard Paragraph G at the end of the notice.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Dth	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2549-000 (7-22-91)	John Brown E&C Inc. (End-user).	8,000 3,300 [1] 1,205,000	CO	CO	6-1-91, TI-1, Interruptible.	ST91-9575-000.
CP91-2558-000 (7-23-91)	Amgas, Inc. (Marketer)	20 10 3,650	Various	IL	5-22-91, PT, Interruptible.	ST91-9093-000.
CP91-2559-000 (7-22-91)	Meridian Oil Inc. (Producer).	250,000 250,000 91,250,000	AL	Various	6-6-91, IT, Interruptible.	ST91-9376-000.
CP91-2560-000 (7-23-91)	North Canadian Resources, Inc.	106,382 0 38,829,430	ND, MT, WY, SD	ND, MT, WY, SD	6-10-91, IT-1, Interruptible.	ST91-9482-000.
CP91-2561-000 (7-23-91)	Prairielands Energy Marketing, Inc. (Marketer).	7,004 7,004 2,556,460	ND, MT, WY	ND, MT, WY, SD	6-4-91, IT-1, Interruptible.	ST91-9463-000.
CP91-2563-000 (7-23-91)	Excel Gas Marketing, Inc.[1]	50,000 50,000 [2] 18,500,000	AR, LA, TX, IL, OK	LA	6-1-91, ITS, Interruptible.	ST91-9366-000.

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[3] These prior notice requests are not consolidated.

[4] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Dth	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2564-000 (7-23-91)	Shell Oil Company	10,000 10,000 3,650,000	AR, LA, TX, IL, OK	IL	6-1-91, FTS, Firm	ST91-9364-000.

[1] Northwest's quantities are in MMBtu.

[2] MRT's quantities are in MMBtu.

Applicant's address	Blanket docket
Mississippi River Transmission Corporation, 9900 Clayton Road, St. Louis, Missouri 63124.	CP89-1121-000
Northwest Pipeline Corporation, 295 Chipeta Way, Salt Lake City, Utah 84108.	CP86-578-000
Panhandle Eastern Pipe Line Company, P.O. Box 1642, Houston, Texas 77251-1642.	CP86-585-000
Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77252.	CP87-115-000
Williston Basin Interstate Pipeline company, suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501.	CP89-1118-000

9. Texas Gas Transmission Corp.

[Docket No. CP88-686-004]

Take notice that on July 22, 1991, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP88-686-004 pursuant to section 7(c) of the Natural Gas Act a petition to amend the order of September 15, 1988, 44 FERC 62,265, issuing to Texas Gas a blanket certificate of public convenience and necessity for certain transportation of natural gas pursuant to order Nos. 436 and 500. Texas Gas states that the amendment requested herein would authorize the use of certain firm capacity rights on upstream pipelines to render firm and interruptible transportation on behalf of third parties when such capacity is not required by Texas Gas for its system supply and the refunctionalization of certain offshore gathering facilities to transmission, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

On July 22, 1991, Texas Gas filed an "Offer of Settlement" in docket Nos. RP90-104-000, et al., RP88-115-000, et al., RP90-192-000, et al. and CP88-686-004. Texas Gas proposes in Article IX of the "Offer of Settlement" to use the firm transportation rights set forth below to render firm and interruptible transportation on behalf of third parties when such capacity is not required by Texas Gas for its system supply.

Upstream pipline	Rate schedule	Capacity
ANR	X-11	183,000 Mcf/d
ANR	X-63	196,640 Mcf/d
ANR	X-153	75,000 Mcf/d
HIOS	T-3	182,500 Mcf/d
HIOS	T-17	8,000 Mcf/d
Texas Eastern	FT	80,000 Mcf/d

Texas Gas states that such capacity shall be allocated in accordance with section 10.2 of the General Terms and Conditions of Volume 2-A of Texas Gas' FERC Gas Tariff (such capacity will not be available under firm point-to-point transportation agreements). Texas Gas states that customers shall pay the applicable Texas Gas FT or IT transportation rate.

Texas Gas requests in article VIII of the "Offer of Settlement" authority to refunctionalize certain offshore gathering facilities with a remaining original cost of $1,338,643 to the offshore transmission function under its blanket certificate issued in Docket No. CP82-407-000 pursuant to Section 157.208(a) of the Commission's Regulations, and to operate the refunctionalized facilities.

Comment date: August 12, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

10. Texas Gas Transmission Corp.

[Docket No. CP91-2546-000]

Take notice that on July 22, 1991, Texas Gas Transmission Corporation (Texas Gas) P.O. Box 1160, Owensboro, Kentucky 42309, filed in Docket No CP91-2546-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add a new delivery point to Peoples Gas and Power, Inc. (Peoples) in Greene County, Indiana, under Texas Gas' blanket certificate issued in Docket No. CP82-407-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas states that it currently makes natural gas sales to Peoples pursuant to a service agreement dated November 1, 1990. Texas Gas states further that the proposed new delivery point would enable Peoples to render natural gas service to approximately 300 new residential customers and one (1) new commercial customer located along Indiana State Road No. 54.

It is said that the annual maximum quantity of natural gas to be delivered to the proposed new delivery point would be an estimated 37,000 MMBtu, with an estimated maximum daily delivery of 450 MMBtu. It is further said that the addition of the new delivery point would not result in an increase in Peoples' current daily contract demand.

Comment date: September 9, 1991, in accordance with Standard Paragraph G at the end of this notice.

11. Texas Gas Transmission Corp.

[Docket No. CP91-2547-000]

Take notice that on July 22, 1991, Texas Gas Transmission Corporation (Texas Gas) P.O. Box 1160, Owensboro, Kentucky 42309, filed in Docket No. CP91-2547-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add a new delivery point to Western Kentucky Gas Company (WKG) in Hopkins County, Kentucky, under Texas Gas' blanket certificate issued in Docket No. CP82-407-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas states that it currently makes natural gas sales to WKG pursuant to a service agreement dated August 1, 1990. Texas Gas states further that the proposed new delivery point would enable WKG to render natural gas service to four (4) new residential customers in the Otter Lake Loop residential area.

It is said that the annual maximum quantity of natural gas to be delivered to the proposed new delivery point would be an estimated 520 MMBtu, with an estimated maximum daily delivery of 4 MMBtu. It is further said that the addition of the new delivery point would not result in an increase in WKG's current daily contract demand.

Comment date: September 9, 1991, in accordance with Standard Paragraph G at the end of this notice.

oints	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
, OK	IL	6-1-91, FTS, Firm	ST91-9364-000.

ate edule	Capacity
1	183,000 Mcf/d
3	196,640 Mcf/d
53	75,000 Mcf/d
	182,500 Mcf/d
7	8,000 Mcf/d
	80,000 Mcf/d

at such capacity
accordance with
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Docket No. CP82–
Section 157.208(a) of
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July 22, 1991,
sion Corporation
1160, Owensboro,
in Docket No
uest pursuant to
nission's
e Natural Gas Act
uthorization to add
to Peoples Gas and
in Greene County,
Gas' blanket
Docket No. CP82–
ection 7 of the
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which is on file with
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osed new delivery

point would enable Peoples to render natural gas service to approximately 300 new residential customers and one (1) new commercial customer located along Indiana State Road No. 54.

It is said that the annual maximum quantity of natural gas to be delivered to the proposed new delivery point would be an estimated 37,000 MMBtu, with an estimated maximum daily delivery of 450 MMBtu. It is further said that the addition of the new delivery point would not result in an increase in Peoples' current daily contract demand.

Comment date: September 9, 1991, in accordance with Standard Paragraph G at the end of this notice.

11. Texas Gas Transmission Corp.

[Docket No. CP91–2547–000]

Take notice that on July 22, 1991, Texas Gas Transmission Corporation (Texas Gas) P.O. Box 1160, Owensboro, Kentucky 42309, filed in Docket No. CP91–2547–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add a new delivery point to Western Kentucky Gas Company (WKG) in Hopkins County, Kentucky, under Texas Gas' blanket certificate issued in Docket No. CP82–407–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas states that it currently makes natural gas sales to WKG pursuant to a service agreement dated August 1, 1990. Texas Gas states further that the proposed new delivery point would enable WKG to render natural gas service to four (4) new residential customers in the Otter Lake Loop residential area.

It is said that the annual maximum quantity of natural gas to be delivered to the proposed new delivery point would be an estimated 520 MMBtu, with an estimated maximum daily delivery of 4 MMBtu. It is further said that the addition of the new delivery point would not result in an increase in WKG's current daily contract demand.

Comment date: September 9, 1991, in accordance with Standard Paragraph G at the end of this notice.

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12. Tennessee Gas Pipeline Co.

[Docket No. CP91–2451–000]

Take notice that on July 23, 1991, Tennessee Gas Pipeline Company (Tennessee), P.O. box 2511, Houston, Texas 77252, filed in Docket No. CP91–2451–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Chevron U.S.A., Inc., a producer, under the blanket certificate issued in Docket No. CP87–115–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee states that, pursuant to an agreement dated September 22, 1988, under its Rate Schedule IT, it proposes to transport up to 7,000 Dt per day equivalent of natural gas. Tennessee indicates that it would transport 7,000 Dt on an average day and 2,555,000 Dt annually. Tennessee further indicates that the gas would be transported from Offshore Louisiana, and would be redelivered in Louisiana.

Tennessee advises that service under § 284.223(a) commenced January 1, 1990, as reported in Docket No. ST91–9378.

Comment date: September 9, 1991, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,
Secretary.

[FR Doc. 91–18201 Filed 7–31–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CI91–76–000, et al.]

Hunt Petroleum Corp., et al. Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Hunt Petroleum Corp.

[Docket No. CI91–76–000]

July 22, 1991.

Take notice that on April 24, 1991, Hunt Petroleum Corporation (Hunt) of 3400 Thanksgiving Tower, Dallas, Texas 75201, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for a blanket certificate to authorize jurisdictional sales of gas under contracts to which Hunt is or becomes a successor-in-interest prior to the effective date of total decontrol under the Natural Gas Wellhead Decontrol Act of 1989, all as more fully set forth in the application which is on file with the Commission and open for public inspection. Hunt also requests that the Commission waive its regulations regarding the establishment of rate schedules.

Comment date: August 8, 1991, in accordance with Standard Paragraph J at the end of this notice.

2. El Paso Production Co.

[Docket No. CI91–50–000]

July 22, 1991.

Take notice that on January 22, 1991, El Paso Production Company (El Paso Production) of 2919 Allen Parkway, suite 900, Houston, Texas 77019, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for a blanket certificate authorizing the continuation of sales in interstate commerce from numerous properties which it has acquired from various producers or from properties which it may acquire prior to January 1, 1993, the effective date of decontrol under the Natural Gas Wellhead Decontrol Act of 1989, all as more fully set forth in the application which is on file with the commission and open for public inspection. El Paso Production also requests that the Commission waive its regulations concerning the establishment of rate schedules.

Comment date: August 8, 1991, in accordance with Standard Paragraph J at the end of this notice.

3. D M Royalties, Ltd., et al.

[Docket Nos. CS91–9–000,[1] et al.

July 22, 1991.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Commission's regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale of resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Comment date: August 8, 1991, in accordance with Standard paragraph J at the end of the notice.

Docket No.	Date filed	Applicant
CS91–9–000	6–12–91	D M Royalties, Ltd., P.O. Box 1716, Fort Worth, TX 76101.

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[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No.	Date filed	Applicant
CS91-10-000....	7-15-91	Zinke & Trumbo, Ltd., 1202 East 33rd Street, Tulsa, OK 74105.

4. Ruth Ray Hunt d/b/a Mrs. H. L. Hunt, Loyal Trusts #1-4, Unit Four Partnership, Lyda Hunt-Margaret Trust, Margaret Hunt Hill, Caroline Hunt Schoellkopf, N. B. Hunt, W. H. Hunt, Lamar Hunt, H. L. Hunt, Jr. Trust Estate, Reliance Trusts, and Hunt Oil Co.

[Docket No. CI91-43-000]

July 22, 1991.

Take notice that on January 22, 1991, as supplemented on February 19, 1991, Ruth Ray Hunt d/b/a Mrs. H. L. Hunt et al. (Applicants), c/o Hunt Oil Company, 1445 Ross Avenue, Dallas, Texas 75202-2785, filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for a blanket certificate with pregranted abandonment authorizing the sale for resale in interstate commerce of any "committed or dedicated" natural gas produced from acreage that Applicants have acquired from the Estate of H. L. Hunt, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicants state that they are the heirs and devisees of H. L. Hunt who died on November 29, 1974. The certificates held by H. L. Hunt were amended to reflect the Estate of H. L. Hunt as the certificate holder by Commission order issued April 30, 1975, in Docket No. G-4866, et al. Applicants state that assignments were made out of the Estate of H. L. Hunt to Mrs. Hunt on January 1, 1983 and to the other various successors in 1985. Applicants are seeking blanket certificate authorization with pregranted abandonment to continue sales which have been or may be made to various purchasers from the acquired acreage.

Comment date: August 8, 1991, in accordance with Standard Paragraph J at the end of this notice.

5. ANR Pipeline Co.

Docket No. CP91-2507-000, CP91-2508-000, CP91-2509-000, CP91-2510-000, CP91-2511-000]

July 22, 1991.

Take notice that on July 17, 1991, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under its blanket certificate issued in Docket No. CP88-532-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by ANR and is summarized in the attached appendix.

Comment date: September 4, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Dth	Receipt points	Delivery points	Contract date, date schedule, service type	Related docket, start up date
CP91-2507-000 (7-17-91)	Texpar Energy, Inc. (Marketer).	100,000 100,000 36,500,000	LA, OK, KS, TX, IL, IN, MI, WI, OH, KY Off LA, Off TX.	MI, WI	3-15-91, ITS, Interruptible.	ST91-9203-000, 6-1-91.
CP91-2508-000 (7-17-91)	Phillips 66 Natural Gas Company (Marketer).	100,000 100,000 36,500,000	TX	MI, WI, IA, IL, IN, OH, KS.	3-13-91, ITS, Interruptible.	ST91-9204-000, 6-1-91.
CP91-2509-000 (7-17-91)	Rangeline Corporation (Marketer).	50,000 50,000 18,250,000	LA, OK, KS, TX, MI, WI Off LA, Off TX.	KS, MO, IA, IL, TX, OK	2-12-91, ITS, Interruptible.	ST91-9205-000, 6-1-91.
CP91-2510-000 (7-17-91)	Semco Energy Services Inc. (Marketer).	30,000 30,000 10,950,000	LA, OK, KS, TX, MI, Off LA, Off TX.	MI	8-31-90, ITS, Interruptible.	ST91-9324-000, 6-1-91.
CP91-2511-000 (7-17-91)	Entrade Corporation (Marketer).	100,000 100,000 36,500,000	LA, TX, OK, KS, MI, WI, Off LA, Off TX.	MI	6-5-90, ITS, Interruptible.	ST91-9468-000, 6-1-91.

6. Texas Gas Transmission Corp.; Natural Gas Pipeline Co. of America

[Docket Nos. CP91-2525-000, CP91-2526-000, CP91-2528]

July 22, 1991.

Take notice that on July 19, 1991, Texas Gas Transmission Corporation, 3800 Frederica Street, Owensboro, Kentucky 42301, and Natural Gas Pipeline Company of America, 710 East 22nd Street, Lombard, Illinois 60148, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued in Docket No. CP88-686-000 and Docket No. CP86-582-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: September 4, 1991, in accordance with Standard Paragraph G at the end of this notice.

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[2] These prior notice requests are not consolidated.

[3] These prior notice requests are not consolidated.

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4866, et al. Applicants
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August 8, 1991, in
Standard Paragraph J
notice.

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507–000, CP91–2508–000,
91–2510–000, CP91–2511–

at on July 17, 1991, ANR
y (ANR), 500
ter, Detroit, Michigan

48243, filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under its blanket certificate issued in Docket No. CP88-532-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by ANR and is summarized in the attached appendix.

Comment date: September 4, 1991, in accordance with Standard Paragraph G at the end of this notice.

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[2] These prior notice requests are not consolidated.

ceipt points	Delivery points	Contract date, date schedule, service type	Related docket, start up date
KS, TX, IL, IN, , OH, KY Off f TX.	MI, WI	3-15-91, ITS, Interruptible.	ST91-9203-000, 6-1-91.
	MI, WI, IA, IL, IN, OH, KS.	3-13-91, ITS, Interruptible.	ST91-9204-000, 6-1-91.
KS, TX, MI, WI , Off TX.	KS, MO, IA, IL, TX, OK	2-12-91, ITS, Interruptible.	ST91-9205-000, 6-1-91.
KS, TX, MI, Off f TX.	MI	8-31-90, ITS, Interruptible.	ST91-9324-000, 6-1-91.
OK, KS, MI, WI, , Off TX.	MI	6-5-90, ITS, Interruptible.	ST91-9468-000, 6-1-91.

gulations under the
for authorization to
gas on behalf of
e blanket certificates
No. CP88-686-000 and
-582-000, respectively,
on 7 of the Natural Gas
ully set forth in the
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open to public
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plicable to each

transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: September 4, 1991, in accordance with Standard Paragraph G at the end of this notice.

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ice requests are not

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2525-000 (7-19-91)	O&R Energy, Inc	40,000 30,000 5,475,000	Various	OH	7-20-90, IT, Interruptible.	ST91-8399-000, 6-27-91.
CP91-2526-000 (7-19-91)	BASF Corporation	10,000 4,384 1,600,000	Various	OH	7-31-90, IT, Interruptible.	ST91-9401-000, 7-1-91.
CP91-2528-000 (7-19-91)	O&R Energy, Inc. (Marketer).	50,000 20,000 7,300,000	Various [1]	Various	3-27-91, ITS, Interruptible.	ST91-9063-000, 5-20-91.

[1] All Receipt Points as they appear in Natural's most recently revised and currently released edition of Catalog of Receipt and Delivery Points, as such may be changed from time to time.

7. Stingray Pipeline Co.; Transcontinental Gas Pipe Line Corp., ANR Pipeline Co. Midwestern Gas Transmission Co.

[Docket Nos. CP91-2512-000, CP91-2513-000, CP91-2514-000, CP91-2515-000, CP91-2517-000]

July 22, 1991.

Take notice that on July 18, 1991, Applicants filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued to Applicants pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix A. Applicants' addresses and transportation blanket certificates are shown in the attached appendix B.

Comment date: September 4, 1991, in accordance with Standard Paragraph G at the end of this notice.

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[4] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day Average day, annual dth	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2512-000 (7-18-91)	CNG Producing Company (producer).	50,000 25,000 [1] 9,125,000	Offshore, TX, LA	Offshore, TX, LA	11-19-90, ITS, Interruptible.	ST91-8986-000 5-10-91
CP91-2513-000 (7-18-91)	Laser Marketing Company (marketer).	4,000 2,500 [2] 912,500	Offshore, LA, TX	LA	4-24-90, ITS, Interruptible.	ST91-9000-000 5-3-91
CP91-2514-000 (7-18-91)	Mid Con Marketing Corp. (marketer).	3,400,000 50,000 18,250,000	Offshore, TX, LA, MS	NJ, DE, NY, MS, PA, VA, LA, TX.	8-10-90, IT, Interruptible.	ST91-9202-000 5-29-91
CP91-2515-000 (7-18-91)	Texpar Energy, Inc. Corp. (marketer).	50,000 50,000 18,250,000	Offshore, LA, TX, OK, KS.	WI	1-5-90, ITS, Interruptible.	ST91-9320-000 6-1-91
CP91-2517-000 (7-18-91)	Hougex Gas Marketing Company (marketer).	100,000 100,000 36,500,000	TN, IN, IL, KY	TN, IL, IN, KY	6-17-90, IT, Interruptible.	ST91-9525-000 7-1-91

[1] Stingray's quantities are in MMBtu.
[2] Stingray's quantities are in MMBtu.

Applicant's address	Blanket docket
Stingray Pipeline Company, 701 East 22nd Street, Lombard, Illinois 60148.	RP89-70-000 [1]
ANR Pipeline Company, 500 Renaissance Center, Detroit, Michigan 48243.	CP88-532-000
Midwestern Gas Transmission Company, P.O. Box 2511, Houston, Texas 77252.	CP90-174-000

Applicant's address	Blanket docket
Transcontinental Gas Pipe Line Corporation, P.O. Box 1396, Houston, Texas 77251.	CP88-328-000

[1] Order No. 509 issued Stingray a blanket transportation certificate corresponding to the rates, terms and conditions filed in Docket No. RP89-70-000.

8. Colorado Interstate Gas Co.; ANR Pipeline Co.

[Docket Nos. CP91-2536-000, CP91-2537-000]

July 23, 1991

Take notice that on July 19, 1991, Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs, Colorado 80944, and ANR Pipeline Company, 500 Renaissance Center, Detroit, Michigan 48243, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued in Docket No. CP86–589, et al., and Docket No. CP88–532–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[5]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: September 5, 1991, in accordance with Standard Paragraph G at the end of this notice.

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[5] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Dth	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2536-000 (7-19-91)	Golden Gas Energies, Inc. (intrastate pipeline).	5,000 5,000 [2] 1,800,000	TX, OK, KS, CO, WY, UT.	CO	4-22-91, TI-1, Interruptive	ST91-8879-000 5-17-91
CP91-2537-000 (7-19-91)	Mobil Natural Gas, Inc. (marketer).	100,000 100,000 36,500,000	OLA, LA	LA	8-21-90, ITS, Interruptible.	ST91-9321-000 6-1-91

[1] Offshore Louisiana is shown as OLA.
[2] CIG's quantities are in Mcf.

9. Trunkline Gas Co.

[Docket No. CP91–2539–000, CP91–2540–000, CP91–2541–000, CP91–2542–000]

July 23, 1991.

Take notice that on July 22, 1991, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under its blanket certificate issued in Docket No. CP86–586–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[6]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Trunkline and is summarized in the attached appendix.

Comment date: September 5, 1991, in accordance with Standard Paragraph G at the end of this notice.

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[6] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Mcf	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2539-000 (7-22-91)	Louis Dreyfus Energy Corporation (producer).	50,000 50,000 18,250,000	OLA, OTX, IL, LA, TN, TX.	LA	10-2-90, PT, Interruptible.	ST91-9430-000 5-1-91
CP91-2540-000 (7-22-91)	Enserch Gas Company (marketer).	50,000 50,000 18,250,000	OLA, OTX, IL, LA, TN, TX.	IL	12-21-90, PT, Interruptible.	ST91-9479-000 1-1-91
CP91-2541-000 (7-22-91)	Enserch Gas Company (marketer).	100,000 100,000 36,500,000	OLA, OTX, IL, LA, TN, TX, IN.	OH	1-24-91, PT, Interruptible.	ST91-9478-000 2-1-91
CP91-2542-000 (7-22-91)	Meridian Oil Trading, Inc. (marketer).	100,000 100,000 36,500,000	OLA, OTX, IL, LA, TN, TX.	IN	4-18-91, PT, Interruptible.	ST91-9480-000 5-1-91

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

10. Union Oil Co. of California, et al.

[Docket Nos. CI66–738–002,[7] et al.]

July 23, 1991.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to terminate or amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Comment date: August 12, 1991, in accordance with Standard Paragraph J at the end of this notice.

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[7] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
CI66-738-002 D 6-24-91	Union Oil Company of California, P.O. Box 7600, Los Angeles, CA 90051.	Northern Natural Gas Company, Denison Field, Sutton County, Texas.	Acreage assigned 6-1-91 to CLTC Exchange Company which assigned it to Centerpoint Resources, Inc. effective 6-1-91.

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under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: September 5, 1991, in accordance with Standard Paragraph G at the end of this notice.

pt[1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
S, CO, WY,	CO	4-22-91, TI-1, Interruptive	ST91-8879-000 5-17-91
	LA	8-21-90, ITS, Interruptible.	ST91-9321-000 6-1-91

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shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Trunkline and is summarized in the attached appendix.

Comment date: September 5, 1991, in accordance with Standard Paragraph G at the end of this notice.

pt[1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
, IL, LA, TN,	LA	10-2-90, PT, Interruptible.	ST91-9430-000 5-1-91
, IL, LA, TN,	IL	12-21-90, PT, Interruptible.	ST91-9479-000 1-1-91
, IL, LA, TN,	OH	1-24-91, PT, Interruptible.	ST91-9478-000 2-1-91
, IL, LA, TN,	IN	4-18-91, PT, Interruptible.	ST91-9480-000 5-1-91

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which are on file with the Commission and open to public inspection.

Comment date: August 12, 1991, in accordance with Standard Paragraph J at the end of this notice.

Purchaser and location	Description
rn Natural Gas Company, Denison d, Sutton County, Texas.	Acreage assigned 6-1-91 to CLTC Exchange Company which assigned it to Centerpoint Resources, Inc. effective 6-1-91.

Docket No. and date filed	Applicant	Purchaser and location	Description
CI91-99-000 (CI65-472) (CI66-1003) D 6-26-91	Meridian Oil Production Inc., P.O. Box 4239, Houston, Texas 77210.	ANR Pipeline Company, Laverne Field, Harper County, Oklahoma.	Acreage assigned 1-1-91 to Alan R. Staab.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Assignment of acreage; E—Succession; F—Partial Succession.

11. Texaco Exploration and Production Inc. (Successor-in-Interest to Texaco Inc.)

[Docket No. G-4616-004, et al]

July 23, 1991.

Take notice that on April 23, 1991, as supplemented on May 6, 1991, Texaco Exploration and Production Inc. (Applicant) of P.O. Box 4700, Houston, Texas 77210-4700, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder as successor-in-interest to Texaco Inc. (Texaco) for certificates authorizing Applicant to continue the sales previously made by Texaco under the certificates listed in appendices A and B and requesting that the related rate schedules listed in appendix A be redesignated as those of Applicant. Applicant also requests that Texaco Inc. and Texaco Producing Inc.'s rate schedules listed in appendix B be consolidated and that the consolidated rate schedules be redesignated as those of Applicant, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

By assignment executed and effective January 1, 1991, Texaco assigned the properties covered under the certificates and rate schedules listed in appendices A and B to Applicant. Applicant is now seeking authorization to continue sales from the acquired interests.

Comment date: August 8, 1991, in accordance with Standard Paragraph J at the end of the notice.

APPENDIX A

Certificate docket no.	Texaco Inc. FERC gas rate schedule No.	Purchaser
G-4616	39	Phillips Petroleum Company
G-4616	42	Phillips Petroleum Company
G-4620	97	Texas Eastern Transmission Corporation
G-4824	96	K N Energy, Inc.
G-11679	160	Texas Eastern Transmission Corporation
G-12162	163	Williams Natural Gas Company
G-13552	170	Texas Eastern Transmission Corporation
G-19127	201	Phillips Petroleum Company
CI60-313	213	Phillips Petroleum Company
CI60-725	219	Phillips Petroleum Company
CI62-519	251	Williams Natural Gas Company
CI52-569	253	Ringwood Gathering Company
CI62-712	255	Williams Natural Gas Company
G-9487	272	Texas Eastern Transmission Corporation
CI53-397	305	Lone Star Gas Company
CI64-824	324	Sunterra Gas Gathering Company
CI64-973	326	K N Energy, Inc.
CI64-976	327	K N Energy, Inc.
CI68-499	406	Mountain Fuel Supply Company
CI69-373	421	Southern California Gas Company
G-4616	433	Phillips Petroleum Company
CI77-381	544	ANR Pipeline Company
CI82-196	605	Pacific Interstate Gas Company
CI82-197	606	Pacific Interstate Gas Company
CI84-593	622	Amoco Gas Company

APPENDIX B

Texaco Inc. Certificate Docket No. and FERC Gas Rate Schedule No.	Texaco Producing Inc. Certificate Docket No. and FERC Gas Rate Schedule No.	Purchaser
G-4616 13	CI67-576 625	KN Energy, Inc.
G-12568 166	CI67-575 626	K N Energy, Inc.

12. Northern Natural Gas Co.

[Docket No. CP91-2534-000]

July 24, 1991.

Take notice that on July 19, 1991, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124-1000, filed a request with the Commission in Docket No. CP91-2534-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate sixteen delivery points and add seven existing jurisdictional delivery points to its service agreement with People Natural Gas Company, Division of UtiliCorp United, Inc. (Peoples), under the blanket certificate issued in Docket No. CP82-401-000 pursuant to section 7 of the NGA, all as more fully set forth ir the request which is open to public inspection.

Northern proposes to construct and operate sixteen delivery points in order for Peoples to provide natural gas service to communities in Iowa, Minnesota, and Nebraska currently without natural gas service (see appendix A). Northern states that it would deliver a total of 8,412 Mcf of natural gas on peak days and 897,181 Mcf annually to Peoples at these delivery points. Northern also requests authorization to add seven existing jurisdictional delivery points (see appendix B) to the service agreement with Peoples for sales under its FERC Rate Schedule CD-1. Northern states that it would deliver 2,232 Mcf of natural gas on peak days and 188,653 Mcf annually to Peoples at these existing delivery points. The natural gas volumes Northern proposes to deliver to Peoples at these 23 delivery points would be within Peoples' currently authorized firm entitlements under Rate Schedule CD-1.

Comment date: September 9, 1991, in accordance with Standard Paragraph G at the end of this notice.

APPENDIX A.—DELIVERY POINTS PROPOSED FOR CONSTRUCTION AND OPERATION

1.	Aurora, Fayette County, Iowa
2.	Brewster, Nobles County, Minnesota
3.	Elmerado Estates, Polk County, Iowa
4.	Fonda, Buena Vista County, Iowa
5.	Fountain, Fillmore County, Minnesota
6.	Freeborn, Freeborn County, Minnesota
7.	Garnavillo, Clayton County, Iowa
8.	Hickman, Lancaster County, Nebraska
9.	Ivanhoe/Canby/Hendricks, Lincoln County, Minnesota [1]
10.	Lake View/Wall Lake, Sac County, Iowa
11.	Lawler, Chickasaw County, Iowa
12.	Lewis, Cass County, Iowa
13.	Peterson, Fillmore County, Minnesota
14.	Sherwood Forest, Chisago County, Minnesota
15.	Springville, Jones County, Iowa
16.	Stanhope, Boone county, Iowa

[1] Northern Border Pipeline Company will, according to Northern's application, file a prior-notice request within ten days after the Commission has issued its notice in Docket No. CP91-2534-000 for authorization to operate an existing value as a delivery point to Northern at the proposed Ivanhoe delivery point.

APPENDIX B.—EXISTING DELIVERY POINTS NORTHERN PROPOSES TO ADD TO SERVICE AGREEMENT

1.	Altura, Winona County, Minnesota
2.	Baxter, Jasper County, Iowa
3.	Bennett, Otoe County, Nebraska
4.	Garden City, Hardin County, Iowa
5.	Knapp Gardens, Polk County, Iowa
6.	LaMotte and Zwingle, Dubuque County, Iowa
7.	Northrup, Martin County, Minnesota

13. Great Lakes Gas Transmission Limited Partnership

[Docket No. CP91-2458-000]

July 24, 1991.

Take notice that on July 12, 1991, Great Lakes Gas Transmission Limited Partnership (Great Lakes), One Woodward Avenue, suite 1600, Detroit, Michigan 48226, filed an application pursuant to section 7(b) of the Natural Gas Act (NGA), 15 U.S.C. 717f(b), for authority to abandon firm natural gas transportation service provided to Michigan Consolidated Gas Company (MichCon) and Michigan Gas Company (MiGas) pursuant to Rate Schedules T-15 and T-18, respectively, under Great Lakes' FERC Gas Tariff, Original Volume No. 2, all as more fully set forth in the application that is on file with the Federal Energy Regulatory Commission (Commission) and open to public inspection. Great Lakes states that both MichCon and MiGas have requested that their respective services be terminated effective November 1, 1991, and each has requested that a reduced level of this transportation service be provided under an FT Agreement, in accordance with Great Lakes' open access tariff.

Great Lakes states that it currently provides MichCon with firm transportation of up to 57,000 Mcf per day (Mcfd) from an existing interconnection between the facilities of Great Lakes and TransCanada Pipelines, Limited, located on the international boundary near Emerson, Manitoba (Emerson Receipt Point), to various points of interconnection between the facilities of Great Lakes and MichCon, located at Rapid River, Mackinaw, Rudyard, Sault Ste. Marie, Pellston, Petoskey, Gaylord, and Belle River Mills, Michigan, pursuant to a Transportation Service Agreement between the companies, dated December 10, 1987. The service was certificated by the Commission on May 6, 1987, in Docket No. CP86-696-000.

Great Lakes further states that it provides MiGas with firm transportation service of up to 7,300 Mcfd from the Emerson Receipt Point to various points of interconnection between the facilities of Great Lakes and MiGas, located at Manistique, Newberry-Engadine, and St. Ignace, Michigan, pursuant to a Transportation Service Agreement between the companies, dated July 31, 1989. The service was certificated by the Commission on May 23, 1988 in Docket No. CP88-8-000.

Great Lakes states that each of the referenced Agreements provide for a primary term which expires on November 1, 1991. Further, MichCon has advised that it would like to reduce the level of transportation service from the Emerson Receipt Point from 57,000 Mcfd to 30,000 Mcfd upon the expiration date. MiGas has requested a similar reduction from a maximum of 7,300 Mcfd to 1,800 Mcfd. MichCon and MiGas have each requested that their respective reduced levels of service be provided under Great Lakes' FT Rate Schedule. Further, MichCon and MiGas both consent to abandonment of the current service, effective November 1, 1991, and each has entered into a letter agreement, dated July 1, 1991, which reflects this understanding. Great Lakes advises that no facilities are being abandoned in this application. Great Lakes also advises that, as a result of the reduction in service by MichCon and MiGas, up to 32,500 Mcfd of capacity will become available on Great Lakes' system. Great Lakes states that this capacity will allow it to avoid the cost of constructing facilities required to provide firm transportation services for Northern States Power Company (Wisconsin) and Northern States Power Company (Minnesota) and Kamine/Beta South Glen Falls, L.P. According to Great Lakes, this will reduce its planned construction costs by $25,000,000, thus benefiting all of the shippers on Great Lakes' system.

Comment date: August 14, 1991, in accordance with Standard Paragraph F at the end of this notice.

14. Texas Eastern Transmission Corp.; Tennessee Gas Pipeline Co.

[Docket Nos. CP91-2493-000, CP91-2494-000, CP91-2495-000, CP91-2518-000]

July 24, 1991.

Take notice that Texas Eastern Transmission Corporation, P.O. Box 2521, Houston, Texas 77252-2521, and Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77252, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP88-136-000, as amended and Docket No. CP87-115-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[8]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: September 9, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMbtu	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2493-000 (7-17-91)	Clinton Gas Transmission, Inc. (Marketer).	100,000 100,000 36,500,000	Various	Various	IT-1, Interruptible	ST91-8889 6-2-91
CP91-2494-0000 (7-17-91)	Vesta Energy Company (Marketer).	120,000 120,000 43,800,000	Various	Various	IT-1, Interruptible	ST91-9170 6-1-91
CP91-2495-000 (7-17-91)	Yuma Gas Corporation (Marketer).	40,000 40,000 14,600,000	Various	Various	IT-1, Interruptible	ST91-9336 6-5-91
CP91-2518-000 (7-18-91)	Hougex Gas Marketing Company (Marketer).	100,000 100,000 36,500,000	Various	IL	IT, Interruptible	ST91-9524 7-1-91

15. United Gas Pipe Line Co.

[Docket No. CP91-2516-000]

July 24, 1991.

Take notice that on July 18, 1991, United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP91-2516-000, a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act, to construct and operate a six-inch delivery tap and related facilities in order to transport natural gas for Shell Oil Company (Shell) in Ranking County, Mississippi, all as more fully set forth in the request on file with the Commission and open to public inspection.

United, specifically states that the proposed facilities will enable it to transport on an interruptible basis an estimated average of 55,000 Mcf/d of natural gas for Shell under United's ITS Rate Schedule. United also states that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other customers. United proposes to install the facilities at M.P. 243.00 on the Koseiusko 30-inch line, in Section 24, T-6-N, R-2-E, at an estimated cost of 231,900, of which cost, Shell will reimburse United.

Comment date: September 9, 1991, in accordance with Standard Paragraph G at the end of this notice.

16. Ocean State Power II

[Docket No. CI91-103-000]

July 24, 1991.

Take notice that on July 3, 1991, as modified on July 16, 1991, Ocean State Power II (Ocean State II), c/o J. Makowski Associates, Inc., One Bowdoin Square, Boston, Massachusetts 02114, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorizing sales for resale of natural gas in interstate commerce subject to the Commission's jurisdiction, including imported gas, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: August 12, 1991, in accordance with Standard Paragraph J at the end of this notice.

17. Honda of America Mfg., Inc.

[Docket No. CI91-106-000]

July 24, 1991.

Take notice that on July 16, 1991, Honda of America Mfg., Inc. (Honda) of Honda Parkway, Marysville, Ohio 43040, filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate which pregranted abandonment authorizing sales in interstate commerce for resale of natural gas from any source (domestic or foreign) to the extent such sales would be subject to the Commission's NGA jurisdiction, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: August 12, 1991, in accordance with Standard Paragraph J at the end of this notice.

18. New Jersey Natural Gas Co.

[Docket No. CI91-104-000]

July 24, 1991.

Take notice that on July 9, 1991, New Jersey Natural Gas Company (New Jersey Natural), a local distribution company, of 1415 Wyckoff Road, P.O. Box 1464, Wall, New Jersey 07719, filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorizing sales for resale in interstate commerce of any natural gas, including all gas purchased in a first sale, imported natural gas, and natural gas purchased from interstate and intrastate pipelines and from local distribution companies, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: August 12, 1991, in accordance with Standard Paragraph J at the end of this notice.

19. Cibola Corp.

[Docket No. CI91-105-000]

July 24, 1991.

Take notice that on July 10, 1991, Cibola Corporation (Cibola) of 11011 Q Street, #106-A, Omaha, Nebraska 68137, filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the

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[8] These prior notice requests are not consolidated.

Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorizing sales of any natural gas in interstate commerce for resale, including all gas NGPA categories of NGA gas, imported natural gas, and natural gas sold under any existing or subsequently approved pipeline blanket certificate authorizing interruptible sales of surplus system supply, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: August 12, 1991, in accordance with Standard Paragraph J at the end of the Notice.

20. North Jersey Energy Associates

[Docket No. CI91-101-000]

July 24, 1991.

Take notice that on July 3, 1991, North Jersey Energy Associates (North Jersey), c/o Intercontinental Energy Corporation, 350 Lincoln, suite 111, Hingham, Massachusetts 02043, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorizing the sale for resale in interstate commerce of natural gas subject to the Commission's NGA jurisdiction, including imported gas, natural gas sold under any existing or subsequently approved pipeline blanket certificate authorizing interruptible sales of surplus system supply and any other natural gas required to be sold pursuant to a certificate, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: August 12, 1991, in accordance with Standard Paragraph J at the end of this notice.

21. Northeast Energy Associates

[Docket No. CI91-102-000]

July 24, 1991.

Take notice that on July 3, 1991, Northeast Energy Associates (Northeast), c/o Intercontinental Energy Corporation, 350 Lincoln, suite 111, Hingham, Massachusetts 02043, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorizing the sale for resale in interstate commerce of natural gas subject to the Commission's NGA jurisdiction, including imported gas, natural gas sold under any existing or subsequently approved pipeline blanket certificate authorizing interruptible sales of surplus system supply and any other natural gas required to be sold pursuant to a certificate, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: August 12, 1991, in accordance with Standard Paragraph J at the end of this notice.

22. Chevron U.S.A. Inc., et al.

[Docket No. G-7192-000,[9] et al.]

July 23, 1991.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Comment date: August 12, 1991, in accordance with Standard Paragraph J at the end of this notice.

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[9] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
G-7192-000 G-10642-000 E 5-1-91	Chevron U.S.A. Inc., P.O. Box 3725, Houston, TX 77253-3725.	El Paso Natural Gas Company, R.S. Windham Lease, Amacker-Tippett Field, Upton County, Texas.	Acreage acquired 5-1-90 from Lawyers Title Insurance Corporation which acquired it from Union Oil Company of California.
CI91-71-000 (CI75-734) B 4-12-91	Maxus Exploration Company, 717 N. Harwood Street, suite 3100, Dallas TX 75201-6505.	Natural Gas Pipeline Company of America, Block 23-L, High Island Area, State of Texas waters.	Last well plugged and abandoned, lease expired.
CI91-74-000 (CI79-658) B 4-15-91	BHP Petroleum Company Inc., 5847 San Felipe, suite 3600, Houston, TX 77057.	Columbia Gas Transmission Corporation, Galveston Area Blocks A-126 and A-131, Offshore Texas.	Reserves depleted, leases expired.
CI91-83-000 (CI75-468) B 5-10-91	Unocal Exploration Corporation, P.O. Box 7600, Los Angeles, CA 90051.	Texas Eastern Transmission Corporation, West Cameron Block 513, Offshore Louisiana.	Lease expired, wells plugged and abandoned.
CI91-84-000 (CI81-291) B 5-10-91	Unocal Exploration Corporation	Texas Eastern Transmission Corporation, West Cameron Block 528, Offshore Louisiana.	Well plugged and abandoned, lease expired.
CI91-100-000 E 7-2-01	Diamond Shamrock Offshore partners Limited Partnership, 717 N. Harwood Street, room 3156, Dallas, TX 75201.	Texas Gas Transmission Corporation, Block 220, East Cameron Area, Offshore Louisiana.	Acreage acquired 1-1-91 from OKC Limited Partnership.

Filing Code: A—Initial Service, B—Abandonment, C—Amendment to add acreage, D—Assignment of acreage, E—Succession, F—Partial Succession.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to

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jurisdiction, including imported gas, natural gas sold under any existing or subsequently approved pipeline blanket certificate authorizing interruptible sales of surplus system supply and any other natural gas required to be sold pursuant to a certificate, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: August 12, 1991, in accordance with Standard Paragraph J at the end of this notice.

22. Chevron U.S.A. Inc., et al.

[Docket No. G–7192–000,[9] et al.]

July 23, 1991.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Comment date: August 12, 1991, in accordance with Standard Paragraph J at the end of this notice.

Purchaser and location	Description
so Natural Gas Company, R.S. Wind- n Lease, Amacker-Tippett Field, on County, Texas.	Acreage acquired 5–1–90 from Lawyers Title Insurance Corporation which acquired it from Union Oil Company of California.
al Gas Pipeline Company of America, ck 23–L, High Island Area, State of as waters.	Last well plugged and abandoned, lease expired.
bia Gas Transmission Corporation, veston Area Blocks A–126 and A- , Offshore Texas.	Reserves depleted, leases expired.
s Eastern Transmission Corporation, st Cameron Block 513, Offshore Lou- na.	Lease expired, wells plugged and abandoned.
s Eastern Transmission Corporation, st Cameron Block 528, Offshore Lou- na.	Well plugged and abandoned, lease expired.
s Gas Transmission Corporation, ck 220, East Cameron Area, Off- re Louisiana.	Acreage acquired 1–1–91 from OKC Limited Partnership.

acreage, D—Assignment of acreage, E—Succession, F—Partial Succession.

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considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to

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[9] This notice does not provide for consolidation for hearing of the several matters covered herein.

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intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 91–18202 Filed 7–31–91; 8:45 am]

BILLING CODE 6717-01-M

[RP91–179–000]

The Algonquin Customer Group v. Texas Eastern Transmission Corporation; Complaint

July 25, 1991.

On July 24, 1991, the Commission issued an Order on Rehearing in CNG Transmission Corporation, Docket Nos. RP88–211–012, *et al.*, which also established the complaint docket in the above-captioned proceeding. The Commission stated that it would treat as a complaint the filing made by the Algonquin Customer Group on June 6, 1991, which requested clarification or, in the alternative, rehearing of the Commission order issued May 7, 1991, in the above-mentioned CNG dockets.

The Commission's July 24, 1991 order stated as follows in treating the Algonquin Customers' filing as a complaint (footnotes deleted):

"The order approving CNG's settlement required CNG to offer all its restructured CD partial requirements customers the same package of restructured sales, storage, and transportation services, with upstream capacity rights and access to favorable upstream receipt points, that CNG has offered to its RQ full requirements sales customers. Under the settlement, RQ and CD customers are allowed to reduce and/or convert current sales entitlements and receive restructured service under new ACD and CD Rate Schedules, respectively. New ACD customers are permitted, under the settlement, to buy gas from sources other than CNG and to store gas purchased from other sources and CNG in CNG's storage fields. After the settlement becomes effective, CNG and its sales customers will commence restructured services under new service agreements based on their interim precedent agreements with CNG."

"Algonquin Gas Transmission Corp., an indirect pipeline CD customer of CNG interconnects with Texas Eastern, not CNG. Texas Eastern's FTS Rate Schedule requires Texas Eastern to transport only gas purchased under CNG's *existing* CD Rate Schedule. Texas Eastern agrees in the FTS Rate Schedule to transport only the gas Algonquin purchases from CNG under the existing CD Rate Schedule until the service agreement expires on October 31, 1992, unless the agreement is extended. Algonquin Customers argue that in order for Algonquin and its LDC resale customers to participate in CNG's restructured services on an equal basis with RQ sales customers, the Commission should require Texas Eastern to modify sections IA(i) and 3.5 of its firm transportation (FTS) Rate Schedule. Algonquin Customers ask the Commission to require Texas Eastern to transport any gas CNG delivers to Texas Eastern for Algonquin or its customers, whether purchased from CNG or not, in order to achieve the settlement's service restructuring objectives."

"Insofar as Algonquin and its LDC resale customers are concerned, the service restructuring objectives of CNG's settlement depend on expanded transportation on Texas Eastern, which is the sole transporter of CD gas sold by CNG to Algonquin. Algonquin does not interconnect directly with CNG. Under Texas Eastern's current FTS tariff, Texas Eastern agrees to transport gas sold under CNG's existing CD Rate Schedule for delivery to CNG's CD customers, including Algonquin. Texas Eastern's FTS tariff, however, does not obligate Texas Eastern to transport gas that CNG proposes to sell to Algonquin (or to other CD customers) under the new restructured CD Rate Schedule, or to transport gas that Algonquin (or other CD customers) may seek to purchase from a supplier other than CNG prior to the expiration of the CD customer's service agreement with CNG."

"The Commission can not revise a Texas Eastern tariff provision in a CNG proceeding because Texas Eastern has not been provided notice of the proposed tariff revision with the opportunity to intervene and comment. Accordingly, the Algonquin Customers' request is denied. However, the Commission will treat the Algonquin Customers' pleading as a complaint under section 5 of the Natural Gas Act. The Commission will give Texas Eastern the opportunity to respond to the Algonquin Customers' complaint in the newly-established Docket No. RP91–179–000. Within 30 days after issuance of this order, Texas Eastern is directed to file its response to the Algonquin Customers' contentions. Any other person potentially affected by the tariff changes urged by the Algonquin Customers may also file a response within 30 days of this order."

Lois D. Cashell,

Secretary.

[FR Doc. 91–18205 Filed 7–31–91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-10-4-000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

July 25, 1991.

Take notice that on July 22, 1991, Granite State Gas Transmission, Inc. (Granite State) 300 Friberg Parkway, Westborough, Massachusetts 01581 tendered for filing Fourth Revised Sheet No. 25 in its FERC Gas Tariff, Second Revised Volume No. 1, containing changes in rates for effectiveness on July 1, 1991.

According to Granite State, it provides a storage service for Bay State Gas Company under its Rate Schedule GSS with storage capacity provided in a facility operated by CNG Transmission Corporation (CNG). It is further stated that Granite State's Rate Schedule GSS tracks changes made by CNG under its Rate Schedule GSS pursuant to which Granite State obtains storage capacity from CNG.

Granite State further states that, on July 6, 1991, in Docket Nos. RP88-211, *et al.*, CNG filed revised tariff sheets in its FERC Gas Tariff, First Revised Volume No. 1, in compliance with a Stipulation and Agreement approved by the Commission in an order issued May 7, 1991. Revisions in CNG's Rate Schedule GSS rates were included in CNG's filing, it is stated. According to Granite State, its filing tracks in its Rate Schedule GSS the changes made by CNG in its rates for Rate Schedule GSS service.

Granite State states that copies of its filing were served on Bay State Gas Company and the regulatory commissions of the states of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before August 1, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-18204 Filed 7-31-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-245-004]

Paiute Pipeline Co., Compliance Filing

July 25, 1991.

Take notice that on July 22, 1991, Paiute Pipeline Company (Paiute) tendered for filing the following tariff sheets to be part of its FERC Gas Tariff, First Revised Volume No. 1-A:

Original Sheet No. 11
First Revised Sheet No. 86
Original Sheet Nos. 87-89

Paiute states that its filing is in compliance with the Commission's order issued June 21, 1991 in Docket No. RP89-245-000, in which the Commission issued rulings on certain issues involving Paiute's recovery from its customers of the take-or-pay buyout and buydown fixed charges billed to Paiute by its former upstream pipeline supplier, Northwest Pipeline Corporation (Northwest). Paiute states that in that order the Commission directed Paiute to recalculate the total allocable portions of the Northwest take-or-pay fixed charges to be assigned to each of Paiute's sales customers by using the 60-month deficiency period utilized by Northwest in computing its allocations. Paiute was also directed to make certain revisions to its related tariff language.

Paiute states that under a settlement approved by the Commission in Docket No. RP88-227, Paiute's four firm sales customers fully converted their firm sales entitlements to firm transportation service effective June 1, 1991, and that Paiute's sales tariff volume was deemed to be cancelled as of that date. Paiute further states that a provision of the settlement provides that Paiute will be able to include provisions governing its passthrough of the Northwest take-or-pay fixed charges in Paiute's transportation tariff following its customers' conversions to firm transportation service and the approval by the Commission of appropriate tariff provisions governing such passthrough. Thus, Paiute proposes in its compliance filing to transfer its take-or-pay buyout and buydown cost passthrough tariff provisions to its transportation tariff, First Revised Volume No. 1-1. However, in transferring such provisions to its transportation tariff, Paiute states that it has continued to allocate the take-or-pay fixed charges from Northwest to only its former firm sales customers, who are now firm transportation customers, from whom Paiute has been authorized to collect such costs.

Paiute asserts that, in compliance with the Commission's order, Paiute has recalculated the total allocable portion of the Northwest take-or-pay fixed charges for each of Paiute's former sales customers utilizing the 60-month deficiency period used by Northwest. In addition, Paiute states that it has calculated revised monthly amounts for each customer for the remainder of the amortization period.

Paiute also indicates that it has made certain revisions to its related tariff language which are consistent with the Commission's order, or which are non-substantive changes to conform the take-or-pay passthrough provisions to Paiute's transportation tariff. Paiute states that as a result of the changes to its tariff language, Paiute has overcollected certain carrying charges from certain of its former sales customers, which Paiute will credit to such customers by means of a billing adjustment.

Paiute requests that the proposed tariff sheets be permitted to become effective June 1, 1991, in order to make such tariff sheets effective upon the date that Paiute's firm service customers converted to firm transportation and Paiute's sales tariff was deemed to be cancelled.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rule 211 of the Commission's rules of practice and procedure 18 CFR 385.211. All such protests should be filed on or before August 1, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available tor public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-18206 Filed 7-31-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 91-32-NG]

Conoco Inc.; Order Granting Blanket Authorization To Import and Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to import and export natural gas, including liquefied natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order to Conoco

-245-004]

Co., Compliance Filing

at on July 22, 1991,
Company (Paiute)
g the following tariff
t of its FERC Gas Tariff,
lume No. 1-A:

No. 11
eet No. 86
Nos. 87-89

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the Commission's order
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certain issues
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take-or-pay buyout and
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Commission in Docket
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as of that date. Paiute
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that, in compliance with
's order, Paiute has
total allocable portion
t take-or-pay fixed
of Paiute's former sales

customers utilizing the 60-month deficiency period used by Northwest. In addition, Paiute states that it has calculated revised monthly amounts for each customer for the remainder of the amortization period.

Paiute also indicates that it has made certain revisions to its related tariff language which are consistent with the Commission's order, or which are non-substantive changes to conform the take-or-pay passthrough provisions to Paiute's transportation tariff. Paiute states that as a result of the changes to its tariff language, Paiute has overcollected certain carrying charges from certain of its former sales customers, which Paiute will credit to such customers by means of a billing adjustment.

Paiute requests that the proposed tariff sheets be permitted to become effective June 1, 1991, in order to make such tariff sheets effective upon the date that Paiute's firm service customers converted to firm transportation and Paiute's sales tariff was deemed to be cancelled.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rule 211 of the Commission's rules of practice and procedure 18 CFR 385.211. All such protests should be filed on or before August 1, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available tor public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-18206 Filed 7-31-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 91-32-NG]

Conoco Inc.; Order Granting Blanket Authorization To Import and Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to import and export natural gas, including liquefied natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order to Conoco Inc. (Conoco) granting blanket authorization to import and export a combined total of up to 50 bullion cubic feet (Bcf) of natural gas, including liquefied natural gas (LNG), from and to any international market, subject to any trade restricitons, over a two-year period beginning with the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., July 26, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-18295 Filed 7-31-91; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. FE C&E 91-17; Certification Notice—85]

Filing Certification of Compliance: Coal Capability of New Electric Powerplant

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (FUA section 201(a), 42 U.S.C. 8311(a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. One owner and operator of proposed new electric base load powerplant has a filed self-certification in accordance with section 201(d).

Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following company has filed an amended self-certification;

Name	Date received	Type of facility	Megawatt capacity	Location
Oildale Cogeneration Partners L.P.[1] Laguna Hills, CA	07-15-91	Topping cycle	38.0	Bakersfield, CA

[1] On November 3, 1983, (48 FR 50787) the Office of Fuels Programs granted an exemption to Turbo-Resources to construct and operate the subject facility with an electrical capacity of 29.0 MW. Oildale Cogeneration Partners, L.P. is the new owner of the facility and will modify it to produce 38.0 MW of electrical power.

Amendments to the FUA on May 21, 1987 (Public Law 100-42), altered the general prohibitions to include only new electric base load powerplants and to provide for the self-certification procedure.

Copies of this self-certification may be reviewed in the Office of Fuels Programs, Fossil Energy, room 3F-056, FE-52, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, or for further information call Myra Couch at (202) 586-6769.

Issued in Washington, DC on July 25, 1991.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Fossil Energy.

[FR Doc. 91-18159 Filed 7-31-91; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders During the Week of April 22 Through April 26, 1991

During the week of April 22 through April 26, 1991, decisions and orders summarized below were issued with respect to applications for refund or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Implementation of Special Refund Procedures

Citronelle-Mobile Gathering, Inc., 04/26/91, KEF-0139

The DOE issued a Decision and Order implementing procedures for the disbursement of $6,769,957, plus accrued interest, obtained by the DOE as the result of an order of the United States District Court for the Southern District of Alabama, in litigation between the DOE and Citronelle-Mobile Gathering, Inc. (Citronelle). The court ruled that Citronelle and the firm's principal shareholder, Bart B. Chamberlain, violated the federal price regulations in a series of sales to the New England Petroleum Corporation (NEPCO) during the period January through June 1974. The DOE determined that it will distribute these funds in two stages. In the first stage, the DOE will accept claims from identifiable purchasers of petroleum products from NEPCO who may have been injured by the alleged overcharges. It will then submit to the court a final report and recommendation as to the distribution of the Citronelle overcharges. If the report meets with the court's approval, the court may order distribution in accordance with the recommendations in the final report. If any funds remain after meritorious claims are paid in the first stage, they will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (1986). Purchasers of regulated petroleum products from NEPCO during the period January 1 through June 30, 1974 may file Applications for Refund from the Citronelle fund. Applications for Refund must be postmarked by November 15, 1991. Instructions for the completion of refund applications are set forth in the Decision.

Refund Applications

Anderson Butane Service, Inc./Louisiana Standard Oil Company (Indiana)/Louisiana, 04/23/91, RQ14-564, RQ251-567

The DOE issued a Decision and Order denying the second-stage refund application filed by the State of Louisiana in the Anderson Butane Service and Standard Oil Company (Indiana) special refund proceedings. Louisiana requested permission to spend

$963,336 in Anderson and Amoco II funds on a demonstration facility which would produce sodium silicate from rice hull ash. The facility would be installed in a privately-owned Louisiana power plant which burns rice hulls to produce energy. The DOE found that the proposal failed to deliver timely and balanced energy-related restitution to Louisiana's injured consumers of refined petroleum products because, although the facility would be installed in a Louisiana company, most of the companies and individuals who could potentially benefit from the new technology reside outside the state. The DOE also found that the proposal promoted economic development for a narrow group of Louisianans rather than energy-related restitution to a large number of Louisiana's injured consumers of refined petroleum products. Accordingly, the State's application was denied.

City of Detroit, 04/25/91, RF272–16040

The DOE issued a Decision and Order concerning an Application for Refund that the City of Detroit (Detroit) filed in the crude oil overcharge refund proceeding. The DOE determined that Detroit's refund claim was meritorious and granted a refund of $212,093. In that decision, however, the DOE also found that Detroit's purchases of "dry gas" and anti-freeze could not form the basis of a refund because those products were not covered petroleum products.

Mobay Corporation, 04/22/91, *RF272–4235, RD272–4235*

The Department of Energy issued a Decision and Order granting a crude oil overcharge refund to Mobay Corporation an end-user of refined petroleum products in the production of chemicals. A consortium of 30 states and 2 territories filed objections and a Motion for Discovery with respect to this application, attempting to rebut the end-user presumption of injury. The DOE found that the end user presumption was applicable and that the Motion for Discovery should be denied. The DOE further determined that two of the products for which Mobay sought a refund, orthene and formaldehyde, are not eligible products in this proceeding. The DOE determined that Mobay should receive a refund of $220,275.

Riverton Investments Corporation, Martin Marietta Corporation, 04/26/91, *RF272–29566, RF272–69633, RD272–69633*

Riverton Investment Corporation and Martin Marietta Corporation filed Applications for Refund in the Subpart V crude oil overcharge refund proceeding. In their applications, both Martin Marietta and Riverton claimed a refund based on purchases of petroleum products which were consumed by a cement plant that Martin Marietta had sold to Riverton in 1987. Because the language of the purchase and sales agreement submitted by both applicants indicates that Martin Marietta intended to sell all assets, including those which were unknown and unenumerated at the time of the sale, to Riverton, the DOE found that Riverton was the proper recipient of the refund associated with those petroleum products. Accordingly, Riverton was granted a refund of $3,034, based on the purchases of petroleum products consumed by the cement plant. Martin Marietta was granted a refund of $443,995 based on its purchases of refined petroleum products, excluding those included in Riverton's refund. The DOE rejected objections to the Martin Marietta application filed by a group of state governments and denied their Motion for Discovery.

Shell Oil Company/ KMOCO Oil Company, 04/23/91, *RF315–4338*

The DOE issued a Decision and Order partially granting the refund application filed by KMOCO Oil Company in the Shell Oil Company special refund proceeding. KMOCO argued that, in addition to a $5,000 presumption-based refund, it should be granted a refund for the period March 6, 1973 to June 13, 1974. KMOCO stated that in the Atlantic Richfield Company special refund proceeding, resellers were eligible for a volumetric refund for that period because, although the period of price controls began on March 6, 1973, resellers were not required to keep records until June 13, 1973. The DOE denied KMOCO's request on the grounds that no provision was made in the Shell refund proceeding for such supplemental refunds, and also noted that KMOCO's request was untimely, as it is impossible at this late date to change the procedures under which a reseller is granted a refund. Accordingly, KMOCO was limited to a refund of $6,776 ($5,000 in principal plus $1,776 in interest).

State of New Hampshire, 04/26/91, *RF272–62009*

The DOE issued a Decision and Order granting a crude oil overcharge refund to the State of New Hampshire. The applicant was granted a refund based on the refined petroleum product purchases of its central purchasing office, which purchased refined petroleum products on behalf of all of the state's agencies, including hospitals, prisons and state universities. The refund granted to New Hampshire was $32,609.

Texaco Inc./Battery Oil Corp., Gram Oil Corp. 04/24/91, RF321–4461, RF321–4462

The DOE issued a Decision and Order in the Texaco Inc. refund proceeding concerning two Applications for Refund filed by Battery Oil Corp. and Gram Oil Corp., resellers of Texaco refined petroleum products. A single stockholder owns 50 percent of Gram's stock and 40 percent of Battery's stock. The applicants stated they accepted the applicable presumption of injury and therefore they were not required to demonstrate injury. Although Battery and Gram are related, the DOE found that it would be inequitble to the minority shareholders of both firms to treat Battery and Gram as affilated firms. This would limit the total refund granted to Battery and Gram to $50,000, thereby reducing the refunds which the minority owners of both firms would otherwise receive. Accordingly, the firms received individual refunds under the medium-range presumption of injury. The total of the refunds granted to both applicants in this Decision is $75,507 ($61,144 principal plus $14,363 interest).

Texaco Inc./Callicoatte Texaco, 04/26/91, RF321–3219, RF321–8681

The DOE issued a Decision and Order concerning two Applications for Refund filed in the Texaco Inc. special refund proceeding. The applications were on behalf of a consigneeship owned and operated by Louie B. Callicoatte, until his death on December 4, 1977. From then until the end of the consent order period the business was operated by Louie B. Callicoatte's son, Jimmy Callicoatte. The refund approved for the period that Louie B. Callicoatte operated the consigneeship was granted to the executor of Louie B. Callicoatte's estate, for distribution according to his Last Will and Testament. The refund approved for the period after Louie B. Callicoatte's death was granted to Jimmy Callicoatte's children, Vincent and Alison Callicoatte, who were the heirs to his estate. The sum of the refunds granted in this Decision is $8,338 ($6,752 principal and $1,586 interest).

Texaco Inc./Claud Hodges Texaco, 04/23/91, RF321–14794

The DOE issued a Decision and Order in the Texaco Inc. special refund proceeding concerning an Application for Refund filed by Claud Hodges (Hodges), a retailer of Texaco products. Hodges was previously granted a refund based on his claim that he operated the retail outlet from September 1973 to July

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ny/ KMOCO Oil
/23/91, RF315–4338

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refund granted to New Hampshire was $32,609.

Texaco Inc./Battery Oil Corp., Gram Oil Corp. 04/24/91, RF321–4461, RF321–4462

The DOE issued a Decision and Order in the Texaco Inc. refund proceeding concerning two Applications for Refund filed by Battery Oil Corp. and Gram Oil Corp., resellers of Texaco refined petroleum products. A single stockholder owns 50 percent of Gram's stock and 40 percent of Battery's stock. The applicants stated they accepted the applicable presumption of injury and therefore they were not required to demonstrate injury. Although Battery and Gram are related, the DOE found that it would be inequitble to the minority shareholders of both firms to treat Battery and Gram as affilated firms. This would limit the total refund granted to Battery and Gram to $50,000, thereby reducing the refunds which the minority owners of both firms would otherwise receive. Accordingly, the firms received individual refunds under the medium-range presumption of injury. The total of the refunds granted to both applicants in this Decision is $75,507 ($61,144 principal plus $14,363 interest).

Texaco Inc./Callicoatte Texaco, 04/26/91, RF321–3219, RF321–8681

The DOE issued a Decision and Order concerning two Applications for Refund filed in the Texaco Inc. special refund proceeding. The applications were on behalf of a consigneeship owned and operated by Louie B. Callicoatte, until his death on December 4, 1977. From then until the end of the consent order period the business was operated by Louie B. Callicoatte's son, Jimmy Callicoatte. The refund approved for the period that Louie B. Callicoatte operated the consigneeship was granted to the executor of Louie B. Callicoatte's estate, for distribution according to his Last Will and Testament. The refund approved for the period after Louie B. Callicoatte's death was granted to Jimmy Callicoatte's children, Vincent and Alison Callicoatte, who were the heirs to his estate. The sum of the refunds granted in this Decision is $8,338 ($6,752 principal and $1,586 interest).

Texaco Inc./Claud Hodges Texaco, 04/23/91, RF321–14794

The DOE issued a Decision and Order in the Texaco Inc. special refund proceeding concerning an Application for Refund filed by Claud Hodges (Hodges), a retailer of Texaco products. Hodges was previously granted a refund based on his claim that he operated the retail outlet from September 1973 to July

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1978. Subsequently, the OHA received two other refund applications requesting a refund based on purchases at the same location during part of the same time period that Hodges claimed to have operated the station. In view of the conflicting claims, on March 15, 1991, the OHA issued a Decision and Order requiring Hodges to show good cause why the refund should not be modified. Hodges failed to respond within 30 days. Accordingly, the DOE found that Hodges should repay, with interest, the amount of the excessive refund. The total repayment ordered was $1,459 ($1,172 principal plus $287 interest).

Texaco Inc./Ridge Service Station, 04/26/91, RF321–59

Ridge Service Station (Ridge) filed a Motion for Reconsideration of a March 18, 1991 Decision and Order in which the DOE denied duplicate refund applications submitted in the Texaco special refund proceeding by Thomas Ceraso, the outlet's owner. In the Motion, Mr. Ceraso stated that he believed that the first application, which had been filed by a private "filing service," Akins Energy, Inc. (Akin), had been a supplement to a pending refund application that Akin had filed on behalf of Ridge in the Exxon special refund proceeding. In considering the Motion, the DOE found Mr. Ceraso's statement was not credible since the Akin application and a statement authorizing Akin to represent Ridge, both of which had been signed by Mr. Ceraso, clearly indicated they were in connection with the Texaco refund proceeding. Accordingly, there was no basis to reconsider the finding in the March 18 Decision that Mr. Ceraso falsely certified in the duplicate application that he had not previously authorized anyone to file a Texaco refund application. The determination in the March 18 Decision that both refund applications should be denied on the grounds of "unclean hands" was therefore affirmed, and the Motion for Reconsideration was denied.

Time Oil Company/Defense Fuel Supply Center, 04/22/91, RF334–1

The DOE issued a Decision and Order granting a refund totalling $620,457 ($325,000 principal and $295,457 interest) to the Defense Fuel Supply Center. The principal amount of the refund was specifically earmarked for the DFSC in the Consent Order with Time Oil, as restitution for alleged overcharges on aviation jet fuel.

W.J. Runyon and Son, Inc., 04/25/91, RA272–00036

The DOE issued a Supplemental Order granting W.J. Runyon and Son, Inc. an additional refund of $7,354 in the subpart V crude oil overcharge refund proceeding.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Co./F & S Fuel & Supply Co., Inc. *et al*	RF304-3372	04/22/91
Atlantic Richfield Co./Garrett's ARCO #1 *et al*	RF304-10496	04/23/91
Atlantic Richfield Co./Joyce Iron & Metal Co. *et al*	RF304-3300	04/25/91
Atlantic Richfield Co./L & R Terminals, Inc. *et al*	RF304-9220	04/25/91
Atlantic Richfield Co./Village Arco *et al*	RF304-10139	04/23/91
B.F. Goodrich Company	RF272-23465	04/23/91
B.F. Goodrich Company	RD272-23465	
B.F. Goodrich	RF272-73871	
Exxon Corporation/Carl's Hillcrest Exxon	RF307-10174	04/24/91
Back River Exxon	RF307-10175	
Weaver's Auto Service	RF307-10176	
General Felt Industries	RF272-24950	04/23/91
General Felt Industries	RD272-24950	
Gold Bond Building Products	RF272-63111	04/22/91
Gold Bond Building Products	RD272-63111	
Gold Bond Building Products	RF272-49156	
Gulf Oil Corp./H & G Holt, Inc. *et al*	RF300-11533	04/25/91
Gulf Oil Corp./Ryder's Gulf Service *et al*	RF300-11700	04/26/91
Gulf Oil Corp./Stop & Shop *et al*	RF300-11055	04/25/91
Gulf Oil Corp./Willis Gulf Service *et al*	RF300-11007	04/25/91
Monarch Asphalt Company *et al*	RF272-21860	04/22/91
Nonarch Asphalt Company	RD272-21860	
National Refractories & Minerals Corporation	RF272-22389	04/23/91
National Refractories & Minerals Corporation	RD272-22389	
Stroh Brewery Co.	RF272-23367	04/26/91
Stroh Brewery Co.	RD272-23367	
Jos. Schlitz Brewing Co.	RF272-23368	
Jos. Schlitz Brewing Co.	RD272-23368	
Tesoro Petroleum Corporation/The Coastal Corporation *et al*	RF326-23	04/24/91
Texaco Inc./Broadway Texaco *et al*	RF321-6600	04/22/91
Texaco Inc./City of Winchester, Virginia *et al*	RF321-7101	04/25/91
Texaco Inc./Gateway Texaco *et al*	RF321-277	04/26/91
Texaco Inc./Jim Mortinson, Inc.	RF321-7417	04/24/91
James F. Mortinson	RF321-7418	
James F Mortinson	RF321-7419	
Texaco Inc./R.V. Kelley *et al*	RF321-6800	04/25/91
Texaco Inc./Sterling Sugars, Inc. *et al*	RF321-6300	04/25/91
Texaco Inc./Stewart's Texaco *et al*	RF321-1400	04/25/91
Time Oil Company/U-Save Oil Company	RF334-2	04/26/91
Velsicol Chemical Corporation	RF272-53853	04/25/91
Velsicol Chemical Corporation	RD272-53853	
Velsicol Chemical Corporation	RF272-62413	
Velsicol Chemical Corporation	RD272-62413	

Dismissals

The following submissions were dismissed:

Name	Case No.
Beard's Gulf	RF300-13560
Boone's Texaco	RF321-867
Carter's Arco	RF304-4562
Caulder Truck Stop	RF300-14270
D.Z. Gulf	RF300-14867
David Dekok	LFA-0114
Dearman Oil Co	RF300-12288
Dembreck's Gulf	RF300-11639
Doug's Texaco	RF321-14476
Federal Arco	RF304-9780
Frizzie's Tire Service	RF304-11659
Gerry's Gulf Station	RF300-14370
Gold Kist, Inc	RF321-5940
Harleyville One Stop	RF300-14411
Harper's Car Wash	RF321-3361
Highway 33 Gulf	RF300-14778
J.L. Culpepper & Co	RF300-12175
Jack Witt Shell	RF315-8658
Joe Zeita	RF300-14868
Ken-Wil Oil Co., Inc	RF115-9
Luke Oil Company, Inc	RF304-4419
Malabu Shell	RF315-8645
McGil Specialized Cariers, Inc	RF272-86542
Miller's Gulf	RF300-15652
Reese's Arco	RF304-11490
Russell's Gulf	RF300-14847
Simonton Oil Co	RF300-15152
Stamatis G. Passas	RF300-11683
Steed's Gulf	RF300-14263
Thomas Hippenmeyer	RF315-10112
University Texaco	RF321-1434
Winding Transportation Co	RF272-36219

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washingotn, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: July 26, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 91-18298 Filed 7-31-91; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders During the Week of May 20 Through May 24, 1991

During the week of May 20 through May 24, 1991, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Implementation of Special Refund Procedures

John R. Adams, 5/21/91, LEF-0020

The DOE issued a Decision and Order implementing special refund procedures to distribute $105,000.00, plus accrued interest, remitted to the DOE by John R. Adams (Adams), formerly doing business as J.R. Adams Oil Company, in settlement of alleged violations of petroleum price and allocation regulations. The DOE determined that it would distribute the Adams settlement monies through a refined product refund proceeding in accordance with the DOE regulations codified at 10 CFR, part 205, subpart V. The Adams settlement monies will be disbursed in the following two stages: refunds to purchasers of regulated Adams petroleum products in the first stage and transfer of monies remaining after the payment of all eligible first-stage claims to the states as mandated by the Petroleum Overcharge Distribution and Restitution Act of 1986.

Refund Applications

Aminoil U.S.A., Inc./Plymouth LP Gas Corporation, 5/24/91, RR139-70

The DOE issued a Decision and Order concerning a Motion for Reconsideration filed by Plymouth LP Gas Corporation in the Aminoil U.S.A., Inc., special refund proceeding. The firm's initial Application for Refund was granted under a $5,000 small claims presumption. In reviewing the Application, the DOE found that Plymouth was eligible for a refund based upon its full volumetric share of the consent order funds for its purchase of 8,623,052 gallons of covered products. As a result, Plymouth's Motion for Reconsideration was approved for $123,061 in principal, plus accrued interest.

Atlantic Richfield Company/Vern's ARCO, et al., 5/20/91, RF304-4001, et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by Petroleum Funds, Inc. (PFI) on behalf of Vern's ARCO, *et al.*, in the Atlantic Richfield Company special refund proceeding. The firms failed to submit any documentation or other material to indicate that they had ever purchased any refined products from ARCO. Although PFI was repeatedly contacted to provide the necessary information, they failed to do so. Accordingly, the Applications were denied.

Ciba-Geigy Corporation, Sun Chemical—Pigments Division, J.T. Baker, Inc., 5/23/91, RF272-64327, RD272-64327, RF272-64994, RD272-64994, RF272-70116, RD272-70116

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Ciba-Geigy Corporation, Sun Chemical—Pigments Division (Sun), and J.T. Baker, Inc., based upon their purchases of refined petroleum products between August 19, 1973, and January 27, 1981. The applicants used the petroleum products in their chemical manufacturing and packaging operations. The applicants were end-users of the refined petroleum products and were therefore presumed injured. A consortium of states and territories (the States) filed Statements of Objection and Motions for Discovery with respect to the Applications. The DOE found that the States' filings were insufficient to rebut the presumption of injury. Threfore, the Applications for Refund were granted, and the States' Motions for Discovery were denied. Specifically, the DOE determined that Ciba-Geigy Corporation was eligible to received a refund for its purchases of magie oil, because the evidence indicated that this product was produced at a refinery and was covered by the EPAA regulations. The DOE conversely determined that Sun was not eligible to receive a refund for its purchases of Naphthalene because it concluded that this product was a petrochemical and therefore not eligible for the purposes of this proceeding.

Gulf Oil Corporation/Five Points West Gulf, 5 Points Gulf, 5/21/91, RF300-12282, RF300-16717

The DOE issued a Decision and Order granting a refund to Mr. Bill Rorie (Case No. RF300-12282) and rescinding a refund (Case No. RF300-16717) that had been granted to Mr. Paul Alexander. Mr. Alexander received a refund based on written certification from Mr. Rorie that he had transferred his right for a refund to Mr. Alexander in selling him his service station. The DOE found that this certification was not genuine and determined that Mr. Rorie was the party eligible for a refund. The DOE therefore rescinded the refund of $2,020 that Mr. Alexander had received and granted a refund of $2,596 to Mr. Rorie.

IMCO Services Halliburton Services, 5/22/91, RF272-22394, RD272-22394, RF272-22395, RD272-22395

The DOE issued a Decision and Order granting Subpart V crude oil refund Applications filed by IMCO Services and Halliburton Services, based on their purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. The applicants,

Special Refund

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23/91, *RF272-64327,*
RD272-64327, RF272-64994, RD272-64994, RF272-70116, RD272-70116

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Ciba-Geigy Corporation, Sun Chemical—Pigments Division (Sun), and J.T. Baker, Inc., based upon their purchases of refined petroleum products between August 19, 1973, and January 27, 1981. The applicants used the petroleum products in their chemical manufacturing and packaging operations. The applicants were end-users of the refined petroleum products and were therefore presumed injured. A consortium of states and territories (the States) filed Statements of Objection and Motions for Discovery with respect to the Applications. The DOE found that the States' filings were insufficient to rebut the presumption of injury. Threfore, the Applications for Refund were granted, and the States' Motions for Discovery were denied. Specifically, the DOE determined that Ciba-Geigy Corporation was eligible to received a refund for its purchases of magie oil, because the evidence indicated that this product was produced at a refinery and was covered by the EPAA regulations. The DOE conversely determined that Sun was not eligible to receive a refund for its purchases of Naphthalene because it concluded that this product was a petrochemical and therefore not eligible for the purposes of this proceeding.

Gulf Oil Corporation/Five Points West Gulf, 5 Points Gulf, 5/21/91, *RF300-12282, RF300-16717*

The DOE issued a Decision and Order granting a refund to Mr. Bill Rorie (Case No. RF300-12282) and rescinding a refund (Case No. RF300-16717) that had been granted to Mr. Paul Alexander. Mr. Alexander received a refund based on written certification from Mr. Rorie that he had transferred his right for a refund to Mr. Alexander in selling him his service station. The DOE found that this certification was not genuine and determined that Mr. Rorie was the party eligible for a refund. The DOE therefore rescinded the refund of $2,020 that Mr. Alexander had received and granted a refund of $2,596 to Mr. Rorie.

IMCO Services Halliburton Services, 5/22/91, *RF272-22394, RD272-22394, RF272-22395, RD272-22395*

The DOE issued a Decision and Order granting Subpart V crude oil refund Applications filed by IMCO Services and Halliburton Services, based on their purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. The applicants, both oil field drilling contractors, demonstrated the volumes of their claims by using contemporaneous records and reasonable estimates. The applicants were end-users of the products they purchased and were therefore presumed injured. A group of states and terrirories of the United States (the States) objected to the Applications, contending that the firms were not injured because they were able to pass through to customers any overcharges they suffered due to the elasticities of supply and demand that exist in any industry. The applicants, in a Response to the States' Objection, admitted that they were able to pass through 40 percent of the over-charges. Accordingly, the DOE granted the applicants refunds equal to 60 percent of their full volumetric claims. The total of the refunds disbursed in this Decision was $106,348. The DOE also denied the Motions for Discovery filed by the States in these cases.

Murphy Oil Corporation/Power Pak, Inc., et al., 5/21/91, *RF309-493, et al.*

The DOE issued a final Decision and Order concerning Applications for Refund submitted on behalf of two retail motor gasoline outlets in the Murphy Oil Corporation (Murphy) special refund proceeding. The DOE issued a proposed Decision and Order regarding these Applications for Refund, which tentatively concluded that the former owner of the assets of both stations was the proper recipient of any refund granted on the basis of the stations' Murphy purchases. After considering all comments concerning the proposed determination, the DOE concluded that its tentative findings were correct and adopted them in a final Decision. Accordingly, the former owner was granted a refund of $6,766 ($4,938 in principal and $1,828 in interest) based on the stations' combined purchase volume of 16,652,902 gallons of regulated Murphy petroleum products. In the final Decision, the DOE also determined that the new owner of one of the station's assets was ineligible for the refund of $5,147 previously disbursed and will be required to return this amount to the Murphy escrow account.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Agway, Inc./Consolidated Edison Co. of NY	RF324-2	05/24/91
Reid Petroleum Corporation	RF324-19	
Davus Oil Co	RF324-26	
Atlantic Richfield Co./Anderson & Watkins, Inc	RF304-79	05/20/91
Atlantic Richfield Co./ARCO Truck Terminal *et al*	RF304-5146	05/21/91
Atlantic Richfield Co./Brewer Propane Gas, Inc	RF304-3582	05/23/91
Brewer Propane Gas, Inc	RF304-3583	
Brewer Propane Gas, Inc	RF304-3590	
Brewer Brothers, Inc	RF304-3790	
Atlantic Richfield Co./Harkleroad Oil Company, Inc	RF304-12283	05/20/91
Atlantic Richfield Co./McDowell Oil Service, Inc	RF304-4973	05/20/91
Atlantic Richfield Co./Wilson Oil Co. *et al*	RF304-11470	05/22/91
Avtex Fibers Front Royal, Inc	RF272-49245	05/23/91
Avtex Fibers Front Royal, Inc	RD272-49245	
Evans Oil & Gas, Inc	RF272-61123	05/24/91
Exxon Corporation/Clarence J. Rulon	RF307-10188	05/24/91
Exxon Corporation/Dave Starmer Exxon	RF307-10156	05/20/91
Gulf Oil Corp./AU Rust Proofing Center, Inc. *et al*	RF300-12420	05/20/91
Gulf Oil Corp./C&P Telephone Co. of MD. *et al*	RF300-11169	05/22/91
Gulf Oil Corp./H.J. Truxillo, Inc	RF300-12448	05/20/91
H.J. Truxillo, Inc	RF300-12449	
Gulf Oil Corp./Jerry's Gulf Service	RF300-16306	05/23/91
Gulf Oil Corp./Milazzo Oil Company	RF300-11601	05/22/91
Gulf Oil Corp./Waccasassa Gulf *et al*	RF300-11515	05/21/91
Heidenfels Brothers, Inc	RF272-25223	05/23/91
Heidenfels Brothers, Inc	RD272-25223	
Puerto Rican Cement Co., Inc	RF272-28145	
Puerto Rican Cement Co., Inc	RD272-28145	
Boh Bros. Construction Co. Inc	RF272-27532	
Boh Bros. Construction Co. Inc	RD272-27532	
John Royster	RC272-119	05/23/91
Nayak Aviation Corp	RF272-63666	05/24/91
Quabaug Corp. *et al*	RF272-65506	05/22/91
Ferguson Brothers Construction Co	RD272-67071	
Shell Oil Company/Bruce J. Sirchio *et al*	RF315-8600	05/22/91
Shell Oil Company/Crystal Petroleum Company	RF315-8367	05/21/91
Shell Oil Company/Randall B. Strickland	RF315-6137	05/22/91
State of California	RF272-67248	05/24/91
Texaco Inc./Army & Air Force Exchange Service *et al*	RF321-6625	05/22/91
Texaco Inc./Burger Bros	RF321-5090	05/24/91
Johnny McCullogh Texaco	RF321-11967	
Wenham Transportation, Inc	RF272-75673	05/21/91
West Springfield Public Schs. *et al*	RF272-61606	05/23/91

The following submissions were dismissed:

Name	Case No.
Andy's Arco	RF304-3356
Barjas Sweis Texaco	RF321-12123

Name	Case No.
Bill Beam's Texaco	RF321-3725
Billy's Texaco, Inc	RF321-3720
Bob Magari Texaco	RF321-846
Bob's Texaco	RF321-13640
Bob's Texaco	RF321-3721

Name	Case No.
Burkhardt's Texaco	RF321-4604
Carey's Texaco	RF321-9624
Chuck's Texaco & Hula Wash	RF321-14829
Crossroads Texaco	RF321-2620
Dodge Moving and Storage	RF272-62718

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Name	Case No.
Ernie's Texaco	RF321-4795
Fletcher's Texaco	RF321-227
Fort Thomas Texas Texaco	RF321-3716
Garden City Texaco	RF321-3931
Grafton Texaco	RF321-305
Hemingway Transport Inc	RF272-75961
Jim Williams Texaco	RF321-4792
Johnson Texaco	RF321-1138
Keck's Service Center	RF321-3723
Lee Hy Paving Company	RF272-64984
Missouri Agricultural Experiment Station.	RF272-67499
Missouri Agricultural Experiment Station.	RF272-67498
Missouri Agricultural Experiment Station.	RF272-67504
Missouri Foundation Seeds	RF272-67505
Mitch's Texaco	RF321-3727
Park Hill Texaco	RF321-14436
Park Square Texaco	RF321-3440
Plymouth Oil, Inc	RF315-0958
Quett's Texaco Station	RF321-14433
R&L Texaco	RF321-1217
Randy's Shell Service	RF315-4499
Riverview Texaco	RF321-3719
Salyer's Texaco	RF321-14103
Scarsdale Avenue Texaco	RF321-2546
Sunset Texaco	RF321-2942
Thirty-Fifth & Harrison Texaco	RF321-3718
Tilcon Delaware, Inc	RF272-3976
Tilcon Delaware, Inc	RF272-3976
Timberlake Texaco	RF321-3726
Vrabics Texaco	RF321-1462
Wayne R. Wilson Texaco	RF321-2570
Wickford Shipyard, Inc	RF321-2581

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: July 26, 1991.

George B. Breznay,

Director. Office of Hearings and Appeals.

[FR Doc. 91-18299 Filed 7-31-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3979-2]

Fuels and Fuel Additives; Waiver Application

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: On July 12, 1991, the Ethyl Corporation (Ethyl) submitted an application for a waiver of the prohibition against the introduction into commerce of certain fuels and fuel additives set forth in section 211(f) of the Clean Air Act (Act). This application seeks a waiver for the gasoline additive, methylcyclopentadienyl manganese tricarbonyl (MMT), an octane enhancer, commercially labeled by Ethyl as HiTEC 3000, to be blended in unleaded gasoline resulting in a level of up to 0.03125 (1/32) gram per gallon manganese (gpg Mn). The Administrator of EPA has until January 8, 1992 to grant or deny this application. If not denied by that date, it will be deemed to be granted, under section 211(f)(4).

DATES: EPA will conduct a one-day public hearing on this application beginning at 9 a.m. on September 13, 1991 at the U.S. EPA Auditorium located in the EPA Education Center (Northwest Mall Entrance), 401 M Street SW., Washington, DC 20460. Comments on this application will be accepted until October 4, 1991. Parties wishing to testify at the hearing should contact David J. Kortum or James W. Caldwell by September 6, 1991 at (202) 382-2635 (after August 23, 1991, the number will be (202) 260-8841). It is also requested that six copies of prepared hearing testimony be available at the time of the hearing for distribution to the hearing panel. Hearing testimony should also be submitted to the docket. Additional information on the submission of comments to the docket may be found below in the "**ADDRESSES**" section of this notice.

ADDRESSES: Copies of the information relative to this application are available for inspection in public docket A-91-46 at the Air Docket (LE-131) of the EPA, room M-1500, 401 M Street SW., Washington, DC 20460, (202) 382-7548, between the hours of 8:30 a.m. to noon and 1:30 p.m. to 3:30 p.m. weekdays. Any comments from interested parties should be addressed to this docket with a copy forwarded to Mary T. Smith, Director, Field Operations and Support Division (EN-397F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: David J. Kortum, Environmental Engineer, Field Operations and Support Division (EN-397F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-8841 (after August 23, 1991: (202) 260-8841).

SUPPLEMENTARY INFORMATION: Section 211(f)(1)(A) of the Act makes it unlawful, effective March 31, 1977, for any manufacturer of a fuel or fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for use in light duty motor vehicles manufactured after model year 1974 which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 206 of the Act. EPA has defined "substantially similar" at 56 FR 5352 (February 11, 1991). Section 211(f)(1)(B) of the Act makes it unlawful, effective November 15, 1990, for any manufacturer of a fuel or fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for use by any person in motor vehicles manufactured after model year 1974 which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 206 of the Act. Thus, section 211(f)(1)(B) expands the prohibitions of 211(f)(1)(A), which apply only to light-duty vehicles. Section 211(f)(4) of the Act provides that upon application by any fuel or fuel additive manufacturer, the Administrator of EPA may waive the prohibitions of section 211(f)(1) if the Administrator determines that the applicant has established that such fuel additive will not cause or contribute to a failure of any emission control device or system (over the useful life of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the emission standards to which it has been certified pursuant to section 206 of the Act. If the Administrator does not act to grant or deny an application for a waiver within 180 days of receipt of the application (in this case, by January 8, 1992), the statute provides that the waiver shall be treated as granted.

The current submission by Ethyl is an application under section 211(f)(4) of the Act for a waiver for the fuel additive methylcyclopentadienyl manganese tricarbonyl (MMT), commercially labeled by Ethyl as HiTEC 3000, to be blended in unleaded gasoline resulting in a level of up to 0.03125 (1/32) gram per gallon manganese (gpg Mn). This is Ethyl's fourth application for a waiver for MMT. Ethyl's first application was submitted on March 17, 1978 for concentrations of MMT resulting in 1/16 and 1/32 gpg Mn in unleaded gasoline. Ethyl's second application was submitted on May 26, 1981 for concentrations of MMT resulting in 1/64 gpg Mn in unleaded gasoline. The Administrator denied these requests for waivers. The decision and justification thereof may be found in the September 18, 1978 **Federal Register**, 43 FR 41424, and the December 1, 1981 **Federal Register**, 46 FR 58630. Ethyl's third

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application, was submitted on May 9, 1990, for concentrations of MMT resulting in a level of up to 0.3125 ($^{1}/_{32}$) gpg Mn in unleaded gasoline (the same level which is requested in the application which is the subject of today's notice). Ethyl withdrew its third application on November 1, 1990, before the deadline for the Administrator to make a determination on the application. Because no determination had been made at the time the applicant withdrew the application, EPA accepted the withdrawal and immediately terminated the proceeding without action on the application.

If the prohibitions against MMT were waived by the Administrator, it is highly likely that most U.S. gasoline would contain MMT, and, therefore, it is also highly likely that fuels used in certifying vehicles under section 206 of the Act, would be required to reflect this compositional change. EPA invites comments on whether the Administrator should grant or deny this waiver application.

Dated: July 24, 1991.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 91–17988 Filed 7–31–91; 8:45 am]

BILLING CODE 6560-50-M

[OPTS–59290B; FRL–3938–1]

Certain Chemicals; Approval of Modification to Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of modifications of the test marketing periods for three test marketing exemptions (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA designated the original test marketing applications as TME–91–2, TME–91–3, and TME–91–4. The test marketing conditions are described below.

EFFECTIVE DATES: July 24, 1991.

FOR FURTHER INFORMATION CONTACT: Rick Keigwin, New Chemicals Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M St. SW., Washington, DC 20460, (202) 382–2440. A public version of the record, without any confidential business information, is available in the TSCA Public Docket Office from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located in Rm. NE–G004, 401 M St., SW., Washington, DC.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to human health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves the modifications of the test marketing periods for TME–91–2, TME–91–3, and TME–91–4. EPA has determined that test marketing of the new chemical substances described below, under the conditions set out in the TME applications and modification request, and for the modified time periods specified below, will not present an unreasonable risk of injury to human health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the original Notice of Approval of Test Marketing Application must be met.

T–91–2

Notice of Approval of Original Application: January 18, 1991 (56 FR 2017).

Modified Test Marketing Period: 6–month extension from the original 6 months.

T–91–3

Notice of Approval of Original Application: January 18, 1991 (56 FR 2017).

Modified Test Marketing Period: 6–month extension from the original 6 months.

T–91–4

Notice of Approval of Original Application: January 18, 1991 (56 FR 2017).

Modified Test Marketing Period: 6–month extension from the original 6 months.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury to human health or the environment.

Dated: July 24, 1991.

John W. Melone,

Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc 91–18282 7–31–91; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection requirement submitted for Review

July 23, 1991.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street NW., Washington, DC 20036, (202) 452–1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0185.

Title: Section 73.3613, Filing of Contracts.

Action: Extension.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of responses: Recordkeeping requirement and on occasion reporting.

Estimated annual burden: 1,800 responses, 3,717 recordkeepers, .5 hours per response and per recordkeeper, 2,759 hours total annual burden.

Needs and Uses: Section 73.6316 requires that licensees of TV and low power TV broadcast stations file with the FCC copies of network affiliation contract, instruments, and documents together with amendments, supplements and cancellations. In addition, all broadcast station licensees are required to file contracts, instruments or documents relating to ownership or control and personnel. Certain contracts, agreements or understandings need not be filed with the FCC, but must be retained at the station and be made available for inspection upon request by the FCC. The contracts filed with the FCC and filed in the station file are used by the FCC to assure that a licensee maintains full control over the operation and maintenance of the Station.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 91–18154 Filed 7–31–91; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Manatee County Port Authority Banana Services, Inc.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200551.

Title: Manatee County Port Authority/Banana Services, Inc. Terminal Agreement.

Parties: Manatee County Port Authority Banana Services, Inc.

Synopsis: The Agreement, filed July 22, 1991, provides for the 5-year lease of a transit warehouse for fresh fruits, vegetables, juices and other general cargo. The Agreement also provides for priority vessel berthing, guaranteed annual cargo volumes, and wharfage incentive rates.

By Order of the Federal Maritime Commission.

Dated: July 29, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–18221 Filed 7–31–91; 8:45 am]

BILLING CODE 6730–01–M

[Agreement No. 217–011324–002]

Transpacific Space Utilization Agreement; Correction

In the **Federal Register** notice of July 16, 1991 (56 FR 32431), concerning subject agreement, Yang Ming Lines should not have been listed as an independent carrier party to the Agreement.

By Order of the Federal Maritime Commission.

Dated: July 29, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–18220 Filed 7–31–91; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR 540, as amended:

Club Med Sales, Inc. and Services et Transports Cruise Lines, 40 West 57th Street, New York, NY 10019, Vessel: CLUB MED 1.

Dated: July 29, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–18219 Filed 7–31–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

July 26, 1991.

Background

Notice is hereby given of the final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503 (202–395–7340).

Final approval under OMB delegated authority of the extension without revision of the following reports:

1. *Report title:* Annual Report on Status of Disposition of Assets Acquired in Satisfaction of Debt Previously Contracted.

Agency form number: FR 4006.
OMB Docket number: 7100–0129.
Frequency: Annual.
Reporters: Bank holding companies.
Annual reporting hours: 3000.
Estimated average hours per response: 5.
Number of respondents: 600.

Significant effect on small business is not expected.

General description of report: This information collection is required by law (12 U.S.C. 1843(c)(2) and 1844(c)). Certain portions may be given confidential treatment at applicant's request (5 U.S.C. 552(b)(4)).

Abstract: Bank holding companies that acquire assets in satisfaction of debts previously contracted are required to submit an annual report to the Board on the progress made to dispose of assets or shares that have been held two years beyond the initial date of their acquisition. The report is submitted by letter, does not have a required format, and serves to identify potentially unsound situations and to encourage timely compliance with the divestiture requirement as contained in the statutes and regulation.

2. *Report title:* Report of Bank Holding Company Intercompany Transactions and Balances.

Agency form number: FR Y–8.
OMB Docket number: 7100–0126.
Frequency: Semiannual.
Reporters: Bank holding companies
Annual reporting hours: 10,080.
Estimated average hours per response: 9.
Number of respondents: 550.
Small businesses are not affected.

General description of report: This report is mandatory (12 U.S.C. 1844(c)) and collects data required to supervise bank holding companies and their subsidiary banks. The data gathered on the form is accorded confidential treatment (5 U.S.C. 552b(8)).

Abstract: This report collects data on the transactions between a domestic bank holding company (or its nonbank subsidiaries) and its subsidiary banks. The information collected enables the

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Estimated average hours per response: 5.
Number of respondents: 600.

Significant effect on small business is not expected.

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Agency form number: FR Y–8.
OMB Docket number: 7100–0126.
Frequency: Semiannual.
Reporters: Bank holding companies
Annual reporting hours: 10,080.
Estimated average hours per response: 9.
Number of respondents: 550.
Small businesses are not affected.

General description of report: This report is mandatory (12 U.S.C. 1844(c)) and collects data required to supervise bank holding companies and their subsidiary banks. The data gathered on the form is accorded confidential treatment (5 U.S.C. 552b(8)).

Abstract: This report collects data on the transactions between a domestic bank holding company (or its nonbank subsidiaries) and its subsidiary banks. The information collected enables the Federal Reserve to identify categories of intercompany funds flows, internal transactions and balances that may have an adverse impact on the safety and soundness of federally-insured bank subsidiaries of bank holding companies.

A one-year interim extension is needed to allow sufficient time to review the reporting requirements in view of the restrictions placed on intercompany transactions by sections 23A and 23B of the Federal Reserve Action and other applicable regulations. These modifications have become necessary to address supervisory and regulatory concerns arising from recent significant increases in intercompany transactions.

Final approval under OMB delegated authority of the implementation of the following report:

Report title: Survey of the Nation's Check-Collection System.

Agency form number: R 3065.

OMB Docket number: 7100–0251.

Frequency: One-time.

Reporters: Certain depository institutions.

Annual reporting hours: 40,000.

Estimated average hours per response: 80.

Number of respondents: 500.

Small businesses are not affected.

General description of report: This information collection is voluntary (12 U.S.C. 4001 et seq.) and individual respondent data from the depository institutions are given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: The Reserve proposes to participate with the Bank Administration Institute (BAI) in a survey of the nation's check-collection system. The survey would involve a sample of some 500 depository institutions nationwide and is aimed at providing an accurate, up-to-date description of the U.S. check-collection system and clearing patterns at both the national and regional levels, as well as on a bank-size basis. The survey would provide information regarding forward collection and returned check processes, as well as the increasing use of electronic check services.

Board of Governors of the Federal Reserve System, July 26, 1991.

William W. Wiles,
Secretary of the Board.

[FR Doc. 91–18223 Filed 7–31–91; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: National Institute on Drug Abuse, ADAMHA, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11979, 11986). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

FOR FURTHER INFORMATION CONTACT: Denise L. Goss, Program Assistant, Drug Testing Section, Division of Applied Research, National Institute on Drug Abuse, room 9–A–53, 5600 Fishers Lane, Rockville, Maryland 20857; tel.: (301)443–6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of NIDA certification are not to be considered as meeting the minimum requirements expressed in the NIDA Guidelines. A laboratory must have its letter of certification from HHS/NIDA which attests that it has met minimum standards.

In accordance with subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

Alpha Medical Laboratory, Inc., 405 Alderson Street, Schofield, WI 54476, 800–627–8200
American BioTest Laboratories, Inc., Building 15, 3350 Scott Boulevard, Santa Clara, CA 95054, 408–727–5525
American Medical Laboratories, Inc., 11091 Main Street, P.O. Box 188, Fairfax, VA 22030, 703–891–9100
Associated Pathologists Laboratories, Inc., 4230 South Burnham Avenue, Suite 250, Las Vegas, NV 89119–5412, 702–733–7866
Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787
Bayshore Clinical Laboratory, 4555 W. Schroeder Drive, Brown Deer, WI 53223, 414–355–4444/800–877–7016
Bellin Hospital-Toxicology Laboratory, 2789 Allied Street, Green Bay, WI 54304, 414–496–2487
Bio-Analytical Technologies, 2356 North Lincoln Avenue, Chicago, IL 60614, 312–880–6900
Bioran Medical Laboratory, 415 Massachusetts Avenue, Cambridge, MA 02139, 617–547–8900
Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Avenue, Miami, FL 33136, 305–325–5810
Center for Human Toxicology, 417 Wakara Way-Room 290, University Research Park, Salt Lake City, UT 84108, 801–581–5117
Columbia Biomedical Laboratory, Inc., 4700 Forest Drive, Suite 200, Columbia, SC 29206, 800–848–4245/803–782–2700
Clinical Pathology Facility, Inc., 711 Bingham Street, Pittsburgh, PA 15203, 412–488–7500
Clinical Reference Lab, 11850 West 85th Street, Lenexa, KS 66214, 800–445–6917
CompuChem Laboratories, Inc., 3308 Chapel Hill/Nelson Hwy., P.O. Box 12652, Research Triangle Park, NC 27709, 919–549–826/800–833–3984
Damon Clinical Laboratories, 140 East Ryan Road, Oak Creek, WI 53154, 800–365–3840 (name changed: formerly Chem-Bio Corporation; CBC Clinilab)
Damon Clinical Laboratories, 8300 Esters Blvd., Suite 900, Irving, TX 75063, 214–929–0535
Doctors & Physicians Laboratory, 801 East Dixie Avenue, Leesburg, FL 32748, 904–787–9006
Drug Labs of Texas, 15201 I 10 East, Suite 125, Channelview, TX 77530, 713–457–3784
DrugScan, Inc., P. O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310
Eagle Forensic Laboratory, Inc., 950 North Federal Highway, Suite 308, Pompano Beach, FL 33062, 305–946–4324
Eastern Laboratories, Ltd., 95 Seaview Boulevard, Port Washington, NY 11050, 516–625–9800
ElSohly Laboratories, Inc., 1215-1/2 Jackson Ave., Oxford, MS 38655, 601–236–2609
General Medical Laboratories, 36 South Brooks Street, Madison, WI 53715, 608–267–6267
HealthCare/Preferred Laboratories, 24451 Telegraph Road, Southfield, MI 48034, 800–225–9414 (outside MI)/800–328–4142 (MI only)

Laboratory of Pathology of Seattle, Inc., 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672
Laboratory Specialists, Inc., P. O. Box 4350, Woodland Hills, CA 91365, 818–718–0115/800–331–6670 (outside CA)/800–464–7081 (CA only), (name changed: formerly Abused Drug Laboratories)
Laboratory Specialists, Inc., 113 Jarrell Drive, Belle Chasse, LA 70037, 504–392–7961
Mayo Medical Laboratories, 200 S.W. First Street, Rochester, MN 55905, 800–533–1710/507–284–3631
Med-Chek Laboratories, Inc., 4900 Perry Highway, Pittsburgh, PA 15229, 412–931–7300
MedExpress/National Laboratory Center, 4022 Willow Lake Boulevard, Memphis, TN 38175, 901–795–1515
MedTox Laboratories, Inc., 402 W. County Road D, St Paul, MN 55112, 612–636–7466
Mental Health Complex Laboratories, 9455 Watertown Plank Road, Milwaukee, WI 53226, 414–257–7439
Methodist Medical Center, 221 N.E. Glen Oak Avenue, Peoria, IL 61636, 309–672–4928
MetPath, Inc., 1355 Mittel Boulevard, Wood Dale, IL 60191, 708–595–3888
MetPath, Inc., One Malcolm Avenue, Teterboro, NJ 07608, 201–393–5000
MetWest-BPL Toxicology Laboratory, 18700 Oxnard Street, Tarzana, CA 91356, 800–492–0800/818–343–8191
National Center for Forensic Science, 1901 Sulphur Spring Road, Baltimore, MD 21227, 301–247–9100 (name changed: formerly Maryland Medical Laboratory, Inc.)
National Drug Assessment Corporation, 5419 South Western, Oklahoma City, OK 73109, 800–749–3784 (name changed: formerly Med Arts Lab)
National Health Laboratories Incorporated, 13900 Park Center Road, Herndon, VA 22071, 703–742–3100/800–572–3734 (inside VA)/800–336–0391(outside VA)
National Health Laboratories Incorporated, d.b.a. National Reference Laboratory, Substance Abuse Division, 1400 Donelson Pike, Suite A–15, Nashville, TN 37217, 615–360–3992/800–800–4522
National Health Laboratories Incorporated, 2540 Empire Drive, Winston-Salem, NC 27103–6710, 919–760–4620/800–334–8627 (outside NC)/800–642–0894 (NC only)
National Psychopharmacology Laboratory, Inc., 9320 Park W. Boulevard, Knoxville, TN 37923, 800–251–9492
National Toxicology Laboratories, Inc., 1100 California Avenue, Bakersfield, CA 93304, 805–322–4250
Nichols Institute Substance Abuse Testing (NISAT), 8985 Balboa Avenue, San Diego, CA 92123, 800–446–4728/619–694–5050, (name changed: formerly Nichols Institute)
Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Avenue, Eugene, OR 97440–0972, 503–687–2134
Parke DeWatt Laboratories, Division of Comprehensive Medical Systems, Inc., 1810 Frontage Rd., Northbrook, IL 60062, 708–480–4800
Pathlab, Inc., 16 Concord, El Paso, TX 79906, 800–999–7284
Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400
PDLA, Inc., 100 Corporate Court, So. Plainfield, NJ 07080, 201–769–8500
PharmChem Laboratories, Inc., 1505–A O'Brien Drive, Menlo Park, CA 94025, 415–328–6200/800–446–5177
Poisonlab, Inc., 7272 Clairemont Mesa Road, San Diego, CA 92111, 619–279–2600
Precision Analytical Laboratories, Inc., 13300 Blanco Road, Suite #150, San Antonio, TX 78216, 512–493–3211
Regional Toxicology Services, 15305 NE. 40th Street, Redmond, WA 98052, 206–882–3400
Roche Biomedical Laboratories, 1801 First Avenue South, Birmingham, AL 35233, 205–581–3537
Roche Biomedical Laboratories, 6370 Wilcox Road, Dublin, OH 43017, 614–889–1061

The certification of this laboratory (Roche Biomedical Laboratories, Dublin, OH) is suspended from conducting confirmatory testing of amphetamines. The laboratory continues to meet all requirements for HHS/NIDA certification for testing urine specimens for marijuana, cocaine, opiates and phencyclidine. For more information, see 55 FR 50589 (Dec. 7, 1990).

Roche Biomedical Laboratories, Inc., 1912 Alexander Drive, P.O. Box 13973, Research Triangle Park, NC 27709, 919–361–7770
Roche Biomedical Laboratories, Inc., 69 First Avenue, Raritan, NJ 08869, 800–437–4986
Roche Biomedical Laboratories, Inc., 1120 Stateline Road, Southaven, MS 38671, 601–342–1286
S.E.D. Medical Laboratories, 500 Walter NE., Suite 500, Albuquerque, NM 87102, 505–843–6800
Sierra Nevada Laboratories, Inc., 888 Willow Street, Reno, NV 89502, 800–648–5472
SmithKline Beecham Clinical Laboratories, 506 E. State Parkway, Schaumburg, IL 60173, 708–885–2010 (name changed: formerly International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 400 Egypt Road, Norristown, PA 19403, 800–523–5447 (name changed: formerly SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 3175 Presidential Drive, Atlanta, GA 30340, 404–934–9205 (name changed: formerly SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301 (name changed: formerly SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Avenue, Van Nuys, CA 91045, 818–376–2520
South Bend Medical Foundation, Inc., 530 North Lafayette Boulevard, South Bend, IN 46601, 219–234–4176
Southgate Medical Laboratory, Inc., 21100 Southgate Park Boulevard, 2nd Floor, Maple Heights, OH 44137, 800–338–0166 outside OH/800–362–8913 inside OH
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 North Lee Street, Oklahoma City, OK 73102, 405–272–7052
St. Louis University Forensic Toxicology Laboratory, 1205 Carr Lane, St. Louis, MO 63104, 314–577–8628
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 314–882–1273
Toxicology Testing Service, Inc., 5426 NW. 79th Avenue, Miami, FL 33166, 305–593–2260

Charles R. Schuster,

Director, National Institute on Drug Abuse.

[FR Doc. 91–18238 Filed 7–31–91; 8:45 am]

BILLING CODE 4160-20-M

Centers for Disease Control

RF-Induced Body Current and Absorbed Power Determinations; Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) announces the following meeting.

Name: RF-Induced Body Current and Absorbed Power Determinations.

Time and Date: 9 a.m.–2:30 p.m., August 22, 1991.

Place: Robert A. Taft Laboratories, Taft Auditorium, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Status: Open to the public, limited only by the space available.

Purpose: To conduct an open meeting for the review of a research protocol for a study to determine the effect of operator posture and workstation furniture on exposure (ankle current) of RF heater operators.

Contact Person for Additional Information: David L. Conover, Ph.D., NIOSH, CDC, 4676 Columbia Parkway, Mailstop C–27, Cincinnati, Ohio 45226, telephone 513/533–8482 or FTS 684–8482.

Dated: July 26, 1991.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 91–18217 Filed 7–31–91; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 91F–0254]

Exxon Chemical Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Exxon Chemical Co. has filed a

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Spokane, WA 99208,

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St. Louis University Forensic Toxicology Laboratory, 1205 Carr Lane, St. Louis, MO 63104, 314–577–8628

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 314–882–1273

Toxicology Testing Service, Inc., 5426 NW. 79th Avenue, Miami, FL 33166, 305–593–2260

Charles R. Schuster,

Director, National Institute on Drug Abuse.

[FR Doc. 91–18238 Filed 7–31–91; 8:45 am]

BILLING CODE 4160-20-M

Centers for Disease Control

RF-Induced Body Current and Absorbed Power Determinations; Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) announces the following meeting.

Name: RF-Induced Body Current and Absorbed Power Determinations.

Time and Date: 9 a.m.–2:30 p.m., August 22, 1991.

Place: Robert A. Taft Laboratories, Taft Auditorium, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Status: Open to the public, limited only by the space available.

Purpose: To conduct an open meeting for the review of a research protocol for a study to determine the effect of operator posture and workstation furniture on exposure (ankle current) of RF heater operators.

Contact Person for Additional Information: David L. Conover, Ph.D., NIOSH, CDC, 4676 Columbia Parkway, Mailstop C–27, Cincinnati, Ohio 45226, telephone 513/533–8482 or FTS 684–8482.

Dated: July 26, 1991.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 91–18217 Filed 7–31–91; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 91F–0254]

Exxon Chemical Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Exxon Chemical Co. has filed a

petition proposing that the food additive regulations be amended to provide for the safe use of hydrogenated cyclodiene resins as a component of polypropylene film intended to contact food.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 1B4267) has been filed by Exxon Chemical Co., P.O. Box 241, Baton Rouge, LA 70821, proposing that the food additive regulations be amended to provide for the safe use of hydrogenated cyclodiene resins for use as a component of polypropylene film intended to contact food.

The potential environmental impact of this action is being reviewed. If the agency finds than an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulations in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: July 26, 1991.

L. Robert Lake,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91–18312 Filed 7–31–91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91F–0264]

Stockhausen, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Stockhausen, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of *N*-((3-dimethylamino) propyl)-2-propenamide, polymer with 2-propenoic acid, sodium salt as a dispersing aid in paper and paper coatings intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9B149) has been filed by Stockhausen, Inc., 2408 Doyle St., Greensboro, NC 27406. The petition proposes to amend the food additive regulations in § 176.170 Components of paper and paperboard in contact with aqueous and fatty foods (21 CFR 176.170) to provide for the safe use of *N*-((3-dimethylamino) propyl)-2-propenamide, polymer with 2-propenoic acid, sodium salt as a dispering aid in paper and paper coatings intended for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmenal impact statement is not required and this petiton results in a regulation, the notice of avilability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: July 26, 1991.

L. Robert Lake,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91–18313 Filed 7–31–91; 8:45 am]

BILLING CODE 4160-01-M

Social Security Administration

[Social Security Ruling SSR 91–7c]

Supplemental Security Income—Disability Standards for Children

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Social Security ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling 91–7c. This Ruling is based on the U.S. Supreme Court decision in *Sullivan* v. *Zebley*, which ruled that the Secretary could not use the regulations then in effect for determining disability in children to deny child disability benefits under the supplemental security income program. Because of this decision, the Commissioner also gives notice that the following Social Security Rulings have been rescinded: SSR 83–19 and SSR 85–21c, and this Ruling supersedes SSR 82–52, SSR 82–53, and SSR 86–8 to the extent these Social Security Rulings discuss the former procedures used to determine disability in children.

EFFECTIVE DATE: August 1, 1991.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235 (301) 965–1711.

SUPPLEMENTARY INFORMATION: Although not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings are based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating other cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the Federal Register to that effect.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802 Social Security—Disability Insurance; 93.803 Social Security—Retirement Insurance; 93.805 Social Security—Survivor's Insurance; 93.806 Special Benefits for Disabled Coal Miners; 93.807 Supplemental Security Income)

Dated: July 11, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

Section 1614(a)(3)(A) of the Social Security Act (42 U.S.C. 1382c(a)(3)(A)) Supplemental Security Income—Disability Standards for Children

20 CFR 416.924 and 416.994(c)

Sullivan v. *Zebley*, 110 S. Ct. 885 (1990).

(The following Social Security Rulings (SSR) have been rescinded: SSR 83–19, Cumulative Edition (C.E.) 1981–1985, p. 370 and SSR 85–21c, C.E. 1981–1985, p. 818. This Ruling supersedes SSR 82–52, C.E. 1981–1985, p. 328, SSR 82–53, C.E. 1981–1985, p. 312, and SSR 86–8, C.E. 1986, p. 78 to the extent these SSRs discuss the former procedures used to determine disability in children.)

Section 1614(a)(3)(A) of the Social Security Act (the Act) (42 U.S.C. 1382c(a)(3)(A)) authorizes the payment of supplemental security income (SSI) benefits to children who suffer from impairments of "comparable severity" to impairments that would render adults (workers) disabled. The Secretary's former regulations at 20 CFR 416.924 generally provided that a child under age 18 would have been found disabled for purposes of eligibility for SSI benefits only if he or she was found to have an impairment(s) which met the duration requirement and which met or equaled an impairment listed in appendix 1, subpart P of Regulations No. 4, the Listing of Impairments. The Supreme Court decided that the Secretary's former regulations implementing the law for evaluating disability in children did not adequately reflect congressional intent. The Court held that the "listings-only" approach used to evaluate the disabilities of children did not carry out the "comparable severity" standard of the Act, in that the listings were set at a level of severity stricter than the level at which an adult can be found disabled and the Secretary's former policies did not provide for an assessment of overall functional impairment.

Blackmun, Supreme Court Justice:

This case concerns a facial challenge to the method used by the Secretary of Health and Human Services to determine whether a child is "disabled," and therefore eligible for benefits under the Supplemental Security Income Program, title XVI of the Social Security Act, as added, 86 Stat. 1465, and amended, 42 U.S.C. 1381 *et seq.* (1982 ed. and Supp. V).

I

In 1972, Congress enacted the Supplemental Security Income Program (SSI) to assist "individuals who have attained age 65 or are blind or disabled" by setting a guaranteed minimum income level for such persons. 42 U.S.C. 1381. The program went into effect January 1, 1974. Currently, about 2,000,000 claims for SSI benefits are adjudicated each year. Of these, about 100,000 are child-disability claims.[1]

A person is eligible for SSI benefits if his income and financial resources are below a certain level, section 1382(a), and if he is "disabled." Disability is defined in section 1382c(a)(3) as follows:

> (A) An individual shall be considered to be disabled for purposes of this subchapter if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months (or, in the case of a child under the age of 18, if he suffers from any medically determinable physical or mental impairment of comparable severity).
>
> (B) For purposes of subparagraph (A), an individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy * * *
>
> (C) For purposes of this paragraph, a physical or mental impairment is an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.

This statutory definition of disability was taken from Title II of the Social Security Act, 42 U.S.C. 423 *et seq.*, as amended (providing for payment of insurance benefits to disabled workers who have contributed to the Social Security Program). See Sections 423(d)(1)(A) and (d)(2)(A) (definitions of disability).

Pursuant to his statutory authority to implement the SSI Program,[2] the Secretary has promulgated regulations creating a 5-step test to determine whether an *adult* claimant is disabled. See *Bowen* v. *Yuckert*, 482 U.S. 137, 140–142, 107 S.Ct. 2287, 2290–91, 96 L.Ed.3d 119 (1987).[3] The first two steps involve threshold determinations that the claimant is not presently working, and has an impairment which is of the required duration and which significantly limits his ability to work. See 20 CFR 416.920(a) through (c) (1989). In the third step, the medical evidence of the claimant's impairment is compared to a list of impairments presumed severe enough to preclude any gainful work. See 20 CFR pt. 404, subpt. P, app. 1 (pt. A) (1989). If the claimant's impairment matches or is "equal" to one of the listed impairments, he qualifies for benefits without further inquiry. Section 416.920(d). If the claimant cannot qualify under the listings, the analysis proceeds to the fourth and fifth steps. At these steps, the inquiry is whether the claimant can do his own past work or any other work that exists in the national economy, in view of his age, education, and work experience. If the claimant cannot do his past work or other work, he qualifies for benefits. Section 416.920(e) and (f).

The Secretary's test for determining whether a *child* claimant is disabled is an abbreviated version of the adult test. A child qualifies for benefits if he "is not doing any substantial gainful activity," § 416.924(a), if his impairment meets the duration requirement, § 416.924(b)(1), and if it matches or is medically equal to a listed impairment, § 416.924(b)(2) and (3). In evaluating a child's claim, both the general listings and a special listing of children's impairments, 20 CFR pt. 404, subpt. P, app. 1 (pt. B), are considered. If a child cannot qualify under these listings, he is denied benefits. There is no further inquiry corresponding to the fourth and fifth steps of the adult test.

II

Respondent Brian Zebley, a child who had been denied SSI benefits, brought a class action in the United States District Court for the Eastern District of Pennsylvania to challenge the child-disability regulations.[4] His complaint alleges that the Secretary

> * * * has promulgated regulations and issued instructions * * * whereby children have their entitlement to SSI disability benefits based solely on the grounds that they have a listed impairment or the medical equivalent of a listed impairment * * * in contravention of the Act's requirement that a child be considered disabled 'if he suffers from any medically determinable physical or mental impairment of comparable severity' to that which disables an adult under the program.

Complaint in ED Pa. Civil Action No. 83–3314, ¶ 2. The District Court, on January 10, 1984, certified a class of all persons

> * * * who are now, or who in the future will be, entitled to an administrative determination * * * as to whether supplemental security income benefits are payable on account of a child who is disabled, or as to whether such benefits have been improperly denied, or improperly terminated, or should be resumed.

The court in due course granted summary judgment in the Secretary's favor as to the class claims, ruling that the regulations are not "facially invalid or incomplete * * * and permi[t] the award of benefits in conformity with the

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[1] Social Security Administration, Office of Disability, Preliminary Staff Report: Childhood Disability Study, p. B–1 (Sept. 20, 1989).

[2] 42 U.S.C. 405(a), made applicable to title XVI by section 1383(d)(1), reads: "The Secretary shall have full power and authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this subchapter, which are necessary or appropriate to carry out such provisions, and shall adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence * * * in order to establish the right to benefits hereunder."

[3] The regulations implementing the title II disability standard, 42 U.S.C. 423(d), at issue in *Yuckert*, and those implementing the identical title XVI standard, section 1382c(a)(3), at issue in this case, are the same in all relevant respects. Compare 20 CFR § 404.1520–1530 with §§ 416.920–930 (1989).

[4] Respondents Joseph Love and Evelyn Raushi, two children who were denied benefits, are the other two named plaintiffs in this action. All three named plaintiffs' individual claims were eventually remanded to the Secretary by the District Court; only the class claims remain before this Court.

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[4] Respondents Joseph Love and Evelyn Raushi, two children who were denied benefits, are the other two named plaintiffs in this action. All three named plaintiffs' individual claims were eventually remanded to the Secretary by the District Court; only the class claims remain before this Court.

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intent of Congress." *Zebley* v. *Heckler*, 642 F.Supp. 220, 222 (1986). The Court of Appeals for the Third Circuit vacated in part that summary judgment. *Zebley ex rel. Zebley* v. *Bowen*, 1855 F.2d 67 (1988). The Third Circuit found the Secretary's regulatory scheme for child disability benefits inconsistent with the statute, because the listings-only approach of the regulations does not account for all impairments of "comparable severity," and denies child claimants the individualized functional assessment that the statutory standard requires and that the Secretary provides to adults. *Id.*, at 69. Although the Court of Appeals recognized that the Secretary's interpretation of the statute is entitled to deference, it rejected the regulations as contrary to clear congressional intent. The court remanded the case to the District Court with the direction that summary judgment be entered in favor of the plaintiff class on the claim that the Secretary must give child claimants an opportunity for individualized assessment of their functional limitations. *Id.*, at 77. We granted certiorari to resolve a conflict among the Circuits as to the validity of the Secretary's approach to child disability.[5]

III

Since the Social Security Act expressly grants the Secretary rulemaking power, see n. 2, *supra*, " 'our review is limited to determining whether the regulations promulgated exceeded the Secretary's statutory authority and whether they are arbitrary and capricious.' " *Bowen* v. *Yuckert*, 482 U.S., at 145, 107 S.Ct., at 2293 (quoting *Heckler* v. *Campbell*, 461 U.S. 458, 466, 103 S.Ct. 1952, 1957, 76 L.Ed.2d 66 (1983)); see *Chevron U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843–844, 104 S.Ct. 2778, 2782, 81 L.Ed.2d 694 (1984) ("If Congress has explicitly left a gap for the agency to fill, there is an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation. Such legislative regulations are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute"). We conclude, however, that the Secretary's child-disability regulations cannot be reconciled with the statute they purport to implement.

The statute generally defines "disability" in terms of an individualized, functional inquiry into the effect of medical problems on a person's ability to work. *Yuckert*, 482 U.S., at 146, 107 S.Ct., at 2293 (Social Security Act adopts "functional approach"); *Campbell*, 461 U.S., at 459–460, 467, 103 S.Ct., at 1953, 1957 (Act "defines 'disability' in terms of the effect a physical or mental impairment has on a person's ability to function in the workplace"; "statutory scheme contemplates that disability hearings will be individualized determinations").

The statutory standard for child disability is explicitly linked to this functional, individualized standard for adult disability. A child is considered to be disabled "if he suffers from any * * * impairment of comparable severity" to one that would render an adult "unable to engage in any substantial gainful activity." 42 U.S.C. 1382c(a)(3)(A). The next paragraph of the statute elaborates on the adult disability standard, providing that an adult is considered unable to engage in substantial gainful activity, and is therefore disabled, if he is unable to do either his own past work or other work. Section 1382c(a)(3)(B). In plain words, the two provisions together mean that a child is entitled to benefits if his impairment is as severe as one that would prevent an adult from working.

The question presented is whether the Secretary's method of determining child disability conforms to this statutory standard. Respondents argue, and the Third Circuit agreed, that it does not, because the regulatory requirement that a child claimant's impairment must match or be equivalent to a listed impairment denies benefits to those children whose impairments are severe and disabling even though the impairments are not listed and cannot meaningfully be compared with the listings. The Secretary concedes that his listings do not cover every impairment that could qualify a child for benefits under the statutory standard, but insists that the listings, together with the equivalence determination, see 20 CFR 416.924(b)(3), are sufficient to carry out the statutory mandate that children with impairments of "comparable severity" shall be considered disabled. To decide this question, we must take a closer look at the regulations at issue.

IV

The listings set out at 20 CFR pt. 404, subpt. P, app. I (pt. A), are descriptions of various physical and mental illnesses and abnormalities, most of which are categorized by the body system they effect.[6] Each impairment is defined in terms of several specific medical signs, symptoms, or laboratory test results.[7] For a claimant to show that his impairment matches a listing, it must meet all of the specified medical criteria. An impairment that manifests only some of those criteria, no matter how severely, does not qualify.[8] See Social Security Ruling (SSR) 83–19,[9] West's Social Security Reporting Service (Rulings Supp. Pamph. 1988) 90, 91–92 ("An impairment 'meets' a listed condition * * * only when it manifests the specific findings described in the set of medical criteria for that listed impairment * * *. The level of severity in any particular listing section is depicted by the given set of findings and not by the degree of severity of any single medical finding—no matter to what extent that finding may exceed the listed value") (emphasis in original).

For a claimant to qualify for benefits by showing that his unlisted impairment, or combination of impairments, is

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[5] The First and Eleventh Circuits have upheld the validity of the Secretary's approach to child disability. *Hinckley ex rel. Martin* v. *Secretary of Health and Human Services*, 742 F.2d 19 (CA1 1984); *Powell ex rel. Powell* v. *Schweiker*, 688 F.2d 1357 (CA11 1982). Also, the Fifth and Eighth Circuits have ruled that the Secretary properly applied the child-disability regulations to deny benefits in a particular case, without explicitly addressing the question whether the regulations are valid. *Nash ex rel. Alexander* v. *Bowen*, 882 F.2d 1291 (CA8 1989); *Burnside ex rel. Burnside* v. *Bowen*, 845 F.2d 587 (CA5 1988). The Third Circuit in the present case acknowledged the conflict. *Zebley ex rel. Zebley* v. *Bowen*, 855 F.2d 67, 75 (1988).

[6] There are 125 impairments defined in the adult listings, and an additional 57 in the child listings. The body system categories in the adult listings are: musculoskeletal, special senses and speech, respiratory, cardiovascular, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine. In addition, there are four groups of listings not categorized by body system: multiple body system impairments, neurological impairments, mental disorders, and malignant neoplastic diseases. The child disability listings include, in addition to all these, a category for growth impairment.

[7] For example, under the "growth impairment" category of the child disability listings, 20 CFR pt. 404, subpt. P, app. I (pt. B) § 100.00 et seq., there is a listing the medical criteria of which require the claimant to show both a "[f]all of greater than 25 percentiles in height which is sustained" and "[b]one age greater than two standard deviations * * * below the mean for chronological age." Section 100.03. Another example is the listing for "mental retardation," which requires that a child claimant show "[a]chievement of only those developmental milestones generally acquired by children no more than one-half the child's chronological age," or "IQ of 59 or less," or "IQ of 60–69, inclusive, and a physical or other mental impairment imposing additional and significant restriction of function or developmental progression." Section 112.05.

[8] For example, in the growth impairment listing described in n. 7, supra, a child claimant whose "bone age" was slightly less than two standard deviations below normal would not qualify under the listing, even if his height was much more than 25 percentiles below normal.

[9] Social Security Rulings are agency rulings "published under the authority of the Commissioner of Social Security and are binding on all components of the Administration." 20 CFR 422.408 (1989); see *Heckler* v. *Edwards*, 465 U.S. 870, 873, n. 3, 104 S.Ct. 1532, 1534, n. 3, 79 L.Ed.2d 878 (1984).

"equivalent" to a listed impairment, he must present medical findings equal in severity to all the criteria for the one most similar listed impairment.[10] 20 CFR 416.926(a) (a claimant's impairment is "equivalent" to a listed impairment "if the medical findings are at least equal in severity" to the medical criteria for "the listed impairment most like [the claimant's] impairment"); SSR 83–19, at 92 (a claimant's impairment is "equivalent" to a listing only if his symptoms, signs, and laboratory findings are "at least equivalent in severity to" the criteria for "the listed impairment most like the individual's impairment(s)"; when a person has a combination of impairments, "the medical findings of the combined impairments will be compared to the findings of the listed impairment most similar to the individual's most severe impairment").[11] A claimant cannot qualify for benefits under the "equivalence" step by showing that the overall functional impact of his unlisted impairment or combination of impairments is as severe as that of a listed impairment. SSR 83–19, at 92–93 ("it is incorrect to consider whether the listing is equaled on the basis of an assessment of overall functional impairment * * *. The functional consequences of the impairments * * * irrespective of their nature or extent, cannot justify a determination of equivalence") (emphases in original).

The Secretary explicitly has set the medical criteria defining the listed impairments at a higher level of severity than the statutory standard. The listings define impairments that would prevent an adult, regardless of his age, education, or work experience, from performing any gainful activity, not just "substantial gainful activity." See 20 CFR 416.925(a) (purpose of listings is to describe impairments "severe enough to prevent a person from doing any gainful activity"); SSR 83–19, at 91 (listings define "medical conditions which ordinarily prevent an individual from engaging in any gainful activity"). The reason for this difference between the listings' level of severity and the statutory standard is that, for adults, the listings were designed to operate as a presumption of disability that makes further inquiry unnecessary. That is, if an adult is not actually working and his impairment matches or is equivalent to a listed impairment, he is presumed unable to work, and is awarded benefits without a determination whether he actually can perform his own prior work or other work. See *Yuckert,* 482 U.S., at 141, 107 S.Ct., at 2291 (if an adult's impairment "meets or equals one of the listed impairments, the claimant is conclusively presumed to be disabled. If the impairment is not one that is conclusively presumed to be disabling, the evaluation proceeds to the fourth step"; the listings "streamlin[e] the decision process by identifying those claimants whose medical impairments are so severe that it is likely they would be found disabled regardless of their vocational background," *id,* at 153, 107 S.Ct., at 2297); *Bowen* v. *City of New York,* 476 U.S. 467, 471, 106 S.Ct. 2022, 2025, 90 L.Ed.2d 462 (1986) ("If a claimant's condition meets or equals the listed impairments, he is conclusively presumed to be disabled and entitled to benefits"; if not, "the process moves to the fourth step"); *Campbell* 461 U.S., at 460 103 S.Ct., at 1953 ("The regulations recognize that certain impairments are so severe that they prevent a person from pursuing any gainful work * * *. A claimant who establishes that he suffers from one of these impairments will be considered disabled without further inquiry * * *. If a claimant suffers from a less severe impairment, the Secretary must determine whether the claimant retains the ability to [work]").

When the Secretary developed the child-disability listings, he set their medical criteria at the same level of severity as that of the adult listings. See 42 Fed. Reg. 14705 (1977) (the child-disability listings describe impairments "of 'comparable severity' to the adult listing"); SSA Disability Insurance Letter No. III–11 [12] (Jan. 9, 1974), App. 97 (child-disability listings describe impairments that affect children "to the same extent as * * * the impairments listed in the adult criteria" affect adults' ability to work).

Thus, the listings in several ways are more restrictive than the statutory standard. First, the listings obviously do not cover all illnesses and abnormalities that actually can be disabling. The Secretary himself has characterized the adult listing as merely containing "over 100 *examples* of medical conditions which ordinarily prevent" a person from working, and has recognized that "it is difficult to include in the listing all the sets of medical findings which describe impairments severe enough to prevent any gainful work." SSR 83–19, at 91 (emphasis added). See also 50 Fed. Reg. 50068, 50069 (1985) (listings contain only the most "frequently diagnosed" impairments); 44 Fed. Reg. 18170, 18175 (1979) ("The Listing criteria are intended to identify the more commonly occurring impairments"). Similarly, when the Secretary published the child-disability listings for comment in 1977, he described them as including only the "more common impairments" affecting children. 42 Fed. Reg. 14706 (the child-disability listings "provide a means to efficiently and equitably evaluate the more common impairments").[13]

Second, even those medical conditions that are covered in the listings are defined by criteria setting a higher level of severity than the statutory standard, so they exclude claimants who have listed impairments in a form severe enough to preclude *substantial* gainful activity, but not quite severe enough to meet the listings level—that which would preclude any gainful activity. Third, the listings also exclude any claimant whose impairment would not prevent any and all persons from doing any kind of work, but which actually precludes the particular claimant from working, given its actual effects on him—such as pain, consequences of medication, and other symptoms that vary greatly with the individual [14]—and given the claimant's age, education, and work experience. Fourth, the equivalence analysis excludes claimants who have unlisted impairments, or combinations of impairments, that do not fulfill all the criteria for any one listed impairment.

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[10] For example, a child claimant with Down syndrome (which currently is not a listed impairment), a congenital disorder usually manifested by mental retardation, skeletal deformity and cardiovascular and digestive problems, would have to fulfill the criteria for whichever single listing his condition most resembled. See Brief for National Easter Seal Society, *et al*, as *Amici Curiae* 17, n. 9.

[11] For example, if a child has both a growth impairment slightly less severe than required by listing § 100.03, and is mentally retarded but has an IQ just above the cut-off level set by § 112.04, he cannot qualify for benefits under the "equivalence" analysis—no matter how devastating the combined impact of mental retardation and impaired physical growth.

[12] A Disability Insurance Letter (DIL) is an internal directive sent by the Secretary to the state agencies responsible for disability determinations. See Brief for Petitioner 36.

[13] There are, as yet, no specific listings for many well-known childhood impairments, including spina bifida, Down syndrome, muscular dystrophy, autism, AIDS, infant drug dependency, and fetal alcohol syndrome. See Brief for American Medical Association, *et al, as Amici Curiae* (AMA Brief) 22. The Secretary, however, has proposed new listings for "Down syndrome and other Hereditary, Congenital, and Acquired Disorders." 52 Fed. Reg. 37161 (1987). See Reply Brief for Petitioner 19, n. 16.

[14] The Secretary has stated that the severity of perceived symptoms such as pain has no bearing on the determination whether a claimant's impairment meets or equals a listing. Social Security Ruling 82–58, DHHS Rulings, Cumulative Edition 1982, p. 121 ("No alleged or reported intensity of the symptoms can be substituted to elevate impairment severity to equivalency * * *. [C]omplaints of 'severe,' 'extreme,' or 'constant' pain will not compensate for * * * missing medical findings and permit an 'equals' determination") (emphasis deleted).

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Thus, there are several obvious categories of claimants who would not qualify under the listings, but who nonetheless would meet the statutory standard.

For *adults*, these shortcomings of the listings are remedied at the final, vocational steps of the Secretary's test. A claimant who does not qualify for benefits under the listings, for any of the reasons described above, still has the opportunity to show that his impairment in fact prevents him from working. 20 CFR 416.920 (e) and (f); *Yuckert*, 482 U.S., at 141, 107 S.Ct., at 2291 (if an adult claimant's "impairment is not one that is conclusively presumed to be disabling, the evaluation proceeds" to the fourth and fifth steps); *Campbell*, 461 U.S., at 460, 103 S.Ct., at 1953 ("If a claimant suffers from a less severe impairment" than the listed impairments, "the Secretary must determine whether the claimant retains the ability to perform either his former work or some less demanding employment").[15]

For children, however, there is no similar opportunity. Children whose impairments are not quite severe enough to rise to the presumptively disabling level set by the listings; children with impairments that might not disable any and all children, but which actually disable *them*, due to symptomatic effects such as pain, nausea, side effects of medication, etc., or due to their particular age, educational background, and circumstances; and children with unlisted impairments or combinations of impairments [16] that are not equivalent to any one listing—all these categories of child claimants are simply denied benefits, even if their impairments are of "comparable severity" to ones that would actually (though not presumptively) render an adult disabled.[17]

The child-disability regulations are simply inconsistent with the statutory standard of "comparable severity." [18] This inconsistency is aptly illustrated by the fact that the Secretary applies the same approach to child-disability determinations under title XVI and to widow's and widowers' disability benefits under title II, despite the fact that title II sets a stricter standard for widows' benefits. Under the Secretary's regulations and rulings both widows and children qualify for benefits *only* if the medical evidence of their impairments meets or equals a listing. SSR 83–19, at 94. Title II provides: "A widow * * * or widow shall not be determined to be under a disability * * * unless him or her * * * impairment or impairments are of a level of severity which under regulations prescribed by the Secretary is deemed to be sufficient to preclude an individual from engaging in any gainful activity," 42 U.S.C. 423(d)(2)(B). When Congress set out to provide disabled children with benefits, it chose to link the disability standard *not* to this test, but instead to the more liberal test set forth in section 423(d)(2)(A) and in section 1382c(a)(3)(A) (any impairment making a claimant "unable to engage in any substantial gainful activity" qualifies him for benefits). The Secretary's regulations, treating child-disability claims like claims for widows' benefits nullify this congressional choice. See *Yuckert*, 482 U.S., at 163–164, 107 S.Ct., at 2302–03 (dissenting opinion) (contrasting widows' disability statute with the section 423(d)(2)(A)/§ 1382(a)(3) test, which requires an individualized inquiry as to whether the claimant can work); S.Rep. No. 744, 90th Cong., 1st Sess., 49 (1967), U.S. Code Cong. & Admin. News 1967, pp. 2834, 2883 (disabled windows' statutory "test of disability * * * is somewhat more restrictive than that for disabled workers") [19]

The DILs are ambiguous as to the scope of the child disability determination. The 1973 DIL says that "childhood disability will be determined solely in consideration of medical factors," but it also says that "disability in children must be defined in terms of the primary activity in which they engage, namely growth and development," and that "[d]escriptions of a child's activities, behavioral adjustment, and school achievement may be considered in relationship to the overall medical history regarding severity of the impairment." SSA Disability Insurance Letter No. III–11 (1973), App. 90–91. The 1974 DIL does reflect the listings-only approach, but its discussion of the "equivalence" determination suggests a broader inquiry than the Secretary's present rules allow. SSA Disability Insurance Letter No. III–11, Supp. 1 (1974), App. 97 ("'medical equivalency' concept * * * takes into account the particular effect of disease processes in childhood"; when used to evaluate multiple impairments, "[e]ach impairment must have some substantial adverse effect on the child's major daily activities, and together must 'equal' the specified impact"). Congress could no have guessed that these early directives would evolve into the present regulatory scheme.

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[15] About 25% of adult claimants qualify for benefits under steps four and five of the Secretary's test. House Committee on Ways and Means, Background Material and Data on Programs Within the Jurisdiction of the Committee on Ways and Means, 1989 Ed., 101st Cong., 1st Sess., 46 (Comm.Print).

[16] As the dissent points out, post, at 899–900, 42 U.S.C. 1382c(a)(3)(F) requires that "the combined impact of [multiple] impairments shall be considered throughout the disability determination process," and 20 CFR 416.923 promises that "we will consider the combined effect of all your impairments." This assurance may be of value to adult claimants, but not to children, for whom the combined effect of multiple impairments is considered *only* within the confines of the equivalence determination, "whether the combination of your impairments is medically equal to *any listed impairment*." 20 CFR 416.926(a). As the Court of Appeals noted, *if* children are afforded the individualized consideration given to adults, *then* § 416.923 would fulfill the statutory mandate as to children with multiple impairments. 855 F.2d, at 76.

[17] Empirical evidence suggests that the rigidity of the Secretary's listings-only approach has a severe impact on child claimants. There are many rare childhood diseases that cannot meaningfully be compared with any of the listings. AMA Brief 6, 25 (it is unlikely "that any physician could make meaningful comparisons between extremely rare diseases and the set medical criteria listed by the Secretary"). Moreover, the listings-only approach disregards factors such as pain, side effects of medication, feeding problems, dependence on medical equipment, confinement at home, and frequent hospitalization, that vary with each individual case. A recent study suggests that children with multiple impairments, young children who cannot be subjected to the clinical tests required by the listings criteria, and children whose impairments have a severe functional impact but which do not match listings criteria, are often denied benefits. H. Fox & A. Greaney, Disabled Children's Access to Supplemental Security Income and Medicaid Benefits (1988).

A telling example of the effect on the listings-only approach is found in *Wilkinson ex rel. Wilkinson* v. *Bowen*, 847 F.2d 660 (CA11 1987) (child with rare liver disorder causing severe swelling, food allergies and fever, and requiring constant care and confinement at home, does not qualify for benefits because his impairment does not meet or equal the criteria for any listing); see also *Zebley ex rel. Zebley* v. *Bowen*, 855 F.2d 67 (CA3 1988) (plaintiff Zebley denied benefits, despite evidence of congenital brain damage, mental retardation, development delay, eye problems and musculoskeletal impairment, because his condition did not meet or equal any listing).

The disparity in the Secretary's treatment of child and adult claimants is thrown into sharp relief in cases where an unsuccessful child claimant, upon reaching age 18, is awarded benefits on the basis of the *same* impairment deemed insufficient to qualify him for child disability benefits. See, *e.g.*, *Wills* v. *Secretary of Health and Human Services*, 686 F.Supp. 171, 172, and n. 1 (WD Mich.1987); Brief of National Organization of Social Security Claimants' Representatives as *Amicur Curiae*, A–3 to A–24 (ALJ decisions awarding benefits when child claimant turns 18). See also Tr. of Oral Arg. 13–14.

[18] The dissent proposes that children who fail to qualify for benefits under the Secretary's current approach can simply "make their case before the Secretary, and take the case to court if their claims are rejected." *Post*, at 898–899. We fail to see why each child denied benefits because his impairment falls within the several categories of impairments that meet the statutory standard but do not qualify under the Secretary's listings-only approach, should be compelled to raise a separate, as-applied challenge to the regulations, or why a facial challenge is not a proper response to the systemic disparity between the statutory standard and the Secretary's approach to child disability claims.

[19] The dissent, *post*, at 900, n. 2, appears to accept the Secretary's argument that Congress expressly indicated its approval of his approach to child disability in 1976, when it directed him to "publish criteria" to be employed to determine disability in children's cases. Unemployment Compensation Amendments of 1976, section 501(b), 90 Stat. 2683, 2685 (1976). At that time, however, Congress could not have known the exact contours of the Secretary's approach. Congress had before it only the Secretary's 1973 and 1974 DILs and accompanying "medical guides" that eventually became the child-disability listings, and the proposed regulations published for comment at 39 Fed. Reg. 1624 (1974).

Similarly, the 1974 proposed regulations provide that a child with an unlisted impairment qualifies for benefits if his impairment is "determined * * * with appropriate consideration of the particular effect of disease processes in childhood, to be medically the equivalent of a listed impairment." 39 Fed. Reg. at 1626. The regulation defining "medical equivalence" says only that an impairment is equivalent to a listed one "only if the medical findings with respect there-to are at least equivalent in severity and duration to the listing findings of the listed impairment." *Id.*; cf. 20 CFR 416.926 (1989) (current definition of equivalence, requiring claimant to meet all criteria for the one most similar listed impairment). Thus, the proposed regulations gave little warning of the Secretary's current, strictly limited equivalence analysis. At least until SSR 83–19 was promulgated in 1983, it did not become clear that the listings criteria would be applied so rigidly, and that proof of equivalence would require a strict matching of the criteria for the single most similar listed impairment.

The 1976 directive to publish criteria therefore has little bearing on the question whether the Secretary's present approach to child disability is consistent with the statute.

V

The Secretary does not seriously dispute the disparity in his approach to child and adult-disability determinations. He argues, instead, that the listings-only approach is the only practicable way to determine whether a child's impairment is "comparable" to one that would disable an adult. An individualized, functional approach to child-disability claims like that provided for adults is not feasible, the Secretary asserts, since children do not work; there is no available measure of their functional abilities analogous to an adult's ability to work, so the only way to measure "comparable severity" is to compare child claimants' medical evidence with the standard of severity set by the listings. Laying to one side the obvious point that such a comparison does not properly implement the statute because the Secretary's current listings set a level of severity higher than that prescribed by the statute, this argument still is not persuasive. Even if the listings were set at the same level of severity as the statute, and expanded to cover many more childhood impairments, *no* set of listings could ensure that child claimants would receive benefits whenever their impairments are of "comparable severity" to ones that would qualify an adult for benefits under the individualized, functional analysis contemplated by the statute and provided to adults by the Secretary. No decision process restricted to comparing claimants' medical evidence to a fixed, finite set of medical criteria can respond adequately to the infinite variety of medical conditions and combinations thereof, the varying impact of such conditions due to the claimant's individual characteristics, and the constant evolution of medical diagnostic techniques.

The Secretary's claim that a functional analysis of child disability claims is not feasible is unconvincing. The fact that a *vocational* analysis is inapplicable to children does not mean that a *functional* analysis cannot be applied to them. An inquiry into the impact of an impairment on the normal daily activities of a child of the claimant's age—speaking, walking, washing, dressing, and feeding oneself, going to school, playing, etc.—is, in our view, no more amorphous or unmanageable than an inquiry into the impact of an adult's impairment on his ability to perform "any other kind of substantial gainful work which exists in the national economy," section 1382c(a)(3)(B).[20] Moreover, the Secretary tacitly acknowledges that functional assessment of child claimants is possible, in that some of his own listings are defined in terms of functional criteria. See, *e.g.*, 20 CFR pt. 404, subpt. P, App. I (pt. B), § 101.03 (listing for "Deficit of musculoskeletal function" defined in terms of difficulty in walking or "[i]nability to perform age-related personal self-care activities involving feeding, dressing, and personal hygiene"); § 111.02(B) (listing for "Major motor seizures" defined in terms of "Significant interference with communication" or "Significant emotional disorder," or "Where significant adverse effects of medication interfere with major daily activities"); § 112.05(C) (mental retardation listing for claimants with IQ of 60–69 requiring "a physical or other mental impairment imposing additional and significant restriction of function or developmental progression").[21] Also, the Secretary's own test for cessation of disability involves an examination of a child claimant's ability to "perform age-appropriate activities." 20 CFR 416.994(c). Finally, the Secretary's insistence that child claimants must be assessed from "a medical perspective alone, without individualized consideration of * * * residual functional capacity," Brief for Petitioner 45, seems to us to make little sense in light of the fact that standard medical diagnostic techniques often include assessment of the functional impact of the disorder.[22]

VI

We conclude that the Secretary's regulations and rulings implementing the child-disability statute simply do not carry out the statutory requirement that SSI benefits shall be provided to children with "any * * * impairment of comparable severity" to an impairment that would make an adult "unable to engage in any substantial gainful activity." Section 1382c(a)(3)(A). For that reason, the Secretary's approach to child disability is "manifestly contrary to the statute," *Chevron*, 467 U.S., at 844, 104 S. Ct., at 2782, and exceeds his statutory authority.

The judgment of the Court of Appeals, vacating in part the District Court's grant of summary judgment in the Secretary's favor as to the claims of the plaintiff class, is affirmed.

It is so ordered.

Justice Blackmun delivered the opinion of the Court, in which Justices Brennan, Marshall, Stevens, O'Connor, Scalia, and Kennedy joined. Justice White filed a dissenting opinion, in which Chief Justice Rehnquist joined.

[FR Doc. 91–18166 Filed 7–31–91; 8:45 am]

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[20] The Secretary's own regulations state that this inquiry involves assessment of an adult claimant's ability to "do physical activities such as walking, standing, lifting, carrying, pushing, pulling, reaching, handling," and his ability "to carry out and remember instructions, and to respond appropriately to supervision, co-workers and work pressures in a work setting." 20 CFR 416.945 (b) and (c) (1989). It is difficult to see why such functional assessment would be feasible for adults and not for children.

[21] The Secretary contends that, because some of the child-disability listings include functional criteria, his approach to child disability adequately takes account of functional considerations. Brief for Petitioner 42. This argument is unavailing. The fact that some of the listed impairments are defined in terms of functional criteria is small comfort to child claimants who do not have one of those impairments, and who fail to qualify for benefits for one of the reasons discussed above.

[22] See AMA Brief 5 ("The view that proper study or treatment of pediatric illness and injury must include an assessment of the child's functional capacity to perform age-appropriate activities is well accepted in the medical community * * *. The biological severity of an illness is an abstraction, measured only by proxies, the most familiar of which are physiological severity, functional severity and burden of illness").

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing-Federal Housing Commissioner

[Docket Nos. N-91-3231; FR-2966-C-02, N-91-3232; FR-2967-C-02, and N-91-3267; FR-3068-C-02]

Supportive Housing for the Elderly

In the matter of Fund Availability (NOFA) for Supportive Housing for the Elderly; Notice of Fund Availability (NOFA) for Supportive Housing for Persons with Disabilities; and Notice of Fund Availability (NOFA) for Supportive Housing for Persons with Disabilities—Set-aside for Persons Disabled as a Result of Infection with the Human Acquired Immunodeficiency Virus, Notices of Fund Availability for FY 91; Corrections.

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notices of fund availability for FY 91; Extension of deadline for receipt of applications; Corrections.

SUMMARY: On June 12, 1991, the Department published a NOFA (56 FR 27126) for Supportive Housing for the Elderly, a NOFA for Supportive Housing for Persons with Disabilities (56 FR 27093), and a NOFA for Supportive Housing for Persons with Disabilities—Set-Aside for Persons Disabled as a Result of Infection with the Human Acquired Immunodeficiency Virus (56 FR 27138). Based upon information from the Field Offices conducting workshops and comments from participants, the Department has decided to extend the deadline for receipt of applications in response to these NOFAs. All applications in response to these NOFAs must be received by September 30, 1991.

In previous Section 202 NOFAs (*e.g.*, 55 FR 14062, 14065, April 13, 1990), the Department has had a minimum project size limitation in metropolitan areas. In the Invitation for Applications for Section 202 Supportive Housing for the Elderly Fund Reservation for this year (HUD Handbook 4571.3, Supportive Housing for the Elderly, Appendix 10; and HUD Notice 91–45, Appendix 4), a 40-unit minimum project size limitation is stated. The Department failed to place this minimum limitation in the interim rule for Supportive Housing for the Elderly (also being corrected in today's **Federal Register**) or the NOFA for Supportive Housing for the Elderly. This notice also corrects the NOFA for Supportive Housing for the Elderly to provide notice of this limitation for FY 1991 applicants. This limitation is also being publicized by the Field Offices at their workshops and is contained in the application package.

DATES: The deadline date for receipt of applications in response to the Notices of Fund Availability (NOFAs) for Supportive Housing for the Elderly, Supportive Housing for Persons with Disabilities, and Supportive Housing for Persons with Disabilities—Set-aside for Persons Disabled as a Result of Infection with the Human Acquired Immunodeficiency Virus is extended to September 30, 1991.

FOR FURTHER INFORMATION CONTACT: Robert Wilden, Director, Housing for the Elderly and Handicapped People Division, Department of Housing and Urban Development, 451 Seventh Street SW., room 6116, Washington, DC 20410, telephone (202) 708–2730. (This is not a toll-free number).

Hearing or speech impaired individuals may call HUD's TDD number (202) 708–4594. (This is not a toll-free number).

Accordingly, FR Doc. 91–13636, Fund Availability (NOFA) for Supportive Housing for the Elderly; FR Doc. 91–13638, Notice of Fund Availability (NOFA) for Supportive Housing for Persons with Disabilities; and FR Doc. 91–13888, Notice of Fund Availability (NOFA) for Supportive Housing for Persons with Disabilities—Set-Aside for Persons Disabled as a Result of Infection with the Human Acquired Immunodeficiency Virus, published in the **Federal Register** of June 12, 1991, at 56 FR 27126, 27093, and 27138, respectively, are corrected to read as follows:

1. On page 27126, in FR Doc. 91–13636, the Fund Availability (NOFA) for Supportive Housing for the Elderly, is amended by correcting the DATE section to read as follows:

DATES: The deadline date for receipt of applications in response to this NOFA is September 30, 1991.

2. On page 27128, in FR Doc. 91–13636, in the second column, under item I, the following sentence is added at the end of the paragraph entitled, *C. Eligibility*, to read as follows:

C. Eligibility

* * * * *

Reservations for projects intended for the elderly in metropolitan areas will not be approved for less than 40 units.

3. On page 27093, in FR Doc. 91–13638, the Notice of Fund Availability (NOFA) for Supportive Housing for Persons with Disabilities, is amended by correcting the DATE section to read as follows:

DATES: The deadline date for receipt of applications in response to this NOFA is September 30, 1991.

4. On page 27138, in FR Doc. 91–13888, the Notice of Fund Availability (NOFA) for Supportive Housing for Persons with Disabilities—Set-aside for Persons Disabled as a Result of Infection With the Human Acquired Immunodeficiency Virus, is amended by correcting the DATE section to read as follows:

DATES: The deadline date for receipt of applications in response to this NOFA is September 30, 1991.

Dated: July 25, 1991.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 91–18292 Filed 7–31–91; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974—Revision of Systems of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes to revise three notices describing records maintained by the U.S. Geological Survey. Except as noted below, all changes are editorial in nature, clarify and update existing statements, and reflect organization, address, and other miscellaneous administrative revisions which have occurred since the previous publication of the material in the **Federal Register**. The three notices being revised, which are published in their entirety below, are:

1. National Research Council Grants Program—Interior, USGS–9 (previously published on September 7, 1990; 55 FR 36906).
2. Personnel Investigations Records—Interior, USGS–23 (previously published on October 30, 1990; 55 FR 45660).
3. Water Data Sources Directory—Interior, USGS–25 (previously published on January 7, 1982; 47 FR 868).

In one notice (USGS–9), the existing system manager(s) and address statement is revised to reflect the correct title of the system manager. In one notice (USGS–23), the existing storage, retrievability and safeguards statements are revised to accurately reflect the manner in which the records are maintained and retrieved. In one notice (USGS–25), the existing routine use statement is revised to accurately reflect the release of information for law enforcement and litigation purposes. In this notice the existing safeguards, retention and disposal, and record access procedures statements are revised to accurately reflect the manner in which the records are maintained, accessed and disposed.

Since these changes do not involve any new or intended use of the information in the systems of records, the notices shall be effective upon publication in the **Federal Register** (August 1, 1991). Additional information regarding these revisions may be obtained from the Department Privacy Act Officer, Office of the Secretary (PMI), Room 2242, Main Interior Building, U.S. Department of the Interior, Washington, DC 20240.

Dated: July 17, 1991.

Janet L. Bishop,

Acting Director, Office of Management Improvement.

INTERIOR/USGS-9

SYSTEM NAME:

National Research Council Grants Program—Interior, USGS-9.

SYSTEM LOCATION:

Office of the Chief Geologist, Geologic Division, U.S. Geological Survey, National Center, Mail Stop 912, Reston, Virginia 22092.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals assigned to U.S. Geological Survey who are considered for grants made through the National Research Council.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains name, address, social security number, date of birth, and marital status of individuals considered for a grant. Records included are: The SF 171 (Application for Federal Employment) for each individual; research proposal; internal memoranda; correspondence between the National Research Council and the applicant; travel requests, if appropriate; and documentation for renewal of assignment, if applicable.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

43 U.S.C. 31 et seq., 5 U.S.C. 3101

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is to evaluate individuals being considered for grants made through the National Research Council. Disclosures outside the Department of the Interior may be made to: (1) The National Research Council for evaluation purposes; (2) The U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the Government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (3) Disclose pertinent information to an appropriate Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, regulation, rule, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (4) A congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office; (5) A Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant or other benefit; and (6) Federal, State or local agencies where necessary to obtain information relevant to the hiring or retention of an employee or the issuance of a security clearance, license, contract, grant or other benefit.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual system maintained in files showing data on Research Associates assigned to the Geological Survey under this program.

RETRIEVABILITY:

Indexed by name:

SAFEGUARDS:

Maintained with safeguards meeting the requirements of 43 CFR 2.51.

RETENTION AND DISPOSAL:

Records are disposed of periodically as prescribed under Bureau Records Disposition Schedule RCS/Item 802-06b and 802-07.

SYSTEM MANAGER(S) AND ADDRESS:

Human Resources Officer, Geologic Division, U.S. Geological Survey, National Center, Mail Stop 912, Reston, Virginia 22092.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Under the specific exemption authority of 5 U.S.C. 552a(k)(5), the Department of the Interior has adopted a regulation (43 CFR 2.79(c)(2)) which exempts this system from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f) to the extent that the system consists of investigatory material compiled solely for the purpose of determining suitability, eligibility or qualifications for federal civilian employment. The reasons for adoption of this regulation are set out at 40 FR 37217 (August 26, 1975).

INTERIOR/USGS-23

SYSTEM NAME:

Personnel Investigations Records—Interior, USGS-23.

SYSTEM LOCATION:

Security Office, Office of Facilities and Management Services, Administrative Division, U.S. Geological Survey, National Center, Mail Stop 250, Reston, VA 22092.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Current Geological Survey employees who (a) are granted access to classified information; (b) are filling sensitive positions not requiring access to classified information; (c) are being considered either for access to classified information or for filling sensitive positions not requiring access to classified information; and (d) are found unsuitable for access to classified information or filling sensitive positions because unfavorable information was revealed during the conduct of their security investigations.

2. Former Geological Survey employees who (a) were granted access to classified information; (b) were filling sensitive positions not requiring access to classified information; and (c) were found unsuitable for access to classified information or filling sensitive positions because unfavorable information was revealed during the conduct of their security investigations.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain investigative information regarding an individual's character, conduct, and behavior in the community where he or she lives or lived; arrests and convictions for any violations against the law; reports of interviews with present and former supervisors, co-workers, associates, educators, etc.; reports about the qualifications of an individual for a specific position; reports of inquiries with or from law enforcement agencies, employers, and educational institutions attended; foreign affiliations which may affect his or her loyalty to the United States; and other information developed from the above.

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CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain investigative information regarding an individual's character, conduct, and behavior in the community where he or she lives or lived; arrests and convictions for any violations against the law; reports of interviews with present and former supervisors, co-workers, associates, educators, etc.; reports about the qualifications of an individual for a specific position; reports of inquiries with or from law enforcement agencies, employers, and educational institutions attended; foreign affiliations which may affect his or her loyalty to the United States; and other information developed from the above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The contents of these records and files may be disclosed and used as follows: (1) To designated officials, officers, and employees of the USGS, DOI, OPM, DOE, CIA, FBI, and all other agencies and departments of the Federal Government who in the performance of their duties have an interest in the individual for employment purposes, including a security clearance or access determination, and a need to evaluate qualifications, suitability, and loyalty to the United States Government; (2) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (3) To disclose pertinent information to an appropriate Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, regulation, rule, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; and, (4) To a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All investigative records are maintained in file folders stored in file cabinets. An automated index system of all records is on a stand-alone computer.

RETRIEVABILITY:

All records are indexed by surname in alphabetical order. The automated index system is indexed by surname or social security number.

SAFEGUARDS:

The filing cabinets and the stand-alone computer are safeguarded in a secure, windowless office with one doorway which is secured by a key locking device using an off-master key system. Access to all keys is under stringent security controls. The automated index system of all records is further protected by a password and privacy act warning.

RETENTION AND DISPOSAL:

(a) OPM background investigative files supporting secret-sensitive decompartmented information and top secret-infrequent access to sensitive compartmented information are retained until the awarded security clearance or employment is terminated. All other OPM investigative files are routinely destroyed within 90 days after receipt or upon completion of the adjudication action, whichever occurs last. Disposition of files is made in accordance with the Bureau Records Disposition Schedule, RCS/Item 306–15b.

(b) All information, supplementing the above OPM investigative files originated by the Geological Survey, is retained for five years following termination of awarded security clearance or employment, whichever occurs first, and is then destroyed. Disposition of files if made in accordance with the Bureau Records Disposition Schedule, RCS/Item 306–15a.

SYSTEM MANAGER(S) AND ADDRESS:

Security Officer/Alternate Security Officer, Office of Facilities and Management Services, Administrative Division, U.S. Geological Survey, National Center, Mail Stop 250, Reston, Virginia 22092.

NOTIFICATION PROCEDURE:

Written inquiries to the System Manager are required and must include the following information in order to positively identify the individual whose records are requested: (1) Full name, (2) Date of birth, (3) Place of birth, (4) Any available information regarding the type of record requested. See 43 CFR 2.60.

RECORD ACCESS PROCEDURE:

An individual can obtain information on the procedures for gaining access to and contesting the records from the above System Manager. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

Same as above. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from the following categories of sources: (1) Applications and other personnel and security forms furnished by the individual, (2) Results of investigations and other material furnished by Federal agencies.

INTERIOR/USGS-25

SYSTEM NAME:

Water Data Sources Directory—Interior, USGS–25

SYSTEM LOCATION:

(1) National Water Data Exchange (NAWDEX), Water Resources Division, U.S. Geological Survey, National Center, Mail Stop 421, Reston, VA 22092. (2) NAWDEX Assistance Centers (for addresses contact the System Manager).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are sources of water or water-related data and services and to whom requesters can be referred to obtain water data held or services provided by them.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains name, address, and telephone number of individuals who are sources of water or water-related data or information and other water-related services.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Water Data Sources Directory is maintained under the authority of 43 U.S.C. 31 (28 Stat. 398), OMB Cir. A–67, and 5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of these records are for reference by (1) Geological Survey and Geological Survey contractor personnel in processing requests for water or water-related data, (2) Personnel of Local Assistance Centers listed in Appendix A of the National Water Data Exchange (NAWDEX) including Geological Survey personnel and personnel of state-governmental, local-governmental, other public, and private organizations serving as NAWDEX Local Assistance Centers in processing requests for water or water-related data, and (3) Users of NAWDEX including Federal, state-governmental, local-governmental, other public, and private organizations and private citizens in identifying sources of water and water-related data or services and transmitting requests for the acquisition of desired data or services. Disclosures outside the Department of the Interior may be made: (1) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the

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Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled, or (2) To disclose pertinent information to an appropriate Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, regulation, rule, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in computerized form on magnetic disks or magnetic tape, printed lists, and a published directory available for public dissemination.

RETRIEVABILITY:

Retrievable by name, a unique identifier, geographical identifiers, and types of data or services available from the individual.

SAFEGUARDS:

Only Geological Survey personnel of the NAWDEX Program Office have access to the original data files.

RETENTION AND DISPOSAL:

Records are retained and disposed of according to the Bureau Records Disposition Schedule, RCS/Item 1400-13.

SYSTEM MANAGER(S) AND ADDRESS:

Program Manager, National Water Data Exchange, U.S. Geological Survey, National Center, Mail Stop 421, Reston, Virginia 22092.

NOTIFICATION PROCEDURE:

Any individual may inquire about information stored on themselves by submitting a written request to the System Manager. See 43 CFR 2.60.

RECORD ACCESS PROCEDURE:

The Water Data Sources Directory is designed to be operated on a personal computer. Copies of the Directory may be obtained by written request to the System Manager. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment must be addressed to the System Manager and must meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Information stored may be obtained from the individual on whom the record is maintained, organizations, or other individuals, with whom the individual identified in the record is associated, NAWDEX personnel, and NAWDEX-contracted information researchers.

[FR Doc. 91-18261 Filed 7-31-91; 8:45 am]

BILLING CODE 4310-31-M

Bureau of Land Management

[ID-050-4212-13/7122-08-7558; IDI-27542, IDI-27581, IDI-28095]

Management Framework and Resource Management Plan Amendments; Exchange of Public Lands; Idaho

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Action—Amendment of the Bennett Hills Management Framework Plan (MFP), Sun Valley MFP and Monument Resource Management Plan (RMP)/Notice of Realty Action (NORA), exchange of public land in Camas, Gooding, Lincoln, and Jerome counties, Idaho, for private land in Camas and Custer Counties, Idaho.

SUMMARY: The following described land has been examined and through the public supported land use planning process has been determined to be suitable for transfer by exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).

Boise Meridian, Idaho

T. 5 S., R. 13 E., Gooding County,
  Sec. 19: E½SW¼, W½SE¼;
  Sec. 30: NW¼NE¼, NE¼NW¼.
T. 6 S., R. 15 E., Gooding County,
  Sec. 31: Lot 4, W½NE¼, E½W½, SE¼.
T. 7 S., R. 17 E., Jerome County,
  Sec. 11: NE¼NE¼, W½NE¼;
  Sec. 12: E½, N½NW¼, SE¼NW¼.
T. 7 S., R. 18 E., Jerome County,
  Sec. 7: Lots 1,2,3,4.
T. 1 N., R. 15 E., Camas County,
  Sec. 21: SW¼SW¼;
  Sec. 28: NW¼NW¼.
T. 5 S., R. 17 E., Lincoln County,
  Sec. 30: Lot 4;
  Sec. 31: Lots 1,2,3,4; S½NE¼, E½NW¼; NE¼SW¼, N½SE¼SW¼, N½SE¼, N½N½S½SE¼, S½NW¼SW¼SE¼;
  Sec. 32: S½N½, N½SW¼, N½N½SE¼, N½S½NW¼SE¼, N½SW¼NE¼SE¼;
  Sec. 33: SW¼NE¼, S½NW¼, N½NW¼SW¼, N½N½NE¼SW¼, S½NW¼NE¼SW¼, N½N½NW¼SE¼;
  Containing 2,499.88 acres.

Non-federal land to be acquired is described as follows:

Boise Meridian, Idaho

T. 2 S., R. 15 E., Camas County,
  Sec. 14: NW¼NW¼, S½NW¼, N½SW¼, SE¼SW¼, SW¼SE¼;
  Sec. 23: NE¼NE¼, W½E½, E½W½.
T. 2 S., R. 16 E., Camas County,
  Sec. 10: E½SW¼, SE¼;
  Sec. 11: W½NE¼, E½NW¼, N½SW¼, SW¼SW¼,NW¼SE¼;
  Sec. 15: N½NE¼, NE¼NW¼;
T. 10 N., R. 21 E., Custer County,
  Sec. 2: S½SW¼;
  Sec. 3: NW¼NE¼, S½NE¼, NW¼, NE¼SE¼;
  Sec. 4: SE¼NE¼;
T. 11 N., R. 21 E., Custer County,
  Sec. 33: SE¼SE¼;
  Sec. 34: S½SW¼.
  Containing 1,880 acres.

The purpose of this exchange is to acquire the non-federal lands which have high values for public access, riparian and wildlife habitat, and recreation. All these parcels are included in the Wildlife 2000 program as meeting the Director's priorities acquiring land containing these values. Acquisition of the lands would result in a significant net increase in riparian habitat, particularly in live stream mileage; enhance and ensure the integrity of a BLM managed crucial elk winter range; and allow BLM to block up management areas which would provide public access for protection and enjoyment of these resources.

The values of the lands to be exchanged are approximately equal. Full equalization of values will be achieved by adjustment of the acres of public land to be transferred from Federal ownership or a cash payment not to exceed 25 percent of the federal land value.

Land to be transferred from the United States will be subject to the following reservations, terms and conditions:

1. A reservation to the United States for rights-of-way for ditches and canals constructed under the Act of August 30, 1890 (43 U.S.C. 945).
2. A reservation to the United States for Power Project Withdrawal 1971 FPC 0 10/30/1961.
3. Subject to rights granted to Edith Faulkner (estate) under right-of-way IDI-4881.
4. Subject to rights granted to Bliss Highway District under right-of-way IDI-22589.
5. Subject to rights granted to Faulkner Land and Livestock under right-of-way IDI-26910.
6. Subject to rights granted to Idaho Department of Transportation under right-of-way IDI-06867.
7. Subject to rights granted to Idaho Department of Transportation under

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  Sec. 23: NE¼NE¼, W½E½, E½W½.
T. 2 S., R. 16 E., Camas County,
  Sec. 10: E½SW¼, SE¼;
  Sec. 11: W½NE¼, E½NW¼, N½SW¼, SW¼SW¼,NW¼SE¼;
  Sec. 15: N½NE¼, NE¼NW¼;
T. 10 N., R. 21 E., Custer County,
  Sec. 2: S½SW¼;
  Sec. 3: NW¼NE¼, S½NE¼, NW¼, NE¼SE¼;
  Sec. 4: SE¼NE¼;
T. 11 N., R. 21 E., Custer County,
  Sec. 33: SE¼SE¼;
  Sec. 34: S½SW¼.

Containing 1,880 acres.

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Land to be transferred from the United States will be subject to the following reservations, terms and conditions:

1. A reservation to the United States for rights-of-way for ditches and canals constructed under the Act of August 30, 1890 (43 U.S.C. 945).
2. A reservation to the United States for Power Project Withdrawal 1971 FPC 0 10/30/1961.
3. Subject to rights granted to Edith Faulkner (estate) under right-of-way IDI–4881.
4. Subject to rights granted to Bliss Highway District under right-of-way IDI–22589.
5. Subject to rights granted to Faulkner Land and Livestock under right-of-way IDI–26910.
6. Subject to rights granted to Idaho Department of Transportation under right-of-way IDI–06667.
7. Subject to rights granted to Idaho Department of Transportation under

right-of-way IDI–01619.
8. Subject to rights granted to Mountain States T&T under right-of-way IDI–20981.
9. Subject to rights granted to Gooding Highway District under right-of-way IDI–25378.
10. Subject to rights granted to North Side Canal Co. under right-of-way IDBL–039651.
11. Subject to rights granted to Union Pacific Railroad under right-of-way IDI–962.
12. Subject to rights granted to Idaho Department of Transportation under right-of-way IDI–2902.
13. Subject to rights granted to Mountain States T&T under right-of-way IDI–22249.
14. A reservation to the United States for Power Project Withdrawal 1975, FPC 0 7/18/1960, IDI–26590.
15. Subject to rights granted to Idaho Power Co. under right-of-way IDI–015841.
16. Subject to rights granted to Pacific Power and Light Co. under right-of-way IDI–6875.
17. Subject to rights granted to Idaho Power Co. under right-of-way IDI–13335.
18. Subject to rights granted to Idaho Power Co. under right-of-way IDI–14990.
19. Subject to rights granted to Idaho Power Co. under right-of-way IDI–17351.
20. Subject to rights granted to Idaho Power Co. under right-of-way IDI–14555.
21. Subject to rights granted to Idaho Department of Transportation under right-of-way 08144.

Continued use of the land by valid right-of-way holders is proper subject to the terms and conditions of the grant. Administrative responsibility previously held by the United States will be assumed by the patentee, unless the right-of-way is reserved to the United States.

Publication of this Notice segregates the public lands from the operation of the public land laws, including the mining law, for a period of two years from the date of publication.

SUPPLEMENTARY INFORMATION: Detailed information concerning the conditions of the exchange can be obtained by contacting Shoshone District Realty Specialist Harold Brown at (208) 886–2206.

PLANNING PROTEST: Any party that participated in the plan amendment and is adversely affected by the amendment may protest this action only as it affects issues submitted for the record during the planning process. The protest shall be in writing and filed with the Director (760), Bureau of Land Management, 1800 C Street NW., Washington, DC 20420, within 30 days of this Notice.

LAND EXCHANGE COMMENTS: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the land exchange to the District Manager, Bureau of Land Management, P.O. Box 2–B, Shoshone, ID 83352. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any planning protests or objections regarding the land exchange, this realty action will become the final determination of the Department of the Interior and the planning amendment will be in effect.

Dated: July 22, 1991.

Dennis D. Schulze,
Acting District Manager.

[FR Doc. 91–18177 Filed 7–31–91; 8:45 am]

BILLING CODE 4310-GG-M

[NV–050–91–4140–08]

Management Framework Plan; Clark Co., NV

AGENCY: Bureau of Land Management, Interior.

ACTION: "Notice of Change" made by the Director, Bureau of Land Management (BLM), to the Proposed Plan Amendment and Final Environmental Assessment (EA) for the Clark County Management Framework Plan (MFP) for Sand and Gravel Leasing in the Las Vegas Valley Sub-Unit and also a "Notice" of a thirty (30) day public comment period on this change.

SUMMARY: The Proposed Plan Amendment and Final EA for the Clark County MFP for Sand and Gravel Leasing in the Las Vegas Valley Sub-Unit, dated November 23, 1988, stipulated that surface owner consent was necessary to mine sand and gravel from two sand and gravel leases. The BLM Director, through administrative review of protests to the Proposed Plan Amendment, determined that surface owner consent will not apply to these leases. Because of this change to the Proposed Amendment and for other reasons, a public review period of thirty (30) days is being conducted.

DATES: Public comment on the BLM Director's change to the Proposed Plan Amendment must be postmarked no later than September 6, 1991 or hand delivered to the Las Vegas District Office by the close of business on this same date.

ADDRESSES: Public comments are to be sent to the Stateline Resource Area Manager, Bureau of Land Management, P.O. Box 26569, Las Vegas, Nevada 89126. Copies of all supporting documents can be reviewed at the Las Vegas District Office at 4765 Vegas Drive, Las Vegas, Nevada.

FOR FURTHER INFORMATION CONTACT: Gary Beckman, Stateline Resource Area Geologist, Bureau of Land Management, P.O. Box 26569, Las Vegas, Nevada 89126, or at the above address, or telephone (702) 647–5000.

SUPPLEMENTARY INFORMATION: The Proposed Amendment and Final EA reads, in part, as follows: "Renew, simultaneously and for another five years, all of lease Nev-057863 and only those portions of lease N–35779 where the current lessee owns the surface, or has a written agreement with the surface owner to mine sand and gravel." The BLM Director, by decision letters of July 13, 1990, determined that the BLM will not apply surface owner consent to either of the two leases. Because of this change to the Proposed Amendment, further public notification and a comment period is necessary.

A letter addressing this change and comment period will be sent to all who participated in the sand and gravel amendment planning process. A press release will also be issued.

All written comments received during this public comment period will be reviewed and those pertinent to the surface owner consent issue will be used to prepare a supplement to the Proposed Plan Amendment and Final EA. This supplemental document will then be made available to the public for a final thirty (30) day protest period. Following the resolution of any new protests on the supplemental plan and EA, an Approved Plan Amendment and Record of Decision will be issued and made available to the public.

A limited number of copies of the Proposed Plan Amendment and Final EA and also the Draft Plan Amendment and EA are available at the BLM Las Vegas District Office and also the BLM Nevada State Office at 850 Harvard Way, Reno, Nevada.

Dated: July 25, 1991.

Billy R. Templeton,
State Director, Nevada.

[FR Doc. 91–18259 Filed 7–31–91; 8:45 am]

BILLING CODE 4310-HC-M

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[UT-040-01-4830-12]

Cedar City Advisory Council; Meeting

Notice is hereby given in accordance with Public Law 92-463, that a Cedar City Advisory Council meeting will be held Tuesday, August 27, 1991. The meeting will begin at 9 a.m. in the BLM Cedar City District Office, 176 East D.L. Sargent Drive, Cedar City, Utah. The agenda will include discussion on the Dixie Resource Management Plan, the Kanab/Escalante Resource Management Plan, vegetative land treatments, predator control, and recreation management.

All Advisory Council meetings are open to the public. Interested persons may make oral statements at 9:15 a.m. or submit written comments for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager, 176 East D.L. Sargent Drive, Cedar City, Utah 84720 by Friday, August 23, 1991. Depending on the number of persons wishing to make a statement, a per person time limit may be established by the District Manager or Council Chairman.

Dated: July 22, 1991.

Gordon R. Staker,

District Manager.

[FR Doc. 91-18178 Filed 7-31-91; 8:45 am]

BILLING CODE 4310-DQ-M

[UT-060-01-4410-14]

Moab District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Moab District Advisory Council Meeting.

SUMMARY: The Moab District Advisory Council meeting that was scheduled for Tuesday and Wednesday, July 16 and 17, 1991, was postponed due to Council members not being able to attend. It has been rescheduled for Thursday and Friday, September 5 and 6, 1991. The business meeting will be held in the Conference Room of the BLM Moab District Office, 82 E. Dogwood, Moab, Utah beginning on the 5th at 10 a.m. and adjourning at 4:30 p.m., followed by a field trip on the 6th.

The agenda for the September 5 business meeting will be an orientation by program leaders and Area Managers for the newly appointed Council members, and election of officers. The orientation will highlight the major program issues in the Divisions of Planning and Environmental Coordination, Lands and Renewable Resources, and Minerals, and in the four Resource Areas. Also on the agenda are new business, opportunity for public comment, finalization of resolutions, and adjournment.

The September 6 field trip will depart from the Moab District Office at 8 a.m. and will include a visit to areas near Moab proposed for oil and gas exploration and related issues concerning recreation, wildlife, environmental concerns, and nearness to State and National Parks. The public is welcome to tour with the group and to attend the business meeting, however, they would need to supply their own transportation and food.

All Advisory Council meetings are open to the public. Persons wishing to make a comment to the Council must notify the BLM by September 3. Depending on the number of people desiring to make a statement, a per-person time limit may be established so that all may be heard. For further information, contact: Mary Plumb, Public Affairs Officer, P.O. Box 970, Moab, Utah 84532. Phone (801) 259-6111.

Gene Nodine,

District Manager.

[FR Doc. 91-18269 Filed 7-31-91; 8:45 am]

BILLING CODE 4310-DQ-M

[WY-040-01-4320-12]

Rock Springs District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Rock Springs District Grazing Advisory Board.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Rock Springs District Grazing Advisory Board. Notice of this meeting is required under Public Law 92-463.

DATES: September 18, 1991, 9 a.m. until 5 p.m. and September 19, 1991, 8 a.m. until 12 noon.

ADDRESSES: Bureau of Land Management District Office, Highway 191 North, Rock Springs, Wyoming 82901.

FOR FURTHER INFORMATION CONTACT: Marlowe E. Kinch, District Manager, Rock Springs District, Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyoming 82902-1869, (307) 382-5350.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include.

1. Introductions and opening remarks.
2. Election of a Chairman and Vice-Chairman.
3. Review of tour and discussion of Sugarloaf AMP development.
4. Cumberland/Uinta AMP development.
5. South LaBarge Common AMP.
6. District rangeland monitoring.
7. Improvements proposed for completion in FY 92 with range betterment (8100) funds.
8. Update on wild horse gathering.
9. Public comment period.

The meeting is open to the public. Transportation is required for the tour part of the meeting. Four-wheel drive vehicles will be needed. Interested persons may make oral statements to the Board between 11:30 a.m. and 12 noon, September 19, 1991, or file written statements for the Board's consideration. Anyone wishing to make an oral presentation should notify the District Manager, Bureau of Land Management, Highway 191 North, P.O. Box 1869, Rock Springs, Wyoming 82902-1869, by September 17, 1991. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Minutes of the meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Marlowe E. Kinch,

District Manager.

[FR Doc. 91-18179 Filed 7-31-91; 8:45 am]

BILLING CODE 4310-22-M

Salt Lake District; Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of grazing advisory board meeting.

SUMMARY: Notice is hereby given in accordance with Public Law 92-463 that the Salt Lake District Grazing Advisory Board will be meeting on September 11, 1991. The meeting will begin at 9:30 a.m. at the Salt Lake District, Bureau of Land Management Office, at 2370 South 2300 West, Salt Lake City, Utah.

The purpose of the meeting will be to: (1) Review FY 1991 (8100) range improvement accomplishments; (2) Review FY 1991 (7121) range improvement accomplishments; and (3) review proposed range improvement work for the upcoming year (FY 1992).

The meeting is open to the public. Interested persons may make oral statements at the meeting between 10 a.m. and 10:30 a.m., or file a written

statement for the Board's co
Those wishing to make state
the Board are requested to c
Glade Anderson at (801) 977-
September 6th so that adequ
be included on the agenda.

Deane H. Zeller,

Salt Lake District Manager.

[FR Doc. 91-18218 Filed 7-31-91;

BILLING CODE 4310-DQ-M

[NM-940-4214-10; NMNM 7796

Expiration of Temporary Se Effect and Opening of Land

AGENCY: Bureau of Land Ma
Interior.

ACTION: Notice.

SUMMARY: This action gives
expiration of the temporary
effect as to 2,784.66 acres of
and 240.00 acres of Federall
mineral interests underlying
surface estate included in a
for withdrawal for protectio
Carlsbad Project, Fort Sumn
Reservoir.

EFFECTIVE DATE: Expiration
temporary segregative effec
effective on March 29, 1991.
will be open to surface entr
on September 3, 1991.

FOR FURTHER INFORMATION
Clarence F. Hougland, BLM,
Mexico State Office, P.O. B
Santa Fe, New Mexico, 505-

SUPPLEMENTARY INFORMATI
to section 204(b)(1)(c) of the
Land Policy and Manageme
1976, 90 stat. 2751; 43 U.S.C.
following described land is
relieved of the temporary s
effect of withdrawal applica
77962. The withdrawal appl
continue to be processed un
cancelled or denied:

New Mexico Principal Meridia

T. 5 N., R. 23 E.,
  Sec. 2, lot 4, and SW¼SE¼.
T. 4 N., R. 24 E.,
  Sec. 2, lots 1, 2, and 3, E½SW
    NW¼SE¼.
T. 5 N., R. 24 E.,
  Sec. 17, S½S½;
  Sec. 18, NE¼ and N½SE¼;
  Sec. 20, NW¼ and SE¼;
  Sec. 21, all;
  Sec. 26, N½SW¼;
  Sec. 27, NE¼SW¼, S½SW
  Sec. 28, W½NE¼, SE¼NE¼
  Sec. 29, N½NE¼ and SE¼N
  Sec. 33, NE¼ and E½SE¼;
  Sec. 34, E½NE¼, W½, and S
  Sec. 35, W½NW¼ and SE¼

The area described aggre
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Mary Plumb,
r, P.O. Box 970,
hone (801) 259–6111.

l 7–31–91; 8:45 am]

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3, 1991, 9 a.m. until 5
19, 1991, 8 a.m. until

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MATION CONTACT:
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2902–1869, (307) 382–

ORMATION: The
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airman and Vice-

3. Review of tour and discussion of Sugarloaf AMP development.
4. Cumberland/Uinta AMP development.
5. South LaBarge Common AMP.
6. District rangeland monitoring.
7. Improvements proposed for completion in FY 92 with range betterment (8100) funds.
8. Update on wild horse gathering.
9. Public comment period.

The meeting is open to the public. Transportation is required for the tour part of the meeting. Four-wheel drive vehicles will be needed. Interested persons may make oral statements to the Board between 11:30 a.m. and 12 noon, September 19, 1991, or file written statements for the Board's consideration. Anyone wishing to make an oral presentation should notify the District Manager, Bureau of Land Management, Highway 191 North, P.O. Box 1869, Rock Springs, Wyoming 82902–1869, by September 17, 1991. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Minutes of the meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Marlowe E. Kinch,

District Manager.

[FR Doc. 91–18179 Filed 7–31–91; 8:45 am]

BILLING CODE 4310-22-M

Salt Lake District; Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of grazing advisory board meeting.

SUMMARY: Notice is hereby given in accordance with Public Law 92–463 that the Salt Lake District Grazing Advisory Board will be meeting on September 11, 1991. The meeting will begin at 9:30 a.m. at the Salt Lake District, Bureau of Land Management Office, at 2370 South 2300 West, Salt Lake City, Utah.

The purpose of the meeting will be to: (1) Review FY 1991 (8100) range improvement accomplishments; (2) Review FY 1991 (7121) range improvement accomplishments; and (3) review proposed range improvement work for the upcoming year (FY 1992).

The meeting is open to the public. Interested persons may make oral statements at the meeting between 10 a.m. and 10:30 a.m., or file a written

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statement for the Board's consideration. Those wishing to make statements to the Board are requested to contact Glade Anderson at (801) 977–4300 by September 6th so that adequate time can be included on the agenda.

Deane H. Zeller,

Salt Lake District Manager.

[FR Doc. 91–18218 Filed 7–31–91; 8:45 am]

BILLING CODE 4310-DQ-M

[NM-940-4214-10; NMNM 77962]

Expiration of Temporary Segregative Effect and Opening of Land; NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action gives notice of the expiration of the temporary segregative effect as to 2,784.66 acres of public land and 240.00 acres of Federally reserved mineral interests underlying acquired surface estate included in an application for withdrawal for protection of the Carlsbad Project, Fort Sumner Dam and Reservoir.

EFFECTIVE DATE: Expiration of temporary segregative effect was effective on March 29, 1991. The land will be open to surface entry and mining on September 3, 1991.

FOR FURTHER INFORMATION CONTACT: Clarence F. Hougland, BLM, New Mexico State Office, P.O. Box 1449, Santa Fe, New Mexico, 505–988–6071.

SUPPLEMENTARY INFORMATION: Pursuant to section 204(b)(1)(c) of the Federal Land Policy and Management Act of 1976, 90 stat. 2751; 43 U.S.C. 1714, the following described land is hereby relieved of the temporary segregative effect of withdrawal application NMNM 77962. The withdrawal application will continue to be processed unless it is cancelled or denied:

New Mexico Principal Meridian

T. 5 N., R. 23 E.,
  Sec. 2, lot 4, and SW¼SE¼.
T. 4 N., R. 24 E.,
  Sec. 2, lots 1, 2, and 3, E½SW¼ and NW¼SE¼.
T. 5 N., R. 24 E.,
  Sec. 17, S½S½;
  Sec. 18, NE¼ and N½SE¼;
  Sec. 20, NW¼ and SE¼;
  Sec. 21, all;
  Sec. 26, N½SW¼;
  Sec. 27, NE¼SW¼, S½SW¼, and SE¼;
  Sec. 28, W½NE¼, SE¼NE¼, and NW¼;
  Sec. 29, N½NE¼ and SE¼NE¼;
  Sec. 33, NE¼ and E½SE¼;
  Sec. 34, E½NE¼, W½, and SE¼SE¼;
  Sec. 35, W½NW¼ and SE¼NW¼.

The area described aggregates 3,024.66 acres in Guadalupe and DeBaca Counties.

Dated: July 23, 1991.

Glibert O. Lockwood,

Acting State Director.

[FR Doc. 91–18256 Filed 7–31–91; 8:45 am]

BILLING CODE 4310-FB-M

[AZ 020-01-4212-12; AZA 25507]

Realty Action; Exchange of Public Land, Maricopa Co., AZ

BLM proposes to exchange public land in order to achieve more efficient management of the public land through consolidation of ownership.

The following public land is being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Gila and Salt River Meridian, Arizona

T. 4 N., R. 1 E.,
  Sec. 3, lots 16 to 18, incl;
  Sec. 12, W½W½SW¼NW¼;
  Sec. 23, W½NW¼NW¼SE¼, N½SW¼ NW¼SE¼.
T. 5 N., R. 1 E.,
  Sec. 23, N½N½NE¼
  Sec. 24, E½NW¼, NW¼NW¼, E½W½ SW¼NW¼,E½SW¼NW¼;
  Sec. 27, S½NE¼NE¼SW¼, W½NE¼ SW¼, SE¼NE¼SW¼, W½SW¼, SE¼ SW¼;
  Sec. 28, SW¼NE¼;
  Sec. 29. E½E½;
  Sec. 30. S½NE¼NE¼, SE¼NE¼.
  Containing 627.72 acres, more or less.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this notice will segregate the affected public lands from appropriation under the public land laws and the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: July 23, 1991.

Paul J. Buff,

Acting District Manager.

[FR Doc. 91–18252 Filed 7–31–91; 8:45 am]

BILLING CODE 4310-32-M

[AZ-020-01-4212-12; AZA-25395]

Realty Action; Exchange of Public Land Pima and Pinal Co., AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Exchange.

SUMMARY: The Bureau of Land Management proposes to exchange public land in order to achieve more efficient management of the public land through consolidation of ownership and the acquisition of unique natural resource lands. All or part of the following described federal lands may be suitable for disposal via exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Base and Meridian, Pima and Pinal Counties, Arizona

T. 11 S., R. 8 E.,
  Secs. 28, 29, 32, 33, 34;
T. 12 S., R. 8 E.,
  Secs. 3, 4, 5, 10, 14, 15;
T. 12 S., R. 9 E.,
  Secs. 17, 20;
T. 16 S., R. 12 E.,
  Sec. 35;
T. 17 S., R. 12 E.,
  Secs. 2, 11;
T. 3 S., R. 13 E.,
  Sec. 24;
T. 3 S., R. 14 E.,
  Secs. 19, 29, 30;
T. 14 S., R. 16 E.,
  Sec. 7.
  Comprising approximately 5090 acres.

In exchange for the above described public lands, the United States will acquire various parcels of land located in southern and southcentral Arizona from ASARCO, Incorporated. The subject parcels to be acquired from Asarco contain critical habitat for certain threatened or endangered species of plants and animals. The exchange proposal involves all of the exchange proponent's interest in the surface and subsurface of the private lands and the surface and subsurface estate of the public lands. The exchange is consistent with the Bureau's land use planning objectives. Upon completion of the environmental, appraisal, and title reports a comprehensive list of the acquisition parcels will be published for public review.

Lands being conveyed from the United States will be subject to the following reservations, terms and conditions: 1. All valid existing rights.

The lands to be acquired by the United States from Asarco shall be subject to certain easements, permits and other encumbrances detailed in the subject title reports.

Upon completion of the official appraisal, acreage adjustments will be made to equalize the values of the offered and selected lands.

In accordance with the regulations of 43 CFR 2201.1, publication of this notice will segregate the affected public land from appropriation under the public land laws, except exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. The segregative effect shall also exclude appropriation of the subject public land under the mining laws, subject to valid existing rights.

The segregation of the above-described land shall terminate upon issuance of a document conveying title to such lands or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: July 26, 1991.

Charles R. Frost,

Acting District Manager.

[FR Doc. 91-18253 Filed 7-31-91; 8:45 am]

BILLING CODE 4310-32-M

[CA-940-01-5410-10-B020; CACA 12991]

California, Conveyance of Mineral Interests

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of segregation.

SUMMARY: The private lands described in this notice, containing 320 acres, are segregated and made unavailable for filings under the United States mining laws, to determine their suitability for conveyance of the reserved mineral interest pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface of minerals ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land than the mineral development.

FOR FURTHER INFORMATION CONTACT: Judy Bowers, California State Office, Federal Office Building, 2800 Cottage Way, room E-2841, Sacramento, California 95825, (916) 978-4820.

Serial No.—CACA 12991

T. 7 N., R. 9 W., San Bernardino Meridian
Sec. 22, S½.

County—Los Angeles

Minerals Reservation—All coal and other minerals.

Upon publication of this notice of segregation in the **Federal Register** as provided in 43 CFR 2720.1-1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the United States mining laws. The segregative effect of the application shall terminate by publication of an opening order in the **Federal Register** specifying the date and time of opening; upon issuance of a patent or other document of conveyance to such mineral interests; or two years from the date of publication of this notice, whichever occurs first.

Dated: July 25, 1991.

Nancy J. Alex,

Chief, Lands Section.

[FR Doc. 91-18257 Filed 7-31-91; 8:45 am]

BILLING CODE 4310-40-M

[Ca-060-01-4212-11; CACA 27139]

California Desert District; Realty Actions, Partial Termination of Small Tract Classification and Public use Classification; Classification of Public Lands for Recreation and Public Purposes; San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action CACA 27139, Classification Terminations, and Classification of Public Land as Suitable for Lease/Conveyance for Recreation and Public Purposes.

SUMMARY: Bureau of Land Management (BLM) Order of Classification Small Tract 186, dated November 29, 1949, is hereby terminated as to the N½SW¼SW¼NW¼, section 13, T.4N., R.5W., SBM, and the land opened to operation under the public land laws and the mining laws. BLM Order of Classification CARI 06309, dated February 5, 1965, which carried no segregative effect, is hereby terminated as to the N½SW¼SW¼NW¼, section 13, T.4N., R.5W., SBM.

The following described public land in San Bernardino County, California has been examined and found suitable for classification for lease or conveyance to the Hesperia Recreation and Park District under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.):

San Bernardino Meridian, California

T. 4 N., R. 5 W.
Sec. 13, N½SW¼SW¼NW¼.
Containing 5.00 acres.

The Hesperia Recreation and Park District, a local government entity (Public District formed September 14, 1959 by resolution of the San Bernardino County Board of Supervisors under the provisions of chapter 4, division 5 of the Public Resources Code, State of California) has filed an application to lease with the option for conveyance of the above described public land. The Hesperia Recreation and Park District proposes to use the land, in conjunction with adjacent non-Federal lands purchased by the District, for establishment of a public sports complex. The public land will be leased during the development stages. Upon substantial compliance with approved plans of development and management, the land will be conveyed.

The land is not needed for Federal purposes. Lease or conveyance under the Recreation and Public Purposes Act is in the public interest and consistent with the California Desert Conservation Area Plan, as amended. The land is situated near significant population centers and convenient access is provided by paved County roads. The site is physically suitable for the proposed use.

The terms and conditions applicable to a lease or conveyance are:

A. Reservations to the United States.

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

2. The United States will reserve all mineral deposits in the land together with the right to prospect for, mine and remove such mineral deposits under applicable law.

3. The right to itself, it permittees or licensees to enter upon, occupy and use any part or all of the NW¼SW¼SW¼NW¼, section 13, T. 4N., R.5W., SBM lying within 20 feet of the centerline of transmission line right-of-way of the Southern California Edison Company, Serial No. CARI 01725, for the purposes

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February 5, 1965, which carried no segregative effect, is hereby terminated as to the N½SW¼SW¼NW¼, section 13, T.4N., R.5W., SBM.

The following described public land in San Bernardino County, California has been examined and found suitable for classification for lease or conveyance to the Hesperia Recreation and Park District under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.):

San Bernardino Meridian, California

T. 4 N., R. 5 W.
  Sec. 13, N½SW¼SW¼NW¼.
  Containing 5.00 acres.

The Hesperia Recreation and Park District, a local government entity (Public District formed September 14, 1959 by resolution of the San Bernardino County Board of Supervisors under the provisions of chapter 4, division 5 of the Public Resources Code, State of California) has filed an application to lease with the option for conveyance of the above described public land. The Hesperia Recreation and Park District proposes to use the land, in conjunction with adjacent non-Federal lands purchased by the District, for establishment of a public sports complex. The public land will be leased during the development stages. Upon substantial compliance with approved plans of development and management, the land will be conveyed.

The land is not needed for Federal purposes. Lease or conveyance under the Recreation and Public Purposes Act is in the public interest and consistent with the California Desert Conservation Area Plan, as amended. The land is situated near significant population centers and convenient access is provided by paved County roads. The site is physically suitable for the proposed use.

The terms and conditions applicable to a lease or conveyance are:

A. Reservations to the United States.

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

2. The United States will reserve all mineral deposits in the land together with the right to prospect for, mine and remove such mineral deposits under applicable law.

3. The right to itself, it permittees or licensees to enter upon, occupy and use any part or all of the NW¼SW¼SW¼NW¼, section 13, T. 4N., R.5W., SBM lying within 20 feet of the centerline of transmission line right-of-way of the Southern California Edison Company, Serial No. CARI 01725, for the purposes described in Power Site Classification 241 (November 11, 1929), and set forth in and subject to the limitations of section 24 of the Federal Power Act of June 10, 1920, as amended (43 U.S.C. 818).

B. The public land will be leased or conveyed subject to the following:

1. Those rights for oil and gas exploration and development granted to Hunt Oil USA Inc., its successors or assigns, by Serial No. CACA 19461, pursuant to the Act of February 25, 1920, as amended (30 U.S.C. 186).

2. Those rights for construction, operation and maintenance of the Arrowhead Calectric Shandin 115kV electric transmission line granted to California Electric Corp. (now Southern California Edison Co.), its successors or assigns, by right-of-way Serial No. CARA 01725, pursuant to the Act of December 21, 1928 (43 U.S.C. 617d).

3. Those rights for construction, operation and maintenance of the Lugo-Victor dobule circuit 220kV electric transmission line granted to Southern California Edison Company, its successors or assigns, by right-of-way Serial No. CARI 06740, pursuant to the Act of March 4, 1911, as amended (43 U.S.C. 961).

4. Those rights for construction, operation and maintenance of the Victorville-Lugo 500kV electric transmission line and the Nos. 3 and 4 Lugo-Victor double circuit 220kV electric transmission line granted to Southern California Edison Co., its successors or assigns, by right-of-way Serial No. CARI 4180, pursuant to the Act of March 4, 1911, as amended (43 U.S.C. 961).

5. Those rights for construction, operation and maintenance of the Control-Calectric double circuit 115kV electric transmission line granted to Southern California Edison Co., its successors or assigns, by right-of-way Serial No. CACA 21596, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).

Upon publication of this notice in the **Federal Register**, the public land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice, interested persons may submit comments, regarding the proposed lease/conveyance of the lands, to the Area Manager, Barstow Resource Area, 150 Coolwater Lane, Barstow, CA 92311, (619) 256–3591. Any adverse comments will be reviewed by the District Manager, California Desert District. In the absence of any adverse comments, this classification will become effective 60 days from the date of publication of this notice.

Dated: July 22, 1991.

Gerald E. Hillier,
District Manager.

[FR Doc. 91–18251 Filed 7–31–91; 8:45 am]

BILLING CODE 4310-40-M

[ID-942-01-4730-12]

Idaho: Filing of Plats of Survey

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., July 24, 1991.

The plat representing the dependent resurvey of portions of the east and north boundaries, and subdivisional lines, and subdivision of sections 2, 11, and 12, T. 24 N., R. 2 E., Boise Meridian, Idaho, Group No. 792, was accepted, July 18, 1991.

This survey was executed to meet certain administrative needs of the U.S. Forest Service, Region 1, Nez Perce National Forest.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: July 24, 1991.

Gary T. Oviatt,
Acting Chief Cadastral Surveyor for Idaho.

[FR Doc. 91–18255 Filed 7–31–91; 8:45 am]

BILLING CODE 4310-GG-M

[OR-943-01-4214-10; GP1-290; OR-47417]

Proposed Withdrawal and Opportunity for Public Meeting; Oregon

AGENCY: Bureau of Land Management, interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw 4,239.95 acres of national forest land to protect the scenic segment of the Illinois Wild and Scenic River. This notice closes the lands for up to two years from mining. The lands will remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by October 30, 1991.

ADDRESSES: Comments and meeting requests should be sent to the Oregon State Director, BLM, P.O. Box 2965, Portland, Oregon 97208–0039.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon State Office, 503–280–7171.

SUPPLEMENTARY INFORMATION: On July 3, 1991, the U.S. Department of Agriculture, Forest Service, filed an application to withdraw the following described national forest lands from location and entry under the United States mining laws (30 U.S.C. ch. 2), subject to valid existing rights:

Willamette Meridian

Siskiyou National Forest

T. 38 S., R. 8 W.,
  Sec. 7, SW¼NE¼, S½NW¼, N½SW¼, SE¼SW¼, and W½SE¼;
  Sec. 18, N½NW¼NE¼ and N½NE¼NW¼.
T. 38 S., R. 9 W.,
  Sec. 1, lot 9, SE¼SW¼, and S½SW¼SE¼;
  Sec. 2, lots 2, 3, 4, and 7, SW¼NE¼, S½NW¼, SW¼, and W½SE¼;
  Sec. 3, lots 1, 2, 3, and 4, S½N½, and N½N½S½;
  Sec. 4, lots 1, 2, 3, and 4, NE¼SW¼NE¼, SE¼NE¼, and NE¼NE¼SE¼;
  Sec. 5, lots 1 and 2;
  Sec. 11, lot 1, NW¼NE¼, N½NE¼NW¼, and N½SE¼NE¼;
  Sec. 12, lots 1 and 2, NW¼NE¼, NE¼NW¼, N½S½NW¼, N½SW¼NE¼, SE¼SW¼NE¼, SE¼NE¼, and NE¼NE¼SE¼.
T. 37 S., R. 9 W.,
  Sec. 6, SW¼SE¼ and SE¼SW¼;
  Sec. 7, lots 2 and 5, SW¼NE¼, E½NW¼, NE¼SW¼, and N½SE¼;
  Sec. 8, lot 5 and lots 7 to 11, inclusive;
  Sec. 16, SW¼NW¼SW¼, W½SW¼SW¼, and SE¼SW¼SW¼;
  Sec. 17, lots 1 and 2, E½NE¼, SW¼NE¼, and SE¼;
  Sec. 20, N½NE¼NE¼, SE¼NE¼NE¼, E½SE¼NE¼, E½SE¼, SE¼NW¼SE¼, and E½SW¼SE¼;
  Sec. 21, W½E½NW¼, W½NW¼, W½NE¼SW¼, NW¼SW¼, N½SW¼SW¼, and SW¼SW¼SW¼;
  Sec. 28, W½W½NW¼ and W½NW¼SW¼;
  Sec. 29, E½NE¼, E½W½NE¼, and SE¼;
  Sec. 32, lots 1 to 6, inclusive, and N½NE¼;
  Sec. 33, SW¼NW¼NW¼, SW¼NW¼, S½SE¼NW¼, SW¼, NW¼NW¼SE¼, S½NW¼SE¼, and S½SE¼.

The areas described aggregate 4,239.95 acres in Josephine County, Oregon.

The purpose of the proposed withdrawal is to protect the scenic segment of the Illinois Wild and Scenic River between the mouth of Deer Creek and the mouth of Briggs Creek.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the State Director at the address indicated above

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Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the State Director at the address indicated above within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the schedule date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of two years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are other National Forest management activities, including permits, licenses, and cooperative agreements, that are compatible with the intended use under the discretion of the authorized officer.

Dated: July 17, 1991.

Champ C. Vaughan,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 91-18254 Filed 7-31-91; 8:45 am]

BILLING CODE 4310-33-M

Fish and Wildlife Service

Notice of Availability of a Draft Recovery Plan for the Purple Cat's Paw Pearlymussel for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft recovery plan for the purple cat's paw pearlymussel. This freshwater mussel historically occurred in the Ohio River and its large tributaries in Ohio, Indiana, Illinois, Kentucky, Tennessee, and Alabama. Presently the purple cat's paw pearlymussel is known from only two relic, apparently nonreproducing, populations—one in a reach of the Cumberland River in Tennessee and one in a reach of the Green River in Kentucky. The Service solicits review and comments from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before September 30, 1991 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials recieved are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Biggins at the above address (704/655-1195).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting them, and initial estimates of time and costs to implement the recovery measured needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular speices. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The primary species considered in this draft recovery plan is the purple cat's paw pearlymussel (*Epioblasma* (=*Dysnomia*) *obliquata obliquata* (=*E. sulcata sulcata*). The areas of emphasis for recovery actions are the major tributaries of the Ohio River system in the States of Virginia, Ohio, Illinois, Indiana, Kentucky, Tennessee, and Alabama. Habitat protection, reintroduction, and preservation of genetic material are major objectives of this recovery plan.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 25, 1991.

Richard G. Biggins,

Acting Field Supervisor.

[FR Doc. 91-18286 Filed 7-31-91; 8:45 am]

BILLING CODE 4310-55-M

Notice of Availability of a Draft Revised Recovery Plan for the Tar River Spiny Mussel for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife service announces the availability for public review of a draft revised recovery plan for the Tar River spiny mussel. This freshwater mussel is endemic to the Tar River drainage basin in eastern North Carolina. Presently there are only three known populations of the Tar River spiny mussel still in existence, two of which are extremely small. The Service solicits review and comments from the public of this draft plan.

DATES: Comments on the draft revised recovery plan must be received on or before September 30, 1991 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft revised recovery plan may obtain a copy by contacting the Field Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806, telephone 704/665-1195. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. John A. Fridell at the address and telephone number shown above.

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Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 25, 1991.

Richard G. Biggins,

Acting Field Supervisor.

[FR Doc. 91-18266 Filed 7-31-91; 8:45 am]

BILLING CODE 4310-55-M

Notice of Availability of a Draft Revised Recovery Plan for the Tar River Spiny Mussel for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife service announces the availability for public review of a draft revised recovery plan for the Tar River spiny mussel. This freshwater mussel is endemic to the Tar River drainage basin in eastern North Carolina. Presently there are only three known populations of the Tar River spiny mussel still in existence, two of which are extremely small. The Service solicits review and comments from the public of this draft plan.

DATES: Comments on the draft revised recovery plan must be received on or before September 30, 1991 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft revised recovery plan may obtain a copy by contacting the Field Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806, telephone 704/665-1195. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. John A. Fridell at the address and telephone number shown above.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals or plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for recognizing the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1553 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

This draft recovery plan revises and updates the original recovery plan for the Tar River spiny mussel published by the Service in January 1987. It outlines a mechanism that provides for the recovery and potential delisting of this federally endangered species. The Tar River spiny mussel was officially listed as an endangered species on July 29, 1985, primarily because of habitat and water quality degradation resulting from sedimentation and the runoff and discharge of municipal, industrial, and agricultural pollutants. The major objectives of the plan are habitat protection, reintroduction, and the preservation of genetic material. Comments and information provided during this review will be used in preparing the final recovery plan.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 26, 1991.

Richard G. Biggins,

Acting Field Supervisor.

[FR Doc. 91-18265 Filed 7-31-91; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Draft Wildland Fire Management Plan and Environmental Assessment, Yellowstone National Park, Wyoming

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of draft plan and environmental assessment.

SUMMARY: In accordance with the National Environmental Policy Act and National Park Service (NPS) regulations, a Draft Environmental Assessment (EA) has been prepared for the draft Wildland Fire Management Plan.

The Draft Environmental Assessment presents four alternative strategies for managing wildland fires in Yellowstone National Park. These alternatives include a proposal and a no-action alternative. Each alternative seeks to protect human life, developments, and cultural resources, and to perpetuate natural resources and their associated processes. The proposal and the alternatives were analyzed for their effects on natural and cultural resources and the area's social and economic fabric.

The proposal would manage wildland fires using the full range of fire management techniques: suppression, management-ignited prescribed fire, and prescribed natural fire. Three zones would be established where fires would be suppressed or permitted based upon their threat to human life, developments, and cultural resources. Conditions that determine when, where, or if a fire is permitted include availability of manpower, equipment, and funding, predicted weather conditions, fuels, and fuel moisture content.

The no-action alternative would continue the full-suppression actions now in place throughout the park. Alternative B would use suppression techniques and management-ignited prescribed fire only to manage wildland fires. Alternative C would use suppression techniques and prescribed natural fire only to manage wildland fires. In Alternatives B and C, zones and prescriptions would be established, as in the proposal, to determine when, where, how, or if fires would be permitted.

DATES: Comments on the draft plan and EA should be sent to the Superintendent, Yellowstone National Park, P.O. Box 168, Yellowstone National Park, Wyoming 82190, no later than August 30, 1991.

ADDRESSES: Copies of the draft plan and EA are available from the Superintendent, Yellowstone National Park, P.O. Box 168, Yellowstone National Park, Wyoming 82190. Copies are also available for review in the Office of Public Affairs, Room 155, National Park Service, Rocky Mountain Regional Office, 12795 W. Alameda Pkwy., Denver, Colorado 80225.

Dated: July 19, 1991.

Ben L. Moffett,

Acting Regional Director, Rocky Mountain Region.

[FR Doc. 91-18192 Filed 7-31-91; 8:45 am]

BILLING CODE 4310-70-M

Phoenix Indian School Property, Arizona; Sale of Land

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice of sale of land—Phoenix, Arizona.

SUMMARY: Notice is hereby given that the Secretary of the Interior is accepting sealed bids for a period of 90 days from the publication of this notice for the purchase of a 71.64 acre (more or less) tract of land in the business district of Phoenix, Arizona, pursuant to title IV of the Arizona-Idaho Conservation Act of 1988, Public Law 100-696 (the Act).

DATE: Written offers must be received on or before October 30, 1991.

ADDRESSES: For information concerning the zoning and other legal requirements applicable to the lands: Name: Frank Dolasinski; Address: City of Phoenix, Planning Department, 125 E. Washington, Phoenix, Arizona 85004; Telephone: (602) 261-8792.

For bid information and details on the sale: Name: P. Daniel Smith; Address: General Services Administration, Office of the Commissioner, Federal Property Resources Service, room 5241, 18th and F Streets NW., Washington, DC 20405; Telephone: (202) 501-0210.

To submit sealed bids: Name: Secretary of the Interior (Attention: Joseph E. Doddridge); Address: Department of the Interior, Office of the Secretary, Mail Stop 3156-MIB, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Joseph E. Doddridge, Department of the Interior, Office of the Secretary, Mail Stop 3156-MIB, 1849 C Street NW., Washington, DC 20240; (202) 208-3928.

SUPPLEMENTARY INFORMATION:

Description of Land

The property being offered is a 71.84 acre portion of a 110.97 acre tract known as the Phoenix Indian School Property. It is situated in the Northeastern quadrant of the intersection at Indian School Road and Central Avenue. Under the terms of the sale, the purchaser will acquire that portion of the Phoenix Indian School Property made up of the entire 110.97 acre parcel minus a 16 acre parcel in the southeastern corner of the property, which is to be transferred to the Department of Veterans' Affairs, three parcels totalling 3.13 acres that are road rights-of-way to be deeded to the city of Phoenix, and a single 20 acre parcel which is to be deeded to the city of Phoenix. The location of the 20 acre parcel to be conveyed to the city of Phoenix may be determined by a mutual agreement between the purchaser and the City at a time prior to closing. Absent such an agreement, the City shall acquire the 20 northernmost acres of the Phoenix Indian School Property.

Background

The offering of this property is made pursuant to subsections 402(h)(2) through 402(h)(9) of title IV of the Act, which ratified and established legal terms for an Exchange Agreement among the United States, Collier Enterprises, Collier Development Corporation, and Barron Collier Company (known collectively as Collier), dated May 12, 1988. Under the Exchange Agreement and the ratifying legislation, Collier was given an option of accepting the property for the greater of $80,000,000, or the value of the property as established by an independent appraisal commissioned by the National Park Service, and based on a "specific plan" as provided in the Planning and Development Agreement between the city of Phoenix and Collier, dated July 1, 1987, as amended on December 21, 1988. At the close of the 90 day bidding process, the Secretary of the Interior shall have 15 days to determine among all bids submitted the one that constitutes the best qualifying offer. Once the best qualifying offer has been identified, Collier will have 30 days in which to determine whether it will exercise its first refusal option by making a binding offer to purchase the property for 105 percent of the best qualifying offer. If Collier does not exercise this option within 30 days, the best qualified offer will be accepted by the U.S. government, and closing will take place within 90 days. Copies of the Exchange Agreement between the United States and Collier, the ratifying legislation (title IV of the Arizona-Idaho Conservation Act, Public Law 100-696), and the Planning and Development Agreement between Collier and the city of Phoenix are available to potential bidders.

Minimum Bid

Pursuant to subsection 402(h)(4) of the Act, the minimum acceptable price for the Phoenix Exchange Property is $80,000,000 plus an amount equal to the costs determined by the Secretary of the Interior as reimbursable to Collier for all expenses associated with the Exchange Agreement as defined by subsection 402(i)(2) of Public Law 100-696. The costs submitted by Collier under this provision total $4,063,681. Therefore, the minimum acceptable bid is $84,063,681, subject to an audit of Collier's costs being conducted by the Office of Inspector General, U.S. Department of the Interior. Should the costs claimed by Collier be reduced by any amount, the minimum acceptable bid for the Phoenix Exchange Property shall be reduced by that same amount. Notice of the results of the Inspector General's audit will be published in the **Federal Register** and all parties who have requested bidding packages will be directly notified of the audit results.

Conditions of Sale

In order to be considered qualified, an offer must be for an amount equal to or greater than the minimum acceptable bid and meet the terms and conditions prescribed by the Act. Among those terms and conditions are:

1. A qualified bid must include an offer to the United States to purchase the entire Phoenix Exchange Property for cash in a single transaction. Such offer must, by its terms, be irrevocable for a period of at least 120 days from the date that it is delivered to the Secretary of the Interior and be legally binding on the offeror upon acceptance of the offer by the United States.

2. In a manner consistent with subsection 402(h)(3)(D) of the Act, a qualified bid must also include an offer to the United States to enter into a Trust Fund Payment Agreement under the terms of section 403 of the Act. Such a trust fund agreement would account for that portion of the purchase price which is equal to the full purchase price minus the amount of the proceeds due to Collier for the purchase of the Florida property ($45,100,000) plus Collier's approved costs. Under the terms of the Act, at some time prior to September 25, the Secretary of the Interior shall elect whether this portion of the purchase price shall be paid in a lump sum or under the Trust Fund arrangement provided in the Act. When a final determination on this issue is made by the Secretary of the Interior, a notice of such determination shall be published in the **Federal Register** and all parties who have requested bid packages will be directly notified.

3. Under the terms of subsection 402(h)(3)(E), the offer must contain evidence that the offeror has made an offer to the city of Phoenix to enter into the Planning and Development Agreement. By its terms such offer to the City must be binding if approved by the Phoenix City Council.

4. The written offer must contain a provision which would allow for access to and recovery of archeological items by the Secretary of the Interior or his contractor within a reasonable period of time, or other mutually agreeable arrangements made with the Department of the Interior to recover and curate or preserve the archeological remains in situ. There must also be expressed in the offer a willingness to negotiate with the Department of the Interior (in consultation with the Arizona State Historic Preservation Officer and the Advisory Council on Historic Preservation) to preserve an Indian War Memorial located on the property in place or, if preservation in place is not deemed prudent and feasible, to relocate the Memorial to an appropriate location.

5. The written offer must contain full and substantial evidence of the capacity of the offeror to enter into and perform each of the obligations required to be taken by the offeror, including a description of financing arrangements to be undertaken by the offeror in order to perform the payment obligation of the purchaser upon closing of the purchase transaction. The rights and obligations of a purchaser shall be comparable in all material respects to the rights and obligations of Collier under the Exchange Agreement, except as otherwise provided by the Act. All financial and other information that the offeror considers confidential should be so marked by the offeror. Every attempt will be made to preserve the confidentiality of this information, except for appropriate review by the Department of the Interior, the General Services Administration, the General Accounting Office, and the Congress of the United States.

Deposit

Each bid must be accompanied by a bid deposit in the amount of $4,000,000,

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3. Under the terms of subsection 402(h)(3)(E), the offer must contain evidence that the offeror has made an offer to the city of Phoenix to enter into the Planning and Development Agreement. By its terms such offer to the City must be binding if approved by the Phoenix City Council.

4. The written offer must contain a provision which would allow for access to and recovery of archeological items by the Secretary of the Interior or his contractor within a reasonable period of time, or other mutually agreeable arrangements made with the Department of the Interior to recover and curate or preserve the archeological remains in situ. There must also be expressed in the offer a willingness to negotiate with the Department of the Interior (in consultation with the Arizona State Historic Preservation Officer and the Advisory Council on Historic Preservation) to preserve an Indian War Memorial located on the property in place or, if preservation in place is not deemed prudent and feasible, to relocate the Memorial to an appropriate location.

5. The written offer must contain full and substantial evidence of the capacity of the offeror to enter into and perform each of the obligations required to be taken by the offeror, including a description of financing arrangements to be undertaken by the offeror in order to perform the payment obligation of the purchaser upon closing of the purchase transaction. The rights and obligations of a purchaser shall be comparable in all material respects to the rights and obligations of Collier under the Exchange Agreement, except as otherwise provided by the Act. All financial and other information that the offeror considers confidential should be so marked by the offeror. Every attempt will be made to preserve the confidentiality of this information, except for appropriate review by the Department of the Interior, the General Services Administration, the General Accounting Office, and the Congress of the United States.

Deposit

Each bid must be accompanied by a bid deposit in the amount of $4,000,000,

which will be in the form of a certified check, cashier's check, or postal money order payable to the order of: "The U.S. Department of the Interior or (name of bidder)." Such deposit shall be forfeited should the United States accept the offer and the offeror fail to meet the obligations under the terms set forth in the offer.

Closing

Closing of the purchase transaction shall take place within 90 days after acceptance by the United States of the best qualifying offer, subject to the requirements respecting deposit of payment under subsection 402(i) of the Act.

Dated: July 25, 1991.

Mike Hayden,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 91-18191 Filed 7-31-91; 8:45 am]

BILLING CODE 4310-70-M

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the availability of environmental documents prepared for OCS mineral proposals on the Gulf of Mexico OCS.

SUMMARY: The Minerals Management Service (MMS), in accordance with Federal Regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Environmental Assessments (EA's) and Findings of No Significant Impact (FONSI's), prepared by the MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS. This listing includes all proposals for which the FONSI's were prepared by the Gulf of Mexico OCS Region in the period subsequent to publication of the preceding notice.

Activity/Operator	Location	Date
Santa Fe International Corporation, one development well, SEA No. N-3875.	High Island Area, East Addition, South Extension, Block A-373, Lease OCS-G 7367, 105 miles southeast of the nearest coastline in Texas.	01/29/91
Chevron U.S.A., one exploratory well, SEA No. N-3912	Destin Dome Area, Block 97, Lease OCS-G 8336, 29 miles south of Florida coastline	12/20/90
Southern Natural Gas Company, pipeline activity, SEA No. OCS-G 12720.	Mississippi Canyon Area; Blocks 397, 353, 309, 310, and 266; Grand Isle Area, Block 80; West Delta Area, Block 137, 136, 135, 120, 121, 116, 101, 102, 91, 90, 75, 76, 61, 60, 47, 48, 27, and 26; Lease OCS-G 12720, 3 miles south of the nearest coastline in Louisiana.	03/14/91
Shell Offshore Inc., 32 development wells, SEA No. U-0703.	Garden Banks Area; Blocks 427, 471, 426, and 470; Leases OCS-G 7493, 7498, 8241, and 8248; 119 miles southwest of the nearest landfill in Terrebonne Parish, Louisiana.	04/26/91
Roberts & Bunch Offshore, Inc., one exploratory well, SEA No. R-2716.	High Island Area, East Addition, South Extension, Block A-353, Lease OCS-G 7362, 110 miles southeast of the nearest coastline on Galveston Island, Texas.	06/21/91
Chevron U.S.A. Inc., structure removal operations, SEA No. ES/SR 90-101.	Vermilion Area, Block 241, Lease OCS-G 3132, 65 miles south of Vermilion Parish, Louisiana.	02/05/91
Forest Oil Corporation, structure removal operations, SEA No. ES/SR 91-07S.	Eugene Island Area, Block 309, Lease OCS-G 0997, 78 miles south of St. Mary Parish, Louisiana.	02/05/91
Exxon Company, U.S.A., structure removal operations, SEA No. ES/SR 91-008.	West Cameron Area, South Addition, Block 616, Lease OCS-G 2558, 115 miles south of Cameron Parish, Louisiana.	03/05/91
Mobil Exploration & Producing U.S. Inc., structure removal operations, SEA No. ES/SR 91-08S.	Matagorda Island Area, Block 664, Lease OCS-G 3463, 10 miles south of Calhoun County, Texas.	02/11/91
Mobil Exploration & Producing U.S. Inc., structure removal operations, SEA No. ES/SR 91-09S.	Vermilion Area, Block 326, Lese OCS-G 4428, 97 miles south of Vermilion Parish, Louisiana.	02/08/91
Mobil Exploration & Producing U.S. Inc., structure removal operations, SEA No. ES/SR 91-010.	West Cameron Area, Block 101, Lease OCS 0246, 13 miles south of Cameron Parish, Louisiana.	02/21/91
Chevron U.S.A., structure removal operations, SEA Nos. ES/SR 91-10S, 91-11S, 91-12S, 91-13S, 91-14S, and 91-15S.	Vermilion Area; Blocks 250, 155, and 261; Leases OCS-G 1149, 2872, and 3328; East Cameron Area, Block 280, Lease OCS-G 2049; and High Island Area, Block A-281, Lease OCS-G 3377; 69 miles south of Vermilion Parish, Louisiana.	03/19/91
Shell Offshore Inc., structure removal operations, SEA No. ES/SR 91-011.	High Island Area, Block 135, Lease OCS 0741, 30 miles south of Jefferson County, Texas.	02/28/91
ODECO Oil and Gas Company, structure removal operations, SEA No. ES/SR 91-013.	Ship Shoal Area, Block 114, Lease OCS 064, 15 miles south of Terrebonne Parish, Louisiana.	02/01/91
Mobil Exploration and Producing U.S. Inc., structure removal operations, SEA No. ES/SR 91-014.	West Cameron Area, Block 110, Lease OCS 081, 20 miles south of Cameron Parish, Louisiana.	04/05/91
UNOCAL Exploration Corporation, structure removal operations, SEA No. ES/SR 91-015.	High Island Area, East Addition, South Extension, Lease OCS-G 2733, 102 miles south of Cameron Parish, Louisiana.	02/20/91
Chevron U.S.A., structure removal operations, SEA No. ES/SR 91-16S.	Main Pass Area, South and East Addition, Block 160, Lease OCS-G 5245, 20 miles east of Breton National Wildlife Refuge and Wilderness Area.	03/27/91
UNOCAL Exploration Corporation, structure removal operations, SEA No. ES/SR 91-016.	Eugene Island Area, Block 32, Lease OCS 0196, 12 miles south of St. Mary Parish, Louisiana.	02/06/91
Mobil Exploration & Producing U.S. Inc., removal operations, SEA No. ES/SR 91-17S.	High Island Area, Block A-63, Lease OCS-G 7300, 44 miles southeast structure of Galveston County, Texas.	04/30/91
ARCO Oil and Gas Company, structure removal operations, SEA No. ES/SR 91-18S.	Main Pass Area, Block 175, Lease OCS-G 8753, 65 miles east of St. Bernard Parish, Louisiana.	04/4/91
Sandefer Offshore Operating Company, structure removal operations, SEA No. ES/SR 91-19A.	East Cameron Area, Block 129, Lease OCS-G 3534, 38 miles south of Cameron Parish, Louisiana.	06/11/91
ARCO Oil and Gas Company, structure removal operations, SEA No. ES/SR 91-19S.	Main Pass Area, Block 245, Lease OCS-G 6828, 65 miles west of Plaquemines Parish, Louisiana.	04/5/91
ARCO Oil and Gas Company, structure removal operations, SEA No. ES/SR 91-20S.	Main Pass Area, Block 129, Lease OCS-G 4009, 17 miles northeast of St. Bernard Parish, Louisiana.	04/12/91
ARCO Oil and Gas Company, structure removal operations; SEA No. ES/SR 91-21S.	Main Pass Area, Block 263, Lease OCS-G 6829, 65 miles west of Plaquemines Parish, Louisiana.	04/11/91
UNOCAL Exploration Corporation, structure removal operations, SEA No. ES/SR 91-22S.	High Island Area, South Addition, Block A-494, Lease OCS-G 3244, 86 miles southeast of Galveston, Texas.	04/26/91
Shell Offshore Inc., structure removal operations, SEA No. ES/SR 91-23S.	East Cameron Area, Block 240, Lease OCS-G 4101, 90 miles south of Cameron Parish, Louisiana.	04/30/91
Energy Development Corporation, structure removal operations, SEA No. ES/SR 91-024.	Main Pass Area, Block 96, Lease OCS-G 5243, 13 miles east of St. Bernard Parish, Louisiana.	03/13/91

Activity/Operator	Location	Date
Shell Offshore Inc., structure removal operations, SEA No. ES/SR 91-24S.	Ship Shoal Area, Block 259, Lease OCS-G 5044, 50 miles south of Terrebonne Parish, Louisiana.	05/07/91
Shell Offshore Inc., structure removal operations, SEA No. ES/SR 91-25S.	Vermilion Area, Block 223, Lease OCS-G 5426, 66 miles south of Vermilion Parish, Louisiana.	04/26/91
Diamond Shamrock Offshore, structure removal operations, SEA No. ES/SR 91-026.	West Cameron Area, Block 192, Lease OCS-G 4757, 25 miles south of Cameron Parish, Louisiana.	03/13/91
Chevron U.S.A. Inc., structure removal operations, SEA No. ES/SR 91-27S.	South Timbalier Area, Block 36, Lease OCS-G 2624, 10 miles south of Terrebonne Parish, Louisiana.	06/11/91
Chevron U.S.A. Inc., structure removal operations, SEA No. ES/SR 91-029.	South Timbalier Area, Block 177, Lease OCS-G 1260, 42 miles south of Lafourche Parish, Louisiana.	03/26/91
Chevron U.S.A. Inc., structure removal operations, SEA No. ES/SR 91-030.	Matagorda Island Area, Block 712, Lease OCS-G 4550, 25 miles southeast of Aransas County, Texas.	05/29/91
Linder Oil Company, structure removal operations, SEA No. ES/SR 91-031.	Main Pass Area, Block 57, Lease OCS-G 10895, 10 miles west of Lafourche Parish, Louisiana.	03/29/91
Kerr-McGee Corporation, structure removal operations, SEA No. ES/SR 91-034.	Ship Shoal Area, Block 33, Lease OCS 0336, 15 miles south of Cameron Parish, Louisiana.	05/01/91
Kerr-McGee Corporation, structure removal operations, SEA No. ES/SR 91-035.	Ship Shoal Area, Block 29, Lease OCS 0345, 6 miles south of Terrebonne Parish, Louisiana.	04/05/91
Kerr-McGee Corporation, structure removal operations, SEA No. ES/SR 91-040/041.	West Cameron Area, Block 543, Lease OCS-G 2010, 105 miles south of Cameron Parish, Louisiana.	05/20/91
Kerr-McGee Corporation, structure removal operations, SEA No. ES/SR 91-042.	East Cameron Area, Block 34, Lease OCS-G 2855, 8 miles south of Cameron Parish, Louisiana.	05/30/91
NERCO Oil & Gas Inc., structure removal operations, SEA No. ES/SR 91-043.	High Island Area, South Addition, Lease OCS-G 4578, 72 miles southeast of Galveston County, Texas.	05/24/91
Quintana Petroleum Corporation, structure removal operations, SEA No. ES/SR 91-051.	Ship Shoal Area, Block 15, Lease OCS-G 3411, 4 miles south of Terrebonne Parish, Louisiana.	06/14/91
Mobil Exploration & Producing, structure removal operations, SEA Nos. ES/SR 91-052/053/054/055.	Eugene Island Area; Blocks 128, 125, 120, and 119; Leases OCS 053, 051, 050, and 049; 50 miles south of St. Mary Parish, Louisiana.	06/07/91
Energy Development Corporation, structure removal operations, SEA No. ES/SR 91-056.	Eugene Island Area, Block 46, Lease OCS-G 4222, 15 miles south of St. Mary Parish, Louisiana.	05/02/91
Chevron U.S.A. Inc., structure removal operations, SEA No. ES/SR 91-057.	Brazos Area, Block A-17, Lease OCS-G 2658, 41 miles south of Brazoria County, Texas.	05/20/91
Shell Offshore Inc., structure removal operations, SEA No. ES/SR 91-063.	West Delta Area, Block 122, Lease OCS-G 1104, 20 miles southwest of Plaquemines Parish, Louisiana.	06/11/91

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Gulf of Mexico OCS are encouraged to contact the MMS office in the Gulf of Mexico OCS Region.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394, Telephone (504) 736-2519.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration for and the development/production of oil and gas resources and structure removals on the Gulf of Mexico OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA section 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Dated: July 23, 1991.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 91-18249 Filed 7-31-91; 8:45 am]

BILLING CODE 4310-MR-M

Request for Comments on the Proposed Comprehensive Outer Continental Shelf (OCS) Natural Gas and Oil Resource Management Program for 1992-1997

AGENCY: Minerals Management Service (MMS), Department of the Interior.

SUMMARY: Comments are requested on the second of three proposals for a new program for the period mid-1992 through mid-1997. The new program will succeed the current one, which covers the period July 1987 through June 1992.

Statutorily required steps in the program development process following this notice include the development of a Proposed Final Program and a Final Program. A draft Environmental Impact Statement (EIS) is being issued along with the Proposed Program. A final EIS will also be prepared. Comments submitted in response to this notice will be considered in preparing the Proposed Final Program and the final EIS.

DATES: Comments and information must be received on or before October 30, 1991. Commenters are strongly advised to submit their comments by the due date. Comments received after that date may not receive full consideration.

ADDRESSES: Comments and information should be mailed to: Director, Minerals Management Service (MS-4013), 1849 C Street, NW., Washington, DC 20240. Hand deliveries to the Department of the Interior may be made at 1849 C Street, NW., room 2525, Washington, DC. Envelopes or packages should be marked "Comments on the Comprehensive OCS Program." If any privileged or proprietary information which the respondent wishes to be treated as confidential is submitted, the envelope should be marked "Contains Confidential Information." Under section 18(c)(1) of the OCS Lands Act, any suggestions from the executive of any affected local government in an affected State should also be submitted to the Governor of such State.

FOR FURTHER INFORMATION CONTACT: For information on the development of the new comprehensive program, telephone Paul Stang or Tim Redding, Branch of Program Development and

Location	Date
259, Lease OCS-G 5044, 50 miles south of Terrebonne Parish,	05/07/91
223, Lease OCS-G 5426, 66 miles south of Vermilion Parish,	04/26/91
ock 192, Lease OCS-G 4757, 25 miles south of Cameron Parish,	03/13/91
Block 36, Lease OCS-G 2624, 10 miles south of Terrebonne	06/11/91
Block 177, Lease OCS-G 1260, 42 miles south of Lafourche	03/26/91
Block 712, Lease OCS-G 4550, 25 miles southeast of Aransas	05/29/91
57, Lease OCS-G 10895, 10 miles west of Lafourche Parish,	03/29/91
33, Lease OCS 0336, 15 miles south of Cameron Parish,	05/01/91
29, Lease OCS 0345, 6 miles south of Terrebonne Parish,	04/05/91
lock 543, Lease OCS-G 2010, 105 miles south of Cameron	05/20/91
ock 34, Lease OCS-G 2865, 8 miles south of Cameron Parish,	05/30/91
Addition, Lease OCS-G 4578, 72 miles southeast of Galveston	05/24/91
15, Lease OCS-G 3411, 4 miles south of Terrebonne Parish,	06/14/91
cks 128, 125, 120, and 119; Leases OCS 053, 051, 050, and St. Mary Parish, Louisiana.	06/07/91
ck 46, Lease OCS-G 4222, 15 miles south of St. Mary Parish,	05/02/91
, Lease OCS-G 2658, 41 miles south of Brazoria County, Texas..	05/20/91
122, Lease OCS-G 1104, 20 miles southwest of Plaquemines	06/11/91

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DATES: Comments and information must be received on or before October 30, 1991. Commenters are strongly advised to submit their comments by the due date. Comments received after that date may not receive full consideration.

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FOR FURTHER INFORMATION CONTACT: For information on the development of the new comprehensive program, telephone Paul Stang or Tim Redding, Branch of Program Development and Planning, at (202) 208–3072. Copies are available of an announcement document entitled "Summary and Decision" and a compilation of the underlying analyses, entitled "Decision Documents." A notice of availability of the draft EIS prepared for this program will appear in the August 2, 1991, issue of the Federal Register. For copies of block-specific maps and documents describing the proposed comprehensive program, telephone orders can be placed by calling Jan Arbegast at the above number.

SUPPLEMENTARY INFORMATION: Comments are requested from States, local governments, other interested individuals and groups, the oil and gas industry, and Federal agencies to assist in preparing a Comprehensive OCS Natural Gas and Oil Resource Management Program to cover the period mid–1992 to mid–1997.

Development of the comprehensive program enables the Federal Government, affected States and localities, other interested parties, and industry to plan for coordination concerning OCS oil and gas activities.

The program preparation process will follow all the analytic and procedural steps set out in section 18 of the OCS Lands Act. As part of this process, consideration will continue to be given to new approaches to the OCS program, with the aim of reaching consensus as well as obtaining a proper balance between the potential benefits and risks.

The preparation of the EIS associated with the new program will be in accordance with section 102(2)(C) of the National Environmental Policy Act (NEPA). As part of the NEPA process initiated in July 1989, comments received in response to this notice will be considered in the preparation of the EIS.

The Proposed Comprehensive Program

Based upon consideration of relevant factors in section 18 of the OCS Lands Act, the Secretary's decision on the Proposed Program affirms, in large part, the decision made for the Draft Proposed Program. Notable features which distinguish the Proposed Program from the February announcement include:

- Sixty-two blocks have been removed from further leasing consideration. Fifty blocks within the Wallops Island Flight Clearance Zone off the coast of Virginia have been removed for safety reasons at the request of the National Aeronautics and Space Administration. An additional 12 adjacent blocks have been removed because, if considered alone, they likely would have little exploration interest.
- In response to comments on the Draft Proposed Program, a more detailed description of the new Area Evaluation and Decision Process is provided which includes information on the criteria that will be used in the decision process.
- Also in response to comments, new options have been developed and are presented for comment in the companion Decision Documents.
- Among the new options: Slow the pace of leasing, establish coastal buffers, and exclude certain sensitive biological features.
- New analyses evaluate the social benefits and costs associated with the program options, assess the potential of alternative energy sources to replace natural gas and oil production from the OCS, and estimate the relative environmental sensitivity of the various planning areas.
- Pursuant to NEPA, a draft EIS has been prepared for comment and public hearings. This presents an opportunity to comment on the results of the environmental analyses conducted for the Proposed Program and for the program alternatives under consideration.

Maps 1–4 depict all 26 OCS planning areas and the portions of planning areas included for the consideration of leasing. Map 5 shows the location of the 62 blocks mentioned above.

The Proposed Program continues the new, comprehensive, long-term approach to OCS management and planning as described below.

I. Comprehensive Program Approach

A key element of the new program is the consideration of the full range of integrated OCS program elements including geologic and environmental studies to provide a basis for consideration of areas for leasing as well as research and development and regulatory activities to support safe and clean operations. The new comprehensive approach divides the OCS into 26 planning areas and places them in the following 3 categories of activities:

Category 1

Plan for geologic and environmental studies and consider for leasing in 1992–1997. The term consider for leasing means that consultations and analyses under NEPA and the OCS Lands Act are planned, and not necessarily that all or even part of the area analyzed will be offered for lease. While leasing would be considered in 15 areas, the proposal provides for up to 23 sales in 12 of those areas. (This contrasts with 39 sales in 21 areas in the 1987 Program.) The number of areas under consideration for leasing will be narrowed down from 15 to 12 in the following way: One sale will be considered for either Hope Basin or St. George Basin; and one sale will be considered for Navarin Basin, or Norton Basin, or St. Matthew-Hall. (See Question 4 below.)

Category 2

Consider for MMS geologic and environmental studies but no leasing (this category includes those areas which President Bush's announcement of June 26, 1990, stated would not have leasing before the year 2000).

Category 3

No leasing and no MMS studies related to program decisions.

Table 1 categorizes the 26 planning areas and indicates the tentative timing of proposed lease sales in Category 1 areas.

Provisions concerning operations will be effective in those planning areas where operations are permitted under the OCS Lands Act. Tentative plans concerning operations, as well as geologic and environmental studies, included as part of this proposed comprehensive program appear in the "Decision Documents" available by calling the above telephone number.

Under this approach, some planning areas are designated for consideration of further study rather than consideration of leasing in the period 1992–1997. Such studies would provide an improved basis for decisionmaking concerning that area in the period beyond 1997.

II. New Approach to the Consideration of Areas for Leasing

The proposed comprehensive program provides for a new approach to the consideration of oil and gas leasing in the OCS:

—Tailoring the program for the different characteristics of each region and planning area;
—Being more selective, giving priority to the areas with oil and gas potential and avoiding areas where the risks of development are too great;
—Limiting the size of the Area Identification in some areas, where appropriate to the geology and environmental concerns (Mid- and South Atlantic (250 blocks); Eastern Gulf of Mexico (200 blocks); and Southern California (87 blocks));
—Using a new Area Evaluation and Decision Process (AEDP) for the consideration of leasing, heightening attention to the adequacy of information and the resolution of conflicts; and

—Responding with sensitivity to the concerns of residents of areas affected by offshore development.

The Area Evaluation and Decision Process

The AEDP is an integral part of the new approach to the OCS program. It provides a framework for the activities which precede the decision of whether and under what conditions to hold an individual OCS oil and gas lease sale. These activities include coordination and consultation, information determination, environmental study, resource evaluation, and solicitation and review of comments under the OCS Lands Act and NEPA.

An expanded description of the AEDP was prepared for the Proposed Program in response to comments received by MMS concerning the Draft Proposed Program issued in February 1991. A detailed discussion of the AEDP is presented in the Summary and Decision which is available by calling the above telephone number.

III. Assurance of Fair Market Value

The current two-phased bid adequacy review process will be retained, with the basic minimum bid level proposed at $25 per acre, subject to sale-by-sale reconsideration.

Information Requested

—All Parties

The MMS requests the comments of all parties on the proposed comprehensive program as described above. Information and criteria which support comments are also requested to assist MMS in its deliberations.

Comments are solicited on all elements of the Proposed Program: the configuration of planning area boundaries; areas included for consideration for leasing; the frequency of sales proposed for consideration in a planning area; the AEDP; provisions to assure the receipt of fair market value; designation of geologic and environmental study areas; and provisions to assure continued safe operations.

Parties requesting the inclusion of one or more portions of the OCS for the consideration of leasing in the new 5-year program should also indicate where leasing consideration should not or need not be pursued.

Parties requesting the exclusion of one or more portions of the OCS from consideration for leasing in the new 5-year program should also indicate where consideration for leasing should be pursued.

Respondents are urged to illustrate their written comments by marking up block-specific maps of areas to be considered for leasing. These maps have been prepared for the 15 planning areas in which leasing consideration is indicated as part of the Proposed Program. Copies of these maps can be obtained by calling the telephone number indicated above under "For Further Information Contact."

Comments also are sought on the following:

(1) The analyses presented in the detailed decision documents, in particular:

(a) Core analyses; and

(b) Sensitivity analyses which show the implications of different assumptions—including the proposed sensitivity analysis for social costs, which will examine the implications of very large oil spills, nonuse values, and other issues. With respect to oil spills, the sensitivity analysis will include a range of potential damages for infrequent, very large oil spills.

(2) Ways to help build consensus concerning OCS issues—in particular, what consultation mechanism is best for each region?

(3) The proposed new AEDP, specifically:

(a) The proposed timing of issuance of the proposed Notice of Sale and draft EIS;

(b) The proposed procedure for preparing a lease sale consistency determination pursuant to the Coastal Zone Management Reauthorization Act of 1990;

(c) The criteria proposed for determining the adequacy of information for program decisions; and

(d) Whether the proposed Request for Interest step could be eliminated and its function met sufficiently by the Call for Information and Nominations step.

(4) Concerning the two Bering Sea groupings of planning areas (Hope/St. George and Norton/Navarin/St. Matthew-Hall) being considered for one lease sale each as explained above, should the selection of one planning area within each group take place at the Proposed Final Program stage or should the decision be made following a Request for Interest and Comments under the AEDP?

(5) For the two Bering Sea groupings, indicate which planning area in each group would be preferred if a decision were to be made to select only one area in each group at the Proposed Final Program stage under section 18.

—Additional Information Requested from the Oil and Gas Industry

In addition to the information requested above, oil and gas industry respondents are requested, as they were for the February 1991 draft proposal, to provide information which could be used to identify the areas most likely to contain natural gas and oil accumulations of sufficient size and number to warrant leasing, exploration, and commercial development activities under current and foreseeable technological and economic conditions. It should be emphasized that information from industry will be considered along with comments on possible environmental effects and the results of various environmental and other cost and economic analyses to determine the size, timing, and location of areas which may be considered for leasing in the 5-year program. All requested information should be based on estimates of resources expected to be unleased as of mid-1992.

(1) Rank each whole planning area from 1 to 26. The ranking should reflect a combination of resource assessment and interest in leasing, exploration, and development.

(2) For the 15 planning areas where the Proposed Program provides for the consideration of leasing, provide a ranking from 1 to 14 (rank Mid- and South Atlantic as a unit). The ranking should reflect interest in the development of natural gas and oil resources. This ranking should take into account only those portions of the planning areas included for the consideration of leasing.

Confidential treatment of privileged or proprietary information is authorized under section 18(g) of the OCS Lands Act. In order that only privileged or proprietary information be treated as confidential, it should be submitted separately and marked as confidential. Privileged or proprietary information

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(1) Rank each whole planning area from 1 to 26. The ranking should reflect a combination of resource assessment and interest in leasing, exploration, and development.

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Confidential treatment of privileged or proprietary information is authorized under section 18(g) of the OCS Lands Act. In order that only privileged or proprietary information be treated as confidential, it should be submitted separately and marked as confidential. Privileged or proprietary information

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that is labeled confidential will be treated as confidential from the time of receipt by MMS until 5 years after final approval of the new OCS program. However, summaries of such information submitted to MMS, the names of respondents submitting it, and comments not containing such information will not be treated as confidential information. As noted above, if any privileged or proprietary information which the respondent wishes to be treated as confidential is attached to comments, the envelope should be marked "Contains Confidential Information."

Dated: July 29, 1991.

S. Scott Sewell,

Director, Minerals Management Service.

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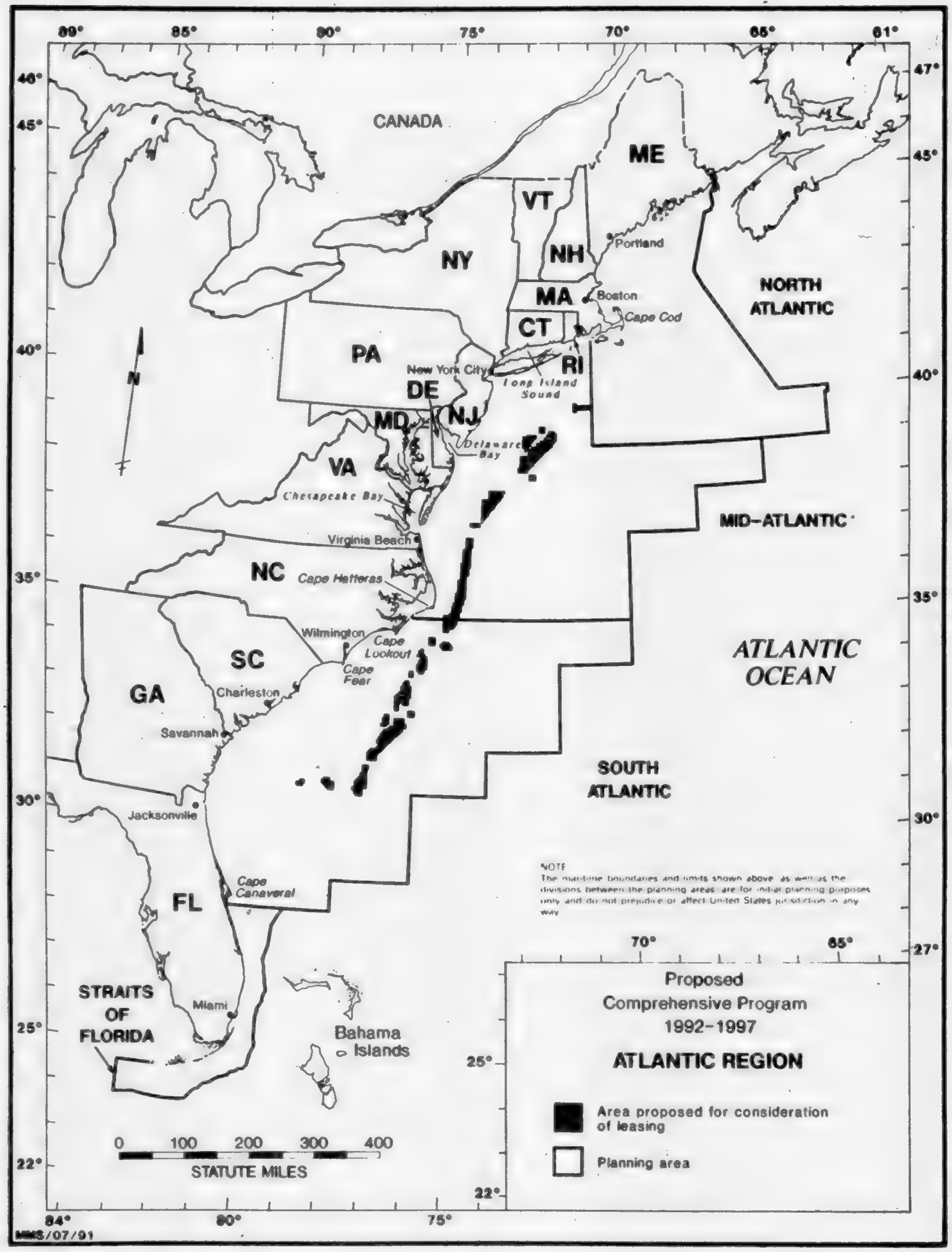
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CANADA
ME
VT
NH
NY
MA
CT
RI
PA
DE
NJ
MD
VA
NC
SC
GA
FL
N
Portland
Boston
Cape Cod
New York City
Long Island Sound
Delaware Bay
Chesapeake Bay
Virginia Beach
Cape Hatteras
Wilmington
Cape Lookout
Cape Fear
Charleston
Savannah
Jacksonville
Cape Canaveral
Miami
STRAITS OF FLORIDA
Bahama Islands
NORTH ATLANTIC
MID-ATLANTIC
SOUTH ATLANTIC
ATLANTIC OCEAN
NOTE
The maritime boundaries and limits shown above, as well as the divisions between the planning areas, are for initial planning purposes only and do not prejudice or affect United States jurisdiction in any way.
Proposed
Comprehensive Program
1992–1997
ATLANTIC REGION
Area proposed for consideration of leasing
Planning area
0
100
200
300
400
STATUTE MILES
84°
MMS/07/91

Map 1. Atlantic Region

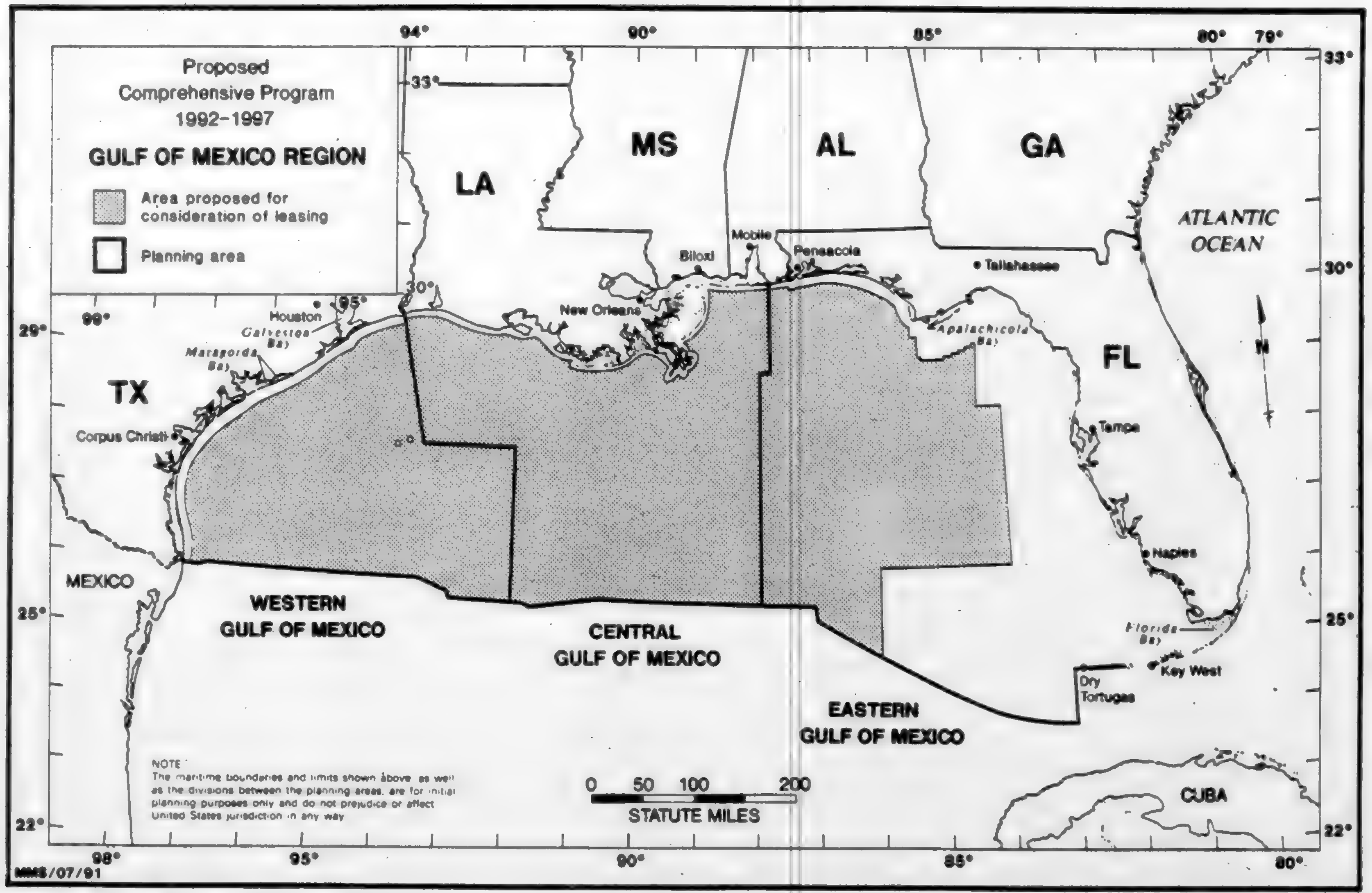
Proposed
Comprehensive Program
1992-1997
GULF OF MEXICO REGION
Area proposed for consideration of leasing
Planning area
LA
MS
AL
GA
TX
FL
ATLANTIC OCEAN
Houston
Galveston Bay
Matagorda Bay
Corpus Christi
New Orleans
Biloxi
Mobile
Pensacola
Tallahassee
Apalachicola Bay
Tampa
Naples
Florida Bay
Key West
Dry Tortugas
MEXICO
CUBA
WESTERN GULF OF MEXICO
CENTRAL GULF OF MEXICO
EASTERN GULF OF MEXICO
N
0 50 100 200
STATUTE MILES
94°
90°
85°
80°
79°
98°
95°
33°
30°
29°
25°
22°
NOTE
The maritime boundaries and limits shown above as well as the divisions between the planning areas, are for initial planning purposes only and do not prejudice or affect United States jurisdiction in any way
MMS/07/91

Map 2. Gulf of Mexico Region

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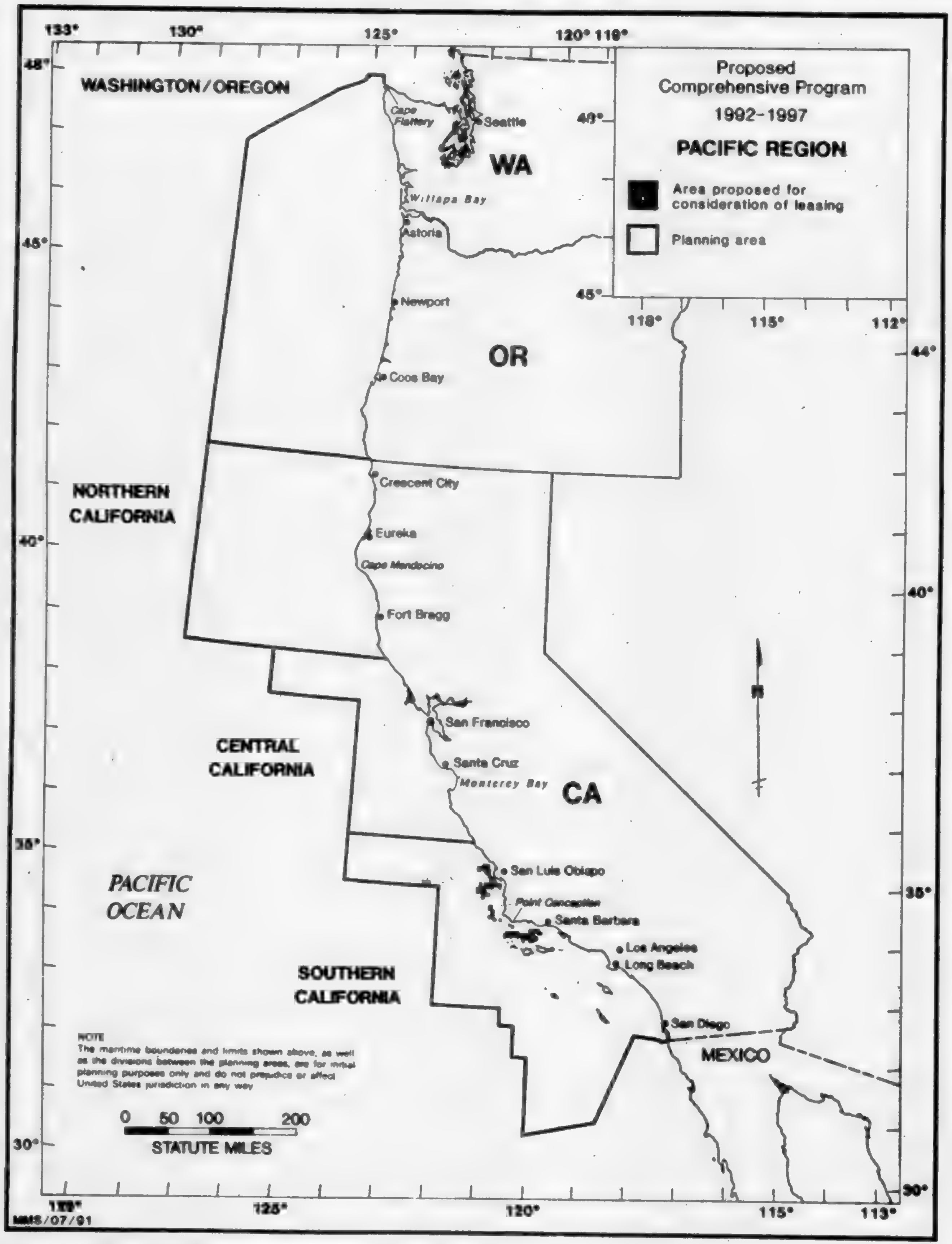
Proposed Comprehensive Program
1992-1997
PACIFIC REGION
Area proposed for consideration of leasing
Planning area
WASHINGTON/OREGON
NORTHERN CALIFORNIA
CENTRAL CALIFORNIA
SOUTHERN CALIFORNIA
PACIFIC OCEAN
WA
OR
CA
MEXICO
Cape Flattery
Seattle
Willapa Bay
Astoria
Newport
Coos Bay
Crescent City
Eureka
Cape Mendocino
Fort Bragg
San Francisco
Santa Cruz
Monterey Bay
San Luis Obispo
Point Conception
Santa Barbara
Los Angeles
Long Beach
San Diego
133°
130°
125°
120° 119°
118°
115°
112°
113°
48°
45°
44°
40°
35°
30°
0 50 100 200
STATUTE MILES
MMS/07/91

NOTE
The maritime boundaries and limits shown above, as well as the divisions between the planning areas, are for initial planning purposes only and do not prejudice or affect United States jurisdiction in any way

Map 3. Pacific Region

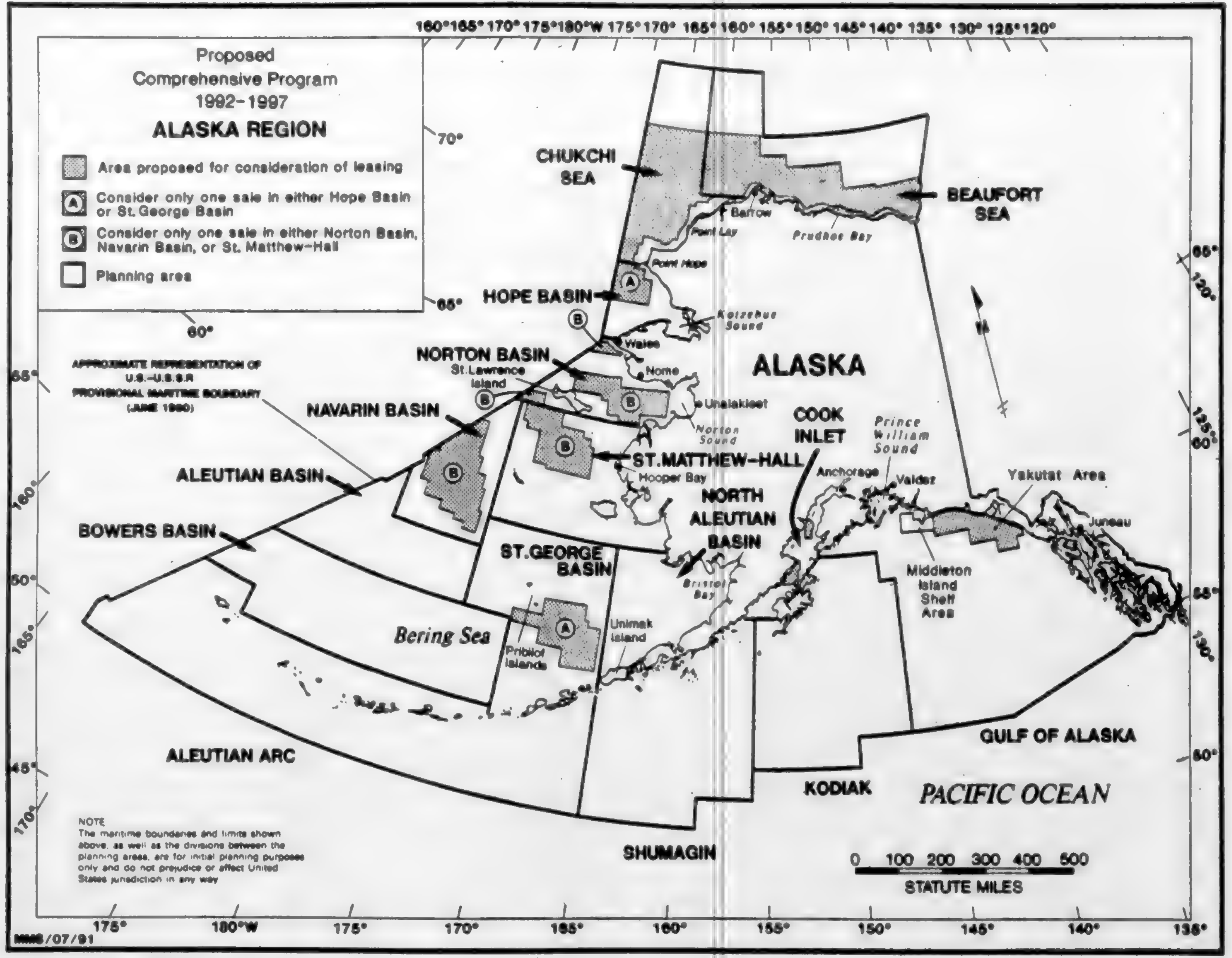
Proposed
Comprehensive Program
1992-1997
ALASKA REGION
Area proposed for consideration of leasing
Consider only one sale in either Hope Basin or St. George Basin
Consider only one sale in either Norton Basin, Navarin Basin, or St. Matthew-Hall
Planning area
APPROXIMATE REPRESENTATION OF U.S.-U.S.S.R PROVISIONAL MARITIME BOUNDARY (JUNE 1990)
CHUKCHI SEA
BEAUFORT SEA
Barrow
Point Lay
Prudhoe Bay
Point Hope
HOPE BASIN
Kotzebue Sound
Wales
Nome
NORTON BASIN
St. Lawrence Island
Unalakleet
Norton Sound
ALASKA
NAVARIN BASIN
ST. MATTHEW-HALL
Hooper Bay
COOK INLET
Prince William Sound
Anchorage
Valdez
Yakutat Area
Juneau
ALEUTIAN BASIN
BOWERS BASIN
NORTH ALEUTIAN BASIN
ST. GEORGE BASIN
Bristol Bay
Bering Sea
Pribilof Islands
Unimak Island
Middleton Island Shelf Area
GULF OF ALASKA
ALEUTIAN ARC
KODIAK
PACIFIC OCEAN
SHUMAGIN
0 100 200 300 400 500
STATUTE MILES
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NOTE
The maritime boundaries and limits shown above, as well as the divisions between the planning areas, are for initial planning purposes only and do not prejudice or affect United States jurisdiction in any way

Map 4. Alaska Region

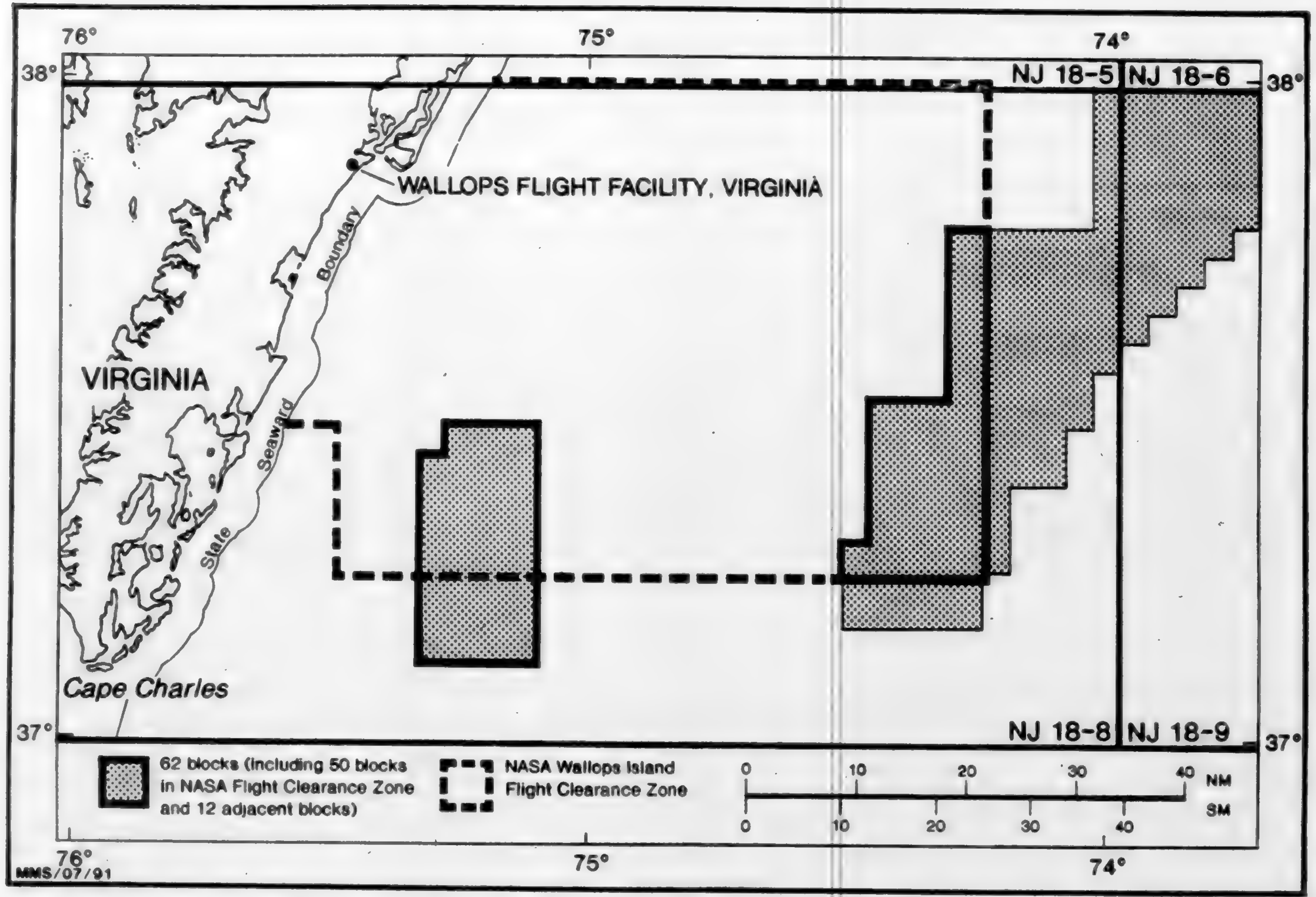
76°
75°
74°
38°
NJ 18-5
NJ 18-6
38°
WALLOPS FLIGHT FACILITY, VIRGINIA
Boundary
VIRGINIA
Seaward
State
Cape Charles
37°
NJ 18-8
NJ 18-9
37°
62 blocks (including 50 blocks in NASA Flight Clearance Zone and 12 adjacent blocks)
NASA Wallops Island Flight Clearance Zone
0
10
20
30
40
NM
0
10
20
30
40
SM
76°
75°
74°
MMS/07/91

Map 5. Mid-Atlantic--62 Blocks Removed from Leasing Consideration

BILLING CODE 4310-MR-C

TABLE 1.—PROPOSED ACTIVITY BY OCS REGION AND PLANNING AREA 1992–1997

Region and planning area	Planned studies	Consider leasing*
Alaska Region:		
Gulf of Alaska		
—Yakutat	Yes	Late 1995.
—Middleton Island	Yes	
Kodiak	Yes	
Cook Inlet	Yes	Mid 1994.
Shumagin	Yes	
Aleutian Arc		
North Aleutian Basin	Yes	
Bowers Basin		
Aleutian Basin		
Norton Basin or Navarin Basin or St. Matthew-Hall.	Yes	Mid 1996.
Hope Basin or St. George Basin.	Yes	Mid 1995.
Chukchi Sea	Yes	Mid 1994, Mid 1997
Beaufort Sea	Yes	Late 1993, Late 1996
Atlantic Region:		
North Atlantic	Yes	
Mid-Atlantic and South Atlantic.	Yes	Late 1994, Mid 1997.
Straits of Florida	Yes	
Gulf of Mexico:		
Eastern Gulf		
—North of 26°	Yes	Late 1994, Early 1997.
—South of 26°	Yes	
Central Gulf	Yes	Annually (Early).
Western Gulf	Yes	Annually (Mid).
Pacific Region:	Yes	
Southern California	Yes	Mid 1996.
Central California	Yes	
Northern California	Yes	
Washington-Oregon	Yes	

*Actual dates depend upon the outcome of the Area Evaluation and Decision Process.

[FR Doc. 91–18349 Filed 7–31–91; 8:45 am]

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[DES 91-20]

Outer Continental Shelf; Availability of the Draft Environmental Impact Statement for the Proposed Comprehensive Outer Continental Shelf Natural Gas and Oil Resource Management Program for 1992–1997

The Minerals Management Service has prepared a draft Environmental Impact Statement (EIS) relating to the Proposed Comprehensive Outer Continental Shelf Natural Gas and Oil Resource Management Program for 1992–1997 pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969.

Information on the availability of the draft EIS can be obtained from: Regional Director, Alaska Region, Minerals Management Service, 949 East 36th Avenue, Anchorage, Alaska 99508–4302, telephone (907) 271–6010; Regional Director, Atlantic Region, Minerals Management Service, suite 1109, 381 Elden Street, Herndon, Virginia 22070–4817, telephone (703) 787–1113; Regional Director, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, telephone (504) 736–0557; Regional Director, Pacific Region, Minerals Management Service, 770 Paseo Camarillo, Camarillo, California 93010, telephone (805) 389–7502; and Chief, Environmental Projects Coordination Branch, Minerals Management Service, 381 Elden Street, MS 4320, Herndon, Virginia 22070–4817, telephone (703) 787–1674.

Copies of the draft EIS will be available for review in public libraries located throughout the coastal States. Information regarding the locations of libraries where copies of the draft EIS will be available may be obtained from the offices listed above.

In accordance with 30 CFR 256.2(b), public hearings relating to the Proposed Comprehensive Outer Continental Shelf Natural Gas and Oil Resource Management Program for 1992–1997 are tentatively scheduled for the period of September 9–20, 1991, for the purpose of receiving comments relating to the adequacy of the draft EIS. The tentative locations of the hearings are as follows: Anchorage, Alaska; Santa Maria, California; Houston, Texas; New Orleans, Louisiana; Gulfport, Mississippi; Mobile, Alabama; Gulf Breeze, Florida; and Wilmington, North Carolina. The exact dates, times, and locations of the hearings will be announced by **Federal Register** Notice in the near future.

Comments resulting from reviews of the draft EIS and written materials prepared as part of testimony at the public hearings will be accepted until October 29, 1991. All comments should be mailed to the Director, Minerals Management Service, 381 Elden Street, MS 4320, Herndon, Virginia 22070–4817, Attention: Debra Purvis. Hand deliveries to the Department of the Interior may be made to Room 4230, 1849 C Street, NW., Washington, DC 20240. Envelopes or packages should be marked "Comprehensive Program draft EIS."

After the public hearing testimony and written comments on the draft EIS have been reviewed and analyzed, a final EIS will be prepared.

The comment period for the draft EIS for the Proposed Comprehensive Outer Continental Shelf Natural Gas and Oil Resource Management Program for 1992–1997 closes October 29, 1991.

Dated: July 30, 1991.

T. Gernhofer,

Associate Director for Offshore Minerals Management.

Approved:

Jonathan P. Deason,

Director, Office of Environmental Affairs.

[FR Doc. 91–18425 Filed 7–31–91; 8:45 am]

BILLING CODE 4310-MR-M

Office of Surface Mining Reclamation and Enforcement

Extension of Comment Period on Draft Environmental Impact Statement

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of the Extension of the Comment Period on a Draft Environmental Impact Statement.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement of the United States Department of the Interior is extending the public comment period on the Draft Environmental Impact Statement OSM–EIS–29 for the Proposed Revision to the Permanent Program Regulations implementing section 522(e) of the Surface Mining Control and Reclamation Act of 1977. The comment period is being extended to coincide with the comment period for a proposed revision to the permanent program regulations addressing the definition of valid existing rights recently published in the **Federal Register**.

DATES: The comment period on the Draft Environmental Impact Statement is extended until 5 p.m. Eastern time on September 16, 1991.

ADDRESSES: Copies of the Draft Environmental Impact Statement may be obtained by contacting the Branch of Environmental and Economic Analysis, Office of Surface Mining, 1951 Constitution Avenue, NW., room 5415–L, Washington, DC 20240; telephone (202) 343–1476 or (FTS) 343–1476.

Written comments may be hand delivered to the Office of Surface Mining, Administrative Record, room 5131, 1100 L St. NW., Washington, DC; or mailed to the Office of Surface Mining, Administrative Record, room 5131–L, 1951 Constitution Avenue, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Andrew DeVito, Branch of Environmental and Economic Analysis, Office of Surface Mining, 1951 Constitution Avenue, NW., room 5415–L, Washington, DC 20240; telephone (202) 343–5150 or (FTS) 343–5150.

SUPPLEMENTARY INFORMATION: On April 19, 1991 (56 FR 16111), the Office of Surface Mining Reclamation and Enforcement (OSM) published a notice of availability of the Draft Environmental Impact Statement OSM–EIS–29 (DEIS) for a proposed revision to the permanent program regulations implementing section 522(e) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.* On June 6, 1991 (56 FR 26144) OSM extended the public comment period on the DEIS until August 5, 1991. OSM is again extending the public comment period so that it will coincide with the comment period for the proposed revision to the permanent program regulations published in the **Federal Register** on July 18, 1991 (56 FR 33152). The proposed revision to the permanent program regulations addresses the issue of valid existing rights (VER) found under section 522(e) of SMCRA.

Section 522(e) of SMCRA prohibits, subject to VER, surface coal mining operations on lands within units of the National Park System; the National Wildlife Refuge System; the National System of Trails; the National Wilderness Preservation System; the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act; and National Recreation Areas designated by act of Congress. In addition, surface coal mining operations for which it has not been determined that the owner has VER are prohibited (with certain exceptions) if they will adversely affect places listed on the National Register of Historic Places or any publicly owned park or if they are within a National Forest. Such operations also are prohibited within 100 feet of cemeteries and public roads and within 300 feet of occupied dwellings, public buildings, schools, churches, and public parks.

The DEIS describes the environmental impacts that might result from amending the permanent program regulations at 30 CFR part 761 that concern VER. The regulatory options for the VER rulemaking are presented as alternatives in the DEIS which considers the cumulative and site-specific effects on the quality of the human environment that might occur as a result of coal mining under the various alternatives.

The DEIS also describes the environmental impacts that would result from amending regulations that address the application of the prohibitions of section 522(e) of SMCRA to the subsidence effects of underground coal mining. Commenters should be aware that since the issuance of the DEIS, the issue of whether and to what degree subsidence is covered by the mining prohibitions set forth in section 552(e) of SMCRA, has been resolved. See the notice of inquiry published on July 18, 1991 (56 FR 33170).

Dated: July 21, 1991.

Brent Wahlquist,

Reclamation and Regulatory Policy.

[FR Doc. 91–18311 Filed 7–31–91; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–167; Sub-No. 1098X]

Consolidated Rail Corporation—Abandonment Exemption—in Baltimore, MD

Consolidated Rail Corporation (Conrail) has filed a notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments* to abandon its approximately 0.16-mile line of railroad between valuation station 25+80±, near N. Haven Street, and valuation station 34+50±, near E. Monument Street (Loney's Lane Yard), in Baltimore, MD.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on August 31, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by August 12, 1991.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by August 21, 1991, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Robert S. Natalini, Room 1138, Six Penn Center Plaza, Philadelphia, PA 19103–2959.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by August 6, 1991. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: July 25, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91. 18246 Filed 7–31–91; 8:45 am]

BILLING CODE 7035-01-M

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[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision of environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). An entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

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MERCE

Sub-No. 1098X]

Corporation—
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Corporation
notice of exemption
152 Subpart F—
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station 25+80±,
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any overhead traffic
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vice on the line (or a
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er) regarding
over the line either
Commission or with
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A copy of any petition filed with the Commission should be sent to applicant's representative: Robert S. Natalini, Room 1138, Six Penn Center Plaza, Philadelphia, PA 19103–2959.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an evironmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by August 6, 1991. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: July 25, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91. 18246 Filed 7–31–91; 8:45 am]

BILLING CODE 7035-01-M

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raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). An entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Department policy, 28 CFR 50.7, and section 122(d)(2) of CERCLA, 42 U.S.C. 9622(d) notice is hereby given that on July 19, 1991, a proposed Consent Decree in *United States* v. *Allied-Signal, Inc., et al.*, Civil Action No. 91–406–LON, was lodged with the United States District Court for the District of Delaware. The Consent Decree requires defendants to pay $210.00 in response costs incurred by the United States at the Tybouts Corner Landfill Superfund Site in New Castle County, Delaware.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Allied-Signal, Inc., et al.*, DOJ Ref. 90–7–1–143.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 844 King Street, Wilmington, Delaware 19801. Copies of the Consent Decree may also be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building NW., Washington, DC 20004 (202–347–2072). A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $4.25 (25 cents per page reproduction cost) payable to the Treasurer of the United States.

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91–18180 Filed 7–31–91 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Order Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with 42 U.S.C. 9622(i) and with Departmental policy, 28 C.F.R. 50.7, notice is hereby given that a proposed consent order in *United States* v. *BASF-Inmont Corporation, et al.*, Civil Action No. 91–40320, has been lodged with the United States District Court for the Eastern District of Michigan on July 18, 1991. The proposed consent order concerns cleanup of a hazardous waste site at the Metamora Landfill in Lapeer County, Michigan, by the thirty-five defendants. The proposed consent decree requires, *inter alia*, incineration of drummed waste and highly contaminated soils, installation of a groundwater monitoring and treatment system, remediation of residual soil contamination, and construction of a cap over the landfill. The United States Environmental Protection Agency ("U.S. EPA") will publish an explanation of significant differences, pursuant to 42 U.S.C. 9617(c), explaining that the proposed consent decree permits defendants the option of incinerating the waste and contaminated soils at an on-site incinerator, under a plan to be approved by U.S. EPA, or at an off-site incinerator. The Record of Decision of September 30, 1986, has selected off-site incineration.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent order. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *BASF-Inmont Corporation, et al.*, D.J. Ref. 90–11–3–289.

The proposed consent order may be examined at the office of the United States Attorney for the Eastern District of Michigan, 206 Federal Building, 600 Church Street, Flint, Michigan 48502, at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 111 West Jackson Street, Chicago, Illinois 60604, and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue NW., Box 1097, Washington, DC 20004, (202) 347–2072. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $13.00 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91–18181 Filed 7–31–91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Final Judgment by Consent Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 C.F.R. 50.7, and section 122(d) and (i) of CERCLA, 42 U.S.C. 9622(d) and (i), notice is hereby given that on July 22, 1991, a consent decree in *United States* v. *BP America, Inc., et al.*, Civil Action No. 91–409, was lodged with the United States District Court for the District of Delaware.

The complaint filed by the United States at the time of lodging the consent decree, alleges, under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, that defendants BP America, Inc., The Budd Company, Champlain Cable Corporation, Chrysler Corporation, Day International Corporation, E.I. duPont de Nemours & Co., Inc., General Motors Corporation, Hercules Incorporated, ICI Americas, Inc., Motor Wheel Corporation, New Castle County, Delaware, SCA Services, Inc., Standard Chlorine of Delaware, Inc., Stauffer Chemical Co., Waste Management of Delaware, Inc., Westvaco Corporation, and Wilmington Chemical Corporation (the "Settlors") are liable for an injunction, damages resulting from injury, destruction, or loss of natural resources, and response costs incurred by the United States in response to the release or threat of release of hazardous substances at the Army Creek Superfund Site located in New Castle County, Delaware (the Site"). The complaint further states that all defendants, except the County, SCA and WMDI, arranged for the transport to and disposal of hazardous substances at the Site, and that SCA and WMDI selected the Site and transported to and disposed of hazardous substances at the Site. The complaint also alleges that the County was the owner and operator of the Site.

In the complaint, the United States, on behalf of the Environmental Protection Agency, sought a judgment against the defendants jointly and severally for implementation of the remedies selected in EPA's Records of Decision ("ROD") dated September 30, 1986 and June 29, 1990, which provide for a surface cap and gas venting system, and a system for pumping, treating and monitoring contaminated groundwater; reimbursement of $1.4 million in past response costs under section 107(a) of CERCLA, 42 U.S.C. 9607(a); and a determination under Section 113(g)(2) of CERCLA, 42 U.S.C. 9613(g)(2), that any

VOL 56 SS 148 AG 1 991 UMI

finding of liability would be binding in any subsequent action for further response costs. In addition, the United States, on behalf of the Secretary of Commerce and the Secretary of Interior, sought damages totalling $1.1 million resulting from injury, destruction, or loss of natural resources. The State of Delaware, which is a party to the consent decree, has filed a separate complaint.

In the consent decree, the Settlors have agreed, *inter alia*, to implement the remedies selected in the RODs dated September 30, 1986 and June 29, 1990, at a total cost of approximately $25 million. They have also agreed to pay $1 million in past costs to the Hazardous Substances Trust Fund; pay costs of oversight and operation and maintenance; and pay damages of $800,000 for injuries to natural resources. The Settlors' agreement to conduct the remedial action is conditioned upon the United States' agreement, pursuant to section 122(b)(1) of CERCLA, 42 U.S.C. 9622(b)(1), to reimburse the Settlors up to 10% of the cost of the surface remedy, not to exceed $2 million, and up to 40% of the cost of the groundwater remedy, not to exceed $1.976 million.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *BP America, Inc., et al.*, DOJ Ref. No. 90-11-2-411. The proposed consent decree may be examined at the office of the United States Attorney, District of Delaware, J. Caleb Boggs Federal Building, 844 King Street, room 5110, Wilmington, Delaware. Copies of the consent decree may also be examined and obtained by mail at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20044 (202-347-7829). When requesting a copy of the consent decree by mail, please enclose a check in the amount of $125 (twenty-five cents per page reproduction costs) payable to the "Consent Decree Library."

Barry M. Hartman,

Acting Assistant Attorney General, Environmental and Natural Resources Division.

[FR Doc. 91-18182 Filed 7-31-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Department policy, 28 C.F.R. 50.7, and section 122(d)(2) of CERCLA, 42 U.S.C. 106 and 107 notice is hereby given that on June 20, 1991 a proposed Consent Decree in *United States* v. *Georgia-Pacific Corporation, et al.*, Civil Action No. 91-5063, was lodged with the United States District Court for the District of South Dakota. The Consent Decree requires defendant to pay $200,000.00 in past response costs incurred by the United States at the "Whitewood Custom Treaters" Superfund Site in Whitewood, Lawrence County, South Dakota.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Georgia-Pacific Corporation et al.*, DOJ Ref. #90-11-3-628.

The proposed Consent Decree may be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building NW., Washington, DC 20004 (202-347-2072). A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $3.50 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Barry M. Hartman,

Acting Assistant Attorney General, Environmental and Natural Resources Division.

[FR Doc. 91-18183 Filed 7-31-91; 8:45 am]

BILLING CODE 4410-01-M

Membership of the Department of Justice's Senior Executive Service (SES) Performance Review Boards

AGENCY: Department of Justice.

ACTION: Notice of the Department of Justice's 1991 SES Performance Review Boards.

SUMMARY: Pursuant to the requirements of 5 U.S.C. 4314(c)(4), the Department of Justice announces the membership of its SES Performance Review Boards. The purpose of the Performance Review Boards are to provide fair and impartial review of Senior Executive Service performance appraisals/recertifications, and bonuses. These Boards will make recommendations to the Deputy Attorney General regarding the final ratings to be assigned, recertification of SES career appointees, and SES bonuses to be awarded.

FOR FURTHER INFORMATION CONTACT: Mr. John C. Vail, Director, Personnel Staff, Justice Management Division, Department of Justice, Washington, DC 20530 Telephone: (202) 514-6788.

Paul W. Mathwin,

Executive Secretary, Senior Executive Resources Board.

1991 Performance Review Board Members

Antitrust Division

I. Curtis Jernigan, Chief, Economic Regulatory Section
John T. Orr, Jr., Chief, Atlanta Office
Neil E. Roberts, Chief, Legal Policy Section

Bureau of Prisons

Wally Cheney, Assistant Director, Office of the General Counsel
Doug Lansing, Assistant Director, Human Resource Management
Wade Houk, Assistant Director, Administration Division
Kathleen Hawk, Assistant Director, Program Review Division

Civil Division

David M. Cohen, Director, Commercial Litigation Branch
Brook Hedge, Director, Federal Programs Branch
Kenneth L. Zwick, Director, Office of Management Programs

Civil Rights Division

James S. Angus, Chief, Employment Litigation Section
David K. Flynn, Chief, Appellate Section
John L. Wodatch, Director, Office on the Americans With Disabilities Act

Criminal Division

Laurence A. Urgenson, Chief, Fraud Section
Roger A. Pauley, Director, Office of Legislation
James S. Reynolds, Acting Chief, Terrorism and Violent Crime Section

Executive Office for U.S. Attorneys

Richard L. DeHaan, Deputy Director

Immigration and Naturalization Service

Joan C. Higgins, Assistant Commissioner for Detention and Deportation

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Boards are to provide fair and impartial review of Senior Executive Service performance appraisals/recertifications, and bonuses. These Boards will make recommendations to the Deputy Attorney General regarding the final ratings to be assigned, recertification of SES career appointees, and SES bonuses to be awarded.

FOR FURTHER INFORMATION CONTACT: Mr. John C. Vail, Director, Personnel Staff, Justice Management Division, Department of Justice, Washington, DC 20530 Telephone: (202) 514–6788.

Paul W. Mathwin,

Executive Secretary, Senior Executive Resources Board.

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Richard L. DeHaan, Deputy Director

Immigration and Naturalization Service

Joan C. Higgins, Assistant Commissioner for Detention and Deportation

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Stanley E. McKinley, Regional Commissioner, Eastern Region
John R. Schroeder, Assistant Commissioner for Employer Labor Relations
Paul W. Virtue, Principal Deputy General Counsel

INTERPOL

Charles S. Saphos, General Counsel, Presently on detail from the Criminal Division

Justice Management Division

Robert F. Diegeleman, Director, Management and Planning Staff
Warren Oser, Senior Policy Advisor
William L. Vann, Procurement Executive

Environment and Natural Resources Division

Margaret N. Strand, Chief, Environmental Defense Section
James Kilbourne, Chief, Wildlife and Marine Resources Section
William J. Kollins, Chief, Land Acquisition Section

Office of Justice Programs

Benjamin H. Renshaw, Deputy Director, Bureau of Justice Statistics

Tax Division

Stanley F. Krysa, Director, Criminal Enforcement Section
Stephen G. Fuerth, Chief, Civil Trial Section, Western Region
Robert E. Lindsay, Chief, Criminal Appeals and Tax Enforcement Policy Section

U.S. Marshals Service

Kenneth Holecko, Associate Director for Human Resources

[FR Doc. 91–18184 Filed 7–31–91; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—Cable Television Laboratories, Inc./General Instrument Corporation/Scientific-Atlanta, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Cable Television Laboratories, Inc. ("CableLabs"), General Instrument Corporation ("GI") and Scientific-Atlanta Inc. ("S–A") on June 21, 1991, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to this agreement and (2) the nature and objectives of this agreement. The notification was filed for the purpose of invoking the protections of section 4 of the Act, which limit the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the identities of the parties to this agreement and the general areas of planned activity are given below.

The current parties are the following:

Cable Television Laboratories, Inc., 1050 Walnut Street, suite 500, Boulder, Colorado 80302
General Instrument Corporation, 2200 Byberry Road, Hatboro, Pennsylvania 19040
Scientific-Atlanta, Inc., One Technology Park, Atlanta, Georgia 30092–2967

The area of planned activity is cooperation in the education of the cable industry and the public concerning the availability of, and potential for, digital video transmission and compression technologies in the distribution and delivery of cable television programming. The parties also plan to cooperate in demonstrations of: (a) The distribution of compressed, digitally-transmitted NTSC signals to cable television systems and (b) the delivery and telecast of advanced television (ATV) programming by the cable industry. These demonstrations will be coordinated by CableLabs using high definition television (HDTV) and other ATV proponent television systems that wish to participate.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91–18185 Filed 7–31–91; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research Act of 1984—OSI/Network Management Forum

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("The Act"), OSI/Network Management Forum ("the Forum") on June 28, 1991, filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing an addition to its membership. The additional notification was filed for the purpose of extending the protections of section 4 of the Act, limiting recovery of the antitrust plaintiffs to actual damages under specified circumstances.

On October 21, 1988, the Forum filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 8, 1988 (53 FR 49615). On December 23, 1988, March 23, 1989, July 3, 1989, September 28, 1989, November 22, 1989, January 29, 1990, March 20, 1990, May 7, 1990, July 20, 1990, February 27, 1991, and April 17, 1991, the Forum filed additional written notifications pursuant to section 6(a) of the Act. The Department published notices in the **Federal Register** pursuant to section 6(b) on January 26, 1989 (54 FR 3870), April 25, 1989 (54 FR 17834), August 4 1989 (54 FR 32141), October 26, 1989 (54 FR 43631), January 10, 1990 (55 FR 926), February 28, 1990 (55 FR 7046), April 23, 1990 (55 FR 15295), May 24, 1990 (55 FR 21449), August 20, 1990 (55 FR 33967), April 3, 1991 (56 FR 13655), and May 23, 1991 (56 FR 23723), respectively.

The identity of the additional party to the venture is given below:

Associate Member

Royal PTT Nederland N.V. P.O. Box 30150, 2500 GD Den Haag, The Netherlands

John W. Clark,

Acting Director of Operations Antitrust Division.

[FR Doc. 91–18186 Filed 7–31–91; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research Act of 1984 Recording Industry Association of America, Inc.

Notice is hereby given that, on May 20, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984 15 U.S.C. 4301 *et seq.* ("the Act"), the Recording Industry Association of America, Inc. ("RIAA"), for itself and on behalf of its member companies, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) additions to its membership, (2) commencement of the final phase of the venture, (3) the identities of the parties to the venture, and (4) the nature and objective of the venture.

The following parties have been added as members of RIAA and have joined the venture, effective April 1, 1991: ABC Group; ABKCO Music & Records: Blue Note Records; CSP; Columbia Group; Epic Group; Giant Records; K-tel International, Inc.; Masterworks; Mercury Records; PDS Records; Private Music; RCA Records Label; R. Francis Entertainment; Showtime Records; Sony Music; Telarc; Virgin Records; WEA; Word; and Whitewing Records.

The parties to the venture are RIAA, for itself and on behalf of its member companies, and Bolt, Beranek and Newman Systems and Technologies Corporation.

The nature and objective of the venture is to undertake research, development, and evaluation of copyright protection and music identification technology. The parties entered the final phase of the venture effective April 2, 1991. No other changes have been made in either the membership or planned activities of RIAA.

On March 27, 1989, RIAA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on May 1, 1989, 54 FR 18607. RIAA filed notifications disclosing changes in its membership on October 30, 1989, and April 27, 1990, notices of which were published by the Department on December 8, 1989, 54 FR 50661, and June 5, 1990, 55 FR 22965, respectively.

John W. Clark,

Acting Director of Operations, Antitrust Division.

[FR Doc. 91-18187 Filed 7-31-91; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984 Software Productivity Consortium

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* (the "Act"), Software Productivity Consortium ("SPC") on march 26, 1991, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notification was filed for the purpose of maintaining the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Loral Aerospace Corporation has been admitted as a member of SPC effective January 1, 1991. McDonnell Douglas Corporation withdrew its membership on December 31, 1990, and Ford Aerospace Company withdrew its membership as of December 31, 1990. Except as indicated above, no other changes have been made in either the membership or planned activity of SPC.

On December 21, 1984, SPC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 17, 1985 (50 FR 2633). Since then, SPC filed additional notifications on April 23, 1985, September 24, 1985, December 10, 1985, February 13, 1986, and November 30, 1989, identifying changes in its membership, and the Justice Department published notice of these changes in the **Federal Register** on May 21, 1985 (50 FR 20954), October 22, 1985 (50 FR 42786), January 13, 1986 (51 FR 1450), March 11, 1986 (51 FR 8373), and January 10, 1990 (55 FR 928), respectively. SPC also filed additional notifications on December 19, 1988, December 27, 1988, March 23, 1989, and November 7, 1990, notices of which the Department published on January 31, 1989 (54 FR 4922), May 4, 1989 (54 FR 19256-57), and December 10, 1990 (55 FR 50787), respectively.

John W. Clark,

Acting Director of Operations, Antitrust Division.

[FR Doc. 91-18188 Filed 7-31-91; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 91-68]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by September 3, 1991. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Mr. D. A. Gerstner, NASA Agency Clearance Officer, Code NTD, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700-0009) Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (703) 271-5542.

Reports

Title: New Technology Transmittal.
OMB Number: 2700-0009.
Type of Request: Extension.
Frequency of Report: As required.
Type of Respondent: Businesses or other for-profit, federal agencies or employees, non-profit institutions, small businesses or organizations.
Respondents: 100
Annual Responses: 2000.
Annual Burden Hours: 500.
Abstact-Need/Uses: Reporting is required under contract provisions.

Dated: July 25, 1991.

D. A. Gerstner,

Director, IRM Policy Division.

[FR Doc. 91-18289 Filed 7-31-91; 8:45 am]

BILLING CODE 7510-01-M

[Notice 91-69]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by September 3, 1991. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Mr. D. A. Gerstner, NASA Agency Clearance Officer, Code NTD, NASA Headquarters, Washington, DC 20546; Office of Management and

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A. Gerstner, NASA
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FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (703) 271-5542.

Reports

Title: New Technology Transmittal.
OMB Number: 2700-0009.
Type of Request: Extension.
Frequency of Report: As required.
Type of Respondent: Businesses or other for-profit, federal agencies or employees, non-profit institutions, small businesses or organizations.
Respondents: 100
Annual Responses: 2000.
Annual Burden Hours: 500.
Abstact-Need/Uses: Reporting is required under contract provisions.

Dated: July 25, 1991.

D. A. Gerstner,

Director, IRM Policy Division.

[FR Doc. 91-18289 Filed 7-31-91; 8:45 am]

BILLING CODE 7510-01-M

[Notice 91-69]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by September 3, 1991. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Mr. D. A. Gerstner, NASA Agency Clearance Officer, Code NTD, NASA Headquarters, Washington, DC 20546; Office of Management and

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Budget, Paperwork Reduction Project (2700-0065), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (703) 271-5541.

Reports

Title: Radio Program Survey and Promotion.

OMB Number: 2700-0065.

Type of Request: Extension.

Frequency of Report: Semi-annually.

Type of Respondent: Businesses or other for profit, Non-profit institutions, Small business or organizations.

Number of Respondents: 1400.

Responses per Respondent: 2.

Annual Responses: 2800.

Hours per Response: .10.

Annual Burden Hours: 280.

Abstract-Need/Uses: This form, NHQ Div. 715, will be used to periodically survey and monitor the use of NASA's "Space Story" and "Frontiers" programs that have been distributed to radio stations throughout the country. It provides the necessary information for NASA to measure the effectiveness of these public service programs.

Dated: July 25, 1991.

D. A. Gerstner,

Director, IRM Policy Division.

[FR Doc. 91-18290 Filed 7-31-91; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-315 and 50-316]

Indiana Michigan Power Co., Donald C. Cook Nuclear Plant, Units 1 and 2 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a temporary Exemption from certain requirements of 10 CFR part 50, appendix A, General Design Criterion 2, to Indiana Michigan Power Company (the licensee), for operation of the Donald C. Cook Nuclear Plant, Units 1 and 2, located in Berrien County, Michigan.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant a temporary Exemption from certain requirements of General Design Criterion (GDC) 2 of appendix A to 10 CFR part 50. On July 19, 1991, the licensee requested a temporary Exemption from GDC 2, which requires in part that "Structures, systems, and components important to safety shall be designed to withstand the effects of natural phenomena such as earthquacks, tornadoes . . . . without loss of capability to perform their safety functions." Specifically, the emergency diesel generator (EDG) combustion air intake piping, exhaust piping, and ventilation supply piping would not be required to withstand the effects of a tornado. This Exemption would be in effect until the licesee completed modifications to strengthen the affected EDG ventilation components as described in their July 19, 1991 letter, but no later than August 17, 1991.

The Need for the Proposed Action

Technical Specification (TS) 3.8.1.1.b for both Units 1 and 2 of the Cook Nuclear Plant requires that two diesel generators be operable during Modes 1 through 4. During a review of the electrical distribution system, the licensee identified a low probability event, a tornado, which has the potential for requiring human intervention in order for the diesel generators to be considered operable. Although the diesel generators meet the TS surveillance requirements and would operate for almost all event, the need for human intervention makes the diesel generators' operability questionable for the single event. The specific items in question are the ventilation ductwork which supplies cooling air to the rooms in which the diesel generators are located, the intake silencer for the diesel generator combustion air, and the diesel generator exhaust piping.

In the highly unlikely event that a tornado passes over the Cook Nuclear Plant, the intake ductwork supplying the diesel generator room ventilation may be subjected to an unacceptable decrease in internal pressure. If the ventilation system is not running at the time the tornado passes, a damper in the line would be closed, effectively isolating the internal area of the ducting from the diesel generator room. Because the ducting passes through the diesel generator room and the room would not be vented, a differential pressure would be imposed across the ducting upstream of the damper. The licensee has been unable to locate documentation which demonstrates the ability of the ductwork to survive the differential pressure associated with this tornado condition. The licensee's preliminary assessment concluded that duct collapse may be possible. A similar concern exists for the diesel generator combustion air intake silencer located inside the diesel generator room.

Additionally, the diesel generator is supplied with combustion air from the atmosphere and exhausts combustion gases to the atmosphere. Both the supply and exhaust piping have components, which are located outside of the building. These components, exhaust silencers, intake filters and piping, could be exposed to high wind forces. The Licensee has been unable to demonstrate the ability of these components to withstand the forces associated with the wind loadings. Because of the lack of sufficient objective documentation to substantiate EDG operability during a tornado, the licensee declared the EDGs inoperable at approximately 12:15 p.m., e.d.t. on July 18, 1991. At 2:20 p.m., e.d.t., John Zwolinski, Assistant Director for Region III Reactors, Office of Nuclear Reactor Regulation, granted the licensee a temporary waiver of compliance from TS 3.8.1.1.b, based upon compensatory actions taken by the licensee and the low probability (2×10^{-4} per year) of occurence of a tornado of sufficient magnitude to be of concern. In his letter to the licensee dated July 19, 1991, Mr. Zwolinski indicated that the licensee should request a temporary Exemption from certain requirements of 10 CFR part 50, appendix A, GDC 2, until corrective actions could be completed to demonstrate compliance, which was anticipated to be no later than August 17, 1991.

Environmental Impacts of the Proposed Action

The proposed Exemption would provide temporary relief from the requirements of GDC 2 that the portions of the EDG ventilation system described above would be able to withstand the effects of a tornado. This relief would be temporary and remain in effect until the licensee had completed corrective actions necessary to demonstrate that the affected components of the EDG ventilation system would be able to withstand the effects of a tornado or until August 17, 1991, whichever is sooner.

The licensee identified and has implemented corrective actions which will alleviate concerns associated with vacuum-induced pressure differential across the ventilation ductwork and the combustion air intake silencer. Additionally, the EDG exhaust silencer, combustion air intake, and ventilation intake components located externally to the building are afforded some protection and shielding from tornado effects by their proximity with respect to structures which are designed to withstand tornadoes. The licensee has begun implementation of modifications to exposed portions of the EDG ventilation system which includes the

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use of cables to provide additional structural support and removing a portion of the ventilation intake which protrudes outside the building. These modifications will be completed on or before August 17, 1991.

The licensee has also determined from the preliminary results of their probabilistic risk assessment (PRA) that tornadoes resulting in 90 mph winds or greater occur with a low probability (2×10^{-4} per year) within a 125 mile radius of the plant. Further, the majority of the tornadoes occur in the months of April, May, and June. The probability that a tornado would cause both a loss of off-site power and loss of the EDGs by damaging the ventilation system is even lower. The licensee has further stated that there is no significant change in the types of effluents that may be released off-site and there is no significant increase in the allowable individual or cumulative occupational radiation exposure associated with the proposed action.

Based on the above, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed temporary Exemption.

With regard to potential non-radiological impacts, the proposed temporary Exemption does not effect a change in the installation or use of a facility component located within the restricted area as defined by 10 CFR part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed Exemption.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested Exemption. This would not reduce environmental impacts of plant operation and would result in increased operational burden on the licensee and the need to subject the plant to additional transients and unnecessary shutdown.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Donald C. Cook Nuclear Plant, Units 1 and 2, dated August 1973.

Agencies and Persons Consulted

The NRC staff did not consult other agencies in making its decision on this proposed action.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed Exemption.

Based upon the foregoing environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letter dated July 19, 1991. This letter is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Rockville, Maryland, this 26th day of July 1991.

For the Nuclear Regulatory Commission.

Brent Clayton,

Acting Director, Project Directorate III-1, Division of Reactor Projects—III, IV, V, Office of Nuclear Reactor Regulation.

[FR Doc. 91-18284 Filed 7-31-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-72]

Environmental Assessment and Finding of No Significant Impact Regarding Proposed Order Authorizing Dismantling of and Disposition of Component Parts University of Utah

The U.S. Nuclear Regulatory Commission is considering issuance of an Order authorizing the University of Utah (UU) to dismantle their AGN-201M research reactor facility located on the licensee's campus in Salt Lake City, Utah and to dispose of the reactor components in accordance with the application dated July 17, 1990, as supplemented on July 18, 1990 and June 12, 1991.

Environmental Assessment

Identification of Proposed Action

By application dated July 17, 1990, as supplemented, UU requested authorization to decontaminate and dismantle the AGN-201M research reactor, to dispose of its components parts in accordance with the proposed decommissioning plan, and to terminate Facility Operating License No. R-25. The University of Utah AGN-201M research reactor was shut down in February 1985, and has not operated since then. Following reactor shutdown the fuel was removed from the core and shipped to a Department of Energy (DOE) Facility as directed by the DOE in accordance with DOE, NRC, and DOT requirements.

Opportunity for hearing was afforded by a "Notice of Proposed Issuance of Orders Authorizing Disposition of Components Parts and Terminating Facility License" published in the **Federal Register** on May 9, 1991 (56 FR 21508). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

Need for Proposed Action

In order to prepare the property for unrestricted access and use, the dismantling and decontamination activities proposed by the University of Utah must be accomplished.

Environmental Impact of the Proposed Action

All decontamination will be performed by trained personnel in accordance with previously reviewed procedures and will be overseen by experienced health physics staff. Solid and liquid waste will be removed from the facility and managed in accordance with NRC requirements. The UU staff has calculated that the collective dose equivalent to the UU staff and public for the project will be less than 0.5 person-rem.

These conclusions were based on the fact that all proposed operations are carefully planned and controlled, most contaminated components are removed, packaged, and shipped offsite, and that the radiological control procedures ensure that releases of radioactive wastes from the facility are within the limits of 10 CFR part 20 and are as low as reasonably achievable (ALARA). Components not removed have been transferred to the University's byproduct material or TRIGA reactor licenses.

Based on the review of the specific proposed activities associated with the dismantling and decontamination of the University of Utah facility, the staff has determined that there will be no significant increase in the amounts of effluents that may be released offsite, and no significant increase in individual or cumulative occupational or population radiation exposure.

The staff has also determined that the proposed activities will not result in any significant impacts on air, water, land, or biota in the area.

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Need for Proposed Action

In order to prepare the property for unrestricted access and use, the dismantling and decontamination activities proposed by the University of Utah must be accomplished.

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These conclusions were based on the fact that all proposed operations are carefully planned and controlled, most contaminated components are removed, packaged, and shipped offsite, and that the radiological control procedures ensure that releases of radioactive wastes from the facility are within the limits of 10 CFR part 20 and are as low as reasonably achievable (ALARA). Components not removed have been transferred to the University's byproduct material or TRIGA reactor licenses.

Based on the review of the specific proposed activities associated with the dismantling and decontamination of the University of Utah facility, the staff has determined that there will be no significant increase in the amounts of effluents that may be released offsite, and no significant increase in individual or cumulative occupational or population radiation exposure.

The staff has also determined that the proposed activities will not result in any significant impacts on air, water, land, or biota in the area.

Alternative Use of Resources

The only alternative to the proposed dismantling and decontamination activities is to maintain possession of the reactor. This approach would include monitoring and reporting for the duration of the safe storage period. However, the University of Utah intends to use the area for other academic purposes.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed action based upon the foregoing environmental assessment. We conclude that the proposed action will not have a significant effect on the quality of the human environment.

For detailed information with respect to this proposed action, see the application for dismantling, decontamination and license termination dated July 17, 1990, as supplemented and the Safety Evaluation prepared by the staff. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland this 23rd day of July 1991.

For the Nuclear Regulatory Commission.

Richard F. Dudley,

Acting Director, Non-Power Reactors, Decommissioning and Environmental Project Directorate, Division of Advanced Reactors and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 91–18285 Filed 7–31–91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–262]

Brigham Young University; Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of orders authorizing Brigham Young University (the licensee) to dismantle the reactor facility and dispose of the component parts, and authorizing termination of Facility License No. R–109, in accordance with the licensee's application dated June 28, 1990, as supplemented on July 2, 1991.

The first of these orders would be issued following the Commission's review and approval of the licensee's detailed plan for decontamination of the facility and disposal of the radioactive components, or some alternate disposition plan for the facility. This order would authorize implementation of the approved plan. Following completion of the authorized activities and verification by the Commission that acceptable radioactive contamination levels have been achieved, the Commission would issue a second order terminating the facility license and any further NRC jurisdiction over the facility. Prior to issuance of each order, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By September 3, 1991, the licensee may file a request for a hearing with respect to issuance of the subject orders and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules and Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the orders under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in

Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Seymour H. Weiss: petitioner's name and telephone number; date petition was mailed; Brigham Young University; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Eugene H. Bramhall, General Counsel, A-357 ASB, Brigham Young Univerity, Provo, Utah 84602, attorney for licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the licensee's application dated June 28, 1990, as supplemented on July 2, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland, this 23rd day of July, 1991.

For the Nuclear Regulatory Commission.

Richard F. Dudley,

Acting Director Non-Power Reactors, Decommissioning and Environmental Project Directorate Division of Advanced Reactors and Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 91-18286 Filed 7-31-91; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29489; File No. SR-CBOE-91-24]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Listing of Capped Index Options

July 25, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 6, 1991, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its rules to allow the Exchange to list Capped Index Options ("Capped Index Option" or "Option"), defined in the proposal as options on a specific market index that are exercised automatically when the option's "cap price" (the strike price plus the cap interval for a call or the strike price minus the cap interval for a put) is less than or equals the closing index value for calls or when the cap price is greater than or equals the closing index value for puts. The proposed call Options are the equivalent of vertical bull spreads traded as a single security (i.e., the combination of one long an one short call position with the same expiration but where the strike price of the short call is higher than the strike price of the long call). Conversely, the proposed put options are the equivalent of vertical bear spreads traded as a single security (*i.e.,* the combination of one long put and one short put position with the same expiration, but where the strike price of the short put is lower than the strike price of the long put). Initially, the CBOE proposes to list Capped Index Options on the Standard & Poor's 100 ("OEX") Index. The text of the proposal is attached as Exhibit A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The CBOE proposes to amend its rules to allow the Exchange to list Capped Index Options, defined in the proposal as options on a specific market index that are exercised automatically at any time prior to expiration when the option's "cap price" is less than or equals the closing index value for calls or when the cap price is greater than or equals the closing index value for puts. The cap price, which is assigned when the Option is listed, is the strike price plus the cap interval for a call or the strike price minus the cap interval for a put. The proposed options will feature Automatic European Exercise, which provides that they will be exercised automatically when the cap price is reached. If the Options fail to reach the cap price, they may be exercised only on the last business day prior to expiration. The cap price establishes a pre-defined maximum value for the proposed options.

At this time, the CBOE proposes only to list Capped Index Options on the OEX. Initially, the cap interval for the Capped OEX options will be $30.00, but it may be modified by the Exchange's Product Development Committee.

The CBOE proposes to list Capped Index Options in order to provide the investing public with a simpler means to use options. The CBOE believes that this objective will be accomplished by giving brokers and customers an option which has a pre-defined maximum value regardless of moves in the market value of the underlying index. Because the maximum gain or loss will be understood easily, the proposed Options will be a relatively low risk security compared to regular options.

As described above, the call Options are equivalent to vertical bull spreads and the put Options are equivalent to vertical bear spreads.

By packaging the spread in one transaction, the Capped Index Options will offer investors a simple, more efficient method of executing spread transactions, without the risk of having the short leg exercised. In addition, transaction-related expenses will be reduced.

The Automatic European Exercise feature will also decrease the risk level of the proposed Options to options writers. Because the Options will be exercisable only at expiration, unless the index cap is reached and the Option is exercised automatically, there is limited risk of early exercise. For example, a four month $30 capped OEX call option with a 360 strike and a cap price of 390 (360 plus $30 cap interval) allows investors to benefit from up to a 30 point move in the index. This Capped Index Option will be exercised automatically when the OEX closes at

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Index Options, defined in the proposal as options on a specific market index that are exercised automatically at any time prior to expiration when the option's "cap price" is less than or equals the closing index value for calls or when the cap price is greater than or equals the closing index value for puts. The cap price, which is assigned when the Option is listed, is the strike price plus the cap interval for a call or the strike price minus the cap interval for a put. The proposed options will feature Automatic European Exercise, which provides that they will be exercised automatically when the cap price is reached. If the Options fail to reach the cap price, they may be exercised only on the last business day prior to expiration. The cap price establishes a pre-defined maximum value for the proposed options.

At this time, the CBOE proposes only to list Capped Index Options on the OEX. Initially, the cap interval for the Capped OEX options will be $30.00, but it may be modified by the Exchange's Product Development Committee.

The CBOE proposes to list Capped Index Options in order to provide the investing public with a simpler means to use options. The CBOE believes that this objective will be accomplished by giving brokers and customers an option which has a pre-defined maximum value regardless of moves in the market value of the underlying index. Because the maximum gain or loss will be understood easily, the proposed Options will be a relatively low risk security compared to regular options.

As described above, the call Options are equivalent to vertical bull spreads and the put Options are equivalent to vertical bear spreads.

By packaging the spread in one transaction, the Capped Index Options will offer investors a simple, more efficient method of executing spread transactions, without the risk of having the short leg exercised. In addition, transaction-related expenses will be reduced.

The Automatic European Exercise feature will also decrease the risk level of the proposed Options to options writers. Because the Options will be exercisable only at expiration, unless the index cap is reached and the Option is exercised automatically, there is limited risk of early exercise. For example, a four month $30 capped OEX call option with a 360 strike and a cap price of 390 (360 plus $30 cap interval) allows investors to benefit from up to a 30 point move in the index. This Capped Index Option will be exercised automatically when the OEX closes at

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or above 390. The CBOE also believes that the Options should be attractive to the member firms that have restricted the use of options by their customers, in that the profit/loss is limited for each option contract.

The CBOE proposes to amend Exchange Rule 24.5, Exercise Limits, by adding Interpretation .02. Interpretation .02 will exclude Capped Index Options from the calculation of exercise limits for index option contracts. This amendment will allow members to maintain their position in index options even if the member's Option position is exercised automatically because the cap price has been reached. For example, during the week prior to the June expiration of options, members are limited to a position in June options of 15,000 contracts and to an exercise limit that is equal to that amount. However, a member's position in Capped Index Options with expirations beyond June could be exercised automatically if the cap price is reached. The proposed amendment will allow the members to continue to hold up to 15,000 contracts in June options even if the member's Option position is exercised.

The CBOE also proposes to add Interpretation .03 to Rule 24.9, Terms of Option Contracts. Interpretation .03 specifies an initial cap interval of $30.00, which may be modified later by the Product Development Committee. In addition, Interpretation .03 provides that (i) One at-the-money call and put will be listed; (ii) the Product Development Committee may add new series to accommodate large moves in the underlying index; and (iii) series will be listed with expiration months four months into the future on an every other month basis. The Product Development Committee may add additional series.

Interpretation .03 reflects the uniqueness of the Options. The listing of specific series with an initial cap interval of $30.00 at two month intervals is a result of the Exchange's review of the needs of the members and customers who will trade Capped Index Options. In addition, the CBOE believes that it will avoid strike price proliferation by limiting the introduction of the amount of Options.

(2) Basis

The CBOE believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade.

(b) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submission should refer to the file number in the caption above and should be submitted by August 22, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

Exhibit A

Proposed Rule Change—Chicago Board Options Exchange, Incorporated

Italicizing reflects additions, brackets deletions.

Rule 24.1 Definitions

(a) through (j) No change.

Capped Index Option

(k) The term "capped index option" is an Automatic European Option on a specific market index that is automatically exercised anytime prior to its expiration when the cap price is less than or equals the closing index value for calls or when the cap price is greater than or equals the closing index value.

Cap Price

(l) The term "cap price" means the strike price plus the cap interval for a call or the strike price minus the cap interval for a put. The cap price is assigned to the capped index option when listed.

Automatic European Option

(m) The term "Automatic European Option" means a European option contract that is automatically exercised when the cap price is reached. If this does not occur, it can only be exercised on the last business day prior to the day it expires.

Rule 24.5 Exercise Limits

No change.

* * * Interpretations and Policies:

.01 No change.

.02 *Capped Index Options will not be included when calculating exercise limits for index option contracts.*

Rule 24.9 Terms of Option Contracts

(a) through (d) No change.

* * * Interpretations and Policies:

.01 and .02 No change.

.03 For capped index options, the procedures for adding strike prices shall be as follows:

a. The cap interval shall initially be $30.00 but may be modified pursuant to such a determination by the Product Development Committee.

b. Initially, one at-the-money call and put will be listed.

c. New series may be added to accommodate large moves in the index pursuant to the authority of the Product Development Committee.

d. Series will be listed with expiration months four months into the future on an every other month basis. Additional series may be added pursuant to the directive of the Product Development Committee.

[FR Doc. 91-18196 Filed 7-31-91; 8:45 am]

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VOL 56 ISS 148 AG 1 1991 UMI

[Release No. 34-29493; File No. SR-MSTC-91-03]

Self-Regulatory Organizations; Midwest Securities Trust Company; Notice of Filing and Order Granting Temporary Accelerated Approval of a Proposed Rule Change Establishing the Institutional Participant Services Program

July 26, 1991.

Pursuant to section 19(b) of the Securities Exchange Act of 1934,[1] notice is hereby given that on July 9, 1991, the Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by MSTC. The Commision is publishing this notice to solicit comments on the proposed rule change from interested persons. The Commission is also granting accelerated approval of the proposed rule change on a temporary basis through January 31, 1992.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change establishes (i) the Institutional Participant Services Program ("Program") and (ii) a new category of participants ("Institutions").[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MSTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MSTC has prepared summaries, set forth in sections (A), (B), and (C) below, or the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Commission has approved the proposed rule change on a temporary basis until July 31, 1991 ("Temporary Approval Period").[3] The rationale for initially approving the rule change on a temporary basis was to provide MSTC with the opportunity to formulate more definitive financial and operational standards for Institutions that desire to participate in the Program. Subsequently, on December 28, 1990, MSTC filed a proposed rule change (SR-MSTC-90-10) which requested permanent approval of the Program and proposed more definitive standards of participation and financial and operational capabilities for Institutions. To provide the Commission with the opportunity to review these standards while providing continuity of service to Institutions that currently participate in the Program, this proposed rule change requests that the Commission extend the Program under the terms of the Temporary Approval Orders through January 31, 1992.[4]

MSTC believes that the proposed rule change is consistent with section 17A of the Act because it will promote the prompt and accurate clearance and settlement of securities transactions and the safeguarding of funds and securities by providing Institutions with the opportunity to participate directly in MSTC.

B. Self-Regulatory Organization's Statement on Burden on Competition

MSTC does not believe that any burdens will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

MSTC has not received any comments from participants of the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing of Commission Action

MSTC requests the Commission to find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. Such accelerated approval would permit MSTC to offer continuity of service to Institutions that participate in the Program while providing the Commission with sufficient time to analyze the more definitive standards of participation and financial operational capability recently proposed by MSTC.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and, in particular with the requirements of sections 17A(b)(3) (A) and (F) of the Act.[5] Those sections require that the rules and organizational structure of a clearing agency promote the prompt and accurate clearance and settlement of securities transactions and the safeguarding of funds and securities which are under the clearing agency's custody and control. The Commission believes that MSTC's proposal will help achieve these requirements by providing Institutions with the opportunity to participate directly in MSTC.

The Commission also finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. The Commission does not anticipate that it will receive any significant negative comment on the proposed rule change in view of the fact that no comments were received on the proposals approved in the Temporary Approval Orders, which were identical in substance to this proposed rule change. Further, the Commission notes that the Program has operated without incident during the Temporary Approval Period. Thus, accelerated approval of the proposed rule change on a temporary basis will permit MSTC to provide continuity of service to those Institutions that currently participate in the Program while the Commission reviews MSTC's proposed permanent standards of financial and operational capabilities for such Institutions.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of MSTC. All submissions should refer to file number SR-MSTC-91-03

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[1] 15 U.S.C. 78s(b).

[2] Attached as Exhibit A and Exhibit B, respectively, to Securities Exchange Act Release No. 28844 (February 1, 1991), 56 FR 5035 (File No. SR-MSTC-91-01) are the text of the proposed rule change and MSTC's procedures for the Program.

[3] Securities Exchange Act Release Nos. 27752 (March 1, 1990), 55 FR 8271 (File No. SR-MSTC-89-05) and 28844 (February 1, 1991), 56 FR 5035 (File No. SR-MSTC-91-01) ("Temporary Approval Orders").

[4] For a complete description of the services offered under the Program and the current standards of financial and operational capabilities for Institutions under the Program, see Temporary Approval Orders.

[5] 15 U.S.C. 78q-1(b)(3) (A) and (F).

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The Commission finds that the proposed rule change is consistent with the requirements of the Act and, in particular with the requirements of sections 17A(b)(3) (A) and (F) of the Act.[5] Those sections require that the rules and organizational structure of a clearing agency promote the prompt and accurate clearance and settlement of securities transactions and the safeguarding of funds and securities which are under the clearing agency's custody and control. The Commission believes that MSTC's proposal will help achieve these requirements by providing Institutions with the opportunity to participate directly in MSTC.

The Commission also finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. The Commission does not anticipate that it will receive any significant negative comment on the proposed rule change in view of the fact that no comments were received on the proposals approved in the Temporary Approval Orders, which were identical in substance to this proposed rule change. Further, the Commission notes that the Program has operated without incident during the Temporary Approval Period. Thus, accelerated approval of the proposed rule change on a temporary basis will permit MSTC to provide continuity of service to those Institutions that currently participate in the Program while the Commission reviews MSTC's proposed permanent standards of financial and operational capabilities for such Institutions.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of MSTC. All submissions should refer to file number SR-MSTC-91-03

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[5] 15 U.S.C. 78q-1(b)(3) (A) and (F).

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and should be submitted by August 22, 1991.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR-MSTC-91-03) be, and hereby is, approved on a temporary basis through January 31, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-18274 Filed 7-31-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29492 ; File No. SR-NYSE-91-09]

Self-Regulatory Organization; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change

July 26, 1991.

In the matter of Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Overnight Comparison System That Will Permit: (1) Security Position Movements, and (2) the Comparison of Cash "Ex-Clearing House" Transactions.

On March 29, 1991, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change under Section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposed rule change was published in the **Federal Register** on May 9, 1991, to solicit comments from interested persons.[2] No comments were received. This order approves the proposal.

I. Description

The proposed rule change will authorize NYSE to add two electronic enhancements to its Overnight Comparision System ("OCS").[3] As discussed below, the enhancements will: (1) Permit clearing member participants in the OCS Correction System [4] to transfer open securities positions to other clearing members ("Step-Out-Service"); and (2) permit automated comparison of trades executed for "cash," whereas previously such trades have been compared pursuant to arrangements between trading parties and not submitted to a clearing agency (*i.e.*, ex-clearing house).[5]

A. The Step-Out Service

The proposed rule change will authorize NYSE to offer the clearing community a new service known as the "Step-Out Service" ("SOS"). SOS will apply to all stock trades in NYSE-listed stocks,[6] but SOS initially will not apply to trades in bonds or other securities.[7] The NYSE states that SOS will enable the Exchange's clearing members, by pressing keys on a computer terminal, to issue instructions to a qualified clearing agency [8] for the transfer of open contractual commitments between the members' clearing accounts.[9] Specifically, SOS will permit all or part of an open stock transaction to be transferred electronically from one clearing firm's account to another clearing firm's account prior to settlement of the trade.[10]

Any NYSE member organization using OCS, meaning every NYSE clearing firm, will be eligible to use SOS. In effect, the Exchange is implementing an electronic mail service for step-out movements among its clearing members. As noted, SOS will be an adjunct to the Exchange's Correction System, but the Correction System and SOS will not interface.[11]

The NYSE clearing members that participate in SOS will be able to enter records on their SOS terminal screens that will provide the identity of the security, the number of shares, price, and counter clearing firm. The counter, or receiving, participant may affirm, reject, or leave an item unaffirmed.[12] At the end of each trading day, the Exchange will transmit affirmed items to the appropriate qualified clearing agency where applicable credits and debits will be entered in the clearing firms' accounts.

Under the proposal, the appropriate qualified clearing agency will merge the affirmed items into the normal clearance and settlement cycles. The Exchange believes that by allowing these entries to be merged into the clearance cycle with all other transactions, the clearing members can accommodate their business requirements through the normal comparison vehicles at a qualified clearing agency. The Exchange believes that this should add to the efficiency of the comparison and clearing processes without adding to expenses.[13]

The NYSE states that there are several routine postexecution situations where clearing members may want to transfer open securities positions to other clearing members. Examples include situations where: (1) An institutional customer want to allocate executions among two or more Exchange clearing members, (2) a clearing member want to "give-up" (*i.e.*, substitute) another clearing member for itself after the original comparison has been completed, and (3) a clearing member's customer want to combine several trades in the same stock with different contract prices into one step out trade with an average price rather than have several contract prices.[14]

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[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30-3(a)(12).

[1] 15 U.S.C. § 78s(b).

[2] Securities Exchange Act Release No. 29156 (May 1, 1991), 56 FR 21514.

[3] OCS is a major automated system used by NYSE in its post-trade processing of securities transactions. While OCS provides several electronic services, its principal function is to match the buy-side and sell-side of trades in order to produce compared trades. For information on OCS, see Securities Exchange Act Release No. 26627 (March 14, 1989), 54 FR 11470 ([File No. SR-NYSE-88-36]. [Mr.]

[4] The "Correction System" is a major component of OCS. For information on the Correction System, see Securities Exchange Act Release No. 26773 (May 1, 1989), 54 FR 20227 (File No. SR-NYSE-89-03).

[5] See NYSE Rule 133. See also NYSE Rules 131-132.

[6] Under NYSE rules, the term "stock" includes stocks, rights, and warrants. NYSE Rule 4.

The proposed rule change presumes that by limiting the use of SOS to trades in NYSE-listed stocks and to NYSE clearing members, SOS as a practical matter will apply only to trades executed on the Exchange's trading floor. Nevertheless, technically, NYSE clearing members will be able to use SOS for position movements of any trades in NYSE-listed stocks, even if executed on another exchange or over-the-counter. Telephone conversation between Dennis Covelli, Vice President, Post Trade Services, NYSE, and Thomas C. Etter, Jr., Attorney, Division of Market Regulation ("Division", SEC (June 5, 1991).

[7] NYSE has stated in its filing that if it should desire to add other securities (*e.g.*, bonds) to SOS, it will submit another rule proposal to the Commission under section 19(b) of the Act.

[8] "Qualified clearing agency" is defined in NYSE Rule 132.10.

[9] While technically SOS could accommodate a trade with any type of settlement terms (*e.g.*, cash, next day, seller's option, etc.), the Exchange believes that, for a variety of reasons involving routine business practices, SOS will be used almost exclusively for regular way trades (*i.e.*, trades that settle on the fifth business day after trade date). Telephone conversation between Dennis Covelli, Vice President, Post Trade Services, NYSE, and Thomas C. Etter, Jr., Attorney, Division, SEC (May 31, 1991).

[10] Such a transfer is referred to as a "step-out" or a "flip." The term "flip" also may be used to mean the movement of an open securities position between clearing agencies. For the purposes of this filing, however, "step-out" and "flip" are being used to mean transfers of open securities positions between broker-dealers (*i.e.*, between NYSE clearing members) and not transfers between clearing agencies. Telephone converstation between Dennis Covelli, Vice President, Post Trade Services, NYSE, and Thomas C. Etter, Jr., Attorney, Division, SEC (June 5, 1991).

[11] SOS will have no execution capacity, and the size of a trade that is stepped-out cannot be expanded within SOS. Also SOS, as part of the NYSE's comparison cycle, will be subject to review by the Exchange's audit trail and market surveillance units. Telephone conversation between Dennis Covelli, Vice President, Post Trade Services, NYSE, and Thomas C. Etter, Jr., Attorney, Division, SEC (April 26, 1991).

[12] There can be no step-out of an item within SOS unless the item is affirmed by the receiving clearing member. *Id.*

[13] While, technically, the step-out procedure is independent of trade comparison, NYSE estimates that 90% of step-outs occur after comparison, usually on T+1. Telephone conversation between Dennis Covelli, Vice President, Post Trade Services, NYSE, and Thomas C. Etter, Jr., Attorney, Division, SEC (June 6, 1991).

The Exchange has stated in the filing that, in accord with its existing rules, the use of SOS and any related failure of trade comparison or failure to receive or delivery securities will have no effect on the terms of any original securities contract or on the liabilities of the original parties.[15] Furthermore, the Exchange has determined that the per-item usage fee for SOS will be $0.20 instead of the usual OCS per-item usage fee of $0.40. The Exchange has stated that a difference in fees is justified because SOS will utilize only a portion of OCS's capabilities.[16]

B. Proposed Comparison of Cash "Ex-Clearing House" Transactions

The proposed rule change would permit NYSE members to compare[17] "ex-clearing" trades[18] among themselves through OCS. These trades would not be forwarded to NSCC or another clearing agency for settlement.

In March 1989, the Commission approved the NYSE's Rule 130.[19] That rule, which was to be implemented within OCS over the eighteen months following its approval, established the principle that "regular way" transactions[20] in listed stocks, rights, and warrants must be compared or closed out within one business day after the trade date (*i.e.*, "T+1"). The "T+1" OCS program became fully effective on August 6, 1990.[21]

Initially, the use of OCS was limited to trades for regular way settlement. Subsequently, the Exchange requested and received approval from the Commission to use OCS for stock trades that settle on a "next day" and "seller's option" basis.[22] Currently, ex-clearing house trades, which mainly include "cash" or "same day" delivery trades,[23] have no access to OCS.[24]

Cash trades were not included in the previous OCS rule proposals because qualified clearing agencies could not compare trades on a basis that would permit delivery of securities in compliance with time frames specified in Exchange rules.[25] The effect of the inability to compare cash trades through the facilities of a qualified clearing agency has been that clearing firms have had to use manual procedures to compare the trades with each other (*i.e.*, ex-clearing house comparison).[26] Such manual procedures have applied to any ex-clearing house comparison of any stock, right, warrant, "when issued" and "when distributed" securities,[27] whether settlement is to be regular way, next-day, or seller's option.

Under the current NYSE ex-clearing house procedures, before a securities delivery can be effected, there must be: (1) A manual delivery of the comparison form by the selling party to the office of the buying party, (2) verification of the form's trade details, and (3) attestation of form's accuracy by the buying party. Because of the narrow time frames involved in cash transactions, the NYSE claims in its filing that it is not unusual for these comparison forms to be processed in a perfunctory manner, especially for cash transactions made late in a trading session.

The NYSE states in its filing that the manual operations and the short time frames involved in cash transactions have caused the Data Management Division of Wall Street ("DMD"), a division of the Securities Industry Association, to ask the Exchange to permit the use of OCS for the automated comparison of cash trades.[28] The Exchange further notes that the comparison of ex-clearing house transactions, including cash trades, is the last remaining Exchange comparison process that has not been automated for stocks, rights, and warrants.

The NYSE represents in its filing that these two additional functions of OCS (*i.e.*, SOS and automated comparison of ex-clearing house trades) will not diminish its capability to accommodate ordinary message traffic as well as peak traffic. Additionally, the Exchange represents that the Correction System's security measures are satisfactory to prevent internal and external violations.

II. Discussion

Section 6(b)(5) of the Act[29] states that exchange rules should be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to securities transactions; to remove impediments to a free and open market; and to protect investors and the public interest. Additionally, section 17A(a)(1) of the Act[30] notes the need for prompt and efficient clearance and settlement of securities transactions, and it expressly encourages the use of automation to achieve more efficient and safer clearance and settlement procedures. As discussed below, the Commission believes the proposal furthers these goals.

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[14] *E.g.*, a customer entering into five buy transactions of 2,000 shares each at a different contract prices but with an average price of $10.33 per share might want to combine the trades for step-out purposes into a single block consisting of 10,000 shares at $10.33 per share.

The act of combining trades for step-out purposes would not affect the status of the original trades, which already would have been booked, and probably would have been compared, prior to the step-out movement. Telephone conversation between Dennis Covelli, Vice President, Post Trade Services, NYSE, and Thomas C. Etter, Jr., Attorney, Division, SEC (June 25, 1991).

[15] See NYSE Rule 142.

[16] For further information on SOS usage fees, see Securities Exchange Act Release No. 29113 (April 22, 1991), 56 FR 19704 (File No. SR–NYSE–91–10).

[17] Trade comparison, or the matching of the buy and sell sides of a securities transaction, is the process after a trade has been executed by which broker-dealers or their agents confirm with each other the exact terms of a trade (*e.g.*, issue, number of units, and price) and the existence of a contract. The successful completion of this process results in a compared trade. Comparison is the first of three basic steps in the post-execution processing of a securities transaction (the other two steps being clearance and settlement). Division of Market Regulation, Securities and Exchange Commission, "Market Analysis of October 13 and 16, 1989," 118–119 (December 1990).

[18] "Ex-clearing house" comparison of trades means that the trades are not submitted to a clearing house for comparison, clearance, or settlement. See NYSE Rule 133.

[19] Securities Exchange Act Release No. 11470 (March 20, 1989), 54 FR 11470 (File No. SR–NYSE–88–30).

[20] The term "regular way" means trade settlement on the fifth business day after the execution of a trade. NYSE Rule 64(3).

[21] Securities Exchange Act Release No. 28265 (July 30, 1990), 55 FR 31030 (File No. SR–NYSE–90–21).

[22] Securities Exchange Act Release No. 27508 (January 18, 1990), 55 FR 1769 (File No. SR–NYSE–89–43). For definitions of "next day" and "seller's option," see NYSE Rule 64.

[23] "Cash" and "same day" are synonymous settlement terms. For definition of "cash" or "same day" settlement, see NYSE Rule 64(1).

[24] While any type of trade may be compared on an ex-clearing house basis, the Exchange notes that the vast majority of ex-clearing house trades (about 90%) are stock trades executed for "cash" settlement. Telephone conversation between Dennis Covelli, Vice President, Post Trade Services, NYSE, and Thomas C. Etter, Jr., Attorney, Division, SEC (June 6, 1991).

[25] Under NYSE Rule 177, deliveries of securities in transactions made for "cash" at or before 2:00 p.m. (ET) must be made before 2:30 p.m. and deliveries of securities in transactions made for "cash" after 2:00 p.m. must be made and delivered within 30 minutes after the time of the transaction.

[26] NYSE Rules 133 and 137.

[27] "When issued" and "when distributed" transactions are made on a contingency basis on the assumption that issuance or distribution will occur in the near future. M. Thompsett, Investment & Securities Dictionary, 319 (1986).

[28] Letter from Edward Adinolfi, Salvatore Curra, and Thomas McConnell, DMD, to Dennis Covelli, Vice President, Post Trade Services, NYSE (December 5, 1990) (submitted by NYSE as part of this filing).

[29] 15 U.S.C. 78f(b)(5).

[30] 15 U.S.C. 78q–1(a)(1).

The Commission believes that the SOS enhancement to OCS will provide numerous post-execution efficiencies by replacing traditional step-out techniques with an automated system that will be safer, more effective, and less expensive per step-out movement. NYSE safeguards include: (1) Preventing members from changing the price or quantity of any trade in OCS and from effecting executions within SOS, and (2) maintaining appropriate audit trails and surveillance reviews of SOS activity. Accordingly, the Commission believes that SOS is consistent with sections 6(b)(5) and 17A(a)(1) of the Act.[31]

In approving SOS, the Commission recognizes that numerous legitimate reasons exist for effecting post-execution movements of securities positions among clearing members, some of which have been set forth above. Nevertheless, the Commission cautions participants and the Exchange against facilitating transactions that do not meet the safe harbor provisions of section 28(e) of the Act [32] and the requirements of Rule 10b–10 under the Act.[33]

In previously approving, on a pilot basis, the NYSE's request to provide facilities for trading listed securities with expedited settlement time frames (*i.e.*, amendments to NYSE Rule 64), the Commission urged the NYSE to monitor trading activity and the need for automated centralized post-trade processing facilities.[34] This could run counter to the goals of the National Clearance and Settlement System which the Commission and the NYSE have sought to develop, foster, and enhance during the last two decades.[35] While the Commission observed that expedited trades may be appropriate in certain circumstances, it warned that if exchanges were to allow the number of trades processed on a manual, ex-clearing house basis to increase, they would increase the risk of delays and other inefficiencies in the marketplace, including the risk of a recurrence of the paperwork problems of the 1960s.[36]

In this proposal, the NYSE is taking a first step in the right direction by providing a centralized, automated facility for comparison of member trades that must be settled ex-clearing. The Commission urges NYSE to consider other steps that would facilitate centralized and automated clearance and settlement of these trades.

III. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the Act, particularly with sections 6(b)(5) and 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change (File No. SR–NYSE–91–09) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[37]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–18275 Filed 7–31–91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–29494; File No. SR–OCC–91–11]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving on an Accelerated Basis a Proposed Rule Change Relating to a Change in the Structure of OCC's Nominating Committee

July 26, 1991.

I. Introduction

On June 17, 1991, the Options Clearing Corporation ("OCC") filed a proposed rule change (File No. SR–OCC–91–11) with the Securities and Exchange Commission ("Commission") pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on July 19, 1991, to solicit comments from interested persons.[2] No comments were received. As discussed below, this order approves the proposal on an accelerated basis.

II. Description of the Proposal

OCC's proposed rule change creates, through the use of a transitional by-law, two classes of Elected Members to its Nominating Committee ("Committee") with each class comprised of three Elected Members. The terms of both classes of Elected Members will be two years and will be staggered so that each year the terms of three Elected Members will expire.

Section 5 of Article III of OCC's By-laws currently provides for the Committee to be reconstituted each year with all Elected Members of the Committee being elected at the preceding annual meeting of stockholders. Section 5 states, "Prior to each annual meeting of stockholders, the Nominating Committee then in office shall nominate * * * one person for each position as Elected Member of the Nominating Committee to be filled at such annual meeting." As a result, when the Committee deliberates each January, it does so without any input from the prior Committee. The proposed by-law change, however, would create two classes of Elected Members with the two classes serving staggered terms of two years each. Thus, only one three person class of Elected Members would be nominated to serve as Elected Members each year.

The proposed by-law provides for Class I Elected Members to serve a one year term which shall begin at the 1992 annual meeting of stockholders and shall expire at the 1993 annual meeting of stockholders. Class II Elected Members shall serve a complete two year term beginning at the 1992 annual meeting of stockholders and ending at the 1994 annual meeting of stockholders. Thereafter, all Elected Members will be elected for two year terms.

Furthermore, the proposed by-law provides that no Elected Member will be eligible for election to the Committee after having served a full two year term until after a lapse of one year. A term of less than two years may, however, immediately precede the full two year term. The additional restrictions, which provide that no director of OCC and no person who is not a Clearing Member or a Designee of a Clearing Member Organization shall be eligible to serve as an Elected Member, remain intact. Taken together, these procedures will eliminate the complete turnover of the Committee each year and will develop greater continuity among the Elected Members.

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[31] 15 U.S.C. 78f(b)(5) and 78q–1(a)(1).

[32] 15 U.S.C. 78bb(e).

[33] 17 CFR 240.10b–10.

[34] Securities Exchange Act Release No. 24161 (March 2, 1987), 52 FR 7350 (File No. SR–NYSE–85–37).

[35] See section 17A of the Act, 15 U.S.C. § 78q–1. See also Senate Banking, Housing & Urban Affairs Comm., Report to Accompany S. 249 (Securities Acts Amendments of 1975), Senate Rep. No. 75, 94th Cong., 1st Sess. 53–55 (1975). See also Securities Exchange Act Release No. 25120 (November 13, 1987), 52 FR 44506 (File No. SR–NYSE–87–04) (order approving NYSE Rule 387).

[36] For a review of the "Paperwork Crisis" of the 1960s, see Securities and Exchange Commission, "Study of Unsafe Practices of Brokers and Dealers," H.R. Doc. No. 231, 92nd Cong. 1st Sess. 1–30, 95–122 (1971).

[37] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b).

[2] Securities Exchange Act Release No. 29437 (July 12, 1991), 56 FR 33319.

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In order to accommodate the transition to the new structure of the Committee, OCC is proposing that a transitional by-law be adopted that will expire at the 1992 annual meeting of stockholders. The transitional by-law provides for the Committee to be increased from six to eight Elected Members until the 1992 annual meeting of stockholders. At the 1992 meeting, the number of Elected Members will be reduced to six. Three of the eight Elected Members from the prior Committee will remain as Class I Elected Members and will serve an additional one year term that will expire at the 1993 annual meeting of stockholders. Thereafter, as mentioned above, terms of the Elected Members will be for two years and will be staggered so that each year the terms of three Elected Members will expire and three new Elected Members will serve on the Committee.[3]

III. Discussion

The Commission believes that OCC's proposed rule change is consistent with the Act and in particular with Section 17A of the Act. Section 17A(a)(3)(C) of the Act[4] requires that the rules of a clearing agency assure a fair representation of its shareholders and participants in the selection of its directors and administration of its affairs. The Commission believes that the creation of two year staggered terms for Elected Members of the Committee in order to eliminate the complete turnover of the Committee each year will increase continuity and enhance efficiency among Elected Members for purposes of selecting nominees for OCC's Board of Directors. The proposed rule change will thus continue to assure a fair representation of OCC's shareholders and participants in the selection of its directors and administration of its affairs.

Furthermore, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. As the first step towards the creation of two year staggered terms for Elected Members, the proposed transitional by-law calls for the appointment of two additional by-law calls for the appointment of two additional Elected Members to the Committee prior to January 1992. In order that OCC has adequate time to properly implement this plan of action, the Commission is approving the proposal on an accelerated basis. Additionally, the Commission does not anticipate that it will receive any significant negative comment on the proposed rule change in view of the fact that no comments have been received to date by the Commission or OCC.

IV. Conclusion

For the reasons stated above, the Commission finds that OCC's proposal is consistent with section 17A of the Act.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[5] that OCC's proposed rule change (SR-OCC-91-11) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-18278 Filed 7-31-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29490; File No. SR-PHLX-91-14]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Floor Broker's Notice to the Trading Crowd

July 25, 1991.

On May 6, 1991, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b-4 thereunder,[2] a proposal to adopt Options Floor Procedure Advice ("OFPA") C-5, which establishes the presumption under PHLX rules that an options floor broker who is also a registered options trader ("ROT") is acting on behalf of his ROT account, unless otherwise specified. Accordingly, under the rule change an options floor broker who is also an ROT will be required to notify the trading crowd at the time he seeks a market that he is acting in his capacity as a floor broker rather than as an ROT.

The proposed rule change was published for comment in Securities Exchange Act Release No. 29267 (June 3, 1991), 56 FR 26706. No comments were received on the proposed rule change.

The PHLX proposes to amend its rules by adding OFPA C-5, entitled ROTs Acting as Floor Brokers, which will require an options floor broker who is also an ROT to notify the trading crowd at the time he seeks a market that he is acting in his capacity as a floor broker rather than as an ROT. Thus, when an ROT makes a bid or an offer, the trading crowd will presume that he is acting on behalf of his own account, unless he indicates to the crowd that he is acting as a floor broker. OFPA C-5 provides an exception to the notification requirement for a floor broker representing an order in an issue in which he represented himself previously that day as an agent, provided that the floor broker has obtained the prior approval of a floor official.

Violations of OFPA C-5 will carry a fine of $250.00 for the first occurrence; $500.00 for the second occurrence; and, thereafter, a sanction discretionary with the Business Conduct Committee.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6.[3] Specifically, the Commission finds that the proposal is designed to prevent fraudulent and manipulative acts and practices in that it will help the PHLX ensure compliance with the Exchange's priority and parity rules.

The PHLX recently amended its equity option and foreign currency option priority-parity rules.[4] The amended priority-parity rules are designed to ensure that public customer equity and foreign currency options orders are accorded priority over all member orders at the same price, except specialists' orders and ROT closing orders, thereby allowing public customer options orders to receive a timely execution.[5]

By requiring ROTs to voice when they are acting on behalf of a customer, the proposal facilitates the enforcement of the Exchange's priority and parity rules, thus contributing to fair and orderly markets, the protection of investors, and the promotion of investor confidence in the PHLX options markets. At the same time, by allowing the trading crowd to presume that an ROT is acting for his own account, unless he provides notice to the contrary, the proposal aids the administration of rules intended to facilitate the market making obligations of ROTs. Through their market making activities, the ROTs provide depth and liquidity to the PHLX's options markets. Finally, the proposal will help the PHLX administer its rules prohibiting dual trading.[6]

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[3] OCC further clarified the procedural aspects of the rule change through the use of a hypothetical example. Letter from Stuart C. Harvey, Jr., Staff Counsel, OCC, to Scott S. Wallner, Staff Attorney, Division of Market Regulation, Commission (July 17, 1991).

[4] 15 U.S.C. 78q-1(a)(3)(C).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30-3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1990).

[3] 15 U.S.C. 78f (1982).

[4] See Securities Exchange Act Release Nos. 28934 (March 4, 1991), 56 FR 10005 (File No. SR-PHLX-90-30, order approving foreign currency option priority-parity rules) and 29065 (April 10, 1991), 56 FR 15394 (File No. SR-PHLX-90-20, order approving equity priority-parity rules).

[5] See Securities Exchange Act Release Nos. 28934 and 29065, *supra* note 4.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR–PHLX–91–14) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–18197 Filed 7–31–91; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted within 30 days of this publication in the **Federal Register**. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205–6629.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: 8(a) Capability Statement.
Form No.: SBA Forms 1815.
Frequency: Annual.
Description of Respondents: 8(a) Program Participants.
Annual Responses: 4,000.
Annual Burden: 2,000.

Title: Use of Proceeds Section 504.
Form No.: SBA Form 1606.
Frequency: On occasion.
Description of Respondents: Certified Development Companies.
Annual Responses: 1,200.
Annual Burden: 600.

Title: National Survey of Small and Minority Owned Business Access to Equity Capital.
Form No.: SBA Form 1791.
Frequency: One-time survey.
Description of Respondents: Small and minority business owners.
Annual Responses: 14,000.
Annual Burden: 1,200.

Title: SBIC Financial Reports.
Form No.: SBA Forms 468.1, 468.2, 468.3, and 468.4.
Frequency: Annual.
Description of Respondents: Small Business Investment Companies.
Annual Responses: 416.
Annual Burden: 7,072.

Jeffrey Guide,

Acting Chief, Administrative Information Branch.

[FR Doc. 91–18305 Filed 7–31–91; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2515]

Iowa and Contiguous Counties in Minnesota and Wisconsin; Amendment Number 1; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with amendments dated July 15 and 17, 1991, to the President's major disaster declaration of July 12, to include the counties of Black Hawk, Cass, Emmet, Johnson, and Tama in the State of Iowa as a disaster area as a result of damages caused by severe storms and flooding which occurred June 1–15, 1991.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Adair, Adams, Audubon, Benton, Cedar, Clay, Dickinson, Guthrie, Iowa, Linn, Louisa, Montgomery, Muscatine, Pottawattamie, Shelby, and Washington in the State of Iowa may be filed until the specified date at the previously designated location.

All other information remains the same, i.e., the termination date filing applications for physical damage is September 11, 1991, and for economic injury until the close of business on April 13, 1992.

The economic injury number for the State of Iowa is 7342.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 19, 1991.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91–18306 Filed 7–31–91; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2505]

Mississippi; Amendment #4; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with an amendment dated July 18, 1991, to the President's major disaster declaration of May 17, to include Benton County in the State of Mississippi as a disaster area as a result of damages caused by severe storms, tornadoes, and flooding beginning on April 28 and continuing through May 31, 1991.

All counties contiguous to the above-named primary county have previously been named as contiguous or primary counties for the same occurrence.

As the termination date for filing applications for physical damage closed on Juy 15, 1991, prior to the Notice of Amendment cited above, the termination date for filing applications for physical damage for victims of the above-named county will be August 17, 1991, 30 days from the date of the amendment. The termination date for filing applications for economic injury remains the close of business February 18, 1992.

The economic injury number is 731500 for Mississippi.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 22, 1991.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91–18307 Filed 7–31–91; 8:45 am]

BILLING CODE 8025–01–M

Region IX Advisory Council Meeting

The U.S. Small Business Administration Region IX Advisory Council, Located in the geographical area of Santa Ana, will hold a public meeting from 9:30 a.m. to 11:30 a.m. on

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[6] See PHLX Rule 1014(e)(i).

[7] 15 U.S.C. 78s(b)(2) (1982).

[8] 17 CFR 200.30–3(a)(12) (1990).

Wednesday, August 7, 1991, at Western Community Bank Offices, 321 East 6th Street, Corona, California, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call John S. Waddell, District Director, U.S. Small Business Administration, 901 W. Civic Center Drive, suite 160, Santa Ana, California 92703, telephone (714) 836–2494.

Dated: July 25, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91–18308 Filed 7–31–91; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Hartford, will hold a public meeting at 8:30 a.m. on Monday, September 9, 1991, at the Days Inn, 900 East Main Street, Meriden, Connecticut, to discuss such matters as may be presented by members, staff of the U.S. Small Business ADministration, or others present.

For further information, write or call Laura A. Brown, Acting District Director, U.S. Small Business Administration, 330 Main Street, Hazrtfor, Connecticut, telephone (203) 240–4670.

Dated: July 25, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91–18309 Filed 7–31–91; 8:45 am]

BILLING CODE 8025-01-M

Region VIII Advisory Council Meeting

The U.S. Small Business Administration Region VIII Advisory Council, located in the geographical area of Helena, will hold a public meeting at 9 a.m. on Friday, September 6, 1991, in the Board Room, Federal Reserve Bank of Minneapolis, Helena Branch, 110 Neill Avenue, Helena, Montana, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call John R. Cronholm, District Director, U.S. Small Business Administration, 301 South Park, Drawer 10054, Helena, Montana 59626–0054, telephone (406) 449–5381.

Dated: July 25, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91–18310 Filed 7–31–91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Bureau of Diplomatic Security

[Public Notice 1439]

Anti-Terrorism Assistance Training

In accordance with Office of Management and Budget Circular No. A–102, dated March 3, 1988, the Department of State hereby gives notice of intention to establish a cooperative agreement for purposes of facilitating the accomplishment of the objectives of 22 U.S.C. 2349aa, et seq. Under this authority, assistance may be furnished to foreign law enforcement personnel to enhance their ability to deter terrorists and terrorist groups from engaging in international terrorist acts. The proposed agreement will encompass explosive detector dog training under the referenced authority.

The Department of State has identified the Connecticut State Police as having the necessary capabilities to conduct the training contemplated by this agreement. This agreement addresses a one-time requirement, and contemplates total funding of under $12,000. Training materials provided by the State of Connecticut and consumed in the training will be reimbursed by the Department of State.

If a similar need is identified in the future, the Department will entertain consideration of additional sources. Public comment on this intended action may be submitted within 20 days after the date of the Federal Register in which this notice appears, addressed to Rudy G. Hall, Bureau of Diplomatic Security (DS/OSA/ASD), SA–10, U.S. Department of State, Washington, DC 20522. Tel. (202) 663–0049.

Dated: July 23, 1991.

Rudy G. Hall,

Chief, Administrative Services Division, Bureau of Diplomatic Security.

[FR Doc. 91–18263 Filed 7–31–91; 8:45 am]

BILLING CODE 4710-22-M

TENNESSEE VALLEY AUTHORITY

Privacy Act of 1974; New Routine Use

AGENCY: Tennessee Valley Authority (TVA).

ACTION: New routine use for TVA–2, "Personnel Files—TVA."

SUMMARY: As required by the Privacy Act, TVA gave notice (56 FR 24439, May 30, 1991) of its intention to establish a new routine use for the system of records entitled TVA–2, "Personnel Files—TVA." No comments from the public were received. The new routine use as published on May 30, 1991, and as described below will therefore become a part of TVA–2. The full text of TVA–2 appears at 55 FR 34817–18 [August 24, 1990] 56 FR 19137 [April 25, 1991], and 56 FR 22902 [May 17, 1991].

EFFECTIVE DATE: August 1, 1991.

FOR FURTHER INFORMATION CONTACT: Ronald E. Brewer, Privacy Act Officer, TVA, 615–751–2520.

TVA–2

SYSTEM NAME:

Personnel Files—TVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information related to education; qualifications; work history; interests and skills; test results; performance evaluation; career counseling; personnel actions; job description; salary and benefit information; service dates, including other Federal and military service; replies to congressional inquiries; medical data; and security investigation data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; Executive Order 10577, Executive Order 10450; Executive Order 11478; Executive Order 11222; Veterans' Preference Act of 1944, 58 Stat. 387, as amended; Equal Employment Opportunity Act of 1972, Pub. L. 92–271, 86 Stat. 103; various sections of title 5 of the United States Code related to employment by TVA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To contractors and subcontractors engaged at TVA's direction in providing support services to TVA in connection with mailing materials to TVA employees or other related services.

Louis S. Grande,

Vice President, Information Services.

[FR Doc. 91–18262 Filed 7–31–91; 8:45 am]

BILLING CODE 8120-08-M

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EY AUTHORITY

; New Routine Use

Valley Authority

ACTION: New routine use for TVA–2, "Personnel Files—TVA."

SUMMARY: As required by the Privacy Act, TVA gave notice (56 FR 24439, May 30, 1991) of its intention to establish a new routine use for the system of records entitled TVA–2, "Personnel Files—TVA." No comments from the public were received. The new routine use as published on May 30, 1991, and as described below will therefore become a part of TVA–2. The full text of TVA–2 appears at 55 FR 34817–18 [August 24, 1990] 56 FR 19137 [April 25, 1991], and 56 FR 22902 [May 17, 1991].

EFFECTIVE DATE: August 1, 1991.

FOR FURTHER INFORMATION CONTACT: Ronald E. Brewer, Privacy Act Officer, TVA, 615–751–2520.

TVA–2

SYSTEM NAME:

Personnel Files—TVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information related to education; qualifications; work history; interests and skills; test results; performance evaluation; career counseling; personnel actions; job description; salary and benefit information; service dates, including other Federal and military service; replies to congressional inquiries; medical data; and security investigation data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; Executive Order 10577, Executive Order 10450; Executive Order 11478; Executive Order 11222; Veterans' Preference Act of 1944, 58 Stat. 387, as amended; Equal Employment Opportunity Act of 1972, Pub. L. 92–271, 86 Stat. 103; various sections of title 5 of the United States Code related to employment by TVA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To contractors and subcontractors engaged at TVA's direction in providing support services to TVA in connection with mailing materials to TVA employees or other related services.

Louis S. Grande,

Vice President, Information Services.

[FR Doc. 91–18262 Filed 7–31–91; 8:45 am]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–91–28]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 21, 1991.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition Docket No. ________, 800 Independence Avenue SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. C. Nick Spithas, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–9683.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on July 26, 1991.

Deborah Swank,

Acting Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 12638

Petitioner: Air Transport Association of America.

Sections of the FAR Affected: 14 CFR 121.99 and 121.351(a).

Description of Relief Sought: To extend Exemption No. 2081, as amended, which grants Air Transport Association of America relief from §§ 121.99 and 121.351(a) of the Federal Aviation Regulations (FAR). This exemption allows part 121 operators to dispatch aircraft over certain oceanic areas with one of two required High Frequency radios inoperative at the time of dispatch, subject to certain conditions and limitations, and would otherwise terminate on October 31, 1991.

Docket No.: 23495

Petitioner: Department of the Army.

Sections of the FAR Affected: 14 CFR 91.209(a) and (b).

Description of Relief Sought: To renew Exemption No. 3946B from § 91.209(a) and (b) of the Federal Aviation Regulations. This exemption allows the Department of the Army tactical helicopters to conduct certain night flight military training operations without lighted aircraft position lights.

Docket No.: 26584

Petitioner: PHH Corporation.

Sections of the FAR Affected: 14 CFR 135.165(b)(6) and (b)(7).

Description of Relief Sought/Disposition: To exempt PHH Corporation from § 135.165(b)(6) and (b)(7) of the Federal Aviation Regulations (FAR). This exemption, if granted, would permit PHH Corporation to operate aircraft equipped with only one high-frequency communications system in extended overwater operations in certain specified areas.

Docket No.: 26590

Petitioner: Regional Airline Association.

Sections of the FAR Affected: 14 CFR 91.203 and 47.49.

Description of Relief Sought/Disposition: To extend Exemption No. 5318, granted to the Air Transport Association of America (ATA), to include RAA member airlines and other similarly situated air carriers certificated in the United States and operating under parts 121 and 135 of the Federal Aviation Regulations. The RAA also proposes to include, under this exemption, operations in the States of Alaska and Hawaii and other United States territorial possessions, in addition to the contiguous 48 states of the United States.

Dispositions of Petitions

Docket No.: 25069

Petitioner: Hawkins & Powers Aviation, Inc.

Sections of the FAR Affected: 14 CFR 137.53(c)(2)

Description of Relief Sought/Disposition: To extend Exemption No. 5075 from § 137.53(c)(2) of the Federal Aviation Regulations which allows Hawkins & Powers Aviation, Inc., to conduct aerial applications of insecticide from C–118 A(DC–6) without the aircraft being equipped with a device capable of jettisoning within 45 seconds at least one-half of the aircraft's maximum authorized load of agricultural materials when operated over congested areas. Exemption No. 5075 is extended to August 31, 1993. *Grant, July 17, 1991, Exemption No. 5075A.*

Docket No.: 25776

Petitioner: Lynch Flying Service, Inc.

Sections of the FAR Affected: 14 CFR 43.3(g).

Description of Relief Sought/Disposition: To extend Exemption No. 5085 which provides Lynch relief from the requirements of § 43.3(g) of the Federal Aviation Regulations to the extent necessary to allow the appropriately trained and certificated pilots employed by Lynch to remove the passenger seats and install approved stretcher and base assemblies in the Cessna 400 Series aircraft operated by Lynch when such aircraft are being used in air ambulance service. The termination date of Exemption No. 5085 is extended for a period of 2 years from August 31, 1991. *Grant, July 19, 1991, Exemption No. 5085A.*

[FR Doc. 91–18239 Filed 7–31–91; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; St. Johns County, Florida

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in St. Johns County, Florida.

FOR FURTHER INFORMATION CONTACT: Mr. Bobby W. Blackmon, District Engineer, Federal Highway Administration, 227 North Bronough Street, room 2015, Tallahassee, Florida 32301, telephone (904) 681–7239.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Florida Department of Transportation will prepare an EIS for a proposal to extend State Road 312 in St. Johns County, Florida. The proposed improvement would involve the extension of State Road 312 from State Road 207 to State Road 5 (U.S. 1), a distance of 9.0 miles. The proposed extension is considered necessary to provide for existing and projected traffic demands. The new roadway would be constructed entirely on new alignment.

Alternatives under consideration include: (1) Taking no action; (2) constructing a multi-lane divided highway; (3) constructing a controlled access facility with, or without, frontage roads; (4) constructing a limited access freeway.

Coordination with appropriate Federal, State, and local agencies, and private citizens who have expressed interest in this proposal has been undertaken and will continue. A series of public meetings will be held in St. Johns County. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be made available for public agency review and comment. A coordination meeting was held at the project site in early 1991 with various regulatory agencies to discuss environmental issues related to the project. A formal scoping meeting will be held if appropriate.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning an Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: July 22, 1991.

J.R. Skinner,

Division Administrator, Tallahassee, Florida.

[FR Doc. 91–18189 Filed 7–31–91; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement: Sears Island, Waldo County, ME

AGENCY: Federal Highway Administration, DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a supplement to the Final Environmental Impact Statement will be prepared for the proposed dry cargo terminal and affiliated structures at Sears Island in Searsport, Waldo County, Maine.

FOR FURTHER INFORMATION CONTACT: William D. Richardson, Division Administrator, Federal Highway Administration, Federal Building, room 614, Augusta, ME 04330, Tel: (207) 622–8487; or Janet L. Myers, Project Manager, Maine Department of Transportation, State House Station #16, Augusta, ME 04333, Tel: (207) 289–2696.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Maine Department of Transportaion, will prepare a supplement to the Final Environmental Impact Statement on the proposed dry cargo terminal and related structures at Sears Island, Searsport, Waldo County, Maine. The terminal was the subject of a final environmental impact statement (FHWA–ME–EIS–86–01–F) approved by the FHWA on October 9, 1987. As previously approved, the project consists of a two birth marginal wharf and related land-based support facilities. Access to the terminal will be by rail line and highway. The terminal is designed to accommodate future expansion of up to four additional berths. The facility is needed in order to provide transportation services for import and export bulk and container cargo and to facilitate economic development in the Waldo County area.

Since the approval of the Final EIS, additional wetland areas on Sears Island have been delineated that are within the limits of the proposed project. The project area, including the future expansion area, is to be evaluated to determine the potential impacts of the project on the wetlands. The Supplemental EIS will include a study to determine whether alternate locations for the terminal or for related facilities would be feasible and/or appropriate. The Supplemental EIS will not include a detailed study of issues which are not significant or have been covered sufficiently by the Final EIS.

Appropriate measures to mitigate the impacts of the project on wetlands will be evaluated in the Supplemental EIS. A previously commenced study of the potential environmental impacts of future development of the expansion area will be incorporated into the Supplemental EIS.

No formal scoping meeting for the Supplemental EIS will be held. Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who previously expressed or are known to have an interest in this proposal. One or more public workshops/hearings will be held. Public notice will be given of the time and place of all workshops/hearings. The draft Supplemental EIS will be available for public and agency review and comment prior to a public workshop/hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action and the EIS, as well as any requests for further information about the project or this proposed action, should be directed to the FHWA and/or MDOT at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: July 25, 1991.

William D. Richardson,

FHWA Division Administrator, Maine.

[FR Doc. 91–18242 Filed 7–31–91; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administralton

Highway Safety Program; Amendment of Conforming Products List of Evidential Breath Testing Devices

AGENCY: National Highway Traffic Safety Administration, (NHTSA), DOT.

ACTION: Notice.

SUMMARY: This notice amends the Conforming Products List for instruments which have been found to conform to the Model Specifications for Evidential Breath Testing Devices (49 FR 48854).

EFFECTIVE DATE: August 1, 1991.

FOR FURTHER INFORMATION CONTACT: Mrs. Robin Mayer, Office of Alcohol and State Programs, NTS-21, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590; Telephone: (202) 366–9825.

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04330, Tel: (207) 622–
Myers, Project Manager,
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No formal scoping meeting for the Supplemental EIS will be held. Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who previously expressed or are known to have an interest in this proposal. One or more public workshops/hearings will be held. Public notice will be given of the time and place of all workshops/hearings. The draft Supplemental EIS will be available for public and agency review and comment prior to a public workshop/hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action and the EIS, as well as any requests for further information about the project or this proposed action, should be directed to the FHWA and/or MDOT at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: July 25, 1991.

William D. Richardson,

FHWA Division Administrator, Maine.

[FR Doc. 91–18242 Filed 7–31–91; 8:45 am]

BILLING CODE 4910-22-M

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ACTION: Notice.

SUMMARY: This notice amends the Conforming Products List for instruments which have been found to conform to the Model Specifications for Evidential Breath Testing Devices (49 FR 48854).

EFFECTIVE DATE: August 1, 1991.

FOR FURTHER INFORMATION CONTACT: Mrs. Robin Mayer, Office of Alcohol and State Programs, NTS-21, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590; Telephone: (202) 366–9825.

SUPPLEMENTARY INFORMATION: On November 5, 1973, the National Highway Traffic Safety Administration (NHTSA) published the Standards for Devices to Measure Breath Alcohol (38 FR 30459). A Qualified Products List of Evidential Breath Measurement Devices comprised of instruments that met this standard was first issued on November 21, 1974 (39 FR 41399).

On December 14, 1984 (49 FR 48854), NHTSA converted this standard to Model Specifications for Evidential Breath Testing Devices, and published in appendix D to that notice (49 FR 48864), a Conforming Products List (CPL) of instruments that were found to conform to the Model Specifications. Amendments to the CPL have been published in the **Federal Register** since that time.

Since the last publication of the CPL, one (1) breath measurement device has been tested and found to conform to the requirements of the Specifications for mobile and non-mobile evidential breath testers: CMI, Inc.'s Intoxilyzer 1400. Further, the designation of an approved instrument has been changed. Plus 4 Engineering, which previously submitted and had approved a modification to the Intoxilyzer 5000 (56 FR 11817), is designating that modification as "5000 Plus4". This is solely an editorial change.

The Conforming Products List is therefore amended as follows:

CONFORMING PRODUCTS LIST OF EVIDENTIAL BREATH MEASUREMENT DEVICES

Manufacturer and model	Mobile	Non-mobile
Alcohol Countermeasures System, Inc., Port Huron, MI		
Alert J3AD	X	X
BAC Systems, Inc., Ontario, Canada		
Breath Analysis computer		X
CAMEC Ltd., North Shields, Tyne and Ware, England		
IR Breath Analyzer	X	X
CMI, Inc., Owensboro, KY		
Intoxilyzer Model		
1400	X	X
4011	X	X
4011A	X	X
4011AS	X	X
4011AS–A	X	X
4011AS–AQ	X	X
4011 AW	X	X
4011A27–10100	X	X
4011A27–10100 with filter	X	X
5000	X	X
5000 (w/Cal. Vapor Re-Circ.)	X	X
5000 w/⅜" ID Hose option	X	X
5000 (CAL DOJ)	X	X
5000 (VA)	X	X
PAC 1200	X	X
SD–2	X	X
Decator Electronics, Decator, IL		
Alco-Tector model 500		X
Intoximeters, Inc., St. Louis, MO		
Photo Electric Intoximeter		X
GC Intoximeter MK II	X	X
GC Intoximeter MK IV	X	X
Auto Intoximeter	X	X
Intoximeter Model		
3000	X	X
3000 (rev B1)	X	X
3000 (rev B2)	X	X
3000 (rev B2A)	X	X
3000 (rev B2A) w/FM option	X	X
3000 (Fuel Cell)	X	X
3000 D	X	X
3000 DFC	X	X
Alco-Sensor III	X	X
Alco-Sensor IIIA	X	X
RBT III	X	X
Komyo Kitagawa, Kogyo, K.K.		
Alcolyzer DPA–2	X	X
Breath Alcohol Meter PAM 101B	X	X
Life-Loc, Inc., Wheat Ridge, CO		
PBA 3000–P	X	X
Lion Laboratories, Ltd., Cardiff, Wales, UK		
Alcolmeter Model	X	X
AE–D1	X	X
SD–2	X	X
EBA	X	X
Auto-Alcolmeter		X
Luckey Laboratories, San Bernadino, CA		
Alco-Analyzer Model		
1000		X
2000		X
National Draeger, Inc., Pittsburgh, PA		
Alcotest Model		
7010	X	X
7110	X	X
7410	X	X
Breathalyzer Model		
900	X	X
900A	X	X
900BG	X	X
National Patent Analytical Systems, Inc., East Hartford, CT		
BAC Datamaster	X	X
Omicron Systems, Palo Alto, CA		
Intoxilyzer Model		
4011	X	X
4011AW	X	X
Plus 4 Engineering, Minturn, CO		
5000 Plus4	X	X
Siemans-Allis, Cherry Hill, NJ		
Alcomat	X	X
Alcomat F	X	X
Smith and Wesson Electronics, Springfield, MA		
Breathalyzer Model		
900	X	X
900A	X	X
1000	X	X
2000	X	X
2000 (non-Humidity Sensor)	X	X
Stephenson Corp.		
Breathalyzer 900	X	X
U.S. Alcohol Testing, Inc./Protection Devices, Inc., Dayton, NJ		
Alco-Analyzer 1000		X
Alco-Analyzer 2000		X
Verax Systems, Inc., Fairport, NY		
The BAC Verifier	X	X
BAC Verifier Datamaster	X	X
BAC Verifier Datamaster II	X	X

(23 U.S.C. 402; delegations of authority at 49 CFR 1.50 and 501.)

Michael B. Brownlee,

Associate Administrator for Traffic Safety Programs.

[FR Doc. 91–18250 Filed 7–30–91; 9:09 am]

BILLING CODE 4910-59-M

Maritime Administration

[Docket No. S–880]

American President Lines, Ltd.; Application for a Waiver of Section 804(a) of the Merchant Marine Act, 1936, as amended, to Permit Foreign-Flag Space Charters

American President Lines, Ltd. (APL), by application dated June 28, 1991, requests waiver of the provisions of section 804 of the Merchant Marine Act, 1936, as amended, (Act), for *ad hoc* foreign-flag space charters by APL pursuant to APL's participation in the eastbound amended Transpacific Stabilization Agreement, designated Federal Maritime Commission (FMC) No. 203–11223, and in the westbound Transpacific Space Utilization Agreement, designated FMC No. 217–011324.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request within the meaning of section 804 of the Act and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5 p.m. on August 8, 1991. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies))

By Order of the Maritime Administrator.

Dated: July 29, 1991.

Joel C. Richard,

Acting Secretary, Maritime Administration.

[FR Doc. 91–18273 Filed 7–31–91; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 22-91]

Treasury Notes, Series AD-1993

Washington, July 24, 1991.

The Secretary announced on July 23, 1991, that the interest rate on the notes designated Series AD-1993, described in Department Circular—Public Debt Series—No. 22-91 dated July 18, 1991, will be 6⅞ percent. Interest on the notes will be payable at the rate of 6⅞ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 91-18303 Filed 7-31-91; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular—Public Debt Series—No. 22-91]

Treasury Notes, Series R-1996

Washington, July 25, 1991.

The Secretary announced on July 24, 1991, that the interest rate on the notes designated Series R-1996, described in Department Circular—Public Debt Series—No. 23-91 dated July 18, 1991, will be 7⅞ percent. Interest on the notes will be payable at the rate of 7⅞ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 91-18304 Filed 7-31-91; 8:45 am]

BILLING CODE 4810-40-M

Public Information Collection Requirements Submitted to OMB for Review

Date: July 25, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the paperwork reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0175.
Form Number: 4626.
Type of Review: Revision.
Title: Alternative Minimum Tax—Corporations (including environmental tax).
Description: Form 4626 is used by corporations to calculate their alternative minimum tax and environmental tax.
Respondents: businesses or other for-profit.
Estimated Number of Respondents: 100,000.
Estimated Burden Hours Per Response/Recordkeeping:
  Recordkeeping—18 hours, 11 minutes
  Learning about the law or the form—13 hours, 48 minutes
  Preparing and sending the form to IRS—14 hours, 43 minutes
Frequency of Response: Annually.
Estimated Total Recordkeeping/Reporting Burden: 4,669,000 hours.

OMB Number: 1545-0410.
Form Number: 6468,6469.
Type of Review: Extension.
Title: How to Prepare Form 6469 (Form 6468); Tape Label for Form W4 (Form 6460).
Description: 26 USC 3402 requires all employers making payments of wages to deduct (withhold) tax upon such payments. Employers are further required under Regulation 31.3402(f)(2)-1(g) to submit certain withholding certificates (W-4) to the IRS. Forms 6469 (labels) and 6468 (instructions) are sent to employers who prefer to file this information on magnetic tape.
Respondents: State or local governments, Farms, businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents: 70.
Estimated Burden Hours Per Response: 6 minutes
Frequency of Response: Quarterly.
Estimated Total Reporting Burden: 26 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhaul (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91-18198 Filed 7-31-91; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Date: July 25, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0128.
Form Number: 1120-L.
Type of Review: Revision.
Title: U.S. Life Insurance Company Income Tax Return.
Description: Life insurance companies are required to file an annual return of income and compute and pay the tax due. The data is used to insure that companies have correctly reported taxable income and paid the correct tax.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 2,440.
Estimated Burden Hours Per Response/Recordkeeping:
  Recordkeeping—75 hours, 34 minutes
  Learning about the law or the form—24 hours, 21 minutes
  Preparing the form—38 hours, 46 minutes
  Copying, assembling, and sending the form to IRS—3 hours, 29 minutes
Frequency of Response: Annually.
Estimated Total Recordkeeping/Reporting Burden: 346,870 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91-18199 Filed 7-31-91; 8:45 am]

BILLING CODE 4830-01-M

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ed 7–31–91; 8:45 am]

Public Information Collection Requirements Submitted to OMB for Review

Date: July 25, 1991.

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OMB Number: 1545–0128.

Form Number: 1120–L.

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Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 2,440.

Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping—75 hours, 34 minutes

Learning about the law or the form—24 hours, 21 minutes

Preparing the form—38 hours, 46 minutes

Copying, assembling, and sending the form to IRS—3 hours, 29 minutes

Frequency of Response: Annually.

Estimated Total Recordkeeping/Reporting Burden: 346,870 hours.

Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91–18199 Filed 7–31–91; 8:45 am]

BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco and Firearms

Granting of Relief, Federal Firearms Privileges

AGENCY: Bureau of Alcohol, Tobacco and Firearms, (ATF).

ACTION: Notice of granting of restoration of federal firearms privileges.

SUMMARY: The persons named in this notice have been granted restoration of their Federal firearms privileges by the Director, Bureau of Alcohol, Tobacco and Firearms.

As a result, these persons may lawfully acquire, transfer, receive, ship, and possess firearms if they are in compliance with applicable laws of the jurisdiction in which they live.

FOR FURTHER INFORMATION CONTACT: Special Agent in Charge Karl Stankovic, Firearms Enforcement Branch, Firearms Division, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, (202–566–7258).

SUPPLEMENTARY INFORMATION: In accordance with 18 U.S.C. 925(c), the persons named in this notice have been granted restoration of Federal firearms privileges with respect to the acquisition, transfer, receipt, shipment, or possession of firearms. These privileges were lost by reason of their convictions of crimes punishable by imprisonment for a term exceeding one year or because they otherwise fell within a category of persons prohibited by Federal law from acquiring, transferring, receiving, shipping or possessing firearms.

It has been established to the Director's satisfaction that the circumstances regarding the applicants' disabilities and each applicant's record and reputation are such that the applicants will not be likely to act in a manner dangerous to public safety, and that the granting of the restoration will not be contrary to the public interest.

The following persons have been granted restoration:

Adler, Carl 10905 North Kendall Drive, Apartment 307, Miami, Florida, convicted on November 2, 1948, in the Northern District Court of Chicago, Illinois.

Anderson, Thomas Alan 2609 North Jay Street, Chandler, Arizona, convicted on May 6, 1985, in the United States District Court, State of Arizona.

Ashley, John Wayne Route 5, Box 172–D, Hertford, North Carolina, convicted on January 5, 1962, in the United States District Court, Fayetteville, North Carolina.

Bagby, James Robert 4740 Barney School Road, Campbellsville, Kentucky, convicted on January 18, 1986, in the Taylor County Circuit Court, Campbellsville, Kentucky.

Beardsley, Jesse J. 1177 East Hill Road, Grand Blanc, Michigan, convicted on February 8, 1988, in the United States District Court, Flint, Michigan.

Bierschbach, Allen John 409 West Main Street, Melrose, Minnesota, convicted on June 12, 1984, in the United States District Court, St. Paul, Minnesota.

Bierschbach, Jerry Francis 40434 227th Avenue, Albany, Minnesota, convicted on June 11, 1984, in the United States District Court, Third Division, St. Paul, Minnesota.

Blossom, Aaron Kay 4660 Cottrell, Vassar, Michigan, convicted on January 6, 1987, in the United States District Court, Eastern Judicial District of Michigan.

Bresette, Albert Alson Senior 1 Joy Place, Portland, Maine, convicted on November 1, 1958, in the Oxford County Superior Court, Rumford, Maine.

Brewer, Bobby Neal Post Office Box 942, Russellville, Alabama, convicted on April 23, 1982, in the United States District Court, Northern District of Alabama, Birmingham, Alabama.

Brinig, Leroy Donald 5948 Regent Avenue North, Crystal, Minnesota, convicted on December 4, 1970, in the United States District Court, Judicial District of Minneapolis, Minnesota; and also on August 4, 1978, in the Hennepin County District Court, Minnesota.

Brown, Gerry Dale 506 Friedriech, Eldon, Missouri, convicted on June 2, 1971, in the Circuit Court of Camden, Missouri.

Brown, Silas Coley 1718 Rutland Court, Columbia, South Carolina, convicted on March 8, 1976, in the United States District Court, Jacksonville, Florida.

Brown, Willie Glen 317 West Bundy Avenue, Flint, Michigan, convicted on May 16, 1960, in the Circuit Court of Genesse County, Michigan.

Brummett, Michael Gregory 4404 Ridge Drive, High Ridge, Missouri, convicted on October 18, 1974, in the Circuit Court of St. Louis, Missouri.

Burnette, Tommy Dennis 44 Regent Drive, Greenville, South Carolina, convicted on September 10, 1986, in the United States District Court, Greenville, South Carolina.

Butler, David Leroy 406 Tuscaloosa Avenue, Apartment 8, Birmingham, Alabama, convicted on November 10, 1950, in the Circuit Court of Montgomery County, Alabama.

Cook, Otto Herman 2222 East 8th, Space 122, Pueblo, Colorado, convicted on May 3, 1984, in the Pueblo County District Court, Pueblo, Colorado.

Cope, Robert Lee 129 South Downey Avenue, Indianapolis, Indiana, convicted on August 9, 1984, in the Southern Judicial District of Indianapolis, Indiana.

Corporation, Northrop 1840 Century Park East, Los Angeles, California, convicted on February 27, 1990, in the United States District Court, Central District of California.

Coward, Wallace D. 4627 North Fifth Street, Philadelphia, Pennsylvania, convicted on September 5, 1974, in the Court of Common Pleas, Philadelphia, Pennsylvania.

Crenshaw, Charles Ray 8975 New Bowling Green Road, Smith Grove, Kentucky, convicted on July 26, 1976, in the Metcalfe Circuit Court, Edmonton, Kentucky.

Depasquale, Joseph Lewis 156–27 91st Street, Howard Beach, Queens, New York, convicted on March 4, 1965, in the United States District Court, Eastern Judicial District of New York.

Dolecki, Fred Arthur 6215 Charlesworth, Dearborn Heights, Michigan, convicted on June 12, 1961, in the United States District Court, Detroit, Michigan.

Drake, Joseph Freeman Junior 5011 Greenwood Road, Louisville, Kentucky, convicted on September 15, 1977, in the Jefferson Circuit Court, Louisville, Kentucky.

Dutcher, L.D. 6028 Flagstone Drive, Jackson, Michigan, convicted on April 15, 1976, in the Jackson County Circuit Court, Jackson, Michigan.

Eddy, Robert Leroy Route 2 Box 663, Raymond, Washington, convicted on June 22, 1981, in the Clatoop County Circuit Court, Oregon.

Eis, Camryn Nolyn 7902 Highway 147, Two Rivers, Wisconsin, convicted on May 20, 1986, in the Circuit Court of Manitowoc County, Manitowoc, Wisconsin.

Fauver, Rodney Allen 1599 Valley Mill Road, Winchester, Virginia, convicted on September 9, 1979, in the Frederick County Court, Winchester, Virginia.

Felgar, Walter Aten 122 West Hobard Avenue, Findlay, Ohio, convicted on May 18, 1967, in the United States District of Toledo, Ohio.

Folea, James William 662 Blair Street, St. Paul, Minnesota, convicted on August 18, 1980, in the United States District Court, Minneapolis, Minnesota.

Frazier, Douglas Gene 447 Division Avenue, Pittsburgh, Pennsylvania, convicted on January 25, 1963, in the Allegheny County Court, Pittsburgh, Pennsylvania.

Garner, Dennis Dwayne 100 Red Oak Circle, Lexington, Tennessee, convicted on January 10, 1975, in the United States District Court, Western District of Tennessee, Memphis, Tennessee.

Gary, Juan E. 1209 Hampton Avenue, Paducah, Kentucky, convicted on November 14, 1974, in the McCraken County Circuit Court, Paducah, Kentucky.

Gatlin, Ollie H. 11261 Highway 1078, Folson, Louisiana, convicted on November 20, 1984, in the United States District Court, Eastern Judicial District of Louisiana.

Hampton, Lester B. 8432 East Jefferson, Apartment 207, Detroit, Michigan, convicted on March 20, 1958, in the New Orleans, Parish, New Orleans, Louisiana.

Hannah, Joseph Michael 2720 Oklahoma, Muskogee, Oklahoma, convicted on December 13, 1971, in the District Court, Tulsa County, Oklahoma.

Hannigan, James Robertson Box 31, Ransom, Pennsylvania, convicted on July 1, 1963, in the United States District Court, Charleston, West Virginia.

Harris, Robert Andrew 401 Birch Avenue, Selma, Alabama, convicted on February 22, 1971 and March 11, 1971, in the Circuit Court of Dallas County, Alabama.

Hibshman, Franklin Carl Junior 51793 RD 19 North, Elkhart, Indiana, convicted on

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March 21, 1970, in the Elkhart Superior Court, Elkhart, Indiana.

Hilgar, Darren Dale Route 3, Box 559–E, Gravois Mills, Missouri, convicted on January 13, 1984, and on May 21, 1987, in the Circuit Court of Morgan County, Missouri.

Hoker, Dennis Frederick 14503 Swanfield Drive, Houston, Texas, convicted on March 19, 1973, and on April 8, 1974, in the Southern Judicial District Court of Texas; and also on November 6, 1975, in the Western Judicial District of Oklahoma.

Jackson, Roy Dan General Delivery, Cranks, New York, convicted on July 26, 1984, in the United States District Court, Roanoke, Virginia.

Jacobs, Ford Post Office Box 157, Pippa Passes, Kentucky, convicted on August 16, 1985, in the United States District Court, Pikeville, Kentucky.

James, Frederick Keith 311 Carefree Circle, Aberdeen, Washington, convicted on October 3, 1955, in the Grays Harbor Superior Court, Montesano, Washington.

Johnson, Michael Thomas 10251–A d'Iberville Road, d'Iberville, Mississippi, convicted on January 28, 1987, in the United States District Court, Southern District of Mississippi, Biloxi, Mississippi.

Johnson, Thomas B. 14006 Barcalow Street, Philadelphia, Pennsylvania, convicted on February 13, 1956, in the United States District Court, Eastern District of Pennsylvania.

Kemrer, Betsy Ellen 34 Kendes Road, Millersville, Pennsylvania, convicted on March 3, 1972, and March 29, 1973, in the Court of Common Pleas, Lancaster County, Pennsylvania.

King, Donald James 322 East Johnson Street, Fond du Lac, Wisconsin, convicted on October 27, 1980, in the Forest County Circuit Court of Wisconsin.

Kinsman, Cheryl 319 Perkasie Avenue, West Lawn, Pennsylvania, convicted on April 5, 1985, in the Jefferson County Court, Golden, Colorado.

Lamb, Floyd Roland Post Office Box 344, Buckhorn Ranch, Alamo, Nevada, convicted on March 14, 1984, in the United States District Court, Las Vegas, Nevada.

Mangold, Trevor Edison 8 Cheyenne Drive, Great Falls, Montana, convicted on September 3, 1986, in the United States District Court, Great Falls, Montana.

May, Lawrence Route 1, Box 902, Thomasville, North Carolina, convicted on June 28, 1977, in the Circuit Court for Buchanan County, Grundy, Virginia.

May, Theodore Frederick 3169 Emery Lane, Ravenna, Michigan, convicted on December 3, 1987, in the United States District Court, Western District of Michigan.

Mazzola, Charles Thomas 2611 NW. Marken Street, Bend, Oregon, convicted on April 20, 1981, in the Stanislaus County Superior Court, California.

McFarland, Mosel M. 1516 East Ambassador Lane, Ford Heights, Illinois, convicted on June 16, 1953, in the Circuit Court, Fredericksburg, Virginia.

McIntire, William Allan 1020 North Watts Street, Portland, Oregon, convicted on January 25, 1965, in the Municipal Court, Pomona County, Pomona, California.

Mohr, Robert Lee 13572 East Tremblay Drive, Vicksburg, Michigan, convicted on July 22, 1983, in the United States District Court, Wesern District of Michigan.

Morgan, Lehman Harvey 1206 Green Hollow Run, Douglas, Georgia, convicted on March 27, 1951, in the United States District Court, Middle District of Georgia, Valdosta, Georgia;, and March 29, 1988, in the United States District Court, Middle District of Georgia, Albany, Georgia.

Nickelson, Orlando Charles 231 South Warren, Newport, Washington, convicted on July 28, 1987, in the Pend Oreille County Superior Court, State of Washington.

Norton, Timothy Oriel 201 West Poplar Street, Cobden, Illinois, convicted on September 18, 1986, in the Southern Judicial District of Illinois.

Nugent, Padraic Pearse 149 Chicago Avenue, Massapequa, New York, convicted on April 6, 1985, in the United States District Court, Uniondale, New York.

Oelke, Donald Victor 1009 Hickory, Marathon, Wisconsin, convicted on February 17, 1984, in the United States District Court, Western District of Wisconsin, Madison, Wisconsin.

Pattee, Thomas James 153 East Main Street, Campbellsport, Wisconsin, convicted on May 13 1986, in the Circuit Court of Douglas County, Wisconsin.

Payne, Wilbert D. Junior 550B Hardaway Circle, Opelika, Alabama, convicted on September 3, 1980, in the United States District Court, Middle District of Alabama, Montgomery, Alabama.

Petkas, Anthony James 822 Plainwood, Houston, Texas, convicted on June 6, 1973, in the Texas Judicial District Court, Travis County, Texas.

Pieper, David Vernon Route 1, Box 372–A, Almond, Wisconsin, convicted on January 6, 1984, in the Fond du Lac County Circuit Court, Branch 4, Fond du Lac, Wisconsin.

Pride, Hemphill P. II 3025 Forest Drive, Columbia, South Carolina, convicted on December 16, 1977, in the United States District Court, Columbia, South Carolina.

Pruett, Johnny Walter 4183 Catalpa Hill Drive, Bartlett, Tennessee, convicted on February 13, 1987, in the Western Judicial District Court, Memphis, Tennessee.

Ransier, Sherry Elaine 8511–A Lawyer's Road, Charlotte, North Carolina, convicted on October 15, 1986, in the Mecklenburg County Superior Court, Charlotte, North Carolina.

Reese, Dennis James 215 West North Street, Geneseo, Illinois, convicted on July 7, 1989, in the United States District Court for the Eastern District of Alexandria, Virginia, Alexandria, Virginia.

Reno, Philip Joseph Junior 666 High Street, Apartment 2, Bath, Maine, convicted on August 10, 1978, in the Maine Superior Court, Bath, Maine.

Ristvedt, Michael David 204 Independence Street, West Salem, Illinois, convicted on September 16, 1965, in the United States District Court, Benton, Illinois.

Rushing, Wayne Eugene Country Club Apartment C–2, Lanett, Alabama, convicted on December 9, 1975, in the Superior Court of Sumter County, Georgia.

Sacks, John Edward 14501 Northwest Cornelius Road, Portland, Oregon, convicted on December 24, 1965, in the Oregon Circuit Court, Benton County, Oregon.

Schneider, Alfred Bernard 33 Beckerle Street, Danbury, Connecticut, convicted on January 9, 1973, in the United States District Court for the Southern District of New York.

Schuman, William Jerome Post Office Box 476, Lac du Flambeau, Wisconsin, convicted on February 25, 1981, in the Vilas County Court, Eagle River, Wisconsin.

Shunn, Gary Glen 7107 Mildred Lane, Loveland, Colorado, convicted on February 4, 1984, Larimer County District Court, Ft. Collins, Colorado.

Shyda, Doris Elaine 1635 South Lincoln Avenue, Lebanon, Pennsylvania, convicted on April 18, 1975, in the United States District Court, Baltimore, Maryland.

Sims, Ricky Lyn 1320 Glen Oaks Court, Norman, Oklahoma, convicted on February 2, 1981, in the United States District Court, Western District of Oklahoma.

Skaggs, Michael Wayne Route 1, Box 197, Mauckport, Indiana, convicted on April 16, 1985, in the County Court, Harrison County, Indiana.

Slate, Bobby Eugene 102–A Woodbend Court, Highpoint, North Carolina, convicted on October 16, 1984, in the United States District Court, Greensboro, North Carolina.

Smith, Donald Eugene Post Office Box 874, Bynum, Alabama, convicted on March 29, 1984, in the Calhoun County Circuit Court, Alabama.

Smitha, Sherman L. Route 3, Box 432, Shelbyville, Kentucky, convicted on June 1, 1982, in the United States District Court, Frankfort, Kentucky.

Solomon, Edward Ferris 3624 Tecumseh River Road, Lansing, Michigan, convicted on March 30, 1979, in the United States District Court, Grand Rapids, Michigan.

Sottile, James John 33 Sheryl Crescent, Smithtown, New York, convicted on December 9, 1974, in the United States District Court, Southern District of New York.

Sullivan, Edward Francis Route 1, Box 76, Delano, Minnesota, convicted on July 16, 1985, in the United States District Court, Judicial District of Minnesota, Minneapolis, Minnesota.

Sullivan, Patrick Sidney 18745 Rutledge Road, Wayzata, Minnesota, convicted on July 18, 1985, in the United States District Court, Judicial District of Minnesota.

Swann, Elverson Mitchell 6312 Shuman Street, Philadelphia, Pennsylvania, convicted on June 2, 1954, and on March 16, 1955, in the Philadelphia County Court, Philadelphia, Pennsylvania.

Thomson, Jeffry Alan 407 Third Avenue North, Onalaska, Wisconsin, convicted on November 13, 1981, in the LaCrosse County Circuit Court, Wisconsin.

Veatch, Joseph Edgar 1210 Oak Grove Road, Columbia, Kentucky, convicted on November 16, 1983, in the Adair County Court, Columbia, Kentucky.

Walizer, Jerome Irvin Rural Delivery 3, Cogan Station, Pennsylvania, convicted on November 3, 1981, in the Lycoming County

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Schneider, Alfred Bernard 33 Beckerle Street, Danbury, Connecticut, convicted on January 9, 1973, in the United States District Court for the Southern District of New York.

Schuman, William Jerome Post Office Box 476, Lac du Flambeau, Wisconsin, convicted on February 25, 1981, in the Vilas County Court, Eagle River, Wisconsin.

Shunn, Gary Glen 7107 Mildred Lane, Loveland, Colorado, convicted on February 4, 1964, Larimer County District Court, Ft. Collins, Colorado.

Shyda, Doris Elaine 1635 South Lincoln Avenue, Lebanon, Pennsylvania, convicted on April 18, 1975, in the United States District Court, Baltimore, Maryland.

Sims, Ricky Lyn 1320 Glen Oaks Court, Norman, Oklahoma, convicted on February 2, 1981, in the United States District Court, Western District of Oklahoma.

Skaggs, Michael Wayne Route 1, Box 197, Mauckport, Indiana, convicted on April 16, 1985, in the County Court, Harrison County, Indiana.

Slate, Bobby Eugene 102–A Woodbend Court, Highpoint, North Carolina, convicted on October 16, 1984, in the United States District Court, Greensboro, North Carolina.

Smith, Donald Eugene Post Office Box 874, Bynum, Alabama, convicted on March 29, 1984, in the Calhoun County Circuit Court, Alabama.

Smitha, Sherman L. Route 3, Box 432, Shelbyville, Kentucky, convicted on June 1, 1982, in the United States District Court, Frankfort, Kentucky.

Solomon, Edward Ferris 3624 Tecumseh River Road, Lansing, Michigan, convicted on March 30, 1979, in the United States District Court, Grand Rapids, Michigan.

Sottile, James John 33 Sheryl Crescent, Smithtown, New York, convicted on December 9, 1974, in the United States District Court, Southern District of New York.

Sullivan, Edward Francis Route 1, Box 76, Delano, Minnesota, convicted on July 16, 1985, in the United States District Court, Judicial District of Minnesota, Minneapolis, Minnesota.

Sullivan, Patrick Sidney 18745 Rutledge Road, Wayzata, Minnesota, convicted on July 18, 1985, in the United States District Court, Judicial District of Minnesota.

Swann, Elverson Mitchell 6312 Shuman Street, Philadelphia, Pennsylvania, convicted on June 2, 1954, and on March 16, 1955, in the Philadelphia County Court, Philadelphia, Pennsylvania.

Thomson, Jeffry Alan 407 Third Avenue North, Onalaska, Wisconsin, convicted on November 13, 1981, in the LaCrosse County Circuit Court, Wisconsin.

Veatch, Joseph Edgar 1219 Oak Grove Road, Columbia, Kentucky, convicted on November 16, 1983, in the Adair County Court, Columbia, Kentucky.

Walizer, Jerome Irvin Rural Delivery 3, Cogan Station, Pennsylvania, convicted on November 3, 1961, in the Lycoming County

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Criminal Court, Williamsport, Pennsylvania.

Ward, Richard Francis 2430 Woodward Avenue, Pittsburgh, Pennsylvania, convicted on June 6, 1984, in the Common Pleas Court, Alleghany County, Pittsburgh, Pennsylvania.

Warren, James Larry 1104 Cottonwood Lane, Dexter, Missouri, convicted on June 11, 1984, in the United States District Court, for the Eastern Judicial District of Missouri.

Wiliams, Donald Lee 8700 Westgate Street, Metaire, Louisiana, convicted on February 27, 1969, in the United States District Court of Alabama, Mobile, Alabama.

Compliance with Executive Order 12291

It has been determined that this notice is not a "major rule" within the meaning of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Signed: July 24, 1991.

Stephen E. Higgins,

Director.

[FR Doc. 91–18200 Filed 7–31–91; 8:45 am]

BILLING CODE 4810-31-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "The Radiance of Jade and the Crystal Clarity of Water: Korean Ceramics from the Ataka Collection" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the temporary exhibition or display of the listed exhibit objects at The Art Institute of Chicago, beginning on or about November 23, 1991, to on or about February 3, 1992, The Asian Art Museum of San Francisco (the Avery Brundage Collection), beginning on or about March 2, 1992, to on or about April 26, 1992, and at The Metropolitan Museum of Art, New York, New York, beginning on or about May 20, 1992, to on or about July 12, 1992, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: July 19, 1991.

Alberto J. Mora,

General Counsel.

[FR Doc. 91–18212 Filed 7–23–91; 8:45 am]

BILLING CODE 8230-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Modification of Sugar Tariff-Rate Quota Allocation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of modification of sugar tariff-rate import quota allocation.

SUMMARY: Notice is hereby given that the allocation of the tariff-rate import quota for sugar is modified by restoring to South Africa an allocation of the tariff-rate quota for sugar imports that was previously transferred to the Philippines under the Comprehensive Anti-Apartheid Act of 1986.

EFFECTIVE DATE: This notice is effective on October 1, 1991.

FOR FURTHER INFORMATION CONTACT: Joseph Papovich, Senior Agriculture Trade Policy Advisor, 395–5006, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20506.

SUPPLEMENTARY INFORMATION: Section 323 of the Comprehensive Anti-Apartheid Act of 1986 (CAAA) (22 U.S.C. 5073) prohibited the importation into the United States of sugars, syrups, or molasses that are products of the Republic of South Africa, and increased the allocation of the Philippines under the absolute sugar import quota then in effect by the amount that had been allocated to the Republic of South Africa. Executive Order 12571 of October 27, 1986, delegated to the United States Trade Representative responsibility for the implementation of the relevant provisions of section 323.

Section 311 of the CAAA provides in relevant part for the termination of title III of the CAAA upon the fulfillment of 5 specified conditions. As stated in Executive Order No. 12769, dated July 10, 1991 (56 FR 31855), the President has concluded that these conditions have been fulfilled. Accordingly, the provisions of title III of the CAAA, including section 323, are terminated.

Presidential Proclamation No. 6179 of September 13, 1990 (55 FR 38923) converted the U.S. absolute sugar import quota into a tariff-rate quota, effective October 1, 1990. The provisions applicable to the tariff-rate quota are contained in Additional U.S. Note 3 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS). Paragraph (b)(i) of Additional U.S. Note 3 specifies the country-by-country allocation of the base quota amount for sugar imported under specified HTS subheadings. Paragraph (b)(ii) of Additional U.S. Note 3 provides that "The United States Trade Representative, after consultation with the Secretaries of State and Agriculture, may modify, suspend (for all or part of the of the [sic] quota amount), or reinstate the allocations provided for in this paragraph (including the addition or deletion of any country or area) if he finds that such action is appropriate to carry out the obligations of the United States under any international agreement to which the United States is a party."

In accordance with Executive Order No. 12571, and after consulting with the Secretaries of State and Agriculture, I have determined that, based on the termination of section 323 of the CAAA, it is appropriate to modify the allocations provided for in paragraph (b)(i) of Additional U.S. Note 3 to HTS chapter 17 to carry out the obligations of the United States under the General Agreement on Tariffs and Trade, in order to restore to the Republic of South Africa the sugar tariff-rate quota allocation previously transferred from it to the Philippines pursuant to section 323 of the CAAA.

Accordingly, Additional U.S. Note 3 to chapter 17 of the HTS is modified in paragraph (b)(i) by inserting immediately after the allocation for the Philippines a new allocation as follows: "South Africa 2.3", and by modifying the percentage distribution for the

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[1] A copy of this list may be obtained by contacting Ms. Lorie J. Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202/619–6975, and the address is U.S. Information Agency, 301 Fourth Street, SW., room 700, Washington, DC 20547.

Philippines by striking out "15.6" and inserting "13.5" in lieu thereof.

This action shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after the beginning of the new tariff-rate quota period, which is October 1, 1991, and the HTS is accordingly modified on such date.

Carla A. Hills,

United States Trade Representative.

[FR Doc. 91-18244 Filed 7-31-91; 8:45 am]

BILLING CODE 3190-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 148
Thursday, August 1, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:06 a.m. on Monday July 29, 1991, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to a certain financial institution.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision) and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsection (c)(2), (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: July 29, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91-18341 Filed 7-29-91; 4:48 pm]

BILLING CODE 6714-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:30 a.m., Wednesday, August 7, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTRACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded annoucement of bank and bank holding company applications scheduled for the meeting.

Dated: July 30, 1991.

Jennifer J. Johnson,

Assoicate Secretary of the Board.

[FR Doc. 91. 18413 Filed 7-30-91; 2:07 pm]

BILLING CODE 6210-01-M

LEGAL SERVICES CORPORATION

Board of Directors Meeting; Advance Notice

TIME AND DATE: A meeting of the Board of Directors will be held on October 21, 1991. The meeting is tentatively scheduled to commence at 9:00 a.m.

PLACE: Portland Regency Hotel, 20 Milk Street, Portland, Maine 04101, (207) 774-4200, 1-800-727-3436.

The Legal Services Corporation has made arrangements with the Portland Regency Hotel to make available to the public the hotel lodging rate obtained by the Corporation. Accordingly, and due to the limited number of rooms available on October 20-21, 1991, interested members of the public are requested to contact the hotel directly at either of the telephone numbers listed above to make lodging reservations. Please advise the hotel reservationist that you are seeking to reserve a room being held in the name of the Legal Services Corporation. Members of the public must make reservations by September 19, 1991, and will be responsible for making direct payment for lodging costs to the Portland Regency Hotel upon departure. Please note that hotel reservations cannot be made through the Legal Services Corporation.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED: [To be announced]

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 863-1839.

[For Hotel Reservations and/or Related Information, Please Contact the Portland Regency Hotel At the Above-Noted Telephone Numbers.]

Date Issued: July 30, 1991.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 91-18441 Filed 7-30-91 4:00 pm]

BILLING CODE 7050-01-M

LEGAL SERVICES CORPORATION

Board of Directors Meeting; Advance Notice

TIME AND DATE: A meeting of the Board of Directors will be held on September 16, 1991. The meeting is tentatively scheduled to commence at 9:00 a.m.

PLACE: Ramada Renaissance Hotel, 1001 County Line Road, The Ballroom, Jackson, Mississippi 39211 (601) 957-2800.

The Legal Services Corporation has made arrangements with the Ramada Renaissance Hotel to make available to the public the hotel lodging rate obtained by the Corporation. Accordingly, and due to the limited number of rooms available, interested members of the public are requested to contact the hotel directly at the telephone number listed above to make lodging reservations. Please advise the hotel reservationist that you are seeking to reserve a room being held in the name of the Legal Services Corporation. Members of the public must make reservations by September 1, 1991, and will be responsible for making direct payment for lodging costs to the Ramada Renaissance Hotel upon departure. Please note that hotel reservations cannot be made through the Legal Services Corporation.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED: [To be announced]

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office (202) 863-1839.

[For Hotel Reservations and/or Related Information, Please Contact the Ramada Renaissance Hotel at the Above-Noted Telephone Number.]

Date Issued: July 30, 1991.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 91-18442 Filed 7-30-91; 4:00 pm]

BILLING CODE 7050-01-M

LEGAL SERVICES CORPORATION

Board of Directors Meeting; Advance Notice

TIME AND DATE: A meeting of the Board of Directors will be held on November 11, 1991. The meeting is tentatively scheduled to commence at 9:00 a.m.

PLACE: Lowes L'Enfant Plaza Hotel, 480 L'Enfant Plaza, S.W., Washington, D.C. 20024; (202) 484-1000; 800-243-1166 (Reservations)

The Legal Services Corporation has made arrangements with the Lowes L'Enfant Plaza Hotel to make available to the public the hotel lodging rate obtained by the Corporation. Accordingly, and due to the limited number of rooms available, interested members of the public are requested to contact the hotel directly at either of the telephone numbers listed above to make lodging reservations. Please advise the hotel reservationist that you are seeking to reserve a room being held in the name of the Legal Services Corporation. Members of the public must make reservations by October 11, 1991, and will be responsible for making direct payment for lodging costs to the Lowes L'Enfant Plaza Hotel upon departure. Please note that hotel reservations cannot be made through the Legal Services Corporation.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED: [To be announced]

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 863-1839.

[For Hotel Reservations and/or Related Information, Please Contact the Lowes L'Enfant Plaza Hotel at the Above-Noted Telephone Numbers.]

Date Issued: July 30, 1991.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 91-18443 Filed 7-30-91; 4:00 pm]

BILLING CODE 7050-01-M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 C.F.R. Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 3:00 p.m. on Thursday, August 8, 1991, and at 8:30 a.m. on Friday, August 9, 1991, in Washington, D.C. The August 8 meeting, at which the Board will consider 1) a filing with the Postal Rate Commission for a walk sequence discount for third-class mail; 2) the procurement of light delivery vehicles; and 3) the Postal Rate Commission's Decision in Docket No. R90-1, is closed to the public.

The August 9 meeting is open to the public and will be held in the Benjamin Franklin Room on the 11th floor of U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

Agenda

Thursday Session

August 8—3:00 p.m. (Closed)

1. Consideration of a Filing with the Postal Rate Commission for a Walk Sequence Discount for Third-Class Mail. (Frank R. Heselton, Assistant Postmaster General, Rates and Classification Department)
2. Capital Investment for Light Delivery Vehicles. (Arthur Porwick, Assistant Postmaster General, Operations Systems and Performance Department, and A. Keith Strange, Acting Assistant Postmaster General, Procurement and Supply Department)
3. Consideration of the Postal Rate Commission's Decision in Docket No. R90-1.

Friday Session

August 9—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, July 1-2, 1991.
2. Remarks of the Postmaster General. (Anthony M. Frank)
3. Postal Rate Commission FY 1992 Budget Request. (Norma Pace, Chairman)
4. Capital Investments:
    a. Memphis, Tennessee, Southern Regional Office and Service Centers. (Messrs. Lee and Smith)
    b. National Eagle Hub Facility. (Messrs. Kane and Smith)
    c. Santa Ana, California, South Orange County Annex, Advance Site Acquisition. (Mr. Smith)
    d. Boston, Massachusetts, General Mail Facility Rehabilitation, Part I. (Messrs. Smith and Ranft)
    e. Louisville, Kentucky, Airport Mail Facility. (Messrs. Smith and Syers)
    f. Denver, Colorado, Airport Mail Facility. (Messrs. Smith and Beebe)
5. Quarterly Report on Finance Performance. (Comer S. Coppie, Senior Assistant Postmaster General, Finance Group)
6. Tentative FY 1993 Budget Request. (Mr. Coppie)
7. Quarterly Report on Service Performance. (Ann McK. Robinson, Consumer Advocate)
8. EXFC's Impact on Operations. (William R. Cummings, Senior Assistant Postmaster General, Operations Support Group)
9. Tentative Agenda for September 9-10, 1991, meeting in Ottawa, Canada.

David F. Harris,

Secretary.

[FR Doc. 91-18414 Filed 7-30-91; 2:08 pm]

BILLING CODE 7710-12-M

30, 1991.

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Filed 7–30–91; 4:00 pm]
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OSTAL SERVICE BOARD

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Governors of the United
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and 3) the Postal Rate
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Board, David F. Harris,

(Closed)
of a Filing with the Postal
or a Walk Sequence
Class Mail. (Frank R.
Postmaster General,
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Postmaster General, Operations Systems and Performance Department, and A. Keith Strange, Acting Assistant Postmaster General, Procurement and Supply Department)

3. Consideration of the Postal Rate Commission's Decision in Docket No. R90–1.

Friday Session

August 9—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, July 1–2, 1991.

2. Remarks of the Postmaster General. (Anthony M. Frank)

3. Postal Rate Commission FY 1992 Budget Request. (Norma Pace, Chairman)

4. Capital Investments:

a. Memphis, Tennessee, Southern Regional Office and Service Centers. (Messrs. Lee and Smith)

b. National Eagle Hub Facility. (Messrs. Kane and Smith)

c. Santa Ana, California, South Orange County Annex, Advance Site Acquisition. (Mr. Smith)

d. Boston, Massachusetts, General Mail Facility Rehabilitation, Part I. (Messrs. Smith and Ranft)

e. Louisville, Kentucky, Airport Mail Facility. (Messrs. Smith and Syers)

f. Denver, Colorado, Airport Mail Facility. (Messrs. Smith and Beebe)

5. Quarterly Report on Finance Performance. (Comer S. Coppie, Senior Assistant Postmaster General, Finance Group)

6. Tentative FY 1993 Budget Request. (Mr. Coppie)

7. Quarterly Report on Service Performance. (Ann McK. Robinson, Consumer Advocate)

8. EXFC's Impact on Operations. (William R. Cummings, Senior Assistant Postmaster General, Operations Support Group)

9. Tentative Agenda for September 9–10, 1991, meeting in Ottawa, Canada.

David F. Harris,

Secretary.

[FR Doc. 91–18414 Filed 7–30–91; 2:08 pm]

BILLING CODE 7710–12–M

Corrections

Federal Register
Vol. 56, No. 148
Thursday, August 1, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 878

[Docket Nos. 88p-0179, 88p-0173, 88p-0136]

Medical Devices; Reclassification and Codification of Nonabsorbable Poly(Ethylene Terephthalate) Surgical Suture, Nonabsorbable Polypropylene Surgical Suture, and Nonabsorbable Polyamide Surgical Suture

Correction

In rule document 91-12954 beginning on page 24684 in the issue of Friday, May 31, 1991, make the following corrections:

1. On page 24685, in the first column, in the first paragraph, in the ninth line, "polyamide" should read "polypropylene".

2. On the same page, in the same column, in the same paragraph, in the 2d line from the bottom; in the 3d paragraph, in the 3d and 13th lines; and in the 4th paragraph in the 10th line, "polypropylene" should read "polyamide"

3. On the same page, in the second column, the heading "**List of Subjects in 211 CFR Part 878**" should read "**List of Subjects in 21 CFR Part 878**".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Schedule of New and Revised Fees for Access to NOAA Environmental Data and Information and Products Derived Therefrom

Correction

In notice document 91-17090 beginning on page 33259, in the issue of Friday, July 19, 1991, make the following correction:

On page 33262, a portion of the table containing the "Schedule of Fees" was omitted. In section "C. Photogrammetry Branch", after the entry "Aerial Photograph: 4X color Enlargement," add section D and the omitted portion of section E set forth below.

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Name of Product/Data/ Publication/Information	Current Fee	Supplemental Fee	Fair Market Fee	Supplemental Fee Range Low	Supplemental Fee Range High
D. Aeronautical Charting Division:					
Uncomposited Negative	$101.00	$238.36	$339.36	$166.85	$357.54
Composited Negative (minimum order which includes two elements)					
Each additional element	$121.00	$285.56	$406.56	$199.89	$428.34
Bromide Print	$29.00	$68.44	$97.44	$47.91	$102.66
Research Request Litigation (one hour)	$35.00	$82.60	$117.60	$57.82	$123.90
Research Request Non-Litigation (one hour)	$28.00	$66.08	$94.08	$46.26	$99.12
Obsolete Charts	$3.00	$7.08	$10.08	$4.96	$10.62
Special Mailing (for each 15 items (or fraction thereof)	$5.00	$11.80	$16.80	$8.26	$17.70
Agents Mail Label Run	$82.00	$193.52	$275.52	$135.46	$290.28
Special Obsolete Charts for Litigation Cases	$6.00	$14.16	$20.16	$9.91	$21.24
E. Ocean & Lake Levels Division:					
Tides, Six-Minute Water Level Heights	$140.00	$330.40	$470.40	$231.28	$495.60
Tides, Hourly Heights (1-3 months)	$101.00	$238.36	$339.36	$166.85	$357.54
Tides, Hourly Heights (one year)	$107.00	$252.52	$359.52	$176.76	$378.78
Tides, Hourly Heights (nth year)	$30.00	$70.80	$100.80	$49.56	$106.20
Tides, Times and Heights of High and Low Waters (1-3 months)	$97.00	$228.92	$325.92	$160.24	$343.38
Tides, Times and Heights of High and Low Waters (one year)	$106.00	$250.16	$356.16	$175.11	$375.24
Tides, Times and Heights of High and Low Waters (nth year)	$30.00	$70.80	$100.80	$49.56	$106.20
Tides, Times and Heights of High and Low Waters and Hourly Heights	$49.00	$115.64	$164.64	$80.95	$173.46
Tides ABC, Near Real-Time Water Level Heights	$16.00	$37.76	$53.76	$26.43	$56.64
Summary of Monthly Tidal Means and Extremes (complete series)	$70.00	$165.20	$235.20	$115.64	$247.80
Summary of Monthly Tidal Means and Extremes (single type)	$26.00	$61.36	$87.36	$42.95	$92.04
Published Bench Mark Sheets with Tidal Datums (single copy)	$10.00	$23.60	$33.60	$16.52	$35.40
Published Bench Mark Sheets with Tidal Datum (nth copy)	$4.00	$9.44	$13.44	$6.61	$14.16

urrent Fee	Supplemental Fee	Fair Market Fee	Supplemental Fee Range Low	Supplemental Fee Range High
01.00	$238.36	$339.36	$166.85	$357.54
21.00	$285.56	$406.56	$199.89	$428.34
29.00	$68.44	$97.44	$47.91	$102.66
5.00	$82.60	$117.60	$57.82	$123.90
28.00	$66.08	$94.08	$46.26	$99.12
3.00	$7.08	$10.08	$4.96	$10.62
5.00	$11.80	$16.80	$8.26	$17.70
2.00	$193.52	$275.52	$135.46	$290.28
6.00	$14.16	$20.16	$9.91	$21.24
0.00	$330.40	$470.40	$231.28	$495.60
1.00	$238.36	$339.36	$166.85	$357.54
7.00	$252.52	$359.52	$176.76	$378.78
0.00	$70.80	$100.80	$49.56	$106.20
.00	$228.92	$325.92	$160.24	$343.38
.00	$250.16	$356.16	$175.11	$375.24
.00	$70.80	$100.80	$49.56	$106.20
.00	$115.64	$164.64	$80.95	$173.46
00	$37.76	$53.76	$26.43	$56.64
00	$165.20	$235.20	$115.64	$247.80
00	$61.36	$87.36	$42.95	$92.04
00	$23.60	$33.60	$16.52	$35.40
00	$9.44	$13.44	$6.61	$14.16

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federal register

Thursday
August 1, 1991

Part II

Department of Transportation

Coast Guard

33 CFR Part 161
National Vessel Traffic Services Regulations; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 161

[CGD 90-020]

RIN 2115-AD56

National Vessel Traffic Services Regulations

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Oil Pollution Act of 1990 directed the Coast Guard to require appropriate vessels to participate in VTS systems. To accomplish this, the Coast Guard proposes requiring participation for vessels using the San Francisco, Houston/Galveston, and Louisville VTS systems, which are currently operated on a voluntary basis. The Coast Guard also proposes to simplify existing Vessel Traffic Service (VTS) regulations by promulgating standard national vessel traffic management and reporting procedures. The effect of this rulemaking would result in consolidated national VTS regulations, supplemented as necessary with local VTS rules. The rules for the Juan de Fuca Cooperative Vessel Traffic Management System (CVTMS) and Mississippi River would be independent and not a component of the National VTS rules, but are included in this part because of their vessel traffic management functions. These proposed rules are intended to enhance safe vessel movement by reducing the potential for groundings and collisions, and to minimize the risk of environmental harm resulting from collisions and groundings.

DATES: Comments must be received on or before September 30, 1991.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2/3406), (CGD 90-20), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is 267-1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Bruce Riley, Project Manager, Navigation Safety Systems Special Projects Staff, Tel. (202) 267-0412.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 90-020) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under "**ADDRESSES.**" If it determines that the opportunity for oral presentations will aid in this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

Drafting Information

The principal persons involved in drafting this document are Bruce Riley, Project Manager, and Nicholas Grasselli, Project Counsel, Office of Chief Counsel.

Background and Purpose

Currently, VTS Puget Sound, the Juan de Fuca Region Cooperative Vessel Traffic Management System, VTS Prince William Sound, VTS Berwick Bay, VTS St. Marys River and VTS New York require vessels, by regulation, to participate in their VTS systems. However, VTS San Francisco, VTS Houston/Galveston and VTS Louisville operate traffic systems with voluntary participation, and rely upon the cooperation and support of the marine community for their success. Although participation in the present voluntary systems is high, marine industry support is not sufficiently reliable when considering the potential for catastrophe.

Each existing VTS regulation was promulgated under a separate section in the Code of Federal Regulations (CFR) and therefore, much of the wording in each section is duplicative. This proposal would consolidate existing regulations for U.S. VTSs thereby eliminating duplication and create one national VTS regulation, modified or supplemented with local rules to address individual VTS operations. The Juan de Fuca Cooperative Vessel Traffic Management System and the Mississippi River regulations will remain as previously written, except for minor editorial changes, and will stand alone.

Local rules, requiring participation in VTS San Francisco, VTS Houston/Galveston and VTS Louisville, have been developed and are included in proposed subpart B.

Discussion of Proposed Amendments

Part 161 is being largely rewritten and completely reorganized.

Subpart A would contain uniform national regulations generated from existing regulations, which would be applicable to all VTS areas. In these VTS areas, vessels would be required to: (1) Communicate with the VTC on certain designated frequencies in clear and unbroken English; (2) ensure that a copy of the regulations are on board; (3) provide the VTC with required movement and status reports; and (4) adhere to the prescribed traffic separation scheme.

Subpart B would contain local rules. The local rules include items of special interest to each VTS such as specific reporting points, operating frequencies, and area descriptions. The local rules for VTS Puget Sound, VTS Prince William Sound, VTS New York, VTS St. Marys River and VTS Berwick Bay were taken from existing rules. Local rules for required participation have been developed in cooperation with local mariners for VTS San Francisco, VTS Houston/Galveston, and VTS Louisville.

Subpart C would contain rules for the Juan de Fuca Region Cooperative Vessel Traffic Management System (CVTMS) and for portions of the Mississippi River. These rules have been amended for editorial purposes only.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary since the vast majority of vessel owners or operators affected by this rulemaking either participate voluntarily in existing VTSs or are required to participate in these VTSs by the present regulations.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have significant economic impact on a substantial number of small entities.

INFORMATION:

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River regulations will remain as previously written, except for minor editorial changes, and will stand alone.

Local rules, requiring participation in VTS San Francisco, VTS Houston/Galveston and VTS Louisville, have been developed and are included in proposed subpart B.

Discussion of Proposed Amendments

Part 161 is being largely rewritten and completely reorganized.

Subpart A would contain uniform national regulations generated from existing regulations, which would be applicable to all VTS areas. In these VTS areas, vessels would be required to: (1) Communicate with the VTC on certain designated frequencies in clear and unbroken English; (2) ensure that a copy of the regulations are on board; (3) provide the VTC with required movement and status reports; and (4) adhere to the prescribed traffic separation scheme.

Subpart B would contain local rules. The local rules include items of special interest to each VTS such as specific reporting points, operating frequencies, and area descriptions. The local rules for VTS Puget Sound, VTS Prince William Sound, VTS New York, VTS St. Marys River and VTS Berwick Bay were taken from existing rules. Local rules for required participation have been developed in cooperation with local mariners for VTS San Francisco, VTS Houston/Galveston, and VTS Louisville.

Subpart C would contain rules for the Juan de Fuca Region Cooperative Vessel Traffic Management System (CVTMS) and for portions of the Mississippi River. These rules have been amended for editorial purposes only.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary since the vast majority of vessel owners or operators affected by this rulemaking either participate voluntarily in existing VTSs or are required to participate in these VTSs by the present regulations.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have significant economic impact on a substantial number of small entities.

"Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

The types of present users of VTSs would not change significantly because of this proposal. The modification of radio equipment, if necessary, would only affect a very small number of vessel owners or operators and would not incur a substantial cost. The Coast Guard expects that no vessel will be required to purchase new radio equipment.

Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

The portions of this proposed rulemaking requiring the collection of information under the Paperwork Reduction Act and 5 CFR part 1320, have been approved by a blanket OMB approval for 33 CFR part 161 (approval number 2115-0540). New information collection requirements would be added for VTS San Francisco, VTS Houston/Galveston and VTS Louisville, but will also be covered.

The voice reports required by these proposed rules are considered to be operational communications and transitory in nature, and therefore do not constitute the collection of information under the Paperwork Reduction Act.

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2. of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. Since this action is aimed primarily at regulatory action requiring the Master, Pilot, or person directing the movement of the vessel to continue participating in the VTS systems, no effect on the environment is expected. While the Coast Guard also recognizes that this rulemaking may also have a positive effect on the environment by minimizing the risk of environmental harm resulting from collisions and groundings, the impact is not expected to be significant enough to warrant further documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "**ADDRESSES.**"

List of Subjects in 33 CFR Part 161

Harbors, Navigation (water), Vessels, Waterways.

For the reasons set out in the preamble, the Coast Guard proposes to revise part 161 of title 33 CFR and its authority citation as follows:

PART 161—VESSEL TRAFFIC MANAGEMENT

Subpart A—National Vessel Traffic Services General Rules

Sec.
161.10 Purpose.
161.11 Applicability.
161.12 Definitions.
161.13 Vessel operation.
161.14 Other laws and regulations.
161.15 VTC directions.
161.16 Requirement to carry regulations.
161.17 Authorization to deviate from these rules.

Traffic Separation Scheme (TSS) Rules

161.20 Purpose of the TSS.
161.21 Vessel operation in the TSS.

Communications Rules

161.30 Radiotelephone required.
161.31 English language.
161.32 Time.
161.33 Designated frequencies.

Vessel Movement System Reporting Rules

161.40 Reports.
161.41 Initial report.
161.42 Underway report.
161.43 Follow-up reports.
161.44 Report of emergency deviation.
161.45 Final report.
161.46 Report of impairment to the operation of the vessel.
161.47 Miscellaneous reports.

Descriptions and Geographic Coordinates

161.50 VTS Areas.

Subpart B—Local Requirements

Vessel Traffic Service New York (VTSNY)

161.101 Designated frequencies.
161.102 Reporting points.
161.103 VTS New York Area.
161.104 VTS New York Users Manual.

Vessel Traffic Service Louisville (VTSL)

161.201 Description of operations.
161.202 Applicability.
161.203 Designated frequencies.
161.204 Reporting points.
161.205 Emergencies.
161.206 VTS Louisville Area.
161.207 VTS Louisville Users Manual.

Vessel Traffic Service Houston/Galveston (VTSH/G)

Sec.
161.821 Designated frequencies.
161.822 Initial report.
161.823 Follow-up reports.
161.824 Special operation.
161.825 Ferry reports.
161.826 Reporting points.
161.827 VTS Houston/Galveston Area.
161.828 VTS Houston/Galveston Users Manual.

Vessel Traffic Service Berwick Bay (VTSBB)

161.841 Applicability.
161.842 Definitions.
161.843 Designated frequency.
161.844 Radiotelephone equipment failure.
161.845 Means of reporting.
161.846 Initial report.
161.847 Follow-up report.
161.848 Reporting points.
161.849 High water towing limitations.
161.850 Precautionary notices.
161.851 Visual displays when limitations are in effect.
161.852 Notice of when limitations are in effect.
161.853 Operational limitations.
161.854 Horsepower limitations.
161.855 VTS Berwick Bay Area.
161.856 VTS Berwick Bay Users Manual.

Vessel Traffic Service St. Marys River (VTSSMR)

161.901 Applicability.
161.902 Designated frequency.
161.903 Vessel movement reporting.
161.904 Reporting points.
161.905 Seasonal or temporary reporting points.
161.906 Transit of Canadian waters.
161.907 Ferry reports.
161.908 One-way traffic—normal conditions.
161.909 Meeting or overtaking in channels.
161.910 Winter navigation.
161.911 Anchorages—general.
161.912 Emergency anchoring.
161.913 Unauthorized anchorage.
161.914 Anchoring of dredging, construction or wrecking plants in channels.
161.915 Shifting anchorage under direction of the VTC.
161.916 Order of departure from anchorage.
161.917 Maximum speed limits.
161.918 Temporary speed limits.
161.919 Minimum speed limit through dredged channels.
161.920 Rules for towing vessels.
161.921 Channel closure and special rules.
161.922 VTS St. Marys River Area.
161.923 VTS St. Marys River Users Manual.

Vessel Traffic Service San Francisco (VTSSF)

161.1101 Designated frequencies.
161.1102 Reporting points.
161.1103 Separation zones.
161.1104 Traffic lanes.
161.1105 Precautionary areas.
161.1106 Standard route deviations.
161.1107 Narrow channels or fairways.
161.1108 Safety procedures for vessels carrying certain dangerous cargoes in San Francisco Bay.
161.1109 VTS San Francisco Area.

Sec.
161.1110 VTS San Francisco Users Manual.

Vessel Traffic Service Puget Sound (VTSPS)

161.1301 Applicability.
161.1302 Navigation requirements.
161.1303 Cooperative Vessel Traffic Management System (CVTMS).
161.1304 Designated frequencies.
161.1305 Initial report.
161.1306 Underway report.
161.1307 Follow-up reports.
161.1308 Ferry reports.
161.1309 Local harbor reports.
161.1310 Separation zones.
161.1311 Traffic lanes east of Port Angeles.
161.1312 Precautionary areas east of Port Angeles.
161.1313 Rosario Strait and Guemes Channel Rules.
161.1314 Before entering Rosario Strait or Guemes Channel.
161.1315 Entering and transiting Rosario Strait or Guemes Channel.
161.1316 Passing arrangements in Rosario Strait or Guemes Channel.
161.1317 VTS Puget Sound Area.
161.1318 VTS Puget Sound Users Manual.

Vessel Traffic Service Prince William Sound (VTSPWS)

161.1701 Designated frequency.
161.1702 Initial report.
161.1703 Follow-up report.
161.1704 Reporting points.
161.1705 Traffic lanes.
161.1706 Separation zone.
161.1707 One-way traffic in Valdez Narrows.
161.1708 Entering Valdez Narrows.
161.1709 Communications in Valdez Narrows.
161.1710 Tank ships in the VTS Area.
161.1711 Tug assistance for tank ships.
161.1712 Special circumstances.
161.1713 VTS Prince William Sound Area.
161.1714 VTS Prince William Sound Users Manual.

Subpart C—Other Vessel Traffic Management Systems

Juan De Fuca Region Cooperative Vessel Traffic Management System (CVTMS)

General Rules

161.2000 Purpose.
161.2001 Applicability.
161.2002 Vessel exemptions.
161.2003 Definitions.
161.2004 Vessel operation in the CVTMS Area.
161.2005 CVTMC directions.
161.2006 Requirement to carry regulations.
161.2007 Laws and regulations not affected.
161.2008 Authorization to deviate from these rules; equivalent procedures.
161.2010 Emergencies.

Communications Rules

161.2012 Radio listening watch.
161.2014 Use of designated frequencies.
161.2016 Time.
161.2018 English language.
161.2020 Radiotelephone equipment failure.
161.2022 Report of radio failure.
161.2024 Report of impairment to the operation of the vessel.
161.2026 Miscellaneous reports.

Vessel Movement Reporting System (VMRS) Rules

Sec.
161.2027 Local harbor report.
161.2028 Initial report.
161.2031 Underway report.
161.2032 Zone boundary and calling-in-point report.
161.2034 Follow-up report.
161.2036 Final report.

Traffic Separation Scheme (TSS) Rules

161.2052 Vessel operation in the TSS.

Descriptions and Geographic Coordinates

161.2054 CVTMS Area.
161.2056 Tofino zone.
161.2058 Seattle zone.
161.2060 Vancouver zone.
161.2062 Separation zones.
161.2064 Traffic lanes.
161.2066 Precautionary areas.

Mississippi River

161.2101 Purpose and applicability.
161.2102 Vessel operation.

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

Subpart A—National Vessel Traffic Services

General Rules

§ 161.10 Purpose.

These rules are intended to enhance safe vessel movement by reducing the potential for rammings, groundings and collisions, and to minimize the risk of environmental harm resulting from those events.

§ 161.11 Applicability.

(a) General rule § 161.15, TSS rule § 161 21, and the Communications rule in § 161.33(a) apply to all vessels.

(b) Unless otherwise stated, the rules in subparts A and B of this part, apply to the operation of:

(1) Each manned vessel of 300 gross tons or more;

(2) Each commercial vessel of 26 feet or more in length engaged in towing astern, alongside, or by pushing ahead;

(3) Each vessel of 100 or more gross tons carrying one or more passengers for hire; and

(4) Each dredge and floating plant.

§ 161.12 Definitions.

As used in this part:

Captain of the Port (COTP) means the U.S. Coast Guard officer or his authorized representative assigned the duty of enforcing federal regulations within a specific area.

Dead Weight Tons (DWT) means the total loading capacity of a vessel expressed in long tons (2240 pounds).

ETA means estimated time of arrival.

Floating plant means any vessel, other than a vessel underway and making way, engaged in any construction, manufacturing, or exploration operation, and which may restrict the navigation of other vessels.

Gross tons means a vessel's volume as stated on the vessel's documents.

Length means overall length of a vessel.

Length of tow unless otherwise stated, length of tow when towing with a hawser means the length in feet from the stern of the towing vessel to the stern of the last barge or vessel in tow. When pushing ahead or towing alongside, length of tow means the overall length in feet of the tow including the length of the towing vessel.

Person includes an individual, firm, corporation, association, partnership, or government entity.

Power driven vessel means any vessel propelled by machinery.

Precautionary area means a routing measure comprising an area within defined limits where ships must navigate with particular caution and within which the direction of traffic flow may be recommended.

Separation zone means an area of Traffic Separation Scheme separating the opposing traffic lanes.

Tank ship means any vessel especially constructed or converted to carry liquid bulk petroleum cargo in tanks and propelled by power or sail.

Towing means towing astern, alongside, or pushing ahead.

Traffic lane means an area of the TSS in which all vessels normally proceed in the same direction. Natural obstacles, including those forming separation zones, may constitute a boundary.

Traffic Separation Scheme (TSS) means the routing measure aimed at the separation of opposing streams of traffic by appropriate means and by establishment of traffic lanes.

Users manual means the manual published for a specific VTS and intended to provide the VTS user with information, in addition to the regulations, which will assist the mariner in a transit through the VTS Area.

Vessel means every description of watercraft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water.

Vessel Movement Reporting System (VMRS) means the system used to track the vessel movements. This is accomplished by participating vessels providing position reports to the VTC, by radiotelephone or other means, at predetermined locations.

Vessel Traffic Center (VTC) means the shore based facility that operates the Vessel Traffic Service for the area.

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and which may restrict the navigation of other vessels.

Gross tons means a vessel's volume as stated on the vessel's documents.

Length means overall length of a vessel.

Length of tow unless otherwise stated, length of tow when towing with a hawser means the length in feet from the stern of the towing vessel to the stern of the last barge or vessel in tow. When pushing ahead or towing alongside, length of tow means the overall length in feet of the tow including the length of the towing vessel.

Person includes an individual, firm, corporation, association, partnership, or government entity.

Power driven vessel means any vessel propelled by machinery.

Precautionary area means a routing measure comprising an area within defined limits where ships must navigate with particular caution and within which the direction of traffic flow may be recommended.

Separation zone means an area of Traffic Separation Scheme separating the opposing traffic lanes.

Tank ship means any vessel especially constructed or converted to carry liquid bulk petroleum cargo in tanks and propelled by power or sail.

Towing means towing astern, alongside, or pushing ahead.

Traffic lane means an area of the TSS in which all vessels normally proceed in the same direction. Natural obstacles, including those forming separation zones, may constitute a boundary.

Traffic Separation Scheme (TSS) means the routing measure aimed at the separation of opposing streams of traffic by appropriate means and by establishment of traffic lanes.

Users manual means the manual published for a specific VTS and intended to provide the VTS user with information, in addition to the regulations, which will assist the mariner in a transit through the VTS Area.

Vessel means every description of watercraft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water.

Vessel Movement Reporting System (VMRS) means the system used to track the vessel movements. This is accomplished by participating vessels providing position reports to the VTC, by radiotelephone or other means, at predetermined locations.

Vessel Traffic Center (VTC) means the shore based facility that operates the Vessel Traffic Service for the area.

Vessel Traffic Service Area or *VTS Area* means the geographical area described in these rules depicting a specific VTS's area of responsibility.

§ 161.13 Vessel operation.

(a) No person, except those authorized to do so under § 161.17, may direct or authorize the operation of a vessel in the VTS Area contrary to any rule in subparts A and B of this part.

(b) In subparts A and B of this part, the Master, Pilot, or person directing the movement of the vessel is responsible for ensuring that all actions required of the vessel are carried out.

§ 161.14 Other laws and regulations.

Unless expressly stated otherwise, nothing in these rules is intended to relieve any person or the Master, Pilot, or person directing the movement from complying with any other applicable federal laws or regulations.

§ 161.15 VTC directions.

(a) During conditions of vessel congestion, reduced visibility, adverse weather, or other hazardous circumstances, the VTC may issue directions to control, supervise, or otherwise manage traffic.

(b) The Master, Pilot, or person directing the movement of a vessel shall comply with VTC directions.

§ 161.16 Requirement to carry regulations.

All vessels listed in § 161.11(b) while operating within the VTS Area must have on board a current copy of these regulations.

Note: In addition to the Code of Federal Regulations, these regulations can be found in the United States Coast Pilot and in the VTS User's Manual for the area in which the vessel is operating. The Code of Federal Regulations can be obtained through the U.S. Government Printing Office. The User's Manual can be obtained free-of-charge by writing to the Commanding Officer of the VTS in which you are interested. VTS addresses are contained in subpart B of this part.

§ 161.17 Authorization to deviate from these rules.

(a) The Commander of the Coast Guard District in which a vessel is operating, may upon written request, issue a written authorization to deviate from these rules for an extended period of time, if the proposed deviation provides a level of safety beyond that provided by the required procedure, or is a maneuver with an operational necessity that can be conducted safely. An application for an authorization must state the need for the deviation and describe the proposed alternative operation.

(b) The VTC may, upon request, authorize a deviation from these rules for a voyage, or part of a voyage, if the proposed deviation provides a level of safety equivalent to or beyond that provided by the required procedure.

(1) The deviation request must be made well in advance to allow the requesting vessel and the VTC sufficient time to assess the safety of the proposed maneuver; and

(2) The requesting vessel and the VTC must exchange relevant information on vessel handling characteristics, traffic density, radar contacts, and environmental conditions, and must otherwise cooperate to promote a safe transit.

(c) In an emergency, the Master, Pilot, or person directing the movement of the vessel may deviate from these rules to the extent necessary to avoid endangering persons, property, or the environment, and shall report the deviation to the VTC as soon as possible.

(d) The Master, Pilot, or person directing the movement of the vessel remains responsible for the safe navigation and maneuvering of the vessel under all circumstances.

Traffic Separation Scheme (TSS) Rules

§ 161.20 Purpose of the TSS.

The TSS is the system of separation zones, traffic lanes, and precautionary areas, intended to promote safety by directing traffic through common, segregated routes. The TSS is depicted where it exists on all Naval Oceanographic Service (NOS)/Defense Mapping Agency (DMA), U.S. Department of Commerce, and National Oceanographic and Atmospheric Administration navigation charts covering the VTS Area.

§ 161.21 Vessel operation in the TSS.

(a) Participating vessels must use the TSS whenever an established TSS coincides with the intended transit route of the vessel.

(b) Vessels not using a TSS should avoid it by as wide a margin as practicable.

(c) All vessels should keep the center of circular precautionary areas and all TSS buoys to port when practical.

Communications Rules

§ 161.30 Radiotelephone required.

(a) When underway, anchored, or moored to a buoy, the Master, Pilot, or person directing the movement of a vessel in the VTS Area shall monitor the appropriate VTS frequency continuously, except when transmitting on that frequency, and shall respond promptly to all calls from the VTC. Refer to the local rules in subpart B of this part for the appropriate frequency.

(1) All communications and reports required by these rules must be made from the navigational bridge of the vessel, or in the case of a dredge, from its main control station.

(2) The radio listening watch required in paragraph (a) of this section may be maintained in a location other than the navigational bridge of the vessel when the vessel is anchored or moored to a buoy.

(b) A vessel subject to these rules, when properly monitoring the VTS and the bridge to bridge radiotelephone frequencies, is exempted from the requirement to maintain a listening watch on channel 16 (156.8 MHz) in accordance with 47 CFR 80.305.

(c) Whenever radiotelephone capability is required by this part, a vessel's radiotelephone equipment must be maintained in effective operating condition. If the radiotelephone required ceases to operate, the Master, Pilot, or person directing the movement of the vessel shall ensure it is restored to operating condition as soon as possible. The failure of a vessel's radiotelephone equipment while the vessel is underway, will not in itself constitute a violation of these rules, nor will it obligate the vessel to moor or anchor. However, the loss of radiotelephone capability will be considered as a factor in navigating the vessel, and required reports must be made by other means, if possible.

(d) A vessel that cannot simultaneously meet the radiotelephone requirements of this part, and the bridge-to-bridge radiotelephone rule in part 26 of this chapter, may not get underway without permission from the VTC.

(e) Unless otherwise indicated, all references to "channels" in §§ 161.31 through 161.47, refer to VHF/FM marine radio channels.

§ 161.31 English language.

(a) All communications and reports required by this part must be made in clear, unbroken English language.

(b) No vessel may enter or transit within the VTS Area unless there is at least one person on the bridge capable of conducting clear, unbroken, two-way radio communications using the English language.

§ 161.32 Time.

Where a report required by these rules includes time, the time must be specified using the local zone time in effect and the 24 hour clock system.

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§ 161.33 Designated frequencies.

(a) No person shall transmit on VTS designated frequencies for any purpose other than the passing of information and reports to and from the VTC or necessary navigational safety information between vessels. Routine passing arrangements between vessels shall be conducted on the vessel bridge-to-bridge radiotelephone frequency (channel 13).

(b) All transmissions to the VTC must be initiated on low power. High power may be used only if low power communications are unsuccessful.

(c) Refer to the local rules in subpart B for the appropriate VTS frequency.

Vessel Movement System Reporting Rules

§ 161.40 Reports.

All reports and communications required of vessels by this part must be made promptly by radiotelephone, except as otherwise provided, to the appropriate VTC on its designated frequency.

§ 161.41 Initial report.

At least 15 minutes, but not more than 45 minutes, before a vessel enters or intends to begin to navigate within an area covered by these rules, the vessel must report the following to the VTC:

(a) Name and type of vessel (if a tow, configuration of the tow and cargoes), and whether a pilot is aboard;

(b) Maximum draft;

(c) Location of the vessel;

(d) Estimated time of entering or beginning to navigate;

(e) Destination and route;

(f) Anticipated speed;

(g) Any planned maneuvers that may impede traffic;

(h) Whether any dangerous cargo defined in part 160 of this chapter is on board the vessel or its tow; and

(i) Any impairments to the operational capability of the vessel, including those described in § 161.46.

§ 161.42 Underway report.

As soon as a vessel enters or begins to navigate in the VTS Area, the Master, Pilot, or person directing the movement of the vessel shall report the name and location of the vessel to the VTC.

§ 161.43 Follow-up reports.

(a) A Master, Pilot, or person directing the movement of the vessel shall report the following to the VTC:

(1) Any information that has changed since the previous report including speed, destination, route, etc.;

(2) Intent to cross, join or depart a TSS, at least 10 minutes (for tows, at least 30 min) before crossing, joining or departing the TSS; and

(3) Intent to enter a separation zone while following a TSS lane, as far in advance as possible.

(b) Whenever directed to do so by the VTC or when passing a designated reporting point as specified in the Special Local Rules, a Master, Pilot, or person directing the movement of the vessel shall report the following:

(1) Vessel name; and

(2) Vessel location.

§ 161.44 Report of emergency deviation.

A Master, Pilot, or person directing the movement of the vessel shall report each emergency deviation from these rules to the VTC as soon as it is safe to do so.

§ 161.45 Final report.

After a vessel anchors in, moors in, or departs the VTS Area, the Master, Pilot, or person directing the movement of the vessel shall report the place and time of anchoring, mooring or departure from the VTS Area to the VTC.

§ 161.46 Report of impairment to the operation of a vessel.

A Master, Pilot, or person directing the movement of the vessel shall report to the VTC as soon as possible:

(a) Any condition of the vessel which impairs its navigation, such as defective propulsion machinery, defective steering equipment, defective radar, defective gyrocompass, defective depth sounding device, or similar defects;

(b) Any difficulties in a towing operation;

(c) Any on board emergency such as fire, flooding, explosion, or similar occurrence;

(d) Any involvement in a grounding, collision, or ramming of a fixed or floating object; and

(e) Any impairment to the radiotelephone equipment capability required by this part.

§ 161.47 Miscellaneous reports.

A Master, Pilot, or person directing the movement of the vessel shall report to the VTC when aware of any of the following circumstances:

(a) Another vessel in apparent difficulty or involved in a casualty;

(b) Any obstruction which is hazardous to navigation;

(c) Any aid to navigation which is malfunctioning, damaged, missing, or off-station;

(d) Any pollution of the marine environment;

(e) Any vessel which is creating a hazard to vessel traffic;

(f) Adverse weather; and

(g) Reduced visibility.

Descriptions and Geographic Coordinates

§ 161.50 VTS Areas.

(a) A description of each VTS Area is contained in the Local Rules contained in subpart B of this part.

Note: Geographic coordinates expressed in terms of latitude, longitude, or both, are not intended for plotting on maps or charts whose reference datum is the North American Datum of 1983 (NAD 83), unless such geographic coordinates are expressly labeled NAD 83. Geographic coordinates without the NAD 83 reference may be plotted on maps or charts referenced to NAD 83 only after application of the appropriate corrections that are published on the particular map or chart being used.

Subpart B—Local Requirements

Note: Local Rules:

The following local rules supplement or modify the rules in subpart A of this part:

Vessel Traffic Service New York (VTSNY)

§ 161.101 Designated frequencies.

The following frequencies must be used when communicating with the VTC:

(a) Primary frequencies: 156.550 MHz (channel 11), 156.600 MHz (channel 12), and 156.700 MHz (channel 14).

(b) Secondary frequency (to be used if communications is not possible on a primary frequency): 156.650 MHz (channel 13).

(c) Vessels must communicate with the VTC on the designated frequencies, as directed by the VTC.

(d) The voice call for VTSNY is "NEW YORK TRAFFIC."

§ 161.102 Reporting points.

All vessels in the VTSNY Area must report to the VTC when passing the following reporting points:

Name	Geographic location
Verrazano-Narrows Bridge.	Upper New York Bay.
Brooklyn Bridge	East River.
Holland Tunnel Ventilator	Hudson River.
Statue of Liberty	Upper New York Bay.
Red Hook	Buttermilk Channel.
Constable Hook	Kill Van Kull.
Bayonne Bridge	Kill Van Kull.
AK Railroad Bridge	Arthur Kill.
Lehigh Valley Draw Bridge.	Newark Bay.
Texaco Bayonne Facility	Newark Bay.

§ 161.103 VTS New York Area.

The VTSNY Area consists of the navigable waters of the United States bounded by the Verrazano-Narrows Bridge to the south, the Brooklyn Bridge to the east, and to the north along a line

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Descriptions and Geographic Coordinates

§ 161.50 VTS Areas.

(a) A description of each VTS Area is contained in the Local Rules contained in subpart B of this part.

Note: Geographic coordinates expressed in terms of latitude, longitude, or both, are not intended for plotting on maps or charts whose reference datum is the North American Datum of 1983 (NAD 83), unless such geographic coordinates are expressly labeled NAD 83. Geographic coordinates without the NAD 83 reference may be plotted on maps or charts referenced to NAD 83 only after application of the appropriate corrections that are published on the particular map or chart being used.

Subpart B—Local Requirements

Note: Local Rules:

The following local rules supplement or modify the rules in subpart A of this part:

Vessel Traffic Service New York (VTSNY)

§ 161.101 Designated frequencies.

The following frequencies must be used when communicating with the VTC:

(a) Primary frequencies: 156.550 MHz (channel 11), 156.600 MHz (channel 12), and 156.700 MHz (channel 14).

(b) Secondary frequency (to be used if communications is not possible on a primary frequency): 156.650 MHz (channel 13).

(c) Vessels must communicate with the VTC on the designated frequencies, as directed by the VTC.

(d) The voice call for VTSNY is "NEW YORK TRAFFIC."

§ 161.102 Reporting points.

All vessels in the VTSNY Area must report to the VTC when passing the following reporting points:

Name	Geographic location
Verrazano-Narrows Bridge.	Upper New York Bay.
Brooklyn Bridge	East River.
Holland Tunnel Ventilator	Hudson River.
Statue of Liberty	Upper New York Bay.
Red Hook	Buttermilk Channel.
Constable Hook	Kill Van Kull.
Bayonne Bridge	Kill Van Kull.
AK Railroad Bridge	Arthur Kill.
Lehigh Valley Draw Bridge.	Newark Bay.
Texaco Bayonne Facility	Newark Bay.

§ 161.103 VTS New York Area.

The VTSNY Area consists of the navigable waters of the United States bounded by the Verrazano-Narrows Bridge to the south, the Brooklyn Bridge to the east, and to the north along a line

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drawn east-west from the Holland Tunnel ventilator shaft at latitude 40°43′42″ N and longitude 74°01′36″ W, and the Arthur Kill Railroad Bridge to the west, and includes the Kill Van Kull and Newark Bay to the Lehigh Valley Draw Bridge.

§ 161.104 VTS New York Users Manual.

To obtain the VTSNY Users Manual free-of-charge write to: Commanding Officer, U.S. Coast Guard Vessel Traffic Service, Governors Island, New York, NY 10004.

Vessel Traffic Service Louisville (VTSL)

§ 161.201 Description of operation.

VTSL will go into operation when the McAlpine upper guage is at approximately 13.0′ and rising. The VTC will remain in 24-hour operation until the river stage is at approximately 13.0′ and falling.

§ 161.202 Applicability.

(a) Includes each vessel under 100 gross tons carrying seven or more passengers for hire and those vessels listed in § 161.11(b).

(b) In addition to those vessels listed in § 161.202(a), § 161.205 applies to all vessels within the VTSL Area.

§ 161.203 Designated frequencies.

(a) The primary frequency for communicating with the VTC is 156.65 MHz (channel 13).

(b) The VTC also monitors channel 16 (156.8 MHz). In the event of communications failure on channel 13, VTS communications must be on channel 16.

(c) The voice call sign for VTSL is "COAST GUARD LOUISVILLE TRAFFIC."

§ 161.204 Reporting points.

All vessels in the VTSL Area subject to the applicability rules in § 161.202(a) must report to the VTC when passing the following reporting points:

(a) McAlpine Locks	Mile 606.8;
(b) Conrail Railroad Bridge.	Mile 604.4;
(c) Towhead Island	Mile 602.5;
(d) Six Mile Island	Mile 598.0, and
(e) Twelve Mile Island	Mile 593.0.

§ 161.205 Emergencies.

(a) Four pairs of emergency mooring buoys have been established by the U.S. Corps of Engineers within the VTS Area. The buoys are 10 feet in diameter with retro-reflective sides. The two buoys which comprise each pair are 585 feet apart. The buoys are for emergency purposes only. However, vessel operators or their representatives may obtain permission from the COTP Louisville to moor to the buoys when downbound with a tow while awaiting permission from the VTS controller to proceed downstream. Pairs of buoys are located at:

(1) Indiana Bank—Mile 582.3 (near 18 Mile Island);

(2) Six Mile Island—Mile 597.5;

(3) Six Mile Island—Mile 598.2; and

(4) Kentucky Bank—Mile 599.8 (Cox's Park) (Note: Tows with tank barges carrying petroleum products or hazardous materials will not be granted permission to moor at this location due to the close proximity of the municipal water intakes. Towboat operators should keep this in mind and plan to use fleeting areas or other mooring buoys.)

(b) Emergency buoys are removed between May 1 and September 30 from all locations except Six Mile Island—Mile 598.2.

§ 161.206 VTS Louisville Area.

The VTSL Area consists of that section of the Ohio River between McAlpine Locks (Mile 606) and Twelve Mile Island (Mile 593).

§ 161.207 VTS Louisville Users Manual.

To obtain the VTSL Users Manual free-of-charge write to: Commanding Officer, U.S. Coast Guard Marine Safety Office, 600 Martin Luther King Jr. Place, Room 360, Louisville, KY 40202–2230.

Vessel Traffic Service Houston/Galveston (VTSH/G)

§ 161.821 Designated frequencies.

(a) The primary frequencies for communicating with the VTC are 156.550 MHz (channel 11) and 156.600 MHz (channel 12). Vessels shall use channel 11 for communicating with the VTC when inbound at Baytown Bend Light 113 or if operating above that location. Vessels shall use channel 12 when outbound at Baytown Bend Light 113 or if operating below that location.

(b) Vessels must communicate with the VTC on the designated frequencies, as directed by the VTC.

(c) The VTC also monitors channel 13 and may use this channel to hail vessels.

(d) The voice call for VTSH/G is "HOUSTON TRAFFIC."

§ 161.822 Initial report.

In addition to the information required in § 161.41 of this part, the following information is required of those vessels listed in § 161.11(b):

(a) Maximum draft;

(b) Overall length; and

(c) Maximum beam.

§ 161.823 Follow-up reports.

In addition to those instances listed in § 161.43, the Master, Pilot, or person directing the movement of the vessel must report to the VTC whenever:

(a) There is any change in tow configuration; or

(b) There is a tow pushed into the bank or windbound.

§ 161.824 Special operations.

(a) Dredges and floating plants must report the following to the VTC prior to commencing operations:

(1) Location and description of the operation;

(2) Any channel restrictions;

(3) Configuration of pipeline;

(4) Notification requirements for approaching vessels;

(5) Number of assist tugs;

(6) Frequencies guarded;

(7) Duration of the operation; and

(8) Operating impairments.

(b) Vessels conducting lightering or bunkering operations must report the following information to the VTC prior to commencing operations:

(1) Location and description of the operation;

(2) Names of vessels involved;

(3) Duration of operation;

(4) Frequencies guarded; and

(5) Number of assist tugs.

§ 161.825 Ferry reports.

(a) Ferries operating in the VTSH/G Area on a set schedule and route, both of which have been furnished to the VTC, need not make the following reports.

(1) Initial report (§ 161.41);

(2) Underway report (§ 161.42); and

(3) Final report (§ 161.45).

(b) Ferries must make reports to the VTC as required in §§ 161.42 and 161.45 under the following conditions, or when in the opinion of the operator it is prudent to participate:

(1) Adverse weather conditions exist;

(2) Conditions exist aboard the vessel which may adversely affect safe navigation; or

(3) When directed by the VTC due to hazardous conditions.

§ 161.826 Reporting points.

(a) All vessels in the VTSH/G Area must report to the VTC when passing the following reporting points:

(1) Galveston Bay Entrance Channel Lighted Buoy "GB";

(2) Galveston Bay Entrance Channel Lighted Buoys 11 and 12;

(3) Bolivar at ICW Mile 349;

(4) Pelican Cut at ICW Mile 351;

(5) Coast Guard Base at the entrance to Galveston Harbor;

(6) Texas City Channel Lighted Buoy 12;

(7) Houston Ship Channel Lighted Buoys 25 and 26. (For tows turning inbound from the ICW or Texas City Channel);

(8) Houston Ship Channel Lighted Buoys 31 and 32. (For all vessels except tows turning inbound from the ICW or Texas City Channel);

(9) Red Fish Bar Lights 1 and 2;

(10) Bayport Ship Channel Lights 7 and 8;

(11) Houston Ship Channel Buoys 69 and 70;

(12) Morgan's Point at Houston Ship, Channel Light 91;

(13) Exxon-Baytown at Baytown Light 113;

(14) Lynchburg at the ferry crossing;

(15) Shell Oil at Houston Ship Channel Light 142;

(16) Greens Bayou at Houston Ship Channel Light 152;

(17) Hess Turning Basin at Houston Ship Channel Light 166;

(18) Arco Turning Basin;

(19) I–610 bridge; and

(20) Houston Turning Basin.

§ 161.827 VTS Houston/Galveston Area.

The VTSH/G Area includes the following major waterways and portions of connecting waterways within the listed precautionary areas.

(a) Channels:

(1) Galveston Bay Entrance Channel;

(2) Outer Bar Channel;

(3) Inner Bar Channel;

(4) Bolivar Roads Channel;

(5) Galveston Channel;

(6) Gulf ICW and Galveston-Freeport Cut-Off from Mile 346 to Mile 352;

(7) Texas City Channel;

(8) Texas City Turning Basin;

(9) Texas City Canal Channel;

(10) Texas City Canal Turning Basin;

(11) Houston Ship Channel;

(12) Bayport Channel;

(13) Bayport Turning Basin; and

(14) Houston Turning Basin.

(b) Precautionary Areas:

(1) Bolivar Roads Precautionary Area. A circular area of 4,000 yards radius centered at 29°20'54" N 94°47'00" W;

(2) Red Fish Bar Precautionary Area. A circular area of 4,000 yards radius centered at 29°29'46" N 94°51'54" W;

(3) Bayport Channel Precautionary Area. A circular area of 4,000 yards radius centered at 29°36'42" N 94°57'12" W;

(4) Morgans Point Precautionary Area. A circular area of 2,000 yards radius centered at 29°41'00" N 94°59'00" W;

(5) Upper San Jacinto Bay Precautionary Area. A circular area of 1,000 yards radius centered at 29°42'20" N 95°01'05" W;

(6) Baytown Precautionary Area. A circular area of 1,000 yards radius centered at 29°43'34" N 95°01'24" W;

(7) Lynchburg Precautionary Area. A circular area of 1,000 yards radius centered at 29°45'47" N 95°04'48" W;

(8) Carpenters Bayou Precautionary Area. A circular area of 1,000 yards radius centered at 29°45'17" N 95°05'36" W;

(9) Jacintoport Precautionary Area. A circular area of 1,000 yards radius centered at 29°44'9" N 95°06'01" W;

(10) Greens Bayou Precautionary Area. A circular area of 1,000 yards radius centered at 29°44'47" N 95°10'10" W;

(11) Hunting Bayou Precautionary Area. A circular area of 1,000 yards radius centered at 29°44'20" N 95°12'06" W;

(12) Sims Bayou Precautionary Area. A circular area of 1,000 yards radius centered at 29°43'11" N 95°14'21" W;

(13) Brady Island Precautionary Area. A circular area of 1,000 yards radius centered at 29°43'32" N 95°16'21" W; and

(14) Buffalo Bayou Precautionary Area. A circular area of 1,000 yards radius centered at 29°44'59" N 95°17'19" W;

§ 161.828 VTS Houston/Galveston Users Manual.

To obtain copies of the VTSH/G Users Manual free-of-charge, write to: Commanding Officer, U.S. Coast Guard Vessel Traffic Service Houston/Galveston, P.O. Box 545, Galena Park, TX 77547–0545.

Vessel Traffic Service Berwick Bay (VTSBB)

§ 161.841 Applicability.

In addition to the vessels listed in § 161.11(b), rules concerning the use of the English language (§ 161.31), reports (§ 161.40), and initial reports (§ 161.41), also apply to the operation of:

(a) Recreational vessels greater than 5 net tons, but less than 300 gross tons intending to transit under the lift span of the Southern Pacific Railroad (SPRR) bridge; and

(b) Commercial vessels not subject to the Vessel Bridge-to-Bridge Radiotelephone Regulations in part 26 of this chapter.

§ 161.842 Definitions.

As used in §§ 161.841 through 161.855:

Available horsepower means all operational propulsion equipment based on the manufacturers' maximum rated continuous brake horsepower for all vessels engaged in a single towing operation.

SPRR Bridge means the Southern Pacific Railroad Bridge across Berwick Bay between the cities of Berwick and Morgan City, Louisiana.

Tandem means towed vessels, barges or other objects arranged in an end-to-end single file configuration.

§ 161.843 Designated frequency.

(a) The primary frequency for communicating with the VTC is 156.55 MHz (channel 11).

(b) The VTC also monitors channel 13. In the event of communications failure on channel 11, VTS communications must be on 156.65 MHz (channel 13).

(c) The voice call for VTSBB is "BERWICK TRAFFIC."

§ 161.844 Radiotelephone equipment failure.

In addition to the requirements set forth in § 161.30(2)(c) and (d), whenever a vessel's radiotelephone equipment fails, permission to proceed must first be obtained from the VTC if the vessel intends to:

(a) Transit the lift span of the SPRR bridge; or

(b) Transit any portion of the ICW between Mile 100 West of Harvey Lock (WHL) and Mile 102 (WHL).

§ 161.845 Means of reporting.

Vessels not subject to the Vessel Bridge-to-Bridge Radiotelephone Regulations in part 26 of this chapter may make initial reports under § 161.41 and deviation reports under § 161.17(b) and (c) by radiotelephone, telephone (504) 385–2462, or other reasonable means.

§ 161.846 Initial report.

In addition to the requirements listed in § 161.41, the Master, Pilot, or person directing the movement of a vessel engaged in towing shall report to the VTC:

(a) The available horsepower;

(b) The overall length of the vessels involved; and

(c) Any cargo of particular hazard that is on board the vessel or any vessel being towed or if empty, the last cargoes carried.

§ 161.847 Follow-up report.

In addition to the requirements listed in § 161.43, if towing is involved the Master, Pilot, or person directing the movement of the vessel shall report to the VTC:

(a) Any revision to the available horsepower; and

(b) Any change to the overall length information given in the initial report.

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Bay between the cities of Berwick and Morgan City, Louisiana.

Tandem means towed vessels, barges or other objects arranged in an end-to-end single file configuration.

§ 161.843 Designated frequency.

(a) The primary frequency for communicating with the VTC is 156.55 MHz (channel 11).

(b) The VTC also monitors channel 13. In the event of communications failure on channel 11, VTS communications must be on 156.65 MHz (channel 13).

(c) The voice call for VTSBB is "BERWICK TRAFFIC."

§ 161.844 Radiotelephone equipment failure.

In addition to the requirements set forth in § 161.30(2)(c) and (d), whenever a vessel's radiotelephone equipment fails, permission to proceed must first be obtained from the VTC if the vessel intends to:

(a) Transit the lift span of the SPRR bridge; or

(b) Transit any portion of the ICW between Mile 100 West of Harvey Lock (WHL) and Mile 102 (WHL).

§ 161.845 Means of reporting.

Vessels not subject to the Vessel Bridge-to-Bridge Radiotelephone Regulations in part 26 of this chapter may make initial reports under § 161.41 and deviation reports under § 161.17(b) and (c) by radiotelephone, telephone (504) 385–2462, or other reasonable means.

§ 161.846 Initial report.

In addition to the requirements listed in § 161.41, the Master, Pilot, or person directing the movement of a vessel engaged in towing shall report to the VTC:

(a) The available horsepower;

(b) The overall length of the vessels involved; and

(c) Any cargo of particular hazard that is on board the vessel or any vessel being towed or if empty, the last cargoes carried.

§ 161.847 Follow-up report.

In addition to the requirements listed in § 161.43, if towing is involved the Master, Pilot, or person directing the movement of the vessel shall report to the VTC:

(a) Any revision to the available horsepower; and

(b) Any change to the overall length information given in the initial report.

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§ 161.848 Reporting points.

All vessels in the VTSBB Area must report to the VTC when passing the following reporting points:

Name	Geographic location
Long Island	Southern tip of Long Island; Mile 5 ICW Morgan City to Port Allen (MC/PA) Alternate Route.
Stouts Pass	Mile 115 Atchafalaya River Route.
Bayou Teche	One mile above Berwick Lock on Lower Atchafalaya River (Bayou Teche).
Berwick Lock	Near Berwick Bay on the Lower Atchafalaya River (Report only if transiting the lock).
Conrad's Point	Mile 1.5 ICW MC/PA Alternate Route.
20 Grand Point	Mile 95.5 ICW West of Harvey Lock (WHL).
Shaffer Junction	Mile 94.5 ICW(WHL) at junction with Bayou Shaffer.
Bayou Shaffer	On Bayou Shaffer, one mile south of junction with Bayou Boeuf.
Bayou Boeuf Lock	Mile 93 ICW(WHL).
Overhead Cable	Mile 119 Atchafalaya River Route; Mile 96 ICW(WHL).
Floodway Gas Processing Plant	Mile 99 ICW(WHL).
Atchafalaya River	Mile 122 Atchafalaya River Route.
Little Wax Bayou	Mile 102 ICW(WHL).

161.849 High water towing limitations.

The high water towing limitations in §§ 161.850 through 161.854 apply to the operation of vessels with tows intending to pass under the lift span of the SPRR bridge or through the navigational openings of either the U.S. 90 highway bridge or the LA Route 187 bridge, both to the north of the SPRR bridge, when those limitations are in effect.

§ 161.850 Precautionary notices.

(a) Whenever the Morgan City River Gauge reads 2.5 feet above mean sea level and COTP Morgan City anticipates that the water level will rise to 3 or more feet above mean sea level, the VTC will issue precautionary notices that the high water towing limitation may soon go into effect.

(b) Precautionary notices are:

(1) Announced during Coast Guard Marine Information Broadcasts;

(2) Published in Coast Guard Local Notices to Mariners;

(3) Announced by the VTC in response to initial reports; and

(4) Available by calling the VTC at (504) 385–2462 or on the frequency designated in § 161.843.

(c) Precautionary notices are given throughout the period during which the conditions in paragraph (a) of this section exist.

(d) During the period when the water level falls below 3 feet above mean sea level on the Morgan City River Gauge but remains at or above 2.5 feet, precautionary notices are issued only if the COTP anticipates that the decrease in the level below 3 feet is only temporary.

§ 161.851 Visual displays when limitations are in effect.

(a) The high water towing limitations are in effect when two vertically arranged red balls by day and two horizontally arranged flashing white lights by night are displayed on top of the SPRR Bridge.

(b) The VTC posts the visual displays under paragraph (a) of this section when the Morgan City River Gauge reads 3 or more feet above mean sea level.

(c) The VTC discontinues the visual displays under paragraph (a) of this section when the Morgan City River Gauge reads less than 3 feet above mean sea level.

§ 161.852 Notice of when limitations are in effect.

(a) In addition to the visual displays provided in § 161.851, notice of when limitations are in effect is:

(1) Announced during Coast Guard Marine Information Broadcasts;

(2) Published in Coast Guard Local Notices to Mariners;

(3) Announced by the VTC in response to initial reports; and

(4) Available by calling the VTC at (504) 385–2462 or on the frequency designated in § 161.843.

(b) The notices given under paragraph (a) of this section are given throughout the period when the limitations are in effect.

§ 161.853 Operational limitations.

(a) Towing on a hawser in either direction is prohibited, with the exception of one self-propelled vessel towing one other vessel upbound.

(b) Barges and towing vessels must be arranged in tandem, with the exception of one vessel towing one other vessel alongside.

(c) A towing vessel or vessels and tow must not exceed an overall length of 1,180 feet.

(d) Tows with a box end in the lead must not exceed two barges in length.

Note: The variation in the draft and the beam of the barges in a multi-barge tow should be minimized in order to avoid unnecessary strain on coupling wires.

§ 161.854 Horsepower limitations.

(a) All tows carrying cargoes of particular hazard as outlined in § 126.10 of this chapter must have available horsepower of at least 600 or three times the length of tow, whichever is greater.

(b) All other tows must have available horsepower of at least the following:

Direction of transit	Available horsepower—daytime transit
Upbound	400 or 3 times (length of tow minus 300 feet) whichever is greater.
Downbound	600 or 3 times (length of tow minus 200 feet) whichever is greater.
	Available horsepower—nighttime transit
Upbound	600 or 3 times (length of tow minus 200 feet) whichever is greater.
Downbound	600 or 3 times length of tow whichever is greater.

Note: "Daytime" is sunrise to sunset; "Nighttime" is sunset to sunrise.

(c) A 5% variance from the available horsepower required under paragraphs (a) and (b) of this section is permitted.

(d) Tows with 3,000 or more available horsepower need not comply with paragraphs (a) and (b) of this section.

§ 161.855 VTS Berwick Bay Area.

The VTSBB Area consists of the following segments of waterways:

(a) The ICW Morgan City to Port Allen Alternate Route from Mile 0 to Mile 5;

(b) The ICW from Mile 93 West of Harvey Lock (WHL) to Mile 102 WHL;

(c) The Atchafalaya River Route from Mile 113 to Mile 122;

(d) From Bayou Boeuf (ICW Mile 94.5 WHL) south one statute mile along Bayou Shaffer; and

(e) From Berwick Lock northwest one statute mile along the Lower Atchafalaya River.

§ 161.856 VTS Berwick Bay Users Manual.

To obtain copies of the VTS Berwick Bay Users Manual free-of-charge, write to: Commanding Officer, U.S. Coast Guard Marine Safety Office Morgan City, 800 David Dr., Room 255, Morgan City, LA 70380–0800 or call (504) 385–2936.

Vessel Traffic Service St. Marys River (VTSSMR)

§ 161.901 Applicability.

The rules in subpart A of this part and §§ 161.901 through 161.923 also apply to all vessels over 20 meters (65 feet) in length, except fishing vessels under 300 gross tons.

§ 161.902 Designated frequency.

(a) The primary frequency for communicating with the VTC is 156.600 MHz (channel 12).

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(b) The Master, Pilot, or person directing the movement of a vessel in the VTS Area must continuously monitor channel 12 and channel 13 (156.65 MHz).

§ 161.903 Vessel movement reporting.

When making reports or communicating with the VTC, participating vessels should address the center as "Soo Control."

§ 161.904 Reporting points.

All vessels in the VTSSMR Area must report to the VTC when passing the following reporting points:

Downbound vessels	Reporting points	Upbound vessels
Report	Ile Parisienne Light Gros Cap Reefs Light.	Report
Report	Round Island Light 32	Report.
Report	Pointe Louise	Report.
Report	Clear of lock	Report.
Report	Mission Point	Report.
Report	Six mile Point	Report.
Report	Ninemile Point	Report.
Report	West Neebish Channel Light [illegible]	
Report	Munuscong Lake Junction	Report.
Report	Lighted Buoy De Tour Reef Light.	Report

§ 161.905 Seasonal or temporary reporting points.

(a) The following locations are reporting points during the winter navigation season:

Downbound vessels	Reporting points	Upbound vessels
Report	Ile Parisienne Light	Report.
Report	Gros Cap Reefs Light	Report.
Report	Birch Point	Report.
Report	Brush Point	Report.
Report	Clear of locks	Report.
Report	Mission Point	Report.
Report	Six Mile Point	Report.
Report	Nine Mile Point	Report.
Report	Stribling Point	Report.
Report	Johnson's Point	Report.
Report	Munuscong Lake Junction Lighted Bell Buoy.	Report.
Report	Pt Aux Frenes	Report.
Report	Lime Island	Report.
Report	De Tour Reef Light	Report.

Note: Effective dates for these reporting points will be published in Local Notice to Mariners and will be available from the VTC.

(b) COTP Sault Ste. Marie may publish additional reporting points as temporary conditions require. These temporary reporting points with their effective dates are published by Broadcast Notices to Mariners and are available from the VTC.

§ 161.906 Transit of Canadian waters.

Vessels which have already reported to the VTC need not make a final report or an initial report when departing or reentering the VTS Area for a brief transit of Canadian waters.

§ 161.907 Ferry reports.

The Master, Pilot, or person directing the movement of any ferry vessel operating in the VTS Area which is operating in accordance with a route and schedule which has been provided to the VTC, need not comply with initial and final reporting rules.

§ 161.908 One-way traffic—normal conditions.

Under normal conditions, two-way traffic is permitted in all channels except the following:

(a) West Neebish Channel from Buoy 53 to Buoy l may be used only by vessels proceeding in a downbound direction;

(b) Middle Neebish Channel from Buoy 2 to Buoy 76 may be used only by vessels proceeding in an upbound direction;

(c) Pipe Island Course from Sweets Point to Watson Reefs Light may be used only by vessels proceeding in a downbound direction; and

(d) Pipe Island Passage to the east of Pipe Island Shoal and North of Pipe Island Twins from Watson Reefs Light to Sweets Point may be used only by vessels proceeding in an upbound direction.

§ 161.909 Meeting or overtaking in channels.

(a) No vessel 100 meters (350 feet) or greater in length may overtake or approach within one-quarter statute mile (0.2 nautical mile) a vessel proceeding in the same direction when in the following channels:

(1) West Neebish Channel between Nine Mile Point and Munuscong Lake Junction Lighted Bell Buoy;

(2) Middle Neebish Channel between Munuscong Lake Junction Lighted Bell Buoy and Ninemile Point; or

(3) Little Rapids Cut from Six Mile Point to Buoy 102.

(b) In addition to paragraph (a) of this section, when two-way traffic is permitted in Middle Neebish Channel no vessel 100 meters (350 feet) or greater in length may meet or overtake another vessel in the vicinity of:

(1) Johnson Point from Buoy 18 to Buoy 22;

(2) Mirre Point from Buoy 26 to Buoy 28; or

(3) Stribling Point from Buoy 39 to Buoy 43.

(c) This section does not apply when navigating through ice fields.

§ 161.910 Winter navigation.

(a) During the winter navigation season, West Neebish Channel (from Buoy 53 to Buoy 1) and Pipe Island Passage to the east of Pipe Island Shoal and north of Pipe Island Twins (from Watson Reef Light to Sweets Point) are normally closed to traffic. The COTP closes or opens these channels as ice conditions require after giving due consideration to the protection of the marine environment, waterway improvements, aids to navigation, the need for cross channel traffic (e.g., ferry vessels), the availability of icebreakers, and the safety of the island residents who, in the course of their daily business, must use naturally formed ice bridges for transportation to and from the mainland. Under normal seasonal conditions, only one closing each winter and one opening each spring are anticipated. Prior to closing or opening these channels, the COTP will give interested parties, including both shipping interests and island residents, not less than 72 hours' notice.

(b) When West Neebish Channel is closed, Middle Neebish Channel (from Buoy 2 to Buoy 76) will either be opened to two-way traffic or open to one-way traffic in alternate directions. When two-way traffic is authorized in Middle Neebish Channel, all upbound vessels must use the easterly 60 meters (197 feet) of the channel and all downbound vessels must use the westerly 91 meters (295 feet) of the channel. When two-way traffic is authorized in Middle Neebish Channel, upbound vessels drawing more than 20 feet must not proceed past Buoy 2 unless specifically authorized by the VTC. When one-way traffic in alternate directions is authorized in Middle Neebish Channel, all vessels must use the westerly 91 meters (295 feet) of the channel.

(c) When Pipe Island Passage is closed, Pipe Island Course is open to two-way traffic.

§ 161.911 Anchorages—general.

Vessels must not be anchored so as to swing into the channel limits or across charted steering courses.

§ 161.912 Emergency anchoring.

In an emergency, vessels may anchor in a dredged channel. Vessels must anchor as near the edge of the channel as possible and must get underway as soon as the emergency ceases, unless otherwise directed. The VTC must be advised of any emergency as soon as possible.

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In an emergency, vessels may anchor in a dredged channel. Vessels must anchor as near the edge of the channel as possible and must get underway as soon as the emergency ceases, unless otherwise directed. The VTC must be advised of any emergency as soon as possible.

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§ 161.913 Unauthorized anchorage.

No vessel may anchor at any time in the area southward of the Point Aux Pins range between Brush Point and the waterworks intake crib off Big Point or within one-quarter mile (0.2 nautical miles) of the intake crib in any direction.

§ 161.914 Anchoring of dredging, construction or wrecking plants in channels.

Dredging, construction, or wrecking plants may be permitted to anchor or moor in the channel under such conditions as the COTP deems appropriate to protect the safety of navigation.

§ 161.915 Shifting anchorage under direction of the VTC.

The VTC may direct any anchored vessel to shift anchorage whenever deemed necessary for the safety of vessels, the safe or expeditious passage of shipping, or the preservation or effective operation of Government installations.

§ 161.916 Order of departure from anchorage.

Vessels collected in any part of the VTS Area by reason of temporary closure of a channel or an impediment to navigation must get underway and depart in the order in which they arrived, unless otherwise directed by the VTC. The VTC may advance any vessel in the order of departure to expedite the movement of mails, passengers, or cargo of a perishable nature, to facilitate the passage of vessels through any channel by reason of special circumstance, or to facilitate passage through the St. Marys Falls Canal.

§ 161.917 Maximum speed limits.

The following speed limits indicate speed over the ground:

Speed limit between	Speed limit	
	Miles/hr	Kts
De Tour Reef Light and Sweets Point Light	14	12.2
Round Island Light and Point Aux Frenes Light 21	14	12.2
Munuscong Lake Lighted Buoy 8 and Everens Point	12	10.4
Everens Point and Reed Point	9	7.8
Reed Point and Lake Nicolet Lighted Buoy 62	10	8.7
Lake Nicolet Lighted Buoy 62 and Lake Nicolet Light 80	12	10.4
Lake Nicolet Light 80 and Winter Point (West Neebish Channel)	10	8.7
Lake Nicolet Light 80 and Six Mile Point Range Rear Light	10	8.7
Six Mile Point Range Rear light and lower limit of the St Marys Falls Canal:		
Upbound	8	7
Down bound	10	8.7
Upper limit of the St Marys Falls Canal and Point Aux Pins Main Light	12	10.4

§ 161.918 Temporary speed limits.

The Commander, Ninth Coast Guard District, may establish temporary speed limit regulations in the VTS Area, including amendments to the speed limits established above. The temporary speed limits established by the Commander, Ninth Coast Guard District, are published in the **Federal Register** and in Local Notices to Mariners.

§ 161.919 Minimum speed limit through dredged channels.

No vessel may make regular passage through any dredged channel at a speed of less than 5 statute miles per hour (4.3 knots) over the ground. Any vessel which can not maintain this speed must not enter any of the channels until permission has been granted by the VTC.

§ 161.920 Rules for towing vessels.

(a) Towing vessels may not drop their tows or otherwise leave them unattended south of Gros Cap Reef Light.

(b) Towing vessels engaged in shortening or lengthening tows, dropping or making up tows, transferring stores or cargo boats alongside, or waiting must stand clear and allow unobstructed passage to other vessels.

(c) Vessels of less than 61 meters (200 feet) in length may not be towed with more than 76 meters (250 feet) of tow line. Vessels of 61 meters (200 feet) or more may not be towed with a tow line longer than the length of the vessel plus 15 meters (50 feet).

§ 161.921 Channel closure and special rules.

Should channel obstructions or other conditions of unusual hazard so require, the COTP may order the closing of a channel, designate additional no-overtaking zones or areas of one-way traffic, or establish other temporary traffic rules. Should a channel be closed, vessels transiting in the direction of the closed channel must make preparations to be able to immediately anchor.

§ 161.922 VTS St. Marys River Area.

The VTSSMR Area consists of the navigable waters of the United States in the St. Marys River and lower Whitefish Bay from 45°57'00" N (De Tour Reef Light) to the south, to 46°38'42" N (Ile Parisienne Light) to the north, except the waters of the St. Marys Falls Channel. The waters of the VTS Area are delineated to the east, from Potagannissing Bay and Worsley Bay by a line from La Pointe to Sims Point.

§ 161.923 VTS St. Marys River Users Manual.

To obtain copies of the VTSSMR Users Manual free-of-charge, write to: Commander, U.S. Coast Guard Group Sault Ste. Marie, Sault Ste. Marie, MI 49783–9501.

Vessel Traffic Service San Francisco (VTSSF)

§ 161.1101 Designated frequencies.

(a) VTSSF uses a three-frequency communications system consisting of channels 12 (156.600 MHz), 14 (156.700 MHz), and 18A (156.900 MHz). Vessels must communicate with the VTC on the primary frequencies, as directed by the VTC.

(b) Channel 16 (156.800 MHz) is the secondary frequency for channel 12. Channel 13 (156.65 MHz) is the secondary frequency for channels 14 and 18A.

(c) The voice call for VTSSF is "SAN FRANCISCO TRAFFIC."

§ 161.1102 Reporting points.

All vessels in the VTSSF Area must report to the VTC when passing the following reporting points:

(a) Abeam buoy "SF" or after a Pilot has embarked;

(b) Abeam Main Ship channels buoys "1" and "2" if outbound;

(c) *Abeam Main Ship channels buoys "7" and "8";

(d) Passing under the Golden Gate Bridge;

(e) *Abeam Harding Rock inbound using the deep draft route;

(f) *Abeam Alcatraz Island;

(g) Passing under the San Francisco-Oakland Bay Bridge;

(h) *Abeam Oakland Inner Harbor buoys "5" and "6";

(i) Abeam Hunters Point;

(j) Passing under the San Mateo Bridge;

(k) Entering Redwood Creek or departing Redwood City;

(l) Passing under the Dumbarton Bridge;

(m) Entering Southampton Shoal Channel;

(n) *Passing Ferry Point, entering Richmond Inner Harbor;

(o) *Passing Point Potrero, leaving Richmond Inner Harbor;

(p) Passing under the Richmond San Rafael Bridge;
(q) Abeam the Brothers Light;
(r) Abeam San Pablo Bay Lighted Buoy "E";
(s) Entering Petaluma Channel;
(t) Entering Mare Island Strait;
(u) Passing under the Mare Island Causeway Bridge;
(v) Passing under the Carquinez Bridge;
(w) Passing under the SP Railroad Bridge at Benicia;
(x) Abeam Concord Naval Weapons Station;
(y) Passing New York Point;
(z) Passing under the Rio Vista Bridge;
(aa) Passing Sacramento Deep Water Ship Channel Light 51;
(bb) Entering/departing port of Sacramento;
(cc) Passing under the Antioch Bridge;
(dd) Passing Prisoners Point; and
(ee) Entering/departing the Port of Stockton.

Note: Those locations marked with an asterisk are required reporting points only when visibility is one mile or less.

§ 161.1103 Separation zones.

Separation zones are 150 yards wide. The boundaries of each zone are parallel to its center line. No part of any separation zone is contained in a precautionary area. The center line of separation zones connect the following geographical points:

(a) Between the SF buoy precautionary area eastward to the Alcatraz Island precautionary area:
(1) 37°45′56″ N 122°38′00″ W;
(2) 37°47′00″ N 122°34′20″ W;
(3) 37°48′06″ N 122°31′00″ W;
(4) 37°49′12″ N 122°28′42″ W (mid-span GGB); and
(5) 37°49′38″ N 122°25′18″ W (Alcatraz Light).

(b) Between the Alcatraz Island precautionary area northward to Pinole Shoal Channel in San Pablo Bay:
(1) 37°50′12″ N 122°24′24″ W;
(2) 37°51′48″ N 122°24′24″ W (North channel LB "A");
(3) 37°54′06″ N 122°26′36″ W (North channel LB "B");
(4) 37°54′48″ N 122°25′54″ W (North channel LB "C");
(5) 37°56′06″ N 122°26′36″ W (mid span Richmond-San Rafael Bridge West);
(6) 37°57′36″ N 122°26′42″ W;
(7) 38°00′36″ N 122°24′06″ W (San Pablo Bay LB "E"); and
(8) 38°01′48″ N 122°22′18″ W.

(c) Between the Alcatraz Island precautionary area southward almost to Anchorage 9:
(1) 37°49′06″ N 122°24′12″ W (Blossom Rock LBB "BR");
(2) 37°47′54″ N 122°22′36″ W (Pier C, Bay Bridge); and
(3) 37°46′36″ N 122°22′00″ W.

§ 161.1104 Traffic lanes.

Traffic lanes extend to but do not enter precautionary areas. Directional lanes are located on both sides of a separation zone.

(a) *Eastbound San Francisco Bay traffic lane.* From the SF buoy precautionary area to the Alcatraz Island precautionary area between the separation zone and a line connecting the following geographical points:
(1) 37°45′48″ N 122°37′42″ W (Main Ship Channel LWB "1");"2");
(2) 37°47′50″ N 122°30′45″ W;
(3) 37°46′36″ N 122°22′00″ W (GGB south pier);
(4) 37°48′50″ N 122°26′14″ W; and
(5) 37°48′42″ N 122°25′06″ W (Pier 45).

(b) *Westbound San Francisco Bay traffic lane.* From the SF buoy precautionary area to the Alcatraz Island precautionary area between the separation zone and a line connecting the following geographical points:
(1) 37°46′12″ N 122°37′54″ W (Main Ship Channel LWB "1");
(2) 37°46′54″ N 122°35′18″ W (Main Ship Channel LWB "7");
(3) 37°46′36″ N 122°22′00″ W (GGB south pier);
(4) 37°49′30″ N 122°28′36″ W (Lime Point);
(5) 37°50′36″ N 122°27′06″ W (Raccoon Strait LB "1"); and
(6) 37°51′06″ N 122°24′54″ W.

(c) *Northbound San Francisco Bay traffic lane.* From the Alcatraz Island precautionary area to Pinole Shoal Channel in San Pablo Bay between the separation zone and a line connecting the following geographical points:
(1) 37°50′00″ N 122°23′42″ W (North Channel LB "2");
(2) 37°51′42″ N 122°23′42″ W (North Channel LB "6");
(3) 37°54′06″ N 122°26′06″ W (North Channel LB "10");
(4) 37°56′06″ N 122°26′30″ W (East pier Richmond/San Rafael Bridge);
(5) 37°57′18″ N 122°26′24″ W (North Channel LB "16");
(6) 37°57′36″ N 122°26′18″ W (North Channel LB "18"); and
(7) 38°01′42″ N 122°22′18″ W (San Pablo Bay Channel LB "8").

(d) *Southbound San Francisco Bay traffic lane.* From the Alcatraz Island precautionary area to Pinole Shoal Channel in San Pablo Bay between the separation zone and a line connecting the following geographical points:
(1) 37°51′06″ N 122°24′54″ W;
(2) 37°51′48″ N 122°24′54″ W;
(3) 37°54′12″ N 122°27′24″ W;
(4) 37°56′06″ N 122°26′42″ W (West pier Richmond/San Rafael Bridge);
(5) 37°57′30″ N 122°27′18″ W (North Channel Light "17");
(6) 38°00′48″ N 122°24′42″ W; and
(7) 38°01′54″ N 122°22′24″ W (San Pablo Bay Channel Lt "7").

(e) *Outbound lane (lower bay).* From Anchorage 9 to the Alcatraz Island precautionary area between the separation zone and a line connecting the following geographical points:
(1) 37°47′00″ N 122°21′30″ W;
(2) 37°48′20″ N 122°22′12″ W (Pier E, SF/Oakland Bay Bridge); and
(3) 37°49′24″ N 122°23′44″ W.

(f) Inbound lane (lower bay). From the Alcatraz Island precautionary area to Point Avisadero between the separation zone and the shore.

§ 161.1105 Precautionary areas.

The precautionary areas consist of:

(a) SF buoy precautionary area. A circular area with a radius of 6 miles centered on the San Francisco Lighted Horn Buoy "SF" (37°45′00″N 122°41′50″W) with the traffic lanes fanning out from its periphery; and

(b) Alcatraz Island precautionary area. A circular area with a radius of 1200 yards centered at 37°49′30″N 122°24′25″W excluding that portion east of 122°23′44″W which is part of Anchorage 7.

§ 161.1106 Standard route deviations.

In the VTS Area there are established safety-related reasons for not adhering to the TSS. Common practice has identified four "STANDARD" deviations wherein it is recognized that safety may require that a vessel deviate from the TSS upon authorization of the VTC as prescribed by § 161.17(b), as follows:

(a) Vessels proceeding eastward to the port of Oakland (or Anchorages 8 and 9) may desire to use the C–D or D–E span of the San Francisco-Oakland Bay Bridge to facilitate "shaping up" for the Oakland Bar Channel or anchorages.

(b) Vessels arriving from sea proceeding eastward, whose draft is greater than 35 feet, may use the deep-draft route. In such cases, the vessel sets a course from the Golden Gate to pass west and north of Harding Rock Lighted Buoy "HR", thence east until north of Alcatraz Island, thence to selected anchorage or other destination.

(c) Vessels proceeding westward to sea, departing from any berth between Pier 25 and Pier 47 on the San Francisco waterfront may initially proceed outbound in the Eastbound Lane passing south of Alcatraz Island. Once west and clear of Alcatraz, they will cross over into the proper Westbound Lane and continue to sea.

(d) Vessels proceeding northward departing from any berth between Pier 52 and the San Francisco-Oakland Bay Bridge may initially proceed in the Southbound Lane (Lower Bay) using A–B or D–E span of the San Francisco Bay Bridge. Once clear of this bridge, they will cross over into the Northbound Lane leaving Blossom Rock Lighted Bell Buoy "BR" to their port and continue to their destination.

§ 161.1107 Narrow channels or fairways.

The following areas are considered to be narrow channels or fairways for the purpose of enforcing the International and Inland Rules of the Road.

(a) All limited traffic areas and precautionary areas in San Francisco Bay east of the San Francisco Approach Lighted Horn Buoy "SF."

(b) South San Francisco Bay channels between the termination of the TSS in the vicinity of San Francisco Bay South Channel Lighted Buoy "1" and Redwood Creek Entrance Light "2."

(c) Redwood Creek between Redwood Creek Entrance Light "2" and Redwood Creek Daybeacon "21."

(d) Carquinez Strait between the Carquinez Strait highway bridge and the Benicia-Martinez highway bridge.

(e) Suisun Bay Channels between Benicia-Martinez highway bridge and Suisun Bay Light "34."

(f) New York Slough between Suisun Bay Light "30" and Point Beenar Light.

(g) San Joaquin River from Point Beenar Light to the Port of Stockton.

(h) Sacramento River Deep Water Ship Channel from Suisun Bay Light "34" to the Port of Sacramento.

(i) Alameda Naval Air Station Channel.

(j) Richmond Harbor Entrance Channel.

(k) Mare Island Strait between Mare Island Strait Light "2" and Mare Island Causeway Bridge.

§ 161.1108 Safety procedures for vessels carrying certain dangerous cargoes in San Francisco Bay.

(a) Owners and operators of vessels transporting any of the following dangerous cargoes within San Francisco Bay, as defined in § 80.1142 of this chapter, shall comply with the procedures outlined in paragraph (b) of this section:

(1) Vessels laden with more than 100 short tons of Class A explosives;

(2) Barges laden with more than 50 short tons of Class A explosives;

(3) All vessels carrying more than 200 short tons of oxidizing materials or blistering agents;

(4) All vessels carrying large quantities of radioactive materials as defined in § 160.203 of this chapter; and

(5) All vessels carrying in bulk any of the cargoes listed in § 160.203(e) of this chapter.

(b) Vessels carrying the commodities described in paragraph (a) of this section shall:

(1) Comply with the arrival and departure notification and waiver provisions as described in § 160.211 of this chapter.

(2) Participate in the VTS and adhere to the charted TSS except as directed by the VTS or COTP San Francisco.

(3) Transit the San Francisco bay area only when visibility is 1 mile or greater. A decrease in visibility must be immediately reported to the VTC.

(4) Limit speed to 12 knots or less. Requests to exceed the 12-knot limit shall be made to the VTC.

(c) The COTP may require that vessels described in paragraph (a) of this section be escorted by a Coast Guard vessel. When unusual navigational difficulties or hazards are anticipated, the COTP will consider requests for escorts from other vessels. Escorts will be conducted as follows:

(1) Escorts for vessels entering port will begin at the Golden Gate Bridge. The escort vessel will normally station itself 500 to 1,000 yards ahead of the escorted vessel.

(2) Continuous communications must be maintained between the vessel and its escort on channel 13. Secondary communications must be on channel 22. If necessary, emergency communications may be conducted on channel 16.

(3) Escorted vessels may depart from the TSS only with the approval of the escort vessel and the VTS.

§ 161.1109 VTS San Francisco Area.

The VTSSF Area includes San Francisco Bay; its seaward approaches south of 38°00′ N; east of 123°07′ W; and north of 37°27′ N; and its tributaries as far north as Petaluma River Entrance Lights "1" and "2", and the Mare Island Causeway Bridge, as far east as the port of Stockton on the San Joaquin River, as far north as the port of Sacramento on the Sacramento River and as far south as Redwood City.

§ 161.1110 VTS San Francisco Users Manual.

To obtain copies of the VTS San Francisco Users Manual free-of-charge, write to: Commanding Officer, U.S. Coast Guard Vessel Traffic Service San Francisco, Yerba Buena Island, San Francisco CA 94130–5013.

Vessel Traffic Service Puget Sound (VTSPS)

§ 161.1301 Applicability.

The rules in subpart A of this part also apply to the operation of each small passenger-carrying vessel certificated in accordance with 46 CFR parts 175 through 187 (subchapter T) when carrying more than six passengers for hire.

§ 161.1302 Navigation requirements.

(a) Tank ships larger than 125,000 deadweight tons bound for a port or place in the United States may not operate in waters of the United States east of a line extending from Discovery Island Light to New Dungeness Light, and all points in the Puget Sound area north and south of these lights.

(b) Participating vessels are exempt from the requirement in § 161.21(c) to keep the center of precautionary "RB" to port.

§ 161.1303 Cooperative Vessel Traffic Management System (CVTMS).

(a) The United States and Canada signed a formal Agreement in 1979 to establish the Cooperative Vessel Traffic Management System (CVTMS). The purpose of the CVTMS is to promote safe and efficient movement of vessel traffic, while minimizing the risk of pollution to the waters covered by the Agreement.

(b) To this end, the VTSPS Area, described in § 161.1318, is divided into three Zones; the Tofino Zone, the Vancouver Zone, and the Seattle Zone. Vessel traffic in each Zone is managed by the governing VTC. By the Agreement, these rules grant each VTC traffic management authority within its Zone. Additional information is contained in subpart C of this part.

(c) The Tofino Zone comprises that portion of the VTSPS Area west of 124°04′00″ W. All vessels must conduct communications with "Tofino Traffic" on channel 74 (156.725 MHz) upon entering or while operating in this area.

(d) The Vancouver Zone comprises that portion of the VTSPS Area north of line drawn from the tip of Church Point on the Canadian shoreline to position 48°17′04″ N 123°14′51″ W; thence northeasterly to Hein Bank Lighted Bell Buoy; thence northeasterly to Cattle Point Light on San Juan Island; thence along the shoreline to Lime Kiln Light; thence to Kellet Bluff Light on Henry Island; thence to Turn Point Light on Stuart Island; thence to Skipjack Island Light; thence to Sucia Island Daybeacon "1"; thence along the shoreline of Sucia Island to a point at 48°46′1″ N 122°53′3″

W; thence to Clements Reef Buoy "2"; thence to Alden Bank Lighted Gong Buoy "A"; thence northerly to the western most tip of Birch Point at 48°56'36" N 122°49'12" W. All vessels must conduct communications with "Vancouver Traffic" on channel 11 (156.55 MHz) upon entering or while operating in this area.

(e) The Seattle Zone comprises all the remaining portions of the VTSPS Area.

§ 161.1304 Designated frequencies.

(a) VTSPS uses a two-frequency communication system. Channel 14 (156.700 MHz) and channel 5A (156.250 MHz) are the primary frequencies. Vessels must communicate with "SEATTLE TRAFFIC" on the primary frequencies, as directed by the VTC.

(b) Channel 13 (156.650 MHz) is the secondary frequency throughout the VTSPS Area.

§ 161.1305 Initial report.

Vessels that will be entering from one of the zones described in § 161.1303 and that have been making reports to another VTC are exempt from making this report.

§ 161.1306 Underway report.

In addition to the requirements of § 161.42, a vessel must report when entering or beginning to navigate in a VTS Zone.

§ 161.1307 Follow-up reports.

In addition to the requirements of § 161.43, a vessel must report when crossing a VTS Zone boundary, to the receiving VTC, on their designated frequency.

§ 161.1308 Ferry reports.

(a) Subject to paragraph (b) of this section, ferries operating in the VTSPS Area on a set schedule and route, both of which have been furnished to the VTC, need not make the following reports:

(1) Initial report (§ 161.41);

(2) Underway report (§ 161.42);

(3) Final report (§ 161.45); and

(4) Intent to cross a TSS (§ 161.43(2)).

(b) Ferries whose schedule and route have been furnished to the VTC, must report the following at least 5 minutes but not more than 10 minutes prior to departure from a ferry terminal:

(1) Name of ferry;

(2) Time and point of departure; and

(3) Destination.

(c) Ferries and vessels carrying passengers for hire must, when crossing the TSS, make safe passing arrangements on channel 13 or the designated VTS frequency with any vessel participating in the VTS and following the TSS, if their transit carries them within one half-mile of that vessel.

§ 161.1309 Local harbor reports.

(a) When a vessel moves within a three mile radius of it's point of departure within the VTSPS Area, the movement is considered a local harbor movement. Subject to paragraph (b) of this section, a vessel making a local harbor movement is exempted from the reporting requirements for initial report (§ 161.41), underway report (§ 161.42), and final report (§ 161.45).

(b) At least 5 minutes, but not more than 45 minutes, before a vessel makes a local harbor movement as described under paragraph (a) of this section, the Master, Pilot, or person directing the movement of the vessel shall report the following information to the VTC:

(1) Name and type of vessel;

(2) Location of departure;

(3) Time of departure;

(4) Destination and ETA; and

(5) General description of operation to be performed.

(c) The Master, Pilot, or person directing the movement of the vessel shall report any changes to the information reported under paragraph (b) of this section, except that departing and ETA times must be reported only if they vary by 15 minutes or more from the report.

§ 161.1310 Separation zones.

(a) Each separation zone, except those west of Port Angeles, is 500 yards wide and centered on a line connecting the points listed in paragraph (c) of this section. Separation zones west of Port Angeles are described in the CVTMS rules, contained in subpart C of this part.

(b) The two boundaries of each separation zone are parallel to its center line, and extend to and intersect with the boundary of a precautionary area. No part of any separation zone is contained in a precautionary area.

(c) The latitudes and longitudes describing the center lines of the separation zones are:

(1) Between the Port Angeles and "SA" precautionary areas:

48°12'22" N	123°06'30" W
48°11'37" N	122°52'40" W

(2) Between the Port Angeles and "RA" precautionary areas:

48°16'26" N	123°06'30" W
48°19'06" N	123°00'09" W

(3) Between the "RA" and "SA" precautionary areas:

48°18'45" N	122°57'39" W
48°13'04" N	122°54'24" W

(4) Between the "RA" and "RB" precautionary areas:

48°20'26" N	122°57'01" W
48°24'14" N	122°48'06" W
48°25'28" N	122°48'23" W

(5) Between the "RB" and "SA" precautionary areas:

48°25'12" N	122°44'40" W
48°24'10" N	122°44'12" W
48°13'22" N	122°40'55" W

(6) Between the "SA" and "SC" precautionary areas:

48°10'48" N	122°46'58" W
48°06'48" N	122°39'36" W
48°02'28" N	122°38'20" W

(7) Between the "SC" and "SE" precautionary areas:

48°01'20" N	122°37'37" W
47°57'53" N	122°34'42" W
47°55'46" N	122°30'14" W

(8) Between the "SE" and "SF" precautionary areas:

47°54'09" N	122°29'17" W
47°46'31" N	122°26'23" W

(9) Between the "SF" and "SG" precautionary areas:

47°45'19" N	122°28'21" W
47°40'19" N	122°27'38" W

(10) Between the "SG" and "T" precautionary areas:

47°39'06" N	122°27'42" W
47°35'12" N	122°27'06" W

(11) Between the "T" and "TC" precautionary areas:

47°33'59" N	122°26'47" W
47°26'53" N	122°24'12" W
47°23'07" N	122°21'08" W
47°19'54" N	122°26'37" W

(12) Between the "CA" and "C" precautionary areas:

48°44'15" N	122°45'39" W
48°41'39" N	122°43'34" W

§ 161.1311 Traffic lanes east of Port Angeles.

(a) Except as provided in paragraph (c) of this section, each traffic lane consists of the area within two parallel boundaries that are 1000 yards apart, and that extend to and intersect with, the boundary of a precautionary area. One of these parallel boundaries is parallel to and 250 yards from the center line of a separation zone.

(b) No part of any traffic lane is contained in a precautionary area.

(c) The traffic lane in Rosario Strait consists of the area enclosed by a line beginning at 48°26'50" N 122°43'27" W; thence northerly to 48°36'06" N 122°44'58" W; thence northeasterly to 48°39'18" N 122°42'42" W; thence westerly and northwesterly along the

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(4) Between the "RA" and "RB" precautionary areas:

48°20'26" N	122°57'01" W
48°24'14" N	122°48'00" W
48°25'28" N	122°48'23" W

(5) Between the "RB" and "SA" precautionary areas:

48°25'12" N	122°44'40" W
48°24'10" N	122°44'12" W
48°13'22" N	122°48'55" W

(6) Between the "SA" and "SC" precautionary areas:

48°10'48" N	122°46'58" W
48°06'48" N	122°39'36" W
48°02'28" N	122°38'20" W

(7) Between the "SC" and "SE" precautionary areas:

48°01'20" N	122°37'37" W
47°57'58" N	122°34'42" W
47°55'46" N	122°30'14" W

(8) Between the "SE" and "SF" precautionary areas:

47°54'09" N	122°29'17" W
47°46'31" N	122°26'23" W

(9) Between the "SF" and "SG" precautionary areas:

47°45'19" N	122°28'21" W
47°40'19" N	122°27'38" W

(10) Between the "SG" and "T" precautionary areas:

47°39'06" N	122°27'42" W
47°35'12" N	122°27'06" W

(11) Between the "T" and "TC" precautionary areas:

47°33'59" N	122°28'47" W
47°26'53" N	122°24'12" W
47°23'07" N	122°21'08" W
47°19'54" N	122°28'37" W

(12) Between the "CA" and "C" precautionary areas:

48°44'15" N	122°45'39" W
48°41'39" N	122°43'34" W

§ 161.1311 Traffic lanes east of Port Angeles.

(a) Except as provided in paragraph (c) of this section, each traffic lane consists of the area within two parallel boundaries that are 1000 yards apart, and that extend to and intersect with, the boundary of a precautionary area. One of these parallel boundaries is parallel to and 250 yards from the center line of a separation zone.

(b) No part of any traffic lane is contained in a precautionary area.

(c) The traffic lane in Rosario Strait consists of the area enclosed by a line beginning at 48°26'50" N 122°43'27" W; thence northerly to 48°36'06" N 122°44'58" W; thence northeasterly to 48°39'18" N 122°42'42" W; thence westerly and northwesterly along the

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boundary of precautionary area "C" to 48°39'37" N 122°43'58" W; thence southerly to 48°38'24" N 122°44'08" W; thence southwesterly to 48°36'08" N 122°45'44" W; thence southerly to 48°29'30" N 122°44'41" W; thence southwesterly to 48°27'37" N 122°45'27" W; thence northeasterly and southeasterly along the boundary of precautionary area "RB" to the point of beginning.

§ 161.1312 Precautionary areas east of Port Angeles.

The precautionary areas are:

(a) Port Angeles precautionary area. An area enclosed by a line beginning on the shoreline at New Dungeness Spit at 48°11'00" N 123°06'30" W, thence due north to 48°17'10" N 123°06'30" W, thence southwesterly to 48°10'00" N 123°27'38" W, thence due south to the shoreline, thence along the shoreline to the point of beginning;

(b) Precautionary area "RA." A circular area of 2,500 yards radius centered at 48°19'46" N 122°58'34" W;

(c) Precautionary area "RB." A circular area of 2,500 yards radius centered at 48°26'24" N 122°45'12" W. (The center of precautionary area "RB" is not marked by a buoy);

(d) Precautionary area "C." A circular area of 2,500 yards radius centered at 48°40'34" N 122°42'44" W;

(e) Precautionary area "CA." A circular area of 2,500 yards radius centered at 48°45'19" N 122°46'26" W;

(f) Precautionary Area "SA." A circular area of 4,000 yards radius centered at 48°11'23" N 122°49'43" W;

(g) Precautionary area "SC." A circular area of 1,250 yards radius centered at 48°01'52" N 122°38'05" W;

(h) Precautionary area "SE." A circular area of 1,250 yards radius centered at 47°55'25" N 122°29'29" W;

(i) Precautionary area "SF." A circular area of 1,250 yards radius centered at 47°45'55" N 122°26'11" W;

(j) Precautionary area "SG." A circular area of 1,250 yards radius centered at 47°39'42" N 122°27'48" W;

(k) Precautionary area "T." A circular area of 1,250 yards radius centered at 47°34'34" N 122°27'00" W; and

(l) Precautionary area "TC." A circular area of 1,250 yards radius centered at 47°19'30" N 122°27'19" W.

§ 161.1313 Rosario Strait and Guemes Channel rules.

Sections 161.1315 through 161.1317 apply to the waters of Rosario Strait bounded to the south by the center of Precautionary Area "RB" and to the north by the center of Precautionary Area "C," and in Guemes Channel.

§ 161.1314 Before entering Rosario Strait or Guemes Channel.

(a) At least 15 minutes before a vessel enters Rosario Strait or Guemes Channel, the Master, Pilot, or person directing the movement of the vessel shall report the vessel's ETA and point of entry to the VTC.

(b) A vessel 40,000 deadweight tons or greater must receive permission to enter Rosario Strait or Guemes Channel from the VTC.

§ 161.1315 Entering and transiting Rosario Strait or Guemes Channel.

(a) A vessel may not enter Rosario Strait or Guemes Channel unless:

(1) The entry report required in § 161.1314(a) of this subpart has been made;

(2) Permission, if required by § 161.1314(b) of this subpart, is received;

(3) The communications rules of this part can be complied with;

(4) The vessel is free of any condition which may impair its navigation, such as fire, defective propulsion machinery, defective steering equipment, defective radar, defective gyrocompass, defective sounding device, or similar condition or defect; and

(5) During periods of reduced visibility of 2 miles or less, the radar is operating and observed by a qualified operator.

(b) No vessel 40,000 deadweight tons or greater may meet or overtake another vessel of 300 gross tons or greater in Rosario Strait or Guemes Channel.

§ 161.1316 Passing arrangements in Rosario Strait or Guemes Channel.

Before a vessel meets, overtakes, or crosses ahead of any other vessel listed in §§ 161.11(b) or 161.1301(a) (1) and (2), in Rosario Strait or Guemes Channel, the Master, Pilot, or person directing the movement of the vessel shall make safe passing arrangements on the Bridge-to-Bridge Radio Telephone Act frequency, channel 13 (156.65 MHz), or the designated VTS frequency.

§ 161.1317 VTS Puget Sound Area.

(a) The VTSPS Area consists of all navigable waters of the U.S. bounded by the Washington State coastline and a line commencing where the Washington State coastline intersects latitude 48°10'00" N on Cape Alava; thence drawn due west to the point of intersection with the U.S. Territorial Sea Boundary; thence northward and eastward along the U.S. Territorial Sea Boundary to its intersection with the U.S./Canada International Boundary; thence along the U.S./Canada International Boundary through the waters known as the Strait of Juan de Fuca, Haro Strait, Boundary Pass, and the Strait of Georgia to a point of intersection with the Washington State coastline at the International Boundary Range C Rear Light.

(b) This area includes all of the following northwestern Washington waters: Puget Sound, Hood Canal, Possession Sound, the San Juan Archipelago, Rosario Strait, Guemes Channel, Bellingham Bay, the U.S. waters of the Strait of Juan de Fuca and Georgia Strait, and all waters adjacent to the above.

§ 161.1318 VTS Puget Sound Users Manual.

To obtain copies of the VTS Puget Sound Users Manual free-of-charge, write to: Commanding Officer, U.S. Coast Guard Vessel Traffic Service Puget Sound, 1519 Alaskan Way South, Seattle, WA 98134–1192.

Vessel Traffic Service Prince William Sound (VTSPWS)

§ 161.1701 Designated frequency.

(a) The primary frequency for communicating with the VTC is 156.65 MHz (channel 13).

(b) The VTC also monitors channel 16. In the event of communications failure on channel 13, VTS communications must be on channel 16.

(c) The voice call for VTSPWS is "VALDEZ TRAFFIC."

§ 161.1702 Initial report.

(a) In addition to the initial reporting requirements specified in § 161.41, the Master, Pilot, or person directing the movement of a tank ship greater than 20,000 DWT shall report the vessels name and location at least three hours before a vessel enters or begins to navigate in the VTS Area.

(b) Fishing vessels maneuvering at various courses and speeds while engaged in fishing need only report their location to the VTC.

(c) Tank ships must also report their draft and whether laden or unladen, and if laden, what type of cargo is on board.

(d) Participating vessels intending to enter the VTS Area via the Cape Hinchinbrook Entrance shall report the information in § 161.41 at least 3 hours before the vessel enters the VTS Area at Cape Hinchinbrook Entrance. This is to enable the VTC to provide the best possible traffic advisories to tankers using the Safety Fairway outside the Cape Hinchinbrook Entrance.

§ 161.1703 Follow-up report.

In addition to the reporting requirements contained in § 161.43, the Master, Pilot, or person directing the movement of the vessel shall report the vessels name and location at least 30 minutes before a vessel enters or begins to navigate in the VTS Area through Hinchinbrook entrance.

§ 161.1704 Reporting points.

All vessels must report to the VTC when passing the following reporting points for frequented routes in the VTSPWS Area.

(a) Cape Hinchinbrook—Valdez:
(1) Hinchinbrook Entrance;
(2) Naked Island;
(3) *Reef Island;
(4) *Tongue Point; and
(5) *Entrance Island.
(b) Cape Hinchinbrook—Cordova:
(1) Cape Hinchinbrook; and
(2) Johnstone Point.
(c) Cape Hinchinbrook—Whittier:
(1) Cape Hinchinbrook; and
(2) Naked Island.
(d) Valdez—Whittier:
(1) *Entrance Island;
(2) *Tongue Point;
(3) *Point Freemantle; and
(4) Granite Point.
(e) Valdez—Cordova:
(1) *Entrance Island;
(2) *Tongue Point;
(3) *Reef Island; and
(4) Red Head.

Note: The reporting points marked with an asterisk are required only when specified by the VTC.

§ 161.1705 Traffic lanes.

The traffic lanes are 1,504 yards wide beginning at Hinchinbrook Entrance and decrease in width to 1001 yards at Valdez Arm west of Bligh Reef, where they terminate. The traffic lanes are as follows:

(a) The inward bound traffic lane is between the separation zone and a line connecting the following points:

60°58′09″ N	146°46′16″ W
60°49′07″ N	146°58′42″ W
60°35′00″ N	147°01′42″ W
60°15′45″ N	146°44′20″ W

(b) The outward bound traffic lane is between the separation zone and a line connecting the following points:

60°59′01″ N	146°48′37″ W
60°50′04″ N	147°03′35″ W
60°34′36″ N	147°06′48″ W
60°17′38″ N	146°51′20″ W

§ 161.1706 Separation zone.

The separation zone is 2,001 yards wide beginning at Hinchinbrook Entrance and decreases in width to 1,001 yards at Valdez Arm west of Bligh Reef, where it terminates. The separation zone is bounded by lines connecting the following points:

60°58′43″ N	146°47′50″ W
60°49′47″ N	147°02′06″ W
60°34′43″ N	147°05′16″ W
60°17′05″ N	146°49′18″ W
60°16′20″ N	146°46′28″ W
60°34′53″ N	147°03′14″ W
60°49′23″ N	147°00′08″ W
60°58′26″ N	146°47′02″ W

§ 161.1707 One-way traffic in Valdez Narrows.

(a) The Valdez Narrows One-Way Traffic Area consists of the navigable waters of the United States in Valdez Arm, Valdez Narrows, and Port Valdez northeast of a line bearing 307° True from Tongue Point at 61°02′06″ N 146°40′00″ W, and southwest of a line bearing 307° True from Entrance Island Light at 61°05′06″ N 146°36′42″ W.

(b) The Valdez Narrows One-Way Traffic Area is restricted to one-way traffic whenever a tank ship of 20,000 DWT or more is navigating therein.

(c) A tank ship of 20,000 DWT or more may not enter Valdez Narrows One-Way Traffic Area unless:

(1) It complies with the procedures for entering Valdez Narrows in § 161.1708; and

(2) It complies with the rules for tank ships in the VTS Area in § 161.1710.

§ 161.1708 Entering Valdez Narrows.

A vessel described in § 161.11(b) may not enter the Valdez Narrows One-Way Traffic Area unless:

(a) Permission to enter is obtained from the VTC;

(1) Outbound vessels will not be granted permission to enter Valdez Narrows if any inbound tank ship will be north of 61° N by the time the outbound vessel is abeam Tongue Point.

(2) Inbound vessels will not be granted permission to proceed north of 61° N until outbound tank ship traffic has exited the Valdez Narrows One-Way Zone at Tongue Point.

(b) Any directions from the VTC to remain separated from another vessel are complied with;

(c) The radio equipment on the vessel that is used to transmit reports required by the VTSPWS rules is in operation;

(d) The radar on a vessel equipped with radar is in operation and manned; and

(e) The vessel is free of any condition that may impair its navigation, such as fire, defective steering equipment, defective propulsion machinery, or similar condition or defect.

§ 161.1709 Communications in Valdez Narrows.

Before a vessel meets, overtakes, or crosses ahead of any vessel in the Valdez Narrows One-Way Traffic Area, the Master, Pilot, or person directing the movement of the vessel shall transmit the intentions of his vessel to any other vessel, for the purpose of making safe passing arrangements, on channel 13 (156.650 MHz).

§ 161.1710 Tank ships in the VTS Area.

(a) Each tank ship of 20,000 DWT or more operating in the VTS Area must:

(1) Have two separate marine radar systems for surface navigation, one of which is operating and the other is either operating or capable of immediate operation;

(2) Have an operating Loran C receiver;

(3) Have an operating rate of turn indicator; and

(4) Have at least two radiotelephones capable of operating on the designated VTS frequency, one of which is capable of battery operation.

(b) No laden tank ship of 20,000 DWT tons or more may transit that portion of Valdez Narrows between Middle Rock and Potato Point at a speed in excess of six knots.

(c) No tank ship of 20,000 DWT tons or more may transit the Valdez Narrows One-Way Traffic Area at a speed in excess of twelve knots.

(d) While in the VTS Area, if a tank ship of 20,000 DWT tons or more is unable to comply with paragraph (a)(1) of this section, the Master, Pilot, or person directing the movement of the vessel shall immediately notify the VTC.

§ 161.1711 Tug assistance for tank ships.

(a) For the purposes of this section, tug assistance means the use of a sufficient number of tugs properly manned and positioned, with enough power and maneuverability to enable the vessel to accomplish the intended maneuvers safely. Factors to be considered in determining the amount of tug assistance needed are:

(1) Existing and expected conditions of wind, tide and current; and

(2) Size, displacement and maneuvering capability of the vessel.

(b) No laden tank ship of 20,000 DWT or more may transit the Valdez Narrows One-Way Traffic Area unless:

(1) A sufficient number of tugs are standing by at the northern end of Valdez Narrows; and

(2) Tug assistance is used when directed by the VTC.

(c) The Master, Pilot, or person directing the movement of any tank ship required to use tug assistance shall insure that there are sufficient persons positioned on the vessel to handle lines to tugs as needed.

§ 161.1712 Special circumstances.

(a) Extension of the Valdez Narrows One-Way Traffic Area may occur when the VTC determines that hazardous ice

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§ 161.1710 Tank ships in the VTS Area.

(a) Each tank ship of 20,000 DWT or more operating in the VTS Area must:

(1) Have two separate marine radar systems for surface navigation, one of which is operating and the other is either operating or capable of immediate operation;

(2) Have an operating Loran C receiver;

(3) Have an operating rate of turn indicator; and

(4) Have at least two radiotelephones capable of operating on the designated VTS frequency, one of which is capable of battery operation.

(b) No laden tank ship of 20,000 DWT tons or more may transit that portion of Valdez Narrows between Middle Rock and Potato Point at a speed in excess of six knots.

(c) No tank ship of 20,000 DWT tons or more may transit the Valdez Narrows One-Way Traffic Area at a speed in excess of twelve knots.

(d) While in the VTS Area, if a tank ship of 20,000 DWT tons or more is unable to comply with paragraph (a)(1) of this section, the Master, Pilot, or person directing the movement of the vessel shall immediately notify the VTC.

§ 161.1711 Tug assistance for tank ships.

(a) For the purposes of this section, tug assistance means the use of a sufficient number of tugs properly manned and positioned, with enough power and maneuverability to enable the vessel to accomplish the intended maneuvers safely. Factors to be considered in determining the amount of tug assistance needed are:

(1) Existing and expected conditions of wind, tide and current; and

(2) Size, displacement and maneuvering capability of the vessel.

(b) No laden tank ship of 20,000 DWT or more may transit the Valdez Narrows One-Way Traffic Area unless:

(1) A sufficient number of tugs are standing by at the northern end of Valdez Narrows; and

(2) Tug assistance is used when directed by the VTC.

(c) The Master, Pilot, or person directing the movement of any tank ship required to use tug assistance shall insure that there are sufficient persons positioned on the vessel to handle lines to tugs as needed.

§ 161.1712 Special circumstances.

(a) Extension of the Valdez Narrows One-Way Traffic Area may occur when the VTC determines that hazardous ice

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conditions exist in Valdez Arm. In these instances:

(1) The Valdez Narrows One-Way Traffic Area will be extended south to a line from 62°5'218" N 147°05'30" W, to 60°46'24" N 146°47'30" W;

(2) The extended one-way traffic area will apply to all vessels defined in § 161.11(b), except: Passenger and commercial vessels of less than 1,000 gross tons; tank ship escort vessels; and vessels of the Alaska Marine Highway system.

(3) All northbound vessels to which these provisions apply shall not proceed north of 60°40'00" N, unless authorized by the VTC.

(b) The VTC may impose tank ship movement restrictions when steady wind conditions above 30 knots (are anticipated) (exist), as follows:

(1) When the steady wind component in Valdez Narrows or Port Valdez exceeds 40 knots, no tank ship of 20,000 DWT or more will be given permission to enter Valdez Narrows one-way zone inbound, or get underway from the berth outbound unless specifically exempted by the VTC.

(2) When the steady wind component exceeds 30 knots, ship assist vessel escorts will be specified by the VTC for inbound and outbound tank ships of 20,000 DWT or more for the transit of Valdez Narrows and Port Valdez.

(c) The VTC may impose tank ship movement restrictions when steady wind conditions above 40 knots (are anticipated) (exist), as follows:

(1) Underway tank ships must not anchor in the anchorage designated in § 110.233 of this chapter.

(2) Tank ships already anchored must:

(i) Maintain a constant bridge watch and determine position with sufficient frequency to enable the vessel to get underway safely if the anchor drags; and

(ii) Place the entire main propulsion system on immediate standby.

(3) Anchored tank ships must get underway and proceed as directed by the VTC when:

(i) The steady wind component exceeds 45 kts; or

(ii) Any dragging of the anchor occurs.

§ 161.1713 VTS Prince William Sound Area.

The VTS Area consists of the navigable waters of the United States north of a line drawn from Cape Hinchinbrook Light to Schooner Rock Light, comprising that portion of Prince William Sound between longitudes 146°30'00" W and 147°20'00" W and includes Valdez Arm, Valdez Narrows and Port Valdez.

§ 161.1714 VTS Prince William Sound Users Manual.

To obtain copies of the VTS Prince William Sound Users Manual free-of-charge, write to: Commanding Officer, U.S. Coast Guard Vessel Traffic Service Prince William Sound, P.O. Box 486, Valdez, AK 99686–0486.

Subpart C—Other Vessel Traffic Management Systems

Note: Since the rules in this subpart relate to traffic management functions, they are included in this part, however, they are independent of the National VTS regulations contained in subparts A and B of this part.

Juan De Fuca Region Cooperative Vessel, Traffic Management System (CVTMS), General Rules

§ 161.2000 Purpose.

Sections 161.2000 to 161.2066 prescribe rules for vessel operation in the CVTMS. These rules are intended to enhance safe and expeditious vessel traffic movement, to prevent groundings and collisions, and to minimize the risk of property damage and pollution to the marine environment.

§ 161.2001 Applicability.

(a) The CVTMS is established as a program jointly managed by the United States and Canada. The CVTMS Area is divided into zones, which are administered solely by the United States or Canada. The appropriate Vessel Traffic Management Center administers, within its zone, the regulations issued by both nations. Each set of regulations applies only to the waters over which the issuing nation has jurisdiction and each nation will enforce only its own set of regulations. With the exception of the vessels listed in § 161.2002, the United States' regulations apply in the CVTMS Area to:

(1) Each vessel of 30 meters (98 feet) or more in length; and

(2) Each vessel that is engaged in towing alongside or astern, or in pushing ahead, one or more vessels or objects, other than fishing gear, where:

(i) The combined overall length of the vessel towing, the towing apparatus, and the vessel or object towed is 45 meters (147 feet) or more; or

(ii) The vessel or object towed is 20 meters (65 feet) or more in overall length.

(b) Geographic coordinates expressed in terms of latitude or longitude, or both, are not intended for plotting on maps or charts whose references horizontal datum is the North American Datum of 1983 (NAD 83), unless such geographic coordinates are expressly labeled NAD 83. Geographic coordinates without the NAD 83 reference may be plotted on maps or charts referenced to NAD 83 only after application of the appropriate corrections that are published on the particular map or chart being used.

§ 161.2002 Vessel exemptions.

The rules contained in §§ 161.2012 through 161.2036, do not apply to:

(a) Fishing vessels of less than 300 gross tons;

(b) Unmanned vessels or vessels which are being towed or pushed, or;

(c) Vessels engaged in towing or pushing within a log booming ground.

§ 161.2003 Definitions.

The following definitions supplement the definitions contained in subpart A of this part. As used in §§ 161.2000 through 161.2066:

Authority means the Commissioner of the Canadian Coast Guard or the Commandant of the United States Coast Guard.

Berth means any wharf, pier, anchorage, or mooring buoy.

Cooperative Vessel Traffic Management Center (CVTMC) means the shore based facility established by the appropriate authority for managing traffic in the CVTMS.

Cooperative Vessel Traffic Management System Center direction (CVTMC direction) means an instruction issued by a vessel traffic management center to one or more ships, for the purpose of managing vessel traffic.

Cooperative Vessel Traffic Management System (CVTMS) means the system of vessel traffic management established and jointly operated by Canada and the United States within the waters of the CVTMS Area.

Cooperative Vessel Traffic Management System Area (CVTMS Area) means the waters described in § 161.2054.

National vessel traffic service means a vessel traffic service which is operated and administered solely by Canada or the United States and is not a part of the Cooperative Vessel Traffic Management System.

Zone means a geographic subdivision of the CVTMC Area, defined for purposes of allocating responsibility for vessel traffic management to one of the authorities.

§ 161.2004 Vessel operation in the CVTMS Area.

No person, except those authorized to do so under § 161.2008, may cause or authorize the operation of a vessel in the CVTMS Area contrary to the rules in §§ 161.2000 through 161.2066.

§ 161.2005 CVTMC directions.

(a) During conditions of vessel congestion, adverse weather, reduced visibility, or other hazardous circumstances in a CVTMS Zone, the CVTMC may issue directions to control and supervise traffic, and may specify times when vessels may enter, move within or through, or depart from ports, harbors, or other waters of the CVTMS Zone.

(b) When a vessel is navigating in an unsafe manner or with improperly functioning equipment, the CVTMC may direct the vessel's movement, including directing it to anchor or moor.

(c) The Master, Pilot, or person directing the movement of a vessel shall comply with each direction issued to the vessel.

§ 161.2006 Requirement to carry regulations.

(a) The Master, Pilot, or person directing the movement of a vessel shall ensure that a copy of the current Cooperative Vessel Traffic Management Systems regulations, 33 CFR 161.2000–161.2066, is available on board the vessel when it is in the CVTMS Area. The regulations are reprinted in the CVTMS Users Manual.

(b) A CVTMS Users Manual, which contains the regulations and other useful information for operating in the CVTMS area, is available free-of-charge from:

Officer-in-Charge, Transport Canada,
Canadian Coast Guard Vessel Traffic,
Management Centre, P.O. Box 190,
Ucluelet, BC Canada, VOR 3AO, Phone:
(604) 726–7777

or

Commanding Officer, U.S. Coast Guard
Vessel Traffic Service, 1519 Alaskan Way
South, Seattle, Washington 98134, Phone:
(206) 286–5640

or

Officer-in-Charge, Transport Canada,
Canadian Coast Guard Vessel Traffic
Management Centre, Room 1006 Kapilano
100, Park Royal West Vancouver, BC
Canada, V7T 1A2, Phone: (604) 666–6011.

§ 161.2007 Laws and regulations not affected.

Unless expressly stated otherwise, nothing in §§ 161.2000 through 161.2066 is intended to relieve any person from complying with any other applicable laws or regulation.

§ 161.2008 Authorization to deviate from these rules; equivalent procedures.

(a) Where these regulations require a particular procedure, the Commander, Thirteenth Coast Guard District may, upon written request, authorize any other procedure for use in U.S. waters if it is determined that such other procedure provides a level of safety equivalent to that provided by the required procedure. An application for an authorization must state the need and fully describe the proposed procedure.

(b) The CVTMC may, upon request, issue an authorization to deviate from any rule in §§ 161.2000 through 161.2066, for a voyage or part of a voyage on which a vessel is embarked or about to embark.

§ 161.2010 Emergencies.

In an emergency, the Master, pilot, or person directing the movement of the vessel may deviate from any rule in §§ 161.2000 through 161.2066, to the extent necessary to avoid endangering persons, property or the environment, and shall report the deviation to the CVTMC as soon as possible.

Communications Rules

§ 161.2012 Radio listening watch.

(a) When underway or anchored or moored to a buoy, in the CVTMS Area, the Master, Pilot, or person responsible for directing the movement of a vessel shall ensure that a radiotelephone listening watch is maintained on the frequency designated in § 161.2014 for the sector of the CVTMS Area in which the vessel is operating, except when transmitting on that frequency.

(b) All reports and communications required by these rules must be made to the CVTMC on its designated frequency using a radiotelephone that is maintained in effective operating condition and is capable of operation on the navigational bridge of the vessel, or, in the case of a dredge, at its main control station.

(1) The radio listening watch required by paragraph (a) of this section may be maintained in a location other than the vessel's navigational bridge when the vessel is anchored or moored to a buoy.

§ 161.2014 Use of designated frequencies.

(a) In accordance with Federal Communications Commission regulations, no person may use the frequency or frequencies designated in this section to transmit any information other than information necessary for the safety of vessel traffic.

(b) All transmissions on the CVTMS frequencies shall be initiated on low power; high power may only be used if low power communications are unsuccessful.

(c) The frequencies to be used when communicating with the CVTMC and with other vessels are as follows:

Zone	Primary freq.		Secondary freq.	
	MHz	Channel	MHz	Channel
Tofino Zone	156.725	74	156.550	11
Seattle Zone	156.700	14	156.650	13
Vancouver Zone	156.550	11	156.725	74

§ 161.2016 Time.

Each report required by §§ 161.2000 through 161.2066 must specify time using:

(a) The time zone in effect in the CVTMS Area; and

(b) The 24-hour clock system.

§ 161.2018 English language.

Each report required by §§ 161.2000 through 161.2066 must be made in clear, unbroken English language.

§ 161.2020 Radiotelephone equipment failure.

(a) If the radiotelephone required by § 161.2012 ceases to operate, the Master, Pilot, or person directing the movement of the vessel shall ensure that it is restored to operating condition as soon as possible. The failure of a vessels radiotelephone equipment, while the vessel is underway, will not in itself constitute a violation of these rules, nor will it obligate the vessel to moor or anchor; however, required reports must be made by other means, if possible.

(b) A vessel that cannot meet the radiotelephone requirements of these rules may not get underway in the CVTMS Area without permission from the CVTMC.

§ 161.2022 Report of radio failure.

Whenever the Master, Pilot, or person directing the movement of the vessel deviates from any rule in §§ 161.2000 through 161.2066 because of a radio

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Communications Rules

§ 161.2012 Radio listening watch.

(a) When underway or anchored or moored to a buoy, in the CVTMS Area, the Master, Pilot, or person responsible for directing the movement of a vessel shall ensure that a radiotelephone listening watch is maintained on the frequency designated in § 161.2014 for the sector of the CVTMS Area in which the vessel is operating, except when transmitting on that frequency.

(b) All reports and communications required by these rules must be made to the CVTMC on its designated frequency using a radiotelephone that is maintained in effective operating condition and is capable of operation on the navigational bridge of the vessel, or, in the case of a dredge, at its main control station.

(1) The radio listening watch required by paragraph (a) of this section may be maintained in a location other than the vessel's navigational bridge when the vessel is anchored or moored to a buoy.

§ 161.2014 Use of designated frequencies.

(a) In accordance with Federal Communications Commission regulations, no person may use the frequency or frequencies designated in this section to transmit any information other than information necessary for the safety of vessel traffic.

(b) All transmissions on the CVTMS frequencies shall be initiated on low power; high power may only be used if low power communications are unsuccessful.

(c) The frequencies to be used when communicating with the CVTMC and with other vessels are as follows:

	Primary freq.		Secondary freq.	
	MHz	Channel	MHz	Channel
	156.725	74	156.550	11
	156.700	14	156.650	13
	156.550	11	156.725	74

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anchor; however, required reports must be made by other means, if possible.

(b) A vessel that cannot meet the radiotelephone requirements of these rules may not get underway in the CVTMS Area without permission from the CVTMC.

§ 161.2022 Report of radio failure.

Whenever the Master, Pilot, or person directing the movement of the vessel deviates from any rule in §§ 161.2000 through 161.2066 because of a radio

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failure, the deviation and radio failure must be reported to the CVTMC as soon as possible by whatever means available.

§ 161.2024 Report of impairment to the operation of the vessel.

The Master, Pilot, or person directing the movement of the vessel in the CVTMS Area shall report to the CVTMC as soon as possible:

(a) Any condition on the vessel that may impair its navigation, such as fire, defective propulsion machinery, defective steering equipment, defective radar, defective gyrocompass, defective echo depth sounding device, defective communications equipment, defective navigational lighting, or similar condition or defect;

(b) Any tow that the towing vessel is unable to control or can control only with difficulty; or

(c) When involved in a grounding, collision, or ramming of a fixed or floating object.

§ 161.2026 Miscellaneous reports.

The Master, Pilot, or person directing the movement of the vessel within the CVTMS Area should report to the CVTMC whenever any of the following circumstances are observed:

(a) Another vessel in apparent difficulty or involved in a casualty;

(b) Any obstruction which is dangerous to navigation;

(c) Any aid to navigation which is malfunctioning, damaged, missing, or off position;

(d) Any pollution of the marine environment;

(e) Any vessel which may be creating a hazard to traffic;

(f) Any other danger to navigation including adverse weather conditions; or

(g) Any significant change in the information previously supplied under this section.

Vessel Movement Reporting System (VMRS) Rules

§ 161.2027 Local harbor report.

(a) When a vessel moves and remains within a three nautical mile radius of its point of departure in the CVTMS Area, the movement is a local harbor movement. A vessel making a local harbor movement is exempted from the reporting requirements for an initial report (§ 161.2028), underway report (§ 161.2031), and final report (§ 161.2036).

(b) At least 5 minutes but not more than 45 minutes before a vessel makes a local harbor movement under paragraph (a) of this section, the Master, Pilot, or person directing the movement of the vessel shall report or cause to be reported the following information to the CVTMC:

(1) Name and type of vessel;

(2) Position of departure;

(3) Time of departure;

(4) Destination, route, and ETA; and

(5) General description of operation to be performed.

(c) The Master, Pilot, or person directing the movement of the vessel shall report or cause to be reported any changes from the information reported under paragraph (b) of this section, except that departing or ETA times must be reported only if they vary by 15 minutes or more from the report.

§ 161.2028 Initial report.

(a) At least 15 minutes but not more than 2 hours before a vessel enters or begins to navigate in the CVTMS Area, the Master, Pilot, or person directing the movement of the vessel shall report by radiotelephone or telephone the following information to the appropriate CVTMC:

(1) The type and name of the vessel;

(2) The point of entry into the CVTMS Area;

(3) Estimated time of entering or beginning to navigate in the CVTMS Area;

(4) Destination, ETA at destination, and route in the CVTMS Area;

(5) Anticipated speed of the vessel (in knots);

(6) Length and deepest draft of the vessel;

(7) Whether the vessel or its tow is bound to or from a U.S. port and is carrying any certain dangerous cargo as listed in § 160.203 (a) through (e) on board;

(8) Any impairment to the operation of the vessel as described in § 161.2024 (a) and (b); and

(9) Any planned maneuvers that may impede traffic.

(b) Vessels making movements that require local harbor reports as specified in § 161.2027, are exempt from making this report.

(c) Vessels that will be entering from a National VTS Area and have previously reported the above information to another VTC are exempt from making this report.

§ 161.2031 Underway report.

As soon as a vessel enters or begins to navigate in the CVTMS Area, the Master, Pilot, or person directing the movement of the vessel shall report the name and location of the vessel to the CVTMC.

§ 161.2032 Zone boundary and calling-in point report.

(a) When a vessel crosses a zone boundary, the Master, Pilot, or person directing the movement of the vessel must report the name and location of the vessel to each CVTMC by radiotelephone on the designated frequency for the zone in which the vessel is leaving and on the designated frequency for the zone that the vessel is entering.

(b) When directed to do so by the CVTMC, vessels must report their name and location on either a one-time basis or as a series of reports.

§ 161.2034 Follow-up report.

The Master, Pilot, or person directing the movement of a vessel shall report any information which has changed since the previous report, including, but not limited to, ETA, speed, destination, and route.

§ 161.2036 Final report.

No later than 30 minutes after a vessel anchors in, moors in, or departs from the CVTMS Area, the Master, Pilot, or person directing the movement of a vessel shall report the place of anchoring, mooring, or departure to the CVTMC.

Traffic Separation Scheme (TSS) Rules

§ 161.2052 Vessel operation in the TSS.

The Master, Pilot, or person directing the movement of a vessel in the TSS described in §§ 161.2062 through 161.2066, shall comply with Rule 10 of the International Regulations for Prevention of Collisions at Sea, 1972.

Descriptions and Geographic Coordinates

§ 161.2054 CVTMS Area.

For the purpose of these rules, the CVTMS Area consists of the waters from a point in the Pacific Ocean at 48°23'30" N, 124°48'37" W; thence due east to the Washington State coast at Cape Flattery; thence southeastward along the Washington coastline to New Dungeness Light; thence northerly to Puget Sound Traffic Lane Entrance Lighted Buoy "S"; thence to Rosario Strait Traffic Lane Entrance Lighted Horn Buoy "R"; thence to Hein Bank Lighted Bell Buoy; thence to Cattle Point Light on San Juan Island; thence along the shoreline to Lime Kiln Light; thence to Kellet Bluff Light; thence to Turn Point Light on Stuart Island; thence to Skipjack Island Light; thence to Sucia Island Daybeacon 1; thence along the shoreline of Sucia Island to a point at 48°46'06" N, 122°53'30" W; thence to Clements Reef Buoy "2"; thence to Alden Bank Lighted Gong Buoy "A"; thence to Birch Point at 48°56'33" N 122°49'18" W; thence along the shoreline to a point where the shoreline intersects the 49° north parallel of latitude; thence due west to the Canadian shoreline at Maple Beach; thence along the shoreline around Point Roberts to a point where the shoreline intersects the 49° north parallel of latitude at Boundary Bluff; thence due west to a point at 49°00'00" N 123°19'14" W; thence southerly to Active Pass Light; thence to East Point on Saturna Island; thence to Point Fairfax Light on Moresby Island; thence to Discovery Island Light; thence to Trail Island Light; thence to Brotchie Ledge Light; thence to Albert Head Light; thence westward along the Canadian shoreline to the intersection of the shoreline with 48°35'45" N near Bonilla Point; thence due west to a point at 48°35'45" N 124°47'30" W; thence southerly along a rhumb line to the starting point at 48°35'45" N 124°47'30" W.

§ 161.2056 Tofino Zone.

The Tofino Zone comprises that portion of the CVTMS Area west of 124°40'00" W.

§ 161.2058 Seattle Zone.

The Seattle Zone comprises that portion of the CVTMS Area in the Strait of Juan de Fuca, bordered on the west by 124°40'00" W, and on the north and east by lines drawn from the tip of Church Point on the Canadian shoreline to Race Rocks Light; thence easterly to the intersection the U.S./Canadian border at position 48°17'04" N 123°14'51" W; thence northeasterly to Hein Bank Lighted Bell Buoy; thence southerly to Rosario Strait Traffic Lane Entrance Lighted Horn Buoy "R"; thence to Puget Sound Traffic Lane Entrance Lighted Buoy "S"; thence to New Dungeness Light.

§ 161.2060 Vancouver Zone.

The Vancouver Zone comprises that portion of the CVTMS Area north of a line drawn from the tip of Church Point on the Canadian shoreline to position 48°17'04" N 123°14'51" W; thence northeasterly to Hein Bank lighted Bell Buoy; thence northeasterly to Cattle Point.

§ 161.2062 Separation zones.

The CVTMS Area contains traffic separation zones bounded by lines connecting the following geographical positions:

(a) Juan de Fuca separation zone:

(1)	48°28'48" N	124°43'36" W
(2)	48°13'24" N	123°56'54" W
(3)	48°13'24" N	123°31'42" W
(4)	48°14'42" N	123°31'48" W
(5)	48°17'48" N	124°00'36" W
(6)	48°29'36" N	124°43'36" W

(b) Port Angeles separation zone:

(1)	48°10'24" N	123°26'30" W
(2)	48°12'18" N	123°27'54" W
(3)	48°12'30" N	123°27'18" W
(4)	48°10'36" N	123°25'48" W

(c) Juan de Fuca western approach separation zone:

(1)	48°30'30" N	124°58'30" W
(2)	48°30'12" N	124°54'00" W
(3)	48°28'54" N	124°54'06" W
(4)	48°28'48" N	124°58'36" W

(d) Juan de Fuca southwestern approach separation zone:

(1)	48°23'12" N	124°55'30" W
(2)	48°25'00" N	124°52'00" W
(3)	48°23'42" N	124°50'06" W
(4)	48°21'24" N	124°52'54" W

(e) Victoria separation zone:

(1)	48°20'42" N	123°25'06" W
(2)	48°16'12" N	123°28'30" W
(3)	48°15'48" N	123°27'06" W
(4)	48°20'30" N	123°24'24" W

§ 161.2064 Traffic lanes.

The traffic lanes, which extend to, but do not enter the precautionary areas, are located on both sides of the separation zones and are bounded by lines connecting the following geographical points:

Western Lanes

(a) A traffic lane for northwest bound traffic is established between the separation zone and a line connecting the following geographical positions:

(1)	48°15'36" N	123°31'00" W
(2)	48°18'48" N	124°00'12" W
(3)	48°30'42" N	124°43'30" W

(b) A traffic lane for southeast bound traffic is established between the separation zone and a line connecting the following geographical positions:

(1)	48°27'06" N	124°43'48" W
(2)	48°27'06" N	124°41'48" W
(3)	48°12'24" N	123°57'12" W
(4)	48°12'24" N	123°30'12" W

Southern Lanes

(c) A traffic lane for northbound traffic is established between the separation zone and line connecting the following geographical positions:

(1)	48°10'54" N	123°25'00" W
(2)	48°13'36" N	123°26'06" W

(d) A traffic lane for southbound traffic is established between the separation zone and a line connecting the following geographical positions:

(1)	48°12'24" N	123°30'12" W
(2)	48°10'06" N	123°27'18" W

Western Approach

(e) A traffic lane for westbound traffic is established between the separation zone and a line connecting the following geographical positions:

(1)	48°31'54" N	124°53'18" W
(2)	48°32'24" N	124°57'48" W

(f) A traffic lane for eastbound traffic is established between the separation zone and a line connecting the following geographical positions:

(1)	48°27'18" N	124°58'18" W
(2)	48°27'30" N	124°53'48" W

Southwestern Approach

(g) A traffic lane for northeastbound traffic is established between the separation zone and a line connecting the following geographical positions:

(1)	48°20'36" N	124°51'00" W
(2)	48°23'12" N	124°48'48" W

(h) A traffic lane for southwestbound traffic is established between the separation zone and a line connecting the following geographical positions:

(1)	48°13'36" N	124°53'00" W
(2)	48°24'24" N	124°56'42" W

Northern Lanes

(i) A traffic lane for southbound traffic is established between the separation zone and a line connecting the following geographical positions:

(1)	48°20'54" N	123°26'06" W
(2)	48°15'36" N	123°31'00" W

(j) A traffic lane for northbound traffic is established between the separation zone and a line connecting the following geographical positions:

(1)	48°13'36" N	123°28'06" W
(2)	48°20'12" N	123°23'24" W

§ 161.2066 Precautionary areas.

(a) *Precautionary area "J."* A precautionary area is bounded as follows: from 48°31'54" N 124°45'24" W; thence southeasterly to 48°30'42" N 124°43'30" W; thence southerly to 48°27'06" N 124°43'48" W; thence westerly to 48°27'06" N 124°45'24" W; thence southwesterly to 48°23'12" N 124°48'48" W; thence northwesterly and northerly by an arc of 7 nautical miles radius, centered at 48°29'12" N 124°43'36" W; thence to the point of the origin.

(b) *Precautionary area "JA."* A precautionary area of radius two miles is centered upon geographical position: 48°14'12" N 123°28'54" W.

(c) *Port Angeles precautionary area.* An area enclosed by a line beginning on the shoreline at New Dungeness Spit at 48°11'00" N 123°06'30" W; thence due north to 48°17'10" N 123°06'30" W; thence southwesterly to geographical position 48°10'00" N 123°27'38" W, thence due south to the shorelines, thence along the shoreline to the point of beginning.

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(2) 48°32'24" N	124°57'48" W

(f) A traffic lane for eastbound traffic is established between the separation zone and a line connecting the following geographical positions:

(1) 48°27'18" N	124°58'18" W
(2) 48°27'30" N	124°53'48" W

Southwestern Approach

(g) A traffic lane for northeastbound traffic is established between the separation zone and a line connecting the following geographical positions:

(1) 48°20'36" N	124°51'00" W
(2) 48°23'12" N	124°48'48" W

(h) A traffic lane for southwestbound traffic is established between the separation zone and a line connecting the following geographical positions:

(1) 48°13'36" N	124°53'00" W
(2) 48°24'24" N	124°56'42" W

Northern Lanes

(i) A traffic lane for southbound traffic is established between the separation zone and a line connecting the following geographical positions:

(1) 48°20'54" N	123°26'06" W
(2) 48°15'36" N	123°31'00" W

(j) A traffic lane for northbound traffic is established between the separation zone and a line connecting the following geographical positions:

(1) 48°13'36" N	123°26'06" W
(2) 48°20'12" N	123°23'24" W

§ 161.2066 Precautionary areas.

(a) *Precautionary area "J."* A precautionary area is bounded as follows: from 48°31'54" N 124°45'24" W; thence southeasterly to 48°30'42" N 124°43'30" W; thence southerly to 48°27'06" N 124°43'48" W; thence westerly to 48°27'06" N 124°45'24" W; thence southwesterly to 48°23'12" N 124°48'48" W; thence northwesterly and northerly by an arc of 7 nautical miles radius, centered at 48°29'12" N 124°43'36" W; thence to the point of the origin.

(b) *Precautionary area "JA."* A precautionary area of radius two miles is centered upon geographical position: 48°14'12" N 123°28'54" W.

(c) *Port Angeles precautionary area.* An area enclosed by a line beginning on the shoreline at New Dungeness Spit at 48°11'00" N 123°06'30" W; thence due north to 48°17'10" N 123°06'30" W; thence southwesterly to geographical position 48°10'00" N 123°27'38" W, thence due south to the shorelines, thence along the shoreline to the point of beginning.

Mississippi River

§ 161.2101 Purpose and applicability.

Sections 161.2101 and 161.2102 prescribe rules for vessel operation in the Mississippi River to assist in the prevention of collisions and groundings and to protect the navigable waters of the Mississippi River from environmental harm resulting from collisions and groundings.

§ 161.2102 Vessel operation.

(a) Mississippi River below Baton Rouge, LA, including South and Southwest Passes:

(1) *Supervision.* The use, administration, and navigation of the waterways to which this paragraph applies is under the supervision of the District Commander, Eighth Coast Guard District.

(2) *Speed; High-water precautions.* When passing another vessel (in motion, anchored, or tied up), a wharf or other structure, work under construction, plant engaged in river and harbor improvement, levees withstanding flood waters, building partially or wholly submerged by high water, or any other structure liable to damage by collision, suction or wave action, vessels must give as much leeway as circumstances permit and reduce their speed sufficiently to preclude causing damages to the vessel or structure being passed. During high river stages, floods, or other emergencies, the District Commander or his designated representative, may prescribe by navigation bulletins or other means the limiting speed in land miles per hour deemed necessary for the public safety for the entire section or any part of the waterway covered by this paragraph, and such limiting speed shall be strictly observed.

(3) *Towing.* Towing in any formation by a vessel with insufficient power to permit ready maneuverability and safe handling is prohibited.

(b) Movement of vessels in vicinity of Algiers Point, New Orleans Harbor:

(1) *Control lights.* When the Mississippi River reaches 8 feet on the Carrollton Gage on a rising stage, and until the gage reads 9 feet on a falling stage, the movement of all tugs with tows and all ships, whether under their own power or in tow, but excluding tugs or towboats without tows or river craft of comparable size and maneuverability operating under their own power, in the vicinity of Algiers Point, will be governed by red and green lights designated and located as follows:

(i) Governor Nicholls Light located on the left descending bank on the wharf shed at the upstream end of Esplanade Avenue Wharf, New Orleans approximately 94.3 miles above Head of Passes; and

(ii) Gretna Light located on the right descending bank on top of the levee at the foot of Ocean Avenue, Gretna, approximately 96.6 miles above Head of Passes.

(2) Governor Nicholls light has lights visible from both upstream and downstream, and Gretna light has lights visible from upstream, all indicating by proper color the direction of traffic around Algiers Point. From downstream Gretna Light always shows green. All lights are visible throughout the entire width of the river and flash once every second. A green light displayed ahead of a vessel (in the direction of travel) indicates that Algiers Point is clear and the vessel may proceed. A red light displayed ahead of a vessel (in the direction of travel) indicates that Algiers Point is not clear and the vessel may not proceed. Absence of light will be considered a danger signal and no attempt may be made to navigate through the restricted area.

Note: To provide advance information to downbound vessels whether the control light at Gretna (Gretna Light) is red or green, a traffic light is located at Westwego on the right descending bank, on the river batture at the end of Avenue B, approximately 101.4 miles above Head of Passes.

(3) Ascending vessels. Ascending vessels may not proceed farther up the river than the Desire Street Wharf (on the left descending bank), mile 93.2 AHP, when a red light is displayed. Vessels waiting for a change of signal must keep clear of descending vessels.

(4) Descending vessels. (i) Descending vessels may not proceed farther down the river than a line connecting the lower end of Julia Street Wharf (on left descending bank), mile 95.2 AHP, with the vertical flagpole at Eastern Associated Terminals (on right descending bank) when a red light is displayed. If the signal remains red, vessels must round to and be headed upstream before they reach that line. Vessels waiting for a change of signal must keep clear of ascending vessels.

(ii) Vessels destined to a wharf above the lower end of Julia Street Wharf shall communicate her destination to the Gretna Traffic Operator by radiotelephone.

(iii) The Master, Pilot, or authorized representative of any vessel scheduled to depart from a wharf between Governor Nicholls Light and Louisiana Avenue, bound downstream around Algiers Point, shall communicate with the Governor Nicholls Light Towerman by telephone or radiotelephone to determine whether the channel at Algiers Point is clear before departure. When the point is clear, vessels must then proceed promptly so that other traffic will not be unnecessarily delayed.

Note: Telephone numbers of both signal towers will be published in navigation bulletins in advance of each operating period. The Traffic Light Operators monitor channel 67 (156.375 MHz).

(5) Minor Changes. The District Commander or his designated representative, is authorized to waive operation or suspension of the lights whenever prospective river stages make it appear that the operation or suspension will be required for only a brief period of time or when river stages fall below the critical stage which is established for operation or suspension by only a few tenths on the Carrollton Gage.

(6) Underpowered vessels. When the Carrollton Gage reaches 12 feet or higher, any vessel which is considered by the Master, Pilot, or person directing the movement as being underpowered or a poor handler may not navigate around Algiers Point without the assistance of a tug or tugs.

(7) Towing. When the Carrollton Gage reaches 12 feet or higher, towing on a hawser in a downstream direction between Julia Street and Desire Street is prohibited except by special permission of the District Commander or his designated representative.

(c) Navigation of South and Southwest Passes. (1) No vessel, except small craft, towboats, and tugs without tows, may enter either South Pass or Southwest Pass from the Gulf until after any descending vessel which has approached within two and one-half (2.5) miles of the outer end of the jetties, has passed to sea.

(2) No vessel having a speed of less than ten miles-per-hour may enter South Pass from the Gulf when the stage of the Mississippi River exceeds 15 feet on the Carrollton Gage at New Orleans. This paragraph does not apply when Southwest pass is closed to navigation. Closing of Southwest Pass will be promulgated by Notice to Mariners.

(3) No vessel, except small craft and tow-boats and tugs without tows, ascending South Pass may pass Frank's Crossing Light until after a descending vessel has passed Depot Point Light.

(4) No vessel, except small craft and towboats and tugs without tows, may enter the channel at the head of South Pass until after an ascending vessel which has reached Frank's Crossing Light, has passed into the river.

(5) When navigating South Pass during periods of darkness no tow may consist of more than one towed vessel

other than small craft, and during daylight hours no tow may consist of more than two towed vessels other than small craft. Tows may be in any formation. When towing on a hawser, the hawser must be as short as practicable to provide full control at all times.

(6) When towing in the Southwest Pass during periods of darkness no tow may consist of more than two towed vessels other than small craft, and during daylight hours no tow may consist of more than three towed vessels other than small craft.

Dated: June 19, 1991.

J.W. Lockwood,

Captain, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 91-17984 Filed 7-31-91; 8:45 am]

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federal register

Thursday
August 1, 1991

Part III

Department of Health and Human Services

Social Security Administration

20 CFR Parts 404 and 416

Standards for Consultative Examinations and Existing Medical Evidence; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

RIN 0960-AB22

Standards for Consultative Examinations and Existing Medical Evidence

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: Section 9 of Public Law 98-460 requires that the Secretary issue regulations to establish standards for consultative examinations. These regulations must include standards for determining when to obtain a consultative examination, the type of consultative examination to be purchased, and monitoring procedures for both the purchase process and the consultative examination reports. Every reasonable effort must be made to obtain from the claimant's medical sources the medical evidence necessary to make a determination of disability before evaluating medical evidence obtained from another source on a consultative basis. Section 9 also requires consideration of all evidence available in a claimant's case record and development of a complete medical history covering at least the preceding 12 months in any case where a decision is made that the individual is not under a disability. We have interpreted this provision to refer to the 12 months prior to the date of application, the date the claimant was last insured for disability benefit or period-of-disability purposes, the end of the prescribed period for widow's or widower's benefits based on disability, or attainment of age 22 for child's benefits based on disability, as appropriate. We also understand this provision to mean that a 12-month medical history is generally not required if the disability is alleged to have begun less than 12 months before application. In such cases, we will develop a complete medical history beginning with the alleged onset date.

EFFECTIVE DATE: These rules are effective August 1, 1991.

FOR FURTHER INFORMATION CONTACT: William J. Ziegler, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, telephone 301-965-1759.

SUPPLEMENTARY INFORMATION: We published proposed rules in a Notice of Proposed Rulemaking in the **Federal Register** on April 20, 1987 (52 FR 13014). These final rules respond to comments, reflect and implement the statutory requirements, and clarify our policy on the weight to be given treating source opinions.

What We Mean by Evidence

We have explained in these final rules, at §§ 404.1512(b) and 416.912(b), what we mean by "evidence" in the disability evaluation process in order to place the rules on evaluating medical opinions in the broader context of all medical evidence in the case record. We have added a paragraph which describes the types of evidence we need from medical sources and the types of evidence we may need from others.

Evidence From Medical Sources

One of the factors required to establish that an individual is disabled is a medically determinable severe impairment. We must have medical evidence when we determine impairment severity and the individual's residual functional capacity. Objective and complete medical evidence results in quality determinations and prompt decisions. We consider all of the evidence in the individual's record to determine whether the individual is disabled.

We make every reasonable effort to obtain medical evidence from the sources who have treated the individual for the impairment(s) he or she alleges since the alleged disability onset date when the individual is applying for benefits, and during the preceding 12 months when the case of an individual receiving benefits is undergoing review.

The quality of medical examinations has a major effect on the quality of our decision making. We try to make decisions based on evidence from treating sources because of the presumed continuing relationship between the claimant and physician. When the evidence in the individual's case file is insufficient for making a disability decision, a consultative examination is purchased, at Government expense, from the treating source whenever possible. Because basing a decision on evidence from a treating or other medical source is not always possible for various reasons, it is sometimes necessary to purchase a consultative examination from an independent source at Government expense. For example, if the information provided by a treating source or other medical source appears not to be supported by medical findings and the source is unable or unwilling to provide the additional medical evidence we need, we may purchase a consultative examination from another source. We may also obtain a consultative examination from another source when highly technical or specialized evidence which is needed is not available from the treating source or other medical source.

In some instances, we may order a consultative examination from an independent source while awaiting receipt of treating or other medical source evidence, but the report will not be evaluated until that evidence is received or every reasonable effort has been made to obtain it.

Program Integrity

Since the enactment of the Medicare/Medicaid anti-fraud and abuse amendments of 1977, an escalation in the prosecution of medical service providers for fraud and abuses in those programs has raised the issue of the propriety of the Social Security Administration (SSA) using these and other offenders in the disability programs administered under titles II and XVI of the Social Security Act (the Act). We are, therefore, providing rules in §§ 404.1503a and 416.903a barring our use of any individual or entity who is currently excluded, suspended, or otherwise barred from participation in the Medicare or Medicaid programs, or by any other Federal or federally-assisted program or whose license is currently revoked or suspended by any State licensing authority pursuant to adequate due process procedures, except to provide existing medical evidence. The final rules reflect a change from the proposed rules to conform our policy to the policies of other agencies responsible for health care delivery programs. We believe it would be unreasonable and confusing to medical providers for us to administer a significantly different policy than these other agencies. For clarity, we are defining an individual or entity as a medical or psychological consultant, consultative examination provider, or diagnostic test facility.

Consultative Examinations

Consultative examinations are medical examinations we purchase from physicians, including pediatricians when appropriate, and other qualified health professionals outside the agency.

If an individual's treating or other medical sources cannot provide us with sufficient medical evidence about his or her impairment(s) to enable us to determine whether the individual is disabled or blind, we may ask the individual to have one or more physical or mental examinations or tests. We will pay for those examinations that we arrange in accordance with our rules at §§ 404.1624 and 416.1024 on payment for medical and other purchased services. When we arrange an examination or test, we will give the individual reasonable notice of the date, time, and place that the examination or test will be given, indicate the type of examination or test that will be given, and provide the name of the person or facility who will do it. We will also give the examiner any necessary background information about the individual's condition unless the examiner already has the background information because he or she is a treating source.

If an individual is applying for benefits and does not have a good reason for failing or refusing to take part in a consultative examination or test that we arrange to obtain information to determine disability or blindness, we may find that the individual is not disabled or blind. If the individual is already receiving benefits and does not have a good reason for failing or refusing to take part in a consultative examination or test that we have arranged, we may determine that the disability or blindness has ceased.

Standards for Consultative Examinations

Consultative examinations may be obtained to secure additional information necessary to make a disability determination or to resolve conflicting information. Evidence obtained through a consultative examination is considered with all other medical and nonmedical evidence submitted in connection with a disability claim. Sections 404.1519m and 416.919m have been revised to state that a State agency medical consultant must approve the ordering of any diagnostic test or procedure when there is a chance that it may entail significant risk.

Until enactment of section 9 of Public Law 98–460, there was no statutory requirement for regulatory standards specifying particular cases in which consultative examinations would be purchased, identifying the types of consultative examinations to be purchased, or requiring any standard procedures to be followed in establishing and monitoring purchase policies. Because consultative examinations are purchased at government expense, we have had guidelines that cover the standards to be used in purchasing and monitoring such examinations. For some time, we have had in place in our operating manuals these guidelines for managing every aspect of the consultative examination process from deciding when to purchase an examination, to providing guidance to the person performing the consultative examination, to monitoring the actual consultative examination delivery process and the reports which it produces. Congress, in passing section 9 of Public Law 98–460, expressed satisfaction over our success in better management of the consultative examination process, but stated that our standards should appear in regulations. See H. Rep. No. 98–618, 98th Cong., 2d Sess. 19–20 (1984). These regulations are being issued to comply with the law.

In addition to incorporating our existing operating procedures into this regulation, we are adding further provisions in three areas. First, we have identified certain time periods that we believe can serve as a frame of reference for scheduling a consultative examination. These minimum scheduling times are intended to emphasize our intentions that sufficient time be made available for thoroughly examining the claimant. They are meant to ensure sufficient time for a full consultative examination including development of the claimant's case history. They are not meant as inflexible rules to be applied mechanically or to impede appropriate judgment on the part of the State and professional individuals. Second, standards are included to ensure that laboratory fees paid to consultative examination providers for services are reasonable and do not permit excessive charges by the source. Third, we emphasize that State rules must be followed regarding minimum qualification levels for physicians' and psychologists' assistants.

The minimum scheduling times for consultative examinations were developed by a panel of regional office and State agency physicians and administrators that was convened to assist us in the preparation of these regulations. Many State agencies already had such standards, including some based on the duration of the examination and others on the numbers of patients who can be scheduled for consultative examinations per hour. These final rules establish national norms.

We have deleted the last two sentences of §§ 404.1519k(a) and 416.919k(a) that were included in the notice of proposed rulemaking. Those sentences dealt with the State determining the rate of payment for the purchase of medical examinations, laboratory tests, and other services and were an overstatement of our policy on the State's authority to set the fees for such services.

The final rules on consultative examinations fall under the categories mandated by law. Those categories are:

(1) Standards to be used by State and Federal personnel in determining when a consultative examination should be obtained in connection with disability determinations.

(2) Standards for the type of referral to be made.

(3) Procedures to monitor the referral process used.

(4) Procedures to monitor the product of health professionals to whom cases are referred.

These standards are being included in subpart P of part 404 and subpart I of part 416. We are adding new §§ 404.1519 through 404.1519t and new §§ 416.919 through 416.919t. We are also updating the Table of Contents for subpart P and subpart I.

Definitions

We are revising §§ 404.1502 and 416.902 to define what we mean by *medical source, treating source,* and *source of record.*

Evidence of Impairment

We have reorganized and expanded §§ 404.1512 and 416.912 to clarify our existing regulations, to provide greater detail about the rules on development of existing evidence, and to refine and consolidate some of the language in §§ 404.1519 and 416.919, 404.1519a and 416.919a, and 404.1519b and 416.919b. The final rule defines what we mean by "evidence" and clearly delineates the responsibilities of the individual and SSA. We explain these and other changes below.

The 12-Month Medical History

We are making changes in paragraph (b) of §§ 404.1512 and 416.912, and §§ 404.1593 and 416.993, to indicate that we will develop a complete medical history covering at least the preceding 12 months in any case in which an unfavorable determination is made, unless the disability is alleged to have begun less than 12 months before application. See S. Rep. No. 98–466, 98th Cong., 2d Sess., 26 (1984). In addition, we have made changes to indicate that, if applicable, we will develop a complete medical history for at least the 12-month period prior to the month the individual was last insured for disability benefits, the month ending the 7-year period to establish the individual's disability if the individual filed an application for widow's or widower's benefits, or the month of attainment of

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age 22 if the individual filed an application for child's insurance benefits based on disability. We are also stating that we will make every reasonable effort to obtain from the individual's treating and other medical sources the evidence necessary to make a determination before we evaluate medical evidence obtained from another source on a consultative basis. "Every reasonable effort" is defined to mean an initial request and, at any point between 10 and 20 calendar days after the initial request, if the evidence has not been received, one followup request to the medical source for the medical evidence. The source will have a minimum of 10 calendar days from the date of our followup request to reply, unless our experience with that source indicates a longer period is advisable in a particular case, before we evaluate the evidence that we may obtain on a consultative basis. In some instances, we may order a consultative examination while awaiting receipt of treating or other medical source evidence.

In addition, we are amending paragraph (a) of §§ 404.1520 and 416.920 to state more clearly that we consider all evidence in the individual's case record when we make a determination. We are also revising §§ 404.1593 and 416.993 to recognize that development of medical evidence in continuing disability review cases will be guided by the special requirements of the medical improvement review standard and to reaffirm that consultative examinations are purchased with only one purpose, to provide information necessary to reach a decision in a case.

Medical Assessment Requirement

We are also revising §§ 404.1513 (b)(6) and (c), 404.1545(a) and 404.1546, as well as §§ 416.913(b)(6) and (c), 416.945(a) and 416.946 to delete references to medical assessments and to refer instead to medical source statements about what a person can still do despite his or her impairment(s). These revisions accomplish two things: They remove all reference to the term "medical assessment," which was not clearly defined and was thus open to various interpretations; and they indicate that we will consider all of the medical and other evidence in determining whether a person is disabled, including statements from medical sources about what a person can still do despite an impairment, and that medical source statements alone are not determinative of whether or not the person is disabled.

We believe these are important changes. There has been confusion among adjudicators as to what constitutes a "medical assessment." This has resulted in special requests being made to elicit information which was already at hand but not labeled "medical assessment." We have also revised §§ 404.1513(b)(6) and 416.913(b)(6) to make clear that we will request medical source statements from treating sources, although the absence of a medical source's statement in a report of existing medical evidence does not make the report incomplete. Also, §§ 404.1519n and 416.919n ensure that although medical source statements should ordinarily be requested as part of the consultative examination process, the absence of a medical source's statement in a consultative examination report does not make the report incomplete.

Evaluating Medical Opinions

In the preamble to the Notice of Proposed Rulemaking, we noted that the Senate Finance Committee had indicated in its report on Public Law 98–460 (S. Rep. No. 98–466, 98th Cong., 2d Sess., 26 (1984)), that it did not intend to alter in any way the relative weight that the Secretary places on reports received from treating physicians and from physicians who perform consultative examinations. We also noted that judicial decisions in several circuits pointed to a need for a clear policy statement that would encourage uniformity of adjudication and provide the public and the courts with a definitive explanation of our policy on weighing treating source opinions. Accordingly, we proposed to replace existing regulations §§ 404.1527 and 416.927 with longer and more detailed provisions that would prescribe rules stating how we would consider and weigh medical opinions.

Some public comments concerning the way we evaluate medical opinions were critical. The comments demonstrated to us that our proposed regulation was not as clear and comprehensive as we had hoped and that it could be misinterpreted. We have, therefore, revised and expanded §§ 404.1527 and 416.927 to state our policy more clearly and in more detail and to respond to the public's concerns.

Although the circuit courts vary somewhat in their formulation of the rule on how treating source evidence is to be considered, the majority of the circuit courts generally agree on two basic principles. First, they agree that treating source evidence tends to have a special intrinsic value by virtue of the treating source's relationship with the claimant. Second, they agree that if the Secretary decides to reject such an opinion, he should provide the claimant with good reasons for doing so. We have been guided by these principles in our development of the final rule.

We were guided in the development of these final rules by the general principles articulated by the various circuit courts. None of the circuit courts of appeals has held that its treating physician rule is required by the Act or the Constitution. Rather, the courts of appeals have articulated their treating physician precedent in the absence of a definitive regulation by the Secretary and in the context of reviewing individual decisions by the Secretary under section 205(g) of the Act to determine whether those individual decisions, given the facts of the particular case, were supported by "substantial evidence." Indeed, the Second Circuit in the *Schisler* case recently expressly invited the Secretary to use the "customary administrative process" to promulgate a treating physician policy. The Secretary has the authority and responsibility under sections 205(a), 223(d)(5) and 1102 of the Act to prescribe regulations for determining the amount and kind of evidence an individual must furnish in order to establish that he or she is under a disability. In these final rules we are exercising that authority to prescribe the standards that we will use to evaluate treating source opinions when those opinions are furnished as evidence in connection with a claim for disability benefits. The Secretary will be applying these final rules as the appropriate legal standard for evaluating treating physician opinion evidence in claims before the Agency.

Under the Act, a claimant is required to prove to us that he or she is disabled by providing medical and other evidence of disability. We consider medical opinions, including treating source opinions, to be evidence that must be evaluated together with all of the other evidence in a person's case record. Sometimes, medical opinions may be entitled to so much weight that they control the issues they address; other times, opinions may be entitled to less weight.

The final rule addresses the problems of weighing opinion evidence in several ways. It recognizes that, because opinions always have a subjective component, because the effects of medical conditions on individuals vary so widely, and because no two cases are ever exactly alike, it is not possible to create rules that prescribe the weight to be given to each piece of evidence that we may take into consideration in every case. It also recognizes that the weighing of any evidence, including opinions, is a process of comparing the

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intrinsic value, persuasiveness, and internal consistency of each piece of evidence and then evaluating all of the evidence together to determine which findings of fact are best supported by all of the evidence. The final rule places medical opinions in the context of the entire case record by first stating general principles of weighing evidence and then the specific rules for weighing opinion evidence. The final regulation provides more detail than the notice of proposed rulemaking on how we will weigh all types of evidence, and contains some substantive changes in our policy made in response to public comment. We believe the level of detail in these final rules is necessary in order to explain our policy fully and to provide sufficient guidance to our adjudicators.

The regulation also recognizes that we may receive medical opinions from three kinds of medical sources: treating sources, other examining sources who are not treating sources (for example, consulting physicians and psychologists), and nonexamining sources. It describes the factors we will consider when we weigh each kind of opinion. It also provides special rules for weighing treating source opinions, and differentiates between the standards for weighing treating source opinions and opinions from other sources. We have included a discussion of evaluation of nontreating source opinions in these final rules because it was clear to us that we could not fully describe the rules to be used in weighing treating source opinions without also describing how those opinions were to be evaluated in relation to opinions from other sources.

The following discussion describes the structure of §§ 404.1527 and 416.927 in detail and why we revised the regulation as we did.

The final regulation contains six paragraphs that do not correspond directly to the paragraphs of the regulation proposed in the notice of proposed rulemaking. Instead, we have reorganized and rewritten the provisions that were originally proposed.

1. Paragraph (a) of the final rule is a new provision that defines the kinds of medical evidence we may consider to be medical opinions.

2. Paragraph (b) states our policy that we always consider relevant medical opinion evidence together with other relevant evidence when we make our determinations and decisions.

3. Paragraph (c) describes generally how we consider evidence, including opinions, in making disability determinations. It also explains the weighing of evidence and describes the steps we will take before we make our determinations and decisions.

The evaluation of evidence is a complex process that requires careful analysis of the value of each piece of evidence and the interrelationship of and consistency among the various pieces of evidence. When the evidence is consistent and sufficient for us to decide a case, decision making is relatively straightforward since we can simply make our findings consistent with the evidence as a whole. However, if there are any inconsistencies in the evidence, including any individual reports that may be internally inconsistent (for example, when a report provides detailed medical findings that suggest greater or lesser severity of impairment than is expressed in an opinion at the end of the report), we weigh all of the evidence to determine what findings are best supported and whether there is sufficient evidence for us to make a final determination or decision.

Regardless of whether the evidence in the case record is consistent, if there is insufficient evidence for us to decide the case, we will try to remedy any evidentiary deficiencies, as provided elsewhere in these regulations. If we are successful, we will have a case record that is either wholly consistent and sufficient to decide the case, or which retains inconsistencies but contains sufficient evidence for us to resolve the inconsistencies. If we cannot get the evidence we need, we will have no alternative but to make a determination or decision by weighing all of the evidence we have and making judgments about what findings can be best supported.

4. Paragraph (d) contains the principal provisions of the regulation section and is intended to replace paragraphs (b) through (d) of the regulation section proposed in the notice of proposed rulemaking. It recognizes that medical opinions are particularly difficult to assess since they always reflect judgments or beliefs of the person offering the opinion that we may not be able to verify or that we may find questionable based on our understanding of all of the evidence. We cannot decide a case solely in reliance on a medical opinion when there is not some reasonable support for the opinion, nor can we find an opinion to be controlling simply by virtue of the fact that it may come from a treating source if there is other substantial evidence which casts doubt on the opinion.

We recognize that medical conditions affect individuals in widely different ways and that medical opinions—especially those from treating sources—can provide evidence of the nature and severity of an individual's impairment(s) that cannot be obtained by any other means. Accordingly, paragraph (d) reaffirms that we will never ignore any medical opinion in the case record. Then, it describes the factors we consider when we determine the amount of deference to give to a medical source's opinion, with particular attention to a treating source's opinion.

In a trial-type or adversarial situation, the facts or grounds on which an opinion is based can be brought out by cross-examination. Such cross-examination can strengthen or weaken the probity of the medical opinion. The Social Security disability programs provide for the adjudication of disability claims in a nonadversarial context without the cross-examination safeguard. We believe that the use of the factors specified in paragraph (d) is a reasonable substitute for the scrutiny that any opinion would be subjected to if it were placed before a court in an adversarial context.

When we cannot give controlling weight to a treating source's opinion about the nature and severity of a claimant's impairment(s), we consider all the following factors when we decide how much weight to give to the opinion.

a. *The examining relationship*—A medical opinion of a source who has examined the individual will generally be given more weight than a medical opinion of a nonexamining source.

b. *The treatment relationship*—We give treating source medical opinions special deference because treating sources usually have the most knowledge about their patients' conditions. When we weigh a treating source's medical opinion, we consider several factors that indicate the extent of this knowledge. Considering these factors allows us to determine whether the treating source is in fact an individual to whom we should give deference and the amount of deference to give to the source's medical opinion. We will consider the length, frequency, nature, and extent of the relationship between the treating source and the claimant. Generally, the longer a treating source has known an individual, the greater the number of times the source has seen the individual for treatment, and the greater the extent of examinations and testing the source has provided or ordered, the more weight we will give to the source's opinion on any medical issue.

c. *Supportability*—The more relevant the supporting evidence of an opinion and the better an explanation a medical source provides, the more weight we will give that opinion.

d. *Consistency*—The more consistent a medical opinion is with the record as a whole, the more weight we will give that opinion.

e. *Specialization*—We generally give more weight to the opinion of a specialist about medical issues related to his or her area of specialty than to the opinion of a source who is not a specialist in that area.

f. *Other factors*—We have included a provision to cover situations that may arise in rare cases that may not be covered by the foregoing provisions. For example, information that a particular physician or psychologist has been submitting identical medical reports for different individuals would clearly affect the weight we would give to any opinions expressed in those reports.

Even though we will consider all of the foregoing factors each time we weigh an opinion, not every factor will apply in every case. Also, certain factors (for example, treatment relationship) will sometimes take precedence over other factors; at other times, certain combinations of factors will result in a finding that one opinion is entitled to more weight than another, or that a single opinion is entitled to great weight while another might not be. As we have explained above, there are simply too many variables to permit a formulaic description of how we will apply the factors in every case, but we believe that the factors in paragraph (d) represent a fair, logical, and comprehensive description of the considerations we should take into account when weighing medical opinions.

Paragraph (d)(2) also states special rules for evaluating medical opinions from treating sources. It provides that we must give controlling weight to any treating source medical opinion on the issues of the nature and severity of the impairment when the opinion is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with other substantial evidence in the record. The final rule was drafted to clarify language in the notice of proposed rulemaking, §§ 404.1527(b) and 416.927(b), which contained the provision most criticized in the public comments. The provision recognizes the deference to which a treating source's medical opinion should be entitled. It does not permit us to substitute our own judgment for the opinion of a treating source on the issues of the nature and severity of an impairment when the treating source has offered a medical opinion that is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with other substantial evidence.

We substituted the word "controlling" for the word "conclusive" in those situations where treating source opinions are such that they should be accorded great deference. We believe the word "controlling" more clearly reflects the process we use, but do not believe any substantive difference in the standard results from the substitution of "controlling" for "conclusive." We changed the term "fully supported" to "well-supported" because we agreed with commenters who pointed out that "fully supported" was unclear and that, more important, it was an impractically high standard which, even if it were attainable, would essentially make any opinion superfluous. We believe that the new term, "well-supported," is more practicable and more reasonable; it should make clear that we will adopt opinions that are well-supported by medically acceptable clinical and laboratory diagnostic techniques unless they are inconsistent with substantial evidence in the record.

Whether an opinion is well-supported will depend on the facts of each case; however, as we explain below, when a treating source's opinion is not accorded controlling weight, good reasons for such a decision are required in the notice of determination or decision.

We also deleted the word "medical" from the phrase "substantial medical evidence" in order to avoid the possibility of an improper result being reached in some cases. Although we would expect it to be an extremely rare occurrence, it is possible that a treating source's opinion about the nature or severity of a claimant's impairment(s), even one that is well-supported by medically acceptable clinical and laboratory findings, may nevertheless be contradicted, and even outweighed, by substantial nonmedical evidence. For example, an opinion from a treating source about what a claimant can still do which would seem to be well-supported by the objective findings would not be entitled to controlling weight if there was other substantial evidence that the claimant engaged in activities that were inconsistent with the opinion.

In addition to the rule requiring us to give controlling weight to certain treating source opinions, we have provided two rules in paragraph (d)(2) for weighing treating source opinions that are not entitled to controlling weight, in recognition of the special kind of knowledge about the nature and severity of their patients' impairments that only treating sources can have. These rules replace the provisions that were in the proposed regulation's paragraph (d), including the term "some extra weight" which was also identified in the public comments as a source of confusion. All things being equal, when a treating source has seen a claimant long enough to have obtained a detailed longitudinal picture of the claimant's impairment(s), we will always give greater weight to the treating source's opinion than to the opinions of nontreating sources even if the other opinions are also reasonable or even if the treating source's opinion is inconsistent with other substantial evidence of record. The rule also provides that, even if the treating source's opinion is not such that we can give it controlling weight, we will still give the opinion more weight than we would have given it if it came from a nontreating source.

We combined the rule on according controlling weight to some treating source medical opinions with the other special rules addressing treating source medical opinions to emphasize that we will still carefully evaluate such opinions, and that we may still accord them special deference or determine that they are entitled to great weight when we do not give them controlling weight. Subsequent provisions in paragraph (d)(2) provide that, as long as the treating source is someone entitled to special deference, and all other factors are equal, we will always give more weight to treating source medical opinions than to opinions from other sources.

Finally, paragraph (d) provides that, when we do not give a treating source's medical opinion controlling weight, we will always provide good reasons why we have not done so in our notices of determination and decision.

Paragraph (d) provides that many of the factors we use for weighing opinions from treating sources are also used in weighing opinions from sources who have examined claimants but who have no treatment relationship (such as consulting physicians and psychologists or physicians or psychologists who may have performed individual consultations during the course of a hospitalization) and from nonexamining medical sources. Thus, the weight to which the opinion of a nontreating source will be entitled depends on such factors as the consistency of the opinion with other evidence, the qualifications of the source, and the degree to which the source offers supporting explanations for the opinion. Even though we may ultimately find the opinion of a nontreating medical source entitled to greater weight than that of a treating source, the opinions of nontreating sources are not entitled to the special deference that we give to treating source opinions.

Essentially, once we have determined that an opinion is from a treating source, it is entitled to special deference. The final rules provide that treating source opinions are generally entitled to greater weight than opinions from nontreating sources unless there are clear and specific reasons why they are outweighed.

5. Paragraph (e) addresses the consideration of opinions on issues reserved to the Secretary. Except for editorial changes, paragraph (e)(1) is intended to be identical in meaning to the rule that was in the existing regulations §§ 404.1527 and 416.927. Paragraph (e)(2) replaces the paragraph (e) of the notice of proposed rulemaking, which was another source of serious concern and misunderstanding in the public comments.

Medical sources often offer opinions about whether their patients are "disabled" or "unable to work." Sometimes, medical sources offer opinions about whether their patients have impairments that meet or equal the requirements for an impairment listed in appendix 1 to subpart P of part 404. Medical sources may also offer opinions about a claimant's "residual functional capacity" under §§ 404.1545 and 416.945 (as distinct from the "statements about what you can still do" described in §§ 404.1513 and 416.913), or about their patient's ability to perform past relevant work or any other type of work considering residual functional capacity, age, education, and work experience.

The new paragraph (e) provides that we will not disregard these opinions, even though they may generally be beyond the expertise of most medical sources. In fact, if a treating source provides an opinion on a nonmedical issue and the basis for the opinion is not clear from the evidence in the case record, we will make every reasonable effort to recontact the source to obtain an explanation of the medical basis for that opinion. The intent of the paragraph, however, is to reiterate the principle previously stated in §§ 404.1527 and 416.927 that determinations on these issues, as described in those sections, are strictly the responsibility of the Secretary and that opinions which address these issues can only be given weight proportionate to the extent to which we can find that they are supported by the remainder of the record. The Act requires such determinations to be made by a State agency or the Secretary. To give a treating source's opinion on such an issue controlling weight would, in actuality, confer upon the treating source the authority to make the determination, and would not, in our view, be consistent with the statute. This was what we intended with the language in proposed paragraph (e). We did not mean to require medical sources to use proper terminology, as some commenters inferred. However, we did mean to reserve the ultimate determination of disability to the Secretary.

6. Paragraph (f) is a new provision that addresses evidence from nonexamining physicians and psychologists. We use physicians and psychologists in several capacities. At the State agency, physicians and psychologists are members of the teams that make disability determinations. We also employ physicians and psychologists to perform quality reviews and to provide expert opinions to State agencies, disability hearing officers, administrative law judges, and the Appeals Council. Administrative law judges may also call upon medical advisors to provide expert testimony at hearings. Even though the provisions of the introductory paragraph of paragraph (f) will normally apply to such physicians and psychologists, they are applicable to opinions received from any nonexamining source, including the rare nonexamining medical source opinion submitted by a claimant.

Paragraphs (f)(1) and (f)(2) are new provisions which clarify the complex role of the State agency medical and psychological consultant. Paragraph (f)(1) explains that when State agency medical or psychological consultants make findings of fact about medical issues in their decision making capacities, the findings are not opinions which are to be weighed against opinions in the case record. Rather, they are findings based on the pertinent medical and other evidence, including medical opinions. When State agency medical or psychological consultants assess medical opinions in the case record, they apply the principles set forth in §§ 404.1527 and 416.927.

At the hearing level, administrative law judges consider the issues before them *de novo*. Therefore, when administrative law judges consider issues of disability, they are not bound by any findings made at the State agency in connection with the initial and reconsidered determinations. However, State agency medical and psychological consultants are highly qualified physicians and psychologists who are also experts in Social Security disability evaluation. Therefore, it has been our longstanding policy that administrative law judges will consider the findings of State agency medical and psychological consultants with regard to the nature and severity of a claimant's impairment as opinions of nonexamining physicians and psychologists. We have incorporated this policy into the regulations in §§ 404.1512(b)(6) and 416.912(b)(6) and in §§ 404.1527(f)(2) and 416.927(f)(2).

Administrative law judges will not give the opinions of State agency medical or psychological consultants any special weight as such; they will apply the principles of §§ 404.1527 (a) through (e) and 416.927 (a) through (e) when they weigh such opinions, always considering that the opinions come from sources who have never examined the individual whose case is being decided. Paragraph (f)(3) provides that the same policy applies to the Appeals Council when the Appeals Council issues a decision.

Public Comments

We published proposed rules to establish standards for consultative examinations in a notice of proposed rulemaking in the **Federal Register** on April 20, 1987 (52 FR 13014). Interested persons, organizations, Government agencies, and other groups were given 60 days to comment. The comment period closed on June 19, 1987.

We received comments from individuals, organizations, and Government agencies, both State and Federal, whose responsibilities and interests require them to have some expertise in the evaluation of medical evidence used in making disability determinations under titles II and XVI of the Act. We received no comments from disabled persons individually, but we did receive them from six legal services organizations that represent the interests of disabled individuals. We also received comments from medical associations, physicians, and other medical professionals.

We have carefully considered all of the comments and have adopted many of the recommendations. These changes are identified in the following discussion of issues which were raised in the comments.

Many of the written comments, by necessity, had to be condensed, summarized or paraphased. In doing this, we believe we have expressed everyone's views adequately and responded to the issues raised.

Some of the comments raised details about how the regulations would be implemented. We believe these comments are not substantive public comments that must be addressed in the regulations.

Many of the explanations and discussions of issues as published in the notice of rulemaking have been expanded and clarified. We believe the result is an improvement over the rules as published in the notice of proposed rulemaking which will enhance the uniformity and equity with which the rules are applied.

We have refined and consolidated some of the language previously proposed in §§ 404.1519 and 416.919, 404.1519a and 416.919a and 404.1519b and 416.919b and moved it into §§ 404.1512 and 416.912. We believe this is appropriate as it makes clearer the process of obtaining existing medical evidence from medical sources, including recontacting the medical source, before evaluating a consultative examination. We revised §§ 404.1512 and 416.912 to clarify that the 12-month medical history means 12 months prior to the application, the date the claimant was last insured for disability benefit or period of disability purposes, the end of the prescribed period for widow's or widower's benefits based on disability, or attainment of age 22 for child's benefits based on disability, as appropriate.

We have reorganized the sections on consultative examinations issues into what we believe is a more logical order when read in the context of current regulations.

Although we did not include §§ 404.1517 and 416.917 of the existing regulations in the notice of proposed rulemaking because we did not initially recognize the need for changes in those sections, we later realized that they should have been revised to avoid redundancy. We have therefore revised the last sentence of §§ 404.1517(a) and 416.917(a) by inserting a period after the words "about your condition." In addition, we have deleted §§ 404.1517(b) and 416.917(b) since situations requiring a consultative examination are now described in §§ 404.1519(a) and 416.919(a). Therefore, §§ 404.1517(a) and 416.917(a) have been redesignated to §§ 404.1517 and 416.917. We have deleted §§ 404.1519e and 416.919e and §§ 404.1519f and 416.919f as set out in the Notice of Proposed Rulemaking since the procedures for development of evidence and obtaining consultative examinations followed at the initial level are also applicable at the reconsideration and hearings level of review; we have added a statement to this effect in §§ 404.1519 and 416.919.

We reorganized the language previously proposed in §§ 404.1519s and 416.919s and §§ 404.1519t and 416.919t as follows:

1. The content of the first paragraph of §§ 404.1519s and 416.919s was moved to §§ 404.1519t(a) and 416.919t(a).

2. The language in §§ 404.1519t and 416.919t, with the exception of the language in §§ 404.1519t(9)(d) and 416.919t(9)(d), is now located in §§ 404.1519s and 416.919s.

We clarified § 416.920 to indicate that it does not apply to children under title XVI.

In proposing these regulations, we had certain objectives in mind in addition to implementing section 9 of Public Law 98–460:

- To ensure that accurate disability determinations are made as early in the process as possible;
- To improve the uniformity of disability determinations;
- To improve the management of the disability programs both at the State and Federal levels; and,
- To preserve the basic Federal/State relationship.

These objectives also guided us as we evaluated the comments received from the public.

For ease of comprehension, we have organized comments according to the issues raised. The issues and our responses are presented in the order in which the regulations are now organized and not in the order in which the issues appeared in the notice of proposed rulemaking, except for the sections which we have deleted from the final regulations. The reference to sections in the headings regarding the comments and in the comments refer to sections as numbered in the notice of proposed rulemaking.

Sections 404.1502/416.902 General Definitions and Terms for This Subpart.

Comment: Several commenters believed that the definition of "treating source" was too restrictive and should include physicians who have treated the claimant in the past as well as those currently treating the claimant. One commenter believed that "treating source" should be defined as "the one who provides medical treatment for alleged impairment(s)."

Response: We have modified the language in the definition of "treating source" to include those physicians who had treated the claimant on an ongoing basis in the past. We did not limit the definition to "one who provides treatment for the alleged impairment," since pertinent evidence may be available in the records of a treating source who has or had an ongoing treatment relationship with the claimant for a condition other than the alleged impairment.

Comment: Some commenters expressed concern about the distinction between "treating source" and "source of record." The commenters suggested clarification or deletion of the phrase "ongoing treatment relationship." One commenter suggested cross-referring this section to §§ 404.1513 and 416.913 to clearly define the term "your own physician," to avoid controversy over evidence from chiropractors, naturopaths, and other practitioners not licensed to practice medicine and surgery.

Response: The distinction between "treating source" and "source of record" has been made to differentiate a source who has examined the claimant but did not have an ongoing relationship with the claimant from one who has such a relationship. Additionally, we have stated what we mean by "ongoing treatment relationship." We have cross-referred §§ 404.1502 and 416.902 to §§ 404.1513 and 416.913 to distinguish acceptable medical sources from other sources.

Sections 404.1503a/416.903a Program Integrity

Comment: Some commenters stated there was not enough detail with regard to the issue of revocation and suspension of license by the State and asked, when revocation or suspension occurs, whether the individual involved is permanently barred from participation in the program or barred only for the duration of the revocation or suspension. One commenter wanted to know SSA's position regarding use of evidence from an individual whose license to practice is restored after (1) passage of penalty time or (2) after investigation.

Response: We will not use in our program except to provide existing medical evidence, any medical or psychological consultant, consultative examination provider, or diagnostic test facility currently excluded, suspended, or otherwise barred from participation in the Medicare or Medicaid programs, or any other Federal or federally-assisted program. The regulations have been revised to reflect this policy. Participation in the Social Security programs is permitted after revocation or suspension, once the license to practice has been restored by the State which revoked or suspended it and the bar from participation in the Medicare or Medicaid programs is removed.

We believe a physician's/provider's professional conduct, reputation, and dealings within the community and with all Government agencies must be such as to avoid any unfavorable reflection upon the Government and erosion of public confidence in the administration of the program.

Comment: One commenter suggested we clarify whether the filing of an appeal on a bar from participation in the Medicare or Medicaid program by physicians would result in a suspension of the debarment by SSA.

Response: The filing of an appeal would not result in a suspension of the debarment by SSA.

Comment: Several commenters indicated the need for SSA to maintain a listing of individuals and entities found guilty of professional misconduct in order to keep the State agencies informed.

Response: We agree and are looking into the possibility of obtaining such information through the use of a data bank service which maintains data on a wide variety of professional disciplinary actions taken against individuals and entities in the country.

Comment: Several commenters suggested that we list additional reasons for exclusions since congressional hearings and the General Accounting Office reports on the consultative examination issue, particularly with regard to "key" or "volume providers," suggested the need to list further abuses in this section to avoid future problems.

Response: We have not adopted the suggestion that we need to list additional reasons for exclusion. We believe the regulations cover a broad base of reasons for not using sanctioned physicians. The list of sanctioned physicians SSA receives from the Office of the Inspector General, which we regularly forward to the States, together with information the State agencies receive and maintain through their monitoring systems on volume providers and other medical sources are designed to ensure the integrity of the program.

Comment: Two commenters believed that prohibitions against "using" physicians in the program and the type of participation that is precluded needed additional clarification. For example, the commenters asked if we would apply this regulation in situations in which the sanctioned individual or entity was involved in our program prior to the legal sanction, and whether we would apply the rule to laboratories used by treating physicians. The commenters believed the regulation could preclude use of a report from such a source in his or her role as a treating source or source of record.

Response: We believe that evidence submitted by sanctioned physicians who are medical sources cannot be summarily disregarded in reviewing disability claims. Similarly, if we have knowledge that the treating source has used the services of a laboratory that has been sanctioned, such evidence will also be considered. Section 223(d)(5)(B) of the Act states, in part, that "in making any determination with respect to whether an individual is under a disability or continues to be under a disability, the Secretary shall consider all evidence available in such individual's case record."

Comment: Several commenters questioned whether we would accept existing medical evidence from sanctioned individuals and entities, and, if so, what the probative value of such evidence would be. Another commenter wanted it specified that the State agencies will not base their disability determinations on any evidence presented by attending physicians who have been sanctioned by the Office of the Inspector General for Medicare or Medicaid program violations.

Response: As we indicated earlier, evidence submitted by sanctioned physicians who are medical sources cannot be summarily disregarded because this would be unfair to the claimant. However, if the examiner has reason to doubt the reliability of a report from a sanctioned physician, then the evidence may have less probative value. Similarly, the particular action which has caused a physician to be excluded from the program will be considered in evaluating medical evidence of record submitted by that physician.

Comment: With regard to the concept of using the treating physician as the preferred source for consultative examinations, one commenter wanted to know if such disciplinary action would bar consideration of those physicians. Another commenter wanted it clearly specified that the State agencies will not purchase consultative examinations from attending physicians who have been sanctioned by the Office of the Inspector General for Medicare or Medicaid program violations.

Response: We will not use a treating source to perform a consultative examination if we have knowledge that the treating source is currently under sanction by the Office of the Inspector General for Medicare or Medicaid program violations or by the State licensing authority.

Sections 404.1512/416.912 Responsibility for Evidence of Your Impairment

Comment: One commenter stated that it would be advantageous to ensure that all claimants fulfill their responsibility to submit evidence of disability. Two commenters indicated that a step-by-step procedure should be implemented for capable claimants to follow to secure medical evidence in support of their claims. Three commenters believed that requiring the claimant to contact medical sources to help obtain medical reports may result in unfair denials. Several commenters stated that severely disabled individuals cannot be expected to assume responsibility to get evidence, and that SSA must assume responsibility in those cases.

Response: We have made clear in §§ 404.1512 and 416.912 of these final regulations the claimant's responsibility to submit evidence of disability and SSA's responsibility to assist the claimant in obtaining evidence of the claimant's impairment. We believe these provisions prevent unfair denials to claimants who must assist us in contacting medical sources to help obtain the medical reports. Additionally, SSA assists those claimants who may be physically or mentally unable to provide evidence.

Comment: One commenter believed that the regulations should honor the statutory directive of developing a complete 12-month history in all cases regardless of the alleged onset date. Other commenters also believed that in cases involving mental impairments the claimant's statement or recall of disability onset should not necessarily be the sole determining factor in developing the preceding 12 months' evidence.

Response: We do not believe that the statute requires 12 months' development in every case. We have revised the regulations to indicate that if the alleged onset date is less than 12 months before the application filing date, we will develop a complete medical history beginning with the month of alleged onset date. In mental impairment cases, as in any other case, evidence can be requested with respect to periods before the alleged onset date. The criteria of this provision are meant to be minimum standards. Judgment and selectivity should be used based on the facts of a particular case.

Comment: Several commenters saw no purpose in rigid timeframes for followup for obtaining existing medical evidence. Some stated that the total 30-day timeframe is unreasonable and should be longer. Others stated that the timeframe should be less than 30 days. Some commenters stated that additional efforts should be made in securing existing medical evidence such as a second followup by telephone, or that a carbon copy of the followup should be sent to the claimant so the claimant can request the source to respond promptly. One commenter suggested waiting 28 days after the initial request for existing medical evidence before purchasing a consultative examination, except when a source is known to be uncooperative in providing such medical evidence. Several commenters stated that a consultative examination should not be ordered while awaiting existing medical evidence.

Response: We have revised the language for "every reasonable effort," the effort which we must expend to help a claimant get medical evidence from his or her own medical source, to permit a period of 30 calendar days between the date of the initial request for existing medical evidence and the response to the followup. Within this 30-day period, the followup can be made at any point between 10 and 20 calendar days after the initial request. This allows a reasonable period of at least 10 calendar days after the followup for response. Current operating instructions provide that the disability determination services may contact the claimant to assist in obtaining needed evidence from a source who has not responded to the initial request. The final regulations provide that a consultative examination may be ordered while awaiting existing medical evidence when a source is known to be unable to provide certain tests or procedures or is known to be nonproductive or uncooperative.

Comment: One commenter questioned whether the treating source should be used for a consultative examination when that source has been uncooperative in furnishing existing medical evidence.

Response: A provision has been included in §§ 404.1519i and 416.919i of these final regulations for ordering a consultative examination from a source other than the treating source when the treating source is known to be uncooperative in furnishing existing medical evidence. The example included in the provision illustrates that when the treating source has consistently failed to furnish existing medical evidence, we should not then use the source to perform the consultative examination.

Sections 404.1513/416.913 Medical Evidence of Your Impairment

Comment: Several commenters objected to use of the new phrase "medical source statement * * *" instead of the term "medical assessment." They believed that the change from "medical assessment" was made to allow consideration of observations by nonmedical personnel. One commenter stated that the new phrase is a reversal of longstanding SSA policy and is essentially a request for a residual functional capacity finding. Many commenters were concerned that the request to a treating physician for the statement of what the individual can still do despite impairment(s) will result in frequent conflict with the State agency staff medical or psychological consultant's residual functional capacity assessment which is based on the full medical record. These commenters thought that, generally, since the physician would not have access to the claimant's full record, the opinion of the treating source may be substantially different from the residual functional capacity assessment provided by the State agency physician, resulting in increased State agency time required to rebut the solicited opinion.

Response: The new phrase "medical source statement" does not include observations by non-medical personnel. We clearly indicated in §§ 404.1513(b)(6) and 416.913(b)(6) that the "statement as to what a person can still do despite impairments" should be provided by a medical source. The request for a statement from a medical source about what a person can still do is not a reversal of SSA policy. It has always been our policy to request "medical assessments" from treating sources because these statements can provide important evidence about the actual functional effect of an individual's impairment(s). However, because the term "medical assessment" was open to various interpretations, we decided that the clarification of our policy was necessary. The final rules clarify that we will request each treating source and consultative source to provide a statement of what the claimant can still do despite impairments. Each opinion received will be considered along with all of the medical and other evidence in arriving at the residual functional capacity assessment. We agree that the State agency examiner or medical or psychological consultant may be required to spend additional time resolving differences between these opinions and the medical consultant's residual functional capacity assessment, but we believe this is necessary in our decision making process in order to properly weigh these opinions.

Comment: One commenter believed the list of work-related activities should be complete rather than a partial list of activities. Two commenters believed that the statement of the medical source's opinion about a claimant's mental impairment should include "to concentrate" and "to persevere," since these are more often the abilities lost in chronic mental illness. Another commenter stated that the information to be included in a medical report does not address complaints of pain and limitations.

Response: We have made clear in the regulations that the list of work-related activities is not all-inclusive and is not limited to the physical and mental capabilities as listed. However, even though the notice of proposed rulemaking at §§ 404.1513(c)(2) and 416.913(c)(2) referred to the ability to reason or make occupational, personal, or social adjustments, §§ 404.1545(c) and 416.945(c) refer instead to the ability to understand, to carry out and remember instructions, and to respond appropriately to supervision, coworkers, and work pressures in a work setting. We believe that the language of the final regulations should be consistent throughout. We have, therefore, revised the language of these final regulations at §§ 404.1513(c)(2) and 416.913(c)(2) and §§ 404.1519n(c)(6) and 416.919n(c)(6) about mental capabilities to be consistent with the language in §§ 404.1545(c) and 416.945(c).

Comment: Two commenters believed that excluding disabled widows or widowers from the requirement that a medical report should include a statement about what the claimant can still do despite his or her impairment will result in the exclusion of evidence needed in order to determine the eligibility of a claimant seeking widow's benefits based on disability.

Response: As a result of the enactment of section 5103 of Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990, on November 5, 1990, we will no longer exclude disabled widows or widowers from the requirement that a medical report should include a statement about what the claimant can still do despite his or her impairment.

Standards To Be Used in Determining When a Consultative Examination Will Be Obtained in Connection With Disability Determinations

Sections 404.1519/416.919 The Consultative Examination

Comment: One commenter suggested adding a provision that a consultative examination may be obtained at the claimant's request.

Response: The claimant or the claimant's representative may request a consultative examination. However, §§ 404.1517 and 416.917 state that we will not pay for any medical examination arranged by the claimant or his representative without our advance approval.

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Comment: Two commenters believed that excluding disabled widows or widowers from the requirement that a medical report should include a statement about what the claimant can still do despite his or her impairment will result in the exclusion of evidence needed in order to determine the eligibility of a claimant seeking widow's benefits based on disability.

Response: As a result of the enactment of section 5103 of Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990, on November 5, 1990, we will no longer exclude disabled widows or widowers from the requirement that a medical report should include a statement about what the claimant can still do despite his or her impairment.

Standards To Be Used in Determining When a Consultative Examination Will Be Obtained in Connection With Disability Determinations

Sections 404.1519/416.919 The Consultative Examination

Comment: One commenter suggested adding a provision that a consultative examination may be obtained at the claimant's request.

Response: The claimant or the claimant's representative may request a consultative examination. However, §§ 404.1517 and 416.917 state that we will not pay for any medical examination arranged by the claimant or his representative without our advance approval.

Comment: One commenter suggested rewording of the language that a consultative examination "must be obtained" to "should be obtained" since "must" is too directive and rigid. Several commenters indicated that in obtaining additional information readily available from a medical source, trained disability examiners or other professionals are just as effective as doctor-to-doctor contact. One commenter asked if the purchase of a consultative examination should be approved if a telephone contact to the treating source has not first been made. One commenter stated that there should be no instance of recording conversations with a medical source unless that source affirms the substance of any conversation with us by his or her signature.

Response: As explained above, we have reorganized paragraphs on recontacting medical sources. Paragraphs 404.1519(b) and 416.919(b) as set out in the Notice of Proposed Rulemaking are now §§ 404.1512(e) and 416.912(e), respectively. We believe this reorganization better describes the process of the efforts of requesting existing medical evidence before obtaining a consultative examination. In rewording the new §§ 404.1512(e) and 416.912(e), we deleted the phrase "must be obtained." Reference to doctor-to-doctor contact was also deleted since existing operating instructions indicate that routine requests for needed information can be made by trained disability adjudicators. We have made clear in these final regulations at §§ 404.1512 (e) and (f) and 416.912 (e) and (f), that before we request a consultative examination we will first recontact the treating source or other medical source to determine whether the information we need is readily available. The decision to purchase a consultative examination will be made after we have given full consideration to whether or not the additional information is readily available from the records of the claimant's medical sources. Such full consideration includes making a telephone contact with the treating source. We agree that the substance of the conversation with a medical source must be affirmed by the source's signature. We cover this in our operating instructions, and we have added this requirement to the final regulations at §§ 404.1512(e)(1) and 416.912(e)(1). Every reasonable effort will be made to obtain the additional information or to obtain the source's signature when medical evidence is obtained over the telephone.

Sections 404.1519a/416.919a When We Will Purchase a Consultative Examination and How We Will Use It

Comment: One commenter indicated that the regulations reflect using a medical source other than the treating source to resolve conflicts, perform specialized tests, and to evaluate changes in a claimant's condition. Two commenters stated that there is no basis to seek a consultative examination when there is an indication of a change in the claimant's condition unless the treating source has first been contacted for the information and cannot provide it. Two commenters stated that unless the treating source is first contacted, SSA will not be able to determine that the source cannot reconcile an inconsistency or ambiguity. One commenter stated that the regulations should make clear that "conflict" involves solely a conflict within the medical data already submitted and not between the opinion of nonexamining physicians and the other medical evidence in the case. Two commenters believed that the provisions appear to indicate that a consultative examination will be required regardless of the quality of the evidence in file from a treating source. These two commenters believed that the language in §§ 404.1519a(b)(7) and 416.919a(b)(7) was unnecessarily broad and should be refined or deleted.

Response: The regulations state that when the evidence we receive is inadequate to allow us to determine whether the individual is disabled, or when the treating source's report or other medical source's report contains a conflict or an ambiguity, we will give every consideration to whether the additional information we need is readily available from the records of the claimant's medical source. Recontact should be made with the treating source or other medical source to determine whether the additional information we need is readily available. We try to make decisions based on the evidence from treating sources because they are often in the best position to provide detailed longitudinal information about a claimant's condition. However, when the source cannot provide the necessary information, we will purchase a consultative examination from the treating source whenever possible, subject to the exceptions noted in §§ 404.1519i and 416.919i of these final regulations. We have made clear in the regulations that when a report from a treating source contains a conflict or an ambiguity, we will give every consideration to first recontacting the treating source for the additional evidence or clarification. The conflict may exist within the medical data or between opinions of the physicians involved in the claimant's case. We will, however, make every reasonable effort to recontact the treating source to resolve the conflict. We agree with the commenter that paragraph (7) of §§ 404.1519a(b) and 416.919a(b), as set out in the Notice of Proposed Rulemaking, should be deleted from these final regulations and have done so.

Comment: One commenter said that consideration of vocational evidence, as mentioned in the Notice of Proposed Rulemaking, is usually not a factor in deciding whether or not to purchase a consultative examination unless there is evidence of work activity. One commenter stated that considering the vocational background from the background report before purchasing a consultative examination may delay the case and may ultimately be unnecessary.

Response: We agree with these commenters and have deleted reference to the vocational background report.

Sections 404.1519b/416.919b When We Will Not Purchase a Consultative Examination

Comment: Several commenters believed that the situations given in this section to illustrate when a consultative examination will not be purchased are vague and will result in the improper denial of benefits. Three commenters indicated that clarification is needed regarding issues involving work activity. Three commenters believed that these standards may have a significant negative impact on persons with mental impairments. Several commenters said that the intent and usage of situations (f) and (g) of § 404.1519b need particular clarification on how these situations will be applied.

Response: These situations are provided as guidelines for us to use in exercising our judgment about obtaining a consultative examination based on the facts of a particular case. We make special efforts to ensure against denial of benefits to all individuals who may be severely impaired and unable to assist us in obtaining evidence, especially those who may be mentally impaired. The SSA field offices are responsible for resolving issues of work activity. Because resolution of the medical issues may be unnecessary, a consultative examination should not be ordered when the State agency recognizes that specific issues concerning evaluation and consideration of substantial gainful activity have not been resolved. We believe our

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regulations already safeguard against the denial of benefits to the mentally impaired. We have deleted situations (f) and (g), as set out in the Notice of Proposed Rulemaking, from these final regulations because those situations could be subject to misinterpretation.

Sections 416.919c Purchase of Title XVI Slight Impairment Examination

Comment: Many commenters expressed concern that this section appears to be designed to allow "quick and easy" determinations of nondisability under title XVI. Several commenters disagreed with letting the claimant make the arrangements for his or her own consultative examination. They believed that it is far more important that SSA do "usual development" of these cases in order to document and properly assess them. The commenters noted that this section presumes that if a person applies for Supplemental Security Income benefits because another agency requires a title XVI determination, then the individual suffers from only a slight impairment. One commenter stated that this section is in direct conflict with all of the safeguards established in other sections of the regulations. Some commenters were concerned about the quality of and lack of timeframes for the medical report required under this section. One commenter said that these special procedures should not be mandated, and if implemented, they should be optional.

Response: We agree that there should not be a different procedure for determinations of nondisability for title XVI claimants than for title II claimants; therefore, we have decided to delete the proposed provision.

Sections 404.1519e/416.919e Purchase of Consultative Examinations at the Reconsideration Level

Comment: One commenter indicated that the regulations should include the circumstances when a consultative examination will be needed at the reconsideration level. Several commenters stated that the requirement to purchase a consultative examination at the reconsideration level based on a treating source's statement would not be cost-effective or productive if the statement was adequately considered at the initial level. Other commenters stated that it would be inappropriate to allow the same treating source to perform a consultative examination at the initial and reconsideration levels. They believed that the regulations should require that a consultative examination at the reconsideration level be performed by a different physician. Others believed that the purchase of a consultative examination from the claimant's treating physician should be mandatory.

Response: We have deleted §§ 404.1519e and 416.919e and §§ 404.1519f and 416.919f, as set out in the Notice of Proposed Rulemaking, from these final regulations since we did not intend to create different standards at the reconsideration or other appeals levels. The rules set forth in §§ 404.1519a and 416.919a and §§ 404.1519b and 416.919b of these final regulations for purchasing a consultative examination are applicable at the reconsideration and other appeals levels of review. When the treating source expresses the opinion that the claimant is disabled, a consultative examination may be purchased at the reconsideration level to ensure that all relevant evidence has been obtained and that we have thoroughly reconsidered the claim. We believe it is appropriate to have the same treating source perform the consultative examination, when possible, at both the initial and reconsideration levels because the treating source is often in the best position to provide detailed longitudinal information about a claimant. Therefore, the treating source is the preferred source for a consultative examination at every level of adjudication, subject to the exceptions in these rules.

Sections 404.1519f/416.919f Securing Medical Evidence at the Administrative Law Judge Hearing Level

Comment: One commenter stated that there should be specific language in this section against administrative law judge *ex parte* contacts with either treating or consultative physicians. Several commenters stated that this section excuses the administrative law judge from making every reasonable effort to get information from treating sources. Two commenters said that the same provisions for consultative examinations at the reconsideration level should apply at the administrative law judge hearing level.

Response: Subpart P and subpart I of the regulations are not the appropriate places to state policy on administrative law judge *ex parte* contacts because *ex parte* contacts can involve all types of determinations, not only those about disability and blindness. We will consider addressing this issue in subpart J of the regulations. The agency's "every reasonable effort" standard to help a claimant get medical evidence from his or her own medical source, as set forth in §§ 404.1512(c)(1) and 416.912(c)(1) also applies to the administrative law judge. We did not intend to create different rules for obtaining a consultative examination at the reconsideration and the hearing levels. The rules that apply at the initial level also apply at the reconsideration, administrative law judge and Appeals Council levels of review.

Standards for the Type of Referral and for Report Content

Sections 404.1519g/416.919g Who we will Select to Perform a Consultative Examination

Comment: One commenter recommended that to allow the State agency to exercise judgment in determining when to order a specific test or a comprehensive examination to determine the person's fitness to undergo the procedures involved in the test or examination, the term "we may" should be substituted for the phrase "we will" purchase only the specific evidence needed. One commenter stated that certain test procedures should never be ordered without a concurrent medical examination.

Response: The regulations, as well as our operating instructions, clearly intend to allow the State agency to exercise judgment in obtaining only the type of examination and/or test needed for adjudication. We will order only the specific examination or test needed. Sections 404.1519m and 416.919m of these final regulations ensure that certain test procedures that may entail significant risk to the claimant are not ordered for the evaluation of disability. The disability interview form and pertinent medical evidence available permits the examining physician to be aware of the claimant's condition.

Comment: Several commenters stated that it was unreasonable and virtually impossible to expect monitoring of the credentials of the support staff of consultative examination providers because of their sheer size in numbers, their rapid turnover rate, and the broad range of certifications needed to operate or perform certain functions that would be involved.

Response: We recognize the overwhelming task it would be for the State agency to monitor continually 100 percent of the support staff of all of their consultative examination providers. We also recognize that this task will become even greater as more new treating sources are used for consultative examinations. However, we are also committed to ensuring that program safeguards are in place. Additionally, congressional concerns have been raised regarding the use of unqualified

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Standards for the Type of Referral and for Report Content

Sections 404.1519g/416.919g Who we will Select to Perform a Consultative Examination

Comment: One commenter recommended that to allow the State agency to exercise judgment in determining when to order a specific test or a comprehensive examination to determine the person's fitness to undergo the procedures involved in the test or examination, the term "we may" should be substituted for the phrase "we will" purchase only the specific evidence needed. One commenter stated that certain test procedures should never be ordered without a concurrent medical examination.

Response: The regulations, as well as our operating instructions, clearly intend to allow the State agency to exercise judgment in obtaining only the type of examination and/or test needed for adjudication. We will order only the specific examination or test needed. Sections 404.1519m and 416.919m of these final regulations ensure that certain test procedures that may entail significant risk to the claimant are not ordered for the evaluation of disability. The disability interview form and pertinent medical evidence available permits the examining physician to be aware of the claimant's condition.

Comment: Several commenters stated that it was unreasonable and virtually impossible to expect monitoring of the credentials of the support staff of consultative examination providers because of their sheer size in numbers, their rapid turnover rate, and the broad range of certifications needed to operate or perform certain functions that would be involved.

Response: We recognize the overwhelming task it would be for the State agency to monitor continually 100 percent of the support staff of all of their consultative examination providers. We also recognize that this task will become even greater as more new treating sources are used for consultative examinations. However, we are also committed to ensuring that program safeguards are in place. Additionally, congressional concerns have been raised regarding the use of unqualified

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support staff to assist the consultative examination physician in the examination process. Therefore, we have retained the requirement outlined in this section governing the qualifications of consultative examination providers. We will add to our operating instructions the requirement that each consultative examination panel source provides the State agency for which he or she agrees to do consultative examinations, a signed agreement certifying that all support staff he or she uses in the performance of a consultative examination meet the appropriate licensing or certification requirements of the State. If the State agency discovers a violation of this agreement by a consultative examination provider, it will take appropriate action to ensure that the problem is corrected. If the problem persists, the State agency will cease using that consultative examination provider.

Comments: One commenter wanted to know who constitutes "support staff" and what documentation of the "appropriate licensing or certification" must be maintained by the State agency. Another commenter indicated that medical sources should be instructed to note on the report when support staff assisted, their qualifications, what they did, and the amount of supervision exercised by the consultative examination provider.

Response: We have added an example of "support staff" in §§ 404.1519g(c) and 416.919g(c) of these final regulations. We have not adopted the suggestion that consultative examination sources be instructed to note on the report when support staff assisted, their qualifications, what they did, and the amount of supervision exercised by the consultative examination provider. We believe such requirements are excessive because consultative examination sources are already aware of their responsibility and liability for the welfare of the claimant during the consultative examination as well as for the accuracy of the consultative examination report. The consultative examination sources' motivation to maintain qualified support staff will be reinforced by the signed agreement discussed above. This signed agreement will also serve as the documentation maintained by the State agency regarding the qualifications of the support staff used by its consultative examination providers.

Comment: Two other commenters wanted to know what constitutes the training and experience to perform the type of examination or test requested and how this is to be applied to treating sources selected to perform consultative examinations.

Response: Where the treating source believes that he or she is experienced in the care of the person with the alleged impairment and is willing and able to do the examination, the treating source will be the preferred source to perform the consultative examination.

Sections 404.1519h/416.919h Your Treating Physician or Psychologist

Comment: Some commenters indicated that the policy on utilizing the treating source as the primary source for a consultative examination could reward a treating source who does not submit adequate evidence by purchasing a necessary consultative examination from that source. Two commenters felt this section as written allows SSA to justify excluding most treating sources from use as consultative examiners. Two commenters stated that there should be a provision notifying the claimant of the reasons his or her treating source was not selected to perform the consultative examination.

Response: There is always the potential that a treating source may not provide us with the existing evidence we need. However, the treating source is the preferred source for a consultative examination. We do not intend this provision to mean that a treating source should not be used for a consultative examination. We see no benefit in notifying the claimant of the reasons why a source other than the treating source was utilized for the consultative examination. The claimant or the claimant's representative retains the right to object to the use of a specific physician.

Sections 404.1519i/416.919i Other Sources for Consultative Examinations

Comment: One commenter suggested that the regulations reflect that licensed professional counselors be recognized to perform psychological examinations. Another commenter stated that school officials, clinicians, and others may have critical information needed in the determination of disability.

Response: Sections 404.1513 and 416.913 of the regulations indicate that we need evidence from acceptable medical sources to determine the existence or severity of an impairment. Since licensed professional counselors are not physicians or psychologists, they cannot serve as consultative examination providers. However, medical evidence from other sources of medical information and evidence from nonmedical persons may be added to the record.

Sections 404.1519j/416.919j Objections to the Designated Physician or Psychologist

Comment: Several commenters indicated that there should be guidelines as to how the State agency will process objections based on this provision and how these objections will be fairly resolved. Two commenters stated that there should be a requirement that claimants be informed of their right to object to a consultative examination. One commenter said that the claimant should be provided an opportunity to object to an examination both before and after the examination has occurred. Another commenter stated that the regulations should emphasize that claimants or their representatives have the right to purchase an examination with any physician they choose and to have SSA consider that report in the determination process.

Response: The regulations and current operating instructions contain guidelines about how objections by the claimant or his or her representative to a specific physician should be handled. Claimants have the right to object to any and every step in the processing of their claims. To single out the consultative examination would appear to give that step undue emphasis or weight in the process.

Sections 404.1517 and 416.917 of these final regulations indicate that the claimant or his or her representative can submit evidence from a purchased examination from the physician of his or her choice. However, we will not pay for any medical examination arranged by the claimant or his or her representative without our advance approval. When the evidence is received, it is considered along with all medical and other evidence in the individual's case record in making a determination as to disability.

Sections 404.1519k/416.919k Purchase of Medical Examinations, Laboratory Tests and Other Services

Some commenters indicated that SSA should consider issuing its own Federal fee schedule, perhaps based on comparable Medicare reimbursement rates. Some commenters noted that §§ 404.1519k(a) and 416.919k(a) do not consider the problem of a State with such a low fee schedule that poor quality evidence is purchased and recruitment of consultative examination providers is impossible. One commenter stated that the word "nominal" handling fee in paragraph (b)(2) should be better defined. Some commenters were concerned that in paragraph (b)(2), the situation where the examining physician uses an independent laboratory for testing and bills the State agency for a higher amount, was not clearly addressed. There was also some concern that applicant travel costs might increase because the examining physicians would not provide services with these payment restrictions. Some commenters were concerned that paragraph (c) did not fully address how the State could document the rates of payment it uses.

Response: Under existing regulations, the State determines the rates of payment to be used for purchasing medical or other services necessary to make determinations of disability. The rates may not exceed the highest rate paid by Federal or other public agencies in the State for the same or similar type of service. The States have traditionally been responsible for determining rates of payment. With the exception of a few State agencies and isolated fee schedule problems, this arrangement has worked well over the years. However, SSA is considering whether a maximum fee schedule for laboratory tests, based on Medicare's limitation amounts for laboratory test fee schedules is feasible. We are currently studying the issue and what course of action, if any, we should take.

We do not believe a minimum payment standard is needed for the purchase of medical examinations, laboratory tests and other services. When a State is experiencing problems with poor quality medical evidence because of low payment rates, SSA will try to assist the State agency or its parent agency to correct the problem. We wish to point out, however, that there are many States with low fee schedules that nevertheless obtain high quality evidence. A high rate of payment does *not* guarantee quality evidence.

We do not believe publishing an exact amount for a physician's handling fee in regulations form is appropriate. We believe determining the actual amount should be based on local circumstances in accordance with general operating guidelines provided by SSA.

We have added clarifying language to this section which provides that when an examining physician uses an independent laboratory for testing, the amount of reimbursement will not exceed the independent laboratory's billed cost of the service or the State's rates of payment, whichever is the lesser amount.

Although some concern was expressed that claimant travel costs might increase because some physicians would not want to work pursuant to these payment restrictions, we do not believe this would outweigh the other considerations of regulating and limiting reimbursement to the service providers within reasonable bounds.

The intent of this section is to ensure that there are no excessive payments or markups for laboratory tests and other services billed by physician providers or laboratories.

For purposes of audit as well as other reasons, State agencies continue to be responsible for documenting the basis for the rates of payment they use. These include such factors as:

(1) Blue Cross/Blue Shield physician payment profiles,

(2) Rates of payment of other State and Federal agencies using same or similar services (i.e., Medicaid and Medicare),

(3) State surveys of physicians, hospitals and laboratory charges,

(4) Consumer price index and wage data of the medical community, and

(5) Requests by providers for rate changes.

The State agency will be required to submit a copy to SSA of the fee schedule and a statement indicating what methodology was used.

Sections 404.1519/416.919 Requesting Examination by a Specific Physician, Psychologist, or Institution—Administrative Law Judge Hearing Level

Comment: Two commenters stated that this section inappropriately limits the administrative law judge's obligation to seek evidence from the treating source. Some commenters indicated that this provision allows the administrative law judge to designate his or her "favorite" physician.

Response: We have deleted §§ 404.1519 and 416.919, as set out in the Notice of Proposed Rulemaking, from these final regulations since an administrative law judge and the Appeals Council will follow the same procedures for development of evidence and obtaining consultative examinations that are followed at the initial and reconsideration levels. There may be special circumstances aside from those listed in §§ 404.1519a and 416.919a in which an administrative law judge will request a consultative examination; even in these circumstances, the claimant's treating source will be the preferred source for the consultative examination.

Sections 404.1519m/416.919m Diagnostic Tests or Procedures

Comment: One commenter suggested that this section be expanded to ensure that diagnostic procedures of any sort that would be life-threatening will not be ordered. One commenter suggested that this section should include an exhaustive list of diagnostic procedures that are precluded. One commenter stated that the regulations should include a provision for consulting with treating sources prior to ordering extensive and perhaps invasive examinations.

Response: The intent of this provision is that diagnostic tests or procedures that may be of significant risk to the claimant shall not be ordered. It would be impossible to provide an exhaustive list of diagnostic procedures that are precluded. The situations provided in the regulations are examples of such procedures and are not all-inclusive. Although we do not routinely contact the treating source prior to ordering consultative examinations, sound medical judgment is exercised in determining when to purchase an examination. The medical and/or background report(s) containing information about the claimant will serve as pertinent evidence in determining when an examination should be purchased. As an additional safeguard, we are adding a requirement that a medical consultant must approve the ordering of any diagnostic test or procedure where there is a question of significant risk to the claimant.

Sections 404.1519n/416.919n Informing the Examining Physician or Psychologist of Examination Scheduling, Report Content, and Signature Requirements

Comment: Several commenters expressed concern that the solicited "statements of what a person can still do" will cause additional work for the State agency and result in additional difficulty in the decisionmaking process. One commenter suggested that a statement should be added that the physician's opinions must be supported by medical findings. Two commenters stated that the regulations put treating and consultative physicians in a role of assessing residual functional capacity.

Response: We agree that the solicited statement of what a claimant can still do despite his or her impairment results in additional work for the State agency. But the statements are important to the assessment of residual functional capacity in the decisionmaking process because they are the opinions of medical sources who have examined the claimant. Sections 404.1527 and 416.927 of the final regulations contain policy with respect to treating source opinions. Among other things they provide instructions on evaluating treating source medical opinions with respect to the nature and severity of an

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impairment that are well-supported by medical findings, those opinions that are not supported by medical findings, and those opinions that are inconsistent with medical or other evidence. We will not request the treating source or consultative examination source to provide a residual functional capacity assessment. The State agency medical or psychological consultant, the administrative law judge, or the Appeals Council is responsible for assessing residual functional capacity. A treating source or consultative examiner will be requested to provide a statement of what work-related activities such as sitting, standing, etc., the claimant can do despite impairments based on his or her knowledge of the claimant. Each statement received will be considered along with the medical and other evidence in arriving at an assessment of the claimant's residual functional capacity based on all of the evidence.

Comment: One commenter stated that this subsection should indicate that only examining physicians, not nonexamining staff persons, should furnish the statement of what a person can still do despite impairment(s). One commenter said that a similar statement is needed from every treating source.

Response: The first comment was not entirely clear to us, but we assume that by "nonexamining staff persons" the commenter meant State agency medical or psychological consultants. As we have explained, State agency medical or psychological consultants do not furnish "statements about what a person can still do," which we have defined in §§ 404.1513(b)(6) and 416.913(b)(6) as statements from medical sources based on their own findings. State agency medical or psychological consultants provide assessments of residual functional capacity, which are formal administrative determinations based on consideration of the entire case record, including the medical and the pertinent nonmedical evidence. The final regulations indicate, in §§ 404.1513 and 416.913, that the statement of what a person can still do despite his or her impairment(s) should be included in medical reports from treating sources or sources of record. The final regulations also provide that the absence of the medical source's statement of what the claimant can still do does not make the medical report incomplete. Additionally, §§ 404.1519n and 416.919n of the final regulations clearly indicate that the statement is to be made by the physician or psychologist who performs the consultative examinations. Also, operating instructions indicate that statements will be solicited from all treating sources and/or consultative examining physicians or psychologists.

Comment: One commenter suggested that the initial request for evidence to treating sources be more complete.

Response: The final regulations stress the importance of indicating to the treating source and/or consultative source what a complete examination should contain. We ask the treating source to provide the evidence already in the records of the claimant and a statement of what the claimant can do in spite of his or her impairments(s). Sections 404.1513(b) and 416.913(b) pertain to what a treating source's medical report should include, and §§ 404.1519n (b) and (c) and 416.919n (b) and (c) of these final regulations pertain to the report content for a consultative examiner.

Comment: Several commenters were concerned with how the State agency would be able to monitor consultative examination scheduling, and one believed it could not be done unless the consultative examination provider scheduled only Social Security referrals. Another commenter stated that the provision setting minimum timeframes for the scheduling of consultative examinations be deleted. This commenter believed that there is no guarantee that any given examination will meet the limits as proposed because much depends on the claimant's subjective perception of the length of the consultative examination.

Concerns were also raised that the consultative examination physician's or psychologist's intelligence would be insulted by the scheduling interval requirements.

Response: We are committed to protecting the public interest by maintaining program safeguards against overscheduling consultative examinations. Both the Subcommittee on Intergovernmental Relations and Human Resources of the House Committee on Government Operations and the General Accounting Office recommended that minimum scheduling intervals become requirements for consultative examination providers. Therefore, we have retained the scheduling interval requirements in this regulation.

We are aware that in the past the State agencies were heavily dependent upon the claimant's subjective perception of the length of the consultative examination as an indicator that overscheduling of consultative examinations might be occurring. We are also cognizant of the extra work that will be imposed on State agencies in monitoring the new scheduling intervals especially when Social Security claimants represent only a part of the consultative examination provider's caseload. For these reasons, we will add to our operating instructions the requirement that key consultative examination providers will sign a statement of agreement with the State agencies certifying that consultative examinations will not be scheduled any closer together than the minimum timeframes set forth in this regulation.

A State agency will maintain its normal consultative examination oversight activities. If a State agency discovers a violation of the above agreement by a consultative examination provider, it will take appropriate actions to ensure that the problem is remedied. If the problem persists, the State agency will cease using that consultative examination provider.

Finally, there is no intent to demean the intelligence or professional integrity of consultative examination physicians and psychologists by establishing scheduling interval requirements; rather, we believe there is a legitimate need to ensure that sufficient time is allowed for examining the claimant.

Comment: Several commenters suggested that the word "minimum" precede the scheduling intervals to avoid the misunderstanding that State agency fees can be multiplied incrementally by the specified times. One commenter thought minimum timeframes were a good idea but thought it may be better to also list average times (which will always exceed the minimum) to help avoid examination mills based on the minimum scheduling intervals.

Response: We adopted the suggestion to add the word "minimum" in front of "scheduling intervals." We did not choose to show average times for scheduling intervals since we believe the minimum times listed are sufficient to prevent overscheduling.

Comment: Several commenters did not think the difference between a "General Medical Examination" and a "Comprehensive General Medical Examination" was clear, while still another commenter thought the phrase "greater or less frequency," which refers to scheduling intervals of consultative examinations by a consultative provider, was not consistent with the language that preceded it.

Response: To clarify the potential confusion between the terms "general medical examination" and "comprehensive general medical examination," we deleted "general medical examination" from the list of examinations. In response to the other commenter, we reworded the sentence immediately following the list of examinations to read: "We recognize that actual practice will dictate that some examinations may require longer scheduling intervals depending on the circumstances in a particular situation."

Comment: One commenter thought that the time spent with the patient face-to-face should be recorded. Another commenter wanted to know if this regulation was actually discussing scheduling intervals or the length of the consultative examination itself. Finally, one commenter questioned whether the scheduling interval times were sufficient if they were to include the administering of needed tests.

Response: We did not adopt the comment that the time spent face-to-face with the patient be recorded because this section deals with overscheduling of consultative examinations and not with the duration of the examination. We deleted the word "duration" from the title of the section for clarity.

Also for clarity, we have added an explanation that the term "scheduling intervals" pertains to time set aside for the individual, not to the duration of the consultative examination.

These scheduling intervals are minimum time periods, and we contemplate that increased time may be necessary for the administration of additional laboratory tests or procedures.

Comment: Two commenters expressed concerns with the provision allowing support staff to help perform consultative examinations because they believed this area was open to liberal interpretation and was a potential area for abuse.

Response: We believe that the concerns raised about the possible liberal interpretation and potential abuse of the provision allowing support staff to help perform consultative examinations are not justified. The assistance to consultative examination providers by their support staff in the performance of a consultative examination has been a part of the consultative examination process since its inception and has worked successfully. As stated previously, the purpose of this regulation is to provide program safeguards to help ensure that when support staff are used, they are properly qualified and the validity of the consultative examination is not jeopardized. The consultative examination provider remains responsible for the examination and must sign the report to attest to that responsibility.

Sections 404.1519o/416.919o When a Properly Signed Consultative Examination Report Has Not Been Received

Comment: One commenter indicated that when an unsigned consultative examination report is consistent with existing evidence and supports a favorable decision, another consultative examination should not be obtained when the original consultative examination was performed by a now deceased physician. Two commenters stated that it was unnecessary or not cost-effective to duplicate consultative examinations to obtain signatures.

Response: We agree that it would be unnecessary to obtain a second consultative examination when a consultative examination performed by a now deceased physician is consistent with existing evidence and supports a fully favorable decision. We have revised the final regulations accordingly at §§ 404.1519o(a) and 416.919o(a). We will not use an unsigned consultative examination report to make disability determinations or decisions that are unfavorable to the claimant. If necessary, and notwithstanding the cost, we will obtain a second consultative examination to obtain a properly signed consultative examination report.

Sections 404.1519p/416.919p Reviewing Reports of Consultative Examinations

Comment: One commenter stated that the examples which used "flail limb" and "claw hands" were offensive, were obvious, and reflected physical impairments. Two commenters said that the examples should be expanded to include pain, alcoholism, and depression.

Response: We have revised the examples to reflect the commenters' suggestions.

Comment: Several commenters thought that the adequacy of the consultative examination report is determined by SSA standards, not "the course of a medical education."

Response: The intent here is that the report be made by physicians according to recognized writing standards set by the medical community and the disease, impairments, and complaints are adequately addressed as required by SSA.

Comment: One commenter stated that this section should include provisions that the claimant or his representative may submit questions to the consultative examiner. One commenter stated that SSA should obtain the claimant's authorization before any report is automatically released to a treating source. Another commenter added that any consultative examination report should be given to the treating source for comments unless the claimant objects.

Response: We have no objections to the claimant or his or her representative submitting questions to the consultative examiner. We believe, however, that this does not have to be included in regulations. Claimant authorization for providing a copy of the consultative examination report to the treating source is covered in existing operating instructions. However, we are adding language stating our policy on claimant authorization for providing a copy of the consultative examination report to the claimant's treating source as a provision in the final regulation at §§ 404.1519p(c) and 416.919p(c). Our operating instructions also provide that when a claimant attends a consultative examination performed by a nontreating source and returns a completed, signed authorization, a copy of the consultative examination report is then mailed to the treating source. When the consultative examination turns up diagnostic information or test results that indicate a condition that is life-threatening to the claimant, we will refer the consultative examination report to the claimant's treating source regardless of authorization. It is administratively impractical to routinely furnish the consultative examination report to the treating source for comments.

Sections 404.1519q/416.919q Conflict of Interest

Comment: Two commenters recommended that the "family members" of State agency medical or psychological consultants who cannot hold financial interests in a business which provides consultative examinations in order to avoid a conflict of interest be defined in the regulations.

Response: We have not adopted the recommendation that "family members" be defined because we prefer to decide on a case-by-case basis whether a conflict exists between the financial interest of a particular family member and the responsibilities of the State agency medical or psychological consultant.

Comment: One commenter suggested that if State agency review physicians and psychologists get approval to perform consultative examinations, claimants should be notified of this fact so they can object to having their consultative examination performed by the designated physician or psychologist.

Response: We disagree. We believe that the claimant does not need to know

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Response: We disagree. We believe that the claimant does not need to know

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that the physician or psychologist designated to perform the consultative examination is a State agency medical or psychological consultant. In the following situations, State agency review physicians and psychologists might be permitted to perform a consultative examination:

1. When no other physician or psychologist with the prerequisite special expertise is reasonably available. For example, the only psychiatrist in Guam willing to perform consultative examinations is also a State agency review physician. Similar situations exist elsewhere (especially in large and sparsely populated States) where the limited physician population in certain available specialties requires occasional use of a State agency review physician to perform a consultative examination.
2. When to do otherwise would result in inordinate scheduling delays or extensive travel by the claimant.
3. When, despite a large physician population to choose from, no other option is available because of the conditions under which the consultative examination must be performed (e.g., the consultative examination must be performed on a claimant confined in an institution or other facility).

In the above situations, it is to the claimant's advantage to have the State agency review physician or psychologist perform the consultative examination. Regulations §§ 404.1517, 404.1519j, 416.917, and 416.919j, and our operating instructions provide that the claimant or his or her representative will be given the name of the physician or psychologist who will perform the consultative examination and the procedures to follow when the claimant objects to using a specific physician or psychologist.

Comment: One commenter suggested that we add "financial interest in a corporation" to the list of prohibited financial interests of State agency medical or psychological consultants or their family members to make it clear that "corporations" were included with "medical partnerships" and "similar relationships."

Response: We agree and have revised the first paragraph of §§ 404.1519q and 416.919q to include the word "corporation."

Sections 404.1519s/416.919s Authorizing and Monitoring the Consultative Examination

Comment: Numerous commenters objected to the requirement of medical or supervisory approval of a consultative examination authorization or purchase because it did not recognize the professional competence of experienced disability examiners. One commenter wanted to know if medical or supervisory approval of the authorization of a consultative examination was going to be required for every type of case and every adjudicator regardless of individual consultative examination rates.

Response: Our basic objective is to regulate to the extent necessary to assure effective, efficient, and uniform administration of SSA's disability programs throughout the United States.

Procedures for medical or supervisory approval of a consultative examination authorization or purchase are necessary for every type of case at the initial and reconsideration levels, including continuing disability reviews, for the following reasons:

It serves to help standardize and make less subjective the consultative examination authorization and purchase process by adding an additional level of professional review and control;

2. It will provide additional program safeguards to help ensure that disability claimants are not subjected to unnecessary consultative examinations; and
3. It will serve to keep consultative examination costs down by assuring that only necessary procedures are ordered.

This requirement also allows a State agency flexibility in deciding which professional review (medical or supervisory), or combination thereof, is best for its management of the consultative examination process.

Comment: One commenter wanted to know if this section applied to open-ended administrative law judge authorizations. (We believe that the commenter was referring to the fact that the State agencies are usually not supposed to question administrative law judge requests for consultative examinations. In other words, such requests are normally open-ended in that they are not restricted by the judgment of the State agencies.)

Response: Administrative law judge requests for consultative examinations will only need to be approved by a State agency medical consultant when a significant risk to a claimant may be involved if the examination is performed.

Comment: One commenter acknowledged the importance of onsite reviews but thought they were disruptive to physicians' offices and that too many people on the visiting team would be counterproductive. It was suggested that these reviews be handled more like "visits" rather than "inspections" with no more than two people on the team.

Response: Comprehensive onsite reviews by SSA are essential to an effective and successful consultative examination oversight process. The Secretary's responsibility for the effective stewardship of SSA's disability programs coupled with SSA's commitment to protect both the public welfare and the trust fund, requires that SSA exercise ongoing consultative examination oversight/quality reviews of every aspect of the consultative examination process, from the consultative examination report to the consultative examination itself. In addition, both Congress and the General Accounting Office have called for the more comprehensive, specific, and uniform consultative examination oversight procedures which are now reflected in this regulation. We expect the high level of scrutiny by the public, Congress, General Accounting Office, and other interested parties will continue. The sensitivities of the medical/professional relationship between the State agency and the consultative examination sources must be held in proper perspective in view of these realities. It is for these reasons that we have retained the consultative examination onsite review requirements as written in the Notice of Proposed Rulemaking. These will be conducted in a professional manner as reviews and not merely as "visits," and the number of review team members will be determined by the scope of that review.

Comment: One commenter wanted a requirement that the State agency must make unannounced monitoring visits of consultative examination providers, particularly key providers.

Response: We do not believe that State agencies should routinely conduct unannounced visits to their consultative examination providers. We believe that such a requirement is excessive and would place an unnecessary strain on the State agencies' relationship with their consultative examination providers. On the other hand, we recognize that situations do exist when unannounced visits are warranted and should be made.

We believe the State agencies are usually in the best position to judge when this is necessary and they should exercise this option when circumstances indicate it should be used.

Comment: Several commenters wanted the second condition under the definition of key providers, which lists providers with practices of medicine and osteopathy as possible consultative examination providers, to include psychologists.

Response: We agree with the comment and have amended the definition of key consultative examination providers to include psychologists.

Comment: Several commenters expressed concern about the requirement for onsite reviews of key providers where claimants are present, causing interference with the consultative examination and placing undue strain on the claimant.

Response: Obtaining the views of the claimant on the quality of consultative examination providers is also a vital part of consultative examination oversight. Onsite reviews provide the opportunity for face-to-face interviews with claimants. Generally, our experience has shown that these interviews have no adverse impact on claimants. We believe that the comments from claimants will facilitate more effective management of consultative examination providers, provide incentives to providers to maintain quality examinations, and improve public relations.

Additionally, the General Accounting Office stated in its December 1985 report on the consultative examination process that "claimants, perception of their consultative examination experience is central to the program's overall credibility." We agree, and therefore, have also retained this requirement for procedures for evaluating claimant reactions to key providers. SSA's operating instructions, which were developed to provide the State agencies with specific procedures for evaluating claimant reactions relating to §§ 404.1519s(f)(10) and 416.919s(f)(10), require routine surveys of claimants by using various methods (questionnaire, post card, telephone, personal interview) as soon as possible after the consultative examination is completed and before any decision is made on the claim. The purpose of these surveys is to obtain the claimant's opinion on matters such as ease of location of, and physical access to the consultative examination provider's facility; cleanliness of the facility; courtesy and professional conduct; timeliness and duration of the examination; and privacy of the examination.

Comment: Another commenter thought that the regulation should be amended to require the State agency to supply the claimant with a copy of the consultative examination report before the State agency interviews the claimant about his or her reaction to a key provider.

Response: We do not believe that the regulations should be amended to require the State agency to supply the claimant with a copy of the consultative examination report before the State agency interviews the claimant about his or her reaction to a key provider. SSA's basic policy is not to release a consultative examination report directly to the claimant. SSA has procedures to send the consultative examination report to the claimant's treating source when the claimant authorizes SSA to do so, and also has procedures for disclosure of the consultative examination report to the claimant's treating source without consent when the consultative examination uncovers a potentially lifethreatening situation. The rationale is that the consultative examination report contains information that may prove harmful to the claimant's mental well-being, or which could be easily misinterpreted by the claimant. SSA believes that, when it is necessary to divulge the contents of the consultative examination report, the information in the consultative examination report should be provided directly to the claimant's treating source because the treating source is in the best position to judge, in each individual case, how to explain the information to the claimant. Additionally, in most cases, the report will not have been completed before the State agency interviews the claimant about his or her reaction to a key provider, and even if it were, we believe that knowledge of its contents may jeopardize the claimant's objectivity.

Comment: One commenter raised concerns about the requirement of the State agency to orient, train and review the work of new consultative examination providers. This commenter went on to say that this is possible when the number of consultative examination providers is relatively small, but when the range of consultative examination providers is continually expanding to include new treating sources, the burden of training and orienting these potential providers becomes overwhelming. This commenter also thought that this language is unclear and may imply to some readers that the State agency is responsible for medical training of the consultative physician, a responsibility clearly beyond the scope of the State agency.

Two commenters expressed concern that a State could use this requirement to create an obstacle to treating physicians being used as consultative examination sources.

Response: The intent of the regulation is to provide new consultative examination providers with information on SSA's program requirements involving consultative examination report content, and not to make the State agency responsible for training the consultative physician in medical techniques, which, we agree, is beyond the scope of the State's responsibility. We have clarified the language in §§ 404.1519s(f)(2) and 416.919s(f)(2) of the final regulations to show that only orientation, training, and review of new consultative examination providers are required. Training or review of medical techniques is not included.

We recognize that the universe of consultative examination providers will continue to expand to include new treating sources as the preferred consultative examination providers. However, we also recognize the unavoidable fact that the State agencies must orient, train, and review their consultative examination providers to ensure that they are conducting proper examinations and are providing complete reports containing the necessary medical evidence.

The State agencies should use a common sense approach towards orientation, training, and review of their consultative examination providers based upon their expected frequency of use. For example, a consultative examination physician or psychologist who is a member of the panel of consultative examination providers that the State agency routinely uses should receive more in-depth training, orientation, and review than a treating source who may only be asked to perform a consultative examination occasionally.

Comment: One commenter thought that, to allow the State agency more latitude, this entire section should be a recommendation rather than a mandate.

Response: As stated earlier, the Secretary's responsibility for the effective stewardship of SSA's disability programs, coupled with SSA's commitment to manage these programs in a way that will be in the best interest of the public and the trust funds, requires that SSA exercise greater management responsibility for the consultative examination process. Therefore, this section will remain mandatory.

Comment: One commenter thought the regulations should contain language that a claimant's failure to raise objections at the time of the consultative examination does not waive objections at reconsideration or at the administrative law judge level. This commenter also thought that there should be a requirement that complaints about any provider (key or not) must be referred to

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Comment: One commenter thought that, to allow the State agency more latitude, this entire section should be a recommendation rather than a mandate.

Response: As stated earlier, the Secretary's responsibility for the effective stewardship of SSA's disability programs, coupled with SSA's commitment to manage these programs in a way that will be in the best interest of the public and the trust funds, requires that SSA exercise greater management responsibility for the consultative examination process. Therefore, this section will remain mandatory.

Comment: One commenter thought the regulations should contain language that a claimant's failure to raise objections at the time of the consultative examination does not waive objections at reconsideration or at the administrative law judge level. This commenter also thought that there should be a requirement that complaints about any provider (key or not) must be referred to the State licensing authority responsible for licensing doctors and psychologists. Another commenter stated that where SSA finds inadequate reports from a consultative examination provider, all cases where the provider was used should be reviewed to see if they should be reopened, and, in cases where the claim is still being considered, or where the decision is made not to reopen, the claimant should be informed. The commenter thought this should be done in all cases where a provider is no longer used because of fraud.

Response: Although we agree that the claimant's failure to raise objections at the time of the consultative examination does not waive objections at the reconsideration or administrative law judge level, we see no need to include this in the regulations. We see no purpose in referring all complaints about consultative examination providers to the State licensing authority, unless the complaint has something to do with the consultative examination provider's competency to practice. We will refer any question of competency of the physician to the State licensing authority. Where SSA finds inadequate reports from a consultative examination provider, it would be administratively impractical in terms of cost to routinely review all prior cases where that provider was used or to notify the claimant. We would not preclude such review, however. Any case in which there is a question of fraud will be re-reviewed. When a provider is no longer used because of fraud, it would be administratively impractical to routinely review all prior cases when that provider was used.

Sections 404.1519/416.919t Consultative Examination Oversight

Comment: One commenter thought the original intent of these regulations was to monitor the larger State agencies and wanted to know if this was still the situation or would all State agencies be open to consultative examination monitoring by an independent medical source. This commenter also questioned the cost effectiveness of hiring an independent third-party medical specialist. Another commenter wanted to know who the independent medical specialists under contract with SSA were and if the State agency is required to participate in their recruitment. This commenter was also concerned about related budget considerations. Finally, one commenter recommended that such reviews not be mandatory.

Response: Complete and reliable medical evidence is a key element in making accurate disability decisions. We spend considerable sums annually to obtain consultative examinations. Because of these expenditures and the need to obtain accurate and complete reports, it is imperative that the consultative examinations and the accompanying reports be of the highest quality. Therefore, it is our intent that all State agencies be open to monitoring, including reviews by independent medical specialists under contract with SSA, as the need arises. We believe these contractors will demonstrate their value and cost effectiveness in providing us an objective and credible evaluation of a consultative examination provider's practices and competence, which in turn will help ensure the integrity and public confidence in SSA's disability programs.

The identities of the contractors will be determined through appropriate procedures on an "as needed" basis. The contractors could come from various sources such as insurance companies, the American Medical Association, and the American Psychiatric Association. State agency staff may be asked for their advice in the selection of contractors and in related budget considerations.

We agree with the commenter who indicated that independent reviews should not be made mandatory and we have reflected this change in §§ 404.1519t(a) and 416.919t(a).

Comment: One commenter thought that comprehensive reviews of the State's consultative examination management and onsite visits of consultative examination providers should be done only at the invitation of State agency staff.

Response: SSA has the ultimate responsibility for oversight of the consultative examination process. Also, as stated earlier, Congress and the General Accounting Office have called for more comprehensive, specific, and uniform consultative examination oversight. In order to carry out its oversight responsibilities, SSA cannot limit itself to oversight activities solely at the invitation of the State agencies. SSA will undertake comprehensive reviews of State agencies periodically and reserves the right to conduct reviews at such times as necessary to assure compliance with pertinent Federal statutes and regulations.

Comment: One commenter questioned the significance of including a regional physician in the State agency review process since the commenter felt that the regional physician could only comment on the report format, deficiencies, or how the examination was conducted. Several commenters also thought that the travel and contracting costs for the regional physician would be considerable. Another commenter thought that the requirements for regional office reviews of the State agencies may adversely affect the relationship between State agency medical staff and the consultative examination source as well as constitute a drain on an already strained regional medical consultant time resource.

Response: We agree with the commenters on the issue of regional physician participation and are therefore, deleting the requirement for participation by the regional medical advisor or a regional physician delegate from the regulation.

We do not believe the State agency review requirements we are imposing will adversely affect the relationship between State agency medical staff and the consultative examination providers. SSA and the State agencies are mindful of the need to preserve and foster a cooperative relationship with the medical community.

Sections 404.1519u/416.919u Direct Purchase of Medical Services Across State Lines

Comment: Several commenters stated that changing our longstanding practice of using the fee schedule of a neighboring State, as the Notice of Proposed Rulemaking provided, when it becomes necessary to use a source in that State for a consultative examination, will create medical relations problems as well as greater cost and delay. According to the commenter, these medical relations problems could occur, for example, when the consultative examination source's payment in the neighboring State's fee schedule is higher than the requesting State's fee schedule.

One commenter also indicated that this is not an aspect of program administration that seriously affects our relationship with the public and that internal program directives and understandings among the States should suffice.

Response: We agree with the commenters on both points and, therefore, have decided to remove this section from the regulation. States will continue to follow current operating policy in these situations.

Sections 404.1520/416.920 Evaluation of Disability

Comment: One commenter indicated that mention should be made here of our policy on multiple not severe impairments or a cross-reference to the section.

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Response: We agree with the commenter and have amended §§ 404.1520 and 416.920 to include our policy on multiple not severe impairments.

Sections 404.1527/416.927 Evaluating Medical Opinions About Your Impairment(s) or Disability

Comment: One commenter stated that proposed §§ 404.1527 and 416.927 were beyond the scope of Public Law 98–460 and that we did not have the authority to publish these regulations. He argued that section 9 of Public Law 98–460 required the Secretary to promulgate regulations addressing the standards for consultative examinations and did not provide authority for promulgating regulations on other issues, such as treating source opinions. The commenter suggested that §§ 404.1527 and 416.927 be withdrawn.

Response: This section has not been withdrawn as suggested by the commenter. We agree that section 9 of Public Law 98–460, which required the Secretary to issue regulations addressing standards for consultative examinations, does not provide specific authority for the issuance of this provision. However, the Secretary has general authority, under section 205(a) of the Act, to promulgate regulations on issues consistent with establishing the right to benefits under the Act. Further, section 221(k) of the Act requires the Secretary to establish, by regulations, uniform standards to be applied to all levels of determination, review, and adjudication in determining whether individuals are "disabled" as defined under the Act.

Comment: Several commenters argued that our proposed policy in §§ 404.1527 (b) and (c) and 416.927 (b) and (c) to give "conclusive" weight only to treating source opinions that were "fully supported by medically acceptable clinical and laboratory diagnostic techniques and * * * not inconsistent with the other substantial medical evidence of record" was unfair and contrary to the view of many circuits. Several commenters pointed out that under the proposed standard such opinions could be viewed as superfluous, since they would follow inevitably from the known facts. Some commenters thought that the proposed standard overlooked the fundamental principle common to decisions in their respective circuits: That treating sources have special knowledge and understanding of their patients by virtue of the treatment relationship. This special knowledge is not necessarily evident in the objective medical findings and cannot necessarily be verified by single examinations, such as consultations, or by simply reviewing medical records. Some commenters thought that the proposed rules would mislead adjudicators into overlooking treating source opinions about their patients' symptomatology. Some thought that the proposed rules would permit us to disregard most treating source opinions. Many of the commenters pointed out that the decisions of their respective circuits required us to adopt certain treating source opinions unless we could overcome the opinions with other substantial evidence.

In addition, some commenters thought that the language of the proposed rule was unclear. They questioned what we meant by the term "fully supported" and how we would determine whether an opinion was fully supported. One commenter expressed a belief that the view of the Second Circuit was based in part on a principle that adjudicators are not experts and are, therefore, not in a position to evaluate whether treating source opinions are supported. Commenters from other circuits generally conceded that opinions were subject to a standard of support and that we were the ultimate finders of the facts. Commenters from the Sixth Circuit stated that the standards for support in their circuit were "sufficient medical data" or "consistent with clinical or laboratory findings." A commenter from the Seventh Circuit stated that the view in that circuit was "fully supported by medically acceptable clinical and laboratory diagnostic techniques and there exists no factual evidence of bias on the part of the treating physician." A commenter from the Tenth Circuit stated that the standard should be that "a treating physician's opinion might be rejected if it is brief, conclusory, and unsupported by medical evidence." However, irrespective of the standards in their individual circuits, all of the commenters were concerned that our proposed rules did not require adjudicators to articulate reasons for rejecting any treating source opinions.

Response: We believe that we have tried to be responsive to most of the comments we have received on this subject, and that we have crafted a regulation that is fair, balanced, and takes into account the concerns raised by the commenters and by the courts.

As stated above, while the circuit courts vary somewhat in their formulation of a standard on how treating source evidence is to be considered, the majority of the circuit courts generally agree on two basic principles. First, they agree that treating source evidence tends to have greater value by virtue of the treating source's relationship with the claimant, because this relationship allows the treating source to have the best idea of how the physical or mental impairment has affected the claimant. Second, they agree that if the Secretary decides to reject such an opinion, he should provide the claimant with good reasons for doing so. We have been guided by these principles in our development of the final rule.

When we decide claims for disability benefits, we have a responsibility (1) to be impartial; (2) to provide each claimant with the fairest possible assessment of the evidence, and even to assist each claimant in developing the evidence when necessary; and (3) to protect the public interest by providing benefits only to those claimants who are truly disabled.

We have revised our regulations to reflect these responsibilities and to address the concerns expressed by the commenters. Consistent with our responsibility to make correct determinations and decisions, the final rules provide that unsupported opinions cannot be determinative. However, we will never disregard a treating source's opinion, and we will make an effort to obtain evidence from the source in support of the opinion.

Under the law, we are the ultimate deciders of each case. We have, however, indicated when a treating source's opinion will be controlling. When it is not controlling, we have provided several rules which recognize the special status of treating sources, and which accord their opinions greater weight—even when they are unsupported or contradicted—than such opinions would otherwise be entitled to if they came from a nontreating source. Moreover, consistent with the concerns raised by the courts and in public comments, we have required our adjudicators to provide good reasons in their notices of determination or decision whenever they do not find a treating source's medical opinion as to the nature or extent of an impairment to be controlling.

Comment: Some commenters were concerned that the proposed language of §§ 404.1527(b) and (c), and 416.927(b) and (c) permitted us to discount a treating source's apparently unsupported opinion without recontacting the source, and that the rules placed highly restrictive conditions on obtaining additional information from treating sources.

Response: To the contrary, recontact with treating sources to complete the case record and to resolve any

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We have revised our regulations to reflect these responsibilities and to address the concerns expressed by the commenters. Consistent with our responsibility to make correct determinations and decisions, the final rules provide that unsupported opinions cannot be determinative. However, we will never disregard a treating source's opinion, and we will make an effort to obtain evidence from the source in support of the opinion.

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Response: To the contrary, recontact with treating sources to complete the case record and to resolve any

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inconsistencies in the evidence is one of the principal provisions of this set of rules. See §§ 404.1512(d) and 416.912(d) of these final regulations. Far from being restrictive, the intent of these rules is to require such contacts.

Comment: One commenter thought that the language of §§ 404.1527(b) and (c), and 416.927(b) and (c) would encourage the inefficient and costly use of consultative examinations.

Response: This was not our intent. Our revisions to the regulations at §§ 404.1519a and 416.919a clarify when a consultative examination will be needed to complete a case record or to help resolve any inconsistencies. If there is sufficient evidence in the case record to decide all of the issues, we will not obtain a consultative examination.

Comment: Several commenters expressed concern that, because our proposed definition of treating source in §§ 404.1502 and 416.902 seemed to exclude sources who had treated claimants in the past but who no longer maintained treatment relationships, many source opinions that should be deserving of special weight would not be entitled to such weight under proposed §§ 404.1527 and 416.927.

Response: We did not intend to exclude sources who had provided treatment in the past. We have, therefore, revised our definition in §§ 404.1502 and 416.902 to include former treating sources, and it should be understood that the provisions of §§ 404.1527 and 416.927 will apply to opinions from these sources.

Comment: Commenters from the Second, Sixth and Tenth Federal Judicial Circuits expressed concern about the phrase "some extra weight" given to the supported opinions of treating sources when resolving an inconsistency with the evidence of record in proposed §§ 404.1527(d) and 416.927(d), stating a belief that the standard implied by the term was inconsistent with the views of their respective circuits. One commenter stated that the standard was contrary to the views of all relevant circuits. Other commenters stated that the phrase was unclear and that it would be difficult to apply.

Response: The term "some extra weight" was actually taken from a case on treating source evidence in the Second Circuit, *Schisler* v. *Heckler,* 787 F.2d 76, 81, (2d Cir., 1986). *See also, Schisler* v. *Bowen,* 851 F.2d 43, (2d Cir., 1988). However, we agree with the commenters that the term "some extra weight" may be unclear. We have, therefore, clarified the regulations by deleting the phrase and adding more detail to the rules.

We believe that the revisions make clear that our policy provides a very specific and detailed process for evaluating medical opinions, a process that takes into account and, in large measure, was shaped by, the kinds of concerns raised by the circuit courts. If a particular treating source is an individual who is more familiar with a claimant's medical condition, we will always give special deference to the source's opinions about the nature and degree of a claimant's impairment(s). If such an opinion is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with other substantial evidence in the record, we will give it controlling weight. However, a treating source's opinion does not have to be consistent with other substantial evidence, and it does not necessarily have to be supported by objective evidence in order to receive some special deference.

We will give greater weight to a well-supported medical opinion from a treating source than to an equally well-supported medical opinion from another source that is inconsistent with the treating source's opinion. Moreover, in recognition of the special kind of knowledge and understanding of a claimant's condition that only a treating source can have, we will also give greater weight to a treating source's medical opinion that is not well-supported than we would otherwise have given it if it had come from a nontreating source. We will also never reject a treating source's opinion simply because it is not well-supported or because it conflicts with other substantial evidence. We will try to recontact the source to obtain additional evidence—which may consist of nothing more than a more detailed explanation—in support of the opinion or to resolve the conflict.

Comment: One commenter thought that the example we proposed in §§ 404.1527(d) and 416.927(d) which describes a case involving arthritis of the shoulder presumed that a treating source has the burden of justifying his or her opinion while a consultative examiner need not give any such justification.

Response: We certainly did not intend to give the impression arrived at by the commenter, but agree that the example could be misinterpreted. We have therefore deleted the example and provided more detailed rules. In general, we will not give great weight to any opinion, including a treating source's, opinion, unless we can understand the basis for the opinion, either by reviewing the complete case record or by obtaining an explanation from the medical source who offered the opinion.

Comment: A significant number of the commenters took issue with the statement in proposed §§ 404.1527(e) and 416.927(e) that we would "not consider as conclusive nor give extra weight to medical opinions which are not in accord with the statutory or regulatory standards for establishing disability." Some commenters thought that this meant we would disregard any treating source opinions that were not couched in the exact terminology of the law or regulations; others thought that the provision meant that we would never give any extra weight to such opinions. In support of their interpretation of the language, several commenters pointed to the second example at the end of the paragraph.

Response: We agree with the commenters that the proposed language could be misinterpreted, and have therefore deleted the examples and replaced the entire section with new §§ 404.1527(e) and 416.927(e). We did not intend to suggest a policy that would permit adjudicators to ignore or reject any opinion evidence on the grounds that the opinions used the wrong terminology.

Our final rule affirms that the ultimate determination of disability is the Secretary's responsibility, and clarifies our policy on how we consider opinions about "disability," "inability to work," and other issues reserved to the Secretary, including determinations about meeting or equalling the Listings, residual functional capacity, the ability of claimants to perform their past relevant work, and the ability of claimants to adjust to other work considering their residual functional capacity together with their age, education, and work experience. However, in response to the comments, we have also added language to §§ 404.1527(e)(2) and 416.927(e)(2) to indicate that we will never disregard an opinion about an issue that is reserved to the Secretary. Furthermore, as we will do in any case in which we have a treating source opinion that is not otherwise controlling and that requires further explanation, we will attempt to recontact the treating source who offers an opinion on any of these issues for additional evidence or explanation whenever necessary. We will always provide an explanation in our notice of determination or decision of our reason why we have not adopted a treating source's opinion.

Comment: One commenter noted that §§ 404.1527(e) and 416.927(e) addressed opinions about meeting the Listings but failed to acknowledge our own provisions for evaluating equivalencies.

Response: The commenter was correct. We have included equivalency in our revision of §§ 404.1527(e) and 416.927(e).

Comment: Two commenters argued, in identical language, that the proposed rules in §§ 404.1527(e) and 416.927(e) would permit us simply to disregard a treating source's opinion about whether a claimant's impairment(s) meets or equals the Listings and stated that the proposal "ignores one of the most important sources of expert testimony" on whether a claimant's impairments are equivalent to the requirements for any listed impairment. A third commenter submitted what appeared to be a paraphrase of the comment submitted by the other two commenters. All three urged that the provision be withdrawn.

Response: As we have indicated in previous responses, it was not our intention to create a rule that would permit adjudicators to "disregard" or "ignore" any treating source opinions for any reason. We have revised the language of §§ 404.1527(e) and 416.927(e) to make this clear.

However, we did intend to restate in the regulations our policy that determinations of meeting the Listings and equivalency are reserved to the Secretary. We agree with the commenters that meeting the Listings is more a question of medical fact than a question of medical opinion. In most instances, the requirements of listed impairments are objective, and whether an individual manifests these requirements is simply a matter of documentation. To the extent that treating sources are usually the best sources of this documentation, we look to them for evidence with which we can determine whether an individual's impairment meets the Listings, and such evidence can have great weight in our determination. When a treating source provides an opinion based on evidence that demonstrates that an individual has an impairment that meets a listing, we will ordinarily adopt the opinion unless we have a good reason to doubt it. However, since meeting the Listings is an ultimate conclusion about disability, it is our responsibility and we cannot give any special weight to treating source or any other medical source opinion about whether an individual's impairment meets the requirements of the Listings of Impairments.

We do not agree with the comment which suggests that the concept of equivalency is strictly medical and, therefore, within the expertise of treating sources. When we address equivalency as a "medical consideration" in §§ 404.1526 and 416.926, and as a determination "based * * * on medical facts alone" in §§ 404.1520(e) and 416.920(e), we mean to distinguish Listings determinations from determinations which consider the *nonmedical* factors of past work experience, age, and education. In fact, determinations of equivalency are not solely medical; they also require familiarity with our regulations, with which most physicians lack expertise. They involve findings not only about the nature and severity of medical impairments, including associated signs, symptoms and laboratory findings, but also about whether the findings comport with a legal standard of severity that is not generally understood by most physicians who are not employed by the Social Security Administration; Social Security's concept of "equivalency" is not taught in medical school, and it is not part of the normal practice of medicine.

We do consider treating sources to be important sources of expert testimony on the nature and severity of a claimant's impairments. Moreover, we will always carefully consider treating source opinions about whether a claimant's impairment(s) meets or equals the requirements of the Listings. However, although treating source opinions that an impairment(s) meets or equals the Listings may be considered to be important expert testimony, we do not consider them to be controlling. Such an opinion, if controlling, would amount to a determination that a claimant is under a disability. Under the law, only the State agency or the Secretary can make that determination. Moreover, as the first two commenters pointed out in a separate comment, "[v]ery few treating physicians are experts at the complexities of the Social Security disability standards."

When a treating source offers an opinion that a claimant's impairment or impairments are equivalent in severity to an impairment in the Listings, we will evaluate all of the evidence to determine if it supports that opinion. If the evidence does not support the opinion and we cannot ascertain from the record the basis of the treating source's opinion, we will make every reasonable effort to recontact the source for clarification of the reasons for the opinion. Also, if after the recontact we do not agree with the opinion, we will provide an explanation of our reasons for not adopting the opinion in our notice of determination or decision, as we will do whenever we do not give a treating source's opinion controlling weight. When we weigh the opinion, we will apply all of the applicable rules in §§ 404.1527(d) and 416.927(d), which may require us to give deference to treating source opinions on issues which relate to the ultimate conclusion of whether a claimant's impairment(s) is equivalent to a listed impairment, such as issues about diagnosis, symptoms, and prognosis; but we will not give special weight to any opinion on the ultimate conclusion regarding whether the impairment(s) is equivalent.

Comment: In connection with Example 2 in proposed §§ 404.1527(e) and 416.927(e), two commenters questioned the propriety of entrusting the responsibility for assessing residual functional capacity to State agency physicians and psychologists. Both suggested that treating sources should be asked to provide the assessments; one requested that we amend our rules to require State agencies to obtain such assessments from treating sources whenever appropriate. Both commenters indicated that residual functional capacity assessments made by nonexamining medical sources or other personnel are given little or no weight by the courts. One of the commenters also questioned how assessments of residual functional capacity made by disability hearing officers, administrative law judges, and the Appeals Council, all of whom are nonmedical adjudicators, could override an opinion about a claimant's work capabilities submitted by a treating source.

Response: We have deleted both of the examples we proposed and have revised and expanded the text of the rules.

Our regulations contain provisions describing two kinds of assessments of what a person can do despite the presence of a severe impairment(s). One assessment, described in §§ 404.1513 (b) and (c) and 416.913 (b) and (c), is the "statement about what you can still do" submitted by medical sources, including treating sources and consulting examiners. Medical sources offer these statements based upon their own records and examinations to express opinions about claimants' abilities to perform work-related activities on a sustained basis. Although we will not consider reports from medical sources to be incomplete without such statements, these final rules provide that we will always request the statements.

The second kind of assessment is the residual functional capacity assessment. "Residual functional capacity assessment" is a term of art in §§ 404.1545 and 416.945 and 404.1546 and 416.946 intended to describe the

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will apply all of the applicable rules in §§ 404.1527(d) and 416.927(d), which may require us to give deference to treating source opinions on issues which relate to the ultimate conclusion of whether a claimant's impairment(s) is equivalent to a listed impairment, such as issues about diagnosis, symptoms, and prognosis; but we will not give special weight to any opinion on the ultimate conclusion regarding whether the impairment(s) is equivalent.

Comment: In connection with Example 2 in proposed §§ 404.1527(e) and 416.927(e), two commenters questioned the propriety of entrusting the responsibility for assessing residual functional capacity to State agency physicians and psychologists. Both suggested that treating sources should be asked to provide the assessments; one requested that we amend our rules to require State agencies to obtain such assessments from treating sources whenever appropriate. Both commenters indicated that residual functional capacity assessments made by nonexamining medical sources or other personnel are given little or no weight by the courts. One of the commenters also questioned how assessments of residual functional capacity made by disability hearing officers, administrative law judges, and the Appeals Council, all of whom are nonmedical adjudicators, could override an opinion about a claimant's work capabilities submitted by a treating source.

Response: We have deleted both of the examples we proposed and have revised and expanded the text of the rules.

Our regulations contain provisions describing two kinds of assessments of what a person can do despite the presence of a severe impairment(s). One assessment, described in §§ 404.1513 (b) and (c) and 416.913 (b) and (c), is the "statement about what you can still do" submitted by medical sources, including treating sources and consulting examiners. Medical sources offer these statements based upon their own records and examinations to express opinions about claimants' abilities to perform work-related activities on a sustained basis. Although we will not consider reports from medical sources to be incomplete without such statements, these final rules provide that we will always request the statements.

The second kind of assessment is the residual functional capacity assessment. "Residual functional capacity assessment" is a term of art in §§ 404.1545 and 416.945 and 404.1546 and 416.946 intended to describe the

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ultimate finding about a person's ability to do work-related activities. It is a determination made by an adjudicator based upon his or her review of the entire case record. Residual functional capacity assessments are based upon consideration of all relevant evidence in the case record, including medical evidence of which an individual treating source may not be aware, and relevant nonmedical evidence, such as observations of lay witnesses of a claimant's apparent symptomatology, a claimant's own statement of what he or she is able or unable to do, and many other factors that could help an adjudicator determine the most reasonable findings in light of all of the evidence.

Thus, a medical source's statement about what an individual can still do is opinion evidence that an adjudicator considers together with all of the other evidence when assessing a claimant's residual functional capacity. However, a State agency medical or psychological consultant's assessment constitutes the findings of an adjudicator based on all the evidence in file and cannot be considered evidence by the State agency. It cannot be weighed against the opinion of a medical source in the case file at the initial and reconsideration levels, since the State agency medical or psychological consultant is participating in the determination at those levels.

The administrative determination of a claimant's residual functional capacity may be the most critical finding contributing to the final decision. We do ask treating sources to provide us with their opinions about their patients' functional abilities based upon the information they are competent to assess, their own knowledge of their patients, and we weigh these opinions carefully. However, we would be abrogating our responsibility under the law to decide cases independently if we were to adopt the suggestion that we ask treating sources to make the ultimate determination of residual functional capacity for us. The State agency medical or psychological consultant, the administrative law judge, or the Appeals Council is responsible for assessing residual functional capacity.

We follow a special procedure at the hearing and appeals levels. Since administrative law judges consider the issues that are before them *de novo,* that is, as though the cases were being decided for the first time, findings made by State agency medical or psychological consultants are not binding on them. Because State agency medical or psychological consultants are highly qualified physicians or psychologists and are experts on our program, administrative law judges may not ignore their findings; instead, we require administrative law judges to give consideration to these findings and to evaluate them using the same rules as apply to the evaluation of opinions of nonexamining medical sources. Of course, since administrative law judges decide the issues of disability *de novo,* they will not consider any State agency findings about whether an individual is or is not disabled, except for opinions about whether the individual has an impairment(s) equivalent to any listed impairment as required by §§ 404.1526 and 416.926. The same rules apply to the Appeals Council when it issues a decision. We have added new §§ 404.1512(b)(6) and 416.912(b)(6) and a new paragraph (f) to §§ 404.1527 and 416.927 to explain these longstanding policies.

We agree with the commenters that it is probably true that the courts usually give less weight to the opinions of nonexamining sources than to the opinions of treating or other examining medical sources. In fact, these final regulations take this into account. The regulations provide progressively less rigorous tests for weighing opinions as the ties between the medical source and the claimant become progressively stronger. We generally give the most weight to the opinions of treating sources who have known their patients for long periods or who otherwise have expert knowledge of their patients that cannot be obtained through single examinations or a brief relationship. The opinions of physicians or psychologists who do not have a treatment relationship with the claimant are weighed by stricter standards, based to a greater degree on medical evidence, qualifications, and explanations for the opinions than are required of treating sources or other examining sources. The opinions of nonexamining sources can be given weight only insofar as they are supported by evidence in the case record. This is not to say that opinions from nonexamining sources cannot outweigh the opinions of treating sources; rather, that we require adjudicators to have solid, well-articulated reasons when they determine that the opinions of nonexamining sources are entitled to greater weight than the opinions of treating sources.

Sections 404.1545/416.945 Your Residual Functional Capacity

No comments were directed to this section.

Sections 404.1546/416.946 Responsibility for Assessing and Determining Residual Functional Capacity

Comment: Several commenters suggested amending this section to be consistent with work simplification initiatives, to have the residual functional capacity assessment prepared by a disability examiner for review and approval by the State agency medical consultant. One commenter said that evidence from workshops and psychologists should be recognized and included in preparing residual functional capacity assessments instead of restricting it to medical evidence.

Response: The work simplification initiative referred to in the comment has been discontinued. There will be no change in the regulatory language because the State agency medical consultant is the person responsible for assessing residual functional capacity. A residual functional capacity assessment is based on all of the medical and other relevant evidence included in an individual's case file. Therefore, if evidence from a workshop or psychologist is in the individual's case file, it will be considered along with the other evidence of record. Observations of the individual's work limitations in addition to those usually made during formal medical examinations may also be used.

Sections 404.1593/416.993 Medical Evidence in Continuing Disability Review Cases

Comment: One commenter stated that this section should be revised to be consistent with other related sections of the regulations. This same commenter stated that the termination of benefits should not occur if a beneficiary unsuccessfully attempts to obtain reports from treating sources.

Response: The rules for development of medical evidence that apply in determining initial disability also apply to that portion of the continuing disability review which involves consideration of the individual's current impairments. We have revised this section to be consistent with §§ 404.1512 and 416.912 of the regulations. We make special efforts to ensure against ceasing benefits solely because the beneficiary is unable to furnish evidence from a source for reasons beyond the beneficiary's control.

Regulatory Procedures

Executive Order 12291

These rules affect the disability programs under title II and title XVI of the Social Security Act. In addition, to the extent that Medicare and Medicaid eligibility are based on title II and title XVI eligibility, these rules also affect the Medicare and Medicaid programs.

These regulations have been reviewed under Executive Order 12291. While implementation of these regulations will involve costs to State Disability Determination Services, these costs do not exceed the dollar thresholds that meet any of the criteria for a major rule. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they only affect disability claimants under title II and title XVI of the Act.

Paperwork Reduction Act

These regulations contain information collection requirements in §§ 404.1512 (b), 404.1513 (b) and (c), 404.1519n(c), 404.1593 (b) and (c), 416.912(b), 416.913 (b) and (c), 416.919n(c), and 416.993 (b) and (c).

As required by section 3504(h) of the Paperwork Reduction Act of 1980, we submitted a copy of the proposed rules to the Office of Management and Budget (OMB) for its review of these information collection requirements. Other organizations and individuals desiring to submit comments on these information collections were asked to direct them to the Commissioner of Social Security and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, room 3208, Washington, DC 20503, Attention: Desk Officer for HHS.

(Catalog of Federal Domestic Program Nos. 93.802, Social Security Disability Insurance; 93.807, Supplemental Security Income Program)

List of Subjects

20 CFR Part 404

Administrative Practice and Procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income.

Dated: March 14, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

Approval: April 25, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set out in the preamble, parts 404 and 416 of chapter III of Title 20, Code of Federal Regulations is amended as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950-)

20 CFR part 404, subpart P is amended as follows:

Subpart P—Determining Disability and Blindness

1. The authority citation for subpart P continues to read as follows:

Authority: Secs. 202, 205 (a), (b), and (d)–(h), 216(i), 221 (a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405 (a), (b), and (d)–(h), 416(i), 421 (a) and (i), 422(c), 423, 425, and 1302; sec. 505(a) of Pub. L. 96-265, 94 Stat 473; secs. 2(d) (2), 5, 6, and 15 of Pub. L. 98-460, 98 Stat. 1797, 1801, 1802, and 1808.

2.–3. Section 404.1502 is revised to read as follows:

§ 404.1502 General definitions and terms for this subpart.

As used in the subpart—

Medical sources refers to treating sources, sources of record, and consultative examiners for us. See § 404.1513.

Secretary means the Secretary of Health and Human Services.

Source of record means a hospital, clinic or other source that has provided you with medical treatment or evaluation, as well as a physician or psychologist who has treated or evaluated you but does not have or did not have an ongoing treatment relationship with you.

State agency means that agency of a State which has been designated by the State to carry out the disability or blindness determination function.

Treating source means your own physician or psychologist who has provided you with medical treatment or evaluation and who has or has had an ongoing treatment relationship with you. Generally, we will consider that you have an ongoing treatment relationship with a physician or psychologist when the medical evidence establishes that you see or have seen the physician or psychologist with a frequency consistent with accepted medical practice for the type of treatment and evaluation required for your medical condition(s). We may consider a physician or psychologist who has treated you only a few times or only after long intervals (e.g., twice a year) to be your treating source if the nature and frequency of the treatment is typical for your condition(s). We will not consider a physician or psychologist to be your treating physician if your relationship with the physician or psychologist is not based on your need for treatment, but solely on your need to obtain a report in support of your claim for disability. In such a case, we will consider the physician or psychologist to be a consulting physician or psychologist.

We or *us* refers to either the Social Security Administration or the State agency making the disability or blindness determination.

You refers to the person who has applied for benefits or for a period of disability or is receiving benefits based on disability or blindness.

4. Section 404.1503a is added to read as follows:

§ 404.1503a Program integrity.

We will not use in our program any individual or entity, except to provide existing medical evidence, who is currently excluded, suspended, or otherwise barred from participation in the Medicare or Medicaid programs, or any other Federal or Federally-assisted program; whose license to provide health care services is currently revoked or suspended by any State licensing authority pursuant to adequate due process procedures for reasons bearing on professional competence, professional conduct, or financial integrity; or who, until a final determination is made, has surrendered such a license while formal disciplinary proceedings involving professional conduct are pending. By individual or entity we mean a medical or psychological consultant, consultative examination provider, or diagnostic test facility. Also see §§ 404.1519 and 404.1519g(b).

§ 404.1506 [Amended]

5. Section 404.1506 is amended by adding the cross-reference "(see § 404.1527)" at the end of the penultimate sentence before the period.

6. Section 404.1512 is revised to read as follows:

§ 404.1512 Evidence of your impairment.

(a) *General.* In general, you have to prove to us that you are blind or disabled. Therefore, you must bring to our attention everything that shows that you are blind or disabled. This means that you must furnish medical and other

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We may consider a physician or psychologist who has treated you only a few times or only after long intervals (e.g., twice a year) to be your treating source if the nature and frequency of the treatment is typical for your condition(s). We will not consider a physician or psychologist to be your treating physician if your relationship with the physician or psychologist is not based on your need for treatment, but solely on your need to obtain a report in support of your claim for disability. In such a case, we will consider the physician or psychologist to be a consulting physician or psychologist.

We or *us* refers to either the Social Security Administration or the State agency making the disability or blindness determination.

You refers to the person who has applied for benefits or for a period of disability or is receiving benefits based on disability or blindness.

4. Section 404.1503a is added to read as follows:

§ 404.1503a Program integrity.

We will not use in our program any individual or entity, except to provide existing medical evidence, who is currently excluded, suspended, or otherwise barred from participation in the Medicare or Medicaid programs, or any other Federal or Federally-assisted program; whose license to provide health care services is currently revoked or suspended by any State licensing authority pursuant to adequate due process procedures for reasons bearing on professional competence, professional conduct, or financial integrity; or who, until a final determination is made, has surrendered such a license while formal disciplinary proceedings involving professional conduct are pending. By individual or entity we mean a medical or psychological consultant, consultative examination provider, or diagnostic test facility. Also see §§ 404.1519 and 404.1519g(b).

§ 404.1508 [Amended]

5. Section 404.1508 is amended by adding the cross-reference "(see § 404.1527)" at the end of the penultimate sentence before the period.

6. Section 404.1512 is revised to read as follows:

§ 404.1512 Evidence of your impairment.

(a) *General.* In general, you have to prove to us that you are blind or disabled. Therefore, you must bring to our attention everything that shows that you are blind or disabled. This means that you must furnish medical and other

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evidence that we can use to reach conclusions about your medical impairment(s) and, if material to the determination of whether you are blind or disabled, its effect on your ability to work on a sustained basis. We will consider only impairment(s) you say you have or about which we receive evidence.

(b) *What we mean by "evidence."* Evidence is anything you or anyone else submits to us or that we obtain that relates to your claim. This includes, but is not limited to:

(1) Objective medical evidence, that is, medical signs and laboratory findings as defined in § 404.1528 (b) and (c);

(2) Other evidence from medical sources, such as medical history, opinions, and statements about treatment you have received;

(3) Statements you or others make about your impairment(s), your restrictions, your daily activities, your efforts to work, or any other relevant statements you make to medical sources during the course of examination or treatment, or to us during interviews, on applications, in letters, and in testimony in our administrative proceedings;

(4) Information from other sources, as described in § 404.1513(e);

(5) Decisions by any governmental or nongovernmental agency about whether you are disabled or blind; and

(6) At the administrative law judge and Appeals Council levels, certain findings, other than the ultimate determination about whether you are disabled, made by State agency medical or psychological consultants and other program physicians or psychologists, and opinions expressed by medical advisors based on their review of the evidence in your case record. See § 404.1527(f) (2) and (3).

(c) *Your responsibility.* You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. If we ask you, you must also provide evidence about:

(1) Your age;

(2) Your education and training;

(3) Your work experience;

(4) Your daily activities both before and after the date you say that you became disabled;

(5) Your efforts to work; and

(6) Any other factors showing how your impairment(s) affects your ability to work. In §§ 404.1560 through 404.1569, we discuss in more detail the evidence we need when we consider vocational factors.

(d) *Our responsibility.* Before we make a determination that you are not disabled, we will develop your complete medical history for at least the 12 months preceding the month in which you file your application unless there is a reason to believe that development of an earlier period is necessary or unless you say that your disability began less than 12 months before you filed your application. We will make every reasonable effort to help you get medical reports from your own medical sources when you give us permission to request the reports.

(1) "Every reasonable effort" means that we will make an initial request for evidence from your medical source and, at any time between 10 and 20 calendar days after the initial request, if the evidence has not been received, we will make one followup request to obtain the medical evidence necessary to make a determination. The medical source will have a minimum of 10 calendar days from the date of our followup request to reply, unless our experience with that source indicates that a longer period is advisable in a particular case.

(2) By "complete medical history," we mean the records of your medical source(s) covering at least the 12 months preceding the month in which you file your application. If you say that your disability began less than 12 months before you filed your application, we will develop your complete medical history beginning with the month you say your disability began unless we have reason to believe your disability began earlier. If applicable, we will develop your complete medical history for the 12-month period prior to (1) the month you were last insured for disability insurance benefits (see § 404.130), (2) the month ending the 7-year period you may have to establish your disability and you are applying for widow's or widower's benefits based on disability (see § 404.335(c)(1)), or (3) the month you attain age 22 and you are applying for child's benefits based on disability (see § 404.350(e)).

(e) *Recontacting medical sources.* When the evidence we receive from your treating physician or psychologist or other medical source is inadequate for us to determine whether you are disabled, we will need additional information to reach a determination or a decision. To obtain the information, we will take the following actions.

(1) We will first recontact your treating physician or psychologist or other medical source to determine whether the additional information we need is readily available. We will seek additional evidence or clarification from your medical source when the report from your medical source contains a conflict or ambiguity that must be resolved, the report does not contain all the necessary information, or does not appear to be based on medically acceptable clinical and laboratory diagnostic techniques. We may do this by requesting copies of your medical source's records, a new report, or a more detailed report from your medical source, including your treating source, or by telephoning your medical source. In every instance where medical evidence is obtained over the telephone, the telephone report will be sent to the source for review, signature and return.

(2) We may not seek additional evidence or clarification from a medical source when we know from past experience that the source either cannot or will not provide the necessary findings.

(f) *Need for consultative examination.* If the information we need is not readily available from the records of your medical treatment source, or we are unable to seek clarification from your medical source, we will ask you to attend one or more consultative examinations at our expense. See §§ 404.1517 through 404.1519t for the rules governing the consultative examination process. Generally, we will not request a consultative examination until we have made every reasonable effort to obtain evidence from your own medical sources. However, in some instances, such as when a source is known to be unable to provide certain tests or procedures or is known to be nonproductive or uncooperative, we may order a consultative examination while awaiting receipt of medical source evidence. We will not evaluate this evidence until we have made every reasonable effort to obtain evidence from your medical sources.

7. Section 404.1513 is amended by revising paragraph (b)(6) and paragraph (c) and the introductory text of paragraph (b) is republished to read as follows:

§ 404.1513 Medical evidence of your impairment.

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(b) *Medical reports.* Medical reports should include—

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(6) A statement about what you can still do despite your impairment(s) based on the medical source's findings on the factors under paragraphs (b)(1) through (b)(5) of this section (except in statutory blindness claims). Although we will request a medical source statement about what you can still do despite your impairment(s), the lack of the medical source statement will not make the report incomplete. See § 404.1527.

(c) *Statements about what you can still do.* Statements about what you can still do (based on the medical source's findings on the factors under paragraphs (b)(1) through (b)(5) of this section) should describe, but are not limited to, the kinds of physical and mental capabilities listed below. See §§ 404.1527 and 404.1545(c).

(1) The medical source's opinion about your ability, despite your impairment(s), to do work-related activities such as sitting, standing, walking, lifting, carrying, handling objects, hearing, speaking, and traveling; and

(2) In cases of mental impairment(s), the medical source's opinion about your ability to understand, to carry out and remember instructions, and to respond appropriately to supervision, coworkers, and work pressures in a work setting.

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8. Section 404.1517 is revised to read as follows:

§ 404.1517 Consultative examination at our expense.

If your medical sources cannot or will not give us sufficient medical evidence about your impairment for us to determine whether you are disabled or blind, we may ask you to have one or more physical or mental examinations or tests. We will pay for these examinations. However, we will not pay for any medical examination arranged by you or your representative without our advance approval. If we arrange for the examination or test, we will give you reasonable notice of the date, time, and place the examination or test will be given, and the name of the person or facility who will do it. We will also give the examiner any necessary background information about your condition.

9. New §§ 404.1519 through 404.1519t and the accompanying center headings are added to read as follows:

Standards To Be Used in Determining When a Consultative Examination Will Be Obtained in Connection With Disability Determinations

§ 404.1519 The consultative examination.

A consultative examination is a physical or mental examination or test purchased for you at our request and expense from a treating physician or psychologist, another source of record, or an independent source, including a pediatrician when appropriate. The decision to purchase a consultative examination will be made on an individual case basis in accordance with the provisions of §§ 404.1519a through 404.1519f. Selection of the source for the examination will be consistent with the provisions of § 404.1503a and §§ 404.1519g through 404.1519j. The rules and procedures for requesting consultative examinations set forth in §§ 404.1519a and 404.1519b are applicable at the reconsideration and hearing levels of review, as well as the initial level of determination.

§ 404.1519a When we will purchase a consultative examination and how we will use it.

(a) (1) *General.* The decision to purchase a consultative examination for you will be made after we have given full consideration to whether the additional information needed (e.g., clinical findings, laboratory tests, diagnosis, and prognosis) is readily available from the records of your medical sources. See § 404.1512 for the procedures we will follow to obtain evidence from your medical sources. Before purchasing a consultative examination, we will consider not only existing medical reports, but also the disability interview form containing your allegations as well as other pertinent evidence in your file.

(2) When we purchase a consultative examination, we will use the report from the consultative examination to try to resolve a conflict or ambiguity if one exists. We will also use a consultative examination to secure needed medical evidence the file does not contain such as clinical findings, laboratory tests, a diagnosis or prognosis necessary for decision.

(b) *Situations requiring a consultative examination.* A consultative examination may be purchased when the evidence as a whole, both medical and nonmedical, is not sufficient to support a decision on your claim. Other situations, including but not limited to the situations listed below, will normally require a consultative examination:

(1) The additional evidence needed is not contained in the records of your medical sources;

(2) The evidence that may have been available from your treating or other medical sources cannot be obtained for reasons beyond your control, such as death or noncooperation of a medical source;

(3) Highly technical or specialized medical evidence that we need is not available from your treating or other medical sources;

(4) A conflict, inconsistency, ambiguity or insufficiency in the evidence must be resolved, and we are unable to do so by recontacting your medical source; or

(5) There is an indication of a change in your condition that is likely to affect your ability to work, but the current severity of your impairment is not established.

§ 404.1519b When we will not purchase a consultative examination.

We will not purchase a consultative examination in situations including, but not limited to, the following situations:

(a) In period of disability and disability insurance benefit claims, when you do not meet the insured status requirement in the calendar quarter you allege you became disabled or later and there is no possibility of establishing an earlier onset;

(b) In claims for widow's or widower's benefits based on disability, when your alleged month of disability is after the end of the 7-year period specified in § 404.335(c)(1) and there is no possibility of establishing an earlier onset date, or when the 7-year period expired in the past and there is no possibility of establishing an onset date prior to the date the 7-year period expired;

(c) In disability insurance benefit claims, when your insured status expired in the past and there is no possibility of establishing an onset date prior to the date your insured status expired;

(d) When any issues about your actual performance of substantial gainful activity or gainful activity have not been resolved;

(e) In claims for child's benefits based on disability, when it is determined that your alleged disability did not begin before the month you attained age 22, and there is no possibility of establishing an onset date earlier than the month in which you attained age 22;

(f) In claims for child's benefits based on disability that are filed concurrently with the insured individual's claim and entitlement cannot be established for the insured individual;

(g) In claims for child's benefits based on disability where entitlement is precluded based on other nondisability factors.

Standards for the Type of Referral and for Report Content

§ 404.1519f Type of purchased examinations.

We will purchase only the specific examinations and tests we need to make a determination in your claim. For example, we will not authorize a comprehensive medical examination when the only evidence we need is a special test, such as an X-ray, blood studies, or an electrocardiogram.

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§ 404.1519b When we will not purchase a consultative examination.

We will not purchase a consultative examination in situations including, but not limited to, the following situations:

(a) In period of disability and disability insurance benefit claims, when you do not meet the insured status requirement in the calendar quarter you allege you became disabled or later and there is no possibility of establishing an earlier onset;

(b) In claims for widow's or widower's benefits based on disability, when your alleged month of disability is after the end of the 7-year period specified in § 404.335(c)(1) and there is no possibility of establishing an earlier onset date, or when the 7-year period expired in the past and there is no possibility of establishing an onset date prior to the date the 7-year period expired;

(c) In disability insurance benefit claims, when your insured status expired in the past and there is no possibility of establishing an onset date prior to the date your insured status expired;

(d) When any issues about your actual performance of substantial gainful activity or gainful activity have not been resolved;

(e) In claims for child's benefits based on disability, when it is determined that your alleged disability did not begin before the month you attained age 22, and there is no possibility of establishing an onset date earlier than the month in which you attained age 22;

(f) In claims for child's benefits based on disability that are filed concurrently with the insured individual's claim and entitlement cannot be established for the insured individual;

(g) In claims for child's benefits based on disability where entitlement is precluded based on other nondisability factors.

Standards for the Type of Referral and for Report Content

§ 404.1519f Type of purchased examinations.

We will purchase only the specific examinations and tests we need to make a determination in your claim. For example, we will not authorize a comprehensive medical examination when the only evidence we need is a special test, such as an X-ray, blood studies, or an electrocardiogram.

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§ 404.1519g Who we will select to perform a consultative examination.

(a) We will purchase a consultative examination only from a qualified medical source. The medical source may be your own physician or psychologist, or another source. If you are a child, the medical source we choose may be a pediatrician. For a more complete list of medical sources, see § 404.1513(a).

(b) By "qualified," we mean that the medical source must be currently licensed in the State and have the training and experience to perform the type of examination or test we will request; the medical source must not be barred from participation in our programs under the provisions of § 404.1503a. The medical source must also have the equipment required to provide an adequate assessment and record of the existence and level of severity of your alleged impairments.

(c) The physician or psychologist we choose may use support staff to help perform the consultative examination. Any such support staff (e.g., X-ray technician, nurse) must meet appropriate licensing or certification requirements of the State. See § 404.1503a.

§ 404.1519h Your treating physician or psychologist.

When in our judgment your treating physician or psychologist is qualified, equipped, and willing to perform the additional examination or tests for the fee schedule payment, and generally furnishes complete and timely reports, your treating physician or psychologist will be the preferred source to do the purchased examination. Even if only a supplemental test is required, your treating physician or psychologist is ordinarily the preferred source.

§ 404.1519i Other sources for consultative examinations.

We will use a source other than your treating physician or psychologist for a purchased examination or test in situations including, but not limited to, the following situations:

(a) Your treating physician or psychologist prefers not to perform such an examination or does not have the equipment to provide the specific data needed;

(b) There are conflicts or inconsistencies in your file that cannot be resolved by going back to your treating physician or psychologist;

(c) You prefer a source other than your treating physician or psychologist and have a good reason for your preference;

(d) We know from prior experience that your treating physician or psychologist may not be a productive source, e.g., he or she has consistently failed to provide complete or timely reports.

§ 404.1519j Objections to the designated physician or psychologist.

You or your representative may object to your being examined by a designated physician or psychologist. If there is a good reason for the objection, we will schedule the examination with another physician or psychologist. A good reason may be that the consultative examination physician or psychologist had previously represented an interest adverse to you. For example, the physician or psychologist may have represented your employer in a workers' compensation case or may have been involved in an insurance claim or legal action adverse to you. Other things we will consider include: the presence of a language barrier, the physician's or psychologist's office location (e.g., 2nd floor, no elevator), travel restrictions, and whether the physician or psychologist had examined you in connection with a previous disability determination or decision that was unfavorable to you. If your objection is because a physician or psychologist allegedly "lacks objectivity" in general, but not in relation to you personally, we will review the allegations. See § 404.1519s. To avoid a delay in processing your claim, the consultative examination in your case will be changed to another physician or psychologist while a review is being conducted. We will handle any objection to use of the substitute physician or psychologist in the same manner. However, if we had previously conducted such a review and found that the reports of the consultative physician or psychologist in question conformed to our guidelines, we will not change your examination.

§ 404.1519k Purchase of medical examinations, laboratory tests, and other services.

We may purchase medical examinations, including psychiatric and psychological examinations, X-rays and laboratory tests (including specialized tests such as pulmonary function studies, electrocardiograms, stress tests, etc.) from a licensed physician or psychologist, hospital or clinic.

(a) The rate of payment to be used for purchasing medical or other services necessary to make determinations of disability may not exceed the highest rate paid by Federal or public agencies in the State for the same or similar types of service. See §§ 404.1624 and 404.1626.

(b) If a physician's bill or a request for payment for a physician's services includes a charge for a laboratory test for which payment may be made under this part, the amount payable with respect to the test shall be determined as follows:

(1) If the bill or request for payment indicates that the test was personally performed or supervised by the physician who submitted the bill (or for whose services the request for payment was made) or by another physician with whom that physician shares his or her practice, the payment will be based on the physician's usual and customary charge for the test or the rates of payment which the State uses for purchasing such services, whichever is the lesser amount.

(2) If the bill or request for payment indicates that the test was performed by an independent laboratory, the amount of reimbursement will not exceed the billed cost of the independent laboratory or the rate of payment which the State uses for purchasing such services, whichever is the lesser amount. A nominal payment may be made to the physician for collecting, handling and shipping a specimen to the laboratory if the physician bills for such a service. The total reimbursement may not exceed the rate of payment which the State uses for purchasing such services.

(c) The State will assure that it can support the rate of payment it uses. The State shall also be responsible for monitoring and overseeing the rate of payment it uses to ensure compliance with paragraphs (a) and (b) of this section.

§ 404.1519m Diagnostic tests or procedures.

We will request the results of any diagnostic tests or procedures that have been performed as part of a workup by your treating physician or psychologist or other medical source and will use the results to help us evaluate impairment severity or prognosis. However, we will not order diagnostic tests or procedures that involve significant risk to you, such as myelograms, arteriograms, or cardiac catheterizations for the evaluation of disability under the Social Security program. Also, a State agency medical consultant must approve the ordering of any diagnostic test or procedure when there is a chance it may involve significant risk. The responsibility for deciding whether to perform the examination rests with the consultative examining physician or psychologist.

§ 404.1519n Informing the examining physician or psychologist of examination scheduling, report content, and signature requirements.

The physicians or psychologists who perform consultative examinations will have a good understanding of our disability programs and their evidentiary requirements. They will be made fully aware of their responsibilities and obligations regarding confidentiality as described in § 401.105(e). We will fully inform consulting physicians or psychologists at the time we first contact them, and at subsequent appropriate intervals, of the following obligations:

(a) In scheduling full consultative examinations, sufficient time should be allowed to permit the examining physician or psychologist to take a case history and perform the examination, including any needed tests. The following minimum scheduling intervals (i.e., time set aside for the individual, not the actual duration of the consultative examination) should be used.

(1) Comprehensive general medical examination—at least 30 minutes;

(2) Comprehensive musculoskeletal or neurological examination—at least 20 minutes;

(3) Comprehensive psychiatric examination—at least 40 minutes;

(4) Psychological examination—at least 60 minutes (Additional time may be required depending on types of psychological tests administered); and

(5) All others—at least 30 minutes, or in accordance with accepted medical practices.

We recognize that actual practice will dictate that some examinations may require longer scheduling intervals depending on the circumstances in a particular situation. We also recognize that these minimum intervals may have to be adjusted to allow for those claimants who do not attend their scheduled examination. The purpose of these minimum scheduling timeframes is to ensure that such examinations are complete and that sufficient time is made available to obtain the information needed to make an accurate determination in your case. State agencies will monitor the scheduling of examinations (through their normal consultative examination oversight activities) to ensure that any overscheduling is avoided, as overscheduling may lead to examinations that are not thorough.

(b) *Report content.* The reported results of your medical history, examination, requested laboratory findings, discussions and conclusions must conform to accepted professional standards and practices in the medical field for a complete and competent examination. The facts in a particular case and the information and findings already reported in the medical and other evidence of record will dictate the extent of detail needed in the consultative examination report for that case. Thus, the detail and format for reporting the results of a purchased examination will vary depending upon the type of examination or testing requested. The reporting of information will differ from one type of examination to another when the requested examination relates to the performance of tests such as ventilatory function tests, treadmill exercise tests, or audiological tests. The medical report must be complete enough to help us determine the nature, severity, and duration of the impairment, and residual functional capacity. The report should reflect your statements of your symptoms, not simply the physician's or psychologist's statements or conclusions. The examining physician's or psychologist's report of the consultative examination should include the objective medical facts as well as observations and opinions.

(c) *Elements of a complete consultative examination.* A complete consultative examination is one which involves all the elements of a standard examination in the applicable medical specialty. When the report of a complete consultative examination is involved, the report should include the following elements:

(1) Your major or chief complaint(s);

(2) A detailed description, within the area of specialty of the examination, of the history of your major complaint(s);

(3) A description, and disposition, of pertinent "positive" and "negative" detailed findings based on the history, examination and laboratory tests related to the major complaint(s), and any other abnormalities or lack thereof reported or found during examination or laboratory testing;

(4) The results of laboratory and other tests (e.g., X-rays) performed according to the requirements stated in the Listing of Impairments (see appendix 1 of this subpart P);

(5) The diagnosis and prognosis for your impairment(s);

(6) A statement about what you can still do despite your impairment(s), unless the claim is based on statutory blindness. This statement should describe the opinion of the consultative physician or psychologist about your ability, despite your impairment(s), to do work-related activities such as sitting, standing, walking, lifting, carrying, handling objects, hearing, speaking, and traveling; and, in cases of mental impairment(s), the opinion of the consultative physician or psychologist about your ability to understand, to carry out and remember instructions, and to respond appropriately to supervision, coworkers and work pressures in a work setting; and

(7) In addition, the consultative physician or psychologist will consider, and provide some explanation or comment on, your major complaint(s) and any other abnormalities found during the history and examination or reported from the laboratory tests. The history, examination, evaluation of laboratory test results, and the conclusions will represent the information provided by the physician or psychologist who signs the report.

(d) *When a complete consultative examination is not required.* When the evidence we need does not require a complete consultative examination (for example, we need only a specific laboratory test result to complete the record), we may not require a report containing all of the elements in paragraph (c).

(e) *Signature requirements.* All consultative examination reports will be personally reviewed and signed by the physician or psychologist who actually performed the examination. This attests to the fact that the physician or psychologist doing the examination or testing is solely responsible for the report contents and for the conclusions, explanations or comments provided with respect to the history, examination and evaluation of laboratory test results. The signature of the examining physician or psychologist on a report annotated "not proofed" or "dictated but not read" is not acceptable. A rubber stamp signature of a physician or psychologist or the physician's or psychologist's signature entered by any other person is not acceptable.

§ 404.1519o When a properly signed consultative examination report has not been received.

If a consultative examination report is received unsigned or improperly signed we will take the following action.

(a) *When we will make determinations and decisions without a properly signed report.* We will make a determination or decision in the circumstances specified in paragraphs (a)(1) and (a)(2) of this section without waiting for a properly signed consultative examination report. After we have made the determination or decision, we will obtain a properly signed report and include it in the file unless the physician or psychologist

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(7) In addition, the consultative physician or psychologist will consider, and provide some explanation or comment on, your major complaint(s) and any other abnormalities found during the history and examination or reported from the laboratory tests. The history, examination, evaluation of laboratory test results, and the conclusions will represent the information provided by the physician or psychologist who signs the report.

(d) *When a complete consultative examination is not required.* When the evidence we need does not require a complete consultative examination (for example, we need only a specific laboratory test result to complete the record), we may not require a report containing all of the elements in paragraph (c).

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§ 404.1519o When a properly signed consultative examination report has not been received.

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(a) *When we will make determinations and decisions without a properly signed report.* We will make a determination or decision in the circumstances specified in paragraphs (a)(1) and (a)(2) of this section without waiting for a properly signed consultative examination report. After we have made the determination or decision, we will obtain a properly signed report and include it in the file unless the physician or psychologist

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who performed the original consultative examination has died.

(1) Continuous period of disability allowance with an onset date as alleged or earlier than alleged; or

(2) Continuance of disability.

(b) *When we will not make determinations and decisions without a properly signed report.* We will not use an unsigned or improperly signed consultative examination report to make the determinations or decisions specified in paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this section. When we need a properly signed consultative examination report to make these determinations or decisions, we must obtain such a report. If the signature of the physician or psychologist who performed the original examination cannot be obtained because the physician or psychologist is out of the country for an extended period of time, on an extended vacation, seriously ill, deceased, or for any other reason, the consultative examination will be rescheduled with another physician or psychologist.

(1) Denial; or

(2) Cessation; or

(3) Allowance of a period of disability which has ended; or

(4) Allowance with an onset date later than alleged.

§ 404.1519p Reviewing reports of consultative examinations.

(a) We will review the report of the consultative examination to determine whether the specific information requested has been furnished. We will consider the following factors in reviewing the report:

(1) Whether the report provides evidence which serves as an adequate basis for decisionmaking in terms of the impairment it assesses;

(2) Whether the report is internally consistent; Whether all the diseases, impairments and complaints described in the history are adequately assessed and reported in the clinical findings; Whether the conclusions correlate the findings from your medical history, clinical examination and laboratory tests and explain all abnormalities;

(3) Whether the report is consistent with the other information available to us within the specialty of the examination requested; Whether the report fails to mention an important or relevant complaint within that specialty that is noted in other evidence in the file (e.g., your blindness in one eye, amputations, pain, alcoholism, depression);

(4) Whether this is an adequate report of examination as compared to standards set out in the course of a medical education; and

(5) Whether the report is properly signed.

(b) If the report is inadequate or incomplete, we will contact the examining consultative physician or psychologist, give an explanation of our evidentiary needs, and ask that the physician or psychologist furnish the missing information or prepare a revised report.

(c) With your permission, or where the examination discloses new diagnostic information or test results that reveal potentially life-threatening situations, we will refer the consultative examination report to your treating physician or psychologist. When we refer the consultative examination report to your treating physician or psychologist without your permission, we will notify you that we have done so.

(d) We will perform ongoing special management studies on the quality of consultative examinations purchased from major medical sources and the appropriateness of the examinations authorized.

(e) We will take steps to ensure that consultative examinations are scheduled only with medical sources who have access to the equipment required to provide an adequate assessment and record of the existence and level of severity of your alleged impairments.

§ 404.1519q Conflict of interest.

All implications of possible conflict of interest between medical or psychological consultants and their medical or psychological practices will be avoided. Such consultants are not only those physicians and psychologists who work for us directly but are also those who do review and adjudication work in the State agencies. Physicians and psychologists who work for us directly as employees or under contract will not work concurrently for a State agency. Physicians and psychologists who do review work for us will not perform consultative examinations for us without our prior approval. In such situations, the physician or psychologist will disassociate himself or herself from further involvement in the case and will not participate in the evaluation, decision, or appeal actions. In addition, neither they, nor any member of their families, will acquire or maintain, either directly or indirectly, any financial interest in a medical partnership, corporation, or similar relationship in which consultative examinations are provided. Sometimes physicians and psychologists who do review work for us will have prior knowledge of a case; for example, when the claimant was a patient. Where this is so, the physician or psychologist will not participate in the review or determination of the case. This does not preclude the physician or psychologist from submitting medical evidence based on treatment or examination of the claimant.

Authorizing and Monitoring the Referral Process

§ 404.1519s Authorizing and monitoring the consultative examination.

(a) Day-to-day responsibility for the consultative examination process rests with the State agencies that make disability determinations for us.

(b) The State agency will maintain a good working relationship with the medical community in order to recruit sufficient numbers of physicians and other providers of medical services to ensure ready availability of consultative examination providers.

(c) Consistent with Federal and State laws, the State agency administrator will work to achieve appropriate rates of payment for purchased medical services.

(d) Each State agency will be responsible for comprehensive oversight management of its consultative examination program, with special emphasis on key providers.

(e) A key consultative examination provider is a provider that meets at least one of the following conditions:

(1) Any consultative examination provider with an estimated annual billing to the Social Security disability programs of at least $100,000; or

(2) Any consultative examination provider with a practice of medicine, osteopathy, or psychology directed primarily towards evaluation examinations rather than the treatment of patients; or

(3) Any consultative examination provider that does not meet the above criteria, but is one of the top five consultative examination providers in the State by dollar volume, as evidenced by prior year data.

(f) State agencies have flexibility in managing their consultative examination programs, but at a minimum will provide:

(1) An ongoing active recruitment program for consultative examination providers;

(2) A process for orientation, training, and review of new consultative examination providers, with respect to SSA's program requirements involving consultative examination report content and not with respect to medical techniques;

(3) Procedures for control of scheduling consultative examinations;

(4) Procedures to ensure that close attention is given to specific evaluation issues involved in each case;

(5) Procedures to ensure that only required examinations and tests are authorized in accordance with the standards set forth in this subpart;

(6) Procedures for providing medical or supervisory approval for the authorization or purchase of consultative examinations and for additional tests or studies requested by consulting physicians and psychologists. This includes physician approval for the ordering of any diagnostic test or procedure where the question of significant risk to the claimant/beneficiary might be raised. See § 404.1519m.

(7) Procedures for the ongoing review of consultative examination results to ensure compliance with written guidelines;

(8) Procedures to encourage active participation by physicians in the consultative examination oversight program;

(9) Procedures for handling complaints;

(10) Procedures for evaluating claimant reactions to key providers; and

(11) A program of systematic, onsite reviews of key providers that will include annual onsite reviews of such providers when claimants are present for examinations. This provision does not contemplate that such reviews will involve participation in the actual examinations but, rather, offer an opportunity to talk with claimants at the provider's site before and after the examination and to review the provider's overall operation.

(g) The State agencies will cooperate with us when we conduct monitoring activities in connection with their oversight management of their consultative examination programs.

Procedures To Monitor the Consultative Examination

§ 404.1519t Consultative examination oversight.

(a) We will ensure that referrals for consultative examinations and purchases of consultative examinations are made in accordance with our policies. We will also monitor both the referral processes and the product of the consultative examinations obtained. This monitoring may include reviews by independent medical specialists under direct contract with SSA.

(b) Through our regional offices, we will undertake periodic comprehensive reviews of each State agency to evaluate each State's management of the consultative examination process. The review will involve visits to key providers, with State staff participating, including a program physician when the visit will deal with medical techniques or judgment, or factors that go to the core of medical professionalism.

(c) We will also perform ongoing special management studies of the quality of consultative examinations purchased from key providers and other sources and the appropriateness of the examinations authorized.

10. Section 404.1520 is amended by revising paragraph (a) to read as follows:

§ 404.1520 Evaluation of disability in general.

(a) *Steps in evaluating disability.* We consider all evidence in your case record when we make a determination or decision whether you are disabled. When you file a claim for a period of disability and/or disability insurance benefits or for child's benefits based on disability, we use the following evaluation process. If you are doing substantial gainful activity, we will determine that you are not disabled. If you are not doing substantial gainful activity, we will first consider the effect of your physical or mental impairment; if you have more than one impairment, we will also consider the combined effect of your impairments. Your impairment(s) must be severe and meet the duration requirement before we can find you to be disabled. We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education, and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further. Once you have been found entitled to disability benefits, we follow a somewhat different order of evaluation to determine whether your entitlement continues, as explained in § 404.1594(f)(6).

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11. Section 404.1527 is revised to read as follows:

§ 404.1527 Evaluating medical opinions about your impairment(s) or disability.

(a) *General.* (1) You can only be found disabled if you are unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. See § 404.1505. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques. See § 404.1508.

(2) Evidence that you submit or that we obtain may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions.

(b) *How we consider medical opinions.* In deciding whether you are disabled, we will always consider the medical opinions in your case record together with the rest of the relevant evidence we receive.

(c) *Making disability determinations.* After we review all of the evidence relevant to your claim, including medical opinions, we make findings about what the evidence shows.

(1) If all of the evidence we receive, including all medical opinion(s), is consistent, and there is sufficient evidence for us to decide whether you are disabled, we will make our determination or decision based on that evidence.

(2) If any of the evidence in your case record, including any medical opinion(s), is inconsistent with other evidence or is internally inconsistent, we will weigh all of the evidence and see whether we can decide whether you are disabled based on the evidence we have.

(3) If the evidence is consistent but we do not have sufficient evidence to decide whether you are disabled, or if after weighing the evidence we decide we cannot reach a conclusion about whether you are disabled, we will try to obtain additional evidence under the provisions of §§ 404.1512 and 404.1519 through 404.1519h. We will request additional existing records, recontact your treating sources or any other examining sources, ask you to undergo a consultative examination at our expense, or ask you or others for more information. We will consider any additional evidence we receive together with the evidence we already have.

(4) When there are inconsistencies in the evidence that cannot be resolved, or when despite efforts to obtain additional evidence the evidence is not complete, we will make a determination or decision based on the evidence we have.

(d) *How we weigh medical opinions.* Regardless of its source, we will

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must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques. See § 404.1508.

(2) Evidence that you submit or that we obtain may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions.

(b) *How we consider medical opinions.* In deciding whether you are disabled, we will always consider the medical opinions in your case record together with the rest of the relevant evidence we receive.

(c) *Making disability determinations.* After we review all of the evidence relevant to your claim, including medical opinions, we make findings about what the evidence shows.

(1) If all of the evidence we receive, including all medical opinion(s), is consistent, and there is sufficient evidence for us to decide whether you are disabled, we will make our determination or decision based on that evidence.

(2) If any of the evidence in your case record, including any medical opinion(s), is inconsistent with other evidence or is internally inconsistent, we will weigh all of the evidence and see whether we can decide whether you are disabled based on the evidence we have.

(3) If the evidence is consistent but we do not have sufficient evidence to decide whether you are disabled, or if after weighing the evidence we decide we cannot reach a conclusion about whether you are disabled, we will try to obtain additional evidence under the provisions of §§ 404.1512 and 404.1519 through 404.1519h. We will request additional existing records, recontact your treating sources or any other examining sources, ask you to undergo a consultative examination at our expense, or ask you or others for more information. We will consider any additional evidence we receive together with the evidence we already have.

(4) When there are inconsistencies in the evidence that cannot be resolved, or when despite efforts to obtain additional evidence the evidence is not complete, we will make a determination or decision based on the evidence we have.

(d) *How we weigh medical opinions.* Regardless of its source, we will

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evaluate every medical opinion we receive. Unless we give a treating source's opinion controlling weight under paragraph (d)(2) of this section, we consider all of the following factors in deciding the weight we give to any medical opinion.

(1) Examining relationship. Generally, we give more weight to the opinion of a source who has examined you than to the opinion of a source who has not examined you.

(2) Treatment relationship. Generally, we give more weight to opinions from your treating sources, since these sources are likely to be the medical professionals most able to provide a detailed, longitudinal picture of your medical impairment(s) and may bring a unique perspective to the medical evidence that cannot be obtained from the objective medical findings alone or from reports of individual examinations, such as consultative examinations or brief hospitalizations. If we find that a treating source's opinion on the issue(s) of the nature and severity of your impairment(s) is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in your case record, we will give it controlling weight. When we do not give the treating source's opinion controlling weight, we apply the factors listed below, as well as the factors in paragraphs (d) (3) through (5) of this section in determining the weight to give the opinion. We will always give good reasons in our notice of determination or decision for the weight we give your treating source's opinion.

(i) Length of the treatment relationship and the frequency of examination. Generally, the longer a treating source has treated you and the more times you have been seen by a treating source, the more weight we will give to the source's medical opinion. When the treating source has seen you a number of times and long enough to have obtained a longitudinal picture of your impairment, we will give the source's opinion more weight than we would give it if it were from a nontreating source.

(ii) Nature and extent of the treatment relationship. Generally, the more knowledge a treating source has about your impairment(s) the more weight we will give to the source's medical opinion. We will look at the treatment the source has provided and at the kinds and extent of examinations and testing the source has performed or ordered from specialists and independent laboratories. For example, if your ophthalmologist notices that you have complained of neck pain during your eye examinations, we will consider his or her opinion with respect to your neck pain, but we will give it less weight than that of another physician who has treated you for the neck pain. When the treating source has reasonable knowledge of your impairment(s), we will give the source's opinion more weight than we would give it if it were from a nontreating source.

(3) Supportability. The more a medical source presents relevant evidence to support an opinion, particularly medical signs and laboratory findings, the more weight we will give that opinion. The better an explanation a source provides for an opinion, the more weight we will give that opinion. Furthermore, because nonexamining sources have no examining or treating relationship with you, the weight we will give their opinions will depend on the degree to which they provide supporting explanations for their opinions. We will evaluate the degree to which these opinions consider all of the pertinent evidence in your claim, including opinions of treating and other examining sources.

(4) Consistency. Generally, the more consistent an opinion is with the record as a whole, the more weight we will give to that opinion.

(5) Specialization. We generally give more weight to the opinion of a specialist about medical issues related to his or her area of specialty than to the opinion of a source who is not a specialist.

(6) Other factors. When we consider how much weight to give to a medical opinion, we will also consider any factors you or others bring to our attention, or of which we are aware, which tend to support or contradict the opinion.

(e) *Medical source opinions on issues reserved to the Secretary.*

(1) Opinions that you are disabled. We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled. A statement by a medical source that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled.

(2) Other opinions on issues reserved to the Secretary. We use medical sources, including your treating source, to provide evidence, including opinions, on the nature and severity of your impairment(s). Although we consider opinions from treating and examining sources on issues such as whether your impairment(s) meets or equals the requirements of any impairment(s) in the Listing of Impairments in appendix 1 of this subpart, your residual functional capacity (see §§ 404.1545 and 404.1546), or the application of vocational factors, the final responsibility for deciding these issues is reserved to the Secretary. We will not give any special significance to the source of the opinion on these issues.

(f) *Opinions of nonexamining medical and psychological consultants and other nonexamining physicians and psychologists.* We consider all evidence from nonexamining physicians and psychologists to be opinion evidence. When we consider the opinions of nonexamining sources on the nature and severity of your impairments, we apply the rules set forth in paragraphs (a) through (e) of this section. In addition, the following rules apply to State agency medical and psychological consultants, and to medical advisors we consult in connection with administrative law judge hearings and Appeals Council review.

(1) At the initial and reconsideration steps in the administrative review process, except in disability hearings, State agency medical and psychological consultants are members of the teams that make the determinations of disability. A State agency medical or psychological consultant will consider the evidence in your case record and make findings of fact about the medical issues, including, but not limited to, the existence and severity of your impairment(s), the existence and severity of your symptoms, whether your impairment(s) meets or equals the requirements for any impairment listed in Appendix 1 to this subpart, and your residual functional capacity. These administrative findings of fact are based on the evidence in your case record but are not themselves evidence at these steps.

(2) Administrative law judges are responsible for reviewing the evidence and making findings of fact and conclusions of law. Administrative law judges are not bound by any findings made by State agency medical or psychological consultants. However, these findings are considered at the hearing level. See § 404.1512(b)(6). When administrative law judges consider these findings, they will evaluate them using the rules set forth in paragraphs (a) through (e) of this section. Also, administrative law judges may ask for and consider the opinions of medical advisors on the nature and severity of your impairment(s) and whether your impairment(s) equals the requirements

of any listed impairment in appendix 1 to this subpart.

(3) When the Appeals Council makes a decision, it will follow the same rules for considering opinion evidence as administrative law judges follow.

12. Section 404.1545 is amended by revising paragraph (a) to read as follows:

§ 404.1545 Your residual functional capacity.

(a) *General.* Your impairment(s) may cause physical and mental limitations that affect what you can do in a work setting. Your residual functional capacity is what you can still do despite your limitations. If you have more than one impairment, we will consider all of your impairments of which we are aware. We consider your capacity for various functions as described in paragraphs (b) physical abilities; (c) mental impairments; and (d) other impairments of this section. A residual functional capacity assessment may include descriptions (including your own) of limitations that go beyond the symptoms that are important in the diagnosis and treatment of your medical condition. Observations of your work limitations, in addition to those usually made during formal medical examinations, may also be used. These descriptions and observations, when used, must be considered along with the rest of your medical record to enable us to decide to what extent your impairment(s) keeps you from performing particular work activities. This assessment of your remaining capacity for work is not a decision on whether you are disabled, but is used as the basis for determining the particular types of work you may be able to do despite your impairment(s). Then, using the guidelines in §§ 404.1560 through 404.1569, your vocational background is considered along with your residual functional capacity in arriving at a disability determination or decision. In deciding whether disability continues or ends, the residual functional capacity assessment may also be used to determine whether any medical improvement you have experienced is related to your ability to work as discussed in § 404.1594.

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13. Section 404.1546 is revised to read as follows:

§ 404.1546 Responsibility for assessing and determining residual functional capacity.

The State agency staff medical or psychological consultants or other medical or psychological consultants designated by the Secretary are responsible for ensuring that the State agency makes a decision about your residual functional capacity. In cases where the State agency makes the disability determination, a State agency staff medical or psychological consultant must assess residual functional capacity where it is required. This assessment is based on all of the evidence we have, including any statements regarding what you can still do that have been provided by treating or examining physicians, consultative physicians, or any other medical or psychological consultant designated by the Secretary. See § 404.1545. For cases in the disability hearing process, the responsibility for deciding your residual functional capacity rests with either the disability hearing officer or, if the disability hearing officer's reconsidered determination is changed under § 404.918, with the Director of the Office of Disability Hearings or his or her delegate. For cases at the Administrative Law Judge hearing or Appeals Council level, the responsibility for deciding your residual functional capacity rests with the Administrative Law Judge or Appeals Council.

14. Section 404.1593 is revised to read as follows:

§ 404.1593 Medical evidence in continuing disability review cases.

(a) *General.* If you are entitled to benefits or if a period of disability has been established for you because you are disabled, we will have your case file with the supporting medical evidence previously used to establish or continue your entitlement. Generally, therefore, the medical evidence we will need for a continuing disability review will be that required to make a current determination or decision as to whether you are still disabled, as defined under the medical improvement review standard. See §§ 404.1579 and 404.1594.

(b) *Obtaining evidence from your medical sources.* You must provide us with reports from your physician, psychologist, or others who have treated or evaluated you, as well as any other evidence that will help us determine if you are still disabled. See § 404.1512. You must have a good reason for not giving us this information or we may find that your disability has ended. See § 404.1594(e)(2). If we ask you, you must contact your medical sources to help us get the medical reports. We will make every reasonable effort to help you in getting medical reports when you give us permission to request them from your physician, psychologist, or other medical sources. See § 404.1512(d)(1) concerning what we mean by every reasonable effort. In some instances, such as when a source is known to be unable to provide certain tests or procedures or is known to be nonproductive or uncooperative, we may order a consultative examination while awaiting receipt of medical source evidence. Before deciding that your disability has ended, we will develop a complete medical history covering at least the 12 months preceding the date you sign a report about your continuing disability status. See § 404.1512(c).

(c) *When we will purchase a consultative examination.* A consultative examination may be purchased when we need additional evidence to determine whether or not your disability continues. As a result, we may ask you, upon our request and reasonable notice, to undergo consultative examinations and tests to help us determine if you are still disabled. See § 404.1517. We will decide whether or not to purchase a consultative examination in accordance with the standards in §§ 404.1519a through 404.1519b.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

20 CFR part 416, subpart I is amended as follows:

Subpart I—Determining Disability and Blindness

1. The authority citation for subpart I continues to read as follows:

Authority: Secs. 1102, 1614(a), 1619, 1631(a) and (d)(1), and 1633 of the Social Security Act; 42 U.S.C. 1302, 1382c(a), 1382h, 1383 (a) and (d)(1), and 1383b; secs. 2, 5, 6, and 15 of Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1806.

2.–3. Section 416.902 is revised to read as follows:

§ 416.902 General definitions and terms for this subpart.

As used in the subpart—

Medical sources refers to treating sources, sources of record, and consultative examiners for us. See § 416.913.

Secretary means the Secretary of Health and Human Services.

Source of record means a hospital, clinic or other source that has provided you with medical treatment or evaluation, as well as a physician or psychologist who has treated or evaluated you but does not have or did not have an ongoing treatment relationship with you.

State agency means that agency of a State which has been designated by the

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a source is known to be unable to provide certain tests or procedures or is known to be nonproductive or uncooperative, we may order a consultative examination while awaiting receipt of medical source evidence. Before deciding that your disability has ended, we will develop a complete medical history covering at least the 12 months preceding the date you sign a report about your continuing disability status. See § 404.1512(c).

(c) *When we will purchase a consultative examination.* A consultative examination may be purchased when we need additional evidence to determine whether or not your disability continues. As a result, we may ask you, upon our request and reasonable notice, to undergo consultative examinations and tests to help us determine if you are still disabled. See § 404.1517. We will decide whether or not to purchase a consultative examination in accordance with the standards in §§ 404.1519a through 404.1519b.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

20 CFR part 416, subpart I is amended as follows:

Subpart I—Determining Disability and Blindness

1. The authority citation for subpart I continues to read as follows:

Authority: Secs. 1102, 1614(a), 1619, 1631(a) and (d)(1), and 1633 of the Social Security Act; 42 U.S.C. 1302, 1382c(a), 1382h, 1383 (a) and (d)(1), and 1383b; secs. 2, 5, 6, and 15 of Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808.

2.–3. Section 416.902 is revised to read as follows:

§ 416.902 General definitions and terms for this subpart.

As used in the subpart—

Medical sources refers to treating sources, sources of record, and consultative examiners for us. See § 416.913.

Secretary means the Secretary of Health and Human Services.

Source of record means a hospital, clinic or other source that has provided you with medical treatment or evaluation, as well as a physician or psychologist who has treated or evaluated you but does not have or did not have an ongoing treatment relationship with you.

State agency means that agency of a State which has been designated by the

State to carry out the disability or blindness determination function.

Treating source means your own physician or psychologist who has provided you with medical treatment or evaluation and who has or has had an ongoing treatment relationship with you. Generally, we will consider that you have an ongoing treatment relationship with a physician or psychologist when the medical evidence establishes that you see or have seen the physician or psychologist with a frequency consistent with accepted medical practice for the type of treatment and evaluation required for your medical condition(s). We may consider a physician or psychologist who has treated you only a few times or only after long intervals (e.g., twice a year) to be your treating source if the nature and frequency of the treatment is typical for your condition(s). We will not consider a physician or psychologist to be your treating physician if your relationship with the physician or psychologist is not based on your need for treatment, but solely on your need to obtain a report in support of your claim for benefits. In such a case, we will consider the physician or psychologist to be a consulting physician or psychologist.

We or *us* refers to either the Social Security Administration or the State agency making the disability or blindness determination.

You refers to the person who has applied for or is receiving benefits based on disability or blindness.

4. Section 416.903a is added to read as follows:

§ 416.903a Program integrity.

We will not use in our program any individual or entity, except to provide existing medical evidence, who is currently excluded, suspended, or otherwise barred from participation in the Medicare or Medicaid programs, or any other Federal or Federally-assisted program; whose license to provide health care services is currently revoked or suspended by any State licensing authority pursuant to adequate due process procedures for reasons bearing on professional competence, professional conduct, or financial integrity; or who until a final determination is made has surrendered such a license while formal disciplinary proceedings involving professional conduct are pending. By individual or entity we mean a medical or psychological consultant, consultative examination provider, or diagnostic test facility. Also see §§ 416.919 and 416.919g(b).

§ 416.908 [Amended]

5. Section 416.908 is amended by adding the cross-reference "(see § 416.927)" at the end of the penultimate sentence before the period.

6. Section 416.912 is revised to read as follows:

§ 416.912 Evidence of your impairment.

(a) *General.* In general, you have to prove to us that you are blind or disabled. Therefore, you must bring to our attention everything that shows that you are blind or disabled. This means that you must furnish medical and other evidence that we can use to reach conclusions about your medical impairment(s) and, if material to the determination of whether you are blind or disabled, its effect on your ability to work on a sustained basis. We will consider only impairment(s) you say you have or about which we receive evidence.

(b) *What we mean by "evidence."* Evidence is anything you or anyone else submits to us or that we obtain that relates to your claim. This includes, but is not limited to:

(1) Objective medical evidence, that is, medical signs and laboratory findings as defined in § 416.928 (b) and (c);

(2) Other evidence from medical sources, such as medical history, opinions, and statements about treatment you have received;

(3) Statements you or others make about your impairment(s), your restrictions, your daily activities, your efforts to work, or any other relevant statements you make to medical sources during the course of examination or treatment, or to us during interviews, on applications, in letters, and in testimony in our administrative proceedings;

(4) Information from other sources, as described in § 416.913(e);

(5) Decisions by any governmental or nongovernmental agency about whether you are disabled or blind; and

(6) At the administrative law judge and Appeals Council levels, certain findings, other than the ultimate determination about whether you are disabled, made by State agency medical or psychological consultants and other program physicians or psychologists, and opinions expressed by medical advisors based on their review of the evidence in your case record. See § 416.927(f) (2) and (3).

(c) *Your responsibility.* You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. If we ask you, you must also provide evidence about:

(1) Your age;

(2) Your education and training;

(3) Your work experience;

(4) Your daily activities both before and after the date you say that you became disabled;

(5) Your efforts to work; and

(6) Any other factors showing how your impairment(s) affects your ability to work. In §§ 416.960 through 416.969, we discuss in more detail the evidence we need when we consider vocational factors.

(d) *Our responsibility.* Before we make a determination that you are not disabled, we will develop your complete medical history for at least the 12 months preceding the month in which you file your application unless there is a reason to believe that development of an earlier period is necessary or unless you say that your disability began less than 12 months before you filed your application. We will make every reasonable effort to help you get medical reports from your own medical sources when you give us permission to request the reports.

(1) "Every reasonable effort" means that we will make an initial request for evidence from your medical source and, at any time between 10 and 20 calendar days after the initial request, if the evidence has not been received, we will make one followup request to obtain the medical evidence necessary to make a determination. The medical source will have a minimum of 10 calendar days from the date of our followup request to reply, unless our experience with that source indicates that a longer period is advisable in a particular case.

(2) By "complete medical history," we mean the records of your medical source(s) covering at least the 12 months preceding the month in which you file your application. If you say that your disability began less than 12 months before you filed your application, we will develop your complete medical history beginning with the month you say your disability began unless we have reason to believe that your disability began earlier.

(e) *Recontacting medical sources.* When the evidence we receive from your treating physician or psychologist or other medical source is inadequate for us to determine whether you are disabled, we will need additional information to reach a determination or a decision. To obtain the information, we will take the following actions.

(1) We will first recontact your treating physician or psychologist or other medical source to determine whether the additional information we need is readily available. We will seek additional evidence or clarification from your medical source when the report

from your medical source contains a conflict or ambiguity that must be resolved, the report does not contain all the necessary information, or does not appear to be based on medically acceptable clinical and laboratory diagnostic techniques. We may do this by requesting copies of your medical source's records, a new report, or a more detailed report from your medical source, including your treating source, or by telephoning your medical source. In every instance where medical evidence is obtained over the telephone, the telephone report will be sent to the source for review, signature and return.

(2) We may not seek additional evidence or clarification from a medical source when we know from past experience that the source either cannot or will not provide the necessary findings.

(f) *Need for consultative examination.* If the information we need is not readily available from the records of your medical treatment source, or we are unable to seek clarification from your medical source, we will ask you to attend one or more consultative examinations at our expense. See §§ 416.917 through 416.919t for the rules governing the consultative examination process. Generally, we will not request a consultative examination until we have made every reasonable effort to obtain evidence from your own medical sources. However, in some instances, such as when a source is known to be unable to provide certain tests or procedures or is known to be nonproductive or uncooperative, we may order a consultative examination while awaiting receipt of medical source evidence. We will not evaluate this evidence until we have made every reasonable effort to obtain evidence from your medical sources.

7. Section 416.913 is amended by revising paragraph (b)(6) and paragraph (c) and the introductory text of paragraph (b) is republished to read as follows:

§ 416.913 Medical evidence of your impairment.

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(b) *Medical reports.* Medical reports should include—

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(6) A statement about what you can still do despite your impairment(s) based on the medical source's findings on the factors under paragraphs (b)(1) through (b)(5) of this section (except in statutory blindness claims). Although we will request a medical source statement about what you can still do despite your impairment(s), the lack of the medical source statement will not make the report incomplete. See § 416.927.

(c) *Statements about what you can still do.* Statements about what you can still do (based on the medical source's findings on the factors under paragraphs (b)(1) through (b)(5) of this section) should describe, but are not limited to, the kinds of physical and mental capabilities listed below. See §§ 416.927 and 416.945(c).

(1) The medical source's opinion about your ability, despite your impairment(s), to do work-related activities such as sitting, standing, walking, lifting, carrying, handling objects, hearing, speaking, and traveling; and

(2) In cases of mental impairment(s), the medical source's opinion about your ability to understand, to carry out and remember instructions, and to respond appropriately to supervision, coworkers, and work pressures in a work setting.

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8. Section 416.917 is revised to read as follows:

§ 416.917 Consultative examination at our expense.

If your medical sources cannot or will not give us sufficient medical evidence about your impairment for us to determine whether you are disabled or blind, we may ask you to have one or more physical or mental examinations or tests. We will pay for these examinations. However, we will not pay for any medical examination arranged by you or your representative without our advance approval. If we arrange for the examination or test, we will give you reasonable notice of the date, time, and place the examination or test will be given, and the name of the person or facility who will do it. We will also give the examiner any necessary background information about your condition.

9. New §§ 416.919 through 416.919t and the accompanying center headings are added to read as follows:

Standards To Be Used in Determining When a Consultative Examination Will Be Obtained in Connection With Disability Determinations

§ 416.919 The consultative examination.

A consultative examination is a physical or mental examination or test purchased for you at our request and expense from a treating physician or psychologist, another source of record, or an independent source, including a pediatrician when appropriate. The decision to purchase a consultative examination will be made on an individual case basis in accordance with the provisions of § 416.919a through § 416.919f. Selection of the source for the examination will be consistent with the provisions of § 416.903a and §§ 416.919g through 416.919j. The rules and procedures for requesting consultative examinations set forth in §§ 416.919a and 416.919b are applicable at the reconsideration and hearing levels of review, as well as the initial level of determination.

§ 416.919a When we will purchase a consultative examination and how we will use it.

(a)(1) *General.* The decision to purchase a consultative examination for you will be made after we have given full consideration to whether the additional information needed (e.g., clinical findings, laboratory tests, diagnosis, and prognosis) is readily available from the records of your medical sources. See § 416.912 for the procedures we will follow to obtain evidence from your medical sources. Before purchasing a consultative examination, we will consider not only existing medical reports, but also the disability interview form containing your allegations as well as other pertinent evidence in your file.

(2) When we purchase a consultative examination, we will use the report from the consultative examination to try to resolve a conflict or ambiguity if one exists. We will also use a consultative examination to secure needed medical evidence the file does not contain such as clinical findings, laboratory tests, a diagnosis or prognosis necessary for decision.

(b) *Situations requiring a consultative examination.* A consultative examination may be purchased when the evidence as a whole, both medical and nonmedical, is not sufficient to support a decision on your claim. Other situations, including but not limited to the situations listed below, will normally require a consultative examination:

(1) The additional evidence needed is not contained in the records of your medical sources;

(2) The evidence that may have been available from your treating or other medical sources cannot be obtained for reasons beyond your control, such as death or noncooperation of a medical source;

(3) Highly technical or specialized medical evidence that we need is not available from your treating or other medical sources;

(4) A conflict, inconsistency, ambiguity or insufficiency in the evidence must be resolved, and we are

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§ 416.919a When we will purchase a consultative examination and how we will use it.

(a)(1) *General.* The decision to purchase a consultative examination for you will be made after we have given full consideration to whether the additional information needed (e.g., clinical findings, laboratory tests, diagnosis, and prognosis) is readily available from the records of your medical sources. See § 416.912 for the procedures we will follow to obtain evidence from your medical sources. Before purchasing a consultative examination, we will consider not only existing medical reports, but also the disability interview form containing your allegations as well as other pertinent evidence in your file.

(2) When we purchase a consultative examination, we will use the report from the consultative examination to try to resolve a conflict or ambiguity if one exists. We will also use a consultative examination to secure needed medical evidence the file does not contain such as clinical findings, laboratory tests, a diagnosis or prognosis necessary for decision.

(b) *Situations requiring a consultative examination.* A consultative examination may be purchased when the evidence as a whole, both medical and nonmedical, is not sufficient to support a decision on your claim. Other situations, including but not limited to the situations listed below, will normally require a consultative examination:

(1) The additional evidence needed is not contained in the records of your medical sources;

(2) The evidence that may have been available from your treating or other medical sources cannot be obtained for reasons beyond your control, such as death or noncooperation of a medical source;

(3) Highly technical or specialized medical evidence that we need is not available from your treating or other medical sources;

(4) A conflict, inconsistency, ambiguity or insufficiency in the evidence must be resolved, and we are

unable to do so by recontacting your medical source; or

(5) There is an indication of a change in your condition that is likely to affect your ability to work, but the current severity of your impairment is not established.

§ 416.919b When we will not purchase a consultative examination.

We will not purchase a consultative examination in situations including, but not limited to, the following situations:

(a) When any issues about your actual performance of substantial gainful activity have not been resolved;

(b) When you do not meet all of the nondisability requirements.

Standards for the Type of Referral and for Report Content

§ 416.919f Type of purchased examinations.

We will purchase only the specific examinations and tests we need to make a determination in your claim. For example, we will not authorize a comprehensive medical examination when the only evidence we need is a special test, such as an X-ray, blood studies, or an electrocardiogram.

§ 416.919g Who we will select to perform a consultative examination.

(a) We will purchase a consultative examination only from a qualified medical source. The medical source may be your own physician or psychologist, or another source. If you are a child, the medical source we choose may be a pediatrician. For a more complete list of medical sources, see § 416.913(a).

(b) By "qualified," we mean that the medical source must be currently licensed in the State and have the training and experience to perform the type of examination or test we will request; the medical source must not be barred from participation in our programs under the provisions of § 416.903a. The medical source must also have the equipment required to provide an adequate assessment and record of the existence and level of severity of your alleged impairments.

(c) The physician or psychologist we choose may use support staff to help perform the consultative examination. Any such support staff (e.g., X-ray technician, nurse) must meet appropriate licensing or certification requirements of the State. See § 416.903a.

§ 416.919h Your treating physician or psychologist.

When in our judgment your treating physician or psychologist is qualified, equipped, and willing to perform the additional examination or tests for the fee schedule payment, and generally furnishes complete and timely reports, your treating physician or psychologist will be the preferred source to do the purchased examination. Even if only a supplemental test is required, your treating physician or psychologist is ordinarily the preferred source.

§ 416.919i Other sources for consultative examinations.

We will use a source other than your treating physician or psychologist for a purchased examination or test in situations including, but not limited to, the following situations:

(a) Your treating physician or psychologist prefers not to perform such an examination or does not have the equipment to provide the specific data needed;

(b) There are conflicts or inconsistencies in your file which cannot be resolved by going back to your treating physician or psychologist;

(c) You prefer a source other than your treating physician or psychologist and have a good reason for your preference;

(d) We know from prior experience that your treating physician or psychologist may not be a productive source, e.g., he or she has consistently failed to provide complete or timely reports.

§ 416.919j Objections to the designated physician or psychologist.

You or your representative may object to your being examined by a designated physician or psychologist. If there is a good reason for the objection, we will schedule the examination with another physician or psychologist. A good reason may be that the consultative examination physician or psychologist had previously represented an interest adverse to you. For example, the physician or psychologist may have represented your employer in a workers' compensation case or may have been involved in an insurance claim or legal action adverse to you. Other things we will consider include: the presence of a language barrier, the physician's or psychologist's office location (e.g., 2nd floor, no elevator), travel restrictions, and whether the physician or psychologist had examined you in connection with a previous disability determination or decision that was unfavorable to you. If your objection is because a physician or psychologist allegedly "lacks objectivity" in general, but not in relation to you personally, we will review the allegations. See § 416.919s. To avoid a delay in processing your claim, the consultative examination in your case will be changed to another physician or psychologist while a review is being conducted. We will handle any objection to use of the substitute physician or psychologist in the same manner. However, if we had previously conducted such a review and found that the reports of the consultative physician or psychologist in question conformed to our guidelines, we will not change your examination.

§ 416.919k Purchase of medical examinations, laboratory tests, and other services.

We may purchase medical examinations, including psychiatric and psychological examinations, X-rays and laboratory tests (including specialized tests such as pulmonary function studies, electrocardiograms, stress tests, etc.) from a licensed physician or psychologist, hospital or clinic.

(a) The rate of payment to be used for purchasing medical or public services necessary to make determinations of disability may not exceed the highest rate paid by Federal or public agencies in the State for the same or similar types of service. See §§ 416.1024 and 416.1026.

(b) If a physician's bill, or a request for payment for a physician's services, includes a charge for a laboratory test for which payment may be made under this part, the amount payable with respect to the test shall be determined as follows:

(1) If the bill or request for payment indicates that the test was personally performed or supervised by the physician who submitted the bill (or for whose services the request for payment was made) or by another physician with whom that physician shares his or her practice, the payment will be based on the physician's usual and customary charge for the test or the rates of payment which the State uses for purchasing such services, whichever is the lesser amount.

(2) If the bill or request for payment indicates that the test was performed by an independent laboratory, the amount of reimbursement will not exceed the billed cost of the independent laboratory or the rate of payment which the State uses for purchasing such services, whichever is the lesser amount. A nominal payment may be made to the physician for collecting, handling and shipping a specimen to the laboratory if the physician bills for such a service. The total reimbursement may not exceed the rate of payment which the State uses for purchasing such services.

(c) The State will assure that it can support the rate of payment it uses. The

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State shall also be responsible for monitoring and overseeing the rate of payment it uses to ensure compliance with paragraphs (a) and (b) of this section.

§ 416.919m Diagnostic tests or procedures.

We will request the results of any diagnostic tests or procedures that have been performed as part of a workup by your treating physician or psychologist or other medical source and will use the results to help us evaluate impairment severity or prognosis. However, we will not order diagnostic tests or procedures that involve significant risk to you, such as myelograms, arteriograms, or cardiac catheterizations for the evaluation of disability under the Supplemental Security Income program. Also, a State agency medical consultant must approve the ordering of any diagnostic test or procedure when there is a chance it may involve significant risk. The responsibility for deciding whether to perform the examination rests with the consultative examining physician or psychologist.

§ 416.919n Informing the examining physician or psychologist of examination scheduling, report content, and signature requirements.

The physicians or psychologists who perform consultative examinations will have a good understanding of our disability programs and their evidentiary requirements. They will be made fully aware of their responsibilities and obligations regarding confidentiality as described in § 401.105(e). We will fully inform consulting physicians or psychologists at the time we first contact them, and at subsequent appropriate intervals, of the following obligations:

(a) In scheduling full consultative examinations, sufficient time should be allowed to permit the examining physician or psychologist to take a case history and perform the examination, including any needed tests. The following minimum scheduling intervals (i.e., time set aside for the individual, not the actual duration of the consultative examination) should be used.

(1) Comprehensive general medical examination—at least 30 minutes;

(2) Comprehensive musculoskeletal or neurological examination—at least 20 minutes;

(3) Comprehensive psychiatric examination—at least 40 minutes;

(4) Psychological examination—at least 60 minutes (Additional time may be required depending on types of psychological tests administered); and

(5) All others—at least 30 minutes, or in accordance with accepted medical practices.

We recognize that actual practice will dictate that some examinations may require longer scheduling intervals depending on the circumstances in a particular situation. We also recognize that these minimum intervals may have to be adjusted to allow for those claimants that do not attend their scheduled examination. The purpose of these minimum scheduling timeframes is to ensure that such examinations are complete and that sufficient time is made available to obtain the information needed to make an accurate determination in your case. State agencies will monitor the scheduling of examinations (through their normal consultative examination oversight activities) to ensure that any overscheduling is avoided, as overscheduling may lead to examinations that are not thorough.

(b) *Report content.* The reported results of your medical history, examination, requested laboratory findings, discussions and conclusions must conform to accepted professional standards and practices in the medical field for a complete and competent examination. The facts in a particular case and the information and findings already reported in the medical and other evidence of record will dictate the extent of detail needed in the consultative examination report for that case. Thus, the detail and format for reporting the results of a purchased examination will vary depending upon the type of examination or testing requested. The reporting of information will differ from one type of examination to another when the requested examination relates to the performance of tests such as ventilatory function tests, treadmill exercise tests, or audiological tests. The medical report must be complete enough to help us determine the nature, severity, and duration of the impairment, and residual functional capacity. The report should reflect your statements of your symptoms, not simply the physician's or psychologist's statements or conclusions. The examining physician's or psychologist's report of the consultative examination should include the objective medical facts as well as observations and opinions.

(c) *Elements of a complete consultative examination.* A complete consultative examination is one which involves all the elements of a standard examination in the applicable medical specialty. When the report of a complete consultative examination is involved, the report should include the following elements:

(1) Your major or chief complaint(s);

(2) A detailed description, within the area of specialty of the examination, of the history of your major complaint(s);

(3) A description, and disposition, of pertinent "positive" and "negative" detailed findings based on the history, examination and laboratory tests related to the major complaint(s), and any other abnormalities or lack thereof reported or found during examination or laboratory testing;

(4) The results of laboratory and other tests (e.g., X-rays) performed according to the requirements stated in the Listing of Impairments (see Appendix 1 of Subpart P of Part 404 of this Chapter);

(5) The diagnosis and prognosis for your impairment(s);

(6) A statement about what you can still do despite your impairment(s), unless the claim is based on statutory blindness. This statement should describe the opinion of the consultative physician or psychologist about your ability, despite your impairment(s), to do work-related activities such as sitting, standing, walking, lifting, carrying, handling objects, hearing, speaking, and traveling; and, in cases of mental impairment(s), the opinion of the consultative physician or psychologist about your ability to understand, to carry out and remember instructions, and to respond appropriately to supervision, coworkers and work pressures in a work setting; and

(7) In addition, the consultative physician or psychologist will consider, and provide some explanation or comment on, your major complaint(s) and any other abnormalities found during the history and examination or reported from the laboratory tests. The history, examination, evaluation of laboratory test results, and the conclusions will represent the information provided by the physician or psychologist who signs the report.

(d) *When a complete consultative examination is not required.* When the evidence we need does not require a complete consultative examination (for example, we need only a specific laboratory test result to complete the record), we may not require a report containing all of the elements in paragraph (c).

(e) *Signature requirements.* All consultative examination reports will be personally reviewed and signed by the physician or psychologist who actually performed the examination. This attests to the fact that the physician or psychologist doing the examination or testing is solely responsible for the

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(3) A description, and disposition, of pertinent "positive" and "negative" detailed findings based on the history, examination and laboratory tests related to the major complaint(s), and any other abnormalities or lack thereof reported or found during examination or laboratory testing;

(4) The results of laboratory and other tests (e.g., X-rays) performed according to the requirements stated in the Listing of Impairments (see Appendix 1 of Subpart P of Part 404 of this Chapter);

(5) The diagnosis and prognosis for your impairment(s);

(6) A statement about what you can still do despite your impairment(s), unless the claim is based on statutory blindness. This statement should describe the opinion of the consultative physician or psychologist about your ability, despite your impairment(s), to do work-related activities such as sitting, standing, walking, lifting, carrying, handling objects, hearing, speaking, and traveling; and, in cases of mental impairment(s), the opinion of the consultative physician or psychologist about your ability to understand, to carry out and remember instructions, and to respond appropriately to supervision, coworkers and work pressures in a work setting; and

(7) In addition, the consultative physician or psychologist will consider, and provide some explanation or comment on, your major complaint(s) and any other abnormalities found during the history and examination or reported from the laboratory tests. The history, examination, evaluation of laboratory test results, and the conclusions will represent the information provided by the physician or psychologist who signs the report.

(d) *When a complete consultative examination is not required.* When the evidence we need does not require a complete consultative examination (for example, we need only a specific laboratory test result to complete the record), we may not require a report containing all of the elements in paragraph (c).

(e) *Signature requirements.* All consultative examination reports will be personally reviewed and signed by the physician or psychologist who actually performed the examination. This attests to the fact that the physician or psychologist doing the examination or testing is solely responsible for the

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report contents and for the conclusions, explanations or comments provided with respect to the history, examination and evaluation of laboratory test results. The signature of the examining physician or psychologist on a report annotated "not proofed" or "dictated but not read" is not acceptable. A rubber stamp signature of a physician or psychologist or the physician's or psychologist's signature entered by any other person is not acceptable.

§ 416.919o When a properly signed consultative examination report has not been received.

If a consultative examination report is received unsigned or improperly signed we will take the following action.

(a) *When we will make determinations and decisions without a properly signed report.* We will make a determination or decision in the circumstances specified in paragraphs (a)(1) and (a)(2) of this section without waiting for a properly signed consultative examination report. After we have made the determination or decision, we will obtain a properly signed report and include it in the file unless the physician or psychologist who performed the original consultative examination has died.

(1) Continuous period of disability allowance with an onset date as alleged or earlier than alleged; or

(2) Continuance of disability.

(b) *When we will not make determinations and decisions without a properly signed report.* We will not use an unsigned or improperly signed consultative examination report to make the determinations or decisions specified in paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this section. When we need a properly signed consultative examination report to make these determinations or decisions, we must obtain such a report. If the signature of the physician or psychologist who performed the original examination cannot be obtained because the physician or psychologist is out of the country for an extended period of time, on an extended vacation, seriously ill, deceased, or for any other reason, the consultative examination will be rescheduled with another physician or psychologist.

(1) Denial; or

(2) Cessation; or

(3) Allowance of disability which has ended; or

(4) Allowance with an onset date later than the filing date.

§ 416.919p Reviewing reports of consultative examinations.

(a) We will review the report of the consultative examination to determine whether the specific information requested has been furnished. We will consider the following factors in reviewing the report:

(1) Whether the report provides evidence which serves as an adequate basis for decisionmaking in terms of the impairment it assesses;

(2) Whether the report is internally consistent; Whether all the diseases, impairments and complaints described in the history are adequately assessed and reported in the clinical findings; Whether the conclusions correlate the findings from your medical history, clinical examination and laboratory tests and explain all abnormalities;

(3) Whether the report is consistent with the other information available to us within the specialty of the examination requested; Whether the report fails to mention an important or relevant complaint within that specialty that is noted in other evidence in the file (e.g., your blindness in one eye, amputations, pain, alcoholism, depression);

(4) Whether this is an adequate report of examination as compared to standards set out in the course of a medical education; and

(5) Whether the report is properly signed.

(b) If the report is inadequate or incomplete, we will contact the examining consultative physician or psychologist, give an explanation of our evidentiary needs, and ask that the physician or psychologist furnish the missing information or prepare a revised report.

(c) With your permission, or where the examination discloses new diagnostic information or test results that reveal potentially life-threatening situations, we will refer the consultative examination report to your treating physician or psychologist. When we refer the consultative examination report to your treating physician or psychologist without your permission, we will notify you that we have done so.

(d) We will perform ongoing special management studies on the quality of consultative examinations purchased from major medical sources and the appropriateness of the examinations authorized.

(e) We will take steps to ensure that consultative examinations are scheduled only with medical sources who have access to the equipment required to provide an adequate assessment and record of the existence and level of severity of your alleged impairments.

§ 416.919q Conflict of interest.

All implications of possible conflict of interest between medical or psychological consultants and their medical or psychological practices will be avoided. Such consultants are not only those physicians and psychologists who work for us directly but are also those who do review and adjudication work in the State agencies. Physicians and psychologists who work for us directly as employees or under contract will not work concurrently for a State agency. Physicians and psychologists who do review work for us will not perform consultative examinations for us without our prior approval. In such situations, the physician or psychologist will disassociate himself or herself from further involvement in the case and will not participate in the evaluation, decision, or appeal actions. In addition, neither they, nor any member of their families, will acquire or maintain, either directly or indirectly, any financial interest in a medical partnership, corporation, or similar relationship in which consultative examinations are provided. Sometimes physicians and psychologists who do review work for us will have prior knowledge of a case; for example, when the claimant was a patient. Where this is so, the physician or psychologist will not participate in the review or determination of the case. This does not preclude the physician or psychologist from submitting medical evidence based on treatment or examination of the claimant.

Authorizing and Monitoring the Referral Process

§ 416.919s Authorizing and monitoring the consultative examination.

(a) Day-to-day responsibility for the consultative examination process rests with the State agencies that make disability determinations for us.

(b) The State agency will maintain a good working relationship with the medical community in order to recruit sufficient numbers of physicians and other providers of medical services to ensure ready availability of consultative examination providers.

(c) Consistent with Federal and State laws, the State agency administrator will work to achieve appropriate rates of payment for purchased medical services.

(d) Each State agency will be responsible for comprehensive oversight management of its consultative examination program, with special emphasis on key providers.

(e) A key consultative examination provider is a provider that meets at least one of the following conditions:

(1) Any consultative examination provider with an estimated annual billing to the Social Security and Supplemental Security Income programs of at least $100,000; or

(2) Any consultative examination provider with a practice of medicine, osteopathy, or psychology directed primarily towards evaluation examinations rather than the treatment of patients; or

(3) Any consultative examination provider that does not meet the above criteria, but is one of the top five consultative examination providers in the State by dollar volume, as evidenced by prior year data.

(f) State agencies have flexibility in managing their consultative examination programs, but at a minimum will provide:

(1) An ongoing active recruitment program for consultative examination providers;

(2) A process for orientation, training, and review of new consultative examination providers, with respect to SSA's program requirements involving consultative examination report content and not with respect to medical techniques;

(3) Procedures for control of scheduling consultative examinations;

(4) Procedures to ensure that close attention is given to specific evaluation issues involved in each case;

(5) Procedures to ensure that only required examinations and tests are authorized in accordance with the standards set forth in this subpart;

(6) Procedures for providing medical or supervisory approval for the authorization or purchase of consultative examinations and for additional tests or studies requested by consulting physicians and psychologists. This includes physician approval for the ordering of any diagnostic test or procedure where the question of significant risk to the claimant/beneficiary might be raised. See § 416.919m.

(7) procedures for the ongoing review of consultative examination results to ensure compliance with written guidelines;

(8) Procedures to encourage active participation by physicians and psychologists in the consultative examination oversight program;

(9) Procedures for handling complaints;

(10) Procedures for evaluating claimant reactions to key providers; and

(11) A program of systematic, onsite reviews of key providers that will include annual onsite reviews of such providers when claimants are present for examinations. This provision does not contemplate that such reviews will involve participation in the actual examinations but, rather, offer an opportunity to talk with claimants at the provider's site before and after the examination and to review the provider's overall operation.

(g) The State agencies will cooperate with us when we conduct monitoring activities in connection with their oversight management of their consultative examination programs.

Procedures To Monitor the Consultative Examination

§ 416.919t Consultative examination oversight.

(a) We will ensure that referrals for consultative examinations and purchases of consultative examinations are made in accordance with our policies. We will also monitor both the referral processes and the product of the consultative examinations obtained. This monitoring may include reviews by independent medical specialists under direct contract with SSA.

(b) Through our regional offices, we will undertake periodic comprehensive reviews of each State agency to evaluate each State's management of the consultative examination process. The review will involve visits to key providers, with State staff participating, including a program physician when the visit will deal with medical techniques or judgment, or factors that go to the core of medical professionalism.

(c) We will also perform ongoing special management studies of the quality of consultative examinations purchased from key providers and other sources and the appropriateness of the examinations authorized.

10. Section 416.920 is amended by revising paragraph (a) to read as follows:

§ 416.920 Evaluation of disability of adults, in general.

(a) *Steps in evaluating disability.* We consider all evidence in your case record when we make a determination or decision whether you are disabled. When you file a claim for Supplemental Security Income disability benefits and are age 18 or older, we use the following evaluation process. If you are doing substantial gainful activity, we will determine that you are not disabled. If you are not doing substantial gainful activity, we will first consider the effect of your physical or mental impairment; if you have more than one impairment, we will also consider the combined effect of your impairments. Your impairment(s) must be severe and meet the duration requirement before we can find you to be disabled. We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education, and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further. Once you have been found eligible for Supplemental Security Income benefits based on disability, we follow a somewhat different order of evaluation to determine whether your eligibility continues, as explained in § 416.994(f)(6).

* * * * *

11. Section 416.927 is revised to read as follows:

§ 416.927 Evaluating medical opinions about your impairment(s) or disability.

(a) *General.* (1) You can only be found disabled if you are unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. See § 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques. See § 416.908.

(2) Evidence that you submit or that we obtain may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions.

(b) *How we consider medical opinions.* In deciding whether you are disabled, we will always consider the medical opinions in your case record together with the rest of the relevant evidence we receive.

(c) *Making disability determinations.* After we review all of the evidence relevant to your claim, including medical opinions, we make findings about what the evidence shows.

(1) If all of the evidence we receive, including all medical opinion(s), is consistent, and there is sufficient evidence for us to decide whether you are disabled, we will make our

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* * * * *

11. Section 416.927 is revised to read as follows:

§ 416.927 Evaluating medical opinions about your impairment(s) or disability.

(a) *General.* (1) You can only be found disabled if you are unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. See § 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques. See § 416.908.

(2) Evidence that you submit or that we obtain may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of your impairment(s), includinq your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions.

(b) *How we consider medical opinions.* In deciding whether you are disabled, we will always consider the medical opinions in your case record together with the rest of the relevant evidence we receive.

(c) *Making disability determinations.* After we review all of the evidence relevant to your claim, including medical opinions, we make findings about what the evidence shows.

(1) If all of the evidence we receive, including all medical opinion(s), is consistent, and there is sufficient evidence for us to decide whether you are disabled, we will make our

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determination or decision based on that evidence.

(2) If any of the evidence in your case record, including any medical opinion(s), is inconsistent with other evidence or is internally inconsistent, we will weigh all of the evidence and see whether we can decide whether you are disabled based on the evidence we have.

(3) If the evidence is consistent but we do not have sufficient evidence to decide whether you are disabled, or, if after weighing the evidence we decide we cannot reach a conclusion about whether you are disabled, we will try to obtain additional evidence under the provisions of §§ 416.912 and 416.919 through 416.919h. We will request additional existing records, recontact your treating sources or any other examining sources, ask you to undergo a consultative examination at our expense, or ask you or others for more information. We will consider any additional evidence we receive together with the evidence we already have.

(4) When there are inconsistencies in the evidence that cannot be resolved, or when despite efforts to obtain additional evidence the evidence is not complete, we will make a determination or decision based on the evidence we have.

(d) *How we weigh medical opinions.* Regardless of its source, we will evaluate every medical opinion we receive. Unless we give a treating source's opinion controlling weight under paragraph (d)(2) of this section, we consider all of the following factors in deciding the weight we give to any medical opinion.

(1) *Examining relationship.* Generally, we give more weight to the opinion of a source who has examined you than to the opinion of a source who has not examined you.

(2) *Treatment relationship.* Generally, we give more weight to opinions from your treating sources, since these sources are likely to be the medical professionals most able to provide a detailed, longitudinal picture of your medical impairment(s) and may bring a unique perspective to the medical evidence that cannot be obtained from the objective medical findings alone or from reports of individual examinations, such as consultative examinations or brief hospitalizations. If we find that a treating source's opinion on the issue(s) of the nature and severity of your impairment(s) is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in your case record, we will give it controlling weight. When we do not give the treating source's opinion controlling weight, we apply the factors listed below, as well as the factors in paragraphs (d) (3) through (5) of this section in determining the weight to give the opinion. We will always give good reasons in our notice of determination or decision for the weight we give your treating source's opinion.

(i) Length of the treatment relationship and the frequency of examination. Generally, the longer a treating source has treated you and the more times you have been seen by a treating source, the more weight we will give to the source's medical opinion. When the treating source has seen you a number of times and long enough to have obtained a longitudinal picture of your impairment, we will give the source's opinion more weight than we would give it if it were from a nontreating source.

(ii) Nature and extent of the treatment relationship. Generally, the more knowledge a treating source has about your impairment(s) the more weight we will give to the source's medical opinion. We will look at the treatment the source has provided and at the kinds and extent of examinations and testing the source has performed or ordered from specialists and independent laboratories. For example, if your ophthalmologist notices that you have complained of neck pain during your eye examinations, we will consider his or her opinion with respect to your neck pain, but we will give it less weight than that of another physician who has treated you for the neck pain. When the treating source has reasonable knowledge of your impairment(s), we will give the source's opinion more weight than we would give it if it were from a nontreating source.

(3) *Supportability.* The more a medical source presents relevant evidence to support an opinion, particularly medical signs and laboratory findings, the more weight we will give that opinion. The better an explanation a source provides for an opinion, the more weight we will give that opinion. Furthermore, because nonexamining sources have no examining or treating relationship with you, the weight we will give their opinions will depend on the degree to which they provide supporting explanations for their opinions. We will evaluate the degree to which these opinions consider all of the pertinent evidence in your claim, including opinions of treating and other examining sources.

(4) *Consistency.* Generally, the more consistent an opinion is with the record as a whole, the more weight we will give to that opinion.

(5) *Specialization.* We generally give more weight to the opinion of a specialist about medical issues related to his or her area of specialty than to the opinion of a source who is not a specialist.

(6) *Other factors.* When we consider how much weight to give to a medical opinion, we will also consider any factors you or others bring to our attention, or of which we are aware, which tend to support or contradict the opinion.

(e) *Medical source opinions on issues reserved to the Secretary.*

(1) Opinions that you are disabled. We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled. A statement by a medical source that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled.

(2) Other opinions on issues reserved to the Secretary. We use medical sources, including your treating source, to provide evidence, including opinions, on the nature and severity of your impairment(s). Although we consider opinions from treating and examining sources on issues such as whether your impairment(s) meets or equals the requirements of any impairment(s) in the Listing of Impairments in Appendix 1 to subpart P of part 404 of this chapter, your residual functional capacity (see §§ 416.945 and 416.946), or the application of vocational factors, the final responsibility for deciding these issues is reserved to the Secretary. We will not give any special significance to the source of the opinion on these issues.

(f) *Opinions of nonexamining medical and psychological consultants and other nonexamining physicians and psychologists.* We consider all evidence from nonexamining physicians and psychologists to be opinion evidence. When we consider the opinions of nonexamining sources on the nature and severity of your impairments, we apply the rules set forth in paragraphs (a) through (e) of this section. In addition, the following rules apply to State agency medical and psychological consultants, and to medical advisors we consult in connection with administrative law judge hearings and Appeals Council review.

(1) At the initial and reconsideration steps in the administrative review process, except in disability hearings, State agency medical and psychological

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consultants are members of the teams that make the determinations of disability. A State agency medical or psychological consultant will consider the evidence in your case record and make findings of fact about the medical issues, including, but not limited to, the existence and severity of your impairment(s), the existence and severity of your symptoms, whether your impairment(s) meets or equals the requirements for any impairment listed in Appendix 1 to subpart P of part 404 of this chapter, and your residual functional capacity. These administrative findings of fact are based on the evidence in your case record but are not themselves evidence at these steps.

(2) Administrative law judges are responsible for reviewing the evidence and making findings of fact and conclusions of law. Administrative law judges are not bound by any findings made by State agency medical or psychological consultants. However, these findings are considered at the hearing level. See § 416.912(b)(6). When administrative law judges consider these findings, they will evaluate them using the rules set forth in paragraphs (a) through (e) of this section. Also, administrative law judges may ask for and consider the opinions of medical advisors on the nature and severity of your impairment(s) and whether your impairment(s) equals the requirements of any listed impairment in appendix 1 to subpart P of part 404 of this chapter.

(3) When the Appeals Council makes a decision, it will follow the same rules for considering opinion evidence as administrative law judges follow.

12. Section 416.945 is amended by revising paragraph (a) to read as follows:

§ 416.945 Your residual functional capacity.

(a) *General.* Your impairment(s) may cause physical and mental limitations that affect what you can do in a work setting. Your residual functional capacity is what you can still do despite your limitations. If you have more than one impairment, we will consider all of your impairments of which we are aware. We consider your capacity for various functions as described in paragraphs (b) physical abilities; (c) mental impairments; and (d) other impairments of this section. A residual functional capacity assessment may include descriptions (including your own) of limitations that go beyond the symptoms that are important in the diagnosis and treatment of your medical condition. Observations of your work limitations, in addition to those usually made during formal medical examinations, may also be used. These descriptions and observations, when used, must be considered along with the rest of your medical record to enable us to decide to what extent your impairment(s) keeps you from performing particular work activities. This assessment of your remaining capacity for work is not a decision on whether you are disabled, but is used as the basis for determining the particular types of work you may be able to do despite your impairment(s). Then, using the guidelines in §§ 416.960 through 416.969, your vocational background is considered along with your residual functional capacity in arriving at a disability determination or decision. In deciding whether disability continues or ends, the residual functional capacity assessment may also be used to determine whether any medical improvement you have experienced is related to your ability to work as discussed in § 416.994.

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13. Section 416.946 is revised to read as follows:

§ 416.946 Responsibility for assessing and determining residual functional capacity.

The State agency staff medical or psychological consultants or other medical or psychological consultants designated by the Secretary are responsible for ensuring that the State agency makes a decision about your residual functional capacity. In cases where the State agency makes the disability determination, a State agency staff medical or psychological consultant must assess residual functional capacity where it is required. This assessment is based on all of the evidence we have, including any statements regarding what you can still do that have been provided by treating or examining physicians, consultative physicians, or any other medical or psychological consultant designated by the Secretary. See § 416.945. For cases in the disability hearing process, the responsibility for deciding your residual functional capacity rests with either the disability hearing officer or, if the disability hearing officer's reconsidered determination is changed under § 416.918, with the Director of the Office of Disability Hearings or his or her delegate. For cases at the Administrative Law Judge hearing or Appeals Council level, the responsibility for deciding your residual functional capacity rests with the Administrative Law Judge or Appeals Council.

14. Section 416.993 is revised to read as follows:

§ 416.993 Medical evidence in continuing disability review cases.

(a) *General.* If you are entitled to benefits because you are disabled, we will have your case file with the supporting medical evidence previously used to establish or continue your entitlement. Generally, therefore, the medical evidence we will need for a continuing disability review will be that required to make a current determination or decision as to whether you are still disabled, as defined under the medical improvement review standard. See §§ 416.979 and 416.994.

(b) *Obtaining evidence from your medical sources.* You must provide us with reports from your physician, psychologist, or others who have treated or evaluated you, as well as any other evidence that will help us determine if you are still disabled. See § 416.912. You must have a good reason for not giving us this information or we may find that your disability has ended. See § 416.994(e)(2). If we ask you, you must contact your medical sources to help us get the medical reports. We will make every reasonable effort to help you in getting medical reports when you give us permission to request them from your physician, psychologist, or other medical sources. See § 416.912(d)(1) concerning what we mean by every reasonable effort. In some instances, such as when a source is known to be unable to provide certain tests or procedures or is known to be nonproductive or uncooperative, we may order a consultative examination while awaiting receipt of medical source evidence. Before deciding that your disability has ended, we will develop a complete medical history covering at least the 12 months preceding the date you sign a report about your continuing disability status. See § 416.912(c).

(c) *When we will purchase a consultative examination.* A consultative examination may be purchased when we need additional evidence to determine whether or not your disability continues. As a result, we may ask you, upon our request and reasonable notice, to undergo consultative examinations and tests to help us determine if you are still disabled. See § 416.917. We will decide whether or not to purchase a consultative examination in accordance with the standards in §§ 416.919a through 416.919b.

[FR Doc. 91-17966 Filed 7-31-91; 8:45 am]

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[FR Doc. 91-17986 Filed 7-31-91; 8:45 am]

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federal register

Thursday
August 1, 1991

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 21 and 36
Primary Category Aircraft; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 36

[Docket No. 23345; Notice No. 89–7]

RIN 2120–AB53

Primary Category Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental Notice of Proposed Rulemaking (SNPRM).

SUMMARY: This supplemental notice corrects statements made in Notice No. 89–7, concerning the applicability of noise standards for airplanes in the proposed category of primary aircraft. Contrary to what was stated in the notice, existing noise standards would be applicable to primary category airplanes, primary category-light airplanes and helicopters. It was not the intention of the FAA to imply that certification in the primary category constitutes a waiver of these noise requirements. The FAA seeks additional comments from the public on amended language to clarify the application of noise standards to the proposed new categories of aircraft.

DATES: Comments must be submitted on or before September 30, 1991.

ADDRESSES: Comments on this notice should be mailed in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–10), Docket No. 23345, 800 Independence Ave. SW., Washington, DC 20591. Comments delivered must be marked Docket No. 23345. Comments may be examined in Room 915G weekdays between 8:30 a.m. and 5 p.m. except Federal holidays.

FOR FURTHER INFORMATION CONTACT: T. Lynn Brown, Aircraft Engineering Division, (AIR–110), Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, Telephone (202) 267–9589.

SUPPLEMENTARY INFORMATION:

Comments Invited

This supplemental notice modifies Notice 89–7, primary Category Aircraft (54 FR 9738, March 7, 1989). Comments on the effect of this change on the proposed rules are invited. Comments should be limited to the changes proposed in this document. This notice does not serve to reopen the comment period on the remainder of the original primary category proposal. Interested persons are invited to comment on any portion of this supplemental notice by submitting written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adopting the proposals as modified in this document are also invited. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking further rulemaking action. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this proposed rule must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to Docket No. 23345." The postcard will be date stamped and mailed to the commenter.

Availability of SNPRM

Any person may obtain a copy of this SNPRM by submitting a request to the Federal Aviation Administration Office of Public Affairs, Attention: Public Inquiry Center (APA–200), 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this SNPRM.

Persons interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

On March 7, 1989, the FAA published Notice No. 89–7 (Primary Category Aircraft), which proposed the adoption of a new category of aircraft to be known as "primary category" aircraft. Such aircraft would be of simple design intended for pleasure and personal use only. The aircraft (airplanes, gliders, rotorcraft, manned free balloons, etc.) would be unpowered or powered by a single, naturally aspirated engine having a certificated takeoff rating of 200 shaft horsepower or less, a maximum weight of 2,500 pounds or less, and would have unpressurized cabins. The NPRM also discussed proposals for type, production, and airworthiness certification standards and procedures that would be simpler than those currently contained in Federal Aviation Regulations (FAR) Parts 21, 23, and 27 and that are applicable to aircraft of this size and type.

As proposed, the rule would not require type or airworthiness certification of ultralight vehicles, as defined in the FAR, but it would permit certification as "primary category-light" as an option for aircraft currently classified as powered ultralights and "growth versions" of ultralights having a maximum certificated weight of 1,000 pounds or less. The proposed rules would also permit certain aircraft currently certificated in the standard (normal, utility, or acrobatic) category to be converted to the primary category.

In the Supplementary Information section of Notice No. 89–7, it was incorrectly stated that within the primary category, only small propeller-driven airplanes would be subject to the noise requirements of FAR Part 36. This supplemental notice is intended to clarify that, as proposed, helicopters in this category would also be subject to the noise restrictions.

Discussion

Effective February 5, 1988, FAR part 36 was amended (53 FR 3534, February 5, 1988) to add Appendix H, Noise Standards for Helicopters in the Normal, Transport, and Restricted Categories, applicable to helicopters for which application for type certification was made on or after March 6, 1986. Effective December 22, 1988, FAR Part 36 was further amended (53 FR 47394, November 22, 1988) to add a new Appendix G, Noise Certification Standards for Propeller-Driven Small Airplanes, applicable to aircraft for which certification tests were not completed before December 22, 1988. Appendix G contains new noise testing procedures to be used in all certification tests after December 22, 1988, although the stringency of the actual noise limits to be met was not substantially affected.

The effect of these two amendments was overlooked when the FAA issued the primary category NPRM. In addition, the requirements of section 611 of the Federal Aviation Act of 1958 (FA Act), which apply to all type certificated aircraft, may affect the procedures used to certify these aircraft, as discussed in more detail later in this preamble.

Part 36 Requirements

As proposed, primary category aircraft would be subject to part 36, as follows:

Rotorcraft

Helicopters certificated in the primary category would be required to demonstrate compliance with the noise standards and testing procedures in appendix H to part 36. Rotorcraft other than helicopters are not subject to noise requirements at this time.

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In the Supplementary Information section of Notice No. 89–7, it was incorrectly stated that within the primary category, only small propeller-driven airplanes would be subject to the noise requirements of FAR Part 36. This supplemental notice is intended to clarify that, as proposed, helicopters in this category would also be subject to the noise restrictions.

Discussion

Effective February 5, 1988, FAR part 36 was amended (53 FR 3534, February 5, 1988) to add Appendix H, Noise Standards for Helicopters in the Normal, Transport, and Restricted Categories, applicable to helicopters for which application for type certification was made on or after March 6, 1986. Effective December 22, 1988, FAR Part 36 was further amended (53 FR 47394, November 22, 1988) to add a new Appendix G, Noise Certification Standards for Propeller-Driven Small Airplanes, applicable to aircraft for which certification tests were not completed before December 22, 1988. Appendix G contains new noise testing procedures to be used in all certification tests after December 22, 1988, although the stringency of the actual noise limits to be met was not substantially affected.

The effect of these two amendments was overlooked when the FAA issued the primary category NPRM. In addition, the requirements of section 611 of the Federal Aviation Act of 1958 (FA Act), which apply to all type certificated aircraft, may affect the procedures used to certify these aircraft, as discussed in more detail later in this preamble.

Part 36 Requirements

As proposed, primary category aircraft would be subject to part 36, as follows:

Rotorcraft

Helicopters certificated in the primary category would be required to demonstrate compliance with the noise standards and testing procedures in appendix H to part 36. Rotorcraft other than helicopters are not subject to noise requirements at this time.

Propeller-Driven Airplanes

Primary category propeller-driven airplanes would be required to meet the requirements of appendix G to part 36. As discussed below, however, this would not apply to aircraft that had been certificated previously in the standard category, had already demonstrated compliance with appendix F or G, and are being converted to primary category.

Ultralights

Ultralights, as defined in part 103 of the FAR, are not currently subject to the noise requirements of either part 36 or section 611 of the FA Act. However, persons choosing to certificate their ultralight vehicles in the primary category would also be required to comply with appendix G.

Aircraft Previously Certificated in the Standard Category

The FAA proposes that aircraft previously certificated in the standard (normal, utility, or acrobatic) category that have shown compliance with the applicable requirements of part 36 (appendix F, G, or H) would not be required to re-demonstrate compliance with part 36 when seeking conversion to the primary category. However, aircraft seeking conversion that also undergo acoustical changes as defined in parts 21 and 36 would be required to comply with appendix G or H as applicable. Moreover, conversions to primary category for helicopters that were type certificated before appendix H became effective would be required to meet appendix H. Helicopters require treatment that differs from the treatment for part 23 airplanes because no part 36 noise control standards existed for helicopters prior to adoption of appendix H.

The FAA is required to develop and apply noise control standards to all civil aircraft. These standards are set out in 14 CFR part 36. Accordingly, aircraft seeking certification under primary category would be required to comply with the standards of Part 36; and the cost of such compliance must be considered in evaluating the proposed rule.

Noise Control Requirements of the FA Act

The Noise Control Act of 1972 amended section 611 of the FA Act to require the FAA, before issuing an original type certificate, to determine whether substantial noise abatement can be achieved by prescribing standards and regulations, unless standards and regulations for that aircraft already exist. In making this determination, the FAA is required to consider, among other issues, whether any proposed standard or regulation would be economically reasonable, technologically practicable, and appropriate for the particular type of aircraft. The Noise Control Act applies to all aircraft except ultralights and aircraft with experimental certificates, neither of which are subject to type certification.

Supplemental Regulatory Evaluation Summary

The FAA has considered the economic impact of this proposed modification of Notice 89–7, Primary Category Aircraft. Helicopters certificated under the proposed regulations would be subject to the noise standards and testing procedures in appendix H to part 36, regardless of any statement to the contrary in FAA's Notice 89–7. The FAA is required to apply these noise standards to all civil aircraft. Thus, any incremental costs resulting from the imposition of these noise standards to rotorcraft certificated under the proposed Primary Category Aircraft regulations would be attributable to part 36 rather than to the proposed rule.

Executive Order 12291 dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if the potential benefits to society from the regulatory changes outweigh the potential costs that would be imposed on society. In response to this requirement, the FAA normally performs a benefit/cost analysis of each proposed and final change to the FAR. In the case of this supplemental notice, however, the FAA has determined that a benefit/cost analysis is unwarranted because the proposal merely corrects and clarifies Notice 89–7 to make it consistent with FAR part 36.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 was enacted to ensure that small entities are not unnecessarily or disproportionately burdened by Government regulations. The Act requires that a Regulatory Flexibility Analysis be conducted if a rule will have a significant economic impact, either detrimental or beneficial, on a significant number of small business entities. The proposed modification of Notice 89–7 will neither eliminate any present regulations or impose any new regulations and, thus, will not have a significant economic impact on a substantial number of small entities. Consequently, the FAA has determined that, under the criteria of the Regulatory Flexibility Act of 1980, a regulatory flexibility analysis of this supplemental notice of proposed rulemaking is not required.

International Trade Impact Assessment

The proposed modification of Notice 89–7 will neither eliminate any present regulations or impose any new ones. As a result, affected manufacturers and operators will not incur additional costs or realize significant savings. Thus, the proposed modification of Notice 89–7 will not have any impact on trade opportunities for either U.S. firms doing business overseas or foreign firms doing business in the United States.

Federalism Implications

The revised regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

This supplemental NPRM clarifies the original Notice for primary category aircraft. For the reasons discussed in the preamble to the previous Notice and the preamble to this supplemental Notice, and based on the findings in the Regulatory Flexibility determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291. In addition, it is certified that Notice No. 89–7, as corrected by this Notice, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal, including this supplemental Notice, is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). A draft regulatory evaluation of the proposal, including a supplement relating to the corrections in this notice, has been placed in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

List of Subjects

14 CFR Part 21

Aircraft, Aviation safety.

14 CFR Part 36

Aircraft, Noise control.

The Proposed Amendments

In consideration of the foregoing, the Federal Aviation Administration amends Notice No. 89-7, Primary Category Aircraft NPRM (54 FR 9738, March 7, 1989) as follows:

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

1. The authority citation for part 21 is revised to read as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g).

2. Proposed § 21.17 is amended by revising paragraph (f)(2) to read as follows:

§ 21.17 Designation of applicable regulations.

* * * * *

(f) * * *

(2) The noise standards of part 36 applicable to primary category aircraft.

3. Proposed § 21.184 is amended by revising paragraph (f) to read as follows:

§ 21.184 Issue of special airworthiness certificates for primary category aircraft.

* * * * *

(f) For all primary category aircraft (except for airplanes that are designed for "agricultural aircraft operations" as defined in § 137.3 of this chapter), no special airworthiness certificate is originally issued under this section unless the applicant shows that the type design complies with the applicable airworthiness requirements in this section and the applicable noise requirements of part 36 as follows:

(1) Primary category helicopters, including helicopters that were previously certificated in the standard (normal) category and are being converted to the primary category, must be shown to comply with the requirements of appendix H to part 36.

(2) Primary category propeller-driven airplanes must be shown to comply with the requirements of appendix G to part 36, unless previously certificated under appendix F in the standard (normal, utility, or acrobatic) category.

(3) Primary category-light aircraft must comply with the applicable requirements of appendix G or H to part 36.

PART 36—NOISE STANDARDS: AIRCRAFT TYPE AND AIRWORTHINESS CERTIFICATION

4. The authority citation for part 36 is revised to read as follows:

Authority: 49 U.S.C. 1344, 1348, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430, 1431(b), 1651(b)(2), 2121 through 2125; 42 U.S.C. 4321 et seq.; Sec. 124 of Pub. L. 98–473, E.O. 11514; 49 U.S.C. 106(g).

§ 36.9 [Amended]

5. The introductory paragraph of § 36.9 is amended by adding "primary and primary light," before the word "normal,".

§ 36.11 [Amended]

6. The introductory paragraph of § 36.11 is amended by adding "primary and primary light," before the word "normal,".

7. The proposed revision to § 36.501(a)(1) contained in the previous NPRM Notice 89–7 is withdrawn; and a new paragraph (a)(3) is added to read as follows:

§ 36.501 Noise limits.

(a) * * *

(3) Airplanes in the primary category, as follows:

(i) For all primary category airplanes not previously certificated under appendix F in the standard (normal, utility, or acrobatic) category, compliance must be shown as prescribed in appendix G.

(ii) For all primary category-light aircraft, compliance must be shown with appendix G or appendix H, as applicable.

§ 36.801 [Amended]

8. Section 36.801 is amended by adding "primary and primary-light," before the word "normal,".

§ 36.805 [Amended]

9. Section 36.805(a) is amended by adding "primary and primary-light," before the word "normal,"

Issued in Washington, DC, on July 26, 1991.

Thomas E. McSweeny,

Acting Director, Aircraft Certification Service.

[FR Doc. 91–18165 Filed 7–26–91; 4:39 pm]

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Acting Director, Aircraft Certification Service.

[FR Doc. 91–18165 Filed 7–26–91; 4:39 pm]

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federal register

Thursday
August 1, 1991

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 21, 36, 43, 91, 141, and 147

Primary Category Aircraft; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

14 CFR Parts 21, 36, 43, 91, 141, and 147

[Docket No. 23345; Notice No. 89-7A]

RIN 2120-AB53

Primary Category Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: This document reopens the comment period for Notice of Proposed Rulemaking (NPRM) No. 89-7, Primary Category Aircraft. In that notice, the FAA proposed a new category of aircraft, primary category aircraft, and simplified procedures for type, production, and airworthiness certification and associated maintenance procedures for those aircraft. After the close of the comment period, representatives of the Experimental Aircraft Association (EAA) submitted additional comments. This document summarizes those comments and reopens the comment period to afford all interested persons an opportunity to comment on those issues addressed by the EAA.

DATES: Comments must be received on or before September 30, 1991.

ADDRESSES: Comments on this notice should be mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 23345, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked Docket No. 23345. Comments may be examined in room 915G weekdays between 8:30 a.m. and 5 p.m. except Federal holidays.

FOR FURTHER INFORMATION CONTACT: T. Lynn Brown, Aircraft Engineering Division, (AIR-110), Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, Telephone (202) 267-9589.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on any portion of this notice, including the environmental, energy, or economic impact that might result from adopting the proposals. Comments should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking further rulemaking action. Anyone wishing the FAA to acknowledge receipt of their comments submitted in response to this proposed rule, must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to Docket No. 23345." The postcard will be date stamped and mailed to the commenter.

Availability of NPRM

Any person may obtain a copy of this notice and Notice No. 89-7 by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center (APA-200), 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the appropriate notice numbers.

Persons interested in being placed on the mailing list for future NPRM's should request from the above office, a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

On March 7, 1989, the FAA issued Notice No. 89-7 (54 FR 9738), proposing the adoption of a new category of aircraft to be known as primary category aircraft, which would be of simple design and intended for pleasure and personal use only. As described in the notice, primary category aircraft (airplanes, gliders, rotorcraft, manned free balloons, etc.) would be unpowered or powered by a single naturally-aspirated engine having a certificated takeoff rating of 200 shaft horsepower or less, would have a maximum weight of 2,500 pounds or less, and would have an unpressurized cabin. The notice proposed to permit pilot-owners of primary category aircraft to do certain maintenance procedures, including inspections, on their own aircraft after receiving the appropriate training. The notice also proposed to permit the conversion of aircraft that are within the primary category engine and weight limits from standard category to primary category. The notice proposed to allow the use of primary category aircraft (excluding primary category-light aircraft) for pilot training, and to prohibit the use of all primary category aircraft for compensation or hire. The notice contained other proposals which are not addressed by this reopening of the comment period.

The proposed rules were promulgated in response to a 1984 petition for rulemaking submitted jointly by the Experimental Aircraft Association (EAA) and the Aircraft Owners and Pilots Association (AOPA). The petitioners, citing a decline in the general aviation industry in the United States, urged the establishment of standards and procedures that would encourage the production of affordable aircraft suitable for general aviation use.

The comment period for Notice No. 89-7 closed on September 7, 1989. In February 1990, the EAA requested a meeting with the FAA to discuss and revise its comments concerning primary category aircraft maintenance, the parameters used to identify a primary category aircraft, the rental of primary category aircraft, and the use of those aircraft for pilot training. The EAA stated that there had been significant developments in the general aviation industry since the date of its original petition in 1984. Specifically, the EAA pointed out that many small aircraft manufacturers had gone out of business since 1984. The EAA also stated that kit manufacturers would not want to begin large-scale production of primary category aircraft if the rules were adopted as proposed.

Because of the higher cost of already assembled kit aircraft, kit manufacturers believe that the major domestic market will be limited to fixed-base operators (FBO's) and flying clubs, not individuals. Also, the EAA reports that kit manufacturers export 36.5% of their total production and that kit manufacturers believe this percentage would continue for already assembled kit aircraft. However, other Civil Airworthiness Authorities might not accept already assembled primary category aircraft into their respective countries because the aircraft would not meet International Civil Aviation Organization Annex 8 requirements which compel the State's certification authority to set aircraft airworthiness standards, and no airworthiness standard is envisioned for primary category aircraft. Consequently, the EAA wished to submit additional comments based on its re-evaluation of the proposed rules. A summary of this meeting has been placed in Docket No. 23345. Following the meeting, the FAA received additional written comments from the EAA, which have also been placed in the docket.

The FAA has determined that the EAA's comments and recommended changes merit consideration. Accordingly, the FAA is reopening the comment period to give all interested parties an opportunity to review the EAA's comments and respond by submitting additional comments.

The EAA recommends changing the criteria for primary category aircraft

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The EAA recommends changing the criteria for primary category aircraft

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from a maximum certificated weight of 2,500 pounds and a single, naturally-aspirated engine with a certificated takeoff rating of 200 shaft horsepower or less, to a maximum weight of 2,700 pounds and a stall speed of 61 knots or less (or in rotorcraft, a 6-pound per square foot disc loading). According to the EAA, the increased weight would permit manufacturers to produce a four-place aircraft with sufficient performance to operate in high-density altitude conditions. The EAA now recommends a stall speed limitation instead of an engine horsepower limit because stall speed would better define airplane performance and the airplane's landing speed in the event of a power failure. The EAA believes that, for the last 50 years, the 61-knot stall speed limitation in Part 23 has established acceptable levels of single-engine airplane performance for safe operation by general aviation pilots. Therefore, the EAA desires to use a stall speed limitation to establish performance criteria for primary category aircraft. The EAA believes that a 61-knot stall speed limitation will require the aircraft designer to define the wing area, wing loading, aircraft size, landing gear design, and powerplant horsepower and size. The EAA believes that stall speed limitations govern aircraft performance more accurately than engine horsepower limitations. The EAA also stated that a rotorcraft 6-pound per square foot disc loading limitation similarly restricts rotorcraft performance but did not provide any rationale for this belief. The FAA seeks comments on these issues.

The proposed rules do not permit primary category aircraft to be used for compensation or hire, or to train new pilots. The proposed rules allow aeronautical experience, including flight instruction, obtained while operating a primary category aircraft (excluding primary category-light aircraft) to be credited toward pilot certificate and rating requirements in accordance with part 61. However, aircraft used for training by Part 141 pilot schools would still be required to have standard category airworthiness certificates.

The EAA urges that the proposed rules be modified to permit rental for pilot training and personal use, noting that the number of standard category training aircraft available has decreased dramatically since the time of its original petition. The EAA asserts that rental for personal use would open a substantial market with FBO's. The FAA welcomes additional comments on this issue.

The petitioner continues to support the proposal that would permit pilot-owners, after appropriate training, to perform certain maintenance and inspection functions on their own aircraft, and to allow the conversion from standard category aircraft to primary category aircraft as a means to extend this maintenance privilege. The petitioner recommends that those aircraft used for rental or pilot training be maintained only by certificated mechanics or repair stations. However, the petitioner recommends that the proposal should be modified to state that these rental or pilot training aircraft maintenance requirements should not apply to those primary category aircraft, maintained by the pilot-owner, that would be used in providing limited "checkouts" for other pilots. Additional comments on this subject are also invited.

The FAA also requests public comment on any economic impact that these changes would have. The FAA requests that detailed data on costs and benefits of these changes be submitted.

Reopening of Comment Period

Department of Transportation (DOT) policy encourages full public participation in the development of rules. Therefore, the FAA is providing the public an equal opportunity to present their views. DOT policy also provides that the general public should be afforded adequate knowledge of contacts made with individual members of the public at all times between the issuance of an NPRM and the issuance of any final rule or other disposition. Since the EAA was afforded the opportunity to revise its original proposal, the FAA has determined that it is necessary to reopen the comment period for Notice No. 89–7. This reopening provides that all interested persons are afforded an equal opportunity to comment specifically on the EAA proposals.

Conclusion

This document reopens the comment period on Notice 89–7, Primary Category Aircraft. The FAA requests comments on the following proposed changes to Notice 89–7.

(1) A change in the maximum weight criteria from 2500 to 2700 pounds.

(2) Replacement of the 200-horsepower engine limitation with a 61-knot stall speed limitation for airplanes and a 6-pound per square foot limitation for rotorcraft.

(3) Allow the use of primary category aircraft for primary pilot training and for rental if the aircraft is maintained by an FAA certificated mechanic or repair station.

(4) Allow the use of primary category aircraft that are maintained by the pilot-owner, rather than an FAA certificated mechanic or repair station, to provide limited "checkouts" for other pilots.

The FAA has determined that this document, like Notice No. 89–7, is not major under Executive Order 12291 but, because of substantial public interest, is significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). In addition, it is certified that reopening the docket for Notice No. 89–7 will not have a significant economic impact, positive or negative, on a substantial number of small entities. Because the economic impact of this document is minimal, a full regulatory evaluation is not required.

Issued in Washington, DC on July 26, 1991.

Thomas E. McSweeny,

Acting Director, Aircraft Certification Service.

[FR Doc. 91–18164 Filed 7–26–91; 4:39 pm]

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Part VI

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 201, 203, 234

Revisions to FHA Maximum Loan and Mortgage Limits for High Cost Areas; Rule

VOL 56 ISS 148 AG 1 1991 UMI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 201, 203, and 234

[Docket No. N-91-3291; FR-3069-N-01]

Loan and Mortgage Insurance; Changes to the Maximum Loan and Mortgage Limits for Single Family Residences, Condominiums and Manufactured Homes and Lots

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of revisions to FHA maximum loan and mortgage limits for high-cost areas.

SUMMARY: This Notice is the annual complete listing of areas eligible for "high-cost" loan and mortgage limits under certain of HUD's insuring authorities under the National Housing Act and each area's applicable limits. Loan and mortgage limits are adjusted in an area when the Secretary determines that middle- and moderate-income persons have limited housing sales prices.

EFFECTIVE DATE: August 1, 1991.

FOR FURTHER INFORMATION CONTACT: For single family: Morris Carter, Director, Single Family Development Division, Room 9272; telephone (202) 708–2700. For manufactured homes: Robert J. Coyle, Director, Title I Insurance Division, room 9158; telephone (202) 708–2880; 451 Seventh Street, SW., Washington, DC 20410. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

The National Housing Act (NHA), 12 U.S.C. 1710–1749, authorizes HUD to insure loans and mortgages for single family residences (from one- to four-family structures), condominiums, manufactured homes, manufactured home lots, and manufactured homes and lots in combination. The NHA, as amended by the Housing and Community Development Amendments of 1980 and the Housing and Community Development Amendments of 1981, permits HUD to increase the maximum loan and mortgage limits under most of these programs to reflect regional differences in the cost of housing. In addition section 214 of the NHA provides for special high-cost limits for insured mortgages in Alaska, Guam Hawaii, and the Virgin Islands.

The last comprehensive list of high-cost areas was published on January 12, 1990 (55 FR 1312) listing all areas eligible for "high-cost" loan and mortgage limits under certain of HUD's insuring authorities under the National Housing Act, and the applicable limits for each area. Amendments to the annual listing were published on March 8, 1990 (55 FR 8464), June 14, 1990 (55 FR 24075), September 12, 1990 (55 FR 37462), April 5, 1991 (56 FR 14021), and May 14, 1991 (56 FR 22114).

This Document

In this document, the Department publishes its entire list of high-cost areas with applicable mortgage limits. This document incorporates the changes published on March 8, 1990 (55 FR 8464), June 14, 1990 (55 FR 24075), September 12, 1990 (55 FR 37462), April 5, 1991 (56 FR 14021), and May 14, 1991 (56 FR 22114), as well as new and increased limits announced for the first time in this document.

This document adds the following new areas, with applicable limits, to the high-cost list:

New Areas

Gadsen, AL MSA
Houston County, AL
Fayetteville-Springdale, AR MSA
Albany, GA MSA
Dawson County, GA
Springfield, IL MSA
Anderson, IN MSA
Owensboro, KY MSA
Lafayette, LA MSA
Duluth, MN MSA
St. Joseph, MO MSA
Springfield, MO MSA
Mansfield, OH MSA
Steubenville-Weirton, OH MSA
Toledo, OH MSA
Lawton, OK MSA
Erie County, PA MSA
Johnstown, PA MSA
Williamsport, PA MSA
El Paso, TX MSA

This document also revises the existing limits for the following areas.

Revised Areas

Anniston, AL MSA
Birmingham, AL MSA
Huntsville, AL MSA
Mobile, AL MSA
Tuscaloosa, AL MSA
Tucson, AZ MSA
Amadore County, CA
Bakersfield, CA MSA
Chico, CA MSA
Fresno, CA MSA
Modesto, CA MSA
Redding, CA MSA
Merced County, CA
Stockton, CA MSA
Colorado Springs, CO MSA
Greeley, CO MSA
Kent County, DE
Wilmington, DE–MD–NJ MSA
Bradenton, FL MSA
Gainesville, FL MSA
Lakeland-Winter Haven, FL MSA
Tallahassee, FL MSA
Augusta, GA–SC MSA
Hall County, GA
Macon-Warner Robins, GA MSA
Savannah, GA MSA
State of Hawaii
Aurora-Elgin, IL MSA
Champaign-Urbana-Rantoul, IL MSA
Chicago, IL MSA
Joliet, IL MSA
Bloomington, IN MSA
Fort Wayne, IN MSA
Indianapolis, IN MSA
Davenport-Rock Island-Moline, IA–IL MSA
Dubuque, IA MSA
Lawrence, KS MSA
Topeka, KS MSA
Alexandria, LA MSA
Lake Charles, LA MSA
Portland, ME MSA
Hagerstown, MD MSA
Detroit, MI MSA
Grand Rapids, MI MSA
Kalamazoo, MI MSA
Lansing-East Lansing, MI MSA
Rochester, MN MSA
Billings, MT MSA
Great Falls, MT MSA
Las Vegas, NV MSA
Reno, NV MSA
Douglas County, NV
Vineland-Millville-Bridgeton, NJ MSA
Albuquerque, NM MSA
Orange County, NY MSA
Rochester, NY MSA
Burlington, NC MSA
Charlotte-Gastonia-Rock Hill, NC–SC MSA
Fayetteville, NC MSA
Raleigh-Durham, NC MSA
Wilmington, NC MSA
Akron, OH MSA
Canton, OH MSA
Cincinnati-Hamilton, OH–KY–IN, MSA
Cleveland, OH MSA
Dayton-Springfield, OH MSA
Lima, OH MSA
Lorain-Elyria, OH MSA
Eugene-Springfield, OR MSA
Medford, OR MSA
Allentown-Bethlehem, PA MSA
Franklin County, PA
Lancaster, PA MSA
Pittsburgh, PA MSA
Reading, PA MSA
York, PA MSA
Columbia, SC MSA
Knoxville, TN MSA
Abilene, TX MSA
Beaumont-Port Arthur, TX MSA
Bryan-College Station, TX MSA
Galveston-Texas City, TX MSA
San Angelo, TX MSA
Tyler, TX MSA
Waco, TX MSA
Provo-Orem, UT MSA
Salt Lake City-Ogden, UT MSA
Burlington, VT MSA
Charlottesville, VA MSA
Norfolk-VA Beach-Newport News, VA MSA
King William County, VA
Shenandoah County, VA
Bremerton, WA MSA

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MSA

Bradenton, FL MSA
Gainesville, FL MSA
Lakeland-Winter Haven, FL MSA
Tallahassee, FL MSA
Augusta, GA–SC MSA
Hall County, GA
Macon-Warner Robins, GA MSA
Savannah, GA MSA
State of Hawaii
Aurora-Elgin, IL MSA
Champaign-Urbana-Rantoul, IL MSA
Chicago, IL MSA
Joliet, IL MSA
Bloomington, IN MSA
Fort Wayne, IN MSA
Indianapolis, IN MSA
Davenport-Rock Island-Moline, IA–IL MSA
Dubuque, IA MSA
Lawrence, KS MSA
Topeka, KS MSA
Alexandria, LA MSA
Lake Charles, LA MSA
Portland, ME MSA
Hagerstown, MD MSA
Detroit, MI MSA
Grand Rapids, MI MSA
Kalamazoo, MI MSA
Lansing-East Lansing, MI MSA
Rochester, MN MSA
Billings, MT MSA
Great Falls, MT MSA
Las Vegas, NV MSA
Reno, NV MSA
Douglas County, NV
Vineland-Millville-Bridgeton, NJ MSA
Albuquerque, NM MSA
Orange County, NY MSA
Rochester, NY MSA
Burlington, NC MSA
Charlotte-Gastonia-Rock Hill, NC–SC MSA
Fayetteville, NC MSA
Raleigh-Durham, NC MSA
Wilmington, NC MSA
Akron, OH MSA
Canton, OH MSA
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Pittsburgh, PA MSA
Reading, PA MSA
York, PA MSA
Columbia, SC MSA
Knoxville, TN MSA
Abilene, TX MSA
Beaumont-Port Arthur, TX MSA
Bryan-College Station, TX MSA
Galveston-Texas City, TX MSA
San Angelo, TX MSA
Tyler, TX MSA
Waco, TX MSA
Provo-Orem, UT MSA
Salt Lake City-Ogden, UT MSA
Burlington, VT MSA
Charlottesville, VA MSA
Norfolk-VA Beach-Newport News, VA MSA
King William County, VA
Shenandoah County, VA
Bremerton, WA MSA

Richland-Kennewick-Pasco, WA MSA
Seattle, WA MSA
Tacoma, WA MSA
Island County, WA
Mason County, WA

These high-cost limits are effective August 1, 1991, and supersede other published amounts in effect, to the extent they are inconsistent with figures appearing in this document.

These amendments appear in two parts. Part I explains how the high-cost limits are calculated for manufactured home and lot loans insured under title I of the National Housing Act. Part II lists each high-cost area, with applicable limits for single family residences (including condominiums) insured under sections 203(b), 234(c) and 214 of the National Housing Act.

List of Subjects

24 CFR Part 201

Health facilities, Historic preservation, Home improvement, Loan programs-housing and community development, Manufactured homes, Reporting and recordkeeping requirements.

24 CFR Part 203

Hawaiian Natives, Indians: lands, Home Improvement, Loan programs-housing and community development, Mortgage Insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 234

Condominiums, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, the Department publishes the revised dollar limitations as follows:

National Housing Act High Cost Mortgage Limits

Part I: Method of Computing Limits Under Title I, National Housing Act

A. *Section 2(b)(1)(D). Combination manufactured home and lot (excluding Alaska, Guam, Hawaii, and the Virgin Islands):*

To determine the high-cost limit for a combination manufactured home and lot loan, multiply the dollar amount in the "one family" column of Part II of this list by .80. For example, Lewiston-Auburn, ME MSA has a one-family limit of $117,650. The combination home and lot loan limit is $117,650 × .80, or $94,120.

B. *Section 2(b)(1)(E): Lot only (excluding Alaska, Guam, Hawaii and the Virgin Islands):* To determine the high-cost limit for a lot loan, multiply the dollar amount in the "one-family" column of Part II of this list by .20. For example, Lewiston-Auburn, ME MSA has a one-family limit of $117,650. The lot-only loan limit is $117,650 × .20, or $23,530.

C. *Section 2(b)(2). Alaska, Guam, and Hawaii limits:* The maximum dollar limits for Alaska, Guam and Hawaii may be 140% of the statutory loan limits set out in section 2(b)(1).

Accordingly, the dollar limits for Alaska, Guam, and Hawaii are as follows:

1. For manufactured homes: $56,700. ($40,500 × 140%).
2. For combination manufactured homes and lots: $75,600. ($54,000 × 140%).
3. For lots only: $18,900. ($13,500 × 140%).

D. *Limits in the Virgin Islands:* For the Virgin Islands, the maximum mortgage amount for a one-family residence has been increased under section 203(b) to 185% of the basic mortgage limit. Accordingly, the combination home and lot limit is $99,900 ($54,000 × 185%). The lot limit is $24,975 ($13,500 × 185%).

Part II. Updating of FHA Sections 203(b), 234(c) and 214 Area-Wide Mortgage Limits

MORTGAGE LIMITS

Market area designation and local jurisdictions	1-family and condominium unit	2-family	3-family	4-family
Region I—HUD Field Office				
Bangor Office:				
Lewiston-Auburn, ME MSA: Androscoggin County	$117,650	$132,500	$160,950	$185,750
Portland, ME MSA: Cumberland County	111,050	125,000	151,850	175,250
Portsmouth-Dover-Rochester, NH–ME MSA: York County, ME	101,250	114,000	138,000	160,500
Other areas:				
Kennebec County	74,100	83,450	101,400	117,000
Knox County and Sagadahoc County	99,750	112,350	136,500	157,500
Burlington Office:				
Burlington, VT MSA:				
Chittenden County	120,650	135,850	165,100	190,500
Franklin County and Grand Isle County	118,750	133,750	162,500	187,500
Other Areas:				
Addison County	89,200	100,450	122,050	140,850
Bennington County	81,700	92,000	111,800	129,000
Lamoille County	80,750	90,950	110,500	127,500
Orange County	87,400	98,400	119,600	138,000
Rutland County	97,850	110,200	133,900	154,500
Washington County	90,000	101,300	122,650	142,650
Windham County	99,750	112,350	136,500	157,500
Windsor County	101,250	114,000	138,000	160,500
Manchester Office:				
Portsmouth-Dover-Rochester, NH–ME MSA:				
Rockingham County (Part)	124,875	140,600	170,200	197,950
Strafford County	101,250	114,000	138,000	160,500
Manchester, NH PMSA:				
Hillsborough County (Part)	124,875	140,600	170,200	197,950
Merrimack County (Part)				
Nashua, NH PMSA:				
Hillsborough County (Part)	124,875	140,600	170,200	197,950
Rockingham County (Part)				
Other Areas:				
Belknap County	104,500	117,700	143,000	165,000
Cheshire County	104,500	117,700	143,000	165,000
Grafton County	114,000	128,400	156,400	180,000

MORTGAGE LIMITS—Continued

Market area designation and local jurisdictions	1-family and condominium unit	2-family	3-family	4-family
Hartford Office:				
State of Connecticut	124,875	140,600	170,200	197,950
Boston Office:				
State of Massachusetts	124,875	140,600	170,200	197,950
Providence Office:				
State of Rhode Island	124,875	140,600	170,200	197,950
Region II—HUD Field Office				
Albany Office:				
Albany, NY MSA: Albany County, Greene County, Montgomery County, Rensselaer County, Saratoga County, and Schenectady County	120,000	135,150	164,200	189,450
Binghamton, NY MSA: Broome County and Tioga County	124,875	140,600	170,200	197,950
Poughkeepsie, NY MSA: Dutchess County	124,875	140,600	170,200	197,950
Syracuse, NY MSA: Madison County, Onondaga County, and Oswego County	91,950	103,550	125,800	145,150
Utica-Rome, NY MSA: Herkimer County and Oneida County	91,150	102,650	124,700	143,900
Other areas:				
Columbia County	90,250	101,650	123,500	142,500
Sullivan County	76,000	85,600	104,000	120,000
Tompkins County	86,300	97,200	118,100	136,250
Ulster County	112,550	126,750	154,050	177,750
Warren County	101,250	114,000	138,000	160,500
Washington County	76,000	85,600	104,000	120,000
New York Office:				
Nassau-Suffolk, NY PMSA: Nassau County and Suffolk County	124,875	140,600	170,200	197,950
New York, NY PMSA: Bronx County, Kings County, New York County, Putnam County, Queens County, Richmond County, Rockland County, and Westchester County	124,875	140,600	170,200	197,950
Orange County, NY PMSA: Orange County	124,875	140,600	170,200	197,950
Newark Office:				
Allentown-Bethlehem, PA-NJ MSA (part): Warren County, NJ	117,600	132,450	160,900	185,650
Bergen-Passaic, NJ PMSA: Bergen County and Passaic County	124,875	140,600	170,200	197,950
Jersey City, NJ PMSA: Hudson County	124,875	140,600	170,200	197,950
Middlesex-Somerset-Hunterdon, NJ PMSA: Hunterdon County, Middlesex County, Somerset County	124,875	140,600	170,200	197,950
Monmouth-Ocean, NJ PMSA (part): Monmouth County, Ocean County	124,875	140,600	170,200	197,950
Newark, NJ PMSA: Essex County, Morris County, Sussex County, Union County	124,875	140,600	170,200	197,950
Camden Office:				
Atlantic City, NJ MSA: Atlantic County, Cape May County	124,875	140,600	170,200	197,950
Monmouth-Ocean, NJ PMSA (part): Ocean County	124,875	140,600	170,200	197,950
Philadelphia, PA–NJ PMSA (part): Burlington County, NJ. Camden County, Gloucester County	124,875	140,600	170,200	197,950
Trenton, NJ PMSA: Mercer County	124,875	140,600	170,200	197,950
Vineland-Millville-Bridgeton, NJ PMSA: Cumberland County	98,700	111,150	135,050	155,800
Wilmington, DE–NJ–MD PMSA (part): Salem County, NJ	90,300	101,700	123,550	142,550
Buffalo Office:				
Bufallo, NY PMSA: Erie County	90,250	101,650	123,500	142,500
Elmira, NY MSA: Chemung County	80,300	90,400	109,850	126,750
Niagara Falls, NY PMSA: Niagara Falls County	76,300	85,900	104,400	120,450
Rochester, NY MSA: Livingston County, Monroe County, Ontario County, Orleans County, Wayne County	91,900	103,500	125,750	145,100
Region III—HUD Field Office				
Philadelphia Office:				
Allentown-Bethleham, PA–NJ MSA (part): Carbon County, PA, Lehigh County, Northampton County	124,650	140,350	170,550	196,800
Harrisburg-Lebanon-Carlisle, PA MSA: Cumberland County, Dauphin County, Lebanon County, Perry County	106,200	119,600	145,300	167,650
Lancaster, PA MSA: Lancaster County	121,600	136,950	166,400	192,000
Philadelphia, PA–NJ PMSA (part): Bucks County, PA, Chester County, Delaware County, Montgomery County, Philadelphia County	124,875	140,600	170,200	197,950
Reading, PA MSA: Berks County	92,250	103,900	126,200	145,650
Scranton—Wilkes-Barre, PA MSA: Columbia County, Lackawanna County, Luzerne County, Monroe County, Wyoming County	95,600	107,650	130,800	150,900
State College, PA MSA: Centre County	87,850	98,950	120,250	138,750
Williamsport, PA MSA: Lycoming County	72,350	81,450	99,000	114,200
York, PA MSA: Adams County, York County	112,100	126,250	153,400	177,000
Other Areas: Franklin County	71,250	80,250	97,500	112,500
Baltimore Office:				
Baltimore, MD MSA: Baltimore City, Anne Arundel County, Baltimore County, Carroll County, Harford County, Howard County, Queen Anne's County	124,875	140,600	170,200	197,950
Hagerstown, MD MSA: Washington County	97,750	110,050	133,750	154,300
Washington, DC–MD–VA MSA: (part): Charles County MD, Calvert County, Frederick County	124,875	140,600	170,200	197,950
Wilmington, DE–NJ–MD PMSA (part): Cecil County, MD	90,300	101,700	123,550	142,550
Other Areas:				
Caroline County	73,800	83,100	101,000	116,550
Kent County	82,650	93,050	113,100	130,500
St. Mary's County	104,500	117,700	143,000	165,000
Talbot County	101,250	114,000	138,000	160,500
Wicomico County	75,900	85,450	103,850	119,850
Worcester County	71,250	80,250	97,500	112,500

ITS—Continued

	1-family and condominium unit	2-family	3-family	4-family
	124,875	140,600	170,200	197,950
	124,875	140,600	170,200	197,950
	124,875	140,600	170,200	197,950
Rensselaer County,	120,000	135,150	164,200	189,450
	124,875	140,600	170,200	197,950
	124,875	140,600	170,200	197,950
	91,950	103,550	125,800	145,150
	91,150	102,650	124,700	143,900
	90,250	101,650	123,500	142,500
	76,000	85,600	104,000	120,000
	86,300	97,200	118,100	136,250
	112,550	126,750	154,050	177,750
	101,250	114,000	138,000	160,500
	76,000	85,600	104,000	120,000
	124,875	140,600	170,200	197,950
ham County, Queens	124,875	140,600	170,200	197,950
	124,875	140,600	170,200	197,950
	117,600	132,450	160,900	185,650
	124,875	140,600	170,200	197,950
	124,875	140,600	170,200	197,950
y, Somerset County	124,875	140,600	170,200	197,950
	124,875	140,600	170,200	197,950
y	124,875	140,600	170,200	197,950
	124,875	140,600	170,200	197,950
	124,875	140,600	170,200	197,950
cester County	124,875	140,600	170,200	197,950
	124,875	140,600	170,200	197,950
	98,700	111,150	135,050	155,800
	90,300	101,700	123,550	142,550
	90,250	101,650	123,500	142,500
	80,300	90,400	109,850	126,750
	76,300	85,900	104,400	120,450
eans County, Wayne	91,900	103,500	125,750	145,100
Northampton County	124,650	140,350	170,550	196,800
ebanon County, Perry	106,200	119,600	145,300	167,650
	121,600	136,950	166,400	192,000
re County, Montgom-	124,875	140,600	170,200	197,950
	92,250	103,900	126,200	145,650
rne County, Monroe	95,800	107,850	130,800	150,900
	87,850	98,950	120,250	138,750
	72,350	81,450	99,000	114,200
	112,100	126,250	153,400	177,000
	71,250	80,250	97,500	112,500
rroll County, Harford	124,875	140,600	170,200	197,950
	97,750	110,050	133,750	154,300
erick County	124,875	140,600	170,200	197,950
	90,300	101,700	123,550	142,550
	73,600	83,100	101,000	116,550
	82,650	93,050	113,100	130,500
	104,500	117,700	143,000	165,000
	101,250	114,000	138,000	160,500
	75,900	85,450	103,850	119,850
	71,250	80,250	97,500	112,500

MORTGAGE LIMITS—Continued

Market area designation and local jurisdictions	1-family and condominium unit	2-family	3-family	4-family
Washington, DC Office:				
Washington, DC–MD–VA MSA (part): District of Columbia, Montgomery County, MD, Prince Georges County, MD, Alexandria City, VA, Arlington County, VA, Fairfax County, VA, Falls Church City, VA, Loudon County, VA, Manassas City, VA, Manassas Park City, VA, Prince William County, VA	124,875	140,600	170,200	197,950
Wilmington Office:				
Wilmington, DE–NJ–MD PMSA (part): New Castle County, DE	100,600	113,300	137,650	158,850
Other Areas:				
Kent County	87,850	98,950	120,250	138,750
Sussex County	91,200	102,700	124,800	144,000
Pittsburgh Office:				
Altoona, PA MSA: Blair County	83,550	94,100	114,300	131,900
Erie, PA MSA: Erie County	74,250	83,600	101,600	117,200
Johnstown, PA MSA: Cambria County, Somerset County	74,250	83,600	101,600	117,200
Pittsburgh, PA PMSA: Allegheny County, Fayette County, Washington County, Westmoreland County	79,000	88,950	108,100	124,700
Richmond Office:				
Charlottesville, VA MSA: Albermarle County, Fluvanna County, Greene County, Charlottesville City	104,500	117,700	143,000	165,000
Johnson City-Kingsport-Bristol, TN–VA MSA (part): Bristol City, VA, Scott County, Washington County	85,400	96,150	116,850	134,800
Norfolk-VA Beach-Newport News, VA MSA: Chesapeake City, Gloucester County, Hampton City, James City County, Newport News City, Norfolk City, Poquoson City, Portsmouth City, Suffolk City, Virginia Beach City, Williamsburg City, York County	120,100	135,250	164,300	189,600
Richmond-Petersburg, VA MSA: Charles City County, Chesterfield County, Colonial Heights City, Dinwiddie County, Goochland County, Hanover County, Henrico County, Hopewell City, New Kent County, Petersburg City, Powhatan County, Prince George County, Richmond City	105,500	118,800	144,350	166,550
Roanoke, VA MSA: Botetourt County, Roanoke County, Roanoke City, Salem City	93,750	105,550	128,250	148,000
Washington, DC–MD–VA MAS (part); Stafford County, VA	124,875	140,600	170,200	197,950
State of Virginia:				
Clark County	90,250	101,650	123,500	142,500
Culpepper County	84,050	94,650	115,050	132,750
Fauquier County	124,875	140,600	170,200	197,950
Frederick County	92,150	103,750	126,100	145,500
Isle of Wight County	87,400	98,400	119,600	138,000
King George County	89,300	100,550	122,200	141,000
King William County	72,200	81,300	98,800	114,000
Louisa County	70,750	79,700	96,850	111,750
Madison County	76,000	85,600	104,000	120,000
Montgomery County	74,550	83,950	102,050	117,750
Orange County	77,900	87,700	106,600	123,000
Rockingham County	82,650	93,050	113,100	130,500
Shenandoah County	80,350	90,100	109,500	126,850
Spotsylvania County/Fredericksburg City	102,700	115,650	140,550	162,150
Warren County	83,600	94,150	114,400	132,000
All Other Areas	68,300	76,900	93,500	107,900
Charleston Office:				
Charleston, WV MSA: Kanawha County, Putnam County	79,800	89,850	109,200	126,000
Huntington–Ashland, WV–KY–OH MSA (part): Cabell County, WV, Wayne County	82,100	92,450	112,300	129,600
Parkersburg-Marietta, WV–OH MSA (part): Wood County, WV	75,400	84,900	103,150	119,050
Steubenville-Weirton, WV–OH MSA, Brook County, Hancock County	74,250	83,600	101,600	117,200
Wheeling, WV–OH MSA (part): Marshall County, WV, Ohio County	69,550	78,350	95,150	109,800
Other Areas: Jefferson County	88,800	100,000	121,550	140,250
Albany, GA MSA: Dougherty County, Lee County	74,250	83,600	101,600	117,200
Atlanta, GA MSA: Barrow County, Butts County, Cherokee County, Clayton County, Cobb County, Coweta County, DeKalb County, Douglas County, Fayette County, Forsyth County, Fulton County, Gwinnett County, Henry County, Newton County, Paulding County, Rockdale County, Spalding County, Walton County	121,450	136,750	166,150	191,750
Augusta, GA–SC MSA: Columbia County, GA, Richmond County, McDuffie County	92,250	104,450	126,900	146,400
Chattanooga, TN–GA MSA (part): Catoosa County, GA, Dade County, Walker County	73,050	82,250	99,950	115,350
Macon-Warner Robins, GA MSA: Bibb County, Houston County, Jones County, Peach County	86,550	97,450	118,400	136,650
Savannah, GA MSA: Chatham County, Effingham County	102,900	115,850	140,800	162,450
Other Areas:				
Clarke County	75,500	85,050	103,350	119,250
Dawson County	68,850	77,550	94,250	108,750
Glynn County	76,000	85,600	104,000	120,000
Hall County	85,500	96,300	117,000	135,000
Muscogee County	75,000	84,450	102,600	118,400
Oconee County	75,500	85,050	103,350	119,250
Caribbean Office:				
Caguas, PR PMSA: Aguas Buenas Municipio, Caguas Municipio, Cayey Municipio, Cidra Municipio, Gurabo Municipio, San Lorenzo Municipio	93,050	104,800	127,300	146,900
Mayaguez, PR MSA: Anasco Municipio, Cabo Rojo Municipio, Hormigueros Municipio, Mayaguez Municipio, San German Municipio	79,650	89,700	109,000	125,800
Ponce, PR MSA: Juana Diaz Municipio, Ponce Municipio	81,700	92,000	111,800	129,000
San Juan, PR PMSA: Barceloneta Municipio, Bayamon Municipio, Canovanas Municipio, Carolina Municipio, Catano Municipio, Corozal Municipio, Dorado Municipio, Fajardo Municipio, Florida Municipio, Guaynabo Municipio, Humacao Municipio, Juncos Municipio, Las Piedras Municipio, Loiza Municipio, Luquillo Municipio, Manati Municipio, Naranjito Municipio, Rio Grande Municipio, San Juan Municipio, Toa Alta Municipio, Toa Baja Municipio, Trujillo Alto Municipio, Vega Alta Municipio, Vega Baja Municipio	93,050	104,800	127,300	146,900

MORTGAGE LIMITS—Continued

Market area designation and local jurisdictions	1-family and condominium unit	2-family	3-family	4-family
Virgin Islands: St. Croix, St. Thomas, St. John	187,300	210,950	256,300	295,700
Columbia Office:				
Augusta, GA–SC MSA (part): Aiken County, SC	92,250	104,450	126,900	146,400
Charleston, SC MSA: Berkeley County, Charleston County, Dorchester County	93,100	104,850	127,400	147,000
Charlotte-Gastonia-Rock Hill, NC–SC MSA (part): York County, SC	88,700	99,900	121,400	140,100
Columbia, SC MSA: Lexington County, Richland County	97,350	109,600	133,200	153,700
Greenville-Spartanburg, SC MSA: Greenville County, Horry County, Pickens County, Spartanburg County	76,950	86,650	105,300	121,500
Other Areas:				
Beaufort County	94,050	105,900	128,700	148,500
Georgetown County	81,600	91,900	111,650	128,850
Birmingham Office:				
Anniston, AL MSA: Calhoun County	78,950	88,900	108,000	124,650
Birmingham, AL MSA: Blount County, Jefferson County, Shelby County, St. Clair County, Walker County	102,700	115,650	140,500	162,150
Florence, AL MSA: Colbert County, Lauderdale County	77,150	86,850	105,550	121,800
Gadsen, AL MSA: Etowah County	74,250	83,600	101,600	117,200
Huntsville, AL MSA: Madison County	95,600	107,700	130,850	151,000
Mobile, AL MSA: Baldwin County, Mobile County	90,700	102,150	124,150	143,250
Montgomery, AL MSA: Atauga County, Elmore County, Montgomery County	84,500	95,150	115,650	133,400
Tuscaloosa, AL MSA: Tuscaloosa County	94,300	106,200	129,050	148,900
Other Areas:				
Houston County	74,100	83,450	101,400	117,000
Morgan County	79,550	89,600	108,850	125,600
Greensboro Office:				
Asheville, NC MSA: Buncombe County	102,450	115,350	140,150	161,750
Burlington, NC MSA: Alamance County	80,450	90,600	110,100	127,050
Charlotte-Gastonia-Rock Hill, NC–SC MSA (part):				
Mecklenburg County, NC	108,300	121,950	148,200	171,000
Cabarrus County, Gaston County, Lincoln County, Rowan County, Union County	97,950	110,300	134,000	154,650
Fayetteville, NC MSA: Cumberland County	89,450	100,700	122,400	141,200
Greensboro—Winston-Salem—High Point, NC MSA: Davidson County, Davie County, Forsyth County, Guilford County, Randolph County, Stokes County, Yadkin County	90,650	102,100	124,000	143,100
Raleigh-Durham, NC MSA: Durham County, Franklin County, Orange County, Wake County	118,550	133,500	162,200	187,150
Wilmington, NC MSA: New Hanover County	87,550	98,600	119,800	138,200
Other Areas:				
Carteret County	70,300	79,150	96,200	111,000
Craven County	81,350	91,600	111,300	128,400
Currituck County	87,850	98,950	120,250	138,750
Dare County	109,250	123,050	149,500	172,500
Granville County	72,200	81,300	98,800	114,000
Henderson County	80,750	90,950	110,500	127,500
Johnston County	71,250	80,250	97,500	112,500
Moore County	93,100	104,850	127,400	147,000
Nash County	76,000	85,600	104,000	120,000
Pitt County	75,050	84,500	102,750	118,500
Jackson Office:				
Biloxi-Gulfport, MS MSA: Hancock County, Harrison County	84,850	95,550	116,100	133,950
Jackson, MS MSA: Hinds County, Madison County, Rankin County	94,950	106,900	129,900	149,950
Memphis, TN–AR–MS MSA: Desoto County, MS	101,250	114,000	138,000	160,500
Pascagoula, MS MSA: Jackson County	81,800	92,100	111,900	129,150
Other Areas:				
Lee County	76,000	85,600	104,000	120,000
Lowndes County	70,200	79,100	96,100	110,900
Oktibbeha County	73,300	82,600	100,350	115,800
Warren County	80,000	90,100	109,450	126,300
Coral Gables Office:				
Ft. Lauderdale-Hollywood-Pompano Beach, FL PMSA: Broward County	104,500	117,700	143,000	165,000
Ft. Myers, FL MSA: Lee County	88,150	99,250	120,600	139,150
Ft. Pierce, FL MSA: Martin County	123,500	139,900	169,000	195,000
Miami-Hialeah, FL PMSA: Dade County	94,500	106,450	129,350	149,250
West Palm Beach-Boca Raton-Delray Beach, FL MSA: Palm Beach County	116,550	131,250	159,450	184,000
Other Areas:				
Collier County	100,700	113,400	137,800	159,000
Monroe County	124,875	140,600	170,200	197,950
Knoxville Office:				
Chattanooga, TN–GA MSA (part): Hamilton County, TN, Marion County, Sequatchie County	73,050	82,250	99,950	115,350
Johnson City-Kingsport-Bristol, TN–VA MSA (part): Carter County, TN, Hawkins County, Sullivan County, Unicoi County, Washington County	85,400	96,150	116,850	134,800
Knoxville, TN MSA: Anderson County, Blount County, Graninger County, Jefferson County, Knox County, Sevier County, Union County	96,350	108,500	131,800	152,100
Memphis Office:				
Jackson, TN MSA: Madison County	77,750	87,600	106,400	122,800
Memphis, TN–AR–MS MSA: Shelby County, TN, Tipton County	101,250	114,000	138,000	160,500
Nashville Office:				
Clarksville-Hopkinsville, TN-KY MSA (part): Montgomery County, TN	76,750	86,400	105,000	121,150
Nashville, TN MSA: Cheatham County, Davidson County, Dickson County, Robertson County, Rutherford County, Sumner County, Williamson County, Wilson County	101,550	114,350	138,950	160,300

MITS—Continued

	1-family and condominium unit	2-family	3-family	4-family
	187,300	210,950	256,300	295,700
	92,250	104,450	126,900	146,400
y	93,100	104,850	127,400	147,000
	88,700	99,900	121,400	140,100
	97,350	109,600	133,200	153,700
ns County, Spartanburg	76,950	86,650	105,300	121,500
	94,050	105,900	128,700	148,500
	81,600	91,900	111,650	128,850
	78,950	88,900	106,000	124,650
t. Clair County, Walker	102,700	115,650	140,500	162,150
	77,150	86,850	105,550	121,800
	74,250	83,600	101,600	117,200
	95,600	107,700	130,850	151,000
	90,700	102,150	124,150	143,250
	84,500	95,150	115,650	133,400
	94,300	106,200	129,050	148,900
	74,100	83,450	101,400	117,000
	79,550	89,600	108,850	125,600
	102,450	115,350	140,150	161,750
	80,450	90,600	110,100	127,050
	108,300	121,950	148,200	171,000
County	97,950	110,300	134,000	154,650
	89,450	100,700	122,400	141,200
Davie County, Forsyth	90,650	102,100	124,000	143,100
Wake County	118,550	133,500	162,200	187,150
	87,550	98,600	119,800	138,200
	70,300	79,150	96,200	111,000
	81,350	91,600	111,300	128,400
	87,850	98,950	120,250	138,750
	109,250	123,050	149,500	172,500
	72,200	81,300	98,800	114,000
	80,750	90,950	110,500	127,500
	71,250	80,250	97,500	112,500
	93,100	104,850	127,400	147,000
	76,000	85,600	104,000	120,000
	75,050	84,500	102,750	118,500
	84,850	95,550	116,100	133,950
	94,950	106,900	129,900	149,950
	101,250	114,000	138,000	160,500
	81,800	92,100	111,900	129,150
	76,000	85,600	104,000	120,000
	70,200	79,100	96,100	110,900
	73,300	82,600	100,350	115,800
	80,000	90,100	109,450	126,300
	104,500	117,700	143,000	165,000
	88,150	99,250	120,600	139,150
	123,500	139,900	169,000	195,000
	94,500	106,450	129,350	149,250
	116,550	131,250	159,450	184,000
	100,700	113,400	137,800	159,000
	124,875	140,600	170,200	197,950
atchie County	73,050	82,250	99,950	115,350
wkins County, Sullivan	85,400	96,150	116,850	134,600
efferson County, Knox	96,350	106,500	131,800	152,100
	77,750	87,600	106,400	122,800
	101,250	114,000	138,000	160,500
	76,750	86,400	105,000	121,150
ty, Robertson County,	101,550	114,350	138,950	160,300

MORTGAGE LIMITS—Continued

Market area designation and local jurisdictions	1-family and condominium unit	2-family	3-family	4-family
Other Areas: Maury County	76,500	86,150	104,650	120,750
Louisville Office:				
Cincinnati, OH–KY–IN, PMSA (part): Boone County, KY, Campbell County, Kenton County	103,750	116,850	141,950	163,600
Clarksville-Hopkinsville, TN–KY MSA (part): Christian County, KY	76,750	86,400	105,100	121,150
Huntington-Ashland, WV–KY–OH MSA (part): Boyd County, KY, Carter County, Greenup County	82,100	92,450	112,300	129,600
Lexington-Fayette, KY MSA: Bourbon County, Clark County, Fayette County, Jessamine County, Scott County, Woodford County	95,000	107,000	130,000	150,000
Louisville, KY–IN MSA (part):				
Jefferson County, KY	91,650	103,200	125,400	144,700
Bullitt County, Oldham County, Shelby County	86,350	97,250	118,200	136,350
Owensboro, KY MSA: Davies County	74,250	83,600	101,600	117,200
Orlando Office:				
Orlando, FL MSA: Orange County, Osceola County, Seminole County	88,350	99,500	120,900	139,500
Melbourne-Titusville-Palm Bay, FL MSA: Brevard County	93,600	105,400	128,050	147,750
Other Areas:				
Indian River County	69,800	78,600	95,550	110,250
St. Lucie County	75,900	85,450	103,850	119,450
Volusia County	74,550	83,950	102,050	117,750
Jacksonville Office:				
Gainesville, FL MSA: Alachua County, Bradford County	98,150	110,500	134,300	154,950
Jacksonville, FL MSA: Clay County, Duval County, Nassau County, St. Johns County	87,850	98,950	120,250	138,750
Panama City, FL MSA: Bay County	96,750	108,950	132,350	152,750
Pensacola, FL MSA: Escambia County, Santa Rosa County	91,950	103,550	125,900	145,150
Tallahassee, FL MSA: Gadsden County, Leon County	106,400	119,800	145,600	168,000
Tampa Office:				
Bradenton, FL MSA: Mantee County	86,650	97,550	118,550	136,800
Lakeland-Winter Haven, FL MSA: Polk County	91,650	103,200	125,400	144,700
Sarasota, FL MSA: Sarasota County	119,350	134,400	163,300	188,400
Tampa-St. Petersburg-Clearwater, FL MSA: Hernanda County, Hillsborough County, Pasco County, Pinellas County	80,750	90,950	110,500	127,500
Region V—HUD Field Office:				
Chicago Office:				
Aurora-Elgin, IL PMSA: Kane County, Kendall County	124,875	140,600	170,200	197,950
Chicago, IL PMSA: Cook County, DuPage County, McHenry County	120,500	135,700	164,850	190,250
Davenport-Rock Island-Moline, IA–IL MSA: Henry County, IL, Rock Island County	72,750	81,900	99,550	114,850
Joliet, IL PMSA: Grundy County, Will County	107,600	121,200	147,250	169,950
Lake County, IL PMSA: Lake County	124,875	140,600	170,200	197,950
Rockford, IL MSA:				
Boone County, Winnebago County	74,500	83,950	102,050	117,750
Dekalb County	77,400	87,200	106,400	122,800
Detroit Office:				
Ann Arbor, MI PMSA: Washtenaw County	89,200	100,450	122,050	140,800
Detroit, MI PMSA (part):				
Oakland County	101,250	114,000	138,000	160,500
Livingston County, Macomb County, Monroe County, St. Clair County, Wayne County	85,150	95,900	116,500	134,400
Grand Rapids Office:				
Grand Rapids, MI PMSA: Kent County, Ottawa County	75,250	84,750	102,950	118,800
Kalamazoo, MI MSA: Kalamazoo County	74,400	83,750	101,800	117,450
Lansing-East Lansing, MI MSA: Clinton County, Eaton County, Ingham County	77,800	87,600	106,450	122,800
Flint Office:				
Detroit, MI PMSA (part): Lapeer County	79,700	89,750	109,050	125,850
Saginaw-Bay City-Midland, MI MSA: Bay County, Midland County, Saginaw County	72,650	81,800	99,400	114,700
Cleveland Office:				
Akron, OH PMSA: Portage County, Summit County	77,300	87,050	105,750	122,050
Canton, OH MSA: Carroll County, Stark County	74,450	79,650	96,800	117,550
Cleveland, OH PMSA: Cuyahoga County, Geauga County, Lake County, Medina County	89,250	100,500	122,100	140,050
Lorain-Elyria, OH PMSA: Lorain County	82,950	93,400	113,500	130,950
Mansfield, OH MSA: Richland County	70,950	79,900	97,050	112,000
Toledo, OH MSA: Fulton County, Lucas County, Wood County	68,900	77,600	94,250	108,750
Springfield Office:				
Alton-Granite City, IL PMSA: Jersey County, Madison County	85,500	96,300	117,000	135,000
Bloomington-Normal, IL MSA: McLean County	79,500	89,500	108,750	125,500
Champaign-Urbana-Rantoul, IL MSA: Champaign County	99,950	112,600	136,800	157,850
East St. Louis-Belleville, IL PMSA: Clinton County, St. Clair County	85,500	96,300	117,000	135,000
Springfield, IL MSA: Menard County, Sangamon County	74,250	83,600	101,600	117,200
St. Louis, MO–IL PMSA (part): Monroe County, IL	99,150	111,650	135,650	156,550
Minneapolis-St. Paul Office:				
Duluth, MN–WI MSA (part): St. Louis County	74,250	83,600	101,600	117,200
Fargo-Moorhead, ND–MN MSA (part): Clay County, MN	99,800	112,400	136,550	157,550
Minneapolis-St. Paul, MN–WI MSA (part): Anoka County, MN, Carver County, Chisago County, Dakota County, Hennepin County, Isanti County, Ramsey County, St. Croix County, Scott County, Washington County, Wright County	107,600	121,150	147,200	169,850
Rochester, MN MSA: Olmstead County	106,150	119,550	145,250	167,600
St. Cloud, MN MSA: Benton County, Sherburn County, Stearns County	87,100	98,100	119,200	137,550
Milwaukee Office:				
Appleton-Oshkosk-Neenah, WI MSA: Calument County, Outagamie County, Winnebago County	84,800	95,500	116,000	133,850

MORTGAGE LIMITS—Continued

Market area designation and local jurisdictions	1-family and condominium unit	2-family	3-family	4-family
Duluth, MN–WI MSA (part): Douglas County	74,250	83,600	101,600	117,200
Eau Claire, WI MSA: Chippewa County, Eau Claire County	76,250	85,850	104,300	120,350
Green Bay, WI MSA: Brown County	86,150	97,000	117,850	136,000
Kenosha, WI MSA: Kenosha County	84,850	95,550	116,100	133,950
La Crosse, WI MSA: La Crosse County	81,150	91,400	111,400	128,100
Madison, WI MSA: Dane County	93,300	105,050	127,650	147,300
Milwaukee, WI PMSA: Milwaukee County, Ozaukee County, Washington County, Waukesha County	92,250	103,900	126,200	145,650
Minneapolis-St. Paul, MN–WI MSA (part): St. Croix County, WI	107,600	121,150	147,200	169,850
Racine, WI PMSA: Racine County	85,450	96,200	116,900	134,900
Indianapolis Office:				
Anderson, IN MSA: Madison County	73,950	83,250	101,150	116,750
Bloomington, IN MSA: Monroe County	84,450	95,100	115,550	133,300
Cincinnati, OH–KY–IN PMSA: Dearborn County, IN	103,750	116,850	141,950	163,800
Elkhart-Goshen, IN MSA: Elkhart County	80,250	90,400	109,850	126,750
Fort Wayne, IN MSA: Allen County, Dekalb County, Whitley County	84,250	94,850	115,250	133,000
Gary-Hammond, IN PMSA: Lake County, Porter County	80,650	90,800	110,350	127,350
Indianapolis, IN MSA: Boone County, Hamilton County, Hancock County, Hendricks County, Johnson County, Marion County, Morgan County, Shelby County	96,200	108,350	131,600	151,850
Lafayette, IN MSA: Tippecanoe County	79,700	89,750	109,050	125,850
Louisville, KY–IN MSA (part): Clark County, IN, Floyd County, Harrison County	86,350	97,250	118,200	136,350
South Bend-Mishawaka, IN MSA: St. Joseph County	79,800	89,850	109,200	126,000
Other Areas:				
Allen County	79,650	89,700	109,000	125,750
Bartholomew County	83,800	94,900	114,700	132,350
Warwick County	73,150	82,350	100,100	115,500
Columbus, OH MSA: Delaware County, Fairfield County, Franklin County, Licking County, Madison County, Pickaway County, Union County	89,000	100,250	121,800	140,550
Dayton-Springfield, OH MSA (part): Clark County	78,750	88,650	107,750	124,300
Huntington-Ashland, WV–KY–OH MSA (part): Lawrence County, OH	82,100	92,450	112,300	129,600
Lima, OH MSA: Allen County, Auglaize County	77,400	87,150	105,850	122,150
Parkersburg-Marietta, WV–OH MSA (part): Washington County, OH	82,900	93,350	113,400	130,850
Steubenville-Weirton, OH–WV MSA: Jefferson County	74,250	83,600	101,600	117,200
Wheeling, WV–OH MSA (part): Belmont County, OH	76,500	86,150	104,650	120,750
Cincinnati Office:				
Cincinnati, OH–KY–IN PMSA (part): Clermont County, OH, Hamilton County, Warren County	103,750	116,850	141,950	163,800
Dayton-Springfield, OH MSA (part): Greene County, Miami County, Montgomery County	78,750	88,650	107,750	124,300
Hamilton-Middletown, OH PMSA: Butler County	103,750	116,850	141,950	163,800
Region VI—HUD Field Office				
Dallas Office:				
Dallas, TX PMSA (part):				
Collin County	114,950	129,450	157,300	181,500
Dallas County, Rockwall County	101,250	114,000	138,000	160,500
Fort Worth Office:				
Abilene, TX MSA: Taylor County	86,600	97,500	118,500	136,700
Dallas, TX PMSA (part): Denton County, Ellis County, Kaufman County	101,250	114,000	138,000	160,500
Ft. Worth-Arlington, TX PMSA: Johnson County, Parker County, Tarrant County, Hood County	101,250	114,000	138,000	160,500
Killeen-Temple, TX MSA: Bell County, Coryell County	88,500	99,650	121,100	139,700
Longview-Marshall, TX MSA (part): Gregg County	81,300	91,550	111,250	128,350
San Angelo, TX MSA: Tom Green County	80,050	90,150	109,550	126,400
Sherman-Denison, TX MSA: Grayson County	95,750	107,800	131,000	151,150
Texarkana, TX-Texarkana, AR MSA (part): Bowie County, TX	76,750	86,400	105,000	121,150
Tyler, TX MSA: Smith County	85,100	95,800	116,450	127,650
Waco, TX MSA: McLennan County	86,900	97,850	118,900	137,200
Wichita Falls, TX MSA: Wichita County	93,900	105,800	128,550	148,300
Houston Office:				
Beaumont-Port Arthur, TX MSA: Hardin County, Jefferson County, Orange County	80,800	91,000	110,550	127,550
Brazoria, TX PMSA: Brazoria County	90,000	101,300	122,650	142,650
Bryan-College Station, TX MSA: Brazos County	92,700	104,400	126,850	146,350
Galveston-Texas City, TX PMSA: Galveston County	124,875	140,600	170,200	197,950
Houston, TX PMSA: Ft. Bend County, Harris County, Liberty County, Montgomery County, Waller County	90,000	101,300	122,650	142,650
Other Areas: Angelina County	68,400	77,000	93,600	108,000
Lubbock Office:				
Amarillo, TX MSA: Potter County, Randall County	78,250	88,100	107,050	123,550
Lubbock, TX MSA: Lubbock County	96,200	108,350	131,600	151,850
Midland, TX MSA: Midland County	101,250	114,000	138,000	160,500
Odessa, TX MSA: Ector County	99,750	112,350	136,500	157,500
San Antonio Office:				
Austin, TX MSA: Hays County, Travis County, Williamson County	116,800	131,550	159,800	184,400
Corpus Christi, TX MSA: Nueces County, San Patricio County	81,450	91,750	111,450	128,600
El Paso, TX MSA: El Paso County	74,250	83,600	101,600	117,300
Laredo, TX MSA: Webb County	76,000	85,600	104,000	120,000
San Antonio, TX MSA: Bexar County, Comal County, Guadalupe County	82,750	93,250	113,250	130,700
Other Areas:				
Burnet County	76,000	85,600	104,000	120,000
Kendall County	79,500	89,500	108,750	125,500

LIMITS—Continued

	1-family and condominium unit	2-family	3-family	4-family
	74,250	83,600	101,600	117,200
	76,250	85,500	104,300	120,350
	86,150	97,000	117,850	136,000
	84,650	95,550	116,100	133,950
	81,150	91,400	111,400	128,100
	93,300	105,050	127,650	147,300
ounty, Waukesha County	92,250	103,900	126,200	145,650
	107,600	121,150	147,200	169,850
	85,450	96,200	116,900	134,900
	73,950	83,250	101,150	116,750
	84,450	95,100	115,550	133,300
	103,750	116,850	141,950	163,800
	80,250	90,400	109,850	126,750
	84,250	94,850	115,250	133,000
	80,650	90,800	110,350	127,350
unty, Hendricks County,	96,200	108,350	131,600	151,850
	79,700	89,750	109,050	125,850
nty	86,350	97,250	118,200	136,350
	79,800	89,850	109,200	126,000
	79,650	89,700	109,000	125,750
	83,800	94,900	114,700	132,350
	73,150	82,350	100,100	115,500
Licking County, Madison	89,000	100,250	121,800	140,550
	78,750	88,650	107,750	124,300
	82,100	92,450	112,300	129,600
	77,400	87,150	105,850	122,150
	82,900	93,350	113,400	130,850
	74,250	83,600	101,600	117,200
	76,500	86,150	104,650	120,750
Warren County	103,750	116,850	141,950	163,800
nery County	78,750	88,650	107,750	124,300
	103,750	116,850	141,950	163,800
	114,950	129,450	157,300	181,500
	101,250	114,000	138,000	160,500
	86,800	97,500	118,500	136,700
	101,250	114,000	138,000	160,500
nty, Hood County	101,250	114,000	138,000	160,500
	88,500	99,650	121,100	139,700
	81,300	91,550	111,250	128,350
	80,050	90,150	109,550	126,400
	95,750	107,800	131,000	151,150
	76,750	86,400	105,000	121,150
	85,100	95,800	116,450	127,650
	86,900	97,850	118,900	137,200
	93,900	105,800	128,550	148,300
ounty	80,800	91,000	110,550	127,550
	90,000	101,300	122,650	142,650
	92,700	104,400	126,850	146,350
	124,875	140,600	170,200	197,950
tgomery County, Waller	90,000	101,300	122,650	142,650
	68,400	77,000	83,600	108,000
	78,250	88,100	107,050	123,550
	96,200	108,350	131,600	151,850
	101,250	114,000	138,000	160,500
	99,750	112,350	136,500	157,500
	116,800	131,550	159,800	184,400
	81,450	91,750	111,450	128,600
	74,250	83,600	101,600	117,300
	76,000	85,600	104,000	120,000
	82,750	93,250	113,250	130,700
	76,000	85,600	104,000	120,000
	79,500	89,500	108,750	125,500

MORTGAGE LIMITS—Continued

Market area designation and local jurisdictions	1-family and condominium unit	2-family	3-family	4-family
Little Rock Office:				
Fayetteville-Springdale, AR MSA: Washington County	74,250	83,600	101,600	117,200
Memphis, TN-AR-MS MSA (part): Crittenden County, AR	101,250	114,000	138,000	160,500
Little Rock, AR MSA: Faulkner County, Lenoke County, Pulaski County, Saline County	90,850	102,300	124,300	143,400
Texarkana, TX-Texarkana, AR MSA (part): Miller County, AR	76,750	86,400	105,000	121,150
Oklahoma City Office:				
Lawton, OK MSA: Comanche County	74,250	83,600	101,600	117,200
Oklahoma City, OK MSA: Canadian County, Cleveland County, Logan County, McClain County, Oklahoma County, Pottawatomie County	72,800	82,000	99,600	114,950
New Orleans Office:				
Baton Rouge, LA MSA: Ascension Parish, East Baton Rouge Parish, Livingston Parish, West Baton Rouge Parish	76,000	85,600	104,000	120,000
Lake Charles, LA MSA: Calcasieu Parish	85,900	96,750	117,500	135,600
New Orleans, LA MSA: Jefferson Parish, Orleans Parish, St. Bernard Parish, St. Charles Parish, St. John the Baptist Parish, St. Tammany Parish	96,500	108,650	132,050	152,350
Lafayette, LA MSA:				
Lafayette Parish	76,000	85,600	104,000	120,000
St. Martin Parish	74,250	83,600	101,600	117,200
Shreveport Office:				
Alexandria, LA MSA: Rapids Parish	87,950	99,050	120,350	138,850
Longview-Marshall, TX MSA (part): Harrison County, TX	75,850	85,400	103,800	119,750
Monroe, LA MSA: Ouachita Parish	82,550	92,950	112,950	130,300
Shreveport, LA MSA: Bossier Parish, Caddo Parish	89,350	100,600	122,250	141,050
Albuquerque Office:				
Albuquerque, NM MSA: Bernalillo County	102,850	115,800	140,700	162,350
Las Cruces, NM MSA: Don Ana County	74,250	83,600	101,600	117,200
Other Areas:				
Los Alamos County	107,800	121,400	147,550	170,250
Santa Fe County	120,650	135,850	165,100	190,500
Sandoval County	72,150	81,300	98,750	113,950
Valencia County	76,000	85,600	104,000	120,000
Tulsa Office:				
Tulsa, OK MSA: Creek County, Osage County, Rogers County, Tulsa County, Wagoner County	83,550	94,100	114,300	131,900
Region VII—HUD Field Office				
Kansas City Office:				
Kansas City, KS PMSA:				
Johnson County, KS	93,550	105,350	128,050	147,750
Leavenworth County, Miami County, Wyandotte County	81,600	91,900	111,700	128,900
Kansas City, MO PMSA: Cass County, MO, Clay County, Jackson County, Lafayette County, Platt County, Ray County	81,600	91,900	111,700	128,900
Springfield, MO MSA: Christian County, Greene County	74,250	83,600	101,600	117,200
St. Joseph, MO MSA: Buchanan County	70,950	79,900	97,050	112,000
St. Louis Office:				
Columbia, MO MSA: Boone County	82,100	92,450	112,300	129,600
St. Louis, MO–IL PMSA (part): Franklin County, MO, Jefferson County, St. Charles County, St. Louis City	99,150	111,650	135,650	156,550
St. Louis County	108,800	122,550	148,850	171,800
Des Moines Office:				
Cedar Rapids, IA MSA: Linn County	72,800	81,950	99,600	114,900
Davenport-Rock Island-Moline, IA–IL MSA (part): Scott County, IA	77,400	87,150	105,900	122,200
Des Moines, IA MSA: Dallas County, Polk County, Warren County	75,800	85,400	103,750	119,700
Dubuque, IA MSA: Dubuque County	86,600	97,500	118,500	136,700
Omaha, NE–IA MSA (part): Pottawattamie County, IA	78,800	88,750	107,800	124,400
Waterloo-Cedar Falls, IA MSA: Black Hawk County, Brewer County	78,950	88,950	108,050	124,700
Other Areas: Johnson County	75,900	85,450	103,850	119,850
Omaha Office:				
Lincoln, NE MSA: Lancaster County	80,600	90,750	110,250	127,250
Omaha, NE–IA MSA (part): Douglas County, NE, Sarpy County, Washington County	78,800	88,750	107,800	124,400
Topeka Office:				
Lawrence, KS MSA: Douglas County	70,775	79,700	96,850	111,750
Topeka, KS MSA: Shawnee County	85,750	96,800	117,600	135,700
Wichita, KS MSA: Butler County, Harvey County, Sedgwick County	78,450	88,350	107,350	123,900
Region VIII—HUD Field Office:				
Denver Office:				
Boulder—Longmont, CO PMSA: Boulder County	117,300	132,100	160,500	165,200
Colorado Springs, CO MSA: El Paso County	123,400	138,950	168,850	194,800
Denver, CO PMSA:				
Arapahoe County	108,300	121,950	148,200	171,000
Douglas Country	109,150	122,900	149,350	172,350
Adams County, Denver County, Jefferson County	102,450	115,350	140,150	161,750
Fort Collins-Loveland, CO MSA: Larimer County	116,750	131,450	159,750	184,300
Greeley, CO MSA: Weld County	101,450	114,250	138,800	160,150
Pueblo, CO MSA: Pueblo County	81,800	92,100	111,900	129,150
Other Areas:				
Eagle County	124,875	140,600	170,200	197,950
Elbert County	88,900	100,100	121,650	140,350
Garfield County	88,350	99,500	120,900	139,500

MORTGAGE LIMITS—Continued

Market area designation and local jurisdictions	1-family and condominium unit	2-family	3-family	4-family
Grand County	80,750	90,950	110,500	127,500
Gunnison County	83,100	93,800	113,750	131,250
Park County	80,750	90,950	110,500	127,500
Pitkin Country	90,000	101,300	122,650	142,650
Routt County	90,000	101,300	122,650	142,650
Summit County	101,250	114,000	138,000	160,500
Teller County	80,750	90,950	110,500	127,500
State of Colorado	71,800	80,900	98,300	113,400
Helena Office:				
Billings, MT MSA: Yellowstone County	83,050	93,500	113,600	131,100
Great Falls, MT: Cascade County	83,050	93,500	113,600	131,100
State of Montana	75,500	85,050	103,350	119,250
Salt Lake City Office:				
Provo-Orem, UT MSA: Utah County	99,750	112,350	136,500	157,500
Salt Lake City-Ogden, UT MSA: Davis County, Salt Lake County, Weber County	92,700	104,400	126,850	146,350
Other Areas:				
Cache County	89,550	100,850	122,550	141,400
Summit County	124,200	139,900	168,950	196,100
Washington County	75,900	85,450	103,850	119,850
Casper Office:				
Teton County	91,200	102,700	124,800	144,000
State of Wyoming	75,000	84,000	102,500	118,000
Fargo Office:				
Fargo-Moorhead, ND–MN MSA (part): Cass County, ND	99,800	112,400	136,550	157,550
Grand Forks, ND MSA: Grand Forks County	101,050	113,800	138,250	159,550
Other Areas: Burleigh County, Morton County	70,750	79,700	96,850	111,750
Sioux Falls Office:				
Rapid City, SD MSA: Pennington County	75,000	84,000	102,500	118,000
Sioux Falls, SD MSA: Minnehaha County	85,100	95,800	116,450	134,350
Other Areas:				
Lincoln County	85,100	95,800	116,450	134,350
Meade County	85,100	95,800	116,450	134,350
Region IX—HUD Field Office:				
Los Angeles Office:				
Bakersfield, CA MSA: Kern County	104,850	118,050	143,450	165,550
Los Angeles-Long Beach, CA PMSA: Los Angeles County	124,875	140,600	170,200	197,950
Oxnard-Ventura, CA PMSA: Ventura County	124,875	140,600	170,200	197,950
Santa Barbara-Santa Maria-Lampoc, CA MSA: Santa Barbara County	124,875	140,600	170,200	197,950
Other Areas: San Luis Obispo County	124,875	140,600	170,200	197,950
San Francisco Office:				
Oakland, CA PMSA: Alameda County, Contra Costa	124,875	140,600	170,200	197,950
Salinas-Seaside-Monterey, CA MSA: Monterey County	124,875	140,600	170,200	197,950
San Francisco, CA PMSA: Marin County, San Francisco County, San Mateo County	124,875	140,600	170,200	197,950
San Jose, CA PMSA: Santa Clara County	124,875	140,600	170,200	197,950
Santa Cruz, CA PMSA: Santa Cruz County	124,875	140,600	170,200	197,950
Santa Rosa-Petaluma, CA PMSA: Sunoma County	124,875	140,600	170,200	197,950
Vallejo-Fairfield-Napa, CA PMSA: Napa County, Solano County	124,875	140,600	170,200	197,950
Other Areas:				
Del Norte County	101,250	114,000	138,000	160,500
Humbolt County, Lake County, San Benito County, Mendocino County	123,500	139,100	169,000	195,000
Fresno Office:				
Fresno, CA MSA: Fresno County	117,600	132,450	160,900	185,650
Modesto, CA MSA: Stanislaus, County	112,650	126,850	154,150	177,850
Visalia-Tulare-Porterville, CA MSA: Tulare County	101,250	114,000	138,000	160,500
Other Areas:				
Kings County	101,250	114,000	138,000	160,500
Madera County, Mariposa County, Merced County	108,750	122,500	148,850	171,750
Sacramento Office:				
Chico, CA MSA: Butte County	118,750	133,750	162,500	187,500
Redding, CA MSA: Shasta County	124,875	140,600	170,200	197,950
Sacramento, CA MSA: El Dorado County, Placer County, Sacramento County, Yolo County	124,875	140,600	170,200	197,950
Stockton, CA MSA: San Joaquin County	119,150	134,200	163,000	188,100
Yuba City, CA MSA: Sutter County, Yuba County	101,250	114,000	138,000	160,500
Other Areas:				
Alpine County	101,250	114,000	138,000	160,500
Amador County	118,750	133,750	162,500	187,500
Calaveras County, Colusa County, Glenn County, Lassen County, Modoc County, Plumas County, Sierra County, Siskiyou County, Tehama County, Trinity County, Tuolumne County	101,250	114,000	138,000	160,500
Nevada County	124,875	140,600	170,200	197,950
San Diego Office:				
San Diego, CA MSA: San Diego County	124,875	140,600	170,200	197,950
Other Areas: Imperial County	101,250	114,000	138,000	160,500
Santa Ana Office:				
Anaheim-Santa Ana, CA PMSA: Orange County	124,875	140,600	170,200	197,950
Riverside-San Bernadino, CA PMSA: Riverside County, San Bernadino County	124,875	140,600	170,200	197,950
Other Areas:				
Inyo County	98,800	111,250	135,200	156,000

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LIMITS—Continued

	1-family and condominium unit	2-family	3-family	4-family
	80,750	90,950	110,500	127,500
	83,100	93,600	113,750	131,250
	80,750	90,950	110,500	127,500
	90,000	101,300	122,650	142,650
	90,000	101,300	122,650	142,650
	101,250	114,000	138,000	160,500
	80,750	90,950	110,500	127,500
	71,800	80,900	98,300	113,400
	83,050	93,500	113,600	131,100
	83,050	93,500	113,600	131,100
	75,500	85,050	103,350	119,250
	99,750	112,350	136,500	157,500
unty	92,700	104,400	126,850	146,350
	89,550	100,850	122,550	141,400
	124,200	139,900	169,950	196,100
	75,900	85,450	103,850	119,850
	91,200	102,700	124,800	144,000
	75,000	84,000	102,500	118,000
	99,800	112,400	136,550	157,550
	101,050	113,800	138,250	159,550
	70,750	79,700	96,850	111,750
	75,000	84,000	102,500	118,000
	85,100	95,800	116,450	134,350
	85,100	95,800	116,450	134,350
	85,100	95,800	116,450	134,350
	104,850	118,050	143,450	165,550
	124,875	140,600	170,200	197,950
	124,875	140,600	170,200	197,950
	124,875	140,600	170,200	197,950
	124,875	140,600	170,200	197,950
	124,875	140,600	170,200	197,950
	124,875	140,600	170,200	197,950
County	124,875	140,600	170,200	197,950
	124,875	140,600	170,200	197,950
	124,875	140,600	170,200	197,950
	124,875	140,600	170,200	197,950
	124,875	140,600	170,200	197,950
	101,250	114,000	138,000	160,500
	123,500	139,100	169,000	195,000
	117,600	132,450	160,900	185,650
	112,650	126,850	154,150	177,850
	101,250	114,000	138,000	160,500
	101,250	114,000	138,000	160,500
	108,750	122,500	148,850	171,750
	118,750	133,750	162,500	187,500
	124,875	140,600	170,200	197,950
ty, Yolo County	124,875	140,600	170,200	197,950
	119,150	134,200	163,000	188,100
	101,250	114,000	138,000	160,500
	101,250	114,000	138,000	160,500
	118,750	133,750	162,500	187,500
Modoc County, Plumas ty, Tuolumne County	101,250	114,000	138,000	160,500
	124,875	140,600	170,200	197,950
	124,875	140,600	170,200	197,950
	101,250	114,000	138,000	160,500
	124,875	140,600	170,200	197,950
ty	124,875	140,600	170,200	197,950
	96,600	111,250	135,200	156,000

MORTGAGE LIMITS—Continued

Market area designation and local jurisdictions	1-family and condominium unit	2-family	3-family	4-family
Mono County	75,000	84,000	102,500	118,000
Las Vegas Office:				
Las Vegas, NV MSA: Clark County	104,300	117,450	142,700	164,650
Other Areas: Lincoln County, Nye County (part)	75,000	84,000	102,500	118,000
Reno Office:				
Reno, NV MSA: Washoe County	124,875	140,600	170,200	197,950
Other Areas:				
Carson City County	95,950	108,050	131,300	151,500
Churchill County	85,500	96,300	117,000	135,000
Douglas County	92,600	104,300	126,750	146,250
Lyon County	77,400	87,200	105,950	122,250
Elko County, Esmeralda County, Eureka County, Humbolt County, Lander County, Mineral County, Nye County (part), Pershing County, Storey County, White Pine County	80,750	90,950	110,500	127,500
Phoenix Office:				
Phoenix, AZ MSA: Maricopa County	104,450	117,600	142,900	164,900
Other Areas:				
Coconino County	89,300	100,550	122,200	141,000
Pinal County	82,400	92,850	112,800	130,150
Yavapai County	87,400	98,400	119,600	138,000
Yuma County	70,300	79,150	96,200	111,000
Tucson Office:				
Tucson, AZ MSA: Pima County	112,000	126,100	153,250	176,800
Other Areas: Cochise County	81,750	92,050	111,850	129,050
Honolulu Office:				
State of Hawaii	187,300	210,950	256,300	295,70
Territory of Guam	142,500	160,500	195,100	225,00
Region X—HUD Field Office				
Seattle Office:				
Skagit County	85,250	96,000	116,650	134,600
Bellinghan, WA MSA: Whatcom County	119,900	135,050	164,100	189,350
Bremerton, WA MSA: Kitsap County	91,200	102,700	124,800	144,000
Olympia, WA MSA: Thurston County	79,800	89,850	109,200	126,000
Seattle, WA PMSA: King County, Snohomish County	124,875	140,600	170,200	197,950
Tacoma, WA PMSA: Pierce County	95,900	108,000	131,200	151,400
Yakima, WA MSA: Yakima County	83,350	93,850	114,050	131,600
Other Areas:				
Callam County	94,750	106,700	129,650	149,600
Island County	114,000	128,400	156,000	180,000
Jefferson County	104,500	117,700	143,000	165,000
Mason County	71,700	80,750	98,150	113,250
San Juan County	124,875	140,600	170,200	197,950
Portland Office:				
Eugene-Springfield, OR MSA: Lane County	89,000	100,200	121,750	140,500
Medford, OR MSA: Jackson County	90,750	102,200	124,150	143,250
Portland, OR PMSA: Clackamas County, Multnomah County, Washington County, Yamhill County	95,200	107,200	132,050	150,300
Vancouver, WA PMSA: Clark County	98,300	110,700	134,550	155,250
State of Oregon	85,200	95,950	116,600	134,550
Anchorage Office:				
State of Alaska	135,000	151,950	183,950	213,950
Spokane Office:				
Richland-Kennewick-Pasco, WA MSA: Benton County, Franklin County	94350	106,250	129,000	148,950-
Spokane, WA MSA: Spokane County	75,350	84,850	103,100	118950
Boise Office:				
Boise City, ID MSA: Ada County	102,150	115,050	139,750	161,250
Other Areas:				
Blaine County	108,300	121,950	148,200	171,000
Bonneville County	70,300	79,150	96,200	111,000
Kootenai County	70,300	79,150	96,200	111,000
Latah County	75,500	85,050	103,350	119,250

Date: July 23, 1991

Arthur J. Hill,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 91-18162 Filed 7-31-91; 8:45 am]

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Thursday
August 1, 1991

Part VII

Department of Transportation

Research and Special Programs Administration

49 CFR Part 107

Amendments to the Hazardous Materials Program Procedures; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 107

[Docket No. HM-207A; Notice No. 91-2]

RIN 2137-AC06

Amendments to the Hazardous Materials Program Procedures

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), enacted on November 16, 1990, amended the Hazardous Materials Transportation Act of 1975 (HMTA). Section 4 of the HMTUSA amended section 105 of the HMTA to establish a new preemption standard for State, political subdivision, or Indian tribe requirements that concern certain covered subjects. RSPA is requesting comment on how the new standard should be defined, and is also proposing to streamline the preemption determination and waiver of preemption processes.

DATES: Comments must be received on or before September 3, 1991.

ADDRESSES: Address comments to the Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590-0001. Comments should identify the docket and be submitted, if possible, in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. The Dockets Unit is located in Room 8419 of the Nassif Building, 400 Seventh Street SW., Washington, DC; telephone (202) 366-5046. The public dockets may be reviewed between the hours of 8:30 a.m. to 5 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mary M. Crouter, Senior Attorney, Hazardous Materials Safety & Research and Technology Law Division, Office of the Chief Counsel, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590-0001, telephone: (202) 366-4400.

SUPPLEMENTARY INFORMATION:

I. Background

The Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA; Pub. L. 101-615) was enacted on November 16, 1990. The HMTUSA amended the Hazardous Materials Transportation Act (HMTA; 49 App. U.S.C. 1801-1813) in many significant respects. RSPA issued a final rule, published on February 28, 1991 (Docket HM-207; 56 FR 8616), to conform its regulations to comply with certain provisions of the HMTUSA amendments. In that final rule, RSPA stated that further rulemaking would be necessary in some areas.

II. Covered Subjects

Section 4 of the HMTUSA amended section 105 of the HMTA by adding new subsections (a)(4) (A) and (B) to preempt any requirement of a State, political subdivision thereof, or Indian tribe concerning the following subjects if the non-Federal requirement is not substantively the same as any provision of the HMTA or any Federal regulation issued under the HMTA:

(i) The designation, description, and classification of hazardous materials;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents;

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

49 App. U.S.C. 1804(a)(4) (A) and (B).

In its February 28, 1991 final rule, RSPA added this new preemption standard to § 107.202 to mirror the statute. RSPA stated that it planned to define the standard "substantively the same" in a future rulemaking, and that is one of the purposes of this notice.

Proposed Definition of "Substantively the Same"

RSPA is proposing that "substantively the same" be defined as "conforming in every significant respect." Therefore, any State, political subdivision, or Indian tribe law, regulation, order, ruling, provision, or other requirement concerning a covered subject would be considered "substantively the same" as the Federal provision on that subject if the non-Federal requirement conforms in every significant respect to the Federal provision. The following would not be considered significant changes:

(1) Editorial changes to the text of a Federal provision to reflect the non-Federal nature of the entity issuing the requirement (e.g., the phrase "Secretary of Transportation" is replaced by a reference to a municipal official responsible for issuing regulations).

(2) Adopting the Federal requirement as non-Federal law (e.g., a State adopts the Hazardous Materials Regulations as State law).

(3) Editorial changes to a Federal provision that do not change the meaning of the Federal provision (e.g., using the definition of a term as opposed to the term itself).

The proposed definition is in accordance with the Department's own experience and with the intent of Congress, as reflected in the two House reports on the bill which became the HMTUSA. Both House Committees expressed support for uniform Federal and State regulation in certain areas, and endorsed the idea that non-Federal laws that are "different from" or are "not the same as" Federal laws on those subjects should be preempted. Both House reports indicated that "*de minimis*" or "insignificant" amendments or wording changes would not preempt the non-Federal requirement.

A provision concerning preemption of certain covered subjects was included in the Department's own legislative proposal to reauthorize the HMTA. (July 11, 1989 letter from Samuel K. Skinner, Secretary of Transportation, to the Honorable Dan Quayle, President of the Senate.) The Department of Transportation delineated these subject areas as "critical areas of hazardous materials transportation regulation" that should be Federally preempted, unless the non-Federal requirements are "identical" to the Federal requirements.

Congress agreed that these areas should be federally preempted, although the standard for preemption differed among the bills that were considered in the 101st Congress. As reported by the House Committee on Energy and Commerce (Energy Committee), H.R. 3520 would have preempted any non-Federal law concerning a covered subject "which is different from any provision of this Act or any regulation under such provision which concerns such subject."

The Energy Committee stated that the amendments would require "uniform Federal, State, and local laws and regulations in key areas of hazardous materials transportation to promote safety and the free flow of commerce." H.R. Rep. No. 444, Pt. 1, 101st Cong., 2d Sess. 17 (1990).

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The Energy Committee stated that the amendments would require "uniform Federal, State, and local laws and regulations in key areas of hazardous materials transportation to promote safety and the free flow of commerce." H.R. Rep. No. 444, Pt. 1, 101st Cong., 2d Sess. 17 (1990).

The Energy Committee also stated that

> [T]he phrase "different from any provision of this Act or any regulation under such provision" is intended to create near-uniformity in Federal and non-Federal laws and requirements relating to the subjects listed in section 105(a)(4)(B). While *de minimis* deviations from Federal regulations under the HMTA may be acceptable, the Committee intends that any significant differences from the HMTA or regulations issued thereunder will cause the nonFederal requirement to be preempted.

H.R. Rep. No. 444, Pt. 1, 101st Cong., 2d Sess. 33 (1990).

As reported by the House Committee on Public Works and Transportation (Public Works Committee), H.R. 3520 would have preempted any non-Federal law concerning a covered subject unless the non-Federal law concerning such subject "is the same as the regulation, rule, or standard issued by the Secretary." The Public Works Committee stated that

> There is some concern that this mandate may mean that the state law must mirror the Federal statute verbatim. It does not mean that. It means the state law must have the same effect as the Federal law. For example, a state having adopted the Federal regulations as state law obviously is in concert with this provision. If the state changes the wording of the Federal regulation but not the meaning, the state regulation will stay in effect. However, any state law or regulation mandating something different than the Federal law would be subjected to a preemption challenge.

H.R. Rep. No. 444, Pt. 2, 101st Cong., 2d Sess. 24 (1990).

The Senate bill, as introduced and reported by the Committee on Commerce, Science, and Transportation, did not contain a comparable preemption provision for covered subjects. However, the final version of S. 2936 was the result of a compromise among both House Committees and the Senate Commerce Committee. S. 2936, which was enacted as Public Law 101-615, contained the "substantively the same" preemption standard for the covered subjects. The term "substantively the same" was not defined in the statute or in any report or floor statement prior to enactment.

RSPA has also examined the ordinary meaning of the words "substantive" and "same." The definition of "substantive" is "belonging to the real nature or essential part of a thing; essential." *Webster's Unabridged Dictionary of the English Language*, 1989 ed., 1418. The definition of "same" includes "being one or identical though having different names, aspects, etc.: *These are the same rules though differently worded.*" *Id.*, 1264.

III. Preemption Determination and Waiver of Preemption Processes

Section 13 of the HMTUSA amended section 112 of the HMTA by adding a new subsection (c) to provide that any person, including a State, political subdivision thereof, or Indian tribe, directly affected by any requirement of a State, political subdivision, or Indian tribe, may apply to the Secretary of Transportation, in accordance with regulations prescribed by the Secretary, for a determination of whether that requirement is preempted by section 105(a)(4) (covered subjects) or section 105(b) (highway routing) or section 112(a) (all other matters under the HMTA).

Section 13 also amended section 112 by adding a new subsection (d) concerning the administrative waiver of preemption provision. The waiver of preemption provision previously contained in the HMTA was amended to clarify that the Secretary has the discretion to waive preemption upon a determination that the statutory criteria have been met. In the final rule issued February 28, 1991, RSPA amended its previous inconsistency ruling and non-preemption determination processes to be consistent with these amendments to the HMTA.

RSPA will exercise the authority to issue preemption determinations and waivers of preemption under the HMTA, with the exception of matters concerning highway routing of hazardous materials. Preemption determinations and waivers of preemption with respect to highway routing, including radioactive materials transportation, will be the responsibility of the Federal Highway Administration. The Federal Highway Administration will be conducting further rulemaking on this issue.

The HMTUSA also amended section 112 to provide that no applicant for an administrative preemption determination may seek relief with respect to the same or substantially the same issue in any court until the Secretary has taken final action or until 180 days after filing of an application, whichever occurs first. The 180-day time limit "is intended to provide sufficient time for the Secretary to make a final determination of preemption based upon the criteria set forth in the bill. Alternatively, if the Secretary fails to act within the 180-day period, the bill seeks to provide the expeditious and definitive resolution of preemption issues by allowing the affected party to proceed with any available judicial remedies." H.R. Rep. No. 444, Pt. 1, 101st Cong., 2d Sess. 49 (1990).

In its February 28, 1991 rule, RSPA included this provision in § 107.203(d). Based upon our experience, RSPA is proposing to shorten the process by eliminating the right to appeal the decision of the Associate Administrator for Hazardous Materials Safety to the Administrator of RSPA. The determination of the Associate Administrator would be the final action of the Secretary, and any party to the preemption determination proceeding could seek judicial review of the decision within 60 days after that decision becomes final.

Under the inconsistency ruling process, the RSPA Administrator generally affirmed the decision of the Director of the Office of Hazardous Materials Transportation (now the Associate Administrator for Hazardous Materials Safety) in every case that was appealed to the Administrator. That experience, coupled with the greater certainty that the statutory preemption standards should provide for the Associate Administrator, leads RSPA to believe that an appellate review at the administrative level is unnecessary.

Although the 180-day time frame applies only to the preemption determination process, RSPA is also proposing to eliminate the appellate review from its waiver of preemption process. RSPA's experience under its non-preemption determination process was that only two applications were filed in the 14 years between 1976 and 1990, and there was only one appeal.

RSPA is also proposing to remove from its preemption determination and waiver of preemption regulations any reference to matters concerning highway routing of hazardous materials. As stated above, the Federal Highway Administration has the responsibility for highway routing matters.

IV. Notice Concerning Pending Applications for Inconsistency Rulings and Non-Preemption Determinations

In its February 28, 1991 final rule, RSPA converted its procedures for inconsistency rulings and non-preemption determinations to procedures for preemption and waiver of preemption determinations. RSPA still has several open proceedings that were begun under the previous administrative processes. Because of the significant changes to the HMTA since those proceedings were begun, RSPA has determined that each of those proceedings should be reevaluated.

There are five inconsistency ruling proceedings where applications have been filed and public notices and

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invitations to comment have been published, but no ruling has been issued:

Docket No.	Applicant	Subject
IRA-40C	American Trucking Assns., Inc. (ATA) & Natl. Tank Truck Carriers, Inc. (NTTC).	New York City training requirements.
IRA-50	City of Watertown, NY.	Watertown, NY ordinances and NY State statute re hazardous materials transportation.
IRA-51	National Solid Wastes Mgmt. Assn.	Illinois Hazardous Waste Manifest.
IRA-52	Tennessee Public Service Comm.	Tennessee statute re transportation of radioactive materials.
IRA-53	Nalco Chemical Co.	California statute and regulations re flammable and combustible liquids.

RSPA has decided to notify the applicants in these proceedings and give them the option of either withdrawing their applications or reapplying for a binding ruling under the new preemption determination process. The other parties to a proceeding will be given an additional opportunity to comment if the applicant reapplies for a binding ruling.

There are also two proceedings where inconsistency ruling applications were filed after November 16, 1990, the effective date of the HMTUSA, but no public notices have been published:

Docket No.	Applicant	Subject
IRA-54	SPCMA	City of Santa Clara, CA requirements re railroad tank cars.
IRA-55	SPCMA	Los Angeles County, CA ordinances re rail tank car loading, unloading, and storage, and related fees.

RSPA has decided to notify the applicants in these proceedings and give them the option of either withdrawing their applications or reapplying for a binding ruling under the new preemption determination process.

There are four inconsistency ruling proceedings where rulings have been issued and appeals have been filed, but not decided:

Docket No.	Ruling	Applicant	Subject
IRA-40B	IR-23	ATA & NTTC.	New York City routing and time restrictions.
IRA-45	IR-26	Yellow Freight System, Inc.	City of San Jose ordinance re haz. materials.
IRA-46	IR-32	Chemical Waste Transportation Council.	Montevallo, AL ordinance re hazardous waste transportation.
IRA-49	IR-31	State of Louisiana.	LA statutes/regs adopting 49 CFR 171-180 with respect to rail transportation.

RSPA has decided that for those proceedings where it is retaining subject matter jurisdiction, it will defer a decision on appeal pending the outcome of this proposed rulemaking on the standard for preemption of certain covered subjects. Applicants and other parties to the proceedings will have a further opportunity to comment if these proceedings are reopened.

There is one pending non-preemption determination proceeding, NPDA-2, concerning New York City permit requirements for certain radioactive materials transportation. In NPDA-2, RSPA issued a ruling (NPD-1; September 12, 1985) and a decision on appeal (December 30, 1986), but the decision was reversed and remanded to RSPA for reconsideration. *City of New York* v. *DOT,* 700 F. Supp. 1294 (S.D.N.Y. 1988). Because the HMTUSA did not change the standards or the administrative process for issuing waivers of preemption, RSPA will continue to conduct this proceeding.

Rulemaking Analyses

Executive Order 12291 and DOT Regulatory Policies and Procedures

RSPA has determined that this rule is not major under Executive Order 12291 and is not significant under DOT's regulatory policies and procedures. (44 FR 11034; Feb. 26, 1979). This rule will not have any direct or indirect economic impact because it does not alter any existing substantive regulations in such a way as to impose additional burdens. The cost of complying with existing substantive regulations is not being increased. Therefore, preparation of a regulatory evaluation is not warranted.

Executive Order 12612

The HMTUSA provides that State and local requirements concerning certain covered subjects are preempted. This notice merely proposes to implement the specific statutory mandate at the minimum level necessary to achieve the objectives of the statute. Therefore, preparation of a Federalism assessment is not warranted.

Regulatory Flexibility Act

RSPA certifies that this rule will not have a significant economic impact on a substantial number of small entities. There are no direct or indirect economic impacts for small units of government, businesses, or other organizations.

Paperwork Reduction Act

There are no information collection requirements contained in this rule.

National Environmental Policy Act

RSPA has concluded that this rule will have no significant impact on the environment and does not require the preparation of an environmental impact statement under the National Environmental Policy Act.

List of Subjects in 49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

In consideration of the foregoing, part 107 of title 49, Code of Federal Regulations, is amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 continues to read as follows:

Authority: 49 App. U.S.C. 1421(c); 49 App. U.S.C. 1653(d), 1655; 49 App. U.S.C. 1802, 1806, 1808–1811; 49 CFR 1.45 and 1.53.

Subpart C—Preemption

2. In § 107.201, paragraphs (a) and (c) are revised to read as follows:

§ 107.201 Purpose and scope.

(a) This subpart prescribes procedures by which:

(1) Any person, including a State, political subdivision, or Indian tribe, directly affected by any requirement of a State, political subdivision, or Indian tribe, may apply for a determination as to whether that requirement is preempted under section 105(a)(4) or section 112 (a)(1) or (a)(2) of the Act (49 App. U.S.C. 1804 and 1811), or regulations issued thereunder; and

(2) A State, political subdivision, or Indian tribe may apply for a waiver of preemption with respect to any

Applicant	Subject
ATA & NTTC.	New York City routing and time restrictions.
Yellow Freight System, Inc.	City of San Jose ordinance re haz. materials.
Chemical Waste Transportation Council.	Montevallo, AL ordinance re hazardous waste transportation.
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rovides that State and
concerning certain

covered subjects are preempted. This notice merely proposes to implement the specific statutory mandate at the minimum level necessary to achieve the objectives of the statute. Therefore, preparation of a Federalism assessment is not warranted.

Regulatory Flexibility Act

RSPA certifies that this rule will not have a significant economic impact on a substantial number of small entities. There are no direct or indirect economic impacts for small units of government, businesses, or other organizations.

Paperwork Reduction Act

There are no information collection requirements contained in this rule.

National Environmental Policy Act

RSPA has concluded that this rule will have no significant impact on the environment and does not require the preparation of an environmental impact statement under the National Environmental Policy Act.

List of Subjects in 49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

In consideration of the foregoing, part 107 of title 49, Code of Federal Regulations, is amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 continues to read as follows:

Authority: 49 App. U.S.C. 1421(c); 49 App. U.S.C. 1653(d), 1655; 49 App. U.S.C. 1802, 1806, 1808–1811; 49 CFR 1.45 and 1.53.

Subpart C—Preemption

2. In § 107.201, paragraphs (a) and (c) are revised to read as follows:

§ 107.201 Purpose and scope.

(a) This subpart prescribes procedures by which:

(1) Any person, including a State, political subdivision, or Indian tribe, directly affected by any requirement of a State, political subdivision, or Indian tribe, may apply for a determination as to whether that requirement is preempted under section 105(a)(4) or section 112 (a)(1) or (a)(2) of the Act (49 App. U.S.C. 1804 and 1811), or regulations issued thereunder; and

(2) A State, political subdivision, or Indian tribe may apply for a waiver of preemption with respect to any

---

requirement that the State, political subdivision, or Indian tribe acknowledges to be preempted by section 105(a)(4) or section 112 (a)(1) or (a)(2) of the Act, or regulations issued thereunder.

* * * * *

(c) For purposes of this subpart, "regulations issued under the Act" means the regulations contained in this subchapter and subchapter C of this chapter.

* * * * *

3. Section 107.202 is amended by adding a new paragraph (d) as follows:

§ 107.202 Standards for determining preemption.

* * * * *

(d) For purposes of this section, "substantively the same" means that the non-Federal requirement conforms in every significant respect to the Federal requirement. Editorial and other *de minimis* changes are permitted.

4. In § 107.203, paragraph (a) is revised to read as follows:

§ 107.203 Application.

(a) With the exception of highway routing matters covered under section 105(b) of the Act (49 App. U.S.C. 1804), any person, including a State, political subdivision, or Indian tribe, directly affected by any requirement of a State, political subdivision, or Indian tribe, may apply to the Associate Administrator for Hazardous Materials Safety for a determination of whether that requirement is preempted by 49 CFR 107.202 (a) or (b).

* * * * *

5. In § 107.209, paragraph (c) is revised to read as follows:

§ 107.209 Determination.

* * * * *

(c) The determination includes a written statement setting forth the relevant facts and the legal basis for the determination.

* * * * *

§ 107.211 [Removed]

6. Section 107.211 is removed and reserved.

7. In § 107.215, paragraph (a) introductory text is revised to read as follows:

§ 107.215 Application.

(a) With the exception of requirements preempted under section 105(b) of the Act (49 App. U.S.C. 1804), any State, political subdivision, or Indian tribe may apply to the Associate Administrator for Hazardous Materials Safety for a waiver of preemption with respect to any requirement that the State, political subdivision, or Indian tribe acknowledges to be preempted under the Act or the regulations issued under the Act. The Associate Administrator may waive preemption with respect to such requirement upon a determination that such requirement—

* * * * *

8. In § 107.221, paragraph (c) is revised to read as follows:

§ 107.221 Determination and order.

* * * * *

(c) The order includes a written statement setting forth the relevant facts and the legal basis for the determination.

* * * * *

9. Section 107.223 is revised to read as follows:

§ 107.223 Timeliness.

If the Associate Administrator fails to take action on the application within 90 days of serving the notice required by § 107.219(d), the applicant may treat the application as having been denied in all respects.

§ 107.225 [Removed]

10. Section 107.225 is removed and reserved.

Issued in Washington, DC, on July 24, 1991, under authority delegated in 49 CFR 1.53.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 91–18051 Filed 7–31–91; 8:45 am]

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DEPARTMENT OF AGRICUL

Animal and Plant Health Ins
Service

9 CFR Part 50

[Docket No. 90-170]

Animals Destroyed Because
Tuberculosis

AGENCY: Animal and Plant He
Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending t
regulations in 9 CFR part 50 b
all references to "Deputy Adm
and replacing them with refer
"Administrator." We are also
certain references to "Veterin
Services" and replacing them
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are removing the definition of
veterinarian representative; r
definitions of accredited veter
and veterinarian in charge, an
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(APHIS), and APHIS represen
These changes are warranted
regulations will accurately ref
the Administrator of the agen
the primary authority and res
for various decisions under th
regulations.

EFFECTIVE DATE: August 2, 19

FOR FURTHER INFORMATION CO
Dr. Mitchell A. Essey, Senior
Veterinarian, Cattle Diseases
Surveillance Staff, VS, APHIS
room 733, Federal Building, 65
Road, Hyattsville, MD 20782;
8715.

SUPPLEMENTARY INFORMATIO

Background

The regulations in 9 CFR pa
(referred to below as the regul

Rules and Regulations

Federal Register
Vol. 56, No. 149
Friday, August 2, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 50

[Docket No. 89-170]

Animals Destroyed Because of Tuberculosis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations in 9 CFR part 50 by removing all references to "Deputy Administrator" and replacing them with references to "Administrator." We are also removing certain references to "Veterinary Services" and replacing them with references to "Animal and Plant Health Inspection Service." Additionally, we are removing the definition of veterinarian representative; revising the definitions of accredited veterinarian and veterinarian in charge, and, adding definitions of Administrator, Animal and Plant Health Inspection Service (APHIS), and APHIS representative. These changes are warranted so the regulations will accurately reflect that the Administrator of the agency holds the primary authority and responsibility for various decisions under the regulations.

EFFECTIVE DATE: August 2, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. Mitchell A. Essey, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, room 733, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301–436–8715.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 50 (referred to below as the regulations) concern the destruction of animals because of tuberculosis and the compensation of their owners. Prior to the effective date of this document, these regulations indicated that the Deputy Administrator of the Animal and Plant Health Inspection Service (APHIS) for Veterinary Services was the official responsible for various decisions under these regulations. We are revising 9 CFR part 50 to indicate that the primary authority and responsibility for various decisions under these regulations belongs to the Administrator of the agency. We are making similar revisions in all other APHIS regulations. These revisions will be published in separate **Federal Register** documents.

We are removing all references to "Deputy Administrator" and replacing them with references to "Administrator," and are removing all references to "Veterinary Services" and replacing them with references to "Animal and Plant Health Inspection Service." With these changes, the terms "Deputy Administrator" and "Veterinary Services representative" no longer appear in the regulations, and the term, "Veterinary Services" no longer appears in the regulations, except in a mailing address. Therefore, we are deleting the definitions of those terms. We are also adding definitions of "Administrator," "Animal and Plant Health Inspection Service," and "APHIS representative." In addition we are revising the definition of "Accredited veterinarian" to make it consistent with the definition in other parts of 9 CFR, and are making nonsubstantive wording changes for clarity.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by Public Law 96–354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 50

Animal diseases, Bison, Cattle, Hogs, Indemnity payments, Reporting and recordkeeping requirements, Tuberculosis.

Accordingly, we are amending 9 CFR part 50 as follows:

PART 50—ANIMALS DESTROYED BECAUSE OF TUBERCULOSIS

1. The authority citation for part 50 continues to read as follows:

Authority: 21 U.S.C. 111–113, 114, 114a, 114a–1, 120, 121, 125, 134b; 7 CFR 2.17, 2.51, and 371.2(d).

§ 50.1 [Amended]

2. In § 50.1 the definitions of "Deputy Administrator," "Veterinary Services," and "Veterinary Services representative" are removed, the definitions of "Accredited veterinarian" and "Veterinarian in Charge" are revised, and definitions of "Administrator", "Animal and Plant Health Inspections Service," and "APHIS representative" are added, in alphabetical order, to read as follows:

§ 50.1 Definitions.

* * * * *

Accredited veterinarian: A veterinarian approved by the Administrator in accordance with the provisions of part 161 of this title to perform functions specified in parts 1, 2, 3, and 11 of subchapter A, and subchapters B, C, and D of this chapter, and to perform functions required by cooperative State-Federal disease control and eradication programs.

Administrator: The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service: The Animal and Plant Health

VOL 56 ISS 149 AG 2 1991 UMI

Inspection Service of the United States Department of Agriculture (APHIS).

* * * * *

APHIS representative: A veterinarian or other person employed by APHIS in animal health activities, who is authorized to perform the function involved.

* * * * *

Veterinarian in Charge: The veterinary official of APHIS who is assigned by the Administrator to supervise and perform official animal health work of APHIS in the State concerned.

§ 50.2 [Amended]

3. In § 50.2, remove the words "has been delegated the authority to cooperate" and add, in their place, the word "cooperates", and remove the words "to pay" and add, in their place, the word "pays".

§ 50.9 [Amended]

4. In § 50.9, second sentence, remove the words "at Veterinary Services expense" and add, in their place, the words "at the expense of APHIS".

§§ 50.2, 50.3, 50.4, 50.6, 50.7, 50.9, 50.14, and 50.16 [Amended]

5. In addition to the amendments set forth above, in 9 CFR Part 50 remove the word "Deputy" in the following places:

(a) Section 50.2;
(b) Section 50.3(b), both places it appears; (c), both places it appears; and (d);
(c) Section 50.4(a);
(d) Section 50.6, introductory text;
(e) Section 50.7(b);
(f) Section 50.9;
(g) Section 50.14(d); and
(h) Section 50.16(a) and (a)(2).

§§ 50.5, 50.6, 50.7, 50.8, 50.11, and 50.16 [Amended]

6. In addition to the amendments set forth above, in 9 CFR Part 50 remove the words "a Veterinary Services" and add, in their place, the words "an APHIS" in the following places:

(a) Section 50.5;
(b) Section 50.6(b).
(c) Section 50.6(c), both places they appear;
(d) Section 50.7(a);
(e) Section 50.8;
(f) Section 50.11; and
(g) Section 50.16(a)(2) and (a)(4).

§§ 50.3, 50.5, 50.6, 50.8, 50.9, 50.10, 50.11, 50.12, 50.14, and 50.16 [Amended]

7. In addition to the amendments set forth above, in 9 CFR Part 50 remove the words "Veterinary Services" and add, in their place, the word "APHIS" in the following places:

(a) Section 50.3 (c) and (d);
(b) Section 50.5;
(c) Section 50.6(c);
(d) Section 50.8;
(e) Section 50.9;
(f) Section 50.10, first and fourth sentences;
(g) Section 50.11;
(h) Section 50.12, first, second, third, fourth, fifth, and sixth sentences;
(i) Section 50.14(b), and
(j) Section 50.16(a), (a)(3), and (a)(4).

§ 50.16 [Amended]

8. In § 50.16, footnote 1 of paragraph (a)(3) is revised to read as follows:

[1] Compliance Agreement forms are available without charge from the Administrator, c/o Veterinary Services, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, and from local offices of Veterinary Services. (Local offices are listed in telephone directories.)

Done in Washington, DC, this 29 day of July 1991.

Robert Melland,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-18366 Filed 8-1-91; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Policy and Procedure for Enforcement Actions; Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy Statement: Modification.

SUMMARY: The NRC is publishing a modification to its Enforcement Policy to add an additional example to the Reactor Operations Supplement involving maintenance related violations and to delete the civil penalty adjustment factor for violations involving maintenance deficiencies. This policy is codified as appendix C to 10 CFR part 2.

DATES: Since this action concerns a general statement of policy, no prior notice is required and, hence, this modification of the Enforcement Policy is effective August 2, 1991. Comments submitted by September 3, 1991 will be considered.

ADDRESSES: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch. Deliver comments to One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm, weekdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Lower Level, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492-0741.

SUPPLEMENTARY INFORMATION: On March 23, 1988, the Commission issued a Policy Statement on Maintenance of Nuclear Power Plants (53 FR 9430) which stated the Commission's expectations in the area of maintenance and the intention to proceed with a rulemaking on maintenance. Subsequently, on November 28, 1988, the Commission published a Notice of Proposed Rulemaking (53 FR 47822) directed toward improving the effectiveness of maintenance programs. Based on additional information received after publication of the Policy Statement and the Notice of Proposed Rulemaking, the Commission decided to hold rulemaking in abeyance for a period of 18 months from the effective date of the Revised Policy Statement on Maintenance of Nuclear Power Plants which was published December 8, 1989 (54 FR 50611).

In the Revised Policy Statement on the Maintenance of Nuclear Power Plants, the Commission stated its intent in enforcing requirements for power reactors to emphasize maintenance. Consistent with that position, the Enforcement Policy was revised to provide such emphasis by adding maintenance failures as an escalating factor in assessing civil penalties where it has been concluded that the violation involves a significant regulatory concern. 54 FR 50611 (December 8, 1989).

The Commission promulgated the final maintenance rule, Monitoring the Effectiveness of Maintenance at Nuclear Power Plants on July 10, 1991 (56 FR 31306) and is now deleting the maintenance escalation factor and replacing it with a specific example of a Severity Level III violation involving maintenance activities in Supplement I of the Enforcement Policy. This change will continue to emphasize the Commission's intent to enforce existing requirements while at the same time normalize treatment of maintenance in the enforcement process. Previously, maintenance as a root cause was the only functional area with a separate escalation factor. The Commission has concluded that placing an example

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concerning maintenance in Supplement I fits more appropriately in the overall structure of the Enforcement Policy and will provide the appropriate flexibility to deal with the various maintenance issues. Significant deficiencies in the performance of maintenance activities that impact plant equipment where a violation is involved may be considered a significant regulatory concern. The added example provides notice consistent with the final rule that appropriate maintenance is expected to be conducted for both safety-related and applicable balance of plant systems.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Civil penalty, Enforcement, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Violations, and Waste treatment and disposal.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for part 2 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

* * * * *

2. Appendix C section V.B is amended by removing subsection section V.B.7.

Appendix C supplement I is amended by adding example C.9 after example C.8.

Appendix C—General Statement of Policy and Procedure for NRC Enforcement Actions

* * * * *

Supplement I—Severity Categories

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Reactor Operations

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C. Severity Level III—Violations involving for example:

* * * * *

9. Equipment failures caused by inadequate or improper maintenance that substantially complicates recovery from a plant transient.

Dated at Rockville, Maryland this 29th day of July 1991.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 91–18360 Filed 8–1–91; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 211, 231 and 241

[Release Nos. FR–37; 33–6906; 34–29495; File No. S7–5–91]

The Acceptability in Financial Statements of an Accounting Standard Permitting the Return of a Nonaccrual Loan to Accrual Status After a Partial Charge-Off

AGENCY: Securities and Exchange Commission.

ACTION: Interpretation.

SUMMARY: The Securities and Exchange Commission (the "SEC" or "Commission") today announced the publication of an interpretive release setting forth the Commission's view that an accounting standard proposed by the Federal Financial Institutions Examination Council (the "FFIEC" or "Council") for use in bank and thrift regulatory reports would not be acceptable in filings with the Commission. The proposed standard, if adopted, would establish criteria under which a depository institution may selectively return certain nonaccrual loans to accrual status even though full recovery of its contractual principal may not be expected. The Commission's staff has been informed, however, that the FFIEC intends to withdraw the proposal.

EFFECTIVE DATE: July 29, 1991.

FOR FURTHER INFORMATION CONTACT: Robert A. Bayless, Office of the Chief Accountant, Division of Corporation Finance at (202) 272–2553; Douglas N. Barton or Michael D. Foley, Office of the Chief Accountant at (202) 272–2130; Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Background

On March 14, 1991, the FFIEC issued a request for public comment (the "FFIEC release") on a proposed accounting rule for use in regulatory reporting to banking and thrift regulators.[1] The proposal was in response to requests for clarification of these regulator's guidelines regarding nonaccrual status of loans. The FFIEC release notes that some had questioned whether the book balance remaining after any partial loan charge-off should be returned to accrual status.[2] Accordingly, the FFIEC published for public comment a proposed standard that would permit a nonaccrual loan meeting certain criteria to be returned to accrual status if its recorded amount is reduced by a charge-off to an amount which the lender expects to fully collect based on prudent underwriting standards, including interest at a market rate and a prudent loan-to-value ratio. According to the initial FFIEC release, loans intended to qualify for this accounting method are primarily those which are collateral-dependent, although other loans where the primary source of repayment is a dedicated and readily determinable stream of cash flows may also be eligible. As proposed by the FFIEC, banks and thrifts could elect to use this accounting method, but would not be required to do so. The comment period expired May 2, 1991, and final action on the FFIEC proposal is pending. The Commission's staff has been informed, however, that the FFIEC intends to withdraw the proposal.

On March 13, 1991, the Commission issued a request for public comment concerning whether financial statements of depository institutions applying the accounting method proposed by the FFIEC would be acceptable in filings with the Commission.[3] In that release, the Commission noted that conformance of the proposed method with Generally Accepted Accounting Principles (GAAP) was not clear under existing authoritative literature, and that application of the method selectively to some but not all loans meeting the qualifying criteria may depart from acceptable accounting practice.[4] The Commission received thirty-two letters of comment in response to its request. Commentators included the staff of the Financial Accounting Standards Board (FASB), sixteen financial institutions, five public accounting firms, the American Institute of Certified Public Accountants, the General Accounting Office and various industry, professional and government regulatory organizations.

II. Discussion of Comments

A majority of respondents, including the FASB staff, commented that the proposed method does not conform with existing GAAP in various respects, although different respondents objected to different aspects of the proposed method. The most frequent objection cited by commentators, including the FASB staff, relates to the requirement that the partial write-down be recorded based on prudent underwriting standards. Commentators believe that this results in recording a loss exceeding that permitted by FASB Statement No. 5.[5]

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[1] FFIEC, Reporting Standard Concerning the Return of a Loan With a Partial Charge-Off to Accrual Status: Notice of Request for Comment (March 18, 1991) (56 FR 11441).

[2] *Id.*, 56 FR at 11442.

[3] Securities Act Release No. 6886 (March 13, 1991) (56 FR 11405).

[4] Because of the Commission's conclusion concerning the proposal, this release does not discuss certain issues contained in the March 13, 1991 SEC release, such as the appropriate scope of the FFIEC proposal, disclosure requirements, and the preferability of the proposed method. The responses of commentators to these issues, however, are available in File No. S7–5–91 in the Commission's Public Reference Room.

Additionally, several commentators objected to the proposed use of a market discount rate to measure the partial charge-off as not being consistent with existing literature or practice. Others observed, however, that while not required by existing GAAP, the use of a market discount rate in the measurement of loan impairment may not be precluded.[6]

As proposed by the FFIEC, institutions adopting the proposed method could choose to apply it only to selected loans meeting the criteria specified in the rule, while continuing to use their customary practices for other similar loans. Most commentators who addressed this issue commented that existing GAAP does not permit a reporting entity to apply different accounting methods to similar transactions. The FASB staff indicated this to be their primary area of concern, stating that providing institutions the option to account for similar loans differently would compromise the comparability of financial information and make it more difficult for users to make meaningful comparisons of financial statements.

A significant number of commentators indicated that the proposal would have limited applicability because of existing authoritative literature on in-substance foreclosures.[7] That is, many loans meeting the qualifying criteria proposed by the FFIEC may already have been (or may need to be) accounted for as insubstance foreclosed assets because the expectation that future probable cash flows will be less than the contractual obligation may lead to a conclusion that it is unlikely that the borrower can rebuild equity in the collateral. Hence, the overlap between FFIEC's proposal and existing in-substance foreclosure literature may significantly reduce the population of loans available for the accounting method proposed by FFIEC.

III. Conclusion

In its March 13, 1991 request for comment, the Commission expressed concern about the proposed method's conformance with GAAP, as well as its selective application and other issues. After giving full consideration to the comment letters, the Commission agrees with the views expressed by many of the commentators that the return of a nonaccrual loan to accrual status as proposed in the initial FFIEC release would (i) not be in conformance with GAAP, (ii) raise substantial consistency and comparability issues, and (iii) be of marginal utility due to existing literature regarding in-substance foreclosure accounting. Further, as stated above, the Commission's staff has been informed that the FFIEC intends to withdraw the proposal made in its initial release. Accordingly, the Commission has concluded that the proposed accounting method is not acceptable in filings with the Commission.

List of Subjects in 17 CFR Parts 211, 231 and 241

Accounting, Reporting and recordkeeping requirements, Securities.

PART 211—INTERPRETATIONS RELATING TO FINANCIAL REPORTING MATTERS

PART 231—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

Parts 211, 231 and 241 of title 17, chapter II of the Code of Federal Regulations are amended by adding each of the following Release Nos. and the release date of July 29, 1991, to the list of interpretive releases in each part: FR–37, 33–6906 34–29495.

Dated: July 29, 1991.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–18331 Filed 8–1–91; 8:45 am]

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[5] FASB Statement of Financial Accounting Standards No. 5, Accounting for Contingencies (March 1975), as amended, requires accrual for estimated losses that are "likely to occur" and precludes accrual for losses that are less than likely.

[6] The FASB currently has a project to consider whether and, if so, in what circumstances creditors should measure impairment of loans with collectibility concerns based on the present value of expected future cash flows related to the loan.

[7] See Financial Reporting Release No. 28, Accounting for Loan Losses by Registrants Engaged in Lending Activities, December 1, 1986, and AICPA Practice Bulletin No. 7, Criteria for Determining Whether Collateral for a Loan Has Been In-Substance Foreclosed, April 1990.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 635

[FHWA Docket No. 90–4]

RIN 2125–AA18

Contract Procedures

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This final rule prescribes policies, requirements, and procedures relating to Federal-aid highway projects from the time of authorization to proceed to the construction stage, to the time of final acceptance by the FHWA. The regulations are being revised to accommodate several policy changes and to clarify and simplify the regulatory requirements pertaining to the contracting for Federal-aid highway construction.

EFFECTIVE DATE: September 3, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. William A. Weseman, Chief, Construction and Maintenance Division, Office of Engineering, 202–366–0392, or Ms. Michelle Morey, Office of Chief Counsel, 202–366–1374, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The existing regulation on contract procedures is being revised to accommodate several policy changes and clarifications issued by Washington Headquarters to the field during the past several years. Also incorporated are several suggested changes from previous Office of the Inspector General (OIG) reviews. The revisions include but are not limited to the following: (a) When a State highway agency (SHA) employs a consultant to provide construction engineering services, a full time employed State engineer no longer needs to be in direct control of the project at all times; (b) highway relocation provisions are no longer included in this subpart as they are addressed in subpart C; (c) additional guidance is provided on analysis of bids; and (d) only contracts terminated for default are subject to a limitation of Federal participation. In addition, the order of presentation of several of the sections has been rearranged to more closely correspond with the orderly process of a Federal-aid project.

An NPRM was published in the **Federal Register** on June 4, 1990, at 55 FR

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SUPPLEMENTARY INFORMATION: The existing regulation on contract procedures is being revised to accommodate several policy changes and clarifications issued by Washington Headquarters to the field during the past several years. Also incorporated are several suggested changes from previous Office of the Inspector General (OIG) reviews. The revisions include but are not limited to the following: (a) When a State highway agency (SHA) employs a consultant to provide construction engineering services, a full time employed State engineer no longer needs to be in direct control of the project at all times; (b) highway relocation provisions are no longer included in this subpart as they are addressed in subpart C; (c) additional guidance is provided on analysis of bids; and (d) only contracts terminated for default are subject to a limitation of Federal participation. In addition, the order of presentation of several of the sections has been rearranged to more closely correspond with the orderly process of a Federal-aid project.

An NPRM was published in the **Federal Register** on June 4, 1990, at 55 FR

22812, in which the FHWA requested comments on the proposed regulations.

Discussion of Comments

General

The comment period to the docket for the NPRM closed on August 3, 1990. The docket received 11 responses from SHA's and 4 from other agencies. In addition to the discussion included below, minor editorial changes and other minor changes to improve clarity have been made. A section-by-section discussion of the comments received and how they were addressed follows:

Section 635.102 Definitions.

Several comments were received by the docket concerning this section. In addressing these comments some minor editorial changes were made as well as definitions added for "force account," "secondary road plan" and "formal approval."

A comment from a SHA recommended that the definition of "specialty items" be modified by inserting the phrase "work items identified in the contract which are not normally associated with highway construction." This change has been made to clarify the definition.

A comment from a trade association indicated concern with the proposed definition for unbalanced bids. It noted that unbalancing a bid means different things to different people and that by attempting to define "mathematically" and "materially" unbalanced bids, too much discretion would be introduced into the bidding process. It is FHWA's position that unbalanced bids had been addressed previously in the regulations but needed further clarification; thus changes were made to include the definitions of "mathematically" and "materially" unbalanced bids. These definitions are based on previous Comptroller General rulings. The FHWA believes that these definitions should be defined in the Code of Federal Regulations. This action does not change the operating procedures of contracting agencies in the application of Federal-aid funds.

Section 635.105 Supervising Agency

The NPRM proposed that when a SHA employs a consultant to provide construction engineering services, rather than having a full-time State employed engineer "in responsible charge and direct control of the project at all times," as had been required, the full-time State employed engineer need only be "in responsible charge of the project." Three SHA's and one trade association commented on this item. In response to these comments, an editorial change was made to clarify that the full-time, State-employed engineer is to be a full-time State employee (not part-time) who is at the jobsite for the time needed to insure that the project receives adequate supervision and inspection to insure that work is accomplished in conformance with approved plans and specifications.

Section 635.106 Use of Publicly Owned Equipment

One comment was received from a SHA expressing disagreement with the concept that contractors can use publicly owned equipment. This comment was considered; however, realizing that it must be shown to be cost effective before publicly owned equipment can be used, no change was made to this section.

Section 635.108 Health and Safety

One comment was received from a trade association indicating its support of the requirement that "the contractor shall provide all safeguards, safety devices, and protective equipment and shall take any such actions reasonably necessary to protect the life and health of persons working at the site of the project and the safety of the public and to protect property in connection with the performance of the work covered by the contract." It recommended that the regulation be revised to stipulate that States may use unit pricing for safety equipment. In response, the FHWA believes that it is unnecessary to address payment methods for safety items. The manner in which this protection is paid for is best left to the SHA's to decide.

Section 635.109 Standardized Changed Condition Clauses

Comments on this section were received from a trade association and from a SHA. The trade association indicated that the term "excluding loss of anticipated profits" was unclear in that it appeared to be a double negative and could mean that anticipated profit would be included under a change in a contract. The trade association believes that anticipated profit should be reimbursable. It is the FHWA's position that Federal-aid funds may not be applied to anticipated profit. To improve clarity, the phrase "loss of anticipated profit" has been changed to "anticipated profit."

The trade association also indicated concern with respect to paragraph (a)(1)(iv). The proposed regulation provides that "no contract adjustment will be allowed under this clause for any effects caused on unchanged work." It was the commenter's position that it would be better if the adjustment would compensate the contractor for all cost increases caused by the changed condition, including the effects caused on unchanged work (i.e., impact costs). It was also recommended with respect to paragraph (a)(3)(B), that it should be stipulated that: (1) If there is an increase in the amount of quantities of up to 125 percent, the contractor should get paid whether or not a change order has been issued and (2) that the 125 percent be changed to 115 percent. The SHA indicated opposition to the required Standardized Contract clauses because "it breaches the autonomy of a State's contract procedures."

Regarding impact costs, as discussed in the preamble of the final rule implementing this regulation (54 FR 4269, January 30, 1989 Docket No. 87–15), it remains the FHWA's position with respect to paragraph (a)(1), that impact costs may be provided for at the option of the SHA. Concerning the comment on the 125 percent threshold, the threshold of 125 percent has not been changed. The 125 percent was contained in the previous regulation. It is felt to be reasonable and fair and has been used in the 1988 AASHTO Guide Specification for Highway Construction (§ 14.02(c)).

Section 635.110 Licensing and Qualification of Contractors

One comment was received from a trade association indicating that it felt the language was too broadly written and should not include the addition of "bonding and insurance." It believes that States should have the right to consider and require bonding and insurance as a prudent course to insure that the public interest is being well served in today's competitive construction market.

Bonding and insurance have been specifically listed to emphasize that no preaward criteria should operate to restrict competition or to prevent submission or consideration of a bid. The FHWA agrees with the trade association that States have the right to consider and require bonding and insurance if they believe that the public interest is well served by such action; however, bonding and insurance criteria which may restrict competition shall not be permitted.

Section 635.111 Tied Bids

Because of general dissatisfaction with the proposed term "linked," the existing term "tied" has been retained. Three comments were received on this section from SHA's. Clarification was requested concerning who may make the decision regarding the tying of bids. To clarify this section, FHWA has revised the first sentence of paragraph (a) to clearly indicate that Federal-aid projects or Federal-aid projects and State-financed projects may be tied together by the SHA or the SHA may permit the bidders to submit tied bids when the State has determined that by so doing more favorable bids may be received.

In addition, it was recommended that the wording "lowest overall responsive and responsible bidders' bid" be included as States may have reason to reject the lowest overall bid in order to comply with requirements for responsiveness and responsibility. In response, the FHWA has revised the last sentence of § 636.111 (b) to include the word "responsive" in describing the low bid proposal on which Federal participation shall be based. Also, a sentence has been added to clarify the action to be taken if an unsupported shift of cost liability to the Federal-aid work occurs.

Section 635.112 Advertising for Bids

No comments were received concerning this section; however, FHWA has amended this section in order to improve clarity by changing reference to "advertised specifications and subsequent contracts" and "bid proposal package" to "bidding documents".

Section 635.113 Bid Opening and Bid Tabulation

In the Notice of Proposed Rulemaking (NPRM), the FHWA proposed to require States to submit an engineer's estimate with the bid tabulation. The FHWA has now decided to not make this change because all States are currently voluntarily submitting the engineer's estimate with the bid tabulation without such a requirement.

In response to the proposed requirement, one SHA indicated that by State statute they are exempt from releasing the engineer's estimate under the State's freedom of information regulations. They routinely provide the engineer's estimate to the FHWA Division Administrator; however, they request that FHWA take whatever action is necessary to ensure the security of this information. The FHWA maintains that engineer's estimates are exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552, provided the State considers the engineer's estimate confidential and the estimate has not been released to the public.

In support of the proposed rule, another SHA indicated that they do not object to including an engineer's estimate with the tabulation of bids nor do they object to not allowing negotiation after bidding and prior to award.

Another SHA commented that negotiations with contractors be permitted when there are errors in the bid so long as the negotiations do not change the total bid amount or when only one bid is received. It has a State law which allows negotiation with a bidder on a one-bid project when the bid amount exceeds the engineer's estimate. It has been and continues to be the FHWA's policy that, based on 23 U.S.C. 112, negotiations prior to award of a contract is inconsistent with the competitive bidding principle.

Section 635.114 Award of Contract and Concurrence in Award

Four comments were received on this proposed section from two SHA's, one trade association and one public transportation agency. One comment recommended that award procedures for FHWA funded projects should be as consistent as possible with those of UMTA funded projects. The FHWA requires that it concur prior to award of contracts while UMTA allows certified grantees to make such awards up to $1 million without prior concurrence. The FHWA's procedures for award are consistent with the provisions of title 23, U.S.C., and to make the change proposed would violate current statutes.

One SHA commented that FHWA concurrence should not be required for a State to reject all bids. To permit a SHA to reject all bids without FHWA concurrence would not be consistent with the agency's contract letting policy. This policy, based on the requirement of title 23, U.S.C., assures that Federal-aid contracts are awarded to responsible bidders submitting the lowest responsive bids. The suggested change was not made.

Another SHA commented that it should be acceptable to make minor corrections to a bid after receipt of bids, without jeopardizing the integrity of the bidding process. The FHWA agrees that there may be some minor bidding requirements which could be corrected after receipt of bids, without jeopardizing the integrity of the bidding process. This section addresses the requirement that the SHA must identify in the bidding documents those items which must be complied with to make a bid responsive. Therefore, no changes have been made to this section.

One comment recommended that in paragraph (d), the language "if the SHA's specifications permit" should be deleted, ending the sentence after the word "awarded." The FHWA agreed with this comment and has made the recommended change.

In addition, FHWA has amended this section to improve clarity, by moving paragraph (g) to § 635.112 (h), in that this paragraph is more applicable at the time of advertising for bids.

Section 635.116 Subcontracting

One comment was received from a SHA indicating that the requirements of paragraph (c) were misplaced and recommended that they be included in a separate section. The requirements of paragraph (c) are related to subcontracting; however, a change in the section title to "Subcontracting and contractor responsibilities" has been made in that it better indicates what is included in this section.

Section 635.117 Labor and Employment

For clarification, a cross reference to the applicable Affirmative Action regulations (23 CFR part 230, 41 CFR part 60 and Exec. Order No. 11246 (Sept. 24, 1965), 3 CFR 339 (1964–1965), as amended) has been added.

Section 635.120 Changes and Extra Work

Four comments were received, three from SHA's and one from a trade association. One SHA commenter indicated that there were circumstances which may dictate an exception to approval of changes in contract time at the same time as approval of the extra work. In addition, it believes that this is not a regulatory issue, but rather a matter of construction policy, and that the regulations should remain unchanged in this area.

The FHWA believes that it is sound construction practice to submit changes in contract time at the same time as the respective work change; however, it does recognize that exceptions do occur. For some change orders, the interrelationship between work items is such that it is difficult to realistically indicate the actual change in the time to complete the project concurrent with the work order approval. The FHWA agrees with these comments and has changed the wording from requiring these time changes at the same time as the work change to that of indicating that time changes "should" be submitted at the same time. However, the times when concurrent approval cannot take place should be for only unusual circumstances.

One SHA indicated concern about paragraph (e) in the NPRM which required States to perform and

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document an independent cost analysis of each negotiated extra work order. It felt that making such an independent cost analysis would be a repetitive effort. Another SHA indicated that the term "independent" needed clarification. The word "independent" as included in the NPRM has been deleted. The paragraph now indicates that a cost analysis is needed for each negotiated contract change or negotiated extra work order, i.e., documentation is needed to cover the basis of the change, any special conditions and the basis of payment including supporting documentation as applicable.

Another commenter took exception to the proposed NPRM requirement that for contract changes and extra work orders the reason or reasons for the use of "force account" would be subject to the approval of FHWA. The commenter felt this change in procedure could cause very expensive delays for only a minimal benefit. In response to this comment, paragraph (d) has been revised to clarify that the reason or reasons for using force account procedures shall be documented. Such documentation should be available for review by the FHWA at the time of change order or extra work approval.

The trade association indicated that it fully supports the new paragraph (d) under this section which states that "force account procedures shall only be used when strictly necessary." The FHWA believes this change will reduce the amount of force account work by encouraging the SHA's to negotiate prices with the contractors.

Section 635.121 Contract Time and Contract Time Extensions

Two comments were received from SHA's. One SHA indicated no objections to the proposed revision requiring written procedures for determination of contract time.

The other SHA opposed the provision requiring SHA's to have "adequate written procedures" for determining contract time. It also expressed concern about the application of such procedures on a uniform statewide basis. In addition, the SHA recommended that implementation of this requirement be modified to accommodate ongoing studies because this SHA is currently engaged in a major research project to study a rational process for determining work days by project type and other parameters.

The FHWA believes that SHA's need to have adequate "written procedures" as a basis of good contracting practice and to ensure that the public interest is protected. In addressing the application of such procedures on a uniform statewide basis, FHWA agrees that conditions throughout a State may vary; therefore, the requirement for having "written procedures for the determination of contract time on a uniform statewide basis" has been revised to read "written procedures for the determination of contract time." In this manner differences throughout the State can be accounted for in the State's procedure. Further, the FHWA agrees that the requirement should be modified to accommodate ongoing studies. Therefore, the FHWA has provided the SHA's with a 6-month period after the final rule is effective to phase in this requirement. This phase in period will also permit the SHA's to adequately document their time determination procedures.

Section 635.122 Participation in Progress Payments

Two comments were received from SHA's. Both recommended that paragraph (a)(3) be revised to indicate that the contractor should furnish an invoice or delivery receipt only if requested by the SHA. No change has been made. The FHWA believes that it is a prudent contract administration practice to receive an invoice or delivery receipt when paying for stockpiled materials.

Section 635.124 Participation in Contract Claim Awards and Settlements

One comment was received from a trade association. It recommended that the FHWA not foreclose the possibility of participation in a contract claim award where State law contemplates award of, among other things, anticipated profit.

The FHWA reviews each claim on a case-by-case basis; however, it is FHWA's policy to not participate in anticipated profit. In addition, unlike major changes in work, which require prior approval, the extent of Federal participation in a claim will normally be determined after the work has been completed and a thorough review of the pertinent factors and all supporting documentation has taken place.

In section (d), the current language states, "In those cases where the SHA receives an adverse decision in an amount more than can be justified by the SHA, the FHWA will participate up to the appropriate matching share * * *" Because at times it is more prudent for a SHA to settle a claim than to litigate it, language has been added to this section to address FHWA participation in claim settlements, where the amount involved is more than the SHA can support.

In Paragraph (e), the current language of "acts not consistent within the standards of the profession" is difficult for FHWA to administer because no written or easily ascertainable "standards of the profession" exist that can be applied nationwide. To provide the FHWA with a means of ascertaining acceptable standards of practice for a particular State, as determined on a case-by-case basis, the current language has been changed to "acts not consistent with usual State practices."

Some minor changes have been made to this section to improve clarity and to strengthen the State/FHWA partnership philosophy of the Federal-aid highway program.

Section 635.125 Termination of Contract

No comments were received concerning this section; however, FHWA has amended this section to clarify existing FHWA policy and procedure relative to the termination of construction contracts. The amendment emphasizes the need for states to obtain the prior concurrence of the Division Administrator in the terms of a termination to assure Federal participation in costs involved. Concurrence must be based on the practical and economical completion factors involved in each particular situation. As indicated in existing § 635.125(e), the FHWA objective of limiting total costs in contract termination to the amount which was authorized under the initial approval of plans, specifications and estimates (and normal amendments for change orders) unless unusual justification for increased amounts can be made. The increased amounts should not include costs incurred as a result of gross errors or neglect in contract administration by the State.

Section 635.126 Record of Materials, Supplies, and Labor

Two comments were received from SHA's. One questioned the accuracy of data supplied by the contractors without a viable means for the State to verify the accuracy of such data. The other requested that paragraphs (b)(2) and (b)(3) be rewritten to clarify that only the information to be shown on Form FHWA–47, and not the data which supports that information, be submitted to the SHA.

In response, a requirement has been added that the SHA review the Form FHWA–47 for reasonableness. It is expected that a State employee sufficiently familiar with the project will perform this review. It is not intended that an audit of contractor records be undertaken. In addition, editorial changes have been made to clarify that only the completed Form FHWA–47 be submitted to the SHA and to clarify when the requirements of this section are applicable.

Rulemaking Analysis and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this document does not contain a major rule under Executive Order 12291, or a significant regulation under the regulatory policies and procedures of the Department of Transportation. It is anticipated that the regulatory impact of this rulemaking, if any, will be minimal since the amendments revise existing FHWA regulations on contract procedures and delineate acceptable procedures that are consistent with Federal statutes, and 49 CFR part 18.

The revised regulations would impose mandatory standards on State and local governments that we believe are necessary to meet requirements in Federal statutes and provide general procedural direction and recommended criteria. In its entirety, however, the regulation is less prescriptive and allows greater flexibility in administering Federal-aid projects under the authority of title 23, United States Code. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), the agency has evaluated the effects of this rule on small entities. It is anticipated that this rule will have a minimal economic impact. Hence, the FHWA certifies that this rule would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. It has been determined that this document has federalism implications. However, we believe that the Federalism implications are mitigated by the need to meet requirements mandated by statute, and the agency has allowed the maximum administrative discretion to meet the intent of the statute. Therefore, a federalism assessment has not been prepared.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulatory Identification Number

A regulatory identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 635

Government contracts, Grant programs—transportation, Highways and roads.

In consideration of the foregoing, the FHWA hereby amends part 635, subpart A of chapter I of title 23, Code of Federal Regulations, as set forth below.

Issued on: July 26, 1991.

T.D. Larson,
Administrator.

PART 635—CONSTRUCTION AND MAINTENANCE

1. The authority citation for part 635 continues to read as follows:

Authority: 23 U.S.C. 112, 113, 114, 117, 128, and 315; 31 U.S.C. 6506; 42 U.S.C. 3334, 4601, *et seq.*; 49 CFR 1.48(b).

2. Subpart A (consisting of §§ 635.101–635.126) of part 635 is revised to read as follows:

Subpart A—Contract Procedures

Sec.
635.101 Purpose.
635.102 Definitions.
635.103 Applicability.
635.104 Method of construction.
635.105 Supervising agency.
635.106 Use of publicly owned equipment.
635.107 Small and disadvantaged business participation.
635.108 Health and safety.
635.109 Standardized changed condition clauses.
635.110 Licensing and qualification of contractors.
635.111 Tied bids.
635.112 Advertising for bids.
635.113 Bid opening and bid tabulations.
635.114 Award of contract and concurrence in award.
635.115 Agreement estimate.
635.116 Subcontracting and contractor responsibilities.
635.117 Labor and employment.
635.118 Payroll and weekly statements.
635.119 False statements.
635.120 Changes and extra work.
635.121 Contract time and contract time extensions.
635.122 Participation in progress payments.
635.123 Determination and documentation of pay quantities.
635.124 Participation in contract claim awards and settlements.
635.125 Termination of contract.
635.126 Record of materials, supplies, and labor.

Subpart A—Contract Procedures

§ 635.101 Purpose.

To prescribe policies, requirements, and procedures relating to Federal-aid highway projects, from the time of authorization to proceed to the construction stage, to the time of final acceptance by the Federal Highway Administration (FHWA).

§ 635.102 Definitions.

As used in this subpart:

Administrator means Federal Highway Administrator.

Certification Acceptance means the alternative procedure which may be used for administering certain highway projects involving Federal funds pursuant to 23 U.S.C. 117.

Division Administrator means the chief FHWA official assigned to conduct business in a particular State. A State is as defined in 23 U.S.C. 101.

Force account means a basis of payment for the direct performance of highway construction work with payment based on the actual cost of labor, equipment, and materials furnished and consideration for overhead and profit.

Formal approval means approval in writing or the electronic transmission of such approval.

Local public agency means any city, county, township, municipality, or other political subdivision that may be empowered to cooperate with the State highway agency in highway matters.

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Subpart A—Contract Procedures

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Formal approval means approval in writing or the electronic transmission of such approval.

Local public agency means any city, county, township, municipality, or other political subdivision that may be empowered to cooperate with the State highway agency in highway matters.

Major change or major extra work means a change which will significantly affect the cost of the project to the Federal Government or alter the termini, character or scope of work.

Materially unbalanced bid means a bid which generates a reasonable doubt that award to the bidder submitting a mathematically unbalanced bid will result in the lowest ultimate cost to the Government.

Mathematically unbalanced bid means a bid containing lump sum or unit bid items which do not reflect reasonable actual costs plus a reasonable proportionate share of the bidder's anticipated profit, overhead costs, and other indirect costs.

Public agency means any organization with administrative or functional responsibilities which are directly or indirectly affiliated with a governmental body of any nation, State, or local jurisdiction.

Publicly owned equipment means equipment previously purchased or otherwise acquired by the public agency involved primarily for use in its own operations.

Secondary Road Plan means the alternative procedure which may be used for the administration of Federal-aid projects on the Federal-aid secondary system pursuant to 23 U.S.C. 117.

Specialty items means work items identified in the contract which are not normally associated with highway construction and require highly specialized knowledge, abilities or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract; in general these items are to be limited to minor components of the overall contract.

State highway agency (SHA) means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term "State" should be considered equivalent to "State highway agency" if the context so implies.

§ 635.103 Applicability.

The policies, requirements, and procedures prescribed in this subpart shall apply to all Federal-aid highway projects except for those title 23 requirements specifically discharged in an approved certification acceptance plan or secondary road plan, in accordance with 23 U.S.C. 117.

§ 635.104 Method of construction.

(a) Actual construction work shall be performed by contract awarded by competitive bidding; unless, as provided in § 635.104(b), the SHA demonstrates to the satisfaction of the Division Administrator that some other method is more cost effective or that an emergency exists. The SHA shall assure opportunity for free, open, and competitive bidding, including adequate publicity of the advertisements or calls for bids. The advertising or calling for bids and the award of contracts shall comply with the procedures and requirements set forth in §§ 635.112 and 635.114.

(b) Approval by the Division Administrator for construction by a method other than competitive bidding shall be requested by the State in accordance with subpart B of part 635 of this chapter. Before such finding is made, the SHA shall determine that the organization to undertake the work is so staffed and equipped as to perform such work satisfactorily and cost effectively.

§ 635.105 Supervising agency.

(a) The SHA has responsibility for the construction of all Federal-aid projects, and is not relieved of such responsibility by authorizing performance of the work by a local public agency or other Federal agency. The SHA shall be responsible for insuring that such projects receive adequate supervision and inspection to insure that projects are completed in conformance with approved plans and specifications.

(b) Although the SHA may employ a consultant to provide construction engineering services, such as inspection or survey work on a project, the SHA shall provide a full-time employed State engineer to be in responsible charge of the project.

(c) When a project is located on a street or highway over which the SHA does not have legal jurisdiction, or when special conditions warrant, the SHA, while not relieved of overall project responsibility, may arrange for the local public agency having jurisdiction over such street or highway to perform the work with its own forces or by contract; provided the following conditions are met and the Division Administrator approves the arrangements in advance.

(1) In the case of force account work, there is full compliance with subpart B of this part.

(2) When the work is to be performed under a contract awarded by a local public agency, all Federal requirements including those prescribed in this subpart shall be met.

(3) The local public agency is adequately staffed and suitably equipped to undertake and satisfactorily complete the work; and

(4) In those instances where a local public agency elects to use consultants for construction engineering services, the local public agency shall provide a full-time employee of the agency to be in responsible charge of the project.

§ 635.106 Use of publicly owned equipment.

(a) Publicly owned equipment should not normally compete with privately owned equipment on a project to be let to contract. There may be exceptional cases, however, in which the use of equipment of the State or local public agency for highway construction purposes may be warranted or justified. A proposal by any SHA for the use of publicly owned equipment on such a project must be supported by a showing that it would clearly be cost effective to do so under the conditions peculiar to the individual project or locality.

(b) Where publicly owned equipment is to be made available in connection with construction work to be let to contract, Federal funds may participate in the cost of such work provided the following conditions are met:

(1) The proposed use of such equipment is clearly set forth in the Plans, Specifications and Estimate (PS&E) submitted to the Division Administrator for approval.

(2) The advertised specifications specify the items of publicly owned equipment available for use by the successful bidder, the rates to be charged, and the points of availability or delivery of the equipment; and

(3) The advertised specifications include a notification that the successful bidder has the option either of renting part or all of such equipment from the State or local public agency or otherwise providing the equipment necessary for the performance of the contract work.

(c) In the rental of publicly owned equipment to contractors, the State or local public agency shall not profit at the expense of Federal funds.

(d) Unforeseeable conditions may make it necessary to provide publicly owned equipment to the contractor at rental rates agreed to between the contractor and the State or local public agency after the work has started. Any such arrangement shall not form the basis for any increase in the cost of the project on which Federal funds are to participate.

(e) When publicly owned equipment is used on projects constructed on a force account basis, costs may be determined by agreed unit prices or on an actual cost basis. When agreed unit prices are applied the equipment need not be itemized nor rental rates shown in the estimate. However, if such work is to be performed on an actual cost basis, the

SHA shall submit to the Division Administrator for approval the schedule of rates proposed to be charged, exclusive of profit, for the publicly owned equipment made available for use.

§ 635.107 Small and disadvantaged business participation.

The SHA shall schedule contract lettings in a balanced program providing contracts of such size and character as to assure an opportunity for all sizes of contracting organizations to compete. In accordance with title VI of the Civil Rights Act of 1964, subsequent Federal-aid Highway Acts, and 49 CFR part 23, the SHA shall affirmatively encourage disadvantaged business enterprise participation in the highway construction program.

§ 635.108 Health and safety.

Contracts for projects shall include provisions designed:

(a) To insure full compliance with all applicable Federal, State, and local laws governing safety, health and sanitation; and

(b) To require that the contractor shall provide all safeguards, safety devices, and protective equipment and shall take any other actions reasonably necessary to protect the life and health of persons working at the site of the project and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

§ 635.109 Standardized changed condition clauses.

(a) Except as provided in paragraph (b) of this section, the following changed conditions contract clauses shall be made part of, and incorporated in, each highway construction project approved under 23 U.S.C. 106:

(1) Differing site conditions.

(i) During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the site is disturbed and before the affected work is performed.

(ii) Upon written notification, the engineer will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding anticipated profits, will be made and the contract modified in writing accordingly. The engineer will notify the contractor of the determination whether or not an adjustment of the contract is warranted.

(iii) No contract adjustment which results in a benefit to the contractor will be allowed unless the contractor has provided the required written notice.

(iv) No contract adjustment will be allowed under this clause for any effects caused on unchanged work. (This provision may be omitted by the SHA's at their option.)

(2) Suspensions of work ordered by the engineer.

(i) If the performance of all or any portion of the work is suspended or delayed by the engineer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the contractor shall submit to the engineer in writing a request for adjustment within 7 calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.

(ii) Upon receipt, the engineer will evaluate the contractor's request. If the engineer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the engineer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The contractor will be notified of the engineer's determination whether or not an adjustment of the contract is warranted.

(iii) No contract adjustment will be allowed unless the contractor has submitted the request for adjustment within the time prescribed.

(iv) No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided or excluded under any other term or condition of this contract.

(3) Significant changes in the character of work.

(i) The engineer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project.

Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the contractor agrees to perform the work as altered.

(ii) If the alterations or changes in quantities significantly change the character of the work under the contract, whether such alterations or changes are in themselves significant changes to the character of the work or by affecting other work cause such other work to become significantly different in character, an adjustment, excluding anticipated profit, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the contractor in such amount as the engineer may determine to be fair and equitable.

(iii) If the alterations or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.

(iv) The term "significant change" shall be construed to apply only to the following circumstances:

(A) When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or

(B) When a major item of work, as defined elsewhere in the contract, is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed.

(b) The provisions of this section shall be governed by the following:

(1) Where State statute does not permit one or more of the contract clauses included in paragraph (a) of this section, the State statute shall prevail and such clause or clauses need not be made applicable to Federal-aid highway contracts.

(2) Where the State highway agency has developed and implemented one or more of the contract clauses included in paragraph (a) of this section, such clause or clauses, as developed by the State highway agency may be included in Federal-aid highway contracts in lieu of the corresponding clause or clauses in

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Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the contractor agrees to perform the work as altered.

(ii) If the alterations or changes in quantities significantly change the character of the work under the contract, whether such alterations or changes are in themselves significant changes to the character of the work or by affecting other work cause such other work to become significantly different in character, an adjustment, excluding anticipated profit, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the contractor in such amount as the engineer may determine to be fair and equitable.

(iii) If the alterations or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.

(iv) The term "significant change" shall be construed to apply only to the following circumstances:

(A) When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or

(B) When a major item of work, as defined elsewhere in the contract, is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed.

(b) The provisions of this section shall be governed by the following:

(1) Where State statute does not permit one or more of the contract clauses included in paragraph (a) of this section, the State statute shall prevail and such clause or clauses need not be made applicable to Federal-aid highway contracts.

(2) Where the State highway agency has developed and implemented one or more of the contract clauses included in paragraph (a) of this section, such clause or clauses, as developed by the State highway agency may be included in Federal-aid highway contracts in lieu of the corresponding clause or clauses in

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paragraph (a) of this section. The State's action must be pursuant to a specific State statute requiring differing contract conditions clauses. Such State developed clause or clauses, however, must be in conformance with 23 U.S.C., 23 CFR and other applicable Federal statutes and regulations as appropriate and shall be subject to the Division Administrator's approval as part of the PS&E.

§ 635.110 Licensing and qualification of contractors.

(a) The procedures and requirements a SHA proposes to use for qualifying and licensing contractors, who may bid for, be awarded, or perform Federal-aid highway contracts, shall be submitted to the Division Administrator for advance approval. Only those procedures and requirements so approved shall be effective with respect to Federal-aid highway projects. Any changes in approved procedures and requirements shall likewise be subject to approval by the Division Administrator.

(b) No procedure or requirement for bonding, insurance, prequalification, qualification, or licensing of contractors shall be approved which, in the judgment of the Division Administrator, may operate to restrict competition, to prevent submission of a bid by, or to prohibit the consideration of a bid submitted by, any responsible contractor, whether resident or nonresident of the State wherein the work is to be performed.

(c) No contractor shall be required by law, regulation, or practice to obtain a license before submission of a bid or before the bid may be considered for award of a contract. This, however, is not intended to preclude requirements for the licensing of a contractor upon or subsequent to the award of the contract if such requirements are consistent with competitive bidding. Prequalification of contractors may be required as a condition for submission of a bid or award of contract only if the period between the date of issuing a call for bids and the date of opening of bids affords sufficient time to enable a bidder to obtain the required prequalification rating.

(d) Requirements for the prequalification, qualification or licensing of contractors, that operate to govern the amount of work that may be bid upon by, or may be awarded to, a contractor, shall be approved only if based upon a full and appropriate evaluation of the contractor's capability to perform the work.

(e) Contractors who are currently suspended, debarred or voluntarily excluded under 49 CFR part 29 or otherwise determined to be ineligible, shall be prohibited from participating in the Federal-aid highway program.

§ 635.111 Tied bids.

(a) The SHA may tie or permit the tying of Federal-aid highway projects or Federal-aid and State-financed highway projects for bidding purposes where it appears that by so doing more favorable bids may be received. To avoid discrimination against contractors desiring to bid upon a lesser amount of work than that included in the tied combinations, provisions should be made to permit bidding separately on the individual projects whenever they are of such character as to be suitable for bidding independently.

(b) When Federal-aid and State-financed highway projects are tied or permitted to be tied together for bidding purposes, the bid schedule shall set forth the quantities separately for the Federal-aid work and the State-financed work. All proposals submitted for the tied projects must contain separate bid prices for each project individually. Federal participation in the cost of the work shall be on the basis of the lowest overall responsive bid proposal unless the analysis of bids reveals that mathematical unbalancing has caused an unsupported shift of cost liability to the Federal-aid work. If such a finding is made, Federal participation shall be based on the unit prices represented in the proposal by the individual contractor who would be the lowest responsive and responsible bidder if only the Federal-aid project were considered.

(c) Federal-aid highway projects and State-financed highway projects may be combined in one contract if the conditions of the projects are so similar that the unit costs on the Federal-aid projects should not be increased by such combinations of projects. In such cases, like quantities should be combined in the proposal to avoid the possibility of unbalancing of bids in favor of either of the projects in the combination.

§ 635.112 Advertising for bids.

(a) No work shall be undertaken on any Federal-aid project, nor shall any project be advertised for bids, prior to authorization by the Division Administrator.

(b) The advertisement and approved plans and specifications shall be available to bidders a minimum of 3 weeks prior to opening of bids except that shorter periods may be approved by the Division Administrator in special cases when justified.

(c) The SHA shall obtain the approval of the Division Administrator prior to issuing any addenda which contain a major change to the approved plans or specifications during the advertising period. Minor addenda need not receive prior approval but should be identified by the SHA at the time of or prior to requesting FHWA concurrence in award. The SHA shall provide assurance that all bidders have received all issued addenda.

(d) Nondiscriminatory bidding procedures shall be afforded to all qualified bidders regardless of National, State or local boundaries and without regard to race, color, religion, sex, national origin, age, or handicap. If any provisions of State laws, specifications, regulations, or policies may operate in any manner contrary to Federal requirements, including title VI of the Civil Rights Act of 1964, to prevent submission of a bid, or prohibit consideration of a bid submitted by any responsible bidder appropriately qualified in accordance with § 635.110, such provisions shall not be applicable to Federal-aid projects. Where such nonapplicable provisions exist, notices of advertising, specifications, special provisions or other governing documents shall include a positive statement to advise prospective bidders of those provisions that are not applicable.

(e) No public agency shall be permitted to bid in competition or to enter into subcontracts with private contractors.

(f) The SHA shall include a noncollusion provision substantially as follows in the bidding documents:

> Each bidder shall file a statement executed by, or on behalf of the person, firm, association, or corporation submitting the bid certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action, in restraint of free competitive bidding in connection with the submitted bid. Failure to submit the executed statement as part of the bidding documents will make the bid nonresponsive and not eligible for award consideration.

(1) The required form for the statement will be provided by the State to each prospective bidder.

(2) The statement shall either be in the form of an affidavit executed and sworn to by the bidder before a person who is authorized by the laws of the State to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States.

(g) The SHA shall include the lobbying certification requirement pursuant to 49 CFR part 20 and the requirements of 49 CFR part 29 regarding suspension and debarment certification in the bidding documents.

(h) The SHA shall clearly identify in the bidding documents those requirements which the bidder must assure are complied with to make the bid responsive. Failure to comply with these identified bidding requirements shall make the bid nonresponsive and not eligible for award consideration.

§ 635.113 Bid opening and bid tabulations.

(a) All bids received in accordance with the terms of the advertisement shall be publicly opened and announced either item by item or by total amount. If any bid received is not read aloud, the name of the bidder and the reason for not reading the bid aloud shall be publicly announced at the letting. Negotiation with contractors, during the period following the opening of bids and before the award of the contract shall not be permitted.

(b) The SHA shall prepare and forward tabulations of bids to the Division Administrator. These tabulations shall be certified by a responsible SHA official and shall show:

(1) Bid item details for at least the low three acceptable bids and

(2) The total amounts of all other acceptable bids.

§ 635.114 Award of contract and concurrence in award.

(a) Federal-aid contracts shall be awarded only on the basis of the lowest responsive bid submitted by a bidder meeting the criteria of responsibility as may have been established by the SHA in accordance with § 635.110. Award shall be within the time established by the SHA and subject to the prior concurrence of the Division Administrator.

(b) The SHA shall formally request concurrence by the Division Administrator in the award of all Federal-aid contracts. Concurrence in award by the Division Administrator is a prerequisite to Federal participation in construction costs and is considered as authority to proceed with construction, unless specifically stated otherwise. Concurrence in award shall be formally approved and shall only be given after receipt and review of the tabulation of bids.

(c) Following the opening of bids, the SHA shall examine the unit bid prices of the apparent low bid for reasonable conformance with the engineer's estimated prices. A bid with extreme variations from the engineer's estimate, or where obvious unbalancing of unit prices has occurred, shall be thoroughly evaluated.

(d) Where obvious unbalanced bid items exist, the SHA's decision to award or reject a bid shall be supported by written justification. A bid found to be mathematically unbalanced, but not found to be materially unbalanced, may be awarded.

(e) When a low bid is determined to be both mathematically and materially unbalanced, the Division Administrator will take appropriate steps to protect the Federal interest. This action may be concurrence in a SHA decision not to award the contract. If, however, the SHA decides to proceed with the award and requests FHWA concurrence, the Division Administrator's action may range from nonconcurrence to concurrence with contingency conditions limiting Federal participation.

(f) If the SHA determines that the lowest bid is not responsive or the bidder is not responsible, it shall so notify and obtain the Division Administrator's concurrence before making an award to the next lowest bidder.

(g) If the SHA rejects or declines to read or consider a low bid on the grounds that it is not responsive because of noncompliance with a requirement which was not clearly identified in the bidding documents, it shall submit justification for its action. If such justification is not considered by the Division Administrator to be sufficient, concurrence will not be given to award to another bidder on the contract at the same letting.

(h) Any proposal by the SHA to reject all bids received for a Federal-aid contract shall be submitted to the Division Administrator for concurrence, accompanied by adequate justification.

(i) In the event the low bidder selected by the SHA for contract award forfeits the bid guarantee, the SHA may dispose of the amounts of such forfeited guarantees in accordance with its normal practices.

(j) A copy of the executed contract between the SHA and the construction contractor should be furnished to the Division Administrator as soon as practicable after execution.

§ 635.115 Agreement estimate.

(a) Following the award of contract, an agreement estimate based on the contract unit prices and estimated quantities shall be prepared by the SHA and submitted to the Division Administrator as soon as practicable for use in the preparation of the project agreement. The agreement estimate shall also include the actual or best estimated costs of any other items to be included in the project agreement.

(b) An agreement estimate shall be submitted by the SHA for each force account project (see 23 CFR part 635, subpart B) when the plans and specifications are submitted to the Division Administrator for approval. It shall normally be based on the estimated quantities and the unit prices agreed upon in advance between the SHA and the Division Administrator, whether the work is to be done by the SHA or by a local public agency. Such agreed unit prices shall constitute a commitment as the basis for Federal participation in the cost of the project. The unit prices shall be based upon the estimated actual cost of performing the work but shall in no case exceed unit prices currently being obtained by competitive bidding on comparable highway construction work in the same general locality. In special cases involving unusual circumstances, the estimate may be based upon the estimated costs for labor, materials, equipment rentals, and supervision to complete the work rather than upon agreed unit prices. This paragraph shall not be applicable to agreement estimates for railroad and utility force account work.

§ 635.116 Subcontracting and contractor responsibilities.

(a) Contracts for projects shall specify the minimum percentage of work that a contractor must perform with its own organization. This percentage shall be not less than 30 percent of the total original contract price excluding any identified specialty items. Specialty items may be performed by subcontract and the amount of any such specialty items so performed may be deducted from the total original contract before computing the amount of work required to be performed by the contractor's own organization. The contract amount upon which the above requirement is computed includes the cost of materials and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

(b) The SHA shall not permit any of the contract work to be performed under a subcontract, unless such arrangement has been authorized by the SHA in writing. Prior to authorizing a subcontract, the SHA shall assure that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. The Division Administrator may permit the SHA to satisfy the subcontract assurance requirements by concurrence in a SHA process which requires the contractor to certify that each subcontract

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(b) An agreement estimate shall be submitted by the SHA for each force account project (see 23 CFR part 635, subpart B) when the plans and specifications are submitted to the Division Administrator for approval. It shall normally be based on the estimated quantities and the unit prices agreed upon in advance between the SHA and the Division Administrator, whether the work is to be done by the SHA or by a local public agency. Such agreed unit prices shall constitute a commitment as the basis for Federal participation in the cost of the project. The unit prices shall be based upon the estimated actual cost of performing the work but shall in no case exceed unit prices currently being obtained by competitive bidding on comparable highway construction work in the same general locality. In special cases involving unusual circumstances, the estimate may be based upon the estimated costs for labor, materials, equipment rentals, and supervision to complete the work rather than upon agreed unit prices. This paragraph shall not be applicable to agreement estimates for railroad and utility force account work.

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(b) The SHA shall not permit any of the contract work to be performed under a subcontract, unless such arrangement has been authorized by the SHA in writing. Prior to authorizing a subcontract, the SHA shall assure that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the* prime contract. The Division Administrator may permit the SHA to satisfy the subcontract assurance requirements by concurrence in a SHA process which requires the contractor to certify that each subcontract

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arrangement will be in the form of a written agreement containing all the requirements and pertinent provisions of the prime contract. Prior to the Division Administrator's concurrence, the SHA must demonstrate that it has an acceptable plan for monitoring such certifications.

(c) To assure that all work (including subcontract work) is performed in accordance with the contract requirements, the contractor shall be required to furnish:

(1) A competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work), and;

(2) Such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines are necessary to assure the performance of the contract.

§ 635.117 Labor and employment.

(a) No construction work shall be performed by convict labor at the work site or within the limits of any Federal-aid highway construction project from the time of award of the contract or the start of work on force account until final acceptance of the work by the SHA unless it is labor performed by convicts who are on parole, supervised release, or probation.

(b) No procedures or requirement shall be imposed by any State which will operate to discriminate against the employment of labor from any other State, possession or territory of the United States, in the construction of a Federal-aid project.

(c) The selection of labor to be employed by the contractor on any Federal-aid project shall be by the contractor without regard to race, color, religion, sex, national origin, age, or handicap and in accordance with 23 CFR part 230, 41 CFR part 60 and Exec. Order No. 11246 (Sept. 24, 1965), 3 CFR 339 (1964–1965), as amended.

(d) Pursuant to 23 U.S.C. 140(d), it is permissible for SHA's to implement procedures or requirements which will extend preferential employment to Indians living on or near a reservation on eligible projects as defined in paragraph (e) of this section. Indian preference shall be applied without regard to tribal affiliation or place of enrollment. In no instance should a contractor be compelled to layoff or terminate a permanent core-crew employee to meet a preference goal.

(e) Projects eligible for Indian employment preference consideration are projects located on roads within or providing access to an Indian reservation or other Indian lands as defined under the term "Indian Reservation Roads" in 23 U.S.C. 101 and regulations issued thereunder. The terminus of a road "providing access to" is that point at which it intersects with a road functionally classified as a collector or higher classification (outside the reservation boundary) in both urban and rural areas. In the case of an Interstate highway, the terminus is the first interchange outside the reservation.

(f) The advertisement or call for bids on any contract for the construction of a project located on the Federal-aid system either shall include the minimum wage rates determined by the Secretary of Labor to be prevailing on the same type of work on similar construction in the immediate locality or shall provide that such rates are set out in the bidding documents and shall further specify that such rates are a part of the contract covering the project.

§ 635.118 Payroll and weekly statements.

For all projects, copies of payrolls and statements of wages paid, filed with the State as set forth in the required contract provisions for the project, are to be retained by the SHA for the time period pursuant to 49 CFR part 18 for review as needed by the Federal Highway Administration, the Department of Labor, the General Accounting Office, or other agencies.

§ 635.119 False statements.

The following notice shall be posted on each Federal-aid highway project in one or more places where it is readily available to and viewable by all personnel concerned with the project:

Notice to All Personnel Engaged on Federal-Aid Highway Projects

United States Code, title 18, section 1020, reads as follows:

Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the costs thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction of any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever, knowingly makes any false statement, false representation, false report, or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever, knowingly makes any false statement or false representation as to a material fact in any statement, certificate, or report submitted pursuant to the provisions of the Federal-aid Road Act approved July 11, 1916 (39 Stat. 355), as amended and supplemented,

Shall be fined not more than $10,000 or imprisoned not more than five years, or both.

§ 635.120 Changes and extra work.

(a) Following authorization to proceed with a project, all major changes in the plans and contract provisions and all major extra work shall have formal approval by the Division Administrator in advance of their effective dates. However, when emergency or unusual conditions justify, the Division Administrator may give tentative advance approval orally to such changes or extra work and ratify such approval with formal approval as soon thereafter as practicable.

(b) For non-major changes and non-major extra work, formal approval is necessary but such approval may be given retroactively at the discretion of the Division Administrator. The SHA should establish and document with the Division Administrator's concurrence specific parameters as to what constitutes a non-major change and non-major extra work.

(c) Changes in contract time, as related to contract changes or extra work, should be submitted at the same time as the respective work change for approval by the Division Administrator.

(d) In establishing the method of payment for contract changes or extra work orders, force account procedures shall only be used when strictly necessary, such as when agreement cannot be reached with the contractor on the price of a new work item, or when the extent of work is unknown or is of such character that a price cannot be determined to a reasonable degree of accuracy. The reason or reasons for using force account procedures shall be documented.

(e) The SHA shall perform and adequately document a cost analysis of each negotiated contract change or negotiated extra work order. The method and degree of the cost analysis shall be subject to the approval of the Division Administrator.

(f) Proposed changes and extra work involved in nonparticipating operations that may affect the design or participating construction features of a project, shall be subject to review and

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concurrence by the Division Administrator.

§ 635.121 Contract time and contract time extensions.

(a) The SHA should have adequate written procedures for the determination of contract time. These procedures should be submitted for approval to the Division Administrator within 6 months of the effective date of this Final Rule.

(b) Contract time extensions granted by a SHA shall be subject to the concurrence of the Division Administrator and will be considered in determining the amount of Federal participation. Contract time extensions submitted for approval to the Division Administrator, shall be fully justified and adequately documented.

§ 635.122 Participation in progress payments.

(a) Federal funds will participate in the costs to the SHA of construction accomplished as the work progresses, based on a request for reimbursement submitted by State highway agencies. When the contract provisions provide for payment for stockpiled materials, the amount of the reimbursement request upon which participation is based may include the appropriate value of approved specification materials delivered by the contractor at the project site or at another designated location in the vicinity of such construction, provided that:

(1) The material conforms with the requirements of the plans and specifications.

(2) The material is supported by a paid invoice or a receipt for delivery of materials. If supported by a receipt of delivery of materials, the contractor must furnish the paid invoice within a reasonable time after receiving payment from the SHA; and

(3) The quantity of a stockpiled material eligible for Federal participation in any case shall not exceed the total estimated quantity required to complete the project. The value of the stockpiled material shall not exceed the appropriate portion of the value of the contract item or items in which such materials are to be incorporated.

(b) The materials may be stockpiled by the contractor at a location not in the vicinity of the project, if the SHA determines that because of required fabrication at an off-site location, it is not feasible or practicable to stockpile the materials in the vicinity of the project.

§ 635.123 Determination and documentation of pay quantities.

(a) The SHA shall have procedures in effect which will provide adequate assurance that the quantities of completed work are determined accurately and on a uniform basis throughout the State. All such determinations and all related source documents upon which payment is based shall be made a matter of record.

(b) Initial source documents pertaining to the determination of pay quantities are among those records and documents which must be retained pursuant to 49 CFR part 18.

§ 635.124 Participation in contract claim awards and settlements.

(a) The eligibility for and extent of Federal-aid participation up to the Federal statutory share in a contract claim award made by a State to a Federal-aid contractor on the basis of an arbitration or mediation proceeding, administrative board determination, court judgment, negotiated settlement, or other contract claim settlement shall be determined on a case-by-case basis. Federal funds will participate to the extent that any contract adjustments made are supported, and have a basis in terms of the contract and applicable State law, as fairly construed. Further, the basis for the adjustment and contractor compensation shall be in accord with prevailing principles of public contract law.

(b) The FHWA shall be made aware by the SHA of the details of the claim at an early stage so that coordination of efforts can be satisfactorily accomplished. It is expected that SHA's will diligently pursue the satisfactory resolution of claims within a reasonable period of time. Claims arising on projects handled under Certification Acceptance or Secondary Road Plan procedures should be processed in accordance with the State's approved Plan.

(c) When requesting Federal participation, the SHA shall set forth in writing the legal and contractual basis for the claim, together with the cost data and other facts supporting the award or settlement. Federal-aid participation in such instances shall be supported by a SHA audit of the actual costs incurred by the contractor unless waived by the FHWA as unwarranted. Where difficult, complex, or novel legal issues appear in the claim, such that evaluation of legal controversies is critical to consideration of the award or settlement, the SHA shall include in its submission a legal opinion from its counsel setting forth the basis for determining the extent of the liability under local law, with a level of detail commensurate with the magnitude and complexity of the issues involved.

(d) In those cases where the SHA receives an adverse decision in an amount more than the SHA was able to support prior to the decision or settles a claim in an amount more than the SHA can support, the FHWA will participate up to the appropriate Federal matching share, to the extent that it involves a Federal-aid participating portion of the contract, provided that:

(1) The FHWA was consulted and concurred in the proposed course of action;

(2) All appropriate courses of action had been considered; and

(3) The SHA pursued the case diligently and in a professional manner.

(e) Federal funds will not participate:

(1) If it has been determined that SHA employees, officers, or agents acted with gross negligence, or participated in intentional acts or omissions, fraud, or other acts not consistent with usual State practices in project design, plan preparation, contract administration, or other activities which gave rise to the claim;

(2) In such cost items as consequential or punitive damages, anticipated profit, or any award or payment of attorney's fees paid by a State to an opposing party in litigation; and

(3) In tort, inverse condemnation, or other claims erroneously styled as claims "under a contract."

(f) Payment of interest associated with a claim will be eligible for participation provided that the payment to the contractor for interest is allowable by State statute or specification and the costs are not a result of delays caused by dilatory action of the State or the contractor. The interest rates must not exceed the rate provided for by the State statute or specification.

(g) In cases where SHA's affirmatively recover compensatory damages through contract claims, cross-claims, or counter claims from contractors, subcontractors, or their agents on projects on which there was Federal-aid participation, the Federal share of such recovery shall be equivalent to the Federal share of the project or projects involved. Such recovery shall be credited to the project or projects from which the claim or claims arose.

§ 635.125 Termination of contract.

(a) All contracts exceeding $10,000 shall contain suitable provisions for termination by the State, including the manner by which the termination will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract

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(d) In those cases where the SHA receives an adverse decision in an amount more than the SHA was able to support prior to the decision or settles a claim in an amount more than the SHA can support, the FHWA will participate up to the appropriate Federal matching share, to the extent that it involves a Federal-aid participating portion of the contract, provided that:

(1) The FHWA was consulted and concurred in the proposed course of action;

(2) All appropriate courses of action had been considered; and

(3) The SHA pursued the case diligently and in a professional manner.

(e) Federal funds will not participate:

(1) If it has been determined that SHA employees, officers, or agents acted with gross negligence, or participated in intentional acts or omissions, fraud, or other acts not consistent with usual State practices in project design, plan preparation, contract administration, or other activities which gave rise to the claim;

(2) In such cost items as consequential or punitive damages, anticipated profit, or any award or payment of attorney's fees paid by a State to an opposing party in litigation; and

(3) In tort, inverse condemnation, or other claims erroneously styled as claims "under a contract."

(f) Payment of interest associated with a claim will be eligible for participation provided that the payment to the contractor for interest is allowable by State statute or specification and the costs are not a result of delays caused by dilatory action of the State or the contractor. The interest rates must not exceed the rate provided for by the State statute or specification.

(g) In cases where SHA's affirmatively recover compensatory damages through contract claims, cross-claims, or counter claims from contractors, subcontractors, or their agents on projects on which there was Federal-aid participation, the Federal share of such recovery shall be equivalent to the Federal share of the project or projects involved. Such recovery shall be credited to the project or projects from which the claim or claims arose.

§ 635.125 Termination of contract.

(a) All contracts exceeding $10,000 shall contain suitable provisions for termination by the State, including the manner by which the termination will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract

may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(b) The SHA prior to termination of a Federal-aid contract shall consult with and receive the concurrence of the Division Administrator. The extent of Federal-aid participation in contract termination costs, including final settlement, will depend upon the merits of the individual case. However, under no circumstances shall Federal funds participate in anticipated profit on work not performed.

(c) Except as provided for in paragraph (e) of this section, normal Federal-aid plans, specifications, and estimates, advertising, and award procedures are to be followed when a SHA awards the contract for completion of a terminated Federal-aid contract.

(d) When a SHA awards the contract for completion of a Federal-aid contract previously terminated for default, the construction amount eligible for Federal participation on the project should not exceed whichever amount is the lesser, either:

(1) The amount representing the payments made under the original contract plus payments made under the new contract; or

(2) The amount representing what the cost would have been if the construction had been completed as contemplated by the plans and specifications under the original contract.

(e) If the surety awards a contract for completion of a defaulted Federal-aid contract or completes it by some other acceptable means, the FHWA will consider the terms of the original contract to be in effect and that the work will be completed in accordance with the approved plans and specifications included therein. No further FHWA approval or concurrence action will therefore be needed in connection with any defaulted Federal-aid contract awarded by a surety. Under this procedure, the construction amount eligible for Federal participation on the project should not exceed the amount representing what the cost would have been if the construction had been completed as contemplated by the plans and specifications under the original contract.

§ 635.126 Record of materials, supplies, and labor.

(a) The provisions in this section are required to facilitate FHWA's efforts to compile data on Federal-aid contracts for the establishment of highway construction usage factors.

(b) On all Federal-aid construction contracts, except Federal-aid secondary and off-system projects, those which provide solely for the installation of protective devices at railroad crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than $1,000,000 the SHA shall require the contractor:

(1) To become familiar with the list of specific materials and supplies including labor-hour and gross earning items contained in Form FHWA–47, "Statement of Materials and Labor Used by Contractors on Highway Construction Involving Federal Funds," prior to the commencement of work under this contract;

(2) To maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA–47, and in the units shown; and

(3) To furnish, upon the completion of the contract, to the SHA on Form FHWA–47 both the data required in paragraph (b)(2) of this section relative to materials and supplies and a final labor summary for all contract work indicating the total hours worked and the gross earnings.

(c) Upon receipt from the contractor, the SHA shall review the Form FHWA-47 for reasonableness and promptly transmit the form to the Division Administrator in accordance with the instructions printed in the form.

[FR Doc. 91–18360 Filed 8–1–91; 8:45 am]
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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Illinois Permanent Regulatory Program; Permit Issuance

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of a proposed amendment to the Illinois permanent regulatory program (hereinafter referred to as the Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment modifies the permit issuance requirements at § 1773.19 in title 62 of the Illinois Administrative Code (IAC) and at section 2.11(d) of the Illinois Surface Coal Mining Land Conservation and Reclamation Act (State Act). The amendment makes the requirements of the Illinois program no less effective than the Federal program.

EFFECTIVE DATE: August 2, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Fulton, Director, Springfield Field Office, Office of Surface Mining Reclamation and Enforcement, 511 West Capitol Avenue, suite 202, Springfield, Illinois 62704, Telephone: (217) 492–4495.

SUPPLEMENTARY INFORMATION:

I. Background on the Illinois Program.
II. Submission of Amendments.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Illinois Program

On June 1, 1982, the Secretary of the Interior conditionally approved the Illinois program. Information pertinent to the general background of the Illinois program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in the June 1, 1982 **Federal Register** (47 FR 23883). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 913.10, 913.15, 913.16, and 913.17.

II. Submission of Amendments

On August 29, 1990, the Illinois General Assembly amended section 2.11(d) of the State Act to make the issuance of coal mine permits in Illinois consistent with the Federal counterpart provisions of section 514(c) of SMCRA. This amendment of the State Act requires that the Illinois regulatory program also be amended. In response to the statutory change and to make the requirements of the Illinois program no less effective than the Federal program, Illinois by letter dated March 5, 1991 (Administrative Record No. IL–1144) submitted proposed changes to its permit issuance regulations at 62 IAC 1773.19.

OSM announced receipt of the proposed amendments in the April 1, 1991 **Federal Register** (56 FR 13300) and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on May 1, 1991.

Because proposed changes to the State Act were inadvertently omitted from the April 1, 1991 **Federal Register** notice, OSM reopened the public comment period and provided opportunity for a public hearing in the May 30, 1991 **Federal Register** (56 FR 24359). The comment period closed on July 1, 1991.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.17, are the Director's findings concerning the proposed amendment to the Illinois program submitted on March 5, 1991.

Revisions to Illinois' Regulations That Are Substantively Identical to the Corresponding Federal Regulations

State Regulation—62 IAC 1773.19(b) (1), (2)
Subject—Permit Issuance
Federal Counterpart—30 CFR 773.19(a)

Because the above proposed revisions are identical in meaning to the corresponding Federal regulations, the Director finds that Illinois' proposed rule is no less effective than the Federal rule.

Revisions to Illinois' Statutes That Are Not Substantively Identical to the Corresponding Federal Regulations

Section 2.11(d) of the State Act

Illinois amended section 2.11(d) of the State Act to make permit issuance occur simultaneously with permit application approval by deleting the provision relating to hearings. The deletion of this provision renders section 2.11(d) of the State Act no less stringent than section 514(c) of SMCRA.

IV. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing announced in the April 1, 1991, **Federal Register** (56 FR 13300) ended on May 1, 1991. No comments were received and the scheduled public hearing was not held as no one requested an opportunity to provide testimony. The public comment period was reopened in the May 30, 1991 **Federal Register** (56 FR 24359). Again, no comments were received and the scheduled public hearing was not held as no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Illinois program. No comments were received.

V. Director's Decision

Based on the above findings, the Director is approving the amendment to the Illinois regulatory program submitted on March 5, 1991. The Federal rules at 30 CFR part 913 concerning the Illinois program are being amended to implement the Director's decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage states to conform their programs to the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of the Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to a State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved programs. In his oversight of the Illinois program, the Director will recognize only the statutes, regulations, and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Illinois of only such provisions.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). Although the Director has determined that this amendment contains no provisions in these categories, the EPA concurred without comment.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA (30 U.S.C. 1292(d)), no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 18, 1991.

Jeffrey Jarrett,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 913—ILLINOIS

1. The authority citation for part 913 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 913.15, a new paragraph (m) is added to read as follows:

§ 913.15 Approval of regulatory program amendments.

* * * * *

(m) The following amendment, as submitted to OSM on March 5, 1991, is approved effective August 2, 1991. The amendment consists of the following modifications to the Illinois program:

1. Revisions of the following regulations of chapter I of title 62 of the Illinois Administrative Code:

1773.19(b)(1) Permit Issuance
1773.19(b)(2) Permit Hearings (deleted and replaced with Permit Fees and Reclamation Bonds which was formerly (b)(3)).

2. Revision of the following statute of the Illinois Surface Coal Mining Land Conservation and Reclamation Act:

Section 2.11(d) Procedures for Permit Approval.

[FR Doc. 91-18375 Filed 8-1-91; 8:45 am]

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Paperwork Reduction Act

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List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 18, 1991.

Jeffrey Jarrett,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 913—ILLINOIS

1. The authority citation for part 913 continues to read as follows:

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2. In § 913.15, a new paragraph (m) is added to read as follows:

§ 913.15 Approval of regulatory program amendments.

* * * * *

(m) The following amendment, as submitted to OSM on March 5, 1991, is approved effective August 2, 1991. The amendment consists of the following modifications to the Illinois program:

1. Revisions of the following regulations of chapter I of title 62 of the Illinois Administrative Code:

1773.19(b)(1) Permit Issuance
1773.19(b)(2) Permit Hearings (deleted and replaced with Permit Fees and Reclamation Bonds which was formerly (b)(3)).

2. Revision of the following statute of the Illinois Surface Coal Mining Land Conservation and Reclamation Act:

Section 2.11(d) Procedures for Permit Approval.

[FR Doc. 91-18375 Filed 8-1-91; 8:45 am]

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30 CFR Part 914

Indiana Permanent Regulatory Program; Water Replacement

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval with one exception of a proposed amendment to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of proposed changes to the Indiana Surface Mining Rules concerning hydrologic balance; water rights and replacement. The amendment is intended to limit the obligation to replace adversely affected water supplies to be consistent with State water rights laws.

EFFECTIVE DATE: August 2, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Rieke, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204, Telephone (317) 226-6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program.
II. Submission of the Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.15 and 914.16.

II. Submission of the Amendment

The Indiana Department of Natural Resources (IDNR) submitted proposed amendments to the Indiana program at 310 Indiana Administrative Code (IAC) 12-5-29 and 310 IAC 12-5-94 (Administrative Record No. IND-0683). OSM announced receipt of the proposed amendments in the November 1, 1989, **Federal Register** (54 FR 46077), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on December 1, 1989. The scheduled public hearing was not held as no one requested an opportunity to provide testimony.

By letter dated February 22, 1990 (Administrative Record No. IND-0757), OSM responded to Indiana's proposed rules and requested additional information concerning the proposed rules and Indiana's interpretation of those rules. Indiana responded by letter dated March 28, 1990 (Administrative Record No. IND-0765).

Numerous public and Federal agency comments were received, and on May 8, 1990, a **Federal Register** notice was published which reopened the public comment period (55 FR 19087). The comment period closed on June 7, 1990. The scheduled public hearing was not held as no one requested an opportunity to provide testimony.

By letter dated May 6, 1991 (Administrative Record No. IND-0867), OSM requested clarification and explanation concerning Indiana's implementation of the proposed rules. Indiana responded by letter dated May 29, 1991 (Administrative Record No. IND-0875).

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Indiana program.

1. 310 IAC 12-5-29 Hydrologic balance; water rights and replacement

Indiana proposes to amend this provision by adding the following words to the rule: "pursuant to a lawful order of an agency or court under IC 13-2-2.5 or another state water rights law." In addition, a second sentence would be added to the rule which reads as follows: "Water replacement rights are not determined by this article."

In effect, the existing requirement to replace contaminated, diminished, or interrupted water supplies which have been so affected by surface mining activities shall be subject to a lawful order of an agency or court under Indiana water rights law.

The Federal provisions concerning water rights and replacement, specifically, the SMCRA at sections 717 (a) and (b) (30 U.S.C. sections 1307 (a) and (b)) and the Federal regulations at 30 CFR 816.41(h), have been the subject of litigation.

In In Re Permanent Surface Mining Litigation II, Round III, 620 F. Supp. 1519 (D.D.C. 1985), the Court clarified that 30 CFR 816.41(h) and section 717(a) of SMCRA defer to State water law in cases of legitimate water use. This opinion was upheld upon appeal in National Wildlife Federation v. Hodel, 839 F.2d 694 (D.C. Cir. 1988).

During the course of litigation before the district court, the Secretary of the Department of the Interior reinterpreted 30 CFR 816.41(h) and stated the following:

> The Secretary agrees that section 717(a) requires a deference to state water law on questions of water use, and thus interprets section 717(b) and the rule at issue as not requiring the replacement of water supplies to the extent a surface coal mine operator consumes or legitimately uses the water supply under a senior water right determined under applicable law. 620 F. Supp. at 1525.

Therefore, Indiana's proposal to subjugate its SMCRA-based water rights and replacement provisions to Indiana water rights law is consistent with SMCRA and the Federal regulations. Within the context of this finding, however, the proposed amendment raises specific concerns.

As quoted above, the Secretary of the Interior has determined that 30 CFR 816.41(h) does not require the replacement of water supplies to the extent a person who conducts surface mining activities consumes or legitimately uses a water supply under a senior water right. 30 CFR 816.41(h) does, however, require the replacement of water supplies that have been adversely impacted by contamination, diminution, or interruption proximately resulting from surface mining activities that do not directly involve the legitimate consumption or use of a water supply under a State's water rights laws. The court did not require deference to State water laws in cases where legitimate water use was not involved. For example, if a water supply is contaminated by leachate from a waste pile, such contamination would not be the result of the legitimate use of water under the Indiana water rights laws and would require replacement under 30 CFR 816.41(h). As another example, suppose a person's surface or ground water supplies are interrupted or diminished as a consequence of blasting operations. Such interruption or diminution is not caused by a legitimate water use by a person conducting surface mining activities and would require replacement under 30 CFR

816.41(h). Therefore, to be no less effective than the Federal regulations, under the proposed Indiana amendment, if contamination, diminution, or interruption results from surface mining activities that do not exercise a legitimate use of a water supply, replacement must be required.

The proposed amendments tie replacement of an affected water supply to a lawful order of an agency or court order under IC 13–2–2.5 or another State water rights law. However, neither the proposed amendments nor the cited Indiana water rights laws address water replacement under circumstances which do not involve a legitimate water use by a person who conducts surface mining activities. Consequently, an owner of interest in real property who obtains all or part of a water supply for legitimate use from an underground or surface source has no apparent means to obtain replacement under 310 IAC 12–5–29 where that water supply has been affected by contamination, diminution, or interruption proximately resulting from surface mining activities which do not involve a legitimate water use by the person who conducts surface mining activities.

The Director finds, therefore, that the proposed amendments are no less effective than the Federal regulations at 30 CFR 816.41(h) except to the extent that they would prevent the replacement of affected water supplies under circumstances which do not involve a legitimate water use by the person who conducts surface mining activities. In addition, the Director is requiring that Indiana further amend 310 IAC 12–5–29, or otherwise amend the Indiana program to clearly require the replacement of water supplies which are affected by contamination, diminution, or interruption proximately resulting from surface mining activities which do not involve a legitimate water use by a person who conducts such activities.

2. 310 IAC 12–5–94 Underground mining; hydrologic balance; water rights and replacement

This rule is identical to 310 IAC 12–5–29 with the exception that it pertains to underground mining activities. Indiana proposes to amend this provision by adding language identical to and in the same relative location as that described in Finding 1, above.

Water replacement by underground mining operations is not required by the Federal regulations, and there is no Federal counterpart to the proposed rule. The Director finds, however, that the proposed rule is not inconsistent with SMCRA and the Federal regulations and can be approved.

IV. Summary and Disposition of Comments

Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were solicited from various interested Federal agencies. The U.S. Department of Agriculture, Soil Conservation Service responded that it concurred with the amendment (Administrative Record No. IND–0705). The U.S. Environmental Protection Agency responded that it had no comments on the proposed revisions (Administrative Record No. IND–0708).

The U.S. Fish and Wildlife Service commented and recommended that the proposed changes not be allowed. The commenter stated that the proposed amendments would make it more difficult for the injured party to obtain appropriate compensation from the operator. The commenter also questioned whether the proposed change would allow the Indiana program to be as effective as the Federal regulations at protecting environmental values. As discussed in Finding 1, the Federal provisions concerning water replacement, SMCRA at section 717 (a) and (b), and 30 CFR 816.41(h), have been the subject of litigation. As a consequence of this litigation, the Director has determined that Indiana's proposal to subjugate its SMCRA-based water provisions to Indiana water rights law is consistent with SMCRA and the Federal regulations. The Director also stated in this finding that, to be no less effective than the Federal regulations, if contamination, diminution, or interruption results from surface mining activities that do not exercise a legitimate use of a water supply, replacement must be required.

The Director does not take the position, however, that a person conducting surface mining activities is not responsible for other consequences which may result from that person's legitimate use of its water supply. Such consequences would include, but are not limited to, damage to the hydrologic balance (30 CFR 816.41(a)) and damage to fish and wildlife and related environmental values (30 CFR 816.97(f)).

Public Comments

The public comment period and opportunity to request a public hearing was announced in the November 1, 1989, **Federal Register** (54 FR 46077). The comment period closed on December 1, 1989. The comment period was subsequently reopened in the May 8, 1990, **Federal Register** (55 FR 19087), and closed on June 7, 1990. Since no one requested an opportunity to testify at either of the scheduled public hearings, no hearings were held. The written comments received are discussed below.

The Indiana Coal Council Inc. (ICC) commented and iterated the history of the proposed Indiana rules and related Federal court decisions. The ICC supports the proposed amendments and asserts that the proposed amendments are wholly in accordance with, as effective as, and consistent with the corresponding Federal SMCRA and regulations. As discussed in Finding 1, the Director is approving the proposed amendments except to the extent that the proposed amendments at 310 IAC 12–5–29 would prevent the replacement of affected water supplies under circumstances which do not involve a legitimate water use by the permittee.

The Hoosier Environmental Council (HEC) commented and objected to the proposed amendments. HEC adopted by reference the objections put forth by counsel for Jack L. Jarrett, et al. Jarrett contends that it could be erroneously interpreted that the proposed amendments would eliminate any requirement under SMCRA for the replacement of groundwater, and that, therefore, the amendments should not be approved. Jarrett also asserts that the coal industry will contend that the Indiana Department of Natural Resources (IDNR) has no authority under SMCRA to regulate any aspects of its use of groundwater. This industry view, Jarrett contends, would be based on their assertion that Indiana SMCRA totally defers to other State law on "water rights" and that Indiana common law gives it an absolute right to make a non-malicious use of groundwater irrespective of consequences to persons or property. As discussed in Finding 1 above, the Director has determined that the addition of the requirement in the proposed rule at 310 IAC 12–5–29 that the replacement of water be conducted pursuant to a lawful order of an agency or court under IC 13–2–2.5 or another state water rights law is consistent with SMCRA and the Federal regulations to the extent that the person conducting surface coal mining activities exercises a legitimate use of the water.

The Director acknowledges that such a deference to state water rights law may result in the contamination, diminution or interruption of water supplies of the citizens of Indiana, or may result in the wasting of Indiana's water resources. Such a deference to State water rights law is, nevertheless, consistent with SMCRA and the Federal regulations as interpreted by the courts. However, as is noted in Finding 1, water replacement is required by the Federal regulations under circumstances where

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the contamination, diminution, or interruption is not caused by a legitimate water use. The Director is requiring that Indiana amend 310 IAC 12–5–29 to clearly require the replacement of water supplies affected by surface mining activities which do not involve a legitimate water use by a person conducting surface mining activities. In addition, the commenter may seek to address the issue of water replacement through the Indiana legislature.

The Director does not take the position, however, that a person conducting surface mining activities is not responsible for other consequences which may result from that person's legitimate use of its water supply. Such consequences would include, but are not limited to, damage to the hydrologic balance (30 CFR 816.41(a)) and damage to fish and wildlife and related environmental values (30 CFR 816.97(f)).

The National Coal Association (NCA) commented in support of the proposed amendments. NCA stated that the amendments clarify that the Indiana surface mining law reflects the purpose of section 717(a) of SMCRA; that is, SMCRA does not disturb existing state water rights law. As discussed in Finding 1, the Director notes that SMCRA defers to state water rights law in cases of legitimate water use by a surface mining operation.

V. Director's Decision

As discussed in Finding 1 above, the Director is approving the proposed amendment to 310 IAC 12–5–29 except to the extent that it would prevent the replacement of affected water supplies under circumstances which do not involve a legitimate water use by a person conducting surface mining activities. In addition, the Director is requiring that Indiana further amend 310 IAC 12–5–29, or otherwise amend its program to clearly require the replacement of water supplies which are affected by contamination, diminution, or interruption proximately resulting from surface mining activities which do not involve the legitimate water use by a person conducting surface mining activities.

As discussed in Finding 2, the Director is approving the proposed amendment to 310 IAC 12–5–94.

The Federal regulations at 30 CFR part 914 codifying decisions concerning the Indiana program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage the states to conform their programs with the Federal standards without delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to a State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved programs. In the oversight of the Indiana program, the Director will recognize only the approved program, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Indiana of such provisions.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). In response to OSM's request for concurrence, the EPA stated that it concluded that the proposed amendment demonstrates the legal authority, administrative capability, and technical conformity with controlling Federal National Pollutant Discharge Elimination System (NPDES) regulations to maintain water quality standards promulgated under the authority of the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*).

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 19, 1991.

Jeffrey Jarrett,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 914—INDIANA

1. The authority citation for part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 914.15 is amended by adding a new paragraph (ff) to read as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(ff) With the exceptions noted herein, the following amendment to the Indiana program as submitted to OSM by Indiana, is approved effective August 2, 1991: Amendments to 310 IAC 12–5–29 concerning hydrologic balance, water rights and replacement except to the extent that the amendment would prevent the replacement of affected water supplies under circumstances which do not involve a legitimate water use by a person conducting surface mining activities; and 310 IAC 12–5–94 concerning underground mining, hydrologic balance, water rights and replacement.

3. In Section 914.16, paragraph (f) is added to read as follows:

§ 914.16 Required program amendments.

* * * * *

(f) By January 3, 1992, Indiana shall amend 310 IAC 12–5–29, or otherwise amend the Indiana regulatory program to clearly require the replacement of water supplies which are affected by contamination, diminution, or interruption proximately resulting from surface mining activities which do not involve a legitimate water use by a person conducting these surface mining activities.

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[FR Doc. 91–18373 Filed 8–1–91; 8:45 am]

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30 CFR Part 914

Indiana Permanent Regulatory Program; Administrative Changes

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of and a required amendment to a proposed amendment to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment (Program Amendment Number 91–2) consists of proposed changes to the Indiana Surface Mining Statute provisions concerning the administration of the Indiana program. The amendment is intended to make specific changes to the administrative responsibilities and procedures as they affect the approved program.

EFFECTIVE DATE: August 2, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Rieke, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204, Telephone (317) 226–6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program.
II. Submission of the Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.15 and 914.16.

II. Submission of the Amendment

By letter dated February 15, 1991, (Administrative Record No. IND–0836), the Indiana Department of Natural Resources (IDNR) submitted proposed Program Amendment Number 91–2 to the Indiana program at Indiana Code (IC) 4–26–3–27.8; IC 13–4.1; IC 14–3–1; and IC 14–3–3. The proposed amendment is part of Indiana's 1990 Senate Enrolled Act No. 362 (Public Law 28–1990).

OSM announced receipt of the proposed amendment in the March 15, 1991, **Federal Register** (56 FR 11133), and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on April 15, 1991. The scheduled public hearing was not held as no one requested an opportunity to provide testimony.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Indiana program. Any revisions not specifically discussed below are found to be no less stringent than SMCRA and no less effective than the Federal regulations. Revisions which are not discussed below contain language similar to the corresponding Federal rules, concern nonsubstantive wording changes, or revise cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

1. IC 4–26–3–27.8

This new section provides for the continuation of the Natural Resources Commission (NRC), the IDNR and other agencies or elements of the IDNR. IC 4–26–3 is known as Indiana's "Sunset" law and under IC 4–26–3–27, the IDNR was scheduled for termination. The proposed amendment provides for the continuation of the IDNR. The Director finds that the proposed amendment is in accordance with SMCRA section 503(a)(3) which requires the State under its approved regulatory program to maintain a State regulatory authority to regulate surface coal mining and reclamation operations.

2. IC 13–4.1–2–2.5

This new section requires the director of the IDNR to develop a policy and procedures manual to standardize the implementation of IC 13–4.1. The Director finds the proposed amendment to be in accordance with SMCRA section 503(a)(7) which requires the State to develop rules and regulations consistent with regulations issued by the Secretary of the Department of the Interior pursuant to SMCRA.

3. IC 13–4.1–4–1

This provision is being amended by adding subsections (2) and (3). Subsection (2) requires an applicant to mail a copy of the advertisement to each person identified in the application under IC 13–4.1–3–3(a) (2). Subsection (3) requires an applicant to mail a copy of the advertisement to every person who has requested notice of such applications. The Director finds the proposed amendments to be in accordance with the provisions of SMCRA at section 513(a) concerning public notice.

4. IC 13–4.1–4–2

This provision is being amended by the addition of subsection (c), and a reference to the new subsection (c) is added in subsections (a) and (b). New subsection (c) requires that a public hearing shall be held on a proposed initial or revised application upon the request of the applicant, the filing of a petition by 25 individuals who meet specified age, residence, or real property ownership requirements, or by the motion of the director of the IDNR. The Director finds the proposed amendments to be in accordance with the public notice and public hearings provisions at SMCRA section 513.

5. IC 13–4.1–4–5

This provision is being amended by deleting subsection (a). Subsection (b) is relettered as subsection (a) and is rewritten to indicate that permit decisions will be made by the director of the IDNR rather than by the NRC. New subsection (a) requires the director of the IDNR to notify the applicant of the director's decision regarding the application. New subsection (a) also states that if the application is disapproved, the notification shall set forth specific reasons for the application's disapproval. The provision deleted from old subsection (a) which requires notification of local government officials is being relocated to new section SC 13–4.1–4–5.3. The Director finds that the proposed revisions are no less stringent than SMCRA section 510(a) which requires such notification of local government officials, and in accordance with SMCRA section 503 which requires a State regulatory

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This provision is being amended by adding subsections (2) and (3). Subsection (2) requires an applicant to mail a copy of the advertisement to each person identified in the application under IC 13–4.1–3–3(a) (2). Subsection (3) requires an applicant to mail a copy of the advertisement to every person who has requested notice of such applications. The Director finds the proposed amendments to be in accordance with the provisions of SMCRA at section 513(a) concerning public notice.

4. IC 13–4.1–4–2

This provision is being amended by the addition of subsection (c), and a reference to the new subsection (c) is added in subsections (a) and (b). New subsection (c) requires that a public hearing shall be held on a proposed initial or revised application upon the request of the applicant, the filing of a petition by 25 individuals who meet specified age, residence, or real property ownership requirements, or by the motion of the director of the IDNR. The Director finds the proposed amendments to be in accordance with the public notice and public hearings provisions at SMCRA section 513.

5. IC 13–4.1–4–5

This provision is being amended by deleting subsection (a). Subsection (b) is relettered as subsection (a) and is rewritten to indicate that permit decisions will be made by the director of the IDNR rather than by the NRC. New subsection (a) requires the director of the IDNR to notify the applicant of the director's decision regarding the application. New subsection (a) also states that if the application is disapproved, the notification shall set forth specific reasons for the application's disapproval. The provision deleted from old subsection (a) which requires notification of local government officials is being relocated to new section SC 13–4.1–4–5.3. The Director finds that the proposed revisions are no less stringent than SMCRA section 510(a) which requires such notification of local government officials, and in accordance with SMCRA section 503 which requires a State regulatory

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authority capable of carrying out the provisions of the regulatory program.

6. IC 13–4.1–4–5.1

This new section is added to require the director of the IDNR to issue a permit if all of the following apply: The application is approved; the bonding requirements of IC 13–4.1–6 are met; and the 30–day period specified under section IC 13–4.1–4–5(b) has expired. The referenced provision at IC 13–4.1–4–5(b) authorizes that a hearing may be requested by the applicant, or by any person with an interest which is or may be adversely affected, within 30 days after the applicant is notified of the approval or disapproval of the application.

The Director finds that the proposed provisions are in accordance with SMCRA at section 514(c) concerning permit issuance and the availability of a hearing on the reasons for the final determination on a permit application.

7. IC 13–4.1–4–5.2

This new section is added to state that notwithstanding IC 4–21.5–3–5, a permit issued under section 5.1 of chapter IC 13–4.1–4 is effective upon issuance, unless a stay of the permit has been granted under section 6 of chapter IC 13–4.1–4. IC 4–21.5–3–5 requires notice to designated persons of the grant, renewal, restoration, transfer or denial of a license. The Director finds the proposed amendment to be in accordance with SMCRA section 514(c) concerning permit issuance.

8. IC 13–4.1–4–5.3

This new section is added to require that within 10 days after a permit is issued, the director of the IDNR shall notify: local government officials; each person identified in the permit application under IC 13–4.1–3–3(a)(2); each person who has requested a hearing under IC 13–4.1–4–2(c)(2); and each person who has requested such a notice. The notice must include a description of the land's location.

The Federal regulations at 30 CFR 773.19(b) concerning notification, require the regulatory authority to issue written notification of the decision to issue a permit to the following persons and entities: The applicant, each person who files comments or objections to the permit application, and each party to an informal conference. In the preamble of the **Federal Register** notice which proposed the Federal regulation at 30 CFR 773.19(b) (47 FR 27698, June 25, 1982), OSM stated that the rule would require notification of persons filing objections to a permit because "such objectors should have adequate notice to request administrative or judicial review of the decision." The proposed Indiana provision, however, does not appear to afford adequate notice to such commentors and objectors because they would not be notified until a permit is issued. After a permit is issued, the time period specified in proposed 13–4.1–4–5(b) for requesting a hearing on a permit decision has expired. Therefore, the proposed provision would not satisfy the Federal regulations at 30 CFR 773.19(b).

The Director notes that the approved Indiana provisions at IC 13–4.1–4–4(a) require that, within 60 days following an informal conference, all parties to that conference must be furnished with the written findings granting or denying the permit in whole or in part and stating the reasons therefor. This requirement would partially satisfy the requirement at 30 CFR 773.19(b) concerning notification of participants to an informal conference, if the 30-day time period specified at IC 13–4.1–4–5(b) began when the applicant and others are notified under IC 13–4.1–4.4(a).

The Director is approving the provisions at IC 13–4.1–4–5.3. In addition, the Director is requiring that Indiana amend the Indiana program to provide timely notice as required by 30 CFR 773.19(b)(1) of the decision to approve or not to approve a permit application to each person who files comments or objections to the permit application, and each party to an informal conference or hearing. Timely notice is that which would allow the above persons or entities to request a hearing within the 30-day period specified at IC 13–4.1–4–5(b).

9. IC 13–4.1–5–5

Subsections (b) and (c) have been amended to clarify that authority for making decisions on permit revisions has been transferred from the NRC to the director of the IDNR. Language in subsection (c), which requires that any revisions proposing significant alterations in a reclamation plan shall, at a minimum, be subject to notice and hearing requirements, has been deleted and relocated to new IC 13–4.1–5–5.3. The Director finds that the proposed changes are in accordance with SMCRA section 511 concerning revision of permits.

10. IC 13–4.1–5–5.1

This new section is added to require at subsection (a) that the NRC adopt rules under IC 4–22–2 to define nonsignificant revisions of a permit under section 5 of chapter 5. Proposed new subsection (b) states that a permit revision that would require significant alterations in the reclamation plan may not be defined as nonsignificant under this section. The Director finds that the proposed subsection (a) is in accordance with the requirements of SMCRA at section 511 concerning revision of permits. Further, the Director finds that subsection (b) is no less stringent than section 511(a)(2) of SMCRA.

11. IC 13–4.1–5–5.2

This new section authorizes the director of the IDNR to approve applications for permit revisions submitted under IC 13–4.1–5 if the application is based only on nonsignificant revisions of a permit (as defined in the rules to be adopted under IC 13–4.1–5–5.1). This new provision also authorizes the director of the IDNR to approve a nonsignificant revision without notice and a hearing. The Director finds that the proposed provisions are in accordance with SMCRA at section 511(a)(2) concerning approval of permit revisions.

12. IC 13–4.1–5–5.3

This new section requires that an application for a significant permit revision may be approved only after the notice and hearing requirements of IC 13–4.1 are complied with. The new provision also authorizes the director of the IDNR to impose other conditions for approval of permit revision applications. The Director finds the proposed provisions to be in accordance with the requirements of SMCRA at section 511(a)(2) concerning approval of permit revisions.

13. IC 14–3–1–5

This provision is amended to clarify that hearing officers shall be appointed by the NRC rather than employed by the IDNR. The Director finds that the proposed amendments are in accordance with the requirements of SMCRA at section 503(a)(3) which requires the State to maintain a regulatory authority to regulate surface coal mining and reclamation operations in accordance with the requirements of SMCRA.

14. IC 14–3–3–3

This provision establishes the NRC. Two changes are made to subsection (a) which establishes seven *ex-officio* members of the NRC. The word "commissioner's" is deleted and replaced by the word "director's" at subsection (a)(3). The word "commissioner's" is deleted and replaced by the word "president's" at subsection (a)(7). These changes are

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intended to clarify the makeup of the *ex-officio* appointments to the NRC.

Subsection (c) is amended to require that at least two of the citizen appointees to the NRC must have knowledge, experience, or education in the environment or in natural resource conservation.

Subsection (e) is amended to clarify that all administrative law judges must be appointed by the NRC.

The Director finds that the proposed amendments are in accordance with the requirements of SMCRA at section 503(a)(3) which requires the State, under its approved regulatory program, to maintain a State regulatory authority.

15. IC 14–3–3–5 and IC 14–3–3–6

These sections are amended to establish within the IDNR a Bureau of Mine Reclamation. The Director finds that these amendments are not inconsistent with SMCRA at section 503(a)(3) which requires the State, under its approved regulatory program, to maintain a State regulatory authority to regulate surface coal mining and reclamation operations.

16. IC 14–3–3–10

This section is amended to clarify that an advisory council may not act in any capacity on permit applications. This modification will have no effect on the newly established Bureau of Mine Reclamation since the new Bureau will not have an advisory council. The Director finds that the proposed amendment is not inconsistent with SMCRA at section 503(a)(3).

17. TC 14–3–3–21

This provision is amended to establish the NRC as the ultimate authority for all administrative appeals. Prior to this amendment, the ultimate authority under the Indiana program was the director of the IDNR in some situations, and the NRC in others. Generally, the director of the IDNR was the ultimate authority on all inspection, enforcement, and civil penalty matters. All such authority now rests with the NRC. This section was also amended to require, rather than give discretion to, the NRC to adopt rules to carry out its duties.

The Director finds that the proposed amendments are in accordance with SMCRA at section 503 (a) (3) .

18. IC 14–3–3–24

This new provision is added to establish that the director of the IDNR shall issue all Indiana surface coal mining and reclamation permits and all other licenses as defined and identified at new subsection (a). Permits may be issued by designees of the director of the IDNR who are full-time employees of the IDNR. The Director finds that the proposed amendments are in accordance with SMCRA at section 503 (a)(3).

19. IC 14–3–3–25

This provision is added to establish that all hearings before the IDNR shall be heard by the NRC. The Director finds that the proposed amendment is in accordance with the provisions of SMCRA at section 503(a)(3).

20. Classification Plan

This proposed provision, section 46 of SEA 362, is a noncode provision directing the Indiana Personnel Director to prepare a new classification plan and a new pay plan for professional, administrative, and technical positions in the new Bureau of Mine Reclamation.

The Director finds that the proposed amendment is in accordance with the provisions of SMCRA at section 503(a)(3).

IV. Summary and Disposition of Comments

Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were solicited from various interested Federal agencies. The Fish and Wildlife Service responded that it had no objections to the proposed changes. The U.S. Soil Conservation Service responded that it had no relevant comments to offer.

The U.S. Forest Service commented (Administrative Record No. IND–0850) and recommended that under IC 13–4.1–4–1(b)(3) the Forest Service be added to the list of agencies to which the director of the IDNR shall give notice of the submission of an application for a permit or revision. While this provision is not being amended by Indiana, the Director notes that the list at subparagraph (b)(3) is not an exhaustive list of all the agencies which may have an interest in the proposed operations, but is a list of agencies which, at a minimum, must be so notified. The Director recommends that the commenter contact the director of the IDNR and request to be notified under IC 13–4.1–4–1(b)(3).

Public Comments

The public comment period and opportunity to request a public hearing was announced in the March 15, 1991, **Federal Register** (56 FR 11133). The comment period closed on April 15, 1991. No comments were received during the comment period, and no one requested an opportunity to testify at the scheduled public hearing so no hearing was held.

By letter dated March 6, 1991 (Administrative Record No. IND–0856), Mr. David H. Pope commented and stated that a complete reading of the Indiana Surface Mining Control and Reclamation Act leads inevitably to the conclusion that the amendments contained in Indiana Public Law 28–1990 do not vest the authority to approve permit applications in the director of the IDNR. Pope stated that the 1990 Indiana legislation creates confusion as to who has authority to approve permit applications and OSM should not approve the amendments. The Director disagrees with the commenter. By letter dated March 8, 1991 (Administrative Record No. IND–0853), the chief legal counsel for the Indiana Bureau of Reclamation commented on the proposed amendments. Counsel stated that, under Indiana case law and rules of statutory interpretation, the proposed amendments do not conflict with other provisions of existing Indiana law or regulations. In addition, Counsel stated that the proposed amendments designate the director of the IDNR or the director's delegate, the initial decision-maker with respect to permit approval and issuance, and the Natural Resources Commission the final decision-maker in contested cases which must go to formal administrative review. The Director has concluded that the proposed amendments make the delegations of authority sufficiently clear.

V. Director's Decision

Based on the above findings, the Director is approving proposed Program Amendment Number 91–2 as submitted by Indiana on February 15, 1991. In addition, as discussed in Finding 8, the Director is requiring that Indiana amend the Indiana program to provide timely notice of the decision to approve or not to approve a permit to each person who files comments or objections to the permit application, and to each party to an informal conference or hearing.

The Federal regulations at 30 CFR part 914 codifying decisions concerning the Indiana program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage the states to conform their programs with the Federal standards without delay. Consistency of State and Federal standards is required by SMCRA.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written

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EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required. However, EPA responded to the Director's request for comments and stated that EPA had no comments and that it concurred on the proposed amendment (Administrative Record No. IND–0858).

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 19, 1991.

Jeffrey Jarrett,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 914—INDIANA

1. The authority citation for part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 914.15 is amended by adding a new paragraph (gg) to read as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(gg) The following amendment (Program Amendment Number 91–2) to the Indiana program as submitted to OSM on February 15, 1991, is approved effective August 2, 1991: IC 4–26–3–27.8 concerning the continuance of specified agencies; IC 13–4.1–2 concerning the regulatory authority; IC 13–4.1–4 concerning permit approval or denial; IC 13–4.1–5 concerning permit terms; IC 14–3 concerning the Department of Natural Resources; and the non-code provision at section 46 of Senate Enrolled Act 362 concerning the Bureau of Mine Reclamation.

3. In Section 914.16, paragraph (a) is revised to read as follows:

§ 914.16 Required program amendments.

* * * * *

(a) By January 5, 1992, Indiana shall amend the Indiana program to provide timely notice of any decision of the Director of the IDNR to approve or not approve a permit application to the following persons or entities: Each person who files comments or objections to the permit application, and each party to an informal conference or hearing.

* * * * *

[FR Doc. 91–18374 Filed 8–1–91; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 626

Biological Defense Safety Program—(AR 385–69)

AGENCY: Department of the Army, DoD.

ACTION: Final rule; suspension of regulations and request for comments.

SUMMARY: 32 CFR part 626, Biological Defense Safety Program—AR 385–69 was published in the **Federal Register** (56 FR 3188; January 28, 1991) as a final rule with an effective date of February 27, 1991. Amendments to part 626 were published on April 4, 1991 (56 FR 13759) with an effective date of April 4, 1991. It was felt by some members of the general public that publishing 32 CFR part 626 as a final rule did not permit them a comment period. Upon publication of this document in the **Federal Register** the regulations published at 56 FR 3186 and 56 FR 13759 are suspended. This suspension will allow for a comment period not to exceed 30 days from the date of publishing in the **Federal Register**. During this period rules and procedures established in 32 CFR part 626—AR 385–69 will not be enforced. A new effective date and/or change, if necessary, to 32 CFR part 626 will be published in the **Federal Register** approximately 60 days from the last date of the comment period.

DATES: Effective on August 2, 1991 32 CFR part 626 is suspended indefinitely.

Comments will be received until September 3, 1991.

FOR FURTHER INFORMATION CONTACT: Submit written comments to HQDA(DACS–SF), Mr. William Wortley, room: 2C717, Pentagon, Washington, DC 20310–0200, (703) 695–7291.

(Authority: 10 U.S.C. 42; Public Law 101–510, 104 Stat. 1485)

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 91–18174 Filed 8–1–91; 8:45 am]

BILLING CODE 3710-08-M

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32 CFR Part 627

Biological Defense Safety Program (Technical Safety Requirements) (DA Pamphlet 385–69)

AGENCY: Department of the Army, DoD.

ACTION: Final rule; suspension of regulations and request for comments.

SUMMARY: 32 CFR part 627, The Biological Defense Safety Program (Technical Safety Requirements) (DA Pamphlet 385–69), was published in the **Federal Register** (56 FR 9424; March 6, 1991) as a final rule with an effective date of April 5, 1991. It was felt by some members of the general public that publishing 32 CFR part 627 as a final rule did not permit them a comment period. Upon publication of this document in the **Federal Register** the regulations at 56 FR 9424 are suspended. This suspension will allow for a comment period not to exceed 30 days from the date of publishing in the **Federal Register**. During this period rules and procedures established in 32 CFR part 627—DA Pamphlet 385–69 will not be enforced. A new effective date and/or change, if necessary, to 32 CFR

part 627 will be published in the **Federal Register** approximately 60 days from the last date of the comment period.

DATES: Effective on August 2, 1991 32 CFR part 627 is suspended indefinitely.

Comments will be received until September 3, 1991.

FOR FURTHER INFORMATION CONTACT: Submit written comments to HQDA(DACS–SF), Mr. William Wortley, room 2C717, Pentagon, Washington, DC 20310–0200, (703) 695–7291.

(Authority: 10 U.S.C. 42; Public Law 101–510, 104 Stat. 1485)

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 91–18173 Filed 8–1–91; 8:45 am]

BILLING CODE 3710–08–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–3980.5]

Volatility Regulations for Gasoline and Alcohol Blends Sold in Calendar Year 1991; Northeastern Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final rulemaking.

SUMMARY: Today's action promulgates a revision of the Phase I federal gasoline and alcohol blend volatility regulations which were promulgated on March 22, 1989 (54 FR 11886). This revision is limited to that part of the State of Arizona bordered by New Mexico and Utah, north of 34 degrees latitude and east of 111 degrees longitude, and applies only to the month of August, 1991. This action changes the Phase I summertime volatility standard for the portion of Arizona described from 9.0 to 9.5 pounds per square inch (psi), for the month of August, 1991. This revision is in response to a petition dated August 22, 1990 received by EPA from Giant Industries Arizona and other refiners.

EFFECTIVE DATE: This regulation is effective on August 1, 1991.

ADDRESSES: Materials relevant to this rulemaking have been placed in Docket A–91–03 by EPA. The docket is located at the Air Docket (LE–131), U.S. Environmental Protection Agency, Washington, DC 20460, in room M–1500 Waterside Mall and may be inspected from 8:30 a.m. to 12:00 noon and 1:30 p.m. to 3:30 p.m. Monday through Friday. A reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: Anne-Marie Cooney, (202) 382–2640.

SUPPLEMENTARY INFORMATION:

Introduction

This notice describes EPA's decision to revise the Reid Vapor Pressure (RVP) standard for the northeastern portion of Arizona for the month of August 1991. The remainder of this preamble will be divided into three sections. The first provides the background for this action, with respect to chronology and broad issues involved. The second section presents today's action and EPA's rationale. The third section summarizes the comments received on the proposed action and EPA's responses to them.

Background

On August 19, 1987, the Agency proposed a two-phase reduction in summertime gasoline volatility (52 FR 31274). On March 22, 1989 (54 FR 11868), EPA published a notice of final rulemaking promulgating Phase I of these volatility control regulations. These Phase I regulations included a list of applicable standards for geographical areas throughout the 48 contiguous states and the District of Columbia for the period of May 1 through September 15, effective June 1, 1989.[1]

The final rule for the Phase I program, established a federal volatility standard of 9.0 psi for the month of August for the entire State of Arizona. EPA based its volatility designations on the geographic volatility classification scheme historically used by the American Society of Testing and Materials (ASTM). Prior to promulgation, no comments were received concerning the treatment of northeastern Arizona.

On August 22, 1990, EPA received a petition to reconsider its Phase I volatility regulations from Giant Industries Arizona, Inc., Bloomfield Refining Company, and Thriftway Marketing Company. The petition requested that EPA change the August Phase I volatility standard for gasoline and alcohol blends for northeastern Arizona from 9.0 to 9.5 psi.

The petitioners based their request on the following facts. On June 18, 1990, the American Society for Testing and Materials voted to change the volatility classification for northeastern Arizona from "A" to "A/B", eliminating the distinction between northeastern Arizona and northern New Mexico for all months except January. They further argued that the northeastern part of Arizona is more similar to northern New Mexico in terms of climate, altitude, and population density than it is to the rest of Arizona. The petitioners argued that the difference in EPA's volatility standard poses a number of practical problems for refiners attempting to serve both the northern New Mexico and northeastern Arizona markets, and requested that EPA amend its classification for northeastern Arizona to be consistent with recent changes in ASTM classification for the area. As noted above, in June 1990, ASTM voted to change the classification for northeastern Arizona from "A" to "A/B".

On November 30, 1990, EPA wrote a letter to Governor Rose Mofford of Arizona, conveying the concerns that had been raised by the petition. In the letter, EPA presented the issues raised and requested the Governor's opinion as to whether EPA should begin rulemaking to amend volatility regulations for northeastern Arizona. On January 18, 1991, a response was received from the Arizona Department of Environmental Quality (ADEQ). The letter stated that the State supports the petition because of climatic and geographic reasons, the isolation of the area, and the fact that the area does not have a current or potential ozone problem.

The effect of today's revision is to change the federal Phase I volatility standard for northeastern Arizona from 9.0 to 9.5 psi, for the month of August, 1991. This change is limited to this one month, as beginning with the summer of 1992, EPA's Phase II gasoline and alcohol blend volatility regulations will become effective.

On June 11, 1990, EPA published a notice of final rulemaking promulgating Phase II of a two phase nationwide reduction in summertime commercial gasoline volatility (55 FR 23658). The Phase II standards will take effect in the summer of 1992. On May 29, 1991, EPA proposed revisions to the Phase II regulations to implement the provisions of section 211(h) of the Clean Air Act (Act) (56 FR 24242).[2] Today's revisions are limited to the month of August of the 1991 volatility season, and do not affect the Phase II regulations.

The revisions to the Phase I volatility standards for northeastern Arizona adopted today were proposed on May 30, 1991 (56 FR 24360).

Description of Today's Action

EPA has reviewed Giant Industries' petition and has found that the request to change the Phase I volatility standard

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[1] In 1989, the standards did not go into effect until June 1.

[2] Section 216 of the Clean Air Act Amendments of 1990, 104 Stat. 2399, amended section 211 of the Act by adding paragraph (h) to that section.

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for northeastern Arizona from 9.0 to 9.5 psi for the month of August, 1991 is appropriate based on the petition itself, the support expressed for this action in the letter from ADEQ, and the following considerations. The petitioners are refiners in northern New Mexico who serve the New Mexico and northeastern Arizona markets in the Four Corners region of the Rocky Mountains. The difference in EPA's Phase I volatility standard for northern New Mexico and northeastern Arizona poses practical problems for refiners seeking to serve both markets. In particular, unless the refiner has redundant blending facilities, it cannot serve the smaller Arizona market during the month of August under the Phase I standards. The part of Arizona in question is not served by products pipelines and most of the area's demand for petroleum products is supplied by local refineries, such as the petitioners'. Northeastern Arizona and northern New Mexico are similar in climate and topography. The portion of Arizona in question is in attainment for ozone [3] and has a low population density. Finally, the proposed change would be effective for only one month, August 1991, before Phase II standards become effective in 1992.

The State of Arizona has expressed support for this action. No requests for a public hearing were received by EPA.

Summary of Public Comments and EPA's Responses

(1) *Comment:* Only one comment was submitted in response to EPA's proposal. That commenter expressed concern that amendments to the Phase I or Phase II volatility standards which relaxed volatility standards might cause safety problems for automobiles. The commenter noted that automobile manufacturers are in advanced stages of hardware development to comply with new enhanced evaporative emissions requirements and lower volatility gasoline, as originally required, is necessary to meet these new vehicle requirements. The commenter pointed out that higher volatility fuels generate excessive vapor and might cause canister breakthrough in enhanced evaporative systems and onboard vapor recovery systems, if these systems are required. Finally, the commenter asserted that basing the relaxation of RVP standards solely on clean air attainment considerations, with no consideration for possible safety implications, was inappropriate.

Response: EPA has given close consideration to the safety concerns raised by the commenter. The expressed concern is that increased gasoline volatility will affect the proper operations of motor vehicle emission control systems designed to meet enhanced evaporative emissions and onboard vapor recovery requirements. EPA is currently conducting rulemaking concerning these motor vehicle requirements. As such, safety concerns regarding these motor vehicle emission control systems are more properly addressed in those rulemakings. In any case, motor vehicles are not at present time subject to these requirements, and the volatility revision announced today applies only during the month of August, 1991. It therefore will not affect motor vehicle hardware designed to meet any future requirements established by those rulemakings.

Environmental Impact

Today's action is not expected to have any adverse environmental effect. The portion of Arizona affected has a low population density and does not have an ozone problem. The amendment affects only one month (August) in 1991.

Economic Impact

The rule will not have a substantial impact. It will allow flexibility for refiners seeking to service both the northern New Mexico and northern Arizona markets, and may result in cost savings for consumers.

Administrative Requirements

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 through 612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment, a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant impact on a substantial number of small entities. In such circumstances, a regulatory flexibility analysis is not required.

The expected impact of the rule on small entities is negligible. This rule does not impose additional regulatory requirements on small entities. I therefore certify that the regulatory revision announced in this notice will not have a significant adverse impact on a substantial number of small entities, and therefore does not require a regulatory flexibility analysis.

Under Executive Order 12291, the Agency must judge whether a regulation is "major" and thus subject to the requirement to prepare a Regulatory Impact Analysis. The rule published today is not major because the rule will not result in an effect on the economy of $100 million or more, will not result in increased costs or prices, will not have significant adverse effects on competition, employment, investment, productivity, and innovation, and will not significantly disrupt domestic export markets. Therefore the Agency has not prepared a Regulatory Impact Analysis under the Executive Order.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order No. 12291. No written comments were received from OMB.

This rulemaking does not include any new information collection requirements. Information collection requirements in the regulations promulgated on March 22, 1989, were approved by OMB under the Paperwork Reduction Act, 44 U.S.C. et seq., and have been assigned OMB control number 2060–0178.

Authority for the action proposed in this notice is granted to EPA by sections 114, 211, and 301 of the Clean Air Act (42 U.S.C. 7414, 7545, and 7601).

The regulation published today is effective on August 1, 1991. I find that good cause exists for an exception from the normal requirement of publication or service 30 days prior to the effective date of a regulation. Section 553(d)(3) of the Administrative Procedure Act, 5 U.S.C. 553(d)(3). In this case, the revised rule applies for only one month, August 1991, and a delay in the effective date would therefore interfere with the purposes of this rulemaking. In addition, no persons are prejudiced by an immediate effective date, given the reasons for issuance of the rule and the fact it relaxes the gasoline volatility standard for that one month.

Since this rulemaking relieves a restriction in the current volatility regulations, EPA also believes that the publication requirements of section 553(d) do not apply under 5 U.S.C. 553(d)(1).

List of Subjects in 40 CFR Part 80

Fuel and fuel additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: July 30, 1991.

William K. Reilly,
Administrator.

For the reasons set forth in the preamble, part 80 of title 40 of the Code of Federal Regulations is amended as follows:

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[3] *See,* 40 CFR 81.303

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Sec. 114, 211 and 301(a) of the Clean Air Act as amended, 42 U.S.C. 7414, 7545, and 7601(a).

2. In § 80.27(a)(1) the table is amended by revising the entry for Arizona to read as follows:

§ 80.27 Controls and prohibitions on gasoline volatility

(a) * * *

APPLICABLE STANDARDS [1]

[(1) 1989–1991]

State	May	June	July	Aug.	Sept.
* * * * * * *					
Arizona:					
North of 34 degrees latitude and east of 111 degrees longitude	9.5	9.0	9.0	9.5	9.5
All areas except North of 34 degrees latitude and east of 111 degrees longitude	9.5	9.0	9.0	9.0	9.5
* * * * * * *					

[1] Standards are expressed in pounds per square inch (psi).

[FR Doc. 91-18495 Filed 8-1-91; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 901078-0345]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of fishing restrictions, and request for comments.

SUMMARY: NOAA announces an increase in trip limits for thornyheads caught with trawl gear in the commercial groundfish fishery for the deepwater complex off Washington, Oregon, and California. This action is authorized by the regulations implementing the Pacific Coast Groundfish Fishery Management Plan. The trip limits are designed to keep landings within the harvest guideline for these species while extending the fishery as long as possible during the year.

EFFECTIVE DATE: 0001 hours (local time) July 31, 1991, through 2400 hours (local time) December 31, 1991, unless modified, superseded, or rescinded. Comments will be accepted through August 19, 1991.

ADDRESSES: Submit comments on this action to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: Joe Scordino (Northwest Region, NMFS) 206–526–6140, Rodney McInnis (Southwest Region, NMFS) 213–514–6199, or the Pacific Fishery Management Council at 503–221–6352.

SUPPLEMENTARY INFORMATION: Regulations implementing Amendment 4 to the Pacific Coast Groundfish Fishery Management Plan (FMP) were approved on November 15, 1991, and final implementing regulations were published at 56 FR 736 (January 8, 1991). The amended FMP provides for rapid changes to specific management measures if they have been designated as "routine." This designation means that the identified management measure may be implemented and adjusted for a specified species or species group and gear type after consideration at a single meeting of the Pacific Fishery Management Council (Council), as long as the purpose of the measure is the same as originally established when the measure was designated as routine and the impacts of the measure already have been analyzed. Trip landing and frequency limits for thornyheads (*Sebastolobus altivelis* and *Sebastolobus alascanus*) are among those management measures that have been designated as routine at 50 CFR 663.23(c). This management measure falls within the scope of the impacts analyzed when Amendment 4 was implemented.

Thornyheads are in the "deepwater complex" which also includes sablefish and Dover sole. Since January 1, 1991, the commercial fishery for the deepwater complex has been managed by a weekly trip limit of 27,500 pounds, of which no more than 1,000 pounds or 25 percent, whichever is greater, can be sablefish and no more than 7,500 pounds can be thornyheads. Biweekly and twice-weekly trip limit options also are available.

At its July 1991 meeting, the Council's Groundfish Management Team (GMT) announced that the total landings of thornyheads were 2,548 mt through June 8, about 32 percent of the harvest guideline of 7,900 mt. At the present rate, landings of thornyheads are projected to reach 5,042 mt by December 31, 1991. Therefore, to enable the harvest guideline to be reached, the Council recommended increasing the weekly trip limit on thornyheads from 7,500 pounds to 12,500 pounds with proportional changes to the biweekly and twice-weekly trip limit options (25,000 pounds biweekly and 6,250 pounds twice-weekly). The higher trip limits may bring the annual total landings of thornyheads to approximately 7,000 mt if effort remains constant. The trip limits for the complex will not be increased, however, so that the trawl allocation for sablefish will not be exceeded.

Secretarial Action

The Regional Director, Northwest Region, NMFS, approved the Council's recommendation and, therefore, the Secretary of Commerce publishes this implementing notice. By this notice, NOAA modifies the trip limits for thornyheads caught with trawl gear announced at 56 FR 645 (January 8, 1991) in section II. 1991 Management Measures by changing: (1) the weekly trip limit from 7,500 pounds to 12, 500 pounds in paragraph D(4)(a)(ii); (2) the biweekly trip limit from 15,000 pounds to 25,000 pounds in paragraph D(4)(a)(iii); and the twice-weekly trip limit from 3,750 pounds to 6,250 pounds in paragraph D(4)(a)(iv). Unless retention or landing of the deepwater complex or thornyheads has been prohibited, a vessel that has landed a weekly (or

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§ 80.27 Controls and prohibitions on gasoline volatility

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FORMATION CONTACT:
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biweekly or twice-weekly) limit may continue to fish on the limits for the next fishing period (weekly, biweekly, or twice-weekly) so long as the fish are not landed (offloaded) until the next fishing period.

All other provisions announced at 56 FR 645 regarding thornyheads caught with trawl gear remain in effect, with the following exception regarding State notification procedures.

Trip Limit Options

At the July Council meeting, the States of Oregon and Washington agreed to no longer require fishermen to declare their intent to use biweekly or twice-weekly trip limit options (currently available for the *Sebastes* complex of rockfish, widow rockfish, and the deepwater complex). Instead, Oregon, and Washington intend to adopt the system used in California which allows fishermen to decide at sea which option to use, without prior declaration to the State. This change is intended to minimize discarding fish in excess of the weekly (or twice-weekly) limit, because a fisherman will be allowed to choose the appropriate trip landing and frequency limit based on actual performance during each two-week period. However, the choice of a weekly, biweekly or twice-weekly option will be biding for the vessel for each two-week period. The two-week periods remaining in 1991 are: July 31–Aug. 13; Aug. 14–27; Aug. 28–Sept. 10; Sept. 11–24; Sept. 25–Oct. 8; Oct. 9–22; Oct. 23–Nov. 6–19; Nov. 20–Dec. 3; Dec. 4–17; Dec. 18–31. For example, those fishermen who already have declared to the States of Oregon and Washington that they are opting for a biweekly trip limit starting on July 24, a biweekly landing limit will apply during the week of July 24–30. The States of Oregon and Washington may require vessels to keep copies of trip tickets on board, and should be contacted to determine the specifics and effective dates of their new regulations. For further information, contact the Oregon Department of Fish and Wildlife, Marine Regional Office, Marine Science Drive, Building No. 3, Newport, OR 98365, telephone 503–867–47841; P.O. Box 5430, Charleston, OR 97420, telephone 503–888–5515; 53 Portway Street, Astoria, OR 97103, telephone 503–325–2462; or the Washington Department of Fisheries, 115 General Administration Building, Olympia, WA 98504, telephone 206–753–6623.

Once the States of Oregon and Washington implement this change, reference to state notification procedures for trip limit options (or their revocation) at 56 FR 645 (January 8, 1991) and 56 FR 20142 (May 2, 1991) will no longer apply, and the provisions that pertained only to California in paragraph "E. Notifications for Biweekly and Twice-weekly Trip Limit Options" at 56 FR 651 will apply to all three states (56 FR 645; January 8, 1991).

Classification

These actions are taken under the authority of, and in accordance with, 50 CFR part 663.23(c)(1)(i)(G) as added by the final rule published at 56 FR 2865 (January 25, 1991), and section III.B.3 of the appendix to 50 CFR part 663.

This action is authorized by Amendment 4 to the FMP for which a Supplemental Environmental Impact Statement (SEIS) was prepared in accordance with the National Environmental Policy Act (NEPA). Because this action and its impacts have not changed significantly from those considered in the SEIS, this action is categorically excluded form the NEPA requirement to prepare an environmental assessment in accordance with paragraph 5a(3) of the NOAA Directives Manual 02–10.

This action is in compliance with Executive Order 12291, and is covered by the Regulatory Flexibility Analysis prepared for the authorizing regulations.

The public has had the opportunity to comment on this action. The public participated in GMT, Groundfish Advisory Subpanel, Scientific and Statistical Committee, and Council meetings in July 1991 that resulted in the recommendation to take this action. Additional public comments will be accepted for 15 days after publication of this notice in the **Federal Register**.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 30, 1991.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–18457 Filed 7–30–91; 4:46 p.m.]

BILLING CODE 3510–22–M

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50 CFR Part 685

[Docket No. 910374–1117, 910469–1089]

RIN 0648–AD97

Pelagic Fisheries of the Western Pacific Region

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; emergency interim rule; effective date extension and modification of management measures in the protected species zone in the Northwestern Hawaiian Islands; corrections.

SUMMARY: This document corrects a final rule that was published on May 31, 1991 (56 FR 24731), by correcting the definition of "Protected species zone" in § 685.2, and the effective dates for the newly redesignated paragraphs (o) through (t) in § 685.5.

This document also corrects an emergency interim rule that was published on July 19, 1991 (56 FR 33211), by correcting the effective dates for paragraphs (s) and (t) of § 685.5 appearing in the preamble of that rule document.

EFFECTIVE DATES: The corrections to the final rule document published at 56 FR 24731 on May 31, 1991, are effective May 31, 1991. The correction to the emergency interim rule document published at 56 FR 33211 on July 19, 1991, is effective July 19, 1991.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Fisheries Management Division, Southwest Region, NMFS, Terminal Island, California (213) 514–6660; or Alvin Katekaru, Pacific Area Office, Southwest Region, NMFS, Honolulu, Hawaii (808) 955–8831.

SUPPLEMENTARY INFORMATION: In a final rule published May 31, 1991 (56 FR 24731), paragraphs (m) through (r) in § 685.5 were redesignated as paragraphs (o) through (t). The intent of this redesignation was to allow for the insertion of new paragraphs while maintaining the temporary status of the redesignated paragraphs, but not to change the temporary status of those paragraphs to a permanent status. The end of the effective period of newly redesignated paragraphs (o) through (r) was intended to remain 2400 hours local time July 22, 1991, and the end of the effective period of newly redesignated paragraphs (s) and (t) was intended to remain 2400 hours local time July 15, 1991. Paragraphs (o) through (r) have subsequently been extended to 2400 hours local time October 9, 1991, by an emergency rule extension and modification notice published June 24, 1991 (56 FR 28718). The effectiveness of paragraphs (s) and (t) was meant to be extended to 2400 hours local time October 13, 1991, by an emergency rule extension and modification notice published July 19, 1991 (56 FR 33211), which is accordingly corrected by this notice.

In addition, the final rule published May 31, 1991 (56 FR 24731), contained a definition in § 685.2 for "Protected species zone" which was incomplete and not consistent with the original definition contained in the emergency interim rule published April 18, 1991 (56 FR 15842).

Finally, in an emergency interim rule effective date extension and modification notice published July 19, 1991 on page 33212, paragraph 2. under the "Effective Dates" subheading in the preamble incorrectly stated that paragraphs (s) and (t) of § 685.5 are not impacted by the extension notice due to the redesignation of those paragraphs in the May 31, 1991, final rule (56 FR 24731). It was intended that paragraphs (s) and (t), although redesignated by the May 31, 1991, final rule, maintain their temporary status until 2400 hours local time July 15, 1991, and then be extended to 2400 hours local time October 13, 1991, by the emergency rule extension and modification notice published July 19, 1991 (56 FR 33211).

This notice corrects the May 31, 1991 (56 FR 24731), final rule and the July 19, 1991 (56 FR 33211), emergency rule extension and modification notice, so that the effective dates of redesignated paragraphs (o) through (t) and the definition for "Protected species zone" are correct.

In FR Doc. 91–12800 (56 FR 24731, May 31, 1991), make the following corrections:

1. On p. 24731, in the third column, in the **EFFECTIVE DATE** paragraph, the first two sentences should read: "This action is effective at 0000 hours local time May 28, 1991, except for the definition of "Protected species zone" in § 685.2; § 685.4(c); § 685.5 paragraphs (i) and (l) through (t); § 685.11; and § 685.13. The definition of "Protected species zone" in § 685.2, and § 685.11 will become effective at 0000 hours local time July 16, 1991; the effective dates of newly redesignated paragraphs (o) through (r) of § 685.5 remain 0001 hours local time April 23, 1991, to 2400 hours local time July 22, 1991; and the effective dates for newly redesignated paragraphs (s) and (t) of § 685.5 remain 0001 hours local time April 15, 1991, to 2400 hours local time July 15, 1991.

PART 685—[CORRECTED]

§ 685.2 [Corrected]

2. On p. 24735, in the first column, in § 685.2, the definition for *"Protected species zone"* is corrected by adding to the end of the definition the following sentence: "Where these areas are not contiguous, parallel lines drawn tangent to and connecting those semi-circles of the 50-nm areas that lie between Nihoa Island and Necker Island, French Frigate Shoals and Gardner Pinnacles, Gardner Pinnacles and Maro Reef, and Lisianski Island and Pearl and Hermes Reef, shall delimit the remainder of the protected species zone."

3. On p. 24735, in the third column, in the last paragraph (amendatory instruction 5), the first sentence should read: "In § 685.5, existing paragraphs (m) through (p), which are effective through July 22, 1991, and (q) and (r), which are effective through July 15, 1991, are redesignated as paragraphs (o) through (t); newly redesignated paragraphs (o) and (r) remain effective through July 22, 1991, and newly redesignated paragraphs (s) and (t) remain effective through July 25, 1991; paragraph (d) is revised; and new paragraphs (e) through (n) are added to read as indicated below."

In FR Doc. 91–17190 (56 FR 33211, July 19, 1991), make the following corrections:

4. On p. 33212, in the second column, paragraph 2. under the "Effective Dates" subheading should read: "In § 685.5, paragraph (i) was suspended and new paragraphs (q) and (r) were added by the April 18, 1991, emergency rule. The May 31, 1991, final rule added a new paragraph (i) to replace the suspended version and redesignated paragraphs (q) and (r) as paragraphs (s) and (t) to be effective through July 15, 1991. New paragraph (i) of § 685.5 will become effective upon approval from OMB and publication of a notice to that effect in the **Federal Register**. Paragraphs (s) and (t) are extended from 0000 hours local time July 16, 1991, to 2400 hours local time, October 13, 1991, by this document.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 25, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 91–18193 Filed 8–1–91; 8:45 am]

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Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 25, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 91-18193 Filed 8-1-91; 8:45 am]

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Proposed Rules

Federal Register
Vol. 56, No. 149
Friday, August 2, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 91-081]

Specifically Approved States Authorized to Receive Mares and Stallions Imported from CEM-Affected Countries

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to add Florida to the list of States approved to receive mares and stallions imported into the United States from countries affected with contagious equine metritis (CEM). We are taking this action because Florida has entered into an agreement with the Administrator of the Animal and Plant Health Inspection Service, to enforce its State laws and regulations to control CEM and to require inspection, treatment, and testing of horses, as required by federal regulations, to further ensure the horses' freedom from CEM. This action would relieve unnecessary restrictions on importers of mares and stallions from countries affected with CEM.

DATES: Consideration will be given to comments received on or before October 1, 1991.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket 91-081. Comments received may be inspected as USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Manuel A. Thomas, Jr., Senior Staff Veterinarian, Sheep, Goat, Equine and Poultry Diseases Staff, USDA, APHIS, room 769, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-5954.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92 §§ 92.301(c)(2), 92.304(a)(4)(ii) and 92.304(a)(7)(ii) allow certain horses (mares and stallions over 731 days old) to be imported into the United States from certain countries where contagious equine metritis (CEM) exists if specific requirements to prevent their introducing CEM into the United States are met and the horses are consigned to approved States for further inspection, treatment, and testing.

Mares and stallions over 731 days old must be consigned to States which have been approved by the Administrator of the Animal and Plant Health Inspection Service (APHIS) as meeting conditions necessary to ensure that the horses are free of CEM. These conditions, which concern inspection, treatment, and testing of the horses, are contained in § 92.304(a)(5) of the regulations for stallions and in § 92.304(a)(8) for mares. Florida has agreed to abide by the regulations concerning horses imported from countries where CEM exists, and to enter into a written agreement with the Administrator, APHIS, to enforce its State laws and regulations to contol CEM. Therefore, we propose to add Florida to the list of States approved to receive mares and stallions that are over 731 days old and imported into the United States from certain countries where CEM exists.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We anticipate that fewer than 20 mares and stallions over 731 days old will be imported into the State of Florida annually from countries where CEM exists. Approximately 225 mares and stallions over 731 days old and from countries where CEM exists were imported into the entire United States in fiscal year 1990. During this same period, approximately 34,715 horses of all classes were imported into the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

Accordingly, 9 CFR part 92 would be amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102-105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.304 [Amended]

2. In § 92.304 paragraphs (a)(4)(ii) and (a)(7)(ii) would be amended by adding "The State of Florida" in alphabetical order.

Done in Washington, DC, on this 29th day of July 1991.

Robert Melland,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-18367 Filed 8-1-91; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL TRADE COMMISSION

16 CFR Ch. I

Petitions for Environmental Marketing and Advertising Guides

AGENCY: Federal Trade Commission.

ACTION: Extension of time of filing public comment on issues concerning environmental marketing and advertising claims and pending petitions.

SUMMARY: The Federal Trade Commission ("FTC" or "Commission") has extended the time to file written comment on issues relating to whether additional guidance to the public is needed on the applicability of section 5 of the FTC Act, 15 U.S.C. 45 (section 5), to environmental advertising and labeling claims and, more specifically, what form such guidance should take and what it should cover. Public hearings on these issues were held on July 17-18, 1991. In order to ensure that all interested parties have the opportunity to submit comments in writing, the Commission has extended the time for filing comments for thirty days, until August 16, 1991. The Commission refers interested parties to its May 31, 1991 **Federal Register** notice (56 FR 24968) for further explication of its interest in this matter and of the issues which the Commission particularly would like addressed.

DATES: Comments will be accepted until August 16, 1991.

ADDRESSES: Comments may be mailed to the Office of the Secretary, room 159, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Devenette Sneed, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, suite 4002, 6th & Pennsylvania Ave. NW., Washington, DC 20580, (202) 326-3360.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 91-18421 Filed 8-1-91; 8:45 am]

BILLING CODE 6750-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 3

Adverse Registration Actions and Other Registration Matters

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission (Commission) is proposing to amend its rules relating to the procedures to be followed when an applicant for registration or a registrant under the Commodity Exchange Act (Act), 7 U.S.C. 1 *et seq.* (1988), is subject to statutory disqualification from registration. The proposed amendments would afford applicants subject to statutory disqualification under section 8a(2) of the Act the opportunity to present evidence of rehabilitation and mitigation, rights currently afforded to all registrants subject to statutory disqualification and to those applicants subject to statutory disqualification under section 8a(3) of the Act. However, the standards of proof which an applicant or registrant must meet to demonstrate that full, conditioned or restricted registration would not pose a substantial risk to the public despite the existence of the statutory disqualification would differ depending upon whether a section 8a(2) or a section 8a(3) disqualification were involved. The standard for a section 8a(2) disqualification would be a clear and convincing showing and the standard for a section 8a(3) disqualification would be a preponderance of the evidence. Further, the Commission is proposing to retain a procedure whereby a registrant subject to statutory disqualification under section 8a(2) of the Act would have his registration suspended on the basis of written submissions without the opportunity to present evidence of rehabilitation and mitigation; however, the Commission would continue to permit such a registrant an oral hearing where such evidence could be presented before his registration could be revoked or restricted. These proposed rules are intended to conform the Commission's rules with respect to adverse registration actions with the standards enunciated in the Commission's decision in *In the Matter of Elizabeth A. Kanoles and In the Matter of Mark W. Chamberlain* (Current Binder) Comm. Fut. L. Rep. (CCH) ¶ 24,855 (June 6, 1990).

The Commission is also proposing amendments to several other provisions of the rules relating to the registration process. These proposals include, among others: elimination of most restrictions on dual and multiple associations of associated persons (APs); codification of positions exempting (1) top corporate officers from AP registration under certain circumstances, (2) APs from being required to re-register when they gain a new sponsor due to events such as a merger or acquisition of the sponsoring firm, and (3) firms from being required to re-register because of a corporate reorganization where there is no change in the natural persons involved in the firms' operations; requiring a Form 8-R and fingerprint card from certain natural person principals of an entity that is a non-natural person principal of a firm applying for registration, unless the non-natural person is a publicly-held company or an otherwise regulated entity; and simplified registration procedures for persons who will confine their activities under the Act to specified products. These proposed rule amendments would codify certain current staff positions and address certain aspects of the registration process that the Commission believes should be clarified or simplified. The Commission is also proposing to codify by rule the requirement that a futures commission merchant (FCM) that has entered into a guarantee agreement with an introducing broker (IB) carry the customer accounts introduced by the IB.

DATES: Comments must be received by October 28, 1991.

ADDRESSES: Comments should be sent to the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 and should refer to "Registration Rule Amendments."

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, or Scott L. Diamond, Attorney-Advisor, Division of Trading and Markets, at the above address. Telephone (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

While the Commission has determined that the proposed rule amendments will effectively decrease the existing paperwork reduction burden previously approved by the Office of Management and Budget (OMB), the ne Commission.

Filed 8-1-91; 8:45 am]

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in *In the Matter of Elizabeth A. Kanoles and In the Matter of Mark W. Chamberlain* (Current Binder) Comm. Fut. L. Rep. (CCH) ¶ 24,855 (June 6, 1990).

The Commission is also proposing amendments to several other provisions of the rules relating to the registration process. These proposals include, among others: elimination of most restrictions on dual and multiple associations of associated persons (APs); codification of positions exempting (1) top corporate officers from AP registration under certain circumstances, (2) APs from being required to re-register when they gain a new sponsor due to events such as a merger or acquisition of the sponsoring firm, and (3) firms from being required to re-register because of a corporate reorganization where there is no change in the natural persons involved in the firms' operations; requiring a Form 8–R and fingerprint card from certain natural person principals of an entity that is a non-natural person principal of a firm applying for registration, unless the non-natural person is a publicly-held company or an otherwise regulated entity; and simplified registration procedures for persons who will confine their activities under the Act to specified products. These proposed rule amendments would codify certain current staff positions and address certain aspects of the registration process that the Commission believes should be clarified or simplified. The Commission is also proposing to codify by rule the requirement that a futures commission merchant (FCM) that has entered into a guarantee agreement with an introducing broker (IB) carry the customer accounts introduced by the IB.

DATES: Comments must be received by October 28, 1991.

ADDRESSES: Comments should be sent to the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 and should refer to "Registration Rule Amendments."

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, or Scott L. Diamond, Attorney-Advisor, Division of Trading and Markets, at the above address. Telephone (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

While the Commission has determined that the proposed rule amendments will effectively decrease the existing paperwork reduction burden previously approved by the Office of Management and Budget (OMB), the

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public reporting burden for the collection of information which includes all proposed amendments to parts 1 and 3 of the Commission's regulations is estimated to average 1.20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Mr. Joe F. Mink, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581; and to Office of Management and Budget, Paperwork Reduction Project (3038–0024), Washington, DC 20503.

II. Statutory Disqualifications

A. Introduction

The Commission's decision *In re Kangles and Chamberlain,* (Current Binder) Comm. Fut. L. Rep. (CCH) ¶ 24,855 (June 6, 1990), called for equal treatment of applicants and registrants who are subject to statutory disqualification. Therein, the Commission stated that "our registration process should use uniform substantive standards to assess the fitness of disqualified applicants seeking entry into the futures industry and disqualified registrants seeking retention in the industry." *Id.,* at 37,028 (footnote omitted). As a result, the Commission called for the promulgation of proposed amendments to its rules relating to statutory disqualifications from registration, which are now being proposed. *Id.,* at 37,036 n.36.

B. Procedure To Deny, Condition, Suspend, Revoke or Place Restrictions Upon Registration Pursuant to Sections 8a(2), 8a(3) and 8a(4) of the Act

The Commission's proposed amendments to Rule 3.60 would set forth procedures applicable to statutory disqualification proceedings pursuant to sections 8a(2), 8a(3) and 8a(4) of the Act. Proposed Rule 3.60 is intended to create procedural equality between applicants and registrants subject to statutory disqualification under sections 8a(2), 8a(3) or 8a(4) of the Act. Under a statutory disqualification proceeding, unlike other types of enforcement proceedings, the Commission will be relying on the fact of the statutory disqualification, and generally not upon its own investigation, as the basis for bringing the proceeding. Accordingly, the procedures discussed herein shift the burden to an applicant or registrant subject to a statutory disqualification to show why, notwithstanding that fact, circumstances justify granting full, conditioned or restricted registration, because such registration would not pose a substantial risk to the public. The Commission believes it is appropriate to shift the burden in this manner because such evidence, if it exists, should be within the applicant's or registrant's control. (Proposed Rule 3.60(b)(2)).

A statutory disqualification proceeding would commence with issuance of a notice by the Commission [1] that an applicant or registrant is subject to statutory disqualification. Such notice would state the bases upon which a registration may be denied, granted upon conditions, suspended, revoked or restricted. The notice is not, however, required to specify any proposed conditions or restrictions. The notice will further contain instructions with respect to the filing of a response and a section on the ramifications of a failure to respond. (Proposed Rule 3.60(a)).[2]

Within thirty days of service of the notice, the applicant or registrant must file a response to the notice. See Proposed Rule 3.60(b). In the response, the applicant or registrant may challenge the evidentiary basis for the statutory disqualification under proposed Rule 3.60(b)(1). If the applicant or registrant cannot dispute the evidentiary basis of the statutory disqualification on the grounds set forth in proposed Rule 3.60(b)(1), the burden is on the applicant or registrant, if other than the AP or floor broker (FB) registration categories are involved, to show that full registration, and if the AP or FB registration categories are involved, to show that full, conditioned or restricted registration, would not pose a substantial risk to the public. The applicant or registrant must also indicate in his response whether he or she intends to make such a showing. (Proposed Rule 3.60(b)(2)).

If a person is an AP or FB or is an applicant for registration in either category, and intends to make a showing that full, conditioned or restricted registration would not pose a substantial risk to the public under proposed Rule 3.60(b)(2)(i), he must include a letter, which is binding upon a sponsor or supervising FB who meets the qualifications set forth in proposed Rule 3.60(b)(2)(i) (A) through (C), indicating that the qualified sponsor or supervising FB agrees to sign a Supplemental Sponsor Certification Statement and supervise compliance with any conditions or restrictions that may be imposed on the applicant or registrant.[3] The Commission also notes that it can place conditions or restrictions on other categories of registrant, if appropriate, but such other categories of registrant are not required to submit an agreement for supervised compliance with conditions or restrictions with their response to the notice.

Pursuant to proposed Rule 3.60(b)(2)(ii), an applicant or registrant who intends to make a showing that full, conditioned or restricted registration would not pose a substantial risk to the general public must submit, within fifteen days after filing his initial response,[4] a statement by himself, or his attorney, which identifies and summarizes the expected testimony of all witnesses whom the applicant or registrant intends to have testify on his behalf. The applicant or registrant must further submit copies of all documents which he intends to introduce. The summary of testimony and copies of documents should show that full, conditioned or restricted registration would not pose a substantial risk to the public and should constitute evidence of mitigation of the seriousness of the statutory disqualification [5] and

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[1] As discussed below, notices that commence a statutory disqualification proceeding are proposed to be issued by the Commission rather than by the Director of the Division of Trading and Markets (Division) or the Director's designee pursuant to delegated authority, as permitted under the current rules.

[2] The Commission notes that so long as a person is registered when a proceeding is commenced, such a registration can be revoked even if it ceases *pendente lite.* See *In the Matter of First Regal Commodities, Inc.,* (1984–1986 Transfer Binder) Comm. Fut. L. Rep. (CCH) ¶ 22,600, at 30,570 (CFTC May 22, 1985).

[3] A Supplemental Sponsor's Certification Statement consists of a statement, made by a registrant's sponsor or an applicant's potential sponsor, or someone who would become a supervising floor broker to the conditioned or restricted FB, wherein the particular relationship between the applicant or registrant and his sponsor or supervising FB is described with specificity and a detailed description of the safeguards to protect the public is provided. The Commission views a sponsor's or supervising FB's failure to supervise in accordance with the special supervisory conditions set forth in a Supplemental Sponsor's Certification Statement as constituting other good cause to affect the registration of the sponsor or supervising FB. The Commission also views a registrant's failure to comply with conditions or restrictions as constituting other good cause to affect such registrant's registration, and notes that the conditions or restrictions themselves generally provide that such a failure to comply would impact upon the registrant's registration.

[4] The Commission believes it is appropriate to allow extra time to make this further submission.

[5] The Commission has stated that "[a]s a conceptual matter, mitigation evidence tends to show that under the particular circumstances, the weight that would ordinarily be accorded the presumption arising from proof of that particular

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rehabilitation[6] since the time of the wrongdoing underlying the statutory disqualification,[7] as well as, if the AP or FB registration categories are involved, evidence of and proposals for a set of effective supervisory controls. The Commission also notes that an applicant's or registrant's willful, material false or misleading statements or omission of material facts about a statutory disqualification in his registration application can constitute separate grounds for disqualification under 8a(2)(G) and 8a(3)(G) of the Act and impact the applicant's or registrant's showing of mitigation or rehabilitation.

The Division of Enforcement (DOE), pursuant to proposed Rule 3.60(c), must reply to the registrant's or applicant's response within thirty days after the later of the initial response or the further submission referred to in the preceding paragraph. The DOE, in its reply, shall either submit a motion for summary judgment stating that there are no genuine issues of material fact to be determined or, if there are material factual issues in dispute, a description of the evidence it intends to produce, including identification of witness and summaries of anticipated DOE witness testimony and copies of documents intended to be introduced in an oral hearing. A motion for summary judgment, pursuant to proposed Rule 3.60(c)(1), may request only a denial or revocation of registration. Summary procedures will not yield a conditioned or restricted registration.

Based upon the notice, response and further submission, if any, and reply, and pursuant to proposed Rule 3.60(d), the Administrative Law Judge (ALJ) will issue a summary order granting, denying, suspending or revoking registration, or an order notifying the parties of a hearing to be conducted in accordance with specified procedures under Part 10 of the Commission's regulations. A telephonic hearing procedure is available under proposed Rule 3.60(d)(3). The telephonic hearing procedure, however, will only be available upon the agreement of all parties to the proceeding.

The ALJ's determinations must be in writing and must accord with the standards and make the findings as set forth in proposed Rule 3.60 (e) and (f). Proposed Rule 3.60(e) separates the burdens of proof for statutory disqualifications under 8a(2) and 8a(3) and 8a(4) of the Act. Pursuant to proposed Rule 3.60(e)(1), an applicant or registrant subject to a 8a(2) statutory disqualification must make a clear and convincing showing that full, conditioned or restricted registration would not pose a substantial risk to the public, whereas, under proposed Rule 3.60(e)(2), an applicant or registrant subject to statutory disqualification under 8a(3) or 8a(4) of the Act must make his case by a preponderance of the evidence.[8] As the Commission stated in *Bryant, supra* at n.21, "Disqualifications arising under section 8a(3) are generally less serious than those arising under section 8a(2) * * *. In light of this distinction, the evidentiary burden appropriate for registrants subject to disqualifications under section 8a(3) need not be as strict as that imposed on registrants subject to disqualifications under section 8a(2)."

Under proposed § 3.60(f), the ALJ must, as appropriate, make findings concerning evidence of mitigation and rehabilitation, as well as the feasibility of effective supervision of conditions or restrictions. The ALJ must also specify a time period after which a registrant who would be subject to conditions or restrictions may petition to lift or modify the conditions or restrictions pursuant to the procedures set out in proposed Rule 3.64.

The settlement provisions of proposed Rule 3.60(h) closely track those found in part 10 of the Commission's regulations. An offer by an applicant or registrant shall be submitted, pursuant to proposed Rule 3.60(h)(3), to the DOE, which will then inform the applicant or registrant of the DOE's recommendation. In the event that the DOE makes an unfavorable recommendation, the applicant or registrant will decide whether to present the offer to the Commission for acceptance or rejection. If the Commission chooses to accept an offer, it will issue an order pursuant to proposed Rule 3.60(h)(4). If the Commission, however, decides to reject an offer, such offer shall be deemed withdrawn, in accordance with proposed Rule 3.60(h)(5). Proposed Rules 3.60 (i) and (j) govern the finality of, and appeal procedures with respect to, Commission orders.

C. Suspension and Revocation of Registration Pursuant to Section 8a(2) of the Act

Most of the current rules relating specifically to statutory disqualifications under section 8a(2) of the Act would be repealed. However, the Commission has determined to retain the two-tier system of temporary suspension and full hearing currently available under Rule 3.55 for a registrant subject to statutory disqualification under section 8a(2) of the Act. The expedited suspension procedures in Rule 3.55, as amended, serve the important public interests of offering the Commission a swift and efficient way to temporarily remove apparently disqualified registrants and thus prevent any further harm to the public while also protecting a registrant's interest in a full administrative hearing on the matter. 49 FR 8208, 8213–14 (March 5, 1984). This protection of the public interest is preserved by proposed Rule 3.55 which, in the first tier, allows an ALJ to temporarily suspend a registrant who is

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disqualification should be lessened." *In the Matter of Horn*, (1987–1990 Transfer Binder) Comm. Fut. L. Rep. (CCH) ¶ 23,731, at 33,889 n.9 (CFTC July 21, 1987). The Commission has also stated that "(w)here * * * the category of disqualification at issue covers a broad range of potential conduct, the relative severity of the crime for which the registrant was convicted becomes a relevant consideration in assessing the danger posed to the public." For example, conviction for "transporting a bag of counterfeit money for a $200 payment * * * is clearly less serious * * * than actual production of the counterfeit currency." The disposition of the criminal case can also provide evidence of mitigating circumstances. *In the Matter of Walter*, (1987–1990 Transfer Binder) Comm. Fut. L. Rep. (CCH) ¶ 24,215, at 35,014–15 (CFTC April 14, 1988). The Commission has noted, however, that an asserted lack of relationship between the wrongful conduct and the futures markets is not a basis for mitigation nor is the fact that someone was registered under the Act for approximately ten years prior to committing an offense. *Horn, supra*, at 33,889 and *Walter, supra*, at 35,015 n.21.

[6] The focus of the rehabilitation inquiry in a statutory disqualification case must be on evidence demonstrating that an applicant or registrant has undertaken a changed direction in his activities. The evidence must show changes in character or business practices since the time of the wrongful conduct. The potential for industry service or quality of professional services plays no role in the rehabilitation inquiry. *See In the Matter of Antonacci*, (Current Binder) Comm. Fut. L. Rep. (CCH) ¶ 24,835, at 36,933 (CFTC April 18, 1990); *In the Matter of Anderson*, (1986–1987 Transfer Binder) Comm. Fut. L. Rep. (CCH) ¶ 23,085, at 32,209 (CFTC May 30, 1986).

[7] *See In the Matter of Kangles and Chamberlain*, (Current Binder) Comm. Fut. L. Rep. (CCH) ¶ 24,855 at 37,036, n. 32 (June 6, 1990). *See also In the Matter of Bear Stearns & Co.*, (Current Binder) Comm. Fut. L. Rep. (CCH) ¶ 24,994 at 37,666 (Jan. 25, 1991); *In the Matter of Sigler*, (Current Binder) Comm. Fut. L. Rep. (CCH) ¶ 24,978 at 37,578 (Jan. 8, 1991); *In the Matter of Antonacci*, (Current Binder) Comm. Fut. L. Rep. (CCH) ¶ 24,835 at 36,933 (Apr. 18, 1990).

[8] See *In the Matter of Bryant*, (Current Binder) Comm. Fut. L. Rep. (CCH) ¶ 24,847 at 36,997 and n.21 (CFTC April 18, 1990); *In the Matter of Horn*, (Current Binder) Comm. Fut. L. Rep. (CCH) ¶ 24,836, at 36,939 and n.15 (CFTC April 18, 1990). The current rules provide for such a distinction in the standard of proof depending upon whether a registrant is subject to statutory disqualification under § 8a(2) or under 8a(3) and 8a(4) of the Act. Compare Rule 3.55(f)(2) and (*i*) with Rule 3.61. See also 49 FR 8208, 8213–14 (March 5, 1984). The Commission has stated in *Horn, supra*, that it "interpret(s) the 'clear and compelling' language of (Rule) 3.55(f)(2) as analogous to the traditional evidentiary standard 'clear and convincing.' That standard has been described as evidence which produces in the mind of the trier of fact 'an abiding conviction that the truth of (the) factual contentions are highly probable.' " (Citations omitted.)

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Under proposed § 3.60(f), the ALJ must, as appropriate, make findings concerning evidence of mitigation and rehabilitation, as well as the feasibility of effective supervision of conditions or restrictions. The ALJ must also specify a time period after which a registrant who would be subject to conditions or restrictions may petition to lift or modify the conditions or restrictions pursuant to the procedures set out in proposed Rule 3.64.

The settlement provisions of proposed Rule 3.60(h) closely track those found in part 10 of the Commission's regulations. An offer by an applicant or registrant shall be submitted, pursuant to proposed Rule 3.60(h)(3), to the DOE, which will then inform the applicant or registrant of the DOE's recommendation. In the event that the DOE makes an unfavorable recommendation, the applicant or registrant will decide whether to present the offer to the Commission for acceptance or rejection. If the Commission chooses to accept an offer, it will issue an order pursuant to proposed Rule 3.60(h)(4). If the Commission, however, decides to reject an offer, such offer shall be deemed withdrawn, in accordance with proposed Rule 3.60(h)(5). Proposed Rules 3.60 (i) and (j) govern the finality of, and appeal procedures with respect to, Commission orders.

C. Suspension and Revocation of Registration Pursuant to Section 8a(2) of the Act

Most of the current rules relating specifically to statutory disqualifications under section 8a(2) of the Act would be repealed. However, the Commission has determined to retain the two-tier system of temporary suspension and full hearing currently available under Rule 3.55 for a registrant subject to statutory disqualification under section 8a(2) of the Act. The expedited suspension procedures in Rule 3.55, as amended, serve the important public interests of offering the Commission a swift and efficient way to temporarily remove apparently disqualified registrants and thus prevent any further harm to the public while also protecting a registrant's interest in a full administrative hearing on the matter. 49 FR 8208, 8213–14 (March 5, 1984). This protection of the public interest is preserved by proposed Rule 3.55 which, in the first tier, allows an ALJ to temporarily suspend a registrant who is

subject to a section 8a(2) disqualification for up to six months. The second tier of the procedure affords the registrant the right to a full hearing on the issue.

Under the first tier, following proper notice by the Commission, the registrant may make a written submission to the ALJ consisting of the evidence described in proposed Rule 3.60 (b)(1), which is limited to a challenge to the evidentiary basis of the statutory disqualification set forth in the notice. The DOE may then reply to the registrant's written submission. After considering the registrant's challenge to the evidentiary basis of the statutory disqualification, the ALJ may temporarily suspend the registration and order the registrant to show cause why the registration should not be permanently revoked. See Proposed Rule 3.55(e). The further proceeding to determine whether the registrant's registration should be revoked or restricted would be conducted pursuant to proposed Rule 3.60 (b)(2) through (j). A registrant will continue to be allowed to present evidence of mitigation and rehabilitation during the second tier proceeding. Alternatively, the ALJ may issue an order finding the registrant not subject to statutory disqualification. New appellate procedures applicable to such an order are available through cross-reference to selected sections of part 10 of the Commission's regulations.

The Commission is also proposing a procedural change with respect to statutory disqualification proceedings. Under current rules, a notice of intent to deny, condition, suspend, revoke or place restrictions upon registration can be issued by the Director of the Division of Trading and Markets or the Director's designee, with the concurrence of the Director of the Division of Enforcement and the General Counsel or their designees. Rules 3.51(a), 3.52, 3.55(a) and 3.60. A statutory disqualification proceeding can thus be instituted pursuant to delegated authority under Rule 3.75 without specific consideration by the Commission, although any ruling by an ALJ in a statutory disqualification proceeding is subject to Commission review on appeal. The Commission is proposing to amend Rules 3.51(a), 3.55(a) and 3.60 (Rule 3.52 is proposed to be revoked) to require specific Commission authorization to commence a statutory disqualification proceeding, thereby revoking the delegation of authority referred to in this paragraph. This would conform the commencement of a statutory disqualification proceeding with the commencement of other types of enforcement proceedings.[9] The Commission notes, however, that these rule amendments would only affect those statutory disqualification proceedings instituted by the Commission. The Commission has previously authorized NFA to conduct statutory disqualification proceedings with respect to registrants and applicants for registration in all registration categories other than that of floor broker.[10] Although any NFA ruling in a statutory disqualification proceeding is and will continue to be appealable to the Commission, statutory disqualification proceedings may be instituted by NFA under previous delegations of authority without Commission consideration.

Since the Commission has delegated to NFA the authority to conduct statutory disqualification proceedings with respect to all registrant categories other than FBs, the Commission anticipates that if the rules proposed herewith with respect to such proceedings, including procedures to lift or modify conditions or restrictions, are adopted, NFA will adopt and submit for Commission review similar rules. Such rules should afford applicants or registrants subject to statutory disqualification with rights similar to those under Commission rules, although we recognize that NFA's rules may not be identical to the Commission's rules in all particulars.

D. Procedure to Lift or Modify Conditions or Restrictions

There is currently no rule concerning lifting or modifying conditions or restrictions on a registration. In light of the fact that more registrants may be subject to conditions or restrictions if the proposed rules described above are adopted, the Commission believes that such a rule is appropriate. Proposed Rule 3.64 is designed to provide procedures whereby a registrant whose registration is subject to conditions or restrictions may petition the Commission to lift or modify such conditions or restrictions.

Rule 3.64(a), as proposed, would allow the registrant to petition for modification or cessation of any conditions or restrictions on his registration no earlier than the date which the ALJ initially set in his decision rendered pursuant to proposed Rule 3.60(f)(3). The registrant's showing in a petition to lift or modify conditions or restrictions shall be strictly limited to affidavits indicating that the conditions or restrictions have been fulfilled in accordance with the standards established in the ALJ's initial decision.

The DOE will respond to the registrant's petition under proposed Rule 3.64(b). Such a response will include the DOE's recommendation as to whether to continue the conditioned or restricted registration or to permit full registration. Where the DOE and the petitioner are in agreement, the Commission may accept the DOE's recommendation and issue an order accordingly.

If the Commission fails to accept the agreement of the DOE and the petitioner, and a proceeding before an ALJ is required to resolve the petition, an ALJ may order an oral hearing, where appropriate to the reliable resolution of the petition, in accordance with proposed Rule 3.64(c)(1), or determine that a decision on the papers is sufficient, under proposed Rule 3.64(c)(2). The focus of such a proceeding would be strictly limited to determining whether the goals of the conditions or restrictions (*i.e.*, preventing harm to the public) have been fulfilled. The purposes of the proceeding are not to reexamine evidence of mitigation and rehabilitation with respect to the statutory disqualification, or the severity of the statutory disqualification. Those matters having been resolved in the initial statutory disqualification proceeding giving rise to the conditions or restrictions, the focus of a Rule 3.64 proceeding would be on whether such conditions or restrictions have been (1) adhered to by the petitioner and his sponsor or supervising FB, (2) successful in preventing harm to the public, and (3) remain necessary to protect the public. The ALJ's written decision may be appealed, pursuant to proposed Rule 3.64(d) and selected sections of part 10 of the Commission's regulations.[11]

III. Other Registration Matters

A. Major Proposals

In addition to the proposed changes in the statutory disqualification procedures, the Commission is proposing amendments to almost every other provision of the part 3 rules, as well as a few amendments to the part 1 rules. Based upon its administration and oversight of the registration process, the Commission believes that these areas of the rules should be clarified and simplified. Some of these amendments would merely codify or extend the logic of existing positions taken by the Division pursuant to delegated authority. These proposals include, among others: Elimination of most restrictions on dual and multiple associations of APs; codification of positions exempting (1) top corporate officers from AP registration under certain circumstances, (2) APs from being required to re-register when they gain a new sponsor due to events such as a merger or acquisition of the sponsoring firm, and (3) firms from being required to reregister because of a corporate reorganization where there is no change in the natural persons involved in the firms' operations; requiring a Form 8–R and fingerprint card from certain natural person principals of an entity that is a non-natural person principal of a firm applying for registration, unless the nonnatural person is a publicly-held company or an otherwise regulated entity; simplified registration procedures for persons who will confine their activities under the Act to specified products; and requiring a futures commission merchant that has entered into a guarantee agreement with an IB to carry all of the customer accounts introduced by the IB.

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[9] See Rule 10.21.

[10] 50 FR 34885 (August 28, 1985); 54 FR 41133 (October 5, 1989). Under such delegations, the National Futures Association (NFA) institutes the majority of statutory disqualification cases. However, the Commission retained authority: (1) To initiate its own statutory disqualification proceedings for all categories of registrants; (2) to review the granting of any registration by NFA; and (3) to institute a review of NFA final orders in statutory disqualification cases on its own motion.

[11] As noted above, the Commission anticipates that NFA will adopt and submit for Commission review rules prescribing the procedures to lift or modify conditions or restrictions.

B. Section-by-Section Analysis

1. Rule 1.10(j)

The Commission is proposing two technical amendments to the requirements for a guarantee agreement between an FCM and an IB under Rule 1.10(j). In paragraph (j)(3), the cross-reference to § 3.15(a) would be changed to § 3.10(a) because Rule 3.15, the current rule pertaining to registration of IBs, is proposed to be removed as part of the effort to eliminate separate rules pertaining to registration of different types of firms [12] and to consolidate all such provisions in an amended Rule 3.10. In paragraph (j)(4), the references to an IB or an FCM failing to renew its registration would be deleted since the requirement for annual renewal of registration has been replaced by a system of perpetual registration with an annual update of the firm's Form 7–R.[13]

2. Rule 1.57

The Commission is proposing an amendment to Rule 1.57, which governs the operations and activities of IBs. The rule currently does not provide specifically that an FCM which enters into a guarantee agreement with an IB must carry all of the accounts of the IB's customers. When the Commission adopted the guarantee agreement rule, it "assume[d] that an FCM which enters into a guarantee agreement with an introducing broker will require the introducing broker to introduce all of its accounts to that FCM. However, these matters are left to the parties to arrange." [14] The Commission permitted some limited flexibility in anticipation of a rare instance where the customer of an IB, due to a preexisting business or personal relationship, would prefer to have his account carried at an FCM other than the guarantor FCM. However, since it was the Commission's expectation that the guarantor FCM would carry all or nearly all of the customer accounts of the guaranteed IB (IBG), and that such increased customer business would increase the guarantor FCM's minimum adjusted net capital requirement based on four percent of segregated funds,[15] the Commission did not impose a capital charge on the guarantor FCM based solely upon the entry into a guarantee agreement.[16]

It subsequently came to the attention of the Division, however, that a few FCMs were entering into guarantee agreements with IBs but not carrying any of the accounts of the IB's customers and instead introducing those accounts to another FCM. Some FCMs guaranteed numerous IBs even though the FCM maintained only the minimum dollar amount of adjusted net capital required under the Commission's rules. The Division pointed out to the IBs involved in these agreements that "[s]uch activity is not contemplated by the Commission's rules related to IB guarantee agreements. [Such a] clearing arrangement is not consistent with the terms of the guarantee agreement required by Commission rules for guaranteed introducing brokers, and consequently your firm has not demonstrated compliance with the Commission's minimum financial requirements * * * ." [17] The Division further noted " '[T]he purpose of the guarantee agreement is * * * to protect the customers of the introducing broker.' " [18]

The Commission is now proposing to codify the Division's position set forth in CFTC Interpretative Letter No. 88–4. The vast majority of IBGs and their guarantor FCMs have conducted themselves in accordance with this policy because effectively IBGs function like APs or nonproprietary branch offices, and the Division believes that the earlier problems that it discovered have been resolved. Nonetheless, the Commission wants to ensure that there is no recurrence of this abuse and accordingly is proposing an amendment to Rule 1.57(a)(1) to require that an IBG introduce *all* of its customer accounts to its guarantor FCM.[19]

3. Rule 1.62

Contract markets are currently required by Rule 1.62 to adopt and enforce rules to assure that only registered FBs act as FBs on the floor of the contract market. Because the Commission is proposing to require that FBs complete an annual update of their registration applications (as do FCMs, IBs, CTAs, CPOs and LTMs) and to provide for an FB to withdraw his registration,[20] the Commission is also proposing to amend Rule 1.62 to ensure that the contract markets will adopt and enforce rules with respect to annual updates and withdrawals by FBs.

The Commission is further proposing to require each contract market to notify the Commission of any facts regarding an FB or applicant therefor which are set forth as statutory disqualifications in section 8a(2) of the Act within ten business days of the date upon which the contract market first knows or should have known such facts. This requirement would be consistent with the obligation of a sponsor of an AP or applicant for registration as an AP who knows or should have known such facts about the AP or applicant for registration as an AP under Rule 3.70(a).

4. Rule 3.1

The Commission is proposing several minor, technical amendments to certain of the definitions applicable to the part 3 rules. The Commission is proposing to clarify, since it receives inquiries on the subject periodically, that the provision

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[12] See also Rule 3.13 (commodity trading advisors (CTAs)), Rule 3.14 (commodity pool operators (CPOs)) and Rule 3.17 (leverage transaction merchants (LTMs)).

[13] 53 FR 8428 (March 25, 1988).

[14] 48 FR 35248, 35264 (Aug. 3, 1983).

[15] See Rule 1.17(a)(1)(i)(B).

[16] 48 FR 35248, 35267–68 (Aug. 3, 1983).

[17] CFTC Interpretative Letter No. 88–4, [1987–1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,098 (Jan. 26, 1988).

[18] *Id.*, citing 48 FR 35248, at 35264.

[19] Of course, an independent IB (IBI) which meets the basic minimum adjusted net capital requirement under Rule 1.17(a)(1)(ii)(A) may have its customers' accounts carried by more than one FCM.

[20] See proposed Rule 3.11(d) and proposed amendments to Rule 3.13.

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further noted " '(T)he purpose of the guarantee agreement is * * * to protect the customers of the introducing broker.' " [18]

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[20] See proposed Rule 3.11(d) and proposed amendments to Rule 3 13.

in Rule 3.1(a)(3) that includes within the principal definition "any person who has contributed ten percent or more of the capital" applies generally to a person who has contributed capital by means of subordinated debt. However, the Commission is proposing to provide an exclusion from the definition of principal in the context of contribution of subordinated debt the proceeds of which qualify as net capital, if the contributor of subordinated debt is an unaffiliated (i) bank insured by the Federal Deposit Insurance Corporation, (ii) U.S. branch or agency of an unaffiliated foreign bank that is licensed under U.S. law and regulated, supervised and examined by U.S. government authorities having regulatory responsibility for such financial institutions, or (iii) insurance company subject to regulation by any State, provided in each case that such debt is not guaranteed by another party not listed as a principal. Since such institutions engage in such financing in the ordinary course of their business and are otherwise regulated, the Commission believes it is not necessary for purposes of the registration process to include such entities as principals, subject to the specified conditions.

The Commission also wishes to note, however, that a bank or insurance company that has contributed ten percent or more of a firm's capital by means of subordinated debt could still be required to be listed as principals of the firm if they meet other criteria of the principal definition, *e.g.*, such persons have the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over the firm's activities which are subject to regulation by the Commission.

The Commission is also proposing minor, technical amendments to Rules 3.1 (b) and (c). The definition of "current" in Rule 3.1(b) would be amended by removing the reference to the obsolete Form 94. The definition of "sponsor" in Rule 3.1(c) would be amended by removing cross-references to Rules 3.16 and 3.18, which the Commission is proposing to delete. These amendments would constitute part of the proposed consolidation of all the provisions relating to registration of APs into Rule 3.12, the current rule governing registration of APs of FCMs and IBs. Such a consolidation would parallel the proposed consolidation of all provisions relating to registration of firms into an amended Rule 3.10, as referred to above.

The Commission further proposes to add three new definitions for purposes of part 3. The first of these would be a definition of "beneficial owner," a term used in the definition of principal and in Rule 3.32 governing re-registration. The language of the definition parallels that contained in 17 CFR 240.13d–3(b) (1990), a Securities and Exchange Commission (SEC) rule relating to the determination of the beneficial owner of securities in connection with a tender offer. The intent of the proposed definition is to prevent a person from avoiding classification as a principal of a firm through establishment of an intermediary entity to hold securities of a firm.

Another proposed new definition is the term "foreign futures authority." This definition would be needed because such a term is contained in a proposed new Rule 3.10(a)(2)(ii), which is discussed below. The language of the definition is consistent with the language in the Commission's pending reauthorization legislation.[21]

The third new definition being proposed is the term "commodity interest." This term is used in proposed new Rule 3.12(j), which is discussed below. The language of the definition is closely modelled on that set forth in Rule 4.10(a), but since that definition is by its terms applicable only to part 4 of the Commission's rules, it is necessary to have a similar definition in part 3 of the Commission's rules.

5. Rule 3.10

The Commission is proposing to consolidate in an amended Rule 3.10 all provisions relating to registration of any type of firm, *i.e.*, FCM, CTA, CPO, IB, and LTM. If this were adopted, Rules 3.13, 3.14, 3.15 and 3.17, which currently apply to the latter four categories of registrant, would be deleted. The Commission is also proposing to eliminate certain outdated references in Rule 3.10 to initial registration, termination of registration and Form 94. The Commission is further proposing to amend Rule 3.10(b) to clarify the effect of a registration suspension. An FCM, IB, CTA, CPO or LTM would not be deemed to be registered during the pendency of a registration suspension, but such a suspension will not have the effect of a revocation or withdrawal of registration. When the suspension expires, the firm could resume regulated activity without the necessity of filing a new Form 7–R and accompanying documents, as would be required if the firm's registration were revoked or withdrawn. This clarification would make the language of Rule 3.10(b) consistent with the practical effect of a registration suspension.

The Commission is also proposing a new paragraph (b)(2) to Rule 3.10 concerning an IB that has been party to a guarantee agreement with an FCM, an IBG. The registration of an IBG automatically would terminate thirty days after termination of the guarantee agreement unless the procedures set forth in Rule 1.10(j)(8) are followed, *i.e.*, the IB files a new guarantee agreement or raises its own capital to meet the minimum financial requirement for an IBI. Such a procedure would be akin to termination of an AP that is no longer associated with a sponsor and would not require a formal proceeding. An IBG whose registration has terminated in this manner would have to re-apply for IB registration like any new applicant and would be subject to appropriate fitness checks. Although it is clear under current rules that such a firm cannot deal with the public, the Commission believes that it is preferable that such firms no longer be deemed registered for any purpose to avoid any confusion as to their status.

The Commission is also proposing a substantive amendment in a proposed new paragraph (a)(2)(ii) of Rule 3.10 relating to principals of a firm that are not natural persons. Under current law, each Form 7–R filed by a firm applying for registration under the Act must be accompanied by a Form 8–R and fingerprint card for each natural person who is a principal of the applicant, unless such person has a current Form 8–R or Form 94 on file. If the applicant lists on its Form 7–R a principal that is not a natural person (*e.g.*, a corporate holding company or a general partnership), however, the firm is only required to provide on a separate sheet the names of officers and directors or general partners of that entity. Further, there is currently no requirement to provide even the name of a person who is the holder or beneficial owner or ten percent or more of the outstanding shares of any class of stock or has contributed ten percent or more of the capital of such an entity. Because of the lack of a Form 8–R and fingerprint card for such persons, no systematic fitness check is conducted with respect to such persons, although further information may be requested by the NFA if circumstances warrant such a request. This leaves open the possibility that persons who could not meet the fitness standards as individual principals of an applicant firm might be able to exercise control of the firm through the vehicle of a corporate holding company or other entity. An ALJ has previously alluded to this potential weakness in the registration system. See *Maloney* v. *Jack Carl/312 Futures, Inc., et al.*, CFTC Docket No. 89–R096, [1987–1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,464, at n.2 (April 27, 1989).

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[21] See H.R. 707, 102d Cong. 2d Sess. 301 and Senate Amendment to H.R. 707, 102d Cong. 2d Sess. 251.

The Commission has therefore determined to propose new Rule 3.10(a)(2)(ii) generally to require the filing of a Form 8–R and fingerprint card for each natural person who is the holder or beneficial owner of ten percent or more of the outstanding shares of any class of stock or has contributed ten percent or more of the capital of an entity that is a non-natural person principal listed on the Form 7–R of a firm applying for registration. If all of the principals of an applicant's non-natural person principal are also non-natural persons, the Form 7–R must be accompanied by a Form 8–R and fingerprints for each natural person described in the preceding sentence. The provisions of proposed Rule 3.10(a)(2)(ii) would not apply to any natural person who has a current Form 8–R on file with the Commission or the National Futures Association, or who has had filed on his behalf a Form 8–R and a fingerprint card pursuant to Rule 3.10(a)(2)(i), *i.e.*, the person is himself a principal of the applicant. Proposed Rule 3.10(a)(2)(ii) would also not apply where the non-natural person principal is a publicly-held company or regulated under securities, banking or insurance laws. The Commission is also proposing that if the natural person in question is a foreign national regulated by a foreign futures authority that provides information concerning facts which would constitute a potential statutory disqualification to NFA, NFA may waive the requirement to file a Form 8–R and fingerprints.

Generally, the Commission would wish to know that the individual in question is licensed and in good standing with the foreign futures authority. The Commission and NFA have undertaken initiatives with certain foreign jurisdictions to obtain information relevant to processing such applications. In other appropriate cases, NFA may also waive the requirement to file a Form 8–R and fingerprints. Proposed Rule 3.10(a)(2)(ii) would also provide that, in appropriate cases, the Commission or NFA may require further information from the applicant with respect to any natural person or entities referred to in that rule.[22] For example, the names of officers and directors or general partners of a non-natural person principal would still have to be listed on a separate sheet, and further information could be requested with respect to such officers, directors or general partners.

6. Rule 3.11

The Commission is proposing to amend paragraph (b) of Rule 3.11 relating to the duration of registration of an FB. Similar language to that proposed to be included in the amendments to Rule 3.10(b) concerning the effect of a suspension of registration, discussed above, would be included. An FB's registration expires if all of his trading privileges on all contract markets of which he is a member have ceased, and re-registration would be required before he could lawfully resume activity as an FB. If all of an FB's trading privileges on all contract markets are suspended, the FB's registration is effectively suspended for a similar duration, but the FB can resume his activities when the trading privilege suspension expires without re-registration. If such trading privileges cease or are suspended at one contract market but the FB retains such privileges at another contract market, registration as an FB would not expire or be suspended.[23] Further, the Commission is proposing to add a cross-reference to a contract market's existing obligation under Rule 3.31(d) to notify NFA when the trading privileges of an FB or an applicant for registration as an FB have ceased.

The Commission is also proposing to add a new paragraph (d) to Rule 3.11 to provide for annual updates of an FB's Form 8–R. Although NFA has previously conducted periodic updates of Forms 8–R filed by FBs, there has been no rule to govern this procedure. As discussed above, contract markets would be required to adopt and enforce rules with respect to such annual updates under the proposed amendments to Rule 1.62. The proposed new Rule 3.11(d) would be consistent with existing requirements for annual updates of Form 7–R by FCMs, IBs, CTAs, CPOs and LTMs, including a provision that if an FB were to fail to file the required Form 8–R update within thirty days of the date specified by NFA, the FB would be deemed to have requested withdrawal from registration.

7. Rule 3.12

The Commission is proposing several major and minor revisions to Rule 3.12, which would now govern registration for all types of APs and allow the deletion of Rules 3.16 (APs of CTAs and CPOs) and 3.18 (APs of LTMs). The minor revisions proposed are similar to ones discussed above with respect to other rules, including new cross-references, deletion of outdated references and clarification of the effect of a registration suspension.

The Commission is proposing to amend Rule 3.12(d) which permits special temporary license (TL) and registration procedures when an AP's registration has terminated within the preceding sixty days. Although the substance of the rule would remain the same, there would be restrictions on who could act as a new sponsor for a person subject to conditional registration, which would be consistent with the restrictions on who can act as a sponsor for a conditioned AP initially.[24] The certifications which the new sponsor must make with respect to any person seeking registration as an AP who has been terminated by any previous sponsors within the preceding sixty days would include whether there is a pending adjudicatory proceeding under sections 6(b), 6(c), 6c, 6d, 8a or 9 of the Act. Currently, the rule only requires a certification with respect to proceedings under which registration can be affected (6(b) and 8a). The Commission is now proposing to add adjudicatory proceedings under other sections of the Act as bars to the use of the special TL and registration procedures: 6(c) (cease and desist orders); 6c (injunctive proceedings); 6d (state proceedings);and 9 (criminal proceedings). Of course, any person terminated within the preceding sixty days for whom a new sponsor cannot make the certifications under Rule 3.12(d)(1) would continue to be able to apply for a new AP registration under standard procedures for a new applicant.

a. *Dual and Multiple Association*. One of the major revisions the Commission is proposing is to eliminate most of the prohibitions on dual and multiple associations of APs contained in Rule 3.12(f). Currently, Rule 3.12(f) prohibits

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[22] See also proposed Rule 3.32(a)(2), discussed below.

[23] The Commission notes, however, that if trading privileges have ceased or been suspended as a result of an outstanding order of a contract market, the FB would be subject to statutory disqualification from registration pursuant to section 8a(3)(J) of the Act.

[24] These restrictions, which are set forth in paragraphs (b)(2)(i)(A) and (B) of the proposed revision of Rule 3.60, provide that a sponsor of a conditioned AP cannot be subject to a pending adjudicatory proceeding under the Act or, if the sponsor would be subject to minimum capital requirements, *i.e.*, an FCM or LTM, have adjusted net capital that is below the "early warning" level. See also Rules 1.10(j)(2) and 3.55(f)(3).

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certain dual and multiple associations of APs with various sponsors. The rule provides that no person may be simultaneously associated as an AP with: (1) More than one FCM or more than one IB; (2) an FCM and an IB or an LTM; and (3) an IB and an LTM. The rule also provides that no person may be simultaneously associated as an AP with: (1) An FCM and a CTA; (2) an FCM and a CPO; (3) an IB and a CTA; and (4) an IB and a CPO, unless all of the customers of the AP in question have their accounts cleared through the FCM or IB with which the AP is associated (in which case the AP is deemed to be solely associated with the FCM or IB and remains registered as an AP only of the FCM or IB, even though solicitation on behalf of the CTA or CPO takes place) or none of the accounts of customers of the AP solicited on behalf of the CTA or CPO is cleared through the FCM or IB with which the AP is associated (in which case the AP registers also as an AP of the CTA or CPO).[25] The rule was adopted to address situations where each sponsor might try to disclaim responsibility for supervision or liability for the AP with dual or multiple associations.

The Division has issued numerous letters pursuant to delegated authority under Rule 3.12(g) exempting APs from the prohibitions of Rule 3.12(f) based upon, among other things, common ownership of the firms. It has been the Division's experience, however, that these rules have been difficult to understand and follow, even for experienced practitioners. The Division has also found that in certain instances they can have perverse effects, for example, limiting the choice of which FCM a customer can use to carry his managed account.

The Commission believes that a better model for addressing the concerns raised by dual and multiple sponsorship situations already exists. Rule 3.16(e)(2)(i), which would be eliminated as part of the proposed consolidation of all provisions relating to AP registration into Rule 3.12, currently provides that a person who is already registered as an AP in any capacity may become associated with a CTA or CPO if the CTA or CPO files a Form 3–R, Part II with the NFA. Such filing contains a certification that the sponsor has verified that the AP is currently registered and is not subject to statutory disqualification under Section 8a(2) of the Act. Further, such sponsor's certification includes an acknowledgment that, in addition to its responsibility to supervise all activities of the AP relating to the sponsor's business as a registrant under the Act in accordance with Rule 166.3, the sponsor is jointly and severally liable for the AP's activities with respect to any customers common to it and another sponsor of the AP.

In light of the fact that the Commission has not found there to be substantial problems under current Rule 3.16(e)(2)(i), the Commission is proposing to incorporate the provisions of that rule into Rule 3.12(f) to be applicable generally to all APs. The Form 3–R would be modified, however, so that each sponsor of an AP, his existing sponsors and any potential new sponsor, would have to sign the Form 3–R when the AP seeks to add a new association. This would make it clear that such new association is known to existing sponsors, and make existing sponsors as well as the potential new sponsor responsible for certifications as to the AP's registration status and fitness. It would also make clear that each sponsor is jointly and severally liable for the AP's conduct with respect to customers common to it and another sponsor of the AP, without regard to whether such conduct would otherwise fall within the purview of the sponsor's supervisory responsibility under Rule 166.3. Sponsors should also be aware that these proposed amendments will not in any respect reduce their supervisory responsibilities under Rule 166.3 with respect to any of their APs.

The Commission is also proposing standards with respect to a firm seeking to utilize the simplified procedures under Rule 3.12(f) to become an additional sponsor of an AP. Such additional sponsor could not be subject to a pending adjudicatory proceeding under the Act or subject to financial early warning reporting requirements. These standards would be similar to those applicable to a sponsor of an AP subject to conditions or restrictions on his registration as discussed above, and the Commission believes it is appropriate to have similar standards where multiple sponsors would be involved in light of the joint and several liability provisions applicable in these situations. Further, these standards would essentially conform the treatment of a potential new sponsor under Rule 3.12(f) with that of an AP seeking such a new sponsor, because an AP involved in a pending proceeding could not add a new sponsor in accordance with the procedures set forth in the proposed amendments to Rule 3.12(f).[26]

The Commission is also proposing to retain one feature of the current system of prohibitions under Rule 3.12(f), however. Under proposed Rule 3.12(f)(4), if an individual is associated as an AP with an FCM or with an IB and he directs customers seeking a managed account to use the services of a CTA or CTAs approved by the FCM or IB and all such customers' accounts solicited or accepted by that AP are carried by the FCM or introduced by the IB with which the AP is associated, such an individual shall be deemed associated solely with the FCM or IB and cannot also register as an AP of the CTA or CTAs nor be required to file a Form 3–R. The Commission believes that it is appropriate to maintain responsibility for such activity by an AP with the FCM or IB. The Commission further believes that, since an FCM or IB may have numerous APs and may change CTAs on its "approved list" frequently, this provision would eliminate the need to file thousands of Forms 3–R annually as a result of changes in such approved lists and thus relieve an administrative burden on FCMs, IBs and APs.

b. *Exemptions.* The Commission is proposing to consolidate the existing provisions for exemption from AP registration now contained in Rules 3.12, 3.16 and 3.18 into a revised Rule 3.12(h). In addition, the Commission is proposing to codify a position which has been taken by the Division pursuant to delegated authority with respect to the requirement for AP registration of persons such as a chief operating officer (COO) or general partner (GP) of a firm engaged primarily in a business other than commodity interest trading.[27]

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[25] See CFTC Interpretative Letter 83–11, (1982–1984 Transfer Binder) Comm. Fut. L. Rep. (CCH) ¶21.952 (Dec. 20, 1983).

[26] See appendix A to part 3 ("other good cause" provision of 8a(3)(M) of the Act authorizes the Commission to refuse to register any registrant in any new capacity if such person is the subject of an administrative proceeding brought by the Commission to revoke the existing registration of such person in any other capacity, pending a final decision in such administrative proceeding).

[27] As interpreted by the Commission, the provisions of section 4k of the Act require the registration as an AP of all individuals in the line of supervisory authority over the APs who solicit and accept customers' orders, including positions up through that of the firm's COO. See Interpretative Statement Regarding the Scope of the Term "Supervision" in the Associated Person Requirement, 45 Fed. Reg. 54032 (Aug. 14, 1980). Although at the time that statement was issued there were only APs of FCMs, the Division took a similar position with respect to APs of other types of firms when such registrant categories were added to the Act by the Futures Trading Act of 1982.

Although such a person would always be required to be listed as a principal on a firm's registration application, and if such person is found to be unfit to act as a principal the firm would be subject to statutory disqualification under section 8a(3)(N) of the Act, the Division has granted exemptions from the AP registration requirements to such persons under certain circumstances.[28] Exemptions have been granted where corporate or partnership resolutions are adopted prohibiting the COO or GP or other similarly situated person from soliciting or accepting customer orders or exercising any line supervisory authority over those persons so engaged or exercising any authority with respect to hiring or firing or other personnel matters involving persons engaged in activities subject to regulation under the Act. Such a resolution must also designate a person registered as an AP or applying for registration as an AP who will have full and final supervisory authority over the customer commodity interest related activities of the firm.

Neither the person so designated nor the firm can be subject to a pending proceeding brought by the Commission or a self-regulatory organization alleging failure to supervise nor can the designated person or the firm have been found in such a proceeding to have failed to supervise. The Division has also generally limited its granting of AP exemptions for a COO or GP to cases where the firm's commodity interest related activity accounts for no more than ten percent of total revenue on an annual basis.

The Commission believes it is appropriate to codify this exemption in the rules to eliminate the need for firms to seek separate relief with respect to persons such as a COO or GP. The Commission also believes that the ten percent revenue measure is appropriate in these circumstances because if the firm's commodity interest related activities constitute a greater percentage of its total business, supervisory control over such activities generally should be exercised by the COO or GP. The Commission also believes that the percentage of business devoted to commodity interest related activities must be reevaluated by a firm on an annual basis in accordance with the annual update of its registration form, and if circumstances have changed, *e.g.*, that percentage now exceeds ten percent, the exemption would no longer be applicable and registration would be required. It is part of a firm's general supervisory duties to monitor this situation and any other aspects of its operations affecting registration so as to ensure that those persons whose status and activities require registration under the Act are properly registered. The Commission also wishes to note that although it is proposing to codify the exemption from registration as an AP, the duties and obligations under section 2(a)(1) of the Act with respect to liability for an agent and Rule 166.3 regarding supervision would still apply.

c. *Sponsor Reorganization.* The Commission is also proposing a new paragraph (i) of Rule 3.12 for situations where an AP is to become sponsored by an entity other than his current sponsor through no choice or action by the AP. This could occur if the sponsor engages in a corporate reorganization whereby an intermediate company is to be inserted as the new owner of the sponsor. It could also occur in the case of the sponsor being merged with or acquired by another company. In any of these instances, the AP may still be dealing with the same customers, have the same supervisor and even operate out of the same physical location (albeit, with a new name on the door). In such circumstances, the Division has previously granted, pursuant to delegated authority, relief to APs from being required to re-register if the new sponsor represents that it will be responsible for supervising all activities of the AP in connection with the sponsor's business as a registrant under the Act, fitness information has not changed since the AP's Form 8–R or most recent update was filed with the NFA, and the day-to-day nature of the AP's activities will be unchanged as a result of the new sponsorship. Such relief has been conditioned upon the filing of a sponsor's certification by the new sponsor.

The Commission believes this policy should be codified and has therefore proposed Rule 3.12(i). Registration as an AP of the new sponsor would be granted upon mailing of certifications specified therein to NFA, and no new Form 8–R or fingerprint card would be required.[29] This situation would be distinguished from the special procedures under Rule 3.12(d), which provide only for granting of a temporary license upon mailing of the certifications specified therein and require submission of a new Form 8–R and fingerprint card. The Commission believes this disparate treatment is appropriate because in the former case, the new sponsor comes about through no choice and as a result of events beyond the control of the AP, while in the latter case the AP has chosen to leave one sponsor to associate with another. The Commission also notes that if Rule 3.12(i) were to be adopted, it would be incumbent upon firms involved in such situations to submit timely to NFA the required paperwork so that there will be no interruption of registration status and to enable NFA to make an appropriate amendment to the registration record with respect to the sponsor of the AP.

d. *Special registration procedures for persons dealing only with certain commodity interests.* The Commission is also proposing, in Rule 3.12(j), to allow special procedures that would be available to a person who limits his activities to certain specified commodity interests. If this rule were to be adopted, the Commission would expect to set forth in an appendix B to part 3 those commodity interests to which the special registration procedures would apply. A commodity interest would only be included in such an appendix B upon petition by a contract market demonstrating that it is not contrary to the purposes of the Act and the registration rules promulgated thereunder or the public interest to permit special registration procedures for persons involved only with that commodity interest. Although the Commission notes that proficiency testing requirements are governed by NFA Rule 401, such a contract market petition could also address whether alternative proficiency testing requirements would be appropriate. If the Commission were to approve the contract market petition, NFA could then adopt and submit for Commission approval special registration procedures to govern those persons involved only with the particular commodity interest that is the subject of the petition. Such NFA rules could vary depending upon the commodity interest involved and would be considered by the Commission on a case-by-case basis. The Commission would expect to include the gold asset participation contract for which the Commodity Exchange, Inc. was designated as a contract market on February 26, 1991, and similar products, such as index participations, in an Appendix B to Part 3 for purposes of the special procedures under Rule 3.12(j).[30]

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[28] Since the fitness review for the individual and the firm is the same whether or not such exemption is available, the main effect of such an exemption is to eliminate NFA's proficiency testing requirement with respect to such individual. See NFA Rule 401.

[29] In light of that relief, NFA would have the authority to require the filing of fingerprints and other information every two years under proposed Rule 3.12(i)(3).

[30] See also Senate Amendment to H.R. 707, 102d Cong. 2d Sess. 304.

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[30] See also Senate Amendment to H.R. 707, 102d Cong. 2d Sess. 304.

8. Rule 3.21

Historically, the Commission has strictly applied the requirement that natural person principals of firms file a Form 8–R and a fingerprint card so that the fitness of such persons can be checked as part of the registration process. Occasionally, the Division has received requests to waive the fingerprint card requirement. Such requests have generally been submitted on behalf of persons who claim to be basically honorary or ceremonial directors of a firm with no direct line involvement in the firm's commodity interest related activities. Such persons may be figures of national prominence, such as former Executive Branch officeholders, and it is claimed that it is unnecessary to require fingerprints from such persons. Certain foreign nationals have claimed that in their culture it is considered undignified to have one's fingerprints taken. In general, the Commission has denied such requests because of the overriding public policy interest of the Act that persons who have the ability to influence the operations of firms required to register under the Act, such as a corporate director, be subject to a thorough fitness check.

However, the Division recently took a no-action position with respect to an outside director of a firm who did not submit a fingerprint card.[31] The Division noted that the firm involved was also registered as a securities broker-dealer with NASD and that the SEC has adopted a rule which provides for an exemption from the fingerprinting requirement in circumstances in which directors, among others, have no direct operational or supervisory role in a firm's securities business.[32]

The Commission has reconsidered the fingerprinting issue and has determined that additional flexibility in this area may be appropriate in certain circumstances. The Commission has therefore determined to propose amendments to Rule 3.21 which would allow NFA to consider petitions of outside directors for exemption from the fingerprint requirement if such persons do not engage in commodity interest activities themselves or have direct supervisory responsibility over persons so engaged, nor have regular access to books and records related to commodity interest activities. The Commission would expect that such exemptions would be granted only on rare occasions and believes that it is appropriate to delegate this function to NFA. Even if such an exemption from the fingerprint requirement were granted, however, the director would still be required to submit a Form 8–R so that certain fitness checks could be performed.

9. Rule 3.22

Rule 3.22 provides that the Commission, the Directors of the Division of Trading and Markets or Division of Enforcement or either Director's designee, or NFA can request supplemental filings of registration forms from an applicant or registrant if they acquire derogatory information about the applicant or registrant which, if true, could constitute a statutory disqualification from registration. The Commission, in light of the expansion of the right of applicants or registrants to present evidence of mitigation or rehabilitation with respect to statutory disqualifications discussed above, is proposing to amend Rule 3.22 to allow such requests for supplemental information from an applicant or registrant, on a voluntary basis, with respect to mitigation or rehabilitation evidence concerning a potential statutory disqualification.[33] Failure to provide such information with respect to mitigation or rehabilitation evidence would not be considered a rule violation which itself constitutes grounds upon which to base a determination that a person is unfit to become or to remain registered under the Act, as is and will remain the case with respect to failure to file a requested Form 7–R or Form 8–R accompanied by a fingerprint card under Rule 3.22.[34] However, the Commission believes it would be beneficial for the recipient of a notice under Rule 3.22, if the proposed amendment is adopted, to submit requested information concerning mitigation or rehabilitation with respect to a potential statutory disqualification, if such information is available. The Commission would envision itself or NFA making use of such a provision where circumstances require clarification as to whether it would be appropriate to commence a formal statutory disqualification proceeding under Rule 3.55 or 3.60. Further information from the applicant or registrant might enable the matter to be resolved without a formal proceeding whereas if no further information is provided by the applicant or registrant in response to a notice under Rule 3.22, there may be no alternative but to institute such a formal proceeding.

10. Rule 3.30

The Commission is proposing to amend Rule 3.30 to clarify and emphasize the affirmative duty of an individual registrant to notify NFA, while registered and for two years after termination of registration, of any change of address. The proposed amendment also clarifies the possible consequences of a failure to provide such notice.[35] The amendments are intended to prevent inadvertent defaults by individuals and to strengthen the presumption of receipt of actual notice by any person who might attempt to argue otherwise. The proposed amendment also specifies that all address change notices must be filed with NFA, rather than with NFA or the Commission. This will conform the rule to current practice whereby NFA processes all registration applications under Commission oversight, and eliminate any confusion as to where to file address change notices.

11. Rule 3.32

The Commission is proposing several exemptions to Rule 3.32 with respect to changes requiring re-registration of a firm and the addition of principals. The Division, acting under delegated authority, has issued several exemptions from the re-registration requirements set forth in current Rule 3.32(a)(1)–(3) in cases where a reorganization will result in the addition of a new principal (such as an intermediate holding company), but no new natural persons are to be added as principals. The Division has generally granted exemptions if the following factors are present: (A) The ultimate day-to-day control of the registrant will remain the same (even if there is a new owner on paper); (B) the addition of the new principal will not affect the conduct or the day-to-day operations of the registrant; and (C) the insertion of the new principal into the ownership chain is not being done for the purpose, and will not have the effect, of limiting any liability of the registrant.

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[31] The individual involved was a former president of the United States.

[32] See 17 CFR 240.17f–2 (1990).

[33] The Commission also anticipates that at the conclusion of this rulemaking proceeding, the registration forms will be amended to provide, among other things, for persons to include on supplemental sheets, on a voluntary basis, information with respect to mitigation or rehabilitation evidence concerning a potential statutory disqualification.

[34] See also appendix A to part 3 which provides in pertinent part that "Good cause to affect a person's registration * * * exists * * * if such person has failed to answer the inquiries or requests for further information concerning an application for registration filed with the Commission."

[35] If such amendments were adopted, changes to registration forms may be appropriate to remind individuals and principals of their personal obligation to comply with Rule 3.30, whether or not they delegate the preparation of the paperwork to some other party, such as the employing firm's compliance department.

The Commission believes it is appropriate to codify the Division's position in this area and has therefore proposed a new paragraph (a)(2) of Rule 3.32. If there is a reorganization but no new natural person principals of a registrant as a result, the registrant would only be required to file a Form 3–R to indicate the new principal and written certifications as to the factors cited in the preceding paragraph.[36] Elimination of the re-registration requirement for a firm in these circumstances would be consistent with the proposed new paragraph (i) of Rule 3.12 discussed above, which would eliminate the need for an AP to re-register when he becomes sponsored by a new entity due to a corporate reorganization, for example, even though his day-to-day activities remain unchanged.

The Commission is also proposing certain clarifications with respect to the re-registration requirements. Under the current rules, if a firm adds a new director it would have ninety days to complete re-registration if such new director is already registered or listed as a principal under the Act (Rule 3.32(d)) or it could avoid re-registration and simply file a Form 3–R accompanied by a Form 8–R and fingerprints for the new director if such forms are filed prior to the person becoming a director (Rule 3.32(a)). It has been the Commission's experience, however, that often a new director is not already registered or listed as a principal under the Act and it is not known who will be a new director until he or she is elected, at which point it is too late to file the forms necessary to avoid re-registration by the firm. On occasion, the Division, pursuant to delegated authority, has granted an exemption from the re-registration requirement where the registrant submits a board of directors resolution prohibiting the new director from exercising any authority or voting privilege as a director with respect to the conduct of the registrant's commodity interest related business until NFA completes its fitness inquiry and determines the new director is not unfit to act as a principal.

The Commission believes the Division's position should be codified in cases where a majority of the board of directors is unchanged and the firm files a new Form 8–R and fingerprints for the new director(s) (unless other exemptions apply) and a new Form 3–R to amend the firm's Form 7–R to identify the new director(s). This will allow firms to keep operating while NFA conducts its fitness inquiry with respect to the new director.

The Commission wishes to note, however, that the current Rule 3.32(e) would be retained with respect to a change in control resulting from a new chief executive officer (CEO) or similar type of person. To avoid re-registration in that circumstance, the firm will continue to be required to notify NFA and file the appropriate forms and fingerprints prior to the change in control. The Commission believes it appropriate to have stricter requirements with respect to a change in CEO than would be the case for the addition of less than a majority of the board of directors. The other proposed amendments to Rule 3.32 are essentially technical in nature and would make necessary cross-references or delete outdated references.

12. Rule 3.33

The Commission is proposing to amend Rule 3.33 concerning withdrawal from registration to permit FBs to withdraw from registration. Under current rules, there is no specific provision allowing an FB to withdraw his registration. The proposed amendment would make FBs subject to the same withdrawal procedures applicable to registered firms and thus FBs would be unable to withdraw from registration without Commission acquiescence.

13. Temporary Licenses (Rules 3.40, 3.42 and 3.44)

The Commission is proposing certain minor, technical amendments to the rules governing TLs for APs in Rules 3.40 and 3.42. The Commission is also proposing to amend Rule 3.42 to add additional events that will cause termination of a TL of an AP. These additional events would be failure timely to pay a civil monetary penalty, reparation award or arbitration award. The Act currently provides that registration is automatically suspended for failure timely to pay a reparation award,[37] and the Commission's pending reauthorization legislation would cause a similar result for failure timely to pay a civil monetary penalty.[38] The Commission believes that if registration can be suspended automatically for failure to make such payments, similar failures should also cause termination of a TL. The Commission also believes that failure to pay an arbitration award timely should be treated in the same manner as failure to pay a civil monetary penalty or a reparations award.

The other amendment the Commission is proposing with respect to TLs relates to a TL for an IBG. Rule 3.44 provides that an IBG can receive a TL for up to six months while the full fitness check of the firm and its principals are completed. In order to qualify for a TL, the IBG must, among other things, submit a Form 8–R for the applicant, if a sole proprietor, and each principal (including each branch office manager) thereof, the Disciplinary History portion of which contains no "Yes" answers indicating that the applicant may be subject to a statutory disqualification under sections 8a(2) through 8a(4) of the Act. Rule 3.44(a)(3). The Commission has become aware that it is sometimes the case that a new IBG is being formed by persons registered as APs of another firm. Such persons might be required to respond "Yes" to certain of the Disciplinary History questions even if such information has previously been disclosed in connection with their AP registration and determined not to constitute a disqualifying event. Such "Yes" answers would nevertheless prevent the IBG from being granted a TL under current rules. If the persons forming the IBG had already terminated their association with the previous sponsor, they could be unable to conduct business lawfully for several weeks awaiting completion of full fitness checks. However, if those same APs were transferring to a new sponsoring firm as APs, they could be granted a TL immediately at the new firm. See paragraph (d)(1)(vi) of current Rules 3.12 and 3.16.

The Commission has therefore determined to propose to conform the treatment of an IBG applying for a TL to that of an AP transferring to a new sponsor such that Forms 8–R filed in connection with the application for registration of an IBG would not prevent issuance of a TL to the IBG if the only "Yes" answers thereon arose from a matter which already has been disclosed in connection with a previous application for registration in any capacity if such registration was granted, or which was disclosed more than thirty days previously in an amendment to such application.

IV. Related matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–611 (1988), requires that

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[36] However, a Form 8–R and a fingerprint card would be required for natural person principals of the newly-inserted non-natural person to the same extent as discussed above with respect to proposed Rule 3.10(a)(2)(ii).

[37] Section 14(f) of the Act, 7 U.S.C. 18(f) (1988).

[38] H.R. 707, 102d Cong. 2d Sess. 207 and Senate Amendment to H.R. 707, 102d Cong. 2d Sess. 244.

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IV. Related matters

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ct, 7 U.S.C. 18(f) (1988).
2d Sess. 207 and Senate
102d Cong. 2d Sess. 244.

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agencies, in proposing rules, consider the impact of those rules on small businesses. The proposed package of rules would affect IBs, FCMs, APs, FBs, CTAs, CPOs and LTMs. The Commission has already established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such small entities in accordance with the RFA.[39] FCMs, registered CPOs and LTMs have been determined not to be small entities under the RFA. With respect to them as well as the other registrant categories, the Commission does not believe that the proposed rules would have any increased regulatory impact as the overall effect of the package is to reduce regulatory burdens on all entities, including small businesses. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities. The Commission, nonetheless invites comments from any person or entity which believes that these proposed rules would have a significant impact on its operations.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501–3512 (1988), imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA.

In compliance with the Act the Commission has submitted this proposed rule and its associated information collection requirement to the Office of Management and Budget. While these proposed rules proposed impose no additional overall burden, the group of rules of which this is a part has the following burden.

Average Burden Hours per Response	1.20
Number of Respondents	160
Frequency of Response	3

Persons wishing to comment on the estimated paperwork burden associated with these proposed rules should contact Mr. Garry Waxman, Office of Management and Budget, Room 3228, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from Mr. Joe F. Mink, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581 (202) 254–9735.

List of Subjects

17 CFR Part 1

Brokers, Commodity futures.

17 CFR Part 3

Brokers, Registration.

Accordingly, the Commission, pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2, 4d, 4e, 4f, 4k, 4m, 4n, 4p, 5a, 8a, 17 and 19 thereof (7 U.S.C. 2, 6d, 6e, 6f, 6k, 6m, 6n, 6p, 7a, 12a, 21 and 23), hereby proposes to amend parts 1 and 3 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for part 1 is revised to read as follows:

Authority: 7 U.S.C. 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 19, 21, 23 and 24, unless otherwise stated.

2. Section 1.10 is proposed to be amended by revising paragraphs (j)(3) and (j)(4) to read as follows:

§ 1.10 Financial reports of futures commission merchants and introducing brokers.

* * * * *

(j) * * *

(3) A guarantee agreement filed in connection with an application for initial registration as an introducing broker in accordance with the provisions of § 3.10(a) of this chapter shall become effective upon the granting of registration or, if appropriate, a temporary license, to the introducing broker. A guarantee agreement filed other than in connection with an application for initial registration as an introducing broker shall become effective as of the date agreed to by the parties.

(4) (i) If the registration of the introducing broker is suspended, revoked, or withdrawn in accordance with the provisions of this chapter, the guarantee agreement shall expire as of the date of such suspension, revocation or withdrawal.

(ii) If the registration of the futures commission merchant is suspended or revoked, the guarantee agreement shall expire 30 days after such suspension or revocation, or at such earlier time as may be approved by the Commission, the introducing broker, and the introducing broker's designated self-regulatory organization.

* * * * *

3. Section 1.57 is proposed to be amended by revising paragraph (a)(1) to read as follows:

§ 1.57 Operations and activities of introducing brokers.

(a) * * *

(1) Open and carry each customer's and option customer's account with a carrying futures commission merchant on a fully-disclosed basis: Provided, however, That an introducing broker which has entered into a guarantee agreement with a futures commission merchant in accordance with the provisions of § 1.10(j) of this part must open and carry such customer's and option customer's account with such guarantor futures commission merchant on a fully-disclosed basis; and

* * * * *

4. Section 1.62 is proposed to be revised to read as follows:

§ 1.62 Contract market requirement for floor broker registration.

(a) Each contract market shall adopt, maintain in effect, and enforce rules which have become effective pursuant to section 5a(12) of the Act and § 1.41 of this part and which provide that no person in or surrounding any pit, ring, post, or other place provided by such contract market for the meeting of persons similarly engaged, shall purchase or sell for any other person any commodity for future delivery, or any commodity option, on or subject to the rules of that contract market, unless such person is registered under the Act as a floor broker in accordance with section 4f of the Act and § 3.11 of this chapter, and such registration has not been suspended (and the period of such suspension shall not have expired), nor been withdrawn nor revoked. Each contract market shall also adopt, maintain in effect, and enforce rules which have become effective pursuant to section 5a(12) of the Act and § 1.41 of this part which require annual updates of registration filings by floor brokers in accordance with § 3.11(d) of this chapter and provide for requests for withdrawal of floor broker registration using Form 7–W in accordance with § 3.33 of this chapter.

(b) Each contract market must notify the Commission of any facts regarding a floor broker or an applicant for registration as a floor broker who has been granted trading privileges at the contract market which are set forth as statutory disqualifications in section 8a(2) of the Act within ten business days of the date upon which the contract market first knows or should have known such facts. Notice to the

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[39] 47 FR 18618–18621 (April 30, 1982).

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Commission shall be sufficient if the contract market gives notice to the Director of the Division of Trading and Markets or the Director's designee by telephone and confirms such notice in writing by certified or registered mail or equivalent means to the Commission at its Washington, DC office (Attn: Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581).

PART 3—REGISTRATION

Subpart A—Registration

5. The authority citation for part 3 continues to read as follows:

Authority: 7 U.S.C. 2, 4, 4a, 6c, 6d, 6e, 6f, 6k, 6m, 6n, 6p, 12a, 13c, 16a and 23 unless otherwise noted.

6. Section 3.1 is proposed to be amended by revising paragraphs (a)(3), (b) and (c) and by adding new paragraphs (d), (e), and (f) to read as follows:

§ 3.1 Definitions.

(a) * * *

(3) Any person who has contributed ten percent or more of the capital: *Provided, however,* That if such capital contribution consists of subordinated debt contributed by an unaffiliated (i) bank insured by the Federal Deposit Insurance corporation, (ii) United States branch or agency of an unaffiliated foreign bank that is licensed under the laws of the United States and regulated, supervised and examined by United States government authorities having regulatory responsibility for such financial institutions, or (iii) insurance company subject to regulation by any State, such bank, branch, agency or insurance company will not be deemed to be a principal for purposes of this section, provided such debt is not guaranteed by another party not listed as a principal.

(b) *Current.* As used in this subpart, a Form 8–R is current if, subsequent to the filing of that form and continuously thereafter, the registrant or principal has been either registered or affiliated with a registrant as a principal.

(c) *Sponsor.* Sponsor means the futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant which makes the certification required by § 3.12 of this part for the registration of an associated person of such sponsor.

(d) *Beneficial owner.* Any person who, without limitation, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement or any other contract, arrangement, or device with the purpose or effect of divesting such person of beneficial ownership of a security or preventing the vesting of such beneficial ownership, or of avoiding making a contribution of ten percent or more of the capital, as part of a plan or scheme to evade being deemed a principal of an applicant or registrant under paragraph (a) of this section shall be deemed for purposes of such paragraph to be the beneficial owner or the contributor of capital.

(e) *Foreign futures authority.* Foreign futures authority means any foreign government, or any department, agency, governmental body, or regulatory organization empowered by a foreign government to administer or enforce a law, rule, or regulation as it relates to a futures or options matter, or any department or agency of a political subdivision of a foreign government empowered to administer or enforce a law, rule or regulation as it relates to a futures or options matter.

(f) *Commodity interest.* Commodity interest means:

(1) Any contract for the purchase or sale of a commodity for future delivery regulated under the Act and rules promulgated thereunder; and

(2) Any contract, agreement or transaction subject to Commission regulation under sections 4c or 19 of the Act.

7. Section 3.10 is proposed to be amended by revising the heading and paragraphs (a), (b) and (d) to read as follows:

§ 3.10 Registration of futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators and leverage transaction merchants.

(a) *Application for registration.* (1) (i) Application for registration as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant must be on Form 7–R, completed and filed with the National Futures Association in accordance with the instructions thereto.

(ii) Applicants for registration as a futures commission merchant or introducing broker must accompany their Form 7–R with a Form 1–FR–FCM or Form 1–FR–1B, respectively, in accordance with the provisions of § 1.10 of this chapter: *Provided, however,* That an applicant for registration as a futures commission merchant or introducing broker which is registered with the Securities and Exchange Commission as a securities broker or dealer may accompany its Form 7–R with a copy of its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, part II or part II A, in accordance with the provisions of § 1.10(h) of this chapter.

(iii) Applicants for registration as a commodity pool operator must accompany their Form 7–R with the financial statements described in § 4.13(c) of this chapter.

(iv) Applicants for registration as a leverage transaction merchant must accompany their Form 7–R with a Form 2–FR in accordance with the provisions of § 31.13 of this chapter.

(2)(i) Each Form 7–R filed in accordance with the requirements of paragraph (a)(1)(i) of this section must be accompanied by a Form 8–R, completed in accordance with the instructions thereto and executed by each natural person who is a principal of the applicant, and must be accompanied by the fingerprints of that principal on a fingerprint card provided by the National Futures Association for that purpose, unless such principal is a director who qualifies for the exemption from the fingerprint requirement pursuant to § 3.21(c) of this part. The provisions of this paragraph (a)(2)(i) do not apply to any principal who has a current Form 8–R on file with the Commission or the National Futures Association.

(ii) In the case of an applicant with a principal that is not a natural person, the applicant's Form 7–R must also be accompanied by a Form 8–R, completed in accordance with the instructions thereto and executed by each natural person who is the holder or beneficial owner of ten percent or more of the outstanding shares of any class of stock or has contributed ten percent or more of the capital of the entity that is a non-natural person principal listed on the Form 7–R of the applicant, and must be accompanied by the fingerprints of such natural person on a fingerprint card provided by the National Futures Association for that purpose: *Provided, however,* That the provisions of this paragraph (a)(2)(ii) shall not apply if the non-natural person principal files reports under the Securities Exchange Act of 1934 or has filed a registration statement under the Securities Act of 1933, or is subject to regulation by the Securities and Exchange Commission, an insurance company subject to regulation by any State, or a bank or any other financial depository institution subject to regulation by any State or the United States. If all of the principals of an applicant's non-natural person principal are also non-natural persons, the Form 7–R must be

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(iii) Applicants for registration as a commodity pool operator must accompany their Form 7–R with the financial statements described in § 4.13(c) of this chapter.

(iv) Applicants for registration as a leverage transaction merchant must accompany their Form 7–R with a Form 2–FR in accordance with the provisions of § 31.13 of this chapter.

(2)(i) Each Form 7–R filed in accordance with the requirements of paragraph (a)(1)(i) of this section must be accompanied by a Form 8–R, completed in accordance with the instructions thereto and executed by each natural person who is a principal of the applicant, and must be accompanied by the fingerprints of that principal on a fingerprint card provided by the National Futures Association for that purpose, unless such principal is a director who qualifies for the exemption from the fingerprint requirement pursuant to § 3.21(c) of this part. The provisions of this paragraph (a)(2)(i) do not apply to any principal who has a current Form 8–R on file with the Commission or the National Futures Association.

(ii) In the case of an applicant with a principal that is not a natural person, the applicant's Form 7–R must also be accompanied by a Form 8–R, completed in accordance with the instructions thereto and executed by each natural person who is the holder or beneficial owner of ten percent or more of the outstanding shares of any class of stock or has contributed ten percent or more of the capital of the entity that is a non-natural person principal listed on the Form 7–R of the applicant, and must be accompanied by the fingerprints of such natural person on a fingerprint card provided by the National Futures Association for that purpose: Provided. however, That the provisions of this paragraph (a)(2)(ii) shall not apply if the non-natural person principal files reports under the Securities Exchange Act of 1934 or has filed a registration statement under the Securities Act of 1933, or is subject to regulation by the Securities and Exchange Commission, an insurance company subject to regulation by any State, or a bank or any other financial depository institution subject to regulation by any State or the United States. If all of the principals of an applicant's non-natural person principal are also non-natural persons, the Form 7–R must be

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accompanied by a Form 8–R and fingerprints for each natural person described in the preceding sentence of such nonnatural persons. The provisions of this paragraph (a)(2)(ii) do not apply to any natural person who has a current Form 8–R on file with the Commission or the National Futures Association or who has had filed on his behalf a Form 8–R and a fingerprint card pursuant to paragraph (a)(2)(i) of this section. However, if such natural person is a foreign national regulated by a foreign futures authority that provides information concerning facts which would constitute a potential statutory disqualification and whether such person is in good standing with the foreign futures authority to the National Futures Association, or in other appropriate cases, the National Futures Association may waive the requirement to file a Form 8–R and a fingerprint card. In appropriate cases, the Commission and the Natural Futures Association may require further information from the applicant with respect to any natural person or entities referred to in this paragraph (a)(2)(ii).

(b) *Duration of registration.* (1) A person registered as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant in accordance with paragraph (a) of this section will continue to be so registered until the effective date of any revocation or withdrawal of such registration, and such person will also not be deemed to be registered during the pendency of any suspension of such registration.

(2) A person registered as an introducing broker who was a party to a guarantee agreement with a futures commission merchant in accordance with § 1.10(j) of this chapter will also have its registration cease thirty days after the termination of such guarantee agreement unless the procedures set forth in § 1.10(j)(8) of this chapter are followed.

* * * * *

(d) *Annual filing.* Any person registered as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant in accordance with paragraph (a) of this section must file with the National Futures Association a Form 7–R, completed in accordance with the instructions thereto, annually on a date specified by the National Futures Association. The failure to file the Form 7–R within thirty days following such date shall be deemed to be a request for withdrawal from registration. On at least thirty days written notice, and following such action, if any, deemed to be necessary by the Commission or the National Futures Association, the National Futures Association may grant the request for withdrawal from registration.

8. Section 3.11 is proposed to be amended by revising paragraph (b) and by adding a new paragraph (d) to read as follows:

§ 3.11 Registration of floor brokers.

* * * * *

(b) *Duration of registration.* A person registered as a floor broker in accordance with paragraphs (a) or (c) of this section, and whose registration has neither been revoked nor withdrawn, will continue to be so registered unless such person's trading privileges on all contract markets have ceased, and such person will also not be deemed to be registered during the pendency of any suspension of such registration or all such trading privileges. In accordance with § 3.31(d) of this part, each contract market that has granted trading privileges to a person who is registered, or has applied for registration, as a floor broker, must notify the National Futures Association within twenty days after such person's trading privileges on such contract market have ceased.

* * * * *

(d) *Annual filing.* Any person registered as a floor broker in accordance with paragraphs (a) or (c) of this section must file with the National Futures Association a Form 8–R, completed in accordance with the instructions thereto, annually on a date specified by the National Futures Association. The failure to file the Form 8–R within thirty days following such date shall be deemed to be a request for withdrawal from registration. On at least thirty days written notice, and following such action, if any, deemed to be necessary by the Commission or the National Futures Association, the National Futures Association may grant the request for withdrawal from registration.

9. Section 3.12 is proposed to be amended by revising the heading and paragraphs (a), (b), (c) introductory text, (d)(1) introductory text, (d)(1)(iv), (d)(1)(v), and (d)(2), by removing paragraphs (d)(4) and (d)(5), by revising paragraphs (f) and (h), and by adding new paragraphs (i) and (j) to read as follows:

§ 3.12 Registration of associated persons of futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators and leverage transaction merchants.

(a) *Registration required.* It shall be unlawful for any person to be associated with a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant as an associated person unless that person shall have registered under the Act as an associated person of that sponsoring futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant in accordance with the procedures in paragraphs (c), (d), (f), (i), or (j) of this section or is exempt from such registration pursuant to paragraph (h) of this section.

(b) *Duration of registration.* A person registered in accordance with paragraphs (c), (d), (f), (i), or (j) of this section and whose registration has not been revoked will continue to be so registered until the revocation or withdrawal of the registration of each of the registrant's sponsors, or until the cessation of the association of the registrant with each of his sponsors and such person will also not be deemed to be registered during the pendency of any suspension of his or his sponsor's registration. In accordance with § 3.31(c) of this part, each of the registrant's sponsors must file a notice with the National Futures Association on Form 8–T or on a Uniform Termination Notice for Securities Industry Registration reporting the termination of the association of the associated person within twenty days thereafter.

(c) *Application for registration.* Except as otherwise provided in paragraphs (d), (f), (i), and (j) of this section, application for registration as an associated person in any capacity must be on Form 8–R, completed and filed in accordance with the instructions thereto.

* * * * *

(d) *Special temporary licensing and registration procedures for certain persons—(1) Registration terminated within the preceding sixty days.* Except as otherwise provided in paragraphs (f) and (i) of this section, any person whose registration as an associated person in any capacity has terminated within the preceding sixty days and who becomes associated with a new sponsor will be granted a temporary license to act in the capacity of an associated person of such sponsor upon the mailing by that sponsor to the National Futures

Association of a Form 8–R, completed in accordance with the instructions thereto and accompanied by the fingerprints of the applicant on a fingerprint card provided by the National Futures Association for that purpose and, if applicable, a Supplemental Sponsor Certification Statement signed by the new sponsor (who must meet the requirements set forth in § 3.60(b)(2)(i)(A) and (B) of this part) that contains conditions identical to those agreed to by the previous sponsor, which includes written certifications stating:

* * * * *

(iv) Whether there is a pending adjudicatory proceeding under sections 6(b), 6(c), 6c, 6d, 8a, or 9 of the Act or §§ 3.55 or 3.60 of this part or if, within the preceding twelve months, the Commission has permitted the withdrawal of an application for registration in any capacity after instituting the procedures provided in § 3.51 of this part and, if so, that the sponsor has been given a copy of the notice of the institution of a proceeding in connection therewith;

(v) That the sponsor has received a copy of the notice of the institution of a proceeding if the applicant or registrant has certified, in accordance with paragraph (d)(1)(iv) of this section, that there is a proceeding pending against him as described in that paragraph or that the Commission has permitted the withdrawal of an application for registration as described in that paragraph; and

* * * * *

(2) A temporary license received in accordance with paragraph (d)(1) of this section shall be subject to the provisions of §§ 3.41, 3.42 and 3.43 of this part.

* * * * *

(f) *Reporting of dual and multiple associations.* (1) Except as otherwise provided in paragraph (f)(4) of this section, a person who is already registered as an associated person in any capacity whose registration is not subject to conditions or restrictions may become associated as an associated person with another sponsor if the new sponsor (who must meet the requirements set forth in § 3.60(b)(2)(i)(A) and (B) of this part) files with the National Futures Association a Form 3–R in accordance with the instructions thereto. The filing of such a Form 3–R shall contain a certification signed by each sponsor that each sponsor has verified that the associated person is currently registered as an associated person in some capacity and that the associated person is not subject to a statutory disqualification as set forth in section 8a(2) of the Act, and an acknowledgment that in addition to each sponsor's responsibility to supervise that associated person, each sponsor is jointly and severally responsible for the conduct of the associated person with respect to (i) the solicitation or acceptance of customers' orders, (ii) the solicitation of funds, securities or property for a participation in a commodity pool, (iii) the solicitation of a client's or prospective client's discretionary account, (iv) the solicitation or acceptance of leverage customers' orders for leverage transactions, and (v) the associated person's supervision of any person or persons engaged in any of the foregoing solicitations or acceptances, with respect to any customers, option customers or leverage customers common to it and any other futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, or leverage transaction merchant with which the associated person is associated.

(2) Upon receipt by the National Futures Association of a Form 3–R filed in accordance with paragraph (f)(1) of this section from an associated person, the associated person named therein shall be registered as an associated person of the new sponsor.

(3) A person who is simultaneously associated with more than one sponsor in accordance with the provisions of paragraphs (f)(1) and (f)(2) of this section shall be required, upon receipt of notice from the National Futures Association, to file with the National Futures Association his fingerprints on a fingerprint card provided by the National Futures Association for that purpose as well as such other information as the National Futures Association may require. The National Futures Association may require such a filing every two years, or at such greater period of time as the National Futures Association may deem appropriate, after the associated person has become associated with a new sponsor in accordance with the requirements of paragraphs (f)(4) and (f)(2) of this section.

(4) If a person is associated with a futures commission merchant or with an introducing broker and he directs customers seeking a managed account to use the services of a commodity trading advisor(s) approved by the futures commission merchant or introducing broker and all such customers' accounts solicited or accepted by that associated person are carried by the futures commission merchant or introduced by the introducing broker with which the associated person is associated, such a person shall be deemed to be associated solely with the futures commission merchant or introducing broker and may not also register as an associated person of the commodity trading advisor(s) nor be required to file a Form 3–R.

* * * * *

(h) *Exemption from registration.* (1) A person is not required to register as an associated person in any capacity if that person is:

(i) Registered under the Act as a futures commission merchant, floor broker, or as an introducing broker;

(ii) Engaged in the solicitation of funds, securities, or property for a participation in a commodity pool, or the supervision of any person or persons so engaged, pursuant to registration with the National Association of Securities Dealers as a registered representative, registered principal, limited representative or limited principal, and that person does not engage in any other activity subject to regulation by the Commission; or

(iii) The chief operating officer, general partner or otherwise in the supervisory chain-of-command, provided the futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, or leverage transaction merchant engages in commodity interest related activity as no more than ten percent of its total revenue on an annual basis, the firm is not subject to a pending proceeding brought by the Commission or a self-regulatory organization alleging fraud or failure to supervise, and has not been found in such a proceeding to have committed fraud or failed to supervise, as required by the Act, the rules promulgated thereunder or the rules of a self-regulatory organization, the person for whom exemption is sought and the person designated in accordance with paragraphs (h)(3)(i)(C) or (h)(3)(i)(D) of this section are listed as principals of the firm, the fitness examination conducted by the National Futures Association with respect to these persons discloses no derogatory information that would disqualify any of such persons as a principal or as an associated person, and the firm files with the National Futures Association corporate or partnership resolutions stating that:

(A) Such supervisory person is not authorized to (*1*) solicit or accept customers' or leverage customers' orders, (*2*) solicit a client's or prospective client's discretionary account, (*3*) solicit funds, securities or property for a participation in a commodity pool, nor (*4*) exercise any

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(h) *Exemption from registration.* (1) A person is not required to register as an associated person in any capacity if that person is:

(i) Registered under the Act as a futures commission merchant, floor broker, or as an introducing broker;

(ii) Engaged in the solicitation of funds, securities, or property for a participation in a commodity pool, or the supervision of any person or persons so engaged, pursuant to registration with the National Association of Securities Dealers as a registered representative, registered principal, limited representative or limited principal, and that person does not engage in any other activity subject to regulation by the Commission; or

(iii) The chief operating officer, general partner or otherwise in the supervisory chain-of-command, provided the futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, or leverage transaction merchant engages in commodity interest related activity as no more than ten percent of its total revenue on an annual basis, the firm is not subject to a pending proceeding brought by the Commission or a self-regulatory organization alleging fraud or failure to supervise, and has not been found in such a proceeding to have committed fraud or failed to supervise, as required by the Act, the rules promulgated thereunder or the rules of a self-regulatory organization, the person for whom exemption is sought and the person designated in accordance with paragraphs (h)(3)(i)(C) or (h)(3)(i)(D) of this section are listed as principals of the firm, the fitness examination conducted by the National Futures Association with respect to these persons discloses no derogatory information that would disqualify any of such persons as a principal or as an associated person, and the firm files with the National Futures Association corporate or partnership resolutions stating that:

(A) Such supervisory person is not authorized to (*1*) solicit or accept customers' or leverage customers' orders, (*2*) solicit a client's or prospective client's discretionary account, (*3*) solicit funds, securities or property for a participation in a commodity pool, nor (*4*) exercise any

line supervisory authority over those persons so engaged;

(B) Such supervisory person has no authority with respect to hiring, firing or other personnel matters involving persons engaged in activities subject to regulation under the Act;

(C) Another person (or persons) designated therein, who is registered as an associated person(s) or who has applied for registration as an associated person(s) and is not subject to a pending proceeding brought by the Commission or a self-regulatory organization alleging fraud or failure to supervise, and has not been found in such a proceeding to have committed fraud or failed to supervise, as required by the Act, the rules promulgated thereunder or the rules of a self-regulatory organization, holds and exercises full and final supervisory authority, including authority to hire and fire personnel, over the customer commodity interest related activities of the firm; and

(D) If the person (or persons) so designated in accordance with paragraph (h)(3)(i)(C) of this section ceases to have the authority referred to therein, the firm will notify the National Futures Association within twenty days of such occurrence by means of a subsequent resolution which resolution must also include the name of another associated person (or persons) who has been vested with full supervisory authority, including authority to hire and fire personnel, over the customer commodity interest related activities of the firm in the event that all of those previously designated in accordance with paragraph (h)(3)(i)(C) of this section have been relieved of such authority. Subsequent changes in supervisory authority shall be reported in the same manner.

(2) A person is not required to register as an associated person of a commodity trading advisor if that person is:

(i) Registered as a commodity trading advisor, if that person is associated with a commodity trading advisor; or

(ii) Exempt from registration as a commodity trading advisor pursuant to the provisions of § 4.14 (a)(1), § 4.14(a)(2) or § 4.14(a)(8) of this chapter or is associated with a person who is so exempt from registration: Provided, That the provisions of this paragraph (h)(2)(ii) shall not apply to the solicitation of a client's or prospective client's discretionary account, or the supervision of any person or persons so engaged, by, for or on behalf of a commodity trading advisor (A) which is not exempt from registration pursuant to the provisions of § 4.14(a)(1), (a)(2), or (a)(8) of this chapter or (B) which is registered as a commodity trading advisor notwithstanding the availability of that exemption.

(3) A person is not required to register as an associated person of a commodity pool operator if that person is:

(i) Registered as a commodity pool operator, if that person is associated with a commodity pool operator;

(ii) Exempt from registration as a commodity pool operator pursuant to the provisions of § 4.13 of this chapter or is associated with a person who is so exempt from registration: Provided, That the provisions of this paragraph (h)(3)(ii) shall not apply to the solicitation of funds, securities, or property for a participation in a commodity pool, or the supervision of any person or persons so engaged, by, for, or on behalf of a commodity pool operator (A) which is not exempt from registration pursuant to the provisions of § 4.13 of this chapter or (B) which is registered as a commodity pool operator notwithstanding the availability of that exemption; or

(iii) Where a commodity pool is operated or to be operated by two or more commodity pool operators, registered as an associated person of one of the pool operators of the commodity pool in accordance with the provisions of paragraphs (c), (d), (f) or (i) of this section: Provided, That each such commodity pool operator shall be jointly and severally liable for the conduct of that associated person in the solicitation of funds, securities, or property for participation in the commodity pool, or the supervision of any person or persons so engaged, regardless of whether that associated person is registered as an associated person of each such commodity pool operator.

(i) *Special registration or temporary licensing procedures when previous sponsor's registration ceases.* (1) Any person whose registration as an associated person in any capacity was not subject to conditions or restrictions, and was terminated within the preceding sixty days because the previous sponsor's registration was revoked, suspended or withdrawn, and who becomes associated with a new sponsor, will be registered as an associated person of such new sponsor upon the mailing by that new sponsor to the National Futures Association of written certifications stating:

(i) That such person has been hired or is otherwise employed by that sponsor;

(ii) That such person's registration as an associated person in any capacity is not suspended or revoked;

(iii) That such person is eligible to be registered in accordance with this paragraph (i);

(iv) Whether there is a pending adjudicatory proceeding under sections 6(b), 6(c), 6c, 6d, 8a or 9 of the Act or §§ 3.55 or 3.60 of this part or if, within the preceding twelve months, the Commission has permitted the withdrawal of an application for registration in any capacity after instituting the procedures provided in § 3.51 of this part and, if so, that the sponsor has been given a copy of the notice of the institution of a proceeding in connection therewith;

(v) That the new sponsor has received a copy of the notice of the institution of a proceeding if the applicant for registration has certified, in accordance with paragraph (i)(1)(iv) of this section, that there is a proceeding pending against him as described in that paragraph or that the Commission has permitted the withdrawal of an application for registration as described in that paragraph;

(vi) That the Disciplinary History of such person's registration application contains no "Yes" answers, or none except those arising from a matter which already has been disclosed in connection with a previous application for registration in any capacity if such registration was granted, or which was disclosed more than thirty days previously in an amendment to such application; and

(vii) That the new sponsor will be responsible for supervising all activities of the person in connection with the sponsor's business as a registrant under the Act.

Provided. however, That if such person's prior registration as an associated person was subject to conditions or restrictions, the new sponsor (who must meet the requirements set forth in § 3.60(b)(2)(i) (A) and (B) of this part) must also file a signed Supplemental Sponsor Certification Statement that contains conditions identical to those agreed to by the original sponsor and, in such case, the person will be granted a temporary license, subject to the provisions of §§ 3.41, 3.42 and 3.43 of this part.

(2) The certifications required by paragraphs (i)(1)(i), (i)(1)(v) and (i)(1)(vii) of this section must be signed and dated by an officer, if the sponsor is a corporation, a general partner, if a partnership, or the proprietor, if a sole proprietorship. The certifications required by paragraphs (i)(1)(ii)(iv) and (i)(1)(vi) of this section must be signed and dated by the applicant for registration as an associated person.

(3) A person who is registered in accordance with the provisions of paragraph (i)(1) of this section shall be required, upon receipt of notice from the National Futures Association, to file

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with the National Futures Association his fingerprints on a fingerprint card provided by the National Futures Association for that purpose as well as such other information as the National Futures Association may require. The National Futures Association may require such a filing every two years, or at such greater period of time as the National Futures Association may deem appropriate, after the associated person has become associated with a new sponsor in connection with the requirements of paragraph (i)(1) of this section.

(j) *Special temporary licensing and registration procedures for associated persons of futures commission merchants and introducing brokers involved only with certain commodity interests.* Notwithstanding any other provision of law, any person associated with a futures commission merchant or an introducing broker may be granted a temporary license or registration to act in the capacity of an associated person of such sponsor if such person restricts his activities only to those commodity interests listed in Appendix B to this part and if such person and his sponsor comply with any special temporary licensing or registration procedures applicable to persons involved solely with such commodity interests that have been adopted by the National Futures Association and approved by the Commission.

§§ 3.13 through 3.18 and § 3.20 [Removed and reserved]

10. Sections 3.13 through 3.18 and § 3.20 are proposed to be removed and reserved.

11. Section 3.21 is proposed to be amended by adding a new paragraph (c) to read as follows:

§ 3.21 Exemption from fingerprinting requirement in certain cases.

* * * * *

(c) *Outside directors.* Any principal who is a director but is not also an officer or employee of an applicant for registration or a registrant may file a petition with the National Futures Association for an exemption from the requirement to submit a fingerprint card in accordance with the provisions of §§ 3.10(a)(2)(i), 3.32(a)(3)(i), 3.32(c), and 3.32(h) of this part. Such petition shall state, if true, that such principal:

(1) Is not engaged in (i) the solicitation or acceptance of customers' orders, (ii) the solicitation of funds, securities or property for a participation in a commodity pool, (iii) the solicitation of a client's or prospective client's discretionary account, (iv) the solicitation or acceptance of leverage customers' orders for leverage transactions;

(2) Does not regularly have access to the keeping, handling or processing of:

(i) Commodity interest transactions;

(ii) Customer funds, leverage customer funds, foreign futures or foreign options secured amount, or adjusted net capital; or

(iii) The original books and records relating to the items described in paragraphs (c)(2)(i) and (c)(2)(ii) of this section; and

(3) Does not have direct supervisory responsibility over persons engaged in the activities referred to in paragraphs (c)(1) and (c)(2) of this section; and

(4) The petition shall also include:

(i) The name of the futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant, or applicant for registration in any of these capacities of which the person is a principal;

(ii) The nature of the duties of the principal for whom exemption under this paragraph (c) is sought;

(iii) The internal controls used to ensure that the principal for whom exemption under this paragraph (c) is sought does not have access to the keeping, handling or processing of the items described in paragraphs (c)(2)(i), (c)(2)(ii), and (c)(2)(iii) of this section; and

(iv) The reasons why the principal believes he should be exempted from the fingerprint requirement and why such an exemption would not be contrary to the public interest and the purposes of the provision from which exemption is sought.

(d) The petition filed in accordance with paragraph (c) of this section will be granted or denied by the National Futures Association on the basis of the papers filed. The National Futures Association may grant such a petition if it finds that the exemption is not contrary to the public interest and the purposes of the provision from which exemption is sought. The petition may be granted subject to such terms and conditions as the National Futures Association may find appropriate.

(e) A firm with a principal who has been granted an exemption from the requirement to submit a fingerprint card pursuant to paragraph (d) of this section must file with the National Futures Association on behalf of such principal a Form 8–R, completed in accordance with the instructions thereto and executed by the principal. The exemption provided for in paragraphs (c) and (d) of this section is limited solely to the principal's fingerprint requirement and does not affect any other duties or responsibilities of the firm or the principal under the Act or the rules set forth in this chapter.

12. Section 3.22 is proposed to be amended by revising the introductory text and paragraphs (a) and (c) to read as follows:

§ 3.22 Supplemental filings.

Notwithstanding any other provision of this chapter, the Commission, the Directors of the Division of Trading and Markets or Division of Enforcement or either Director's designee, or the National Futures Association may, at any time, give written notice to any registrant, applicant for registration, or person required to be registered:

(a)(1) That derogatory information has come to the attention of the staff of the Commission or the National Futures Association which, if true, could constitute grounds upon which to base a determination that the person is unfit to become, or to remain, registered or temporarily licensed in accordance with the Act or the regulations thereunder and setting forth such information in the notice and requesting the person to provide evidence mitigating the seriousness of the statutory disqualification set forth in the notice and evidence that the person has undergone rehabilitation, or

(2) That the Commission or the National Futures Association has undertaken a routine or periodic review of the registrant's fitness to remain registered or temporarily licensed; and

* * * * *

(c) Failure to provide the information required under paragraph (b) of this section is a violation of the Commission's regulations which itself constitutes grounds upon which to base a determination that the person is unfit to become or to remain so registered.

13. Section 3.30 is proposed to be revised to read as follows:

§ 3.30 Current address for purpose of delivery of communications from the Commission or the National Futures Association.

(a) The address of each registrant, applicant for registration and principal, as submitted on the application for registration (Form 7–R or Form 8–R) or as submitted on the biographical supplement (Form 8–R) shall be deemed to be the address for delivery to the registrant, applicant or principal for any communications from the Commission or the National Futures Association, including any summons, complaint, reparation claim, order, subpoena, special call, request for information, notice, and other written documents or or leverage

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12. Section 3.22 is proposed to be amended by revising the introductory text and paragraphs (a) and (c) to read as follows:

§ 3.22 Supplemental filings.

Notwithstanding any other provision of this chapter, the Commission, the Directors of the Division of Trading and Markets or Division of Enforcement or either Director's designee, or the National Futures Association may, at any time, give written notice to any registrant, applicant for registration, or person required to be registered:

(a)(1) That derogatory information has come to the attention of the staff of the Commission or the National Futures Association which, if true, could constitute grounds upon which to base a determination that the person is unfit to become, or to remain, registered or temporarily licensed in accordance with the Act or the regulations thereunder and setting forth such information in the notice and requesting the person to provide evidence mitigating the seriousness of the statutory disqualification set forth in the notice and evidence that the person has undergone rehabilitation, or

(2) That the Commission or the National Futures Association has undertaken a routine or periodic review of the registrant's fitness to remain registered or temporarily licensed; and

* * * * *

(c) Failure to provide the information required under paragraph (b) of this section is a violation of the Commission's regulations which itself constitutes grounds upon which to base a determination that the person is unfit to become or to remain so registered.

13. Section 3.30 is proposed to be revised to read as follows:

§ 3.30 Current address for purpose of delivery of communications from the Commission or the National Futures Association.

(a) The address of each registrant, applicant for registration and principal, as submitted on the application for registration (Form 7–R or Form 8–R) or as submitted on the biographical supplement (Form 8–R) shall be deemed to be the address for delivery to the registrant, applicant or principal for any communications from the Commission or the National Futures Association, including any summons, complaint, reparation claim, order, subpoena, special call, request for information, notice, and other written documents or correspondence, unless the registrant, applicant or principal specifies another address for this purpose: Provided, That the Commission or the National Futures Association may address any correspondence relating to a biographical supplement submitted for or on behalf of a principal to the futures commission merchant, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant with which the principal is affiliated and may address any correspondence relating to the registration of an associated person to the futures commission merchant, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant with which the associated person or the applicant for registration is or will be associated as an associated person.

(b) Each registrant, while registered and for two years after termination of registration, and each principal, while affiliated and for two years after termination of affiliation, must notify in writing the National Futures Association of any change of the address on the application for registration, biographical supplement, or other address filed with the National Futures Association for the purpose of receiving communications from the Commission or the National Futures Association. Failure to file a required response to any communication sent to the latest such address filed with the National Futures Association which is caused by failure to notify in writing the National Futures Association of an address change may result in an order of default and award of claimed monetary damages or other appropriate order in any National Futures Association or Commission proceeding, including a reparation proceeding brought under part 12 of this chapter.

14. Section 3.32 is proposed to be amended by revising paragraphs (a), (c), (e), (g), and (h) to read as follows:

§ 3.32 Changes requiring new registration; addition of principals.

(a)(1) Except as otherwise provided in this section, if the registrant is a futures commission merchant, introducing broker, commodity pool operator, commodity trading advisor or leverage transaction merchant, registration is deemed to terminate and a new registration is required whenever a person not listed on the registrant's application for registration (or amendment of such application prior to the granting of registration):

(i) Becomes the holder or beneficial owner of ten percent or more of the outstanding shares of any class of stock or acquires the right to vote ten percent or more of the corporate registrant's voting securities;

(ii) Becomes entitled to receive ten percent or more of the registrant's profits;

(iii) Contributes ten percent or more of the capital:

Provided, however, That if such capital contribution consists of subordinated debt contributed by an unaffiliated (A) bank insured by the Federal Deposit Insurance Corporation, (B) United States branch or agency of an unaffiliated foreign bank that is licensed under the laws of the United States and regulated, supervised and examined by United States government authorities having regulatory responsibility for such financial institutions, or (C) insurance company regulated by any State, the termination of registration shall be deemed not to have occurred and the re-registration requirement shall not apply, provided such debt is not guaranteed by another party not listed as a principal.

(iv) Becomes a director of the corporate registrant;

(v) Becomes the chief executive officer of the corporate registrant or occupies a position of similar status or performs a similar function;

(vi) Acquires ownership of the registrant's business in the case of a sole proprietorship; or

(vii) Becomes a general partner of the registrant in the case of a partnership.

(2)(i) If the person who becomes a principal of the registrant because of an event described in paragraphs (a)(1)(i), (a)(1)(ii), or (a)(1)(iii) of this section is a non-natural person and each natural person who would be deemed a principal, under the definition set forth in § 3.1(a) of this part, of the entity that is a non-natural person has a current Form 8–R on file with the Commission or the National Futures Association, the registrant's registration shall not be deemed to terminate and a new Form 7–R need not be filed: Provided, however, That within twenty days of the occurrence of the event described in paragraphs (a)(1)(i), (a)(1)(ii), or (a)(1)(iii) of this section, the registrant must notify the National Futures Association of the name of such added principal on Form 3–R and must file written certifications with the National Futures Association stating (A) the ultimate day-to-day control of the registrant remains the same, (B) the addition of the new principal will not affect the conduct or the day-to-day operations of the registrant, and (C) the insertion of the new principal into the chain of ownership is not being done for the purpose, and will not have the effect, of limiting any liability of the registrant.

(ii) If the principals of the new non-natural person principal of the registrant are also non-natural person principals, the registrant's registration shall not be deemed to terminate and a new Form 7–R need not be filed only if the registrant files a Form 8–R and fingerprints for each natural person who is the holder or beneficial owner of ten percent or more of the outstanding shares of any class of stock or has contributed ten percent or more of the capital of such latter non-natural persons: Provided, however, That the provisions of this paragraph (a)(2)(ii) shall not apply if the non-natural person principal files reports under the Securities Exchange Act of 1934 or has filed a registration statement under the Securities Act of 1933, or is subject to regulation by the Securities and Exchange Commission, an insurance company subject to regulation by any State, or a bank or any other financial depository institution subject to regulation by any State or by the United States. The provisions of this paragraph (a)(2)(ii) do not apply to any natural person who has a current Form 8–R on file with the Commission or the National Futures Association. However, if such natural person is a foreign national regulated by a foreign futures authority that provides information concerning facts which would constitute a potential statutory disqualification and whether such person is in good standing with the foreign futures authority to the National Futures Association, or in other appropriate cases, the National Futures Association may waive the requirement to file a Form 8–R and a fingerprint card. In appropriate cases, the Commission and the National Futures Association may require further information from the registrant with respect to any natural persons or entities referred to in this paragraph (a)(2)(ii).

(3) If a registrant adds a new director, the registrant's registration shall not be deemed to terminate and a new Form 7–R need not be filed pursuant to paragraph (a)(1)(iv) of this section if a majority of the board of directors remains the same and the registrant, within twenty days after the election of the director, files with the National Futures Association:

(i) A Form 8–R, completed in accordance with the instructions thereto and executed by the new director, accompanied by the fingerprints of that principal on a fingerprint card provided by the National Futures Association for that purpose (unless such director qualifies for the exemption from the fingerprint requirement pursuant to § 3.21(c) of this part), unless the new director has a current Form 8–R on file with the National Futures Association or the Commission;

(ii) A Form 3–R amending the registrant's Form 7–R to identify the new director and, if such new director has a current Form 8–R on file with the National Futures Association or the Commission, a statement to that effect; and

(iii) A corporate resolution prohibiting the new director from exercising any authority or voting privilege as a director with respect to the conduct of the registrant's commodity interest related business until the National Futures Association has completed its fitness inquiry and has determined that the new director is not unfit to act as a principal of the registrant.

* * * * *

(c) Notwithstanding any other provision of this part, each Form 7–R filed in accordance with paragraph (b) of this section must be accompanied by a Form 8–R, completed in accordance with the instructions thereto and executed by each natural person who is a principal of the registrant and who was not listed on the registrant's initial application for registration or any amendment thereto. The Form 8–R for each such principal must be accompanied by the fingerprints of that principal on a fingerprint card provided by the National Futures Association for that purpose, unless such principal is a director who has been granted an exemption from the fingerprint requirement pursuant to § 3.21(c) of this part.

* * * * *

(e) (1) Except where a reqistrant chooses to file an application pursuant to paragraph (d) of this section, if applicable, in the event of a change as described in paragraph (a)(1)(v) of this section, a new registration will not be required if the registrant submits a written notice on Form 3–R to the National Futures Association prior to the date of such change in control (and such change does not occur until the registrant receives written approval from the National Futures Association) and includes with such notice a Form 8–R, completed in accordance with the instructions thereto and executed by the registrant's new chief executive officer or person occupying a position of similar status or performing a similar function. The Form 8–R for such individual must be accompanied by the fingerprints of that individual on a fingerprint card provided for that purpose by the National Futures Association: Provided, however, That a fingerprint card need not be provided under this paragraph for any individual who has a current Form 8–R on file with the National Futures Association or the Commission.

(2) No person who submits written notification in accordance with the provisions of paragraph (e)(1) of this section may become so affiliated with such registrant until that registrant receives a written confirmation from the National Futures Association that such affiliation has been approved.

* * * * *

(g) Notwithstanding the provisions of § 3.12(a), if a new registration is granted under this section, any person who is registered, or who has submitted an application for registration, as an associated person of the registrant on or prior to the date of any event described in paragraph (a) of this section, shall be deemed to be registered, or to have submitted an application for registration, as an associated person of such new registrant.

(h) Except as otherwise provided in this section, within twenty days after any natural person becomes a principal of an applicant for registration subsequent to the filing of a Form 7–R in accordance with the requirements set forth in § 3.10(a) of this part, the applicant for registration must file a Form 8–R with the National Futures Association. The Form 8–R must be completed by such principal in accordance with the instructions thereto and must be accompanied by the fingerprints of that principal on a fingerprint card provided for that purpose by the National Futures Association, unless such principal is a director who has been granted an exemption from the fingerprint requirement pursuant to § 3.21(c) of this part. This filing need not be made for any such principal who has a current Form 8–R on file with the National Futures Association or the Commission: Provided, That within twenty days the applicant for registration must notify the National Futures Association of the name of such added principal on Form 3–R.

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15. Section 3.33 is proposed to be amended by revising paragraphs (a) introductory text, (e) and (f) introductory text to read as follows:

§ 3.33 Withdrawal from registration.

(a) A futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant or floor broker may request that its registration be withdrawn in accordance with the requirements of this section if:

* * * * *

(e) A request for withdrawal from registration as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant or floor broker must be sent to the National Futures Association, Registration Office, 200 West Madison Street, Chicago, Illinois 60606 and a copy of such request must be sent by the National Futures Association within three business days of the receipt of such withdrawal request to the Commodity Futures Trading Commission, Division of Trading and Markets, Registration Unit, 2033 K Street NW., Washington, DC 20581. Within three business days of any determination by the National Futures Association under §§ 3.10(d) or 3.11(d) of this part to treat the failure by a registrant to file an annual Form 7–R as a request for withdrawal, the National Futures Association shall send the Commission notice of that determination.

(f) Except as otherwise provided in §§ 3.10(d) or 3.11(d) of this part, a request for withdrawal from registration will become effective on the thirtieth day after receipt of such request by the National Futures Association, or earlier upon written notice from the National Futures Association (with the written concurrence of the Commission) of the granting of such request, unless prior to the effective date:

* * * * *

Subpart B—Temporary Licenses

16. The authority for Subpart B is revised to read as follows:

Authority: 7 U.S.C. 2 and 4, 6, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a and 13b, 12, 12a, 18, 19, 21 and 23; 5 U.S.C. 552 and 552b.

17. Section 3.40 is proposed to be amended by revising paragraph (c) to read as follows:

§ 3.40 Temporary licensing of applicants for associated person registration.

* * * * *

(c) The sponsor's certification required by § 3.12(c) of this part.

* * * * *

18. Section 3.42 is proposed to be amended by revising paragraph (a) to read as follows:

§ 3.42 Termination.

(a) A temporary license shall terminate:

(1) Five days after service upon the applicant of a notice by the Commission or the National Futures Association pursuant to § 3.60 of this part that the

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(e) A request for withdrawal from registration as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant or floor broker must be sent to the National Futures Association, Registration Office, 200 West Madison Street, Chicago, Illinois 60606 and a copy of such request must be sent by the National Futures Association within three business days of the receipt of such withdrawal request to the Commodity Futures Trading Commission, Division of Trading and Markets, Registration Unit, 2033 K Street NW., Washington, DC 20581. Within three business days of any determination by the National Futures Association under §§ 3.10(d) or 3.11(d) of this part to treat the failure by a registrant to file an annual Form 7–R as a request for withdrawal, the National Futures Association shall send the Commission notice of that determination.

(f) Except as otherwise provided in §§ 3.10(d) or 3.11(d) of this part, a request for withdrawal from registration will become effective on the thirtieth day after receipt of such request by the National Futures Association, or earlier upon written notice from the National Futures Association (with the written concurrence of the Commission) of the granting of such request, unless prior to the effective date:

* * * * *

Subpart B—Temporary Licenses

16. The authority for Subpart B is revised to read as follows:

Authority: 7 U.S.C. 2 and 4, 6, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a and 13b, 12, 12a, 18, 19, 21 and 23; 5 U.S.C. 552 and 552b.

17. Section 3.40 is proposed to be amended by revising paragraph (c) to read as follows:

§ 3.40 Temporary licensing of applicants for associated person registration.

* * * * *

(c) The sponsor's certification required by § 3.12(c) of this part.

* * * * *

18. Section 3.42 is proposed to be amended by revising paragraph (a) to read as follows:

§ 3.42 Termination.

(a) A temporary license shall terminate:

(1) Five days after service upon the applicant of a notice by the Commission or the National Futures Association pursuant to § 3.60 of this part that the applicant for registration may be found subject to a statutory disqualification from registration;

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applicant for registration may be found subject to a statutory disqualification from registration;

(2) Immediately upon termination of the association of the applicant with the registrant which filed the sponsorship certification described in § 3.40(c) of this part;

(3) Immediately upon the withdrawal of the registration application pursuant to § 3.40(d);

(4) Immediately upon failure to comply with an order to pay a civil monetary penalty within the time permitted under Sections 6(d) or 6b of the Act; or

(5) Immediately upon failure to pay the full amount of a reparation order within the time permitted under section 14(f) of the Act; or

(6) Immediately upon failure to comply with an award in an arbitration proceeding conducted pursuant to part 180 of this chapter within the time permitted for such compliance as specified in section 10(g) of National Futures Association's Code of Arbitration or the comparable time period specified in the rules of a contract market or other appropriate arbitration forum.

* * * * *

19. Section 3.44 is proposed to be amended by revising paragraphs (a)(3) and (a)(5) to read as follows:

§ 3.44 Temporary licensing of applicants for guaranteed introducing broker registration.

(a) * * *

(3) A Form 8–R for the applicant, if a sole proprietor, and each principal (including each branch office manager) thereof, properly completed in accordance with the instructions thereto, the Disciplinary History portion of which contains no "Yes" answers indicating that the applicant may be subject to a statutory disqualification under sections 8a(2) through 8a(4) of the Act, or none except those arising from a matter which already has been disclosed in connection with a previous application for a registration in any capacity if such registration was granted, or which was disclosed more than thirty days previously in an amendment to such application.

* * * * *

(5) The fingerprints of the applicant, if a sole proprietor, and of each principal (including each branch office manager) thereof on fingerprint cards provided by the National Futures Association for that purpose: *Provided,* That a principal who has a current Form 8–R on file with the National Futures Association or the Commission is not required to submit a fingerprint card if the principal is not otherwise required to be registered as an associated person of the applicant.

* * * * *

Subpart C—Denial, Suspension or Revocation of Registration

20. The authority citation for subpart C is revised to read as follows:

Authority: 7 U.S.C. 2 and 4, 6, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a and 13b, 12, 12a, 18, 19, 21 and 23; 5 U.S.C. 552 and 552b.

21. Section 3.50 is proposed to be amended by revising paragraph (b)(1) to read as follows:

§ 3.50 Service.

* * * * *

(b) * * *

(1) Any registrant sponsoring the applicant or registrant pursuant to the provisions of § 3.12 of this part if the applicant or registrant is an individual registered as or applying for registration as an associated person; or

* * * * *

22. Section 3.51 is proposed to be amended by revising paragraph (a) introductory text and paragraph (b) to read as follows:

§ 3.51 Withdrawal of application for registration.

(a) *Notice.* Whenever information comes to the attention of the Commission that an applicant for initial registration in any capacity under the Act may be found subject to a statutory disqualification under sections 8a(2) or 8a(3) of the Act, the Commission may serve written notice upon the applicant, which notice shall specify the statutory disqualifications to which the applicant may be subject and advise the applicant that:

* * * * *

(b) The applicant must serve the written confirmation referred to in paragraph (a)(3) of this section upon the Secretary of the Commission on or before twenty days after the date the notice described in paragraph (a) of this section is served.

§§ 3.52 through 3.54 [Removed and reserved]

23. Sections 3.52 through 3.54 are proposed to be removed and reserved.

24. Section 3.55 is proposed to be amended by revising paragraphs (a) introductory text, (a)(3), (b), (e) and (f) and by removing paragraphs (g), (h), (i), (j) and (k) to read as follows:

§ 3.55 Suspension and revocation of registration pursuant to Section 8a(2) of the Act.

(a) *Notice.* On the basis of information obtained by the Commission, the Commission may at any time serve notice upon a registrant in any capacity under the Act that:

* * * * *

(3) If the registrant is found to be subject to a statutory disqualification, the registration of the registrant may be suspended and the registrant ordered to show cause why such registration should not be revoked.

(b) *Written submission.* If the registrant wishes to challenge the accuracy of the allegations set forth in the notice, the registrant may submit written evidence limited to the type described in § 3.60(b)(1) of this part. Such written submission must be served upon the Division of Enforcement and filed with the Hearing Clerk within twenty days of the date of service of notice to the registrant.

* * * * *

(e) *Suspension and order to show cause.* (1) If the registrant is found to be subject to a statutory disqualification, the Administrative Law Judge, within thirty days after receipt of the registrant's written submission, if any, and any reply thereto, shall issue an interim order suspending the registration of the registrant and requiring the registrant to show cause within twenty days of the date of the order why, notwithstanding the existence of the statutory disqualification, the registration of the registrant should not be revoked. The registration of the registrant shall be suspended, effective five days after the order to show cause is served upon the registrant in accordance with § 3.50(a) of this part, until a final order with respect to the order to show cause has been issued: *Provided, That* if the sole basis upon which the registrant is subject to statutory disqualification is the existence of a temporary order, judgment or decree of the type described in section 8a(2)(C) of the Act, the order to show cause shall be suspended until such time as the temporary order, judgment or decree shall have expired: Provided, however, That in no event shall the registrant be suspended for a period to exceed six months.

(2) If the registrant is found not to be subject to a statutory disqualification, the Administrative Law Judge shall issue an order to that effect and the Hearing Clerk shall promptly serve a copy of such order on the registrant, the Division of Trading and Markets and the

Division of Enforcement. Such order shall be effective as a final order of the Commission fifteen days after the date it is served upon the registrant in accordance with the provisions of § 3.50(a) of this part unless a timely application for review is filed in accordance with § 10.102 of this chapter. The appellate procedures set forth in §§ 10.102, 10.103, 10.104, 10.106, 10.107 and 10.109 of this chapter shall apply to any appeal brought under this paragraph (e)(2).

(f) *Further proceedings.* If an order to show cause is issued pursuant to paragraph (e)(1) of this section, further proceedings on such order shall be conducted in accordance with the provisions of § 3.60(b)–(j) of this part.

§ 3.56 [Removed and reserved]

25. Section 3.56 is proposed to be removed and reserved.

26. Section 3.60 is proposed to be revised to read as follows:

§ 3.60 Procedure to deny, condition, suspend, revoke or place restrictions upon registration pursuant to sections 8a(2), 8a(3) and 8a(4) of the Act.

(a) *Notice.* On the basis of information obtained by the Commission, the Commission may at any time give written notice to any applicant for registration or any registrant in any capacity under the Act that:

(1) The Commission alleges and is prepared to prove that the registrant or applicant is subject to one or more of the statutory disqualifications set forth in sections 8a(2), 8a(3) or 8a(4) of the Act;

(2) The allegations set forth in the notice, if true, constitute a basis upon which registration may be denied, granted upon conditions, suspended, revoked or restricted;

(3) The applicant or registrant is entitled to file a response within thirty days of the date of service of the notice to challenge the evidentiary basis of the statutory disqualification set forth in the notice or show cause why, notwithstanding the accuracy of those allegations, registration should nevertheless be granted, or granted upon condition, or should not be conditioned, suspended, revoked or restricted; and

(4) If the applicant or registrant does not file a timely response to the notice:

(i) The applicant or registrant will be deemed to have waived his right to a hearing on all issues and the facts stated in the notice shall be deemed to be true and conclusive for the purpose of finding that the applicant or registrant is subject to a statutory disqualification under Sections 8a(2), 8a(3) or 8a(4) of the Act; and

(ii) A presiding officer may thereafter decide whether to issue an order of default in accordance with paragraph (g) of this section to deny, condition, suspend, revoke, or place restrictions upon registration based solely upon the facts set forth in the notice.

(b) *Response.* Within thirty days after service upon the applicant or registrant of a notice issued in accordance with the provisions of paragraph (a) of this section, the applicant or registrant shall file a response with the Hearing Clerk and serve a copy of the response on the Division of Enforcement.

(1) In the response, the applicant or registrant shall state whether he challenges the evidentiary basis of the statutory disqualification set forth in the notice. The grounds for such a challenge shall include evidence as to (i) the applicant's identity, (ii) the existence of a clerical error in any record documenting the statutory disqualification, (iii) the nature or date of the statutory disqualification, (iv) the post-conviction modification of any record of conviction, or (v) the favorable disposition of any appeal. The applicant or registrant shall state the nature of each challenge and submit a verified statement or affidavit to support facts material to each challenge raised in the response.

(2)(i) In the response, if the person is not an associated person or a floor broker or an applicant for registration in either capacity, the applicant or registrant shall also state whether he intends to show that registration would not pose a substantial risk to the public despite the existence of the disqualification set forth in the notice. If the person is an associated person or floor broker or an applicant for registration in either capacity, the applicant or registrant shall also state whether he intends to show that full, conditioned or restricted registration would not pose a substantial risk to the public despite the existence of the disqualification set forth in the notice. If the applicant or registrant is an associated person or floor broker or an applicant for registration in either capacity and intends to make such a showing, he must also submit a letter signed by an officer or general partner authorized to bind the sponsor or, in the case of a floor broker or applicant for registration as a floor broker, another floor broker, whereby the sponsor or floor broker agrees to sign a Supplemental Sponsor Certification Statement and supervise compliance with any conditions or restrictions that may be imposed on the applicant or registrant as a result of a statutory disqualification proceeding under this section: Provided, That, with respect to such sponsor or supervising floor broker:

(A) An adjudicatory proceeding pursuant to the provisions of sections 6(b), 6(c), 6c, 6d, 8a or 9 of the Act is not pending; and

(B) In the case of a sponsor which is a futures commission merchant or a leverage transaction merchant, the sponsor is not subject to the reporting requirements of §§ 1.12(b) or 31.7(b) of this chapter, respectively; and

(C) In the case of a supervising floor broker, such supervising floor broker is not barred from service on self-regulatory organization governing boards or committees based on disciplinary history in accordance with § 1.63 of this chapter.

(ii) If, in the response, the applicant or registrant states that he intends to make the showing referred to in paragraph (b)(2)(i) of this section, he shall also, within fifteen days after filing his initial response under this paragraph (b), file with the Hearing Clerk and serve a copy on the Division of Enforcement a submission which includes a statement of the applicant, registrant or his attorney identifying and summarizing the testimony of each witness whom the applicant or registrant intends to have testify in support of facts material to his showing, and copies of all documents which the applicant or registrant intends to introduce to support facts material to his showing. The factors forming the basis for a disqualified applicant's or registrant's showing referred to in paragraph (b)(2)(i) of this section may include:

(A) Evidence mitigating the seriousness of the wrongdoing underlying the statutory disqualification set forth in the notice;

(B) Evidence that the applicant or registrant has undergone rehabilitation since the time of the wrongdoing underlying the statutory disqualification; and

(C) If the person is an associated person or floor broker or an applicant for registration in either capacity, evidence that the applicant's or registrant's registration on a conditioned or restricted basis would be subject to supervisory controls likely both to detect future wrongdoing by the applicant or registrant and protect the public from any harm arising from the applicant's or registrant's future wrongdoing, including proposed conditions or restrictions.

(c) *Reply.* Within thirty days after the latter of the date the applicant or registrant serves a copy of the response on the Division of Enforcement (if no further submission is to be made in

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(A) An adjudicatory proceeding pursuant to the provisions of sections 6(b), 6(c), 6c, 6d, 8a or 9 of the Act is not pending; and

(B) In the case of a sponsor which is a futures commission merchant or a leverage transaction merchant, the sponsor is not subject to the reporting requirements of §§ 1.12(b) or 31.7(b) of this chapter, respectively; and

(C) In the case of a supervising floor broker, such supervising floor broker is not barred from service on self-regulatory organization governing boards or committees based on disciplinary history in accordance with § 1.63 of this chapter.

(ii) If, in the response, the applicant or registrant states that he intends to make the showing referred to in paragraph (b)(2)(i) of this section, he shall also, within fifteen days after filing his initial response under this paragraph (b), file with the Hearing Clerk and serve a copy on the Division of Enforcement a submission which includes a statement of the applicant, registrant or his attorney identifying and summarizing the testimony of each witness whom the applicant or registrant intends to have testify in support of facts material to his showing, and copies of all documents which the applicant or registrant intends to introduce to support facts material to his showing. The factors forming the basis for a disqualified applicant's or registrant's showing referred to in paragraph (b)(2)(i) of this section may include:

(A) Evidence mitigating the seriousness of the wrongdoing underlying the statutory disqualification set forth in the notice;

(B) Evidence that the applicant or registrant has undergone rehabilitation since the time of the wrongdoing underlying the statutory disqualification; and

(C) If the person is an associated person or floor broker or an applicant for registration in either capacity, evidence that the applicant's or registrant's registration on a conditioned or restricted basis would be subject to supervisory controls likely both to detect future wrongdoing by the applicant or registrant and protect the public from any harm arising from the applicant's or registrant's future wrongdoing, including proposed conditions or restrictions.

(c) *Reply.* Within thirty days after the latter of the date the applicant or registrant serves a copy of the response on the Division of Enforcement (if no further submission is to be made in

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accordance with paragraph (b)(2)(ii) of this section), or the date the applicant or registrant serves a copy of the further submission made in accordance with paragraph (b)(2)(ii) of this section on the Division of Enforcement, the Division of Enforcement shall file a reply thereto with the Hearing Clerk and serve a copy of the reply on the applicant or registrant. The Division of Enforcement's reply shall include either:

(1) A motion for summary disposition statinq that there are no genuine issues of material fact to be determined and that registration should be denied or revoked, based upon the applicant's or registrant's response and further submission, if any, and any other materials which are attached to the reply and would be admissible under § 10.91 of this chapter; or

(2) A description of factual issues raised in the applicant's or registrant's response and further submission, if any, that the Division of Enforcement regards as material and disputed. Such a reply shall also include the identity and a summary of the expected testimony of each witness whom the Division intends to have testify, and copies of all documents which the Division intends to introduce.

(d) *Oral presentation.* Within thirty days of the date the Division of Enforcement files its reply in accordance with the provisions of paragraph (c) of this section to the applicant's or registrant's response and further submission, if any, the Administrative Law Judge shall issue an order:

(1) If the Administrative Law Judge finds, based on the motion for summary disposition, that a party is entitled to judgment as a matter of law, granting, denying, suspending, or revoking the registration of an applicant or registrant, or dismissing the notice issued in accordance with paragraph (a) of this section, and such order shall be made in accordance with the standards set forth in paragraphs (e) and (f) of this section; or

(2) Notifying the parties of a time and place of hearing. At such hearing, the parties shall be limited to presentation of witnesses and documents listed in previous filings except, for good cause shown, the parties may request that the witness and document lists be supplemented for purposes of rebuttal. Such oral hearing shall be conducted in accordance with §§ 10.61–10.81 and 10.83 of this chapter. The Administrative Law Judge shall file an initial decision after completion of the oral hearing in accordance with the standards set forth in paragraphs (e) and (f) of this section.

(3) Upon notice that the Administrative Law Judge has concluded that an oral presentation is appropriate, the parties may elect to participate by telephone in accordance with the terms set forth in § 12.209(b) of this chapter. To effect such an election, the party shall file a notice with the Hearing Clerk and serve a copy on all opposing parties within fifteen days of the date the Administrative Law Judge's notice is served. The filing of an election to participate by telephone will be deemed a waiver of the party's right to a full oral heading on the parties' material disputes of fact. The Administrative Law Judge shall schedule a telephonic hearing only if all parties to the proceeding elect such a procedure. The Administrative Law Judge shall conduct such a hearing in accordance with § 12.209(b) of this chapter. Following the hearing, the Administrative Law Judge shall issue a written decision in accordance with the standards set forth in paragraphs (e) and (f) of this section.

(e) *Determination by Administrative Law Judge—Standards of Proof.* The Administrative Law Judge's written determination shall specifically consider whether the applicant or registrant is subject to the statutory disqualification set forth in the notice issued by the Commission and, where appropriate:

(1) In actions involving statutory disqualifications set forth in section 8a(2) of the Act, whether the applicant or registrant has made a clear and convincing showing that full, conditioned or restricted registration would not pose a substantial risk to the public despite the existence of the statutory disqualification; or

(2) In actions involving statutory disqualifications set forth in sections 8a(3) or 8a(4) of the Act, whether the applicant or registrant has shown by a preponderance of the evidence that full, conditioned or restricted registration would not pose a substantial risk to the public despite the existence of the statutory disqualification.

(f) *Determination of Administrative Law Judge—Findings.* In making his written determination, the Administrative Law Judge shall set forth the facts material to his conclusion and provide an explanation of his decision in light of the statutory disqualification set forth in the notice and, where appropriate, his findings regarding:

(1) Evidence mitigating the seriousness of the wrongdoing underlying the applicant's or registrant's statutory disqualification;

(2) Evidence that the applicant or registrant has undergone rehabilitation since the time of the wrongdoing underlying the statutory disqualification: and

(3) If the person is an associated person or floor broker or an applicant for registration in either capacity, evidence that the applicant's or registrant's registration on a conditioned or restricted basis would be subject to supervisory controls likely both to detect future wrongdoing by the applicant or registrant and protect the public from any harm arising from future wrongdoing by the applicant or registrant. Any decision providing for a conditioned or restricted registration shall take into consideration the applicant's or registrant's statutory disqualification and the time period remaining on such statutory disqualification, and shall fix a time period after which the registrant and his sponsor or supervisory floor broker may petition to lift or modify the conditions or restrictions in accordance with § 3.64 of this part.

(g) *Default.* The procedures for obtaining a default order and the setting aside of a default order in a proceeding instituted under this section shall follow the procedures set forth in §§ 10.93 and 10.94 of this chapter.

(h) *Settlements.*—(1) *When offers may be made.* Parties may, at any time during the course of the proceeding, propose offers of settlement. All offers of settlement shall be in writing.

(2) *Content of offer.* Each offer of settlement made by a respondent shall:

(i) Acknowledge service of the notice;

(ii) Admit the jurisdiction of the Commission with respect to the matters set forth in the notice;

(iii) Include a waiver of:

(A) A hearing,

(B) All post-hearing procedures,

(C) Judicial review, and

(D) Any objection to the staff's participation in the Commission's consideration of the offer;

(iv) Stipulate the record basis on which an order may be entered, which may consist solely of the notice and any findings contained in the offer of settlement; and

(v) Consent to the entry of an order reflecting the terms of settlement agreed upon, including, where appropriate:

(A) Findings that the respondent is subject to statutory disqualification under sections 8a(2), 8a(3) or 8a(4) of the Act, and

(B) The denial or granting of full registration or imposition of conditioned or restricted registration.

(3) *Submission of offer.* Offers of settlement made by a respondent shall be submitted in writing to the Division of Enforcement, which shall present

them to the Commission with the Division's recommendation. The respondent will be informed if the recommendation will be unfavorable, in which event the offer shall not be presented to the Commission unless the respondent so requests. Any offer of settlement not presented to the Commission shall be null and void with respect to any acknowledgment, admission, waiver, stipulation or consent contained in the offer and shall not be used in any manner in the proceeding by any party thereto.

(4) *Acceptance of offer.* The offer of settlement will only be deemed accepted upon issuance by the Commission of an opinion and order based on the offer. Upon issuance of the opinion and order, the proceeding shall be terminated as to the respondent involved and so noted on the docket by the Hearing Clerk.

(5) *Rejection of offer.* When an offer of settlement is rejected, the party making the offer shall be notified by the Division of Enforcement and the offer of settlement shall be deemed withdrawn. A rejected offer of settlement and any documents relating thereto shall not constitute a part of the record in the proceeding; and the offer will be null and void with respect to any acknowledgment, admission, waiver, stipulation or consent contained in the offer and shall not be used in any manner in the proceeding by any party thereto.

(i) *Effect of the Administrative Law Judge's Determination.* The Administrative Law Judge's written determination shall become the final decision of the Commission thirty days following the date the Hearing Clerk serves the determination on the parties unless:

(1) One or more of the parties files and serves a timely notice of appeal in accordance with § 10.102 of this chapter; or

(2) The Commission issues an order staying the effective date of the determination and notifying the parties of its intention to undertake sua sponte review in accordance with § 10.105 of this chapter.

(j) *Appeal.* Following the filing of a notice of appeal the parties shall observe the rules of appellate procedure set forth in §§ 10.102, 10.103, 10.104, 10.106, 10.107 and 10.109 of this chapter.

§§ 3.61 and 3.62 [Removed and reserved]

27. Sections 3.61 and 3.62 are proposed to be removed and reserved.

28. Section 3.63 is proposed to be amended by revising paragraph (a) to read as follows:

§ 3.63 Service of order issued by a Presiding Officer.

(a) A copy of any order issued pursuant to § 3.60 of this part shall be served promptly upon the applicant or registrant, the Division of Trading and Markets, the Division of Enforcement, the National Futures Association, and any contract markets where the applicant or registrant is a member or has trading privileges in accordance with the provisions of § 3.50(a) of this part and shall be deemed a final order of the Commission thirty days after the date of such service, unless a timely application for review under paragraph (b) of this section is filed.

* * * * *

29. Section 3.64 is proposed to be added to read as follows:

§ 3.64 Procedure to lift or modify conditions or restrictions.

(a) *Petition.* The registrant and his sponsor or supervising floor broker may file a petition with the Hearing Clerk and serve a copy of the petition on the Division of Enforcement to lift or modify conditions or restrictions on the registrant's registration.

(1) The petition may be filed after the period specified in the order imposing the conditioned or restricted registration.

(2) In the petition, the registrant and his sponsor or supervising floor broker shall be limited to a showing, by affidavit, that the conditions or restrictions have been satisfied pursuant to the order which imposed them. A sponsor's or supervising floor broker's affidavit must be sworn to by a person with actual knowledge of registrant's activities on behalf of the sponsor or supervising floor broker.

(b) *Response.* (1) Within thirty days of receipt of the petition, pursuant to paragraph (a) of this section, the Division of Enforcement shall file a response with the Hearing Clerk. The response must include a recommendation by the Division of Enforcement as to whether to continue the conditions or restrictions, modify the conditions or restrictions, or to allow for a full registration.

(2) If the Division of Enforcement agrees with the petitioner's request to lift or modify conditions or restrictions on the petitioner's registration, it shall so recommend to the Commission. Such recommendation will only be deemed accepted upon issuance by the Commission of an order lifting or modifying conditions or restrictions on the petitioner's registration. Such order shall be so noted on the docket by the Hearing Clerk.

(c) *Oral Presentation.* If the Division of Enforcement requests a continuation, or a modification other than in accordance with the terms of the petition, of the restrictions or conditions on the registration, the Administrative Law Judge shall, within thirty days of the date that the response is filed pursuant to paragraph (b) of this section, determine whether an oral presentation is appropriate to the reliable resolution of the registrant's petition.

(1) If the Administrative Law Judge determines that an oral presentation is appropriate, he shall notify the parties of his determination and shall schedule and conduct an oral hearing in accordance with §§ 10.61 through 10.81 of this chapter. Following the hearing, the Administrative Law Judge shall issue a written decision or an order.

(2) If the Administrative Law Judge concludes that an oral presentation is unnecessary, he shall notify the parties and issue a written decision or an order.

(d) *Appeal.* The Hearing Clerk shall promptly serve the Administrative Law Judge's written determination on the registrant, the registrant's sponsor or supervising floor broker and the Division of Enforcement. Such written determination shall become the final decision of the Commission thirty days after the date it is served unless one or more of the parties files a timely appeal in accordance with § 10.102 of this chapter. The appellate procedures set forth in §§ 10.102, 10.103, 10.104, 10.106, 10.107 and 10.109 of this chapter shall apply to any proceeding brought under this section.

Subpart D—Notice Under Section 4k(5) of the Act

30. The authority citation for Subpart D continues to read as follows:

Authority: 7 U.S.C. 2 and 4, 6, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a and 13b, 12, 12a, 16, 19, 21 and 23; 5 U.S.C. 552 and 552b.

31. Section 3.70 is proposed to be amended by revising paragraphs (a) and (c) to read as follows:

§ 3.70 Notification of certain information regarding associated persons.

(a) *Notice.* A registrant must notify the Commission under Section 4k(5) of the Act of any facts regarding an associated person of the registrant or an applicant for registration as an associated person whom it has sponsored pursuant to the provisions of § 3.12 of this part or whom it intends to hire or otherwise employ as an associated person which are set forth as statutory disqualifications in section 8a(2) of the Act within ten business days

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(c) *Oral Presentation.* If the Division of Enforcement requests a continuation, or a modification other than in accordance with the terms of the petition, of the restrictions or conditions on the registration, the Administrative Law Judge shall, within thirty days of the date that the response is filed pursuant to paragraph (b) of this section, determine whether an oral presentation is appropriate to the reliable resolution of the registrant's petition.

(1) If the Administrative Law Judge determines that an oral presentation is appropriate, he shall notify the parties of his determination and shall schedule and conduct an oral hearing in accordance with §§ 10.61 through 10.81 of this chapter. Following the hearing, the Administrative Law Judge shall issue a written decision or an order.

(2) If the Administrative Law Judge concludes that an oral presentation is unnecessary, he shall notify the parties and issue a written decision or an order.

(d) *Appeal.* The Hearing Clerk shall promptly serve the Administrative Law Judge's written determination on the registrant, the registrant's sponsor or supervising floor broker and the Division of Enforcement. Such written determination shall become the final decision of the Commission thirty days after the date it is served unless one or more of the parties files a timely appeal in accordance with § 10.102 of this chapter. The appellate procedures set forth in §§ 10.102, 10.103, 10.104, 10.106, 10.107 and 10.109 of this chapter shall apply to any proceeding brought under this section.

Subpart D—Notice Under Section 4k(5) of the Act

30. The authority citation for Subpart D continues to read as follows:

Authority: 7 U.S.C. 2 and 4, 6, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a and 13b, 12, 12a, 18, 19, 21 and 23; 5 U.S.C. 552 and 552b.

31. Section 3.70 is proposed to be amended by revising paragraphs (a) and (c) to read as follows:

§ 3.70 Notification of certain information regarding associated persons.

(a) *Notice.* A registrant must notify the Commission under Section 4k(5) of the Act of any facts regarding an associated person of the registrant or an applicant for registration as an associated person whom it has sponsored pursuant to the provisions of § 3.12 of this part or whom it intends to hire or otherwise employ as an associated person which are set forth as statutory disqualifications in section 8a(2) of the Act within ten business days of the date upon which the registrant first knows or should have known such facts. Notice to the Commission shall be sufficient if the registrant gives notice to the Director of the Division of Trading and Markets or the Director's designee by telephone and confirms such notice in writing by certified or registered mail or equivalent means to the Commission at its Washington, DC office (Attn: Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581).

* * * * *

(c) *Proceedings under Subpart C.* Upon notification to the Commission by the registrant under paragraph (a) of this section, the Commission may promptly issue notice under §§ 3.55 or 3.60 of this part, as appropriate, to suspend and revoke the registration of the associated person of the registrant or to deny the registration of the applicant for registration as an associated person of the registrant.

Subpart E—Delegation and Reservation of Authority

32. The authority citation for subpart E is revised to read as follows:

Authority: 7 U.S.C. 2 and 4, 6, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a and 13b, 12, 12a, 18, 19, 21 and 23; 5 U.S.C. 552 and 552b.

33. Section 3.75 is proposed to be amended by revising paragraph (c) to read as follows:

§ 3.75 Delegation and reservation of authority.

* * * * *

(c) The Commission reserves to itself the decision in any case to proceed by order, upon notice and hearing, to deny, suspend, condition or restrict the registration of any person pursuant to sections 8a(2), 8a(3) and 8a(4) of the Act.

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Issued in Washington, DC, on July 25, 1991 by the Commission.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 91-18022 Filed 8-1-91; 8:45 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 150

Revision of Federal Speculative Position Limits

AGENCY: Commodity Futures Trading Commission.

ACTION: Petition for rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has received pursuant to Commission Rule 13.2, 17 CFR 13.2, two petitions for rulemaking requesting that it increase certain speculative position limits and exemptions. See, 17 CFR 150.2 and 150.3. The Petitions for Rulemaking received from the Chicago Board of Trade and the New York Cotton Exchange request that these limits be raised on the specified futures contracts for grains, soybeans, soybean products and cotton. The Commission is asking for comment on the requested rule amendments to aid in its determination on these matters. The Commission seeks public comment to assist in determining the need for revisions to these speculative position limits.

DATES: Comments must be received by October 1, 1991.

ADDRESS: Commodity Futures Trading Commission, 2033 K Street NW. Washington, DC 20581, Attention: Secretariat.

FOR FURTHER INFORMATION CONTACT: Blake Imel, Deputy Director, or Paul Architzel, Chief Counsel, Division of Economic Analysis, at the above address. Telephone: (202) 254-3203 or (202) 254-6990, respectively.

SUPPLEMENTARY INFORMATION: The Congress has provided the Commission with the authority to establish speculative position limits for futures contracts.[1] Further, Commission Rule 1.61, 17 CFR 1.61, requires that exchanges adopt and enforce speculative position limits for all contracts where they have not been established by the Commission, including contract markets for options. Currently, the limits fixed by the Commission in part 150 of its regulations cover the futures contracts for domestically produced agricultural commodities traded on the Chicago Board of Trade, the New York Cotton Exchange, the Kansas City Board of Trade, the Minneapolis Grain Exchange, the Chicago Rice and Cotton Exchange, and the MidAmerica Commodity Exchange.[2]

The Chicago Board of Trade ("CBT") on April 16, 1991, petitioned the Commission to increase the Commission's speculative position limits in Regulations 150.2 and 150.3 for corn, soybeans, wheat, oat, soybean oil and soybean meal futures contracts traded on the CBT. The New York Cotton Exchange ("NYCE") submitted a petition on July 16, 1990, to raise the Commission's speculative position limits on its cotton No. 2 contract. A comparison of the current limit levels and those proposed by the two exchanges are shown in the following table.

COMPARISON OF CHICAGO BOARD OF TRADE AND NEW YORK COTTON EXCHANGE PROPOSALS FOR SPECULATIVE LIMITS ON OUT RIGHT POSITIONS LIMITS IN CONTRACTS

	Corn	Soybeans	Wheat	Oats	Soybean meal	Soybean oil	NYCE cotton #2
Current Commission Rule 150.2 Speculative Position Limits							
Spot Month [1]	600	600	600	400	720	540	300
Individual Months	600	600	500	400	720	540	450
All Months Combined	2,400	2,400	1,800	400	2,160	1,620	1,200
Proposed Changes to Commission Rule 150.2 Speculative Position Limits							
Spot Month [1]	600	600	600	600	720	540	300

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[1] Each of these speculative position limits rules contains limits on net positions held in any one futures month and all futures combined, a hedge exemption provision and, where applicable, a provision subjecting positions which are spread or arbitrage positions between futures and option contracts to exchange-set speculative position limits approved pursuant to Rule 1.61.

[2] Exchange-set speculative position limits are approved by the Commission under the standards set forth in Rule 1.61 and under section 5a(12) of the Act. Section 4a(5) of the Act provides that violation of such an exchange-set speculative position limit that has been approved by the Commission, in addition to being an enforceable violation of exchange rules, is also a violation of the Act.

The Chicago Board of Trade adopted rules identical to those of the Commission on speculative position limits so that the exchange also could enforce these limits under its rules. However, section 4a(5) provides that exchange-set speculative position limits may not be higher than the limits fixed by the Commission. Accordingly, in order to raise these exchange-set limits, the Commission must first amend its own rules.

	Corn	Soybeans	Wheat	Oats	Soybean meal	Soybean oil	NYCE cotton #2
Individual Months	1,600	1,600	1,200	600	1,440	1,080	900
All Months Combined	4,800	4,800	3,600	1,800	4,320	3,240	1,800

[1] Becomes effective for nearby futures on day preceding first notice day.

In addition to these changes, the CBT has also proposed in a separate submission to increase its option limits in the same commodities. Those limits are a matter of exchange rules and establish separate limits for outright positions in long puts, short puts, long calls and short calls, as well as various spread positions between options and futures. Currently the level of these outright limits are 600 futures equivalent contracts in corn, wheat, soybean,[8] 720 in soybean meal, 540 in soybean oil and 400 in oats. They would be doubled under the CBT proposal. The NYCE is not proposing to change its option limits.

The CBT also requests in its petition that the language in Regulation 150.3(3) be changed by removing the crop year restriction and increasing the level of allowable spread or arbitrage positions. Currently, additional positions may be held as spread or arbitrage positions between single months of a CBT futures contract outside of the spot month and in the same crop year, provided that such spread or arbitrage positions, when combined with outright positions in the single month, do not exceed twice the single month position limit.

Specifically, the CBT is requesting that Regulation 150.3(3) be changed to the following:

> Spread or arbitrage positions between single months of a futures contract traded on the same board of trade outside of the spot month; provided however, that such spread or arbitrage positions, when combined with any outright positions in the single month, do not exceed the all-months combined net limit, and provided that in all-months combined the total of spread positions does not exceed the all-months combined net limit for the futures contract set forth in Regulation 150.2 of this part.

Petition of Rulemaking of the Chicago Board of Trade, dated April 16, 1991.

The CBT petition states that the Regulation changes are being recommended because of four general trends in the agricultural futures markets. First, during the past 15 years, the concentration of large speculative positions near single month limits in individual futures months in the agricultural markets has increased dramatically, particularly since position limits were restructured in 1987. Second, the agricultural cash and futures markets have grown significantly since the most recent increase in single month limits in 1971 for corn, soybeans, soybean oil and soybean meal and in 1976 for wheat. In addition, ending stocks in these commodities have increased while restrictions on spread positions between crop years have been maintained. Third, continued growth in agricultural futures and options is expected as producers increase their use of futures and options to offset reductions in government price support programs required in the 1990 Farm Bill. Fourth, competition from hybrid products and imitation contracts traded on foreign exchanges (which usually do not have position limits) is increasing.

Furthermore, the Petitioner conducted a 12 month review of the effect of the structure of agricultural position limits on market performance. As a result of this review, the Petitioner reasoned that:

> * * * the proposed increases in position limits will be essential factors which determine whether these markets are able to continue providing the liquidity required for efficient performance as the demand for contract usage as a pricing and hedging medium increases * * *. The proposed single month and all-months combined position limits * * * are justified based on the evidence of increasing concentration of positions near single month limits and the significant growth occurring in these cash and futures markets.

Petition of Rulemaking of the Chicago Board of Trade, dated April 16, 1991.

After an analysis of the cotton futures market, the NYCE reasoned that its regulation change is being requested because:

> After the 1987 increase in speculative limits, volume increased, open interest increased, trade participation increased, and volatility decreased. It seems apparent that the increase in speculative limits contributed to a more efficient cotton futures market.

Petition of Rulemaking of the New York Cotton Exchange, dated July 16, 1990.

In light of the above two petitions, the Commission believes it is appropriate to re-examine Federal speculative position limits at this time. In particular, the Commission is requesting public comment on the possible revision of current Federal speculative position limits and is requesting responses on the following specific issues. The Commission will evaluate these comments in conjunction with the data which the Commission itself develops concerning the appropriateness of current speculative position limits.

(1) What are the costs and benefits to the market and to market participants of increasing agriculture speculative position limits in the commodities covered by the two petitions? Are the proposed levels appropriate?

Commenters may wish to address the relative levels of open interest and trading volume in specific futures contracts on these commodities over the years. Commenters should discuss why higher speculative position limits in different maturities are appropriate and in particular, whether different levels for different maturities (spot versus deferred) may or may not be appropriate.

(2) Are there any adverse effects from raising speculative position limits to the overall regulatory purpose of these limits? Specifically, are there any adverse effects on the market and on market participants from raising these limits in the back months? Will raising these limits have an adverse impact on the ability to use these contracts for hedging or price basing?

(3) Speculative position limits have various regulatory effects. They can help ensure orderly liquidation of a contract; aid in preventing market manipulation; and help prevent market distortions and other pricing anomolies. To what extent do current speculative position limits achieve these effects and are there alternative regulatory tools which can better achieve these objectives?

(4) Should the Commission consider revising the speculative position limits for other actively traded agricultural contracts where federal limits are in effect?

The Commission is interested in determining whether the proposed levels should also apply to similar contracts traded on other exchanges such as the Kansas City Board of Trade and Minneapolis Grain Exchange wheat contracts.

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[8] A futures equivalent contract is a term frequently used with reference to speculative position limits for options on futures contracts. The futures equivalent of an option position is the number of options multiplied by the previous day's risk factor or delta for the option series. For example, 10 deep out-of-the-money options with a risk factor of 0.20 would be considered 2 futures equivalent contracts. The delta or risk factor used for this purpose is the same as that used in delta based margining and risk analysis systems.

Soybeans	Wheat	Oats	Soybean meal	Soybean oil	NYCE cotton #2
1,600 4,800	1,200 3,600	600 1,800	1,440 4,320	1,080 3,240	900 1,800

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The Commission is interested in determining whether the proposed levels should also apply to similar contracts traded on other exchanges such as the Kansas City Board of Trade and Minneapolis Grain Exchange wheat contracts.

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(5) Should speculative position limits in grains, the soybean complex, and cotton be combined into a single limit for futures and options positions as they are in most other commodities?

Although the CBT and NYCE petitions do not propose to combine options and futures speculative position limits, commenters are requested to address this issue. In particular, commenters should note that in most contract markets for which there are no Commission set speculative position limits, the limits on futures and options are combined.

(6) The CBT is proposing to extend the higher limits on intracrop year spread to spread positions between crop years. The Commission is requesting comments on both the existence and level of this intercrop spread provision.

List of Subjects in 17 CFR Part 150

Arbitrage, Contract markets, Hedging, Speculative position limits, Commodity futures.

Issued in Washington, DC this 25th day of July 1991, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91-18321 Filed 8-1-91; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

New Mexico Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; Public Comment Period and Opportunity for Public Hearing on Proposed Amendment.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the New Mexico permanent regulatory program (hereinafter, the "New Mexico program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of a change to the New Mexico rules pertaining to hydrologic balance as it relates to water quality standards and effluent limitations. The amendment is intended to revise the New Mexico program to be consistent with the corresponding Federal regulations. This notice sets forth the times and locations that the New Mexico program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., m.d.t. September 3, 1991. If requested, a public hearing on the proposed amendment will be held on August 27, 1991. Requests to present oral testimony at the hearing must be received by 4 p.m., m.d.t. on August 19, 1991.

ADDRESSES: Written comments should be mailed or hand delivered to Robert H. Hagen at the address listed below.

Copies of the New Mexico program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., suite 310, Albuquerque, NM 87102, Telephone: (505) 766-1486.

New Mexico Energy & Minerals Department, Mining and Minerals Division, 2040 South Pacheco Street, Santa Fe, NM 87505, Telephone: (505) 827-5970.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Director, Albuquerque Field Office, telephone number (505) 766-1486.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program can be found in the December 31, 1980, **Federal Register** (45 FR 86459). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.15, 931.16, and 931.30.

II. Proposed Amendment

By letter dated July 9, 1991 (Administrative Record No. NM-642), New Mexico submitted a proposed amendment to its program pursuant to SMCRA. New Mexico submitted the proposed amendment to satisfy a required program amendment at 30 CFR 931.16(b). The provision of the Coal Surface Mining Commission (CSMC) rules that New Mexico proposes to amend is CSMC Rule 80-1-20-42(a)(8), which concerns hydrologic balance as it relates to water quality standards and effluent limitations.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the New Mexico program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4 p.m., m.d.t. on August 19, 1991. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 19, 1991.

Allen D. Klein,

Acting Assistant Director, Western Support Center.

[FR Doc. 91-18376 Filed 8-1-91; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[COTP Port Arthur, TX Regulation 90-03]

33 CFR Part 165

Safety Zone; Calcasieu Channel and Industrial Canal, Calcasieu River, Lake Charles, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is considering a proposal to revise the existing safety zone in the turning basin of the Industrial Canal, Calcasieu River, Lake Charles, LA. The safety zone is necessary to safeguard vessels, personnel and property against the accidental release of liquefied natural gas (LNG) at the Trunkline LNG Terminal. Revising the existing safety zone will accurately reflect the hazardous areas of the turning basin and ensure public safety while allowing the public to continue to fish in one of the prime fishing areas in the Calcasieu River.

DATES: Comments must be received on or before September 16, 1991.

ADDRESSES: Comments should be mailed to U.S. Coast Guard Marine Safety Office, 2875 75th St. & Hwy. 69, Port Arthur, Texas (409) 723-6500. Comments may also be mailed to the U.S. Coast Guard Marine Safety Detachment, Port of Lake Charles, 150 Marine Street, Box 4, Lake Charles, LA 70601-5612. The comments will be available for inspection and copying at the Marine Safety Office, Port Arthur, TX and at the Marine Safety Detachment, Lake Charles, LA during normal office hours between 7:30 a.m. and 4 p.m. Monday through Friday, except holidays. Comments may also be hand delivered to the Marine Safety Office, Port Arthur, TX or the Marine Safety Detachment, Lake Charles, LA.

FOR FURTHER INFORMATION CONTACT: LCDR Gilbert Kanazawa, Supervisor MSD Lake Charles at (318) 433-3765.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (COTP Port Arthur, TX Regulation 90-03) and the specific section of the proposal to which the comments apply, and give reasons for each comment. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid in the rulemaking process.

Drafting Information

The drafters of this notice are Lieutenant Commander Gilbert Kanazawa, and Lieutenant Junior Grade Gary Messmer, project officers for the Captain of the Port, and Lieutenant Wilson, Project Attorney, Eighth Coast Guard District Legal Office, New Orleans, Louisiana.

Discussion of Proposed Regulation

The Captain of the Port, Port Arthur, TX is proposing to modify the existing safety zone around the Trunkline LNG Terminal in the turning basin of the Industrial Canal, Calcasieu River, Lake Charles, LA. The Trunkline LNG Terminal has resumed operations after being dormant since 1984 when it terminated importing LNG from Algeria. In November 1989, Trunkline restarted terminal operations with a new contract for the importation of Algerian LNG. The area around the Trunkline LNG terminal has always been a very popular fishing area for local recreational fishermen. On any given day it is not uncommon to find as many as 30 to 50 fishing boats packed into one small corner of the turning basin. Two of the best fishing spots are directly underneath the transfer facility itself and the other is the far northeast corner of the turning basin. The present safety zone extends 150 feet offshore and runs parallel along the shoreline the whole length of the Trunkline property. It also extends an additional 50 feet around a LNG tanker when moored at the terminal. During the time period the terminal was dormant, the safety zone was not enforced, since there was no hazard of a LNG release because LNG was not kept in storage or circulating through the piping. Since the restart up of terminal operations, the Coast Guard has resumed enforcing the safety zone regulations, citing several fishermen for violation of the safety zone. This resumption of enforcement of the safety zone has angered many of the fishermen who feel they should have the right to fish there and that there is no real addition of safety by having to stay 150 feet offshore when the safety zone only extends 50 feet from a LNG tanker when it is moored transferring LNG. After discussions with several local fishermen and fishing associations it was learned that 150 feet was too far offshore for the fishermen to cast up to the shoreline to where the fish could be caught. It was suggested that if the safety zone could be modified to only extend 50 feet offshore while still keeping the marine transfer facility off limits this would be an acceptable compromise. This was discussed with Trunkline LNG management and they felt it was hard to justify keeping a 150 foot safety zone at the far northeast corner of the turning basin since no LNG is stored there and no LNG piping is located in that area. They indicated that a 50 foot safety zone at the far northeast corner of the turning basin while keeping the marine transfer facility off limits was acceptable.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and Procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The users of the port of Lake Charles fall into four main categories; Commercial Shipping, Commercial Fishing Vessels, Small Passenger Boats and Pleasure Boats. Since this zone is actually reducing the area encompassed in an already existing safety zone, there should be no adverse impact on harbor use. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

between 7:30 a.m.
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Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Impact

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g.5 of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Vessels, Waterways.

Proposed Regulation

In consideration of the foregoing part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

2. In § 165.805, paragraph (a) is revised to read as follows:

§ 165.805 Calcasieu Channel and Industrial Canal, Calcasieu River, Lake Charles, LA.

(a) The waters and waterfront facility located within the area described by the following boundaries constitute a safety zone when:

(1) a Liquefied Natural Gas (LNG) vessel is moored at Trunkline LNG facility: Beginning at the west side property line at position 30 06′31.9″ N., 93 17′37″ W. a line extending in an eastward direction and 50 feet from shore to a point 50 feet west of mooring dolphin #1; then due south to a line running in an eastward direction and 50 feet south of the moored LNG vessel to a line running due north to a point 50 feet east of mooring dolphin #13; and then a line extending in an eastward direction and 50 feet from shore to the end of the turning basin.

(2) an LNG vessel is not moored at the Trunkline LNG facility: Beginning at the west side property line at position 30 06′31.9″ N., 93 17′37″ W. a line extending in an eastward direction and 50 feet from shore to a point 50 feet west of mooring dolphin #1; then a continuous uniform line extending 50 feet outside of all facility docks and structures to a point 50 feet east of mooring dolphin #13; and then a line extending in an eastward direction and 50 feet from shore to the end of the turning basin.

* * * * *

Dated: July 25, 1991.

J.L. Robinson,

Captain, U.S. Coast Guard, Captain of the Port, Port Arthur, Texas

[FR Doc. 91–18383 Filed 8–1–91; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AF26

Disability Evaluations for HIV-Related Illnesses

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its rating schedule for evaluation of disabilities caused by the human immunodeficiency virus (HIV). This change is necessary because current provisions in the rating schedule do not adequately describe all levels of impairment which may be associated with these disabilities. The change will reflect current medical knowledge regarding HIV-related diseases and allow more equitable evaluations.

DATES: Comments must be received on or before September 3, 1991. Comments will be available for public inspection until September 11, 1991. This change is proposed to be effective the date of publication of the final rule.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this change to Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written comments will be available for public inspection only in the Veterans Services Unit, room 132, at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays), until September 11, 1991.

FOR FURTHER INFORMATION CONTACT: Bob Seavey, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, (202) 233–3005.

SUPPLEMENTARY INFORMATION: Currently, VA uses three diagnostic codes for rating HIV-related illnesses; Diagnostic code 6351, acquired immunodeficiency syndrome (AIDS); diagnostic code 6352, AIDS related complex (ARC); and, diagnostic code 6353, HIV antibody positive. Diagnostic codes 6351 and 6352 are rated according to the severity of the "underlying disease(s)," which means the constitutional disease, neurologic disease, opportunistic infection, secondary cancers, or other conditions such as chronic lymphoid interstitial pneumonitis which may be associated with HIV-related illnesses. Evaluations from 0 to 100 percent are permissible for these disabilities, which are rated by reference to the same or analagous disorders in other sections of the rating schedule. Diagnostic code 6535 is assigned a zero percent evaluation, since no disabling symptoms are recognized by the schedule at this level.

The need for more specific rating criteria is clear when the multitude and complexity of the underlying diseases are considered. The aggregate impairment of these disabilities is often more than the simple sum of the multiple complications separately considered. Constitutional and neurological diseases can be created under a variety of diagnostic codes, and since several analogies may be possible, inconsistent evaluations may result. Opportunistic infections may resolve with minimal chronic impairment of the affected body system, but the patient's quality of life and employment potential are markedly comprised and average life expectancy is shortened. Although the HIV infection may not have progressed to a specific stage, a patient may nevertheless be symptomatic and partially disabled.

VA is proposing to rate HIV-related illnesses under a single diagnostic code, 6351. We believe that eliminating the necessity for rating by analogy will result in more consistent evaluations. Under diagnostic code 6351, minimum evaluations of 30 and 60 percent would be established for specified clinical stages of HIV-related illness. Minimum evaluations are warranted for these stages due to the progressive nature of the disease, probable difficulties with employment, and shortened lifespan. Recognizing that symptoms are not confined to AIDS alone, certain levels of symptomatology would also be considered as 0, 10, 30, 60, or 100 percent disabling. The proposed revision allows for rating by staging or symptomatology, whichever permits a higher evaluation. Separate evaluations under other diagnostic codes for manifestations of the disease would also be permitted if a higher overall evaluation would thereby result.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–602. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual impact on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprise in domestic or export markets.

(The Catalog of Federal Domestic Assistance numbers are 64.104 and 64.109.)

List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

Approved: May 16, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 4, subpart B, is proposed to be amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

Subpart B—Disability Ratings

1. The authority citation for part 4 continues to read as follows:

Authority: 72 Stat. 1125; 38 U.S.C. 355.

2. Section 4.88a is amended by removing diagnostic codes 6352 and 6353; and revising the heading and diagnostic criteria for diagnostic code 6351 to read as follows:

§ 4.88a Schedule of ratings—systemic diseases.

* * * * *

6351 HIV-Related Illness:	
AIDS with recurrent opportunistic infections or with secondary diseases afflicting multiple body systems; HIV-related illness with debility and progressive weight loss, without remission, or few or brief remissions	100
Refractory constitutional symptoms, diarrhea, and pathological weight loss; or minimum rating following development of AIDS-related opportunistic infection or neoplasm	60
Recurrent constitutional symptoms, intermittent diarrhea, and on approved medication(s); or minimum rating with T4 cell count less than 200, or Hairy Cell Leukoplakia, or Oral Candidiasis	30
Following development of definite medical symptoms, T4 cell count less than 500, and on approved medication(s); or with evidence of depression or memory loss with employment limitations	10
Asymptomatic, following initial diagnosis of HIV infection, with or without lymphadenopathy or decreased T4 cell count	0

Note (1): The term "approved medication(s)" includes medications prescribed as part of a research protocol at an accredited medical institution.

Note (2): Central nervous manifestations, opportunistic infections, and neoplasms may be rated separately under appropriate codes if higher overall evaluation results, but not in combination with percentages otherwise assignable above.

[FR Doc. 91–18347 Filed 8–1–91; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 441, 488, and 489

[HSQ–169–P]

Medicare and Medicaid Programs; Survey and Enforcement Requirements and Alternative Sanctions for Home Health Agencies

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: These rules would—

- Establish requirements for periodic, unannounced surveys of home health agencies (HHAs); and
- Provide a number of sanctions that may be imposed when HHAs are out of compliance with Federal requirements. The alternative sanctions would be imposed in lieu of immediate termination of the HHA's participation in the Medicare program, and would remain in effect until the HHA achieves compliance or HCFA terminates the provider agreement because the HHA does not achieve compliance.

These rules are necessary to implement changes made by several sections of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87).

The purpose of the amendments is to encourage and assist HHAs to come into compliance with Federal requirements so that they can continue to participate in the program without risk to the health and safety of the patients to whom they provide services.

DATES: To ensure consideration, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5 p.m. on October 1, 1991.

ADDRESSES: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HSQ–169–P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave. SW., Washington, D.C., or
Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code HSQ–169–P. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in room 309–G of the Department's offices at 200 Independence Ave. SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202–245–7890).

FOR FURTHER INFORMATION CONTACT: Irene Gibson (301) 966–6768. To order a copy of the **Federal Register** containing this document, enclose a check for $1.50, made out to the Superintendent of Documents, or enclose your Visa or Mastercard Number and expiration date, and send your request to Superintendent of Documents, Washington, D.C. 20402–9325. Your order should specify the date of the requested **Federal Register**. If your prefer, you may Fax your credit card order using (202) 275–6802.

SUPPLEMENTARY INFORMATION:

I. Background

An HHA, as defined in section 1861(o) of the Social Security Act (the Act), is a public agency or private organization

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These rules are necessary to implement changes made by several sections of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87).

The purpose of the amendments is to encourage and assist HHAs to come into compliance with Federal requirements so that they can continue to participate in the program without risk to the health and safety of the patients to whom they provide services.

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SUPPLEMENTARY INFORMATION:

I. Background

An HHA, as defined in section 1861(o) of the Social Security Act (the Act), is a public agency or private organization

that is primarily engaged in providing skilled nursing services and other therapeutic services. In order to be covered under Medicare, these services must be furnished—

- To an individual who is confined to the home, under the care of a physician, and in need of services specified by the Act;
- Under a plan of treatment established and periodically reviewed by a physician; and
- By an HHA that is approved as meeting the Federal requirements for participation in the Medicare program.

State survey agencies, under contract with HCFA, and the State Medicaid agency, survey HHAs periodically and certify their findings to HCFA and to the State agency. For Medicare, the survey agency certification of compliance is a recommendation upon which HCFA bases its determination to grant, deny, or terminate provider agreements. For Medicaid, a survey agency certification of compliance with Federal requirements is a final determination of the HHA's eligibility to participate in that program. (A Medicaid agency may not enter into a provider agreement with an HHA for which the survey agency has not certified compliance, but is not required to enter into agreements with all that are so certified.)

Previous law and current regulations in parts 488 and 489 of the Medicare rules—

- Do not require that surveys be unannounced and that penalties be imposed when an HHA is notified of an impending survey, or specify how often surveys must be performed;
- Do not, in the case of a non-complying HHA, provide for any sanctions other than termination of the HHA's provider agreement after 15-day notice; and
- Do not provide for shorter notice when an HHA's deficiencies pose immediate jeopardy to patient health and safety.

We note that, with minor exceptions, these regulations apply to the Medicare program and not to the Medicaid program. The exceptions are:

- The amendments to § 441.11, which provide for continuation of Federal financial participation (FFP) in Medicaid payments for home health services; and
- New § 448.440(d) which provides for denial of FPP in Medicaid payments to an HHA that has been terminated from Medicare but continues to participate in Medicaid.

These exceptions are discussed in section III.B. 12 and 13 of this preamble.

II. Statutory Provisions

Section 4021 of OBRA '87 added to the Act section 1891, which specifies the conditions of participation for HHAs. OBRA '87 sections 4022 and 4023 amended the new section by adding several subsections.

A. Survey Requirements

1. In summary, subsection (c) of section 1891 of the Act—

a. Establishes requirements for type and periodicity of surveys;

b. Requires that standard surveys be unannounced;

c. Provides for a civil money penalty of up to $2000 for anyone who notifies an HHA or causes an HHA to be notified of the scheduled time or date of a standard survey, and

d. Requires the Secretary to review State survey agency procedures to ensure that the agency has taken all reasonable steps to avoid giving such notice to HHAs through those procedures.

2. More specifically, subsection (c) provides that—

a. Participating HHAs are subject to a standard survey not later than 15 months after the date of the previous standard survey and that, for all HHAs that participate in Medicare, the Statewide average interval between standard surveys may not exceed 12 months.

b. A standard survey or an abbreviated standard survey may be conducted within 2 months of any change in ownership, administration, or management of the HHA to determine whether the change has resulted in any decline in the quality of care furnished;

c. A standard survey or abbreviated standard survey shall be conducted within 2 months after a significant number of complaints concerning an HHA have been reported to the Secretary, the State, the entity responsible for licensing of the agency, the State or local agency responsible for maintaining a toll-free hot line and investigative unit (under section 1864(a) of the Act) or any other appropriate Federal, State or local agency.

d. If an HHA is found, under a standard survey, to have furnished substandard care, an extended survey of that HHA, to review and identify the policies and procedures that produced the substandard care, shall be conducted immediately after the standard survey or, if that is not possible, within 2 weeks after completion of the standard survey;

e. HCFA or the State survey agency may subject any HHA to an extended or partial extended survey when conditions other than the furnishing of substandard care are found during a standard survey; and

f. Nothing in paragraph (c)(2) of section 1891 of the Act shall be construed as requiring an extended or partial extended survey as a prerequisite for imposition of a sanction on the basis of a standard survey.

B. Alternative Sanction Provisions

(We note that although section 1891 uses the term "intermediate", these proposed rules, for consistency with other sanction rules, use the term "alternative", which we consider to have the same meaning.)

1. In summary, subsections (e) and (f) of section 1891 of the Act provide as follows:

a. Require the Secretary to—

- Take immediate action to remove the jeopardy and correct deficiencies that immediately jeopardize patient health and safety, or terminate the provider agreement.
- Develop and implement a range of intermediate sanctions, including civil money penalties, suspension of all or part of the payments to a noncomplying HHA, and temporary management;
- Promulgate specific procedures with respect to the situations in which each intermediate sanction is to be applied; and
- Establish procedures for appealing determinations regarding the imposition of intermediate sanctions.

b. Authorize the Secretary to impose intermediate sanctions in lieu of termination of the HHA's provider agreement if the deficiencies do not immediately jeopardize patient health and safety.

2. More specifically, subsection (e) requires the Secretary to take the following actions with respect to a participating HHA that is found, during any survey, to no longer be in compliance with the requirements of sections 1861(o) and 1891(a) of the Act:

a. If the deficiencies of an HHA approved for participation in Medicare immediately jeopardize the health and safety of the individuals it serves, the Secretary—

- Shall take immediate action to remove the jeopardy and correct the deficiencies through appointment of temporary management, or terminate the HHA's participation; and
- May impose any of the intermediate sanctions specified in the law or additional sanctions promulgated by the Secretary.

b. If the deficiencies do not pose immediate jeopardy, the Secretary may terminate the HHA's provider

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agreement or, for a period of not more than 6 months, impose any of the intermediate sanctions developed under subsection (f), in lieu of termination.

c. If a provider that is currently in compliance with the conditions of participation is found to have been out of compliance for a previous period, the Secretary may impose a civil money penalty for that previous period of noncompliance.

d. The Secretary may continue Medicare payments for up to 6 months to an HHA that is subject to intermediate sanctions if—

- The State or local survey agency finds that it is more appropriate to take alternative action to assure the HHA's compliance with the requirements than to terminate its participation in the program.
- The HHA has submitted and the Secretary has approved a correction plan and timetable for corrective action; and
- The HHA agrees to refund any payments received during implementation of the correction plan if the deficiencies are not corrected in accordance with the approved plan and timetable.

e. If after 6 months the HHA is not in compliance with all of the conditions of participation, the Secretary must terminate the provider agreement.

3. More specifically, subsection (f)—

a. Requires the Secretary to—

- Develop and implement a range of intermediate sanctions that includes civil money penalties for each day of noncompliance, suspension of all or part of the payments for services furnished by the HHA on or after the effective date of the sanction, and appointment of temporary management; and
- Specify procedures with respect to the circumstances under which each of the intermediate sanctions is to be applied; and
- Develop and implement appropriate procedures for appealing the imposition of intermediate sanctions.

b. Specifies that—

- Temporary management shall not be terminated until the Secretary has determined that the HHA has the management capability to ensure continued compliance with all the requirements of sections 1861(o) and 1891(a);
- Suspension of all or part of the payment shall not be terminated until the Secretary finds that the HHA is in substantial compliance with all requirements specified in, or developed in accordance with, sections 1861(o) and 1891(a); and
- The intermediate sanctions are in addition to any other sanctions available under Federal or State law.

Changes in the Regulations

In order to implement the statutory changes discussed above, we propose to add new subparts, H, I, and N to part 488 of the HCFA rules and to make technical amendments in several other sections of part 488.

A. Survey Requirements for HHAs.

The survey requirements are contained in the new subpart H (§§ 448.350–488.360).

1. *Kinds of surveys.* Sections 488.350 and 488.352 set forth the statutory basis and the scope of the subpart, and define frequently used terms. Since the law discusses abbreviated, standard, partial extended, and extended surveys, we have provided definitions in § 488.352 to distinguish among the several types of surveys. A standard survey is conducted routinely, on the average of once a year. Special surveys are discussed under section A4 of this preamble.

Both the abbreviated survey and partial extended survey are limited in their scope and do not cover all of the aspects of HHA operations and services that are covered in a standard or extended survey. Rather they focus on particular aspects that need extensive review. They usually focus on a particular condition of participation rather than on all of them.

For a "standard survey", the law requires use of—

- A case-mix stratified sample of individuals to whom the HHA furnishes services; and
- A Functional Assessment Instrument (FAI) developed, tested, and validated by HCFA.

The FAI, which will ensure consistency in surveying techniques, contains standardized procedures and instructions for assessing specific aspects of the quality of care and services furnished. The FAI, with instructions for its use, will be published as part of HCFA general instructions, in the State Operations Manual. We propose that the definition of standard survey will include an assessment of nurse and home health aide services. Section 1891(a)(3)(A) (i) and (ii) of the Act requires an HHA to use only aides who have completed a training and competency evaluation program, or a competency evaluation program, and who are competent to provide home health services. We believe that the standard survey is the most appropriate method and time to ensure that the HHA is meeting these requirements. We are proposing a random sampling methodology for this aspect of the standard survey because of the demonstrated effectiveness and validity of this approach in dealing with other aspects reviewed during surveys.

2. *Unannounced surveys.* Section 488.354 requires unannounced surveys, although the law requires only that "standard" surveys be unannounced, § 488.354 extends this requirement to all surveys. We believe that this is necessary to ensure the validity of any survey. We realize that the rule will have no effect for extended surveys that are conducted immediately after a standard survey. However, since there is a leeway of up to two weeks, we believe that the reasons for requiring standard surveys to be unannounced also make it important that the HHA not know the exact date and time when the extended survey will be done.

This section also specifies that HCFA—

- Reviews State scheduling and survey procedures once a year to ensure that the agency has taken all reasonable steps to avoid giving notice of impending surveys through these procedures.
- Takes its own corrective action when it is a State survey agency that has given an HHA notice of an impending survey through survey scheduling practices; and
- Refers to the Office of the Inspector General (OIG) any individuals who violate the announced survey policy, for possible imposition of a civil money penalty.

Congress felt it necessary, in order to enforce the unannounced survey provision for standard surveys to provide that a civil money penalty, not to exceed $2000, be imposed against any individual who gives notice of an impending standard survey. The OIG will enforce this provision. Since we have extended the unannounced survey provision to include all types of surveys as opposed to just standard surveys, we believe that the civil monetary penalty should also be extended to include all types of surveys. This would discourage individuals from giving advance notice for any type of survey.

3. *Timing and Frequency of Surveys.* Section 488.356—

- Requires State survey agencies to survey each participating HHA at least every 15 months and maintain a Statewide average survey frequency of 12 months for all standard surveys of participating HHAs; and
- Provides for HCFA to determine a State's average survey frequency at the end of each fiscal year, and take action

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to ensure that States meet the 12-month average.

When a State does not meet the 12-month average, HCFA may take one or more of the following actions:

- Require the State survey agency to take corrective action.
- Provide technical assistance or actually direct the scheduling of the surveys.
- Provide training to individual employees on proper methods of scheduling without alerting the HHA.

4. *Special surveys.* Section 488.358 specifies types of special surveys and when they are used. Special surveys are in addition to the periodic standard surveys discussed above in connection with § 488.356. A special survey (which may be standard or abbreviated in scope) may be conducted when there is a change in ownership, administration, or management, and must be conducted in response to one or more significant complaints against the HHA. Extended or partial extended surveys are also classified as special surveys and must be conducted when an HHA is found to have furnished substandard care (that is, care furnished while out of compliance with condition level requirements), and may be conducted for other reasons, at HCFA's discretion.

We have interpreted Congress' use of the term "substandard care" to refer to care furnished by an HHA that is not in compliance with the conditions of participation set forth in part 484 of the HCFA rules.

We believe this is an appropriate interpretation because—

- Congress has linked the imposition of sanctions with the requirements of sections 1861(o) and 1891(a) of the Act; and
- Those requirements are set forth as conditions of participation in part 484 of the HCFA rules.

Furthermore, since these are deficiencies that must be monitored to ensure that they are corrected within 6 months, we believe that an extended survey is necessary to ensure that the cause of the deficiencies is fully understood.

Section 1891(c)(2)(B)(ii) of the Act states that a standard or abbreviated survey must be conducted when "a significant number of complaints" has been received. We believe that, in order to protect the health and safety of individuals served by the HHA, we must also require that surveys be conducted in response to even one complaint that is determined to be significant. This approach is supported by the broad authority given the Secretary by section 1891(b) of the Act.

5. *Requirements for surveys and surveyors.* Section 488.360 specifies as follows:

a. The purpose of surveys is to—

- Evaluate the quality and scope of services furnished; and
- Determine compliance with the Federal conditions of participation and other requirements.

b. Surveyors must use Federal forms, procedures, and survey methods approved by HCFA.

c. Surveys must be performed by a registered nurse or a team that includes a registered nurse.

d. Except when employed by the Federal government, the registered nurse must be licensed in the State in which the survey is performed.

e. All individuals conducting a survey must have completed the training program specified in § 488.360(b).

Section 1891(c)(2)(C)(iii) of the Act requires that surveys be performed by "an individual who meets the minimum qualifications established by the Secretary". We proposed to allow more than one individual to conduct surveys because, in a large HHA, more than one surveyor may be needed in order to complete the survey in a timely manner.

We are proposing that sole surveyors be registered nurses, and that survey teams include a registered nurse, because HHA's are, by definition, agencies engaged primarily in providing skilled nursing services. Since a nurse plays a unique and critical role in the provision of home health services, we believe that nurses are necessary in order to assess the services furnished by an HHA.

f. Either of the following circumstances disqualifies a surveyor for surveying a particular HHA:

- The surveyor currently serves, or within the previous two years served, on the staff of, or as a consultant to, that HHA.
- The surveyor, or an immediate relative of the surveyor, has a significant ownership interest in the HHA, that is, has a direct or indirect ownership or controlling interest of 5 percent or more in the capital, the stock, or the profits of the HHA, or has an ownership interest of 5 percent or more in any mortgage, deed of trust, note, or other obligation that is secured by the HHA, if that interest equals 5 percent or more of the HHA's assets.

The second disqualifying factor above is consistent with the provision of § 424.22 of the Medicare rules. That section aims to preclude conflict of interest for physicians who certify need for home health services or establish and review plans of treatment. The procedures for determining indirect interest are those set forth at § 420.202(a) of the Medicare rules.

We propose to define "Immediate relative" to mean husband or wife; natural or adoptive parent, child, or sibling; step-parent, step-child, step-brother or step-sister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; grandparent or grandchild; and spouse of grandparent or grandchild. We believe this definition is appropriate and reasonable because it includes all the relatives who could possibly compromise the integrity of the survey process or reduce the objectivity of a surveyor's professional judgement.

In addition, this definition copies the definition of "immediate relative" as used in the rule that excludes from Medicare payment charges imposed by an immediate relative. We have used the same definition as that set forth at § 411.12 because the concerns of the two regulations are similar. Specifically, § 411.12 (of final rules published on October 11, 1989 at 54 FR 41736) is designed to preclude loss of objectivity in treatment decisions, and these proposed rules are designed to preclude loss of objectivity in survey findings.

Section 488.360 also sets forth the specific training and experience requirements for surveyors.

B. Alternative Sanctions

The rules for alternative sanctions other than civil money penalties are set forth in the new subpart I (§§ 488.400–488.440).

Section 488.400 and 488.402 set forth the basis and scope of the subpart and define terms, and § 488.404 sets forth the general rules on alternative sanctions.

1. *Imposition of sanctions.* Under section 1891(e)(1) of the Act, in immediate jeopardy situations, we are authorized to impose other alternative sanctions in addition to appointing a temporary manager or terminating the HHA's participation in Medicare. When there are condition level deficiencies but they do not pose immediate jeopardy, section 1891(e)(2) of the Act speaks to imposing alternative sanctions in lieu of termination. If there is no immediate jeopardy, and HCFA has imposed alternative sanctions, we believe that those sanctions ought not be discontinued in order to initiate termination proceedings. The statute does not require HCFA to discontinue alternative sanctions if termination becomes necessary. Therefore, we believe that in order to protect the health and safety of individuals receiving services from the HHA,

alternative sanctions should continue in effect until termination is effective.

However, since the law does not provide explicit authority to initiate termination action while alternative sanctions are in effect, we are proposing that, when alternative sanctions have been imposed on the basis of the original survey, termination procedures would be initiated on the basis of a revisit which indicates that the HHA is still out of compliance.

Alternative sanctions, which are based on the findings of the initial inspection, would continue until termination of the HHA's provider agreement is effective.

If a revisit is not made, because the HHA does not make a credible allegation of compliance, HCFA would assume noncompliance on the basis of both the initial inspection findings and the failure to make a credible allegation of compliance. This assumption would constitute the combined basis for HCFA to initiate termination procedures.

2. *Choice of sanctions.* The selection of particular sanctions is based on the nature of the deficiencies and the likelihood that they can achieve timely correction of those deficiencies. Since sanctions must be chosen according to the overall circumstances surrounding the deficiencies at a particular time, we have developed a list of factors that we will consider in order to determine the most effective sanctions.

The choice of sanction depends on one or more of the following:

- The severity of the deficiencies or noncompliance.
- The scope of the deficiencies or noncompliance.
- The relationship of one deficiency or group of deficiencies to other deficiencies.
- The HHA's previous compliance history in general, and specifically with reference to the cited deficiencies.
- The corrective and long-term compliance outcomes that HCFA hopes to achieve through application of the sanction.
- Whether the deficiencies pose immediate jeopardy to patient health and safety.
- Whether the deficiencies are directly related to patient care.

3. *Duration of sanctions.* Under section 1891(e)(2) of the Act, we are—

- Authorized to impose alternative sanctions for a period "not to exceed 6 months"; and
- Required to terminate the certification of an HHA that, at the end of the 6-month period, is still out of compliance with the requirements and conditions of sections 1861(o) and 1891(a) of the Act, as set forth in part 484 of this chapter.

However, section 1866(b) of the Act authorizes us to terminate the provider agreement at any time after a provider is found to be out of compliance with the conditions of participation.

Since section 1891(e)(2) of the Act does not impose a minimum duration for alternative sanctions, and section 1866(b) of the Act authorizes us to terminate at any time, we are proposing, in § 488.404(c)(5) to establish the last day of survey, rather than the effective date of the sanction, as the starting point for counting the 6-month period. This is consistent with HCFA policies on other termination actions, which use the last day of survey as the starting point for counting, for instance, the 23-day limit for immediate jeopardy situations that are not corrected immediately.

4. *Advance notice.* We propose to give HHAs notice of sanction 5 days before the effective date of sanction in immediate jeopardy situations, and 15 days before the effective date of sanction when there is not immediate jeopardy.

Current rules on termination (§ 489.53(c) of the rules on Medicare provider agreements) specify 15-day advance notice of termination and shorten the period to 2 days for skilled nursing facilities in immediate jeopardy situations. We propose to amend § 489.53(c) to increase the timeframe to 5 days because we have found a 2-day period to be impracticable. The change to 5 days would be applicable to all providers with deficiencies that pose immediate jeopardy.

We propose that within 5 days from the last day of a survey, HCFA would give the HHA notice of intent to impose a sanction. HCFA needs the flexibility of having 5 days from the last day of survey to permit time for the transmittal of survey documentation to the appropriate agencies (the State Survey Agency and the HCFA Regional Office), for the agencies to review the documentation and make decisions concerning the HHA's compliance or noncompliance with the requirements, and to provide notice of intent to impose a sanction. For example, the findings of a survey that is conducted in a remote part of a State must be sent initially to the State Survey Agency for review and a certification of compliance or noncompliance as explained earlier in this preamble. The survey documentation along with the State Survey Agency's recommendation must be transmitted to HCFA's Regional Office for its review, decision concerning the imposition of an alternative sanction, if appropriate, and final determination to grant, deny, or terminate the HHA's provider agreement. Therefore, the 5-day period is needed to ensure enough time for implementing this process.

Further, we propose that HCFA would give the HHA notice of the sanction at least 2 days but not more than 4 days before the effective date of the sanction in immediate jeopardy situations, and at least 15 days before the effective date of sanction when there is no immediate jeopardy. Therefore, in practice, in immediate jeopardy situations, the sanction could not be imposed anytime after the minimum 2 day notification period but no later than the 10th day after the last date of survey. This allows for up to 5 days for HCFA to send the notice and an additional 2 to 4 days before the sanction is imposed.

Current rules on termination (§ 489.53(c) of the rules on Medicare provider agreements) specify at least 15 days advance notice of termination and shorten the period to at least 2 days for skilled nursing facilities (SNFs) in immediate jeopardy situations. We propose to make the termination notification requirement of "at least 2 days" in immediate jeopardy situations applicable to all providers.

5. *Appeals procedures.* Section 1891(f)(1)(B) of the Act requires us to develop and implement appropriate procedures for appealing determinations relating to the imposition of alternative sanctions. HHAs that participate in Medicare are already covered by the provisions of part 498 of the HCFA rules (Appeals from Determinations that Affect Participation in Medicare) when HCFA denies or cancels a provider agreement with an HHA. We now propose to extend the part 498 provisions—specifically, the provisions for ALJ hearings and Appeals Council review—to the imposition of alternative sanctions. We believe this is appropriate because—

- The system of due process for certification related disputes has already been established in regulations and upheld by case law;
- The proposal would establish appeal procedures for an HHA dissatisfied with the imposition of a sanction, regardless of which particular sanction is imposed;
- The existing appeal mechanisms in part 498 are implemented by an entity that is not affiliated with HCFA. Since HCFA makes the determination to impose sanctions, we believe it is important to have a non-related party handle any appeals to ensure objectivity.

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alternative sanction, if appropriate, and final determination to grant, deny, or terminate the HHA's provider agreement. Therefore, the 5-day period is needed to ensure enough time for implementing this process.

Further, we propose that HCFA would give the HHA notice of the sanction at least 2 days but not more than 4 days before the effective date of the sanction in immediate jeopardy situations, and at least 15 days before the effective date of sanction when there is no immediate jeopardy. Therefore, in practice, in immediate jeopardy situations, the sanction could not be imposed anytime after the minimum 2 day notification period but no later than the 10th day after the last date of survey. This allows for up to 5 days for HCFA to send the notice and an additional 2 to 4 days before the sanction is imposed.

Current rules on termination (§ 489.53(c) of the rules on Medicare provider agreements) specify at least 15 days advance notice of termination and shorten the period to at least 2 days for skilled nursing facilities (SNFs) in immediate jeopardy situations. We propose to make the termination notification requirement of "at least 2 days" in immediate jeopardy situations applicable to all providers.

5. *Appeals procedures.* Section 1891(f)(1)(B) of the Act requires us to develop and implement appropriate procedures for appealing determinations relating to the imposition of alternative sanctions. HHAs that participate in Medicare are already covered by the provisions of part 498 of the HCFA rules (Appeals from Determinations that Affect Participation in Medicare) when HCFA denies or cancels a provider agreement with an HHA. We now propose to extend the part 498 provisions—specifically, the provisions for ALJ hearings and Appeals Council review—to the imposition of alternative sanctions. We believe this is appropriate because—

- The system of due process for certification related disputes has already been established in regulations and upheld by case law;
- The proposal would establish appeal procedures for an HHA dissatisfied with the imposition of a sanction, regardless of which particular sanction is imposed;
- The existing appeal mechanisms in part 498 are implemented by an entity that is not affiliated with HCFA. Since HCFA makes the determination to impose sanctions, we believe it is important to have a non-related party handle any appeals to ensure objectivity.

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6. *Effect of pending appeals.* All sanctions except civil money penalties may be imposed while a requested hearing or the hearing decision is pending. Section 1891(f)(2)(A)(iii) of the Act, by citing section 1128A of the Act, prohibits the imposition of civil money penalties until after a hearing decision has been issued. However, the statute does not contain a similar reference with respect to the imposition of other alternative sanctions. Section 1891(f)(3) of the Act requires us to use procedures that minimize the time between the identification of deficiencies and the imposition of sanctions. We believe, therefore, that the imposition of sanctions must not be delayed because of the appeals process except when required by the statute.

7. *Judicial review.* As noted above, section 1891(f) of the Act incorporates by reference certain provisions of section 1128A of the Act. One of those provisions provides for judicial review when the sanction is a civil money penalty. The statute is silent with respect to judicial review for the other alternative sanctions. We believe, therefore, that Congress intended to foreclose further review of appeals under section 1891(f)(1)(B) of the Act. The omission of judicial review for the other sanctions is further supported by section 205(h) of the Act (made applicable to Medicare by section 1872 of the Act) which provides, in part, that the Secretary's decision after a hearing shall not be reviewed by any tribunal except as provided in the Act. Since the Act has not explicitly provided for judicial review, we believe that such review is not warranted.

It can also be argued that, if judicial review were made available for imposition of alternative sanctions, the resources of the Federal court system would be unduly taxed. By precluding judicial review except when it is mandated by statute—that is for termination and for civil money penalties—we can prevent the overloading of that system.

8. *Available sanctions.* Section 488.410 lists the available alternative sanctions, which are—

a. Appointment of temporary manager;

b. Imposition of civil money penalties in accordance with subpart N of part 488;

c. Suspension of payment for all new admissions;

d. Suspension of payment for new admissions who require particular types of services;

e. State survey agency monitoring; and

f. Directed plan of correction.

Section 1891(f)(2)(A) of the Act specifies that the range of sanctions shall include temporary management, civil money penalties, and suspension of all or part of the payments to which the HHA would otherwise be entitled under title XVIII of the Act. We propose to implement the "suspension" provision through two sanctions: suspension of payments for all new admissions, and suspension of payment for certain new admissions, specifically those requiring particular types of services. The latter sanction would protect patients from substandard care in the areas in which the HHA is deficient, while permitting continuation of payment for new admissions who require the types of services that are not adversely affected by the deficiencies.

Further, section 1891(f)(2)(C) of the Act provides that a suspension of payment sanction shall terminate when HCFA finds that the HHA is in substantial compliance with all of the requirements specified in, or developed in accordance with, sections 1861(o) and 1891(a) of the Act. The cited requirements are set forth in part 484 of the HCFA rules as "conditions of participation", and § 488.402 of these proposed rules would define "condition level deficiency" as noncompliance with any of the conditions, as contrasted with "lower level" deficiencies, i.e., deficiencies in one or more of the standards that make up each condition. Since alternative sanctions are imposed only when an HHA has "condition level" deficiencies, we have interpreted the term "substantial compliance" to mean compliance with all condition level requirements. In other words, the suspension of payment sanction would end when the HHA had corrected all condition level deficiencies.

State monitoring and directed plan of correction are included among the statutory provisions applicable to other types of health care facilities. We believe that State survey agency monitoring and directed plans of correction will also be effective in encouraging home health agencies to correct deficiencies so that they can continue to participate in the program.

9. *Action depending on nature of deficiencies.* The next three sections of the regulations specify the actions to be taken when—

- An HHA's deficiencies pose immediate jeopardy to patient health and safety (§ 488.416);
- There is no immediate jeopardy (§ 488.418); and
- The deficiencies are not at the condition of participation level, but only at the level of some of the standards that make up each of the conditions (§ 488.420).

10. *Continuation of payments to HHAs with deficiencies.* Section 1891(e)(4) of the Act establishes three conditions for continuation of Medicare payments to HHAs with deficiencies:

- The survey agency finds it more appropriate to take alternative action to assure compliance than to terminate the HHA;
- The HHA submits a plan and timetable for corrective action and the Secretary approves the plan and timetable;
- The HHA agrees that, if it does not correct the deficiencies within the timeframe of the approved plan, it will refund any Medicare payments received for services furnished during the correction period. (§ 488.422)

We propose to add a fourth requirement—that the HHA not charge the beneficiary for the services for which it refunds the Medicare payments. Support for this additional requirement is derived from section 1866(a)(1)(A) of the Act and implementing regulations in subpart B of part 489 of the Medicare rules pertaining to Medicare provider agreements. Under these provisions, a provider must agree not to charge a beneficiary for any services for which he or she would be entitled to have Medicare payment made if the provider "had complied with the procedural and *other* requirements under or pursuant to this title * * *" (emphasis supplied).

Since the situation arises because the HHA is out of compliance with the conditions of participation, it is evident that, under section 1866, the HHA may not charge the beneficiary. Moreover, the additional requirement is consistent with the intent of the alternative sanction approach—to encourage prompt correction of deficiencies. Refund of Medicare payments would not constitute an incentive for prompt correction if the HHA could charge the beneficiary the amounts refunded.

11. *Rules for particular sanctions.* The next seven sections deal with each particular sanction and the procedures for imposing them.

a. *Temporary management.* Section 488.426 specifies when and how HCFA appoints temporary managers, the qualifications for temporary managers, and the duration of this sanction.

The statute provides that when deficiencies pose immediate jeopardy, HCFA must take immediate action to remove the jeopardy and correct the deficiencies through temporary management, or terminate the provider agreement. In addition, HCFA may impose one or more other sanctions.

The statute provides that when deficiencies are found that do not pose immediate jeopardy, HCFA may impose, in lieu of termination, one or more sanctions, which include temporary management, civil money penalties, and suspension of payments.

While Congress broadly outlines the temporary management provision in the statute, we are proposing more specific criteria and procedures to facilitate the application of this sanction. We are also recommending that the temporary manager be given blanket authority to appropriately manage a facility, to remove the threat or jeopardy, if necessary, and to ensure that the necessary action is taken to achieve compliance within the timeframes set forth in the plan of correction. We have interpreted the role of the temporary manager to be tantamount to that of a facility administrator. We are proposing to add the following:

- The temporary manager would have the authority to hire, terminate, and reassign staff; obligate funds, alter the facility's administrative procedures; and otherwise manage the HHA to correct the deficiencies and to protect and assure patient health and safety.
- The HHA would pay the temporary manager's salary.

The salary would have to—

- Be commensurate with salaries paid to other HHA managers in the geographic area where the HHA is located; and
- Include additional costs (such as travel allowance) that would reasonably be incurred by the manager and would be included if he or she were a regular employee of the HHA.

In order to be appointed temporary manager of an HHA, an individual would have to:

- Be licensed as an HHA administrator if licensing is required in the State in which the HHA is located; or
- In lieu of licensure, have at least two years of experience as an HHA administrator, and
- Be able to provide at least 20 hours a week of services to the HHA.

The procedures for installing a temporary manager when deficiencies pose immediate jeopardy are as follows:

- Within 5 days from the last day of a survey, HCFA would give the HHA notice of intent to appoint a temporary manager.
- In the notice, HCFA would give the HHA the option of accepting temporary management and making available to the manager sufficient funds and management support to bring the facility into compliance, or accepting termination of its provider agreement.
- If the HHA accepts temporary management, HCFA would approve the selection of a temporary manager based on the State's recommendation and would install the temporary manager within 10 days from the last day of survey. This allows for a total of 10 days for administrative processing of the survey findings, (i.e., review in the survey agency and the regional office), for notice as required before imposing a sanction in immediate jeopardy situations, for the HHA to respond to the notice, and for the actual installation of the temporary manager.

When deficiencies do not pose immediate jeopardy, HCFA sends the notice of the imposition of a temporary manager within 5 days after the last day of survey. The notice states that the temporary manager, if available, will be installed no earlier than 15 days from the date of the notice.

The temporary management terminates when HCFA—

- Determines that the HHA is in compliance with all conditions of participation and has the capability to remain in full compliance; or
- Terminates the provider agreement because:
  - —The provider requests discontinuance of temporary management while still not in compliance with the conditions of participation; or
  - —HCFA determines that the HHA compliance has deteriorated to the point of precluding continued participation in the program.

HCFA may also, concurrent with appointment of temporary manager, impose any of the other sanctions specified in § 488.410.

We believe that the regulations we are proposing at § 488.426 would provide the temporary manager with the authority, training and experience necessary to manage the facility and precipitate positive change. However, temporary management is meant to be more than just assistance to the facility. Congress included it with the list of intermediate sanctions which implies that it is a form of penalty. Therefore, it should not be provided free of charge to the facility, but rather at the facility's expense. Otherwise, providing free managerial staff would, in essence, be a reward to deficient facilities. The timeframes and appeal mechanisms are consistent with those established for other sanctions and those pre-existing in the regulations.

b. *Civil money penalties.* Section 488.428 refers the reader to subpart N of part 488, which contains the rules for imposition of civil money penalties.

c. *Suspension of payment for new admissions.* We propose to impose suspension of payment for all new admissions (§ 488.430), if the HHA is found to still be out of compliance 90 days after the survey that first identified the deficiencies. We propose that the survey agency conduct a revisit of the HHA no later than 60 days from the last day of survey, to assess whether the condition level deficiencies have been corrected. The monies withheld would not be recouped by the HHA. The suspension of payment sanction would end only when HCFA found the HHA to be in substantial compliance with all of the requirements specified in, or developed in accordance with, sections 1861(o) and 1891(a) of the Act. At such time, HCFA would resume payment to the HHA (§ 488.430). As part of this sanction, the HHA would be required to notify the beneficiary, before initiating care, of the fact that Medicare payment is not available because of the suspension sanction, and the HHA would be precluded from charging the beneficiary for those services unless it could show that it had notified the beneficiary in writing before initiating care.

Support for these additional requirements is found in section 1891(a)(1)(E)(iii) of the Act and implementing regulations at § 484.10(e) of the Medicare rules, which provide that the patient has a right to be informed orally and in writing, before care is initiated, as to the services that will be paid for by Medicare and those for which the patient will be responsible.

d. *Suspension of payment for new admissions who require particular types of services.* Section 488.432 specifies applicability and duration of suspension of payment for particular types of services, such as physical therapy or speech pathology services. We are proposing this sanction to protect patients from substandard care in those areas in which an HHA is deficient, while permitting continuation of payment for the types of services that are not affected by the deficiencies.

The requirements for terminating the sanction when the HHA is in substantial compliance with the condition level requirements and for notifying the beneficiary of a suspension of payment sanction and the limitation on charges to the beneficiary, discussed in connection with suspension of payment for all new admissions, apply also with respect to suspension of payment for new

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admissions who require particular types of services.

e. *State survey agency monitoring and directed plan of correction.* Sections 488.436 and 488.438 pertain to State survey agency monitoring and directed plans of correction, respectively. State survey agency monitoring is a procedure that is already in place as part of the revisit process for monitoring progress towards the correction of deficiencies. However, State survey agency monitoring as a sanction would enable the State survey agency or HCFA, or both, to monitor progress towards compliance more frequently when the nature and severity of the deficiencies justify closer oversight. We propose to use State agency monitors who have expertise in the area or areas in which the HHA has deficiencies. However, they would function as observers only, not as consultants or managers.

Imposing directed plans of correction as a sanction would enable the State agency, temporary manager, or HCFA to develop a plan of correction which would require a facility to take correction action within specified timeframes. We propose to establish State monitoring and directed plans of correction in accordance with our authority under section 1891(f)(2)(B), which states that, "the sanctions specified in Subparagraph A are in addition to sanctions otherwise available under State or Federal law and shall not be construed as limiting other remedies, including any remedy available to an individual at common law." Both state monitoring and directed plans of correction are available under the authority of other sections of Federal law, for other types of facilities. In an effort to maintain consistency of enforcement approach wherever possible, among all providers and suppliers, we are proposing extending such sanctions to HHAs.

Both State monitoring and directed plans of correction would allow the State agency or HCFA, or both, to become directly involved in the establishment and oversight of the correction process.

12. *Termination of provider agreement.* Section 488.440 makes clear that termination of a provider agreement effectively terminates continuation of payments and any alternative sanctions that were imposed, regardless of the timeframes previously specified for continuation of payments and for alternative sanctions. This section also sets forth the following:

- The basis and timeframes for termination of a provider agreement, are based on section 1891(e) of the Act and § 489.53 of the Medicare rules. (The HHA's provider agreement is terminated if condition level deficiencies have not been corrected within 6 months from last day of survey.)
- The effect of termination of the Medicare provider agreement of an HHA that also participates in Medicaid.
- The advance notice periods, which are based on the timeframes established in § 489.53(c) of the Medicare rules.

In the latter situation, HCFA notifies the State Medicaid agency of—

- The reason for, and effective date of, termination from Medicare; and
- The fact that, with one exception, Federal financial participation (FFP) is not available in State payments for services furnished by that HHA after the effective date of termination from Medicare.

Denial of FFP is based on § 440.70 of the Medicaid rules, which defines "home health agency" as an agency or organization "that meets the requirements for participation in Medicare". Services furnished by an HHA which does not meet those participation requirements are not subject to FFP because they are not "home health services", and cannot be considered "medical assistance".

13. *Continuation of FFP for home health services.* In connection with this provision, we are proposing an exception under which FFP would be available, for up to 30 days after the HHA is terminated from Medicare, as necessary for the HHA to discharge Medicaid patients from care or refer them to other HHAs. This proposed exception constitutes a change from current policy under which—

- Medicare payments may be made for home health services (as well as for inpatient care in a hospital or a long-term care facility) furnished under a plan of care established before the effective date of termination of the Medicare provider agreement (§ 489.55 of the rules on Medicare provider agreements); but
- FFP in Medicaid payments for services furnished within 30 days after termination of a Medicaid provider agreement is limited to payment for institutional services, i.e., services furnished in inpatient facilities (§ 441.11 of the Medicaid rules).

The proposed change would make the Medicaid rules consistent with the Medicare rules and would recognize the fact that Medicaid patients need time for orderly transfer just as much as Medicare patients do. The proposed change is reflected in amendments to § 441.11.

14. *Civil money penalties.*

Note: Because civil money penalty provisions are more complex than the provisions of other alternative sanctions, we propose to put those provisions in a separate subpart N (§§ 488.700–488.718).

Section 1891(f)(3) of the act requires the Secretary to develop and implement specific procedures for determining the conditions under which intermediate sanctions are to be applied, including the amount of any fines and the severity of each sanction. Section 1891(f)(2) of the Act specifies that the sanctions shall include civil money penalties in an amount not to exceed $10,000 for each day of noncompliance. Because the law directs us to establish the amounts of fines and the levels of severity, we propose the following range of penalty amounts, based on two levels of severity:

a. For a condition level deficiency that poses immediate jeopardy to patient health and safety, the range would be from $3,050 to $10,000 per day of noncompliance.

b. For a condition level deficiency that does not pose immediate jeopardy, the range would be from $50 to $3,000 per day of noncompliance.

Since deficiencies take on greater of lesser significance depending on the specific circumstances at a particular time it would be impossible to assign a specific monetary amount for each type of noncompliance that is found. The amount of the penalty must reflect the seriousness of each particular violation. We believe that consideration of certain specified factors will enable us to select the amount that is appropriate for each situation.

We believe that these penalty amounts would provide the economic motivation for providers to achieve compliance and would decrease any monetary advantage that might result from remaining out of compliance.

Sections 488.700 and 488.702 set forth the basis and scope of civil money penalties and define terms.

Section 488.705 provides that HCFA may impose a civil money penalty—

- When the provider is found to have condition level deficiencies, regardless of whether they pose immediate jeopardy to patient health and safety; and
- In addition to any other alternative sanctions.

Section 488.708 sets forth—

- The factors that HCFA considers when determining the amount of the penalty;
- The range and specific daily amounts of civil money penalties; and
- The fact that HCFA may increase or decrease the daily penalty amount

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depending on specified circumstances. This responds to the requirement (section 1891(f)(3) of the Act) that HCFA provide for more severe fines for repeat or uncorrected deficiencies.

The factors to be considered in setting the daily penalty amount include the facility's culpability, previous compliance history, and financial condition, as well as the nature and duration of noncompliance and the category of requirements with which the facility is out of compliance.

Section 488.710 sets forth the procedures for imposing civil money penalties (which include notice of intent); the appeals procedures; and the fact that HCFA may reduce the penalty amount by 35 percent if the facility waives its right to an ALJ hearing and appeals council review.

Written notice of intent is sent at least 2 days but not more than 4 days before the effective date of the penalty in immediate jeopardy situations and at least 15 days before the effective date in all other situations. The purpose of the advance notice is to afford the HHA an opportunity to correct deficiencies, and is consistent with notice provided to other types of facilities.

For civil money penalties, the law makes applicable the provisions of section 1128A of the Act which, in effect, provide for an ALJ hearing and for judicial review by a U.S. Court of Appeals. As noted in sections B5 and B7 of this preamble, we propose to—

- Make the appropriate provisions of part 498 of the HCFA rule (ALJ hearings and Appeals Council review) applicable to the imposition of any alternative sanctions; and
- Specify that judicial review is available only for civil money penalties, as provided in the statute.

We believe that the 35 percent reduction in the penalty amount reflects a savings of costs that would otherwise be incurred, by the facility and the government, to formally adjudicate the dispute. However, the provider is free to reject the option to waive the right to a hearing.

Section 488.712 provides that—

- The effective date of the penalty is 10 days after the last day of the survey that found the deficiencies if there is immediate jeopardy to patient health and safety, and 20 days after last day of survey when there is no immediate jeopardy; and
- The penalty ends the day before the deficiencies are corrected or, if they are not corrected, the day before program participation ends.

Since the imposition of a civil money penalty is postponed during the pendency of a hearing, the penalty must be made retroactive in these types of situations. Therefore, we propose to make the penalty retroactive to the 10th day after the last day of the survey if there is immediate jeopardy, and the 20th day after the last day of the survey if there is no immediate jeopardy. The 10 day and 20 day timeframes take into consideration the 2–4 day and 15 day notification requirements set forth in § 488.710.

Sections 488.714 and 488.716 set forth the rules for timing, computation, and notice of total penalty amount, and specify the due date for payment of that amount, plus interest accrued on unpaid balance. The addition of interest is intended to motivate prompt payment.

Section 488.718 provides that—

- The penalty amount may be deducted from any sums owed by the United States to the sanctioned provider;
- Interest accrues on the unpaid balance beginning on the due date; and
- HCFA may settle any case at any time before the ALJ issues a hearing decision.

C. Part 489 amendments

These amendments would revise the authority citation, change the notice period in immediate jeopardy situations, and correct outdated cross-references.

D. Technical amendments

The technical amendments to part 488 are necessary to update a definition and correct internal cross references. Changes to part 498 will be developed in a separate regulation.

IV. Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed regulation that meets one of the E.O. 12291 criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 602), unless the Secretary certifies that a regulation will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all HHAs as small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital which is located outside of a metropolitan statistical area and has fewer than 50 beds.

For the most part, these regulatory amendments conform the regulations to the legislative provisions. We expect some incremental increases in expenditures beyond those that have already occurred, subsequent to the implementation of the legislative provisions. At this time we are unable to calculate these costs because of the lack of data. However, we encourage comments and submission of any applicable data concerning these regulations, particularly if there is a perception that they may result in significant increased costs. We believe that these proposed regulations do not meet any of the criteria for a major rule under E.O. 12291. In addition, for the above reasons, we believe, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a substantial number of small entities or small rural hospitals. We have, therefore, not prepared a regulatory flexibility analysis or rural impact analysis.

V. Paperwork Reduction Act

Sections 488.354(d) and 488.420 of these rules require submission of plans of correction that involve collection of information and are, therefore, subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. When OMB approves these requirements, we will publish a **Federal Register** notice to that effect. It is estimated that the development of a plan of correction requires an average of 5 hours. If you comment on this requirement, please send a copy of those comments directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3002, New Executive Office Bldg., Washington, DC 20503, attention; Allison Herron, Desk Officer for HCFA.

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For the most part, these regulatory amendments conform the regulations to the legislative provisions. We expect some incremental increases in expenditures beyond those that have already occurred, subsequent to the implementation of the legislative provisions. At this time we are unable to calculate these costs because of the lack of data. However, we encourage comments and submission of any applicable data concerning these regulations, particularly if there is a perception that they may result in significant increased costs. We believe that these proposed regulations do not meet any of the criteria for a major rule under E.O. 12291. In addition, for the above reasons, we believe, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a substantial number of small entities or small rural hospitals. We have, therefore, not prepared a regulatory flexibility analysis or rural impact analysis.

V. Paperwork Reduction Act

Sections 488.354(d) and 488.420 of these rules require submission of plans of correction that involve collection of information and are, therefore, subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. When OMB approves these requirements, we will publish a **Federal Register** notice to that effect. It is estimated that the development of a plan of correction requires an average of 5 hours. If you comment on this requirement, please send a copy of those comments directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3002, New Executive Office Bldg., Washington, DC 20503, attention: Allison Herron, Desk Officer for HCFA.

VI. Response to Comments

Because of the many comments we receive, we cannot respond to them individually. However, in the preamble to the final rule we will discuss all timely comments.

List of Subjects

42 CFR Part 441

Family planning, Grant programs-health, Infants and children, Medicaid, Penalties, Prescription drugs, Reporting and recordkeeping requirements.

42 CFR Part 488

Health facilities, Survey and certification, Forms and guidelines.

42 CFR Part 489

Health facilities, Medicare.

42 CFR chapter IV would be amended as set forth below:

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

1. The authority citation continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 441.11 is amended to revise the heading and paragraph (a)(1) and add a new paragraph (c)(9), to read as follows:

§ 441.11 Continuation of FFP for certain services.

(a) *Basic conditions for continuation of FFP.* * * *

(1) The Medicaid payments are for recipients admitted to the facility or accepted for care before the effective date of termination or expiration.

* * * * *

(c) *Services for which FFP may be continued.* * * *

(9) Home health services.

1. The heading of part 488 is revised to read as set forth above.

PART 488—SURVEY AND CERTIFICATION PROCEDURES; ALTERNATIVE SANCTIONS FOR CERTAIN PROVIDERS AND SUPPLIERS

2. In part 488 the table of contents is amended by adding subparts H, I and N and the authority citation is revised as follows:

* * * * *

Subparts D–G [Reserved]

Subpart H—Survey Requirements for Home Health Agencies

Sec.
488.350 Basis and scope.
488.352 Definitions.
488.354 Unannounced surveys.
488.356 Timing and frequency of standard surveys.
488.358 Special surveys.
488.360 Requirements for all surveys and for surveyors.

Subpart I—Alternative Sanctions for Home Health Agencies (HHAs)

488.400 Basis and scope.
488.402 Definitions.
488.404 General considerations.
488.410 Available alternative sanctions.
488.416 Action when deficiencies pose immediate jeopardy to patient health and safety.
488.418 Action when there are deficiencies at the condition level but they do not pose immediate jeopardy to patient health and safety.
488.420 Action when deficiencies are below the condition level.
488.422 Continuation of payments to HHAs with deficiencies.
488.426 Temporary management.
488.428 Civil money penalties.
488.430 Suspension of payment for new admissions.
488.432 Suspension of payment for new admissions who require particular types of services.
488.436 State survey agency monitoring.
488.438 Directed plan of correction.
488.440 Termination of provider agreement.

Subparts J–M [Reserved]

Subpart N—Civil Money Penalties

488.700 Basis and scope.
488.702 Definitions.
488.705 Basis for imposing a civil money penalty.
488.708 Amount of penalty.
488.710 Procedure for imposition of civil money penalty.
488.712 Effective date and duration of penalty.
488.714 Computation and notice of total penalty amount.
488.716 Due date for payment of penalty.
488.718 Collection and settlement.

Authority: Secs. 1102, 1814, 1846, 8161, 1864, 1965, 1866, 1871, 1880, 1881, 1883, and 1891 of the Social Security Act (42 U.S.C. 1302, 1395f, 1395w–2, 1395x, 1395aa, 1395bb, 1395cc, 1395hh, 1395qq, 1395rr, 1395tt, and 1395bbb).

3. New subparts H, I, and N are added, to read as follows:

Subpart H—Survey Requirements for Home Health Agencies

§ 488.350 Basis and scope.

(a) *Statutory basis:* This subpart is based on section 1891(c) of the Act, which establishes specific requirements for surveys of HHAs.

(b) *Scope.* This subpart establishes specific rules for survey of HHAs by State survey agencies and explains HCFA's participation with respect to those rules.

§ 488.352 Definitions.

Abbreviated survey means a survey that does not cover all the aspects covered in a standard or extended survey, but rather focuses on particular aspects that relate, for example, to change in ownership of the HHA or complaints received.

Condition level deficiency means noncompliance with any of the conditions sets forth in part 484 of this chapter, and *Lower level deficiency* or *Deficiency below the condition level* means noncompliance with any of the standards that make up each condition.

Extended survey means a survey that focuses on the HHA's policies and procedures to determine the cause of one or more condition level deficiencies or of any other conditions that make further examination desirable. An extended survey further documents the actual care being provided or the patient outcomes, and explores the extent to which structure and process factors such as written policies and procedures, staff qualifications and functions, and specific agreements and contracts of the HHA may have contributed to the outcomes.

Home health agency means a public agency or private organization, or a subdivision of such an agency or organization that meets the requirements that meets the requirements of section 1861(o) of the Act.

Partial Extended Survey means a limited survey that does to cover all of the HHA's policies and procedures as in a full extended survey, but rather focuses on specific structure or process features to determine the cause of a condition level deficiency or any other circumstance that makes further examination desirable.

Standard survey means a survey that includes the following:

(1) Review of a sample of clinical records and plans of care.

(2) Case-mix stratified sampling of home visits, using functional assessment instruments developed, tested, and validated by HCFA to assess the quality of care and services furnished (including nurse and home health aide services), as measured by indicators of medical, nursing, and rehabilitative care.

(3) Review of patient rights.

(4) Review of compliance with Federal, State and local laws, disclosure and ownership information, and

accepted professional standards and principles.

§ 488.354 Unannounced surveys.

(a) All surveys of a participating HHA must be unannounced.

(b) Once a year HCFA reviews each State's scheduling and surveying procedures to determine whether those procedures include reasonable safeguards against giving HHAs notice of impending surveys

(c) If HCFA finds that a survey agency representative or any other person has given such notice to one or more HHAs, it refers the matter to the OIG. The OIG—

(1) Administers civil money penalties, which may be up to $2000 for each individual who notifies an HHA or causes an HHA to be notified of the date or time of a scheduled survey; and

(2) Provides for appeals from, and hearings on, imposition of those penalties, in accordance with part 1003 of this title (Hearings are before an Administrative Law Judge of the Departmental Appeals Board.)

(d) If a survey agency gives notice of an impending survey through its scheduling and surveying procedures, HCFA takes corrective action, which may include the following:

(1) Require the State to submit a corrective action plan.

(2) Provide technical assistance on, or actually direct the scheduling of surveys.

(3) Provide training to individual employees on proper methods of scheduling without alerting the HHA.

§ 488.356 Timing and frequency of standard surveys.

(a) *Frequency.* (1) The State survey agency must perform a standard survey of each participating HHA at least every 15 months.

(2) The average survey frequency for all standard surveys of HHAs in each State may not exceed 12 months.

(3) The State survey agency on HCFA may perform surveys as often as necessary to ascertain compliance or confirm correction of deficiencies under a plan of correction.

(b) *Monitoring by HCFA.* (1) HCFA determines each State's statewide average interval at the end of each fiscal year by comparing the last date of the most recent standard survey with the last date of the preceding standard survey for each participating HHA. (Abbreviated surveys are not included in this determination.)

(2) HCFA provides technical or educational assistance to ensure that State survey agencies comply with the 12-month average interval requirement.

(3) HCFA may require the State survey agency to submit a plan to ensure compliance with the 12-month average interval.

§ 488.358 Special surveys.

(a) *General rules.*—(1) *Scope of special surveys.* A special survey may, depending on the circumstances, be a "standard" survey, an abbreviated survey, a partial extended survey or an extended survey. It is conducted in response to a triggering event or particular occurrence as set forth in paragraph (a)(2) of this section. If a special survey is conducted, it is in addition to the standard survey required in § 488.356.

(2) *Triggering events.* A special purpose survey is usually performed when there is a change in ownership, administration, or management, or when circumstances other than deficiencies at the condition of participation level are found; it is always performed when—

(i) During a standard survey, an HHA is found to have furnished substandard care; or

(ii) Significant complaints against the HHA are received.

(b) *Survey after change in ownership, administration, or management.* (1) The purpose of this special survey is to determine whether the change has caused any decline in the quality of services.

(2) The State agency decides whether to perform a special survey. If a special survey is conducted, the State agency conducts a standard survey unless specific information indicates that no decline in the quality of services has occurred, in which case an abbreviate survey is performed to verify the information. If the agency decides to perform a special survey, it must carry out that survey within 60 days after the change in ownership, administration, or management.

(c) *Survey with HHA has furnished substandard care.* For each HHA that is found, at the completion of a standard survey, to be furnishing substandard care, that is, to have deficiencies at the condition level, the State survey agency must perform an extended or partial extended survey within 2 weeks after completion of the standard survey. The State survey agency decides whether to perform an extended or a partial extended survey depending on the scope and severity of the substandard care. When there is an indication of inadequate home health aide services, the extended or partial extended survey includes a random sampling of home health aide training and competency evaluation files and interviews to determine whether home health aides have completed required training and inservice education and met competency requirements.

(d) *Survey in response to significant complaints.* (1) A complaint is considered significant if the reported circumstance or practice has the potential to affect adversely the quality of patient care furnished by the HHA.

(2) The State survey agency must perform a standard or abbreviated survey within 60 days after one or more significant complaints have been received from any source, by HCFA or by any of the following:

(i) The State.

(ii) The entity responsible for licensing of HHAs.

(iii) The State or local agency responsible for maintaining a toll-free hot line and investigative unit under section 1864(a) of the Act.

(iv) Any other appropriate Federal, State, or local agency.

§ 488.360 Requirements for all surveys and for surveyors.

(a) *General rules.* (1) Surveys are conducted by State survey agency or HCFA surveyors who use their professional judgment, in concert with Federal forms and procedures, to—

(i) Evaluate the quality and scope of services furnished; and

(ii) Determine compliance with the Federal conditions of participation and other requirements.

(2) Surveyors are required to use Federal forms, procedures, and survey methods, as prescribed by HCFA, to ensure uniformity and consistency in the interpretation and application of Federal requirements.

(3) Surveys must be performed by a registered nurse or a team that includes a registered nurse.

(4) All surveyors must have completed the training and assessment program specified in paragraph (b) of this section. However, the survey agency may permit an individual who has not completed the training program, to observe survey activities under the supervision of a surveyor who has successfully completed the required program.

(5) Either of the following circumstances disqualifies a surveyor for surveying a particular HHA:

(i) The surveyor currently serves, or within the previous two years served, on the staff of, or as a consultant to, that HHA.

(ii) The surveyor or an immediate relative of the surveyor has a direct or indirect ownership or controlling interest of 5 percent or more in the capital, the stock, or the profits of the

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(i) The State.

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(3) Surveys must be performed by a registered nurse or a team that includes a registered nurse.

(4) All surveyors must have completed the training and assessment program specified in paragraph (b) of this section. However, the survey agency may permit an individual who has not completed the training program, to observe survey activities under the supervision of a surveyor who has successfully completed the required program.

(5) Either of the following circumstances disqualifies a surveyor for surveying a particular HHA:

(i) The surveyor currently serves, or within the previous two years served, on the staff of, or as a consultant to, that HHA.

(ii) The surveyor or an immediate relative of the surveyor has a direct or indirect ownership or controlling interest of 5 percent or more in the capital, the stock, or the profits of the

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HHA, or has an ownership interest of 5 percent or more in any mortgage, deed of trust or other obligation that is secured by the HHA and that equals 5 percent or more of the HHA's assets.

(6) *Terminology and procedures.* (i) As used in paragraph (a)(6) of this section, *immediate relative* means husband or wife; natural or adoptive parent, child, or sibling; stepparent, stepchild, stepbrother or stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law; grandparent or grandchild; and spouse of grandparent or grandchild.

(ii) The procedures for determining indirect interest are those set forth in § 420.202(a) of this chapter.

(b) *Specific requirements for surveyors.* A surveyor must—

(1) Have experience in investigating, evaluating, and reporting official findings on health care facilities; and

(2) Have successfully completed a training program in the conduct of standard and extended surveys, including the use of the functional assessment instrument.

Subpart I—Alternative Sanctions for Home Health Agencies (HHAs).

§ 488.400 Basis and scope.

(a) *Statutory basis.* Section 1891 of the Act requires the Secretary to develop and implement—

(1) A range of intermediate sanctions to apply to HHAs that are not in compliance with the conditions of participation in Medicare;

(2) Appropriate procedures for appealing determinations to impose those sanctions; and

(3) Specific procedures on when and how each intermediate sanction is to be applied, the amounts of any fines and the severity of each penalty. The procedures must be designed so as to minimize the time between identification of violations and imposition of the sanctions, and provide for imposition of incrementally more severe fines for repeated or uncorrected deficiencies.

(b) *Scope.* (1) This subpart sets forth procedures that HCFA follows to impose sanctions alternative to termination of a provider agreement when an HHA no longer complies with the conditions of participation set forth elsewhere in this chapter.

(2) The rules that govern imposition of civil money penalties are those set forth in subpart N of this part.

(3) The procedures for termination of a provider agreement are those set forth in subpart E of part 489 of this chapter.

§ 488.402 Definitions.

As used in this subpart—

Condition level deficiency means noncompliance with any of the conditions set forth in part 484 of this chapter, and *Lower level deficiency* or *Deficiency below the condition level* means noncompliance with any of the standards that make up each condition.

Immediate jeopardy means a situation in which immediate corrective action is necessary because the HHA's noncompliance with one or more conditions of participation has already caused, or is very likely to cause, at any time, serious injury or harm to the patients served by the HHA.

New admission means a patient who is accepted for home health services on or after the effective date of the suspension of payment and who had not been accepted before that date or, if previously accepted, had been discharged from care before that effective date. The term does not include an individual who was receiving services before the effective date of a suspension of payment sanction and who—

(1) Becomes eligible for Medicare after that effective date; or

(2) Interrupts treatment when admitted to an inpatient facility (regardless of whether the interruption occurs before or after the effective date of sanction) and resumes treatment after that effective date.

Plan of correction means an action plan submitted by an HHA with deficiencies, describing the steps the HHA will take to correct the deficiencies, and the expected completion dates for each step.

§ 488.404 General considerations.

(a) *Purpose.* The application of sanctions has a dual purpose—

(1) To protect Medicare beneficiaries against substandard quality care; and

(2) To encourage and assist providers to comply with the conditions of participation so that they may continue to provide quality services to Medicare beneficiaries.

(b) *Basis for decision to impose sanctions.* HCFA's decision to impose sanctions is based either on deficiencies found during surveys performed by State survey agencies and reported to HCFA with the agency's recommendations for corrective action, or on deficiencies found during HCFA's own surveys.

(c) *Imposition of sanctions*—(1) *General rules.* (i) HCFA may impose one or more of the sanctions specified in § 488.410 when HCFA or a State survey agency finds that an HHA has deficiencies at the condition of participation level.

(ii) Alternative sanctions may be imposed in lieu of termination of the provider agreement or concurrent with termination procedures, to continue until the day before the day termination is effective or compliance is achieved.

(2) *Choice of sanction: Factors considered.* The choice of sanction depends on one or more of the following:

(i) The severity of the deficiencies or noncompliance.

(ii) The scope of the deficiencies or noncompliance.

(iii) The relationship of one deficiency or goup of deficiencies to other deficiencies.

(iv) The HHA's previous compliance history in general, and specifically with reference to the cited deficiencies.

(v) The corrective and long-term compliance outcomes that HCFA hopes to achieve through application of the sanction.

(vi) Whether the deficiencies pose immmediate jeopardy to patient health and safety.

(vii) Whether the deficiencies are directly related to patient care.

(viii) The HHA's financial condition.

(3) *Number of sanctions.* HCFA may impose a separate sanction for each condition level deficiency, or a single sanction for all condition level deficiencies that are interrelated and subject to correction by a single remedy.

(4) *Notice of sanctions.* HCFA gives the HHA notice of the reasons for and the effective date of sanction at least 2 days but not more than 4 days before the effective date in immediate jeopardy situations, and at least 15 days before the effective date in all other situations.

(5) *Duration of alternative sanctions.* In the notice of sanction, HCFA informs the HHA that the sanction will continue for 6 months from the last day of the survey unless, before the end of that period HCFA finds that—

(i) The HHA has corrected the condition level deficiencies and is makng a good faith effort to correct lower level deficiencies; or

(ii) The deficiencies are such that HCFA finds it necessary to terminate the provider agreement.

(6) *Appeals procedures.* Imposition of any of the alternative sanctions specified in § 488.410 is subject to the appeals provisions for part 498 of this chapter.

(7) *Effect of pending appeal.* The effective date of an alternative sanction other than civil money penalty is not delayed because the provider has

appealed and the hearing or the hearing decision is pending.

§ 488.410 Available alternative sanctions.

The available alternative sanctions include the following.

(a) Appointment of a temporary manager.

(b) Imposition of civil money penalties, in accordance with subpart N of this part.

(c) Suspension of payment for new admissions.

(d) Suspension of payment for new admissions.

(d) Suspension of payment for new admissions who require particular types of services.

(e) State survey agency monitoring.

(f) Directed plan of correction.

§ 488.416 Action when deficiencies pose immediate jeopardy to patient health and safety.

(a) *Basic rule.* If an HHA's deficiencies pose immediate jeopardy to patient health and safety, HCFA determines whether to take immediate action to remove the jeopardy and correct the deficiencies through appointment of a temporary manager or to terminate the provider agreement.

(b) *Procedures.* (1) When HCFA immediately terminates the provider agreement rather than impose temporary management, it follows the termination procedures in § 489.53 of this chapter.

(2) When HCFA imposes temporary management, the following rules apply:

(i) Within 5 days from the last day of the standard or special survey, HCFA gives the HHA notice of intent to appoint a temporary manager.

(ii) The notice gives the HHA the option of accepting temporary management and making available to the manager sufficient funds and management support to bring the facility into compliance, or accepting termination of its provider agreement.

(iii) If the HHA accepts temporary management—

(A) It must notify HCFA to that effect by the 7th day after the last day of survey; and

(B) If HCFA receives timely notice, HCFA approves the selection of a temporary manager based on the State's recommendation, and installs the temporary manager within 10 days from the last day of survey.

(c) *Other actions.* HCFA may also, concurrent with appointment of a tempoary manager, impose any of the other sanctions specified in § 488.410.

(d) *Effect on continued program participation.* HCFA terminates the Medicare provider agreement as follows:

(1) Effective on the 23rd day after the last day of survey if—

(i) The HHA does not accept temporary management; or

(ii) Despite the HHA's acceptance, a temporary manager has not been appointed, and the immediate jeopardy has not been removed.

(2) Effective on the 23rd day after the appointment of the temporary manger unless, before that day, the HHA eliminates the conditions and practices that pose immediate jeopardy to patient health and safety.

§ 488.418 Action when there are deficiencies at the condition level but they do not pose immediate jeopardy to patient health and safety.

If an HHA no longer meets one or more of the conditions of participation, but the deficiencies do not pose immediate jeopardy to patient health and safety, the following rules apply;

(a) *Termination.* HCFA may terminate the provider agreement.

(b) *Alternative sanctions.* HCFA may impose any of the alternative sanctions listed in § 488.410 in lieu of termination.

(c) *Monitoring of the correction plan.* The State survey agency revisits the HHA no later than 60 days after the last day of survey to assess the HHA's progress in correcting the cited deficiencies.

(d) *Action by HCFA.* (1) If there are still condition level deficiencies, HCFA imposes the suspension of payment for new admissions sanction, effective no later than 90 days after the last day of survey.

(2) If the remaining deficiencies are below the condition level, HCFA may request a revised plan of correction, which must be designed to encourage prompt correction and must provide for achievement of full compliance no later than 12 months after the last day of survey.

(3) If the condition level deficiencies remain uncorrected, HCFA terminates the HHA's provider agreement effective no later than 6 months after the last day of survey.

§ 488.420 Action when deficiencies are below the condition level.

(a) *Basic requirement.* If an HHA has deficiencies only below the condition level, it must, as a condition for continued participation in Medicare, submit a correction plan that is acceptable to HCFA in content and time frames.

(b) *Time frames.* The time allowed (not to exceed 12 months from the last day of the survey) for correcting deficiencies depends on the nature of the deficiencies and on HCFA's evaluation of the HHA's capability to furnish adequate and safe care.

(c) *Monitoring the correction plan.* The State survey agency revisists and the HHA after the projected date for completion of all corrections under the plan.

(1) If there are still deficiencies and there has not been significant progress in correcting all deficiencies, HCFA may terminate the provider agreement.

(2) If there has been significant progress, HCFA may request a revised correction plan.

(3) The revised plan may not extend beyond 12 months from the last day of the survey.

§ 488.422 Continuation of payments to HHAs with deficiencies.

(a) *HHAs with deficiencies that pose immediate jeopardy to patient health and safety.* If the HHA's deficiencies pose immediate jeopardy to patient health and safety, payment continues until HCFA terminates the HHA's provider agreement in accordance with § 488.416(d).

(b) *HHAs with deficiencies that do not pose immediate jeopardy to patient health and safety.* HCFA may continue Medicare payments to an HHA with deficiencies that do not pose immediate jeopardy for up to 6 months from the last day of the survey, but only if the following conditions are met:

(1) The State survey agency recommends alternative sanctions in lieu of termination.

(2) The HHA has submitted a plan of correction that is approved by HCFA.

(3) The HHA agrees that if the corrections are not made in accordance with the approved plan and timetable, the HHA—

(i) Will refund any Medicare payments received for services furnished during the time period covered by the correction plan; and

(ii) Will not charge the beneficiary for any services for which the HHA refunds the Medicare payments.

§ 488.426 Temporary management.

(a) *Application.* (1) HCFA uses temporary management in immediate jeopardy situations.

(2) When there are condition level deficiencies that do not pose immediate jeopardy, HCFA may appoint a temporary manager to substitute for the HHA's manager or administrator and assist the provider to improve procedures and practices so as to comply with all conditions of participation.

(3) The temporary manager has the authority to hire, terminate, or reassign

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(c) *Monitoring the correction plan.* The State survey agency revisists and the HHA after the projected date for completion of all corrections under the plan.

(1) If there are still deficiencies and there has not been significant progress in correcting all deficiencies, HCFA may terminate the provider agreement.

(2) If there has been significant progress, HCFA may request a revised correction plan.

(3) The revised plan may not extend beyond 12 months from the last day of the survey.

§ 488.422 Continuation of payments to HHAs with deficiencies.

(a) *HHAs with deficiencies that pose immediate jeopardy to patient health and safety.* If the HHA's deficiencies pose immediate jeopardy to patient health and safety, payment continues until HCFA terminates the HHA's provider agreement in accordance with § 488.416(d).

(b) *HHAs with deficiencies that do not pose immediate jeopardy to patient health and safety.* HCFA may continue Medicare payments to an HHA with deficiencies that do not pose immediate jeopardy for up to 6 months from the last day of the survey, but only if the following conditions are met:

(1) The State survey agency recommends alternative sanctions in lieu of termination.

(2) The HHA has submitted a plan of correction that is approved by HCFA.

(3) The HHA agrees that if the corrections are not made in accordance with the approved plan and timetable, the HHA—

(i) Will refund any Medicare payments received for services furnished during the time period covered by the correction plan; and

(ii) Will not charge the beneficiary for any services for which the HHA refunds the Medicare payments.

§ 488.426 Temporary management.

(a) *Application.* (1) HCFA uses temporary management in immediate jeopardy situations.

(2) When there are condition level deficiencies that do not pose immediate jeopardy, HCFA may appoint a temporary manager to substitute for the HHA's manager or administrator and assist the provider to improve procedures and practices so as to comply with all conditions of participation.

(3) The temporary manager has the authority to hire, terminate, or reassign

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staff; obligate funds; and otherwise manage the HHA to correct the deficiencies and protect and ensure patient health and safety.

(4) The HHA pays the temporary manager's salary, which must be commensurate with salaries paid to other HHA managers in the geographic area.

(b) *Qualifications of temporary managers.* In order to be appointed temporary manager of an HHA an individual must—

(1) Be licensed as an HHA administrator if licensin is required in the State in which the HHA is located; or

(2) In lieu of licensure, have at least two years of experience as an HHA administrator.

(3) Be able to provide at least 20 hours a week of services to the provider.

(c) *Procedures for installation of a temporary manager.* The procedures are the same as those set forth in § 488.416, with one exception. When the deficiencies do not pose immediate jeopardy to patient health and safety, the timeframe for notice is at least 15 days instead of the 2 to 4 day period, and the timeframe for installation of the temporary manager is at least 20 days instead of 10.

(d) *Duration of temporary management.* Temporary management terminates when HCFA—

(1) Determines that the HHA is in compliance with all conditions of participation and has the capability to remain in full compliance; or

(2) Terminates the provider agreement because—

(i) The provider requests discontinuance of temporary management while still not in compliance with the conditions of participation; or

(ii) HCFA determines that the HHA is not in compliance with the conditions of participation at the end of the time specified in the plan of correction for the elimination of deficiencies.

§ 488.428 Civil money penalties.

The rules for imposition of civil money penalties are set forth in subp.art N of this part.

§ 488.430 Suspension of payment for new admissions.

(a) *Application.* HCFA may use this sanction when there are condition level deficiencies, regardless of whether those deficiencies pose immediate jeopardy. HCFA always uses suspension of payment in the following situations:

(1) When an HHA has not corrected any of deficiencies covered by the plan of correction within 90 days after the last day of the survey. (This 90-day period includes the 60-day period for correction of deficiencies and the minimum 15-day period for giving the provider advance notice of the imposition of the sanction and the effective date of sanction.)

(2) When an HHA has been out of compliance with one or more conditions of participation for three consecutive standard surveys.

(b) *Effect of sanction.* (1) As required by § 484.10(e) of this chapter, the HHA must give all new admissions oral and written notice of the suspension of payment sanction and of the fact that Medicare payment is not available for them.

(2) The HAA may not charge a newly admitted beneficiary for Medicare covered services for which Medicare payment is suspended unless the HHA can show that, before initiating care, it gave the beneficiary oral and written notice as required under paragraph (b)(1) of this section.

(c) *Duration.* The suspension of payment continues in effect until the HHA's compliance is verified or until HCFA terminates the HHA's provider agreement, no later than 6 months after the last day of survey, because the HHA still has condition level deficiencies.

§ 488.432 Suspension of payment for new admissions who require particular types of services.

(a) *Application.* HCFA may suspend payment for new admissions who require particular types of services (for example, physical therapy or speech pathology services) when HCFA or the State survey agency finds that the HHA is not currently able to provide those services safely and adequately.

(b) *Effect of sanction.* (1) As required under § 484.10(e) of this chapter, the HHA must give all new admissions oral and written notice of the type of services for which Medicare payment is not available because a suspension of payment sanction is in effect for those services.

(2) The HHA may not charge a newly admitted beneficiary for any of the particular services for which Medicare payment is suspended unless the HHA can show that, before initiating care, it gave the beneficiary oral and written notice as required by paragraph (b)(1) of this section.

(c) *Duration.* The suspension of payment continues in effect until the HHA's compliance is verified or until HCFA terminates the HHA's provider agreement, no later than 6 months after the last day of survey, because the HHA still has condition level deficiencies.

§ 488.436 State survey agency monitoring.

(a) *Application.* HCFA may require onsite, continuous or intermittent monitoring of an HHA in order to oversee implementation of a plan of correction that involves condition level deficiencies.

(b) *Requirements and limitations.* (1) State monitors are either employed by, or under contract to, the State survey agency.

(2) State monitors do not have managerial authority, do not serve as consultants, and do not advise the HHA on the best way to correct deficiencies. Their function is to observe and verifv the correction of deficiencies.

(3) State monitors are paid by the HHA.

(c) *Duration.* State monitoring continues for as long as a plan of correction for condition level deficiencies is being carried out.

§ 488.438 Directed plan of correction.

(a) *Application.* HCFA may impose a directed plan of correction when an HHA fails to submit an acceptable plan of correction for condition level deficiencies or when HCFA believes that the severity of the deficiencies warrants HCFA's directing the HHA to take specific actions.

(b) *Procedures.* A directed plan—

(1) Is developed by HCFA, or developed by the State survey agency, or the HHA's temporary manager and approved by HCFA; and

(2) Specifies the outcomes to be achieved, the corrective actions necessary to achieve those outcomes, and the time frame for achieving them.

§ 488.440 Termination of provider agreement.

(a) *Effect of termination.* Termination of the provider agreement terminates continuation of payment, and any alternative sanctions imposed, regardless of the time frames originally specified for continuation of payment and for the alternative sanctions.

(b) *Basis and time frames for termination*—(1) *Failure to accept and use temporary management.* HCFA terminates the Medicare provider agreement in accordance with § 488.416, or § 488.426, if the HHA does not accept and use temporary management.

(2) *Failure to correct condition level deficiencies.* If there are condition level deficiencies that remain uncorrected, HCFA terminates the HHA's provider agreement as follows:

(i) In immediate jeopardy situation, not later than 23 days after the last day of survey, or after the day the temporary manager is appointed, as specified in § 488.416.

(ii) If there is not immediate jeopardy, no later than 6 months after the last day of survey, as specified in § 488.418. (The 6-month period includes the 15 days required for the advance notice of termination that HCFA gives the public and the provider.)

(3) *Failure to submit an acceptable plan of correction.* HCFA terminates the Medicare provider agreement if the HHA fails to submit an acceptable plan of correction within time frames specified by HCFA in general instructions.

(4) *Failure to carry out a plan of correction for lower level deficiencies.* HCFA terminates the Medicare provider agreement if the HHA fails to carry out an approved plan of correction for lower level deficiencies.

(c) *Procedures for termination.* The procedures for termination of a Medicare provider agreement are those set forth in § 489.53 of this chapter.

(d) *HHA that also participates in Medicaid.* (1) If the HHA also participates in Medicaid, HCFA notifies the Medicaid agency of the reason for, and effective date of termination of the Medicare provider agreement so that the Medicaid agency may terminate the HHA's participation in Medicaid.

(2) HCFA also notifies the Medicaid agency of the fact that, except as provided in paragraph (d)(3) of this section, FFP is not available in State payments for services furnished by that HHA after the effective date of termination from Medicare.

(3) As an exception, FFP may be continued for up to 30 days after termination of the Medicare provider agreement, if the payments are for patients admitted to care before the effective date of termination and the facility is making a good faith effort to discharge the Medicaid patients from care or refer them to other HHAs.

Subpart N—Civil Money Penalties

§ 488.700 Basis and scope.

(a) *Statutory basis.* (1) Section 1891 (e) and (f) of the Act authorize the Secretary to impose civil money penalties on HHAs as alternative sanctions.

(2) These sections of the Act also make the appeals provisions of section 1128A of the Act, which include a hearing before an ALJ and judicial review by a U.S. Court of Appeals, applicable to civil money penalties.

(b) *Scope.* This subpart sets forth the procedures that HCFA follows to impose a civil money penalty.

§ 488.702 Definitions.

(1) As used in this subpart, *facility* means an HHA.

(2) The other definitions set forth in subpart I of this part are equally applicable in this subpart N.

§ 488.705 Basis for imposing a civil money penalty.

(a) HCFA may impose a civil money penalty against any facility determined to have deficiencies at the condition of participation level, regardless of whether those deficiencies pose immediate jeopardy to patient health and safety.

(b) HCFA may impose the penalty when the facility is found by the State survey agency or by HCFA to have had condition level deficiencies between the previous and the current surveys even if it was in compliance at the time of both surveys.

(c) HCFA does not impose a civil money penalty when deficiencies are below the condition level.

(d) HCFA may impose a civil money penalty in addition to termination or any other penalties specified in other subparts of this part, or available under State or Federal law.

§ 488.708 Amount of penalty.

(a) *Factors considered.* HCFA always takes into account the following factors, as assessed by the State:

(1) The facility's degree of culpability.

(2) The facility's history of previous offenses, including repeat deficiencies.

(3) The facility's financial condition.

(4) The nature, scope, severity, and duration of the noncompliance.

(5) The category of requirements with which the facility is out of compliance.

(b) *Range of penalty amount.* (1) For a condition level deficiency that poses immediate jeopardy to patient health and safety, the range is $3,050–$10,000 per day of noncompliance.

(2) For a condition level deficiency that does not pose immediate jeopardy, the range is $50–$3,000 per day of noncompliance.

(c) *Specific daily amounts.* (1) HCFA sets specific daily amounts using $50 intervals.

(2) If the immediate jeopardy is removed, but the deficiency continues, HCFA shifts the daily amount to the lower range.

(3) Within the ranges specified in paragraph (b) of this section, HCFA may increase the daily amount for a facility that alleges compliance but, on revisit by HCFA or the State survey agency, is found to still be out of compliance.

(4) Within the ranges specified in paragraph (b) of this section, HCFA increases the daily amount if the facility fails to correct cited deficiencies within the approved timeframe for a plan of correction.

§ 488.710 Procedures for imposition of civil money penalty.

(a) *Notice of intent.* (1) HCFA sends the facility written notice of its intent to impose a civil money penalty.

(2) HCFA sends the notice at least 2 days but not more than 4 days before the effective date of the penalty in immediate jeopardy situations, and at least 15 days before the effective date in all other situations.

(3) The notice includes the following information:

(i) The statutory basis for the penalty.

(ii) The proposed daily amount.

(iii) The factors (as described in § 488.708) that HCFA considered.

(iv) Instructions for responding to the notice.

(v) A specific statement regarding the facility's appeal rights, which are those set forth in part 498 of this chapter.

(b) *Appeal rights.* (1) If the facility requests a hearing, part 498 of this chapter applies.

(2) The facility has 60 days from the date of receipt of the notice to request a hearing in accordance with § 498.40 of this chapter.

(c) *Waiver of right to hearing.* If the facility waives its right to a hearing, HCFA may reduce the civil money penalty amount by 35 percent.

§ 488.712 Effective date and duration of penalty.

(a) *Effective date.* The sanction is effective retroactive to the tenth day after the last day of survey for immediate jeopardy situations, and the twentieth day after the last day of survey when the deficiencies do not pose immediate jeopardy.

(b) *Duration of penalty.* (1) The civil money penalty continues until the day before the day the deficiencies are corrected or, if the HHA's provider agreement is terminated, the day before the effective date of termination.

(2) The date of correction of deficiencies may be found to be earlier than the date of revisit if the provider can demonstrate, through a preponderance of evidence, that corrections were in fact completed, and compliance achieved, by that earlier date.

§ 488.714 Computation and notice of total penalty amount.

(a) *Computation.* HCFA computes the total penalty amount after the HHA's compliance is verified, or after HCFA sends the HHA notice of termination of

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(3) The notice includes the following information:

(i) The statutory basis for the penalty.

(ii) The proposed daily amount.

(iii) The factors (as described in § 488.708) that HCFA considered.

(iv) Instructions for responding to the notice.

(v) A specific statement regarding the facility's appeal rights, which are those set forth in part 498 of this chapter.

(b) *Appeal rights.* (1) If the facility requests a hearing, part 498 of this chapter applies.

(2) The facility has 60 days from the date of receipt of the notice to request a hearing in accordance with § 498.40 of this chapter.

(c) *Waiver of right to hearing.* If the facility waives its right to a hearing, HCFA may reduce the civil money penalty amount by 35 percent.

§ 488.712 Effective date and duration of penalty.

(a) *Effective date.* The sanction is effective retroactive to the tenth day after the last day of survey for immediate jeopardy situations, and the twentieth day after the last day of survey when the deficiencies do not pose immediate jeopardy.

(b) *Duration of penalty.* (1) The civil money penalty continues until the day before the day the deficiencies are corrected or, if the HHA's provider agreement is terminated, the day before the effective date of termination.

(2) The date of correction of deficiencies may be found to be earlier than the date of revisit if the provider can demonstrate, through a preponderance of evidence, that corrections were in fact completed, and compliance achieved, by that earlier date.

§ 488.714 Computation and notice of total penalty amount.

(a) *Computation.* HCFA computes the total penalty amount after the HHA's compliance is verified, or after HCFA sends the HHA notice of termination of

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its provider agreement but in no event before—

(1) The 60 day period for requesting a hearing has expired without a request from the HHA, or the HHA has explicitly waived its right to hearing; or

(2) The ALJ issues a decision following a hearing requested by the HHA.

(b) *Notice and due date.* The notice includes the following information:

(1) The daily penalty amount.

(2) Number of days for which the penalty is imposed.

(3) Total penalty amount.

(4) Due date for payment of the penalty.

§ 488.716 Due date for payment of penalty.

Payment of a civil money penalty is due 15 days after the notice specified in § 488.714(b).

488.718 Collection and settlement.

(a) *Collection of penalty amounts.* (1) The determined penalty amount may be deducted from any sums then or later owing by HCFA to the provider subject to the penalty.

(2) Interest accrues on the unpaid balance of the penalty, beginning on the due date and until the date of payment.

(3) The penalty amounts collected revert to the Medicare Trust Fund.

(b) *Settlement.* HCFA has authority to settle any case at any time before the ALJ issues a hearing decision.

PART 489—PROVIDER AGREEMENTS UNDER MEDICARE

1. The authority citation is revised to read as follows:

Authority: Secs. 1102, 1861, 1864m, 1866, 1871, and 1891 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395aa, 1395cc, 1395hh and 1395bbb).

§ 489.21 [Amended]

2. In § 489.21, the introductory text of paragraph (b) is republished and paragraph (b)(3) is revised to read:

* * * * *

(b) Services for which the beneficiary is entitled to have payment made if the provider—* * *

(3) Had complied with the requirements for timely utilization review (as set forth, for hospitals in part 482, and for long-term care facilities in part 483 of this chapter), so that a limitation on days of service had not been imposed under section 1866(a) of the Act.

* * * * *

§ 489.53 [Amended]

3. In § 489.53, the following changes are made:

a. In paragraph (b)(1), the phrase "part 405, subpart K of this chapter;" is changed to "subpart B of part 483 of this chapter."

b. Paragraph (c)(2) is revised to read as follows:

* * * * *

(2) *Exception.* For a provider with deficiencies that pose immediate jeopardy to the health and safety of patients, HCFA gives notice of termination at least 2 days before the effective date of termination of the provider agreement.

* * * * *

§ 489.60 [Amended]

4. In § 489.60, in paragraph (a), "subpart K of part 405 of this chapter", is changed to "subpart B of part 483 of this chapter".

Technical Amendments; Part 488

§ 488.1 [Amended]

1. In § 488.1—

a. The definition of *"Act"* is removed.

b. In the definition of *State,* "the Northern Mariana Islands," is added immediately after "Guam,".

§ 488.3 [Amended]

2. In § 488.3, paragraph (a)(2) is revised to read:

(a) * * *

(2) Be in compliance with the applicable conditions of participation, conditions for coverage, requirements of participation, or conditions for certification set forth elsewhere in this chapter.

* * * * *

§ 488.18 [Amended]

3. In § 488.18, in paragraphs (a) and (b), the parenthetical phrases are removed.

§ 488.20 [Amended]

4. In § 488.20, in paragraph (a), the second parenthetical phrase is removed and the following is added: "Special rules for SNFs are set forth in § 488.50".

§ 488.28 [Amended]

5. In § 488.28, in paragraph (a), the second parenthetical phrase is removed, and the following is added "Special requirements applicable to SNFs are set forth in § 488.50."

§ 488.60 [Amended]

6. In § 488.60—

(a) The phrase "of this chapter" is added immediately after "subpart U of part 405", wherever the latter appears.

(b) In paragraph (a), § 488.12 of this part" is changed to "§ 488.12".

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance; Program No. 13.773, Medicare-Hospital Insurance; Progam No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: September 7, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: January 28, 1991.

Louis W. Sullivan,

Secretary.

Editorial note: This document was received at the office of the Federal Register on July 26, 1991.

[FR. Doc. 91–18130 Filed 8–1–91; 8:45 am]

BILLING CODE 4120–01–M

FEDERAL MARITIME COMMISSION

46 CFR Parts 550, 580 and 581

[Docket No. 90–23]

Automated Tariff Filing and Information System ("ATFI"); Ocean Freight Tariffs in Foreign and Domestic Offshore Commerce; Inquiry

AGENCY: Federal Maritime Commission.

ACTION: Notice of availability of Supplement #3 to Batch Filing Guide.

SUMMARY: The Federal Maritime Commission announces the availability of Supplement #3 to the ATFI Batch Filing Guide. The transaction sets and other standards contained in the Batch Filing Guide must be followed in the private development of batch filing software which will be used in formatting and transmitting tariff material to the Commission's computer under ATFI.

DATES: Availability of Supplement #3: July 24, 1991.

ADDRESSES: Copies of Supplement #3 may be obtained from: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573.

FOR FURTHER INFORMATION CONTACT: John Robert Ewers, Deputy Managing Director, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523–5800.

SUPPLEMENTARY INFORMATION: The Batch Filing Guide, containing transaction sets and other standards, was appended to the Commission's December 26, 1990, Interim Report in this proceeding (56 FR 668, January 8, 1991). Supplement #3 (IB 20–91), like Supplements #1 and #2 issued by Information Bulletins IB 3–91 and IB 10–91, contains errata and addenda to the December 13, 1990, version of the ATFI Batch Filing Guide. The standards in the

Batch Filing Guide must be followed in developing batch filing software for formatting and transmitting tariff data under the new electronic system.

Joseph C. Polking,

Secretary.

[FR Doc. 91-18370 Filed 8-1-91; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 685

[Docket No. 910489-1190]

RIN 0648-AD98

Pelagic Fisheries of the Western Pacific Region

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: The Secretary of Commerce (Secretary) issues this proposed rule to implement Amendment 3 to the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP). The rule would prohibit longline fishing within 50 nautical miles (nm) of certain Northwestern Hawaiian Islands (NWHI) as well as within corridors between those islands. This action is necessary to prevent interactions between the fishery and the endangered Hawaiian monk seal *(Monachus schauinslandi).* The proposed rule would also establish a process for adjusting the size of the protected species zone and for changing the conservation and management measures to protect monk seals and other protected species in the NWHI.

DATES: Comments on the proposed rule must be received on or before September 16, 1991.

ADDRESSES: Send comments on the proposed rule and plan amendment to E.C. Fullerton, Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731. Copies of Amendment 3 may be obtained from the Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813.

Send comments on the proposed collections of information to the Director, Southwest Region, NMFS (see above), and to the Office of Information and Regulatory Affairs, Office of Management and Budget, ATTN: Paperwork Reduction Project 0648-0214, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Fisheries Management Division, Southwest Region, NMFS, Terminal Island, California, (213) 514-6660, or Alvin Katekaru, Pacific Area Office, Southwest Region, NMFS, Honolulu, Hawaii, (808) 955-8831.

SUPPLEMENTARY INFORMATION: The FMP for pelagic species was approved and implemented when there were only 37 longline vessels in the fishery. Initial consultation under section 7 of the Endangered Species Act concluded that the longline fishery would not likely jeopardize the continued existence of the Hawaiian monk seal if certain gear and reporting requirements were included in the implementing regulations.

On May 31, 1991, NMFS published a final rule implementing Amendment 2 to the FMP (56 FR 24731). In preparation of the amendment, a new biological opinion was issued, which concluded that the fishery would jeopardize the continued existence of the Hawaiian monk seal unless longline fishing was prohibited within 50 nm of the NWHI. Amendment 2 and a preceding emergency rule (56 FR 15842, April 18, 1991) established a protected species zone in the NWHI. Amendment 2 also placed restrictions on vessels with longline gear entering the zone that included permit requirements, logbooks, and the requirement to carry an observer if directed by the Regional Director of the Southwest Region (Regional Director), NMFS. The rule was promulgated as a result of the expansion of the longline fishery and concerns that the growth of the fishery would have an adverse impact on fish stocks, on other fisheries, and on protected species, including Hawaiian monk seals, birds, and turtles.

As a result of information about injuries to monk seals received early in 1991, the Western Pacific Fishery Management Council (Council) sponsored an interagency task force consisting of NMFS, the U.S. Fish and Wildlife Service, the Hawaii Department of Land and Natural Resources, the U.S. Coast Guard, and the Council. The task force recommended closing to longline fishing the area where monk seals are active. A public hearing was held in Honolulu, Hawaii, on February 26, 1991, to solicit public testimony on the need for the types of regulatory controls necessary to prevent future takings of seals by the longline fishery. Representatives of several environmental groups stated that they favored closures of 50 nm or more to guarantee no taking of monk seals, and proposed mandatory observer coverage in a buffer zone around the NWHI. Several representatives of the fishing industry indicated that they believed interactions were rare and would be limited to waters much closer to the islands. They felt that a closure of 20-30 nm would be sufficient with observer coverage out to 50 nm. There was general agreement on the need for more effective surveillance of the area to enforce whatever closures were implemented.

The Council subsequently met in an open session in Honolulu on February 27 through March 1, 1991, and concluded that prohibiting longline fishing in waters within 50 nm of the NWHI, including corridors connecting islands more than 100 nm apart, would be appropriate. In the Council's view, there was no evidence to suggest that there would be interactions beyond these boundaries. Preliminary data from mandatory logbooks during the period December 1, 1990, through January 31, 1991, show that only 19 of the 112 vessels that reported longline catches around Hawaii fished in the 50-nm zone Those 19 vessels made 103 sets, 6 percent of the total 1,667 sets made by all vessels. Of the total fish landed in this 2-month period, 2,343 were caught in the 50-nm zone. About 6.5 percent of the bigeye tuna and 24 percent of the swordfish were caught in the zone. This time period is believed to have been representative of the heaviest fishing for swordfish in the NWHI, so the harvest from the zone throughout the year is expected to be relatively much less important. Also, since the pelagic species are highly migratory species and the fleet is highly mobile, the catches described above do not necessarily mean that the fleet will suffer an economic loss if this catch is foregone. Much, if not all of the harvest, may be made up from outside the zone, although some additional effort may be required. The economic impacts of displacing the fleet from the zone is expected to be minimal.

In response to the evidence of interactions last winter, the Council requested that the Secretary implement an emergency closure of these waters. The Secretary concurred with the proposal, and the closure became effective on April 15, 1991 (56 FR 15842, April 18, 1991). This action closed to longline fishing the protected species zone defined in Amendment 2.

More recent information regarding incidental hooking and snagging of monk seals confirmed the occurrence of interactions with the fishery. As of May 28, 1991, nine monk seals with evidence of injuries resulting from interactions with longline fishing operations have been reported. Six of these seals were

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observed on Tern Island, French Frigate Shoals, with jaw or head injuries inconsistent with natural causes. Another seal was seen with a longline hook imbedded in its chest, trailing 30 feet of monofilament leader. Yet another was observed ashore on Tern Island with a hook in its mouth. A juvenile seal with a bleeding head injury and trailing monofilament line from its mouth was reported by a fishing vessel northwest of French Frigate Shoals in January 1991.

Some injured seals may have died at sea or hauled out on islands where they would not be seen, and observed injuries may represent only a part of the impact of the fishery. If seals were snagged or entangled only occasionally and released alive, the risks of injury and mortality from drowning, perforation of the gastrointestinal tract, or infection and septicemia still would be considerable. Any mortality resulting from these interactions could adversely affect the conservation and recovery of the endangered seal.

This proposed rule would implement Amendment 3 to the FMP, which permanently closes the protected species zone to longline fishing. Amendment 3 would also allow the Regional Director, Southwest Region, NMFS, with the Council's concurrence, to initiate rulemaking to change the size of the established protected species zone or to adopt new management measures necessary to protect endangered or threatened species in the protected species zone or other areas. These measures could include: Enlarging the protected species zone, requiring additional reporting from fishing vessels, restricting the type of gear used, and requiring observers to be taken on fishing trips.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Fishery Conservation and Management Act (Magnuson Act) requires the Secretary to publish regulations proposed by a Council within 15 days of the receipt of an amendment and proposed regulations. At this time, the Secretary has not determined that Amendment 3 is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the information, views, and comments received during the comment period.

The Council prepared an environmental assessment (EA) for Amendment 3. A copy of the EA is available from the Council (see "**ADDRESSES**").

The Assistant Administrator for Fisheries, NOAA, has initially determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The present action will not have a cumulative effect on the economy of $100 million or more, nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant adverse effects on competition, employment, investment, productivity, innovation, or competitiveness of U.S. based enterprises are anticipated.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this proposed rule, if adopted, would not have a significant impact on a substantial number of small entities. The displacement of a portion of the longline effort inside the protected species zone is not expected to have a significant economic effect, because the harvest can be anticipated to be recovered outside the area.

The proposed rule would make permanent a collection-of-information requirement subject to the provisions of the Paperwork Reduction Act. This information collection has been approved by the Office of Management and Budget (OMB), OMB Control Number 0648–0214. Operators of longline fishing vessels would be required to notify the NMFS Southwest Enforcement Office immediately upon entering and departing the protected species zone. The public reporting burden for this collection of information is estimated to be 10 minutes: 5 minutes for the pre-transit notification and 5 minutes for the post-transit notification.

This proposed rule would also establish a process by which the Regional Director may adopt additional management measures to ensure the protection of endangered or threatened species from fishing operations. One of these measures could be the establishment of an observer program whereby vessel operators intending to fish within certain areas would be required to notify the Regional Director so that NMFS would have the opportunity to place an observer aboard the vessel. If an observer program is established, the public reporting burden for this collection of information is estimated to be 2 minutes for the pretrip notification. This collection-of-information requirement has been approved by OMB, OMB Control Number 0648–0214.

Send comments on the burden estimates or any other aspect of these collections of information, including suggestions on how to reduce the burdens, to the Regional Director, Southwest Region, NMFS (see **ADDRESSES**), and to the Office of Information and Regulatory Affairs, Office of Management and Budget, ATTN: Paperwork Reduction Project 0648–0214, Washington, DC 20503.

The Council has determined that the proposed action is consistent to the maximum extent practicable with the approved coastal zone management program of the State of Hawaii. A letter requesting concurrence with this determination has been forwarded to the appropriate state agency.

Implementation of this rule would ensure that the fishery will not jeopardize the continued existence of any species listed as endangered or threatened under the Endangered Species Act, or the critical habitat of those species. The biological opinion issued for Amendment 2, which defined the protected species zone and required reporting from fishermen active within the zone, states that permanently closing the area to longline fishing is a reasonable and prudent alternative that must be adopted to safeguard the monk seal. This amendment implements that alternative.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 685

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 26, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 685 is proposed to be amended as follows:

PART 685—PELAGIC FISHERIES OF THE WESTERN PACIFIC REGION

1. The authority citation for part 685 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 685.2, the definition for "Northwestern Hawaiian Islands" is revised, to read as follows:

§ 685.2 Definitions.

* * * * *

Northwestern Hawaiian Islands means the EEZ of the Hawaiian Islands Archipelago lying to the west of 161 °W longitude.

* * * * *

3. In § 685.5, new paragraphs (s) and (t) are revised to read as follows:

§ 685.5 Prohibitions.

* * * * *

(s) Fish for pelagic species with longline gear within the protected species zone in the Northwestern Hawaiian Islands as defined in § 685.2.

(t) Fail to notify the NMFS Southwest Enforcement Office of intent to transit the protected species zone as required under § 685.14.

* * * * *

4. In § 685.11, the section heading is revised and paragraphs (a) through (c) are revised to read as follows:

§ 685.11 Protected species conservation.

(a) If the Regional Director determines that additional measures are needed in a particular area to prevent adverse effects of longline fishing on protected species, the Regional Director will, with the Council's concurrence, initiate rulemaking which could include:

(1) Requiring additional reporting from vessels fishing;

(2) Enlarging the protected species zone;

(3) Restricting the type of gear used;

(4) Requiring observers to be taken on fishing trips; or

(5) Adopting any other management measures necessary to protect endangered or threatened species.

(b) If an observer requirement is established under paragraph (a)(4) of this section, the operator of any fishing vessel subject to the permit requirements of § 685.9 of this part shall inform the Pacific Area Office at least 72 hours (not including weekends and holidays) before leaving port of the operator's intent to fish within the area in which observers are required. The operator shall provide this notice by contacting the Pacific Area Office, telephone (808) 955–8831. The notice must include the name of the vessel, the name of the operator, the intended departure date and location, and a telephone number at which the operator or his agent may be contacted during the business day (8 a.m. to 5 p.m. local time) to indicate whether an observer will be required on the fishing trip.

(c) The initial size of the protected species zone is 50 nm from the center geographical positions of Nihoa Island, Necker Island, French Frigate Shoals, Gardner Pinnacles, Maro Reef, Laysan Island, Lisianski Island, Pearl and Hermes Reef, Midway Islands, and Kure Island, as defined in § 685.2.

* * * * *

5. Section 685.14 is revised, to read as follows:

§ 685.14 Transit notification.

The operator of a longline fishing vessel subject to this part transiting the protected species zone shall notify the NMFS Southwest Enforcement Office at (808) 541–2727 immediately upon entering and immediately upon departing the protected species zone. The notification must include the name of the vessel, name of the operator, date and time (GMT) of entry or exit from the protected species zone, and location by latitude and longitude to the nearest minute.

[FR Doc. 91–18287 Filed 8–1–91; 8:45 am]

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[FR Doc. 91–18287 Filed 8–1–91; 8:45 am]

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Notices

Federal Register
Vol. 56, No. 149
Friday, August 2, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 91–111]

National Boll Weevil Cooperative Control Program; Supplement to the Draft Environmental Impact Statement

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice advises the public that the Animal and Plant Health Inspection Service (APHIS) has prepared a supplement to the draft environmental impact statement (EIS) for the National Boll Weevil Cooperative Control Program. We request comments from Federal, State, and local agencies; industry; conservation groups; and other members of the public. The comments received on the supplement to the draft EIS, plus those previously received on the draft EIS, will be considered in the development of the final EIS.

DATES: We will consider all written comments received on or before September 16, 1991.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Nancy Sweeney, Project Leader, Environmental Analysis and Documentation, Biotechnology, Biologics, and Environmental Protection, ASPHIS, USDA, Room 828, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket 91–111. Comments we receive may be inspected at USDA, 14th and Independence Avenue, SW., room 1141, South Building, Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

A limited number of copies of the supplemental environmental impact statement (EIS) are available at the following locations:

1. Southeast Regional Office: A. S. Elder, Regional Director, 3505 25th Avenue, Building 1 North, Gulfport, MS 39501, (601) 863–1813.
2. South Central Regional Office: Robert L. Williamson, Regional Director, 3505 Boca Chica Boulevard, Suite 360, Brownsville, TX 78521–4065, (512)–2610.
3. Western Regional Office: James Reynolds, Regional Director, 9580 Micron Avenue, Suite 1, Sacramento, CA 95827, (916) 551–3220.
4. APHIS Reading Room, USDA: Room 1141, South Building, 14th and Independence Avenue, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Nancy Sweeney, Project Leader, Environmental Analysis and Documentation, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, Room 828, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8565.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 1989, we published in the **Federal Register** (54 FR 31710–31711, Docket No. 89–134) a notice announcing the availability of a draft EIS for the National Boll Weevil Cooperative Control Program. The notice also requested comments on or before October 2, 1989. On October 12, 1989, we published in the **Federal Register** (54 FR 41859–41860, Docket No. 89–168) a notice extending the comment period on the draft EIS to November 3, 1989. In response to some of the comments received, we determined that a supplement was necessary to address the impacts the program may have in Alabama and to describe the steps we have taken to assess possible effects on listed and proposed endangered and threatened species across the cotton belt. Thus, this notice requests comments on the supplement, which has two parts:

Implementation of the Program in Alabama, and Analysis and Protection of Endangered and Threatened Species.

We will consider all comments on the supplement if received on or before the end of the 45-day comment period. Following the comment period, we will analyze these comments and those received on the draft EIS to develop the final EIS. A "Notice of Availability" of the final EIS will be published in a subsequent **Federal Register** notice.

Done in Washington, DC, this 29th day of July 1991.

Robert Melland,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–18365 Filed 8–1–91; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Southern California Edison Company, Lucerne Valley/Big Bear Valley 115kV Electric Transmission Line, San Bernardino National Forest, San Bernardino County, CA; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement (EIS) for a Southern California Edison Company (SCE) proposal to furnish additional electrical power to Big Bear Valley and surrounding areas. The proposal is to provide 100 MW of capacity to Southern California Water Company's Bear Valley Electric District by constructing a 115 kilovolt (kV), double circuit, six conductor electric transmission line and electrical system substation on National Forest System lands. The proposed transmission line would run from the existing Cottonwood Substation in Lucerne Valley to a new substation in the Big Bear Lake area. The substation would connect to Southern California Water Company's existing Bear Valley Electric District distribution system by way of two 33 kV underground circuits. The first circuit will connect to the existing North Shore 33 kV underground line; the second circuit will tie into the existing South Shore 33 kV circuit with 1400 feet of new undergound line. The Forest Service will serve as the lead Federal agency in meeting the requirements of the National Environmental Policy Act (NEPA).

ISSUES IDENTIFIED: Initial scoping and discussions with the proponent have identified the following issues: Threatened and endangered species, sensitive plant species, wildlife, road location, visual quality, cultural resources, recreation, health and safety, economics, mineral development, air

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quality, water quality, and other land uses.

SUPPLEMENTARY INFORMATION: The proposed project includes a 14 mile long powerline and associated poles, a two and one-half acre substation complex (approximately 300 X 350 feet), and associated access/ maintenance roads. Depending on the route selected, the proposal could also involve the removal of other powerlines, pole structures, and substation equipment. Single pole structures, H-frame structures, and a combination of both will be analyzed.

The existing 33 kV line from the Cottonwood Substation to the Goldhill Substation north of Baldwin Lake supplies most of the electrical power to Big Bear Valley and the surrounding areas. Bear Valley Electric states that their electrical system currently operates at full capacity during peak demand periods. Based on the San Bernardino County General Plan and the Big Bear Lake Community Development Plan, future demand for electricity in the area is expected to increase as residential and commercial growth continue. Southern California Edison and Bear Valley Electric are proposing to construct the new system to meet all demand for the foreseeable future.

The Draft EIS (DEIS) is expected to be available for public review by April 1992 and comments will be received for a period of 45 days following the date that the notice of its availability is published in the **Federal Register**. It is important that those interested in the management of the San Bernardino National Forest participate at that time. To be most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the document or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations For Implementing The Procedural Provisions Of The National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal Court decisions have established that reviewers of DEISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions, [*Vermont Nuclear Power Corp.* versus *NRDC*, 435 U.S. 519, 553 (1978)], and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS, [*Wisconsin Heritages, Inc.* versus *Harris*, 490 F. Supp. 1338 (E.D. Wisc. 1980)]. The reason for this is to ensure that substantive comments and objections are made available to the Forest Service when they can meaningfully consider them and respond to them in the final document. All comments will be considered and analyzed in preparing the final EIS, which is scheduled to be completed by July 1992. The responsible official will document the decision in a Record of Decision which will be subject to appeal under the provisions of 36 CFR part 217.

DATES: Comments are requested on this notice concerning the scope of analysis of the draft EIS. Comments must be received on or before September 3, 1991.

PUBLIC MEETING: A public meeting, to explain the proposal in more detail and to answer any associated questions, will be held at 10 a.m. on Saturday, August 17, 1991, at the Performing Arts Center, Big Bear Civic Center Office, 39707 Big Bear Boulevard, Big Bear Lake, CA.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis for the Southern California Edision Company proposal to Gene Zimmerman, Forest Supervisor, San Bernardino National Forest, 1824 S. Commercenter Circle, San Bernardino, CA 92408–3430.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and preparation of the EIS to Paul Bennett, Special Uses Assistant, P.O. Box 290, Fawnskin, CA 92333 or telephone (714) 866–3437.

Dated: July 25, 1991.

Gene Zimmerman,

Forest Supervisor.

[FR Doc. 91–18338 Filed 8–1–91; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–502]

Preliminary Results of Antidumping Duty Administrative Review: Certain Iron Construction Castings From the People's Republic of China

AGENCY: International Trade Administration, Import Administration, Commerce.

EFFECTIVE DATE: August 2, 1991.

FOR FURTHER INFORMATION CONTACT: Michael Ready, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377–2613.

PRELIMINARY RESULTS:

Background

On May 9, 1986, the Department of Commerce (the Department) published in the **Federal Register** (51 FR 17222) an antidumping duty order on iron construction castings from the People's Republic of China (PRC). Petitioners, the Municipal Castings Fair Trade Council, and two respondents, Beijing Metals and Minerals Import and Export Corporation and Guangdong Metals and Minerals Import and Export Corporation (Minmet Beijing and Minmetals Guangdong) requested that we conduct an administrative review of iron construction castings from the PRC for the May 1, 1989 through April 30, 1990 period. We published the notice of initiation on July 6, 1990, (55 FR 27859).

Questionnaires were sent to ten exporters, including those specifically named by petitioner in its request to initiate the review. Minmetals Guangdong responded to our questionnaire on October 1, 1990. Further information was submitted to Minmetals Guangdong on November 15, 1990, and on June 7 and July 16, 1991. Despite its request for a review, Minmet Beijing did not respond to the questionnaire and has not been a participant in the review.

Scope of Review

Imports covered by this review are shipments of iron construction castings, limited to: manhole covers, rings and frames; catch basin grates and frames; cleanout covers and frames used for drainage or access purposes for public utility, water and sanitary systems; and valve, service and meter boxes which are placed below ground to encase water, gas, or other valves, or water or gas meters. These articles must be of cast iron, not alloyed, and not malleable. Until January 1, 1989, iron construction castings were classifiable under items 657.0950 and 657.0990 of the Tariff Schedules of the United States Annotated (TSUSA). Certain iron construction castings are currently classifiable under subheadings 7325.10.00.00 and 7325.10.00.50 of the Harmonized Tariff Schedule (HTS). Although the HTS and TSUSA subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Separate Rate

In a recent final determination concerning sparklers from the PRC (56 FR 20588, May 6, 1991), the Department stated certain criteria for assigning separate rates to respondents in non-

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Filed 8–1–91; 8:45 am]

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August 2, 1991.

ORMATION CONTACT:
Office of Antidumping
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de Administration, U.S.
ommerce, 14th Street
Avenue NW.,
20230; telephone: (202)

PRELIMINARY RESULTS:

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Scope of Review

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Separate Rate

In a recent final determination concerning sparklers from the PRC (56 FR 20588, May 6, 1991), the Department stated certain criteria for assigning separate rates to respondents in non-market-economy (NME) cases. As stated in the **Federal Register** notice (at 20589):

> We have determined that exporters in non-market-economy countries are entitled to separate, company-specific margins when they can demonstrate an absence of central government control, both in law and in fact, with respect to exports. Evidence supporting, though not requiring, a finding of *de jure* absence of central control includes: (1) an absence of restrictive stipulations associated with an individual's exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; or (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of central government control with respect to exports is based on two prerequisites: (1) whether each exporter sets its own export prices independently of the government and other exporters; and (2) whether each exporter can keep the proceeds from its sales.

Accordingly, on June 7, 1991, we sent to counsel for Minmetals Guangdong, the only participating respondent, a letter eliciting information and documentation that we might evaluate in determining whether that firm met the criteria and, therefore, merited a separate deposit rate.

Minmetals Guangdong's response to our request for information included the following:

1. The company's business license, which contains no restrictive stipulations;
2. Regulations on the Management of Enterprise Legal Person Registration under which the company separated from its parent;
3. Claims that Minmetals Guangdong sets its own export prices independently of the government and other exporters, provides samples of Minmetals Guangdong's correspondence with a customer (to demonstrate the price negotiation process) attached, and claims that Minmetals Guangdong competes with other PRC castings exporters; and
4. A certificate from the Bank of China stating that Minmetals has an independent foreign exchange account and may freely transfer funds to or from the account.

Minmetals Guangdong's submission also included the following:

1. The company's corporate charter which states, among other things, that the company is a financially independent economic entity responsible for determining its own profits and losses which has independent decision making power regarding all of its financial matters as long as such decisions do not violate the state's laws and regulations; and
2. A certificate from the Commission of Foreign Economic Relations and Trade of Guangdong Province which states, among other things, that Minmetals Guangdong "is an independent legal person that was set up and is now existing in accordance with the Chinese law."

Based on the information contained in respondent's submission, we have preliminarily determined that Minmetals Guangdong satisfies the criteria established in *Sparklers* and should therefore be assigned a separate rate.

Period of Review

This review covers the period May 1, 1989 through April 30, 1990.

United States Price

In calculating United States price, the Department used purchase price, as defined in section 772 of the Act, because the merchandise was sold to unrelated purchasers for exportation to the United States prior to importation into the United States, and because exporter's sales price (ESP) methodology was not indicated by other circumstances. Purchase price was based on the packed price to unrelated purchasers in the United States. We made deductions for foreign inland freight and ocean freight. In accordance with the policy set forth in our final determination in the investigation of carbon steel wire rod from Poland (49 FR 29434, July 20, 1984), we based the deduction for inland freight charges on freight rates in a market-economy country. Most of the goods were transported from China to the United States aboard market-economy carriers. For the few shipments which were transported aboard non-market-economy carriers, the ocean freight charges were comparable to the charges of the market-economy carriers. Therefore, we based the deduction for ocean freight for all sales on the actual charges submitted by the respondent.

Foreign Market Value

Section 773(c)(1) of the Act provides that the Department shall determine foreign market value (FMV) using a factors of production methodology if (1) the merchandise is exported from an NME country, and (2) the information does not permit the calculation of FMV using home market prices, third country prices, or constructed value under section 773(a).

Pursuant to section 771(18) of the Act and based on determinations in prior proceedings, the PRC is an NME. (See *e.g.*, Final Determination of Sales at Less than Fair Value: Natural Menthol From the People's Republic of China (46 FR 24614, May 1, 1981); Initiation of Antidumping Duty Investigation: Refined Antimony Trioxide From the People's Republic of China (56 FR 23549, May 22, 1991). Respondents have not refuted this determination. Furthermore, absent a showing that all costs and prices are market-oriented, FMV in an NME cannot be based on home market prices, third country prices, or constructed value under section 773(a). No such showing has been made in the course of this review. As a result, section 773(c) of the Act, as amended by the Omnibus Trade and Competitiveness Act of 1988 ("1988 Act"), requires the Department to determine foreign market value on the basis of the market valuation of the factors of production utilized in producing the subject merchandise (unless the Department determines the available information on factor prices in market economies to be inadequate).

The 1988 Act further permits the Department to value the factors of production in one or more market economy countries that are at a level of economic development comparable to that of the NME and that are significant producers of comparable merchandise.

Of countries known to produce castings, we have determined that India, Pakistan and the Philippines are comparable to the PRC in terms of per capita gross national product (GNP), the growth rate in per capita GNP, and the national distribution of labor. We calculated FMV based on factors of production reported by the Chinese exporter, Minmetals Guangdong. We used information from India and Pakistan to value the various factors of production.

We chose India as the most comparable surrogate on the basis of per capita GNP, the growth rate in per capita GNP, and the national distribution of labor. Where possible, we obtained information for valuing factors of production from publicly available sources in India.

For items for which an Indian price was not available, we assigned a value based on data from Pakistan. Where appropriate, the factor values were adjusted to the period of review using wholesale price indices published by the International Monetary Fund.

The respondent reported the amounts of raw materials and energy needed to manufacture one metric ton of castings. We multiplied each per-ton factor quantity by the value for each component material, and summed the resulting individual raw material values. We then added an amount for direct labor cost. Next, we added an amount for factory overhead. We then added 10 percent, the amount reported by an

Indian company, for general expenses. We next added 10 percent for profit, as reported by the Indian manufacturer, because this figure is higher than the 8 percent statutory minimum for profit. Finally, we added an amount for packing costs to arrive at a constructed foreign market value for a single metric ton of castings. We then compared this value to the exporter's U.S. price for a metric ton of castings.

Use of Best Information Available

We have determined, in accordance with section 776(c) of the Act, that the use of best information available is appropriate for entries of the subject merchandise from exporters other than Minmetals Guangdong.

In deciding what to use as best information available, section 353.37(b) of the Department's regulations provides that the Department may take into account whether a party refused to provide requested information. Thus, the Department determines on a case-by-case basis what is best information available. When a company refuses to provide the information requested in a timely manner, or otherwise significantly impedes the Department's review, the Department will normally assign to that company the highest margin for the subject merchandise of either: (1) The highest margin calculated for that company in any previous review or the original investigation; or (2) the highest calculated margin for any respondent that supplied adequate responses for the current review. In this case, the highest margin is the margin we have calculated for Minmetals Guangdong in the current review. Accordingly, we will assign, as best information available, the margin we calculated for Minmetals Guangdong to all other exports from the PRC.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminary determine that the following margins exist:

Exporters	Margin (percent)
Guangdong Metals & Minerals Import & Export Corporation	63.28
All others	63.28

The cash deposit rate for all producers or exporters of iron construction castings from the PRC will be that established in the final results of this administrative review. These deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of iron construction castings from the PRC entered, or withdrawn from warehouse, for consumption on or after that publication date, as provided by section 751(a)(1) of the Act. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Public Comment

In accordance with 19 CFR 353.38, we will hold a public hearing, if requested, at 9:30 a.m. on September 18, 1991 in room 3708, to afford interested parties an opportunity to comment on these preliminary results. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. Interested parties who wich to request or participate in a hearing must submit a written request within ten days of the date of publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reasons for attending; and, (4) a list of the issues to be discussed.

In addition, ten copies of the business proprietary version and five copies of the non-proprietary version of case briefs must be submitted to the Assistant Secretary no later than September 4, 1991. Ten copies of the business proprietary version and five copies of the non-proprietary version of rebuttal briefs must be submitted to the Assistant Secretary no later than September 11, 1991. An interested party may make a presentation only on arguments included in that party's case or rebuttal brief. If no hearing is requested, interested parties still may comment on these preliminary results in the form of case and rebuttal briefs. Written argument should be submitted in accordance with 19 CFR 353.38 and will be considered if received within the time limits specified in this notice.

This administrative review and notice are in accordance with sections 751(a)(1) of the Act and 19 CFR 353.22(c)(5).

Dated: July 28, 1991.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-18404 Filed 8-1-91; 8:45am]

BILLING CODE 3510-DS-M

[A-588-015]

Television Receivers, Monochrome and Color, From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration/International Trade Administration Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by two domestic parties to the proceeding and one respondent, the Department of Commerce has conducted an administrative review of the antidumping finding on television receivers, monochrome and color, from Japan. The review covers one manufacturer/exporter of this merchandise to the United States, Mitsubishi Electric Corporation and Mitsubishi Electric Sales America, for the period March 1, 1988, through February 28, 1989. The preliminary results indicate the existence of dumping margins for the respondent during the period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 2, 1991.

FOR FURTHER INFORMATION CONTACT: Orlando Velez, David Mason, or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone; (202) 377-2923.

SUPPLEMENTARY INFORMATION:

Background

On April 19, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 16069) the final results of its last administrative review of the antidumping finding on television receivers, monochrome and color, from Japan (36 FR 4597, March 10, 1971). Two domestic parties to the proceeding, Zenith Corporation (Zenith) and the United Elecrical Workers of America, Independent International Brotherhood of Electrical Workers, International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL-CIO, and Industrial Union Department, AFL-CIO (the Unions), and certain respondents, including Mitsubishi Electric Corporation and Mitsubishi Electric

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[A-588-015]

Television Receivers, Monochrome and Color, From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration/International Trade Administration Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by two domestic parties to the proceeding and one respondent, the Department of Commerce has conducted an administrative review of the antidumping finding on television receivers, monochrome and color, from Japan. The review covers one manufacturer/exporter of this merchandise to the United States, Mitsubishi Electric Corporation and Mitsubishi Electric Sales America, for the period March 1, 1988, through February 28, 1989. The preliminary results indicate the existence of dumping margins for the respondent during the period.

As a result of the review, the Department has preliminarily determined to assess antidiumping duties equal to the differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 2, 1991.

FOR FURTHER INFORMATION CONTACT: Orlando Velez, David Mason, or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone; (202) 377–2923.

SUPPLEMENTARY INFORMATION:

Background

On April 19, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 16069) the final results of its last administrative review of the antidumping finding on television receivers, monochrome and color, from Japan (36 FR 4597, March 10, 1971). Two domestic parties to the proceeding, Zenith Corporation (Zenith) and the United Elecrical Workers of America, Independent International Brotherhood of Electrical Workers, International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL–CIO, and Industrial Union Department, AFL–CIO (the Unions), and certain respondents, including Mitsubishi Electric Corporation and Mitsubishi Electric

Sales America (Mitsubishi), requested that we conduct an administrative review for the period March 1, 1988, through February 28, 1989, in accordance with § 353.22(a) of the Department's regulations. On April 28, 1989, we published a notice of initiation of an administrative review for Fujitsu General, Funai, Hitachi, Matsushita, Mitsubishi, NEC, Sanyo, Victor, Sharp, and Toshiba (54 FR 18320). The Department has already completed the administrative review for several of the parties listed above. At present, the Department is conducting the administrative review for Mitsubishi pursuant to § 751 of the Tariff Act of 1930 (the Tariff Act). Notice of preliminary results for the other parties listed above have been or will be published separately.

On June 28, and December 19, 1989, Mitsubishi submitted its questionnaire response to the Department. Subsequently, we requested and received supplementary information from Mitsubishi. In addition, Zenith made a timely allegation that Mitsubishi made sales in the home market at prices below its cost of production. Pursuant to Zenith's allegations, we initiated a cost investigation. On May 6, 1991, Mitsubishi submitted its cost questionnaire response to the Department.

Scope of the Review

Imports covered by this review are shipments of television receivers, monochrome and color, from Japan. Television receivers include, but are not limited to, units known as projection televisions, receiver monitors, and kits (containing all parts necessary to receive a broadcast television signal and produce a video image). Not included are certain monitors not capable of receiving a broadcast signal, certain combination units, and certain subassemblies not containing the components essential for receiving a broadcast television signal and producing a video image. Prior to January 1, 1989, television receivers, monochrome and color, were classifiable under item numbers 684.9230, 684.9232, 684.9234, 684.9236, 684.9238, 684.9240, 684.9245, 684.9246, 684.9248, 684.9250, 684.9252, 684.9253, 684.9255, 684.9256, 684.9258, 684.9262, 684.9263, 684.9265, 684.9270, 684.9275, 684.9400, and 684.9655 of the Tariff Schedules of the United States Annotated (TSUSA). As of January 1, 1989, this merchandise is classifiable under Harmonized Tariff Schedules (HTS) item numbers 8528.10.80, 8528.11.60, and 8528.20.00. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This review covers one manufacturer and/or exporter of Japanese television receivers, monochrome and color, for the period March 1, 1988, through February 28, 1989.

United States Price

In calculating United States price for Mitsubishi, the Department used exporter's sales price (ESP), as defined in § 772 of the Tariff Act. ESP was based on delivered prices to unrelated purchasers in the United States. We made adjustments, as applicable, for ocean freight, marine insurance, U.S. and Japanese inland freight, Japanese inland insurance, U.S. and foreign brokerage fees, U.S. duties, discounts, rebates, credit, royalties, warranties, inventory carrying costs, interest costs for the period of transit, selling expenses incurred in Japan for U.S. sales, and the U.S. subsidiary's selling expenses. Where appropriate, we added an amount to U.S. price to account for the Japanese commodity taxes which were rebated or not collected by reason of exportation of the merchandise to the United States, as specified in section 772(d)(1)(C) of the Tariff Act.

Foreign Market Value

In calculating foreign market value for Mitsubishi, we used home market price, as defined in section 773 of the Tariff Act.

Zenith alleged that Mitsubishi sold televisions in the home market at prices below the cost of production. We considered the allegations sufficient to warrant an investigation of possible sales below cost of production. When more than 10 percent of the sales of a particular model are determined to be below cost, we exclude those sales from our FMV calculation. In this case, we found it unnecessary to exclude sales in the home market.

We made adjustments, as applicable, for inland freight and insurance, discounts, credit expenses, sales promotions, advertising, warranties, royalties, differences in the physical characteristics of the merchandise, differences in commodity tax amounts, packing charges, and indirect selling expenses not exceeding the amount of U.S. indirect selling expenses.

Preliminary Results of Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margin exists for the period March 1, 1988, through February 28, 1989:

Manufacturer/exporter	Margin (percent)
Mitsubishi	2.[illegible]

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first workday thereafter. Interested parties may submit case briefs and/or written comments not later than 30 days after the date of publication. Rebuttal briefs, limited to issues raised in case briefs, may be filed not alter than 37 days after the date of publication. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entires. Individual differences between United States price and foreign market value may vary from the percentage stated below. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated dumping duties of 35.40 percent, based on the margin for Mitsubishi in the March 1, 1989, through Febraury 28, 1990 review period, will be required for Mitsubishi. For any future entries of this merchandise from an exporter not covered in this or in prior reviews, and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of 17.07 percent, based on the final results of the March 1, 1989 through February 28, 1990 administrative review, shall be required. These deposit requirements are effective for all shipments of Japanese television receivers, monochrome and color, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and this notice are in accordance with § 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Commerce regulations (19 CFR 353.22) (1990).

Dated: July 26, 1991

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–18405 Filed 8–1–91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-015]

Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of Antidumping Duty Administrative review.

SUMMARY: On June 6, 1991, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on television receivers, monochrome and color, from Japan. The review covers one manufacturer/exporter of this merchandise to the United States, the Sharp Corporation, and the periods March 1, 1986, through February 28, 1987, and March 1, 1988, through February 28, 1989.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received and the correction of certain clerical errors, we have changed the final results. The final margins range from 20.94 percent to 30.76 percent.

EFFECTIVE DATE: August 2, 1991.

FOR FURTHER INFORMATION CONTACT: Zev Primor or Melissa Skinner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-4851.

SUPPLEMENTARY INFORMATION:

Background

On June 6, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 26061) the preliminary results of its antidumping duty administrative review of the antidumping finding on television receivers, monochrome and color, from Japan (36 FR 4597, March 10, 1971). We have now completed this administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of Review

Imports covered by the review are shipments of television receivers, monochrome and color, from Japan. Television receivers include, but are not limited to, units known as projection televisions, receiver monitors, and kits (containing all parts necessary to receive a broadcast television signal and produce a video image). Not included are certain monitors not capable of receiving a broadcast signal, certain combination units, and certain subassemblies not containing the components essential for receiving a broadcast television signal and producing a video image. Prior to January 1, 1989, television receivers, monochrome and color, were classifiable under item numbers 684.9230, 684.9232, 684.9234, 684.9236, 684.9238, 684.9240, 684.9245, 684.9246, 684.9248, 684.9250, 684.9252, 684.9253, 684.9255, 684.9256, 684.9258, 684.9262, 684.9263, 684.9265, 684.9270, 684.9275, 684.9400, and 684.9655 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under item numbers 8528.10.80 and 8528.20.00 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received timely comments from Sharp Corporation (Sharp) and two domestic interested parties, Zenith Electronics Corporation (Zenith) and Montgomery Ward & Co., Incorporated (Montgomery Ward).

In this final determination, we have corrected the following clerical errors: (1) The equation calculating the commodity tax base in the exporter's sales price (ESP) computer programs; (2) the adjustment in the indirect selling expenses; and (3) the U.S. interest rates used in the calculation of the credit and inventory carrying-cost expenses.

Comment 1: Zenith states that the Department's treatment of Japanese commodity taxes rebated or not collected by reason of exportation of the merchandise was unlawful. According to Zenith, the Department added the full amount of the tax to U.S. price, and made a circumstance-of-sale (COS) adjustment to foreign market value (FMV) for the difference between the amount of Japanese and U.S. tax. Zenith argues that the Court of International Trade (CIT) in *Zenith*) Electronics Corp. v. *United States,* 755 F. Supp. 397 (1990) (as clarified by the Court order dated February 20, 1991) (*Zenith* and in *Daewoo Electronics Co.* v. *United States,* 712 F. Supp. 931 (1989) (*Daewoo*), ruled that the Department must cap the amount of commodity or consumption tax added to U.S. price at the amount of tax added to FMV, and that the Department is forbidden from neutralizing the tax adjustment to U.S. price by making COS adjustment to FMV for differences in taxes.

Department's Position: We do not agree with the CIT in *Zenith* or *Daewoo,* but have not had an opportunity to appeal the issue on its merits. Consistent with our longstanding practice, we have not attempted to measure the amount of tax "passed-through" to customers in the home market. We do not agree that the statutory language limiting the amount of adjustment to the amount of tax "added to or included in the price" of color televisions (CTVs) in the home market requires the Department to measure the incidence of tax.

Because we believe that dumping margins should neither be inflated nor deflated by differences between Japanese taxes and constructed taxes applied to U.S. price, we do not agree with the CIT's position on adjustments for differences in commodity taxes. After calculating the amount of commodity and consumption tax and adding it to U.S. price, we make an adjustment to FMV for the differences in taxes by deducting the Japanese consumption and commodity tax from FMV and replacing it with the constructed U.S. commodity and consumption tax. This method has the same effect on the absolute margin calculated as would capping the amount of U.S. tax added to U.S. price. See our responses to Comment 1 in Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Review (56 FR 12702, March 27, 1991) and our response to Comment 4 in Color Television Receivers, Except for Video Monitors, from Taiwan; Final Results of Antidumping Duty Administrative Review (56 FR 31380, July 10, 1991).

Comment 2: Zenith argues that the Department should take into account the average age and balance of each account payable relating to home market sales, and apply the respondent's short-term interest rate to those average ages and balances to offset all claimed selling expenses. Zenith maintains that the true cost of a discount or rebate is the discount or rebate amount minus the savings the respondent realized by paying the rebate or discount after the obligation to pay has been incurred.

Department's Position: We disagree with Zenith. We avoid imputing expenses or costs when a company quantifies or documents its actual expenses, and when the company's quantification accurately reflects the expense to the seller. Since we have determined that Sharp accurately quantified its home market selling expenses, and that its claims accurately reflected these expenses, we have not reduced them by the amount of any

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but have not had an opportunity to appeal the issue on its merits. Consistent with our longstanding practice, we have not attempted to measure the amount of tax "passed-through" to customers in the home market. We do not agree that the statutory language limiting the amount of adjustment to the amount of tax "added to or included in the price" of color televisions (CTVs) in the home market requires the Department to measure the incidence of tax.

Because we believe that dumping margins should neither be inflated nor deflated by differences between Japanese taxes and constructed taxes applied to U.S. price, we do not agree with the CIT's position on adjustments for differences in commodity taxes. After calculating the amount of commodity and consumption tax and adding it to U.S. price, we make an adjustment to FMV for the differences in taxes by deducting the Japanese consumption and commodity tax from FMV and replacing it with the constructed U.S. commodity and consumption tax. This method has the same effect on the absolute margin calculated as would capping the amount of U.S. tax added to U.S. price. See our responses to Comment 1 in Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Review (56 FR 12702, March 27, 1991) and our response to Comment 4 in Color Television Receivers, Except for Video Monitors, from Taiwan; Final Results of Antidumping Duty Administrative Review (56 FR 31380, July 10, 1991).

Comment 2: Zenith argues that the Department should take into account the average age and balance of each account payable relating to home market sales, and apply the respondent's short-term interest rate to those average ages and balances to offset all claimed selling expenses. Zenith maintains that the true cost of a discount or rebate is the discount or rebate amount minus the savings the respondent realized by paying the rebate or discount after the obligation to pay has been incurred.

Department's Position: We disagree with Zenith. We avoid imputing expenses or costs when a company quantifies or documents its actual expenses, and when the company's quantification accurately reflects the expense to the seller. Since we have determined that Sharp accurately quantified its home market selling expenses, and that its claims accurately reflected these expenses, we have not reduced them by the amount of any

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savings realized as a result of delayed payment. *See* our response to Comment 2 in Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Reviews (54 FR 13918, April 6, 1989).

Comment 3: Zenith argues that the Department should deduct antidumping-related legal expenses from exporter's sales price (ESP). According to Zenith, these expenses are selling expenses because they are incurred as a result of a respondent selling the merchandise under review in the United States at prices below FMV. Moreover, Zenith argues that there is no basis for retaining in ESP legal expenses incurred as a result of an antidumping proceeding when all other legal expenses incurred by a foreign company's U.S. subsidiary are deducted from ESP.

Department Position: We disagree with Zenith. As we have stated in previous reviews of this order, and of the antidumping duty orders on color television receivers from the Republic of Korea and Taiwan, we do not consider legal expenses incurred in defending against an allegation of dumping to be expenses incurred in selling the merchandise in the United States. As a result, we have not deducted these expenses from ESP in these final results. Also, *see* our response to Comment 4 in Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Reviews (54 FR 13919, April 6, 1989). We note, however, that whereas Zenith criticized the Department in Comment 1 for failing to follow the CIT opinion in *Zenith*, in this instance, it is urging the Department to disregard the CIT opinion regarding this issue in *Daewoo*.

Comment 4: Zenith argues that the Department should deduct from U.S. price payments of estimated antidumping duties and any expenses related to such payments. According to Zenith, these items should be deducted from U.S. price along with the estimated ordinary duties paid because the statute specifically requires that "United States import duties" be deducted from U.S. price.

Department's Position: We disagree with Zenith. As we have stated in previous reviews of this finding, we believe that using estimated amounts of antidumping duties in our calculations would result in inaccurate margins. We do not consider payments of estimated antidumping duties to be expenses related to the sales of the merchandise under consideration for this review period. Further, given the possibility that these estimated duties could vary significantly from duties that may be assessed, we do not consider them to be "expenses" within the meaning of section 772(d)(2)(A) of the Tariff Act for purposes of determining U.S. price. Finally, estimated duties and duties assessed are paid by the importer who is, in some cases, unrelated to the party whose sales are under review. We have, therefore, not deducted estimated duties from U.S. price in these final results. See our response to Comment 5 in Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Reviews (54 FR 13919, April 6, 1989), our response to Comment 6 in Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Review (56 FR 12703, 12704, March 27, 1991), and our response to Comment 8 in Color Television Receivers, Except for Video Monitors, from Taiwan; Final Results of Antidumping Administrative Review (56 FR 31380, July 10, 1991).

Comment 5: Zenith contends that the Department erroneously treated selling commissions in the United States as though they consisted entirely of indirect selling expenses. According to Zenith, commissions compensate the recipient for both direct and indirect selling expenses incurred on behalf of the respondent. Zenith argues that, since FMV has already been adjusted for direct selling expenses, an offset to FMV comprised of indirect selling expenses up to the full amount of the U.S. commission overcompensates for the indirect portion of the commission, and effectively negates the deduction from U.S. price of the direct expense portion of the commission.

Department's Position: We disagree with Zenith. Section 353.56(b)(1) of our regulations requires us to make an adjustment for situations in which a commission is paid in one market, but not in the other market. That adjustment is limited to "the amount of the other selling expenses" allowed in the other market. We do not interpret this regulation as requiring us to limit the offset to a specific portion of the expenses of the commissionaire. Indeed, it is not necessary to examine how the recipient of the commissions spends the money because, to the seller, such monies represent direct expenses incurred as a result of that particular sale. We have, therefore, offset the full amount of the U.S. commissions in these final results. See our response to Comment 6 in Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Reviews (54 FR 13919, April 6, 1989), our response to Comment 9 in Color Television Receivers, Except for Video Monitors, from Taiwan; Final Results of Antidumping Duty Administrative Review (56 FR 31381, July 10, 1991), and our response to Comment 7 in Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Review (56 FR 12704, March 27, 1991).

Comment 6: Zenith asserts that the Department may have improperly used home market indirect expenses that are not selling expenses as an offset to U.S. indirect selling expenses. Zenith states that the Department should require an affirmative demonstration from Sharp that all home market indirect expenses it has claimed as ESP offsets are actually selling expenses, and not general and administrative expenses.

Department's Position: We disagree with Zenith. As we have stated in previous reviews of this case, the pool of indirect selling expenses in the home market should include those expenses which are similar to the expenses incurred by the U.S. subsidiary, whose function it is to sell merchandise. We do not interpret our regulations as requiring that indirect selling expenses in the home market be limited to selling expenses in sales offices, and as excluding general and administrative expenses incurred by those offices. Accordingly, the equivalent home market expenses are those which are incurred by the home market selling division in support of the home market sales effort and which include certain general expenses associated with selling. Therefore, we believe that Sharp did not overstate its home market selling expenses, and we have used all these expenses in calculating the ESP offset for these final results. See our response to Comment 3 in Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Reviews (54 FR 13919, April 6, 1989) and our response to Comment 4 in Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Review (56 FR 12703, March 27, 1991).

Comment 7: Zenith contends that it is unclear whether constructed value (CV) does or does not include discounts, rebates, or commodity and consumption taxes. According to Zenith, these items must be included among the "general expenses" component of CV because the statute requires that these general expenses encompass what usually reflected in sales. Because Sharp acknowledges that discounts, rebates, and commodity and consumption taxes are included in the selling price of the merchandise, and because the

Department routinely adjusts for these items under its authority to adjust for differences in circumstances of sale. Zenith argues that they are "general expenses" as defined in the statute, and should, therefore, be included in CV.

Department's Position: We disagree with Zenith that these expenses should be included in CV. As we have stated in previous reviews, we do not consider discounts and rebates to be selling expenses; we consider them to be adjustments to price. Pursuant to the statute, the Department constructs an ex-factory value which consists of the sum of the cost of manufacture (COM), selling, general and administrative (SGA) expenses, profit on home market sales, and the cost of packing the merchandise for shipment to the United States. In order to make an "apples-to-apples" comparison of this surrogate FMV to U.S. price, all taxes, rebates, and discounts are removed from U.S. price and no tax is added thereto. As a result, we have not included discounts, rebates, and commodity taxes in our calculations of CV for these final results. See our response to Comment 20 in Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Reviews (56 FR 5396, February 11, 1991), and our response to Comment 9 in Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Review (56 FR 12704, 12705, March 27, 1991).

Comment 8: Sharp argues that the Department should have used Sharp's prices to its home market distributors to calculate FMV or, alternatively, that the Department should have granted a level-of-trade adjustment for the SGA expenses of the distributors since all of the comparable expenses of Sharp's U.S. distributors were deducted from the resale price in the United States. Montgomery Ward, which imported subject merchandise from Sharp, presents a similar argument.

Department's Position: We determined that the distributor-to-dealer level in Japan was an appropriate level for price comparisons because there was no clear evidence that home market prices to the company's related distributors were comparable to prices to unrelated parties. See 19 CFR 353.45. Other than what it submitted in previous reviews, where we similarly disallowed this adjustment, Sharp submitted no evidence in this administrative review to support its argument. As a result, we compared sales in the United States and the home market at the same level of trade, *i.e.*, sales from distributors to dealers. Thus, there is clearly no need for an adjustment for differences in level of trade. We note that we have included in the ESP offset the indirect SGA expenses incurred by the distributors for the sale of home market models as is our usual practice and policy. (See also 54 FR 35517, August 28, 1989; 55 FR 35916, September 4, 1990, Comment 10; and 56 FR 16069, April 19, 1991, Comment 2).

Comment 9: Sharp and Montgomery Ward claim that the Department failed to make a COS adjustment for home market indirect SGA expenses in calculating margins for purchase price (PP) sales.

Department's Position: The Department's regulations do not provide for a COS adjustment for indirect home market SGA expenses in the case of PP sales, except in situations where the PP sales include the payment of a commission, as described in 19 CFR 353.56(b)(1). In this case, there were no commissions associated with the U.S. sales. Therefore, no adjustment is warranted.

Comment 10: Sharp argues that the Department should have used a lower Japanese interest rate, rather than a U.S. short-term interest rate, when calculating the imputed U.S. credit and inventory carrying-cost expenses for ESP transactions. Sharp argues that in *LMI—La Metalli Industriale S.p.A.* v. *United States* 912 F.2d 455, 460 (Fed. Cir. 1990) (*LMI*), the Court concluded that "it is reasonable to assume that a corporation will finance its operations with the cheapest money available". Sharp states that it should be allowed to use the lowest interest rate available during the review period, regardless of the market in which the interest expenses would have been incurred. Sharp goes on to argue that as an alternative to using the lower Japanese rate, the Department should use the actual U.S. reported credit expenses.

Department's Position: We disagree. It is the Department's practice to apply the U.S. subsidiary's short-term interest rate to ESP sales when calculating the ESP credit and inventory carrying-cost adjustments. Sharp presented no evidence that its U.S. subsidiary received, or had access to, financing in Japan, and thus the Department used the average U.S. prime rate in effect at the time of the reviews. Moreover, Sharp's contention that we should have used actual U.S. reported credit expenses is without merit because, as noted in its questionnaire responses and the brief, Sharp realized no U.S. credit expenses during these review periods.

Sharp's attempt to rely on the *LMI* decision is also misplaced. The *LMI* decision was based on PP transactions where no U.S. subsidiary existed. In the *LMI* decision, the Court found that since the respondent, LMI, could secure funds at a lower rate in the United States and did in fact do so, the U.S. interest rate should be applied to these PP sales. In this review, Sharp's U.S. subsidiary is responsible for ESP transactions. We attribute imputed interest expenses and inventory carry-cost to the location where they would be incurred, *i.e.*, at Sharp's facilities in the United States, and, therefore, we applied the U.S. short-term interest rate to these sales. (See Final Determination of Sales at Less than Fair Value: Active-Matrix Liquid Crystal High Information Content Flat Panel Displays and Display Glass Therefor from Japan (56 FR 32395, July 16, 1991) and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and certain Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Review (56 FR 26054, June 6, 1991).)

Comment 11: Sharp argues that the Department must recalculate U.S. indirect expenses to include all the expenses of moving television receivers from factory sites in Japan to U.S. warehouses.

Department's Position: We disagree. As we stated in our last two reviews of Sharp, the statute provides that USP shall be reduced by the amount included in such price attributable to any movement charges. We consider charges incident to transporting the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States to be movement expenses, not indirect selling expenses. We deduct movement expenses from the selling prices in the Unites States (19 U.S.C. 772(d)(2)(A)) and home market (19 U.S.C. 733(a)) to ensure "apples-to-apples" comparisons.

Comment 12: Sharp claims that certain U.S. sales reported at zero or negative prices should be ignored because they are not in the ordinary course of trade.

Department's Position: We disagree. In its case brief of July 8, 1991, Sharp provided no explanation for the sales at zero or negative prices. Sharp merely argued that the fact that these transactions showed zero or negative prices established that they were "clearly" outside the ordinary course of trade. In its rebuttal brief of July 15, 1991, Sharp argues that these sales were provided ". . . to non-TV customers as a temporary promotion for the sale of non-TV items," however, Sharp provided no further information to support this contention. Sharp did not raise this argument until after the preliminary results were issued, and has provided

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little more than affirmative statements in support of its contention. Consequently, we have included the U.S. sales with zero or negative prices in our calculations.

Comment 13: Montgomery Ward claims that it was unfairly penalized due to inordinate delays in the review of this antidumping finding. Specifically, Montgomery Ward is concerned about the potentially high payment of antidumping duties when, at the time of importation of Sharp's television sets, the estimated deposit rate was zero.

Department's Position: We disagree. An antidumping administrative review is, by its very nature, a retroactive proceeding. It reviews sales made in the United States after they were completed. Moreover, duty deposit rates are estimated rates and are subject to final determination. Despite the alleged delays in reviewing Montgomery Ward's sales, the Department is required by statute to determine final, and if necessary higher, antidumping duty rates.

Final Results of the Review

As a result of the comments received and the correction of certain clerical errors, we have revised our preliminary results for Sharp, and we determine the margins to be:

Manufacturer	Review No.	Period of review	Margin (percent)
Sharp	8	03/01/86-02/29/87	20.94
Sharp	10	03/01/88-2/29/89	30.76

The Department shall determine, and the Customs Service will assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties of 30.76 percent will be required for Sharp. For any shipments of this merchandise manufactured by Funai, Fujitsu General, Hitachi, Matsushita, Mitsubishi, NEC, Sanyo, Seiko Epson, Toshiba, Casio, Citizen, or Victor, the cash deposit will continue to be the same as the rates published in the final results of the last administrative reviews for these firms (56 FR 5392, February 11, 1991). For all other exporters/manufacturers not related to Sharp, or any previously reviewed firm, a cash deposit of 17.07 percent shall be required. These cash deposit requirements will be effective for all shipments of Japanese television receivers, monochrome or color, entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 29, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-18406 Filed 8-1-91; 8:45 am]

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[C-201-405]

Certain Textile Mill Products From Mexico; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on certain textile mill products from Mexico for the period January 1, 1989 through December 31, 1989. We preliminarily determine the total bounty or grant to be zero or *de minimis* for 30 companies, 55.73 percent *ad valorem* for Atoyac Textil, S.A. de C.V., and 1.76 percent *ad valorem* for all other companies. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: August 2, 1991.

FOR FURTHER INFORMATION CONTACT: Dana S. Mermelstein or Barbara E. Tillman, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 26, 1990, the Department of Commerce (the Department) published a notice of "Opportunity to Request Administrative Review" (55 FR 11417) for the countervailing duty order on certain textile mill products from Mexico (50 FR 10824; March 18, 1985). On March 29, 1990, Tapetes Luxor, S.A. de C.V., an exporter of certain textile mill products from Mexico, requested an administrative review of the order for the period January 1, 1989 through December 31, 1989. On March 30, 1990, the Government of Mexico, Barth & Dreyfuss, an importer of certain textile mill products from Mexico, and Productora Textil San Marcos, S.A. de C.V., an exporter of certain textile mill products from Mexico, also requested a review for this period. We initiated the review on April 27, 1990 (55 FR 17792). The Department has now conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of certain textile mill products from Mexico. During the review period, such merchandise was classifiable under item numbers of the Harmonized Tariff Schedule listed in the attached appendix.

The review covers the period January 1, 1989 through December 31, 1989, and nine programs.

Calculation Methodology for Assessment and Cash Deposit Purposes

In calculating the benefits received during the review period, we followed the methodology described in the preamble to 19 CFR 355.20(d) (53 FR 52325; December 27, 1988). First, we calculated a country-wide rate, weight-averaging the benefits received by the 38 companies subject to review to determine the overall subsidy from all countervailable programs benefitting exports of the subject merchandise to the United States. Because the country-wide rate was above *de minimis*, as defined by 19 CFR 355.7, we proceeded to the next step in our analysis and examined the *ad valorem* rate we had calculated for each company for all countervailable programs combined, to determine whether individual company rates differed significantly from the weighted-average country-wide rate. Thirty companies received aggregate benefits which were zero or *de minimis* (significantly different within the meaning of 19 CFR 355.22(d)(3)(ii)); one company, Atoyac Textil, S.A. de C.V., received aggregate benefits which were otherwise significantly different in accordance with 19 CFR 355.22(d)(3)(i). These 31 companies must be treated separately for assessment and cash deposit purposes.

The remaining seven companies received aggregate benefits from all countervailable programs combined which were not significantly different from the weighted-average country-wide rate; their rates were used in the calculation to establish the "all other" rate for the review period. See, *e.g.*,

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Final Results of Countervailing Duty Administrative Review; Porcelain-on-Steel Cookingware from Mexico (56 FR 26064; June 6, 1991) and Final Results of Countervailing Duty Administrative Review; Ceramic Tile from Mexico (56 FR 27496; June 14, 1991).

Analysis of Programs

(1) FOMEX

The "Fund for the Promotion of Exports of Mexican Manufactured Products" (FOMEX) is a trust of the Mexican Treasury Department, with the National Bank of Foreign Trade acting as trustee for the program. The National Bank of Foreign Trade, through financial institutions, makes FOMEX loans available at preferential rates to manufacturers and exporters for two purposes: pre-export financing and export financing. We consider both pre-export and export FOMEX loans to provide countervailable export bounties or grants because these loans are given at preferential rates, only on merchandise destined for export.

We found that the annual rate charged to the textiles exporters with peso-denominated FOMEX pre-export loans with interest due during the review period ranged from 34.8 percent to 54.7 percent; the annual rate for dollar-denominated FOMEX pre-export loans with interest due during the review period ranged from 10.3 to 11.6 percent. The annual rate for dollar-denominated FOMEX export loans received during the review period ranged from 9.1 to 11.3 percent. FOMEX export loans are available only in dollars.

We consider the benefit from loans to occur when the interest is paid. Because interest on FOMEX pre-export loans is paid at maturity, we calculated benefits based on loans that matured during the review period; these were obtained between July 1988 and November 1989. Interest on FOMEX export loans is pre-paid; we therefore calculated benefits based on FOMEX export loans received during the review period.

As a basis for our benchmark for peso-denominated FOMEX loans, we have relied in part on the effective rates published for the years 1981 through 1984, as published monthly in the Banco de Mexico's Indicadores Economicos y Moneda (I.E.), because the Banco de Mexico stopped publishing data on nominal and effective commercial lending rates after 1984. We calculated the average difference between the nominal Costo Porcentual Promedio (CPP) rates (the average short-term cost of funds to banks), and the I.E. effective rates for the period 1981 through 1984. We added this average difference to the 1988 and 1989 CPP rates. In the last administrative review, we determined that a benchmark for peso-denominated loans calculated on a quarterly basis was more appropriate than an annual benchmark because the CPP rates fluctuated greatly during 1988. Hence we calculated a quarterly average monthly benchmark of 4.18 percent for pre-export peso-denominated loans received in the fourth quarter of 1988. See, *e.g.*, Preliminary Results of Countervailing Duty Administrative Review; Certain Textile Mill Products from Mexico (56 FR 26065, June 6, 1991). In 1989, the CPP rates were stable; therefore, we calculated an annual average monthly benchmark of 4.36 percent for peso-denominated FOMEX loans. To determine the effective interest rate benchmark for 1989 dollar-denominated loans, we used an average of the quarterly weighted-average effective interest rates published in the Federal Reserve Bulletin, which was 11.99 percent in 1989.

We found that many textiles exporters used peso- and dollar-denominated FOMEX pre-export and dollar-denominated export financing during the review period. Because we found that the exporters were able to tie their FOMEX loans to specific countries, we measured the benefit only from FOMEX loans tied to sales of subject merchandise to the United States. We allocated each company's FOMEX benefit over the value of its total exports of the subject merchandise to the United States during the review period. We then weight-averaged the resulting benefits by each company's proportion of exports of the subject merchandise to the United States, excluding companies with significantly different aggregate benefits. (See section on "Calculation Methodology for Assessment and Duty Deposit Purposes" above.) On this basis, we preliminarily determine the benefit from this program to be zero or *de minimis* for 30 companies, 0.06 percent ad valorem for Atoyac Textil, S.A. de C.V., and 0.34 percent *ad valorem* for all other companies.

(2) FOGAIN

The Guarantee and Development Fund for Medium and Small Industries (FOGAIN) is a program that provides long-term loans to small- and medium-sized companies in Mexico. Although FOGAIN loans are available to all small- and medium-sized companies in Mexico, the interest rates available under the program vary depending upon whether a company has been granted priority status, and whether a company is located in a zone targeted for industrial growth; as a result, some companies get more beneficial rates than others. Therefore, to the extent that this program provides financing at rates below the lowest non-specific rate available under FOGAIN, we consider it countervailable. See, *e.g.*, Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Certain Textile Mill Products from Mexico (50 FR 10824; March 18, 1985).

During the review period, three companies had long-term variable-rate FOGAIN loans on which interest payments were due. Because the annual interest rate varied monthly, we treated each loan as a series of short-term loans.

To calculate the benefit, we used as our benchmark the least beneficial interest rate in effect for each FOGAIN loan payment and compared it to the FOGAIN preferential rate for the loan payments made during the review period. We divided the benefit from the loans by each company's total sales to all markets and then weight-averaged the resulting benefit by each company's proportion of total exports of the subject merchandise to the United States during the review period. On this basis, we preliminarily determine the benefit from this program to be 0.14 percent *ad valorem* for Apolo Textil, S.A. de C.V., 0.22 percent *ad valorem* for Telas VYC, S.A. de C.V., 0.08 percent *ad valorem* for Textiles del Hogar San Marcos, S.A. de C.V., zero for Atoyac Textil, S.A. de C.V., and zero for all other companies.

(3) FONEI

The Fund for Industrial Development (FONEI), administered by the Banco de Mexico, is a specialized financial development fund that provides long-term loans at below-market rates. FONEI loans are available under various provisions having different eligibility requirements. The plant expansion provision is designed for the creation, expansion, or modernization of enterprises in order to promote efficient production of goods to compete in the international market or to meet the objectives of the National Development Plan (NDP), which include industrial decentralization. We consider this FONEI loan provision to confer a bounty or grant because it restricts loan benefits to those enterprises located outside Zone IIIA (Mexico City and designated areas around Mexico City). See, *e.g.*, Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Certain Textile Mill Products from Mexico (50 FR 10824; March 18, 1985).

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To calculate the benefit, we used as our benchmark the least beneficial interest rate in effect for each FOGAIN loan payment and compared it to the FOGAIN preferential rate for the loan payments made during the review period. We divided the benefit from the loans by each company's total sales to all markets and then weight-averaged the resulting benefit by each company's proportion of total exports of the subject merchandise to the United States during the review period. On this basis, we preliminarily determine the benefit from this program to be 0.14 percent *ad valorem* for Apolo Textil, S.A. de C.V., 0.22 percent *ad valorem* for Telas VYC, S.A. de C.V., 0.08 percent *ad valorem* for Textiles del Hogar San Marcos, S.A. de C.V., zero for Atoyac Textil, S.A. de C.V., and zero for all other companies.

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Two companies had variable-rate, peso-denominated FONEI loans on which interest was due during the review period. These loans were used for investment. We treated these variable rate loans as a series of short-term loans. To calculate the benefit, we used the same benchmark as for the FOMEX peso-denominated pre-export loans and compared it with preferential interest rates in effect for each FONEI loan payment made during the review period. We divided the benefit from the loans by each company's total sales to all markets and then weight-averaged the resulting benefit by each company's proportion of exports of subject merchandise to the United States during the review period. On this basis, we preliminarily determine the benefit from this program to be 0.11 percent *ad valorem* for Bemis Craftil, S.A. de C.V., 0.07 percent *ad valorem* for Productora Textil San Marcos, S.A. de C.V., zero for Atoyac Textil, S.A. de C.V., and zero for all other companies.

(4) PITEX

The Program for Temporary Importation of Products used in the Production of Exports (PITEX) was established by a decree published in the *Diario Oficial* on May 9, 1985, and amended in the *Diario Oficial* on September 19, 1986, and May 3, 1990. The program is jointly administered by the Ministry of Commerce and Industrial Development (SECOFI) and the Customs Administration. Under PITEX, manufacturers with a proven export record may receive authorization to temporarily import merchandise to be used in the production of exports for up to five years without having to pay the import duties normally applicable to those imports. PITEX allows for the exemption of import duties for the following categories of merchandise used in export production: raw materials, packing materials, fuels and lubricants, machinery used to manufacture products for export, and other machinery. The importer must post a bond or other security to guarantee the reexportation of the temporary imports.

Nine companies used PITEX during the review period for temporary imports of merchandise that was both physically incorporated into exported products and not physically incorporated into exported products. The Department does not consider the non-excessive exemption, remission, deferral or drawback of import charges levied on goods that are physically incorporated in the exported products (making normal allowances for waste) to confer a countervailable benefit. Non-excessive duty drawback is a practice acceptable under U.S. countervailing duty law and consistent with Item (i) of the Illustrative List of Export Subsidies appended to the Agreement on the Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade (Subsidies Code). Therefore, we preliminarily determine that PITEX provides countervailable benefits to the extent that it provides duty exemptions on temporary imports of merchandise not physically incorporated into the exported products.

To calculate the benefit from this program, we first calculated the duties that should have been paid on the non-physically incorporated items that were imported under the PITEX program during the review period. We then divided that amount by each company's total exports. We then weight-averaged the resulting benefits by each company's proportion of exports of subject merchandise to the United States, excluding companies with significantly different aggregate benefits. On this basis, we preliminarily determine the benefit from this program to be zero or *de minimis* for 30 companies, 55.67 percent *ad valorem* for Atoyac Textil, S.A. de C.V., and 1.43 percent *ad valorem* for all other companies.

(5) Other Programs

We also examined the following programs and preliminarily determine that exporters of certain textile mill products did not use them during the review period:

(A) Certificates of Fiscal Promotion (CEPROFI);
(B) Article 15 Loans;
(C) Bancomext loans;
(D) State Tax Incentives; and
(E) Import Duty Reductions and Exemptions.

Firms Not Receiving Benefits

We preliminarily determine that the following firms have received zero or *de minimis* total benefits:

(1) Abetex, S.A. de C.V
(2) Apolo Textil, S.A. de C.V.
(3) Bemis Craftil, S.A. de C.V.
(4) Celanese Mexicana, S.A. de C.V.
(5) Comercializadora de Textiles, S.A. de C.V.
(6) Crisol Textil, S.A. de C.V.
(7) Derivados Acrilicos, S.A. de C.V.
(8) Encajes Mexicanos, S.A. de C.V.
(9) Estambres Millor, S.A. de C.V.
(10) Exportaciones Diaz, S.A. de C.V.
(11) Fabrica de Hilados y Tejidos SINDEC, S.A.
(12) Fibras Sinteticas, S.A. de C.V.
(13) Fieltros Finos, S.A. de C.V.
(14) Glasmex, S.A. de C.V.
(15) Grupo HYTT, S.A. de C.V.
(16) Hilaturas de la Laguna, S.A. de C.V.
(17) Hilaturas Lerma, S.A. de C.V.
(18) Hilos Timon, S.A. de C.V. (formerly Hilaturas Maya, S.A. de C.V.)
(20) Milyon, S.A. de C.V.
(21) Nanco, S.A. de C.V.
(22) Nueva Nacional Textil Manufacturera del Salto, S.A. de C.V.
(23) Portafelt de Mexico, S.A. de C.V.
(24) Productora Textil San Marcos, S.A. de C.V.
(25) Ryltex, S.A. de C.V.
(26) Santiago Textil, S.A. de C.V.
(27) Tamacani, S.A. de C.V.
(28) Telas VYC, S.A. de C.V.
(29) Terpel, S.A. de C.V.
(30) Textiles del Hogar San Marcos, S.A. de C.V.

Preliminary Results of Review

As a result of our review, we preliminarily determined the total bounty or grant to be zero or *de minimis* for 30 companies, 55.73 percent *ad valorem* for Atoyac Textil, S.A. de C.V., and 1.76 percent *ad valorem* for all other companies during the period January 1, 1989 through December 31, 1989.

Upon completion of this review, the Department intends to instruct Customs to liquidate, without regard to countervailing duties, shipments of this merchandise from the 30 companies listed above, and to assess countervailing duties of 55.73 percent of the f.o.b. invoice price on shipments of this merchandise from Atoyac Textil, S.A. de C.V. and 1.76 percent of the f.o.b. invoice price on shipments of this merchandise from all other companies exported on or after January 1, 1989 and on or before December 31, 1989.

Further, the Department intends to instruct Customs to waive the cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on shipments of this merchandise from the 30 companies listed above, and to collect a cash deposit of 55.73 percent of the f.o.b. invoice price on shipments of this merchandise from Atoyac Textil, S.A. de C.V. and 1.76 percent of the f.o.b. invoice price on shipments of this merchandise from all other companies entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than ten days from the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication of this notice. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for the submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 355.38(c), are due.

The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: July 26, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

Appendix

Certain Textile Mill Products From Mexico

C-201-405

Harmonized Tariff System (HTS) Numbers

1989 Administrative Review

3918.10.32	3921.12.19	3921.13.19	3921.90.19
3921.90.21	4008.21.00	4010.10.10	5106.10.00
5106.20.00	5107.10.00	5107.20.00	5108.10.60
5108.20.60	5109.10.60	5109.90.60	5111.11.60
5111.19.20	5111.19.60	5111.20.60	5111.30.60
5112.19.60	5112.20.00	5112.30.00	5204.11.00
5204.19.00	5204.20.00	5205.11.10	5205.12.10
5205.12.20	5205.13.10	5205.13.20	5205.14.10
5205.22.00	5205.23.00	5205.24.00	5205.25.00
5205.31.00	5205.32.00	5205.33.00	5205.34.00
5205.42.00	5205.43.00	5205.44.00	5206.11.00
5206.12.00	5206.13.00	5206.14.00	5206.15.00
5206.31.00	5206.32.00	5206.33.00	5206.34.00
5206.35.00	5206.41.00	5206.42.00	5206.43.00
5206.44.00	5206.45.00	5207.10.00	5207.90.00
5208.11.20	5208.12.40	5208.13.00	5208.19.40
5208.21.20	5208.21.40	5208.22.40	5208.22.60
5208.23.00	5208.29.40	5208.29.60	5208.31.40
5208.31.60	5208.31.80	5208.32.30	5208.32.40
5208.32.50	5208.33.00	5208.39.20	5208.39.60
5208.39.80	5208.41.40	5208.41.60	5208.41.80
5208.42.30	5208.42.40	5208.42.50	5208.43.00
5208.49.40	5208.51.40	5208.51.60	5208.51.80
5208.52.30	5208.52.40	5208.52.50	5208.53.00
5208.59.20	5208.59.60	5208.59.80	5209.11.00
5209.19.00	5209.21.00	5209.29.00	5209.31.60
5209.32.00	5209.39.00	5209.41.60	5209.42.00
5209.43.00	5209.49.00	5209.51.60	5209.52.00
5209.59.00	5210.21.40	5210.21.60	5210.22.00
5210.29.40	5210.29.60	5210.31.40	5210.31.60
5210.32.60	5210.39.40	5210.39.60	5210.51.40
5210.51.60	5210.52.00	5210.59.40	5210.59.60
5211.31.00	5211.39.00	5211.51.00	5211.59.00
5212.21.60	5212.22.60	5212.23.60	5212.24.60
5212.25.60	5401.10.00	5401.20.00	5402.10.30
5402.20.30	5402.20.60	5402.31.30	5402.31.60
5402.32.30	5402.32.60	5402.33.30	5402.33.60
5402.39.30	5402.39.60	5402.41.00	5402.42.00
5402.43.00	5402.49.00	5402.51.00	5402.52.00
5402.59.00	5402.61.00	5402.62.00	5402.69.00
5403.10.30	5403.20.30	5403.20.60	5403.31.00
5403.32.00	5403.33.00	5403.39.00	5406.10.00
5406.20.00	5407.10.00	5407.41.00	5407.42.00
5407.43.20	5407.44.00	5407.52.20	5407.53.10
5407.53.20	5407.54.00	5407.60.05	5407.60.10
5407.60.20	5407.71.00	5407.72.00	5407.73.20
5407.74.00	5407.81.00	5407.82.00	5407.83.00
5407.84.00	5407.91.05	5407.91.20	5407.92.05
5407.92.20	5407.93.05	5407.93.20	5407.94.05
5407.94.20	5408.10.00	5408.21.00	5408.22.00
5408.23.20	5408.24.00	5408.31.05	5408.31.20
5408.32.05	5408.32.90	5408.33.05	5408.33.90
5408.34.05	5408.34.90	5508.10.00	5508.20.00
5509.12.00	5509.21.00	5509.22.00	5509.31.00
5509.32.00	5509.41.00	5509.51.30	5509.51.60
5509.53.00	5509.69.20	5509.69.40	5509.99.20
5509.99.40	5511.10.00	5511.20.00	5511.30.00
5512.11.00	5512.19.00	5512.21.00	5512.29.00
5512.91.00	5512.99.00	5513.11.00	5513.13.00
5513.19.00	5513.21.00	5513.23.00	5513.29.00
5513.33.00	5513.39.00	5513.41.00	5513.43.00
5513.49.00	5514.11.00	5514.19.00	5514.21.00
5514.29.00	5514.41.00	5514.49.00	5515.11.00
5515.12.00	5515.13.05	5515.19.00	5515.21.00
5515.29.00	5515.91.00	5515.99.00	5516.11.00
5516.12.00	5516.13.00	5516.14.00	5516.21.00
5516.22.00	5516.23.00	5516.24.00	5516.41.00
5516.42.00	5516.43.00	5516.44.00	5516.91.00
5516.92.00	5516.93.00	5516.94.00	5601.10.20
5601.22.00	5602.10.10	5602.10.90	5602.21.00
5602.90.30	5602.90.60	5602.90.90	5603.00.90
5604.20.00	5604.90.00	5606.00.00	5607.41.30
5607.49.15	5607.49.25	5607.49.30	5607.50.20
5607.50.40	5607.90.20	5608.11.00	5608.19.10
5701.10.16	5701.10.20	5701.90.20	5702.10.90
5702.31.10	5702.31.20	5702.32.10	5702.32.20
5702.39.20	5702.41.10	5702.41.20	5702.42.10
5702.42.20	5702.49.10	5702.51.20	5702.51.40
5702.52.00	5702.59.10	5702.59.20	5702.91.30
5702.91.40	5702.92.00	5702.99.10	5702.99.20
5703.10.00	5703.20.10	5703.20.20	5703.30.00
5704.10.00	5704.90.00	5705.00.20	5801.21.00
5801.33.00	5801.34.00	5801.35.00	5801.36.00
5802.30.00	5803.10.00	5803.90.30	5804.10.00
5804.21.00	5804.29.00	5804.30.00	5805.00.25
5805.00.30	5805.00.40	5806.31.00	5806.32.10
5806.40.00	5808.90.00	5810.10.00	5810.91.00
5810.92.00	5811.00.20	5901.10.20	5901.90.40
5902.10.00	5902.20.00	5902.90.00	5903.10.30
5903.20.30	5903.90.30	5905.00.90	5906.91.30
5906.99.30	5907.00.90	5911.10.20	5911.20.10
5911.31.00	5911.32.00	5911.90.00	6001.10.20
6001.10.60	6001.22.00	6001.92.00	6002.10.60
6002.20.10	6002.20.30	6002.20.60	6002.30.20
6002.43.00	6002.93.00	6301.10.00	6301.20.00
6301.30.00	6301.40.00	6301.90.00	6302.10.00
6302.21.20	6302.22.10	6302.22.20	6302.29.00
6302.31.20	6302.32.10	6302.32.20	6302.39.00
6302.40.10	6302.40.20	6302.51.10	6302.51.20
6302.51.30	6302.51.40	6302.52.10	6302.52.20
6302.53.00	6302.59.00	6302.60.00	6302.91.00
6302.92.00	6302.93.20	6302.99.20	6303.12.00
6303.19.00	6303.92.00	6303.99.00	6304.11.10
6304.11.20	6304.11.30	6304.19.05	6304.19.15
6304.19.20	6304.19.30	6304.91.00	6304.92.00
6304.93.00	6304.99.15	6304.99.20	6304.99.60
6307.10.20	7019.20.10	9404.90.80	

[FR Doc. 91-18407 Filed 8-1-91; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

[Docket No. 910771-1171]

Decision on Petition Submitted by Iranian Political Refugees for Designation as a Minority Group

AGENCY: Minority Business Development Agency (MBDA), Commerce.

ACTION: Notice of decision.

SUMMARY: MBDA received a petition requesting it to designate Iranian political refugees as a socially or economically disadvantaged group whose members are eligible for MBDA assistance. This notice announces denial of that request.

FOR FURTHER INFORMATION CONTACT: Eric W. Moll, Acting Chief Counsel, United States Department of Commerce, Minority Business Development Agency, room 5069, Washington, DC 20230, Telephone 377-5045.

SUPPLEMENTARY INFORMATION: MBDA issued a regulation at 15 CFR part 1400 for determination of group eligibility for MBDA assistance (See 49 FR 42697, October 24, 1984). The purpose of this regulation is to provide procedures through which groups not previously designated can establish their social or economic disadvantage.

In accordance with this regulation, a petition was submitted on behalf of all Iranian political refugees to the United States, requesting this Agency to designate them as a socially or economically disadvantaged group whose members are eligible for MBDA assistance. Receipt of this petition by MBDA was published in the Federal Register on February 21, 1991, and interested persons were invited to submit comments.

The petitioner for minority status asserted that Iranian refugees need assistance as the lack of control over the circumstances which led to their emigration have led to their suffering severe economic disadvantage. He indicated that in the first twenty-four months after their arrival, Iranians experience the third highest welfare dependency rate with respect to other refugees, with this economic disadvantage causing social disadvantage. Further, the petitioner argued that political relations between the United States and Iran are the cause of discrimination against Iranian refugees in the area of private sector jobs. In support of his claim, the petitioner has appended two publications of statistical information on

5402.33.30	5402.33.60
5402.41.00	5402.42.00
5402.51.00	5402.52.00
5402.62.00	5402.69.00
5403.20.60	5403.31.00
5403.39.00	5406.10.00
5407.41.00	5407.42.00
5407.52.20	5407.53.10
5407.60.05	5407.60.10
5407.72.00	5407.73.20
5407.82.00	5407.83.00
5407.91.20	5407.92.05
5407.93.20	5407.94.05
5408.21.00	5408.22.00
5408.31.05	5408.31.20
5408.33.05	5408.33.90
5508.10.00	5508.20.00
5509.22.00	5509.31.00
5509.51.30	5509.51.60
5509.69.40	5509.99.20
5511.20.00	5511.30.00
5512.21.00	5512.29.00
5513.11.00	5513.13.00
5513.23.00	5513.29.00
5513.41.00	5513.43.00
5514.19.00	5514.21.00
5514.49.00	5515.11.00
5515.19.00	5515.21.00
5515.99.00	5516.11.00
5516.14.00	5516.21.00
5516.24.00	5516.41.00
5516.44.00	5516.91.00
5516.94.00	5601.10.20
5602.10.90	5602.21.00
5602.90.90	5603.00.90
5606.00.00	5607.41.30
5607.49.30	5607.50.20
5608.11.00	5608.19.10
5701.90.20	5702.10.90
5702.22.10	5702.32.20
5702.41.20	5702.42.10
5702.51.20	5702.51.40
5702.59.20	5702.91.30
5702.99.10	5702.99.20
5703.20.20	5703.30.00
5705.00.20	5801.21.00
5801.35.00	5801.36.00
5803.90.30	5804.10.00
5804.30.00	5805.00.25
5806.31.00	5806.32.10
5810.10.00	5810.91.00
5901.10.20	5901.90.40
5902.90.00	5903.10.30
5905.00.90	5906.91.30
5911.10.20	5911.20.10
5911.90.00	6001.10.20
6001.92.00	6002.10.80
6002.20.60	6002.30.20
6301.10.00	6301.20.00
6301.90.00	6302.10.00
6302.22.20	6302.29.00
6302.32.20	6302.39.00
6302.51.10	6302.51.20
6302.52.10	6302.52.20
6302.60.00	6302.91.00
6302.99.20	6303.12.00
6303.99.00	6304.11.10
6304.19.05	6304.19.15
6304.91.00	6304.92.00
6304.99.20	6304.99.60
4.90.90	

8-1-91; 8:45 am]

Minority Business Development Agency

[Docket No. 910771-1171]

Decision on Petition Submitted by Iranian Political Refugees for Designation as a Minority Group

AGENCY: Minority Business Development Agency (MBDA), Commerce.

ACTION: Notice of decision.

SUMMARY: MBDA received a petition requesting it to designate Iranian political refugees as a socially or economically disadvantaged group whose members are eligible for MBDA assistance. This notice announces denial of that request.

FOR FURTHER INFORMATION CONTACT: Eric W. Moll, Acting Chief Counsel, United States Department of Commerce, Minority Business Development Agency, room 5069, Washington, DC 20230, Telephone 377-5045.

SUPPLEMENTARY INFORMATION: MBDA issued a regulation at 15 CFR part 1400 for determination of group eligibility for MBDA assistance (See 49 FR 42697, October 24, 1984). The purpose of this regulation is to provide procedures through which groups not previously designated can establish their social or economic disadvantage.

In accordance with this regulation, a petition was submitted on behalf of all Iranian political refugees to the United States, requesting this Agency to designate them as a socially or economically disadvantaged group whose members are eligible for MBDA assistance. Receipt of this petition by MBDA was published in the **Federal Register** on February 21, 1991, and interested persons were invited to submit comments.

The petitioner for minority status asserted that Iranian refugees need assistance as the lack of control over the circumstances which led to their emigration have led to their suffering severe economic disadvantage. He indicated that in the first twenty-four months after their arrival, Iranians experience the third highest welfare dependency rate with respect to other refugees, with this economic disadvantage causing social disadvantage. Further, the petitioner argued that political relations between the United States and Iran are the cause of discrimination against Iranian refugees in the area of private sector jobs. In support of his claim, the petitioner has appended two publications of statistical information on

numbers of Middle Eastern refugees settling in the United States. One item is a portion of the Report to Congress, Refugee Resettlement Program, U.S. Department of Health and Human Services, published on January 31, 1990; the other is a 1984 publication of the American Council for Nationalities Service discussing the creation of a refugee class as a result of the political and religious upheavals in Iran.

In addition, appended to the petition was a letter from the Church of the Brethren, Refugee Resettlement Program, which emphasized the lack of financial resources that refugees endure.

The Agency received three comments in favor of and in support of the petition and none opposed to it. The first comment was a letter asserting that Iranian refugees have suffered tremendous discrimination and that, on humanitarian grounds, assistance would be of great help to them as a group. The second comment was also a letter stating that Iranian exiles, including refugees, originate from lower social class backgrounds and are at a disadvantage educationally and occupationally. This contributor included two statistical documents which he coauthored, entitled, "Iranian Exiles and Immigrants in Los Angeles," and "Are the Characteristics of Exiles Different From Immigrants? The Case of Iranians in Los Angeles." The third comment, also a letter, stated that Iranian refugees, even though they had become naturalized United States citizens, suffer present job discrimination based on their country of origin.

Having considered the evidence submitted by the petitioner and the comments which the Agency received, as the Director of MBDA, I have decided to deny the petition. My determination follows:

MBDA issued a regulation at 15 CFR part 1400 for determination of group eligibility for assistance. In accordance with this regulation, a petition was submitted on behalf of all Iranian political refugees, requesting this Agency to designate them as a socially or economically disadvantaged group whose members are eligible for MBDA assistance.

The evidence which has been presented to MBDA in support of this petition is insufficient to sustain a designation of social or economic disadvantage. Section 1400.4 of the regulation sets out the harm which must be proved and the types of evidence that must be produced. The section states as follows:

(a) The representatives of the group requesting formal designation should establish social or economic disadvantage by a preponderance of the evidence. Social or economic disadvantage must be chronic, long standing, and substantial, not fleeting or insignificant. In determining whether a group has made an adequate showing that it has suffered chronic racial or ethnic prejudice or cultural bias for the purposes of this regulation, a determination will be made as to whether this group suffered the effects of discriminatory practices over which its members have no control.

Applicants must demonstrate that such social or economic conditions have produced impediments in the business world for members of the group which are not common to all business people in the same or similar business and market place.

(b) Evidence which will be considered in determining whether groups are socially or economically disadvantaged includes but is not limited to:

(1) Statistical profile outlining the national income level and standard of living enjoyed by members of the group in comparison to the income level and standard of living enjoyed by individuals not considered to be members of socially or economically disadvantaged groups.

(2) Evidence of employment discrimination suffered by members of the group in comparison to employment opportunities available to individuals not considered to be members of socially or economically disadvantaged groups.

(3) Evidence of educational discrimination in comparison to educational opportunities available to individuals not considered to be members of socially or economically disadvantaged groups.

(4) Evidence of denial of access to organizations, groups, or professional societies, whether in business or in school, based solely upon racial and/or ethnic considerations.

(5) Kinds of businesses and business opportunities available to group members in comparison to the kinds of businesses and business opportunities available to individuals not considered to be members of socially or economically disadvantaged groups.

(6) Availability of capital to group members in comparison to the availability of capital to individuals not considered to be members of socially or economically disadvantaged groups.

(7) Availability of technical and managerial resources to group members in comparison to the technical and managerial resources available to individuals not considered to be members of socially or economically disadvantaged groups.

(8) Any other evidence of denial of opportunity or access to those things which would enable the individual to participate more successfully in the American economic system, available to individuals not considered to be members of social or economically disadvantaged groups.

The petitioner has defined the disadvantaged group very narrowly, limiting its membership, not to all United States citizens and resident aliens of Iranian descent, but to individuals who have left Iran as political refugees. He has, therefore, chosen to demonstrate characteristics that are limited to that circumscribed group of individuals.

The only evidence which MBDA has received in favor of the petition are conclusory statements to the effect that Iranian refugees are disadvantaged economically. No actual evidence of the type set forth above has been submitted demonstrating that the public perceives certain specific characteristics unique to Iranian refugees and that it has reacted in such a way as to create an environment of social or economic disadvantage. It is necessary that substantial factual evidence be presented to the Agency demonstrating the situation endured and the fact that it is more likely than not that the individual suffers such disadvantage as a result of his membership in the group.

Accordingly, the petition submitted on behalf of all Iranian political refugees requesting minority designation is denied.

Authority: 15 U.S.C. 1512; E.O. 11625; 3 CFR 616 (1971-75); 36 FR 19967 (1971); E.O. 12432; 3 CFR 198 (1983); and 48 FR 32551 (1983).

Dated: July 22, 1991.

Joe Lira,

Director.

[FR Doc. 91-18315 Filed 8-1-91; 8:45 am]

BILLING CODE 3510-21-M

National Institute of Standards and Technology

Senior Executive Service; Membership of General and Limited Performance Review Boards

The General Performance Review Board (GPRB) reviews performance agreements, appraisals, ratings, and recommended actions pertaining to employees in the Senior Executive Service and makes appropriate recommendations to the Director of NIST concerning such matters in such a manner as will assure the fair and

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equitable treatment of senior executives. The GPRB performs its review functions for all NIST senior executives except those who are members of the NIST executive Board and those who are members of the GPRB.

The Limited Performance Review Board (LPRB) performs its review functions for all NIST senior executives who are members of the NIST Executive Board (except the NIST Deputy Director) and those senior executives who are members of the NIST GPRB.

Individuals who have been newly appointed by the Director of NIST to membership on the GPRB and LPRB or have had their term of membership extended are listed below:

GPRB

Mr. E. Larry Heacock, Director, Office of Satellite Operations, National Environmental Satellite Data and Information Service, National Oceanic and Atmospheric Administration, Washington, DC 20233. Appointment expires: 12/31/92.

Dr. Donald J. Sullivan, Chief, Time and Frequency Division, Physics Laboratory, National Institute of Standards and Technology, Boulder, CO 80303. Appointment expires: 12/31/92.

Mr. Robert Scace, Director, Office of Microelectronics Programs, Electronic and Electrical Engineering Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899. Appointment expires: 12/31/92.

LPRB

Dr. George Sinnott (Chair), Director for International and Academic Affairs, Office of the Director, National Institute of Standards and Technology, Gaithersburg, MD 20899. Appointment expires: 12/31/92.

Mr. J. Michael St. Clair, Chief, Engineering Division, National Weather Service, National Oceanic and Atmospheric Administration, Silver Spring, MD 20910. Appointment expires: 12/31/92.

The full membership and expiration dates of the GPRB and LPRB are listed below:

GPRB

Dr. James E. Hill, (Chair), Chief, Building Environment Division, Building and Fire Research Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899. Appointment expires: 12/31/91.

Mr. Allen L. Hankinson, Chief, Systems and Software Technology Division, Computer Systems Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899. Appointment expires: 12/31/91.

Mr. E. Larry Heacock, Director, Office of Satellite Operations, National Environmental Satellite Data and Information Service, National Oceanic and Atmospheric Administration, Washington, DC 20233. Appointment expires: 12/31/92.

Dr. Willie E. May, Chief, Organic Analytical Research Division, Chemical Science and Technology Laboratory, National Institute of Standards and Techanology, Gaithersburg, MD 20899. Appointment expires: 12/31/91.

Dr Alvin H. Sher, Assistant Director for Management Information Technology, Computing and Applied Mathematics Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899. Appointment expires: 12/31/91.

Dr. Donald J. Sullivan, Chief, Time and Frequency Division, Physics Laboratory, National Institute of Standards and Technology, Boulder, CO 80303. Appointment expires: 12/31/92.

Mr. Robert Scace, Director, Office of Microelectronics Programs, Electronics and Electrical Engineering Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899. Appointment expires: 12/31/92.

LPRB

Dr. George Sinnott (Chair), Director for International and Academic Affairs, Office of the Director, National Institute of Standards and Technology, Gaithersburg, MD 20899. Appointment expires: 12/31/92.

Mr. J. Michael St. Clair, Chief, Engineering Division, National Weather Service, National Oceanic and Atmospheric Administration, Silver Spring, MD 20910. Appointment expires: 12/31/92.

Mr. Karl E. Bell, Deputy Director, Office of the Director of Administration, National Institute of Standards and Technology, Gaithersburg, MD 20899. Appointment expires: 12/31/91.

For further information contact Mrs. Ellen M. Dowd, Chief, Office of Personnel and Civil Rights, National Institute of Standards and Technology, Gaithersburg, telepyhone 301-975-3000.

Dated: July 26, 1991.

John W. Lyons,

Director.

[FR Doc. 91-18320 Filed 8-1-91; 8:45 am]

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Chief, Organic
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Assistant Director for
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Applied Mathematics
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Dr. Donald J. Sullivan, Chief, Time and Frequency Division, Physics Laboratory, National Institute of Standards and Technology, Boulder, CO 80303. Appointment expires: 12/31/92.

Mr. Robert Scace, Director, Office of Microelectronics Programs, Electronics and Electrical Engineering Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899. Appointment expires: 12/31/92.

LPRB

Dr. George Sinnott (Chair), Director for International and Academic Affairs, Office of the Director, National Institute of Standards and Technology, Gaithersburg, MD 20899. Appointment expires: 12/31/92.

Mr. J. Michael St. Clair, Chief, Engineering Division, National Weather Service, National Oceanic and Atmospheric Administration, Silver Spring, MD 20910. Appointment expires: 12/31/92.

Mr. Karl E. Bell, Deputy Director, Office of the Director of Administration, National Institute of Standards and Technology, Gaithersburg, MD 20899. Appointment expires: 12/31/91.

For further information contact Mrs. Ellen M. Dowd, Chief, Office of Personnel and Civil Rights, National Institute of Standards and Technology, Gaithersburg, telepyhone 301–975–3000.

Dated: July 26, 1991.

John W. Lyons,

Director.

[FR Doc. 91-18320 Filed 8-1-91; 8:45 am]

BILLING CODE 3510-13-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Macau

July 29, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: August 5, 1991.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6495. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated June 21, 1991, the Governments of the United States and Macau agreed to increase the 1991 limits for sweaters in Categories 345, 445/446 and 645/646 to the original 1991 levels.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 51945, published on December 18, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 29, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 12, 1990, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 1991 and extends through December 31, 1991.

Effective on August 5, 1991, you are directed to amend further the December 12, 1990 directive to increase the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Macau, as amended:

Category	Adjusted twelve-month limit [1]
Sublevels in Group I	
345	38,233 dozen.
645/646	193,285 dozen.
Sublevel in Group II	
445/446	75,679 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1990.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-18308 Filed 8-1-91; 8:45 am]

BILLING CODE 3510-DR-F

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing the blind or other severely handicapped.

EFFECTIVE DATE: September 3, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On May 3, June 7 and 14, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (56 FR 20414, 26395 and 27502) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodities and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Bandage, Elastic, 6510–00–935–5823 (Remaining Government Requirement).
Water Bag, Nylon Duck, 8465–01–310–1259.

Services

Janitorial/Custodial, BLM Fairbanks Offices and Fire Operations Building, Fort Wainwright and University Avenue, Fairbanks, Alaska.
Janitorial/Custodial, U.S. Post Office and Courthouse, Dubuque, Iowa.

Janitorial/Custodial for the following locations:

Federal Building, 130 East Main Street, Carthage, Tennessee.
Federal Building, 118 East Locust Street, Lafayette, Tennessee.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 91-18409 Filed 8-1-91; 8:45 am]

BILLING CODE 6820-33-M

Procurement List Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to procurement list.

SUMMARY: This action adds to the Procurement List a service to be furnished by a nonprofit agency employing the blind or other severely handicapped.

EFFECTIVE DATE: September 3, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On April 12, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (56 FR 14931) of proposed addition to the Procurement List.

Comments were received from the current contractor for this service and from the local union which represents the contractor's employees. The union enclosed a petition signed by most of the employees in support of its comments.

The contractor noted that it is a minority business participating in the Small Business Administration (SBA) 8(a) program, with a commitment to hiring minorities for the entry level jobs it provides. It objected to the proposed addition to the Procurement List because minorities would be displaced and would lose the training opportunities these jobs afford. It proposed as alternatives that the 8(a) program be expanded or that each Federal contract establish a number of positions to be filled by people with disabilities.

The local union stated tha[illegible] service provides an opportunity for minorities to gain experience needed to compete in the commercial office cleaning market. It also stated that it has active programs to integrate persons with disabilities into the competitive work force. It claimed that addition of this service to the Procurement List would remove an opportunity for minorities and adversely affect its attempts to find employment for persons with disabilities by discouraging other unions from following its example.

The Committee has been informed that the contractor will graduate from the 8(a) program in 1992, so it will not be able to provide employment and training opportunities through this service beyond its current contract. Expansion of the 8(a) program is the responsibility of SBA, not the Committee. As for displacement of the current minority employees of the contractor, the Committee has determined that the loss of employment for this group is outweighed by the creation of jobs for persons with severe disabilities, a group with even higher rates of unemployment. With respect to the contractor's other alternative, the Committee is not aware of any authority that would permit Federal agencies to require that a specific number of persons with disabilities be employed on Federal contracts.

The Committee applauds the union's efforts and encourages it and other unions to continue to explore ways to provide employment for persons with disabilities. However, the union has not indicated that the janitorial/custodial service at the Jackson Federal Building which is proposed for addition to the Procurement List is part of this effort. Accordingly, the Committee has determined that creation of a definite number of jobs for persons with disabilities through addition of this service to the Procurement List outweighs any possible discouragement of union efforts to create an unknown number of jobs for persons with disabilities.

After consideration of the material presented to it concerning the capability of a qualified nonprofit agency to provide the service at a fair market price and the impact of the addition on the current or most recent contractor, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the service listed.

c. The action will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to the Procurement List:

Janitorial/Custodial, Jackson Federal Building, 915 Second Avenue, Seattle, Washington.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,
Executive Director.

[FR Doc. 91–18410 Filed 8–1–91; 8:45 am]

BILLING CODE 6820–33–M

Procurement List Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be provided by nonprofit agencies employing the blind or other severely handicapped.

DATES: Comments must be received on or before September 3, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing the blind or other severely handicapped. It is proposed to add the following services to the Procurement List:

Grounds Maintenance, Naval Hospital, Oakland, California.

Janitorial/Custodial, Martin Luther King Federal Building, Walnut Street, Newark, New Jersey.

Janitorial/Custodial, Philadelphia Service Center, North Building, 11601 Roosevelt Blvd., South Building, 11501 Roosevelt Blvd., Philadelphia, Pennsylvania.

Janitorial/Custodial, Naval Air Station (Except Army Facilities), Corpus Christi, Texas.

Janitorial/Custodial for the following GSA Warehouses in Auburn, Washington: WAO815KA, WAO816KA, WAO821KA, WAO817KA, WAO822KA, WAO823KA, WAO824KA, WAO825KA, WAO831KA, WAO832KA, WAO833KF, WAO834KF.

Microfilming of IRS Documents, Cincinnati, Ohio.

Beverly L. Milkman,
Executive Director.

[FR Doc. 91–18411 Filed 8–1–91; 8:45 am]

BILLING CODE 6820–33–M

Additions to the Procurement List; Correction of Effective Date

The effective date for additions to the Procurement List appearing on page 33422 of FR Doc. 91–17232 in the issue of Monday, July 22, 1991 is corrected to August 21, 1991.

Beverly L. Milkman,

Executive Director.

[FR Doc. 91–18412 Filed 8–1–91; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability: Record of Decision for the Yakima Firing Center Land Acquisition, Yakima, WA

AGENCY: Department of Defense, Department of the Army, Fort Lewis, Washington.

ACTION: Notice of Availability of a Record of Decision (ROD) for the Yakima Firing Center (YFC) Land Acquisition, Yakima, Washington.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the U.S. Army has prepared a Record of Decision to acquire approximately 63,000 acres of additional maneuver training land near the Yakima Firing Center (YFC), Yakima, Washington in fiscal year 1992.

The requirement for additional maneuver area, beyond what is available at Fort Lewis and YFC, is a result of three major factors. First is the increased emphasis on brigade level combined arms training by both Active and Reserve Component (AC/RC) units Army wide. This increased emphasis results from changes in Army doctrine, organizations, and equipment which in turn respond to evolving battlefield requirements. The land expansion at YFC will enhance the ability of AC/RC units to train to realistic brigade and battalion levels. Second, the expansion will provide sufficient land to permit live-fire operations to continue at the same time large scale maneuver training exercises are conducted. YFC is the only major training area in the northwest continental United States that can accommodate the safety fans for all modern ground and Army air weapons platforms. Despite the trend to reduce forces, the Army must maintain training areas large enough to support the current and future live-fire and maneuver training and testing requirements and support potential mobilization requirements. Finally, the expansion will also permit environmentally sound land management practices. The increased usage of YFC by all types of maneuver forces has mandated the careful monitoring and conservation of our existing land resources.

The following alternatives were considered in this ROD: (1) The Preferred Alternative—the land proposed to be acquired lies in Yakima, Kittitas and Grant Counties, Washington, and encompasses approximately 63,000 acres. The land includes a northern expansion area (North of the existing YFC), an eastern expansion area (east of the existing YFC), and a river crossing site on the east bank of the Columbia River; (2) The Hanford Reservation Alternative—the areas of the Hanford Site that were considered for acquisition included: the Arid Lands Ecology (ALE) Reserve; the buffer area located north of Washington State Highway #24, west of highway #240, and south of the Columbia River; the Wahluke Wildlife Area and the Saddle Mountains Refuge Area; (3) The No Action Alternative—the no action alternative would maintain the current acreage and training activity at the YFC. YFC would continue to have a shortfall of available maneuver area for training, and not enough land to provide fallow time for land rehabilitation without interfering with realistic maneuver and live-fire training. The Preferred Alternative was selected.

A copy of the YFC ROD can be obtained by writing or contacting Mr. Gary Stedman, Headquarters I Corps and Fort Lewis, Environmental and Natural Resources Division (ATTN: AFZH–DEQ), Fort Lewis, Washington 98433–5000. Telephone calls may be placed to (206) 967–5337 or 967–5646.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA (I,L&E).

[FR Doc. 91–18363 Filed 8–1–91; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Conduct of Employees; Waiver of Post-Employment Restrictions

Section 605(a)(3) of the Department of Energy Organization Act (Public Law 95–91, as amended) authorizes the Secretary of Energy to waive the post-employment restrictions of section 605(a)(1) of the Act, where a former employee has outstanding scientific or technological qualifications, is acting with respect to a particular matter in a scientific or technological field, and it has been determined that the national interest would be served by such action or appearance by the former employee.

It has been established to my satisfaction that Lewis E. Temple, Jr., who was Director of the Construction, Environment, and Safety Division of the Office of Energy Research from May 1985 until June 1991, has a unique combination of outstanding qualifications in the field of nuclear engineering and in the management of construction projects. I am further satisfied that it will serve the national interest to permit him, in his capacity as Project Director for the Advanced Photon Source (APS), Argonne National Laboratory, to appear before and communicate with employees of the Department of Energy with respect to management and direction of construction of the APS Project, and that these activities are in a technological field.

I have, therefore, waived the post-employment prohibitions of section 605(a)(1) of the Department of Energy Organization Act to permit contact by Dr. Temple with employees of the Department of Energy with respect to management and direction of construction of the APS Project.

Dated: July 12, 1991.

James D. Watkins,

Admiral, U.S. Navy (Retired), Secretary of Energy.

[FR Doc. 91–18390 Filed 8–1–91; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award Intent To Award Grant to British Coal Corp.

AGENCY: U.S. Department of Energy.

ACTION: Notice of Noncompetitive Financial Assistance.

SUMMARY: The Department of Energy announces that, pursuant to 10 CFR 600.7(b)(2)(i)(B), it intends to make a non-competitive award of $102,030.00 to the British Coal Corporation under grant number DE–AC01–91FE62384.

The purpose of this grant is to support a study of the control, utilization, and disposal of carbon dioxide and other greenhouse gases from fossil fuel use. This study will also develop estimates of the energy market and economic impacts of the implementation of potential abatement offices.

This study is cosponsored by the U.K. Atomic Energy Authority; the British Coal Corporation; ENEL, Italy; Ministry of Economic Affairs, the Netherlands; National Energy Administration, Sweden; Ministry of Energy, Danish Energy Agency, Denmark; Statoil,

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Norway; and DGXII, Commission of the European Community.

The performance schedule is for a six month period.

FOR FURTHER INFORMATION CONTACT: U.S Department of Energy, Office of Placement and Administration, ATTN: Lynnette Desorcie, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–8700.

Robert J. Woytko,

Acting Director, Operations Division "A", Office of Placement and Administration.

[FR Doc. 91–18391 Filed 8–1–91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP90–127–000]

Oklahoma-Arkansas Pipeline Co.; Availability of Final Environmental Impact Statement for Proposed Oklahoma-Arkansas Pipeline Project

July 26, 2991.

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC or Commission) has made available a final environmental impact statement (FEIS) on the natural gas pipeline facilities proposed in the above-referenced docket.

The FEIS was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, including receipt of necessary permits and approvals, would have limited adverse environmental impact. The FEIS evaluates alternatives to the proposal.

The proposed action involves the construction and operation of approximately 355.4 miles of 30- and 36-inch-diameter interstate natural gas pipeline, including metering facilities, to provide open access transportation services on a firm or interruptible basis to shippers who may include producers, interstate pipelines, local distribution companies, cogenerators, marketers, and end users. The Oklahoma-Arkansas Pipeline Project would transport up to 500,000 thousand cubic feet per day (Mcfd) of natural gas from the Arkoma Basin producing area in eastern Oklahoma and western Arkansas, to interconnection points with existing facilities of Texas Eastern Transmission Corporation (Texas Eastern) in White County, Arkansas and of Trunkline Gas Company (Trunkline) in Tate County, Mississippi. Approximately 259,000 Mcfd would be delivered to Texas Eastern and 241,000 Mcfd to Trunkline.

The FEIS will be used in the regulatory decision-making process at the FERC and may be presented as evidentiary material in formal hearings at the FERC. While the period for filing interventions in this case has expired, motions to intervene out-of-time can be filed with the FERC in accordance with the Commission's Rules of Practice and Procedure, 18 CFR 385.214(d). Further, anyone desiring to file a protest with the FERC should do so in accordance with 18 CFR 385.211.

The FEIS has been placed in the public files of the FERC and is available for public inspection in the FERC's Division of Public Information, room 3104, 941 North Capitol Street, NE., Washington, DC 20426. Copies have been mailed to Federal, state, and local government agencies, interested individuals, public interest groups, newspapers, libraries, and parties to the proceeding.

Limited copies of the FEIS are available from Mr. Lonnie Lister, Project Manager, Environmental Policy and Project Analysis Branch, Office of Pipeline and Producer Regulation, room 7312, 825 North Capitol Street, NE., Washington, DC 20426, or call (202) 208–2191. When these copies are depleted, the FEIS will be available from the National Technical Information Service (NTIS), Springfield, Virginia. Please call the NTIS at (703) 487–4780 to obtain the identification number and information on how to order additional copies.

Lois D. Cashell,

Secretary.

[FR Doc. 91–18335 Filed 8–1–91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91–2538–000, *et al.*]

Questar Pipeline Company, et al.; Natural Gas Certificate Filings

July 26, 1991.

Take notice that the following filings have been made with the Commission:

1. Questar Pipeline Company

[Docket No. CP91–2538–000]

Take notice that on July 22, 1991, Questar Pipeline Company (Questar), 79 South State Street, Salt Lake City, Utah 84111, filed in (Docket No. CP91–2538–000, a request pursuant to §§ 157.205 and 157.212(a) of the Commission's Regulations and Questar's blanket certificate issued in Docket No. CP82–491–000 pursuant to seciton 7 of the Natural Gas Act for authorization to construct and operate one 2-inch tap on its transmission pipeline system for delivery of gas to Mountain Fuel Supply Company (Mountain Fuel), all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Questar proposes to construct and operate one 2-inch tap on its existing 12 ¾-inch O.D. Jurisdictional Lateral No. 85 (J.L. No. 85) located in Sweetwater County, Wyoming, at an estimated cost of $7,000. Questar states that the additional delivery point will allow it to deliver natural gas from its general system supply of up to approximate 20 Dth per day and 2,200 Dth annually to Mountain Fuel, the local distribution company affiliate of Questar, for sale by Mountain Fuel to the Rock Springs-Sweetwater County Airport located near Rock Springs, Wyoming.

In addition to the tap, Questar states that pursuant to the automatic authorization provisions of 18 CFR 157.208(a), it intends install approximately 4,000 feet of 3-inch tap line (Juriscitional Tap Line No. 91 (J.T.L. No. 91)) and one standard district regulator station, at an estimated cost of $79,000. Questar states that the J.T.L. No. 91 will connect the J.L. No. 85 two-inch tap assembly to the new district regulator station where Mountain Fuel will take title to the gas.

Questar states that deliveries to Mountain Fuel through the proposed tap will not cause Questar to exceed the maximum daily quantities applicable to the service provided to Mountain Fuel under Questar's FERC Rate Schedules CD–1 (Wyoming/Colorado Zone) (23,893 Dth per day) and X–33 (1187,470 Dth per day). Finally, Questar states that its FERC Gas Tariff does not prohibit the addition of new delivery points.

Comment date: September 9, 1991, in accordance with Standard Paragraph G at the end of this notice.

2. El Paso Natural Gas, Tennessee Gas Pipeline, and United Gas Pipe Line Companies

Docket Nos. CP91–2565–000, CP91–2566–000, CP91–2567–000, CP91–2568–000, CP–2569–000, CP91–2570–000, CP91–2571–000, CP91–2572–000]

Take notice that Applicants filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued to Applicants all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

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[1] These prior notice requests are not consolidated.

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8-1-91; 8:45 am]

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he following filings
n the Commission:

Company

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n July 22, 1991,
npany (Questar), 79
alt Lake City, Utah
et No. CP91-2538-
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fully set forth in the request that is on file with the Commission and oben to public inspection.

Questar proposes to construct and operate one 2-inch tap on its existing 12 ¾-inch O.D. Jurisdictional Lateral No. 85 (J.L. No. 65) located in Sweetwater County, Wyoming, at an estimated cost of $7,000. Questar states that the additional delivery point will allow it to deliver natural gas from its general system supply of up to approximate 20 Dth per day and 2,200 Dth annually to Mountain Fuel, the local distribution company affiliate of Questar, for sale by Mountain Fuel to the Rock Springs-Sweetwater County Airport located near Rock Springs, Wyoming.

In addition to the tap, Questar states that pursuant to the automatic authorization provisions of 18 CFR 157.208(a), it intends install approximately 4,000 feet of 3-inch tap line (Juriscitional Tap Line No. 91 (J.T.L. No. 91)) and one standard district regulator station, at an estimated cost of $79,000. Questar states that the J.T.L. No. 91 will connect the J.L. No. 85 two-inch tap assembly to the new district regulator station where Mountain Fuel will take title to the gas.

Questar states that deliveries to Mountain Fuel through the proposed tap will not cause Questar to exceed the maximum daily quantities applicable to the service provided to Mountain Fuel under Questar's FERC Rate Schedules CD-1 (Wyoming/Colorado Zone) (23,893 Dth per day) and X-33 (1187,470 Dth per day). Finally, Questar states that its FERC Gas Tariff does not prohibit the addition of new delivery points.

Comment date: September 9, 1991, in accordance with Standard Paragraph G at the end of this notice.

2. El Paso Natural Gas, Tennessee Gas Pipeline, and United Gas Pipe Line Companies

Docket Nos. CP91-2565-000, CP91-2566-000, CP91-2567-000, CP91-2568-000, CP-2569-000, CP91-2570-000, CP91-2571-000, CP91-2572-000]

Take notice that Applicants filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued to Applicants all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

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[1] These prior notice requests are not consolidated.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix A. Applicants' addresses and transportation blanket certificates are shown in the attached appendix B.

Comment date: September 9, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2565-000 (7-24-91)	GasMark, Inc. (Marketer).	1,030 515 187,975	(2)	NM	[3] 5-24-91, T-1, interruptible.	ST91-9033-000, 6-1-91.
CP91-2566-000 (7-24-91)	Ashton Energy Company (Marketer).	100,000 100,000 [4] 36,500,000	Various	Various	[3] 6-16-88, IT, interruptible.	ST91-9552-000, 7-9-91.
CP91-2567-000 (7-24-91)	NGC Transportation, Inc. (Marketer).	500,000 500,000 [4] 182,500,000	OLA, LA, TX	NY, RI, NJ, CT, PA, MS	[3] 9-30-87, IT, interruptible.	ST91-9523-000, 7-1-91.
CP91-2568-000 (7-24-91)	BHP Petroleum Company, Inc. (Producer).	20,000 20,000 [4] 7,300,000	LA, TX, MS	LA, AL, TN, MS, WV, NJ, MA.	[3] 12-19-88, IT, interruptible.	ST91-9507-000, 7-1-91.
CP91-2569-000 (7-24-91)	Seagull Marketing Services (Marketer).	515,000 515,000 187,975,000	Various	Various	[3] 10-1-88, ITS, interruptible.	ST91-9384-000, 6-19-91.
CP91-2570-000 (7-24-91)	Enron Gas Marketing Inc. (Marketer).	515,000 515,000 187,975,000	Various	Various	[3] 1-20-89, ITS, interruptible.	ST91-9470-000, 6-19-91.
CP91-2571-000 (7-24-91)	Graham Energy Marketing Corp. (Marketer).	123,600 123,600 45,114,000	Various	Various	[3] 11-9-88, ITS, interruptible.	ST91-9455-000, 6-24-91.
CP91-2572-000 (7-24-91)	Energy Marketing Exchange, Inc. (Marketer).	77,250 77,250 28,196,250	AL, LA, TX	LA, TX	[5] 4-14-88, ITS, interruptible.	ST91-9506-000, 7-2-91.

[1] Offshore Louisiana is shown as OLA.
[2] Any point of receipt on El Paso's system.
[3] As amended.
[4] Tennessee's quantities are in dekatherms.
[5] As amended.

Applicant's address	Blanket docket
El Paso Natural Gas Company, P.O. Box 1492, El Paso, Texas 79978.	CP88-433-000
Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77252.	CP88-115-000
United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77251-1478.	CP88-6-000

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91-18337 Filed 8-1-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-6-22-000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 26, 1991.

Take notice that CNG Transmission Corporation ("CNG"), on July 24, 1991, pursuant to section 4 of the Natural Gas Act, Article V of the Stipulation and Agreement approved by the Commission on May 7, 1991, in Docket Nos. RP88-211-000, *et al.*, and section 3 of Rate Schedule UTAP filed June 6, 1991, files six (6) copies of the following revised tariff sheets to First Revised Volume No. 1 of CNG's FERC Gas Tariff:

Second Revised Sheet No. 35
Alternate Second Revised Sheet No. 35
Second Alternate Second Revised Sheet No. 35

The proposed effective date is August 1, 1991.

The purpose of this filing is to track a rate reduction filed by Texas Eastern Transmission Corporation ("Texas Eastern") on July 1, 1991, in Docket No. TQ91-4-17-000.

CNG has filed alternate tariff sheets to correspond to the alternate sheets currently before the Commission as part of CNG's compliance filing of June 6, 1991, in Docket Nos. RP88-211 et al.

CNG states that copies of the filing were served upon CNG's customers as well as interested parties.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 and 385.211. All motions or protests should be filed on or before August 2, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Persons that are already parties the this proceeding need not file a motion to intervene in this matter.

VOL 56 ISS 149 AG 2 1991 UMI

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–18336 Filed 8–1–91; 8:45]

BILLING CODE 6717–01–M

[Docket Nos. CP90–2154–000, RP85–177–006, RP88–67–039, RP88–81–000, RP88–221–000, RP89–255–002, RP90–119–001, RP90–15–000, RP91–4–000, RP91–119–000, and TA91–1–17 (Phase I/Rates)]

Texas Eastern Transmission Co.; Informal Settlement Conference

July 26, 1991.

Take notice that a conference will be convened in this proceeding on August 6, 7 & 8, 1991, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the issues in the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations 18 CFR 385.214. In the spirit of 18 CFR 385.601(b)(2), it is recommended that parties have management officials with decision-making authority attend.

For additional information, contact Dennis H. Melvin (202) 208–0042 or Arnold H. Meltz (202) 208–0737.

Lois D. Cashell,

Secretary.

[FR Doc. 91–18334 Filed 8–1–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–61–004]

Texas Gas Transmission Corp.; Compliance Filing

July 26, 1991.

Take notice that on July 24, 1991, Texas Gas Transmission Corporation (Texas Gas) tendered for filing a refund report of amounts due customers under the dockets numbers referenced above.

Texas Gas states that, pursuant to Ordering Paragraph (B) of the Commission's Order Approving Settlement (Order) issued on May 1, 1991, in the dockets referenced above, Texas Gas is submitting the following refund report. On June 28, 1991, Texas Gas issued refund checks to five (5) customers who had negative remaining direct bill obligations under the Stipulation and Agreement filed by Texas Gas. Paragraph (B) of the Order directs Texas Gas to file with the Commission a refund report for any refund made pursuant to this settlement within 30 days of making such refunds.

Texas Gas states that copies of the refund report are being mailed to Texas Gas's jurisdictional customers, interested state commissions, and all persons listed on the official service list previously compiled by the secretary in the proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before August 2, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–18332 Filed 8–1–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–68–035]

Transcontinental Gas Pipe Line Corp.; Report of Refunds

July 26, 1991.

Take notice that on July 9, 1990, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing with the Federal Energy Regulatory Commission its Interest Rate True-Up of PSP and LPSP Charges made pursuant to sections 34 through 37 of the General Terms and Conditions of Transco's FERC Gas Tariff, Second Revised Volume No. 1.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before August 2, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–18333 Filed 8–1–91; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 91–14–NG]

BC Gas Inc.; Order Amending Long-Term Authorization To Import From and Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order amending long-term authorization to import from and export natural gas to Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order to BC Gas Inc. (BC Gas) approving amendments to DOE/FE Opinion and Order No. 285–A that increase the annual Canadian natural gas volumes it imports and exports to and from U.S. storage facilities from 2,164,122 Mcf to 3,180,243 Mcf. Further, the order eliminates daily delivery ceilings and seasonal restrictions for importing and exporting gas.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 26, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–18392 Filed 8–1–91; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 91–29–NG]

North American Resources Co.; Order Granting Blanket Authorization To Export Natural Gas to Canada and Mexico

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting Blanket Authorization to Export natural gas to Canada and Mexico.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order granting North American Resources Company blanket authorization to export up to a combined total of 73 Bcf of natural gas to Canada and Mexico over a two-year term beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056,

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3-1-91; 8:45 am]

Office of Fossil Energy

[FE Docket No. 91-14-NG]

BC Gas Inc.; Order Amending Long-Term Authorization To Import From and Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order amending long-term authorization to import from and export natural gas to Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order to BC Gas Inc. (BC Gas) approving amendments to DOE/FE Opinion and Order No. 285-A that increase the annual Canadian natural gas volumes it imports and exports to and from U.S. storage facilities from 2,164,122 Mcf to 3,180,243 Mcf. Further, the order eliminates daily delivery ceilings and seasonal restrictions for importing and exporting gas.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 26, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-18392 Filed 8-1-91; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91-29-NG]

North American Resources Co.; Order Granting Blanket Authorization To Export Natural Gas to Canada and Mexico

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting Blanket Authorization to Export natural gas to Canada and Mexico.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order granting North American Resources Company blanket authorization to export up to a combined total of 73 Bcf of natural gas to Canada and Mexico over a two-year term beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 26, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-18393 Filed 8-1-91; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91-24-NG]

Seagull Marketing Services, Inc.; Order Granting Blanket Authorization To Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to import and to export natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Seagull Marketing Services, Inc. blanket authorization to import up to 150 Bcf of Canadian natural gas and to export to Canada up to 150 Bcf of natural gas over a two-year period beginning on the date of first delivery of the import or export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 26, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-18394 Filed 8-1-91; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed During the Week of July 5 Through July 12, 1991

During the Week of July 5 through July 12, 1991, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: July 26, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of July 5 through July 12, 1991]

Date	Name and location of applicant	Case No.	Type of submission
July 12, 1991	James L. Schwab, Spokane, WA	LFA-0136	Appeals of an information request denial. *If Granted* James L. Schwab would receive a waiver of all fees incurred in the processing of the DOE information.
July 11, 1991	Unisys, McLean, VA	LFA-0135	Appeal of an information request denial. *If Granted* Unisys would receive access to fee information for Contract DE-AC65-89WA04360.

REFUND APPLICATIONS RECEIVED

[Week of July 5 to July 12, 1991]

Date received	Name of refund proceeding/name of refund applicant	Case No.
02/11/91	Fisher Motor Company.	RF311-14
06/07/91	Odessa L.P.G. Transport, Inc.	RF335-33
07/08/91	E. Carter Co. RII School Dist.	RF335-52
07/09/91	David E. Knox	RF329-9
07/09/91	L.S. Riggins Oil Co.	RF330-32
07/09/91	Johnson Oil Co.	RF330-33
07/09/91	Metropolitan Petroleum Co.	RF330-34
07/09/91	Rainey Oil Co.	RF330-35
07/09/91	Metro Oil Prods. Inc.	RF330-36
07/11/91	Doech-King Company, Inc.	RC272-126
07/12/91	Hercules, Inc.	RF336-18
07/12/91	Aqualon Company	RF336-19
07/12/91	Southwestern Massachusetts.	RF336-20
07/05/91 thru 07/12/91.	Texaco Refund Applications Received.	RF321-16225 thru RF321-16254
07/05/91 thru 07/12/91.	Crude Oil Applications Received.	RF272-890446 thru RF272-89470
07/05/91 thru 07/12/91.	Gulf Oil Refund Applications Received.	RF300-17136 thru RF300-17191

[FR Doc. 91-18395 Filed 8-1-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3979-9]

Environmental Impact Statement; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements Filed July 22, 1991 Through July 26, 1991 Pursuant to 40 CFR 1506.9.

EIS No. 910241, Final EIS, FHW, MI, MI-45 Reconstruction, west of 68th Avenue to east of 24th Avenue, Funding and section 404 Permit, Ottawa County, MI, Due: September 03, 1991, Contact: Norman Stoner (517) 377-1851.

EIS No. 910242, Final EIS, FHW, WI, US 53 Improvements, Trego to Kent Road, Funding and section 404 Permit, Washburn and Douglas Counties, WI, Due: September 03, 1991, Contact: James Wenning (608) 264-5956.

EIS No. 910243, Draft EIS, FHW, CA, CA–30 Improvements, CA–66/Foothill Boulevard to I–215, Funding and section 404 Permit, Los Angeles and San Bernardino Counties, CA, Due: September 16, 1991, Contact: Leonard Brown (916) 551–1307.

EIS No. 910244, Draft EIS, AFS, UT, East Fork Black Forks Multiple Use Management Project, Implementation, Wasatch-Cache National Forest, Evanston Ranger District, Summit County, UT, Due: September 16, 1991, Contact: Steve Ryberg (307) 789–3194.

EIS No. 910245, Final EIS, FHW, IL, FAP 30 (formerly FAP 413) Constructrion, I–270 at the northern terminus of I–255 to IL–267 north of Alton, Funding, section 404 Permit, Possible NPDES Permit, Madison County, IL, Due: September 03, 1991, Contact: Jay Miller (217) 492–4600.

EIS No. 910246, Final EIS, NPS, VA, George Washington Memorial Parkway, Potomac Greens Interchange Development, Construction Permit, Special Use Permit, Daingerfield Island, VA, Due: September 03, 1991, Contact: Sally Bluemental (202) 619–7038.

EIS No. 910247, Final SUPPLEMENT, FHW, KY, US 27 and US 68 Improvement, Rogers Road in Lexington to Parkway Drive in Paris, Funding, Bridge Construction Permit, North Fork Elkhorn Creek and Houston Creek Bridge, Fayette and Bourbon Counties, KY, Due: September 03, 1991, Contact: Paul Toussaint (502) 227–7321.

EIS No. 910248, Final EIS, UAF, IL, Scott Air Force Base Joint Military-Civilian Use, Civil Runway and Associated Airport Facilities Construction, Plan Approval, St. Clair County, IL, Due: September 03, 1991, Contact: Patricia Calliott (618) 256–5764.

EIS No. 910249, Draft EIS, EPA, Hazardous Waste Treatment, Storage, and Disposal Facilities (TSDF), Organic Air Emission Standards, Due: October 01, 1991, Contract: Stephen Shedd (919) 541–5397.

EIS No. 910250, Draft EIS, CDB, NY, City of Rochester School No. 25 and School No. 36 Replacement, CDBG, Rochester, Monroe County, NY, Due: September 16, 1991, Contact: Robert M. Barrows (716) 428–6924.

EIS No. 910251, Final EIS, AFS, MT, Turkey Salvage Timber Sale and Road Construction Implementation, Lewis and Clark National Forest, Judith Ranger District, Judith Basin County, MT, Due: September 03, 1991, Contact: Richard M. Abt (406) 761–4628.

EIS No. 910252, Final EIS, NOA, Flower Garden Banks National Marine Sanctuary Establishment, Designation, LA and TX, Due: September 03, 1991, Contact: Edward Lindelof (202) 606–4122.

EIS No. 910253, Draft EIS, NOA, AK, Halibut Fisheries Proposed Individual Fishing Quota Management Alternatives Plan, Approval and Implementation, Gulf of Alaska and Bering Sea/Aleutian Islands, AK, Due: September 16, 1991, Contact: Steven Pennoyer (907) 586–7221.

EIS No. 910254, Final EIS, FHW, KY, US 27 Construction, Camp Nelson to Nicholasville Bypass, Funding and 404 Permit, Jessamine County, KY, Due: September 16, 1991, Contact: Paul Toussaint (502) 227–7321.

EIS No. 910255, Draft EIS, FHW, IA, US 20 Relocation, US 65 south of Iowa Falls to existing US 20 at the Grundy/Black Hawk County line, Funding and section 404 Permit, Hardin and Grundy Counties, IA, Due: September 16, 1991, Contact: H.A. Williard (515) 233–1664.

EIS No. 910256, Final EIS, AFS, MT, Gravelly Sagebrush Burning Project, Implementation, Beaverhead National Forest, Madison County, MT, Due: September 03, 1991, Contact: Ron Scott (406) 682–4253.

EIS No. 910257, Final EIS, FRC, OK, MS, AR, Oklahoma-Arkansas Natural Gas Pipeline Project, Construction, Operation and Transportation, Section 10 and 404 Permits, NPDES Permit, Several Counties in MS, OK and AR, Due: September 03, 1991, Contact: Lonnie Lister (202) 208–2191.

Dated: July 30, 1991.

Terry M. Cullins,

Chief, SPAD, Office of Federal Activities.

[FR Doc. 91–18415 Filed 8–1–91; 8:45 am]

BILLING CODE 6560-50-M

[ER–FRL–3980–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 15, 1991 through July 19, 1991 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5076. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 5, 1991 (56 FR 14096).

Draft EISs

ERP No. D–AFS–J67012–MT Rating EC2, East Boulder Mine Project, Platinum and Palladium Mining, Construction and Operation, Plan of Operations Approval and COE section 404 Permit, Gallatin National Forest, Sweet Grass County, MT.

Summary: EPA has concerns with potential impacts on water quality and aquatic life from the East Boulder Mine project. Sufficient information is lacking to address the credibility of several document proposals. Additional alternatives should be analyzed in subsequent NEPA documentation.

ERP No. D–AFS–K35033–CA Rating EC2, Rock Creek-Cresta Reservoirs Dredging Project, Dredging and Disposal of Sediments, section 404 Permit, Plumas National Forest, Plumas County, CA.

Summary: EPA expressed environmental concerns regarding potential project impacts to wetlands and water quality and the adequacy of the alternatives analysis, mitigation to avoid or reduce impacts of water quality and wetlands and the discussion of future actions to address the long term sedimentation problem at the reservoir.

ERP No. DA–AFS–C65001–PR Rating EC2, Caribbean National Forest and Luquillo Experimental Forest Land and Resource Management Plan, Effects of Hurricane Hope and Updated Information, Commonwealth of Puerto Rico.

Summary: EPA believes the Forest Service addresses many of our concerns about mitigation activities in the Caribbean National Forest. The final EIS should present additional information on the potential impacts of highway restoration on water quality.

ERP No. DS–FRC–C05144–NJ Rating EC2, Mount Hope Pumped Storage Hydroelectric Project Construction, Operation and Maintenance, New and Additional Information, License, section 404 Permit, Morris County, NJ.

Summary: EPA expressed environmental concerns due to potential water quality impacts to Mount Hope Pond and other water bodies in the drainage basin, and the project's potential conflict with the provisions of the Roe Amendment. EPA requests that additional information to address these issues be provided in the final EIS.

Final EISs

ERP No. F–BLM–A82122–00, Thirteen Western States, Vegetation Treatment on Bureau of Land Management Lands, Implementation, AZ, CO, ID, MT, NV, NM, ND, OK, OR, SD, UT, WA, and WY.

Summary: EPA has concerns about site-specific assessments that will be tiered from the final EIS. To ensure adequate analysis of the program's impacts, the future assessments should be made available to EPA staff for review. Additionally, several remaining

Lindelof (202) 606–

Draft EIS, NOA, AK,
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Final EIS, FHW, KY,
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1, Contact: Paul
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liard (515) 233–1664.
Final EIS, AFS, MT,
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1, Contact: Ron Scott

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(EISs) was published
5, 1991 (56 FR 14096).

–J67012–MT Rating
Mine Project,
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Operation, Plan of

Operations Approval and COE section 404 Permit, Gallatin National Forest, Sweet Grass County, MT.

Summary: EPA has concerns with potential impacts on water quality and aquatic life from the East Boulder Mine project. Sufficient information is lacking to address the credibility of several document proposals. Additional alternatives should be analyzed in subsequent NEPA documentation.

ERP No. D–AFS–K35033–CA Rating EC2, Rock Creek-Cresta Reservoirs Dredging Project, Dredging and Disposal of Sediments, section 404 Permit, Plumas National Forest, Plumas County, CA.

Summary: EPA expressed environmental concerns regarding potential project impacts to wetlands and water quality and the adequacy of the alternatives analysis, mitigation to avoid or reduce impacts of water quality and wetlands and the discussion of future actions to address the long term sedimentation problem at the reservoir.

ERP No. DA–AFS–C65001–PR Rating EC2, Caribbean National Forest and Luquillo Experimental Forest Land and Resource Management Plan, Effects of Hurricane Hope and Updated Information, Commonwealth of Puerto Rico.

Summary: EPA believes the Forest Service addresses many of our concerns about mitigation activities in the Caribbean National Forest. The final EIS should present additional information on the potential impacts of highway restoration on water quality.

ERP No. DS–FRC–C05144–NJ Rating EC2, Mount Hope Pumped Storage Hydroelectric Project Construction, Operation and Maintenance, New and Additional Information, License, section 404 Permit, Morris County, NJ.

Summary: EPA expressed environmental concerns due to potential water quality impacts to Mount Hope Pond and other water bodies in the drainage basin, and the project's potential conflict with the provisions of the Roe Amendment. EPA requests that additional information to address these issues be provided in the final EIS.

Final EISs

ERP No. F–BLM–A82122–00, Thirteen Western States, Vegetation Treatment on Bureau of Land Management Lands, Implementation, AZ, CO, ID, MT, NV, NM, ND, OK, OR, SD, UT, WA, and WY.

Summary: EPA has concerns about site-specific assessments that will be tiered from the final EIS. To ensure adequate analysis of the program's impacts, the future assessments should be made available to EPA staff for review. Additionally, several remaining

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factual omissions and deficiencies should be corrected.

ERP No. F–FHW–E50287–TN, TN–56 (Austin Peay) Bridge Approaches Replacement, Cumberland River, Funding, U.S. CGD Bridge Permit and Possible COE Section 404 Permit, Jackson County, TN.

Summary: EPA believes, that no significant long term environmental impact will occur if best management practices are followed, and wetlands mitigation and the monitoring plan are implemented.

ERP No. FS–AFS–G65041–AR, Ozark-St. Francis National Forest, Land and Resource Management Plan, Additional Information, Amendment to Alternative D, Implementation, Several Counties, AR.

Summary: Review of the final EIS has been completed and the project found to be satisfactory.

Dated: July 30, 1991.

Terry M. Cullins,

Chief, SPAD, Office of Federal Activities.

[FR Doc. 91-18416 Filed 8-1-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3980-3]

Expert Panel on the Role of Science at EPA; Open Meeting

Under Public Law 92–463, notice is hereby given that the Expert Panel on the Role of Science at EPA will hold a public meeting on August 19, 1991, in the LaSalle Room of the Loew's L'Enfant Plaza Hotel, 480 L'Enfant Plaza SW., Washington, DC. The meeting will begin at 8:30 a.m. and will end at 10 a.m.

The purpose of the meeting will be to summarize issues which the Panel has identified for consideration during its review of science at EPA, and to receive input from members of the public. Any member of the public wishing to attend the meeting, present an oral statement, or submit a written statement should contact Gail Robarge, U.S. Environmental Protection Agency, Office of Research and Development (H–8105), 401 M St., SW., Washington, DC 20460, (202)382–7891. For further information concerning the Panel or its activities, please contact Ms. Wendy Cleland-Hamnett, Designated Federal Official to the Panel, Office of the Administrator (A–101), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202)382–4724. Seating is limited due to the size of the room and will be on a first come basis.

Dated: July 30, 1991.

Wendy Cleland-Hamnett,

Special Assistant to the Administrator.

[FR Doc. 91–18508 Filed 8–1–91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1854]

Petitions for Reconsideration and Clarification of Actions in Rule Making Proceedings

July 26, 1991–G4.

Petitions for reconsideration have been filed in the Commission rule making proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copaying in room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor Downtown Copy Center (202) 452–1422. Oppositions to these petitions must be filed on or before August 20, 1991. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b), Table of allotments, FM Broadcast Stations. (Lafayette, Tennessee and Campbellsville, Kentucky) (MM Docket No. 89–570, RM Nos. 7061, 7710), Number of Petitions Received: 1.

Subject: Amendment of part 73 of the Rules to provide for an Additional FM Station Class (Class C3) and to Increase the Maximum Transmitting Power for Class A FM Stations. (MM Docket No. 88–375, RM–6236, RM–6237), Number of Petitions Received: 4.

Subject: Amendment of Part 2 of the Rules Concerning the Importation of Radio Frequency Devices Capable of Causing Harmful Interference. (GEN Docket No. 89–349), Number of Petitions Received: 3.

Subject: Regulation of International Accounting Rates. (CC Docket No. 90–337, Phase I), Number of Petitions Received: 2.

Subject: Amendment of Part 15 of the Commission's Rules to Implement the Provisions of the Television Decoder Circuitry Act of 1990. (GEN Docket No. 91–1), Number of Petitions Received: 1.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–18322 Filed 8–1–91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Supervisory Policy Statement on Securities Activities

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Request for comment.

SUMMARY: The five member agencies of the Federal Financial Institutions Examination Council (the FFIEC), which include the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS) (collectively, the Agencies), are seeking additional public comment on section III of the proposed supervisory policy statement that was initially published for public comment on January 3, 1991 (56 FR 263). As now proposed, section III defines "high-risk mortgage securities" and specifies that such securities are not suitable investment portfolio holdings for depository institutions. High-risk mortgage securities may only be acquired to reduce an institution's interest rate risk and must be reported in the trading account at market value or as assets held for sale at the lower of cost or market value. Examiners will seek the orderly divestiture of high-risk mortgage securities that do not reduce interest rate risk. Other products with risk characteristics similar to high-risk mortgage securities may be subject to the same supervisory treatment. In addition, section III further provides that disproportionately large holdings of long-term zero-coupon bonds are considered an imprudent investment practice. Such holdings will be subject to criticism by examiners who may seek their orderly disposal.

DATES: Comments must be received by September 3, 1991.

ADDRESSES: Comments should be directed to Robert J. Lawrence, Executive Secretary, Federal Financial Institutions Examination Council, 1776 G Street NW., suite 850B, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: At the FRB: Rhoger H Pugh, Manager, Policy Development, Division of Banking

Supervision and Regulation (202) 728–5883; Charles H. Holm, Supervisory Financial Analyst, Division of Banking Supervision and Regulation (202) 452–3502. At the FDIC: Sharon K. Lee, Capital Markets Specialist, Division of Supervision (202) 898–6789; Robert F. Storch, Chief, Accounting Section, Division of Supervision (202) 898–8906. At the NCUA: Charles Felker (202) 682–9640. At the OCC: Owen Carney, Senior Advisor for Investment Securities (202) 874–5070; Jamie Newell, Senior Capital Markets Advisor (202) 874–5070. At the OTS: John M. Frech, Senior Accountant, Accounting Policy (202) 906–5649; J. Douglas Gordon, Senior Financial Economist (202) 906–5728.

SUPPLEMENTARY INFORMATION: On January 3, 1991, the Federal Financial Institutions Examination Council issued for public comment a proposed Supervisory Policy Statement concerning the Selection of Securities Dealers, Securities Portfolio Policies and Strategies and Unsuitable Investment Practices, and Stripped Mortgage-Backed Securities, Certain CMO Tranches, Residuals, and Zero-Coupon Bonds. Under Section III of this proposal, stripped mortgage-backed securities, residuals, and "high-risk CMO tranches" were subject to the same supervisory treatment. However, many commenters indicated that the definition of high risk CMO tranches in section III of the proposal was too vague. These commenters indicated that the definition should include specific quantitative criteria in order to more precisely differentiate high risk CMO tranches from those with less risk. In consideration of the public comments on the January proposal, the FFIEC is now proposing to define "high-risk mortgage securities" in a quantitative manner. This definition will apply to all mortgage derivative products, including Collateralized Mortgage Obligations ("CMOs"), Real Estate Mortgage Investment Conduits ("REMICs"), CMO and REMIC residuals, and Stripped Mortgage-Backed Securities ("SMBSs"). In addition, other aspects of Section III have been changed from the January proposal.

Although the FFIEC invites comments on all aspects of section III as it is now proposed, the FFIEC requests comment on the following specific issues relating to section III.

(1) Whether the quantitative criteria proposed for determining high-risk mortgage securities in Section III effectively distinguishes "high-risk" mortgage derivative products from all other mortgage derivative products. If possible, commenters should provide estimates (with supporting data) of the portion of the existing CMO and REMIC products that will fall within the high-risk definition.

(2) The impact of the reporting treatment set forth in section III for high-risk mortgage securities.

The text of the proposed section III of the Supervisory Policy follows.

Supervisory Policy Statement on Securities Activities

Section III: Mortgage Derivative Products, Other Asset Backed Products, and Zero-Coupon Bonds

Summary

Mortgage derivative products include Collateralized Mortgage Obligations (CMOs), Real Estate Mortgage Investment Conduits (REMICs), CMO and REMIC residuals, and Stripped Mortgage-Backed Securities (SMBSs). The cash flows from the mortgages underlying these securities are redirected to create two or more classes with different maturity or risk characteristics designed to meet a variety of investor needs and preferences. However, many mortgage derivative products exhibit considerably more price volatility than standard mortgages or ordinary mortgage pass-through securities and can therefore expose investors to significant risk of loss if they are not managed in a safe and sound manner. This price volatility is caused in part by these mortgage derivative products' substantial prepayment risk and average life variability. In addition, because these products are complex, a high degree of technical expertise is required to understand how their prices and cash flows may behave under various interest rate and prepayment expectations. Moreover, because the secondary market for most of these products is relatively thin, they may be difficult to liquidate should the need arise.

Finally, there is additional uncertainty because new variants of these instruments continue to be introduced and their price performance under varying market and economic conditions has not been tested.

A general principle underlying this section is that mortgage derivative products possessing average life or price volatility in excess of a standard fixed rate 30-year mortgage-backed pass-through security are "high-risk mortgage securities" and are not suitable investments for depository institutions. All high-risk mortgage securities, as defined in detail below, held by depository institutions must be carried in the institutions, trading account or as assets held for sale. Institutions that hold mortgage derivative products that meet the definition of a high-risk mortgage security must do so to reduce interest rate risk in accordance with safe and sound practices.[1] Furthermore, depository institutions that purchase high-risk mortgage securities must demonstrate that they understand and are effectively managing the risks associated with these instruments. Levels of activity involving high-risk mortgage securities should be reasonably related to an institution's capital, capacity to absorb losses, and level of in-house management sophistication and expertise. Appropriate managerial and financial controls must be in place and the institution must have the ability to use analytical modeling techniques to monitor and prudently adjust its holdings of high-risk mortgage securities in an environment of changing price and maturity expectations.

Prior to taking a position in any high-risk mortgage security, an institution should evaluate the risk exposure resulting therefrom to ensure that the position will lead to a reduction in the institution's overall interest rate risk. An institution should also consider the liquidity and price volatility of these products prior to purchasing them.

Circumstances in which the purchase or retention of high-risk securities is deemed by the appropriate federal regulatory authority to be contrary to safe and sound practices for depository institutions will result in criticism by examiners, who may require the orderly divestiture of high-risk mortgage securities.

Securities and other products, whether carried on or off the balance sheet, having risk characteristics similar to high-risk mortgage securities may be subject to the same supervisory treatment as high-risk mortgage securities.

Long-term zero coupon bonds also exhibit significant price volatility and may expose an institution to considerable risk. Disproportionately large holdings of these instruments may be considered an imprudent investment practice, which will be subject to

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[1] Notwithstanding the provisions of this supervisory policy requiring the use of high-risk mortgage securities to reduce interest rate risk, this supervisory policy is not meant to preclude an institution with strong capital and earnings and adequate liquidity that has a closely supervised trading department from acquiring high-risk mortgage securities for trading purposes. The trading department must operate in conformance with well-developed policies, procedures, and internal controls, including detailed plans prescribing specific position limits and control arrangements for enforcing these limits.

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Prior to taking a position in any high-risk mortgage security, an institution should evaluate the risk exposure resulting therefrom to ensure that the position will lead to a reduction in the institution's overall interest rate risk. An institution should also consider the liquidity and price volatility of these products prior to purchasing them.

Circumstances in which the purchase or retention of high-risk securities is deemed by the appropriate federal regulatory authority to be contrary to safe and sound practices for depository institutions will result in criticism by examiners, who may require the orderly divestiture of high-risk mortgage securities.

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[1] Notwithstanding the provisions of this supervisory policy requiring the use of high-risk mortgage securities to reduce interest rate risk, this supervisory policy is not meant to preclude an institution with strong capital and earnings and adequate liquidity that has a closely supervised trading department from acquiring high-risk mortgage securities for trading purposes. The trading department must operate in conformance with well-developed policies, procedures, and internal controls, including detailed plans prescribing specific position limits and control arrangements for enforcing these limits.

criticism by examiners. In such instances, examiners may seek the orderly disposal of such securities. Assets slated for disposal are reported as assets held for sale at the lower of cost or market value.

Overview of the Securities

A. SMBSs consist of two classes of securities with each class receiving a different portion of the monthly interest and principal cash flows from the underlying mortgage-backed securities (MBS). In its purest form, an MBS is converted into an interest-only (IO) strip, where the investor receives all of the interest cash flows and none of the principal, and a principal-only (PO) strip, where the investor receives all of the principal cash flows and none of the interest.

IOs and POs have highly volatile price characteristics based, in part, on the prepayment variability of the underlying mortgages and consequently on the maturity of the stripped securities. Therefore, IOs and POs will nearly always meet the definition of high risk in this policy.

From a market perspective, IOs and POs have relatively wide bid/ask spreads compared to mortgage-backed securities. This decreases the effectiveness of SMBSs as interest rate risk reduction tools because interest rates and prepayments need to change by a significant amount before the price at which the security can be sold (i.e., the bid price) will exceed the price at which the security was purchased (i.e., the ask price).

B. CMOs and REMICs, hereafter called CMOs, have been developed in response to investor concerns regarding the uncertainty of cash flows associated with the prepayment option of the underlying mortgagor. A CMO can be collateralized directly by mortgages, but more often is collateralized by MBSs issued or guaranteed by GNMA, FNMA or FHLMC and held in trust for CMO investors. In contrast to MBSs in which cash flow is received pro rata by all security holders, the principal cash flow from the mortgages underlying a CMO is segmented and paid in accordance with a predetermined priority to investors holding various CMO tranches (but not necessarily to those holding certain residuals). By allocating the principal cash flows from the underlying collateral among the separate CMO tranches, different classes of bonds are created, each with its own stated maturity, estimated average life, coupon rate, and unique prepayment risk characteristics. Notwithstanding the importance of the CMO structure to an evaluation of the timing and amount of cash flows, it is equally essential to understand the coupon rates on the mortgages underlying the CMO to assess the prepayment sensitivity of the CMO tranches.

C. Residuals are claims on any excess cash flows from a CMO issue or other asset-backed security remaining after the payments due to the holders of the other classes and after trust administrative expenses have been met. The economic value of a residual is a function of the present value of the anticipated excess cash flows under assumed prepayment speeds based upon the underlying collateral of the CMO. These cash flows are highly sensitive to prepayments and existing levels of market interest rates; and the mortgages underlying the CMO must be understood in order to assess this sensitivity. Accordingly, most residuals meet the definition of high-risk in this policy. Other factors affecting the market value of residuals include a lack of liquidity and a wide bid-ask price spread.

D. Zero-coupon, "stripped" and certain Original Issue Discount (OID) securities are priced at large discounts to their face value prior to maturity and exhibit significant price volatility. "Stripped" securities are the interest or principal portions of U.S. Government obligations (which are separated and sold to depository institutions in the form of stripped coupons or stripped bonds (principal)), STRIPS, and such proprietary products as CATs or TIGRs. Also, deep discount OID bonds have been issued by a number of municipal entities.

Definition of "High-Risk Mortgage Security"

In general, any mortgage derivative product (including a CMO floating rate debt class) that exhibits greater price volatility than a standard fixed rate thirty-year mortgage-backed pass-through security will be deemed to be high risk. For purposes of this policy statement, a "high-risk mortgage security" is defined as any mortgage derivative product that at the time of purchase, or at a subsequent testing date, meets at least one of the following three tests. Once a mortgage derivative product is defined to be high risk, the product will be considered as high-risk as long as it is held by the institution.

(1) *Average Life Test.* The mortgage derivative product has an expected weighted average life greater than 8.0 years.

(2) *Average Life Sensitivity Test.* The expected weighted average life of the mortgage derivative product:

a. Extends by more than 4.0 years, assuming an immediate and sustained parallel shift in the yield curve of plus 300 basis points, or

b. Shortens by more than 5.0 years, assuming an immediate and sustained parallel shift in the yield curve of minus 300 basis points.

(3) *Price Sensitivity Test.* The estimated change in the price of the mortgage derivative product is more than 16 percent, due to an immediate and sustained parallel shift in the yield curve of plus or minus 300 basis points.

For purposes of determining whether a particular mortgage derivative product meets any of the above tests, all of the underlying assumptions including prepayment assumptions for the underlying collateral must be reasonable. Examiners will review all of the underlying assumptions used by the institution. For example, if an institution's prepayment assumptions differ significantly from the median prepayment assumptions of several major dealers as selected by examiners, the examiners may use their own prepayment assumptions in determining if a particular mortgage derivative product is high risk.

The federal financial institution regulatory agencies will monitor the changes in the level of interest rates and market innovations. The above tests may be adjusted in the event of a significant movement in market interest rates or to fairly measure the risk characteristics of new mortgage-backed products. Furthermore, each federal financial institution regulatory agency reserves the right to take such action as it deems appropriate to avoid evasion of the standards set forth in this policy statement, including the definition of high risk mortgage security.

Generally, a CMO floating-rate debt class bearing a rate that, at the time of purchase and each subsequent testing date, is 125 basis points or more below the contractual cap on the instrument is not subject to the average life and average life sensitivity tests described above. For purposes of this policy statement, a CMO floating-rate debt class is a debt class whose rate adjusts at least annually on a one-for-one basis with the debt class's index. The index must be a conventional, widely-used market interest rate index such as LIBOR. This exception does not apply to inverse floating rate debt classes.

A mortgage derivative product that does not meet any of the above tests will generally not be considered a high-risk mortgage security. However, any mortgage derivative product (including a CMO floating rate debt class) that, in an examiner's judgment, exhibits greater price volatility than a standard fixed rate 30-year mortgage-backed pass-through security will be deemed to be high risk.

Supervisory Policy

Mortgage Derivative Products. Prior to purchase, a depository institution must determine whether a mortgage derivative product that it is considering acquiring is high-risk, as defined above. An institution may only acquire a high-risk mortgage derivative product to reduce its overall interest rate risk. (See footnote 4 regarding the use of high-risk mortgage derivative products as trading assets.)

An institution that has acquired high-risk mortgage securities in order to reduce interest rate risk needs to actively manage its holdings of these securities because of their substantial prepayment and average life variability. Such active management implies that the institution does not have both the intent and ability to hold high-risk mortgage securities for long-term investment purposes. Accordingly, high-risk mortgage securities that are being used to reduce interest rate risk should not be reported as investments at amortized cost, but must be reported as trading assets at market value or as held-for-sale assets at the lower of cost or market value.

Examiners will seek the orderly divestiture of high-risk mortgage securities that do not reduce interest rate risk. These securities must be reported as held-for-sale assets at the lower of cost or market value until their disposition.

Mortgage derivative products that do not meet the definition of high-risk mortgage securities at the time of purchase should be reported as investments, held-for-sale assets, or trading assets, as appropriate. A mortgage derivative product that was not a high-risk mortgage security when it was purchased as an investment may later fall into the high-risk category. Institutions must ascertain from a source independent of the party from whom the product was purchased and document, no less frequently than annually, that any nonhigh-risk mortgage derivative products that are held for investment remain outside the high-risk category. Such documentation will be subject to examiner review. If a mortgage derivative product that was not a high-risk mortgage security when it was purchased as an investment later meets the high-risk definition, it normally must be redesignated as held for sale.

An institution that owns or plans to acquire high-risk mortgage securities must have a monitoring and reporting system in place that provides the documentation necessary to evaluate the expected and actual performance of such securities. The institution must use this system to conduct and document an analysis that shows, prior to purchase, that the proposed acquisition of a high-risk mortgage security will reduce the institution's overall interest rate risk. Subsequent to purchase, the institution must evaluate and document at least quarterly whether this high-risk mortgage security has actually reduced interest rate risk.

The institution's analyses performed prior to purchase and subsequently thereafter must be fully documented and will be subject to examiner review. This review will include an analysis of all assumptions used by management regarding the interest rate risk associated with the institution's assets, liabilities and off-balance sheet positions. Analyses performed and records constructed to justify purchases on a post-acquisition basis are unacceptable and will be subject to examiner criticism. Reliance on analyses and documentation obtained from a securities dealer or other outside party without internal analyses by the institution are also unacceptable and reliance on such third-party analyses will be subject to examiner criticism.

Management should also maintain documentation demonstrating that it took reasonable steps to assure that the prices paid for high-risk mortgage securities represented fair market value. Generally, price quotes should be obtained from at least two brokers prior to executing a trade. If, because of the unique or proprietary nature of the transaction or product, or for other legitimate reasons, bids cannot be obtained from more than one broker, management should document the reasons for not obtaining such quotes.

In addition, a depository institution that owns high-risk mortgage securities must demonstrate that it has established the following:

(1) A board-approved portfolio policy which addresses the goals and objectives the institution expects to achieve through its securities activities, including interest rate risk reduction objectives with respect to high-risk mortgage securities;

(2) Limits on the amounts of funds that may be committed to these high-risk mortgage securities;

(3) Specific financial officer responsibility for and authority over securities activities involving high-risk mortgage securities;

(4) Adequate information systems;

(5) Procedures for periodic evaluation of high-risk mortgage securities and their actual performance in reducing interest rate risk; and

(6) Appropriate internal controls.

The board of directors, or an appropriate committee thereof, and the institution's senior management should regularly (at least quarterly) review all high-risk mortgage securities to determine whether these instruments are adequately satisfying the interest rate risk reduction objectives set forth in the portfolio policy. The depository institution's senior management should be fully knowledgeable about the risks associated with prepayments and their subsequent impact on its high-risk mortgage securities.

Failure to report high-risk mortgage securities in accordance with the above policy, or failure to maintain adequate documentation demonstrating that the product was intended to reduce the institution's interest rate risk, will be viewed as an unsafe and unsound practice.

Purchases of high-risk mortgage securities prior to the date of this supervisory policy statement generally will be reviewed in accordance with previously-existing supervisory policies.

Other Zero-Coupon, Stripped or Original Issue Discount (OID) Products. Although considered free from credit risk if issued directly by the U.S. Government, longer maturities of zero coupon, stripped, and deep discount OID products (generally, maturities exceeding ten years from the date of purchase) have displayed extreme price volatility. Therefore, disproportionately large long-maturity holdings of these instruments, in relation to the total investment portfolio or total capital of the depository institution, are considered an imprudent investment practice. Such holdings will be subject to criticism by examiners who may seek the orderly disposal of some or all of these securities. Securities slated for disposal must be reported as held-for-sale assets at the lower of cost or market value until their disposition.

Other Considerations

Depository institutions should exercise extreme caution with respect to high-risk mortgage securities (as defined above) and securities with similar characteristics, irrespective of brand names and labels. Before purchasing any new or unfamiliar instrument, senior management should at a minimum produce internally a detailed analysis of the security in order to understand the performance characteristics, price volatility, and

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(5) Procedures for periodic evaluation of high-risk mortgage securities and their actual performance in reducing interest rate risk; and

(6) Appropriate internal controls.

The board of directors, or an appropriate committee thereof, and the institution's senior management should regularly (at least quarterly) review all high-risk mortgage securities to determine whether these instruments are adequately satisfying the interest rate risk reduction objectives set forth in the portfolio policy. The depository institution's senior management should be fully knowledgeable about the risks associated with prepayments and their subsequent impact on its high-risk mortgage securities.

Failure to report high-risk mortgage securities in accordance with the above policy, or failure to maintain adequate documentation demonstrating that the product was intended to reduce the institution's interest rate risk, will be viewed as an unsafe and unsound practice.

Purchases of high-risk mortgage securities prior to the date of this supervisory policy statement generally will be reviewed in accordance with previously-existing supervisory policies.

Other Zero-Coupon, Stripped or Original Issue Discount (OID) Products. Although considered free from credit risk if issued directly by the U.S. Government, longer maturities of zero coupon, stripped, and deep discount OID products (generally, maturities exceeding ten years from the date of purchase) have displayed extreme price volatility. Therefore, disproportionately large long-maturity holdings of these instruments, in relation to the total investment portfolio or total capital of the depository institution, are considered an imprudent investment practice. Such holdings will be subject to criticism by examiners who may seek the orderly disposal of some or all of these securities. Securities slated for disposal must be reported as held-for-sale assets at the lower of cost or market value until their disposition.

Other Considerations

Depository institutions should exercise extreme caution with respect to high-risk mortgage securities (as defined above) and securities with similar characteristics, irrespective of brand names and labels. Before purchasing any new or unfamiliar instrument, senior management should at a minimum produce internally a detailed analysis of the security in order to understand the performance characteristics, price volatility, and

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potential hazards inherent in owning the security under various interest rate scenarios. A prospectus supplement that fully details the cash flows covering each of the securities held by the institution should be obtained and analyzed prior to purchase and retained for examiner review. Securities and other products (whether carried on or off the balance sheet) with characteristics similar to those of high-risk mortgage securities and long-maturity zero-coupon products described in this supervisory policy may be treated in the same manner by the financial regulatory agencies.

Several states have adopted, or are considering, regulations that prohibit state-chartered banks from purchasing interest-only strips or other securities discussed above. Accordingly, state-chartered institutions should consult with their state regulator concerning the permissibility of these purchases.

Dated: July 29, 1991.

Robert J. Lawrence,

Executive Secretary, Federal Financial Institutions Examination Council.

[FR Doc. 91–18342 Filed 8–1–91; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL MARITIME COMMISSION

Maryland Port Administration Moller Steamship Line, Inc.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–010896–008.

Title: Maryland Port Administration/Moller Steamship Line, Inc. Terminal Agreement.

Parties:

Maryland Port Administration
Moller Steamship Line, Inc.

Synopsis: The Agreement, filed July 26, 1991, amends the parties' basic agreement to place the agreement on a month-to-month basis for a term of 30 days beginning on August 1, 1991 pending the final negotiations of a long-term lease between the parties. All other terms and conditions of the agreement will continue to remain in effect.

Dated: July 29, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–18348 Filed 8–1–91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Central Illinois Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 21, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Central Illinois Bancorp, Inc., Sidney, Illinois; to acquire 97 percent of the voting shares of Arrowsmith State Bank, Arrowsmith, Ilinois.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Central Bancompany, Inc., Jefferson City, Missouri; to acquire at least 80 percent of the voting shares of Nixa Bank, Nixa, Missouri.

Board of Governors of the Federal Reserve System, July 29, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-18353 Filed 8-1-91; 8:45 am]

BILLING CODE 6210-01-F

Norwest Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 16, 1991.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire the book of insurance business of Norwest Bank

Wisconsin East Central, Sheboygan, Wisconsin, and thereby engage in general insurance agency activities pursuant to section 4(c)(8)(G) of the Bank Holding Company Act and § 225.25(b)(8)(vii) of the Board's Regulation Y. These activities will be conducted in Sheboygan, Wisconsin.

Board of Governors of the Federal Reserve System, July 29, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-18354 Filed 8-1-91; 8:45 am]

BILLING CODE 6210-01-F

Carlos Hank Rohn; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than August 21, 1991.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Carlos Hank Rohn, Lomas Virreyes, Mexico; to acquire an additional 8.86 percent of the voting shares of Laredo National Bancshares, Inc., Laredo, Texas, for a total of 13.05 percent and thereby indirectly acquire The Laredo National Bank, Laredo, Texas.

Board of Governors of the Federal Reserve System, July 29, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-18355 Filed 8-1-91; 8:45 am]

BILLING CODE 6210-01-F

Wachovia Corporation; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 21, 1991.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Wachovia Corporation, Winston-Salem, North Carolina; to acquire 100 percent of the voting shares of South Carolina National Corporation, Columbia, South Carolina, and thereby indirectly acquire The South Carolina National Bank, Charleston, South Carolina.

In connection with this application, Applicant also proposes to acquire Provident Financial Corporation, Columbia, South Carolina, and thereby engage in making, acquiring, or servicing loans or other extensions of credit for its own account or the account of others pursuant to § 225.25(b)(1); acting as agent for the sale of credit life, credit accident and health insurance, and property and casualty insurance directly related to extensions of credit by it or its affiliate pursuant to § 225.25(b)(8)(i), (ii), and (iv); and reinsuring credit life and credit accident and health insurance sold as agent by itself or affiliates pursuant to § 225.25(b)(8)(i); South Carolina National Mortgage Corp., Columbia, South Carolina, and thereby engage in making, acquiring, or servicing loans or other extensions of credit for its own account or the account of others pursuant to § 225.25(b)(1); Southern Provident Life Insurance Company, Phoenix, Arizona, and thereby engage in reinsuring credit life and credit accident and health insurance sold by subsidiaries of South Carolina National Corporation pursuant to § 225.25(b)(8)(i); SCN Capital Management Corporation, Columbia, South Carolina, and thereby engage in serving as investment adviser as defined by section 2(a)(20) of the Investment Company Act of 1990, to an investment company registered under the Act; providing portfolio investment advice to any other person, including South Carolina National Bank; furnishing general economic information and advice; general economic statistical forecasting services and industry studies; and providing financial advice to state and local governments, such as with respect to the issuance of their securities pursuant to § 225.25(b)(4); SCN Discount Brokerage Services, Inc., Columbia, South Carolina, and thereby engage in securities brokerage services pursuant to § 225.25(b)(15); Southeast Switch, Inc., Maitland, Florida, and thereby engage in providing data processing and transmission services to federally insured depository institutions who participate in Southeast Switch's neutral shared electronic funds transfer network and providing related services, including the administration and promotion of the network and providing data processing, transmission and related services to other EFT networks pursuant to § 225.25(b)(7); and providing bank management consulting advice to depository institutions pursuant to § 225.25(b)(11); Atlantic Savings Bank, FSB, Hilton Head Island, South Carolina, and thereby engage in deposit-taking activities and lending and other activities that are permissible for bank holding companies pursuant to § 225.25(b)(9); and making first mortgage loans, selling such loans in the secondary market, and such other

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engage in making, acquiring, or servicing loans or other extensions of credit for its own account or the account of others pursuant to § 225.25(b)(1); acting as agent for the sale of credit life, credit accident and health insurance, and property and casualty insurance directly related to extensions of credit by it or its affiliate pursuant to § 225.25(b)(8)(i), (ii), and (iv); and reinsuring credit life and credit accident and health insurance sold as agent by itself or affiliates pursuant to § 225.25(b)(8)(i); South Carolina National Mortgage Corp., Columbia, South Carolina, and thereby engage in making, acquiring, or servicing loans or other extensions of credit for its own account or the account of others pursuant to § 225.25(b)(1); Southern Provident Life Insurance Company, Phoenix, Arizona, and thereby engage in reinsuring credit life and credit accident and health insurance sold by subsidiaries of South Carolina National Corporation pursuant to § 225.25(b)(8)(i); SCN Capital Management Corporation, Columbia, South Carolina, and thereby engage in serving as investment adviser as defined by section 2(a)(20) of the Investment Company Act of 1990, to an investment company registered under the Act; providing portfolio investment advice to any other person, including South Carolina National Bank; furnishing general economic information and advice; general economic statistical forecasting services and industry studies; and providing financial advice to state and local governments, such as with respect to the issuance of their securities pursuant to § 225.25(b)(4); SCN Discount Brokerage Services, Inc., Columbia, South Carolina, and thereby engage in securities brokerage services pursuant to § 225.25(b)(15); Southeast Switch, Inc., Maitland, Florida, and thereby engage in providing data processing and transmission services to federally insured depository institutions who participate in Southeast Switch's neutral shared electronic funds transfer network and providing related services, including the administration and promotion of the network and providing data processing, transmission and related services to other EFT networks pursuant to § 225.25(b)(7); and providing bank management consulting advice to depository institutions pursuant to § 225.25(b)(11); Atlantic Savings Bank, FSB, Hilton Head Island, South Carolina, and thereby engage in deposit-taking activities and lending and other activities that are permissible for bank holding companies pursuant to § 225.25(b)(9); and making first mortgage loans, selling such loans in the secondary market, and such other

mortgage banking activities pursuant to § 225.25(b)(1); South Carolina Low and Moderate Income Rural Housing Partners Limited Partnership, Boston, Massachusetts, and thereby engage in constructing, acquiring, managing and selling seven apartment complexes to provide safe and affordable housing for low to moderate income and elderly individuals and families in South Carolina's communities with populations of less than 20,000 pursuant to § 225.25(b)(6); Bay Side, A Limited Partnership, Columbia, South Carolina, and thereby engage in investing up to $5,000,000 in one or more community development projects which will provide safe and affordable rental housing to low- and moderate-income persons in South Carolina pursuant to §225.25(b)(6); and Old Republic Bancorp, Inc. and Old Republic Savings Bank, Raleigh, North Carolina, and thereby engage in owning, controlling, and operating a savings association that engages only in deposit-taking activities and lending and other activities that are permissible for bank holding companies pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 29, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-18356 Filed 8-1-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Forms Submitted to the Office of Management and Budget for clearance

The Administration for Children and Families will publish on Fridays information collection packages submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). Following is the package submitted to OMB since the last publication.

(For a copy of a package, call the FSA, Report Clearance Officer 202-401-5604.)

Participation Rate Statistical Report—FSA-103—The information is needed to determine the JOBS program participation rate and appropriate Federal Financial Participation (FFP) rate in each state. Respondents: State or local government; Number of Respondents: 51; Frequency of Response: Quarterly; Average Burden per Response: 12 hours; Estimated Annual Burden: 2,448 hours.

OMB Desk Clearance Officer: Laura Oliven.

Written comments and recommendations for the proposed information collection should be sent directly to the appropriate OMB Desk Officers designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3201, 725 17th Street NW., Washington, DC 20503.

Dated: July 19, 1991.

Naomi B. Marr,

Associate Administrator, Office of Management and Information Systems.

[FR Doc. 91-18045 Filed 8-1-91; 8:45 am]

BILLING CODE 4150-04-M

Agency for Health Care Policy and Research

Assessment of Medical Technology

The Agency for Health Care Policy and Research (AHCPR), through its Office of Health Technology Assessment (OHTA), announces that it is coordinating a Public Health Service (PHS) assessment of the effectiveness of plethysmography for the diagnosis of vascular (venous or arterial) disease.

Specifically, AHCPR is interested in:

1. The diagnostic accuracy of all types of plethysmography and how they compare to other non-invasive measurements, such as light reflection rheography, ultrasound imaging, including, but not limited to, B-mode ultrasonography, duplex ultrasonography, and ultrasonic duplex color arteriography in detecting vascular insufficiency;
2. Comparative information on indirect (hemodynamic) tests and direct (anatomical) tests in the diagnosis of vascular disease; and
3. The clinical utility of plethysmography.

The assessment consists of a synthesis of published literature and information obtained from appropriate organizations in the private sector and from PHS agencies and others in the Federal Government. PHS assessments are conducted in accordance with section 904(b) of the PHS Act (42 U.S.C. 299a-2(b)). Based on the assessment, a PHS recommendation will be formulated, pursuant to 904(d) of the PHS Act, to assist the Health Care Financing Administration (HCFA) in establishing coverage policies. The information being sought by this notice is a review and assessment of past, current, and planned research related to this technology, as well as a bibliography of published, controlled clinical trials and other well-designed clinical studies. Information related to the characteristics of the patient population most likely to benefit from plethysmography, as well as information on clinical acceptability, effectiveness, and the extent of use of this technology, is also being sought. Any person or group wishing to provide AHCPR with information relevant to this assessment should do so in writing no later than October 31, 1991 or within 90 days from the date of publication of this notice.

To enable the interested scientific community to evaluate the information included in the assessment, AHCPR will discuss in the assessment only those data and analyses for which a source(s) can be cited. Respondents therefore are encouraged to include with their submission a written consent permitting AHCPR to cite the source of the data and comments provided. Otherwise, in accordance with the confidentiality statute governing information collected by AHCPR, 42 U.S.C. 299a-1(c), no information received will be published or disclosed which could identify an individual described in the information or an entity supplying the information.

Written material should be submitted to: Director, Office of Health Technology Assessment, AHCPR, 6001 Montrose Avenue, suite 700, Rockville, MD 20852, (301) 443-4990.

Dated: July 26, 1991.

J. Jarrett Clinton,

Administrator.

[FR Doc. 91-18418 Filed 8-1-91; 8:45 am]

BILLING CODE 4160-90-M

Centers for Disease Control

[Program Announcement 128]

Cooperative Agreements for Childhood Lead Poisoning; Availability of Funds for Fiscal Year 1991

Introduction

The Centers for Disease Control (CDC) announces that cooperative agreement applications are being accepted for Fiscal Year 1991 for the following studies: Blood Lead Levels Following Abatement, BLLFA, which are prospective studies of blood lead levels in lead-poisoned children following abatement of lead paint in dwellings; Fingerstick/Venous Comparison, FVC which are comparative studies of lead levels in children's blood samples collected by fingerstick and by venipuncture.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Environmental Health and Maternal and Infant Health. (For ordering a copy of Healthy People 2000, see Where to Obtain Additional Information section.)

Authority

This program is authorized under sections 301(a) (42 U.S.C. 241) and 317A (42 U.S.C. 247b–1) of the Public Health Service Act, as amended. Program regulations are set forth in title 42, Code of Federal Regulations, part 51b.

Eligible Applicants

Eligible applicants are state or local health departments or other state or local health agencies or departments with active programs to screen, identify, and medically and environmentally manage lead-poisoned children. This eligibility includes health departments or other official organizational authority (agency or instrumentality) of the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and Federally recognized Indian Tribal governments. Limitation of eligibility for these awards to the above-named entities is based on the need for established mechanisms for collection of necessary case-related data.

Public agency applicants are encouraged to collaborate with academic institutions where appropriate to obtain scientific and technical assistance in study design and implementation. If a state agency applying for cooperative agreement funds is other than the official state health department, written concurrence by the state health department must be provided.

Applicants may apply for both components, however, each application must be complete and must stand alone.

Note: Eligible applicants may enter into contracts, including consortia agreements, as necessary to meet the requirements of the program and strengthen the overall application.

Availability of Funds

A. BLLFA

Approximately $300,000 will be available in Fiscal Year 1991 to fund up to six new cooperative agreements. Awards of approximately $50,000 to $100,000 each are expected to begin on or about September 30, 1991. Awards will be made for 12-month budget periods within project periods not to exceed 3 years.

B. FVC

Approximately $50,000 will be available in Fiscal Year 1991 to fund up to two new cooperative agreements. Awards of approximately $20,000 to $30,000 per year are expected to begin on or about September 30, 1991. Awards will be made for 12-month budget periods within project periods not to exceed 2 years.

Purpose

A. BLLFA

This cooperative agreement program is intended to assist state and local health agencies in conducting structured studies of changes in blood lead levels in lead-poisoned children following lead-paint abatements as they are routinely conducted in the jurisdictions of the recipients. It presumes that a program already exists to screen children for lead poisoning, inspect the dwellings associated with lead-poisoned children, and ensure that lead-paint abatement is carried out according to state and local requirements. Funding and technical assistance are intended to enable recipients to conduct additional case-tracking, data-collection, and data-analysis activities for the studies which are not part of routine case-management. While recipients are expected to study lead-poisoned children identified from an ongoing screening activity and abatements conducted under the requirements of jurisdictional health or housing codes, these awards are not intended to fund screening or abatement activities.

B. FVC

This cooperative agreement program is intended to support studies which will systematically compare lead levels in blood samples collected by fingerstick with levels in samples collected by venipuncture from the same children. Funded studies would be carried out in settings where children are routinely screened and followed up for childhood lead poisoning. Information from such studies may be used to refine recommendations made by CDC to state and local childhood lead poisoning prevention programs (CLPPPs) regarding screening and diagnosis of lead poisoning. Such studies may also lead to identification of the need for improved sample collection methods.

Goals

A. BLLFA

1. To obtain quantitative estimates of both short-term and long-term changes in the blood lead levels of lead-poisoned children not requiring chelation therapy, following lead-paint abatements as they are currently conducted in different jurisdictions.

2. To obtain estimates of short-term and long-term changes in house dust lead levels in abated dwellings.

3. To identify factors that may modify changes in blood or dust lead levels following lead-paint abatement.

B. FVC

1. To quantify the rate of false positive tests;

2. To identify factors associated with false positive tests;

3. To assess the ability of special devices and techniques to reduce the rate of false positives.

Program Requirements

To be able to fulfill the objectives of this cooperative agreement, an applicant must meet the following requirements:

A. BLLFA

1. Screening: Applicant has responsibility for or close working relationship with, an ongoing program that screens children for lead poisoning (or monitors screening performed by others), identifies lead poisoning cases, and provides for or ensures the appropriate medical and environmental management of such cases, including obtaining follow-up blood lead measurements at appropriate intervals.

2. Inspection/abatement: Applicant has responsibility for or close connection with ongoing inspection/abatement activities, which include inspecting residences of childhood lead-poisoning cases for lead-paint hazards and providing or ensuring abatement of lead-paint hazards, using generally accepted practices.

Ongoing activity is based on use of written guidelines, statutes, or regulations that specify methods used to inspect dwellings, identify lead-paint hazards, and abate such hazards. Abatement standards should include:

- Acceptable methods of lead-paint removal, enclosure, or encapsulation;
- Measures to prevent exposure of children to the abatement process;
- Requirements for containment and cleanup of dust and debris generated by the abatement process; and
- Inspection of dwellings from which lead based paint has been abated to ensure compliance with applicable abatement standards.

3. Applicant is able to demonstrate established capacity to collect and analyze data needed to fulfill the study objectives, including ability to obtain

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2. To obtain estimates of short-term and long-term changes in house dust lead levels in abated dwellings.

3. To identify factors that may modify changes in blood or dust lead levels following lead-paint abatement.

B. FVC

1. To quantify the rate of false positive tests;

2. To identify factors associated with false positive tests;

3. To assess the ability of special devices and techniques to reduce the rate of false positives.

Program Requirements

To be able to fulfill the objectives of this cooperative agreement, an applicant must meet the following requirements:

A. BLLFA

1. Screening: Applicant has responsibility for or close working relationship with, an ongoing program that screens children for lead poisoning (or monitors screening performed by others), identifies lead poisoning cases, and provides for or ensures the appropriate medical and environmental management of such cases, including obtaining follow-up blood lead measurements at appropriate intervals.

2. Inspection/abatement: Applicant has responsibility for or close connection with ongoing inspection/abatement activities, which include inspecting residences of childhood lead-poisoning cases for lead-paint hazards and providing or ensuring abatement of lead-paint hazards, using generally accepted practices.

Ongoing activity is based on use of written guidelines, statutes, or regulations that specify methods used to inspect dwellings, identify lead-paint hazards, and abate such hazards. Abatement standards should include:

- Acceptable methods of lead-paint removal, enclosure, or encapsulation;
- Measures to prevent exposure of children to the abatement process;
- Requirements for containment and cleanup of dust and debris generated by the abatement process; and
- Inspection of dwellings from which lead based paint has been abated to ensure compliance with applicable abatement standards.

3. Applicant is able to demonstrate established capacity to collect and analyze data needed to fulfill the study objectives, including ability to obtain

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follow-up blood lead measurements at required intervals.

4. Applicant has demonstrated experience in conducting relevant epidemiologic studies.

5. Applicant has access to a laboratory with demonstrated proficiency in performing lead measurements.

B. FVC

1. Applicant conducts routine screening and follow up for childhood lead poisoning, or has a close working relationship with such a screening program.

2. Applicant has access to a laboratory with demonstrated proficiency in performing blood lead measurements.

3. Applicant is able to demonstrate established capacity to collect and analyze data needed to fulfill the study objectives.

Cooperative Activities

In conducting activities to achieve the purpose of these programs, the recipient shall be responsible for conducting activities under A. below, and CDC will be responsible for conducting activities under B. below:

A. Recipient Activities

BLLFA

1. Enroll study subjects meeting specified eligibility criteria after obtaining informed consent;

2. Collect demographic, behavioral, and household inspection data using structured interviews and data collection forms;

3. Measure baseline blood lead, house dust lead, and soil lead levels;

4. Measure follow-up blood lead and house dust levels at regular intervals; and

5. Analyze collected data.

FVC

1. Enroll study subjects meeting specified eligibility criteria after obtaining informed consent. Eligibility criteria should include children for which a venous blood sample would normally be collected;

2. Collect paired fingerstick and venous blood samples from enrolled subjects, using one or more protocols for sample collection;

3. For each paired sample collection, collect data concerning the subject, technician, and conditions of sample collection that may be predictive of contamination rates;

4. Measure lead levels in the paired samples;

5. Analyze collected data.

B. CDC Activities

BLLFA

1. Review study protocol and recommend changes consistent with the project goals;

2. Assist in quality control and quality assurance of blood and environmental lead measurements;

3. Provide technical assistance in data collection, analysis, and interpretation.

FVC

1. Review study protocol and recommend changes consistent with the project goals;

2. Assist in quality control and quality assurance of blood lead measurements;

3. Provide technical assistance in data collection, analysis, and interpretation.

Evaluation Criteria

Each application will be reviewed individually, and evaluated according to the following criteria:

A. BLLFA: (maximum of 100 points)

1. *Study Protocol* (25%): The protocol's scientific soundness, its feasibility, its consistency with the project goals, and the extent to which it provides adequate detail for evaluation.

2. *Access to Study Subjects* (20%): The extent to which the application documents the presence of an ongoing childhood lead poisoning screening program with the ability to identify and follow up the number of lead poisoning cases required to meet study criteria.

3. *Inspection and Abatement Activities* (25%): The extent to which the application documents the presence of an ongoing activity of inspecting dwellings for lead hazards and ensuring abatement. The technical soundness and degree of detail provided in written procedures for inspection and abatement and the extent to which the abatement procedures are likely to reduce sources of lead exposure in the abated dwelling.

4. *Laboratory Capacity* (10%): The extent to which the application documents access to a laboratory with demonstrated proficiency in performing blood lead measurements.

5. *Project Personnel* (10%): The extent to which the application documents qualifications and time commitments adequate to complete the study and meet the project goals.

6. *Experience* (10%): The extent of the applicant's experience in conducting similar studies.

7. *Budget Justification and Adequacy of Facilities* (unscored): The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of grant funds. The adequacy of available facilities to support the project will also be evaluated.

B. FVC: (maximum of 100 points)

1. *Study Protocol* (30%): The protocol's scientific soundness, its feasibility, its consistency with the project goals, and the extent to which it provides adequate detail for evaluation.

2. *Access to Study Subjects* (20%): The extent to which the application documents the presence of an ongoing childhood lead poisoning screening program with the ability to identify and enroll the number of subjects required to meet study criteria.

3. *Laboratory Capacity* (20%): The extent to which the application documents access to a laboratory with demonstrated proficiency in performing blood lead measurements.

4. *Project Personnel* (15%): The extent to which the application documents qualifications and time commitments adequate to complete the study and meet the project goals.

5. *Experience* (15%): The extent of the applicant's experience in conducting similar studies.

6. *Budget Justification and Adequacy of Facilities* (unscored): The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of grant funds. The adequacy of available facilities to support the project will also be evaluated.

Noncompeting Applications

Continuation awards will be made on the basis of the availability of funds and the following criteria:

1. Satisfactory progress is made towards achieving first budget year objectives for implementation of the study protocol.

2. The proposed activities for the new budget period are consistent with the study protocol and project goals.

3. The budget request is clearly explained, adequately justified and consistent with the intended use of grant funds.

Other Requirements

Human Subjects

Individual state projects may include research on human subjects, including access to personal identifiers to link relevant data sets. Therefore, if applicable, applicants must comply with Public Law 93–148 regarding the protection of human subjects. Assurances must be provided that the project or activity will be subject to initial and continuing review by an appropriate institutional review

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committee. The applicant will be responsible for providing evidence of this assurance in accordance with the appropriate guidelines and forms provided in the application kit.

Executive Order 12372 Review

Applications are subject to the Intergovernmental review of Federal Programs as Governed by Executive Order 12372. Executive Order 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than Federally-recognized Indian tribal governments) should contact their state Single Point of Contacts (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305, no later than 30 days after the deadline date for new and competing awards. The granting agency does not guarantee to "accommodate or explain" state process recommendations it receives after that date.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.283.

Application Submission and Deadline

Applicants should follow the guidance provided in PHS form 5161-1 in preparing grant applications. Applicants are encouraged to be concise. You may refer to appendices to provide detailed program descriptions and program protocols. The original and two copies of the application must be submitted on or before August 8, 1991 to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, GA 30305.

1. Deadline

Applications shall be considered as meeting the deadline if they are either:

A. Received on or before the deadline date, or

B. Sent on or before the deadline date and received in time for submission for the review process. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

2. Late Applications

Applications which do not meet the criteria in 1A or 1B above are considered late applications and will be returned to the applicant.

A one-page, single-spaced, typed abstract must be submitted with the application. The heading should include the title of the grant program, project title, organization, name and address, project director and telephone number. The abstract should include a brief summary of the study protocol, a brief description of the population of study subjects and of laboratory capacity, and a brief synopsis of the applicant's experience in conducting similar studies.

Where To Obtain Additional Information

A complete program description, information on application procedures, an application package and business management technical assistance may be obtained from Lisa Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E-14, Atlanta, Georgia 30305, (404) 842-6630 or FTS 236-6630.

Programmatic technical assistance may be obtained from Nancy Tips, Public Health Advisor, or Thomas Matte, M.D., Medical Epiuemiologist, Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects, Center for Environmental Health and Injury Control, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop F-28, Atlanta, Georgia 30333, (404) 488-4880 or FTS 236-4880.

Please refer to Announcement Number 128 when requesting information and submitting any application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone (202) 783-3238).

Dated: July 29, 1991.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 91-18352 Filed 8-1-91; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 91M-0247]

IOPTEX Research, Inc.; Premarket Approval of Model 405 Anterior Chamber Intraocular Lens

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by IOPTEX Research, Inc., Irwindale, CA, for premarket approval, under the Medical Device Amendments of 1976, of Model 405 Anterior Chamber Intraocular Lens. After reviewing the recommendation of the Opthalmic Devices Panel of the Medical Devices Advisory Committee, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of June 27, 1991, of the approval of the application.

DATES: Petitions for administrative review by September 3, 1991.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nancy C. Brogdon, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1212.

SUPPLEMENTARY INFORMATION: On November 15, 1988, IOPTEX Research, Inc., Irwindale, CA 91706, submitted to CDRH an application for premarket approval of Model 405 Anterior Chamber Intraocular Lens. The device is an anterior chamber intraocular lens and is indicated for secondary and backup lens implantation for the visual correction of aphakia in persons 60 years of age or older. Backup lens implantation is identified as primary extracapsular cataract extraction where there is a structural reason that the anterior chamber lens is the preferred lens. The lens is intended to be placed in the angle in the anterior chamber. The

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Dated: July 29, 1991.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 91–18352 Filed 8–1–91; 8:45 am]

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Food and Drug Administration

[Docket No. 91M–0247]

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ACTION: Notice.

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device is available in a range of powers from 5 diopters (D) through 33 D in 0.5–D increments.

On January 25, 1990, the Opthalmic Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On June 27, 1991, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before September 3, 1991, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: July 24, 1991.

James S. Benson,

Director, Center for Devices and Radiological Health.

[FR Doc. 91–18417 Filed 8–1–91; 8:45 am]

BILLING CODE 4160–01–M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on July 12, 1991.

(Call Reports Clearance Officer on (301) 965–4149 for copies of package)

1. Pain Assessment Instruments Development—0960–0479. The information will be used by the Social Security Administration to develop final information collection instruments to assess pain in applicants for disability insurance benefits. The affected public is comprised of State Disability Determination Services and certain applicants for disability insurance.

Number of Respondents: 2700.

Frequency of Response: 1.

Average Burden Per Response: 53 minutes.

Estimated Annual Burden: 2400.

OMB Desk Officer: Laura Oliven.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: July 25, 1991.

Ron Compston,

Social Security Administration, Reports Clearance Officer.

[FR Doc. 91–18195 Filed 8–1–91; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–91–1917; FR–2934–N–37]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

All properties in this week's Notice are located on Air Force bases that are being closed pursuant to the 1988 Base Closure and Realignment Act. The Department of the Air Force is the landholding and disposal agency. For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact: U.S. Air Force: John Carr, Realty Specialist, HQ–AFBDA/BDR, Pentagon, Washington, DC 20330–5130; (703) 693–0674; (this is not a toll-free number.)

Dated: July 26, 1991.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 08/02/91

California—George Air Force Base

George Air Force Base is located in San Bernardino County, California, 92394–5000. All the properties will be excess to the needs of the Air Force on or about December 31, 1992. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The Base covers 5,340 acres and contains 732 individual properties that have been reviewed by HUD for suitability for use to assist the homeless. The 666 properties that HUD has determined suitable and which are available include various types of housing; office and administrative buildings; recreational, maintenance, and storage facilities; and other more specialized structures.

Suitable/Available Properties

Property Numbers: 199120001–199120420
Type Facility: Housing—420 buildings with a total of 1,636 dwelling units; buildings have 1, 2, 3, 4, 6, or 8 units each; wood/stucco frame construction; possible asbestos

Property Numbers: 199120421–199120467, 199120470–199120473
Type Facility: Office/administration—51 buildings ranging in size from 200 sq. ft. on 1 floor to 56,600 sq. ft. on 3 floors; wood or concrete block construction; several trailers; possible asbestos

Property Numbers: 199120474–199120483, 199120485–199120505
Type Facility: Recreation—21 buildings and 10 parcels of land, including theatre, recreation center, bowling center, gym, library, craft center, shop, youth center, golf course buildings, pools, bathhouses; 7 baseball, softball, and soccer fields; track; golf course; driving range; possible asbestos

Property Numbers: 199120506–199120508, 199120511–199120520, 199120527–199120547
Type Facility: Temporary living quarters, dorms, lodges, and ancillary sheds—34 buildings; 1 and 2 story wood, concrete, and concrete block structures; 4700 sq. ft. to 25,000 sq. ft. for living quarters; 380 sq. ft. to 2400 sq. ft. for sheds; possible asbestos

Property Numbers: 199120548–199120587
Type Facility: Aircraft and airport related facilities—40 structures including hangers, shops, tower, terminal, lab, docks, storage, control center, navigation station, runways; sizes up to 86,000 sq. ft.; possible asbestos

Property Numbers: 199120588–199120597, 199120599–199120608
Type Facility: Maintenance and engineering facilities—20 buildings; concrete and wood; 200 sq. ft. to 17,000 sq. ft.; possible asbestos

Property Numbers: 199120609–199120618
Type Facility: Training facilities—10 buildings; education center and 9 classroom buildings; concrete and wood; 1200 sq. ft. to 16,800 sq. ft.; possible asbestos

Property Numbers: 199120619–199120630
Type Facility: Stores and services—12 buildings; 10 stores and 2 gas stations; wood and concrete; 1800 sq. ft. to 30,700 sq. ft.; possible asbestos

Property Numbers: 199120631–199120632
Type Facility: Chapels—2 buildings; 4800 sq. ft. wood; 24,100 sq. ft. concrete; possible asbestos

Property Number: 199120633
Type Facility: Hospital—3 story, concrete block, 147,000 sq. ft.; possible asbestos

Property Numbers: 199120634–199120635
Type Facility: Fire facilities—2 buildings; fire station and command center; possible asbestos

Property Numbers: 199120636–199120638
Type Facility: Audio visual and photo lab—3 buildings; wood and concrete; 1800 sq. ft. to 2300 sq. ft.; possible asbestos

Property Numbers: 199120639–199120645
Type Facility: Vehicle shops—7 buildings; concrete; 74 sq. ft. to 33,000 sq. ft.; possible asbestos

Property Numbers: 199120646–199120655
Type Facility: Misc.—10 buildings; wood and concrete; 1 story; dining halls, mess halls, food service, child care centers; 1800 sq. ft. to 19,000 sq. ft.; possible asbestos

Property Numbers: 199120656–199120666
Type Facility: Communications/electronic—11 buildings; concrete block and wood; 1 story shops and sheds; 108 sq. ft. to 10,200 sq. ft.; possible asbestos

Property Numbers: 199120667–199120678
Type Facility: Warehouses—12 buildings; 1124 sq. ft. to 70,000 sq. ft.; wood, concrete, and concrete block; possible asbestos

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Air Force Base

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Type Facility: Vehicle shops—7 buildings; concrete; 74 sq. ft. to 33,000 sq. ft.; possible asbestos

Property Numbers: 199120646–199120655
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Property Numbers: 199120656–199120666
Type Facility: Communications/electronic—11 buildings; concrete block and wood; 1 story shops and sheds; 108 sq. ft. to 10,200 sq. ft.; possible asbestos

Property Numbers: 199120667–199120678
Type Facility: Warehouses—12 buildings; 1124 sq. ft. to 70,000 sq. ft.; wood, concrete, and concrete block; possible asbestos

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Suitable/Unavailable Properties

Property Numbers: 199120468–199120469
Type Facility: Office—2 one story wood structures; possible asbestos

Property Number: 199120484
Type Facility: Recreation—one story wood structure; possible asbestos

Property Numbers: 199120509–199120510, 199120521–199120526
Type Facility: Temporary living quarters—8 one story wood structures; possible asbestos

Property Number: 199120598
Type Facility: Maintenance and engineering—one story wood structure; possible asbestos

Unsuitable Properties

Property Number: 199120679
Type Facility: Small arms
Reason: Within 2000 ft. of flammable or explosive material

Property Numbers: 199120680–199120687
Type Facility: Hazardous storage facilities—8 buildings
Reason: Within 2000 ft. of flammable or explosive material

Property Numbers: 199120688–199120713
Type Facility: Explosives and munitions facilities—26 buildings
Reason: Within 2000 ft. of flammable or explosive materials

Property Numbers: 199120714–199120732
Type Facility: Fuel facilities—19 structures
Reason: Within 2000 ft. of flammable or explosive materials

California—Mather Air Force Base

Mather Air Force Base is located in Sacramento County, California, 95655. The five properties listed below were reported as unutilized in 1990. Approximately 1,400 other properties at the Base will be reviewed for suitability for use to assist the homeless on or about January 1992.

Unsuitable Properties

Property Numbers: 189010606–189010608, 189030001
Type Facility: 4 Buildings, Nos. 3686, 3494, 2566, 1766
Reason: Secured area

Property Number: 189010609
Type Facility: Vacant land
Reason: Secured area

Illinois—Chanute Air Force Base

Chanute Air Force Base is located in Rantoul, Champaign County, Illinois, 61866. The 123 properties listed below were reported excess to the needs of the Air Force in 1990. They are presently vacant and available for application for use to assist the homeless. The remainder of the approximately 800 properties at the Base will be reviewed for suitability for use to assist the homeless on or about January 1992.

Suitable/Available Properties

Property Numbers: 189030224–189030301
Type Facility: Housing (Chapman Courts)—78 2-unit residential buildings; wood frame; termite damage; need major rehab; possible asbestos; possible easement restrictions

Property Numbers: 189030302–189030312
Type Facility: Housing (Chapman Courts)—11 4-unit residential buildings; wood frame; termite damage; need major rehab; possible asbestos; possible easement restriction

Property Numbers: 189030313–189030342
Type Facility: Housing (Chapman Courts)—30 1-unit residential buildings; wood frame; termite damage; need major rehab; possible asbestos; possible easement restriction

Property Number: 189030343
Type Facility: Administrative (Chapman Courts, Bldg. 5) 2707 sq. ft.; 1 story wood frame; termite damage; possible asbestos; needs major rehab; possible easement restriction

Property Number: 189030344
Type Facility: Warehouse (Bldg. 732)—13,336 sq. ft.; 2 story wood frame; needs structural repairs

Property Number: 189030345
Type Facility: Band facility (Bldg. 118)—3996 sq. ft.; 1 story wood frame; needs structural repairs

Property Number: 189030346
Type Facility: Cold storage (Bldg. 107)—17,118 sq. ft.; 1 story wood frame; needs rehab; potential utilities

New Hampshire—Pease Air Force Base

Pease Air Force Base is located in Rockingham County, New Hampshire, 03803. The Base covers 4,257 acres and includes a hospital, theatre, bowling alley, 2 chapels, over 2,000 bachelor bed spaces, and 1,200 military multi-family housing units. The New Hampshire Air National Guard is expected to continue operations on a portion of the Base. HUD has reviewed information on 798 properties located at the Base and has found 689 to be suitable for possible use to assist the homeless. All suitable/available properties listed below are vacant.

Suitable/Available Properties

Property Number: 189040320–189040323
Type Facility: 3 open mess and 1 dining hall

Property Number: 189040324
Type Facility: Credit union building

Property Numbers: 189040325–189040326
Type Facility: 2 bachelor quarters buildings

Property Number: 189040327
Type Facility: Hospital heat plant

Property Number: 189040328
Type Facility: Hospital

Property Number: 189040329
Type Facility: Trailer (hospital office space)

Property Numbers: 189040330–198040322
Type Facility: 3 training facilities

Property Numbers: 189040333–198040334
Type Facility: 2 child care facilities

Property Number: 189040335
Type Facility: Fire station

Property Numbers: 189040059–189040319
Type Facility: 261 4-unit residences

Property Numbers: 189040347, 189040349
Type Facility: 2 sales stores

Property Number: 189040350
Type Facility: Commissary

Property Numbers: 189040351–189040352
Type Facility: 2 chapels

Property Number: 189040383
Type Facility: Single family residence

Property Number: 189040384
Type Facility: Rod and gun club

Property Number: 189040385
Type Facility: Motor pool

Property Numbers: 189040386–189040394
Type Facility: 9 dormitories

Property Numbers: 189040395–189040404
Type Facility: 10 residences with detached garage

Property Numbers: 189040405–189040467
Type Facility: 63 2-unit residences with detached garage

Property Numbers: 189040468–189040471
Type Facility: 4 6-unit residences with attached garage

Property Numbers: 189040472–189040715
Type Facility: 244 detached housing storage sheds

Property Numbers: 189040720, 189040721, 189040726
Type Facility: 3 communications facilities

Property Numbers: 189040734–189040742
Type Facility: 9 recreational facilities, including library, bowling center, theatre, gymnasium, youth center, bath house, and automotive shop

Property Numbers: 189040743–189040751
Type Facility: 9 small concrete munitions storage buildings

Property Numbers: 189040752–189040771
Type Facility: 20 administrative facilities

Property Numbers: 189040773–189040788, 189040790–189040793, 189040795–189040805

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Type Facility: 31 miscellaneous buildings used for office, administrative, educational, laboratory, traffic check, storage, maintenance, and other purposes
Property Number: 189010534
Type Facility: Bldg. 8, Newington Road
Property Number: 189010535
Type Facility: Temp. lodging facility, Bldg. 94, Rockingham Drive

Unsuitable Properties

Property Number: 189040360
Type Facility: Golf course
Reason: Within airport runway clear zone

Property Number: 189010536
Type Facility: Vehicle fuel station
Reason: Within 2000 ft. of flammable or explosive material

Property Numbers: 189010537, 189010538
Type Facility: Jet fuel pumphouses
Reason: Within 2000 ft. of flammable or explosive material

Property Number: 189010539
Type Facility: Weapons storage area
Reason: Within 2000 ft. of flammable or explosive material

Property Numbers: 189040336–189040346
Type Facility: Family housing, Bldgs. 369–371, 373–375, 377–380, 382
Reason: Within airport runway clear zone

Property Number: 189040348
Type Facility: Service station
Reason: Other

Property Numbers: 189040353–189040359
Type Facility: Bldgs. 398–401, 403, 405, 407
Reason: Within airport runway clear zone

Property Numbers: 189040361–189040373
Type Facility: Industrial facilities
Reason: Within 2000 ft. of flammable or explosive material

Property Numbers: 189040374–189040382, 189040727–189040733
Type Facility: Aircraft operations buildings
Reason: Within 2000 ft. of flammable or explosive material

Property Numbers: 189040716–189040719
Type Facility: Utility plants
Reason: Other

Property Numbers: 189040722–189040725
Type Facility: Communications facilities
Reason: Within 2000 ft. of flammable or explosive material

Property Numbers: 189040772, 189040794
Type Facility: Bus shelters
Reason: Other

Property Number: 189040789
Type Facility: Utility station
Reason: Other

Property Numbers: 189040806, 189040808, 189040825–189040829
Type Facility: Sewage pump stations
Reason: Other

Property Numbers: 189040807, 189040809, 189040814, 189040819–189040820, 189040822–189040824
Type Facility: Pump stations
Reason: Other

Property Numbers: 189040810–189040813, 189040815–189040818, 189040821, 189040830–189040851
Type Facility: Power stations
Reason: Other

[FR Doc. 91–18163 Filed 8–1–91; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–010–01–4320–08]

Cascade Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to amend the Cascade Resource Management Plan.

SUMMARY: Pursuant to 43 CFR part 1600 (BLM Planning Regulations) the Bureau of Land Management (BLM) is beginning preparation of an amendment to the Cascade Resource Management Plan. The amendment will consider area of critical environmental concern (ACEC) designation on six sites containing populations of *Allium aaseae* (Asae's Onion). The amendment will also consider transfer of three tracts out of federal ownership. An environmental assessment (EA) will be prepared on the amendment.

DATES: It is anticipated that the amendment and EA will be available for public review and comment during the summer of 1991. Public meetings have not been scheduled.

ADDRESSES: Written Comments should be mailed to: Cascade Area Manager, Bureau of Land Management, 3948 Development Avenue, Boise, ID 83705.

FOR FURTHER INFORMATION CONTACT: Cascade Area Manager or Fred Minckler, Team Leader at the Bureau of Land Management, 3984 Development Avenue, Boise, ID 83705. Telephone (208) 384–3300.

SUPPLEMENTARY INFORMATION: The Cascade Resource Management Plan (RMP) is a land use plan for the Cascade Resource Area encompassing nearly 500,000 acres of public land administered by BLM in southwest Idaho. The RMP was approved in 1988. The amendment being prepared will address special management actions and designation of six sites ranging in size from five to 400 acres as ACECs to protect an onion species currently being considered for listing as threatened or endangered. The amendment will also address transfer of two small tracts of public land from federal ownership by direct sale and transfer of a third tract through private exchange.

Dated: July 26, 1991.

J. David Brunner,

District Manager, Boise District Office.

[FR Doc. 91–18339 Filed 8–1–91; 8:45 am]

BILLING CODE 4310–GG–M

Fish and Wildlife Service

Availability of Draft Recovery Plan for the O'ahu Tree Snails of the Genus Achatinella for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the O'ahu tree snails of the genus *Achatinella*. These species occur in mountainous dry to wet forests and shrublands on the island of O'ahu, Hawaii.

DATES: Comments on the draft recovery plan must be received on or before October 1, 1991 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, Pacific Islands Office, U.S. Fish and Wildlife Service, P.O. Box 50167, Honolulu, Hawaii 96850 (building address: 300 Ala Moana Boulevard, Honolulu, Hawaii 96813), or the Assistant Regional Director, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232. Written comments and materials regarding the plan should be addressed to the Pacific Islands Office Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above Honolulu, Hawaii address.

FOR FURTHER INFORMATION CONTACT: Karen Rosa, Fish and Wildlife Biologist, at the above Honolulu, Hawaii address (telephone 808/541–2749 or FTS/551–2749).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where

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FOR FURTHER INFORMATION CONTACT: Karen Rosa, Fish and Wildlife Biologist, at the above Honolulu, Hawaii address (telephone 808/541–2749 or FTS/551–2749).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where

they are again secure, self-sustaining members of their ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States, its Territories and Commonwealths. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting them, and initial estimates of times and costs to implement the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will take these comments into account in the course of implementing approved recovery plans.

The species being considered in this recovery plan are the O'ahu tree snails of the genus *Achatinella*. The areas of emphasis for recovery actions are the Northern Ko'olau range, Northern Wai'anae range, Southern Wai'anae range and other mountainous areas above 400 m elevation on the island of O'ahu, Hawaii.

Of the 41 species in the genus *Achatinella* that are federally listed as endangered, 16 species are now extinct, 5 species have not been seen for over 15 years, and 18 of the remaining 20 species are on the verge of extinction. Recovery efforts for these species will focus on control of an introduced predatory snail that is believed to be the main reason for decline of the O'ahu tree snails, control of introduced rats and exotic plants, location and protection of additional populations of tree snails, protection and management of suitable habitat, and captive cultivation for future reestablishment of snail colonies on O'ahu. The interim goal of this recovery plan is to locate and stabilize all remaining populations of *Achatinella* spp.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of this plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 26, 1991.

William E. Martin,

Acting Regional Director, U.S. Fish and Wildlife Service, Region 1.

[FR Doc. 91–18340 Filed 8–1–91; 8:45 am]

BILLING CODE 4310-55-M

Availability of a Draft Revised Recovery Plan for Enhydra lutra nereis (southern sea otter) for Review and Comment, and Announcement of Public Workshops on the Draft

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and related public workshops.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft revision of the southern sea otter recovery plan. this species occurs along the central coast of California, from Point Ano Nuevo south to Pismo Beach. The Service solicits review and comment from the public on this draft revised plan. One of the issues being considered in the draft plan is the future of the Management (no-otter) Zone and the translocated experimental population. Two public workshops will be held.

DATES: Comments of the draft revised recovery plan must be received on or before October 1, 1991 to receive consideration by the Service. Public workshops will be held in Santa Monica, California on August 20, 1991, and in Rohnert Park, California on August 22, 1991.

ADDRESSES: Public workshops will be held at the Guest Quarters Suite Hotel, 1707 Fourth Street, Santa Monica, California; and at the Red Lion Inn Sonoma County, One Red Lion Drive, Rohnert Park, California. Workships will be from 1 p.m. to 4 p.m. and from 6 p.m. to 9 p.m.

Persons wishing to review the draft revised recovery plan may obtain a copy by written request addressed to the Ventura Field Office, U.S. Fish and Wildlife Service, 2140 Eastman Avenue, Suite 100, Ventura, California, 93003, or the Assistant Regional Director, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232–4181. Written comments and materials regarding the plan should be addressed to Mr. Carl Benz at the above Ventura, California address. Comments and materials received are available upon request for public inspection, by appointment, during normal business hours at the above Ventura, California address.

FOR FURTHER INFORMATION CONTACT: Mr. Carl Benz at the above Ventura, California address (telephone 805–644–1766 or FTS 983–6039).

SUPPLEMENTARY INFORMATION:

Background

The southern (California) sea otter was listed as threatened in 1977 under the Federal Endangered Species Act. It is also recognized as a depleted population pursuant to the Marine Mammal Protection Act. Reduced range and population size, vulnerability to oil spills, and the oil spill risk from coastal tanker traffic were the primary reasons for the threatened status. The southern sea otter population contains about 2000 individuals and ranges between Point Ano Nuevo south to Pismo Beach. About 14 otters are at San Nicolas Island as a result of translocation efforts to establish an experimental population. After review of new biological information, the Service, with assistance of the Southern Sea Otter Recovery Team, has drafted for public review and comment a revised recovery plan.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified will be considered prior to approval of the plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 29, 1991.

William E. Martin,

Acting Regional Director, U.S. Fish and Wildlife Service, Region 1.

[FR Doc. 91–18351 Filed 8–1–91; 8:45 am]

BILLING CODE 4310-55-M

Availability of a Draft Recovery Plan for Cirsium Pitcheri (Pitcher's Thistle) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft recovery plan for *Cirsium pitcheri* (Pitcher's thistle). This plant is endemic to the beaches and grassland dunes of Lakes Michigan, Superior, and Huron. It is found at 120

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sites in Michigan, 8 in Indiana, and 8 in Wisconsin. It is also known from 12 sites in Ontario, Canada. The species is threatened by human-caused threats, including shoreline development, recreation, dune and beach stabilization, and sand mining. The recovery plan sets out criteria to protect essential habitat, manage known occurrences, and preserve genetic diversity. The Service solicits review and comments from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before September 3, 1991 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft plan may examine a copy during normal business hours at the Services's Twin Cities Regional Office, Division of Endangered Species, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111, telephone 612/725-3276, FTS 725-3276; the East Lansing Field Office, 1405 South Harrison Road, East Lansing, Michigan, 48823, telephone 517/337-6650, FTS 374-6650; the Green Bay Field Office, 1015 Challenger Court, Green Bay, Wisconsin, 54311, telephone 414/433-3803, FTS 360-3803; and the Bloomington Field Office, 718 North Walnut Street, Bloomington, Indiana 47401 telephone 812/334-4261, FTS 332-4261. Persons wishing to obtain a copy of the draft recovery plan should contact the Twin Cities Regional Office. Written comments and materials regarding the plan should be mailed to the Twin Cities Office. All comments and materials received will be available for public inspection, by appointment, during normal business hours at that office for the duration of the comment period.

FOR FURTHER INFORMATION CONTACT: William F. Harrison, at the above Twin Cities Regional Office address (612/725-3276; FTS 725-3276).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing recovery levels for downlisting or delisting them, and initial estimates of times and costs to implement the recovery measures needed.

The Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during the recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

Cirsium pitcheri (Pitcher's thistle) was listed as a threatened species under the Act on July 18, 1988 (FR 53 27137). This species is currently extant at 136 sites; 120 in Michigan, 8 in Indiana, and 8 in Wisconsin. The plant is endemic to the beaches and grassland dunes of Lakes Michigan, Superior, and Huron, where it is threatened by development of the lakeshores and dunal areas. It is found most frequently in the near-shore plant communities, although it may be found in all nonforested areas of a dune system. Pitcher's thistle is vulnerable because of its endemism to the narrow shoreline habitats of the Great Lakes. Habitat alteration and destruction is considered the greatest threat to the species, because of the desirability of its shoreline habitat for residential development. The plant has been extirpated from Illinois, where it was once known from 14 sites.

Pitcher's thistle is a monocarpic or semelparous (blooms and sets seed only once) herbaceous plant that blooms after a 5 to 8 year juvenile stage. The stems and leaves of juveniles and adults are woolly white, deeply pinnatified with the lobes less than 2 centimeter (cm) wide and up to 4 cm long. The flowering stems are up to 1 meter tall and have several to a dozen widely scattered leaves. The plants will have a tap root that extends at least 2 meters long. The recovery plan outlines strategies to protect populations and habitats, manage all protected sites, continue to survey for new occurrences, implement a landowner contact and education program, develop restoration protocols, and conduct research on the biology of the species and the dune system it depends upon. The recovery objective is to secure permanent protection sufficient to maintain 80 of the most viable occurrences representing each biogeographic region, all landowners have been contacted concerning the protection of privately owned occurrences, and restored populations are ecologically functional after 20 years.

Public Comments Solicited

The Service solicits written comments on this recovery plan. All comments received by the date specified above will be considered prior to approval of the plan.

Authority: The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 23, 1991.

James C. Gritman,

Regional Director.

[FR Doc. 91-18362 Filed 8-1-91; 8:45 am]

BILLING CODE 4310-55-M

Geological Survey

Application Notice Establishing a Tentative Closing Date for Transmittal of Applications Under the Water Resources Research Grant Program for Fiscal Year (FY) 1992

Applications are invited for water research projects under the Water Resources Research Grant Program.

The purpose of this program is to provide matching grants for research concerning any aspect of water resource-related problems deemed to be in the national interest.

Applications may be submitted by water resources research institutes and other qualified educational institutions, private foundations, private firms, individuals, and agencies of State or local governments.

Closing Date for Transmittal of Applications: Applications are tentatively due on or before November 19, 1991. The announcement will state the actual due date for receipt of the application.

Program Information: This program supports research related to the following general areas of national interest: (1) Aspects of the hydrologic cycle; (2) supply and demand for water; (3) demineralization of saline and other impaired waters; (4) conservation and best use of available supplies of water and methods of increasing such supplies; (5) water reuse; (6) depletion and degradation of groundwater supplies; (7) improvements in the productivity of water when used for agricultural, municipal, or commercial purposes; and (8) the economic, legal, engineering, social, recreational, biological, geographic, ecological, and other aspects of water problems.

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Public Comments Solicited

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Authority: The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 23, 1991.

James C. Gritman,

Regional Director.

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Application Forms: The announcement is expected to be available on or about August 12, 1991. The announcement may be obtained by writing to Ms. Mary Burkett, U.S. Geological Survey, Office of Procurement and Contracts—MS 205C, 12201 Sunrise Valley Drive, Reston, Virginia 22092 and requesting a copy of announcement 7846. All organizations that applied for a FY 1991 award, all Historically Black Colleges and Universities and Hispanic Association of Colleges and Universities known to have schools in earth sciences, physical sciences and related fields. All organizations that requested to be retained on the mailing list since the last announcement will be mailed a copy of the announcement.

Further Information: For further information contact Melvin Lew, U.S. Geological Survey, Water Resources Division—MS 424, 12201 Sunrise Valley Drive, Reston, Virginia 22092. Telephone: 703-648-6811.

(Catalog of Federal Domestic Assistance Number 1p5.806)

Dated: July 12, 1991.

Jack J. Stassi,

Assistant Director for Administration.

[FR Doc. 91-18317 Filed 8-1-91; 8:45 am]

BILLING CODE 4310-31-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office. Sonoco Products Company, One North Second Street, P.O. Box 160, Hartsville, SC 29550.

2. Wholly owned subsidiaries which will participate in the operations, and State(s) of incorporation:

Sonoco Fibre Drum, Inc.—Delaware
Sonoco Plasti-Drum, Inc.—Illinois
Sonoco International, Inc., Sonoco LTD.—Delaware, Canada (Federally Incorporated)
Paper Stock Dealers, Inc.—North Carolina
Sonoco Plasti-Drum—Southwest—Texas
Sonoco Plasti-Drum—Kentucky—Kentucky

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-18371 Filed 8-1-91; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-1 (Sub-No. 212)]

Chicago and North Western Transportation Co.—Abandonment—Between Palmer and Laurens in Pocahontas County, IA; Findings

The Commission has found that the public convenience and necessity permit the Chicago and North Western Transportation Company to abandon its 20.4-mile line of railroad between milepost 453.6 near Palmer, IA, and milepost 474.0 near Laurens, IA, and 1.03 mile of side track.

A certificate will be issued authorizing abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase), to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: July 26, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald. Commissioner Simmons was absent and did not participate in the disposition of this proceeding.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-18372 Filed 8-1-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Consent Judgment in Action To Enjoin and Penalize Violations of the Clean Air Act ("CAA")

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent decree in *United States* v. *Michael T. Robinson and Associates, Inc.* ("Robinson"), (W.D. Wis.), Civil Action No. 90-C-0866-S was lodged with the United States District Court for the Western District of Wisconsin on July 22, 1991. The consent decree provides for penalties and injunctive relief for violating the notice requirements of the National Emission Standard for Hazardous Air Pollutants ("NESHAP") for asbestos, 40 CFR 61.146, promulgated pursuant to the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the consent decree. Comments should be address to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Michael T. Robinson and Associates, Inc.*, D.O.J. Ref. No. 90-5-2-1-1342.

The proposed consent decree may be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue NW., Washington, DC 20004 (202-347-2072). A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $3.00 (25 cents per page reproduction charge) payable to Consent Decree Library.

John. C. Cruden,

Chief Environment Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 91-18408 Filed 8-1-91; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirement may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETAOLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New Collection

Bureau of Labor Statistics

Current Population Survey CATI/CAPI Overlap Sample

Form #	Affected public	# Respondents	Freq.	Ave. time per response
CPS-260 & CPS-1 Version D	Households	2,150	4	0.1667 Hours.

1,433.62 Total Hours in 1991

The Current Population Survey is a household sample survey that is the primary source of data on the growth of the labor force and on trends in employment and unemployment. The overlap sample will benchmark differences in labor force estimates between the current system and the proposed system.

Revision

Employment Standards Administration, 1215-0173.

Title	Agency Number	Affected Public	Frequency	Hours per response
Representative Payee Report	CM 623	Individuals or households; Businesses or other for profit; Non-profit institutions; Small businesses or organizations.	Annually	1½
Representative Payee Report	CM 623S		do	10 minutes.
Physician's/Medical Officer's Report	CM 787	do	On occasion	15 minutes.

2,480 total hours.

The Representative Payee Report forms are used to ensure benefits certified and paid to a representative are being used for the beneficiary's well-being. The Physician's/Medical Officer's Report is used to determine the beneficiary's capability to manage monthly Black Lung Benefits.

Extension

Employment and Training Administration, UI Trust Fund Activities, 1205-0154; ETA 2112, 8401, 8405, 8413, 8414, 8403.

Form #	Affected Public	Respondents	Frequency	Average Time Per Response
ETA 2112	State/local governments	53	Monthly	30 min.
ETA 8401	do	53	Monthly	30 min.
ETA 8413	do	53	Monthly	30 min.
ETA 8414	do	53	Monthly	30 min.
ETA 8403	do	18	Monthly	30 min.

1,698 total hours.

ETA report 8403 monitors Reed Act funds. ETA Reports 2112, 8401, 8405, 8413 and 8414 are used to monitor Unemployment Trust Fund cash flow, disbursement, measure cash management performance and regulate balances pertaining to unemployment benefits paid from Federal sources. These activities are coordinated with State government accounting systems.

Reinstatement

Employment Standards Administration, 1215-0028; *Economic Survey Schedule*, WH-1.

Biennially

State or local governments; Businesses or other for-profit; Small businesses or organizations.

60 respondents; 45 total hours; 45 min. per response; 1 form Form WH–1 is used by the Department of Labor to collect data and prepare an economic report for the industry committee which sets industry wage rates in American Samoa.

Signed at Washington, DC this 26th day of July, 1991.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 91–18397 Filed 8–1–91; 8:45 am]

BILLING CODE 4510-22-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-Explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page numbers(s).

Volume I

Maryland: MD91–9 (Aug. 2, 1991).	p.493 p.494
Virginia:	
VA91–71 (Aug. 2, 1991)	p.1400a p.1400b
VA91–72 (Aug. 2, 1991)	p.1400c p.1400d

Volume III

Colorado: CO91–10 (Aug. 2, 1991).	p.192a pp.192b–192d

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Florida: FL91–1 (Feb. 22, 1991)	p. 101 p. 102
Maryland:	
MD91–6 (Feb. 22, 1991)	p. 467 p. 468
MD91–17 (Feb. 22, 1991)	p. 513 p. 514
MD91–22 (Feb. 22, 1991)	p. 523 p. 524
New Jersey:	
NJ91–2 (Feb. 22, 1991)	p. 701 p. 703, pp.708–720
NJ91–3 (Feb. 22, 1991)	p. 721 pp. 722–744b
Pennsylvania:	
PA91–23 (Feb. 22, 1991)	p. 1123 pp. 1124–1128
PA91–24 (Feb. 22, 1991)	p. 1129 pp. 1130–1133
Rhode Island: RI91–1 (Feb. 22, 1991).	p. 1149 p. 1150
Virginia:	
VA91–15 (Feb. 22, 1991)	p. 1273 pp. 1274–1276
VA91–50 (Feb. 22, 1991)	p. 1357 p. 1358
West Virginia: WV91–1 (Feb. 22, 1991).	p. 1419 p. 1420

Volume II

Illinois: IL91–18 (Feb. 22, 1991)	p. 237 p. 238
Michigan: MI91–4 (Feb. 22, 1991).	p. 491 pp. 491–498
Nebraska: NE91–2 (Feb. 22, 1991).	p. 749 pp. 749–752
Texas:	
TX91–2 (Feb. 2, 1991)	p. 1017 pp. 1017–1020
TX91–19 (Feb. 22, 1991)	p. 1067 pp. 1067–1068
TX91–51 (Feb. 2, 1991)	p. 1167 pp. 1167–1170

Volume III

Alaska: AK91–1 (Feb. 22, 1991).	p. 1 pp. 2–8b

Colorado:
CO91–2 (Feb. 22, 1991)........ p. 159
pp. 160–161
CO91–3 (Feb. 22, 1991)........ p. 163
pp. 164–165
CO91–4 (Feb. 22, 1991)........ p. 167
pp. 167–173
Montana: MT91–1 (Feb. 22, 1991). p. 231
pp. 232–248e
Nevada: NV91–1 (Feb. 22, 1991). p. 299
pp. 313–315

Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subcriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 26th day of July 1991.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 91–18133 Filed 8–1–91; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 25, 1991.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 25, 1991.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 22nd day of July 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Amber Well Completion Rentals (Wkrs)	Austin, TX	07/22/91	07/07/91	26,090	Oil and Gas.
Armstrong Drilling, Inc. (Co)	Wooster, OH	07/22/91	07/08/91	26,091	Oil and Gas.
Atlas Soundolier (IUE)	Parsippany, NJ	07/22/91	07/11/91	26,092	Commercial Sound Equipment.
Bellaire Tool Co (Wkrs)	Bellaire, MI	07/22/91	07/11/91	26,093	Gear Cutting Tools.
Cable Craft, Inc. d/b/a/ Cable Star (Co)	Glasgow, KY	07/22/91	07/12/91	26,094	Computer Cable Assembly.
Caloric Corporation (Wkrs)	Topton, PA	07/22/91	07/12/91	26,095	Gas and Electric Ranges.
Carbon Fuel Resources, Inc. (Wkrs)	Pittsburgh, PA	07/22/91	07/09/91	26,096	Coke.
Domestic Corp (Co)	Evansville, IN	07/22/91	07/08/91	26,097	RV Refrigerators.
Donora Sportswear Co., Inc (Wkrs)	Donora, PA	07/22/91	06/24/91	26,098	Ladies' and Men's Coats.
Empire-Orr, Inc. (Wkrs)	Elizabeth, NJ	07/22/91	06/30/91	26,099	Warehouse/Distribution Handbags.
Fiber Materials, Inc. (Wkrs)	Rumford Center, ME	07/22/91	06/27/91	26,100	Missile Nose Tips.
Ford Motor Co (Wkrs)	Walton Hills, OH	07/22/91	06/24/91	26,101	Automotive Stamping Panels.
Frink America, Inc IAMAW	Clayton, NY	07/22/91	07/08/91	26,102	Snow Plows.
Gen Corp Automotive (UAW)	Marion, IN	07/22/91	07/12/91	26,103	Automobile Rubber Weather Stripping.
General Kinetics, Inc (Wkrs)	Herndon, VA	07/22/91	07/05/91	26,104	Fax Machines.
Gerber Textiles, Inc (Co)	Marlboro, NJ	07/22/91	07/10/91	26,105	Piece Goods for Tablecloths and Scarves.
Grumman Boats (OMCGB Inc) (Wkrs)	Marathon, NY	07/22/91	07/02/91	26,106	Aluminum Boats.
Gulfstream Aerospace Technologies (Wkrs)	Oklahoma City, OK	07/22/91	07/03/91	26,107	Sheet Metal for Aircrafts.
Halliburton Services (Wkrs)	Duncan, OK	07/22/91	07/08/91	26,108	Oil and Gas.
Kitchens of Sara Lee (Wkrs)	Deerfield, IL	07/22/91	07/06/91	26,109	Frozen Baked Goods.
MECO International, Inc. (Wkrs)	Warrendale, PA	07/22/91	07/03/91	26,110	Mining Roof Suports and Ancillery Equip.
Merrow Machine Co (Wkrs)	Newington, CT	07/22/91	06/28/91	26,111	Industrial Sewing Machines.
Outokumpu American Brass (USWA)	Kenosha, WI	07/22/91	07/09/91	26,112	Brass and Copper Tube.
Rina di Montella Manufacturing (Wkrs)	Conshohocken, PA	07/22/91	07/10/91	26,113	Ladies Evening Wear.
Spotlight, Inc. (Wkrs)	Marianna, AR	07/22/91	07/14/91	26,114	Nightgowns and Pajamas.
Stan-Lite Corp. (Wkrs)	McAdoo, PA	07/22/91	07/09/91	26,115	Lampshades.
Unisys Corp (Wkrs)	Flemington, NJ	07/22/91	06/25/91	26,116	IMB Personal Computers.
Wheatley Gaso (Wkrs)	Tulsa, OK	07/22/91	06/21/91	26,117	Pump Oil.
Zenith Electronics Corp (Wkrs)	El Paso, TX	07/22/91	05/06/91	26,118	Televisions.

[FR Doc. 91–18399 Filed 8–1–91; 8:45 am]

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The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 25, 1991.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 25, 1991.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 22nd day of July 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

NDIX

Date received	Date of petition	Petition No.	Articles produced
07/22/91	07/07/91	26,090	Oil and Gas.
07/22/91	07/08/91	26,091	Oil and Gas.
07/22/91	07/11/91	26,092	Commercial Sound Equipment.
07/22/91	07/11/91	26,093	Gear Cutting Tools.
07/22/91	07/12/91	26,094	Computer Cable Assembly.
07/22/91	07/12/91	26,095	Gas and Electric Ranges.
07/22/91	07/09/91	26,096	Coke.
07/22/91	07/08/91	26,097	RV Refrigerators.
07/22/91	06/24/91	26,098	Ladies' and Men's Coats.
07/22/91	06/30/91	26,099	Warehouse/Distribution Handbags.
07/22/91	06/27/91	26,100	Missile Nose Tips.
07/22/91	06/24/91	26,101	Automotive Stamping Panels.
07/22/91	07/08/91	26,102	Snow Plows.
07/22/91	07/12/91	26,103	Automobile Rubber Weather Stripping.
07/22/91	07/05/91	26,104	Fax Machines.
07/22/91	07/10/91	26,105	Piece Goods for Tablecloths and Scarves.
07/22/91	07/02/91	26,106	Aluminum Boats.
07/22/91	07/03/91	26,107	Sheet Metal for Aircrafts.
07/22/91	07/08/91	26,108	Oil and Gas.
07/22/91	07/06/91	26,109	Frozen Baked Goods.
07/22/91	07/03/91	26,110	Mining Roof Suports and Ancillery Equip.
07/22/91	06/28/91	26,111	Industrial Sewing Machines.
07/22/91	07/09/91	26,112	Brass and Copper Tube.
07/22/91	07/10/91	26,113	Ladies Evening Wear.
07/22/91	07/14/91	26,114	Nightgowns and Pajamas.
07/22/91	07/09/91	26,115	Lampshades.
07/22/91	06/26/91	26,116	IMB Personal Computers.
07/22/91	06/21/91	26,117	Pump Oil.
07/22/91	05/06/91	26,118	Televisions.

[TA-W-26,126]

Erico Fastening Systems, Moorestown, NJ; Public Hearing

Pursuant to the Department's regulations at 29 CFR 90.13 a public hearing is scheduled for 7 p.m. on Thursday, August 15, 1991 at the Masonic Temple, 151 N. Fellowship Road, Maple Shade, New Jersey. The public hearing is for petitioners or any other persons showing a substantial interest in the proceedings to furnish testimony and evidence of a relevant and material nature bearing upon petition TA-W-26,126 filed on behalf of workers and former workers at Erico Fastening Systems, Moorestown, New Jersey.

Such individuals who desire to furnish testimony as evidence should inform the Director, Office of Trade Adjustment Assistance, Department of Labor, of their intention to appear not later than Tuesday, August 13, 1991. Mr. Marvin M. Fooks, Director, OTAA, can be reached in Washington, DC at (202) 523-0555. The Director's Office is in room C-4318, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 30th day of July 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-18400 Filed 8-1-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,212]

NCR Corporation, a/k/a MicroEnergy, Inc.; Lake Mary Florida; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 15, 1991 applicable to all workers of NCR Corporation, Lake Mary, Florida. The Notice was published in the **Federal Register** on March 7, 1991 (56 FR 9740).

New information from the company shows that MicroEnergy, Inc. (MEI) purchased NCR Corporation in Lake Mary, Florida on July 1, 1991. MEI has retained the former employees who continue to produce power supplies for the same customers. Accordingly, MEI is a successor-in-interest firm to NCR Corporation at Lake Mary, Florida. The notice, therefore is amended to properly reflect the correct worker group.

The amended notice applicable to TA-W-25,212 is hereby issued as follows:

> All workers of NCR Corporation, Lake Mary, Florida also known as MicroEnergy, Inc., Lake Mary, Florida who became totally or partially separated from employment on or after November 29, 1989 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 26th day of July 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-18401 Filed 8-1-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,302]

Storage Technology Corp., Customer Services-Printer Operations, Melbourne, FL; Revised Determination on Reopening

On July 22, 1991, the Department, on its own motion, reopened its investigation for former workers of the Customer Services-Printer Operations of Storage Technology Corporation in Melbourne, Florida. The initial investigation resulted in a notice of determinations issued on March 15, 1991 and published in **Federal Register** on April 2, 1991 (56 FR 13500). The notice denied the workers of the Customer Services-Printer Operations of Storage Technology in Melbourne, Florida (TA-W-25,302) and certified the workers of StorageTek Printer Operations in Melbourne, Florida (TA-W-25,303).

On April 30, 1991, the Department denied the application for reconsideration for the Customer Services-Printer Operations in Melbourne, Florida. The denial notice for application for reconsideration was published in the **Federal Register** on May 7, 1991 (56 FR 21176).

New findings show that the several employees of the Customer Services-Printer Operations separated before March 2, 1991 were directly affected by increased imports of the 6100 series computer printer. The workers were an integral support part of the 6100 series computer printer whose domestic production was lost as the result of a foreign joint venture. All such printers for the domestic market are now sourced overseas.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that workers laid off prior to March 2, 1991 were adversely affected by increased imports of articles like or directly competitive with the 6100 series computer printers formerly produced at StorageTek Printer Operations, Melbourne, Florida. Increased imports of the 6100 series computer printer contributed importantly to the decline in sales or production and to the total or partial separation of workers at the Customer Services-Printer Operations of Storage Technology in Melbourne, Florida. In accordance with the provisions of the Act, I make the following revised certification for Customer Services-Printer Operations, Melbourne, Florida.

> All workers of the Customer Services-Printer Operations of Storage Technology, Melbourne, Florida who became totally or partially separated from employment on or after January 3, 1990 and before March 2, 1991 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 24th of July 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-18402 Filed 8-1-91; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. BethEnergy Mines, Inc.

[Docket No. M-91-63-C]

BethEnergy Mines, Inc., P.O. Box 143, Eighty Four, Pennsylvania 15330 has filed a petition to modify the application of 30 CFR 75.305 to its No. 84 Mine (I.D. No. 36-00958) located in Washington County, Pennsylvania. The petitioner proposes to establish ventilation evaluations points in a return aircourse in lieu of traveling the aircourse in its entirety.

2. Doverspike Bros. Coal Company, Inc.

[Docket No. M-91-64-C]

Doverspike Bros. Coal Company, Inc., R.D. #4, Box 271, Punxsutawney, Pennsylvania 15767 has filed a petition to modify the application of 30 CFR 75.1710 to its No. 84 Mine (I.D. No. 36-08191) located in Jefferson County, Pennsylvania. Due to low mining heights, the petitioner requests relief from the use of canopies or cabs on self propelled face equipment.

3. Moline Consumers Company

[Docket No. M–91–07–M]

Moline Consumers Company, 1701 Fifth Avenue, Moline, Illinois 81265 has filed a petition to modify the application of 30 CFR 56.14107 to its Allied Stone Plant #30 Mine (I.D. No. 11–00135) located in Rock Island County, Illinois, and to its Valley Quarry #7 Mine (I.D. No. 11–00136) located in Warren County, Illinois. The petitioner proposes to use a gate with a padlock and electrical interlocks on moving machine parts in lieu of guards.

4. Jamieson Company

[Docket No. M–91–08–M]

Jamieson Company, P.O. Box 850, Pleasanton, California 95466–0872 has filed a petition to modify the application of 30 CFR 56.11001 to its Pleasanton Pit and Mill (I.D. No. 04–01924) located in Alameda County, California. The petitioner proposes that locked gates at the entrances to the conveyor catwalk and a policy to lock out the power to the conveyors before persons use the catwalks provide safe means of access.

5. J.S. Redpath Corporation

[Docket No. M–91–09–M]

J.S. Redpath Corporation, 1865 West Baseline Road, Mesa, Arizona 85202 has filed a petition to modify the application of 30 CFR 57.4131 to its Mine (I.D. No. R–83) located in Comet Beach, Alaska. The petitioner proposes to store more than one days supply of combustible material (fuel) within 100 feet of mine openings and fan installation.

6. J.S. Redpath Corporation

[Docket No. M–91–10–M]

J.S. Redpath Corporation, 1865 West Baseline Road, Mesa, Arizona 85202 has filed a petition to modify the application of 30 CFR 57.4131 to its Mine (I.D. No. R–83) located in Comet Beach, Alaska. The petitioner proposes to store fuel within 100 feet of the mine opening and other mine buildings.

7. J.S. Redpath Corporation

[Docket No. M–91–10–M]

J.S. Redpath Corporation, 1865 West Baseline Road, Mesa, Arizona 85202 has filed a petition to modify the application of 30 CFR 57.4131 to its Mine (I.D. No. R–83) located in Juneau, Alaska. The petitioner proposes to store fuel within 100 feet of the mine opening and other buildings.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 3, 1991. Copies of these petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 91–18403 Filed 8–1–91; 8:45 am]

BILLING CODE 4510–43–M

Office of Inspector General

Contracting Officer Appointment

The Office of Inspector General gives notice that Theodore Goldberg, Director, Division of Contracting and Administrative Services, is appointed the contracting officer for the Office of Inspector General. Mr. Goldberg's has the authority to enter into, administer, or terminate contracts and make related determinations and findings, except that this authority does not include the use of small purchase procedures, acquisition of Federal Information Processing Resources or any contract action that exceeds $500,000.

FOR FURTHER INFORMATION CONTACT: E.J. German, Assistant Inspector General, Office of Resource Management and Legislative Assessment, telephone no. 202–523–6730.

Signed at Washington, DC This 26th of July, 1991.

Julian W. De La Rosa,

Inspector General.

[FR Doc. 91–18398 Filed 8–1–91; 8:45 am]

BILLING CODE 4510–21–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 91-70]

NASA Advisory Council University Relations Task Force; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council University Relations Task Force.

DATES: August 26, 1991, 9 a.m. to 5 p.m.; and August 27, 1991, 9 a.m. to 3 p.m.

ADDRESSES: National Aeronautics and Space Administration, room 6004, Federal Office Building 6, 400 Maryland Avenue SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Sylvia D. Fries, Code ADA–2, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–8766.

SUPPLEMENTARY INFORMATION: The NASA Advisory Council was established as an interdisciplinary group to advise senior management on the full range of NASA's programs, policies, and plans. The University Relations Task Force, reporting to the Council, will examine current forecasts of future national requirements for aerospace science and engineering and their supporting university infrastructure; it will also evaluate the degree, mechanisms, and appropriateness of NASA support for university programs in these fields. The Task Force is chaired by Dr. Steven Muller and is composed of 11 members.

The meeting will be open to the public up to the seating capacity of the room, which is approximately 30 persons including Task Force members and other participants. Visitors will be requested to sign a visitor's register.

TYPE OF MEETING: Open.

Agenda:

August 26, 1991

9 a.m.—Introductory Remarks.
9:10 a.m.—NASA/University Funding Data.
1 p.m.—NASA/Federal Science Grants Process.
2 p.m.—NASA/University Engineering Community.
4 p.m.—Summary.
5 p.m.—Adjourn.

August 27, 1991

9 a.m.—Universities and the Federal Government.
11 a.m.—Format for Members' Poll.
1 p.m.—NASA Policy Toward Universities.
2 p.m.—Task Force Report Focus.
3 p.m.—Adjourn.

Dated: July 30, 1991.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 91–18361 Filed 8–1–91; 8:45 am]

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Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 91-18361 Filed 8-1-91; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by September 3, 1991. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357-7817.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95-541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The applications received are as follows:

1. Applicant

William R. Fraser, Old Dominion University, Long Lake, MN 55356.

Activity for Which Permit Requested

Enter specially protected area. The applicant is conducting research on birds and requests permission to enter Litchfield Island specially protected area to census penguins and seabirds.

Location

Litchfield Island, Antarctica Peninsula area.

Dates

October 1991—March 1992.

2. Applicant

Wiliam R. Fraser, Old Dominion University, Long Lake, MN 55356.

Activity for Which Permit Requested

Taking. The applicant is conducting research on the effects of an oil spill on seabirds. He requests permission to band, weigh and measure birds, examine stomach contents, and affix radio transmitters to up to 40 Adelie penguins and Skuas. All birds will be released unharmed. Species to be examined are:

Species	*Number*
Adelie penguin	3,580
Chinstrap penguin	15
Giant Fulmar	400
Kelp Gull	100
South Polar Skua	1,000
Brown Skua	50
Blue-Eyed Shag	200

Location

Palmer Station area, Antarctica.

Dates

October 1991-March 1992.

3. Applicant

William R. Fraser, Old Dominion University, Long Lake, MN 55356.

Activity for Which Permit Requested

Taking. Import into USA. The applicant is conducting long-term ecological research, and population studies of penguins and seabirds. He requests permission to take birds for diet analysis. The following will be taken:

Species	*Number*
Emperor penguin	50
Adelie penguin	50
Chinstrap penguin	50
Gentoo penguin	50
Snow Petrel	75
Antarctic Petrel	75
Cape Petrel	75
Antarctic Fulmar	75
South Polar Skua	25
Kelp Gull	25

Location

Antarctic Peninsula area. Access via Polar Duke or similar ship.

Dates

October 1991-March 1992.

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 91-18318 Filed 8-1-91; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Materials Research; Notice of Meetings

SUMMARY: In accordance with the Federal Advisory Committee Act (Public Law 92-463, as amended), the National Science Foundation announces the following meetings.

SUPPLEMENTARY INFORMATION: The purpose of the meetings is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Materials Research.

Dates and Times:

Aug. 20-21, 1991, 8:30 am-5 pm, rm. 417C,
Sept. 04-05, 1991, 8:30 am-5 pm, rm. 408,
Sept. 12-13, 1991, 8:30 am-5 pm, rm. 408,
Sept. 19-20, 1991, 8:30 am-5 pm, rm. 408,
Sept. 23-24, 1991, 8:30 am-5 pm, rm. 408.

Place: National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Agenda: To provide advice and recommendations concerning support for SBIR Phase I proposals.

Contact Person: Dr. Robert J. Reynik, Head, Office of Special Programs in Material, Division of Materials Research, room 408, National Science Foundation, Washington, DC 20550. Telephone (202) 357-9791.

Dated: July 29, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-18318 Filed 8-1-91; 8:45 am]

BILLING CODE 7555-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Lower Columbia River Wildlife Amendments

July 22, 1991.

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of extension of comment period on proposed wildlife amendments to the Columbia River Basin Fish and Wildlife Program (Lower Columbia River wildlife amendments).

SUMMARY: On March 10, 1991, the Northwest Planning Council voted to initiate proceedings pursuant to section 4(d)(1) of the Northwest Power Act, 16 U.S.C. 839, *et seq.*), to consider amending the Columbia River Basin Fish and Wildlife Program (program) to include wildlife loss estimates for the McNary, John Day, The Dalles, and Bonneville hydroelectric projects. The Council initially requested that written comments on the proposed amendments be submitted through July 10, 1991. The Council now extends the deadline for submission of written comments to 5 p.m., Pacific time, on September 12, 1991. Comments should be submitted to Steven Crow, Director of Public Affairs, 851 SW. Sixth Avenue, suite 1100, Portland, Oregon, 97204. Comments should be clearly marked "Lower Columbia Wildlife Comments.".

FOR FURTHER INFORMATION CONTACT: For further informaiton contact the Council's Public Involvement Division, 851 SW. Sixth Avenue,. suite 1100, Portland, Oregon 97204 or (503) 222–5161, toll free 1–800–222–3355.

Bobbe Fendall,

Liaison Officer.

[FR Doc. 91–18314 Filed 8–1–91; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Areas #2514]

California; Declaration of Disaster Loan Area

Los Angeles County and the contiguous counties of Kern, Orange, San Bernardino, and Ventura in the State of California constitute a disaster area as a result of damages caused by an earthquake which occurred June 28, 1991. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September 9, 1991 and for economic injury until the close of business on April 13, 1992 at the address listed below: Disaster Area 4 Office, Small Business Administration, P.O. Box 13795, Sacramento, CA 95853–4795 or other locally announced locations.

The interest rates are:

For physical damage	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	9.125
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 251402. For economic injury the number is 734100.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 11, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 91–18381 Filed 8–1–91; 8:45 am]

BILLING CODE 8025-01-M

[Delegation of Authority No. 12–D, Revision 1]

Redelegation of Disaster Assistance

Delegation of Authoirty No. 12–D (48 FR 9981) is hereby superseded Delegation of Authority No. 12–D (Revision 1). This revision reflects the organizational changes made by a reorganization of the Finance and Investment Activities of the Small Business Administration. Delegation of Authority No. 12–D (Revision 1) reads as follows:

I. Pursuant to the action of the Administrator dated February 12, 1990, the following authority relating to disaster assistance activities is hereby delegated to the specific positions as indicated herein:

A. To the Assistant Administrator for Disaster Assistance as follows:

1. To declare a disaster loan area in instances where the President has determined, pursuant to Public Law 100–707, as amended, that a "major disaster" has occurred, or to declare a disaster loan area for Economic Injury Disaster Loans upon notification that the Secretary of Agriculture has declared a natural disaster for that area.

2. To amend declarations made under authority of paragraph A.1 above.

3. To authorize the acceptance of disaster loan applications after expiration of the original diaster period or extension thereof.

4. To approve or decline applications for home or business physical disaster loans, economic injury disaster loans, and all other types of disaster loans authorized to be made by the Agency, including reconsideration thereof, and to execute authorizations and modifications pertaining to such loans, including waiving the limit of $500,000 for major sources of employment as permitted by section 7(c)(3) of the Small Business Act, 15 U.S.C. 636(c)(3).

5. To cancel, reinstate, modify, and amend authorizations for disaster loans.

6. To extend disbursement periods without limitation for disaster loans.

7. To determine eligibility and make size determinations of disaster loan applicants.

8. To close and disburse approved disaster loans.

9. To establish disaster field offices and to obligate the Small Business Administration, through the General Services Administration, for the rental of office space and ancillary services and to close disaster field offices when no longer advisable to maintain such offices.

10. To appoint any lender in the processing area as a processing representative.

11. To hire, reassign, and terminate disaster permanent, cadre, and temporary employees, as necessary.

12. To take necessary actions with respect to personnel, financial management, and administrative activities.

13. To contract for supplies, material, and equipment, printing (Government sources only), transportation, communications, and special services for the Agency pursuant to chapter 4 of title 41, U.S.C., as amended, subject to limitations contained in section 257 (a) and (b) of that chapter.

14. To amend, suspend, or revoke authority delegated to any position listed below.

15. The authority delegated herein may be redelegated, except for the authority provided in paragraphs A.1 and A.2 above.

16. The authority delegated herein may be exercised by an SBA employee officially designated as Acting in such position.

II. Pursuant to the authority delegated to the Assistant Administrator for Disaster Assistance, authority relating to disaster assistance activities is hereby redelegated as follows:

A. To the Area Director (Disaster) as follows:

1. To approve, up to the statutory limit, or decline, applications for home and business physical disaster loans, economic injury disaster loans, and all other types of disaster loans authorized to be made by the Agency, including reconsideration thereof, and to execute authorizations and modifications pertaining to such loans.

2. To cancel, reinstate, modify, and amend authorizations for disaster loans.

3. To authorize the acceptance of disaster loan applications after

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8. To close and disburse approved disaster loans.

9. To establish disaster field offices and to obligate the Small Business Administration, through the General Services Administration, for the rental of office space and ancillary services and to close disaster field offices when no longer advisable to maintain such offices.

10. To appoint any lender in the processing area as a processing representative.

11. To hire, reassign, and terminate disaster permanent, cadre, and temporary employees, as necessary.

12. To take necessary actions with respect to personnel, financial management, and administrative activities.

13. To contract for supplies, material, and equipment, printing (Government sources only), transportation, communications, and special services for the Agency pursuant to chapter 4 of title 41, U.S.C., as amended, subject to limitations contained in section 257 (a) and (b) of that chapter.

14. To amend, suspend, or revoke authority delegated to any position listed below.

15. The authority delegated herein may be redelegated, except for the authority provided in paragraphs A.1 and A.2 above.

16. The authority delegated herein may be exercised by an SBA employee officially designated as Acting in such position.

II. Pursuant to the authority delegated to the Assistant Administrator for Disaster Assistance, authority relating to disaster assistance activities is hereby redelegated as follows:

A. To the Area Director (Disaster) as follows:

1. To approve, up to the statutory limit, or decline, applications for home and business physical disaster loans, economic injury disaster loans, and all other types of disaster loans authorized to be made by the Agency, including reconsideration thereof, and to execute authorizations and modifications pertaining to such loans.

2. To cancel, reinstate, modify, and amend authorizations for disaster loans.

3. To authorize the acceptance of disaster loan applications after expiration of the original disaster period or extension thereof.

4. To determine eligibility and make size determinations of disaster loan applicants.

5. To extend disbursement periods, without limitation, for disaster loans.

6. To close and disburse approved disaster loans, except loans which the delegatee previously approved or recommended approval.

7. To establish disaster field offices and to obligate the Small Business Administration, through the General Services Administration, for the rental of office space and ancillary services and to close disaster field offices when no longer advisable to maintain such offices.

8. To appoint any lender in the disaster area as a processing representative.

9. To hire, reassign, and terminate disaster permanent, cadre, and temporary employees, as necessary.

10. To take necessary actions with respect to personnel, financial management, and administrative activities.

11. To contract for supplies, materials, and equipment, printing (Government sources only), transportation, communication, and special services for the Agency pursuant to chapter 4 of title 41, U.S.C., as amended, subject to the limitations contained in section 257 (a) and (b) of that chapter.

12. To amend, suspend, or revoke authority delegated to any position listed below.

13. The authority delegated herein may not be redelegated.

14. The authority delegated herein may be exercised by an SBA employee officially designated as Acting in that position.

B. To the Assistant Area Director for Loan Processing as follows:

1. To approve, up to the statutory limit, or decline, applications for home and business physical disaster loans, economic injury disaster loans, and all other types of disaster loans authorized to be made by the Agency, including reconsideration thereof, and to execute authorizations and modifications pertaining to such loans.

2. To cancel, reinstate, modify and amend authorizations for disaster loans.

3. To authorize the acceptance of disaster loan applications after expiration of the original disaster period or extension thereof.

4. To determine eligibility of disaster loan applicants.

5. To extend disbursement periods without limitation for disaster loans.

6. To close and disburse approved unsecured disaster loans, except loans which the delegatee previously approved or recommended approval.

7. The authority delegated herein may not be redelegated.

8. The authority delegated herein may not be exercised by an SBA employee officially designated as Acting in that position.

C. To the Disaster Branch Manager as follows:

1. To establish disaster branch field offices and to obligate the Small Business Administration, through the General Services Administration, for the rental of office space and ancillary services and to close disaster field offices when no longer advisable to maintain such offices.

2. To hire, reassign, and terminate disaster employees as necessary, and reassign permanent and cadre employees as necessary.

3. To take necessary actions with respect to personnel, financial management, and administrative activities.

4. To contract for supplies, materials, and equipment, printing (Government sources only), transportation, communications, and special services for the Agency pursuant to chapter 4 of title 41, U.S.C., as amended, subject to the limitations contained in section 257 (a) and (b) of that chapter.

5. The authority delegated herein may not be redelegated.

6. The authority delegated herein may be exercised by an SBA employee officially designated as Acting in that position.

D. To the Supervisory Loan Officer (Disaster) as follows:

1. To approve, up to the statutory limit, or decline, applications for home and physical disaster loans, economic injury disaster loans, and all other types of disaster loans authorized to be made by the Agency, including reconsideration thereof, and to execute authorizations and modifications pertaining to such loans.

2. To cancel, reinstate, modify, and amend authorizations for disaster loans.

3. To determine eligibility of disaster loan applicants.

4. To extend disbursement periods for disaster loans up to 6 months cumulative (on fully undisbursed loans only).

5. To close and disburse approved unsecured disaster loans, except loans which the delegatee previously approved or recommended approval.

6. The authority delegated herein may not be redelegated.

E. To the Area Counsel (Disaster) as follows:

1. To close and disburse approved disaster loans.

2. The authority delegated herein may not be redelegated.

3. The authority delegated herein may be exercised by an SBA employee officially designated as Acting in that position.

F. To the Attorney, Area Office (Disaster) as follows:

1. To close and disburse approved disaster loans.

2. The authority delegated herein may not be redelegated.

3. The authority delegated herein may be exercised by an SBA employee officially designated as Acting in that position.

Dated: July 25, 1991.

Patricia F. Saiki,
Administrator.

[FR Doc. 91–18380 Filed 8–1–91; 8:45 am]

BILLING CODE 8025-01-M

[Delegation of Authority No. 12–B; Revision 3]

Redelegation of Investment Activities; Financial Assistance

Delegation of Authority No. 12–B (Revision 2) (49 FR 11049) is hereby superseded by Delegation of Authority No. 12–B (Revision 3). This revision reflects the organizational changes made by a reorganization of the Finance and Investment activities of the Small Business Administration. Delegation of Authority No. 12–B (Revision 3) reads as follows.

I. Pursuant to the action of the Administrator dated February 12, 1990, the following authority relating to surety bond guarantee activities is hereby delegated as indicated herein:

A. To the Assistant Administrator for Surety Guarantees as follows:

1. To take any and all actions necessary to carry out the provisions of part B of title IV of the Small Business Act of 1958 as amended, and the regulations promulgated thereunder, without limitation, including the following:

a. To guarantee sureties of small business against portions of losses resulting from breach of bid, payment, or performance bonds and bonds ancillary thereto, on contracts up to the statutory limit.

b. To approve or decline all claim reimbursement requests from participating surety companies on contract defaults bonded with SBA guarantees.

c. To take all necessary actions in connection with establishing SBA loss reserves for potential liability on contract defaults under guaranteed bonds.

d. To enter into agreements with participating surety and/or insurance companies and to modify and revise the same whenever necessary.

e. To approve or decline applications for guarantees received from participating surety and/or insurance companies.

f. To take all necessary actions in connection with the servicing, administration, collection and payment of claims arising under surety bond guarantees upon default.

g. To make size and eligibility determinations for the purpose of the surety bond guarantee program.

2. This redelegation does not authorize anyone serving in the above position:

a. To sell any primary obligations or other evidence of indebtedness owed to the Agency for a sum less than the total amount due thereof.

b. To deny liability of the Small Business Administration under terms of participation or guaranty agreement, or to initiate a suit for recovery from a participation or guaranty agreement.

c. To accept or reject a compromise settlement of an indebtedness owed to the Agency in connection with any matter covered hereunder for a sum less than the amount due thereon. (Authority for any other compromise settlements is delegated to the Central Office Claims Review Committee, see Delegation of Authority No. 12–A).

3. The authority delegated herein may be redelegated.

4. The authority delegated herein may be exercised by any SBA employee officially designated as Acting Assistant Administrator for Surety Guarantees, as appropriate.

Dated: July 25, 1991.

Patricia F. Saiki,

Administrator.

[FR Doc. 91–18379 Filed 8–1–91; 8:45 am]

BILLING CODE 8025-01-M

[Delegation of Authority No. 12–B, Revision 3]

Redelegation of Investment Activities; Financial Assistance

Delegation of Authority No. 12–B (Revision 2) (49 FR 11048) is hereby superseded by Delegation of Authority No. 12–A (Revision 3). This revision reflects the organizational changes made by a reorganization of the Finance and Investment activities of the Small Business Administration. Delegation of Authority No. 12–B (Revision 3) reads as follows:

I. Pursuant to the action of the Administrator dated February 12, 1990, the following authority relating to investment activities is redelegated to the specific positions indicated herein as follows:

A. To the Associate Administrator for Investment as follows:

1. To take any and all actions necessary to carry out the provisions of title I, II, and III (exclusive of all of section 310 of title III except that provision in subsection (b) which requires Licensees to report to the Administration at such time and in such form as the Administration may require) of the Small Business Investment Act of 1958, as amended, and the regulations promulgated thereunder, including, without limitation, all necessary action in connection with the purchasing of the preferred stock, or guaranteeing of debentures issued by, Small Business Investment Companies licensed under section 301(c) or 301(d) of the Small Business Investment Act of 1958, the serving, administration, collection, and sale of such stock and such debentures, and related loans, obligations, and property (real, personal, or mixed, tangible, or intangible) held by or assigned to SBA and arising out of activities under said Act, and, in connection therewith, to conduct all liquidation activities, including deciding whether to accept or reject compromise settlement of an indebtedness owed to the Agency in connection with any matter covered hereunder, including all offers of settlement for a sum less than the full value of obligations owed the SBA. (Authority for any other compromise settlements is delegated to the Central Office Claims Review Committee, see Delegation of Authority 12–A).

2. This redelegation does not authorize anyone serving in the above position to deny liability of the Small Business Administration under terms of participation or guarantee agreement, or to initiate a suit for recovery from a participation or guarantee agreement.

3. The authority delegated herein may be redelegated.

4. The authority delegated herein may be exercised by any SBA employee officially designated as Acting Associate Administrator for Investment, as appropriate.

Dated: July 25, 1991.

Patricia F. Saiki,

Administrator.

[FR Doc. 91–18378 Filed 8–1–91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 91–040]

Chemical Transportation Advisory Committee (CTAC) Annual Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Chemical Transportation Advisory Committee (CTAC) annual meeting will be held on Wednesday, August 21, 1991 in room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. The meeting is scheduled to begin at 9:30 a.m. and end at 4 p.m.

The agenda for the meeting follows:

1. Opening remarks.
2. U.S. Coast Guard Remarks.
3. Introduction of new members.
4. General interest topics.
   - Benzene Regulations (Written Brief)
   - Tankerman Regulations (Written Brief)
   - TSAC Work—Part 151 (Written Brief)
5. Subcommittee reports:
   - TSAC (Part 151 Liaison)
   - Marine Vapor Recovery
   - MOSH
   - Coal Tar
   - IGS
   - Filling Limits
   - Fire Fighting Media Review/Foam
6. New Tasks/Initiatives.
7. International Activities Update.
8. Other business.
9. Closing.

Attendance at this meeting is open to the public. Members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Director of CTAC no later than the day before the meeting. Any member of the public may present a written statement to the Committee at any time.

FOR FURTHER INFORMATION CONTACT: CDR K.J. Eldridge or Dr. M.C. Parnarouskis, U.S. Coast Guard Headquarters (G–MTH–1), 2100 Second Street SW., Washington, DC 20593–0001, (202) 267–1577.

Dated: July 24, 1991.

D.H. Whitten,

Deputy Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 91–18365 Filed 8–1–91; 8:45 am]

BILLING CODE 4910-14-M

[CGD8 90–19]

Houston/Galveston Navigation Safety Advisory Committee; Offshore Waterway Management Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub.

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8-1-91; 8:45 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 91-040]

Chemical Transportation Advisory Committee (CTAC) Annual Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Chemical Transportation Advisory Committee (CTAC) annual meeting will be held on Wednesday, August 21, 1991 in room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. The meeting is scheduled to begin at 9:30 a.m. and end at 4 p.m.

The agenda for the meeting follows:

1. Opening remarks.
2. U.S. Coast Guard Remarks.
3. Introduction of new members.
4. General interest topics.
   Benzene Regulations (Written Brief)
   Tankerman Regulations (Written Brief)
   TSAC Work—Part 151 (Written Brief)
5. Subcommittee reports:
   TSAC (Part 151 Liaison)
   Marine Vapor Recovery
   MOSH
   Coal Tar
   IGS
   Filling Limits
   Fire Fighting Media Review/Foam
6. New Tasks/Initiatives.
7. International Activities Update.
8. Other business.
9. Closing.

Attendance at this meeting is open to the public. Members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Director of CTAC no later than the day before the meeting. Any member of the public may present a written statement to the Committee at any time.

FOR FURTHER INFORMATION CONTACT: CDR K.J. Eldridge or Dr. M.C. Parnarouskis, U.S. Coast Guard Headquarters (G–MTH–1), 2100 Second Street SW., Washington, DC 20593–0001, (202) 267–1577.

Dated: July 24, 1991.

D.H. Whitten,

Deputy Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 91–18385 Filed 8–1–91; 8:45 am]

BILLING CODE 4910–14–M

[CGD8 90–19]

Houston/Galveston Navigation Safety Advisory Committee; Offshore Waterway Management Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub.

L. 92–463; 5 U.S.C. app. I) notice is hereby given of a meeting of the Offshore Waterway Management Subcommittee of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, August 29, 1991, in the Blackthorn Pavilion, at the U.S. Coast Guard Base, Galveston, Texas. The meeting is scheduled to begin at 10:30 a.m. and end at 12 Noon. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of previous recommendations made by the full Advisory Committee and the Offshore Waterway Management Subcommittee.
3. Presentation of any additional new items for consideration by the Subcommittee.
4. Adjournment.

The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Lieutenant Commander E. N. Funk, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone number (504) 589–4686.

Dated: July 23, 1991.

T. D. Fisher,

Captain, U.S. Coast Guard Commander, 8th Coast Guard Dist., Acting.

[FR Doc. 91–18387 Filed 8–1–91; 8:45 am]

BILLING CODE 4910–14–M

[CGD8 90–17]

Houston/Galveston Navigation Safety Advisory Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. I) notice is hereby given of the twenty-seventh meetings of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, September 26, 1991, int the conference room of the Houston Pilots Office, 8150 South Loop East, Houston, Texas. The meeting is scheduled to begin at approximately 9 a.m. and end at approximately 1 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Presentation of the minutes of the Offshore and Inshore Waterways Subcommittees and discussion of recommendations.
3. Discussion of previous recommendations made by the Committee.
4. Presentation of any additional new items for consideration of the Committee.
5. Adjournment.

The purpose of this Advisory Committee is to provide recommendations and guidance to the Commander, Eight Coast Guard District on navigation safety matters affecting the Houston/Galveston area.

The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Lieutenant Commander E. N. Funk, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eight Coast Guard District (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone number (504) 589–4686.

Dated: July 23, 1991.

T.D. Fisher,

Captain, U.S. Coast Guard Commander, 8th Coast Guard Dist., Acting.

[FR Doc. 91–18388 Filed 8–1–91; 8:45 am]

BILLING CODE 4910–14–M

[CGD8 90–18]

Houston/Galveston Navigation Safety Advisory Committee; Inshore Waterway Management Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Inshore Waterway Management Subcommittee of the Houston/Galveston Navigation Safety Advisory Committee. the meeting will be held on Thursday, August 29, 1991, in the Blackthorn Pavilion, at the U.S. Coast Guard Base, Galveston, Texas. The meeting is scheduled to begin at 09:00 A.M. and end at 10:30 A.M. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of previous recommendations made by the full Advisory Committee and the Inshore Waterway Management Subcommittee.
3. Presentation of any additional new items for consideration of the Subcommittee.
4. Adjournment.

The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Lieutenant Commander E.N. Funk, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone number (504) 589–4686.

Dated: July 23, 1991.

T.D. Fisher,

Captain U.S. Coast Guard Commander, 8th Coast Guard Dist., Acting.

[FR Doc. 91–18386 Filed 8–1–91: 8:45 am]

BILLING CODE 4910–14–M

Federal Railroad Administration

Petition for Exemption or Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for exemptions from or waivers of compliance with a requirement of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticiapte scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RSGM–91–7) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Communications received before September 16, 1991, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in room 8201, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

Atlanta, Stone Mountain and Lithonia Railway Company (Waiver Petition Docket Number RSGM 91–7)

The Atlanta, Stone Mountain and Lithonia Railway Company (ASML) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for one locomotive. The petitioner operates on approximately 4.3 miles of track between their quarry and an interchange with CSX in Lithonia, Georgia.

Waccamaw Coast Line Railroad Company (Wavier Petition Docket No. RSGM 91–8)

The Waccamaw Coast Line Railroad Company (WCLR) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for one locomotive. The railroad operates over approximately 14 miles of track between Conway and Myrtle Beach, South Carolina. The railroad states the locomotive is used exclusively in switching service. It is equipped with safety glass and there is no record of vandalism relating to glazing.

R.J. Corman Railroad Corporation (Wavier Petition Docket Number RSGM 91–9)

The R.J. Corman Railroad Corporation (RJCR) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) pertaining to: two locomotives used in dinner train service on the Bardstown Line (Bardstown Junction—Bardstown, Kentucky), one locomotive operating on the Cleveland Line (Holloway—Warwick, Ohio) and one locomotive operating on the Memphis Line (Memphis Junction, Kentucky—Zinc, Tennessee). The carrier reports there have been no glazing related accidents nor incidents involving vandalism.

Great River Railroad (Waiver Petition Docket Number RSGM 91–10)

The Great River Railroad (GRTR) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for two locomotives. The GRTR operates on approximately 30 miles of track between Rosedale and Great River Junction, Mississippi. The area of operation is largely rural and there have been no reports of vandalism nor incidents concerning glazing during operations according to the railroad.

Chevron USA (Waiver Petition Docket Number RSGM 91–11)

Chevron USA (ZCUI) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for two locomotives. The locomotives operate on approximately 7 miles of in-plant track and ½ mile of outside track.

Wisconsin and Southern Railroad Company (Wavier Petition Docket Number RSGM 91–12)

The Wisconsin and Southern Railroad Company (WSOR) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for one locomotive.

The WSOR operates 148 miles of track, primarily in rural Wisconsin. The locomotive for which the waiver is requested will be used solely as a backup switcher during peak loading periods. It will operate only on WSOR track. All other WSOR locomotives which do interchange on other tracks do comply with part 223. The carrier states there have been no incidents of vandalism since their inception in 1980.

Whitewater Valley Railroad (Waiver Petition Docket Number RSGM 91–14)

The Whitewater Valley Railroad (WVRR) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for three locomotives. The WVRR is primarily an excursion railroad operating in rural Indiana between Connersville and Metamora. A freight switching move of less than 2 miles is also provided. The railroad reports there have been incidents of vandalism resulting in broken glass when the locomotives have been inactive for extended periods.

Issued in Washington, DC on July 28, 1991.

Grady C. Cothen, Jr.

Associate Administrator for Safety.

[FR Doc. 91–18358 Filed 8–1–91; 8:45 am]

BILLING CODE 4910-06-M

Petition for Waiver of Compliance; Canadian

In accordance with 49 CFR Pacific Ltd. 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received from the Canadian Pacific Limited (CP Rail) a request for a waiver of compliance with a requirement of Federal rail safety standards. The petition is described below, including the regulatory provisions involved and the nature of the relief being requested.

Canadian Pacific Limited

Waiver Petition Docket Number LI–88–4A

The Canadian Pacific Limited (CP Rail) seeks an extension of their temporary waiver of compliance with certain provisions of the Locomotive Safety Regulations (49 CFR part 229). CP Rail was granted a temporary waiver of compliance with § 229.29, for 10 locomotives on October 14, 1988. Section 229.29 stipulates that all brake valves, with the exception of 26–L type, must be cleaned, tested and inspected every 736 calendar days. The 26–L type air brake equipment must be cleaned, inspected and tested every 1,104 calendar days.

CP Rail and the Canadian National Railway (CN Rail) in conjunction with Transport Canada participated in a test program covering a total of 60 locomotives with 26-L Brake Equipment for a period of 48 months. The 10 waivered locomotives were equipped for international service and thus could be operated in the United States and be covered by § 229.29. During the test period, all failed valves were tested and inspected for cause of failure. At the completion of the 48 month period, six locomotive sets of air brake equipment were tested and disassembled for inspection of their internal condition. The remaining 54 sets of brake equipment were subjected to the normal COT&S. Results of this test were favorable and Transport Canada has now authorized an extended 48 month test, with certain conditions, to include all locomotives with 26-L type air brake equipment operating on CP Rail and CN Rail.

Since many of the CP Rail locomotives are equipped for international service, the possibility exists that they may enter the United States during the normal course of their operations. In order to preserve the integrity of the expanded test, CP Rail is requesting relief from the 1,104 calendar day (36 month) clean, inspect and test schedule contained in 49 CFR § 229.29 for all CP Rail locomotives equipped with 26-L Brake Equipment.

The following conditions which were previously specified will continue:

1. Each locomotive specified will have stencilled in a prominent location in the cab the following: "AIR BRAKE EQUIPMENT UNDER TEST WITH FRA WAIVER APPROVAL."
2. The test report, when completed, will be forwarded to the FRA.
3. If any incident occurs which involves one of these test locomotives and is attributable to the air brakes on the test locomotive, the FRA Office of Safety will be notified as soon as practicable.

A previous requirement that all valves be painted for identification is no longer necessary since all locomotives are included in the test.

Each locomotive will receive a COT&S on or before the expiration of the 48 month period.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the rt 223) for one

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Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the

end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number L1–88–4A) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before September 16, 1991 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in room 8201, Nassif Building, 400 Seventh Street, SW, Washington, DC 20590.

Issued in Washington, DC on July 26, 1991.

Grady C. Cothen, Jr.,

Associate Administrator for Safety.

[FR Doc. 91–18359 Filed 8–1–91; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: July 26, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0064.

Form Number: 4029.

Type of Review: Extension.

Title: Application for Exemption From Social Security and Medicare Taxes and Waiver of Benefits.

Description: Form 4029 is used by members of recognized religious groups to apply for exemption from social security and Medicare taxes under Internal Revenue Code sections 1402(g) and 3127. The information is used to approve or deny exemption from social security and Medicare taxes.

Respondents: Individuals or households.

Estimated Number of Respondents: 3,754.

Estimated Burden Hours Per Response/Recordkeeping:

	Minutes
Recordkeeping	7
Learning about the law or the form	10
Preparing the form	11
Copying, assembling, and sending the form to the SSA	35

Frequency of Response: Filed only once.

Estimated Total Recordkeeping/Reporting Burden: 3,942 hours.

OMB Number: 1545–0191.

Form Number: 4952.

Type of Review: Revision.

Title: Investment Interest Expense Deduction.

Description: Form 4952 is used by taxpayers who paid or accrued interest on money borrowed to purchase or carry investment property. The form is used to compute the allowable deduction for interest on investment indebtedness and the information obtained is necessary to verify the amount actually deducted.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 800,000.

Estimated Burden Hours Per Response/Recordkeeping:

	Minutes
Recordkeeping	13
Learning about the law or the form	14
Preparing the form	11
Copying, assembling, and sending the form to the IRS	10

Frequency of Response: Annually.

Estimated Total Recordkeeping/Reporting Burden: 648,000 hours.

Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91–18328 Filed 8–1–91; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: July 26, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Office listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Office of Thrift Supervision

OMB Number: 1550–0026.

Form Number: FFIEC 001.

Type of Review: Extension.

Title: Annual Report of Trust Assets.

Description: The Annual Report of Trust Assets is submitted by financial institutions that operate trust departments. The report is the only source of information available regarding market values of assets held in trust departments. The information is compiled by the FDIC and published in an annual report that is used by financial institutions, Federal supervisory agencies and other groups.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 130.

Estimated Burden Hours Per Response: 1 hour, 49 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 235 hours.

Clearance Officer: John Turner (202) 906–6840, Office of Thrift Supervision, 1700 G Street, NW., 3rd Floor, Washington, DC 20552.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91–18329 Filed 8–1–91; 8:45 am]

BILLING CODE 4810-25-M

Internal Revenue Service

Tax Counseling for the Elderly (TCE) Program; Availability of Application Packages

AGENCY: Internal Revenue Service, Treasury.

ACTION: Availability of TCE application packages.

SUMMARY: This document provides notice of the availability of Application Packages for the 1992 Tax Counseling for the Elderly (TCE) Program.

DATES: Application packages are available from the IRS at this time. The deadline for submitting an application package to the IRS for the 1992 Tax Counseling for the Elderly (TCE) Program is September 3, 1991.

ADDRESSES: Application Packages may be requested by contacting: Internal Revenue Service, Management and Operations Branch (T:T:M), Program Manager, Tax Counseling for the Elderly Program, 1111 Constitution Avenue NW., room 7207, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Haag, Management and Operations Branch (T:T:M) room 7207, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. The non-toll-free telephone number is (202) 566-6603.

SUPPLEMENTARY INFORMATION: Authority for the Tax Counseling for the Elderly (TCE) Program is contained in section 163 of the Revenue Act of 1978, Public Law No. 95-600, 92 Stat. 12810, November 6, 1978. Regulations were published in the **Federal Register** (44 FR 72113) on December 13, 1979. Section 163 gives the Internal Revenue Service authority to enter into cooperative agreements with private or public non-profit agencies or organizations to establish a network of trained volunteers to provide free tax information and return preparation assistance to elderly individuals. Elderly individuals are defined as individuals age 60 or over at the close of their taxable year.

Cooperative agreements will be entered into based upon competition among eligible agencies and organizations. Because applications are being solicited before the FY 1992 budget has been approved, cooperative agreements will be entered into subject to appropriation of funds. Once funded, sponsoring agencies and organizations will receive a grant from the IRS for administrative expenses and to reimburse volunteers for expenses incurred in training and in providing tax return assistance. The Tax Counseling for the Elderly (TCE) Program is referenced in the Catalog of Federal Domestic Assistance in section 21.006.

John J. Mannion,

Chief, Management and Operations Branch.

[FR Doc. 91-18420 Filed 8-1-91; 8:45 am]

BILLING CODE 4830-01-M

[Project No. IRS-91-064]

Proposed Establishment of a Federally Funded Research and Development Center

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of intent.

SUMMARY: The Internal Revenue Service (IRS) announces its intention to sponsor and establish a Federally Funded Research and Development Center (FFRDC) to conduct research and advise IRS officials on technical aspects of Tax Systems Modernization (TSM). TSM is a long-term initiative of major importance involving the modernization and redesign of the tax processing and administrative systems and methods employed by the IRS. The FFRDC will be established under the authority of 48 CFR subpart 35.017 and the Office of Federal Procurement Policy (OFPP) Policy Letter 84-1. This is the third of three announcements under the authority of 48 CFR 5.205(b).

Of paramount importance in fulfilling this requirement will be the absence of actual or potential conflicts of interest (whether personal or organizational, real or apparent, or financial or non-financial) in recommendations that may be made to IRS officials. The scope of work of the FFRDC will be governed by a Sponsoring Agreement encompassing technology assessment, strategic planning, and acquisition support. These three major areas of support are described below. (1) Technology Assessment—The FFRDC will conduct continuing laboratory research and experimentation to evaluate new and emerging data processing and telecommunications technologies, concepts, and methodologies for potential use in TSM including recommendations on how the technologies, concepts, and methodologies may be timely applied to improving tax processing and taxpayer services. (2) Strategic Planning—The FFRDC will combine technical expertise with knowledge gained from research to provide ongoing advice to IRS officials on strategic plans and designs for TSM. Activities will include the review, critical assessment, verification of, as well as general participation in, the development of, high level plans, processes, and strategies for the timely delivery of systems that will meet TSM objectives. (3) Acquisition Support—The FFRDC will support and assist the acquisition of TSM components to ensure conformity with architectural standards and designs as well as the achievement of TSM goals and objectives. This will be accomplished through the review and evaluation of, and general participation in the development of technical requirements and specifications for critical TSM acquisitions. The FFRDC will participate in the development of technical evaluation criteria and, as an observer on technical evaluation panels, in the evaluation of proposals. In addition, the FFRDC will conduct periodic reviews of the effectiveness and efficiency of operational TSM systems. This notice is not a request for competitive proposals, however, expressions of interest and qualification or capability statements from entities interested and capable of fulfilling this requirement in the Washington, DC, metropolitan area will be considered. The qualification or capability statements received will be used to select potentially qualified entities, which at a later date may be requested to submit more detailed cost and technical proposals.

DATES: The final date for receipt of comments on this action, expressions of interest and qualification or capability statements, in order to be considered, is August 12, 1991.

ADDRESSES: Responses to this notice must be mailed to the Internal Revenue Service, A/C Procurement, Office of End User Acquisitions, 1111 Constitution Avenue NW., room 6418/ICC Building, P:HR:C:E, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Michelle Faseru, Contracting Officer, (202) 401-4198 or Veronica Fernandez, Contract Specialist, (202) 401-4253.

SUPPLEMENTARY INFORMATION: Upon request, copies of a detailed scope of work for the intended FFRDC will be mailed to any interested party. Requests must be sent to the address stated above and must make reference to "Project No. IRS-91-064".

Gregory D. Rothwell,

Assistant Commissioner (Procurement).

[FR Doc. 91-18419 Filed 8-1-91; 8:45 am]

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Activities will include the review, critical assessment, verification of, as well as general participation in, the development of, high level plans, processes, and strategies for the timely delivery of systems that will meet TSM objectives. (3) Acquisition Support—The FFRDC will support and assist the acquisition of TSM components to ensure conformity with architectural standards and designs as well as the achievement of TSM goals and objectives. This will be accomplished through the review and evaluation of, and general participation in the development of technical requirements and specifications for critical TSM acquisitions. The FFRDC will participate in the development of technical evaluation criteria and, as an observer on technical evaluation panels, in the evaluation of proposals. In addition, the FFRDC will conduct periodic reviews of the effectiveness and efficiency of operational TSM systems. This notice is not a request for competitive proposals, however, expressions of interest and qualification or capability statements from entities interested and capable of fulfilling this requirement in the Washington, DC, metropolitan area will be considered. The qualification or capability statements received will be used to select potentially qualified entities, which at a later date may be requested to submit more detailed cost and technical proposals.

DATES: The final date for receipt of comments on this action, expressions of interest and qualification or capability statements, in order to be considered, is August 12, 1991.

ADDRESSES: Responses to this notice must be mailed to the Internal Revenue Service, A/C Procurement, Office of End User Acquisitions, 1111 Constitution Avenue NW., room 6418/ICC Building, P:HR:C:E, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Michelle Faseru, Contracting Officer, (202) 401–4198 or Veronica Fernandez, Contract Specialist, (202) 401–4253.

SUPPLEMENTARY INFORMATION: Upon request, copies of a detailed scope of work for the intended FFRDC will be mailed to any interested party. Requests must be sent to the address stated above and must make reference to "Project No. IRS–91–064".

Gregory D. Rothwell,

Assistant Commissioner (Procurement).

[FR Doc. 91–18419 Filed 8–1–91; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following informaton: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before September 3, 1991.

Dated: July 29, 1991.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Reinstatement

1. Application for Dependency and Indemnity Compensation or Death Pension by Parent(s), VA Form 21–535.

2. This form is used by parents of deceased veterans to file an application for benefits. The information is used to determine whether the applicant is eligible for dependency and indemnity compensation benefits.

3. Individuals or households.

4. 25,056 hours.

5. 1 hour and 12 minutes.

6. On occasion.

7. 20,880 respondents.

[FR Doc. 91–18344 Filed 8–1–91; 8:45 am]

BILLING CODE 8320-01-M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before September 3, 1991.

Dated: July 29, 1991.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Revision

1. Claim for One Sum Payment, VA Form 29–4125, Claim for Government Life Insurance Policy, VA Form Letters 29–764P and 29–764S, and Claim for Monthly Payments, VA Form 29–4125A.

2. The forms are used by beneficiaries applying for the proceeds of Government Life Insurance policies.

3. Individuals or households.

4. 10,400 hours.

5. 6 minutes.

6. On occasion.

7. 104,000 respondents.

[FR Doc. 91–18345 Filed 8–1–91; 8:45 am]

BILLING CODE 8320-01-M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before September 3, 1991.

Dated: July 29, 1991.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Extension

1. Student Verification of Enrollment, VA Form 22–6979.

2. This form is used by students in certifying attendance and continued enrollment in courses leading to a standard college degree and noncollege degree programs.

3. Individuals or households.

4. 151,956 hours.

5. 5 minutes.

6. On occasion; Monthly.

7. 260,500 respondents.

[FR Doc. 91–18346 Filed 8–1–91; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 149
Friday, August 2, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Change in Subject of Meeting

The National Credit Union Administration Board determined that its business requires that the previously announced closed meeting (Federal Register, July 22, 1991) scheduled for 9:30 a.m. on Tuesday, July 30, 1991, include the following additional item, which is closed to public observation:

NCUA Delegations of Authority. Closed pursuant to exemption (2).

The Board voted unanimously to add this item to the closed agenda.

The previously announced items are:

1. Approval of Minutes of previous Closed Meeting.
2. Administration Action under Section 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
3. Administrative Action under Sections 208 and 307 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
4. Administrative Action under Sections 206, 208, and 307 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
5. Administrative Actions under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
6. Application for Federal Insurance.Closed pursuant to exemptions (8), (9)(A)(ii).
7. Appeal of Denial of Insurance. Closed pursuant to exemptions (6), (8), and (9)(B).
8. NCUA's Budget FY 92 and FY 93. Closed pursuant to exemptions (2), and (9)(B).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682–9600.

Becky Barker,

Secretary of the Board.

[FR Doc. 91–18458 Filed 7–30–91; 4:39 pm]

BILLING CODE 7535-01-M

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5. Administrative Actions under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

6. Application for Federal Insurance.Closed pursuant to exemptions (8), (9)(A)(ii).

7. Appeal of Denial of Insurance. Closed pursuant to exemptions (6), (8), and (9)(B).

8. NCUA's Budget FY 92 and FY 93. Closed pursuant to exemptions (2), and (9)(B).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682-9600.

Becky Barker,

Secretary of the Board.

[FR Doc. 91-18458 Filed 7-30-91; 4:39 pm]

BILLING CODE 7535-01-M

Corrections

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 158

[Docket No. 26385; Part 158(new)]

RIN 2120-AD67

Passenger Facility Charges

Correction

In rule document 91-12576 beginning on page 24254 in the issue of Wednesday, May 29, 1991, make the following corrections:

On page 24261, in the third column, in the fifth line from the top, "258.3l" should read "158.31".

§ 158.15 [Corrected]

On page 24279, in the third column, in § 158.15(b)(5), in the third line, "2l04" should read "2104".

§ 158.25 [Corrected]

On page 24281, in the first column, in § 158.25(c)(1)(iv) "(b)(25)" should read "(b)(15)".

§ 158.33 [Corrected]

On page 24282, in the third column, in § 158.33(c)(1)(iii), "l58.35" should read "158.35".

§ 158.47 [Corrected]

On page 24284, in the first column, in § 158.47(a), "1.58.45" should read "158.45". And in paragraph (c)(3), "l58.45" should read "158.45".

§ 158.53 [Corrected]

On the same page, in the third column in § 158.53(a) the effective date should read "June 28, 1994".

BILLING CODE 1505-01-D

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federal register

Friday
August 2, 1991

Part II

Department of Defense

Department of the Army

32 CFR Part 552

Control of Firearms, Ammunition and Other Dangerous Weapons, Fort Gordon, GA; Final Rule

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 552

Control of Firearms, Ammunition and Other Dangerous Weapons; Fort Gordon, GA

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: This part establishes the criteria for possessing, carrying, concealing, and transporting, firearms and/or other deadly or dangerous weapons and instruments on Fort Gordon. The provisions of this part are applicable to all persons employed on, visiting, or traveling through or on Fort Gordon including, but not limited to, Department of Defense (DOD) military and civilian personnel, retirees, United States Army Reserve/National Guard (USAR/NG) personnel, military family members, and civilians. This regulation will not become void in its entirety merely because one part or portion thereof is declared unconstitutional or void.

EFFECTIVE DATE: August 2, 1991.

FOR FURTHER INFORMATION CONTACT: LTC Michael L. Wamsted, Headquarters, U.S. Army Signal Center and Fort Gordon, attn: ATZH–JA, Fort Gordon, Georgia 30905–5000, (404) 791–3043/3148.

SUPPLEMENTARY INFORMATION: This part is punitive in nature. Personnel subject to the Uniform Code of Military Justice (UCMJ) who fail to comply with the requirements of this part are subject to punishment under the UCMJ, as well as to adverse administrative action and other adverse action authorized by applicable United States Code sections or Federal Regulations. Personnel not subject to the UCMJ who fail to comply with the provisions of this part are subject to adverse administrative action or criminal prosecution as authorized by applicable laws of the United States.

Executive Order 12291

This final rule has been reviewed under Executive Order 12291 and the Secretary of the Army has classified this action as nonmajor. The effect of the final rule on the economy will be less than $100 million.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 and the Secretary of the Army has certified that this action does not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

List of Subjects in 32 CFR Part 552

Arms and munitions, Federal buildings and facilities, Government employees.

PART 552—REGULATIONS AFFECTING MILITARY RESERVATIONS

1. The authority citation for 32 CFR part 552 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 3012; 15 U.S.C. 1601; 18 U.S.C. 1382; 31 U.S.C. 71; 40 U.S.C. 258a; 41 U.S.C. 14, U.S.C. 797.

2. Subpart J is added to part 552 to read as follows:

Subpart J—Control of Firearms, Ammunition and Other Dangerous Weapons on Fort Gordon

Sec.

552.126 Definitions.
552.127 Prohibitions.
552.128 Requirements for possession and use.
552.129 Requirements for carrying and use.
552.130 Disposition of confiscated/seized weapons.

Subpart J—Control of Firearms, Ammunition and Other Dangerous Weapons on Fort Gordon

§ 552.126 Definitions.

For the purpose of this part, the following definitions apply:

(a) *Ammunition.* Projectiles together with their fuses, propelling charges, and primers that are designed to be expelled from a firearm. This includes any type of military and commercial ammunition (ball, trace, incendiary, blank, shotgun, black powder, and shot). Items shall only be considered as ammunition when loaded into a cartridge with its bullet and primer.

(b) *Pellet and BB Guns.* Any type rifle, pistol, or other instrument designed or redesigned, made or remade, modified or remodified to expel BBs or pellets by springs, compressed air, CO_2, or any other compressed gas cartridge.

(c) *Dangerous Instruments.* Any device which is designed or redesigned, made or remade, modified or remodified to be used as an offensive or defensive weapon. Devices of this type include but are not limited to:

(1) "Constant companion" or any similar weapon, designed or redesigned, made, or remade modified or remodified to be worn as a belt buckle, brass knuckles, "Knucklers," and "Knucks."

(2) Studded or spiked wrist bands, or any device designed or redesigned, made or remade, modified or remodified to fit over the hand or wrist which can be used to cause grave bodily harm.

(3) Blackjacks, slapjacks, slappers, saps, including homemade substitutes, other bludgeons (with or without handles), and metal pipes.

(4) "Nanchaku" (num-chucks), two or more sticks connected by rope, cord, or chain and normally used as a martial arts weapon. "Shuriken", a disc or any geometrical object designed to be thrown as a weapon. "Manrikiqusari" or "Kusari," a rope or cord joined to a weight at each end and designed to be used as a weapon. "Sai" fighting forks or other similar weapons.

(5) Any finger ring with blades or sharp objects that are capable of being projected/extended from the surface of the ring.

(6) Any device capable and primarily intended for discharging darts or needles.

(7) All firearms.

(8) Slingshots (not including small slingshots made for use by children), other missile throwing devices, or any other instrument designed to produce bodily harm.

(d) *Explosive, incendiary, and pyrotechnic devices.* Any type of military or commercial explosive, incendiary, gas or smoke bomb, grenade, rocket, missile, mine, blasting cap, "dummy" and/or practice device such as simulators, and other similar detonating devices which are capable of being altered to contain a live charge, and pyrotechnic devices such as firecrackers, cherry bombs, bottlerockets, and starclusters.

(e) *Firearms.* (1) A shotgun having a barrel or barrels of less than 18 inches in length.

(2) A weapon made from a shotgun, if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length.

(3) A rifle having a barrel or barrels of less than 16 inches in length.

(4) A weapon made from a rifle if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length.

(5) A machine gun.

(6) A muffler or a silencer for any firearm whether or not such firearm is included within this definition. The term

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(1) "Constant companion" or any similar weapon, designed or redesigned, made, or remade modified or remodified to be worn as a belt buckle, brass knuckles, "Knucklers," and "Knucks."

(2) Studded or spiked wrist bands, or any device designed or redesigned, made or remade, modified or remodified to fit over the hand or wrist which can be used to cause grave bodily harm.

(3) Blackjacks, slapjacks, slappers, saps, including homemade substitutes, other bludgeons (with or without handles), and metal pipes.

(4) "Nanchaku" (num-chucks), two or more sticks connected by rope, cord, or chain and normally used as a martial arts weapon. "Shuriken", a disc or any geometrical object designed to be thrown as a weapon. "Manrikiqusari" or "Kusari," a rope or cord joined to a weight at each end and designed to be used as a weapon. "Sai" fighting forks or other similar weapons.

(5) Any finger ring with blades or sharp objects that are capable of being projected/extended from the surface of the ring.

(6) Any device capable and primarily intended for discharging darts or needles.

(7) All firearms.

(8) Slingshots (not including small slingshots made for use by children), other missile throwing devices, or any other instrument designed to produce bodily harm.

(d) *Explosive, incendiary, and pyrotechnic devices.* Any type of military or commercial explosive, incendiary, gas or smoke bomb, grenade, rocket, missile, mine, blasting cap, "dummy" and/or practice device such as simulators, and other similar detonating devices which are capable of being altered to contain a live charge, and pyrotechnic devices such as firecrackers, cherry bombs, bottlerockets, and starclusters.

(e) *Firearms.* (1) A shotgun having a barrel or barrels of less than 18 inches in length.

(2) A weapon made from a shotgun, if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length.

(3) A rifle having a barrel or barrels of less than 16 inches in length.

(4) A weapon made from a rifle if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length.

(5) A machine gun.

(6) A muffler or a silencer for any firearm whether or not such firearm is included within this definition. The term

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shall not include an antique firearm or any device (other than a machine gun) which, although designed as a weapon, by reason of the date of its manufacture, value, design, and other characteristics is primarily a collector's item and is not likely to be used as a weapon. For purpose of this definition, the length of the barrel on a shotgun or rifle shall be determined by measuring the distance between the muzzle and the face of the bolt, breech, or breechlock when closed and when the shotgun or rifle is cocked. The overall length of a weapon made from a shotgun or rifle is the distance between the extreme ends of the weapon measured along a line parallel to the center line of the bore.

(f) *Knives, sabers, swords, and machetes.* Any instrument having a sharp blade which is fastened to a handle, or made with a handle. Measurement of the blade will be from the tip of the blade to the point where the blade meets the handle. This includes folding knives, switchblades, gravity knives, stilettos, lock blade knives, swords, sabers, and machetes.

(g) *Machine gun and automatic weapon.* Any weapon which shoots, is designed to shoot, or can be readily restored to shoot automatically more than one shot without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machine gun, and any combination of parts from which a machine gun can be assembled if such parts are in the possession or under the control of a person.

(h) *Pistol.* A weapon originally designed, made, and intended to fire a projectile (bullet) from one or more barrels when held in one hand, and having:

(1) A chamber(s) as an integral part(s) of, or permanently aligned with, the bore(s).

(2) A short stock designed to be gripped by one hand and at an angle to and extending below the line of the bore(s).

(i) *Public gathering.* Shall include, but shall not be limited to, athletic or sporting events, schools or school functions, churches or church functions, rallies, or establishments at which alcoholic beverages are sold for consumption on the premises.

(j) *Revolver.* A projectile weapon, of the pistol type, having a breechloading chambered cylinder so arranged that the cocking of the hammer or movement of the trigger rotates it and brings the next cartridge in line with the barrel for firing.

(k) *Rifle.* A weapon designed or redesigned, made or remade, and intended to be fired from the shoulder. Also, designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger, and shall include any such weapon which may be readily restored to fire a fixed cartridge.

(l) *Shotgun.* A weapon designed or redesigned, made or remade, and intended to be fired from the shoulder; and designed or redesigned, made or remade, to use the energy or the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projecting (ball shot) or a single projectile for each single pull of the trigger and shall include any such weapon which may be readily restored to fire a fixed shotgun shell.

(m) *Silencer.* Any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for the use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication.

(n) *Weapon.* An instrument used in an offensive or defensive manner.

§ 552.127 Prohibitions.

(a) *Prohibited items.* It is prohibited to possess, carry, conceal, transport, store, transfer or sell any of the following weapons or devices, on, through, or within the confines of Fort Gordon unless specifically allowed elsewhere in this part:

(1) Sawed-off shotgun.

(2) Sawed-off rifle.

(3) Machine gun and automatic weapons.

(4) Silencers.

(5) Dangerous instruments as defined in § 552.126(c) of this part.

(6) Explosives, Incendiary and Pyrotechnic Devices, as defined in § 552.126(d) of this part.

(7) Knives with automatic blade openers (i.e., switch blades, gravity knives, stilettos) of any blade length. Folding or fixed bladed knives with a blade length of more than 3 inches. Swords, sabers, and machetes with sharpened blades.

(8) Any object which carries an electrical current of sufficient wattage to deliver a shock to a person, such as cattle prods, stun guns, "taser" or "public defenders."

(9) Umbrellas, canes, or walking sticks with sharpened points or removable handles which convert into a sword type instrument.

(b) *Carrying a concealed weapon.* A person commits the offense of carrying a concealed weapon when he/she knowingly has or carries about his/her person, unless in an open manner and fully exposed to view, any bludgeon, metal knuckles, firearm, or knife designed for the purpose of offense and/or defense, or any other dangerous or deadly weapon or instrument of like character outside of his/her home or place of business.

(c) *Carrying deadly weapons to or at public gatherings.* A person commits an offense under this section when he/she carries to, or possesses while at, a public gathering any explosive compound, firearm, or knife designed for the purpose of offense and/or defense. This paragraph shall not apply to necessary equipment for military personnel in a formation when a weapon is required, or to police/security personnel while in performance of their duties.

(d) *Prohibited possession and storage.* It is prohibited to possess or store ammunition, firearms, knives with blades more than 3 inches, bows and arrows, crossbows, and BB and pellet guns, in locations other than those specified in § 552.128 except under conditions specified in § 552.129. Prohibited locations for these items include, but are not limited to, living spaces and common areas of billets, squad rooms, privately-owned vehicles, exterior storage sheds, camper trailers, and offices. Commanders will designate an arms room and times for weapons turn-in. During periods when arms rooms are closed, the Staff Duty Officer (SDO) will ensure the weapon is secured in accordance with (IAW) this subpart. A receipt will be given for each weapon received, reflecting the weapon's make, serial number, identity of owner and other data deemed appropriate.

(e) Carrying of straight razors, unless the razor is in the original sealed package, is prohibited.

(f) *Exemptions.* Nothing in this subpart shall prohibit:

(1) Military members or DOD civilian employees from possessing or using military weapons, military ammunition or explosives, or military devices in a lawful manner while in the performance of their military duties while acting under orders of superior military authority, for training, or other authorized purposes, as prescribed by applicable Army Regulations.

(2) Military and DOD civilian personnel, while in the performance of official law enforcement duties, from

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possessing or using government ammunition, explosives or devices in a lawful manner, as prescribed by applicable laws or regulations or by their lawful superiors.

(3) Federal, state, county or local law enforcement personnel, while in the performance of official law enforcement duties, from possessing or using government or privately-owned weapons, ammunition, explosives or devices in a lawful manner, as prescribed by applicable laws or regulations or by their lawful superiors.

(4) Government contractors, while in performance of their contract from possessing or using weapons, ammunition, explosives or devices, IAW the provisions of their contract and as determined by the contracting officer.

(5) Individuals with Federal firearms licenses (class III) from possessing, carrying, and transporting class III weapons IAW Federal regulations; however, they are prohibited from concealing, storing, transferring, or selling class III weapons within the confines of Fort Gordon.

(6) Individuals from possessing, carrying, transporting, or storing decorative, ornamental, and ceremonial swords and sabers within the confines of Fort Gordon when used strictly for display and ceremonies.

(7) Individuals and agencies from possessing, transporting, storing, selling, or using fixed bladed knives with a blade length of more than 3 inches when used for their lawful purpose (i.e., steak knives, cooking knives, hunting knives) and when in compliance with all other requirements in this subpart.

(8) Flares used for emergency warning devices in automobiles may be transported in the locked trunk or glove compartment of an automobile.

§ 552.128 Requirements for possession and use.

All persons entering or otherwise on Fort Gordon may possess legally-defined and privately-owned firearms, ammunition, pellet and BB guns, knives, bows and arrows, and crossbows under the following conditions:

(a) Privately-owned firearms, crossbows, pellet and BB guns possessed or stored on the installation must be registered at the Installation's Provost Marshal Office within 3 working days after arrival on the installation, or after obtaining the weapon, except:

(1) Firearms legally brought onto the installation for the purpose of hunting or firing at an approved firing range, and only for the period of time the person possessing the firearms is hunting or firing on the range.

(2) Firearms carried by federal, state, county, or local law enforcement personnel when in the performance of official law enforcement duties.

(b) Personnel residing in family housing, bachelor officers' quarters/bachelor enlisted quarters/visiting officer quarters (BOQ/BEQ/VOQ) and guest housing, may store legally-acquired, authorized ammunition, knives with a blade measuring more than 3 inches, bows and arrows, registered crossbows, registered pellet and BB guns, and registered firearms within their quarters.

(c) Personnel residing in troop billets may store legally-acquired authorized ammunition, knives and blades measuring more than 3 inches, bows and arrows, registered crossbows, registered pellet and BB guns and registered firearms in unit arms rooms. The unit arms room should utilize a standard weapons card and log book to document storage, removal, and return.

(d) Persons 17 or under must be accompanied by a person over the age of 21, who will be responsible for compliance with the requirements of this subpart while hunting or target shooting on the installation and when purchasing legal arms (including knives with blades over 3 inches) and ammunition from installation retail outlets.

(e) Persons must be in compliance with federal and state laws regarding possession (i.e., age, criminal record restrictions, etc.).

(f) Storage, accountability, and registration procedures will be in accordance with (IAW) Army Regulation (AR) 190–11 (Physical Security of Arms, Ammunition and Explosives) and supplements. Copies of the AR may be obtained from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

(g) Loss or theft of firearms and ammunition will be reported to the Fort Gordon military police desk sergeant immediately. Reports will contain all available details of the incident and a description of the lost item.

§ 552.129 Requirements for carrying and use.

Persons legally authorized to possess firearms, ammunition, knives (with blades longer than 3 inches), bows and arrows, and crossbows, may carry or transport legally possessed and registered (if required) weapons under the following conditions:

(a) For purposes of hunting: From quarters, on or off the installation, by the most direct route to hunting area and return. Stopping at other installation facilities while en route is prohibited (i.e., post exchange, club, offices, etc.). Individual must have in his/her possession weapon registration (if applicable), valid state hunting license, valid Fort Gordon hunting permit and an area access pass (if applicable).

(b) For purposes of target shooting, selling the weapon or having the weapon repaired: From quarters by the most direct route to approved range or to the location where the weapon is to be sold or repaired and returned. Stopping at other installation facilities while en route is prohibited. Individual must have in his/her possession at all times his/her registration (if applicable).

(1) When carried, weapons will be carried in an open manner (not concealed). Firearms will be unloaded when carried (i.e., projectiles physically separated from the firearms, not just removed from the chamber), except when actually engaged in hunting or shooting. Knives will be carried in a sheath or scabbard worn in a clearly visible manner. Commanders may authorize the carrying of a privately-owned, knife with a blade over 3 inches to field duty. The provost marshal may authorize the carrying of a privately-owned, sheathed, lock blade knife on military and DOD police officers' pistol belts.

(2) When transported in a vehicle, weapons will be in plain view in the passenger area of the vehicle or secured (locked) in the trunk or other rear compartment of the vehicle, not readily accessible from the passenger area (i.e., locked tool box secured to bed of a truck). Firearms will be unloaded and the ammunition physically separated from the firearms. THE GLOVE COMPARTMENT OF A VEHICLE IS NOT AN AUTHORIZED COMPARTMENT FOR STORING PISTOLS.

(3) Firearms, bows and arrows, crossbows, pellet and BB guns will not be loaded, fired, or used within any housing area or cantonment area of the installation; within 50 yards of any public highway, street or Fort Gordon named street or numbered road, or across same; within 100 yards of any designated recreation area, managed waters, building or similar structures; any aircraft landing facility; any ammunition storage area (except on approved firing ranges when properly authorized); be discharged from vehicles.

§ 552.130 Disposition of confiscated/seized weapons.

All weapons, ammunition, explosives, or other devices defined in this subpart, that are confiscated pursuant to the

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(i.e., post exchange, club, offices, etc.). Individual must have in his/her possession weapon registration (if applicable), valid state hunting license, valid Fort Gordon hunting permit and an area access pass (if applicable).

(b) For purposes of target shooting, selling the weapon or having the weapon repaired: From quarters by the most direct route to approved range or to the location where the weapon is to be sold or repaired and returned. Stopping at other installation facilities while en route is prohibited. Individual must have in his/her possession at all times his/her registration (if applicable).

(1) When carried, weapons will be carried in an open manner (not concealed). Firearms will be unloaded when carried (i.e., projectiles physically separated from the firearms, not just removed from the chamber), except when actually engaged in hunting or shooting. Knives will be carried in a sheath or scabbard worn in a clearly visible manner. Commanders may authorize the carrying of a privately-owned, knife with a blade over 3 inches to field duty. The provost marshal may authorize the carrying of a privately-owned, sheathed, lock blade knife on military and DOD police officers' pistol belts.

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§ 552.130 Disposition of confiscated/seized weapons.

All weapons, ammunition, explosives, or other devices defined in this subpart, that are confiscated pursuant to the

commission of a crime or violation of this subpart or other regulation or found unsecured/unattended on the installation, will be immediately turned over to the military police, U.S. Army Criminal Investigation Command (USACIDC), or the Federal Bureau of Investigation (FBI) for investigation, retention as evidence, or other law disposition. When retention for investigation or evidence is no longer required by military police, USACIDC, or other law enforcement or judicial agencies, the items will be disposed of under the provisions of AR 195–5, Evidence Procedures. Copies of the AR may be obtained from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 91–18172 Filed 8–1–91; 8:45 am]

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The President

Proclamation 6319—Helsinki Human Rights Day, 1991

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Title 3—

The President

Proclamation 6319 of July 31, 1991

Helsinki Human Rights Day, 1991

By the President of the United States of America

A Proclamation

In 1975, when the United States, Canada, and 33 European states joined in adopting the Helsinki Final Act of the Conference on Security and Cooperation in Europe, we affirmed "the close link between peace and security in Europe and in the world as a whole." Signatories to the Helsinki accords also recognized that respect for human rights and fundamental freedoms is essential not only to achieving lasting peace among nations but also to promoting their social and economic development. During the past 16 years, the CSCE process begun at Helsinki has played a leading role in building mutual confidence, reducing the risk of conflict, and enhancing the growth of democracy and openness in Europe. This year we welcome Albania's entry into the CSCE community and its commitment to respect human rights and fundamental freedoms that this symbolizes.

The tremendous changes that have swept central and eastern Europe underscore the CSCE's effectiveness in advancing the goal of universal compliance with the Helsinki accords. At their meeting in Paris last November, CSCE members welcomed the emergence of a new transatlantic partnership of nations based on a mutual commitment to upholding human rights and the rule of law. In signing the Charter of Paris for a New Europe, members added to existing CSCE principles new and sweeping commitments to political pluralism, free elections, free enterprise, and the rule of law. New CSCE institutions established at the Paris summit—such as the Office for Free Elections in Warsaw, the CSCE Secretariat in Prague, and the Conflict Prevention Center in Vienna—strengthen the CSCE's ability to help consolidate and to build upon recent gains. The United States encouraged and welcomed these developments as evidence that the CSCE can serve not only as a catalyst for change but also itself change to reflect the demands of an evolving Europe.

During the June meeting of CSCE foreign ministers in Berlin, the Conference endorsed the report of the Valletta Meeting on the Peaceful Settlement of Disputes and agreed to designate the Conflict Prevention Center in Vienna as the nominating institution to help settle disputes. Members also agreed on a mechanism for holding emergency official-level meetings of the CSCE, which has first been called into action in the current Yugoslav crisis.

As the Yugoslav crisis demonstrates, major challenges remain. The United States will continue to suggest that the CSCE strengthen its capacity to address the political sources of conflict. One area of special concern to us is the persecution of ethnic minorities. Ethnic tensions in Europe provide a solemn and urgent reminder that we still have much work to do in achieving universal compliance with both the letter and the spirit of the Helsinki accords. The United States has sought to lead other member-states in exploring ways that the CSCE can help reduce those tensions and fulfill the promise of a Europe that is whole and free, and at peace with itself.

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As an expression of the special importance that the United States continues to attach to the CSCE in a changing Europe, the Congress, by House Joint Resolution 264, has designated August 1, 1991, as "Helsinki Human Rights Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim August 1, 1991, as Helsinki Human Rights Day and reaffirm the United States dedication to the principles of human dignity and freedom—principles that are enshrined in the Helsinki Final Act. As we Americans observe this day with appropriate programs, ceremonies, and activities, let us call on all signatories of the Final Act to fulfill their obligation to respect the rights and dignity of all their citizens.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of July, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and sixteenth.

G Bush

[FR Doc. 91-18567
Filed 8-1-91; 10:37 am]
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REOF, I have hereunto set my hand this thirty-first day of
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United States of America the two hundred and sixteenth.

Bush

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DEPARTMENT OF TRANS

Federal Aviation Administ

14 CFR Part 39

[Docket No. 91-NM-08-AD; A
7086; AD 91-15-21]

Airworthiness Directives;
Model 727 Series Airplane
With Auxiliary Fuel Tanks

AGENCY: Federal Aviation
Administration (FAA), DO

ACTION: Final rule.

SUMMARY: This amendment
new airworthiness directive
applicable to certain Boeing
series airplanes, which requ
inspection of the fuselage m
auxiliary fuel tanks for dela
and/or cracking of the oute
repair, if necessary. This a
prompted by reports of cra
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This condition, if not corre
result in fuel leaking from t
into the cargo compartment
a potential fire hazard.

DATES: Effective September

The incorporation by ref
certain publications listed
regulations is approved by
of the Federal Register as o
9, 1991.

ADDRESSES: The applicable
information may be obtaine
Boeing Commercial Airplan
P.O. Box 3707, Seattle, Wa
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examined at the FAA, Nort
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Directorate, 1601 Lind Ave
Renton, Washington; or at
the Federal Register, 1100 L
room 8401, Washington, DC

FOR FURTHER INFORMATION
Mr. Stanton R. Wood, Seat
Certification Office, Airfra
ANM-120S; telephone (206)

Rules and Regulations

Federal Register
Vol. 56, No. 150
Monday, August 5, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–NM–08–AD; Amendment 39–7086; AD 91–15–21]

Airworthiness Directives; Boeing Model 727 Series Airplanes Equipped With Auxiliary Fuel Tanks

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, which requires inspection of the fuselage mounted auxiliary fuel tanks for delamination and/or cracking of the outer panels, and repair, if necessary. This amendment is prompted by reports of cracking of a side panel of the auxiliary fuel tanks. This condition, if not corrected, could result in fuel leaking from the fuel tanks into the cargo compartment and creating a potential fire hazard.

DATES: Effective September 9, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 9, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Seattle Aircraft Certification Office, Airframe Branch, ANM–120S; telephone (206) 227–2772. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain Boeing Model 727 series airplanes, which requires inspection of the fuselage mounted auxiliary fuel tanks for delamination and/or cracking of the outer panels and repair, if necessary, was published in the **Federal Register** on April 8, 1991 (56 FR 14222).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Several commenters requested that the compliance time for the initial ultrasonic inspection/leak check (as proposed in paragraph A.) be increased from the proposed 500 flight cycles to 1,000 flight cycles or at the next scheduled "C" check. The commenters stated that in order to accomplish the inspections, it may be necessary to remove the subject fuel tanks; this could best be done at a main maintenance base where trained staff and necessary equipment are available. Additionally, one commenter pointed out that 41 tanks already have been inspected and no damage has been found. The FAA concurs that the initial compliance time can be increased to 1,000 flight cycles without compromising safety. The FAA's intent was that the inspection be accomplished during regularly scheduled maintenance. Paragraph A. of the final rule has been revised accordingly.

One commenter proposed an alternative procedure for complying with the inspection requirements of proposed paragraph A., and requested that the rule be revised to include this procedure. The FAA does not concur that revision of the rule is necessary. Operators may request the use of alternative methods of compliance in accordance with the provisions of paragraph F. of the final rule.

One commenter requested that implementation of the rule be delayed until special non-destructive testing (NDT) equipment is developed that will enable this commenter to accomplish the ultrasonic inspection required by proposed paragraph A.1. The FAA does not concur with this request. Equipment necessary to accomplish the ultrasonic inspection can be manufactured well within the 1,000 flight cycle compliance time of paragraph A.1. Additionally, the commenter may elect to accomplish the leak check in accordance with paragraph A.2. in lieu of the ultrasonic inspection; development of special equipment is not necessary to perform the leak check.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. This change will neither increase the economic burden on any operator nor increase the scope of the rule.

There are approximately 112 Model 727 series airplanes of the affected design in the worldwide fleet. It is estimated that 81 airplanes of U.S. registry will be affected by this AD, that it will take approximately 12 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $53,460.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the rules docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91–15–21. Boeing: Amendment 39–7086. Docket 91–NM–08–AD.

Applicability: Model 727 series airplanes, equipped with Boeing manufactured auxiliary fuel tanks installed in the lower cargo compartments, certified in any category.

Compliance: Required as indicated, unless previously accomplished.

To reduce the potential for fire in the cargo compartment due to fuel leaking from the auxiliary fuel tanks installed in the fuselage cargo compartments, accomplish the following:

A. Within the next 1,000 flight cycles after the effective date of this AD, accomplish one of the following:

1. Conduct an ultrasonic inspection for disbonding of the lower sidewall (curved) panels of the auxiliary fuel tanks in accordance with Part I of the Accomplishment Instructions in Boeing Service Bulletin 727–28–0110, dated September 6, 1990; or

2. Perform a leak check of the auxiliary fuel tanks in accordance with Part III of the Accomplishment Instruction in Boeing Service Bulletin 727–28–0110, dated September 6, 1990. If any fuel leakage is detected, prior to further flight repair, deactivate or remove the auxiliary fuel tanks, in accordance with Part III of the Accomplishment Instructions in the service bulletin. Repeat the leak check prior to each flight.

B. Within the next 12,000 flight cycles after the effective date of this AD, accomplish the inspections of the auxiliary fuel tank and support structure in accordance with Part II of the Accomplishment Instructions in Boeing Service Bulletin 727–28–0110, dated September 6, 1990. Repeat this inspection at intervals not to exceed 12,000 flight cycles. Accomplishment of this inspection constitutes terminating action for the inspection/check requirements of paragraph A. of this AD.

C. Deactivation of the auxiliary fuel tank in accordance with part V of the Accomplishment Instructions in Boeing Service Bulletin 727–28–0110, dated September 6, 1990, constitutes terminating action for the inspection requirements of this AD. If the auxiliary fuel tanks are reactivated, the inspections required by paragraphs A. and B. of this AD must be accomplished prior to exceeding the flight cycle thresholds required by those paragraphs.

Note: Fuel tanks deactivated, but installed in an airplane, accumulate the same number of flight cycles as the airplane.

D. Auxiliary fuel tanks currently not installed in an airplane must be inspected in accordance with part II of the Accomplishment Instructions in Boeing Service Bulletin 727–28–0110, dated September 6, 1990, prior to installation in an airplane.

E. If a disbonded or cracked panel is detected during the inspections required by paragraphs A.1., B., C., or D. of this AD, accomplish one of the following prior to further flight.

1. Replace the panel in accordance with part IV of the Accomplishment Instructions in Boeing Service Bulletin 727–28–0110, dated September 6, 1990; or

2. Deactivate the auxiliary fuel tank in accordance with part V of the Accomplishment Instructions in Boeing Service Bulletin 727–28–0110, dated September 6, 1990; or

3. Remove the auxiliary fuel tank in accordance with the Boeing 727 Maintenance Manual Subject 53–20–31.

F. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

H. The inspection, deactivation, and replacement requirements shall be done in accordance with Boeing Service Bulletin 727–28–0110, dated September 6, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment (39–7086, AD 91–15–21) becomes effective September 9, 1991.

Issued in Renton, Washington, on July 12, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–18475 Filed 8–2–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–14–AD; Amendment 39–7089; AD 91–15–24]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which requires penetrant inspection and proof pressure testing of the auxiliary power unit (APU) pneumatic ducts, and repair or replacement, as necessary; and a one-time stress relief of the duct assemblies. This amendment is prompted by reports of cracked or ruptured APU pneumatic ducts that have caused damage to adjacent structure, pneumatic ducts, and hydraulic lines. This condition, if not corrected, could result in damage to the adjacent structure, pneumatic ducts, hydraulic lines, and/or electrical wiring.

DATES: Effective September 9, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 9, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy J. Dulin, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM–130S; telephone (206) 227–2675. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain Boeing Model 747 series airplanes, which requires penetrant inspection and proof pressure testing of the auxiliary power unit (APU) pneumatic ducts, and repair or replacement, as necessary; and a one-time stress relief of the duct assemblies; was published in the **Federal Register** on March 8, 1991 (56 FR 9907).

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14 CFR Part 39

[Docket No. 91–NM–14–AD; Amendment 39–7089; AD 91–15–24]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which requires penetrant inspection and proof pressure testing of the auxiliary power unit (APU) pneumatic ducts, and repair or replacement, as necessary; and a one-time stress relief of the duct assemblies. This amendment is prompted by reports of cracked or ruptured APU pneumatic ducts that have caused damage to adjacent structure, pneumatic ducts, and hydraulic lines. This condition, if not corrected, could result in damage to the adjacent structure, pneumatic ducts, hydraulic lines, and/or electrical wiring.

DATES: Effective September 9, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 9, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy J. Dulin, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM–130S; telephone (206) 227–2675. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain Boeing Model 747 series airplanes, which requires penetrant inspection and proof pressure testing of the auxiliary power unit (APU) pneumatic ducts, and repair or replacement, as necessary; and a one-time stress relief of the duct assemblies; was published in the **Federal Register** on March 8, 1991 (56 FR 9907).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Several commenters requested that the FAA withdraw the proposed rule, because the justification for it is not sufficient to satisfy the requirements of part 39 of the Federal Aviation Regulations (FAR). These commenters recognized that there have been a number of APU duct leaks, but since the APU normally is not operational in flight, the APU ducts normally are not pressurized during flight. Furthermore, the APU ducts are subject to lower pressures during operation and are used for only approximately 10% of the time that the wing leading edge and crossover ducts are used. These commenters stated that the consequences that could occur from an APU duct leak would not lead to an airworthiness concern. These commenters also stated that all of the APU duct ruptures have occurred on the ground, not in flight. One commenter stated that the APU manifold integrity is protected during flight by an isolation valve, and that there are no common pneumatic ducts between the APU ducts and the leading edge/crossover ducts. The FAA does not concur with the commenters' requests to withdraw the rule, or with the commenters' statements that the rule is not justified. The FAA has determined that APU duct failures justifiably meet the established FAR part 39 criteria for an unsafe condition since APU pneumatic ducts on in-service airplanes have ruptured and damaged adjacent structure, pneumatic ducts, and hydraulic lines. In one incident, a ruptured APU pneumatic duct jammed the elevator control. In another incident, a ruptured APU pneumatic duct led to an emergency evacuation in which several passengers were injured. In yet another incident, a ruptured APU pneumatic duct damaged two hydraulic lines, which consequently had to be replaced. While it is true that all of these incidents occurred while the airplanes were on the ground, the potential exists for similar incidents to occur in flight, since Model 747–100, –200, and –300 airplanes are certificated for APU operation up to 20,000 feet pressure altitude and Model 747–400 airplanes are certificated for APU operation up to 15,000 feet pressure altitude. The requirements of this AD are intended to preclude the possibility of APU ruptures—and the subsequent significant damage—from occurring while the airplane is either in flight or on the ground. In regard to the comments concerning the lower pressures to which the APU ducts are subject during operation, and the amount of time that the APU duct is used as compared to that of the wing leading edge and crossover ducts, the FAA has determined that the duct weld failures are cycle-dependent and not time-dependent. In addition, although the wing leading edge and crossover ducts may be used more, there have been more ruptures reported of the APU duct than of the wing leading edge duct or crossover duct.

One commenter requested that the applicability of the AD not apply to airplanes on which the APU air inlet scoop has been removed to preclude APU operation during flight. (This commenter stated that the air inlet scoop for the APU had been removed from its fleet of Model 747 series airplanes.) The FAA does not concur, since the in-service history of APU duct failures has demonstrated that they pose a significant safety hazard on the ground.

Several commenters requested that the applicability of the AD not apply to operators who have procedures in their manuals which prohibit APU operation in flight. The FAA does not concur. As discussed above, numerous incidents of APU duct ruptures have occurred while the airplane is on the ground and have caused significant damage. Therefore, it is necessary to ensure safe operation of the APU on the ground, as well as in flight, by issuing this AD.

Several commenters requested that the AD not apply to airplanes on which reinforcement rings have been added to the APU pneumatic ducts. These commenters stated that APU duct failures have not been experienced since reinforcement rings were added to prevent the ducts from collapsing. The FAA does not concur. The FAA has received confirmed reports of duct weld failures on pneumatic ducts with the reinforcement rings installed. The duct reinforcement rings will not prevent the duct weld failures.

Several commenters requested that the proposed rule be revised to require the initial inspection within 6,000 flight cycles, in lieu of the proposed 3,000 flight cycles. These commenters stated that the required actions for the leading edge and crossover pneumatic ducts, as well as the APU pneumatic ducts, will create scheduling problems that will increase the cost of compliance significantly above the FAA cost estimate. The FAA does not concur with the request for an extension of the initial compliance time. The FAA has determined that the compliance time, as proposed, represents the maximum time allowable for the affected airplanes to continue to operate prior to the required inspections without compromising safety. Further, based on the average aircraft utilization rate for this model, the proposed compliance time of 3,000 flight cycles is equal to approximately 4 years; the FAA considers this to be an ample amount of time to schedule the required inspection.

One commenter requested that the proposed rule be revised to require the initial inspection of the APU pneumatic ducts within 3,000 flight cycles or at the next "D" check (approximately 7,000 flight cycles), whichever occurs later; and to permit a repetitive inspection to be conducted at every "D" check thereafter if the ducts are not stress-relieved. The commenter stated that the basis for this recommendation is that the APU pneumatic ducts are unpressurized most of the time during flight and, therefore, would not pose a flight safety concern. The FAA does not concur. Since maintenance schedules vary from operator to operator, there would be no assurance that the inspection would be accomplished at intervals of 7,000 flight cycles. Under the provisions of paragraph D. of the final rule, however, operators may apply for approval of an alternative method of compliance or adjustment of the compliance time if sufficient justification is presented to the FAA. Furthermore, to continue to perform the inspection at intervals of 7,000 flight cycles is contrary to the FAA's determination that long term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by repetitive inspections. Long term repetitive inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual special procedures, has led the FAA to consider placing less emphasis on special procedures and more emphasis on design improvement. The stress relieving procedure requirement of this AD action is in consonance with that policy decision.

The manufacturer requested that the AD applicability be changed to Model 747 series airplanes, line positions 2 through 720, for APU ducts in body sections 44, 46, and 48; and line positions 721 through 734, for APU ducts in body sections 44 and 48. The FAA concurs. Since the accomplishment instructions contained in Boeing Service Bulletin 747–36–2081, dated November 29, 1990, do not clearly define which

APU pneumatic ducts do not require inspection on airplanes line position 721 through 734, the applicability section of the final rule has been revised to clarify which APU pneumatic ducts require inspection or replacement. This does not change airplane applicability.

Paragraph D. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternative methods of compliance.

The economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as was cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of this AD.

There are approximately 714 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 214 airplanes of U.S. registry will be affected by this AD, that it will take approximately 724 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $8,521,480.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91–15–24. Boeing: Amendment 39–7089. Docket No. 91–NM–14–AD.

Applicability: Model 747 series airplanes, line positions 2 through 720 for Auxiliary Power Unit (APU) pneumatic ducts in body sections 44, 46, and 48; and line positions 721 through 734 for APU pneumatic ducts in body section 44 and 48; certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent damage to adjacent structure, pneumatic ducts, hydraulic lines, and/or electrical wiring as a result of failure of Auxiliary Power Unit (APU) pneumatic ducts, accomplish the following:

A. Prior to the accumulation of 7,000 flight cycles, or within the next 3,000 flight cycles after the effective date of this AD, whichever occurs later, conduct a penetrant inspection, proof pressure test, and penetrant inspection again to detect cracks or ruptures in the APU pneumatic ducts in accordance with the Accomplishment Instructions, Items A. through G., K., O., and P. of Boeing Service Bulletin 747–36–2081, dated November 29, 1990. If cracks or ruptures are detected, prior to further flight, repair or replace in accordance with service bulletin. The stress relieving procedure specified in Accomplishment Instructions, Items H., I., and J. of the service bulletin may be accomplished in conjunction with the penetrant inspection and proof pressure test required by this paragraph, and constitutes terminating action for the requirements of paragraph B. of this AD for all APU pneumatic ducts.

B. Prior to the accumulation of 7,000 flight cycles after the accomplishment of the initial inspection required by paragraph A. of this AD, conduct an additional penetrant inspection, proof pressure test, and penetrant inspection of the APU pneumatic ducts, and stress relieve the APU pneumatic duct assemblies, in accordance with the Accomplishment Instructions, Items A. through K., O., and P. of Boeing Service Bulletin 747–36–2081, dated November 29, 1990. If cracks or ruptures are detected, prior to further flight, repair or replace in accordance with the service bulletin.

C. Replacement of all APU pneumatic ducts in accordance with Accomplishment Instructions A., B., L. through O., and P. of Boeing Service Bulletin 747–36–2081, dated November 29, 1990; or in accordance with Boeing Service Bulletin 747–36–2092, dated June 28, 1990; constitutes terminating action for the requirements of this AD.

D. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

F. The penetrant inspections; proof pressure testing, and stress relieving shall be done in accordance with Boeing Service Bulletin 747–36–2081, dated November 29, 1990. APU pneumatic duct replacement shall be done in accordance with either Boeing Service Bulletin 747–36–2081, dated November 29, 1990, or Boeing Service Bulletin 747–36–2092, dated June 28, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment (39–7089, AD 91–15–24) becomes effective September 9, 1991.

Issued in Renton, Washington, on July 16, 1991.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–18476 Filed 8–2–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–ANE–01; Amdt. 39–7080]

Airworthiness Directives; General Electric Co. (GE), CF6–45/–50 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD),

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through K., O., and P. of Boeing Service Bulletin 747–36–2081, dated November 29, 1990. If cracks or ruptures are detected, prior to further flight, repair or replace in accordance with the service bulletin.

C. Replacement of all APU pneumatic ducts in accordance with Accomplishment Instructions A., B., L. through O., and P. of Boeing Service Bulletin 747–36–2081, dated November 29, 1990; or in accordance with Boeing Service Bulletin 747–36–2092, dated June 28, 1990; constitutes terminating action for the requirements of this AD.

D. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

F. The penetrant inspections; proof pressure testing, and stress relieving shall be done in accordance with Boeing Service Bulletin 747–36–2081, dated November 29, 1990. APU pneumatic duct replacement shall be done in accordance with either Boeing Service Bulletin 747–36–2081, dated November 29, 1990, or Boeing Service Bulletin 747–36–2092, dated June 28, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment (39–7089, AD 91–15–24) becomes effective September 9, 1991.

Issued in Renton, Washington, on July 16, 1991.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–18476 Filed 8–2–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–ANE–01; Amdt. 39–7080]

Airworthiness Directives; General Electric Co. (GE), CF6–45/–50 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain GE CF6–45/–50 series turbofan engines, which requires repetitive eddy current inspections to detect high pressure turbine (HPT) thermal shield cracking. The AD also requires the removal of cracked HPT thermal shields and certain HPT disks. This amendment is prompted by four HPT stage one disks found cracked during inspection. This condition, if not corrected, could result in an uncontained engine failure.

DATES: Effective September 4, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 4, 1991.

ADDRESSES: The applicable service information may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, room 132, 111 Merchant Street, Cincinnati, Ohio 45246. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Robert Guyotte, Engine Certification Office, ANE–140, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone (617) 273–7094.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (FAR) to include a new airworthiness directive, applicable to GE CF6–45/–50 series turbofan engines, which requires repetitive eddy current inspections of HPT thermal shields and the removal of cracked HPT thermal shields and certain HPT disks, was published in the **Federal Register** on February 25, 1991, (56 FR 7613).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the five comments received. Three of the commenters expressed no objection to the adoption of the proposed rule.

One commenter stated that the proposed rule should not be adopted. The commenter further stated that thermal shield cracking can be controlled with certain HPT build requirements.

The FAA does not concur with the commenter. The proposed eddy current inspection program was chosen because it provides an acceptable level of safety while simultaneously minimizing economic burden. Further, the proposed rule allows for the approval of alternate methods of compliance provided sufficient substantiating data is submitted to the FAA.

This same commenter recommended that the thermal shield effectivity be expressed by assembly part number instead of detail part number. The FAA does not concur that the assembly part number is required to identify the affected parts. However, a list of affected assembly part numbers will be included in the AD.

The other commenter requested that the eddy current inspection interval for CF6–45 series engines be increased from 400 cycles to 500 cycles based on its reduced takeoff thrust rating. The FAA does not concur with the commenter. The commenter did not provide any data to substantiate the requested inspection interval increase.

The economic impact analysis contained in the final evaluation has been reduced slightly to reflect additional information received since issuance of the proposal.

After review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 517 GE CF6–45/–50 series engines of the affected design installed on aircraft of U.S. registry which will be affected by this AD. It is estimated that it will take approximately 0.5 manhours per engine for each inspection, that each engine will require 10 inspections, and that the average labor cost will be $55 per manhour. Also, it is estimated that approximately 30 engines will require modifications prior to initial inspections, and that this cost is estimated to be $735 per engine, yielding an additional total cost for these engines of $22,050. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $164,225.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, and Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

91–15–16—General Electric Company: Amendment 39–7080, Docket No. 91–ANE–01.

Applicability: General Electric Company (GE) CF6–45/–50 series turbofan engines, installed on, but not limited to, Airbus A300, Boeing 747, and McDonnell Douglas DC–10–15 and DC–10–30 aircraft.

Compliance: Required as indicated, unless previously accomplished.

To prevent uncontained engine failure, accomplish the following:

(a) Eddy current inspect affected high pressure turbine (HPT) thermal shields, Part Numbers (P/N's) 9045M31P04, 9045M31P05, 9045M31P07, 9045M31P08, 9045M31P09, 9045M31P10, 9045M31P12, 9045M31P13, 9143M71P01, 9143M71P02, 9155M16P01, 9155M16P02, 9155M16P03, 9155M16P04, 9181M64P01, 9181M64P02, 9181M64P07, 9181M64P08, 9181M64P10, 9186M96P02, and 9186M96P03, in accordance with the Accomplishment Instructions contained in GE CF6–50/–45 Service Bulletin (SB) 72–879, Revision 6, dated October 30, 1990, as follows:

(1) Inspect prior to accumulating 800 cycles since last HPT overhaul or 400 cycles in service after the effective date of this AD, whichever occurs later.

(2) Thereafter, reinspect at intervals not to exceed 400 cycles since last inspection.

(3) Remove cracked HPT thermal shield from service prior to further flight and replace with a serviceable part.

(b) Affected HPT thermal shields stated in paragraph (a) of this AD, would also be assembled into one of the following HPT thermal shield assembly P/N's: 9045M53G04, 9045M53G05, 9045M53G07, 9045M53G08, 9045M53G09, 9045M53G10, 9045M53G12, 9045M53G13, 9045M53G14, 9186M78G01, 9186M78G02, 9186M78G03, 9186M78G04, 9186M78G05, 9186M78G06, 9186M78G07, 9186M78G08, 9208M76G02, 9208M76G03, and 9208M76G04.

(c) For the purpose of this AD, an HPT overhaul is defined as the induction of the engine into a shop where the subsequent maintenance entails HPT disassembly.

(d) The eddy current inspection requirements of paragraph (a) of this AD are not applicable to engines incorporating an affected P/N thermal shield that has operated exclusively with an interstage seal, P/N 9315M16G14, 9315M16G15, or 9315M16G17, provided the owner or operator submits to their Airworthiness Inspector the configuration documentation substantiating that the affected thermal shield has never been operated with a P/N 9045M23G07, 9045M23G08, 9045M23G09, 9045M23G10, 9045M23G11, or 9045M23G12 interstage seal.

(e) Prior to further flight, remove from service HPT stage one disks which have operated in engines containing an HPT thermal shield cracked through its forward flange. These removed HPT stage one disks may not be returned to service.

(f) Prior to further flight, remove from service HPT stage two disks which have operated in engines containing an HPT thermal shield cracked through its rear flange. HPT stage two disks may be returned to service if no cracks are detected when inspected in accordance with appendix I.

(g) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(h) Upon submission of substantiating data by an owner or operator through an FAA Inspector (maintenance, avionics, or operations, as appropriate), an alternate method of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD may be approved by the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803–5299.

(i) The eddy current inspections shall be done in accordance with the following GE CF6–50/–45 SB 72–879:

Page No.	Issue/ Revision	Date
3–14, 17–26, 29–31	Rev. 5	1/6/88
1, 2, 16, 28	Rev. 6	10/30/90
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Note: Total Pages: 31.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, room 132, 111 Merchant Street, Cincinnati, Ohio 45246. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, room 311, Burlington, Massachusetts, or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

Appendix I

1. Reference: CF6–50 Shop Manual Document No. GEK–50481.

2. Accomplishment Instructions:

A.(1) Clean, etch, and fluorescent penetrant inspect (FPI) the high pressure turbine rotor (HPTR) stage two disk according to Chapter 72–53–04, *High Pressure Turbine Rotor Stage 2 Disks—Inspection*, paragraph 2, *Fluorescent—Penetrant Inspect Disk*, of the reference shop manual.

(2) The immersion ultrasonic inspection (Subtask 72–53–04–270–051) may be used in lieu of an FPI for the stage 2 disk dovetail serrations only.

B.(1) Clean, etch, and eddy current inspect (ECI) the HPTR stage two disk dovetail slot bottoms according to Chapter 72–53–04, *High Pressure Turbine Rotor Stage 2 Disk—Inspection*, paragraph 5, *Special Inspection of Dovetail Slot Bottoms*, of the reference shop manual.

(2) If ECI capability is not available, the disk must be recleaned in accordance with paragraph 2.A (stating with Subtask 72–53–04–140–051). The slot bottoms must then be fluorescent penetrant inspected in accordance with paragraph 2.D (Subtask 72–53–04–230–001–057) paying special attention to slot bottom corners.

This amendment (39–7080, AD 91–15–16), becomes effective September 4, 1991.

Issued in Burlington, Massachusetts, on July 8, 1991.

Jack A Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 91–18477 Filed 8–2–91; 8:45 am]

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14 CFR Part 39

[Docket No. 91–NM–18–AD; Amendment 39–7087; AD 91–15–22]

Airworthiness Directives; McDonnell Douglas Model DC–10–40 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to McDonnell Douglas Model DC–10–40 series airplanes, which requires replacement of one of the existing fuel line protective shields with an enlarged shield. This amendment is prompted by a report of an uncontained failure on a number 2 engine in which fan blade fragments penetrated the engine bellmouth and caused subsequent damage to the fuel line and fuel shutoff cable. This condition, if not corrected, could result in engine fragments puncturing the fuel line and severing the engine fuel shutoff cable; this could result in an engine fire, while the flight crew would not be able to shutdown the engine using the engine fuel shutoff lever.

DATES: Effective September 9, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 9, 1991.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: DC–10echnical Publications, Technical Administrative Support C1–L5B. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond Vakili, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (213) 988–5262.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to McDonnell Douglas Model DC–10–40 series airplanes, which requires replacement of one of the existing fuel line protective shields with an enlarged shield, was published in the **Federal Register** on March 22, 1991 (56 FR 12131).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter requested that the proposed compliance time of one year be extended to 15 months. The commenter stated that the additional time is necessary since the ground equipment to perform the modification is only available during a regular maintenance base visit and the date when the required modification kit would be available has not been established. The FAA concurs that the comments were valid when submitted. However, the manufacturer has advised that ample modification kits are now

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DATES: Effective September 9, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 9, 1991.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: DC–10echnical Publications, Technical Administrative Support C1–L5B. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond Vakili, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (213) 988–5262.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to McDonnell Douglas Model DC–10–40 series airplanes, which requires replacement of one of the existing fuel line protective shields with an enlarged shield, was published in the **Federal Register** on March 22, 1991 (56 FR 12131).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter requested that the proposed compliance time of one year be extended to 15 months. The commenter stated that the additional time is necessary since the ground equipment to perform the modification is only available during a regular maintenance base visit and the date when the required modification kit would be available has not been established. The FAA concurs that the comments were valid when submitted. However, the manufacturer has advised that ample modification kits are now

available; therefore, extending the compliance time is not necessary in regard to parts availability. Further, in developing an appropriate compliance time for this rulemaking action, the FAA considered the safety implications and parts availability, as well as normal maintenance schedules for timely accomplishment of the modification. An operator may apply for an adjustment to the compliance time under the provisions of paragraph B. of the final rule, if supporting justification is provided.

There are approximately 41 McDonnell Douglas Model DC–10–40 series airplanes of the affected design in the worldwide fleet. It is estimated that 21 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $11,550.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91–15–22. **McDonnell Douglas:** Amendment 39–7087. Docket No. 91–NM–18–AD.

Applicability: McDonnell Douglas Model DC–10–40 series airplanes, as listed in McDonnell Douglas Service Bulletin 71–154, dated January 18, 1991, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent fuel line and engine fuel shutoff cable damage and possible fire caused by an uncontained engine failure, accomplish the following:

A. Within one year after the effective date of this AD, replace the fuel line shield on the left side of the number 2 engine bellmouth panel, and install an additional plate, as applicable, in accordance with the accomplishment instructions of McDonnell Douglas DC–10 Service Bulletin 71–154, dated January 18, 1991.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may concur or comment and then send it to the Manager, Los Angeles ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

D. The replacement and installation requirements shall be done in accordance with McDonnell Douglas DC–10 Service Bulletin 71–154, dated January 18, 1991. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: DC–10 Technical Publications, Technical Administrative Support C1–L5B. Copies may be inspected at the FAA, Transport Airplane Directorate, Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the **Federal Register**, 1100 L Street NW., room 8401, Washington, DC.

This amendment (39–7087, AD 91–15–22) becomes effective September 9, 1991.

Issued in Renton, Washington, on July 12, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–18478 Filed 8–2–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM80–53]

Maximum Lawful Price and Inflation Adjustments Under the Natural Gas Policy Act

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Final rule; order of the Director, OPPR.

SUMMARY: Pursuant to the authority delegated by 18 CFR 375.307(c)(1), the Director of the Office of Pipeline and Producer Regulation revises and publishes the maximum lawful prices prescribed under title I of the Natural Gas Policy Act (NGPA) for the months of August, September, October, 1991. Section 101(b)(6) of the NGPA requires that the Commission compute and publish the maximum lawful prices before the beginning of each month for which the figures apply.

EFFECTIVE DATE: August 1, 1991.

FOR FURTHER INFORMATION CONTACT: Garry L. Penix, (202) 208–0622.

SUPPLEMENTARY INFORMATION:

Order of the Director, OPPR

Issued July 30, 1991.

Section 101(b)(6) of the Natural Gas Policy Act of 1978 (NGPA) requires that the Commission compute and make available maximum lawful prices and inflation adjustments prescribed in title I of the NGPA before the beginning of any month for which such figures apply.

Pursuant to this requirement and § 375.307(c)(1) of the Commission's regulations, which delegates the publication of such prices and inflation adjustments to the Director of the Office of Pipeline and Producer Regulation, the maximum lawful prices for the months of August, September, October, 1991, are issued by the publication of the price tables for the applicable quarter. Pricing tables are found in § 271.101(a) of the Commission's regulations. Table I of § 271.101(a) specifies the maximum lawful prices for gas subject to NGPA sections 102, 103(b)(1), 105(b)(3), 106(b)(1)(B), 107(c)(5), 108 and 109. Table II of § 271.101(a) specifies the maximum lawful prices for sections 104 and 106(a) of the NGPA. Table III of § 271.102(c) contains the inflation adjustment factors. The maximum lawful prices and the inflation adjustment factors for the periods prior to August, 1991, are found in the tables in §§ 271.101 and 271.102.

List of Subjects in 18 CFR Part 271

Natural gas.

Kevin P. Madden,

Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

1. The authority citation for part 271 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w; Department of Energy Organization Act, 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 1978 Comp., p. 142; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432.

§ 271.101 [Amended]

2. Section 271.101(a) is amended by adding the maximum lawful prices for August, September, October, 1991, in tables I and II.

(a) * * *

TABLE I.—NATURAL GAS CEILING PRICES

[Other than NGPA sections 104 and 106(a)]

Subpart of part 271	NGPA section	Category of gas	Maximum lawful price per MMBtu for deliveries in—		
			Aug. 1991	Sept. 1991	Oct. 1991
B	102	New natural gas, certain OCS gas [1]	$6.308	$6.349	$6.390
C	103(b)(1)	New onshore production wells [2]	3.764	3.777	3.790
E	105(b)(3)	Intrastate existing contracts	5.935	5.969	6.003
F	106(b)1(B)	Alternative maximum lawful price for certain intrastate rollover gas [3]	2.153	2.160	2.167
G	107(c)(5)	Gas produced from tight formations [4]	7.528	7.554	7.580
H	108	Stripper gas	6.757	6.801	6.845
I	109	Not otherwise covered	3.114	3.124	3.134

[1] Commencing January 1, 1985, the price of natural gas finally determined to be new natural gas under section 102(c) was deregulated. (See part 272 of the Commission's regulations.)

[2] Commencing January 1, 1985, and July 1, 1987, the price of some natural gas finally determined to be natural gas produced from a new, onshore production well under section 103 was deregulated. (See part 272 of the Commission's regulations.) Thus, for all months succeeding June 1987 publication of a maximum lawful price per MMBtu under NGPA section 103(b)(2) is discontinued.

[3] Section 271.602(a) provides that for certain gas sold under an intrastate rollover contract the maximum lawful price is the higher of the price paid under the expired contract, adjusted for inflation or an alternative Maximum Lawful Price specified in this Table. This alternative Maximum Lawful Price for each month appears in this row of Table I. Commencing January 1, 1985, the price of some intrastate rollover gas was deregulated. (See part 272 of the Commission's regulations.)

[4] The maximum lawful price for tight formation gas is the lesser of the negotiated contract price or 200% of the price specified in subpart C of part 271. The incentive ceiling price does not apply to certain gas after May 12, 1990, as a result of Commission Order No. 519–A. (See § 271.703 of the Commission's regulations.)

TABLE II.—NATURAL GAS CEILING PRICES: NGPA SECTIONS 104 AND 106(A) (SUBPART D, PART 271)

Category of natural gas and type of sale or contract	Maximum lawful price per MMBtu for deliveries in—		
	Aug. 1991	Sept. 1991	Oct. 1991
Post-1974 gas: [2] All producers	$3.114	$3.124	$3.134
1973–1974 Biennium gas:			
Small producer	2.626	2.635	2.644
Large producer	2.015	2.022	2.029
Interstate rollover gas: All producers	1.154	1.158	1.162
Replacement contract gas or recompletion gas:			
Small producer	1.481	1.486	1.491
Large producer	1.130	1.134	1.138
Flowing gas:			
Small producer	.745	.747	.750
Large producer	.630	.632	.634
Certain Permian Basin gas:			
Small producer	.881	.884	.887
Large producer	.781	.784	.787
Certain Rocky Mountain gas:			
Small producer	.881	.884	.887
Large producer	.745	.747	.750
Certain Appalachian Basin gas:			
North subarea contracts dated after 10–7–69	.711	.713	.715
Other contracts	.559	.561	.563
Minimum rate gas: [1] All producers	.386	.387	.388

[1] Prices for minimum rate gas are expressed in terms of dollars per Mcf, rather than MMBtu.

[2] This price may also be applicable to other categories of gas (see §§ 271.402 and 271.602).

al Gas Act, 15 U.S.C. 717–
f Energy Organization
7352; E.O. 12009, 3 CFR
Natural Gas Policy Act of
–3432.

§ 271.101 [Amended]

2. Section 271.101(a) is amended by adding the maximum lawful prices for August, September, October, 1991, in tables I and II.

(a) * * *

AL GAS CEILING PRICES

sections 104 and 106(a)]

s	Maximum lawful price per MMBtu for deliveries in—		
	Aug. 1991	Sept. 1991	Oct. 1991
	$6.308	$6.349	$6.390
	3.764	3.777	3.790
	5.935	5.969	6.003
ollover gas ³	2.153	2.160	2.167
	7.528	7.554	7.580
	6.757	6.801	6.845
	3.114	3.124	3.134

d to be new natural gas under section 102(c) was deregulated. (See part 272 of the

al gas finally determined to be natural gas produced from a new, onshore production
ulations.) Thus, for all months succeeding June 1987 publication of a maximum lawful

rollover contract the maximum lawful price is the higher of the price paid under the
pecified in this Table. This alternative Maximum Lawful Price for each month appears
state rollover gas was deregulated. (See part 272 of the Commission's regulations.)
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ult of Commission Order No. 519–A. (See § 271.703 of the Commission's regulations.)

A SECTIONS 104 AND 106(A) (SUBPART D, PART 271)

ontract	Maximum lawful price per MMBtu for deliveries in—		
	Aug. 1991	Sept. 1991	Oct. 1991
	$3.114	$3.124	$3.134
	2.626	2.635	2.644
	2.015	2.022	2.029
	1.154	1.158	1.162
	1.481	1.486	1.491
	1.130	1.134	1.138
	.745	.747	.750
	.630	.632	.634
	.881	.884	.887
	.781	.784	.787
	.881	.884	.887
	.745	.747	.750
	.711	.713	.715
	.659	.661	.663
	.386	.387	.388

er than MMBtu.
2 and 271.602).

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§ 271.102 [Amended]

3. Section 271.102(c) is amended by adding the inflation adjustment for the months of August, September, October, 1991 in table III.

TABLE III.—INFLATION ADJUSTMENT

Month of delivery	Factor by which price in preceding month is multiplied
1991:	
August	1.00335
September	1.00335
October	1.00335

[FR Doc. 91–18450 Filed 8–2–91; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 235

[Docket No. R-91-1559; FR-3108-F-01]

Mortgage Insurance; Changes in Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This change in the regulations increases the maximum allowable interest rate on section 235 (Homeownership for Lower Income Families) insured loans. This final rule is intended to bring the maximum permissible financing charges for this program into line with competitive market rates.

EFFECTIVE DATE: June 17, 1991.

FOR FURTHER INFORMATION CONTACT: James B. Mitchell, Director, Financial Services Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 708–4325. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The following amendments to 24 CFR chapter II have been made to decrease the maximum interest rate which may be charged on loans insured by this Department under section 235 of the National Housing Act. The maximum interest rate on the HUD/FHA section 235 insurance programs has been raised from 9.00 percent to 9.50 percent.

Until recently, HUD regulated interest rates not only for the section 235 Program, but also for fire safety equipment loans insured under section 232 of the National Housing Act. However, section 429(e)(2) of the Housing and Community Development Act of 1987 (Pub. L. 100–242, approved February 5, 1988) amended the National Housing Act to provide that interest on fire safety equipment loans under section 232(i) of the Act will be "at such rate as may be agreed upon by the mortgagor and the mortgagee." Accordingly, these loans, like most other National Housing Act-authorized loans, now have their interest rates determined by negotiation. Accordingly, this announcement of a change in interest rate ceilings for FHA-insured mortgages is limited to the section 235 Program. The Secretary has determined that this change is immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change.

As a matter of policy, the Department submits most of its rulemaking to public comment, either before or after effectiveness of the action. In this instance, however, the Secretary has determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this final rule effective immediately. HUD regulations published at 47 FR 56266 (1982), amending 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities, and programs specified in section 50.20. Since the amendments made by this rule fall within the categorical exclusions set forth in paragraph (*1*) of section 50.20, the preparation of an Environmental Impact Statement or Finding of No Significant Impact is not required for this rule. This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In accordance with the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule provides for a small adjustment in the mortgage interest rate in programs of limited applicability, and thus of minimal effect on small entities. This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 24, 1990, (53 FR 41974) pursuant to Executive Order 12291 and the Regulatory Flexibility Act. The Catalog of Federal Domestic Assistance Program numbers are 14.108, 14.117, and 14.120.

List of Subjects in 24 CFR Part 235

Condominiums, Cooperatives, Low- and Moderate-Income Housing, Mortgage Insurance, Homeownership, Grant Programs: housing and community development.

Accordingly, the Department amends 24 CFR part 235 as follows:

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOMEOWNERSHIP AND PROJECT REHABILITATION

1. The authority citation for 24 CFR part 235 continues to read as follows:

Authority: Secs. 211, 235, National Housing Act (12 U.S.C. 1715b, 1715z); section 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

2. In § 235.9, paragraph (a) is revised to read as follows:

§ 235.9 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 9.50 percent per annum with respect to mortgages insured on or after June 17, 1991.

* * * * *

3. In § 235.540, paragraph (a) is revised to read as follows:

§ 235.540 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed on by the mortgagee and the mortgagor, which rate shall not exceed 9.50 percent per annum with respect to mortgages insured after June 17, 1991.

* * * * *

Dated: June 23, 1991.

Ronald A. Rosenfeld,

General Deputy Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 91–18517 Filed 8–2–91; 8:45 am]

BILLING CODE 4210-27-M

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 888

[Docket No. N-91-3077; FR-2938-N-04]

Section 8 Housing Assistance Payments Program; Fair Market Rents for New Construction and Substantial Rehabilitation for Three Market Areas (Detroit, MI; Marquette, MI; North Platte, NE)

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final notice.

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 requires that the Secretary establish Fair Market Rents (FMRs) periodically, but not less frequently than annually. This document establishes Fiscal Year 1989 FMRs for the Section 8 New Construction Program and the Section 8 Substantial Rehabilitation Program for three market areas that were not made final when all other market areas were made final by publication of a Final Notice in the **Federal Register** on April 24, 1991.

These FMRs are based primarily upon the level of rentals paid for recently completed or newly constructed dwelling units of modest design within each market area, as determined by HUD Field Office staff—hereafter referred to as "Process A". They also reflect the Department's cost containment efforts in relation to housing assistance provided in the Section 8 New Construction and Substantial Rehabilitation Programs—hereafter referred to as "Process B". The FMRs established by this Notice are the lesser of the rents determined by Process A or Process B.

EFFECTIVE DATE: August 5, 1991, retroactive to September 15, 1989.

FOR FURTHER INFORMATION CONTACT: Edward M. Winiarski, Chief, Appraiser, Valuation Branch, Technical Support Division, Office of Insured Multifamily Housing Development, 451 Seventh Street SW., Washington, DC 20410-8000, telephone (202) 708-0624. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f (the Act) authorizes a system of housing assistance payments to aid lower income families in renting decent, safe, and sanitary housing. The Section 8 Housing Assistance Payments Program currently provides assistance for section 202 elderly new construction and substantial rehabilitation proposals. Under this program, HUD makes rental assistance payments on behalf of eligible families to the mortgagor entity.

Total housing expense represents the total monthly cost of housing for an eligible family, which is the sum of the contract rent plus any utility allowance for the assisted unit occupied by the family. Where the unit is leased to an eligible family, the housing assistance payment represents the difference between the total housing expense and the total family contribution. Initial contract rents plus any allowance for utilities generally may not exceed area-wide FMRs established by the Department.

Section 8(c)(1) of the Act states that the Secretary shall establish FMRs periodically, but not less frequently than annually. Section 8(c)(1) further provides that the Department shall publish FMRs in the **Federal Register**, with reasonable time for public comment, and that the FMRs will become effective upon their publication in final form in the **Federal Register**.

The Department determined that rule making was not necessary, because the rule making procedure delayed timely publication of the FMRs. Accordingly, the Department published a final rule on September 25, 1985, (50 FR 38791) changing the FMR publication procedure to a Notice procedure, effective October 30, 1985. FMRs are published as a Proposed Notice with a 30-day comment period. Once the 30-day comment period has expired and the comments are considered, any revised FMRs may afterwards be published for effect in the **Federal Register**.

A proposed notice for FY 1989 FMRs was published in the **Federal Register** on February 19, 1991, and the public was afforded a 30-day comment period in which to submit comments on the FY 1989 FMRs. The Department received a total of 34 comments from Field Offices and the public.

Because of a large backlog of prior fiscal year section 202 cases, there was a pressing need to publish these FMRs for effect. Therefore, a Final Notice was published in the **Federal Register** on April 24, 1991, that established the FMRs for those market areas for which no public comments were received.

The comments that were received related to three market areas—Detroit, Michigan; Marquette, Michigan; and North Platte, Nebraska. The largest number of commenters stated that the proposed FY 1989 FMRs were too low for the three market areas. As a result of the Department's analysis of all of the comments that were submitted, the FMRs for the affected market were revised and are appended to this Final Notice.

The FY 1989 FMRs reflected data submitted by the Field Offices, as well as cost containment efforts implemented for these FY 1989 New Construction and Substantial Rehabilitation rents. While the data submitted by the Grand Rapids Field Office was proper, it reflected rent comparables built during the mid-1970's for Marquette, Michigan. Moreover, Marquette, Michigan is situated in the Upper Peninsula of Michigan and requires high costs to transport building materials to that area. Further, there has been no new construction of modestly designed rental housing for this market area in recent years.

The Marquette, Michigan FY 1989 FMR schedules had been limited, not only by the paucity of new rental comparables which are less than six years old, but also by cost containment policy considerations which resulted in rents that were less than those originally submitted by this Field Office. After comments were received from the Field Office and from the public, the Department investigated and reanalyzed this rent schedule by applying an interpolation procedure which permits a better utilization of the limited market data. As a result, the Department found that the rents published for comment did not adequately reflect current market conditions. Accordingly, the FY 1989 FMRs were increased to the level of the originally submitted rents for the Marquette, Michigan market area. These higher rents are supported by interpolation methods.

When the Detroit FY 1989 FMRs were published for comment, virtually all the rents were reduced from the level of the originally submitted rents, due to HUD cost containment policy. Comments received from the Detroit Field Office and from the public indicated that the FMRs as published were too low and did not reflect current market conditions. The Department further analyzed the comments received and found that the FY 1989 FMRs were insufficient to support project feasibility for much needed units in the Detroit market area. As a result, the FY 1989 FMR schedule for Detroit, Michigan was increased to the level of the rents that were originally submitted by the Field Office. These FMRs are supported by the market rents surveyed by the Detroit Field Office.

The Omaha Field Office commented that, due to the paucity of rental data caused by market inactivity in North Platte, Nebraska, the FY 1989 FMRs had

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The FY 1989 FMRs reflected data submitted by the Field Offices, as well as cost containment efforts implemented for these FY 1989 New Construction and Substantial Rehabilitation rents. While the data submitted by the Grand Rapids Field Office was proper, it reflected rent comparables built during the mid-1970's for Marquette, Michigan. Moreover, Marquette, Michigan is situated in the Upper Peninsula of Michigan and requires high costs to transport building materials to that area. Further, there has been no new construction of modestly designed rental housing for this market area in recent years.

The Marquette, Michigan FY 1989 FMR schedules had been limited, not only by the paucity of new rental comparables which are less than six years old, but also by cost containment policy considerations which resulted in rents that were less than those originally submitted by this Field Office. After comments were received from the Field Office and from the public, the Department investigated and reanalyzed this rent schedule by applying an interpolation procedure which permits a better utilization of the limited market data. As a result, the Department found that the rents published for comment did not adequately reflect current market conditions. Accordingly, the FY 1989 FMRs were increased to the level of the originally submitted rents for the Marquette, Michigan market area. These higher rents are supported by interpolation methods.

When the Detroit FY 1989 FMRs were published for comment, virtually all the rents were reduced from the level of the originally submitted rents, due to HUD cost containment policy. Comments received from the Detroit Field Office and from the public indicated that the FMRs as published were too low and did not reflect current market conditions. The Department further analyzed the comments received and found that the FY 1989 FMRs were insufficient to support project feasibility for much needed units in the Detroit market area. As a result, the FY 1989 FMR schedule for Detroit, Michigan was increased to the level of the rents that were originally submitted by the Field Office. These FMRs are supported by the market rents surveyed by the Detroit Field Office.

The Omaha Field Office commented that, due to the paucity of rental data caused by market inactivity in North Platte, Nebraska, the FY 1989 FMRs had

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been developed based upon interpolation techniques. Further analysis revealed that the original FMR schedule for that area was low in relation to other nearby market areas, and that there was not an appropriate relationship between the North Platte market area and the three adjoining Nebraska market areas. As a result, HUD asked the Field Office to resubmit revised FMRs for that market area in order to provide more consistency in the FMRs for all Nebraska market areas and to permit a well-designed and badly needed proposal to be economically feasible in the North Platte market area.

This Notice

Today's document establishes the Fiscal Year (FY) 1989 FMRs for new construction and substantial rehabilitation that shall apply to section 202 elderly proposals selected on or after September 15, 1989, under part 885 for the Detroit (Michigan), Marquette (Michigan), and North Platte (Nebraska) market areas.

The FMRs are based primarily on the levels of rents paid for recently completed or newly constructed dwelling units of modest design within each market area, as determined by HUD Field Office staff, trended ahead to September 30, 1990, to allow time for the period of construction or rehabilitation of the projects involved. They are estimates of rentals that prospective tenants who are not receiving Federal rent subsidies would be willing and able to pay for recently completed or newly constructed dwelling units of modest design, with suitable amenities. They do not necessarily represent rents needed to support construction and operating costs.

This Notice includes FMRs for 0, 1, 2, 3 and 4-bedroom units in five structural categories (detached, semi-detached/row, walkup, 2-4-story elevator, and 5+-story elevator buildings). Construction or rehabilitation of elevator projects for families with children is prohibited unless there is no practical alternative. FMRs for family units in elevator structures are proposed for appropriate market areas; however, the determination that there is "no practical alternative" must be made on a project-by-project basis. HUD regulations also provide that high-rise elevator projects for the elderly may be approved only if HUD determines that high-rise construction is appropriate after taking into account land costs, safety and security factors.

Applicability

1. For section 202 projects for the elderly with Section 8 assistance selected on or after September 15, 1989, contract rents shall be based on the FY 1989 FMRs published herein. If the project meets HUD's cost containment guidelines and economic feasibility requirements, these FMRs may be increased by up to 10 percent with the approval of the Field Office Manager, or by up to 20 percent with the approval of the Regional Administrator upon publication in the near future of a redelegation of authority to that effect. However, until then, this authority remains with the Assistant Secretary for Housing.

2. For all FY 1988 and prior year section 202 selections for which firm commitments are issued after the effective date of the FY 1989 FMRs, the maximum approvable FMRs will be 110 percent of the FY 1989 FMRs, except that where a higher rent is needed for project feasibility, the maximum approvable FMRs shall be the amount above 110 percent of the FY 1989 FMRs necessary to service the debt at a 9 percent interest rate rather than an 8.375 percent interest rate. In no event, however, may the approved FMR exceed 120 percent of the FY 1989 FMR. Approvals above 110 percent of the FY 1989 FMRs will require the Assistant Secretary's prerogative. For all projects where the FY 1989 FMRs are lower than the FMRs applicable in the year that the project was selected, the contract rents shall be based upon the higher of:

(1) The final published FY 1989 FMRs, or

(2) The FMRs applicable for the year in which the project was selected.

Other Information

HUD regulations in 24 CFR part 50, implementing section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities and programs specified in 24 CFR 50.20. Since the FMRs proposed in this Notice are within the exclusion set forth in 24 CFR 50.20(1), no environmental assessment is required, and no environmental finding has been prepared.

The Catalog of Federal Domestic Assistance Program number and title for the activities covered by this Notice are 14.156, Lower Housing Assistance Program (Section 8).

Accordingly, the Department revises Schedule A of 24 CFR part 888 to add the three market areas as set forth below:

(These FMRs will not be codified in part 888 of title 24 of the Code of Federal Regulations.)

Authority: Section 8(c)(1), U.S. Housing Act of 1937, 42 U.S.C. 1437(f); Section 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

Dated: July 30, 1991.

Arthur J. Hill,

Assistant Secretary for Housing, Federal Housing Commissioner.

Schedule A—Fair Market Rents for New Construction and Substantial Rehabilitation

Special Category Computations

1. FMRs for dwelling units designed for the elderly or handicapped are those for appropriate size units, not to exceed two bedrooms for the elderly, multiplied by 1.05.

2. Congregate housing dwelling unit FMRs are the same as for non-congregate units.

3. Single-room occupancy dwelling unit FMRs (applicable only for substantial rehabilitation projects) are 75 percent of those for zero-bedroom units of the same structural type.

4. FMRs for living units in a group home are those for a zero bedroom or a one bedroom unit of the walkup structural type (or if the group home contains an elevator, of the 2-4 story elevator structural type). Each living unit in a group home is composed of a bedroom plus a proportionate part of common living space ordinarily included in a living unit. One-bedroom FMRs for group homes may be applied only when the project conforms to the following criteria.

a. The project meets HUD's cost containment guidelines, and

b. Use of the one bedroom FMR must be necessary in order to assure the economic feasibility and financial soundness of the project.

Rent Computations

All rents computed in accordance with this note shall be rounded down to the nearest whole dollar. Similarly, all FMRs increased by up to 10 percent with the approval of the HUD Field Officer Manager, or by up to 20 percent with the approval of the Assistant Secretary for Housing should have the result rounded down to the nearest whole dollar.

BILLING CODE 4210-27-M

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 5

DETROIT OFFICE

MARKET: DETROIT

	NUMBER OF BEDROOMS				
STRUCTURE TYPE	-0-	-1-	-2-	-3-	-4+
DETACHED			706	883	991
SEMI-DETACHED/ROW	465	531	637	797	917
WALKUP	428	524	597	735	852
ELEVATOR 2-4 STY	458	539	612		
ELEVATOR 5+ STY	468	576	705		
MANUFACTURED HOME					

EFFECTIVE DATE 100188
TRENDED DATE. 100190

PREPARED ON 070291

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 5

GRAND RAPIDS OFFICE

MARKET: MARQUETTE

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			681	810	960
SEMI-DETACHED/ROW	517	591	715	740	851
WALKUP	374	424	516	648	677
ELEVATOR 2-4 STY	394	471	572		
ELEVATOR 5+ STY	576	660	798		
MANUFACTURED HOME					

EFFECTIVE DATE 100188
TRENDED DATE 100190

PREPARED ON 070291

SCHEDULE A- FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

REGION 7

OMAHA OFFICE

MARKET: NORTH PLATTE

STRUCTURE TYPE	NUMBER OF BEDROOMS -0-	-1-	-2-	-3-	-4+
DETACHED			565	664	776
SEMI-DETACHED/ROW	400	468	560	659	771
WALKUP	354	424	516	600	683
ELEVATOR 2-4 STY	422	483	591		
ELEVATOR 5+ STY	465	533	654		
MANUFACTURED HOME					

EFFECTIVE DATE 100188
TRENDED DATE 100190

PREPARED ON 070291

[FR Doc. 91-18474 Filed 8-2-91; 8:45 am]

BILLING CODE 4210-27-C

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

Virginia Regulatory Program; Coal Surface Mining Reclamation Fund

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendments.

SUMMARY: OSM is announcing the approval of proposed amendments to the Virginia permanent regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments consist of revisions to sections 45.1–261.1, 45.1–270.3, 45. 1–270. 4, and 45.1–270.4:1 of the Code of Virginia, Part 480–03.19.801 of the Coal Surface Mining Reclamation Regulations, and the repeal of 45.1–270.3:1 of the Code of Virginia, all of which relate to Virginia's Coal Surface Mining Reclamation Fund (hereinafter, Pool Bond Fund). The amendments, as proposed, seek to strengthen the Pool Bond Fund.

EFFECTIVE DATE: August 5, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A Penn, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Drawer 1216, Powell Valley Square Shopping Center, room 220, Big Stone Gap, Virginia 24219; Telephone (703) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Program.
II. Submission of Amendments.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision
VI. Procedural Determinations.

I. Background on the Virginia Program

The Secretary of the Interior conditionally approved the Virginia program on December 15, 1981. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the December 15, 1981 **Federal Register** (46 FR 61085–61115). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 946.12, 946.13, 946.15, and 946.16.

II. Submission of Amendments

By letter dated April 5, 1991 (Administrative Record No. VA–790), Virginia submitted proposed amendments to the Code of Virginia relating to the Pool Bond Fund, intended to strengthen the financial stability of the Fund. OSM announced receipt of the proposed amendment in the April 24, 1991, **Federal Register** (56 FR 18792), and in the same notice opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment.

By letter dated May 1, 1991 (Administrative Record No. VA–795), Virginia submitted proposed amendments to the Coal Surface Mining Reclamation Regulations in order to achieve consistency with the statutory changes to the Code of Virginia included in the State's submission of April 5, 1991. OSM announced receipt of the proposed amendment in the May 22, 1991, **Federal Register** (56 FR 23533), and in the same notice opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment.

To provide clarity and continuity to the review and decision making process, the Director is combining these proposed statutory and regulatory changes, both of which concern bonding, into one rulemaking.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17 are the Director's findings concerning the proposed amendments. Revisions that are not discussed below concern nonsubstantive wording changes, or revise cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

1. Virginia is revising subsection A of section 45.1–261.1 of the Code of Virginia to allow operators to bid on contracts to conduct reclamation projects under the Pool Bond Fund. The operator must have at least three years of relevant mining experience in Virginia and must meet all other applicable requirements of Federal, State and local law. While the proposal has no direct Federal counterpart, the Director finds the proposal will serve to promote reclamation and is, therefore, not inconsistent with the requirements of SMCRA and the Federal regulations.

2. Virginia is revising its regulations at VR 480–03–19.801.11(a) to require that applicants for the Pool Bond Fund must demonstrate at least a consecutive three year history of compliance under the Act or any other comparable State or Federal Act. This revision makes the regulations consistent with the statutory requirement found in section 45.1–270.2.A of the Code of Virginia which was approved by the Director on February 2, 1990 (55 FR 3588). While the proposal has no direct Federal counterpart, the Director finds that the proposal will serve to promote the stability of the Pool Bond Fund by improving the quality of its membership and is, therefore, not inconsistent with 30 CFR 800.11(e).

3. Virginia is revising VR 480–03–19.801.12(a) to increase the entrance fee for participation in the Pool Bond Fund from $1,000 to $5,000, whenever the Pool Bond Fund balance is determined to be less than $1,750,000. The fee shall revert to $1,000 when the total Pool Bond Fund balance is greater than $2,000,000. In addition, the proposal provides for a $1,000 renewal fee at permit renewal. There is no direct Federal counterparts to the rules contained in VR 480–03–19.801.12(a). These revisions make the regulations consistent with the provisions of Section 45.1–270.3.A of the Code of Virginia which was approved by OSM on February 2, 1990 (55 FR 3588). The increase in the entrance fee and the permit renewal fee would not alter the basis of the findings approving the original alternative bonding system and should serve to strengthen the Pool Bond Fund. Since the proposal would increase revenue for the fund, the Director finds it not inconsistent with 30 CFR 800.11(e).

4. Virginia is revising subsection B of section 45.1–270.3 and VR 480–03–19.801.12(b) to provide that all operators in the Pool Bond Fund shall furnish to the Fund a bond determined as follows:

(a) For underground operations participating in the Pool Bond Fund prior to July 1, 1991, the bond remains at $1,000 per acre covered by each permit, while the minimum total amount of such bond is revised from $10,000 to $40,000. For permits on which all mining has been completed and completion reports have been approved prior to July 1, 1991, the minimum total bond remains at $10,000.

(b) For underground operations entering the Pool Bond Fund on or after July 1, 1991, and for additional acreage bonded on or after July 1, 1991, the bond amount shall be $3,000 per acre with the total bond amount being no less than $40,000.

(c) For other coal mining operations participating in the Pool Bond Fund prior to July 1, 1991, the bond amount remains at $1,500 per acre covered by each permit, while the minimum total amount of such bond is revised from $25,000 to

$100,000. For permits on which all mining has been completed and completion reports have been approved prior to July 1, 1991, the minimum total bond remains at $25,000.

(d) For other coal mining operations entering the Pool Bond Fund on or after July 1, 1991, and for additional acreage bonded on or after July 1, 1991, the bond amount shall be $3,000 per acre with the total bond amount being no less than $100,000.

There are no direct Federal counterparts to these statutory sections and rules.

On July 16, 1991, OSM requested clarification (Administrative Record No. VA–812) from Virginia regarding the wording of proposed VR 480–03–19.801.12(b)(3). The proposal refers to all other coal "surface" mining operations participating in the fund prior to July 1, 1991, whereas the corresponding statutory proposal at section 45.1–270.3.B(3) refers to other coal mining operations without the word "surface". In their response dated July 16, 1991 (Administrative Record No. VA–813), Virginia stated that the terms "other surface coal mining operations" and "other coal mining operations" are interpreted synonymously, and include any activity regulated under the Virginia program, except for underground mines. The Director finds that the clarification supplied by the State removes any confusion regarding the wording of the proposed rule change.

The increase in the minimum bond requirements would not alter the basis of the findings approving the original alternative bonding system and should serve to strengthen the Pool Bond Fund. Therefore, the Director finds the proposals to be not inconsistent with 30 CFR 800.11(e).

5. Virginia is revising VR 480–03–19.801.12(b) by deleting former subsections (3) (i), (ii), (iii), and (4) dealing with bond rates for combined underground mining operations and preparation plant/associated facility, combined surface and underground mining operations, combined surface mining operation and preparation plant/associated facility, and areas permitted exclusively for refuse disposal. In response to an inquiry from OSM (Administrative Record No. VA–812), Virginia stated (Administrative Record No. VA–813) that the Virginia Act establishes bond requirements for underground mines and "other coal mining operations", and combination operations and areas permitted exclusively for refuse disposal are considered by the State to be examples of "other coal mining operations" and are covered by the bonding requirements of VR 480–03–19.801.12(b) (3) and (4).

There is no direct Federal counterpart for the provisions being deleted by the State. Based upon the clarification provided by the State, the Director finds that the proposed deletion of former VR 480–03–19.801.12(b)(3) (i), (ii), (iii), and (4) does not render the State regulations inconsistent with 30 CFR 800.11(e).

6. Virginia is revising section 45.1–270.3 of the Code of Virginia by adding subsection F, and VR 480–03–19.801.12 by adding subsection (g). The revisions provide for the posting of a bond equal to the total estimated cost of reclamation for all portions of a permitted site which are in temporary cessation. The proposed amendments provide the following timeframes for posting the required bond for any mining operation participating in the Fund.

(a) Any operation in temporary cessation for more than six months as of July 1, 1991, shall post the bond within ninety days of that date.

(b) Any operation in temporary cessation for six months or less as of July 1, 1991, shall post the bond within ninety days after the date on which the operation has been in temporary cessation more than six months.

(c) Any operation entering temporary cessation on or after July 1, 1991, shall post the bond prior to the date on which the operation has been in temporary cessation for more than six months.

The bonds are to remain in effect throughout the period during which the site is in temporary cessation. The bond may be released when the site returns to active status provided the permittee has posted bond pursuant to section 45.1–270.3.B, and VR 480–03–19.801.12(b).

There are no direct Federal counterparts to these statutory sections and rules.

Under 30 CFR 800.11(e)(1), an alternative bonding system must assure that the regulatory authority will have available sufficient money to complete the reclamation plan for any areas which may be in default at any time. As proposed, the amendment provides for the posting of a bond equal to the total estimated cost of reclamation of the portion of the site in temporary cessation. Therefore, this amendment will enhance the Pool Bond Fund's ability to meet the requirements of 30 CFR 800.11(e), by increasing the bond required for operations in a lengthy period of temporary cessation. Thus the Director finds the proposal to be not inconsistent with the requirements of 30 CFR 800.11(e)(1).

7. Virginia is proposing to delete section 45.1–270–3:1 of the Code of Virginia, which deals with procedures for granting extensions of temporary cessation requested by fund participants. The section provided that after an operation has been in temporary cessation for six months, an extension for more than nine months will not be granted unless certain conditions are met. The conditions involved the degree of completion of rough regrading, backfilling and seeding, the posting of bond in a specified amount; and compliance with other state requirements for temporary cessation. In addition, the rule allows for release of bond posted pursuant to this section upon resumption of active operations and request by the participant.

There is no direct Federal counterpart to the statutory sections being deleted.

Some of the provisions being deleted are incorporated in section 45.1–270.3.F of the Code of Virginia which is being added by the State as discussed in Finding 6 herein. The Director finds that the proposed deletion does not render the State statutory section inconsistent with 30 CFR 800.11(e).

8. Virginia is revising subsection B of section 45.1–270.4 and VR 480–03–19.801.14(a), to increase the reclamation tax levied upon the production of coal, in the following amounts:

(a) From two cents to four cents per clean ton of coal produced by a surface mining operation.

(b) From one cent to three cents per clean ton of coal produced by a deep mining-operation.

(c) From one-half cent to one and one-half cents per clean ton of coal processed or loaded by preparation or loading facilities.

Since these increased revenues should strengthen the Pool Bond Fund, the Director finds the revisions not inconsistent with 30 CFR 800.11(e).

Further, the State is revising VR 480–03–19.801.14(a) to provide that the tax shall be paid within thirty (30) days after the end of any calendar quarter during which the balance of the Pool Bond Fund is less than $1,750,000; and VR 480–03–19.801.14(b) to provide that payments shall be deferred when the balance of the Pool Bond Fund at the end of any quarter exceeds $2,000,000. These revisions make the regulations consistent with the provisions of section 45.1–270.4.B and C of the Code of Virginia which was approved by OSM on December 31, 1987 (52 FR 49403).

In addition, Virginia is revising subsection E of section 45.1–270.4 and VR 480–03–19.801.14(d)(1) to increase the maximum reclamation tax for any operator holding more than one type of permit, from two and one-half cents to

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There is no direct Federal counterpart to the statutory sections being deleted.

Some of the provisions being deleted are incorporated in section 45.1-270.3.F of the Code of Virginia which is being added by the State as discussed in Finding 6 herein. The Director finds that the proposed deletion does not render the State statutory section inconsistent with 30 CFR 800.11(e).

8. Virginia is revising subsection B of section 45.1-270.4 and VR 480-03-19.801.14(a), to increase the reclamation tax levied upon the production of coal, in the following amounts:

(a) From two cents to four cents per clean ton of coal produced by a surface mining operation.

(b) From one cent to three cents per clean ton of coal produced by a deep mining-operation.

(c) From one-half cent to one and one-half cents per clean ton of coal processed or loaded by preparation or loading facilities.

Since these increased revenues should strengthen the Pool Bond Fund, the Director finds the revisions not inconsistent with 30 CFR 800.11(e).

Further, the State is revising VR 480-03-19.801.14(a) to provide that the tax shall be paid within thirty (30) days after the end of any calendar quarter during which the balance of the Pool Bond Fund is less than $1,750,000; and VR 480-03-19.801.14(b) to provide that payments shall be deferred when the balance of the Pool Bond Fund at the end of any quarter exceeds $2,000,000. These revisions make the regulations consistent with the provisions of section 45.1-270.4.B and C of the Code of Virginia which was approved by OSM on December 31, 1987 (52 FR 49403).

In addition, Virginia is revising subsection E of section 45.1-270.4 and VR 480-03-19.801.14(d)(1) to increase the maximum reclamation tax for any operator holding more than one type of permit, from two and one-half cents to

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five and one-half cents per ton on coal originally surface mined by the operator, and from one and one-half cents to four and one-half cents per ton on coal originally deep mined by that operator. VR 480-03-19.801.14 (d)(2) is being revised to increase from one-half cent to one and one-half cents per clean ton the amount a permittee shall pay for all coal processed and/or loaded at the permit which originated from other permits during the calendar quarter. There are no direct Federal counterparts to these statutory sections and rules.

The increase in the reclamation tax would not alter the basis of the findings approving the original alternative bonding system and should serve to strengthen the Pool Bond Fund. Since the proposals would increase revenue for the fund, the Director finds them to be not inconsistent with 30 CFR 800.11(e).

9. Virginia is revising VR 480-03-19.801.15(a) to (1) delete the requirement that the copy of the "Coal Surface Mining Reclamation Fund Tax Reporting Form" filed by permittees with the Commissioner be notarized, and (2) to require that the form be filed no later than 30 days after the end of each calendar quarter, rather than the current 15 days. There is no Federal counterpart for this rule. However, since the elimination of the requirement for a notarized copy of the form does not make the State program less effective than the Federal regulations, and the change in the filing date makes the reporting requirement consistent with the State's payment provisions, the Director finds the proposal is not inconsistent with 30 CFR 800.11(e).

10. Virginia is revising section 45.1-270.4:1 of the Code of Virginia by changing subsection A to read that each permittee shall be required (rather than may be required) to pay any special assessments made pursuant to subsection B. This amendment should strengthen the fund by making the assessments mandatory. Therefore, while there is no direct Federal counterpart, the Director finds the proposal is not inconsistent with 30 CFR 800.11(e).

In addition, the State is revising subsection B to provide that on or after July 1, 1991, the Commissioner of the Division of Mined Land Reclamation shall assess an amount not to exceed $500,000, to consist of (1) $250 for each participating permit on which all mining activity has been completed and for which a completion report has been approved; and (2) the remaining assessments made in equal amounts per acre for each disturbed acre permitted under the Pool Bond Fund. The amount of disturbed acreage is to be determined by the most recent anniversary map submitted, or updated anniversary map submitted prior to July 1, 1991. The amendment provides that this special assessment shall not apply to acreage that has been reclaimed and for which an increment of the bond has been transferred to other acreage in the permit, and that the assessments shall be made only one time and all revenues shall be applied to the balance of the Fund. Payment of the assessment is the responsibility of the permittee.

There is no direct Federal counterpart to this proposal. Implementation of this special assessment would not alter the basis of the findings approving the original alternative bonding system because the purpose of the amendment is to strengthen the Pool Bond Fund. Since the proposal would increase revenue for the fund, the Director finds it not inconsistent with 30 CFR 800.11(e).

11. Virginia is revising subsection C of section 45.1-270.4:1 of the Code of Virginia to provide that any civil penalties collected for violations of this section shall be applied to the balance of the fund.

There is no direct Federal counterpart to this proposal. Inclusion of civil penalties in the fund would not alter the basis of the findings approving the original alternative bonding system because the purpose of the amendment is to strengthen the Pool Bond Fund.

Since the proposal would increase revenue for the fund, the Director finds it not inconsistent with 30 CFR 800.11(e).

IV. Summary and Disposition of Comments

Public Comments

The public comment periods and opportunities to request public hearings announced in the April 24, 1991, and May 22, 1991, **Federal Register** ended on May 24, 1991, and June 21, 1991, respectively. The scheduled public hearings were not held as no one requested an opportunity to provide testimony. The South Atlantic Coal Company, Inc. and the H.C. Bostic Coal Company, Inc. filed comments in response to the proposed rules, requesting clarification as to whether section 45.1-270.3.F was the exclusive requirement for bonding permitted sites in temporary cessation. The companies were concerned that the State would require a temporary cessation permit to be amended according to section 45.1-270.3.B to the new minimum bond amounts and then require an additional bond as outlined in section 45.1-270.3.F (i.e., create a double bond situation). By letter dated May 30, 1991 (Administrative Record No. VA-805), Virginia provided clarification to the effect that for permitted areas in temporary cessation more than six months, the reclamation cost estimate for the area will be credited with bond already posted for the area according to the per acre bond rate. Further, the State indicated that excess bond from other portions of the permit, or from the minimum bond, will also be credited. The State's clarification further provided that all bond posted will be applied toward the minimum bond, without regard to the source of the bond requirement. That is, each pool bond participant, including those in temporary cessation status, must increase its minimum bond amounts to those revised amounts found at section 45.1-270.3.B. In addition, each participant in temporary cessation status must follow the requirements of section 45.1-270.3.F. If the total estimated cost to reclaim is less than the minimum bond posted by the participant under the revised section 45.1-270.3.B, as discussed in Finding (4) herein, no additional bond amount would be required by section 45.1-270.3.F, as amended. If the total estimated cost to reclaim is greater than the revised minimum bond posted under section 45.1-270.3.B, then the participant must post enough bond to equal the total estimated cost of reclamation. Any bond posted over the amount required in section 45.1-270.3.B., will be released when the site returns to active status. As stated in the findings, there are no direct Federal counterparts to the section in question. Since the amendments to sections 45.1-270-3.B. and F should strengthen the pool bond fund, the amendments are not inconsistent with 30 CFR 800.11(e).

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations of 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Virginia program. The Environmental Protection Agency (EPA), Mine Safety and Health Administration (MSHA), and Soil Conservation Service (SCS) responded. MSHA and SCS had no substantive comments while EPA expressed their concurrence and concluded that the proposed amendment demonstrated the legal authority, administrative capability, and technical conformity with controlling National Pollutant Discharge Elimination System regulations.

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V. Director's Decision

Based on the above findings, the Director is approving the program amendments as submitted on April 5, 1991, and May 1, 1991 and as clarified on May 30, 1991 and July 16, 1991. The Federal regulations at 30 CFR part 946 codifying decisions concerning the Virginia program are being amended to implement this decision.

This final rule is being made effective immediately to expedite the state program amendment process and to encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 946

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 24, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set forth in the preamble, title 30, Chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 946—VIRGINIA

1. The authority citation for part 946 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 946.15, a new paragraph (ee) is added to read as follows:

§ 946.15 Approval of regulatory program amendments.

* * * * *

(ee) The amendments submitted to OSM on April 5, 1991 and May 1, 1991 and clarified on May 30, 1991 and July 16, 1991 are approved August 5, 1991. The amendments consist of modifications to the following sections of the Code of Virginia and the Virginia regulations (VR 480–03–19) which all deal with Virginia's Coal Surface Mining Reclamation Fund:

(1) Code of Virginia Sections 45.1–261.1, 45.1–270.3, 45.1– 270.4, and 45.1–270.4:1.

(2) Virginia Regulations Sections (VR 480–03–19.) 801.11(a), 801.12(a), 801.12(b), 801.12(g), 801.14(a), 801.14(b), 801.14(c), 801.14(d), and 801.15(a).

(3) The repeal of section 45.1–270.3:1 of the Code of Virginia.

[FR Doc. 91–18473 Filed 8–2–91; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 550

Libyan Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule; amendments to the list of specially designated nationals of Libya.

SUMMARY: The Libyan Sanctions Regulations are being amended to remove the numerical designations and merge the separate categories in appendix A, "Organizations Determined To Be Specially Designated Nationals of the Government of Libya," and to add the names of twelve companies to appendix A, and to add a new appendix B, "Individuals Determined To Be Specially Designated Nationals of the Government of Libya," to the end thereof. Appendix A contains the names of companies, banks, and other entities, whether located outside or inside of Libya, which the Director of the Office of Foreign Assets Control has determined to be owned or controlled by, or acting or purporting to act directly or indirectly on behalf of, the Government of Libya. Appendix B contains the names of individuals whom the Director of the Office of Foreign Assets Control has determined to be acting or purporting to act directly or indirectly on behalf of the Government of Libya. This list may be expanded or amended at any time.

EFFECTIVE DATE: August 5, 1991.

ADDRESSES: Copies of this list are available upon request at the following location: Office of Foreign Assets Control, U.S. Department of the Treasury, Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Richard J. Hollas, Chief, Enforcement Section, Office of Foreign Assets Control, Tel.: (202) 566–5021.

SUPPLEMENTARY INFORMATION: The Libyan Sanctions Regulations, 31 CFR part 550 (the "Regulations"), were issued by the Treasury Department to implement Executive Orders No. 12543 (51 FR 875, Jan. 9, 1986) and 12544 (51 FR 1235, Jan. 10, 1986), in which the President declared a national emergency with respect to Libya, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), and ordering specific measures against the Government of Libya. The Regulations were amended by a final rule published in the **Federal Register** (56 FR 20540, May 6, 1991) which added appendix A, a list of organizations determined to be within the term "Government of Libya."

Section 550.304(a) of the Regulations, as amended, defines the term "Government of Libya" as follows:

(a) The "Government of Libya" includes: (1) The state and the Government of Libya, as well as any political subdivision, agency, or instrumentality thereof, including the Central Bank of Libya;

(2) Any partnership, association, corporation, or other organization substantially owned or controlled by the foregoing;

(3) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, since the effective date, acting or purporting to act directly or indirectly on behalf of any of the foregoing;

(4) Any other person or organization determined by the Secretary of the Treasury to be included within paragraph (a) of this section.

(b) A person specified in paragraph (a)(2) of this section shall not be deemed to fall within the definition of Government of Libya solely by reason of being located in, organized under the

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contains the names of individuals whom the Director of the Office of Foreign Assets Control has determined to be acting or purporting to act directly or indirectly on behalf of the Government of Libya. This list may be expanded or amended at any time.

EFFECTIVE DATE: August 5, 1991.

ADDRESSES: Copies of this list are available upon request at the following location: Office of Foreign Assets Control, U.S. Department of the Treasury, Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Richard J. Hollas, Chief, Enforcement Section, Office of Foreign Assets Control, Tel.: (202) 566–5021.

SUPPLEMENTARY INFORMATION: The Libyan Sanctions Regulations, 31 CFR part 550 (the "Regulations"), were issued by the Treasury Department to implement Executive Orders No. 12543 (51 FR 875, Jan. 9, 1986) and 12544 (51 FR 1235, Jan. 10, 1986), in which the President declared a national emergency with respect to Libya, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), and ordering specific measures against the Government of Libya. The Regulations were amended by a final rule published in the **Federal Register** (56 FR 20540, May 6, 1991) which added appendix A, a list of organizations determined to be within the term "Government of Libya."

Section 550.304(a) of the Regulations, as amended, defines the term "Government of Libya" as follows:

(a) The "Government of Libya" includes: (1) The state and the Government of Libya, as well as any political subdivision, agency, or instrumentality thereof, including the Central Bank of Libya;

(2) Any partnership, association, corporation, or other organization substantially owned or controlled by the foregoing;

(3) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, since the effective date, acting or purporting to act directly or indirectly on behalf of any of the foregoing;

(4) Any other person or organization determined by the Secretary of the Treasury to be included within paragraph (a) of this section.

(b) A person specified in paragraph (a)(2) of this section shall not be deemed to fall within the definition of Government of Libya solely by reason of being located in, organized under the

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laws of, or having its principal place of business in, Libya.

Section 550.805 of the Regulations provides that the Director of the Office of Foreign Assets Control ("FAC"), may take any action which the Secretary of the Treasury is authorized to take pursuant to Executive Order 12543.

Determinations that persons fall within the definition of the "Government of Libya" are effective upon the date of determination by the Director of FAC. Public notice is effective upon the date of publication or upon actual notice, whichever is sooner.

This rule amends appendix A to part 550 to remove the references to numerical designations and categories in appendix A, to provide public notice of twelve additional companies determined to be "specially designated nationals" of the Government of Libya, and to add appendix B, providing public notice of 21 individuals determined to "specially designated nationals of the Government of Libya." Appendix A consists of organizations and appendix B consists of individuals determined by the Director of FAC to be owned or controlled by, or acting or purporting to act directly or indirectly on behalf of, the Government of Libya. The persons listed in appendices A and B thus fall within the definition of the "Government of Libya" contained in § 550.304(a) of the Regulations, and are subject to all prohibitions in the Regulations applicable to other components of the Government of Libya. All unlicensed transactions with such persons, or in property in which they have an interest, are prohibited.

The list of specially designated nationals is a partial one, since FAC may not be aware of all the agencies and officers of the Government of Libya or of all the persons located outside of Libya that might be owned or controlled by the Government of Libya or acting as agents or front organizations for Libya, and which thus qualify as specially designated nationals of the Government of Libya. Therefore, persons engaging in transactions may not rely on the fact that any particular person is not on the specially designated nationals list as evidence that it is not owned or controlled by, or acting or purporting to act directly or indirectly on behalf of the Government of Libya. The Treasury Department regards it as incumbent upon all U.S. persons to take reasonable steps to ascertain for themselves whether persons they enter into transactions with are owned or controlled by the Government of Libya or are acting or purporting to act on its behalf, or on behalf of other countries subject to blocking or transportation-related restrictions (at present, Cambodia, Cuba, Iraq, North Korea, and Vietnam).

Section 206 of the International Emergency Economic Powers Act, 50 U.S.C. 1705, as amended by the Uniform Sentencing Act, 18 U.S.C. 3571 and 3581, provides for civil penalties not to exceed $10,000 per count for violations of the Regulations, fines of up to $250,000 and imprisonment for up to 12 years for willful violations of the Regulations by individuals, and fines of up to $500,000 for organizations.

Because the Regulations involve a foreign affairs function, Executive Order 12291 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

List of Subjects in 31 CFR Part 550

Banks, Banking, Foreign trade, Libya, Securities, Specially designated nationals.

For the reasons set forth in the preamble, 31 CFR part 550 is amended as set forth below:

PART 550—LIBYAN SANCTIONS REGULATIONS

1. The authority citation for part 550 continues to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 2349aa–8 & –9; 49 U.S.C. 1514; E.O. 12543, 51 FR 875 (Jan. 9, 1986); E.O. 12544, 51 FR 1235 (Jan. 10, 1986).

2. Appendix A to Part 550, "Organizations Determined to be Within the Term 'Government of Libya' (Specially Designated Nationals of Libya)," is amended by removing the numerical designations from the list of organizations and by removing the category designation "Part I: Located Outside Libya".

3. Appendix A to part 550 is amended by adding the following names in their proper alphabetical positions.

Corinthia Group of Companies, Head Office, 22, Europa Centre, Floriana, Malta.

Corinthia Palace Hotel Company Limited, De Paula Avenue, Attard, Malta.

Holborn Europa Raffinerie GmbH, (a.k.a. HER), Rothenbaumchaussee 5, 4th Floor, D-2000 Hamburg 13, Germany.

Holborn European Marketing Company Limited (a.k.a. HEMCL), Miranda Court No. 1, Ipirou Street, P.O. Box 897, Larnaca, Cyprus.

Hofplein 33, 3011 AJ Rotterdam, the Netherlands.

Holborn Investment Company Limited (a.k.a. HICL), Miranda Court No. 1, Ipirou Street, P.O. Box 897, Larnaca, Cyprus.

Jerma Palace Hotel, Maarsancala, Malta.

Lafi Trade Malta, 14517 Tower Road, Siema, Malta.

Oilinvest, (a.k.a. Foreign Petroleum Investment Corporation), (a.k.a. Libyan Oil Investment International Company), (a.k.a. OIIC), (a.k.a Oilinvest International N.V.), Netherlands Antilles.

Tripoli, Libya.

Oilinvest (Netherlands) B.V., (a.k.a. OILINVEST HOLLAND B.V.), Museumpin 11, 1071 DJ Amsterdam, The Netherlands.

OS Oilinvest Services A.G., Loewenstrasse 60, Zurich, Switzerland.

Quality Shoes Company, UB33, Industrial Estate, San Gwan, Malta.

Swan Laundry and Dry Cleaning Company, Ltd., 55, Racecourse Street, Marsa, Malta.

4. Appendix B is added to part 550 to read as follows:

Appendix B—Individuals Determined to be Specially Designated Nationals of the Government of Libya

Abbott, John G., 34 Grosvenor Street, London W1X 9FG, United Kingdom.

Abduljawad, Muhammed I., (a.k.a. ABDUL JAWAD, Mohammed), Tripoli, Libya.

Aghil, Yousef I., Libya.

Bushwesha, Abdullah, Libya.

Charalambides, Kypros, Cypus.

El Badri, Abdullah Salim, Tripoli, Libya.

El Ghrabli, Abdudayem, Libya.

EL Huweij, Mohamed A., Tripoli, Libya

Ferjani, A.S.A., Tripoli, Libya.

Ghadamsi, Bashir, Italy.

Layas, Mohammed H., Tripoli, Libya.

Yousef, Mohamed T., Libya.

Mana, Salem, Libya.

Naas, Mahmoud, Libya

Paradissiotis, Christoforos Pavlou, Larnaca, Cyprus.

34 Grosvenor Street, London W1X 9FG, United kingdom.

Riecke, Dr. Hans, Germany.

Saudi, Abdullah A., Manama, Bahrain.

Siala, Mohamed Taher Hammuda, Tripoli, Libya.

Stavrou, Stavros, Cyprus.

Ugueto, Luis, Venezuela.

Wojtek, Dr. Ralf, Germany.

Dated: June 28, 1991.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: July 15, 1991.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 91–18545 Filed 8–1–91; 9:47 am]

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DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Ozark National Scenic Riverways; Restriction for Motorized Vessels

AGENCY: National Park Service, Interior.

ACTION: Final Rule; delay of effective date.

SUMMARY: The implementation date of the final rule for 36 CFR 7.83 will be October 1, 1993, the date established in Ozark National Scenic Riverways River Use Management Plan, which was finalized on November 4, 1988 and approved on May 11, 1989. This date was omitted from the final rule. The public was provided an opportunity to comment on the regulations during the planning process. Public hearings were held in 6 towns and cities and news releases were sent to seventy three (73) news media and 30 political subdivisions during a widely publicized, extended comment period prior to approval of the River Use Management Plan. The reason for delaying implementation until October 1, 1993 is to prevent creating a hardship on boat owners who use Ozark National Scenic Riverways. By providing a reasonable period of time to river users, this grace period of more than two (2) years after the publication of the final regulation is available to those with larger motors for amortizing their present motors and for purchasing motors that will comply with the regulation.

DATES: Effective August 5, 1991, the effective date of August 5, 1991 for the regulations described below and published in the July 5, 1991 **Federal Register** (56 FR 30694) is delayed until October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Arthur L. Sullivan, Superintendent, Ozark National Scenic Riverways, P.O. Box 741, Van Buren, MO 63965.

Under the authority of 16 U.S.C. 3, the effective date of August 5, 1991 for the final rule for Ozark National Scenic Riverways, 36 CFR 7.83, as published in the July 5, 1991 **Federal Register** (56 FR 30694) is delayed until October 1, 1993.

Dated: July 23, 1991.

Don H. Castleberry,

Regional Director, Midwest Region.

[FR Doc. 91-18514 Filed 8-2-91; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL-3980-8]

National Emission Standards for Hazardous Air Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In a Notice of Proposed Rulemaking published elsewhere in this issue of the **Federal Register**, EPA is proposing a rule to rescind subpart I of 40 CFR part 61 as it is applied to nuclear power reactors, pursuant to section 112(d)(9) of the 1990 amendments of the Clean Air Act. In this companion action, EPA is issuing a final rule which stays the effectiveness of subpart I as applied to nuclear power reactors pending completion of the rulemaking concerning rescission.

DATES: Effective on July 26, 1991, EPA is staying the effectiveness of subpart I of 40 CFR part 61 for nuclear power reactors. This stay will remain in effect until such time as EPA takes final action concerning its proposal to rescind subpart I for nuclear power reactors pursuant to section 112(d)(9) of the Clean Air Act.

ADDRESSES: Questions should be addressed to: Central Docket Section LE-131, Environmental Protection Agency, Attn: Docket No. A-79-11, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Al Colli, Environmental Standards Branch, Criteria and Standards Division (ANR-460W), Office of Radiation Programs, Environmental Protection Agency, Washington, DC 20460 (703) 308-8787.

SUPPLEMENTARY INFORMATION:

A. Background

On October 31, 1989, EPA promulgated standards controlling radionuclide emissions to the ambient air from several source categories, including emissions from licensees of the Nuclear Regulatory Commission ("NRC") and from Federal facilities not licensed by the NRC or owned or operated by the Department of Energy ("non-DOE Federal facilities") (subpart I, 40 CFR part 61). This rule was published in the **Federal Register** on December 15, 1989 (54 FR 51654). At the same time as the rule was promulgated, EPA granted reconsideration of subpart I based on comments received late in the rulemaking from NRC and NIH on the subject of duplicative regulation by NRC and EPA and on potential negative effects of the standard on nuclear medicine. EPA established a comment period to receive further information on these subjects, and also granted a 90-day stay of subpart I as permitted by Clean Air Act section 307(d)(7)(B), 42 U.S.C. 7607(d)(7)(B).

EPA subsequently extended the stay of the effective date of Subpart I on several occasions, pursuant to the authority provided by section 10(d) of the Administrative Procedure Act (APA), 5 U.S.C. 705, and section 301(a) of the Clean Air Act, 42 U.S.C. 7601(a). (55 FR 10455, March 21, 1990; 55 FR 29205, July 18, 1990; and 55 FR 38057, September 17, 1990).

In October 1990, Congress passed new legislation amending the Clean Air Act. Section 112(d)(9) of the amendments provides,

> No standard for radionuclide emissions from any category or subcategory of facilities licensed by the Nuclear Regulatory Commission (or an Agreement State) is required to be promulgated under this section if the Administrator determines, by rule, and after consultation with the Nuclear Regulatory Commission, that the regulatory program established by the Nuclear Regulatory Commission pursuant to the Atomic Energy Act for such category or subcategory provides an ample margin of safety to protect the public health.

After evaluating the information received during the reconsideration of subpart I, EPA concluded that for all categories of NRC-licensed facilities other than nuclear power reactors the Agency presently lacks sufficient information to determine whether the regulatory program established by NRC provides "an ample margin of safety to protect the public health," as that term is used in section 112 of the Clean Air Act (CAA). On April 15, 1991, EPA issued a final order staying the effectiveness of Subpart I for all categories of NRC-licensed facilities except nuclear power reactors, until November 15, 1992, or until such earlier date that EPA is prepared to make an initial determination under Clean Air Act section 112(d)(9) and conclude its reconsideration under section 307(d)(7)(B). 56 FR 18735 (April 24, 1991). This stay will afford EPA the time needed to collect the information which is necessary to make a determination under section 112(d)(9).

With regard to non-DOE federal facilities, EPA concluded that the factors which led to the reconsideration of subpart I, possible duplication of effort between the EPA and the NRC and potential negative effects on nuclear medicine, are not applicable to this

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After evaluating the information received during the reconsideration of subpart I, EPA concluded that for all categories of NRC-licensed facilities other than nuclear power reactors the Agency presently lacks sufficient information to determine whether the regulatory program established by NRC provides "an ample margin of safety to protect the public health," as that term is used in section 112 of the Clean Air Act (CAA). On April 15, 1991, EPA issued a final order staying the effectiveness of Subpart I for all categories of NRC-licensed facilities except nuclear power reactors, until November 15, 1992, or until such earlier date that EPA is prepared to make an initial determination under Clean Air Act section 112(d)(9) and conclude its reconsideration under section 307(d)(7)(B). 56 FR 18735 (April 24, 1991). This stay will afford EPA the time needed to collect the information which is necessary to make a determination under section 112(d)(9).

With regard to non-DOE federal facilities, EPA concluded that the factors which led to the reconsideration of subpart I, possible duplication of effort between the EPA and the NRC and potential negative effects on nuclear medicine, are not applicable to this subcategory of facilities. Since the determination concerning the adequacy of the NRC regulatory program contemplated by the new language in section 112(d)(9) could not apply to such facilities, EPA did not propose to further stay the effectiveness of subpart I for these facilities. Subpart I became effective with respect to non-DOE federal facilities on March 10, 1991.

EPA believes that it does not possess sufficient information concerning radionuclide emissions from nuclear power reactors and the program implemented by the NRC to control such emissions to make an initial determination under section 112(d)(9). After reviewing the available information, EPA tentatively concluded that the NRC regulatory program limiting these emissions protects public health with an ample margin of safety. On March 8, 1991, EPA issued an Advance Notice of Proposed Rulemaking announcing its intention to enter into a future rulemaking pursuant to section 112(d)(9) to rescind subpart I of 40 CFR part 61 ("subpart I") as it applies to nuclear power reactors. 56 FR 10524 (March 13, 1991). On March 8, 1991, EPA also proposed this rule to stay the effectiveness of subpart I as applied to nuclear power reactors during the rulemaking on rescission. 56 FR 10523 (March 13, 1991). The March 8, 1991, proposal incorporated an order temporarily staying the effectiveness of subpart I for nuclear power reactors pending final action by EPA either adopting or declining to adopt the proposed stay.

A hearing concerning the proposed rule to stay the effectiveness of subpart I for nuclear power reactors was held in Washington, DC on May 9, 1991. Pursuant to section 307(d)(5)(iv) of the Clean Air Act, EPA kept the record for this rulemaking open to receive additional written comments or information until June 8, 1991, thirty days after completion of the hearing.

B. Final Rule Staying Subpart I for Nuclear Power Reactors

EPA today issues a final rule staying the effectiveness of Subpart I of 40 CFR part 61 for all commercial nuclear power reactors licensed by the Nuclear Regulatory Commission. This stay of subpart I will remain in effect until EPA takes final action concerning its proposal to rescind subpart I for nuclear power reactors pursuant to section 112(d)(9) of the Clean Air Act. This proposal to rescind is published elsewhere in this issue of the **Federal Register**.

The decision by EPA to adopt this final rule to stay the effectiveness of subpart I for nuclear power reactors reflects the Agency's interpretation of the Congressional policy embodied in section 112(d)(9) of the Clean Air Act Amendments of 1990. In section 112(d)(9), Congress authorized EPA not to regulate radionuclide emissions from NRC licensees and to relieve NRC licensees of the burden of parallel regulation in those instances where NRC regulation is sufficient to provide an ample margin of safety. Since EPA has now proposed to rescind subpart I for nuclear power reactors, it would frustrate the evident purpose of section 112(d)(9) if EPA were to permit subpart I to take effect for this subcategory during the pendency of the rulemaking concerning rescission.

C. Discussion of Comments and Response to Comments

The Agency has evaluated all of the comments made by interested members of the public during the hearing, as well as those written comments submitted for incorporation in the subpart I docket. The majority of these comments concern the substantive merits of the Agency's proposal to rescind subpart I for nuclear power reactors, rather than the specific question of whether subpart I should be stayed during the rulemaking on rescission. As such, these comments may be considered to be primarily responsive to the ANPR which announced the Agency's intention to propose rescission. The Agency's initial response to these comments is embodied in the discussion set forth in the proposed rulemaking to rescind, as published elsewhere in today's **Federal Register**.

Although none of the comments which opposed the Agency's announced intention to propose rescission of subpart I for nuclear power reactors has persuaded EPA not to issue that proposal, such comments will be incorporated in the record of the rulemaking concerning rescission and will be considered as part of any final action concerning the rescission proposal. In addition, all parties who have previously submitted comments in opposition to the Agency's proposal to rescind will have an opportunity to clarify or augment their comments by submission of additional comments or by participation in the hearings to be held concerning the proposal. (Details concerning the procedure for submission of comments on the rescission proposal and the dates and locations of hearings are set forth in the proposed rule itself.)

The comments and responses summarized below are those which specifically concern the Agency's proposal to stay subpart I during the pendency of the rulemaking on rescission. Although a number of additional comments concerning the Agency's legal authority to stay subpart I were submitted in connection with the Agency's prior proposal to stay subpart I for NRC licensees other than nuclear power reactors, these comments were not resubmitted in connection with this proposal. The Agency's response to these prior comments is set forth in the final rule staying subpart I for NRC-licensed facilities other than nuclear power reactors which EPA issued on April 15, 1991. 56 FR 18735 (April 24, 1991).

Comment: Subpart I should be made immediately effective to all NRC-licensed facilities including nuclear power reactors because there has been no EPA rule or finding that the Nuclear Regulatory Commission is in fact providing an ample margin of safety to protect the public health.

Response: EPA considers this stay of the effectiveness of subpart I for nuclear power reactors while EPA is engaged in rulemaking to rescind subpart I for such facilities pursuant to section 112(d)(9) to be a logical component in the implementation of the congressional policy embodied in section 112(d)(9). The 1990 Amendments do not clearly establish all of the procedures to be followed by EPA in implementing section 112(d)(9) for previously promulgated NESHAPs. However, EPA is unwilling to attribute to Congress an intention to require EPA to proceed with implementation of subpart I on an interim basis, even though EPA believes that NRC regulation of nuclear power reactors affords an ample margin of safety and has commenced a rulemaking to rescind the standard for such facilities. Such an interpretation of section 112(d)(9) would force all facilities affected by a previously promulgated NESHAP to make all of the expenditures necessary to demonstrate that they comply with the NESHAP, before EPA could promulgate a rule providing relief from duplicative regulation. EPA is not prepared to presume that Congress intended that section 112(d)(9) would provide meaningful regulatory relief only in the case of future NESHAPs.

Comment: The stay will prevent the undesirable result of subjecting subpart I facilities to compliance and potential enforcement actions while EPA is taking the procedural steps necessary to rescind these standards.

Response: EPA agrees with this comment.

Comment: The stay is in the public interest due to EPA's prior finding that current emission levels from nuclear power plants provide adequate protection of public health with an ample margin of safety and due to EPA's prior statement when it previously issued stays of subpart I that the stay would have little or no adverse effects on public health. In addition, Congress evidenced its desire to avoid unnecessary and duplicative regulation by passing section 112(d)(9) and therefore it is clear that a stay during the pendency of the rulemaking would be in the public interest.

Response: Based on the available data, EPA agrees that the issuance of the stay will have little or no adverse effect on public health. EPA also agrees that issuance of this final rule will further the Congressional objective of avoiding unnecessary and duplicative regulation, by relieving affected facilities of the burdens of demonstrating compliance with the standard during the rulemaking on rescission.

D. Miscellaneous

1. Paperwork Reduction Act

There are no information collection requirements in this rule.

2. Executive Order 12291

Under Executive Order 12291, EPA is required to judge whether this regulation is a "major rule" and therefore subject to certain requirements of the Order. The EPA has determined that issuing this stay of subpart I for nuclear power reactors will result in none of the adverse economic effects set forth in section I of the Order as grounds for finding a regulation to be a "major rule." This regulation is not major because the nationwide compliance costs do not meet the $100 million threshold, the regulation does not significantly increase prices or production costs, and the regulation does not cause significant adverse effects on domestic competition, employment, investment, productivity, innovation or competition in foreign markets.

The Agency has not conducted a Regulatory Impact Analysis (RIA) of this regulation because this action does not constitute a major rule.

3. Regulatory Flexibility Analysis

Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, requires EPA to prepare and make available for comment an "initial regulatory flexibility analysis" which describes the effect of the rule on small business entities. However, section 604(b) of the Act provides that an analysis will not be required when the head of an Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

This rule staying 40 CFR part 61 subpart I for nuclear power reactors will have the effect of easing the burdens associated with immediate compliance with subpart I and I therefore certify that this rule will not have significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 61

Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Hazardous Substances, Mercury, Radionuclides, Radon, Reporting and Recordkeeping requirements, Uranium, Vinyl chloride.

Dated: July 26, 1991.

William K. Reilly,
Administrator.

For all of the reasons given in the preamble, part 61 of title 40 of the Code of Federal Regulations is amended to read as follows:

PART 61—[AMENDED]

1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7414, 7416, 7601.

2. Section 61.109 of subpart I of part 61 is amended by designating the current text as paragraph (a) and by adding paragraph (b) to read as follows:

§ 61.109 Stay of effective date.

* * * * *

(b) The effective date for subpart I is stayed for commercial nuclear power reactors which are licensed by the Nuclear Regulatory Commission until the date on which EPA takes final action concerning its proposal to rescind subpart I for nuclear power reactors pursuant to section 112(d)(9) of the Clean Air Act, as published on August 5, 1991. EPA will publish any such final action in the **Federal Register.**

[FR Doc. 91-18506 Filed 8-2-91; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[DA 91-896]

Editorial Amendment of Part 97 of the Commission's Rules Regarding the Amateur Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action deletes an alternative power measurement standard from part 97 of the Commission's Rules. The rule change is necessary because the exception to the power standard that was applicable to amateur stations transmitting emission type A3E has expired. The effect of the rule change is to remove this expired standard from the amateur service rules.

EFFECTIVE DATE: September 9, 1991.

FOR FURTHER INFORMATION CONTACT: William T. Cross, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554 (202) 632-4964.

SUPPLEMENTARY INFORMATION:

1. This is a summary of the Commission's *Memorandum Opinion and Order,* adopted July 15, 1991, and released July 24, 1991. The complete text of this Commission action, including the rule amendments, is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 239), 1919 M Street, NW, Washington, DC. The complete text, including the rule amendments, may also be purchased from the Commission's copy contractor, Downtown Copy Center (DCC) (202) 452-1422, 1114 21st Street NW., Washington, DC 20036.

2. The action taken herein has been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520, and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements and will not increase or decrease burden hours imposed on the public.

3. The amended rules are set forth at the end of this document and are issued under the authority of 47 U.S.C. 154(i) and 303 (c) and (r).

List of Subjects in 47 CFR Part 97

Radio, Emission types, Power.

Federal Communications Commission.

Ralph A. Haller,
Chief, Private Radio Bureau.

Amended Rules

Part 97 of chapter 1 of title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609, unless otherwise noted.

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Filed 8-2-91; 8:45 am]

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MUNICATIONS

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Communications

ACTION: Final rule.

SUMMARY: This action deletes an alternative power measurement standard from part 97 of the Commission's Rules. The rule change is necessary because the exception to the power standard that was applicable to amateur stations transmitting emission type A3E has expired. The effect of the rule change is to remove this expired standard from the amateur service rules.

EFFECTIVE DATE: September 9, 1991.

FOR FURTHER INFORMATION CONTACT: William T. Cross, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554 (202) 632-4964.

SUPPLEMENTARY INFORMATION:

1. This is a summary of the Commission's *Memorandum Opinion and Order,* adopted July 15, 1991, and released July 24, 1991. The complete text of this Commission action, including the rule amendments, is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 239), 1919 M Street, NW, Washington, DC. The complete text, including the rule amendments, may also be purchased from the Commission's copy contractor, Downtown Copy Center (DCC) (202) 452-1422, 1114 21st Street NW., Washington, DC 20036.

2. The action taken herein has been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520, and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements and will not increase or decrease burden hours imposed on the public.

3. The amended rules are set forth at the end of this document and are issued under the authority of 47 U.S.C. 154(i) and 303 (c) and (r).

List of Subjects in 47 CFR Part 97

Radio, Emission types, Power.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

Amended Rules

Part 97 of chapter 1 of title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609, unless otherwise noted.

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2. Section 97.313(b) is revised to read as follows:

§ 97.313 Transmitter power standards.

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(b) No station may transmit with a transmitter power exceeding 1.5 kW PEP.

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[FR Doc. 91-18422 Filed 8-2-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 910498-1098]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: NOAA announces the closure of the recreational salmon fishery in the exclusive economic zone (EEZ) from the U.S.-Canada border to Cape Alava, Washington, at noon, July 24, 1991, to ensure that the coho salmon quota is not exceeded. The Director, Northwest Region, NMFS (Regional Director), has determined that the recreational fishery quota of 23,300 coho salmon for the subarea will be reached by noon, July 24, 1991. The closure is necessary to conform to the preseason announcement of 1991 management measures. This action is intended to ensure conservation of coho salmon.

DATES: *Effective:* Closure of the EEZ from the U.S.-Canada border to Cape Alava, Washington, to recreational salmon fishing is effective at 1200 hours local time, July 24, 1991. Actual notice to affected fishermen was given prior to that time through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts, as provided by 50 CFR 661.20, 661.21, and 661.23.

Comments: Public comments are invited until August 15, 1991.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: Joe Scordino at 206-526-6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR part 661 specify at § 661.21(a)(1) that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by notice issued under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

In its preseason notice of 1991 management measures (56 FR 21311, May 8, 1991), NOAA announced that the 1991 recreational fishery for all salmon species in the subarea from the U.S.-Canada border to Cape Alava, Washington, would begin on July 1 and continue through the earliest of September 26 or the attainment of either a subarea quota of 23,300 coho salmon or the overall recreational quota of 40,000 chinook salmon north of Cape Falcon, Oregon. Based on the best available information on July 23, the recreational fishery catch in the subarea from the U.S.-Canada border to Cape Alava, Washington, is projected to reach the 23,300 coho salmon quota by noon, July 24, 1991. Therefore, the fishery in this subarea is closed to further recreational fishing effective 1200 hours local time, July 24, 1991.

In accordance with the season notice procedures of 50 CFR 661.20, 661.21, and 661.23, actual notice to this closure was given prior to 1200 hours local time, July 24, 1991, by telephone hotline number (206) 526-6667 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 KHz. NOAA issues this notice of closure of the recreational salmon fishery in the EEZ from the U.S.-Canada border to Cape Alava, Washington, which is effective 1200 hours local time, July 24, 1991.

The Regional Director consulted with representatives of the Pacific Fishery Management Council and the Washington Department of Fisheries regarding a closure of the recreational fishery between the U.S.-Canada border and Cape Alava, Washington. The State of Washington will manage the recreational fishery in State waters adjacent to this area of the EEZ in accordance with this federal action. This notice does not apply to treaty Indian fisheries or to other fisheries that may be operating in other areas.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted through August 15, 1991.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 30, 1991.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-18469 Filed 7-31-91; 11:06 am]

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VOL 56
ISS 150
AG 5 1991
UMI

Proposed Rules

Federal Register
Vol. 56, No. 150
Monday, August 5, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 574

[No. 91-155]

RIN 1550-AA36

Agency Disapproval of Directors and Senior Executive Officers of Savings Associations and Savings and Loan Holding Companies

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: If adopted, this proposal would implement section 914 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Public Law No. 101-73, 103 Stat. 183, 484-5, ("section 914"), by adding a new section to 12 CFR part 574. The new section would require certain savings associations and savings and loan holding companies to file a notice with the Office of Thrift Supervision (the "OTS") prior to adding or replacing a member of the board of directors, and prior to employing, or changing the responsibilities of an individual in a position or into another position, as senior executive officer. Section 914 grants the OTS the authority to disapprove any proposed board member or senior executive officer of a savings association or savings and loan holding company whose service is not considered to be in the best interests of the depositors of the savings association or the public.

DATES: Comments must be received on or before September 4, 1991.

ADDRESSES: Comments should be directed to: Director, Information Services Division, Office of Communications, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Comments will be available for public inspection at 1776 G Street, NW., Street Level.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Kaplan, Staff Attorney (202) 906-7508, V. Gerard Comizio, Acting Deputy Chief Counsel (202) 906-6411, Corporate and Securities Division; Jodie S. Jacobs, Attorney, Enforcement (202) 906-7959; Kevin L. Petrasic, Assistant Chief Counsel, Regulations and Legislation Division (202) 906-6452; Julie L. Williams, Senior Deputy Chief Counsel (202) 906-6459; Mary Jo Johnson, Policy Analyst, Supervision (202) 906-5739, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background

On August 9, 1989, President Bush signed FIRREA into law. Section 914 of FIRREA, which added section 32 of the Federal Deposit Insurance Act ("FDIA"), codified at 12 U.S.C. 1831i, requires certain savings associations and savings and loan holding companies to furnish the OTS with at least 30 days notice before adding any individual to the board of directors or employing any individual as a senior executive officer. A savings association or savings and loan holding company is subject to the notice requirement if the savings association or savings and loan holding company: (1) Has been chartered less than two years in the case of a savings association; (2) has undergone a change in control within the preceding two years; or (3) is not in compliance with the minimum capital requirements applicable to such saving association or is otherwise in a "troubled condition," as determined "on the basis of the savings association's or the savings and loan holding company's most recent report of condition or report of examination or inspection."

Section 914 prohibits a savings association or savings and loan holding company from adding an individual to its board of directors, or employing an individual as a senior executive officer, if the OTS issues a notice of disapproval with regard to the addition or employment of such individual. In this regard, the OTS must disapprove a notice under this section if it finds that the competence, experience, character, or integrity of an individual indicate that it would not be in the best interests of the depositors of the savings association or the public for the individual to be employed by, or associated with, the savings association or savings and loan holding company.

The requirements of section 914 have been in effect since enactment of the FIRREA, August 9, 1989. The OTS is proposing to implement this regulation in order to clarify various issues that have arisen in the application of the new provisions.

Issues

The application of section 914 to savings associations and savings and loan holding companies presents a number of issues, discussed below. Comment is invited on these and any other issues related to the regulation.

1. Definition of "Senior Executive Officer"

The term "senior executive officer" is defined to include the president, chief executive officer, chief operating officer, chief financial officer, chief lending officer, chief investment officer, general counsel or their functional equivalents, or any individual who exercises significant influence over, or participates in, major policy making decisions of a savings association or savings and loan holding company without regard to title, salary or compensation.

The term "senior executive officer" also includes any employees of another entity, such as a consulting firm, hired to perform the functions of positions covered by the regulation on behalf of a savings association or savings and loan holding company.

2. Definition of "Troubled Condition"

a. Savings Associations

For purposes of the notice requirements of section 914, the term "troubled condition" with respect to savings associations is defined to mean a savings association: (1) That has received a composite MACRO rating of 4 or 5 in its most recent report of examination; (2) that is subject to a capital directive or a formal enforcement action or proceeding or a written agreement entered into with the OTS, relating to the safety or soundness or financial viability of the savings association; or (3) that is informed in writing by the OTS that it has been designated in "troubled condition" for purposes of the requirements of section 914 as a result of its current financial

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b. Savings and Loan Holding

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3. Prior Notice Requirement

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ORMATION CONTACT:
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and Securities Division;
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evin L. Petrasic,
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Division (202) 906–6452;
, Senior Deputy Chief
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The requirements of section 914 have been in effect since enactment of the FIRREA, August 9, 1989. The OTS is proposing to implement this regulation in order to clarify various issues that have arisen in the application of the new provisions.

Issues

The application of section 914 to savings associations and savings and loan holding companies presents a number of issues, discussed below. Comment is invited on these and any other issues related to the regulation.

1. Definition of "Senior Executive Officer"

The term "senior executive officer" is defined to include the president, chief executive officer, chief operating officer, chief financial officer, chief lending officer, chief investment officer, general counsel or their functional equivalents, or any individual who exercises significant influence over, or participates in, major policy making decisions of a savings association or savings and loan holding company without regard to title, salary or compensation.

The term "senior executive officer" also includes any employees of another entity, such as a consulting firm, hired to perform the functions of positions covered by the regulation on behalf of a savings association or savings and loan holding company.

2. Definition of "Troubled Condition"

a. Savings Associations

For purposes of the notice requirements of section 914, the term "troubled condition" with respect to savings associations is defined to mean a savings association: (1) That has received a composite MACRO rating of 4 or 5 in its most recent report of examination; (2) that is subject to a capital directive or a formal enforcement action or proceeding or a written agreement entered into with the OTS, relating to the safety or soundness or financial viability of the savings association; or (3) that is informed in writing by the OTS that it has been designated in "troubled condition" for purposes of the requirements of section 914 as a result of its current financial

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statements or report of examination, inspection, or limited scope review of the association or its holding company.

In addition, a savings association that fails to meet all of its applicable regulatory capital requirements under 12 CFR part 567 is subject to the section 914 notice requirement.

b. Savings and Loan Holding Companies

For purposes of section 914, the term "troubled condition" with respect to a savings and loan holding company is defined to mean a savings and loan holding company:

(1) That is subject to either a formal enforcement action or proceeding or a written agreement entered into with the OTS, relating to the safety or soundness or financial viability of its subsidiary savings association;

(2) That is informed in writing by the OTS that it has been designated in "troubled condition" for purposes of the requirements of section 914 as a result of the current financial statements or report of examination, inspection, or limited scope review of the holding company or its subsidiary association; or

(3) That the OTS determines is having a detrimental or burdensome effect on its subsidiary savings association or that requires more than the normal level of supervision.

3. Prior Notice Requirement

Three categories of savings associations and savings and loan holding companies must file a notice of intent to add a director or employ a senior executive officer. The first category includes savings associations that have been chartered and fully operational for less than two years.

The second category includes savings associations or savings and loan holding companies that have directly or indirectly undergone a change in control within the preceding two years, subject to the Change in Bank Control Act, 12 U.S.C. 1817(j) (or if a change in control occurred within the preceding two years and prior to the passage of the FIRREA, the Change in Savings and Loan Control Act, formerly 12 U.S.C. 1730(q)), or the Savings and Loan Holding Company Act, 12 U.S.C. 1467a, and the regulations promulgated under these provisions at 12 CFR part 574. Thus, the change in control standard for application of the section 914 requirements is triggered for a savings association if there is a direct change of control of the savings association or a change in control of the association's holding company. In the case of a savings and loan holding company, the change of control would, of course, occur at the holding company level. In both cases, the change in control includes acquisitions of control subject to prior notice or approval under either the Change in Bank Control Act or the Savings and Loan Holding Company Act. However, upon written request to the OTS, the OTS may determine that the transactions involving existing approved control parties and acquisitions of control that do not result in substantive changes of control will not be deemed to be a change of control triggering the requirements of section 914.

The OTS also seeks comments as to whether, in the context of a mutual savings association, the filing of Reports of change in control of mutual savings associations, 12 CFR 563.181, would trigger a change in control for purposes of the section 914 notice requirement, or whether the OTS should treat a change in the highest-ranking officials of a mutual association, *e.g.* the chief executive officer or chief operating officer, as constituting a change in control of the association for purposes of the two-year applicability thereafter of the notice requirements of section 914.

The third category includes savings associations not in compliance with all of the minimum capital requirements established pursuant to 12 CFR part 567 and savings associations or savings and loan holding companies that are otherwise deemed to be in a "troubled condition," as described above.

Failure to file prior notice of intent to add a director or employ a senior executive officer may require immediate resignation of the subject individual and may subject the individual, the savings association or savings and loan holding company to enforcement actions, including assessment of civil money penalties.

4. Promotions of Senior Executive Officers and Re-election of Directors

An additional issue under section 914 is whether the notice requirement covers senior executive officers of a savings association or savings and loan holding company that are promoted or laterally transferred to another position as a senior executive officer of the same association or holding company. The rule makes clear that the section 914 notice requirement applies where a senior executive officer is promoted or transferred to a new position as a senior executive officer or where there is a "change in responsibilities" of any individual resulting in a senior executive officer position, notwithstanding that such "change in responsibilities" is not accompanied by a change in title or salary.

With respect to the applicability of section 914 to the "proposed addition of any individual to the board of directors," the rule also clarifies that section 914 covers not only increases in board membership but also replacements, filling of vacancies on the board, and a "change in responsibilities" of any individual resulting in his or her assumption of a director position. The notice requirement would also apply to a senior executive officer who is proposed as a director of the savings association or savings and loan holding company and to a director who is offered employment as a senior executive officer. However, the provision is not intended to apply to a re-election of a director who is already serving on the board of directors of a savings association or savings and loan holding company.

5. Effective Date

Section 914 became effective upon the signature of the President on August 9, 1989. Accordingly, all savings associations and savings and loan holding companies that were subject to one of the three categories of applicability under section 914 upon enactment of the FIRREA, were at that time subject to the notice requirements.

Thus, every savings association that was chartered less than two years on the date of enactment of the FIRREA, and every savings association or savings and loan holding company that was subject to a change in control within the two years preceding the date of enactment of the FIRREA, was subject to the notice requirements of section 914 for the remainder of the two year period after the enactment of the FIRREA. For example, a savings association that underwent a change in control in November 1988 is covered by the requirements of section 914 until November 1990; therefore, a notice is required for any addition to the board of directors or any employment of a senior executive officer effected prior to November 1990 that occurred after the date of enactment of the FIRREA.

6. Effect on Other Statutes

Although the section 914 notice requirement applies to, among others, a savings association that has been chartered less than two years and a savings association or savings and loan holding company that has undergone a change in control within the preceding two years, certain other statutory provisions also permit the OTS to require a similar notice in the same situations. In this regard, for example, section 914 does not displace or supersede OTS's authority implied in section 5(e) of the HOLA, 12 U.S.C. 1464(e), to require, as a condition of granting a charter, prior review of proposed changes in executive officers for three years after a savings association is chartered. Such a condition has been imposed on new thrift charters for many years and, unlike the prior review authority in section 914, is not subject to a limit of 30 days on the OTS's review.

Similarly, the OTS believes that section 914 does not replace or repeal section 7(j)(12) of the FDIA, 12 U.S.C. 1817(j)(12), which states that whenever a change in control occurs, the bank or savings association "shall report promptly * * * any changes or replacement of its chief executive officer or of any director occurring in the next twelve-month period * * *". This authority similarly does not require the OTS to complete its review and act on any such report within 30 days.

Nor does section 914 displace or repeal any provision of section 8(b) of the FDIA, 12 U.S.C. 1818(b), which authorizes the OTS to include a provision in a cease and desist order requiring a savings association to take "affirmative action to correct the conditions resulting from [any] violation or practice." Under this authority, the OTS can require a savings association to obtain prior approval from the OTS before a proposed individual becomes a director of, or is employed by a savings association. This authority is also not subject to a requirement that review of requests be completed within 30 days.

Other statutes may also provide authority to review changes in executive officers or directors of savings association or savings and loan holding companies and similarly, are not pre-empted by the section 914 process.

Procedural Requirements

1. Required Information

Section 914 provides that the information required under section 7(j)(6)(a) of the FDIA and such additional information as the OTS may require by regulation is required in notices filed under this section. In particular, section 914 of the FIRREA requires the OTS to review the competence, experience, character, and integrity of an individual proposed for a position as a director or senior executive officer of a savings association or savings and loan holding company.

Notices filed under this section shall be on OTS Form 1393, Biographical and Financial Report, which requests the identity, personal history, business background, and experience of the individual, including financial statements and other relevant financial data, pending legal or administrative proceedings, and an explanation of any criminal indictment or conviction involving the individual. The OTS may modify these requirements where appropriate, but in no event will the OTS require less information than is required by section 7(j)(6)(A) of the FDIA, and the OTS may request additional information necessary to permit a full evaluation of the competence, experience, character, or integrity of the individual with respect to whom the notice has been filed, or of the public interest factors the OTS must consider.

2. Special Notice Rule for Publicly-Held Diversified Savings and Loan Holding Companies

The existence of multi-tiered diversified savings and loan holding companies, where the subsidiary savings association of such savings and loan holding company represents a small percentage of the aggregate operations of such company, presents a unique issue for the OTS in implementing section 914. Accordingly, the OTS has determined that abbreviated notice requirements will be available for multi-tiered diversified savings and loan holding companies that have a class of equity securities registered under the Securities Exchange Act of 1934 and that, therefore, already prepare substantial information regarding their directors and senior officials. With respect to such companies, a Form 1393 for a subject individual will be required only for persons employed by, or serving on the board of directors of, the savings and loan holding company that directly controls a savings association. However, if such savings and loan holding company is a "shell," i.e., a minimally capitalized company without substantial assets and lacking independent operations, then that company and its immediate parent company, *i.e.*, the company that controls such shell company, shall also be required to provide a Form 1393 for its directors and senior executive officers. In addition, in the event such second company also is a shell, then the company above it shall be subject to such requirements, and so on, until at least one savings and loan holding company in the line of ownership that is not a shell is subject to the notification requirements of this provision.

Companies in a multi-tiered diversified savings and loan holding company structure that are not required to submit Form 1393 by virtue of this special rule may satisfy the OTS's notice requirements under section 914 by submitting: (1) Copies of materials that are used in the savings and loan holding company's securities disclosure documents filed pursuant to the Securities Exchange Act that provide information on the individual to which the notice pertains, and (2) the OTS's RB–20 certification regarding such individual's involvement in certain types of legal proceedings. Where such material is not available, then the regular notice requirements will be applicable.

Notwithstanding this special rule, the OTS may require any such additional information as is necessary to adequately evaluate a notice filed under this section.

3. Who May File

The OTS has determined that the notice shall be submitted by the savings association or savings and loan holding company. Each individual, on whose behalf a notice is filed, must certify that, to the best of his or her knowledge and belief, all of the information filed is true, correct, complete and made in good faith and a senior official of the savings association or savings and loan holding company must certify that the information pertaining to that individual has been reviewed by the filing savings association or savings and loan holding company and that the information submitted is consistent with information obtained through a background investigation conducted by the savings association or savings and loan holding company. Where the interests of the individual and the savings association or savings and loan holding company are at odds, such as a proxy contest situation, the notice may be submitted to the OTS directly by the individual. In such case, the individual must certify that he or she provided the savings association or savings and loan holding company all non-confidential information contained in the notice and likewise, certify that, to the best of his or her knowledge and belief, all of the information filed is true, correct, complete and made in good faith.

4. Processing Timeframes

After the initial filing of a notice pursuant to section 914, the OTS will conduct a completeness review of the filing. This initial review is solely for the purpose of determining whether sufficient information is included in the notice for the agency to assess the competence, experience, character, and

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company structure that are not required to submit Form 1393 by virtue of this special rule may satisfy the OTS's notice requirements under section 914 by submitting: (1) Copies of materials that are used in the savings and loan holding company's securities disclosure documents filed pursuant to the Securities Exchange Act that provide information on the individual to which the notice pertains, and (2) the OTS's RB–20 certification regarding such individual's involvement in certain types of legal proceedings. Where such material is not available, then the regular notice requirements will be applicable.

Notwithstanding this special rule, the OTS may require any such additional information as is necessary to adequately evaluate a notice filed under this section.

3. Who May File

The OTS has determined that the notice shall be submitted by the savings association or savings and loan holding company. Each individual, on whose behalf a notice is filed, must certify that, to the best of his or her knowledge and belief, all of the information filed is true, correct, complete and made in good faith and a senior official of the savings association or savings and loan holding company must certify that the information pertaining to that individual has been reviewed by the filing savings association or savings and loan holding company and that the information submitted is consistent with information obtained through a background investigation conducted by the savings association or savings and loan holding company. Where the interests of the individual and the savings association or savings and loan holding company are at odds, such as a proxy contest situation, the notice may be submitted to the OTS directly by the individual. In such case, the individual must certify that he or she provided the savings association or savings and loan holding company all non-confidential information contained in the notice and likewise, certify that, to the best of his or her knowledge and belief, all of the information filed is true, correct, complete and made in good faith.

4. Processing Timeframes

After the initial filing of a notice pursuant to section 914, the OTS will conduct a completeness review of the filing. This initial review is solely for the purpose of determining whether sufficient information is included in the notice for the agency to assess the competence, experience, character, and

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integrity of the subject individual. In this regard, if the submitting party has not been notified to the contrary by the OTS within 15 days after submission of the notice, then the notice will be deemed complete as of the date of the original filing of the notice with the agency. However, in circumstances where new information becomes available to the OTS after a notice has been deemed complete, the agency may deem a notice not complete and request additional information, if necessary. In the event that additional information is required, the OTS will contact the appropriate party to request such information. Such party should attempt to respond accurately and completely to the additional information request within 15 days. After a submission is deemed complete, the agency will either disapprove or issue a notice of intention not to disapprove the notice within 30 days of the completeness date. If the OTS does not take either of such actions, the notice will be deemed not disapproved 30 days from the date of completeness.

5. Notice Requirement

Notices are required to be filed for the two years after a savings association has been chartered, for the two years after a savings association or savings and loan holding company has directly or indirectly undergone a change in control, or if a savings association or savings and loan holding company is in a troubled condition. Under the literal language of the provision, a notice is not required to be filed for individuals who will join an association or holding company simultaneously with the chartering of such savings association or at the time a savings association or a savings and loan holding company undergoes a change in control. In this regard, the OTS notes that due to the fact that substantially identical standards for evaluating managerial resources exists under the Change in Bank Control Act and the Savings and Loan Holding Company Act, it would be duplicative to require a section 914 notice in these circumstances, particularly in light of the fact that the same form (OTS Form 1393) is being used for both purposes.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), it is certified that this proposal will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis is not required.

Executive Order 12291

OTS has determined that this proposal is not a "major rule" and therefore does not require a Regulatory Impact Analysis.

List of Subjects in 12 CFR Part 574

Administrative practice and procedure, Holding companies, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision hereby proposes to amend part 574, subchapter D, chapter V, title 12, Code of Federal Regulations as set forth below:

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

1. The authority citation for part 574 continues to read as follows:

Authority: Sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a; sec. 2(7), 64 Stat. 876, as amended (12 U.S.C. 1817).

2. New § 574.10 is added to read as follows:

§ 574.10 Additions of directors and employment of senior executive officers of savings associations and savings and loan holding companies.

(a) *Definitions.* As used in this section and in the forms under this section, the following definitions apply, unless the context otherwise requires:

(1) *Director.* The term *director* means any individual who serves on the board of directors of a savings association or savings and loan holding company, except that such term does not include an advisory director who was not elected by the shareholders of the savings association or savings and loan holding company and is not authorized to vote on any matters before the board of directors, but provides only general policy advice to the board of directors. However, the term does include an advisory director who performs the same functions as a director or who exercises significant influence over, or participates in, major policy making decisions of the board of directors of a savings association or savings and loan holding company.

(2) *Senior Executive Officer.* The term *senior executive officer* means any individual who exercises significant influence over, or participates in, major policy making decisions of a savings association or savings and loan holding company without regard to title, salary, or compensation. The term includes but is not limited to the president, chief executive officer, chief operating officer, chief financial officer, chief lending officer, chief investment officer, general counsel, or their functional equivalents. The term also includes employees of entities retained by a savings association or savings and loan holding company to perform such functions in lieu of directly hiring the designated individuals.

(3) *Troubled Condition.* The term *troubled condition* means:

(i) Any savings association:

(A) That has a composite rating of 4 or 5 under the MACRO Rating System; or

(B) That is subject to a capital directive or a formal enforcement action or proceeding with the Office, or a written agreement entered into with the Office, relating to the safety and soundness or financial viability of the savings association; or

(C) That is informed in writing by the Office that it has been designated in *troubled condition* for the purposes of this section based on the current financial statements or report of examination, inspection, or limited scope review of the savings association; or

(ii) Any savings and loan holding company:

(A) That is subject to a formal enforcement action or proceeding with the Office, or a written agreement entered into with the Office, relating to the safety and soundness or financial viability of its subsidiary savings association; or

(B) That is informed in writing by the Office that it has been designated as in *troubled condition* for the purposes of this section as a result of the current financial statements or report of examination, inspection, or limited scope review, or periodic filings or other filings of the holding company or its subsidiary savings; or

(C) That the Office determines is having a detrimental or burdensome effect on its subsidiary savings association or that requires more than the normal level of supervision.

(b) *Prior Notice.* A savings association or savings and loan holding company shall provide written notice to the Office at least 30 days prior to the effective date of any addition or replacement of a member of the board of directors, or the employment or change in responsibilities of any individual to a position as a senior executive officer or director, if:

(1) In the case of a savings association, the savings association has been chartered less than two years; or

(2) Within the preceding two years of the proposed addition or employment, the savings association or savings and loan holding company has directly or indirectly undergone a change in control subject to the Change in Bank Control Act, 12 U.S.C. 1817(j) (or if a change in

control occurred prior to August 9, 1989, the Change in Savings and Loan Control Act, formerly 12 U.S.C. 1730(q)), or the Savings and Loan Holding Company Act, 12 U.S.C. 1467a, and the regulations promulgated thereunder at 12 CFR part 574, or the Reports of change in control of mutual savings associations, 12 CFR 563.181, excluding, however, transactions involving existing approved control parties and acquisitions of control that do not result in substantive changes of control, as determined by the District Director upon written request; or

(3) In the case of a savings association, the savings association is not in compliance with all of its applicable regulatory capital requirements established pursuant to 12 CFR part 567 or the savings association or the savings and loan holding company is otherwise in a troubled condition, as defined herein.

(c) *Procedures*—(1) *Filing Requirements.* (i) Notices shall be filed in accordance with the filing procedures set forth in 12 CFR 500.32(c)(5). Except as noted in paragraph (c)(2) of this section, the Office's Form 1393 shall be used for all such notices filed. Copies of all forms referenced in this section may be obtained from the Office of Communications, Information Services Division at the address listed in § 500.32(a) of this chapter.

(ii) The notice shall be submitted by the savings association or savings and loan holding company; each individual on whose behalf a notice is filed must certify that, to the best of his or her knowledge and belief, all the information filed is true, correct, complete and made in good faith; and a senior official of the savings association or savings and loan holding company must certify that information pertaining to that individual has been reviewed by the filing savings association or savings and loan holding company and that the information submitted is consistent with information obtained through a background investigation conducted by the savings association or savings and loan holding company. Where the interests of the individual and the savings association or savings and loan holding company may be at odds, such as a proxy contest, the notice may be submitted to the Office directly by the individual. In such case, the individual must certify that he or she provided the savings association or savings and loan holding company all nonconfidential information contained in the notice and likewise, certify that, to the best of his or her knowledge and belief, all of the information filed is true, correct, complete and made in good faith.

(iii) After the initial receipt of a notice, the Office may require additional information.

(iv) The 30-day notice period will begin on the date the Office determines that all required information has been provided and notifies the savings association or savings and loan holding company that the notice is deemed complete.

(2) *Special Notice Rule for Publicly-Held Diversified Savings and Loan Holding Companies.* (i) With respect to multi-tiered diversified savings and loan holding companies with a class of equity securities registered under the Securities Exchange Act of 1934, the notification required by paragraph (c)(1) of this section will only be required for the savings and loan holding company that directly controls a savings association; provided, however, that if such company is without substantial assets other than the ownership of the subsidiary savings association, then the company that directly controls such savings and loan holding company shall also be subject to the notification requirement of paragraph (c)(1) of this section; further provided that, in the event the first indirect savings and loan holding company also is without substantial assets other than the ownership of the direct savings and loan holding company, then each company that directly and/or indirectly holds the indirect savings and loan holding company shall be subject to the notification requirement of paragraph (c)(1) of this section until a savings and loan holding company in the line of ownership that has substantial assets other than the indirect ownership of the savings association is subject to the notification requirement of paragraph (c)(1) of this section.

(ii) Other savings and loan holding companies in a multi-tier ownership structure described in paragraph (c)(2)(i) of this section may satisfy the notification requirement of paragraph (c)(1) of this section by submitting:

(A) An executed copy of the Office's RB–20 certification regarding the subject individual's involvement in certain types of legal proceedings, and

(B) Copies of all materials used in the savings and loan holding companies, securities disclosure documents, filed pursuant to the Securities Exchange Act of 1934, which provide information on the individual to which the notice pertains. Where such material is not available, then the regular notice requirements shall be applicable.

(iii) Notwithstanding the provisions of paragraphs (c)(2)(i) and (ii) of this section, the Office may require such additional information as is necessary to adequately evaluate a notice.

(3) *Notice of Disapproval.* The Office may disapprove an individual proposed as a member of the board of directors or senior executive officer of a savings association or savings and loan holding company upon determining that, on the basis of the individual's competence, experience, character, or integrity, it would not be in the best interests of the depositors of the savings association or in the best interests of the public to permit the individual to be employed by, or associated with, the savings association or the savings and loan holding company. If the Office disapproves an individual, the savings association or savings and loan holding company will be notified. The notice of disapproval will contain a statement of the basis for disapproval.

(4) *Commencement of Service.* (i) An individual proposed as a member of the board of directors or senior executive officer of a savings association or savings and loan holding company may begin service 30 days after a complete notice under paragraph (c)(1) of this section has been accepted by the Office unless the Office issues a notice of disapproval of the proposed addition or employment by end of the 30-day period.

(ii) An individual proposed as a member of the board of directors or as a senior executive officer of a savings association or savings and loan holding company may begin service before the expiration of the 30-day period if the Office notifies the savings association or savings and loan holding company in writing of an intention not to disapprove the addition or employment.

(5) *Waiver of Prior Notice.* The Office may waive the prior notice requirement but not the filing of a notice under this section if the Office finds that delay would not be in the best interest of the savings association or the savings and loan holding company or the public interest, or that other extraordinary circumstances justify waiving the prior notice requirement of this provision. If a waiver is granted, the required notice shall be filed within the time period specified in the waiver. A waiver shall not affect the authority of the Office subsequently to issue a notice of disapproval within 30 days of the receipt of a complete notice under paragraph (c)(1) of this section.

(6) *Appeal.* Within 20 days of receipt of a notice of disapproval, the disapproved individual (if the notice was directly submitted by the individual as detailed in paragraph (c)(1)(ii) of this section), the savings association or savings and loan holding company may

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(3) *Notice of Disapproval.* The Office may disapprove an individual proposed as a member of the board of directors or senior executive officer of a savings association or savings and loan holding company upon determining that, on the basis of the individual's competence, experience, character, or integrity, it would not be in the best interests of the depositors of the savings association or in the best interests of the public to permit the individual to be employed by, or associated with, the savings association or the savings and loan holding company. If the Office disapproves an individual, the savings association or savings and loan holding company will be notified. The notice of disapproval will contain a statement of the basis for disapproval.

(4) *Commencement of Service.* (i) An individual proposed as a member of the board of directors or senior executive officer of a savings association or savings and loan holding company may begin service 30 days after a complete notice under paragraph (c)(1) of this section has been accepted by the Office unless the Office issues a notice of disapproval of the proposed addition or employment by end of the 30-day period.

(ii) An individual proposed as a member of the board of directors or as a senior executive officer of a savings association or savings and loan holding company may begin service before the expiration of the 30-day period if the Office notifies the savings association or savings and loan holding company in writing of an intention not to disapprove the addition or employment.

(5) *Waiver of Prior Notice.* The Office may waive the prior notice requirement but not the filing of a notice under this section if the Office finds that delay would not be in the best interest of the savings association or the savings and loan holding company or the public interest, or that other extraordinary circumstances justify waiving the prior notice requirement of this provision. If a waiver is granted, the required notice shall be filed within the time period specified in the waiver. A waiver shall not affect the authority of the Office subsequently to issue a notice of disapproval within 30 days of the receipt of a complete notice under paragraph (c)(1) of this section.

(6) *Appeal.* Within 20 days of receipt of a notice of disapproval, the disapproved individual (if the notice was directly submitted by the individual as detailed in paragraph (c)(1)(ii) of this section), the savings association or savings and loan holding company may

appeal to the Office the disapproval on the grounds that the reasons given for disapproval are contrary to fact, that such reasons given are insufficient to justify disapproval, or both. The appeal shall be filed in accordance with the filing procedures set forth in 12 CFR 500.32(c)(2)(i). The appeal shall attach whatever documents and written arguments the appealing party wishes to be considered in support of the appeal. The notice of disapproval shall be sustained unless the appealing party clearly demonstrates that the disapproval is unjustified. Written notice of a final decision shall be sent to the appealing party. If an appeal is not filed within the time period required under this section, any objection to the notice of disapproval is waived. A timely appeal filed in accordance with the provision of this section shall be mandatory for securing judicial review of a notice of disapproval.

Date: March 11, 1991.

By the Office of Thrift Supervision.

Timothy Ryan,
Director.

[FR Doc. 91-18427 Filed 8-2-91; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-134-AD]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain British Aerospace Model ATP series airplanes, which currently requires repetitive visual inspections to detect cracks in the rudder lower hinge attachment brackets, and to check the security of the fasteners in this area, and repair, if necessary. This action would provide an additional terminating action for the repetitive inspections required by the existing AD. This proposal is prompted by a further evaluation by the FAA of the modification which provides terminating action for the repetitive inspections. This condition, if not corrected, could impair the operation of the rudder and result in reduced directional control of the airplane.

DATES: Comments must be received no later than September 17, 1991.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-134-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number ana be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-134-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On April 8, 1991, the FAA issued AD 91-09-13, Amendment 39-6979 (56 FR 18697, April 24, 1991), to require repetitive visual inspections to detect cracks in the rudder lower hinge attachment brackets, and to check the security of the fasteners in this area, and repair, if necessary. That action was prompted by reports of cracked and loose or failed fasteners in the rudder lower hinge lower attachment rib angle brackets attached to the front spar of the rudder. This condition; if not corrected, could impair the operation of the rudder and result in reduced directional control of the airplane.

Since issuance of that AD, the FAA has evaluated further Modification 10170A, which is described in paragraph D. of the existing AD. The FAA has determined that, in addition to providing terminating action for the repetitive inspections required by paragraph A. (applicable to airplanes with rudders in pre-Modification 10165A configuration) and paragraph B. (applicable to airplanes with rudders fitted with Modification 10165A during production) of the existing AD, the installation of Modification 10170A also provides terminating action for the repetitive inspections required by paragraph C. (applicable to airplanes with rudders fitted with Modification 10165A in accordance with British Aerospace Service Bulletin ATP-55-4, or by previous repair or replacement action). This amendment proposes to include the installation of Modification 10170A as an additional means of terminating the repetitive inspections required by paragraph C. of the AD.

British Aerospace has issued Service Bulletin ATP-55-3, Revision 4, dated June 28, 1990, which describes procedures for repetitive visual inspections to detect cracks in the rudder lower hinge attachment brackets, and to check the security of the fasteners in this area, and repair, if necessary. The United Kingdom Civil Aviation Authority (CAA) has classified this service bulletin as mandatory.

British Aerospace has also issued Service Bulletin ATP-55-5, Revision 1, dated January 3, 1991, which describes procedures for the installation of Modification 10170A, including strengthening the rudder lower hinge ribs at Stations 29.582, 27.582, and 24.82. Accomplishment of this modification would eliminate the need for the repetitive inspections recommended by Service Bulletin ATP-55-3. The United Kingdom CAA has not classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal

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Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would supersede AD 91-09-13 with a new airworthiness directive that would provide an additional terminating action for the repetitive inspections required for certain airplanes by the existing AD, in accordance with the service bulletins previously described.

It is estimated that 4 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1 manhour per airplane to accomplish the required inspections, and that the average labor cost would be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $220.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-6979 and by adding the following new airworthiness directive:

British Aerospace: Docket No. 91-NM-134-AD.

Applicability: All Model ATP series airplanes which have not installed Modification 10170A (described in British Aerospace Service Bulletin ATP-55-5), certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent reduced directional control of the airplane due to impairment of the operation of the rudder, accomplish the following:

(a) For airplanes with rudders in pre-Modification 10165A configuration: Prior to the accumulation of 750 hours time-in-service, or within 125 hours time-in-service after May 28, 1991 (the effective date of AD 91-09-13, Amendment 39-6979), whichever occurs later, and thereafter at intervals not to exceed 125 hours time-in-service, perform a detailed visual inspection of the angle brackets attaching the hinge ribs at Stations 27.582 and 29.582 for cracks, and a detailed visual inspection of the fasteners attaching the reinforcing plates for security, in accordance with paragraph 2.A. of British Aerospace Service Bulletin ATP 55-3, Revision 4, dated June 28, 1990.

(1) If cracking or local distortion is found on the angles or doubling plate flanges on the front face of the rudder spar, prior to further flight, remove the bolts and doubling plates, and perform a detailed visual inspection in accordance with paragraph 2.B. of the service bulletin.

(2) All items found cracked and all rivets found distorted or insecure must be replaced with a serviceable part prior to further flight, in accordance with paragraph 2.C of the service bulletin.

(b) For airplanes with rudders fitted with Modification 10165A during production: Prior to the accumulation of 6,250 hours time-in-service, or within 30 days after May 28, 1991 (the effective date of AD 91-09-13, Amendment 39-6979), whichever occurs later, and thereafter at intervals not to exceed 500 hours time-in-service, perform a detailed visual inspection of the angle brackets attaching the hinge ribs at Stations 27.582 and 29.582 for cracks, and a detailed visual inspection of the fasteners attaching the reinforcing plates for security, in accordance with paragraph 2.A. of British Aerospace Service Bulletin ATP 55-3, Revision 4, dated June 28, 1990.

(1) If cracking or local distortion is found on the angles or doubling plate flanges on the front face of the rudder spar, prior to further flight, remove the bolts and doubling plates, and perform a detailed visual inspection in accordance with paragraph 2.B. of the service bulletin.

(2) All items found cracked and all rivets found distorted or insecure must be replaced with a serviceable part prior to further flight in accordance with paragraph 2.C. of the service bulletin.

(c) For airplanes with rudders fitted with Modification 10165A in accordance with British Aerospace Service Bulletin ATP-55-4, or by previous repair or replacement action: Prior to the accumulation of 500 hours time-in-service following installation, or within 30 days after May 28, 1991 (the effective date of AD 91-09-13, Amendment 39-6979), whichever occurs later, and thereafter at intervals not to exceed 500 hours time-in-service, perform a detailed visual inspection of the angle brackets attaching the hinge ribs at Stations 27.582 and 29.582 for cracks, and a detailed visual inspection of the fasteners attaching the reinforcing plates for security, in accordance with paragraph 2.A. of British Aerospace Service Bulletin ATP 55-3, Revision 4, dated June 28, 1990.

(1) If cracking or local distortion is found on the angles or doubling plate flanges on the front face of the rudder spar, prior to further flight, remove the bolts and doubling plates, and perform a detailed visual inspection in accordance with paragraph 2.B. of the service bulletin.

(2) All items found cracked and all rivets found distorted or insecure must be replaced with a serviceable part prior to further flight in accordance with paragraph 2.C. of the service bulletin.

(d) The installation of Modification 10170A, which includes strengthening the rudder lower hinge ribs at Stations 27.582, 29.582, and 24.82, in accordance with British Aerospace Service Bulletin ATP 55-5, Revision 1, dated January 3, 1991, constitutes terminating action for the repetitive inspections required by paragraphs (a), (b), and (c) of this AD.

(e) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on July 18, 1991.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-18467 Filed 8-2-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-136-AD]

**Airworthiness Directives;
Douglas Model DC-9-10,
and -50 Series Airplanes
(Military) Series Airplanes**

AGENCY: Federal Aviation
Administration (FAA), DO

ACTION: Notice of Propose
(NPRM).

SUMMARY: This notice prop
supersede an existing airw
directive (AD), applicable
McDonnell Douglas Model
airplanes, which currently
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checks of the tailcone rele
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DATES: Comments must be
later than September 23, 1

ADDRESSES: Send commen
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136-AD, 1601 Lind Avenue
Washington 98055-4056. T
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Post Office Box 1771, Long
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Directorate, 1601 Lind Ave
Renton, Washington; or at
Angeles Aircraft Certificat
3229 East Spring Street, Lo
California.

FOR FURTHER INFORMATIO
Andrew Gfrerer, Aerospac
ANM-131L, Los Angeles A
Certification Office, FAA,
Airplane Directorate, 3229
Street, Long Beach, Califor
2425; telephone (213) 988-

SUPPLEMENTARY INFORMA
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(c) For airplanes with rudders fitted with Modification 10165A in accordance with British Aerospace Service Bulletin ATP–55–4, or by previous repair or replacement action: Prior to the accumulation of 500 hours time-in-service following installation, or within 30 days after May 28, 1991 (the effective date of AD 91–09–13, Amendment 39–6979), whichever occurs later, and thereafter at intervals not to exceed 500 hours time-in-service, perform a detailed visual inspection of the angle brackets attaching the hinge ribs at Stations 27.582 and 29.582 for cracks, and a detailed visual inspection of the fasteners attaching the reinforcing plates for security, in accordance with paragraph 2.A. of British Aerospace Service Bulletin ATP 55–3, Revision 4, dated June 28, 1990.

(1) If cracking or local distortion is found on the angles or doubling plate flanges on the front face of the rudder spar, prior to further flight, remove the bolts and doubling plates, and perform a detailed visual inspection in accordance with paragraph 2.B. of the service bulletin.

(2) All items found cracked and all rivets found distorted or insecure must be replaced with a serviceable part prior to further flight in accordance with paragraph 2.C. of the service bulletin.

(d) The installation of Modification 10170A, which includes strengthening the rudder lower hinge ribs at Stations 27.582, 29.582, and 24.82, in accordance with British Aerospace Service Bulletin ATP 55–5, Revision 1, dated January 3, 1991, constitutes terminating action for the repetitive inspections required by paragraphs (a), (b), and (c) of this AD.

(e) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on July 18, 1991.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–18467 Filed 8–2–91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91–NM–136–AD]

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 Series Airplanes and C–9 (Military) Series Airplanes.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9 series airplanes, which currently requires repetitive inspections and functional checks of the tailcone release system for proper operation. This action would require replacement or modification of the internal and external tailcone release system cable and handle assemblies. This proposal is prompted by reports of the tailcone failing to drop away when release activation was attempted. This condition, if not corrected, could result in the inability of passengers and crew members to exit through the tail of the airplane during an emergency evacuation.

DATES: Comments must be received no later than September 23, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, attention: Airworthiness Rules Docket No. 91–NM–136–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from McDonnell Douglas Corporation, Post Office Box 1771, Long Beach, California 90801, attn: Business Unit Manager, Technical Publications, Technical Administration Support, C1–L5B(45–60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Andrew Gfrerer, Aerospace Engineer, ANM–131L, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California, 90806–2425; telephone (213) 988–5338.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91–NM–136–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On January 10, 1991, the FAA issued AD 91–02–13; Amendment 39–6867 (56 FR 1911, January 18, 1991), to require repetitive inspections and functional checks for proper operation of the tailcone release system on McDonnell Douglas Model DC–9 series airplanes. That action was prompted by reports of discrepancies within the tailcone release system which prevented, or could prevent, the tailcone from releasing from the airplane when actuated. This condition, if not corrected, could result in the inability of passengers and crew members to exit through the tail of the airplane during an emergency evacuation.

Since issuance of that AD, there have been a number of tailcone release handles that have been found broken or cracked. The McDonnell Douglas Corporation and the FAA have investigated this problem and have determined that the currently-installed internal and external tailcone release system handles cannot adequately support a sideload. A modified handle recently has been developed, the design of which precludes the addressed cracking/breaking problems.

The FAA has also received reports of a number of other discrepancies with the tailcone release system, which are currently being evaluated for possible mandatory corrective action.

The FAA has reviewed and approved McDonnell Douglas Service Bulletin 53–245, Revision 1, dated June 12, 1991, which describes procedures for replacing or modifying the internal and external tailcone release system cable and handle assemblies.

The FAA has also reviewed and approved McDonnell Douglas Alert Service Bulletin A53–243, Revision 1, dated February 8, 1991, which has been revised to include procedures for external and internal inspections of the tailcone release system assembly, which were formerly contained in Alert Service Bulletin, A53–242, dated December 20, 1990 (the service bulletin cited in AD 91–02–13); and to revise the functional testing procedures.

(Note: The original issue of this alert service bulletin, which was cited in AD 91–02–13, contains instructions only for the functional test.)

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede AD 91–02–13 with a new airworthiness directive that would continue to require inspections of the tailcone release handles for cracks, and functional testing of the tailcone release system; and would require eventual replacement or modification of the internal and external tailcone release system cable and handle assemblies in accordance with Service Bulletin 53–245, Revision 1, previously described.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

There are approximately 910 Model DC–9–10, –20, –30, –40, and –50 series airplanes and C–9 (Military) series airplanes of the affected design in the worldwide fleet. It is estimated that 590 airplanes of U.S. registry would be affected by this AD, that it would take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. The cost of parts to accomplish the modification is approximately $1,370 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $970,550.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–6867 and by adding the following new airworthiness directive:

McDonnell Douglas: Docket No. 91–NM–136–AD. Supersedes AD 91–02–13.

Applicability: Model DC–9–10, –20, –30, –40, and –50 series airplanes and C–9 (Military) series airplanes, operating in a passenger or passenger/cargo configuration; certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

Note: The requirements of this AD become applicable at the time an airplane in an all-cargo configuration is converted to a passenger or passenger/cargo configuration.

To confirm proper operation and maintenance and to prevent failure of the tailcone release system, accomplish the following:

(a) Within 60 days after February 11, 1991 (the effective date of AD 91–02–13, Amendment 39–6867), unless previously accomplished within the last 60 days, inspect the interior and exterior tailcone release handles for cracks, in accordance with the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin A53–242, dated December 20, 1990, or Alert Service Bulletin A53–243, Revision 1, dated February 8, 1991; and accomplish a tailcone release system functional test in accordance with the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin A53–243, dated January 10, 1991, or Revision 1, dated February 8, 1991.

(1) Cracked or broken tailcone release handles must be replaced prior to further flight.

(2) Discrepancies in the operation of the tailcone release system found as a result of the functional test must be repaired prior to further flight.

(b) Repeat the inspection of the interior and exterior tailcone release handles and conduct the functional test required by paragraph (a) of this AD at intervals not to exceed 3,000 flight hours or 15 months, whichever occurs first.

(c) Report any cracked or broken tailcone release handles or any discrepancies found during the accomplishment of the inspection and functional tests required by paragraph (a) of this AD to the Manager, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425, within 30 days after discovery. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1990 (Pub. L. 96–511) and have been assigned OMB Control Number 2120–0056.

(d) Within 90 days after the effective date of this AD replace or modify the internal and external tailcone release system cable and handle assemblies, in accordance with the Accomplishment Instructions of McDonnell Douglas Service Bulletin 53–245, Revision 1, dated June 12, 1991. Accomplishment of such replacement or modification constitutes terminating action for the repetitive inspections of the interior and exterior tailcone release handles for cracks, as required by paragraph (b) of this AD. However, the repetitive functional checks of the tailcone release system required by paragraph (b) of this AD must continue to be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal, Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, Post Office Box 1771, Long Beach, California 90801, attn: Business Unit Manager, Technical Publications, Technical Administration Support, C1–L5B. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

Issued in Renton, Washington, on July 23, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–18468 Filed 8–2–91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 910761-1161]

RIN 0691–AA17

International Services Surveys: BE–20 Benchmark Survey of Selected Services; Transactions With Unaffiliated Foreign Persons—1991

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Economic Analysis is proposing to amend 15 CFR part 801 by revising § 801.10 to set forth reporting requirements for the BE–20 Benchmark Survey of Selected Services Transactions With Unaffiliated Foreign Persons—1991; existing § 801.10, which contains the rules for the last (1986) benchmark survey, is being deleted.

The BE–20 benchmark survey is conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act. It is taken once every 5 years and is intended to cover the universe of selected U.S. services transactions with unaffiliated foreign persons. In nonbenchmark years, the data from the survey are used to derive universe estimates of these transactions based on sample data collected in the BE–22 annual follow-on survey to the BE–20. The information gathered is needed primarily to support U.S. trade policy initiatives on international services and to compile the U.S. balance of payments and the national income and product accounts.

Two major changes to the BE–20 survey are set forth in these proposed rules:

(1) The exemption criteria for the survey are being changed to significantly improve the coverage of the survey and the accuracy of the geographic detail obtained for critical services, such as data base and other information services, computer and data processing services, etc., and

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Issued in Renton, Washington, on July 23, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-18468 Filed 8-2-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 910761-1161]

RIN 0691-AA17

International Services Surveys: BE-20 Benchmark Survey of Selected Services; Transactions With Unaffiliated Foreign Persons—1991

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Economic Analysis is proposing to amend 15 CFR part 801 by revising § 801.10 to set forth reporting requirements for the BE-20 Benchmark Survey of Selected Services Transactions With Unaffiliated Foreign Persons—1991; existing § 801.10, which contains the rules for the last (1986) benchmark survey, is being deleted.

The BE-20 benchmark survey is conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act. It is taken once every 5 years and is intended to cover the universe of selected U.S. services transactions with unaffiliated foreign persons. In nonbenchmark years, the data from the survey are used to derive universe estimates of these transactions based on sample data collected in the BE-22 annual follow-on survey to the BE-20. The information gathered is needed primarily to support U.S. trade policy initiatives on international services and to compile the U.S. balance of payments and the national income and product accounts.

Two major changes to the BE-20 survey are set forth in these proposed rules:

(1) The exemption criteria for the survey are being changed to significantly improve the coverage of the survey and the accuracy of the geographic detail obtained for critical services, such as data base and other information services, computer and data processing services, etc., and

(2) Several services not previously included in the survey are being added. Specifically, data on receipts and payments for the sale, purchase, or use of rights to natural resources; claims related to purchases of primary insurance; and miscellaneous disbursements, consisting of news-gathering costs of broadcasters and the print media, production costs of broadcasters and motion picture producers, and costs of maintaining business promotion, sales, or representative offices or of participating in foreign trade shows will be collected for the first time.

DATES: Comments on these proposed rules will receive consideration if submitted in writing on or before September 19, 1991.

ADDRESSES: Comments may be mailed to the Office of the Chief, International Investment Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230, or hand delivered to room 1008, Tower Building, 1401 K Street, NW., Washington, DC 20005. Comments will be available for public inspection in room 1008, Tower Building, between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Betty L. Barker, Chief, International Investment Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 523-0659.

SUPPLEMENTARY INFORMATION: BEA is proposing to amend 15 CFR part 801 by revising § 801.10 to set forth reporting requirements for the BE-20, Benchmark Survey of Selected Services Transactions With Unaffiliated Foreign Persons—1991. The survey is conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act (Pub. L. 94-472, 90 Stat. 2059, 22 U.S.C. 3101-3108, as amended by Pub. L. 98-573 and Pub. L. 101-533). Section 4(a) of the Act provides that "The President shall, to the extent he deems necessary and feasible—* * * (4) conduct * * * benchmark surveys with respect to trade in services between unaffiliated United States persons and foreign persons * * *". In section 3 of Executive Order 11961, as amended by Executive Order 12518, the President delegated the authority under the Act as concerns international trade in services to the Secretary of Commerce, who has redelegated it to BEA.

The BE-20 survey is conducted once every 5 years. The new survey will cover 1991; the last survey was conducted for 1986. The survey is intended to cover the universe of selected U.S. services transactions with unaffiliated foreign persons. In nonbenchmark years, universe estimates of these transactions are derived from reported sample data by extrapolating forward the universe data collected in the BE-20 benchmark survey. The data are needed to support U.S. trade policy initiatives, including bilateral and multilateral trade negotiations, on international services, compile the U.S. balance of payments and national income and product accounts, assess U.S. competitiveness in international trade in services, and improve the ability of U.S. businesses to identify and evaluate market opportunities for services trade.

Two major changes to the survey since it was last conducted for 1986 are reflected in these proposed rules:

(1) The Exemption Criteria for the Survey are Being Changed to Significantly Improve the Coverage of the Survey and the Accuracy of the Geographic Detail Obtained for Critical Services

For the 1986 BE-20 survey, the threshold for mandatory reporting was $250,000 per transaction. that is, if an individual transaction in any covered service exceeded $250,000 during the year, it had to be reported. (A transaction was defined as the sum of all purchases, or the sum of all sales, of a particular service between a given U.S. person and a given foreign person during the year.) Such transactions had to be reported by type, disaggregated by country. Smaller transactions in each service were requested to be reported voluntarily, in aggregate for all foreign countries combined, if the total of such transactions exceeded $500,000.

For the 1991 survey, BEA proposes to require respondents to report sales for a given service if total sales of that service exceed $500,000, and to report purchases if total purchases of that service exceed $500,000. Such services must be disaggregated by country. For those types of services for which sales or purchases total $500,000 or less, data are requested to be reported voluntarily, in aggregate for all foreign countries combined.

The $250,000 per-transaction exemption level used in the 1986 survey did not provide adequate information on many services for two reasons: It caused a large proportion of the services to be reported only voluntarily by type, without any country detail, and it also resulted in a significant proportion of services transactions not being reported at all.

Data by individual foreign country and by type of service cross classified by country are available only from the mandatory sections of the survey. Data by type cross classified by country are particularly crucial for the conduct of successful trade negotiations on international services. For example, a bilateral treaty to reduce a foreign country's barriers to U.S. exports of data base and other information services cannot be negotiated or evaluated on the basis of estimates of only the sales of such services worldwide by all U.S. persons combined; what is needed are complete and accurate estimates of transactions of U.S. companies in the particular service with that foreign country alone. Data by country are also needed for compiling and analyzing the U.S. balance of payments accounts.

BEA requested that smaller transactions be reported voluntarily in 1986, in aggregate for all countries combined, for two reasons. First, it wanted to obtain a rough estimate of the amount of data being missed by the mandatory reporting requirement, for use in evaluating the effectiveness of the $250,000 per-transaction exemption level used in 1986 and in considering alternative levels, as necessary, to ensure adequate coverage in subsequent benchmark surveys. It should be noted that the $250,000 per-transaction level in the 1986 survey—the first benchmark survey of services conducted by BEA—was a compromise reached after considerable discussion with respondents about the adequacy and burden of alternative levels. At that time, no data were available on which to judge the adequacy of that, or any other, level. Second, by combining the albeit fragmentary information from the voluntary sections of the form with the data from the mandatory sections, BEA wanted to obtain at least a rough, aggregate estimate of total sales and purchases of the various covered services, even though it recognized that such an aggregate estimate had only limited uses. Detailed data by country and by type of service cross classified by country were not requested to be reported voluntarily because it was felt that respondents would be unwilling to provide such detailed information on a voluntary basis.

The large size of the data reported voluntarily (not by country) in the 1986 BE-20 (and in the BE-22 annual follow-on survey for 1987 forward, which had the same exemption level) indicated that the $250,000 per-transaction exemption level for mandatory reporting was clearly inadequate to obtain the complete and accurate information by country, and by type of service cross classified by country, required for analytical and policy purposes. The voluntary data accounted for over one-half of the totals for a number of important services. Also, for every service covered by the BE–20 except telecommunications, construction, and insurance, the voluntary data accounted for 23 percent or more of total sales or total purchases (including both the voluntary and mandatory data) in at least one recent year.

In addition to inadequate coverage of many services by country and by type cross classified by country, the $250,000 per-transaction exemption level caused a significant amount of services to not be reported at all. Evidence of this is provided in the BE–22 annual follow-on surveys. In those surveys, companies that claimed exemption from mandatory reporting because they had no individual transaction of more than $250,000, and that did not report data voluntarily, were asked to indicate the rough size ranges of their total sales and total purchases of all covered services combined. Some companies indicated that, even though their transactions were small individually, they were sizable in total. The 1986 BE–20 may also have missed transactions of companies that would have claimed exemption from reporting but were not contacted by BEA and small transactions of companies that reported only in the mandatory sections of the survey, and, thus, did not provide data on their small transactions in the voluntary section.

For receipts, coverage problems are particularly serious in data base and other information services; computer and data processing services; and legal services. For payments, large and persistent coverage problems are evident in legal services; educational and training services; and performing arts. For most other covered services, coverage problems are sizable in some years but not in others.

The expected improvement in mandatory coverage outside telecommunications, insurance, and construction is significant under the proposed exemption level. Based on data from the 1989 BE–22 survey, BEA estimates that sales reported in the mandatory section of the survey for the 15 covered services excluding telecommunications would have been $3,715 million under the proposed exemption level instead of $2,541 million, an increase of 46 percent. For 1989 purchases, BEA estimates that data reported for the same 15 services would have been $1,037 million instead of $756 million, an increase of 37 percent.

(2) Several Services not Previously Covered by the BE–20 Survey Are Being Added

BEA proposes to broaden the coverage of the BE–20 to include several additional services. The addition of these services will fill several of the remaining major gaps in Government statistics on international services transactions. A new schedule would cover receipts and payments for the purchase, sale, or use of rights to natural resources, such as oil production royalties. Another new schedule would cover a variety of miscellaneous disbursements, consisting of news-gathering costs of broadcasters and print media, production costs of broadcasters and motion picture producers, disbursements to maintain business promotion, sales, or representative offices, and disbursements for participating in foreign trade shows. BEA would also begin collecting data on claims related to purchases of primary insurance; only purchases of primary insurance (i.e., premiums paid) are currently covered.

One other change reflected in these proposed rules for the 1991 BE–20 survey was first made in the 1987 BE–22 annual follow-on survey to the 1986 BE–20. That change is to delete coverage of purchases and sales of prepackaged computer software from the computer and data processing services category for purposes of this survey. This change was recommended during OMB's clearance of the 1987 BE–22 survey by potential respondents on the basis that transactions in prepackaged software are transactions in goods instead of in services.

During the design of the 1991 BE–20 survey, BEA consulted extensively with both data users and respondents on preliminary proposals for the survey. On March 7, 1991, it mailed a letter to 50 data users and respondents, outlining its preliminary proposals. In that letter, BEA proposed changing the exemption criteria for the survey to require reporting of sales if total sales for all covered services combined (rather than of only a given type of service) exceeded $500,000 and reporting purchases if total purchases for all covered services combined exceeded $500,000. In a meeting with BEA staff on April 26, representatives of the Business Council on the Reduction of Paperwork (BCORP) expressed concern about the burden of such an exemption level. As a result, BEA changed its proposal to apply the $500,000 exemption level to total sales of each type of service separately, rather than to total sales of all covered services combined. This change eliminates reporting of those individual services for which purchases or sales were $500,000 or less but which, when combined with purchases or sales of all other covered services, would sum to more than $500,000.

BEA also considered continuing to base the exemption level upon the size of an individual transaction but to lower the threshold for mandatory reporting from $250,000. BEA decided not to do so for two reasons. First, BEA has no information on the amount of data that would be reported under alternative threshold amounts, and therefore does not know what level would provide adequate coverage of each service. (Anecdotal evidence suggests that, for some services, such as computer and data processing services, or data base and other information services, the exemption level probably would have to be set near zero to assure adequate coverage.) Second, BEA received a number of exemption claims from companies that checked the exemption claim box indicating they had more than $10 million in total sales or total purchases but no one transaction of $250,000 or more. Exempt companies that checked that box might have had $10.1 million in transactions or $100 million in transactions; BEA has no basis to judge, but the amounts involved are potentially sizable. Also many companies reported sizable amounts of data only voluntarily, not disaggregated by individual foreign country. The proposed exemption level would assure that the companies that are the largest purchasers or sellers of a particular service would be required to report data by individual foreign country.

In its consideration of whether or not to add services to the 1991 BE–20 survey, BEA recognized that one of the major remaining gaps in U.S. Government statistics on international services is the lack of information on financial services. However, BEA decided not to propose the addition of questions related to financial services now, but is studying possible ways to obtain information on such services, including adding questions to the 1992 BE–22 survey. BEA also decided not to propose adding questions at this time on a number of nonfinancial services, including medical services, merchant trader commissions, real estate commissions, finder's fees, and clearance of credit card vouchers.

In the meeting with representatives of BCORP, it was suggested that BEA stop covering several of the smallest services on the survey, because the cost to

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than to total sales of all covered services combined. This change eliminates reporting of those individual services for which purchases or sales were $500,000 or less but which, when combined with purchases or sales of all other covered services, would sum to more than $500,000.

BEA also considered continuing to base the exemption level upon the size of an individual transaction but to lower the threshold for mandatory reporting from $250,000. BEA decided not to do so for two reasons. First, BEA has no information on the amount of data that would be reported under alternative threshold amounts, and therefore does not know what level would provide adequate coverage of each service. (Anecdotal evidence suggests that, for some services, such as computer and data processing services, or data base and other information services, the exemption level probably would have to be set near zero to assure adequate coverage.) Second, BEA received a number of exemption claims from companies that checked the exemption claim box indicating they had more than $10 million in total sales or total purchases but no one transaction of $250,000 or more. Exempt companies that checked that box might have had $10.1 million in transactions or $100 million in transactions; BEA has no basis to judge, but the amounts involved are potentially sizable. Also many companies reported sizable amounts of data only voluntarily, not disaggregated by individual foreign country. The proposed exemption level would assure that the companies that are the largest purchasers or sellers of a particular service would be required to report data by individual foreign country.

In its consideration of whether or not to add services to the 1991 BE–20 survey, BEA recognized that one of the major remaining gaps in U.S. Government statistics on international services is the lack of information on financial services. However, BEA decided not to propose the addition of questions related to financial services now, but is studying possible ways to obtain information on such services, including adding questions to the 1992 BE–22 survey. BEA also decided not to propose adding questions at this time on a number of nonfinancial services, including medical services, merchant trader commissions, real estate commissions, finder's fees, and clearance of credit card vouchers.

In the meeting with representatives of BCORP, it was suggested that BEA stop covering several of the smallest services on the survey, because the cost to respondents of assembling the data, or even of determining whether or not they had any transactions in those services, was not justified by the small amounts of data that were reported. However, the five smallest services (agricultural services; mailing, reproduction, and commercial art; management of health care facilities; accounting, auditing, and bookkeeping services; and employment agencies and temporary help supply services) together account for a significant amount of data (more as a group than some other services individually), and dropping them would adversely contribute to the statistical gap in the U.S. balance of payments accounts. Further, if dropped, BEA would have difficulty in resurrecting them for the BE–20 survey in 5 or 10 years, because it would not know whether or to what extent they had grown in the interim. As a compromise, BEA proposes to continue including the five smallest services in the 1991 and subsequent benchmark surveys, but excluding them from the BE–22 annual surveys for nonbenchmark years as long as the benchmark surveys continue to indicate that they are small.

BEA believes its current proposals reflect a reasonable balance between the needs of data users for more complete, accurate, detailed, and timely data, and the concerns of respondents about the burdens imposed.

Copies of the proposed survey forms may be obtained from: Office of the Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 523-0659.

Paperwork Reduction Act

These proposed rules contain a collection of information requirement subject to the Paperwork Reduction Act.

The public reporting burden for this collection of information is estimated to vary from 4 to 500 hours per response, with an average of 13.2 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding the burden estimate, including suggestions for reducing this burden, may be sent to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project 0608–0058, Washington, DC 20503.

Executive Order 12291

BEA has determined that these proposed rules are not "major" as defined in E.O. 12291 because they are not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12612

These proposed rules do not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

Regulatory Flexibility Act

The General Counsel, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities. The exemption level for the survey excludes most small businesses from mandatory reporting. Reporting is required only if total sales or total purchases transactions in a given type of service with unaffiliated foreigners exceed $500,000 during the year. In addition, international business, whether in goods or services, tends to be conducted mainly by the larger companies in a given industry. Finally, small businesses tend to have specialized operations and activities, so those that do have reportable transactions will likely have to report only one type of service; therefore, the burden on them should be relatively small.

List of Subjects in 15 CFR Part 801

Economic statistics, Balance of payments, Foreign trade, Reporting and recordkeeping requirements, Services.

Dated: July 30, 1991.

Allan H. Young,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA proposes to amend 15 CFR part 801 as follows:

PART 801—[AMENDED]

1. The authority citation for 15 CFR part 801 continues to read as follows:

Authority: 5 U.S.C. 301, 22 U.S.C. 3101–3108, and E.O. 11961, as amended.

2. Section 801.10 is revised to read as follows:

§ 801.10 Rules and regulations for the BE-20, Benchmark Survey of Selected Services Transactions With Unaffiliated Foreign Persons—1991.

A BE–20, Benchmark Survey of Selected Services Transactions With Unaffiliated Foreign Persons, will be conducted covering companies' 1991 fiscal year. All legal authorities, provisions, definitions, and requirements contained in § 801.1 through § 801.9(a) are applicable to this survey. Additional rules and regulations for the BE–20 survey are given below. More detailed instructions are given on the report form itself.

(a) The BE–20 survey consists of two parts and eight schedules. Part I (Name, Address, and Determination of Reporting Status) requests information needed to determine whether a report is required and which schedules apply. Part II (Identification and Selected Financial and Operating Data of U.S. Reporter) requests information about the reporting entity. Each of the eight schedules covers one or more different types of services and is to be completed only if the U.S. Reporter has transactions of the type(s) covered by the particular schedule.

(b) *Who is to report and transactions to be reported.* (1) Mandatory reporting—A BE–20 report is required from each U.S. person who had transactions (either sales or purchases) in excess of $500,000 with unaffiliated foreign persons in any of the services listed in paragraph (c) of this section during the U.S. person's 1991 fiscal year.

(i) The determination of whether a U.S. person is subject to this mandatory reporting requirement may be judgmental, that is, based on the judgment of knowledgeable persons in a company who can identify reportable transactions on a recall basis, with a reasonable degree of certainty, without conducting a detailed manual records search.

(ii) Reporters who must file pursuant to this mandatory reporting requirement must complete parts I and II of Form BE–20 and all applicable schedules. The total amounts of transactions applicable to a particular schedule are to be entered in the appropriate column(s) on line 1, section A of the schedule. In addition, these amounts must be distributed below line 1 to the country(ies) involved in the transaction(s).

(iii) Application of the $500,000 exemption level to each covered service is indicated on the schedule for that particular service. It should be noted that an item other than sales or purchases may be used as the measure of a given service for purposes of determining whether the threshold for mandatory reporting of the service is exceeded.

(2) Voluntary reporting—If, during the U.S. person's 1991 fiscal year, the U.S. person's total transactions (either sales or purchases) in any of the types of services listed in paragraph (c) of this section are $500,000 or less, the U.S. person is requested to provide an estimate of the total for each type of service.

(i) Provision of this information is voluntary. The estimates may be judgmental, that is, based on recall, without conducting a detailed manual records search.

(ii) The amounts of transactions reportable on a particular schedule are to be entered in the appropriate column(s) on line 32, section B of the schedule; they are not to be disaggregated by country. Reporters filing voluntary information only should also complete part I (sections A, B, and C) and part II of Form BE–20, answering "no" for each type of service listed in part I, section B and indicating in part I, section C that voluntary data are being reported.

(3) Any person receiving the BE–20 survey form from BEA, even if the person is not subject to the mandatory reporting requirement in paragraph (b)(1) of this section, and is not filing information on a voluntary basis pursuant to paragraph (b)(2) of this section, must nevertheless complete and return to BEA part I of the form, answering "no" for each type of service listed in part I, section B, indicating in part I, section C that no voluntary data are being reported, and indicating in part I, section D the basis for not reporting data. This requirement is necessary to ensure compliance with reporting requirements and efficient administration of the Act by eliminating unnecessary followup contact.

(c) *Covered types of services.* Only the services listed below are covered by the BE–20 survey. Other services, such as transportation, reinsurance, lending and borrowing and related fees and charges, brokerage fees, etc., are NOT covered. Covered services are:

(1) *Advertising services.* Preparation of advertising and placement of such advertising in media, including charges for media space and time. An advertising agency selling services should use gross billings to unaffiliated foreigners as the measure of these services.

(2) *Computer and data processing services, excluding the value of prepackaged software.* Data entry, processing (both batch and remote), and tabulation; computer systems analysis, design, and engineering; custom software and programming services; rights to use, reproduce, or distribute computer software, whether custom or prepackaged; equipment leasing (except financial leasing) integrated hardware/software systems; and other computer services (e.g., timesharing, maintenance, and repair). Excludes the value of prepackaged software.

(3) *Data base and other information services.* Business and economic data base services, including business news, stock quotation, and financial information services; medical, legal, technical, demographic, bibliographic, and similar data base services; general news services, such as those provided by a news syndicate; and other information services, including reservation systems and credit reporting and authorization systems.

(4) *Telecommunications services.* (i) Message telephone services (communications carriers only)—Receipts from foreign persons (communications companies and postal, telephone, and telegraph agencies (PTT's)) for own share of revenues for transmitting messages originating abroad to U.S. destinations, and payouts to foreign persons (communications companies and PTT's) for their share of revenues for transmitting messages originating in the United States to foreign destinations.

(ii) Private leased channel services—Receipts from foreign persons for circuits and channels terminating in the United States and for circuits and channels between foreign points, and payouts to foreign persons for leased channels and circuits terminating in foreign countries.

(iii) Telex, telegram, and other jointly provided (basic) services—Includes telex and telegram services, packet switched services when not offered in connection with enhanced services, and other regulated services of the type reportable to the FCC on Report 4361.

(iv) Value-added (enhanced) services—Telecommunications services that add value or function above and beyond the telecommunications transport services that deliver the value-added services to end users. They can include electronic mail, voice mail, code and protocol processing, and management of data networks; facsimile services and videoconferencing; and other value-added (enhanced) services.

(v) Support services—Services related to the maintenance and repair of telecommunications equipment; ground station services; capacity leasing for transiting; and launching of communications satellites.

(5) *Agricultural services*—Soil preparation services, crop services, veterinary and other animal services, farm labor and management services, and landscape and horticultural services.

(6) *Research, development, and testing services.* Commercial and noncommercial research, product development services, and testing services. Excludes medical and dental laboratory services.

(7) *Management, consulting, and public relations services.* Management services, except management of health care facilities (see paragraph (c)(8) of this section); consulting services, except consulting engineering services related to actual or proposed construction or mining services projects (see paragraph (c)(20) of this section) and computer consulting (see paragraph (c)(2) of this section); and public relations services, except those that are an integral part of an advertising campaign (see paragraph (c)(1) of this section). Excludes management and operation of a foreign business by a U.S. person, or of a U.S. business by a foreign person, where operating staff as well as management is provided. (Generally, such operations would be deemed to constitute a foreign affiliate of the U.S. person, or a U.S. affiliate of the foreign person, to be reported in BEA's direct investment surveys rather than in this survey.)

(8) *Management of health care facilities.* Management of hospitals, nursing homes, and other health care facilities. If operating staff is provided, generally should be reported in BEA's direct investment surveys, rather than in this survey.

(9) *Accounting, auditing, and bookkeeping services.* Excludes data processing and tabulating services (see paragraph (c)(2) of this section).

(10) *Legal services.* Legal advice or other legal services, including insurance claims adjustment services.

(11) *Educational and training services.* Educational or training services provided or acquired on a contract or fee basis. Excludes tuition and fees charged to individual students by educational institutions, as well as training done by a manufacturer in connection with the sale of a good (see paragraph (c)(15)(ii) of this section).

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(v) Support services—Services related to the maintenance and repair of telecommunications equipment; ground station services; capacity leasing for transiting; and launching of communications satellites.

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(7) *Management, consulting, and public relations services.* Management services, except management of health care facilities (see paragraph (c)(8) of this section); consulting services, except consulting engineering services related to actual or proposed construction or mining services projects (see paragraph (c)(20) of this section) and computer consulting (see paragraph (c)(2) of this section); and public relations services, except those that are an integral part of an advertising campaign (see paragraph (c)(1) of this section). Excludes management and operation of a foreign business by a U.S. person, or of a U.S. business by a foreign person, where operating staff as well as management is provided. (Generally, such operations would be deemed to constitute a foreign affiliate of the U.S. person, or a U.S. affiliate of the foreign person, to be reported in BEA's direct investment surveys rather than in this survey.)

(8) *Management of health care facilities.* Management of hospitals, nursing homes, and other health care facilities. If operating staff is provided, generally should be reported in BEA's direct investment surveys, rather than in this survey.

(9) *Accounting, auditing, and bookkeeping services.* Excludes data processing and tabulating services (see paragraph (c)(2) of this section).

(10) *Legal services.* Legal advice or other legal services, including insurance claims adjustment services.

(11) *Educational and training services.* Educational or training services provided or acquired on a contract or fee basis. Excludes tuition and fees charged to individual students by educational institutions, as well as training done by a manufacturer in connection with the sale of a good (see paragraph (c)(15)(ii) of this section).

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(12) *Mailing, reproduction, and commercial art.* Direct mail advertising services; mailing services; blueprinting, photocopying, and other reproduction services, including those in connection with direct mail advertising; commercial photography, art, and graphic services; address list compilers; and stenographic services.

(13) *Employment agencies and temporary help supply services.* Employment services and provision of temporary help and personnel to perform services for others on a contract or fee basis. Where workers are carried on the payroll of the agency, includes receipts and payments covering the compensation of workers, as well as agency fees.

(14) *Industrial engineering services.* Engineering services related to the design of movable products, including product design services. Excludes services that relate to immovable products, such as those that relate to actual or proposed construction or mining services projects (see paragraph (c)(20) of this section).

(15) *Industrial-type maintenance and repair, installation, alteration, and training services.* (i) Maintenance and repair services primarily to machinery and equipment, and small maintenance and repair work on buildings, structures, dams, highways, etc. Would include such services as the periodic overhaul of turbines or locomotives, the extinguishing of oil or natural gas well fires, and refinery maintenance. Excludes computer maintenance and repair services (see paragraph (c)(2) of this section).

(ii) Installation, startup, and training services provided by a manufacturer *in connection with the sale of goods.* Include elsewhere as appropriate (e.g., in construction or education and training) if not provided in connection with the sale of goods. Excludes such services where the cost is included in the price of the goods and not separately billed or is declared as a part of the price of the goods on the shippers export or import declaration filed with the U.S. Customs Service; however, services provided at a price over and above that entered on the shippers export or import declaration should be included. These services would be reported elsewhere if not provided in connection with the sale of goods. For example, installation of machinery and equipment is normally considered a construction activity, and training personnel in the use of new machinery would ordinarily be reported as an educational or training service. However, this separate category has been provided for reporting such services when provided in connection with goods.

(16) *Performing arts, sports, and other live performances, presentations, and events.* Fees (net of allowances for expenses) for performances abroad by U.S. or foreign performers, and for performances in the United States by foreign performers. To be reported by U.S. management companies, booking agents, promoters, and presenters who book performances and events abroad by U.S. or foreign performers; U.S. performers who received funds directly from a foreign person rather than through a U.S. management company (or similar entity); and management companies, booking agents, promoters, and presenters who book performances in the United States by foreign performers. (As used here, "performers" means entertainers, sports teams, orchestras, dance companies, lecturers, and similar persons or performing groups.)

(17) *Rights to natural resources.* Receipts (or payments) for the sale (or acquisition), or for the use of rights to natural resources, excluding rights to surface land, located in the United States and abroad.

(18) *Miscellaneous disbursements.* Disbursements or outlays to fund newsgathering costs of broadcasters and the print media; production costs of motion picture companies and companies engaged in the production of broadcast program material other than news; and costs of maintaining tourism, business promotion, sales, and representative offices, and of participating in foreign trade shows.

(19) *Primary insurance.* (i) Primary insurance premiums paid—Applies only to insurance *purchased* from foreign insurance carriers. Equals premiums paid minus cancellations. Excludes reinsurance transactions.

(ii) Losses recovered on purchases of primary insurance—Applies only to claims recovered on purchases of primary insurance.

(20) *Construction, engineering, architectural, and mining services.* Covers only *purchases* of the following types of services: services of general contractors in the fields of building and heavy construction; construction work by special trade contractors, such as the erection of structural steel for bridges and buildings and on-site electrical work; architectural, engineering, and land-surveying services; and mining services, including oil and gas field services. Includes only those engineering services purchased in conjunction with construction and mining services projects; industrial engineering services, such as product design services, are included under paragraph (c)(14) of this section. Includes services purchased in connection with proposed projects (e.g., feasibility studies) as well as projects that are actually being carried out. Note that the U.S. Reporter's *sales* of construction, engineering, architectural, and mining services are not reportable in this survey, but on separate Form BE-47.

[FR Doc. 91-18516 Filed 8-2-91; 8:45 am]

BILLING CODE 3510-CW-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

[RIN 1205-AA89]

Wage and Hour Division

29 CFR Part 507

[RIN 1215-AA]

Labor Condition Applications and Requirements for Employers Using Aliens on H-1B Visas in Specialty Occupations

AGENCIES: Employment and Training Administration, Labor; and Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Proposed rule.

SUMMARY: The Employment and Training Administration (ETA) and the Employment Standards Administration (ESA) of the Department of Labor (DOL or Department) are proposing regulations governing the filing and enforcement of labor condition applications filed by employers seeking to use aliens in specialty occupations on H-1B visas. Under the Immigration and Nationality Act (INA), as amended by the Immigration Act of 1990 (Act), an employer seeking to employ an alien in a specialty occupation on an H-1B visa is required to file a labor condition application with, and receive the approval of, DOL before the Immigration and Naturalization Service (INS) may approve an H-1B visa petition. The labor condition application process will be administered by ETA; complaints and investigations regarding labor condition applications will be the responsibility of ESA.

DATES: Written comments on the proposed rule are invited from interested parties. Comments must be received on or before September 4, 1991.

ADDRESSES: Submit comments to: Roberts T. Jones, Assistant Secretary, Employment and Training Administration, Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, Attention: Immigration Task Force, room N–4470.

FOR FURTHER INFORMATION CONTACT: On 20 CFR part 655, subpart H, and 29 CFR part 507, subpart H, contact David O. Williams, Chair, Immigration Task Force, Employment and Training Administration, Department of Labor, room N–4470, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 535–0174 (this is not a toll-free number).

On 20 CFR part 655, subpart I, and 29 CFR part 507, subpart I, contact Solomon Sugarman, Wage and Hour Division, Employment Standards Administration, Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 523–7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

The information collection requirements contained in the proposed rule have been submitted to the Office of Management and Budget for clearance under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

The Employment and Training Administration estimates that up to 50,000 employers per year will submit labor condition applications. The public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing information/data sources, gathering and maintaining the information/data needed, and preparing the application.

Written comments on the collection of information requirements should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Employment and Training Administration, Washington, DC 20503.

II. Background

On November 29, 1990, the Immigration Act of 1990 (Act), Public Law 101–649, 104 Stat. 4978, was enacted into law. The law amends the Immigration and Nationality Act (8 U.S.C. 1101 *et seq.*) (INA) and assigns responsibility to the Department of Labor for the implementation of several provisions of the Act relating to the entry of certain categories of employment-based immigrants, and to the temporary employment of certain categories of nonimmigrants. One of the major provisions of the Act the Department of Labor (DOL or Department) is charged with implementing governs the entry of H–1B aliens in specialty occupations to work temporarily in the United States (U.S.). 8 U.S.C. 1101(a)(15)(H)(i)(b); 8 U.S.C. 1182(n); and 8 U.S.C. 1184(c).

The Act has redefined and narrowed the occupational scope of the current H–1B visa category. Aliens of distinguished merit and ability who had been previously admitted under the H–1B visa category may now be eligible for entry under one of two new visa classifications (O and P) which have been established for aliens with extraordinary ability, persons accompanying aliens, and athletes and entertainers. 8 U.S.C. 1101(a)(15)(O) and 1101(a)(15)(P); see also 8 U.S.C. 1184(g)(1)(C). DOL has no operational responsibilities under the O and P visa provisions of the Act. Under the new provisions of the Act, the H–1B visa category is designated for aliens who are coming temporarily to the U.S. to perform services in a "specialty occupation," as defined in sec. 214(i)(1) of the INA. 8 U.S.C. 1184(i)(1). The Immigration and Naturalization Service (INS) makes determinations on whether a job opportunity is in a specialty occupation.

The new H–1B category of specialty occupations consists of those occupations which require the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States. In addition, the alien must possess full state licensure to practice in the occupation (if required), completion of the required degree, or experience in the specialty equivalent to the degree and recognition of expertise in the specialty. 8 U.S.C. 1184(i)(2). INS makes determinations on an alien's qualifications for a job opportunity or specialty occupation.

The INA now establishes a cap of 65,000 on the number of aliens who may be issued H–1B visas annually, and provides a process for protecting the wages and working conditions of similarly employed workers in the area of employment from being adversely affected by the employment of H–1B temporary workers. 8 U.S.C. 1184(g)(1)(A).

The process of protecting U.S. workers under the H–1B program begins with a requirement that employers file a labor condition application on Form ETA 9035 with the Department. 8 U.S.C. 1182(n). In this application the employer is required to attest that:

(1) It will pay the alien(s) and other individuals employed in the occupational classification at the place of employment prevailing wages or actual wages whichever are greater;

(2) It will provide working conditions that will not adversely affect the working conditions of U.S. workers similarly employed;

(3) There is no strike or lockout in the course of a labor dispute in the occupational classification at the place of employment;

(4) It has publicly notified the bargaining representative of its employees in the occupational classification at the place of employment of its intent to employ an H–1B alien worker(s), or, if there is no bargaining representative, that it has posted such notice at the place of employment; and

(5) The employer must provide the information required in the application about the number of aliens sought, occupational classification, job duties, wage rate and conditions under which they will be employed, date of need, and period of employment.

Finally, an important part of the process of protecting U.S. workers consists of a complaint and enforcement provision. DOL will accept complaints from any aggrieved party about an employer's failure to meet a specified condition or for misrepresentation of a material fact in the application. If DOL determines a reasonable basis for the complaint exists, DOL will investigate, provide the employer an opportunity for a hearing, and may assess penalties depending upon the outcome of the hearing. 8 U.S.C. 1182(n)(2).

III. The Process of Developing Proposed Regulations

In developing the proposed regulations, the Department considered a number of issues pertaining to the filing of labor condition applications by employers seeking to employ H–1B workers. These issues included:

(1) Which employers may file a labor condition application for H–1B worker(s);

(2) Whether a labor condition application must be filed before or after an H–1B visa is issued;

(3) Whether DOL should determine that an H–1B occupation is a specialty occupation, including the extent to which the Department will review a labor condition application; and

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with a requirement that employers file a labor condition application on Form ETA 9035 with the Department. 8 U.S.C. 1182(n). In this application the employer is required to attest that:

(1) It will pay the alien(s) and other individuals employed in the occupational classification at the place of employment prevailing wages or actual wages whichever are greater;

(2) It will provide working conditions that will not adversely affect the working conditions of U.S. workers similarly employed;

(3) There is no strike or lockout in the course of a labor dispute in the occupational classification at the place of employment;

(4) It has publicly notified the bargaining representative of its employees in the occupational classification at the place of employment of its intent to employ an H–1B alien worker(s), or, if there is no bargaining representative, that it has posted such notice at the place of employment; and

(5) The employer must provide the information required in the application about the number of aliens sought, occupational classification, job duties, wage rate and conditions under which they will be employed, date of need, and period of employment.

Finally, an important part of the process of protecting U.S. workers consists of a complaint and enforcement provision. DOL will accept complaints from any aggrieved party about an employer's failure to meet a specified condition or for misrepresentation of a material fact in the application. If DOL determines a reasonable basis for the complaint exists, DOL will investigate, provide the employer an opportunity for a hearing, and may assess penalties depending upon the outcome of the hearing. 8 U.S.C. 1182(n)(2).

III. The Process of Developing Proposed Regulations

In developing the proposed regulations, the Department considered a number of issues pertaining to the filing of labor condition applications by employers seeking to employ H–1B workers. These issues included:

(1) Which employers may file a labor condition application for H–1B worker(s);

(2) Whether a labor condition application must be filed before or after an H–1B visa is issued;

(3) Whether DOL should determine that an H–1B occupation is a specialty occupation, including the extent to which the Department will review a labor condition application; and

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(4) Whether documentation should be submitted with the labor condition application and/or maintained at the place of employment.

The Department published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** on March 20, 1991, which invited comments from all interested parties on these issues and others of concern to the public. 56 FR 11705. Comments and recommendations were received from a variety of persons and organizations with respect to the Department's approach to the development and implementation of these regulations. The Department has carefully considered the views of these commenters in developing the proposed regulations.

A. Labor Condition Application Process and Requirements

The Department believes that Congress, in enacting the Act, intended to provide greater protection than under prior law for U.S. and foreign workers without interfering with an employer's ability to obtain the H–1B workers it needs on a timely basis. Accordingly, the Department proposes that a labor condition application be accepted if it is complete and that DOL review be limited to whether the application is complete, and whether the Wage and Hour Division (Administrator) has previously disqualified the employer from employing H–1B workers, thereby minimizing the time it takes to obtain approval of H–1B workers. However, in implementing the protection for workers that the Act intends, the proposed procedures and documentation requirements are sufficiently specific to enable investigations of complaints against employers and enforcement of sanctions where necessary. Under the Act, protection of U.S. workers is provided through the complaint process. The proposed regulations set forth a process which:

(1) Requires labor condition applications that are specific with respect to employer statements and promises; (2) limits DOL's review of a labor condition application to a simple check to assure that it is completed and signed, and to determine whether the Wage and Hour Division (Administrator) has disqualified the employer from employing H–1B workers; (3) describes the information that employers must retain to document the validity of their statements; and (4) establishes a system for the receipt of complaints, and their investigation and disposition, including the imposition of penalties where warranted. The proposed rule assigns to the Employment and Training Administration (ETA) DOL's role in accepting and processing applications; and to the Wage and Hour Division of the Employment Standards Administration (ESA) DOL's role in investigating complaints and assessing penalties.

1. Who May File a Labor Condition Application?

In developing the proposed regulations, the Department considered a number of issues relating to the eligibility of an employer to file a labor condition application, including: Whether an H–1B employer must have a physical location in the U.S. or otherwise be able to prove it is doing business in the U.S. at the time a labor condition application is filed; and whether the alien must be paid in U.S. currency. The Department received comments on these and several related issues. Several commenters to the ANPRM indicated that current practice did not require a U.S. employer, or even the presence of an employer in the U.S., and that payment to the H–1B workers was often not made in U.S. currency. One commenter stated that H–1B workers were not always paid while in the U.S. Instead, their salaries were credited to accounts in their home countries, and, while in the U.S., the workers were provided living expenses only and those expenses were paid in U.S. dollars.

The Department believes that, in order to implement the complaint and enforcement provisions of the Act, H–1B employers must maintain a legal presence in the United States. In the proposed regulations, the Department interprets this to mean that an H–1B employer must have an Internal Revenue Service (IRS) employer identification number and make a filed labor condition application and supporting documentation available for public examination at the employer's principal place of business in the U.S. or at the place of employment. In addition, the proposed regulations do not require the payment to the H–1B employee in U.S. currency.

Consideration was also given to whether a job contractor should be treated as an employer for H–1B purposes. The term job contractor refers to an employer whose employees perform work at job sites of other employers but who are paid by the job contractor and are its employees. In the proposed regulations, job contractors are treated like any other employer and are bound by the regulations applicable to all H–1B employers. The Department notes that the Act requires the payment of wages which are at least equal to the actual wage level for the occupational classification at the place of employment, or the prevailing wage level for the occupational classification in the area of employment, whichever is greater. Use of a job contractor will not permit circumvention of this requirement; the proposed regulations require that an H–1B employee receive wages which are at least equal to the actual wage at the worksite or the local area prevailing wage for the occupation, whichever is greater.

2. Pre- vs. Post-Entry Approval

The Act requires the Department to determine and certify to the Attorney General that before the alien can be granted H–1B status, the employer has filed with, and had approved by DOL, a labor condition application. On the other hand, H.R. Conf. Rep. No. 101–955, p. 122, reprinted in 1990 U.S. Code Cong. & Admin. News 6787 (Conference Report) suggests that Congressional intent is that such status be granted on a "post-entry attestation" basis. A number of commenters to the ANPRM asserted their belief that the Act intended for labor condition applications to be approved by DOL on a post-entry basis. These commenters claim that U.S. businesses have a need to hire workers in H–1B specialty occupations quickly, and given the number and variety of occupations involved, they fear backlogs will develop if DOL reviews and approves each application on a pre-entry basis.

While the Department recognizes these concerns, the Department is required to follow the clear, unambiguous language of the Act. Therefore, the proposed regulations require that the employer must file a labor condition application and receive approval from DOL before an H–1B petition can be submitted to INS. Because of the legitimate concerns expressed, the Department has attempted to design a streamlined application procedure.

3. Part-time Employment

The Department is proposing that the long-standing practice of approving part-time employment for temporary professional workers be continued in the H–1B program. The great majority of commenters to the ANPRM opposed the imposition of any limitation on part-time employment. These commenters argued that there is no statutory basis for excluding part-time work under the H–1B program and suggested that the economy would be harmed if H–1B workers were no longer permitted to enter for part-time jobs. Commenters also indicated that it is not unusual for an alien to be needed on a one-time project basis where a 40-hour work week is not typical. A few commenters favored eliminating or limiting part-time employment because the new ceiling on the annual number of H–1B visas could be quickly exhausted by numerous H–1B aliens working only a few hours per week. The Department agrees with the views of the majority of commenters and the proposed regulations do not prohibit part-time employment. Complaints alleging that working conditions of U.S. workers have been adversely affected by the employment of H–1B workers, including parttime H–1B workers, by, for example, eliminating or otherwise curtailing permanent jobs and/or fringe benefits for U.S. workers, would be investigated by the Department.

4. Multiple Employers

Under the current practice, H–1B aliens may work for more than one employer. The Department believes that there is no statutory basis for changing this practice. In addition, there appear to be situations where highly specialized skills and knowledge are needed by more than one employer simultaneously. Therefore, the proposed regulations continue to permit H–1B workers to work for more than one employer, provided that each employer has filed a labor condition application.

5. Occupational Scope

Under the proposed regulations, an employer may file a single labor condition application for more than one alien in more than one occupational classification, as long as the application clearly names each occupational classification by Dictionary of Occupational Titles (DOT) Three-Digit Occupational Groups code and by the employer's own title for the job. A listing of the three-digit occupational groups for professional, technical, and managerial occupations is included at Appendix 2 to this subpart. For each occupational classification the employer must indicate the number of aliens to be employed, the rate of pay, the starting and ending dates of the H–1B workers' employment, and the location of each intended place of employment.

6. Labor Condition Application Validity Period

The period of authorized admission for an alien nonimmigrant on an H–1B visa normally may not exceed six years. The Department proposes that the acceptance of a labor condition application be valid for a period of up to six years, depending upon the period of intended employment stated in the labor condition application. The proposed regulations place no specific time limit on when a labor condition application, once approved by DOL, must be used. However, since the Act requires the employer to specify the period of intended employment, there will be a practical limitation on the extent to which an approved labor condition application can be held without being used.

B. Labor Condition Statements

1. Prevailing Wage Determinations

The Act requires that the wages paid to H–1B workers and to other workers in the occupational classification at the place of employment be the higher of the actual wage rate paid to such workers or the prevailing wage for the occupation in the area of employment. The ANPRM acknowledged the Congressional intent, as expressed in the Conference Report, that prevailing wage determinations shall be made in a like manner as regulations currently governing the permanent alien labor certification (immigrant worker) program. See 20 CFR 656.40; see also 8 U.S.C. 1182(a)(5)(A).

The current method of obtaining prevailing wage information in the permanent worker program varies from state to state. In a few states, employers may call the State Employment Security Agency (SESA) and obtain prevailing wage information over the telephone. In other states, especially larger states, a prevailing wage determination is not made until the employer has submitted a labor certification application to the SESA. Upon receipt of the application, the SESA will determine whether it has on file current prevailing wage information for the occupation. Where it does not, the SESA conducts a prevailing wage survey using the methods outlined at 20 CFR 656.40. The speed with which these surveys can be conducted depends on a number of factors, such as the volume of requests and the resources available to the SESA, and the extent to which surveyed employers voluntarily divulge information regarding wages paid to their workers in the occupation. Where employers are reluctant to provide the needed information, the SESA will require more time to make a prevailing wage determination, since other employers who will provide the information must be sought.

The Department received many comments on this issue, most of which addressed matters of availability, accessibility and utility of prevailing wage data. Commenters urged that SESAs make prevailing wage determinations quickly or immediately, even within a few days. A number of commenters recommended that the SESAs not be the only source of prevailing wage information, and that employers have the option of using other prevailing wage information, such as that contained in various published wage surveys. Some commenters expressed concern that SESA prevailing wage determinations would not be relevant to the occupation or geographic locality and would not be sufficiently specific to the occupation and employer. Other commenters suggested that prevailing wage surveys be conducted only after a complaint is filed. Still others commented on the need to provide a method of dealing with employer wage ranges.

The proposed regulations incorporate the language of 20 CFR 656.40, as required by the Conference Report, and, in response to the many comments received on this issue, also permit the applicant to use an independent "authoritative" wage source, as defined in subpart H of the proposed rule, in lieu of a SESA prevailing wage determination. These independent authoritative wage surveys are now used by state and federal staff in the permanent labor certification program and the Department believes their continued use in the H–1B program will simplify prevailing wage determinations for employers and the Department and will expedite the approval of labor condition applications. The proposed regulations, therefore, provide the employer with the option of either obtaining a prevailing wage determination from the SESA or using an independent authoritative source. In either case, the employer shall develop and retain documentation regarding how it determined the prevailing wage, and shall have the burden of proving the validity of the prevailing wage obtained from a non-SESA source in the event a complaint is filed. The proposed regulations also require that documentation to support an employer's prevailing wage rate be updated every 24 months from the date of filing the application, and that the workers receive the greater of the actual or the updated prevailing wage for the occupation for the entire period of intended employment. Employers may challenge a SESA prevailing wage determination through the Employment Service complaint system. See 20 CFR part 658, subpart E.

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2. Prevailing Working Conditions

The Act requires employers to state that the employment of H–1B workers will not adversely affect the working conditions of U.S. workers similarly employed. The ANPRM stated the Department's interpretation that the Act intended that prevailing working condition determinations be made in the same manner as prevailing wage determinations, i.e., according to the current regulations for the permanent alien labor certification (immigrant worker) program. See 20 CFR part 656. Most of the few commenters to the ANPRM that addressed this issue appear satisfied with the current regulations for the permanent program. In the event of a complaint under the H–1B program, the employer must provide credible proof of prevailing working conditions for the occupations of concern. Such proof may include surveys conducted by employers, published independent studies or articles which discuss the conditions in the industry and locale, and other relevant information. The proposed regulations require that prevailing working conditions determinations be made on a post-complaint basis as is currently done in the permanent program. See 20 CFR 656.24(b)(3).

3. Supporting Documentation

The Department considered whether employers should be required to submit supporting documentation with the labor condition application or whether such documentation should be maintained by the employer at the place of employment. Several commenters to the ANPRM indicated that there is no statutory requirement to submit documentation to DOL or to maintain it at the place of employment. The Act does require that a copy of each application and accompanying documentation be available for public examination at the employer's principal place of business or place of employment.

The proposed regulations do not require that supporting documentation be submitted to DOL with the labor condition application. Instead, the employer is required to develop documentation to support each labor condition application element and maintain it at the place of employment or the employer's principal place of business in the U.S. The application and the supporting documentation regarding all elements of the application other than payment of wages (i.e., other than payroll records) must be maintained by the employer for the validity period of the labor condition application plus one year beyond the end of the validity period, except that, in the event a timely complaint is filed, the documentation must be retained until the complaint is resolved through the enforcement process set out in the regulations. Payroll records, documenting the payment of the required wages, must be retained for three years from the date(s) of the creation of the record(s), except that in the event a timely complaint is filed, all payroll records must be retained until the complaint is resolved through the enforcement process.

C. DOL Review of Labor Condition Applications

1. Level of Review

The Department considered a number of approaches to the level of DOL review of a labor condition application ranging from full review and approval of each labor condition element to a simple screening of the application for completeness. Many commenters to the ANPRM made recommendations concerning the level of review of a labor condition application. A number of commenters recommended that DOL not review a labor condition application unless a complaint was filed. Other commenters suggested that DOL simply file the labor condition application after insuring that the required information has been provided on the form.

The Department believes that Congress intended that DOL use a simplified, streamlined process for reviewing H–1B labor condition applications and proposes a simplified review. The Department proposes to rely upon a complaint-driven enforcement process which involves: Attestations made by the employer; public examination of the labor condition application; and the ability of aggrieved persons to file complaints, which may be investigated and which may result in penalties against the employer. The Department's proposed regulations reflect this approach.

2. Specialty Occupation

The INA defines a "specialty occupation" as one which requires the theoretical and practical application of a body of highly specialized knowledge, and which requires the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent). 8 U.S.C. 1184(i)(1). In addition, the INA requires the prospective H–1B alien to possess the following qualifications: Full state licensure to practice in the occupation, if required; and either (i) completion of a bachelor's or higher degree in the specific specialty (or its equivalent), or (ii) experience in the specialty equivalent to the completion of such a degree and expertise in the specialty through progressively responsible positions relating to the specialty. 8 U.S.C. 1184(i)(2).

It has been the responsibility of INS to determine whether an alien and the occupation met the requirements for an H–1B visa. The proposed regulations reflect a continuation of this approach. INS will continue to have, under the H–1B program, the responsibility for determining whether the occupation and alien meet the requirements for an H–1B visa, after receiving the employer's petition with the DOL-approved labor condition application attached. A determination by INS that the occupation or alien does not qualify for an H–1B visa is appealed only through relevant INS and Department of Justice procedures.

This approach is in keeping with the intent of the Act—that DOL review be simple and streamlined, and that worker safeguards be provided by a complaint-driven enforcement system.

3. Labor Availability Determination

The ANPRM asked whether commenters believed that Congress intended that employers attest to the unavailability of U.S. workers for the positions offered aliens who would enter the U.S. on H–1B visas. A large number of comments and recommendations were received on this issue. Most commenters stated they believed that such a requirement was not in the law and exceeded Congressional intent. These commenters argued that the attestation-like process, public notification, and complaint provisions were the mechanisms intended by the Act to protect U.S. workers. Other commenters asserted that the Act intends that an employer attest that it had been unable to recruit a qualified U.S. worker for the position(s) to be filled by the H–1B alien(s).

The Department is not proposing that employers attest to the unavailability of qualified U.S. workers for H–1B positions.

D. Confidentiality of Employer Information

Many commenters raised the issue of the confidentiality of employer-provided information. These commenters strongly recommended that the Department make every effort to protect confidential employer information provided to the Department as part of the labor condition application. While the Department recognizes these concerns, the Act requires that the employer make available for public examination a copy of the labor condition application and accompanying documentation within one working day after the date on which an application is filed with DOL. 8 U.S.C. 1182(n)(1)(D); see also 8 U.S.C. 1182(n)(1)(C). Although the Department does not propose to require any documentation to be submitted to it along with the labor condition application, the proposed regulations require that certain documentation must be available for public examination at the place of employment. In addition, employers should note that if a complaint is filed, an investigation conducted, and a hearing held, any employer information submitted as evidence at the hearing will become a matter of public record; such information may well be more extensive than that which the employer must make available for public examination. See 8 U.S.C. 1182(n)(2).

E. Discouraging Frivolous Complaints

Many commenters urged the Department to take steps to discourage frivolous complaints. The Department notes that the Act itself addresses this concern by permitting only "any aggrieved person or organization (including bargaining representatives)" to file a complaint. 8 U.S.C. 1182(n)(2)(A). In addition, under the Department's proposed regulations an investigation will only be initiated after DOL determines that there is reasonable cause to believe a violation has occurred.

F. Complaint, Investigation and Hearing

Section 212(n)(2) of the Act requires that the Department establish a system to conduct investigations to determine whether an employer failed to meet a condition specified in the labor condition application or misrepresented a material fact on its application. 8 U.S.C. 1182(n)(2). These regulations propose that the Wage and Hour Administrator may conduct investigations of potential violations of the law only pursuant to a complaint. The Department has determined, based on the legislative history, that this carries out Congressional intent that the enforcement of the statute should be exclusively complaint-driven. Any aggrieved person or organization (including bargaining unit representatives) may file a complaint, but the proposed regulations reflect the Act's requirement that the complaint be filed no later than 12 months after the alleged violation(s). The investigative process is to be completed and a determination issued within 30 days from the date that the complaint is accepted for filing, after screening for reasonable cause; the 30-day investigation period may be suspended in the event that the Administrator finds it necessary to seek a determination from ETA on a controlling matter such as the prevailing wage.

The Department proposes regulations that reflect the employer's obligation to establish its compliance with, and the truthfulness of, the statements and information attested to on the labor condition application. The regulations also require that the employer cooperate in the investigation and take no retaliatory action against persons who file complaints, assist in the investigation, or participate in administrative proceedings. 8 U.S.C. 1182(n)(2) (A) and (B).

G. Administrative Law Judge Hearing and Discretionary Review By the Secretary

Section 212(n)(2)(B) requires that the Secretary provide interested parties an opportunity for a hearing within 60 days of the date of the investigative determination, and issue findings within 60 days of the date of the hearing.

Because of this compressed time frame, the proposed regulations require that a request for hearing be filed directly with the Chief Administrative Law Judge no later than 15 days from the date of the Administrator's determination. Further, because of the problems of proof to be anticipated in an administrative hearing on factual issues of prevailing wages and working conditions which may be virtually impossible to address except through hearsay reports of surveys, or for which crucial witnesses and other evidence may be unavailable except through hearsay since, for example, the witnesses are located outside the U.S., the proposed regulations specify that the Department's rules of evidence shall not apply.

An opportunity for discretionary review by the Secretary is afforded by the proposed regulations, with short deadlines in accordance with the statutory intent for expedited dispositions. Any interested party may request such review, and the Secretary shall determine what matters, if any, will be reviewed.

H. Penalties

Failure to meet a condition of the application regarding wages, working conditions, and strikes or lockouts, or substantial failure to meet a condition of the application regarding notification of bargaining representatives or employees, or misrepresentation of a material fact in the application may result in the imposition of administrative remedies:

(1) Civil money penalties in an amount not to exceed $1,000 per violation;

(2) Employers being barred from filing applications or attestations with the Department to employ aliens on either a permanent or temporary basis for at least one year; and

(3) Employers being ordered to provide for payment of backwages. 8 U.S.C. 1182(n)(2) (C) and (D).

IV. Summary

The Department welcomes comments on any issues addressed in the proposed regulations, and on any issues not addressed that commenters believe need to be addressed.

Regulatory Impact and Administrative Procedure

E.O. 12291

The rule does not have the financial or other impact to make it a major rule and, therefore, the preparation of a regulatory impact analysis is not necessary. See Executive Order 12291, 3 CFR, 1981 Comp., page 127, 5 U.S.C. 601 note.

Regulatory Flexibility Act

The Department of Labor has notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), that the rule does not have a significant economic impact on a substantial number of small entities.

Nevertheless, interested parties are requested to submit, as part of their comments on this rule, information on the potential economic impact of the rule.

Catalog of Federal Domestic Assistance Number: This program is not yet listed in the *Catalog of Federal Domestic Assistance.*

List of Subjects

20 CFR Part 655

Administrative practice and procedure, Agriculture, Aliens, Crewmembers, Employment, Enforcement, Forest and forest products Guam, Health professions, Immigration, Labor, Longshore work, Migrant labor, Nurse, Penalties, Registered nurse, Reporting and recordkeeping requirements, Specialty occupation, Wages.

29 CFR Part 507

Administrative practice and procedures, Aliens, Employment, Enforcement, Immigration, Labor,

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29 CFR Part 507

Administrative practice and procedures, Aliens, Employment, Enforcement, Immigration, Labor,

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Penalties, Reporting and recordkeeping requirements, Specialty occupation, Wages.

Text of the Proposed Joint Rule

The text of the proposed joint rule as proposed by ETA and the Wage-Hour Division, ESA, in this document appears below:

Subpart H—Labor Condition Applications and Requirements for Employers Using Aliens on H-1B Visas in Specialty Occupations

Sec.
____.700 Purpose, procedure and applicability of subparts H and I.
____.705 Overview of responsibilities.
____.710 Complaints.
____.715 Definitions.
____.720 Addresses of Department of Labor regional offices.
____.730 Labor condition application.
____.740 Labor condition application determinations.
____.750 Validity period of labor condition application.
____.760 Public access.

Subpart I—Enforcement of H-1B Labor Condition Applications

Sec.
____.800 Enforcement authority of Administrator, Wage and Hour Division.
____.805 Complaints and investigative procedures.
____.810 Remedies.
____.815 Written notice and service of Administrator's determination.
____.820 Request for hearing.
____.825 Rules of practice for administrative law judge proceedings.
____.830 Service and computation of time.
____.835 Administrative law judge proceedings.
____.840 Decision and order of administrative law judge.
____.845 Secretary's review of administrative law judge's decision.
____.850 Administrative record.
____.855 Notice to the Employment and Training Administration and the Attorney General.

Subpart H—Labor Condition Applications and Requirements for Employers Using Aliens on H-1B Visas in Specialty Occupations

§ ____.700 Purpose, procedure and applicability of subparts H and I.

(a) *Purpose.* The Immigration and Nationality Act, with respect to nonimmigrant workers entering the United States on H-1B visas:

(1) Establishes an annual ceiling of 65,000 (exclusive of spouses and children) on the number of aliens who may be issued H-1B visas;

(2) Defines the scope of eligible occupations for which nonimmigrants may be issued H-1B visas and specifies the qualifications that are required for entry as an H-1B worker;

(3) Requires an employer seeking to employ H-1B workers to file a labor condition application with and have it approved by the Department of Labor (DOL) before an alien may be provided H-1B status by the Immigration and Naturalization Service (INS); and

(4) Establishes a system for the receipt and investigation of complaints, as well as for the imposition of fines and penalties for misrepresentation or for failure to fulfill a condition of the labor condition application. 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), 1184(g)(1)(A), and 1184(i).

(b) *Procedure for obtaining an H-1B visa.* Before a nonimmigrant alien may work in a "specialty occupation" in the United States under an H-1B visa, the alien must receive that H-1B visa from the Department of State (DOS). There are three steps in the process which leads to the issuance of an H-1B visa. These steps shall be followed in sequence and are as follows:

(1) First, an employer shall submit to DOL, and obtain DOL approval of, a labor condition application. The requirements for obtaining an approved labor condition application are provided in this subpart. The labor condition application (Form ETA 9035) and instructions may be obtained from DOL Regional Offices listed in § ____.720 of this part.

(2) After obtaining DOL approval of a labor condition application, the employer shall submit a petition (INS Form I-129), together with the approved labor condition application, to INS, requesting that the alien be issued an H-1B visa. The requirements concerning the submission of a petition to, and its processing by, INS are set forth in INS regulations. The INS petition (Form I-129) may be obtained from an INS district or area office.

(3) After the petition (INS form I-129) is approved by INS, the petition will be sent to the U.S. Consulate when the alien is outside of the U.S. or is otherwise required to apply at the Consulate in person. U.S. Consular staff will assist INS in determining whether the alien meets the requirements for the visa. If the alien is in the United States, it may be possible for the alien to adjust to the H-1B visa status without leaving the U.S. If so, the review of the alien's qualifications normally done by Consular staff will be done by INS staff and the alien will be required to appear at an appropriate INS office. Aliens may obtain information about the requirements for an H-1B visa from U.S. Embassies or Consulates, or from the INS. U.S. Consulates are guided by the *Foreign Affairs Manual* of the U.S. Department of State.

(c) *Applicability.* Subparts H and I of this part apply to all employers seeking to employ aliens on H-1B visas in specialty occupations.

§ ____.705 Overview of responsibilities.

Three federal agencies are involved in the process which leads to the issuance of an H-1B visa, and the responsibilities which continue after the visa is issued. The employer also has continuing responsibilities under the process. This section briefly describes the responsibilities of each of these entities.

(a) *Department of Labor responsibilities.* DOL administers the labor condition application process and enforcement provisions.

(1) The Employment and Training Administration (ETA), DOL, is responsible for receiving and making determinations on labor condition applications in accordance with subpart H of this part.

(2) The Employment Standards Administration (ESA), DOL, is responsible, in accordance with subpart I of this part, for investigating and resolving any complaints filed with DOL concerning labor condition applications or the employment of H-1B workers.

(b) *Immigration and Naturalization Service (INS) responsibilities.* The Immigration and Naturalization Service (INS) shall receive the employer's petition (INS Form I-129) with the DOL-approved labor condition application attached. INS is responsible for determining whether the occupation named in the labor condition application is a specialty occupation and whether the qualifications of the alien meet the statutory requirements for issuance of an H-1B visa. INS will send the employer's petition, if approved, together with the labor condition application to the U.S. Consulate where the alien is to apply for the visa unless the alien is in the U.S. and eligible to adjust status without leaving this country. If the alien is within the U.S. and eligible to adjust status, INS will carry out the functions normally performed by the consulate. See 8 U.S.C. 1184(i).

(c) *Department of State (DOS) responsibilities.* The Department of State, through U.S. Embassies and Consulates, is the initial point of contact for the alien when the alien is outside of the U.S. and is applying for an H-1B visa. DOS will assist INS in determining whether the alien meets the requirements for the H-1B visa.

(d) *Employer's responsibilities.* Each employer seeking an H-1B employee(s) in a specialty occupation has several responsibilities.

(1) The employer shall submit a completed labor condition application on Form ETA 9035 and one copy to the regional office of ETA serving the area where the alien will be employed. If the labor condition application is approved by ETA, a copy will be returned to the employer.

(2) The employer then shall submit a copy of the approved labor condition application to INS with a completed petition (INS Form I–129) requesting that the alien be issued an H–1B visa.

(3) The employer shall not allow the alien to begin work, even though a labor condition application has been approved by DOL, until an H–1B visa has been issued to the alien, which visa grants the alien authorization to work in the United States for that employer, unless the INS has otherwise specifically granted the alien permission to work in that job opportunity.

(4) The employer shall develop sufficient documentation to meet its burden of proof with respect to the validity of the statements made in its labor condition application and the accuracy of information provided in the event that such statement or information is challenged. The employer shall also maintain such documentation at its place of business in the U.S. and shall make such documentation available to DOL for inspection and copying upon request.

§ ____.710 Complaints.

Complaints concerning misrepresentation in the labor condition application or failure of the employer to meet a condition specified in the application shall be filed with the Administrator, Wage and Hour Division (Administrator), ESA, according to the procedures set forth in subpart I of this part. The Administrator shall then investigate if reasonable cause is found, and, where appropriate, after an opportunity for a hearing, assess sanctions and penalties.

§ ____.715 Definitions.

For the purposes of subparts H and I of this part:

Actual wage means the wage rate paid by the employer to all similarly situated employees in the occupation at the worksite at the time of employment.

Administrative Law Judge means an official appointed pursuant to 5 U.S.C. 3105.

Administrator means the Administrator of the Wage and Hour Division, Employment Standards Administration, Department of Labor, and such authorized representatives as may be designated to perform any of the functions of the Administrator under subpart H or I of this part.

Area of intended employment means the area within normal commuting distance of the place (address) of employment where the H–1B alien is or will be employed. If the place of employment is within a Metropolitan Statistical Area (MSA), any place within the MSA is deemed to be within normal commuting distance of the place of employment. If there is no MSA then the area of intended employment is the area within normal commuting distance of the place of employment.

Attorney General means the chief official of the U.S. Department of Justice or the Attorney General's designee.

Authorized agent and *authorized representative* mean an official of the employer who has the legal authority to commit the employer to the statements in the labor condition application.

Certifying Officer and *Regional Certifying Officer* mean a Department of Labor official, or such official's designee, who makes determinations about whether or not to approve labor condition applications.

Chief Administrative Law Judge means the chief official of the Office of the Administrative Law Judges of the Department of Labor or the Chief Administrative Law Judge's designee.

Department and *DOL* mean the United States Department of Labor.

Division means the Wage and Hour Division of the Employment Standards Administration, DOL.

Employer means:

(1) A person, firm, corporation, contractor, or other association or organization in the United States which suffers or permits a person to work within the United States;

(2) Which has an employer-employee relationship with respect to employees under this part, as indicated by the fact that it may hire, pay, fire, supervise or otherwise control the work of any such employee; and

(3) Which has an Internal Revenue Service tax identification number.

Employment and Training Administration (ETA) means the agency within the Department which includes the United States Employment Service (USES).

Employment Standards Administration (ESA) means the agency within the Department which includes the Wage and Hour Division.

Immigration and Naturalization Service (INS) means the component of the Department of Justice which makes the determination under the Act on whether to grant visa petitions of employers seeking the admission of nonimmigrant aliens under H–1B visas for the purpose of employment.

INA means the Immigration and Nationality Act, as amended, 8 U.S.C. 1101 *et seq.*

Independent authoritative source means a professional, business, trade, educational or governmental association, organization, or other similar entity, not owned or controlled by the employer, which has a recognized expertise in an occupational field.

Independent authoritative source survey means a survey of wages conducted by an independent authoritative source and published in a book, newspaper, periodical, looseleaf service, newsletter, or other similar medium, within the 24-month period immediately preceding the filing of the employer's attestation and each succeeding annual prevailing wage update. Such survey shall:

(1) Reflect the average wage paid to workers similarly employed in the area of intended employment;

(2) Be based upon data collected within the 24-month period immediately preceding the date of publication of the survey; and

(3) Represent the latest published prevailing wage finding by the authoritative source for the occupation in the area of intended employment.

Lockout means a labor dispute involving a work stoppage, wherein an employer withholds work from its employees in order to gain a concession from them.

Occupation means the occupational or job classification in which the H–1B alien is to be employed.

Period of intended employment means the time period between the starting and ending dates inclusive of the H–1B alien's intended period of employment in the occupational classification at the place of employment as set forth in the labor condition application.

Place of employment means the worksite or physical location where the work is performed.

Required wage rate means the rate of pay which is the higher of:

(1) The actual establishment wage rate for the occupation in which the H–1B alien is to be employed; or

(2) The prevailing wage rate (adjusted every 24 months) for the occupation in which the H–1B alien is to be employed in the geographic area of intended employment. The prevailing wage rate must be no less than the minimum wage required by Federal, State, or local law.

Secretary means the Secretary of Labor or the Secretary's designee.

Specialty occupation means an occupation that requires theoretical and

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INA means the Immigration and Nationality Act, as amended, 8 U.S.C. 1101 *et seq.*

Independent authoritative source means a professional, business, trade, educational or governmental association, organization, or other similar entity, not owned or controlled by the employer, which has a recognized expertise in an occupational field.

Independent authoritative source survey means a survey of wages conducted by an independent authoritative source and published in a book, newspaper, periodical, looseleaf service, newsletter, or other similar medium, within the 24-month period immediately preceding the filing of the employer's attestation and each succeeding annual prevailing wage update. Such survey shall:

(1) Reflect the average wage paid to workers similarly employed in the area of intended employment;

(2) Be based upon data collected within the 24-month period immediately preceding the date of publication of the survey; and

(3) Represent the latest published prevailing wage finding by the authoritative source for the occupation in the area of intended employment.

Lockout means a labor dispute involving a work stoppage, wherein an employer withholds work from its employees in order to gain a concession from them.

Occupation means the occupational or job classification in which the H–1B alien is to be employed.

Period of intended employment means the time period between the starting and ending dates inclusive of the H–1B alien's intended period of employment in the occupational classification at the place of employment as set forth in the labor condition application.

Place of employment means the worksite or physical location where the work is performed.

Required wage rate means the rate of pay which is the higher of:

(1) The actual establishment wage rate for the occupation in which the H–1B alien is to be employed; or

(2) The prevailing wage rate (adjusted every 24 months) for the occupation in which the H–1B alien is to be employed in the geographic area of intended employment. The prevailing wage rate must be no less than the minimum wage required by Federal, State, or local law.

Secretary means the Secretary of Labor or the Secretary's designee.

Specialty occupation means an occupation that requires theoretical and

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practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree (or its equivalent) in the specific specialty as a minimum for entry into the occupation in the United States. The alien in a specialty occupation shall possess the following qualifications:

(1) Full state licensure to practice in the occupation, if licensure is required for the occupation;

(2) Completion of the required degree; or

(3) Experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty. 8 U.S.C. 1184(i).

Determinations of specialty occupation and of alien qualifications are made by INS.

State means one of the 50 States, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands.

State employment security agency (SESA) means the State agency designated under section 4 of the Wagner-Peyser Act to cooperate with USES in the operation of the national system of public employment offices.

Strike means a labor dispute wherein employees engage in a concerted stoppage of work (including stoppage by reason of the expiration of a collective-bargaining agreement) or engage in any concerted slowdown or other concerted interruption of operation.

United States Employment Service (USES) means the agency of the Department of Labor, established under the Wagner-Peyser Act, which is charged with administering the national system of public employment offices.

Wage rate means the remuneration (exclusive of fringe benefits) to be paid in terms of amount per hour, day, month or year.

§ ____.720 Addresses of Department of Labor Regional Offices.

Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont): One Congress Street, 10th Floor, Boston, Massachusetts 02114–2021. Telephone: 617–565–4446.

Region II (New York, New Jersey, Puerto Rico, and the Virgin Islands): 201Varick Street, room 755, New York, New York 10014. Telephone: 212–660–2185.

Region III (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia): Post Office Box 8796, Philadelphia, Pennsylvania 19101. Telephone: 215–596–6363.

Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee): 1371 Peachtree Street NE., Atlanta Georgia 30309. Telephone: 404–347–3938.

Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin): 230 South Dearborn Street, Room 605, Chicago, Illinois 60604. Telephone: 312–353–1550.

Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas): 525 Griffin Street, Room 314, Dallas, Texas 75202. Telephone: 214–767–4989.

Region VII (Iowa, Kansas, Missouri, and Nebraska): 911 Walnut Street, Kansas City, Missouri 64106. Telephone: 816–426–3796.

Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming): 1961 Stout Street, 16th Floor, Denver, Colorado 80294. Telephone: 303–844–4613.

Region IX (Arizona, California, Guam, Hawaii, and Nevada): 71 Stevenson Street, room 830, San Francisco, California 94119. Telephone: 415–744–6647.

Region X (Alaska, Idaho, Oregon, and Washington): 909 First Avenue, room 1145, Seattle, Washington 98174. Telephone: 206–553–5297.

§ ____.730 Labor Condition Application.

(a) *Who must submit labor condition applications?* An employer, or the employer's authorized representative or agent, which meets the definition of employer set forth in § ____.715 of this part and intends to employ an H–1B alien in a specialty occupation shall submit a labor condition application to DOL.

(b) *Where should a labor condition application be submitted?* A labor condition application shall be submitted, by U.S. mail, private carrier, or facsimile transmission, to the ETA regional office shown in § ____.720 of this part in whose geographic area of jurisdiction the H–1B employee will be employed. It is the employer's responsibility to ensure that a complete application is received by the appropriate regional office of ETA. Incomplete applications will not be approved. The regional office shall process all applications sequentially upon receipt regardless of the method used by the employer to submit the application. If the application is submitted by facsimile transmission, the application containing the original signature shall be maintained by the employer as set forth at § ____.760(a)(1) of this part.

(c) *What should be submitted? Form ETA 9035.* (1) *General.* One completed and dated original Form ETA 9035, or facsimile transmission thereof, containing the labor condition statements referenced in § ____.730(e) of this part, bearing the employer's original signature (or that of the employer's authorized agent or representative) (see paragraph (b) of this section and § ____.760(a)(1) of this part with respect to applications filed by facsimile transmission) and one copy of Form ETA 9035 shall be submitted to ETA. Copies of Form ETA 9035 are available at the addresses listed in § ____.720 of this part; photocopies of the form also are permitted. Each application shall identify the occupational classification(s) for which a labor condition application is being submitted and shall state for each occupational classification:

(i) The occupation(s), by *Dictionary of Occupational Titles* (DOT) Three-Digit Occupational Groups code and by the employer's own title for the job.

(ii) The number of H–1B workers sought;

(iii) The gross wage rate(s) to be paid to each H–1B worker, expressed on a weekly, biweekly or monthly basis;

(iv) The starting and ending dates of the H–1B workers' employment;

(v) The place(s) of intended employment.

(2) *Multiple positions, occupations, and/or places of employment.* The employer may file a labor condition application for a single occupation or for multiple occupations. An employer may file a single labor condition application for more than one occupational classification, and/or for more than one place of employment only if:

(i) Each occupation is a specialty occupation;

(ii) All places of employment covered by the application are located within the jurisdiction of a single ETA regional office, or, if the alien(s) is/are to be employed sequentially in various places of employment, the application is to be submitted to the regional office having jurisdiction over the initial place of employment; and

(iii) The information required in this paragraph (c) is provided for each occupational classification for each place of employment.

(3) *Full-time and part-time jobs.* The position(s) covered by the labor condition application may be full-time or part-time or a mix of both.

(d) *Content of the labor condition application.* An employer's labor condition application shall contain the labor condition statements referenced in paragraphs (d) through (g) of this section, which provide that no alien may be admitted or provided status as an H–1B nonimmigrant in an occupational classification unless the employer has filed with the Secretary an application stating that:

(1) The employer is offering and will offer during the period of authorized employment to aliens and to all other individuals employed in the occupational classification and in the area of intended employment the greater of the following:

(i) The actual wage level for the occupational classification at the place of employment; or

(ii) The prevailing wage level for the occupational classification in the area of intended employment;

(2) The employer will provide working conditions for such aliens that will not adversely affect the working conditions of workers similarly employed;

(3) There is not a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment;

(4) The employer, at the time of filing the labor condition application:

(i) Has provided notice of the filing of the labor condition application to the bargaining representative of the employer's employees in the occupational classification in the area of intended employment for which the aliens are sought; or

(ii) If there is no such bargaining representative, has posted notice of the filing of the labor condition application in conspicuous locations in the employer's establishment(s) in the area of intended employment, in the manner described in paragraph (h) of this section; and

(5) The employer has provided the information about the occupation required in paragraph (c) of this section.

(e) *The first labor condition statement: wages.* An employer seeking to employ H–1B aliens in a specialty occupation shall state on Form ETA 9035 that it will pay the H–1B aliens and other similarly situated worker(s) the required wage rate. For purposes of this paragraph, "similarly situated" shall mean "an employee of the employer working in the same position under like conditions, such as the same shift on the same days of the week."

(1) *Establishing the wage requirement.* The first labor condition application requirement shall be satisfied when the employer signs Form ETA 9035, attesting that, for the entire period of authorized employment, the required wage rate will be paid to the H–1B alien(s) and other similarly situated workers; that is, that the wage shall be:

(i) No less than the actual wage rate paid to workers similarly employed at the place of employment; or

(ii) The prevailing wage level for the occupational classification in the area of intended employment, whichever is greater, determined as of the time of filing the application and every 24 months thereafter. The prevailing wage shall be determined as follows:

(A) If the job opportunity is in an occupation which is subject to a wage determination in the area under the Davis-Bacon Act, 40 U.S.C. 276a *et seq.* (see also 29 CFR part 1), or the McNamara-O'Hara Service Contract Act, 41 U.S.C. 351 *et seq.* (see also 29 CFR part 4), the prevailing wage shall be at the rate required under such statutory determination;

(B) If the job opportunity is covered by a union contract which was negotiated at arms-length between a union and the employer, the wage rate set forth in the union contract shall be presumed for this purpose as not adversely affecting the wages of U.S. workers similarly employed, and shall be considered as the "prevailing wage" for purposes of an employer's prevailing wage statement on a labor condition application;

(C) If the job opportunity is in an occupation which is not covered by paragraph (e)(1)(ii) (A) or (B) of this section, the prevailing wage shall be the average rate of wages, that is, the rate of wages paid to workers similarly employed in the area of intended employment. Since it is not always feasible to determine such an average rate of wages with exact precision, the wage set forth in the application shall be considered as meeting the prevailing wage standard if it is within 5 percent of the average rate of wages. The prevailing wage rate under this paragraph (e)(1)(ii)(C) of this section shall be determined by:

(*1*) The SESA; or

(*2*) An independent authoritative source. See paragraph (e)(2)(ii)(C) (*2*) of this section.

(D) For purposes of this paragraph (e), "similarly employed" shall mean "having substantially comparable jobs in the occupational classification in the area of intended employment," except that if no such workers are employed by employers other than the employer applicant in the area of intended employment "similarly employed" shall mean:

(*1*) Having jobs requiring a substantially similar level of skills within the area of intended employment; or

(*2*) If there are no substantially comparable jobs in the area of intended employment, having substantially comparable jobs with employers outside of the area of intended employment.

(E) A prevailing wage determination for labor condition application purposes made pursuant to this paragraph (e) shall not permit an employer to pay a wage lower than that required under any other Federal, State or local law.

(F) Where a range of wages is paid by the employer for an occupational classification, the range is considered to meet the definition of prevailing wage so long as the bcttom of the wage range is at least at the required wage rate.

(iii) Every 24 months throughout the period of employment of the H–1B alien, starting from the date the labor condition application was filed, the employer shall obtain current prevailing wage information as set forth in paragraph (e)(2)(ii) of this section for the occupation(s) named in the labor condition application and shall adjust the rate of pay upwards where the prevailing wage has increased, unless the actual pay rate exceeds the prevailing wage.

(2) *Documentation of the wage stqtement.* (i) The employer shall develop and maintain documentation sufficient to meet its burden of proving the validity of the prevailing wage statement referenced in paragraph (e)(1) of this section and attested to on Form ETA 9035. The employer shall document that the wage rate(s) paid to H–1B alien(s) is/are no less than the required wage rate(s).

(ii) The employer shall retain documentation regarding the determination of the prevailing wage. This source documentation shall not be submitted to ETA with the labor condition application, but shall be retained at the employer's place of business for the length of time required in § ____.760(c) of this part. The documentation shall be made available for public examination as required in § T2XX.760 of this part and to DOL upon request. Such documentation shall consist of the documentation described in paragraphs (e)(2)(ii) (A), (B), or (C) of this section and the documentation described in paragraph (e)(2)(ii)(D) of this section.

(A) If the position is in an occupation which is subject to a wage determination in the area under the provisions of the Davis-Bacon Act, 40 U.S.C. 276a *et seq.* (see 29 CFR part 1), or the McNamara-O'Hara Service Contract Act, 41 U.S.C. 351 *et seq.* (see 29 CFR part 4), the documentation shall include an excerpt from the statutory or regulatory determination showing the wage rate for the occupation in the area of intended employment.

(B) If the position is covered by a union contract which was negotiated at arms-length between a union and the employer, the documentation shall

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made pursuant to this paragraph (e) shall not permit an employer to pay a wage lower than that required under any other Federal, State or local law.

(F) Where a range of wages is paid by the employer for an occupational classification, the range is considered to meet the definition of prevailing wage so long as the bottom of the wage range is at least at the required wage rate.

(iii) Every 24 months throughout the period of employment of the H–1B alien, starting from the date the labor condition application was filed, the employer shall obtain current prevailing wage information as set forth in paragraph (e)(2)(ii) of this section for the occupation(s) named in the labor condition application and shall adjust the rate of pay upwards where the prevailing wage has increased, unless the actual pay rate exceeds the prevailing wage.

(2) *Documentation of the wage stqtement.* (i) The employer shall develop and maintain documentation sufficient to meet its burden of proving the validity of the prevailing wage statement referenced in paragraph (e)(1) of this section and attested to on Form ETA 9035. The employer shall document that the wage rate(s) paid to H–1B alien(s) is/are no less than the required wage rate(s).

(ii) The employer shall retain documentation regarding the determination of the prevailing wage. This source documentation shall not be submitted to ETA with the labor condition application, but shall be retained at the employer's place of business for the length of time required in § ____.760(c) of this part. The documentation shall be made available for public examination as required in § T2XX.760 of this part and to DOL upon request. Such documentation shall consist of the documentation described in paragraphs (e)(2)(ii) (A), (B), or (C) of this section and the documentation described in paragraph (e)(2)(ii)(D) of this section.

(A) If the position is in an occupation which is subject to a wage determination in the area under the provisions of the Davis-Bacon Act, 40 U.S.C. 276a *et seq.* (see 29 CFR part 1), or the McNamara-O'Hara Service Contract Act, 41 U.S.C. 351 *et seq.* (see 29 CFR part 4), the documentation shall include an excerpt from the statutory or regulatory determination showing the wage rate for the occupation in the area of intended employment.

(B) If the position is covered by a union contract which was negotiated at arms-length between a union and the employer, the documentation shall

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include an excerpt from the union contract showing the wage rate(s) for the occupation(s).

(C) If position is not covered by the provisions of paragraph (e)(2)(ii) (A) or (B) of this section, the employer's documentation shall consist of:

(*1*) A prevailing wage finding from the SESA for the occupation within the area of employment; or

(*2*) A prevailing wage survey for the occupation in the area of intended employment published by an independent authoritative source. For purposes of this paragraph (e)(2)(ii)(C) (*2*), a prevailing wage survey for the occupation in the area of intended employment published by an independent source shall mean a survey of wages published in a book, newspaper, periodical, looseleaf service, newsletter, or other similar medium, within the 24-month period immediately preceding the filing of the employer's attestation and each succeeding annual prevailing wage update. Such survey shall:

(*i*)(*7*) Reflect the average wage paid to workers similarly employed in the area of intended employment;

(*ii*) Be based upon data collected within the 24-month period immediately preceding the date of publication of the survey; and

(*iii*) Represent the latest published prevailing wage finding by the authoritative source for the occupation in the area of intended employment.

(D) The documentation shall include information about the employer's pay rate to employees in the area of intended employment and occupational classification in which the H–1B employee is to work. The employer shall maintain payroll records on all employees in the occupational classification in the area of intended employment beginning with the date the labor condition application was submitted and continuing throughout the period of employment. The records shall be retained for the period of time specified in § ____.760 of this part. The payroll records for each employee shall include:

(*1*) Employee's full name;

(*2*) Employee's home address;

(*3*) Employee's occupation;

(*4*) Employee's rate of pay;

(*5*) Hours worked each day and each week by the employee;

(*6*) Total daily or weekly straightime earnings by employee;

(*7*) Total overtime compensation for the week by employee;

(*8*) Total additions to or deductions from pay each pay period by employee; and

(*9*) Total wages paid each pay period, date of pay and pay period covered by the payment by employee.

(iii) Every 24 months throughout the period of employment of the H–1B alien, starting from the date the labor condition application was filed, the employer shall obtain current prevailing wage information as set forth in paragraph (e)(2)(ii) of this section for the occupation(s) named in the labor condition application and shall adjust the rate of pay upwards where the prevailing wage has increased, unless the actual pay rate exceeds the prevailing wage.

(3) *Complaints.* In the event that a complaint is filed pursuant to subpart I of this part, alleging a material misrepresentation by the employer regarding the payment of the required wage, the Administrator shall first determine whether the employer has the documentation required in paragraphs (e)(2) (ii) and (iv) of this section, and whether the documentation supports the employer's wage attestation. Where the documentation is either nonexistent or is insufficient to determine the prevailing wage (e.g., does not meet the criteria specified in this section, in which case the Administrator may find a violation of paragraph (e)(2) (i), (ii), and/or (iii) of this section), or where, based on other information regarding wages paid for the occupation in the area of intended employment, the Administrator has reason to believe that the prevailing wage finding obtained from the independent authoritative source varies substantially from the wage prevailing for the occupation in the area of intended employment, the Administrator may contact ETA, which shall provide the Administrator with a prevailing wage determination, which the Administrator shall use as the basis for the determination as to violations and for the computation of back wages, if such wages are found to be owed. For purposes of this paragraph (e)(3), ETA may consult with the appropriate SESA to ascertain the prevailing wage applicable under the circumstances of the particular complaint.

(f) *The second labor condition statement: working conditions.* An employer seeking to employ H–1B aliens in a specialty occupation shall state on Form ETA 9035 that the employment of H–1B aliens will not adversely affect the working conditions of workers similarly employed in the area of intended employment.

(1) For purposes of this paragraph (f), "similarly employed" shall mean "having substantially comparable jobs in the occupational classification in the area of intended employment," except that if no such workers are employed by employers other than the employer applicant in the area of intended employment "similarly employed" shall mean:

(i) Having jobs requiring a substantially similar level of skills within the area of intended employment; or

(ii) If there are no substantially comparable jobs in the area of intended employment, having substantially comparable jobs with employers outside of the area of intended employment.

(2) *Establishing the working conditions requirement.* The second labor condition statement is satisfied when the employer signs the labor condition application attesting that for the period of intended employment its employment of H–1B workers will not adversely affect the working conditions of workers similarly employed. Working conditions commonly refer to matters including hours, shifts, vacation periods, and fringe benefits. The employer's obligation regarding working conditions shall continue for the period of employment stated on the labor condition application.

(3) *Documentation of the workinq condition statement.* (i) In the event a complaint is filed pursuant to subpart I of this part, the employer shall document the validity of the prevailing working conditions statement referenced in paragraph (f)(1) of this section and attested to on Form ETA 9035. The employer must be able to show that the working conditions of the H–1B workers and its other employees in the occupational classification(s) named in the labor condition application are similar to working conditions existing in like business establishments to the employer's, in the area of intended employment.

(ii) In the event that an investigation is conducted pursuant to subpart I of this part, concerning whether the employer failed to satisfy the prevailing working conditions statement referenced in paragraph (f)(1) of this section and attested to on Form ETA 9035, the Administrator shall first determine whether the employer has produced the documentation required in § ____.730(f)(3)(i) of this section, and whether the documentation is sufficient to support the employer's prevailing working conditions statement. Where the documentation is either nonexistent (in which case the Administrator may find a violation of paragraph (f)(3)(i) of this section), or is insufficient to determine whether the employment of H–1B aliens has or has not adversely affected the working conditions of workers similarly employed in the area of intended employment, the Administrator may contact ETA which shall provide the Administrator with advice as to whether the working conditions of similarly employed workers in the area of intended employment have or have not been adversely affected by the employment of H–1B aliens.

(g) *The third labor condition statement: no strike or lockout.* An employer seeking to employ H–1B workers shall state on Form ETA 9035 there is not at that time a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment. A strike or lockout which occurs after the labor condition application is filed by the employer with DOL is covered by INS regulations at 8 CFR 214.2(h)(16).

(1) *Establishing the no strike or lockout requirement.* The third labor condition statement is satisfied when the employer signs the labor condition application attesting that, as of the date the application is filed, it is not involved in a strike, lockout, or work stoppage in the course of a labor dispute in the occupational classification in the area of intended employment. Labor disputes for the purpose of this paragraph (g) relate only to those disputes involving employees of the employer working at the place of employment in the occupational classification named in the labor condition application. See also INS regulations at 8 CFR 214.2(a)(16) for effects of strikes or lockouts in general on the H–1B alien's employment.

(2) *Documentation of the third labor condition statement.* (i) The employer shall develop and maintain documentation sufficient to meet its burden of proving the validity of the statement referenced in paragraph (g)(1) of this section and attested to on Form ETA 9035 should a complaint be filed that presents reasonable cause that there was a strike or lockout in the course of a labor dispute for the occupational classification in which an H–1B alien is employed at the time the application was filed. For example, such documentation may consist of a statement from the bargaining representative of the employer's employees in the occupational classification.

(ii) The employer's documentation shall not be submitted to ETA with the labor condition application, but shall be retained at the employer's place of business for the period of time specified in § ____.760(c) of this part. The documentation shall be made available as required in § ____.760(a) of this part for public examination and to DOL upon request.

(h) *The fourth labor condition statement: notice.* An employer seeking to employ H–1B workers shall state on Form ETA 9035 that the employer has provided notice of the filing of the labor condition application to the bargaining representative of the employer's employees in the occupational classification in the area of intended employment for which the aliens are sought, or, if there is no such bargaining representative, has posted notice of filing in conspicuous locations in the employer's establishment(s) in the area of intended employment, in the manner described in this paragraph (h).

(1) *Establishing the notice requirement.* The fourth labor condition statement is established when one of the following has occurred:

(i) Where there is a collective bargaining representative, no later than on or before the date the labor condition application is filed with ETA, the employer of H–1B workers shall provide notice to the bargaining representative that a labor condition application has been filed with ETA. The notice shall identify the number of H–1B worker(s) the employer is seeking to employ; the occupational classification(s) in which the H–1B worker(s) will be employed; the wages offered; the period of employment; and the location(s) at which the H–1B workers will be employed. Notice under this paragraph (h)(1)(i) shall include the following statement: "Complaints alleging misrepresentation of material facts in the labor condition application and/or failure to comply with the terms of the labor condition application may be filed with any office of the Wage and Hour Division of the United States Department of Labor."

(ii) Where there is no collective bargaining representative, the employer shall provide a notice of the labor condition application to its employees by posting a notice in at least two conspicuous locations at the place of employment. The notice shall indicate that H–1B workers are sought; the number of such workers the employer is seeking; the occupational classification(s); the wages offered; the period of employment; the location(s) at which the H–1B workers will be employed in the occupation(s); and that the labor condition application is available for public inspection at the employer's principal place of business in the U.S. or at the worksite. The notice shall also include the statement: "Complaints alleging misrepresentation of material facts in the labor condition application and/or failure to comply with the terms of the labor condition application may be filed with any office of the Wage and Hour Division of the United States Department of Labor." The posting of exact copies of the labor condition application, together with the statement regarding the filing of complaints, shall be sufficient to meet the requirements of this paragraph (h)(1)(ii) of this section.

(A) The notice shall be of sufficient size and visibility, and shall be posted in two or more conspicuous places so that the employer's workers at the place(s) of employment can easily see and read the posted notice(s).

(B) Appropriate locations for posting the notices include, but are not limited to, locations in the immediate proximity of wage and hour notices required by 29 CFR 516.4 or occupational safety and health notices required by 29 CFR 1903.2(a).

(C) The notices shall be posted before the labor condition application is filed and shall remain posted for a total of 10 days.

(2) *Documentation of the fourth labor condition statement.* The employer shall develop and maintain documentation sufficient to meet its burden of proving the validity of the statement referenced in paragraph (h)(1) of this section and attested to on Form ETA 9035. Such documentation shall include a copy of the dated notice and the name and address of the collective bargaining representative to whom the notice was provided. Where there is no collective bargaining representative, the employer shall note and retain the dates when, and locations where, the notice was posted and shall retain a copy of the posted notice.

(3) *Records retention; records availability.* The employer's documentation shall not be submitted to ETA with the labor condition application, but shall be retained for the period of time specified in § ____.760(c) of this part. The documentation shall be made available for public examination as required in § ____.760(a) of this part, and shall be made available to DOL upon request.

§ ____.740 Labor condition application determinations.

(a) *Actions on labor condition applications submitted for filing.* Once a labor condition application has been received from an employer, a determination shall be made by the ETA regional Certifying Officer whether to approve the labor condition application or return it to the employer disapproved.

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(A) The notice shall be of sufficient size and visibility, and shall be posted in two or more conspicuous places so that the employer's workers at the place(s) of employment can easily see and read the posted notice(s).

(B) Appropriate locations for posting the notices include, but are not limited to, locations in the immediate proximity of wage and hour notices required by 29 CFR 516.4 or occupational safety and health notices required by 29 CFR 1903.2(a).

(C) The notices shall be posted before the labor condition application is filed and shall remain posted for a total of 10 days.

(2) *Documentation of the fourth labor condition statement.* The employer shall develop and maintain documentation sufficient to meet its burden of proving the validity of the statement referenced in paragraph (h)(1) of this section and attested to on Form ETA 9035. Such documentation shall include a copy of the dated notice and the name and address of the collective bargaining representative to whom the notice was provided. Where there is no collective bargaining representative, the employer shall note and retain the dates when, and locations where, the notice was posted and shall retain a copy of the posted notice.

(3) *Records retention; records availability.* The employer's documentation shall not be submitted to ETA with the labor condition application, but shall be retained for the period of time specified in § ____.760(c) of this part. The documentation shall be made available for public examination as required in § ____.760(a) of this part, and shall be made available to DOL upon request.

§ ____.740 Labor condition application determinations.

(a) *Actions on labor condition applications submitted for filing.* Once a labor condition application has been received from an employer, a determination shall be made by the ETA regional Certifying Officer whether to approve the labor condition application or return it to the employer disapproved.

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(1) *Approval of labor condition application.* Where all items on Form ETA 9035 have been completed and it contains the signature of the employer or its authorized agent or representative, the regional Certifying Officer shall approve the labor condition application. If the labor condition application is approved, the regional Certifying Officer shall return an approved copy of the labor condition application to the employer or the employer's authorized agent or representative. The employer shall file the approved labor condition application with the appropriate INS office in the manner prescribed by INS. The INS shall determine whether each occupational classification named in the approved labor condition application is a specialty occupation.

(2) *Disapproval of labor condition applications.* ETA shall not approve a labor condition application and shall return such application to the employer or the employer's authorized agent or representative, when either or both of the following two conditions exists:

(i) When the Form ETA 9035 is not properly completed. Examples of a Form ETA 9035 which is not properly completed include instances where the employer has failed to check all the necessary boxes; or where the employer has failed to identify the occupational classification(s) or state the number of workers sought, the wage rate, period of intended employment or date of need; or where the application does not contain the signature of the employer or the employer's authorized agent or representative.

(ii) When the Administrator, Wage and Hour Division, after notice and opportunity for a hearing pursuant to subpart I of this part, has notified ETA in writing that the employer has been disqualified from employing H–1B workers under section 212(n)(2) of the Act.

(3) *Correction and resubmission of labor condition application.* If the labor condition application is not approved pursuant to paragraph (a)(2)(i) of this section, ETA shall return it to the employer, or the employer's authorized agent or representative, explaining the reasons for such disapproval. The employer may immediately submit a corrected application to ETA. A "resubmitted" or "corrected" labor condition application shall be treated as a new application by the regional office—i.e., on a "first come, first served" basis. If the labor condition application is not approved pursuant to paragraph (a)(2)(ii) of this section, such action shall be the final decision of the Secretary.

(b) *Challenges to labor condition applications.* ETA shall not consider information contesting a labor condition application received by ETA prior to the approval or disapproval of the application. Such information shall not be made part of ETA's administrative record on the application, but shall be referred to ESA to be processed as a complaint pursuant to subpart I of this part, and, if such application is approved by ETA, the complaint will be handled by ESA under subpart I.

(c) *Truthfulness and adequacy of information.* DOL is not the guarantor of the accuracy, truthfulness or adequacy of an approved labor condition application. The burden of proof is on the employer to establish the truthfulness of the information contained on the labor condition application.

§ ____.750 Validity period of the labor condition application.

(a) *Validity of approved labor condition applications.* A labor condition application which has been approved pursuant to the provisions of § ____.740 of this part shall be valid for the period of employment indicated on Form ETA 9035; however, in no event shall the validity period of a labor condition application exceed six years. Where the labor condition application contains multiple periods of intended employment, the validity period shall extend to the latest date indicated or six years, whichever comes first.

(b) *Withdrawal of approved labor condition applications.* (1) An employer who has filed a labor condition application which has been approved pursuant to § ____.740 of this part may withdraw such labor condition application at any time before the expiration of the validity period of the application, provided that:

(i) H–1B workers are not employed at the place of employment pursuant to the labor condition application; and

(ii) The Administrator has not found reasonable cause under subpart I to commence an investigation of the particular application. Any such request for withdrawal shall be null and void; and the employer shall remain bound by the labor condition application until the enforcement proceeding is completed, at which time the application may be withdrawn.

(2) Requests for withdrawals shall be in writing and shall be directed to the regional ETA Certifying Officer.

(3) Upon receipt of an employer's written request to withdraw a labor condition application, ETA shall promptly notify the Attorney General that the application has been withdrawn, unless ESA has found reasonable cause to commence an investigation.

(4) Withdrawal of a labor condition application shall not affect an employer's liability with respect to any failure to meet the labor conditions which took place before the withdrawal, or for misrepresentations in an application. However, if an employer has not yet employed any H–1B aliens pursuant to the application, the Administrator shall not find reasonable cause to investigate, unless it is alleged, and there is reasonable cause to believe, that the employer has made misrepresentations in the labor condition application.

(c) *Invalidation or suspension of a labor condition application.* (1) Invalidation of a labor condition application may result from enforcement action(s) by the Administrator, Wage and Hour Division, under subpart I of this part—i.e., investigation(s) conducted by the Administrator regarding the employer's failure to meet a labor condition (or substantial failure in the case of the employer's failure to meet the notice and public access conditions of the application; see §§ ____.730(h) and 760 of this part) or the misrepresentation of a material fact in an application.

(2) If, after approving a labor condition application, ETA finds that it is unacceptable because it falls within one of the categories set forth at § ____.740(a)(2) (i) or (ii) of this part, ETA shall invalidate the application and notify the Attorney General and the employer, or the employer's authorized agent or representative. ETA shall notify the Attorney General and the employer in writing of the reason(s) that the application is invalidated. When a labor condition application is invalidated because it falls within § ____.740(a)(2)(ii), such action shall be the final decision of the Secretary.

(3) Suspension of a labor condition application may result from a discovery by ETA that it made an error in approving the application because such application is incomplete or has not been signed. In such event, ETA shall immediately notify INS and the employer. When an application is suspended, the employer may immediately submit to the certifying officer a corrected or completed application.

(d) *Employers subject to disqualification.* No labor condition application shall be approved for an employer which has been found to be disqualified from participation in the H–1B program as determined in a final agency action following an investigation by the Wage and Hour Division pursuant to subpart I of this part.

§ ____.760 Public access.

(a) *Public examination.* The employer shall make a filed labor condition application and supporting documentation available for public examination at the employer's principal place of business in the U.S. or at the place of employment within one working day after the date on which the labor condition application is filed with DOL. This documentation shall include the following:

(1) A copy of the completed labor condition application, Form ETA 9035. If the application is submitted by facsimile transmission, the application containing the original signature shall be maintained by the employer;

(2) Information about the pay rate of the employer to its employees in the occupational classification in which the H-1B alien(s) is employed; actual payroll records showing rates of pay to individual employees are not required to be made available for public examination; however, these records must be made available to DOL upon request (see § ____.730(e)(2)(ii)(D) and (e)(2)(iv) and subpart I of this part);

(3) Prevailing wage information as required by § ____.730(e) of this part;

(4) Evidence of no strike or lockout as required by § ____.730(g) of this part; and

(5) Evidence of notification as required by § ____.730(h) of this part.

(b) *National list of applications.* ETA shall compile and maintain on a current basis a list of the labor condition applications. Such list shall be by employer, showing the occupational classification, wage rate(s), number of aliens sought, period(s) of intended employment, and date(s) of need for each employer's application. The list shall be available for public examination at the Department of Labor, 200 Constitution Avenue, NW., room N4456, Washington, DC 20210.

(c) *Retention of records.* The employer shall retain copies of the labor condition application, prevailing wage information, documentation that no strike or lockout existed during the filing of the application, and documentation showing provision of notice to bargaining representatives or employees at the place of employment for a period of one year beyond the end of the period of employment specified on the labor condition application, except that if a timely complaint is filed, the documentation shall be retained until the complaint is resolved through the procedures set forth in subpart I. Required payroll records for the H-1B employees and other employees in the occupational classification shall be retained at the place of employment for a period of three years from the date(s) of the creation of the record(s), except that if a timely complaint is filed, all payroll records shall be retained until the complaint is resolved through the procedures set forth in subpart I.

Subpart I—Enforcement of H-1B Labor Condition Applications

§ ____.800 Enforcement authority of Administrator, Wage and Hour Division.

(a) *Authority of Administrator.* The Administrator shall perform all the Secretary's investigative and enforcement functions under section 212(n) of the INA (8 U.S.C. 1182(n)) and subparts H and I of this part.

(b) *Conduct of Investigations.* The Administrator, pursuant to a complaint, shall conduct such investigations as may be appropriate and, in connection therewith, enter and inspect such places and such records (and make transcriptions or copies thereof), question such persons and gather such information as deemed necessary by the Administrator to determine compliance regarding the matters which are the subject of the investigation.

(c) *Availability of Records.* An employer being investigated shall make available to the Administrator such records, information, persons, and places as the Administrator deems appropriate to copy, transcribe, question, or inspect. No employer subject to the provisions of section 212(n) of the INA (8 U.S.C. 1182(n)) or and subpart H or I of this part shall interfere with any official of the Department of Labor performing an investigation, inspection or law enforcement function pursuant to 8 U.S.C. 1182(n) or subpart H or I of this part. Any such interference shall be a violation of the labor condition application and these regulations, and the Administrator may take such further actions as the Administrator considers appropriate.

Note: Federal criminal statutes prohibit certain interference with a Federal officer in the performance of official duties. 18 U.S.C. 111 and 18 U.S.C. 1114.

(d) *Employer Cooperation.* An employer subject to subpart H or I of this part shall at all times cooperate in administrative and enforcement proceedings. No employer shall intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any person because such person has:

(1) Filed a complaint or appeal under or related to section 212(n) of the INA (8 U.S.C. 1182(n)) or subpart H or I of this part;

(2) Testified or is about to testify in any proceeding under or related to section 212(n) of the INA (8 U.S.C. 1182(n)) or subpart H or I of this part;

(3) Exercised or asserted on behalf of himself or herself or others any right or protection afforded by section 212(n) of the INA (8 U.S.C. 1182(n)) or subpart H or I of this part.

(4) Consulted with an employee of a legal assistance program or an attorney on matters related to section 212(n) of the INA (8 U.S.C. 1182(n)) or to subpart H or I of this part or any other DOL regulation promulgated pursuant to 8 U.S.C. 1182(n).

In the event of such intimidation or restraint as are described in this paragraph (d), the conduct shall be a violation of the labor condition application and subparts H and I of this part, and the Administrator may take such further actions as the Administrator considers appropriate.

(e) *Confidentiality.* The Administrator shall, to the extent possible under existing law, protect the confidentiality of any person who provides information to the Department in confidence in the course of an investigation or otherwise under subpart H or I of this part.

§ ____.805 Complaints and investigative procedures.

(a) The Administrator, through an investigation pursuant to a complaint, shall determine whether an H-1B employer has:

(1) Filed a labor condition application with ETA which misrepresents a material fact.

Note: Federal criminal statutes provide penalties of up to $10,000 and/or imprisonment of up to 5 years for knowing and willful submission of false statements to the Federal Government. 18 U.S.C. 1001; see also 18 U.S.C. 1546.

(2) Failed to meet a condition in the labor condition application—

(i) Failed to pay wages as required under § .730(e) of this part;

(ii) Failed to provide the working conditions required under § ____.730(f) of this part;

(3) Filed a labor condition application for H-1B worker(s) during a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment (see § ____.730(g) of this part); or

(4) Substantially failed to provide notice of the filing of the labor condition application as required in § ____.730(h) of this part;

(5) Substantially failed to make available for public examination the

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(2) Testified or is about to testify in any proceeding under or related to section 212(n) of the INA (8 U.S.C. 1182(n)) or subpart H or I of this part;

(3) Exercised or asserted on behalf of himself or herself or others any right or protection afforded by section 212(n) of the INA (8 U.S.C. 1182(n)) or subpart H or I of this part.

(4) Consulted with an employee of a legal assistance program or an attorney on matters related to section 212(n) of the INA (8 U.S.C. 1182(n)) or to subpart H or I of this part or any other DOL regulation promulgated pursuant to 8 U.S.C. 1182(n).

In the event of such intimidation or restraint as are described in this paragraph (d), the conduct shall be a violation of the labor condition application and subparts H and I of this part, and the Administrator may take such further actions as the Administrator considers appropriate.

(e) *Confidentiality.* The Administrator shall, to the extent possible under existing law, protect the confidentiality of any person who provides information to the Department in confidence in the course of an investigation or otherwise under subpart H or I of this part.

§ ____.805 Complaints and investigative procedures.

(a) The Administrator, through an investigation pursuant to a complaint, shall determine whether an H–1B employer has:

(1) Filed a labor condition application with ETA which misrepresents a material fact.

Note: Federal criminal statutes provide penalties of up to $10,000 and/or imprisonment of up to 5 years for knowing and willful submission of false statements to the Federal Government. 18 U.S.C. 1001; see also 18 U.S.C. 1546.

(2) Failed to meet a condition in the labor condition application—

(i) Failed to pay wages as required under § .730(e) of this part;

(ii) Failed to provide the working conditions required under § ____.730(f) of this part;

(3) Filed a labor condition application for H–1B worker(s) during a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment (see § ____.730(g) of this part); or

(4) Substantially failed to provide notice of the filing of the labor condition application as required in § ____.730(h) of this part;

(5) Substantially failed to make available for public examination the

attestation and its accompanying document(s) at the employer's principal place of business or worksite as required in § ____.760(a);

(6) Failed to retain documentation as required by § ____.760(c) of this part; or

(7) Failed otherwise to comply in any other manner with the provisions of subpart H or I of this part.

(b) Pursuant to §§ ____.740(a)(1) and ____.750 of this part; or the provisions of this part become effective upon the date of ETA's notification that the employer's labor condition application is approved, whether or not the employer hires any H–1B worker(s) in the occupation(s) for the period of employment covered in the labor condition application. Should the period of employment specified in the labor condition application expire or should the employer withdraw the application in accordance with § ____.750(b) of this part, the provisions of this part will no longer be in effect with respect to such application, except as provided in § ____.750(b)(4) of the part.

(c) Any aggrieved person or organization (including bargaining representatives) may file a complaint of a violation described in paragraph (a) of this section.

(1) No particular form of complaint is required, except that the complaint shall be written or, if oral, shall be reduced to writing by the Wage and Hour Division official who receives the complaint.

(2) The complaint shall set forth sufficient facts for the Administrator to determine whether an investigation is warranted, in that there is reasonable cause to believe that a violation as described in paragraph (a) of this section has been committed. This determination shall be made within 10 days of the date that the complaint is received by a Wage and Hour Division official. If the Administrator determines that the complaint fails to present reasonable cause for an investigation, the Administrator shall so notify the complainant, who may submit a new complaint, with such additional information as may be necessary. No hearing pursuant to this subpart shall be available where the Administrator determines that an investigation on a complaint is not warranted.

(3) If the Administrator determines that an investigation on the complaint is warranted, the complaint shall be accepted for filing; an investigation shall be conducted and a determination issued within 30 calendar days of the date of filing.

(4) In the event that the Administrator seeks a prevailing wage determination from ETA pursuant to § ____.730(e)(3), or advice as to prevailing working conditions from ETA pursuant to § ____.730(f)(3)(ii), the 30-day investigation period shall be suspended, from the date of the Administrator's request to the date of the Administrator's receipt of the wage determination or advice as to prevailing working conditions.

(5) The complaint must be filed not later than 12 months after the date of the alleged violation(s).

(6) The complaint may be submitted to any local Wage and Hour Division office. The addresses of such offices are found in local telephone directories. The office or person receiving such a complaint shall refer it to the office of the Wage and Hour Division administering the area in which the reported violation is alleged to have occurred.

(d) When an investigation has been conducted, the Administrator shall, pursuant to § ____.815 of this part, issue a written determination as to whether or not any violation(s) as described in paragraph (a) of this section has been committed.

§ ____.810 Remedies.

(a) Upon determining that the employer has failed to pay wages as required by § ____.730(e) of this part, the Administrator shall assess and oversee the payment of back wages to any H–1B worker or other individual employed by the employer in the occupational classification. The back wages shall be equal to the difference between the amount that should have been paid and the amount that actually was paid to such worker(s);

(b) Upon determining that the employer has committed any violation(s) described in § ____.805(a) of this part, the Administrator may assess a civil money penalty not to exceed $1,000 per violation. In determining the amount of civil money penalty to be assessed, the Administrator shall consider the type of violation committed and other relevant factors. The factors which may be considered include, but are not limited to, the following:

(1) Previous history of violation, or violations, by the employer under the Act and subpart H or I of this part;

(2) The number of workers affected by the violation or violations;

(3) The gravity of the violation or violations;

(4) Efforts made by the violator in good faith to comply with the provisions of 8 U.S.C. 1182(n) and subparts H and I of this part;

(5) The violator's explanation of the violation or violations;

(6) The violator's commitment to future compliance; and

(7) The extent to which the violator achieved a financial gain due to the violation, or the potential financial loss, potential injury or adverse effect with respect to other parties.

(c) In addition to back wages and civil money penalties, the Administrator may impose such other administrative remedy(ies) under this subpart as the Administrator deems appropriate.

(d) The civil money penalties, back wages, and/or any other remedy(ies) determined by the Administrator to be appropriate are immediately due for payment or performance upon the assessment by the Administrator, or upon the decision by an administrative law judge where a hearing is timely requested, or the decision by the Secretary where review is granted. The employer shall remit the amount of the back wages and/or civil money penalties by certified check or money order made payable to the order of "Wage and Hour Division, Labor." The remittance shall be delivered or mailed to the Wage and Hour Division office in the manner directed in the Administrator's notice of determination. The performance of any other remedy prescribed by the Administrator shall follow procedures established by the Administrator.

§ ____.815 Written notice and service of Administrator's determination.

(a) The Administrator's determination, issued pursuant to § ____.805 of this part, shall be served on the complainant, the employer, and other known interested parties by personal service or by certified mail at the parties' last known addresses. Where service by certified mail is not accepted by the party, the Administrator may exercise discretion to serve the determination by regular mail.

(b) The Administrator shall file with the Chief Administrative Law Judge, U.S. Department of Labor, a copy of the complaint and the Administrator's determination.

(c) The Administrator's written determination required by § ____.805 of this part shall:

(1) Set forth the determination of the Administrator and the reason or reasons therefor, and in the case of a finding of violation(s) by an employer, prescribe any remedies, including the amount of any back wages assessed, the amount of any civil money penalties assessed and the reason therefor, and/or any other remedies assessed.

(2) Inform the interested parties that they may request a hearing pursuant to § ____.820 of this part.

(3) Inform the interested parties that in the absence of a timely request for a hearing, received by the Chief Administrative Law Judge within 15 calendar days of the date of the determination, the determination of the Administrator shall become final and not appealable.

(4) Set forth the procedure for requesting a hearing, and give the address of the Chief Administrative Law Judge.

(5) Inform the parties that, pursuant to § .855 of this part, the Administrator shall notify ETA and the Attorney General of the occurrence of a violation by the employer.

§ ____.820 Request for hearing.

(a) Any interested party desiring to request an administrative hearing in accordance with section 556 of title 5, United States Code, on a determination issued pursuant to §§ ____.805 and ____.815 of this part shall make such request in writing to the Chief Administrative Law Judge at the address stated in the notice of determination.

(b) Interested parties may request a hearing in the following circumstances:

(1) The complainant or any other interested party may request a hearing where the Administrator determines, after investigation, that there is no basis for a finding that an employer has committed violation(s). In such a proceeding, the party requesting the hearing shall be the prosecuting party and the employer shall be the respondent; the Administrator may intervene as a party or appear as amicus curiae at any time in the proceeding, at the Administrator's discretion.

(2) The employer or any other interested party may request a hearing where the Administrator determines, after investigation, that the employer has committed violation(s). In such a proceeding, the Administrator shall be the prosecuting party and the employer shall be the respondent.

(c) No particular form is prescribed for any request for hearing permitted by this section. However, any such request shall:

(1) Be dated;

(2) Be typewritten or legibly written;

(3) Specify the issue or issues stated in the notice of determination giving rise to such request;

(4) State the specific reason or reasons why the party requesting the hearing believes such determination is in error;

(5) Be signed by the party making the request or by an authorized representative of such party; and

(6) Include the address at which such party or authorized representative desires to receive further communications relating thereto.

(d) The request for such hearing shall be received by the Chief Administrative Law Judge, at the address stated in the Administrator's notice of determination, no later than 15 calendar days after the date of the determination.

(e) The request may be filed in person, by facsimile transmission, by certified or regular mail, or by courier service. For the requesting party's protection, if the request is by mail, it should be by certified mail. If the request is by facsimile transmission, the original of the request, signed by the requestor or authorized representative, shall be filed within ten days.

(f) Copies of the request for a hearing shall be sent by the requestor to the Administrator and all known interested parties.

§ ____.825 Rules of practice for administrative law judge proceedings.

(a) Except as specifically provided in this subpart, and to the extent they do not conflict with the provisions of this subpart, the "Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges" established by the Secretary at 29 CFR part 18 shall apply to administrative proceedings under this subpart.

(b) As provided in the Administrative Procedure Act, 5 U.S.C. 556, any oral or documentary evidence may be received in proceedings under this part. The Federal Rules of Evidence and subpart B of the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges (29 CFR part 18, subpart B) shall not apply, but principles designed to ensure production of relevant and probative evidence shall guide the admission of evidence. The administrative law judge may exclude evidence which is immaterial, irrelevant, or unduly repetitive.

§ ____.830 Service and computation of time.

(a) Under this subpart, a party may serve any pleading or document by regular mail. Service on a party is complete upon mailing to the last known address. No additional time for filing or response is authorized where service is by mail. In the interest of expeditious proceedings, the administrative law judge may direct the parties to serve pleadings or documents by a method other than regular mail.

(b) Two (2) copies of all pleadings and other documents in any administrative law judge proceeding shall be served on the attorneys for the Administrator. One copy shall be served on the Associate Solicitor, Division of Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue NW., room N–2716, Washington, DC 20210, and one copy shall be served on the attorney representing the Administrator in the proceeding.

(c) Time will be computed beginning with the day following the action and includes the last day of the period unless it is a Saturday, Sunday, or federally-observed holiday, in which case the time period includes the next business day.

§ ____.835 Administrative law judge proceedings.

(a) Upon receipt of a timely request for a hearing filed pursuant to and in accordance with § ____.820 of this part, the Chief Administrative Law Judge shall promptly appoint an administrative law judge to hear the case.

(b) Within 7 calendar days following the assignment of the case, the administrative law judge shall notify all interested parties of the date, time and place of the hearing. All parties shall be given at least fourteen calendar days notice of such hearing.

(c) The date of the hearing shall be not more than 60 calendar days from the date of the Administrator's determination. Because of the time constraints imposed by the Act, no requests for postponement shall be granted except for compelling reasons. Even where such reasons are shown, no request for postponement of the hearing beyond the 60-day deadline shall be granted except by consent of all the parties to the proceeding.

(d) The administrative law judge may prescribe a schedule by which the parties are permitted to file a prehearing brief or other written statement of fact or law. Any such brief or statement shall be served upon each other party in accordance with § ____.830 of this part. Posthearing briefs will not be permitted except at the request of the administrative law judge. When permitted, any such brief shall be limited to the issue or issues specified by the administrative law judge, shall be due within the time prescribed by the administrative law judge, and shall be served on each other party in accordance with § ____.830 of this part.

§ ____.840 Decision and order of administrative law judge.

(a) Within 60 calendar days after of the date of the hearing, the administrative law judge shall issue a decision.

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copy shall be served on the Associate Solicitor, Division of Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue NW., room N-2716, Washington, DC 20210, and one copy shall be served on the attorney representing the Administrator in the proceeding.

(c) Time will be computed beginning with the day following the action and includes the last day of the period unless it is a Saturday, Sunday, or federally-observed holiday, in which case the time period includes the next business day.

§ ____.835 Administrative law judge proceedings.

(a) Upon receipt of a timely request for a hearing filed pursuant to and in accordance with § ____.820 of this part, the Chief Administrative Law Judge shall promptly appoint an administrative law judge to hear the case.

(b) Within 7 calendar days following the assignment of the case, the administrative law judge shall notify all interested parties of the date, time and place of the hearing. All parties shall be given at least fourteen calendar days notice of such hearing.

(c) The date of the hearing shall be not more than 60 calendar days from the date of the Administrator's determination. Because of the time constraints imposed by the Act, no requests for postponement shall be granted except for compelling reasons. Even where such reasons are shown, no request for postponement of the hearing beyond the 60-day deadline shall be granted except by consent of all the parties to the proceeding.

(d) The administrative law judge may prescribe a schedule by which the parties are permitted to file a prehearing brief or other written statement of fact or law. Any such brief or statement shall be served upon each other party in accordance with § ____.830 of this part. Posthearing briefs will not be permitted except at the request of the administrative law judge. When permitted, any such brief shall be limited to the issue or issues specified by the administrative law judge, shall be due within the time prescribed by the administrative law judge, and shall be served on each other party in accordance with § ____.830 of this part.

§ ____.840 Decision and order of administrative law judge.

(a) Within 60 calendar days after of the date of the hearing, the administrative law judge shall issue a decision.

(b) The decision of the administrative law judge shall include a statement of findings and conclusions, with reasons and basis therefor, upon each material issue presented on the record. The decision shall also include an appropriate order which may affirm, deny, reverse, or modify, in whole or in part, the determination of the Administrator; the reason or reasons for such order shall be stated in the decision.

(c) In the event that the Administrator's determination(s) of wage violation(s) and computation of back wages are based upon a wage determination obtained by the Administrator from ETA during the investigation (pursuant to § ____.730(e)(3)), the administrative law judge shall not determine the prevailing wage de novo, but shall, based on the evidence (including the ETA administrative record), either accept the wage determination or vacate the wage determination. If the wage determination is vacated, the administrative law judge shall remand the case to the Administrator, who may then refer the matter to ETA and, upon the issuance of a new wage determination by ETA, resubmit the case to the administrative law judge. Under no circumstances shall source data obtained in confidence by ETA, or the names of establishments contacted by ETA, be submitted into evidence or otherwise disclosed.

(d) The administrative law judge shall not render determinations as to the legality of a regulatory provision or the constitutionality of a statutory provision.

(e) The decision shall be served on all parties in person or by certified or regular mail.

§ ____.845 Secretary's review of administrative law judge's decision.

(a) The Administrator or any interested party desiring review of the decision and order of an administrative law judge shall petition the Secretary to review the decision and order. To be effective, such petition shall be received by the Secretary within 30 calendar days of the date of the decision and order. Copies of the petition shall be served on all parties and on the administrative law judge.

(b) No particular form is prescribed for any petition for Secretary's review permitted by this subpart. However, any such petition shall:

(1) Be dated;

(2) Be typewritten or legibly written;

(3) Specify the issue or issues stated in the administrative law judge decision and order giving rise to such petition;

(4) State the specific reason or reasons why the party petitioning for review believes such decision and order are in error;

(5) Be signed by the party filing the petition or by an authorized representative of such party;

(6) Include the address at which such party or authorized representative desires to receive further communications relating thereto; and

(7) Attach copies of the administrative law judge's decision and order, and any other record documents which would assist the Secretary in determining whether review is warranted.

(c) Whenever the Secretary determines to review the decision and order of an administrative law judge, a notice of the Secretary's determination shall be served upon the administrative law judge and upon all parties to the proceeding within 30 calendar days after the Secretary's receipt of the petition for review.

(d) Upon receipt of the Secretary's notice, the Office of Administrative Law Judges shall within fifteen calendar days forward the complete hearing record to the Secretary.

(e) The Secretary's notice shall specify:

(1) The issue or issues to be reviewed;

(2) The form in which submissions shall be made by the parties (*e.g.*, briefs);

(3) The time within which such submissions shall be made.

(f) All documents submitted to the Secretary shall be filed with the Secretary of Labor, U.S. Department of Labor, Washington, DC 20210, Attention: Executive Director, Office of Administrative Appeals, room S-4309. An original and two copies of all documents shall be filed. Documents are not deemed filed with the Secretary until actually received by the Secretary. All documents, including documents filed by mail, shall be received by the Secretary either on or before the due date.

(g) Copies of all documents filed with the Secretary shall be served upon all other parties involved in the proceeding. Service upon the Administrator shall be in accordance with § ____.830(b) of this part.

(h) The Secretary's final decision shall be issued within 180 calendar days from the date of the notice of intent to review. The Secretary's decision shall be served upon all parties and the administrative law judge.

(i) Upon issuance of the Secretary's decision, the Secretary shall transmit the entire record to the Chief Administrative Law Judge for custody pursuant to § ____.850 of this part.

§ ____.850 Administrative record.

The official record of every completed administrative hearing procedure provided by subparts H and I of this part shall be maintained and filed under the custody and control of the Chief Administrative Law Judge. Upon receipt of a complaint seeking review of the final agency action in a United States District Court, the Chief Administrative Law Judge shall certify the official record and shall transmit such record to the clerk of the court.

§ ____.855 Notice to the Employment and Training Administration and the Attorney General.

(a) The Administrator shall notify the Attorney General and ETA of the final determination of a violation by an employer upon the earliest of the following events:

(1) Where the Administrator determines that there is a basis for a finding of violation by an employer, and no timely request for hearing is made pursuant to § ____.820 of this part; or

(2) Where, after a hearing, the administrative law judge issues a decision and order finding a violation by an employer; or

(3) Where the administrative law judge finds that there was no violation by an employer, and the Secretary, upon review, issues a decision pursuant to § ____.845 of this part, holding that a violation was committed by an employer.

(b) The Attorney General, upon receipt of notification from the Administrator pursuant to paragraph (a), shall not approve petitions filed with respect to that employer under sections 204 or 214(c) of the Act (8 U.S.C. 1154 and 1184 (c)) during a period of at least one year for aliens to be employed by the employer.

(c) ETA, upon receipt of the Administrator's notice pursuant to paragraph (a) of this section, shall suspend the employer's labor condition application(s) under subparts H and I of this part, and shall not accept for filing any application or attestation submitted by the employer under 20 CFR Part 656 or subparts A, B, C, D, E, H or I of this part, for a period of 12 months or for a longer period if such is specified by the Attorney General for visa petitions filed by that employer under sections 204 and 214(c) of the Act.

Proposed Adoption of the Joint Rule

The agency specific proposed adoption of the joint rule, which appears at the end of the common preamble, appears below:

VOL 56 ISS 150 AG 5 1991 UMI

Title 20—Employers' Benefits

CHAPTER V—EMPLOYMENT AND TRAINING ADMINISTRATION, DEPARTMENT OF LABOR

Accordingly, chapter V of title 20, Code of Federal Regulations, is proposed to be amended as follows:

PART 655—TEMPORARY EMPLOYMENT OF ALIENS IN THE UNITED STATES

The authority citation for part 655 is revised to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(H) (i) and (ii), 1182 (m) and (n), 1184, 1188, and 1288(c), 29 U.S.C. 49 *et seq.*, Pub. L. 101–238; sec. 3(c)(1), 103 Stat. 2099, 2103, and Pub. L. 101–649, sec. 221(a), 104 Stat. 4978, 5027; § 665.00 issued under 8 U.S.C. 1101(a)(15)(H)(ii), 1184, and 1186, 29 U.S.C. 49 *et seq.*, and 8 CFR 214.2(h)(4)(i); Subparts A and C issued under 8 U.S.C. 1101(a)(15)(H)(ii)(b) and 1184, 29 U.S.C. 49 *et seq.*, and 8 CFR 214.2(b)(4)(i); Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184, and 1188, and 29 U.S.C. 49 *et seq.;* Subparts D and E issued under 8 U.S.C. 1101(a)(15)(H)(i)(a), 1182(m), and 1184, 29 U.S.C. 49 *et seq.*, and Pub. L. 101–238, sec. 3(c)(1), 103 Stat. 2099, 2103; Subparts F and G issued under 8 U.S.C. 1184 and 1288(c), and 29 U.S.C. 49 *et seq.;* Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), and 1184, and 29 U.S.C. 49 *et seq.;* Subparts J and K issued under 29 U.S.C. 49 *et seq.*, and Pub. L. 101–649, sec. 221(a), 104 Stat. 4978, 5027.

2. Section 655.0 is amended by adding a new paragraph (d) to read as follows:

§ 655.0 Scope and purpose of part.

* * * * *

(d) *Subparts H and I of this part.* Subparts H and I of this part set forth the process by which employers can file with, and the requirements for obtaining approval from, the Department of Labor of labor condition applications necessary for the purpose of petitioning INS for H-1B visas for aliens to be employed in specialty occupations, and the enforcement provisions relating thereto.

* * * * *

§ 655.000 [Amended]

3. Part 655 is amended by adding new subparts H and I as set forth at the end of the common preamble.

Subpart H—Labor Condition Applications Filed by Employers Seeking to Use Aliens on H-1B Visas in Specialty Occupations

Sec.
655.700 Purpose, procedure and applicability of subparts H and I.
655.705 Overview of responsibilities.
655.710 Complaints.
655.715 Definitions.
655.720 Addresses of Department of Labor regional offices.
655.730 Labor condition application.
655.740 Labor condition application determinations.
655.750 Validity period of labor condition application.
655.760 Public access.

Subpart I—Enforcement of H-1B Labor Condition Applications

655.800 Enforcement authority of Administrator, Wage and Hour Division.
655.805 Complaints and investigative procedures.
655.810 Remedies.
655.815 Written notice and service of Administrator's determination.
655.820 Request for hearing.
655.825 Rules of practice for administrative law judge proceedings.
655.830 Service and computation of time.
655.835 Administrative law judge proceedings.
655.840 Decision and order of administrative law judge.
655.845 Secretary's review of administrative law judge's decision.
655.850 Administrative record.
655.855 Notice to the Employment and Training Administration and the Attorney General.

Signed at Washington, DC this 30th day of July, 1991.

Roberts T. Jones,
Assistant Secretary of Employment and Training.

Samuel D. Walker,
Acting Assistant Secretary for Employment Standards.

Lynn Martin,
Secretary of Labor.

Title 29—Labor

CHAPTER V—WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR

Accordingly, title 29, Code of Federal Regulations is proposed to be amended by adding a new part 507 to read as follows, and subparts H and I are added to new part 507 as set forth in this document.

PART 507—ENFORCEMENT OF H-1B LABOR CONDITION APPLICATIONS

Subparts A, B, C, D, E, F, and G [Reserved]

Subpart H—Labor Condition Applications Filed by Employers Seeking to Use Aliens on H-1B Visas in Specialty Occupations

Sec.
507.700 Purpose, procedure and applicability of subparts H and I.
507.705 Overview of responsibilities.
507.710 Complaints.
507.715 Definitions.
507.720 Addresses of Department of Labor regional offices.
507.730 Labor condition application.
507.740 Labor condition application determinations.
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Signed at Washington, DC this 30th day of July, 1991.

Roberts T. Jones,
Assistant Secretary of Employment and Training.

Samuel D. Walker,
Acting Assistant Secretary for Employment Standards.

Lynn Martin,
Secretary of Labor.

Appendix I (Not to Be codified in the CFR): Form ETA 9035

Printed below is a copy of *Form ETA 9035.*

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Condition Applications
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Specialty Occupations

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PART 507—ENFORCEMENT OF H–1B LABOR CONDITION APPLICATIONS

Subparts A, B, C, D, E, F, and G [Reserved]

Subpart H—Labor Condition Applications Filed by Employers Seeking to Use Aliens on H–1B Visas in Specialty Occupations

Sec.
507.700 Purpose, procedure and applicability of subparts H and I.
507.705 Overview of responsibilities.
507.710 Complaints.
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Signed at Washington, DC this 30th day of July, 1991.

Roberts T. Jones,
Assistant Secretary of Employment and Training.

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Acting Assistant Secretary for Employment Standards.

Lynn Martin,
Secretary of Labor.

Appendix I (Not to Be codified in the CFR): Form ETA 9035

Printed below is a copy of *Form ETA 9035.*

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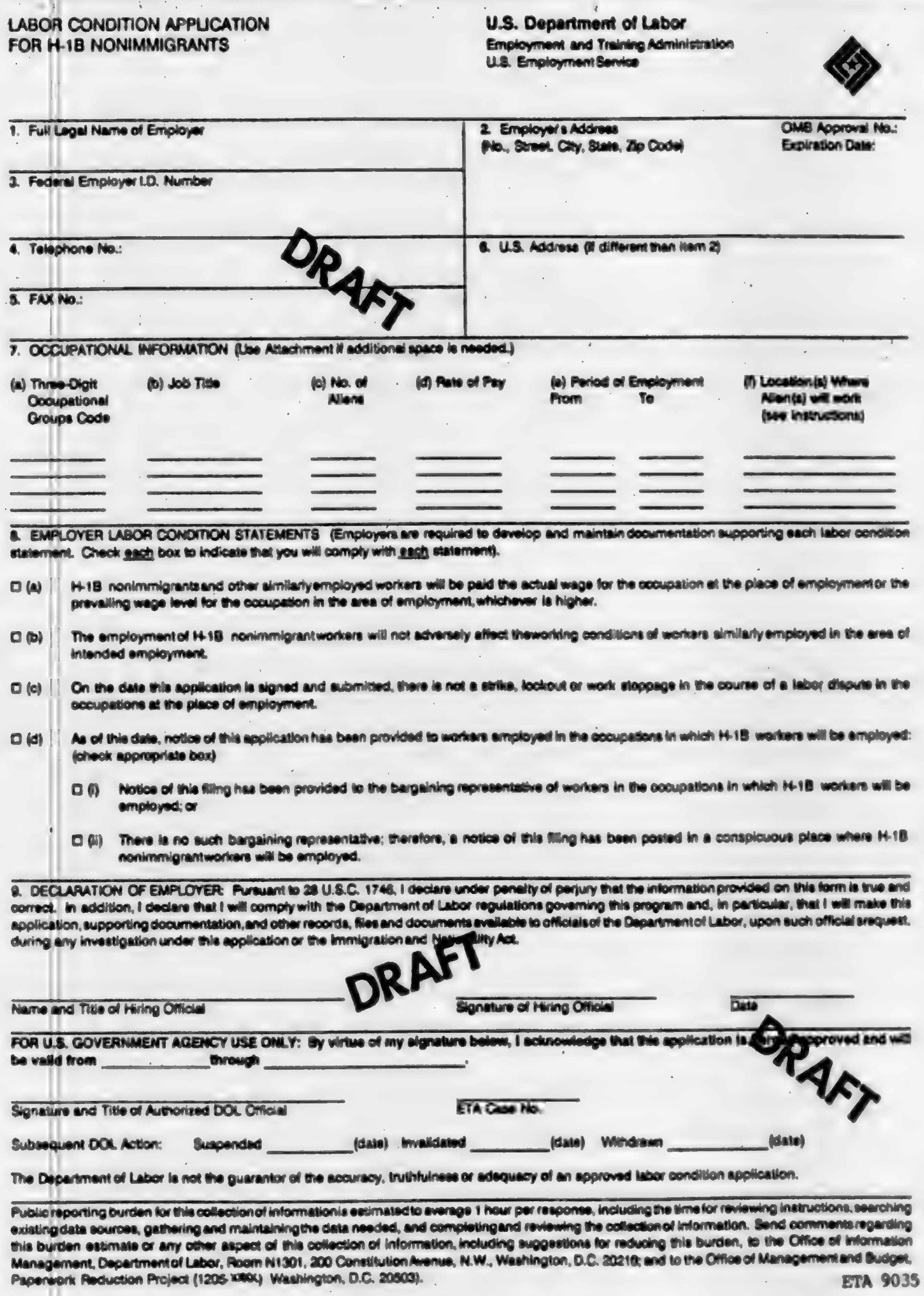

LABOR CONDITION APPLICATION
FOR H-1B NONIMMIGRANTS

U.S. Department of Labor
Employment and Training Administration
U.S. Employment Service

1. Full Legal Name of Employer

2. Employer's Address
(No., Street, City, State, Zip Code)

OMB Approval No.:
Expiration Date:

3. Federal Employer I.D. Number

4. Telephone No.:

DRAFT

5. FAX No.:

6. U.S. Address (If different than item 2)

7. OCCUPATIONAL INFORMATION (Use Attachment if additional space is needed.)

(a) Three-Digit Occupational Groups Code	(b) Job Title	(c) No. of Aliens	(d) Rate of Pay	(e) Period of Employment From	To	(f) Location(s) Where Alien(s) will work (see instructions)

8. EMPLOYER LABOR CONDITION STATEMENTS (Employers are required to develop and maintain documentation supporting each labor condition statement. Check each box to indicate that you will comply with each statement).

☐ (a) H-1B nonimmigrants and other similarly employed workers will be paid the actual wage for the occupation at the place of employment or the prevailing wage level for the occupation in the area of employment, whichever is higher.

☐ (b) The employment of H-1B nonimmigrant workers will not adversely affect the working conditions of workers similarly employed in the area of intended employment.

☐ (c) On the date this application is signed and submitted, there is not a strike, lockout or work stoppage in the course of a labor dispute in the occupations at the place of employment.

☐ (d) As of this date, notice of this application has been provided to workers employed in the occupations in which H-1B workers will be employed: (check appropriate box)

  ☐ (i) Notice of this filing has been provided to the bargaining representative of workers in the occupations in which H-1B workers will be employed; or

  ☐ (ii) There is no such bargaining representative; therefore, a notice of this filing has been posted in a conspicuous place where H-1B nonimmigrant workers will be employed.

9. DECLARATION OF EMPLOYER: Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the information provided on this form is true and correct. In addition, I declare that I will comply with the Department of Labor regulations governing this program and, in particular, that I will make this application, supporting documentation, and other records, files and documents available to officials of the Department of Labor, upon such official request, during any investigation under this application or the Immigration and Nationality Act.

DRAFT

Name and Title of Hiring Official
Signature of Hiring Official
Date

FOR U.S. GOVERNMENT AGENCY USE ONLY: By virtue of my signature below, I acknowledge that this application is [illegible] approved and will be valid from ____________ through ______________________.

DRAFT

Signature and Title of Authorized DOL Official
ETA Case No.

Subsequent DOL Action: Suspended __________(date) Invalidated __________(date) Withdrawn ____________(date)

The Department of Labor is not the guarantor of the accuracy, truthfulness or adequacy of an approved labor condition application.

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Information Management, Department of Labor, Room N1301, 200 Constitution Avenue, N.W., Washington, D.C. 20210; and to the Office of Management and Budget, Paperwork Reduction Project (1205-XXXX) Washington, D.C. 20503).

ETA 9035

Appendix 2 (Not to be codified in the CFR): DOT Three-Digit Occupational Groups codes

Printed below is a copy of DOT Three-Digit Occupational Groups Codes.

Three-Digit Occupational Groups

Professional, Technical and Managerial Occupations

Occupations in Architecture, Engineering and Surveying

001 Architectural Occupations
002 Aeronautical Engineering Occupations
003 Electrical/Electronic Engineering Occupations
005 Civil Engineering Occupations
006 Ceramic Engineering Occupations
007 Mechanical Engineering Occupations
008 Chemical Engineering Occupations
010 Mining and Petroleum Engineering Occupations
011 Metallurgy and Metallurgical Engineering Occupations
012 Industrial Engineering Occupations
013 Agricultural Engineering Occupations
014 Marine Engineering Occupations
015 Nuclear Engineering Occupations
019 Other Occupations in Architecture, Engineering and Surveying

Occupations in Mathematics and Physical Sciences

020 Occupations in Mathematics
021 Occupations in Astronomy
022 Occupations in Chemistry
023 Occupations in Physics
024 Occupations in Geology
025 Occupations in Meteorology
029 Other Occupations in Mathematics and Physical Sciences

Computer-Related Occupations

030 Occupations in Systems Analysis and Programming
031 Occupations in Data Communications and Networks
032 Occupations in Computer System User Support
033 Occupations in Computer Systems Technical Support
039 Other Computer-Related Occupations

Occupations in Life Sciences

040 Occupations in Agricultural Sciences
041 Occupations in Biological Sciences
045 Occupations in Psychology
049 Other Occupations in Life Sciences

Occupations in Social Sciences

050 Occupations in Economics
051 Occupations in Political Science
052 Occupations in Sociology
055 Occupations in Anthropology
059 Other Occupations in Social Sciences

Occupations in Medicine and Health

070 Physicians and Surgeons
071 Osteopaths
072 Dentists
073 Veterinarians
074 Pharmacists
076 Therapists
077 Dietitians
078 Occupations in Medical and Dental Technology
079 Other Occupations in Medicine and Health

Occupations in Education

090 Occupations in College and University Education
091 Occupations in Secondary School Education
092 Occupations in Preschool, Primary School, and Kindergarten Education
094 Occupations in Education of Persons With Disabilities
096 Home Economists and Farm Advisers
097 Occupations in Vocational Education
099 Other Occupations in Education

Occupations in Museum, Library, and Archival Sciences

100 Librarians
101 Archivists
102 Museum Curators and Related Occupations
109 Other Occupations in Museum, Library, and Archival Sciences

Occupations in Law and Jurisprudence

110 Lawyers
111 Judges
119 Other Occupations in Law and Jurisprudence

Occupations in Religion and Theology

120 Clergy
129 Other Occupations in Religion and Theology

Occupations in Writing

131 Writers
132 Editors: Publication, Broadcast, and Script
139 Other Occupations in Writing

Occupations in Art

142 Environmental, Product and Related Designers
149 Other Occupations in Art

Occupations in Entertainment and Recreation

152 Occupations in Music
159 Other Occupations in Entertainment and Recreation

Occupations in Administrative Specializations

160 Accountants, Auditors, and Related Occupations
161 Budget and Management Systems Analysis Occupations
164 Advertising Management Occupations
165 Public Relations Management Occupations
166 Personnel Management Occupations
169 Other Occupations in Administrative Specializations

Managers and Officials

180 Agriculture, Forestry, and Fishing Industry Managers and Officials
181 Mining Industry Managers and Officials
182 Construction Industry Managers and Officials
183 Manufacturing Industry Managers and Officials
184 Transportation, Communication, and Utilities Industry Managers and Officials
185 Wholesale and Retail Trade Managers and Officials
186 Finance, Insurance and Real Estate Managers and Officials
187 Service Industry Managers and Officials
188 Public Administration Managers and Officials
189 Miscellaneous Managers and Officials

Miscellaneous Professional, Technical, and Managerial Occupations

195 Occupations in Social and Welfare Work
199 Miscellaneous Professional, Technical, and Managerial Occupations

[FR Doc. 91-18343 Filed 8-2-91; 8:45 am]

BILLING CODE 4510-30-M and 4510-27-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 784 and 817

Permanent Regulatory Program; Underground Mining Permit Application Requirements—Subsidence Control Plan; Underground Mining Performance Standards—Subsidence Control

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of public meetings.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the Department of the Interior (DOI) published a notice of inquiry seeking the views of the public and other interested parties on a potential rulemaking on the necessity for, and possible scope of, revisions to its current regulations applicable to underground coal mining and control of subsidence affecting lands and structures. OSM is announcing that two public meetings will be held.

DATES: The public meetings are scheduled for August 14, 1991, at 7 p.m. in Morgantown, West Virginia; and August 15, 1991, at 7:30 p.m. in Pikeville, Kentucky.

ADDRESSES: The public meetings will be held at the Ramada Inn, Route 119 South and Interstate 68 (formerly U.S. 48), Morgantown, West Virginia; and at the First National Bank Building, 334 Main Street, Pikeville, Kentucky.

FOR FURTHER INFORMATION CONTACT: Patrick W. Boyd, Office of Surface ons in Medicine and

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187 Service Industry Managers and Officials
188 Public Administration Managers and Officials
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Miscellaneous Professional, Technical, and Managerial Occupations

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ADDRESSES: The public meetings will be held at the Ramada Inn, Route 119 South and Interstate 68 (formerly U.S. 48), Morgantown, West Virginia; and at the First National Bank Building, 334 Main Street, Pikeville, Kentucky.

FOR FURTHER INFORMATION CONTACT: Patrick W. Boyd, Office of Surface Mining Reclamation and Enforcement, Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: (202) 208-2564.

SUPPLEMENTARY INFORMATION: The meetings are open to the public and to all other interested parties. The meetings will continue until all persons wishing to speak have been heard. To assist the transcriber and ensure an accurate record, OSM requests that persons who speak at a meeting give the transcriber a written copy of their remarks.

As was announced in the **Federal Register**, OSM is seeking comments on the necessity for, and possible scope of, revisions to its current regulations applicable to underground coal mining and control of subsidence affecting lands and structures (July 18, 1991, 56 FR 33170). OSM is particularly interested in public comments concerning the need to modify or provide additional guidance in such areas as the statutory distinctions and operational differences between underground and surface coal mines; the definition of "material damage" as the term is used in section 516(b)(1) of the Surface Mining Act; performance of pre-subsidence surveys; the extent of the obligation to repair of structures damaged by subsidence; replacement of water supplies damaged by underground mining; prevention of subsidence damage, even where planned subsidence is to occur; and sufficiency of bond requirements when subsidence-caused damage occurs. OSM is also particularly interested in comments on the adequacy of State laws and regulatons to address these issues. Commenters should be aware that based upon a recent DOI Solicitor's opinion, the prohibitions of section 522(e) of the Surface Mining Act and 30 CFR 761.11 do not apply to subsidence.

OSM has scheduled two public meetings on the issues identified in the notice of inquiry. The first meeting will be held on August 14, 1991, at 7:30 p.m., at the Ramada Inn, Route 119 South and Interstate 68 (formerly U.S. 48), Morgantown, West Virginia. The second meeting will be held on August 15, 1991, at 7:30 p.m. at the First National Bank Building, 334 Main Street, Pikeville, Kentucky.

Dated: August 1, 1991.

Brent Wahlquist,

Assistant Director, Reclamation and Regulatory Policy, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 91-18615 Filed 8-2-91; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3960-6]

Disapproval of State Implementation Plans, Montana; Wood-Waste Burner and Aluminum Manufacturing Plant, Regulation Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: In this action, EPA is proposing to disapprove revisions to Montana's State Implementation Plan that were submitted by the Governor of Montana on June 14, 1989. The revisions were made to the Administrative Rules of Montana (ARM) 16.8.1407 and 16.8.1503, and amend the emission limitation and provisions for the operation of wood-waste burners and the standard for visible emissions from aluminum manufacturing facilities potroom groups, respectively. The revisions include: (1) A relaxation of the particulate emission standard for wood-waste burners; (2) a requirement to maintain a minimum operating temperature for wood-waste burners; (3) a requirement that existing burners comply with the new regulation by June 30, 1990; and (4) clarification of the application of the standard for visible emissions from potrooms within aluminum manufacturing plants.

After review of the revisions, the State was notified on September 18, 1989 that the submittal was determined to be incomplete for procedural and technical reasons. The State responded with additional information on November 17, 1989. This latter submittal adequately addressed the procedural concerns. The technical concerns (enforcement of emission limitations and regulations to ensure that the national ambient air quality standards (NAAQS) would be achieved and maintained) still remain.

DATES: Comments must be received on or before September 4, 1991.

ADDRESSES: Copies of the revision are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday, at the following offices:

Environmental Protection Agency, region VIII, Air Programs Branch, 999 18th Street, suite 500, Denver, Colorado 80202-2405.

Montana Department of Health and Environmental Sciences, Air Quality Bureau, Cogswell Building, Helena, Montana 59620.

FOR FURTHER INFORMATION CONTACT:

Vicki Stamper, Air Programs Branch, 999 18th Street, suite 500, Denver, Colorado 80202-2405 (303) 293-1876, FTS 330-1876.

SUPPLEMENTARY INFORMATION: The State of Montana has promulgated revisions to its SIP which attempt to update the State's wood-waste burner and aluminum potroom regulations. The revisions include: (1) A statement encouraging the complete utilization of wood-waste residue; (2) a relaxation of the particulate emission standard for wood-waste burners from 0.01 grains per dry standard cubic foot (grs/dscf) at 12% carbon dioxide (CO_2) to 0.25 grs/dscf at 12% CO_2; (3) a new requirement to maintain a minimum operating temperature for the wood-waste burners (700 °F); (4) a requirement that existing burners comply with the new regulation by June 30, 1990; and (5) clarification on the application of the standard for visible emissions from potrooms within aluminum manufacturing plants. This SIP Revision was submitted by the Governor in a letter dated June 14, 1989.

On September 18, 1989, EPA determined that the SIP submittal was incomplete both on procedural and technical grounds, and additional information was requested. Specifically, the administrative issues involved the absence of a copy of the Montana Administrative Register in which the revisions appeared and assurance that all public comments regarding the revisions had been received and addressed. Technical issues involved the impact of the relaxation of the emission standard from 0.01 to 0.25 grs/dscf for wood-waste burners and the enforceability of the new emission standard. In addition, the revision did not adequately demonstrate that the relaxation of the emission standard would not adversely impact PM10 nonattainment areas.

The State responded to the September 18, 1989 completeness determination in correspondence dated November 17, 1989. In that response, information was supplied which satisfied the procedural issues. The State responded to the technical issue of the relaxation of the emission standard by indicating that the new standard should force new wood-waste burner sources under new Source Review to comply with the standard by adopting a silo-type of wood-waste burner. However, the SIP revisions as reviewed by EPA did not specifically require the conversion of existing wood-waste burners to silo-type burners. The second point of the response was that existing wood-waste burners were presently emitting at levels higher than the proposed 0.25 grs/dscf standard.

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Since the proposed emission standard was lower than actual emission rates, the relaxation of the standard would actually lower overall emissions from these sources and, consequently, have less impact on PM10 nonattainment areas.

After reviewing the State's response, the EPA determined that sufficient information was available to make a determination of the status of the SIP revision. In correspondence dated June 7, 1990 to the State, EPA indicated that the SIP would be disapproved.

EPA is disapproving the State's revisions because they do not meet the enforcement of emission limitations and regulations requirement of sections 110(a)(2)(A) and 110(a)(2)(C) of the Clean Air Act, as amended. The State failed to demonstrate that it would be able to effectively determine a source's compliance with the particulate standard either through visible emissions observation or stack testing of the wood-waste burners. The revisions, therefore, do not provide for the enforcement of emission limitations and regulations to assure that the NAAQS would be protected or maintained. In addition, the impact of the relaxation of the emission standard on the State's PM10 nonattainment areas and efforts to reach or ensure attainment of the standard in these areas was not adequately addressed.

The opacity limitation for aluminum manufacturing potrooms, although not changed in the proposed revisions, was identified by EPA as being unenforceable because of the inability to distinguish the potroom emission plume from other plumes that are part of the manufacturing operation. The revision to help clarify the application of the visible emission standard did not resolve the issue.

Proposed Action

In this action EPA is proposing to disapprove revisions to Montana's State Implementation Plan made to the Administrative Rules of Montana (ARM) 16.8.1407 and 16.8.1503. Disapproval pertains to those revisions that amend the emission limitation and provisions for the operation of wood-waste burners and the clarification of the standard for visible emissions from aluminum manufacturing facilities potroom groups, respectively.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities.

This action has been classified as a table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

The Agency has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action does not conform with the statute as amended and must be disapproved. The Agency has examined the issue of whether this action should be reviewed only under the provisions of the law as it existed on the date of submittal to the Agency (i.e., prior to November 15, 1990) and has determined that the Agency must apply the new law to this revision.

List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter.

Authority: 42 U.S.C. 7401–7642.

Dated: May 29, 1991.

Jack McGraw,

Acting Regional Administrator.

[FR Doc. 91–18510 Filed 8–2–91; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 61

[FRL-3980-7]

National Emission Standards for Hazardous Air Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is today proposing to rescind subpart I of 40 CFR part 61 (subpart I) as it applies to nuclear power reactors, one of the subcategories of NRC-licensed facilities which are governed by subpart I. EPA is establishing a 60-day comment period to receive comments on this issue. In a related action published elsewhere in today's **Federal Register**, EPA is issuing a final rule which stays the effectiveness of subpart I for nuclear power reactors pending completion of the rulemaking on rescission. Subpart I is also stayed as it applies to subcategories of NRC-licensees other than nuclear power reactors while EPA collects additional information needed to make the determination contemplated by section 112(d)(9) of the Clean Air Act Amendments.

DATES: Public hearings will be held on September 23 and 24, 1991, in Washington, DC and on September 26 and 27, 1991, in Seattle, Washington if a request for such a hearing is received by September 6, 1991. Comments concerning the proposed rule must be received on or before October 27, 1991.

ADDRESSES: Comments should be submitted (in duplicate) to: Central Docket Section LE–131, Environmental Protection Agency, attn: Docket No. A–79–11, Washington, DC 20460. Comments may also be faxed to the EPA at (703) 308–8763.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the Background Information Document supporting this proposed rule, and requests for additional information may be made by writing to: Al Colli, Environmental Standards Branch, Criteria and Standards Division (ANR–460W), Office of Radiation Programs, Environmental Protection Agency, Washington, DC 20460 (703) 308–8767.

SUPPLEMENTARY INFORMATION:

A. Background

On October 31, 1989, EPA promulgated standards controlling radionuclide emissions to the ambient air from several source categories, including emissions from licensees of the Nuclear Regulatory Commission (NRC) and from federal facilities not licensed by the NRC or operated by the Department of Energy (non-DOE Federal facilities) (subpart I, 40 CFR part 61). This rule was published in the **Federal Register** on December 15, 1989. (54 FR 51654). Simultaneously with promulgating the rule, EPA granted reconsideration of subpart I based on information received late in the rulemaking on the subject of duplicative regulation by NRC and EPA and on potential negative effects of the standard on nuclear medicine. EPA established a comment period to receive further information on these subjects, and also granted a 90-day stay of subpart I as permitted by Clean Air Act section 307(d)(7)(B), 42 U.S.C. 7607 (d)(7)(B). That stay expired on March 15, 1990.

EPA subsequently extended the stay of the effective date of subpart I on several occasions, pursuant to the authority provided by section 10(d) of the Administrative Procedure Act

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SUPPLEMENTARY INFORMATION:

A. Background

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EPA subsequently extended the stay of the effective date of subpart I on several occasions, pursuant to the authority provided by section 10(d) of the Administrative Procedure Act (APA), 5 U.S.C. 705, and section 301(a) of the Clean Air Act, 42 U.S.C. 7601(a). (55 FR 10455, March 21, 1990; 55 FR 29205, July 18, 1990; and 55 FR 38057, September 17, 1990.)

In October 1990, Congress passed new legislation amending the Clean Air Act. Section 112(d)(9) of the amendments provides,

> No standard for radionuclide emissions from any category or subcategory of facilities licensed by the Nuclear Regulatory Commission (or an Agreement State) is required to be promulgated under this section if the Administrator determines, by rule, and after consultation with the Nuclear Regulatory Commission, that the regulatory program established by the Nuclear Regulatory Commission pursuant to the Atomic Energy Act for such category or subcategory provides an ample margin of safety to protect the public health.

After evaluating the information received during the reconsideration of subpart I, EPA concluded that the data presently available to EPA for all categories of NRC-licensed facilities except nuclear power reactors is not sufficient to enable the Agency to determine whether the regulatory program established by NRC provides "an ample margin of safety to protect the public health," as that term is used in section 112 of the Clean Air Act (CAA). On February 13, 1991, EPA proposed to stay the effectiveness of Subpart I for all NRC-licensed facilities except for nuclear power reactors until November 15, 1992. 56 FR 6339 (February 15, 1991). EPA issued a final rule to stay Subpart I for these facilities on April 24, 1991 (56 FR 18735). This stay will provide EPA with the time needed to collect (using the authority of section 114 of the Clean Air Act) the information which is required to make a determination under section 112(d)(9). With regard to non-DOE federal facilities, EPA concluded that the factors which led to the reconsideration of subpart I, possible duplication of effort between the EPA and the NRC and potential negative effects on nuclear medicine, are not applicable to this subcategory of facilities. Since the determination concerning the adequacy of the NRC regulatory program contemplated by the new language in section 112(d)(9) could not apply to such facilities, EPA did not include non-DOE federal facilities in the latest stay of subpart I.

With regard to nuclear power reactors, EPA believes that it now possesses sufficient information concerning radionuclide emissions from nuclear power reactors and the NRC program which addresses those emissions to reach a determination under section 112(d)(9). Therefore, EPA is today proposing to rescind subpart I as applied to nuclear power reactors, pursuant to the authority provided by section 112(d)(9). In a related action published elsewhere in this issue of the **Federal Register**, EPA is issuing a final rule which stays the effectiveness of subpart I as applied to nuclear power reactors until the rulemaking concerning rescission of subpart I for nuclear power reactors has been concluded. EPA did not include this subcategory of facilities in the stay issued on April 24, 1991 because the basis of that stay, EPA's need to collect further information before making a determination under section 112(d)(9), is not applicable to these facilities.

B. Discussion of Existing EPA Standard 40 CFR Part 61 Subpart I

Subpart I of 40 CFR part 61 limits radionuclide emissions to the ambient air from NRC-licensed facilities to that amount which would cause any member of the public to receive in any year an effective dose equivalent (ede) of 10 millirem, of which no more than 3 millirem ede may be from radioiodine. The limit of 10 millirem/year ede represents the Agency's application to radionuclide emissions of the policy for regulating section 112 pollutants which was first announced in the benzene NESHAP. 54 FR 38044 (September 14, 1989).

The NESHAP policy utilized a two-step approach. In the first step, EPA considered that the risk to the maximally exposed individual is presumptively acceptable if it is no higher than approximately 1 in ten thousand. This presumptive level provides a benchmark for judging the acceptability of a category of emissions. This first step also considers other health and risk factors such as projected incidence of cancer, the estimated number of persons exposed within each individual lifetime risk range, the weight of evidence presented in the risk assessment, and the estimated incidence of non-fatal cancer and other health effects. After considering all of this information, a final decision on acceptable risk is made. This becomes the starting point for the second step, determining an ample margin of safety.

In the second step, EPA strives to provide protection of an individual lifetime risk level no higher than approximately one in one million to the greatest number of persons possible. In this ample margin decision, the Agency again considers all of the health risk and other health information considered in the first step. Beyond that information, additional factors relating to the appropriate level of control will also be considered, including costs and economic impacts of controls, technological feasibility, uncertainties, and any other relevant factors.

As part of the risk assessment associated with the promulgation of Subpart I, EPA examined the doses to the maximally exposed individuals from all categories of NRC-licensed facilities. EPA examined the uranium fuel cycle as a separate sector of NRC-licensees and determined that baseline emissions from that category were at a safe level. However, subpart I was promulgated to ensure that baseline emissions would not increase, and that the public would be afforded an ample margin of safety. Upon reconsideration of the standard, EPA conducted a review of the nuclear power reactor sector of the uranium fuel cycle and determined that the individual doses associated with nuclear power reactors are even lower than was previously estimated. This latest analysis revealed that the most exposed individual from emissions of nuclear power plants would be expected to receive a dose of less than 1.0 mrem/year ede from all radionuclides and a dose of less than 0.01 mrem/year ede from radioiodine. The estimated doses for these facilities are a factor of 10 less than the standard and are likely to remain low in the future.

C. The Advanced Notice of Proposed Rulemaking

After reviewing the information provided to EPA concerning radionuclide emissions from nuclear power reactors and the program implemented by the NRC to control such emissions, EPA tentatively concluded that NRC's regulatory program limiting these emissions protects public health with an ample margin of safety. Accordingly, on March 13, 1991, EPA issued an Advanced Notice of Proposed Rulemaking announced the Agency's intention to enter into a rulemaking to rescind subpart I as it applies to nuclear power reactors.

D. Rationale for the Proposed Rule To Rescind 40 CFR Part 61 Subpart I for Nuclear Power Reactors

In light of the new statutory authority given EPA under section 112(d)(9), EPA has analyzed the public health risks posed by nuclear power plants to determine whether NRC's regulatory program for air emissions provides an ample margin of safety to protect the public health. In making this determination, EPA has focused on two questions: (1) Does the objective evidence demonstrate that the NRC regulatory program in practice results in sufficiently low doses to protect the public health with an ample margin of safety? and (2) Is the NRC program sufficiently comprehensive and thorough and administered in a manner which will detect and prevent future increases in radionuclide emissions? Today's proposal to rescind Subpart I for nuclear power reactors is based upon evaluation of NRC's current regulatory program; EPA could revisit this decision if new information suggesting higher emissions or other information concerning NRC's regulatory program becomes available.

1. Doses Resulting From Radionuclide Emissions From Nuclear Power Reactors.

EPA independently calculated doses for every NRC site with one or more operating reactors using the most current year for which a complete set of data was available (1988). If the plants had below normal emissions in 1988, an alternative year was used in the analysis. Site-specific data were obtained to the maximum extent practical and used as input to the AIRDOSE EPA computer program. In all cases, calculated doses did not exceed 1.0 mrem/year ede to the maximally exposed individual. This is equivalent to a lifetime individual risk of approximately 3 in 100,000. Thus, the NRC regulatory program, for the years examined, results in doses which are at least 10 times lower than EPA's NESHAP of 10 mrem/year ede. EPA also compared the 1988 data with historical data to determine if the 1988 data was representative a long term trends in population and individual doses. Although the populations around the reactor facilities and the facility capacity factors have increased over the last fifteen years, the average annual collective population doses have steadily declined.

2. NRC's Regulatory Program

a. Regulations Governing Radionuclide Emissions

There are three regulations which control routine radionuclide emissions from commercial nuclear power plants: 10 CFR part 50, Appendix I, "Numerical Guides for Design Objectives and Limiting Conditions for Operation to Meet the Criterion 'As Low As is Reasonably Achievable' for Radioactive Material in Light-Water-Cooled Nuclear Power Reactor Effluents"; 40 CFR Part 190, "Environmental Radiation Protection Standards for Nuclear Power Operations"; and 10 CFR Part 20, "Standards for Protection Against Radiation "

1. *10 CFR 50, Appendix I, "Numerical Guides for Design Objectives and Limiting Conditions for Operation to Meet the Criterion "As Low As Is Reasonably Achievable" for Radionuclide Material in Light-Water-Cooled Nuclear Power Reactor Effluents".* This appendix provides numerical guides for design objectives and limiting conditions for operation to assist licensees for light-water-cooled commercial nuclear power plants in meeting the requirements of §§ 50.34a and 50.36a that radioactive materials in effluents released to unrestricted areas be kept as low as is reasonably achievable (ALARA). The licensee satisfies the design objectives, in part, by demonstrating that the gaseous radionuclide releases to the atmosphere from each reactor on site will not result in an estimated average annual air dose in excess of 10 millirem for gamma exposure and 20 millirem for beta exposure. These limits apply to dose to individuals located in unrestricted areas and are limited to external exposure to noble gases. Lower radionuclide release rates may be required to satisfy the design objectives if it appears that the releases are likely to result in an estimated annual external dose from gaseous effluents in excess fo 5 mrem/year. Alternatively, higher release rates may be acceptable if the applicant can provide reasonable assurance that the external dose to any individual in an unrestricted area will not exceed 5 mrem/year to the whole body and 15 mrem/year to the skin. The applicant must also demonstrate that the calculated annual total quantity of all radioiodines and radioactive particulates released to the atmosphere from each reactor will not cause exposures to any individual in unrestricted areas in excess of 15 mrem to any organ. A dose of 15 mrem/year to the thyroid from radioiodine will result in an ede of less than 1 rmem/year. For all practical purposes, the total ede allowed under 10 CFR part 50 appendix I is held to 6 mrem/year because essentially all of the internal emitters are radioiodine.

The limiting conditions of operation (LCOs) set forth in Appendix I complement the design objectives by providing guidance on ensuring that, during operation, the facility maintains radionuclide releases and offsite exposures as low as is reasonably achievable consistent with the design objectives. At the same time, the LCOs provide for flexibility of operation, compatible with considerations of pubic health and safety, to assure that the facility can continue to operate even under unusual operating conditions.

2. *40 CFR part 190, "Environmental Radiation Protection Standards for Nuclear Power Operations."* This regulation requires uranium fuel cycle operations to be conducted in such a manner that there is reasonable assurance that the annual radiation dose equivalent to any member of the public from all uranium fuel cycle sources, does not exceed 25 mrem to the whole body, 75 rmem to the thyroid, and 25 mrem to any other organ. This standard applies to gaseous and liquid effluent pathways and direct radiation.

In 1981, 10 CFR 20.105 and 20.106 were amended to adopt these standards. Paragraphs 20.105(c) and 20.106(g) specifically require that licensees engaged in uranium fuel cycle operations subject to the provision of this part comply with these dose limits.

3. *10 CFR Part 20, "Standards for Protection Against Radiation."* The regulations in 10 CFR part 20 establish standards for protection against radiation hazards arising out of activities conducted under licenses issued by the NRC and were issued pursuant to the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974.

The portions of part 20 that apply to radionuclide emissions from licensed facilities are § 20.105, which sets permissible levels of radiation in unrestricted areas and 20.106 which establishes limits on radioactivity in effluents to unrestricted areas. Section 20.105 states that the Commission will grant a licensee to possess or use radioactive materials or any other source of radiation if the applicant demonstrates that any individual in an unrestricted area is not likely to receive a whole body dose in excess of 500 mrem/year.

Section 20.106 limits the release of radioactive material to unrestricted areas to levels that will not result in average annual radionuclide concentrations in air and water in excess of the limits set forth in table II of appendix B of Part 20. This secondary standard is designed to provide assurance that the primary health based standard of 500 mrem/year to the whole body or the equivalent to any organ is not exceeded.

In addition to these numerical standards, paragraph 20.1(c) requires each licensee to make every reasonable effort to maintain radiation exposures, and releases of radioactive material in effluents to unrestricted areas, as low as is reasonable achievable (ALARA). ALARA means "as low as is reasonable

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In addition to these numerical standards, paragraph 20.1(c) requires each licensee to make every reasonable effort to maintain radiation exposures, and releases of radioactive material in effluents to unrestricted areas, as low as is reasonable achievable (ALARA). ALARA means "as low as is reasonable

achievable taking into account the state-of technology, and the economics of improvement in relation to benefits to the public health and safety, and other societal and socioeconomic considerations in relation to the utilization of atomic energy in the public interest."

On December 13, 1990, major revisions to Part 20 were approved by the Commission. The revised rule implements 1987 Presidential guidance on occupational radiation protection and the recommendations of scientific organizations to establish risk based limits and a system of dose limitation in accordance with the guidance published by the International Committee on Radiation Protection. Pertinent revisions to the rule include:

- Section 20.301 which reduced the total allowable effective dose equivalent to individual members of the public to 100 mrem/year;
- Section 20.302 which requires appropriate surveys to ensure that the dose limits are not exceeded;
- Table 2 which provides Derived Air Concentrations that act to ensure that continued exposure at these levels will not result in doses to members of the general public in excess of 50 mrem/year; and
- Codification of ALARA as a regulatory requirement versus a regulatory admonition.

The revised part 20 still adopts the standards set forth in 40 CFR part 190 for the uranium fuel cycle.

b. NRC's Methods of Implementation of Its Standards

The principal radionuclides routinely released in the gaseous effluents from commercial light water reactors are noble gases and radioiodines. The whole body dose from noble gas emissions per reactor is limited by the 5 mrem/year limit of appendix I. The organ doses from radioiodines and particulates are limited to 15 mrem/year. For the thyroid gland from radioiodines, this converts to an effective dose equivalent of less than 1 mrem/year. The guidelines set forth in appendix I to 10 CFR part 50 and the standards set forth in 40 CFR part 190 together establish a regulatory framework that provides a high level of assurance that the routine emissions from commercial light water reactors will not result in exposures in excess of 10 mrem/year ede.

1. *Monitoring.* Compliance with 10 CFR part 50 appendix I and 40 CFR part 190 is demonstrated through the establishment of Limiting Conditions of Operation (LCOs) and Radiological Effluent Technical Specifications (RETS) for each nuclear power reactor in accordance with 10 CFR 50.36a. The LCOs and their associated RETS require that, if the quantity of radioactive materials actually released in effluents to unrestricted areas in any calendar quarter is such that the resulting radiation exposure, calculated on the same basis as the design objectives, exceeds on half the annual design objectives, the licensee is required to investigate the cause of the release, define and initiate corrective actions to prevent a recurrence, and report these actions to the NRC within 30 days from the end of the quarter in which the release occurred.

The LCOs and RETS also require the licensee to initiate effluent and environmental monitoring programs to provide (1) data on the quantities of radionuclides released, (2) the levels of radiation and radioactive materials in the environment, and (3) changes in land use and demography in the vicinity of the site that pertain to compliance with the LCOs. If the monitoring data reveal that the relationship between the quantities of radioactive materials released and the doses to individuals in unrestricted areas is significantly different than that assumed in the calculations used to assess compliance with the design objectives, the NRC may require a modification of the RETS.

In order to provide assistance to licensees in complying with the LCOs and preparing their RETS, the NRC has issued the following guidance: NUREG–0472 and –0473, "Standard Radiological Effluent Technical Specifications for PWRs (and BWRs)," U.S. NRC, January 1983; NUREG–0133, "Preparation of Radiological Effluent Technical Specifications for Nuclear Power Plants," U.S. NRC, October 1978; NUREG–1301 and NUREG–1302, "Offsite Dose Calculation Manual Guidance: Standard Radiological Effluent Controls for Pressurized Water Reactors (and Boiling Water Reactors)," U.S. NRC, April 1991; and U.S. NRC Regulatory Guide 1.21, "Measuring, Evaluating, and Reporting Radioactivity in Solid Waste and Releases of Radioactive Material in Liquid and Gaseous Effluents from Light-Water-Cooled Nuclear Power Plants".

These documents provide highly detailed standard RETS and procedures for implementing the RETS. Detailed guidance is provided in the areas of effluent monitoring instrumentation; specific equations, assumptions and methodologies addressing short and long term radioactive releases; and the use of gaseous radwaste treatment systems.

NUREG–0133 also provides guidance to utilities for calculating doses for the purpose of assessing compliance with 40 CFR 190, as follows:

(1) Identify the uranium fuel cycle sources that contribute to individual dose.

(2) Identify the maximum exposed individual. This individual may be different than the maximum individual identified for the purpose of assessing compliance with appendix I.

(3) Determine the annual dose to this person from all existing pathways and sources of radioactivity and radiation using the methodologies described in Regulatory Guide 1.109, "Calculation of Annual Doses to Man from Routine Releases of Reactor Effluents for the Purpose of Evaluating Compliance with 10 CFR part 50 appendix I" or other methods that may be more appropriate.

(4) Include direct radiation dose from all potential sources of radioactivity onsite.

2. *Inspections.* To ensure that the licensee is meeting its regulatory and license-specific requirements for each facility receives approximately 2 inspections per year in the area of radiation protection by the regional NRC inspectors. Along with the plants' reporting requirements, the inspections determine the degree to which each plant is in compliance with its license and technical specifications, including its RETS. If problem areas are identified, follow-up inspections are scheduled in order to ensure that deficiencies are corrected. If a facility appears to have persistent problems in particular areas, the facility is subjected to inspections on a more frequent basis.

The periodic inspections of the RETS include a review of records and procedures, interviews with plant personnel, and an effluent and environmental measurements program. The measurements program consists of the independent collection and analysis of effluent and environmental samples by NRC personnel using an NRC mobile laboratory. The results of these analyses not only indicate the level of radioactive material in the effluent, but also indicate the degree of accuracy and precision of the facility's own effluent monitoring equipment.

Each commercial power plant has at least one full time NRC Senior Resident Inspector who provides continual health and safety oversight of plant operations. Sites with multiple reactors have at least one Resident Inspector per reactor. If problem areas arise pertaining to compliance with the RETS, the Resident Inspector may request special inspections and audit related plant operations on a more frequent basis.

All inspections performed by either on-site Resident Inspectors or inspectors from the NRC Regional offices or NRC Headquarters are fully documented. These reports are made available to the public in the NRC Public Document Rooms located in the regions and in Washington, DC. The reports are filed in the separate docket established for each site. Periodically the NRC publishes a summary of the licensee event reports generated by reactor facilities which provides a brief explanation of the type of event, its cause(s), corrective actions taken by the licensee, and what, if any, fines were imposed. Reportable licensee events include exceeding effluent release rates, worker overexposures, procedure violations, and accidents, to name just a few. If detailed event information is desired, the Licensee Event Report located in the individual docket can provide it.

These ongoing elements of the NRC regulatory program demonstrate that the emissions are being adequately controlled. After a thorough evaluation of these requirements, EPA has tentatively determined that: (1) Present radionuclide emissions from nuclear power plants are well controlled under the NRC's regulatory program and result in low doses to the general public; and (2) the NRC's regulatory program will ensure that current levels do not substantially increase. Based on these determinations, EPA has tentatively concluded that the regulatory program of the NRC controls radionuclide emissions from nuclear power reactors sufficiently to protect public health with an ample margin of safety. Consequently, EPA proposes to delete commercial nuclear power plants from the category of facilities subject to 40 CFR part 61 subpart I.

F. Miscellaneous

1. Paperwork Reduction Act

There are no information collection requirements in this proposed rule.

2. Executive Order 12291

Under Executive Order 12291, EPA is required to judge whether this regulation, if promulgated, would be a "major rule" and therefore subject to certain requirements of the Order. The EPA has determined that rescinding subpart I for nuclear power reactors would result in none of the adverse economic effects set forth in section I of the Order as grounds for finding a regulation to be a "major rule." This regulation would not be major because the nationwide compliance costs would not meet the $100 million threshold, the regulation would not significantly increase prices or production costs, and the regulation would not cause significant adverse effects on domestic competition, employment, investment, productivity, innovation or competition in foreign markets.

The Agency has not conducted a Regulatory Impact Analysis (RIA) of this purposed regulation because this action does not constitute a major rule.

3. Regulatory Flexibility Analysis

Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, requires EPA to prepare and make available for comment an "initial regulatory flexibility analysis" which describes the effect of the proposed rule on small business entities. However, section 604(b) of the Act provides that an analysis not be required when the head of an Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

This proposed rule to rescind 40 CFR part 61 subpart I, if promulgated as a final rule, will have the effect of easing the burdens associated with the provisions of subpart I and for those reasons, I certify that this rule will not have significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 61

Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Hazardous substances, Mercury, Radionuclides, Radon, Reporting and Recordkeeping requirements, Uranium, Vinyl chloride.

William K. Reilly,
Administrator.

Part 61 of chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 61—[AMENDED]

1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7414, 7416, 7601.

2. Section 61.100 is revised to read as follows:

§ 61.100 Applicability.

The provisions of this subpart apply to facilities other than nuclear power reactors which are licensed by the Nuclear Regulatory Commission. This subpart also applies to facilities owned or operated by any Federal agency other than the Department of Energy, except that this subpart does not apply to disposal at facilities regulated under 40 CFR part 191, subpart B, or to any uranium mill tailings pile after it has been disposed of under 40 CFR part 192, or to low energy accelerators, or to any NRC-licensee that possesses and uses radionuclides only in the form of sealed sources.

§ 61.107 [Amended]

3. Section 61.107 is amended by removing paragraph (c)(1) and by redesignating paragraphs (c)(2) and (c)(3) as paragraphs (c)(1) and (c)(2) respectively.

[FR Doc. 91–18507 Filed 8–2–91; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Threatened Status for Three Florida Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The comment period on the Service's proposed rule to designate threatened status for three plants of the Florida panhandle is reopened to acknowledge acceptance into the public record of comments received since the close of the original comment period, and to permit receipt of additional data and comments.

DATES: Comments from all interested parties must be received by August 26, 1991.

ADDRESSES: Comments and materials should be sent to the Field Supervisor, Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, suite 120, Jacksonville, Florida 32216. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: David J. Wesley, Field Supervisor, at the above address (telephone: 904/791–2580 or FTS 946–2580).

SUPPLEMENTARY INFORMATION:

Background

On December 18, 1990 (55 FR 51936) the Service published a proposal to list

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FOR FURTHER INFORMATION CONTACT: David J. Wesley, Field Supervisor, at the above address (telephone: 904/791-2580 or FTS 946-2580).

SUPPLEMENTARY INFORMATION:

Background

On December 18, 1990 (55 FR 51936) the Service published a proposal to list three plants of the Florida panhandle as threatened species. They are *Euphorbia telephioides* (Telephus spurge), *Macbridea alba* (white birds-in-a-nest), and *Scutellaria floridana* (Florida skullcap). The plants occur near the Gulf coast in the vicinity of the Apalachicola River in Liberty, Franklin, Gulf, and Bay Counties.

During the original comment period, the Service (1) accepted a request to include data in its review that would be gathered during the 1991 flowering season of these plants, and (2) accepted two requests to hold informal meetings to allow presentation of oral comments on the proposal. However, due to scheduling difficulties, it was not feasible to hold such meetings during the original comment period. The comment period is therefore being reopened primarily to honor these prior commitments and to include in the record several written comments received after, the expiration of the original comment period.

Author

The primary author of this notice is Mr. David Martin (see **ADDRESSES** section).

Authority

The authority for this notice is the Endangered Species Act (16 U.S.C. 1531-1544).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: July 30, 1991.

James W. Pulliam, Jr.

Regional Director, Southeast Region.

[FR Doc. 91-18472 Filed 8-2-91; 8:45 am]

BILLING CODE 4310-55-M

VOL 56
ISS 150
AG 5
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Notices

Federal Register
Vol. 56, No. 150
Monday, August 5, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Current Industrial Reports Program (Wave I Mandatory).

Form Number(s): Various.

Agency Approval Number: 0607–0392.

Type of Request: Revision of a currently approved collection.

Burden: 10,090 hours.

Number of Respondents: 10,658.

Avg Hours Per Response: 57 minutes.

Needs and Uses: The Current Industrial Reports (CIR) program is a series of monthly, quarterly, and annual surveys which provides key measures of production, shipments, and/or inventories on a national basis for selected manufactured products. Requests for OMB clearance of the various surveys within the CIR program are divided into 3 waves, each submitted for 3 year clearances (one wave per year). Each wave has two separate packages—one for mandatory reports and one for voluntary. Government agencies, business firms, trade associations, and private research and consulting organizations use these data to make trade policy, production, and investment decisions.

Affected Public: Businesses or other for-profit organizations.

Frequency: Quarterly, and annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 30, 1991.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 91–18493 Filed 8–2–91; 8:45 am]

BILLING CODE 3510-07-F

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of Income and Program Participation – 1992 Panel Core, Waves 1 – 8, and Wave 1 Topical Modules.

Form Number(s): SIPP–12100, 12001, 12105(L), 4003(A).

Agency Approval Number: None.

Type of Request: New collection.

Burden: 42,000 hours.

Number of Respondents: 84,000.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The Bureau of the Census conducts the Survey of Income and Program Participation (SIPP) to collect information concerning the distribution of income received directly as money or indirectly as in-kind benefits. The SIPP is designed as a continuing series of national panels of interviewed households which are introduced annually with each panel having a duration of about 2 1/2 years in the survey. The survey is molded around a central "core" of labor force and income questions that will remain fixed throughout the life of a panel. The Wave 1 questionnaire contains the SIPP's core. The core is periodically supplemented with questions designed to answer specific needs. These supplemental questions are included with the core and are referred to as "topical modules." The Wave 1 questionnaire contains two topical modules, Recipiency History and Employment History. The 1992 Panel is the first to introduce topical modules in the first interview period. Wave 1 interviews will be conducted from February through May of 1992.

Affected Public: Individuals or households.

Frequency: There will be two interview periods for the 1992 Panel in Fiscal Year 1992.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

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Dated: July 30, 1991.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 91-18494 Filed 8-2-91; 8:45 am]

BILLING CODE 3510-07-F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Japan

July 30, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: August 8, 1991.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6583. For information on embargoes and quota re-openings, call (202) 377–3715.

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Dated: July 30, 1991.

Edward Michals,

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COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Japan

July 30, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: August 8, 1991.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6583. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and Japan reached agreement, effected by exchange of notes dated June 21, 1991, to establish a new bilateral textile agreement for cotton, wool and man-made fiber textile products, produced or manufactured in Japan and exported during two consecutive one-year periods, beginning on January 1, 1990 and extending through December 31, 1991.

A copy of the current bilateral agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State (202) 647–3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 30, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of June 21, 1991, between the Governments of the United States and Japan; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on August 8, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Japan and exported during the twelve-month period beginning on January 1, 1991 and extending through December 31, 1991, in excess of the following levels of restraint:

Category	Twelve-month restraint limit [1]
Levels not in a Group	
313	7,500,631 square meters.
315	9,000,000 square meters.
326	9,242,076 square meters.
410/624	12,000,000 square meters of which not more than 9,000,000 square meters shall be in Category 624.
611	15,774,456 square meters.
618	14,420,000 square meters.
619	111,734,291 square meters.
620	25,250,000 square meters
Group I	
237, 239, 330-359, 431-459, 630-659, as a group.	65,000,000 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1990.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and Japan.

Imports charged to these category limits for the period January 1, 1990 through December 31, 1990 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91–18492 Filed 8–2–91; 8:45 am]

BILLING CODE 3510-DR-F

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Privacy Act; Systems of Records

AGENCY: Defense Nuclear Facilities Safety Board

ACTION: Notice of Systems of Records

SUMMARY: Each Federal agency is required by the Privacy Act of 1974, 5 U.S.C. 552a, to provide public notice of systems of records it maintains containing personal information. In this notice the Board provides the required information on two such systems of records.

FOR FURTHER INFORMATION CONTACT: Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, suite 700, Washington, DC 20004, (202) 208–6387.

SUPPLEMENTARY INFORMATION: Section 552a(e) of the Privacy Act of 1974 directs each Federal agency to provide notice to the public of systems of records it maintains on individuals. This notification of two records systems is the first in a series of notices which will bring the Board (an agency established in 1989) into full compliance with the Privacy Act.

The Board has not yet published regulations (required by Section 552a(f) of the Act) governing how individuals gain access to records and request their correction. These regulations will be proposed within the next few months. In the interim, access and correction will be available by simply contacting the Board's Privacy Act Officer.

Future notices will describe other systems of records maintained by the Board. It is the Board's intent to be in full compliance with the Privacy Act by the end of 1991. Any questions concerning these notices, or other Privacy Act issues, should be directed to the Office of the General Counsel.

Systems of Records

DNFSB-1

SYSTEM NAME:

Personnel Security Files.

SECURITY CLASSIFICATION:

Classified and unclassified materials.

SYSTEM LOCATION:

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and applicants for employment with DNFSB and DNFSB contractors; consultants; other individuals requiring access to classified materials and facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel security folders and requests for security clearances, Forms SF 86, 86A, 87, 312, and DOE Forms 5631.18, 5631.29, 5631.20, and 5631.21. In addition, records containing the following information:

(1) Security clearance request information;

(2) Radiation exposure and whole body count, including any mandatory training associated with site work/visits;

(3) Records of security education and foreign travel lectures;

(4) Records of any security infractions;

(5) Names of individuals visiting DNFSB;

(6) Employee identification files (including photographs) maintained for access purposes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Defense Authorrzation Act, Fiscal Year 1989 (amended the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) by adding new Chapter 21—Defense Nuclear Facilities Safety Board).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

DNFSB—(1) to monitor radiation exposure of its employees and contractors, (2) to determine which individuals should have access to classified material and to be able to transfer clearances to other facilities for visitor control purposes.

DOE—(1) to monitor radiation exposure of visitors to the various DOE facilities in the United States, (2) to determine eligibility for security clearances.

Other Federal and State Health Institutions—To monitor radiation exposure of DNFSB personnel.

STORAGE:

Paper records, magnetic disk, and computer printouts.

RETRIEVABILITY:

By name, social security number, and numeric code.

SAFEGUARDS:

Access is limited to employees having a need to know. Records are stored in locked file cabinets in a controlled access area.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the "General Records Schedules" published by National Archives and Records Administration, Washington, D.C. Records within DNFSB are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER AND ADDRESS:

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004. Attention: Security Management Officer.

NOTIFICATION PROCEDURE:

Requests by an individual to determine if DNFSB–1 contains information about him/her should be directed to the Privacy Act Officer, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004. Required identifying information: Complete name, social security number, and date of birth.

RECORD ACCESS PROCEDURE:

Same as Notification procedure above, except individual must show official photo identification, such as driver's license, passport, or government identification before viewing records.

CONTESTING RECORD PROCEDURE:

Same as Record Access procedure.

RECORD SOURCE CATEGORIES:

Subject individuals, Questionnaire for Sensitive Positions (SF–86), agency files, official visitor logs, contractors, and DOE Personnel Security Branch. Radiation exposure records are obtained from previous employee records, DOE contractors' film badges, and dosimetry badges.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DNFSB–2

SYSTEM NAME:

Administrative and Travel Files.

SYSTEM CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Defense Nuclear Facilities Safety Board, 625 Indiana Ave., NW, Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and applicants for employment with DNFSB, including DNFSB contractors and consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records containing the following information:

(1) Time and attendance;

(2) Payroll actions and deduction information requests;

(3) Authorizations for overtime and night differential;

(4) Credit cards and telephone calling cards issued to individuals;

(5) Destination, itinerary, mode and purpose of travel;

(6) Date(s) of travel and all expenses;

(7) Passport number;

(8) Requests for advance of funds, and voucher with receipts;

(9) Travel authorizations;

(10) Name, address, social security number and birth date;

(11) Employee parking permits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Defense Authorization Act, Fiscal Year 1989 (amended the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) by adding new Chapter 21—Defense Nuclear Facilities Safety Board).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Treasury Department—To collect withheld taxes, print payroll checks, and issue savings bonds.

Internal Revenue Service—To process Federal income tax.

State and Local Governments—To process state and local income tax.

Office of Personnel Management—Retirement records and benefits.

Social Security Administration—Social Security records and benefits.

Department of Labor—To process Workmen's Compensation claims.

Department of Defense—Military Retired Pay Offices—To adjust Military retirement.

Savings Institutions—To credit accounts for savings made through payroll deductions.

Health Insurance Carriers—To process insurance claims.

General Accounting Office—Audit—To verify accuracy and legality of disbursement.

Veteran's Administration—To evaluate veteran's benefits to which the individual may be entitled.

States' Departments of Employment Security—To determine entitlement to unemployment compensation or other state benefits.

Travel Agencies—To process travel itineraries.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, magnetic disk, and computer printouts.

RETRIEVABLLITY:

By name, social security number, travel dates, and alphanumeric code.

SAFEGUARDS:

Access is limited to employees having a need to know. Records are stored in locked file cabinets in a controlled access area in accordance with Board directives and Federal guidelines.

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(9) Travel authorizations;

(10) Name, address, social security number and birth date;

(11) Employee parking permits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Defense Authorization Act, Fiscal Year 1989 (amended the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) by adding new Chapter 21—Defense Nuclear Facilities Safety Board).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Treasury Department—To collect withheld taxes, print payroll checks, and issue savings bonds.

Internal Revenue Service—To process Federal income tax.

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Office of Personnel Management—Retirement records and benefits.

Social Security Administration—Social Security records and benefits.

Department of Labor—To process Workmen's Compensation claims.

Department of Defense—Military Retired Pay Offices—To adjust Military retirement.

Savings Institutions—To credit accounts for savings made through payroll deductions.

Health Insurance Carriers—To process insurance claims.

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Veteran's Administration—To evaluate veteran's benefits to which the individual may be entitled.

States' Departments of Employment Security—To determine entitlement to unemployment compensation or other state benefits.

Travel Agencies—To process travel itineraries.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, magnetic disk, and computer printouts.

RETRIEVABLLITY:

By name, social security number, travel dates, and alphanumeric code.

SAFEGUARDS:

Access is limited to employees having a need to know. Records are stored in locked file cabinets in a controlled access area in accordance with Board directives and Federal guidelines.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the "General Records Schedules" published by National Archives and Records Administration, Washington, DC. Records within DNFSB are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER AND ADDRESS:

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004, Attention: Chief Administrative Officer.

NOTIFICATION PROCEDURE:

Requests by an individual to determine if DNFSB–2 contains information about him/her should be directed to the Privacy Act Officer, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004. Required identifying information: Complete name, social security number, and date of birth.

RECORD ACCESS PROCEDURE:

Same as Notification procedures above, except individual must show official photo identification, such as driver's license, passport, or government identification before viewing records.

CONTESTING RECORD PROCEDURE:

Same as Record Access procedure.

RECORD SOURCE CATEGORIES:

Subject individuals, timekeepers, official personnel records, GSA for accounting and payroll, OPM for official personnel records, IRS and State officials for withholding and tax information, and travel agency contract.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Dated: July 31 1991.

John T. Conway,

Chairman.

[FR Doc. 91–18497 Filed 8–2–91; 8:45 am]

BILLING CODE 6820-KD-M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Defense Research and Development Laboratories Consolidation and Conversion Advisory Commission Meeting

AGENCY: Department of Defense (DoD) Advisory Commission on Consolidation and Conversion of Defense Research and Development Laboratories.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of Public Law 92–463, the "Federal Advisory Committee Act," notice is hereby given that the Federal Advisory Commission on Consolidation and Conversion of Defense Research and Development Laboratories will hold its next meeting on August 28–29, 1991, in Adelphi, MD and Beltsville, MD, suburbs in the greater metropolitan area of Washington, DC. The first session of this meeting will be held in the facilities of the U.S. Army Adelphi Laboratory Center in Adelphi, MD and will be closed to the public. The second session of this meeting will be open to the public and will be held in the facilities of the Holiday Inn Calverton in Beltsville, MD on August 29, 1991. The public session will begin at 1 p.m. and end at 5 p.m. The address of the Holiday Inn Calverton is 4095 Powder Mill Road, Beltsville, MD.

The purpose of these meetings is to discuss technological factors involved in developing recommendations to the Secretary of Defense on consolidating, converting, or realigning various laboratories of the Department of Defense. The agenda for the meetings will consist of discussions of issues related to future military research and technology development. These matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive Order. Accordingly, the Director of Defense Research and Engineering has determined, in writing, that the public interest requires that the first session of this meeting be closed to the public because this session will be concerned with matters listed in section 552(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact: Dr. Michael Heeb, Executive Secretary to the DoD Advisory Commission on Consolidation and Conversion of Defense Research and Development Laboratories, 5109 Leesburg Pike, suite 317, Falls Church, VA 22041, Phone (703) 756–8969.

Dated: July 30, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–18487 Filed 8–2–91; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group C (Mainly Opto-Electronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday and Wednesday August 27 and 28, 1991.

ADDRESSES: The meeting will be held at the Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, suite 307, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Gerald Weiss, AGED Secretariat, 2011 Crystal Drive, suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Avanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classifed defense programs throughout.

In accordance with section 10(d) of Public Law No. 92–463, as amended, (5 U.S.C. App. II 10(d)(1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: July 29, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Office, Department of Defense.

[FR Doc. 91–18430 Filed 8–2–91; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Weapon Development and Production Technology; Meeting

ACTION: Change in Status from Closed to Open of Advisory Committee Meeting Notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Weapon Development and Production Technology scheduled for 11 to 23 August, 1991, originally announced as a closed meeting, as published in the **Federal Register** (vol. 56, no. 111, page 26658, Monday, June 10, 1991, FR Doc. 91–13671) will be open to the public except for a session from 1 p.m. to 5 p.m., Tuesday, 13 August, 1991, which shall remain closed. In all other respects the original notice remains unchanged.

Dated: July 30, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-13439 Filed 8-2-91; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Intent To Prepare an Environmental Impact Statement on EF/F-111 Realignment at Cannon AFB, NM

The United States Air Force intends to prepare an Environmental Impact Statement (EIS) on the actions associated with the realignment of the 27th Tactical Fighter Wing at Cannon AFB, NM. There are three actions associated with this realignment. In mid 1992, the wing will receive 25 EF-111A aircraft and convert from 59 F-111D to 62 F-111F aircraft. Additionally, 18 F-111G will retire and be replaced with 18 F-111E aircraft in mid 1993. Manpower authorizations are expected to increase by 303 full-time military and 19 civilians by mid 1993. This realignment was announced on April 12, 1991 as part of a comprehensive package prepared for the Defense Base Closure and Realignment Commission by the Air Force.

This EIS will focus on the realignment impacts taking place at Cannon AFB. It will analyze the local environmental effects. associated with the 27th TFW realignment. The Air Force hopes to have this EIS completed by mid 1992.

The Air Force will conduct public scoping meetings to determine the issues and concerns that should be addressed in the EIS.

Notice of the time and place of the planned scoping meetings will be made available to public officials and announced in the news media where the meetings will be held.

To assure the Air Force will have sufficient time to consider public input on issues to be included in the EIS, scoping comments should be forvarded to the addressee listed below by September 6, 1991. However, the Air Force will accept comments sent to the addressee below at any time during the environmental impact process.

For further information concerning realignment of the 27th TFW contact: Ms Brenda Cook, HQ TAC/DEVE, Langley AFB, VA 23665 or telephone (804) 764-7844.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91-18486 Filed 8-2-91; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Freight Tenders; Procedural Changes in Receipt and Approval

AGENCY: Military Traffic Management Command (MTMC).

ACTION: Procedural changes in the receipt and approval of DOD Freight Tenders.

SUMMARY: Headquarters MTMC will transfer the Tender Function to Headquarters, MTMC Eastern Area, Bayonne, N.J. All carriers, Motor, Rail, Air, Water, and Pipeline must submit their tenders, with the exception of 600,000 series (negotiated tenders), to: Headquarters, Military Traffic Management Command, Eastern Area, ATTN: MTEA-INS-T, Room 142, Building 82, Bayonne, N.J. 07002-5302. Effective date: October 1, 1991.

SUPPLEMENTARY INFORMATION: The purpose of this transfer is to co-locate the tender receipt/approval function with the CONUS Freight Management (CFM) System. This will enhance the receipt and approval of tenders.

John O. Roach, II,

Department of the Army Liaison Officer with the Federal Register.

[FR Doc. 91-18451 Filed 8-2-91; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Intent to Prepare a Draft Environmental Impact Statement for the Grundy Local Protection Plan, Grundy, VA

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The Huntington District, currently has underway a study of potential flood damage reduction alternatives for Grundy, Virginia, Levisa Fork Basin of the Big Sandy River Drainage, as authorized by section 202 of the Energy and Water Development Appropriation Act of 1981. (Pub. L. 96-367). The possibility of significant environmental and socio-economic impacts as the result of implementation of these potential flood damage alternatives, necessitates the preparation of a Draft Environmental Impact Statement (DEIS). Consequently, the Huntington District Engineer has directed the preparation of a Draft Environmental Impact Statement (DEIS) on the Grundy, Virginia, Local Protection Project.

FOR FURTHER INFORMATION CONTACT: Questions regarding the proposed action and DEIS should be addressed to: Mr. Theodore A. Brown, PD-S, Phone: (304) 529-5644, Mr. Wallace E. Dean, PD-B, Phone: (304) 529-5712, Planning division, Huntington District Corps of Engineers, 520 8th Street, Huntington, West Virginia, 25701-2070.

SUPPLEMENTARY INFORMATION:

1. *Proposed Action:* Plan 3-A, the recommended plan, will be carried out through a joint venture of the U.S. Army Corps of Engineers, Virginia Department of Transportation, and the town of Grundy.

2. Study efforts when complete will be documented in a Specific Project Report (SPR), a supplement to a General Plan, as directed and authorized by section 202 of Public Law 96-367. The study addresses only those flooding problems along the Levisa Fork and Slate Creek within the Grundy, Virginia corporation limits. Study alternatives being considered include an assessment of the following: Comprehensive flood damage reduction and U.S. Route 460 upgrading in Grundy. The project will consist of (1) voluntary floodproofing and floodplain evacuation in those areas not for the highway right of way; (2) mandatory evacuation structures located in the highway right of way and in the floodplain; (3) construction of a barrier wall and three-foot parapet wall around Area B, which includes those structures fronting Main Street and bound by Slate Creek on the north and the mountainside on the south; (4) relocation of two schools; and (5) preparation of a floodsafe site bounded by an elevated State Route 83 and retaining walls, Area C. Additional Features of the project will be the establishment of greenbelt along the Levisa Fork between U.S. Route 460 and the river, and the opportunity for commercial redevelopment on a prepared floodsafe site, Area C.

These study efforts have been discussed at numerous public meeting and workshops with concerned area residents during the period June 1984 to present, the most recent meeting being a Town meeting called by Congressman Boucher on May 31, 1991 to provide and update the area representation and residents.

3. a. A draft SPR containing a summary of investigations with specific recommendations is currently scheduled for completion by February 1992 with a final report to be completed by late 1992 or early 1993. Public involvement will continue throughout this final phase of study in the form of workshops and information furnished to the local media.

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FOR FURTHER INFORMATION CONTACT: Questions regarding the proposed action and DEIS should be addressed to: Mr. Theodore A. Brown, PD–S, Phone: (304) 529–5644, Mr. Wallace E. Dean, PD–B, Phone: (304) 529–5712, Planning division, Huntington District Corps of Engineers, 520 8th Street, Huntington, West Virginia, 25701–2070.

SUPPLEMENTARY INFORMATION:

1. *Proposed Action:* Plan 3–A, the recommended plan, will be carried out through a joint venture of the U.S. Army Corps of Engineers, Virginia Department of Transportation, and the town of Grundy.

2. Study efforts when complete will be documented in a Specific Project Report (SPR), a supplement to a General Plan, as directed and authorized by section 202 of Public Law 96–367. The study addresses only those flooding problems along the Levisa Fork and Slate Creek within the Grundy, Virginia corporation limits. Study alternatives being considered include an assessment of the following: Comprehensive flood damage reduction and U.S. Route 460 upgrading in Grundy. The project will consist of (1) voluntary floodproofing and floodplain evacuation in those areas not for the highway right of way; (2) mandatory evacuation structures located in the highway right of way and in the floodplain; (3) construction of a barrier wall and three-foot parapet wall around Area B, which includes those structures fronting Main Street and bound by Slate Creek on the north and the mountainside on the south; (4) relocation of two schools; and (5) preparation of a floodsafe site bounded by an elevated State Route 83 and retaining walls, Area C. Additional Features of the project will be the establishment of greenbelt along the Levisa Fork between U.S. Route 460 and the river, and the opportunity for commercial redevelopment on a prepared floodsafe site, Area C.

These study efforts have been discussed at numerous public meeting and workshops with concerned area residents during the period June 1984 to present, the most recent meeting being a Town meeting called by Congressman Boucher on May 31, 1991 to provide and update the area representation and residents.

3. a. A draft SPR containing a summary of investigations with specific recommendations is currently scheduled for completion by February 1992 with a final report to be completed by late 1992 or early 1993. Public involvement will continue throughout this final phase of study in the form of workshops and information furnished to the local media.

Federal, state, and local agencies as well as other affected and concerned organizations will be requested to be represented at all scheduled meetings of this nature.

b. Several potentially significant impacts have been identified. Studies have been designed and are presently underway to assess and qualify the significance of each. Potentially significant impacts are: (1) Impacts on the present aquatic and terrestrial resources; (2) Changes in life style and traditional values; (3) socio-economic impacts and any other significant impacts; and (4) Cultural resources. In addition to the above impacts any significant impact development during the study will also be analyzed and presented in the DEIS.

c. A public scoping meeting will be conducted at Grundy, Virginia, during the latter part of August, 1990. No additional public scoping meetings are anticipated during DEIS development.

d. The DEIS will be developed under guidance, requirements, and format in 40 CFR 1502.10. Consultation will be conducted with the U.S. Fish and Wildlife Service and the Environmental Protection Agency during the DEIS process, pursuant to the requirements of the Fish and Wildlife Coordination Act 16 U.S.C. 661 *et seq.* (Pub. L. 85–624), the Endangered Species Act 16 U.S.C. 1531 *et seq.* (Pub. L. 93–205), the Heritage Conservation and Recreation Service and State Historical Preservation Act of 1966 (80 Stat 915) (Pub. L. 89–655), and the Preservation of Historic and Archaeologic Data (88 Stat 174) (Pub. L. 93–291) and EO 11593. In addition, other interest groups or organizations will be included.

4. It is anticipated that the DEIS will be made available for public review in Fiscal year 1992.

John O. Roach,

Department of the Army Liaison, Officer with the Federal Register.

[FR Doc. 91–18452 Filed 8–2–91; 8:45 am]

BILLING CODE 3710–GM–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before September 4, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) title; (3) frequency of collection; (4) the affected public; (5) reporting burden; and/or (6) recordkeeping burden; and (7) abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above.

Dated: July 30, 1991.

Mary P. Liggett,

Acting Director, Office of Information Resources Management.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Biennial Performance Report for Drug-Free Schools and Communities Act—State Educational Agencies.

Frequency: Biennially.

Affected Public: State or local governments.

Reporting Burden:
Responses: 57,
Burden Hours: 4,920.

Recordkeeping Burden:
Recordkeepers: 0,
Burden Hours: 0.

Abstract: Information about programs funded under the Drug-Free Schools and Communities Act must be submitted to the Department. The Department will use the information to enhance program management and use it as a tool in considering development of its reauthorization proposal for the Drug-Free Schools and Communities Act.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title: Application for Grants under the Migrant Education Even Start Program (MEES) Operated by State Educational Agencies.

Frequency: Annually.

Affected Public: State or local governments.

Reporting Burden:
Responses: 50,
Burden Hours: 900.

Recordkeeping Burden:
Recordkeepers: 0,
Burden Hours: 0.

Abstract: This form will be used by State Educational Agencies to apply for funding under the Migrant Education Even Start Program. The Department uses the information to make grant awards.

Office of Postsecondary Education

Type of Review: Revision.

Title: Application for Grants under the Law School Clinical Experience Program.

Frequency: Annually.

Affected Public: Non-profit institutions.

Reporting Burden:
Responses: 91,
Burden Hours: 1,820.

Recordkeeping Burden:
Recordkeepers: 0,
Burden Hours: 0.

Abstract: This form will be used by State Educational Agencies to apply for grants under the Law School Clinical Experience Program. The Department uses the information to make grant awards.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Application for Grants under the Patricia Roberts Harris Graduate and Professional Study Fellowship Program.

Frequency: Annually.

Affected Public: Non-profit institutions.

Reporting Burden:
Responses: 250,
Burden Hours: 5,000.

Recordkeeping Burden:
Recordkeepers: 0,
Burden Hours: 0.

Abstract: This form will be used by State Educational Agencies to apply for funding under the Patricia Roberts Harris Graduate and Professional Study Fellowship Program. The Department uses the information to make grant awards.

Office of Intergovernmental and Interagency Affairs

Type of Review: Revision.
Title: AMERICA 2000 Toll-Free Telephone Service.
Frequency: One time.
Affected Public: Individuals or households.

Reporting Burden:
Responses: 80,000,
Burden Hours: 6,400.

Recordkeeping Burden:
Recordkeepers: 0,
Burden Hours: 0.

Abstract: This toll-free telephone service is used by the general public to obtain information packets on education issues. The Department will use this information to help individual citizens become active in the development of educational initiatives within their communities.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.
Title: Annual Client Assistant Program.
Frequency: Annually.
Affected Public: State or local governments; Non-profit institutions.

Reporting Burden:
Responses: 57,
Burden Hours: 228.

Recordkeeping Burden:
Recordkeepers: 0,
Burden Hours: 0.

Abstract: Using this report the Department evaluates the performance of those agencies who have been designated to administer the Client Assistant Program (CAP) and provide assistance in informing and advising all clients and client applicants of the available benefits under the Rehabilitation Act of 1973, as amended. The Department uses the information to evaluate the program and make recommendations to the Congress.

[FR Doc. 91–18459 Filed 8–2–91; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award Intent To Award Grant to Energy Education Services, Inc.

AGENCY: Department of Energy.

ACTION: Notice of Non-Competitive Financial Assistance Award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.7(b)(2)(i)(A) it is making a financial assistance renewal award under Grant Number DE–FG01–90CE16031 to Energy Education Services, Inc., for purposes of continuing support for the Leadership Training Conferences for the National Energy Education Development (NEED) project. This grant is necessary to continue the project created by a joint resolution of Congress and Presidential Proclamation. The NEED project will conduct four National Leadership Training Conferences having a total estimated cost of at least $142,000 with approximately $40,000 being provided by the Department of Energy (DOE).

This project, which will contribute significantly to the energy education of the public, is a renewal of an activity presently being funded by DOE under Grant Number DE–FG01–90CE16031. Competition would have a significant adverse effect on the activity due to the applicant's unique previous experience on the project and its development of a specialized network of coordinators in approximately 25 states. Any other organization would not be able to perform at the level required by the project.

In accordance with 10 CFR 600.7(b)(2)(i)(A), it has been determined that the activity to be funded is necessary to the satisfactory completion of an activity presently being funded by DOE and for which competition for support would have a significant adverse effect on completion of the activity. The anticipated term of the proposed grant shall be eighteen months from the effective date of the award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, ATTN: Rose Mason, PR–322.2, 1000 Independence Ave., SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Operations Division "B", Office of Placement and Administration.

[FR Doc. 91–18519 Filed 8–2–91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. EL91–46–000, et al.]

Madison Gas and Electric Company, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

July 29, 1991.

Take notice that the following filings have been made with the Commission:

1. Madison Gas and Electric Company

[Docket No. EL91–46–000]

Take notice that on July 23, 1991, Madison Gas and Electric Company (Applicant), 133 S. Blair Street, P.O. Box 1231, Madison, Wisconsin 53701–1231, filed a petition in Docket No. EL91–46–000 for a declaratory order concerning the rights of the parties under the Joint Power Supply Agreement dated July 26, 1973, between Wisconsin Power and Light Company, Wisconsin Public Service Corporation, and Applicant, as amended (hereinafter "JPSA"), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Applicant states that it specifically seeks an order declaring that the JPSA permits each of the three parties thereto to transmit power and energy over each segment of the 345 kV line jointly constructed by the parties pursuant to the JPSA—including portions of the line owned by one of the other parties—without charge, up to a level corresponding to the transmitting party's share of output in the jointly owned and operated generating units identified in the JPSA. Applicant states that absent such a declaratory order, it may be required to pay for the use of a transmission network in which it has already invested heavily as part of an effort to achieve joint regional economies for the benefit of all customers of the three utilities.

Comment date: August 28, 1991 in accordance with Standard Paragraph E at the end of this notice.

2. Niagara Mohawk Power Corporation

[Docket No. ER91–551–000]

Take notice that on July 23, 1991, Niagara Mohawk Power Corporation ("Niagara Mohawk"), tendered for filing, as a rate schedule, a supplement agreement between Niagara Mohawk and Consolidated Edison Company of New York, Inc. ("Consolidated Edison") dated May 29, 1991.

Niagara presently has on file an agreement with Consolidated Edison dated April 1, 1979 last amended

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d 8–2–91; 8:45 am]

Federal Energy Regulatory Commission

[Docket Nos. EL91–46–000, et al.]

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Comment date: August 28, 1991 in accordance with Standard Paragraph E at the end of this notice.

2. Niagara Mohawk Power Corporation

[Docket No. ER91–551–000]

Take notice that on July 23, 1991, Niagara Mohawk Power Corporation ("Niagara Mohawk"), tendered for filing, as a rate schedule, a supplement agreement between Niagara Mohawk and Consolidated Edison Company of New York, Inc. ("Consolidated Edison") dated May 29, 1991.

Niagara presently has on file an agreement with Consolidated Edison dated April 1, 1979 last amended September 28, 1988. The original agreement is to provide transmission service for the delivery of diversity power and energy from the Power Authority of the State of New York (PASNY) to Consolidated Edison. The diversity power and energy is in turn exchanged by PASNY with Hydro Quebec. This agreement is designated as Niagara Mohawk Rate Schedule FERC No. 113. This new agreement is being transmitted as a supplement to the existing agreement and supersedes and amends Supplement No. 11.

The May 29, 1991 agreement, which is a supplement to the original agreement, revises the transmission rates. Niagara requests a waiver of the Commission's prior notice requirements in order to allow the May 29, 1991 agreement to become effective April 1, 1988. Niagara Mohawk states that Consolidated Edison has agreed to the proposed effective date.

Copies of the filing were served upon Consolidated Edison and the Public Service Commission of New York.

Comment date: August 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Niagara Mohawk Power Corporation

[Docket No. ER91–552–000]

Take notice that on July 23, 1991, Niagara Mohawk Power Corporation ("Niagara Mohawk"), tendered for filing an agreement between Niagara Mohawk and Consolidated Edison Company of New York, Inc. ("Con Ed"), providing for certain transmission services to Con Ed. This agreement is designated as Niagara Mohawk Power Corporation Rate Schedule FERC No. 90. This new agreement is being transmitted as a supplement to the existing agreement.

Under Rate Schedule No. 90, Niagara delivers Fitzpatrick power and energy between the New York Power Authority and Con Ed Paragraph 2.3 of Rate Schedule No. 90, as amended on August 28, 1980, states that Niagara Mohawk will recalculate the annual fixed-charge rate effective September 1 of each year for the ensuing 12-month period using previous year-end data and cost of capital data as determined by the New York State Public Service Commission in Niagara Mohawk's most recent retail electric rate proceeding. Niagara requests an effective date of September 1, 1988.

Copies of the filing were served upon Consolidated Edison and the Public Service Commission of New York.

Comment date: August 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. Central Power and Light Company and West Texas Utilities Company

[Docket No. ER91–550–000]

Take notice that on July 23, 1991, Central Power and Light Company ("CPL") and West Texas Utilities Company ("WTU") tendered for filing: (1) The Oklaunion Power Transmission Services Agreement (Agreement) dated as of December 24, 1986, between CPL, WTU and the City of Brownsville, Texas, operating by and through the Public Utilities Board of the City of Brownsville, Texas (Brownsville); and (2) revised Master ERCOT Transmission Facility Rate Schedules for CPL and WTU, respectively.

CPL and WTU state that the Agreement provides for the transmission by CPL and WTU of electric power and energy to which Brownsville is entitled by virtue of its undivided ownership interest in Oklaunion Unit No. 1, a coal-fired generating station located in the control area of WTU, operated by WTU and owned by WTU, CPL, Brownsville, Public Service Company of Oklahoma and the Oklahoma Municipal Power Authority.

WTU and CPL further state that by this filing, they are revising their respective Master Rate Schedules to include the Agreement on the list of agreements and tariffs to which the Master Rate Schedule applies.

CPL and WTU request that the Agreement be permitted to become effective as of December 24, 1986, and therefore has requested waiver of the Commission's notice requirements.

Copies of the filing were served upon Brownsville and the Public Utility Commission of Texas.

Comment date: August 16, 1991, in accordance with Standard Paragraph E end of this notice.

5. York County Solid Waste and Refuse Authority

[Docket No. QF86–920–002]

On July 23, 1991, York County Solid Waste and Refuse Authority tendered for filing an amendment to its filing in this docket.

The amendment clarifies certain aspects of the ownership organizational structure of the facility.

Comment date: 21 days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–18449 Filed 8–2–91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91–1–31–005]

Arkla Energy Resources; Filing of Revised Tariff Sheet in Compliance With Commission Order

July 30, 1991.

Take notice that on July 25, 1991, Arkla Energy Resources (AER), a division of Arkla, Inc., tendered for filing the following revised tariff sheet to become effective April 1, 1991:

2nd Revised Volume No. 1
2nd Substitute 2nd Revised Original Sheet No. 11

AER states that the above sheet is being filed in accordance with the Commission's order dated July 3, 1991 which directed AER to refile its April 1, 1991 tariff sheets within 30 days to reflect the recovery of its gas costs in excess of the threshold of the past performance test.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before August 6, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–18490 Filed 8–2–91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-6-22-004]

CNG Transmission Corp.; Report of Refunds

July 30, 1991.

Take notice that CNG Transmission Corporation (CNG), on July 19, 1991, tendered for filing with the Federal Energy Regulatory Commission (Commission) its report of refunds as a credit to its April 1991 bills. CNG states that the report is being made pursuant to the Commission's June 19, 1991, order in the referenced proceeding.

CNG states that the refunds are related to take-or-pay amounts flowed through by Texas Gas Transmission Corporation in its Docket No. RP90-132.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before August 6, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-18488 Filed 8-2-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. GT91-31-000 and G-280-002]

Northern Natural Gas Co.; FERC Order No. 493 Filing

July 30, 1991.

Take notice that on July 23, 1991, Northern Natural Gas Company (Northern) tendered for filing certain tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1, as shown on appendix A to its filing. Northern requests an effective date of July 23, 1991.

Northern states that the tariff sheets are filed to reflect the change in corporate name to Northern Natural Gas Company, in compliance with the Commission's July 17, 1990, order in Docket No. G-280-001, *et al.*, which granted Northern Natural Gas Company, Division of Enron Corp. authorization to transfer all its assets and operations to Northern Natural Gas Company, effective December 31, 1990.

Northern further states that as a result of this filing, Northern's FERC Gas Tariff, Third Revised Volume No. 1 has been filed in its entirety on electronic medium in compliance with FERC Order No. 493. Northern asserts that only minor changes have been made to the tariff sheets, such as corrections in spelling and punctuation, name and address changes, etc.

Copies of this filing have been mailed to each of Northern's customers and interested commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests must be filed on or before August 9, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-18489 Filed 8-2-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. IN88-6-007]

Tennessee Gas Pipeline Co.; Report of Refunds

July 30, 1991.

Take notice that on June 28, 1991, Tennessee Gas Pipeline Company (Tennessee) in compliance with the Federal Energy Regulatory Commission orders issued February 29, 1988 and April 27, 1988, tendered for filing with the Commission its Report of Refunds reflecting flow-through to its jurisdictional sales customers of the refund received from Ozark Gas Transmission System through a $0.005/Mcf credit to invoices during the period of May 1990 through April 1991, pursuant to a Stipulation and Consent agreement approved by the Commission in the above docket on August 3, 1987.

Tennessee states that copies of the filing have been mailed to all of its jurisdictional sales customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before August 6, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-18491 Filed 8-2-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-2433-000, CP91-2483-000]

Tennessee Gas Pipeline Co.; Requests Under Blanket Authorization

July 29, 1991.

Take notice that on July 23, 1991, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificate issued in Docket No. CP87-115-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Tennessee and is summarized in the attached appendix.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the date after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for

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[1] These prior notice requests are not consolidated.

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Lois D. Cashell,
Secretary.

[FR Doc. 91-18491 Filed 8-2-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-2433-000, CP91-2483-000]

Tennessee Gas Pipeline Co.; Requests Under Blanket Authorization

July 29, 1991.

Take notice that on July 23, 1991, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificate issued in Docket No. CP87-115-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Tennessee and is summarized in the attached appendix.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the date after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for

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[1] These prior notice requests are not consolidated.

filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,
Secretary.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Dth	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2433-000 (7-23-91) [3]	Diamond Shamrock Offshore Limited Partnership (Producer).	92,000 92,000 33,580,000	OLA, OTX	Various	10-31-88,[2] IT, Interruptible.	ST91-9368-000, 5-1-89.
CP91-2483-000 (7-23-91) [4]	Exxon Corporation (Producer).	80,000 80,000 29,200,000	OLA, LA, TX	LA	3-17-88,[2] IT, Interruptible.	ST91-9461-000, 1-23-90.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

[2] As amended.

[3] The request under blanket authorization was tendered for filing July 10, 1991. However, the required fee (18 CFR 381.207) was not paid until July 23, 1991. Section 381.103 of the Commission's Rules provides that the filing date is the date on which the fee is paid.

[4] The request under blanket authorization was tendered for filing July 16, 1991. However, the required fee (18 CFR 381.207) was not paid until July 23, 1991. Section 381.103 of the Commission's Rules provides that the filing date is the date on which the fee is paid.

[FR Doc. 91-18448 Filed 8-2-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 91-40-NG]

Southwest Gas Corp.; Application for Blanket Authorization to Import Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application for blanket authorization to import natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on June 4, 1991, of an application filed by Southwest Gas Corporation (Southwest) for blanket authorization to import up to a total of 365 Bcf of Canadian natural gas over a two-year term beginning on the date of first delivery. Southwest intends to use existing pipeline facilities for the transportation of the imported gas. Southwest states that it will notify DOE within two weeks after deliveries begin and will submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, September 4, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Thomas Duke, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-9590.

Diane Stubbs, Office of Assistant general Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Southwest, a corporation organized under the laws of California, with its principal place of business in Las Vegas, Nevada, is a local distribution company that serves residential, commercial, and industrial customers in Nevada and Northern California. Southwest receives its gas supplies in southern Nevada and Arizona from El Paso Natural Gas Company, while it receives its Northern Nevada and California gas supplies from Northwest Pipeline Corporation (Northwest). Northwest delivers gas to Southwest *via* Paiute Pipeline Company (Paiute), a wholly owned subsidiary of Southwest. Paiute would function solely as a transporter on behalf of Southwest under the proposed import arrangement.

Southwest seeks two-year blanket authority to import competitively priced Canadian natural gas, under contracts of two years or less, for resale to its end-use customers under firm, short-term or best-efforts types of arrangements. Southwest states that U.S. importing pipelines would generally be either Northwest or Pacific Gas Transmission and that supplies would come from a variety of Alberta producers which have reserves in excess of their contractual commitments.

The decision on this import application will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that imports made under this requested arrangement will be competitive. Parties opposing the arrangement bear the burden of overcoming this assertion. Southwest currently holds a two-year authorization to import up to 6 Bcf of Canadian natural gas from date of first delivery under DOE/ERA Opinion and order No. 69 (Order 69, 1 ERA 70,581) issued December 18, 1984. This import authority has not been activated. By letter on June 21, 1991, Southwest acknowledged its authority to import under Order 69 and requested that the DOE vacate that order in lieu of its June 4, 1991, blanket application for higher volumes. If the DOE grants Southwest's June 4, 1991, blanket application, DOE intends to vacate Order 69.

NEPA Compliance. The National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures. In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedure, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including he parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Southwest's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 30, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-18520 Filed 8-2-91; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91-18-NG]

Tex/Con Gas Marketing Co.; Order Granting Blanket Authorization To Export Natural Gas to Canada and Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order granting blanket authorization to export natural gas to Canada and Mexico.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Tex/Con Gas Marketing Company blanket authorization to export up to 73 Bcf of U.S. natural gas to Canada and Mexico over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F-056 Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on July 30, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-18521 Filed 8-2-91; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91-46-NG]

Washington Natural Gas Co.; Application for Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on July 10, 1991, of an application filed by Washington Natural Gas Company (Washington Natural) for blanket authorization to import from Canada up to 50 Bcf of natural gas over a two-year term beginning on the date of first delivery after November 30, 1991, the date Washington Natural's existing blanket import authority expires (1 FE ¶70,219). The gas would be purchased from various Canadian suppliers on a short-term and spot market basis for system supply. Washington Natural intends to use existing pipeline facilities for transportation of the volumes to be imported. No new construction would be involved.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, September 4, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Allyson C. Reilly, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, FE-53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9394.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, GC-14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Washington Natural is a Washington State corporation and has its principal place of business in Seattle, Washington. Washington Natural proposes to import Canadian natural gas on an interruptible basis for resale in its distribution operation. The specific terms of each import and sale, including the price and volumes, would be negotiated on an individual basis.

In support of its application, Washington Natural asserts that the requested extension of its existing blanket authorization under the same terms and conditions as granted in its current blanket authorization will be in the public interest.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR

DC, July 30, 1991.

Secretary for Fuels
Energy.

-2-91; 8:45 am]

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The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, September 4, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Allyson C. Reilly, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–094, FE–53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9394.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, GC–14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Washington Natural is a Washington State corporation and has its principal place of business in Seattle, Washington. Washington Natural proposes to import Canadian natural gas on an interruptible basis for resale in its distribution operation. The specific terms of each import and sale, including the price and volumes, would be negotiated on an individual basis.

In support of its application, Washington Natural asserts that the requested extension of its existing blanket authorization under the same terms and conditions as granted in its current blanket authorization will be in the public interest.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR

6684, February 22, 1984). Parties, especially those that may oppose this application, should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that imports made under this arrangement will be competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance. The National Environment Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures. In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Washington Natural's application is available for inspection and copying in the Office of Fuels Programs Docket room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 30, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–18522 Filed 8–2–91: 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3970-4]

Postponement of Open Meeting on August 8, 1991; Technology Innovation and Economics Committee of the National Advisory Council for Environmental Policy and Technology (NACEPT)

Under Public Law 92463 (The Federal Advisory Committee Act), EPA gives notice of the postponement of the first meeting of the Industrial Pollution Prevention Focus Group of the Technology Innovation and Economics (TIE) Committee. The TIE Committee is a standing committee of the National Advisory Council for Environmental Policy and Technology (NACEPT), an advisory committee to the Administrator of the EPA. The meeting scheduled to convene August 8, from 8:30 a.m. to 5:00 p.m. at the Washington Court Hotel, 525 New Jersey Avenue, NW., Washington, DC 20001 has been postponed. An alternative meeting date will be announced as soon as it is selected.

Additional information may be obtained from David R. Berg or Morris Altschuler at the above address, by calling 202–382–3153, or by written request sent by fax 202–245–3882.

Dated: July 24, 1991.

Robert Hardaker,

NACEPT Designated Federal Official.

[FR Doc. 91–18511 Filed 8–2–91: 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing

1. The Commission has before it the following applications for renewal of license of Station KUCB–FM, Des Moines, Iowa; and for new FM stations at Des Moines, Iowa.

Applicant	City/State	File No.	MM Docket No.	FCC No.
A. Center For Study and Application of Black Economic Development (Renewal of KUCB–FM).	Des Moines, Iowa	BRH–900131UA	91–204	91–197
B. Iowa Acorn Broadcasting Corporation	Des Moines, Iowa	BPED–900102MB		
C. Minority Communications, Inc.	Des Moines, Iowa	BPED–900116MA		

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the following issues:

(a) To determine whether the Center for Study and Application of Black Economic Development has been inept in its operation of Station KUCB–FM since 1979;

(b) To determine whether the Center for Study and Application of Black Economic Development violated § 73.561 of the Commission's Rules;

(c) To determine whether the Center for Study and Application of Black Economic Development misrepresented material facts to, and/or concealed material facts from, the Commission in connection with its answer to Question 6 of its instant renewal application;

(d) To determine the current ownership and composition of the Center for Study and Application of Black Economic Development and the ownership and composition during the license term, including the role and participation of Charles Knox, and the effect thereof on the Center's basic qualifications to be a Commission licensee;

(e) To determine whether control of the Center for Study and Application of Black Economic Development was transferred without Commission approval, or exercised by persons not authorized to do so, in violation of section 310(d) of the Communications Act of 1934, as amended;

(f) To determine whether the Center for Study and Application of Black Economic Development made any misrepresentations to the Commission or lacked candor with the Commission as to the true officers and directors of the permittee and licensee, and whether the Center violated § 73.3615 of the Commission's Rules;

(g) To determine, in light of the evidence adduced pursuant to issues (a) through (f), *supra*, whether the Center for Study and Application of Black Economic Development is basically qualified to be a Commission licensee;

(h) To determine which of the proposals would, on a comparative basis, better serve the public interest; and

(i) To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC 20554. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (telephone (202) 857-3800).

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-18424 Filed 8-2-91; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 91-142; DA 91-843]

Hearing Designation Order

AGENCY: Federal Communications Commission.

ACTION: Order designating applications for hearing.

SUMMARY: Cellular application is designated for hearing for possible rule violations.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Carmen Borkowski, Mobile Services Division, Common Carrier Bureau (202) 632-6450.

SUPPLEMENTARY INFORMATION: This is a summary of an Order Designating Application for Hearing in CC Docket No. 91-142, adopted July 2, 1991 and released July 12, 1991.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M St. NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1114 21st, NW. Washington, DC 20037.

Summary of Order Designating Application for Hearing

The Deputy Chief, Common Carrier Bureau, under delegated authority, has designated for hearing a cellular radio system application. The applicant apparently participated in an agreement styled as "Mutual Contingent Risk Sharing Agreement" (Rish Sharing Agreement). The hearing has been consolidated with the previous hearing designated in Algreg Cellular Engineering, DA 91-589, CC Docket No. 91-142 (Com. Car. Bur. May 29, 1991).

Pursuant to section 309(e) of the Communications Act of 1934, as amended, the following application has been designated for hearing upon the same issues as in *Algreg*, DA 91-589, 8 at para. 42.

Applicant	RSA	File No.
21st Century Cellular.	Iowa 2-Union No. 413.	10344-CL-P-413-A-89

Federal Communications Commission.

Gerald P. Vaughan,

Deputy Chief (Operation), Common Carrier Bureau.

[FR Doc. 91-18423 Filed 8-2-91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Reporting Standard Concerning the Return of a Loan With a Partial Charge-Off to Accrual Status

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Withdrawal of proposal.

SUMMARY: On March 18, 1991, under the auspices of the Task Forces on Supervision and Reports of the Federal Financial Institutions Examination Council (FFIEC), the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), the Board of Governors of the Federal Reserve System (FRB), and the Office of Thrift Supervision (OTS) (referred to as the "agencies"), published in the **Federal Register** a request for public comment (56 FR 11441) on a proposal relating to nonaccrual loans. The proposal would establish criteria under which a federally supervised bank or savings association ("depository institution"), for purposes of the Reports of Condition and Income (Call Reports) or Thrift Financial Reports (TFR), would be permitted to return nonaccrual loans with partial charge-offs of principal to accrual status without first recovering the partial charge-off or becoming fully current in accordance with the contractual loan terms.

The agencies have reviewed the eighty-three letters received during the comment period which closed May 2, 1991. A summary of these comments is presented in section III, below. The majority of comments received that disapproved of the proposal indicated concerns that the proposal was not in accordance with generally accepted accounting principles (GAAP) and a number of the comments expressed concerns that such differences with GAAP in the area of nonaccrual loans might be viewed negatively by analysts and other users of depository institution financial reports. While noting these concerns, the agencies also observed that in some respects where the proposal differed from GAAP, the proposal was more conservative than GAAP. At the same time, as a longstanding practice, the agencies have attempted to minimize differences between regulatory reporting requirements and GAAP.

The agencies have also noted that the American Institute of Certified Public Accountants (AICPA) and the Financial Accounting Standards Board (FASB) have projects underway which will

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FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Reporting Standard Concerning the Return of a Loan With a Partial Charge-Off to Accrual Status

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Withdrawal of proposal.

SUMMARY: On March 18, 1991, under the auspices of the Task Forces on Supervision and Reports of the Federal Financial Institutions Examination Council (FFIEC), the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), the Board of Governors of the Federal Reserve System (FRB), and the Office of Thrift Supervision (OTS) (referred to as the "agencies"), published in the **Federal Register** a request for public comment (56 FR 11441) on a proposal relating to nonaccrual loans. The proposal would establish criteria under which a federally supervised bank or savings association ("depository institution"), for purposes of the Reports of Condition and Income (Call Reports) or Thrift Financial Reports (TFR), would be permitted to return nonaccrual loans with partial charge-offs of principal to accrual status without first recovering the partial charge-off or becoming fully current in accordance with the contractual loan terms.

The agencies have reviewed the eighty-three letters received during the comment period which closed May 2, 1991. A summary of these comments is presented in section III, below. The majority of comments received that disapproved of the proposal indicated concerns that the proposal was not in accordance with generally accepted accounting principles (GAAP) and a number of the comments expressed concerns that such differences with GAAP in the area of nonaccrual loans might be viewed negatively by analysts and other users of depository institution financial reports. While noting these concerns, the agencies also observed that in some respects where the proposal differed from GAAP, the proposal was more conservative than GAAP. At the same time, as a longstanding practice, the agencies have attempted to minimize differences between regulatory reporting requirements and GAAP.

The agencies have also noted that the American Institute of Certified Public Accountants (AICPA) and the Financial Accounting Standards Board (FASB) have projects underway which will attempt to resolve issues relating to income recognition on nonaccrual loans and the estimation of credit losses on certain loans and restructured debt.

In consideration of those efforts, a number of commentators urged the agencies to refrain from unilaterally issuing further guidance, such as the proposal, in these areas, and to work instead with these rulemaking bodies to ensure consistency between regulatory reporting requirements and GAAP.

Furthermore, a number of the potential positive impacts attributed to this proposal have already been accomplished by the guidance presented by the agencies in their March 1, 1991 joint policy statements (e.g., cash basis recognition of interest income on nonaccrual loans, criteria for restoration of formally restructured loans to accrual status, suggested enhanced disclosure of relevant quality and performance characteristics of nonaccrual loans, and disclosure of market rate restructured debt). The agencies also recognize that the March 1, 1991 joint policy statements accomplished this within the framework of GAAP.

In light of these considerations, the agencies have decided that the proposal should be withdrawn. In keeping with the joint agency policy statements of March 1, 1991, the agencies will continue their efforts to clarify supervisory and reporting policies for depository institutions. In this regard, the agencies intend to work with the private sector rulemaking bodies to attempt to develop a consistent and objective accounting treatment with respect to the recognition and measurement of interest income on nonaccrual loans and other loans to borrowers experiencing financial difficulties and other issues considered in the request for comment.

EFFECTIVE DATE: August 5, 1991.

FOR FURTHER INFORMATION CONTACT: At the OCC: Zane D. Blackburn, Chief Accountant, or William J. Lewis, Accounting Fellow (202) 874–5180. At the FDIC: Robert F. Storch, Chief, or Doris L. Marsh, Examination Specialist, Accounting Section, Division of Supervision (202) 898–8914. At the FRB: Rhoger H. Pugh, Manager (202) 728–5883, or Gerald A. Edwards, Jr., Project Manager (202) 452–2741, Policy Development Section, Division of Banking Supervision and Regulation. At the OTS: David H. Martens, Chief Accountant (202) 906–5646 or Robert J. Fishman, Program Manager (202) 906–5672.

SUPPLEMENTARY INFORMATION:

I. Overview

National banks and federally insured state-chartered member banks and nonmember banks are required to file quarterly Call Reports with the OCC, FRB, and FDIC, respectively. Savings associations are required to file Thrift Financial Reports with the OTS.

The bank Call Report instructions provide certain requirements for a nonaccrual loan to be returned to accrual status. These instructions state that a nonaccrual asset may be returned to an accrual status when (1) none of its principal and interest is due and unpaid, and the bank expects repayment of the remaining contractual principal and interest, or (2) when it otherwise becomes well secured and in the process of collection (emphasis added). For savings associations, the TFR instructions state that, in order for interest to be accrued on a loan, its collection must be probable.

In applying these requirements, amounts due and expected have been based on the loan's contractual amounts. Some depository institutions had questioned whether the remaining book balance (after any partial loan charge-offs) should be the basis for applying these requirements in certain circumstances. These institutions asked whether it might be appropriate to return the loan to accrual status in circumstances where a suitable charge-off was taken and the full collection of the remaining book value of the loan at a market rate of interest was expected.

These questions arose because some institutions believed that nonaccrual status based on collectibility under the contractual terms was not necessarily the most relevant indicator of expected earnings on recorded loan balances in financial statements prepared in accordance with generally accepted accounting principles (GAAP). Therefore, these institutions suggested that reporting requirements could be developed to permit the return of partially charged-off loans to accrual status in certain circumstances. The agencies were willing to develop and issue the proposal (a summary of which is presented in section II, below) because, in many respects, the proposed treatment had the potential to improve the quality of information on loans to troubled borrowers that is presented in financial reports. At the same time, the proposed approach would also have provided potential benefits to depository institutions that were attempting to work with borrowers experiencing financial difficulties.

While in some respects the proposal may not have used the same approaches as FASB standards, these aspects of the proposal were not viewed by the agencies as necessarily unsound. Indeed, in some respects, the proposal was more conservative than GAAP. For example, while the proposal would not have used the same approach as required by Statement of Financial Accounting Standards No. 5, "Accounting for Contingencies" (FAS 5), in estimating the amount of loan losses, the proposal would result in the recognition of larger loan losses than under GAAP—thus giving a more conservative carrying amount for the loan to which the reporting treatment had been applied. In addition, by requiring the discounting of probable future cash flows on a loan subject to the proposed treatment in order to estimate loan losses and accrue interest at a market rate, the proposal is again more conservative that GAAP. In particular, it is more conservative than Statement of Financial Accounting Standards No. 15, "Accounting by Debtors and Creditors for Troubled Debt Restructurings" (FAS 15), which does not utilize present value calculations to estimate losses on restructured debt. Furthermore, the disclosures set forth in the proposal present a reconciliation of loans subject to the proposed reporting treatment, and related income and loss items, that provide more extensive information in financial report disclosures than is required under GAAP. The agencies believed that these extensive disclosures might mitigate any inherent differences in reporting treatment which might otherwise arise from the optional application feature of the proposal.

While providing for more conservative loan loss recognition criteria and enhanced disclosures of loans to troubled borrowers, the proposal would also provide certain benefits to depository institutions. Depository institutions had indicated that analysts and other financial statement users had made the reported levels of nonaccrual loans an inappropriate indicator of future losses and of the appropriate level for the allowance for loan and lease losses (ALLL). Advocates of the proposal, therefore, had argued that, while the proposal would result in the recognition of loan losses (i.e., for the portions of the loans which were charged-off), the proposal would also benefit financial institutions by reducing the reported levels of nonaccrual loans and, perhaps, the level of the ALLL that analysts would expect institutions to maintain. The extensive charge-offs required by the proposal for qualifying loans would cleanse those loans of estimated losses and, in effect, obviate the need for attribution of the ALLL to those loans.

Furthermore, it was argued that the proposal would permit an institution to avoid formal restructuring of the troubled debt, thus reducing the risk that through the renegotiation process borrowers might be able to relieve themselves of the obligation to repay the full contractual amount of the loan. Finally, by making the proposed treatment optional, it was argued, the management of financial institutions could utilize this technique as an additional approach for solving difficult problem loan situations.

Although some commenters recognized that certain aspects of the proposal were more conservative than GAAP, a number of commenters indicated reluctance to have any differences between regulatory reporting standards and GAAP. In particular, some commenters indicated concern that such differences in the area of nonaccrual loans might be viewed as liberal regulatory standards by analysts and other users of financial statements, thus reducing the credibility of the financial reports of depository institutions.

Furthermore, the agencies recognize that the FASB and AICPA have projects underway which will attempt to resolve some of the issues addressed by the proposal. These projects are expected to address the use of present value calculations in determining loan loss reserves and losses from certain troubled debt restructurings, and to determine appropriate methods for recognizing interest income on loans, including nonaccrual loans. The agencies have had discussions with the FASB and AICPA regarding these projects and the prospects for these projects to result in standards that will address these issues.

The agencies also agree that the adoption of this proposed reporting treatment for regulatory purposes would provide limited benefits to depository institutions if it were not viewed as acceptable in public financial statements prepared in accordance with GAAP. Furthermore, the objectives of the agencies and those of the depository institutions advocating the proposal would not be achieved if the proposal were modified to bring it into conformity with GAAP, particularly in view of the fact that GAAP standards may be revised by projects of the AICPA and FASB that were mentioned above.

Moreover, the agencies' March 1, 1991 joint policy statements present certain regulatory reporting policies regarding nonaccrual assets and restructured debt that are consistent with GAAP and that, when taken together, provide many of the potential positive effects that would have been provided by the proposed reporting standard. For example, the interagency policy indicates that cash basis recognition of interest income on nonaccrual loans is permitted when the loan's remaining book balance is fully collectible. Thus, when this criterion is met, partial charge-offs do not have to be recovered before cash basis interest income recognition can begin. The joint statements also included a suggested format for enhanced disclosure of attributes of nonaccrual loans, including cash basis interest and recoveries recorded, charge-offs taken and the segregation of those loans which are substantially performing relative to contractual terms.

Another issue that the joint policies clarified was that nonaccrual assets that have been formally restructured under FAS 15 may be restored to accrual status when certain conditions are met without first having to demonstrate payment performance for a period after the date of the restructuring. Finally, the joint policies indicated that market rate restructured debt need not be disclosed as a FAS 15 restructuring in years after the year of restructuring.

In light of these considerations, and particularly the benefits already provided to depository institutions by the March 1 joint agency policies, the agencies have decided that the FFIEC proposal should be withdrawn. The agencies will continue to work with the FASB and the AICPA as these organizations attempt to develop standards that will address income recognition and credit losses on loans to borrowers experiencing financial difficulties.

II. Summary of Proposal

The proposed reporting treatment was contemplated principally for collateral dependent loans that have been placed on nonaccrual status. However, other loans for which the primary source of repayment was a dedicated and readily determinable stream of cash flows might have qualified for this reporting treatment subject to supervisory review during the examination process.

Under the proposal, a nonaccrual loan that had demonstrated substantial, but less than required, contractual repayment performance would have been eligible for return to accrual status when all of the following criteria were met:

(1) The borrower continued to retain control of any associated collateral and the loan was not an insubstance foreclosure.

(2) The loan had been reduced through a charge-off to a balance that would have the characteristics of a good loan paying interest at a market rate (i.e., that rate which the depository institution would require for a new loan of the same type with comparable terms and credit risk). Indicators of a good loan would have included prudent loan-to-value ratios and adequate cash flow support similar to that which would be required by the depository institution for a new loan under its normal underwriting standards. Consequently, the book value of the loan following the charge-off would be less than the present value of the total expected cash flows, in order to provide cash flow support consistent with prudent underwriting standards.

(3) The amount and timing of collections would have to have been reasonably estimable. Further, the amount and timing of anticipated cash flows would have to have been sufficient to cover the expected lower level of debt service (i.e., the reduced principal and interest payments) on the remaining recorded loan balance and demonstrate that the borrower would be able to fully repay the reduced loan balance plus interest over a reasonable period of time.

(4) The borrower would have to have performed for a sustained period at the level necessary to service the reduced principal and interest payments on the remaining loan balance.

Under the proposal, only once during the life of a loan relationship could a nonaccrual loan have been reduced through a charge-off to a balance that could have been returned to accrual status. Interest income would have been accrued at the market interest rate used in the second criterion, above. Cash interest receipts in excess of that required to amortize the recorded loan balance at this market rate would have been recorded as recoveries of charge-offs and thereafter as interest income.

If a loan that had been returned to accrual status under the proposed reporting treatment failed to perform in accordance with the criteria for adoption of this reporting treatment, but no further charge-off was necessary, the loan would have been returned to nonaccrual status. Also, when a loan met the existing Call Report or TFR nonaccrual criteria applied to the remaining book balance and related debt service, the loan would have been placed on nonaccrual status.

Additionally, Call Report and TFR disclosure would have been required of the loan as partially charged-off and accruing interest at a market rate until

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(3) The amount and timing of collections would have to have been reasonably estimable. Further, the amount and timing of anticipated cash flows would have to have been sufficient to cover the expected lower level of debt service (i.e., the reduced principal and interest payments) on the remaining recorded loan balance and demonstrate that the borrower would be able to fully repay the reduced loan balance plus interest over a reasonable period of time.

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If a loan that had been returned to accrual status under the proposed reporting treatment failed to perform in accordance with the criteria for adoption of this reporting treatment, but no further charge-off was necessary, the loan would have been returned to nonaccrual status. Also, when a loan met the existing Call Report or TFR nonaccrual criteria applied to the remaining book balance and related debt service, the loan would have been placed on nonaccrual status.

Additionally, Call Report and TFR disclosure would have been required of the loan as partially charged-off and accruing interest at a market rate until such time as it became contractually current, was paid in full, or was required to return to nonaccrual status.

III. Summary of Comments Received

The FFIEC received 83 letters responding to the proposed accounting. The respondents could generally be categorized as follows:

Financial institutions	56
Financial institutions industry groups	8
Public accounting firms	5
Real estate industry groups	4
Members of Congress	3
Accounting rulemaking bodies (FASB & AICPA)	2
Depository institutions supervisory agencies	2
Others	2
General Accounting Office	1

Thirty-six respondents implicitly or explicitly agreed with the proposal, some with suggested modifications. Twenty-two of those supporting the proposal did not address whether the proposal was in conformity with GAAP. One acknowledged that there were issues relative to the proposal's conformity with GAAP but approved the proposal on the condition they were resolved. Of the thirteen who did take a position on whether the proposal was acceptable under GAAP, three stated that GAAP should be changed to incorporate this proposal. Three others stated that the proposal was in conformity with GAAP without providing technical arguments to support their conclusions. The remaining seven provided various interpretations of GAAP and/or suggested significant modifications of the proposal to make it acceptable under GAAP.

Forty-two respondents disagreed with the proposal, eight of whom stated that they agreed with the premise of the proposal but could not accept the proposal without substantial modification due to significant concerns about its acceptability under GAAP. Twenty-nine of these forty-two respondents indicated the proposal was not in accordance with GAAP. Another three said the proposal did not represent conservative accounting. Three respondents indicated the proposal would have limited benefit and applicability given the stringent criteria for eligibility. Three disagreed on the premise that the proposed treatment would misrepresent an institution's condition and performance. Two believed it would diminish the credibility of financial reporting of depository institutions. Two dissented primarily on the basis of the regulatory reporting burden which they asserted the proposal created.

The overall conclusions of five commenters were unclear. Two of these commenters each addressed two technical aspects of the proposal's requirements. Another raised for the agencies, consideration the effects that adoption would have on entities who provide data services to banks. Another addressed only the tax treatment of nonaccrual loans. Finally, the other voiced support for the proposal while also highlighting its limited applicability and inherent differences from GAAP.

Commenters who believed the proposal to be at variance with GAAP typically cited one or two principal reasons. First, the proposal's prescribed method for determining the charge-off necessary to adopt the proposed reporting treatment was deemed inconsistent with established principles for recognizing and measuring loan losses. FAS 5 establishes the generally accepted standards for loss recognition. While viewed by the agencies as more conservative than FAS 5, the proposal's methodology would be applied to an institution's better nonaccrual loans, while those that did not have readily determinable cash flows would be recorded using the existing, less conservative standards. Second, commenters took exception to the fact that application of the proposed standard was optional. Commenters noted that GAAP generally does not allow for the application of different standards to similar transactions and assets.

The agencies found these arguments concerning the proposal's lack of conformity with GAAP to be persuasive. The agencies further concluded that the changes to the proposal that would be needed to bring it into conformity with GAAP would not be likely to improve the quality of financial reporting or contribute to an environment in which depository institutions would make credit available to creditworthy borrowers and work with troubled borrowers—which were important objectives behind the development of the proposal.

Additionally, at least thirty respondents, both among those who agreed with and those who rejected the proposal, explicitly indicated that the applicability of the proposal would be limited by GAAP's existing rules for insubstance foreclosure (ISF) accounting, as those rule are currently applied. Seven respondents implored the agencies to "fix" the ISF rules. The agencies are not in a position to unilaterally amend these rules as they are contained in GAAP which are established by the private sector. However, staffs at the agencies have begun discussions with the staff of the Securities and Exchange Commission to address whether the current ISF rules are being applied as intended by those who developed them and the agencies will work to the extent necessary with the GAAP standard setters to promote consistent application.

In addition, some respondents said the standard would not enhance the quality of financial reporting and would present implementation problems for financial institutions and auditors. Some respondents stated that the proposed disclosures would cause analysts to continue considering the reported loans in an unfavorable light.

Others commented that GAAP does not explicitly address whether income can be accrued on partially charged-off loans and urged that the development of accounting standards in this area be left to the private sector. These considerations also contributed to the agencies' decision to withdraw the proposal.

Apart from the questions as to compliance with GAAP, many respondents suggested changes to various components of the proposal. Areas of focus included the level of required disclosure, potential application to uncollateralized loans, suggested clarifications to the several qualifying criteria, and transition periods for adoption. Because the agencies have decided to withdraw the proposed reporting treatment, these types of comments are not further addressed.

As indicated in the summary of comments above, several respondents provided various interpretations of GAAP, modifications of the proposal to address shortcomings relative to GAAP or alternatives to the proposal. While appreciating these comments, the agencies did not find any such suggestions persuasive in light of the arguments set forth by other respondents concerning the proposal's lack of conformity with GAAP and the changes to the proposal that would be needed to achieve conformity.

IV. Comments on Specific Questions Asked in Request for Comment

Following is a summary of the comments on each of the questions specifically asked in the proposal. These questions were asked in order to assist the agencies in assessing whether the proposal, if adopted for regulatory reporting purposes, would conform to GAAP. For the most part, the views expressed in the comment letters on these questions came from respondents who opposed the proposal, as most who supported the proposal did not directly address these questions.

(1) Is the method permitted under this proposed reporting treatment an acceptable interpretation under existing GAAP? Specifically:

(a) Under FAS 5 and the AICPA Industry Audit Guides, "Audits of Banks" and "Audits of Savings and Loan Associations", is it acceptable for an institution to utilize both discounted and undiscounted techniques to measure probable losses on loans? Is the use of both methods acceptable, particularly if the less conservative method is used for lower-quality loans that do not qualify for application of the proposed method?

The majority of the thirty-six commenters who addressed this issue stated that GAAP allows for the use of discounted and undiscounted measurement techniques in assessing loan impairment. However, they stated that GAAP does not allow different techniques to be applied to similar loans. Additionally, many of these commenters indicated that the proposal introduces a new variation of the acceptable loss recognition methods in that it requires discounting to reflect the maintenance of a market rate of return and a level of cash flow support above that required to simply service the debt. Respondents indicated this was not acceptable under GAAP because it would require loss recognition greater than that currently required by FAS 5.

Furthermore, because the proposal's discounting approach is intended to result in a market rate of return, five respondents took exception to the proposal being a prelude to a market value based accounting model for commercial loans.

Eleven commenters noted the existing inconsistencies in loan impairment assessment guidance in GAAP and the lack of definitive GAAP guidance on income recognition issues. They acknowledged that these issues were being addressed by projects currently being undertaken by FASB and the AICPA, respectively. These commenters indicated that the proposal would add to the already diverse practice. They suggested that development of GAAP in these areas be left to the private sector and that the FFIEC actively participate in these processes.

(b) Is the use of a market discount rate an acceptable interpretation of the AICPA Savings and Loan Audit Guide which requires the reduction of proceeds at a rate equivalent to the cost of capital in determination of net realizable value? Can an institution use two discount rates for similar loans?

Only ten respondents addressed this issue. Some of these respondents indicated that a market rate of interest would be acceptable and that an institution should use the same rate for similar loans. Others pointed out that the use of a market rate would be at variance with the AICPA's Savings and Loan Audit Guide. The agencies understand that this matter is included in the FASB's ongoing loan impairment project.

(c) Is the proposed method consistent with Statement of Financial Accounting Standards No. 15, "Accounting by Debtors and Creditors for Troubled Debt Restructurings" (FAS 15), in which the gain or loss on restructuring is measured on an undiscounted basis?

Responses to this question were mixed. A consensus of the twenty-six commenters who addressed this question indicated that the proposal did not comply with FAS 15. Some accepted this lack of conformity given the fact that the proposal and FAS 15 have different objectives and measurement bases. FAS 15 measurement is based on undiscounted cash flows. FAS 15 also provides for varying effective interest rates to the extent that expected cash flows exceed the recorded balance. These commenters also noted that FAS 15 limits loss recognition to situations where the recorded balance will not be recovered. The proposal would currently recognize an additional loss to ensure a market rate of return on the remaining balance.

Other commenters cited FAS 15 as a basis for supporting the optionality of the proposal. They indicated that just as FAS 15 accounting was available for those who opted to enter into a formal debt restructuring, the proposal should be available to those who opted for a "unilateral restructuring."

(d) Is the proposed method consistent with AICPA Practice Bulletin 5, which prohibits accrual of income on certain loans unless, among other things, the loan becomes current as to principal and interest payments?

Most of the fourteen respondents who addressed this issue acknowledged that the proposal is not consistent with Practice Bulletin 5. However, most stressed that the practice bulletin addressed a narrow issue related to loans to developing countries and should not be analogized in the agencies' assessment of the propriety of accrual treatment.

(2) Should the proposed reporting treatment be limited only to collateral dependent loans? If not, are the proposed limitations set forth in this document, (i.e., loans where the primary source of repayment is a dedicated and readily determinable stream of cash flows) sufficiently clear and appropriate, or are other criteria for applicability necessary? For example, should the proposed reporting treatment be required for a broader subset of loans or for other assets such as leases?

A variety of responses to this question were received. Some of the twenty-nine respondents on this issue stated the proposal should be limited to collateral dependent loans. They were concerned that without some objective source of cash flows, the values ascribed to the loans would be arbitrary. Others stated that the proposal should be applicable to non-collateral dependent loans which met the test for a dedicated and determinable stream of cash flows. Six commenters asserted that the proposal should be applied to all loans on a mandatory basis. No guidelines were provided by these commenters on how the proposal could be applied to loans without dedicated and readily determinable cash flows.

Several respondents added that the final rule should provide guidance on what sources of repayment would represent "dedicated and readily determinable" cash flows. Some indicated that this definition was too subjective and would lead to ebuse. Conversely, others stated that this was too restrictive a criterion and recognized that it would preclude certain loans, such as construction loans, from being eligible for return to accrual status.

(3) Is it reasonable to believe that loans meeting the requirements for the proposed reporting treatment will not also meet the criteria requiring insubstance foreclosure accounting?

Most of the thirty-three respondents addressing this question indicated that few loans would qualify for this proposed treatment due to the fact that most would likely represent ISFs. The responses to this question also appear to indicate that the existing ISF rules are interpreted in a variety of ways. Some indicated that any loan with a partial charge-off was potentially an ISF. Others said that the degree of charge-off required in the proposal would force an ISF, indicating that some threshold of tolerance for partial charge-offs exists in assessing ISFs. Several respondents indicated that the proposed reporting standard's requirement that the loan not be an ISF would so limit the applicability of the proposal as to make proceeding with the proposal not worthwhile. A large number of respondents indicated that the agencies should work with the private sector rulemaking bodies on a priority basis to clarify the application of the ISF rules.

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(4) Can existing GAAP be interpreted to permit selective or discretionary application of the proposed reporting treatment by a depository institution to only certain of the loans within the defined scope? Further, would existing GAAP permit an institution to elect to adopt or forego this proposed reporting treatment entirely? Do the proposed bank Call Report and TFR items alleviate the concerns inherent in selective application, or is the collection of additional information in regulatory reports necessary to alleviate these concerns? If so, what additional information would be needed?

The majority of the forty-six respondents to this question concluded that GAAP did not allow the selective application of different accounting methods to similar loans. They stated that, if adopted by an institution, the proposal would have to be applied to all loans in order for its application to be acceptable under GAAP. They further noted that an institution may not consider the proposal to be a preferable method from among acceptable alternatives and that the institution could forego its adoption entirely.

Most of the respondents on this question stated that a rule allowing optional accounting would seriously diminish the credibility of bank financial reporting. Some observed that the required disclosure adequately mitigated the inherent risks of selective application. However, the proposed Call Report and TFR disclosure requirement was also criticized. Several respondents indicated that the disclosure defeated the original purpose of the proposal. They stated the disclosure would continue to characterize the remaining loan as something less than fully performing. They stated that the subtle accounting distinctions would be overlooked and these loans would be categorized with troubled loans by analysts.

Ten respondents stated that the benefits of the proposal would be outweighed by the regulatory reporting burden which would be caused by the proposed additional quarterly disclosures.

A few respondents indicated the proposal should be applied by all institutions. Conversely, six respondents indicated they would not support the proposal if it were made mandatory for all institutions.

(5) Would the adoption of this proposed reporting treatment represent a change to a preferable accounting principle under APB 20? Does the discretionary application aspect preclude, or make more difficult or otherwise impact the determination of whether the change is preferable?

Most of the twenty-five respondents to this question thought this was a moot point because they did not view the proposal as acceptable under GAAP. Therefore, it could not be considered to be preferable. Thus, the discretionary application feature led to the respondents' inability to justify this as a preferable approach.

(6) If a loan to which this reporting treatment were applied subsequently became contractually current, should it be excluded from being reported in the bank Call Report and TFR items for partially charged-off loans returned to accrual status? If so, should it happen immediately, or after one year-end reporting, similar to the requirements for FAS 15 disclosure?

Most of the seventeen respondents to this issue suggested that a loan to which the reporting treatment would be applied should be removed from disclosure after a nominal period of performance at the market rate without regard to whether it had become contractually current. If a loan became contractually current, most respondents indicated it should be eliminated from the disclosure.

Dated: July 30, 1991.

Robert J. Lawrence,

Executive Secretary, Federal Financial Institutions Examination Council.

[FR Doc. 91-18440 Filed 8-2-91; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL MARITIME COMMISSION

Board of Trustees of Galveston Wharves et al; Agreements(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 224-200552.

Title: Board of Trustees of the Galveston Wharves/Transportacion Maritima Mexicana, S.A. De C.V.

Parties: Board of Trustees of the Galveston Wharves (Port), Transportacion Maritima Mexicana, S.A. De C.V. (TMM).

Synopsis: The Agreement, filed July 26, 1991, provides for TMM to participate with the Port in an incentive program to increase the movement of cargo through the Port of Galveston. TMM's container ships shall call on the Port's East End Container Terminal and pay to the Port tariff rates that were in effect as April 1, 1991 for dockage, wharfage and crane hire. Dockage for a second vessel call within a 10-day period shall be charged at one-half the tariff rate. The agreement further provides for: (1) crane downtime in the amount of $250.00 per quarter hour of gang detention; (2) relief from the storage charges in Item 375 of the tariff; and (3) a guaranteed berth with two container cranes.

Agreement No.: 224-200043-001.

Title: City of Long Beach/Forest Terminals, Corporation Terminal Agreement.

Parties: City of Long Beach, Forest Terminals Corporation (FTC).

Synopsis: The Agreement, filed July 29, 1991, amends the parties' basic preferential assignment agreement to: modify the description of the premises; provide for a relinquishing and release of a portion of the assigned premises; adjust the compensation payable by FTC; and extend the term of the agreement to August 31, 2001.

Dated: July 31, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-18479 Filed 8-2-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

July 30, 1991.

BACKGROUND: Notice is hereby given of the submission of proposed information collection(s) to the Office of Management and Budget (OMB) for its review and approval under the Paperwork Reduction Act (Title 44 U.S.C. chapter 35) and under OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR part 1320). A copy of the proposed information collection(s) and supporting documents is available from the agency clearance officer listed in the notice. Any comments on the proposal should be sent to the agency clearance officer and to the OMB desk officer listed in the notice.

DATE: Comments on this proposed revision to information collection are welcome and should be submitted on or before September 6, 1991.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–3740).

Request for OMB approval to extend, without revision, the following reports:

1. *Report title:* Annual Report of Trust Assets.

Agency form number: FFIEC 001.

OMB Docket number: 7100–0031.

Frequency: Annual.

Reporters: State member banks with trust powers, and trust company subsidiaries of bank holding companies not otherwise supervised by a federal banking agency.

Annual reporting hours: 2,025.

Small businesses are affected.

General description of report:

This information collection is mandatory (12 U.S.C. 248(a) and 1844(a)) and is not given confidential treatment.

This interagency report is the only report on fiduciary asset totals and activities. It is used to monitor changes in the volume and character of discretionary trust activity, the volume of nondiscretionary trust activity, and the resource needs for supervisory purposes. The data are also used for statistical and analytical purposes.

2. *Report title:* Annual Report of International Fiduciary Activities.

Agency form number: FFIEC 006.

OMB Docket number: 7100–0031.

Frequency: Annual.

Reporters: State member banks and foreign banking affiliates.

Annual reporting hours: 232.

Small businesses are not affected.

General description of report:

This information collection is mandatory (12 U.S.C. 248(a)(1), 325, 334, 602, 625, and 1844) and is given confidential treatment (5 U.S.C. 552(b)(8)).

This report provides the only available known source of the volume of trust or fiduciary activities of foreign banking affiliates of U.S. banking organizations. The information reported is used for supervisory purposes.

Board of Governors of the Federal Reserve System, July 30, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91–18481 Filed 8–2–91; 8:45 am]

BILLING CODE 6210-01-M

Banc One Corporation; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 26, 1991.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Banc One Corporation, Columbus, Ohio; to merge with Marine Corporation, Springfield, Illinois, and thereby indirectly acquire Marine Bank of Springfield, Springfield, Illinois; Marine Bank of Bloomington-Normal, Bloomington, Illinois; Marine Bank of Monticello, Monticello, Monticello, Illinois; and Marine Bank of Champaign-Urbana, Champaign, Illinois.

In connection with this application, Applicant also proposes to acquire Marine Investment Management Company, Springfield, Illinois, and thereby engage in providing investment advice pursuant to § 225.25(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 30, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-18482 Filed 8-2-91; 8:45 am]

BILLING CODE 6210-01-F

Doris A. Brosius; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than August 26, 1991.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Doris A. Brosius, Brady, Nebraska; to acquire 25 percent of the voting shares of Stapleton Investment, Co.,

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Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 26, 1991.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Banc One Corporation, Columbus, Ohio; to merge with Marine Corporation, Springfield, Illinois, and thereby indirectly acquire Marine Bank of Springfield, Springfield, Illinois; Marine Bank of Bloomington-Normal, Bloomington, Illinois; Marine Bank of Monticello, Monticello, Monticello, Illinois; and Marine Bank of Champaign-Urbana, Champaign, Illinois.

In connection with this application, Applicant also proposes to acquire Marine Investment Management Company, Springfield, Illinois, and thereby engage in providing investment advice pursuant to § 225.25(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 30, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-18482 Filed 8-2-91; 8:45 am]

BILLING CODE 6210-01-F

Doris A. Brosius; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than August 26, 1991.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Doris A. Brosius, Brady, Nebraska; to acquire 25 percent of the voting shares of Stapleton Investment, Co.,

Stapleton, Nebraska, and thereby indirectly acquire Bank of Stapleton, Stapleton, Nebraska.

Board of Governors of the Federal Reserve System, July 30, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-18483 Filed 8-2-91; 8:45 am]

BILLING CODE 6210-01-F

First National of Nebraska, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than August 26, 1991.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First National of Nebraska, Inc., Omaha, Nebraska; to acquire 100 percent of the voting shares of Pathfinder Bancshares, Inc., Fremont, Nebraska, and thereby indirectly acquire Fremont National Bank and Trust, Fremont, Nebraska.

Board of Governors of the Federal Reserve System, July 30, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-18484 Filed 8-2-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91M–0163]

Progressive Chemical Research, Ltd.; Premarket Approval of Alberta Lens 'S' (Sulfocon A) Rigid Gas Permeable Contact Lens for Daily Wear (Clear and Tinted) With an Ultraviolet Light Absorber

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Progressive Chemical Research, Ltd., Calgary, Alberta, T2J 2V4, Canada, for premarket approval, under the Medical Device Amendments of 1976, of the spherical Alberta Lens 'S' (sulfocon A) Rigid Gas Permeable Contact Lens for Daily Wear (clear and tinted) with an Ultraviolet Light Absorber. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of May 3, 1991, of the approval of the application.

DATES: Petitions for administrative review by September 4, 1991.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1080.

SUPPLEMENTARY INFORMATION: On December 27, 1989, Progressive Chemical Research, Ltd., Calgary, Alberta, T2J 2V4, Canada, submitted to CDRH an application for premarket approval of the Alberta Lens 'S' (sulfocon A) Rigid Gas Permeable Contact Lens for Daily Wear (clear and tinted) with an Ultraviolet Light Absorber. The spherical lens is indicated for daily wear for the correction of visual acuity in not-aphakic persons with nondiseased eyes that are myopic or hyperopic. The lens may be worn by persons who may exhibit astigmatism of 3.00 diopters (D) or less that does not interfere with visual acuity. The spherical lens ranges in powers from −20.00 D to +12.00 D and is to be disinfected using a chemical lens care system. The lens contains the ultraviolet light absorber Tinuvin P. Additionally, the blue tinted lens contains the color additive D&C Green No. 6, in accordance with the color additive listing provisions of 21 CFR 74.3206.

On June 14, 1990, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On May 3, 1991, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ–460), address above. The labeling of the Alberta Lens 'S' (sulfocon A) Rigid Gas Permeable Contact Lens for Daily Wear (clear and tinted) with an Ultraviolet Light Absorber states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before September 4, 1991, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: July 23, 1991.

James S. Benson,

Director, Center for Devices and Radiological Health.

[FR Doc. 91-18464 Filed 8-2-91; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committee; Agenda Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the agenda of a meeting of the Orthopedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee which is scheduled for August 16, 1991. This meeting was announced in the **Federal Register** of July 24, 1991 (56 FR 33937). There are no other changes. The date, time, and place of the meeting remain the same as announced in the July 24, 1991 **Federal Register.** This amendment will be announced at the beginning of the open portion of the meeting. This action is being taken to clarify the actual issues to be discussed at the meeting.

FOR FURTHER INFORMATION CONTACT: Marie A. Schroeder, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1036.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 24, 1991, FDA announced that a meeting of the Orthopedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee would be held on August 16, 1991. On page 33937, column 3, the agenda for this meeting is amended as follows:

Open committee discussion. The committee will discuss premarket approval applications for an uncemented porous metal-coated unicompartmental knee prosthesis, a bone void filler device, and an anterior cruciate ligament augmentation prosthesis. The committee will also discuss galvanic corrosion potential of orthopedic implants using dissimilar metals.

Closed presentation of data. The committee may discuss trade secret or confidential commercial information regarding materials, design, and/or manufacturing information for the above premarket approval applications. This portion of the meeting will be closed to permit discussion of this information.

Authority: 5 U.S.C. 552b(c)(4).

Dated: July 30, 1991.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 91-18465 Filed 8-2-91; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget for Clearance

AGENCY: Health Care Financing Administration, HHS.

The Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Pub. L. 96-511).

1. *Type of Request:* Reinstatement; *Title of Information Collection:* Information Collection Requirements in 42 CFR 412.118—Indirect Medical Education; *Form Number:* HCFA-R-64; *Use:* This collection of information on interns and residents is needed to calculate Medicare program payments for hospitals for the indirect costs they incur for medical education and affects 1,250 hospitals which participate in approved medical education programs; *Frequency:* Annually; *Respondents:* Businesses/other for profit and non-profit institutions; *Estimated Number of Responses:* 1,250; *Average Hours per Response:* 4; *Total Estimated Burden Hours:* 5,000.

2. *Type of Request:* Extension; *Title of Information Collection:* Requests for Exception to End Stage Renal Disease Composite Rates, Provider Reimbursement Manual Sections 2721, 2722, and 2725; *Form Number:* HCFA-9044; *Use:* These requirements describe the information that End Stage Renal Disease Facilities must submit in justifying an exception request to their composite rate for outpatient dialysis services; *Frequency:* On occasion; *Respondents:* Businesses/other for profit, Federal agencies/employees, non-profit institutions, and small businesses/organizations; *Estimated Number of Responses:* 200; *Average Time per Response:* 48; *Total Estimated Burden Hours:* 9,600.

3. *Type of Request:* Extension; *Title of Information Collection:* Methodology for Estimating Waiver Costs of Health Care Financing Administration Demonstration Projects; *Form Number:* HCFA-482; *Use:* The information collected is intended to provide guidance to individuals responsible for the preparation of waiver cost estimates for HCFA demonstrations. These estimates are used in the analysis of potential costs and benefits associated with implementing a proposed policy; *Frequency:* Monthly; *Respondents:* Businesses/other for profit; non-profit institutions; State/local governments; and small businesses/organizations; *Estimated Number of Responses:* 50; *Average Hours per Response:* 80; *Total Estimated Burden Hours:* 4,000.

4. *Type of Request:* Extension; *Title of Information Collection:* Hospice Request for Certification in the Medicare Program; *Form Number:* HCFA-417; *Use:* This form is used by all hospice facilities applying for entrance into the Medicare program. The information is used by State agencies that perform the Medicare certification survey process to schedule on-site surveys and to ensure that the applying facility meets preliminary requirements prior to receiving an on-site survey; *Frequency:* Annually; *Respondents:* Businesses/other for profit and non-profit institutions; *Estimated Number of Responses:* 1,000; *Average Hours per Response:* .25; *Total Estimated Burden Hours:* 250.

5. *Type of Request:* New; *Title of Information Collection:* A Policy Study of the Cost Effectiveness of Institutional Subacute Care Alternatives and Services; *Form Number:* HCFA-800-A-D; *Use:* This study of skilled nursing facility and rehabilitation hospital care provided to Medicare beneficiaries will

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2. *Type of Request:* Extension; *Title of Information Collection:* Requests for Exception to End Stage Renal Disease Composite Rates, Provider Reimbursement Manual Sections 2721, 2722, and 2725; *Form Number:* HCFA–9044; *Use:* These requirements describe the information that End Stage Renal Disease Facilities must submit in justifying an exception request to their composite rate for outpatient dialysis services; *Frequency:* On occasion; *Respondents:* Businesses/other for profit, Federal agencies/employees, non-profit institutions, and small businesses/organizations; *Estimated Number of Responses:* 200; *Average Time per Response:* 48; *Total Estimated Burden Hours:* 9,600.

3. *Type of Request:* Extension; *Title of Information Collection:* Methodology for Estimating Waiver Costs of Health Care Financing Administration Demonstration Projects; *Form Number:* HCFA–482; *Use:* The information collected is intended to provide guidance to individuals responsible for the preparation of waiver cost estimates for HCFA demonstrations. These estimates are used in the analysis of potential costs and benefits associated with implementing a proposed policy; *Frequency:* Monthly; *Respondents:* Businesses/other for profit; non-profit institutions; State/local governments; and small businesses/organizations; *Estimated Number of Responses:* 50; *Average Hours per Response:* 80; *Total Estimated Burden Hours:* 4,000.

4. *Type of Request:* Extension; *Title of Information Collection:* Hospice Request for Certification in the Medicare Program; *Form Number:* HCFA–417; *Use:* This form is used by all hospice facilities applying for entrance into the Medicare program. The information is used by State agencies that perform the Medicare certification survey process to schedule on-site surveys and to ensure that the applying facility meets preliminary requirements prior to receiving an on-site survey; *Frequency:* Annually; *Respondents:* Businesses/other for profit and non-profit institutions; *Estimated Number of Responses:* 1,000; *Average Hours per Response:* .25; *Total Estimated Burden Hours:* 250.

5. *Type of Request:* New; *Title of Information Collection:* A Policy Study of the Cost Effectiveness of Institutional Subacute Care Alternatives and Services; *Form Number:* HCFA–800–A–D; *Use:* This study of skilled nursing facility and rehabilitation hospital care provided to Medicare beneficiaries will

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assess cost effectiveness of rehabilitation services and model prospective payment methodologies. This project will yield policy recommendations relating to reimbursement, quality assurance and coverage of Medicare services; *Frequency:* One-time; *Respondents:* Individuals/households, businesses/other for profit, non-profit institutions, and small businesses/organizations; *Estimated Number of Responses:* 24,480; *Average Hours per Response:* .37; *Total Estimated Burden Hours:* 8,960.

6. *Type of Request:* New; *Title of Information Collection:* Evaluation of the Home Health Prospective Payment Demonstration; *Form Number:* HCFA–R–9; *Use:* To reduce costs for Medicare home health care, HCFA is developing, conducting, and evaluating demonstrations of per visit and per episode prospective payment. These data will be used in assessing the impact of per visit prospective payment and in developing a case-mix adjustor for per episode prospective payment; *Frequency:* One-time; *Respondents:* Individuals/households; *Estimated Number of Responses:* 2,000; *Average Hours per Response:* .33; *Total Estimated Burden Hours:* 667.

7. *Type of Request:* Extension; *Title of Information Collection:* Identification of Extension Units of Outpatient Physical Therapy/Outpatient Speech Pathology (OPT/OSP) Providers; *Form Number:* HCFA–381; *Use:* This form is used by OPT/OSP providers who participate in the Medicare program to identify locations where services are provided to beneficiaries. These locations are locations other than their primary office location and must also meet the Medicare requirements for OPT/OSP providers; *Frequency:* Annually; *Respondents:* State and local governments; *Estimated Number of Responses:* 600; *Average Hours per Response:* .25; *Total Estimated Burden Hours:* 150.

8. *Type of Request:* Reinstatement; *Title of Information Collection:* Home Office Cost Statement; *Form Number:* HCFA–287; *Use:* These forms are used to report the home office cost for chain organizations providing covered services to the Medicare population, in accordance with section 1815a and 1833 of the Social Security Act; *Frequency:* Annually; *Respondents:* Businesses/other for profit; *Estimated Number of Responses:* 850; *Average Hours per Response:* 138; *Total Estimated Burden Hours:* 117,300 (reporting) and 278,800 (recordkeeping) for a total of 396,100.

9. *Type of Request:* Reinstatement; *Title of Information Collection:* Skilled Nursing Facility Prospective Payment Cost Report; *Form Number:* HCFA–2540S–87; *Use:* This form is used by skilled nursing facilities with less than 1,500 Medicare-patient days, at their option, to report costs incurred for providing services to Medicare patients; *Frequency:* Annually; *Respondents:* Small businesses/organizations and non-profit institutions; *Estimated Number of Responses:* 1,441; *Average Hours per Response:* 14; *Total Estimated Burden Hours:* 20,174 (reporting) and 122,485 (recordkeeping) for a total of 142,659.

2. *Type of Request:* Extension; *Title of Information Collection:* Intermediary Request to Skilled Nursing Facilities for Medical Information on Claims to be Processed; *Form Number:* HCFA–9031; *Use:* This information is used by the fiscal intermediaries to assure reimbursement is made only for services that are covered under Medicare Part A or B for skilled nursing facilities. The medical information describes the patient's condition and level of medical needs and/or services provided. These records or information are submitted with claims or as requested; *Frequency:* On occasion; *Respondents:* Businesses/other for profit and small businesses/organizations; *Estimated Number of Responses:* 217,669; *Average Hours per Response:* .5; *Total Estimated Burden Hours:* 108,835. *Additional Information or Comments:* Call the Reports Clearance Officer on 301–966–2088 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent directly to the following address: OMB Reports Management Branch, Attention: Allison Eydt, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: July 29, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 91–18471 Filed 8–2–91; 8:45 am]

BILLING CODE 4120-03-M

Public Health Service

National Institutes of Health; Privacy Act of 1974; New System of Records

AGENCY: Public Health Service, HHS.

ACTION: Notification of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing a notice of a new system of records, 09–25–0165, "National Institutes of Health Acquired Immunodeficiency Syndrome (AIDS) Research Loan Repayment Program, HHS/NIH/OD." We are also proposing routine uses for this new system.

DATES: PHS invites interested parties to submit comments on the proposed internal and routine uses on or before September 4, 1991. PHS has sent a report of a New System to the Congress and to the Office of Management and Budget (OMB) on July 23, 1991. This system of records will be effective 60 days from the date of publication unless PHS receives comments on the routine uses which would result in a contrary determination.

ADDRESSES: Please submit comments to: Privacy Act Officer, National Institutes of Health, Building 31, Room 3B07, 9000 Rockville Pike, Bethesda, MD 20892, (301) 496–2832.

Comments received will be available for inspection at this same address from 9 a.m. to 3 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Director, NIH AIDS Research Loan Repayment Program, Office of AIDS Research, National Institutes of Health, Building 31, Room 3B19, 9000 Rockville Pike, Bethesda, MD 20892, (301) 402–0852.

The numbers listed above are not toll free.

SUPPLEMENTARY INFORMATION: The National Institutes of Health (NIH) proposes to establish a new system of records: 09–25–0165, "National Institutes of Health Acquired Immunodeficiency Syndrome (AIDS) Research Loan Repayment Program, HHS/NIH/OD." This system of records will be used by NIH staff to: (1) Identify and select applicants for the NIH AIDS Research Loan Repayment Program (LRP); (2) monitor loan repayment activities, such as payment tracking, deferment of service obligation, and default; and (3) to assist NIH officials in the collection of overdue debts owed under the NIH AIDS Research LRP. Records may be transferred to Privacy Act System, 09–15–0045, "Health Resources and Services Administration Loan Repayment/Debt Management Records System, HHS/HRSA/OA," for debt collection purposes when NIH officials are unable to collect overdue debts owed under the NIH AIDS Research LRP.

The system will comprise records that contain the names, addresses, Social Security numbers; service pay-back obligations, standard school budgets, educational loan data, including deferment and repayment/delinquent/default status information; employment data; professional and credentialing history of licensed health professionals including schools of attendance; personal, professional, and demographic background information; employment status verification (which includes certifications and verifications of continuing participation in AIDS research); Federal, State and local tax information, including copies of tax returns.

The amount of information recorded on each individual will be only that which is necessary to accomplish the purpose of the system. Each record is established from an application form that has been submitted to the NIH AIDS Research LRP by the applicant.

The records in this system will be maintained in a secure manner compatible with their content and use. NIH staff will be required to adhere to the provisions of the Privacy Act and the HHS Privacy Act Regulations. The System Manager will control access to the data. Only authorized users whose official duties require the use of such information will have regular access to the records in this system. Authorized users are HHS employees and contractors responsible for implementing the NIH AIDS Research LRP. The records will be stored in file folders, computer tape, discs and file cards. Manual and computerized records will be maintained in accordance with the standards of Chapter 45-13 of the UHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45-13, the Department's Automated Information System Security Handbook, and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

Data stored in computers will be accessed through the use of keywords known only to authorized users. Rooms where records are stored are locked when not in use. During regular business hours rooms are unlocked but are controlled by on-site personnel. Security guards perform random checks on the physical security of the data.

The routine uses proposed for this system are compatible with the stated purposes of the system. The first routine use proposed for this system, permitting disclosure to a congressional office, allows subject individuals to obtain assistance from their representatives in Congress, should they so desire. Such disclosure would be made only pursuant to a request of the individual. The second routine use allows disclosure to the Department of Justice or a court in the event of litigation. The third routine use allows referral to the appropriate agency in the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law. The fourth routine use allows disclosure of records to contractors for the purpose of processing or refining records in the system. The fifth routine use allows disclosure to private parties such as present and former employers, references listed on applications and associated forms, other references and educational institutions to evaluate an individual's professional accomplishments, performance, and educational background, and to determine if an applicant is suitable for participation in the NIH AIDS Research LRP. The sixth routine use permits disclosure to a consumer reporting agency (credit bureau to obtain a commercial credit report to assess and verify the ability of an individual to repay debts owed to the Federal Government. The seventh routine use allows disclosure of a delinquent debtor's or a defaulting participant's record to another Federal agency so that agency can effect a salary offset for debts owed by Federal employees or so that the agency can effect an unauthorized administrative offset; or to the Treasury Department, Internal Revenue Service (IRS), to request an individual's current mailing address to locate him/her for purposes of either collecting or compromising a debt, or to have a commercial credit report prepared. The eighth routine use allows disclosure to another agency that has asked the Department to effect a salary or administrative offset to help collect a debt owed to the United States. The ninth routine use allows disclosure to the Treasury Department, Internal Revenue Service (IRS), of information about an individual applying for loan repayment to find out whether the applicant has a delinquent tax account. The tenth routine use allows reporting to the Treasury Department, Interna1 Revenue Service (IRS), as taxable income, the written-off amount of a debt owed by an individual to the Federal Government when a debt becomes partly or wholly uncollectible. The eleventh routine use allows disclosure to debt collection agents, other Federal agencies, and other third parties of information necessary to identify a delinquent debtor or a defaulting participant. The twelfth routine use allows disclosure to any third party that may have information about a delinquent debtor's or a defaulting participant's current address. This disclosure will be strictly limited to information necessary to identify the individual, without any reference to the reason for the agency's need for obtaining the current address. The thirteenth routine use allows disclosure to other Federal agencies that also provide loan repayment at the request of these Federal agencies in conjunction with a matching program conducted by these Federal agencies to detect or curtail fraud and abuse in Federal loan repayment programs, and to collect delinquent loans or benefit payments owed to the Federal Government. The fourteenth routine use allows disclosure to the Department of Treasury, Internal Revenue Service (IRS) so that IRS can offset against the debt any income tax refunds which may be due to the debtor or the defaulting participant. The fifteenth routine use allows disclosure of information provided by a lender to other Federal agencies, debt collection agents, and other third parties who are authorized to collect a Federal debt for the purpose of identifying an individual who is delinquent in loan or benefit payments owed to the Federal Government.

The following notice is written in the present, rather than future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the system has become effective.

Dated: July 29, 1991.

Wilford J. Forbush,

Director, Office of Management.

09-25-0165

SYSTEM NAME:

National Institutes of Health Acquired Immunodeficiency Syndrome (AIDS) Research Loan Repayment Program, HHS/NIH/OD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of AIDS Research (OAR), National Institutes of Health, Building 31, room 3B19, 9000 Rockville Pike, Bethesda, Maryland 20892.

Division of Computer Research and Technology (DCRT), National Institutes of Health, Building 12A, room 4037, 9000 Rockville Pike, Bethesda, Maryland 20892.

Division of Financial Management (DFM), Operations Accounting Branch, National Institutes of Health, Building 31, room B1B55, 9000 Rockville Pike, Bethesda, Maryland 20892.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied for, who have been approved to receive, who are

that a system of
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reason for the agency's need for obtaining the current address. The thirteenth routine use allows disclosure to other Federal agencies that also provide loan repayment at the request of these Federal agencies in conjunction with a matching program conducted by these Federal agencies to detect or curtail fraud and abuse in Federal loan repayment programs, and to collect delinquent loans or benefit payments owed to the Federal Government. The fourteenth routine use allows disclosure to the Department of Treasury, Internal Revenue Service (IRS) so that IRS can offset against the debt any income tax refunds which may be due to the debtor or the defaulting participant. The fifteenth routine use allows disclosure of information provided by a lender to other Federal agencies, debt collection agents, and other third parties who are authorized to collect a Federal debt for the purpose of identifying an individual who is delinquent in loan or benefit payments owed to the Federal Government.

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SYSTEM LOCATION:

Office of AIDS Research (OAR), National Institutes of Health, Building 31, room 3B19, 9000 Rockville Pike, Bethesda, Maryland 20892.
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Division of Financial Management (DFM), Operations Accounting Branch, National Institutes of Health, Building 31, room B1B55, 9000 Rockville Pike, Bethesda, Maryland 20892.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied for, who have been approved to receive, who are

receiving, and who have received funds under the NIH AIDS Research LRP; and individuals who are interested in participation in the NIH AIDS Research LRP.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, Social Security number; service pay-back obligations, standard school budgets, educational loan data including deferment and repayment/delinquent/default status information; employment data; professional and credentialing history of licensed health professionals including schools of attendance; personal, professional, and demographic background information; employment status verification (which includes certifications and verifications of continuing participation in AIDS research); Federal, State and local tax information, including copies of tax returns.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 487A (42 USC 288-1) of the PHS Act, as amended, directing the NIH to establish and implement a program of educational loan repayment for qualified health professionals who agree to conduct, as employees of NIH, AIDS research. The provisions of section 338B of the PHS Act (42 USC 2541-1), as amended, governing the NHSC loan repayment program, are incorporated except as inconsistent. The Internal Revenue Code at 26 USC 6109 requires the provision of the SSN for the receipt of loan repayment funds under the NIH AIDS Research LRP.

PURPOSE(S) OF THE SYSTEM:

(1) To identify and select applicants for the NIH AIDS Research LRP.

(2) To monitor loan repayment activities, such as payment tracking, deferment of service obligation, and default.

(3) To assist NIH officials in the collection of overdue debts owed under the NIH AIDS Research LRP. Records may be transferred to system No. 09-15-0045, "Health Resources and Services Administration Loan Repayment/Debt Management Records System, HHS/HRSA/OA," for debt collection purposes when NIH officials are unable to collect overdue debts owed under the NIH AIDS Research LRP.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. Disclosure may be made to the Department of Justice or to a court or other tribunal from this system of records, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States of any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred to the appropriate agency, whether Federal, State, or local, charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

4. NIH may disclose records to Department contractors and subcontractors for the purpose of collecting, compiling, aggregating, analyzing, or refining records in the system. Contractors maintain, and are also required to ensure that subcontractors maintain, Privacy Act safeguards with respect to such records.

5. NIH may disclose information from this system of records to private parties such as present and former employers, references listed on applications and associated forms, other references and educational institutions. The purpose of such disclosures is to evaluate an individual's professional accomplishments, performance, and educational background, and to determine if an applicant is suitable for participation in the NIH AIDS Research LRP.

6. NIH may disclose information from this system of records to a consumer reporting agency (credit bureau) to obtain a commercial credit report to assess and verify the ability of an individual to repay debts owed to the Federal Government. Disclosures are limited to the individual's name, address, Social Security number and other information necessary to identify him/her; the funding being sought or amount and status of the debt; and the program under which the applicant or claim is being processed.

7. NIH may disclose from this system of records a delinquent debtor's or a defaulting participant's name, address, Social Security number, and other information necessary to identify him/her; the amount, status, and history of the claim, and the agency or program under which the claim arose, as follows:

a. To another Federal agency so that agency can effect a salary offset for debts owed by Federal employees; if the claim arose under the Social Security Act, the employee must have agreed in writing to the salary offset.

b. To another Federal agency so that agency can effect an unauthorized administrative offset; i.e., withhold money, other than federal salaries, payable to or held on behalf of the individual.

c. To the Treasury Department, Internal Revenue Service (IRS), to request an individual's current mailing address to locate him/her for purposes of either collecting or compromising a debt, or to have a commercial credit report prepared.

8. NIH may disclose information from this system of records to another agency that has asked the Department to effect a salary or administrative offset to help collect a debt owed to the United States. Disclosure is limited to the individual's name, address, Social Security number, and other information necessary to identify the individual to information about the money payable to or held for the individual, and other information concerning the offset.

9. NIH may disclose to the Treasury Department, Internal Revenue Service (IRS), information about an individual applying for loan repayment under any loan repayment program authorized by the Public Health Service Act to find out whether the applicant has a delinquent tax account. This disclosure is for the sole purpose of determining the applicant's creditworthiness and is limited to the individual's name, address, Social Security number, other information necessary to identify him/her, and the program for which the information is being obtained.

10. NIH may report to the Treasury Department, Internal Revenue Service (IRS), as taxable income, the written-off amount of a debt owed by an individual to the Federal Government when a debt becomes partly or wholly uncollectible,

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either because the time period for collection under the statute of limitations has expired, or because the Government agrees with the individual to forgive or compromise the debt.

11. NIH may disclose to debt collection agents, other Federal agencies, and other third parties who are authorized to collect a Federal debt, information necessary to identify a delinquent debtor or a defaulting participant. Disclosure will be limited to the individual's name, address, Social Security number, and other information necessary to identify him/her; the amount, status, and history of the claim, and the agency or program under which the claim arose.

12. NIH may disclose information from this system of records to any third party that may have information about a delinquent debtor's or a defaulting participant's current address, such as a U.S. post office, a State motor vehicle administration, a professional organization, an alumni association, etc., for the purpose of obtaining the individual's current address. This disclosure will be strictly limited to information necessary to identify the individual, without any reference to the reason for the agency's need for obtaining the current address.

13. NIH may disclose information from this system of records to other Federal agencies that also provide loan repayment at the request of these Federal agencies in conjunction with a matching program conducted by these Federal agencies to detect or curtail fraud and abuse in Federal loan repayment programs, and to collect delinquent loans or benefit payments owed to the Federal Government.

14. NIH may disclose from this system of records to the Department of Treasury, Internal Revenue Service (IRS): (1) A delinquent debtor's or a defaulting participant's name, address, Social Security number, and other information necessary to identify the individual; (2) the amount of the debt; and (3) the program under which the debt arose, so that IRS can offset against the debt any income tax refunds which may be due to the individual.

15. NIH may disclose information provided by a lender to other Federal agencies, debt collection agents, and other third parties who are authorized to collect a Federal debt. The purpose of this disclosure is to identify an individual who is delinquent in loan or benefit payments owed to the Federal Government.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

DISCLOSURES PURSUANT TO 5 USC 552A(B)(12):

Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 USC 1681a(f)) or the Federal Claims Collection Act of 1966 (31 USC 3701(a)(3)). The purposes of these disclosures are: (1) To provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records, and (2) to enable NIH to improve the quality of loan repayment decisions by taking into account the financial reliability of applicants, including obtaining a commercial credit report to assess and verify the ability of an individual to repay debts owed to the Federal Government. Disclosure of records will be limited to the individual's name, Social Security number, and other information necessary to establish the identity of the individual, the amount, status, and history of the claim, and the agency or program under which the claim arose.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, computer tape, discs, and file cards.

RETRIEVABILITY:

Records are retrieved by name, Social Security number, or other identifying numbers.

SAFEGUARDS:

1. Authorized Users: Data on computer files is accessed by keyword known only to authorized users who are NIH employees responsible for implementing the NIH AIDS Research LRP. Access to information is thus limited to those with a need to know.

2. Physical Safeguards: Rooms where records are stored are locked when not in use. During regular business hours rooms are unlocked but are controlled by on-site personnel. Security guards perform random checks on the physical security of the data.

3. Procedural and Technical Safeguards: A password is required to access the terminal and a data set name controls the release of data to only authorized users. All users of personal information in connection with the performance of their jobs (see Authorized Users, above) protect information from public view and from unauthorized personnel entering an unsupervised office.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45–13, the Department's Automated Information System Security Handbook, and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B–361), item 2300–537–1. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER AND ADDRESSES:

Director, NIH AIDS Research Loan Repayment Program, Office of AIDS Research, National Institutes of Health, Building 31, Room 3B19, 9000 Rockville Pike, Bethesda, Maryland 20892.

NOTIFICATION PROCEDURES:

To determine if a record exists, write to the System Manager listed above. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be. The request should include: (a) Full name, and (b) appropriate dates of participation. The requester must also understand that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURES:

Write to the System Manager specified above to attain access to records and provide the same information as is required under the Notification Procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request an accounting of disclosure of their records, if any.

CONTESTING RECORD PROCEDURES:

Contact the System Manager specified above and reasonably identify the record, specify the information to be contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is

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RECORD SOURCE CATEGORIES:

Subject individual; particip
lending institutions; educatio
institutions attended; other F
agencies; consumer reporting
credit bureaus; and third part
provide references concernin
subject individual.

SYSTEMS EXEMPTED FROM CERTA
PROVISIONS OF THE ACT:

None.

[FR Doc. 91–18466 Filed 8–2–91; 8
BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING
URBAN DEVELOPMENT

Office of Administration

[Docket No. N–91–3297]

Submission of Proposed Inf
Collection to OMB

AGENCY: Office of Administra

ACTION: Notice.

SUMMARY: The proposed infor
collection requirement descri
has been submitted to the Off
Management and Budget (OM
review, as required by the Pa
Reduction Act. The Departme

HUD-51234

Total Estimated Burden Ho
Status: Reinstatement.
Contact: Edward C. Whippl
(202) 708–0744, Wendy Swire,
395–6880.

Dated: July 25, 1991.

[FR Doc. 91–18518 Filed 8–2–91; 8:
BILLING CODE 4210-01-M

SUMER REPORTING

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These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45–13, the Department's Automated Information System Security Handbook, and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

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SYSTEM MANAGER AND ADDRESSES:

Director, NIH AIDS Research Loan Repayment Program, Office of AIDS Research, National Institutes of Health, Building 31, Room 3B19, 9000 Rockville Pike, Bethesda, Maryland 20892.

NOTIFICATION PROCEDURES:

To determine if a record exists, write to the System Manager listed above. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be. The request should include: (a) Full name, and (b) appropriate dates of participation. The requester must also understand that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURES:

Write to the System Manager specified above to attain access to records and provide the same information as is required under the Notification Procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request an accounting of disclosure of their records, if any.

CONTESTING RECORD PROCEDURES:

Contact the System Manager specified above and reasonably identify the record, specify the information to be contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is

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inaccurate, incomplete, untimely or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Subject individual; participating lending institutions; educational institutions attended; other Federal agencies; consumer reporting agencies/credit bureaus; and third parties that provide references concerning the subject individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 91–18466 Filed 8–2–91; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–91–3297]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Wendy Swire, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 25, 1991.

John T. Murphy,

Director, Information Policy and Management Division.

Submission of Proposed Information Collection to OMB

Proposal: Report on Occupancy for Public Housing.

Office: Public and Indian Housing.

Description of the Need for the Information and Its Proposed Use: The information collected will be used to measure and evaluate the utilization of Public and Indian Housing units by low-income families as well as assure that all persons have an equal opportunity to participate in and receive the benefits of the housing assistance offered. Occupancy and tenant characteristic information is required for monitoring and compliance activities.

Form Number: HUD–51234.

Respondents: State or local governments, and non-profit institutions.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD-51234	3,330		1		1		3,300

Total Estimated Burden Hours: 3,300.

Status: Reinstatement.

Contact: Edward C. Whipple, HUD (202) 708–0744, Wendy Swire, OMB (202) 395–6880.

Dated: July 25, 1991.

[FR Doc. 91–18518 Filed 8–2–91; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–680–1–4130–02]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act (44 U.S.C. Chapter 35)

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1004–0110), Washington, DC 20503, telephone (202) 395–7340.

Title: Multiple Use Mining and Mining Law Administration.

OMB approval number: 1004–0110.

Abstract: Several statutes affecting the location of operations on, patenting of, and contesting of mining claims or sites on the public lands require certain information to be filed with the Bureau of Land Management if the owners of the mining claims or sites wish to exercise their rights under the mining laws. The Acts of August 11, 1955 and April 8, 1948 (30 U.S.C. 621) require that a notice or certificate of location and annual assessment work be filed with the Bureau. The Stockraising Homestead Act of 1916 (43 U.S.C. 299) requires that an operator on the reserved mineral interest of the United States on these lands provide the Bureau with either a bond or a narrative statement in the form of a waiver from the surface owner, or an agreement for damage compensation between the owner and the operator. The Act of May 10, 1872 (30 U.S.C. 22 *et seq.*) provides for the patenting of a mining claim or site and for adverse claims against such before the Bureau. Information specified in the act must be provided to the Bureau if the owner wishes to patent or adverse another claimant.

Bureau Form Number: 3814–1.

Frequency: Respondents only file once to claim the benefits of the various statutes.

Description of respondents: Respondents may range from an individual to multi-national corporations.

Estimated completion time: 24 hours.

Annual responses: 294.

Annual burden hours: 6,980.

Bureau Clearance Officer (Alternate): Gerri Jenkins, (202) 653–8853.

Adam A. Sokoloski,

Deputy Assistant Director, Energy and Mineral Resources.

[FR Doc. 91–18456 Filed 8–2–91; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT 760439

Applicant: Los Angeles, Zoo, Los Angeles, CA.

The applicant requests a permit to import two male and eleven female captive-born Southern pudu (*Pudu pudu*) from Criadero Experimental Rucapangue, Talagante, Santiago, Chile, for breeding purposes.

PRT 760444

Applicant: Los Angeles Zoo, Los Angeles, CA.

The applicant requests a permit to import one female captive-born white-cheeked gibbon (*Hylobates concolor gabriellae*) from the Hong Kong Zoo, Hong Kong, for breeding purposes.

PRT 760701

Applicant: William G. Stratton, Billings, MT.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Mr. Pine Louw, National Parks Board, Swellington, Cape Province, Republic of South Africa for the purpose of enhancement of survival of the species.

PRT 730746

Applicant: Los Angeles Zoo, Los Angeles, CA.

The applicant requests a permit to import one male captive-born white-cheeked gibbon (*Hylobates concolor gabriellae*) from the Mulhouse Zoo, Mulhouse, France for breeding purposes.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45–4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: July 31, 1991.

R.K. Robinson,

Chief, Branch of Permits; Office of Management Authority.

[FR Doc. 91–18496 Filed 8–2–91; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to CERCLA

In accordance with Department Policy, 28 CFR 50.7, and pursuant to section 122(i) of CERCLA, 42 U.S.C. 9622(i), notice is hereby given that a proposed consent decree in *United States* v. *Monsanto Co., Inc.*, Civil Action No. 191–143 was lodged with the United States District Court for the Southern District of Georgia on July 17, 1991. This agreement resolves a judicial enforcement action brought by the United States against the defendant pursuant to sections 106 and 107 of CERCLA, 42 U.S.C. 9606, 9607.

The proposed consent decree provides that Monsanto will design a system to extract and treat contaminated groundwater from the surficial aquifer in the vicinity of its plant located in Augusta, Georgia. Monsanto will also conduct groundwater monitoring to assess whether arsenic contamination in the surficial aquifer continues to decrease as predicted by the Remedial Investigation and Feasibility Study (RI/FS) previously conducted at the Site. If arsenic levels in the surficial aquifer should increase, the Decree requires that Monsanto begin construction of the groundwater extraction and treatment system. The proposed Decree also requires that Monsanto reimburse the Hazardous Substances Superfund in the amount of $131,506 for costs incurred by EPA at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Monsanto Co., Inc.*, D.O.J. Ref. 90–11–2–664.

This Consent Decree may be examined at the offices of the United States Attorney, Southern District of Georgia, Eighth and Telfair Streets, Augusta, Georgia 30903, at the Office Regional Counsel, EPA 345 Courtland Street, NE., Atlanta, Georgia 30365, and at the Offices of the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice, Room 1535, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. The proposed consent decree may also be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Ave., NW., Box 1097, Washington, DC 20004, 202–347–7829. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $16.00 (25 cents per page reproduction costs) payable to Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resource Division.

[FR Doc. 91–18455 Filed 8–2–91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a proposed

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The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Monsanto Co., Inc.*, D.O.J. Ref. 90–11–2–664.

This Consent Decree may be examined at the offices of the United States Attorney, Southern District of Georgia, Eighth and Telfair Streets, Augusta, Georgia 30903, at the Office Regional Counsel, EPA 345 Courtland Street, NE., Atlanta, Georgia 30365, and at the Offices of the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice, Room 1535, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. The proposed consent decree may also be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Ave., NW., Box 1097, Washington, DC 20004, 202–347–7829. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $16.00 (25 cents per page reproduction costs) payable to Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resource Division.

[FR Doc. 91–18455 Filed 8–2–91; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a proposed

Consent Decree in *United States, et al.,* v. *National Steel Corporation* Civil Action No. 81–3009 was lodged July 24, 1991 with the United States District Court for the Southern District of Illinois. The complaint alleged that certain facilities at defendant's Granite City Steel Division located in Granite City, Illinois, were operating in violation of the Illinois State Implementation Plan (Illinois SIP) and the Clean Air Act, 42 U.S.C. 7401 *et seq.*

The consent decree, as amended, requires National Steel to implement an environmentally beneficial project, specifically, installing and operating emission control equipment at its slab ripping operation. Defendant has installed and operated the required emission control equipment and has demonstrated continued compliance with the associated emission limits set forth in the decree. Defendant now wishes to disconnect and remove the aforementioned emission control equipment to allow for the construction of a continuous caster facility.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. All comments should refer to *United States, et al.*, v. *National Steel Corporation* D.J. Ref. 90–5–2–1–262.

The proposed consent decree may be examined at the Office of the United States Attorney for the Southern District of Illinois, room 330, 750 Missouri Avenue, East St. Louis, IL 62201; the Region V Office of the Environmental Protection Agency 230 South Dearborn Street, Chicago, Illinois; and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (202) 247–2072. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $2.25 (25 cents per page reproduction costs) payable to Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General Environment and Natural Resources Division.

[FR Doc. 91–18454 Filed 8–2–91; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

United States v. General Binding Corp. and VeloBind Inc.

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a civil suit and an accompanying proposed Final Judgment, Stipulation, and Competitive Impact Statement has been filed with the United States District Court for the District of Columbia in *United States* v. *General Binding Corporation, et al.*, Civil No. 91–1822.

The Complaint alleges that the proposed acquisition of VeloBind Incorporated of Freemont, California, by the General Binding Corporation of Northbrook, Illinois, would violate section 7 of the Clayton Act since it would likely lessen competition substantially in the high-volume mechanized binding machine market in the United States.

High-volume mechanized binding machines are electric machines that can easily and securely bind documents in a professional-looking manner. General Binding is the largest manufacturer of such machines in the United States. VeloBind is the second largest manufacturer of such machines and the sole manufacturer of plastic strip-binding machines in the United States. Together the two firms account for about 88 percent of all domestic sales of high-volume mechanized binding machines.

As originally structured, the merger agreement would have made General Binding the sole manufacturer and distributor of VeloBind high-volume plastic strip-binding machines and related supplies. As a result of the restructuring, General Binding will establish the Gestetner Corporation of Greenwich, Connecticut, as a competing source of these plastic strip-binding machines and supplies, which it will resell under a private label.

Gestetner is a leading office products retailer nationwide. Its product lines include copiers and fax machines. The addition of high-volume machines will complement Gestetner's existing product lines.

General Binding has agreed to supply Gestetner with plastic strip-binding machines and the plastic strips used in the machines at favorable prices. General Binding has also agreed to license Gestetner at a favorable royalty rate under VeloBind's basic patent covering the plastic strips. Both agreements will expire on January 18, 2000, the expiration of the plastic strip patent.

The proposed Final Judgment would require General Binding to notify the Department sixty (60) days prior to making any modification, cancellation, rescission, or amendment to the supply or license agreements. GBC may not proceed with any such modification, cancellation, rescission, or amendment without the written permission of the Department. The Final Judgment also would enjoin General Binding and Gestetner from discussing or exchanging any information relating to the prices at which General Binding or Gestetner will sell high-volume binding machines and related supplies.

Public comment is invited within the statutory sixty (60) day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to P. Terry Lubeck, Chief, Litigation II Section, Antitrust Division, Department of Justice, room 10–437, 555 Fourth Street, NW., Washington, DC 20001 (telephone: 202–307–0924).

John W. Clark,

Acting Director of Operations, Antitrust Division.

Civil Action No. 91 1822

Filed: July 24, 1991.

Judge Harris:

Stipulation

It is hereby stipulated by and between the undersigned parties, by their respective attorneys, as follows:

(1) The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the District of Columbia.

(2) The parties consent that a Final Judgment in the form attached hereto may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)–(h)), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

(3) The parties shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment.

(4) In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever, and the making of

this stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: July 23, 1991.

For Plaintiff United States of America.

James F. Rill,
Assistant Attorney General.
Judy Whalley.
John W. Clark.
P. Terry Lubeck.
John F. Greaney,
Attorneys, Antitrust Division, U.S. Department of Justice.
M. Lee Anne Washington.
Katherine J. Palmer,
Attorneys, Antitrust Division, U.S. Department of Justice, Room 10–437, 555 4th Street, NW., Washington, DC 20001, (202) 307–0948.

Mark Crane, John H. Spellman, D.C.Bar #061465, Hopkins & Sutter, 888 Sixteenth Street, NW., Washington, D.C. 20006, (202) 835–8000

Richard William Austin, John R. Keys, Jr., D.C. Bar #203539, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

Steve Rubin, General Binding Corporation, One GBC Plaza, Northbrook, Illinois 60062, (708) 272–3700.

Counsel for General Binding Incorporated

Ronald G. Carr, D.C. Bar #379167, Thomas E. Unterman, Esquire, W. Stephen Smith, Esquire, D.C. Bar #376179, Morrison & Foerster, 2000 Pennsylvania Avenue, NW., Washington, DC 20006–1812.

Counsel for VeloBind Incorporated

Stipulation Approved for Filing

Done this _____ day of _____, 1991.

____

United States District Judge

Final Judgment

Whereas plaintiff, United States of America, having filed its Complaint herein on July 24, 1991, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

And Whereas defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas defendant General Binding Corporation proposes to acquire defendant VeloBind Incorporated;

And Whereas the essence of this Final Judgment is prompt and certain remedial action to ensure that after the acquisition the number of viable firms competing in the sale of high-volume binding machines and related supplies in the United States is not reduced:

And Whereas General Binding Corporation has agreed to supply Gestetner Corporation with high-volume plastic strip binding machines and related supplies until the year 2000 and to license Gestetner Corporation under U.S. Patent No. 4,369,013, the basic patent covering plastic strips for use in such binding machines, which expires in that year;

And Whereas defendants have represented to plaintiff that the remedial action required below can be undertaken and that they will later raise no claim of financial hardship arising out of this Final Judgment or the supply agreement or the license agreement as grounds for asking the Court to modify any of the provisions contained below;

Now Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, Adjudged, and Decreed as follows:

I

This Court has jurisdiction of the subject matter of this action and of each of the parties hereto. The Complaint states a claim upon which relief may be granted against defendants under section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II

As used in this Final Judgment:

A. "GBC" means defendant General Binding Corporation, each subsidiary and division thereof, and each officer, director, employee, agent, and other person acting for or on behalf of any of them.

B. "VeloBind" means defendant VeloBind Incorporated, each subsidiary and division thereof, and each officer, director, employee, agent, and other person acting for or on behalf of any of them.

C. "Gestetner" means Gestetner Corporation, each subsidiary and division thereof, and each officer, director, agent, and other person acting for or on behalf of any of them.

D. "Supply agreement" means the contract dated as of April 10, 1991, between GBC and Gestetner entitled "OEM Distribution Agreement, Hot Knife Process Products," which provides, among other things, for the sale by GBC to Gestetner of high-volume plastic strip-binding machines and related plastic strips.

E. "License agreement" means the contract dated May 24, 1991, between GBC and Gestetner entitled "License Agreement," which provides, among other things, for the grant of an exclusive license from GBC to Gestetner to manufacture or have manufactured plastic strips of the type that are the subject of the supply agreement.

F. "Addendum No. 1" means the contract dated July 15, 1991, between GBC and Gestetner entitled "Addendum No. 1 to OEM Distribution Agreement," which provides, among other things, that should Gestetner exercise the license agreement it will be under no obligation to purchase any machines from GBC.

III

A. The provisions of this Final Judgment shall apply to defendants, to each of their successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Nothing herein contained shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party and nothing herein shall be construed to provide any rights to any third party.

C. GBC shall require, as a condition of the sale or other disposition of all or substantially all of its assets or stock, that the acquiring party agree to be bound by the provisions of this Final Judgment.

IV

A. GBC shall not, without first providing plaintiff with sixty (60) days prior written notification, cancel, rescind, modify, or amend the supply agreement or the license agreement. In the event that plaintiff does not object within sixty (60) days of receiving such notice, GBC may proceed with such cancellation, rescission, modification, or amendment. In the event that plaintiff does object within sixty (60) days of receiving such notice, GBC shall not proceed with such cancellation, rescission, modification, or amendment without plaintiff's prior written permission.

B. GBC shall not offer or give Gestetner, directly or indirectly, any payment or other consideration for eliminating or reducing its orders from GBC during the term of the supply agreement, or for altering, amending, or adjusting the prices at which Gestetner sells binding machines or related supplies, or the quantities, terms, or manner of such sales.

V

GBC is enjoined and restrained, except when acting pursuant to the supply or license agreements, from:

A. Entering into, directly or indirectly, any contract, agreement, understanding, arrangement, plan, program,

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III

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B. Nothing herein contained shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party and nothing herein shall be construed to provide any rights to any third party.

C. GBC shall require, as a condition of the sale or other disposition of all or substantially all of its assets or stock, that the acquiring party agree to be bound by the provisions of this Final Judgment.

IV

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B. GBC shall not offer or give Gestetner, directly or indirectly, any payment or other consideration for eliminating or reducing its orders from GBC during the term of the supply agreement, or for altering, amending, or adjusting the prices at which Gestetner sells binding machines or related supplies, or the quantities, terms, or manner of such sales.

V

GBC is enjoined and restrained, except when acting pursuant to the supply or license agreements, from:

A. Entering into, directly or indirectly, any contract, agreement, understanding, arrangement, plan, program,

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combination, or conspiracy with Gestetner to fix, establish, raise, stabilize, or maintain the prices at which Gestetner or GBC sells or will sell binding machines or related supplies;

B. Discussing with or suggesting to Gestetner the prices at which Gestetner or GBC sells or will sell binding machines or related supplies; and

C. Communicating with, requesting from, or exchanging with Gestetner any information concerning any prices at which Gestetner or GBC sells or will sell binding machines or related supplies.

VI

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice made to any defendant at its principal offices, be permitted:

(1) Access during office hours of the defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview officers, directors, employees, agents, or other persons acting for or on behalf of the defendant, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to any defendant's principal office, the defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section VI shall be divulged by any representatives of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by any defendant to plaintiff, the defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendant marks each pertinent page of such material, "Subject to claim of privilege under rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to the defendant prior to divulging such material in any legal proceeding (other than grand jury proceedings) to which the defendant is not a party.

VII

GBC shall, within ninety (90) days after entry of this Final Judgment and annually thereafter, give copies of this Final Judgment, together with a statement from GBC as to the importance of and procedures for complying with this Final Judgment, to all then-current GBC distributors of high-volume binding machines and to all GBC marketing and sales executives and sales persons.

VIII

Jurisdiction is retained by this Court for the purpose of enabling plaintiff and defendants to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of this Final Judgment, for the enforcement or compliance herewith, and for the punishment of any violations hereof.

IX

This Final Judgment will expire at 12:01 am., central standard time, on January 18, 2000.

X

Entry of this Final Judgment is in the public interest.

United States District Judge

Competitive Impact Statement

The United States, pursuant to section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

On July 24, 1991, the United States filed a civil antitrust complaint under section 15 of the Clayton Act, 15 U.S.C. 25, alleging that the proposed acquisition of VeloBind Incorporated ("VeloBind") by General Binding Corporation ("GBC") would violate section 7 of the Clayton Act, 15 U.S.C. 18. The complaint alleges that the effect of the acquisition may be substantially to lessen competition in the manufacture and sale in the United States of high-volume binding machines, which are electric machines that can easily and securely bind numerous documents up to three inches thick in a professional-looking manner. GBC is the largest domestic seller of these machines, and VeloBind is the second largest.

The United States, GBC, and VeloBind have consented to the entry of a proposed Final Judgment designed to eliminate the anticompetitive effects likely to result if GBC acquires VeloBind. As explained more fully below, GBC has entered into two contracts with Gestetner Corporation ("Gestetner") that would make Gestetner a viable competitor in the sale of high-volume binding machines in the United States, and the proposed Final Judgment would prevent GBC from altering its arrangement with Gestetner without the permission of the United States.

The United States, GBC, and VeloBind have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the government withdraws its consent. The proposed Final Judgment constitutes no admission by any party as to any issue of fact or law. Under the provisions of section 2(e) of the APPA, entry of the proposed Final Judgment is conditioned upon a determination by the Court that the proposed Final Judgment is in the public interest. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, and enforce the proposed Final Judgment and to punish violations of the Final Judgment.

II

Events Giving Rise to the Alleged Violation

On September 22, 1990, GBC and VeloBind entered into a definitive merger agreement in which GBC proposed to acquire VeloBind for approximately $50 million. GBC and VeloBind both manufacture high-volume binding machines and related supplies, which they sell throughout the United States.

GBC's principal high-volume binding machines use a plastic comb that is inserted through nineteen rectangular holes punched in the paper. VeloBind's machines use a plastic strip with eleven circular posts that are inserted through holes punched in the paper and then melted onto an opposing strip to produce a secure bind. Other types of high-volume binding machines use thermally sealed adhesive tape, wires, or clamps to bind the paper.

The complaint alleges that the manufacture and sale of high-volume binding machines is a relevant product market for antitrust purposes. Other forms of binding are not adequate substitutes for high-volume binding machines. Some binding methods, such as strip-stapling, perfect binding, or stitching, require capital investments significantly greater than the high-volume machines manufactured by GBC and VeloBind. Other binding methods, such as paper clips and ordinary stapling, do not produce the professional-looking binds available from machines. Still other methods tend to be significantly more expensive and more cumbersome for high-volume use. Fully manual machines, while producing an end-product similar or identical to the high-volume machines, are not suitable for binding numerous documents.

GBC's market share of about 68 percent makes it the largest seller of high-volume binding machines in the United States. VeloBind's share of about 20 percent makes it the second largest seller of high-volume binding machines. After the acquisition, their combined market share would be about 88 percent. The transaction would cause the Herfindahl-Hirschman Index,[1] a measure of market concentration, to increase by at least 2686 points to at least 7717.

Entry into the manufacture and sale of high-volume binding machines is difficult and time-consuming. GBC has established an effective distribution system consisting of dedicated distributors and in-house sales offices, which provide buyers with various services that are essential to GBC's sales success, including on-site demonstrations, emergency repair services and in many cases access to graphics expertise. To design and manufacture a machine and to establish such a distribution system would require two or more years.

Further, the plastic strips used in VeloBind high-volume binding machines are protected by a patent, which will not expire until the year 2000. The demand for high-volume plastic strip-binding machines is closely linked to the demand for plastic strips, and hence to the prices and availability of plastic strips. Thus, entry into the manufacture and sale of plastic strip-binding machines is difficult.

III

Explanation of the Proposed Final Judgment

The United States brought this action because the effect of the proposed acquisition of VeloBind by GBC may be substantially to lessen competition in the domestic high-volume binding machine market. The transaction would eliminate actual and potential competition between VeloBind and GBC and lessen competition generally in this market. In particular, after the acquisition GBC could increase strip-binding prices significantly without fear of substantial loss of customers, because many customers who would switch to other products in response to such a price increase would switch to GBC's comb products. These risks to competition posed by this acquisition would be substantially eliminated by the relief provided in the proposed Final Judgment.

Specifically, the proposed Final Judgment would provide that GBC would have to obtain the permission of the United States before GBC could change any of the terms of the two contracts it entered into with Gestetner, a large international distributor of office equipment and supplies. One of these two contracts is a supply agreement pursuant to which GBC would sell to Gestetner substantial quantities of high-volume strip-binding machines and related plastic strips that are compatible with those currently sold by VeloBind. It is contemplated that Gestetner will then resell those items under a private label in competition with GBC. The other contract is a license agreement that grants Gestetner the exclusive right at a favorable royalty to produce the patented plastic strips. If exercised, the license agreement would enable Gestetner to manufacture the plastic strips itself or to obtain them from another manufacturer. An addendum to the supply agreement, dated July 15, 1991, insures that if Gestetner exercises its rights under the license agreement, it will not be obligated to purchase any machines from GBC. All of the agreements will expire in January 2000, the expiration date of the plastic strip patent.

The supply and license agreements should enable Gestetner, which sells other large, private label office products, to compete successfully with GBC. The prices it will pay to purchase the machines and strips from GBC under the supply agreement are substantially below VeloBind's current dealer prices, and future price increases are limited by the agreement. These favorable prices should permit Gestetner to sell strip-binding machines and related supplies at competitive prices. In the event that GBC fails to supply Gestetner's demands for strip-binding machines and supplies, the supply agreement provides that Gestetner will receive a royalty-free license of VeloBind's basic patent covering the manufacture of strips and the necessary know-how to permit it to manufacture machines and strips.

The license agreement also assures that Gestetner will be a new, viable competitor sufficient to deter or counteract any new diminution in competition caused by the merger. Gestetner may exercise the license agreement at any time and for any reason. The license agreement would enable Gestetner to quickly begin manufacturing the patented strips. If the license is exercised, the rights, duties, and obligations under the supply agreement remain intact. However, if Gestetner exercises the license agreement, it is no longer under any obligation to purchase any machines from GBC. In that event, Gestetner could also manufacture the machines, since no significant patents cover them.

An additional provision of the Final Judgment would prohibit GBC from reaching an agreement with Gestetner regarding the quantities or prices or terms at which either Gestetner or GBC would sell high-volume binding machines or related supplies or from even discussing such prices with Gestetner.

IV

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has

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[1] The Herfindahl-Hirshman Index ("HHI") is a measure of market concentration calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30%, 30%, 20%, and 20%, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI, which takes into account the relative size and distribution of the firms in a market, ranges from virtually zero to 10,000. The index approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches 10,000 when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between the leading firms and the remaining firms increases.

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IV

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Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has

suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust actions. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any private lawsuit that may be brought against the defendants.

V

Procedures Available for Modification of the Proposed Final Judgement

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and responses of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to P. Terry Lubeck, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, Judiciary Center Building, room 10–437, 555 4th Street, NW., Washington DC 20001.

The proposed Final Judgment would provide that the Court would retain jurisdiction over this action and that any party may apply to the Court for any order necessary or appropriate for its modification, interpretation, or enforcement.

VI

Alternatives to the Proposed Final Judgment

The only alternative to the proposed Final Judgment the United States considered was to file suit and seek an injunction that would block GBC's acquisition of VeloBind. The United States rejected this alternative because the supply and license agreements, backed up by the proposed Final Judgment, should establish Gestetner as a viable, effective competitive presence in the domestic high-volume binding machine market, thus preventing the acquisition from having a significant anticompetitive effect in that market. The government believes that Gestetner could quickly obtain a substantial share of the high-volume binding machine market. Gestetner, which has numerous outlets nationwide, currently is engaged in on-site sales of office equipment. The firm is also very familiar with the VeloBind product line, having been a distributor of VeloBind products in the United States until the late 1980's. Under its supply agreement with GBC, Gestetner will be able to obtain a supply of high-volume plastic strip-binding machines and plastic strips at very attractive prices. Moreover, Gestetner has the option, at any time during the duration of the supply agreement, to exercise the license agreement. Thus, at its own option, Gestetner could begin producing both the patented plastic strips and strip-binding machines, for which no significant patent protection exists.

Under the circumstances, the United States determined that the public interest in preserving competition in the United States high-volume mechanized binding market would be served best by obtaining an enforceable consent decree and filing the decree with the Court prior to the consummation of any part of the proposed acquisition. Although the proposed Final Judgment may not be entered until the criteria established by the APPA have been satisfied, the safeguards of the Final Judgment will begin immediately because the defendants have stipulated that they will comply with the terms of the Final Judgment pending its entry by the Court.

VII

Determinative Materials and Documents

The United States considers the supply agreement and corresponding addendum and the license agreement between GBC and Gestetner to be determinative documents. These contracts include the terms of the proposed relationship between GBC and Gestetner and were determinative in formulating the proposed Final Judgment. Accordingly, the United States will file copies of them with this Competitive Impact Statement. The information in the supply agreement relating to specific prices at which Gestetner can purchase high-volume binding machines and plastic strips is highly confidential and has been redacted. The United States will file an unredacted copy of the supply agreement with the Court, under seal.

Dated: July 23, 1991.

Respectfully submitted,

M. Lee Anne Washington,

Katherine J. Palmer,

Attorneys, Antitrust Division, U.S. Department of Justice, 555 Fourth Street, NW., Room 10–437, Washington, DC 20001.

[FR Doc. 91–18453 Filed 8–2–91; 8:45 am]

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Drug Enforcement Administration

[Docket No. 90–03]

Kenneth Behymer, M.D.; Revocation of Registration

On December 1, 1989, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Kenneth Behymer, M.D. (Respondent), of Anchorage, Alaska, proposing to revoke his DEA Certificate of Registration, AB8645028, and to deny any pending applications for renewal. The statutory basis for seeking the revocation of the registration was that Respondent's continued registration would be inconsistent with the public interest, as set forth in 21 U.S.C. 823(f) and in 21 U.S.C. 824(a)(4), and as evidenced by the fact that Respondent had twice been convicted of felony offenses relating to controlled substances, and that the State of Alaska had temporarily suspended his medical license and permanently restricted his authority to prescribe Schedule II and III controlled substances.

Respondent, through counsel, filed a request for hearing on the issues raised by the Order to Show Cause, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held in Anchorage, Alaska, on August 21 and 22, 1990. On April 18, 1991, in her opinion and recommended ruling, findings of fact, conclusions of law, and decision, the administrative law judge recommended that the Respondent's DEA Certificate of Registration be revoked and that any pending applications for renewal be denied.

No exceptions were filed to Judge Bittner's opinion. On June 10, 1991, the administrative law judge transmitted the record to the Administrator. The Administrator has carefully considered the entire record in this matter and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The administrative law judge found that on September 21, 1978, Respondent was indicted on 147 felony counts relating to controlled substances, including a charge of conspiracy to distribute Schedule II non-narcotic controlled substances. On September 29, 1978, the Respondent was convicted in the United States District Court for the District of Alaska, upon his plea, of one count of unlawful distribution of controlled substances, a felony violation of 21 U.S.C. 841(a)(1) and 846. He was sentenced to three years imprisonment, which was suspended to three years probation, on condition that he pay a fine of $15,000, surrender his DEA registration for the term of suspension, and not practice medicine for one year.

In 1986, an area pharmacist's concern over a patient's use of prescribed controlled substances, prompted a survey of the Respondent's prescribing practices. Upon further investigation, it was discovered that the Respondent had been excessively prescribing controlled substances for his own use. He also prescribed Percocet, Tylox, and Mepergan Fortis for two former nurse-employees. Additionally, Respondent prescribed methadone for three heroin addicts without ever holding the separate DEA narcotic treatment program registration required by 21 U.S.C. 823(g) and 21 CFR 1301.22.

During the subsequent DEA investigation, two physicians were requested to review Respondent's medical files for prescriptions that he had written. One physician found that the Respondent had inappropriately prescribed excessive quantities of Empirin with codeine and Paregoric for himself, and that his prescribing practices were "way out of bounds of the normal medical practice." Another physician concluded that "there is a significant problem in the [Respondent's] judgment relating to the use of medications * * *. The physician's own use of medication strongly suggests the possibility of a significant impairment in the physician's ability to judge appropriately how medical care should be dispensed."

In October 1987, the Respondent was indicted by a Federal grand jury on seven counts of unlawful distribution of controlled substances, and one count of obtaining controlled substances by fraud. In March 1988, in the United States District Court for the District of Alaska, the Respondent pled guilty to one count of unlawful distribution of medicine. The Court sentenced him to two years suspended probation, on the conditions that he write all future prescriptions on triplicate forms, that he not prescribe controlled substances for himself, his family, his employees or their families, or for others not bona fide patients; that prescriptions for Percocet, Percodan, and Dilaudid, unless co-signed by another physician, be limited to less than one-third of his Schedule II prescriptions, and be for no more than 30 dosage units per visit; and lastly, that he be required to seek a consulting specialist for patient usage beyond three prescriptions.

In 1989, a hearing officer appointed by the Alaska Medical Board held hearings regarding Respondent's license to practice medicine. On May 23, 1989, the Board adopted a decision which found in part that Respondent had frequently prescribed narcotics in excessively high doses and that his "over-prescription of scheduled narcotic drugs without adequate documentation and patient monitoring constitutes professional incompetence, repeated negligent conduct and in [two] cases * * * gross negligence." The Board suspended Respondent's license to practice medicine for sixty days, permanently prohibited his ability to prescribe any Schedule II and III controlled substances, ordered Respondent to participate in and successfully complete the Impaired Physician Program, and placed his license on probation for three years. In light of the action of the Alaska Medical Board, the administrative law judge found that the Respondent is not eligible for DEA registration in Schedules II and III, since 21 U.S.C. 823(f) provides that the DEA may only register practitioners to the extent that they are authorized by the State.

Respondent testified that his previous convictions grew out of his medical concerns for a putative cancer patient and pregnant drug addict, respectively. He also presented witnesses who testified that Respondent was well liked and respected, had a reputation for providing quality care. and was a very hard worker. The Respondent stated that in August 1989, he had participated in a mandatory thirty day in-patient program, and had sought help from the Alcoholics Anonymous program and a psychologist. He presented a medical witness who stated that the Respondent was "genuinely in recovery", and who further asserted that two years of treatment is the norm before monitoring would cease. The Respondent maintained that since the Alaska Medical Board had not revoked his ability to prescribe Schedule IV and V drugs, the DEA should do likewise.

The Government contended that Respondent's current rehabilitation efforts were incomplete and that he had not demonstrated that even a limited registration would be in the public interest.

The Administrator may revoke a DEA Certificate of Registration or deny an application for such a registration if he determines that the registration would be inconsistent with the public interest. Pursuant to 21 U.S.C. 823(f), "[i]n determining the public interest, the following factors will be considered:

(1) The recommendation of the appropriate State licensing board or disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct as may threaten the public health or safety.

It is well established that these factors are to be considered in the disjunctive, i.e., the Administrator may properly rely on any one or a combination of factors, and give each factor the weight he deems appropriate. See, Henry J. Schwarz, Jr., M.D., Docket No. 88-42, 54 FR 16422 (1989); Neveille H. Williams, D.D.S., Docket No. 87-47, 53 FR 23465 (1988); David E. Trawick, D.D.S., Docket No. 86-69, 53 FR 5326 (1988).

The administrative law judge found that the Respondent's past history of misusing controlled substances demonstrates the failure of past sanctions. Judge Bittner concluded that the Respondent's continued registration would be inconsistent with the public interest and that his DEA Certificate of Registration should be revoked.

The Administrator adopts the recommended ruling, finding of fact, conclusions of law and decision of the administrative law judge in their entirety. Respondent's registration is clearly inconsistent with the public interest. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AB8645028, previously issued to Kenneth Behymer, M.D., be, and it hereby is, revoked, and that any pending applications for registration be, and they hereby are, denied. This order is effective September 4, 1991.

Dated: July 28, 1991.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 91-18428, Filed 8-2-91; 8:45 am]

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Dated: July 26, 1991.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 91–18426, Filed 8–2–91; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D-8533, et al.]

Proposed Exemptions; City Capital Counseling Inc. (CCC), et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certainof the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the notice of proposed exemption, within 45 days from the date of publication of this **Federal Register** notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each notice of proposed exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue-exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

City Capital Counseling, Inc. (CCC) Located in Atlanta, GA

[Application No. D–8533]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) shall not apply to the acquisition, sale or redemption of limited partnership interests (the Interests) between CCC, the general partner of City Associates, L.P. (the Limited Partnership) and pension plans (the Plans) or individual retirement accounts (the IRAs) investing in the Limited Partnership[1], provided the following conditions are satisfied:

(1) The investment of a Plan's assets in the Limited Partnership shall be approved by a Plan fiduciary who is independent of CCC and its affiliates.

(2) CCC shall determine and document, pursuant to a written procedure, that the investment decision is being made by a Plan fiduciary who is independent of CCC and its affiliates and who is capable of making an informed investment decision about investing in the Limited Partnership.

(3) Prior to making an investment in the Limited Partnership, each Plan fiduciary shall receive offering materials which disclose, among other things, all material facts concerning the purpose, structure and operation of the Limited Partnership as well as associated risk factors.

(4) No participating Plan may invest an amount which exceeds 20 percent of the total assets of the Limited Partnership.

(5) At the time the transactions are entered into, the terms of the transactions shall be at least as favorable to the Plans as those obtainable in arm's length transactions between unrelated parties.

(6) No participating Plan shall pay a fee or commission by reason of the acquisition, sale or redemption of an Interest in the Limited Partnership.

(7) The total fees paid to CCC shall constitute no more than reasonable compensation.

(8) Each participating Plan shall receive, not later than 90 days after the end of the period to which the report relates, the following from CCC with respect to investing in the Limited Partnership:

(a) An audited financial statement of the Limited Partnership prepared annually by a qualified independent public accountant; and

(b) A quarterly statement of a Plan's percentage interest in the Limited Partnership and the value of such Interest.

Such reports shall also disclose the total fees paid to CCC by the participating Plans.

(9) CCC shall maintain, for a period of six years, the records necessary to enable the persons described in paragraph (10) of this section to determine whether the conditions of this exemption have been met, except that (a) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of CCC and/or its affiliates, the records are lost or destroyed prior to the end of the six year period, and (b) no party in interest other than CCC shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for

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[1] The Plans and the IRAs are collectively referred to herein as the Plans.

examination as required by paragraph (10) below.

(10)(a) Except as provided in section (b) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (9) of this section shall be unconditionally available at their customary location during normal business hours by:

(1) Any duly authorized employee or representative of the Department or the Internal Revenue Service (the Service);

(2) Any fiduciary of a participating Plan which invests as a limited partner (the Limited Partner) or any duly authorized representative of such fiduciary;

(3) Any contributing employer to any Plan investing as a Limited Partner or any duly authorized employee representative of such employer;

(4) Any participant or benefifciary of any participating Plan investing as a Limited Partner, or any duly authorized representative of such participant or beneficiary; and

(5) Any other Limited Partner.

(b) None of the persons described above in subparagraphs (2)–(5) of this paragraph (10) shall be authorized to examine the trade secrets of CCC or commercial or financial information which is privileged or confidential.

Summary of Facts and Representations

1. CCC, which maintains its headquarters in Atlanta, Georgia is an investment advisor registered under the Investment Advisers Act of 1940, as amended. At present, CCC serves as an investment manager to the Southern Orthopedic Clinic, P.A., the Capital Atlantic, Inc. Profit Sharing Plan and Trust, and the Christine A. Simmons Rollover, IRA.[2] As of December 31, 1990, CCC had $251 million in assets under management and total shareholders' equity of $128,994. Although the majority of its clients's are individuals, CCC acts as an investment manager to a number of corporations, pension and profit sharing plans, trusts, estates, charitable organizations, foundations and foreign investment accounts.

2. To provide an investment vehicle that will facilitate effective diversification and management of investor assets, CCC proposes to form a limited partnership by means of a private placement of interests in such partnership (the Offering) in accordance with the private placement provisions of section 4(2) of the Securities Exchange Act of 1933, as amended (the 1933 Securities Act) which provides statutory exemptive relief from the registration requirements of section 5 of the 1933 Act. The Limited Partnership will become operational once CCC has received subscription for the purchase of Interests in the aggregate amount of $2 million. The closing will take place as soon as it is practicable after the minimum number of subscriptions have been received.

3. The Limited Partnership will be called City Associates, L.P. and it will maintain its principal place of business in Atlanta, Georgia. As its primary purposes, the Limited Partnership will invest in and trade in publicly-traded securities, including subscriptions, warrants, bonds, notes, debentures, treasury bills, trust receipts, certificates of beneficial interest and rights and options. The Limited Partnership is also empowered to enter into contractural arrangements in connection with the investment and trading of securities.

4. CCC will serve as the sole general partner of the Limited Partnership and will have full discretion in the management and control of the business of the Limited Partnership. The Limited Partners will be individuals, corporations, tax-exempt organizations, IRAs and Plans qualified under section 401 of the Code. Some of the Plans may have participated in the Bank Trust or currently have their assets managed directly by CCC. Each Plan may invest up to 100 percent of its assets in the Limited Partnership, but no Plan may invest an amount which exceeds 20 percent of the total assets of the Limited Partnership.[3]

5. For purposes of investing in the Limited Partnership, an existing or prospective client of CCC will not be permitted to have its assets individually managed in a separate account that has been established by CCC. Because the Limited Partnership is designed to facilitate the diversification and management of the assets of investors having small asset bases, no Limited Partner will be permitted to invest more than $1 million in the Limited Partnership. In the event that a Limited Partner's Interest exceeds $2 million, due to the appreciation of such investment, the Limited Partner will not be permitted to continue to invest in the Limited Partnership. Such Limited Partner may then have its assets managed on an individual account basis by CCC.

6. CCC will not be an investor or a sponsor of a Plan that invests in the Limited Partnership. In addition, no officer, director or employee of CCC who owns or controls, directly or indirectly, five percent or more of the beneficial ownership or voting power of CCC will be permitted to invest in the Limited Partnership. At all times, the number of Limited Partners will be restricted to fewer than 100 persons so that registration under the Investment Company Act of 1940 will not be required. Unless terminated earlier by CCC or extended by a majority of the Limited Partnership Interests, the Limited Partnership will cease to exist on December 31, 2009.[4]

7. CCC requests prospective exemptive relief for the acquisition, sale or redemption of Interests in the Limited Partnership by the participating Plans. No commissions or fees will be paid with respect to such transactions. CCC states that the initial purchase of an Interest in the Limited Partnership by a Plan may give rise to a prohibited transaction because of a pre-existing service provider relationship with the Plan. CCC also assets that a prohibited transaction could arise upon a subsequent purchase, sale or redemption of Interests in the Limited Partnership by a participating Plan

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[2] Formerly, CCC provided investment advisory services to First American Bank of Georgia, N.A. (FAB) which managed the assets of qualified pension and profit sharing plans having assets of less than $1 million through investment in a bank trust fund (the Bank Trust). In its capacity as adviser to the FAB, CCC did not have the power to direct any investments or to cause the purchase or sale of any particular securities. At the beginning of 1990, FAB phased out the Bank Trust and thus terminated its advisory relationship with CCC. Certain fiduciaries of these plans have, however, expressed an interest in engaging CCC as an investment manager. Because these plans are too small to allow effective management and portfolio diversification on an individual basis, CCC believes the Limited Partnership that is described herein will accomplish this objective.

[3] The applicant believes that the assets of a Plan that proposes to invest in the Limited Partnership will be sufficiently diversified because of the Limited Partnership will be a pooled investment fund containing investments that have been diversified within the pool. The applicant notes that CCC will establish, within the Limited Partnership, a number of separate funds with different investment objectives, different types of portfolio securities and different risk/return characteristics. Thus, the applicant represents that a decision by a Plan fiduciary to invest all of the assets of a Plan in the Limited Partnership is consistent with the requirements of section 404 of the Act. In this regard, the Department is expressing opinion regarding the application of the general fiduciary responsibility provisions of section 404 of the Act, including the diversification requirement of Act section 404(a)(1)(C), to a Plan's investment in the Limited Partnership.

[4] Since a number of Plans have expressed an interest in investing in the Limited Partnership, CCC represents that the equity participation by Plans investing in the Limited Partnership is expected to exceed 25 percent of the value of all Limited Partnership Interests. Therefore, CCC believes that the underlying assets of the Limited Partnership will constitute Plan assets within the meaning of 29 CFR 2510.3–101.

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5. For purposes of investing in the Limited Partnership, an existing or prospective client of CCC will not be permitted to have its assets individually managed in a separate account that has been established by CCC. Because the Limited Partnership is designed to facilitate the diversification and management of the assets of investors having small asset bases, no Limited Partner will be permitted to invest more than $1 million in the Limited Partnership. In the event that a Limited Partner's Interest exceeds $2 million, due to the appreciation of such investment, the Limited Partner will not be permitted to continue to invest in the Limited Partnership. Such Limited Partner may then have its assets managed on an individual account basis by CCC.

6. CCC will not be an investor or a sponsor of a Plan that invests in the Limited Partnership. In addition, no officer, director or employee of CCC who owns or controls, directly or indirectly, five percent or more of the beneficial ownership or voting power of CCC will be permitted to invest in the Limited Partnership. At all times, the number of Limited Partners will be restricted to fewer than 100 persons so that registration under the Investment Company Act of 1940 will not be required. Unless terminated earlier by CCC or extended by a majority of the Limited Partnership Interests, the Limited Partnership will cease to exist on December 31, 2009.[4]

7. CCC requests prospective exemptive relief for the acquisition, sale or redemption of Interests in the Limited Partnership by the participating Plans. No commissions or fees will be paid with respect to such transactions. CCC states that the initial purchase of an Interest in the Limited Partnership by a Plan may give rise to a prohibited transaction because of a pre-existing service provider relationship with the Plan. CCC also assets that a prohibited transaction could arise upon a subsequent purchase, sale or redemption of Interests in the Limited Partnership by a participating Plan

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[4] Since a number of Plans have expressed an interest in investing in the Limited Partnership, CCC represents that the equity participation by Plans investing in the Limited Partnership is expected to exceed 25 percent of the value of all Limited Partnership Interests. Therefore, CCC believes that the underlying assets of the Limited Partnership will constitute Plan assets within the meaning of 29 CFR 2510.3–101.

inasmuch as the party in interest relationship between it and the Plan would then be established.

8. Prior to accepting a subscription from a person or entity proposing to invest in the Limited Partnership, each prospective investor must represent in writing to CCC that such investor is: (a) An accredited investor as defined in rule 501 of Regulation D of the 1933 Securities Act; or (b) a non-accredited investor who has sufficient knowledge and experience in financial, business, tax and related matters to evaluate the merits and risks of the investment and that such prospective Limited Partner is able to bear the economic risks of the investment. In this regard, the subscription documents will require that the non-accredited investor furnish such investor's net worth, gross income and previous investment in securities and that the investor offer specific evidence of its knowledge and experience in financial and business matters.

9. In the case of a non-accredited investor that is a Plan, CCC will determine that the investment decision is being made by a Plan fiduciary who is: (a) Independent of CCC and its affiliates; (b) capable of making an independent decision; and (c) knowledgeable with respect to the Plan in administrative benefits, and funding matters related thereto, and able to make an informed decisions concerning investment in the Limited Partnership. In addition, the fiduciaries of the Plans proposing to invest in the Limited Partnership will be required to state in writing that they are not relying upon the advice of CCC in order to invest in the Limited Partnership.

10. CCC states that it will not, in any fiduciary capacity, cause a Plan to invest in the Limited Partnership. In this regard, CCC represents that it will not act as an investment adviser within the meaning of section 3(21)(a)(ii) of the Act to a Plan proposing to invest in the Limited Partnership because, in each instance, the Plan fiduciary who makes the investment decision has agreed not to rely on CCC's advice as the primary basis for a Plan's investment and such Plan fiduciary is specifically required to so acknowledge in every instance. CCC represents that the decision of a Plan to invest in the Limited Partnership will be made by an unrelated Plan fiduciary acting on the basis of his or her own investigation into the advisability of investing in the Limited Partnership.[5]

11. CCC will make the Offering to investors in the Limited Partnership pursuant to rule 506 of Regulation D of the 1933 Securities Act. This rule permits limited offers and sales of securities by an issuer without regard to the dollar amount of the offering.[6] Such Offering will also be made by means of a private placement memorandum (the Memorandum) which will describe, in relevant part, investor suitability standards, risk factors associated with an investment in the Limited Partnership, investment objectives and policies, Federal income tax information and the material terms of the Limited Partnership Agreement.[7]

In addition to the Memorandum, each Limited Partner will be provided with the following documents: (a) A certificate evidencing such Limited Partner's investment in the Limited Partnership; (b) a copy of the Limited Partnership Agreement; and (c) a schedule reflecting the Limited Partner's initial investment. The schedule will be updated periodically to reflect changes in the constituency of the Limited Partnership.[8]

12. Although the Limited Partnership Agreement does not impose a maximum or minimum on the number of Interests that may be sold, each Limited Partner will generally make a basic cash investment to the Limited Partnership of at least $100,000. Additional capital investments may be made in cash by the Limited Partners, subject to acceptance by CCC, on the first day of any month. CCC may also accept basic investments and additional capital contributions in the form of securities rather than cash.

13. CCC will establish and maintain a capital account (the Capital Account) for each Limited Partner reflecting the Limited Partner's pro rata share of Interests in the Limited Partnership. The Capital Account will be credited for any capital contributed by the Limited Partner and it will be debited for any distributions made to the Limited Partner. The Limited Partner's Capital Account will also reflect the Limited Partner's allocable share of net profits or net losses as well as the Limited Partner's allocable share of income or expenses credited to or debited against such Limited Partner. As general partner, CCC will also maintain a Capital Account for itself in the Limited Partnership (or contribute to such Capital Account) in an amount that is equal to one percent of all of the Limited Partner's Capital Accounts. In the event that its interest in the Limited Partnership exceeds the one percent contribution by more than one percent due to fluctuations in the market values of securities underlying the Capital Accounts, CCC will withdraw from its Capital Account the amount necessary to reduce its interest to below 2 percent.

14. The Limited Partnership Agreement authorizes the Limited Partners (including CCC) to allocate their Capital Accounts among any of three separate funds (the Funds) established within the Limited Partnership and specify the allocation

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[5] The Department is not expressing an opinion on whether CCC would be deemed to be a fiduciary under section 3(21)(A)(ii) of the Act. In this regard, the Department believes, as a general matter, that when a person is deemed to be a fiduciary by virtue of rendering investment advice as described in regulation § 2510.3–21(c)(1)(ii)(B), the presence of an unrelated second fiduciary acting on the investment adviser's recommendations on behalf of the Plan is not sufficient to insulate the investment adviser from fiduciary liability under section 406(b) of the Act. The Department's regulation § 2510.3–21(c)(1)(ii)(B) presupposes the existence of a second fiduciary who by agreement or conduct manifests a mutual understanding to rely on the investment adviser's recommendations as a primary basis for the investment of Plan assets. In the presence of such an agreement or understanding, the rendering of investment advice involving self-dealing, such as the acquisition of limited partnership interests which results in the payment of fees to the adviser, will subject the investment adviser to liability under section 406(b) of the Act. The Department is unable to conclude that fiduciary self-dealing of this type (if present) is in the interests or protective of the Plans and their participants and beneficiaries. If, however, the unrelated second fiduciary has not agreed to rely on the investment adviser's recommendations, the investment adviser will not be deemed to be a fiduciary under section 3(21)(A)(ii) because the requirements of regulation § 2510.3–21(c)(1)(ii)(B) will not be met. Accordingly, the Department has limited exemptive relief for the acquisition, redemption or sale or Interests in the Limited Partnership to section 406(a) violations only.

[6] In particular, rule 506(b)(2)(i) limits to 35 the number of purchasers of securities in an offering. The applicant notes that the number of Limited Partners will be restricted to fewer than 100 persons to ensure that the Limited Partnership will be exempt from the Investment Company Act of 1940. Therefore, the applicant does not believe that rule 506(b)(2)(i) will be violated because, for purposes of calculating the number of purchasers under rule 506(b), accredited investors are excluded. The applicant states that an offering under rule 506 may be extended to an unlimited number of accredited investors but to only 35 non-accredited investors which will include the Plans.

[7] Although the Limited Partnership Interests will not be registered with the Securities and Exchange Commission (the SEC), CCC represents that the Interests will be protective of the Limited Partners because: (a) Such Interests will be subject to the anti-fraud provisions of section 10(b) and rule 10b–5 of the Securities Exchange Act of 1934; (b) the Offering Memorandum (as described above) will disclose the risks and other material information concerning investment in the Limited Partnership; and (c) as a registered investment adviser, CCC asserts that it is subject to annual, unannounced examinations of its activities and investments by the SEC.

[8] The Department notes that CCC will give each potential investor access to all necessary information that will permit such investor to make an intelligent investment judgment with regard to deciding whether to invest in the Limited Partnership.

percentages attributed to each Fund. The Funds have been designated as Equity Fund A which will allow the Limited Partners to invest in equities, cash equivalents, convertible preferred stock or bonds; Fixed Income Fund A which will invest in taxable fixed income securities such as United States government bonds, notes and bills; and Fixed Income Fund B which will invest in tax-exempt municipal bonds and taxable bonds.

Decisions regarding the investments made by each Fund will be made by portfolio managers and principals of CCC.

In order to provide diversification and minimize risk, CCC will generally invest no more than 5 percent of the assets of the Limited Partnership in the equity securities of a single issuer or 10 percent of the assets of the Partnership in the debt securities of a single issuer. CCC also represents that, with the exception of securities that are guaranteed by the United States government or agencies thereof, the Limited Partnership will, in no event, invest more than 10 percent of the assets of any Fund in the securities of a single issuer.

15. All Limited Partners will have the right to change the allocations of their investments among the respective Funds by giving at least 30 days prior written notice to CCC. A Limited Partner may change an investment allocation decision up to twelve times annually on the first day of any month.

16. Although the Limited Partnership Agreement does not permit a Plan to assign its Interest, it allows a Limited Partner to redeem its entire Interest in the Limited Partnership or withdraw any amount in excess of $20,000 from the Limited Partner's Closing Capital Account (the Closing Capital Account) on the last day of any month.[9] However, the Limited Partner must give CCC 60 days' advance written notice in order for a withdrawal or redemption to take place.

As an alternative redemption procedure, the Limited Partnership Agreement permits the systematic redemption of a Limited Partner's Interest. In this connection, the Limited Partnership Agreement provides that a Limited Partner may withdraw, on a semiannual basis (on the last day of such semiannual period), an amount not greater than 4 percent, but at least $20,000, of such Limited Partner's Closing Capital Account. However, the Limited Partner must give notice to CCC not less than 30 days prior to the first day of any fiscal year in which withdrawals are to be made in order to permit the systematic redemption of the Limited Partner's Interest.

For purposes of redeeming an Interest under either procedure, the amount available for withdrawal will be based upon the Limited Partner's Closing Capital Account as of the date of the withdrawal. In other words, the Limited Partner's Capital Account will be adjusted pro ratably for profits and losses that are derived from the fair market values of the securities investments which underlie the Capital Account.[10]

17. Each Limited Partner will pay CCC a quarterly fee equal to .25 percent of the total amount of the Limited Partner's Closing Capital Account for CCC's services as investment manager to the Limited Partnership. In calculating the fee, the Limited Partner's Closing Capital Account will be valued at its current fair market value in the manner noted above at the end of each quarter. The fee will be allocated ratably among the Funds in accordance with the Limited Partner's Closing Capital Account.[11] In the event that the value of a Limited Partner's Interest exceeds $2 million due to investment appreciation, CCC will reimburse the difference between the fee charged on such excess and the fee which the Limited Partner would have been paid had such assets been managed in a separate account.

18. The books of the Limited Partnership will be audited annually by an independent public accountant. All Limited Partners will be provided with copies of an audited financial report (the Annual Report) 90 days after the close of the fiscal year. The books and financial records of the Limited Partnership will be open for inspection by any Limited Partner, as well as the Department and the Service, at all times during regular business hours.

19. In summary, it is represented that the proposed transactions will meet the statutory criteria for an exemption under section 408(a) of the Act because: (a) The investment of a Plan's assets in the Limited Partnership shall be approved by a Plan fiduciary who is independent of CCC and its affiliates; (b) CCC will institute and maintain a written procedure and records establishing criteria for determining that the Plan fiduciaries are independent of CCC and are sufficiently knowledgeable to make informed decisions regarding the transactions described herein; (c) independent fiduciaries of the Plans which invest as Limited Partners will maintain complete discretion with respect to such investments; (d) fiduciaries of the Plans will have an opportunity to redeem their Limited Partnership Interests pursuant to applicable provisions of the Limited Partnership Agreement and in such fiduciaries' individual discretion; and (e) CCC will make periodic disclosures to each participating Plan with respect to the financial condition of the Limited Partnership, the total fees that it will receive from such Plans and the value of a Plan's Interest in the Limited Partnership.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Profit Sharing Plan & Trust of Spartanburg Radiological Associates, P.A. (the Plan), Located in Spartanburg, SC

[Application No. D-8524]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale of a parcel of undeveloped real property (the Property) by the individually directed account (the Account) of Dr. Robert E. Mitchell in the Plan to Dr. Mitchell provided that the sales price is the greater of (1) the original purchase price paid by the Account for the Property, plus all additional expenses incurred by the Account in holding the Property, or (2)

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[9] A Limited Partner's Closing Capital Account is determined by crediting the Limited Partner's pro rata share of net profits and debiting such Account with the Limited Partner's pro rata share of net losses.

[10] According to section 4.08 of the Limited Partnership Agreement, a security listed on a national securities exchange will be valued at its closing sales price on the date of valuation or, if no sales occurred on such date, at the mean between the closing bid and asked prices on such exchange on such date. If the security is listed on more than one national exchange, CCC will make reference to the closing sales price or the closing bid and asking prices on the exchange which CCC determines to be the principal exchange for such security. However, if the security is not listed on a national securities exchange and CCC determines that an active trading market exists, such security will be valued at its closing price as of the valuation date.

[11] CCC represents that the fee it will receive for investment management services it renders to the Limited Partnership will comply with the terms of section 408(b)(2) of the Act. The Department expresses no opinion herein on whether CCC's provision of services and compensation therefor will satisfy the terms and conditions of section 408(b)(2) of the Act.

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Department and the Service, at all times during regular business hours.

19. In summary, it is represented that the proposed transactions will meet the statutory criteria for an exemption under section 408(a) of the Act because: (a) The investment of a Plan's assets in the Limited Partnership shall be approved by a Plan fiduciary who is independent of CCC and its affiliates; (b) CCC will institute and maintain a written procedure and records establishing criteria for determining that the Plan fiduciaries are independent of CCC and are sufficiently knowledgeable to make informed decisions regarding the transactions described herein; (c) independent fiduciaries of the Plans which invest as Limited Partners will maintain complete discretion with respect to such investments; (d) fiduciaries of the Plans will have an opportunity to redeem their Limited Partnership Interests pursuant to applicable provisions of the Limited Partnership Agreement and in such fiduciaries' individual discretion; and (e) CCC will make periodic disclosures to each participating Plan with respect to the financial condition of the Limited Partnership, the total fees that it will receive from such Plans and the value of a Plan's Interest in the Limited Partnership.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Profit Sharing Plan & Trust of Spartanburg Radiological Associates, P.A. (the Plan), Located in Spartanburg, SC

[Application No. D–8524]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale of a parcel of undeveloped real property (the Property) by the individually directed account (the Account) of Dr. Robert E. Mitchell in the Plan to Dr. Mitchell provided that the sales price is the greater of (1) the original purchase price paid by the Account for the Property, plus all additional expenses incurred by the Account in holding the Property, or (2)

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the fair market value of the Property on the date of the sale.

Summary of Facts and Representations

1. The Plan, a defined contribution plan with 12 participants, is sponsored by Spartanburg Radiological Associates, P.A. The Plan's trustees are Doctors Neil H. Parnes, Robert E. Mitchell, and F. Peter Ryan. The Plan allows participants to direct investments for their own accounts, and as of March 31, 1990, the Account had assets of approximately $433,142.

2. The Property is unimproved real property located in Chimney Rock Township, Rutherford County, North Carolina. In 1984, the Account acquired the Property as an investment from Gray Eagle Enterprises, an unrelated third party at a purchase price of $77,650. The only access is via eroded logging roads and development of the area is not planned. The applicant states that the Account's holding costs associated with owning the Property total $2064.

3. Mr. David Caulder of Caulder Realty & Land Co., an independent real estate appraiser, calculated the fair market value of the Property to be $91,000. Market value as reported by Mr. Caulder is based upon like property sales or market availability. Currently the adjoining tract of land is on the market for sale. This tract is similar to the Property. This adjoining property has been on the market for five years for the asking price of $92,000. There has been little interest in that adjoining tract. The market for property in the area of the Property is very low as the Property is very remote, and there are no plans to improve the roadways.

4. The applicant states that the proposed transaction is in the best interest of the Account. The sale of the Property will allow the Account to divest itself of the Property and reinvest the proceeds in investments which yield greater returns. The applicant states that the Account will not pay any sales commission or other expenses in connection with the transaction, and the appraisal of the Property will be updated on the date of the sale.

5. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (a) The sale will be a one-time transaction for cash; (b) the Account will receive the greater of either the fair market value of the Property or the original purchase price paid by the Account plus all incurred expenses associated with holding the Property; (c) the Account will not pay any sales commission with respect to the sale; and (d) the sale of the Property will allow the Account to divest itself of the Property and reinvest the proceeds in other investments which provide greater returns.

Notice to Interested Persons

Becaue Dr. Mitchell is the only participant in the Plan to be affected by the proposed transaction, it has been determined that there is no need to distribute notice of the proposed exemption to interested persons. Comments and requests for a hearing must be received by the Department within 30 days of the date of publication of this notice of proposed exemption in the **Federal Register**.

Tax Consequences of Transactions

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan, and therefore must be examined under the applicable provisions of the Internal Revenue Code, including sections 401(a)(4) and 404 and 415.

FOR FURTHER INFORMATION CONTACT: Allison Padams of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

Bobson Construction Company Defined Benefit Pension Plan (the Plan), Located in Southfield, MI

[Application No. D–8717]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c) (1)(A) through (E) of the Code, shall not apply to the proposed loan by the Plan of amounts not to exceed the lesser of: (a) $495,000, or (b) 25% of its total assets, to Bobson Construction Company, Inc. (Bobson), the Plan's sponsor, on a recurring basis over a five-year period, under the terms and conditions described in this proposed exemption, provided such terms and conditions are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party.

Temporary Nature of Exemption

This proposed exemption, if granted, will be effective for five years from the date a grant of an individual exemption is published in the **Federal Register** for the subject transactions. Subsequent to the expiration of the exemption, the Plan may continue to hold any loan provided such loan was made during the five year period.

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan with 10 participants which had assets of approximately $1,980,000 as of April 30, 1991. Bobson has been in the residential, commercial and industrial remodeling business since 1954.

2. The applicant has requested an exemption to permit the Plan to loan up to $495,000 to Bobson (the Loans) on a recurring basis over a five year period. The total amount of the Loans will not exceed the lesser of 25% of the Plan's assets or $495,000. The first Loan will be for $495,000 and will be fully amortized over a five year period with equal monthly payments of principal and interest. During the five year period and as the first Loan is reduced, additional Loans may be made under the same terms as the first Loan.

3. The applicant represents that the interest rate on the first Loan will be 11½%. The interest rate to be set on any future Loan will be a similar or better rate than that charged by third party lending institutions on similar loans, but in no event less than 11½%. Ms. Jean Davis, Assistant Vice President of NBD Bank, N.A. (the Bank) in Birmingham, Michigan, represents that Bobson has maintained a similar line of credit with the Bank since 1975. Ms. Davis states that the interest rate for Bobson's credit line is at ½% over prime, and that Bobson's rate, as of May 1, 1991, was at 9.5%.

4. In order to assist its customers in the purchase of its products and services, Bobson finances such customer purchases by accepting mortgages on the homes and commercial properties of its customers. As collateral for the Loans, Bobson will pledge first mortgages (the Mortgages) in an amount in excess of 200 percent of the Loans. Bobson represents that if the value of the Mortgages should fall below 200 percent of the Loans, Bobson will add additional first mortgages as collateral. The applicant represents that no Mortgages used as collateral will be to parties in interest with respect to the Plan.

5. Mr. Paul Blankenburg of Burnham Associates, an independent real estate and banking expert in Battle Creek, Michigan, has represented that the Mortgages currently have an aggregate discounted value of at least $1,007,669. Thus, the Mortgages would have a current fair market value approximately 2.04 times the principal amount of the proposed Loans. Mr. Blankenburg represents that he has spent 30 years in banking, during which time he was responsible for all types of retail lending including real estate and home improvement loans.

6. Mr. Robin Hoag, a CPA in Birmingham, Michigan, has been appointed as independent fiduciary for the Plan with respect to the subject transactions. Mr. Hoag represents that he has no relationship with Bobson, and that neither Bobson nor the Plan is a client of his or of the CPA firm of which he is a partner. Mr. Hoag represents that he understands and accepts his duties, liabilities and responsibilities as a fiduciary under the Act.

7. Mr. Hoag represents that the proposed transactions are appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries. In this regard, Mr. Hoag states that the Loans will be collateralized by first Mortgages on real property held by Bobson, and the terms of repayment and the collateralization of the Loans will be equal to or better than those terms which the Plan would receive in dealing with an unrelated party. Mr. Hoag represents that before any subsequent Loan is entered into, he will determine that such Loan is appropriate for the Plan and in the best interest of its participants and beneficiaries. Mr. Hoag represents that he will monitor the repayment of the Loans by requiring monthly statements reflecting the Loan balances and changes in the collateral, including copies of all Mortgages. A mortgage appraiser will update the value of the Mortgages annually to verify that the collateral for the Loans is equal to or greater than 200% of the outstanding Loan balance with Bobson. Mr. Hoag will monitor the collateal to assure that it remains at least 200% of the outstanding balance of the Loans, and will act on behalf of the Plan to require additional collateral should the existing collateral fall below the 200% limit. The collateralization of the Loans shall be reflected by a written document to be recorded with the Register of Deeds in the county in which the applicable properties are located. Any revisions to the collateralization shall be reflected in a written document recorded with the Register of Deeds of the applicable county in which the properties are located, on a monthly basis.

8. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act because: (1) The Loans will at no time represent more than 25% of the assets of the Plan; (2) the Loans will be adequately secured at all times by the Mortgages, which will have an aggregate current fair market value not less than 200% of the principal amount of the Loans; (3) the interest rate on the Loans will be equal to or greater than that charged by third party lending institutions on similar loans; (4) Mr. Hoag, the Plan's independent fiduciary, has determined that the Loans are appropriate for the Plan and in the best interests of its participants and beneficiaries; and (5) Mr. Hoag will monitor the Loans and will take whatever action is necessary to protect the Plan's rights under the Loans.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 31st day of July, 1991.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

FR Doc. 91-18512 Filed 8-2-91; 8:45 am]

BILLING CODE 4510-29-M

[Exemption Application No. D-8600, *et al.*]

Prohibited Transaction Exemption 91-40; Grant of Individual Exemptions; Gemco Ware, Inc., Amended and Restated Pension Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification

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(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 31st day of July, 1991.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

FR Doc. 91-18512 Filed 8-2-91; 8:45 am]

BILLING CODE 4510-29-M

[Exemption Application No. D-8600, *et al.*]

Prohibited Transaction Exemption 91-40; Grant of Individual Exemptions; Gemco Ware, Inc., Amended and Restated Pension Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification

to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Gemco Ware, Inc. Amended and Restated Pension Plan (the Plan), Located in Freeport, NY

[Prohibited Transaction Exemption 91-40; Exemption Application No. D-8600]

Exemption

The restrictions of section 406 (a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale by the Plan of mortgage loan participation interests (the Participations) to Walter Schlessel, a party in interest with respect to the Plan; provided that the sale price is no less than the greater of (1) the principal amount of the Participations plus accrued interest to the date of sale, or (2) the fair market value of the Participations as of the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 7, 1991 at 56 FR 26440.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Electro-Matic Products, Inc. Profit Sharing Plan (the Plan), Located in Farmington Hill, MI

[Prohibited Transaction Exemption 91-41; Exemption Application No. D-8684]

Exemption

The restrictions of section 406 (a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale by the Plan of certain vacant land to Electro-Matic Products, Inc., the sponsor of the Plan; provided that the Plan receives the greater of $260,000 or the fair market value at the time of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to notice of proposed exemption published on June 7, 1991 at 56 FR 26444.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

Graham J. Newstead, M.D., Inc. Pension Plan (the Plan), Located in Providence, RI

[Prohibited Transaction Exemption 91-42; Exemption Application No. D-8449]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions from the application of section 4975(e) (1)(A) through (E) of the Code shall not apply to the proposed purchase of property by the Plan from Graham and Gillian Newstead, parties in interest with respect to the Plan, provided that the Plan pays no more than the fair market value for the property.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 18, 1991 at 56 FR 15949.

FOR FURTHER INFORMATION CONTACT: Allison Padams of the Department of Labor (the Department) telephone (202) 523-8971. (This is not a toll-free number.)

AAXICO, Incorporated Profit Sharing Plan (the Plan), Located in Mt. Clemens, MI

[Prohibited Transaction Exemption 91-43; Exemption Application No. D-8477]

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale of right, title and interest in a loan (the Note) made by the Plan to an unrelated third party to Mr. James L. Van Camp, a party-in-interest with respect to the Plan provided that the Plan receives $68,500 in cash for the Note which is equal to the amount of the Loan principal plus interest.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 18, 1991 at 56 FR 27978.

FOR FURTHER INFORMATION CONTACT: Allison Padams of the Department of Labor, telephone (202) 523-8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 31st day of July, 1991.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 91-18513 Filed 8-2-91; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Design Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Overview Section) to the National Council on the Arts will be held on August 22, 1991, from 9 a.m.-5:45 p.m. and August 23 from 9 a.m.-5:30 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics will be introductions, role of overview panel, review of current program activity, FY 92 budget review/discussion, FY 93 guidelines review/discussion, and summary and conclusions.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: July 30, 1991.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-18462 Filed 8-2-91; 8:45 am]

BILLING CODE 7537-01-M

Inter-Arts Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Inter-arts Advisory Panel (Presenting Organizations "A" Section) to the National Council on the Arts will be held on August 20, 1991 from 9 a.m.-7 p.m., August 21-22 from 9 a.m.-8 p.m. and August 23 from 9 a.m.-5 p.m. in room M-14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 23 from 2 p.m.-5 p.m. The topics will be guidelines review and policy discussion.

The remaining portions of this meeting on August 20 from 9 a.m.-7 p.m., August 21-22 from 9 a.m.-8 p.m. and August 23 from 9 a.m.-2 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 5, 1991, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: July 30, 1991.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-18463 Filed 8-2-91; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-312]

Sacramento Municipal Utility District; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuing an exemption from the requirements of sections 55.41, 55.43, 55.45, 55.53(e), 55.53(f)(2), and 55.59 of part 55 of title 10 of the Code of Federal Regulations (10 CFR part 55) concerning the requirements for granting and maintaining operators' licenses to the Sacramento Municipal Utility District (SMUD, the licensee for the Rancho Seco Nuclear Generating Station located in Sacramento County, California).

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the requirements of the aforementioned rules to the extent that these regulations address the granting and maintaining of operators' licenses for operating power reactors and to the extent that sections 55.53(e) and 55.53(f)(2) delineate the time requirements for operators to maintain and regain active proficiency. By letter of December 28, 1989, and supplements of March 30, 1990 and June 24, 1991, the licensee requested an exemption from the above specified requirements of 10 CFR part 55, "Operators' Licenses," in the case of section 55.53(e), a reduction in the time requirement for operators to maintain active proficiency from seven 8-hour shifts or five 12-hour shifts per calendar quarter to 4-hours per calendar quarter and in the case of section 55.53(f)(2), a reduction in the number of hours of shift functions that must be completed under the direction of an operator or senior operator in order to regain an active operator status from 40 hours to one shift.

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Panel; Meeting

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Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: July 30, 1991.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–18463 Filed 8–2–91; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–312]

Sacramento Municipal Utility District; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuing an exemption from the requirements of sections 55.41, 55.43, 55.45, 55.53(e), 55.53(f)(2), and 55.59 of part 55 of title 10 of the Code of Federal Regulations (10 CFR part 55) concerning the requirements for granting and maintaining operators' licenses to the Sacramento Municipal Utility District (SMUD, the licensee for the Rancho Seco Nuclear Generating Station located in Sacramento County, California).

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the requirements of the aforementioned rules to the extent that these regulations address the granting and maintaining of operators' licenses for operating power reactors and to the extent that sections 55.53(e) and 55.53(f)(2) delineate the time requirements for operators to maintain and regain active proficiency. By letter of December 28, 1989, and supplements of March 30, 1990 and June 24, 1991, the licensee requested an exemption from the above specified requirements of 10 CFR part 55, "Operators' Licenses," in the case of section 55.53(e), a reduction in the time requirement for operators to maintain active proficiency from seven 8-hour shifts or five 12-hour shifts per calendar quarter to 4-hours per calendar quarter and in the case of section 55.53(f)(2), a reduction in the number of hours of shift functions that must be completed under the direction of an operator or senior operator in order to regain an active operator status from 40 hours to one shift.

The Need for the Proposed Action

The requirements of 10 CFR part 55 for granting and maintaining operators' licenses are designed for operating power reactors. The licensee ceased power operations at Rancho Seco on June 7, 1989, and completed defueling the reactor vessel on December 8, 1989, with all fuel stored in the spent fuel pool. In addition, the Commission issued a Confirmatory Order on May 2, 1990, prohibiting refueling at Rancho Seco without first receiving NRC approval. With the reactor in this defueled condition, the operators will primarily monitor and maintain the spent pool storage facility to ensure that the special nuclear material continues to be stored safely and ensure that the health and safety is not compromised. Additionally, the knowledge required of operators and senior operators to operate a reactor in a defueled status is far less than that required for an operating facility; therefore, the operators would be required to spend far less time actively performing operator functions per calendar quarter in order to maintain a proficient status. Likewise, far less time would be required for an operator to regain his proficiency if he failed to meet the minimum proficiency time. The request for an exemption from the requirements of 10 CFR part 55 as mentioned above, is based on the above plant conditions and the licensee's intent not to resume power operations at Rancho Seco.

Environmental Impact of the Proposed Action

The proposed exemption does not affect the risk of facility accidents caused by the defueled condition of the plant. With reactor vessel defueled and the licensee not intending to resume power operations at Rancho Seco, there are no longer any credible design basis accidents associated with an operating plant from start-up through full power operations. Design basis accidents for a nuclear facility in a defueled condition are all associated with loss of fuel pool water inventory or with fuel handling. Because of the geometric storage arrangement of the fuel assemblies underwater, a criticality accident is not considered credible. In addition, the Confirmatory Order prohibiting movement of the fuel to the reactor building further diminishes the possibility for a fuel handling accident. The operator training requirements which remain relevant to the defueled status, a 4-hour per calendar quarter requirement for maintaining active proficiency, and a one shift reproficiency requirement, ensure protection of the public health and safety and are consistent with the defueled condition of the facility.

The post-accident radiological releases will not differ from those determined previously, and the proposed exemption does not otherwise affect facility radiological effluents, or any significant occupational exposures. The proposed exemption does not affect plant non-radiological effluents and has no other adverse environmental impact. Therefore, the Commission concludes there are no measurable radiological or non-radiological environmental impacts associated with the proposed exemption.

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternative will either have no environmental impact or will have a greater environmental impact. The principal alternative to the exemption would be to require operator training and requalification criteria that pertain to power operations and to require the usual operating power reactor time criterion for maintaining and regaining proficiency. Such action would not enhance the protection of the environment and would require the licensee and the Commission to spend resources unnecessarily.

Alternate Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for the Rancho Seco Nuclear Generating Station.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the licensee's letter of December 28, 1989, and supplements of March 30, 1990 and June 24, 1991, which are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Martin Luther King Regional Library, 7340 24th Street Bypass, Sacramento, California 95822.

Dated at Rockville, Maryland this 30th day of July 1991.

For the Nuclear Regulatory Commission.

Richard F. Dudley, Jr.,

Acting Director, Non-Power Reactors, Decommissioning and Environmental Project Directorate, Division of Advanced Reactors and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 91–18505 Filed 8–2–91; 8:45 am]

BILLING CODE 7590-01-M

First Memorandum of Understanding Between the Office of the Nuclear Waste Negotiator and the Nuclear Regulatory Commission

AGENCY: Nuclear Regulatory Commission.

ACTION: Publication of a memorandum of understanding.

SUMMARY: On July 26, 1991, the Office of the U.S. Nuclear Waste Negotiator (ONWN) and the U.S. Nuclear Regulatory Commission (NRC) signed a Memorandum of Understanding (MOU) outlining the initial procedures for interactions between the two Offices. The text of the MOU is printed below.

FOR FURTHER INFORMATION CONTACT: Robert M. Bernero, Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492–3352.

Dated in Rockville, Maryland, this 30th day of July, 1991.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

First Memorandum of Understanding Between the Office of the U.S. Nuclear Waste Negotiator and the U.S. Nuclear Regulatory Commission

I. Introduction

This Memorandum of Understanding (MOU) outlines the initial procedures for interactions between the Office of the U.S. Nuclear Waste Negotiator (ONWN) and the U.S. Nuclear Regulatory Commission (NRC) in carrying out the Nuclear Waste Policy Amendment Act of 1987 (title V of Pub. L. 100–203),[1] which amended the Nuclear Waste Policy Act of 1982 (Pub. L. 97–425) (the Act) and, *inter alia*, created the ONWN. The ONWN is an independent establishment in the Executive Branch, separate from NRC and all other operating departments and agencies of the Federal Government. This independence facilitates the mission of the ONWN to find States or Indian Tribes willing to negotiate regarding the siting of a monitored retrievable storage facility or a permanent repository within their jurisdictions as part of an integrated waste management system for the disposal of spent nuclear fuel and high-level radioactive waste.

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[1] 42 U.S.C. 10241 et seq.

II. Purpose

The purpose of this MOU is to establish a working relationship between the ONWN and NRC that assures a timely flow of information between the parties; provides the ONWN with use of such NRC services, facilities, and personnel as the Commission determines appropriate and consistent with the scope described in Section V. and maintains each party's independence.

III. Authority

This MOU is entered into under the authority of section 409 of the Act (42 U.S.C. 10249), which provides that each department, agency, and instrumentality of the United States may furnish the Negotiator such information as he determines to be necessary to carry out the functions of the ONWN, and under the authority of section 408 of the Act (42 U.S.C. 10248(4)), which specifies that the Negotiator may utilize the services, personnel, and facilities of other Federal agencies, subject to the consent of the head of any such agency.

IV. Matters Not Addressed

Subsequent MOU's between the parties addressing procedures and relations regarding other provisions of the Act may be entered into at a later date.

V. Policy

The working relationship of the parties under this MOU will be consistent with the provisions of the Act related to high-level nuclear waste regulatory matters associated with a monitored retrievable storage facility and a geologic repository including transportation and safeguards. The NRC will respond in a timely maner to all written requests made by the ONWN to NRC for services, personnel, facilities, or information, subject to the discretion of the Commission and as permitted by law. The scope of the NRC activity generally will be limited to pre-licensing consultations and discussion with the Office of the Nuclear Waste Negotiator, a potential applicant, or a potential host State or Indian tribe.

Information made available to the ONWN under this agreement may be used at that agency's option in carrying out its responsibilities under the Act. The ONWN and NRC contemplate that all information requested and provided would be information that may be released to the public.

VI. Points of Contact

The points of contact for routine daily communication between the ONWN and NRC will be Counsel for the ONWN located in the Washington, DC liaison office and the Director of the Office of Nuclear Material Safety and Safeguards within NRC.

VII. Supplemental Interagency Agreements

Unless otherwise agreed by the Commission and the Negotiator, when requested by the Negotiator to provide services, personnel, facilities or information, NRC shall determine whether compliance with such requests will be in furtherance of its purposes, responsibilities, and obligations. To the extent NRC determines that compliance is in furtherance of such purposes, responsibilities, and obligations, it will assume the costs of such compliance.

If it is determined that a commitment, obligation, or transfer of funds is required, the details of the levels of support to be furnished by one organization to the other, with respect to funding, will be developed in specific interagency agreements.

All obligations or expenditures emanating from activities conducted under this MOU or any subsequent interagency agreements are subject to the availability of appropriated funds.

VIII. Amendment or Termination

This MOU may be modified, amended, or terminated by mutual written agreement, or may be terminated unilaterally by either part upon thirty (30) days written notice to the other party.

IX. Effective Date

This MOU shall be effective upon execution by the Negotiator and the NRC's Chairman.

Dated: July 26, 1991.

United States Nuclear Regulation Commission.

Ivan Selin,

Chairman.

Office of the United States Nuclear Waste Negotiator.

David H. Leroy,

Negotiator.

[FR Doc. 91-18500 Filed 8-2-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-213]

Connecticut Yankee Atomic Power Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 142 to Facility Operating License No. DPR-61 issued to Connecticut Yankee Atomic Power Company, which revised the Technical Secifications for operation of the Haddam Neck Plant located in Middlesex County, Connecticut. The amendment is effective as of the date of issuance.

The amendment modified the Technical Specifications to allow for the storage of zircaloy clad fuel assemblies in the new and spent fuel storage racks.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on April 9, 1991 (56 FR 14395). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement.

Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated March 4, 1991, (2) Amendment No. 142 to License No. DPR-61, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention:

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led 8-2-91; 8:45 am]

[Docket No. 50-213]

Connecticut Yankee Atomic Power Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 142 to Facility Operating License No. DPR-61 issued to Connecticut Yankee Atomic Power Company, which revised the Technical Secifications for operation of the Haddam Neck Plant located in Middlesex County, Connecticut. The amendment is effective as of the date of issuance.

The amendment modified the Technical Specifications to allow for the storage of zircaloy clad fuel assemblies in the new and spent fuel storage racks.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on April 9, 1991 (56 FR 14395). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement.

Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated March 4, 1991, (2) Amendment No. 142 to License No. DPR-61, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention:

Director, Division of Reactor Projects—I/II.

Dated at Rockville, Maryland this 25th day of July 1991.

For the Nuclear Regulatory Commission.

Alan B. Wang,

Project Manager, Project Directorate I-4 Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

[FR Doc. 91-18503 Filed 8-2-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-440-A, 50-346-A (Suspension of Antitrust Conditions); ASLBP No. 91-644-01-A]

Atomic Safety and Licensing Board

Before Administrative Judges: Marshall E. Miller, Chairman, Charles Bechhoefer, G. Paul Bollwerk, III.

In the Matter of Ohio Edison Company (Perry Nuclear Power Plant, Unit 1, Facility Operating License No. NPF-58); The Cleveland Electric Illuminating Company, The Toledo Edison Company (Perry Nuclear Power Plant, Unit 1, Facility Operating License No. NPF-58) (Davis-Besse Nuclear Power Station, Unit 1, Facility Operating License No. NPF-3).

Rescheduled Prehearing Conference

The initial prehearing conference in this anti-trust proceeding, previously scheduled for July 25, 1991, is hereby rescheduled for Thursday, September 19, 1991, beginning at 9:30 a.m., in the NRC Hearing Room, 5th floor, 4350 East West Highway, Bethesda, Maryland. To the extent necessary, the conference will continue on September 20.

For the Atomic Safety and Licensing Board.

Bethesda, Maryland.

Charles Bechhoefer,

Administrative Judge.

[FR Doc. 91-18501 Filed 8-2-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-602]

University of Texas; Order Extending Construction Completion Date

The University of Texas is the current holder of Construction Permit No. CPRR-123, issued by the U.S. Nuclear Regulatory Commission on June 4, 1985, for construction of the University of Texas TRIGA Mark II research reactor. The reactor facility is presently under construction at the Balcones Research Center in Austin, Texas.

On May 24, 1991, the University of Texas (UT or the applicant) filed a request for an extension of the construction completion date from June 30, 1991 to October 31, 1991. The extension has been requested because additional time is required to close open items identified during the inspection program and to review documentation to support issuance of the Facility Operating License.

Good cause has been shown for the delay; the cause is beyond the control of the applicant; and the requested extension if for a reasonable period, the bases for which are set forth in the staff's evaluation of the request for extension.

Pursuant to 10 CFR 51.32, the Commission has determined that extending the construction completion date will have no significant impact on the environment (56 FR 33477) published on July 22, 1991.

The NRC staff's safety evaluation of the request for extension of the construction permit is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555.

It Is Hereby Ordered That the latest completion date for Construction Permit No. CPRR-123 is extended from June 30, 1991 to October 31, 1991.

Date of Issuance: July 30, 1991.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Director, Division of Advanced Reactors and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 91-18504 Filed 8-2-91; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

July 30, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Blackstone 1998 Term Trust, Inc.
  Common Stock, $.01 Par Value (File No. 7-7112).
International Movie Group, Inc.
  Common Stock, $.01 Par Value (File No. 7-7113).
Thermoelectron Technologies Corporation
  Common Stock, $.01 Par Value (File No. 7-7114).
ETZ Lavud Limited
  Common Stock, IL 5.25 Par Value (File No. 7-7115).
Sanifill, Inc.
  Common Stock, $.01 Par Value (File No. 7-7116).
MGM Grand, Inc.
  Rights to Subscribe to Common Stock (File No. 7-7117).
Tie/Communications, Inc.
  Common Stock, $.10 Par Value (File No. 7-7118).
Time Warner, Inc.
  Rights to Subscribe to Common Stock (File No. 7-7119).

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 20, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-18445 Filed 8-2-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18251; 811-6245]

CellTelCo Nationwide Paging Partnership; Application

July 26, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: CellTelCo Nationwide Paging Partnership.

RELEVANT ACT SECTIONS: Section 8(f) of the Act.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on April 30, 1991, and was amended on July 15, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's

Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 20, 1991, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, suite 138, 1555 Lynnfield Road, Memphis, Tennessee 38119.

FOR FUTHER INFORMATION CONTACT: Elizabeth G. Osterman, Staff Attorney, at (202) 504–2524, or Jeremy N. Rubenstein, Assistant Director, at (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a general partnership under the laws of the District of Columbia and is a closed-end non-diversified management company registered under the Act. On February 27, 1991, applicant filed a Notification of Registration pursuant to section 8(a) of the Act and a Registration Statement pursuant to section 8(b) of the Act. The Registration Statement was never declared effective and applicant never operated as an investment company.

2. At meetings held on December 19, 1990 and April 2, 1991, the execution, delivery, and performance of an agreement of sale relating to the sale of applicant's principal asset and the winding up of applicant's affairs were approved.

3. On April 11, 1991, applicant distributed a total of $30,361,580.75 to its partners in proportion to each partner's interest in applicant.

4. Applicant expects to incur expenses consisting of legal, accounting, and administrative fees in the approximate amount of $200,000 in connection with the liquidation of applicant. It has retained assets in sufficient quantity to discharge these expenses. Applicant has no assets other than the assets retained for the purpose described in the preceding sentence. Any assets remaining after payment of expenses will be distributed to applicant's partners in proportion to each partner's interest in applicant.

5. As of the date of the application, applicant had 409 partners. Applicant is not a party to any litigation or administrative proceeding. Applicant does not propose to engage in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–18446 Filed 8–2–91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35–25354]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

July 26, 1991.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 19, 1991 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Eastern Utilities Associates, et al. (70–7825)

Eastern Utilities Associates ("EUA"), a registered, holding company, and its subsidiary company, EUA Cogenex Corporation ("Cogenex"), both located at P.O. Box 2333, Boston, Massachusetts 02107, have filed a post-effective amendment under sections 6(a), 6(b), 7, 9(a), 10 and 12(b) of the Act and rules 43, 45 and 50(a)(5) thereunder to their application-declaration previously filed under sections 6(a), 7, 9(a), 10, and 12(b) of the Act and rules 43 and 45 thereunder.

By order dated March 29, 1991 (HCAR No. 25289), the Commission authorized the increase in Cogenex's financing authority from $75 million to $100 million, consisting of: (i) $35 million of long-term unsecured notes issued by Cogenex in 1990; (ii) approximately $12.8 million in capital contributions from EUA, and; (iii) $52.2 million from any combination of the following sources: (a) Up to an aggregate principal amount of $50 million of short-term borrowings from lending institutions under the EUA system existing lines of credit and (b) up to an aggregate principal amount of $40 million from: (A) Short-term borrowings from EUA, (B) capital contributions from EUA, and/or (C) sales of common stock to EUA (collectively, "Investments"). The Commission also authorized EUA to borrow up to $25 million under the EUA system credit lines to finance the Investments in Cogenex, and to guarantee Cogenex's borrowings under the EUA system credit lines. Such authority expires December 31, 1991.

EUA and Cogenex now propose to finance Cogenex's business in an amount not to exceed $100 million through December 31, 1993, from the following sources: (i) Up to an aggregate of $50 million from EUA in any combination of short-term borrowings, capital contributions or proceeds from sales of common stock to EUA (the "EUA Investments"); (ii) up to $35 million from the issuance and sale of additional long-term unsecured notes (the "New Notes"); and (iii) up to $50 million of short-term borrowings under the EUA system credit lines.

EUA also requests authority for the period ending December 31, 1993 to (i) make investments in Cogenex in an aggregate amount of up to $50 million in one or any combination of EUA Investments, (ii) borrow up to $25 million under the EUA system credit lines to finance EUA Investments in Cogenex and (iii) continue to guarantee Cogenex's borrowings under the EUA system credit lines.

Cogenex expects that the New Notes will mature in not less than 3 nor more than 30 years from the first day of the month in which they are issued. The New Notes are expected to be sold at not less than 98% nor more than 102.75% of their principal amount and to bear interest payable quarterly or

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02107, have filed a post-effective amendment under sections 6(a), 6(b), 7, 9(a), 10 and 12(b) of the Act and rules 43, 45 and 50(a)(5) thereunder to their application-declaration previously filed under sections 6(a), 7, 9(a), 10, and 12(b) of the Act and rules 43 and 45 thereunder.

By order dated March 29, 1991 (HCAR No. 25289), the Commission authorized the increase in Cogenex's financing authority from $75 million to $100 million, consisting of: (i) $35 million of long-term unsecured notes issued by Cogenex in 1990; (ii) approximately $12.8 million in capital contributions from EUA, and; (iii) $52.2 million from any combination of the following sources: (a) Up to an aggregate principal amount of $50 million of short-term borrowings from lending institutions under the EUA system existing lines of credit and (b) up to an aggregate principal amount of $40 million from: (A) Short-term borrowings from EUA, (B) capital contributions from EUA, and/or (C) sales of common stock to EUA (collectively, "Investments"). The Commission also authorized EUA to borrow up to $25 million under the EUA system credit lines to finance the Investments in Cogenex, and to guarantee Cogenex's borrowings under the EUA system credit lines. Such authority expires December 31, 1991.

EUA and Cogenex now propose to finance Cogenex's business in an amount not to exceed $100 million through December 31, 1993, from the following sources: (i) Up to an aggregate of $50 million from EUA in any combination of short-term borrowings, capital contributions or proceeds from sales of common stock to EUA (the "EUA Investments"); (ii) up to $35 million from the issuance and sale of additional long-term unsecured notes (the "New Notes"); and (iii) up to $50 million of short-term borrowings under the EUA system credit lines.

EUA also requests authority for the period ending December 31, 1993 to (i) make investments in Cogenex in an aggregate amount of up to $50 million in one or any combination of EUA Investments, (ii) borrow up to $25 million under the EUA system credit lines to finance EUA Investments in Cogenex and (iii) continue to guarantee Cogenex's borrowings under the EUA system credit lines.

Cogenex expects that the New Notes will mature in not less than 3 nor more than 30 years from the first day of the month in which they are issued. The New Notes are expected to be sold at not less than 98% nor more than 102.75% of their principal amount and to bear interest payable quarterly or

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semiannually in arrears. It is proposed that other terms of the New Notes and of a purchase agreement for the New Notes, including redemption provisions, security provisions, if any, sinking fund provisions, if any, covenants and default provisions will be determined by negotiation. If it becomes necessary in order to obtain more favorable terms for the the New Notes, EUA proposes to guarantee all or a portion of the obligations with respect to the New Notes.

The net proceeds from the sale of the New Notes will be used for one of any combination of the following purposes: (i) To pay or reduce short-term borrowings from banks; (ii) to pay or reduce short-term loans from EUA; (iii) to acquire nonutility tangible assets for Cogenex; and (iv) for general corporate purposes.

Cogenex requests that the Commission, pursuant to paragraph (a)(5) of rule 50, grant an exception from that rule with respect to the New Notes, so that it may carry out the negotiation of the terms of the New Notes itself, with one or a few institutional investors, or to engage a placement agent to negotiate the terms of and place the New Notes with institutional purchasers. It may do so.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-18444 Filed 8-2-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25356]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

August 1, 1991.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 19, 1991 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Columbia Gas System, Inc. (70–7901)

The Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807–0020, a registered holding company, has filed a declaration under sections 6, 7, and 12 of the act and rules 44 and 50 thereunder.

To enable it to fund the operations of certain of its subsidiaries, Columbia, a debtor in possession under Chapter 11 of the Bankruptcy Code, 11 U.S.C., proposes to issue and sell short-term secured promissory notes ("Notes") in an aggregate amount not exceeding $75 million or such lesser amount as may be approved by the Bankruptcy Court, prior to September 30, 1991 or such earlier date when longer term and enlarged debtor in possession financing may be approved by the Bankruptcy Court and this Commission.[1] A letter of credit of up to $10 million will be available to Columbia as part of the $75 million borrowing. The Notes will evidence Columbia's borrowings under a proposed credit facility with Manufacturers Hanover Trust Company, as agent for a syndicate of banks. A facility fee of $550,000 and a commitment fee on the unused portions of the total facility of ½% per annum and interest on all outstanding balances at the rate of no more than 1½ percent over the lender's alternate reference rate (the higher of the lender's announced prime rate or the federal funds rate plus 50 basis points), or such lesser rates and fees as shall be approved by the Court, will be charged to Columbia.

The lender will have a lien on all property of Columbia except voting securities of subsidiaries which are gas public-utility companies as defined under section 2(a)(4) of the Act. The loans would be secured by a lien upon all assets of Columbia, excluding the voting securities of Columbia's public-utility subsidiaries.

Columbia will use the proceeds of the loans primarily to make short-term advances to its subsidiaries (other than Columbia Gas Transmission Corporation ("Transmission"), which is itself a debtor in possession in a proceeding under Chapter 11 of the Bankruptcy Code) to fund current operating needs.[2] Columbia will make the advances in accordance with the terms and conditions of a previous order of the Commission which, among other things, authorized Columbia to fund advances to its subsidiaries through December 31, 1991 by short-term borrowings in an aggregate principal amount of up to $525 million at any one time outstanding.[3]

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-18580 Filed 8-1-91; 12:18 pm]

BILLING CODE 8010-01-M

[Rel. No. IC-18250; 812-7683]

Transamerica Bond Fund, et al.; Application

July 26, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Transamerica Bond Fund, Transamerica California Tax-Free Income Fund, Transamerica Cash Reserve, Inc., Transamerica Current Interest, Inc., Transamerica Investment Trust, Transamerica Special Equity Portfolios, Transamerica Special Series, Inc., Transamerica Sunbelt Growth Fund, Inc., Transamerica Tax-Free Bond Fund, Transamerica Capital Appreciation Fund (collectively, "Applicant Funds"), Transamerica Fund Management Company (the "Adviser"), Transamerica Fund Distributors, Inc. (the "Distributor"), and such other registered, open-end, management investment companies for which the

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[1] The long-term debtor in possession financing will be the subject of a future filing with the Commission.

[2] Columbia and Transmission filed for protection with the Bankruptcy Court for the District Court of Delaware on July 31, 1991, in response to recent financial difficulties related to Transmission's obligations under above-market gas purchase contracts. Columbia will file with the Bankruptcy Court a petition for approval of the subject interim financing. Transmission, which will also file with the Bankruptcy Court for approval of a short term line of credit, will rely upon rule 49(c) under the Act to exempt from the requirement of Commission approval its proposed transactions.

[3] *Columbia Gas System, Inc.*, Holding Co. Act Release No. 25001 (Dec. 18, 1989).

Adviser (or any affiliated person of the Adviser) may hereafter serve as investment adviser and for which the Distributor (or any affiliated person of the Distributor) may hereafter serve as principal underwriter, that may at any time hereafter offer shares on a basis that is identical in all material respects to the arrangements described herein (collectively with the Applicant Funds, the "Funds").

RELEVANT ACT SECTIONS: Exemptions requested under section 6(c) from the provisions of section 18(f), 18(g) and 18(i).

SUMMARY OF APPLICATION: The Applicants seek an exemption from the provisions of section 18(f), 18(g) and 18(i) of the Act to the extent necessary to offer two classes of shares of certain non-money market investment companies, and to offer multiple classes of shares in certain money market funds.

FILING DATE: The application was filed on February 13, 1991, and amended on June 28, 1991 and July 25, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 19, 1991, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW, Washington, DC 20549. Applicants, 1000 Louisiana, suite 6000, Houston, Texas 77002.

FOR FURTHER INFORMATION CONTACT: Nicholas D. Thomas, Staff Attorney, at (202) 504–2263 or Max Berueffy, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the Applicant Funds is registered under the Act as an open-end, diversified, management investment company.

2. Transamerica Current Interest, Inc. ("TCI") and Transamerica Cash Reserve, Inc. ("TCR") are money market funds that offer and sell shares at net asset value ("NAV") without any sales charge and seek to maintain constant $1.00 share prices. (These two companies, together with other investment portfolios of the Funds that may in the future invest in money market instruments and seek to maintain constant $1.00 share prices, are hereinafter referred to as the "Money Market Funds").

3. Transamerica Special Series, Inc. (the "CDSC Fund"), presently comprised of nine separate investment portfolios, offers shares of each of its portfolios at their respective current NAVs with no initial sales charge, but subject to a contingent deferred sales charge ("CDSC") and a distribution fee charged in compliance with rule 12b–1 under the Act (a "12b–1 fee"). The CDSC is imposed and, under certain circumstances, waived in accordance with the terms of an order issued by the SEC, pursuant to section 6(c) of the Act, granting exemptions from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and rule 22c–1 thereunder. Criterion Special Series, Inc., et al., Investment Company Act Release Nos. 16009 (Sept. 28, 1987) (notice) and 16073 (October 23, 1987) (order). Each of the other Applicant Funds (the "Load Funds") presently offers its shares for sale at their current NAV plus a front-end sale charge and a 12b–1 fee.

4. The Applicants seek an exemption that would allow the non-money market Funds to offer two classes of shares (the "Dual Distribution System"). This will be accomplished by, in effect, dividing shares of the investment portfolios to be offered on such a basis into two classes of shares ("Class I" and "Class II"). Class I shares would be offered subject to a CDSC and a rule 12b–1 distribution plan similar to the CDSC Fund's current distribution plan (the "Deferred Option"). Class II shares would be offered subject a front-end load and a rule 12b–1 distribution plan similar to the present distribution plans of the Load Funds (the "Front-End Option"). Shares of the Funds being offered at the time of the creation of the new class of shares will be reclassified as Class I shares if such shares are of a class that has been offered subject to the CDSC arrangement, or as Class II shares if such shares are of a class that has been offered subject to a front-end sales charge. The Class I shares and Class II shares will be identical in all respects, except for differences relating to the impact of the respective rule 12b–1 distribution payments borne by each class, any incremental transfer agency costs identified by the Funds' transfer agent as being attributable to a specific class, and any other incremental expenses subsequently identified that should properly be allocated to one class that shall be approved by the SEC pursuant to an amended order. Although the transfer agency fees of the CDSC Funds are presently the same as those of the Load Funds, industry experience to date suggests that in the future higher transfer agency fees with respect to Class I shares may be imposed than are imposed for Class II shares as a result of the higher costs associated with processing shareholder accounts with CDSC features. Other differences between Class I and Class II shares will include (i) voting rights on matters affecting only a particular class, such as approval of the rule 12b–1 distribution plan, (ii) different exchange privileges available to each class and (iii) the designation of each class of shares of an investment portfolio. Shares purchased through the reinvestment of dividends and other distributions will be of the same class as the shares on which the distributions were paid.

5. The NAV of all outstanding shares of each class of an investment portfolio will be computed on a pro rata basis for each outstanding share based on the proportionate interest in the portfolio represented by the shares of that class. All income earned, and expenses incurred by an investment portfolio, will be borne on a pro rata basis by each outstanding share of a class, based on the proportionate interest in the portfolio represented by the shares of such class, except that because of the particular distribution expenses and other costs that might be allocable to each class, it is expected that the net income of and dividends payable to each class of a portfolio will vary.

6. The Applicants also seek an exemption that would allow the Money Market Funds to offer multiple classes of shares. Each class of shares may adopt one or more of the following: A rule 12b–1 distribution plan, a non-rule 12b–1 shareholder services plan with payments made by the Fund, or an administrative plan with payments made by the Adviser or the Distributor. The classes of shares will be identical in all respects, except: (i) Each class will have a different designation; (ii) each class of shares will bear any expenses specifically attributable to that class ("Class Expenses") limited to: (a) Payments made pursuant to a rule 12b–1 distribution plan or a shareholder service plan; (b) any incremental transfer agency costs as identified by the Funds' transfer agent as being

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5. The NAV of all outstanding shares of each class of an investment portfolio will be computed on a pro rata basis for each outstanding share based on the proportionate interest in the portfolio represented by the shares of that class. All income earned, and expenses incurred by an investment portfolio, will be borne on a pro rata basis by each outstanding share of a class, based on the proportionate interest in the portfolio represented by the shares of such class, except that because of the particular distribution expenses and other costs that might be allocable to each class, it is expected that the net income of and dividends payable to each class of a portfolio will vary.

6. The Applicants also seek an exemption that would allow the Money Market Funds to offer multiple classes of shares. Each class of shares may adopt one or more of the following: A rule 12b–1 distribution plan, a non-rule 12b–1 shareholder services plan with payments made by the Fund, or an administrative plan with payments made by the Adviser or the Distributor. The classes of shares will be identical in all respects, except: (i) Each class will have a different designation; (ii) each class of shares will bear any expenses specifically attributable to that class ("Class Expenses") limited to: (a) Payments made pursuant to a rule 12b–1 distribution plan or a shareholder service plan; (b) any incremental transfer agency costs as identified by the Funds' transfer agent as being

attributable to a specific class; (c) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxies to current shareholders attributable to an individual class; (d) Blue Sky registration fees attributable to an individual class; (e) registration fees under the Securities Act of 1933 incurred by a class of shares; (f) any expense of administrative personnel and services as required to support the shareholders of a specific class; and (g) any director's fees incurred as a result of issues relating to one class of shares; (iii) voting rights on the rule 12b–1 distribution plan of that class or other matters relating solely to such class; (iv) each class will have different exchange privileges; and (v) one class of each portfolio may be offered subject to a CDSC (the principal purpose of which is to allow holders of other CDSC classes to exchange in and out of a Money Market Fund).

7. All shares of the Money Market Funds, regardless of class, will be sold and redeemed daily at NAV without a sales charge or redemption charge, except in the case of one class per Money Market Fund that will be subject to the possible imposition of a CDSC.

8. Each Money Market Fund will accrue its payments for any Class Expenses daily. Further, before offering shares on a multi-class basis, each Money Market Fund may seek to obtain undertakings from its service providers stating that, if necessary to prevent accrued Class Expenses of any class from exceeding the allocated gross income of such class on any given day, they will waive some or all of the payments to which they otherwise would have been entitled. If such waivers are not obtained or they are not sufficient to prevent accrued Class Expenses for the day from exceeding a class's gross income for the day, the Adviser and/or the Distributor will waive their fees up to the amount by which such day's accrued Class Expenses exceed a class's gross income. If after giving effect to such waivers by service providers, if any, and by the Adviser and the Distributor, Class Expenses for the day would nevertheless exceed a class's gross income, the Adviser and/or the Distributor will, within five business days, reimburse the Money Market Fund in such amount as may be necessary to prevent such Class Expenses from exceeding a class's gross income for the day. In this way, each Money Market Fund will maintain a stable NAV.

9. Class I shares of an investment portfolio will be exchangeable for Class I shares of another investment portfolio (or shares of a portfolio that has not adopted the Dual Distribution System but that offers its shares on a CDSC basis). Class II shares of an investment portfolio will be exchangeable for Class II shares of another investment portfolio (or shares of a portfolio that has not adopted the Dual Distribution System but that offers its shares on a front-end sales charge basis). In addition, shares of a Money Market Fund acquired in exchange for shares of a class offered with a CDSC may be re-exchanged for shares of any other portfolio of the Funds offered with a CDSC; and shares of a Money Market Fund acquired in exchange for shares of a class offered with a front-end sales charge may be re-exchanged for shares of any other portfolio offered with a front end sales load. Shares of a portfolio of a Money Market Fund will not otherwise be exchangeable for shares of any portfolio that imposes a CDSC or front-end sales charge. All offers of exchange will be made in accordance with the requirements of rule 11a–3 under the Act.

Applicants' Legal Analysis

10. The Funds request an exemptive order pursuant to section 6(c) of the 1940 Act to the extent that the proposed issuance of dual classes and multiple classes of shares of the Funds might be deemed (1) to result in the creation of a "senior security" within the meaning of section 18(g) and to be prohibited by section 18(f)(1) of such Act; and (2) to violate the equal voting provisions of section 18(i) of the 1940 Act.

11. Section 6(c) of the Act permits the SEC to exempt applicants from provisions of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

12. The Applicants argue that their request for an exemption meets the standards of section 6(c) of the Act because (a) the dual and multi-class distribution systems will attract more investors which will have the beneficial effect of spreading fixed cost over a broader investor base; (b) only those shareholders enjoying the benefits of arrangements such as distribution plans or shareholder servicing plans will bear the expenses and voting responsibilities of such arrangements; and, (c) the proposed dual and multi-class arrangements will not involve borrowing, nor will they effect a Fund's current assets or reserves, nor will they increase the speculative nature of any Fund.

Applicants' Conditions

The Applicants agree that any order granting the exemptions requested by the application will be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of the Fund, and be identical in all respects, except as set forth below. The only differences between the classes of shares will relate solely to: (a) The impact of the disproportionate payments made under a rule 12b–1 distribution plan and/or a shareholder services plan (in the case of the Money Market Funds), any incremental transfer agency costs as identified by the Fund's transfer agent as being attributable to a specific class, and any other incremental expenses subsequently identified that should be properly allocated to one class that shall be approved by the Commission pursuant to an amended order; (b) in the case of the Money Market Funds only: Printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses and proxies to current shareholders attributable to an individual class; Blue Sky registration fees attributable to an individual class; registration fees under the Securities Act of 1933 incurred by a class of shares; the expense of administrative personnel and services as required to support the shareholders of a specific class; and Directors' fees incurred as a result of issues relating to one class of shares; (c) the fact that the classes will vote separately with respect to rule 12b–1 distribution plans and other matters exclusively affecting one class of shares; (d) different exchange privileges of the classes of shares; and (e) the designation of each class of shares.

2. The Directors of the Fund, including a majority of the Independent Directors, will approve the system of the offering of dual classes or, in the case of the Money Market Funds, multiple classes, of shares. The minutes of the meetings of Directors regarding deliberations of the Directors with respect to the approval necessary to implement the dual class or multiple class system will reflect in detail the reasons for the Directors' determinations that the system is in the best interests of both the Fund and its shareholders.

3. On an ongoing basis, the Directors of the Fund, pursuant to their fiduciary responsibilities under the Act and

otherwise, will monitor the Fund for the existence of any material conflicts between the interests of the outstanding classes of shares. The Directors, including a majority of the Independent Directors, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The investment adviser and the distributor of the Fund will be responsible for reporting any potential or existing conflicts to the Directors. If a conflict arises, the investment adviser and the distributor of the Fund, at their own cost, will remedy such conflict up to and including establishing a new registered management investment company.

4. Any rule 12b–1 plan adopted or amended to permit assessment of a rule 12b–1 fee on any class of shares which has not had its rule 12b–1 plan approved by the public shareholders of such class will be submitted to the public shareholders of such class for approval at the next meeting of shareholders after the initial issuance of that class of shares. Such meeting is to be held within 16 months from the date that the registration statement relating to such class first becomes effective or, if applicable, the date that the amendment to the registration statement necessary to offer such class first becomes effective.[1]

5. In the case of the Money Market Funds, which shall be the only Funds that may adopt a shareholder services plan, such plans will be adopted and operated in accordance with the procedures set forth in rule 12b–1 (b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders will not enjoy the voting rights specified in rule 12b–1. In evaluating a shareholder services plan, the Directors will specifically consider whether: (a) The shareholder services plan is in the best interest of the applicable classes and their respective shareholders; (b) the services to be performed pursuant to the shareholder services plan are required for the operation of the applicable classes; (c) the service organizations can provide services at least equal, in nature and quality, to those provided by others, including the Fund, providing similar services; and (d) the fees for such services are fair and reasonable in light of the usual and customary charges made by other entities, especially non-affiliated entities, for services of the same nature and quality.

6. Each shareholder services agreement entered into pursuant to a shareholder services plan will contain a representation by the service provider that any compensation payable to the service provider in connection with the investment of its customer's assets in the Fund (a) will be disclosed by it to its customers; (b) will be authorized by its customers; and (c) will not result in an excessive fee to the service provider.

7. Each shareholder services agreement entered into pursuant to a shareholder services plan will provide that, in the event an issue pertaining to the shareholder services plan is submitted for shareholder approval, the service provider will vote any shares held for its own account in the same proportion as the vote of those shares held for its customers' accounts.

8. The Directors of the Fund will receive quarterly and annual statements concerning distribution and shareholder servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not relating to the sale or servicing of a particular class will not be presented to the Directors to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the Independent Directors in the exercise of their fiduciary duties.

9. Dividends paid with respect to each class of shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that expenses of the type that are authorized by Condition 1 above to be allocated to a particular class will be borne exclusively by that class.

10. The methodology and procedures for calculating the NAV and dividends and distributions of the various classes and the proper allocation of expenses among the classes has been reviewed by an expert (the "Expert") who has rendered a report to the Applicants, which has been provided to the staff of the Commission, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an on-going basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Fund that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Fund (which the Fund agrees to provide), will be available for inspection by the Commission staff upon the written request to the Fund for such work papers by a senior member of the Division of Investment Management limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" and the ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in SAS No. 44 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

11. The Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the NAV and dividends and distributions of the various classes of shares and the proper allocation of expenses among the classes of shares, and this representation has been concurred with by the Expert in the initial report referred to in Condition 10 above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in Condition 10 above. The Applicants will take immediate corrective measures if this representation is not concurred in by the Expert, or appropriate substitute Expert.

12. The prospectus of each class of shares will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing shares may receive different compensation with respect to one particular class of shares over another.

13. The distributor of the Fund will adopt compliance standards as to when

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[1] In the Applicants' opinion, since the distribution plan in connection with the Deferred Option for Class I shares will be the distribution plan now in effect for the CDSC Fund, except as amended to provide that the fee thereunder will be assessed only on Class I shares, it will not be necessary for the CDSC Fund's existing shareholders (all of whom will be holders of Class I shares upon implementation of the Dual Distribution System) to "reapprove" such plan. Applicants also believe the same is true for distribution plans of other Funds which have previously been approved by public shareholders and thereafter are similarly amended to accommodate the dual class or multiple class structure.

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and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an on-going basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Fund that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Fund (which the Fund agrees to provide), will be available for inspection by the Commission staff upon the written request to the Fund for such work papers by a senior member of the Division of Investment Management limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" and the ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in SAS No. 44 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

11. The Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the NAV and dividends and distributions of the various classes of shares and the proper allocation of expenses among the classes of shares, and this representation has been concurred with by the Expert in the initial report referred to in Condition 10 above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in Condition 10 above. The Applicants will take immediate corrective measures if this representation is not concurred in by the Expert, or appropriate substitute Expert.

12. The prospectus of each class of shares will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing shares may receive different compensation with respect to one particular class of shares over another.

13. The distributor of the Fund will adopt compliance standards as to when

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each class of shares may be sold to particular investors. The Applicants will require all persons selling shares to agree to conform to such standards.

14. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Directors of the Fund with respect to the dual class or multiple class system of the Fund will be set forth in guidelines which will be furnished to the Directors.

15. The Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares of an investment portfolio in every prospectus for shares of that investment portfolio, regardless of whether all classes of shares are offered through each prospectus. The Fund's per share data in shareholder reports will disclose the respective expenses and performance data applicable to all classes of shares of an investment portfolio in every shareholder report for an investment portfolio. To the extent any advertisement of sales literature describes the expenses or performance data applicable to any class of shares of an investment portfolio, it will also disclose the respective expenses and/or performance data applicable to all classes of its shares. The information provided by the Applicants for publication in any newspaper or similar listing of NAV and public offering priced will present each class of shares separately.

16. The Applicants acknowledge that the grant to the exemptive order requested by the application will not imply Commission approval, authorization or acquiescence in any particular level of payments that the Funds may make pursuant to rule 12b–1 distribution plans or shareholder services plans in reliance on the exemptive order.

17. To ensure that the NAV per share of each class of shares of a Money Market Fund does not deviate from the NAV per share of the other classes as a result of variations in net income among the classes from day to day, no Money Market Fund class will on any day bear any accrued Class Expenses that would cause the accrued expenses of such class for such day to exceed its allocated gross income. To accomplish this, each Money Market Fund may seek to obtain undertakings from its service providers stating that, if necessary to prevent accrued Class Expenses of any class from exceeding the allocated gross income of such class on any given day, they will waive some or all of the payments to which they otherwise would have been entitled. If such waivers are not obtained or they are not sufficient to prevent accrued Class Expenses for the day from exceeding a class's gross income for the day, the Adviser and/or the Distributor will waive their fees up to the amount by which such day's accrued Class Expenses exceed a class's gross income. If after giving effect to such waivers by service providers, if any, and by the Adviser and the Distributor, Class Expenses for the day would nevertheless exceed a class's gross income, the Adviser and/or the Distributor will, within five business days, reimburse the Money Market Fund in such amount as may be necessary to prevent such Class Expenses from exceeding a class's gross income for the day. Fees and expenses waived by a service provider or reimbursed to the Fund by the Adviser and/or the Distributor will not be carried forward or recouped at a future date.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–18447 Filed 8–2–91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CCGD8–91–15]

Public Hearing Concerning Proposed Regulations, Barge Mooring Facility Mile 151.7 GIWW. Gulf Shores, Alabama

AGENCY: Coast Guard, DOT.

ACTION: Notice of public hearing.

SUMMARY: Notice is hereby given of a public hearing to be held by the Commander, Eighth Coast Guard District, at Gulf Shores, Alabama. The purpose of the hearing is to provide an opportunity to all interested persons to present data, views and comments orally or in writing concerning a proposal to moor barges along the Gulf Intracoastal Waterway Mile Mark 151.7, Gulf Shores, Alabama.

DATES: Tuesday, September 3, 1991 commencing at 7 p.m., until all speakers in attendance have had the opportunity to comment.

ADDRESSES: The hearing will be held at the Gulf State Park Resort, 21250 East Beach Boulevard, Gulf Shores, Alabama.

FOR FURTHER INFORMATION CONTACT: Mr. Monty Ledet, Commander, Eighth Coast Guard District (oan), Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, tel. (504) 589–4686.

SUPPLEMENTARY INFORMATION: REL Marine is seeking both U.S. Coast Guard and Army Corps of Engineers approval to construct a barge mooring facility along the north shoreline of the Gulf Intracoastal Waterway Mile Mark 151.7 East of the Harvey Locks. The mooring facility would start at the existing canal/boatyard facility and extend to the west 1,000 feet with a width of approximately 90 feet. Spud mooring barges on 200 foot centers would be used for mooring points. Therefore, a joint public hearing is being held by the U.S. Coast Guard and the U.S. Army Corps of Engineers to collect information concerning this permit request. On June 14, 1990, the Coast Guard authorized the mooring of barges in this vicinity with the stipulation that the mooring not adversely impact navigation safety. Since that time, information has come to the Coast Guard's attention that navigation safety may be adversely affected if barges are permitted to be moored at the proposed site. In an effort to gather additional information, the Coast Guard will give the public and all interested parties an opportunity to make comments on navigation safety issues for consideration in the decision making process. The Army Corps of Engineers has the ultimate decision on permitting the construction of a barge fleeting facility and will provide an opportunity for public comments on all other related issues immediately following. This is *not* an adversarial proceeding. Therefore there will be no cross examination of the speakers. The audience, however, may ask the panel of Coast Guard and Army Corps of Engineers representatives to clarify specific points.

Any person who wishes may appear and be heard at this public hearing. Persons planning to appear and be heard are requested to notify the Commander, Eighth Coast Guard District (oan), Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, tel. (504) 589-4686, any time prior to the hearing. Speakers will be limited to 5 minutes for oral presentations. Written statements and exhibits may be submitted in lieu of, in support of, or to supplement oral statements and will be made a part of the hearing record. Such written statements and exhibits may be delivered at the hearing or mailed in advance to the Commander, Eighth Coast Guard District, at the above address. Transcripts of the hearing will be made available for purchase upon request.

Dated: July 18, 1991.

J.M. Loy,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 91-18384 Filed 8-2-91; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: July 30, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171, Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0502.

Form Number: ATF REC 5210/12 and ATF REC 5210/1.

Type of Review: Extension.

Title: Tobacco Products Manufacturers—Notice for Tobacco Products (ATF REC 5210/12); Records of Operation (ATF REC 5210/1).

Description: ATF requires tax identification on packages or cases, which is used to validate excise tax payments and verify claims. Manufacturers records systems are needed to ensure product traceability and satisfaction of Tax Liabilities.

Respondents: Businesses or other for-profit.

Estimated Number of Recordkeepers: 145.

Estimated Burden Hours Per Recordkeeper: 1 hour.

Frequency of Response: Other.

Estimated Total Recordkeeping Burden: 1 hour.

Clearance Officer: Robert N. Hogarth (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91-18485 Filed 8-2-91; 8:45 am]

BILLING CODE 4810-31-M

Office of Thrift Supervision

Ensign Federal Savings Bank; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Ensign Federal Savings Bank, New York, New York, ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on July 19, 1991.

Dated: July 30, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-18431 Filed 8-2-91; 8:45 am]

BILLING CODE 6720-01-M

Sentry Savings Bank, FSB; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Sentry Savings Bank, FSB, Hyannis, Massachusetts ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on July 26, 1991.

Dated: July 30, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-18432 Filed 8-2-91; 8:45 am]

BILLING CODE 6720-01-M

Vanguard Savings Bank, FSB; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Vanguard Savings Bank, FSB, Vandergrift, Pennsylvania, ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on July 5, 1991.

Dated: July 30, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-18433 Filed 8-2-91; 8:45 am]

BILLING CODE 6720-01-M

Beach Savings Bank, FSB; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Beach Savings Bank, FSB, Fountain Valley, California, OTS No. 9046 on July 19, 1991.

Dated: July 30, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-18434 Filed 8-2-91; 8:45 am]

BILLING CODE 6720-01-M

Colonial Federal Savings Association; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Colonial Federal Savings Association, Roselle Park, New Jersey ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on July 5, 1991.

Dated: July 30, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-18430 Filed 8-2-91; 8:45 am]

BILLING CODE 6720-01-M

Family Savings & Loan Association, F.A.; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Family Savings & Loan Association, F.A., Seattle, Washington, OTS No. 9058, on July 19, 1991.

Dated: July 30, 1991.

Vashington, DC

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Dated: July 30, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–18433 Filed 8–2–91; 8:45 am]

BILLING CODE 6720-01-M

Beach Savings Bank, FSB; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Beach Savings Bank, FSB, Fountain Valley, California, OTS No. 9046 on July 19, 1991.

Dated: July 30, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–18434 Filed 8–2–91; 8:45 am]

BILLING CODE 6720-01-M

Colonial Federal Savings Association; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Colonial Federal Savings Association, Roselle Park, New Jersey ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on July 5, 1991.

Dated: July 30, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–18430 Filed 8–2–91; 8:45 am]

BILLING CODE 6720-01-M

Family Savings & Loan Association, F.A.; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Family Savings & Loan Association, F.A., Seattle, Washington, OTS No. 9058, on July 19, 1991.

Dated: July 30, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–18435 Filed 8–2–91; 8:45 am]

BILLING CODE 6720-01-M

First Savings & Loan Company, F.A. Massillon, OH; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in Subdivision (F) of 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for First Savings & Loan Company, F.A., Massillon, Ohio, ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on July 19, 1991.

Dated: July 30, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–18429 Filed 8–2–91; 8:45 am]

BILLING CODE 6720-01-M

Malibu Savings Bank, FSB; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Malibu Savings Bank, FSB, Costa Mesa, California, OTS No. 7888, on July 19, 1991.

Dated: July 30, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–18436 Filed 8–2–91; 8:45 am]

BILLING CODE 6720-01-M

Southwest Savings & Loan Association, FA; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Southwest Savings and Loan Association, FA, Phoenix, Arizona, OTS No. 8636, on July 19, 1991.

Dated: July 30, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–18437 Filed 8–2–91; 8:45 am]

BILLING CODE 6720-01-M

[AC-32; OTS No. 7035]

First Federal Savings & Loan Association of Bryan, Bryan, TX; Final Action; Approval of Voluntary Supervisory Conversion Application

Notice is hereby given that on July 26, 1991, the Director of the Office of Thrift Supervision or his designee approved the application of First Federal Savings and Loan Association of Bryan, Bryan, Texas, for permission to convent to the stock form of organization in a voluntary supervisory conversion. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, suite 600, Irving, Texas 75039.

Dated: July 30, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporation Secretary.

[FR Doc. 91–18428 Filed 8–2–91; 8:45 am]

BILLING CODE 6720-01-M

UNITED STATES INFORMATION AGENCY

Meeting of Advisory Board for Cuba Broadcasting

The Advisory Board for Cuba Broadcasting will conduct a meeting on August 7, 1991, in room 3557, 400 Sixth Street, SW., Washington, DC. Below is the intended agenda.

Wednesday, August 7, 1991

Agenda

Part One—Closed to the Public

9:30 a.m.

1. Briefing on Marti Security Measures.
2. TV Marti Broadcast Schedule.
3. Radio Marti Program—Second Frequency Option.

Part Two—Open to the Public

11:30 a.m.

4. TV Marti.
   a. TV Marti Staffing Pattern.
   b. TV Marti Space Assignments.
   c. TV Marti Non-News Programming.
5. Radio Marti. a. Leasing Commercial Radio Time.
6. Presidential Task Force on International Broadcasting—Impact on Office for Cuba Broadcasting.
7. OCB Budget Update.
8. Ethics Update (Agency Ethics Officer).

Items one, two and three, which will be discussed from 9:30 a.m. to 11:30 a.m., will be closed to the public. Information in item one involves the discussion of classified information. Closing such deliberations to the public is justified under 5 U.S.C. 522b(c)(1). Discussion of items two and three will include information the premature disclosure of which would be likely to frustrate the implementation of a proposed agency action (5 U.S.C. 522b(c)(9)(B)).

Members of the public interested in attending the meeting should contact James Skinner at (202) 401–7312 to make prior arrangements, as access to the building is controlled.

Dated: July 30, 1991.

Henry E. Catto,

Director.

Determination to Close Portions of Advisory Board Meeting of August 7, 1991

Based on information provided to me by the Advisory Board for Cuba Broadcasting, I hereby determine that the 9:30 a.m. to 11:30 a.m. portion of the meeting may be closed to the public.

The Advisory Board has requested that items one, two and three of the August 7, 1991 meeting be closed to the public. Item one on the agenda involves the discussion of classified information. Closing such deliberations to the public is justified by the Government in the Sunshine Act under 5 U.S.C. 522b(c)(1). Items two and three will involve information the premature disclosure of which would likely frustrate implementation of a proposed agency action (5 U.S.C. 522b(c)(9)(B)).

Item one on the agenda will involve a discussion by the Advisory Board of classified information relating to allegations that an individual working on behalf of the Cuban government was an employee of the Office of Cuba Broadcasting. Item two on the agenda involves a discussion about broadcasting TV Marti to Cuba during alternate hours of the day. Item three on the agenda includes a briefing to the Advisory Board about the feasibility of acquiring a second medium wave frequency for radio broadcasting to Cuba.

Dated: July 30, 1991.

Henry E. Catto,

Director.

[FR Doc. 91–18470 Filed 8–2–91; 8:45 am]

BILLING CODE 8230-01-M

VOL 56 ISS 150 AG 5 1991 UMI

Sunshine Act Meetings

Federal Register
Vol. 56, No. 150
Monday, August 5, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:15 p.m. on Tuesday, July 30, 1991, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the probable failure of certain insured banks.

Matters relating to certain financial institutions.

Matters relating to the Corporation's assistance agreements with insured banks.

Application of Public Savings Association, Bala Cynwyd, Pennsylvania, an operating nonfederally insured state savings and loan association, for Federal deposit insurance.

Recommendations regarding the liquidation of a depository institution's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,724
  Dallas Consolidated Office, Various Savings and Loans

Case No. 47,727
  Various Banks and Savings and Loans

Administrative Enforcement Proceedings.

Reports of the Office of Inspector General:

Audit Report re:
  Champion Federal Savings and Loan Association, Bloomington, Indiana, Case Number: C-320c (Memo dated July 12, 1991)

Audit Report re:
  Red River Federal Savings and Loan Association, Lawton, Oklahoma, Case Number: SWP-009c (Memo dated July 2, 1991)

Audit Report re:
  Superior Bank, FSB, Oakbrook Terrace, Illinois, Case Number: C-389c (Memo dated July 12, 1991)

Audit Report re:
  Inventory Closing Procedures, Houston Consolidated Office, (Memo dated July 11, 1991)

Audit Report re:
  Audit of Asset Management Contractor, Republic Realty Services Inc. (Memo dated July 10, 1991)

Audit Report re:
  Report on Audit of FSLIC Corporate Assets (Memo dated July 10, 1991)

Audit Report re:
  Audit of the Management and Control of Collateral, Midland Consolidated Office (Memo dated July 12, 1991)

Audit Report re:
  Information System Audit Report of the Liability and Dividend System (Memo dated July 12, 1991)

Audit Report re:
  Audit of Legal Expenses Paid to the Law Firm of Morrison, Hecker, Curtis and Parrish (Memo dated June 28, 1991)

Audit Report re:
  Audit of Legal Expenses Paid to the Law Firm of Steptoe and Johnson (Memo dated June 28, 1991)

Matters relating to the Corporation's corporate activities.

Application of Brunswick Bank and Trust Company, Manalapan, New Jersey, for the Corporation's consent to merge, under its charter and title, with Mutual Aid Federal Savings and Loan Association, Manasquan, New Jersey, and for consent to establish branches.

Matters relating to Corporation litigation.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), Vice Chairman Andrew C. Hove, Jr., and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public, that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: July 31, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91-18556 Filed 8-1-91; 10:00 am]

BILLING CODE 6714-0-M

LEGAL SERVICES CORPORATION

Board of Directors Meeting

TIME AND DATE: A meeting of the Board of Directors will be held on August 12, 1991. The meeting will commence at 9:00 a.m.

PLACE: Washington Court Hotel, 525 New Jersey Avenue, NW., The Ballroom Center, Washington, DC 20001 (202) 628-2100.

STATUS OF MEETING: Open, except that a portion of the meeting will be closed pursuant to: (1) A majority vote taken in open session during the July 8, 1991 meeting of the Board of Directors, and (2) a supplemental vote taken by telephone on July 23, 1991, during which the specific information contained herein was provided members of the Board of Directors. At the closed session, the Board of Directors will hear and consider the report of the General Counsel on litigation to which the Corporation is a party, and will consider pending personnel actions and personnel-related rules and practices, including matters related to current investigations being undertaken by the Corporation's Office of the Inspector General. In addition, the Board will interview four applicants for the position of Inspector General of the Corporation, will consider the qualifications of these applicants, and will select from among the applicants one individual to fill the position of Inspector General. The closing is authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c)(2), (6), and (10)], and the corresponding regulation of the Legal Services Corporation [45 C.F.R. Sections 1622.5(a), (e), and (h)]. The closing pursuant to the July 8, 1991 and July 23, 1991 votes has been certified by the Acting General Counsel as authorized by the above-cited provisions of law. A copy of the Acting General Counsel's certification is posted for public inspection at the Corporation's headquarters, located at 400 Virginia Avenue, SW., Washington, DC 20024, in its three reception areas, and is otherwise available upon request.

VOTE TO CLOSE:

Board Member	Vote
Vote of July 8, 1991	
Howard Dana, Jr	Yes.
Luis Guinot, Jr	(Absent).
J. Blakeley Hall	Yes.
William Kirk, Jr	Yes.
Jo Betts Love	Yes.
Guy Molinari	(Absent).
Penny Pullen	Yes.
Thomas Rath	(Absent).
Basile Uddo	(Absent)
George Wittgraf	Yes.
Jeanine Wolbeck	Yes.

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RPORATION

Meeting

eeting of the Board
held on August 12,
ill commence at 9:00

Court Hotel, 525
, NW., The Ballroom

Center, Washington, DC 20001 (202) 628–2100.

STATUS OF MEETING: Open, except that a portion of the meeting will be closed pursuant to: (1) A majority vote taken in open session during the July 8, 1991 meeting of the Board of Directors, and (2) a supplemental vote taken by telephone on July 23, 1991, during which the specific information contained herein was provided members of the Board of Directors. At the closed session, the Board of Directors will hear and consider the report of the General Counsel on litigation to which the Corporation is a party, and will consider pending personnel actions and personnel-related rules and practices, including matters related to current investigations being undertaken by the Corporation's Office of the Inspector General. In addition, the Board will interview four applicants for the position of Inspector General of the Corporation, will consider the qualifications of these applicants, and will select from among the applicants one individual to fill the position of Inspector General. The closing is authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c)(2), (6), and (10)], and the corresponding regulation of the Legal Services Corporation [45 C.F.R. Sections 1622.5(a), (e), and (h)]. The closing pursuant to the July 8, 1991 and July 23, 1991 votes has been certified by the Acting General Counsel as authorized by the above-cited provisions of law. A copy of the Acting General Counsel's certification is posted for public inspection at the Corporation's headquarters, located at 400 Virginia Avenue, SW., Washington, DC 20024, in its three reception areas, and is otherwise available upon request.

VOTE TO CLOSE:

Board Member	*Vote*
Vote of July 8, 1991	
Howard Dana, Jr	Yes.
Luis Guinot, Jr	(Absent).
J. Blakeley Hall	Yes.
William Kirk, Jr	Yes.
Jo Betts Love	Yes.
Guy Molinari	(Absent).
Penny Pullen	Yes.
Thomas Rath	(Absent).
Basile Uddo	(Absent)
George Wittgraf	Yes.
Jeanine Wolbeck	Yes.

Vote of July 23, 1991

Board Member	*Vote*
Howard Dana, Jr	Yes.
Luis Guinot, Jr	Yes.
J. Blakeley Hall	Yes
William Kirk, Jr	Yes.
Jo Betts Love	Yes.
Guy Molinari	Yes.
Penny Pullen	Yes.
Thomas Rath	Yes.
Basile Uddo	Yes.
George Wittgraf	Yes.
Jeanine Wolbeck	Yes.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of Agenda.
2. Approval of Minutes of July 8, 1991 Meeting.
3. Chairman's Report.
4. President's Report.
5. Consideration of Report on the Competition Study.
6. Consideration of Legislative Report and Report by Special Reauthorization Committee.
7. Consideration of Report by Office of the Inspector General Oversight Committee, and Consideration of Recommendations of the Inspector General.

Closed Session

8. Interview of First Candidate for the Position of Inspector General of the Legal Services Corporation.
9. Interview of Second Candidate for the Position of Inspector General of the Legal Services Corporation.
10. Consideration of Report by Inspector General on Current Investigations and Other Matters, and Consultation with Board's Special Counsel.
11. Consideration of Pending Personnel Actions and Personnel-Related Rules and Practices.
12. Consideration of Acting General Counsel's Litigation Report.
13. Interview of Third Candidate for the Position of Inspector General of the Legal Services Corporation.
14. Interview of Fourth Candidate for the Position of Inspector General of the Legal Services Corporation.
15. Consideration of and Vote on Candidate to Fill the Position of Inspector General of the Legal Services Corporation.

Open Session

16. Consideration of Report by Staff on Status of Pending Regulations, and Consideration of Related Resolutions.
17. Consideration of Schedule of Board Committee Meetings for Remainder of 1991.
18. Consideration of Plans for Annual Meeting with Legal Services Project Representatives.
19. Consideration of and, if necessary, Vote on Closure of a Portion of the September 16, 1991 Meeting of the Board of Directors.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 863–1839.

Date Issued: July 31, 1991.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 91–18542 Filed 7–31–91; 4:19 pm]

BILLING CODE 7050-01-M

LEGAL SERVICES CORPORATION

Board of Directors Meeting and Annual Conference of Legal Services Providers; Advance Notice

TIME AND DATE: __________

MEETING: A meeting of the Board of Directors and the Annual Conference of Legal Services Providers will be held on December 9–10, 1991. The meeting and conference are tentatively scheduled to commence at 9:00 a.m. each day.

PLACE: Clarion Hotel, 200 South 4th Street, St. Louis, Missouri 63102, (314) 241–9500, 1–800–325–7353 (Reservations).

The Legal Services Corporation has made arrangements with the Clarion Hotel to make available to the public the hotel lodging rate obtained by the Corporation. Accordingly, and due to the limited number of rooms available, interested members of the public are requested to contact the hotel directly at either of the telephone numbers listed above to make lodging reservations. Please advise the hotel reservationist that you are seeking to reserve a room being held in the name of the Legal Services Corporation. Members of the public must make reservations by November 9, 1991, and will be responsible for making direct payment for lodging costs to the Clarion Hotel upon departure. Please note that hotel reservations cannot be made through the Legal Services Corporation.

STATUS OF MEETING: Open.

STATUS OF CONFERENCE: Open.

MATTERS TO BE CONSIDERED: [Matters to be considered at the meeting of the Board of Directors and at the annual conference will be announced at a future date]

CONTACT PESON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 863–1839.

[For Hotel Reservations and/or Related Information, Please Contact The Clarion Hotel at the Above-noted Telephone Numbers.]

Date Issued: July 31, 1991.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 91–18543 Filed 7–31–91; 4:19 pm]

BILLING CODE 7050-01-M

RESOLUTION TRUST CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the following changes were made to the open agenda of the Resolution Trust Corporation Board of Directors meeting Tuesday, July 30, 1991 in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, N.W., Washington, D.C.:

The following subject was withdrawn from the agenda:

Memorandum re:
  Revised Indemnification for Contractors Providing Professional Services to the RTC.

The following subject was added to the agenda:

Memorandum re:
  Delegations of Authority Relating to Administrative Expenses.

Requests for further information concerning the meeting may be directed to Mr. John M. Buckley, Jr., Executive Secretary of the Corporation, at 202–416–7282.

Dated: July 31, 1991.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 91–18549 Filed 8–1–91; 9:08 am]

BILLING CODE 6714-01-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:36 p.m. on Tuesday, July 30, 1991, the Board of Directors of the Resolution Trust Corporation met in closed session to consider: (1) The resolution of failed thrift institutions; (2) leasing and furnishing office space; (3) contracting matters relating to (a) real estate educational training programs, (b) an automated securities tracking system, and (c) an automated financial management system; (4) the sale of assets by securitization and negotiated transactions; and (5) recommendations regarding the 1988–89 FSLIC-assisted transactions restructuring proposals and disclosure of the Southwest Plan Report.

In calling the meeting, the Board determined, on motion of Director C.C. Hope (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, Vice Chairman Andrew C. Hove, Jr., and Director T. Timothy Ryan Jr. (Director of Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B) and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b).

The meeting was held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550—17th Street, N.W., Washington, D.C.

Dated: July 31, 1991.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 91-18550 Filed 8-1-91; 9:08 am]

BILLING CODE 6714-01-M

Corrections

Federal Register
Vol. 56, No. 150
Monday, August 5, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 5, 8, 9, 10, 14, 15, 16, 17, 19, 25, 27, 31, 35, 36, 42, 43, 44, 45, 49, and 52

RIN 9000-AC43, 9000-AE12, 9000-AD85, 9000-AE00, 9000-AD32, 9000-AE01,9000-AD66, 9000-AD21, 9000-AD57, 9000-AD08, 9000-AE05, 9000-AD73, 9000-AD02, 9000-AD78, 9000-AD61, 9000-AD77, 9000-AD33

[FAC 90-4]

Federal Acquisition Regulation (FAR); Miscellaneous Amendments

Correction

In the correction to rule document 91-8647 appearing on page 33487, in the issue of Monday, July 22, 1991, make the following correction:

In the first column, amendatory instruction 1. should read:

1. On page 15146, in the 1st column, in the 14th line "Robert H. Hope" should read "Richard H. Hopf, III".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

Metro Health Medical Center, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

Correction

In notice document 91-15357 appearing on page 29469 in the issue of Thursday, June 27, 1991, in the second column, in the first full paragraph, in the first line "*Docket Number: 90-026*" should read "*Docket Number 91-026*".

BILLING CODE 1505-01-D

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federal register

Monday
August 5, 1991

Part II

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 33

Federal Acquisition Regulation; General Accounting Office Protest Costs; Final Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 33

[FAC 90-6; FAR Case 91-41]

Federal Acquisition Regulation; General Accounting Office Protest Costs

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: Federal Acquisition Circular (FAC) 90-6 amends the Federal Acquisition Regulation (FAR) with respect to the following: FAR 33.104 is amended at paragraphs (g) and (h) to provide that the General Accounting Office's awards of contract protest costs will be treated as advisory recommendations. Agencies may continue to pay protest costs out of funds available for the acquisition of services or supplies, but such payments may be subject to recoupment if 31 U.S.C. 3554(c) is judicially determined to be unconstitutional.

DATES: *Effective Date:* August 5, 1991.

ADDRESSES: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ms. Jeritta Parnell at (202) 501-4082 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4041, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-6, FAR case 91-41.

SUPPLEMENTARY INFORMATION:

A. Background

The changes made by this final rule arose as a result of a Department of Justice (DOJ) recommendation to revise FAR 33.104 (g) and (h) because the coverage is based on an unconstitutional statute, 31 U.S.C. 3554(c). DOJ has advised that the award of protest costs and attorney fees by the General Accounting Office is unconstitutional because it violates the separation of powers doctrine. Therefore, DOJ is seeking a declaratory judgment that the provision is unconstitutional and the Comptroller General has no authority to order Executive branch agencies to pay attorney fees and protest costs to successful bid protesters.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* applies to this rule and a Final Regulatory Flexibility Analysis has been performed. A copy of the Analysis may be obtained from the FAR Secretariat.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Part 33

Government procurement.

Dated: July 30, 1991.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition Policy.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90-6 is effective August 5, 1991.

Dated: July 30, 1991.

Eleanor R. Spector,

Director of Defense Procurement (DOD).

Dated: July 29, 1991.

Richard H. Hopf III,

Associate Administrator for Acquisition Policy, GSA.

Dated: July 30, 1991.

Darleen A. Druyun,

Assistant Administrator for Procurement (NASA).

Federal Acquisition Circular (FAC) 90-6 amends the Federal Acquisition Regulations as specified below:

General Accounting Office Protest Costs

FAR Part 33 is being revised to clarify the General Accounting Office's (GAO) authority to award bid protest costs and attorney fees. FAR 33.104(g) is amended to provide that GAO awards of bid protest costs and attorney fees are to be treated as recommendations to the agency. FAR 33.104(h) is revised to provide that any agency may pay protest costs as a result of a GAO recommendation, but such payments may be subject to recoupment if 31 U.S.C. 3554(c) is judicially determined to be unconstitutional. The final rule applies to any payments which have not been made as of the effective date thereof.

Therefore, 48 CFR part 33 is amended as set forth below:

PART 33—PROTESTS, DISPUTES, AND APPEALS

1. The authority citation for 48 CFR part 33 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 33.104 is amended by revising paragraphs (g) and (h) to read as follows:

33.104 Protests to GAO.

* * * * *

(g) *Notice to GAO.* The head of the agency or a designee (not below the level of the head of the contracting activity) responsible for the solicitation, proposed award, or award of the contract shall report to the Comptroller General within 60 days of receipt of the GAO's recommendation, if the agency has decided not to comply with the recommendation. The report shall explain the reasons why the GAO's recommendation, including any recommendation concerning the award of protest costs (i.e., the costs of filing and pursuing the protest, including reasonable attorneys' fees and bid and proposal preparation), will not be followed by the agency.

(h) *Award of protest costs.* Pending a final, nonappealable judicial determination of the constitutionality of 31 U.S.C. 3554(c), a recommended award of protest costs (as defined under paragraph (g)) may be paid by the agency out of funds available to or for the use of the agency for the acquisition of supplies or services, but such payments may be subject to recoupment by the agency if 31 U.S.C. 3554(c) is judicially determined not to be constitutional. Before paying a recommended award of protest costs (as defined under paragraph (g)), agency personnel should consult the General Counsel's office of the agency. This paragraph (h) applies to all recommended awards of protest costs (as defined under paragraph (g)) which have not yet been paid.

[FR Doc. 91-18460 Filed 8-2-91; 8:45 am]

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[FR Doc. 91–18460 Filed 8–2–91; 8:45 am]

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federal register

Monday
August 5, 1991

Part III

Department of the Interior

National Park Service

36 CFR Part 13

Glacier Bay National Park, Alaska, Fishing Regulations; Proposed Rule

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

RIN 1024-AB99

Glacier Bay National Park, Alaska; Fishing Regulations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: Expanding fishing uses of Glacier Bay National Park (GLBA) have compelled the National Park Service (NPS) to review the relationship of such fisheries to management of the Park.

The NPS is proposing to amend regulations regarding fishing in GLBA. These proposed amendments will allow commercial fishing to continue, exempted from currently existing nationwide NPS prohibitions on such activities, until December 31, 1997. Any continuance of commercial fishing beyond that date would require a finding that such uses are compatible with protection of park values and purposes, and promulgation of a new regulation at that time. The statutory prohibition on commercial fishing in designated wilderness in the park is clarified by these regulations. Non-commercial consumptive fishing methods are designated and "subsistence" uses are prohibited by these regulations.

Studies and research are proposed to be conducted on the relationship for fishing uses to park values and purposes. The results will be used for any future NPS regulatory actions.

The proposed regulatory revisions set forth below are necessary to fulfill the statutorily mandated duties of the NPS which are to ensure the preservation, enjoyment, and scientific value of the unique marine ecosystem of GLBA. These regulations do not affect Glacier Bay National Preserve where commercial and subsistence fishing are authorized by statute and no proposal for their prohibition is being made.

DATES: Written comments, suggestions or objections will be accepted until October 4, 1991.

The NPS also intends to provide an opportunity for public comment in a series of public hearings to be announced separately in the **Federal Register** (FR).

ADDRESSES: Comments should be directed to: Paul Haertel, National Park Service, Alaska Regional Office, 2525 Gambell Street, rm. 107, Anchorage, Alaska 99503-2892.

FOR FURTHER INFORMATION CONTACT: Paul Haertel, National Park Service, Alaska Regional Office, 2525 Gambell Street, rm. 107, Anchorage, Alaska, 99503-2892, telephone: (907) 257-2684; or, Marvin Jensen, National Park Service, Glacier Bay National Park, Bartlett Cove, Gustavus, Alaska, 99827, telephone: (907) 697-2230.

SUPPLEMENTARY INFORMATION:

Background

Glacier Bay National Monument was established by presidential proclamation dated February 26, 1925. 43 Stat. 1988. The monument was established to protect the dynamically changing glacial environment of mountains, tidewater glaciers, and associated movements and development of flora and fauna, and promote the scientific study of such. The early monument included marine waters within Glacier Bay north of a line running approximately from Geikie Inlet on the west side of the bay to the northern extent of the Beardslee Islands on the east side of the bay. The monument was expanded by a second presidential proclamation on April 18, 1939. 53 Stat. 2534. The expanded monument included additional lands and marine waters off: all of Glacier Bay; portions of Cross Sound, North Inian Pass, North Passage, Icy Passage, and Excursion Inlet; and, Pacific coastal waters to a distance of three miles seaward between Cape Spencer in the south and Sea Otter Creek, north of Cape Fairweather. The inclusion of substantial tracts of marine waters within the boundaries of the monument, and present-day park, presents unique opportunities for the study and preservation of marine flora and fauna, in an unimpaired state.

Glacier Bay National Monument was redesignated as Glacier Bay National Park in 1980 by the Alaska National Interest Lands Conservation Act (ANILCA). The new park included all lands and waters of the previously existing monument, plus additional land areas. 94 Stat. 2382. The legislative history of ANILCA provides that certain NPS units in Alaska including Glacier Bay National Park "* * * are intended to be large sanctuaries where fish and wildlife may roam freely, developing their social structures and evolving over long periods of time as nearly as possible without the changes that extensive human activities would cause." Sen. Rep. No. 96-413, 96th Cong., 1st Sess. 137 (1979); and, Cong. Rec. H 10532 (Nov. 12, 1980).

The management of the previous Glacier Bay National Monument, and current Glacier Bay National Park, is governed by the original monument proclamations and the NPS Organic Act and its amendments. The NPS Organic Act of 1916 directs the Secretary of the Interior and the NPS to manage national parks and monuments to "conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." 16 U.S.C. 1. The Organic Act also grants the Secretary the authority to implement "rules and regulations as he may deem necessary or proper for the use and management of the parks, monuments and reservations under the jurisdiction of the National Park Service." 16 U.S.C. 3. In addiiton, the Redwood National Park Act of 1978 states: "The authorization of activities shall be construed and the protection, management and administration of" NPS areas "shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress." 92 Stat. 166.

Commercial Fishing

The marine waters of Glacier Bay National Park have been fished commercially since prior to the monument's existence. Commercial fishing continued under Federal regulation after the proclamation of the area as a national monument in 1925 and its subsequent enlargement in 1939.

Under the Act of June 6, 1934, 43 Stat. 464, the Secretary of Commerce was authorized to "set apart and reserve fishing areas in any of the waters of Alaska * * * and within such areas * * * establish closed seasons during which fishing may be limited or prohibited * * *." The first Alaska Fishery Regulations of the Bureau of Fisheries, promulgated between 1937 and 1939, addressed fisheries of an area designated as the Icy Strait district including Glacier Bay National Monument. See 2 FR 305 (February 12, 1937); and 4 FR 927 (February 15, 1939). Those regulations, and regulations of the United States Fish and Wildlife Service (USFWS) enacted between 1941 and 1959 specifically addressed allowances for, and restrictions on, commercial fisheries in areas within the boundaries of Glacier Bay National Monument. See 6 FR 1252 (March 4, 1941), 50 CFR part 222; 16 FR 2158 (1951), 50 CFR part 117; 24 FR 2053 et seq. (March 19, 1959), 50 CFR part 115.

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Early NPS fishing regulations prohibited any type of fishing "with nets, seines, traps, or by the use of drugs or explosives, or for merchandise or profit, or in any other way than with hook and line, the rod or line being held in the hand * * *." 6 FR 1627 (March 26, 1941), 36 CFR 2.4. However, in conjunction with the previously mentioned USFWS regulations, the 1941 NPS regulations also stated: "commercial fishing in the waters of Fort Jefferson and Glacier Bay National Monuments is permitted under special regulations." *Id.* NPS regulations continued to reference allowance of commercial fishing in Glacier Bay National Monument through 1966 in accordance with special regulations approved by the Secretary of the Interior. See 20 FR 618 (1955), 36 CFR 1.4; and, 27 FR 6261 (July 3, 1962).

In 1966 NPS regulations were revised. The fishing regulations were revised in such a way, that unlike the earlier versions, they only specifically prohibited fishing for "merchandise or profit" in fresh waters of NPS areas. 31 FR 16653 (Dec. 29, 1966), 36 CFR 2.13(j)(2). Nevertheless, all unauthorized commercial activities, including commercial fishing, in all National Park System areas were generally prohibited by 36 CFR 5.3. at that time. See 31 FR 16661 (Dec. 29, 1966). In contrast to earlier NPS regulations, the 1966 regulations did not contain any special authorization for commercial fishing in Glacier Bay National Monument.

Provisions of the Alaska National Interest Lands Conservation Act (ANILCA), enacted in 1980, redesignated Glacier Bay National Monument as Glacier Bay National Park, and designated certain areas of the Park as wilderness. See 94 Stat 2371, sections 202 and 701. Commercial activities, other than those related to recreational and wilderness purposes, are prohibited by the Wilderness Act of 1964. 78 Stat. 892, section 4(c). Consequently, all commercial fishing was prohibited by statute in waters within designated wilderness in Glacier Bay National Park as of 1980. Marine waters within designated wilderness areas include upper Dundas Bay, Adams Inlet, Rendu Inlet, the Hugh Miller Inlet complex, and waters in and around the Beardslee Islands.

Where commercial fishing activities were intended to continue, ANILCA made specific provision for such activities, as in the case of the Dry Bay area of Glacier Bay National Preserve, the Malaspina Forelands area of Wrangell-St. Elias National Park and Preserve, and Cape Krusenstern National Monument. See 94 Stat. 2371, section 205. No such provision was made for Glacier Bay National Park.

Due to the consumptive nature of commercial fishing, NPS "Management Policies" in effect in 1983 stated: "Commercial fishing is permitted only where authorized by law." (1978). In addition, in 1978 the Department of the Interior directed USFWS to convene an Ad Hoc Fisheries Task Force to review NPS fisheries management. The NPS made the Task Force report available for public comments through publication in the **Federal Register** on February 25, 1980. 45 FR 12304. The Task Force concluded that the extraction of fish for commercial purposes was a nonconforming use of park resources which should be phased out.

A revision of general NPS regulations in 1983 included a prohibition on commercial fishing throughout marine and fresh waters of park areas systemwide. See 48 FR 30252 (June 30, 1983). The resultant, and current, commercial fishing regulation reads:

> (d) The following are prohibited: * * *
> (4) Commercial fishing, except where specifically authorized by Federal statutory law.

Id. at 30283; see also, 36 CFR 2.3(d)(4). Current NPS "Management Policies" reiterate previous policy statements and the 1983 regulation, and state: "Commercial fishing will be allowed only where specifically authorized by Federal law or treaty right." (1988).

Despite the 1983 servicewide prohibition on commercial fishing, amended Glacier Bay whale protection regulations issued in 1985 acknowledge commercial fishing operations in Glacier Bay proper. 36 CFR 13.65(b). The park's General Management Plan issued in 1984 is also inconsistent with the servicewide prohibition. It states:

> Traditional commercial fishing practices will continue to be allowed throughout most park and preserve waters. However, no new (nontraditional) fishery will be allowed by the National Park Service. Halibut and salmon fishing and crabbing will not be prohibited by the Park Service.
>
> Commercial fishing will be prohibited in wilderness waters in accordance with ANILCA and the Wilderness Act.

GMP at p. 51. "Traditional commercial fishing practices" is further clarified to include: "trolling, long lining and pot fishing for crab, and seining (Excursion Inlet only) in park waters * * *." *Id.* In addition, the Wilderness Final Environmental Impact Statement issued in 1988 makes reference to the continuance of commercial fishing in waters of the park outside of designated wilderness.

Proposed Action on Commercial Fishing

The NPS participated in public meetings on these issues held by the Citizens Advisory Commission on Federal Areas of the State of Alaska, during March 1990, in Juneau, Hoonah, Pelican, Gustavus, and Yakutat, Alaska. Based upon an internal review and public input, the NPS has determined that the equitable solution to resolving contradictions among nationwide regulations and service policies, and regionally originated regulations and management plans is to propose this rulemaking.

As an equitable approach to that end, the proposed regulations set up a specific exception to the servicewide prohibition on commercial fishing, allowing the continuance of commercial fishing by traditional methods previously identified in the GLBA GMP for a period of seven years. This will allow an adequate amount of time for commercial fishermen to amortize their equipment and/or adjust their operations to areas outside of park boundaries.

In addition, during this seven year period and depending upon availability of funding, the NPS will continue, and initiate, studies and research regarding fisheries within GLBA and the relationship of those fisheries to: Marine and terrestrial ecosystems preserved in the park; the scientific values of ecosystems and resources preserved in the park; and, other park purposes including visitor enjoyment. In the event that data from such studies assuredly indicate that certain levels and/or types of commercial fishing can compatibly coexist with conserving park resources in an unimpaired state, then the NPS may consider regulatory adjustments to allow for closely monitored commercial fisheries to continue at prescribed levels beyond the presently proposed interim allowance period. Such research is proposed to be conducted by the NPS and contracted entities, with the cooperation of other Federal agencies and the State of Alaska. Research projects may require closures of specific portions of the park's marine waters for comparative purposes.

The intended effect of these regulatory changes will be to enhance the protection of park resources in an unimpaired state in accordance with the NPS Organic Act and its amendments, and protect wilderness values as mandated by the Wilderness Act. In conjunction with fulfilling the mandates of Congress, the goal of conserving the marine ecosystem of GLBA in an unimpaired state, will protect an

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ecological model against which, marine related activities in other areas may be measured.

Other Fishing Activities

In 1989 and 1990, the Alaska Department of Fish and Game specified areas within GLBA as open under "subsistence" salmon fishing permits. Subsistence salmon fishing activities in GLBA were not explicitly authorized until the 1989 State action. Unlike commercial fishing, these locationally distinct fishing uses are not currently existing or continuing.

ANILCA does not authorize subsistence use of GLBA. Section 203 provides that: "Subsistence uses by local residents shall be allowed in national preserves and, where specifically permitted by this Act, in national monuments and parks." 94 Stat. 2383. Subsistence uses are not specifically permitted in section 202(1) of ANILCA, which established GLBA, whereas other sections establishing other national parks do intentionally contain language specifically permitting subsistence uses.

The legislative history of ANILCA clarifies that the lack of a subsistence provision for GLBA was deliberate and not merely an oversight. The Senate Committee on Energy and Natural Resources Report on Alaska National Interest Lands clearly stated: "Subsistence uses will be allowed within the preserve, but not in the park." Senate Report No. 96–413, 1979 VI. Committee Amendments, Title II—National Park System, Section 202(1): Glacier Bay National Park and National Preserve. In addition, the Congressional Record documents similar comments from the House of Representatives which state: "Subsistence uses * * * are not allowed in the park." and "Subsistence uses * * * are allowed in the preserve in accordance with the provisions of this Act." Congressional Record, House of Representatives, November 12, 1980, H 10539.

Accordingly, temporary regulations related to the Federal assumption of subsistence management responsibilities on Federal public lands pursuant to title VIII of ANILCA and promulgated on July 1, 1990, include a prohibition on subsistence uses in Glacier Bay National Park, as well as other similarly situation NPS areas. See 50 CFR 100.3. Any other Alaska native subsistence type fishing "rights," asserted on the basis of aboriginal use were also clearly eliminated by the Alaska Native Claims Settlement Act of 1971 (ANCSA). 43 U.S.C. 1601, et. seq. Congressional intent to preclude subsistence uses of Glacier Bay National Park, including subsistence fishing use, is clear.

Proposed Action on Other Fishing Activities

The proposed regulations effectuate the statutory preclusion of subsistence uses of Glacier Bay National Park by specifically prohibiting such uses.

The proposed regulation limits all non-commercial fishing to sport methods. Allowances for traditional sportfishing activities mandated in Alaska's national parks by ANILCA, and supported by NPS policy, will be unaffected. As provided in ANILCA, "sport fishing shall be authorized in such areas [all national parks and monuments in Alaska] by the Secretary and carried out in accordance with the requirements of this title and other applicable laws of the United States and the State of Alaska." 94 Stat. 2371, section 816(a).

Public Comments and Hearings

It is the policy of the Department of the Interior, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding the proposed regulations to the address noted at the beginning of this rulemaking. In addition, as previously mentioned, the NPS will schedule public hearings on this proposed rulemaking, to be announced through separate **Federal Register** publication.

Drafting Information

The primary author of this regulation is the Subsistence Division, Alaska Regional Office, National Park Service.

Paperwork Reduction Act

The collections of information for the special park use permit contained in paragraph (c) have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024–0026. The information is being collected to allow the superintendent to issue permits to allow commercial fishing vessels to enter park waters until December 31, 1997. Response is required to obtain a benefit in accordance with 16 U.S.C. 3. Public reporting burden for the collection of information for the special use permit is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Information Collection Officer, National Park Service, 1100 L. Street, NW., Washington, DC 20013; and the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Compliance With Other Laws

The National Park Service has determined that this document is not a "major rule" under Executive Order 12291 (February 19, 1991), 46 FR 13193. In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the NPS has determined that the regulations proposed in this proposed rulemaking will not have a significant economic effect on a substantial number of small entities, nor does it require a preparation of a regulatory analysis.

The NPS has reviewed this rule as directed by E.O. 12360, "Government Actions and Interference with Constitutionally Protected Property Rights", to determine if this rule has "policies that have taking implications." The NPS has determined that this rule does not have takings implications because it allows an activity (commercial fishing) currently prohibited by NPS regulations to continue for a period of seven years, and implements legislation to prohibit subsistence uses.

Pursuant to the National Environmental Policy Act, 42 U.S.C. 4332, the Service prepared an environmental assessment on these proposed regulations which led to a finding of No Significant Impact.

List of Subjects in 36 CFR Part 13

Alaska, National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, it is proposed to amend 36 CFR chapter 1 as follows:

PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

1. The authority citation for part 13 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 462(k), 3101 *et seq.*; 13.65(b) also issued under 16 U.S.C. 1361, 1531.

§ 13.65 [Amended]

2. Section 13.65 is amended by adding paragraphs (a) and (c) to read as follows:

(a) *Subsistence.* Subsistence uses are prohibited in, and the provisions of

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subpart B of this part shall r
Glacier Bay National Park.

* * * * *

(c) *Fishing.* Except as prov
section, or in § 2.3 of this ch
fishing shall be done in acco
applicable State and Federa
regulations, including State
requirements, and such non
laws and regulations are ad
part of these regulations.

(1) *Commercial fishing.* C
fishing in salt waters of Gla
National Park is hereby per
exempted from the commerc
prohibition contained in § 2
December 31, 1997, subject t
following provisions:

(i) Fishing by other than t
methods is prohibited: trolli
lining for halibut; seining in
Inlet only; and, pot fishing f

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estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Information Collection Officer, National Park Service, 1100 L. Street, NW., Washington, DC 20013; and the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Compliance With Other Laws

The National Park Service has determined that this document is not a "major rule" under Executive Order 12291 (February 19, 1991), 46 FR 13193. In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the NPS has determined that the regulations proposed in this proposed rulemaking will not have a significant economic effect on a substantial number of small entities, nor does it require a preparation of a regulatory analysis.

The NPS has reviewed this rule as directed by E.O. 12360, "Government Actions and Interference with Constitutionally Protected Property Rights", to determine if this rule has "policies that have taking implications." The NPS has determined that this rule does not have takings implications because it allows an activity (commercial fishing) currently prohibited by NPS regulations to continue for a period of seven years, and implements legislation to prohibit subsistence uses.

Pursuant to the National Environmental Policy Act, 42 U.S.C. 4332, the Service prepared an environmental assessment on these proposed regulations which led to a finding of No Significant Impact.

List of Subjects in 36 CFR Part 13

Alaska, National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, it is proposed to amend 36 CFR chapter 1 as follows:

PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

1. The authority citation for part 13 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 462(k), 3101 *et seq.;* 13.65(b) also issued under 16 U.S.C. 1361, 1531.

§ 13.65 [Amended]

2. Section 13.65 is amended by adding paragraphs (a) and (c) to read as follows:

(a) *Subsistence.* Subsistence uses are prohibited in, and the provisions of

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subpart B of this part shall not apply to, Glacier Bay National Park.

* * * * *

(c) *Fishing.* Except as provided in this section, or in § 2.3 of this chapter, all fishing shall be done in accordance with applicable State and Federal laws and regulations, including State license requirements, and such non-conflicting laws and regulations are adopted as a part of these regulations.

(1) *Commercial fishing.* Commercial fishing in salt waters of Glacier Bay National Park is hereby permitted and exempted from the commercial fishing prohibition contained in § 2.3(d)(4) until December 31, 1997, subject to the following provisions:

(i) Fishing by other than the following methods is prohibited: trolling; long lining for halibut; seining in Excursion Inlet only; and, pot fishing for crab.

(ii) Commercial fishing without an annual nonfee special use permit issued by the Superintendent is prohibited. The potential entry permit requirements of § 13.65(b)(3)(iii) are separate and supplemental to special use fishing permits required by this paragraph.

(iii) No commercial fishing gear shall be left unattended for more than fourteen (14) consecutive days.

(iv) Commercial fishing within designated wilderness areas is prohibited. Maps showing designated wilderness areas are available from the Superintendent.

(v) Restrictions contained in § 13.65(c)(2) shall not apply to commercial fishing operations authorized herein.

(2) *Non-commercial fishing.* Fishing in fresh and salt waters other than by a hook and line, with the rod or line being closely attended; or by the following excepted methods in salt waters, is prohibited:

(i) Shrimp may be taken by pots and ring nets.

(ii) Crabs may be taken by pots, ring nets, diving gear, dip nets, and hooked or hookless hand lines.

(iii) Clams may be taken by rakes, shovels, and manually operated clam guns.

(iv) Other shellfish may be taken by pots, ring nets, diving gear, dip nets, hooked or hookless hand lines, rakes, shovels, and manually operated clam guns.

Dated: May 1, 1991.

Scott Sewell,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 91–18515 Filed 8–2–91; 8:45 am]

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CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $620.00 domestic, $155.00 additional for foreign mailing.

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1990. The CFR volume issued January 1, 1987, should be retained.

[3] No amendments to this volume were promulgated during the period Apr. 1, 1989 to Mar. 31, 1990. The CFR volume issued April 1, 1989, should be retained.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1991. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1989 to June 30, 1990. The CFR volume issued July 1, 1989, should be retained.

[6] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[7] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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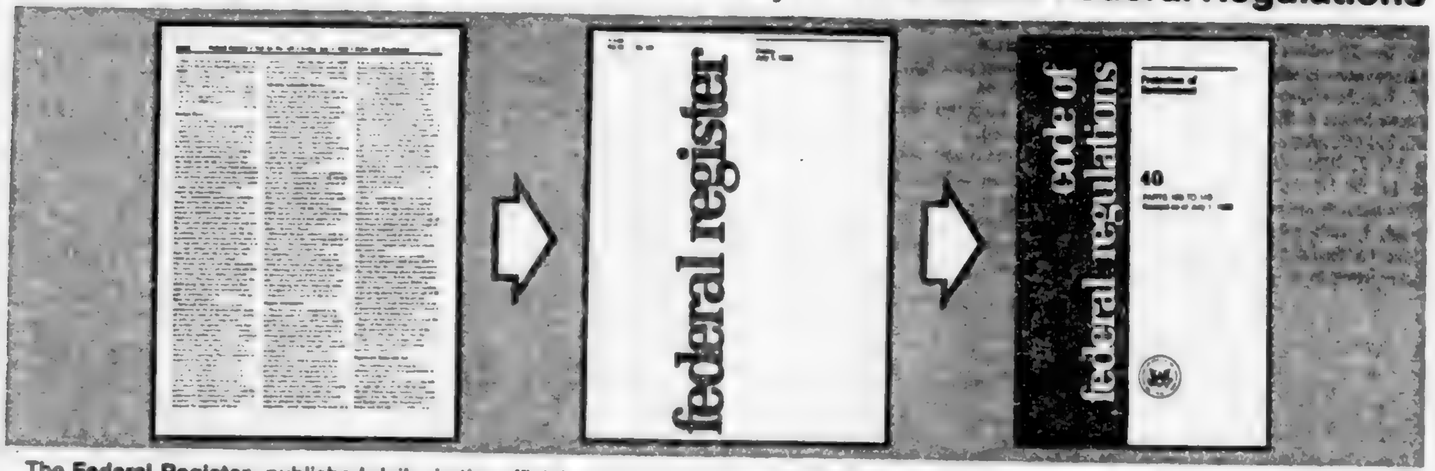

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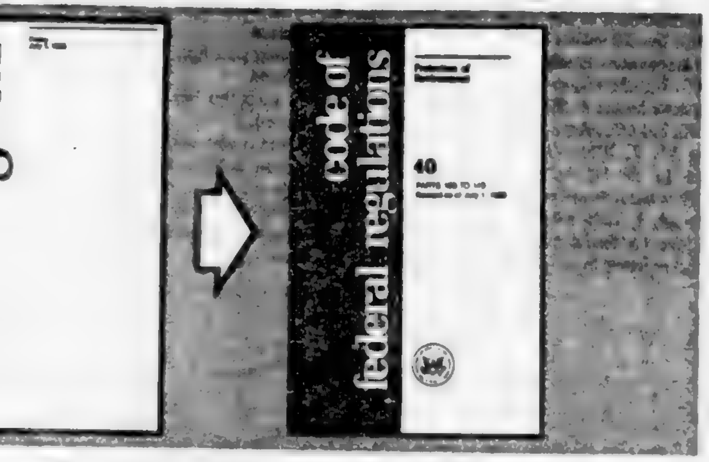

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Rules and Regu

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published under 50 titles pursuant
U.S.C. 1510.
The Code of Federal Regulations
by the Superintendent of Docume
Prices of new books are listed i
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DEPARTMENT OF AGRICULTU

Rural Electrification Administra

7 CFR Part 1786

RIN 0572-AA53

Discounted Prepayments on RI
Notes in the Event of a Merger
Certain REA Electric Borrower

AGENCY: Rural Electrification
Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrificat
Administration (REA) hereby am
CFR chapter XVII part 1786, Dis
Prepayments on REA Notes, by a
new subpart E, Discounted Prep
on REA Notes in the Event of a M
of Certain REA Electric Borrowe
addition to part 1786 establishes
and procedures to implement the
provisions of 306B of the Rural
Electrification Act of 1936 (7 U.S
et seq.) ("Act"). Section 306B(b)
authorizes the Administrator of
permit certain borrowers to prep
loans made under the Act at the
of the outstanding principal bala
on the loan or the loan's present
discounted from the face value a
maturity at a rate set by the
Administrator. These borrowers
appendix A) are defined as elect
organizations resulting from a m
consolidation between a borrowe
an organization which, prior to C
1, 1987, prepaid its direct or insu
loans pursuant to section 306B(a
CFR part 1786, subpart C, Specia
Discounted Prepayments on REA
Direct/Insured Loans). Prepayme
a borrower hereunder shall be m
later than one year after the effe
date of the merger, consolidation
other transaction. This regulation
provides a formula for computing
amount which the borrower mus

Rules and Regulations

Federal Register
Vol. 56, No. 151
Tuesday, August 6, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1786

RIN 0572-AA53

Discounted Prepayments on REA Notes in the Event of a Merger of Certain REA Electric Borrowers

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby amends 7 CFR chapter XVII part 1786, Discounted Prepayments on REA Notes, by adding a new subpart E, Discounted Prepayments on REA Notes in the Event of a Merger of Certain REA Electric Borrowers. The addition to part 1786 establishes policies and procedures to implement the provisions of 306B of the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*) ("Act"). Section 306B(b) authorizes the Administrator of REA to permit certain borrowers to prepay loans made under the Act at the lesser of the outstanding principal balance due on the loan or the loan's present value discounted from the face value at maturity at a rate set by the Administrator. These borrowers (See appendix A) are defined as electrical organizations resulting from a merger or consolidation between a borrower and an organization which, prior to October 1, 1987, prepaid its direct or insured loans pursuant to section 306B(a) (See 7 CFR part 1786, subpart C, Special Discounted Prepayments on REA Direct/Insured Loans). Prepayments by a borrower hereunder shall be made not later than one year after the effective date of the merger, consolidation, or other transaction. This regulation provides a formula for computing the amount which the borrower must pay and establishes certain other requirements which borrowers must meet in order to prepay loans.

DATES: *Effective date:* August 6, 1991.

REA will accept prepayment applications as of August 6, 1991.

ADDRESSES: Applications may be submitted to Finance and Management Staff, U.S. Department of Agriculture, Rural Electrification Administration, 14th and Independence Avenue SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: David J. Lessels, Acting Chief, Finance and Management Staff, (202) 382-0094.

SUPPLEMENTARY INFORMATION: Pursuant to the RE Act (the Act), REA hereby amends 7 CFR chapter XVII part 1786 by adding subpart E concerning discounted prepayments on REA notes. This final action has been reviewed in accordance with Executive Order 12291, Federal Regulation. This action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; (3) result in significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets and therefore has been determined to be "non-major". This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environment Policy Act of 1969 (42 U.S.C. 432 *et seq.* (1976)), and therefore, does not require an environmental impact statement or environment assessment. This program is listed in the Catalog of Federal Domestic Assistance under No. 10.850, Rural Electric Loans and Guarantees. For the reasons set forth in the Final Rule and related Notice to 7 CFR part 3015, subpart V (50 FR 47034, November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

The information collection and recordkeeping requirements contained in this final rule have been approved by the Office of Management and Budget (OMB) under control number 0572-0092 in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Comments regarding these requirements should be directed to the Office of Management and Budget, Information and Regulatory Affairs, Attention: Desk Officer for USDA, room 3201, NEOB, Washington, DC 20503.

Background

REA provides long-term low interest rate loans to eligible borrowers for the purpose of furnishing and improving electric and telephone service in rural areas. The notes evidencing such loans bear interest at either two or five percent. The notes, as well as the proceeds from the sale, assignment or prepayment of the notes are assets of the Rural Electrification and Telephone Revolving Fund ("Fund") to be used for such purposes as are permitted by the Act. Section 2367 of Public Law 101-624, enacted November 28, 1990, amended the Act by adding section 306B(b) which provides that an REA loan may be prepaid by certain electric borrowers at the lesser of the outstanding principal balance due on such loan or the loan's present value discounted from the face value at maturity at a rate set by the Administrator (Discounted Present Value). These borrowers are defined as electrical organizations resulting from a merger or consolidation between a borrower and an organization which, prior to October 1, 1987, prepaid its direct or insured loans pursuant to section 306B(a). There were 29 electric borrowers that prepaid their direct and/or insured loans under section 306B(a), and these borrowers are listed in appendix A to subpart E.

This regulation will implement section 306B(b), establishing terms and conditions of prepayment. The formula to determine the Discounted Present Value of the notes uses, as the discount rate, the current cost of funds to the U.S. Treasury. This rate will be based on market yields and estimated for comparable maturities. Among the terms and conditions of prepayment are the following:

(a) The borrower must be current on all payments due on its outstanding REA Notes and all other payment obligations owed to REA.

(b) The borrower must agree to prepay all of its outstanding REA Notes.

(c) The borrower must identify the source of financing that will be used to refinance its outstanding REA notes. The borrower must certify in writing whether the financing will be tax exempt; and, if so, shall furnish all information on the financing sufficient to enable REA to adjust the discount to the equivalent to fully taxable financing.

(d) The borrower must have expended all funds advanced on account of the REA Notes for the purposes for which such funds were advanced or have repaid REA for all unexpended funds.

(e) The borrower must agree to a rescission of the unadvanced balance of the REA Notes, outstanding as of the date of its application for prepayment.

(f) The borrower must agree that the borrower, its successors and assigns, shall pay to the Government, as a condition of receiving additional loans or loan guarantees pursuant to titles I and III of the Act, an amount equal to the aggregate of the difference with respect to each of the REA Notes between (1) the amount outstanding on the REA Note and (2) the Discounted Present Value of the prepaid REA Note; with interest accruing quarterly. The interest rates shall be the rates provided in the respective REA Notes.

(g) If the borrower is a party to a wholesale power contract with a power supplier financed pursuant to the Act, the borrower must provide the Administrator with such assurances as the Administrator may request that it will meet its obligations to the power supplier.

Comments

In the proposed rule, published on May 2, 1991 (56 FR 20147), REA invited interested parties to file comments on or before June 3, 1991. Pennsylvania Rural Electric Association was the only respondent. The comments were considered, and minor language changes were made in the text. It was suggested that REA "require that a borrower requesting to prepay pursuant to this part, prepay at par value any REA loan funds advanced after November 28, 1990, the date of enactment of section 2387 of Public Law 101–624." The Agency does not view itself as having the discretion to require such prepayment at par value under section 306B, assuming the borrower otherwise qualifies under subpart E.

Effective Date

Pursuant to 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this final rule for 30 days after publication in the Federal Register. If the effective date were so postponed, REA believes that one or more borrowers could be precluded from making the prepayments otherwise authorized by section 306B(b) of the Rural Electrification Act of 1936, as amended. This would occur if the regulations were to become effective later than one year after the effective date of a particular borrower's merger. Section 306B(b) provides that "Prepayments by a borrower hereunder shall be made not later than one year after the merger, consolidation, or other transaction." REA also believes that making this regulation effective immediately will not be prejudicial to borrowers' interests in any way.

List of Subjects in 7 CFR Part 1786

Electric power, Federal financing bank, Loan programs—communication, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas, Telephone.

For the reasons set out in the preamble, REA hereby amends 7 CFR chapter XVII, part 1786 as follows:

1. The authority citation for part 1786 is added to read as follows:

Authority: 7 U.S.C. 901–950b; title I, subtitle B, Pub. L. 99–509; Pub. L. 101–624, 104 Stat. 4051:; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23, delegation of authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72.

Subpart D—REA Privatization Demonstration Prepayment Program for the State of Alaska

2. Subpart D is amended by adding and reserving §§ 1786.87–1786.94.

3. A new subpart E is added to part 1786 to read as follows:

Subpart E—Discounted Prepayments on REA Notes in the Event of a Merger of Certain REA Electric Borrowers

Sec.

1786.95 Purpose.
1786.96 Definitions.
1786.97 Prepayment.
1786.98 Discounted present value.
1786.99 Eligibility criteria.
1786.100 Application procedure.
1786.101 Approval of application.
1786.102 Prepayment agreement.
1786.103 Security.
1786.104 Loan fund audit.
1786.105 Closing.
1786.106 Other prepayments.
Appendix A to Subpart E of Part 1786—Listing of Eligible Borrowers
Appendix B to Subpart E of Part 1786—Federal Reserve Statistical Release

Subpart E—Discounted Prepayments on REA Notes in the Event of a Merger of Certain REA Electric Borrowers

§ 1786.95 Purpose.

This subpart sets forth the policies and procedures of REA whereby certain electric borrowers may prepay outstanding REA Notes at the Discounted Present Value of the REA Notes with private financing.

§ 1786.96 Definitions.

As used in this subpart:

Act means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 et *seq.)*.

Administrator means the Administrator of REA.

Consolidation means:

(1) The combination, pursuant to state law, of two or more borrower or nonborrower organizations into a new successor organization that takes over the assets and assumes the liabilities of those organizations; or

(2) Any other transaction including an acquisition which has substantially the same effect.

Discounted Present Value shall have the meaning specified in § 1786.98.

Fund means the Rural Electrification and Telephone Revolving Fund pursuant to the Act.

Merger means:

(1) The combination, pursuant to state law, of two or more borrower or nonborrower organizations into an existing survivor organization that takes over the assets and assumes the liabilities of the merged organizations; or

(2) Any other transaction including an acquisition which has substantially the same effect.

REA means the Rural Electrification Administration, an agency of the United States Department of Agriculture.

REA Loan Agreement means the agreement between the borrower and REA providing for loans pursuant to the Act.

REA Notes means those notes, bonds or other obligations evidencing indebtedness created by loans made or guaranteed by REA pursuant to titles I and III of the Act (7 U.S.C. 901–940).

§ 1786.97 Prepayment.

There were 29 former REA electric borrowers that prepaid their direct or insured loans under section 306B(a) of the Act prior to October 1, 1987. (See

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Appendix A to Subpart E of Part 1786—Listing of Eligible Borrowers

Appendix B to Subpart E of Part 1786—Federal Reserve Statistical Release

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(1) The combination, pursuant to state law, of two or more borrower or nonborrower organizations into a new successor organization that takes over the assets and assumes the liabilities of those organizations; or

(2) Any other transaction including an acquisition which has substantially the same effect.

Discounted Present Value shall have the meaning specified in § 1786.98.

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Merger means:

(1) The combination, pursuant to state law, of two or more borrower or nonborrower organizations into an existing survivor organization that takes over the assets and assumes the liabilities of the merged organizations; or

(2) Any other transaction including an acquisition which has substantially the same effect.

REA means the Rural Electrification Administration, an agency of the United States Department of Agriculture.

REA Loan Agreement means the agreement between the borrower and REA providing for loans pursuant to the Act.

REA Notes means those notes, bonds or other obligations evidencing indebtedness created by loans made or guaranteed by REA pursuant to titles I and III of the Act (7 U.S.C. 901–940).

§ 1786.97 Prepayment.

There were 29 former REA electric borrowers that prepaid their direct or insured loans under section 306B(a) of the Act prior to October 1, 1987. (See subpart C of this part.) These borrowers are listed in appendix A to subpart E of this part. Any REA electric borrower which is the result of a merger or consolidation involving any of these 29 former borrowers and a borrower with outstanding Notes may, after meeting all requirements of this subpart, prepay all outstanding REA Notes issued or assumed by the borrower upon paying the lesser of the outstanding balance or the Discounted Present Value. Such prepayment must be made not later than one year after the effective date of the merger or consolidation.

§ 1786.98 Discounted present value.

(a) The Discounted Present Value shall be calculated by REA before prepayment is made by summing the present values of all remaining payments on all outstanding notes according to the following formula to compute the discounted present value of each note and adjusting as here and after provided for tax exempt financing.

$$\text{Present value} = \sum_{k=1}^{n} \frac{P_k}{\prod_{i=1}^{k} \left[1.0 + \left(\frac{D1_i}{365} + \frac{D2_i}{366}\right) \times I\right]}$$

Where:

P_k = Total payment, including interest, due on the kth payment date following the prepayment date.

n = Total number of remaining payment dates.

I = The discount rate applied to each transaction will be ascertained by using data specified in the "Federal Reserve Statistical Release" which is published each Monday. (See Appendix B to Subpart E of this Part.) The specific discount rate will be the discount rate(s) specified in the "Treasury Constant Maturities" section of this publication eight working days prior to the closing. In applying the discount rate, the 1-year Treasury rate will be used for all notes with a remaining term of less than 2 years; the 2-year Treasury rate for notes with maturities between 2 and 3 years; the 3-year Treasury rate for all notes with maturities between 5 and 7 years; the 7-year Treasury rate for all notes with maturities between 7 and 10 years; the 10-year Treasury rate for all notes with maturities between 10 and 30 years; and the 30-year Treasury rate for all notes with maturities longer than 30 years.

$D1_i$ = Number of days in the ith payment period that are in a non-leap year (365 day year).

$D2_i$ = Number of days in the ith payment period that are in a leap year (366 day year).

(b) Notwithstanding paragraph (a) of this section, in the event that the borrower shall elect to prepay using tax exempt financing, the calculation of the Discounted Present Value shall be adjusted to make the discount the equivalent of fully taxable financing.

§ 1786.99 Eligibility criteria.

To be eligible to prepay REA Notes at the Discounted Present Value, a borrower must comply with the following criteria:

(a) The borrower must be current on all payments due on its outstanding REA Notes and all other payment obligations owed to REA;

(b) The borrower must agree to prepay all of its outstanding REA Notes;

(c) The borrower must identify the source of financing that will be used directly or indirectly to refinance its outstanding REA Notes. The borrower must certify in writing whether such financing will be tax exempt and, if so, shall furnish all information on the financing as REA may request to enable REA to adjust the discount to the equivalent of fully taxable financing;

(d) The borrower must have expended all funds advanced on account of the REA Notes for the purposes for which such funds were advanced or repaid REA for all unexpended funds;

(e) The borrower must agree to a rescission of the unadvanced balance of any REA Notes outstanding as of the date of its application for prepayment;

(f) The borrower must agree that the borrower, its successors and assigns, shall pay to the Government, as a condition of receiving additional loans or loan guarantees pursuant to titles I and III of the Act, an amount equal to the aggregate of the difference with respect to each of the REA Notes between the amount outstanding on the REA Note and the Discounted Present Value of the REA Note upon prepayment with interest accruing quarterly; the interest rates shall be the rates provided in the respective Notes; and

(g) If the borrower is a party to a wholesale power contract with a power supplier financed pursuant to the Act, the borrower must provide the Administrator with such assurances as the Administrator may request that it will meet its obligations to the power supplier. The borrower must also specifically agree to the following limitation: The borrower agrees that, for so long as the Wholesale Power Contract shall be in effect between the borrower and the power supplier, the borrower will not, without the approval in writing of the power supplier and the Administrator, take or suffer to be taken any steps for reorganization or to consolidate with or merge into any corporation or any other public power district, or to sell, lease or transfer (or make any agreement therefor) all or a substantial portion of its assets, whether now owned or hereafter acquired. Notwithstanding the foregoing, the borrower may take or suffer to be taken any steps for reorganization or to consolidate with or merge into any corporation or any other public power district, or to sell, lease or transfer (or make any agreement therefor) all or a substantial portion of its assets, whether now owned or hereafter acquired, so long as the borrower shall pay such portion of the outstanding indebtedness evidenced by the power supplier's Notes at the time outstanding as shall be determined by the power supplier with the prior written consent of the Administrator and shall otherwise comply with such reasonable terms and conditions as the Administrator and the Power Supplier shall require.

§ 1786.100 Application procedure.

Any borrower seeking to prepay its REA Notes under this Subpart should apply to the appropriate REA Area Director not less than 60 days prior to one year after the effective date of the merger or consolidation by submitting:

(a) A board resolution that:

(1) Requests approval of the prepayment of the borrower's outstanding REA Notes;

(2) States the intent of the borrower to comply with all eligibility criteria set forth in § 1786.99 of this subpart; and

(3) Identifies the source of financing.

(b) A list of all REA Notes together with the outstanding amount on such notes.

(c) An opinion of counsel as to the effective date of the merger or consolidation.

(d) Such additional information as the Administrator will request.

§ 1786.101 Approval of application.

The applications will be reviewed and, if satisfactory, approved. Closing will be scheduled upon approval.

§ 1786.102 Prepayment agreement.

Upon approving an application for prepayment under this subpart, the Administrator shall notify the borrower and deliver to the borrower for its execution a prepayment agreement which shall set forth and provide:

(a) The REA Notes to be prepaid and when the Discounted Present Value will be calculated.

(b) The place, date and conditions for closing.

(c) Agreement that the unadvanced balance of REA Notes shall be rescinded.

(d) Agreement that the borrower, or its successors or assigns, shall pay to the Government, as a condition of receiving additional loans or loan guarantees pursuant to titles I and III of the Act, an amount equal to the aggregate of the difference with respect to each of the REA Notes between the amount outstanding on the REA Note and the Discounted Present Value of the prepaid REA Note; with interest accruing quarterly. The interest rates shall be the rates provided in the respective REA Notes.

(e) Assurances that the borrower will meet its obligations to any power supplier financed pursuant to the Act.

(f) Such other terms and conditions as the Administrator deems appropriate.

§ 1786.103 Security.

If, after prepayment of REA Notes, the Government should continue to hold liens on the borrower's property, the Administrator of REA will consider a request for the accommodation of such liens for the purpose of providing security for loans the proceeds of which were used to prepay REA Notes. Such lien accommodations shall be limited in amount to the Discounted Present Value of the REA Notes plus such costs, as the Administrator shall determine to be reasonable, incurred by the borrower in obtaining such loans.

§ 1786.104 Loan fund audit.

REA shall have the right to audit within 6 months of closing, transactions involving the REA construction fund established and maintained by the borrower pursuant to the terms of the REA Loan Agreement and to inspect all books, records, accounts and other documents and papers of the borrower. Should REA determine that the borrower has made disbursements of funds advanced pursuant to REA Notes which do not comply with the requirements of the REA Loan Agreement, the borrower shall be required to pay the Government an amount equal to the difference between the amount which the borrower prepaid on such REA Notes evidencing REA loans funds which were improperly disbursed and the amount which the borrower would otherwise have been required to return to the Government as a result of noncompliance if the borrower had not prepaid such REA Notes. (See 7 CFR part 1721, Post-Loan Policies and Procedures for Insured Electric Loans.)

§ 1786.105 Closing.

(a) The borrower shall be responsible for obtaining all approvals necessary to consummate the transaction as required by the prepayment agreement, including such approvals as may be required by regulatory bodies and other lenders.

(b) The REA Notes shall be prepaid at a closing to be held in accordance with the prepayment agreement. REA shall designate the date of closing which in no event shall be later than one year after the effective date of the merger or consolidation. At closing, in addition to paying all current interest due on the date of prepayment, a borrower shall prepay the REA Notes by paying to the Government an amount equal to the lesser of the outstanding balance or the Discounted Present Value of the REA Notes. The closing shall otherwise be conducted as prescribed in the prepayment agreement.

§ 1786.106 Other prepayments.

REA loan documentation generally permits borrowers to prepay REA Notes by paying the outstanding balance due thereon. Nothing in this subpart shall prohibit any borrower from prepaying its outstanding REA Notes in accordance with the terms thereof. The provisions of this subpart shall not be applicable to such prepayment.

Appendix A to Subpart E of Part 1786—Listing of Eligible Borrowers

State	Borrower name and address
Colorado	Colorado-Ute Electric Assn., Inc., Montrose.
Florida	Lee County Electric Coop. Inc., North Fort Myers.
Indiana	Clark County Rural Elec. Memb. Corp., Sellersburg.
Louisiana	Beauregard Electric Cooperative, Inc., Deridder.
Missouri	Cuivre River Electric Cooperative, Inc., Troy.
Nebraska	Roosevelt Public Power District, Mitchell.
Nebraska	Howard Greely Rural Public Power Dist., St. Paul.
Nebraska	Cuming County Public Power District, West Point.
Nebraska	York County Rural Public Power District, York.
Nebraska	Elkhorn Rural Public Power District, Battle Creek.
Nebraska	Southern Nebraska Rural P P D., Grand Island.
Nebraska	McCook Public Power District, McCook.
Nebraska	Niobrara Valley Electric Memb. Corp., O'Neill.
Nebraska	Cornhusker Public Power District, Columbus.
Nebraska	Custer Public Power District, Broken Bow.
Nebraska	Northwest Rural Public Power Dist., Hay Springs.
Nebraska	Southwest Public Power District, Palisade.
Nebraska	Loup Valleys Rural Public Power District, Ord.
Nebraska	South Central Public Power District, Nelson.
Oklahoma	Peoples' Electric Cooperative, Ada.
Texas	Deaf Smith County Electric Coop. Inc., Hereford.
Texas	Pedernales Electric Coop. Inc., Johnson City.
Texas	Bandera Electric Cooperative, Inc., Bandera.
Texas	Guadalupe Valley Electric Coop., Inc., Gonzales.
Texas	Bluebonnet Electric Cooperative, Inc., Giddings.
Texas	Cap Rock Electric Cooperative, Inc. Stanton.
Texas	San Bernard Electric Cooperative, Inc., Bellville.
Washington	Inland Power & Light Company, Spokane.
Washington	Pub. Util. Dist. No. 1 Grays Harbor Co., Aberdeen.

Appendix B to Subpart E of Part 1786—Federal Reserve Statistical Release

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**bpart E of Part 1786—
Borrowers**

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State	Borrower name and address
Florida	Lee County Electric Coop. Inc., North Fort Myers.
Indiana	Clark County Rural Elec. Memb. Corp., Sellersburg.
Louisiana	Beauregard Electric Cooperative, Inc., Deridder.
Missouri	Culvre River Electric Cooperative, Inc., Troy.
Nebraska	Roosevelt Public Power District, Mitchell.
Nebraska	Howard Greely Rural Public Power Dist., St. Paul.
Nebraska	Cuming County Public Power District, West Point.
Nebraska	York County Rural Public Power District, York.
Nebraska	Elkhorn Rural Public Power District, Battle Creek.
Nebraska	Southern Nebraska Rural P P D., Grand Island.
Nebraska	McCook Public Power District, McCook.
Nebraska	Niobrara Valley Electric Memb. Corp., O'Neill.
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Appendix B to Subpart E of Part 1786—Federal Reserve Statistical Release

Federal Reserve Statistical Release

These data are released each Monday. The availability of the release will be announced when the information is available, on (202) 452-3206.

H. 15 (519)

For immediate release February 4, 1991.

SELECTED INTEREST RATES

[Yields in percent per annum]

Instruments	1991 Jan. 28	1991 Jan. 29	1991 Jan. 30	1991 Jan. 31	1991 Feb. 1	This week	Last week	1991 Jan.
Federal Funds (effective) [1] [2] [3]	7.61	7.16	6.96	6.18	6.30	7.46	6.88	6.91
Commercial paper [3] [4] [5]								
1-Month	6.86	6.96	6.95	6.99	6.79	6.90	6.83	7.12
3-Month	6.92	6.96	6.94	6.95	6.67	6.89	6.92	7.10
6-Month	6.87	6.91	6.88	6.86	6.58	6.82	6.86	7.02
Finance paper placed directly [3] [4] [6]								
1-Month	6.76	6.85	6.83	6.63	6.55	6.76	6.88	6.95
3-Month	6.75	6.83	6.83	6.76	6.46	6.73	6.77	6.92
6-Month	6.53	6.53	6.59	6.53	6.19	6.47	6.55	6.59
Bankers acceptances (top rated) [3] [4] [7]								
3-Month	6.80	6.82	6.77	6.66	6.30	6.67	6.76	6.96
6-Month	6.67	6.70	6.65	6.55	6.15	6.54	6.63	6.84
CDS (secondary market) [3] [8]								
1-Month	6.78	6.85	6.87	6.82	6.52	6.77	6.77	7.10
3-Month	6.94	6.95	6.93	6.86	6.51	6.84	6.94	7.17
6-Month	6.95	6.98	6.95	6.88	6.51	6.85	6.97	7.17
Eurodollar deposits (London) [3] [9]								
1-Month	6.81	6.88	6.88	6.88	6.86	6.86	6.81	7.13
3-Month	6.94	7.06	7.00	6.94	6.94	6.98	7.01	7.23
6-Month	7.00	7.00	7.00	6.94	6.94	6.98	7.04	7.25
Bank prime loan [2] [3] [10]	9.50	9.50	9.50	9.50	9.50	9.50	9.50	9.52
Discount window borrowing [2] [11]	6.50	6.50	6.50	6.50	6.00	6.50	6.50	6.50
U.S. Government securities								
Treasury bills								
Auction average [3] [4] [12]								
3-Month	6.22					6.22	6.14	6.30
6-Month	6.28					6.28	6.21	6.34
1-Year								6.22
Auction average (investment) [12]								
3-Month	6.41					6.41	6.32	6.49
6-Month	6.56					6.56	6.50	6.64
Secondary market [3] [4]								
3-Month	6.25	6.22	6.20	6.10	6.00	6.17	6.12	6.22
6-Month	6.26	6.26	6.24	6.20	5.97	6.19	6.20	6.26
1-Year	6.24	6.20	6.17	6.13	5.91	6.13	6.19	6.25
Treasury Constant maturities [13]								
1-Year	6.54	6.59	6.56	6.51	6.27	6.51	6.58	6.64
2-Year	7.12	7.10	7.07	7.05	6.83	7.03	7.09	7.13
3-Year	7.38	7.35	7.34	7.30	7.10	7.29	7.35	7.38
5-Year	7.67	7.64	7.64	7.62	7.45	7.60	7.66	7.70
7-Year	7.93	7.90	7.90	7.89	7.75	7.87	7.92	7.97
10-Year	8.06	8.05	8.05	8.03	7.91	8.02	8.04	8.09
30-Year	8.23	8.20	8.23	8.21	8.09	8.19	8.22	8.27
Composite								
Over 10 years (long-term) [14]	8.29	8.26	8.29	8.27	8.15	8.25	8.28	8.33
Corporate bonds								
Moody's Seasoned								
AAA	9.03	9.01	9.00	8.99	8.96	9.00	9.05	9.04
BAA	10.43	10.37	10.35	10.33	10.24	10.34	10.44	10.45
A-Utility [15]					9.65	9.65	9.80	9.83
State and local bonds [16]				7.00		7.00	7.06	7.08
Conventional mortgages [17]					9.56	9.58	9.61	9.64

Footnotes:

[1] The daily effective federal funds rate is a weighted average of rates on trades through N.Y. brokers.

[2] Weekly figures are averages of 7 calendar days ending on Wednesday of the current week; monthly figures include each calendar day in the month.

[3] Annualized using a 360-day year or bank interest.

[4] Quoted on a discount basis.

[5] An average of offering rates on commercial paper placed by several leading dealers for firms whose bond rating is AA or the equivalent.

[6] An average of offering rates on paper directly placed by finance companies.

[7] Representative closing yields for acceptances of the highest rated money center banks.

[8] An average of dealer offering rates on nationally traded certificates of deposit.

[9] Bid rates for Eurodollar deposits at 11 a.m. London time.

[10] One of several base rates used by banks to price short-term business loans.

[11] Rate for the Federal Reserve Bank of New York.

[12] Auction date for daily data; weekly and monthly averages computed on an issue-date basis.

[13] Yields on actively traded issues adjusted to constant maturities. Source: U.S. Treasury.

[14] Unweighted average of rates on all outstanding bonds neither due nor callable in less than 10 years, including one very low yielding "flower" bond.

[15] Estimate of the yield on a recently offered, A-rated utility bond with a maturity of 30 years and call protection of 5 years; Friday quotations.

[16] Bond buyer Index, general obligation, 20 years to maturity, mixed quality; Thursday quotations.

[17] Contract interest rates on commitments for fixed-rate first mortgages. Source: FHLMC.

NOTE: Weekly and monthly figures are averages of business days unless otherwise noted.

Description of the Treasury Constant Maturity Series

Yields on Treasury securities at "constant maturity" are interpolated by the U.S. Treasury from the daily yield curve. This curve, which relates the yield on a security to its time to maturity, is based on the closing market bid yields on actively traded Treasury securities in the over-the-counter market. These market yields are calculated from composites of quotations reported by five leading U.S. Government securities dealers to the Federal Reserve Bank of New York. The constant maturity yield values are read from the yield curve at fixed

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maturities, currently 1, 2, 3, 5, 7, 10, and 30 years. This method provides a yield for a 10-year maturity, for example, even if no outstanding security has exactly 10 years remaining to maturity.

Dated: July 3, 1991.

George E. Pratt,

Acting Administrator, Rural Electrification Administration.

[FR Doc. 91-18128 Filed 8-5-91; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 32

[Docket No. 91-8]

National Bank Lending Limit

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (the "OCC") is amending its lending limit regulation, 12 CFR part 32, by adopting a revised version of a temporary rule published on June 24, 1988 (53 FR 23752). This final rule states that a legally binding written loan commitment qualifies as a loan and can be funded during its entire term, even if a bank's lending limit subsequently declines, provided that the commitment, when combined with a borrower's other outstanding loans and unfunded commitments qualifying as loans, is within the bank's lending limit at the time the commitment is made.

The final rule also permits a bank that has reached its lending limit with respect to a particular borrower through the combination of outstanding loans and unfunded commitments qualifying as loans, to make a subsequent loan to the same borrower without violating the lending limit. If the bank extends such an additional loan to the same borrower in excess of the lending limit, the rule provides that a loan commitment which qualified for funding as a loan automatically will be disqualified from being treated as a loan, and will revert to being treated as a loan commitment. A subsequent loan will operate to disqualify the entire unfunded portions of prior qualifying loan commitments in reverse chronological order. Disqualified commitments need not be included in a bank's lending limit calculation until funds are advanced.

In addition, the final rule provides that the OCC will not take administrative action against banks for a violation of 12 U.S.C. 84 caused by application of the temporary rule to loans and extensions of credit made from the date the temporary rule became effective until the effective date of the final rule.

The final rule is intended to provide appropriate relief to banks which have suffered a decline in capital, without imposing undue constraints on the ability of all national banks to manage their ordinary lending relationships with borrowers.

EFFECTIVE DATE: August 6, 1991.

FOR FURTHER INFORMATION CONTACT: Deborah Katz, Senior Attorney, Legal Advisory Services Division (202) 874-5330; or William C. Kerr, National Bank Examiner, Office of the Chief National Bank Examiner (202) 874-5070.

SUPPLEMENTARY INFORMATION:

Background

On June 24, 1988, the OCC published a temporary rule addressing the treatment of loan commitments under the lending limit applicable to national banks (53 FR 23752). The temporary rule permitted a bank to fully fund a legally binding written loan commitment that was within the bank's lending limit when made, as though it were a loan from the date of execution, even if the bank's lending limit subsequently declined during the original term of the loan commitment.

Although the temporary rule was made effective on publication, the regulation contained a 90-day comment period that closed on September 22, 1988. In response to comments objecting to the effect of the temporary rule on banks that had not experienced a decline in capital, an amendment was proposed. See 54 FR 30054 (July 18, 1989).

Under the proposal, a bank that has reached its lending limit with respect to a particular borrower, through the combination of outstanding loans and unfunded commitments which qualified as loans, would be permitted to extend additional loans to that borrower. However, should a bank choose to extend such additional loans to the borrower in an amount which exceeds the bank's lending limit, the bank will no longer be permitted to fully fund certain prior loan commitments if its lending limit declines. These loan commitments may be funded only to the extent that any advance under the commitment does not exceed the bank's lending limit on the date of funding.

The Final Rule

I

To achieve the flexibility desired, the final rule retains the following provisions initially introduced in the temporary rule: A legally binding written commitment will qualify as a loan and may be funded, even if a bank's capital subsequently declines, provided that the commitment, when combined with all other outstanding loans and qualifying commitments to the borrower, is within the bank's lending limit on the date it is executed. Other types of commitments, including oral commitments, and legally binding written loan commitments which, when combined with all other outstanding loans and qualifying commitments to the borrower, exceed the bank's lending limit on the date of execution, will not qualify as loans and may not be fully funded if the amount of the bank's capital should subsequently decrease. See 53 FR 23752 (June 24, 1988). Such commitments may be funded only if, on the date of funding, monies advanced combined with all other outstanding loans and qualifying commitments to the borrower, would not exceed the bank's lending limit.

As explained in the preamble to the temporary rule, during the original term of a qualifying loan commitment, a bank will not be regarded as having violated section 84 when it fully funds such a commitment, even though such funding may result in total obligations outstanding to a borrower in excess of the bank's lending limit on the date of funding. Instead, the excess credit will be deemed "nonconforming" for the purposes of section 84. A bank may not advance additional credit to a borrower whose loans with the bank have become nonconforming.

For a numerical example, assume that in June 1988, the bank has a lending limit of $10 million and one loan of $5 million extended to a borrower. In July, the bank enters into a loan commitment with the borrower for an additional $5 million with a maturity of one year, to be funded at a later date. Because this loan commitment, when combined with all other outstanding loans and vides a yield for a 10-year maturity, for example, even if no outstanding

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RMATION CONTACT:
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Kerr, National Bank
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2) 874–5070.

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As explained in the preamble to the temporary rule, during the original term of a qualifying loan commitment, a bank will not be regarded as having violated section 84 when it fully funds such a commitment, even though such funding may result in total obligations outstanding to a borrower in excess of the bank's lending limit on the date of funding. Instead, the excess credit will be deemed "nonconforming" for the purposes of section 84. A bank may not advance additional credit to a borrower whose loans with the bank have become nonconforming.

For a numerical example, assume that in June 1988, the bank has a lending limit of $10 million and one loan of $5 million extended to a borrower. In July, the bank enters into a loan commitment with the borrower for an additional $5 million with a maturity of one year, to be funded at a later date. Because this loan commitment, when combined with all other outstanding loans and qualifying commitments to the borrower, is within the bank's lending limit when it is made, the commitment qualifies as a loan.

In October, the bank's lending limit has declined to $7 million, and the borrower requests that the bank fully fund its July loan commitment. Because the commitment qualified to be treated as a loan when made, the bank may fully fund the commitment without violating section 84, although it would then have total extensions of credit to the borrower of $10 million. The amount extended in excess of its lending limit, $3 million, would be deemed nonconforming. In November, the borrower requests a short term loan of $.5 million from the bank. Because the bank has nonconforming extensions of credit outstanding to the borrower, the bank may not make this loan without violating section 84.

II

As noted in the preamble to the proposed amendment, the OCC regards the expiration of an unfunded or partially funded loan commitment, or any restructuring of a commitment, as an opportunity for a bank to bring that commitment into conformance with the bank's then-applicable lending limit. See 54 FR 30054, 30056 (July 18, 1989). Consistent with the OCC's general policy with regard to loan renewals, the bank must make every effort to bring a loan into conformance with the bank's lending limit, for example, by having the debtor partially repay the loan or by securing another bank's participation in the loan.

Where it is not practicable for the bank, after the exercise of its best efforts, to bring the previously funded portion of a loan commitment within its lending limit, the funded portion, including any excess credit above the lending limit, may be renewed. The OCC will not consider the loan renewal to be a violation of law leading to possible director liability. Upon renewal, any excess credit will be deemed "nonconforming" rather than a violation of the bank's lending limit. Again, the bank must continue to exercise best efforts to bring the excess credit into conformance with the lending limit, thus the excess portion of a commitment could not be renewed as a revolving credit.

On the other hand, the renewal of an unfunded commitment in excess of the bank's lending limit, or the renewal of the unfunded portion of a loan commitment in excess of the bank's lending limit, will be treated as would any loan commitment exceeding the bank's lending limit. Such a renewal will not by itself constitute a violation of section 84. A violation of section 84 will only occur if, on the date of funding, the borrower is advanced funds under the commitment which exceed the bank's lending limit. When a bank is requested to enter into such a commitment, prudent banking practice would dictate that the bank take precautions to include a clause in the loan agreement which will release it from its obligation, if funding the loan commitment would result in a violation of the lending limit.

To illustrate the requirements for the renewal and restructuring of unfunded or partially funded qualifying loan commitments, assume that in June 1988, a borrower and a bank entered into a legally binding, written, loan commitment for $10 million, with a maturity of one year, at a time when the bank's lending limit was $10 million. Because the borrower had no other outstanding obligations, and the commitment was within the bank's lending limit when made, the commitment qualified as a loan. During the course of the year, the bank advances only $7 million to the borrower under the qualifying commitment.

By June 1989, the bank's lending limit has decreased to $5 million. Upon expiration of the commitment, if the borrower requests that the entire commitment be renewed, the bank must first exercise best efforts to bring the $7 million into conformance with its lending limit of $5 million. If the bank is unable to do so, the funded portion may be renewed for $7. Upon renewal, $2 million of the funded portion will be deemed nonconforming rather than a violation of section 84.

If the borrower requests that the bank renew its commitment as a revolving credit, the bank will be permitted to renew only $5 million, an amount within its lending limit, as a revolving credit. Such a position is consistent with the OCC's policy that a bank must exercise its best efforts to bring the funded portion of a loan commitment into conformance with the lending limit, which in this example is $5 million.

The renewal of the unfunded $3 million portion, in excess of the lending limit, will not by itself constitute a violation of section 84. A violation of section 84 will occur, however, if the borrower is advanced funds under the commitment which exceed the bank's lending limit on the date of funding.

III

The final rule also adopts elements of the proposed amendment which reintroduced flexibility into the approach discussed above. This change is being adopted in response to several commenters on the temporary rule who had observed that once a commitment qualified as a loan under the temporary rule, it would have to be included by the bank in computing its lending limit for all subsequent loans to the borrower. Consequently, a bank with outstanding loan commitments to a borrower could reach its lending limit without actually having advanced funds to the borrower. Such a bank would not be able to extend an additional loan to a borrower without violating section 84. Thus, the temporary rule prevented banks from making some extensions of credit which could have been made prior to the issuance of the temporary rule.

The final rule permits those commitments, which automatically qualify as a loan, to be disqualified. A qualifying commitment may be disqualified from being deemed a loan if, after entering into a qualifying commitment, the bank makes an additional loan or an extension of credit to the borrower which exceeds the bank's lending limit when combined with all other outstanding loans and qualifying commitments to the borrower. See 54 FR 30054, 30057.

Once a qualifying commitment has been disqualified from being considered a loan, it will revert to being treated as a loan commitment. Thus, a disqualified loan commitment may be funded only to the extent that any advance under the commitment, when combined with all other outstanding loans and qualifying commitments to the borrower, does not exceed the bank's lending limit on the date of funding.

Note that, where a bank enters into a loan commitment in excess of its lending limit subsequent to executing a qualifying commitment, the execution of the non-qualifying commitment will not, by itself, disqualify an earlier qualifying commitment to lend. However, advances of funds under such a non-qualifying loan commitment could disqualify an earlier qualifying commitment.

As an example of the concept of disqualification, assume a national bank has a stable lending limit of $10 million throughout 1988. After having extended a loan to a borrower of $5 million in June, the bank enters into a legally binding written loan commitment with the borrower for an additional $5 million in July, to be funded at a later date. Because this loan commitment, when combined with all other outstanding loans and qualifying commitments to the borrower, is within the bank's lending limit when it is made, the commitment qualifies as a loan for lending limit purposes. Unless it is disqualified, this loan commitment may be fully funded during its original term, notwithstanding a subsequent decline in the bank's lending limit.

In August, after entering into the above-referenced loan commitment but before it is funded, the borrower requests an additional loan of $1 million from the bank; this loan is not related to the qualifying loan commitment. If the bank makes this loan, the total outstanding loans and qualifying commitments to the borrower, including the amount of the unfunded loan commitment, will total $11 million, exceeding the bank's lending limit. Under the temporary rule, the bank would have violated section 84 upon extending this $1 million loan to the borrower. Under this final rule, however, the bank will not violate section 84.

Under the final rule, the bank may elect to extend the $1 million loan, thereby disqualifying the unfunded loan commitment made in July. The disqualified loan commitment could then be funded only to the extent that any advance under the commitment, when combined with all other outstanding loans and qualifying commitments to the borrower, did not exceed the bank's lending limit on the date of funding. Thus, if the borrower seeks advances under the loan commitment after having received the $1 million short term loan, the bank may advance only $4 million under the commitment without violating section 84. Of course, the bank may attempt to sell participations for the remaining $1 million of the commitment.

If the borrower had requested a second loan commitment of $1 million in August, rather than a loan, the July loan commitment would not have been disqualified. As noted above, the final rule provides that a qualifying loan commitment may only be disqualified by a subsequent loan or extension of credit which would cause the bank to exceed its lending limit when combined with all other outstanding loans and qualifying commitments to the borrower. A loan commitment of $1 million, entered into in August, would not have qualified as a loan and therefore would not have disqualified the July loan commitment.

IV

The final rule also clarifies which commitments among a bank's qualifying commitments will be disqualified when a loan or extension of credit is extended to a borrower, causing the bank to exceed its lending limit. The proposed amendment stated:

> A qualifying commitment to lend will be disqualified by any loan or extension of credit made subsequent to the date of the qualifying commitment which, when combined with all other outstanding loans (including other binding commitments) attributable to the borrower, would cause the total to exceed the bank's lending limit on the date of the loan or extension of credit.

See 54 FR 30054, 30059.

The OCC intended this language to require disqualification of the entire unfunded portion of the loan commitment entered into most recently prior to the loan or extension of credit which causes the total amount of outstanding loans and qualifying commitments attributable to a borrower to exceed the banks' lending limit. Moreover, if the amount of the loan or extension of credit causing the total amount of obligations attributable to a borrower to exceed the bank's lending limit is greater than the amount of the most recent prior loan commitment, other loan commitments will be disqualified in reverse chronological order.

For example, assume that a bank has had a stable lending limit of $10 million since 1988. In 1989, the bank entered into successive binding written loan commitments with a borrower of $2 million in January, $3 million in February, and $4 million in March, totalling $9 million. In December, if the bank grants to the borrower an extension of credit of $2 million pursuant to a new loan, the entire loan commitment of $4 million made in March, which most recently preceded the December extension of credit, will be disqualified. If, instead, the bank grants to the borrower an extension of credit of $6 million, both the preceding $4 million commitment made in March, and the $3 million loan commitment made in February will be disqualified.

Comments on the Proposed Amendment

The OCC received ten comment letters on the proposed amendment. All of the commenters acknowledged that the proposed amendment corrected the problem encountered by national banks and other financial institutions subject to the provisions of section 84 which did not suffer a decline in capital. The commenters noted that the temporary rule had prevented healthy banks from making some extensions of credit which they could have previously made. The commenters approved of the approach in the proposed amendment which grants to banks that have entered into loan commitments that were within the banks' lending limit when made the ability to choose whether such commitments will be treated as loans.

Nine of the commenters recommended that the proposed amendment be adopted because it assists banks with declining capital, without penalizing healthy banks. One of the commenters strongly supported the implementation of a modified transition period, noting that some lending practices may need to be modified to achieve full compliance with the final rule.

The tenth commenter credited the OCC for recognizing that the temporary rule imposed additional burdens upon banks. However, the commenter stated that certain further refinements would be appropriate. This commenter noted that the proposed amendment appeared to take the position that once a commitment which qualified as a loan had been disqualified, it could not once again become a "qualifying commitment." The commenter strongly recommended that once the funding which caused the qualifying commitment to be disqualified had been repaid, the OCC should permit the disqualified commitment to be "rehabilitated (i.e., again may become qualifying)" at least to the extent of then available capital and surplus.

The OCC examined the issue of rehabilitation, or re-qualification of disqualified loan commitments, prior to the publication of the proposed amendment. After considering several regulatory models, the OCC concluded that rehabilitation could permit a bank to manipulate its lending limit. Further, both banks and borrowers would find monitoring of the lending limit difficult, should rehabilitation be permitted. Hence, the policy set forth in the proposed amendment, which does not permit rehabilitation, is adopted in this final rule.

The tenth commenter also objected to a provision in the proposed amendment which requires that "in determining whether a commitment would cause the bank to exceed its limit on the date of the commitment, the amount of a legally binding written commitment to participate in the loan commitment by another financially responsible person or institution may be deducted." See 54 FR 30056. The commenter noted that the question of financial responsibility of the participant counterparty is more appropriately addressed by existing statutes giving the Comptroller authority to examine the "safety and soundness" of the banking system. This commenter stated that " 'financial responsibility' should not be made part of a regulation for the violation of which a national bank and its directors may be subject to fines and personal liability."

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Nine of the commenters recommended that the proposed amendment be adopted because it assists banks with declining capital, without penalizing healthy banks. One of the commenters strongly supported the implementation of a modified transition period, noting that some lending practices may need to be modified to achieve full compliance with the final rule.

The tenth commenter credited the OCC for recognizing that the temporary rule imposed additional burdens upon banks. However, the commenter stated that certain further refinements would be appropriate. This commenter noted that the proposed amendment appeared to take the position that once a commitment which qualified as a loan had been disqualified, it could not once again become a "qualifying commitment." The commenter strongly recommended that once the funding which caused the qualifying commitment to be disqualified had been repaid, the OCC should permit the disqualified commitment to be "rehabilitated (i.e., again may become qualifying)" at least to the extent of then available capital and surplus.

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The OCC believes that the standard of "financial responsibility" is a standard to which a bank would obviously adhere. The maintenance of this term in the regulation imposes no additional burdens upon a financial institution.

Finally, with respect to the participation provision discussed above, this commenter noted that the proposed amendment does not make clear when the OCC would determine that a written legally binding commitment had been entered into by a participant and, therefore, could be deducted from the calculation of a bank's lending limit. The commenter noted that there may be several preliminary stages where a participant may have conditionally committed to extend funds.

It is the intent of the OCC that, for purposes of the deduction of participant commitments, a bank will be deemed to have entered into a binding written commitment to lend upon execution of definitive loan documents. Hence, the proposed amendment makes use of the term "legally binding written commitment." Inasmuch as the binding nature of a commitment is a function of state law, the final rule has not been made more specific. Instead, the OCC will review participant commitments during the examination process, taking into account variations in State law and the facts and circumstances of each case.

Agency Action

The OCC has determined that the provisions of the proposed amendment provide appropriate relief to banks which have suffered a decline in capital, without imposing undue constraints on the ability of all national banks to manage their ordinary lending relationships with borrowers. In order to achieve the results intended by this revision, the final rule amends the definition of a "contractual commitment to advance funds," at 12 CFR 32.2(d), to include a "qualifying commitment to lend." Moreover, the revision adds a definition of a "qualifying commitment to lend" to the definitions provided by part 32. A "qualifying commitment to lend" is defined as any written legally binding loan commitment which, when combined with all other outstanding loans and qualifying commitments to the borrower, is within the bank's lending limit when made. The definition also describes the disqualification of loan commitments and the order in which loan commitments will be disqualified by a subsequent loan or extension of credit. The precise language of the new definition is set forth below.

In addition to the substantive revision of the temporary rule, the OCC is implementing a modified transition period. The OCC will not take administrative action to enforce violations of 12 U.S.C. 84 which occur as a result of applying the temporary rule to loans made from June 24, 1988, the date the temporary rule became effective, until the date this final rule becomes effective. The provision for a transition period will not change the effective date of the temporary rule, and will not affect the qualification as a loan of any legally binding commitment which was made in good faith prior to the effective date of the temporary rule which was within the bank's lending limit when made.

Reason for Immediate Effective Date

The OCC had proposed that the transition period extend from the date the temporary rule became effective, June 24, 1988, until 60 days after the date the temporary rule is adopted as a final rule. The final rule establishes a transition period extending from June 24, 1988, until the effective date of the final rule. The OCC has determined that it is unnecessary to extend the transition period beyond the effective date of the final rule. Upon implementation, the final rule itself will provide a remedy to banks which did not comply with the requirements of the temporary rule.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Comptroller of the Currency certifies that this final rule will not have a significant economic impact on a substantial number of small banks. All banks should benefit from the regulatory clarification in this final rule which introduces additional flexibility into the lending relationships of all institutions.

Executive Order 12291

The OCC has determined that this final rule is not classified as a "major rule," within the meaning of Executive Order 12291. Consequently, a Regulatory Impact Analysis is not required on the grounds that this regulation (1) would not have an annual effect on the economy of $100 million or more, and (2) would not result in a major increase in the cost of bank operations or government supervision.

List of Subjects in 12 CFR Part 32

National banks, Lending limit, Loan commitments, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, part 32 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 32—LENDING LIMITS

1. The authority citation for part 32 continues to read as follows:

Authority: 12 U.S.C. 84 and 12 U.S.C. 93a.

2. Section 32.2, paragraph (d) is revised, and a new paragraph (f) is added, to read as follows:

§ 32.2 Definitions.

* * * * *

(d) *Contractual commitment to advance funds* means: (1) An obligation to make payments (directly or indirectly) to a third party contingent upon default by the bank's customer in the performance of an obligation under the terms of that customer's contract with the third party or upon some other stated condition;

(2) An obligation to guarantee or stand as a surety for the benefit of a third party; or

(3) A qualifying commitment to lend (as defined at paragraph (f) of this section). The term includes, but is not limited to, standby letters of credit (as defined in paragraph (e) of this section), guarantees, puts or other similar arrangements.

For the purposes of this part, undisbursed loan funds and loan commitments not yet drawn upon which are not "qualifying commitments to lend," or which are not otherwise equivalent to a contractual commitment to advance funds as defined are not considered a "contractual commitment to advance funds." This definition also does not include commercial letters of credit and similar instruments where the issuing bank expects the beneficiary to draw upon the issuer, which do not "guarantee" payment of a money obligation, and which do not provide for payment in the event of default of the account party.

* * * * *

(f) *Qualifying commitment to lend* means a binding written commitment to lend which, when combined with all other outstanding loans and qualifying commitments to the borrower, is within the bank's lending limit on the date of the commitment and which has not been disqualified. A qualifying commitment to lend will be disqualified by any loan or extension of credit made subsequent to the date of the qualifying commitment which, when combined with all other outstanding loans and qualifying commitments attributable to the borrower, would cause the total to exceed the bank's lending limit on the date of the loan or extension of credit. A disqualified loan commitment may be funded only to the extent that any advance under the commitment, when combined with all other outstanding loans and qualifying commitments to the borrower, does not exceed the bank's lending limit on the date of funding. The entire unfunded portions of qualifying loan commitments made last will be disqualified first, in reverse chronological order, until the sum of the disqualified commitments at least equals the amount of the loan or extension of credit which caused the total amount of obligations attributable to a borrower to exceed the bank's lending limit. In determining whether the issuance of a commitment to lend would be within a bank's lending limit on the date of the commitment, the bank may deduct from the amount of the commitment the aggregate amount of legally binding written loan participations in that commitment by other financially responsible persons or institutions.

3. A new section, § 32.9, is added to read as follows:

§ 32.9 Modified transition period.

The Comptroller of the Currency will not take administrative enforcement action against a bank, its officers, directors, or employees for a violation of 12 U.S.C. 84, for loans or extensions of credit made during the period June 24, 1988, until August 6, 1991, where it is established to the satisfaction of the Comptroller of the Currency that the bank has exceeded its lending limit as the result of an unintentional misapplication of the definition of a "contractual commitment to advance funds," as it appeared in § 32.2(d) of the lending limit regulation in effect as of June 24, 1988, until August 6, 1991.

Dated: July 30, 1991.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 91–18548 Filed 8–5–91; 8:45 am]

BILLING CODE 4810-33-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701 and 741

Requirments for Insurance and Eligible Obligations

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of correction of effective date.

SUMMARY: This notice corrects and clarifies that August 28, 1991 is the effective date for a final rule previously published in the **Federal Register** July 29, 1991 (56 FR 35808) concerning §§ 701.23(b)(2), 741.3, and 741.4 of the NCUA Rules and Regulations. On page 35808, second column, "**DATES**" should read "**EFFECTIVE DATE**."

FOR FURTHER INFORMATION CONTACT: Martin E. Conrey, Staff Attorney, Office of General Counsel, (202) 682–9630.

By the National Credit Union Administration Board on August 1, 1991.

Becky Baker,

Secretary of the Board.

[FR Doc. 91–18578 Filed 8–5–91; 8:45 am]

BILLING CODE 7535-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AB87

Eligibility of Organizations for the Handicapped for Small Business Set-asides

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) amends its regulations to enlarge the class of organizations eligible for award of Small Business Set-Aside contracts to include public and private organizations for the handicapped, to define the terms under which such organizations may qualify for such awards, and to provide methods to consider protests of eligibility of organizations for the handicapped or appeals of small businesses alleging prospective severe economic injury if a specific award is made to an organization for the handicapped.

EFFECTIVE DATE: August 6, 1991.

FOR FURTHER INFORMATION CONTACT: Catherine Thomas, Procurement Analyst, 202/205–6465.

SUPPLEMENTARY INFORMATION: This regulation implements section 133 of the Small Business Administration Reauthorization and Amendment Act of 1988 (Public Law 100–590). Section 133 enlarged eligibility for award of Small Business Set-Aside contracts to include public and private organizations for the handicapped. Small Business Set-Asides are procurements in which competition is restricted to firms which qualify as small businesses under the definitions established by SBA. In addition to expanding eligibility for these set-asides, the law defines the terms under which the organizations may qualify for such awards; and, also establishes a right of appeal for small businesses which experience, or are likely to experience "severe economic injury" as the result of a proposed award to an organization for the handicapped. The method which has been determined by SBA to be the most suitable means for alleviating severe economic injury is to assure that the affected small business has the opportunity to win award of the contract in question. This is the method for fulfilling the statutory obligation which is least disruptive to the procurement process. It is therefore SBA policy, when severe economic injury is found, to seek award of the contract without regard to offers by organizations for the handicapped.

The Small Business Administration published an interim final rule implementing this statute on January 31, 1990, in the **Federal Register** (Vol. 55, No. 21, p. 3201). However, as a result of the application of that rule, SBA determined that § 121.2005, which established the procedure for a small business to appeal the award of a contract to an organization for the handicapped, required a substantial revision. As currently written, any small business that was the otherwise apparent successful offeror on a solicitation could automatically establish severe economic injury if the contract would have represented at least 25 percent of its annual receipts for the last completed fiscal year. If severe economic injury is determined, award would be made to the small business. This would most likely result in no awards being made to organizations for the handicapped. Section 133 of Public Law 100–590 clearly manifested the intent of Congress that organizations for the handicapped be eligible to receive small business set-asides. To remedy this problem, SBA substantially revised § 121.2005. Because we made major changes to the procedures established in the interim final rule, SBA published a proposed rule on October 5, 1990 (Vol. 55, No. 194, pg. 40847), and invited public comment on § 121.2005.

SBA received four comments as a result of the interim final rule published January 30, 1990. These comments were addressed in the proposed rule of October 5, 1990. Three comments were received in response to the proposed rule of October 5, 1990.

Overview of Public Comments and SBA's Responses Thereto

SBA received a request from a small business that public and private organizations for the handicapped not be made eligible to participate in the small business set-aside program. SBA

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Overview of Public Comments and SBA's Responses Thereto

SBA received a request from a small business that public and private organizations for the handicapped not be made eligible to participate in the small business set-aside program. SBA

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cannot adopt this suggestion because this is a statutory requirement.

Goodwill Industries of America reiterated its prior objection that the rule unnecessarily restricts the remedies available when SBA determines that severe economic injury has occurred or is likely to occur as the result of an award of a small business set-aside to an organization for the handicapped. SBA gave this considerable thought before publishing the interim final rule, and again before publishing the proposed rule, and we have determined that award to the small business concern in cases where severe economic injury has been determined is the only reasonable means to assure direct alleviation of the injury. The other alternatives impose a great administrative burden on the procuring activity and interfere with prompt and efficient procurement processes.

A commenter requested that an organization for the handicapped be allowed more than three business days to submit the required documentation to the SBA. SBA cannot adopt this comment. It was determined that these procedures would be consistent with the procedures for size determinations and not cause additional delay in awarding the contract.

A commenter requested that SBA give equal consideration to the negative impact a decision to take away a contract from an organization for the handicapped might have on that particular organization and the persons with disabilities employed under the contract. SBA cannot adopt this comment. The statute authorizes SBA to grant relief to a small business suffering severe economic injury as a result of a proposed award to an organization for the handicapped. While organizations for the handicapped are eligible for small business set-asides, they are not small business concerns. The statute did not authorize SBA to provide such relief to organizations for the handicapped.

A commenter requested that SBA work with national organizations such as NARF, Goodwill Industries of America and Easter Seals to help educate organizations for the handicapped on how to bid on small business set-aside contracts. SBA would agree to provide assistance to such national organizations; however, we do not have the resources, nor the statutory charter, to undertake a training program of this kind, especially in light of the fact that organizations for the handicapped are not small business concerns. The SBA has agreed to provide information on training/seminars to the Committee for Purchase from the Blind and Other Severely Handicapped as it becomes available to us.

Section by Section Review

Section 121.2001 describes the underlying policy of permitting public and private organizations for the handicapped to participate in Federal procurements which are set-aside for small business. It notes the total dollar limits on such participation. It also describes an appeal right which the SBA Reauthorization Act provides for small businesses which experience or are likely to experience severe economic injury as a result of award of set-asides to such organizations. Such small businesses may appeal the award to SBA. The final agency decision on the appeals will be made by the Associate Administrator for Procurement Assistance as the delegatee of the Administrator.

Section 121.2002 provides definitions of "public or private organizations for the handicapped" and "handicapped individual". Although Public Law 100–590 provided that the definition for public and private organizations for the handicapped would be as set forth in section 3(e) of the Small Business Act the definition contained in this rule omits the portion of the statutory definition found in subparagraph 3(e)(3). This omission is required because subparagraph 3(e)(3) provides limitations on the organizations in terms of financial assistance, which is not involved in contract awards. Additionally, the portion of subparagraph 3(e)(3) which requires that 75 per cent of the labor be performed by handicapped individuals, is separately addressed in Public Law 100–590, and separately implemented in this proposed rule by § 121.2003.

In § 121.2003 the eligibility of sheltered workshops for Small Business Set-Asides is established, including the requirement that at least 75 per cent of the direct labor performed on each item being produced, or on each type of service being performed, must be performed by handicapped individuals. This section also notes that organizations for the handicapped cease to be eligible for such set-asides when the aggregate limits for such awards during a fiscal year have been reached.

The procedure for protesting the eligibility of sheltered workshops is described in § 121.2004. These rules are modeled on long-established rules for protesting the small business status of another offeror on a Federal procurement. The essential differences are that the determinations would be made at the Central Office of the SBA, rather than at a regional office; the Committee for the Blind and Other Severely Handicapped would be consulted; and, the determination would be the final administrative remedy. The section also describes the documentation which will establish the eligibility of an organization for the handicapped.

The provisions of Section 121.2005 describe the process for appeal of awards to organizations for the handicapped by small businesses who allege severe economic injury has been or will be suffered as a result of award of a contract to an organization for the handicapped. There are no changes to this section from the proposed rule published on October 5, 1990. Reasonable grounds for appeal are described and a presumption is established that 25 per cent or more of a small business' annual receipts is "severe". The level of 25 per cent has been selected because, in the absence of other persuasive data, it conforms to the level selected for SBA's "8(a)" program which also conducts reviews of economic impact upon competing candidates for contracts. The procedure for appeal is again modeled on the process for protesting small business status but would include a 10-day period for filing appeals, as set forth in the law. The remedy provided is the only reasonable means to assure direct alleviation consistent with the reasonable needs for prompt and efficient Federal procurement processes. Here, also, determinations will be made at the Central Office of the SBA and will be the final administrative remedy.

Compliance With Executive Orders 12291 and 12612, the Administrative Procedure Act (5 U.S.C. 551 et. seq.), the Regulatory Flexibility Act (55 U.S.C. 601, 601, 3et seq.), and the Paperwork Reduction Act (44 U.S.C. chap. 35)

SBA has determined that this rule does not constitute a major rule for purposes of Executive Order 12291 because the annual effect on the economy will not exceed $100 million. The statutory limit on the program does not exceed $50 million in any one year and SBA's previous experience with a similar program showed less than $10 million to be involved.

SBA certifies that this rule does not warrant the preparation of a Federalism Assessment in accordance with Executive Order 12612.

For purposes of compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, SBA certifies that this rule will not have a significant effect on a substantial number of small entities. While it is possible that 10 or more small entities might use these appeal procedures, such a contingency is not anticipated.

For purposes of the Paperwork Reduction Act, 44 U.S.C. ch. 35, SBA certifies that this rule will impose no new reporting or recordkeeping requirements.

List of Subjects in 13 CFR Part 121

Small businesses, Standard industrial classification codes.

For the reasons set forth above, part 121 of title 13, Code of Federal Regulations (CFR) is amended as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for part 121 is revised to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), and 644(c).

2. Subpart B is revised to read as follows:

Subpart B—Other Eligibility Provisions

Eligibility of Organizations for the Handicapped for Small Business Set-Asides

121.2001 Statutory Basis.
121.2002 Definitions.
121.2003 Eligibility.
121.2004 Protest of eligibility.
121.2005 Appeal of economic impact.

Eligibility of Organizations for the Handicapped for Small Business Set-Asides

§ 121.2001 Statutory Basis.

(a) The Small Business Act as amended by Public Law 100–590 provides that public or private organizations for the handicapped shall be eligible to participate in Federal procurements which are set aside for small business, during fiscal years 1989 through 1993, in aggregate amounts of not more than $30,000,000 in 1989; $40,000,000 in 1990; and $50,000,000 each year in 1991 through 1993.

(b) That law further provides for appeal to SBA of such an award when a small business experiences or is likely to experience severe economic injury as a result of the proposed award to an organization for the handicapped. Any eligible concern wishing to appeal must file its appeal with the SBA within 10 days after the announcement of the proposed award to which the appeal relates. SBA is afforded 30 days from the date the appeal is filed to consult with the Executive Director of the Committee for Purchase from the Blind and Other Severely Handicapped.

§ 121.2002 Definitions.

(a) *Organization for the handicapped* means a public or private entity:

(1) Which is organized under the laws of the United States or any state, operated in the interest of handicapped individuals, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual; and,

(2) Which complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor.

(b) *Handicapped individual* means a person who has a physical, mental, or emotional impairment, defect, ailment, disease, or disability of a permanent nature which in any way limits the selection of any type of employment for which the person would otherwise be qualified or qualifiable.

§ 121.2003 Eligibility.

Organizations for the handicapped shall be eligible for award of contracts set aside for small business provided that:

(a) The workshop meets the definition in § 121.2002(a);

(b) At least 75 per centum of the direct labor performed on each item being produced by the organization for the handicapped under the contract or performed in providing each type of service under the contract is performed by handicapped individuals; and,

(c) The maximum allowable amount of such awards for the applicable fiscal years has not been reached.

§ 121.2004 Protest of eligibility.

(a) *Who may protest.* A responsive offeror, the affected contracting officer, or the Small Business Administration may protest the status of an offeror as an organization for the handicapped eligible for participation in small business set-asides.

(b) *Grounds for protest.* Protests must include specific information which tends to show that the protested organization does not meet the eligibility criteria set forth in §§ 121.2002 and 121.2003.

(c) *Procedure for protest.* (1) Protests shall be submitted to the contracting officer who shall promptly forward them to the Associate Administrator for Procurement Assistance, Small Business Administration, 409 Third Street, SW., Washington, DC 20416. The Associate Administrator shall be the deciding official for purposes of protests under this section.

(2) Protests, including copies, shall be delivered by hand, telegram or be placed in the U.S. mail prior to the close of business on the fifth working day after bid opening or, in the case of a negotiated procurement, the fifth working day after receipt of notification of the identity of the apparent successful offeror.

(3) The Associate Administrator for Procurement Assistance shall notify the protested organization in writing that a protest concerning its eligibility for small business set-asides has been presented.

(4) The protested organization shall deliver required documentation, with any other documentation or information it wishes SBA to consider within three business days of receipt of written notification of the protest. See paragraphs (d) and (e) of this section. If the protested organization is a workshop participating under the Javits-Wagner-O'Day Program, the required documentation may be delivered by the Committee for Purchase from the Blind and Other Severely Handicapped which maintains workshop eligibility documentation on file in its offices. Delivery may be made by hand, telegram or placement in the U.S. mail.

(5) The Associate Administrator for Procurement Assistance shall consult with the Executive Director of the Committee for Purchase from the Blind and other Severely Handicapped before rendering a determination.

(6) SBA shall, within ten business days of receipt of a protest, notify parties, including the contracting officer, of its decision. Notification will be considered complete upon hand delivery, receipt of a telegram, or placement in the U.S. mail.

(7) The eligibility determination by the Associate Administrator shall be the final Agency action with respect to such protests.

(8) Failure to submit any documentation required to resolve a protest may be grounds for resolution of the protest against the non-submitting party.

(d) *Required documentation to demonstrate eligibility.*

Except as provided in paragraph (e) of this section, the following documentation, where applicable, will be required to demonstrate the eligibility of an organization:

(1) A legible copy (preferably a photocopy) of the articles of incorporation showing the date of filing and the signature of an appropriate State official.

(2) A copy of the bylaws certified by an officer of the corporation.

(3) If the articles of incorporation or bylaws do not include a statement to the effect that no part of the net income of the workshop may inure to the benefit of any shareholder or other individual, one of the following documents:

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of the identity of the apparent successful offeror.

(3) The Associate Administrator for Procurement Assistance shall notify the protested organization in writing that a protest concerning its eligibility for small business set-asides has been presented.

(4) The protested organization shall deliver required documentation, with any other documentation or information it wishes SBA to consider within three business days of receipt of written notification of the protest. See paragraphs (d) and (e) of this section. If the protested organization is a workshop participating under the Javits-Wagner-O'Day Program, the required documentation may be delivered by the Committee for Purchase from the Blind and Other Severely Handicapped which maintains workshop eligibility documentation on file in its offices. Delivery may be made by hand, telegram or placement in the U.S. mail.

(5) The Associate Administrator for Procurement Assistance shall consult with the Executive Director of the Committee for Purchase from the Blind and other Severely Handicapped before rendering a determination.

(6) SBA shall, within ten business days of receipt of a protest, notify parties, including the contracting officer, of its decision. Notification will be considered complete upon hand delivery, receipt of a telegram, or placement in the U.S. mail.

(7) The eligibility determination by the Associate Administrator shall be the final Agency action with respect to such protests.

(8) Failure to submit any documentation required to resolve a protest may be grounds for resolution of the protest against the non-submitting party.

(d) *Required documentation to demonstrate eligibility.*

Except as provided in paragraph (e) of this section, the following documentation, where applicable, will be required to demonstrate the eligibility of an organization:

(1) A legible copy (preferably a photocopy) of the articles of incorporation showing the date of filing and the signature of an appropriate State official.

(2) A copy of the bylaws certified by an officer of the corporation.

(3) If the articles of incorporation or bylaws do not include a statement to the effect that no part of the net income of the workshop may inure to the benefit of any shareholder or other individual, one of the following documents:

(i) A certified copy of the State statute under which the workshop was incorporated which includes wording to the effect that no part of the net income of the workshop may inure to the benefit of any shareholder or other individual.

(ii) A copy of a resolution approved by the governing body of the corporation, certified by an officer of the corporation to the effect that no part of the net income of the workshop may inure to the benefit of any shareholder or other individual.

(iii) A copy of the Internal Revenue Service certificate, duly executed during the prior twelve months, indicating that the corporation has been accepted as a non-profit agency for taxation purposes.

(e) A State-owned or State-operated workshop for the blind or other severely handicapped shall demonstrate its eligibility by submitting the following documents:

(1) A certified copy of the State statute establishing or authorizing the establishment of workshop(s) for the handicapped.

(2) In the case of a wholly-owned State corporation, a certified copy of the corporation bylaws; and, in the case of a State agency, a certified true copy of implementing regulations, operating procedures, notice of establishment of the workshop, or other similar documents.

§ 21.2005 Appeal of economic impact.

A proposed award of a small business set-aside to an organization for the handicapped may be appealed to SBA if a small business concern has experienced or is likely to experience severe economic injury as the result of the proposed award.

(a) *Who may appeal.* Those eligible to appeal are:

(1) A small business concern making an offer on the solicitation which is or was the incumbent contractor on a predecessor contract for the services or products being solicited; or,

(2) A small business concern offering on the solicitation which was the otherwise apparent successful offeror on a prior small business set-aside contract that was awarded to an organization for the handicapped.

(b) *Grounds for appeal.* (1) An incumbent contractor must show, absent competition by organizations for the handicapped, the incumbent contractor is likely to receive the instant award, and

(i) That the dollar amount of the instant award represents at least 25 percent of the concern's annual receipts in its most recently completed fiscal year.

(2) Offerors appealing on the grounds of prior small business set-aside contract awards to organizations for the handicapped must show, absent competition by organizations for the handicapped, such offeror is likely to receive the instant award; and,

(i) The dollar amount of the instant award represents at least 25 percent of the concern's annual receipts in its most recently completed fiscal year, and

(ii) The dollar amount of the prior small business set-aside contract awarded to an organization for the handicapped for which the concern was the otherwise apparent successful offeror represented at least 25 percent of its annual receipts for the fiscal year in which the contract was awarded. If the fiscal year in which the prior contract was awarded to an organization for the handicapped is not yet completed, the award must represent at least 25 percent of the small business concern's most recently completed fiscal year.

(c) *Procedure for appeal.* (1) Appeals shall be submitted to the contracting officer who shall promptly forward them to the Associate Administrator for Procurement Assistance, Small Business Administration, 1441 L Street NW., room 600, Washington, DC 20416. The Associate Administrator shall be the deciding official for purposes of appeals under this section.

(2) Appeals including copies, shall be delivered by hand, telegraph, or placed in the U.S. mail, by the close of business of the tenth calendar day after opening of bids or, in the case of negotiated procurements, after receipt of notification of the identity of the apparent successful offeror.

(3) The Associate Administrator shall consult with the Executive Director of the Committee for Purchase from the Blind and Other Severely Handicapped and shall resolve the appeal within ten working days after its receipt.

(4) The Associate Administrator shall, within ten working days of receipt of an appeal, notify appellants and affected contracting officers of SBA's decision and require the contracting officer to proceed with award or to make an award without regard to offers by organizations for the handicapped. Notice shall be complete upon hand delivery, delivery by telegram or placement in the U.S. mail.

(5) The decision by the Associate Administrator shall be the final agency action with respect to such appeals.

Dated: May 31, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 91-17311 Filed 8-5-91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM-50; Special Conditions No. 25-ANM-46]

Special Conditions; Learjet Inc., Model 31A Airplane; Lightning and High Intensity Radiated Fields

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Learjet Inc., Model 31A airplane. This airplane is equipped with high-technology digital avionics systems that perform critical or essential functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of lightning and high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards which the Administrator considers necessary to ensure that the critical and essential functions that these systems perform are maintained when the airplane is exposed to lightning and HIRF.

EFFECTIVE DATE: July 17, 1991.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, ANM-113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055-4056; telephone (206) 227-2145.

Background

On September 13, 1990, Learjet Inc., applied for an amendment to their type certificate No. A10CE to include their new Model 31A airplane. The Model 31A, which is a derivative of the Lear Model 31 currently approved under T.C. No. A10CE, is a pressurized 10-passenger transport category airplane with a maximum takeoff gross weight of 15,500 pounds, (16,500 optional), maximum operating speed V_{mo}/M_{mo} of 325 KIAS/.81MI, and maximum operating altitude of 51,000 feet. It is powered by two Garrett TFE-731-2-3B turbofan engines mounted on the aft fuselage. This airplane incorporates a number of novel or unusual design features, such as digital avionics including, but not necessarily limited to, five tube electronic flight instrument systems (EFIS), dual attitude and heading reference systems (AHRS), dual air data computers, dual autopilot/flight directors, and digital electronic engine

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controls (DEEC), that may be vulnerable to lightning and external high-intensity radiated fields (HIRF).

Type Certification Basis

Under the provisions of § 21.101 of the FAR, Learjet Inc., must show that the Model 31A meets the applicable provisions of Subchapter C in effect on the date of application for the amended TC unless: (1) otherwise specified by the Administrator; or (2) compliance with later effective amendments is elected or required under § 21.17; and (3) special conditions are prescribed by the Administrator. The certification basis for the Model 31A is as follows:

Part 25 of the FAR, effective February 1, 1965, as amended by Amendments 25-2, and 25-4. In addition, Amendments 25-3, 25-7, 25-10, 25-12, 25-18, 25-21, and 25-30; § 25.955(b)(2), as amended by Amendment 25-11; § 25.954, as amended by Amendment 25-14; §§ 25.803(e), 25.811(f), 25.853(a), 25.853(b) and 25.855(a), as amended by Amendment 25-15; § 25.1359, as amended by Amendment 25-17; § 25.785(c), as amended by Amendment 25-20; §§ 25.25, 25.113, 25.145, 25.251, 25.303, 25.305(b), 25.307(d), 25.331(a)(3), 25.335(b), 25.335(f), 25.337(b), 25.349(b), 25.351(a), 25.363, 25.395(a), 25.395(b), 25.471(a)(1), 25.471(a)(2), 25.473, 25.493(b), 25.499(b), 25.499(c), 25.499(d), 25.509(a)(3), 25.561(b)(3), 25.581, 25.607, 25.615, 25.619, 25.625, 25.629, 25.677, 25.697, 25.699, 25.701, 25.721, 25.723, 25.725, 25.727, 25.729, 25.733, 25.735, 25.865, 25.867, 25.871 25.903(d), 25.934, 25.994, 25.1103(d), 25.1143(e), 25.1303(a)(1), 25.1303(a)(3), 25.1303(b), 25.1303(c), 25.1307, 25.1331, and 25.1585(c), as amended by Amendment 25-23; §§ 25.1013(e), 25.1305(c)(4), and 25.1305(c)(6), as amended by Amendment 25-38; §§ 25.45 through 25.75 deleted; §§ 25.101, 25.161, 25.815, 25.1303(a)(2), 25.1322, 25.1403, and 25.1439, as amended by Amendment 25-38; §§ 25.903(e), 25.939, and 25.943, as amended by Amendment 25-40; § 25.1335, as amended by Amendment 25-41; §§ 25.29, 25.143(b), 25.147, 25.177, 25.181, 25.201, 25.207, 25.233, 25.237, 25.255, and 25.703, as amended by Amendment 25-42; § 25.1326, as amended by Amendment 25-43; § 25.1329(h), as amended by Amendment 25-46; § 25.253, as amended by Amendment 25-54; §§ 25.33 and 25.961, as amended by Amendment 25-57; Part 36 of the FAR effective December 1, 1969, as amended at the time of certification; Part 34 of the FAR effective September 10, 1990, as amended at the time of certification; and Special Conditions No. 25-99-CE-14 (high altitude operation at 51,000 feet), and Special Conditions No. 25-ANM-19 (lightning strike protection of digital electronic engine controls).

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Model 31A because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by § 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.17(a)(2). In addition to the applicable airworthiness regulations and special conditions, the Model 31A must comply with the noise certification requirements of Part 36 and the engine emission requirements of Part 34.

Discussion

The existing lightning protection airworthiness certification requirements are insufficient to provide an acceptable level of safety with the new technology avionic systems. There are two regulations that specifically pertain to lightning protection; one for the airframe in general (§ 25.581), and the other for fuel system protection (§ 25.954). There are, however, no regulations that deal specifically with protection of electrical and electronic systems from lightning. The loss of a critical function of these systems due to lightning would prevent continued safe flight and landing of the airplane. Although the loss of an essential function would not prevent continued safe flight and landing, it could significantly impact the safety level of the airplane.

There is also no specific regulation that addresses protection requirements for electrical and electronic systems from high-intensity radiated fields (HIRF). Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Model 31A which require that new electrical and electronic systems, such as the EFIS, AHRS, dual air data computers, dual autopilot/flight directors, and DEEC, be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of lightning and HIRF.

Lightning

To provide a means of compliance with the special conditions, clarification of the threat definition for lightning is needed. The following "threat definition," based on FAA Advisory Circular 20-136, Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning, dated March 5, 1990, is proposed as a basis to use in demonstrating compliance with the lightning protection special condition.

The lightning current waveforms (Components A, D, and H) defined below, along with the voltage waveforms in Advisory Circular (AC) 20-53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depend upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analyses need to be conducted in order to obtain the resultant internal threat to the installed systems. The electronic systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and/or malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke:* (Severe Strike—Component A, or Restrike—Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents and voltages is sufficiently below the equipment "hardness" level; then

2. *Multiple Stroke Flash:* (½ Component D). A lightning strike is often composed of a number of successive strokes, referred to as multiple strokes. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be

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To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke:* (Severe Strike—Component A, or Restrike—Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents and voltages is sufficiently below the equipment "hardness" level; then

2. *Multiple Stroke Flash:* (½ Component D). A lightning strike is often composed of a number of successive strokes, referred to as multiple strokes. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be

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carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ½ magnitude of Component D (peak amplitude of 50,000 amps). The 23 restrikes are distributed over a period of up to 2 seconds according to the following constraints: (1) the minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation; and,

3. *Multiple Burst:* (Component H). In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause physical damage, it is possible that transients resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of short duration, low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulse observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is necessary that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes each, distributed over a period of 2 seconds. Each set of 20 strokes is made up of 20 repetitive Component H waveforms distributed within a period of one millisecond. The minimum time between individual Component H pulses within a burst is 10μs, the maximum is 50μs. The 24 bursts are distributed over a period of up to 2 seconds according to the following constraints: (1) the minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. The individual "Multiple Burst" Component H waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst" (Component H).

These components are defined by the following double exponential equation:

$$i(t)=I_o(e^{-at}-e^{-bt})$$

where:

t = time in seconds,

i = current in amperes, and

		Severe strike (component A)	Restrike (component D)	Multiple stroke (½ component D)	Multiple burst (component H)
I_o, amp	=	218,810	109,405	54,703	10,572
a, sec^{-1}	=	11,354	22,708	22,708	187,191
b, sec^{-1}	=	647,265	1,294,530	1,294,530	19,105,100

This equation produces the following characteristics:

I_{peak} and	=	200 KA	100 KA	50 KA	10 KA
$(di/dt)_{max}$ (amp/sec)	=	1.4×10^{11} @t=0+sec	1.4×10^{11} @t 0+sec	0.7×10^{11} @t=0+sec	2.0×10^{11} @t=0+sec
di/dt, (amp/sec)	=	1.0×10^{11} @t=.5μs	1.0×10^{11} @t=.25μs	0.5×10^{11} @t=.25μs	
Action Integral (amp^2 sec)	=	2.0×10^6	0.25×10^6	$.0625\times10^6$	

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as the EFIS, AHRS, and ADC, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–500 KHz	60	60
500 KHz–2 MHz	80	80
2 MHz–30 MHz	200	200
30 MHz–100 MHz	33	33
100 MHz–200 MHz	33	33
200 MHz–400 MHz	150	33
400 MHz–1 GHz	8,300	2,000
1 GHz–2 GHz	9,000	1,500
2 Hz–4 GHz	17,000	1,200
4 GHz–6 GHz	14,500	800
6 GHz–8 GHz	4,000	666
8 GHz–12 GHz	9,000	2,000
12 GHz–20 GHz	4,000	509
20 GHz–40 GHz	4,000	1,000

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S. It will also be adopted by the European Joint Airworthiness Authorities.

Discussion of Comments

Notice of Proposed Special Conditions No. SC–91–2–NM for the Learjet Inc. Model 31A airplane was published in the **Federal Register** on March 18, 1991 (56 FR 11375). No comments were received; however, the FAA inadvertently omitted, in the preamble to the Notice, part of the certification basis listed in Type Certificate Data Sheet (TCDS) A10CE. The listing of the certification basis in these final special conditions is corrected to include this information.

As a delay in issuance of these special conditions would significantly affect the applicant's installation of the system and certification of the airplane, which is imminent, the FAA has determined that good cause exists for making these special conditions effective upon issuance, as opposed to 30 days from the date of publication in the **Federal Register**.

Conclusion:

This action affects only certain unusual or novel design features on one model of airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 142 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Learjet Inc. Model 31A airplane:

1. Lightning Protection

a. Each new electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to lightning.

b. Each essential function of new or modified electrical or electronic systems or installations must be protected to ensure that the function can be recovered in a timely manner after the airplane has been exposed to lightning.

2. Protection From Unwanted Effects of High-Intensity Radiated Fields (HIRF)

Each new electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to externally radiated electromagnetic energy.

3. The following definitions apply with respect to these special conditions:

Critical Functions. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Essential Functions. Functions whose failure could contribute to or cause a failure condition that would significantly impact the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions.

Issued in Renton, Washington, on July 17, 1991.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–18562 Filed 8–5–91; 8:45 am]

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14 CFR Part 39

[Docket No. 90–NM–236–AD; Amendment 39–7098; AD 91–16–08]

Airworthiness Directives; Boeing Model 737 Series Airplanes Equipped With Boeing Auxiliary Fuel Tanks

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Boeing Model 737 series airplanes equipped with a Boeing aft auxiliary fuel tank, which requires the deactivation of the auxiliary fuel system or accomplishment of certain inspections and modifications. This amendment is prompted by reports of uncontrollable fuel leakage into the aft cargo bay on Model 727 airplanes, due to delamination and/or cracks in the auxiliary fuel tank outer panel, which is similar in design to the Model 737. This condition, if not corrected, could result in a fire in the Model 737 aft cargo compartment due to fuel leaking from the auxiliary fuel tank.

EFFECTIVE DATE: September 6, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen S. Bray, Seattle Aircraft Certification Office, Propulsion Branch, ANM–140S; telephone (206) 227–2681. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 737 series airplanes equipped with an aft auxiliary fuel tank, which requires the deactivation of the auxiliary fuel system or accomplishment of certain inspections and modifications; or incorporation of a design modification determined to be terminating action, was published in the **Federal Register** on February 25, 1991 (56 FR 7616).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The manufacturer disagreed with the need for the proposed mandatory (terminating) modification of the fuel tanks. The manufacturer believes that the one reported case of fuel leakage in a Model 727 airplane was an isolated case; that the auxiliary fuel tank exhibits adequate fail-safety; and that, when inspected in accordance with Boeing Service Bulletin 737–28–1088, the tank will be damage tolerant. The FAA has re-evaluated its position on the proposed modification requirement, and concurs in part with the commenter. A modification has not yet been designed that meets the criteria for termination of the required inspections. In light of this, the FAA considers that the repetitive inspection program required by the rule will adequately monitor the condition of the auxiliary fuel tanks and tank structure in the interim. Although a terminating modification is not currently available, the FAA will consider proposals for such modifications under the alternative method of compliance provisions of paragraph C. of the final rule.

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FOR FURTHER INFORMATION CONTACT: Mr. Stephen S. Bray, Seattle Aircraft Certification Office, Propulsion Branch, ANM-140S; telephone (206) 227-2681. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 737 series airplanes equipped with an aft auxiliary fuel tank, which requires the deactivation of the auxiliary fuel system or accomplishment of certain inspections and modifications; or incorporation of a design modification determined to be terminating action, was published in the Federal Register on February 25, 1991 (56 FR 7616).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The manufacturer disagreed with the need for the proposed mandatory (terminating) modification of the fuel tanks. The manufacturer believes that the one reported case of fuel leakage in a Model 727 airplane was an isolated case; that the auxiliary fuel tank exhibits adequate fail-safety; and that, when inspected in accordance with Boeing Service Bulletin 737-28-1088, the tank will be damage tolerant. The FAA has re-evaluated its position on the proposed modification requirement, and concurs in part with the commenter. A modification has not yet been designed that meets the criteria for termination of the required inspections. In light of this, the FAA considers that the repetitive inspection program required by the rule will adequately monitor the condition of the auxiliary fuel tanks and tank structure in the interim. Although a terminating modification is not currently available, the FAA will consider proposals for such modifications under the alternative method of compliance provisions of paragraph C. of the final rule.

The manufacturer and one operator stated that the NPRM incorrectly implied that the manufacturer was currently working on a modification which, once installed, would provide terminating action for the requirements of this AD.

In addition, the manufacturer commented that five modification designs were reviewed by system experts and designers and none were determined to be feasible or workable for a variety of reasons. The FAA acknowledges the comment, but is not yet convinced that a feasible modification cannot be developed. However, since the manufacturer has yet to develop one, the FAA has deleted the proposed requirement to modify the auxiliary fuel tank, paragraph C. of the NPRM. As explained above, the inspection requirements of the rule will ensure an adequate level of safety in the interim. Once a feasible modification is developed, approved, and available, the FAA may consider further rulemaking to require installation of the terminating modification of the auxiliary fuel system.

The manufacturer also stated that the proposed rule had several typographical errors with respect to service bulletin numbers and dates. The FAA concurs. The final rule has been revised to reflect the correct service bulletin information.

In its final comment, the manufacturer pointed out that there are at least three different suppliers of auxiliary fuel tanks manufactured and used on Model 737 airplanes. By referencing the Boeing service bulletins, the proposed rule implies that the Boeing-designed-and-built tank is the subject of the Notice, but the proposal is not specific. The FAA concurs that some clarification is necessary, and has revised the final rule in the appropriate places to indicate that this AD applies only to Boeing auxiliary fuel tank installations.

Two Air Transport Association (ATA) of America member operators indicated that 31 airplanes in their combined fleets are included in the effectivity listing of the Boeing Service Bulletin, whereas, the economic impact paragraph in the preamble to the NPRM indicates that only 4 airplanes of U.S. registry would be affected by the proposed rule. These commenters requested a clarification of this point. Upon further review of the available data, the FAA concurs that the estimated number of U.S.-registered airplanes affected by the rule is greater than that which was specified in the economic analysis paragraph. The economic analysis paragraph, below, has been revised to reflect more accurately the economic impact on the U.S. fleet.

One operator requested that proposed paragraph A.2.b. be applicable only to airplanes on which the tank and its support structure have been removed and reinstalled. As justification, this commenter noted that the incident which prompted the proposed rule occurred on a Model 727 that was not originally equipped by Boeing with an auxiliary fuel tank installation. The commenter believes that this difference is sufficient to distinguish those airplanes which need or need not be inspected. The FAA does not concur. The investigation of the cited incident did not indicate that the leakage problem was in any way exclusively associated with removal and reinstallation of the fuel tank. The FAA has determined that the fuel leakage problem is due to delamination and/or cracks in the auxiliary fuel tank outer panel; the design of these fuel cell support panels (on both the Model 727 and Model 737) is such that it does not preclude the potential for delamination and/or cracks to occur. Therefore, inspection of all airplanes equipped with an auxiliary fuel tank is warranted.

One operator requested that proposed paragraph A.2. be revised to allow either the accomplishment of the modification described in Boeing Alert Service Bulletin 737-28A1034, Revision 2, or the inspections required by proposed paragraph A.2.a. (1). The FAA does not concur. The FAA has determined that both the fuel system modification required by paragraph A.2. and the inspections required by paragraph A.2.a.(1) are necessary to prevent fuel leakage from the auxiliary fuel tank into the aft cargo compartment. As an alternative, any operator may choose to deactivate its auxiliary fuel system in accordance with paragraph A.1. of the rule.

Upon further review of the deactivation instructions outlined in Boeing Service Bulletin 737-28-1088, the FAA has determined that Boeing Alert Service Bulletin 737-28A1034 Revision 2, dated December 6, 1990, provides more detailed instructions. Therefore, paragraphs, A.1 and A.2.c(2) of the final rule have been revised to reference both service bulletins as appropriate sources of service information.

Paragraph C. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternative method of compliance.

The economic analysis below, has been revised to increase the specified hourly labor rate from $40 per manhour (as was cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with Ad activity to account for various inflationary costs in the airline industry.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 103 Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 31 airplanes of U.S. registry will be affected by this AD.

For operators who elect to perform the deactivation of the auxiliary fuel system and installation of the placard, it will require approximately 16 manhours to accomplish these actions, at an average labor rate of $55 per manhour. The cost of manufacturing a placard is expected to be negligible. Based on these figures, the total cost impact of this portion of the AD on U.S. operators is estimated to be $880 per airplane, or $27,280 for the U.S. fleet.

For operators who elect to perform the installation of the check and shutoff valves, and the required inspections, it will require approximately 212 manhours to accomplish these actions, at an average labor rate of $55 per manhour. The cost of necessary installation parts is estimated to be $10,504 per airplane. Based on these figures, the total cost impact of this portion of the AD on U.S. operators is estimated to be $22,164 per airplane, or $687,084 for the U.S. fleet.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–499, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91–16–06. Boeing: Amendment 39–7098. Docket No. 90–NM–236–AD.

Applicability: Model 737 series airplanes, equipped with a Boeing aft cargo bay auxiliary fuel tank; listed in Boeing Service Bulletin 737–28–1088, dated September 6, 1990; certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To reduce the potential for a fire in the aft cargo compartment due to fuel leaking from the auxiliary fuel tank, accomplish the following:

A. Within 90 days after the effective date of this AD, accomplish one of the following:

1. Deactivate the auxiliary fuel system and attach a placard in the flight compartment to indicate that the auxiliary fuel tank is inoperative, in accordance with Boeing Alert Service Bulletin 737–28A1034, Revision 2, dated December 6, 1990, or Boeing Service Bulletin 737–28–1088, dated September 6, 1990; or

2. Install a check valve and a pressure activated shutoff valve in the auxiliary fuel system near the center wing tank in accordance with Boeing Service Bulletin 737–28A1034, Revision 2, dated December 6, 1990; and perform the following inspections of the auxiliary fuel tank support structure in accordance with the inspection procedures below:

a. Within 500 flight cycles after the effective date of this AD, to detect a disbonded or cracked side panel in the auxiliary fuel tank, accomplish one of the following:

(1) Conduct an inspection of the lower sidewall (curved) panels of the auxiliary fuel tanks for disbonding, in accordance with Part I of the Accomplishment Instructions in Boeing Service Bulletin 737–28–1088, dated September 6, 1990.

(2) Perform a leak check of the auxiliary fuel tanks in accordance with Part III of Boeing Service Bulletin 737–28–1088, dated September 6, 1990. If any fuel leakage is detected, repair prior to further flight in accordance with Part III of the service bulletin. Repeat leak check prior to each flight.

b. Within 12,000 flight cycles after the effective date of this AD, conduct an inspection of the auxiliary fuel tank and support structure in accordance with Part II of Boeing Service Bulletin 737–28–1088, dated September 6, 1990. Repeat this inspection at intervals not to exceed 12,000 flight cycles. Accomplishment of this inspection constitutes terminating action for the inspection requirements of paragraph A.2.a. of this AD.

c. If a disbonded or cracked panel is detected during the inspections required by paragraphs A.2.a. or A.2.b. of this AD, accomplish one of the following prior to further flight:

(1) Replace the panel in accordance with Part IV of Boeing Service Bulletin 737–28–1088, dated September 6, 1990; or

(2) Deactivate the auxiliary fuel tank in accordance with Boeing Alert Service Bulletin 737–28A1034, Revision 2, dated December 6, 1990; or Boeing Service Bulletin 737–28–1088, dated September 6, 1990; or

(3) Remove the auxiliary fuel tank in accordance with the Boeing 737 Maintenance Manual Subject 28–14–0.

Note: A deactivated auxiliary fuel tank will require inspections per paragraph A.2. of this AD when reactivated. Auxiliary fuel tanks that are deactivated but remain in an airplane accumulate the same number of flight cycles as the airplane.

B. Auxiliary fuel tanks currently not installed in an airplane must be inspected in accordance with Boeing Service Bulletin 737–28–1088, dated September 6, 1990, prior to installation in an airplane if they have accumulated more than 4,000 flight cycles. If any cracking or delamination is detected, repair prior to installation in an airplane.

C. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington, 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment (39–7098, AD 91–16–06) becomes effective September 6, 1991.

Issued in Renton, Washington, on July 22, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–18563 Filed 8–5–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined Large Harbor Tug YTB 813 to be a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval vessel. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: July 18, 1991.

FOR FURTHER INFORMATION CONTACT: Captain R.R. Rossi, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that Large Harbor Tug YTB 813 is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(c), pertaining to the location of the sternlight; Rule 24(c), pertaining to the towing lights displayed by power driven vessels when pushing ahead or towing alongside; Rule 27(b)(i), pertaining to the lights displayed by vessels restricted in their ability to maneuver; annex I, section 2(a)(i), pertaining to the height above the hull of the masthead light; and

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Issued in Renton, Washington, on July 22, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–18563 Filed 8–5–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

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AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined Large Harbor Tug YTB 813 to be a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval vessel. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: July 18, 1991.

FOR FURTHER INFORMATION CONTACT: Captain R.R. Rossi, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, telephone number: (703) 325–9744.

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Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. Table Three of section 706.2 is amended by adding the following vessel under "YTB" in numerical order to read as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE THREE

Vessel	Number	Masthead lights, arc of visibility; Rule 21(a)	Side lights, arc of visibility; Rule 21(b)	Stern light, arc of visibility; Rule 21(c)	Side lights, distance inboard of ship's sides in meters; § 3(b), Annex I	Stern light distance forward of stern in meters; Rule 21(c)	Forward anchor light, height above hull in meters; § 2(K), Annex I	Anchor lights, relationship of aft light to forward light in meters; § 2(K), Annex I
*	*	*	*	*		*	*	
YTB-813	YTB-813				2.63	19.2		
*	*	*	*	*		*	*	

3. Paragraph 14, Table Four of § 706.2 is amended by adding the following vessel in numerical order to read as follows:

Table Four

* * * * *

Vessel No.	Distance in meters of Aux. masthead light below minimum required height. Annex 1 § 2(a)(1).
*	*
YTB-813	6.15
*	*

Dated: July 18, 1991.

Approved:

J.E. Gordon,

Rear Admiral, JAGC, U.S. Navy, Judge Advocate General.

[FR Doc. 91–18530 Filed 8–5–91; 8:45 am]

BILLING CODE 3810–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[GA18–1–5012 FRL–3981–2]

Designation of Areas for Air Quality Planning Purposes; Georgia: Redesignation of a Georgia Carbon Monoxide Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice will discuss EPA's final approval action on a March 21, 1989, request by the State of Georgia to redesignate the Atlanta carbon monoxide (CO) nonattainment area to attainment. The redesignation request is based on ambient air quality monitoring data from 1985 to 1988 and a fully implemented control strategy. The data show no violations of the CO National Ambient Air Quality Standards (NAAQS) have occurred in the Atlanta nonattainment area since the end of 1985. The redesignation request is therefore in accord with EPA policy.

EFFECTIVE DATE: This rulemaking action is effective as of September 5, 1991.

ADDRESSES: Copies of the material submitted may be examined during normal business hours at the following locations:

Region IV Air Programs Branch, Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365.

Georgia Department of Natural Resources, 205 Butler Street, Southeast, suite 1252, Atlanta, Georgia 30334.

FOR FURTHER INFORMATION CONTACT: Liz Wilde of the EPA Region IV Air Programs Branch at (404) 347–2864 or (FTS) 257–2864 and at the above address.

SUPPLEMENTARY INFORMATION: In the March 3, 1978, **Federal Register** notice (43 FR 8962) the Atlanta area was designated as nonattainment for carbon monoxide (CO). The nonattainment area consists of those portions of Clayton, DeKalb, and Fulton Counties that exist within the Interstate 285 highway perimeter. In April 1979, the State of Georgia submitted the initial CO State implementation Plan (SIP) to EPA. The CO SIP projected that the Atlanta nonattainment area could not meet the CO standard by 1982. Under part D of title I of the 1977 Clean Air Act (CAA), Georgia requested and EPA approved

(January 24, 1980, 45 FR 5698) an extension of the CO attainment deadline until December 31, 1987. On April 1, 1982, a Reasonably Available Control Technology (RACT) level inspection and maintenance (I&M) program was implemented in the Atlanta nonattainment area as required for all major CO extension areas. A CO SIP revision was submitted by Georgia on July 30, 1982. EPA fully approved the SIP revision on November 10, 1982 (45 FR 51622). On March 21, 1989, the Department of Natural Resources of the State of Georgia requested that EPA redesignate the Atlanta CO nonattainment area to attainment.

Redesignation of a CO nonattainment area requires the most recent eight consecutive quarters of quality assured ambient air quality data showing no violations of the NAAQS. More than one exceedance of the CO standard (i.e., 9 parts per million (ppm) for an 8-hour average concentration, and 35 ppm for a 1-hour average concentration) constitutes a violation (40 CFR 50.8 (1989)). In addition to maintaining the CO standard, EPA'S redesignation policy requires that the EPA-approved control strategy must be fully implemented. This requires that transportation control measures (TCMs) committed to in the SIP and a RACT level I&M program, where required, have been fully implemented.

Georgia's redesignation request is based on four years (1985 to 1988) ambient air data from an EPA-approved CO monitoring network. The monitoring sites and their Aerometric Information Retrieval System numbers are Midtown (13–121–0050), Peachtree Center (13–121–0051), Brookwood (13–121–0052) and DeKalb Tech (13–089–1002). The monitoring data indicate that a CO violation has not occurred since the end of 1985. The maximum and second highest CO readings for each year and station are summarized in Table I.

In addition to the monitoring data, the attainment demonstration from the State of Georgia included the implementation of the part D control strategy approved by EPA (February 3, 1983, 48 FR 5038). The SIP required a CO emission reduction of 44% from the 1980 base year emission level of 279,040 tons per year (tpy). These emission reductions were projected to be achieved from the Federal Motor Vehicle Control Program (FMVCP), an I&M program and various TCMs.

The FMVCP is a program that has been instituted nationwide by EPA to reduce emissions from vehicles. It has been very successful in reducing CO emissions due to the installation of emission controls in new vehicles. The gradual replacement of older vehicles with newer, cleaner ones has resulted in significant reductions in CO emissions.

All major urban areas that needed an extension beyond 1982 to attain the CO standard were required to implement a vehicle I&M program as a part of this control strategy. The Georgia RACT level I&M program was approved by EPA on January 24, 1980 (45 FR 5698), and has been in operation since April 1, 1982, in the Atlanta nonattainment area. On April 1, 1985, Gwinnett County was added to the I&M program after meeting the requirements for participation in the program. The I&M program is achieving its designed emission reductions and the EPA requirements for a RACT level program.

Section 108 of the CAA lists TCMs that must be evaluated for their feasibility to be implemented as a part of the control strategy. The Georgia SIP contained commitments to implement those TCMs which were determined to be feasible. The 1982 CO SIP Reasonable Further Progress demonstration includes a two percent emission reduction from the 1980 base year emissions of 279,040 tpy which equates a 5580.8 tpy. Calculations by the Atlanta Regional Commission (ARC) indicate that 5920.7 tpy in annual CO emission reductions were achieved due to the implementation of the TCMs. (See Table II for a listing of TCMs used in determining this reduction).

On September 24, 1990 (55 FR 39019), after experiencing internal processing delays, EPA proposed to approve the redesignation request submitted by the State of Georgia. At that time, the public was invited to submit written comments by October 24, 1990, on the proposed action. No comments were received. Procedurally, the next step was to finalize and publish approval of the redesignation request. EPA did not have a chance to take such action before enactment of the Clean Air Act Amendments of 1990 (CAAA), which were signed into law on November 15, 1990. Public Law No. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.

The Amendments added several new requirements for redesignations of nonattainment areas. (See Section 107(d)(3)(E), 42 U.S.C. 7407(d)(3)(E)). Most notably, the Amendments require a fully approved maintenance plan which meets the requirements of Section 175A of the CAAA.

As a general rule, an Agency must apply new law to pending actions. See *Bradley* v. *Richmond School Board*, 416 U.S. 696, 711, 94 S.Ct. 2006, 201 (1974). However, EPA believes that the new redesignation provisions do not apply to this final action on the Atlanta redesignation request. In certain circumstances, statutory provisions which on their face appear to apply to a certain situation may be found to be inapplicable. In some instances, the common or obvious meaning of the words of a statutory provision would produce an absurd, irrational or unjust result. *Public Citizen* v. *United States Dept. of Justice*, 109 S.Ct. 2558, 2566–67 (1989); *Church of the Holy Trinity* v. *United States*, 143 U.S. 457, 459, (1892). For example, the Supreme Court has found that if the literal interpretation of a statutory provision would produce an irrational or unjust result, the statute should be construed to avoid that result. See *Green* v. *Bock Laundry Mach. Co.*, 109 S. Cr. 1981, 1985 (1989); see also Public Citizen, 109 S.Ct. at 2566–67; Church of the Holy Trinity, 143 U.S. at 459. In such instances, the circumstances surrounding the enactment of the statute may indicate that Congress did not intend the statute to have its literal meaning. *Watt* v. *Alaska*, 451 U.S. 259, 266, 101 S.Ct. 1673, 1678, (1981).

Literally interpreting the redesignation provision of the CAAA to have broad application would produce an irrational and unjust result. The provision facially appears to apply to any area seeking redesignation to attainment. Congress clearly desired the CAAA to apply to redesignation requests that were new or just beginning the redesignation process. However, application of this strict rule to certain pending redesignation requests that had substantially completed the redesignation process under the pre-amended Act would not only be irrational, but also unjust.

It would be irrational to require both the State, which had completed all necessary action on its part, and EPA, which had substantially completed all necessary action, to repeat these steps under the new provisions of the amended Act. Since EPA had already proposed to approve the redesignation request, no comments were received, and no intervening circumstances had changed EPA's proposed decision to redesignate, the only action remaining was to publish the final notice of redesignation. It would be irrational to require the State and the Agency to repeat these steps under the new provisions when no controversy concerning the redesignation exists. In addition, application of this provision to the State would be unjust. Because the action was substantially complete and EPA was responsible for any delay in proposing and promulgating the redesignation, it would be unjust to

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redesignation provisions do not apply to this final action on the Atlanta redesignation request. In certain circumstances, statutory provisions which on their face appear to apply to a certain situation may be found to be inapplicable. In some instances, the common or obvious meaning of the words of a statutory provision would produce an absurd, irrational or unjust result. *Public Citizen* v. *United States Dept. of Justice*, 109 S.Ct. 2558, 2566–67 (1989); *Church of the Holy Trinity* v. *United States*, 143 U.S. 457, 459, (1892). For example, the Supreme Court has found that if the literal interpretation of a statutory provision would produce an irrational or unjust result, the statute should be construed to avoid that result. See *Green* v. *Bock Laundry Mach. Co.*, 109 S. Cr. 1981, 1985 (1989); see also Public Citizen, 109 S.Ct. at 2566–67; Church of the Holy Trinity, 143 U.S. at 459. In such instances, the circumstances surrounding the enactment of the statute may indicate that Congress did not intend the statute to have its literal meaning. *Watt* v. *Alaska*, 451 U.S. 259, 266, 101 S.Ct. 1673, 1678, (1981).

Literally interpreting the redesignation provision of the CAAA to have broad application would produce an irrational and unjust result. The provision facially appears to apply to any area seeking redesignation to attainment. Congress clearly desired the CAAA to apply to redesignation requests that were new or just beginning the redesignation process. However, application of this strict rule to certain pending redesignation requests that had substantially completed the redesignation process under the pre-amended Act would not only be irrational, but also unjust.

It would be irrational to require both the State, which had completed all necessary action on its part, and EPA, which had substantially completed all necessary action, to repeat these steps under the new provisions of the amended Act. Since EPA had already proposed to approve the redesignation request, no comments were received, and no intervening circumstances had changed EPA's proposed decision to redesignate, the only action remaining was to publish the final notice of redesignation. It would be irrational to require the State and the Agency to repeat these steps under the new provisions when no controversy concerning the redesignation exists. In addition, application of this provision to the State would be unjust. Because the action was substantially complete and EPA was responsible for any delay in proposing and promulgating the redesignation, it would be unjust to

require Georgia to reinitiate the redesignation process by making a new and more complex submittal and to subject the Atlanta area to the new requirements for nonattainment areas during the period it takes to meet these new redesignation requirements.

There is no evidence that Congress intended such an irrational and unjust result. In fact, the only pertinent legislative history manifests an intent that this provision not be applied to the particular circumstances of this case. During the Senate debate, Senator Chafee, the ranking minority member of the Senate Committee on the Environment and Public Works, and a conferee, responded to remarks by Senator Nickles concerning pending redesignation requests, by stating: "In the case where there is no evidence of new violations, where a State has a request for [re]designation pending before EPA, and the Agency has proposed to approve this request, the Agency should proceed to complete its action using the existing criteria for review and approval of such requests." 136 Cong. Rec. S17236 (daily ed. October 26, 1990).[1] Based on this evidence of Congressional intent, and the irrationality and injustice of applying the statutory provision in its literal sense, this provision should not be given the broad interpretation that it appears to require on its face.

In addition, although the provision facially appears to apply to the pending redesignation request, in actuality, the provision is ambiguous because it does not speak directly to the present circumstances. An agency may apply pre-existing law to a pending action if the new law does not directly speak to the action being taken and if manifest injustice would result from application of the new law. Bradley, 416 U.S. at 711, 94 S.Ct. at 2016. *Contra Bowen* v. *Georgetown University Hosp.*, 488 U.S. 204 109 S. Ct. 468 (1988) (if the statute does not directly speak to the issue, then it is presumed that the pre-existing law applies).

Section 107(d)(1)(C), the designation provision in the amended Act, does not speak to the present situation. It provides that areas designated nonattainment before enactment of the amendments are designated nonattainment by operation of law; however, it does not address the case in which EPA proposed redesignation to attainment before enactment of the 1990 Amendments, has not received any adverse comments on the proposed action, and the final action is substantially the same as the proposed action. Furthermore, the legislative history quoted above indicates that at least some key members of Congress did not believe the new statute directly addressed this type of situation; indeed, Senators Chafee and Nickles believed the law was susceptible to an interpretation that would not subject this type of area to the new redesignation requirements.

Moreover, application of the new law would work a manifest injustice. The amended Act places new burdens on a State seeking redesignation of an area. Since the failure to redesignate the Atlanta CO nonattainment area was due to EPA's unreasonable delay in proposing redesignation, and no comments were received on EPA's proposed approval of the redesignation, it is unjust to subject the Atlanta area to these new requirements. If action had been taken promptly, the redesignation would have been finalized before enactment of the CAAA. The fact that no comments were received during the comment period indicates that the action is not controversial. In addition, the Agency has found no basis for changing its proposed approval of the redesignation request, and now submits a substantially similar final action.

Final Action

On the basis of four years of air quality data showing no violations of the NAAQS for CO and a fully implemented EPA-approved control strategy, EPA is today approving the redesignation of the Atlanta CO nonattainment area to attainment.

Under 5 U.S.C. 605(b), the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Today's action makes final the action proposed at 55 FR 39019. As noted elsewhere in this notice, EPA received no adverse public comment on the proposed action. As a direct result, the Regional Administrator has reclassified this action from Table 1 to Table 2 under the procedures published in the **Federal Register** on January 19, 1989, (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 until April 1991.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

TABLE I

	1985		1986		1987		1988	
	Max	2nd	Max	2nd	Max	2nd	Max	2nd
1-Hour Average (ppm):								
Midtown	7.5	7.5	9.7	8.2	8.8	8.5	10.0	8.8
Ptree Center	18.9	17.1	17.8	12.7	11.3	9.5	19.5	17.5
Brookwood	14.4	13.0	15.9	11.9	11.8	11.7	11.3	10.4
Dekalb Tech	7.5	7.0	10.2	9.7	9.0	8.5	9.8	9.0
8-Hour Average (ppm):								
Midtown	5.6	5.5	5.8	5.5	6.7	6.2	6.3	5.9
Ptree Center	10.3	9.4	6.9	6.2	6.3	6.0	9.2	6.0
Brookwood	6.1	6.0	7.0	6.3	6.4	6.0	6.0	5.6
Dekalb Tech	6.1	5.5	6.0	5.9	7.2	5.9	5.7	5.6
Data Recovery:								
Midtown	97.4		96.9		93.1		94.0	

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[1] Although the legislative history should not be something which would normally override the literal language of a statute, in cases of "unintended irrationality or injustice", the legislative history may overcome the strict textual reading of the statute. See *Green* v. *Bock Laundry Mach. Co.*, 109 S.Ct. at 1994; Public Citizen, 109 S.Ct. at 2567–73.

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Ptree Center	95.0	91.4	81.7	98.5
Brookwood	89.9	98.2	93.3	97.5
Dekalb Tech	96.1	95.4	98.0	96.3

TABLE II

TCM	Reduction (tons/year)
Expanded Transit	1453.1
Express Transit to Park/Ride Lots	155.1
Informal Park/Ride Lots	1233.5
Improved Traffic Flow	1750.9
Pedestrian Malls, Bridges	134.0
Expand I & M Program	454.6
Fleet Vehicle Idling/Tune-up	739.0
Total	5920.7

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 7, 1991. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: July 10, 1991.

Patrick M. Tobin,

Acting Regional Administrator.

Part 81 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart C—Section 107 Attainment Status Designations

2. Section 81.311 is amended by revising the attainment status designation table titled "Georgia—CO" to read as follows:

§ 81.311 Georgia.

* * * * *

GEORGIA—CO

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
Statewide		X

* * * * *

[FR Doc. 91-18616 Filed 8-5-91; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[FRL-3981-1]

Designation of Areas for Air Quality Planning Purposes; Texas; Revised Geographical Designation of Certain Air Quality Control Regions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice approves the revision of geographical designation of Air Quality Control Regions (AQCRs) in the State of Texas. On April 3, 1989, under section 107(e)(1) of the Clean Air Act and 40 CFR 81.11, the Governor of Texas requested that EPA approve the reconfiguration of five AQCRs in Texas. The change is requested in the interest of more efficient Air quality management by the Texas Air Control Board (TACB).

DATES: This action will be effective October 7, 1991 unless notice is received within 30 days that someone wishes to submit adverse or critical comments. Written comments on this action should be addressed to Thomas H. Diggs, Chief, Planning Section, Air Programs Branch, Region 6, U.S. Environmental Protection Agency at the address given below for the Region 6 EPA office. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region 6, Planning Section (6T-AP), 1445 Ross Avenue, Dallas, Texas 75202-2733.

Texas Air Control Board, 12124 Park 35 Circle, Austin, Texas 78753.

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street., SW., Washington, DC 20460.

The interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours in advance.

FOR FURTHER INFORMATION CONTACT: John Crocker or Barbara Durso at (214) 655-7214 or FTS 255-7214. Please reference Docket File Number TX 6-1-5219.

SUPPLEMENTARY INFORMATION: Under section 107 of the Clean Air Act as amended, the Administrator of EPA designated twelve Air Quality Control Regions (AQCRs) located partly or entirely in Texas. Today's notice concerns the following five AQCRs as described at 40 CFR part 81:

Sec.
81.38 Metropolitan Houston-Galveston Intrastate AQCR.
81.53 Southern Louisiana-Southeast Texas Interstate AQCR.
81.132 Abilene-Wichita Falls Intrastate AQCR.
81.134 Austin-Waco Intrastate AQCR.
81.137 Midland-Odessa-San Angelo Intrastate AQCR.

In a letter dated April 3, 1989, the Governor of Texas requested the EPA's approval of the reassignment of six Texas counties from their present AQCRs to adjacent AQCRs as described below:

1. Coke, Concho, Menard, and McColloch Counties from Midland-Odessa-San Angelo Intrastate AQCR to Abeline-Wichita Falls Intrastate AQCR;
2. San Saba County from Midland-Odessa-San Angelo intrastate AQCR to Austin-Waco Intrastate AQCR; and
3. Walker County from Metropolitan Houston-Galveston Intrastate AQCR to Southern Louisiana-Southeast Texas Interstate AQCR.

The Governor states that the transfers are desirable, because access to these particular counties is more convenient for the staff of the reassigned regional TACB offices than the staff of the presently assigned regional TACB offices. The new AQCR configurations allow TACB to better manager air quality resources from their regional offices.

To approve these reconfigurations of the AQCRs, the State must meet the requirements of:

(1) Section 107(e)(1)—the purpose of a redesignation must be for the purpose of efficient and effective air quality management.

(2) 40 CFR 81.11—allows for revisions to AQCRs if they protect the public health and welfare; and

(3) Section 107(e)(2)—allows for redesignation of a region that may affect another State, with permission of the Administrator, and the Governor of the

	95.0	91.4	81.7	98.5
	89.9	96.2	93.3	97.5
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655-7214 or FTS 255-7214. Please reference Docket File Number TX 6-1-5219.

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1. Coke, Concho, Menard, and McColloch Counties from Midland-Odessa-San Angelo Intrastate AQCR to Abeline-Wichita Falls Intrastate AQCR;

2. San Saba County from Midland-Odessa-San Angelo intrastate AQCR to Austin-Waco Intrastate AQCR; and

3. Walker County from Metropolitan Houston-Galveston Intrastate AQCR to Southern Louisiana-Southeast Texas Interstate AQCR.

The Governor states that the transfers are desirable, because access to these particular counties is more convenient for the staff of the reassigned regional TACB offices than the staff of the presently assigned regional TACB offices. The new AQCR configurations allow TACB to better manager air quality resources from their regional offices.

To approve these reconfigurations of the AQCRs, the State must meet the requirements of:

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(2) 40 CFR 81.11—allows for revisions to AQCRs if they protect the public health and welfare; and

(3) Section 107(e)(2)—allows for redesignation of a region that may affect another State, with permission of the Administrator, and the Governor of the

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neighboring State if it will significantly affect the neighboring State.

According to the State, the new regional boundaries will be more convenient for regional TACB staff, which will lead to more efficient management. Thus, if the operation of a TACB regional office is more efficient, it will aid in protecting the public health and welfare.

All of the affected AQCRs, or the pertinent parts where the affected counties are or will be located, are presently designated as attainment for the national ambient air quality standards (NAAQS). At 40 CFR 81.344, these areas are rated "better than national standard," or "cannot be classified or better than national standard." Reassignment of the counties from one AQCR to another should not cause significant impact on the air quality of any of the counties involved.

The transfer of Walker County into an interstate region does not need the permission of the Governor of Louisiana, because it is not expected to have a significant effect on the State of Louisiana. Specifically, EPA finds that transferring Walker County into the Southern Louisiana-Southeast Texas Interstate AQCR will not have a significant effect on Louisiana because the County is presently in attainment for all NAAQS, and it is over 120 km (75 mi) from the Louisiana border.

Final Action

With this notice, EPA is approving a revision to 40 CFR Part 81 Subpart B concerning designation of AQCRs. The request changes the geographic boundaries of five AQCRs. The reconfigurations meet the statutory requirements of section 107(e) (1) and (2) of the Clean Air Act as amended and the regulatory requirements of 40 CFR 81.11.

The public should be advised that this action will be effective October 7, 1991. However, if notice is received within 30 days of publication that someone wishes to submit adverse or critical comments, this action will be withdrawn before the effective date. A subsequent notice will begin a new rulemaking action by announcing a proposal of the action and establishing a comment period.

The Agency has reviewed this request for conformance with the Clean Air Act as amended November 15, 1990, and it finds that the State's request conforms with those requirements regardless of the fact that the submittal preceded the date of enactment.

Under 5 U.S.C. 605(b) the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 7, 1991. Filing a petition for reconsideration of this final rule by the Administrator does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed. Furthermore, filing such a petition shall not postpone the effectiveness of this rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 81

Air Pollution control, National parks, Wilderness areas.

Dated: July 25, 1991.

Allyn M. Davis,

Acting Regional Administrator.

40 CFR part 81, subpart B, is amended as follows:

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

Subpart B—Designation of Air Quality Control Regions

2. Section 81.38 is amended by revising the entry for Texas to read as follows:

§ 81.38 Metropolitan Houston-Galveston Intrastate Air Quality Control Region.

* * * * *

In the State of Texas: Austin County, Brazoria County, Chambers County, Colorado County, Fort Bend County, Galveston County, Harris County, Liberty County, Matagorda County, Montgomery County, Waller County, Wharton County.

3. Section 81.53 is amended by revising the entry for Texas to read as follows:

§ 81.53 Southern Louisiana-Southeast Texas Interstate Air Quality Control Region.

* * * * *

In the State of Texas: Angelina County, Hardin County, Houston County, Jasper County, Jefferson County, Nacogdoches County, Newton County, Orange County, Polk County, Sabine County, San Augustine County, San Jacinto County, Shelby County, Trinity County, Tyler County, Walker County.

4. Section 81.132 is amended by revising the entry for Texas to read as follows:

§ 81.132 Abilene-Wichita Falls Intrastate Air Quality Control Region.

* * * * *

In the State of Texas: Archer County, Baylor County, Brown County, Callahan County, Childress County, Clay County, Coke County, Coleman County, Comanche County, Concho County, Cottle County, Eastland County, Fisher County, Foard County, Hardeman County, Haskell County, Jack County, Jones County, Kent County, Knox County, McCulloch County, Menard County, Mitchell County, Montague County, Nolan County, Runnels County, Scurry County, Shackelford County, Stephens County, Stonewall County, Taylor County, Throckmorton County, Wichita County, Wilbarger County, Young County.

5. Section 81.134 is amended by revising the entry for Texas to read as follows:

§ 81.134 Austin-Waco Intrastate Air Quality Control Region.

* * * * *

In the State of Texas: Bastrop County, Bell County, Blanco County, Bosque County, Brazos County, Burleson County, Burnet County, Caldwell County, Coryell County, Falls County, Fayette County, Freestone County, Grimes County, Hamilton County, Hays County, Hill County, Lampasas County, Lee County, Leon County, Limestone County, Llano County, McLennan County, Madison County, Milam County, Robertson County, San Saba County, Travis County, Washington County, Williamson County.

6. Section 81.137 is amended by revising the entry for Texas to read as follows:

§ 81.137 Midland-Odessa-San Angelo Intrastate Air Quality Control Region.

* * * * *

In the State of Texas: Andrews County, Borden County, Crane County, Crockett County, Dawson County, Ector County, Gaines County, Glasscock County, Howard County, Irion County, Loving County, Martin County, Midland County, Pecos County, Reagan County, Reeves County, Schleicher County, Sterling County, Sutton County, Terrell

County, Tom Green County, Upton County, Ward County, Winkler County.

[FR Doc. 91-18617 Filed 8-5-91; 8:45 am]

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40 CFR Part 271

[FRL-3980-9]

Arizona: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: The State of Arizona has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Arizona's application and has made a decision, subject to public review and comment, that Arizona's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Arizona's hazardous waste program revisions. Arizona's application for program revision is available for public review and comment.

DATES: Final authorization for Arizona shall be effective October 7, 1991 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Arizona's program revision application must be received by the close of business September 5, 1991.

ADDRESSES: Copies of Arizona's program revision application are available during the business hours of 9 a.m. to 5 p.m. at the following addresses for inspection and copying:

Arizona Department of Environmental Quality, Central Office, Office of Waste Programs, Waste Assessment Section, 2005 N. Central Avenue, Phoenix, Arizona 85004 Phone: 602/257-2375.

Arizona Department of Environmental Quality, Northern Regional Office, 2501 North 4th Street, suite #14, Flagstaff, Arizona 86004 Phone: 602/779-0313 or 1-800/234-5677.

Arizona Department of Environmental Quality, Southern Regional Office, 4040 East 29th Street, Tucson, Arizona 85711 Phone: 602/628-5321 or 1-800/234-5677.

U.S. EPA Public Information Reference Unit (PM-211A), EPA Headquarters Library, 401 M Street SW., Washington, DC 20460 Phone: 202/382-5926.

U.S. EPA Region IX Library-Information Center, 75 Hawthorne Street, San Francisco, California 94105 Phone: 415/744-1510.

Written comments should be sent to April Katsura, U.S. EPA Region IX (H-2-2), 75 Hawthorne Street, San Francisco, California 94105 Phone: 415-744-2026.

FOR FURTHER INFORMATION CONTACT: April Katsura at the above address and phone number.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260-266, 268, 124 and 270.

B. Arizona

Arizona initially received final authorization on November 20, 1985. On June 13, 1991, Arizona submitted a program revision application for additional program approvals. Today, Arizona is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Arizona's application, and has made an immediate final decision that Arizona's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Arizona. The public may submit written comments on EPA's immediate final decision up until September 5, 1991. Copies of Arizona's application for program revision are available for inspection and copying at the locations indicated in the "**ADDRESSES**" section of this notice.

Approval of Arizona's program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received, EPA will publish either (1) A withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

Arizona is applying for authorization for the following Federal hazardous waste regulations:

Federal requirement	State authority
—Interim Status Standards—Applicability (48 FR 52718, November 22, 1983).	Arizona Revised Statute (ARS) 42-922(A) & (B); Arizona Administrative Code (AAC) R18-8-260(A) & (C) and 265(A).
—National Uniform Manifest (49 FR 10490, March 20, 1984).	ARS 49-922(A) & (B); AAC R18-8-260(c) and 262(A).
—Permit Rules: Settlement Agreement (49 FR 17716, April 24, 1984).	ARS 49-922(A) & (B); AAC R18-8-270(A).
—Lime Stabilized Pickle Liquor Sludge (49 FR 23284, June 5, 1984).	ARS 49-922(A) & (B); AAC R18-8-261(A).
—Exclusion of Household Waste (49 FR 44978, November 13, 1984).	ARS 49-922(A) & (B): AAC R18-8-261(A).
—Interim Status Standards—Applicability (49 FR 46095, November 21, 1984).	ARS 49-922(A) & (B); AAC R18-8-260(A) & (C) and 265(A).
—Corrections to Test Methods Manual (49 FR 47390, December 4, 1984).	ARS 49-922(A) & (B); AAC R18-8-260(C).
—Definition of Solid Waste (40 FR 614, January 4, 1985, as amended on April 11, 1985 at 50 FR 14216 and August 20, 1985, at 50 FR 33541).	ARC 49-921(5) and 922(A); AAC R18-8-260(C), 261(A) & (F), 264(A) & (B), 265(A) and 266(A).
—Interim Status Standards for Treatment, Storage or Disposal Facilities (50 FR 16044, April 23, 1985).	ARS 49-922(A) & (B); AAC R18-8-265(A).
—Financial Responsibility: Settlement Agreement (51 FR 16422, May 2, 1986).	ARS 49-922(A) & (B); AAC R18-8-260(A) & (C), 264(A), 265(A) & (I) and 270(A).
—Listing of Spent Pickle Liquor (K062) (51 FR 19320, May 28, 1986, as amended on September 22, 1986, at 51 FR 33612).	ARS 49-922(A) & (B); AAC R18-8-261(A).

Arizona agrees to review all State hazardous waste permits which have been issued under State law prior to the effective date of this authorization. Arizona agrees to then modify or revoke and reissue such permits as necessary to require compliance with the amended State program. The modifications or revocation and reissuance will be scheduled in the annual State Grant Work Plan.

Arizona is not being authorized to operate any portion of the hazardous waste program on Indian lands.

C. Decision

I conclude that Arizona's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly,

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horne Street, San
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Arizona is applying for authorization for the following Federal hazardous waste regulations:

Federal requirement	State authority
—Interim Status Standards—Applicability (48 FR 52718, November 22, 1983).	Arizona Revised Statute (ARS) 42-922(A) & (B); Arizona Administrative Code (AAC) R18-8-260(A) & (C) and 265(A).
—National Uniform Manifest (49 FR 10490, March 20, 1984).	ARS 49-922(A) & (B); AAC R18-8-260(c) and 262(A).
—Permit Rules: Settlement Agreement (49 FR 17716, April 24, 1984).	ARS 49-922(A) & (B); AAC R18-8-270(A).
—Lime Stabilized Pickle Liquor Sludge (49 FR 23284, June 5, 1984).	ARS 49-922(A) & (B); AAC R18-8-261(A).
—Exclusion of Household Waste (49 FR 44978, November 13, 1984).	ARS 49-922(A) & (B): AAC R18-8-261(A).
—Interim Status Standards—Applicability (49 FR 46095, November 21, 1984).	ARS 49-922(A) & (B); AAC R18-8-260(A) & (C) and 265(A).
—Corrections to Test Methods Manual (49 FR 47390, December 4, 1984).	ARS 49-922(A) & (B); AAC R18-8-260(C).
—Definition of Solid Waste (40 FR 614, January 4, 1985, as amended on April 11, 1985 at 50 FR 14216 and August 20, 1985, at 50 FR 33541).	ARC 49-921(5) and 922(A); AAC R18-8-260(C), 261(A) & (F), 264(A) & (B), 265(A) and 266(A).
—Interim Status Standards for Treatment, Storage or Disposal Facilities (50 FR 16044, April 23, 1985).	ARS 49-922(A) & (B); AAC R18-8-265(A).
—Financial Responsibility: Settlement Agreement (51 FR 16422, May 2, 1986).	ARS 49-922(A) & (B); AAC R18-8-260(A) & (C), 264(A), 265(A) & (I) and 270(A).
—Listing of Spent Pickle Liquor (K062) (51 FR 19320, May 28, 1986, as amended on September 22, 1986, at 51 FR 33612).	ARS 49-922(A) & (B); AAC R18-8-261(A).

Arizona agrees to review all State hazardous waste permits which have been issued under State law prior to the effective date of this authorization. Arizona agrees to then modify or revoke and reissue such permits as necessary to require compliance with the amended State program. The modifications or revocation and reissuance will be scheduled in the annual State Grant Work Plan.

Arizona is not being authorized to operate any portion of the hazardous waste program on Indian lands.

C. Decision

I conclude that Arizona's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly,

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Arizona is granted final authorization to operate its hazardous waste program as revised.

Arizona is now responsible for permitting treatment, storage, and disposal facilities within its borders and carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Arizona also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013 and 7003 or RCRA.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Arizona's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 25, 1991.

Jeffrey Zelikson,

Acting Regional Administrator.

[FR Doc. 91-18509 Filed 8-5-91; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 271

[FRL-3981-6]

Utah; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule, correction.

On May 23, 1991 (56 FR 23648), EPA published the Immediate Final Rule for authorization of portions of the Federal RCRA program in Utah. EPA inadvertently omitted the following Federal citations from Table I. This notice corrects these errors. These corrections do not impact the authorization which became effective July 22, 1991.

TABLE 1.—PROVISIONS

Federal Register reference	State equivalent [1]
1. TDI, DNT, and TDA wastes, 50 FR 42936-42943 10/23/85	R450-2-1.8, R450-2-1.9, R450-50-1J, R450-50-1K, R450-50-1L.
2. Burning of waste fuel and used oil fuel in boilers and industrial furnaces, 50 FR 49164-49211, 11/29/85 as amended, 51 FR 41900-41904, 11/19/86, and on 4/13/87 52 FR 118119-11822.	R450-1-1.2, R450-2-1.4, R450-2-1.5, R450-8-15.1, R450-8-15.1, R450-7-22.1, R450-7-29, R450-7-30.
3. Listing of spent solvents, 50 FR 53315-53320, 12/31/85 as amended 1/21/86, at 51 FR 2702.	R450-2-1.8.
4. Listing of EDB wastes, 51 FR 5327-5331, 2/13/86	R450-2-1.8, R450-50-1J, R450-50-1K.
5. Listing of four spent solvents, 51 FR 6537-6542, 2/24/86	R450-2-1.8, R450-2-1.9, R450-50-1J, R450-50-1L.
6. Generators of 100-1,000 kg hazardous waste, 51 FR 10146-10176, 3/24/86	R450-1, R450-2-1.4, R450-4-2, R450-5-9, R450-5-11, R450-4-3, R450-3-3.2
7. Financial responsibility requirements: Settlement agreement, 51 FR 16442, 5/2/86.	R450-1, R450-8-7, R450-8-8, R450-7-14, R450-7-15, R450-3-3.2, R450-3-9, R450-3-20.
8. Codification rule, technical correction, 51 FR 19176, 5/28/86	R450-7-21.
9. Listing of spent pickle liquor (K062), 51 FR 19320-19322, 5/28/86	R450-2-1.8.
10. Liability coverage—corporate guarantee, 51 FR 25350-25356, 7/11/86	R450-8-8, R450-7-15.
11. Standards for hazardous waste storage and treatment tank systems, 51 FR 25422-25486, 7/14/86 as amended on 8/15/86, 51 FR 29430-29431.	R450-1, R450-2-1, R450-5-9, R450-8-2.6, R450-8-5.3, R450-8-7, R450-8-8, R450-8-10, R450-7-9.4, R450-7-9.6, R450-7-12.4, R450-7-16, R450-7-17, R450-3-3.2, R450-3.20.
12. Corrections to listing of commercial chemical products and appendix VIII constituents, 51 FR 28296-28310, 8/6/86.	R450-2-1.9, R450-50-1L.
13. Biennial report correction, 51 FR 28556, 8/8/86	R450-8-5.6, R450-7-12.6.
14. Exports of hazardous waste, 51 FR 28664, 8/8/86	R450-2-1.4, R450-2-1.5, R450-5-5, R450-5-12, R450-5-13, R450-5-10.1, R450-50-1B, R450-4-3.
15. Standards for generators—waste minimization certifications, 51 FR 35190, 10/1/86.	R450-50-1B.
16. Listing of EBDC, 51 FR 37725, 10/24/86	R450-2-1.8, R450-50-1J, R450-50-1K.
17. Land disposal restrictions, 51 FR 40572-40654, 11/7/86 as amended 6/4/87 at 52 FR 21010-21018.	R450-2.1, R450-5-1, R450-6-1.4, R450-8-1, R450-8-2.4, R450-8-5.3, R450-7-8.1, R450-7-9-4, R450-13, R450-12.4, R450-50-1P, 1Q, R450-3.3, R450-3-13, R450-3-9.
18. Revised manual SW-846, 51 FR 6072-6073, 3/16/87	R450-2-1.7, R450-3-1.2.
19. Closure/post closure care for interim status surface impoundments, FR 8704, 3/19/87.	R450-7-18.6.
20. Definition of solid waste: Technical corrections, 52 FR 21306, 6/5/87	R450-2-1.9, R450-7-28.
21. Amendments to part B information requirements for disposal facilities, 52 FR 23447-23450, 6/22/87, as amended 9/9/87 at 52 FR 33936.	R450-3-3.2.
22. Identification and listing of hazardous waste, 52 FR 26012, 7/10/87	R450-2-1.9.
23. Liability requirements for hazardous waste facilities corporate guarantee, 52 FR 44314, 11/18/87.	R450-8-8, R450-7-15.

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[1] Rules referenced are to the Utah Solid and Hazardous Waste Rules. State Authorities: UCA 26-14-2, enacted 1981, amended 1987 and 1988, effective 7/1/87 and 4/25/88. UCA 26-14-5, enacted 1981, amended 1988, effective 4/25/88 and 9/20/88. UCA 26-14-6, enacted 1981, amended 1985, 1987, 1988, effective 7/1/87, 4/25/88, and 9/20/88.

FOR FURTHER INFORMATION CONTACT: Marcella M. DeVargas (8HWM-RM), RCRA Program Support Section, RCRA Management Branch, U.S. EPA, 999 18th Street, suite 500, Denver, CO 80202-2405 Phone: 303/293-1670.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 19, 1991.

James J. Scherer,

Regional Administrator.

[FR Doc. 91-18618 Filed 8-5-91; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 28

[Docket No. 47666]

RIN 2105-AA29

Enforcement of Nondiscrimination on the Basis of Handicap in Department of Transportation Conducted Programs

AGENCY: Department of Transportation.

ACTION: Final rule.

SUMMARY: This regulation provides for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to programs or activities conducted by Federal Executive agencies, including the Department of Transportation, and is issued under the authority of that Act. 49 CFR part 27 carries out section 504 in the Department's financial assistance programs. This regulation sets forth standards for what constitutes discrimination on the basis of mental or physical handicap, provides a definition for individual with handicaps and qualified individual with handicaps, and establishes a complaint mechanism for resolving allegations of discrimination.

EFFECTIVE DATE: This rule is effective September 5, 1991.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Office of Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, room 10424, 400 7th Street SW., Washington, DC 20590. 202/366-9306. Persons with impaired hearing may contact Mr. Ashby by using TDD 202/755-7687. Taped copies are available on request for the use of persons with visual impairments.

SUPPLEMENTARY INFORMATION: The purpose of this rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the Department of Transportation. Section 504 states, in pertinent part, that—

> No otherwise qualified individual with handicaps in the United States, * * * shall, solely by reason of his or her handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance *or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Development Disabilities Act of 1978. Copies of any regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.*

(29 U.S.C. 794 (1978 amendment italicized).)

The substantive nondiscrimination obligations of the Department, as set forth in this rule, are identical, for the most part, to those established by Federal regulations for programs or activities receiving Federal financial assistance. *See* 28 CFR part 41 (Department of Justice section 504 coordination regulation for federally assisted programs) and 49 CFR part 27 (Department of Transportation section 504 rule for financial assistance programs). This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal Government should have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1978) *id.;* 124 Cong. Rec. 13,897 (remarks of Rep. Brademas); *id.* at 38,552 (remarks of Rep. Sarasin).

There are, however, some language differences between this rule and the Federal Government's section 504 regulations for federally assisted programs. These changes are based on the Supreme Court's decision in *Southeastern Community College* v. *Davis,* 442 U.S. 397 (1979), and the subsequent circuit court decisions interpreting *Davis* and section 504. *See Dopico* v. *Goldschmidt,* 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association* v. *Lewis,* 655 F.2d 1272 (DC Cir. 1981) *(APTA); see also Rhode Island Handicapped Action Committee* v. *Rhode Island Public Transit Authority,* 718 F.2d 490 (1st Cir. 1983).

These language differences are also supported by the decision of the Supreme Court in *Alexander* v. *Choate,* 469 U.S. 287 (1985), where the Court held that the regulations for federally assisted programs did not require a recipient to modify its durational limitation on Medicaid coverage of inpatient hospital care for handicapped persons. Clarifying its *Davis* decision, the Court explained that section 504 requires only "reasonable" modifications, *id.* at 300, and explicitly noted that "[t]he regulations implementing § 504 [for federally assisted programs] are consistent with the view that *reasonable* adjustments in the nature of the benefit offered must at times be made to assure meaningful access." Id. at n.21 (emphasis added).

Incorporation of these changes, therefore, makes this regulation implementing section 504 for federally conducted programs consistent with the Federal Government's regulations implementing section 504 for federally assisted programs as they have been interpreted by the Supreme Court. Many of these federally assisted program regulations were issued prior to the interpretations of section 504 by the Supreme Court in *Davis,* by lower courts interpreting *Davis,* and by the Supreme Court in *Alexander;* therefore their language does not reflect the interpretation of section 504 provided by the Supreme Court and by the various circuit courts. Of course, these federally assisted regulations must be interpreted to reflect the holdings of the Federal judiciary. Hence the Department believes that there are no significant differences between this ruled for federally conducted programs and the Federal Government's interpretation of section 504 regulations for federally assisted programs.

This regulation has been reviewed by the Department of Justice. It is an adaptation of a prototype prepared by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298). This regulation has also been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206).

This rule is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127) and therefore, a regulatory impact analysis has not been prepared. However, it is a significant rule under the Department of Transportation's Regulatory Policies and Procedures. A regulatory evaluation is not needed under the Department's

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This rule is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127) and therefore, a regulatory impact analysis has not been prepared. However, it is a significant rule under the Department of Transportation's Regulatory Policies and Procedures. A regulatory evaluation is not needed under the Department's

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procedures. The rule imposes no requirements or costs on parties outside the Department. The primary cost on DOT that this rule would impose is the obligation to make appropriate modifications for the handicaps of employees and others. The rule itself prevents undue burdens resulting from this obligation. The regulatory review called for by the rule will impose only minimal administrative costs.

This regulation does not have any impact on small entities since it governs only the conducted programs of DOT. Therefore, under the Regulatory Flexibility Act (5 U.S.C. 601–612), we certify that the proposal would not have a significant economic impact on a substantial number of small entities.

Response to Comments

The Department received only two comments on the notice of proposed rulemaking (NPRM) for this rule (55 FR 4633; February 9, 1990). The comments were from the Paralyzed Veterans of America (PVA) and the National Association of the Deaf Legal Defense Fund (NAD).

NAD and PVA both object to references to safety in various provisions of the regulation, saying that this emphasis on safety "is unnecessary and perpetuates the myth that persons with disabilities present a threat to themselves and others and are incapable of recognizing that danger." The Department believes that this concern is misplaced.

The Department of Transportation is a safety agency. Many of its regulatory programs are designed to ensure that trains, planes, ships, automobiles, trucks, buses, etc., and the people who operate them, provide safe transportation for the traveling public. To argue that the Department should avoid considering safety in any regulation having potential effects on the lives of the traveling public is to ignore a fundamental DOT mission. The ability to perform safely is self-evidently among the essential eligibility requirements for any position involving transportation functions regulated by the Department, and no individual, with or without a disability, is a qualified individual with respect to such functions if he or she cannot perform them safely. Paying due attention to safety does not, in our view, perpetuate any myths about people with disabilities or any other group.

The two comments discuss this concern about referring to safety primarily in the context of the definition of "qualified individual with handicaps." NAD expresses particular concern about a reference in the preamble to the NPRM to DOT safety rules establishing physical qualifications for transportation employees. The Department would view meeting these standards as among "essential eligibility requirements" for the positions involved. As explained in NAD's comment and voluminous attachments to it, NAD contends that some DOT physical qualification standards (e.g., requirements of the Federal Motor Carrier Safety Regulations for hearing acuity for interstate truck drivers) are contrary to section 504 because they establish an irrefutable presumption of unfitness for some individuals, without the opportunity for a case-by-case evaluation of the individuals' ability to perform job functions safely.

In the Department's view, it is not appropriate to attempt to resolve issues about the content of DOT physical qualification standards in this rulemaking, which is intended to establish the basic regulatory framework for the implementation of section 504 in DOT-conducted programs. The regulation provides a mechanism for addressing issues of the kind NAD raises about the content of the physical qualification standards. Under section 28.110, the Department's self-evaluation will include consideration of the consistency of its safety regulations with the standards of section 504. If, as a result of that self-evaluation, it is deemed necessary to alter physical qualification standards, then appropriate changes would be made.

Both comments asked for the inclusion of additional items in the definition of "auxiliary aids," and PVA suggested changing the name of the term to "aids for reasonable accommodation." The matters listed in the definition are intended to be examples, and not an exhaustive list. With respect to attendant services, which PVA requested be included, the Department believes that these are basically personal services which it is not appropriate to require in the rule. "Auxiliary aids" is a common, well-understood term; the Department is not persuaded that there would be anything to gain from changing it. Certainly the term cannot connote something that is discretionary in the context of a rule that requires auxiliary aids to be provided.

PVA generally approved the definition of facility, and from it assumed that all rolling stock or other conveyances used in DOT-conducted programs would be accessible (e.g., lift-equipped). The Department agrees, in the sense that we would hold ourselves to standards articulated in the Americans with Disabilities Act (ADA) with respect to the acquisition of accessible vehicles. This regulation, like the ADA, does not require retrofit of existing vehicles.

The definition of "individual with handicaps" is identical to the definition of "handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31), except that it reflects the amendment made by the Americans with Disabilities Act of 1990, Pub. L. No. 101–336 (ADA), which provides that the term does not include an individual who is currently illegally using drugs, when the agency acts on the basis of such use. The phrase "current illegal use of drugs" is explained in § 28.131, which effectuates the substantive provisions of the ADA amendment.

Definitions are also added of two terms. The phrase "current illegal use of drugs" is used in § 28.131. Its meaning is discussed in the preamble for that section. The definition of the term "drug" is taken from section 512(b) of the ADA.

Finally, a new § 28.131 has been added. Section 28.131 effectuates section 512 of the Americans with Disabilities Act, which amended title V of the Rehabilitation Act to clarify its application to people who use drugs illegally. Paragraph (a) provides that this part does not prohibit discrimination based on an individual's current illegal use of drugs.

As amended, the Act and the regulation distinguish between *illegal* use of drugs and the legal use of substances, whether or not those substances are "controlled substances," as defined in the Controlled Substances Act (21 U.S.C. 812). Alcohol is not a controlled substance, so use of alcohol is not affected by § 28.131 (although alcoholics are individuals with disabilities, subject to the protections of the statute). Section 28.131 also does not affect use of controlled substances pursuant to a valid prescription, or other use that is authorized by the Controlled Substances Act or any other provisions of Federal law. It is the *use* of the substance, rather than the substance itself, that is illegal.

A distinction is also made between the use of a substance and the status of being addicted to that substance. Addiction is a disability, and addicts are individuals with disabilities protected by the Act. The protection, however, does not extend to actions based on the illegal *use* of the substance. In other words, an addict cannot use the fact of his or her addiction as a defense to an action based on illegal use of drugs. This distinction is not artificial. Congress intended to deny protection to people

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who engage in the illegal use of drugs, whether or not they are addicted, but to provide protection to addicts so long as they are not currently using drugs.

A third distinction is the difficult one between current use and former use. The definition of "current illegal use of drugs" in § 28.103, which is based on the report of the Conference Committee on the ADA, H.R. Conf. Rep. No. 596, 101st Cong., 2d Sess. 64 (1990), is "illegal use of drugs that occurred recently through enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem."

Paragraph (a)(2)(i) specifies that an individual who has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully and who is not engaging in current illegal use of drugs is protected. Paragraph (a)(2)(ii) clarifies that an individual who is currently participating in a supervised rehabilitation program and is not engaging in current illegal use of drugs is protected. Paragraph (a)(2)(iii) provides that a person who is erroneously regarded as engaging in current illegal use of drugs, but who is not engaging in such use, is protected.

Paragraph (b) provides a limited exception to the exclusion of current illegal users of drugs from the protections of the Act. It prohibits denial of health services, or services provided under titles I, II, and III of the Rehabilitation Act on the basis of current illegal use of drugs, if the individual is otherwise entitled to such services.

Paragraph (c) expresses Congress' intention that the Act be neutral with respect to testing for illegal use of drugs. This paragraph implements the provision in section 512 of the ADA that allows entities "to adopt or administer reasonable policies or procedures, including but not limited to drug testing," that ensure that an individual who is participating in a supervised rehabilitation program, or who has completed such a program or otherwise been rehabilitated successfully, is no longer engaged in the illegal use of drugs.

Paragraph 28.131(c) clarifies that it is not a violation of this part to adopt or administer reasonable policies or procedures to ensure that an individual who formerly engaged in illegal use of drugs is not currently engaging in the illegal use of drugs. Any such policies or procedures must, of course, be reasonable, and must be designed to identify accurately the illegal use of drugs. This paragraph does not authorize inquiries, tests, or other procedures which would disclose use of substances that are not controlled substances or are taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law, because such uses are not included in the definition of "illegal use of drugs."

PVA suggested adding some elements to the self-evaluation requirement, including an assurance, a transition plan, a list of persons consulted, and modifications made for persons with vision and hearing impairments. PVA also felt that the self-evaluation file should be retained indefinitely, rather than for three years. The Department does not believe that additional paperwork would add much to the process. An assurance from DOT to DOT that DOT will make needed modifications seems superfluous, for example. DOT will modify the record retention provision to provide that the material will remain on file until all matters identified in the self-evaluation as needing modification have been modified.

PVA suggested that notice of the provisions of this rule should be made in recruitment materials and in accessible formats. The proposal required provision of this information to applicants; no regulatory change appears needed (the scope of this action would apply to prospective applicants as well). Likewise, information will be provided to the public in accessible formats, but no regulatory change is needed here to implement this policy.

PVA's next comment concerns a suggested addition to the general prohibitions against discrimination. It suggests language, parallel to that in 49 CFR part 27, the Department's financial assistance programs section 504 rule, prohibiting the provision of significant assistance to an agency, organization, or person that discriminates. The comment's example is of discrimination by another Federal agency that does not have to have a section 504 rule (e.g., the Federal Communications Commission) that somehow would be assisted by DOT. The Department does not believe that such an addition is needed. The part 27 language has obvious application in the financial assistance programs context, but not in the DOT-conducted programs context. The FCC example refers to too far-fetched and speculative a situation to warrant a regulatory provision.

With respect to new construction and alterations, PVA requested additional language referencing requirements under the Architectural Barriers Act (ABA). We agree that section 504 and the ABA are different statutes, and that compliance with one does not necessarily fulfill all obligations under the other. This, however, is a section 504 regulation, and, to be complete, need only encompass requirements under section 504. The ABA is adequately implemented by other regulations.

With respect to communications, both PVA and NAD suggest that, in determining whether an accommodation would create an undue burden, the entire resources of the agency be taken into consideration (rather than the funds available to the specific program or activity). This is not always feasible. The Federal budget process allocates appropriations to specific agencies and offices within DOT. Funds allocated to the FAA for air traffic control are not available to the Coast Guard pay for a braille printer. Funds allocated to the Assistant Secretary for Policy and International Affairs for research and development are not available to the Office of General Counsel for use in hiring interpreters. When considering whether a burden is undue, the decisionmaker will consider all Departmental resources available for use in the funding and operation of the conducted program, but all of the Department's resources cannot be regarded as available for particular programs or activities.

PVA suggested several additions to the compliance procedures section of the rule. First, PVA suggested a regulatory provision for obtaining input from the Architectural and Transportation Barriers Compliance Board (ATBCB) to resolve problems concerning facilities accessibility. The Department will consult with the ATBCB for this purpose when needed, but a regulatory provision is not essential.

Second, PVA requested a judicial review mechanism. The establishment of judicial review mechanisms is a matter for Congress and the courts. The Department does not have the authority, through rulemaking, to either provide for or preclude judicial review.

Third, PVA asked for a provision to ensure that all other documents issued by the Department are superseded by the nondiscrimination regulations of this part. Upon publication of this part, the Department will take action to ensure that any inconsistent rules, directives, etc. are superseded, but a provision in this rule is not necessary for this purpose.

Fourth, PVA recommended that provisions be added to explicitly allow compensation and attorney fees in administrative proceedings brought by

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Third, PVA asked for a provision to ensure that all other documents issued by the Department are superseded by the nondiscrimination regulations of this part. Upon publication of this part, the Department will take action to ensure that any inconsistent rules, directives, etc. are superseded, but a provision in this rule is not necessary for this purpose.

Fourth, PVA recommended that provisions be added to explicitly allow compensation and attorney fees in administrative proceedings brought by persons to enforce the rule against the Department. These issues are statutory, and beyond the scope of this rulemaking. The Department of Justice addressed these concerns in the preamble to its final rule on this subject, and the Department relies on that discussion.

With respect to the same provision, NAD suggests that the regulation explicitly state that deaf individuals have the right to seek review of a denial of a waiver of requirements of the Federal Motor Carrier Safety Regulations (FMCSR). The DOT should also allow deaf individuals to petition for a waiver of the disqualifying condition pertaining to deafness, NAD contends.

The latter point goes to the substance of the disagreement NAD has with the content of some provisions of the FMCSR. DOT finds it inappropriate to resolve here whether the FMCSR should permit individual waiver of this other disqualifying conditions. Nevertheless, individuals with impaired hearing have the same right as all other individuals to submit a complaint under the compliance procedures for any action of the Department which they believe is inconsistent with this Part.

A new paragraph (b)(2) has been added to § 28.170 to deal with complaints alleging violations of section 504 with respect to requirements of any DOT qualification standards. In this new paragraph the Department has established a process for the review and disposition of complaints alleging that a DOT rule is facially inconsistent with section 504. In those instances when a complainant alleges, for example, that a physical qualification standard established by the department, or any modal administration of the Department, applicable to a regulated transportation industry unlawfully discriminates against people with disabilities, the Department refers such complaint to the appropriate office or modal administration for review as a request for a rulemaking change to amend or rescind the challenged standard or a request for an individual waiver.

The operating administration would consider the petition for rulemaking and inform the complainant, in writing, of its decision on the petition. If the complainant is dissatisfied with the decision, it can request reconsideration of the decision. In some operating administrations, there is a formal procedure established by regulation for reconsiderations (e.g. 49 CFR 389.35–37 for the Federal Highway Administration). In others (e.g. the Coast Guard) there is no formal procedure, but reconsideration is permitted on an ad hoc basis. In any case, the operating administration will reconsider its decision on request of the complainant.

The Federal Highway Administration (FHWA), for example, has established minimum physical qualification standards for interstate drivers of commercial motor vehicles. These standards have been adopted in response to laws directing the agency to establish such requirements to ensure public safety. 49 U.S.C. 3102 and 49 U.S.C. app. 2505. Section 206 of the Motor Carrier Safety Act of 1984 provides, in part, that the agency is to adopt safety standards that shall ensure that "the physical condition of operators of commercial motor vehicles is adequate to enable them to operate such vehicles safely * * *." 49 U.S.C. app. 2505 (a)(3). Complaints received by the Department that any of these standards unlawfully discriminate against people with disabilities who wish to drive commercial motor vehicles in interstate commerce are referred to the Administrator of the FHWA for handling as a request for a waiver or for review and possible amendment of the challenged of standard.

Section 206(f) of the MCSA authorizes the agency to "waive, in whole or in part, application of any regulation issued under (Section 206 with respect to any person or class of persons," if it is determined that such action "is not contrary to the public interest and is consistent with the safe operation of commercial motor vehicles." Such requests for individual waivers are granted after notice and opportunity for comment has been provided and the FHWA has assured itself that such a waiver meets the standards established by statute. 49 U.S.C. app. 2505(f).

In considering requests for individual waivers or when reviewing a standard for possible amendment, the FHWA is mindful that its driver qualification standards must be consistent with the principles of the Rehabilitation Act. Moreover, recent Congressional action emphasizes the need to ensure that anti-discrimination principles are incorporated in any review of agency rules.

Accordingly, the FHWA intends to review all of its driver physical qualification standards to ensure that they continue to be based on sound medical, scientific, and technological grounds and that they are consistent with the standards of section 504. The first steps in this review have been taken. *See, e.g.,* 55 FR 41,028 (Oct. 5, 1990) (notice of proposed rulemaking proposing to eliminate a blanket prohibition against insulin-using diabetics driving in interstate commerce). Several recent specific requests for review of these standards are being considered by the FHWA in its current regulatory review effort.

The Department does not believe that this review process for interstate driver qualification requirements adds any burden to complainants beyond those imposed on any section 504 complainant. The Department believes that the FHWA's current comprehensive review of its driver qualification requirements will ensure an orderly and thorough review of these standards taking into full account both safety and anti-discrimination factors. In this latter regard, the Department notes that the FHWA, as part of its normal regulations review and development process, involves staff representing a number of disciplines, as well as with the Office of the Secretary.

Moreover, as part of this review the FHWA will not require individuals to produce information or data which may not be readily available to them. Rather, it is the agency's intent to develop the required information through its own resources, supplemented through public notice and opportunity for comment.

The Department believes that this approach will facilitate its review of all of its standards and will enable the Department to ensure itself that standards which it has adopted promote public safety while not unduly restricting employment opportunities for those with disabilities.

Because, with the one exception discussed with respect to the record retention provision of the self-evaluation section, the NPRM is being adopted without change, the Department refers interested persons to the preamble of the NPRM (55 FR 4633–4640; Feb. 9, 1990) for further information concerning the provisions of the individual sections of this rule.

List of Subjects in 49 CFR Part 28

Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped.

Issued this 30th day of July 1991, at Washington, DC.

Samuel K. Skinner,

Secretary of Transportation.

For the reasons set forth in the preamble, 49 CFR Subtitle A is amended by adding a new part 28 to read as follows:

PART 28—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF TRANSPORTATION

Sec.
28.101 Purpose.
28.102 Application.
28.103 Definitions.
28.104–28.109 [Reserved]
28.110 Self-evaluation.
28.111 Notice.
28.112–28.129 [Reserved]
28.130 General prohibition against discrimination.
28.131 Illegal use of drugs.
28.132–28.139 [Reserved]
28.140 Employment.
28.141–28.148 [Reserved]
28.149 Program accessibility: Discrimination prohibited.
28.150 Program accessibility: Existing facilities.
28.151 Program accessibility: New construction and alterations.
28.152–28.159 [Reserved]
28.160 Communications.
28.161–28.169 [Reserved]
28.170 Compliance procedures.
28.171–28.999 [Reserved]

Authority: 29 U.S.C. 794

§ 28.101 Purpose.

The purpose of this part is to carry out section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies, including this Department, or the United States Postal Service. 49 CFR part 27 implements section 504 in the Department's financial assistance programs.

§ 28.102 Application.

This part applies to all programs or activities conducted by the Department except for programs and activities conducted outside the United States that do not involve individuals with handicaps in the United States.

§ 28.103 Definitions.

For purposes of this part, the term—

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the Department. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the Department's alleged discriminatory actions in sufficient detail to inform the Department of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Current illegal use of drugs means illegal use of drugs that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem.

Drug means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

Department or *DOT* means the U.S. Department of Transportation, including the Office of the Secretary and all operating administrations.

Departmental Element (or "DOT element") means any one of the following organizations within the Department.

(a) Office of the Secretary (OST).

(b) United States Coast Guard (USCG).

(c) Federal Aviation Administration (FAA).

(d) Federal Highway Administration (FHWA).

(e) Federal Railroad Administration (FRA).

(f) National Highway Traffic Safety Administration (NHTSA).

(g) Urban Mass Transportation Administration (UMTA).

(h) Research and Special Programs Administration (RSPA).

(i) Maritime Administration (MARAD).

(j) St. Lawrence Seaway Development Corporation (SLSDC).

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Illegal use of drugs means the use of one or more drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812) The term "illegal use of drugs" does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) "Physical or mental impairment"—

(i) Includes any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; muscular; skeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine;

(ii) Includes any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities; and

(iii) Includes, but is not limited to, such diseases or conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction, and alcoholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the Department as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the Department as having such an impairment.

Qualified individual with handicaps means—

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812) The term "illegal use of drugs" does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) "Physical or mental impairment"—

(i) Includes any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; muscular; skeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine;

(ii) Includes any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities; and

(iii) Includes, but is not limited to, such diseases or conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction, and alcoholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the Department as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the Department as having such an impairment.

Qualified individual with handicaps means—

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(1) With respect to education services provided by the U.S. Merchant Marine Academy or the U.S. Coast Guard Academy, an individual with handicaps who meets the essential eligibility requirements for participation in and receipt of such services, including the physical standards applicable to the U.S. Naval Reserve or the U.S. Coast Guard.

(2) With respect to any other Department program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the Department can demonstrate would result in a fundamental alteration in its nature. The essential eligibility requirements include the ability to participate without endangering the safety of the individual or others.

(3) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity and

(4) *Qualified handicapped person* as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 28.140.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617), the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955); the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810); the Civil Rights Restoration Act of 1987 (Pub. L. 100–259, 102 Stat. 28), and Handicapped Program Technical Amendments Act of 1988 (Pub. L. 100–630, 102 Stat. 3312). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

§§ 28.104–109 [Reserved]

§ 29.110 Self-evaluation.

(a) The Department shall, by one year of the effective date of this part, evaluate its current policies and practices, and effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the Department shall proceed to make the necessary modifications.

(b) The Department shall provide an opportunity to interested persons, including individuals with handicaps, agency employees with handicaps, and organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The Department shall, until at least three years following completion of the evaluation required under paragraph (a) of this section, or until such time as all modifications identified by the self-evaluation to be necessary to comply with section 504 have been completed, whichever occurs later, maintain on file and make available for public inspection—

(1) a description of areas examined, regulations and nonregulatory criteria reviewed, and any problems identified; and

(2) a description of any modifications made.

§ 28.111 Notice.

The Department shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the Department, and make such information available to them in such manner as the Department finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 28 112–28.129 [Reserved]

§ 28.130 General prohibition against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the Department.

(b)(1) The Department, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangement, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The Department may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The Department may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The Department may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the Department; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The Department, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(6) The Department may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the Department establish requirements for the programs or

activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the Department are not, themselves, covered by this part. The Department may limit the programs or activities of a licensee or certificate holder, who is a qualified individual with handicaps, to the extent necessary to ensure the safety of that person or the safety of others.

(c) The exclusion of individuals without handicaps from the benefits of a program limited by Federal statute or Executive Order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive Order to a different class of individuals with handicaps is not prohibited by this part.

(d) The Department shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§ 28.131 Illegal use of drugs.

(a) General. (1) Except as provided in paragraph (b) of this section, this part does not prohibit discrimination against an individual based on that individual's current illegal use of drugs.

(2) The agency shall not discriminate on the basis of illegal use of drugs against an individual who is not engaging in current illegal use of drugs and who—

(i) Has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully;

(ii) Is participating in a supervised rehabilitation program; or

(iii) Is erroneously regarded as engaging in such use.

(b) Health and rehabilitation services. The agency shall not deny health services or services provided under titles I, II, and III of the Rehabilitation Act to an individual on the basis of that individual's current illegal use of drugs, if the individual is otherwise entitled to such services.

(c) Drug testing. (1) This part does not prohibit the agency from adopting or administering reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual who formerly engaged in the illegal use of drugs is not engaging in current illegal use of drugs.

(2) Nothing in paragraph (c) of this section shall be construed to encourage, prohibit, restrict, or authorize the conduct of testing for the illegal use of drugs.

§§ 28.132–28.139 [Reserved]

§ 28.140 Employment.

(a) No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the Department.

(b) The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities. The provisions of this section do not apply to military personnel of the U.S. Coast Guard.

§§ 28.141–28.148 [Reserved].

§ 28.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 28.150, no qualified individual with handicaps shall, because the Department's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Department.

§ 28.150 Program accessibility: Existing facilities.

(a) General. The Department shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require the Department to make each of its existing facilities accessible to and usable by individuals with handicaps;

(2) [Reserved]

(3) Require the Department to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where personnel of a DOT element believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the DOT element has the burden of proving that compliance with § 28.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Secretary or his or her designee, after considering all resources available for use in the funding and operation of the program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the Department shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods*. The Department may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The Department is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The Department, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the Department shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(c) *Time period for compliance*. The Department shall comply with the obligations established under this section within sixty days of the effective date of this part except that where structural changes in facilities are undertaken, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible. Provided that, where major restructuring of fixed facilities to accommodate technological changes is planned to occur within five years from the effective date of this part, changes needed to comply with this section are not required to be made until the planned restructuring takes place. However, alternative means for participation by individuals with handicaps in DOT programs and activities in the most integrated setting possible during this interim waiting period shall be available.

(d) *Transition plan*. In the event that structural changes to facilities will be undertaken to achieve program for the illegal use of

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activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the Department shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods*. The Department may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The Department is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The Department, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the Department shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(c) *Time period for compliance*. The Department shall comply with the obligations established under this section within sixty days of the effective date of this part except that where structural changes in facilities are undertaken, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible. Provided that, where major restructuring of fixed facilities to accommodate technological changes is planned to occur within five years from the effective date of this part, changes needed to comply with this section are not required to be made until the planned restructuring takes place. However, alternative means for participation by individuals with handicaps in DOT programs and activities in the most integrated setting possible during this interim waiting period shall be available.

(d) *Transition plan*. In the event that structural changes to facilities will be undertaken to achieve program

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accessibility, the Department shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps, agency employees with handicaps, or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the Department's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 28.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the Department shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600–607, apply to buildings covered by this section, except for military facilities of the Coast Guard, which are covered by 32 CFR part 56.

§ 28.152–28.159 [Reserved]

§ 28.160 Communications.

(a) The Department shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The Department shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Department.

(i) In determining what type of auxiliary aid is necessary, the Department shall give primary consideration to the requests of the individual with handicaps.

(ii) The Department need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature to applicants or participants in programs.

(2) Where the Department communicates with applicants and beneficiaries by telephone, telecommunications devices for deaf persons (TDDs) or equally effective telecommunication systems, shall be used to communicate with persons with impaired hearing.

(b) The Department shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The Department shall provide signs at each primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information as to the location of accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the Department to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where personnel of a DOT element believe that the proposed action would fundamentally alter the program or activity or would result in an undue financial and administrative burden, the DOT element has the burden of proving that compliance with § 28.160 would result in such alteration or burden. The decision that compliance would result in such alteration or burden must be made by the Secretary or his or her designee, after considering all resources available for use in the funding and operation of the program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the Department shall take any other action that would not result in such an alteration or such a burden but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 28.161–28.169 [Reserved]

§ 28.170 Compliance Procedures.

(a) Except as provided in paragraph (b) of this section, paragraphs (c)–(k) of this section apply to all allegations of discrimination on the basis of handicap in programs of activities conducted by the Department;

(b)(1) The Department shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(2) The Department shall process complaints alleging violations of section 504 with respect to requirements of any Department safety regulation, concerning an individual's qualifications to perform a function or to receive a certificate or license, according to the procedures for a petition for an individual waiver or request for review of a standard for possible amendment or recession. The Departmental element shall inform the complainant, in writing, or the decision on the request. The complainant may request reconsideration by the Departmental element of the decision. The decision on the petition or request shall constitute the Department's final action in the matter.

(c) Responsibility for implementation and operation of this section shall be vested in the Director, Departmental Office of Civil Rights.

(d)(1) The Department shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The Department may extend this time period for good cause.

(2) If the subject matter of a complete complaint concerns a decision by a Departmental element, under a safety regulation, concerning an individual's qualifications to perform a function or to receive a certificate or license, and the complainant has available within the Departmental element a formal review or appeal mechanism concerning that decision, the Department shall not take action on the complaint until the Departmental element's review or appeal process has been completed.

(e) If the Department receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) The Department shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the Department shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the Department of the letter required by § 28.170(g). The Department may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Assistant Secretary for Policy and International Affairs. The appeal will not be heard by the same person who made the initial determination on the request. The decision on the appeal shall constitute the Department's final action in the matter.

(j) The Department shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the Department determines that it needs additional information from the complainant, it shall have 60 days from the date it receives the additional information to make its determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The Department may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

§§ 28.171–28.999 [Reserved]

[FR Doc. 91-18527 Filed 8–5–91; 8:45 am]

BILLING CODE 4910-63-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 685

[Docket No. 900793–1169]

Pelagic Fisheries of the Western Pacific Region

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule; modification of permit criteria for Hawaii longline fishery moratorium.

SUMMARY: The Secretary of Commerce (Secretary) modifies an emergency rule now in effect that establishes a moratorium on issuing permits for the longline fishery for pelagic management unit species around Hawaii. Eligibility for limited entry permits is extended to lobster vessel owners who landed lobster in the Northwestern Hawaiian Islands (NWHI) in 1990. The purpose of this action is to correct an unanticipated discrepancy between the emergency and the long-term management plan. The modification is expected to relieve hardships on certain participants in the fishery.

EFFECTIVE DATE: The amendment to § 685.15(a)(1) is effective from 0000 hours local time August 1, 1991, to 2400 hours local time October 9, 1991.

ADDRESSES: Copies of the environmental assessment prepared for the emergency rule may be obtained from E.C. Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Fisheries Management Division, Southwest Region, Terminal Island, California (213) 514–6660, or Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, Honolulu, Hawaii (808) 523–1368.

SUPPLEMENTARY INFORMATION: Under the emergency action authority of section 305(c) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), the Secretary issued an emergency rule (56 FR 14866, April 12, 1991) temporarily amending the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (FMP) and its implementing regulations. The rule, which was implemented April 23, 1991, establishes a moratorium on additional entry into the Hawaii longline fishery to provide a period of stability and allow for development of an amendment to the FMP providing for long-term management.

Under the original moratorium, permits for the fishery were limited to persons who certified that they were: (1) Owners of vessels when those vessels made landings in Hawaii of longline-caught management unit species prior to December 5, 1990; (2) owners of vessels when those vessels engaged in transshipment(s) of longline-caught management unit species in the exclusive economic zone (EEZ) off Hawaii prior to December 5, 1990; (3) persons who made a substantial financial commitment or investment in gear prior to December 5, 1990, for a vessel owned by the person and located in Hawaii prior to December 5, 1990, so that the vessel could participate in the fishery; or (4) persons who by June 21, 1990, had made a substantial financial commitment or investment in the construction of a new fishing vessel for participation in the fishery and intended contemporaneously with the investment to participate in the fishery. Permits were not transferable from one owner to another during the emergency period except in cases of extreme hardship such as death or terminal illness preventing the vessel owner from participating in the fishery. The hardship determination was made by the Regional Director in consultation with the Western Pacific Fishery Management Council (Council). A permit holder could also replace the originally qualifying vessel with another vessel provided the Regional Director determined that the replacement vessel had comparable harvesting capacity.

At its meeting on May 16, 1991, the Council voted to request that the Secretary extend the moratorium for another 90-day period, and to institute immediately three modifications to the emergency rule: (1) To extend permit eligibility to persons who, prior to June 21, 1990, had made substantial financial commitment or investment in the refitting of a vessel for participation in the fishery in the EEZ surrounding Hawaii, and who can establish intent to participate in the fishery prior to or at the time of the commitment or investment; (2) to allow a permit holder to transfer a limited entry permit with the sale of the vessel one time during the emergency and proposed regular plan amendment period; and (3) to clarify application of the rule to vessels owned by corporations and partnerships. In a subsequent teleconference meeting on May 24, 1991, the Council agreed to request that permit eligibility be extended to persons who were owners of vessels that made landings of lobster from the NWHI in 1990. All of these provisions also would be included in the regular FMP amendment that would establish a long-term moratorium. The Council requested that the proposed modification be made effective as soon as possible.

The modifications agreed to at the May 15–16 meeting were implemented in a rule published in the **Federal Register** on June 24, 1991 (56 FR 28718). The modification proposed at this time extends permit eligibility to owners of lobster vessels that landed lobsters taken from the NWHI in 1990, as agreed to by the Council on May 24, 1991. Together, these changes will make the provisions of the emergency rule

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At its meeting on May 16, 1991, the Council voted to request that the Secretary extend the moratorium for another 90-day period, and to institute immediately three modifications to the emergency rule: (1) To extend permit eligibility to persons who, prior to June 21, 1990, had made substantial financial commitment or investment in the refitting of a vessel for participation in the fishery in the EEZ surrounding Hawaii, and who can establish intent to participate in the fishery prior to or at the time of the commitment or investment; (2) to allow a permit holder to transfer a limited entry permit with the sale of the vessel one time during the emergency and proposed regular plan amendment period; and (3) to clarify application of the rule to vessels owned by corporations and partnerships. In a subsequent teleconference meeting on May 24, 1991, the Council agreed to request that permit eligibility be extended to persons who were owners of vessels that made landings of lobster from the NWHI in 1990. All of these provisions also would be included in the regular FMP amendment that would establish a long-term moratorium. The Council requested that the proposed modification be made effective as soon as possible.

The modifications agreed to at the May 15–16 meeting were implemented in a rule published in the **Federal Register** on June 24, 1991 (56 FR 28718). The modification proposed at this time extends permit eligibility to owners of lobster vessels that landed lobsters taken from the NWHI in 1990, as agreed to by the Council on May 24, 1991. Together, these changes will make the provisions of the emergency rule

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identical to the provisions agreed on for the subsequent plan amendment. The Council would like this modification to be effective as soon as possible because of the financial hardships that would result if it were not implemented during the emergency period. Between five and eight lobster vessels that would qualify for limited entry permits under the proposed plan amendment moratorium are currently prohibited from participating in the longline fishery during the emergency period. Preventing these fishing vessels from fishing during the emergency period will cause hardships not intended by the Council because they also are prevented from landing lobsters under an emergency closure implemented to protect the lobster stocks from overfishing (56 FR 21961, May 13, 1991).

The Council is proceeding with an amendment to the FMP to extend the moratorium for an additional two and one-half years. The purpose of the moratorium is to allow the Council, MNFS, and industry to continue with data collection and analysis, evaluation of long-term management alternatives, including limited entry, and selection of a long-term management regime.

Classification

The Assistant Administrator for Fisheries, NOA (Assistant Administrator), has determined that this rule is necessary to respond to an emergency situation, involving unintended hardship to certain vessels as explained above, and is consistent with the Magnuson Fishery Conservation and Management Act (Magnuson Act) and other applicable law. This rule further modifies a rule that was originally implemented for 90 days under section 305(C)(2)(B) of the Magnuson Act and subsequently extended with modifications for an additional 90 days (June 24, 1991, 56 FR 28718).

The Assistant Administrator also finds that the reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide notice and opportunity for comment upon, or to delay for a full 30 days, the effective date of these emergency regulations under sections 553(b) and (d) of the Administrative Procedure Act.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order and has been reported to the Director of the Office of Management and Budget with an explanation of why it is not possible to follow the regular procedures of that order.

NOAA prepared an environmental assessment (EA) for this action. The Assistant Administrator concluded that there will be no significant impact on the human environment. A copy of the EA is available from the Southwest Region (see "**ADDRESSES**").

The Assistant Administrator has determined that this emergency rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of the State of Hawaii, and the state has concurred.

The rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

This emergency rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comment.

This emergency rule does not contain policies with known federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 685

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 31, 1991.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 685 is amended as follows:

PART 685—PELAGIC FISHERIES OF WESTERN PACIFIC REGION

1. The authority citation for part 685 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 685.15, a new paragraph (a)(1)(iii) is added effective from 0000 hours local time August 1, 1991, to 2400 hours local time October 9, 1991, to read as follows:

§ 685.15 Limited Entry Permits

(a) * * *

(1) * * *

(iii) Was owner of the vessel, which had a permit issued under 50 CFR part 681, and which landed lobster taken from the Northwestern Hawaiian Islands during calendar year 1990; or

* * * * *

[FR Doc. 91–18568 Filed 8–1–91; 2:33 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 151
Tuesday, August 6, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 800

Aflatoxin Testing Services

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) proposes to revise the regulations under the United States Grain Standards Act (ACT), as amended (7 U.S.C. 71 *et seq.*), to include aflatoxin testing service requirements for export corn shipments. The Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 71 *et seq.* as amended by title 20 Public Law No. 101–624, Sec. 2007) amends section 5 of the ACT to require that all corn exported from the United States be tested for aflatoxin, unless the contract for export stipulates that such testing is not required. In conjunction with implementing the required aflatoxin testing service for corn exported from the United States, FGIS will begin providing aflatoxin testing services on all grains, including corn, under the authority of the ACT. This action will increase the availability of official aflatoxin testing services to the grain industry and facilitate the implementation of the required export corn testing.

DATES: Comments must be submitted on or before September 5, 1991.

ADDRESSES: Comments must be submitted in writing to George Wollam, Federal Grain Inspection Service, USDA, room 0619 South Building, Box 96454, Washington, DC, 20090–6454; telemail users may respond to [IRSTAFF/FGIS/USDA] telemail; telex users may respond to George Wollam, TLX: 7807351, ANS:FGIS UC; telecopy users may respond to the automatic telecopier machine at (202) 447–4628.

All comments received will be made available for public inspection at room 0619 South Building, 1400 Independence Avenue SW., Washington, DC, during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: George Wollam, address as above, telephone (202) 382–0231

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as "nonmajor" because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

John C. Foltz, Administrator, FGIS, has determined that this proposed rule will not have a significant economic impact on substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most users of the official inspection and weighing services and those entities that perform those services do not meet the requirement for small entities. Further, the standards are applied equally to all entities.

Information Collection and Recordkeeping Requirements

In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the collection and recordkeeping requirements contained in this proposal are included under control number 0580–0013 now being reviewed by the Office of Management and Budget (OMB). Comments concerning these requirements should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Department of Agriculture, room 3201, NEOB, Washington, DC 20503.

Background

Aflatoxin is a naturally occurring mycotoxin produced by two types of mold, *Aspergillus flavus* and *Aspergillus parasiticus*. *A. flavus* is very common and widespread in nature and is more likely to occur when certain grains are grown under stressful conditions such as drought. Aflatoxin occurs in soil, decaying vegetation, hay, and grains undergoing microbiological deterioration. It invades all types of organic substrates whenever and wherever the conditions are favorable for its growth.

Since 1977, FGIS has provided aflatoxin testing services under the authority of the Agricultural Marketing Act (AMA) of 1946 (7 U.S.C. 1621 *et seq.*), as amended. This service has been available through various FGIS field offices, the FGIS Commodity Testing Laboratory in Beltsville, Maryland, and government cooperators (a Federal or State agency having a cooperative agreement with FGIS).

The ACT authorizes the Administrator of FGIS to approve and provide official inspection service, upon request, using criteria other than numerical or special grade criteria for determining the kind, class, quality, or condition of grain, or other facts related to grain. FGIS refers to test services provided under this authority as "Official Criteria." This service is independent of the grade designation assigned under the Official U.S. Standards for Grain. Official criteria currently include several types of quality information, such as wheat protein, soybean oil and protein, moisture in all grains, and sunflower seed oil & admixture. Furthermore, these services are provided only upon the request of an interested person unless otherwise required by the standards or regulations under the ACT.

In conjunction with implementation of the required aflatoxin testing services for corn exported from the United States, FGIS will begin providing aflatoxin testing on all grains, including corn, as official criteria. This action will increase the availability of official aflatoxin test services to the grain industry and facilitate the implementation of the required export corn test.

Regulatory Revisions

The Grain Quality Incentives Act of 1990 (GQIA) amends section 5 of the ACT (7 U.S.C. 77) to require that any corn exported from the United States be tested to ascertain whether it exceeds acceptable levels of aflatoxin

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INFORMATION:

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In conjunction with implementation of the required aflatoxin testing services for corn exported from the United States, FGIS will begin providing aflatoxin testing on all grains, including corn, as official criteria. This action will increase the availability of official aflatoxin test services to the grain industry and facilitate the implementation of the required export corn test.

Regulatory Revisions

The Grain Quality Incentives Act of 1990 (GQIA) amends section 5 of the ACT (7 U.S.C. 77) to require that any corn exported from the United States be tested to ascertain whether it exceeds acceptable levels of aflatoxin contamination. This requirement does not apply if export contract between the buyer and seller stipulates that aflatoxin testing is not required. Furthermore, the House Conference Report covering the GQIA (H.R. Conf. Rep. No. 916, 101st Cong., 2nd Sess. 595 (1990)) states,

> * * * buyer and seller may agree not to have corn tested for aflatoxin. However, if a buyer and seller desire an official USDA test and certification for aflatoxin, such test must be conducted by USDA. This does not preclude buyer and seller from utilizing private (unofficial) testing laboratories in lieu of USDA official testing.

FGIS proposes to implement the aflatoxin testing requirements of the GQIA by revising the regulations under the ACT to require official aflatoxin tests of corn exported from the United States unless: (1) The buyer and seller agree not to have the corn tested; or (2) the buyer and seller agree to have the corn tested by an entity other than FGIS or an agency authorized to perform official testing under the ACT. This requirement applies only to corn as defined in the official U.S. Standard for Corn (7 CFR part 810, subpart D). Furthermore, the aflatoxin testing requirement also applies to corn exported from the United States under the waiver provisions set forth under Section 800–18.

FGIS will cover the cost of providing aflatoxin test services by applying the applicable inspection fee(s) as set forth in § 800.71 of the regulations. For example, an inspection service fee of $41.90 per hour per service representative would be charged under a noncontract, regular workday arrangement. This charge would cover all inspection activities, including grading and aflatoxin tests.

Proposed Action

FGIS proposes to revise §§ 800.15, 800.16, and 800.162. Specifically, FGIS proposes to revise language in § 800.15(b)(1) by including the exporter's responsibility for complying with corn aflatoxin testing requirements. Further, it is proposed to revise § 800.16(a) by including official aflatoxin test results as a certification requirement under the ACT.

FGIS proposes to revise § 800.162, Certificates of grade; special requirements, by the addition of a new paragraph (d), Aflatoxin Test for Corn, to indicate that each official certificate for shipments of export corn shall show aflatoxin test results, when applicable.

For the reasons set out in the preamble, 7 CFR part 800 is proposed to be amended as follows:

PART 800—GENERAL REGULATIONS

1. The authority citation for part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

2. It is proposed that § 800.15(b)(1) be revised as follows:

§ 800.15 Services.

* * * * *

(b) *Responsibilities for complying with the official inspection, aflatoxin testing, and weighing requirements*—(1) *Export grain.* Exporters are responsible for: (i) Complying with all inspection, Class X weighing, and other certification provisions and requirements of section 5(a)(1) of the ACT and the regulations applicable to export grain and (ii) having all corn, as defined in Part 800–401, exported from the United States tested for aflatoxin contamination unless the buyer and seller agree not to have the corn tested by an entity other than FGIS.

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3. It is proposed that § 800.16(a) be revised as follows:

§ 800.16 Certification requirements for export grain.

(a) *General.* Official Export Grain Inspection and Weight Certificates, Official Export Grain Inspection Certificates, and Official Export Grain Weight Certificates for bulk or sacked grain shall be issued according to § 800.162 for export grain loaded by an export elevator. Only these types of export certificates showing the official grade, official aflatoxin test results if required under the ACT and the regulation, and/or the Class X weight of the grain shall be considered to be in compliance with inspection and weighing requirements under the ACT for export grain.

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4. It is proposed that § 800.162(d) be added as follows:

§ 800.162 Certification of Grade; special requirements.

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(d) *Aflatoxin Test for Corn.* Official corn export certificates shall show, in addition to the requirements of paragraphs (a), (b), and (c) of this section, the official aflatoxin test results if required under § 800.15(b).

Dated: July 2, 1991.

D.R. Galliart,

Acting Administrator.

[FR Doc. 91–18364 Filed 8–5–91; 8:45 am]

BILLING CODE 3410-EN-M

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 922, 931 and 932

[No. 91–280.1]

Eligibility and Financial Disclosure Requirements for Directors of the Federal Home Loan Banks; and Federal Housing Finance Board, Board of Directors and Employee Responsibilities and Conduct

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rules.

SUMMARY: The Federal Housing Finance Board ("Finance Board") proposes to amend parts 931 and 932 of its interim rules governing the eligibility, financial disclosure and conflict of interest requirements for directors of the Federal Home Loan Banks ("FHLBanks"). The Finance Board also is issuing proposed regulations under part 922 implementing eligibility, financial disclosure and conflict of interest requirements for the appointive members of the Board of Directors of the Finance Board.

The proposed rule would revise the current eligibility, conflict of interest and financial disclosure requirements established by the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (Pub. L. No. 101–73, 103 Stat. 183 August 9, 1989 ("FIRREA")) for appointive and elective directors of the FHLBanks. The proposed rules also would implement the eligibility and conflict of interest requirements for the appointive members of the Board of Directors of the Finance Board, which were established by FIRREA. They would apply to the Board of Directors financial interest prohibitions and financial disclosure requirements that are similar in many respects to those applicable to appointive directors of the FHLBanks. The proposed rules are intended to ensure that FHLBank directors and the Board of Directors of the Finance Board carry out their official responsibilities without conflicts of interest, or the appearance of conflicts of interest, that could affect adversely their ability to perform their duties, or the credibility or operations of the Finance Board or FHLBanks.

DATES: Comments must be in writing and received on or before September 5, 1991.

ADDRESSES: Comments should be mailed to: Federal Housing Finance Board, Executive Secretary, 1777 F Street, NW., Washington, DC 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Sharon B. Like, Attorney/Advisor, Office of the General Counsel, (202) 408–2930, or Amy R. Maxwell, Director, Operations Division, District Bank Directorate, (202) 408–2882, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. Statutory and Regulatory Background

FIRREA amended the Federal Home Loan Bank Act of 1932 ("Act") by establishing, in section 2A(a) of the Act, the Finance Board as the successor agency to the former Federal Home Loan Bank Board ("Bank Board") for the supervision and regulation of the twelve FHLBanks. 12 U.S.C. 1422a(a). Section 2A(b)(1) of the Act vests the management of the Finance Board in a Board of Directors consisting of the Secretary of Housing and Urban Development, and four directors appointed by the President, by and with the advice and consent of the Senate. 12 U.S.C. 1422a(b)(1). Section 2A(b)(2) sets forth eligibility requirements for appointment of the Finance Board directors, and limitations on conflicts of interest for such directors. 12 U.S.C. 1422a(b)(2). In addition, FIRREA amended section 7 of the Act, 12 U.S.C. 1427, by substantially changing the eligibility requirements for appointive and elective FHLBank directors.

In order to comply with FIRREA's new requirements for FHLBank directors, on January 16, 1990, the Finance Board amended the former Bank Board's director eligibility rules under 12 CFR parts 931 and 932 by issuing interim rules, effective January 5, 1990 (55 FR 1393). The Finance Board now proposes to further amend parts 931 and 932 in order to effect changes deemed desirable by the Finance Board as a result of public comments received and its experience under the interim rules. The Finance Board also proposes to issue new regulations under part 922 to implement the eligibility and conflict of interest provisions of FIRREA, and establish financial disclosure requirements, for the appointive members of the Board of Directors of the Finance Board. These provisions would parallel in many respects the definitions and requirements of parts 931 and 932 for appointive and elective FHLBank directors.

B. Analysis of Comments Received in Response to Request for Comment on Interim Rules

The Finance Board received eight comment letters in response to its request for comment on the interim rules. Comments were submitted by three FHLBanks, two financial trade associations, and three savings institutions.

The comment letters are discussed below by subject matter addressed in the letters.

1. Appointive Director Eligibility

a. Qualifications

1. *Residency requirement.* Section 7(a) of the Act provides that "all (FHLBank directors) shall be citizens of the United States and bona fide residents of the district in which such [B]ank is located." 12 U.S.C. 1427(a). Section 932.18(a)(2) of the interim rules implements this statutory requirement by providing that each appointive director shall "[b]e a bona fide resident of the district served by the Bank for which he or she is a director."

One commenter noted that as president of an institution headquartered in Ohio, but residing ten minutes away in West Virginia, he is ineligible to serve as a director of the FHLBank of Cincinnati. The commenter suggested that the residency requirement be changed to include a "place of work" criterion as well in order to expand the source of qualified individuals to serve on the boards of the various FHLBanks. (A similar comment with respect to the residency requirement for elective directors was received from an Indiana institution located close to the Illinois border, whose officers reside nearby in Illinois, and therefore are ineligible to serve as elective directors of the FHLBank of Indianapolis.)

The Finance Board proposes to maintain the residency requirement in the regulations. The Finance Board believes that it does not have the flexibility to change the residency requirement because section 7(a) of the Act provides specifically that all FHLBank directors be bona fide residents of the district in which such FHLBank is located.

2. *Compliance with regulations and policies.* Section 932.18(a)(3) of the interim rules requires each appointive director to "[c]omply with all regulations and policies of the Board and the Bank, presently in effect or to be established by the Board or a Bank's directorate." One commenter questioned the import of requiring appointive directors to comply with the FHLBank's policies as established by its board, because the FHLBank's board lacks the authority to appoint, discipline or remove appointive directors. (The same comment also was made with respect to such compliance by elective FHLBank directors.)

The Finance Board proposes to keep this requirement in the regulations. It is appropriate that FHLBank directors be required to comply with all regulations and policies, be they established by the Finance Board or their own FHLBank. Further, FHLBank directors could be subject to policies and procedures established by the board not directly relevant to their qualifications as a director (*e.g.*, recordkeeping requirements and compensation for time and expenses incurred while serving as a director), and they should be required by these regulations to comply with such policies.

b. *Prohibited Financial Interests*

Section 7(a) of the Act states that no appointive director may, during such director's term of office, "hold shares, or any other financial interest in, any member of a Bank." 12 U.S.C. 1427(a). Section 932.18(b) of the interim rules implements this provision by providing that no appointive director may "* * * hold shares, or any other financial interest in any member of [any] Bank, non-diversified holding company, subsidiary or affiliate thereof * * *."

One comment letter opposed the statutory prohibition on financial interests, arguing that the most dedicated and supportive directors are those who have invested in the capital of member institutions because of their confidence in the FHLBank System. Thus, by prohibiting such persons with financial interests in members from serving on the FHLBank's board, FIRREA "waters down the qualifications of these directors." However, the Finance Board is charged with implementing the provisions of FIRREA, and does not have the discretion to ignore a financial interest prohibition mandated by statute.

Noting that FIRREA is silent as to the impact of the financial interest prohibition on existing appointive directors, another commenter stated that the Finance Board's regulations could have grandfathered such financial interests for the remainder of the director's term. The commenter stated that this would have given existing directors greater flexibility in deciding whether and when to divest their financial interests, thereby eliminating the possibility of substantial financial losses. Again, the Finance Board is constrained by the provisions of FIRREA, which prohibit such financial interests as of the effective date of the statute and do not provide for grandfathering of existing financial interests.

Section 931.20 of the interim rules defines a "financial interest" generally as the ownership or control of equity or debt interests. Interim § 931.18 defines hree savings

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b. *Prohibited Financial Interests*

Section 7(a) of the Act states that no appointive director may, during such director's term of office, "hold shares, or any other financial interest in, any member of a Bank." 12 U.S.C. 1427(a). Section 932.18(b) of the interim rules implements this provision by providing that no appointive director may "* * * hold shares, or any other financial interest in any member of [any] Bank, non-diversified holding company, subsidiary or affiliate thereof * * *."

One comment letter opposed the statutory prohibition on financial interests, arguing that the most dedicated and supportive directors are those who have invested in the capital of member institutions because of their confidence in the FHLBank System. Thus, by prohibiting such persons with financial interests in members from serving on the FHLBank's board, FIRREA "waters down the qualifications of these directors." However, the Finance Board is charged with implementing the provisions of FIRREA, and does not have the discretion to ignore a financial interest prohibition mandated by statute.

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"control" to mean "[t]o own, hold with the power to vote, hold proxies representing, or otherwise hold the power to control ten percent or more of the voting shares or rights of a company." One commenter questioned the meaning of the phrase "otherwise hold the power to control," suggesting that the phrase be clarified or that examples of such control be set forth in the preamble. The Finance Board agrees that the meaning of this phrase may be unclear, and proposes to revise the definition to track more closely the definition of "control" in the Federal Reserve Board's ("FRB's") Regulation O and the Office of Thrift Supervision's ("OTS's") savings and loan holding company regulations. See 12 CFR 215.2(b), 583.7, respectively. Accordingly, the proposed regulations would revise the definition of "control" to mean "to own, control, or hold with the power to vote, or hold proxies representing, ten (10) percent or more of the voting shares or rights of a company."

Under § 932.18(e) of the interim rules, financial interests of an appointive director's "spouse, child, or other dependents" are considered financial interests of the director. One comment letter stated that if the intent of this provision is to include only financial interests of minor children who are dependents of the director, the section is overbroad in failing to distinguish such financial interests from those of adult children who are no longer the legal responsibility of the director and are no longer claimed as dependents under other applicable laws. The proposed regulations would clarify this point by defining financial interests of an appointive director to include financial interests of the director's spouse, minor children, and any other individual related by blood, marriage or adoption residing in the director's household.

c. Mutual Funds

Section 932.18(f) of the interim rules provides that "(a)ppointive directors may have an indirect interest in securities or other financial interests of a member that arises through ownership of shares or other investment units of mutual funds." See H.R. Conf. Rep. No. 101–222, 101st Cong., 1st Sess. (1989) ("FIRREA Conf. Rep."), at 425.

One comment letter suggested that the regulations distinguish a mutual fund from a holding company, and define a "diversified" mutual fund referred to in the FIRREA Conference Report. See id. The Finance Board proposes to define a diversified mutual fund in the proposed regulations by reference to the definitions of such company as set forth in section 5 (a) and (b)(1) of the Investment Company Act of 1940, as amended, 15 U.S.C. 80a–5 (a), (b)(1).

d. Effect of Ineligibility

Section 7(f)(3) of the Act provides that "[i]f any elective Bank director shall cease to have any qualification set forth in this section, the office held by such person shall immediately become vacant, and such person shall not continue to act as a Bank director." 12 U.S.C. 1427(f)(3). Section 932.21(d)(1) of the interim rules implements this provision in virtually identical form.

One comment letter supported this provision, noting that it would be better to have a vacant seat on the FHLBank's board, rather than permit a director from an undercapitalized institution to continue serving, and that the absence of one director on a board of 14 members would not cause undue delay or disruption.

e. Certification and Reporting

Section 932.18(d)(2) of the interim rules requires appointive directors generally to disclose to the Finance Board (i) uninsured deposit or savings accounts in a member, (ii) contractual rights with a member exceeding a minimum threshold of either $10,000 or 5 percent of the director's total income; and (iii) loans or extensions of credit from a member exceeding $50,000, except for the purchase of financing of the director's principal residence.

(1) Contractual rights. One comment letter noted that the interim preamble states that for purposes of reporting contractual rights, the interim rules consider the aggregate of contractual rights which the director has with all members of the FHLBank. The commenter noted, however, that interim § 932.18(d)(ii) does not appear to provide for aggregation of contractual rights, but rather requires disclosure of certain contractual rights with "a" member of such FHLBank. As a commenter correctly noted, the interim (and proposed) rules do not require aggregation of contractual rights with all members. Accordingly, for purposes of determining whether to make disclosures under this provision, the director should determine whether he or she has contractual rights with a member of the FHLBank served that exceed either $10,000 or 5 percent of total income, whichever is less, on an annual basis.

Another commenter questioned the meaning of "contingent or fixed" contracts. The commenter also recommended that only contractual rights in the current, not the previous, calendar year be required to be disclosed, because disclosure is required annually in other subsections of the interim rules. The Finance Board has determined that contractual rights in the previous calendar year also should be required to be disclosed, as they are for federal government employees on the Standard Form 278. Such disclosures will alert the Finance Board to any recent dealings by the directors with members (and related affiliates) that could raise conflict of interest issues for the director at the FHLBank.

(2) Reporting of ineligibilities. Section 932.18(h) of the interim rules requires appointive directors to report known or suspected ineligibilities to the Finance Board. One commenter suggested that the reports also be provided to the affected FHLBank in order to apprise the FHLBank of any potential vacancies on its board. It is important that the reports be provided to the Finance Board in order that it may determine, pursuant to the regulations, whether the directors satisfy the eligibility qualifications to serve as FHLBank directors. The Finance Board would of course promptly notify a FHLBank of any impending vacancies on the FHLBank's board. It should be noted that there is nothing in the regulations that would prohibit the directors from providing their reports to the FHLBanks as well as the Finance Board.

2. Community Interest Director Eligibility.

Section 7(a) of the Act provides that "[a]t least 2 of the * * * Bank directors who are appointed by the Board shall be representatives chosen from organizations with more than a 2-year history of representing consumer or community interests on banking services, credit needs, housing, or financial consumer protections." 12 U.S.C. 1427(a). Section 931.15 of the interim rules defines a "community interest director" generally as a "member in good standing of a consumer or community organization." Interm § 931.17 defines a "consumer or community organization" generally as en organization that "has at least a two year history of representing consumer or community interests on banking services, credit needs, housing, or financial consumer protections."

One commenter pointed out that the interim preamble states that a community interest director must come from the organization's membership, "so long as the director is actively involved in one of the organization's qualifying interests." Interim § 931.15, however, does not appear to require that the director be actively involved, but merely states that the director must be a "member in good standing" of the organization. The proposed regulations would require that the director be "actively involved" in representing one of the four designated consumer or community interests at the time of his or her appointment as a community interest director, because past experience or simple affiliation with an organization is not enough to show current experience and commitment.

Section 932.19(b) of the interim rules states that if the consumer or community organization from which the community interest director was chosen "changes its principal purpose" to something other than one of the four designated consumer or community interests, the director becomes ineligible to serve as a community interest director. One comment letter noted that this "principal purpose" requirement appears inconsistent with statements in the interim preamble suggesting that an organization qualifies if it is actively involved in any one of the four designated consumer or community interests, even if the organization has some other principal purpose. The principal purpose requirement also is inconsistent with the definition of "consumer or community organization" in interim (and proposed) § 931.17, which does not require that the organization's principal purpose be the representation of such consumer or community interests. Accordingly, the proposed regulations would delete the principal purpose requirement as a cause of ineligibility for community interest directors.

3. Elective Director Eligibility.

a. Qualifications

1. *Residency requirement.* See discussion *supra* under Appointment Director Eligibility.

2. *Compliance with regulations and policies.* See discussion *supra* under Appointive Director Eligibility.

b. Minimum Capital Requirements

Section 7(b) of the Act provides that "[n]o person who is an officer or director of a member that fails to meet any applicable capital requirement is eligible to hold the office of * * * Bank director." 12 U.S.C. 1427(b). Section 932.21(b)(1) of the interim rules implements this provision by providing that such person is ineligible to serve as a FHLBank elective director, "regardless of any exemption or exception granted by any appropriate regulatory agency." Interim § 932.21(b)(2) also provides that "a person whose member failed to meet the applicable minimum regulatory capital requirements shall not be eligible for election to a directorship during the calendar year in which the failure occurred."

One comment letter supported the exemption provision in § 932.21(b)(1) on the basis that directors and officers from institutions failing their capital requirements would have to direct their attention to restoring their institution's capital position, and could not devote their full attention to running the FHLBank. The letter noted that FHLBank directors representing sound institutions would be more likely to make objective decisions about FHLBank management, "rather than being swayed by whether some decision might affect their particular FHLBank."

In addition, the comment letter agreed that an elective director should not be eligible for reelection as a FHLBank director during the calendar year in which the institution failed its capital requirements because time is needed to allow full recovery of the institution.

4. Other Comments

Several comment letters suggested minor editorial and stylistic changes to the language of the interim rules. In addition, the comment letters identified a number of internal references to paragraph cites in the interim rules and preamble that are inconsistent, and which have been corrected in the proposed rules.

C. Analysis of Proposed Rulemaking

1. Amendments to Parts 931 and 932

a. Appointment Director Eligibility—Section 932.18

1. *Qualifications—Section 932.18(a).* The proposed regulations would change the heading from "General" to "Qualifications" in order to more accurately reflect the substance of this paragraph. In addition, paragraph (a)(3) would be revised to include the requirement that the director comply with all requirements of the Act, in addition to the requirement under the interim rules of compliance with regulations and policies of the Finance Board and the FHLBank.

2. *Prohibited Service, Financial Interests and Financial Relationships—§ 932.18(b).* The proposed regulations would add the terms "Prohibited service" and "financial relationships" to the heading to reflect that this paragraph covers not only prohibited financial interests, but also prohibited service and financial relationships. The paragraph also would be divided into four separate subsections for each of the various prohibitions, discussed in (a)–(d) below.

(a) Prohibited Service—Section 932.18(b)(1) and (2)

Section 7(a) of the Act prohibits an appointive director from serving, during his or her term of office, as "an officer of any * * * Bank or a director or officer of any member of a Bank." 12 U.S.C. 1427(a). Section 932.18(b) of the interim rules implements this provision by providing that no appointive director may "serve as an officer of any Bank or a director or officer of any member of such bank, * * * non-diversified holding company, subsidiary or affiliate, thereof * * *."

The Finance Board has received inquiries from the FHLBanks as to whether this provision prohibits service only at a member of the FHLBank, on whose board the director serves, or at a member of any FHLBank. In addition, questions have arisen as to the scope of the prohibition with respect to holding companies, subsidiaries and affiliates. Interim § 932.18(b) was intended to implement section 7(a) of the Act by prohibiting such service only at a member of the FHLBank the director serves, and at a subsidiary or non-diversified holding company of such member, or an affiliate of that holding company. Proposed § 932.18(b)(2) of the regulations would clarify this intent by prohibiting such service at "any member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) of the FHLBank on whose board the director serves."

(b) Prohibited Financial Interest—Section 932.18(b)(2)

1. *Scope of prohibition.* Section 7(a) of the Act provides that an appointive director may not, during such director's term of office, "hold shares, or any other financial interest in, any member of a Bank." 12 U.S.C. 1427(a). Interim § 932.18(b) provides that no appointive director may "serve as an officer of any Bank or a director or officer of any member of such Bank, or hold shares, or any other financial interest in any member of such Bank, non-diversified holding company, subsidiary or affiliate, thereof, * * *."

As above, questions have been raised as to whether the prohibition on financial interests applies only to such interests in members of the FHLBank the director serves, or to members of any FHLBank, and the scope of its application to holding companies, subsidiaries and affiliates. As with the prohibition on service, proposed § 932.18(b)(2) would clarify that the prohibition applies to financial interests in "any member (or a subsidiary or non-

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(a) Prohibited Service—Section 932.18(b) (1) and (2)

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The Finance Board has received inquiries from the FHLBanks as to whether this provision prohibits service only at a member of the FHLBank, on whose board the director serves, or at a member of any FHLBank. In addition, questions have arisen as to the scope of the prohibition with respect to holding companies, subsidiaries and affiliates. Interim § 932.18(b) was intended to implement section 7(a) of the Act by prohibiting such service only at a member of the FHLBank the director serves, and at a subsidiary or non-diversified holding company of such member, or an affiliate of that holding company. Proposed § 932.18(b)(2) of the regulations would clarify this intent by prohibiting such service at "any member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) of the FHLBank on whose board the director serves."

(b) Prohibited Financial Interest—Section 932.18(b)(2)

1. *Scope of prohibition.* Section 7(a) of the Act provides that an appointive director may not, during such director's term of office, "hold shares, or any other financial interest in, any member of a Bank." 12 U.S.C. 1427(a). Interim § 932.18(b) provides that no appointive director may "serve as an officer of any Bank or a director or officer of any member of such Bank, or hold shares, or any other financial interest in any member of such Bank, non-diversified holding company, subsidiary or affiliate, thereof, * * *."

As above, questions have been raised as to whether the prohibition on financial interests applies only to such interests in members of the FHLBank the director serves, or to members of any FHLBank, and the scope of its application to holding companies, subsidiaries and affiliates. As with the prohibition on service, proposed § 932.18(b)(2) would clarify that the prohibition applies to financial interests in "any member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) of the Bank on whose board the director serves." Interim § 932.18(c) would be deleted as it is redundant with the language in interim § 932.18(b), as well as with new § 932.18(b)(2).

2. *Definition of "Financial Interest"—Section 931.20.* The proposed regulations would revise the definition of "financial interest" in interim § 931.20 in several ways. First, the financial interest and financial relationship definitions would be divided into two separate sections (931.20 and 931.30, respectively).

Second, the definition of financial interest would be expanded to include direct or indirect control of equity and debt interests, and not simply ownership of such interests as in the interim rules, because ownership too narrowly defines the types of financial interests over which a director may have influence. In addition, the proposed regulations would revise the definition of "control" in interim § 931.18 because the meaning of the phrase "otherwise hold the power to control" may be unclear. The new definition would state: "To own, control, or hold with the power to vote, or hold proxies representing, ten (10) percent or more of the voting shares or rights of a company." This definition more closely resembles the definitions of "control" in the FRB's Regulation O, and OTS's savings and loan holding company regulations, 12 CFR 215.2(b), 583.7, respectively.

Third, the regulations propose to revise the definition to include financial interests of the director's "immediate family members," thereby allowing deletion of separate § 932.18(e)(1) which attributed to the director financial interests of his or her "spouse, children, or other dependents." The new term "immediate family member" would be defined in § 931.32 to mean the director's spouse, the director's minor children, and any other individual related by blood, marriage or adoption residing in the director's household. The director's spouse and minor children need not live in the director's household, but other persons related by blood, marriage or adoption (such as adult children of the director) must reside in the director's household in order to be considered "immediate family members." The revisions therefore would bring within the definition of "financial interest" additional financial interests over which a director may have influence but which are not covered by the interim section.

Fourth, the revised section would define a "financial interest" of a director to include financial interests of the director's "related interests," and the "related interests" of the director's immediate family members. A "related interest" would be defined in new § 931.40 as a company controlled by the director. This revision thus would expand the financial interests attributed to a director by attributing to the director the related interests of his or her immediate family members. Revised § 931.20 also would alter the scope of interim § 932.18(e)(2), which would be deleted, by attributing to the director financial interests of companies the director controls, as opposed to companies in which the director has only an ownership interest.

(c) Prohibited Financial Relationship—Section 932.18(b)(3).

1. *Nature and scope of prohibition.* New § 932.18(b)(3) would restate, and elaborate on, interim § 932.18(d) in the form of prohibitory instead of permissive language. Interim § 932.18(d) would be deleted and the disclosure requirements in (d)(2) moved to new § 932.18(f)(3). New § 932.18(b)(3) would prohibit an appointive director from having a financial relationship with a member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) of the FHLBank the director serves that generally is not, to the director's knowledge, transacted in the ordinary course of business and on substantially the same terms as those prevailing at the time for comparable transactions.This would ensure that directors are not deemed ineligible to serve as FHLBank directors if they did not know that the transaction in which they engaged with a member was not carried out in the ordinary course of business or on substantially similar terms. The language on terms and creditworthiness would be revised to track in most respects similar language in the FRB's Regulation O. See 12 CFR 215.4(a).

2. *Definition of "Financial Relationship"—Section 931.30.* The proposed regulations would continue to define a "financial relationship" as in interim section 931.20 to mean: (a) any type of deposit or savings account; (b) any other contractual right to the payment of money, whether contingent or fixed, in the previous calendar year or the current calendar year; and (c) any type of loan or extension of credit. As stated earlier, the definition of "financial relationship" would be moved from interim § 931.20 to new § 931.30. As with the amended definition of "financial interest," this definition also would be revised to include financial relationships of the director's immediate family members and related interests, and the immediate family members' related interests, as well as those of the director. The revisions therefore would bring within the definition of "financial relationship" additional financial relationships over which a director may have influence but which were not covered by the interim section.

(d) Prohibited Service as Result of Past Due or Loss Loans—Section 932.18(b)(4)

New § 932.18(b)(4) would provide that, in the Finance Board's discretion, no person may serve as an appointive director is such person (i) has any loan or extension of credit from any insured depository institution (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) that is more than 30 days past due, or (ii) has or has ever had any loan or extension of credit that caused a loss to any insured depository institution (or such subsidiary, holding company or affiliate), or to federal deposit insurance funds, the Federal Savings and Loan Insurance Corporation ("FSLIC"), or the Resolution Trust Corporation ("RTC"), within the past three years. A "loss" would be defined in new § 931.38 as (i) an obligation as to which there is a continuing legal claim that is owed that is 12 months or more delinquent as to principal or interest, or (ii) an obligation to pay an outstanding, unsatisfied, final judgment based on any legal theory. See 12 CFR 1606.2(g) (RTC's independent contractor ethics regulations). This provision is deemed necessary by the Finance Board to enable it to monitor appointive directors and director candidates for instances of poor financial judgment or creditworthiness (or the appearance of such) which, in the judgment of the Finance Board, could affect adversely the ability of the person to perform his or her duties as a FHLBank director or the credibility of the FHLBank's operations.

3. Permitted Financial Interests—Mutual Funds—Section 932.18(c)

The proposed regulations would amend the heading by adding the words "Permitted financial interests" to indicate that certain ownership interests in mutual funds that invest in FHLBank members are permitted financial interests. This section would be moved from interim § 932.18(f), as the provision on permitted financial interests more logically follows directly after the provision on prohibited financial interests.

The word "solely" would be inserted to clarify that the director's indirect interest in financial interests of members may arise only through ownership of shares in mutual funds. The language would be revised to authorize ownership of shares in "one or more diversified" mutual funds "that have invested in the member," as discussed in the FIRREA Conference Report. See FIRREA Conf. Rep. at 425. The proposed regulations also would define a diversified mutual fund by reference to the definitions of such company as set forth in section 5(a) and (b)(1) of the Investment Company Act of 1940, as amended, 15 U.S.C. 80a–5(a), (b)(1). In addition, the regulations propose to revise this section to provide that an appointive director may have interest in mutual funds that have invested in a member of the FHLBank the director serves, provided the director does not contribute to investment decisions of the funds. The proposed regulations would not prohibit the director from contributing to investment decisions of other mutual funds that have not invested in members within the district of the FHLBank the director serves.

4. Prohibited Acceptance of Things of Monetary Value—Section 932.18(d)

New § 932.18(d) would prohibit appointive directors from soliciting or accepting, directly or indirectly, any gift, gratuity, favor, honorarium, entertainment or any other thing of monetary value, from a member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) of the FHLBank the director serves, or from a person who generally (i) seeks financial relationships with the FHLBank System; (ii) has interests affected by the director's duties; or (ii) is an officer, director, controlling shareholder, employee or agent of any member (or such subsidiary, holding company or affiliate), trade organization of members (or such subsidiaries, holding companies or affiliates), or company that controls a member (or such subsidiary, holding company or affiliate), unless the director generally is motivated by obvious family or personal relationships, or the things are of nominal value. The prohibition is intended to ensure that the director's performance of his or her duties as FHLBank director is not improperly influenced, or that there is no appearance of improper influence, as a result of such activities.

5. Effect of Ineligibility—Section 932.18(e)

Interim § 932.18(g) would become revised § 932.18(e). No substantial revision would be made to this paragraph.

6. Certification and Reporting—Section 932.18(f).

a. Certification—Section 932.18(f)(1)

Interim § 932.18(h)(1) requires each appointive director to certify to the Finance Board by January 15 of each year that he or she continues to meet all applicable eligibility qualifications. This section would be revised in several ways. First, the revised section would appear in proposed § 932.18(f)(1). Second, the new section would implement Finance Board practice by requiring appointive director candidates to certify their eligibility prior to appointment. Third, the new provision would move up the certification deadline from January 15 to November 15 in order to give the Finance Board time to evaluate candidate finalists for selection as appointive directors at its December Board meeting. Candidates and appointive directors also would be required to certify their eligibility on new Form A–1 and A–2, respectively.

b. Reporting of Ineligibilities—Section 932.18(f)(2)

Interim § 932.18(h)(2) provides that if an appointive director knows or suspects that he or she is ineligible, the director must report the factual basis for the ineligibility, with specificity, to the Finance Board in writing within 30 days of the event that caused or may have caused the ineligibility, and the specific actions the director will take to remedy the ineligibility. New § 932.18(f)(2) would clarify that the director must report ineligibilities "at any time" the director knows or suspects he or she is ineligible. Appointive directors would be required to report the ineligibilities on new Form A–2. In addition, the requirement in the interim section that the director disclose proposed remedies would be deleted because proposed remedies are only required to be reported when an appointive director seeks an opportunity to cure. Those reporting provisions would be set forth in a separate section on opportunity to cure (interim § 932.18(i) and new § 932.18(g)).

c. Reporting of Certain Financial Relationships—Section 932.18(f)(3)

Under interim § 932.18(d)(2), each appointive director is required to report on Finance Board disclosure forms:

(i) Any type of deposit or savings account in a member of the FHLBank the director serves exceeding the limits of federal deposit insurance;

(ii) Any contractual rights with a member of the FHLBank the director serves exceeding a minimum threshold of either $10,000 or 5 percent of the director's total income; and

(iii) Any loans or extensions of credit by a member of the FHLBank the director serves to such director exceeding $50,000, except such loans or extensions of credit for the purpose of purchasing or financing the director's principal residence.

In addition, the Finance Board requires appointive (and elective) directors to report on the disclosure forms any loans from a member of the FHLBank the director serves to the director or a business with which the director is affiliated that is or has ever been more than 30 days past due or that caused a loss to the member. "Loss" is not defined in the interim rules or on the current disclosure forms.

Under interim § 932.18(h)(3)(i)–(iii), the disclosures also are required to be made by appointive directors prior to the initial appointment, and annually thereafter by January 15 of each year. The proposed regulations would move the disclosure provisions of interim paragraph (d)(2) to new § 932.18(f)(3) (and paragraph (h)(3)(i)–(iii) would be deleted as redundant and inconsistent). Interim paragraph (d)(2) would be revised as follows:

(a) *New procedural requirements.* First, as with the certification deadline, the disclosure deadline would be changed from January 15 to November 15 in order to give the Finance Board time to evaluate candidate finalists for selection as appointive directors at its December Board meeting. Second, candidates and appointive directors would be required to make the disclosures of financial relationships "at any other time they arise," and not just by November 15 of each year. Third, candidates and appointive directors would be required to disclose the financial relationships on new Forms A–1 and A–2, respectively.

(b) *New substantive requirements.* First, the disclosure requirements in the revised section would be broader because, as discussed earlier under the definition of "financial relationship," the regulations propose to expand the definition of "financial relationship" to include financial relationships of the director's immediate family members and related interests, and the immediate family members' related interests. Second, the director would be required to disclose such financial relationships not only with a member of the FHLBank the director serves, but also with any subsidiary or non-diversified holding company of the member, or affiliate of such holding company.

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In addition, the Finance Board requires appointive (and elective) directors to report on the disclosure forms any loans from a member of the FHLBank the director serves to the director or a business with which the director is affiliated that is or has ever been more than 30 days past due or that caused a loss to the member. "Loss" is not defined in the interim rules or on the current disclosure forms.

Under interim § 932.18(h)(3)(i)–(iii), the disclosures also are required to be made by appointive directors prior to the initial appointment, and annually thereafter by January 15 of each year. The proposed regulations would move the disclosure provisions of interim paragraph (d)(2) to new § 932.18(f)(3) (and paragraph (h)(3)(i)–(iii) would be deleted as redundant and inconsistent). Interim paragraph (d)(2) would be revised as follows:

(a) *New procedural requirements.* First, as with the certification deadline, the disclosure deadline would be changed from January 15 to November 15 in order to give the Finance Board time to evaluate candidate finalists for selection as appointive directors at its December Board meeting. Second, candidates and appointive directors would be required to make the disclosures of financial relationships "at any other time they arise," and not just by November 15 of each year. Third, candidates and appointive directors would be required to disclose the financial relationships on new Forms A–1 and A–2, respectively.

(b) *New substantive requirements.* First, the disclosure requirements in the revised section would be broader because, as discussed earlier under the definition of "financial relationship," the regulations propose to expand the definition of "financial relationship" to include financial relationships of the director's immediate family members and related interests, and the immediate family members' related interests. Second, the director would be required to disclose such financial relationships not only with a member of the FHLBank the director serves, but also with any subsidiary or non-diversified holding company of the member, or affiliate of such holding company.

Third, the director would be required to disclose such financial relationships of any company for which the director serves as a director, partner or executive officer. This disclosure requirement is intended to ensure that the Finance Board is aware of any significant dealings between the director's company and a member (*e.g.*, contracts pursuant to which the director receives a percentage financial interest) that could raise conflict of interest issues for the director at the FHLBank. New § 931.28 would define an "executive officer" as a person who participates or has authority to participate (other than in the capacity of a director) in major policymaking functions of the company. See FRB's Regulation O, 12 CFR 215.2(d).

Fourth, with respect to the disclosure of contractual rights exceeding $10,000 or 5 percent of the director's total income, whichever is less, "income" would be defined in new section 931.34 to mean the director's adjusted gross income as reported on his or her most recent federal income tax return.

Fifth, the director would be required to disclose any loan or extension of credit from any insured depository institution (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) that (i) is or has ever been, within the past three years, more than 30 days past due, or (ii) the director knows caused a loss to such institution (or subsidiary, holding company or affiliate), or to federal deposit insurance funds, the FSLIC, or the RTC, within the past three years. The definition of "loss" (in new § 931.38) would be the same as that for proposed § 932.18(b)(4). (See discussion *supra* under § 932.18(b)(4).) Again, the purpose of such disclosures is to enable the Finance Board to monitor directors and director candidates for instances of poor financial judgment or creditworthiness (or the appearance of such) that, in the judgment of the Finance Board, could affect adversely the ability of the person to perform his or her duties as a FHLBank director or the credibility of the FHLBank's operations.

Finally, the last paragraph of new § 932.18(f) would state that in addition to the failure to make any certifications required under paragraph (f) (see interim § 932.18(h)(3)(ii)), the failure to make any disclosures required under paragraph (f) shall render the director candidate or appointive director ineligible to serve as a FHLBank director. The proposed regulations would move this provision from interim § 932.18(h)(3)(ii) to the end of revised § 932.18(f), as it should apply to the failure to make any of the required disclosures and certifications, and not simply to the disclosures required under interim paragraph (h)(3)(ii).

7. Opportunity to Cure—Section 932.18(g)

Interim § 932.18(i) provides appointive directors with an opportunity to cure ineligibilities arising because of changes in law, FHLBank membership, marital status, inheritance or gift, which occur subsequent to appointment. Appointive directors with such an ineligibility may retain their office if they report the ineligibility and the proposed remedy within 30 days of the event causing the ineligibility, or the effective date of the interim rules, whichever is later, and remedy the ineligibility within up to 90 days (as determined by the Finance Board) of the causal event, or the effective date of the interim rules, whichever is later.

New § 932.18(g) would provide appointive directors with an opportunity to cure ineligibilities arising from any cause, on the basis that the opportunity to cure under the interim rules is too limited in scope. In addition, the new section would provide that it is within the Finance Board's discretion whether or not to allow the appointive director the opportunity to cure.

b. Community Interest Director Eligibility—Section 932.19

The regulations propose to revise the heading by adding the word "eligibility" in order to clarify that this section sets forth the eligibility qualifications for community interest directors.

1. *Definition of "Community Interest Director" and "Consumer or Community Organization"—Sections 931.15 and 931.17.* Section 7(a) of the Act provides that at least two of the appointive directors on each FHLBank's board shall be "representatives chosen from organizations with more than a 2-year history of representing consumer or community interests on banking services, credit needs, housing or financial consumer protections." 12 U.S.C. 1427(a). Interim § 931.15 defines a "community interest director" generally as an appointive director who is a member in good standing of a consumer or community organization that has more than a two-year history of representing one of the four designated consumer or community interests, and who has "experience and commitment to consumer and community interests." A "consumer or community organization" is defined in interim § 931.17 generally as an organization which "for a period of at least two years has advocated, represented, promoted or been actively involved in the protection, improvement or expansion of consumer or community interests" in any one of the four designated consumer or community interest areas.

The regulations propose to revise these definitions in several ways. First, the requisite elements for being a community interest director would be set out in separate paragraphs (a)–(e) of § 931.15 for greater clarity. Second, the Finance Board believes that the requirement that a community interest director be a "member in good standing" of the organization could restrict too narrowly the number of available community interest director candidates who may serve. Accordingly, the regulations propose to revise the definition in § 931.15 to permit a "director, officer, employee or member in good standing of a consumer or community organization" to serve as community interest director.

Third, the Finance Board believes that the community interest director should come from a consumer or community organization "operating within the district of the Bank the director will be serving." Section 931.15, thus, would be revised accordingly. This would ensure that the director has familiarity with the district and its problems and concerns. In addition, revised § 931.17 would provide that where the director candidate works for a local chapter or similar entity of a national consumer or community organization, the local chapter or entity itself must have represented one of the four designated consumer or community interests for a period of more than two years.

Fourth, revised § 931.15 would provide that the community interest director "possess more than two (2) years of recent experience" representing one of the four designated consumer or community interests, in order to ensure that the director has the necessary personal expertise to adequately represent consumer or community interests on the FHLBank's board.

Finally, revised § 931.15 would require that the director be "actively involved" in representing one of the four designated consumer or community interests "at the time of his or her appointment as a community interest director," because past experience or simple affiliation with an organization is not enough to show current experience and commitment.

In addition, the definition of "consumer or community organization" in interim § 931.17 would be shortened and simplified to state: "[a]ny organization (or local chapter or similar

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entity thereof in the case of a national organization) which for a period of more than two (2) years has represented consumer or community interests in banking services, credit needs, housing or financial consumer protections."

2. *Appointment and selection.* The heading in interim § 932.19(a) would be changed from "Requirements" to "Appointment" to more accurately reflect the substance of this paragraph. In addition, the first sentence in interim paragraph (a) would be deleted as moot.

The proposed regulations would move interim § 932.19(c) on the "Selection process" to paragraph (b), as it relates to the appointment process and therefore should follow directly paragraph (a).

3. *Ineligibility.* Interim § 932.19(b) on "Effect of ineligibility" would become paragraph (c) in the proposed regulations. The heading would be changed to "Ineligibility," because the provision states when ineligibility arises, not the effect of such ineligibility. In addition, the proposed regulations would set forth the various causes of ineligibility in separate paragraphs (c)(1)–(2) for greater clarity.

Interim § 932.19(b) provides that a community interest director becomes ineligible to serve: (i) If the director ceases his or her personal involvement, or ceases to be affiliated with a consumer or community organization, or (ii) if the organization from which the director was chosen (a) changes its principal purpose to something other than one of the four designated consumer or community interests, or (b) ceases to operate, is dissolved, or declared insolvent.

New § 932.19(c) would revise this provision by providing that a community interest director becomes ineligible if the director: (i) ceases to meet the definition of "community interest director" (*i.e.*, fails to satisfy any of the requirements for appointive director under section 7(a) of the Act and part 932, or is no longer a director, officer, employee or member in good standing of a consumer or community organization); or (ii) the organization the director serves ceases to represent one of the four designated consumer or community interests, or ceases to operate, is dissolved or declared insolvent. The proposed regulations would delete the "principal purpose" clause of the interim rules because the definition of "consumer or community organization" in § 931.17 (under both the interim and proposed rules) does not require that the organization's principal purpose be the representation of such consumer or community interests.

In addition, a director should not become ineligible if the organization from which the director was chosen ceases to operate, as long as the director continues an affiliation with some other qualifying consumer or community organization. As discussed earlier under proposed § 932.18(g), appointive directors (including community interest directors) should have, in the Finance Board's discretion, an opportunity to cure ineligibilities arising from any source. Thus, if a community interest director ceases to be a director, officer, employee or member in good standing of a consumer or community organization, or the organization the director serves ceases to operate, the director should have the opportunity, in the Finance Board's discretion, to cure the ineligibility by becoming a director, officer, employee or member in good standing of another qualifying consumer or community organization.

c. Minimum Number of Elective Directorships—Section 932.20

The regulations propose to revise this section to reflect the language of section 7(c) of the Act by adding the December 31, 1960 date.

d. Elective Director Eligibility—Section 932.21

1. *Qualifications—Section 932.21(a).* As under § 932.18(a) for appointive directors, the heading would be changed from "General" under the interim rules to "Qualifications" under the proposed regulations to more accurately reflect the substance of this paragraph. In addition, the proposed regulations would revise paragraph (a)(4) to include the requirement that the director comply with all requirements of the Act, in addition to the requirement under the interim rules of compliance with regulations and policies of the Finance Board and the FHLBank.

2. *Prohibited service as result of past due or loss loans—Section 932.21(b).* This provision would be identical to proposed § 932.18(b)(4) for appointive directors, except that it would apply to elective directors. Thus, new § 932.21(b) would provide that no person may, in the Finance Board's discretion, serve as an elective director if such person (i) has any loan or extension of credit from any insured depository institution (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) that is more than 30 days past due, or (ii) has or has ever had any loan or extension of credit that caused a loss to any insured depository institution (or such subsidiary, holding company or affiliate), or to federal deposit insurance funds, the FSLIC, or the RTC, within the past three years. "Loss" is defined the same as discussed above. Again, this provision is deemed necessary by the Finance Board to enable it to monitor elective directors and director nominees for instances of poor financial judgment or creditworthiness (or the appearance of such) which, in the judgment of the Finance Board, could affect adversely the ability of the person to perform his or her duties as a FHLBank director or the credibility of the FHLBank's operations.

3. Prohibited acceptance of things of monetary value—Section 932.21(c). This provision also is identical to proposed § 932.18(d) for appointive directors, except that the soliciting or accepting of things of monetary value by elective directors from members the elective directors represent would not be prohibited.

4. *Minimum capital requirements—Section 932.21(d).* Section 7(b) of the Act provides that "[n]o person who is an officer or director of a member that fails to meet any applicable capital requirement is eligible to hold the office of * * * Bank director." 12 U.S.C. 1427(b). Interim § 932.21(b) implements this provision by prohibiting such service during the calendar year in which the member represented fails to meet applicable minimum regulatory capital requirements, regardless of any exemption or exception granted by the appropriate regulatory agency. Pursuant to this provision, the Finance Board has prohibited persons from serving as elective directors if the member represented failed its minimum capital requirements.

Proposed § 932.21(d) would clarify Finance Board practice that the capital requirements apply only to members the director serves that are located within the FHLBank's district, by adding in paragraph (d)(1) the phrase "any member of the Bank on whose board the person serves." Interim paragraphs (b)(1) and (2) would be consolidated into new paragraph (d)(1), and the language would be simplified, for greater clarity.

Proposed paragraph (d)(2) would be revised in light of the changes made in revised paragraph (d)(1). The phrase in parentheses would be inserted to clarify that the granting by the appropriate regulatory agency of exceptions or exemptions to the capital requirements will not suffice for purposes of satisfying the capital requirements in succeeding years either. "Appropriate regulatory agency" would be defined in new § 931.26 to mean the appropriate federal banking agency as defined in section 2[3] of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1813(q)), or other appropriate regulatory agency for

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3. Prohibited acceptance of things of monetary value—Section 932.21(c). This provision also is identical to proposed § 932.18(d) for appointive directors, except that the soliciting or accepting of things of monetary value by elective directors from members the elective directors represent would not be prohibited.

4. *Minimum capital requirements—Section 932.21(d).* Section 7(b) of the Act provides that "[n]o person who is an officer or director of a member that fails to meet any applicable capital requirement is eligible to hold the office of * * * Bank director." 12 U.S.C. 1427(b). Interim § 932.21(b) implements this provision by prohibiting such service during the calendar year in which the member represented fails to meet applicable minimum regulatory capital requirements, regardless of any exemption or exception granted by the appropriate regulatory agency. Pursuant to this provision, the Finance Board has prohibited persons from serving as elective directors if the member represented failed its minimum capital requirements.

Proposed § 932.21(d) would clarify Finance Board practice that the capital requirements apply only to members the director serves that are located within the FHLBank's district, by adding in paragraph (d)(1) the phrase "any member of the Bank on whose board the person serves." Interim paragraphs (b)(1) and (2) would be consolidated into new paragraph (d)(1), and the language would be simplified, for greater clarity.

Proposed paragraph (d)(2) would be revised in light of the changes made in revised paragraph (d)(1). The phrase in parentheses would be inserted to clarify that the granting by the appropriate regulatory agency of exceptions or exemptions to the capital requirements will not suffice for purposes of satisfying the capital requirements in succeeding years either. "Appropriate regulatory agency" would be defined in new § 931.26 to mean the appropriate federal banking agency as defined in section 2[3] of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1813(q)), or other appropriate regulatory agency for

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institutions not governed by such section.

5. *Ineligible director-elect—Section 932.21(e).* No substantive changes would be made to this paragraph.

6. *Effect of ineligibility—Section 932.21(f).* Section 7(f)(3) of the Act provides that "[i]f any elective Bank director shall cease to have any qualification set forth in this section, the office held by such person shall immediately become vacant, and such person shall not continue to act as a bank director." 12 U.S. 1427(f)(3). By contrast, an appointive director who ceases to satisfy the requisite eligibility qualifications "may continue to act as a Bank director until his or her successor assumes the vacated office or the term of such office expires, whichever occurs first." 12 U.S.C. 1427(f)(2). Interim § 932.21(d)(2) provides that "[a]ny vote by an elective director during a period when such director has ceased to have the qualifications set forth in section 7(a) [sic] of the Act or this part shall not be deemed to render void or invalid any action taken by the board of directors during such period."

The regulations proposes to delete interim § 932.21(d)(2) in order to be consistent with the requirement of section 7(f)(3) of the Act that an elective director not continue to serve as a FHLBank director if he or she fails to satisfy the eligibility qualifications.

7. Certification and reporting—Section 932.21(g). New § 932.21(g) would replace interim section 932.21(e).

a. *Certifications—Section 932.21(g)(1).*—The revisions to the certification requirements for appointive director in new § 932.18(f)(1) also would apply for elective directors in new § 932.21(g)(1), except that director nominees and elective directors would be required to certify their eligibility by December 1 instead of January 15 of each year on new Forms E-1 and E-2, respectively.

b. Reporting of Ineligibilities—Section 932.21(g)(2).—Interim § 932.21(e)(2) requires elective directors to report immediately to the Finance Board any known or suspected ineligibilities. Proposed § 932.21(g)(2) would require elective directors to report such ineligibilities within 30 days of the event that caused or may have caused the ineligibility, the same time period afforded to appointive directors. In addition, as with appointive directors, the new provision would clarify that the elective director must report such ineligibilities "at any time" the director knows or suspects he or she is ineligible.

c. Reporting of Certain Financial Relationships—Section 932.21(g)(3).—The interim rules do not require elective directors to disclose certain relationships as required for appointive directors.

New § 932.21(g)(3) would set forth in the regulations the same reporting procedures and disclosure requirements for elective directors as are required for appointive directors, except that director nominees and elective directors would report such financial relationships by December 1 of each year, and at any other time they arise, on new Forms E-1 and E-2, respectively.

In addition, as with appointive directors, the proposed regulations would include a sentence stating that the failure to make any certifications or disclosures required under § 932.21(g) shall render the director nominee or elective director ineligible to serve as a FHLBank director.

e. Vacancies in Directorships—Section 932.22

1. *Appointive director vacancy.* The proposed regulations would revise the language in § 932.22(a) by adding the phrase "for unexpired term" in order to more accurately reflect the statutory language in section 7(f)(2) of the Act.

2. *Elective director vacancy.* The same revision made for appointive director vacancies in paragraph (a) also would be made for elective director vacancies in proposed § 932.22(b). The language also would be revised to reflect the language of section 7(f)(2) of the Act by adding that the vacancy shall be filled by a majority vote of the remaining directors, "regardless of whether such remaining Bank directors constitute a quorum of the Bank's board of directors." The proposed regulations also would revise paragraph (b) to indicate that the Finance Board shall declare elected such person selected by the remaining FHLBank directors only if the person satisfies all applicable eligibility qualifications. In addition, the section would be revised for greater clarity by adding: "in which case the vacancy may be filled by an eligible director from another state in the Bank's district."

f. Certification and Disclosure Forms—Section 932.23

This new section would identify the new certification and disclosure forms required to be completed and submitted to the Finance Board by appointive director candidates, appointive directors, elective director nominees and elective directors.

2. Part 922.

a. Definitions—Section 922.1

Proposed § 922.1 would provide that the definitions contained in §§ 931.14, 931.16, 931.18, 931.19, 931.20, 931.21, 931.22, 931.23, 931.25, 931.28, 931.30, 931.32, 931.34, 931.36, 931.38, and 931.40 of this chapter also apply where such terms are used in part 922.

b. Qualifications—Section 922.2

Section 2A(b) of the Act provides that the management of the Finance Board shall be vested in a Board of Directors consisting of five directors, who are the Secretary of Housing and Urban Development, and four citizens of the United States appointed by the President, by and with the advice and consent of the Senate. 12 U.S.C. 1422a(b)(1). Accordingly, proposed § 922.2(a) would provide that each Finance Board appointive director shall be a citizen of the United States. In addition, as with appointive and elective directors, § 922.2(b) would provide that each Finance Board appointive director shall comply with all requirements of the Act, and the regulations and policies of the Finance Board presently in effect or to be established by the Finance Board.

c. Prohibited Service, Financial Interests and Financial Relationships—Section 922.3

1. *Prohibited Service—Section 922.3(a).* Section 2A(b)(2)(C)(i) of the Act provides that no Finance Board director may "serve as a director or officer of any * * * Bank or any member of any Bank." 12 U.S.C. 1422a(b)(2)(C)(i). Proposed § 922.3(a) would implement this provision by providing that no Finance Board appointive director may serve as a director or officer of any Bank or any member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company). However, in contrast to the prohibition that applies to FHLBank appointive directors, the prohibition with respect to serving as officers or directors of members would apply to service at any member of any FHLBank, as opposed to a member of only the FHLBank the appointive director serves.

2. *Prohibited Financial Interests—Section 922.3(b).—a. Scope of Prohibition.* Section 2A(b)(2)(C)(ii) of the Act provides that no Finance Board director may "* * * hold shares of, or any other financial interest in, any member of any such Bank." 12 U.S.C. 1422a(b)(2)(C)(ii). Proposed § 922.3(b) would implement this provision by providing that, as with FHLBank

appointive directors, a Finance Board appointive director may not have a financial interest in any member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company). However, the prohibition would apply to financial interests in any member of any FHLBank, as opposed to a member of only the FHLBank the appointive director serves.

b. *Definition of "Financial Interest"—Section 922.1.* The definition of a "financial interest" of a Finance Board appointive director would be the same as the definition of the term for FHLBank directors (see discussion *supra* under § 931.20).

3. *Prohibited Financial Relationships—Section 922.3(c).*—a. *Nature and Scope of Prohibition.* As with FHLBank appointive directors, proposed § 922.3(c) would prohibit a Finance Board appointive director from having a financial relationship with a member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) that is not, to the director's knowledge, transacted in the ordinary course of business and on substantially the same terms as those prevailing at the time for comparable transactions. However, the prohibition would apply to such financial relationships with any member of any FHLBank, as opposed to a member of only the FHLBank the appointive director serves.

b. *Definition of "Financial Relationship"—Section 922.1.* The definition of a "financial relationship" of a Finance Board appointive director would be the same as the definition of the term for FHLBank directors (see discussion *supra* under § 931.30).

d. Permitted Financial Interests—Mutual Funds—Section 922.4

Proposed § 922.4 would provide that, as with FHLBank appointive directors, a Finance Board appointive director may have an interest in securities or other financial interests of any member of any FHLBank that arises solely through ownership of shares or other investment units of one or more diversified mutual funds (as defined in section 5(a)(1) and (b)(1) of the Investment Company Act of 1940, as amended, 15 U.S.C. 80a–5(a)(1), (b)(1)) that have invested in the member. However, proposed section 932.18(c) would prohibit FHLBank appointive directors from contributing to investment decisions of funds that have invested in members of the FHLBank the director serves. Proposed § 922.4 would prohibit Finance Board appointive directors from contributing to investment decisions of funds that have invested in any member of any FHLBank.

e. Prohibited Acceptance of Things of Monetary Value—Section 922.5

The prohibition on soliciting or accepting things of monetary value proposed in § 932.18(d) for FHLBank appointive directors also would apply to Finance Board appointive directors. However, the prohibition would apply to such conduct with any member of any FHLBank, as opposed to a member of only the FHLBank the appointive director serves. This proposed requirement is similar to the provision in federal regulations that prohibits the Finance Board directors generally from accepting things of monetary value from any person who: (1) seeks contractual or other business or financial relationships with the agency; (2) has interests affected by the director's duties; or (3) conducts operations or activities regulated by the agency. See 5 CFR 735-202. However, proposed § 922.5 is more specifically tailored to prohibiting such conduct *vis a vis* the FHLBank System, as opposed to just the agency itself.

As with FHLBank appointive directors, the prohibition is intended to ensure that the Finance Board appointive director's performance of his or her duties as Finance Board director is not improperly influenced, or that there is no appearance of improper influence, as a result of such activities.

f. Certification and Reporting—Section 922.6.

The proposed regulations would establish certification and disclosure requirements for Finance Board appointive directors that are similar in nature to those required for FHLBank appointive and elective directors in part 932.

1. *Certifications—Section 922.6(a).* Proposed section 922.6(a) would require that upon appointment, and annually thereafter by November 15 of each year, each Finance Board director shall certify on Form FB-1 that he or she meets all applicable requirements for his or her appointment set forth in section 2A(b)(1)(B) and (2)(C) of the Act and part 922.

2. *Reporting of Noncompliance—Section 922.6(b).* Proposed § 922.6(b) would provide that if a Finance Board appointive director knows or suspects at any time that he or she does not meet any of the requirements for his or her appointment set forth in section 2A(b)(1)(B) and (2)(C) of the Act or part 922, the director must report the specific factual bases for the known or suspected noncompliance to the Finance Board on Form FB-1 within 30 days of the event that caused or may have caused his or her compliance.

3. *Reporting of Certain Financial Relationships—Section 922.6(c).* Proposed § 922.6(c) would provide that upon appointment, and annually thereafter by November 15 of each year, and at any other time they arise, each Finance Board director must disclose to the Finance Board on Form FB-1 the same types of financial relationships with a member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) that are required to be disclosed by FHLBank appointive directors under proposed § 932.18(f)(3). However, the Finance Board directors would be required to disclose such financial relationships with any member of *any FHLBank*, as opposed to a member of only the FHLBank the appointive director serves. In addition, as with FHLBank appointive directors, Finance Board appointive directors would be required to disclose such financial relationships of any company for which the Finance Board director serves as a director, partner or executive officer.

g. Certification and Disclosure Form—Section 922.7

Proposed § 922.7 would identify the certification and disclosure form required to be completed and submitted to the Finance Board appointive directors.

D. Regulatory Flexibility Act

For the reasons set forth in the SUPPLEMENTARY INFORMATION, the undersigned hereby certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that these proposed rules, if promulgated, will not have a significant economic impact on a substantial number of small entities.

E. Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget ("OMB") for review under section 3504(h) of the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35. The title, description of need and use, and respondent description for the information collection requirements are discussed in the **SUPPLEMENTARY INFORMATION.**

Any comments on this proposed information collection should be sent to: Gary Waxman, Paperwork Reduction Project, OMB, Room 3208, New Executive Office Building, Washington, DC 20503.

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Any comments on this proposed information collection should be sent to: Gary Waxman, Paperwork Reduction Project, OMB, Room 3208, New Executive Office Building, Washington, DC 20503.

In accordance with 5 CFR 1320.15 and 1320.21, the following table discloses the estimated annual reporting burden for each collection of information in the proposed rule.

ESTIMATED ANNUAL REPORTING BURDEN

Description of information collection	Average number of respondents	×	Average number of responses per respondent	=	Total average responses	×	Average hours per response	=	Total average hours
1. A-1 Appointive Director Candidates—Personal Certification and Disclosure Form.	100		1		100		1		100
2. A-2 Appointive Directors—Personal Certification and Disclosure Form.	72		1		72		1		72
3. E-1 Elective Director Nominees—Personal Certification and Disclosure Form.	150		1		150		1		150
4. E-2 Elective Directors—Personal Certification and Disclosure Form	72		1		72		1		72
Totals	394		1		394		1		394

List of Subjects in 12 CFR

Part 922

Conflict of interests.

Part 931

Federal home loan banks.

Part 932

Conflict of interests, Federal home loan banks, Reporting and recordkeeping requirements.

Accordingly, title 12, chapter IX of the Code of Federal Regulations is proposed to be amended as follows:

SUBCHAPTER A—GENERAL

Part 922 is amended by revising the part heading and by adding text to read as follows:

PART 922—BOARD OF DIRECTORS AND EMPLOYEE RESPONSIBILITIES AND CONDUCT

Subpart A—Board of Directors Responsibilities and Conduct

Sec.
922.1 Definitions.
922.2 Qualifications.
922.3 Prohibited service, financial interests and financial relationships.
922.4 Permitted financial interests—mutual funds.
922.5 Prohibited acceptance of things of monetary value.
922.6 Certification and reporting.
922.7 Certification and disclosure forms.

Authority: 12 U.S.C. 1422a, 1422b.

§ 922.1 Definitions.

The definitions contained in §§ 931.14, 931.16, 931.18, 931.19, 931.20, 931.21, 931.22, 931.23, 931.25, 931.28, 931.30, 931.32, 931.34, 931.36, 931.38, and 931.40 of this chapter also shall apply where such terms are used in this part.

§ 922.2 Qualifications.

Each Board director appointed pursuant to section 2A(b)(1)(B) of the Act shall:

(a) Be a citizen of the United States; and

(b) Comply with all requirements of the Act, and the regulations and policies of the Board presently in effect or to be established by the Board.

§ 922.3 Prohibited service, financial interests and financial relationships.

(a) No Board director appointed pursuant to section 2A(b)(1)(B) of the Act shall serve as a director or officer of any Bank, or any member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) of any Bank.

(b) The financial interest prohibition set forth in § 932.18(b)(2) of this chapter also shall apply to Board directors appointed pursuant to section 2A(b)(1)(B) of the Act during their term of office, except that the reference to any member shall mean any member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) of any Bank.

(c) The financial relationship prohibition set forth in § 932.18(b)(3) of this chapter also shall apply to Board directors appointed pursuant to section 2A(b)(1)(B) of the Act during their term of office, except that all references to a member shall mean any member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) of any Bank.

§ 922.4 Permitted financial interests—mutual funds.

A Board director appointed pursuant to section 2A(b)(1)(B) of the Act may have an interest in securities or other financial interests of any member of any Bank that arises solely through ownership of shares or other investment units of one or more diversified mutual funds (as defined in section 5 (a) and (b)(1) of the Investment Company Act of 1940, as amended, 15 U.S.C. 80a–5 (a), (b)(1)) that have invested in the member, provided the director does not contribute to investment decisions of the fund.

§ 922.5 Prohibited acceptance of things of monetary value.

The prohibition on soliciting or accepting things of monetary value set forth in § 932.18(d) of this chapter also shall apply to Board directors appointed pursuant to section 2A(b)(1)(B) of the Act during their term of office, except that all references to a member shall mean any member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) of any Bank.

§ 922.6 Certification and reporting.

(a) Upon appointment, and annually thereafter by November 15 of each year, each Board director shall certify in writing to the Board's designated agency ethics official on Form FB–1 that he or she meets all applicable requirements for his or her appointment set forth in section 2A(b) (1)(B) and (2)(C) of the Act and this part.

(b) If a Board appointive director knows or suspects at any time that he or she does not meet any of the requirements for his or her appointment set forth in section 2A(b) (1)(B) and (2)(C) of the Act or this part, the director shall report the specific factual basis for the known or suspected noncompliance in writing to the Board's designated agency ethics official on Form FB–1 within thirty (30) days of the event that caused or may have caused his or her noncompliance.

(c) Upon appointment, annually thereafter by November 15 of each year, and at any other time they arise, each

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Board director shall fully disclose in writing to the Board's designated agency ethics official on Form FB–1 any financial relationships set forth in § 932.18(f)(3) of this chapter of such director or company for which such director serves as a director, partner or executive officer, except that all references to a member shall mean any member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) of any Bank.

§ 922.7 Certification and disclosure forms.

The following form(s) shall be completed and submitted to the Board's designated agency ethics official pursuant to the requirements of § 922.6 of this part:

Form FB–1—Finance Board Appointive Directors—Personal Certification and Disclosure Form (Required by § 922.6 of this part)

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 931—DEFINITIONS

1. The authority citation for part 931 is revised to read as follows:

Authority: Secs. 2A, 2B, as added by sec. 702, 103 Stat. 413, 414 (12 U.S.C. 1422a, 1422b); sec. 7, as amended by secs. 707, 710(b)(4), 103 Stat. 417, 418 (12 U.S.C. 1427).

2. Section 931.14 is revised to read as follows:

§ 931.14 Affiliate.

Any person or company which controls, is controlled by, or is under common control with, a member, including any holding company, any subsidiary, or any service corporation of a member.

3. Section 931.15 is revised to read as follows:

§ 931.15 Community interest director.

A director who:

(a) Is appointed by the Board;

(b) Is subject to all of the requirements of appointive directors as set forth in section 7(a) of the Act and part 932 of this chapter;

(c) Is a director, officer, employee or member in good standing of a consumer or community organization operating within the district of the Bank the director will be serving;

(d) Possesses more than two (2) years of recent experience representing consumer and community interests in banking services, credit needs, housing or financial consumer protections; and

(e) Is actively involved in representing consumer or community interests in banking services, credit needs, housing or financial consumer protections at the time of his or her appointment as a community interest director.

4. Section 931.16 is revised to read as follows:

§ 931.16 Company.

Any corporation, partnership, trust (business or otherwise), joint-stock company, joint venture, pool syndicate, sole proprietorship, unincorporated organization, or similar organization, or any other form of business entity not specifically listed herein.

5. Section 931.17 is revised to read as follows:

§ 931.17 Consumer or community organization.

Any organization (or local chapter or similar entity thereof in the case of a national organization) which for a period of more than two (2) years has represented consumer or community interests in banking services, credit needs, housing or financial consumer protections.

6. Section 931.18 is revised to read as follows:

§ 931.18 Control.

To own, control, or hold with the power to vote, or hold proxies representing, ten (10) percent or more of the voting shares or rights of a company.

7. Section 931.19 is revised to read as follows:

§ 931.19 Diversified holding company.

A holding company whose member subsidiary and related activities, as specified in 12 U.S.C. 1467a(c)(2), represented on either an actual or *pro forma* basis less than fifty (50) percent of both its consolidated net worth and its consolidated net earnings at the close of its preceding fiscal year. For purposes of the foregoing, consolidated net worth and consolidated net earnings shall be determined in accordance with generally accepted accounting principles.

8. Section 931.20 is revised to read as follows:

§ 931.20 Financial interest.

A financial interest of a director or director candidate means the ownership or control, directly or indirectly, by the director or director candidate, his or her immediate family members and related interests, and the immediate family members' related interests, of:

(a) Any shares of common or preferred capital stock;

(b) Any other equity security;

(c) Any debt security or obligation (except deposit or savings accounts), including subordinated debt.

9. Section 931.21 is revised to read as follows:

§ 931.21 Holding company.

Any company that directly or indirectly controls a member, but does not include:

(a) Any company by virtue of its direct or indirect ownership or control of voting stock of a member or a holding company acquired in connection with the underwriting of securities if such stock is held only for such period of time (not exceeding 120 days unless extended by the appropriate regulatory agency) as will permit the sale thereof on a reasonable basis; or

(b) Any trust (other than a pension, profit-sharing, stockholders', voting or business trust) which directly or indirectly controls a member if such trust by its terms must terminate within twenty-five (25) years or not later than twenty-one (21) years and ten (10) months after the death of individuals living on the effective date of the trust, and:

(1) Was in existence and was directly or indirectly in control of a member on June 26, 1967; or

(2) Is a testamentary trust.

10. Section 931.23 is revised to read as follows:

§ 931.23 Person.

An individual or a company.

11. Section 931.26 is added to read as follows:

§ 931.26 Appropriate regulatory agency.

The appropriate federal banking agency as defined in section 2[3] of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1813(q)), or other appropriate regulatory agency for institutions not governed by such section.

12. Section 931.28 is added to read as follows:

§ 931.28 Executive officer.

A person who participates or has authority to participate (other than in the capacity of a director) in major policymaking functions of the company

13. Section 931.30 is added to read as follows:

§ 931.30 Financial relationship.

A financial relationship of a director, director candidate or director nominee means any of the following relationships or activities of the director, director candidate or director nominee, his or her immediate family members and related interests, and the immediate family members' related interests:

(a) Any type of deposit or savings account;

(b) Any other contractual right to the payment of money, whether contingent

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§ 931.21 Holding company.

Any company that directly or indirectly controls a member, but does not include:

(a) Any company by virtue of its direct or indirect ownership or control of voting stock of a member or a holding company acquired in connection with the underwriting of securities if such stock is held only for such period of time (not exceeding 120 days unless extended by the appropriate regulatory agency) as will permit the sale thereof on a reasonable basis; or

(b) Any trust (other than a pension, profit-sharing, stockholders', voting or business trust) which directly or indirectly controls a member if such trust by its terms must terminate within twenty-five (25) years or not later than twenty-one (21) years and ten (10) months after the death of individuals living on the effective date of the trust, and:

(1) Was in existence and was directly or indirectly in control of a member on June 26, 1967; or

(2) Is a testamentary trust.

10. Section 931.23 is revised to read as follows:

§ 931.23 Person.

An individual or a company.

11. Section 931.26 is added to read as follows:

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The appropriate federal banking agency as defined in section 2[3] of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1813(q)), or other appropriate regulatory agency for institutions not governed by such section.

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§ 931.28 Executive officer.

A person who participates or has authority to participate (other than in the capacity of a director) in major policymaking functions of the company

13. Section 931.30 is added to read as follows:

§ 931.30 Financial relationship.

A financial relationship of a director, director candidate or director nominee means any of the following relationships or activities of the director, director candidate or director nominee, his or her immediate family members and related interests, and the immediate family members' related interests:

(a) Any type of deposit or savings account;

(b) Any other contractual right to the payment of money, whether contingent

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or fixed, in the previous calendar year or the current calendar year;

(c) Any type of loan or extension of credit.

14. Section 931.32 is added to read as follows:

§ 931.32 Immediate family member.

The spouse of a person, the person's minor children, and any other individual related by blood, marriage or adoption residing in the person's household.

15. Section 931.34 is added to read as follows:

§ 931.34 Income.

The director's adjusted gross income as reported on his or her most recent federal income tax return.

16. Section 931.36 is added to read as follows:

§ 931.36 Insured depository institution.

An insured depository institution as defined in 12 U.S.C. 1422(12).

17. Section 931.38 is added to read as follows:

§ 931.38 Loss.

(a) An obligation as to which there is a continuing legal claim that is owed that is twelve (12) months or more delinquent as to principal or interest; or

(b) An obligation to pay an outstanding, unsatisfied, final judgment based on any legal theory.

18. Section 931.40 is added to read as follows:

§ 931.40 Related interest.

A company that is controlled by a person.

PART 932—ORGANIZATION OF THE BANKS

1. The authority citation for part 932 is revised to read as follows:

Authority: Secs. 2A, 2B, as added by sec. 702, 103 Stat. 413, 414 (12 U.S.C. 1422a, 1422b); secs. 6–7, 47 stat. 727, 730, as amended by secs. 707, 710(b)(4), 103 Stat. 417, 418 (12 U.S.C. 1426–1427); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 207, 62 Stat. 692, as added by sec. 1a, 76 Stat. 1123, as amended (18 U.S.C. 207); sec. 602, 92 Stat. 2115, as amended (42 U.S.C. 8101, *et seq.*).

2. Section 932.18 is revised to read as follows:

§ 932.18 Appointive director eligibility.

(a) *Qualifications.* Each appointive director shall:

(1) Be a citizen of the United States;

(2) Be a bona fide resident of the district served by the Bank for which he or she is a director; and

(3) Comply with all requirements of the Act, and the regulations and policies of the Board and of the Bank presently in effect or to be established by the Board or the Bank's board of directors.

(b) *Prohibited service, financial interests and financial relationships.* (1) No director who is appointed pursuant to section 7(a) of the Act may, during such director's term of office, serve as an officer of any Bank.

(2) No director who is appointed pursuant to section 7(a) of the Act may, during such director's term of office, serve as a director or an officer of, or have a financial interest in, any member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) of the Bank on whose board the director serves, except as provided in paragraph (c) of this section.

(3) No director who is appointed pursuant to section 7(a) of the Act may, during such director's term of office, have a financial relationship with a member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) of the Bank on whose board the director serves, that:

(i) Is not, to the director's knowledge, transacted in the ordinary course of business of the member (or such subsidiary, holding company or affiliate) and on substantially the same terms, including fees, interest rates and collateral, where applicable, as those prevailing at the time for comparable transactions by the member (or such subsidiary, holding company or affiliate) with other persons; and

(ii) In the case of a loan or extension of credit by a member (or such subsidiary, holding company or affiliate), does not, to the director's knowledge, involve more than the normal risk of repayment or contain other unusual terms and conditions that increase the risk of loss to the member (or such subsidiary, holding company or affiliate).

(4) No director who is appointed pursuant to section 7(a) of the Act may, during such director's term of office, in the Board's discretion, serve as an appointive director if such director:

(i) Has any loan or extension of credit from any insured depository institution (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) that is more than thirty (30) days past due; or

(ii) Has or has ever had any loan or extension of credit that caused a loss to any insured depository institution (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company), or to federal deposit insurance funds, the Federal Savings and Loan Insurance Corporation ("FSLIC"), or the Resolution Trust Corporation ("RTC"), within the past three (3) years.

(c) *Permitted financial interests—mutual funds.* An appointive director may have an interest in securities or other financial interests of a member of any Bank that arises solely through ownership of shares or other investment units of one or more diversified mutual funds (as defined in section 5(a) and (b)(1) of the Investment Company Act of 1940, as amended, 15 U.S.C. 80a–5(a), (b)(1)) that have invested in the member, except that where the member is within the district of the Bank on whose board the director serves, the director may not contribute to investment decisions of the fund.

(d) *Prohibited acceptance of things of monetary value.* (1) Except as provided in paragraph (d)(2) of this section, no director who is appointed pursuant to section 7(a) of the Act may, during such director's term of office, solicit or knowingly accept, directly or indirectly, any gift, gratuity, favor, honorarium, entertainment or any other thing of monetary value, from a member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) of the Bank on whose board the director serves, or from a person who:

(i) Has, or is seeking to obtain, contractual or other business or financial relationships with the Bank System;

(ii) Has interests that may be substantially affected by the performance or non-performance of the director's official duties; or

(iii) Is an officer, director, controlling shareholder, employee, or agent of any member (or such subsidiary, holding company or affiliate) or of a trade organization comprised of members (or such subsidiaries, holding companies or affiliates) or of a company that is a controlling shareholder of a member (or such subsidiary, holding company or affiliate).

(2) Paragraph (d)(1) of this section shall not apply provided:

(i) The acceptance of such things of monetary value is motivated by obvious family or personal relationships rather than the business of the persons concerned;

(ii) The things of monetary value accepted are unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, seasonal gifts of nominal value or other similar things of nominal value;

(iii) The things of monetary value accepted are food and accompanying entertainment of nominal value accepted on infrequent occasions in the ordinary course of a conference, meeting or other working session where such things are incidental to the activity performed; or

(iv) The things of monetary value accepted are non-cash honoraria of nominal value where the gifts are intended as tokens of appreciation for the director's willingness to speak before the group.

(e) *Effect of ineligibility.* (1) If an appointive director shall cease to have any of the qualifications set forth in section 7(a) of the Act or this part, such directorship shall become vacant subject to the cure option in paragraph (g) of this section, but such person may continue to serve as an appointive director until his or her successor assumes the vacated office or the term of such office expires, whichever occurs first.

(2) Any vote by an appointive director during a period when such director has ceased to have any of the qualifications set forth in section 7(a) of the Act or this part shall not be deemed to render void or invalid any action taken by the board of directors during such period.

(f) *Certification and reporting.* (1) Prior to the initial appointment each director candidate for appointive director shall certify, and annually thereafter by November 15 of each year each appointive director shall certify, in writing to the Board on Form A–1 or A–2, as applicable, that he or she meets all applicable eligibility qualifications for his or her appointment set forth in section 7(a) of the Act and this part.

(2) If an appointive director knows or suspects at any time that he or she is ineligible, the director shall report the factual basis for the known or suspected ineligibility, with specificity, in writing to the Board on Form A–2 within thirty (30) days of the event that caused or may have caused his or her ineligibility.

(3) Prior to the initial appointment each director candidate for appointive director shall fully disclose, and annually thereafter by November 15 of each year and at any other time they arise each appointive director shall fully disclose, in writing to the Board on Form A–1 or A–2, as applicable, the following financial relationships, as defined in § 931.30 of this chapter, of such director candidate or appointive director and of any company for which such director candidate or appointive director serves as a director, partner or executive officer:

(i) Any type of deposit or savings account in a member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) of the Bank on whose board the director candidate or appointive director serves in excess of the limits of federal deposit insurance;

(ii) Any contractual right with a member (or such subsidiary, holding company or affiliate) of the Bank on whose board the director candidate or appointive director serves in excess of either $10,000 or 5 percent of the director candidate's or appointive director's total income, whichever is less, on an annual basis;

(iii) Any loan or extension of credit by a member (or such subsidiary, holding company or affiliate) of the Bank on whose board the director candidate or appointive director serves in excess of $50,000, except a loan or extension of credit for the purpose of purchasing or financing the director candidate's or appointive director's principal residence;

(iv) Any loan or extension of credit from any insured depository institution (or such subsidiary, holding company or affiliate) that:

(A) Is or has ever been, within the past three (3) years, more than thirty (30) days past due; or

(B) The director knows caused a loss to such institution (or subsidiary, holding company or affiliate), or to federal deposit insurance funds, the FSLIC, or the RTC, within the past three (3) years.

(4) Failure to make any certifications or disclosures required under this paragraph (f) shall render the director candidate or appointive director ineligible under this part.

(g) *Opportunity to cure.* If an appointive director ceases for any reason occurring subsequent to appointment to satisfy the requisite eligibility qualifications set forth in section 7(a) of the Act or this part, the Board may, in its discretion, give such director a reasonable opportunity to eliminate the cause of the ineligibility provided:

(1) Such director reports the ineligibility, pursuant to paragraph (f)(2) of this section, and the proposed method of remedying the cause of ineligibility, with specificity, within thirty (30) days of the date of the event that caused the ineligibility, or thirty (30) days of the effective date of this section, whichever is later; and

(2) Such director remedies the cause of the ineligibility within a reasonable period of time set by the Board, not to exceed ninety (90) days from the date of the event that caused the ineligibility, or ninety (90) days from the effective date of this section, whichever is later.

3. Section 932.19 is revised to read as follows:

§ 932.19 Community interest director eligibility.

(a) *Appointment.* At least two (2) of the appointive directors for each Bank shall be community interest directors.

(b) *Selection process.* Each Bank shall forward to the Board a list of qualified candidates compiled after active solicitation of nominations from qualified consumer or community organizations within its district. The Board may on its own also solicit nominations of qualified candidates. Final selection shall be in the sole discretion of the Board.

(c) *Ineligibility.* A community interest director shall cease to have the qualifications to be a community interest director if such director:

(1) Ceases to meet the definition of "community interest director" as set forth in § 931.15 of this chapter; or

(2) The organization which the community interest director serves:

(i) Ceases to represent consumer or community interests in banking services, credit needs, housing or financial consumer protections; or

(ii) Ceases to operate, is dissolved, or is declared insolvent.

4. Section 932.20 is amended by revising the introductory text and the column headings in the table to read as follows:

§ 932.20 Minimum number of elective directorships.

Under section 7(c) of the Act, the number of elective directorships allocated to members located in each state cannot be less than the number of directorships that were filled by the members from that state on December 31, 1960. The following list sets forth the number of elective directorships that were filled by members from each state on December 31, 1960:

Federal home loan bank—State	No. of elective directorships on December 31, 1960

* * * * *

5. Section 932.21 is revised to read as follows:

§ 932.21 Elective director eligibility.

(a) *Qualifications.* Each elective director shall:

(1) Be a citizen of the United States;

(2) Be a bona fide resident of the district served by the Bank for which he or she is a director;

(3) Be an officer or a director of a member whose principal place of business is in the state the elective director represents; and

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§ 932.19 Community interest director eligibility.

(a) *Appointment.* At least two (2) of the appointive directors for each Bank shall be community interest directors.

(b) *Selection process.* Each Bank shall forward to the Board a list of qualified candidates compiled after active solicitation of nominations from qualified consumer or community organizations within its district. The Board may on its own also solicit nominations of qualified candidates. Final selection shall be in the sole discretion of the Board.

(c) *Ineligibility.* A community interest director shall cease to have the qualifications to be a community interest director if such director:

(1) Ceases to meet the definition of "community interest director" as set forth in § 931.15 of this chapter; or

(2) The organization which the community interest director serves:

(i) Ceases to represent consumer or community interests in banking services, credit needs, housing or financial consumer protections; or

(ii) Ceases to operate, is dissolved, or is declared insolvent.

4. Section 932.20 is amended by revising the introductory text and the column headings in the table to read as follows:

§ 932.20 Minimum number of elective directorships.

Under section 7(c) of the Act, the number of elective directorships allocated to members located in each state cannot be less than the number of directorships that were filled by the members from that state on December 31, 1960. The following list sets forth the number of elective directorships that were filled by members from each state on December 31, 1960:

Federal home loan bank—State	No. of elective directorships on December 31, 1960

* * * * *

5. Section 932.21 is revised to read as follows:

§ 932.21 Elective director eligibility. µ

(a) *Qualifications.* Each elective director shall:

(1) Be a citizen of the United States;

(2) Be a bona fide resident of the district served by the Bank for which he or she is a director;

(3) Be an officer or a director of a member whose principal place of business is in the state the elective director represents; and

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(4) Comply with all requirements of the Act, and regulations and policies of the Board and of the Bank presently in effect or to be established by the Board or the Bank's board of directors.

(b) *Prohibited service.* No director who is elected pursuant to section 7 of the Act may, during such director's term of office, in the Board's discretion, serve as an elective director if such director:

(1) Has any loan or extension of credit from any insured depository institution (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) that is more than thirty (30) days past due; or

(2) Has or has ever had any loan or extension of credit that caused a loss to any insured depository institution (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company), or to federal deposit insurance funds, the FSLIC, or the RTC, within the past three (3) years.

(c) *Prohibited acceptance of things of monetary value.* The prohibition on soliciting or accepting things of monetary value set forth in § 932.18(d) of this part also shall apply to elective directors during their term of office, except for such relationships with members (or subsidiaries or non-diversified holding companies thereof, or affiliates of such holding companies) the elective directors represent.

(d) *Minimum capital requirements:* (1) No person who is an officer or a director of any member of the Bank on whose board the person serves that fails to meet any applicable minimum regulatory capital requirements of the member's appropriate regulatory agency, is eligible to hold the office of Bank elective director during the calendar year in which the failure occurred, regardless of any exemption or exception to such capital requirements granted by the appropriate regulatory agency.

(2) A director who is ineligible pursuant to paragraph (d)(1) of this section is once again eligible for election in the succeeding calendar year, provided the member(s) that he or she serves as an officer or director meet(s) the applicable minimum regulatory capital requirements (which are not satisfied by the granting of any exemption or exception to such capital requirements by the appropriate regulatory agency), during each phase of the election process for the succeeding calendar year.

(e) *Ineligible director-elect.* A person declared elected pursuant to § 932.14(d) of this part will not be eligible to take office or serve as a director if, as of the date such person would otherwise assume the directorship, he or she does not meet the eligibility requirements set forth in section 7 of the Act or this part.

(f) *Effect of ineligibility.* If an elective director shall cease to have any of the qualifications set forth in section 7 of the Act or this part, such directorship shall immediately become vacant and such person shall not continue to serve as a Bank director.

(g) *Certification and reporting.* (1) Prior to each election each director nominee for elective director shall certify, and annually thereafter by December 1 of each year each elective director shall certify, in writing to the Board on Form E–1 or E–2, as applicable, that he or she meets all applicable eligibility qualifications for his or her election set forth in section 7 of the Act and this part.

(2) If an elective director knows or suspects at any time that he or she is ineligible, the director shall report the factual basis for the known or suspected ineligibility, with specificity, in writing to the Board on Form E–2 within thirty (30) days of the event that caused or may have caused his or her ineligibility.

(3) Prior to each election each director nominee for elective director shall fully disclose, and annually thereafter by December 1 of each year and at any other time they arise each elective director shall fully disclose, in writing to the Board on Form E–1 or E–2, as applicable, any financial relationships, as defined in § 931.30 of this chapter, set forth in § 932.18(f)(3) of this part of such director nominee, elective director or company for which such director nominee or elective director serves as a director, partner or executive officer.

(4) Failure to make any certifications or disclosures required under this paragraph (g) shall render the director nominee or elective director ineligible under this part.

6. Section 932.22 is revised to read as follows:

§ 932.22 Vacancies in directorships.

(a) *Appointive director vacancy.* A vacancy in an appointive directorship shall be filled for the unexpired term through appointment by the Board as soon as practicable.

(b) *Elective director vacancy.* A vacancy in an elective directorship shall be filled for the unexpired term by an affirmative vote of a majority of the remaining Bank directors as soon as practicable, regardless of whether such remaining Bank directors constitute a quorum of the Bank's board of directors. The Board shall declare elected such person selected by the Bank directors only if the person satisfies all applicable eligibility qualifications to serve as an elective director set forth in section 7 of the Act and this part. Such vacancy shall be filled with a director from the state of the vacated director, unless there are no eligible candidates from such state, in which case the vacancy shall be filled by an eligible director from another state in the Bank's district.

7. Section 932.23 is added to read as follows:

§ 932.23 Certification and disclosure forms.

The following forms shall be completed and submitted to the Board pursuant to the requirements of §§ 932.18 (f) and (g) and 932.21(g) of this part:

Form A–1–Appointive Director Candidates—Personal Certification and Disclosure Form (Required by § 932.18(f) (1) and (3) of this part)
Form A–2–Appointive Directors—Personal Certification and Disclosure Form (Required by § 932.18(f) (1) through (3) and (g) of this part)
Form E–1–Elective Director Nominees—Personal Certification and Disclosure Form (Required by § 932.21(g) (1) and (3) of this part)
Form E–2–Elective Directors—Personal Certification and Disclosure Form (Required by § 932.21(g) (1) through (3) of this part)

By the Federal Housing Finance Board.

Dated: July 26, 1991.

J. Stephen Britt,
Executive Director.

[FR Doc. 91–18237 Filed 8–5–91; 8:45 am]

BILLING CODE 6725-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–NM–133–AD]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain British Aerospace Model ATP series airplanes, which would require modification and testing of the landing gear hydraulic selector valve. This proposal is prompted by recent reports of friction in the selector valve plunger, requiring increased effort by the flight crew to select the landing gear down. This condition, if not

corrected, could result in a gear-up landing.

DATES: Comments must be received no later than September 17, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 91–NM–133–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM–113; telephone (206) 227–2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91–NM–133–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain British Aerospace Model ATP series airplanes. There have been recent reports of friction in the selector valve plunger, requiring increased effort by the flight crew to select the landing gear down. This condition, if not corrected, could result in a gear-up landing.

British Aerospace has issued Service Bulletin ATP–29–6, dated April 12, 1991, which references AP Precision Hydraulics Service Bulletin AIR44880–29–01, dated April 1991, and describes procedures for modification of the landing gear hydraulic selector valve. The modification consists of lowering the tightening torque of the gland bearing, chamfering the body bore to prevent burrs being formed, opening out the hole in the end plate to prevent plunger foul, and tightening the torque on the fluid adapters to prevent leakage. The AP Precision Hydraulics service bulletin also describes procedures to test the selector valve. The United Kingdom CAA has classified the AP Precision Hydraulics service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require modification and testing of the landing gear hydraulic selector valve in accordance with the service bulletins previously described.

It is estimated that 6 airplanes of U.S. registry would be affected by this AD, that it would take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,980.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Docket No. 91–NM–133–AD.

Applicability: Model ATP series airplanes, equipped with hydraulic selector valves part number AIR44880 and AIR44882, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent a gear-up landing, accomplish the following:

(a) Within 12 months after the effective date of this AD, modify and test the landing gear hydraulic selector valves in accordance with AP Precision Hydraulics Service Bulletin AIR44880–29–01, dated April 1991.

Note: British Aerospace Service Bulletin ATP–29–6, dated April 12, 1991, references AP Precision Hydraulics Service Bulletin AIR44880–29–01, dated April 1991.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and

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implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Docket No. 91–NM–133–AD.

Applicability: Model ATP series airplanes, equipped with hydraulic selector valves part number AIR4488O and AIR44882, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent a gear-up landing, accomplish the following:

(a) Within 12 months after the effective date of this AD, modify and test the landing gear hydraulic selector valves in accordance with AP Precision Hydraulics Service Bulletin AIR44880–29–01, dated April 1991.

Note: British Aerospace Service Bulletin ATP–29–6, dated April 12, 1991, references AP Precision Hydraulics Service Bulletin AIR44880–29–01, dated April 1991.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and

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then send it to the Manager, Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on July 18, 1991.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–18559 Filed 8–5–91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91–NM–130–AD]

Airworthiness Directives; McDonnell Douglas Model DC–9 and DC–9–80 Series Airplanes, Model MD–88 Airplanes, and C–9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9 and DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (Military) series airplanes, which currently requires replacement of a certain lap belt at the forward cabin attendant double seat. That action was prompted by a report that the outboard attendant lap seat belt connection half can inadvertently be thrown into the lower hinge of the passenger entrance door and obstruct opening of the door. This condition, if not corrected, could result in delayed evacuation of passengers in an emergency situation. This proposed action would require inspection of the outboard lap belt assembly at the forward cabin attendant seat installed on additional airplanes, and replacement of the lap belt if it can obstruct the opening of the passenger entrance door.

DATES: Comments must be received no later than September 17, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 91–NM–130–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from McDonnell Douglas Corporation, P.O.Box 1171, Long Beach, California 90801, Attn: Business Unit Manager, Technical Publications & Technical Administrative Support, C1–L5B (54–60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Walter Eierman, Aerospace Engineer, Los Angeles Aircraft Certification Office, Systems and Equipment Branch, ANM–131L, FAA, Northwest Mountain Region, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (213) 988–5336.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91–NM–130–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On June 29, 1990, the FAA issued AD 90–15–02, Amendment 39–6651 (55 FR 28183, July 10, 1990), to require replacement of a certain lap belt at the forward cabin attendant double seat on certain Model DC–9 and DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (military) series airplanes. That action was prompted by a report indicating that the outboard attendant seat lap belt connection half can inadvertently be thrown into the lower hinge of the passenger entrance door and obstruct opening of the door. This condition, if not corrected, could result in delayed evacuation of passengers in an emergency situation.

AD 90–15–02 is applicable only to those airplanes listed in McDonnell Douglas DC–9 Alert Service Bulletin A25–311, dated January 31, 1990. The airplanes listed in that service bulletin had the subject lap belt assemblies installed in them originally by McDonnell Douglas prior to delivery. However, since issuance of AD 90–15–02, a report has been received which indicated that operators of certain other Model DC–9 series airplanes not listed in the service bulletin may have installed the subject lap belt assemblies after delivery; therefore, these airplanes may be subject to the same unsafe condition addressed in AD 90–15–02. The FAA has determined that it is necessary to inspect all airplanes in the series to determine if the subject lap belt assemblies are installed and, where necessary, to replace the lap belt in order to eliminate the interference with the opening of the passenger door.

The FAA has reviewed and approved McDonnell Douglas DC–9 Alert Service Bulletin A25–311, dated January 31, 1990, which describes procedures for the replacement of a certain lap belt at the forward cabin attendant double seat.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede AD 90–15–02 with a new airworthiness directive that would require inspection of the outboard lap belt assembly at the forward cabin attendant seat on all Model DC–9 series airplanes, and replacement of the lap belt if it obstructs opening the passenger entrance door.

There are approximately 1,793 Model DC–9 series, DC–9–80 series, MD–88, and C–9 (Military) series airplanes of the affected design in the worldwide fleet. It is estimated that 1,085 airplanes of U.S. registry would be affected by this AD, that it would take approximately 0.6 manhour per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is

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estimated to be $35,805. Where seat belt interference is discovered, an additional $80 per airplane would be required for the cost of the replacement belt.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–6651 and by adding the following new airworthiness directive:

McDonnell Douglas: Docket No 91–NM–130–AD. Supersedes AD 90–15–02.

Applicability: All Model DC–9 and DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (Military) series airplanes, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent the lap belt connector or buckle from jamming the passenger entrance door hinge, accomplish the following:

(a) For airplanes listed in McDonnell Douglas DC–9 Alert Service Bulletin A25–311, dated January 31, 1990: Within six months after August 14, 1990 (the effective date of AD 90–15–02, Amendment 39–6651), modify the forward cabin attendant dual seat, outboard position, lap belt restraint system, in accordance with the Accomplishment Instructions, Paragraph 2, of McDonnell Douglas DC–9 Alert Service Bulletin A25–311, dated January 31, 1990.

(b) For airplanes not listed in McDonnell Douglas DC–9 Alert Service Bulletin A25–311, dated January 31, 1990, and having dual forward cabin attendant seats incorporating a restraint system with lap belts independent of the shoulder harness: Within six months after the effective date of this AD, inspect the outboard attendant seat lap belt to determine if the connector or buckle is capable of reaching and interfering with the lower hinge of the passenger entrance door and obstructing the opening of the door.

(1) If opening of the passenger entrance door is obstructed, prior to further flight, modify the installation so that a shorter lap belt half is utilized, in a manner approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(2) If opening of the passenger entrance door is not obstructed, no further action is necessary.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

Note: A previously-approved alternative method of compliance with AD 90–15–02 is considered to be an approved alternative method of compliance with this AD.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, Post Office Box 1771, Long Beach, California 90801; Attn: Business Unit Manager, Technical Publications & Technical Administrative Support, C1–L5B (54–60). These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

Issued in Renton, Washington, on July 18, 1991.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–18561 Filed 8–5–91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91–NM–132–AD]

Airworthiness Directives; SAAB-Scania Models SF–340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain SAAB-Scania Models SF–340A and SAAB 340B series airplanes, which would require a one-time inspection and measurement of certain latches on the nacelle forward cowling doors to determine if the latch triggers are within certain specified limits, and the installation of new latch triggers, if necessary. This proposal is prompted by reports that the latch triggers on the nacelle forward cowling doors had been trimmed to make the latch fit the form of the cowling surface, which could cause abnormal abrasion on the triggers and subsequent unlocking of the latches. This condition, if not corrected, could result in the cowling doors opening during flight.

DATES: Comments must be received no later than September 17, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 91–NM–132–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from SAAB-Scania AB, Product Support, S–581.88, Linkoping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM–113; telephone (206) 227–2145. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified

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14 CFR Part 39

[Docket No. 91-NM-132-AD]

Airworthiness Directives; SAAB-Scania Models SF-340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain SAAB-Scania Models SF-340A and SAAB 340B series airplanes, which would require a one-time inspection and measurement of certain latches on the nacelle forward cowling doors to determine if the latch triggers are within certain specified limits, and the installation of new latch triggers, if necessary. This proposal is prompted by reports that the latch triggers on the nacelle forward cowling doors had been trimmed to make the latch fit the form of the cowling surface, which could cause abnormal abrasion on the triggers and subsequent unlocking of the latches. This condition, if not corrected, could result in the cowling doors opening during flight.

DATES: Comments must be received no later than September 17, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-132-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from SAAB-Scania AB, Product Support, S-581.88, Linkoping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 227-2145. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified

above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-132-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority of Sweden, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain SAAB-Scania Models SF-340A and SAAB 340B series airplanes. There have been recent reports that the latch triggers, manufactured by Avibank, located on the nacelle forward cowling doors have been trimmed to make the latch fit the form of the cowling surface. This could cause abnormal abrasion on the latch triggers and subsequent unlocking of the latches. This condition, if not corrected, could result in the cowling doors opening during flight.

SAAB-Scania has issued Service Bulletin 340-71-035, Revision 1, dated December 18, 1990, which describes procedures for a one-time inspection and measurement of the Avibank latches on the nacelle forward cowling doors to determine if the latch triggers are within specified limits, and the installation of new latch triggers, if necessary. The LFV has classified this service bulletin as mandatory, and has issued Swedish Airworthiness Directive 1-042 addressing this subject.

This airplane model is manufactured in Sweden and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require a one-time inspection and measurement of the Avibank latches on the nacelle forward cowling doors to determine if the latch triggers are within specified limits, and the installation of new latch triggers, if necessary, in accordance with the service bulletin previously described.

It is estimated that 108 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $11,880.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Saab-Scania: Docket No. 91-NM-132-AD.

Applicability: Model SF-340A series airplanes, Serial Numbers 004 through 159; and Model SAAB 340B series airplanes, Serial Numbers 160 through 200; certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent the cowling doors from opening during flight, accomplish the following:

(a) Within 90 days after the effective date of this AD, inspect and measure the Avibank latches on the nacelle forward cowling doors 7271110-501/601, in accordance with SAAB Service Bulletin 340-71-035, Revision 1, dated December 18, 1990.

(1) If the measurement is within the limits specified in Figure 2 of the service bulletin, no further action is required.

(2) If the measurement is outside the limits specified in Figure 2 of the service bulletin, prior to further flight, install new latch triggers in accordance with paragraph 2.C. of the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to SAAB-Scania AB, Product Support, S-581.88, Linköping, Sweden. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on July 18, 1991.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-18560 Filed 8-5-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 10

[Docket No. 910764-1164]

RIN 0651-AA64

Duty of Disclosure

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Patent and Trademark Office (Office) proposes to amend the

rules of practice in patent cases to (1) clarify the duty of disclosure for information required to be submitted to the Office; (2) provide flexible time limits for submitting information disclosure statements including the requirement for a fee in certain cases; (3) eliminate consideration of duty of disclosure issues by the Office except in disciplinary proceedings, and under other limited circumstances; and (4) eliminate the striking of patent applications which are improperly executed. The Office further proposes to amend the Patent and Trademark Office Code of Professional Responsibility to define acts of misconduct which conform to a failure to comply with the proposed rules on duty of disclosure.

The proposed rules attempt to strike a balance between the need of the Office to obtain and consider all known relevant information pertaining to patentability before a patent is granted and the desire to avoid or minimize unnecessary complications in the enforcement of patents. The proposed rules are intended to (1) specify more precisely the information which those associated with the filing and prosecution of patent applications have a duty to disclose to the Office; (2) minimize the risk that valuable patent rights will be lost by providing more flexible procedures and time limits for submitting information to the Office in pending patent applications; (3) insure that information material to patentability timely submitted to the Office is considered by the examiner before a patent is granted; and (4) permit some of the Office resources previously devoted to consideration of duty of disclosure issues to be directed to other Office priorities.

DATES: Comments must be submitted on or before October 8, 1991. A public hearing will be held on October 8, 1991, beginning at 9:30 a.m. Requests to present oral testimony should be received on or before October 7, 1991.

ADDRESSES: Address written comments and requests to present oral testimony to Commissioner of Patents and Trademarks, Washington, DC 20231, marked to the attention of Charles E. Van Horn (Crystal Park 2—room 919). The hearing will be held at the Patent and Trademark Office in room 912 of Crystal Park Building 2 located at 2121 Crystal Drive, Arlington, Virginia. Written comments and a transcript of the public hearing will be available for public inspection in room 919 of Crystal Park Building 2.

FOR FURTHER INFORMATION CONTACT: By telephone Charles E. Van Horn (703–557–3054) or J. Michael Thesz (703–557–8384) or by mail addressed to Commissioner of Patents and Trademarks, Washington, DC 20231, and marked to the attention of Charles E. Van Horn (Crystal Park 2—room 919).

SUPPLEMENTARY INFORMATION: The notice of proposed rulemaking published in the **Federal Register** at 54 FR 11334 (March 17, 1989), and in the Patent and Trademark Office Official Gazette at 1101 Off. Gaz. Pat. Office 12 (April 4, 1989), is hereby withdrawn. The rules proposed herein are significantly different from those contained in the notice of proposed rulemaking of March 17, 1989.

The purpose of the rules relating to duty of disclosure is to advise individuals of the scope of that duty and to assist the Office in conducting effective and efficient ex parte examination of patent applications and to issue valid patents. The rules are directed to those individuals who are substantively involved in the preparation or prosecution of the patent application.

The proposed rules emphasize that the public interest is best served and the Office is most effective in granting valid patents when, at the time the patent application is examined, the Office is aware of and evaluates all information material to patentability. The primary concern of the Office is that relevant information be considered by the examiner before a patent is granted, not on how that information comes to the attention of the examiner. The public, the Office and the users of the patent system also have an interest in an efficient examination process. Accordingly, the proposed rules place some practical time limits on the submission of information to the Office, without foreclosing the opportunity to have any information considered by the Office in a particular application, or in a continuing application, before a patent is granted.

The Office proposes to modify § 1.56 to more clearly define for individuals associated with the filing and prosecution of a patent application the duty to cite to the Office all information known to them to be material to patentability. The duty contemplated by proposed § 1.56 requires both knowledge of the information and knowledge of its materiality. The duty would exist with respect to the subject matter of claims for which a patent is sought, and would not exist for the subject matter of claims which is no longer under consideration. Proposed § 1.56 specifies that there is no need to cite information material to patentability of a cancelled claim or a claim withdrawn from consideration is the information is not material to the patentability of any claim remaining under consideration in the application.

Proposed § 1.56 would emphasize that the interests of the Office and the patent system are served when information that is material to the patentability of claims that issue in a patent is considered by the Office before a patent is granted. Specifically, proposed § 1.56 specifies that the requirements of the section would be satisfied if all information known to be material to the patentability of all allowed claims was either cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)–(d) and 1.98 prior to the issuance of the patent. The duty of disclosure as defined in proposed § 1.56 would not be violated simply because the examiner cited a reference before it was submitted to the Office by an individual subject to the duty.

Proposed § 1.56(b) presents a clearer and more objective definition of information material to patentability. The current definition, based on what would be important to a reasonable examiner in deciding whether to allow the application to issue as a patent, has been criticized as vague and because it does not correlate with any concept applied in other areas of the patent law. The revised definition is framed in terms of alternative objective criteria that emphasize the direct connection between the disclosure standard and the examination process.

Under proposed § 1.97, individuals who are working diligently in a cooperative effort with the Office to bring material information to the attention of the examiner promptly after its discovery are able to file such information and have it considered by the examiner until the point in the pendency of the application where the issue fee is paid. For those individuals that do not certify that the information was recently discovered as defined in proposed § 1.97(e), the opportunities to have information considered by the examiner during the examination of a particular application are more limited. Even where no certification is made, however, the opportunity is available for such individuals to timely file a continuing application of the particular application to have such information considered.

The Office encourages prompt filing of information disclosure statements, yet is willing to provide more flexibility for patent applications within certain limits. Recent surveys of 1719 recently issued patent files indicated that 856 (50%) contained a total of 933 information

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INFORMATION: The
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claim withdrawn from consideration is the information is not material to the patentability of any claim remaining under consideration in the application.

Proposed § 1.56 would emphasize that the interests of the Office and the patent system are served when information that is material to the patentability of claims that issue in a patent is considered by the Office before a patent is granted. Specifically, proposed § 1.56 specifies that the requirements of the section would be satisfied if all information known to be material to the patentability of all allowed claims was either cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)–(d) and 1.98 prior to the issuance of the patent. The duty of disclosure as defined in proposed § 1.56 would not be violated simply because the examiner cited a reference before it was submitted to the Office by an individual subject to the duty.

Proposed § 1.56(b) presents a clearer and more objective definition of information material to patentability. The current definition, based on what would be important to a reasonable examiner in deciding whether to allow the application to issue as a patent, has been criticized as vague and because it does not correlate with any concept applied in other areas of the patent law. The revised definition is framed in terms of alternative objective criteria that emphasize the direct connection between the disclosure standard and the examination process.

Under proposed § 1.97, individuals who are working diligently in a cooperative effort with the Office to bring material information to the attention of the examiner promptly after its discovery are able to file such information and have it considered by the examiner until the point in the pendency of the application where the issue fee is paid. For those individuals that do not certify that the information was recently discovered as defined in proposed § 1.97(e), the opportunities to have information considered by the examiner during the examination of a particular application are more limited. Even where no certification is made, however, the opportunity is available for such individuals to timely file a continuing application of the particular application to have such information considered.

The Office encourages prompt filing of information disclosure statements, yet is willing to provide more flexibility for patent applications within certain limits. Recent surveys of 1719 recently issued patent files indicated that 856 (50%) contained a total of 933 information

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disclosure statements. Where statements were filed in an application, 691 (74%) were filed before the first Office action, 874 (94%) were filed before the final rejection or notice of allowance, whichever occurred first, and 923 (99%) were filed before payment of the issue fee. If there is a substantial shift in the filing of information disclosure statements to a later point in time in the examination process, the efficiency and cost of that process and average pendency of applications will be adversely affected.

The Office proposes to amend its rules to reflect current practice of no longer investigating violations of duty of disclosure except under very limited circumstances or with respect to a charge of misconduct under 37 CFR part 10. Similarly, the Office generally will not comment on duty of disclosure issues, bur reserves its inherent authority to reject an application under appropriate circumstances where fraud or other inequitable conduct has occurred. The Office would exercise its authority in ex parte examination only in the most egregious and clear cases, e.g., where there is a final court decision that inequitable conduct has occurred. The Office will not consider, evaluate, or decide fraud or other inequitable conduct issues during an interference proceeding under 35 U.S.C. 135(a). Specifically, a motion for judgment based on inequitable conduct would no longer be authorized under 37 CFR 1.633(a). However, practitioners found to have participated in fraud or other inequitable conduct would remain subject to disciplinary proceedings. 37 CFR part 10.

Examination for the lack of deceptive intent in reissue applications will continue (35 U.S.C. 251), but without any independent investigation of inequitable conduct issues. The reissue applicant's statement of lack of deceptive intent generally will be accepted as dispositive except in special circumstances, such as a judicial determination of fraud or inequitable conduct or an admission of facts which would conclusively establish fraud or inequitable conduct without any investigation. In those cases, the claims will be rejected under 35 U.S.C. 251 for failing to satisfy the statutory requirement of a lack of "deceptive intent." See In re Clark, 522 F.2d 623, 187 USPQ 209 (CCPA 1975). Accordingly, reissue is not available to cure or otherwise purge inequitable conduct in obtaining a patent.

The proposed rules would substantially conform the rules to the policies announced in the Official Gazette: "Patent and Trademark Office Implementation of 37 CFR 1.56," 1095 Off. Gaz. Pat. Office 16 (October 11, 1988), "Further Clarification on Patent and Trademark Office Implementation of 37 CFR 1.56," 1096 Off. Gaz. Pat. Office 19 (November 8, 1988), and "Patent and Trademark Office Implementation of 37 CFR 1.28(d) and 1.56 (c), (f) and (g)," 1098 Off. Gaz. Pat. Office 502 (January 3, 1989) regarding consideration of fraud or other inequitable conduct issues in the Office.

Discussion of Specific Rule Change Proposals

Section 1.17, if amended as proposed, would amend paragraph (i)(1) to include a reference to the petition required in proposed § 1.97(d) and would add a fee for submission of an information disclosure statement under proposed § 1.97(c) in the amount of $200.00. The added fee would be due upon filing each information disclosure statement in certain cases under the conditions set forth in proposed § 1.97(c). That is, if the statement is filed after the first Office action and is not accompanied by a certification (proposed § 1.97(e)) that the information was found within the preceding three months, the statement will not be considered by the examiner unless and until the fee in proposed § 1.17(p) is paid. The proposed fee is being charged to cover a new service as well as to compensate the Office for the extra work caused by the examiner who may have to redo part of all of the examination because of information which is not brought to the attention of the Office promptly.

Section 1.28(d)(2) is proposed to be amended to remove the references to § 1.56(d) and to § 1.555. Proposed § 1.28(d)(2) retains the reference to fraud practiced or attempted on the Office, but removes any reference to sections which currently provide for rejections based on fraud. Further, the reference to "gross negligence" is proposed to be replaced by reference to "intent to deceive" to reflect binding precedent of the U.S. Court of Appeals for the Federal Circuit. See, e.g., *Kingsdown Medical Consultants, Ltd.* v. *Hollister, Inc.*, 863 F.2d 867, 9 USPQ 2d 1384 (Fed. Cir. 1988) (*en banc*).

Section 1.51(b), if amended as proposed, would delete the reference to § 1.99 which is proposed to be removed.

Section 1.52(c), if amended as proposed, would delete the reference to § 1.56(c) which dealt with the striking of applications which are improperly executed. The Office no longer would strike such applications. Section 1.52(c) would be revised to indicate that no alteration to application papers should take place after signing any accompanying oath or declaration under § 1.63. Application papers containing alterations made after an oath or declaration is signed must be supported by a supplemental oath or declaration under proposed § 1.67(c).

Section 1.56 is proposed to be revised to provide a more objective definition of information material to patentability. It would also delete the provisions that were followed when the Office was conducting investigations of fraud or other inequitable conduct during the examination of patent applications.

Section 1.56(a), as proposed, sets forth some of the reasons which the Office considers important for insisting on candor and good faith on the part of individuals associated with the filing and prosecution of a patent application. A patent is affected with a public interest. *Precision Instrument Mfg. Co.* v. *Automatic Maintenance Machinery Co.*, 324 U.S. 806, 816 (1945). Patent examination by the Office, an ex parte proceeding, is most effective when the Office is aware of and evaluates the teachings of all information material to patentability before a patent is granted. The duty of candor and good faith in the conduct of business before the Office includes a duty to disclose to the Office information material to patentability. The duty to disclose information attaches where an individual defined in proposed § 1.56(c) has both knowledge of the information and of its materiality to the patentability of a pending claim.

Proposed § 1.56(a) also sets forth further boundaries of the duty of disclosure to further prescribe the information in which the Office has an interest. Thus, the duty to disclose information cannot exist with respect to the subject matter of a claim that is no longer under consideration in an application unless the information is material to some other pending claim that remains under consideration in the application. Further, the statement that there is no duty to submit information which is not material to the patentability of any existing claim is retained from the present rule. It would be sufficient to satisfy all requirements of proposed § 1.56 if all information known to be material to patentability, as defined in § 1.56(b), as to all allowed claims is cited by the examiner or submitted to the Office in a manner that requires consideration by the Office prior to the grant of the patent.

Finally, under proposed § 1.56(a), the Office encourages individuals to carefully examine (1) prior art cited in search reports of a foreign patent office in a counterpart patent application and (2) the closest information over which

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individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any information material to patentability contained therein is disclosed to the Office. Consideration of all material information, prior to the issuance of a patent, will minimize the chance that the Office will issue an invalid patent, and will reduce the need for expensive patent litigation. Any risk of non-compliance with the provisions of proposed § 1.56(a) can be avoided by submitting the information to the Office in accordance with proposed §§ 1.97(b)–(d) and 1.98.

Proposed § 1.56(b) defines information which is material to patentability. The definition would ensure that the most pertinent information is considered during examination by the Office. Information is not material when it is cumulative to information already of record in the application, i.e., it shows or teaches the same subject matter as shown or taught by information already of record.

Under proposed § 1.56(b)(1), information is material where it creates, either by itself or in combination with other information, a prima facie case of unpatentability of a claim pending before the Office. A prima facie case is established during ex parte examination when the prior art or other information compels a conclusion that a claim is unpatentable, under the preponderance of evidence, burden of proof standard, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability. The clear and convincing burden of proof and claim construction standards applied by the courts in infringement cases would not be applied to a determination of whether information is material. During ex parte examination before the Office, and unlike infringement cases, claims are given their broadest reasonable interpretation consistent with the specification. For example, if the information establishes that the subject matter of at least one claim is anticipated under 35 U.S.C. 102, or prima facie would have been obvious to a person of ordinary skill in the art under 35 U.S.C. 103, or prima facie is not supported by an enabling disclosure under the first paragraph of 35 U.S.C. 112, it must be cited under proposed § 1.56(b)(1).

A prima facie case of unpatentability is subject to being rebutted by other information or arguments which may be submitted in the application. However, an individual would have a duty to submit the information which creates a prima facie case of unpatentability and may submit the rebuttal information to the Office so that the examiner can make an informed determination on patentability. Thus, if an individual knows of a document which establishes a prima facie case of unpatentability, but also knows of antedating evidence which would tend to show that the invention was made before the effective date of the document, the document would be material to patentability and should be submitted to the Office. Applicant could also submit any evidence of prior invention (37 CFR 1.131) so that the examiner could determine whether the evidence was sufficient to remove the document as a reference. If an individual knows of a document which establishes a prima facie case of unpatentability, but also knows of test results which would tend to show that the invention produces unexpected results, the document would be material to patentability and should be submitted to the Office. Applicant could also submit any evidence of unexpected results (37 CFR 1.132) so that the examiner could determine whether the document, when considered with the evidence, renders the claimed subject matter obvious or non-obvious.

Proposed § 1.56(b)(2) further defines as material information which supports a position of unpatentability taken by the Office which applicant disputes, or is inconsistent with a position in support of patentability on which the applicant has relied. The information defined in § 1.56(b)(2) would either provide non-cumulative support for a rejection made by the examiner, or be inconsistent with a position in support of patentability on which applicant has relied whether or not the position was taken in response to a rejection of a claim made by the examiner. The Office has selected the phrase "inconsistent with" rather than a term such as "refutes" because the Office, not the applicant, should make the determination of the relative value and weight to be accorded information that is inconsistent with a position of patentability relied on by applicant.

For example, there could be a case where four tests are conducted, with three tests producing results which support applicant's argument for patentability, but the fourth test producing a result which contradicts the other three. Ultimately, it might be decided by applicant that the fourth test was not valid. Paragraph (b)(2) of proposed § 1.56 would require disclosure of the results of the fourth test to the Office so that the examiner could weigh the probative value of all the tests. An explanation of why the fourth test is believed invalid by the applicant could also be submitted.

Proposed § 1.56(c) retains the definition of individuals who are subject to the duty of disclosure. Also retained in proposed § 1.56(d) is the assurance that individuals that do not normally communicate directly with the Office can comply with the duty of disclosure by disclosing the information to those that do.

Section 1.56 is proposed to be amended by eliminating the provisions of current paragraphs (b)–(f) which are inconsistent with the intention of the Office to no longer investigate issues of fraud and inequitable conduct except under unique circumstances, and to no longer strike an application for improper execution.

Specifically, the provisions of current § 1.56(b) are either restated in the provisions of proposed § 1.56, or replaced by the provisions of proposed § 1.98 relating to the content requirements of an information disclosure statement. The provisions of §§ 1.56 (c), (f), and (g) are proposed to be eliminated because the Office will no longer strike an application for improper execution. Under current rules, an application may be filed in the Office pursuant to § 1.53(d) without an oath or declaration. Further, if there was a defect in executing a patent application, such as listed in § 1.56(c), the defect could be corrected by filing a supplemental oath or declaration pursuant to proposed § 1.67(c). Accordingly, the Office will not consider striking an application for these defects under the proposed rules and will not consider a petition directed to such matters. However, the conduct of any practitioner knowingly permitting a material alteration of the application papers after the oath or declaration has been signed, which is prohibited by § 1.52(c), is not condoned by the Office and remains subject to disciplinary proceedings. See proposed § 10.23(c)(11).

Similarly, since the Office generally will not be investigating or examining duty of disclosure issues which are brought to its attention in original or reissue applications except in limited circumstances, the provisions of §§ 1.56 (d), (e), (h), and (i) are proposed to be deleted. The Office also proposes to continue its policy of not considering fraud or other inequitable conduct issues in interference proceedings under 35 U.S.C. 135. While the Office ordinarily will not investigate fraud or other inequitable conduct in connection with the ex parte examination of a patent application, the public should be

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Proposed § 1.56(c) retains the definition of individuals who are subject to the duty of disclosure. Also retained in proposed § 1.56(d) is the assurance that individuals that do not normally communicate directly with the Office can comply with the duty of disclosure by disclosing the information to those that do.

Section 1.56 is proposed to be amended by eliminating the provisions of current paragraphs (b)–(f) which are inconsistent with the intention of the Office to no longer investigate issues of fraud and inequitable conduct except under unique circumstances, and to no longer strike an application for improper execution.

Specifically, the provisions of current § 1.56(b) are either restated in the provisions of proposed § 1.56, or replaced by the provisions of proposed § 1.98 relating to the content requirements of an information disclosure statement. The provisions of §§ 1.56 (c), (f), and (g) are proposed to be eliminated because the Office will no longer strike an application for improper execution. Under current rules, an application may be filed in the Office pursuant to § 1.53(d) without an oath or declaration. Further, if there was a defect in executing a patent application, such as listed in § 1.56(c), the defect could be corrected by filing a supplemental oath or declaration pursuant to proposed § 1.67(c). Accordingly, the Office will not consider striking an application for these defects under the proposed rules and will not consider a petition directed to such matters. However, the conduct of any practitioner knowingly permitting a material alteration of the application papers after the oath or declaration has been signed, which is prohibited by § 1.52(c), is not condoned by the Office and remains subject to disciplinary proceedings. See proposed § 10.23(c)(11).

Similarly, since the Office generally will not be investigating or examining duty of disclosure issues which are brought to its attention in original or reissue applications except in limited circumstances, the provisions of §§ 1.56 (d), (e), (h), and (i) are proposed to be deleted. The Office also proposes to continue its policy of not considering fraud or other inequitable conduct issues in interference proceedings under 35 U.S.C. 135. While the Office ordinarily will not investigate fraud or other inequitable conduct in connection with the ex parte examination of a patent application, the public should be

aware that the Commissioner has inherent authority to, and may under limited circumstances, reject an application when such conduct has occurred.

The provision in § 1.56(j) that a time period would be set by the Office for the applicant to provide copies of documents omitted from an information disclosure statement is to be deleted. Under proposed § 1.97(f), additional time may be provided under limited circumstances in order to complete an information disclosure statement.

Section 1.63, if amended as proposed, would amend paragraphs (b)(3) and (d) to require an oath or declaration submitted as part of an application to include an acknowledgment of the duty to disclose all known information material to patentability as defined in proposed § 1.56 to the Office. These amendments would delete reference to paragraph (a) in § 1.56, and make reference to all of § 1.56 including its definitional paragraphs.

Section 1.67, if amended as proposed, would add new paragraph (c) requiring that a new oath or declaration be filed if the application was altered after the oath or declaration was signed or if a prior oath or declaration contained any of the defects previously listed in § 1.56(c). The new oath or declaration either may be required by the Office or may be filed voluntarily by the applicant and could also be filed to eliminate questions about the execution of the originally filed oath or declaration.

Section 1.97, as proposed, does not require that an information disclosure statement be filed in each application, but rather sets forth the circumstances and conditions under which the Office would consider information brought to its attention by applicant. The proposed rule differs from current practice which only encourages the filing of an information disclosure statement within a short period of time after the application is filed. By considering statements filed within the times specified, the Office seeks to promote the efficiency of the examination process, to insure consideration of information relevant to patentability, and to help avoid duty of disclosure issues.

Paragraph (a) of proposed § 1.97 provides that information disclosure statements should comply with both proposed § 1.97 and § 1.98 in order to have information considered by the Office during the pendency of an application. Information which is material to patentability, as defined in proposed § 1.56(b), or other information which applicant desires the Office to consider would be considered if the information disclosure statement complied with the provisions of both §§ 1.97 and 1.98. Multiple information disclosure statements may be filed in a single application, and they will be considered, provided they are in compliance with the appropriate requirements.

Paragraph (b) of proposed § 1.97 sets forth the requirements that must be met for consideration of information contained in an information disclosure statement by the Office without the certification of proposed paragraph (e) of the fee set forth in proposed § 1.17(p). In order to insure consideration by the Office, the information must be brought to the attention of the examiner in the form required by proposed § 1.98. An information disclosure statement would be considered without certification or payment of a fee if filed before any of the points in time set forth in proposed paragraph (b). These points in time relate to each new application, whether it is an original application or some type of continuing application, i.e., continuation, continuation-in-part or divisional application. As noted in the recent survey reported above, a substantial majority of the information disclosure statements are filed before first Office action in an application. The Office wishes to continue to encourage early submission of information disclosure statements since it promotes the efficiency of the ex parte examination process.

Under proposed § 1.97(b), all information disclosure statements that were filed in accordance with proposed § 1.98 and were filed within three months of the filing date would be considered by the examiner, regardless of whatever else had occurred in the examination process up to that point in time. Thus, in the rare instance that a final Office action or a notice of allowance had been mailed prior to a date which is three months from the filing date, any information contained in a complete information disclosure statement filed within that three-month window would be considered by the examiner. Likewise, an information disclosure statement would be considered if it was filed later than three months after the filing date but before the mailing date of a first Office action on the merits. An action on the merits means an action which treats the patentability of the claims in an application, as opposed to only formal or procedural requirements. An action on the merits would, for example, contain a rejection or indication of allowability of a claim or claims rather than just a restriction requirement (§ 1.142) or just a requirement for additional fees to have a claim considered (§ 1.16(d)).

For the purposes proposed in § 1.97, the information disclosure statement will be considered to have been filed on the day it was received in the Office, or on an earlier date of mailing if accompanied by a properly executed certificate of mailing under § 1.8, or Express Mail certificate under § 1.10.

Paragraph (c) of proposed § 1.97 sets forth the requirements for an information disclosure statement to be considered if it was filed after the points in time described in paragraph (b) but before the date of mailing of either a final action under § 1.113 or a notice of allowance under § 1.311, whichever occurs earlier. The late submission fee set forth in proposed § 1.17(p) would have to be filed with the information disclosure statement unless the certification as specified in proposed paragraph (e) was filed. The purpose of the fee is to compensate the Office for the extra work caused the examiner who may have to redo part or all of the examination because of the late submission. The added cost of considering new information in an application at an advanced stage in the examination process would be borne only by those applicants do not certify that information is being brought to the attention of the Office within the time periods specified.

Where the information is submitted under proposed § 1.97(c) with a fee, an examiner would be able to use any information cited in such a submission and make the next Office action final.

Paragraph (d) of proposed § 1.97 sets forth the requirements for an information disclosure statement to be considered if filed after the mailing date of either a final action under § 1.113 or a notice of allowance under § 1.311, whichever occurs earlier, but before payment of the issue fee. In order to insure consideration, the information disclosure statement would be required to be accompanied by a certification as specified in proposed paragraph (e) and a petition requesting consideration of the information disclosure statement. The proper petition fee under § 1.17(i)(1) would also be required. These requirements are appropriate in view of the late stage of prosecution when the information is being submitted, i.e., after the examiner has reached a final determination on the patentability of the claims presented for examination.

The proposed requirements provide for consideration by the Office of information which is submitted within a reasonable time, i.e., within 3 months after an individual designated in proposed § 1.56(c) becomes aware of the information. This undertaking by the Office to consider information would be available throughout the pendency of the application until the point where the patent issue fee was paid. If an applicant chose not to comply, or could not comply, with proposed § 1.97(d), a continuing application could be filed to have the information considered by the examiner. The parent application could be permitted to become abandoned by not paying the issue fee required in the Notice of Allowance, for example, or by the filing of a file wrapper continuing application under § 1.62. Where the issue fee had already been paid, the parent application could be withdrawn from issue and abandoned pursuant to proposed § 1.313(b)(5). If an application has been withdrawn from issue under one of the provisions of §§ 1.313(b) (1)–(4), it will be treated as though the issue fee had not yet been paid with regard to § 1.97.

Paragraph (e) of proposed § 1.97 sets forth the requirements of a certification that could be submitted in place of the late submission fee set forth in § 1.17(p) or to obtain consideration of an information disclosure statement up to payment of the issue fee. The certification would be required to state that no item of information contained in the information disclosure statement in question was cited in a communication from a foreign patent office in a counterpart foreign application more than three months prior to the filing of the statement, or was known to any individual designated in § 1.56(c) more than three months prior to the filing of the statement. The date on the action by the foreign patent office begins the three-month period in the same manner as the mailing of an Office action starts a three-month shortened statutory period for response. Likewise, the statement will be considered to have been filed on the date the statement was received in the Office, or on an earlier date of mailing if accompanied by a properly executed certificate of mailing under § 1.8, or Express Mail certificate under § 1.10.

The term *counterpart foreign patent application* means that a claim for priority has been made in either the U.S. application or a foreign application based on the other, or that the disclosures of the U.S. and foreign patent application are substantively identical (e.g., an application filed in the European Patent Office claiming the same U.K. priority as claimed in the U.S. application).

The certification should be made by a person in a position to know the facts certified. Certification need not be in the form of an oath or declaration under § 1.68. Certification by a registered practitioner or any other individual that the statement was filed within the three-month period of either first citation by a foreign patent office or first discovery of the information will be accepted as dispositive of compliance with this provision in the absence of evidence to the contrary. The time at which information "was known to any individual designated in § 1.55(c)" is the time when the information was discovered even if awareness of the materiality came later. The Office wishes to encourage prompt evaluation of the relevance of information and to have a date certain for determining if a certification can properly be made. A statement on information and belief normally would not be sufficient. Although it is recognized that an individual actually becomes aware of the information in the communication from the foreign patent office sometime after it was mailed, the mailing date of such a communication, if it occurs prior to the first awareness of the same information, would determine the date for filing of an information disclosure statement without a fee. The Office is willing to absorb any additional cost in considering such information relevant to patentability after the time set in proposed paragraph (b) only when it is clear that an applicant is diligent in providing the information to the Office.

Paragraph (f) of proposed § 1.97 sets forth that the time periods for filing a statement are not subject to an extension of time under § 1.136. However, the examiner has discretion to set an additional time period to permit an applicant to comply with any requirements of § 1.98 which were inadvertently omitted. The concept proposed in paragraph (f) is the same as that applied under § 1.135(c).

Paragraph (g) of proposed § 1.97 continues the present policy that the filing of an information disclosure statement would not be construed as a representation that a patentability search was made. There is no requirement that an applicant for a patent make a patentability search.

Paragraph (h) of proposed § 1.97 states that information disclosure statements which do not comply with this section will not be considered by the Office but will be placed in the application file if filed before a patent is granted on the application. Information submitted after the grant of a patent must comply with § 1.501.

The provisions of proposed § 1.97 are summarized in the following chart:

SECTION 1.97 REQUIREMENTS FOR CONSIDERATION OF INFORMATION DISCLOSURE STATEMENTS (IDS)

Time when IDS is filed	§ 1.97 Requirements
(1) Within 3 months of filing or before first Office action on merits (§ 1.97(b)).	None (always considered).
(2) After (1) but before final action or notice of allowance (§ 1.97(c)).	Certification or § 1.17(p) fee.
(3) After final action or notice of allowance and before payment of issue fee (§ 1.97(d)).	Certification, petition, and petition fee.

The administrative details of supplying information to the Office are defined in proposed § 1.98. These details are substantially unchanged from current prractice, but the format and wording have been modified to provide greater clarity. Under proposed § 1.98(a)(1), the information disclosure statement must include a list of all the information disclosed. The list will permit the printing contractor to identify the documents to be printed on the patent without unnecessary duplication of effort by the Office. Individuals submitting an information disclosure statement are encouraged to use form PTO–1449, "Information Disclosure Citation", for such a list.

Under proposed § 1.98(a)(2), a legible copy of each item of information listed is required. However, copies of U.S. patent applications cited in the information disclosure statement are not required to be submitted to the Office because the applications are readily accessible to the examiner, copies would add unnecessary bulk to the file, and the presence of copies might result in the unnecessary disclosure of the contents of such patent applications when the application in which it was cited matures into a patent.

Under proposed § 1.98(a)(3), the information disclosure statement must include a concise explanation of the relevance of each item of information listed, and may further contain an explanation of why the claimed invention should be considered patentable over the item of information. These explanations may be contained in the specification or be submitted in a page separate from the specification. In either case, however, a list and a copy of each document for inclusion in the file record is required in order to satisfy the requirements of § 1.98(a). If information is being submitted from a foreign search report, the requirement for a concise explanation may be satisfied by submitting an English-language version of the search report.

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SECTION 1.97 REQUIREMENTS FOR CONSIDERATION OF INFORMATION DISCLOSURE STATEMENTS (IDS)

Time when IDS is filed	§ 1.97 Requirements
(1) Within 3 months of filing or before first Office action on merits (§ 1.97(b)).	None (always considered).
(2) After (1) but before final action or notice of allowance (§ 1.97(c)).	Certification or § 1.17(p) fee.
(3) After final action or notice of allowance and before payment of issue fee (§ 1.97(d)).	Certification, petition, and petition fee.

The administrative details of supplying information to the Office are defined in proposed § 1.98. These details are substantially unchanged from current prractice, but the format and wording have been modified to provide greater clarity. Under proposed § 1.98(a)(1), the information disclosure statement must include a list of all the information disclosed. The list will permit the printing contractor to identify the documents to be printed on the patent without unnecessary duplication of effort by the Office. Individuals submitting an information disclosure statement are encouraged to use form PTO–1449, "Information Disclosure Citation", for such a list.

Under proposed § 1.98(a)(2), a legible copy of each item of information listed is required. However, copies of U.S. patent applications cited in the information disclosure statement are not required to be submitted to the Office because the applications are readily accessible to the examiner, copies would add unnecessary bulk to the file, and the presence of copies might result in the unnecessary disclosure of the contents of such patent applications when the application in which it was cited matures into a patent.

Under proposed § 1.98(a)(3), the information disclosure statement must include a concise explanation of the relevance of each item of information listed, and may further contain an explanation of why the claimed invention should be considered patentable over the item of information. These explanations may be contained in the specification or be submitted in a page separate from the specification. In either case, however, a list and a copy of each document for inclusion in the file record is required in order to satisfy the requirements of § 1.98(a). If information is being submitted from a foreign search report, the requirement for a concise explanation may be satisfied by submitting an English-language version of the search report.

Proposed § 1.98(b) continues the present practice and policy regarding the identifying information to be listed for each document cited in an information disclosure statement. Listing of the patentees or authors in a patent or publication may be limited to the last name of the first listed inventor or author followed by "et al."

Proposed § 1.98(c) continues the present practice and policy relative to citing and supplying information which is cumulative and relative to supplying a translation of information that is not in the English language. Under this proposed section, if two or more patents or publications are cumulative in terms of their contents relative to the patentability of the claims, the submission need be accompanied by only a copy of one of the documents containing the information, provided that a statement is made that the other documents are cumulative.

In addition, an English language translation of a non-English language document or the relevant portion thereof need only be submitted when it is in the possession, custody or control of, or is readily available to any individual designated in proposed § 1.56(c). This does not mean that such an individual must purchase a translation in each case, even though a translating service may be readily available. But if the individual has the ability to translate the non-English language into English and has done so for the purposes of reviewing the information relative to the claimed invention, the translation would be considered "readily available."

Finally, proposed § 1.98(d) would relieve applicant of the burden of supplying a copy of any document that is cited in an information disclosure statement complying with § 1.98 that had been submitted to the Office by the applicant in a prior application, where that prior application is properly identified in the statement and relied upon for an earlier filing date under 35 U.S.C. 120. The relevance of the information need be explained only if it differs from the relevance as explained in the prior application. The provisions of proposed § 1.98(d) do not relieve applicants desiring to have information considered of the requirements to file an information disclosure statement in each continuing application, or of the responsibility to furnish a list in each application where the information is to be considered and a concise explanation of the relevance of any document if it differs from the explanation of relevance provided in the prior application. No additional copy of the document will normally be required in the continuing application if a copy was submitted in the prior application.

Section 1.99 is proposed to be removed and reserved since the filing of supplemental information disclosure statements is covered by the procedures set forth in proposed § 1.97.

Section 1.175(a)(7), if amended as proposed, would be changed so that the acknowledgment required to be made in a reissue oath or declaration would be consistent with the language of proposed § 1.56.

Section 1.193(c) is proposed to be deleted and reserved. The proposed deletion reflects the general intention of the Office not to investigate fraud or other inequitable conduct in connection with the examination of a patent application.

Section 1.291(a) is proposed to be revised to indicate that protests which raise fraud or other inequitable conduct issues will be entered in the application file generally without comment on those issues. Again, this reflects the general policy of the Office not to investigate these issues in the examination of an application. Further, protests which do not adequately identify a pending application to permit matching of the protest with an application will be diposed of because the Office cannot act on such protests.

Section 1.291(c) is proposed to be amended to provide that the return of a return-addressed postcard which the protestor may include with the protest will be the only acknowledgment of the filing of a protest in either a reissue or regular application. The distinction made in current § 1.291(c) between reissue and regular applications has served no useful purpose. Although applicant will receive a copy of the protest filed in the application, the Office may not communicate with the applicant regarding the protest as where it does not contain information which is material to the patentability of the application. While the Office may require applicant to respond to specific questions raised by the protest, the Office generally will not investigate allegations with regard to fraud or other inequitable conduct. According to the proposed revision of § 1.291(c), in the absence of a request from the Office, an applicant has no duty to, and need not, respond to a protest. The last sentence in § 1.291(c) is proposed to be amended to reflect that the protestor has no active participation in the examination of an application. The protestor's involvement is limited to the filing of a protest which would be acknowledged by the return of a return-addressed postcard or similar administrative act. It is also proposed to eliminate the term "acknowledged" in the last sentence of § 1.291(c) since the Office will always acknowledge receipt of a document when accompanied by a return-addressed postcard. Finally, it is proposed to delete the phrase "and thereby constitutes a new protest" as superfluous.

Section 1.313(b) is proposed to be revised to indicate that the provisions of this section are applicable as of the date the issue fee has been paid. The purpose of this amendment is to provide a clear line to both the public and the Office for when the provisions of § 1.313(b) become operative. Since the public is not aware of when the patent to be issued receives its issue date and patent number, an event that typically takes place within two or three weeks after the issue fee has been paid, the proposed amendment is made to provide greater clarity and certainty for the patent applicant to judge what type of action can be taken.

In addition, § 1.313(b) is proposed to be amended to add one additional reason for withdrawing an application from issue after the issue fee has been paid. In proposed paragraph (b)(5), an application could be withdrawn from issue after the issue fee has been paid upon a request by the applicant to have information considered in a continuing application. A condition on the grant of a petition under proposed paragraph (5) of § 1.313(b) is that applicant agrees to abandon the present application in favor of a continuing application to have the information considered in the continuing application. This option is available to any applicant, and may be used by those applicants who choose not to certify that they first became aware of the information within three months of filing the proposed information disclosure statement. The Office thus provides every reasonable opportuntiy for an individual to avoid the consequences of failure to comply with § 1.56, and provides definite deadlines to preserve efficient operation of the Office.

Section 1.555 is proposed to be revised to conform with the amendments in proposed § 1.56(a). Although reexamination proceedings are based on patents or printed publications, patent owners and individuals involved on their behalf in a reexamination proceeding need to disclose to the Office all information material to the patentability of a new claim or to the patentability of a claim of the patent in such a proceeding. For example, prior admissions against interest by the patentee need to be disclosed. Section

1.555(a) is proposed to be revised to correspond to proposed § 1.56(a).

Paragraphs (b) and (c) of current § 1.555 are proposed to be deleted because paragraph (a) has been amended to require that information disclosure statements filed in a reexamination proceeding must meet the requirements of proposed § 1.98. Patent owners are encouraged to file an information disclosure statement in a timely manner. Provisions similar to proposed § 1.97 are not considered necessary in a reexamination proceeding because late-filed statements have not been a problem in these proceedings, and the patent owner does not have the opportunity to refile the proceeding in reexamination. The provisions of § 1.555(c) are proposed to be deleted as unnecessary, and § 1.555(d) is proposed to be redesignated as paragraph (b) of § 1.555.

Part 10 is proposed to be amended to reflect changes made in the rules related to duty of disclosure and the requirements for execution of an application. Paragraph 10 of § 10.23(c) is proposed to be revised to parallel the language of other paragraphs of the rule by stating that the violation must be done "knowingly", and to add a reference to § 1.555.

Paragraph 11 of § 10.23(c) is proposed to be revised to reflect that § 1.56(c) is proposed to be deleted. Although applications having defects in their execution will no longer be stricken, the Office desires to continue to discourage practitioners from permitting alterations in the application papers after the oath or declaration is signed, especially if such alterations are material. Merely editing, such as correcting misspellings, would not be considered to involve material alterations; nor would the insertion of filing or patent information of a parent or related application. However, adding to or deleting from the application matters of substance, such as a working example or claim language, would be considered to be a material alteration.

Other Considerations

The proposed rule change is in conformity with the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, executive Orders 12291 and 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The General Counsel of the Department of Commerce has certified to the Small Business Administration that the rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)) because the proposed rules do not require individuals to submit information that they are not already aware of and are not already under an obligation to provide to the Office. The proposed rules further promote the efficiency of the examination process by encouraging a timely submission of an information disclosure statement and by substantially eliminating rejections based on inequitable conduct, thereby reducing the costs to all patent applicants.

The Patent and Trademark Office has determined that this proposed rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individual industries, Federal, State or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity or innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Patent and Trademark Office has also determined that this proposed rule has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

This proposed rule contains a collection of information requirement subject to the Paperwork Reduction Act, which has previously been approved by the Office of Management and Budget under Control No. 0651–0011. Each information disclosure statement is estimated to take approximately 45 minutes, including time for reviewing instructions, gathering and maintaining data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate to the Patent and Trademark Office, Office of Management and Organization, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. (Attention Paper Reduction Project 0651–0011)

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Inventions and patents, Reporting and record keeping requirements, Small businesses.

37 CFR Part 10

Administrative practice and procedure, Inventions and patents, Lawyers, Reporting and record keeping requirements.

For the reasons set forth in the preamble, 37 CFR parts 1 and 10 are proposed to be amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for part 1 continues to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. In § 1.17, paragraph (i)(1) is proposed to be revised and paragraph (p) is proposed to be added to read as follows:

§ 1.17 Patent application processing fees.

* * * * *

(i)(1) For filing a petition to the Commissioner under a section of this part listed below which refers to this paragraph.................................$120.00

Sec.

1.12—for access to an assignment record.

1.14—for access to an application.

1.53—to accord a filing date.

1.55—for entry of late priority papers.

1.60—to accord a filing date.

1.62—to accord a filing date.

1.97(d)—to consider an information disclosure statement.

1.103—to suspend action in application.

1.177—for divisional reissues to issue separately.

1.312—for amendment after payment of issue fee.

1.313—to withdraw an application from issue.

1.314—to defer issuance of a patent.

1.334—for patent to issue to asignee, assignment recorded late.

1.666(b)—for access to interference settlement agreement.

* * * * *

(p) For submission of an information disclosure statement under § 1.97 (c)...$200.00

3. Section 1.28, paragraph (d)(2) is proposed to be revised to read as follows:

§ 1.28 Effect on fees of failure to establish status, or change status, as a small entity.

* * * * *

(d) (1) * * *

(2) Improperly and with intent to deceive

(i) Establishing status as a small entity, or

(ii) Paying fees as a small entity shall be considered as a fraud practiced or attempted on the Office.

4. Section 1.51, paragraph (b) is proposed to be revised to read as follows:

§ 1.51 General requisites of an application.

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§ 1.17 Patent application processing fees.

* * * * *

(i)(1) For filing a petition to the Commissioner under a section of this part listed below which refers to this paragraph $120.00

Sec.
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1.14—for access to an application.
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1.62—to accord a filing date.
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1.312—for amendment after payment of issue fee.
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1.314—to defer issuance of a patent.
1.334—for patent to issue to asignee, assignment recorded late.
1.666(b)—for access to interference settlement agreement.

* * * * *

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§ 1.28 Effect on fees of failure to establish status, or change status, as a small entity.

* * * * *

(d) (1) * * *

(2) Improperly and with intent to deceive

(i) Establishing status as a small entity, or

(ii) Paying fees as a small entity shall be considered as a fraud practiced or attempted on the Office.

4. Section 1.51, paragraph (b) is proposed to be revised to read as follows:

§ 1.51 General requisites of an application.

* * * * *

(b) Applicants are encouraged to file an information disclosure statement. See §§ 1.97 and 1.98.

* * * * *

5. Section 1.52, paragraph (c) is proposed to be revised to read as follows:

§ 1.52 Language, paper, writing, margins.

* * * * *

(c) Any interlineation, erasure, cancellation or other alteration of the application papers filed should be made before the signing of any accompanying oath or declaration pursuant to § 1.63 referring to those application papers and should be dated and initialed or signed by the applicant on the same sheet of paper. Application papers containing alterations made after the signing of an oath or declaration referring to those application papers must be supported by a supplemental oath or declaration under § 1.67(c). After the signing of the oath or declaration referring to the application papers, amendments may be made in the manner provided by §§ 1.121 and 1.123 through 1.125.

* * * * *

6. Section 1.56 is proposed to be revised to read as follows:

§ 1.56 Duty to disclose information material to patentability.

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Individuals associated with the filing and prosecution of a patent application have a duty of candor and good faith in their dealings with the Office, which includes a duty to disclose to the Office all information known to them to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled, or withdrawn from consideration, or the application becomes abandoned.

Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The requirements of this section are deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. The Office encourages applicants to carefully examine (1) prior art cited in search reports of a foreign patent office in a counterpart application, and (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record in the application, and

(1) It creates, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or

(2) It supports a position of unpatentability taken by the Office which the applicant disputes, or it is inconsistent with a position in support of patentability on which the applicant relies.

(c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

(1) Each inventor named in the application;

(2) Each attorney or agent who prepares or prosecutes the application; and

(3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.

(d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.

7. Section 1.62, paragraphs (b)(3) and (d) are proposed to be revised to read as follows:

§ 1.63 Oath or declaration.

* * * * *

(b) * * *

(3) Acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in § 1.56.

* * * * *

(d) In any continuation-in-part application filed under the conditions specified in 35 U.S.C. 120 which discloses and claims subject matter in addition to that disclosed in the prior copending application, the oath or declaration must also state that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in § 1.56, which became available between the filing date of the prior application and the national or PCT international filing date of the continuation-in-part application.

8. Section 1.67 is proposed to be amended by adding a new paragraph (c) to read as follows:

§ 1.67 Supplemental oath or declaration.

* * * * *

(c) A supplemental oath or declaration meeting the requirements of § 1.63 must also be filed if the application was altered after the oath or declaration was signed or it the oath or declaration was signed:

(1) In blank;

(2) Without review thereof by the person making the oath or declaration; or

(3) Without review of the specification, including the claims, as required by § 1.63(b)(1).

9. Section 1.97 is proposed to be revised to read as follows:

§ 1.97 Filing of information disclosure statement.

(a) In order to have information considered by the Office during the pendency of a patent application, an information disclosure statement in compliance with § 1.98 should be filed in accordance with this section.

(b) An information disclosure statement shall be considered by the Office if filed:

(1) Within three months of the filing date of a national application;

(2) Within three months of the date of entry of the national stage as set forth in § 1.491 in an international application; or

(3) Before the mailing date of a first Office action on the merits,

whichever event occurs last.

(c) An information disclosure statement shall be considered by the Office if filed after the period specified in paragraph (b) of this section, but before the mailing date of either

(1) A final action under § 1.113 or

(2) A notice of allowance under § 1.311,

whichever occurs first, provided the statement is accompanied by either a certification as specified in paragraph (e) of this section or the fee set forth in § 1.17(p).

(d) An information disclosure statement shall be considered by the Office if filed after the mailing date of either

(1) A final action under § 1.113 or

(2) A notice of allowance under § 1.311,

whichever occurs first, but before payment of the issue fee, provided the statement is accompanied by:

(i) A certification as specified in paragraph (e) of this section,

(ii) A petition requesting consideration of the information disclosure statement, and

(iii) The petition fee set forth in § 1.17(i)(1).

(e) A certification under this section must state that no item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application, or, to the knowledge of the person signing the certification, was known to any individual designated in § 1.56(c), more than three months prior to the filing of the statement.

(f) No extensions of time for filing an information disclosure statement are permitted under § 1.136. If a bona fide attempt is made to comply with § 1.98, but part of the required content is inadvertently omitted, additional time may be given to enable full compliance.

(g) An information disclosure statement filed in accordance with this section shall not be construed as a representation that a search has been made.

(h) Information disclosure statements, filed before the grant of a patent, which do not comply with this section and § 1.98 will be placed in the file, but will not be considered by the Office.

10. Section 1.98 is proposed to be revised as follows:

§ 1.98 Content of information disclosure statement.

(a) Any information disclosure statement filed under §1.97 shall include:

(1) A list of all patents, publications, or other information submitted for consideration by the Office;

(2) A legible copy of:

(i) Each U.S. and foreign patent;

(ii) Each publication or that portion which caused it to be listed;

(iii) All other information, except a U.S. patent application, or that portion which caused it to be listed; and

(3) A concise explanation of the relevance of each patent, publication, or other information listed. The concise explanation may be either separate from the specification or incorporated therein.

(b) Each U.S. patent listed in an information disclosure statement shall be identified by patentee, patent number and issue date. Each foreign patent or published foreign patent application shall be identified by the country or patent office which issued the patent or published the application, an appropriate document number, and the publication date indicated on the patent or published application. Each publication shall be identified by author (if any), title, relevant pages of the publication, date and place of publication.

(c) When the disclosures of two or more patents or publications listed in an information disclosure statement are substantively cumulative, a copy of one of the patents or publications may be submitted without copies of the other patents or publications provided that a statement is made that these other patents or publications are cumulative. If a written English language translation of a non-English language document, or portion thereof, is within the possession, custody or control of, or is readily available to any individual designated in § 1.56(c), a copy of the translation shall accompany the statement.

(d) A copy of any patent, publication or other information listed in an information disclosure statement is not required to be provided if it was previously submitted to the Office in a prior application, provided that the prior application is properly identified in the statement and relied upon for an earlier filing date under 35 U.S.C. 120.

§ 1.99 [Removed and Reserved]

11. Section 1.99 is proposed to be removed and reserved.

12. Section 1.175, paragraph (a)(7), is proposed to be revised to read as follows:

§ 1.175 Reissue oath or declaration.

(a) * * *

(7) Acknowledging the duty to disclose to the Office all information known to applicants to be material to patentability as defined in § 1.56.

* * * * *

13. Section 1.193(c) is proposed to be removed and reserved:

§ 1.193 Examiner's Answer.

* * * * *

(c) [Reserved]

14. Section 1.291, paragraphs (a) and (c), are proposed to be revised to read as follows:

§ 1.291 Protests by the public against pending applications.

(a) Protests by a member of the public against pending applications will be referred to the examiner having charge of the subject matter involved. A protest specifically identifying the application to which the protest is directed will be entered in the application file if (1) the protest is timely submitted; and (2) the protest is either served upon the applicant in accordance with § 1.248, or filed with the Office in duplicate in the event service is not possible. Protests raising fraud or other inequitable conduct issues will be entered in the application file, generally without comment on those issues. Protests which do not adequately identify a pending patent application will be disposed of and will not be considered by the Office.

* * * * *

(c) A member of the public filing a protest under paragraph (a) of this section in an application will not receive any communications from the Office relating to the protest, other than the return of a self-addressed postcard which the member of the public may include with the protest in order to receive an acknowledgment by the Office that the protest has been received. The Office may communicate with the applicant regarding any protest and may require the applicant to respond to specific questions raised by the protest. In the absence of a request by the Office, an applicant has no duty to, and need not, respond to a protest. The limited involvement of the member of the public filing a protest pursuant to paragraph (a) of this section ends with the filing of the protest, and no further submission on behalf of the protestor will be considered unless such submission raises new issues which could not have been earlier presented.

15. Section 1.313, paragraph (b), is proposed to be revised to read as follows:

§ 1.313 Withdrawal from issue.

* * * * *

(b) When the issue fee has been paid, the application will not be withdrawn from issue for any reason except:

(1) A mistake on the part of the Office;

(2) A violation of § 1.56 or illegality in the application;

(3) Unpatentability of one or more claims;

(4) For interference; or

(5) For abandonment to permit consideration of an information disclosure statement under § 1.97 in a continuing application.

(16). Section 1.555 is proposed to be revised to read as follows:

§ 1.555 Information material to patentability in reexamination proceedings.

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective reexamination occurs when, at the time a reexamination proceeding is being conducted, the Office is aware of and evaluates the

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protest is either served upon the applicant in accordance with § 1.248, or filed with the Office in duplicate in the event service is not possible. Protests raising fraud or other inequitable conduct issues will be entered in the application file, generally without comment on those issues. Protests which do not adequately identify a pending patent application will be disposed of and will not be considered by the Office.

* * * * *

(c) A member of the public filing a protest under paragraph (a) of this section in an application will not receive any communications from the Office relating to the protest, other than the return of a self-addressed postcard which the member of the public may include with the protest in order to receive an acknowledgment by the Office that the protest has been received. The Office may communicate with the applicant regarding any protest and may require the applicant to respond to specific questions raised by the protest. In the absence of a request by the Office, an applicant has no duty to, and need not, respond to a protest. The limited involvement of the member of the public filing a protest pursuant to paragraph (a) of this section ends with the filing of the protest, and no further submission on behalf of the protestor will be considered unless such submission raises new issues which could not have been earlier presented.

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(4) For interference; or

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(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective reexamination occurs when, at the time a reexamination proceeding is being conducted, the Office is aware of and evaluates the

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teachings of all information material to patentability as defined in § 1.56. Individuals associated with the patent owner in a reexamination proceeding have a duty of candor and good faith in their dealings with the Office, which includes a duty to disclose to the Office all information known to them to be material to patentability. The individuals who have a duty to disclose to the Office all information known to them to be material to patentability are the patent owner, each attorney or agent who represents the patent owner, and every other individual who is substantively involved on behalf of the patent owner in a reexamination proceeding. The duty to disclose the information exists with respect to each claim pending in the reexamination proceeding until the claim is cancelled. Information material to the patentability of a cancelled claim need not be submitted if the information is not material to patentability of any claim remaining under consideration in the reexamination proceeding. The requirements of this section are deemed to be satisfied if all information known to be material to patentability of any claim in the patent after issuance of the reexamination certificate was cited by the Office or called to the attention of the Office in an information disclosure statement. Any information disclosure statement must be filed in accordance with § 1.98, and should be filed within two months of the date of the order for reexamination, or as soon thereafter as possible in order to bring such information to the attention of the Office.

(b) The responsibility for compliance with this section rests upon the individuals designated in paragraph (a) of this section and no evaluation will be made by the Office in the reexamination proceeding as to compliance with this section. If questions of compliance with this section are discovered during a reexamination proceeding, they will be noted as unresolved questions in accordance with § 1.552(c).

PART 10—REPRESENTATION OF OTHERS BEFORE THE PATENT AND TRADEMARK OFFICE

17. The authority citation for part 10 continues to read as follows:

Authority: 5 U.S.C. 500; 15 U.S.C. 1123; 35 U.S.C. 6, 31, 32, 41.

18. Section 10.23, paragraphs (c)(10) and (c)(11), are proposed to be revised to read as follows:

§ 10.23 Misconduct.

* * * * *

(c) * * *

(10) Knowingly violating or causing to be violated the requirements of § 1.56 or § 1.555 of this subchapter.

(11) Knowingly filing or causing to be filed an application containing any material alteration made in the application papers after the signing of the accompanying oath or declaration without identifying the alteration at the time of filing the application papers.

* * * * *

Dated: August 1, 1991.

Harry F. Manbeck, Jr.,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 91–18588 Filed 8–5–91; 8:45 am]

BILLING CODE 3510-16-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 136, 260, and 261

[FRL-3981-5]

Extension of Comment Period for Proposed Rule Establishing Test Procedures for the Analysis of Pollutants; Identification of Hazardous Waste; Test Methods

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: EPA is extending the comment period for a proposed rule published on July 3, 1991 [56 FR 30519] establishing analytical methods under the Clean Water Act (CWA) and the Resource Conservation and Recovery Act (RCRA) to allow the use of alternative solvents in lieu of chlorofluorocarbons (CFCs) in these methods. The original deadline for comments is being extended for sixty days because various laboratory groups are continuing testing to validate alternative solvents, and therefore more time is needed to collect additional data.

DATES: Comments for the proposed rule should be submitted in writing to the address shown below on or before October 1, 1991 to be considered in the formulation of the final rule.

ADDRESSES: The public must send an original and two copies of their comments to the EPA RCRA/CWA Docket (OS-305). U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Place the Document number f-91-MEI-FFFFF on your comments. The EPA RCRA Docket is located in room 2427, 401 M Street, SW., Washington, DC 20460. The docket is open from 9 a.m. to 4 p.m. Monday through Friday, except Federal holidays. The public must make an appointment to review docket materials by calling (202) 475-9327. The public may copy a maximum of 100 pages from any regulatory docket at no cost. Additional copies are $0.20 per page. To expedite review, it is also recommended that a duplicate copy of written comments be sent to Dr. Reva Rubenstein at the address listed below.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; telephone No. (800) 424-9346 (toll free) or (202) 382-3000 locally. For technical information about the RCRA portion of this proposal, contact Mr. Alexander C. McBride, Technical Assessment Branch, Office of Solid Waste (OS-332) at (202) 382-4761 or Mr. David Friednman, Office of Research and Development at (202) 245-3535. For technical information on the CWA portion of this proposal, contact Mr. William Telliard, Energy and Mining Branch, Industrial Technology Division (WH-552) at 382-2272. For technical information related to the analytical methods, contact J.J. Lichtenberg, Environmental Monitoring Systems Laboratory, Office of Research and Development, at (513) 569-7306. For technical information about the method used by the Office of Underground Storage Tanks in this proposal, contact Mr. David Wiley, Standards Branch, Office of Underground Storage Tanks (OS-410) at (703) 308-8875. for more information on the Montreal Protocol and related CAAA regulatory activities, contact Dr. Reva Rubenstein, Division of Global Change, Office of Air and Radiation (ANR-445), at (202) 382-7410.

Dated: July 30, 1991.

Michael Shapiro,

Acting Assistant Administrator.

[FR Doc. 91-18619 Filed 8-5-91; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74-09; Notice 22]

Planning Document on Potential Standard 213 Upgrade; Federal Motor Vehicle Safety Standards; Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments; extension of comment period.

SUMMARY: This notice grants a request from the Child Passenger Protection Research Program, the University of Michigan, for extension of the period to submit written comments on an agency request for comments to the planning document on potential changes to Federal Motor Vehicle Safety Standard No. 213, *Child Restraint Systems.*

DATES: The comment closing date is changed from September 3, 1991, to October 3, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. George Mouchahoir, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366-4919.

SUPPLEMENTARY INFORMATION: On July 17, 1991, NHTSA published in the **Federal Register** (56 FR 32544) a notice announcing the publication of a planning document that discusses planned research and possible upgrades to Federal Motor Vehicle Safety Standard No. 213, *Child Restraint Systems.* This notice is also seeking public review and comment on the planning document. The agency originally established a 45-day comment period.

The Child Passenger Protection Research Program of the University of Michigan has requested a 30-day extension of the comment period. That organization submitted this request because of concerns about the future of child restraints and the necessity to spend significant time formulating responses to the specific items addressed, as well as covering topics not addressed in the plan.

After consideration of the request, NHTSA has decided to extend the comment period by the requested 30-days. The agency has concluded that a 30-day extension of the comment period is warranted considering the significance and public interest in this subject.

Issued on July 30, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-18461 Filed 8-5-91; 8:45 am]

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Issued on July 30, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91–18461 Filed 8–5–91; 8:45 am]

BILLING CODE 4910–59–M

Notices

Federal Register
Vol. 56, No. 151
Tuesday, August 6, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Beaver-Dry Timber Sales, Helena National Forest, Powell and Lewis and Clark Counties, MT

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The USDA, Forest Service is gathering information and preparing an Environmental Impact Statement (EIS) for a proposal to harvest timber, reforest the site, and construct haul roads in the Beaver Creek, Dry Creek and Lincoln Gulch drainages on the Lincoln Ranger District. The Beaver Creek drainage is located approximately 3 air miles northwest of Lincoln, Montana.

The Forest Service proposes to harvest approximately 8 million board feet of timber through using a variety of harvest methods on approximately 650 acres of forest land. The proposal also includes the construction of 10 miles of new haul roads to access the specific harvest units.

The proposal is designed to help achieve the goals and objectives of the 1986 Helena National Forest Plan. More specifically, the proposal has the following purpose:

1. Increase overall forest health and timber productivity in treated stands by; (1) Replacing mature and overmature treees with younger trees capable of increased growth; (2) harvesting stands with poor health and vigor due to insect and disease damage or poor stocking levels and regenerate or encourage growth on healthier trees.
2. Initiate activities to shift the age class distribution towards the desired future condition as described in the Helena Forest Plan.
3. Move towards the desired future condition as described in the Forest Plan for fish and wildlife by the spatial distribution of harvest units.
4. Assess opportunities for recreation improvement.
5. Validate Forest Plan management area allocations in the project area.

DATES: Comments concerning the scope of the analysis should be received in writing on or before September 5, 1991.

ADDRESSES: The responsible official is Ernest R. Nunn, Forest Supervisor, Helena National Forest, 301 S. Park, Drawer 10014, Federal Office Building, room 328, Helena, MT. 59626.

FOR FURTHER INFORMATION CONTACT: Glenda Scott, EIS Team Leader, Helena National Forest, Lincoln Ranger District, P.O. Box 219, Lincoln, MT. 59626. PHone: (406) 362–4265.

SUPPLEMENTARY INFORMATION: The timber sale(s) and road construction would occur on National Forest lands in portions of the Lincoln Gulch, Beaver Creek and Dry Creek drainages of the Lincoln Ranger District. Included in the area being analyzed is all or portions of T.15N., R.10W., sections 20–29, 35 and 36; T.14N., R.10W., sections 1, 2, 12, and 13; T.15N., R.9W., sections 19, 20, 21, 28–33 and T.14N., R.9W., sections 5–8, 17, 18, Montana Principle Meridian.

Harvest units and road construction are proposed in roadless areas. Approximately 36 acres of harvest and 0.5 miles of road construction are proposed in the Bear-Marshall-Scapegoat-Swan Roadless Area (1485) and 230 acres of harvest and 3.3 miles of road are proposed in the Lincoln Gulch Roadless Area (1601). These areas have not been considered for inclusion in the National Wilderness System by the Helena Forest Plan or by past legislative wilderness proposals.

The areas of proposed harvest are within management areas T–1 and T–3 described in the Helena Forest Plan. The direction states that T–1 is available and suitable for timber harvest. T–3 lands provide important spring and summer habitat requirements for all big game species as well as being available and suitable for timber harvest.

The decision to be made is the amount and timing of harvesting and location of harvest units within the roaded and roadless portions of the project area. Activities may begin as early as fall of 1992. Associated with this is, the miles of road construction, fuels treatment and reforestation and stand improvement activities needed to meet the objectives.

This EIS will tier to the Helena Forest Plan and Final EIS of April 1986, which provides program goals, objectives and standards and guidelines for conducting management activities in this area. All activities associated with the proposal will be designed to maintain or enhance the resource objectives identified in the Forest Plan.

A project feasibility analysis was initiated in January 1991. Analysis and collection of site specific information has been on-going since that time. The Forest Service is seeking information and comments from Federal, State, local agencies, and other organizations or individuals who may be interested in or affected by the proposed actions. The Forest Service invites written comments and suggestions on the issues for the proposal and the area being analyzed. Information received will be used in preparation of the Draft EIS. Preparation of the EIS will include the following steps:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Identification of additional reasonable alternatives.
5. Identification of potential environmental effects of the alternatives.
6. Determination of potential cooperation agencies.

Prescribed harvest treatments in this proposal include even aged management techniques of clearcutting, shelterwood and seed tree harvests. Alternatives to this proposal will include varying degrees of uneven aged systems, intermediate stand treatments, salvage harvests and stand improvement activities.

The preliminary issues identified are:

1. Affects on roadless characteristics.
2. Impacts to fisheries.
3. Affects to long term and short term thermal cover needs.
4. Impacts on elk movement patterns.
5. Affects to old growth forest conditions.
6. Visual impacts to local communities.
7. Potential for sedimentation increases in Beaver, Stonewall, Lincoln Gulch, Arrastra, and Dry Creeks.
8. Alterations to forest health and vigor.
9. Fire hazards and burning opportunities.
10. Recreation use and potential for changes in use.

The Forest Service will analyze and disclose in the DEIS/FEIS the

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environmental effects of the proposed action and a reasonable range of alternatives, including no action. The alternatives to the proposed action will be developed to respond to the purpose and need for the action. The DEIS/FEIS will disclose the direct, indirect, and cumulative environmental effects of each alternative and its associated site specific mitigation measures.

Public participation is especially important at several points of the analysis. Interested parties may visit with Forest Service officials at any time during the analysis. However, two periods of time are specifically identified for the receipt of comments. The first comment period is during the scoping process when the public is invited to give written comments and the Forest Service will conduct public scoping meetings in Helena, Montana and Lincoln, Montana for the receipt of verbal comments. The dates and location will be published locally. This period extends for 30 days from the date of publication of this notice. The second review period is during the review of the DEIS in February and March 1992 when the public is invited to comment on the DEIS.

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in February 1992. At that time, the EPA will publish a notice of availability of the DEIS in the **Federal Register**.

The comment period on the draft environmental impact statement will be 45 days from the date the notice of availability is published in the **Federal Register**.

At this early stage in the scoping process, the Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978)*. Secondly, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.).

After the comment period ends on the draft environmental impact statement, the comments will be analyzed and considered by the Forest Service in preparing the Final EIS. The EIS is expected to be filed in June 1992.

Dated: July 25, 1991.

Ernest Nunn,

Forest Supervisor, Helena National Forest.

[FR Doc. 91–18532 Filed 8–5–91; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Public Meeting of the Alabama Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Alabama Advisory Committee to the Commission will convene at 7 p.m. and adjourn at 10 p.m. on August 27, 1991, at the Radisson Hotel Birmingham, 808 South 20th Street, Birmingham, Alabama 35205. The purpose of the meeting is to discuss program planning and future Advisory Committee projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Division (816) 426–5253, (TDD 816—426–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 26, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91–18528 Filed 8–5–91; 8:45 am]

BILLING CODE 6335–01–M

Agenda and Public Meeting of the Nebraska Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Nebraska Advisory Committee to the Commission will convene at 10 a.m. and adjourn at 2 p.m. on August 27, 1991, at the Ramada Inn-Airport, 2301 NW. 12th Street, Lincoln, Nebraska 68521. The purpose of the meeting is to discuss program planning and future Advisory Committee projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Division (816) 426–5253, (TDD 816—426–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 26, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91–18529 Filed 8–5–91; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of Income and Program Participation – 1990 Panel Wave 7.

Form Number(s): SIPP–10700, 10703, 10705(L).

Agency Approval Number: 0607–0670.

Type of Request: Revision of a currently approved collection.

Burden: 67,725 hours.

Number of Respondents: 135,450.

Avg Hours Per Response: 30 minutes.

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CIVIL RIGHTS

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Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91–18528 Filed 8–5–91; 8:45 am]

BILLING CODE 6335-01-M

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The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 26, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91–18529 Filed 8–5–91; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of Income and Program Participation – 1990 Panel Wave 7.

Form Number(s): SIPP–10700, 10703, 10705(L).

Agency Approval Number: 0607–0670.

Type of Request: Revision of a currently approved collection.

Burden: 67,725 hours.

Number of Respondents: 135,450.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The Survey of Income and Program Participation (SIPP) is designed as a continuing series of national panels of interviewed households which are introduced annually with each panel having a duration of about 2 1/2 years in the survey. The survey is molded around a central "core" of labor force and income questions that will remain fixed throughout the life of a panel. The core is periodically supplemented with questions designed to answer specific needs. These supplemental questions are included with the core and are referred to as "topical modules." The topical modules for the 1990 Panel Wave 7 and the 1991 Panel Wave 4 are identical. They are the following: (1) Selected Financial Assets, (2) Medical Expenses and Work Disability, and (3) Real Estate and Shelter Costs, Dependent Care, and Vehicles. Wave 7 interviews will be conducted from February through May of 1992.

Affected Public: Individuals or households.

Frequency: There will be three interview periods for the 1990 Panel in Fiscal Year 1992.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 31, 1991.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 91–18570 Filed 8–5–91; 8:45 am]

BILLING CODE 3510-07-F

International Trade Administration

[A–588–401]

Calcium Hypochlorite From Japan; Termination, In Part, of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Termination, In Part, of Antidumping Duty Administrative Review.

SUMMARY: On May 24, 1989 (54 FR 22465) and June 1, 1990 (55 FR 22366), the Department of Commerce initiated administrative reviews of the antidumping duty order on calcium hypochlorite from Japan for the periods April 1, 1988, through March 31, 1989, and April 1, 1989, through March 31, 1990, respectively, for calcium hypochlorite from Japan manufactured by Nippon Soda Co., Ltd. The Department of Commerce has now decided to terminate these reviews.

EFFECTIVE DATE: August 6, 1991.

FOR FURTHER INFORMATION CONTACT: Fred BAker or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–5255.

SUPPLEMENTARY INFORMATION:

Background

On May 24, 1989, we published a notice initiating the administrative review of the antidumping duty order on calcium hypochlorite from Japan for the period April 1, 1988, through March 31, 1989 (54 FR 22465). On July 1, 1990, we published a notice initiating the administrative review for the period April 1, 1989, through March 31, 1990 (55 FR 22366). Those notices stated that we would review three companies: Nippon Soda Co., Ltd., Tohoku Tosoh Chemical Co., Ltd., and Nankai Chemical Industry Co., Ltd.

On October 10, 1990, we published a notice of "Final Results of Antidumping Duty Administrative Review and Revocation in Part" (55 FR 41259) for the periods April 1, 1986, through March 31, 1987, and April 1, 1987, through March 31, 1988. In that notice we revoked the order on Nippon Soda Co., Ltd. As a result, we are terminating the reviews for Nippon Soda Co., Ltd., for the periods April 1, 1988, through March 31, 1989, and April 1, 1989, through March 31, 1990. A notice of "Final Results of Antidumping Duty Administrative Review" for the latter two review periods for Nankai Chemical Industry Co., Ltd., and Tohoku Tosoh Chemical Co., Ltd., was published on December 11, 1990 (55 Fr 50853).

Dated: July 30, 1991.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 91–18622 Filed 8–5–91; 8:45 am]

BILLING CODE 3510-DS-M

[A–588–087]

Preliminary Results of Antidumping Duty Administrative Reviews: Portable Electric Typewriters From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 6, 1991.

FOR FURTHER INFORMATION CONTACT: Beth Graham or Larry Sullivan, Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–4105 or 377–0114, respectively.

PRELIMINARY RESULTS:

Case History

On April 5, 1991, the Department of Commerce ("the Department") published in the **Federal Register** (56 FR 14072) the final results of the administrative reviews of the antidumping duty order on portable electric typewriters ("PETs") from Japan (45 FR 18416, March 21, 1980) covering the period May 1, 1986, through April 30, 1988.

On May 31, 1989, Smith Corona Corporation ("Smith Corona") and Nakajima All Co., ("Nakajima") requested that the Department conduct an administrative review for the period May 1, 1988, through April 30, 1989, in accordance with 19 CFR 353.22(a). We published a notice of initiation of this antidumping duty administrative review for Matsushita Electric Industrial Corporation ("Matsushita"), Nakajima, Brother Corporation ("Brother"), Canon Inc./Canon U.S.A. ("Canon"), Sharp Corporation ("Sharp"), and Silver Seiko, Ltd. ("Silver Seiko") on June 21, 1989 (54 FR 26069). The Department did not initiate an administrative review with respect to Royal Business Machines, Inc., as requested by Smith Corona, because petitioner failed to identify any Japanese company with which Royal is affiliated which may be a Japanese manufacturer or exporter of PETs.

On June 23, 1989, August 11, 1989, September 8, 1989, and September 15, 1989, we received letters from Silver Seiko, Brother, Matsushita, and Sharp, respectively, informing us that they did not export PETs subject to the order during the review period. We also received a letter from Canon on August 31, 1989, informing us that it would not be responding to our questionnaire.

On May 30, 1990, Smith Corona requested that the Department conduct an administrative review for the period May 1, 1989, through April 30, 1990, in accordance with 19 CFR 353.22(a). We published a notice of initiation of this antidumping duty administrative review for Matsushita, Nakajima, Brother, Canon, Sharp, Silver Seiko, Fujitsu American, Inc. ("Fujitsu"), Tokyo Jiki Industrial Co., Ltd. ("Juki"), Tokyo Electric Company, Ltd. ("Tokyo Electric") and Towa Espo Corporation ("Towa Espo") on July 6, 1990 (55 FR 27859).

On July 26, August 1, December 5, December 17, December 20, and December 28, 1990, we received letters from Tokyo Electric, Juki, Silver Seiko, Fujitsu, Towa Espo and Sharp, respectively, informing us that they did not export PETs subject to the order during the review period. We received a letter from Canon on December 20, 1990, informing us that it would not be responding to our questionnaire. On December 31, 1990, we received a letter from Brother indicating that all of its shipments entered prior to May 1, 1990, were liquidated.

On November 21, 1990, the Department sent a revised questionnaire to all respondents requesting information on certain PETs not previously covered by the order, pursuant to the Court of Appeals for the Federal Circuit ("CAFC") ruling affirming the Court of International Trade ("CIT") decision of February 3, 1989. See the "Scope of the Review" section of this notice for further information.

On November 5, 1990, Smith Corona made an allegation in the 1989–90 administrative review of sales below the cost of production ("COP") with regard to Nakajima's sales of PETs to Canada. On December 19, 1990, the Department rejected Smith Corona's allegation because it was not sufficiently specific to the subject merchandise to warrant the initiation of a COP investigation.

In response to the assertion by Nakajima, Matsushita, and Brother that a large number of their entries newly determined to be subject to the order had been liquidated, the Department requested, on December 18, 1990, that all respondents report, for each model and each period of review, the volume of liquidated and unliquidated entries. Based on the responses received from Nakajima and Matsushita, the Department determined that it would only review unliquidated entries of automatic PETs ("PATs") and PETs for these companies, since: (1) They appeared to adequately represent the models of the subject merchandise entered during the 1989–90 review period, (2) they were of a sufficient volume to serve as a basis for calculating the duty deposit rate, and (3) there was no information indicating that limiting the Department's analysis to the unliquidated entries would be distortive or unrepresentative of each company's selling practices for liquidated merchandise entered after February 3, 1989 and before April 5, 1990.

Since Brother did not have unliquidated entries of PETs or PATs during either review period, on April 5, 1991, we requested that Brother report the sales data for its liquidated entries for the period December 1989 through May 1990. Brother responded on April 10, 1990, that it did not have any entries of the subject merchandise during this period. Since we had no basis upon which to establish the cash deposit rate for future entries of the subject merchandise, we requested, on April 12, 1991, that Brother report all liquidated entries of the subject merchandise for the most recent month in 1989 in which it had entries and the four months prior to that month, as long as each month fell within the 1989–90 review period. On May 20, 1991, Brother responded that it would not be responding to our request for information regarding liquidated entries of PETs.

Verification of Nakajima and Nakajima U.S.A. ("NUSA"), was conducted from May 28 through June 14, 1991. Verification of Matsushita, Matsushita Electric of Canada, Ltd. (MELCA) and Matsushita Electric Corporation of America (MECA) was conducted from June 19 through July 12, 1991. The Department has conducted these reviews in accordance with section 751 of the Tariff Act of 1930, as amended ("the Act").

Use of Best Information Available

Two firms failed to respond to our request for information. Specifically, for both review periods, Canon refused to respond to our questionnaires. In addition, for the 1989–90 review period, Brother refused to respond to the Department's April 12, 1991, request for information. In deciding what to use as best information available, § 353.37(b) of the Department's regulations provides that the Department may take into account whether a party fails to provide requested information. When a company fails to provide the information requested in a timely manner, or otherwise significantly impedes the Department's review, the Department generally assigns to that company the higher of: (a) The highest rate for a responding firm with shipments during the period or (b) the highest rate for that company for any previous review or the original investigation. In this case we assigned non-responding companies their highest rate from prior reviews.

Scope of the Review

On April 5, 1990, the Department published in the **Federal Register**: Portable Electric Typewriters; Court of International Trade Decision Concerning the Scope of the Antidumping Duty Order (55 FR 12701) ("CIT Decision"), a notice suspending liquidation of all unliquidated entries of PATs, and PETs incorporating a calculating mechanism, entered or withdrawn from warehouse for consumption on or after February 3, 1989. On September 26, 1990, a CAFC decision established finally that these products were within the scope of the antidumping duty order on PETs from Japan. See, Portable Electric Typewriters from Japan; Court of Appeals for the Federal Circuit Decision Concerning the Scope of the Antidumping Duty Order (55 FR 42423, October 19, 1990). Therefore, beginning February 3, 1989, these reviews cover PETs, PATs, and PETs incorporating a calculating mechanism. (For a complete explanation of the history of the scope in this proceeding, see Final Scope Ruling; Portable Electric Typewriters from Japan (55 FR 47358, November 13, 1990), and CIT Decision.)

The merchandise covered by these reviews is now currently classified under subheadings 8469.10.00, 8469.21.00 and 8469.29.00 of the Harmonized Tariff System (HTS). Prior to January 1, 1989, this merchandise was classified under subheading 675.0510 and, in some cases, under subheading 676.0540 of the Tariff Schedules of the United States Annotated (TSUSA). Although the HTS and TSUSA subheadings are provided for convenience and customs purposes, our written description of the scope of these proceedings is dispositive.

Review Periods

The review periods are May 1, 1988, through April 30, 1989, and May 1, 1989, through April 30, 1990.

United States Price

For Matsushita, we based United States price ("USP") on exporter's sales price ("ESP"), in accordance with section 772(c) of the Act, because all sales used for purposes of our analysis were made to unrelated parties after importation into the United States. For Nakajima, in the 1988–89 review period, we based the USP on purchase price ("PP"), in accordance with section 772(b) of the Act, both because the PETs were sold to unrelated purchasers in the United States prior to importation into the United States and because ESP methodology was not indicated by other circumstances. For Nakajima in the

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1989–90 review period, we based USP on both PP and on ESP.

Matsushita

We calculated ESP based on packed, delivered prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, foreign shipping charges, foreign warehouse expenses, customs duties, customs processing fees, ocean freight, U.S harbor maintenance fees, insurance, brokerage, U.S. inland freight and freight out, in accordance with section 772(d)(2) of the Act. We made further deductiona, where appropriate, for volume rebates, early payment rebates, sales promotion expense, off-invoice sales promotion, three types of off-invoice discounts, local sales promotion allowance, cooperative advertising, after-invoice credits, warranties, accounts receivable credit expense, three types of royalty expenses and indirect selling expenses, which include expenses for service manuals, national advertising expenses, four types of inventory carrying costs, administrative and indirect selling expenses incurred in Japan, indirect selling and general and administrative expenses incurred in the United States, other advertising, and U.S. service expenses, in accordance with section 772(e) of the Act.

Matsushita claimed the expense for service manuals as a direct selling expense. At verification, we discovered that these manuals are provided to customer service centers and not the customers's customer. Therefore, we have treated this expense as an indirect selling expense. In addition, Matsushita claimed its national advertising expense as a direct selling expense. At verification, we established that the expense reported was for national advertising which was institutional in nature or not directed at the customer of Matsushita's customer. Therefore, we treated national advertising as an indirect selling expense. We also found minor clerical errors in the figures reported for sales promotion expense and brokerage. We included the corrected figures in our calculations.

We discovered at verification that several entries which had been suspended, pursuant to our instructions to Customs in the **Federal Register** of April 5, 1990, were subsequently liquidated. Matsushita claimed it was unaware of these liquidations when preparing its response and, as a result, submitted a sales listing which contained sales tied to the liquidated entries. Since the Department's decision not to require Matsushita to report data on liquidated entries was based on the amount of unliquidated entries originally reported, we have included these entries in order to have an adequate basis on which to calculate Matsushia's weighted-average duty deposit margin.

Nakajima

For both review periods, we calculated PP based on the packed, F.O.B. (Japan), C&I or delivered price to unrelated purchasers in the United States. For the 1988–89 review period, we made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling, U.S. inland freight, U.S. brokerage and handling, ocean freight, and marine insurance, in accordance with section 772(d)(2) of the Act. We also made a deduction to PP for labels. We determined that certain of Nakajima's PP sales which were reported in the context of the 1988–89 review period (because the sales occured during that period) were more appropriately evaluated in the 1989–90 review period since this was the time period in which they entered the United States.

For 1989–90, we made deductions to the PP, where appropriate, for foreign brokerage and handling, foreign inland freight, containerization, marine insurance, U.S brokerage and handling, U.S. inland freight and ocean freight, in accordance with section 772(b)(2) of the Act. For the ESP sales during this review period, we made deductions for foreign inland freight, containerization, ocean freight, U.S. brokerage and handling and U.S. inland freight and insurance, credit, discounts, royalties, advertising and indirect selling expenses, including inventory carrying costs, in accordance with section 772(d)(2) of the Act.

At verification of NUSA, we discovered minor clerical errors for certain sales and expenses. For purposes of our preliminary results, we have included the corrected information in the calculation of Nakajima's weighted-average margin.

Nakajima failed to report sales of unliquidated entries of PATs in its response for the 1988–89 review period. For purposes of the preliminary determination, as BIA we assigned to these units the highest unit margin and the lowest value for any Nakajima sale of PETs during this review period. We then factored in the resulting margin to calculate an adjusted, weighted-average margin for all products.

Foreign Market Value

In order to determine whether there were sufficient sales of PETs in the home market to serve as the basis for calculating FMV, we compared the volume of home market sales to the volume of third country sales, in accordance with section 773(a)(1)(B) of the Act. Matsushita reported, and the Department verified, that they had no sales of PETs in the home market during the review period. For both periods, Nakajima had sales of PETs in the home market, but the volume of home market sales was less than five percent of third country sales. Therefore, for these companies, we determined that home market sales did not constitute a viable basis for calculating FMV, in accordance with section 353.48 of the Department's regulations.

In selecting which third country market to use for comparison purposes, we first determined which third country markets had an "adequate" volume of sales. We determined that the volume of sales to a third country market was adequate if the sales of such or similar merchandise exceeded or was equal to five percent of the volume sold to the United States. In selecting which of the third country markets having an adequate sales volume was the most appropriate for comparison purposes, we followed § 353.49 of the Department's regulations.

Matsushita

We determined that sales to Canada were the most appropriate basis for calculating FMV.

We calculated FMV based on packed, delivered prices to unrelated customers in Canada. We made deductions, where appropriate, for foreign inland freight, foreign warehousing, foreign shipping expenses, Canadian federal sales tax, ocean freight, air freight, inland freight, marine insurance, brokerage, and freight-out. We deducted third country packing costs and added U.S. packing costs, in accordance with section 773(a)(1).

We made further deductions, where appropriate, for after-invoice credits, floor expenses, volume rebates, early payment discounts, sales promotion expenses, national advertising, cooperative advertising, warranties, accounts receivable credit, two types of royalties, and catalog expenses, in accordance with section 773(a)(4)(B) of the Act. We also made deductions for third country indirect selling expenses, including four types of inventory carrying costs, administrative and indirect selling expenses incurred in Japan, indirect selling and general and administrative expenses incurred in Canada, manual expenses, bad debt, service expenses, indirect sales promotion expenses, and "other" advertising expenses. The deduction for third country indirect selling expenses was capped by the sum of the indirect selling expenses incurred on ESP sales, in accordance with § 353.56(b)(2) of the Department's regulations.

In addition, where appropriate, we made further adjustments to FMV to account for differences in physical characteristics of the merchandise, in accordance with § 353.57 of the Department's regulations.

At verification, we discovered minor clerical errors on warranty expenses, inventory carrying costs and volume rebates. The corrected figures have been included in our calculations.

Nakajima

For the 1988–89 review period, third country prices were based on the packed, F.O.B. price to unrelated purchasers in Canada. We made deductions, where appropriate, for foreign inland freight, and foreign brokerage and handling. We deducted third country packing costs and added U.S. packing costs, in accordance with section 773(a)(1) of the Act. We made adjustments for differences in circumstances of sale between the two markets, in accordance with § 353.56 of the Department's regulations. We adjusted for differences in bank handling, credit, advertising, and royalties.

For the 1989–90 review period, we calculated FMV based on packed, F.O.B. prices to unrelated customers in the Federal Republic of Germany. We made deductions, where appropriate, for foreign inland freight, containerization, and foreign brokerage and handling. We deducted third country packing costs and added U.S. packing costs, in accordance with section 773(a)(1).

For comparisons involving PP transactions, we made adjustments for differences in circumstances of sale between the markets in accordance with § 353.56 of the Department's regulations. We adjusted for differences in bank handling, credit, royalties and warranties. For comparisons involving ESP transactions, we made deductions, where appropriate for bank handling, credit, warranties, and indirect selling expenses. Indirect selling expenses were capped by the sum of the indirect selling expenses incurred on ESP sales, in accordance with § 353.56(b)(2) of the Department's regulations.

In addition, where appropriate, we made further adjustments to FMV to account for differences in physical characteristics of the merchandise, in accordance with § 353.57 of the Department's regulations.

Certain Nakajima PP sales were reported in the context of both review periods due to the timing of their sale and entry into the United States. However, Nakajima did not report contemporaneous third country sales in both review periods. Because we have determined that these PP sales are most appropriately evaluated in the 1989–90 review period (see United States Price section above) we have used, for purposes of the preliminary determination, the most contemporaneous FRG sales reported in the 1989–90 review period as best information available for FMV. For purposes of the final determination, we have asked Nakajima to submit contemporaneous FRG sales by August 8, 1991.

For both the 1988–89 and 1989–90 review periods, Nakajima did not report third country or U.S. typewriter warranty expenses in its sales listing but did include these figures in its narrative response. Nakajima did not incur third country or U.S. typewriter warranty expenses in the 1988–89 period. For comparisons to PP sales in the 1989–90 review, we made an adjustment to FMV for differences in warranty expenses incurred during the period of review. For comparisons to ESP sales in the 1989–90 review, we deducted from FMV third country typewriter warranty expenses incurred during the period of review.

At verification of NUSA, we discovered minor clerical errors concerning foreign inland freight and difference in merchandise adjustments ("difmer"). For purposes of our preliminary results, we have included the corrected figures in the calculation of Nakajima's weighted average margin.

Preliminary Results of Review

As described in the "Case History" section of this notice, Sharp and Silver Seiko claimed that they made no exports of PETs to the United States during the 1988–89 review period. We have requested the U.S. Customs Service ("Customs") to verify that these two companies made no shipments to the United States during this period. For the 1989–90 review period, Fujitsu, Juki, Sharp, Silver Seiko, Tokyo Electric, and Towa Espo claimed that they made no exports of PETs to the United States. We have also requested Customs to verify that these six companies made no shipments to the United States during this period.

As a result of our review, we preliminarily determine that the following margins exist for the periods May 1, 1988, through April 30, 1989, and May 1, 1989, through April 30, 1990:

Manufacturer/exporter	Review period	Margin (percent)
Brother	5/01/88–4/30/89	62.79
	5/01/89–4/30/90	62.79
Nakajima	5/01/88–4/30/89	0.79
	5/01/89–4/30/90	8.13
Matsushita	5/01/88–4/30/89	4.92
	5/01/89–4/30/90	0.27
Silver Seiko	5/01/88–4/30/89	[1] 88.85
	5/01/89–4/30/90	[1] 88.85
Sharp	5/01/88–4/30/89	[1] 37.12
	5/01/89–4/30/90	[1] 37.12
Canon	5/01/88–4/30/89	88.85
	5/01/89–4/30/90	88.85
Fujitsu American, Inc	5/01/89–4/30/90	[1] 5.20
Juki Corp./Juki Office Machine Corporation	5/01/89–4/30/90	[1] 2.40
Tokyo Electric Company, Ltd	5/01/89–4/30/90	[1] 4.92
Towa Espo Corporation	5/01/89–4/30/90	[1] 1.41

[1] These companies had no shipments during the review period. Therefore, we assigned them their rates from the most recently completed administrative review.

Upon completion of this administrative review, the Department will issue appraisement instructions concerning all respondents directly to Customs.

Furthermore, the following deposit requirements will be effective upon publication of the final results of these administrative reviews for all shipments of PETs entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed companies will be that established in the final results of the review for the 1989–90 period; (2) for merchandise exported by manufacturers or exporters not covered in these reviews but covered in previous reviews or the original less-than-fair-value investigation, the cash deposit rate will continue to be the rate published in the most recent determination for which the manufacturer or exporter received a company-specific rate; and (3) the cash deposit rate for all other exporters/producers will be 8.13 percent. This is

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Canon	5/01/88–4/30/89	88.65
	5/01/89–4/30/90	88.65
Fujitsu American, Inc	5/01/89–4/30/90	[1] 5.20
Juki Corp./Juki Office Machine Corporation	5/01/89–4/30/90	[1] 2.40
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[1] These companies had no shipments during the review period. Therefore, we assigned them their rates from the most recently completed administrative review.

Upon completion of this administrative review, the Department will issue appraisement instructions concerning all respondents directly to Customs.

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the highest non-BIA rate for any firm included in the 1989–90 review.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Public Comment

In accordance with § 353.38 of the Department's regulations, we will hold a public hearing, if requested, on August 26, 1991, at 10 a.m. in room 3708, to afford interested parties an opportunity to comment on these preliminary results. Parties should confirm by telephone, the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request or participate in a hearing must submit a written request within ten days of the date of publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed.

In addition, ten copies of the business proprietary version and five copies of the non-proprietary version of case briefs must be submitted to the Assistant Secretary no later than August 14, 1991. Ten copies of the business proprietary version and five copies of the non-proprietary version of rebuttal briefs must be submitted to the Assistant Secretary no later than August 21, 1991. An interested party may make a presentation at the hearing only on arguments included in that party's briefs. If no hearing is requested, interested parties still may comment on these preliminary results in the form of case and rebuttal briefs. Written arguments should be submitted in accordance with § 353.38 of the Department's regulations and will be considered if received within the time limits specified in this notice.

This administrative review and notice are in accordance with section 751(a)(1) of the Act and § 353.22(c)(5) of the Department's regulations.

Dated: July 31, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91–18623 Filed 8–5–91; 8:45 am]

BILLING CODE 3510-DS-M

[A–588–015]

Television Receivers, Monochrome and Color, from Japan; Final Results of Antidumping Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Reviews.

SUMMARY: On April 26, 1991, the Department of Commerce published the preliminary results of its administrative reviews of the antidumping finding on television receivers, monochrome and color, from Japan. The reviews cover one manufacturer/exporter of this merchandise to the United States, Toshiba Corporation, and the periods from September 28, 1983 through February 28, 1986.

We gave interested parties an opportunity to comment on our preliminary results. We held a public hearing on June 11, 1991.

Based on our analysis of the comments received and the correction of certain clerical errors, we have changed these final results for the fifth, sixth, and seventh reviews. The final margins range from 0.06 percent to 39.88 percent.

EFFECTIVE DATE: August 6, 1991.

FOR FURTHER INFORMATION CONTACT: Maura Kim or Melissa G. Skinner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–3601 or (202) 377–4851, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 26, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 19345) the preliminary results of its administrative reviews of the antidumping finding on television receivers, monochrome and color, from Japan (36 FR 4597, March 10, 1971). We have now completed these administrative reviews in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of the Review

Imports covered by the reviews are shipments of television receivers, monochrome and color, from Japan. Television receivers include, but are not limited to, units known as projection televisions, receiver monitors, and kits (containing all parts necessary to receive a broadcast television signal and produce a video image). Not included are certain monitors not capable of receiving a broadcast signal, certain combination units, and certain subassemblies not containing the components essential for receiving a broadcast television signal and producing a video image. During the review periods, televison receivers, monochrome and color, were classifiable under item numbers 684.9230, 684.9232, 684.9234, 684.9236, 684.9238, 684.9240, 684.9245, 684.9246, 684.9248, 684.9250, 684.9252, 684.9253, 684.9255, 684.9256, 684.9258, 684.9262, 684.9263, and 684.9655 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under item numbers 8528.10.80 and 8528.20.00 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive.

These reviews cover one manufacturer/exporter to the United States of Japanese televisions, Toshiba Corporation (Toshiba), and the periods from September 28, 1983 through March 31, 1984, April 1, 1984 through February 28, 1985, and March 1, 1985 through February 28, 1986.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received comments from one of the petitioners, Zenith Electronics Corporation (Zenith), and Toshiba, the respondent. We held a hearing on June 11, 1991.

Comment 1: Zenith argues that the Department should deduct from foreign market value (FMV) the amount realized by Toshiba by having delayed payment on its selling expenses accounts payable.

Toshiba argues that in previous proceedings the Department has repeatedly refused to make an offset against claimed selling expenses adjustment amounts for the savings realized by the delayed payment of certain selling expenses. Toshiba further argues that it is the Department's practice to avoid inputing expenses or costs where a company quantifies the actual expenses or costs, provides adequate documentation of those expenses, and the company's quantification accurately reflects the expense to the seller.

Department's Position: We disagree with Zenith. We avoid imputing expenses or costs when a company quantifies or documents its actual expenses, and when the company's quantification accurately reflects the expense to the seller. Since we have

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determined that Toshiba accurately quantified its home market selling expenses, and that its claims accurately reflected these expenses, we have not reduced them by the amount of any savings realized as a result of delayed payment. See our response to Comment 2 in Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Review (54 FR 13918, April 6, 1989).

Comment 2: Zenith argues that the Department should deduct antidumping-related legal expenses from exporter's sales price (ESP). According to Zenith, these expenses are selling expenses because they are incurred as a result of a respondent selling the merchandise under review in the United States at prices below FMV. Moreover, Zenith argues that there is no basis for retaining in ESP legal expenses incurred as a result of an antidumping proceeding when all other legal expenses incurred by a foreign company's U.S. subsidiary are deducted from ESP.

Toshiba argues that the Department should not deduct antidumping-related legal expenses from USP. It argues that the Department's position in previous proceedings is that the legal fees incurred in antidumping investigations are not directly or indirectly related to sales and therefore should not be deducted.

Department's Position: We disagree with Zenith. As we have stated in previous reviews of this finding, as well as the antidumping duty orders on color television receivers from the Republic of Korea and Taiwan, we do not consider legal expenses incurred in defense of an allegation of dumping to be expenses incurred in selling the merchandise in the United States. As a result, we have not deducted these expenses from ESP in these final results. *See* our response to Comment 4 in Television Receivers, Monochrome and Color from Japan; Final Results of Antidumping Duty Administrative Review (54 FR 13919, April 6, 1989). We note, moreover, that Zenith is urging that the Department disregard the Court of International Trade (CIT) opinion regarding this issue in *Daewoo Electronics Co.* v. *United States,* 712 F. Supp. 931 (1989) (*Daewoo*).

Comment: Zenith argues that the Department should deduct payments of estimated antidumping duties, and any expenses related to such payments from USP.

Toshiba argues that unlike ordinary duties antidumping duties paid upon entry are only estimates, with the actual amounts charged for each sale remaining unknown until an administrative review is completed. Therefore it argues that the Department should reject Zenith's argument because the adjustment would skew the accuracy of the Department's results and artificially affect the dumping margins. It further argues that the Department's practice is not to consider antidumping duties to be expenses related to sales.

Department's Position: We disagree with Zenith. As we have stated in previous reviews of this finding, we believe that including estimated amounts of antidumping duties in our calculations would result in inaccurate margin. We do not consider payments of estimated antidumping duties to be expenses related to the sales under review. Further, given the possibility that these estimated duties could very significantly from duties that may be assessed, we do not consider them to be "expenses" (within the meaning of section 772(d)(2)(A) of the Tariff Act) for purposes of determining U.S. price (USP). Finally, estimated duties and duties assessed are paid by the importer, which is, in some cases, unrelated to the party whose sales are under review. We have therefore not deducted estimated antidumping duties from USP in these final results. See our response to Comment 5 in Television Receivers, Monochrome and Color from Japan; Final Results of Antidumping Duty Administrative Review (54 FR 13918, April 6, 1989), our response to Comment 6 in Color Television receivers from the Republic of Korea; Final Results of Antidumping Administrative Review (56 FR 12703, 12704, March 27, 1991), and our response to Comment 8 in Color Television Receivers, Except for Video Monitors, from Taiwan; Final Results of Antidumping Administrative Review (56 FR 31380, July 10, 1991).

Comment 4: Zenith contends that the Department erroneously treated selling commissions in the United States as though they consisted entirely of indirect selling expenses. According to Zenith, commissions compensate the recipient for both direct and indirect selling expenses incurred on behalf of the respondent. Zenith argues that, since FMV has already been adjusted for direct selling expenses, an offset to FMV comprised of indirect selling expenses up to the full amount of the U.S. commission overcompensates for the indirect portion of the commission and effectiveness negates the deduction from U.S. price of the direct expense portion of the commission.

Toshiba argues that Zenith's suggestion is contrary to the Department's regulations at 19 CFR 353.56(b), which provides for a commission offset of indirect selling expenses for the full amount of the commissions paid.

Department's Position: We disagree with Zenith. Section 353.56(b)(1) of our regulations requires us to make an adjustment for situations in which a commission is paid in one market, but not in the other market. That adjustment is limited to "the amount of the other selling expenses" allowed in the other market. We do not interpret this regulation as requiring us to limit the offset to a specific portion of the expenses of the commissionaire. Indeed, it is not necessary to examine how the recipient of the commissions spends the money because, to the seller, such monies represent direct expenses incurred as a result of that particular sale. As a result, we have offset the full amount of the U.S. commissions in these final results. See our response to Comment 6 in Television Receivers, Monochrome and Color from Japan; Final Results of Antidumping Duty Administrative Review (54 FR 13919, April 6, 1989), our response to Comment 9 in Color Television Receivers, Except for Video Monitors, from Taiwan; Final Results of Antidumping Duty Administrative Review (56 FR 31381, July 10, 1991), and our response to Comment 7 in Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Review (56 FR 12704, March 27, 1991).

Comment 5: Zenith asserts that the Department should ensure that the offset to FMV excludes non-selling expenses. Zenith argues that Toshiba should provide an affirmative demonstration that all of the indirect selling expenses claimed as part of the offset to FMV are actually selling expenses, and not general and administrative expenses.

Toshibea contends that Zenith's argument has been rejected in the past and should be rejected again in this proceeding. It argues that the Department does not interpret its regulations concerning indirect selling expenses in the home market as limited only to selling expenses in sales offices and as excluding so-called "non-selling" expenses incurred by those offices. Furthermore, Toshiba points out that in Television Receivers, Monochrome and Color from Japan; Final Results of Antidumping Duty Administrative Review (54 FR 13919, April 9, 1989) the Department included certain general expenses associatied with selling in its calculation of indirect selling expenses.

Department's Position: We disagree with Zenith. We do not interpret our regulations as requiring that indirect selling expenses in the home market be

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Department's Position: We disagree with Zenith. We do not interpret our regulations as requiring that indirect selling expenses in the home market be

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limited to selling expenses in sales offices, and as excluding general and administrative expenses incurred by those offices. As we have stated in previous reviews of this case, the pool of indirect selling expenses in the home market should include these expenses which are similar to the expenses incurred by the U.S. subsidiary, whose function it is to sell merchandise. Accordingly, the equivalent home market selling expenses are those which are incurred by the home market selling division in support of the home market sales effort and which include certain general expenses associated with selling. Therefore, we believe that Toshiba did not overstate its home market selling expenses, and we have used all these expenses in calculating the ESP offset for these final results. *See* our response to Comment 3 in Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Reviews (54 FR 13919, April 6, 1989) and our response to Comment 4 in Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Reveiw (56 FR 12703, March 27, 1991).

Comment 6: Toshiba argues that there is no basis for the Department's deduction of quantity discounts from the USPs reported by Toshiba's U.S. subsidiaries, Toshiba America, Inc (TAI) and Toshiba Hawaii, Inc. (THI). Toshiba asserts that TAI did not grant quantity discounts on its sales of modesl CJ300 and CJ300WG. Toshiba contends that where TAI did grant quantity discounts on its sales of model CZ2094, it reported USPs net of such discounts. In addition, Toshiba claims that THI did not grant discounts on any models it sold during the review period.

Department's Position: For these final results, the Department made no deduction from USP for quantity discounts for any models sold by TAI or THI. We agree with Toshiba that there is no need to deduct an amount for quantity discounts from TAI's reported USPs because it reported USPs net of cretain discounts. Because THI's sales were all made at the lowest list price, regardless of the quantity sold, we have made no adjustment for quantity discounts to THI's USPs. We have revised our calculations accordingly.

Comment 7: Toshiba objects to the Department's use of best information available (BIA) to deterrmine the amount of quantity discount.

Department's Position: In these final results we have allowed Toshiba's claims for quantity discounts. We did not use BIA.

Comment 8: Toshiba argues that the Department erred in finding that TAI failed to quantify the amount of its volume discounts for the fifth and the sixth review periodds.

Department's Position: We disagree. TAI provided a volume discount schedule containing anticipated sales volume and discount percentage figures without tying this information to specific sales or customers. TAI did not quantify the amount for volume discounts either as an amount or as a percentage of the sale price. Sicne we determined that Toshiba had not sufficiently tied its volume discount information to sales, we used BIA. We applied the following figures as BIA: the amount of TAI's quantity discount for model CZ2094 as BIA for model CZ2094's volume discount; and the actual quantity discount for model CJ300 as BIA for the volume discount of models CJ300 and CJ300WG in the fifth and sixth review periods.

Comment 9: Toshiba argues that the Department erroneously made an adjustment for volume discounts to TAI's sales in the seventh review period.

Department's Position: We agree and have made no adjustment for TAI's volume discounts in the seventh review period in these final results.

Comment 10: Toshiba argues that because TAI explained its method for calculating its volume rebate, quantified the amounts provided, and fully responded to the department's questionnaires, there is no basis for the Department's use of BIA for TAI's volume rebate.

Department's Position: We desagree. In analyzing TAI's questionnaire responses, we discovered discrepancies between TAI's U.S. sales responses and rebate schedules. Although TAI listed in its rebate schedule a specific rate as being the highest volume rebate, we found many sales with even higher rebate amounts in TAI's U.S. sales responses. Therefore, as BIA, we applied the highest reported volume rebate prcentage to all of TAI's sales where a volume rebate was tranted.

Comment 11: Toshiba argues that the Department failed to adjust the USP of repaired and used merchandise to reflect the difference between repaired and used merchandise sold in the United States and new merchandise sold in the home market. Zenith argues that the Department should reject both Toshiba's claimed "offset" adjustment to constructed value (CV) for the price reduction given on sales of so-called "B-class" merchandise in the U.S., as well as the adjustment to expenses in order to offset certain price adjustments on U.S. sales. Zenith argues that there are no home market expenses underlying these adjustment claims and the claims are entirely fictional.

Department's Position: toshiba claimed in its August 6, 1990 responses that it reported USP net of discounts, including the reapired and used merchandise discount. Therefore, we determined that no further adjustment for this discount was necessary, and used the USPs as reportd in our sales comparisons. However, for purposes of calculating certain U.S. selling expenses, we added the amount of this discount to USP in order to reflect these expenses as a percentage of the original selling price.

Zenith misunderstands Toshiba's claims. Toshiba claimed an adjustment to USP, not to CV. Therefore, whether similar expenses were incurred in the home market is not relevant here since we made the adjustment to USP. Since Toshiba sold reapired and used merchandise at reduced prices, we have allowed the adjustment to USP. In addition, for sales of repaired and used merchandise, we offset the effect of the price discount on the calculation of TAI's expense allocations by adjusting U.S. indirect selling expenses downwards by the amount of the reported adjustment to expenses.

Comment 12: Toshiba aruges that two variables which appeared as negative numbers in TAI's computer printouts and computer tapes, were missing from the Department's computer printout of TAI's fifth review sales response. Since toshiba believed the problem was due to an improper command in the computer programming language used by the Department, it submitted another copy of its computer tape for the fifth review.

Department's Position: We have examined our data and corrected the error in the instructions for mounting the computer tape containing this data. The missing observations of the two variables now appear in our printout of TAI's fifth review sales. We returned the tape voluntarily submitted by Toshiba.

Comment 13: Toshiba asserts that, although an appropriate adjustment, the amount for uncollected commodity taxes was erroneously adjusted twice in the Department's computer program for the sixth review period.

Department's Position: We agree and have eliminated the second adjustment.

Comment 14: Toshiba argues that, because Toshiba's reported selling, general, and administrative (SG&A) expenses included *all* of Toshiba's selling expenses the Department should not have added Toshiba's reported U.S.

direct selling expenses to FMV in its CV calculations.

Department's Position: We agree. We have corrected this error in these final results by removing the addition of these U.S. direct selling expenses to CV.

Comment 15: Toshiba argues tht by using total factory overhead and the product-specific mold depreciation calculated by Toshiba, te Department double-counted mold depreciation in its cost of manufacture calculations.

Department's Position: We agree and have removed the separate addition of mold depreciation expense from our calculation of cost of manufacture since this expense was included in total factory overhead.

Comment 16: Toshiba argues that it reported separate SG&A rates for the first and second halves of the sixth and seventh review periods, which did not appear in the Department's computer printout of the preliminary results.

Department's Position: In the preliminary results we intended to weight-average SG&A rates for the sixth and seventh review periods, respectively. For these final results we have ensured that the correct SG&A rates are weighted as intended in our CV calculations for the sixth and seventh review periods.

Final Results of the Reviews

As a result of the comments received and the correction of certain clerical errors, we have revised our preliminary results for Toshiba. Accordingly, we determine the margins to be:

Manufacturer/exporter	Review No.	Period of review	Margin (%)
Toshiba	5	9/26/83–3/31/84	39.66
Toshiba	6	4/01/84–2/28/85	17.57
Toshiba	7	3/01/85–2/28/86	0.06

The Department will instruct the U.S. Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties of 35.40 percent will be required for Toshiba; this is the margin for Toshiba in the eleventh review, covering the period March 1, 1989 through February 28, 1990. For any shipments of this merchandise manufactured by Funai Electric; Fujitsu General Ltd.; Hitachi, Ltd.; Matsushita Electric Industrial Company, Ltd.; Mitsubishi Electric Corporation; NEC; Sanyo Electric Company; Seiko Epson Corporation; or Victor Corporation of Japan, the cash deposit rate will continue to be the same as the rates published in the most recently completed final results of the administrative reviews for these firms (56 FR 5392, February 11, 1991). The cash deposit rate for Sharp shall be 38.26 percent, which is Sharp's rate for the ninth review. Since these reviews cover periods which have been superceded by more recent reviews, the rates in this notice do not affect the cash deposit rate for any firm.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Commerce Regulations (19 CFR 353.22).

Dated: July 29, 1991.

Eric T. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–18624 Filed 8–5–91; 8:45 am]

BILLING CODE 3510-DS-M

Short Supply Review: Certain Mirror-Polished Stainless Steel Sheet

AGENCY: Import Administration/International Trade Administration, Commerce.

ACTION: Notice of Short-Supply Review and Request for Comments: Certain Mirror-Polished Stainless Steel Sheet with Non-Directional Unbroken Mirror Finish

SUMMARY: The Secretary of Commerce ("Secretary") hereby announces a review and request for comments on a short-supply request for 150 metric tons of certain mirror-polished stainless steel sheet with non-directional, unbroken mirror finish for the period October 1991 through March 1992 under Paragraph 8 of the Arrangement Between the Government of Japan and the Government of the United States of America Concerning Trade in Certain Steel Products ("the U.S.-Japan Arrangement").

SHORT-SUPPLY REVIEW NUMBER: 55.

SUPPLEMENTARY INFORMATION: Pursuant to section 4(b)(3)(B) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101–221, 103 Stat. 1886 (1989) ("the Act"), and Section 357.104(b) of the Department of Commerce's Short-Supply Procedures, 19 CDR 357.104(b) ("Commerce's Short-Supply Procedures"), the Secretary hereby announces that a short-supply determination is under review with respect to certain mirror-polished stainless steel sheet with a non-directional, unbroken mirror finish for use in decorative architectural applications. On July 25, 1991, the Secretary received an adequate petition from Clark Metals, Inc. ("Clark") requesting a short-supply allowance for 150 metric tons of this product during the period October 1991 through March 1992 under Paragraph 8 of the U.S.-Japan Arrangement. Clark is requesting short supply because it alleges that no U.S. producers produce identical or competitive products and that regular export licenses are unavailable for this product during this period.

The requested material meets the following specifications:

Raw Material Specifications

UNS Designation: S30400 (Class 1) (Superceded AISI 304)

Pinholes—Not more than 3 pinholes of not larger than 0.06mm in 300 square meters.

Slivers—Not more than 3 slivers of not longer than 10mm in one square meter.

Finish

Finish Code "Super No. 8" (non-directional, unbroken mirror)

Surface Roughness—Rmax 0.07–0.09 micron meter

Chemical Composition

	Min.	Max.
Carbon		0.08
Manganese		2.00
Phosphorus		0.045
Sulfur		0.030
Silicon		1.00
Chromium	18.0	20.00
Nickel	8.0	10.50

Dimensions

thickness—0.8–6.0mm
width—1,524mm (5 feet) (max.)
length—4,500mm (14 feet 8 inches) (max.)

Tolerances

thickness—under 3/16 inch
width—1/16 inch over, 0 under
length—1/4 inch over, 0 under
camber—1/8 inch

Section 4(b)(4)(B)(ii) of the Act and § 357.106(b)(2) of Commerce's Short-Supply Procedures require the Secretary to make a determination with respect to a short-supply petition not later than the 30th day after the petition is filed, unless the Secretary finds that one of the following conditions exist: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional

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The requested material meets the following specifications:

Raw Material Specifications

UNS Designation: S30400 (Class 1) (Superceded AISI 304)

Pinholes—Not more than 3 pinholes of not larger than 0.06mm in 300 square meters.
Slivers—Not more than 3 slivers of not longer than 10mm in one square meter.

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Finish Code "Super No. 8" (non-directional, unbroken mirror)
Surface Roughness—Rmax 0.07–0.09 micron meter

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width—1/16 inch over, 0 under
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quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary finds that none of these conditions exist with respect to the requested product, and therefore, the Secretary will determine whether this product is in short supply not later than August 23, 1991.

COMMENTS: Interested parties wishing to comment upon this review must send written comments not later than August 13, 1991 to the Secretary of Commerce, Attention: Import Administration, Room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230. Interested parties may file replies to any comments submitted. All replies must be filed not later than 5 days after August 13, 1991. All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above noted short-supply review number.

FOR FURTHER INFORMATION CONTACT: Kathy McNamara or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230, (202) 377–1390 or (202) 377–0159.

Dated: July 31, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91–18707 Filed 8–5–91; 8:45 am]

BILLING CODE 3510-DS-M

University of Arizona, et al.; Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 91–050. *Applicant:* University of Arizona, Tucson, AZ 85712. *Instrument:* Electron Microscope, Model H–8000 NAR. *Manufacturer:* Hitachi Scientific Instruments, Japan. *Intended Use:* See notice at 56 FR 14930, April 12, 1991. *Order Date:* December 27, 1990.

Docket Number: 91–055. *Applicant:* New York State Department of Health, Albany, NY 12201–0509. *Instrument:* Electron Microscope, Model EM 910. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* See notice at 56 FR 14931, April 12, 1991. *Order Date:* November 21, 1990.

Docket Number: 91–056. *Applicant:* The Ohio State University, Columbus, OH 43210. *Instrument:* Electron Microscope, Model JEM–2010. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 56 FR 23286, May 21, 1991. *Order Date:* March 11, 1991.

Docket Number: 91–058. *Applicant:* National Institutes of Health, Bethesda, MD 20892. *Instrument:* Electron Microscope, Model CM 10. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* See notice at 56 FR 23287, May 21, 1991. *Order Date:* January 29, 1991.

Docket Number: 91–064. *Applicant:* Bigelow Laboratory for Ocean Sciences, West Boothbay Harbor, ME 04575. *Instrument:* Electron Microscope with Imaging Spectrometer, Model EM902 PC/ST/G45. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* See notice at 56 FR 23287, May 21, 1991. *Order Date:* March 1, 1991.

Docket Number: 91–070. *Applicant:* Washington University School of Medicine, St. Louis, MO 63110. *Instrument:* Electron Microscope, Model EM902/PC. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* See notice at 56 FR 25412, June 4, 1991. *Order Date:* 1991.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91–18625 Filed 8–5–91; 8:45 am]

BILLING CODE 3510-DS-M

University of California, Riverside, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 91–012.

Applicant: University of California, Riverside, Riverside, CA 92521.

Instrument: Liquid Chromatograph/Mass Spectrometer/Mass Spectrometer, Model API III.

Manufacturer: Sciex Instruments, Canada.

Intended Use: See notice at 56 FR 8184, February 27, 1991.

Reasons: The foreign instrument provides: (1) Atmospheric pressure ionization, (2) tandem (MS/MS) mass spectroscopy, (3) high performance liquid chromatography and (4) mass range to 2400.

Advice Submitted By: National Institutes of Health, May 30, 1991.

Docket Number: 91–014.

Applicant: Tulane University, New Orleans, LA 70118.

Instrument: Mass Spectrometer, Model Profile HV–3.

Manufacturer: Kratos Analytical, Inc., United Kingdom.

Intended Use: See notice at 56 FR 8185, February 27, 1991.

Reasons: The foreign instrument provides: (1) Resolution to 10,000, (2) scan speed to 0.1 second per decade and (3) flow FAB capability.

Advice Submitted By: National Institutes of Health, May 30, 1991.

Docket Number: 91–022

Applicant: Northwestern University, Chicago, IL 60611.

Instrument: Reflex Microscope.

Manufacturer: Reflex Measurement Ltd., United Kingdom.

Intended Use: See notice at 56 FR 11545, March 19, 1991.

Reasons: The foreign instrument provides determination and recording of specific points on a specimen with a repeatability of 0.002 mm in the horizontal and 0.015 in the vertical.

Advice Submitted By: National Institutes of Health, May 30, 1991.

The National Institutes of Health advises that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91–18628 Filed 8–5–91; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Deep Seabed Mining; Approval of Exploration License Extensions and Revisions

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of approval of Deep Seabed Mining Exploration License extensions and revisions to USA–2 and USA–3 for Ocean Management, Inc., and Ocean Mining Associates.

SUMMARY: On March 26, 1991, at 56 FR 12508, the National Oceanic and Atmospheric Administration (NOAA), noticed receipt of applications for five-year extensions of Deep Seabed Mining Exploration Licenses, USA–2 and USA–3 from Ocean Management, Inc. (OMI), and Ocean Mining Associates (OMA), respectively. Amendments to the related exploration plans and schedule of expenditures were also received. No comments objecting to approval of these proposed revisions were received. Pursuant to the Deep Seabed Hard Mineral Resources Act (Pub. L. 96–283) and 15 CFR part 970, on 31 July 1991, NOAA approved extensions to these licenses and the exploration plans from year 1994 through 1999.

FOR FURTHER INFORMATION CONTACT: Betty Rosser, Ocean Minerals and Energy Division, Office of Ocean and Coastal Resource Management, NOAA, 1825 Connecticut Avenue, NW., suite 710, Washington, DC 20235, (202) 606–4117.

Dated: July 31, 1991.

Virginia K. Tippie,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 91–18586 Filed 8–5–91; 8:45 am]

BILLING CODE 1390-12-M

Deep Seabed Mining; Proposed Extension and Revision of Exploration License

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of receipt of application to extend Deep Seabed Mining Exploration License USA–1 and to revise incorporated exploration plan; request for comments.

SUMMARY: On May 16, 1991, Ocean Minerals Company (OMCO) submitted to the National Oceanic and Atmospheric Administration (NOAA) an application for a five-year extension of Deep Seabed Mining Exploration License USA–1, pursuant to section 105(c)(2) and 107(a) of the Deep Seabed Hard Mineral Resources Act (DSHMRA, 30 U.S.C. 1401 *et seq.*) and 15 CFR 970.515. OMCO has also proposed related exploration plan modifications. NOAA has determined that this proposal constitutes an application for a major but not significant revision to the exploration plan and to the terms, conditions and restrictions (TCRs) of the license under 15 CFR 970.513, and is commencing public review procedures as prescribed in 15 CFR 970.514(b).

Pursuant to the DSHMRA and 15 CFR part 970, on August 29, 1984, NOAA issued a license to OMCO to engage in deep seabed mining exploration activities for a period of 10 years in a site located in the Clarion-Clipperton Fracture Zone of the Northeastern Equatorial Pacific Ocean. Since that time, the licensee, subject to the TCRs of the license and NOAA's regulatory requirements, has diligently pursued the activities approved in the exploration plan of the license, directed toward application for a commercial permit in 1994.

OMCO is applying for a five-year extension of the license based on significantly changed market conditions, pursuant to 15 CFR 970.515. Section 107(a) of the DSHMRA provides that the Administrator shall extend a license, on terms consistent with the Act and NOAA's regulations, if the licensee has substantially complied with the license and associated exploration plan. Section 105(a)(2) of the DSHMRA authorizes NOAA to approve a license revision upon a finding that the revision will comply with the requirements of the Act and implementing regulations. A revision to the exploration plan of the license is being requested to reflect accomplishment of objectives in OMCO's current plan, due to the substantial amounts of data received by OMCO as a result of conflict resolution, and to reduce the level of activity, based on economic conditions.

OMCO's current ten-year exploration plan, approved by NOAA on September 8, 1988, is a two-phased plan. During the first six years (Phase I) OMCO's work schedule is designed to analyze and integrate exploration data from settlement agreements and other sources, compile environmental data, and identify test sites and candidate sites suitable for commercial mining. Phase II, currently planned for years 7 through 10, is directed toward survey operations, selection of commercial recovery permit areas, and scale-up activities preparatory to filing a permit in conjunction with the investment decision of whether or not to proceed with commercial mining.

Since issuance of the exploration license in 1984, OMCO has resolved all site conflicts with other consortia and the USSR, and exchanged and analyzed related technical data received from these agreements; upgraded computer capability and integrated data into OMCO's exploration database; identified candidate sites within its area suitable for commercial recovery; contributed an area within its site to be used as a joint environmental preservational reference area and released related resource and environmental data to NOAA for evaluation; and monitored technical and legal developments in the metals market.

The May 1991 revision requests an extension of the term of the license until 1999. The amendment to the exploration plan proposes to continue Phase I through year 12 during which the

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The May 1991 revision requests an extension of the term of the license until 1999. The amendment to the exploration plan proposes to continue Phase I through year 12 during which the

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licensee will continue to monitor technical, legal, economic and political developments in ocean mining; compile environmental data for future mining activities; assess improved exploration methods and techniques for use in Phase II; and perform economic evaluations to determine the advisability of implementing Phase II. Phase II will be scheduled for years 13 through 15. Expenditures are estimated at $120,000 per annum for years 7 through 10, and $100,000 for years 11 and 12.

Subject to 15 CFR 970.902, which excludes confidential information from public disclosure, interested persons will be permitted to examine the application for revision and to provide comments by October 7, 1991. These documents may be examined at the below listed address.

FOR FURTHER INFORMATION CONTACT: Betty Rosser, Ocean Minerals and Energy Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Ave., NW., suite 710, Washington, DC 20235, (202) 606–4117.

Dated: July 31, 1991.

Virginia K. Tippie,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 91–18567 Filed 8–5–91; 8:45 am]

BILLING CODE 3510-12-M

Gulf of Mexico Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of public hearings; request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public hearings on Draft Amendment 4 to the Gulf of Mexico Reef Fish Fishery Management Plan, which includes modifications to the framework procedure that governs Council action in making annual changes in reef fish management, a 5-year moratorium on issuance of new commercial reef fish permits, combining the deep and shallow-water grouper quotas into an overall quota beginning in 1992, addition of almaco jack and banded rudderfish to the management unit, and applying the same size and bag limits to both greater and lesser amberjacks due to the difficulty in identifying the two species.

DATES: Public comments must be received by September 13, 1991. See "**SUPPLEMENTARY INFORMATION**" for dates, times, and locations of the hearings.

ADDRESSES: Written comments should be sent to Douglas Gregory, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 881, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: Douglas Gregory, Gulf of Mexico Fishery Management Council, 813–228–2815.

SUPPLEMENTARY INFORMATION: The public hearings will begin at 7 p.m., and adjourn at 10 p.m., and are scheduled as follows:

1. Monday, August 12, 1991—H.L. Stokely Hal, Ft. Brown Memorial Center Complex, 600 International Boulevard, Brownsville, Texas.
2. Tuesday, August 13, 1991—Galveston Beachfront Hotel, 5914 Seawall Boulevard, Galveston, Texas.
3. Wednesday, August 14, 1991—Gouaux Hall, Nichols State University, Corner of Arcadia and Glenwood, Thibodaux, Louisiana.
4. Thursday, August 15, 1991—Mobile Civic Center, 401 Civic Center Drive, Mobile, Alabama.
5. Wednesday, August 21, 1991—City Hall Auditorium, 300 Municipal Drive, Madeira Beach, Florida.
6. Thursday, 22, 1991—The Reach Hotel, 1435 Simonton Street, Key West, Florida.

Dated: July 31, 1991.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management.

[FR Doc. 91–18547 Filed 8–5–91; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's (Council) Bottomfish Advisory Review Board (BARB), will hold a public meeting on August 6, 1991, beginning at 3 p.m., at the Hawaii Department of Land and Natural Resources, Board Room, 1151 Punchbowl Street, Honolulu, HI.

The BARB will discuss the following agenda items: (1) Any new analyses available and related to limited entry in the Mau Zone of the Northwestern Hawaiian Islands (NWHI); (2) requests by NWHI bottomfish permit holders to fish for bottomfish within the 50 mile longline closure area around the NWHI while having longline gear aboard; (3) a change in observer requirements for the Mau Zone; (4) work assignments and time table for completing 1990 Annual Report on the fisheries; and (5) other business.

For more information contact Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1405, Honolulu, HI 96813; telephone: (808) 523–1368.

Dated: August 1, 1991.

David S. Cerstin,

Deputy Director Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–18590 Filed 8–5–91; 8:45 am]

BILLING CODE 3510-22-M

Patent and Trademark Office

Additional Information Regarding Comments for the Advisory Commission on Patent Law Reform

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: Public responses to the request for public comments issued by the Advisory Commission on Patent Law Reform on May 16, 1991 (56 FR 22702) will be considered if received by September 3, 1991.

DATES: Written comments received by September 3, 1991, will be considered.

ADDRESSES: Submit written comments to E. R. Kazenske, Executive Assistant to the Commissioner, U.S. Patent and Trademark Office, Box 15, Washington, D.C. 20231.

FOR FURTHER INFORMATION CONTACT: Jeff Kushan, Commission Specialist, or Paul Salmon, Commission Specialist; U.S. Patent and Trademark Office, Box 15, Washington, DC 20231. Phone: (703) 557–3071.

SUPPLEMENTARY INFORMATION: On May 16, 1991, a notice requesting public comments on the issues to be studied by the Advisory Commission on Patent Law Reform was published in the **Federal Register** at 56 FR 22702. The notice asked that the public comments be received by July 15, 1991. The response to this request has been substantial, and numerous responses have been received after the July 15 response date. The Commission wishes to give notice that it will consider all responses received to date, and any other responses which are received by September 3, 1991.

Dated: July 31, 1991.

Harry F. Manbeck, Jr.,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 91–18589 Filed 8–5–91; 8:45 am]

BILLING CODE 3510-16-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in the Philippines

July 31, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: August 7, 1991.

FOR FURTHER INFORMATION CONTACT: Kim-Bang Nguyen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535–6735. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Inasmuch as consultations have not yet been held on a mutually satisfactory solution on Category 350, the United States Government has decided to control imports in this category for the prorated period beginning on May 28, 1991 and extending through December 31, 1991.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 56 FR 11548, published on March 19, 1991.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 31, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Agreement of March 4, 1987, as amended, between the Governments of the United States and the Philippines; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on August 7, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 350, produced or manufactured in the Philippines and exported during the period beginning on May 28, 1991 and extending through December 31, 1991, in excess of 51,694 dozen [1].

Textile products in Category 350 which have been exported to the United States on and after January 1, 1991 shall remain subject to the Group II limit established for the period January 1, 1991 through December 31, 1991.

Imports charged to the category limit for the period February 27, 1991 through May 27, 1991 shall be charged against the level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91–18628 Filed 8–5–91; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Department of the Army

Historical Advisory Committee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee meeting:

Name of Committee: Department of the Army Historical Advisory Committee.

Date of Meeting: August 21, 1991.

Place: The Pentagon, room 2E687.

Time: 9:30 a.m.–11:30 a.m.

Proposed Agenda: Introduction of Department of Defense Plan to commemorate the 50th Anniversary of World War II, 1991–1995. Summary of Service Plans and 50th Anniversary of World War II Commemoration Committee's current staffing, facilities, planning and focus during the commemorative period. Discussion of proposed events, activities, projects, and products.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, contact Colonel Ron L. Green, HQDA (SACC), Pentagon, room 3E524, Washington, DC 20310, telephone (703) 697–4664.

Ron L. Green,

Colonel, GS, Deputy Director.

[FR Doc. 91–18791 Filed 8–5–91; 8:45 am]

BILLING CODE 3710-08-M

Office of the Secretary

Environmental Assessment: ZEST Flight Test Experiments

AGENCY: Strategic Defense Initiative Organization (SDIO), U.S. Department of Energy (cooperating agency), U.S. Department of Navy (cooperating agency).

ACTION: Environmental assessment for ZEST flight test experiments.

SUMMARY: The Department of Defense has prepared a Finding of No Significant Impact based on an assessment of the potential environmental consequences of conducting the ZEST flight test experiments. These experiments are designed to demonstrate technologies associated with high energy release clouds and their applicability to a Strategic Defense System.

Background

Pursuant to Council on Environmental Quality Regulations (40 CFR 1500–1508) for implementing the procedural provisions of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and the U.S. Department of Defense (DoD) directive 6050.1, the Strategic Defense Initiative Organization (SDIO) has conducted an assessment of the potential environmental consequences of launching ZEST flight test experiment vehicles from Kauai Test Facility (KTF) on the Pacific Missile Range Facility (PMRF) on Kauai, Hawaii. This assessment also includes activities in the continental United States associated with the launches. The proposed action is to design, develop, launch, and detonate two payloads carrying high energy explosives. Execution of these experiments is crucial to further development of high energy cloud technology. Also, the data gathered from the ZEST flights will be employed in the development of space-based sensors

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[1] The limit has not been adjusted to account for any imports exported after May 27, 1991.

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DEFENSE

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This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, contact Colonel Ron L. Green, HQDA (SACC), Pentagon, room 3E524, Washington, DC 20310, telephone (703) 697–4664.

Ron L. Green,

Colonel, GS, Deputy Director.

[FR Doc. 91–18791 Filed 8–5–91; 8:45 am]

BILLING CODE 3710–08–M

Office of the Secretary

Environmental Assessment: ZEST Flight Test Experiments

AGENCY: Strategic Defense Initiative Organization (SDIO), U.S. Department of Energy (cooperating agency), U.S. Department of Navy (cooperating agency).

ACTION: Environmental assessment for ZEST flight test experiments.

SUMMARY: The Department of Defense has prepared a Finding of No Significant Impact based on an assessment of the potential environmental consequences of conducting the ZEST flight test experiments. These experiments are designed to demonstrate technologies associated with high energy release clouds and their applicability to a Strategic Defense System.

Background

Pursuant to Council on Environmental Quality Regulations (40 CFR 1500–1508) for implementing the procedural provisions of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and the U.S. Department of Defense (DoD) directive 6050.1, the Strategic Defense Initiative Organization (SDIO) has conducted an assessment of the potential environmental consequences of launching ZEST flight test experiment vehicles from Kauai Test Facility (KTF) on the Pacific Missile Range Facility (PMRF) on Kauai, Hawaii. This assessment also includes activities in the continental United States associated with the launches. The proposed action is to design, develop, launch, and detonate two payloads carrying high energy explosives. Execution of these experiments is crucial to further development of high energy cloud technology. Also, the data gathered from the ZEST flights will be employed in the development of space-based sensors

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[1] adjusted to account for
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essential to SDIO's strategic defense effort.

As currently configured, activities involved in the ZEST program include component/assembly ground tests and pre-flight/flight tests. The component/assembly ground tests for the ZEST flight vehicle and payload will be conducted at Orbital Sciences Corporation's Space Data Division (SDD) in Chandler, Arizona, and at Los Alamos National Laboratory (LANL) in Los Alamos, New Mexico. The proposed activities will be conducted in existing facilities and will be within the normal scope of activities that are routinely conducted at those facilities and that are addressed in existing environmental protection and safety procedures at those facilities. No construction will be required and no additional personnel will be needed.

The pre-flight and flight activities will be conducted from the Kauai Test Facility (KTF), a tenant on the Pacific Missile Range Facility (PMRF), on Kauai, Hawaii as part of the continuing operations at KTF. These activities will be conducted at existing facilities, that have been developed specifically for such activities. No construction will be required. Approximately 20 additional contractor personnel and 5 additional government personnel will be required for the ZEST pre-flight and flight tests, over a period of about 45 days.

ZEST vehicles will be launched from KTF launch pad No. 1, which will have an explosive safety quantity distance (ESQD) of 1,250 feet while the booster is on the launch paid. This ESQD will restrict access to recreation area No. 1 at PMRF typically for 2–7, but potentially up to 14 days, per launch. A ground hazard area (GHA) for ZEST with a radius of 2,200 feet will begin to be cleared three hours prior to the launch. This ensures that the GHA will be completely evacuated two hours before the launch when the launch vehicle is armed. A launch hazard area extends 5 nautical miles downrange and is a pie-shaped area, the boundaries of which are tangent to the ZEST GHA at headings of 15 and 300 degrees. The launch hazard area will be maintained from 10 minutes prior to the launch countdown until the rocket has successfully launched and the first stage has separated.

The KTF was elected as the launch site so that the high energy release cloud created by ZEST could be observed by the highly sophisticated sensors at the Air Force Maui Optical Station (AMOS) and the Maui Optical Tracking and Identification Facility (MOTIF) on Mt. Haleakala on Maui, Hawaii. The ZEST experiment trajectory and timeline have been specifically configured from KTF to obtain maximum coverage of the highest possible quality from AMOS/MOTIF. In addition, the ZEST experiment will be observed and recorded by existing satellites and other ground based sensors. The following SDIO objectives will be achieved by AMOS and other observation modes: validation of the payload design modeling, characterization of the high energy release cloud, and documentation of scientific phenomena that may occur as a result of releasing high energy clouds.

Finding of No Significant Impact

The ZEST flight test experiments were evaluated to determine the potential for significant impacts through an analysis of the activities that would be conducted at the proposed locations, compared to current activities and existing conditions at those locations. The impacts of the proposed action were assessed against the following environmental media: Physical setting and land use; geology and water resources; air quality; noise; biological resources; threatened and endangered species; cultural resources; infrastructure; hazardous materials and waste; and public health and safety.

Potential impacts associated with the proposed ZEST activities will be avoided or minimized through implementation of standard, planned mitigation measures (i.e. through modification of test procedures or through protection of potentially affected resources). These mitigations have been incorporated as an integral part of the ZEST flight test experiments.

Component/assembly ground tests to be conducted at SDD and LANL will use existing facilities and will be within the scope of activities routinely conducted at those facilities. No construction or modification of facilities will be required. Additional personnel will not be necessary. All of the proposed tests will be within the scope of existing environmental protection and safety procedures at SDD and LANL. Therefore, significant environmental impacts are not expected to occur at SDD or LANL.

The pre-flight and flight activities proposed for KTF will be conducted at existing facilities that have been developed specifically for such activities. No construction or modification of facilities will be required. Biological resources, threatened and endangered species, cultural resources and infrastructure will not be adversely affected by the ZEST pre-flight and flight activities at KTF, and the proposed activities are not expected to generate any hazardous waste. In addition, personnel will be trained and safe operating procedures will be followed when hazardous materials are handled. No environmental impacts are expected off-site of the affected installations.

The U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) have reviewed the ZEST Description of Proposed Actions and Alternatives (DOPAA) and have concurred with the findings of this EA that the project is expected to have little, if any impact on any federally listed endangered or threatened species. The State Historic Preservation Officer (SHPO) has reviewed the ZEST DOPAA and has concurred that the project would not have any impact on cultural or historical resources. The State of Hawaii, Office of State Planning has approved the ZEST flight tests for consistency with Hawaii's Coastal Zone Management regulations.

Potential impacts to land use could result from the imposition of safety zones while the ZEST flight vehicle is on the launch pad. A portion of recreation area No. 1 will be closed during the time the booster is on the launch pad (2–14 days per launch). However, this closure will not present a significant impact to land use due to the short period of time required for the actual launch and the large amount of other beach areas which are readily accessible.

The lead emitted from the first stage Talos booster has the potential to impact the geology and water resources at KTF. The analysis concluded that the lead will have a limited areal impact, adsorb strongly to soil constituents, and be filtered from any runoff as it percolates downward. Therefore, a significant impact to geology and water resources will not result from the proposed action.

The emissions from the solid propellant rocket motors and the detonation products from the high explosive payload have the potential to impact the air quality at KTF. The emission products from the first stage Talos motor will not exceed Hawaiian or National ambient air quality standards and the emissions from the second stage Castor motor will be released well downrange of KTF and will have no effect on ground-level air quality. The detonation products from the high explosive payload will dissociate quickly into compounds which are normally present in the atmosphere and will have a negligible impact on short term and ambient air quality.

The noise generated from the ZEST launch vehicle could potentially impact

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humans and wildlife in the area of KTF. This potential will be minimized by ensuring that operations personnel wear hearing protection equipment or remain in the control building to reduce noise levels to acceptable standards. In addition, enforcement of the launch hazard area ensure that unauthorized personnel and public spectators are not exposed to noise levels that exceed allowable standards.

A catastrophic failure of the ZEST flight vehicle on the launch pad or early in the launch trajectory could potentially impact geology and water resources, air quality, and public health and safety.

The potential impacts to geology and water resources and air quality are not expected to be significant because all of the detonation products either occur naturally in the atmosphere and the soils or will readily break down to compounds that exist naturally. Potential impacts to public health and safety from an accidental explosion of the rocket on the launch pad will be mitigated through the implementation of safety zones (1,250 ft ESQD and 2,200 ft GHA), and the monitoring of these areas to prevent unauthorized entry.

Cumulative impacts to air quality, geology and water resources, noise, and land use were evaluated with respect to the projected launch schedule for KTF. It is not anticipated that cumulative impacts will result from a schedule that includes normal KTF operations and the proposed STARS, EDX, and ZEST program launches.

Overall, no significant impacts will result from conducting the ZEST flight test experiments. Therefore, an environmental impact statement (EIS) is not required for the proposed action. The test program will proceed 15 days from the publication of this notice subject to no new substantive issues being identified.

FOR FURTHER INFORMATION CONTACT: Major Martha J. Cenkci (703) 695–8743.

ADDRESSES: Public Affairs Staff Officer, SDIO/IEA, The Pentagon, room 1E1008, Washington DC 20301–7100.

Dated: August 1, 1991.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–18573 Filed 8–5–91; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Shallow Water Antisubmarine Warfare Task Force will meet 6 August 1991 from 10 a.m. to 5 p.m., in the CNO's Conference room, Pentagon 4E630, Washington, DC. This session will be closed to the public.

The purpose of this meeting is to evaluate U.S. Navy shallow water antisubmarine warfare long-term strategies. The entire agenda for the meeting will consist of discussions of key issues related to shallow antisubmarine warfare and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and, are in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

This notice is being published late because of administrative delays which constitute an exceptional circumstance, not allowing notice to be published in the **Federal Register** at least 15 days before the day of the meeting.

For further information concerning this meeting, contact: Judith A. Holden, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, room 601, Alexandria, Virginia 22302-0268, phone (703) 756-1205.

Dated: August 1, 1991.

Wayne T. Baucino

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 91-18569; Filed 8-5-91; 8:45 am]

BILLING CODE 3810-AE-M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, August 14, 1991 beginning at 1:30 p.m. in the Struble Room of the Chester County Library, 400 Exton Square Parkway, Exton, Pennsylvania.

Please be advised that parking for this meeting is limited to the adjacent shopping mall parking lot rather than the library's parking facilities. The hearing will be part of the Commission's regular business meeting which is open to the public.

An informal conference among the Commissioners and staff will be open for public observation at 9:30 a.m. at the same location and will include discussions of a CSO study for the upper Delaware Estuary, proposed Clean Water Act amendments, administrative aspects of the Delaware Estuary program, the upper Delaware ice jam project, Scenic Rivers protection proposed rules and golf course water use inventory.

The subjects of the hearing will be as follows:

Proposed Amendments to Comprehensive Plan and Water Code of the Delaware River Basin Relating to Retail Water Pricing to Encourage Conservation. Notice was given in the June 7, 1991 issue of the **Federal Register** that the Commission would hold a public hearing on August 14, 1991 to receive comments on a proposed amendment to its Comprehensive Plan and Water Code in relation to retail water pricing to encourage water conservation. The amendments would establish Commission policy and regulations to promote water conserving retail water pricing. The hearing record will remain open for submission of written comments received by September 9, 1991.

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact

1. George A. Coombs & Sons D–81–10 Renewal 2. An application for the renewal of a ground water withdrawal project to supply up to 15 million galons (mg)/30 days of water to the applicant's agricultural irrigation system fom Well Nos. 1–6. Commission approval on June 25, 1986 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 50 mg/30 days. The project is located in Upper Pittsgrove Township, Salem County, New Jersey.

2. Hoffmann-LaRoche, Inc. D–85–14 Renewal. An application for the renewal of a ground water withdrawal of up to 21.6 mg/30 days of water from the applicant's ground water pollution abatement/recovery Well Nos. 8 and 9. Commission approval on March 26, 1986 was limited to five years. The applicant requests that the total withdrawal from all wells and surface water sources remain limited to 120 mg/30 days. The project is located in White Township, Warren County, New Jersey.

3. Township of Maple Shade D–88–30 CP. A project that regionalizes sewage treatment within Maple Shade Township, Burlington County, New Jersey. The project involves the conversion of the old 0.6 million gallons

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per day (mgd) capacity Main Street Sewage Treatment Plant (STP) into a pumping station to convey raw sewage to the Linwood Avenue STP, designed to provide upgraded treatment and expanded (from 1.0 mgd to 3.4 mgd) capacity. Effluent from the regional STP will be discharged to South Branch Pennsauken Creek via a new outfall structure.

4. Knights Bridge Corporation D–90–54. A sewage treatment plant (STP) expansion project to increase the capacity of the existing STP from 0.045 mgd to 0.09 mgd, to serve the growing commercial development of the Villages at Painter's Crossing. The STP is located about 1000 feet northwest of the U.S. Rt. 1 and Rt. 202 intersection and will continue to discharge treated effluent at its outfall on an unnamed tributary to Harvey Run, a tributary of Brandywine Creek. The project is in the Township of Birmingham, Delaware County, Pennsylvania.

5. Frank Perano Sewage Treatment Plant D–90–63. A project to expand the existing sewage treatment plant (STP) from 0.036 mgd to 0.062 mgd and serve the projected growth in the applicant's Pleasant Hills Mobile Home Development. The STP will continue to discharge secondary treated effluent to the Schuylkill River. The project is located in Tilden Township, approximately 1000 feet west of the Schuylkill River in Berks County, Pennsylvania.

6. Rank Ahnert, Inc. D–91–18 CP. (Subsidiaries: Lehman Pike Development and Outdoor World Corporations). An application for approval of a ground water withdrawal project to supply up to 22.8 mg/30 days of water to the applicant's residential developments of Saw Creek Estates and the Falls at Saw Creek, and also to the campground of Outdoor World/Timothy Lake for existing Well Nos. 1–7, 9 & 10, and 1A–4A, and to limit the withdrawal from all wells to 22.8 mg/30 days. The project is located in Middle Smithfield and Lehman Townships, Monroe and Pike Counties, Pennsylvania.

7. Lake Wynonah Municipal Authority D–91–20–CP. An application for approval of a ground water withdrawal project to supply up to 4.32 mg/30 days of water to the applicant's distribution system for new Well No. 6, and to increase the existing withdrawal limit of 10.5 mg/30 days from all wells to 12 mg/30 days. The project is located in Wayne Township, Schuylkill County, Pennsylvania.

8. Rank Ahnert, Inc. D–91–23. (Subsidiary Fernwood, Inc.). A ground water withdrawal project to supply up to 9.8 mg/30 days of water to the Fernwood Country Club Resort from existing Well Nos. 1–5, and to limit the withdrawal from all wells to 9.8 mg/30 days. The project is located in Middle Smithfield Township, Monroe County, Pennsylvania.

9. Birmingham Township Sewage Treatment Plant D–91–28 CP. A sewage treatment plant (STP) project proposed to provide 0.15 mgd tertiary treatment facilities to serve the Township of Birmingham. The STP will be located in Birmingham Township, Chester County, Pennsylvania, just northwest of the intersection of Route 202 and Old Wilmington Pike and will discharge to Radley Run approximately 4.5 miles above its confluence with Brandywine Creek.

10. BP Oil Company D–91–32 (D). A ground water decontamination project that will provide treatment for up to 0.5 mgd to ground water to be withdrawn from eleven proposed wells at the applicant's plant site. The applicant will construct a two-stage powdered activated carbon treatment (PACT) plant to treat the ground water prior to its discharge to the Delaware River, in Water Quality Zone 4, via a new outfall pipe line. The project is located in the Borough of Paulsboro, Gloucester County, New Jersey, with the discharge approximately 2,000 feet downstream of the Mantua Creek confluence.

11. BP Oil Company D–91–32 (G). An application for approval of a ground water withdrawal project of up to 30 mg/30 days of water as part of the applicant's ground water remediation system from Well Nos. Area 3 Sump, R–3, R–4A, R–5A, R–6A, R–7A, R–8, R–9, R–10, R–7, and 51–1A, and to limit the withdrawal from all wells to 30 mg/30 days. The project is located in Paulsboro Borough, Gloucester County, New Jersey.

12. Exeter Township, Berks County, Authority D–91–37 CP. A sewage treatment plant (STP) rerating project that entails increasing the rated treatment capacity of the applicant's existing 3.6 mgd tertiary treatment plant to 3.9 mgd. No modifications to the facilities are proposed. Discharge of treated effluent will continue via the existing outfall to the Schuylkill River adjacent to the STP in Exeter Township, Berks County, Pennsylvania.

Proposed Amendment to Water Charging Contract for Philadelphia Electric Company

Pursuant to the provisions of the Delaware River Basin Compact, DRBC Resolution No. 71–4 and section 5–3.2 of Resolution No. 74–6, a proposed supplement to the Agreement between the Commission and Philadelphia Electric Company for the payment of water charges in connection with the Limerick Generating Station. This contact amendment defines part of the overall charging scheme for water withdrawn from the Point Pleasant Intake for use by the Limerick Generating Station and in particular, for the evaporative loss at the Company's chiller and from Bradshaw Reservoir.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions and Dr. Richard Tortoriello concerning the proposed PECO contract. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Dated: July 30, 1991.

Susan M. Weisman,

Secretary.

[FR Doc. 91–18566 Filed 8–5–91; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF ENERGY

Office of Defense Programs

Floodplain/Wetlands Involvement Notification; Continued Operations, Lawrence Livermore National Laboratory and Sandia National Laboratories, Livermore, CA

AGENCY: Department of Energy (DOE).

ACTION: Sitewide floodplain and wetland involvement notification.

SUMMARY: DOE and the University of California (UC) are jointly preparing a sitewide Environmental Impact Statement and Environmental Impact Report (EIS/EIR) for the continued operations of Lawrence Livermore National Laboratory (LLNL) and Sandia National Laboratories, Livermore (SNL, Livermore) in support of research and development missions established by the Congress and the President. These facilities include the LLNL and SNL sites near Livermore, California and LLNL's Site 300, a largely undeveloped site of approximately 7,000 acres located 15 miles southeast of the Livermore site. Both research facilities are operated for DOE by separate organizations: LLNL is operated by UC; and SNL, Livermore is operated by the Sandia Corporation. The EIS/EIR alternative actions to be addressed are (1) proposed action (continued operation, including near-term proposed projects—within 5 to 10 years; (2) no action (continued operation of existing facilities and research and

development efforts at FY 1992 levels); (3) shutdown and decommissioning; and (4) modification of operations. The EIR alternative considered is the discontinuation of UC's management of LLNL.

Implementation of the proposed action or the alternatives may involve activities located in floodplains and/or wetlands at these sites. Although small wetlands are widely scattered at all sites, floodplains are limited to small ephemeral drainages at the sites. Based on geological information available, there are five floodplains that occur on both sites: Corral Hollow Creek, Middle Canyon, Oasis and Draney Canyon, Arroyo Las Positas, and Arroyo Seco. Maps of the floodplain/wetlands for the LLNL and SNL sites can be obtained from the EIS/EIR Project Office at the address below. Maps for LLNL's Site 300 are currently being prepared and will be available with the draft EIS/EIR. In accordance with DOE regulations for compliance with floodplain/wetlands environmental review requirements (10 CFR part 1022), DOE will prepare a floodplain/wetlands assessment for the proposed action and the alternatives. This assessment will be included as an appendix to the draft EIS/EIR. The Statement of Findings for this action will be incorporated into the final EIS/EIR.

DATES: Any comments on the preparation of the floodplain/wetlands are requested by August 21, 1991.

ADDRESSES: Send comments to: DOE EIS/EIR Project Manager, EIS/EIR Project Office, Department of Energy, San Francisco Field Office, 1333 Broadway, Oakland, California 94612 or fax comments to (415) 422-7256.

FOR FURTHER INFORMATION CONTACT: Anthony Adduci, EIS/EIR Project Manager, Department of Energy, San Francisco Field Office, 1333 Broadway, Oakland, California 94612, (415) 422-0599.

Issued at Washington, DC, this 30th day of July, 1991.

Richard A. Claytor,

Assistant Secretary for Defense Programs.

[FR Doc. 91-18606 Filed 8-5-91; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 91-35-LNG]

Enron Gas Liquids, Inc.; Order Granting Blanket Authorization to Import Liquefied Natural Gas and Granting Interventions

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of an order granting blanket authorization to import liquefied natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order to Enron Gas Liquids, Inc. (EGLI) granting blanket authorization to import up to 200 billion cubit feet (Bcf) of liquefied natural gas from unspecified international sources, subject to any trade restrictions, over a two-year period beginning with the date of first delivery

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hour of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 30, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-18609 Filed 8-5-91; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91-31-NG]

Utrade Gas Co.; Order Granting Blanket Authorization to Export Natural Gas to Mexico

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of an order granting blanket authorization to export natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Utrade Gas Company blanket authorization to export to Mexico up to 146 Bcf of natural gas over a two-year period beginning on the date of first delivery. A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 26, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 18610 Filed 8-5-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59911; FRL 3940-3]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 6 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 91-182, August 6, 1991.
Y 91-183, August 6, 1991.
Y 91-184, August 12, 1991.
Y 91-185, 91-186, August 13, 1991.
Y 91-187, August 12, 1991.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 91-182

Manufacturer. Confidential.

Chemical. (G) Urethane alkyd resin.

Use/Production. (S) Resin for exterior coating. Prod. range: Confidential.

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8–5–91; 8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[OPTS–59911; FRL 3940–3]

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AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

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Y 91–182

Manufacturer. Confidential.

Chemical. (G) Urethane alkyd resin.

Use/Production. (S) Resin for exterior coating. Prod. range: Confidential.

Y 91–183

Importer. Nissan Chemical America Corporation.

Chemical. (G) Polyacrylic ester.

Use/Import. (G) Paint. Import range: Confidential.

Y 91–184

Manufacturer. Confidential.

Chemical. (G) Crosslinked rubber.

Use/Production. (G) Thermoplastic resin for medical applications and formoded/extruded parts. Prod. range: Confidential.

Y 91–185

Manufacturer. Confidential.

Chemical. (G) Adipic acid, polyethylene glycol, terephthalic acid copolymer.

Use/Production. (G) Textile preparation/finishing aid. Prod. range: Confidential.

Y 91–186

Manufacturer. Confidential.

Chemical. (G) Adipic acid, polyurethane glycol, terephthalic acid copolymer.

Use/Production. (G) Textile preparation/finishing aid. Prod. range: Confidential.

Y 91–187

Manufacturer. Estron Chemical, Inc.

Chemical. (G) Polyester.

Use/Production. (S) Powder coating formulation. Prod. range: Confidential.

Dated: July 31, 1991.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 91–18621 Filed 8–5–91; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

Port of Oakland et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 224–010631–006.

Title: Port of Oakland/Hanjin Shipping Company, Ltd. Marine Terminal Agreement.

Parties:

Port of Oakland
Hanjin Shipping Company, Ltd., as successor to Korea
Shipping Corporation, Ltd.

Synopsis: The Agreement, filed July 30, 1991, extends the term of the basic Agreement to December 31, 1991, subject to earlier termination in the event of a further terminal use agreement following completion of earthquake and related repairs at the Seventh Street Marine Container Terminal.

Agreement No: 224–200543–001.

Title: Virginia International Terminals, Inc./Venezuelan Line Terminal Agreement.

Parties:

Virginia International Terminals, Inc. (VIT)
Venezuelan Line (VL).

Synopsis: The Agreement, filed July 30, 1991, provides for the cancellation of Agreement No. 224–200543 by either party upon sixty days prior written notice.

Dated: July 31, 1991.

By order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–18544 Filed 8–5–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of Waiting Period Under Premerger Notification Rules

Section 7a of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 070891 AND 071991

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Control Techniques plc, Emerson Electric Co., ICD Drives Inc	91–1062	07/10/91
Emerson Electric Co., Control Techniques plc, Control Techniques plc	91–1064	07/10/91
Peter Kiewit Sons, Inc., California Energy Company, California Energy Company	91–1124	07/10/91
Semi-Tech (Global) Limited, Emerson Radio Corp., Emerson Radio Corp.	91–1111	07/11/91
Telephone and Data Systems, Inc. Voting Trust, Jeffery P. Massnick, Jeffery P. Massnick	91–1123	07/11/91
Maxus Energy Corporation, Freeport-McMoRan, Freeport-McMoRan Inc	91–1134	07/11/91
Financial Institutions Insurance Group, Ltd., London United Investments plc, JBR Holdings, Inc.; First Reinsurance Co. of Hartford	91–1136	07/11/91
United Healthcare Corporation, Aurora Health Care, Inc., Samaritan Health Plan Insurance Corporation	91–1090	07/12/91
Super Food Services, Inc., Kentucky Food Stores, Inc., d/b/a Affiliated Foods, Kentucky Food Stores, Inc., d/b/a Affiliated Foods	91–1105	07/12/91
Agip S.p.A., Freeport-McMoRan Inc., Freeport-McMoRan Oil & Gas Company Division	91–1142	07/12/91
General Accident Insurance Company, plc, USLICO Corporation, Hawkeye-Security Insurance Company	91–1143	07/12/91
Transamerica Corporation, Ugo Rista Foundation, First Tank Corporation, Inc	91–1147	07/12/91
Burelle S.A., Zarn, Inc., Zarn, Inc	91–1148	07/12/91
PCF Acquisition Company, The McMillen Trust, Occidental Life Insurance Company of North Carolina	91–1155	07/12/91
David A. Bayer, 900 Partners' Investments, GSSA, Inc. or Gensub, Inc	91–1167	07/12/91
R. Emmett Boyle, Willy R. Strothotte, Ravenswood Aluminum Corporation	91–1166	07/15/91

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 070891 AND 071991—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Nelson Peltz, John B. Turbidy, Trustee for Laribee Wire Manufact. Co., Royal Electric, Inc	91-1162	07/16/91
MCI Communications Corporation, MCI Services Marketing, Inc., MCI Services Marketing, Inc	91-1157	07/17/91
Augat Inc., June Collier, National Industries, Inc	91-1158	07/17/91
Charles A. Long, MCI Services Marketing, Inc., MCI Services Marketing, Inc	91-1160	07/17/91
Mestek, Inc., Management Investors Voting Trust of Hydrotherm, Inc., Hydrotherm, Inc.; Hydrotherm (Canada), Inc	91-1115	07/19/91
Equitable Resources, Inc., The Coastal Corporation, ANR Production Company	91-1146	07/19/91
Siemens Aktiengesellschaft, Capital Re Corporation, Capital Re Corporation	91-1163	07/19/91
LVMH Moet Hennessy Louis Vuitton, McDonald's Corporation, McDonald's of Hawaii Development Company	91-1164	07/19/91
Primark Corporation, Arthur Gelb, The Analytic Sciences Corporation	91-1175	07/19/91
Stiftung Hasler Werke, Unisys Corporation, Timeplex, Inc	91-1179	07/19/91
Unilab Corporation, Thomas H. McConnell, MD., AM Laboratories, Inc	91-1189	07/19/91

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580. (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 91-18581 Filed 8-5-91; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3336]

Zipatone, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Hillside, Ill., based manufacturer of artists' materials from representing that any product containing a Class I ozone-depleting substance will not damage the environment, and from making any unsubstantiated claims that any product containing an ozone-depleting substance offers environmental benefits.

DATES: Complaint and Order issued July 9, 1991.[1]

FOR FURTHER INFORMATION CONTACT: Michael Dershowitz, FTC/S-4002, Washington, DC 20580 (202) 326-3158.

SUPPLEMENTARY INFORMATION: On Tuesday, April 30, 1991, there was published in the **Federal Register**, 56 FR 19865, a proposed consent agreement with analysis In the Matter of Zipatone, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended: 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 91-18582 Filed 8-5-91; 8:45 am]

BILLING CODE 6750-01-M

[Docket 9237]

Wayne Phillips, et al; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, that Wayne Phillips, a Scottsdale, Arizona individual and two companies of which he was an officer, cease and desist distributing the Government Grants commercial and pay consumer redress of $50,000.

DATES: Comments must be received on or before October 7, 1991.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Jeffrey A. Klurfeld, San Francisco Regional Office, Federal Trade Commission, suite 570, 901 Market Street, San Francisco, CA 94103, (415) 744-7920.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25 of the Commission's Rules of Practice (16 CFR 3.25), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the Matter of Wayne Phillips, individually and as an officer of Accelerated Systems, Inc., and as an officer of United States Educational Services, Inc.; Accelerated Systems, Inc., a corporation; and United States Educational Services, Inc., a corporation.

Agreement Containing Consent Order To Cease and Desist

This agreement, by and between Wayne Phillips, individually and as an officer of Accelerated Systems, Inc., and as an officer of United States Educational Services, Inc., and Accelerated Systems, Inc., a corporation, and United States Educational Services, Inc., a corporation, hereinafter sometimes referred to as corporate respondents, and their attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. Accordingly,

It is Hereby Agreed: 1. a. Respondent Wayne Phillips is an individual who has been an officer of Accelerated Systems, Inc., and of United States Educational Services, Inc. At all times material to this case, he has formulated, directed, and controlled the acts and practices of

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[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

ION BETWEEN: 070891 AND 071991—Continued

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arketing, Inc	91-1157	07/17/91
	91-1158	07/17/91
	91-1160	07/17/91
n, Inc.; Hydrotherm (Canada), Inc.	91-1115	07/19/91
	91-1146	07/19/91
	91-1163	07/19/91
waii Development Company	91-1164	07/19/91
	91-1175	07/19/91
	91-1179	07/19/91
	91-1189	07/19/91

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Street, San Francisco, CA 94103, (415) 744–7920.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25 of the Commission's Rules of Practice (16 CFR 3.25), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the Matter of Wayne Phillips, individually and as an officer of Accelerated Systems, Inc., and as an officer of United States Educational Services, Inc.; Accelerated Systems, Inc., a corporation; and United States Educational Services, Inc., a corporation.

Agreement Containing Consent Order To Cease and Desist

This agreement, by and between Wayne Phillips, individually and as an officer of Accelerated Systems, Inc., and as an officer of United States Educational Services, Inc., and Accelerated Systems, Inc., a corporation, and United States Educational Services, Inc., a corporation, hereinafter sometimes referred to as corporate respondents, and their attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. Accordingly,

It is Hereby Agreed: 1. a. Respondent Wayne Phillips is an individual who has been an officer of Accelerated Systems, Inc., and of United States Educational Services, Inc. At all times material to this case, he has formulated, directed, and controlled the acts and practices of

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the corporate respondents, including the acts and practices alleged in this complaint. He resides at 15608 N. 55th Street, Scottsdale, Arizona, and his principal office or place of business is located at 13610 North Scottsdale Road #10–105, Scottsdale, Arizona 85254.

b. Respondent Accelerated Systems, Inc., is a corporation organized and doing business under the laws of the territory of the Northern Marianas Islands. Its office and principal place of business is located at c/o ICS International, 918 Tower 3, China Hong Kong City, Kowloon, Hong Kong.

c. Respondent United States Educational Systems, Inc., is a corporation organized and doing business under the laws of the State of Nevada. Its office and principal place of business is located at 100 W. Grove Street #360, Reno, Nevada 89509.

2. Respondents admit all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

3. Respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondents, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the draft of complaint here attached or have engaged in any other unlawful conduct.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may, without further notice to respondents, (1) issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondents' addresses as stated in this agreement shall constitute service. Respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Respondents have read the complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definition

For purposes of this Order, *grant* shall mean any money or item of value that is given or awarded without a concomitant obligation to repay or to provide goods or services.

I

It Is Ordered That respondents Accelerated Systems, Inc., a corporation; United States Educational Services, Inc., a corporation; their successors and assigns, and their officers; and Wayne Phillips, individually and as an officer of the corporate respondents; and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, as *commerce* is defined in the Federal Trade Commission Act, do forthwith cease and desist from selling, broadcasting, disseminating, or assisting or encouraging others to sell, broadcast or disseminate the "Government Grants" commercial described in the complaint.

II

It Is Further Ordered That respondents Accelerated Systems, Inc., a corporation; United States Educational Services, Inc., a corporation; their successors and assigns, and their officers; and Wayne Phillips, individually and as an officer of the corporate respondents; and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, as *commerce* is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

A. That there is 33 billion dollars in grants available from federal, state, and local governments to start small businesses;

B. That it is easy for the average consumer to obtain a grant from federal, state, or local governments to start a small business;

C. That the book How To Start Your Own Business By Doing Business With The Government consists primarily of information on how average consumers can obtain grants from federal, state, and local governments to start a small business;

D. That the Small Business Innovation Research program provides grants to consumers to start small businesses; or

E. That federal, state, and local governments provide grants to consumers to start small businesses without regard to the grant applicant's financial history or resources;

III

It Is Further Ordered That respondents Accelerated Systems, Inc., a corporation; United States Educational Services, Inc., a corporation; their successors and assigns, and their officers; and Wayne Phillips, individually and as an officer of the corporate respondents; and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, as *commerce* is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any direct or implied representation concerning:

A. The availability of grants from any source for any purpose;

B. Whether any book or other writing contains information about a particular subject or topic;

C. The terms or conditions upon which any person, firm, agency, or institution will award a grant to any other person, firm, or organization;

D. The terms or conditions of any government or private business opportunity, business assistance program, grant program, loan program, or procurement program; or

E. Any method or technique for starting, operating, or financing any profession or business;

unless, at the time of making the representation, respondents possess and rely upon competent and reliable evidence that substantiates the representation; provided, however, that whenever respondents represent that any book or other writing contains information about a particular subject or topic, subpart B. shall not be construed to require respondents to possess and rely upon evidence that such information in said book or other writing is true, but only that it is present in said book or other writing.

IV

It Is Further Ordered That respondents Accelerated Systems, Inc., a corporation; United States Educational Services, Inc., a corporation; their successors and assigns, and their officers; and Wayne Phillips, individually and as an officer of the corporate respondents; and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, as *commerce* is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Using, publishing, or referring to any endorsement (as *endorsement* is defined in section 255(b), part 255, title 16, Code of Federal Regulations) unless respondents have good reason to believe that at the time of such use, publication, or reference, the endorsement reflects the honest opinions, findings, beliefs, or experience of the endorser and contains no representations which would be false or unsubstantiated if made directly by respondents.

B. Representing, directly or by implication, that any endorsement of the product or service represents the typical or ordinary experience of members of the public who use the product or service unless such is the case.

C. Failing to honor, in a timely manner, any offer or guarantee that, in connection with the purchase of the product or service, another product or service will be provided to the purchaser as a bonus, prize, gift, award, or promotional item, or will be sold to the purchaser at a reduced or special price.

V

It Is Further Ordered That respondents Accelerated Systems, Inc., a corporation; United States Educational Services, Inc., a corporation; their successors and assigns, and their officers; and Wayne Phillips, individually and as an officer of the corporate respondents; and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, as *commerce* is defined in the Federal Trade Commission Act, do forthwith cease and desist from creating, producing, selling, or disseminating:

A. Any commercial or other advertisement for any such product or service that misrepresents, directly or by implication, that it is an independent program and not a paid advertisement.

B. Any commercial or other advertisement for any such product or service longer than fifteen (15) minutes in length that does not display visually, in a clear and conspicuous manner, within the first thirty (30) seconds of the commercial and immediately before each presentation of ordering instructions for the product or service, the following disclosure:

"The Program You Are Watching is a Paid Advertisement for [The Product or Service]."

VI

It Is Further Ordered That for three (3) years from the date that the practices to which they pertain are last employed, respondents shall maintain and upon request make available to the Federal Trade Commission, at a place designated by Commission staff for inspection and copying:

A. All advertisements, promotional materials, documents, or other materials covered by this order;

B. All materials relied on to substantiate any claim or representation covered by this Order;

C. All materials in their possession or control that contradict, qualify, or call into question such representation or the basis on which respondents relied for such representation; and

D. All materials that demonstrate respondents' compliance with this Order.

VII

It Is Further Ordered: A. That respondents shall jointly and severally pay to the Commission as consumer redress the sum of two million one hundred thousand dollars ($2,100,000.00); provided however, that this liability will be suspended, subject to the provisions of subparts B and D below, upon the payment of fifty thousand dollars ($50,000.00) no later than fifteen (15) days after the date of service of this Order. Such payment shall be made by cashier's check or certified check payable to the Federal Trade Commission and shall be delivered to the Federal Trade Commission, 901 Market Street, suite 570, San Francisco, California 94103.

B. That, in the event of respondents' default on the $50,000 payment set forth in subpart A above, the amount of two million one hundred thousand dollars ($2,100,000.00), less the sum of any payments made pursuant to subpart A above, shall become immediately due and payable without any notice required to be given to the respondents, and interest computed at the rate prescribed under 28 U.S.C. 1961, as amended, shall immediately begin to accrue on the unpaid balance.

C. That any funds paid by respondents pursuant to part VII of this Order shall be paid into a redress fund administered by the Commission and shall be used to provide direct redress to purchasers of the book "How To Start Your Own Business By Doing Business With The Government," by respondent Wayne Phillips. If the Commission determines, in its sole discretion, that redress to purchasers is wholly or partially impracticable, any funds not so used shall be paid to the United States Treasury. Respondents shall be notified as to how the funds are disbursed, but shall have no right to contest the manner of distribution chosen by the Commission.

D. That the Commission's acceptance of this Order is expressly premised upon the respondents' financial statements, depositions, and related documents provided by respondents to the Commission for purposes of this agreement. For a period of ten (10) years from the date of the Commission's acceptance of this Order, or for a period of thirty (30) months after the respondents' last submission of documents as required by part VIII of this Order, whichever period is shorter, after service upon respondents of an

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D. All materials that demonstrate respondents' compliance with this Order.

VII

It Is Further Ordered: A. That respondents shall jointly and severally pay to the Commission as consumer redress the sum of two million one hundred thousand dollars ($2,100,000.00); provided however, that this liability will be suspended, subject to the provisions of subparts B and D below, upon the payment of fifty thousand dollars ($50,000.00) no later than fifteen (15) days after the date of service of this Order. Such payment shall be made by cashier's check or certified check payable to the Federal Trade Commission and shall be delivered to the Federal Trade Commission, 901 Market Street, suite 570, San Francisco, California 94103.

B. That, in the event of respondents' default on the $50,000 payment set forth in subpart A above, the amount of two million one hundred thousand dollars ($2,100,000.00), less the sum of any payments made pursuant to subpart A above, shall become immediately due and payable without any notice required to be given to the respondents, and interest computed at the rate prescribed under 28 U.S.C. 1961, as amended, shall immediately begin to accrue on the unpaid balance.

C. That any funds paid by respondents pursuant to part VII of this Order shall be paid into a redress fund administered by the Commission and shall be used to provide direct redress to purchasers of the book "How To Start Your Own Business By Doing Business With The Government," by respondent Wayne Phillips. If the Commission determines, in its sole discretion, that redress to purchasers is wholly or partially impracticable, any funds not so used shall be paid to the United States Treasury. Respondents shall be notified as to how the funds are disbursed, but shall have no right to contest the manner of distribution chosen by the Commission.

D. That the Commission's acceptance of this Order is expressly premised upon the respondents' financial statements, depositions, and related documents provided by respondents to the Commission for purposes of this agreement. For a period of ten (10) years from the date of the Commission's acceptance of this Order, or for a period of thirty (30) months after the respondents' last submission of documents as required by part VIII of this Order, whichever period is shorter, after service upon respondents of an

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order to show cause, the Commission may reopen this proceeding to make a determination whether there are any material misrepresentations or omissions in said financial statements, depositions, and related documents. Respondents shall be given an opportunity to present evidence on this issue. If, upon consideration of respondents' evidence and other information before it, the Commission determines that there are any material misrepresentations or omissions in said financial statements and related documents, that determination shall cause the entire amount of monetary liability of two million and one hundred thousand dollars ($2,100,000.00), less the sum of any payments made under subpart A above, to become immediately due and payable to the FTC, and interest computed at the rate prescribed in 28 U.S.C. 1961, as amended, shall immediately begin to accrue on the unpaid balance. Proceedings instituted under this subpart are in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings the Commission may initiate to enforce this Order.

VIII

It Is Further Ordered That: A. Each respondent shall submit to the Commission copies of all federal tax returns (including but not limited to income tax, gift, estate, partnership, etc.) that the respondent files with the United States Internal Revenue Service for the years 1990 through 1994, inclusive. These submissions shall be made within thirty (30) days of the filing of the returns.

B. If Wayne Phillips does not timely file with the Internal Revenue Service the federal tax returns referenced in subpart VIII.A., he shall submit to the Commission, on a copy of the form attached hereto as exhibit A, a sworn statement describing his assets and liabilities for the tax year involved. For purposes of this subpart, timely filed shall mean within the time period, inclusive of extensions, allowed by the Internal Revenue Service. The filing of sworn statements of assets and liabilities shall not discharge Phillips's obligation to provide the Commission with copies of the federal tax returns referenced in subpart VIII.A. of this Order.

C. If the corporate respondents do not timely file with the Internal Revenue Service the federal tax returns referenced in subpart VIII.A., they shall submit to the Commission, on a copy of the form attached hereto as exhibit B, a sworn statement describing their assets and liabilities for the tax year involved. For purposes of this subpart, timely filed shall mean within the time period, inclusive of extensions, allowed by the Internal Revenue Service. The filing of sworn statements of assets and liabilities shall not discharge the corporate respondents' obligation to provide the Commission with copies of the federal tax returns referenced in subpart VIII.A. of this Order.

D. Annually, for five (5) years after the date of service of this Order, respondent Wayne Phillips shall, within ninety (90) days of the request, provide sworn answers to such written questions regarding his finances, assets and liabilities and their sources as the staff of the Commission may pose.

IX

It Is Further Ordered That the respondents shall, for five (5) years from the date of entry of this Order, distribute a copy of this Order to each present and future managerial employee.

X

It Is Further Ordered That respondents Accelerated Systems, Inc. and United States Educational Services, Inc. shall notify the Commission, at least thirty (30) days prior to the proposed change, of any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of the Order.

XI

It Is Further Ordered That respondent Wayne Phillips, for a period of five (5) years from the date of service of this Order, shall promptly notify the Commission, in writing, of his new affiliation with any business or employment that engages in any act or practice covered by any provision of this Order. For each such new affiliation or employment, the notice shall include the name and address of the new business or employment, and a description of respondent's duties and responsibilities.

XII

It Is Further Ordered That respondents shall, within sixty (60) days after service of this Order upon them and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed Consent Order from Wayne Phillips, Accelerated Systems, Inc. ("ASI"), and United States Educational Services, Inc. ("USES") (collectively, "the respondents").

The proposed Consent Order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

This matter concerns the program-length advertisement for a book, *How to Start Your Own Business by Doing Business With the Government* (the "government grants commercial"), which purportedly instructs consumers how to obtain government grants to start small businesses. ASI is incorporated in the Northern Marianas Islands, and USES is a Nevada corporation. Wayne Phillips allegedly formulated, directed, and controlled the acts and practices of both corporations, as they relate to the Complaint.

The Commission's Complaint alleges that the commercial contains six false and misleading representations concerning the availability of government grants to start small businesses. The creation and dissemination of this commercial is alleged to be an unfair or deceptive act or practice in violation of Section 5(a) of the Federal Trade Commission Act.

The Complaint alleges that the respondents made the following misrepresentations:

That there is $33 billion in grants available from federal, state, and local governments to start small businesses;

That it is easy for the average consumer to obtain a grant to start virtually any type of small business;

That the government grants book consists primarily of information on how average consumers can easily obtain grants from federal, state, and local governments to start virtually any kind of small business;

That the Small Business Innovation Research ("SBIR") program provides grants to consumers to start virtually any kind of small business, and that average consumers can obtain a $25,000 grant from the SBIR program to start a small business quickly and easily;

That federal, state, and local governments provide grants to consumers to start small businesses without regard to the grant applicant's financial history or resources;

That the success stories in the commercial were true, and illustrated and substantiated that the information provided in the government grants book has been used successfully by average consumers to start small businesses; and

That every purchaser of the government grants book would receive, in a timely manner and at no additional cost, the Grant Alert Service, which consists of information to alert consumers promptly and preferentially of the availability of government grants in their geographic area;

The Complaint also alleges that the representation regarding the Grant Alert Service was an unfair practice.

The Consent Order is desiged to remedy the advertising violations charged and to prevent the respondents from engaging in similar acts and practices in the future. Part I of the order prohibits the selling, broadcasting, disseminating, or assisting or encouraging others to sell, broadcast or disseminate the government grants commercial described in the complaint.

Part II of the Order prohibits the respondents from representing in connection with the advertising, promotion, offering for sale, sale, or distribution of any product or service that: (1) There is $33 billion in grants available from federal, state, and local governments to start small businesses; (2) it is easy for the average consumer to obtain a grant from federal, state, or local governments to start a small business; (3) the book How To Start Your Own Business By Doing Business With The Government consists primarily of information on how average consumers can obtain grants from federal, state, and local governments to start a small business; (4) the SBIR program provides grants to consumers to start small businesses; or (5) federal, state, and local governments provide grants to consumers to start small businesses without regard to the grant applicant's financial history or resources.

Part III of the Order requires the respondents to possess and rely upon competent and reliable evidence to substantiate any representation in connection with the advertising, promotion, offering for sale, sale, or distribution of any product or service concerning: (1) The availability of grants from any source for any purpose; (2) whether any book or other writing contains information about a particular subject or topic; (3) the terms or conditions upon which any person, firm, agency, or institution will award a grant to any other person, firm, or organization; (4) the terms or conditions of any government or private business opportunity, business assistance program, grant program, loan program, or procurement program; or (5) any methods or techniques for starting, operating, or financing any profession or business. The order states that part III shall not be construed to require the respondents to possess and to rely on competent and reliable evidence that any representations made in the book or other writing are true.

Part IV of the Order prohibits the respondents from using, publishing, or referring to any endorsement, as "endorsement" is defined by 16 CFR 255(b), in connection with the advertising, promotion, offering for sale, sale, or distribution of any product or service, unless they have good reason to believe that the endorsement reflects the honest opinions, findings, beliefs, or experience of the endorser and contains no representations which would be false or unsubstantiated if made directly by the respondents. The respondents also are prohibited from representing that any endorsement of a product or service represents the typical or ordinary experience of members of the public who use the product or service unless such is the case. Part IV of the Order also prohibits the respondents from failing to honor a promise to provide a bonus or a gift to the purchaser of a product or service.

Part V of the order prohibits the respondents from creating, producing, selling, or disseminating any commercial that misrepresents that it is an independent program and not a paid advertisement. In any commercial or other advertisement that is more than fifteen (15) minutes in length, the following disclosure must appear:

"The Program You Are Watching is a Paid Advertisement for [The Product or Service]."

This disclosure must appear visually, in a clear and conspicuous manner, within the first thirty (30) seconds of the commercial and immediately before each presentation of ordering instructions for the product or service.

Part VI of the Order requires the respondents to retain records, and copies, of materials covered by the Order, for a period of three years.

Part VII of the Order requires the respondents to pay the sum of $2,100,000 as consumer redress. These funds are to be used by the Commission to pay redress to consumers injured by the practices challenged in the complaint. If the Commission finds that consumer redress is not practicable, then the funds shall be paid to the United States Treasury in lieu of redress. This liability is to be suspended on the payment by the respondents of $50,000, provided, however, that respondents: Do not default in this payment; and (2) have not misrepresented their financial condition. If either of these occurs, the entire $2,100,000 will then be due and payable.

Part VIII of the Order requires the respondents to provide the Commission with all federal tax returns for the years 1990 through 1994. In the event that those tax returns are not timely filed, the respondents must file sworn statements of assets and liabilities with the Commission. Part VIII of the Order also requires Wayne Phillips to provide sworn answers, for a period of five years, to such questions regarding his finances, assets and liabilities, as the staff of the Commission may pose.

Parts IX through XII of the Order are standard order provisions requiring the respondents to retain records demonstrating their compliance with the Order; to distribute the Order to their managerial employees; to notify the Commission of any changes in the structure of the corporations or of Phillips's new affiliation with businesses that make commercials covered by the Order; and to report to the Commission their compliance with the terms of the Order.

The purpose of this analysis is to facilitate public comment on the proposed Order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 91-18585 Filed 8-5-91; 8:45 am]

BILLING CODE 6750-01-M

[File No. 891 0086]

Sentinel Group, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require,

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as consumer redress. These funds are to be used by the Commission to pay redress to consumers injured by the practices challenged in the complaint. If the Commission finds that consumer redress is not practicable, then the funds shall be paid to the United States Treasury in lieu of redress. This liability is to be suspended on the payment by the respondents of $50,000, provided, however, that respondents: Do not default in this payment; and (2) have not misrepresented their financial condition. If either of these occurs, the entire $2,100,000 will then be due and payable.

Part VIII of the Order requires the respondents to provide the Commission with all federal tax returns for the years 1990 through 1994. In the event that those tax returns are not timely filed, the respondents must file sworn statements of assets and liabilities with the Commission. Part VIII of the Order also requires Wayne Phillips to provide sworn answers, for a period of five years, to such questions regarding his finances, assets and liabilities, as the staff of the Commission may pose.

Parts IX through XII of the Order are standard order provisions requiring the respondents to retain records demonstrating their compliance with the Order; to distribute the Order to their managerial employees; to notify the Commission of any changes in the structure of the corporations or of Phillips's new affiliation with businesses that make commercials covered by the Order; and to report to the Commission their compliance with the terms of the Order.

The purpose of this analysis is to facilitate public comment on the proposed Order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 91-18585 Filed 8-5-91; 8:45 am]

BILLING CODE 6750-01-M

[File No. 891 0086]

Sentinel Group, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require,

among other things, a Stamford, Connecticut, based corporation to divest one of its funeral homes in each of three separate markets and to obtain Commission approval, for a period of ten years, before acquiring any additional funeral homes in these and three other markets.

DATES: Comments must be received on or before October 7, 1991.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Mark Taylor, Atlanta Regional Office, Federal Trade Commission, 1718 Peachtree St., NW., room 1000, Atlanta, GA 30367, (404) 347-4836.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission s Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

The Federal Trade Commission having initiated an investigation of certain funeral home acquisitions of Sentinel Group, Inc., a corporation, and it now appearing that Sentinel Group, Inc., hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing a Consent Order,

It Is Hereby Agreed by and between Sentinel Group, Inc., by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Sentinel Group, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1177 Summer Street, in the City of Stamford, State of Connecticut.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that, once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I.

As used in this order, the following definitions shall apply:

(a) *Sentinel* means Sentinel Group, Inc., its parents, subsidiaries, divisions, groups controlled by Sentinel, successors and assigns and their respective directors, officers, employees, agents and representatives.

(b) *Funeral home* means a facility devoted to the care or preparation for burial or transportation of deceased human bodies, and a facility in which funeral services may be conducted.

(c) *Properties to be Divested* means the funeral home properties described in Paragraph II.

(d) *Commission* means the Federal Trade Commission.

It Is Ordered That, within twelve (12) months after the date this order becomes final, Sentinel shall divest, absolutely and in good faith, the following funeral homes: Mincy-Fulford Funeral Home in Waycross, Georgia; Ward's Funeral Home in Gainesville, Georgia; and Erwin-Pettit Funeral Home in Summerville, Georgia. These funeral homes are hereinafter referred to as the "Properties to be Divested". The Properties to be Divested are to be divested only to an acquirer or acquirers, and only in such manner, that receive the prior approval of the Commission. The purpose of the divestiture required by this Order is to insure the continuation of the funeral homes as ongoing viable enterprises and to remedy the lessening of competition alleged in the Commission's complaint.

III

It Is Further Ordered That, pending divestiture, Sentinel shall maintain the viability and marketability of the Properties to be Divested and shall not cause or permit the destruction, removal or impairment of any assets or business of the Properties to be Divested, except in the ordinary course of business and except for ordinary wear and tear.

IV

It Is Further Ordered That the Properties to be Divested shall not be divested, directly or indirectly, to anyone who is at the time of the divestiture an officer, director, employee or agent of, or under the control, direction or influence of Sentinel.

V

It Is Further Ordered That: (A) If Sentinel has not divested the Properties to be Divested as required by Paragraph II within twelve (12) months after the date this Order becomes final, Sentinel shall consent to the appointment of a trustee by the Commission to divest the remaining Properties to be Divested. In the event the Commission or the Attorney General brings an action pursuant to section 5(1) of the Federal Trade Commission Act, 15 U.S.C. 45(1), or any other statute enforced by the Commission, Sentinel shall similarly consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to section 5(*1*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Sentinel to comply with this Order.

(B) If a trustee is appointed by the Commission or a court pursuant to paragraph V.(A) of this Order, Sentinel shall consent to the following terms and conditions regarding the trustee's powers, authorities, duties and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Sentinel, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

2. The trustee shall have the exclusive power and authority, subject to the prior approval of the Commission, to divest the remaining Properties to be Divested.

3. The trustee shall have eighteen (18) months from the date of appointment to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the eighteen-month period the trustee has submitted a plan of divestiture or believes that divestiture can be accomplished within a reasonable time, the divestiture period may be extended by the Commission, or by the Court for a court-appointed trustee; *Provided, however,* That the Commission or court may only extend the divestiture period two (2) times.

4. The trustee shall have full and complete access to the personnel, books, records and facilities relating to the remaining Properties to be Divested, or any other relevant information, as the trustee may reasonably request. Sentinel shall develop such financial or other information as such trustee may reasonably request and shall cooperate with any reasonable request of the trustee. Sentinel shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by Sentinel shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or the court for a court-appointed trustee.

5. Subject to Sentinel's absolute and unconditional obligation to divest at no minimum price and the purpose of the divestiture as stated in Paragraph II of the Order, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available with each acquiring entity for the divestiture of the remaining Properties to be Divested. The divestiture shall be made in the manner set out in Paragraph II; *Provided, however,* That if the trustee receives bona fide offers from more than one acquiring entity or entities, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by Sentinel from among those approved by the Commission.

6. The trustee shall serve, without bond or other security, at the cost and expense of Sentinel, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of Sentinel, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, or other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Sentinel and the trustee's power shall be terminated. The trustee's compensation shall be based at least in a significant part on a commission arrangement contingent on the trustee's divesting the remaining Properties to be Divested.

7. Except in cases of misfeasance, negligence, willful or wanton acts, or bad faith by the trustee, the trustee shall not be liable to respondent for any action taken or not taken in performance of the trusteeship. Sentinel shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, or liabilities arising in any manner out of, or in connection with, the trustee's duties under this Order, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for or defense of any claim whether or not resulting in any liability, except to the extent such liabilities, claims, or expenses result from misfeasance, negligence, willful or wanton acts, or bad faith of the trustee.

8. Within sixty (60) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, Sentinel shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this Order.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph V.(A) of this Order.

10. The Commission and, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

11. The trustee shall have no obligation or authority to operate or maintain the remaining Properties to be Divested.

12. The trustee shall report in writing to Sentinel and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

VI

It Is Further Ordered That, within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until Sentinel has fully complied with Paragraph II of this Order, Sentinel shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying or has complied with that provision. Sentinel shall include in its compliance reports, among other things that are required from time to time, a full description of all contacts or negotiations with prospective acquirers for the divestiture required by this Order, including the identity of all parties contacted. Sentinel also shall include in its compliance reports copies of all written communications to and from such parties, and all internal memoranda, reports, and

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trustee harmless against any losses, claims, damages, or liabilities arising in any manner out of, or in connection with, the trustee's duties under this Order, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for or defense of any claim whether or not resulting in any liability, except to the extent such liabilities, claims, or expenses result from misfeasance, negligence, willful or wanton acts, or bad faith of the trustee.

8. Within sixty (60) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, Sentinel shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this Order.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph V.(A) of this Order.

10. The Commission and, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

11. The trustee shall have no obligation or authority to operate or maintain the remaining Properties to be Divested.

12. The trustee shall report in writing to Sentinel and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

VI

It Is Further Ordered That, within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until Sentinel has fully complied with Paragraph II of this Order, Sentinel shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying or has complied with that provision. Sentinel shall include in its compliance reports, among other things that are required from time to time, a full description of all contacts or negotiations with prospective acquirers for the divestiture required by this Order, including the identity of all parties contacted. Sentinel also shall include in its compliance reports copies of all written communications to and from such parties, and all internal memoranda, reports, and

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recommendations concerning the required divestiture.

VII

It Is Further Ordered That, for a period of ten (10) years after the date this Order becomes final, Sentinel shall cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, without the prior approval of the Commission, any funeral home located within the area extending fifteen (15) miles outward in any direction from the city limits of: (a) Waycross, Georgia; (b) Summerville, Georgia; (c) Gainesville, Georgia; (d) Rome, Georgia; (e) Savannah, Georgia; and (f) Ft. Smith, Arkansas; *Provided, however,* That this prohibition shall not apply to the construction of new facilities by Sentinel.

VIII

It Is Further Ordered That, one year after the date this Order becomes final and annually thereafter for nine (9) years, Sentinel shall file with the Commission a verified written report of its compliance with Paragraph VII of this Order. Such reports shall include a listing of all acquisitions made by Sentinel during the 12 months preceding the date of the report.

IX

It Is Further Ordered That, for the purpose of determining or securing compliance with this Order, subject to any legally recognized privilege, and upon written request with reasonable notice to Sentinel made to its principal office, Sentinel shall permit any duly authorized representative or representatives of the Commission:

(A) Access during the office hours of Sentinel, in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Sentinel relating to compliance with this Order;

(B) Upon five (5) days' notice to Sentinel and without restraint or interference from them, to interview officers or employees of Sentinel, who may have counsel present, regarding any such matters.

X

It Is Further Ordered That Sentinel shall notify the Commission at least thirty (30) days prior to any proposed change in its organization such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change that may affect compliance obligations arising out of this Order.

Concurring Statement of Commissioner Azcuenaga

Sentinel Group, Inc., File No. 891 0086

I concur in part with and dissent in part from the decision of the Commission majority to accept this proposed consent order from Sentinel Group, Inc. for public comment. The proposed order remedies the potential anticompetitive effects of Sentinel's acquisitions of funeral homes in some, but not all, of the affected communities. Based on the information available concerning the level of concentration, conditions of entry, and other circumstances relevant to the state of competition in the funeral services market, the Commission should require additional divestitures in order to restore competition in more localities affected by Sentinel's acquisitions. I would welcome comment on the scope of the divestiture provision.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondent Sentinel Group, Inc. ("Sentinel").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that, by purchasing two funeral homes in each of the following relevant geographic markets: Gainesville, Georgia and its immediate environs; Waycross, Georgia and its immediate environs; Summerville, Georgia and its immediate environs; Savannah, Georgia and its immediate environs; and Ft. Smith, Arkansas and its immediate environs, and by purchasing three funeral homes in Rome, Georgia and its immediate environs, Sentinel violated section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and section 7 of the Clayton Act, as amended, 15 U.S.C. 18. The effects of the acquisitions may have been to substantially lessen competition in the following ways, among others: (1) By eliminating actual competition between Sentinel and others in the relevant markets; and (2) by significantly enhancing the possibility of collusion or interdependent coordination among the remaining firms in the relevant markets. These effects increase the likelihood that firms have increased prices and restricted output in the relevant markets or will increase prices and restrict output both in the near future and in the long term.

The proposed order requires Sentinel to divest one funeral home in Waycross, one funeral home in Summerville, and one funeral home in Gainesville. In addition, the proposed order requires that, for a period of ten (10) years after the order becomes final, Sentinel shall cease and desist from acquiring any funeral home located within the area extending fifteen (15) miles outward in any direction from the city limits of Waycross, Summerville, Gainesville, Savannah, Rome, or Ft. Smith without the prior approval of the Commission.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,
Secretary.

[FR Doc. 91–18583 Filed 8–5–91; 8:45 am]

BILLING CODE 6750-01-M

[File No. 911 0087]

Service Corporation International; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a Houston, Texas, based corporation to divest six funeral homes and to obtain prior Commission approval, for a period of ten years, before acquiring any additional funeral homes in certain Georgia and Tennessee areas.

DATES: Comments must be received on or before October 7, 1991.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Katherine B. Alphin, Atlanta Regional Office, Federal Trade Commission, 1718 Peachtree St., NW., room 1000, Atlanta, GA 30367, (404) 347–4836.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade

Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The Federal Trade Commission having initiated an investigation of the proposed acquisition of the voting securities of Sentinel Group, Inc., ("Sentinel") by Service Corporation International, a corporation hereinafter sometimes referred to as "proposed respondent" or "SCI," and it now appearing that the proposed respondent is willing to enter into an agreement containing an order to divest certain assets and cease and desist from certain acts,

It Is Hereby Agreed by and between proposed respondent, its duly authorized officer and attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent SCI is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 1929 Allen Parkway, Houston, Texas.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that, once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

8. Counsel for the Federal Trade Commission agree that the Agreement Containing Consent Order in Sentinel Group, Inc., File No. 891 0086, shall be submitted to the Commission for its consideration prior to or contemporaneously with this agreement.

Order

I.

As used in this order, the following definitions shall apply:

A. *SCI* or *respondent* means Service Corporation International, its parents, subsidiaries, divisions, groups controlled by SCI, successors and assigns, and their respective directors, officers, employees, agents and representatives.

B. *Sentinel* means Sentinel Group, Inc., its parents, subsidiaries, divisions, groups controlled by Sentinel, successors and assigns, and their respective directors, officers, employees, agents and representatives.

C. *Funeral establishment* means the Assets and Businesses of a facility that is devoted to the care or preparation for burial or transportation to a cemetery or crematory of deceased human bodies and in which funeral services may be conducted.

D. *Assets and Businesses* include assets, properties, business and goodwill, tangible and intangible, utilized by a funeral establishment, including the following:

1. All right, title and interest in and to owned or leased real property, together with appurtenances, licenses and permits;

2. All machinery, fixtures, equipment, furniture, tools and other tangible personal property;

3. All right, title and interest in the trade name of each funeral establishment with the exception that the trade name "Chattanooga Funeral Home" need not be included;

4. All right, title and interest in the legal name "Lane Funeral Homes, Inc." within Hamilton County, Tennessee, and a portion of Dade, Walker and Catoosa Counties, Georgia, being more particularly described as follows: Beginning at the northwest corner of Dade County, Georgia, turning thence southerly along the western line of Dade County, Georgia, to its intersection with the westerly extension of the northerly line of the Chickamauga & Chattanooga National Military Park ("Park"), thence easterly along the extension of the northerly line of the Park and the northerly line of the Park to the intersection of the northeastern corner of the Park and the city limits of Ft. Oglethorpe, thence turning northeasterly through the intersection of the centerline of Ross Hollow Road and Doug Road to the north line of Catoosa County, Georgia, thence westerly along the north line of Catoosa, Walker and Dade Counties to the northwest corner of Dade County, Georgia and the point of beginning;

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Order

I.

As used in this order, the following definitions shall apply:

A. *SCI* or *respondent* means Service Corporation International, its parents, subsidiaries, divisions, groups controlled by SCI, successors and assigns, and their respective directors, officers, employees, agents and representatives.

B. *Sentinel* means Sentinel Group, Inc., its parents, subsidiaries, divisions, groups controlled by Sentinel, successors and assigns, and their respective directors, officers, employees, agents and representatives.

C. *Funeral establishment* means the Assets and Businesses of a facility that is devoted to the care or preparation for burial or transportation to a cemetery or crematory of deceased human bodies and in which funeral services may be conducted.

D. *Assets and Businesses* include assets, properties, business and goodwill, tangible and intangible, utilized by a funeral establishment, including the following:

1. All right, title and interest in and to owned or leased real property, together with appurtenances, licenses and permits;

2. All machinery, fixtures, equipment, furniture, tools and other tangible personal property;

3. All right, title and interest in the trade name of each funeral establishment with the exception that the trade name "Chattanooga Funeral Home" need not be included;

4. All right, title and interest in the legal name "Lane Funeral Homes, Inc." within Hamilton County, Tennessee, and a portion of Dade, Walker and Catoosa Counties, Georgia, being more particularly described as follows: Beginning at the northwest corner of Dade County, Georgia, turning thence southerly along the western line of Dade County, Georgia, to its intersection with the westerly extension of the northerly line of the Chickamauga & Chattanooga National Military Park ("Park"), thence easterly along the extension of the northerly line of the Park and the northerly line of the Park to the intersection of the northeastern corner of the Park and the city limits of Ft. Oglethorpe, thence turning northeasterly through the intersection of the centerline of Ross Hollow Road and Doug Road to the north line of Catoosa County, Georgia, thence westerly along the north line of Catoosa, Walker and Dade Counties to the northwest corner of Dade County, Georgia and the point of beginning;

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5. All right, title and interest in the legal name, "Wallis & Son Funeral Home" and the trade name "Wallis" in that portion of Walker County, Georgia, being more particularly described as follows: All of Walker County, Georgia lying south of the north line of the Chickamauga & Chattanooga National Military Park and its westward extension; and

6. All books, records and files pertinent to any of the Properties to be Divested.

E. *Properties to be Divested* means the Assets and Businesses of the following funeral establishments:

1. Chattanooga Funeral Home, West Chapel, Chattanooga, Tennessee.
2. Lane Funeral Homes, Inc., R. J. Coulter Chapel, Chattanooga, Tennessee.
3. Lane Funeral Homes, Inc., Valley View Chapel, Chattanooga, Tennessee.
4. Lane Funeral Homes, Inc., Williamson & Sons Funeral Home, Soddy Daisy, Tennessee.
5. Wallis & Son Funeral Home, LaFayette, Georgia.
6. Sipple's Mortuary, Savannah, Georgia.

II

It Is Ordered That, within twelve (12) months after the date this order becomes final, respondent shall divest, absolutely and in good faith, the Properties to be Divested. The Properties to be Divested are to be divested only to an acquirer or acquirers, and only in such manner, that receives the prior approval of the Commission. The purpose of the divestitures required by this order is to ensure the continuation of the funeral establishments as ongoing viable enterprises and to remedy the lessening of competition alleged in the Commission's complaint.

III

It Is Further Ordered That, pending divestiture, respondent shall maintain the viability and marketability of the Properties to be Divested and shall not cause or permit the destruction, removal, or impairment of any assets or businesses of the Properties to be Divested, except in the ordinary course of business and except for ordinary wear and tear.

IV

It Is Further Ordered That: A. If respondent has not divested the Properties to be Divested as required by section II within twelve (12) months after the date this order becomes final, respondent shall consent to the appointment of a trustee by the Commission to divest the remaining Properties to be Divested. In the event the Commission or the Attorney General brings an action pursuant to section 5(1) of the Federal Trade Commission Act, 15 U.S.C. 45(1), or any other statute enforced by the Commission, respondent shall similarly consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Section shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to section 5(1) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by SCI to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to section IV.A. of this order, respondent shall consent to the following terms and conditions regarding the trustee's powers, authorities, duties and responsibilities:

1. The Commission shall select the trustee, subject to the consent of respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

2. The trustee shall have the exclusive power and authority, subject to the prior approval of the Commission, to divest the remaining Properties to be Divested.

3. The trustee shall have eighteen (18) months from the date of appointment to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the eighteen-month period the trustee has submitted a plan of divestiture or believes that divestiture can be accomplished within a reasonable time, the divestiture period may be extended by the Commission, or by the Court for a court-appointed trustee; *Provided, however,* that the Commission or court may only extend the divestiture period two (2) times.

4. The trustee shall have full and complete access to the personnel, books, records and facilities relating to the remaining Properties to be Divested, or any other relevant information, as the trustee may reasonably request. Respondent shall develop such financial or other information as such trustee may reasonably request and shall cooperate with any reasonable request of the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by respondent shall extend the time for divestiture under this section in an amount equal to the delay, as determined by the Commission or the court for a court-appointed trustee.

5. Subject to respondent's absolute and unconditional obligation to divest at no minimum price and the purpose of the divestiture as stated in section II of this order, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available with each acquiring entity for the divestiture of the remaining Properties to be Divested. The divestiture shall be made in the manner set out in section II; *Provided, however,* that if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by respondent from among those approved by the Commission.

6. The trustee shall serve, without bond or other security, at the cost and expense of respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, or other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of respondent and the trustee's power shall be terminated. The trustee's compensation shall be based at least in a significant part on a commission arrangement contingent on the trustee's divesting the remaining Properties to be Divested.

7. Except in cases of misfeasance, negligence, willful or wanton acts, or bad faith by the trustee, the trustee shall not be liable to respondent for any action taken or not taken in performance of the trusteeship. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, or liabilities arising in any manner out of, or in connection with, the trustee's duties under this order, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for or defense of any claim whether or not resulting in any liability, except to the extent such liabilities, claims, or expenses result from misfeasance, negligence, willful or wanton acts, or bad faith of the trustee.

8. Within sixty (60) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, respondent shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in section IV.A. of this order.

10. The Commission or, in the case of a court-appointed trustee, the court may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the remaining Properties to be Divested.

12. The trustee shall report in writing to respondent and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

V

It Is Further Ordered That respondent shall be bound by the terms and obligations of the Agreement Containing Consent Order between staff of the Commission and Sentinel, dated April 11, 1991, and any order issued by the Commission in Sentinel Group, Inc., File No. 891 0086, pursuant thereto, and shall execute the provisions thereof.

VI

It Is Further Ordered That respondent shall comply with the Agreement to Hold Separate, attached hereto and made a part hereof as appendix I. Said agreement shall continue in effect until respondent has divested the Properties to be Divested or until such other time as the Agreement to Hold Separate provides.

VII

It Is Further Ordered That, within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until respondent has fully complied with section II of this order, respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying or has complied with that provision. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of all contacts or negotiations with prospective acquirers for the divestitures required by this order, including the identity of all parties contacted. Respondent also shall include in its compliance reports copies of all written communications to and from such parties, and all internal memoranda, reports, and recommendations concerning the required divestitures.

VIII

It Is Further Ordered That, for a period of ten (10) years after the date this order becomes final, respondent shall cease and desist from acquiring, through subsidiaries or otherwise, without the prior approval of the Commission, any interest in a funeral establishment located within the city limits of, or the area extending fifteen (15) miles outward in any direction from the city limits of: (a) Chattanooga, Tennessee; (b) Soddy Daisy, Tennessee; (c) LaFayette, Georgia; and (d) Savannah, Georgia; *Provided, however,* that this prohibition shall not apply to the construction of new facilities by respondent.

IX

It Is Further Ordered That, for a period of ten (10) years after the date this order becomes final, notwithstanding the requirements of section VIII. hereof and of paragraph VII. of the "Agreement Containing Consent Order" that is referred to in section V. hereof, respondent may acquire through default or foreclosure proceedings any interest in a funeral establishment located within the city limits of, or the area extending fifteen (15) miles outward in any direction from the city limits of: (a) Chattanooga, Tennessee; (b) Soddy Daisy, Tennessee; (c) LaFayette, Georgia; (d) Savannah, Georgia; (e) Gainesville, Georgia; (f) Rome, Georgia; (g) Summerville, Georgia; (h) Waycross, Georgia; or (i) Ft. Smith, Arkansas; *Provided, however,* that respondent must give the Commission notice of such acquisition within ten (10) days of the acquisition. Within thirty (30) days of such acquisition respondent must apply for Commission approval of the acquisition. If the Commission does not approve the acquisition, respondent shall divest such interest in accordance with the terms of Sections II., III., and IV. of this order. From the date of the acquisition until such time as the Commission approves the acquisition or, if the acquisition is not approved, until the interest is divested, respondent shall hold separate, as required by the Hold Separate Agreement attached hereto, any funeral establishment in which such an interest is acquired.

X

It Is Further Ordered That, one year after the date this order becomes final and annually thereafter for nine (9) years, respondent shall file with the Commission a verified written report of its compliance with sections VIII. and IX. of this order. Such reports shall include, but not be limited to, a listing of all acquisitions and the acquired locations' addresses, including but not limited to acquisitions due to default, foreclosure proceedings or purchases in foreclosure, made by respondent during the 12 months preceding the date of the report.

XI

It Is Further Ordered That, for the purpose of determining or securing compliance with this order, subject to any legally recognized privilege, and upon written request with reasonable notice to respondent made to their principal offices, respondent shall permit any duly authorized representative or representatives of the Commission:

A. Access, during the office hours of respondent and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this order;

B. Upon five (5) days' notice to respondent and without restraint or interference therefrom, to interview officers or employees of respondent, who may have counsel present, regarding such matters.

XII

It Is Further Ordered That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in its organization, such as dissolution, assignment or sale resulting in the emergence of a successor, the creation or dissolution of subsidiaries, or any other change, that may affect compliance obligations arising out of this order.

Agreement to Hold Separate

This Agreement to Hold Separate (the "Agreement") is by and between Service Corporation International ("SCI"), a corporation organized and existing under the laws of the State of Texas, with its principal executive offices located at 1929 Allen Parkway, Houston, Texas, and the Federal Trade Commission (the "Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914,

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XI

It Is Further Ordered That, for the purpose of determining or securing compliance with this order, subject to any legally recognized privilege, and upon written request with reasonable notice to respondent made to their principal offices, respondent shall permit any duly authorized representative or representatives of the Commission:

A. Access, during the office hours of respondent and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this order;

B. Upon five (5) days' notice to respondent and without restraint or interference therefrom, to interview officers or employees of respondent, who may have counsel present, regarding such matters.

XII

It Is Further Ordered That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in its organization, such as dissolution, assignment or sale resulting in the emergence of a successor, the creation or dissolution of subsidiaries, or any other change, that may affect compliance obligations arising out of this order.

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15 U.S.C. 41, *et seq.* (collectively, the "Parties").

Premises

Whereas, on or about April 5, 1991, SCI entered into an Agreement and Plan of Merger with Sentinel Group, Inc. ("Sentinel"), in which (1) SG Acquisition Corp., a wholly-owned subsidiary of SCI, would be merged into Sentinel; (2) Sentinel shareholders would receive SCI common stock; and (3) SCI would become the sole shareholder of Sentinel (hereinafter the "Acquisition"); and

Whereas, both Sentinel and SCI own funeral establishments that provide funeral services to consumers; and

Whereas, the Commission is now investigating the Acquisition to determine if the Acquisition would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the Agreement Containing Consent Order (the SCI Consent Agreement), attached hereto as exhibit A, the Commission must place the order on the public record for public comment for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of § 2.34 of the Commission's Rules; and

Whereas, if the Commission accepts the Agreement Containing Consent Order dated April 11, 1991 between Sentinel and Commission staff (Sentinel Consent Agreement), attached hereto as exhibit B, the Commission must place the Sentinel order on the public record for public comment for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of § 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached preserving the status quo ante and holding separate the assets and businesses of certain Sentinel funeral establishments listed in exhibit C attached hereto and made a part hereof (hereinafter Hold Separate Assets) until the divestitures contemplated by the SCI Consent Agreement and the Sentinel Consent Agreement have been made, divestitures resulting from any proceeding challenging the legality of the Acquisition might not be possible or might be less than an effective remedy; and

Whereas, if the Commission finally accepts the order contained in the SCI Consent Agreement, SCI agrees, for a period of 10 years after the date the order becomes final, to notify the Commission of the acquisition, by default or foreclosure proceedings, of any interest in a funeral establishment in nine specified geographic areas and to hold such funeral establishment separate until such time as the Commission approves the acquisition or the interest is divested; and

Whereas, the purposes of this Agreement are to: (1) Preserve the Hold Separate Assets as viable independent businesses pending the divestitures described in the SCI Consent Agreement and the Sentinel Consent Agreement; (2) preserve the Commission's ability to require the divestitures of the funeral establishments required by the SCI Consent Agreement and the Sentinel Consent Agreement; and (3) remedy any anticompetitive aspects of the Acquisition; and

Whereas, SCI's entering into this Agreement shall in no way be construed as an admission by SCI that the Acquisition is illegal; and

Whereas, SCI understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, Therefore, the Parties agree, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the SCI Consent Agreement, it will not seek further relief from SCI with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement, the SCI Consent Agreement to which it is annexed and made a part thereof and any order issued against SCI or Sentinel, as follows:

1. SCI agrees to execute and be bound by the attached SCI Consent Agreement.

2. SCI agrees that, from the date this Agreement is accepted until the first to occur of (i) ten business days after the Commission withdraws its acceptance of the SCI Consent Agreement pursuant to the provisions of § 2.34 of the Commission's Rules; or (ii) until the date the divestitures required by the SCI order and the Sentinel order are accomplished, SCI shall hold the Hold Separate Assets separate and apart on the following terms and conditions and for the periods set forth in exhibit C:

a. SCI shall hold separate and apart the Hold Separate Assets.

b. Except as provided herein and as is necessary to assure compliance with this Agreement and the Consent Order, SCI shall not exercise direction or control over, or influence directly or indirectly, the Hold Separate Assets or any of their operations or businesses.

c. SCI shall cause the Hold Separate Assets to continue using their present names and trade names, and shall maintain and preserve the viability and marketability of each of the Hold Separate Assets and shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair their marketability or viability.

d. SCI shall refrain from taking any actions that may cause any material adverse change in the business or financial conditions of the Hold Separate Assets.

e. SCI shall not change the composition of the management of the Hold Separate Assets, except that SCI may fill vacancies and remove management for cause.

f. SCI shall maintain separate financial and operating records and shall prepare separate financial statements for the Hold Separate Assets and shall provide the Commission with quarterly and annual financial statements for each funeral establishment within ten days of their availability.

g. All earnings and profits of the Hold Separate Assets shall be held separate. If necessary, SCI shall provide any or all of the Hold Separate Assets with sufficient working capital to operate at their current levels.

h. SCI shall refrain from, directly or indirectly, encumbering, selling, disposing of, or causing to be transferred any assets, property, or business of the Hold Separate Assets, except that the Hold Separate Assets may advertise, purchase merchandise and sell or otherwise dispose of merchandise in the ordinary course of business, and SCI may sell or otherwise dispose of assets, property or business to accomplish the divestitures required by any order issued against SCI or Sentinel.

3. The parties agree that if the Commission finally approves and issues the order in the SCI Consent Agreement, this Agreement shall remain in effect until ten (10) years after the date said order becomes final.

4. Should the Federal Trade Commission seek in any proceeding to compel SCI to divest itself of the shares of Sentinel stock that SCI may acquire, or to compel SCI to divest any assets or businesses of Sentinel that it may hold, or to seek any other injunctive or equitable relief, SCI shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. SCI also waives all rights to contest the validity of this Agreement.

5. In the event the Commission has not finally approved and issued the SCI order within one hundred twenty (120) days of its publication in the **Federal Register**, SCI may, at its option, terminate this Agreement to Hold Separate by delivering written notice of termination to the Commission, which termination shall be effective ten (10) days after the Commission's receipt of such notice, and this Agreement shall thereafter be of no further force and effect. If this Agreement is so terminated, the Commission may take such action as it deems appropriate, including but not limited to an action pursuant to section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b). Termination of this Agreement to Hold Separate shall in no way operate to terminate the Agreement Containing Consent Order that SCI has entered into in this matter.

6. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to SCI made to its principal office, SCI shall make available to any duly authorized representative or representatives of the Commission:

a. All books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of SCI relating to any matters contained in this Agreement, for inspection and copying during office hours and in the presence of counsel; and

b. Upon five (5) days notice to SCI, and without restraint or interference from SCI, officers or employees of SCI, who may have counsel present, for interviews regarding any such matters.

7. This agreement shall not be binding until approved by the Commission.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondent Service Corporation International (SCI).

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that, SCI's acquisition of Sentinel Group, Inc., violated section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and section 7 of the Clayton Act, as amended, 15 U.S.C. 18. In the relevant geographic markets of Savannah, Georgia and its immediate environs; LaFayette, Georgia, and its immediate environs; and Hamilton County, Tennessee, and Rossville and Fort Oglethorpe, Georgia, both SCI and Sentinel own funeral establishments and are actual competitors in the provision of funeral services. In the Savannah, Georgia area, Sentinel is the largest firm and SCI is one of the leading firms in the provision of funeral services. In the Hamilton County, Tennessee and Rossville and Fort Oglethorpe, Georgia area, Sentinel and SCI are the two largest firms in the provision of funeral services. In the LaFayette, Georgia area, Sentinel and SCI are the only two providers of funeral services.

The effects of the acquisition may have been to substantially lessen competition in the following ways, among others: (1) By eliminating actual competition between SCI and Sentinel in the relevant markets; and (2) by significantly enhancing the possibility of collusion or interdependent coordination among the remaining firms in the relevant markets or by tending to create a dominant firm in the relevant markets. These effects increase the likelihood that firms have increased prices and restricted output in the relevant markets or will increase prices and restrict output both in the near future and in the long term.

The proposed order requires SCI to divest one funeral establishment in Savannah, Georgia; one funeral establishment in LaFayette, Georgia; and three funeral establishments in Chattanooga, Tennessee and one funeral establishment in Soddy Daisy, Tennessee. In addition, the proposed order requires that, for a period of ten (10) years after the order becomes final, SCI shall cease and desist from acquiring any funeral home located within the area extending fifteen (15) miles outward in any direction from the city limits of Savannah, LaFayette, Chattanooga or Soddy Daisy without the prior approval of the Commission.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 91-18584 Filed 8-5-91; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Announcement Number 168]

Project Grants for Community Based Organizations Immunization Program

Introduction

The Centers for Disease Control (CDC) announces the availability of project grant funds in Fiscal Year 1991 to develop collaborative efforts with Community Based Organizations (CBOs) to enhance the consumer demand and service delivery of vaccine.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Immunization and Infectious Diseases. (For ordering a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

Authority

This program is authorized under the Public Health Service Act 317(k)(3) (42 U.S.C. 247b(k)(3)), as amended. Regulations governing the implementation of this legislation are covered under 42 CFR part 51b, subparts A and B.

Eligible Applicants

Eligible applicants for this program are the official public health agencies who are current recipients of project grants for Preventive Health Services-Immunization. Funds will be focused where the problem has been demonstrated to be most severe. Eligibility is limited to programs targeting high-risk, underserved inner-city residents in metropolitan areas with populations of at least 250,000 where preschool children are experiencing high incidence rates of measles and other vaccine-preventable diseases, or in which immunization coverage in preschool children has been shown to be low. Specific criteria for eligibility include a city or county or other urban population with either documented incidence of measles in preschool children (less than five years of age) of greater than or equal to 20 per 100,000 over the last five years (1986–1990 or similar interval updated to present), or demonstrated age-appropriate vaccination coverage of less than 50% for all recommended vaccines by the second birthday.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

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Availability of Funds

The Centers for Disease Control (CDC) is making available approximately $400,000 in Fiscal Year 1991 to supplement two immunization program grants.

A substantial portion of these funds must be used to subcontract with CBOs to carry out activities that include, (1) working with CBOs that deliver immunization services (e.g., neighborhood health center or community health center) and, (2) working with consumer groups to increase the demand for immunization services through such activities as information and education campaigns and community outreach.

Purpose

The purpose of the CBO Demonstration Program is to develop a collaborative effort between health departments and CBOs to enhance the consumer demand and service delivery of vaccines.

Program Requirements

CDC staff may provide, upon request, technical assistance in the development and implementation of the demonstrations.

A. Activities

The recipients will select up to 2 non-profit CBOs which are capable of conducting such a project. Since there are many different types of CBOs, potential projects may vary widely. To be considered, a CBO must have prior experience with and be able to demonstrate successful management of health programs (including successful delivery of health services in defined geographic communities or clearly defined segments of communities), be able to target families with preschool-age children who are inadequately vaccinated, and be located within a municipal area of 250,000 or greater population in which there has been an increased incidence of measles since 1986 among children aged 5 years or less, or where age-appropriate vaccine coverage is 50% or less. Two general types of programs may be proposed: a project designed to increase utilization of immunization services in an existing public health clinic (e.g., city or county well-child clinic, maternal and child health clinic, WIC clinic) (Option A), and a program designed to increase the level of immunization services provided within a community (i.e., provided directly by the CBO such as a neighborhood or community health center) (Option B). A third possibility (Option C) is a proposal that combines elements of Options A and B. A proposal that is limited to Option A, increasing utilization of existing services for immunization, must include assurances that those services will be able to accommodate the additional number of children seeking vaccination. All proposed actions/activities should be described in sufficient detail to indicate how they will ultimately improve coverage.

Under either option, the proposal should be structured around specific, measurable program objectives, a clearly outlined timetable and a specific plan for evaluating the program's effectiveness.

Proposals may include but are not limited to the following:

1. Option A (Increasing demand for vaccinations)

a. Working with health service clinics, providers, etc. to increase demand for immunization services by informing them of community attitudes towards health services and the major difficulties which the highrisk population(s) face in obtaining comprehensive health care.

b. Providing community health education about the importance of age-appropriate immunizations (via, e.g., mass media, targeted media).

c. Utilizing existing community outreach mechanisms to encourage families to make and keep vaccination appointments.

d. Building support systems within neighborhoods to make it easier for families to make clinic visits (e.g., helping with transportation, child care).

e. Using home visitors to find children who need vaccinations.

f. Linking with neighborhood/community services and/or beneficiary programs for referral of preschool-age children to health providers.

2. Option B (Increasing vaccination serices)

a. Working with CBOs that operate community health centers to implement the clinic immunization practices.

b. Opening satellite immunization clinics in part of the intervention area which is underserved.

c. Developing and distributing or broadcasting messages on the importance, safety and efficacy of immunizations.

3. Option C (Increasing demand and level of services by combining elements of Options A and B).

B. Evaluation Methodology

A detailed and specific plan for evaluating the program and measuring its effect upon vaccination rates for pre-school children (less than or equal to 24 months of age) must be included in the proposal.

Program effectiveness may be assessed through several mean , including but not limited to:

1. Process Measures

a. Doses of vaccine administered before and during the intervention program to perschool-age children in the target population.

b. Increases in the numbers of preschool-age patients seeking vaccinations from commuity clinics and other vaccine providers.

c. Changes in clinics policies for vaccination (use of standing orders, "fast-track" vaccination services, etc.) and the effect on reducing waiting times and other barriers to service delivery.

2. Direct Assessment

a. Projects may wish to collaborate with schools of public health to develop and implement plans for program evaluation.

b. Systematic pre- and post-project assessment audits of clinic medical charts and vaccination records for missed opportunities, appropriate observance of contraindications and timeliness of vaccinations.

c. Pre- and post-project assessment of vaccination related knowledge, attitudes and practices among target community residents or persons attending community health care providers.

d. Pre- and post-project assessment of vaccine provider knowledge, attitudes and practices regarding vaccination.

e. Pre-and post-project surveys of the target community for vaccine coverage levels.

f. The assessment plan included in the proposal must include community clinic record audits along with at least one other formal assessment, and at least two process measures.

Evaluation Criteria

Applicants will be evaluated on an individual basis according to the following criteria:

A. The applicant's understanding of the purpose of the program, the appropriateness and feasibility of the project and the potential for positive impact of the project on meeting the stated goals of the program. (10 points)

B. The extent to which background information and other data demonstrate that the applicant has existing links with the community and has been previously successful in reaching high-risk population(s); the appropriate organizational structure; administrative support; and accessibility to immunization records of the target population. (10 points)

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C. The degree to which long- and short-term objectives are consistent with the purpose of the demonstration project and are realistic, specific, measurable, and time-phased. (10 points)

D. The quality of the plan of operation for conducting and monitoring proposed activities and the degree to which the plan specifies the what, who, where, how, and the timing for start and completion of each activity. (25 points)

E. The degree to which the evaluation plan will be able to measure achievement of each objective and the quality of the methods and instruments to be used. (25 points)

F. The extent to which methods and strategies proposed are financially feasible and transferable to other states or counties. (10 points)

G. The extent to which qualified and experienced personnel are available to carry out the proposed activities of the project. (10 points)

In addition, consideration will be given to the extent to which the budget request is clearly explained, adequately justified, reasonable, consistent with the intended use of funds, and the extent to which the applicant is contributing its own resources to childhood immunization activities.

Executive Order 12372 Review

Applications are subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact their state Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. A current SPOC list is included in the application kit. On or before September 26, 1991, the SPOC should send any state process recommendations to: Edwin L. Dixon, Grants Management Officer, Centers for Disease Control, 255 East Paces Ferry Road NE., room 300, Atlanta, GA 30305, ATTN: Eddie L. Wilder. CDC does not guarantee to "accommodate or explain" for state process recommendations it receives after September 26, 1991.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.268, Preventive Health Services-Immunization.

Other Requirements

Data collection initiated under this grant has been approved by the Office of Management and Budget under number 0920–0106, Title: "Preventive Health and Health Services Grant Reporting Requirements," expiration date September 30, 1991. (A request for extension of this information collection is currently in process.)

Application Submission and Deadline

The original and two copies of the application (form PHS 5161–1) must be submitted to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., room 300, Atlanta, GA 30305, on or before August 23, 1991.

A. Deadline: Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Sent on or before the deadline date and received in time to submit to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable proof of timely mailing.)

B. Late Applications: Late applications will not be considered in the current funding cycle and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, an application package and business management technical assistance may be obtained from Eddie L. Wilder, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., room 300, Atlanta, GA 30305, (404) 842–6640 or FTS 236–6640.

Programmatic technical assistance may be obtained from Rick Nelson, Program Services Branch and Gail King, Surveillance-Investigations and Research Branch, Division of Immunization, National Center for Prevention Services, Centers for Disease Control, Atlanta, GA 30333, (404) 639–1284 or FTS 236–1284.

Please refer to Announcement 168 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone (202) 783–3238).

Dated: July 31, 1991.

Robert L. Foster,

Acting Director, Office of Program Support Centers for Disease Control.

[FR Doc. 91–18553 Filed 8–5–91; 8:45 am]

BILLING CODE 4160-19-M

Public Health Service

National Toxicology Program; Call for Public Comments, Chemicals Proposed for Eighth Annual Report on Carcinogens

Background

The National Toxicology Program (NTP) requests comments on actions which the Program plans to take with regard to the Eighth Annual Report on Carcinogens. The report is a Congressionally-mandated listing of certain carcinogens and its preparation is delegated to the National Toxicology Program by the Secretary, Department of Health and Human Services. The pertinent provision of Public Law 95–622 requires an Annual Report which contains "a list of all substances (i) which either are known to be carcinogens or may reasonably be anticipated to be carcinogens and (ii) to which a significant number of persons residing in the United States are exposed . . ." The law also states that the reports should provide available information on the nature of exposures, the estimated number of persons exposed and the extent to which the implementation of Federal regulations decreases the risk of public health from exposure to these chemicals.

The proposed new entries for the Eighth Report have undergone a multiphased peer review process involving a variety of Federal research and regulatory agencies. All evidence of carcinogenicity of the proposed new entries was peer reviewed by scientists of either the International Agency for Research on Cancer (IARC) or the Technical Reports Review Subcommittee of the NTP Board of Scientific Counselors before the chemicals were considered for selection. All data relevant to the criteria for inclusion of candidate substances in the Annual Report have been evaluated by the two scientific review committees which develop the list of proposed additions to these reports. This notice is being published to provide for appropriate public comment to

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Dated: July 31, 1991.

Robert L. Foster,

Acting Director, Office of Program Support Centers for Disease Control.

[FR Doc. 91–18553 Filed 8–5–91; 8:45 am]

BILLING CODE 4160-18-M

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supplement these selection and review processes.

Proposed Actions

In the Eighth Annual Report on Carcinogens, the National Toxicology Program is proposing the addition of 8 substances to the existing listing of substances "reasonably anticipated to be carcinogens." These chemicals are listed in the Appendix with their Chemical Abstract Services (CAS) Registry numbers and references. The Program seeks public comment on this action, including information and data pertaining to these substances. There are no substances proposed for addition to the list of substances known to be carcinogens.

Submission of Comments on the Eighth Annual Report

Comments on the actions proposed for the Eighth Annual Report on Carcinogens will be accepted for a period of 45 days from date of publication of this announcement in the **Federal Register.** Comments should be sent to the National Toxicology Program Public Information Office, MD B2–04, P.O. Box 12233, Research Triangle Park, NC 27709.

Kenneth Olden,

Director.

APPENDIX.—SUBSTANCES PROPOSED FOR THE EIGHTH ANNUAL REPORT ON CARCINOGENS REASONABLY ANTICIPATED TO BE CARCINOGENS

CAS Nos.	Substance	NTP technical reports	IARC Vol.
95–69–2 1165–93–3	p-Chloro-o-toluidine and its hydrochloride salt	165	48(1990)
42397–64–8	1, 6-Dinitropyrene		46(1989)
42397–65–9	1,8-Dinitropyrene		46(1989)
2475–45–8	Disperse Blue 1	299	48(1990)
110–00–9	Furan	402	
7496–02–8	6-Nitrochrysene		46(1989)
5522–43–0	1-Nitropyrene		46(1989)
57835–92–4	4-Nitropyrene		46(1989)

[FR Doc. 91–18627 Filed 8–5–91; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–014–00–6334–12; G1–299]

Emergency Closure of Public Lands; Oregon

July 26, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that effective immediately the public lands legally described below are closed seasonally to any public access:

The Salt Caves, located on the south bank (river left, River Mile 211.7) of the upper Klamath River, T. 41 S., R. 6 E., W.M., Sec. 8: SW¼NW¼SW¼. The closure applies to the caves and extending 25 feet in front of the entrances.

This closure will be in effect from July 26, to September 15, 1991. Thereafter the seasonal closure will be in effect May 1 through September 15 annually until completion of the Klamath Falls Resource Area RMP. The only exception to the closure would be for special authorized administrative use and emergency needs.

The closure is intended to protect a maternity colony of the Townsend's big-eared bat during its normal birthing and brood-rearing period. Townsend's big-eared bat is currently listed as a Category 2 Candidate species. This listing identifies those species which are being considered for addition to the list of endangered or threatened wildlife under the Endangered Species Act. While Category 2 species do not receive the protection of listed species, it is the Bureau of Land Management's policy to manage its lands in a manner which may prevent listing this species as threatened or endangered.

The authority for this closure is 43 CFR 8364.1 and any person who violates this closure notice may be subject to a maximum fine of $1,000 and/or imprisonment not to exceed 12 months in accordance with 43 CFR 8360.0–7.

FOR FURTHER INFORMATION CONTACT: Gayle Sitter, Klamath Falls Resource Area, 2795 Anderson Ave., Bldg. 25, Klamath Falls, Oregon 97603, (Telephone (503) 883–6916).

A. Barron Ball,

Area Manager.

[FR Doc. 91–18565 Filed 8–5–91; 8:45 am]

BILLING CODE 4310-33-M

[WY–920–01–4120–14]

Powder River Regional Coal Team; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Powder River Regional Coal Team Activities: announcement of public meeting.

SUMMARY: The Powder River Regional Coal Team (RCT) will hold a public meeting on September 6, 1991 for the following purposes: (1) Review the approved Leasing by Application (LBA) guidelines, (2) review pending coal applications in the Powder River Coal Region, (3) discuss decertification of the Powder River Coal region.

DATES: The RCT will meet at 9 a.m. MDT on September 6, 1991 at the Holiday Inn, Cheyenne, WY 82007. The meeting is open to the public.

ADDRESSES: The meeting will be held at the Holiday Inn, 204 West Fox Farm Road, in the Shoshone Room, Cheyenne, Wyoming 82007, telephone (307) 638–4466. Attendees of this meeting may wish to make their personal room reservations from a block of rooms which has been set aside until two weeks prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Eugene A. Jonart, Wyoming State Office, Attn: (925), P.O. Box 1828, Cheyenne, Wyoming 82003, telephone (307) 775–6250, or (FTS) 329–6250.

SUPPLEMENTARY INFORMATION: One purpose of the meeting is to review the guidelines as recommended by the RCT in 1990 and approved by the Director of the Bureau of Land Management (BLM). The RCT will also discuss the Wyoming

BLM's project management strategy for handling the coal lease application backlog in the Powder River Basin. The backlog consists of the following five (5) Lease by Applications (LBAs): Jacob's Ranch (WYW117924), West Black Thunder (WYW118907), North Antelope (WYW119554), Rochelle (WYW119555), and West Rocky Butte (WYW122586). Public Notification of each of the above pending applications, in accordance with the Powder River Operational Guidelines, was printed in the **Federal Register**, on either June 13, 1990 or January 18, 1991. Most of the pending applications have been applied for in order to maintain existing mining operations. Because of the amount of coal in several tracts, however, the RCT (in accordance with the Guidelines), will consider the possibility of new mine starts in the region: The West Black Thunder Trace could be a possible new mine start, although it was applied for by the Thunder Basin Coal Company as a maintenance tract; and the West Rocky Butte Tract, which would require a new mine start. Generally, a coal lease application filed under the LBA portion of the regulations (43 CFR part 3425) can be processed to the lease sale stage by BLM within one and a half and two years, depending on informational and environmental study requirements.

The RCT will also review their recommendation to decertify. The basis for a recertification recommendation will include current market conditions, current level of interest, regional environmental and socioeconomic concerns, and public input.

If the RCT does not recommend recertification, they may make recommendations on any or all of the pending applications for a coal lease. The meeting will also serve as a forum for public discussion on Federal coal management issues of regional concern. Any party interested in providing input about the need for regional leasing may do so in writing to the State Director (925), Wyoming State Office, Bureau of Land Management, P.O. Box 1828, Cheyenne, WY 82003 by August 16, 1991, or by addressing the RCT with his/her concern at the meeting on September 6, 1991. Public input opportunities will be provided on all agenda items during the meeting. The proposed agenda for this meeting is as follows:

1. Introductions.
2. Approval of Minutes of April 3, 1990 RCT meeting Regional Coal Team Meeting.
3. RCT Coal Leasing-by-Application Operational Guidelines.
4. Regional Coal Activity Status.

a. Current Production.

b. Preference Right Lease Applications (PRLA).

c. Exchanges—Bull Mountain; Texaco—DeSmet.

d. Coal Lease Modification(s).

—East Black Thunder Modification (WYW2313–5 MM Tons).

e. Pending LBA Applications.

—Jacob's Ranch LBA (WYW117924–132 MM Tons)—Kerr-McGee.

—West Black Thunder LBA (WYW8907–450 MM Tons)—Thunder Basin Coal Company.

—North Antelope LBA (WYW119554–120 MM Tons)—Powder River Coal Company.

—Rochelle LBA (WYW119555–150 MM Tons)—Powder River Coal Company.

—West Rocky Butte LBA (WYW122586–50 MM Tons)—Northwestern Resources.

5. Review of Market Conditions.
6. RCT Activity Planning Recommendations.

a. Recommendation on continuation of decertification.

b. Review and recommendation(s) on pending lease applications.

7. Other Regional Issues.
8. Adjourn.

Public discussion opportunities will be provided on all agenda items.

F. William Eikenberry,

Associate State Director.

[FR Doc. 91–18554 Filed 8–5–91; 8:45 am]

BILLING CODE 4310–22–M

Bureau of Reclamation

South Delta Water Management Program, Sacramento—San Joaquin Delta, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Reopen comment period; DES 90–20.

SUMMARY: The Bureau of Reclamation (Reclamation) and the California Department of Water Resources (DWR) are reopening the public comment period for the Draft Environmental Impact Report/Draft Environmental Impact Statement (DEIR/DEIS) for the South Delta Water Management Program (DES 90–20). The DEIR/DEIS was filed with the Environmental Protection Agency on July 30, 1990. The public comment period was previously extended to March 15, 1991, in the **Federal Register**, Vol. 56, No. 9, January 14, 1991. The public comment period was reopened to June 30, 1991, in the **Federal Register**, Vol. 56, No. 9, April 26, 1991.

DATES: The comment period is reopened to September 30, 1991.

ADDRESSES: Copies of the DEIR/DEIS may be requested from DWR or Reclamation's Mid-Pacific Regional Office at the following addresses:

- Department of Water Resources, Division of Planning, 1416 Ninth Street, P.O. Box 942836, Sacramento, CA 94236–0001, telephone: (916) 445–9371.
- Regional Director, Bureau of Reclamation, Mid-Atlantic Regional Office, 2800 Cottage Way, Attention: MP-750, Sacramento, CA 95825-1898, telephone: (916) 978-5130.

Copies of the DEIR/DEIS are available for inspection at the addresses above, at libraries in California, and also at the following locations:

- Office of the Commissioner, Bureau of Reclamation, Technical Liaison Division, 1849 C Street, NW, room 7456, Washington, DC 20240, telephone: (202) 208–4662.
- Denver Office, Bureau of Reclamation, Library, room 167, Building 67, Denver Federal Center, Denver Colorado 80225, telephone: (303) 236-6963.

FOR FURTHER INFORMATION CONTACT: Fred Bachmann (Chief, South Delta Management Section, Department of Water Resources), (916) 324–4751; Douglas Kleinsmith, (Project Environmental Specialist, Bureau of Reclamation, Mid-Pacific Region), (916) 978–5121; or Dr. Wayne Deason (Manager, Environmental Services Staff, Bureau of Reclamation, Denver Federal Center), (303) 236–9336.

SUPPLEMENTARY INFORMATION: DWR informed Reclamation on June 27, 1991, that DWR had extended the comment period to September 30, 1991, to allow more time for the public to review and comment on the DEIR/DEIS.

Dated; July 26, 1991.

Margaret W. Sibley,

Assistant Commissioner, Administration.

[FR Doc. 91–18551 Filed 8–5–91; 8:45 am]

BILLING CODE 4310–09–M

Fish and Wildlife Service

Availability of a Draft Revised Recovery Plan for the Aleutian Canada Goose for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability of a draft revised Aleutian

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l. 56, No. 9, April 26,

DATES: The comment period is reopened to September 30, 1991.

ADDRESSES: Copies of the DEIR/DEIS may be requested from DWR or Reclamation's Mid-Pacific Regional Office at the following addresses:

- Department of Water Resources, Division of Planning, 1416 Ninth Street, P.O. Box 942836, Sacramento, CA 94236–0001, telephone: (916) 445–9371.
- Regional Director, Bureau of Reclamation, Mid-Atlantic Regional Office, 2800 Cottage Way, Attention: MP-750, Sacramento, CA 95825-1898, telephone: (916) 978-5130.

Copies of the DEIR/DEIS are available for inspection at the addresses above, at libraries in California, and also at the following locations:

- Office of the Commissioner, Bureau of Reclamation, Technical Liaison Division, 1849 C Street, NW, room 7456, Washington, DC 20240, telephone: (202) 208–4662.
- Denver Office, Bureau of Reclamation, Library, room 167, Building 67, Denver Federal Center, Denver Colorado 80225, telephone: (303) 236-6963.

FOR FURTHER INFORMATION CONTACT: Fred Bachmann (Chief, South Delta Management Section, Department of Water Resources), (916) 324–4751; Douglas Kleinsmith, (Project Environmental Specialist, Bureau of Reclamation, Mid-Pacific Region), (916) 978–5121; or Dr. Wayne Deason (Manager, Environmental Services Staff, Bureau of Reclamation, Denver Federal Center), (303) 236–9336.

SUPPLEMENTARY INFORMATION: DWR informed Reclamation on June 27, 1991, that DWR had extended the comment period to September 30, 1991, to allow more time for the public to review and comment on the DEIR/DEIS.

Dated; July 26, 1991.

Margaret W. Sibley,

Assistant Commissioner, Administration.

[FR Doc. 91–18551 Filed 8–5–91; 8:45 am]

BILLING CODE 4310-09-M

Fish and Wildlife Service

Availability of a Draft Revised Recovery Plan for the Aleutian Canada Goose for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability of a draft revised Aleutian Canada Goose Recovery Plan for public review. This species nests in Alaska and winters in Oregon and California. The Service solicits review and comments from the public on this draft revised plan.

DATES: Comments from all interested parties on the draft recovery plan will be considered by the Service if received on or before September 16, 1991.

ADDRESSES: Persons wishing to review the draft revised recovery plan may obtain a copy by contacting the Field Supervisor, Ecological Services Anchorage Field Office, U.S. Fish and Wildlife Service, 605 W. 4th Avenue, room 62, Anchorage, Alaska 99501, or Dr. Andrew F. Robinson, Jr., Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, 911 NW. 11th. Avenue, Portland, Oregon 97232–4181. Written comments and materials should be addressed to Mr. Brian Anderson at the above Anchorage, Alaska address. Comments and materials received are available for public inspection, by appointment, during normal business hours at either the above Anchorage, Alaska or Porland, Oregon address.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Anderson at the above Anchorage, Alaska address (telephone 907/271–2888 or FTS 868–2888).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. The Service also periodically revises approved recovery plans to incorporate new information and any change in status. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (ACT), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The Aleutian Canada goose (*Branta canadensis leucopareia*) nests on islands of the Alaska Peninsula and Aleutian Archipelago. The species winters in coastal Oregon and the Central Valley of California. Aleutian Canada geese were originally listed as endangered in 1967. Two major threats are responsible for the decline of this species: Predation of nesting geese and their young on many of the breeding islands by introduced exotic foxes and hunting on the wintering grounds. Recovery efforts have included hunting closures, and the reestablishment of Aleutian geese on former breeding islands following the removal of introduced fox. These efforts have been successful in bringing the Aleutian goose population up from approximately 800 birds in 1975 to over 6,000 birds in 1990. Effective January 11, 1991, the Aleutian goose was reclassified from endangered to the less critical threatened status (55 FR 51106).

The Aleutian Canada Goose Recovery Plan is being revised for the first time since 1982. Revisions to the plan places a new emphasis on restoring remnant breeding populations in the Central Aleutians and Semidi Islands, securing migration and wintering habitat in California and Oregon, and updating the original objects and tasks. Several public and private entities are cooperating in the Aleutian Canada goose recovery program, including the California Department of Fish and Game, Oregon Department of Fish and Game, and the East Bay Municipal Utility District.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 30, 1991.

Rowan W. Gould,

Acting Regional Director.

[FR Doc. 91–18629 Filed 8–5–91; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 25, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by August 21, 1991.

Carol D. Shull,

Chief of Registration, National Register.

CALIFORNIA

Humboldt County

Trinidad Head Light Station (Light Stations of California MPS), Trinidad Head, Trinidad vicinity, 91001098

Marin County

Point Bonita Light Station (Light Stations of California MPS), Point Bonita, Sausalito, 91001099

Point Reyes Light Station (Light Stations of California MPS), Point Reyes National Seashore, Point Reyes vicinity, 91001100

Mendocino County

Point Cabrillo Light Station (Light Stations of California MPS), 45300 Lighthouse Rd., Caspar vicinity, 91001092

Monterey County

Point Sur Light Station (Light Stations of California MPS), Morro Rock on Point Sur, 0.5 mi. w of CA 1. Big Sur vicinity, 91001097

San Francisco County

Yerba Buena Island Lighthouse (Light Stations of California MPS), Yerba Buena Island, San Francisco vicinity, 91001096

San Luis Obispo County

Piedras Biancas Light Station (Light Stations of California MPS), CA 1 on Point Piedras Blancas, San Simeon vicinity, 91001095

San Luis Obispo Light Station (Light Stations of California MPS), Point San Luis. Avila Beach vicinity, 91001093

San Mateo County

Point Montara Light Station (Light Stations of California MPS), Jct. of 16th St. and CA 1, Montara vicinity, 91001094

Ventura County

Anacapa Island Light Station (Light Stations of California MPS), Anacapa Island. Channel Islands National Park, Oxnard vicinity, 91001101

FLORIDA

Escambia County

King—Hooton House, 512—514 N. Seventh Ave., Pensacola, 91001090

GUAM

Guam County

Faha Massacre Site, Off Rt. 4, S of Pigua R., Merizo vincinty, 91001091

IOWA

Henry County

Budde—Singer Building (Mount Pleasant MPS), 110 N. Main, Mount Pleasant, 91001112

City Hall (Mount Pleasant MPS), 220 W. Monroe, Mount Pleasant, 91001120

First National Bank (Mount Pleasant MPS), 101 S. Jefferson, Mount Pleasant, 91001118

Henry County Savings Bank (Mount Pleasant MPS), 100 S. Main, Mount Pleasant, 91001116

Louisa Building (Mount Pleasant MPS), 120 S. Main, Mount Pleasant, 91001117

Masonic Temple Theater (Mount Pleasant MPS), 115 N. Main, Mount Pleasant, 91001119

Masters Building (Mount Pleasant MPS), 221 W. Monroe, Mount Pleasant, 91001121

McCandless Building (Mount Pleasant MPS), 115 W. Monroe, Mount Pleasant, 91001111

National State Bank (Mount Pleasant MPS), 101 W. Monroe, Mount Pleasant, 91001115

Timmerman—Burd Building (Mount Pleasant MPS), 118 S. Main, Mount Pleasant, 91001113

Union Block (Mount Pleasant MPS), 109–113 W. Monroe, Mount Pleasant, 91001110

Zuhn Building (Mount Pleasant MPS), 201 E. Monroe, Mount Pleasant, 91001114

KANSAS

Rooks County

Thomas Barn, NE of Woodston, near Osborne Co. line, Woodston vicinity, 91001104

Sedgwick County

Hypatia House, 1215 N. Broadway, Wichita, 91001105

KENTUCKY

Nelson County

Kelley, John S., House, 306 S. Fifth St., Bardstown, 91001103

MISSISSIPPI

Pike County

Tanglewood, Co. Rd. 468, 1 mi. N of MS 48, Magnolia vicinity, 91001102

TENNESSEE

Anderson County

Brannon, Luther, House (Oak Ridge MPS), 151 Oak Ridge Tpk., Oak Ridge, 91001108

Jones, J. B. House (Oak Ridge MPS), Old Edgemoor Rd. between Bethel Valley Rd. and Melton Hill Lake, Oak Ridge, 91001107

Oak Ridge Historic District (Oak Ridge MPS), Roughly bounded by East Dr., W. Outer Dr., Louisiana and Tennessee Aves., Oak Ridge, 91001109

Woodland—Scarboro Historic District (Oak Ridge MPS), Roughly bounded by Rutgers Ave., Lafayette Dr., Benedict, Wilburforce and Illinois Aves., Oak Ridge, 91001106

VIRGINIA

Hanover County

Hanover Meeting House, Address Restricted, Mechanicsville vicinity, 91001089

[FR Doc. 91–18555 Filed 8–5–91; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 290 (Sub-No. 4)]

Railroad Cost Recovery Procedures—Productivity Adjustment

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed action..

SUMMARY: The Commission is proposing to adopt a 1989 value for productivity change and incorporate that value, along with previously calculated data, into a 1982–1989 (eight-year) averaging period. Estimated average productivity growth for 1989 is 1.060. Estimated annual productivity for the 1982–1989 period is 1.046 or 4.6 percent. Addition of 1989 data will lengthen the averaging period and provide a more stable base for productivity measurement. The productivity adjustment is used to adjust the quarterly Rail Cost Adjustment Factor for productivity improvements.

DATES: Comments are due August 26, 1991. Replies are due September 10, 1991.

ADDRESSES: Send original and 10 copies of comments to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: William T. Bono, (202) 275–7354, Robert C. Hasek, (202) 275–0938, [TDD for hearing impaired (202) 275–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington DC 20423, or telephone (202) 289–4357/4359. Assistance for the hearing impaired is available through TDD Services at (202) 275–1721 or by pickup from Dynamic Concepts, Inc., room 2229 at Commission Headquarters.

This action will not significantly affect either the quality of the human environment or energy conservation.

Authority: 49 U.S.C. 10321, 10707a, 5 U.S.C. 553.

Decided: July 29, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald. Chairman Philbin did not participate in the disposition of this proceeding.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–18611 Filed 8–5–91; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31907]

Georgia Pacific Corp.—Continuance in Control Exemption—Arkansas Louisiana & Mississippi Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 11343 the continuance in control by Georgia Pacific Corporation (GP) of Arkansas Louisiana & Mississippi Railroad Company (AL&M) when it becomes a rail common carrier, subject to standard labor protective conditions. GP has six short-line Class III rail carrier subsidiaries, which are for the most part non-contiguous: (1) Ashley, Drew & Northern Railway (AD&N), which connects with AL&M at Crossett (none of GP's other rail subsidiaries connects with that line); (2) Fordyce & Princeton Railroad (F&P), at Fordyce, AR, which holds trackage rights over the AD&N and interchanges with AL&M at Crossett; (3) Amador Central Railroad, at Martell, CA; (4) Chattahoochee Industrial Railroad, at Cedar Springs, GA; (5) Gloster Southern Railroad, at Gloster and Columbia, MS; and (6) Old Augusta Railroad, at New Augusta, MS.

This transaction is related to the notice of exemption in Finance Docket No. 31906, Arkansas Louisiana & Mississippi Railroad Company—Acquisition and Operation Exemption—Arkansas and Louisiana Missouri Railway Company.

DATES: This exemption will be effective on September 5, 1991. Petitions to reopen must be filed by September 25, 1991.

ADDRESSES: Send pleadings referring to Finance Docket No. 31907 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and

(2) Petitioner's representative: D. Eugenia Langan, Shea & Gardner, 1800 Massachusetts Ave., NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired: (202) 275–1721.]

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Phillips, and McDonald. Chairman Philbin did not participate in the disposition of this proceeding.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–18611 Filed 8–5–91; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31907]

Georgia Pacific Corp.—Continuance in Control Exemption—Arkansas Louisiana & Mississippi Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 11343 the continuance in control by Georgia Pacific Corporation (GP) of Arkansas Louisiana & Mississippi Railroad Company (AL&M) when it becomes a rail common carrier, subject to standard labor protective conditions. GP has six short-line Class III rail carrier subsidiaries, which are for the most part non-contiguous: (1) Ashley, Drew & Northern Railway (AD&N), which connects with AL&M at Crossett (none of GP's other rail subsidiaries connects with that line); (2) Fordyce & Princeton Railroad (F&P), at Fordyce, AR, which holds trackage rights over the AD&N and interchanges with AL&M at Crossett; (3) Amador Central Railroad, at Martell, CA; (4) Chattahoochee Industrial Railroad, at Cedar Springs, GA; (5) Gloster Southern Railroad, at Gloster and Columbia, MS; and (6) Old Augusta Railroad, at New Augusta, MS.

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DATES: This exemption will be effective on September 5, 1991. Petitions to reopen must be filed by September 25, 1991.

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FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired: (202) 275–1721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275–1721.]

Decided: July 29, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–18612 Filed 8–5–91; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL COMMISSION ON SEVERELY DISTRESSED PUBLIC HOUSING

Meeting Announcement

AGENCY: National Commission on Severely Distressed Public Housing.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Commission on Severely Distressed Public Housing announces a forthcoming meeting of the Commission.

DATES: Monday, August 12, 1991, 9:30 a.m. to 3 p.m.

ADDRESSES: Public Hearing, Independent Square, 2455 So. Saint Andrews, Los Angeles, CA 90018.

Full Commission meeting at Hyatt Regency Hotel, 4 p.m. to 6 p.m., The Westin Bonaventure Hotel, Los Angeles, CA 90071.

FOR FURTHER INFORMATION CONTACT: Carmelita Pratt, Administrative Officer, The National Commission on Severely Distressed Public Housing, 1100 L Street, NW., room 7121, Washington, DC 20005 (202) 275–6933.

TYPE OF MEETING: Open.

Due to scheduling difficulties, this notice could not be published 15 days prior to this meeting as required by Federal Advisory Committee Act.

Carmelita R. Pratt,

Administrative Officer.

[FR Doc. 91–18501 Filed 8–5–91; 8:45 am]

BILLING CODE [illegible]

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted by September 5, 1991.

ADDRESSES: Send comments to Mr. Dan Chenok, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503; (202–395–7316). In addition, copies of such comments may be sent to Mr. Murray R. Welsh, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401).

FOR FURTHER INFORMATION CONTACT: Mr. Murray R. Welsh, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a revision of a currently approved collection of information. This entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: NEA Museum Program FY 1993–94 Guidelines.

Frequency of Collection: One-time.

Respondents: Individuals or households; State and local governments; Non-profit institutions.

Use: Federal aid is provided in the form of grants for arts and education oriented projects. Guideline instructions and applications elicit relevant information from applicants who apply under specific Museum Program categories. This information is necessary for a thorough and fair consideration of competing proposals in the peer panel review process.

Estimated Number of Respondents: 703.

Average Burden Hours per Response: 20.

Total Estimated Burden: 21,620.

Murray R. Welsh,

Director, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 91–18564 Filed 8–5–91; 8:45 am]

BILLING CODE 7537-01-M

Challenge/Advancement Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Challenge/Advancement Advisory Panel (Dance Challenge III Section) to the National Council on the Arts will be held on August 21, 1991 from 9 a.m–5:30 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9 a.m.–10 a.m. and 4:30 p.m.–5:30 p.m. The topics will be welcoming remarks, overview of Challenge III, and policy discussion.

The remaining portion of this meeting from 10 a.m.–4:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation of the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 5, 1991, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies.

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National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-18571 Filed 8-5-91; 8:45 am]

BILLING CODE 7537-01-M

Dance Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (General Services to the Field Section) to the National Council on the Arts will be held on August 26-27, 1991 from 9 a.m.-7 p.m. and August 28 from 9 a.m.-5 p.m. in room M-07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 28 from 2:30 p.m.-5 p.m. The topic will be policy discussion.

The remaining portions of this meeting on August 26-27 from 9 a.m.-7 p.m. and August 28 from 9 a.m.-2:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 5, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-18572 Filed 8-5-91; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by September 6, 1991. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357-7817.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The applications received are as follows:

1. Applicant

Mahlon C. Kennicutt II, Geochemical and Environmental Research, Texas A&M University, College Station, Texas 77845.

Activity for Which Permit Requested

Enter Specially Protected Area. The applicant is conducting research on the effects of an oil spill in Arthur Harbor near Palmer Station, Antarctica. He requests permission to enter Litchfield Island Specially Protected Area to collect sediments and other samples (fishes, limpets).

Location

Antarctic Peninsula area, Antarctica.

Dates

January 1992-June 1992.

2. Applicant

J. Robie Vestal, Department of Biology, University of Cincinnati, Cincinnati, Ohio 45221.

Activity for Which Permit Requested

Enter Site of Special Scientific Interest. The applicant is conducting research on rocks containing cryptoendolithic microbiota. He requests permission to enter Linnaeus Terrace Site of Special Scientific Interest to collect rock samples.

Location

Linnaeus Terrace, Victoria Land, Antarctica.

Dates

December 1991—February 1993.

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 91-18592 Filed 8-5-91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-219]

GPU Nuclear Corp., Jersey Central Power & Light Co; Environmental Assessment and Finding of No Significant Impact

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The applications received are as follows:

1. Applicant

Mahlon C. Kennicutt II, Geochemical and Environmental Research, Texas A&M University, College Station, Texas 77845.

Activity for Which Permit Requested

Enter Specially Protected Area. The applicant is conducting research on the effects of an oil spill in Arthur Harbor near Palmer Station, Antarctica. He requests permission to enter Litchfield Island Specially Protected Area to collect sediments and other samples (fishes, limpets).

Location

Antarctic Peninsula area, Antarctica.

Dates

January 1992–June 1992.

2. Applicant

J. Robie Vestal, Department of Biology, University of Cincinnati, Cincinnati, Ohio 45221.

Activity for Which Permit Requested

Enter Site of Special Scientific Interest. The applicant is conducting research on rocks containing cryptoendolithic microbiota. He requests permission to enter Linnaeus Terrace Site of Special Scientific Interest to collect rock samples.

Location

Linnaeus Terrace, Victoria Land, Antarctica.

Dates

December 1991—February 1993.

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 91–18592 Filed 8–5–91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–219]

GPU Nuclear Corp., Jersey Central Power & Light Co; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is

considering issuance of an amendment to Facility Operating License No. DPR–16 issued to GPU Nuclear Corporation, et al. (the licensee), for operation of the Oyster Creek Nuclear Generating Station, located in Ocean County, New Jersey.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the Technical Specification Section 3.4 to incorporate the 10 CFR 50.46 loss-of-coolant accident analysis that is the basis for the Average Planar Linear Heat Generation Rate (APLHGR) limit provided in Technical Specification section 3.10 "Core Limits". The Limiting Conditions for Operation and Bases will be changed as appropriate.

The proposed amendment is in accordance with GPU Nuclear Corporation's application dated August 14, 1990, as supplemented June 18, 1991.

Need for the Proposed Action

The proposed changes to the Facility Operating License are needed because the reduction of the APLHGR limits when a redundant Core Spray Loop is out of service would ensure 10 CFR 50.46 criteria are met for each action statement of the applicable Limiting Condition for Operation (LCO).

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the Technical Specification 3.4 to incorporate the 10 CFR 50.46 loss-of-coolant accident analysis that is the basis for the APLHGR limit provided in Technical Specification section 3.10 "Core Limits."

Based on its review, the Commission concludes that the proposed changes are acceptable. The NRC staff has determined that the proposed changes do not alter any initial conditions assumed for the design basis accidents previously evaluated nor change operation of safety systems utilized to mitigate the design basis accidents.

The proposed changes do not increase the probability or consequences of accidents. No changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that the proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed changes to the Technical Specifications involve components in the plant which are located within the restricted area as defined in 10 CFR part 20. They do not affect nonradiological plant effluents and have no other environmental impacts. Therefore, the Commission concludes that there are no significant nonradiological impacts associated with the proposed amendment.

Alternatives to the Proposed Action

Since the Commission concludes that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

Alternative Use of Resources

The action would involve no use of resources not previously considered in the Final Environmental Statement for the Oyster Creek Nuclear Generating Station dated December 1974.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The NRC staff has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated August 14, 1990, as revised June 18, 1991, which are available for public inspection in the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the local public document room located at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Dated at Rockville, Maryland 31st day of July, 1991.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

[FR Doc. 91–18604 Filed 8–5–91; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–315 and 50–316]

Indiana Michigan Power Co., Donald C. Cook Nuclear Plant, Units 1 and 2; Environment Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an Exemption from certain requirements of 10 CFR part 50, appendix E to Indiana Michigan Power Company (the licensee), for operation of the Donald C. Cook Nuclear Plant, Units 1 and 2, located in Berrien County, Michigan.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the schedular requirements of appendix E to 10 CFR part 50. On May 24, 1991, the licensee requested an exemption from section IV.F.3, which requires that each licensee at each site shall exercise with offsite authorities such that the State and local government emergency plans for each operating reactor site are exercised biennially, with full or partial participation by State and local governments, within the plume exposure pathway emergency planning zone (EPZ).

The Need for the Proposed Action

The proposed exemption is needed because the Federal Emergency Management Agency (FEMA) has requested that the State of Michigan and the licensee reschedule the offsite participation portion of the annual emergency preparedness exercise for D.C. Cook, Units 1 and 2 from November 1992 until May 1993.

The current schedule requires the State of Michigan to participate in one offsite exercise one year and in three offsite exercises during the next year. This places an uneven workload on the FEMA Region V office which evaluates the offsite aspects of the exercises.

Environmental Impact of the Proposed Action

The proposed exemption will move the State and Berrien County participation from the November 1992 exercise to the May 1993 exercise. The November 1992 exercise would then become a utility only exercise.

The affected local jurisdiction, Berrien County, participates in both the Palisades and Donald C. Cook Nuclear Plant Radiological Emergency Preparedness (REP) exercises. The schedule change would not reduce the

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number of REP exercises in which Berrien County participates.

Because of the requested change, the licensee for D.C. Cook would not meet the requirement in 1992 that "each licensee at each site shall exercise with offsite authorities * * *," however, the State of Michigan and Berrien County will still exercise with the Palisades Nuclear Plant as scheduled and would exercise with the D.C. Cook licensee in May 1993 approximately six months later than scheduled. The proposed exemption is temporary and is fully supported by the State of Michigan. The NRC's rating of licensee performance during previous REPs at D.C. Cook has been high and there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at the D.C. Cook Nuclear Plant.

Accordingly, the exemption does not appear to adversely affect either the probability or the consequences of an accident, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption does not affect a change in the installation or use of a facility component located within the restricted area as defined by 10 CFR part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce environmental impacts of plant operation and would result in increased operational burden on FEMA Region V.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Donald C. Cook Nuclear Plant, Units 1 and 2, dated August 1973.

Agencies and Persons Consulted

By letter dated April 15, 1991, the State of Michigan documented the need of FEMA Region V Office and the support of FEMA headquarters for the requested exemption. The State of Michigan further indicated that neither they nor the affected local jurisdiction, Berrien County, objected to the proposed schedule change. This information was considered by the NRC in the evaluation of the requested exemption.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letter dated May 24, 1991, with the State of Michigan letter dated April 15, 1991, attached. These letters are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washingtion DC, and at the Maude Preston Palenske Memorial Library, 500 Market Street, St Joseph, Michigan 49085.

Dated at Rockville, Maryland, this 29th day of July 1991.

For the Nuclear Regulatory Commission.

Timothy G. Colburn,

Acting Director, Project Directorate III–1, Division of Reactor Projects—III, IV, V, Office of Nuclear Reactor Regulation.

[FR Doc. 91–18605 Filed 8–5–91; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 40–8958 and 40–8981]

Pathfinder Mines Corp.; Final Finding of No Significant Impact Regarding Termination of Source Material License SUA–1539 Authorizing the Commerical Operation of Ruth In-Situ Leach Project, Johnson County, WY

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of final finding of no significant impact.

1. Proposed Action

The proposed administrative action is to terminate Source Material License SUA–1539.

2. Reasons for Final Finding of No Significant Impact

An environmental assessment was prepared by the staff at the U.S. Nuclear Regulatory Commission (NRC), Uranium Recovery Field Office, Region IV. The environmental assessment performed by the Commission's staff evaluated potential impact on-site and off-site due to radiological releases that may occur during the course of the Ruth in-situ leach project. Based on the review of the operational data and the Pathfinder Mines Corporation's application materials, the Commission has determined that no significant impact will result from operation of the site. The proposed action is to incorporate all license conditions associated with the Ruth in-situ leach project into the license covering the North Butte in-situ leach operations. The North Butte Source Material License SUA–1540 has been amended to include all of the Ruth license commitments. Due to this Source Material License SUA–1539 may be terminated without any significant impacts.

In consideration of this situation, the Director of the Uranium Recovery Field Office, in accordance with 10 CFR 51.35 is issuing a final finding of no significant impact. Concurrent with this finding, the Commission's Uranium Recovery Field Office will terminate Source Material License SUA–1539.

Dated at Denver, Colorado, this 26th day of July, 1991.

For the Nuclear Regulatory Commission.

Ramon E. Hall, Director,

Uranium Recovery Field Office Region IV

[FR Doc. 91–18606 Filed 8–5–91; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 34th meeting on August 27 (7 p.m.–9 p.m.), 28 (8:30 a.m.–9 p.m.) and 29 (8:30 a.m.–5 p.m.), 1991, room P–110, 7920 Norfolk Avenue, Bethesda, MD. The entire meeting will be open to the public.

The agenda for the subject meeting shall be as follows:

A. State of Nevada to present a summary and discussion of the State's review and comments on DOE's Site Characterization Plan and related Study Plans.

B. DOE to present a summary and discussion of the DOE responses to comments by EPA, NRC and State of Nevada on Yucca Mountain Site Characterization Plan.

C. Presentation by the NMSS High Level Waste staff on the results of the review of DOE's reponses to the NRC staff's Site Characterization Analysis.

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Dated at Denver, Colorado, this 26th day of July, 1991.

For the Nuclear Regulatory Commission.

Ramon E. Hall, Director,

Uranium Recovery Field Office Region IV

[FR Doc. 91–18606 Filed 8–5–91; 8:45 am]

BILLING CODE 7590-01-M

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C. Presentation by the NMSS High Level Waste staff on the results of the review of DOE's reponses to the NRC staff's Site Characterization Analysis.

D. Presentation on the proactive program for High Level Waste. This involves planned rulemakings, guidelines, and technical positions in support of the High Level Waste program.

E. Prepare the next Program Plan for ACNW activities over the next four months.

F. Begin deliberations on what technical and scientific questions are necessary to make a determination that adequate technology is available to safely store high-level radioactive wastes (spent fuel) resulting from nuclear power plant operations on an interim basis for the next 50 years.

G. Review the NRC staff's current position on the Working Draft #3 of the U.S. Environmental Protection Agency's High-Level Waste Disposal Standards, and a revised NRC staff paper on their approach for dealing with uncertainties in implementing the EPA high-level waste standards.

H. Review the staff's response to the ACNW's May 30, 1991, report on alternative approach to the probabilistic section of the containment requirements in 40 CFR part 191 ("The Three-Bucket Approach").

I. Discuss Committee activities, future meeting agenda, administrative, and organizational matters, as appropriate. Also, discuss matters and specific issues that were not completed during previous meetings as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only be members of the Committee, its consultants, and staff. The office of the ACRS is providing staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the office of the ACRS as far in advance as practical so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the office of the ACRS, Mr. Raymond F. Fraley (telephone 301/492–4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director or call the recording (301/492–4600) for the current schedule if such rescheduling would result in major inconvenience.

Dated: July 31, 1991.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 91–18602 Filed 8–5–91; 8:45 am]

BILLING CODE 7590-01-M

Availability of Staff Technical Position on Regulatory Considerations in the Design and Construction of the Exploratory Shaft Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of NUREG–1439, "Staff Technical Position (STP) on Regulatory Considerations in the Design and Construction of the Exploratory Shaft Facility (ESF)."

ADDRESSES: Copies of NUREG–1439, including the staff disposition of comments from the public on the August 1990 draft technical position (TP) and from the Advisory Committee on Nuclear Waste (ACNW) on the final draft STP, can be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy of NUREG–1439 is also available for public inspection and/or copying at the NRC Public Document Room, 2120 L Street (Lower Level), NW., Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Robert D. Carlson, Project Manager, Repository Licensing and Quality Assurance Project Directorate, Division of High-Level Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, MD 20852. Telephone 301/492–0435.

SUPPLEMENTARY INFORMATION: This STP is undertaken for the purpose of compiling and further clarifying previous staff positions on regulatory considerations in the design and construction of the exploratory shaft facility (ESF) for a potential high-level radioactive waste repository. (DOE now refers to the ESF as the "exploratory *studies* facility.") The STP covers topics that include certain aspects of the design control process, coordination of ESF design with design of the geologic repository operations area (GROA), consideration of alternatives, excavation methods, test interference, and site characterization. The positions and discussion in this STP are based on the premise that the permanent components of the ESF may become a part of an eventual GROA. Therefore, all 10 CFR part 60 requirements applicable to the GROA design would be considered applicable to the ESF design. This STP lists the key regulations in 10 CFR part 60 that should be considered in the design and construction of the ESF and presents the staff position statements and corresponding discussions.

Finally, this STP gives specific guidelines by which the staff plans to assess the U.S. Department of Energy's work on the ESF design and documents related thereto.

On August 14, 1990, the NRC published the "Notice of Availability" for the draft TP and solicited public comments (see 44 FR 33193). As a result, approximately 50 comments were received from three different parties. The NRC staff reviewed the comments and, as a result, changes and clarifications have been incorporated into the draft TP now classified as a "STP." Staff responses to the comments have been documented separately and included as appendices. The STP has been developed after consideration of the ACNW comments on the draft STP as well. The ACNW comments and staff responses to these comments have been documented as an apendix to the STP.

Dated at Rockville, Maryland this 24th day of May, 1991.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 91–18607 Filed 8–5–91; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29487; File No. SR-CBOE-91-25]

Self-Regulatory Organizations; Chicago Board Options Exchange; Notice of Filing of Proposed Change Relating to Minor Rule Violation Fine Plan

July 30, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 17, 1991, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.[1]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a fine system for the disposition of certain minor rule violations. A summary of the proposed fine system is set forth below.[2]

The proposed rule would enable the Exchange, in lieu of commencing a disciplinary proceeding for violations of minor rules, to impose a fine in an amount not to exceed $5,000. The proposed rule contains a list of the rule violations that would be subject to the summary fine system, along with the proposed fine schedules. Among the violations proposed to be subject to the summary fine procedures are the Exchange's trading conduct and decorum violations, position limit violations and audit trail violations.

A person fined pursuant to the proposed rule may contest the fine within a specified period of time, at which point the matter will be deemed a disciplinary proceeding subject to review by the Business Conduct Committee. Contested trading conduct and decorum finds not in excess of $2,500 are subject to review by the Appeals Committee. Persons wishing to contest a fine must pay a filing fee, which will be refunded if the fine ultimately is eliminated. The filing fee also may be waived upon a satisfactory showing of hardship. Fines that are not contested in a timely manner will be collected by drafting the account of the clearing member previously designated by the person fined pursuant to Exchange Rule 3.23.

Uncontested fines in amounts not exceeding $2,500 will be reported to the Commission on a quarterly basis. Fines in excess of $2,500 would be subject to current, rather than quarterly, reporting to the Commission in accordance with Rule 19d-1 of the Act. The CBOE will issue circulars periodically to supplement various provisions of the proposed rule.

The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the fine system for minor rule violations is to provide a mechanism whereby certain minor violations of Exchange rules can be resolved fairly, effectively, and expeditiously. Because the violations subject to fine are objectively ascertainable, they are conducive to summary treatment. The imposition of fines pursuant to pre-established schedules that are known to the CBOE membership will help to ensure equitable treatment among persons charged with minor rule violations, as well as providing an effective deterrent. In addition, by enabling persons to pay the fine and avoid the time-consuming proceedings necessitated by more complex disciplinary matters, the proposed rule will better allocate the Exchange's resources. Finally, the rule will simplify the Exchange's administrative responsibilities, since uncontested fines not exceeding $2,500 can be reported to the Commission quarterly and in an abbreviated fashion.

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(1) and 6(b)(7) in particular, in that it enhances the effectiveness and fairness of the Exchange's disciplinary procedures.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 4 U.S.C 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC.

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[1] This notice satisfied the solicitation requirements contained in rule 19d-1(c)(2).

[2] The CBOE filed an amendment to the proposal with the Commission on July 8, 1991, which added a summary of the proposed fine system to the notice. See letter from Robert P. Ackermann, Vice President, Legal Services, CBOE, to Thomas Gira, Branch Chief, Division of Market Regulation, Commission, dated June 28, 1991.

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(2) Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(1) and 6(b)(7) in particular, in that it enhances the effectiveness and fairness of the Exchange's disciplinary procedures.

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No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 4 U.S.C 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC.

20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-91-25 and should be submitted by August 27, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-18574 Filed 8-5-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Incorporated

July 31, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following security:

IMCO Recycling, Inc.

Common Stock, $0.10 Par Value (File No. 7-7120)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 9, 1991, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-18535 Filed 8-5-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29498; File No. SR-NYSE-91-24]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to an Extension of the Pilot Program for Rule 80A

July 30, 1991.

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 19, 1991, the New York Stock Exchange, Inc. ("NYSE" or Exchange) filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would extend a pilot program for the provisions of Exchange Rule 80A relating to certain restrictions on the execution of index arbitrage orders when the Dow Jones Industrial Average ("DJIA") has advanced or declined 50 points or more from its closing value on the previous trading day.[1] Specifically, the Exchange requests that the pilot be extended until the earlier of November 1, 1991 or the date on which the Commission takes action on the permanent approval of the pilot. In a separate filing, the Exchange has requested permanent approval of these provisions of rule 80A ("Permanent Approval Request").[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The provisions of Exchange Rule 80A regarding stabilization procedures as they apply to index arbitrage orders in component stocks of the S&P 500 Stock Price Index when the DJIA advances or declines by 50 points from its previous day's closing value were approved by the Commission for a one year pilot ending July 31, 1991.[3] On June 10, 1991, the Exchange filed a request to make these procedures permanent. The Exchange now is requesting approval to extend the pilot program in order to allow for the uninterrupted utilization of the procedures while the Commission considers the Exchange's Permanent Approval Request.

As stated in its Permanent Approval Request, the Exchange believes that the procedures have worked well to minimize excess volatility which may be associated with index arbitrage activity during periods of significant market movement without adversely impacting the markets in derivative equity instruments.

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[1] Initially, the NYSE requested an extension of the pilot until the earlier of 90 days from the expiration of the pilot or the date when the Commission takes action on permanent approval of the pilot. Subsequently, the NYSE amended the filing to provide for an extension of the pilot until November 1, 1991, or until such earlier date when the Commission acts on permanent approval of the pilot. The NYSE's amendment also clarified that, while the Exchange's original filing only specifically addressed the extension of trading restrictions imposed on index arbitrage activity pursuant to NYSE Rule 80A(c), the Exchange also proposes to extend the provisions of Rule 80A(d) which place restrictions on the trading of baskets of stock through the NYSE's Exchange Stock Portfolio ("ESP") Service. *See* letter from Brian M. McNamara, Managing Director, NYSE, to Thomas Gira, Branch Chief, Division of Market Regulation, SEC, dated July 25, 1991.

[2] *See* Securities Exchange Release No. 29306 (June 14, 1991), 56 FR 23428 (File No. SR-NYSE-91-21). The NYSE also submitted to the Commission a report on the operation of the pilot program. *See* The Rule 80A Index Arbitrage Tick Test—Report to the Commission ("NYSE Pilot Report"), NYSE Research & Planning, May 31, 1991.

[3] Specifically, when the DJIA declines by 50 points or more from the previous trading day's closing value, all index arbitrage orders to sell must be entered with the instruction "sell plus." Conversely, when the DJIA advanced by 50 points or more from its previous trading day's closing value, all index arbitrage orders to buy component stocks of the S&P 500 must be entered with the instruction "buy minus." These conditions once activated remain in effect for the remainder of the trading day, except that the conditions no longer apply when the DJIA moves back to a value which is 25 points or less from its previous day's closing value. These conditions are reimposed if the DJIA subsequently were to reach again the 50 point DJIA trigger and are removed if the DJIA again moved to a value that is 25 points or less from the previous day's close. The pilot program provides for similar treatment of trading through the NYSE's ESP Service after the DJIA moves 50 points from its previous day's close. For additional information regarding the pilot program procedures, see Securities Exchange Act Release No. 28282 (July 30, 1990), 55 FR 31468.

The Exchange believes that the basis for this proposed rule change under the Act is the requirement under section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the poposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested accelerated approval of the proposed rule change pursuant to section 19(b)(2) of the Act. The Exchange believes that the procedures have provided a benefit to its marketplace in helping to minimize excess market volatility during periods of significant market activity and continuance of the pilot program procedures would be in the interest of public investors. The Commission finds that the proposed rule change to extend the pilot program is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 and the rules and requirements thereunder.[4] The Commission concluded, when approving the commencement of the pilot program, that the NYSE pilot program to condition index arbitrage and ESP trading activities after a 50 point move in the DJIA was a reasonable effort by the Exchange to attempt to address volatility in the marketplace. The Commission also noted that establishing pre-set trading conditions that only apply after major market moves and then only to a narrow and limited segment of trading activity, specifically index arbitrage activity and ESP trading, was a reasonable proposal by the Exchange that should be provided an opportunity to succeed.

When approving the pilot program, the Commission required the NYSE to provide a quantitative and analytical assessment of the effects, if any, of the pilot rules on curbing destabilization of the stock market and retaining liquidity during volatility market conditions.[5] At the present time, the Commission is continuing its review of the NYSE Pilot Report and believes that the pilot program should be permitted to continue until the Commission's review is completed.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register** so that the program will not lapse before the Commission is ready to consider whether it should be approved on a permanent basis. If, as the NYSE states in its order seeking permanent approval of the index arbitrage restriction, rule 80A has been helpful to investor confidence, then it is consistent with the public interest to continue the program uninterrupted while the Commission evaluates the issue. Finally, to date, the Commission has not received any adverse comments concerning the operation of the Exchange's pilot program.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 27, 1991.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (SR-NYSE-91-24) is approved and, accordingly, that the pilot program is extended until November 1, 1991, or until such earlier date when the Commission acts on the NYSE's Permanent Approval Request.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-18575 Filed 8-5-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29506; File No. SR-NYSE-91-25]

Self-Regulatory organizations; Notice of Filing and Order Granting Accelerated Temporary Approval of Proposed Rule Change by New York Stock Exchange, Inc. Relating to Six-month Extension of Rule 805 (Priority of Basket Bids and Offers) and Rule 806 (Taking or Supplying Baskets Named in Order)

July 31, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (Act), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 23, 1991, the New York Stock Exchange, Inc. (NYSE or Exchange) filed with the Securities and Exchange Commission (Commission) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. The Commission also is approving the proposed rule change on an accelerated basis.[1]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of a request to extend the effectiveness of Exchange Rule 805 (Priority of Basket Bids and Offers) and rule 806 (Taking or Supplying Baskets Named in Order) to January 31, 1992.[2]

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[4] 15 U.S.C. 78f(b)(5) (1982).

[5] In particular, the approval order identified three specific factors that should be analyzed: (1) Correction of stock prices after the 50 point triggering event from their low (high) price, (2) the bid/ask spreads of the stocks contained in the S&P 500 during those periods, and (3) the divergence between stocks, stock index futures and index options prices during those periods. Additionally, the Commission directed the NYSE to evaluate alternative measures to achieve these objectives.

[6] 15 U.S.C. 78s(b) (1982).

[1] In its filing, the NYSE requested that the Commission approve this proposal on an accelerated basis. See File No. SR-NYSE-91-25.

[2] Originally, the Commission gave temporary approval to Rules 805 and 806 for a six-month

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the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 27, 1991.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (SR–NYSE–91–24) is approved and, accordingly, that the pilot program is extended until November 1, 1991, or until such earlier date when the Commission acts on the NYSE's Permanent Approval Request.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–18575 Filed 8–5–91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–29506; File No. SR–NYSE–91–25]

Self-Regulatory organizations; Notice of Filing and Order Granting Accelerated Temporary Approval of Proposed Rule Change by New York Stock Exchange, Inc. Relating to Six-month Extension of Rule 805 (Priority of Basket Bids and Offers) and Rule 806 (Taking or Supplying Baskets Named in Order)

July 31, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (Act), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 23, 1991, the New York Stock Exchange, Inc. (NYSE or Exchange) filed with the Securities and Exchange Commission (Commission) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. The Commission also is approving the proposed rule change on an accelerated basis.[1]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of a request to extend the effectiveness of Exchange Rule 805 (Priority of Basket Bids and Offers) and rule 806 (Taking or Supplying Baskets Named in Order) to January 31, 1992.[2]

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[6] 15 U.S.C. 78s(b) (1982).

[1] In its filing, the NYSE requested that the Commission approve this proposal on an accelerated basis. See File No. SR–NYSE–91–25.

[2] Originally, the Commission gave temporary approval to Rules 805 and 806 for a six-month

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose

The purpose of this filing is to extend the effectiveness of rule 805 (Priority of Basket Bids and Offers) and rule 806 (Taking or Supplying Baskets Named in Order) until January 31, 1992.

Rule 805 sets forth the rules of priority applicable to basket bids and offers. The highest bid or lowest offer has priority in all cases. At the same price, Tier 1 and Tier 2 bids and offers have priority over all other bids and offers, so as to enhance the opportunity for public customers in the component stock markets to participate. Next, priority at a price is determined by the time of entry on the Exchange Stock Portfolio ("ESP") display unit. Finally, a bid or offer from the trading crowd has priority over other bids or offers from the trading crowd at that price (though not over bids or offers on the display unit at that price) based on when the bid or offer was made. Where the sequence of trading crowd bids and offers cannot be determined, or where bids and offers in the trading crowd are made simultaneously, priority will be shared on a pro rata basis. The Rule also makes clear that, unlike stock trading, a basket sale does not remove all bids and offers. Paragraph (d) of the Rule allows a member to cross two agency orders without exposing either side, but only at a price that is better than the ESP display unit's best bid and offer for the basket, and if the cross price is announced to the trading crowd.

Rule 806 specifies that a Competitive Basket Market-Maker ("CBMM") may only facilitate a customer's order at a price that is better than the best bid or offer on the ESP display unit, and only after announcing the facilitation price to other members in the trading crowd. Rule 806(b) prohibits another Exchange member from interceding in the facilitation if the proposed facilitation price is only one "minimum variation" (*i.e.*, .01 index points) better than the prevailing quote on the customer's side of the market. When a facilitation is more than the minimum variation from the prevailing quote, NYSE Rule 806(b) permits another member to intercede in a CBMM's facilitation trade by taking or supplying all of the baskets that the customer seeks at a price that is better for the customer than the facilitation price.

In its original filing of these rules, the Exchange agreed, in response to a request from the Commission staff, to provide a six-month "sunset" provision to these rules.[3] The Commission noted in its order granting temporary approval to Rules 805 and 806 that it would be difficult to predict whether the ESP market would expand and be characterized by active basket trading, or whether trading would be sporadic. Accordingly, the Commission determined that it was consistent with the Act for the Exchange to build in necessary incentives to ensure active market-making participation, at least in the initial stages of basket trading, and therefore the Commission gave temporary approval to Rules 805 and 806 for a six-month period, ending April 30, 1990. Subsequently, the Exchange requested and was granted two additional extensions.[4] The effectiveness of Rules 805 and 806 are due to expire July 31, 1991.

Volume in basket trading has continued to be low. In light of this low trading activity in baskets, and consistent with the decision to extend the exemption from consolidated last trade reporting of ESP volume in component stocks,[5] the Exchange is requesting that the Commission extend the effectiveness of the current rules for six months so that additional market experience can be gained.

Statutory Basis

The basis under the Act for this proposed rule change is Section 6(b)(5), which requires that rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the NYSE. All submissions should refer to File No. SR–NYSE–91–25 and should be submitted by August 27, 1991.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission has determined that the proposed rule change to extend the effectiveness of NYSE Rules 805 and 806 until January 31, 1992 is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities

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period, ending April 30, 1990 see Securities Exchange Act Release No. 27382 (October 26, 1989), 54 FR 45834 (order temporarily approving File No. SR–NYSE–89–5). Subsequently, the Exchange requested, and the Commission granted, a nine-month extension of these rules through January 31, 1991 see Securities Exchange Act Release No. 27965 (April 30, 1990), 55 FR 19133 (order temporarily approving File No. SR–NYSE–90–23), and an additional six-month extension due to expire on July 31, 1991 see Securities Exchange Act Release No. 28840 (January 31, 1991), 56 FR 4882 (February 6, 1991).

[3] See note 2, *supra*.

[4] See note 2, *supra*.

[5] See not 6, *infra*.

exchange.[6] In particular, the Commission believes that the proposed rule change is consistent with the section 6(b)(5) requirement that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

In the order extending the effectiveness of Rules 805 and 806 until July 31, 1991, the Commission stated that the Exchange should continue to assess the NYSE's basket market and file a report with the Commission detailing the Exchange's experience regarding the trading of baskets. The Exchange recently informed the Commission that trading volume remains low.[7] Thus, the Commission believes that in light of the low basket volume to date, the Exchange should be able to continue employing rules of time and price priority in order to provide an incentive that may attract upstairs capital to the basket market. Because the proposed extension of effectiveness of rule 805 will permit the Exchange to continue allowing baskets to trade under the regime of strict price and time priority, with no distinction between proprietary and customer orders, thereby providing an incentive for upstairs firms to participate in the basket market, the Commission has determined to approve an extension of the effectiveness of Rule 805 on a temporary six-month basis.

Further, the proposed extensions of effectiveness of Rule 806 will permit Exchange to continue allowing only CBMMs to effect proprietary cross transactions. While the Commission remains concerned about the anti-competitive limitations on proprietary trading contained in Rule 806, the Commission believes that a six-month extension of the effectiveness of the rule is consistent with the Act. As with the extension of Rule 805, the low basket volume to date justifies the continuations of Rule 806 as structured in order to attract upstairs maket-making participation to the basket market. Accordingly, the Commission has determined to approve, on a temporary six-month basis, an extension of the effectiveness of the NYSE's limitations on proprietary trading contained in Rule 806. If during the next six months, however, baskets become actively traded, no artificial market-making incentives should be necessary and the Commission trading and facilitation by all member firms.

Because trading volume in the baskets has remained lower than previously anticipated, the Commission believes an extension of NYSE rules 805 and 806 until January 31, 1992 would provide the Exchange with additional time to evaluate the effects of basket trading on the market. As indicated in the past orders extending the effectiveness of rules 805 and 806, the Commission expects that during the extended time period of six months, the Exchange will continue to assess the NYSE's basket market. The Commission also expects that by December 1, 1991 the Exchange will file a report detailing the NYSE's experience regarding the trading of baskets.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in order that the Exchange members may continue their current order priority and precedence and proprietary facilitation procedures for basket trading without disruption. In addition, accelerated approval is necessary because the effectiveness of the rules expires on July 31, 1991. Finally, the Commission did not receive any comments on the orders approving the previous two extensions of Rules 805

It is therefore Ordered, pursuant to section 19(b)(2)[8] of the Act, that the proposed rule change be, and hereby is, approved for a six-month period ending on January 31, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-18576 Filed 8-5-91; 8:45am]

BILLING CODE 8010-01-M

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[6] In addition, the Commission has issued an order which extends the Exchange's exemption from reporting transactions in reported securities and disseminating on a consolidated basis the total trading volume for each component stock in basket transcations, pursuant to Rule 11Aa3-1 under the Act, through January 31, 1992. See Securities Exchange Act Release No. 29507 (July 31, 1991).

[7] See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Christine Sakach, Branch Chief, Division of Market Regulations, SEC, dated Jult 22, 1991.

[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30-3(a)(12) (1990).

[Release No. 34-29507; File No. SR-NYSE-91-25]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Extending Exemption Relating to Basket Trading

July 31, 1991.

I. Introduction

On October 26, 1989, the Securities and Exchange Commission (Commission or SEC) approved a proposed rule change submitted by the New York Stock Exchange, Inc. (NYSE or Exchange) to trade "Exchange Stock Portfolios" (ESPs), standardized baskets of stocks, on the floor of the Exchange (ESP Service).[1] As part of the proposal, the Exchange requested certain exemptions under rule 11Aa3-1 of the Securities Exchange Act of 1934 (Act) from the Rule's requirements to report transactions in reported securities and to disseminate on a consolidated basis the total trading volume for each component stock in ESP transactions.[2] The Commission granted an exemption from the requirement that the NYSE disseminate transaction reports for individual securities and a temporary exemption for the dissemination, on a consolidated basis, of the total trading volume for each component stock in ESP transactions.[3] This temporary exemption was extended through July 31, 1991.[4] Because the volume in ESPs continues to be low, the NYSE requested that the Commission extend the temporary exemption once more through January 31, 1992.[5] This order approves the extension of the temporary exemption.

II. Discussion

Pursuant to Rule 11Aa3-1[6] under the Act, the NYSE is required to collect and disseminate transaction data on securities listed and traded on the Exchange. More specifically, Rule 11Aa3-1 requires that the Exchange disseminate transaction reports for individual reported securities traded on the Exchange,[7] and that the Exchange disseminate on a consolidated basis trading volume for each of the component stocks represented by ESP transactions.[8]

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[1] See Securities Exchange Act Release No. 27382 (October 26, 1989), 54 FR 45834.

[2] See letter from Richard A. Grasso, President and Chief Operating Officer, NYSE, to Brandon C. Becker, Associate Director, Division of Market Regulation ("Division"), SEC, dated October 4, 1989; and letter from Michael J. Simon, Milbank, Tweed, Hadley & McCloy, counsel for the NYSE, to Kathryn V. Natale, Assistant Director, Division, SEC, dated October 13, 1989.

[3] See Securities Exchange Act Release No. 27390 (October 26, 1989), 54 FR 45876.

[4] See Securities Exchange Act Release No. 28841 (January 31, 1991), 56 FR 4881.

[5] See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Christine A. Sakach, Branch Chief, National Market System Branch, Division of Market Regulation, SEC, dated July 22, 1991.

[6] 17 CFR 240.11Aa3-1 (1989).

[7] Rule 11Aa3-1(c)(1) and (2). Paragraph (a)(4) of rule 11Aa3-1 defines a "reported security" as that for which transaction reports are required to be made on a real-time basis pursuant to an effective transaction reporting plan.

The NYSE provides trading facilities through the ESP Service for reported securities (as components of baskets) but does not disseminate on a consolidated basis the total daily trading volume for each component stock. The NYSE believed that its proposal to exclude end-of-day transaction volume in the ESP component stocks from the consolidated transaction volume figures was appropriate to provide the Division and the Exchange with an opportunity to assess whether the absence of individual basket component stocks in the end-of-day consolidated volume figures merited modification in light of actual trading experience.[9]

Due to the low volume in basket trading, the NYSE has requested an extension of the exemption for disseminating on a consolidated basis the total trading volume for each component stock. The Commission believes that it is appropriate to extend the conditional relief from rule 11Aa3–1 through January 31, 1992. The NYSE, however, must file a proposed rule change that will provide for the inclusion of end-of-day transaction volume in the ESP component stocks in the consolidated transaction volume figures, on or before December 1, 1991.

III. Conclusion

Based on the factors presented above, the Commission finds that the requested extension of the temporary exemption granted under rule 11Aa3–1 is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 11A of the Act, and rule 11Aa3–1(g) thereunder, that the temporary exemption from the requirement of paragraph (b)(2)(iv) of rule 11Aa3–1 that the Exchange provide for the consolidation of transaction reports be, and hereby is, extended through January 31, 1992.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–18577 Filed 8–5–91; 8:45 am]

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[8] Rule 11Aa3–1(b)(2)(iv).

[9] *See* letter from Richard A. Grasso, President and Chief Operating Officer, NYSE, to Brandon C. Becker, Associate Director, Division, SEC, dated October 4, 1989.

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

July 31, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Sierra Health Services
  Common Stock, $0.01 Par Value (File No. 7–7121)
Universal Health Service, Inc.
  Class B Common Stock, $0.01 Par Value (File No. 7–7122)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 21, 1991, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–18536 Filed 8–5–91; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Application To Withdraw From Listing and Registration; Swift Energy Company, Common Stock, $.01 Par Value (File No. 1–8754)

July 31, 1991.

Swift Energy Company ("Company") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and rule 12d2–2(d) promulgated thereunder to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

Effective at the opening of business on July 11, 1991, the Company's Common Stock commenced trading on the New York Stock Exchange ("NYSE"). In making the decision to withdraw its Common Stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its Common Stock on the NYSE and Amex. The Company does not see any particular advantage in the dual trading of its Common Stock and believes that dual listing would fragment the market for its Common Stock.

Any interested person may, on or before August 21, 1991, submit by letter to the Secretary of the Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–18537 Filed 8–5–91; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster Loan Areas #7356, #7357, & #7358]

District of Columbia (With Contiguous Counties in Virginia and Maryland); Declaration of Disaster Loan Area

The District of Columbia and the contiguous counties of Arlington and Fairfax and the Independent City of Alexandria in the State of Virginia, and Montgomery and Prince Georges Counties in the State of Maryland constitute an Economic Injury Disaster Loan Area due to damages caused by civil disorders which occurred on May 5 and 6, 1991 in the Mount Pleasant and Adams-Morgan areas. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on April 27, 1992 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, suite 300, Atlanta, Georgia 30308 or other locally announced locations. The interest rate for eligible small busineses and small agricultural cooperatives is 4 percent.

The economic injury number assigned to the State of Virginia is 735700 and for the State of Maryland the number is 735800.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: July 25, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 91–18538 Filed 8–5–91; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Areas #2516 & #2517]

Missouri (And Contiguous Counties in Illinois); Declaration of Disaster Loan Area

St. Louis County, the contiguous counties of Franklin, Jefferson, and St. Charles, and the Independent City of St. Louis in the State of Missouri, and Madison, Monroe, and St. Clair Counties in the State of Illinois constitute a disaster area as a result of damages caused by flooding which occurred on July 9–10, 1991. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September 26, 1991 and for economic injury until the close of business on April 27, 1992 at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., suite 102, Ft. Worth, TX 76155 or other locally announced locations.

The interest rates are:

	Percent
For physical damage:	
Homeowners with Credit Available Elsewhere	8.000
Homeowners without Credit Available Elsewhere	4.000
Businesses with Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) with Credit Available Elsewhere	9.125
For economic injury:	
Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000

The numbers assigned to this disaster for physical damage are 251606 for the State of Missouri and 251706 for the State of Illinois. For economic injury the numbers are 735900 for Missouri and 736000 for Illinois.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 26, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 91–18539 Filed 8–5–91; 8:45 am]

BILLING CODE 8025-01-M

[License No. 03/03–0050]

Fidelity America Small Business Investment Co.; Surrender of License

Notice is hereby given that Fidelity America Small Business Investment Co., ("FASBIC"), 128 Fayette St., Conshohocken, PA 19428, has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). FASBIC was licensed by the Small Business Administration on January 4, 1963.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the license was accepted on June 17, 1991, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 26, 1991.

Bernard Kulik,

Associate Administrator for Investment.

[FR Doc. 91–18540 Filed 8–5–91; 8:45 am]

BILLING CODE 8025-01-M

[Delegation of Authority No. 12-A (Revision 4)]

Delegation of Authority; Redelegation of Financial Assistance

Delegation of Authority No. 12–A (Revision 3) (49 FR 5411) is hereby superseded by Delegation of Authority No. 12–A (Revision 4). This revision reflects the organizational changes made by a reorganization of the Finance and Investment activities of the Small Business Administration. Delegation of Authority No. 12–A (Revision 4) reads as follows:

I. Pursuant to the action of the Administrator, Small Business Administration, dated February 12, 1990 the following authority is hereby delegated to the specific positions designated herein as follows:

A. To the Assistant Administrator for Financial Assistance as follows:

1. Financial Assistance Program

a. To take any and all actions involved in approval or decline of applications for direct and guaranteed business and development company loans, and approval or decline of guarantees of debentures, authorized to be made under section 7(a) of the Small Business Act and title V of the Small Business Investment Act of 1958 including reconsideration thereof; and to execute authorizations and modifications pertaining to such loans and debentures.

b. To cancel, reinstate, modify, and amend authorizations for any such loans and debentures.

c. To determine eligibility for loan and debenture financing applicants.

d. To take all necessary actions in connection with the sale of SBA guaranteed Certified Development Company debentures and SBA guaranteed Certificates issued against pools of such debentures to the Federal Financing Bank or any other duly qualified purchaser as determined by SBA.

e. To take all necessary actions in connection with the servicing, administration, collection, and liquidation of all loans and debentures and any other obligations and acquired property related to them; with the exception of legal action to be taken with respect to loans or debentures classified as in litigation.

f. To take all necessary actions in connection with the liquidation of loans made by the Economic Development Administration of the Department of Commerce pursuant to a Memorandum of Understanding executed on March 10, 1971, with the exception of legal action

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[Delegation of Authority No. 12-A (Revision 4)]

Delegation of Authority; Redelegation of Financial Assistance

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A. To the Assistant Administrator for Financial Assistance as follows:

1. Financial Assistance Program

a. To take any and all actions involved in approval or decline of applications for direct and guaranteed business and development company loans, and approval or decline of guarantees of debentures, authorized to be made under section 7(a) of the Small Business Act and title V of the Small Business Investment Act of 1958 including reconsideration thereof; and to execute authorizations and modifications pertaining to such loans and debentures.

b. To cancel, reinstate, modify, and amend authorizations for any such loans and debentures.

c. To determine eligibility for loan and debenture financing applicants.

d. To take all necessary actions in connection with the sale of SBA guaranteed Certified Development Company debentures and SBA guaranteed Certificates issued against pools of such debentures to the Federal Financing Bank or any other duly qualified purchaser as determined by SBA.

e. To take all necessary actions in connection with the servicing, administration, collection, and liquidation of all loans and debentures and any other obligations and acquired property related to them; with the exception of legal action to be taken with respect to loans or debentures classified as in litigation.

f. To take all necessary actions in connection with the liquidation of loans made by the Economic Development Administration of the Department of Commerce pursuant to a Memorandum of Understanding executed on March 10, 1971, with the exception of legal action taken with respect to any such loans classified as in litigation.

g. To take all necessary actions in connection with the financial aspects of certificates of competency issued under section 8(b)(7) of the Small Business Act and, as appropriate, financial aspects of contracts let by SBA under section 8(a) of the Small Business Act.

2. Participating Lender Program

a. To take all necessary actions in connection with determinations of eligibility for lending institutions and Development Companies to participate in SBA lending and financial assistance programs in accordance with the Small Business Act and title V of the Small Business Investment Act of 1958, including actions required to initiate suspension or revocation of eligibility of any such institution.

b. To take all necessary actions in connection with the regulation of lending institutions and Development Companies participating in SBA lending and financial assistance programs, in accordance with the Small Business Act and title V of the Small Business Investment Act of 1958 and the regulations promulgated thereunder.

c. To take all necessary actions in connection with the promotion and development of the Agency's financial assistance activities as they relate to participating lending institutions and Development Companies.

3. Initial Placement and Secondary Market Activity

a. To plan, direct, and administer secondary market activity as it relates to loan servicing and processing. In so doing, to execute any necessary documents and to take other appropriate action to implement and maintain secondary market activity, including loan pooling.

b. To determine and develop policy and procedures necessary for field office support of secondary market activities, through the office of Portfolio Management, to fulfill SBA's contractual obligations in secondary participation guaranty agreements.

4. Lease Guaranty Activities

a. To take all necessary actions in connection with the administration and servicing of reinsured lease rental guaranty insurance policies (hereinafter referred to as "lease guarantees") entered into pursuant to title IV of the Small Business Investment Act of 1958.

b. To process claims arising out of lease guarantees.

c. To take all necessary actions in connection with the default of all direct lease guarantees, except for legal action with respect to matters classified as in litigation.

5. Pollution Control Financing Guaranty Activities

a. To approve or decline applications for pollution control financing guarantees authorized to be made by the Agency pursuant to title IV of the Small Business Investment Act of 1958, including reconsideration thereof, and to execute commitments and modifications thereto and guarantees pertaining to such financing.

b. To determine eligibility and make size determinations of applicants for pollution control financing guarantees.

c. To take all necessary actions in connection with the servicing, administration of pollution control financing guarantees, and the collection, and payment of claims arising as a result of any default of a pollution control financing guaranty upon default of a benefited small business, with the exception as in litigation.

d. To enter into participation agreements with qualified companies and to revise such agreements when necessary.

6. To amend, suspend, or revoke authority delegated to any position listed below.

B. To the Director, Office of Financing as follows:

1. Financial Assistance Program

a. To take any and all actions involved in approval or decline of applications for direct and guaranteed business and development company loans authorized to be made under section 7(a) of the Small Business Act including reconsideration thereof; and to execute authorizations and modifications pertaining to such loans.

b. To cancel, reinstate, modify, and amend authorizations for any such loans.

c. To determine eligibility for loan applicants.

d. To take all necessary actions in connection with the servicing, administration, collection, and liquidation of all loans and any other obligations and acquired property related to them; with the exception of legal action to be taken with respect to loans or any other obligation classified as in litigation.

e. To take all necessary actions in connection with the liquidation of loans made by the Economic Development Administration of the Department of Commerce pursuant to a Memorandum of Understanding executed on March 10, 1971, with the exception of legal action taken with respect to any such loans classified as in litigation.

f. To take all necessary actions in connection with the servicing of financial aspects of certificates of competency issued under section 8(b)(7) of the Small Business Act and, as appropriate, financial aspects of contracts let by SBA under section 8(a) of the Small Business Act.

2. Participating Lender Program

a. To take all necessary actions in connection with determinations of eligibility for lending institutions to participate in SBA lending and financial assistance programs in accordance with the Small Business Act, including actions required to initiate suspension or revocation of eligibility of any such institution.

b. To take all necessary action in connection with the regulation of lending institutions participating in SBA lending and financial assistance programs, in accordance with the Small Business Act and the regulations promulgated thereunder.

c. To take all necessary actions in connection with the promotion and development of the Agency's financial assistance activities as they related to participating lending institutions.

3. Initial Placement and Secondary Market Activity

a. To plan, direct, and administer secondary market activity as it relates to loan servicing and processing. In so doing, to execute any necessary documents and to take other appropriate action to implement and maintain secondary market activity.

b. To determine and develop policy and procedures necessary for field office support of secondary market activities, through the office of Portfolio Management, to fulfill SBA's contractual obligations in secondary participation guaranty agreements.

4. Lease Guaranty Activities

a. To take all necessary actions in connection with the administration and servicing of reinsured lease rental guaranty insurance policies (hereinafter referred to as "lease guarantees") entered into pursuant to title IV of the Small Business Investment Act of 1958.

b. To process claims arising out of lease guarantees.

c. To take all necessary actions in connection with the default of all direct lease guarantees, except for legal action with respect to matters classified as in litigation.

5. Pollution Control Financing Guaranty Activities

a. To approve or decline applications for pollution control financing guarantees authorized to be made by the Agency pursuant to title IV of the Small Business Act of 1958, including reconsideration thereof, and to execute commitments and modifications thereto and guarantees pertaining to such financing.

b. To determine eligibility and make size determinations of applicants for pollution control financing guarantees.

c. To take all necessary actions in connection with the servicing, administration of pollution control financing guarantees, and the collection, and payment of claims arising as a result of any default of a pollution control financing guaranty upon default of a benefitted small business, with the exception of legal action to be taken with respect to guarantees classified as in litigation.

d. To enter into participation agreements with qualified companies and to revise such agreements when necessary.

6. To amend, suspend, or revoke authority delegated to any position listed below.

a. Chief, Loan Policy and Procedures Branch

1. To approve or decline applications for all loans, excluding disaster loans, authorized to be made by the Agency pursuant to the Small Business Act, including reconsideration thereof, and to execute authorizations and amendments pertaining to such loans.

2. To cancel, reinstate, modify, and amend authorizations for any such loan.

3. To determine eligibility of any applicant for any such loan.

b. Chief, Office of Financial Institutions

1. To take all necessary actions in connection with determinations of eligibility for lending institutions to participate in SBA lending and financial assistance programs authorized by the Small Business Act, including the suspension or revocation of such eligibility provided, however, that any final determination regarding eligibility, suspension, or revocation of such eligibility shall be retained by the Assistant Administrator for Financial Assistance.

2. To take all necessary actions in connection with the regulation of lending institutions participating in SBA lending and financial assistance programs, in accordance with the Small Business Act and the regulations promulgated thereunder.

3. To take all necessary actions in connection with the promotion and development of the Agency's financial assistance activities as they relate to participating lending institutions.

c. To the Director, Office of Portfolio Management as follows:

1. To take all necessary action in connection with the servicing, administration, collection, and liquidation of all loans, debentures, direct lease guarantees (including automatic terminations provided for within the Policy), pollution control financings, made or guaranteed pursuant to the Small Business Act and acquired property related thereto, with the exception of legal action taken with respect to those loans and other obligations classified as in litigation.

2. To take all necessary actions in connection with the liquidation of loans made by the Economic Development Administration of the Department of Commerce pursuant to a Memorandum of Understanding executed on March 10, 1971, with the exception of legal action taken with respect to matters classified as in litigation.

3. To take all necessary actions in connection with the servicing of financial aspects of certificates of competency issued under section 8(b)(7) of the Small Business Act, as amended, and, as appropriate, financial aspects of contracts let by SBA pursuant to section 8(a) of the Small Business Act, as amended.

4. The authority delegated to the Director, Office of Portfolio Management is redelegated to the specific positions designated herein as follows:

a. Chief, Operations Assistance Branch

1. To take all necessary actions in connection with the servicing, administration, collection, and liquidation of all loans and debentures, direct lease guarantees (including automatic terminations provided for within the Policy), pollution control financing, and other obligations and acquired property within all loan programs of the SBA, with the exception of legal action taken with respect to those loans and other obligations classified as in litigation.

2. To take all necessary actions in connection with the liquidation of loans made by the Economic Development Administration of the Department of Commerce pursuant to a Memorandum of Understanding executed on March 10, 1971, with the exception of legal action taken with respect to loans classified as in litigation.

3. To take all necessary actions in connection with the servicing of financial aspects of certificates of competency issued under section 8(b)(7) of the Small Business Act and, as appropriate, financial aspects of contracts let by SBA pursuant to section 8(a) of the Small Business Act, as amended.

D. To the Director, office of Economic Development as follows:

1. To approve or decline development company loan applications and debenture guarantees authorized under title V of the Small Business Investment Act of 1958, including reconsideration thereof, and to execute authorizations and modifications pertaining to such loans and debentures.

2. To cancel, reinstate, modify, and amend authorizations for such loans and debentures. To take all necessary actions in connection with the sale of SBA guaranteed Certified Development Company debentures and SBA guaranteed Certificates issued against pools of such debentures to the Federal Financing Bank or any other duly qualified purchaser as determined by SBA.

a. To take all necessary actions in connection with determinations of eligibility for Development Companies to participate in SBA lending and financial assistance programs in accordance with title V of the Small Business Investment Act of 1958, including actions required to initiate suspension or revocation of eligibility of any such institution.

b. To take all necessary action in connection with the regulation of Development Companies participating in SBA lending and financial assistance programs, in accordance with title V of the Small Business Investment Act of 1958, and the regulations promulgated thereunder.

c. To take all necessary actions in connectin with the promotion and development of the Agency's financial assistance activities as they relate to Development Companies.

E. To the Central Office Claims Review Committee as follows:

1. This committee shall consist of the Director, Office of Portfolio Management, acting as chairperson, Director, Office of Financing, and the Associate General Counsel for Litigation, Office of the General Counsel.

2. This committee shall consider, advise upon, and make the final decision to accept or reject reasonable and properly supported compromise proposals, regarding indebtedness owed to the SBA, with the exception of indebtedness owed by a small business investment company licensed pursuant to section 301(c) or 301(d) of the Small

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b. To take all necessary action in connection with the regulation of Development Companies participating in SBA lending and financial assistance programs, in accordance with title V of the Small Business Investment Act of 1958, and the regulations promulgated thereunder.

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2. This committee shall consider, advise upon, and make the final decision to accept or reject reasonable and properly supported compromise proposals, regarding indebtedness owed to the SBA, with the exception of indebtedness owed by a small business investment company licensed pursuant to section 301(c) or 301(d) of the Small

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Business Investment Act of 1958, as amended.

II. This delegation does not authorize anyone serving in the above specified positions (except as set forth in I(E) above):

A. To sell any primary obligations or other evidence of indebtedness owned to the Agency for a sum less than the total amount due thereunder.

B. To deny liability of the SBA under terms of a participation or guaranty agreement, or the initiation of a suit for recovery from a participation or guaranty agreement.

C. To accept or reject a compromise settlement of an indebtedness owed the Agency for a sum less than the total amount due thereon.

III. The authority delegated herein may not be redelegated.

IV. The authority delegated to any position indicated herein may be exercised by any SBA employee officially designated as Acting in that position.

Dated: July 25, 1991.

Patricia F. Saiki,
Administrator.

[FR Doc. 91-18377 Filed 8-5-91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements: Submittals to OMB on July 29, 1991

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation on July 29, 1991, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler, Annette Wilson or Susan Pickrel, Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, telephone, (202) 366-4735, or Edward Clarke or Wayne Brough, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503, (202) 395-7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "**FOR FURTHER INFORMATION CONTACT:**" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on July 29, 1991.

DOT No: 3519.

OMB No: New.

Administration: National Highway Traffic Safety Administration.

Title: Survey of Families of Head Injured Persons in the National Head Injury Foundation Database.

Need for Information: To gather needed information on costs and injuries of head injured persons.

Proposed Use of Information: The National Head Injury Foundation needs information on the service utilization history and consequences of head injury in order to provide help to families and to develop prevention activities. The Agency also needs additional cost data on head injuries for regulatory analyses.

Frequency: One-time only.

Burden Estimate: 200 hours.

Respondents: Individuals.

Form(s): Questionnaire.

Average Burden Hours Per Response: 1 hour.

DOT No: 3520.

OMB No: 2115-0571.

Administration: U.S. Coast Guard.

Title: Alternative Provisions for Reinspections of Offshore Supply Vessels in Foreign Ports.

Need for Information: This information collection requirement is needed by the U.S. Coast Guard to ensure that offshore supply vessels (OSV), based overseas, are inspected before they are put into service. The owners and operators of OSV's submit certified examination reports and statements to the Coast Guard as an alternative to the Coast Guard reinspecting these vessels.

Proposed Use of Information: This information collection requirement will be used by the U.S. Coast Guard as an alternative to Coast Guard marine inspectors conducting reinspection examinations on offshore OSV's that operate in overseas locations. Marine Inspectors will issue vessel's certificates of inspection with a letter or endorsement containing specific information concerning the person who performed the examination; also to ensure that these vessels remain fit for the route and service specified in the certificate of inspection.

Frequency: On occasion.

Burden Estimate: 780 hours.

Respondents: Owners or Operators of Offshore Supply Vessels.

Form(s): None.

Average Burden Hours Per Response: 7 hours and 30 minutes.

DOT No: 3521.

OMB No: 2115-0094.

Administration: U.S. Coast Guard.

Title: Safety Approval of Cargo Containers.

Need for Information: This information collection requirement is needed by the U.S. Coast Guard to enforce and carry out the provisions of the Convention for Safe Containers (SCS). The recordkeeping requirement ensures that adequate documentation is available to verify that an individual container or an entire design type has been designed and tested. It also ensures that containers are maintained in safe condition and that periodic examinations are carried out in accordance with the CSC.

Proposed Use of Information: This information collection requirement will be used by the U.S. Coast Guard for (1) receiving specific design information for plan review and approval, (2) receiving information concerning the continuous examination program (3) to ensure when additional containers are being manufactured, to any approved design, no unauthorized changes are made, (4) ensure adequate documentation is available to verify the approval of an individual container or design type, (5) ensure periodic examinations are carried out as required, and (6) ensure that container handlers and authorities in other countries will allow free movement of U.S. Containers in foreigr trade.

Frequency: On occasion.

Burden Estimate: 69,085 hours.

Respondents: Containers owners, operators, manufacturers and delegated approval authorities.

Form(s): None.

Average Burden Hours Per Response: 4 hours and 46-½ minutes.

DOT No: 3522.

OMB No: 2115–0015.

Administration: U.S Coast Guard.

Title: Shipping Articles, Forecastle Card, and Master's Report of Seamen Shipped or discharged.

Need for Information: The need for this information collection by the U.S. Coast Guard is to ensure that various navigational statutes are being complied with for its commercial vessel safety program.

Proposed Use of Information: This information will be used by the U.S. Coast Guard for vessel manning laws and regulations; provide a written contract and record for seamen's protection and relief. Seamen will also use this information to obtain their benefits or entitlements.

Frequency: On occasion.

Burden Estimate: 848 hours.

Respondents: 13,650.4.

Form(s): CG–704, CG–705–A and CG–735T.

Average Burden Hours Per Response: 1 hour and 10½ minutes.

DOT No: 3523.

OMB No: 2115–0017.

Administration: U.S Coast Guard.

Title: Application for Approval of Marine Event.

Need for Information: This information collection is needed by the U.S. Coast Guard to provide effective control over regattas and marine parades conducted on the navigable waters of the U.S. to ensure the safety of life and property.

Proposed Use of Information: The U.S. Coast Guard will use this information to provide effective control over marine parades and regattas and determine what impact these events may have on navigation and the environment.

Frequency: On occasion.

Burden Estimate: 4000 hours.

Respondents: Applicants for marine parades or regattas.

Form(s): CG–4423.

Average Burden Hours Per Response: 1 hour.

DOT No: 3524.

OMB No: 2115–0037.

Administration: U.S Coast Guard.

Title: Importation of Noncomplying Recreational Boats and Products Subject to U.S. Customs Regulations and U.S. Coast Guard Regulations (CG–5096).

Need for Information: This information collection requirement is needed by both the U.S. Coast Guard and Bureau of Standards for recreational boats imported into the United States that are not in compliance with the safety standards and regulations of both agencies.

Proposed Use of Information: This information collection is used to identify recreational boats imported to the U.S. that are not in compliance with Federal safety standards and regulations of the Coast Guard and Bureau of Standards. This information will help the Coast Guard to identify individuals or companies responsible for notifying their purchasers of any defects needed to be corrected that would create a substantial risk of personal injury to the public.

Frequency: On occasion.

Burden Estimate: 125 hours.

Respondents: Importers of recreational boats and associated equipment.

Form(s): CG–5096.

Average Burden Hours Per Response: 15 minutes.

DOT No: 3525.

OMB No: New.

Administration: Federal Railroad Administration.

Title: Grade Crossing Signal System Safety Regulations.

Need for Information: To provide accurate data regarding instances of grade crossing activation failure.

Proposed Use of Information: This information will be used to craft better solutions to the problems of grade crossing device malfunctions.

Frequency: On occasion, one-time.

Estimated Number of Respondents: 605 Railroads.

Total Estimated Burden: 20,701 hours.

Form(s): FRA-F-6180.83 and FRA-F-6180.87.

Average Burden Hours Per Response: 34 hours and 12 minutes.

DOT No.: 3526.

OMB No.: News.

Administration: National Highway Traffic Safety Administration.

Title: Labeling of Reflective Material for Trailer Conspicuity.

Need for Information: Identification of reflective material as conforming to safety requirements.

Proposed Use of Information: Routine trailer inspection by Federal Highway Administration.

Frequency: On occasion.

Burden Estimate: 200 hours.

Respondents: Businesses.

Form(s): None.

Average Burden Hours Per Respondent: 1 second.

DOT No.: 3527.

OMB No.: 211530-0106.

Administration: U.S. Coast Guard.

Title: Plan Approval and Records for Foreign Vessels Carrying Oil in Bulk.

Need for Information: This information collection requirement will be used by the U.S. Coast Guard to ensure that foreign tank vessels carrying oil in bulk, comply with minimum applicable standards prior to issuing the Certificate of Compliance.

Proposed Use of Information: This information collection will be used by the Coast Guard to ensure that: (1) Foreign tank vessels carrying oil in bulk are in compliance with standards prior to issuing the Certificate of Compliance; (2) determine if a vessel's construction, arrangement and equipment meets the applicable standards as promulgated by the regulations and (3) that sufficient information is available to personnel operating these vessels and equipment in compliance with the standards.

Frequency: On occasion.

Burden Estimate: 214 hours.

Respondents: Owners and operators of foreign tank vessels.

Form(s): None.

Average Burden Hours Per Respondent: 4 hours.

DOT No.: 3528.

OMB No.: None.

Administration: Urban Mass Transportation Administration.

Title: Return Questionnaire Addressing Security and Crime Prevention Needs and Requirements of Mass Transportation Employees.

Need for Information: The Questionnaire is Needed to Assist Operators of Mass Transportation in the Development of Effective Security Awareness Techniques for Transit Employees Working in Isolated Situations.

Proposed Use of Information: To provide valuable information for UMTA in its efforts to develop security guidelines and an audiovisual security training program.

Frequency: One time only.

Burden Estimate: 450 hours.

Respondents: State or Local Governments or Other for Profit Organizations.

Form(s): None.

Average Burden Hours Per Respondent: 1 hour.

DOT No.: 3529.

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Frequency: On occasion.

Burden Estimate: 200 hours.

Respondents: Businesses.

Form(s): None.

Average Burden Hours Per Respondent: 1 second.

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Frequency: On occasion.

Burden Estimate: 214 hours.

Respondents: Owners and operators of foreign tank vessels.

Form(s): None.

Average Burden Hours Per Respondent: 4 hours.

DOT No.: 3528.

OMB No.: None.

Administration: Urban Mass Transportation Administration.

Title: Return Questionnaire Addressing Security and Crime Prevention Needs and Requirements of Mass Transportation Employees.

Need for Information: The Questionnaire is Needed to Assist Operators of Mass Transportation in the Development of Effective Security Awareness Techniques for Transit Employees Working in Isolated Situations.

Proposed Use of Information: To provide valuable information for UMTA in its efforts to develop security guidelines and an audiovisual security training program.

Frequency: One time only.

Burden Estimate: 450 hours.

Respondents: State or Local Governments or Other for Profit Organizations.

Form(s): None.

Average Burden Hours Per Respondent: 1 hour.

DOT No.: 3529.

OMB No.: 2120-0020.

Administration: Federal Aviation Administration.

Title: Certification: Mechanics, Repairmen, Parachute Riggers, FAR-65.

Need for Information: The information is needed to determine eligibility for certification of mechanics, repairmen, and parachute riggers.

Proposed Use of Information: The information is used for the purpose of certification and the issuance of inspection authorizations.

Frequency: On occasion.

Burden Estimate: 30,136 hours.

Respondents: Individuals.

Form(s): FAA Forms 8610–1 and 8610–2.

Average Burden Hours Per Respondent: 20 minutes.

DOT No: 3530.

OMB No: 212–0424.

Administration: Federal Aviation Administration.

Title: Aircraft Registration (NPRM Stage).

Need for Information: The information is needed by the FAA to maintain a registration system for aircraft identification and a centralized public record of aircraft ownership. Such a system is required by international treaty and by statutory law.

Proposed Use of Information: The information is used by the FAA to register an aircraft or hold an aircraft in trust.

Frequency: On occasion.

Burden Estimate: 83,111 burden hours.

Respondents: Any individual or organization wishing to register an aircraft.

Form(s): AC Forms 8050–1, 8050–2, 8050–4, 8050–81, 8050–98, 8050–117, 8050–130, 8050–131, and 8050–132.

Average Burden Hours Per Respondent: 30 minutes per response for 8050–1, 2, 4, 81, 98, and 117; and 45 minutes for 8050–130, 131, and 132.

DOT No: 3531.

OMB No: 2120–0024.

Administration: Federal Aviation Administration.

Title: Dealer's Aircraft Registration Certificate Application, AC Form 8050–5 (NPRM Stage).

Need for Information: The information is needed to enable the Aircraft Registry to determine eligibility of an applicant to receive a Dealer's Certificate and issue the certificate to the correct name and address.

Proposed Use of Information: The information is used to issue Dealer's Certificates to any individual or company engaged in manufacturing, distributing, or selling aircraft who wants to fly those aircraft with a dealer's certificate instead of registering them permanently in his name. The information is also used to provide a system of identification of aircraft dealers.

Frequency: On occasion.

Burden Estimate: 2,101.5 hours.

Respondents: Individuals and companies engaged in manufacturing, distributing, or selling aircraft.

Form(s): AC Form 8050–5.

Average Burden Hours Per Respondent: 1 hour and 30 minutes.

DOT No: 3532.

OMB No: 2132–0544.

Administration: Urban Mass Transportation Administration.

Title: Pre-Award, Post-Delivery Audit requirements under Buy America.

Need for Information: All Bidders on UMTA-supported projects must certify compliance with the general or specific requirements of Buy America.

Proposed Use of Information: UMTA grantees and bidders on UMTA funded contracts to assure that the products being purchased comply with statutory requirements.

Frequency: Occasional, per order.

Burden Estimate: 4,250 hours.

Respondents: Grantees and bidders on UMTA funded projects.

Form(s): Pre-Award, Post-Delivery Buy America, In-plant inspection.

Average Burden Hours Per Respondent: 6 minutes.

DOT No: 3533.

OMB No: New.

Administration: Federal Aviation Administration.

Title: Airport Storm Water Questionnaire.

Need for Information: The Environmental Protection Agency has new storm water regulations that will affect airports. The FAA needs the information to help us prepare appropriate guidance to airport facilities needed to comply with the new regulations.

Proposed Use of Information: The FAA will use the information collected to help develop technical guidance for airports on how to manage deicing and other potential pollutant-generating activities to minimize pollutant discharge and comply with storm water regulations.

Frequency: One time questionnaire.

Burden Estimate: 270 total hours.

Respondents: Airport operators/managers.

Form(s): Questionnaire.

Average Burden Hours Per Respondent: 3 hours.

DOT No: 3534.

OMB No: 2105–0517.

Administration: DOT, Office of the Secretary.

Title: Transportation Acquisition Regulation (TAR).

Need for Information: To allow DOT to establish contracts and monitor contractor compliance.

Proposed Use of Information: To allow DOT to establish contracts and monitor contractor compliance.

Frequency: On occasion.

Burden Estimate: 74,610.

Respondents: 4,670.

Form(s): TAR.

Average Burden Hours Per Respondent: 15 hours and 59 minutes.

Issued in Washington, DC on July 29, 1991.

Cynthia C. Rand,

Director of Information Resource Management.

[FR Doc. 91–18525 Filed 8–5–91; 8:45 am]

BILLING CODE 4910–62–M

Aviation Proceedings; Agreements Filed During the Week Ended July 26, 1991

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47657.
  Date filed: July 24, 1991.
  Parties: Members of the International Air Transport Association.
  Subject: Mail Vote 501 (Iceland-Egypt Fares).
  Proposed Effective Date: August 1, 1991.

Docket Number: 47660.
  Date filed: July 25, 1991.
  Parties: Members of the International Air Transport Association.
  Subject: TC23 Reso/P 0460 dated July 18, 1991, Expedited Europe-South Asian Subcontinent R–1 To R–3.
  Proposed Effective Date: September 1, 1991.

Phyllis T. Kaylor,

Chief, Documentary Service Divisions.

[FR Doc. 91–18526 Filed 8–5–91; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

Noise Exposure Map

T.F. Green State Airport

Providence, Warwick, Rhode Island

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure

maps submitted by Rhode Island Department of Transportation (RIDOT) for T. F. Green State Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is July 23, 1991.

FOR FURTHER INFORMATION CONTACT: John Silva, FAA New England Region, 12 New England Executive Park, Burlington, Massachusetts.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for T.F. Green State Airport are in compliance with applicable requirements of part 150, effective July 23, 1991.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps.

The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by RIDOT. The specific maps under consideration are "Revised Noise Exposure Maps for T. F. Green State Airport: DNL Contour for 1989 Operations" and "Revised Noise Exposure Maps for T. F. Green State Airport: DNL Coutour for 1994 Operations". The FAA has determined that these maps for T. F. Green State Airport are in compliance with applicable requirements. This determination is effective on July 23, 1991. FAA's determination on an airport operator's noise exposure maps is limited of a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, New England Region, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 018033.

Rhode Island Department of Transportation, Division of Airports, T. F. Green State Airport, Warwick, Rhode Island 02886.

Questions may be directed to the individual named above under the heading "**FOR FURTHER INFORMATION CONTACT**".

Issued in Burlington, Massachusetts, July 23, 1991.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 91–18557 Filed 8–5–91; 8:45 am]

BILLING CODE 4910-13-M

Availability of the Airspace Analysis Model

AGENCY: Federal Aviation Administration (FAA), Department of Transportation, (DOT).

ACTION: Notice of availability.

SUMMARY: The purpose of this notice is to inform the public that the FAA is making available the latest version of the Airspace Analysis Model (AAM) used in the determination of potential electromagnetic interference from FM broadcast stations to aviation-related navigational aids. The AAM is used in calculating whether an electromagnetic emission would have an adverse effect on air navigation pursuant to the Federal Aviation Act of 1958, as amended. Any interested party who wishes to receive a copy on computer disc, may submit a request and three (3) blank 5¼ inch 1.2 megabyte diskettes to the person listed below under "For Further Information Contact." The current version of the AAM is 4.01. From time to time, the FAA will amend or update the model and revise the version number. Unless otherwise requested, the FAA will mail the version of the AAM in effect on the date of mailing.

ADDRESSES: Comments on the AAM may be submitted to: Federal Aviation Administration, Systems Maintenance Service, Attention: David F. Morse, Director, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Gerald Markey, Manager, Spectrum Engineering Division, ASM–500, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267–3491.

SUPPLEMENTARY INFORMATION: Comments on the AAM may be submitted to the FAA at the address listed below. Comments should be submitted in triplicate. One copy of each comment submitted will be forwarded to the Federal Communications Commission, Office of the General Counsel.

Issued in Washington, DC on July 23, 1991.

David F. Morse,

Director, Systems Maintenance Service.

[FR Doc. 91–18558 Filed 8–5–91; 8:45 am]

BILLING CODE 4910-13-M

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Filed 8-5-91; 8:45 am]

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AGENCY: Federal Aviation Administration (FAA), Department of Transportation, (DOT).

ACTION: Notice of availability.

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Issued in Washington, DC on July 23, 1991.

David F. Morse,

Director, Systems Maintenance Service.

[FR Doc. 91-18558 Filed 8-5-91; 8:45 am]

BILLING CODE 4910-13-M

Research and Special Programs Administration

Availability of the Federal Radionavigation Plan

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Availability for comment.

SUMMARY: The 1990 edition of the Federal Radionavigation Plan has been published and is available for comment.

DATES: Comments must be received by February 07, 1992.

ADDRESSES: Comments should be forwarded to Chairman, DOT Navigation Working Group, U.S. Department of Transportation (DRT-20), room 9402, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Heywood Shirer, Department of Transportation (DRT-20), 400 7th Street SW., Washington, DC, 20590, (202) 366-4355.

SUPPLEMENTARY INFORMATION: A copy of the Federal Radionavigation Plan is available for inspection in the RSPA Dockets Unit. The Dockets Unit is located in room 8421 of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Office hours are 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays. Telephone (202) 366-5046.

The 1990 Federal Radionavigation Plan is available from:

1. National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161
   Stock Number: PB91-190868.
   Paper Copy: $23.00.
   Microfiche: $8.00.
2. Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.
   S/N 008-047-00402-8
   Paper Copy: $12.00.

Issued in Washington, DC, on July 31, 1991.

Travis P. Dungan,

Administrator, Research and Special Programs Administration.

[FR Doc. 91-18523 Filed 8-5-91; 8:45 am]

BILLING CODE 4910-60-M

Aviation, Marine and Land Radionavigation Users Conferences

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of conferences.

SUMMARY: Aviation, Marine and Land Radionavigation Users Conferences will be conducted in Washington, DC, on November 19 and 20, and in Seattle, Washington, on December 5, 1991. The purpose of the conferences is to provide users and suppliers of radionavigation equipment with the opportunity to comment on current plans and policies for Federally provided systems which satisfy aviation, marine, and land radionavigation requirements.

DATE, TIME AND PLACE: November 19 and 20, beginning at 8:30 a.m. each day at the Embassy Suites Hotel, 1900 Diagonal St. (across from the King St. Metro Station), Alexandria, Virginia. The November 19 session will focus primarily on marine and land requirements. The November 20 session will focus primarily on aviation requirements. December 5, 1991, beginning at 8:30 a.m. at the Sheraton Hotel and Towers, 1400 Sixth Ave., Seattle, Washington. Th eDecember 5 conference will focus on aviation, marine, and land requirements.

FURTHER INFORMATION: For marine and land information, contact Heywood G. Shirer, Research and Special Programs Administration (DRT-20), Department of Transportation, 400 7th Street, SW., Washington, DC 20590, (202) 366-4355. For aviation information, contact Jerry W. Bradley, NAS Systems Engineering Service, Federal Aviation Administration (ASE-300), Department of Transportation, 800 Independence Avenue SW., Washington, DC 20591, (202) 646-4824.

SUPPLEMENTARY INFORMATION: Each day the meeting will open with an overview of the Federal radionavigation planning process, the Federal Radionavigation Plan, and current plans and policies for Federally operated radionavigation systems. This information relates to the selection of a future mix of radionavigation systems as required by the Federal Radionavigation Plan. An opportunity will be provided for organizations or individuals representing the users and suppliers of radionavigation systems to participate in the meeting and to have their comments heard by representatives of the Federal Aviation Administration, Coast Guard, Research and Special Programs Administration, Maritime Administration and other government agencies participating in the conference.

Issued in Washington, DC, on July 31, 1991.

Travis P. Dungan,

Administrator, Research and Special Programs Administration.

[FR Doc. 91-18524 Filed 8-5-91; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Atlantic Financial Federal Savings Bank, San Francisco, CA; Notice of Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Atlantic Financial Federal Savings Bank, San Francisco, California, on July 26, 1991.

Dated: July 30, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-18596 Filed 8-5-91; 8:45 am]

BILLING CODE 6720-01-M

Atlantic Financial Savings Bank, F.S.B. San Francisco, CA; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Atlantic Financial Savings Bank, F.S.B., San Francisco, California, OTS No. 8117, on July 26, 1991.

Dated: July 30, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-18598 Filed 8-5-91; 8:45 am]

BILLING CODE 6720-01-M

Fulton Federal Savings Association; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of Section 5 (d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Fulton Federal Savings Association, Atlanta, Georgia ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on July 26, 1991.

Dated: July 30, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-18600 Filed 8-5-91; 8:45 am]

BILLING CODE 6720-01-M

Southwest Federal Savings Association; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdividion (F) of section 5 (d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Southwest Federal Savings Association, Dallas, Texas ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on July 26, 1991.

Dated: July 30, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-18597 Filed 8-5-91; 8:45 am]

BILLING CODE 6720-01-M

Westland Federal Savings and Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Westland Federal Savings and Loan Association, Rawlins, Wyoming, OTS No. 3556, on July 26, 1991.

Dated: July 30, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-18599 Filed 8-5-91; 8:45 am]

BILLING CODE 6720-01-M

[AC-33; OTS No. 3183]

AmeriFed Federal Savings Bank, Joliet, IL; Final Action; Approval of Conversion Application

Notice is hereby given that on July 25, 1991, the Office of the Chief Counsel, Office of the Thrift Supervision, acting pursuant to delegated authority, approved the application of AmeriFed Federal Savings Bank, Joliet, Illinois for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, suite 800, Chicago, Illinois 60601-4360.

Dated: July 30, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-18593 Filed 8-5-91; 8:45 am]

BILLING CODE 6720-01-M

[AC-34; OTS No. 6721]

Odenton Federal Savings and Loan Association, Odenton, MD, Final Action; Approval of Conversion Application

Notice is hereby given that on July 12, 1991, the Office of the Chief Counsel, Office of the Thrift Supervision, acting pursuant to delegated authority, approved the application of Odenton Federal Savings and Loan Association, Odenton, Maryland for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and Office of Thrift Supervision, Southeast Region, 1475 Peachtree Street, NE., Atlanta, Georgia 30309.

Dated: July 30, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-18594 Filed 8-5-91; 8:45 am]

BILLING CODE 6720-01-M

[AC-35; OTS No. 7035]

Randolph County Federal Savings and Loan Association, Cuthbert, GA; Final Action; Approval of Voluntary Supervisory Conversion Application

Notice is hereby given that on July 31, 1991, the Director of the Office of Thrift Supervision, or his designee approved the application of Randolph County Federal Savings and Loan Association, Cuthbert, Georgia, for permission to convert to the stock form of organization in a voluntary supervisory conversion. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street, NE., Atlanta, Georgia 30309.

Dated: July 31, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-18595 Filed 8-5-91; 8:45 am]

BILLING CODE 6720-01-M

UNITED STATES INFORMATION AGENCY

Fulbright Foreign Student Enhancement Seminars

AGENCY: United States Information Agency.

ACTION: Notice of request for proposals.

SUMMARY: The Bureau of Educational and Cultural Affairs of the United States Information Agency (USIA) seeks applications from non-profit organizations, universities and university consortia to implement professional enhancement programs in Washington, DC, Chicago, Illinois and San Francisco, California for Fulbright foreign students in the greater metropolitan area of these cities and students whose travel costs to the program would not exceed an average of $300 round trip per person. Interested organizations may propose to conduct programs in one or more of the designated cities. However, a separate budget and program agenda must be proposed for each city. The program in each city will consist of a three-day seminar for 150 Fulbright foreign students with an agenda combining some introductory material on the United States with in-depth coverage of an economic, political, or cultural issue characteristic of the region. Programs should take advantage of the local resources of the city.

DATES: Deadline for proposals: Must be received at the U.S. Information Agency by 5 p.m. e.d.t. on September 30, 1991. Proposals received by the Agency after this deadline will not be eligible for consideration.

Faxed documents will not be accepted, nor will documents postmarked on September, 30, 1991 but received at a later date. It is the responsibility of each grant applicant to ensure that their proposal is received by the above deadline. Programs should be held at a date from January to May 1992. No funds may be expended until the grant agreement has been signed.

ADDRESSES: Fifteen copies of the completed application including required forms should be submitted to the office below: U.S. Information Agency, Bureau of Educational and Cultural Affairs, Ref.: Fulbright Foreign Student Enhancement Seminars, Office of the Executive Director, E/X, room 336, 301 4th St., SW. Washington, DC 20547.

FOR FURTHER INFORMATION: Interested U.S. organizations should write or call Ms. Nancy Searles at USIA, 301 4th Street, SW., room 234, Washington, DC 20547, 202-619-5384.

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FOR FURTHER INFORMATION: Interested U.S. organizations should write or call Ms. Nancy Searles at USIA, 301 4th Street, SW., room 234, Washington, DC 20547, 202–619–5384.

SUPPLEMENTARY INFORMATION: Overall authority for the program is contained in the Mutual Educational and Cultural Exchange Act of 1961 as amended, Public Law 87–256 (Fulbright-Hays Act). The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments and achievements of the people of the United States and other nations and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." Programs and projects must conform with all Agency requirements and are subject to final review by the USIA contracting officer.

Guidelines

The major goals of the seminar are: (1) To provide for first year Fulbright students, in an off-campus setting, an introduction to some of the key features of the U.S. economic, political, and social system; (2) to enable them to meet community and civic leaders, people who have had a significant impact on the city or community in which they live; and (3) to broaden and expand students' view of the U.S. beyond the somewhat limited and stereotyped view they may have known prior to their Fulbright grant. The goals will be accomplished through a series of lectures, interactive panel discussions as well as contacts with local leaders and other citizens via home hospitality with American families and field trips.

Program components should include: (1) Interactive discussions, led by experts on intercultural awareness, of some of the distinctive features of U.S. culture as they relate to the customary goals and expectations of foreign students;

(2) Panel discussions, with audience participation, on selected major features of the U.S., such as the role of the private sector and private enterprise in the U.S. economy; the federal system; the role of the media in politics; U.S. society, ethnicity, and the absorption of new immigrants; a regional economic issue, etc.;

(3) Opportunities for representatives of USIA to discuss with the students the goals and structure of the Fulbright Program, its current and future significance to them and the responsibilities as well as rights and privileges of being a Fulbrighter;

(4) Events to allow students to meet with local business, civic, educational, cultural, and media leaders;

(5) Homestays and other home hospitality opportunities so that the students interact on at least one occasion with people other than those typically encountered on campus; and

(6) Field trips to sites of local cultural, historical or recreational interest.

A detailed outline of a proposed seminar agenda should be included in the proposal. The outline should demonstrate the organization's ability to enlist the participation of informed lectures, keynote speakers and/or presenters whose credentials and experience show evidence of in-depth knowledge of seminar topics. Invited speakers should provide international students with access to expertise and insights not otherwise available to them. The application should include information on previous programs conducted for foreign students and detailed information on the volunteer services the organization anticipates using in program implementation. Activities supported by this grant must maintain a non-political character and shall represent, in a balanced way, the diversity of American political, social and cultural life.

Proposals should include a listing of names, titles, addresses, and telephone numbers of the executive officer(s) of the organization and of the person(s) directly responsible for the project. Resumes or vitae of key personnel should be provided. USIA recommends the inclusion of brochures and general information concerning the organization, i.e. the number of employees, the names of board members (or similar group) and evidence of previous experience with international students in the proposal package. USIA grant assistance, not to exceed $85,000 for each program, is expected to constitute only a portion of total project funding, i.e. cost sharing should be provided.

The budget proposal must include costs for administration such as a salaries and other direct costs including communications, reproduction, supplies, meeting rooms, etc. and participant expenses such as travel and per deim. In preparing the program budget, it should be noted that at least one-fourth of the foreign student participants will be students who are attending local academic institutions and will not, therefore, be lodged with the students from out of town. The travel costs for the rest of the students should average $300 round trip per person.

Inasmuch as cost sharing is required, proposals should list other anticipated sources of support. Grant applications should demonstrate financial and in-kind support using a multi-column budget format that clearly identifies the following categories by line-item: the amount of USIA support, amount of institutional/organizational in-kind support, amount provided by other funding sources.

Selection Criteria for the Implementing Organization

1. The quality, variety and breadth of the proposed program; past/current services provided to international students by the organization;
2. Ability to recruit recognized experts in the appropriate field to participate as presenters, lecturers, or keynote speakers in the seminar;
3. Ability to recruit and maintain a cadre of volunteers to successfully accomplish the program goals;
4. Evidence of at least a four year track record of success in conducting similar programs;
5. An evaluation component for the attending foreign students to participate in at the conclusion of the seminar; and
6. Cost effectiveness of basic services, including evidence of cost sharing, form, amount, etc.

Technical Requirements

Proposals can only be accepted for review when they include the following documentation:

1. Bureau of Educational and Cultural Affairs Grant Application Coversheet (OMB #3116–0173);
2. Assurance of Compliance with U.S. Information Agency Regulations under title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and title IX of the Education Amendment of 1972;
3. Certification and Disclosure of Lobbying Activities for Awards of $100,000 or more;
4. Certification Regarding Debarment, Suspension and other Responsibility Matters, Primary Covered Transactions (form IA–1279) and Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion, Lower Tier Covered Transactions (form 1280);
5. Certification Regarding Drug-Free Workplace Requirements, Grantees other than Individuals (form 1285); and
6. Evidence of your organization's non-profit (tax-exempt) status and articles of incorporation.

Notification

All applicants will be notified of the results of the review process on or about December 12, 1991. Funded proposals will be subject to periodic reporting and evaluation requirements.

Dated: July 22, 1991.

William P. Glade,

Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 91-18601 Filed 8-5-91; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF VETERANS AFFAIRS

Small Business Competitiveness Demonstration Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is a participating agency in the Small Business Competitiveness Demonstration Program, established by title VII of the "Business Opportunity Development Reform Act of 1988," Public Law 100-656. As a participating agency, VA shall designate its own industry categories targeted for enhanced small business participation. Notice is hereby given that VA has designated new industry categories targeted for enhanced small business participation, due to limited contracting activity in those industry categories published at 54 FR 33326 on August 14, 1989. For all contracting actions in excess of $25,000 in these industry categories, VA has instituted small business set-aside restrictions.

ADDRESSES: Department of Veterans Affairs, Office of Acquisition and Materiel Management, Acquisition Policy Division (95A), 810 Vermont Avenue, NW., Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: Department of Veterans Affairs, Office of Small and Disadvantaged Business Utilization (005SB), 810 Vermont Avenue, NW., Washington, DC 20420, (202) 376-6996.

SUPPLEMENTARY INFORMATION: The Small Competitiveness Demonstration Program has two primary objectives: (1) Demonstrate whether small businesses, in specific industry groups, can compete successfully on an unrestricted basis for federal contracts; and (2) Demonstrate whether targeted goaling and management techniques can expand federal contract opportunities for small businesses, in industry categories where such opportunities historically have been low despite adequate numbers of small business contracts in the industry. The following industry categories have been targeted for enhanced small business participation:

FPDS (PSC/SIC)	Description	Previous FY Total Amount	Amount to SB	Percent to SB	Targeted Increase (Per FY) (percent)
D314 (7371)	ADP Acquisition Support Service	$205,000	$5,000	2.4	2.5
J058 (3661)	Maintenance & Repair, Telephone/Telegraph Equipment	827,000	127,000	15.0	2.5
J070 (7377)	Maintenance & Repair, General Purpose ADPE	1,539,000	57,000	3.7	2.5
W070 (7377)	Lease, General ADPE	6,254,000	474,000	7.6	2.5
6510 (2211)	Surgical Dressing Materials	7,327,000	817,000	11.0	2.5
6525 (3844)	X-Ray Equipment/Supplies	64,288,000	4,182,000	6.5	2.5
6550 (2835)	Diagnostic Reagents, Kits, Etc	550,000	0	0	2.5
6630 (3559)	Chemical Analysis Instruments	1,176,000	0	0	2.5
6640 (8071)	Laboratory Equipment/Supplies	1,487,000	34,000	2.3	2.5
8940 (2023)	Special Diet Preparations	4,965,000	329,000	6.6	2.5

The Office of Small and Disadvantaged Business Utilization will assist procuring activities in locating additional sources through contacts with Federal agencies, the U.S. Small Business Administration Procurement Automated Source System (PASS), trade journals, and attendance at local and federal procurement conferences.

Dated: July 25, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

[FR Doc. 91-18552 Filed 8-5-91; 8:45 am]

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[FR Doc. 91-18552 Filed 8-5-91; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 151
Tuesday, August 6, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION:

Farm Credit Administration Board; Regular Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on August 8, 1991, from 10:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883-4003, TDD (703) 883-4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

A. *Approval of Minutes*
B. *New Business*
1. Regulations

a. Parts 613 and 618, Eligibility and Scope of Financing; General Provisions; Financing of Basic Processing and Marketing Activities; Authorized Insurance Services (Proposed)

Closed Session/*

A. *New Business*
1. Enforcement Actions.

*Session closed to the public-exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

Dated: August 1, 1991.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 91-18709 Filed 8-2-91; 11:12 am]

BILLING CODE 6705-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM:

TIME AND DATE: 11:00 a.m., Monday, August 12, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 2, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-18777 Filed 8-2-91; 3:11 pm]

BILLING CODE 6210-01-M

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Tuesday, August 13, 1991.

PLACE: Hearing Room, Suite 650, 1425 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of July, 1991.

2. NMB Oral Argument Process.

3. Simultaneous Service by Participants in Representation Proceedings.

4. Sky Valet/TCU: CJ-6426 (NLRB Jurisdicational Referral—Skycaps).

5. Precision Valley Aviation/Northeast Express Regional Airlines/ALPA: CR-6354.

6. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. William A. Gill, Jr., Executive Director, Tel: (202) 523-5920.

Date of Notice: July 31, 1991.

John J. Bavis,

Acting Executive Director, National Mediation Board.

[FR Doc. 91-18706 Filed 8-2-91; 11:12 am]

BILLING CODE 7550-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of August 5, 12, 19, and 26, 1991.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of August 5

Monday, August 5

10:00 a.m.
  Briefing on AEOD Programs (Public Meeting)
11:30 a.m.
  Affirmation/Discussion and Vote (Public Meeting) (if needed)
3:00 p.m.
  Discussion of Pending Investigations (Closed—Ex. 2, 5, & 7)

Week of August 12—Tentative

Friday, August 16

10:00 a.m.
  Briefing on Uncertainties in Implementing the EPA HLW Standards (Public Meeting)
11:30 a.m.
  Affirmation/Discussion and Vote (Public Meeting)
  a. Program Fraud Civil Remedies Act (10 CFR Part 13)—Final Rule (Tentative)
  b. Appeal of LBP-91-19 (Arizona Public Service Company, et al. (Palo Verde Nuclear Station, Units Nos. 1, 2 and 3)) (Tentative)

Week of August 19—Tentative

Wednesday, August 21

10:00 a.m.
  Briefing by NUMARC on Program for Inspections, Tests, Analyses, and Criteria (ITAAC) for Advanced Reactors (Public Meeting)
11:30 a.m.
  Affirmation/Discussion and Vote (Public Meeting) (if needed)
2:00 p.m.
  Briefing by NRC Staff on International Programs (Public Meeting)

Week of August 26—Tentative

Wednesday, August 28

11:30 a.m.
  Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings Call (Recording)—(301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

Dated: August 1, 1991.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 91-18770 Filed 8-2-91; 3:11 pm]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of August 5, 1991:

A closed meeting will be held on Tuesday, August 6, 1991, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, August 6, 1991, at 2:30 p.m., will be:

Litigation matter.

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Institution of injunctive actions.

Settlement of injunctive actions.

Regulatory matter bearing enforcement implications.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Stephen Luparello at (202) 272–2100.

Dated: August 2, 1991.

Jonathan G. Katz,

Secretary.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-18785 Filed 8-2-91; 3:48 am]

BILLING CODE 8010-01-M

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[FR Doc. 91-18785 Filed 8-2-91; 3:48 am]

BILLING CODE 8010-01-M

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federal register

Tuesday
August 6, 1991

Part II

Department of Health and Human Services

Administration for Children and Families

Administration for Native Americans; Availability of Financial Assistance; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 13612–921]

Administration for Native Americans: Availability of Financial Assistance

AGENCY: Administration for Native Americans (ANA), Administration for Children and Families, HHS.

ACTION: Announcement of availability of competitive financial assistance for American Indian, Native Hawaiian, Alaskan Natives and Native American Pacific Islanders social and economic development projects.

SUMMARY: The Administration for Native Americans (ANA) announces the anticipated availability of fiscal year 1992 funds for social and economic development projects. Financial assistance provided by ANA is designed to strengthen the self-sufficiency of Native American tribes and organizations through support of social and economic development strategies (SEDS) and the strengthening of local governance capabilities.

DATES: The closing dates for submission of applications are October 11, 1991, February 7, 1992 and May 15, 1992.

FOR FURTHER INFORMATION CONTACT: Lucille Dawson or Winonah Warren (202) 245–7727, Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, 200 Independence Avenue, SW, 344F, Washington, DC 20201–0001.

SUPPLEMENTARY INFORMATION:

A. Introduction and Purpose

The purpose of this program announcement is to announce the anticipated availability of fiscal year 1992 financial assistance to promote social and economic self-sufficiency for American Indians, Alaskan Natives, Native Hawaiians, and Native American Pacific Islanders. Native American Pacific Islanders are defined as American Samoan Natives and indigenous peoples of Guam, the Commonwealth of the Northern Marianas, and the Republic of Palau. Funds will be awarded under section 803(a) of the Native American Programs Act of 1974, as amended, Public Law 93–644, 88 Stat. 2324, 42 U.S.C. 2991b for local governance and social and economic development projects.

Proposed projects will be reviewed on a competitive basis against the evaluation criteria in this announcement.

The Administration for Native Americans believes that responsibility for achieving self-sufficiency rests with the governing bodies of Indian tribes, Alaskan Native villages, and in the leadership of Native American groups. The development of self-sufficiency requires the strengthening of governmental responsibilities, economic progress, and improvement of social systems which protect and enhance the health and well-being of individuals, families and communities. Achievement of self-sufficiency is based on the community's ability to develop a strategy and to plan, organize, and direct resources in a comprehensive manner to achieve the community's long-range goals.

The Administration for Native Americans bases its program and policy on three goals:

(1) *Governance:* To assist tribal and village governments, Native American institutions, and local leadership to exercise local control and decision-making over their resources.

(2) *Economic Development:* To foster the development of stable, diversified local economies and economic activities which will provide jobs, promote economic well-being, and reduce dependency on public funds and social services.

(3) *Social Development:* To support local access to, control of, and coordination of services and programs which safeguard the health and well-being of people, and which are essential to a thriving and self-sufficient community.

To achieve these goals, ANA supports tribal and village governments, and other Native American organizations to develop and implement community-based, long-term governance, and social and economic development strategies (SEDS). These strategies promote the self-sufficiency of local communities. The ANA approach is based on two fundamental principles:

(1) The local community and its leadership are responsible for determining goals, setting priorities, and planning and implementing programs aimed at achieving those goals. The unique mix of socio-economic, political, and cultural factors in each community makes such self-determination necessary. The local community is in the best position to apply its own cultural, political, and socio-economic values for its long-term strategies and programs.

(2) Economic and social development are interrelated, and development in one area should be balanced with development in the other in order to move toward self-sufficiency. Consequently, comprehensive development strategies address all aspects of the infrastructures needed to become self-sufficient communities.

- "Governmental infrastructure" includes the constitutional, legal, and administrative development requisite for independent physical, commercial industrial and/or agricultural components necessary for a functioning local economy which supports the life-style embraced by the Native American community.
- "Economic infrastructure" includes the physical, commercial, industrial and/or agricultural components necessary for a functioning local economy which supports the life-style embraced by the Native American community.
- "Social infrastructure" includes those components through which health and well-being are maintained within the community.

Without a careful balance of all of these, a community's development efforts could be jeopardized. For example, expansion of social services, without providing opportunities for employment and economic development, could lead to greater dependency on social services. Conversely, inadequate social services could seriously impede productivity and local economic development.

B. Proposed Projects To Be Funded

The fundamental task which Native American communities face is to develop enduring social and economic strategies in keeping with their local goals, resources, and cultural values. The Administration for Native Americans assists local communities to undertake projects that are a part of long-range strategies to achieve social and economic self-sufficiency. The Administration for Native Americans expects its applicants to have undertaken a long-range planning process to address the community's development. Such long-range planning must consider the maximum use of all available resources, directing those resources to opportunities, and addressing local issues that hinder social and economic growth in the community.

The Administration for Native Americans encourages applicants to design projects to achieve their specific governance, and social and economic goals, that use available human, natural, financial, and physical resources to which the applicant has access. Non-ANA resources should be marshalled to strengthen and broaden the proposed in this

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- "Governmental infrastructure" includes the constitutional, legal, and administrative development requisite for independent physical, commercial industrial and/or agricultural components necessary for a functioning local economy which supports the life-style embraced by the Native American community.
- "Economic infrastructure" includes the physical, commercial, industrial and/or agricultural components necessary for a functioning local economy which supports the life-style embraced by the Native American community.
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project impact in the community. Project designs should explain the means through which those parts of projects which ANA does not fund, such as construction, will be financed through other sources.

All projects funded by ANA must be completed, or self-sustaining or supported with other than ANA funds, at the end of the project period. *Completed* means that the project ANA funded is finished, and the desired result(s) have been attained. *Self-sustaining* means that a project will continue without outside resources. *Supported by other than ANA funds* means that the project will continue beyond the ANA project period, but supported by funds other than ANA's. The Administration for Native Americans does not fund programs which operate indefinitely that would have a need for ANA funding on a recurring basis.

The Administration for Native Americans does not fund objectives or activities for the core administration of an organization. *Core administration* is defined as those functions which provide the ongoing management and administrative support to an organization. The management and administrative functions needed to carry out an ANA approved project are not considered core administration. However, ANA does fund the salaries of approved staff for time to implement a funded ANA project. The Administration for Native Americans does not provide funds for staff salaries for those functions which support the organization as a whole, or for purposes unrelated to the actual management or implementation of work conducted under an ANA approved project.

Goal 1: Governance. Effective governance is a necessary foundation and condition for social and economic development of Indian tribes, Alaskan Native villages, and Native American groups. Efforts to achieve effective governance include: (1) Strengthening the infrastructures of tribal and village governments; (2) increasing the ability of tribes, villages, and Native American groups and organizations to plan, develop, and administer a comprehensive program to support community social and economic self-sufficiency; and (3) increasing awareness of the legal rights and benefits to which Native Americans are entitled, either by virtue of treaties, the Federal trust relationship, legislative authority, or as citizens of a particular state, or of the United States. Under its governance goal, ANA strongly encourages tribal and village councils, and other governing bodies, to strengthen and streamline their institutional management. The purpose is to develop and implement effective social and economic development strategies, and to improve their day-to-day governmental management. By improving such capabilities, Indian Tribes, Alaskan Native villages, and Native American groups can better define and achieve their goals, promote greater efficiency, and the effective use of all available resources.

Goal 2: Economic development is the long-term mobilization and management of economic resources to achieve a diversified economy. It is characterized by the effective and planned distribution of economic resources, services, and benefits. It also includes the participation of community members in the productive activities and economic investments of the community, and the pursuit of economic interests through methods that balance economic gain with social development, supported by an adequate governmental infrastructure.

Goal 3: Social Development is the mobilization and management of resources for the social benefit of community members. It involves the establishment of institutions, systems, and practices that contribute to the social environment desired by the community. This includes the development of, access to, and local control over, the projects and institutions that protect the health and welfare of individuals and families, and preserve the values, language, and culture of the community.

Building on the foundation of strong local governance, ANA supports tribal and village governments' and other Native American organizations' plans to achieve coordinated and balanced development through the implementation of social and economic development strategies (SEDS). These interrelated strategies should describe how the community coordinates and directs all resources (Federal and non-Federal) toward locally determined priorities, and how the community and its members are assisted in ways that promote greater economic and social self-sufficiency. In addition, strategies that combine balanced social and economic and governance goals should target independent sources of revenue for the community which will decrease dependency on public funds.

C. Eligible Applicants

Current ANA grantees whose project period terminates in fiscal year 1992 (October 1, 1991—September 30, 1992) are eligible to apply for a grant award under this program announcement. (The Project Period is noted in Block 9 of the "Financial Assistance Award" document).

Additionally, provided they are not current ANA grantees, the following organizations are eligible to apply:

- Federally recognized Indian Tribes;
- Consortia of Indian Tribes;
- Incorporated non-Federally recognized Tribes;
- Incorporated nonprofit multi-purpose community-based Indian organizations;
- Urban Indian Centers;
- Public and nonprofit private agencies serving Native Hawaiians;
- National or regional incorporated nonprofit Native American organizations with Native American community-specific objectives;
- Public and nonprofit private agencies serving native peoples from Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands. The populations served may be located on these islands or in the United States.
- Alaskan Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;
- Nonprofit Alaskan Native Regional Associations in Alaska with village specific projects;
- Nonprofit Native organizations in Alaska with village specific projects; and
- Nonprofit Alaskan Native community entities or tribal governing bodies (IRA or traditional councils) as recognized by the Bureau of Indian Affairs.

Under section 803 of the Native American Programs Act of 1974, as amended, colleges and universities are not eligible applicants unless they serve Native Hawaiians or the other Native American Pacific Islanders.

This program announcement does not apply to current grantees with multi-year projects that apply for continuation funding for their second or third budget periods.

Note: A separate program announcement for fiscal year 1992 funding will also be published specifically for Alaskan Native applicants (Program Announcement 13612-922). In fiscal year 1992, Alaskan Native entities are eligible to submit an application under either announcement, but are limited to a single application for each closing date.

An Alaskan Native applicant may apply for the:

(1) October 11, 1991 closing date of Program Announcement 13612-921; and

(2) February 7, 1992 closing date for Program Announcement 13612-921 OR

for Program Announcement 13612-922; and

(3) May 15, 1992 closing date for Program Announcement 13612-921 OR for Program Announcement 13612-922.

The following chart may be of assistance in understanding under what dates an Alaskan Native applicant is eligible to apply.

13612-921	13612-922
(Application to be submitted to Washington DC)	(Application to be submitted to Seattle WA)
October 11, 1991 and/or	
February 7, 1992 and/or	February 7, 1992.
May 15, 1992	May 15, 1992.

Thus, Alaskan Native groups now have the same three closing date opportunities as the rest of ANA's constituency. Those Alaskan Native organizations which want to develop plans, programs and projects to compete with other applicant groups under this program announcement (13612-921) are now able to compete for project money that does not have a specific project funding limit.

D. Available Funds

Approximately $14 million of financial assistance is available under this program announcement for American Indian, Alaskan Natives, Native Hawaiian, and Native American Pacific Islander projects. This program announcement is being issued in anticipation of appropriation of funds, and is contingent upon that appropriation.

Each tribe, Native American organization, or other eligible applicant can receive only one grant award under this announcement.

E. Multi-Year Projects

Applicants may apply for projects of up to 36 months duration. A multi-year project, that is, a project on a single theme requiring more than 12 months to complete, affords applicants the opportunity to develop more complex, and in-depth, projects than can be completed in one year. Applicants are encouraged to develop multi-year projects. However, applicants should understand that a multi-year project is a project on a single theme that requires more than 12 months to complete. The project cannot be a series of unrelated projects or activities presented in chronological order over a two or three year period. Funding after the first 12 month budget period of an approved multi-year project is non-competitive.

The budget period for each multi-year project grant is 12 months. The non-competitive funding for the second and third years is contingent upon the grantee's satisfactory progress in achieving the objectives of the project, according to the approved work plan, the availability of Federal funds, and compliance with the applicable statutory, regulatory and grant requirements.

F. Grantee Share of Project

Grantees, with the exception of organizations in the Native American Pacific Islands, must provide at least 20 percent of the total approved cost of the project, which may be cash or in-kind contributions.

Applications originating from American Samoa, Guam, Palau, or the Commonwealth of the Northern Mariana Islands are covered under section 501(d) of Public Law 95-134, as amended (48 U.S.C. 1469a) under which HHS waives any requirement for local matching funds under $200,000 (including in-kind contributions). Applications from groups in the United States serving Native American Pacific Islanders in the United States are required to provide a 20 percent match or apply for a waiver under 45 CFR 1336.50(b)(3) of the Native American Program Regulations.

The total approved cost of the project is the sum of the Federal share and the non-Federal share. The method to compute the non-Federal share is shown in the ANA Application Kit. An itemized budget detailing the applicant's non-Federal share, and its source, must be included in an application. A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program Regulations.

G. Intergovernmental Review of Federal Programs

This program is not covered by Executive Order 12372.

H. The Application Process

Availability of Application Forms

In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ANA. The application kits containing the necessary forms and instructions may be obtained from:

Department of Health and Human Services,
Administration for Children and Families,
Administration for Native Americans, room 344F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201-0001, Attention: No. 13612-921, (202) 245-7730.

Application Submission

One signed original, and two copies, of the grant application, including all attachments, must be hand delivered or mailed by the closing date to:

Department of Health and Human Services,
Administration for Children and Families,
Discretionary Grants Management Branch, room 341F.2, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201-0001, Attention: ANA 13612-921.

Note: If the applicant is from Alaska, the applicant is to send the application to the above address, not to the ANA Seattle Regional Office.

The application must be signed by an individual authorized (1) to act for the applicant tribe or organization and (2) to assume the applicant's obligations under the terms and conditions of the grant award, including Native American Program statutory and regulatory requirements.

Application Consideration

The Commissioner of the Administration for Native Americans determines the final action to be taken with respect to each grant application received under this announcement. The following points should be taken into consideration by all applicants:

- Incomplete applications and applications that do not conform to this announcement will not be accepted for review. Applicants will be notified in writing of any such determination by ANA.
- Complete applications that conform to all the requirements of this program announcement are subjected to a competitive review and evaluation process. An independent review panel evaluates each application against the published criteria in this announcement. The results of this review assist the Commissioner to make final funding decisions.
- The Commissioner's decision also takes into account the comments of ANA staff, State and Federal agencies having performance related information, and other interested parties.
- The Commissioner makes grant awards consistent with the purpose of the Act, all relevant statutory and regulatory requirements, this program announcement, and the availability of funds.
- After the Commissioner has made decisions on all applications, unsuccessful applicants are notified in writing within approximately 120 days of the closing date. Successful applicants are notified through an official Financial Assistance Award (FAA) document. The Administration

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for Native Americans staff cannot respond to requests for funding decisions prior to the official notification to the applicants. The FAA will state the amount of Federal funds awarded and the amount of the non-Federal matching share requirement, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, and the budget period.

I. Review Process and Criteria

Applications submitted by the post-marked date under this program announcement will undergo a pre-review to determine:

- That the applicant is eligible in accordance with the Eligible Applicants Section of this announcement.
- That the application materials submitted are sufficient to allow the panel to undertake an in-depth evaluation. (All required materials and forms are listed in the Grant Application Checklist in the Application Kit).

Applications which pass the pre-review will be evaluated and rated by an independent review panel on the basis of five evaluation criteria. These criteria are used to evaluate the quality of a proposed project, and to determine the likelihood of its success. A proposed project should reflect the purposes of ANA's SEDS policy and program goals (described in Introduction and Program Purpose of this announcement) and the probability of self-sufficiency for a specific tribe or Native American community. The five programmatic and management criteria are closely related to each other. They are considered jointly in judging the overall quality of an application. Points will be given only to applications which are responsive to this announcement and these criteria. The five evaluation criteria are:

(1) Long-Range Goals and Available Resources. (15 points)

(a) The application presents specific long-range community goals related to the proposed project. It explains how the community's intent to achieve these goals has been identified and clearly documents the involvement and support of the community in the planning process and implementation of the proposed project. The goals are presented within the context of a comprehensive community social and economic development plan. (Inclusion of the community's entire development plan is not necessary.)

(b) Available resources (other than ANA) which will assist, and be coordinated with the project are described. These resources may be human, natural or financial, and may include other Federal and non-Federal resources.

Note: Applicants from the Native American Pacific Islands are not required to provide a 20 percent match for the non-Federal share if it is under $200,000 and may not have points reduced for this policy. They are, however, expected to coordinate non-ANA resources for the proposed project, as are all of ANA's applicants.

(2) Organizational Capabilities and Qualifications. (10 points)

a. The management and administrative structure of the applicant is explained. Evidence of the applicant's ability to manage a project of the proposed scope is well defined. The application clearly shows the successful management of prior or current projects of similar scope by the organization, and/or by the individuals designated to manage the project.

b. Position descriptions or resumes of key personnel, including those of consultants, are presented. The position descriptions and resumes relate specifically to the staff proposed in the Approach Page and in the proposed Budget of the application. Position descriptions very clearly describe the position and its duties and clearly relate to the pesonnel staffing required for implementation of the project. Resumes indicate that the proposed staff are qualified to carry out the project activities. Either the position descriptions or the resumes set forth the qualifications that the applicant believes are necessary for overall quality management of the project.

(3) Project Objectives, Approach and Activities. (45 points)

The application proposes specific project objectives and activities related to the overall long-term goals. The Objective Work Plan in the application includes project objectives and activities for each budget period proposed and demonstrates that these objectives and activities:

- Are measurable and/or quantifiable;
- Are based on a fully described and locally determined balanced strategy for governance or social and economic development;
- Clearly relate to the community's long-range goals which the project addresses;
- Can be accomplished with available or expected resources during the proposed project period;
- Indicate when the objective, and major activities under each objective, will be accomplished;
- Specify who will conduct the activities under each objective; and
- Support a project that will be completed, self-sustaining, or financed by other than ANA funds at the end of the project period.

(4) Results or Benefits Expected. (20 points)

The proposed project will result in specific, measurable outcomes for each objective that will clearly contribute to the completion of the project and will help the community meet its goals. The specific information provided in the application on expected results or benefits for each objective is the basis upon which the outcomes can be evaluated at the end of each budget year.

(5) Budget. (10 points)

There is a detailed budget provided for each budget period requested. (This is especially necessary for multi-year applications.) The budget is fully explained. It justifies each line item in the budget categories in section B of the Budget Information of the application, including the applicant's non-Federal share and its source. (Applicants from the Native American Pacific Islands are exempt from the non-Federal share requirement.) Sufficient cost and other detail is included and explained to facilitate the determination of cost allowability and the relevance of these costs to the proposed project. The funds requested are appropriate and necessary for the scope of the project. For business development projects, the proposal demonstrates that the expected return on the funds used to develop the project provides a reasonable profit within a future specified time frame.

J. Guidance to Applicants

The following is provided to assist applicants to develop a competitive application.

(1) Program Guidance

- The Administration for Native Americans funds projects that present the strongest prospects for fulfilling a community's governance, social or economic development. The Administration for Native Americans does not fund on the basis of need alone.
- In discussing the problems being addressed in the application, sufficient background and/or history of the community concerning these problems, and progress to date, as well as the size of the population to be served, should be included so that the appropriateness and potential of the proposed project in strengthening the self-sufficiency of a community will be better understood by reviewers.

- An application should demonstrate a clear linkage between the proposed project and the community's long range goals or plan.
- The project application must clearly identify in measurable terms the expected results, benefits or outcomes of the project, and the positive or continuing impact on the community the project will have.
- Supporting documentation or other testimonies from concerned interests other than the applicant should be included to provide support for the feasibility and commitments of resources to the implementation or conduct of the project.

In the ANA Project Narrative, section A of the application package, Resources Available to the Proposed Project, the applicant should describe any specific financial circumstances which may impact on the project, such as any monetary or land settlements made to the applicant, and any restrictions on the use of those settlements. When the applicant appears to have other resources to support the proposed project and chooses not to use them, the applicant should explain why it is seeking ANA funds and not utilizing these resources for the project.

- Reviewers of applications for ANA indicate they are better able to evaluate the feasibility and practicality of a proposed economic development project if the applicant includes a business plan to support the feasibility of the project. (ANA has included sample business plans in the application kit.) It is strongly recommended that an applicant use these as a guide in the development of an application. The more information provided a review panel, the better able the panel is to evaluate the potential for the success of the proposed project.
- A *multi-purpose community-based Native American organization* is an association and/or corporation whose charter specifies that the community designates the Board of Directors and/or officers of the organization through an elective procedure and that the organization functions in several differing areas of concern to the members of the local Native American community. These areas are specified in the by-laws and/or policies adopted by the organization. They may include, but need not be limited to, economic, artistic, cultural, and recreational activities, the delivery of human services such as health, day care, counseling, education, and training.

(2) Technical Guidance

- It is strongly suggested that the applicant follow the Supplemental Guide included in the ANA application kit to develop an application. The Guide provides practical information and helpful suggestions, and is an aid to help applicants prepare ANA applications for social and economic development projects.
- Applicants are encouraged to have someone other than the author apply the evaluation criteria in the program announcement and to score the application prior to its submission, in order to gain a better sense of the application's quality and potential competitiveness in the ANA review process.
- There is no maximum or minimum amount of Federal funds that may be requested.
- For purposes of developing an application, applicants should plan for a project start date approximately 120 days after the closing date under which the application is submitted.
- The Administration for Native Americans will not fund essentially identical projects serving the same constituency.
- The Administration for Native Americans will accept only one application for each closing date. If an eligible applicant sends in two applications, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application.

An application from an Indian tribe or other applicant must be from the governing body of the applicant.

- The application's Form 424 must be signed by the applicant's representative authorized to act with full authority on behalf of the applicant.
- The Administration for Native Americans suggests that the pages of the application be numbered sequentially from the first page, and that a table of contents be provided. This allows for easy reference during the review process. Simple tabbing of the sections of the application is also helpful to the reviewers.
- Two copies of the application plus the original are required.
- The Cover Page (included in the Kit) should be the first page of an application, followed by the one-page abstract.
- The Approach page (section B of the ANA Program Narrative) for each objective proposed should be of sufficient detail to become a monthly staff guide of responsibilities should the applicant be funded.
- The applicant should specify the entire project period length on the first page of the Form 424, Block 13, not the length of the first budget period. Should the application's contents propose one length of project period and the Form 424 specify a conflicting length of project period, ANA will consider the project period specified on the Form 424 as governing.
- Line 15a of the 424 should specify the Federal funds requested for the first Budget Period, not the entire project period.
- If a profit-making venture is being proposed, profits must be reinvested in the business in order to decrease or eliminate ANA's future participation. Such revenue must be reported as general program income. A decision will be made at the time of grant award regarding appropriate use of program income. (See 45 CFR part 74 and part 92.)
- Applicants proposing multi-year projects must fully describe annual project objectives and activities. Separate Objective Work Plans (OWP) must be presented for each project year and a separate itemized budget of the Federal and non-Federal costs of the project for each budget period must be included.
- Applicants for multi-year projects must justify the entire time-frame of the project (i.e., why the project needs funding for more than one year) and describe the results to be achieved by the end of each budget period of the total project period.

(3) Projects or Activities That Generally Will Not Meet the Purposes of This Announcement

- Projects in which a grantee would provide training and/or technical assistance (T/TA) to other tribes or Native American organizations ("third party T/TA"). However, the purchase of T/TA by a grantee for its own use or for its members' use (as in the case of a consortium), where T/TA is necessary to carry out project objectives, is acceptable.
- Projects that include feasibility studies, business plans, marketing plans or written materials, such as manuals, that are not an essential part of the applicant's long-range development plan. The Administration for Native Americans is not interested in funding 'wish lists' of business possibilities. The Administration for Native Americans expects evidence of solid investment of time and thought on the part of the applicant to any development of business plans, etc., prior to the submission of the application.
- The support of on-going social service delivery programs or the expansion, or continuation, of existing social service delivery programs.
- Core administration functions, or other activities, that essentially support

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(3) Projects or Activities That Generally Will Not Meet the Purposes of This Announcement

- Projects in which a grantee would provide training and/or technical assistance (T/TA) to other tribes or Native American organizations ("third party T/TA"). However, the purchase of T/TA by a grantee for its own use or for its members' use (as in the case of a consortium), where T/TA is necessary to carry out project objectives, is acceptable.
- Projects that include feasibility studies, business plans, marketing plans or written materials, such as manuals, that are not an essential part of the applicant's long-range development plan. The Administration for Native Americans is not interested in funding 'wish lists' of business possibilities. The Administration for Native Americans expects evidence of solid investment of time and thought on the part of the applicant to any development of business plans, etc., prior to the submission of the application.
- The support of on-going social service delivery programs or the expansion, or continuation, of existing social service delivery programs.
- Core administration functions, or other activities, that essentially support

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only the applicant's on-going administrative functions.

- Project goals which are not responsive to one or more of the three ANA goals (Governance, Economic Development, Social Development).
- Proposals from consortia of tribes that are not specific with regard to support from, and roles of, member tribes. The Administration for Native Americans expects an application from a consortium to have goals and objectives that will create a positive impact in the communities of its members.
- Projects which should be supported by other Federal funding sources that are appropriate, and available, for the proposed activity.
- Projects that will not be completed, self-sustaining, or supported by other than ANA funds, at the end of the project period.
- The purchase of real estate (see 45 CFR 1336.50(e)) or construction (see HDS Grants Administration Manual Ch.3, section E.).
- Projects originated and designed by consultants who are not members of the applicant organization, tribe or village who prepared the application and provide a major role for themselves in the proposed project.

The Administration for Native Americans will critically evaluate applications with which the acquisition of major capital equipment (whether oil rigs or computers/word processing equipment) is a major component of the Federal share of the budget. During negotiation, such expenditures may be deleted from the budget of an otherwise approved application, if not fully justified by the applicant and not deemed appropriate to the needs of the project by ANA.

K. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Public Law 96–511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record keeping requirements in regulations including program announcements. This program announcement does not contain information collection requirements beyond those approved for ANA grant applications under the Program Narrative Statement by OMB.

L. Due Date for Receipt of Applications

The closing dates for applications submitted in response to this program announcement are October 11, 1991, February 7, 1992, and May 15, 1992.

M. Receipt of Applications

Applications must either be hand delivered or mailed to the address in section H, The Application Process: Application Submission.

The Administration for Native Americans will not accept applications submitted via facsimile (FAX) equipment.

Deadlines

Applications mailed through the U.S. Postal Service or a commercial delivery service shall be considered as meeting an announced closing date if they are either:

(1) Received on or before the deadline date at the address specified in section H, Application Submission, or

(2) Sent on, or before, the deadline date and received in time for the ANA independent review. (Applicants are cautioned to request a legibly dated receipt from a commercial carrier or U.S. Postal Service or a legible postmark date from the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications

Applications which do not meet the criteria in the above paragraph of this section are considered late applications and will be returned to the applicant. The Administration for Native Americans shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines

The Administration for Native Americans may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if ANA does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

(Catalog of Federal Domestic Assistance Program Number 13.612 Native American Programs)

Dated: June 28, 1991.

S. Timothy Wapato,

Commissioner, Administration for Native Americans.

Approved: July 12, 1991.

Donna N. Givens,

Deputy Assistant Secretary for Children and Families.

[FR Doc. 91–18533 Filed 8–5–91; 8:45 am]

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federal register

Tuesday
August 6, 1991

Part III

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 7 and 52

Federal Acquisition Regulation; Lease With Option To Purchase; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 7 and 52

[FAR Case 91-6]

Federal Acquisition Regulation; Lease With Option To Purchase

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering amending FAR subpart 7.4 and adding a clause at 52.207 based on the Defense Management Review (DMR). This includes information required to support a decision to use a lease with an option to purchase and outlines the Government's right to purchase at any time during the performance of the contract.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before October 7, 1991 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., room 4041, Washington, DC 20405.

Please cite FAR Case 91-6 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott at (202) 501-0168 in reference to this FAR case. For general information, contact Ms. Beverly Fayson, FAR Secretariat, room 4041, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAR Case 91-6.

SUPPLEMENTARY INFORMATION:

A. Background

The Secretary of Defense directed that the Defense Federal Acquisition Regulation Supplement (DFARS) be streamlined and rewritten as part of the DMR Regulatory Reform initiative. This initiative entails deletion of some DFARS language, consolidation of DFARS language, movement of DFARS language to the FAR, redefinition of policies and procedures, and editing and rewrite of the total book. The proposed additions are a result of language being deleted from lower level supplements for more appropriate insertion into the FAR, since it is applicable to all Federal buying activities.

FAR 7.402(b)(2) states that if a lease is justified, a lease with option to purchase is preferable. However, there is no FAR coverage to implement this requirement. The proposed coverage implements FAR 7.402(b)(2) and outlines the Government's right to purchase at any time during the performance of the contract.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et. seq.*, because the proposed changes do not impose any new requirements on contractors, and it is a change to internal operating procedures. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAR Case 91-6) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Parts 7 and 52

Government procurement; lease with option to purchase.

Dated: May 28, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR parts 7 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 7 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 7—ACQUISITION PLANNING

2. Section 7.402 is amended by adding paragraph (b)(4) to read as follows:

7.402 Acquisition methods.

* * * * *

(b) * * *

(4) If a lease with option to purchase is used, the contract shall state the purchase price or provide a formula which shows how the purchase price will be established at the time of purchase.

3. Section 7.404 is added to read as follows:

7.404 Contract clause.

The contracting officer shall insert a clause substantially the same as the clause at 52.207-X, Option To Purchase Equipment, in solicitations and contracts involving a lease with option to purchase.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 52.207-X is added to read as follows:

§ 52.207-X Option To Purchase Equipment.

As prescribed in 7.404, insert a clause substantially the same as the following:

Option To Purchase Equipment (XXX 1991)

(a) The Government has the right to purchase the equipment provided on a lease or rental basis under this contract at any time during the period of the contract, including any contract extensions. The Contracting Officer may exercise the option only by written notice to the Contractor. The written notice will specify the effective date of the purchase.

(b) The purchase conversion cost of the equipment shall be computed as of the effective date specified in the written notice required in paragraph (a) of this clause, on the basis of the purchase price set forth in the contract, minus the total purchase option credits accumulated during the period of lease or rental, calculated by the formula contained elsewhere in this contract. The accumulated purchase option credits available to determine the purchase conversion cost will include any credits accrued during a previous period of lease or rental of the equipment under any Government contract, and are calculated from the time the equipment has been on continuous rental. The movement of equipment from one site to another site shall be interpreted as "continuous rental".

(c) When the Contracting Officer exercises the option to purchase, the lease or rental portion of the contract becomes complete as of the effective date specified in the written notice required in paragraph (a) of this clause, except for final payment and transfer of title to the Government.

(d) The equipment converted to purchase shall be discontinued from lease or rental on the day immediately preceding the effective date of purchase.

(e) The Contractor shall allow the Government to transfer accumulated purchase option credits and the right to convert from lease to purchase to successor contracts for equipment subject to lease with option to purchase under this contract.

(End of clause)

[FR Doc. 91-18531 Filed 8-5-91; 8:45 am]

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(d) The equipment converted to purchase shall be discontinued from lease or rental on the day immediately preceding the effective date of purchase.

(e) The Contractor shall allow the Government to transfer accumulated purchase option credits and the right to convert from lease to purchase to successor contracts for equipment subject to lease with option to purchase under this contract.

(End of clause)

[FR Doc. 91–18531 Filed 8–5–91; 8:45 am]

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federal register

Tuesday
August 6, 1991

Part IV

The President

Proclamation 6320—Agreement on Trade Relations Between the United States of America and the Union of Soviet Socialist Republics

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Title 3—

The President

Federal Register
Vol. 56, No. 151
Tuesday, August 6, 1991

Presidential Documents

Title 3—

The President

Proclamation 6320 of August 2, 1991

Agreement on Trade Relations Between the United States of America and the Union of Soviet Socialist Republics

By the President of the United States of America

A Proclamation

1. Pursuant to the authority vested in me by the Constitution and the laws of the United States, as President of the United States of America, I, acting through duly empowered representatives, entered into negotiations with representatives of the Union of Soviet Socialist Republics to conclude an agreement on trade relations between the United States of America and the Union of Soviet Socialist Republics.

2. These negotiations were conducted in accordance with the requirements of the Trade Act of 1974 (Public Law 93-618, January 3, 1975; 88 Stat. 1978), as amended (the "Trade Act").

3. As a result of these negotiations, an "Agreement on Trade Relations Between the United States of America and the Union of Soviet Socialist Republics," including annexes and exchanges of letters which form an integral part of the Agreement, the foregoing in English and Russian, was signed on June 1, 1990, by duly empowered representatives of the two Governments and is set forth as an annex to this proclamation.

4. This Agreement conforms to the requirements relating to bilateral commercial agreements set forth in section 405(b) of the Trade Act (19 U.S.C. 2435(b)).

5. Article XVII of the Agreement provides that the Agreement shall enter into force on the date of exchange of written notices of acceptance by the two Governments.

6. Section 405(c) of the Trade Act (19 U.S.C. 2435(c)) provides that a bilateral commercial agreement providing nondiscriminatory treatment to the products of a country heretofore denied such treatment, and a proclamation implementing such agreement, shall take effect only if approved by the Congress under the provisions of that Act.

7. Section 604 of the Trade Act (19 U.S.C. 2483) authorizes the President to embody in the Harmonized Tariff Schedule of the United States the substance of the provisions of that Act, of other acts affecting import treatment, and actions taken thereunder.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to sections 404, 405, and 604 of the Trade Act of 1974, as amended, do proclaim that:

(1) This proclamation shall become effective, said Agreement shall enter into force, and nondiscriminatory treatment shall be extended to the products of the Union of Soviet Socialist Republics, in accordance with the terms of said Agreement, on the date of exchange of written notices of acceptance in accordance with Article XVII of said Agreement. The United States Trade Representative shall publish notice of the effective date in the **Federal Register**. On such date, and without prejudice to the long-standing U.S. policy of not recognizing the forcible incorporation of Estonia, Latvia, and Lithuania into the Soviet Union, nondiscriminatory tariff treatment shall also be extended to the products of Estonia, Latvia, and Lithuania.

(2) Effective with respect to articles entered, or withdrawn from warehouse for consumption, into the customs territory of the United States on or after the date provided in paragraph (1) of this proclamation, general note 3(b) to the Harmonized Tariff Schedule of the United States, enumerating those countries whose products are subject to duty at the rates set forth in Rates of Duty Column 2 of the tariff schedule, is modified by striking out "Estonia", "Latvia", "Lithuania", and "Union of Soviet Socialist Republics".

IN WITNESS WHEREOF, I have hereunto set my hand this second day of August, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and sixteenth.

George Bush

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ff schedule, is modified by striking out "Estonia", "Latvia",
nion of Soviet Socialist Republics".

EREOF, I have hereunto set my hand this second day of
of our Lord nineteen hundred and ninety-one, and of the
United States of America the two hundred and sixteenth.

AGREEMENT ON TRADE RELATIONS BETWEEN THE UNITED STATES OF AMERICA AND THE UNION OF SOVIET SOCIALIST REPUBLICS

The United States of America and the Union of Soviet Socialist Republics (hereinafter referred to collectively as "Parties" and individually as "Party"),

Recognizing that the development of bilateral trade may contribute to better mutual understanding and cooperation,

Taking into account the favorable implications for trade expansion of the economic restructuring and the development of a market-based economy in the USSR,

Considering that expanded trade relations between the Parties will contribute to the general well-being of the peoples of each Party, and promote respect for internationally recognized rights of working people,

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Acknowledging that the development of trade relations and direct contact between Soviet organizations and United States nationals and companies will promote openness and mutual understanding,

Considering that economic ties are an important and necessary element in the strengthening of their bilateral relations,

Reaffirming their desire to develop economic cooperation in accordance with the principles and provisions of the Final Act signed in Helsinki on the 1st of August, 1975, and other documents of the Conference on Security and Cooperation in Europe, and in accordance with the Document of the Conference on Economic Cooperation in Europe held in Bonn in March-April 1990,

Being convinced that an agreement on trade relations between the two Parties will best serve their mutual interests, and

Desiring to create a framework which will foster the development and expansion of commercial ties between Soviet organizations and United States nationals and companies,

Have agreed as follows:

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ARTICLE I

MOST FAVORED NATION AND NONDISCRIMINATORY TREATMENT

1. Each Party shall accord unconditionally to products originating in or exported to the territory of the other Party treatment no less favorable than that accorded to like products originating in or exported to the territory of any third country in all matters relating to:

(a) customs duties and charges of any kind imposed on or in connection with importation or exportation, including the method of levying such duties and charges;

(b) methods of payment for imports and exports, and the international transfer of such payments;

(c) rules and formalities in connection with importation and exportation, including those relating to customs clearance, transit, warehouses and transhipment;

(d) taxes and other internal charges of any kind applied directly or indirectly to imported products; and

(e) rules concerning sale, purchase, transport, distribution, storage and use of products on the domestic market.

2. Each Party shall accord to products originating in or exported to the territory of the other Party nondiscriminatory treatment with respect to the application of quantitative restrictions and the granting of licenses.

3. Each Party shall accord to imports of products and services originating in the territory of the other Party

nondiscriminatory treatment with respect to the allocation of the currency needed to pay for such imports.

4. The provisions of paragraphs 1, 2 and 3 shall not apply to:

(a) advantages accorded by either Party by virtue of such Party's full membership in a customs union or free trade area;

(b) advantages accorded to third countries for the facilitation of frontier traffic;

(c) advantages accorded to third countries in accordance with the General Agreement on Tariffs and Trade (the "GATT"), and advantages accorded to developing countries under the GATT and other international agreements; and

(d) actions taken under Article XI (Market Disruption) of this Agreement.

ARTICLE II

GENERAL OBLIGATIONS WITH RESPECT TO MARKET ACCESS FOR PRODUCTS AND SERVICES

1. Recognizing the mutual benefit to trade relations on the basis of this Agreement and consistent with the most favored nation principles expressed in Article I, the Parties shall, on the basis of reciprocity and without detriment to relations with third countries, improve market access for products and services of the other Party and optimize mutual commercial opportunities, including through the satisfactory reciprocation of market opening measures resulting from multilateral negotiations.

Taking the above into account and resulting from the development of market mechanisms in the Soviet Union and its closer relationship with the GATT, opportunities shall be created to increase step by step national treatment for products and services of the United States.

2. Trade in products and services shall be effected by contracts between nationals and companies of the United States and organizations of the Soviet Union concluded in the exercise of their independent commercial judgment and on the basis of customary commercial considerations such as price, quality, delivery and terms of payment.

3. Neither Party shall require or encourage Soviet organizations or U.S. nationals or companies to engage in barter or countertrade transactions. Nevertheless, where nationals, companies or organizations decide to resort to countertrade operations, the Parties will encourage them to furnish to each other all necessary information to facilitate the transaction.

4. Each Party shall accord products imported from the territory of the other Party treatment no less favorable than that accorded to like products originating in any third country in relation to technical regulations and standards, including conformity testing and certification. Furthermore, the Parties shall ensure that such technical regulations and standards are not prepared, adopted, or applied in a discriminatory manner, with a view to creating obstacles to bilateral trade, or to protect domestic production.

ARTICLE III

EXPANSION AND PROMOTION OF TRADE

1. The Parties affirm their desire to expand trade in products and services consistent with the terms of this Agreement. They shall take appropriate measures to encourage and facilitate the exchange of goods and services and to secure favorable conditions for long-term development of trade relations between Soviet organizations and United States nationals and companies.

2. The Parties shall take appropriate measures to encourage the expansion of commercial contacts with a view to increasing trade. In this regard, the Soviet Party expects that, during the term of this Agreement, Soviet organizations shall increase their orders in the United States for products and services, while the United States Party anticipates that the effect of this Agreement shall be to encourage increased purchases by United States nationals and companies of products and services from the Soviet Union. Toward this end, the Parties shall publicize this Agreement and ensure that it is made available to all interested parties.

3. The Parties shall encourage interested nationals, companies and organizations of both countries to look for opportunities to expand trade in machinery, equipment and technologies, including creation of favorable financial conditions to carry on trade in such products.

4. Each Party shall encourage and facilitate the holding of trade promotional events such as fairs, exhibitions, missions and seminars in its territory and in the territory of the other Party. Similarly, each Party shall encourage and facilitate the participation of its respective nationals, companies and organizations in such events. Subject to the laws in force within their respective territories, the Parties agree to allow the import and re-export on a duty free basis of all articles for use in such events, provided that such articles are not sold or otherwise transferred.

ARTICLE IV

GOVERNMENT COMMERCIAL OFFICES

1. Each Party shall allow government commercial offices to hire directly host country nationals and, subject to its laws and procedures on entry and residence of aliens, third country nationals.

2. Each Party shall ensure unhindered access of host country nationals to government commercial offices of the other Party.

3. Each Party shall encourage the participation of its nationals, companies and organizations in the activities of their respective government commercial offices, especially with respect to events held on the premises of such commercial offices.

4. Each Party shall create favorable conditions for access by government commercial office personnel of the other Party to host country officials at both the federal and other levels,

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representatives of state enterprises, institutes, foreign trade organizations, cooperatives, joint ventures and other organizations.

ARTICLE V

BUSINESS FACILITATION

1. Each Party shall permit the establishment within its territory of commercial representations of companies and organizations of the other Party and shall accord such representations treatment at least as favorable as that accorded to commercial representations of companies and organizations of third countries. If either Party accredits commercial representations, that Party shall establish promptly an expedited accreditation procedure. Through this procedure, a central accrediting authority shall exercise its best efforts to consider an application for accreditation and, in the case of a positive decision, to issue a certificate of accreditation to commercial representations of the other Party all within 60 days of the submission of such application. The accreditation procedure shall be administered with a goal of maximizing the participation in the market of the accrediting Party of companies already operating in that market, new entrants and small companies. Commercial representations of a Party accredited through the above procedure shall be accorded treatment no less favorable than that accorded to accredited commercial representations of third countries, except that they shall not be entitled to the

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assistance of the accrediting Party in locating office and residential space.

2. Each Party shall afford commercial representations of the other Party fair and equitable treatment with respect to the conduct of their operations.

3. Each Party shall permit commercial representations of the other Party to import and use in accordance with normal commercial practices, office and other equipment, such as typewriters, photocopiers, computers and telefax machines in connection with the conduct of their activities in the territory of such Party.

4. Each Party shall permit on a nondiscriminatory basis, at nondiscriminatory prices (where such prices are set or controlled by the government), commercial representations of the other Party access to office space and living accommodations, whether or not designated for use by foreigners, as well as telecommunications, municipal and social services.

5. Each Party shall permit such commercial representations established in its territory to hire directly employees who are nationals of either Party or of third countries and to compensate such employees on terms and in a currency that is mutually agreed between the parties, consistent with such Party's minimum wage laws.

6. Each Party shall permit nationals, companies and organizations of the other Party to advertise their products and services (a) through direct agreement with the advertising media,

including television, radio, print and billboard, and (b) by direct mail, including the use of enclosed envelopes and cards preaddressed to that national, company or organization.

7. Each Party shall permit nationals, companies and organizations of the other Party to conduct market studies, either directly or by contract, within its territory. To facilitate the conduct of market research, each Party, upon request of the other Party, shall make available to interested nationals, companies and organizations of that Party, non-confidential, non-proprietary market information within its possession.

8. Each Party shall permit commercial representations to stock and provide an adequate supply of samples and replacement parts for before and after sales service on a non-commercial basis.

9. Each Party shall facilitate direct contact between end-users in its territory and nationals, companies, and organizations of the other Party. Each Party shall create favorable conditions for direct contacts between its organizations and government institutions whose decisions affect potential sales and purchases of goods and services and nationals, companies, and organizations of the other Party. Each Party shall also encourage direct commercial transactions between Soviet organizations and U.S. nationals and companies, including those which act from either side as producers, end-users or buyers.

10. Each Party shall permit nationals, companies and

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organizations of the other Party to engage and serve as agents or consultants for nationals, companies or organizations of either Party and of third countries on prices and terms mutually agreed between the parties. Each Party shall permit nationals, companies and organizations of the other Party to engage its nationals, companies and organizations that act as distributors, provided that such nationals, companies or organizations are entitled to engage in such activities, on prices and terms mutually agreed between the parties.

11. Neither Party shall impose measures which unreasonably impair contractual or property rights or other interests acquired within its territory by nationals, companies and organizations of the other Party.

12. Nothing in paragraphs 1, 5 or 10 of this Article shall be interpreted to confer any rights under either Party's laws and procedures on entry and residence of aliens.

ARTICLE VI

TRANSPARENCY

1. Each Party shall make available publicly on a timely basis all laws and regulations related to commercial activity, including trade, investment, taxation, banking, insurance and other financial services, transport and labor.

2. Each Party shall provide nationals, companies and organizations of the other Party with access to available non-

confidential, non-proprietary data on the national economy and individual sectors, including information on foreign trade.

3. Each Party shall allow the other Party, when interested, the opportunity to consult on the formulation of rules and regulations which affect the conduct of business activities.

ARTICLE VII

FINANCIAL PROVISIONS RELATING TO TRADE IN PRODUCTS AND SERVICES

1. Unless otherwise agreed between the parties to individual transactions, all commercial transactions between Soviet organizations and United States nationals and companies shall be made in United States dollars or any other freely convertible currency that may be mutually agreed upon by such organizations, nationals and companies.

2. No restrictions shall be placed by either Party upon the export from its territory of freely convertible currencies, including deposits or instruments representative of such currencies, obtained in an authorized manner in connection with trade in products and services by nationals, companies and organizations of the other Party.

3. Nationals, companies and organizations of a Party holding currency of the other Party received in an authorized manner may deposit such currency in authorized financial

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institutions located in the territory of the other Party and may maintain and use such currency for local expenses in accordance with applicable laws and regulations of the other Party.

4. Without derogation from paragraph 2, in connection with trade in products and services, each Party shall grant to nationals, companies and organizations of the other Party most-favored-nation treatment with respect to:

(a) opening and maintaining accounts, in both foreign and local currency, and having access to funds deposited, in financial institutions located in the territory of the Party;

(b) payments, remittances and transfers of freely convertible currencies, or financial instruments representative thereof, between the territories of the two Parties, as well as between the territory of that Party and that of any third country;

(c) rates of exchange offered by financial institutions authorized to deal in foreign exchange, and authorized means of obtaining freely convertible currencies; and

(d) the receipt and use of local currency.

ARTICLE VIII

PROTECTION OF INTELLECTUAL PROPERTY

1. Proceeding from the importance of intellectual property and the necessity of its legal protection to promote trade and economic cooperation and acknowledging the necessity of creating

more favorable conditions for adequate and effective legal protection of intellectual property and its enforcement, the Parties have agreed that they shall:

(a) ensure in accordance with the provisions of internal legislation, protection and implementation of intellectual property rights, including copyright on literary, scientific and artistic works including computer programs and data bases, patents and other rights on inventions and industrial designs, know-how, trade secrets, trade marks and service marks, trade names, and protection against unfair competition;

(b) ensure that their international commitments in the field of intellectual property rights are honored. Accordingly, each Party reaffirms the commitments made with respect to industrial property in the Paris Convention for the Protection of Industrial Property of March 30, 1883, as revised at Stockholm on July 14, 1967 (the "Paris Convention"), and the commitments made with respect to copyright in the Universal Copyright Convention of September 6, 1952; and

(c) encourage appropriate arrangements between institutions within the United States and the Union of Soviet Socialist Republics to provide protection for intellectual property rights.

2. To provide adequate and effective protection and enforcement of intellectual property rights, each Party agrees to submit, to their respective legislative bodies, the draft laws necessary to carry out the obligations of this Article and to exert their best efforts to enact and implement these laws. In this connection, the Parties will:

(a) enhance their copyright relations through adherence to the Berne Convention for the Protection of Literary and Artistic Works (Paris 1971) (the "Berne Convention");

(b) provide copyright protection for computer programs and data bases as literary works under their copyright laws;

(c)(1) provide protection for sound recordings first fixed by their respective nationals or companies or first published in their national territory;

(c)(2) such protection shall include, among the minimum rights guaranteed to producers of these works, a right of reproduction and a right of public distribution and importation, and notwithstanding the rights of an owner of a particular copy of a sound recording in such copy, the producer of a sound recording shall continue to enjoy the exclusive commercial rental and lending rights in such copy; and

(c)(3) the Parties agree, that immediately after both Parties have enacted protection for sound recordings originating in their respective territories, to take such steps as are necessary under domestic law to extend such protection to sound recordings originating in the other Party's territory;

(d) provide product and process patent protection for all areas of technology (except the Parties may exclude materials useful solely in atomic weapons) for a term of at least 20 years from the filing of an application or at least 17 years from the grant of the patent; and

(e) provide broad protection for trade secrets.

3. Upon the date when both Parties are members of the Berne Union, the protection of works in existence prior to that date shall be determined in accordance with Article 18 of the 1971 Paris Act of the Berne Convention.

4. The Parties shall introduce in their legislative proposals the principles enumerated in the side letters to this Agreement. These side letters shall form an integral part of this Agreement.

5. The Parties agree to constitute a working group on intellectual property matters in accordance with the terms and for the purposes set forth in the side letters attached hereto.

ARTICLE IX

TRANSIT

Each Party shall facilitate the transit of products originating in the territory of the other Party and transported via the territory of the Party in accordance with the laws and regulations in force in the Party.

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ARTICLE X

SUBJECTS FOR FURTHER ECONOMIC COOPERATION

1. The Parties shall take appropriate steps to foster economic cooperation on as broad a base as possible in all fields deemed to be in their mutual interest, including with respect to statistics and standards.

2. The Parties, taking into account the growing economic significance of service industries, agree to consult on matters affecting the conduct of service business between the two countries and particular matters of mutual interest relating to individual service sectors with the objective, among others, of attaining maximum possible market access and liberalization.

ARTICLE XI

MARKET DISRUPTION SAFEGUARDS

1. The Parties agree to consult promptly at the request of either Party whenever either actual or prospective imports of products originating in the territory of the other Party cause or threaten to cause or significantly contribute to market disruption. Market disruption exists within a domestic industry whenever imports of an article, like or directly competitive with an article produced by such domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat thereof, to such domestic industry.

2. The consultations provided for in paragraph 1 shall have the objectives of (a) presenting and examining the factors relating to such imports that may be causing or threatening to cause or significantly contributing to market disruption, and (b) finding means of preventing or remedying such market disruption. Such consultations shall be concluded within sixty days from the date of the request for such consultation, unless the Parties otherwise agree.

3. Unless a different solution is mutually agreed upon during the consultations, the importing Party may (a) impose quantitative import limitations, tariff measures or any other restrictions or measures it deems appropriate, and for such period of time it deems necessary, to prevent or remedy threatened or actual market disruption, and (b) take appropriate measures to ensure that imports from the territory of the other Party comply with such quantitative limitations or other restrictions introduced in connection with market disruption. In this event, the other Party shall be free to deviate from its obligations under this Agreement with respect to substantially equivalent trade.

4. Where in the judgment of the importing Party, emergency action is necessary to prevent or remedy such market disruption, the importing Party may take such action at any time and without prior consultations provided that such consultations shall be requested immediately thereafter.

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5. In the selection of measures under this Article, the Parties shall endeavor to give priority to those measures which cause least disturbance to the achievement of the goals of this Agreement.

6. The Parties acknowledge that the elaboration of the market disruption safeguard provisions in this Article is without prejudice to the right of either Party to apply laws applicable to unfair trade.

7. Each Party shall ensure that its domestic legislation and procedures for determining market disruption are transparent and afford affected parties an opportunity to submit their views.

ARTICLE XII

DISPUTE SETTLEMENT

1. Nationals, companies and organizations of either Party shall be accorded national treatment with respect to access to all courts and administrative bodies in the territory of the other Party, as plaintiffs, defendants or otherwise. They shall not claim or enjoy immunity from suit or execution of judgment, proceedings for the recognition and enforcement of arbitral awards or other liability in the territory of the other Party with respect to commercial transactions; they also shall not claim or enjoy immunities from taxation with respect to commercial transactions, except as may be provided in other bilateral agreements.

2. The Parties encourage the adoption of arbitration for the settlement of disputes arising out of commercial transactions concluded between nationals and companies of the United States and organizations of the Soviet Union. Such arbitration may be provided for by agreements in contracts between such nationals, companies or organizations, or in separate written agreements between them.

3. The parties to individual transactions may provide for arbitration under any internationally recognized arbitration rules, including the UNCITRAL Rules in which case the parties should designate an Appointing Authority under said Rules in a country other than the United States or the Soviet Union.

4. Unless otherwise agreed between the parties, the parties should specify as the place of arbitration a country, other than the United States or the Soviet Union, that is a party to the U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards, signed in New York, June 10, 1958.

5. Nothing in this Article shall be construed to prevent, and the Parties shall not prohibit, the parties from agreeing upon any other form of arbitration or dispute settlement which they mutually prefer and agree best suits their particular needs.

6. Each Party shall ensure that an effective means exists within its territory for the recognition and enforcement of arbitral awards.

ARTICLE XIII

NATIONAL SECURITY

The provisions of this Agreement shall not limit the right of either Party to take any action for the protection of its security interests.

ARTICLE XIV

CONSULTATIONS

1. The Parties agree to consult periodically within the framework of the Joint US-USSR Commercial Commission to review the operation of this Agreement.

2. The Parties agree to consult promptly through appropriate channels at the request of either Party to discuss any matter concerning the interpretation or implementation of this Agreement and other relevant aspects of the relations between the Parties.

ARTICLE XV

DEFINITIONS

1. As used in this Agreement, the terms set forth below shall have the following meaning:

(a) "company," means any kind of corporation, company, association, sole proprietorship or other organization legally constituted under the laws and regulations of a Party or an internal subdivision thereof, whether or not organized for pecuniary gain or privately or governmentally owned; provided that, either Party reserves the right to deny any company the advantages of this Agreement if nationals of any third country control such a company and, in the case of a company of the other Party, that company has no substantial business activities in the territory of the other Party or is controlled by nationals of a third country with which the denying country does not maintain normal economic relations.

(b) "commercial representation," means a representation of a company or organization of a Party.

(c) "national," means a natural person who is a national of a Party under its applicable law.

(d) "organization," means, with respect to the United States, a company of the United States and, with respect to the Soviet Union, any economic entity or enterprise (including a company) engaging in foreign trade or other commercial activities with foreign nationals or companies.

ARTICLE XVI

GENERAL EXCEPTIONS

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prohibit the adoption or enforcement by a Party of:

(a) measures necessary to secure compliance with laws or regulations which are not contrary to the purposes of this Agreement;

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(b) measures for the protection of intellectual property rights and the prevention of deceptive practices as set out in Article VIII of this Agreement (and related side letters); or

(c) any other measure referred to in Article XX of the GATT.

ARTICLE XVII

ENTRY INTO FORCE, TERM AND TERMINATION

1. This Agreement (including its side letters which form an integral part of the Agreement) shall enter into force upon an exchange of diplomatic notes in which the Parties notify each other that all necessary legal requirements for entry into force have been fulfilled and shall remain in force as provided in this Article.

2. The initial term of this Agreement shall be three years, subject to paragraph 4 below.

3. This Agreement shall be extended for successive terms of three years each unless either Party has given written notice to the other Party of its intent to terminate this Agreement at least 30 days prior to the expiration of the then current term.

4. Either Party may terminate this Agreement upon written notice to the other Party and in such case the Parties will, to the fullest extent practicable, seek to minimize possible disruption to their trade relations.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Agreement.

DONE at Washington this first day of June, 1990, in duplicate, in the English and Russian languages, both texts being equally authentic.

FOR THE UNITED STATES OF AMERICA:	FOR THE UNION OF SOVIET SOCIALIST REPUBLICS:

signed, being duly authorized,

y of June , 1990, in duplicate,

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FOR THE UNION OF SOVIET
SOCIALIST REPUBLICS:

Washington, June 1, 1990

Dear Mr. Deputy Minister:

I have the honor to confirm receipt of your letter that reads as follows:

> Dear Madam Ambassador:
>
> In connection with the signing on this date of the Agreement on Trade Relations between the Union of Soviet Socialist Republics and the United States of America (the "Agreement"), I have the honor to confirm the understanding reached by our Governments as follows:
>
> By the Resolution of the Supreme Soviet of the U.S.S.R. of 6 March 1990, about bringing into force the Soviet Union's "Law on Property in the U.S.S.R.," the Supreme Soviet of the U.S.S.R. has charged the Council of Ministers of the U.S.S.R. in 1990 to introduce for examination by the Supreme Soviet of the U.S.S.R. drafts of the legislative acts of the U.S.S.R. governing relations on the creation and use of inventions and discoveries, scientific, literary and artistic works as well as other objects of intellectual property, which by virtue of their content will create conditions for Soviet participation in the Berne Convention for the Protection of Literary and Artistic Works (the "Berne Convention").
>
> The Government of the U.S.S.R. will introduce in 1991 the draft laws necessary to fulfill the obligations contained in Article VIII of the Agreement and will undertake all possible measures to enact these laws during 1991. The Government of the U.S.S.R. will seek prompt implementation of these laws.
>
> To fulfill the obligations under paragraphs 4 and 5 of Article VIII of the Agreement, the Government of the U.S.S.R. undertakes the following:
>
> I. The Government of the U.S.S.R. shall incorporate the following principles in its legislative proposals on intellectual property:

The Honorable Yuri N. Chumakov
Deputy Minister of Foreign Economic Relations
Union of Soviet Socialist Republics

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COPYRIGHT PROTECTION FOR COMPUTER SOFTWARE

1. Copyright protection for computer programs shall extend to all types of computer programs including application programs and operating systems which may be expressed in any language, whether in source or object code and regardless of their medium of fixation.

2. The duration and level of protection for computer programs shall be consistent with that provided to other literary works.

3. Limitations on rights expressly permitted to apply to literary works under the Paris Act of the Berne Convention shall also be made applicable to computer programs. In addition, owners of a copy of a computer program shall be provided the right:

(3.1) to make or authorize the making of a single copy or adaptation of that computer program provided:

(3.1.1) that such new copy or adaptation is created as an essential step in the utilization of the computer program -- in conjunction with a machine and that it is used in no other manner, or

(3.1.2) that such a new copy or adaptation is for archival purposes only and that all archival copies are destroyed -- in the event that continued possession of the computer program should cease to be rightful.

PROTECTION AGAINST UNFAIR COMPETITION, INCLUDING PROTECTION OF TRADE SECRETS

1. Protection against unfair competition will be implemented in accordance with the provisions of Article 10*bis* and Article 10*ter* of the Paris Convention for the Protection of Industrial Property.

2. Trade secrets include any formula, device, compilation of information, computer program, pattern, technique or process that is used or could be used in the owner's business and has actual or potential economic value from not being generally known.

3. A trade secret shall be protected whether such trade secret is of a technical or commercial nature, provided that it:

(3.1) has actual or potential commercial value from not being known to the relevant public;

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(3.2) is not readily accessible in a lawful manner; and

(3.3) has been subject to appropriate measures to keep it secret.

The trade secret shall be protected as long as these conditions exist.

4. The appropriation, disclosure, and use of a trade secret without the consent of the owner shall be unlawful.

5. Efforts to commercially exploit the trade secret shall not be hindered or impeded by imposing excessive or discriminatory conditions or conditions that dilute the value of the trade secret.

II. The Government of the U.S.S.R. shall provide for a review of the following issues concerning protection of sound recordings:

1. Recognizing that the United States provides a longer term of protection for sound recordings than is in the current draft proposal of the U.S.S.R., the Government of the U.S.S.R. commits to review the question of including in the appropriate draft legislation which must be presented to the Supreme Soviet of the U.S.S.R. in 1990, a provision to provide to producers of sound recordings, a term of protection for fifty (50) years from the date of first publication of the sound recording.

2. Recognizing that the United States adheres to the Geneva Phonograms Convention, the Government of the U.S.S.R. commits to review immediately after enactment of sound recording protection, its adherence to that Convention.

III. The Government of the U.S.S.R. shall provide for a review of protection for inventions, as follows:

1. The Government of the U.S.S.R. undertakes to examine further paragraph 3 of Article 30 of the draft law "On Invention in the U.S.S.R." and to consider possible submission of proposals to the Supreme Soviet.

2. The Government of the U.S.S.R. and the Government of the United States agree to seek mutually acceptable provisions on compulsory licensing of patents in the working group provided for in paragraph 5 of Article VIII of the Agreement. Both sides will present proposals on provisions for compulsory licensing that will be fully considered by the working group including the following:

(2.1) A compulsory license to supply domestic needs may be given if:

(2.1.1) the license only permits local making of the patented invention;

(2.1.2) the license is granted to one qualified to make the invention;

(2.1.3) those seeking the license show that the combination of manufacture, use and importation of the patented invention has not satisfied the basic needs of the local market by the expiration of a period of five years from the date of the grant of the patent;

(2.1.4) those seeking the license show that the patent owner has refused to grant a voluntary license on terms in line with normal commercial practices;

(2.1.5) the patent owner does not show that his inaction is justified by the existence of legal, technical or commercial reasons;

(2.1.6) the patent owner receives reasonable and equitable compensation for the license;

(2.1.7) the license is nonexclusive;

(2.1.8) the license will be non-assignable except with that part of the enterprise or goodwill which exploits such a license;

(2.1.9) the license does not significantly prejudice the economic interests of the patent owner;

(2.1.10) the license does not create trade distortions; and

(2.1.11) decisions to grant a compulsory license and the terms of the license are made by a court and can be appealed and reviewed in accordance with national law;

(2.2) The U.S.S.R. will grant no other compulsory licenses; and

(2.3) A patent shall not be revoked except for invalidity.

Negotiations on these provisions must be concluded during 1991. The agreed provisions shall be an integral part of the Agreement.

IV. The Government of the U.S.S.R. shall establish with the Government of the United States a working group on intellectual property matters. This working group will address the following topics:

1. The exchange of information and cooperation among authorities responsible for the protection of intellectual property;

2. The implementation of intellectual property laws;

3. The review of international trends in the protection of intellectual property rights in the context of international economic and trade relations;

4. The protection of integrated circuit layout designs;

5. The protection for products that

(5.1) were not patentable subject matter in the U.S.S.R. before the effective date of the new Soviet law on inventions; and

(5.2) that were the subject of patents in the United States or other countries that were based on applications filed before the effective date of the new Soviet law on inventions.

During these consultations, specifics of this protection including, inter alia, the term and coverage will be considered; and

6. The government use of patented inventions.

I have the further honor to propose that this understanding be treated as an integral part of the Agreement. I would be grateful if you would confirm that this understanding is shared by your Government.

I have the further honor to confirm that the foregoing understanding is shared by my Government and constitutes an integral part of the Agreement.

Sincerely,

Carla A. Hills
United States Trade Representative

Washington, June 1, 1990

Dear Mr. Deputy Minister:

In connection with the signing on this date of the Agreement on Trade Relations Between the United States of America and the Union of Soviet Socialist Republics (the "Agreement"), I have the honor to confirm the understanding reached by our Governments (the "Parties") regarding cooperation in the field of tourism services as follows:

1. Both Parties shall facilitate the expansion of tourism between the United States and the Soviet Union and encourage the adoption of measures by tourist organizations and companies of both countries to satisfy the desire of tourists to learn about the lifestyles, achievements and culture of each country.

2. Taking into account the great significance of tourism in establishing mutual understanding between the peoples of the United States and the Soviet Union, and also the growth of its role in the development of economic cooperation between the two countries, the Parties agree to conclude a separate bilateral agreement on tourism.

Official Tourism Promotion Offices

1. Each Party shall seek permission of the other Party prior to the establishment of official, governmental tourism promotion offices in the other's territory.

2. Permission to open tourism promotion offices or field offices, and the status of personnel who head and staff such offices, shall be as agreed upon by the Parties, and subject to the applicable laws and regulations of the host country.

3. Tourism promotion offices opened by either Party shall be operated on a non-commercial basis. Official tourism promotion offices and the personnel assigned to them shall not function as agents or principals in commercial transactions, enter into contractual agreements on behalf of commercial organizations or engage in other commercial activities. Such offices shall not sell services to the public or otherwise compete with travel agents or tour operators of the host country.

4. Official governmental tourism offices shall exercise activities, related to the facilitation of development of tourism between the United States and the Soviet Union, including:

a) providing information about the tourist facilities and attractions in their respective countries to the public, the travel trade, and the media;

The Honorable Yuri N. Chumakov
Deputy Minister of Foreign Economic Relations
Union of Soviet Socialist Republics

b) conducting meetings and workshops for representatives of the travel industry;

c) participating in trade shows;

d) distributing advertising materials such as posters, brochures and slides, and also coordinating advertising campaigns; and

e) performing tourism market research.

5. Nothing in this side letter shall obligate either Party to open such offices in the territory of the other.

Commercial Tourism Enterprises

1. Commercial tourism enterprises, whether privately or governmentally-owned, or branches thereof shall be treated as private commercial enterprises, fully subject to all applicable laws and regulations of the host country.

2. Each Party shall ensure within the scope of its legal authority and in accordance with its laws and regulations that any company owned, controlled or administered by that Party or any joint venture therewith or any private company or joint venture between private companies, which effectively controls a significant portion of the supply of any tourism or travel-related service in the territory of that Party shall provide those services to nationals and companies of the other Party on a fair and equitable basis.

Nothing in this letter or in the Agreement shall be construed to mean that tourism and travel-related services shall not receive the benefits from that Agreement as fully as all other industries and sectors.

I have the further honor to propose that this understanding be treated as an integral part of the Agreement. I would be grateful if you would confirm that this understanding is shared by your Government.

Sincerely,

Robert A. Mosbacher
Secretary of Commerce
United States of America

Washington, June 1, 1990

Dear Mr. Deputy Minister:

In connection with the Agreement on Trade Relations Between the United States of America and the Union of Soviet Socialist Republics ("Agreement") to be signed today, I have the honor to confirm the understanding reached by our Governments as follows:

Upon the extension of most-favored-nation treatment by the United States of America to the Union of Soviet Socialist Republics in accordance with the terms of said Agreement, and after the date on which a note from the Government of the United States of America is delivered to the Government of the Union of Soviet Socialist Republics stating that the Government of the United States has, accordingly, made available most-favored-nation treatment for the Union of Soviet Socialist Republics no less favorable than that provided in an Agreement between the Governments of the United States of America and the Union of Soviet Socialist Republics Regarding Trade signed on October 18, 1972, the balance of $674,000,000 in payment of lend lease accounts shall become due, and shall be paid, in accordance with the terms of the Agreement Between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics Regarding Settlement of Lend Lease, Reciprocal Aid and Claims, signed October 18, 1972.

The Government of the United States of America undertakes not to deliver the diplomatic note referred to above until export credits, guarantees and insurance through the Export-Import Bank and other similar credits for the purchase of American goods are available to the Union of Soviet Socialist Republics on terms appropriate to the transactions, in accordance with the exchange of letters between Mr. Willis C. Armstrong and Mr. V. Alkhimov dated May 15, 1972.

I have the further honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.

Sincerely,

Carla A. Hills
United States Trade Representative

The Honorable Yuri N. Chumakov
Deputy Minister of Foreign Economic Relations
Union of Soviet Socialist Republics

Washington, June 1, 1990

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Sincerely,

Carla A. Hills
United States Trade Representative

Relations

Washington, June 1, 1990

Dear Mr. Deputy Minister:

I have the honor to confirm receipt of your letter which reads as follows:

> Dear Madam Ambassador:
>
> In connection with the signing on this date of the Agreement on Trade Relations between the Union of Soviet Socialist Republics and the United States of America (the "Agreement"), I have the honor to confirm the understanding reached by our Government as follows:
>
> 1. The Soviet Union intends in the near future to accede to the Convention Establishing the Customs Co-operation Council.
>
> 2. Beginning from January 1, 1991 the Harmonized Commodity Description and Coding System shall be implemented in the Soviet Union.
>
> I have the further honor to propose that this understanding be treated as an integral part of the Agreement. I would be grateful if you would confirm that this understanding is shared by your Government.

I have the further honor to confirm that the foregoing understanding is shared by my Government and constitutes an integral part of the Agreement.

Sincerely,

Carla A. Hills
United States Trade Representative

The Honorable Yuri N. Chumakov
Deputy Minister of Foreign Economic Relations
Union of Soviet Socialist Republics

Washington, June 1, 1990

Dear Mr. Deputy Minister:

In connection with the signing on this date of the Agreement on Trade Relations between the United States of America and the Union of Soviet Socialist Republics (the "Agreement"), I have the honor to confirm the understanding reached by our Governments (the "Parties") as follows:

1. The Parties recognize that trade in textiles and textile products is generally governed by separate arrangements.

2. The provisions of paragraph 2 of Article I of the Agreement (quantitative restrictions) shall not apply to trade in textiles and textile products.

3. The elaboration of the market disruption safeguard provisions in Article XI of the Agreement (market disruption) is without prejudice to the right of either Party to apply any of its laws and regulations applicable to trade in textiles and textile products.

4. Nothing in this side letter or in the Agreement limits the application of any existing or future agreement between the Parties on trade in textiles and textile products.

I have the further honor to propose that this understanding be treated as an integral part of the Agreement. I would be grateful if you would confirm that this understanding is shared by your Government.

Sincerely,

Carla A. Hills
United States Trade Representative

The Honorable Yuri N. Chumakov
Deputy Minister of Foreign Economic Relations
Union of Soviet Socialist Republics

Washington, June 1, 1990

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Sincerely,

Carla A. Hills
United States Trade Representative

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Washington, June 1, 1990

Dear Mr. Deputy Minister:

In connection with the signing on this date of the Agreement on Trade Relations between the United States of America and the Union of Soviet Socialist Republics (the "Agreement"), I have the honor to confirm the understanding reached by our Governments as follows:

1. In order to foster increased commercial activities and economic cooperation, the Government of the Union of Soviet Socialist Republics and the Government of the United States of America (the "Parties") agree to undertake the following activities:

a. to encourage their respective nationals, companies and organizations to develop, publish and provide directly, directories of nationals, companies and organizations involved in foreign trade and their officers, as well as other information useful in contacting and evaluating potential business partners, and lists of government agencies and officers involved in foreign trade policy and regulation; and

b. to create favorable conditions for access to nonproprietary and nonconfidential commercial information useful in evaluating potential business partners such as their financial reports, profit and loss statements, and experience in foreign trade.

2. Noting the particular needs of small and medium-sized enterprises in expanding trade, the Parties agree to pay attention to and provide appropriate support for small and medium-sized enterprises by promoting business cooperation networks which facilitate the search for business partners, access to publications and data bases, and information on the availability of technical innovations.

3. Any commercial representation designated as a foreign mission is not guaranteed the rights provided for in Article V of the Agreement.

I have the further honor to propose that this understanding be treated as an integral part of the Agreement. I would be grateful if you would confirm that this understanding is shared by your Government.

Sincerely,

Robert A. Mosbacher
Secretary of Commerce
United States of America

The Honorable Yuri N. Chumakov
Deputy Minister of Foreign
Economic Relations
Union of Soviet Socialist Republics

Washington, June 1 1990

Dear Mr. Deputy Minister:

In connection with the signing on this date of the Agreement on Trade Relations Between the United States of America and the Union of Soviet Socialist Republics (the "Agreement"), I have the honor to confirm the understanding reached by our Governments as follows:

With respect to paragraph 3 of Article VII of the Agreement, the Soviet Party will give favorable consideration to requests by nationals and companies of the United States to open and maintain deposit accounts in Soviet currency received in an authorized manner and to use such currency for local expenses in accordance with permission granted. Such permission shall remain in force irrespective of possible future Soviet laws and regulations which would restrict conditions of the holding, use or deposit of Soviet currency by foreign nationals or companies.

I have the further honor to propose that this understanding be treated as an integral part of the Agreement. I would be grateful if you would confirm that this understanding is shared by your Government.

Sincerely,

Carla A Hills

Carla A. Hills
United States Trade Representative

The Honorable Yuri N. Chumakov
Deputy Minister of Foreign Economic Relations
Union of Soviet Socialist Republics

Washington, June 1, 1990

Dear Mr. Deputy Minister:

In connection with the signing on this date of the Agreement on Trade Relations between the United States of America and the Union of Soviet Socialist Republics (the "Agreement"), I have the honor to confirm the understanding reached by our Governments as follows:

1. The Government of the United States will, during 1990, request that the United States Congress repeal the prohibition on the importation into the United States of gold coins from the Soviet Union and will take all possible measures to ensure the repeal of this prohibition by December 31, 1991.

2. Until such time as the prohibition is repealed, paragraphs 1, 2 and 3 of Article I of the Agreement shall not apply to the importation into the United States of America of gold coins.

I have the further honor to propose that this understanding be treated as an integral part of the Agreement. I would be grateful if you would confirm that this understanding is shared by your Government.

Sincerely,

Carla A. Hills
United States Trade Representative

The Honorable Yuri N. Chumakov
Deputy Minister of Foreign Economic Relations
Union of Soviet Socialist Republics

Washington, June 1, 1990

Dear Mr. Deputy Minister:

In connection with the signing on this date of the Agreement on Trade Relations between the United States of America and the Union of Soviet Socialist Republics, I have the honor to confirm the understanding reached by our Governments as follows:

1. The legal status of the Commercial Office of the United States of America ("USA") established in Moscow is set forth in Annex 1 hereto.

2. The legal status of the Trade Representation of the Union of Soviet Socialist Republics ("USSR") established in Washington, D.C. is set forth in Annex 2 hereto.

3. Additional offices of the Trade Representation of the USSR in the USA in other cities in the USA, as well as additional offices of the Commercial Office of the USA in the USSR in other cities in the USSR, may be established later upon agreement between the Governments of both countries. The status and terms and conditions of the operation of any such offices shall be mutually agreed upon at that time.

4. The establishment of the Trade Representation and the Commercial Office shall in no way affect the rights of Soviet organizations and of the natural or legal persons of the USA, either in the USSR or in the USA, to maintain direct relations with each other with a view to negotiation, execution and fulfillment of trade transactions. To facilitate the maintenance of such direct relations, the Trade Representation may provide temporary office facilities at its location to transient employees or representatives of Soviet organizations and the Commercial Office may provide temporary office facilities at its location to transient employees or representatives of nationals and companies of the USA where such facilities are not readily commercially available. These transient employees and representatives shall not be officers or members of the administrative, technical or service staff of the Trade Representation or the Commercial Office.

I have the further honor to propose that this letter, and the Annexes attached hereto, and your letter of confirmation in reply shall constitute an agreement between our Governments.

Sincerely,

Robert A. Mosbacher
Secretary of Commerce
United States of America

The Honorable Yuri N. Chumakov
Deputy Minister of Foreign Economic Relations
Union of Soviet Socialist Republics

Washington, June 1, 1990

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Sincerely,

Robert A. Mosbacher
Secretary of Commerce
United States of America

Relations

ANNEX 1

THE STATUS OF THE COMMERCIAL OFFICE OF THE UNITED STATES OF AMERICA IN THE UNION OF SOVIET SOCIALIST REPUBLICS

ARTICLE 1

The Commercial Office of the United States of America may perform the following functions:

1. Promote the development of trade and economic relations between the United States of America ("USA") and the Union of Soviet Socialist Republics ("USSR"); and

2. Provide assistance to nationals and companies of the USA in facilitating purchases, sales and other commercial transactions. The Commercial Office, and its respective officers and staff members, shall not participate in the negotiation, execution or fulfillment of trade or commercial transactions or otherwise carry on trade.

ARTICLE 2

1. The Commercial Office shall consist of one Principal Officer and no more than three Deputy Officers and a mutually agreed number of staff personnel, provided, however, that the number of officers and staff personnel permitted may be changed by mutual agreement of the two Governments.

2. The Commercial Office shall be an integral part of the Embassy of the USA in Moscow. The Government of the USSR shall facilitate in accordance with its laws and regulations the acquisition or lease by the Government of the USA of suitable official and residential premises for the Commercial Office and its staff.

3. (a) The Commercial Office, including all of its premises and property, shall enjoy all of the privileges and immunities which are enjoyed by the Embassy of the USA in Moscow. The Commercial Office shall have the right to use cipher.

(b) The Principal Officer of the Commercial Office and his Deputies shall enjoy all of the privileges and immunities which are enjoyed by members of the diplomatic staff of the Embassy of the USA in Moscow.

(c) Members of the administrative, technical and service staffs of the Commercial Office who are not nationals of the USSR shall enjoy all of the privileges and immunities which are enjoyed by corresponding categories of personnel of the Embassy of the USA in Moscow.

ANNEX 2

THE STATUS OF THE TRADE REPRESENTATION OF THE UNION OF SOVIET SOCIALIST REPUBLICS IN THE UNITED STATES OF AMERICA

ARTICLE 1

The Trade Representation of the Union of Soviet Socialist Republics may perform the following functions:

1. Promote the development of trade and economic relations between the Union of Soviet Socialist Republics ("USSR") and the United States of America ("USA"); and

2. Provide assistance to Soviet organizations in facilitating purchases, sales and other commercial transactions. The Trade Representation, and its respective officers and staff members, shall not participate in the negotiation, execution or fulfillment of trade or commercial transactions or otherwise carry on trade.

ARTICLE 2

1. The Trade Representation shall consist of one Principal Officer, designated as Trade Representative, and no more than three Deputy Officers and a mutually agreed number of staff personnel, provided, however, that the number of officers and staff personnel permitted may be changed by mutual agreement of the two Governments.

2. The Trade Representation shall be an integral part of the Embassy of the USSR in Washington, D.C. The Government of the USA shall facilitate in accordance with its laws and regulations the acquisition or lease by the Government of the USSR of suitable official and residential premises for the Trade Representation and its staff.

3. (a) The Trade Representation, including all of its premises and property, shall enjoy all of the privileges and immunities which are enjoyed by the Embassy of the USSR in Washington, D.C. The Trade Representation shall have the right to use cipher.

(b) The Trade Representative and his Deputies shall enjoy all of the privileges and immunities which are enjoyed by members of the diplomatic staff of the Embassy of the USSR in Washington, D.C.

(c) Members of the administrative, technical and service staffs of the Trade Representation who are not nationals of the USA shall enjoy all of the privileges and immunities which are enjoyed by corresponding categories of personnel of the Embassy of the USSR in Washington, D.C.

DEPUTY UNITED STATES TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON, D.C. 20506

MAY 31 1990

The Honorable Yuri N. Chumakov
Head of Soviet Delegation
Deputy Minister of Foreign Economic Relations
Ministry of Foreign Economic Relations
Union of Soviet Socialist Republics

Dear Mr. Chumakov:

I am writing to you at your request to explain the relation between legislation currently pending in the U.S. Congress and paragraph 4 of Article XVII of the Trade Agreement we have negotiated.

As you know, under current U.S. law, it is not possible to have a notice period prior to termination of the Trade Agreement. Therefore, our two delegations have agreed that paragraph 4 of Article XVII will read as follows:

> "4. Either Party may terminate this Agreement upon written notice to the other Party and in such case the Parties will, the fullest extent practicable, seek to minimize possible disruption to their trade relations."

As part of legislation currently in conference between the House of Representatives and the Senate, we have asked that a provision be added which would permit some notice period. We have suggested to Congress that this period be sixty days. We do not know when or if such legislation will be passed by Congress. If such a provision is enacted into law before the Trade Agreement is signed, paragraph 4 could be amended by inserting the phrase "sixty days" before the phrase "written notice." If the legislation is enacted after the Trade Agreement is signed, I would suggest an exchange of letters which would clarify that the Parties would give each other sixty days notice prior to termination.

I trust that this explanation is helpful to you.

Sincerely,

Julius L. Katz
Head of U.S. Delegation

DEPUTY UNITED STATES TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON, D.C. 20506

SEP 26 1990

The Honorable Yuri N. Chumakov
Head of Soviet Delegation
Deputy Minister of Foreign Economic Relations
Ministry of Foreign Economic Relations
Union of Soviet Socialist Republics

Dear Mr. Chumakov:

I have the honor to refer to the Agreement on Trade Relations between the United States of America and the Union of Soviet Socialist Republics, signed in Washington on June 1, 1990 (the "Agreement").

During the negotiation of the Agreement, our delegations discussed the desirability of including in Article XVII paragraph 4 a provision requiring 60 days written notice prior to termination. As I noted in my letter to you of May 31, 1990 (attached), U.S. legislation did not then permit the inclusion of such a provision.

On August 20, 1990, the President signed into law the Customs and Trade Act of 1990 which, among other things, would permit the inclusion of such a notice period. I therefore have the honor to propose that paragraph 4 of Article XVII be amended by inserting the phrase "sixty days" before the phrase "written notice" so that paragraph 4 would read in its entirety as follows:

> "4. Either Party may terminate this Agreement upon sixty days written notice to the other Party and in such case the Parties will, to the fullest extent practicable, seek to minimize possible disruption to their trade relations."

I have the further honor to propose that, if the foregoing is acceptable, this letter and your affirmative letter in reply shall constitute an agreement between the United States of America and the Union of Soviet Socialist Republics to amend the Agreement which shall enter into force upon the entry into force of the Agreement.

Sincerely,

Julius L. Katz
Head of U.S. Delegation

[INFORMAL TRANSLATION]

October 31, 1990

Dear Mr. Katz:

I have the honor to confirm receipt of your letter of September 26, 1990 which reads as follows:

[See text of Ambassador Katz's letter.]

I have the further honor to confirm that your proposal is acceptable, and that your letter and this letter in reply constitute an agreement between the Union of Soviet Socialist Republics and the United States of America to amend the Agreement which shall enter into force upon the entry into force of the Agreement.

Sincerely,

/s/

Yuri N. Chumakov
Head of Soviet Delegation

[FR Doc. 91-18761
Filed 8-2-91; 2:28 pm]
Billing code 3190-01-C

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Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

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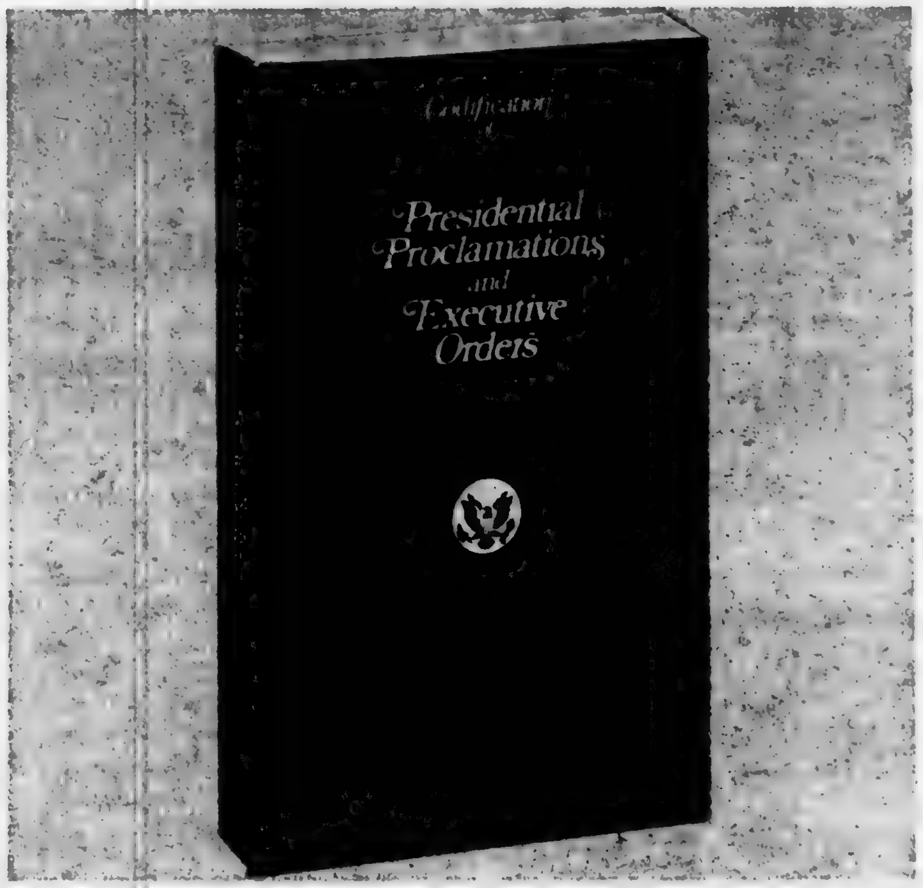

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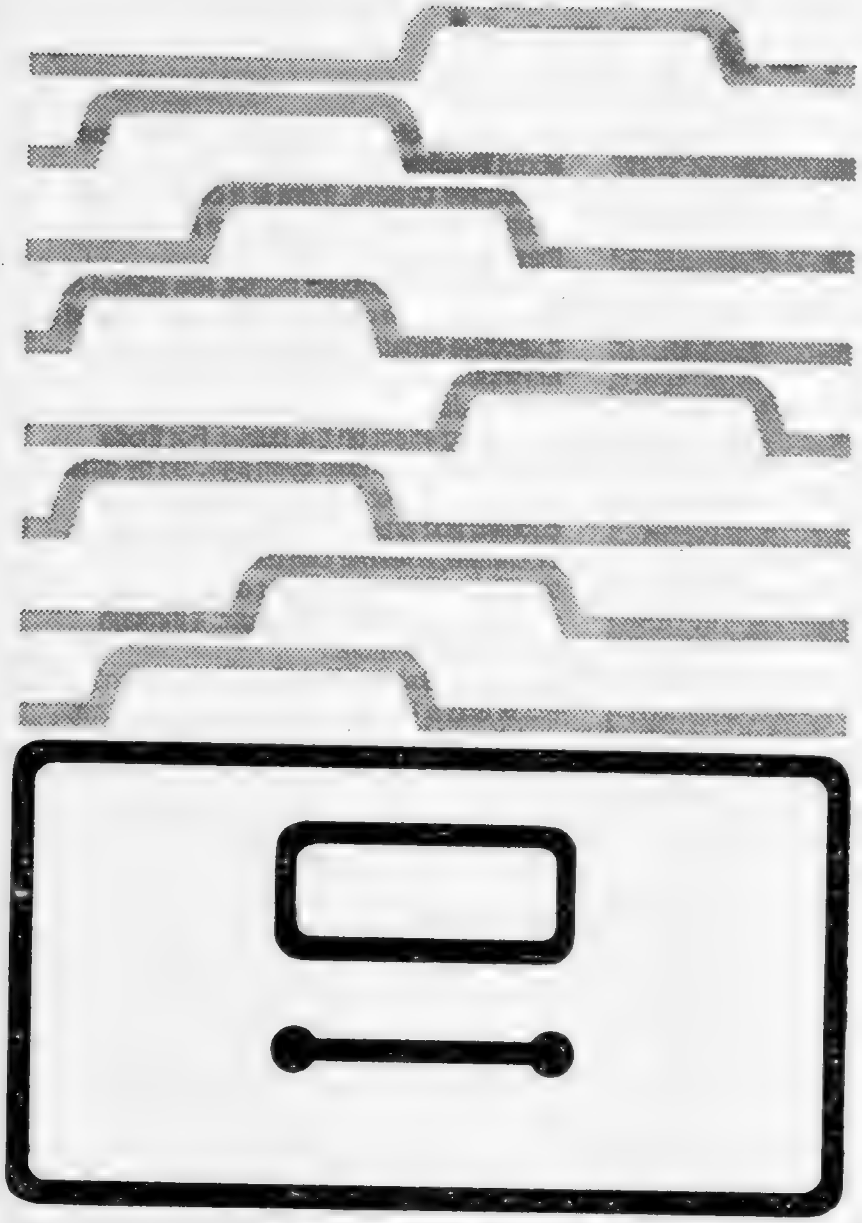

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in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1989
SUPPLEMENT: Revised January 1, 1991

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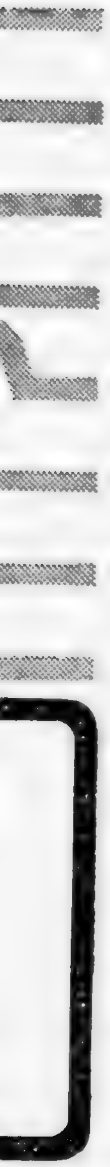

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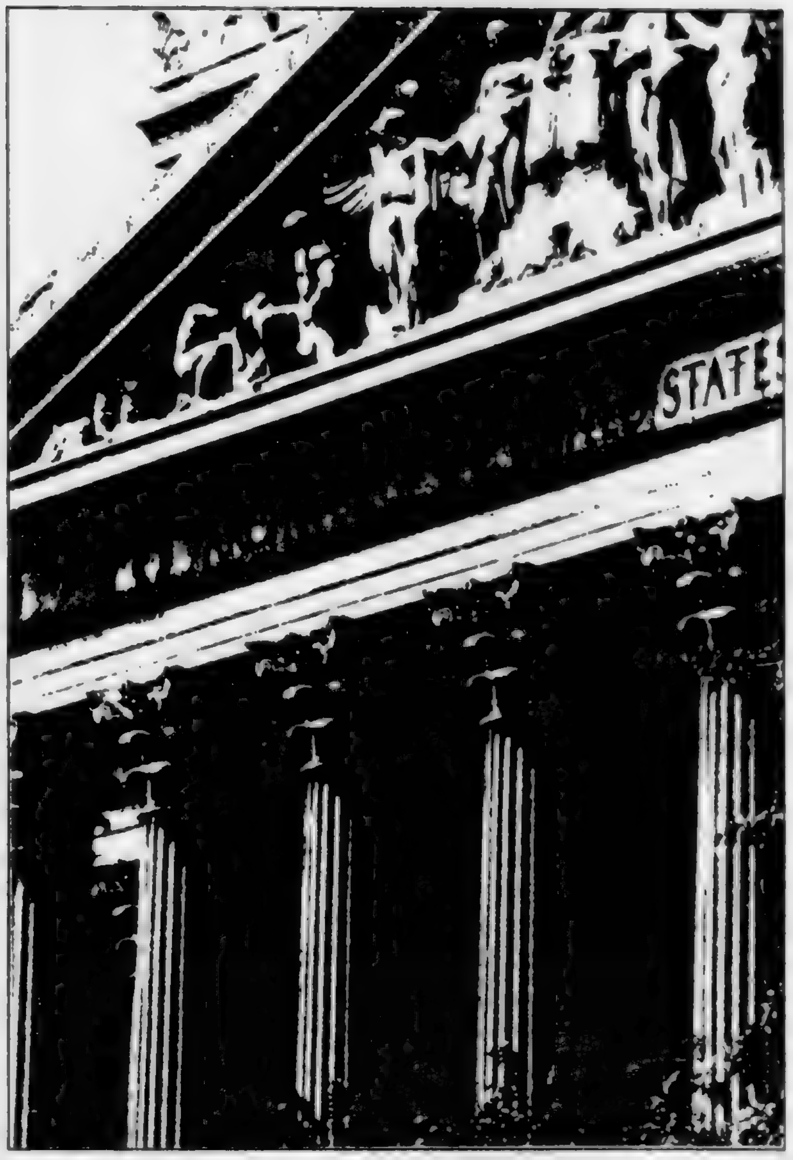

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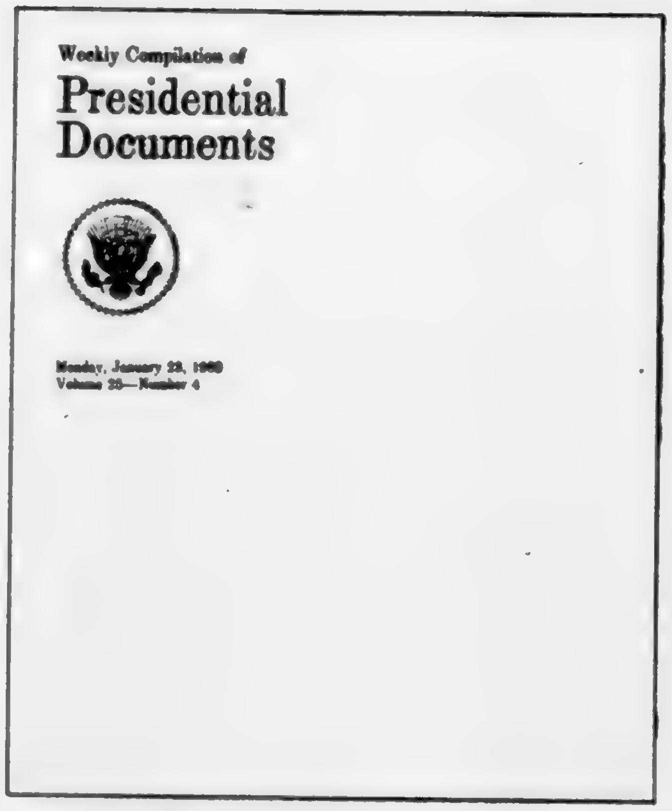

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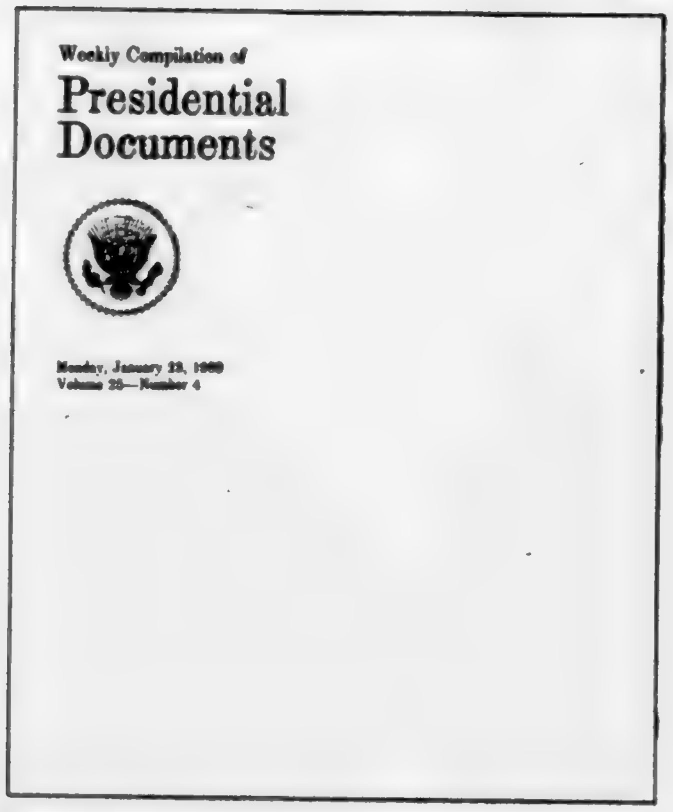

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Agricultural Marketing Service

7 CFR Part 1240

[AMS-FV-91-241]

RIN 0581-AA46

Honey Research, Promotion, a
Consumer Information Order;
Amendments to the Order, Ru
Regulations Issued Thereunde
Procedure for the Conduct of
Referenda

AGENCY: Agricultural Marketing
USDA.

ACTION: Final rule.

SUMMARY: This action amends
Honey Research, Promotion, an
Consumer Information Order (O
Rules and Regulations issued
thereunder; and Procedure for t
Conduct of Referenda in Conne
with the Honey Research, Prom
and Consumer Information Ord
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amended by the Food, Agricult
Conservation, and Trade Act of
accordance with this amendme
Act, amendments to the Order a
published herein. In addition,
conforming amendments are ma
Order, all applicable rules and
regulations issued thereunder, a
procedure for the conduct of ref

EFFECTIVE DATE: August 7, 1991

FOR FURTHER INFORMATION CON
Sheila A. Young, Marketing Ord
Administration Branch, F&V, A
USDA, room 2525-S, P.O. Box 9
Washington, DC 20090-6456; tel
(202) 475-3930.

SUPPLEMENTARY INFORMATION:
final rule is issued under the Ho
Research, Promotion, and Cons
Information Order (7 CFR part 1
amended, hereinafter referred t
Order. The Order is effective ur

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Agricultural Marketing Service

7 CFR Part 1240

[AMS-FV-91-241]

RIN 0581-AA46

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AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends the Honey Research, Promotion, and Consumer Information Order (Order); Rules and Regulations issued thereunder; and Procedure for the Conduct of Referenda in Connection with the Honey Research, Promotion, and Consumer Information Order. The Honey Research, Promotion, and Consumer Information Act (Act) was amended by the Food, Agriculture, Conservation, and Trade Act of 1990. In accordance with this amendment to the Act, amendments to the Order are published herein. In addition, conforming amendments are made to the Order, all applicable rules and regulations issued thereunder, and to the procedure for the conduct of referenda.

EFFECTIVE DATE: August 7, 1991.

FOR FURTHER INFORMATION CONTACT: Sheila A. Young, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-3930.

SUPPLEMENTARY INFORMATION: This final rule is issued under the Honey Research, Promotion, and Consumer Information Order (7 CFR part 1240), as amended, hereinafter referred to as the Order. The Order is effective under the Honey Research, Promotion, and Consumer Information Act, as amended 778 (7 U.S.C. 4601-4612), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Executive Order 12291 and USDA Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained in the Executive Order.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final action on small entities.

There are an estimated 145 handlers, 510 producer-packers, 8,300 producers, and 350 importers who are currently subject to the provisions of the Order. The majority of these persons would be classified as small businesses under the criteria established by the Small Business Administration.

The changes to the Order, rules and regulations, and procedures for conduct of referenda are made as a result of amendments to the Act. The economic impact of these changes is not expected to be significant. The changes will impose additional reporting and recordkeeping requirements. The economic impact of these requirements is also not expected to be significant. Furthermore, the research and promotion program is expected to benefit handlers, producer-packers, producers, and importers by expanding and maintaining new and existing markets. Accordingly, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (PRA) and Office of Management and Budget (OMB) regulations (5 CFR part 1320) (44 U.S.C. chapter 35), the information collection and recordkeeping requirements contained in this action have been submitted to the OMB and issued OMB control Nos. 0581-0093 and 0505-0001. Control number 0581-0093 replaces control number 0581-0153 which was listed in the proposed rule. Therefore, in addition to the succeeding changes, this action also amends § 1240.125 of the General Rules and Regulations of the Order, to include new OMB control number 0581-0093.

The Order amendments established herein will authorize the Board to require any person who receives an exemption from assessments to submit reports to employees of the Board at such times and in such manner as the Board may prescribe with the approval of the Secretary. In addition, such persons will be required to maintain records as necessary to carry out the provisions of the Order and the records will be subject to inspection. Records will be required to be maintained for two years beyond the first period of their applicability. It is estimated that the number of producer, producer-packer, and importer exemption applicants will not exceed 500. It is also estimated that any such reports will provide for an average burden of .05 hours per report based upon reporting requirements recently approved by the OMB. The original estimates of 3,000 applicants with reporting times of .17 hours, as stated in the proposed rule, were determined to be incorrect based on recent reports submitted by the Board. To claim an exemption, a producer, producer-packer, or importer must submit an application to the Board stating the basis upon which the person claims the exemption each year. It is estimated that the burden will be one response per year with an average reporting burden of .05 hours per response. In addition, exporters nominated for Board membership will complete a membership background information sheet. The estimated number of respondents to this form will be four nominees with an estimated average reporting burden of 0.5 hours per response. Information sheets have been previously approved by the OMB and assigned OMB number 0505-0001.

There are about 212,000 beekeepers in the United States, 95 percent of whom are hobbyists with fewer than 25 colonies. Another 10,000 part-time beekeepers each operate 25-299 colonies. Commercial beekeepers, those owning 300 or more colonies, are estimated to number about 2,000. Hobbyists and part-time beekeepers combined account for 99 percent of the beekeepers, 50 percent of the colonies, and 40 percent of honey production.

Honey production in the United States declined from an average of about 240 million pounds in the 1950's and 1960's to 211 million pounds in the 1970's. Excluding the weather-reduced crops of 1984 and 1985, honey production averaged 208 million pounds for the

1980–88 period. Production averaged 213 million pounds for the crop years 1986–88. The United States has been a net importer of honey since 1967, except in 1973. Imports reached successive record levels in 1981–85. Exports have been increasing since 1985.

Domestic honey consumption includes commercial sales and Government donations. Honey consumption in the United States over the past four decades has ranged between 208 million pounds and 331 million pounds annually. Annual domestic consumption of honey increased from an average of 241 million pounds in the 1960's, 245 million pounds in the 1970's, and 266 million pounds for 1980–87.

This final rule amends the Order, rules and regulations issued thereunder, and the Procedure for the Conduct of Referenda. The changes are in accordance with amendments to the Honey Research, Promotion, and Consumer Information Act (7 U S.C. 4601–4612) as made in the Honey Research, Promotion, and Consumer Information Act Amendments of 1990 (subtitle F, chapter 1 of the Food, Agriculture, Conservation, and Trade Act of 1990, Pub.L. 101–624, November 28, 1990).

The Act, as amended, provides for exporter representation on the National Honey Board (Board). There are two importer members and their respective alternates serving on the 13-member Board. The industry has in the past found it difficult to find enough importers to adequately represent that segment of the industry. The amendment to the Act provides that one of the two importer positions on the Board may be filled by an exporter of honey. This change is reflected in the amendments to the Order.

The Act, as amended, provides that should the seven honey producing regions in the United States be realigned, any producer Board members or alternates appointed from a region, who after the realignment process no longer reside in the region for which they were appointed, will be allowed to complete their terms of office on the Board. This change in the Act permits greater continuity in Board membership and minimizes disruption of the Board's activities should realignment be necessary. This change is reflected in the amendments to the Order.

The Act, as amended, provides that producer-packers who, during any three of the preceding five years, purchase for resale more honey than they produce shall be ineligible for appointment as a producer or alternate producer member to the Board. This change assures the industry of actual producer representation on the Board. This change is reflected in the amendments to the Order.

The Act, as amended, will allow producers, producer-packers who produce and handle, and importers, who produce or import a total quantity of less than 6,000 pounds of honey annually, to apply for and receive an exemption from paying assessments if the total amount of such honey is distributed directly through retail outlets. Formerly, a producer, producer-packer, or importer who produced or imported 6,000 pounds or less of honey per year could apply for and receive an exemption without any restriction as to the manner in which the honey was used. Further, any producer, producer-packer, or importer, who consumes their honey at home or donates honey to a nonprofit, government, or other entity, as determined appropriate by the Secretary, rather then sells such honey, shall be exempt from the assessment on that quantity of honey so consumed or donated, except for honey donated that is later sold in a commercial outlet by a donee or donee's assignee.

In addition, the Act, as amended, will not authorize any producer, producer-packer, or importer to vote in any referendum should they receive an exemption from paying assessments. These amendments to the Act concerning exemptions from paying assessments and eligibility to vote are reflected in the amendments to the Order and the implementing regulations.

The Act, as amended, requires persons who obtain an exemption from the assessment requirement to maintain and make available for inspection books and records, and to file reports as may be required under the Order to assure proper enforcement of the exemption provision. To claim an exemption, a producer, producer-packer, or importer is required to file a report with the Board stating the basis of the exemption. These changes are reflected in the amendments to the Order.

The Act, as amended, provides for patents, copyrights, inventions, product formulations, or publications developed with Board funds to be the property of the Board and any income derived therefrom to inure to the benefit of the Board. This amendment amends previous language whereby such funds became the property of the U.S. Government as represented by the Board. This change is reflected in the amendments to the Order.

The Act, as amended, provides that the Secretary shall provide proof of payment documents to producers at the time Board assessments are deducted on honey placed under the Honey Price Support Loan Program. In accordance with this provision, producers shall qualify for a refund once the deduction of the assessment has been made, even though final settlement has not been made at the time of the loan. This amendment enables a producer who received a price support loan to apply for a refund without delay. Under current Order provisions, refunds cannot be made until final settlement of the loan, even when portions of the honey under loan are redeemed. Delays sometimes occur for a number of months, often until the maturity date of the loan. These changes are reflected in the amendments to the Order.

The Act, as amended, provides that each importer requesting a refund will receive a refund limited to an amount that represents the same percentage of assessments collected from that importer as the percentage of refunds paid to domestic producers by the Board. For example, if the producer refund rate is 10 percent of all assessments collected from producers, each importer could only receive a refund equal to 10 percent of the assessments that the importer paid. Current provisions of the Order apply a percentage refund limitation on importers as a group but apply the producer refund percentage to the entire amount collected from all importers. This change, applying the producer refund rate to each individual importer's allowable refund, is reflected in the accompanying rules and regulations.

The Act, as amended, provides that if a first handler or the Secretary fails to collect an assessment from a producer, the producer shall be responsible for the payment of assessments to the Honey Board. This change is also reflected in the Order and the rules and regulations.

In addition, the Act, as amended, specifies that the Secretary shall conduct a referendum to determine if honey producers and importers favor the continuation of the order, and termination of the authority for producers and importers to obtain a refund of assessments. Approval requires the vote of a majority of those producers and importers voting in the referendum, who produce and import more than 50 percent of the volume of honey produced and imported by those voting in the referendum. In the event termination of the refund provision is favored by the requisite number of producers and importers, the Order would be amended to reflect that decision.

Notice of this action was published in the **Federal Register** on April 19, 1991 (56 FR 16026). Written comments from

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interested persons were invited through May 20, 1991. Five comments were received. Comments were received from the National Honey Board, Longmont, Colorado; The American Beekeeping Federation, Inc., Jessup, Georgia; the law firm of Winston and Strawn, Washington, DC, representing the American Honey Producers Association; the National Customs Brokers and Forwarders Association of America, Inc., New York, New York; and the American Farm Bureau Federation, Park Ridge, Illinois. Most of the commenters suggested minor clarifications in specific sections of the Order. The comment from the American Farm Bureau Federation stated its support for the amended section of the Order in regard to continuance referenda.

In its comment, the Board raised a question regarding payments of assessments and the person who is ultimately responsible for assessment collection and payment to the Board. Section 9 of the Act specifies in detail who is responsible for paying the required assessments. The provisions of the Order and the regulations regarding the payments reflect the requirements of the Act. Pursuant to the 1990 amendments to the Act, the ultimate responsibility for paying the assessment, if the handler fails to collect such assessments from a producer, is the producer's.

In its comment the Board also suggested that, in order to avoid confusion regarding responsibility for paying assessments, the word "shall" should be changed to "may". This cannot be done since the amended language of the Act states that "* * * the producer shall be held responsible for the payment of the assessment to the Board."

A comment submitted by the American Beekeeping Federation, Inc. (ABF), recommends that the provisions in § 1240.115(d), which deal with the deduction of assessments from the Honey Price Support Program loans, include a reference that the assessment is to be deducted either from the loan funds or the loan deficiency payment. The general intent of the regulations was to have the terminology broad enough to encompass all types of Community Credit Corporation loans. However, loan deficiency payments are recognizably different from other loans under the Honey Price Support Program. Therefore, the ABF's comment identifying this specific type of loan payment is accepted and has been incorporated into the rules and regulations. Conforming changes regarding price support program loans have also been made to § 1240.41(g) of the Order.

Additional comments submitted by the ABF did not apply to the amendments to the Order and rules and regulations issued thereunder, but addressed the length of time for voting in the referendum and when the voting period should begin. The Department will issue a Referendum Order stating the specific terms of the first reconfirmation referendum, including all applicable time periods.

The comment on behalf of the American Honey Producers Association (Association) recommended clarification of the provisions in § 1240.42(b) of the Order, which addresses honey that is consumed at home or donated. The Association recommended that the Order specifically limit the exemption from assessment to honey consumed at home or donated. The commenter stated that, as currently worded, the Order provision appears to exempt all honey that a producer or importer handles so long as such producer or importer consumes honey at home or donates honey. The intent of the Act is to exempt from assessment only that honey which is consumed at home or donated, unless the donated honey is later sold in a commercial outlet. We therefore agree with the comment and the Order provision is reworded accordingly.

Another comment by the Association recommended that, with respect to nominations of importer or exporter members to the Board, there should be a provision in the Order specifically stating that the two nominees submitted for each position by the Honey Nominations Committee (Committee) be selected by the Committee based on recommendations by industry organizations representing importer and exporter interests. This has been the practice followed in the nominations procedure since the inception of the Order and is applicable to importers as stated in § 1240.32(7)(iii) of the Order. Thus, the comment is accepted and its applicability to exporters has been incorporated into this final rule amending the Order.

A third comment by the Association recommended that the provisions of the first reconfirmation referendum be included in the rules and regulations under the Order. The provisions for the first reconfirmation referendum are clearly expressed in the amendments made to the Act by the Food, Agriculture, Conservation, and Trade Act of 1990. Further, as stated in the analysis of the previous comment, before the occurence of the first reconfirmation referendum, the Department will issue a Referendum Order containing the specific terms of the first reconfirmation referendum and the provisions for termination of the Order. To incorporate into the Order, or the rules and regulations issued under the Order, those provisions that apply only to the first reconfirmation referendum would be redundant and unnecessary. Therefore, this comment is denied.

Two comments were received after the end of the comment period but are addressed in this final rule. These comments were received from the National Customs Brokers and Forwarders Association of America, Inc. (Customs Brokers), New York, New York and the American Farm Bureau Federation (AFBF), Park Ridge, Illinois.

Comments received from the Customs Brokers asked that customs brokers not be considered importers for assessment purposes under the Order. They requested that if entry documentation is filed in the name of a licensed customs broker, then the actual owner or purchaser of the honey for whose account the honey is imported be considered the importer of record. At the time honey is imported or withdrawn for consumption, the U.S. Customs Service records the name of the importer of record and it is that person who is held responsible for paying the assessment. To identify the actual owner or purchaser of honey would present burdensome administrative procedures to the Board, the U.S. Customs Service, and the Department. Furthermore, the term "broker" as used in the Act and Order was intended to mean the agent or person who acts as an intermediary for the seller or purchaser. The Recommended Decision applicable to the Order, published in the **Federal Register** on January 29, 1986 (51 FR 3605), states that a person need not take title to honey to be an importer. The Recommended Decision states that any person who acts on behalf of others as their agents, brokers, or consignees would become importers if honey or honey products released from the U.S. Customs Service were introduced into commerce. Therefore, this comment is denied.

The AFBF comments were in support of the proposed amendments to the Order, specifically in regard to the provisions that would provide for a periodic referendum (at least every five years) on continuance of the Order and allow for a referendum at any time based on a petition of at least 10 percent of the registered honey producers and importers in any area covered by the program.

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Therefore, for the reasons stated, all comments received are either incorporated into the amendments to the Order and rules and regulations issued thereunder, denied as explained in the analysis of each comment, or otherwise addressed.

Based on the above, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic effect on a substantial number of small entities.

After consideration of all relevant material presented, it is found that this regulation, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This rule further clarifies the provisions already set forth in the Act; (2) the proposed rule offered a 30-day comment period and comments suggesting only points of clarification were received; and (3) no useful purpose will be served by delaying the effective date until 30 days after publication.

List of Subjects in 7 CFR Part 1240

Honey, Agricultural research, Reporting and recordkeeping requirements, Market Development, and Consumer information.

For the reasons set forth in the preamble, chapter XI of title 7, part 1240 is amended to read as follows:

PART 1240—HONEY RESEARCH, PROMOTION, AND CONSUMER INFORMATION ORDER

1. The authority citation for 7 CFR part 1240 is amended to read as follows:

Authority: Honey Research, Promotion, and Consumer Information Act, as amended 7 U.S.C. 4601–4612.

2. Section 1240.10 is revised to read as follows:

§ 1240.10 Importer.

Importer means any person who imports honey or honey products into the United States as principal or as an agent, broker, or consignee for any person who produces honey outside of the United States for sale in the United States, and who is listed in the import records as the importer of record for such honey or honey products.

§§ 1240.11 through 1240.21 [Redesignated as §§ 1240.12 through 1240.21]

3. Sections 1240.11 through 1240.21 are redsignated as §§ 1240.12 through 1240.22 and a new § 1240.11 is added to read as follows:

§ 1240.11 Exporter.

Exporter means any person who exports honey or honey products from the United States.

4. Section 1240.30 is revised to read as follows:

§ 1240.30 Establishment and membership.

A Honey Board (hereinafter called the Board) is hereby established to administer the terms and provisions of this part. The Board shall consist of thirteen (13) members, each of whom shall have an alternate. Seven members and seven alternates shall be honey producers; two members and two alternates shall be honey handlers; two members and two alternates shall be either honey importers or exporters of which at least one member and alternate shall be an importer; one member and one alternate shall be an officer or employee of a honey marketing cooperative; and, one member and one alternate shall be selected to represent the general public. The Board shall be appointed by the Secretary from nominations submitted by the National Honey Nominations Committee, pursuant to § 1240.32.

5. Section 1240.32 is amended by revising paragraph (a)(1), redesignating paragraph (b)(7) as (b)(8), adding new paragraph (b)(7), and revising newly designated paragraph (b)(8)(iii) to read as follows:

§ 1240.32 Nominations.

* * * * *

(a) * * *

(1) There is hereby established a National Honey Nominations Committee, hereinafter called the Committee, which shall consist of not more than one member from each State, appointed by the Secretary from nominations submitted by each State Association. Wherever there is more than one eligible association within a State, the Secretary shall designate the association most representative of the honey producers, handlers, importers and exporters not exempt under sections 1240.42 (a) and (b) to make nominations for that State.

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(b) * * *

(7) In nominating producer members to the Board, no producer-packer who, during any three of the preceding five years, purchased for resale more honey than such producer-packer produced shall be eligible for nomination or appointment to the Honey Board as a producer or as an alternate to such producer.

(8) * * *

(iii) Two importer members or one importer and one exporter member, and two alternate importer members or one importer and one exporter alternate member from recommendations made by industry organizations representing importer and/or exporter interests; and

* * * * *

6. Section 1240.34 is amended by revising paragraph (a) to read as follows:

§ 1240.34 Vacancies.

(a) In the event any member of the Board ceases to be a member of the category of members from which the member was appointed to the Board, such position shall automatically become vacant, except that if, as a result of the adjustment of the boundaries of the regions in accordance with § 1240.32(b)(6), a producer member or alternate is no longer from the region from which such person was appointed, such member or alternate may serve out the term for which such person was appointed.

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7. Section 1240.38 is amended by revising paragraph (k) to read as follows:

§ 1240.38 Duties.

* * * * *

(k) To notify honey producers, producer-packers, handlers, importers, and exporters of all Board meetings through press releases or other means;

* * * * *

8. Section 1240.41 is amended by revising paragraphs (c) and (g), redesignating paragraphs (h) through (l) as (i) through (m), and adding new paragraph (h) to read as follows:

§ 1240.41 Assessments.

* * * * *

(c) The assessment on honey shall be levied at a rate fixed by the Secretary which shall be $0.01 per pound of honey or honey used in honey products.

* * * * *

(g) Whenever a loan is made on honey under the Honey Loan-Price Support Program, the Secretary shall provide that the assessment be deducted from the proceeds of the loan or the loan deficiency payment, if applicable, and that the amount of such assessment shall be forwarded to the Board, except that the assessment shall not be deducted by the Secretary in the case of a honey marketing cooperative that has already deducted the assessment. As soon as practicable after the assessment is deducted from the loan funds or loan deficiency payment, the Secretary shall

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§ 1240.34 Vacancies.

(a) In the event any member of the Board ceases to be a member of the category of members from which the member was appointed to the Board, such position shall automatically become vacant, except that if, as a result of the adjustment of the boundaries of the regions in accordance with § 1240.32(b)(6), a producer member or alternate is no longer from the region from which such person was appointed, such member or alternate may serve out the term for which such person was appointed.

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7. Section 1240.38 is amended by revising paragraph (k) to read as follows:

§ 1240.38 Duties.

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(k) To notify honey producers, producer-packers, handlers, importers, and exporters of all Board meetings through press releases or other means;

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§ 1240.41 Assessments.

* * * * *

(c) The assessment on honey shall be levied at a rate fixed by the Secretary which shall be $0.01 per pound of honey or honey used in honey products.

* * * * *

(g) Whenever a loan is made on honey under the Honey Loan-Price Support Program, the Secretary shall provide that the assessment be deducted from the proceeds of the loan or the loan deficiency payment, if applicable, and that the amount of such assessment shall be forwarded to the Board, except that the assessment shall not be deducted by the Secretary in the case of a honey marketing cooperative that has already deducted the assessment. As soon as practicable after the assessment is deducted from the loan funds or loan deficiency payment, the Secretary shall

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provide the producer with proof of payment of the assessment.

(h) Should a first handler or the Secretary fail to collect an assessment from a producer, the producer shall be responsible for the payment of the assessment to the Board.

* * * * *

9. Section 1240.42 is amended by revising paragraph (a), redesignating paragraphs (c) and (d) as paragraphs (e) and (f), respectively, redesignating and revising paragraph (b) as paragraph (c), and adding new paragraphs (b) and (d) to read as follows:

§ 1240.42 Exemption from assessment.

(a) A producer who produces less than 6,000 pounds of honey per year, or a producer-packer who produces and handles less than 6,000 pounds of honey per year or an importer who imports less than 6,000 pounds of honey per year on honey which such person distributes directly through local retail outlets such as roadside stands, farmers markets, groceries, or other outlets as otherwise determined by the Secretary, during such year shall be eligible for an exemption from the assessment.

(b) A producer or importer who consumes honey at home or donates honey to a nonprofit, government, or other entity, as determined appropriate by the Secretary, rather then sell such honey, shall be exempt from the assessment on that honey so consumed or donated, except for honey donated that is later sold in a commercial outlet by a donee or donee's assignee.

(c) To claim such exemption, a producer, producer-packer, or importer shall submit an application to the Board stating the basis on which the person claims the exemption for such year.

(d) If, after a person claims an exemption from assessments for any year under this subparagraph, and such person no longer meets the requirements of this subparagraph for an exemption, such person shall file a report with the Board in the form and manner prescribed by the Board and pay an assessment on or before March 15 of the subsequent year on all honey produced or imported by such person during the year for which the person claimed the exemption.

* * * * *

10. Section 1240 43 is amended by revising paragraph (a) to read as follows:

§ 1240.43 Producer, importer, and State assessment plan refund.

(a) Any producer or importer who pays an assessment under the authority of this part shall have the right to demand and receive from the Board a refund of such assessment upon submission of proof to the staff of the Board that the producer or importer paid the assessment for which refund is sought. The amount of refunds during any year made to an importer, as a percentage of total assessments collected from such importer, shall not exceed the amount of refunds made to domestic producers, as a percentage of total assessments collected from such producers. Any demand for refund shall be made by the producer or importer within the time and in the manner prescribed by the Board and approved by the Secretary. Refunds made in accordance with this section shall be paid by the Board in June and December of each year.

* * * * *

11. Section 1240.50 is revised to read as follows:

§ 1240.50 Reports.

Each handler, importer, or producer-packer subject to this part shall be required to report to the employees of the Board, at such times and in such manner as it may prescribe, such information as may be necessary for the Board to perform its duties. Such reports shall include, but shall not be limited to the following:

(a) For handlers or producer-packers, total quantity of honey acquired during the reporting period; total quantity handled during such period; amount of honey acquired from each producer, giving name and address of each producer, including those producers who claim exemption from assessment; copy of statement claiming exemption from assessment from those who claim such exemption; assessments collected or collectible during the reporting period; quantity of honey processed for sale from producer-packer's own production; and record of each transaction for honey on which assessment had already been paid, including statement from seller that assessment had been paid.

(b) For importers, total quantity of honey imported during the reporting period and a record of each importation of honey during such period, giving quantity, date, and port of entry.

(c) For persons who have an exemption from assessments under § 1240.42 (a) and (b), such information as deemed necessary by the Board, and approved by the Secretary, concerning the exemption including disposition of exempted honey.

12. Section 1240.51 is revised to read as follows:

§ 1240.51 Books and records.

Each handler, importer, producer-packer, or any person who receives an exemption from assessments shall maintain and during normal business hours make available for inspection by employees of the Board or the Secretary, such books and records as are necessary to carry out the provisions of this subpart and the regulations issued thereunder, including such records as are necessary to verify any required reports. Such records shall be maintained for two years beyond the first period of their applicability.

13. Section 1240.62 is amended by revising paragraph (b), redesignating paragraph (c) as paragraph (d), and adding new paragraph (c) to read as follows:

§ 1240.62 Suspension or termination.

* * * * *

(b) Except as otherwise provided in paragraph (c) of this section, five years from the date the Secretary issues an order authorizing the collection of assessments on honey under provisions of this subpart, and every five years thereafter, the Secretary shall conduct a referendum to determine if honey producers and importers favor the termination or suspension of this subpart.

(c) In lieu of the first referendum otherwise required to be conducted under paragraph (b) of this section for the order in effect, the Secretary shall conduct a referendum to determine if honey producers and importers favor:

(1) Continuation of the order; and

(2) Termination of the authority for producers and importers to obtain a refund of assessments under § § 1240.43 (a) and (b).

* * * * *

14. Section 1240.67 is revised to read as follows:

§ 1240.67 Patents, copyrights, inventions, product formulations, and publications.

Except for a reasonable royalty paid by the Board to the inventor of a patented invention, any patents, copyrights, inventions, product formulations, or publications developed through the use of funds collected under the provisions of this subpart shall be the property of the Honey Board. Funds generated by such patents, copyrights, inventions, product formulations, or publications shall inure to the benefit of the Board and shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board.

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15. Section 1240.106 is revised to read as follows:

§ 1240.106 Communications.

Communications in connection with the Order and all rules, regulations, and supplemental Orders issued thereunder shall be addressed to the National Honey Board, 421 21st Street, Longmont, Colorado 80501–1421.

16. Section 1240.114 is amended by revising paragraph (a) to read as follows:

§ 1240.114 Exemption procedures.

(a) Producers who produce, producer-packers who produce and handle, and importers who import honey and who wish to claim an exemption from assessments pursuant to § § 1240.42 (a) and (b) should submit an application to the Board for a certificate of exemption.

* * * * *

17. Section 1240.115 is amended by revising paragraph (c)(1), revising paragraph (c)(2)(i), removing paragraph (c)(2)(ii), redesignating paragraph (c)(2)(iii) as paragraph (c)(2)(ii), and revising paragraph (d) to read as follows:

§ 1240.115 Levy of assessments.

* * * * *

(c) * * *

(1) The first handler shall collect and pay assessments to the Board unless such handler has received documentation acceptable to the Board that the assessment has been previously paid.

(2) * * *

(i) Such producer-packer has obtained an exemption from the Board applicable to the honey which that producer-packer produced or produced and handled; or

* * * * *

(d) Assessments shall be levied with respect to honey pledged as collateral for a loan or loan deficiency payment under the Commodity Credit Corporation (CCC) Honey Price Support Program in accordance with an agreement entered into between the Honey Board and the CCC. The assessment will be deducted from the proceeds of the loan or loan deficiency payment by the CCC and forwarded to the Board, except that the assessment shall not be deducted in the case of a honey marketing cooperative that has already deducted the assessment or that portion of the assessment paid to a qualified State plan exempted by the Board. The Secretary, through the CCC, shall provide for the producer to receive a statement of the amount of the assessment deducted from the loan funds or loan deficiency payment promptly after each occasion when an assessment is deducted from any such loan funds or payment under this subsection.

* * * * *

18. Section 1240.116 is amended by revising paragraph (a) to read as follows:

§ 1240.116 Payment of assessments.

(a) Responsibility for payment. Unless otherwise authorized by the Board under the Act and Order, the first handler or producer-packer shall collect the assessment from the producer, or deduct such assessment from the proceeds paid to the producer on whose honey the assessment is made, and remit the assessments to the Board. The first handler or producer-packer shall furnish the producer with evidence of such payment. Any such collection or deduction of assessment shall be made not later than the time when the assessment becomes payable to the Board. Failure of the handler or producer-packer to collect or deduct such assessment does not relieve the handler or producer-packer of his or her obligation to remit the assessment to the Board. However, should a first handler or the Secretary fail to collect an assessment from a producer, the producer shall be responsible for the payment of the assessment to the Board. Assessments on imported honey and honey products shall be collected as specified in § 1240.115(e); *Provided,* That importers shall be responsible for payment of any assessment amount not collected by the U.S. Customs Service at the time of entry or withdrawal for consumption into the United States.

* * * * *

19. Section 1240.118 is revised to read as follows:

§ 1240.118 Reports of disposition of exempted honey.

The Board may require reports by first handlers, producer-packers, importers, or any persons who receive an exemption from assessments under § 1240.42 (a) and (b) on the handling and disposition of exempted honey. Also, authorized employees of the Board or the Secretary may inspect such books and records as are appropriate and necessary to verify the reports on such disposition.

20. Section 1240.120 is revised to read as follows:

§ 1240.120 Retention period for records.

Each first handler, producer-packer, importer, or any person who receives an exemption from assessments under § § 1240.42 (a) and (b) required to make reports pursuant to this subpart shall maintain and retain for at least two years beyond the marketing year of their applicability: One copy of each report made to the Board, records of all exempt producers, producer-packers, and importers including certification of exemption as necessary to verify the address of such exempt person and such records as are necessary to verify such reports.

21. Section 1240.121 is revised to read as follows:

§ 1240.121 Availability of records.

Each first handler, producer-packer, importer, or any person who receives an exemption from assessments under §§ 1240.42 (a) and (b) and is required to make reports pursuant to this subpart shall make available for inspection by authorized employees of the Board or the Secretary during regular business hours, such records as are appropriate and necessary to verify reports required under this subpart.

22. Section 1240.122 is revised to read as follows:

§ 1240.122 Confidential books, records, and reports.

All information obtained from the books, records, and reports of handlers, producer-packers, importers or any persons who receive an exemption from assessments under § 1240.42 (a) and (b) and all information with respect to refunds of assessments made to individual producers and importers shall be kept confidential in the manner and to the extent provided for in § 1240.52 of the Order.

23. Section 1240.125 is revised to read as follows:

§ 1240.125 OMB control numbers.

The control numbers assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Public Law 96–511, are as follows: OMB Number 0581–0093, except Board member nominee information sheets which are assigned OMB Number 0505–0001.

24. Section 1240.200 is revised to read as follows:

§ 1240.200 General.

Referenda to determine whether eligible producers and importers favor the termination or suspension of a Honey Research, Promotion, and Consumer Information Order shall be conducted in accordance with this subpart.

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§ 1240.125 OMB control numbers.

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24. Section 1240.200 is revised to read as follows:

§ 1240.200 General.

Referenda to determine whether eligible producers and importers favor the termination or suspension of a Honey Research, Promotion, and Consumer Information Order shall be conducted in accordance with this subpart.

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25. Section 1240.201 is amended by revising paragraphs (h) and (i) to read as follows:

§ 1240.201 Definitions.

* * * * *

(h) *Eligible producer* means any person defined as a producer or producer-packer in the order who produces, or handles, or produces and handles honey or honey products and who does not claim an exemption from paying assessments during the representative period and who:

(1) Owns or shares in the ownership of honey bee colonies or beekeeping equipment resulting in the ownership of the honey produced;

(2) Rents honey bee colonies or beekeeping equipment resulting in the ownership of all or a portion of the honey produced; or

(3) Owns honey bee colonies or beekeeping equipment but does not manage them and, as compensation, obtains the ownership of a portion of the honey produced;

(4) Is a party in a lessor-lessee relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce honey who share the risk of loss and receive a share of the honey produced. No other acquisition of legal title to honey shall be deemed to result in persons becoming eligible producers.

(i) *Eligible importer* means any person defined as an importer in the order, engaged in the importation of honey and/or honey products and who does not claim an exemption from paying assessments during the representative period. Importation occurs when commodities originating outside the United States are released from custody of the U.S. Customs Service and introduced into the stream of commerce within the United States. Included are persons who hold title to foreign-produced honey and/or honey products immediately upon release by the Customs Service, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of honey and/or honey products from Customs and introduce them into the current of commerce.

* * * * *

26. Section 1240.203 is amended by revising paragraph (e) to read as follows:

§ 1240.203 Instructions.

* * * * *

(e) Make available to eligible producers and importers the instructions on voting, appropriate ballot and certification forms, and, except in the case of a referendum on the termination or suspension of an order, a summary of the terms and conditions of the order: *Provided*, That no person who claims to be eligible to vote shall be refused a ballot.

* * * * *

Dated: July 17, 1991.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 91–18632 Filed 8–6–91; 8:45 am]

BILLING CODE 3410-02-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

[Rev. 6, Amdt. 6]

Small Business Investment Companies; Management and Private Capital Requirements

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: On October 2, 1990 SBA published as an interim final rule several amendments to the regulations governing the Small Business Investment Company (SBIC) and Specialized Small Business Investment Company (SSBIC) program. These regulatory changes were designed to increase minimum capital requirements for SBICs and SSBICs (collectively Licensees) and to ensure the objectivity and impartiality of the valuation of investments made by SBICs and SSBICs. They were designed to protect SBA's exposure with respect to Government funds and guarantees it makes available to such entities (Leverage). They took effect immediately upon publication with respect to new applicants for licenses to act as SBICs or SSBICs, and prospectively with respect to applications in-house on the effective date and Licensees which had been licensed as of the effective date. SBA invited public comments upon these interim final rules.

After reviewing the comments, SBA published a revocation of that portion of the interim final rule that involved composition of the bodies which perform valuation of the investments of SBICs and SSBICs. 56 FR 13583, April 3, 1991. SBA hereby publishes, with some modifications based upon comments received, the final rule involving minimum private capital which reflects SBA's final position on that issue dealt with by the interim final rule.

DATES: These regulations are effective August 7, 1991. However, as indicated in the body of the regulations, their effectiveness is delayed with respect to applications in-house at the time of the publication of the interim final rules and licenses granted thereupon, and present Licensees. Comments on these rules will be accepted and reviewed as part of SBA's ongoing evaluation of its regulatory function.

ADDRESSES: Written comments should be addressed to Bernard Kulik, Associate Administrator for Investment, Small Business Administration, 409 Third Street, SW., Code 6140, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Joseph L. Newell, Director, Office of Investment, telephone (202) 205–6510.

SUPPLEMENTARY INFORMATION: On June 29, 1990, the Small Business Administration announced by notice a 90 day moratorium on the approval for new licenses for Small Business Investment Companies (SBICs) licensed pursuant to section 301(c), 5 U.S.C. 681(c), of the Small Business Investment Act and Specialized Small Business Investment Companies (SSBICs) licensed pursuant to section 301(d) of the same Act. (55 FR 26803). The notice indicated that SBA would use the moratorium period to review criteria under which SBIC and SSBIC licenses are issued as well as other program regulations. While that review was still ongoing, SBA determined that there was an immediate need to implement new regulatory requirements in two areas in order to permit uninterrupted program operations after the expiration of the moratorium while satisfying SBA's need to reduce its fiscal vulnerability. These two areas involve the requirements for minimum private capital invested in a SBIC or SSBIC by its owners and the composition of the bodies which perform the valuations of the investments of SBICs and SSBICs. The interim final rule with respect to the latter area of concern was revoked by publication in the **Federal Register** of April 3, 1991.

With respect to the former area of concern, section 302 of the Small Business Investment Act prescribes minimum capital requirements for SBICs and SSBICs. This section has been implemented by regulations found at 13 CFR 107.101(d)(1). The minimum capital requirement for SBICs and SSBICs prior to publication of the interim final rule was $1,000,000. SBA was not satisfied that this requirement was sufficient to support its provision of future funding to SBICs and SSBICs. Thus, the interim final rule raised the minimum capital requirement by amendment to § 107.101(d)(1) to $3,000,000 for SBICs and $2,000,000 for SSBICs. This requirement applied to new applicants of either type immediately upon publication in the **Federal Register**. However, in order to avoid undue hardship, all applications in-house prior to the effective date of the interim final regulation were to be judged under the minimum capital regulatory requirement in effect prior to that effective date. In addition any licensed SBIC or SSBIC, or applicant which had been licensed under prior regulatory requirements was permitted to retain minimum capital in the amount required by regulations in effect prior to the effective date of the interim final rule. However, any such SBIC or SSBIC was required by the terms of that regulation to meet the new applicable minimum capital requirement in order to be eligible for Leverage pursuant to SBA's regulations. In other words, Leverage would be granted to an SBIC or SSBIC beginning one year after the effective date, only if the Licensee had attained the minimum capital requirement by the time the Leverage was requested.

SBA offered the public ample opportunity to comment on the interim final regulations. During the comment period, SBA received over 330 comments on the minimum capital requirement proposal. Most were critical of the regulation. The major objections voiced by the comments were:

1. The effective date of the regulation permits too short a time for existent Licensees to raise their private capital to the regulatory requirement.

2. "Rollovers" or refinancings of existent SBA-guaranteed obligations should be permitted regardless of compliance with the new private capital requirements.

3. Imposition of the new private capital requirement on existent Licensees works a hardship because it amounts to a retroactive rule change. This is unfair and inconsistent with SBA's past practice of "grandfathering" existent Licensees at prior levels when private capital requirements have been raised in the past.

4. The new requirement is prejudicial against smaller Licensees without an evidentiary basis; since SBA points to no evidence which would indicate that there is a greater risk in providing Leverage to a Licensee with private capital below the new limits.

5. The regulation arbitrarily discriminates against SBICs by setting lower requirements for SSBICs.

6. The requirements would adversely affect Licensees' interest in providing small financings.

7. The requirement is inequitable for Licensees located in smaller states where sources of capital needed for compliance are not readily available.

SBA has carefully reviewed these comments and decided to make final the interim final rule with some modifications applicable to Licensees in existence on October 2, 1990, and those whose license applications were in-house on that date. Its primary reason for doing so remains as previously expressed; it is not satisfied that previous regulatory levels of capitalization are sufficient to support its guarantee of future funding to SBICs and SSBICs. However, SBA is persuaded that the applicability of the regulation should not result in severe economic disruption of the existent industry.

The modifications to the interim final rule focus upon the minimum capital requirements themselves, the timetable under which they must be achieved in order for a Licensee to be eligible for Leverage and the opportunity for refinancing or "rollover" of existent Leverage. With respect to the minimum private capital requirements, SBA has decided to relax the requirement for SBICs from $3,000,000 to $2,500,000, and for SSBICs from $2,000,000 to $1,500,000.

In order to permit an orderly schedule of compliance with the new minimum private capital requirements and in order to permit existent Licensees adequate time to raise the amounts of capital necessary to attain compliance, SBA has made two modifications to the interim final rule. First, SBA has made the minimum capital requirements fully effective after December 31, 1995, for Licensees existent on October 2, 1990; and those whose licenses are based on applications in-house on that date. However, in order to be eligible for Leverage in each year between December 31, 1992, and December 31, 1995 such Licensees will have to increase their private capital each year by 25 percent of the difference between the new requirement and their private capital on October 2, 1990. The first such increase will be required at such time after December 31, 1992, that the Licensee applies for leverage. Thus, to be eligible for leverage after December 31, 1992, and prior to December 31, 1993, each such Licensee will have to have increased its private capital by 25 percent of the difference between its private capital on October 2, 1990, and $2.5 million for SBICs; $1.5 million for SSBICs, at the time of the application for leverage. Additional cumulative 25 percent increases will be required by December 31, 1993, 1994, 1995 in order to retain Leverage eligibility. Thereafter, full compliance with the minimum amounts will be required for such Licensees at the time of the application for leverage. The minimum capital requirements will be effective upon publication of this regulation in the **Federal Register** for any Licensee whose application was not in-house on October 2, 1990.

In addition, SBA has provided two limited exceptions to the applicability of the new private capital requirements. First, any Licensee existent on October 2, 1990, or whose application for a license was in-house on that date, may be eligible to apply for Leverage regardless of these new minimum capital requirements if it can demonstrate to SBA's satisfaction that it has been profitable for three (3) out of its last four fiscal years preceding the date of its application for Leverage and, on the average, has been profitable for all such fiscal years. In verifying a Licensee's profitability, SBA will review the Licensee's Annual Audited Financial Statements contained in its Annual Report, SBA Form 468, filed with SBA in accord with applicable regulations. Profitability will be measured in terms of Combined Income (Net Investment Income (Loss) plus Realized Gain (Loss) on Sale of Securities).

Second, under this final rule Licensees existent on October 2, 1990 will be permitted one "rollover" of each debenture outstanding on October 2, 1990 which matures on or before December 31, 1995, for a term of not more than 10 years, and one rollover of any such debenture which matures after December 31, 1995, for a term of three years, regardless of its private capital.

Compliance With Executive Orders 12291 and 12612, and the Regulatory Flexibility and Paperwork Reduction Acts

Executive Order 12291 and the Regulatory Flexibility Act

SBA has determined that these regulations, taken as a whole, will constitute a major rule for purposes of Executive Order 12291, because they are likely to have an annual impact on the national economy of $100 million or more. In this regard, these regulations may have a significant economic impact on a substantial number of small entities. Pursuant to E.O. 12291 and 5 U.S.C. 603, SBA offers the following regulatory flexibility and economic impact analysis.

1. This action, taken as a whole, is designed to reduce risks of losses being sustained by Licensees and by SBA as investor or the guarantor of certain of their indebtedness.

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In addition, SBA has provided two limited exceptions to the applicability of the new private capital requirements. First, any Licensee existent on October 2, 1990, or whose application for a license was in-house on that date, may be eligible to apply for Leverage regardless of these new minimum capital requirements if it can demonstrate to SBA's satisfaction that it has been profitable for three (3) out of its last four fiscal years preceding the date of its application for Leverage and, on the average, has been profitable for all such fiscal years. In verifying a Licensee's profitability, SBA will review the Licensee's Annual Audited Financial Statements contained in its Annual Report, SBA Form 468, filed with SBA in accord with applicable regulations. Profitability will be measured in terms of Combined Income (Net Investment Income (Loss) plus Realized Gain (Loss) on Sale of Securities).

Second, under this final rule Licensees existent on October 2, 1990 will be permitted one "rollover" of each debenture outstanding on October 2, 1990 which matures on or before December 31, 1995, for a term of not more than 10 years, and one rollover of any such debenture which matures after December 31, 1995, for a term of three years, regardless of its private capital.

Compliance With Executive Orders 12291 and 12612, and the Regulatory Flexibility and Paperwork Reduction Acts

Executive Order 12291 and the Regulatory Flexibility Act

SBA has determined that these regulations, taken as a whole, will constitute a major rule for purposes of Executive Order 12291, because they are likely to have an annual impact on the national economy of $100 million or more. In this regard, these regulations may have a significant economic impact on a substantial number of small entities. Pursuant to E.O. 12291 and 5 U.S.C. 603, SBA offers the following regulatory flexibility and economic impact analysis.

1. This action, taken as a whole, is designed to reduce risks of losses being sustained by Licensees and by SBA as investor or the guarantor of certain of their indebtedness.

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2. The legal basis for these regulations is section 308(c) of the Small Business Investment Act, 5 U.S.C. 687(c).

3. These rules apply to all 367 currently operating Licensees, including 133 SSBICs.

4. The potential benefits of these regulations have been set forth in the respective discussions of these regulations above, under Supplementary Information.

5. The potential costs of these regulations cannot be quantified or even estimated, as for the most part they prevent transactions from being consummated, such as high-risk leveraging of Licensees at the expense of SBA as guarantor.

6. There are no Federal rules which duplicate, overlap or conflict with these rules.

7. SBA is not aware of regulatory alternatives that could achieve the same objectives at lower cost, as explained above under No. 5.

Executive Order 12612

SBA certifies that these final regulations have no federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

Paperwork Reduction Act

For purposes of the Paperwork Reduction Act, 44 U.S.C., ch. 35, we hereby certify that these regulations, will impose no new recordkeeping requirements.

These final regulations represent the result of an exhaustive analysis of the comments received on the interim final rules. Thus, while they differ from the interim final rule in some respects, SBA takes the position that further notice and comment is not required. These regulations respond to an immediate need to ensure that the disposition of Government funds is adequately protected, and SBA's interest is not unnecessarily disrupting industry operation. Therefore, these final regulations are effective upon publication. However, SBA is soliciting public comments on them and will consider those comments in the development of future final rules on the matter.

List of Subjects in 13 CFR Part 107

Investment companies, Loan programs/business, Small businesses.

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

For the reasons set forth above, part 107 of title 13, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 107 continues to read as follows:

Authority: Title III of the Small Business Investment Act, 15 U.S.C. 681 et seq., as amended, Public Law 100–590 and Public Law 101–162. 15 U.S.C. 687(c); 15 U.S.C. 683, as amended by Public Law 101–162; 15 U.S.C. 687(d); 15 U.S.C. 687g; 15 U.S.C. 687b; 15 U.S.C. 687m, as amended by Public Law 100–590.

2. Section 107.101 is amended by revising paragraph (d) to read as follows:

§ 107.101 Operational requirements.

* * * * *

(d) *Minimum Capital.* Each section 301(c) Licensee and section 301(d) Licensee shall have:

(1) In the case of a section 301(c) Licensee, Private Capital of at least $2,500,000; *Provided however,* That the $2,500,000 requirement shall not apply with respect to any Licensee licensed before October 2, 1990, nor with respect to any license application on file with SBA before October 2, 1990, nor with respect to any license granted on the basis of such application. Any such Licensee or license applicant is permitted to have such Private Capital as is required by regulation in effect prior to October 2, 1990.

(2) In order to be eligible for Leverage under these regulations after December 3, 1992, any section 301(c) Licensee licensed before October 2, 1990, or whose license application was on file with SBA before October 2, 1990, will be required to have increased its private capital at the time of the application for leverage after December 31, 1992, by 25 percent of the difference between its Private Capital on October 2, 1990 and $2,500,000 (the difference); and at the time of the application for leverage after December 31, 1993 by 50 percent of the difference; and at the time of the application for leverage after December 31, 1994 by 75 percent of the difference; and at the time of the application for leverage after December 31, 1995 and thereafter by 100 percent of the difference: *Provided however;* That any such section 301(c) Licensee is eligible to apply for Leverage if it can demonstrate to SBA's satisfaction that it has been profitable for three out of its last four fiscal years preceding the date of application for Leverage and, on the average has been profitable for all such fiscal years. In verifying a Licensee's profitability, SBA will review the Licensee's Annual Audited Financial Statements contained in its Annual Report, SBA Form 468, filed in accord with applicable regulations. Profitability will be measured in terms of combined Income (Net Investment Income (Loss) plus Realized Gain (Loss) on Sale of Securities); *Provided further, however,* That any such section 301(c) Licensee is eligible to apply for Leverage needed to refinance any debenture outstanding on October 2, 1990, as follows:

(i) Any such debenture which matures on or before December 31, 1995 may be refinanced, one time only, for a term of not more than ten years, and

(ii) Any such debenture which matures after December 31, 1995, may be refinanced, one time only, for a term of three years.

(3) In the case of a section 301(d) Licensee, Private Capital of at least $1,500,000; *Provided however,* That the $1,500,000 requirement shall not apply with respect to any Licensee licensed before October 2, 1990, nor with respect to any license application on file with SBA before October 2, 1990, nor with respect to any license granted on the basis of such application. Any such Licensee or license applicant is permitted to have such Private Capital as is required by regulation in effect prior to October 2, 1990.

(4) In order to be eligible for Leverage under these regulations after December 31, 1992, any section 301(d) Licensee licensed before October 2, 1990, or whose license application was on file with SBA before October 2, 1990, will be required to have increased its private capital at the time of the application for leverage after December 31, 1992, by 25 percent of the difference between its Private Capital on October 2, 1990 and $1,500,000 (the difference); and at the time of application for leverage after December 31, 1993 by 50 percent of the difference; and at the time of the application for leverage after December 3, 1994 by 75 percent of the difference; and at the time of the application for leverage after December 31, 1995 and thereafter by 100 percent of the difference; *Provided however;* That any such section 301(d) Licensee is eligible to apply for Leverage if it can demonstrate to SBA's satisfaction that it has been profitable for three out of its last four fiscal years preceding the date of application for Leverage and, on the average has been profitable for all such fiscal years. In verifying Licensee's profitability, SBA will review the Licensee's Annual Audited Financial Statements contained in its Annual Report, SBA Form 468, filed in accord with applicable regulations. Profitability will be measured in terms of combined Income (Net Investment Income (Loss) plus Realized Gain (Loss) on Sale of Securities); *Provided further, however,* That any such section 301(d) Licensee is eligible to apply for Leverage needed to

refinance any debenture outstanding on October 2, 1990, as follows:

(i) Any such debenture which matures on or before December 31, 1995 may be refinanced, one time only, for a term of not more than ten years, and

(ii) Any such debenture which matures after December 31, 1995, may be refinanced, one time only, for a term of three years.

Dated: July 1, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 91-18691 Filed 8-6-91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-174-AD; Amendment 39-7095; AD 91-16-05]

Airworthiness Directives; Airbus Industrie Model A310-200 and A310-300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Industrie Model A310-200 and A310-300 series airplanes, which requires repetitive visual inspections and electrical continuity tests to detect broken or missing vespel bushes in the flap universal joint assemblies, and replacement of universal joint bushes, if necessary. This amendment is prompted by reports of abnormal angular backlash found in some flap drive shaft-universal joint assemblies, due to loose, broken, or missing vespel bushes installed in the universal joint forkends. This condition, if not corrected, could result in flap failure and subsequent partial loss of lift in one wing with associated degradation of controllability of the airplane.

DATES: Effective September 11, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 11, 1991.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 227-2140. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to all Airbus Industrie Model A310-200 and A310-300 series airplanes, which requires repetitive visual inspections and electrical continuity tests to detect broken or missing vespel bushes in the flap system universal joint assemblies, and replacement of the universal joint bushes, if necessary, was published in the **Federal Register** on April 26, 1991 (56 FR 19326).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters supported the rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 22 airplanes of U.S. registry would be affected by this AD, that it would take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6,050.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the rules docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-16-05. **Airbus Industrie:** Amendment 39-7095. Docket No. 90-NM-174-AD.

Applicability: Model A310-200 and A310-300 series airplanes, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent rupture of the flap universal joints, subsequent partial loss of lift in one wing, and reduced controllability of the airplane, accomplish the following:

A. Prior to the accumulation of 5,500 landings, or within 350 hours time-in-service after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 3,500 landings, perform a visual inspection and electrical continuity tests of the flap system universal joint assemblies, in accordance with Airbus Industrie Service Bulletin A310-27-2054, Revision 2, dated November 9, 1990.

Note: The Airbus service bulletin references Lucas/Liebherr Service Bulletin No. 551A-27-613, dated March 1989, for additional instructions.

B. If any universal joint bushes are missing or broken, prior to further flight, replace the bushes in accordance with Airbus Industrie Service Bulletin A310-27-2054, Revision 2, dated November 9, 1990. After replacement, repeat the inspections required by paragraph A. of this AD at intervals not to exceed 3,500 landings.

C. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

ter, 1100 L Street NW.,
ington, DC.
ORMATION CONTACT:
andardization Branch,
one (206) 227–2140.
FAA, Northwest
, Transport Airplane
Lind Avenue SW.,
ton 98055–4056.
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docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91–16–05. **Airbus Industrie:** Amendment 39–7095. Docket No. 90–NM–174–AD.

Applicability: Model A310–200 and A310–300 series airplanes, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent rupture of the flap universal joints, subsequent partial loss of lift in one wing, and reduced controllability of the airplane, accomplish the following:

A. Prior to the accumulation of 5,500 landings, or within 350 hours time-in-service after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 3,500 landings, perform a visual inspection and electrical continuity tests of the flap system universal joint assemblies, in accordance with Airbus Industrie Service Bulletin A310–27–2054, Revision 2, dated November 9, 1990.

Note: The Airbus service bulletin references Lucas/Liebherr Service Bulletin No. 551A–27–613, dated March 1989, for additional instructions.

B. If any universal joint bushes are missing or broken, prior to further flight, replace the bushes in accordance with Airbus Industrie Service Bulletin A310–27–2054, Revision 2, dated November 9, 1990. After replacement, repeat the inspections required by paragraph A. of this AD at intervals not to exceed 3,500 landings.

C. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

The inspection, testing, and replacement requirements shall be done in accordance with Airbus Industrie Service Bulletin A310-27–2054, Revision 2, dated November 9, 1990, which includes the following list of effective pages:

Page No.	Revision level	Date
Summary 1–2	2	Nov. 9, 1990.
1–2	2	Nov. 9, 1990.
3–4	Original	July 13, 1989.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. Copies may be inspected at the FAA, Transport Airplane Directorate, Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

This amendment (39–7095, AD 91–16–05) becomes effective September 11, 1991.

Issued in Renton, Washington, on July 22, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–18670 Filed 8–6–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–90–AD; Amendment 39-7093; AD 91–16–03]

Airworthiness Directives; Airbus Industrie Model A300, A310, and A300-600 Series Airplanes Equipped With Escape Slides

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Industrie Model A300, A310, and A300–600 series airplanes equipped with escape slides, which requires a one-time visual inspection of the escape slide girt bars for correct installation, and repair, if necessary. This amendment is prompted by a recent report of an incorrectly installed escape slide girt bar. This condition, if not corrected, could result in passengers tripping over the raised bar and being delayed during an emergency evacuation.

DATES: Effective September 11, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 11, 1991.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM–113; telephone (206) 227–2140. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to all Airbus Industrie Model A300, A310, and A300–600 series airplanes equipped with escape slides, which requires a one-time visual inspection of the escape slide girt bars for correct installation, and repair, if necessary, was published in the **Federal Register** on May 1, 1991 (56 FR 19960).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

All commenters supported the rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 113 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6,215.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the rules docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91–16–03. **Airbus Industrie:** Amendment 39–7093. Docket No. 91–NM–90–AD.

Applicability: Model A300, A310, and A300–600 series airplanes equipped with escape slides, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent delayed passenger evacuation during an emergency, accomplish the following:

A. Within 30 days after the effective date of this AD, or prior to the accumulation of 300 hours time-in-service after the effective date of this AD, whichever occurs first, perform a close visual inspection of the escape slide girt bars for correct installation, in accordance with paragraph 4 of Airbus Industrie All Operators Telex (AOT) 25–01, dated July 30, 1990. If the girt bars are incorrectly installed, prior to further flight, repair in accordance with the AOT.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

D. The inspection and repair requirements shall be done in accordance with Airbus Industrie All Operators Telex (AOT) 25–01, dated July 30, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

Copies may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. Copies may be inspected at the FAA, Transport Airplane Directorate, Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

This amendment (39–7093, AD 91–16–03) becomes effective September 11, 1991.

Issued in Renton, Washington, on July 19, 1991.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–18669 Filed 8–6–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–59–AD; Amendment 39–7092; AD 91–16–02]

Airworthiness Directives; Airbus Industrie Model A320 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A320 series airplanes, which requires repetitive functional checks of the low pressure fuel fire shut-off valve actuator and replacement of the actuator, if necessary. This amendment is prompted by reports that the low pressure fuel fire shut-off valve did not close completely on command due to the microswitches moving from their set position. This condition, if not corrected, could result in failure to shut off the fuel supply in the event of an engine fire.

DATES: Effective September 11, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 11, 1991.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM–113; telephone (206) 227–2140. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain Airbus Industrie Model A320 series airplanes, which requires repetitive functional checks of the low pressure fuel fire shut-off valve actuator and replacement of the actuator, if necessary, was published in the **Federal Register** on April 23, 1991 (56 FR 18545).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supported the rule.

A second commenter suggested that paragraph B. of the proposal be clarified by identifying the appropriate replacement parts by part number. The FAA concurs and has revised the final rule accordingly. Additionally, for clarity's sake, the FAA has revised all references to the subject actuator to specify that it is the "low pressure fuel fire shut-off valve actuator."

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator, nor increase the scope of the AD.

It is estimated that 20 airplanes of U.S. registry would be affected by this AD, that it would take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $5,500.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034), February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the rules docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91–16–02. **Airbus Industrie:** Amendment 39–7092. Docket No. 91–NM–59–AD.

Applicability: Model A320 series airplanes, on which Modification 22039 has not been accomplished, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To ensure complete closure of the low pressure fuel fire shut-off valve, accomplish the following:

A. Within 350 hours time-in-service after the effective date of this AD, and thereafter at intervals not to exceed 350 hours time-in-service, perform a functional check of the low pressure fuel fire shut-off valve actuator, in accordance with Airbus Industrie All Operators Telex (AOT) 28–01, dated October 8, 1990.

B. If any valve fails or indicates failure to open or close correctly, prior to further flight, replace the low pressure fuel fire shut-off valve actuator with either P/N HTE 190001 (PRE Airbus Industrie Service Bulletin A320–28–1028), or P/N HTE 190001–1 (POST Airbus Industrie Service Bulletin A320–28–1028), in accordance with Airbus Industrie Service Bulletin A320–28–1028, Revision 1, dated November 23, 1990. Following actuator replacement, perform a functional test in accordance with AOT 28–01, dated October 8, 1990. Accomplishment of Modification 22039 (Service Bulletin A320–28–1028) constitutes terminating action for the repetitive functional checks required by paragraph A. of this AD.

FORMATION CONTACT:
Standardization Branch,
hone (206) 227–2140.
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1 Lind Avenue SW.,
gton 98055–4056.
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12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034), February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the rules docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91–16–02. **Airbus Industrie:** Amendment 39–7092. Docket No. 91–NM–59–AD.

Applicability: Model A320 series airplanes, on which Modification 22039 has not been accomplished, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To ensure complete closure of the low pressure fuel fire shut-off valve, accomplish the following:

A. Within 350 hours time-in-service after the effective date of this AD, and thereafter at intervals not to exceed 350 hours time-in-service, perform a functional check of the low pressure fuel fire shut-off valve actuator, in accordance with Airbus Industrie All Operators Telex (AOT) 28–01, dated October 8, 1990.

B. If any valve fails or indicates failure to open or close correctly, prior to further flight, replace the low pressure fuel fire shut-off valve actuator with either P/N HTE 190001 (PRE Airbus Industrie Service Bulletin A320–28–1028), or P/N HTE 190001–1 (POST Airbus Industrie Service Bulletin A320–28–1028), in accordance with Airbus Industrie Service Bulletin A320–28–1028, Revision 1, dated November 23, 1990. Following actuator replacement, perform a functional test in accordance with AOT 28–01, dated October 8, 1990. Accomplishment of Modification 22039 (Service Bulletin A320–28–1028) constitutes terminating action for the repetitive functional checks required by paragraph A. of this AD.

C. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

E. The repetitive functional check requirements shall be done in accordance with Airbus Industrie All Operators Telex (AOT) 28–01, dated October 8, 1990. The replacement requirements shall be done in accordance with Airbus Industrie Service Bulletin A320–28–1028, Revision 1, dated November 23, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. Copies may be inspected at the FAA, Transport Airplane Directorate, Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment becomes effective September 11, 1991.

Issued in Renton, Washington, on July 19, 1991.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–18668 Filed 8–6–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–79–AD; Amendment 39–7097; AD 91–16–07]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes Equipped With Smiths Industries Altimeter Repeater Unit, Part No. 1205AM1

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model ATP series airplanes, which requires modification of the Smiths Industries Altimeter Repeater Units. This amendment is prompted by reports of jamming of the baro set knob and the pilot's inability to adjust the baro setting. This condition, if not corrected, could result in the pilot not receiving accurate altitude data that is necessary for safe operation of the airplane.

DATES: Effective September 11, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 11, 1991.

ADDRESSES: The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM–113; telephone (206) 227–2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to British Aerospace Model ATP series airplanes, which requires modification of the Smiths Industries Altimeter Repeater Units, was published in the **Federal Register** on May 1, 1991 (56 FR 19961).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supported the rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 6 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. The modification parts will be supplied by Smiths Industries at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $330.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Proçedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the rules docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91–16–07. **British Aerospace:** Amendment 39–7097. Docket No. 91–NM–79–AD.

Applicability: Model ATP series airplanes, equipped with Smiths Industries Altimeter Repeater Units, Part Number 1205AM1, certificated in any category.

Compliance: Required within 120 days after the effective date of this AD, unless previously accomplished.

To ensure the pilot receives accurate altitude data, accomplish the following:

A. Install a hardened knobshaft, Part Number AM10588, in place of Part Number AM10454, and remount the microswitch (Smiths Industries Modification No. 02), in accordance with British Aerospace Service Bulletin ATP–34–40, dated October 20, 1990.

Note: The British Aerospace service bulletin references Smiths Industries Service Bulletin 1205AM–34–756 for additional instructions.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

D. The modification requirement shall be done in accordance with British Aerospace Service Bulletin ATP–34–40, dated October 20, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041.

Copies may be inspected at the FAA, Transport Airplane Directorate, Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment (39–7097, AD 91–16–07) becomes effective September 11, 1991.

Issued in Renton, Washington, on July 22, 1991.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–18671 Filed 8–6–91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91–NM–83–AD; Amendment 39–7096; AD 91–16–06]

Airworthiness Directives; Fokker Model F–28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F–28 Mark 0100 series airplanes, which requires replacement of the audio control panels with modified units. This amendment is prompted by reports of audio failure following the selection of certain control settings. This condition, if not corrected, could result in loss of communications and reduced capability to comply with air traffic control separation procedures.

DATES: Effective September 11, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 11, 1991.

ADDRESSES: The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM–113; telephone (206) 227–2145. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain Fokker Model F–28 Mark 0100 series airplanes, which requires replacement of the audio control panels with modified units, was published in the **Federal Register** on May 7, 1991 (56 FR 21105).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supported the rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 12 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. The cost for required parts is negligible. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,320.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the rules docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91–16–06. **Fokker:** Amendment 39–7096. Docket No. 91–NM–83–AD.

Applicability: Model F–28 Mark 0100 series airplanes; Serial Numbers 11244 through 11264, 11268 through 11283, 11286, 11289, 11291, 11293, 11295, and 11297; certificated in any category.

Compliance: Required within one year after the effective date of this AD, unless previously accomplished.

To prevent loss of communications and reduced capability to comply with air traffic control separation procedures, accomplish the following:

A. Remove all audio control panels and replace with modified audio control panels, in accordance with Fokker Service Bulletin F100–23–014, dated November 7, 1990.

Note: The Fokker service bulletin references Gables Service Bulletins G6937XX SB#2, Revision 1, dated March 1, 1991; G6939–12 SB#3, dated February 6, 1990; and G6968–02 SB#2, dated February 6, 1990; for additional instructions.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Avionics Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

D. The replacement requirement shall be done in accordance with Fokker Service Bulletin F100–23–014, dated November 7, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314.

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List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91–16–06. **Fokker:** Amendment 39–7096. Docket No. 91–NM–83–AD.

Applicability: Model F–28 Mark 0100 series airplanes; Serial Numbers 11244 through 11264, 11268 through 11283, 11286, 11289, 11291, 11293, 11295, and 11297; certificated in any category.

Compliance: Required within one year after the effective date of this AD, unless previously accomplished.

To prevent loss of communications and reduced capability to comply with air traffic control separation procedures, accomplish the following:

A. Remove all audio control panels and replace with modified audio control panels, in accordance with Fokker Service Bulletin F100–23–014, dated November 7, 1990.

Note: The Fokker service bulletin references Gables Service Bulletins G6937XX SB#2, Revision 1, dated March 1, 1991; G6939–12 SB#3, dated February 6, 1990; and G6968–02 SB#2, dated February 6, 1990; for additional instructions.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Avionics Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

D. The replacement requirement shall be done in accordance with Fokker Service Bulletin F100–23–014, dated November 7, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314.

Copies may be inspected at the FAA, Transport Airplane Directorate, Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment (39–7096, AD 91–16–06) becomes effective September 11, 1991.

Issued in Renton, Washington, on July 22, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–18672 Filed 8–6–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 90–ANE–34; Amendment 39–7090]

Airworthiness Directives; General Electric Company (GE) CF6–80A and CF6–80C2 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain GE CF6–80A and CF6–80C2 series turbofan engines, which requires borescope inspection of high pressure compressor rotor (HPCR) stages 11–14 spool-shafts to detect vane to spool rubs. Also, the AD reduces the life limit for spool-shafts with vane to spool rubs. This amendment is prompted by reports of HPCR stages 11–14 spool-shafts found in service with vane to spool rubs. This condition, if not corrected, could result in uncontained engine failure.

DATES: Effective September 6, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 6, 1991.

ADDRESSES: The applicable service information may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, room 132, 111 Merchant Street, Cincinnati, Ohio 45246, or may be examined in the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Karen Grant, Engine Certification Office, ANE–140, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5299, (617) 273–7096.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include a new airworthiness directive, applicable to certain GE CF6–80A and CF6–80C2 series turbofan engines, which requires borescope inspection of HPCR stages 11–14 spool-shafts to detect vane to spool rubs and which reduces the life limit for spool-shafts with vane to spool rubs, was published in the **Federal Register** on January 8, 1991 (56 FR 657).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Three comments were received. Two commenters expressed no objection to the adoption of the proposed rule. Due consideration has been given to the comments received.

One commenter stated that the proposed compliance schedule does not adequately differentiate spool-shafts susceptible to rubs from those which are not susceptible to rubs. In particular, the commenter stated that affected spool-shafts which were determined not to have rub damage but were later installed on engines with tight vane to spool clearances are susceptible to rubs and should be borescope inspected. The commenter also stated that any rub condition will surface early in service and that the minimum inspection threshold should be removed.

The FAA concurs with the commenter. Consequently, the AD will address all engines susceptible to vane to spool rubs. Also, the minimum inspection threshold will be removed. These changes do not increase the scope of the AD since the decrease in required inspections associated with removing the minimum inspection threshold is offset by the increase in required inspections from addressing engines rebuilt with tight vane to spool clearances.

The economic impact contained in the final evaluation has been increased to reflect additional information received since issuance of the proposal.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 484 GE CF6–80A and CF6–80C2 series engines of the affected design in the worldwide fleet. It is estimated that 110 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 2 manhours per engine to accomplish the required actions, and that the average labor cost would be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $12,100.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, and Safety.

The Adopted Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

AD 91–15–25—General Electric Company (GE): (39–7090) Docket No. 90–ANE–34.

Applicability: GE CF6–80A series and CF6–80C2 series engines, installed on, but not limited to, Airbus A300 and A310 and Boeing 747 and 767 aircraft.

Compliance: Required as indicated, unless already accomplished.

To prevent an uncontained engine failure, accomplish the following:

(a) Inspect high pressure compressor rotor (HPCR) stages 11–14 spool-shafts for vane to spool rubs within 500 cycles in service (CIS) after the effective date of this AD, or prior to accumulating 8000 cycles since new, whichever occurs later, according to the following:

(1) Inspect CF6-80A series engines, Serial Numbers (S/N) 580-101 through 580-319, and S/N 585-101 through 585-222, installed with an HPCR stages 11-14 spool-shaft, Part Number (P/N) 9225M37G11, 9225M37G14, 9225M37G16, 9225M37G19, 9225M37G20, or 9225M37G21, in accordance with the Accomplishment Instructions in GE CF6-80A Service Bulletin (SB) 72-459, Revision 2, dated June 14, 1989.

(2) Inspect CF6-80C2 series engines, S/N 690-101 through 690-181, S/N 695-101 through 695-150, and S/N 705-101 through 705-112, installed with an HPCR stages 11-14 spool-shafts, P/N 9380M30G07, 9380M30G08, 9380M30G09, 9380M30G10, or 1531M21G01, in accordance with the Accomplishment Instructions in GE CF6-80C2 SB 72-130, Revision 2, dated October 18, 1989.

(3) Inspect in accordance with the applicable requirements of paragraph (a)(1) or (a)(2) of this AD, HPCR stages 11-14 spool-shafts which were installed in a high pressure compressor (HPC) at an engine shop visit, with stages 10 through 13 vane radii less than the values indicated in Table 1 of this AD for CF6-80A service engines, and Table 2 of this AD for CF6-80C2 series engines.

(b) The inspection requirements of paragraph (a) of this AD are not applicable to HPCR stage 11-14 spool-shafts visually inspected at the piece-part level, determined not to have vane to spool rub damage, and were installed in an HPC with stages 10 through 13 vane radii greater than or equal to the values indicated in Table 1 of this AD for CF6-80A series engines, and Table 2 of this AD for CF6-80C2 series engines.

(c) Remove from service within 500 CIS after the effective date of this AD or prior to accumulating 8,000 cycles since new, whichever occurs later, HPCR stages 11-14 spool-shafts with vane to spool rub damage.

Note: CF6-80A SB 72-460 and CF6-80C2 SB 72-131 introduce an FAA approved rework procedure to increase the FAA approved life limit for HPCR stages 11-14 spool-shafts with vane to spool rub damage.

(d) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(e) Upon submission of substantiating data by an owner or operator through an FAA Inspector (maintenance, avionics or operations, as appropriate), an alternate method of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD may be approved by the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803-5299.

(f) The inspections shall be done in accordance with the following GE documents:

Document	Page No.	Issue/revision	Date
GE CF6-80A	2-9	Original	11/25/86
SB 72-459	1	Rev. 2	6/14/89
Total pages	9		

Document	Page No.	Issue/revision	Date
GE CF6-80C2	2-9	Original	11/25/86
SB 72-130	1	Rev. 2	10/18/89
Total pages	9		

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, room 132, 111 Merchant Street, Cincinnati, Ohio 45246. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts, or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

TABLE 1.—CF6-80A HPC STATOR VANE MINIMUM RADII VANE

Stage	Position	Minimum vane radius (in)
Stage 10 Vanes.	1-6, 35-80	11.416
	7-8, 33, 34	11.417
	9, 10, 31, 32	11.418
	11, 12, 29, 30	11.419
	13-16, 25-28	11.420
	17-24 (or 1-80 if round grind).	11.421
Stage 11 Vanes.	1-6, 35-80	11.623
	7, 8, 33, 34	11.624
	9, 10, 31, 32	11.625
	11, 12, 29, 30	11.626
	13, 16, 25-28	11.627
	17-24 (or 1-80 if round grind).	11.628
Stage 12 vanes with liners.	1-10, 31-80	11.769
	11, 12, 29, 30	11.770
	13-15, 26-28	11.771
	16-25 (or 1-80 if round grind).	11.772
Stage 12 vanes without liners.	1-10, 31-80	11.786
	11, 12, 29, 30	11.787
	13-15, 26-28	11.788
	16-25 (or 1-80 if round grind).	11.789
Stage 13 Vanes.	1-10, 31-80	11.903
	11, 12, 29, 30	11.904
	13-15, 26-28	11.905
	16-25 (or 1-80 if round grind).	11.906

NOTES: (1) Vane radius is measured from vane tip at vane centerline to stator case centerline.

(2) Vane positions are numbered clockwise, aft looking forward, starting with No. 1 at the left hand horizontal split line upper stator case.

(3) These revised minimum vane radii were incorporated into the CF6-80A Engine Manual, GEK 72501, in Revision 23.

TABLE 2.—CF6-80C2 HPC STATOR VANE MINIMUM RADII VANE

Stage	Position	Minimum vane radius (in)
Stage 10 Vanes.	1-6, 35-80	11.409
	7, 34	11.410
	8, 9, 32, 33	11.411
	10, 31	11.412
	11, 12, 29, 30	11.413
	13, 14, 27, 28	11.414
	15, 16, 25, 26	11.415
	17-24 (or 1-80 if round grind).	11.416
Stage 11 Vanes.	1-6, 35-80	11.617
	7, 34	11.618
	8, 9, 32, 33	11.619
	10, 31	11.620
	11, 12, 29, 30	11.621
	13, 14, 27, 28	11.622
	15, 16, 25, 26	11.623
	17-24 (or 1-80 if round grind).	11.624
Stage 12 Vanes.	1-10, 32-84	11.780
	11, 31	11.781
	12, 13, 29, 30	11.782
	14-16, 26-28	11.783
	17-25 (or 1-84 if round grind).	11.784
Stage 13 Vanes.	1-10, 31-80	11.906
	11, 12, 29, 30	11.907
	13, 14, 27, 28	11.908
	15, 16, 25, 26	11.909
	17-24 (or 1-80 if round grind).	11.910

NOTES: (1) Vane radius is measured from vane tip at vane centerline to stator case centerline.

(2) Vane positions are numbered clockwise, aft looking forward, starting with No. 1 at the left hand horizontal split line upper stator case.

(3) These revised minimum vane radii were incorporated into the CF6-80C2 Engine Manual, GEK 92451, in Revision 7.

This amendment (39-7090, Docket No. 90-ANE-34) becomes effective September 6, 1991.

Issued in Burlington, Massachusetts, on July 17, 1991.

Jay J. Pardee,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 91-18673 Filed 8-6-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-118-AD; Amendment 39-7091; AD 91-16-01]

Airworthiness Directives; Mitsubishi Heavy Industries Model YS-11/-11A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD),

VOL 56 ISS 152 AG 7 1991 UMI

	Issue/revision	Date
	Original	11/25/86
	Rev. 2	10/18/89

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Aircraft Engines, CF6
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, New England Region,
nt Chief Counsel, room
Executive Park,
setts, or at the Office of
1100 L Street, NW.,
on, DC.

A HPC STATOR VANE
RADII VANE

Position	Minimum vane radius (in)
5–80	11.416
, 34	11.417
31, 32	11.418
29, 30	11.419
25–28	11.420
(or 1–80 if round).	11.421
–80	11.623
, 34	11.624
11, 32	11.625
29, 30	11.626
25–28	11.627
(or 1–80 if round).	11.628
1–80	11.769
29, 30	11.770
26–28	11.771
(or 1–80 if round).	11.772
1–80	11.786
29, 30	11.787
26–28	11.788
or 1–80 if round).	11.789
1–80	11.903
29, 30	11.904
26–28	11.905
or 1–80 if round).	11.906

is measured from vane tip
r case centerline.
numbered clockwise, aft
with No. 1 at the left hand
stator case.
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0A Engine Manual, GEK

TABLE 2.—CF6-80C2 HPC STATOR VANE MINIMUM RADII VANE

Stage	Position	Minimum vane radius (in)
Stage 10 Vanes.	1–6, 35–80	11.409
	7, 34	11.410
	8, 9, 32, 33	11.411
	10, 31	11.412
	11, 12, 29, 30	11.413
	13, 14, 27, 28	11.414
	15, 16, 25, 26	11.415
	17–24 (or 1–80 if round grind).	11.416
Stage 11 Vanes.	1–6, 35–80	11.617
	7, 34	11.618
	8, 9, 32, 33	11.619
	10, 31	11.620
	11, 12, 29, 30	11.621
	13, 14, 27, 28	11.622
	15, 16, 25, 26	11.623
	17–24 (or 1–80 if round grind).	11.624
Stage 12 Vanes.	1–10, 32–84	11.780
	11, 31	11.781
	12, 13, 29, 30	11.782
	14–16, 26–28	11.783
	17–25 (or 1–84 if round grind).	11.784
Stage 13 Vanes.	1–10, 31–80	11.906
	11, 12, 29, 30	11.907
	13, 14, 27, 28	11.908
	15, 16, 25, 26	11.905
	17–24 (or 1–80 if round grind).	11.910

NOTES: (1) Vane radius is measured from vane tip at vane centerline to stator case centerline.

(2) Vane positions are numbered clockwise, aft looking forward, starting with No. 1 at the left hand horizontal split line upper stator case.

(3) These revised minimum vane radii were incorporated into the CF6-80C2 Engine Manual, GEK 92451, in Revision 7.

This amendment (39-7090, Docket No. 90-ANE-34) becomes effective September 6, 1991.

Issued in Burlington, Massachusetts, on July 17, 1991.

Jay J. Pardee,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 91-18673 Filed 8-6-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91–NM–118–AD; Amendment 39–7091; AD 91–16–01]

Airworthiness Directives; Mitsubishi Heavy Industries Model YS–11/–11A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Mitsubishi Heavy Industries (MHI) Model YS–11/–11A series airplanes, which currently requires a revision to the FAA-approved Airplane Flight Manual (AFM) and installation of a placard to limit the wing flap setting on final approach to landing in icing conditions. The operational limitation is intended to prevent airplane nose down pitch during flap extension, and consequent uncontrolled descent of the airplane. This amendment requires the incorporation of certain MHI Transmittal Letters into the AFM so that the required AFM revisions are properly located and applicable to all series of the affected airplane model, and to ensure that all necessary operating procedures are available to the flight crew.

DATES: Effective August 22, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 22, 1991.

ADDRESSES: The applicable service information may be obtained from Nagoya Aircraft Works, Mitsubishi Heavy Industries, Ltd., 10 Oye-cho, Minato-Ku, Nagoya 455, Japan, Attention: Manager, YS–11 Group, Service Department. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Brownlee, Flight Test Pilot, ANM–160L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (213) 988–5365.

SUPPLEMENTARY INFORMATION: On February 21, 1991, the FAA issued AD 91–06–04, Amendment 39–6922 (56 FR 9616, March 7, 1991), to require a revision to the Model YS–11/–11A FAA-approved Airplane Flight Manual (AFM) and installation of a placard to limit flap extension to 20 degrees while landing in icing conditions. That action was prompted by two instances of airplane nose down pitch while flying in icing conditions as flaps were set to normal positions on final approach (moved from 20 degrees extended to 35 degrees extended). This condition, if not corrected, could result in uncontrolled descent of the airplane.

Since issuance of AD 91–06–04, the FAA has determined that the MHI Transmittal Letter referenced in that AD, and the location of the required AFM revision associated with it, are applicable only to Model YS–11A–200 and –300 series airplanes. It is therefore necessary that certain other MHI Transmittal Letters be referenced to ensure that the required AFM revision is properly located in the AFM and applicable to the other series of the affected airplane model, namely Model YS–11, YS–11A–500, and YS–11A–600 series airplanes. Additionally, the FAA has determined that the referenced MHI Transmittal Letters must be incorporated into the AFM in order to ensure that all necessary operating procedures are available to the flight crew.

The intent of the AFM revision, and the inclusion of the MHI Transmittal Letters in the AFM, is to provide special operational procedures that will preclude any Model YS–11/–11A series airplane from extending wing flaps more than 20 degrees when landing in icing conditions and, consequently, experiencing nose down pitch.

MHI has issued the following Transmittal Letters:

a. NMAC YS–11 Flight Manual Publication No. YS–FM–001, Transmittal Letter E32, dated October 2, 1990;

b. NMAC YS–11A–200/300 Flight Manual Publication No. YS–FM–002, Transmittal Letter No. E2027, dated October 2, 1990;

c. NMAC YS–11A–500 Flight Manual Publication No. YS–FM–005, Transmittal Letter No. E5021, dated October 2, 1990; and

d. NMAC YS–11A–600 Flight Manual Publication No. YS–FM–006, Transmittal Letter No. E6021, dated October 2, 1990.

These Transmittal Letters add procedures for approach and landing in icing conditions or in visible moisture below +5 °C (+41 °F) OAT. The letters do not indicate, however, that flap settings should be restricted to 20 degrees.

This airplane model is manufactured in Japan and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD supersedes AD 91–06–04 to require the inclusion of certain MHI Transmittal Letters in the AFM, a revision to the AFM, and installation of a placard to limit the flap positions in icing conditions on final approach to landing.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–6922 and by adding the following new airworthiness directive:

91–16–01. Mitsubishi Heavy Industries (MHI), Ltd. (formerly Nihon Aeroplane Manufacturing Company (NMAC)): Amendment 39–7091. Docket No. 91–NM–118–AD. Supersedes AD 91–06–04.

Applicability: Model YS-11, YS-11A-200, YS-11A-300, YS-11A-500, and YS-11A-600 series airplanes, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent uncontrolled nose down pitch of the airplane on landing approach during icing conditions, accomplish the following:

(a) Within 30 days after March 19, 1991 (the effective date of Amendment 39-6922, AD 91-06-04), accomplish the following:

(1) Revise the Operating Limitations Section of the FAA-approved Airplane Flight Manual (AFM) for the Model YS-11/-11A by adding a subparagraph B. to paragraph 1.10.5, *Wing De-Icer System*, to read as follows: This may be accomplished by inserting a copy of this AD in the AFM.

"B. Do not extend flaps greater than 20 degrees in the presence of known icing conditions or in visible moisture below plus 5 degrees centigrade (plus 41 degrees Fahrenheit) outside air temperature (OAT)."

(2) Add a placard as near as possible to the flap handle to read as follows: "Flaps limited to 20 degrees in known icing conditions."

(b) Within 30 days after the effective date of this amendment, accomplish the following:

(1) Insert the following MHI Transmittal Letters in the Normal Operating Procedures Section of the AFM, as applicable:

(i) For Model YS-11 airplanes: NMAC YS-11 Flight Manual Publication No. YS-FM-001, Transmittal Letter E32, dated October 2, 1990;

(ii) For Model YS-11A-200 and -300 series airplanes: NMAC YS-11A-200/300 Flight Manual Publication No. YS-FM-002, Transmittal Letter No. E2027, dated October 2, 1990;

(iii) For Model YS-11A-500 series airplanes: NMAC YS-11A-500 Flight Manual Publication DNo. YS-FM-005, Transmittal Letter No. E5021, dated October 2, 1990;

(iv) For Model YS-11A-600 series airplanes: NMAC YS-11A-600 Flight Manual Publication No. YS-FM-005, Transmittal Letter No. E6021, dated October 2, 1990.

(2) In the Normal Operating Procedures Section of the AFM, just after the MHI Transmittal Letter required by paragraph (b)(1) of this AD, revise subparagraph "(2) Flaps" of paragraph 3.1.10.1, *Approach and Landing in Icing Conditions or in Visible Moisture Below plus 5 Degrees C (plus 41 Degrees F) OAT*, to read as follows. This may be accomplished by inserting a copy of this AD in the AFM.

"(2) Flaps..Set Position

Note: Do not extend flaps greater than 20 degrees.

Caution: If Unusual Pitching or Yoke Movement Occurs While Extending the Flaps, Immediately Retract the Flaps Until the Pitching or Yoke Movement Stops."

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

Note: Previous FAA approval granted for an alternative method of compliance with AD 91-06-04 constitutes FAA approval as an alternative method of compliance with this AD.

(d) Speical flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(e) The AFM revision requirements shall be accomplished, in part, by incorporating the following documents into the AFM: NMAC YS-11 Flight Manual Publication No. YS-FM-001, Transmittal Letter E32; NMAC YS-11A-200/300 Flight Manual Publication No. YS-FM-002, Transmittal Letter No. E2027; NMAC YS-11A-500 Flight Manual Publication No. YS-FM-005, Transmittal Letter No. E5021; NMAC YS-11A-600 Flight Manual Publication No. YS-FM-006, Transmittal Letter No. E6021; all of which are dated October 2, 1990. These documents contain the following list of effective pages:

Publication No./transmittal letter No.	Section	Code symbol	Page No.
Publication No. YS-FM-001	Transmittal Sheet	T/L E32	1/1
Transmittal Letter E32	L.E.P.	(none)	i
Dated October 2, 1990	Log of Revision (1)	(none)	ii-10
	3	(none)	i
		(none)	25
		(none)	25a
Publication No. YS-FM-002	Transmittal Sheet	T/L E2027	1/1
Transmittal Letter E2027	L.E.P.	E101	i
Dated October 2, 1990	Log of Revision (1)	E101	ii-8
	3	E100	i
		E100	21
		E100	22
Publication No. YS-FM-005	Transmittal Sheet	T/L E5021	1/1
Transmittal Letter E5021	L.E.P.	E500	i
Dated October 2, 1990	Log of Revision (1)	E156	ii-5
	3	E100	i
		E100	21
		E100	22
Publication No. YS-FM-006	Transmittal Sheet	T/L E6021	1/1
Transmittal Letter E6021	L.E.P.	E600	i
Dated October 2, 1990	Log of Revision (1)	E156	ii-5
	3	E100	i
		E100	21
		E100	22

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Nagoya Aircraft Works, Mitsubishi Heavy Industries, Ltd., 10 Oye-cho, Minato-Ku, Nagoya 455, Japan, Attention: Manager, YS-11 Group, Service Department. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

This amendment supersedes Amendment 39-6922, AD 91-06-04.

This amendment (39-7091, AD 91-16-01) becomes effective August 22, 1991.

Issued in Renton, Washington, on July 19, 1991.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-18674 Filed 8-6-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-ANE-20; Amendment 39-7065]

Airworthiness Directives; Pratt & Whitney Canada, Inc. (PWC) JT15D-4B Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

S–11A–200 and –300 series
YS–11A–200/300 Flight
n No. YS–FM–002,
No. E2027, dated October

S–11A–500 series
YS–11A–500 Flight Manual
YS–FM–005, Transmittal
ated October 2, 1990;
S–11A–600 series
YS–11A–600 Flight Manual
–FM–005, Transmittal
ated October 2, 1990.
l Operating Procedures
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Set Position
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ual Pitching or Yoke
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Retract the Flaps Until
e Movement Stops."

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ompliance time, which
able level of safety, may

be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

Note: Previous FAA approval granted for an alternative method of compliance with AD 91–06–04 constitutes FAA approval as an alternative method of compliance with this AD.

(d) Speical flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(e) The AFM revision requirements shall be accomplished, in part, by incorporating the following documents into the AFM: NMAC YS–11 Flight Manual Publication No. YS–FM–001, Transmittal Letter E32; NMAC YS–11A–200/300 Flight Manual Publication No. YS–FM–002, Transmittal Letter No. E2027; NMAC YS–11A–500 Flight Manual Publication No. YS–FM–005, Transmittal Letter No. E5021; NMAC YS–11A–600 Flight Manual Publication No. YS–FM–006, Transmittal Letter No. E6021; all of which are dated October 2, 1990. These documents contain the following list of effective pages:

Section	Code symbol	Page No.
mittal Sheet	T/L E32	1/1
	(none)	i
f Revision (1)	(none)	ii-10
	(none)	i
	(none)	25
	(none)	25a
mittal Sheet	T/L E2027	1/1
	E101	i
f Revision (1)	E101	ii-8
	E100	i
	E100	21
	E100	22
mittal Sheet	T/L E5021	1/1
	E500	i
f Revision (1)	E156	ii-5
	E100	i
	E100	21
	E100	22
mittal Sheet	T/L E6021	1/1
	E600	i
f Revision (1)	E156	ii-5
	E100	i
	E100	21
	E100	22

al Register, 1100 L Street
Vashington, DC.
supersedes Amendment
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(39–7091, AD 91–16–01)
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ansport Airplane
t Certification Service.
iled 8–6–91; 8:45 am]

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14 CFR Part 39

[Docket No. 91–ANE–20; Amendment 39–7065]

Airworthiness Directives; Pratt & Whitney Canada, Inc. (PWC) JT15D–4B Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to PWC JT15D–4B turbofan engines, which requires initial and repetitive inspections of certain gas generator cases (GGC) for cracks, removal from service of cases found cracked, and removal from service of affected cases at the next engine overhaul. This amendment is prompted by a report of the explosive rupture of a GGC during takeoff which resulted in sudden loss of engine power and an aborted takeoff. This condition, if not corrected, could result in rupture of the GGC, which could lead to an aborted takeoff, inflight shutdown, and/or damage to the aircraft.

DATES: Effective August 22, 1991.

Comments must be received no later than Septembr 6, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 22, 1991.

ADDRESSES: Submit comments in duplicate to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–ANE–20, 12 New England Executive Park, Burlington, Massachusetts 01803–5299, or deliver in duplicate to room 311 at the above address.

Comments may be inspected at the above location between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service information may be obtained from Pratt & Whitney Canada, Inc., Publications Distribution Department, 03CAl, 1000 Marie Victorin, Longueuil, Quebec, Canada J4G lAl. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Richard Woldan, Engine Certification Office, ANE–140, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; (617) 273–7097.

SUPPLEMENTARY INFORMATION: There has been one GGC rupture resulting from an axial crack in the case outer wall. The event resulted in sudden loss of engine power, an aborted takeoff and bursting of the engine outer bypass duct. In this event the aircraft damage was minimal because the case ruptured on the side of the engine away from the airplane. Subsequent examination of the fracture surface revealed that a fatigue crack originated from a spot weld used to attach a reinforcing strip to the inside of the case. This crack propagated to a critical length which caused the GGC to explosively rupture. This GGC also exhibited cracks at a number of other spot welds. Since this event another in-service case was found to have a similar crack originating from a spot weld. This condition, if not corrected, could result in rupture of the GGC, which could lead to aborted takeoff, inflight shutdown, and/or damage to the aircraft.

The FAA has reviewed and approved the technical contents of PWC JT15D–4B Maintenance Manual, Part Number 3017542, Temporary Revisions 72–95 and 72–96, each dated January 16, 1991, which provide the instructions required to perform an on-wing borescope inspection of the outside of the GGC for cracks.

Since this condition is likely to exist or develop on other engines of the same type design, this AD requires initial and repetitive inspections of affected GGC's, removal of cracked cases from service, and removal from service of affected cases at the next engine overhaul.

Since this condition could result in sudden loss of engine power, aborted takeoff, engine inflight shutdown, and/or damage to the aircraft, there is a need to require on-wing, repetitive inspections and removal of affected GGC's from service with minimum delay. Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Although this action is in the form of a final rule, which involves an emergency and, thus, was not preceded by notice and public procedure, interested persons are invited to submit such written data, views, or arguments as they may desire regarding this AD. Communications should identify the docket number and be submitted to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–ANE–20, 12 New England Executive Park, Burlington, Massachusetts 01803–5299. All communications received by the deadline date indicated above will be considered by the Administrator, and the AD may be changed in light of the comments received.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, and Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449), January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

91–15–02. Pratt & Whitney Canada, Inc.: Amendment 39–7065. Docket No. 91–ANE–20.

Applicability: Pratt & Whitney Canada (PWC) JT15D–4B turbofan engines, with the following serial numbers, installed on, but not limited to, Cessna model S550 (Citation S/II) series airplanes:

Serial Numbers PC–E 102047 to PC–E 102050 inclusive, PC–E 102053 to PC–E 102066 inclusive, PC–E 102069, PC–E 102070, PC–E 102073, PC–E 102082, and PC–E 102089.

Compliance: Required as indicated, unless previously accomplished.

To prevent rupture of the gas generator case (GGC) which could result in an inflight shutdown, aborted takeoff, and/or damage to the aircraft, accomplish the following:

(a) Perform a borescope inspection of GGC Part Number (P/N) 3106469–01 for cracks in accordance with PWC JT15D–4B Maintenance Manual (MM), P/N 3017542, Temporary Revision (TR) 72–95, dated January 16, 1991, and TR 72–96, dated January 16, 1991, within 10 days after the effective date of this AD. Ensure that particular attention is paid to the spot welds. Accomplishment of this inspection within the previous 150 engine operating hours or 150 cycles in service, whichever is the shorter interval, before the effective date of this AD, meets the requirements of this paragraph.

(b) Thereafter, at intervals not to exceed 150 engine operating hours or 150 cycles in service, whichever occurs first, since last inspection, perform repetitive borescope inspections of GGC P/N 3106469–01 for cracks in accordance with PWC JT15D–4B MM TR 72–95, dated January 16, 1991, and TR 72–96, dated January 16, 1991. Ensure that particular attention is paid to the spot welds.

(c) Borescope inspections performed in accordance with PWC Service Information Letter Number 7040, dated December 17, 1990, are considered to satisfy the requirements of paragraph (a) of this AD.

(d) Remove from service prior to further flight GGC's which are found to be cracked and replace with a serviceable GGC P/N 3109069–01, 3110464–01 or 3114407–01. Accomplishment of this replacement constitutes terminating action for the repetitive inspection requirements of paragraph (b) of this AD.

(e) No later than the next engine overhaul, remove GGC P/N 3106469–01 and replace with a serviceable GGC P/N 3109069–01, 3110464–01 or 3114407–01. Accomplishment of this replacement constitutes terminating action for the repetitive inspection requirements of paragraph (b) of this AD.

(f) For the purpose of this AD an engine overhaul is defined as any engine maintenance action which includes separation of the GGC forward outer flange and aft flange.

(g) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(h) Upon submission of substantiating data by an owner or operator through an FAA Inspector, (maintenance, avionics, or operations, as appropriate) an alternate method of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD may be approved by the Manager, Engine Certification Office, ANE–140, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803–5299.

(i) The inspections shall be done in accordance with the following Pratt & Whitney Canada documents:

Document No.	Page No.	Issue/ Rev	Date
Temporary Revision, 72–95 to PWC, Maintenance Manual, Part No. 3017542.	1	Original......	1/16/91
Temporary Revision, 72–96 to PWC, Maintenance Manual, Part No. 3017542.	1	Original......	1/16/91
Total Pages: 2			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney Canada, Inc., Publications Distribution Department, 03CA1, 1000 Marie Victorin, Longueuil, Quebec, Canada J4G 1A1. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, room 311, Burlington, Massachusetts, or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

This amendment (39–7065, AD 91–15–02) becomes effective August 22, 1991.

Issued in Burlington, Massachusetts, on July 10, 1991.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 91–18675 Filed 8–6–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor Name

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor name from Syntex Animal Health, Inc., to Syntex Animal Health, Division of Syntex Agribusiness, Inc.

EFFECTIVE DATE: August 7, 1991.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8646.

SUPPLEMENTARY INFORMATION: Syntex Animal Health, Inc., has informed FDA of a change of sponsor name from Syntex Animal Health, Inc., to Syntex Animal Health, Division of Syntex Agribusiness, Inc. The agency is amending the regulations in 21 CFR 510.600 (c)(1) and (c)(2) to reflect this change.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

2. Section 510.600 is amended in the table in paragraph (c)(1) by removing the entry "Syntex Animal Health, Inc.," and replacing it with the entry "Syntex Animal Health, Division of Syntex Agribusiness, Inc.," and in the table in paragraph (c)(2) in the entry "000033" by revising the sponsor name to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Syntex Animal Health, Division of Syntex Agribusiness, Inc., 3401 Hillview Ave., Palo Alto, CA 94304	000033
* * * * *	

Drug labeler code	Firm name and address
(2) * * *	
* * * * *	
000033	Syntex Animal Health Division of Syntex Agribusiness, Inc., 3401 Hillview Ave., Palo Alto, CA 94304
* * * * *	

Dated: August 1, 1991.

Robert C. Livingston,

Director, Center for Veterinary Medicine.

[FR Doc. 91–18757 Filed 8–6–91; 8:45 am]

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of a change of sponsor name from Syntex Animal Health, Inc., to Syntex Animal Health, Division of Syntex Agribusiness, Inc. The agency is amending the regulations in 21 CFR 510.600 (c)(1) and (c)(2) to reflect this change.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

2. Section 510.600 is amended in the table in paragraph (c)(1) by removing the entry "Syntex Animal Health, Inc.," and replacing it with the entry "Syntex Animal Health, Division of Syntex Agribusiness, Inc.," and in the table in paragraph (c)(2) in the entry "000033" by revising the sponsor name to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *
(1) * * *

Firm name and address	Drug labeler code
* * * *	*
Syntex Animal Health, Division of Syntex Agribusiness, Inc., 3401 Hillview Ave., Palo Alto, CA 94304	000033
* * * *	*

Drug labeler code	Firm name and address
(2) * * *	
* *	* * *
000033	Syntex Animal Health Division of Syntex Agribusiness, Inc., 3401 Hillview Ave., Palo Alto, CA 94304
* *	* * *

Dated: August 1, 1991.

Robert C. Livingston,

Director, Center for Veterinary Medicine.

[FR Doc. 91–18757 Filed 8–6–91; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 510, 520, and 524

Animal Drugs, Feeds, and Related Products; Primidone et al.

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions of the regulations reflecting approval of three new animal drug applications (NADA's) held by Bolar Pharmaceutical Co., Inc., and two NADA's held by Sanofi Animal Health, Inc. In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the NADA's.

EFFECTIVE DATE: August 19, 1991.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4093.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the following NADA's held by Bolar Pharmaceutical Co., Inc., 130 Lincoln St., Copiague, NY 11726, and Sanofi Animal Health, Inc., 7101 College Blvd., suite 610, Overland Park, KS 66210.

NADA No.	Sponsor	Product
107–397	Bolar Pharmaceutical Co., Inc.	Primidone tablets.
118–506	Sanofi Animal Health, Inc.	Nitrofurazone ointment.
119–974	Sanofi Animal Health, Inc.	Nitrofurazone solution.
125–329	Bolar Pharmaceutical Co., Inc.	Furosemide tablets.
135–299	Bolar Pharmaceutical Co., Inc.	Acepromazine maleate tablets.

This final rule removes those portions of the regulations in 21 CFR 520.23(a)(2), 520.1010a(b), 520.1900(b), 524.1580b(b), and 524.1580d(b) that reflect approval these NADA's. Additionally, because Bolar Pharmaceutical Co., Inc., no longer sponsors any approved NADA's 21 CFR 510.600 (c)(1) and (c)(2) are amended to remove the sponsor entries for that firm.

List of Subjects in 21 CFR

Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Part 520

Animal drugs.

Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 520, and 524 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry for "Bolar Pharmaceutical Co., Inc.," and in the table in paragraph (c)(2) by removing the entry for "000725".

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

3. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 520.23 [Amended]

4. Section 520.23 *Acepromazine maleate tablets* is amended in paragraph (a)(2) by removing the phrase "Nos. 000725 and" and inserting "No." in its place.

§ 520.1010a [Amended]

5. Section 520.1010a *Furosemide tablets or boluses* is amended in paragraph (b) by removing the phrase "Nos. 000725 and" and inserting "No." in its place.

§ 520.1900 [Amended]

6. Section 520.1900 *Primidone tablets* is amended in paragraph (b) by removing the phrase "Nos. 000725 and" and inserting "No." in its place.

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

7. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 524.1580b [Amended]

8. Section 524.1580b *Nitrofurazone ointment* is amended in paragraph (b) by removing the number "050604".

§ 524.1580d [Amended]

9. Section 524.1580d *Nitrofurazone solution* is amended in paragraph (b) by removing the number "050604".

Dated: August 1, 1991.

Richard H. Teske,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 91–18758 Filed 8–6–91; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 510 and 524

Animal Drugs, Feeds, and Related Products; Liquid Crystalline Trypsin, Peru Balsam, Castor Oil; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the change of sponsor for a new animal drug application (NADA) for liquid crystalline trypsin, Peru balsam, castor oil from Pan American Pharmaceuticals, Inc., to Farnam Companies, Inc.

EFFECTIVE DATE: August 7, 1991.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8646.

SUPPLEMENTARY INFORMATION: Pan American Pharmaceuticals, Inc., 4156 Danvers Ct. SE., Grand Rapids, MI 49508, has informed FDA that it has transferred ownership of, and all rights and interests in, NADA 31–555 (liquid crystalline trypsin, Peru balsam, castor oil) to Farnam Companies, Inc., 301 West Osborn, Phoenix, AZ 85013–3928. The agency is amending the regulations in 21 CFR 510.600 (c)(1) and (c)(2) and 524.2620(b)(2) to reflect the change of sponsor.

List of Subjects in 21 CFR

Part 510

Administrative practice and procedures, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 524 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry for "Pan American Pharmaceuticals, Inc.," and in the table in paragraph (c)(2) by removing the entry for "052799".

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM—NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

3. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 524.2620 [Amended]

4. Section 524.2620 *Liquid crystalline trypsin, Peru balsam, castor oil* is amended in paragraph (b)(2) by removing the number "052799" and replacing it with the number "017135".

Dated: August 1, 1991.

Robert C. Livingston,

Director, Center for Veterinary Medicine.

[FR Doc. 91–18759 Filed 8–6–91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD09–91–03]

Drawbridge Operation Regulations; Cheboygan River, MI

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Michigan Department of Transportation, the Coast Guard is amending the operating regulations governing the US-23 highway bridge at mile 0.9 across the Cheboygan River in Cheboygan, Michigan, by extending the period of time the bridge opens for the passage of recreational vessels on a regulated schedule. This change is being made because an increase of vehicle traffic, and because random bridge openings are causing vehicular traffic tie-ups. This action will accommodate the current needs of vehicular traffic and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on September 6, 1991.

FOR FURTHER INFORMATION CONTACT: Robert W. Bloom, Jr., Chief, Bridge Branch, telephone (216) 522–3993.

SUPPLEMENTARY INFORMATION: On May 7, 1991, the Coast Guard published proposed rules Vol. 56, No. 88, FR 21114 and FR 21115 concerning this amendment. The Commander, Ninth Coast Guard District, also published the proposal as a Public Notice dated May 23, 1991. Interested persons were given until June 21, 1991, to submit comments.

Drafting Information

The drafters of these regulations are Fred H. Mieser, project officer, and Commander M. Eric Reeves, U.S. Coast Guard project attorney.

Discussion of Comments

One comment was received as a result of the public notices in response to the proposed change. The comment was from the Michigan Department of Natural Resources and they had no objection to the proposed action.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulations and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The operating regulations expand the times for regulated openings during the period May 16 through September 15. The draw is required to open on signal for the passage of recreational vessels from three minutes before to three minutes after the quarter and three-quarters hour between the hours of 6 a.m. and 6 p.m., seven days a week. From 6 p.m. to 6 a.m., seven days a week, the draw is required to open on signal for the passage of all vessels. The additional regulated periods will help to alleviate vehicle traffic tie-ups while still allowing vessels to navigate the river. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have a sufficient federalism implication to warrant preparation of a Federalism Statement.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.627 is revised to read as follows:

§ 117.627 Cheboygan River.

The draw of the US 23 highway bridge, mile 0.9 at Cheboygan shall operate as follows:

(a) From March 16 through May 15 and from September 16 through December 14, the draw shall open on signal.

(b) From May 16 through September 15—

(1) Between the hours of 6 p.m. and 6 a.m., seven days a week, the draw shall open on signal.

(2) Between the hours of 6 a.m. and 6 p.m., seven days a week, the draw need open only from three minutes before to three minutes after the quarter and three-quarters hour.

(c) From December 15 through March 15, no bridgetender is required to be at the bridge and the draw need not open unless a request to open the draw is given to the Cheboygan Police Department at least 24 hours in advance of a vessel's time of intended passage through the draw.

(d) At all times, the draw shall open as soon as possible for the passage of public vessels of the United States, State or local vessels used for public safety, commercial vessels, and vessels in distress.

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ORMATION CONTACT:
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Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have a sufficient federalism implication to warrant preparation of a Federalism Statement.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.627 is revised to read as follows:

§ 117.627 Cheboygan River.

The draw of the US 23 highway bridge, mile 0.9 at Cheboygan shall operate as follows:

(a) From March 16 through May 15 and from September 16 through December 14, the draw shall open on signal.

(b) From May 16 through September 15—

(1) Between the hours of 6 p.m. and 6 a.m., seven days a week, the draw shall open on signal.

(2) Between the hours of 6 a.m. and 6 p.m., seven days a week, the draw need open only from three minutes before to three minutes after the quarter and three-quarters hour.

(c) From December 15 through March 15, no bridgetender is required to be at the bridge and the draw need not open unless a request to open the draw is given to the Cheboygan Police Department at least 24 hours in advance of a vessel's time of intended passage through the draw.

(d) At all times, the draw shall open as soon as possible for the passage of public vessels of the United States, State or local vessels used for public safety, commercial vessels, and vessels in distress.

Dated: July 30, 1991.

G.A. Penington,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 91–18719 Filed 8–6–91; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 161

[CGD 91–015]

RIN 2115–AE05

Puget Sound Vessel Traffic Service

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rulemaking amends the Puget Sound Vessel Traffic Service (VTS) regulations to incorporate a multi-channel communications system. Communicating on the present VTS frequency, 156.700 MHz (channel 14), has become difficult due to increased vessel traffic. By using a second VTS designated frequency, 156.250 MHz (channel 5A), communications on channel 14 will be reduced, thereby improving navigational safety in the VTS Area.

EFFECTIVE DATE: September 6, 1991.

FOR FURTHER INFORMATION CONTACT: Bruce Riley, Project Manager, Navigation Safety Systems Special Projects Staff, Tel. (202) 267–0412.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Bruce Riley, Project Manager, and Nicholas Grasselli, Project Counsel, Office of Chief Counsel.

Regulatory History

On April 5, 1991, the Coast Guard published a Notice of Proposed Rulemaking entitled Puget Sound Vessel Traffic Service in the **Federal Register** (56 FR 14046). The Coast Guard received no letters commenting on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

Communications in the VTS Puget Sound Area have become increasingly difficult due to the large volume of traffic. The VTS has noticed a significant increase in the number of incidents of covered communications (a transmission by one unit made unreadable because of a second unit's transmission) occurring on channel 14. This is an indication that this radio channel is being over used.

VTS Puget Sound will use channel 5A, designated by the Federal Communications Commission for VTS use, as the second channel for their VTS operations. Vessels must have the capability to communicate with the Vessel Traffic Center (VTC) on channel 5A and channel 14. Vessels will be directed to use either channel 5A or channel 14 by the VTC.

Regulatory Evaluation

This rule is not major under Executive Order 12291 and is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979).

Since the vast majority of vessel owners or operators affected by this rulemaking already have channel 5A programmed into their VHF/FM radios, the Coast Guard expects the economic impact of this rule to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

The regular practices of present users of VTS Puget Sound will not change significantly because of this rulemaking. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

The Coast Guard considers operational communications within the VTS Area as transitory in nature and, therefore, has concluded that this rule contains no collection of information requirements (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rulemaking and concluded that under section 2.B.2. of Commandant Instruction M16475.1B, this rulemaking is categorically excluded from further environmental documentation. Since this rulemaking is primarily aimed at improving communications and navigation, no effect on the human environment is expected. A Categorical Exclusion Determination is available for inspection or copying in the rulemaking docket.

List of Subjects in 33 CFR Part 161

Harbors, Navigation (water), Vessels, Waterways.

For the reasons set out in the preamble, the Coast Guard is amending 33 CFR part 161 as follows:

PART 161—VESSEL TRAFFIC MANAGEMENT

1. The authority citation for part 161 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

2. Section 161.114 is revised to read as follows:

§ 161.114 Use of designated frequencies.

(a) The VTS Area uses a two-frequency VHF–FM communication system. The two primary working frequencies authorized by FCC rule 47 CFR 80.383 are 156.25 MHz (channel 5A) and 156.70 MHz (channel 14).

(b) The secondary frequency throughout the VTS Area is 156.650 MHz (channel 13).

(c) No one shall transmit on these VTS frequencies for any purpose other than to pass information and reports to and from the VTC or necessary navigational safety information between vessels.

(d) All transmissions to the VTC shall be initiated on low power. High power may be used only if low power communications are unsuccessful.

(e) Vessels will communicate with the VTC on channel 5A or channel 14, as directed by the VTC.

Dated: July 30, 1991.

L.J. Black,

Captain, U.S. Coast Guard, Acting Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 91–18720 Filed 8–6–91; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. 110; FRL–39768]

Approval and Promulgation of Implementation Plans; Revision to the State of New York Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is announcing today the approval on a permanent basis of a request by New York State to revise the

New York State Implementation Plan (SIP) to allow Orange and Rockland Utilities (ORU), Inc. to operate two reconverted units at its Lovett Generating Station in Stony Point, New York on coal. A temporary revision allowing coal burning for a 42-month period expired on December 9, 1990, but was extended by EPA for six months to allow time for processing the State's request for a permanent SIP revision. This revision relaxes the normal emission limit of 0.4 pounds of sulfur dioxide (SO_2) per million British thermal units (lbs/MMBtu) to 1.0 lb/MMBtu for units 4 and 5 if both are operated on coal, or to 1.5 lb/MMBtu for one unit if the other is operated on fuel oil, natural gas or is not operated at all. Today, EPA is permanently incorporating into the New York SIP those portions of the State's Certificates to Operate for units 4 and 5 of ORU's Lovett Generating Station which pertain to the SO_2 emission limits.

DATES: *Effective Date:* This action will be effective September 6, 1991.

ADDRESSES: Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch 26 Federal Plaza, room 1034A, New York, New York 10278.
New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.
Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, 26 Federal Plaza, room 1034A, New York, New York 10278 (212) 264-2517.

SUPPLEMENTARY INFORMATION:

Background

In a **Federal Register** notice published on March 15, 1983 (48 FR 11093), the Environmental Protection Agency (EPA) announced that the State of New York had submitted a request to revise the sulfur dioxide (SO_2) portion of its State Implementation Plan (SIP). This revision sought to allow Orange and Rockland Utilities, Inc. (ORU) to reconvert two units at its Lovett Generating Station in Stony Point, New York from oil to coal. It entailed relaxing the normal emission limit of 0.4 lbs/MMBtu to 1.0 lb/MMBtu for units 4 and 5 if both are operated on coal, or 1.5 lb/MMBtu for one unit if the other is operated on fuel oil, natural gas or is not operated at all.

In order to approve the New York SIP revision request, EPA required a demonstration that the conversion would not adversely affect air quality. An air quality modeling analysis was submitted to EPA, however, it was not consistent with EPA's Guideline on Air Quality Models, (Revised), (EPA-450/2-78-027R). On November 21, 1984 (49 FR 45872), EPA published a supplemental **Federal Register** notice which described an agreement between EPA, the New York State Department of Environmental Conservation (NYSDEC), and ORU under which ORU was allowed to temporarily reconvert the Lovett facility to coal and replace two existing stacks with a single 475 foot stack. This included an air dispersion model analysis of the Lovett area, which is mostly characterized by complex terrain. Due to the uncertainties associated with state-of-the-art complex terrain modeling, EPA decided that only post-conversion ambient air monitoring could verify the accuracy of the State's complex terrain modeling results.

Under the aforementioned agreement, New York State received a temporary relaxation in the SO_2 limitations in its SIP in order to allow ORU to burn coal during a 42-month test period. During this time, ORU was required to monitor the effects on ambient air quality of the reconversion and conduct an evaluation of three air quality dispersion models: The EPA Complex I model, the NYSDEC model, and a modified NYSDEC model. Based upon a statistical comparison between the predicted concentrations generated by the models and the measured concentrations obtained at 12 monitoring sites located around the facility, it was determined that the most accurate predictor of air quality at the site was the modified NYSDEC model. In its subsequent SIP revision request for a permanent reconversion, NYSDEC used this model to determine whether the air quality impacts resulting from the facility's reconversion were acceptable. EPA's final approval of the 42-month special emission limitation and model evaluation study appeared in the **Federal Register** on May 30, 1985 (50 FR 23004). The 42-month period started on June 6, 1987 when unit 5 of the Lovett plant began burning coal.

It should be noted that on December 2, 1990 (55 FR 51101), EPA extended the 42-month special limitation for a period of six months, due to delays in processing an approvable State-submitted permanent SIP revision request for the facility. In approving the original 42-month special emission limitation, EPA gave itself the option of granting such an extension should delays in processing arise, provided that ORU met specific conditions (see 40 CFR 52.1675). For further information on the granting of this extension, the reader is referred to the December 12, 1990 **Federal Register** notice.

In a **Federal Register** notice published on April 3, 1991, (56 FR 13605) EPA announced its proposal and requested comments on the approval of the site specific emission limit for the Lovett reconversion. EPA received one comment during the comment period. The comment was in support of the SIP revision.

The State Submittal

On September 18, 1990, NYSDEC submitted a facility specific SO_2 SIP revision request for the Lovett Generating Station. The State's request was supported by a demonstration that the conversion would not lead to a violation of the Prevention of Significant Deterioration (PSD) increment or national ambient air quality standard for SO_2. This was based upon modeling results obtained from the modified NYSDEC Complex Terrain model. Documents submitted by NYSDEC to support its SIP revision request include Lovett Generating Station Model Evaluation Study, Lovett Generating Station Emission Limitation Study, and the Review of Orange and Rockland Model Evaluation Study and Emission Limitation Study for Lovett Facility for Units 4 and 5. In addition, monitoring for ambient air quality at a number of locations impacted by the Lovett Generating Station demonstrated compliance with the standards for SO_2. (For further details on the models and the results of the evaluation study, the reader is referred to a December 1990 Technical Support Document available at the locations identified earlier in the "Addresses" section of today's notice).

On April 12, 1991, the State submitted additional material related to the SIP revision request package. This included the hearing officer's report from the public hearing held on November 13, 1990, an Order on Consent signed by the State and ORU wherein ORU agreed to study and abate the particulate emissions from the Lovett facility,[1] and Certificates to Operate for units 4 and 5. The Certificates to Operate for units 4 and 5 do not contain the specific emission limits approved herein. These Certificates to Operate incorporate the limits by reference to an April 13, 1982

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[1] A copy of the Order on Consent was submitted as part of the SIP revision request submittal for EPA information only. The issue covered by this Order does not have a direct bearing on this SO_2 SIP revision.

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conditions (see 40 CFR 52.1675). For further information on the granting of this extension, the reader is referred to the December 12, 1990 **Federal Register** notice.

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The State Submittal

On September 18, 1990, NYSDEC submitted a facility specific SO_2 SIP revision request for the Lovett Generating Station. The State's request was supported by a demonstration that the conversion would not lead to a violation of the Prevention of Significant Deterioration (PSD) increment or national ambient air quality standard for SO_2. This was based upon modeling results obtained from the modified NYSDEC Complex Terrain model. Documents submitted by NYSDEC to support its SIP revision request include Lovett Generating Station Model Evaluation Study, Lovett Generating Station Emission Limitation Study, and the Review of Orange and Rockland Model Evaluation Study and Emission Limitation Study for Lovett Facility for Units 4 and 5. In addition, monitoring for ambient air quality at a number of locations impacted by the Lovett Generating Station demonstrated compliance with the standards for SO_2. (For further details on the models and the results of the evaluation study, the reader is referred to a December 1990 Technical Support Document available at the locations identified earlier in the "Addresses" section of today's notice).

On April 12, 1991, the State submitted additional material related to the SIP revision request package. This included the hearing officer's report from the public hearing held on November 13, 1990, an Order on Consent signed by the State and ORU wherein ORU agreed to study and abate the particulate emissions from the Lovett facility,[1] and Certificates to Operate for units 4 and 5. The Certificates to Operate for units 4 and 5 do not contain the specific emission limits approved herein. These Certificates to Operate incorporate the limits by reference to an April 13, 1982 Commissioner's decision and an October 14, 1982 Amended Order which specifically state the SO_2 emission limits and respective monitoring and reporting requirements.

Conclusion

NYSDEC requested a revision to its SO_2 SIP for a site specific facility, the Lovett Generating Station, located in Stony Point, New York. This revision would allow the Lovett Generating Station to convert units 4 and 5 permanently from oil to coal with an emission limit of 1.0 lb/MMBtu if both of these units are operated on coal or 1.5 lb/MMBtu for one unit if the other is operated on fuel oil, natural gas or is not operated at all. The air dispersion model results and monitoring data obtained during a 42-month coal burning test period showed no exceedances of PSD increments or national ambient air quality standards for SO_2.

Since it was found that the air quality impacts from the proposed coal conversion do not result in any violations of the PSD increment or standards for SO_2 and ORU has met the requirements under which it could convert to coal, EPA is approving the SIP submittal allowing Lovett to burn coal with the emission limitations identified earlier in this notice.

On April 3, 1991, the State issued Certificates to Operate for units 4 and 5 which incorporate by reference an attached sheet of special conditions, an April 13, 1982 Commissioner's Decision, an October 14, 1982 Amended Order. The October 14, 1982 Amended Order includes the SO_2 emission limit of 1.0 lb/MMBtu for units 4 and 5 if both are operated on coal, or 1.5 lb/MMBtu for one unit if the other is operated on fuel oil, natural gas or is not operated at all.

EPA is permanently approving these emission limits and those portions of the documents incorporated into the Certificates to Operate which relate to continuous SO_2 emissions monitoring and reporting requirements for SO_2 emissions and any other condition included in the State's submittal which would enhance enforcement, monitoring and reporting of the SO_2 emissions from units 4 and 5.

EPA has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the November 15, 1990 Clean Air Act as amended. The Agency has determined that this action conforms with those requirements irrespective of the fact that the initial submittal preceded the date of enactment.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to a SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. § 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Under section 307(b)(1), 42 U.S.C. 7607 (b)(1) of the Act as amended, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days from the date of publication. Filing a petition for reconsideration by the Regional Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: July 8, 1991.

Constantine Sidamon-Eristoff,
Regional Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40, chapter I, subchapter C, part 52, Code of Federal Regulations is amended as follows:

Subpart HH—New York

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1670 is amended by adding new paragraph (c)(83) to read as follows:

§ 52.1670 Identification of plan.

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(c) * * *

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(83) A revision submitted on September 18, 1990 with additional materials submitted on April 12, 1991, and June 3, 1991 by the New York State Department of Environmental Conservation that revises the SO_2 emission limit for units 4 and 5 of Orange and Rockland Utilities' Lovett Generating Station.

(i) Incorporation by reference. Sulfur dioxide emission limits incorporated into the Certificates to Operate units 4 and 5 of the Orange and Rockland Utilities' (ORU) Lovett Generating Station issued April 3, 1991 and the materials which pertain to the SO_2 emission limits, monitoring and recordkeeping which are incorporated by reference into the Certificates to Operate for units 4 & 5. This includes the following:

(A) The special conditions attached to certificates;

(B) April 13, 1982 Decision of the Commissioner; and

(C) October 14, 1982 Amended Commissioner's Order.

(ii) Additional materials:

(A) Lovett Generating Station Model Evaluation Study, May 1989,

(B) Lovett Generating Station Emission Limitation Study, May 1989,

(C) Review of Orange and Rockland Model Evaluation Study and Emission Limitation Study for Lovett Facility for Units 4 & 5, January 27, 1990 and

(D) Lovett Generating Station Air Quality and Meteorological Monitoring Network Quarterly Reports.

3. Section 52.1675 (f) is amended by removing the entry for "Lovett Plant (Units 4 and 5)" in the table under (f) Temporary fuel variance, (ii) coal.

4. Section 52.1675 is amended by revising (h) to read as follows:

§ 52.1675 Control strategy and regulations: Sulfur oxides.

* * * * *

(h) The Environmental Protection Agency has approved a New York State Implementation Plan revision relating to the SO_2 emission limit for units 4 and 5 of Orange and Rockland Utilities' Lovett generating station. The revision which allows Lovett to burn coal at units 4 and 5 was submitted by the New York State Department of Environmental Conservation (NYSDEC) on September 18, 1990, with additional materials submitted on April 12, 1991, and June 3, 1991. This action sets the emission limit applicable to the facility to 1.0 pound per million British thermal units (MMBtu) for units 4 and 5 if both are operated on coal, or to 1.5 lb/MMBtu for one unit if the other is operated on fuel oil, natural gas or is not operated at all, as set forth in the Certificates to Operate issued by NYSDEC on April 3, 1991. The SO_2 emission limit, monitoring and recordkeeping requirements pertaining to the SO_2 emissions are incorporated by reference into the Certificates to Operate.

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[1] A copy of the Order on Consent was submitted as part of the SIP revision request submittal for EPA information only. The issue covered by this Order does not have a direct bearing on this SO_2 SIP revision.

[FR Doc. 91-18546 Filed 8-6-91; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 301-8

[FTR Amendment 19]

Federal Travel Regulation; Reimbursement of Higher Actual Subsistence Expenses in Special or Unusual Circumstances

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Travel Regulation to provide for the establishment of a higher maximum daily rate for the reimbursement of actual subsistence expenses of Federal employees on official travel to an area within the continental United States where special or unusual circumstances result in an extreme increase in subsistence costs for a temporary period.

DATES: Effective date: This final rule is effective July 21, 1991 and applies for travel performed on or after July 21, 1991. Expiration date: October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Raymond F. Price, Travel Management Division (FBT), Washington, DC 20406, telephone FTS 557-1253 or commercial (703) 557-1253.

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 301-8

Government employees, Travel, Travel allowances, Travel and transportation expenses.

For the reasons set out in the preamble, 41 CFR part 301-8 is amended as set forth below.

PART 301-8—REIMBURSEMENT OF ACTUAL SUBSISTENCE EXPENSES

1. The authority citation for part 301-8 continues to read as follows:

Authority: 5 U.S.C. 5701-5709; E.O. 11609, July 22, 1971 (36 FR 13747).

2. Section 301-8.3 is amended by revising paragraph (c) to read as follows:

§ 301-8.3 Maximum daily rates and reimbursement limitations.

* * * * *

(c) *Travel to an area within CONUS where special or unusual circumstances result in an extreme increase in subsistence costs for a temporary period.* (1) The provisions of paragraph (c)(2) of this section shall expire on October 1, 1994.

(2) The head of an agency may request establishment of a maximum daily rate for subsistence expenses above the maximum rate prescribed in paragraph (a) of this section for travel to an area within CONUS where special or unusual circumstances result in an extreme increase in subsistence costs for a temporary period. Requests for a higher subsistence rate, with the exception of requests for travel to a Presidentially declared disaster area, shall be submitted at least 30 days in advance of the beginning of the recommended effective period unless otherwise adequately justified. The Administrator of General Services may establish an appropriate maximum daily rate, not to exceed 300 percent of the maximum per diem rate prescribed for the area under § 301-7.3, pursuant to a review of the justification supporting the request. Such higher established rate shall apply for all official travel to the area and will be effective for a period not to exceed 30 days. The Administrator of General Services may extend the period of effectiveness in increments of up to 30 days upon the request of the head of the agency originally requesting establishment of the higher rate. Requests should be submitted to the Administrator of General Services, Washington, DC 20405, and must contain the following information:

(i) A specification of the geographic area encompassed;

(ii) If the area is a Presidentially declared disaster area, a copy of the Presidential disaster declaration;

(iii) A recommended maximum daily rate not to exceed 300 percent of the maximum per diem rate prescribed for the area under § 301-7.3;

(iv) A description of the specific circumstances which justify the establishment of the recommended rate;

(v) An estimate of the cost impact of establishing a maximum daily rate for subsistence expenses above the maximum rate prescribed in paragraph (a) of this section.

(vi) A recommended time period for effectiveness of the maximum daily rate requested to be established under this paragraph.

* * * * *

Dated: July 9, 1991.

Richard G. Austin,

Administrator of General Services.

[FR Doc. 91-18711 Filed 8-6-91; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 531

[Docket No. LVM 89-01; Notice 10]

Passenger Automobile Average Fuel Economy Standards; Dutcher Motors, Inc.; Final Decision

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT

ACTION: Final decision.

SUMMARY: This decision is issued in response to a petition filed by Dutcher Motors, Inc. (Dutcher) requesting that it be exempted from the generally applicable average fuel economy standard of 27.5 miles per gallon (mpg) for model years (MY) 1993, 1994, and 1995 passenger automobiles, and that a lower alternative standard be established for it for each of these model years. This decision exempts Dutcher and establishes an alternate standard of 17.0 mpg for each of MYs 1993, 1994, and 1995. The decision was preceded by publication of a notice requesting public comments.

DATES: Effective date: September 23, 1991. This exemption and the alternative standards apply to Dutcher for MYs 1993, 1994, and 1995. Petitions for reconsideration must be submitted by September 6, 1991.

ADDRESSES: Petitions for reconsideration must be submitted to:

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(iii) A recommended maximum daily rate not to exceed 300 percent of the maximum per diem rate prescribed for the area under § 301–7.3;

(iv) A description of the specific circumstances which justify the establishment of the recommended rate;

(v) An estimate of the cost impact of establishing a maximum daily rate for subsistence expenses above the maximum rate prescribed in paragraph (a) of this section.

(vi) A recommended time period for effectiveness of the maximum daily rate requested to be established under this paragraph.

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Dated: July 9, 1991.

Richard G. Austin,

Administrator of General Services.

[FR Doc. 91–18711 Filed 8–6–91; 8:45 am]

BILLING CODE 6820–24–M

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AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT

ACTION: Final decision.

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DATES: Effective date: September 23, 1991. This exemption and the alternative standards apply to Dutcher for MYs 1993, 1994, and 1995. Petitions for reconsideration must be submitted by September 6, 1991.

ADDRESSES: Petitions for reconsideration must be submitted to: Administrator, NHTSA, 400 Seventh Street SW., Washington, DC 20590. It is requested, but not required, that 10 copies be provided.

FOR FURTHER INFORMATION CONTACT: Mr. Orron Kee, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington, DC 20590. Mr. Kee's telephone number is (202) 366–0846.

SUPPLEMENTARY INFORMATION: NHTSA is exempting Dutcher from the generally applicable average fuel economy standard for 1993, 1994, and 1995 model year passenger automobiles and establishing alternative standards applicable to Dutcher for each of these model years. This exemption is issued under the authority of section 502(c) of the Motor Vehicle Information and Cost Savings Act, as amended ("the Act") (15 U.S.C. 2002(c)). Section 502(c) provides that a passenger automobile manufacturer which manufactures fewer than 10,000 passenger automobiles annually may be exempted from the generally applicable average fuel economy standard for a particular model year if that standard is greater than the low volume manufacturer's maximum feasible average fuel economy and if NHTSA establishes an alternative standard for the manufacturer at its maximum feasible level. Section 502(e) of the Act (15 U.S.C. 2002(e)) requires NHTSA, in determining maximum feasible average fuel economy, to consider:

(1) Technological feasibility;

(2) Economic practicability;

(3) The effect of other Federal motor vehicle standards on fuel economy; and

(4) The need of the Nation to conserve energy.

This final decision was preceded by a proposed decision announcing the agency's tentative conclusion that Dutcher should be exempted from the generally applicable MY 1993, 1994, and 1995 passenger automobile average fuel economy standard of 27.5 mpg, and that an alternative standard of 17.0 mpg should be established for Dutcher for each of these model years (56 FR 21653, May 10, 1991). No comments were received on the proposed decision.

The agency is adopting the tentative conclusions set forth in the proposed decision as its final conclusions, for the reasons set forth in the proposed decision. Based on the conclusions that the maximum feasible average fuel economy level for Dutcher in each of MYs 1993, 1994, and 1995 is 17.0 mpg, that other Federal motor vehicle standards will not affect achievable fuel economy beyond the extent considered in the proposed decision, and that the national effort to conserve energy will not be affected by granting this exemption, NHTSA hereby exempts Dutcher from the generally applicable passenger automobile average fuel economy standard for the 1993, 1994, and 1995 model years and establishes an alternative standard of 17.0 miles per gallon for Dutcher for each of these years.

NHTSA has analyzed this decision, and determined that neither Executive Order 12291 nor the Department of Transportation's regulatory policies and procedures apply, because this decision is not a "rule," which term is defined as "an agency statement of general applicability and future effect." This exemption is not generally applicable, since it applies only to Dutcher. If the Executive Order and the Departmental policies and procedures were applicable, the agency would have determined that this action is neither "major" nor "significant." The principal impact of this exemption is that Dutcher will not be required to pay civil penalties if it achieves a CAFE level equivalent to the alternative standard established in this notice. Since this decision sets an alternative standard at the level determined to be Dutcher's maximum feasible average fuel economy, no fuel would be saved by establishing a higher alternative standard. The impacts for the public at large will be minimal.

The agency has also considered the environmental implications of this decision in accordance with the National Environmental Policy Act and determined that this decision will not significantly affect the human environment. Regardless of the fuel economy of a vehicle, it must pass the emissions standards which limit the amount of emissions per mile traveled. Thus, the quality of the air is not affected by this exemption and alternative standard. Further, since Dutcher's MY 1993, 1994, and 1995 automobiles cannot achieve better fuel economy than 17.0 mpg, granting this exemption will not affect the amount of gasoline available.

Since the Regulatory Flexibility Act may apply to a decision exempting a manufacturer from a generally applicable standard, I certify that this decision will not have a significant economic impact on a substantial number of small entities. This decision does not impose any burdens on Dutcher. It does relieve the company from having to pay civil penalties for noncompliance with the generally applicable standard for MYs 1993, 1994, and 1995. Since the price of 1993, 1994, and 1995 Dutcher automobiles will not be affected by this decision, the purchasers will not be affected.

List of Subjects in 49 CFR Part 531

Energy conservation, Fuel economy, Gasoline, Imports, Motor vehicles.

In consideration of the foregoing, 49 CFR part 531 is amended to read as follows:

PART 531—[AMENDED]

1. The authority citation for part 531 continues to read as follows:

Authority: 15 U.S.C. 2002, delegation of authority at 49 CFR 1.50.

2. Section 531.5 is amended by revising paragraph (b)(11); the introductory text of paragraph (b) is republished to read as follows:

§ 531.5 Fuel economy standards.

* * * * *

(b) The following manufacturers shall comply with the standards indicated below for the specified model years:

* * * * *

(11) Dutcher Motors, Inc.

Model year	Average fuel economy standard (miles per gallon)
1986	16.0
1987	16.0
1988	16.0
1992	17.0
1993	17.0
1994	17.0
1995	17.0

* * * * *

Issued on: August 1, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91–18667 Filed 8–6–91; 8:45 am]

BILLING CODE 4910–59–M

Proposed Rules

Federal Register
Vol. 56, No. 152
Wednesday, August 7, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 733

Political Activity of Federal Employees

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) proposes to grant Federal Government employees in Calvert County, Maryland, a partial exemption from the political activity restrictions of 5 U.S.C. 7324. This proposal reflects OPM's determination that Calvert County meets the criteria described in 5 U.S.C. 7327 and 5 CFR 733.124(b) for a partial exemption to issue.

DATES: Written comments must be received on or before October 7, 1991.

ADDRESSES: Comments may be mailed to Jaime Ramon, General Counsel, room 7355, United States Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Jo-Ann Chabot, Office of the General Counsel, Office of Personnel Management. (202) 606–1920.

SUPPLEMENTARY INFORMATION: The Hatch Act, at 5 U.S.C. 7324, *et seq.*, controls the political activity of Federal employees and individuals employed by the District of Columbia. 5 U.S.C. 7324 generally prohibits Federal employees from taking an active part in political campaigns. Section 7327 of title 5, United States Code, however, authorizes OPM to prescribe regulations permitting certain Federal employees to be politically active to the extent OPM considers it to be in their domestic interest.

Under the authority of 5 U.S.C. 7327, OPM may allow Federal employees to participate in political campaigns involving the municipality or political subdivision where they reside when two conditions relevant to the current request for exemption exist. One condition is met if the municipality is in Maryland or Virginia and is in the immediate vicinity of the District of Columbia. The second condition is met if OPM determines that, because of special or unusual circumstances, the domestic interest of the employees is served by permitting their political participation in accordance with regulations prescribed by OPM.

In regulations at 5 CFR 733.124(b), OPM has designated municipalities and political subdivisions in which Federal employees may participate in local elections. At 5 CFR 733.124(c), OPM has established the following limitations on political participation by employees residing in these designated municipalities and subdivisions:

(1) Participation in politics shall be as an independent candidate or on behalf of, or in opposition to, an independent candidate.

(2) Candidacy for, and service in, an elective office shall not result in neglect of, or interference with, the performance of the duties of the employee or create a conflict or apparent conflict of interests.

In response to a request from the Board of Commissioners for Calvert County, Maryland, OPM proposes to designate that county as one in which Federal employees may participate in local elections subject to the limitations established by OPM. This proposal reflects OPM's determination that special or unusual circumstances exist so that it is in the domestic interest of Federal employees residing in Calvert County to permit their local political participation in connection with independent candidacies. This determination is based on documentary material provided by the applicant as well as interviews of the County Administrator and a Federally employed resident of the County. Principal factors leading to OPM's determination are the proximity of Calvert County to the District of Columbia, the substantial portion of County residents who are Federal Government employees, and the rapid growth of the County within the past few years.

A copy of this notice will be published in two local newspaper serving Calvert County.

If this proposed rule is adopted, OPM will amend 5 CFR 733.124(b) by adding Calvert County to the list of designated Maryland municipalities and political subdivisions in which Federal Government employees may participate in connection with independent candidates in local elections. The addition of Calvert County will be listed after Brentwood and before Capitol Heights, Maryland.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the changes will affect only employees of the Federal Government.

List of Subjects in 5 CFR Part 733

Political activity (Government employees).

U.S. Office of Personnel Management.
Constance Berry Newman,
Director.

Accordingly, the Office of Personnel Management proposes to amend 5 CFR part 733 as follows:

PART 733—POLITICAL ACTIVITY OF FEDERAL EMPLOYEES

1. The authority citation for part 733 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302, 7301, 7321, 7322, 7323, 7324, 7325, and 7327; Reorganization Plan No. 2 of 1978, 3 CFR 1978 Comp. p. 323; and E.O. 12107, 3 CFR 1978 Comp. p. 264, unless otherwise noted.

2. Section 733.124(b) is amended by adding Calvert County, Maryland, alphabetically to the list of designated Maryland municipalities and political subdivisions as set forth below.

§ 733.124 Political management and political campaigning; exception of certain elections.

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In Maryland

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Calvert County

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In Maryland

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Calvert County

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[FR Doc. 91-18729 Filed 8-6-91; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

9 CFR Part 130

[Docket No. 91-021]

RIN 0579-AA43

User Fees—Agricultural Quarantine and Inspection Services, Phytosanitary Certificates, Animal Quarantine Services, Veterinary Diagnostics, Export Health Certificates

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend 7 CFR part 354 and 9 CFR chapter I to establish user fees for certification, inspection and testing services we provide. These proposed user fees are authorized by sections 2509 (b) and (c) of the Food, Agriculture, Conservation and Trade Act of 1990, as amended by the Omnibus Budget Reconciliation Act of 1990 (21 U.S.C. 136a), or by 31 U.S.C. 9701.

The effect of these regulations would be to require certain persons to pay fees for services they receive.

DATES: Consideration will be given only to comments received on or before September 6, 1991.

ADDRESSES: To help ensure that your comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 91-021. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: For information concerning agricultural quarantine and inspection (AQI), plant inspections, and additional inspections, contact Charles A. Havens, Chief Operations Officer, Port Operations, PPQ, room 635, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8295.

For information concerning animal imports and exports, contact Louise R. Lothery, Director, Resource Management Support Staff, VS, room 740, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8590.

For information concerning veterinary diagnostics, contact Dr. Robert M. Nervig, Director, National Veterinary Services Laboratory, 1800 Dayton Road, P.O. Box 844, Ames, Iowa 50010, 515-239-8266.

SUPPLEMENTARY INFORMATION:

Background

User Fees Authorized Under the Farm Bill

The Food, Agriculture, Conservation and Trade Act of 1990, as amended by the Omnibus Budget Reconciliation Act of 1990 (Budget Reconciliation Act), referred to below as the Farm Bill, authorizes the Secretary of Agriculture to prescribe and collect fees to cover the cost of providing certain agricultural quarantine and inspection services. The services are "agricultural quarantine and inspection services in connection with the arrival at a port in the customs territory of the United States,[1] or the preclearance or preinspection at a site outside the customs territory of the United States, of an international passenger, commercial vessel commercial aircraft, commercial truck, or railroad car" (section 2509 of the Farm Bill). We refer to these services as AQI services.

The Farm Bill establishes a fund in the Treasury of the United States, known as the "Agricultural Quarantine Inspection User Fee Account" (the Account) for the Secretary of Agriculture to use for fees collected for AQI services. All fees collected for agricultural quarantine and inspection services are to be deposited in the Account. Fees collected within a calendar quarter are to be deposited no later than 31 days after the close of that quarter. The Farm Bill further requires the Secretary of the Treasury to reimburse, from the Account, any appropriations accounts that incur costs associated with agricultural quarantine services for which the Secretary of Agriculture is authorized to collect user fees, if the amounts are provided in advance in appropriation acts. (See section 2509(a)(3)(B)(ii) of the Farm Bill)

The Farm Bill also authorizes the Secretary of Agriculture "to prescribe and collect fees to recover the costs of providing for the inspection of plants and plant products offered for export or transiting the United States and certifying to shippers and interested parties as to the freedom of such plants and plant products from plant pests according to the phytosanitary requirements of the foreign countries to which such plants and plant products may be exported, or to the freedom from exposure to plant pests while in transit through the United States . . . ." (section 2509(b) of the Farm Bill). This section further provides that "[t]he Secretary of Agriculture shall, pursuant to regulations as prescribed by the Secretary of Agriculture, suspend performance of services to persons who have failed to pay such fees, late payment penalty and accrued interest."

In addition to the above authority, the Farm Bill authorizes the Secretary of Agriculture to "prescribe and collect fees to reimburse the Secretary for the cost of carrying out the provisions of the Federal Animal Quarantine Laws that relate to the importation, entry, and exportation of animals, articles, or means of conveyance." (section 2509(c)(1) of the Farm Bill).

Further, the Farm Bill authorizes the Secretary "to prescribe and collect fees to recover the costs of carrying out the provisions of (21 U.S.C. 114a, as amended) which relate to veterinary diagnostics." (section 2509(c)(2) of the Farm Bill) 21 U.S.C. 114a concerns control and eradication of livestock and poultry diseases. Section 2509(c) also provides procedures for the Secretary to follow in the case of non-payment, late payment penalties, or accrued interest. The section states that "(t)he Secretary shall suspend performance of services to persons who have failed to pay fees, late payment penalty, or accrued interest . . .".

Section 2509(d) of the Farm Bill provides in addition that [t]he Secretary may prescribe such regulations as the Secretary determines necessary to carry out the provisions of (section 2509)."

Finally, the Farm Bill authorizes the Secretary "in carrying out regulations prohibiting or restricting the entry of materials that may harbor pests, or diseases, . . . to enter into agreements with operators or owners of vessels or aircraft for the purpose of providing inspection services at points of entry in the United States in addition to the regular or on-call basis currently available in connection with such vessels or aircraft." The section states that such agreements" shall provide for the payment by the operator or owner of an amount determined by the Secretary to be necessary to defray the costs of providing additional service pursuant to such agreement." (Section 2508 of the Farm Bill)

User Fees Under Other Authority

We also have general authority to collect user fees under 31 U.S.C. 9701

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[1] The Farm Bill defines "customs territory of the United States" as "[t]he 50 States, the District of Columbia, and Puerto Rico." (section 2509(f)(2))

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(the User Fee Statute). This statute states, in part, that:

> (a) It is the sense of the Congress that each service or thing of value provided by an agency . . . to a person (except a person on official business of the United States government) is to self-sustaining to the extent possible.
>
> (b) The head of each agency . . . may prescribe regulations establishing the charge for a service or thing of value provided by the agency.

Each agency must deposit fees collected pursuant to 31 U.S.C. 9701 into the Treasury of the United States.

Under the User Fee Statute, we may charge for quarantine and inspection services we provide in connection with traffic departing certain domestic quarantine areas for other locations within the United States. Domestic quarantine areas are areas within the United States—Hawaii and Puerto Rico—which are quarantined because of the presence of various plant diseases or pests. Individuals and means of conveyance departing these areas for any other part of the United States are subject to inspection (see 7 CFR 318.13 and 318.58).

Under the Farm Bill we have authority to charge for AQI services "in connection with . . . preclearance" at a site outside the customs territory of the United States" for various persons and means of conveyance. Because the United States Virgin Islands (U.S. Virgin Islands) are outside the customs territory of the United States, we have authority under the Farm Bill to charge a user fee for AQI services provided certain persons and means of conveyance departing the U.S. Virgin Islands for other parts of the United States. Because Hawaii and Puerto Rico are within the customs area of the United States we do not have authority under the Farm Bill to charge a user fee for persons and means of conveyance departing Hawaii and Puerto Rico, or other domestic quarantine areas, for other parts of the United States.

Previously Published Regulations

On February 27, we proposed to amend 7 CFR parts 318, 320, 330, 352 and 354 (56 FR 8148–8156), to establish user fees for services we provide in connection with airline passengers departing Hawaii and Puerto Rico for other parts of the United States, and in connection with the arrival at ports in the customs territory of the United States of commercial vessels, commercial trucks, commercial railroad cars, and passengers on commercial aircraft.[2]

We made these regulations final in two separate documents. The first final rule was published April 12, 1991 (56 FR 14837–14846). It covered user fees for commercial vessels, commercial trucks, commercial railroad cars, and passengers on commercial aircraft arriving in the United States from outside the country. We began charging user fees for these services May 13, 1991.

The second final rule was published April 23, 1991 (56 FR 18496–18502). It covered user fees for passengers on commercial airlines departing Hawaii and Puerto Rico for other parts of the United States. We stated in this final rule that we would begin charging user fees for these services August 1, 1991. However, we have postponed the effective date of the second final rule (see 56 FR 36724, August 1, 1991) until October 1, 1991. We took this action because we determined that affected parties required additional time to address fee implementation concerns.

Regulations Proposed in this Document

We are now proposing to charge user fees for a variety of other services we provide. They fall into five categories.

The first category of services is the inspection services we provide to commercial aircraft, both aircraft arriving at a port within the customs territory of the United States and aircraft departing Hawaii or Puerto Rico for other locations within the United States.

The second category of services relates to the issuance of phytosanitary certificates for plants and plant product being exported from the United States. These certificates are issued in accordance with the regulations at 7 CFR 353.1. They certify agricultural products moving from one country to another as being "free from quarantine pests, and practically free from other injurious pests."

The third category includes services which relate to the export or import of animals or birds. In this category are: (1) Services provided in connection with animals or birds in quarantine facilities, including Animal Import Centers operated by APHIS and privately-operated facilities; (2) endorsing health certificates needed to export animals or birds; (3) inspecting export isolation facilities for animals or birds; (4) inspecting animals and birds in isolation facilities; (5) supervising rest periods for animals and birds prior to export; and (6) supervising loading and unloading of animals or birds from a means of conveyance.

The fourth category of services relates to veterinary diagnostics. Veterinary diagnostics is the work performed in a laboratory to determine if a disease-causing organism is present in body tissues or cells. The services in this category are: (1) Performing laboratory tests required to import or export animals or birds; (2) conducting diagnostic testing on tissue samples referred to APHIS by State animal health officials who want assistance in establishing or confirming a diagnosis (referred to in this document as reference assistance testing); (3) providing certain diagnostic reagents. Diagnostic reagents are substances used in diagnostic tests to detect disease antibodies by causing an identifiable reaction.

The fifth category of services includes inspection services provided, at the request of operators or owners of vessels or aircraft, in addition to regular or on-call services currently available at points of entry in the United States.

We have divided this document into two parts. Part 1 of this document covers user fees for agricultural quarantine and inspection services and phytosanitary export certification. These user fees, if adopted, would appear in title 7 of the Code of Federal Regulations. Part 2 covers user fees for animal quarantine services, testing, veterinary diagnostics, and export health certificates. These user fees, if adopted, would appear in title 9 of the Code of Federal Regulations.

Within each part we discuss what services we provide, how we calculated our proposed fees, the proposed user fees, and our proposed billing and payment requirements.

Part 1

User Fees for Inspection of International Commercial Aircraft (Proposed 7 CFR 354.3)

We inspect commercial aircraft arriving within the customs territory of the United States from places outside the United States. We also inspect aircraft which have arrived within the customs territory of the United States from places outside the United States and which are proceeding from one United States airport to another under a United States Customs Service "Permit ers on commercial

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[2] In the document of February 27, 1991, we also proposed to amend 7 CFR parts 318 and 354, to establish user fees for agricultural quarantine and inspection services we provide in connection with the departure of passengers from Puerto Rico and Hawaii on certain domestic airline flights. However, the authority for these proposed amendments to the regulations was 31 U.S.C. 9701, not the Farm Bill.

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to Proceed," as specified in title 19, Code of Federal Regulations, §§ 122.81 through 122.85, or an "Agricultural Clearance or Safeguard Order" (PPQ Form 250), used pursuant to title 7, Code of Federal Regulations, § 330.400 and title 9, Code of Federal Regulations, § 94.5. In this document we are proposing to charge user fees for these services.

The proposed user fees would cover inspection of the aircraft itself. The proposed user fees would also cover inspection of cargo and any associated services if: (1) Such services occur during regular hours of service (0800–1630, Monday through Friday); or (2) inspection of the cargo is concurrent with inspection of the aircraft. Associated services include monitoring garbage handling, and disinfecting aircraft. Cargo owners may request inspection outside of regular hours of service. In that case, they would pay reimbursable overtime under 7 CFR 354.1.

We are proposing to exempt commercial aircraft moving solely between the United States and Canada from paying user fees. These means of conveyance pose little animal or plant disease or pest risk to United States agriculture, and we do not provide AQI services for them. Therefore, we do not believe a user fee is justified.

We are also proposing to exempt aircraft used exclusively in the governmental service of the United States or a foreign government. Governments traditionally accord certain privileges to the property of other governments. One of these privileges is exemption from fees. However, to qualify for the exemption, the aircraft could not be carrying any persons or merchandise for commercial purposes.

Aircraft making an emergency or forced landing would also be exempt under our proposed regulations. In these situations, nothing may be removed or brought on board an aircraft except passengers in need of medical attention or equipment and parts for repair. In these circumstances, we believe there is little animal or plant disease or pest risk to United States agriculture and we do not conduct AQI inspections.

We are also proposing to exempt aircraft with 30 seats or fewer, which are not carrying cargo and which are not equipped to offer inflight food service. The passengers on these aircraft would already have paid a user fee under 7 CFR 354.3. Also, there would be no cargo or garbage requiring AQI services. As we would not be providing any services to these aircraft, we do not believe an APHIS user fee would be justified.

Finally, we are proposing to exempt aircraft moving from the United States Virgin Islands to Puerto Rico. We do not provide any inspection services to these aircraft. Therefore, we do not believe charging a user fee is justified.

User Fees for Inspection of Domestic Commercial Aircraft (Proposed 7 CFR 354.4)

We inspect commercial aircraft moving from Hawaii and Puerto Rico to other parts of the United States. In this document we are proposing to charge user fees for these services.

The proposed user fees would cover inspection of the aircraft itself. The proposed user fees would also cover inspection of cargo and any associated services if: (1) such services occur during regular hours of service (0800–1630, Monday through Friday); or (2) inspection of the cargo is concurrent with inspection of the aircraft. Associated services include monitoring garbage handling, disinfecting aircraft, and preclearing cargo in Hawaii and Puerto Rico. Cargo owners may request inspection outside of regular hours of service. In that case, they would pay reimbursable overtime under 7 CFR 354.1.

We are proposing to exempt aircraft used exclusively in the governmental service of the United States or a foreign government from paying an APHIS user fee under our proposed regulations. Governments traditionally accord certain privileges to the property of other governments. One of these privileges is exemption from fees. However, to qualify for the exemption, the aircraft could not be carrying any persons or merchandise for commercial purposes.

We also propose to exempt aircraft transiting Hawaii or Puerto Rico and subject to inspection under 7 CFR part 330. These aircraft would be subject to paying an APHIS user fee under proposed 7 CFR 354.3.

Congress has expressed concern with regulations we previously adopted to charge user fees for passengers on commercial airlines departing Hawaii and Puerto Rico for other parts of the United States (see 56 FR 18496–18502 for those rules, and see discussion above concerning the effective date of the rules). Any action Congress takes on this subject may impact our proposed user fees for inspection of domestic commercial aircraft. Therefore, in our final rule we will include a discussion of Congressional action and any amendments we make pursuant to such action.

User Fees for Inspection of Domestic Commercial Maritime Vessels (Proposed 7 CFR 354.4)

We are proposing to charge a user fee for inspecting commercial maritime vessels moving from Hawaii and Puerto Rico to other parts of the United States.

The proposed user fees would cover inspection of the vessel itself. The proposed user fees would also cover inspection of cargo and any associated services if: (1) Such services occur during regular hours of service (0800–1630, Monday through Friday); or (2) inspection of the cargo is concurrent with inspection of the vessel. Associated services include monitoring garbage handling, disinfecting vessels, inspecting, and certifying cargo. Cargo owners may request inspection outside of regular hours of service. In that case, they would pay reimbursable overtime under 7 CFR 354.1.

Vessels used exclusively in the governmental service of the United States or a foreign government would also be exempt from paying a user fee under our proposed regulations. Governments traditionally accord certain privileges to the property of other governments. One of these privileges is exemption from fees. However, to qualify for the exemption, the vessel could not be carrying any persons or merchandise for commercial purposes.

We are proposing to exempt vessels transiting Hawaii or Puerto Rico and subject to inspection under 7 CFR part 330. We are proposing to exempt these vessels because they would be charged a user fee under 7 CFR 354.3.

As explained above, Congress has expressed concern with regulations we previously adopted to charge user fees for passengers on commercial airlines departing Hawaii and Puerto Rico for other parts of the United States. Any action Congress takes on this subject may impact our proposed user fees for inspection of domestic commercial maritime vessels. Therefore, in our final rule we will include a discussion of Congressional action and any amendments we make pursuant to such action.

Remittance and Statement Procedures

We are proposing similar remittance and payment procedures to those we adopted in our previous fee regulations (see final rules published April 12, 1991 (56 FR 14837–14846) and April 23, 1991 (56 FR 18496–18502).) The procedures and the information required are needed to ensure that the correct user fees are remitted in full in a timely manner. The

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requirements, including the taxpayer identification number, are also needed to ensure that the fees are properly credited.

Compliance

Under these proposed regulations, we must rely on others to remit fees for us. However, we are responsible for ensuring that the fees are correct and remitted in full and in a timely manner. To ensure this, we are proposing to require the party responsible for remitting the fees to allow APHIS personnel to verify the accuracy of the fees remitted, and otherwise determine compliance with the statute and regulations. We are therefore proposing to require that whoever is responsible for remitting fees must advise us of the name, address, and telephone number of a responsible officer who is authorized to verify fee remittances. In addition, we are proposing to require that we be promptly notified of any change in that information.

At this time we do not have the address to which user fees must be remitted and other information provided. However, if these proposed rules are adopted, we will insert the correct addresses in the final rule.

User Fees for Export Certification of Plants and Plant Products (Proposed 7 CFR 354.3)

We are proposing to adopt user fees for export certification of plants and plant products. Certificates are issued in accordance with the International Plant Protection Convention and regulations in 7 CFR part 353, and they certify agricultural products moving between countries as being free from quarantine pests, and practically free from other injurious pests. These certificates must be issued in accordance with 7 CFR part 353 to be accepted in international commerce.

APHIS inspectors issue many certificates directly to exporters. However, in some states, certain state employees are designated to issue federal certificates. In these situations, we provide state officials with blank certificates. Exporters in these states have the option of going to either state or federal officials to obtain a certificate. Designated state employees issue approximately 47 percent of all certificates. These state inspectors are vital to the success of our program. There are more state inspectors than APHIS inspectors, and in many instances they are able to provide services more efficiently, including at remote portions of the country.

We issue the following certificates:

1. Phytosanitary Certificate (PPQ Form 577); and
2. Phytosanitary Certificate for Re-Export (PPQ Form 579).
3. Processed Product Certificate (PPQ Form 578)

We do not issue processed product certificates at this time. However, we intend to begin issuing these certificates under 7 CFR 353.1 *et seq.* no later than October 1, 1991. Products covered by this document will include products such as plywood and pelletized plant materials, which are manufactured out of plants or plant materials in such a way that the manufacturing process itself destroys any plant pest organisms.

All certificates are designed to cover either commercial[3] or non-commercial shipments. The phytosanitary certificate covers any plants or plant products being exported from the United States. The processed product certificate covers processed products being exported from the United States. The phytosanitary certificate for re-export covers plants and plant products which have entered the United States from another country, but which are being re-exported from the United States, in whole or in part.

Depending on the circumstances, issued certificates may be voided and/or reissued. All certificates are controlled documents. That is, they are numbered and we must keep track of them. If a certificate is issued, but it is filled out incorrectly or it is damaged, and it cannot be used, the person who received the certificate may have us reissue the certificate. In that case, we would void the first certificate, and complete a new certificate for the person. Some certificates are voided, but not reissued.

Under our proposal, we would charge different user fees for phytosanitary certificates issued for commercial shipments and for non-commercial shipments. We are proposing different user fees because the services provided are different. Issuing a certificate for a commercial shipment generally requires APHIS personnel to travel to the inspection site. It also generally requires them to inspect larger quantities of plants or plant products, which takes more time. Travel is not usually required for noncommercial shipments, because those exporters usually bring their plants to an APHIS office for inspection.

We are also proposing to charge a user fee for issuing processed product certificates for commercial shipments and for issuing phytosanitary certificates for re-export for commercial shipments. We are not proposing any user fee for these certificates for non-commercial shipments. In the case of phytosanitary certificates for re-export, we have never issued such a certificate and do not anticipate any requests. We anticipate that there will similarly be no demand for processed product certificates for non-commercial shipments.

In addition, we are proposing to charge a user fee for reissuing certificates. However, our proposed fee for these services is less than that for issuing the original certificates. That is because our only cost is for administrative processing and tracking.

The user fees we propose to charge are:

Phytosanitary certificate:	
commercial shipment	$30
non-commercial shipment	$19
Phytosanitary certificate for reexport:	
commercial shipment	$30
Processed product certificate:	
commercial shipment	$30
Reissued certificate (all types)	$6

Many importers have asked us to issue certificates to cover processed products. However, at this time we have no data on the number of certificates which will actually be issued or the time that will be necessary to issue them. Based on the requests we have received, we estimate that the inspection and administrative time necessary to issue the certificates, or reissue them if appropriate, will be similar to that for other certificates covering commercial shipments. Therefore, we are proposing to charge the same $30 APHIS user fee for issuing, and the same $6 APHIS user fee for reissuing, as we are proposing to charge for phytosanitary certificates covering commercial shipments. We would perform an annual review of these fees based on the actual demand for the certificates and would publish any necessary cost adjustments in the **Federal Register**.

Currently, when designated state inspectors issue Federal certificates, we do not charge any fee for the federal certificate. However, some states charge a fee to recover their travel, transportation and inspection costs.

Under this proposal, when an APHIS employee conducts the inspection and signs the certificate, the user would be required to pay the applicable APHIS user fee. However, if a designated state employee conducts the inspection and signs the certificate, we would not charge the APHIS user fee because APHIS would not be providing any service to the user. However, the state, if it wished, could charge a state fee to cover the cost of providing its services. To charge such a fee, the state would ertificate (PPQ

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[3] Our proposed regulations define a commercial shipment as a shipment for gain or profit.

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have to calculate the cost of its services using the same factors that we use to calculate our user fees.

To establish its fee, the state would have to:

(1) Estimate the annual number of certificates to be issued;

(2) Determine the total cost of issuing certificates;

(3) Divide the cost of issuing certificates by the estimated number of certificates to be issued to obtain a "raw" fee.

A state could round the "raw" fee up to the nearest quarter, if necessary for ease of calculation, collection, or billing.

When determining the total cost of issuing certificates, states could include delivery, support, and administrative costs. Delivery costs are costs such as employee salary and benefits, transportation, per diem, travel, purchases of specialized equipment, and all costs associated with maintaining field offices. Support costs are similar costs at supervisory levels, and costs such as training, automated data processing, public affairs, enforcement, communications, postage, budget and accounting services, and payroll, purchasing, billing and collection services. Administrative costs are any additional costs the states incur as a direct result of collecting and monitoring federal certificates.

As we explained above, state participation in the program is crucial to its success. We believe offering states the option of collecting a user fee based on the cost of providing their services would encourage them to continue participating.

Services Provided under Agreements (Proposed 7 CFR 354.4).

We are sometimes asked to provided inspection services at points of entry into the United States in addition to the regular or on-call basis currently available in connection with vessels or aircraft. We receive two types of requests:

(1) that we open a permanent inspection station at a port we do not currently serve; and

(2) that we provide one-time or occasional service at a location where we normally do not provide service.

We are willing to provide service in both these situations under authority of the Farm Bill. We are therefore proposing that owners or operators of vessels or aircraft, or their agents, may enter into agreements with us to provide these types of services. The agreements would include the location where inspection services would be provided, the times and dates when services would be provided, the types of services that would be provided, and the total cost of providing the services. The owner or operator requesting the services would be required to deposit, at the time the agreement is signed, an amount covering the estimated cost of providing 6 months of service. In addition, the owner or operator requesting the service would be required to maintain, based on a monthly accounting conducted by APHIS, a deposit large enough to cover the estimated cost of providing 6 months of service. If the service was to be provided only once or occasionally, the amount would be for as many provisions of the service as we anticipated would occur within a 6-month period.

The deposit is necessary to ensure that services needed can be funded as they are provided. The standard billing cycle is 3 months. A 6-month deposit would provide enough money to fund services for 2 billing cycles and would allow adequate time to replenish the account if required.

Agreements could be terminated by either party upon 30 days written notice. In the case the agreement was terminated after less than 6 months, if occasional services were provided less frequently than anticipated, or if costs to provide the service were lower than anticipated, APHIS would refund any excess user fee paid.

Under these proposed agreements, we would recover the full cost of providing the requested services. In the case of a new inspection station, the fee would cover all costs of opening and operating the station. Costs to operate the facility would include personnel costs, overhead, and other operating costs such as we have explained above in connection with our other existing and proposed user fees. We would determined the total of these costs. However, because the facility would be open to the public, we would collect users fees for services provided there. Therefore, we would deduct the amount of user fees collected from the total cost of operating the facility. The resulting figure would be the amount payable by the owner or operator signing the agreement. If, after the inspection station was open for a time, user fees collected there were enough to cover the full cost of operating the facility, then the amount payable under the agreement would drop to zero.

In the case of one-time or occasional services, our costs to provide the service would include any existing APHIS user fee that applied to the service, plus, as appropriate, reimbursable overtime, travel, transportation, and per diem. If no existing APHIS user fee applied to the service, then the amount would be the full cost of providing the service, calculated as we have for our other proposed user fees. That is explained elsewhere in this document. For example, if the agreement covered vessel inspection services 500 miles from a port of entry, then the user fee under the agreement would include the APHIS vessel inspection fee plus reimbursable overtime, if applicable, and travel, transportation, and per diem.

Calculation of Proposed User Fees for AQI Services, and Phytosanitary Certificates

We are proposing to require user fees to cover the cost of certain agricultural quarantine and inspection (AQI) services and for issuance of phytosanitary certificates.

For each category of service, we have estimated the annual number of means of conveyance that would be subject to inspection, or, as appropriate, the annual number of phytosanitary certificates to be issued. Our estimates include services relating to persons and means of conveyance which would be exempt from paying the proposed user fees. Our estimates are based on our Work Accomplishment Data System.

For each category of service, we have determined the total cost of providing service. Included in the total cost are delivery costs, program support costs, and agency-level support costs. Delivery costs include, but are not limited to, employee salary and benefits, travel, purchase of specialized equipment, and all costs associated with maintaining field offices. Program support costs include these same items at the regional and headquarters level. Agency-level support costs include, but are not limited to, training, legislative and public affairs, regulatory enforcement, communications, postage, budget and accounting services, and payroll, purchasing, billing and collection services. We have also included administrative expenses we would incur by adopting these proposed regulations.

In the case of AQI services for aircraft arriving within the customs territory of the United States, we have also included in the proposed fee an amount which would provide for a reasonable reserve in the Account. The proposed fee is designed so that the balance would be approximately 3 months operating expenses, or $5,487,000. Since the majority of the fees would be remitted in arrears, a sufficient reserve must be maintained to meet current expenses. In addition, we believe that a reserve of this size would be necessary to ensure that sufficient funds are available to carry out agricultural quarantine and

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inspection activities because the number of aircraft may deviate from the anticipated volume upon which our fees are based. The anticipated volume of activity could fluctuate greatly due to changes in travel and trade. The reserve would also be used to offset any uncollectible debts that result from clients are unwilling or unable to pay for our services. We would monitor the balance closely and propose adjustments in our fees as necessary to ensure a reasonable balance.

Our final step in calculating our proposed fees for services was to divide the cost of providing service by either the anticipated number of means of conveyance subject to inspection, or by the number of phytosanitary certificates to be issued, as appropriate. In this manner we arrived at a "raw" fee.

To determine the fees we are proposing to charge, we raised the "raw" fees up to the nearest quarter. We did round to the next dollar for user fees adopted to cover various other agricultural quarantine and inspection services (see 56 FR 14837–14846, April 12, 1991, and 56 FR 18496–18502, April 23, 1991.) However, we do not believe that is necessary for the user fees proposed in this document. We do not need to establish a reserve fund for any services other than the agriculture quarantine and inspection services. Therefore, we do not need to generate more revenue than needed to cover costs. Also, we do not need to generate more revenue than needed to cover costs. Also, we do not need to coordinate our collection system with that of any other entity. Our existing user fees will be collected for us by the United States Customs Service. Partly because they collect fees only in whole dollars, we adopted user fees which were rounded up to the next dollar. However, the user fees proposed in this docket will be paid directly to us, and not collected by the United States Customs Service.

We have proposed to round these fees up, rather than down, in order to ensure that we collect enough revenue to cover the costs of providing these services. If we were to round down, many fees would be lower than the cost of the service.

As is the case with all other APHIS user fees, we intend to review, at least annually, the user fees we are proposing in this document. We would propose any necessary cost adjustments in the **Federal Register**.

Below is a table showing the categories of service, the cost of providing service in each category, including, in the case of airline inspection, a reasonable balance in the account, the number of means of conveyance subject to inspection or the anticipated number of certificates to be issued (labeled "volume"), the "raw" fee, and the proposed fee. Additional supporting data and computations are available for inspection at the Animal and Plant Health Inspection Service, room 263, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland, between 8:00 a.m. and 4:30 p.m., Monday through Friday.

CALCULATION OF USER FEES

Activity	Total cost plus reserve (in thousands)	Volume	"Raw" fee	Proposed fee
AQI Services				
Airport operations:				
Commercial aircraft				
International	$28,880	246,001	$117.40	$117.50
Domestic	1,115	29,719	37.52	37.75
Maritime Operations:				
Commercial vessels				
Domestic	79	713	110.80	111.00
Other Services				
Phytosanitary certificates, and phytosanitary certificates for reexport, and				
Commercial	2,865	95,998	29.84	30.00
Noncommercial	193	9,543	18.98	19.00
Reissued	71	11,863	5.98	6.00
Processed product certificates [4]				30.00
Reissued processed product certificates				6.00

[4] As explained above in this document, we have no data at this time showing the total cost or volume of processed product certificates.

The fees adopted would be periodically reexamined and any further adjustments necessary to reflect costs of providing services would be included in a future rulemaking proceeding.

Collection and Billing Procedures (Proposed 7 CFR 354.3)

We propose to collect the proposed APHIS user fees for phytosanitary certificates as follows:

Some commercial exporters receive APHIS services on a continuous or repeated basis. Under certain circumstances we give blocks of phytosanitary certificates to these exporters. They complete and return the certificates to us to be endorsed. Under our proposal, these exporters would have to pay the full required APHIS user fee for each certificate. Payment would have to be made at the time we issue the block of certificates to them.

Commercial exporters who are given and pay up front for a block of certificates would be issued a receipt. They could return voided and unused certificates to us for a partial refund or credit. They would choose whether they preferred a refund or credit. Credits would be applied to future user fee charges. The refund or credit would be the amount of the APHIS user fee already paid, minus $6 to cover administrative costs we incur to issue, track, and process these certificates.

Commercial exporters who are given and pay up front for a block of certificates could also get a partial refund or credit under certain other circumstances. The APHIS user fee for certificates would include any necessary inspections, if they are conducted during normal business hours (8 a.m. to 4:30 p.m.). Exporters could request that inspections be conducted at other times. However, they would be charged reimbursable overtime under 7 CFR 354.1 for that service, in addition to the user fee. A shipper who requested inspection for a certificate outside of normal business hours, would be paying twice for the inspection—once in the

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As is the case with all other APHIS user fees, we intend to review, at least annually, the user fees we are proposing in this document. We would propose any necessary cost adjustments in the **Federal Register**.

Below is a table showing the categories of service, the cost of providing service in each category, including, in the case of airline inspection, a reasonable balance in the account, the number of means of conveyance subject to inspection or the anticipated number of certificates to be issued (labeled "volume"), the "raw" fee, and the proposed fee. Additional supporting data and computations are available for inspection at the Animal and Plant Health Inspection Service, room 263, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland, between 8:00 a.m. and 4:30 p.m., Monday through Friday.

N OF USER FEES

	Total cost plus reserve (in thousands)	Volume	"Raw" fee	Proposed fee
	$28,880	246,001	$117.40	$117.50
	1,115	29,719	37.52	37.75
	79	713	110.80	111.00
	2,865	95,998	29.84	30.00
	193	9,543	18.96	19.00
	71	11,863	5.98	6.00
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APHIS user fee and once under reimbursable overtime. Therefore, we are proposing, if this situation occurs, that we, at the shipper's option, would reimburse them the amount of any overcharge, or give them a credit against future APHIS user fees.

We also propose that commercial exporters who are given and pay up front for a block of certificates could get a partial refund or credit if they use any of the certificates to cover a non-commercial shipment. The proposed user fee for a non-commercial shipment is less than that for a commercial shipment. As commercial exporters issued a block of certificates would have paid the commercial user fee, they would have overpaid if the shipment was non-commercial. In this situation also, we would, at the shipper's option, either reimburse them the amount of the overcharge, or give them a credit against future APHIS user fees.

Many commercial exporters ship only occasionally. We do not give them blocks of certificates. They and all noncommercial exporters would be required, under our proposal, to pay the user fee for each certificate at the time it is issued.

Payment Methods

We are proposing to accept checks, including personal checks, checks drawn on commercial accounts, money orders, traveler's checks, and cashier's checks. However, we would not accept personal checks from individuals, for amounts over $100.00. We cannot determine whether a personal check is good until after we have provided our services. Therefore, we are limiting personal checks in order to limit our losses. Based on our experience, other types of payment do not pose this problem. Therefore, we are not proposing to limit them.

Penalties for Non-Payment or Late Payment

We are proposing to add a new § 354.5 to impose penalties for non-payment or late payment of APHIS user fees. If payment for an APHIS user fee is past due by more than 30 days, APHIS would impose a late payment penalty and interest charges in accordance with 31 U.S.C. 3717.

If a person is delinquent in paying any APHIS user fee, or delinquent in paying any interest due on any APHIS user fee, we would provide no further services requiring a user fee to that person.

In addition, if an APHIS user fee is due in a situation where we are still in the process of providing the service, but the fee has not been paid within the time allowed, or the payment is inadequate or unacceptable, we would not finish providing the services. For example, if payment was due for a phytosanitary certificate, we would not release the certificate.

Part 2

User Fees for Birds and Poultry in APHIS Animal Import Centers (Proposed 9 CFR 130.2)

We are proposing to charge a user fee for each bird or poultry quarantined in an Animal Import Center. The proposed fee would be assessed daily. Different fees would be assessed for birds and poultry of different sizes, with further adjustments for non-standard feed, housing, and care and handling required. The different fees reflect the varying costs of quarantining different birds and poultry.

Size is a major component of quarantine costs. Feed costs are higher for larger birds and poultry. The larger a bird or poultry is, the more space it occupies. More cages must be used, which must be cleaned and taken care of. Labor costs are therefore greater for larger birds and poultry.

The proposed user fee for each category includes water and standard feed, housing, care and handling. We consider standard feed to be seed, or dry feeds such as dog food or monkey biscuits, whether soaked in water or not. Examples of standard diets are: regular medicated pelleted feed for psittacine birds, canary/finch mix for canaries and finches, and corn mixture for game cocks. We consider standard housing to be any suitable housing, other than individual housing, which is normally available at the facility. Individual housing, housing constructed or purchased at the request of an importer, and housing with blinds, dense foliage or plants, or temperature-regulated housing are not considered "standard." Non-standard care and handling would include hand-feeding, more than one feeding a day, frequent observation, and any handling or observation which requires personnel to attend to the birds or poultry outside of normal business hours.[6]

Non-standard feed, housing, and care and handling are sometimes required, and sometimes requested by the importer. Some birds and poultry must be fed a special diet. For example, some birds are fruit eaters. But special diet requirements do not necessarily apply to every bird or poultry in a category. For example, some pigeons require a fresh fruit diet, but most do not. Some birds and poultry must also be housed individually. Game cocks, for example, are to aggressive to be housed together. Certain varieties of hummingbirds are also so aggressive they must be separated. Special care and handling is also sometimes required. Baby birds have to be hand-fed. Some birds may need to be observed to ascertain their eating patterns, to check their adjustment to an artificial environment, to detect undue stress and make suitable adjustments, or to try to reduce mortality.

APHIS is prepared to provide non-standard feed, housing, care and handling, whether it is required or provided at the request of the importer. However, under the proposed user fee system, the costs of these services must be recovered.

Therefore, we are proposing to charge for special diets. These can be extremely costly, and the cost can vary widely from one area of the United States to another. Feed for seed-eating birds ranges from approximately $0.04 per day for a small bird to $0.64 for a large bird. Feed for seed-eating birds is also fairly uniform in price throughout the United States and is easily obtainable in all locations and at all times of the year. In comparison, fruit, such as mangoes and papayas, may cost $1.23 per day for a medium bird. Special feeds are also not always readily available. They vary widely in price. For example, papayas in Hawaii are considerably less expensive than papayas in New York State, depending both on location and season of the year. Because of differences in feed costs for seed-eating birds and poultry, and for birds and poultry on special diets, we are proposing to require importers to either provide special feed for their birds or poultry, or pay for it on an actual cost basis. Actual cost basis would include not only the cost of the feed, but also any delivery costs. The importer would be able to choose which method he or she preferred.

We are also proposing to require that any bird or poultry which is housed in non-standard housing, and any bird or poultry which receives non-standard care and handling, must pay the maximum user fee for birds or poultry, as appropriate. The higher charge would apply whether the non-standard treatment was to maintain good husbandry practices, or because the importer requested it. As an example of how the charge would work, small birds would be charged $0.75 per day for quarantine under this proposal, while large birds would be charged $6.50 per day. A hummingbird is a small bird. However, certain species of hummingbirds must be housed individually. Therefore, under this proposal we would charge $6.50 per day for quarantining one of these hummingbirds in an Animal Import Center. Likewise, if an importer requested that an animal be housed individually when we would not normally do that, we would charge the higher fee.

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[6] Normal business hours at the Animal Import Centers are: 7:30 a.m. to 11:30 a.m., Honolulu, HI; 7 a.m. to 3:30 p.m., Miami, FL; and 8 a.m. to 4:30 p.m., Newburgh, NY.

Fee for Zoo Animals and Zoo Birds in Animal Import Centers (Proposed 9 CFR 130.2)

We are proposing a daily user fee for all zoo animals, except equines, birds, and poultry. Zoo animals, which include poultry but not birds, are defined in the proposed regulations as "any animal, including poultry intended for exhibition in a zoo, park or other place maintained for the exhibition of live animals for recreational or educational purposes." Zoo birds are defined in the proposed regulations as "birds intended for exhibition in a zoo, park or other place maintained for the exhibition of live animals or birds for recreational or educational purposes."

We have determined that it is not necessary to charge different user fees for different zoo animals, except equines, birds, and poultry. This is because, with the exception of equines, poultry, and birds, the handling and care requirements for all zoo animals are virtually the same, and the diseases requiring quarantine are comparable.

For zoo equines, zoo birds, and zoo poultry, we are proposing to charge the same user fees as we propose to charge for other equines, birds, and poultry.

All equines are quarantined in accordance with the regulations in 9 CFR part 92. Generally this will result in a 3, 7, or 60 days quarantine, whether they are zoo equines or not. Zoo equines are handled the same as other equines. Therefore, a different user fee for quaranting them is not justified.

Similarly, all birds and poultry are dealt with the same in quarantine, whether they are zoo birds and zoo poultry, or not. Therefore, there is no reason to charge a different user fee for quarantining them.

However, we do charge a reservation fee for space at APHIS Animal Impact Centers (see 9 CFR part 92). Under this proposal, we would apply the reservation fee paid by the importer or his or her agent against the user fees due for services provided at an Animal Import Center.

Fee for Equines in Animal Import Centers (Proposed 9 CFR 130.2)

We are proposing to charge a daily user fee for each equine, including zoo equines. The rates we propose are $128.50 for this 1st day through the 3rd day, $93.25 for the 4th day through the 7th day, and $79.00 for the 8th and later days. All equines being imported into the United States are quarantined for either 3 days, 7 days, or 60 days, depending on what tests must be performed on the equine and how long it takes to get test results. What tests are conducted depends in turn on the country from which the equine is being imported and the diseases which are present in that country.

All animals and birds which require quarantine, except equines, are quarantined for a standard 30-day period. As explained above, equines are quarantined for either 3, 7, or 60 days. The different between quarantine periods is the time it takes to observe the different animals or birds for signs of various diseases. The diseases prevalent in the country of origin dictate what diseases we are concerned about. For example, equines from countries infected with African horse sickness must be quarantined for 60 days, as it takes that long to be sure that they are not infected with African horse sickness.

For certain activities, necessary for quarantining a horse, the costs are fixed in terms of labor and materials. These include setting up stalls and providing bedding before a horse arrives at the Animal Import Center, then identifying it, taking blood samples, and taking its temperature and inspecting it for ectoparasites such as ticks when it arrives, and finally cleaning and disinfecting its stall after the horse leaves the Animal Import Center. The greater the length of quarantine, the lower the cost per day for these activities because the costs are spread over more days.

We do charge a resevation fee for space at APHIS Animal Import Centers (see 9 CFR Part 92). Under this proposal, we would apply the reservation fee paid by the importer, or his or her agent, against the user fees due for services provided at an Animal Import Center.

Fee for Domestic Animals in Animal Import Center (Proposed 9 CFR 130.2)

With regard to domestic animals, other than equines, we are proposing one rate for camels, cattle, bison and buffalo, and another rate for all other domestic animals. Compared with other domestic animals, camels, cattle, bison and buffalo require either more space or more handling, or both, while in quarantine. Therefore, we are proposing to charge a higher rate.

We are proposing to charge a single user fee for the "all others" category of domestic animals. Though there is some variation in feed, space, and handling required by different animals in this catetory, the variations are not sufficiently significant to warrant multiple categories.

We do charge a reservation for space at APHIS Animal Import Centers (see 9 CFR part 92). Under this proposal, we would apply the reservation fee paid by the importer, or his or her agent, against the user fees due for services provided at an Animal Import Center.

Fee for Use of Entire Quarantine Building at Animal Import Centers (Proposed 9 CFR 130.3)

We are also proposing to allow importers, at their option, to utilize an entire Animal Import Center quarantine building and pay a single user fee. Any animals or birds could be imported under this fee.

However, only designated buildings at our Newburgh, NY, and Honolulu, HI, facilities would be available on this basis. Not all quarantine buildings in Honolulu and Newburgh are suitable, and no buildings in Miami are suitable.

We are proposing to designate only those buildings which are inappropriate for "multiple use." Some buildings at our facilities are designed to be used concurrently for quarantining different types of animals. For example, birds and horses can be quarantined at the same time in the same building. These are known as "multiple use" buildings. However, if one importer controls the entire building, no other animals or birds could be housed in it during the month it was reserved. We do have other buildings which are inappropriate for multiple use. If any animals or birds are quarantined in them, no other type of bird or animal can be housed there. We are proposing to designate only buildings which are inappropriate for multiple use. In this way, we maximize the available quarantine space. Designating multiple use buildings would severely and unnecessarily restrict the available quarantine space.

We would charge a monthly user fee for use of the entire building. The fee would cover all costs of the quarantine except feed.

The costs included in our proposed user fees cover labor and utilities and all associated costs, such as trash removal and incineration. We calculated labor costs by determining the average salary for one animal caretaker, who

Animal Import
9 CFR 130.2)

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We are proposing to charge a single user fee for the "all others" category of domestic animals. Though there is some variation in feed, space, and handling required by different animals in this catetory, the variations are not sufficiently significant to warrant multiple categories.

We do charge a reservation for space at APHIS Animal Import Centers (see 9 CFR part 92). Under this proposal, we would apply the reservation fee paid by the importer, or his or her agent, against the user fees due for services provided at an Animal Import Center.

Fee for Use of Entire Quarantine Building at Animal Import Centers (Proposed 9 CFR 130.3)

We are also proposing to allow importers, at their option, to utilize an entire Animal Import Center quarantine building and pay a single user fee. Any animals or birds could be imported under this fee.

However, only designated buildings at our Newburgh, NY, and Honolulu, HI, facilities would be available on this basis. Not all quarantine buildings in Honolulu and Newburgh are suitable, and no buildings in Miami are suitable.

We are proposing to designate only those buildings which are inappropriate for "multiple use." Some buildings at our facilities are designed to be used concurrently for quarantining different types of animals. For example, birds and horses can be quarantined at the same time in the same building. These are known as "multiple use" buildings. However, if one importer controls the entire building, no other animals or birds could be housed in it during the month it was reserved. We do have other buildings which are inappropriate for multiple use. If any animals or birds are quarantined in them, no other type of bird or animal can be housed there. We are proposing to designate only buildings which are inappropriate for multiple use. In this way, we maximize the available quarantine space. Designating multiple use buildings would severely and unnecessarily restrict the available quarantine space.

We would charge a monthly user fee for use of the entire building. The fee would cover all costs of the quarantine except feed.

The costs included in our proposed user fees cover labor and utilities and all associated costs, such as trash removal and incineration. We calculated labor costs by determining the average salary for one animal caretaker, who

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would be assigned exclusively to the building for the month. The figure is different for our New York and Hawaii facilities, in part, because the New York facility is open 8 hours a day and the Hawaii facility is open 4 hours a day. Utility and associated costs were calculated for each facility, and the total for each facility was divided by the number of square feet of animal quarantine space at that facility. The resulting cost per square foot was applied to the designated buildings. The resulting figures are different for the New York and Hawaii facilities because basic costs are different. For example, trash and incineration costs are substantially higher at the New York facility than in Hawaii. Heating is a major expense at the New York facility, but negligible in Hawaii.

The importer would have to provide feed, or pay for it on an actual cost basis, including cost of delivery. The importer would be allowed to utilize the building as he or she wished. However, we would limit the number of animals and birds to the maximum number which could be cared for without jeopardizing their health. In determining the maximum number, the veterinarian in charge of the Animal Import Center would consider the species, size and age of the animals, sanitation, and ability to conduct tests, inspections, and support procedures. The maximum allowable number would vary with every lot. When an importer determined what species, sizes and ages of animals and birds he or she wished to import, he or she would call for a reservation and request to use an entire building. At that time we would determine, and inform the importer of, the maximum number of animals and birds to be permitted.

We have decided to offer this option for two reasons. First, importers often request a more favorable rate, based on economy-of-scale savings, for very large shipments. Second, importers occasionally demand extraordinary space for their animals or birds, beyond routine husbandry needs. Offering an entire quarantine building as an option would satisfy both types of requests.

A large number of animals can be quarantined for less cost per head than a small number of animals. However, the cost varies with the species, size, ages and number of animals and birds and the building in which they are housed. Because of the variation, we cannot calculate a standard user fee for large shipments. We can, however, calculate the cost of offering an entire building for use. Under this method, regardless of the number of animals and birds housed in the building, we recover our costs. In turn, the importer may obtain a lower per-head cost than by paying our proposed standard daily user fee.

As to requests for extraordinary space, we cannot afford to offer extra space if we cannot recover its cost. Under this proposal, we can recover our costs and the importer can have as much space as he or she wants for his or her animals and birds.

User Fee for Animals in Privately Operated Permanent Quarantine Facilities (Proposed 9 CFR 130.4)

We propose to charge importers separate user fees for inspection services and for testing services, for animals in permanent privately operated quarantine facilities.[6] We considered an hourly rate for inspection services. However, APHIS veterinarians must supervise shipments belonging to many different importers, with varying numbers of animals in each shipment. To allocate daily costs to each importer would be impossible. Therefore, we have calculated the cost of providing services at these facilities. We determined annual labor and support costs, and divided the total by the annual number of quarantine days (each day an animal is in quarantine is a quarantine day; 40 animals in quarantine for 1 day is 40 quarantine days). The resulting figure is our proposed user fee.

User Fee for Animals in Privately Operated Temporary Quarantine Facilities (Proposed 92 CFR 130.5)

We are proposing to charge a user fee for each hour of service provided by an APHIS veterinarian or Animal Health Technician during the time the quarantine facility is in operation. We would estimate the total fee when the request for approval of the temporary quarantine facility is made under 9 CFR part 92. It would be based on the anticipated number of hours of service, whether service would be provided by an APHIS veterinarian or Animal Health Technician, or both, and on the hourly rate for that service. The person requesting approval of the facility would be billed for actual services at the end of the quarantine. Our proposed fees are: $33.50 per hour for service performed by an APHIS veterinarian and $21.75 per hour for service performed by an APHIS Animal Health Technician.

User Fee for Endorsing Export Health Certificates (Proposed 9 CFR 130.6)

Many animals, poultry, and hatching eggs are exported from the United States each year. The importing countries often require that the animals, birds, or hatching eggs be accompanied by an export health certificate. This is a certificate, issued by APHIS, that states that the animals, birds, or hatching eggs being exported are free of certain diseases that the importing country is concerned about. Different countries have different requirements as to the number and kind of tests required and the number of animals, birds, or hatching eggs which can be covered by one certificate. For example, Canada is the only country that requires that no more than one non-slaughter horse be covered by an export health certificate. Other countries allow an unlimited number of animals to be covered by one certificate.

We are proposing to charge user fees for endorsing export health certificates. We are proposing to charge different fees, depending in part on the number of animals, birds, or hatching eggs covered by the certificate and the number of different tests recorded on the certificate.

There are many costs associated with endorsing the certificates. These costs are less for certificates covering animals as a group which do not require tests. Costs are higher for certificates which cover individually-identified animals which require tests. In the latter case, the greater the number of animals, and the larger the number of tests, the more time consuming it is for APHIS personnel to issue export health certificates. Costs include time to review health certificates, to confirm that the importing country's requirements have been met, to verify laboratory test results if tests are required, and to endorse, or sign, the certificates. Other costs include administrative support (area office rent, utilities, supplies, etc.), agency overhead, and Departmental charges. Our proposed fees would recover these costs.

User Fees for Other Export Animal and Export Bird-Related Inspection and Supervision Services Within the United States (Proposed 9 CFR 130.7)

With regard to export animals and birds, APHIS personnel often conduct inspections and provide supervision for these animals and birds within the United States that is different than or in addition to the service discussed above. For example, APHIS personnel supervise rest periods for export

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[6] Permanent privately operated quarantine facilities are authorized under 9 CFR 92.309.

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animals and the loading and unloading of animals at export isolation facilities. We are proposing to charge a user fee for these services. The proposed fees, which cover all costs, include travel costs, are: $33.50 per hour for services provided by an APHIS veterinarian and $21.75 per hour for services provided by an APHIS Animal Health Technician. Some services can be performed only by a veterinarian. The proposed user fees would apply to the entire period of time the veterinarian or Animal Health Technician is providing a service, including travel time to and from the work site.

User Fees for Inspection Services Outside the United States (Proposed 9 CFR 130.8)

We must at times provide inspection services outside the United States. These are inspections, usually to approve facilities from which animals or birds will be exported to the United States, required under various regulations in title 9, Code of Federal Regulations.

Most of these inspection services are paid for by the users under trust fund agreements. However, some of our regulations do not provide any means for payment. Therefore, we are proposing to establish standard regulations, which would apply to all inspection services provided outside the United States, except those for which the regulations already provide a trust fund or other payment method.

Under our proposal, we would require any person who wishes to receive inspection services outside the United States to enter into an agreement with APHIS. The agreement would include the location where the services would be provided, the times and dates when services would be provided, the types of services that would be provided, and the total cost of providing the services. The person requesting the inspection services would be required to deposit, at the time the agreement is signed, the estimated cost, as calculated by APHIS, of providing 6 months of service. In addition, the person requesting the services would be required to maintain, based on a monthly accounting conducted by APHIS, a user fee deposit large enough to cover the estimated cost of providing 6 months of service. The assessed fee would cover the amount of inspection service it is estimated the person would require over a 6-month period. This account is necessary to ensure that services needed can be funded as they are provided. The standard billing cycle is 3 months. A 6-month account would provide enough money to fund services for 2 billing cycles and would allow adequate time to replenish the account if required.

Agreements could be terminated by either party upon 30 days written notice. In the case the agreement was terminated after less than 6 months, if inspection services were provided less frequently than anticipated, or if costs to provide the services were lower than anticipated, APHIS would refund any excess user fee paid.

Under these proposed agreements, we would recover the full cost of conducting site visits. Personnel costs, travel and transportation, per diem, reimbursable overtime, overhead, direct materials, and other operating costs such as we have explained above in connection with out other proposed user fees, would be included. We would determine the total of these costs. The resulting figure would be the user fee payable by the entity signing the agreement.

If user fees were payable for off-site services provided in conjunction with the site visit, user fees for those services would be in addition to the user fee for the site visit.

User Fees for Tests (Proposed 9 CFR 130.9, 130.10, and 130.11) and Diagnostic Reagents (Proposed 9 CFR 130.12)

We are also proposing to charge a user fee for: (1) All laboratory tests we perform in connection with the importation or exportation of animals and birds; (2) all laboratory test we perform in as part of reference assistance testing; and (3) certain diagnostic reagents. The proposed user fees have been calculated to recover the cost of performing each test or supplying the diagnostic reagent.

Laboratory tests are required to import or export animals or birds and as part of reference assistance testing. Reference assistance tests are tests requested by veterinarians, State cooperators, or universities. The request may be to either establish or confirm a diagnosis.

The user fee for import or export-related tests would be the cost of the test requested. The user fee for reference assistance testing would be the total cost of the tests performed. In reference assistance testing to establish a diagnosis, we cannot predict in advance what tests will be required. The user fee must, therefore, be based on the cost of the tests actually performed. However, in reference assistance testing to confirm a diagnosis, we are requested to perform specific tests.

The fees would include all the costs explained earlier in this document: direct labor, direct materials, pro-rata shares of administrative support, equipment capitalization, overhead and Departmental charges.

The proposed user fees for some reference assistance tests are higher than the proposed user fees for the same tests for import or export purposes. The reason for this is that when we perform a test for import or export purposes, we simply complete the requested test and report the result. In reference assistance testing, we take whatever steps are necessary to confirm our results. These confirming steps, which can include repeating a test or conducting additional, different tests, add to the cost of reference assistance testing.

To arrive at proposed user fees for laboratory tests, we determined the amount of time, in hours, needed to perform the test. If 400 tests could be done in 1 hour, the time per test would be $^{1}/_{400}$th of an hour. We then multiplied the number of hours per test by the average hourly salary of personnel in the laboratory where the test is performed, plus support costs, Departmental charges, and Agency overhead. The resulting cost figure is covered by our proposed user fee.

To arrive at proposed user fees for diagnostic reagents, we determined the amount of time needed to produce a batch of reagent. We multiplied the number of hours needed by the average hourly salary of personnel in the laboratory where the reagent is produced, plus support costs, Departmental charges, and Agency overhead. We then divided the total by the number of milliliters of reagent in the batch, to arrive at a cost per milliliter. The proposed user fee is the cost per milliliter multiplied by the number of milliliters of reagent in a standard unit of that reagent.

Calculation of Proposed User Fees for Quarantine Services, Testing, Veterinary Diagnostics, and Export Health Certificates

We are proposing to charge a specific dollar amount for each individual service we provide. Each fee has been calculated to cover the full cost of providing that service. The cost of providing a service includes direct labor and direct material costs. It also includes administrative support, equipment capitalization, agency overhead, and Departmental charges.

Direct labor costs are the costs of employee time spent specifically to provide the service. For example, at APHIS's Animal Import Centers, animal caretakers and veterinarians prepare for the arrival of animals or birds to be quarantined in the Center, care for them (feed, water, clean cages or stalls) while

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The proposed user fees for some reference assistance tests are higher than the proposed user fees for the same tests for import or export purposes. The reason for this is that when we perform a test for import or export purposes, we simply complete the requested test and report the result. In reference assistance testing, we take whatever steps are necessary to confirm our results. These confirming steps, which can include repeating a test or conducting additional, different tests, add to the cost of reference assistance testing.

To arrive at proposed user fees for laboratory tests, we determined the amount of time, in hours, needed to perform the test. If 400 tests could be done in 1 hour, the time per test would be 1/400th of an hour. We then multiplied the number of hours per test by the average hourly salary of personnel in the laboratory where the test is performed, plus support costs, Departmental charges, and Agency overhead. The resulting cost figure is covered by our proposed user fee.

To arrive at proposed user fees for diagnostic reagents, we determined the amount of time needed to produce a batch of reagent. We multiplied the number of hours needed by the average hourly salary of personnel in the laboratory where the reagent is produced, plus support costs, Departmental charges, and Agency overhead. We then divided the total by the number of milliliters of reagent in the batch, to arrive at a cost per milliliter. The proposed user fee is the cost per milliliter multiplied by the number of milliliters of reagent in a standard unit of that reagent.

Calculation of Proposed User Fees for Quarantine Services, Testing, Veterinary Diagnostics, and Export Health Certificates

We are proposing to charge a specific dollar amount for each individual service we provide. Each fee has been calculated to cover the full cost of providing that service. The cost of providing a service includes direct labor and direct material costs. It also includes administrative support, equipment capitalization, agency overhead, and Departmental charges.

Direct labor costs are the costs of employee time spent specifically to provide the service. For example, at APHIS's Animal Import Centers, animal caretakers and veterinarians prepare for the arrival of animals or birds to be quarantined in the Center, care for them (feed, water, clean cages or stalls) while they are quarantined, observe them while they are quarantined, release them from quarantine, and clean the quarantine area afterwards. These are all direct labor costs. For other services, the direct labor costs would be different. For example, if the service is testing a tissue sample for disease-causing organisms, then direct labor costs include the time spent by laboratory personnel to prepare the sample, conduct the test, and read the test. Or, if the service is inspecting an aircraft, the direct labor costs include the time spent by the inspector to conduct the inspection. Direct labor costs vary with the type of service provided.

Direct materials costs include the cost of any materials needed to supply the service. For example, among other things, animals in quarantine need feed, water and bedding, disinfectants, and pharmaceuticals (for preparation of any needed tranquilizers). These are all direct materials costs. Again, direct materials costs are different for different services. For example, direct materials costs for conducting a laboratory test would include animals, eggs, glassware, chemicals, and other supplies necessary to perform the test.

Administrative support costs include local clerical and administrative activities; indirect labor hours (supervision of personnel and time spent doing work that is not directly connected with the service but which is nonetheless necessary, such as repairing equipment); travel and transportation for personnel, supplies, equipment, and other necessary items; training; general supplies for offices, washrooms, cleaning, etc.; contractual services (such as guard service, maintenance, trash pickup, etc.); grounds maintenance; chemicals and glassware, and utilities (such as water, trash pickup, telephone, electricity, natural and propane gas, heating and diesel oil). Some administrative support items may be contractual or not, depending on local circumstances. For example, trash pickup may be provided as a utility or a contractual service. However, the costs are all administrative support. As with direct labor and direct materials costs, the type, amount and cost of administrative support vary with the type of service provided.

Equipment capitalization is the annualized cost to replace equipment. We determine this by establishing the life expectancy, in years, of equipment we use to provide a service and by establishing the cost to replace the equipment at the end of its useful life. We subtract any money we anticipate receiving for selling used equipment. Then we divide the resulting dollar figure by the life expectancy of the equipment. The result is the annual cost to replace equipment.

Agency overhead is the pro-rata share, attributable to a particular service, of the management and support cost for all agency activities. Included are the cost of providing budget and accounting services, management support, including the Administrator's office and support at the regional level, personnel services, public information service, and liaison with Congress.

The final cost item included in the calculation, Departmental charges, is APHIS's share, expressed as a percentage of the total cost, of services provided centrally by the Department of Agriculture (Department). Services the Department provides centrally include the Federal Telephone Service; mail; National Finance Center processing of payroll, billing, collections, and other money management; unemployment compensation; Office of Workers Compensation Programs; and central supply for storing and issuing commonly used supplies and Department forms. The Department notifies APHIS how much the agency owes for these services. We have included a pro-rata share of these Departmental charges, as attributes to a particular service, in our fee calculations. An outline of the basic process is shown below. The actual components, quantities, and costs used to calculate the fee are different for each service.

The basic steps in the calculation, for each particular service, are:

1. Determine the following costs:

Direct labor;
Direct materials;
Pro-rata share of administrative support;
Pro-rata share of equipment capitalization;
Pro-rata share of agency overhead; and
Pro-rata share of Departmental charges;

2. Add all costs;
3. Estimate, based on past experience, the frequency of service, that is, the number of times the service will be performed in one year; and
4. Divide the total of all costs by the frequency of service.

The result of these calculations is the total cost of provide a particular service one time.

Rounding

We are proposing to round our proposed user fees up to the nearest quarter. This is consistent with the other APHIS user fees proposed in this docket. We did round to the next dollar for user fees adopted to cover various agricultural quarantine and inspection services (see 56 FR 14837–14846, April 12, 1991, and 56 FR 18496–18502, April 23, 1991.) However, that is not necessary for these proposed fees covering animal quarantine, testing, export health certificates, and veterinary diagnostics. We do not need to establish a reserve fund for these services. Also, rounding up to the nearest dollar would generate more revenue than needed to cover costs, and fees would be the same for markedly different services.

We have proposed to round these fees up, rather than down, in order to ensure that we collect enough revenue to cover the costs of providing these services. If we were to round down, many fees would be lower than the cost of the service. As we would not have a reserve fund, there would be no funds for us to draw on to make up the deficiency.

As is the case with all other APHIS user fees, we intend to review, at least annually, the user fees we are proposing in this document. We will publish an necessary adjustments in the **Federal Register**.

Payment Procedures (See Proposed 9 CFR 130.50)

We propose to implement several different billing and collection methods to accommodate those who use our services.

At our Animal Import Centers and at privately operated permanent quarantine facilities, we proposed to collect for all APHIS services at the time we release the animals or birds from quarantine. We would collect user fees at the time for both quarantine services and diagnostic tests performed on the animals or birds. As explained above, we would apply the reservation fee already paid by the importer against the user fee charges. At privately-operated temporary quarantine facilities, the person requesting approval of the facility would be billed for our services at the end of the quarantine.

We are proposing to accept cash at Animal Import Centers. VISA and MasterCard credit cards would also be accepted, but only at locations which are equipped to handle credit card payments. These locations are the Animal Import Centers in Newburgh, NY and in Miami, FL, and the USDA, APHIS, VS, office at John F. Kennedy International Airport, Jamaica, NY. Other credit cards cannot be accepted as the United States Department of the Treasury accepts credit card payments made only through VISA or MasterCard.

With regard to hourly user fees for miscellaneous supervision and inspection services, we propose to bill users monthly for services provided. All

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forms of payment, except cash, would be accepted. We cannot accept cash because we do not have facilities either to make change or to safely keep cash.

We propose to collect for endorsing export health certificates at the time we provide the service. If that is at an area office,[7] we would collect the user fee when the certificate is endorsed. We would accept all forms of payment at area offices, including, cash, checks, money orders, traveler's checks, and credit cards If we endorse export health certificates at Canadian or Mexican border ports, we would also collect the user fees when we endorse the certificate. However, we would not accept cash at these locations. Port veterinarians do not have proper facilities for keeping cash or making change.

We propose to collect user fees for tests, other than testing conducted on animals and birds in quarantine and reference assistance testing to establish a diagnosis, at the time the test request is sent to the National Veterinary Services Laboratories in Ames, Iowa. Payment would have to be enclosed with the test request. As explained above, we would collect payment for tests performed on quarantined animals and birds at the time they are released from quarantine. With regard to reference assistance testing to establish a diagnosis, we propose to bill users for the actual tests and procedures performed, as soon as they are determined. Users would have to pay for these tests before we would release the results. We would accept any form of payment except cash. As explained above, we do not have facilities for keeping cash or making change.

We propose to collect user fees for diagnostic reagents at the time a request for the reagent is made. Payment would have to be enclosed with the request. We would not release any diagnostic reagent without complete payment. Payment could be made by any means except cash, for the reasons given above.

Penalties for Non-payment or Late Payment (Proposed Section 130.51)

We are proposing to impose penalties for non-payment or late payment of APHIS user fees. If payment for an APHIS user fee is past due by than 30 days, APHIS will impose interest charges in accordance with 31 U.S.C. 3717. If a person is delinquent in paying any APHIS user fee, or delinquent in paying any interest due on any APHIS user fee, we would provide that person no further services for which an APHIS user fee is assessed.

In addition, if an APHIS user fee is due in a situation where we are still in the process of providing the service, but the fee has not been paid within the time allowed, or the payment is inadequate or unacceptable, we would not finish providing the services. For example, if an animal was still in quarantine at an Animal Import Center, we would not release it from quarantine, or if we had completed a test but not informed the user of the results, we would withhold the results.

If animals or birds are left in quarantine at an Animal Import Center for longer than 30 days after the close of the required quarantine, we would consider them to be abandoned. If they could be released from quarantine, we would do so, seize them, and sell or otherwise dispose of them. We would recover the costs of handling the animals or birds from the proceeds. If the animals or birds could not be released from quarantine, we would dispose of them, as determined by the Administrator, and would recover the cost of handling them from the proceeds.

We believe these penalties would help ensure that users pay APHIS user fees promptly and in full. Prompt and full payment is necessary if we are to recover the costs of providing services. Without payment, we cannot continue to provide services.

Executive Order 12291 and Regulatory Flexibility Act

In accordance with Executive Order 12291, it has been determined that this rule is part of a series of documents which are being considered as a "major rule." This proposed rule is one of several rules which concern requiring certain persons to pay user fees for APHIS services they receive. We have already published, in two separate documents, final rules adopting user fees for various passengers and means of conveyance. One final rule covered user fees for commercial vessels, commercial trucks, commercial railroad cars, and passengers on commercial aircraft arriving in the United States from outside the country. It was published April 12, 1991 (56 FR 14837–14846), and was effective May 13, 1991. The other final rule covered user fees for passengers on commercial airlines departing Hawaii and Poerto for other parts of the United States. It was published April 23, 1991 (56 FR 18496–18502). As explained above, its effective date, originally scheduled for August 1, 1991, has been postponed until October 1, 1991.

These rules, together with the regulations proposed in this document, are expected to provide total savings to taxpayers of $132 million annually. The discounted value of this amount is estimated at abut $1.3 billion into perpetuity. The fees on the four categories of service proposed in this rule are expected to contribute 30 percent of the total savings.

Total administrative costs associated with implementing the three rules are estimated as $2 million annually, a discounted value of about $20 million. Only 20 percent of this amount is expected to be incurred in implementing the fees proposed in this rule.

The preliminary impact analysis indicates that the implementation of user fees for the four categories affected by this proposed rule is expected to save taxpayers over $38 million per year. The total discounted value is estimated to be roughly $380 million into perpetuity. Total administrative costs to the Department associated with fee collection (for the inspection of commercial vehicles and the issuance of phytosanitary certificates) are estimated to be $510,000 annually, a discounted cost of about $5 million.

The implementation of user fees for the inspection of commercial aircraft and commercial vessels is expected to provide tax savings of $30 million a year ($300 million discounted value). User fees for the issuance of phytosanitary certificates are expected to accrue savings of at least $3 million annually ($30 million discounted value).

Administrative costs associated with the inspection of these commercial vehicles are estimated as $209,000 annually. A discounted cost of about $2 million is estimated. Costs relating to the issuance of phytosanitary certificates are estimated as $301,000 a year, or $3 million discounted into perpetuity.

The implementation of user fees for services related to the export and import of animals or birds is expected to yield savings to taxpayers of $4 million per year ($40 million discounted value). User fees for services relating to veterinary diagnostics are expected to accrue annual savings of over $1 million (a discounted value of $10 million).

The two final user fee rules that have already been published (one for international air passengers and commercial trucks, rail cars and foreign vessels, and one for domestic air travel) were estimated to have a combined annual impact of $93 million in the form of savings to taxpayers. The savings

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[7] A list of the locations of area offices can be obtained from the Office of the Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

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These rules, together with the regulations proposed in this document, are expected to provide total savings to taxpayers of $132 million annually. The discounted value of this amount is estimated at abut $1.3 billion into perpetuity. The fees on the four categories of service proposed in this rule are expected to contribute 30 percent of the total savings.

Total administrative costs associated with implementing the three rules are estimated as $2 million annually, a discounted value of about $20 million. Only 20 percent of this amount is expected to be incurred in implementing the fees proposed in this rule.

The preliminary impact analysis indicates that the implementation of user fees for the four categories affected by this proposed rule is expected to save taxpayers over $38 million per year. The total discounted value is estimated to be roughly $380 million into perpetuity. Total administrative costs to the Department associated with fee collection (for the inspection of commercial vehicles and the issuance of phytosanitary certificates) are estimated to be $510,000 annually, a discounted cost of about $5 million.

The implementation of user fees for the inspection of commercial aircraft and commercial vessels is expected to provide tax savings of $30 million a year ($300 million discounted value). User fees for the issuance of phytosanitary certificates are expected to accrue savings of at least $3 million annually ($30 million discounted value).

Administrative costs associated with the inspection of these commercial vehicles are estimated as $209,000 annually. A discounted cost of about $2 million is estimated. Costs relating to the issuance of phytosanitary certificates are estimated as $301,000 a year, or $3 million discounted into perpetuity.

The implementation of user fees for services related to the export and import of animals or birds is expected to yield savings to taxpayers of $4 million per year ($40 million discounted value). User fees for services relating to veterinary diagnostics are expected to accrue annual savings of over $1 million (a discounted value of $10 million).

The two final user fee rules that have already been published (one for international air passengers and commercial trucks, rail cars and foreign vessels, and one for domestic air travel) were estimated to have a combined annual impact of $93 million in the form of savings to taxpayers. The savings

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estimated to accrue from the first rule on international air passengers and commercial vehicles comprise 83 percent of this total while the remaining 17 percent in savings is attributed to passenger fees for domestic travel.

This proposed action may also have a significant economic impact on a substantial number of small entities. However, we do not currently have all the data necessary for a comprehensive analysis of the effects of this rule on small entities, and we invite comments on these impacts. In particular, we are interested in determining the number and kind of small entities which may incur benefits or costs from the implementation of users fees. These small entities, among others, include: commercial aircraft or sea companies; importers, traders, and wholesalers of agricultural commodities; animal importers and brokers; pet owners; veterinarians; commercial testing laboratories, and State or local government agencies.

Our preliminary Regulatory Impact Analysis is available for inspection at USDA, room 1141, South Building, 14th and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays, or by telephoning (202) 382–1368.

Executive Order 12606

We have analyzed these regulations in accordance with the Executive Order 12606, and have determined that this rule has no potential impact on the family well-being. We have determined that this rule: Does not affect the stability of the family, and particularly, the marital commitment; does not affect the authority and rights of parents in the education, nurture, and supervision of their children; does not help or hinder the family to perform its functions; does not substitute governmental activity for family functions; and does not affect family earnings. We have also determined that the benefits of this action justify any impact it may have on the family budget, and that this activity cannot be carried out by a lower level of government or by the family itself. This rule sends no message, intended or otherwise, to the public concerning the status of the family or to young people concerning the relationship between their behavior, their personal responsibility, and the norms of our society.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection provisions that are included in this proposed rule will be submitted for approval to the Office of Management and Budget. Your written comments will be considered if you submit them to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. You should submit a duplicate copy of your comments to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsvile, MD 20782; and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

Executive Order 12372

This program activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, subpart V.)

List of Subjects

7 CFR Part 354

Agricultural commodities, Exports, Government employees, Imports, Phytosanitary certificate, Plants (agriculture), Quarantine, and Transportation

9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry, Quarantine, and Tests.

Accordingly, we are proposing to amend 7 CFR part 354 and 9 CFR chapter I as follows:

7 CFR PART 353—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

1. The authority citation for part 354 would continue to read as follows:

Authority: 7 U.S.C. 2260, 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

§ 354.3 [Amended]

2. In § 354.3, paragraph (a) would be amended to add, in alphabetical order, the following definitions:

* * * * *

Commercial purpose. The intention of receiving compensation, or making a gain or profit.

* * * * *

Commercial shipment. A shipment for gain or profit.

* * * * *

Designated state inspector. A state employee designated by APHIS to conduct inspections for phytosanitary export certification and to sign certificates on behalf of APHIS.

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Phytosanitary certificate. A document certifying that agricultural products moving from one country to another are free from quarantine pests, and practically free from other injurious pests.

Phytosanitary certificate for reexport. A document certifying that agricultural products which moved into the United States from another country and which are now moving from the United States to another country, remained free from quarantine pests, and practically free from other injurious pests while in the United States.

Processed product certificate. A document certifying that processed agricultural products moving from the United States are believed to be free from injurious plant pests.

3. In § 354.3, paragraph (e) would be redesignated as paragraph (f), and a new paragraph (e) would be added to read:

§ 354.3 User fees for certain international services.

* * * * *

(e) *Fee for inspection of commercial aircraft.* (1) Except as provided in paragraph (e)(2) of this section, an APHIS user fee will be charged for each commercial aircraft which is arriving, or which has arrived and is proceeding from one United States airport to another under a United States Customs Service "Permit to Proceed," as specified in title 19, Code of Federal Regulations, §§ 122.81 through 122.85, or an "Agricultural Clearance or Safeguard Order" (PPQ Form 250), used pursuant to title 7, Code of Federal Regulations, § 330.400 and title 9, Code of Federal Regulations, § 94.5, and which is subject to inspection under part 330 of this chapter or 9 CFR chapter I, subchapter D. Each carrier is responsible for paying the APHIS user fee. The APHIS user fee is $117.50 for each arrival.

(2) The following categories of commercial aircraft are exempt from paying an APHIS user fee:

(i) Any aircraft moving solely between the United States and Canada;

(ii) Any aircraft used exclusively in the governmental services of the United States or a foreign government, including any agency or political subdivision of the United States or a foreign government, so long as the aircraft is not carrying persons or merchandise for commercial purposes;

(iii) Any aircraft making an emergency or forced landing when the

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original destination of the aircraft was a foreign port;

(iv) Any aircraft with 30 or fewer seats, which is not carrying cargo and which is not equipped to offer inflight food service; and

(v) Any aircraft moving from the United States Virgin Islands to Puerto Rico.

(3) *Remittance and statement procedures.* (i) Each carrier must remit the appropriate fees to the United States Department of Agriculture, * * * , for receipt no later than 31 days after the close of the calendar quarter in which the aircraft arrivals occurred. Late payments will be subject to interest, penalty, and handling charges as provided in the Debt Collection Act of 1982 (31 U.S.C. 3717).

(ii) At the same time a remittance is submitted the remitter must mail a written statement to the United States Department of Agriculture, * * * the statement must include the following information:

(A) Name and address of the person remitting payment;

(B) Taxpayer identification number of the person remitting payment;

(C) Calendar quarter covered by the payment;

(D) Ports of entry at which inspections occurred;

(E) Number of arrivals at each port; and

(F) Amount remitted.

(iii) Remittances must be made by check or money order, payable in United States dollars, through a United States bank, to "The Animal and Plant Health Inspection Service."

(4) *Compliance.* Each carrier subject to this section must allow APHIS personnel to verify the accuracy of the APHIS user fees remitted and to otherwise determine compliance with 21 U.S.C. 136a and this paragraph. Each carrier must advise the United States Department of Agriculture, * * * , of the name, address, and telephone number of a responsible officer who is authorized to verify APHIS user fee calculations and remittances. The United States Department of Agriculture, * * *, must be promptly notified of any changes in the identifying information submitted.

§ 354.3 [Amended]

4. In § 354.3(f)(1), the words "paragraph (e)(2)" would be removed and "paragraph (f)(2)" would be added in their place.

5. In § 354.3, new paragraphs (g), (h), and (i) would be added to read as follows:

§ 354.3 User fees for certain international services.

* * * * *

(g) *Fees for export certification of plants and plant products.* (1) For each certificate issued by APHIS personnel, the recipient must pay the applicable APHIS user fee at the time and place the certificate is issued, or, in the case of a block of certificates, at the time the certificates are given to the shipper.

(2) There is no APHIS user fee for a certificate issued by a designated State inspector.

(3) If a designated state inspector issues a certificate, the state where the certificate is issued may charge for inspection services provided in that state.

(4) Any state which wishes to charge a fee for services it provides to issue certificates, must establish fees in accordance with the following guidelines:

(i) The state must:

(A) Estimate the annual number of certificates to be issued:

(B) Determine the total cost of issuing certificates by adding together delivery,[2] support,[3] and administrative[4] costs; and

(C) Divide the cost of issuing certificates by the estimated number of certificates to be issued to obtain a "raw" fee.

(ii) The state may round the "raw" fee up to the nearest quarter, if necessary for ease of calculation, collection, or billing.

(5) The APHIS user fees are:

(i) $30 for a certificate for a commercial shipment;

(ii) $19 for a certificate for a non-commercial shipment;

(iii) $30 for a certificate for reexport of a commercial shipment;

(iv) $6 for reissuing any certificate or certificate for reexport;

(h) *Refunds of APHIS user fees.* (1) A shipper who pays for a block of certificates to cover commercial shipments may obtain a refund or a credit against future APHIS user fees under the following circumstances:

(i) If a certificate from the block is voided:

(ii) If a certificate from the block is returned unused;

(iii) If the shipper pays for inspection outside of normal business hours (8:00 a.m. to 4:30 p.m.) under § 354.1 of this part.

(iv) If a certificate from the block is used for a non-commercial shipment; or

(v) If a certificate from the block is used to reissue another certificate.

(2) The amount of any refund or credit will be the amount over charged, less $6 to cover APHIS administrative expenses.

(i) *Payment methods.* For payment of any of the APHIS user fees required in paragraph (g) of this section, we will accept personal checks for amounts less than $100, and checks drawn on commercial accounts, cashier's checks, certified checks, traveler's checks, and money orders for any amount.

6. In § 354.4, new paragraphs (c), (d), and (e) would be added to read as follows:

§ 354.4 User fees for certain domestic services.

* * * * *

(c) *Fee for inspection of commercial aircraft from Hawaii and Puerto Rico.* (1) Except as provided in paragraph (c)(2) of this section, an APHIS user fee will be charged for each commercial aircraft which is subject to inspection under § 318.13–8 or § 318.58–8 of this chapter. Each such carrier is responsible for paying the APHIS user fee, which is $37.75 for each aircraft departing Hawaii or Puerto Rico.

(2) The following categories of commercial aircraft are exempt from paying an APHIS user fee:

(i) Any aircraft used exclusively in the governmental services of the United States or a foreign government, including any agency or political subdivision of the United States or a foreign government, so long as the aircraft is not carrying persons or merchandise for commercial purposes; and

(ii) Aircraft transiting Hawaii or Puerto Rico and subject to inspection under part 330 of this chapter.

(3) *Remittance and statement procedures.* (i) Each carrier must remit the appropriate fees to the United States Department of Agriculture, * * *, for receipt no later than 31 days after the close of the calendar quarter in which the aircraft departures occurred. Late payments will be subject to interest, penalty, and handling charges as provided in the Debt Collection Act of 1982 (31 U.S.C. 3717).

(ii) At the same time a remittance is submitted the remitter must mail a

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[2] Delivery costs are costs such as employee salary and benefits, transportation, per diem, travel, purchase of specialized equipment, and all costs associated with maintaining field offices.

[3] Support costs are costs at supervisory levels which are similar to delivery costs, and costs such as training, automated data processing, public affairs, enforcement, communications, postage, budget and accounting services, and payroll, purchasing, billing and collecting services.

[4] Administrative costs are costs incurred as a direct result of collecting and monitoring federal phytosanitary certificates.

(ii) If a certificate from the block is returned unused;

(iii) If the shipper pays for inspection outside of normal business hours (8:00 a.m. to 4:30 p.m.) under § 354.1 of this part.

(iv) If a certificate from the block is used for a non-commercial shipment; or

(v) If a certificate from the block is used to reissue another certificate.

(2) The amount of any refund or credit will be the amount over charged, less $6 to cover APHIS administrative expenses.

(i) *Payment methods.* For payment of any of the APHIS user fees required in paragraph (g) of this section, we will accept personal checks for amounts less than $100, and checks drawn on commercial accounts, cashier's checks, certified checks, traveler's checks, and money orders for any amount.

6. In § 354.4, new paragraphs (c), (d), and (e) would be added to read as follows:

§ 354.4 User fees for certain domestic services.

* * * * *

(c) *Fee for inspection of commercial aircraft from Hawaii and Puerto Rico.* (1) Except as provided in paragraph (c)(2) of this section, an APHIS user fee will be charged for each commercial aircraft which is subject to inspection under § 318.13–8 or § 318.58–8 of this chapter. Each such carrier is responsible for paying the APHIS user fee, which is $37.75 for each aircraft departing Hawaii or Puerto Rico.

(2) The following categories of commercial aircraft are exempt from paying an APHIS user fee:

(i) Any aircraft used exclusively in the governmental services of the United States or a foreign government, including any agency or political subdivision of the United States or a foreign government, so long as the aircraft is not carrying persons or merchandise for commercial purposes; and

(ii) Aircraft transiting Hawaii or Puerto Rico and subject to inspection under part 330 of this chapter.

(3) *Remittance and statement procedures.* (i) Each carrier must remit the appropriate fees to the United States Department of Agriculture, * * *, for receipt no later than 31 days after the close of the calendar quarter in which the aircraft departures occurred. Late payments will be subject to interest, penalty, and handling charges as provided in the Debt Collection Act of 1982 (31 U.S.C. 3717).

(ii) At the same time a remittance is submitted the remitter must mail a

written statement to the United States Department of Agriculture, * * * the statement must include the following information:

(A) Name and address of the person remitting payment;

(B) Taxpayer identification number of the person remitting payment;

(C) Calendar quarter covered by the payment;

(D) Ports of entry at which inspections occurred;

(E) Number of arrivals at each port of entry; and

(F) Amount remitted.

(iii) Remittances must be made by check or money order, payable in United States dollars, through a United States bank, to "The Animal and Plant Health Inspection Service."

(4) *Compliance.* Each carrier subject to this section, must allow APHIS personnel to verify the accuracy of the APHIS user fees remitted and to otherwise determine compliance with 31 U.S.C. 9701 and this section. Each carrier must advise the United States Department of Agriculture, * * *, of the name, address, and telephone number of a responsible officer who is authorized to verify APHIS user fee calculations and remittances. The United States Department of Agriculture, * * *, must be promptly notified of any changes in the identifying information submitted.

(d) *Fee for inspection of commercial vessels from Hawaii and Puerto Rico.* (1) Except as provided in paragraph (d)(2) of this section, each commercial vessel which is subject to inspection under § 318.13–9 or § 318.58–9 of this chapter, must pay an APHIS user fee. Each such carrier is responsible for paying the APHIS user fee, which is $111.00 for each vessel departing Hawaii or Puerto Rico.

(2) The following categories of commercial vessels are exempt from paying an APHIS user fee:

(i) Any vessel used exclusively in the governmental services of the United States or a foreign government, including any agency or political subdivision of the United States or a foreign government, so long as the vessel is not carrying persons or merchandise for commercial purposes; and

(ii) Any vessel transiting Hawaii or Puerto Rico and subject to inspection under part 330 of this chapter.

(3) *Remittance and statement procedures.* (i) Each carrier must remit the appropriate fees to the United States Department of Agriculture, * * *, for receipt not later than 31 days after the close of the calendar quarter in which the aircraft departures occurred. Late payments will be subject to interest, penalty, and handling charges as provided in the Debt Collection Act of 1982 (31 U.S.C. 3717).

(ii) At the same time a remittance is submitted the remitter must mail a written statement to the United States Department of Agriculture, * * *, the statement must include the following information:

(A) Name and address of the person remitting payment;

(B) Taxpayer identification number of the person remitting payment;

(C) Calendar quarter covered by the payment;

(D) Ports of entry at which inspections occurred;

(E) Number of arrivals at each port of entry; and

(F) Amount remitted.

(iii) Remittances must be made by check or money order, payable in United States dollars, through a United States bank, to "The Animal and Plant Health Inspection Service."

(4) *Compliance.* Each carrier subject to this section, must allow APHIS personnel to verify the accuracy of the APHIS user fees remitted and to otherwise determine compliance with 31 U.S.C. 9701 and this paragraph. Each carrier must advise the United States Department of Agriculture * * *, of the name, address, and telephone number of a responsible officer who is authorized to verify APHIS user fee calculations and remittances. The United States Department of Agriculture * * *, must be promptly notified of any changes in the identifying information submitted.

(e) *Individual agreements for inspection services at ports of entry.* (1) Operators and owners of vessels or aircraft, or their agents, may enter into agreements with APHIS to receive, at points of entry in the United States, inspection services in addition to the regular or on-call services available in connection with such vessels or aircraft.

(2) Agreements may be made to cover the following types of services:

(i) Opening and operating a new inspection station at a port of entry; and

(ii) Providing one-time or occasional inspection services at a location where APHIS does not normally provide such services.

(3) Owners and operators of vessels or aircraft, or their agents, must contact the Regional Director, USDA, APHIS, Plant Protection and Quarantine,[1] for the state where they want APHIS to provide services, to make an agreemen[1]

(4) All agreement must include the following:

(i) Name, mailing address, and telephone number of the operator or owner of the vessel or aircraft, or, if applicable, the operator's or owner's agent;

(ii) Explanation of inspection services to be provided;

(iii) Date(s) and time(s) inspection services will be provided;

(vi) Location (street address, port of entry, berth, dock, gate, etc.) and if applicable, identify (identification number, name, etc.) of vessel or aircraft or other thing to be inspected;

(v) An estimate of the actual cost, as calculated by APHIS, to provide the described inspection services for 6 months;

(vi) A statement that APHIS agrees to provide the described inspection services;

(vii) A statement that the owner or operator of the vessel or aircraft, or if appropriate, his or her agent, agrees to pay, at the time the agreement is entered into, a user fee equal to the estimated cost of providing the described inspection services for 6 months;

(viii) A statement that APHIS will credit an amount equal to all user fees received for services provided at the location to the owner or operator's account, until the total amount of user fees credited to the account is equal to the amount of money paid into the account by the owner or operator of the vessel or aircraft, or if appropriate, his or her agent, at the time the agreement was entered into; and

(ix) A statement that the owner or operator of the vessel or aircraft, or if appropriate, his or her agent, agrees to maintain a balance in the user fee payment account equal to the cost of providing the services described for 6 months, as calculated monthly by APHIS.

(5) APHIS will enter into an agreement only if qualified personnel can be made available to provide the services to be provided.

(6) An agreement can be terminated by either party on 30 days written notice.

(7) If, at the time an agreement is terminated, any unobligated funds remain in the user fee account, APHIS will return them to the owner or operator, or his or her agent.

7. In part 354, a new § 354.5 would be added to read as follows:

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[1] A list of the Regional Directors, USDA, APHIS, Plant Protection and Quarantine and the states for which they are responsible, may be obtained from the Deputy Administrator, Plant Protection and Quarantine, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

§ 354.5 Penalties for non-payment or late payment of user fees.

(a) If a person requesting a service for which an APHIS user fee is payable, is delinquent in paying any APHIS user fee due under either title 7 of title 9, Code of Federal Regulations, or is delinquent in paying the interest on any delinquent APHIS user fee, then APHIS will not provide the service requested.

(b) If APHIS is in the process of providing a service for which an APHIS user fee is due, and the user has not paid the fee within the time required, or if the payment offered by the user is insufficient or not in compliance with the regulations in this part, then APHIS will take the following action:

(1) If an APHIS user fee is due for a certificate or a certificate for reexport, APHIS will not issue the certificate.

(2) If an APHIS user fee is past due by than 30 days, APHIS will impose a late payment penalty and interest charges in accordance with 31 U.S.C. 3717.

9 CFR CHAPTER I—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

8. Chapter I would be amended by redesignating subchapters F, G, H, I, J and K as subchapters G, H, I, J, K and I and all cross references would be revised accordingly and a new subchapter F consisting of part 130 would be added to read as follows:

SUBCHAPTER F—USER FEES

PART 130—USER FEES

Sec.
130.1 Definitions.
130.2 User fees for individual animals and birds quarantined in APHIS Animal Import Centers.
130.3 User fees for exclusive use of buildings at APHIS Animal Import Centers.
130.4 User fees for services at privately operated permanent quarantine facilities.
130.5 User fees for services at privately operated temporary quarantine facilities.
130.6 User fees for export health certificates.
130.7 User fees for inspection and supervision services provided within the United States for export animals and birds.
130.8 User fees for inspection services outside the United States.
130.9 User fees for tests performed at the National Veterinary Services Laboratories.
130.10 User fees for tests performed at the Foreign Animal Diseases Laboratory.
130.11 User fees for reference assistance testing.
130.12 User fees for diagnostic reagents.
130.13 through 49 [Reserved]
130.50 Payment of user fees.
130.51 Penalties for non-payment or late payment of user fees.

Authority: 21 U.S.C. 136 and 136a; 7 CFR 2.17, 2.51, and 371.2(d).

§ 130.1 Definitions.

As used in this part, the following terms shall have the meaning set forth in this section.

Administrator. The Administrator of the Animal and Plan Health inspection Service, or any person authorized to act for the Administrator.

Animal. All animals except birds, but including poultry.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant health Inspection Service of the United States Department of Agriculture.

Animal Import Center. Quarantine facilities operated by APHIS in Newburgh, New York; Miami, Florida; and Honolulu, Hawaii.[1]

Animal product or by-product. Any material of animal origin, such as, but not limited to, meat, milk, organs, glands, extracts, secretions, fat, bones, blood, lymph, hides, skins, hair, wool, hoofs, hoof meal, horn meal, blood meal, meat meal, glue stock, and test specimens.

APHIS animal health technician. An animal health technician employed by APHIS, who is authorized to perform services required by title 9, Code of Federal Regulations, chapter I.

APHIS veterinarian. A veterinarian employed by APHIS, who is authorized to perform the services required by title 9, Code of Federal Regulations, chapter I.

Bird. Any member of the class aves, other than poultry.

Diagnostic reagent. Substances used in diagnostic tests to detect disease antibodies by causing an identifiable reaction.

Domestic animal. Any animal imported into the United States for any purpose other than exhibition in a zoo, park or other place maintained for the exhibition of live animals for recreational or educational purposes.

Equine. Any horse, ass, mule, or zebra.

Export health certificate. An official document issued by an APHIS veterinarian or animal health technician, which, as required by the importing country, states that animals or birds to be exported from the United States are free of certain diseases and pests.

Game cock. Any chicken bred, trained, or imported for cock fighting.

Person. An individual, corporation, partnership, trust, association, or any other public or private entity, or any officer, employee, or agent thereof.

Poultry. Chickens, doves, ducks, geese, grouse, guinea fowl, partridges, pea fowl, pheasants, pigeons, quail, swans, and turkeys.

Reference assistance testing. Tests conducted by APHIS at the request of a veterinarian, state cooperator, or university, to either establish or confirm a diagnosis.

Standard feed. Seed, or dry feeds such as dog food or monkey biscuits, whether soaked in water or not.

Zoo animal. Any animal, including poultry, intended for exhibition in a zoo, park or other place maintained for the exhibition of live animals for recreational or educational purposes.[2]

Zoo bird. Any bird intended for exhibition in a zoo, park or other place maintained for the exhibition of live animals or birds for recreational or educational purposes.[3]

Zoo equine. Any equine intended for exhibition in a zoo, park or other place maintained for the exhibition of live animals for recreational or educational purposes.[4]

§ 130.2 User fees for individual animals and birds quarantined in APHIS Animal Import Centers.

(a) The following user fees, which include standard care, feed, and handling, must be paid for each animal or bird quarantined in an Animal Quarantine Facility:[5]

Animal or bird	Daily fee
Birds (including zoo birds):	
0–250 grams	$0.75
251–1,000 grams	2.75
over 1,000 grams, and any bird in non-standard housing or receiving non-standard care and handling	6.50
Poultry (including zoo poultry):	
A. Doves, pigeons, quail	1.75
B. Chickens, ducks, grouse, guinea fowl, partridge, pea fowl, pheasants	3.00
C. Game cocks, geese, swans, turkeys, and poultry housed in non-standard housing or receiving non-standard care and handling	7.00
Equines (including zoo equines):	
1st through 3rd day	128.50
4th through 7th day	93.25
8th and later days	79.00
Zoo animals (except equines, birds, and poultry)	20.00
Domestic animals:	
Camels, cattle, bison, buffalo	49.00

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[1] The addresses of Animal Import Centers may be obtained from the Deputy Administrator, Veterinary Services, APHIS, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

[2] Regulations concerning approval of zoos and requirements for importing wild animals are found in part 92 of this chapter.

[3] See footnote 2.

[4] See footnote 2.

[5] APHIS Animal Import Centers are located in Honolulu, HI, Miami, FL, and Newburgh, NY. The addresses of these facilities are published in part 92 of this chapter.

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y chicken bred,
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vidual, corporation,
association, or any

other public or private entity, or any officer, employee, or agent thereof.

Poultry. Chickens, doves, ducks, geese, grouse, guinea fowl, partridges, pea fowl, pheasants, pigeons, quail, swans, and turkeys.

Reference assistance testing. Tests conducted by APHIS at the request of a veterinarian, state cooperator, or university, to either establish or confirm a diagnosis.

Standard feed. Seed, or dry feeds such as dog food or monkey biscuits, whether soaked in water or not.

Zoo animal. Any animal, including poultry, intended for exhibition in a zoo, park or other place maintained for the exhibition of live animals for recreational or educational purposes.[2]

Zoo bird. Any bird intended for exhibition in a zoo, park or other place maintained for the exhibition of live animals or birds for recreational or educational purposes.[3]

Zoo equine. Any equine intended for exhibition in a zoo, park or other place maintained for the exhibition of live animals for recreational or educational purposes.[4]

§ 130.2 User fees for individual animals and birds quarantined in APHIS Animal Import Centers.

(a) The following user fees, which include standard care, feed, and handling, must be paid for each animal or bird quarantined in an Animal Quarantine Facility:[5]

Animal or bird	Daily fee
Birds (including zoo birds):	
0–250 grams	$0.75
251–1,000 grams	2.75
over 1,000 grams, and any bird in non-standard housing or receiving non-standard care and handling	6.50
Poultry (including zoo poultry):	
A. Doves, pigeons, quail	1.75
B. Chickens, ducks, grouse, guinea fowl, partridge, pea fowl, pheasants	3.00
C. Game cocks, geese, swans, turkeys, and poultry housed in non-standard housing or receiving non-standard care and handling	7.00
Equines (including zoo equines):	
1st through 3rd day	128.50
4th through 7th day	93.25
8th and later days	79.00
Zoo animals (except equines, birds, and poultry)	28.00
Domestic animals:	
Camels, cattle, bison, buffalo	49.00

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nimal Import Centers may be
uty Administrator, Veterinary
ral Building, 6505 Belcrest
20782.

[2] Regulations concerning approval of zoos and requirements for importing wild animals are found in part 92 of this chapter.

[3] See footnote 2.

[4] See footnote 2.

[5] APHIS Animal Import Centers are located in Honolulu, HI, Miami, FL, and Newburgh, NY. The addresses of these facilities are published in part 92 of this chapter.

Animal or bird	Daily fee
All others	13.00

(b) The importer may, at his or her option, request that birds or poultry be housed in non-standard housing. Non-standard housing is individual housing, any housing not normally available at the Animal Import Center, any housing constructed or purchased at the request of the importer, and housing with blinds, dense foliage, plants, or temperature regulation.

(c) The importer may, at his or her option, request that birds or poultry be given non-standard care and handling. Non-standard care and handling includes hand-feeding, more than one feeding a day, frequent observation, and any handling or observation which requires personnel to attend to the birds or poultry outside of normal business hours.[6]

(d) If any bird or poultry is fed a diet other than seed, including but not limited to diets of fruit, insects, nectar or fish, the importer must either provide feed or pay for it on an actual cost basis, including the cost of delivery to the Animal Import Center.

(e) Any reservation fee paid by the importer under part 92 of this chapter, will be applied to the APHIS user fees due for animals or birds quarantined in an Animal Import Center.

§ 130.3 User fees for exclusive use of buildings at APHIS Animal Import Centers.

(a) An importer may, at his or her option, occupy entire quarantine buildings at the Animal Import Centers specified below. A user fee will be charged for each building as follows:

Animal import center	Building size	Monthly fee
Honolulu, Hawaii	30 feet × 75 feet.	$7,830
Newburgh, New York	72 feet × 82 feet.	$9,450

(b) Users must provide APHIS personnel at the Animal Import Center, at the time they make a reservation for quarantine space, with the following information:

(1) Species of animals and birds to be quarantined;

(2) Ages of animals and birds to be quarantined; and

(3) Sizes of animals and birds to be quarantined.

(c) APHIS personnel at the Animal Importer Center will determine, based on the information provided by the importer under paragraph (b) of this section, and on routine husbandry needs, the maximum number of animals and birds permitted in the requested building.

(d) The importer must provide feed, or pay for it on an actual cost basis, including cost of delivery to the Animal Import Center.

§ 130.4 User fees for services at privately operated permanent quarantine facilities.

A daily user fee of $49.25 must be paid for each animal quarantined in a privately-operated permanent quarantine facility.

§ 130.5 User fees for services at privately operated temporary quarantine facilities.

(a) A user fee must be paid for each animal quarantined in a privately operated temporary quarantine facility.

(b) The user fees are:

(1) $33.50 per hour for service performed by an APHIS veterinarian;

(2) $21.75 per hour for service performed by an APHIS Health Technician.

§ 130.6 User fees for export health certificates.

(a) The following user fees must be paid for each export health certificate requested[7] for the following types of animals, regardless of the number of animals covered by the certificate:

Type of animal	User fee
Slaughter animals, of any type, moving to Canada or Mexico	$10.00
Non-slaughter horses to Canada	10.00
Poultry	2.00
Hatching eggs	2.00
Animal products and by-products	3.25
Other animals and birds	4.00

(b) The following user fees must be paid for each export certificate requested for animals and birds, depending on the number of animals or birds covered by the certificate and the number of tests required:

Number of tests required	Number of animals on certificate	Fee
1–2	First animal	$38.00
	Each additional animal.	1.00
3–6	First animal	41.50
	Each additional animal.	1.25
7 or more	First animal	44.00
	Each additional animal.	1.50

§ 130.7 User fees for inspection and supervision services provided within the United States for export animals or birds.

(a) A user fee must be paid for the following APHIS services provided within the United States for export animals or birds:

(1) Inspect an export isolation facility;

(2) Supervise animal or bird rest periods prior to export; and

(3) Supervise loading or unloading of animals or birds for export shipment.

(b) The user fees are:

(1) $33.50 per hour for service performed by an APHIS veterinarian;

(2) $21.75 per hours for service performed by an APHIS Animal Health Technician.

§ 130.8 User fees for inspection services outside the United States.

(a) If an inspection is required in title 9, Code of Federal Regulations, to be performed outside the United States, and the regulation does not contain a provision for payment of the cost of the service, the person requesting the service must pay a user fee under this section.

(b) Any person who wants APHIS to provide inspection services outside the United States must contact the Import/Export Staff, USDA, APHIS, Veterinary Services, Federal Building, Hyattsville, MD 20782, to make an agreement.

(c) All agreements must include the following:

(1) Name, mailing address, and telephone number of either the person requesting the inspection services, or his or her agent;

(2) Explanation of inspection services to be provided, including the regulations in title 9, Code of Federal Regulations which provide for the services;

(3) Date(s) and time(s) the inspection services are to be provided;

(4) Location (including street address) where inspection services are to be provided;

(5) An estimate of the actual cost, as calculated by APHIS, to provide the described inspection services for 6 months;

(6) A statement that APHIS agrees to provide the inspection services;

(7) A statement that the person requesting the inspection services, or, if

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[6] Normal business hours at the Animal Import Centers are: 7:30 a.m. to 11:30 a.m., Honolulu, HI; 7:00 a.m. to 3:30 p.m., Miami, FL; and 8 a.m. to 4:30 p.m., Newburgh, NY.

[7] An export certificate may need to be issued for an animal being exported from the United States if the country to which the animal is being shipped requires one. APHIS issues export certificates as a service to the public.

appropriate, his or her agent, agrees to pay, at the time the agreement is entered into, a user fee equal to the estimated cost of providing the described inspection services for 6 months; and

(8) A statement that the person requesting the inspection services, or, if appropriate, his or her agent, agrees to maintain a user fee payment account equal to the cost of providing the described inspection services for 6 months, as calculated monthly by APHIS.

(d) APHIS will enter into an agreement only if qualified personnel can be made available to provide the inspection services.

(e) An agreement can be terminated by either party on 30 days written notice.

(f) If, at the time an agreement is terminated, any unobligated funds remain in the user fee payment account, APHIS will refund them to the person who requested the inspection services, or his or her agent.

§ 130.9 User fees for tests performed at the National Veterinary Services Laboratories.

The following user fees must be paid for each test performed at the National Veterinary Services Laboratories in connection with the importation or exportation of animals or birds:

Type of test	User fee
Agar gel immunodiffusion	$4.75
Buffered acidified plant antigen presumptive	3.50
Card test	3.00
Competitive enzyme linked immunosorbent assay	3.75
Complement fixation	9.00
Complement fixation-ovis	3.75
Enzyme linked immunosorbent assay	2.75
Hemagglutination inhibition	7.50
Hemagglutination inhibition-5	2.00
Indirect fluorescent antibody	4.50
Latex agglutination	5.50
Mercaptoethanol	3.50
Microscope agglutination	6.25
Neutralization test	19.50
Plate test	1.25
Rivanol	2.25
Serum neutralization	7.50
Tube test	2.50
Tube agglutination melitensis	3.50

§ 130.10 User fees for tests performed at the Foreign Animal Diseases Laboratory.

The following user fees must be paid for each test performed at the Foreign Animal Diseases Laboratory in connection with the importation or exportation of animals:

Test	User fee
Blue tongue agar gel immunodiffusion	$6.25
Foot and mouth virus infection associated antigen	12.00
Foot and mouth tissue culture virus neutralization/type A, O, and C)	13.75
Rinderpest fluorescent antibody neutralization	27.25
Swine virus diarrhea tissue culture virus neutralization	13.75
Trypanosoma vivax indirect fluorescent antibody	27.25

§ 130.11 User fees for reference assistance testing.

The following APHIS user fees must be paid for each test performed as part of reference assistance testing to either establish a diagnosis or confirm a diagnosis:

Type of test	User fee
Agar gel immunodiffusion	$5.00
Bacteria culture	2.00
Complement fixation	20.50
Hemagglutination inhibition	23.75
Histopathology	6.50
Indirect fluorescent antibody	7.50
Parasitology	9.00
Serum neutralization	15.50
Toxicology	139.00
Virus isolation	29.75

§ 130.12 User fees for diagnostic reagents.

(a) The following user fees must be paid for each diagnostic reagent obtained from the National Veterinary Services Laboratory:

Reagent	Unit (ml)	Fee/unit (dollars)
Avian Adenovirus 127:		
Antigen	5	$39.50
Antiserum	5	21.75
Avian Encephalomyelitis:		
Virus	0.6	5.25
Antiserum	5	21.75
Avian Influenza:		
Antigen	2	7.75
Antiserum	6	121.50
Avian Paramyxovirus-2:		
Virus	0.6	5.25
Antiserum	5	21.75
Antigen	5	39.50
Avian Paramyxovirus-3:		
Virus	0.6	5.25
Antiserum	5	21.75
Antigen	5	39.50
Avian Reovirus:		
Virus	0.6	5.25
Bovine Coronavirus:		
Antiserum	2	83.50
Virus	0.6	5.25
Conjugate	1	19.25
Bovine Herpes Virus:		
Antiserum:		
Type 1	2	83.50
Type 2	2	83.50
Type 3	2	83.50
Conjugate:		
Type 1	1	19.25
Type 2	1	19.25
Type 3	1	19.25
Positive Control Serum		
Type 1	2	4.50
Type 2	2	4.50
Virus:		
Type 1	0.6	5.25
Type 2	0.6	5.25
Type 3	0.6	5.25
Bovine Papular Stomatitis:		
Antiserum	2	83.75
Conjugate	1	19.25
Bovine Parvovirus:		
Antiserum	2	83.50
Conjugate	1	19.25
Positive Control Serum	1	4.50
Virus	0.5	5.25
Bovine Respiratory Syncytial Virus:		
Antiserum	2	3.50
Conjugate	1	19.25
Positive Control Serum	2	4.50
Virus	0.6	5.25
Bovine Rotavirus:		
Antiserum	2	83.50
Conjugate	1	19.25
Virus	0.5	5.25
Bovine Viral Diarrhea:		
Antiserum	2	83.50
Conjugate	1	19.25
Positive Control Serum	2	4.50
Virus	0.6	5.25
Brucella Canis:		
Antigen	25	104.00
Brucella Ovis:		
Antigen	25	22.50
Chlamydia Psittaci:		
Virus	0.8	5.25
Antigen	1	5.25
Conjugate	1	19.25
Antiserum	1	5.25
CF Modifying Factor	1	11.50
Modifying Factor	2	1.25
Contagious Ecthyma:		
Antiserum	1	5.25
CF Antigen	1	7.00
Antigen	5	3.75
Conjugate	1	19.25
Virus	0.6	5.25
Duck Viral Enteritis:		
Conjugate	1	31.25
Virus	0.6	5.25
Encephalomyocarditis:		
Antiserum	2	57.50
Conjugate	1	19.25
Virus	0.6	5.25
Positive Control Serum	2	6.25
Epizootic Hemorrhagic Disease		
Antigen	1	16.50
Conjugate	1	19.25
Virus	0.6	5.25
Equine Adenovirus:		
Antiserum	5	48.25
Conjugate	1	24.00
Virus	0.8	5.25
Equine Herpes Type 1:		
Antiserum	5	48.25
Conjugate	1	24.00
Virus	0.6	5.25
Equine Herpes Type 2:		
Antiserum	5	23.75
Virus	0.6	5.25
Equine Herpes Type 3:		
Antiserum	5	22.25
Virus	0.6	5.25
Equine Influenza:		
Antiserum	5	21.75
Virus	0.6	5.25
Exotic Newcastle Disease:		
Antigen	100	39.50

Reagent	Unit (ml)	Fee/unit (dollars)
Antiserum	400	21.75
Virus	100	5.25
Hemagglutinating Encephalomyelitis:		
Antiserum	2	57.50
Virus	0.6	5.25
Conjugate	1	19.25
Positive Control Serum	2	6.25
Infectious Bronchitis Virus		
Virus	0.6	4.50
Antiserum	5	21.75
Infectious Bursal Disease:		
Virus	0.6	5.25
Antiserum	5	21.75
Antigen	1	8.00
Infectious Laryngotracheitis:		
Virus	0.6	5.25
Johnin:		
OT	10	12.25
PPD	2	10.75
Lepto IFA:		
Conjugate	1	19.25
Leptospira:		
Antigen	10	124.00
Antisera	1	9.75
Lepto Transport Medium	10	8.00
Parainfluenza-3:		
Antiserum	2	6.25
Virus	0.6	5.25
Conjugate	1	19.25
Positive Control Serum	2	6.25
Pasteurella:		
Antigen	0.5	1.00
Antiserum	1	18.50
Porcine Adenovirus (AV):		
Antiserum	2	57.50
Virus	0.6	5.25
Conjugate	1	19.25.
Porcine Parvovirus (PPV):		
Antiserum	2	57.50
Virus	0.6	5.25
Conjugate	1	19.25
Positive Control Serum	2	6.25
Porcine Reovirus:		
Antiserum	2	57.50
Virus	0.6	5.25
Conjugate	1	19.25
Porcine Rotavirus:		
Antiserum	2	57.50
Virus	0.6	5.25
Conjugate	1	14.25
Positive Control Serum	2	6.25
Psittacine Herpes Virus:		
Antiserum—Standard	5	21.75
Virus	0.6	5.25
Conjugate	1	34.00
Quail Bronchitis Virus:		
Virus	0.6	5.25
Swine Influenza:		
Antiserum	2	57.50
Virus	0.6	5.25
Conjugate	1	19.25
Positive Control Serum	2	6.25
Transmissible Gastroenteritis:		
Antiserum	2	57.50
Virus	0.6	5.25
Conjugate	1	19.25
Positive Control Serum	2	6.25

§§ 130.13 through 130.49 [Reserved]

§ 130.50 Payment of user fees.

(a) All user fees must be paid as follows:

(1) User fees for reference assistance testing to establish a diagnosis must be paid when billed;

(2) User fees for reference assistance tests to confirm a diagnosis must be paid when the test(s) is requested;

(3) User fees for animals in Animal Import Centers or privately-operated permanent quarantine facilities must be paid at the time the animals are released from quarantine;

(4) User fees for animals in privately-operated temporary quarantine facilities must be paid when billed;

(5) User fees for supervision and inspection services specified in § 130.7 must be paid when billed; and

(6) User fees for export health certificates must be paid prior to receipt of endorsed certificates.

(b) User fees may be paid by the following methods:

(1) Cash, if payment is made at an area office [8] or an Animal Import Center;

(2) All types of checks, including traveler's checks;

(3) Money orders; or

(4) Credit cards (VISA and Master Card) if payment is made at the Animal Import Centers in Newburgh, NY or in Miami, FL, or at the USDA, APHIS, VS, office at John F. Kennedy International Airport, Jamaica, NY.

§ 130.51 Penalties for non-payment or late payment of user fees.

(a) If a person requesting a service for which an APHIS user fee is payable, is delinquent in paying any APHIS user fee under either Title 7 or Title 9, Code of Federal Regulations, or is delinquent in paying the interest on any delinquent APHIS user fee, then APHIS will not provide the service requested.

(b) If APHIS is in the process of providing a service for which an APHIS user fee is due, and the user has not paid the fee within the time required, or if the payment offered by the user is inadequate or unacceptable, then APHIS will take the following action:

(1) If an APHIS user fee is due for animals or birds in quarantine at an Animal Import Center or at a privately-operated quarantine facility, APHIS will not release them;

(2) If an APHIS user fee is due for an export health certificate, APHIS will not release the certificate;

(3) If an APHIS user fee is due for tests conducted by APHIS, APHIS will not release the test results; and

(4) If an APHIS user fee is due for a diagnostic reagent, APHIS will not release the reagent.

(c) If user fees are paid later than 30 days after payment is due, APHIS will impose a late payment penalty and interest charges as in accordance with 31 U.S.C. 3717.

(d) Animals or birds left in quarantine at an Animal Import Center for more than 30 days after the end of the required quarantine period will be deemed to be abandoned.

(1) After APHIS releases the abandoned animals or birds from quarantine, APHIS may seize them and sell or otherwise dispose of them, as determined by the Administrator, provided that their sale is not contrary to any Federal law or regulation, and may recover all expenses of handling the animals or birds from the proceeds of their sale or disposition.

(2) If animals or birds abandoned in quarantine at an Animal Import Center cannot be released from quarantine, APHIS may seize and dispose of them; as determined by the Administrator, and may recover all expenses of handling the animals or birds from the proceeds of their disposition.

Done in Washington, DC this 1st day of August 1991.

Robert Melland,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-18614 Filed 8-6-91; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Stabilization and Conservation Service

7 CFR Part 701

Conservation and Environmental Programs

AGENCY: Agricultural Stabilization and Conservation Service (ASCS), USDA.

ACTION: Proposed rule.

SUMMARY: The purpose of this proposed rule is to amend the regulations governing the Conservation and Environmental Programs found at 7 CFR part 701, to change the definition of an eligible "State" to allow producers in American Samoa to participate in the Agricultural Conservation Program (ACP) and the Emergency Conservation Program (ECP). This change would allow certain producers in American Samoa to be eligible for cost-share assistance under the ACP and ECP.

DATES: Comments must be received by September 6, 1991 in order to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments to: James R. McMullen, Director,

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[8] A list of APHIS Area Offices may be obtained from the Deputy Administrator, Veterinary Services, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

Conservation and Environmental Protection Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013, telephone 202-447-6221.

FOR FURTHER INFORMATION CONTACT: James R. McMullen, Director, Conservation and Environmental Protection Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013, telephone 202-447-6221.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in this regulation (7 CFR part 701) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB Number 0560-0112.

This proposed rule has been reviewed for compliance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified as "not major." It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The titles and numbers of the Federal Assistance Program to which this rule applies are: Title—Agricultural Conservation Program (ACP), Number—10.063; Title—Emergency Conservation Program (ECP), Number—10.054; as found in the Catalog of Federal Domestic Assistance.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

The ACP is authorized generally by Sections 7-17 of the Soil Conservation and Domestic Allotment Act of 1936, as amended (16 U.S.C. 590g *et seq.*) The program provides financial incentives and technical assistance to encourage agricultural producers to voluntarily perform enduring soil and water conservation and pollution abatement measures, including practices or programs which are deemed essential to maintain soil productivity, prevent soil depletion, or prevent increased cost of production.

The ECP is authorized by the Agricultural Credit Act of 1978 (16 U.S.C. 2201 *et seq.*). This program is designed to provide cost-share assistance for emergency work to meet only the critical needs of agricultural producers due to drought or other natural disaster.

Requests have been received from representatives of producers in American Samoa for the implementation of the ACP and the ECP in this area. The Soil Conservation Service has a staff available in American Samoa to provide technical assistance to producers in the area. American Samoa is in the process of forming a Soil and Water Conservation District to service the producers in the area.

The Secretary of Agriculture is authorized to extend, in the Secretary's discretion, programs administered by the Department of Agriculture to Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, the Virgin Islands, and America Samoa (hereinafter called the "territories"). (48 U.S.C. 1469d(c).) Under existing regulations the authority for producers to participate in ACP and ECP has not been extended to American Samoa.

American Samoa is a series of small islands with limited natural resources. In addition, the financial resources of the people living there are very limited. The availability of the ACP to these people will help to control and prevent the erosion of valuable natural resources. The availability of the ECP will assist them in times of natural disaster to rehabilitate the land back to a productive state. These two programs will help the people put valuable conservation measures on the land.

The Secretary is proposing that the ACP and the ECP should be extended to American Samoa and has notified the appropriate committees of Congress of this decision.

List of Subjects in 7 CFR Part 701

Disaster assistance, Forest and forest products, Grant programs—natural resources, Rural areas, Soil conservation, Water resources, Wildlife.

For the reasons set forth in the preamble, 7 CFR part 701 is proposed to be amended as follows:

PART 701—CONSERVATION AND ENVIRONMENTAL PROGRAMS

1. The authority citation for part 701 is revised to read as follows:

Authority: 16 U.S.C. 590d, 590g-590o, 590p(a), 590q; 16 U.S.C. 1501-1510; 16 U.S.C. 1606, 2101-2111; 16 U.S.C. 2201-2205; 48 U.S.C. 1469d(c).

Section 701.2 is amended by revising paragraph (e) to read as follows:

§ 701.2 Definitions.

* * * * *

(e) *State* means any one of the United States, Puerto Rico, the Virgin Islands, and:

(1) In the case of the Agricultural Conservation Program and the Emergency Conservation Program, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa; and

(2) In the case of the Forestry Incentives Program, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands and the Territories and possessions of the United States.

* * * * *

Signed at Washington, DC on February 12, 1991.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 91-18630 Filed 8-6-91; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 985

[FV-91-264]

Spearmint Oil Producing in the Far West; Amendment of Rules and Regulations Regarding the Issuance of Additional Base to New Producers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Reopening and extending the comment period.

SUMMARY: Notice is hereby given that the time period for filing comments is reopened and extended on the proposed rule published in the May 31, 1991, issue of the **Federal Register** (56 FR 24742) under the marketing order for spearmint oil produced in the Far West. The comment period is reopened and extended until August 10, 1991.

DATES: Comments must be received by August 10, 1991.

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7 CFR Part 701

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PART 701—CONSERVATION AND ENVIRONMENTAL PROGRAMS

1. The authority citation for part 701 is revised to read as follows:

Authority: 16 U.S.C. 590d, 590g–590o, 590p(a), 590q; 16 U.S.C. 1501–1510; 16 U.S.C. 1606, 2101–2111; 16 U.S.C. 2201–2205; 48 U.S.C. 1469d(c).

Section 701.2 is amended by revising paragraph (e) to read as follows:

§ 701.2 Definitions.

* * * * *

(e) *State* means any one of the United States, Puerto Rico, the Virgin Islands, and:

(1) In the case of the Agricultural Conservation Program and the Emergency Conservation Program, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa; and

(2) In the case of the Forestry Incentives Program, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands and the Territories and possessions of the United States.

* * * * *

Signed at Washington, DC on February 12, 1991.

Keith D. Bjerko,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 91-18630 Filed 8-6-91; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 985

[FV-91-264]

Spearmint Oil Producing in the Far West; Amendment of Rules and Regulations Regarding the Issuance of Additional Base to New Producers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Reopening and extending the comment period.

SUMMARY: Notice is hereby given that the time period for filing comments is reopened and extended on the proposed rule published in the May 31, 1991, issue of the **Federal Register** (56 FR 24742) under the marketing order for spearmint oil produced in the Far West. The comment period is reopened and extended until August 10, 1991.

DATES: Comments must be received by August 10, 1991.

ADDRESSES: Interested persons are invited to submit written comments in triplicate to the Docket Clerk, F&V, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Christian Nissen, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone (202) 447-5127.

SUPPLEMENTARY INFORMATION: This action is issued under Marketing Order No. 985 (7 CFR part 985) regulating the handling of spearmint oil produced in the Far East. The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

The proposed rule was issued on May 28, 1991, and published in the May 31, 1991, issue of the **Federal Register** (56 FR 24742). It proposed that § 985.153 of the administrative rules and regulations of the spearmint oil marketing order be amended by dividing the production area into four regions for the purpose of distributing additional allotment base to new producers. The production area, which includes the States of Washington, Idaho, and Oregon and portions of the States of California, Nevada, Montana, and Utah, would be divided as follows: Region 1 would consist of those portions of Montana and Utah included in the production area; Region 2 would consist of Oregon and those portions of Nevada and California included in the production area; Region 3 would consist of Idaho; and Region 4 would consist of Washington.

The proposed amendment would make an equal portion of the additional allotment base available to each of the four regions for each class of spearmint oil during a marketing year. It would provide a greater opportunity to new producers in some regions of the production area, such as portions of Montana, Utah, Nevada, Central Oregon, and California, to receive allotment base and undertake the production of spearmint oil.

The U.S. Department of Agriculture has received a request to reopen and extend the deadline to provide more time for interested persons to analyze the proposed rule and prepare comments. Reopening and extending the comment period will provide such interested persons more time to review the proposed rule and submit written views and information pertinent to the proposed change. Accordingly, the comment period is reopened and extended to August 10, 1991.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, and Spearmint oil.

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Dated: August 2, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91-18739 Filed 8-6-91; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 721]

RIN 1512-AA07

Atlas Peak Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms proposes to establish a viticultural area located in Napa County, California, to be known by the appellation "Atlas Peak." The proposal is the result of a petition filed by Mr. Richard Mendelson on behalf of Atlas Peak Vineyards. The proposed area is located entirely within the approved "Napa Valley" viticultural area, which is in turn located within the approved "North Coast" area. ATF believes that the establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers better identify the wines they purchase. The establishment of viticultural areas also allows wineries to specify further the origin of wines they offer for sale to the public.

DATES: Written comments must be received by September 23, 1991.

ADDRESSES: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091-0221, Ref: Notice No. 721.

Copies of the petition, the proposed regulations, the appropriate maps, and written comments will be available for public inspection during normal business hours at: ATF Public Reading Room, room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Marjorie Dundas, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202) 566-7626.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR, part 4. These regulations allow the establishment of definite American viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin in the labeling and advertising of wine. On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new part 9 to 27 CFR, providing for the listing of approved American viticultural areas.

Section 4.25a(e)(1), title 27 CFR defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in subpart C of part 9. Section 4.25a(e)(2), title 27 CFR outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy or copies of the appropriate U.S.G.S. map(s) with the proposed boundaries prominently marked.

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Petition

ATF received a petition proposing a viticultural area in Napa County, California, to be known as Atlas Peak. The proposal was submitted by Mr. Richard Mendelson, on behalf of Atlas Peak Vineyards, the first established winery in the proposed viticultural area. The proposed viticultural area is located six to ten miles north-northeast of Napa, California on the western slope of the Vaca Range (which separates Napa Valley and Sacramento Valley). As proposed, the "Atlas Peak" viticultural area includes the mountain of that name as well as the Foss Valley and portions of the Rector and Milliken Canyons. The proposed viticultural area has a land area of approximately 11,400 acres, with approximately 565 acres planted to vineyards. In addition to Atlas Peak Vineyards, one more winery is under construction. There are 14 commercial vineyards in the proposed area.

If the name Atlas Peak is adopted, then the use of Atlas Peak as a brand name is governed by 27 CFR 4.39(i), which means that (unless it is used in an existing certificate of label approval issued prior to July 7, 1986) the brand name may not be used unless the wine meets the appellation of origin requirements for the viticultural area (not less than 85% of the wine is derived from grapes grown within the boundaries of the viticultural area and the wine has been fully finished in the State in which the viticultural area is located).

Evidence of Name

Atlas Peak is the most prominent feature of the proposed area at an elevation of 2663 feet. The petition states that the original derivation of the name "Atlas Peak" for the mountain and the surrounding Foss Valley remains unclear but that the name has been applied since at least 1875.

As evidence of the name, the petitioner provided copies of newspaper articles from the 1870s discussing the merits of Atlas Peak as a resort area. The first, from the July 10, 1875, Napa County Recorder, describes Atlas Peak as the "divide between Foss and Capelle Valleys" and lists the fine scenery, the pure water, the moderate temperature and the dry air as its advantages over nearby areas for camping. The second article, in the November 18, 1876, Napa County Recorder, described the health benefits of a visit to Atlas Peak. The petitioner also provided a copy of the Report of the Committee on the Establishment of a State Hospital for Consumptives to the California State Legislature in 1880. Atlas Peak was considered as a site for such a hospital on the basis of its "equability of temperature, freedom from fogs, or from harsh winds, the dryness of the atmosphere," and "abundant supply of pure water." The petitioner also states that "Atlas Peak" is the recognized name for the Foss Valley since the name is used for the valley's main road and only school.

Viticultural History

According to the petition, the first vineyard, of 1000 vines, was planted in 1870 by James Reed Harris. By 1881, Harris' vineyard had grown to 5 acres, and by 1893, to 47 acres. The petitioner provided an 1895 assessor's map marked with the locations of six vineyards shown by the assessor's records to be located within the proposed area. According to the petitioner, the vineyards in the Atlas Peak area survived the Phylloxera epidemic of the 1890s, but were abandoned after the enactment of Prohibition in 1920, and no new vines were planted until 1940. In that year, the first new vineyard was planted on Mead Ranch, in the southwest portion of the proposed area. Between the publication in 1951 and photorevision in 1968 of the two U.S.G.S. maps which contain the proposed area, six new vineyards were added. Beginning in 1981, "several new vineyard plantings have been developed in the proposed viticultural area, often utilizing sites previously planted to vines in the 19th century."

The petitioner states that Zinfandel is presently the grape variety most recognized for its regional character, but he anticipates that as "young vineyards in the region reach maturity, other grapes varieties—including Cabernet Sauvignon and Chardonnay—may well receive individual recognition for their special character." The petitioner submitted samples of Zinfandel labels utilized by one California winery which identifies the grapes in the wine as being from the Atlas Peak area, as well as copies of the lists of offerings at the annual Napa Valley Wine Auctions of 1981, 1982 and 1988, which show the source of grapes used in some of the Rutherford Hill wines as "Vines at the Giles Mead Ranch atop Atlas Peak."

Proposed Boundary

As indicated above, the petitioner requests designation of the mountain known as Atlas Peak and the surrounding Foss Valley as the Atlas Peak viticultural area. As evidence for the proposed boundary, the petitioner points out that the name "Atlas Peak" is used to designate the region's oldest access road with a route that traverses Milliken Canyon and Foss Valley as well as Atlas Peak. The boundaries of the proposed area consist mainly of ridge lines which separate Atlas Peak and the Foss Valley from the surrounding valleys and canyons, such as Soda Canyon to the west; Wooden Valley and Capell Valley to the east; and Sage Canyon and Pritchard Hill to the north. The petitioner describes these canyons and valleys as different in history, climate and geology. The boundaries of the proposed "Atlas Peak" viticultural area may be found on two United States Geological Survey maps of the 7.5 minute series. The boundary is described in proposed § 9.140.

Distinguishing Features

The petitioner provided the following evidence relating to features which distinguish the proposed viticultural area from the surrounding areas:

Topography

The proposed area's highest elevation is 2663 feet above sea level at the summit of Atlas Peak. The lowest points are 760 feet above sea level at the bottom of Rector Canyon, in the northwest corner of the proposed area, and 924 feet above sea level at the bottom of Milliken Canyon, in the southeastern portion of the area. Most of the proposed area, even the Foss Valley, which is described by the petitioner as an "elevated hanging valley," is more than 1400 feet above sea level. According to the petitioner, the topography, "an elevated valley surrounded by volcanic mountains of relatively shallow relief," is unusual for the area.

Soils

According to a report prepared by Eugene L. Begg, Soils Consultant, and submitted by the petitioner, the soils of the proposed Atlas Peak area are predominantly volcanic in origin. The soil series reported within the area by the "Soil Survey of Napa County, California" (updated 1978), are Aiken, Boomer, Felta, Guenoc, and Hambright soils from andesite and basalt; the Forward soils from rhyolite; the Bale, Perkins, and Maxwell soils from valley fill alluvium; and the Henneke and Montara soils from serpentine. According to Mr. Begg's report, only the Henneke and Montara soils, which represent a small percentage of the soils within the proposed area, are from a non-volcanic source. By way of contrast, the soils in surrounding areas such as Soda Canyon, Capell Valley, Wooden Valley and Stags Leap are diverse since they are derived from both volcanic and sedimentary rock sources.

Climate

The petitioner included a separate report on the climate of the proposed area prepared by Michael Pechner, a consulting meteorologist, which describes the proposed area as "very distinctive, and perhaps unique in Northern California." In support of this claim, the report describes the effect of the location and topography of the proposed area on the growing conditions. Although the area is only 40 miles from the Pacific ocean and subject to the afternoon and evening cooling which are characteristic of maritime influence, the area is free from the fogs which are drawn up into the rest of the Napa Valley. Mr. Pechner attributes the lack of fog to the fact that the proposed area is east of Napa, has a high elevation, and is connected to Napa Valley by narrow canyons. The report also indicates that cooling in the proposed area is influenced by the fact that the area is characterized by shallow volcanic soils and large areas of volcanic rock.

This contributes to radiant cooling, resulting in late afternoon temperatures which can drop as much as 30 degrees in two hours, and in daily minimum temperatures which are usually lower than those in nearby Stags Leap, Yountville, or Napa. Finally, Mr. Pechner's report indicates that the annual rainfall in the Atlas Peak area is greater than in surrounding areas, "due to the terrain forcing the moist air masses of winter storms upward as they move inland along a southeasterly path from the coast, causing condensation." The report contrasts average rainfall within the Atlas Peak area of 37.5 inches per year with averages of 25 to 35 inches of rain per year in other parts of Napa Valley. According to the petition, only Howell Mountain, "well to the north, has higher rainfall totals."

Executive Order 12291

It has been determined that this document is not a major regulation as defined in E.O. 12291 because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required because the proposal, if promulgated as a final rule, is not expected (1) to have significant secondary or incidental effects on a substantial number of small entities, or (2) to impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice because no requirement to collect information is proposed.

Public Participation

ATF requests comments from all interested persons concerning this proposed viticultural area. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date. ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public.

Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure. Any interested person who desires an opportunity to comment orally at a public hearing on the proposed regulations should submit his or her request, in writing, to the Director within the 45-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Drafting Information

The principal author of this document is Marjorie Dundas, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, Wine.

Issuance

Title 27, Code of Federal Regulations, part 9, American Viticultural Areas is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. The table of sections in subpart C is amended to add the title of § 9.140 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.140 Atlas Peak.

Par. 3. Subpart C is amended by adding 9.140 to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.140 Atlas Peak.

(a) *Name.* The name of the viticultural area described in this section is "Atlas Peak."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the "Atlas Peak" viticultural area are 2 U.S.G.S. (7.5 minute series) maps. They are titled:

(1) Yountville, Calif., 1951 (photorevised 1968);

(2) Capell Valley, Calif., 1951 (photorevised 1968).

(c) *Boundary.* The Atlas Peak viticultural area is located in portions of Napa County, in the State of California. The boundary is as follows:

(1) The beginning point is Haystack (peak) in section 21, T. 7 N., R. 4 W. on the Yountville, California, U.S.G.S. map;

(2) From the beginning point, the boundary follows a straight line in a southeasterly direction, until it reaches the highest point of the unnamed peak (1443 feet elevation) on the boundary of sections 21 and 28 of T. 7 N., R. 4 W. on the Yountville map;

(3) The boundary then proceeds southeast in a straight line to an unnamed pass with an elevation of 1485 feet, located on Soda Canyon Road;

(4) The boundary then turns east and proceeds in a straight line

approximately 0.5 miles until it reaches an unnamed peak with an elevation of 2135 feet;

(5) The boundary then turns southeast and proceeds in a straight line approximately 0.4 miles to an unnamed pass, elevation 1778 feet;

(6) The boundary continues in a generally southeasterly direction, following a series of straight lines connecting the highest points of unnamed peaks with elevations of 2102, 1942, 1871 and 1840 feet, ending in section 2, T. 6 N., R. 4 W. on the Yountville map;

(7) The boundary then proceeds southeast in a straight line approximately 1.8 miles, onto the Capell Valley, Calif., U.S.G.S. map, continuing until it reaches the highest point of an unnamed peak, elevation 1268 feet in section 12, T. 6 N., R. 4 W.;

(8) The boundary proceeds east-southeast in a straight line approximately 1.1 miles until it reaches the point where an unnamed tributary stream enters the Milliken Creek, just south of the Milliken Reservoir in T. 6 N., R. 3 W. on the Capell Valley map;

(9) The boundary follows the unnamed stream east-northeast to its source and then continues east in a straight line approximately 0.5 miles, through the highest point of an unnamed peak, elevation 1846 feet, and to the 1600 foot contour line;

(10) The boundary follows the 1600 foot contour line generally north and west for approximately 10 miles, crosses on to the Yountville, Calif., U.S.G.S. map to the point where it intersects the section boundary line between sections 12 and 13 of T. 7 N. R. 4 W.;

(11) The boundary then follows the section boundary line west approximately 0.8 miles until it reaches an unnamed pass, elevation 2055 feet;

(12) The boundary proceeds west-northwest in a straight line to the highest point of an unnamed peak, elevation 2114 feet, then to the highest point of an unnamed peak, elevation 2023 feet;

(13) From that peak, the boundary goes southwest in a straight line approximately 2.2 miles to Haystack, the beginning point on the Yountville, Calif., U.S.G.S. map.

Approved: July 30, 1991.

Stephen E. Higgins,

Director.

[FR Doc. 91-18647 Filed 8-6-91; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 91-016]

RIN 2115-AD77

Drawbridge Operation Regulations, Waterborne Emergency

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the regulations which govern the nation's drawbridges by requiring that emergency vessels and vessels in an emergency situation, that have given the proper emergency signal, be passed through an attended draw at any time. This proposal is being made because there is provision for the passage of emergency land vehicles, but nothing similar has been done to make allowance for the passage of emergency vessels or vessels in an emergency situation. This action should not seriously interfere with the needs of vehicular traffic, yet still provides for the reasonable needs of navigation in an emergency.

DATES: Comments must be received on or before September 23, 1991.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2/3406) (CGD 91-016) U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, or may be delivered to Room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Mr. Larry R. Tyssens, Alterations, Regulations and Systems Branch (G-NBR-1), at (202) 267-0376.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD 91-016) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under "**ADDRESSES.**" If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The principal persons involved in drafting this document are Mr. Larry R. Tyssens, Project Manager, and Lieutenant Ralph L. Hetzel, Project Counsel, Office of Chief Counsel.

Background and Purpose

An issue has been raised regarding the need for a regulation requiring emergency vessels and vessels in distress—where a delay would endanger life or property—to be passed through drawbridges during scheduled closure periods. Presently, drawtenders are required to close the draw when emergency vehicles wish to cross. However, there is no general requirement to open drawbridges during schedules closure periods for vessels that should be passed without delay.

Discussion of Proposed Amendment

The proposed amendment will allow immediate passage for emergency vessels or vessels in distress, commercial vessels engaged in rescue or emergency salvage operations, and vessels seeking shelter from severe weather equivalent to Force 7 or greater on the Beaufort Wind Scale.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. There will be no cost to the general public other than that associated with the inconvenience to vehicular traffic occasioned by an opening of the draw for an emergency.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard

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Background and Purpose

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Discussion of Proposed Amendment

The proposed amendment will allow immediate passage for emergency vessels or vessels in distress, commercial vessels engaged in rescue or emergency salvage operations, and vessels seeking shelter from severe weather equivalent to Force 7 or greater on the Beaufort Wind Scale.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. There will be no cost to the general public other than that associated with the inconvenience to vehicular traffic occasioned by an opening of the draw for an emergency.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard

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must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

Because this proposal imposes no special expense on small business, and because the rule is expected to be infrequently used, the Coast Guard expects the economic impact of this proposal to be minimal. No new equipment will be required. The delay to vehicular traffic will result in a minimal loss of time. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2. of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation, because it is a Bridge Administration Program action involving the promulgation of operating requirements or procedures for drawbridges. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "**ADDRESSES.**"

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

Part 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.29 is added to read as follows:

§ 117.29 Opening of draw for emergency vessels and vessels in an emergency situation.

Federal, state, and local government vessels used for public safety, vessels in distress where a delay would endanger life or property, commercial vessels engaged in rescue or emergency salvage operations, and vessels seeking shelter from severe weather equivalent to Force 7 or greater on the Beaufort Wind Scale must, upon proper emergency signal, be passed through an attended drawbridge as soon as possible at any time regardless of the operating schedule of the draw.

Dated: July 12, 1991.

L.J. Black,

Acting Chief, Office of Navigation, Safety and Waterway Services.

[FR Doc. 91–18721 Filed 8–6–91; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL MARITIME COMMISSION

46 CFR Chapter IV

[Docket No. 91–14]

Inquiry Concerning Use and Effect of Surcharges by Common Carriers and Conferences

AGENCY: Federal Maritime Commission.

ACTION: Notice of inquiry; enlargement of time to reply.

SUMMARY: The Federal Maritime Commission, by notice published March 22, 1991 (56 FR 12143) solicited public comment and replies to comments on the use and effect of ocean common carrier and conference surcharges. The information received will be used by the Commission for the purpose of determining whether agency regulatory action to address potential problems regarding surcharges is warranted. Subsequently, the Commission extended the time for comments and replies (56 FR 20003; May 1, 1991, and 56 FR 22871; May 17, 1991). The Commission now, upon consideration of requests of interested persons has determined to grant a further limited extension of time to file replies to comments. Parties are reminded to serve copies of replies on all participants in this proceeding and to include a certificate of service on their reply.

DATES: Replies to comments (original and fifteen copies) on or before August 30, 1991.

ADDRESSES: Send comments to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573–0001, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573–0001, (202) 523–5740.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–18692 Filed 8–6–91; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 107, 171, 172, 173, 175, 177, and 178

[Docket No. HM–166X; Notice No. 91–3]

RIN 2137–AA44

Transportation of Hazardous Materials; Proposed Miscellaneous Amendments

AGENCY: Research and Special Programs Administration (RSPA), DOT

ACTION: Notice of proposed rulemaking.

SUMMARY: RSPA is proposing to make several miscellaneous amendments to the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) pertaining to the transportation of hazardous materials. This action is necessary to update the regulations and to respond to petitions for rulemaking.

DATES: Comments must be received October 7, 1991.

ADDRESSES: Address comments to the Dockets Unit (DHM–30), Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001. Comments should identify the docket and notice number and be submitted in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped post card. The Docket Unit is located in room 8421 of the Nassif Building, 400 Seventh Street, SW., Washington, DC. Public Dockets may be reviewed between the hours of 8:30 a.m. and 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Diane LaValle, (202) 366–4488, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001.

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SUPPLEMENTARY INFORMATION: This document is primarily designed to reduce regulatory burdens by incorporating changes in the HMR based on either petitions for rulemaking submitted in accordance with 49 CFR 106.31 or agency initiative. These proposed amendments are in keeping with Executive Order 12291 and are designed to update and simplify existing regulations. On December 21, 1990, RSPA published a final rule in the **Federal Register** (55 FR 52402) under Docket No. HM–181. The final rule, which becomes effective on October 1, 1991, makes significant changes to the HMR with respect to the format of the HMR, and the hazard communication, classification and packaging requirements. The proposals contained in this notice are aligned with the changes adopted under HM–181.

Part 107

In § 107.331, paragraph (d) would be amended by adding the word "(violations)" after the words "prior offenses" to clarify that the words "offense" and "violations" are used interchangably in the Hazardous Materials Transportation Act (HMTA) and HMR. Neither "prior offense" nor "prior violation" includes an act which merely has been the subject of a letter of warning. Both terms, however, include any violation of the HMTA or HMR found in a compromise, settlement, or other order or action taken with prejudice to respondent by an authorized Departmental official (i.e., a model agency head, a chief counsel, a delegee of either, or an administrative law judge).

Part 171

In § 171.7, of part 171, the table in paragraph (a)(3) would be amended by updating the AAR Specifications for Tank Cars, Specification M–1002, from the 1988 edition to the 1990 edition. This proposed change is based on a petition for rulemaking (P–1101) from the Association of American Railroads.

In § 171.8, the definition for "solid" would be revised to correct a technical discrepancy related to the testing of materials.

Part 172

In part 172, the § 172.101 Table would be amended by adding "173.304" in column 8C as a packaging section reference in the entries, "Carbon dioxide, refrigerated liquid" and "Nitrous oxide, refrigerated liquid", and by changing the packaging section references in columns 8A and 8B for "Fire extinguisher" from "173.306" to "173.309". Section 172.400(a)(1) would be revised to include an exception from labeling for dewar flasks containing oxygen, refrigerated liquid (*cryogenic liquid*) conforming to § 173.320(a) when properly marked in accordance with CGA Pamphlet C–7, appendix A. For consistency with requirements contained in § 173.29(d), a new § 172.401(d) would be added to clarify that empty packagings not containing hazardous residues may bear hazard warning labels if transported in closed motor vehicles.

Part 173

In § 173.7, paragraph (b) would be revised to except national security shipments of hazardous materials, other than radioactive materials, from requirements of the HMR, if such shipments are escorted by personnel in transport vehicles other than those carrying the hazardous materials and are accompanied by a document certifying that the shipment is for national security. The current exception in § 173.7 addresses only radioactive materials. The change is based, in part, on a petition from the Department of Energy (P–1084).

In § 173.31, paragraph (b)(4) would be added to permit the shipment of a tank car tank, under certain conditions, after expiration of the retest date. In § 173.32, a new paragraph (e)(5) would be added to clarify that a portable tank filled prior to expiration of the retest date may be shipped, under certain conditions, after the retest date. In § 173.34, paragraph (e)(15)(i) would be changed to remove the 35 year age restriction for DOT–3A and 3AA cylinders manufactured after December 31, 1945. This proposed change is based on a petition for rulemaking (P–1105) from Liquid Carbonic Specialty Gas Corporation.

In § 173.62, in the Table of Packing Methods, in paragraph (c), "US006" would be amended to authorize the transportation of jet perforating guns, charged, by contract motor carriers in addition to private carriers. This proposed change is based on a petition for rulemaking (P–1029) submitted by the Petroleum Equipment Suppliers Association. Interested persons are directed to Docket HM–181 for additional information on explosives. DOT–E 9372 authorizes the transportation of charged oil well casing jet perforating guns, with detonators attached, from the gun assembly site (wireline shop) to the job site. It is proposed to incorporate this provision into the HMR.

In § 173.159, paragraph (d) would be revised to provide for marking "DOT NONSPILLABLE BATTERY" on wet, electric storage batteries which meet "nonspillable" test criteria and to clarify that these batteries are regulated for transport by aircraft and vessel. The marking requirement is based on a petition (P–1097) submitted by the Air Transport Association of America (ATA) which requests that batteries be marked "MEETS U.S. DOT TEST CRITERIA FOR NONSPILLABLE". In § 173.185, paragraph (k) would be added to provide an exception from the HMR for certain DOD shipments of lithium batteries transported for disposal. This request is based on a petition (P–1065) submitted by DOD. DOD's Military Traffic Management Command has provided supporting data from EPA that these batteries are not subject to EPA's hazardous wastes requirements.

In § 173.304, the table in paragraph (a)(2) would be amended and a new paragraph (g) would be added to authorize the use of DOT 4L cylinders for Carbon dioxide, refrigerated liquid and Nitrous oxide, refrigerated liquid. This proposed change is based on petitions (P–1036 from Taylor-Wharton and P–1107 from the Compressed Gas Association, Inc.) and DOT–E 7638, E 8063 and E 8938, which authorize the use of DOT 4L cylinders for these materials. In § 173.306, paragraph (c) would be removed and reserved. The requirements in current § 173.306(c) would be moved to new § 173.309 and expanded to authorize certain DOT specification cylinders to be used as fire extinguishers. This proposed change is based, in part, on a petition (P–0792) submitted by Amerex Corporation and DOT–E 8886. In § 173.314, a new paragraph (g)(3) would be added pertaining to the return of tank cars containing a residual of hydrogen chloride, refrigerated liquid. This proposed change is based on a petition (P–1013) submitted by Dow Chemical U.S.A. In § 173.318, paragraph (g) would be revised to authorize use of the abbreviation "OWTT" for "One-way travel time". This proposed change is based on a petition (P–1072) submitted by Union Carbide and DOT–E 9710, which authorizes the use of this abbreviation. In § 173.423, Table 7 would be amended by correcting a format error which was brought to RSPA's attention by the Nuclear Regulation Commission, i.e., "Other liquids" should be indented the same number of spaces as "Tritiated water".

Part 175

In part 175, several editorial changes would be made for consistency with changes adopted under Docket No. HM–181. In addition, certain safety initiatives, which were either

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In § 173.304, the table in paragraph (a)(2) would be amended and a new paragraph (g) would be added to authorize the use of DOT 4L cylinders for Carbon dioxide, refrigerated liquid and Nitrous oxide, refrigerated liquid. This proposed change is based on petitions (P–1036 from Taylor-Wharton and P–1107 from the Compressed Gas Association, Inc.) and DOT–E 7638, E 8063 and E 8938, which authorize the use of DOT 4L cylinders for these materials. In § 173.306, paragraph (c) would be removed and reserved. The requirements in current § 173.306(c) would be moved to new § 173.309 and expanded to authorize certain DOT specification cylinders to be used as fire extinguishers. This proposed change is based, in part, on a petition (P–0792) submitted by Amerex Corporation and DOT–E 8886. In § 173.314, a new paragraph (g)(3) would be added pertaining to the return of tank cars containing a residual of hydrogen chloride, refrigerated liquid. This proposed change is based on a petition (P–1013) submitted by Dow Chemical U.S.A. In § 173.318, paragraph (g) would be revised to authorize use of the abbreviation "OWTT" for "One-way travel time". This proposed change is based on a petition (P–1072) submitted by Union Carbide and DOT–E 9710, which authorizes the use of this abbreviation. In § 173.423, Table 7 would be amended by correcting a format error which was brought to RSPA's attention by the Nuclear Regulation Commission, i.e., "Other liquids" should be indented the same number of spaces as "Tritiated water".

Part 175

In part 175, several editorial changes would be made for consistency with changes adopted under Docket No. HM–181. In addition, certain safety initiatives, which were either

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recommended by industry or developed by DOT, are proposed. In § 175.10, paragraph (a)(7) is revised for clarity. In paragraphs (a)(12) introductory text, and (a)(12)(ii) and (v), the phrase "aviation security program" would be replaced with the phrase "hazardous materials program". Paragraph (a)(12)(v) is also amended to reflect that some states do not have licensing authority for blasters. Paragraph (a)(12) introductory text would be revised and a new paragraph (a)(12)(vi) would be added to provide for the transportation and routine testing of certain special fireworks manufactured for DOD (based on DOT–E 7648). The § 175.10 requirements in paragraphs (a)(19), addressing the transport of wheelchairs equipped with nonspillable batteries, and (a)(20), for wheelchairs equipped with spillable batteries, would be revised based on a petition (P–1097) from ATA and on RSPA's initiative. Both paragraphs would be reformatted for clarity. The provisions of both paragraphs would be made applicable to battery-powered mobility aids other than wheelchairs, consistent with the International Civil Aviation Organization's (ICAO's) Technical Instructions for the Safe Transport of Dangerous Goods by Air. Provision would be made in paragraph (a)(19) to clarify that a nonspillable battery may be removed from the wheelchair and packaged separately, if necessary (e.g., if the battery were not adequately secured to the wheelchair) and to require that both battery and packaging, if any, be marked "DOT NONSPILLABLE BATTERY". Paragraph (a)(20) would be revised to clarify that a liner may be used to render a packaging leak-tight and impervious to battery fluid, and to delete the requirement that absorbent material "surround" the battery. The term "outside" would be deleted to remove any implication that the packaging is a combination packaging. These changes are intended to facilitate airlines' efforts to implement standardized procedures for routinely handling battery-equipped wheelchairs, while maintaining a high level of safety in the transport of the batteries. Finally, in § 175.10, new paragraph (a)(23) would be added to provide for the transport of a small carbon dioxide cylinder fitted into a life jacket. This latter proposed change is based on a petition (P–1076) submitted by the ATA and requirements contained in the ICAO Technical Instructions.

A new § 175.26 would require the display of certain warning signs or posters at cargo-loading facilities, based on FAA and RSPA initiative. In § 175.78, requirements pertaining to stowage and segregation of hazardous materials would be revised to clarify that they apply to stowage facilities at airports. In § 175.700, proposed changes would require that an air carrier notify the shipper of an incident involving hazardous materials no later than the close of business the following work day.

Part 177

Section 177.804 would be amended by removing the words "to the extent they apply" to eliminate confusion about the extent to which RSPA is incorporating into the HMR the Federal Motor Carrier Safety Regulations (FMCSR), i.e., 49 CFR Parts 390–397 (excluding §§ 397.3 and 397.9). By fully incorporating the applicable provisions of the FMCSR into the HMR, RSPA also would be giving full preemptive effect under the HMR to those provisions when hazardous materials transportation is involved. Specifically, the preemptive effect of those provisions, when the HMR apply, would be determined under the "substantively the same," "dual compliance," and "obstacle" tests set forth in § 107.202 of the HMR (as amended by a February 28, 1991 final rule (Docket HM–207, 56 FR 8616)).

Part 178

In § 178.251–2, pertaining to DOT 56 and 57 portable tanks, paragraph (a) would be revised to provide for caps or plugs covering discharge openings to be made of non-metallic material compatible with the lading (petitions P–1078 from Bishop, Cook, Purcell and Reynolds and P–1092 from Nalco Chemical Company).

Administrative Notices

A. Regulatory Flexibility Act

The proposals in this notice impact persons who offer for transportation and transport hazardous materials, some of whom are small entities. Based on the minimal impact of these proposals and limited information available concerning size and nature of entities likely to be affected, I certify that this proposed regulation will not, if promulgated, have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

B. Executive Order 12291 and Administrative Notices

In view of the type of changes, the RSPA has further determined that this Notice (1) is not "major" under Executive Order 12291; (2) is not "significant" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact would be minimal; and (4) does not require an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

C. Executive Order 12612

I have reviewed this regulation in accordance with Executive Order 12612 ("Federalism"). It has no substantial direct effects on the States, on the Federal-State relationship or the distribution of power and responsibilities among levels of government. Thus, this regulation contains no policies that have Federalism implications, as defined in Executive Order 12612, and no Federalism Assessment is necessary.

List of Subjects in 49 CFR

Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by Reference, Reporting and recordkeeping requirements.

Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

Part 178

Hazardous materials transportation, Packagings and containers, Motor vehicle safety, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 49 CFR Chapter I is amended as follows:

PARTS 171, 172, 173, 175, and 178 [AMENDED]

1. The authority citation for part 107 would continue to read as follows:

Authority: 49 App. U.S.C. 1421(c); 49 App. U.S.C. 1802, 1806, 1808–1811; 49 App. U.S.C. 1653(d), 1655; 49 CFR part 1.

2. The authority citation for part 171 would continue to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1805, 1808; 49 CFR part 1.

3. The authority citation for part 172 would continue to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1808; 49 CFR part 1.

4. The authority citation for part 173 would continue to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1807, 1808; 49 CFR part 1, unless otherwise noted.

5. The authority citation for part 175 would continue to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1807, 1808, 49 CFR part 1.

6. The authority citation for part 177 would continue to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 49 CFR part 1.

7. The authority citation for part 178 would continue to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1808; 49 CFR part 1, unless otherwise noted.

Regulation affected	Reason(s) for proposed change	Proposed amendment
§ 107.331(d)	To reflect the fact that the words "offenses" and "violations" are used interchangeably in the HMTA and the HMR.	In § 107.331(d) the parenthetical expression "(violations)" would be added after the words "prior offenses" and before the semicolon.
§ 171.7	To reflect the current edition of the AAR standard. (P–1101).	In § 171.7, paragraph (a)(3) table, for the entry "AAR Specification for Tank Cars, Specification M–1002, 1988" the date would be changed to "1990".
§ 171.8	To correct a discrepancy in the definition for "solid". A material having a separation of one gram of liquid is included in the definition of a "liquid".	In § 171.8, the definition for "Solid" would be revised to read as follows: * * * * * *Solid* means a material which has a vertical flow of two inches (50 mm) or less within a three-minute period, or a separation of less than one gram (1g) of liquid when determined in accordance with the procedures specified in ASTM D 4359–84, "Standard Test Method for Determining Whether a Material is a Liquid or Solid." * * * * *
§ 172.101 (Table)	To authorize use of DOT 4L cyclinders for carbon dioxide, refrigerated liquid and nitrous oxide, refrigerated liquid.	In the § 172.101 Table, the line entries "Carbon dioxide, refrigerated liquid" and "Nitrous oxide, refrigerated liquid" would be amended by adding "304" in column 8B.
§ 172.101 (Table)	To relocate requirement for fire extinguishers from § 173.306 to § 173.309.	In the § 172.101 Table, the line entry "Fire extinguishers" would be revised by changing columns 8A and 8B from "306" to "309".
§ 172.400a(a)(1)	To except from labeling a Dewar flask containing oxygen, refrigerated liquid (*cryogenic liquid*) when marked in accordance with CGA Pamphlet C–7, appendix A.	In § 172.400a, the introductory text to paragraph (a)(1) would be amended by adding the words "or Dewar flask conforming to § 173.320 of this subchapter" immediately after the word "cylinder".
§ 172.401	To revise paragraph (a) introductory text and add new paragraph (d) to provide that when an empty packaging is labeled and transported in a transport vehicle, the packaging would not be subject to the HMR if it is not visible.	In § 172.401, paragraph (a) introductory text would be revised and paragraph (d) would be added to read as follows: *§ 172.401 Prohibited labeling.* (a) Except as otherwise provided in this section, no person may offer for transportation and no carrier may transport a package bearing a label specified in this subpart unless: * * * * * (d) The provisions of paragraph (a) of this section do not apply to a packaging bearing a label if that packaging is: (1) Unused or cleaned and purged of all residue; (2) Transported in a transport vehicle or freight container in such a manner that the packaging is not visible during transportation; and (3) Loaded by the shipper and unloaded by the shipper or consignee.
§ 173.7	To provide that national security shipments of hazardous materials under escort not be subject to requirements of the HMR.	In § 173.7, paragraph (b) would be revised to read as follows: *§ 173.7 U.S. Government material.* (a) * * * (b) Shipments of hazardous materials, made by or under the direction or supervision of the U.S. Department of Energy (DOE) or the Department of Defense (DOD), and which are escorted by personnel specifically designated by or under the authority of those agencies, for the purpose of national security, are not subject to the requirements of this subchapter. For transportation by a motor vehicle or a rail car, the escorts must be in a separate transport vehicle from the transport vehicle carrying the hazardous materials that are excepted by this paragraph. A document certifying that the shipment is for the purpose of national security must be in the possession of the person in charge of providing security during transportation. * * * * *
§ 173.31(b)(4)	To permit shipment of a tank car tank which has been loaded with a hazardous material prior to expiration of the retest date. After emptying, the tank may not be refilled and shipped until it has been retested.	In § 173.31, paragraph (b)(4) would be added to read as follows: *§ 173.31 Qualification, maintenance, and use of tank cars.* * * * * * (b) * * * (4) A tank car for which the retest has become due may not be filled and offered for transportation until it has been properly tested. * * * * *
§ 173.32(e)(5)	To clarify that a portable tank, which has been loaded with a hazardous material prior to expiration of the retest date, may be offered for transportation. After emptying, the tank may not be refilled and shipped until it has been properly retested.	In § 173.32, paragraph (e)(5) would be added to read as follows: *§ 173.32 Qualification, maintenance and use of portable tanks.* * * * * * (e) * * * (5) A portable tank for which the prescribed retest or reinspection under paragraph (e)(1) of this section has become due may not be filled and offered for transportation until the retest or reinspection has been successfully completed. * * * * *

p. U.S.C. 1802, 1803, 1804, part 1.

y citation for part 172 o read as follows:

p. U.S.C. 1803, 1804, 1808;

y citation for part 173 o read as follows:

p. U.S.C. 1803, 1804, 1805, CFR part 1, unless

y citation for part 175 o read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1807, 1808, 49 CFR part 1.

6. The authority citation for part 177 would continue to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 49 CFR part 1.

7. The authority citation for part 178 would continue to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1808; 49 CFR part 1, unless otherwise noted.

Proposed amendment
n § 107.331(d) the parenthetical expression "(violations)" would be added after the words "prior offenses" and before the semicolon.
n § 171.7, paragraph (a)(3) table, for the entry "AAR Specification for Tank Cars, Specification M–1002, 1988" the date would be changed to "1990". n § 171.8, the definition for "Solid" would be revised to read as follows: * * * * * *Solid* means a material which has a vertical flow of two inches (50 mm) or less within a three-minute period, or a separation of less than one gram (1g) of liquid when determined in accordance with the procedures specified in ASTM D 4359–84, "Standard Test Method for Determining Whether a Material is a Liquid or Solid." * * * * *
n the § 172.101 Table, the line entries "Carbon dioxide, refrigerated liquid" and "Nitrous oxide, refrigerated liquid" would be amended by adding "304" in column 8B.
n the § 172.101 Table, the line entry "Fire extinguishers" would be revised by changing columns 8A and 8B from "306" to "309". n § 172.400a, the introductory text to paragraph (a)(1) would be amended by adding the words "or Dewar flask conforming to § 173.320 of this subchapter" immediately after the word "cylinder".
n § 172.401, paragraph (a) introductory text would be revised and paragraph (d) would be added to read as follows: § *172.401 Prohibited labeling.* (a) Except as otherwise provided in this section, no person may offer for transportation and no carrier may transport a package bearing a label specified in this subpart unless: * * * * * (d) The provisions of paragraph (a) of this section do not apply to a packaging bearing a label if that packaging is: (1) Unused or cleaned and purged of all residue; (2) Transported in a transport vehicle or freight container in such a manner that the packaging is not visible during transportation; and (3) Loaded by the shipper and unloaded by the shipper or consignee. n § 173.7, paragraph (b) would be revised to read as follows: § *173.7 U.S. Government material.* (a) * * * (b) Shipments of hazardous materials, made by or under the direction or supervision of the U.S. Department of Energy (DOE) or the Department of Defense (DOD), and which are escorted by personnel specifically designated by or under the authority of those agencies, for the purpose of national security, are not subject to the requirements of this subchapter. For transportation by a motor vehicle or a rail car, the escorts must be in a separate transport vehicle from the transport vehicle carrying the hazardous materials that are excepted by this paragraph. A document certifying that the shipment is for the purpose of national security must be in the possession of the person in charge of providing security during transportation. * * * * *
n § 173.31, paragraph (b)(4) would be added to read as follows: § *173.31 Qualification, maintenance, and use of tank cars.* * * * * * (b) * * * (4) A tank car for which the retest has become due may not be filled and offered for transportation until it has been properly tested. * * * * *
n § 173.32, paragraph (e)(5) would be added to read as follows: § *173.32 Qualification, maintenance and use of portable tanks.* * * * * * (e) * * * (5) A portable tank for which the prescribed retest or reinspection under paragrap (e)(1) of this section has become due may not be filled and offered for transportation until the retest or reinspection has been successfully completed. * * * * *

Regulation affected	Reason(s) for proposed change	Proposed amendment
§ 173.34(e)(15)(i)	To remove the 35 year restriction for retesting DOT–3A or 3AA cylinders every ten years. (P-1105).	In § 173.34, paragraph (e)(15)(i) would be revised to read as follows: § *173.34 Qualification, maintenance and use of cylinders.* * * * * * (e) * * * (15) * * * (i) This requirement does not apply to cylinders manufactured after December 31, 1945. * * * * *
§ 173.62(c)	To revise packing method "US006" to permit the transport of jet perforating guns with detonators attached and to allow carriage by contract carriers.	In § 173.62(c), the Table of Packing Methods, "US006" would be revised by removing paragraph "a" and revising paragraph "e" by inserting the phrase "or contract" after the word "private". Paragraphs "b" through "f" are redesignated as paragraphs "a" through "e" respectively.
§ 173.159(d)	To add a marking requirement to identify nonspillable wet electric storage batteries.	In § 173.159, paragraphs (d)(1) and (d)(2) would be redesignated as paragraphs (d)(3)(i) and (d)(3)(ii) and the remainder of paragraph (d) would be revised to read as follows: § *173.159 Batteries, wet.* * * * * * (d) Except for transportation by aircraft or vessel, a nonspillable wet electric storage battery is excepted from all other requirements of this subchapter under the following conditions: (1) The battery must be protected against short circuits and securely packaged. (2) The battery, outer packaging and overpack, if applicable, must be marked "DOT NONSPILLABLE BATTERY"; and (3) The battery must be capable of withstanding the following two tests, without leakage of battery fluid from the battery: * * * * *
§ 173.185	To provide an exception from the HMR for the disposal of certain lithium batteries.	In § 173.185, paragraph (k) would be added to read as follows: § *173.185 Lithium batteries and cells.* * * * * * (k) Lithium Sulfur dioxide cells and batteries, for disposal, are not subject to the requirements of this subchapter under the following conditions: (1) When new, each cell contained not more than 2.8 grams of lithium and was electrochemically balanced with a ratio of lithium to sulfur dioxide of 1.0 ± 0.1; (2) Each battery is composed of not more than 10 cells and is appropriately marked to indicate the battery was produced in accordance with current U.S. Army Military Specifications; (3) Each battery is discharged with a discharge device to a remaining average of 0.30 grams of metallic lithium per cell after complete discharge. Such a device may be built into the battery or may be seperate and external to the battery. The device must be able to completely discharge the battery in 5 days; and (4) After being activated for discharge, the batteries are held not less than five days before being offered for transportation.
§ 173.304(g)	To authorize DOT 4L cylinders for "Carbon dioxide, refrigerated liquid" and "Nitrous oxide, refrigerated liquid". To add a paragraph (g) containing pressure control valve settings for these materials.	In § 173.304, paragraph (g) would be added to read as follows: § *173.304 Charging of cylinders with liquefied compressed gas.* (a) * * * (g) *Carbon dioxde, refrigerated liquid or nitrous oxide, refrigerated liquid.* The following provisions apply to carbon dioxide, refrigerated liquid and nitrous oxide, refrigerated liquid: (1) DOT 4L cylinders conforming to the provisions of this paragraph are authorized. (2) Each cylinder must be protected with at least one pressure relief valve and at least one frangible disc conforming to §§ 173.34(d) and 173.304(b)(2). The relieving capacity of the pressure relief device system must be equal to or greater than that calculated by the applicable formula in paragraph 5.9 of CGA Pamphlet S–1.1. (3) The temperature and pressure of the gas at the time of loading may not exceed −18°C (0°F) and 2007 kPa(291 psig) for carbon dioxide and −15.6°C (+4°F) and 2007 kpa (291 psig) for nitrous oxide. Maximum time in transit may not exceed 120 hours. The following pressure control valve settings, design service temperatures and filling densities apply:

Pressure Control Valve Setting maximum start-to discharge gauge pressure in kpa (psig)	Maximum permitted filling density (percent by weight)	
	Carbon dioxide, refrigerated liquid	Nitrous oxide, refrigerated liquid
724 kPa (105 psig)	108	104
1172 kPa (170 psig)	105	101
1586 kPa (230 psig)	104	99
2034 kPa (295 psig)	102	97
2483 kPa (360 psig)	100	95
3103 kPa (450 psig)	96	83
3723 kPa (540 psig)	92	67
4309 kPa (625 psig)	86	60
Design service temperature °C (°F)	−196°C (−320°F)	−196°C (−320°F)

Regulation affected	Reason(s) for proposed change	Proposed amendment
§ 173.306	To relocate the provisions of paragraph (c) to new § 173.309.	In § 173.306, paragraph (c) would be removed and reserved.
§ 173.309	To add § 173.309 containing requirements for fire extinguishers, to provde for fire extinguishers conforming to DOT 3A, 3AA, 4B, 4BW and 4B240ET cylinder specifications, and to allow retest requirements in accordance with § 173.34(e)(8) and (e)(9).	Section 173.309 would be added to read as follows: *§ 173.309 Fire extinguishers.* (a) Fire extinguishers charged with a limited quantity of compressed gas to not more than 1660 kpa (241 psig) at 21°C (70°F) are excepted from labeling (except when offered for transportation by air) and the specification packaging requirements of this subchapter when shipped under the following conditions. In addition, shipments are not subject to subpart F of part 172 of this subchapter, to part 174 of this subchapter except § 174.24 or to part 177 of this subchapter except § 177.817. (1) Each fire extinguisher must have contents which are not flammable poisonous, or corrosive as defined under this subchapter. (2) Each fire extinguisher must be shipped as an inner packaging. (3) Nonspecification cylinders, are authorized subject to the following conditions: (i) The internal volume of each cylinder may not exceed 18 liters (1,100 cubic inches). For fire extinguishers not exceeding 900 ml (55 cubic inches) capacity, the liquid portion of the gas plus any additional liquid or solid must not completely fill the container at 55°C (130°F). Fire extinguishers exceeding 900 ml (55 cubic inches) capacity may not contain any liquefied compressed gas. (ii) Each fire extinguisher manufactured on and after January 1, 1976, must be designed and fabricated with a burst pressure of not less than six times its charged pressure at 21°C (70°F) when shipped. (iii) Each fire extinguisher must be tested, without evidence of failure or damage, to at least three times its charged pressure at 21°C (70°F) but not less than 825 kpa (120 psig) before initial shipment, and must be marked to indicate the year of the test (within 90 days of the actual date of the original test) and "MEETS DOT REQUIREMENTS." This marking will be considered a certification that the fire extinguisher was manufactured in accordance with the requirements of this section. The words "This extinguisher meets all requirements of 49 CFR 173.306" may be displayed on fire extinguishers manufactured prior to January 1, 1976. (iv) For any subsequent shipment, each fire extinguisher must be in compliance with the retest requirements of the Occupational Safety and Health Administration Regulations of the Department of Labor, 29 CFR 1910.157(e). (4) Specification 2P or 2Q (§§ 178.33 and 178.33a of this subchapter) inner nonrefillable metal packagings are authorized for use as fire extinguishers subject to the following conditions: (i) The liquid portion of the gas plus any additional liquid or solid may not completely fill the packaging at 55°C (130°F); (ii) Pressure in the packaging shall not exceed 1250 kpa (181 psig) at 55°C (130°F). If the pressure exceeds 920 kpa (141 psig) at 55°C (130°F), but does not exceed 1100 kpa (160 psig) at 55°C (130°F), a specification DOT 2P inner metal packaging must be used; if the pressure exceeds 1100 kpa (160 psig) at 55°C (130°F), a specification DOT 2Q inner metal packaging must be used. The metal packaging must be capable of withstanding, without bursting, a pressure of one and one-half times the equilibrium pressure of the contents at 55°C (130°F); and (iii) Each completed inner packaging filled for shipment must have been heated until the pressure in the container is equivalent to the equilibrium pressure of the contents at 55°C (130°F) without evidence of leakage, distortion, or other defect. (b) Specification 3A, 3AA, 4B, 4BW or 4B240ET (§§ 178.50, 178.61 and 178.55 of this subchapter) cylinders are authorized for use as fire extinguishers subject to the following conditions: (1) Cylinders must be used exclusively for ammonium phosphate, sodium bicarbonate, potassium bicarbonate, potassium imido dicarboxamide and bromochlorodifluromethane or bromotrifluoromethane, (2) cylinders must be charged with a nonflammable, non-toxic, noncorrosive, dry gas, having a dewpoint at or below minus 46.7°C (52°F) at 101 kpa (1 atmosphere) to not more than the service pressure of the cylinder. (3) Cylinders must be protected externally by suitable corrosion-resisting coatings; (4) Cylinders with service pressures not exceeding 2070 kpa (300 psi), and a water weight not over 5.4 kg (12 pounds), are authorized to be retested in accordance § 173.34(e)(8) or Note 2 of § 173.34(e)(9); and (5) Cylinders having a water weight capacity of greater than 5.4 kg (12 pounds) are authorized to be retested in accordance with § 173.34(e)(9).
§ 173.314(g)	To add a new paragraph (g)(3) to ensure that a tank car containing a residue of hydrogen chloride, refrigerated liquid does not build up pressure sufficient to cause a release of the material through the pressure relief valves.	In § 173.314, paragraph (g)(3) would be added to read as follows: *§ 173.314 Requirements for compressed gases in tank car tanks.* * * * * * (g) * * * (3) Tank cars containing hydrogen chloride, refrigerated liquid, must be unloaded so that any residue remaining in the tank, when vaporized, will not actuate the safety relief device at 21°C (70°F) during transportation * * * * *

Proposed amendment

In § 173.306, paragraph (c) would be removed and reserved.

Section 173.309 would be added to read as follows:

§ 173.309 Fire extinguishers.

(a) Fire extinguishers charged with a limited quantity of compressed gas to not more than 1660 kpa (241 psig) at 21°C (70°F) are excepted from labeling (except when offered for transportation by air) and the specification packaging requirements of this subchapter when shipped under the following conditions. In addition, shipments are not subject to subpart F of part 172 of this subchapter, to part 174 of this subchapter except § 174.24 or to part 177 of this subchapter except § 177.817.

(1) Each fire extinguisher must have contents which are not flammable poisonous, or corrosive as defined under this subchapter.

(2) Each fire extinguisher must be shipped as an inner packaging.

(3) Nonspecification cylinders, are authorized subject to the following conditions:

(i) The internal volume of each cylinder may not exceed 18 liters (1,100 cubic inches). For fire extinguishers not exceeding 900 ml (55 cubic inches) capacity, the liquid portion of the gas plus any additional liquid or solid must not completely fill the container at 55°C (130°F). Fire extinguishers exceeding 900 ml (55 cubic inches) capacity may not contain any liquefied compressed [illegible]

(ii) Each fire extinguisher manufactured on and after January 1, 1976, must be designed and fabricated with a burst pressure of not less than six times its charged pressure at 21°C (70°F) when shipped.

(iii) Each fire extinguisher must be tested, without evidence of failure or damage, to at least three times its charged pressure at 21°C (70°F) but not less than 825 kpa (120 psig) before initial shipment, and must be marked to indicate the year of the test (within 90 days of the actual date of the original test) and "MEETS DOT REQUIREMENTS." This marking will be considered a certification that the fire extinguisher was manufactured in accordance with the requirements of this section. The words "This extinguisher meets all requirements of 49 CFR 173.306" may be displayed on fire extinguishers manufactured prior to January 1, 1976.

(iv) For any subsequent shipment, each fire extinguisher must be in compliance with the retest requirements of the Occupational Safety and Health Administration Regulations of the Department of Labor, 29 CFR 1910.157(e).

(4) Specification 2P or 2Q (§§ 178.33 and 178.33a of this subchapter) inner nonrefillable metal packagings are authorized for use as fire extinguishers subject to the following conditions:

(i) The liquid portion of the gas plus any additional liquid or solid may not completely fill the packaging at 55°C (130°F);

(ii) Pressure in the packaging shall not exceed 1250 kpa (181 psig) at 55°C (130°F). If the pressure exceeds 920 kpa (141 psig) at 55°C (130°F), but does not exceed 1100 kpa (160 psig) at 55°C (130°F), a specification DOT 2P inner metal packaging must be used; if the pressure exceeds 1100 kpa (160 psig) at 55°C (130°F), a specification DOT 2Q inner metal packaging must be used. The metal packaging must be capable of withstanding, without bursting, a pressure of one and one-half times the equilibrium pressure of the contents at 55°C (130°F); and

(iii) Each completed inner packaging filled for shipment must have been heated until the pressure in the container is equivalent to the equilibrium pressure of the contents at 55°C (130°F) without evidence of leakage, distortion, or other defect.

(b) Specification 3A, 3AA, 4B, 4BW or 4B240ET (§§ 178.50, 178.61 and 178.55 of this subchapter) cylinders are authorized for use as fire extinguishers subject to the following conditions:

(1) Cylinders must be used exclusively for ammonium phosphate, sodium bicarbonate, potassium bicarbonate, potassium imido dicarboxamide and bromochlorodifluromethane or bromotrifluoromethane,

(2) cylinders must be charged with a nonflammable, non-toxic, noncorrosive, dry gas, having a dewpoint at or below minus 46.7°C (52°F) at 101 kpa (1 atmosphere) to not more than the service pressure of the cylinder.

(3) Cylinders must be protected externally by suitable corrosion-resisting coatings;

(4) Cylinders with service pressures not exceeding 2070 kpa (300 psi), and a water weight not over 5.4 kg (12 pounds), are authorized to be retested in accordance § 173.34(e)(8) or Note 2 of § 173.34(e)(9); and

(5) Cylinders having a water weight capacity of greater than 5.4 kg (12 pounds) are authorized to be retested in accordance with § 173.34(e)(9).

In § 173.314, paragraph (g)(3) would be added to read as follows:

§ 173.314 Requirements for compressed gases in tank car tanks.

* * * * *

(g) * * *

(3) Tank cars containing hydrogen chloride, refrigerated liquid, must be unloaded so that any residue remaining in the tank, when vaporized, will not actuate the safety relief device at 21°C (70°F) during transportation

* * * * *

Regulation affected	Reason(s) for proposed change	Proposed amendment
§ 173.318(g)	To allow the use of the abbreviation "OWTT" in place of the phrase "One Way Travel Time" to be marked on cargo tanks.	In § 173.318, a sentence is added at the end of the introductory text of paragraph (g), preceding paragraph (g)(1), to read as follows: *§ 173.318 Cryogenic liquids in cargo tanks.* * * * * * (g) * * * The abbreviation "OWTT" may be used in place of the words "One-way-travel-time" in the marking required by this paragraph. * * * * *
§ 173.423	To correct a format error in § 173.423, Table 7, by indenting "Other liquids" the same number of spaces as "Tritiated water".	In § 173.423, the format of the portion of Table 7 under the caption "Liquids" and the line entry "Other liquids" would be revised to read as follows: *§ 173.423 Table of activity limits—excepted quantities and articles.* * * * * *

TABLE 7—ACTIVITY LIMITS FOR LIMITED QUANTITIES, INSTRUMENTS, AND ARTICLES

Nature of contents	Instruments and articles: Instrument and article limits[1]	Instruments and articles: Package limits	Materials package limits
* * *	* * *	* * *	* * *
Liquids:			
Tritiated water:			
<0.1 Ci/liter			1000 Curies.
0.1 Ci to 1.0			100 Curies.
>1.0 Ci/liter			1 Curie.
Other Liquids:	$10^{-3}A_2$	$10^{-1}A_2$	$10^{-4}A_2$
* * *	* * *	* * *	* * *

[1] For mixture of radionuclides see § 173.433(b).

* * * * *

Regulation affected	Reason(s) for proposed change	Proposed amendment
§ 175.10	To revise paragraphs (a)(7), (a)(19), (a)(20)(i), and (a)(20)(ii) for clarity. To revise paragraphs (a)(12) (ii) and (v) for consistency with FAA's review procedures. To add new paragraphs (a)(12)(vi) and (a)(23) to provide for the transportation and routine testing of certain special fireworks manufactured for DOD in the same manner as such testing is currently authorized under exemption DOT E-7648. To add new paragraph (a)(23) to allow for transportation of one small carbon dioxide cylinder in baggage and provide for consistency between requirements contained in the ICAO Technical Instructions and the HMR.	In § 175.10, paragraphs (a)(7), (a)(19), (a)(20), (a)(12) introductory text, (a)(12)(v) and the penultimate sentence of paragraph (a)(12)(ii) would be revised, and paragraphs (a)(12)(vi) and (a)(23) would be added to read as follows: *§ 175.10 Exceptions.* (a) * * * (7) Oxygen, or any hazardous material used for the generation of oxygen, for medical use by a passenger, which is furnished and maintained aboard the aircraft by the aircraft operator in accordance with 14 CFR 121.574 or 135.91. * * * * * (12) Hazardous materials which are loaded and carried on or in cargo aircraft only and which are to be dispensed or expended during flight for weather control, forest preservation and protection, flood control, or avalanche control purposes or routine quality control testing of special fireworks manufactured for the Department of Defense when the following requirements are met: * * * * * (ii) * * * The manual must be approved by the FAA Civil Aviation Security Office responsible for reviewing the operator's hazardous materials program or the FAA Civil Aviation Security Office in the region where the operator is located. * * * * * * * * (v) When dynamite and blasting caps are carried for avalanche control flights, the explosive must be handled by, and at all times be under the control of, a qualified blaster. When required by state or local authority, the blaster must be licensed and the authority must be identified in writing to the FAA Civil Aviation Security Office responsible for reviewing the operator's hazardous materials program or the FAA Civil Aviation Security Office in the region where the operator is located. (vi) When special fireworks aerial illuminating flares, manufactured specifically for the DOD, are carried for in-flight routine quality control testing, the fireworks must be handled by, and at all times be under the control of, a qualified person who has been trained in accordance with a program approved by the local FAA Civil Aviation Security Field Office. The aircraft must be specially modified to conduct the testing operation and must be specifically approved for such operations by the local FAA Civil Aviation Security Field Office before the flight. * * * * * (19) A wheelchair or other battery-powered mobility aid equipped with a nonspillable battery, as checked baggage, provided that— (i) The battery meets the provisions of § 173.159(d) for nonspillable batteries and is marked "DOT NONSPILLABLE BATTERY"; (ii) Visual inspection of the battery reveals no obvious defects; (iii) The battery is disconnected and terminals are insulated to prevent short circuits; (iv) The battery is securely attached to the wheelchair or mobility aid, or is removed and placed in a strong, rigid packaging; and (v) Any packaging or housing which encloses the battery is marked "DOT NONSPILLABLE BATTERY".

Regulation affected	Reason(s) for proposed change	Proposed amendment
		(20) A wheelchair or other battery-powered mobility aid equipped with a spillable battery, as checked baggage, provided that— (i) Visual inspection of the battery reveals no obvious defects; (ii) The battery is disconnected and terminals are insulated to prevent short circuits; (iii) The pilot-in-command is advised, either orally or in writing, prior to departure as to the location of the battery aboard the aircraft; and (iv) The wheelchair or mobility aid is loaded, stowed, secured and unloaded in an upright position or the battery is removed, the wheelchair or mobility aid is carried as checked baggage without further restriction, and the removed battery is carried in a strong, rigid packaging under the following conditions: (A) The packaging must be leak-tight and impervious ot battery fluid. An inner liner may be used to satisfy this requirement if the liner completely surrounds the battery with absorbent material and has a leakproof closure; (B) The battery must be protected against short circuits, secured upright in the packaging, and packaged with enough compatible absorbent material to completely absorb liquid contents in the event of rupture of the battery; and (C) The packaging must be labeled with a CORROSIVE label, marked to indicate proper orientation, and marked with the words "Battery, wet, with wheelchair." * * * * * (23) With approval of the aircraft operator, one small carbon dioxide cylinder fitted into a self-inflating life-jacket plus one spare cartridge may be carried by a passenger or crew member in checked or carry-on baggage.
§ 175.25	To require that airport operators display warning signs at prominent locations within the airport for passengers carrying undeclared hazardous materials aboard the aircraft.	In § 175.25, paragraph (a) would be revised to read as follows: *§ 175.25 Informing passengers about hazardous materials restrictions.* (a) Each aircraft operator who engages in for-hire transportation of passengers shall display notices to passengers concerning the requirements for and penalties associated with, the carriage of hazardous materials aboard aircraft. Each notice must be legible, be prominently displayed in visible airport locations and be seen by passengers where the aircraft operator issues tickets, checks baggage, and maintains aircraft boarding areas. * * * * *
§ 175.26 (new)	To require airport operators to display, at certain locations within airports, warning signs alerting persons of requirements and penalties associated with offering undeclared hazardous materials for transportation aboard an aircraft.	A new § 175.26 would be added to read as follows: *§ 175.26 Notification to cargo customers of the hazardous materials requirements.* (a) Each operator who engages in the acceptance and transport of cargo by aircraft shall display notices to persons offering cargo concerning the requirements and penalties associated with the carriage of hazardous materials aboard aircraft. Such notices shall be prominently displayed in each location where the operator conducts cargo operations and accepts cargo for transport by aircraft. Each notice must contain the following information: Federal law forbids the offering and acceptance of cargo containing hazardous materials (dangerous goods) for transportation by aircraft, except as provided in the Federal Hazardous Materials Regulations (49 CFR parts 171–180). A violation can result in civil penalties of up to $25,000 and criminal penalties of up to $500,000 and 5 years imprisonment (49 U.S.C. 1809). Hazardous materials (dangerous goods) include explosives, compressed gases, flammable liquids and solids, oxidizers, poisons, corrosives and radioactive materials. For transportation as cargo, hazardous materials must conform to applicable national or international regulations and be— Properly classified, authorized and within prescribed quantity limitations for transportation by aircraft. Packaged in authorized packages which are properly marked and labeled, authorized and in condition for transportation by aircraft. Accompanied by a signed shipping paper describing the contents and certifying conformance to the applicable regulations. (b) The information contained in paragraph (a) of this section must be printed: (1) In legible English; (2) In lettering of at least 9.5 mm (3/8 inch) in height. (3) On a background of contrasting color. (c) Size and color of the notice are optional. Additional information, examples, or illustrations, if not inconsistent with required information, may be included
§ 175.78(a)	To clarify that storage segregation requirements apply in storage facilities at airports.	The introductory text preceding Table 1 in paragraph (a) of § 175.78 would be revised to read as follows: *§ 175.78 Stowage compatibility of cargo.* (a) For stowage on an aircraft, in a cargo facility, or at any other area at an airport designated for the stowage of hazardous materials, packages containing hazardous materials which might react dangerously with one another may not be placed next to each other or in a position that would allow a dangerous interaction in the event of leakage. * * * * *
§ 175.700(b)	To specify a time frame within which an air carrier must notify the shipper of an incident involving a hazardous material.	In § 175.700, two sentences would be added between the first and second sentence of paragraph (b) to read as follows: § 175.700 *Special limitations and requirements for radioactive materials.* (a) * * * (b) * * * In addition to the reporting requirements of § 175.45, the carrier must notify the shipper at the earliest practicable moment following any incident in which there has been breakage, spillage or suspected radioactive contamination involving a radioactive material shipment. In no instance may the notification be later than the close of business of the following workday. * * * * * * * *

Proposed amendment

A wheelchair or other battery-powered mobility aid equipped with a spillable battery, checked baggage, provided that—

sual inspection of the battery reveals no obvious defects;

he battery is disconnected and terminals are insulated to prevent short circuits;

he pilot-in-command is advised, either orally or in writing, prior to departure as to location of the battery aboard the aircraft; and

The wheelchair or mobility aid is loaded, stowed, secured and unloaded in an ight position or the battery is removed, the wheelchair or mobility aid is carried as ecked baggage without further restriction, and the removed battery is carried in a ong, rigid packaging under the following conditions:

he packaging must be leak-tight and impervious ot battery fluid. An inner liner may used to satisfy this requirement if the liner completely surrounds the battery with sorbent material and has a leakproof closure;

The battery must be protected against short circuits, secured upright in the ckaging, and packaged with enough compatible absorbent material to completely sorb liquid contents in the event of rupture of the battery; and

he packaging must be labeled with a CORROSIVE label, marked to indicate proper entation, and marked with the words "Battery, wet, with wheelchair."

* * * * *

With approval of the aircraft operator, one small carbon dioxide cylinder fitted into a f-inflating life-jacket plus one spare cartridge may be carried by a passenger or w member in checked or carry-on baggage.

75.25, paragraph (a) would be revised to read as follows:

.25 Informing passengers about hazardous materials restrictions.

ach aircraft operator who engages in for-hire transportation of passengers shall play notices to passengers concerning the requirements for and penalties associat- with, the carriage of hazardous materials aboard aircraft. Each notice must be ble, be prominently displayed in visible airport locations and be seen by passen- s where the aircraft operator issues tickets, checks baggage, and maintains aircraft rding areas.

* * * * *

v § 175.26 would be added to read as follows:

26 Notification to cargo customers of the hazardous materials requirements.

ach operator who engages in the acceptance and transport of cargo by aircraft ll display notices to persons offering cargo concerning the requirements and alties associated with the carriage of hazardous materials aboard aircraft. Such ces shall be prominently displayed in each location where the operator conducts go operations and accepts cargo for transport by aircraft. Each notice must tain the following information:

ederal law forbids the offering and acceptance of cargo containing hazardous materials (dangerous goods) for transportation by aircraft, except as provided in the Federal Hazardous Materials Regulations (49 CFR parts 171–180).

violation can result in civil penalties of up to $25,000 and criminal penalties of up to $500,000 and 5 years imprisonment (49 U.S.C. 1809).

azardous materials (dangerous goods) include explosives, compressed gases, flammable liquids and solids, oxidizers, poisons, corrosives and radioactive materials.

or transportation as cargo, hazardous materials must conform to applicable national or international regulations and be—

- Properly classified, authorized and within prescribed quantity limitations for transportation by aircraft.
- Packaged in authorized packages which are properly marked and labeled, authorized and in condition for transportation by aircraft.
- Accompanied by a signed shipping paper describing the contents and certifying conformance to the applicable regulations.

ne information contained in paragraph (a) of this section must be printed:

legible English;

lettering of at least 9.5 mm (3/8 inch) in height.

a background of contrasting color.

ze and color of the notice are optional. Additional information, examples, or trations, if not inconsistent with required information, may be included

troductory text preceding Table 1 in paragraph (a) of § 175.78 would be revised to l as follows:

78 Stowage compatibility of cargo.

r stowage on an aircraft, in a cargo facility, or at any other area at an airport gnated for the stowage of hazardous materials, packages containing hazardous erials which might react dangerously with one another may not be placed next to h other or in a position that would allow a dangerous interaction in the event of age.

* * * * *

'5.700, two sentences would be added between the first and second sentence of graph (b) to read as follows:

700 Special limitations and requirements for radioactive materials.

*

* In addition to the reporting requirements of § 175.45, the carrier must notify the per at the earliest practicable moment following any incident in which there has n breakage, spillage or suspected radioactive contamination involving a radioac- material shipment. In no instance may the notification be later than the close of ness of the following workday. * * *

* * * * *

Regulation affected	Reason(s) for proposed change	Proposed amendment
§ 177.804	To remove the qualifying words "to the extent those rules apply" to fully incorporate the provisions of the FMCSR.	Section 177.804 would be revised to read as follows: *§ 177.804 Compliance with the Federal Motor Carrier Safety Regulations.* Motor carriers and other persons subject to this part shall comply with 49 CFR parts 390 through 397 (excluding §§ 397.3 and 397.9).
§ 178.251–2(a)	To provide for a discharge cap or plug made of nonmetallic material compatible with the intended lading, on DOT 56 and 57 portable tanks.	In § 178.251–2, paragraph (a) would be revised to read as follows: *§ 178.251–2 Materials of construction.* (a) Except for gaskets, pressure relief devices, valve seats, liners, linings, and caps or plugs used as secondary closing devices over discharge openings, materials of construction must be metal. * * * * *

Issued in Washington, DC on July 29, 1991, under authority delegated in 49 CFR part 106, appendix A.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 91–18357 Filed 8–6–91; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB62

Endangered and Threatened Wildlife and Plants; Proposed Determination of Experimental Population Status for an Introduced Population of Red Wolves in North Carolina and Tennessee

AGENCY: Fish and Wildlife Service.

ACTION: Proposed rule.

SUMMARY: The Service proposes to introduce mated pairs of red wolves (*Canis rufus*) into the Great Smoky Mountains National Park (Park), Haywood and Swain Counties in North Carolina, and Blount, Cocke, and Sevier Counties in Tennessee, and to determine this population to be a nonessential, experimental population according to section 10(j) of the Endangered Species Act of 1973 (Act), as amended. There is presently one other nonessential, experimental population that was introduced in 1987 on the Alligator River National Wildlife Refuge in North Carolina. The currently proposed introduction is part of a continuing effort by the Service to reestablish the red wolf within its historic range so that it may continue to function as a part of the natural environment. Experimental population status is being proposed because section 10(j) authorizes more discretion in devising an active management program for an experimental population than for a regularly listed species, a critical factor in insuring that other agencies and the public will accept the proposed reintroduction. No conflicts are envisioned between the red wolf reintroduction in the Park and any existing or anticipated Federal agency actions or traditional public uses of the Park or adjacent U.S. Forest Service lands.

In relation to the existing experimental population on Alligator River National Wildlife Refuge, the Service proposes to revise the associated special rule to (1) modify the project review date deadline and (2) add Beaufort County, North Carolina, to the list of nearby counties where the experimental population designation would apply.

DATES: Comments from all interested parties must be received by September 6, 1991.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Red Wolf Coordinator, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806. Comments and materials received will be available for public inspection by appointment during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. V. Gary Henry, Red Wolf Coordinator, at the above address (telephone 704/665–1195).

SUPPLEMENTARY INFORMATION:

Background

Among the significant changes made by the Endangered Species Act Amendments of 1982, Public Law 97–304, was the creation of a new section 10(j) which provides for the designation of specific introduced populations of listed species as "experimental populations." Under previous authorities in the Act, the Service was permitted to reintroduce populations into unoccupied portions of a listed species' historic range when it would foster the conservation and recovery of the species. Local opposition to reintroduction efforts, however, stemming from concerns about the restrictions and prohibitions on private and Federal activities contained in sections 7 and 9 of the Act, severely handicapped the effectiveness of this as a management tool.

Under section 10(j), past and future reintroduced populations established outside the current range, but within the species' historic range, may be designated, at the discretion of the Service, as "experimental." Such designations increase the Service's flexibility to manage these reintroduced populations, because such experimental populations may be treated as threatened species for purposes of section 9 of the Act. The Service has much more discretion in devising management programs for threatened species than for endangered species, especially on matters regarding incidental or regulated takings. Moreover, experimental populations found to be "nonessential" to the continued survival of the species in question are treated as if they were only proposed for listing for purposes of section 7 of the Act, except as noted below.

A "nonessential" experimental population is not subject to the formal consultation requirement of section 7(a)(2) of the Act, but if the experimental population is found on a National Wildlife Refuge or National Park, the full protection of section 7 applies to such animals. (The provision in section 7(a)(1) applies to all experimental populations.) The individual organisms comprising the designated experimental population can be removed from an existing source or donor population only after it has been determined that their removal itself is not likely to jeopardize the continued existence of the species, and must be done under a permit issued in accordance with the requirements in 50 CFR 17.22.

The red wolf (*Canis rufus*) is an endangered species that is currently found in the wild only as an experimental population on the Service's Alligator River National Wildlife Refuge in Dare and Tyrrell Counties, North Carolina, and as an endangered species in three small island propagation projects located on Bulls Island, South Carolina; Horn Island, Mississippi; and St. Vincent Island, Florida. These four carefully managed wild populations contain a total of at least 23 animals, including pups. The remaining red wolves are located in 23 captive breeding facilities in the United States. The captive population presently numbers 146 animals, including pups.

The red wolf was originally native to the Southeastern United States from the Atlantic Coast westward to central Texas and Oklahoma, and from the Gulf of Mexico to central Missouri and southern Illinois. The historic relationship of the red wolf to other wild canids is poorly understood, but it is thought that the red wolf coexisted with the coyote (*Canis latrans*) along its western range generally along the line where deciduous cover gave way to open prairie in Texas and Oklahoma. The gray wolf (*Canis lupus*) is believed to have frequented the range north and west of the red wolf, but also occurred among the higher elevations of the Appalachian Mountains as far south as Georgia and Alabama. Fossil records indicate both species inhabiting these higher elevations at one time or another. Historical evidence, however, seems to characterize the red wolf as most common in the once vast pristine bottomland riverine habitats of the Southeast, and especially numerous in and adjacent to the extensive "canebrakes" that occurred in these habitats. The canebrakes harbored large populations of swamp and marsh rabbits, considered likely to be the primary prey of the red wolf under natural conditions. The demise of the red wolf was directly related to man's activities, especially land changes, such as the drainage of vast wetland areas for agricultural purposes; the construction of dam projects that inundated prime bottomland habitat; and predator control efforts at the private, State, and Federal levels. At that time the natural history of the red wolf was poorly understood, and like most other large predators, it was considered a nuisance species.

Today, the red wolf's role as a potentially important part of a natural ecosystem, if it can be restored to portions of its historic range, is certainly better appreciated. Furthermore, it is now clear that traditional controls would not be needed in any case; the red wolf poses no threat to livestock in situations where its natural prey, especially such mammal species as groundhogs, rabbits, raccoons, and deer, is abundant. Park Service surveys and studies in the Park have documented that there is an adequate prey base, especially in the Cades Cove quadrant in Tennessee.

Man-caused pressures eventually forced the red wolf into the lower Mississippi River drainage and lastly into the prairie marshes of southeast Texas and southwest Louisiana. This was where the only surviving population remained in the mid-1970s when the Service decided to trap as many surviving animals as possible and place them in a captive breeding program. This decision was based on the obviously low number of red wolves left in the wild, poor physical condition of these animals due to internal and external parasites and disease, and the threat posed by an expanding coyote population and consequent interbreeding problems.

A Red Wolf Captive Breeding Program was established by contract with the Point Defiance Zoological Park and Aquarium in Tacoma, Washington. Soon thereafter 40 wild-caught adult red wolves were provided to the breeding program, and the first litter of pups was born in May 1977. Since then, the wolves have continued to prosper at this and 22 other captive facilities throughout the United States. Without this extreme action it is certain that the red wolf would now be extinct. Throughout this time, however, the goal of the Service's red wolf recovery program has continued to be the eventual release of at least some of the captive animals into the wild to establish populations within the species' historic range.

To demonstrate the feasibility of reintroducing red wolves, the Service conducted carefully planned one-year experiments in 1976 and 1978. These experiments involved the release of mated pairs of wild-caught red wolves onto Bulls Island, a 5,000-acre component of the Cape Romain National Wildlife Refuge near Charleston, South Carolina. The results of these carefully planned releases indicated that it is feasible to reestablish adult wild-caught red wolves in selected habitats in the wild. The experiments were eventually terminated, and the wolves recaptured and returned to captivity. Bulls Island was not large enough to support a population of red wolves indefinitely, and it was never intended to be a permanent reintroduction site. Observations and conclusions derived from these experiments, plus knowledge gained with wild-caught but captive-reared pups in Texas, also indicated the potential probability of being able to successfully establish captive-reared populations in the wild.

A great deal of investigative effort by Service personnel during the mid-1980s revealed that good habitat for the red wolf existed on lands in northeastern North Carolina that eventually became the Alligator River National Wildlife Refuge. These properties in Dare and Tyrrell Counties comprise nearly 120,000 acres of the finest wetland ecosystems remaining in the Mid-Atlantic region of the United States. Adjacent to the refuge is a 47,000-acre U.S. Air Force weapons range with similar habitats. Intensive studies revealed a good prey base within these Federal properties, a low human population within the general area, and virtually no livestock. The small agricultural base in the area was row crop farming for corn and soybeans. After briefing the North Carolina Congressional delegation, the North Carolina Wildlife Resources Commission, the Commissioner of Agriculture, and the Governor's staff, an intensive effort to inform the local public of the red wolf and its plight resulted in local acceptance of a reintroduction project. This acceptance was voiced by local residents during four public meetings held in the project area. In addition to public information and education, the use of new technology was highlighted. This was the use of the "capture collar," an electronic device that permitted project personnel to track released red wolves and also tranquilize an animal if needed.

On November 12, 1986, four pairs of adult red wolves were shipped to the Alligator River National Wildlife Refuge to begin a 6-month acclimation process. Because of unexpected delays in development of the capture collar, wolves were not released until September 1987. Despite anticipated mortalities during the first 6 months of release, the reintroduction effort has proven that captive-reared red wolves can be successfully released and survive in the wild. Reproduction occurred the first year the animals were released, and at the moment there are 15 red wolves alive in the wild on lands comprising the Alligator River National Wildlife Refuge and the adjacent Air Force Weapons Range in Dare County.

A strategy to propagate wild red wolf offspring was initiated on November 19, 1987, when a pair of adult wolves was shipped from the captive breeding project in Washington State to Bulls Island. Two other island projects have subsequently been initiated, one on Horn Island, Mississippi, and the other on St. Vincent Island, Florida. The island propagation strategy has proven to be very successful. These island projects are now providing wild young red wolves to the project, as well as serving as ideal training sites for captive-born adult wolves to learn their skills in a wild but controlled situation.

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At the present time there are five red wolves on the three island projects. The three island projects are not reintroduction sites, but simply temporary efforts to rear young wild animals for later use in mainland reintroduction efforts.

The Fish and Wildlife Service Captive Breeding Program in Washington State has 48 animals, including pups. There are 98 other red wolves, including pups, in the remaining 22 public and private zoos and captive facilities in the United States. The Service has full responsibility for all red wolves in captivity. It is from these captive breeding projects and the island propagation projects that wolves selected for reintroduction in the Park will come.

For the past year Fish and Wildlife Service and National Park Service personnel have been developing a reintroduction strategy for the red wolf in the Park. Considerable effort has been expended in assessing local interests and concerns with such a project. North Carolina and Tennessee congressional representatives, respective State wildlife agencies, state agricultural agencies, Farm Bureaus, local agricultural interests, and a variety of local organizations have been apprised of the project. The project is designed to address significant questions that have to be clarified before additional red wolf reintroductions can be contemplated. The most pressing need is to ascertain the interactions of red wolves and coyotes under wild conditions. The successes at Alligator River National Wildlife Refuge have been achieved in an area that is free of coyotes. Since approximately 90 percent of historic red wolf habitat now has resident coyotes, it is essential that this biological issue be addressed. It is generally thought that a hierarchy exists among the various wild canids. Studies have demonstrated that red fox populations gradually decline as coyote numbers increase, and coyotes decline in number where their range overlaps with gray wolf range. It appears that the decline of the red wolf in the coastal marshes of Louisiana and Texas was complicated by a parallel expansion of coyote range with subsequent instances of interbreeding. It is thought that this was an exceptional biological phenomenon brought on by man's intervention. Very little is actually known of red wolf-coyote interactions in the wild. The first phase of the Park proposal is oriented at addressing this need.

A coyote tracking investigation was initiated in the Park during the spring of 1990. That study is currently assessing the population density of resident coyotes.

A phased reintroduction into the Park has initially required the removal of two adult pairs of red wolves from the captive breeding and island propagation projects. Animals were selected and flown to Knoxville, Tennessee, in January 1991 and were transported by truck to the Park. Each pair is being held in a 2,500-square-foot acclimation pen for a period of approximately 6 months. Acclimation pens are isolated and provided maximum security. During their acclimation the pairs were allowed to breed. Only one pair successfully bred, producing five pups. This family unit would be utilized for release. At about 10 weeks of age each of the pups in the release group would receive a small, surgically implanted radio transmitter, and the adult animals would be fitted with new capture-tracking collars. The animals would be released a week later. They would be closely monitored via telemetry tracking for the first 10 to 12 weeks, then the frequency of monitoring would be gradually reduced after the family unit establishes predictable patterns of movement. Most of the telemetry tracking would be done from fixed wing aircraft. Special emphasis would be given to determining interactions of released red wolves and resident coyotes, as well as adaptability of the animals to the Park environment.

The acclimation pens function as additional captive propagation facilities, and the captive population figures in this proposed rule include these animals. Although used to acclimate the wolves to the Park environment, this acclimation does not commit the wolves to release or affect the wolves' utility for captive breeding. If the project is not implemented, the acclimated wolves would be transferred to permanent captive breeding facilities elsewhere and be maintained as part of the captive population.

If this initial release is successful, the project would move to a second stage of effort. This stage would entail the acclimation and release of six to eight pairs of adult red wolves and their offspring in various sectors of the Park. Monitoring processes would follow the same protocols as in the first stage. Monitoring would continue to be a primary objective for 2 to 3 years. If the project proceeds to stage two, it is anticipated that the Park and adjacent U.S. Forest Service lands in North Carolina and Tennessee could eventually sustain a red wolf population of about 50 to 70 animals.

Status of Reintroduced Populations

This reintroduced population of red wolves is proposed to be designated as a nonessential experimental population according to the provisions of section 10(j) of the Act. The experimental population status means that the reintroduced population will be treated as a threatened species, rather than an endangered species, for the purposes of sections 4(d) and 9 of the Act, which regulate taking, and other actions. This enables the Service to propose a special rule which can be less restrictive than the mandatory prohibitions covering endangered species.

The proposed special rule provides that there will be no violation of the Act for taking by the public incidental to otherwise lawful hunting, trapping, or other recreational activities or defense of human life, provided such takings are immediately reported to the Park Superintendent or his staff. National Park Service, Fish and Wildlife Service and State employees and agents will be additionally authorized to take animals which need special care or which are posing a threat to livestock or property. Livestock owners may also take red wolves that are actually engaged in the pursuit or killing of livestock on private properties. Such take, however, will only be permitted after due notification to the Superintendent and if efforts to capture offending red wolves prove unsuccessful. Such take must be immediately reported to the Park Superintendent. These flexible rules are considered a key to public acceptance of the reintroduced population. The States of North Carolina and Tennessee have entered into cooperative agreements with the Service as provided by Section 6 of the Act. These cooperative agreements are reviewed annually by the Service to ensure that the States have regulatory authority to conserve listed species, including the red wolf. Hunting and trapping are regulated outside the Park; in the event of wolves' dispersing from the Park, they would be immediately captured and returned to the Park. Therefore, risks of incidental taking outside the Park are virtually nonexistent. No additional Federal regulations are needed.

The nonessential status is appropriate for the following reasons: Although once extirpated from its historic range, the red wolf has recently been reintroduced successfully to a small portion of that range; it exists in low numbers on three widely separated island projects; and the population is secured in 23 captive breeding facilities and zoos in the United States. In addition, recent efforts

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to safeguard red wolf genetic material through cryogenic storage have proven successful. The existing captive population numbers 146 animals, and 23 animals are being managed in the wild. Given the health checks and careful monitoring that these animals receive, it is highly unlikely that disease or other natural phenomenon will threaten the survival of the species. Furthermore, the species breeds readily in captivity. Therefore the taking of 18 to 20 adult animals from this assemblage (assuming a second stage release is realized) will pose no threat to the survival of the species even if all of these animals, once placed in the wild, were to succumb to natural or man-caused factors.

The management advantage derived from the nonessential status comes from the fact that it will change the application of section 7 of the Act (interagency consultation) to the reintroduced population. Outside of the Park (i.e., on U.S. Forest Service lands, on Cherokee Indian tribal lands, or on private lands), the nonessential experimental population will be treated as if it were a species proposed for listing, rather than a listed species. This means that only two provisions of section 7 will apply on these non-Service lands: Section 7(a)(1), which authorizes all Federal agencies to establish conservation programs; and section 7(a)(4), which requires Federal agencies to confer informally with the Fish and Wildlife Service on actions that are likely to jeopardize the continued existence of the species. The results of a conference are only advisory in nature; agencies are not required to refrain from commitment of resources to projects as a result of a conference. There are in reality no conflicts envisioned with any current or anticipated management actions of the U.S. Forest Service or other Federal agencies in the area. Forest Service properties are a benefit to the project since they form a buffer in many areas to private properties, and management activities on National Forests are typically conducive to production of numerous prey animals. There will be no threats to the success of the reintroduction project or the overall continued existence of the red wolf from these less restrictive section 7 requirements.

In the Park, on the other hand, the experimental population will continue to receive the full range of protections of section 7. This will prohibit the National Park Service or any other Federal agency from authorizing, funding, or carrying out an action within the Park which is likely to jeopardize the continued existence of the red wolf. Service regulations at 50 CFR 17.83(b) specify that section 7 provisions shall apply collectively to all experimental and nonexperimental populations of a listed species, rather than solely to the experimental population itself. The Fish and Wildlife Service has reviewed all ongoing and proposed uses of the Park and found none that are likely to jeopardize the continued existence of the red wolf, nor will they adversely affect the success of the reintroduction effort. Uses that could adversely affect success are hunting, trapping, and high-speed vehicular traffic. Hunting and trapping are prohibited in the Park, and vehicular traffic speed limits are reduced to levels not likely to result in vehicle/wolf impacts. Speed limits are 30–35 miles per hour on most roads in the Park and 20 miles per hour in the immediate area of the proposed release. The highest speed limits are 45 miles per hour on a few sections of U.S. Route 441 in North Carolina, approximately 30 miles from the proposed release site.

Location of Reintroduced Population

Since the red wolf is recognized as extinct on all but four small, carefully managed sites within its historic range, this proposed reintroduction site would fulfill the requirement of section 10(j) that an experimental population be geographically isolated and/or easily discernible from existing populations. As previously described, the release site would be the Great Smoky Mountains National Park in Haywood and Swain Counties in North Carolina, and Blount, Cocke, and Sevier Counties in Tennessee. The area is located in the extreme western portion of North Carolina and the extreme eastern portion of Tennessee.

Management

This reintroduction project would be undertaken by the Fish and Wildlife Service. Additional work and assistance would be undertaken by National Park Service personnel operating under an interagency agreement funded by the Fish and Wildlife Service. Phase one plans call for the acclimation of two pairs of wolves for 6 months in captive pens within the Park. One of these pairs has bred and produced five pups during acclimation. During the summer or fall there will be a careful evaluation of where the pups, and the pair (with some or all of the pups) would be released at that time. Released red wolves would be closely monitored via telemetry. It is hoped that the long acclimation period and presence of pups would prove to be effective in keeping the wolves within the boundaries of the Park. Private landowners adjacent to the Park would be requested to immediately report any observation of a red wolf off Park lands to the Park Superintendent. The Fish and Wildlife Service, with Park Service assistance, would take appropriate actions to recapture and return the animal to the Park. After an as yet unspecified period of assessment (probably 10 to 12 months in duration) the released animals would probably be recaptured and data gathered about their movements and interactions with native prey species, resident coyotes, human interactions, and other parameters assessed.

Take of red wolves by the public would be discouraged by an extensive information and education program and by the assurance that all animals would be radio-collared or implanted and therefore easy to locate if they leave the Park. The public would be encouraged to cooperate with the Fish and Wildlife Service and National Park Service in the attempt to maintain the animals on the release site. In addition, the special rule provides there would be no penalty for incidental take in the course of otherwise lawful hunting, trapping, or other recreational activity, or in defense of human life, provided that the taking is immediately reported to the Park Superintendent. Fish and Wildlife Service, National Park Service, and State employees and agents would be additionally authorized to take animals that need special care, pose a threat to livestock or property, or need to be moved for genetic purposes. Take procedures in such instances would involve live capture and removal to a remote area, or if the animal is clearly unfit to remain in the wild, return to the captive breeding facility. Killing of animals would be a last resort and authorized only if live capture attempts failed or there was some clear danger to human life. Private livestock owners would be permitted to take red wolves actually engaged in the pursuit or killing of livestock on private lands only after reporting such conflicts to the Park Superintendent, and only after an early response by Interior Department or State officials has failed to live capture offending animals. In the unlikely event that red wolves are proven to be successfully preying on livestock on private properties, the owner of such livestock would be reimbursed through an established source of non-Federal funds. These flexible rules are considered a key to public acceptance of the reintroduced population.

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unit to adjust to the Park environment would be made. It is thought that this initial phase will be terminated after 10 to 12 months. In consultation with the North Carolina Wildlife Resources Commission, the Tennessee Wildlife Resources Agency, and the National Park Service, the Fish and Wildlife Service would determine the feasibility of reintroducing the red wolf into the Park. Public response to the wolves would also be a factor in the determination. Information and experience gained with the red wolf reintroduction at Alligator River National Wildlife Refuge has provided the confidence needed to consider a project of this magnitude. This reintroduction attempt is consistent with the recovery goals identified for this species.

This proposed reintroduction is not expected to conflict with existing or proposed human activities or hinder the public utilization of the Park. Additionally, the presence of these animals is not expected to impact the ongoing activities designated for this National Park. Utilization of the Park for the establishment of a red wolf population is consistent with the legal responsibility of the National Park Service to enhance the native wildlife resources of the United States.

As described above, two pairs of red wolves were taken from captive breeding and/or island propagation projects for the initial phase of the project. If a second reintroduction phase is attained, animals would generally be taken from these same sources. Additional red wolves would also be available from the stock of wild animals at Alligator River National Wildlife Refuge. If this reintroduction proves successful, it will represent only the second, and by far the largest, viable wild population of red wolves. More importantly, this project would significantly enhance the long-term recovery potential for this critically endangered species. There are no existing or anticipated Federal and/or State actions identified for this release site which are expected to affect this experimental population. For all these reasons, the Fish and Wildlife Service proposes to find that the release of an experimental population into the Park would further the conservation of this species in accordance with section 10(j)(2)(A) of the Endangered Species Act.

Special Rule Changes for Alligator River Population

In the period since codification of the special rule for the experimental population introduced on Alligator River National Wildlife Refuge (50 CFR 17.81(b)), it has become apparent that two changes are needed in the rule for this population. Originally it was indicated that the Service would conduct a review of the project within 5 years of the effective date of the regulation. However, since the actual date for reintroducing wolves on the Refuge did not occur until approximately 11 months after the rule's effective date, the Service proposes to revise the deadline for reevaluating the project to indicate that reevaluation will be accomplished by October 1, 1992, instead of November 19, 1991. Additionally, based on experience gained to date, it now appears that there is some possibility that introduced wolves may wander into Beaufort County, which is in close proximity to the project area. In order to assure that in such an eventuality the wolves would be legally covered under the experimental population designation, the Service proposes to add Beaufort County, North Carolina, to the area covered by the special rule.

Public Comments Solicited

The Fish and Wildlife Service intends that any rule finally adopted be as effective as possible. Therefore, comments or recommendations concerning any aspect of this proposed rule are hereby solicited (see **ADDRESSES** section) from the public, concerned government agencies, the scientific community, industry, or any other interested party. Comments should be as specific as possible.

A final decision on this proposed action will take into consideration any comments or additional information received by the Fish and Wildlife Service. Such communications may lead to a final rule that differs from this proposal.

National Environmental Policy Act

A draft Environmental Assessment prepared under authority of the National Environmental Policy Act of 1969 is available to the public at the Service's Asheville, North Carolina, Office (see **ADDRESSES** section) or the Division of Endangered Species, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240. This assessment will form the basis for a decision as to whether this is a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (implemented at 40 CFR parts 1500–1508).

Required Determinations

The Fish and Wildlife Service has determined that this is not a major rule as defined by Executive Order 12291, and that the rule would not have a significant economic effect on a substantial number of small entities as described in the Regulatory Flexibility Act (5 U.S.C. 601, et. seq). The reintroduction of a nonessential experimental population of red wolves into the Park and the use by these animals of the Park and adjacent Federal lands is compatible with current utilization of the Park and adjacent Federal properties, and is expected to have no adverse impact on public use days. It is reasonable to expect some increase, although probably too small to be measured, in visitor use of the Park after the release of the wolves. The Service has also determined that this action would not involve any taking of constitutionally protected property rights under Executive Order 12630 that require preparation of a takings implication assessment. The rule does not require a Federalism assessment under Executive Order 12612 since it would not have any significant federalism effects as described in the order. The rule as proposed does not contain collections of information which require approval by the Office of Management and Budget under 44 U.S.C. 3501, et. seq.

Author

The principal authors of this proposal are Warren T. Parker and V. Gary Henry (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, Title 50 of the Code of Federal Regulations as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.11(h) by revising the existing entry for "Wolf, red" under MAMMALS to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*	*	
Wolf, red	*Canis rufus*	U.S.A. (SE U.S.A., west to central TX).	Entire, except where listed as Experimental Populations below.	E	1,248, ___	NA	NA
Do	do	do	U.S.A. (portions of NC and TN—see § 17.84(c)(9)).	XN	248, ___	NA	17.84(c)
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3. It is proposed that § 17.84 be amended by revising paragraphs (c)(1), (c)(4), (c)(5)(iii), (c)(6), (c)(9), (c)(10), and (c)(11) and adding paragraph (c)(5)(iv) as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(c) * * *

(1) The red wolf populations identified in paragraphs (c)(9)(i) and (c)(9)(ii) of this section are nonessential experimental populations.

* * * * *

(4)(i) Any person may take red wolves found in the area defined in paragraph (c)(9)(i) of this section in defense of that person's own life or the lives of others, *Provided* that such taking shall be immediately reported to the refuge manager, as noted in paragraph (c)(6) of this section.

(ii) Any person may take red wolves found in the area defined in paragraph (c)(9)(ii) of this section incidental to lawful recreational activities, in defense of that person's own life or the lives of others, or to protect livestock actually pursued or being killed by red wolves on private properties after notifying park personnel and efforts to capture depredating red wolves by project personnel have proven unsuccessful, *Provided* that all such taking shall be immediately reported to the Park Superintendent.

(5) * * *

(iii) Take an animal which constitutes a demonstrable but non-immediate threat to human safety, or which is responsible for depredations to lawfully present domestic animals or other personal property, if it has not been possible to otherwise eliminate such depredation or loss of personal property, *provided* that such taking must be done in a humane manner, and may involve killing or injuring the animal only if it has not been possible to eliminate such threat by live capturing and releasing the specimen unharmed on the refuge or park;

(iv) Move an animal for genetic purposes.

(6) Any taking pursuant to paragraphs (c) (3) through (5) of this section must be immediately reported to either the Refuge Manager, Alligator River National Wildlife Refuge, Manteo, North Carolina, telephone 919/473–1131, or the Superintendent, Great Smoky Mountains National Park, Gatlinburg, Tennessee, telephone 615/436–1294. Either of these two persons will determine disposition of any live or dead specimens.

* * * * *

(9)(i) The Alligator River National Wildlife Refuge reintroduction site is within the historic range of the species in North Carolina, in Dare and Tyrrell Counties; because of their proximity, Beaufort, Hyde, and Washington Counties are also included in the experimental population designation.

(ii) The red wolf also historically occurred on lands that now comprise the Great Smoky Mountains National Park. The park encompasses properties within Haywood and Swain Counties in North Carolina, and Blount, Cocke, and Sevier Counties in Tennessee. Graham, Jackson, and Madison Counties in North Carolina, and Monroe County in Tennessee, are also included in the experimental designation because of the close proximity of these counties to the Park boundary.

(iii) Except for three coastal island propagation projects and these small reintroduced populations, the red wolf is extirpated from the wild. Therefore, there are no other extant populations with which the refuge or park experimental populations could come into contact.

(10) The reintroduced populations will be monitored closely for the duration of the project, generally by use of radio telemetry as appropriate. All animals will be vaccinated against diseases prevalent in canids prior to release. Any animal which is determined to be sick, injured, or otherwise in need of special care, or which moves off Federal lands, will be immediately recaptured by Fish and Wildlife Service and/or National Park Service and/or designated State wildlife agency personnel and given appropriate care. Such animals will be released back to the wild on the refuge or park as soon as possible, unless physical or behavioral problems make it necessary to return the animals to a captive breeding facility.

(11) The status of the Alligator River National Wildlife Refuge project will be reevaluated by October 1, 1992, to determine future management status and needs. This review will take into account the reproductive success of the mated pairs, movement patterns of individual animals, food habits, and overall health of the population. The duration of the first phase of the park project is estimated to be 10 to 12 months. After that period, an assessment of the reintroduction potential of the park for red wolves will be made. If a second phase of reintroduction is attempted, the duration of that phase will be better defined during the assessment. However, it is presently thought that a second phase would last for 3 years, after which time the red wolf would be treated as a

ge	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
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resident species within the park. Throughout these periods, the experimental and nonessential designation of the animals will remain in effect.

* * * * *

Dated: July 2, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91–18633 Filed 8–6–91; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 56, No. 152
Wednesday, August 7, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Intent To Grant Exclusive Licenses; Sonoco Products Co.

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Patent Application Serial No. 06/895,639, "Apparatus for Forming Uniform Density Structural Fiberboard," issued as Patent Number 4,753,713, is available for licensing. Notice is also given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant a partially exclusive license to Sonoco Products Company, Hartsville, South Carolina, on said invention and also on U.S. Patent Application Serial No. 06/864,920, "Method and Apparatus for Forming Three Dimensional Structural Components from Wood Fiber," issued as Patent Number 4,702,870. Notice of Availability on the latter invention was given on January 14, 1988.

DATES: Comments must be received on or before November 5, 1991.

ADDRESSES: Send comments to: USDA–ARS–Office of Cooperative Interactions, Beltsville Agricultural Research Center, Baltimore Boulevard, Building 005, room 401–A, BARC–W, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: M. Ann Whitehead of the Office of Cooperative Interactions at the Beltsville address given above; telephone: 301/344–2786, (FTS) 344–2786.

SUPPLEMENTARY INFORMATION: The USDA–ARS intends to grant to Sonoco Products Company, Hartsville, South Carolina, a partially exclusive license to practice the aforementioned inventions. Patent rights to these inventions are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license these inventions for Sonoco Products Company has submitted a complete and sufficient application for a license, promising therein to bring the inventions into public use upon reasonable terms and within a reasonable period of time.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within ninety days from the date of this published Notice, ARS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

M.A. Whitehead,

Coordinator, National Patent Program.

[FR Doc. 91–18755 Filed 8–6–91; 8:45 am]

BILLING CODE 3410–03–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1992 Economic Censuses Affiliation Report.

Form Number(s): NC–9921.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 122,500 hours.

Number of Respondents: 490,000.

Avg Hours Per Response: 15 minutes.

Needs and Uses: The Bureau of the Census will use the Form NC–9921 to obtain company affiliation information and the corresponding Standard Industrial Classification (SIC) for establishments in transportation; communications; public utilities; finance, insurance and real estate; and services not elsewhere classified. It will also be used to update the Standard Statistical Establishment List (SSEL), the basic sampling frame for many of our surveys. The collection of this information will improve the accuracy and reliability of both the industry and geographic classifications in the 1992 Economic Censuses, which constitute the primary source of facts about the structure and functioning of key sectors of our economy.

Affected Public: Businesses or other for–profit organizations, Small businesses or organizations.

Frequency: Every five years.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 2, 1991.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 91–18750 Filed 8–6–91; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Economic Development Administration.

Title: Public Works Preapplication and Application.

Form Number: Agency Form ED–101P and 101A, OMB 0610–0011.

Type of Request: Extension of the expiration date.

Burden: 674 respondents; 35,996 hours.

Average Hours Per Response: ED–010P: 30 hours. ED–101A: 88 hours.

Needs and Uses: To provide preliminary evaluation of a proposed project as well as to determine if applicants meet legal requirements to be considered for financial assistance.

Affected Public: State and local units of Government, Indian tribes, public authorities, and nonprofit organizations.

Frequency: On occasion.

Federal Register
Vol. 56, No. 152
Wednesday, August 7, 1991

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Economic Censuses, which constitute the primary source of facts about the structure and functioning of key sectors of our economy.

Affected Public: Businesses or other for-profit organizations, Small businesses or organizations.

Frequency: Every five years.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Marshall Mills, 395-7340.

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Dated: August 2, 1991.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 91-18750 Filed 8-6-91; 8:45 am]

BILLING CODE 3510-07-F

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Needs and Uses: To provide preliminary evaluation of a proposed project as well as to determine if applicants meet legal requirements to be considered for financial assistance.

Affected Public: State and local units of Government, Indian tribes, public authorities, and nonprofit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room H5327, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 1, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-18746 Filed 8-6-91; 8:45 am]

BILLING CODE 3510-CW-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: International Trade Administration.

Title: Petition Format for Requesting Relief under U.S. Antidumping Duty Law.

Form Numbers: Agency—ITA-357P and 19 CFR 353.12, OMB—0625-0105.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 85 respondents; 3,400 reporting hours.

40 hours.

Average Hours Per Response: 40 hours.

Needs and Uses: Under section 732 of the Tariff Act of 1930, as amended, the Department of Commerce is required to initiate an antidumping duty investigation when a domestic interested party alleges the elements necessary for the imposition of an antidumping duty on an imported product. The antidumping petition is used to gather the information necessary to determine whether an antidumping duty investigation is warranted. The information requested relates to the existence of sales at less than fair value and injury to the affected U.S. industry. This information is necessary in setting forth an allegation that foreign merchandise is being dumped in the United States and forms the basis for initiating an investigation.

Affected Public: Businesses or other for profit; small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208 New Executive Office Building, Washington, DC 20503.

Dated: August 1, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-18747 Filed 8-6-91; 8:45 am]

BILLING CODE 3510-CW-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: International Trade Administration.

Title: Overseas Trade Fair Certification Program: Application and Evaluation.

Form Numbers: Agency—ITA-4100P and ITA 4103P, OMB—0625-0130.

Type of Request: Revision of a currently approved collection.

Burden: 80 respondents; 601 reporting hours.

Average Hours Per Response: 14.25 hours.

Needs and Uses: The International Trade Administration (ITA) designed the Overseas Trade Fair Certification Program to encourage private sector show organizers to develop, operate, and manage U.S. industry participation in trade fairs overseas. The application form (ITA-4100P) provides specifics about a proposed project that will allow ITA to determine if the trade fair and the requesting organization stand a reasonable chance of success and if it meets ITA's promotion program objectives and general selection criteria. The evaluation form (ITA-4103P) is used by (1) the show organizer to critique the event as well as the government's performance and (2) by the overseas post to provide basic analysis of the event. Evaluation of the results gives feedback to both the private sector organizer and ITA for repeating certification of future editions of the fair.

Affected Public: Businesses or other for profit; small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5327, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 1, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-18748 Filed 8-6-91; 8:45 am]

BILLING CODE 3510-CW-M

Bureau of Export Administration

Automated Manufacturing Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Automated Manufacturing Equipment Technical Advisory Committee will be held August 27 and 28, 1991, 9:30 a.m., in the Herbert C. Hoover Building, room 1617F, 14th and Pennsylvania Avenue NW., Washington, DC. The General Session, which is open to the public, will begin at 9:30 a.m. on August 27. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to automated manufacturing equipment and related technology.

Agenda:

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Review of Core List 2 regulations.

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4. Review of controls on laser feedback devices.
5. Review of controls on motion control boards.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Lee Ann Carpenter, TAC Staff/BXA/ room 1621, U.S. Department of Commerce, 14th and Pennsylvania Ave. NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 5, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 377–2583.

Dated: August 2, 1991.

Betty Anne Ferrell,

Director, Technical Advisory Committee Staff.

[FR Doc. 91–18749 Filed 8–6–91; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A–588–505]

Dynamic Random Access Memory Semiconductors of 256 Kilobits and Above From Japan; Termination of Antidumping Duty Investigation

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On September 14, 1990, the Department of Commerce published a notice of initiation of antidumping duty administrative review and requests for termination of suspended investigation on dynamic random access memory semiconductors of 256 kilobits and above from Japan. On July 18, 1991, the Department requested comments on its proposal to terminate the suspended antidumping duty investigation on dynamic random access memory semiconductors of 256 kilobits and above from Japan. The Department is now terminating this suspended investigation.

EFFECTIVE DATE: August 1, 1991.

FOR FURTHER INFORMATION CONTACT: Steven Presing, Office of Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–4106.

SUPPLEMENTARY INFORMATION:

Background

On December 6, 1985, the Department of Commerce (the Department) self-initiated an antidumping duty investigation under section 732(a) of the Tariff Act of 1930, as amended (the Act), to determine whether dynamic random access memory semiconductors of 256 kilobits and above (DRAMs) are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and whether these imports are materially injuring, or are threatening material injury to, a United States industry, or are materially retarding the establishment of a United States industry (50 FR 51450, December 17, 1985).

On March 19, 1986, the Department published a preliminary determination that DRAMs from Japan were being sold at less than fair value in the United States (51 FR 9475). On August 7, 1986, the Department published a notice of suspension of investigation and amendment of preliminary determination of the antidumping investigation involving DRAMs from Japan (51 FR 28396). The basis for the suspension was an agreement by the Japanese producers/ exporters which account for substantially all of the known imports of these products from Japan, to revise their prices to eliminate sales of this merchandise to the United States at less than fair value.

On August 31, 1990, the Department received timely requests from seven of the signatories to the suspension agreement, in accordance with 19 CFR 353.25(b) (1990) of the Department's regulations, for termination of the suspended investigation on DRAMs from Japan. Included in those requests, the signatories provided certifications that their respective companies: (1) Did not sell products subject to the suspension agreement at less than the foreign market value during the period from the effective date of the suspension agreement to present; and (2) would not in the future sell covered products at less than foreign market value. Pursuant to 19 CFR 353.25(c), the Department considered these requests as including requests for administrative review, and on September 14, 1990, the Department initiated a review to determine whether termination is appropriate (55 FR 37925).

By letter of July 18, 1991, the Department notified parties to the proceeding of its intent to terminate the suspended investigation pursuant to § 353.17(a)(1) of the Department's regulations (19 CFR 353.17(a)(1) (1990)). We received comments from interested parties concerning the proposed termination on July 24, 1991.

Scope of Investigation

The merchandise covered by the investigation are Japanese DRAMs having a memory capacity of 256 kilobits and above, of both the N-channel and the complementary metal oxide semiconductor type, whether in the form of processed wafers, unmounted die, mounted die, or assembled devices however packaged (ceramic, plastic, or other). Processed wafers and dice produced in Japan and assembled into finished DRAMs in another country prior to importation into the United States from the other country are included in the scope of the investigation.

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1,

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1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 et seq. of the Omnibus Trade and Competitiveness Act of 1988. Currently, DRAMs between 80,000 bits and 300,000 bits (including 256K DRAMs), but not over 300,000 bits are classified under subheading 8542.11.336 of the HTS. DRAMs over 300,000 bits are provided for under HTS item number 8542.11.354. Unmounted chips, dies and wafers are classified under HTS subheading 8542.11.023. Prior to January 1, 1989, finished DRAMs of 256K and above were classified under items 687.7443 and 687.7444 of the Tariff Schedules of the United States Annotated (TSUSA). Unassembled DRAMs, including processed wafers and mounted and unmounted die, were provided for under item 687.7405 of the TSUSA.

Termination of Investigation

Based on information contained in the record, the Department has decided to terminate the antidumping duty investigation of DRAMs from Japan. The record contains statements from the Computer System Policy Project (CSPP) and the Semiconductor Industry Association (SIA) supporting the proposed termination. Domestic producers of the subject merchandise are members of the SIA.

Under § 353.17(a) of the Department's regulations (19 CFR 353.17(a) (1990)), the Department may terminate an investigation on its own initiative in an investigation initiated under § 353.11, after notifying all parties to the proceeding and after consultation with the International Trade Commission (ITC). Section 353.17(a) further provides that the Department may not terminate an investigation unless it concludes that the termination is in the public interest. We have notified all parties to the proceeding and have consulted with the ITC. We conclude that termination of the investigation is in the public interest. Accordingly, we are terminating the suspended antidumping duty investigation on DRAMs from Japan.

This action is taken pursuant to section 734(a)(1) of the Tariff Act of 1930, as amended (19 U.S.C. 1673c(a)(1)), and § 353.17(a)(2) of Commerce's regulations (19 CFR 353.17(a)(2)).

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-18754 Filed 8-6-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-504]

Erasable Programmable Read Only Memory Semiconductors From Japan; Termination of Antidumping Administrative Review and Revision of Suspension Agreement

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On September 14, 1990, the Department of Commerce published a notice of initiation of antidumping duty administrative review and requests for termination of suspended investigation on erasable programmable read only memory semiconductors from Japan. On July 11, 1991, the Department published a request for comments on proposed revision on the agreement suspending the antidumping investigation on erasable programmable read only memory semiconductors from Japan. The Department is now terminating this review and revising the agreement suspending this antidumping investigation.

EFFECTIVE DATE: August 1, 1991.

FOR FURTHER INFORMATION CONTACT: Melissa Skinner or Steven Presing, Office of Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-4851 or (202) 377-4106, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 6, 1986, the Department of Commerce (the Department) suspended the antidumping investigation involving erasable programmable read only memory semiconductors (EPROMs) from Japan (51 FR 28253). The basis for the suspension is an agreement by the Japanese producers/exporters which account for substantially all of the known imports of these products from Japan, to revise their prices to eliminate sales of this merchandise to the United States at less than fair value.

On August 31, 1990, the Department received timely requests from six of the signatories to the suspension agreement, in accordance with 19 CFR 353.25(b) (1990) of the Department's regulations, for termination of the suspended investigation on EPROMs from Japan. Included in those requests, the signatories provided certifications that their respective companies: (1) Did not sell products subject to the suspension agreement at less than the foreign market value during the period from the effective date of the suspension agreement to present; and (2) would not in the future sell covered products at less than foreign market value. Pursuant to 19 CFR 353.25(c), the Department considered these requests as including requests for administrative review, and on September 14, 1990, the Department initiated a review to determine whether termination is appropriate (55 FR 37925).

On July 11, 1991, the Department published a notice requesting comments on the proposed revision of the agreement suspending the antidumping investigation on EPROMs from Japan (56 FR 31613). In order to ascertain whether the signatories to the suspension agreement continue to account for substantially all imports of these products from Japan, on June 28, 1991, the Department requested information on total quantity and sales value of EPROMs exported to the United States [19 CFR 353.18(c) (1990) requires that the agreement be signed by exporters (producers and resellers) who account for not less than 85 percent by value or volume of the merchandise]. The Department provided a copy of the proposed revision of the agreement suspending the antidumping investigation on EPROMs to current signatories and known exporters of EPROMs to the United States on July 3, 1991.

We received data on total quantity and value of EPROM exports to the United States from: Fujitsu Limited and Fujitsu Microelectronic, Inc. (Fujitsu); Hitachi, Ltd. (Hitachi); Mitsubishi Electric Corporation and Mitsubishi Electronics America, Inc. (Mitsubishi); NEC Corporation (NEC); OKI Electric Industry Company, Ltd. (Oki); Sanyo Electric Company Ltd. (Sanyo); Sharp Corporation (Sharp); Texas Instruments Japan Limited (TIJ); and Toshiba Corporation (Toshiba). On July 22, 1991, the Department received comments from NEC regarding the proposed revision to the suspension agreement.

The Department has taken into consideration all information and comments received. In response to data received, the Department has determined that Fujitsu, Hitachi, Mitsubishi, NEC, Sanyo, Sharp, and Toshiba, account for substantially all imports of these products from Japan and therefore, in accordance with 19 CFR 353.18(c) (1990), must sign the revised suspension agreement.

In response to comments received from NEC, we have amended section IV.B.1. of the revised agreement to clarify that data would be collected on a calendar quarterly basis, except as

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provided in section VI(C) of the revised agreement.

Based on comments from interested parties, we have determined that the revised suspension agreement will eliminate sales of this merchandise to the United States at less than fair value, that the revised agreement can be monitored effectively, and that the revised agreement is in the public interest. We find, therefore, that the criteria for suspension of an investigation pursuant to section 734 of the Act have been met by the revised EPROM suspension agreement. The terms and conditions of the revised agreement, signed July 31, 1991, are set forth in appendix 1 to this notice.

This notice is published pursuant to section 734(f)(1)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1673c(f)(1)(A)), and section 353.18(h)(1) of Commerce regulations (19 CFR 353.18(h)(1)).

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

Appendix 1: Revision of Suspension Agreement— Erasable Programmable Read Only Memory Semiconductors From Japan

Pursuant to the provision of sections 734(b) and 734(d) of the Tariff Act of 1930, as amended (19 U.S.C. 1673c(b), 1673c(d)) (the "Act"), and § 353.18 of the Department of Commerce (the "Department") Regulations (19 CFR 353.18) (1990), the Department and the signatory producers/exporters of erasable programmable read only memory semiconductors ("EPROMS") from Japan enter into this revised suspension agreement ("the Agreement"). This Agreement revises and supersedes the suspension agreement covering EPROMS from Japan signed on July 30, 1986. On the basis of this revised suspension agreement, the Department shall continue to suspend its antidumping investigation initiated on October 21, 1985 (50 FR 43603, October 28, 1985), with respect to EPROMS from Japan subject to the terms and provisions set forth below.

I. Product Coverage

The following merchandise is subject to this Agreement: (1) EPROMS produced in Japan, whether in the form of processed wafers, unmounted die, mounted die, or assembled devices however packaged (ceramic, plastic, or other) ("merchandise subject to this Agreement").

(2) Processed wafers and dice produced in Japan and assembled into finished EPROMS, or other merchandise of the same class or kind, in another country prior to importation into the United States.

Finished EPROMS are currently classifiable under item numbers 8542.11.00586, 8542.11.00595 and 8542.11.00602 of the Harmonized Tariff Schedules of the United States ("HTS"). Unassembled EPROMS, including processed wafers and mounted and unmounted die, are currently classifiable under HTS item number 8542.11.00014.

II. U.S. Import Coverage

The signatory producers/exporters collectively are the producers and resellers in Japan which currently account for substantially all (not less than 85 percent) of the merchandise imported into the United States, as provided in the Department's regulations. The Department may at any time during the period of this Agreement require additional producers/exporters in Japan to sign this Agreement in order to ensure that no less than substantially all imports into the United States are covered by this Agreement.

III. Basis for the Agreement

In order to satisfy the requirements of section 734(b) of the Act, each signatory producer/exporter of semiconductors from Japan, individually, agrees to make any necessary price revisions to eliminate completely any amount by which the foreign market value of its merchandise exceeds the United States price. For this purpose, the foreign market value will be determined in accordance with section 773 of the Act, and U.S. price in accordance with section 772 of the Act.

IV. Monitoring of the Agreement

A. General Monitoring Provisions

1. The Department will monitor entries of EPROMS from Japan to ensure compliance with Section III of this Agreement.

2. Each signatory producer/exporter agrees to supply the Department with any information and any documentation which the Department may require to ensure that the signatory producer/exporter is in full compliance with the terms and conditions of this Agreement.

3. The Department may conduct administrative reviews under section 751 of the Act, upon request or upon its own initiative, to ensure that exports of EPROMS from Japan are at prices consistent with the terms of this Agreement. The Department may perform verifications pursuant to administrative reviews conducted under section 751 of the Act.

4. The Department may also request the U.S. Customs Service to direct ports of entry to forward an Antidumping Report of Importations for entries of semiconductors during the period this Agreement is in effect.

B. Specific Monitoring Provisions

1. The signatory producers/exporters shall collect and maintain transaction specific data by representative product type, on the quantity and value of sales of the merchandise subject to this Agreement to the United States and in the home market price in accordance with sections 772 and 773 of the Act and the Department's current practice. Cost of production information shall also be collected and maintained, by representative product type, on the total quantity and value of sales: (1) To the United States; (2) in the home market; (3) to countries other than the United States; and (4) on a country-by-country basis, to the five largest countries other than the United States. All informatiion will be collected and maintained on a continuous basis for the most recent four calendar quarters (*i.e.*, January-March, April-June, July-September, and October-December) completed beginning after the effective date of this Agreement. Cost and price data would be collected no later than 60 days from the end of the relevant calendar quarter except as provided in section VI(C) of this Agreement.

2. Each of the individual signatory producers/exporters will review the price and cost data collected under section IV(B)(1) of this Agreement to ensure that its exports of EPROMS from Japan are at prices consistent with the terms of this Agreement.

3. The Department will review publicly available data as well as Customs Form 7501, entry summaries, and other official import data from the Bureau of the Census, on a monthly basis, to determine whether there have been imports that are inconsistent with the provisions of section III of this Agreement.

4. The Department will monitor Bureau of the Census IM–115 computerized records, which include the quantity and value of each entry. Because these records do not provide other specific entry information, such as the identity of the signatory producer/exporter which may be responsible for such sales, the Department may request the U.S. Customs Service to provide such information. The Department may request other additional documentation from the U.S. Customs Service.

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B. Specific Monitoring Provisions

1. The signatory producers/exporters shall collect and maintain transaction specific data by representative product type, on the quantity and value of sales of the merchandise subject to this Agreement to the United States and in the home market price in accordance with sections 772 and 773 of the Act and the Department's current practice. Cost of production information shall also be collected and maintained, by representative product type, on the total quantity and value of sales: (1) To the United States; (2) in the home market; (3) to countries other than the United States; and (4) on a country-by-country basis, to the five largest countries other than the United States. All informatiion will be collected and maintained on a continuous basis for the most recent four calendar quarters (*i.e.*, January-March, April-June, July-September, and October-December) completed beginning after the effective date of this Agreement. Cost and price data would be collected no later than 60 days from the end of the relevant calendar quarter except as provided in section VI(C) of this Agreement.

2. Each of the individual signatory producers/exporters will review the price and cost data collected under section IV(B)(1) of this Agreement to ensure that its exports of EPROMS from Japan are at prices consistent with the terms of this Agreement.

3. The Department will review publicly available data as well as Customs Form 7501, entry summaries, and other official import data from the Bureau of the Census, on a monthly basis, to determine whether there have been imports that are inconsistent with the provisions of section III of this Agreement.

4. The Department will monitor Bureau of the Census IM-115 computerized records, which include the quantity and value of each entry. Because these records do not provide other specific entry information, such as the identity of the signatory producer/exporter which may be responsible for such sales, the Department may request the U.S. Customs Service to provide such information. The Department may request other additional documentation from the U.S. Customs Service.

V. Violation of the Agreement

A. "Violation" means noncompliance with the terms of this suspension agreement caused by an act or omission of a signatory producer/exporter, except, at the discretion of the Secretary, an act or omission which is inadvertent or inconsequential. Prior to making a determination of a violation, the Department will provide the signatories 10 days within which to provide comments.

B. If the Department determines that this Agreement is being or has been violated or no longer meets the requirements of sections 734 (b) or (d) of the Act, the Department will take such action as it determines is appropriate under section 734(i) of the Act and § 353.19 of the Department's regulations. In the event that the Department determines there is a violation under § 734(i) of the Act and issues an antidumping order, a signatory may request in writing a changed circumstances review and, in response to such request, the proceedings in accordance with § 353.22(f) of the Department's regulations, including an expedited action at the Secretary's discretion, may be conducted.

VI. Other Provisions

A. For purposes of section IV(B) of this Agreement, the representative product types of EPROMS are specified in the annex to this Agreement as the items for which the signatories will collect and maintain cost and price information. These items are representative of the EPROMS currently exported to the United States by the signatory producers/exporters. The Department reserves the right to revise the annex to ensure that the representative product types for which the signatories will collect and maintain cost and price information are representative of the types of EPROMS exported to the United States by the signatories and to prevent product selective dumping by the signatories. After notifying the signatories of the proposed changes to the list of representative product types, the Department will provide the signatories 10 days within which to provide technical comments on the intended changes.

B. If the Department has reason to believe that the signatories are not complying with section III of this Agreement, the Department may request the signatories to submit the price and cost information maintained under section IV(B)(1) of this Agreement. The signatories will submit this information to the Department in accordance with the provisions of subpart C of part 353 of the Department's regulations within 14 days of receipt of such a request.

C. Transitional Rule—The signatories will be required to collect and maintain data on a continuous basis for the period beginning August 1, 1991 and ending on December 1, 1991. If, under section VI(B) of this Agreement, the Department requests the signatories to submit price and cost information during this period, the signatories will be required to submit information for the period from August 1 through the date of the Department's request. This information will be submitted to the Department within 14 days of receipt of such a request. Information collected during the period August 1 through September 30, 1991, will be maintained by the signatories until January 1, 1993. Information collected during the period October 1 through December 1, 1991, will be maintained by the signatories until March 1, 1993. For the period beginning after December 1, 1991, data will be collected and maintained as described in section IV(B)(1) of this Agreement.

D. In reviewing the operation of this Agreement for the purpose of determining whether this Agreement has been violated or is no longer in the public interest, the Department will consider imports into the United States from all sources of the merchandise described in section I of this Agreement. For this purpose, the Department will consider factors including, but not limited to, the following: volume of trade, pattern of trade, whether or not the reseller is an original equipment manufacturer, and the reseller's purchase price.

E. The Department will notify the signatories of any relevant amendments to the antidumping law and the Department's corresponding regulations. In addition, upon request, the Department will advise any signatory producer/exporter on the Department's methodology for calculating its United States price and foreign market value.

F. In entering into this Agreement, the signatory producers/exporters do not admit that any sales of the merchandise subject to this Agreement have been made at less than fair value.

G. For purposes of sections IV(B)(2) of this Agreement, each signatory will compare, by representative product type, its home market price with its United States price of the merchandise subject to this Agreement. However, if its sales in the home market are at prices less than its cost of production, each of the signatory producers/exporters will compare, by representative product type, its United States price of the merchandise subject to this Agreement with its constructed value of the merchandise in accordance with section 773(e) of the Act and § 353.50 of the Department's regulations.

VII. Termination

Absent a likelihood of dumping, the Department expects to terminate this suspended investigation and Agreement by August, 1996.

VIII. Definitions

For purposes of this Agreement, the following definitions apply: A. U.S. Price—means the price at which merchandise is sold by the producer or reseller to the first unrelated party in the United States, including the amount of any discounts, rebates, price protection or ship and debit adjustments, and other adjustment affecting the net amount paid or to be paid by the unrelated purchaser, as determined by the Department under section 772 of the Act.

B. Foreign Market Value—means foreign market value as defined in section 773 of the Act and the corresponding sections of the Department's regulations.

C. Date of Sale—is the date on which the essential terms of sale, specifically price and quantity, are finalized to the extent that they are outside the parties' control, normally the date of confirmation of sales.

IX. Effective Date

The effective date of this revision on the agreement suspending the antidumping investigation on EPROMS is August 1, 1991.

Signed on this 31st day of July, 1991.

For Japanese producers/exporters.

Mark D. Herlach,
NEC Corporation.
Carl W. Schwarz,
Hitachi, Ltd.
Warren E. Connelly,
Fujitsu, Ltd.
Thomas P. Ondeck,
Mitsubishi Electric Corp.
David P. Houlihan,
Toshiba Corp.
Gail T. Cumins,
Sanyo Electric Co.
Peter J. Gartland,
Sharp Electric Co.

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For U.S. Department of Commerce.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

ANNEX TO REVISED SUSPENSION AGREEMENT.—EPROMS FROM JAPAN

Product	Subgroup	Representative product type (Note: All speeds)
EPROM:		
	64K	8K*8 NMOS CER DIP
	128K	16K*8 CMOS CER DIP
	256K	32K*8 CMOS CER DIP
	512K	64K*8 CMOS CER LCC
		64K*8 CMOS CER DIP
	1Mb	128K*8 CMOS CER DIP
		128K*8 CMOS PLCC
		64K*16 CMOS CER DIP
		64K*16 CMOS PLCC
	2Mb	256K*8 CMOS CER DIP
		256K*8 CMOS PLCC
		128K*16 CMOS CER DIP
		128K*16 CMOS PLCC
	4Mb	512K*8 CMOS CER DIP
		512K*8 CMOS PLCC
		256K*16 CMOS CER DIP
		256K*16 CMOS PLCC

[FR Doc. 91–18753 Filed 8–6–91; 8:45 am]

BILLING CODE 3510-DS-M

[A–122–813]

Initiation of Antidumping Duty Investigation: Nepheline Syenite From Canada

AGENCY: Import Administration, International Trade Administration, Commerce

EFFECTIVE DATE: August 7, 1991.

FOR FURTHER INFORMATION CONTACT: John Gloninger, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–2778.

Initiation

The Petition

On July 12, 1991, The Feldspar Corporation (TFC) filed with the Department of Commerce (the Department) an antidumping duty petition on behalf of a regional United States industry producing feldspar and aplite, alleged to be like products to nepheline syenite. In accordance with 19 CFR 353.12, the petitioner alleges that imports of nepheline syenite from Canada are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, domestic producers of the like products, feldspar and aplite, located within the region.

The petitioner has stated that it has standing to file the petition because it is an interested party, as defined in 19 CFR 353.2(k), and because it has filed the petition on behalf of the regional U.S. industry producing like products.

On July 25, 1991, the Department received a letter from Unimin Corporation (Unimin), a domestic feldspar producer located near to, but outside, the region identified in the petition. Unimin is also the parent of the sole Canadian exporter of nepheline syenite. The Department agreed to receive Unimin's submission because it was uncertain whether Unimin was a target and/or a member of the domestic industry, and because Unimin was raising the issue of the petitioner's standing. In its submission, Unimin argued that TFC lacks standing to file this petition because: (1) TFC's products are not like products, and (2) if TFC's products are determined to be like products, then the Department's analysis of whether TFC represents the industry should include producers of other like products. Unimin requested that the Department immediately make a like product determination regarding TFC's feldspar and aplite products.

The Department has determined that since Unimin is sole owner of the Canadian nepheline syenite exporter, the Department is precluded under *Roses Inc.* v. *United States,* 706 F.2d 1563 (Fed. Cir. 1983) and 19 CFR 353.12(i) from considering Unimin's arguments. Further, since Unimin is also located outside the region as alleged by the petitioner, the Department is precluded from considering Unimin a part of the regional domestic industry under *Gilmore* v. *United States,* 7 CIT 219, 585 F.Supp. 670 (1984). However, the Department will reexamine the standing issue should the International Trade Commission (ITC) determine that the boundaries of the region are such that Unimin would fall within them. If any interested party, as described in 19 CFR 353.2(k)(3), (4), (5), or (6), wishes to register support for, or opposition to, this investigation, please file written notification with the Assistant Secretary for Import Administration.

United States Price and Foreign Market Value

The petitioner bases United States Price for glass-grade and fiberglass-grade nepheline syenite on information from U.S. parties and its own experience. The information consists of sales reports or other similar documentation identifying a price which the petitioner would need to meet to receive an order, or the margin by which a quotation was not competitive. The petitioner adjusted the FOB Canada prices by deducting freight charges.

The petitioner bases foreign market value for glass-grade (grade 340) nepheline syenite on information from a source in Canada. The petitioner calculated foreign market value for fiberglass-grade (grade 333) nepheline syenite by first calculating the difference between Unimin's price on grade 340 and grade 333 as published in Industrial Minerals and then subtracting this difference from the grade 340 price. Petitioner made no adjustments to foreign market value.

Based on a comparison of U.S. price and foreign market value, petitioner alleges dumping margins of 1.13 percent to 18 percent, depending on grade and quantity.

Initiation of Investigation

Under 19 CFR 353.13(a), the Department must determine, within 20 days after a petition is filed, whether the petition properly alleges the basis on which an antidumping duty may be imposed under section 731 of the Act, and whether the petition contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on nepheline syenite from Canada and find that it meets the requirements of 19 CFR 353.13(a). Therefore, we are initiating an antidumping duty investigation to determine whether imports of nepheline syenite from Canada are being, or are likely to be, sold in the United States at less than fair value.

In accordance with 19 CFR 353.13(b) we are notifying the ITC of this action.

Any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14.

Scope of Investigation

The product covered by this investigation is nepheline syenite which is a coarse crystalline rock consisting principally of feldspathic minerals (*i.e.,*

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United States Price and Foreign Market Value

The petitioner bases United States Price for glass-grade and fiberglass-grade nepheline syenite on information from U.S. parties and its own experience. The information consists of sales reports or other similar documentation identifying a price which the petitioner would need to meet to receive an order, or the margin by which a quotation was not competitive. The petitioner adjusted the FOB Canada prices by deducting freight charges.

The petitioner bases foreign market value for glass-grade (grade 340) nepheline syenite on information from a source in Canada. The petitioner calculated foreign market value for fiberglass-grade (grade 333) nepheline syenite by first calculating the difference between Unimin's price on grade 340 and grade 333 as published in Industrial Minerals and then subtracting this difference from the grade 340 price. Petitioner made no adjustments to foreign market value.

Based on a comparison of U.S. price and foreign market value, petitioner alleges dumping margins of 1.13 percent to 18 percent, depending on grade and quantity.

Initiation of Investigation

Under 19 CFR 353.13(a), the Department must determine, within 20 days after a petition is filed, whether the petition properly alleges the basis on which an antidumping duty may be imposed under section 731 of the Act, and whether the petition contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on nepheline syenite from Canada and find that it meets the requirements of 19 CFR 353.13(a). Therefore, we are initiating an antidumping duty investigation to determine whether imports of nepheline syenite from Canada are being, or are likely to be, sold in the United States at less than fair value.

In accordance with 19 CFR 353.13(b) we are notifying the ITC of this action.

Any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14.

Scope of Investigation

The product covered by this investigation is nepheline syenite which is a coarse crystalline rock consisting principally of feldspathic minerals (*i.e.*,

sodium-potassium feldspars and nepheline), with little or no free quartz, and ground no finer than 140 mesh. Nepheline syenite is currently classifiable under item 2529.30.0010 of the Harmonized Tariff Schedule (HTS). Although the HTS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Preliminary Determination by ITC

The ITC will determine by August 26, 1991, whether there is a reasonable indication that imports of nepheline syenite from Canada are materially injuring, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated. If affirmative, the Department will make its preliminary determination on or before December 19, 1991, unless the investigation is terminated pursuant to 19 CFR 353.17 or the preliminary determination is extended pursuant to 19 CFR 353.15.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: August 1, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-18751 Filed 8-6-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-401]

Red Raspberries From Canada; Final Results of Antidumping Duty Administration Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: In response to requests from the petitioners and three respondents, the Department of Commerce has conducted an administrative review of the antidumping duty order on fresh and frozen red raspberries from Canada. The review covers twelve processors/exporters of this merchandise to the United States and the period June 1, 1989 through May 31, 1990.

We gave interested parties an opportunity to comment on our preliminary results, published on April 25, 1991 (56 FR 19087). Based on our analysis of the comments received, the final results of review have changed for one respondent, Universal Packers. The final margins now range from zero to 4.43 percent.

EFFECTIVE DATE: August 7, 1991.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick, Mark Spellun, or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On April 25, 1991, the Department of Commerce (the Department published in the **Federal Register** (56 FR 19087) a notice of the preliminary results of review of the antidumping duty order on certain red raspberries from Canada (50 FR 26019; June 24, 1985) for the period June 1, 1989 through May 31, 1990. The Department has now completed the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by this review are shipments of fresh and frozen red raspberries packed in bulk containers and suitable for further processing. These products are classifiable under the Harmonized Tariff Schedule (UTS) item numbers 0810.20.90, 0810.20.10, and 0811.20.20. The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

The review covers twelve processors/exporters of Canadian red raspberries and the period June 1, 1989 through May 31, 1990.

Five processors/exporters reported no shipments during the review period.

Analyis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from the respondents, B.C. Blueberry Co-op, Clearbrook Packers Inc., Mukhtiar & Sons Packers Ltd., Universal Packers Inc., and Valley Berries Inc. and from the petitioners, the Washingtron Red Raspberry Commission and the Red Raspberry Committee of the Oregon Caneberry commission.

Comment 1: Respondents contend that the petitioners lack standing to request reviews because there is no evidence on the record of this segment of the proceeding that the Washington Red Raspberry Commission (WRRC) and the Red Raspberry Regional Relations Committee of the Oregon Caneberry Commission (OCC) qualify as interested parties within the meaning of section 771(9) (E) or (G) of the Tariff Act (19 U.S.C. 12677(9)(E) and 19 U.S.C. 1677(9)(G), respectively). Respondents assert that there is no evidence on the record indicating that WRRC or OCC is a trade or business association, a majority of whose members are producers or wholesalers of bulk-packed red raspberries. Nor is there evidence on the record that the WRCC and OCC are members of an industry engaged in producing a processed agricultural product. Therefore, petitioners' request for review of Universal Packers Inc. (Universal) and Valley Berries Inc. (Valley is invalid and Universal and Valley should be excluded from the review.

Petitioners point out that the Department has consistently rejected respondents' claim that WRRC and OCC lack standing as interested parties in this as well as in the two previous segments of this proceeding and granted APO requests to the petitioners. Petitioners cite their submission of July 17, 1990 as factual evidence in the record of these proceedings regarding the composition and organization of both Commissions. Petitioners point out that at no time in the review have respondents presented any new evidence to contradict the Department's prior standing determination. For these reasons, petitioners contend that the Department properly initiated and conducted the review on Universal and Valley.

Department's Position: Respondents have raised the identical argument about WRCC's and OCC's status as interested parties on numerous occasions and the Department has stated its position on those occasions. See, e.g., the Department's letter to Cameron and Hornbostel dated October 4, 1990 with enclosed APO and Red Raspberries from Canada—Notice of Final Results of Antidumping Duty Administrative Review (56 FR 677; January 8, 1991) (hereinafter Raspberries, Final Results).

Since the respondent has submitted no new information concerning the WRRC or the OCC, we stand by our position that the WRRC and OCC qualify as interested parties. Therefore, the request for review of Universal and Valley remains valid.

Comment 2: Respondents Clearbrook, Mukhtiar and Universal contend that their claimed adjustments for imputed commissions should be allowed on sales made by management in the home market. Alternatively, respondents argue that, under the special rule of 19 CFR 353.56(b), adjustments should be allowed for selling expenses incurred on home market sales made by management.

Petitioners argue that no commission was actually paid to management and the Department has refused to allow the imputed commission in the previous review.

Department's Position: In Raspberries; Final Results, the companies claimed a management commission based on the fact that selling was one of management's responsibilities. The amount claimed was based on the percentage that would have been paid had a broker arranged the sale. Since the imputed commission claimed for management was not an actual commission expense that the companies incurred, we disallowed the adjustment. Where actual commissions were paid, the Department appropriately allowed the commission adjustment. In this review, where an actual commission was paid in the U.S. market and not in the home market, we allowed an adjustment for home market indirect selling expenses up to the amount of the U.S. commission for Muhktiar, Clearbrook and Universal.

Comment 3: Respondent requests that the Department revise its calculations to include an omitted margin calculation for one of B.C. Blueberry's invoices.

Department's Position: The margin calculation has been included and the B.C. Blueberry calculations revised resulting in no change to the final margin.

Final Results of the Review.—As a result of our review, we determine the weighted average dumping margins to be as follows:

Processor/exporters	Margin (percent) 6/1/89–5/31/90
BB Fruit Packing	(1)
BC Blueberry Co-op	0.00
Berry Best	22.76
Clearbrook Packers	0.07
East Chilliwack Fruit Growers Co-op	(1)
Jesse Processing, Ltd	22.76
Marco Estates/Landgrow	(1)
Mukhtiar & Sons	0.00
Pacific Coast Fruit Products	(1)
Sabolay	(1)
Universal Packers	4.43
Valley Berries	1.77

[1] No shipments reported during the review period.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service. Further, as provided for by section 751(a)(i) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins will be required for these processors/exporters. Since B.C. Blueberry and Mukhtiar & Sons had no margins, and the margin for Clearbrook Packers is *de minimis*, no cash deposit will be required for these processors/exporters. For shipments from the remaining known processors/exporters, the cash deposit will continue to be at the latest rate applicable to each of those firms. For all other processors/exporters of this merchandise, the cash deposit rate shall be 4.43 percent. This is the highest non-BIA rate for any firm included in this review with shipments during the period. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 31, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–18752 Filed 8–6–91; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammals: Issuance of Permit Modification; NMFS, Southeast Fisheries Science Center (P77#51)

Modification No. 1 to Permit No. 738

Notice is hereby given that pursuant to the provisions of §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Scientific Research Permit No. 738 issued to the Southeast Fisheries Science Center, National Marine Fisheries Service, 75 Virginia Beach Drive, Miami, Florida 33149, on May 16, 1991 (56 FR 23684) is modified in the following manner:

A. Number and Kind of Marine Mammals

Item 3 is added:

3. Up to 10,000 Atlantic bottlenose dolphins (*Tursiops truncatus*) may be taken by harassment while conducting low-level monitoring of bottlenose dolphin stocks. Stock surveys of bottlenose dolphin will occur throughout the NMFS Southeast Region.

B. Special Conditions

All applicable conditions of Permit No. 738 shall apply and are made a part of the this Modification.

This Modification becomes effective upon publication in the **Federal Register**.

The Permit and Modification documentation are available for review in the following offices:

By appointment: Permit Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, Maryland 20910 (301/427–2289); and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, Florida 33702 (813/893–3141).

Dated: July 26, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91–18646 Filed 8–6–91; 8:45 am]

BILLING CODE 3510-22-M

COPYRIGHT OFFICE, LIBRARY OF CONGRESS

[Docket No. 91-10]

Policy Decision: Revised Special Handling Procedures

AGENCY: Copyright Office, Library of Congress.

ACTION: Policy Decision: Notice of revised procedures.

SUMMARY: The Copyright Office of the Library of Congress issues this Policy Decision to inform the public of changes in the procedure for requesting and obtaining special handling, i.e., expedited service, in connection with registration of claims to copyright, recordation of documents, and other services rendered to the public under the Copyright Act, title 17 of the U.S. Code. The basic procedures and the fee for the special handling service are unchanged. The Copyright Office will now accept payment for the special handling service by personal check and the required justification has been simplified.

EFFECTIVE DATE: August 7, 1991.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, DC 20559; (202) 707–8380.

SUPPLEMENTARY INFORMATION:

1. Background

Section 708(a) of the Copyright Act, title 17 of the United States Code, prescribes a schedule of fees that must be remitted to the Copyright Office on filing applications to register claims to copyright, to record documents pertaining to copyright, and for other services rendered to the public under the Act. Subsection (10) of section 708(a) gives the Register of Copyrights the

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Issuance of Permit
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Dated: July 26, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91-18646 Filed 8-6-91; 8:45 am]

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SUPPLEMENTARY INFORMATION:

1. Background

Section 708(a) of the Copyright Act, title 17 of the United States Code, prescribes a schedule of fees that must be remitted to the Copyright Office on filing applications to register claims to copyright, to record documents pertaining to copyright, and for other services rendered to the public under the Act. Subsection (10) of section 708(a) gives the Register of Copyrights the

authority to fix a fee for any special services requiring a substantial amount of time or expense based on the cost of providing the special service.

"Special handling" is a procedure established within the Copyright Office to reduce the length of time required to process an application for registration of a claim of copyright or to record a document pertaining to copyright. Special handling is granted at the discretion of the Register of Copyrights in a limited number of cases as a service to copyright registrants who have compelling reasons for the expedited issuance of a certificate of registration or a certificate of recordation of a document. In June 1982, a special handling fee for registration was fixed by the Register of Copyrights.

Special handling of requests for issuance of a certificate of registration impacts upon every step of the registration process. Under normal procedures applications for registration pass through the various processing steps in groups which are administratively efficient. A claim that receives special handling must be processed outside of the normal work flow necessitating individual handling at each step and individual routing between work stations. A separate system of controls must be maintained for the special handling of claims to assure both that they move expeditiously through the necessary procedures and that they can be located quickly if the need should arise. Each of these activities involves more employee time than claims in the normal work flow since employees could otherwise be more efficiently occupied processing ordinary claims.

The copyright Office reviewed its experience under these procedures in 1984 and re-evaluated the costs associated with special handling of registration applications. The Office found that processing of special handling requests involved more special administrative procedures than had been identified at the time the Register set the original special handling fee. The Office also found that the large number of special handling requests was more disruptive of routine processing procedures than we anticipated. The Register of Copyrights consequently determined that the special handling fee would be increased to $200 to recover the administrative costs of providing this special service. At that time the Office also established a fee for processing multiple applications. In 1985 the Register of Copyrights determined that the fee for the special handling of a recordation of a document should be $200, based on the cost of this service.

Under the authority of section 708(a)(10) the Register of Copyrights determined that the requestor of special handling service should pay, in addition to the normal applicable filing fee or recordation fee, the cost of additional staff time involved in the special handling of cases, computed at overtime rates plus a reasonable administrative fee.

The special handling fee is charged for each application for registration or for each recordation of a document pertaining to copyright for which special handling service is requested and granted, with the following exception: If special handling is requested for only one of several claims submitted at the same time with a single deposit, which is an acceptable deposit for all the claims, the fee for processing the additional claims is $50.00 each plus the filing fee for each claim. The claim for which special handling is requested is processed for the $200.00 special handling fee plus the filing fee. This narrow exception applies only where a single set of deposit copies may appropriately be submitted to register multiple claims, in accordance with the practices of the Copyright Office. The applicant is given the option of submitting an additional set of copies for each application to avoid assessment of the special $50.00 fee. If multiple applications are accompanied by individual sets of deposit copies, claims for which special handling is not requested are processed routinely. Only the claims(s) for which special handling is requested and granted are processed specially.

If the request for special handling is granted, the fee is not refundable. The Copyright Office makes every effort to process the claim within five working days after the request has been approved. Within that period the Office either issues the certificate of registration or notifies the applicant of any defect in the claim. If correspondence is required, the Office will make every effort to process the claim expeditiously after the reply is received.

2. Policy Revisions

Recently, the Copyright Office reviewed the general policies governing special handling. Based on this review, the Office confirms the policies described about but makes the following adjustments regarding the payment of the fee and the averment required to justify a request for special handling.

a. *Personal checks.* Under existing policies, the Copyright Office has required payment of the special handling fee in the form of cash, certified check, cashier's check, or money order. Personal checks have not been accepted. The Office has noted that this policy poses problems for those who request special handling by mail: The Office returns the personal check and must delay processing the special handling request until acceptable payment is received. After several years of experience with special handling, the Office is prepared to change its policy and accept personal checks in payment of the special handling fee. The Office cautions, however, that the registration or recordation will be cancelled if the check is returned for insufficient funds. The Office will refuse to accept future personal checks from a special handling requestor once any personal check is returned for insufficient funds.

b. *Justification for special handling.* Requests for special handling are only granted in cases involving pending or prospective litigation, customs matters, or contract or publishing deadlines that necessitate the expedited issuance of a certificate. The existing policy requires requestors to use the form available in the Public Office or to submit a cover letter answering various questions concerning the need for special handling. The Office has decided to accept either the special form or a letter that clearly answers the question: "Why is there a need for special handling?" In either case the request must include a signed statement certifying that the information contained in the request is true.

3. Procedure for Requesting Special Handling

Requests for special handling may be made in person on the form available in the Public Information Office of the Copyright Office, room LM-401, James Madison Memorial Building, Library of Congress, 101 Independence Avenue, SE., Washington, DC. The Office will also consider requests by mail provided that the Special Handling Request form is used or a cover letter submitted, which gives an answer to the following question: "Why is there an urgent need for special handling?" It is also necessary to certify that the answer to this question is correct to the best of the requestor's knowledge. A mailed request for special handling should be sent to: Library of Congress, Box 100, Washington, DC 20540.

Note: Use this address exactly as shown. Do not include a reference to the Copyright Office or any other information.

The letter inside should clearly indicate that it is a request for special handling.

The request for special handling of a registration must be accompanied by a completed application, the required deposit copies, phonorecords, or identifying material, and the $200.00 fee plus the applicable filing fee. The request for special handling of a recordation of a document pertaining to copyright must be accompanied by a document meeting the requirements for recordation and the $200 fee plus recordation fees ($20 for a document listing no more than 1 title, plus $10 for each group of 10 or fewer additional titles). The fee may be charged to a deposit account established in the Copyright Office. If the deposit account contains insufficient funds to cover the total special handling fee, or if the remitter does not maintain a deposit account, the total special handling fee may be paid either in person at the Public Information Office in Washington, DC, or it may be remitted by mail. Such payment must be in cash, check, or money order made payable to the Register of Copyrights. Cash should not be sent by mail, however.

A request for special handling will be granted only in cases involving pending or prospective litigation, customs matters, or contract or publishing deadlines that necessitate the expedited issuance of a certificate. Special handling procedures may be applied to cases pending in the Copyright Office, provided the previously mentioned criteria are met.

Dated: July 30, 1991.

Ralph Oman,

Register of Copyrights.

[FR Doc. 91-18686 Filed 8-6-91; 8:45 am]

BILLING CODE 1410-07-M

COPYRIGHT ROYALTY TRIBUNAL

[CRT Docket No. 91-5-90SCD]

Ascertainment of Whether Controversy Exists Concerning Distribution of 1990 Satellite Carrier Royalty Fund

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice.

SUMMARY: The Copyright Royalty Tribunal directs all claimants to royalty fees paid by satellite carriers for secondary transmissions during 1990 to submit any comments concerning whether a controversy exists with regard to the distribution of the 1990 satellite carrier royalty fees. All claimants intending to participate in the 1990 proceeding shall include with their comments a Notice of Intent to Participate. The Tribunal also seeks comments concerning the advisability of consolidating the 1990 distribution proceeding with the 1989 distribution proceeding.

DATE: September 6, 1991.

ADDRESSES: An original and five copies should be sent to: Chairman, Copyright Royalty Tribunal, 1825 Connecticut Avenue NW., suite 918, Washington, DC 20009.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1825 Connecticut Avenue NW., suite 918, Washington, DC 20009 (202-606-4400).

Dated: August 2, 1991.

Mario F. Aguero,

Chairman.

[FR Doc. 91-18738 Filed 8-6-91; 8:45 am]

BILLING CODE 1410-09-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, August 6, 1991; Tuesday, August 13, 1991; Tuesday, August 20, 1991; and Tuesday, August 27, 1991, at 10 a.m. in room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 93-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy/Equal Opportunity) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b(c)(2)), and the detailed wage data considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552(b)(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, room 3D264, The Pentagon, Washington, DC 20301.

Dated: August 2, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-18737 Filed 8-6-91; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's Ad Hoc Committee on Alternative Strategies for Software and Computer Processor Upgrades to Softward Intensive Aircraft will meet on 13-15 August 1991 from 8 a.m. to 5 p.m., HQ AFLC, Wright-Patterson AFB, Ohio.

The purpose of this meeting is to gather information in support of the study.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91-18713 Filed 8-6-91; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board of the Ad Hoc Committee Study of Off-Board Sensors—Summer Study 1991 will meet on 24 August 1991 from 8 a.m. to 1:00 p.m. at the Pentagon, DC.

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However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, room 3D264, The Pentagon, Washington, DC 20301.

Dated: August 2, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–18737 Filed 8–6–91; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's Ad Hoc Committee on Alternative Strategies for Software and Computer Processor Upgrades to Softward Intensive Aircraft will meet on 13–15 August 1991 from 8 a.m. to 5 p.m., HQ AFLC, Wright-Patterson AFB, Ohio.

The purpose of this meeting is to gather information in support of the study.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91–18713 Filed 8–6–91; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board of the Ad Hoc Committee Study of Off-Board Sensors—Summer Study 1991 will meet on 24 August 1991 from 8 a.m. to 1:00 p.m. at the Pentagon, DC.

The purpose of this meeting is to present the results of the study to the Air Force Vice Chief of Staff and senior Air Force leaders. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientic Advisory Board Secretariat at 703–697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91–18648 Filed 8–6–91; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

July 26, 1991.

The USAF Scientific Advisory Board of the Ad Hoc Committee on Science and Technology (S&T) Broad Program Appraisal (BPA) will meet on August 28, 1991, from 8 a.m. to 5 p.m. at ANSER Corporation, 1215 Jefferson Davis Highway, Arlington, VA 22202.

The purpose of this meeting is to develop the Committee's observations and comments on the Air Force S&T programs for presentation to the Air Force Acquisition Executive (AFAE) to assist him in his decisions to approve/disapprove the Technology Area Plans (TAPs) and the Technology Investment Plans (TIPs) submitted for the management of these programs. This meeting will involve discussions of: (1) Classified defense and (2) contractor proprietary matters listed in section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91–18649 Filed 8–6–91; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board (SAB) Ad Hoc Committee on Hypersonic Technologies will meet from 8 a.m. to 5 p.m. on 9–11 September 1991 at ANSER Corporation, 1215 Jefferson Davis Highway, Arlington, VA.

The purpose of this meeting is to work on the final study report. The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91–18650 Filed 8–6–91; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Closure of U.S. Army Materials Technology Laboratory, Watertown, MA; Availability of Final Environmental Impact Statement

AGENCY: U.S. Army, DOD.

ACTION: Notice of Availability of the Final Environmental Impact Statement (FEIS) for the closure of the U.S. Army Materials Technology Laboratory (AMTL), Watertown, Massachusetts.

SUMMARY: The Army announced today the availability of its Final Environmental Impact Statement (FEIS) relating to the closure of the U.S. Army Materials Technology Laboratory (AMTL), Watertown, Massachusetts.

No significant impacts of closure were found. The Army will prepare separate National Environmental Policy Act (NEPA) documents to address the effects of construction at receiving installations and for AMTL remediation, property excessing, and specific reuse alternatives.

The closure of AMTL is the result of the December 29, 1988 recommendation of the Secretary of Defense's Commission on Base Realignments and Closures. Implementation complies with the Defense Authorization Amendments and Base Closure and Realignment Act, Public Law 100–526.

The closure of AMTL will result in the relocation of 351 positions (12 military and 339 civilians) by 30 September 1995. Fort Belvoir is scheduled to gain 178 positions (six military and 172 civilians). Picatinny Arsenal will gain 101 positions (one military and 100 civilians). Detroit Arsenal will gain 62 positions (one military and 61 civilians). There will be minor transfers to Natick Laboratory, Massachusetts (three military and five civilians), Fort Devens, Massachusetts (one civilian), and Adelphi, Maryland (one military). Approximately two military and 225 civilian positions will be eliminated. Aggressive personnel outplacement actions will continue to find new jobs (DOD, Federal agencies, or other government or private organizations) for these personnel.

Execution of all or some of the decisions analyzed in this document are subject to change based on the Defense Base Closure and Realignment Act of 1990. Specifically, the Secretary of Defense recommended to the 1991 Defense Base Closure and Realignment Commission the formation of the Combat Materials Research Laboratory (CMRL). Those AMTL activities, less Structures element, scheduled to move to Picatinny Arsenal, New Jersey, Fort Belvoir, Virginia and Detroit Arsenal, Michigan, move to Aberdeen Proving Ground, a secondary CMRL site. The Structures element moves to the National Aeronautic and Space Administration—Langley Research Center at Hampton, Virginia.

This recommendation, if not disapproved, is subject to additional environmental impact analysis and documentation.

No action will be taken until thirty days from the FEIS filing with the Environmental Protection Agency and publication of the Notice of Availability in the Federal Register. Following the 30 day waiting period, a Record of Decision will be filed with the Army Environmental Office.

The FEIS is available to the public through the U.S. Army Corps of Engineers, New England Division, 424 Trapelo Road, Waltham, Massachusetts 02254–9149 or by calling (617) 647–8029.

Lewis D. Walter,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA (I,L&E).

[FR Doc. 91–18730 Filed 8–6–91; 8:45 am]

BILLING CODE 3710-08-M

Patent Availability

ACTION: Notice.

AGENCY: Walter Reed Army Institute of Research, DOD.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive, or nonexclusive licenses under United States Patent Application Serial No. 07/609,318 filed on 5 November 1990, and entitled, "Method For The In Vitro Production of Protein From a DNA Sequence Without Cloning: Expression-Polymerase Chain Reaction (E–PCR) Technique." Any licenses granted shall comply with U.S.C. 209 and 37 CFR part 404.

FOR FURTHER INFORMATION CONTACT: Earl T. Reichert, Office of The Judge Advocate General, Intellectual Property Law Division, 5611 Columbia Pike, attn:

JALS-IP, Falls Church, VA 22041-5013 (703) 756-2623.

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 91-18651 Filed 8-6-91; 8:45 am]

BILLING CODE 3710-08-M

Performance Review Boards; Membership

ACTION: Notice.

SUMMARY: Notice is given of the names of members of the Performance Review Boards for the Department of the Army.

EFFECTIVE DATE: July 26, 1991.

FOR FURTHER INFORMATION CONTACT: Jeanne Raymos, Senior Executive Service Office, Directorate of Civilian Personnel, Headquarters, Department of the Army, the Pentagon, room 2C670, Washington, DC 20310-0300.

SUMMARY INFORMATION: Section 4314(c)(1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Performance Review Board for the Consolidated Commands include:

1. Mr. Ralph Gunn, Director, Information Systems Command—Pentagon.

The members of the Performance Review Board for the Army Materiel Command include:

1. Ms. Maureen Miller, Assistant Deputy Chief of Staff for Program Management, Headquarters, U.S. Army Materiel Command.
2. Mr. Joseph J. Pucilowski, Jr., Director, Product Assurance and Test, U.S. Army Communications-Electronics Command.
3. Mr. Ronald L. Treusdell, Assistant Deputy Chief of Staff for Readiness, Headquarters, U.S. Army Materiel Command.

John O. Roach II,

Army Liaison Officer With the Federal Register.

[FR Doc. 91-18652 Filed 8-6-91; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Assistant Secretary of the Army (Civil Works): Request for Nominations to the Inland Waterways Users Board; Correction

AGENCY: Corps of Engineers (Civil Works).

ACTION: Notice of correct dates.

SUMMARY: This notice corrects certain dates published in the **Federal Register** on July 19, 1991 (56 FR 33267). The date in the Summary section should read January 1, 1992. The Effective Date should read July 19, 1992. And, the deadline for nominations date should read August 30, 1991.

John O. Roach II,

Department of the Army, Liaison Officer With the Federal Register.

[FR Doc. 91-18653 Filed 8-6-91; 8:45 am]

BILLING CODE 3710-08-M

Intent To Prepare a Draft Environmental Impact Statement (DEIS) on Maintenance Dredging of the Miami River, Dade County, FL

AGENCY: U.S. Army Corps of Engineers.

ACTION: Notice of intent.

SUMMARY: The proposed work consists of dredging approximately 600,000 cubic yards of polluted shoaling from the Miami River over a 5.5-mile reach terminating at the river mouth in Biscayne Bay, and disposal of the material in the EPA-designated Ocean Disposal Site.

CONTACT FOR FURTHER INFORMATION: Questions about the proposed work can be addressed to: U.S. Army Corps of Engineers, P.O. Box 4970, Jacksonville, Florida 32232-0019, ATTN: Jonathan D. Moulding, 904/791-2286.

SUPPLEMENTARY INFORMATION:

1. The following alternatives will be considered:

a. Ocean disposal of dredged material.

b. Upland disposal of dredged material.

c. Incineration or other exotic means of disposal.

2. a. Comments on alternatives and environmental concerns are invited from any affected Federal, State, and local agencies, affected Indian tribes, and other private organizations and parties.

b. Significant issues to be analyzed in depth in the EIS that have been identified to date are selection of a suitable disposal site for the dredged material and water quality effects in Biscayne Bay resulting from dredging.

c. Coordination with appropriate Federal and State agencies is required under provisions of the Endangered Species Act and the National Historic Preservation Act.

3. Scoping has been conducted in conjunction with the Corps Feasibility Study on the Miami River in 1989. Further Scoping will be conducted with identified interested parties. No Scoping Meeting is anticipated.

4. The DEIS is expected to be available for review in the 4th quarter CY 1991.

John O. Roach II,

Department of the Army, Liaison Officer With the Federal Register.

[FR Doc. 91-18654 Filed 8-6-91; 8:45 am]

BILLING CODE 3710-AJ-M

Department of the Navy

Government-Owned Invention; Availability for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice of availability of invention for licensing.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is made available for licensing by the Department of the Navy.

Requests for copies of the patent application cited should be directed to the Office of the Chief of Naval Research (Code OOCCIP), 800 North Quincy Street, Arlington, Virginia 22217-5000 and must include the application serial number.

DATE: August 7, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCCIP), 800 N. Quincy Street, Arlington, Virginia 22217-5000, telephone (703) 696-4001.

Patent Application Ser. No 489,161: Electromagnetic Warming of Submerged Extremities; filed March 6, 1990.

Dated: July 30, 1991.

Wayne T. Baucino,

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 91-18656; Filed 8-6-91; 8:45 a.m.]

BILLING CODE 3810-AE-M

CNO Executive Panel; Closed Meeting

On Wednesday, July 17, 1991, a Notice of a closed meeting of the Chief of Naval Operations (CNO) Executive Panel rs, Department of

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c. Coordination with appropriate Federal and State agencies is required under provisions of the Endangered Species Act and the National Historic Preservation Act.

3. Scoping has been conducted in conjunction with the Corps Feasibility Study on the Miami River in 1989. Further Scoping will be conducted with identified interested parties. No Scoping Meeting is anticipated.

4. The DEIS is expected to be available for review in the 4th quarter CY 1991.

John O. Roach II,

Department of the Army, Liaison Officer With the Federal Register.

[FR Doc. 91–18654 Filed 8–6–91; 8:45 am]

BILLING CODE 3710-AJ-M

Department of the Navy

Government-Owned Invention; Availability for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice of availability of invention for licensing.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is made available for licensing by the Department of the Navy.

Requests for copies of the patent application cited should be directed to the Office of the Chief of Naval Research (Code OOCCIP), 800 North Quincy Street, Arlington, Virginia 22217-5000 and must include the application serial number.

DATE: August 7, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCCIP), 800 N. Quincy Street, Arlington, Virginia 22217- 5000, telephone (703) 696-4001.

Patent Application Ser. No 489,161: Electromagnetic Warming of Submerged Extremities; filed March 6, 1990.

Dated: July 30, 1991.

Wayne T. Baucino,

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 91-18658; Filed 8-6-91; 8:45 a.m.]

BILLING CODE 3810-AE-M

CNO Executive Panel; Closed Meeting

On Wednesday, July 17, 1991, a Notice of a closed meeting of the Chief of Naval Operations (CNO) Executive Panel Defense Subpanel Task Force was published at 56 FR 32561. That meeting was originally scheduled to be held on August 22, 1991. That meeting date has been changed.

The Chief of Naval Operations (CNO) Executive Panel Defense Subpanel Task Force will now meet August 28, 1991 from 10:30 a.m. to 2 p.m., in the CNO's Conference Room, Pentagon 4E630, Washington, DC. This session will be closed to the public.

For further information concerning this meeting, contact: Judith A. Holden, Executive Secretary to the Executive Panel, 4401 Ford Avenue,room 601, Alexandria, Virginia 22302-0268, Telephone No. (703) 756-1205.

Dated: July 30, 1991.

Wayne T. Baucino,

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 91-18655; Filed 8-6-91; 8:45 a.m.]

BILLING CODE 3810-AE-M

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Space and Electronic Combat Standing Task Force will meet 13 September 1991 from 9 a.m. to 5 p.m., at 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting is to continue discussions on Navy space and electronic warfare (SEW) implementation strategy, receive reports concerning SEW master plan development and appraisal process, and review related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Judith A. Holden, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, room 601, Alexandria, Virginia 22332-0268, Phone (703) 756-1205.

Dated: July 29, 1991.

Wayne T. Baucino,

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 91-18656; Filed 8-6-91; 8:45 a.m.]

BILLING CODE 3810-AE-M

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Technology Surprise Task Force will meet September 12, 1991 from 9 a.m. to 5 p.m., at 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting is to discuss the possibility of unexpected technological breakthroughs that vastly change warfighting capabilities. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Judith A. Holden, Executive Secretary to the Executive Panel, 4401 Ford Avenue, room 601, Alexandria, Virginia 22302-0268, Phone (703) 756-1205.

Dated: July 29, 1991.

Wayne T. Baucino,

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 91-18657; Filed 8-6-91; 8:45 a.m.]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before September 6, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett, (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above.

Dated: August 1, 1991.

Mary P. Liggett,

Acting Director, Office of Information Resources Management.

Office of Elementary and Secondary Education

Type of Review: Revision.

Title: Application for the Follow Through Program.

Frequency: Annually.

Affected Public: State or local governments; non-profit institutions.

Reporting Burden:
Responses: 300.
Burden Hours: 6,000.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.

Abstract: This form will be used by State Educational Agencies to apply for grants under the Follow Through Program. The Department uses the information to make grant awards.

Office of Elementary and Secondary Education

Type of Review: New.
Title: Biennial Performance Report for Drug-Free Schools and Communities Act, part B, Governors Form.
Frequency: Biennially.
Affected Public: State or local governments.
Reporting Burden:
Responses: 57.
Burden Hours: 3,420.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.

Abstract: State or local governments will be required to furnish information to the Secretary about programs funded under the Drug-Free Schools and Communities Act. The Department will use the information to enhance program management and to assist in the development of its reauthorization proposal for the Drug-Free Schools and Communities Act.

[FR Doc. 91-18677 Filed 8-6-91; 8:45 am]

BILLING CODE 4000-1-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. QF91-87-001, et al.]

Seneca Power Partners, L.P., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

July 30, 1991.

Take notice that the following filings have been made with the Commission:

1. Seneca Power Partners, L.P.

[Docket No. QF91-187-001]

On July 23, 1991, Seneca Power Partners, L.P., c/o Seneca Power Corporation, of 135 East 57 Street, New York, NY 10022, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Batavia, New York, and will include a combustion turbine generator, a heat recovery boiler and an extraction/condensing steam turbine generator. Thermal energy recovered from the facility will be used for milk processing. The net electric power production capacity of the facility will be 54.8 MW. The boiler fuel will be natural gas. Construction of the facility began in April of 1991.

Comment date: On or before September 6, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Chevron U.S.A. Inc.

[Docket No. QF85-703-001]

On July 22, 1991, Chevron U.S.A. Inc. of P.O. Box 3725, Houston, Texas 77253-3725, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The original certification was issued on November 26, 1985 (33 FERC 62,267). The instant recertification is requested to reflect an increase in the electric power output, a change in the design and configuration of the facility, and a change in the installation date.

The topping-cycle cogeneration facility will be located in El Segundo, California, and consists of 2 combustion turbine generators, 2 supplementary fired heat recovery boilers, and two extraction/condensing steam turbine generators. Thermal energy recovered from the facility will be used in oil refinery processes. The elecric power production capacity of the facility is approximately 77MW. The primary source of energy will be natural gas. Construction of the facility was scheduled to begin in February 1991, with start-up scheduled for August 1991.

Comment date: On or before September 6, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Exxon Company, U.S.A. (a division of Exxon Corporation)

[Docket No. QF91-183-000]

On July 15, 1991, Exxon Company, U.S.A. (a division of Exxon Corporation), (applicant) of 1555 Poydras Street, New Orleans, Louisiana 70112, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Mobile County, Alabama, and will consist of three combustion turbine generating units, three heat recovery boilers and a steam turbine generating unit. Steam recovered from the facility will be used in process heating applications in Exxon's Mobile Bay Onshore Treating Facility. The net electric power production capacity will be approximately 11 MW. The primary energy source will be natural gas. Installation of the facility began in February 1990.

Comment date: On or before September 6, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91-18678 Filed 8-6-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-2580-000, et al.]

Northern Natural Gas Company, et al.; Natural Gas Certificate Filings

July 31, 1991.

Take notice that the following filings have been made with the Commission:

1. Northern Natural Gas Company

[Docket No. CP91-2580-000]

Take notice that on July 25, 1991, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124-1000, filed in Docket No. CP91-2580-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon by removal approximately 2.47 miles of a 2-inch

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The topping-cycle cogeneration facility will be located in Mobile County, Alabama, and will consist of three combustion turbine generating units, three heat recovery boilers and a steam turbine generating unit. Steam recovered from the facility will be used in process heating applications in Exxon's Mobile Bay Onshore Treating Facility. The net electric power production capacity will be approximately 11 MW. The primary energy source will be natural gas. Installation of the facility began in February 1990.

Comment date: On or before September 6, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91–18678 Filed 8–6–91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91–2580–000, et al.]

Northern Natural Gas Company, et al.; Natural Gas Certificate Filings

July 31, 1991.

Take notice that the following filings have been made with the Commission:

1. Northern Natural Gas Company

[Docket No. CP91–2580–000]

Take notice that on July 25, 1991, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP91–2580–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon by removal approximately 2.47 miles of a 2-inch

Wilber, Nebraska, branchline under the authorization issued in Docket No. CP82–401–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that the 2-inch line is in a state of deterioration and is completely looped with a parallel 3-inch line, which line has adequate capacity to serve the existing customers.

Northern states that the 2-inch line is located in Gage and Saline Counties, Nebraska; was installed in 1930 as a bare, coupled pipeline; and was certificated under the "grandfather clause" of the Natural Gas Act by order issued on April 4, 1943, at Docket No. G–280. Northern further states that continued operation of the 2-inch line, with the attendant high maintenance and replacement costs, is not justified, particularly since no customer will be adversely affected by the abandonment.

Northern estimates that the total cost of the abandonment is approximately $10,000 with no related salvage value.

Comment date: September 16, 1991, in accordance with Standard Paragraph G at the end of this notice.

2. United Gas Pipe Line Company, Natural Gas Pipeline Company of America, Natural Gas Pipeline Company of America

[Docket Nos. CP91–2587–000, CP91–2593–000, CP91–2594–000]

Take notice that United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77251–1478, and Natural Gas Pipeline Company of America, 701 East 22nd Street, Lombard, Illinois 60148, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued in Docket No. CP88–6–000 and Docket No. CP86–582–000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: September 16, 1991, in accordance with Standard Paragraph G at the end of this notice.

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[1] These prior notice requests are not consolidated.

APPENDIX

Docket number (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP1–2587–000 (7–25–91)	Midcon Marketing Corp. (Marketer)	721,000 721,000 263,165,000	Various	Various	4–30–88 ITS Interruptible	ST91–9559 7–12–91
CP1–2593–000 (7–25–91)	Neste Oy (Marketer)	3,100,000 15,000 5,475,000	Various	Various	9–5–90 ITS Interruptible	ST91–9310 5–30–91
CP1–2594–000 (7–25–91)	CNG Producing Company (Producer)	5,000 5,000 1,825,000	OLA	OLA	11–19–90 ITS Interruptible	ST91–9309 5–30–91

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

3. Florida Gas Transmission Company

[Docket No. CP91–2573–000]

Take notice that on July 24, 1991, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed a request with the Commission in Docket No. CP91–2573–000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to add two existing delivery points as jurisdictional sales facilities to provide natural gas service to the City of Gainesville, Florida, under FGT's blanket certificate issued in Docket No. CP82–553–000, all as more fully described in the request which is open to public inspection.

FGT proposes to add its Deerhaven and Kelly delivery points to its General Service ("G") and Preferred Service ("I") agreements with the City of Gainesville, pursuant to the terms stated in the Commission order issued June 24, 1991, in Docket No. CP91–705–000. FGT states that the Commission order issued in Docket No. CP91–705–000 granted FGT a waiver of the Commission's first-come, first-served policy and FGT's tariff, to the extent necessary, to permit the City of Gainesville to retain its existing place in FGT's first-come, first-served queue while adding the Deerhaven and Kelly delivery points to the G and I service agreements. FGT also states that it would charge rates and abide by the terms and conditions of its FERC Rate Schedule G and I. FGT states that the total natural gas volumes it proposes to deliver at these two delivery points would not exceed the City of Gainesville's currently authorized entitlements.

Comment date: September 16, 1991, in accordance with Standard Paragraph G at the end of this notice.

4. Panhandle Eastern Pipe Line Company

[Docket No. CP91–2557–000]

Take notice that on July 23, 1991, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251, filed in Docket No. CP91–2557–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to partially abandon a sales service provided by Panhandle for Southeastern Michigan Gas Company (SEMCO), an existing jurisdictional sales customer of Panhandle, all as more fully detailed in the application which is on file with the Commission and open to public inspection.

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Panhandle proposes to abandon the sale to SEMCO of 1,095,000 Mcf of natural gas annually, representing a reduction from the currently authorized volume of 6,643,000 to the proposed volume of 5,548,000. It is stated that the original sale was authorized by the Commission in Docket No. G–437, pursuant to Panhandle's Rate Schedule G–1, and that the current level of service was authorized in Docket No. CP91–1828–000, as reflected in a service agreement dated October 30, 1990. It is asserted that SEMCO has executed a new service agreement dated April 25, 1991, to reflect the proposed level of contract demand. Panhandle states that the proposed reduction would result in an annual savings for SEMCO of approximately $436,170. Panhandle requests that the abandonment authorization be made effective retoractive to April 1, 1991.

Comment date: August 21, 1991, in accordance with Standard Pargraph F at the end of the notice.

5. Colorado Interstate Gas Company

[Docket No. CP91–2482–000]

Take notice that on July 16, 1991, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP91–2482–000 an application, as supplemented July 25, 1991, with the Commission pursuant to section 7(c) of the Natural Gas Act (NGA) for authorization to construct and operate approximately 3.5 miles of 4-inch pipeline in Moore County, Texas, all as more fully set forth in the application which is open to public inspection.

CIG states that it would interconnect with its own 20-inch pipeline approximately 3.5 miles of 4-inch pipe to provide processed natural gas compression fuel to its Panhandle Field Compressor Station 24 in Moore County, Texas. CIG estimates that it would cost $218,150 to install this pipe. CIG proposes to finance this project with general corporate funds.

Comment date: August 21, 1991, in accordance with Standard Paragraph F at the end of this notice.

6. Panhandle Eastern Pipe Line Company

[Docket No. CP91–2520–000]

Take notice that on July 18, 1991, Panhandle Eastern Pipe Line Company (Panhandle), Post Office Box 1642, Houston, Texas, 77251–1642, filed an application with the Commission in Docket No. CP91–2520–000 pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon the sales service to Michigan Storage company (MGS), an existing jurisdictional sales customer that has elected to terminate firm sales service upon the expiration of its sales contract, and to convert its capacity to firm transportation service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle states that the existing Gas Sales Contract (Contract) dated October 29, 1990 between Panhandle and MGS has expired and that MGS has converted its entire sales entitlements for firm transportation effective April 1, 1991, such firm transportation being performed pursuant to § 284.222 of the Commission Regulations and in accordance with the terms and conditions of Panhandle's Rate Schedule PT-Firm. Specifically, Panhandle states that it requests authorization for abandonment of firm sales service to MGS, effective April 1, 1991.

Panhandle also states that it has filed revised tariff sheets at Docket Nos. RP91–53 and RP91–52, *et al.*, to recover portions of prudently incurred take-or-pay costs from each of its customers, including MGS. In addition, Panhandle states that it seeks to recover the portion of such costs attributable to MGS as described herein, which may be amended, supplemented, revised or modified pursuant to Commission authorizations or as required by law and that, by this filing, Panhandle is not waiving any of its rights to recover from MGS prudently incurred take-or-pay costs or any other costs properly attributable to MGS. Finally, Panhandle states that the abandonment authority sought herein should be conditioned on the ultimate recovery by Panhandle of the residual costs associated with the service to MGS in addition to any amounts jpayable pursuant to the Gas Sales Contract.

Comment date: August 21, 1991, in accordance with Standard Paragraph F at the end of this notice.

7. Transcontinental Gas Pipe Line

[Docket No. CP91–2574–000]

Take notice that on July 24, 1991, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed a request with the Commission in Docket No. CP91–2574–000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a new delivery point and appurtenant metering and regulating facilities to serve Fort Hill Natural Gas Authority (Fort Hill), an existing customer, under Transco's blanket certificate issued in Docket No. CP82–426–000 pursuant to section 7 of the NGA, all as more fully set forth in the application which is open to public inspection.

Transco proposes to add a new delivery point on its mainline in Anderson County, South Carolina, to provide existing levels of firm transportation and storage service, as well as interruptible service to Fort Hill. Transco states that the maximum daily delivery capacity of its Fort Hill-Starr delivery point would be 15,000 Mcf of natural gas, however, Transco does not propose to increase Fort Hill's daily total firm entitlement above the current 11,900 Mcf. Transco also proposes to construct a 4-inch interconnect, a dual 4-inch meter station, and appurtenant facilities at the Fort Hill-Starr delivery point. Fort Hill would reimburse Transco for its estimated $263,000 construction expense.

Transco states that the proposed Fort Hill-Starr delivery point, which is permitted under Transco's tariff, would have no effect on Transco's peak day or annual volumetric natural gas deliveries to Fort Hill or any other existing customer. Transco also states that it has sufficient system capacity to deliver natural gas at the Fort Hill-Starr delivery point without detriment or disadvantage to Transco's other customers.

Comment date: September 16, 1991, in accordance with Standard Paragraph G at the end of this notice.

8. Trunkline Gas Company

[Docket Nos. CP91–2588–000, CP91–2589–000, CP91–2590–000, CP91–2591–000]

Take notice that Trunkline Gas Company, P.O. Box 1642, Houston, Texas 77251–1642, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86–586–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions

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[2] These prior notice requests are not consolidated.

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Docket No. CP82–426–000 pursuant to section 7 of the NGA, all as more fully set forth in the application which is open to public inspection.

Transco proposes to add a new delivery point on its mainline in Anderson County, South Carolina, to provide existing levels of firm transportation and storage service, as well as interruptible service to Fort Hill. Transco states that the maximum daily delivery capacity of its Fort Hill-Starr delivery point would be 15,000 Mcf of natural gas, however, Transco does not propose to increase Fort Hill's daily total firm entitlement above the current 11,900 Mcf. Transco also proposes to construct a 4-inch interconnect, a dual 4-inch meter station, and appurtenant facilities at the Fort Hill-Starr delivery point. Fort Hill would reimburse Transco for its estimated $263,000 construction expense.

Transco states that the proposed Fort Hill-Starr delivery point, which is permitted under Transco's tariff, would have no effect on Transco's peak day or annual volumetric natural gas deliveries to Fort Hill or any other existing customer. Transco also states that it has sufficient system capacity to deliver natural gas at the Fort Hill-Starr delivery point without detriment or disadvantage to Transco's other customers.

Comment date: September 16, 1991, in accordance with Standard Paragraph G at the end of this notice.

8. Trunkline Gas Company

[Docket Nos. CP91–2588–000, CP91–2589–000, CP91–2590–000, CP91–2591–000]

Take notice that Trunkline Gas Company, P.O. Box 1642, Houston, Texas 77251–1642, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86–586–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions

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[2] These prior notice requests are not consolidated.

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under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: September 16, 1991, in accordance with Standard Paragraph G at the end of this notice.

APPENDIX

Docket number (date filed)	Shipper name (type)	Peak day, average day, annual Mcf	Receipt points [1]	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91–2588–000 (7–25–91)	Howell Gas Management Company (Marketer)	30,000 30,000 10,950,000	Various	LA	——— PT Interruptible	ST91–9174 6–1–91
CP91–2589–000 (7–25–91)	Kansas Pipeline Company (intrastate)	60,000 60,000 21,900,000	Various	IL	——— PT Interruptible	ST91–9173 6–2–91
CP91–2590–000 (7–25–91)	Citizens Gas Supply Corporation (Marketer)	75,000 75,000 27,375,000	Various	IL	——— PT Interruptible	ST91–9483 5–31–91
CP91–2591–000 (7–25–91)	Enron Gas Marketing, Inc. (Marketer)	100,000 100,000 36,500,000	Various	LA	——— PT Interruptible	ST91–9007 5–22–91

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

9. Questar Pipeline Company

[Docket No. CP91–2394–000]

Take notice that on July 3, 1991, Questar Pipeline Company (Questar), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP91–2394–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain pipeline, compression, and appurtenant facilities in Sweetwaer County, Wyoming and Uintah and Daggett Counties, Utah, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Questar proposes to construct and operate the following facilities:

(1) 42.14 miles of 20-inch pipeline (to be designated as Main Line No. 58 Loop) extending from the existing Nightingale/Kanda/Coleman Compressor Complex in Sweetwater County, Wyoming, southward to a point of interconnection with Questar's existing Main Line Nos. 58 and 80 in Daggett County, Utah. It is stated that the loop would parallel Questar's existing Main Line No. 58 and would be constructed entirely within the right-of-way of that pipeline. Questar estimates the cost of this segment of the project at $12,859,000.

(2) 3.52 miles of 20-inch pipeline (to be designated the Natural Buttes-Fidlar Line) connecting the Natural Buttes Field with Questar's Fidlar Compressor Station in Uintah County, Utah. This portion of the project would cost an estimated $1,100,000 and would also follow an existing Questar pipeline right-of-way.

(3) 14,508 horsepower of additional compression (together with minor modifications of existing equipment) at Questar't existing Fidlar Compressor Station, consisting of three 4,836 hp turbine-driven centrifugal compressor units. The compressor station addition is estimated to cost $13,897,300.

Questar states that the project, as a whole, includes 45.66 miles of pipeline and 14,508 hp of compression and would cost an estimated $27,856,300. Questar notes that it seeks to place the proposed facilities in service by the 1992–1993 heating season and therefore requests that the Commission process the application on a phased basis and grant the requested authorization by December 31, 1991.

Questar explains that its application is designed as a competitive alternative to an application filed by Colorado Interstate Gas Company (CIG) in Docket No. CP91–1110–000.[3] Questar accordingly requests that its application be consolidated with the CIG application under the Ashbacker doctrine.[4] Questar asserts that the two proposals are mutually exclusive and duplicative with respect to expanded transportation service in the Uinta Basin of eastern Utah and the Piceance Basin of western Colorado. Questar argues that its proposal is superior to CIG's application because Questar can provide the same service at a lower facility and service cost and also less environmental impact. Questar indicates that the Commission considered the CIG application at its June 26, 1991, meeting but that no order was issued prior to the date of its application herein.[5]

Comment date: August 20, 1991, in accordance with Standard Paragraph F at the end of this notice.

10. Texas Gas Transmission Corporation

[Docket No. CP91–2550–000]

Take notice that on July 23, 1991, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP91–2550–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act for authorization to add a new delivery point for various shippers in St. Mary Parish, Louisiana under its blanket certificate issued in Docket No. CP82–407–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas state that it currently transports gas to Bridgeline Gas Distribution Company (Bridgeline) at the Bridgeline-Berwick Meter Station in St. Mary Parish, Louisiana, which was installed and is being operated under section 311 of the Natural Gas Policy Act of 1978. Texas Gas indicates that the facilities were placed in service on April 1, 1991, for use in the transportation and delivery of natural gas from Texa's Gas to Bridgeline for various shippers under section 311.

Texas Gas states that after these facilities were placed in service, it has received numerous requests from other shippers to transport gas under Texas Gas' blanket authorization issued in Docket No. CP88-686-000 and to have such gas delivered to the Bridgeline-Berwick Meter Station. Texas Gas further states that it has been unable to comply with these requests since the use of the Bridgeline-Berwick Meter Station is restricted to 311 transportation service.

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[3] Questar notes that in Docket No. CP91–1110–000, CIG requests authority to construct and operate a 223-mile pipeline and install approximately 25,000 hp of compression at an estimated cost of $85,000,000. Questar further notes that CIG would use its proposed facilities to transport 60,000 Mcf per day of system supply gas and 114,000 Mcf per day for third-party shippers.

[4] Ashbacker Radio Corporation v. FCC, 326 U.S. 327 (1945).

[5] The Commission actually issued a Preliminary Determination on Non-Environmental Issues in the CIG proceeding on July 2, 1991.

Texas Gas requests authorization to change the status of this delivery point in order to be able to transport and deliver natural gas on a jurisdictional basis. Texas Gas indicates that the quantity of natural gas to be delivered through this meter would vary, however, the design capacity is approximately 95 MMcf per day under normal operating conditions. The new service provided through this meter would be under Rate Schedules IT or FT of Texas Gas' FERC Gas Tariff, it is indicated. Texas Gas further states that this proposal would have no impact on Texas Gas' peak day and annual deliveries since the addition of this new delivery point would not increase or decrease Texas Gas' mainline capacity.

Comment date: September 16, 1991, in accordance with Standard Paragraph G at the end of this notice.

11. Panhandle Eastern Pipe Line Company

[Docket Nos. CP91-2551-000,[6] CP91-2552-000, CP91-2553-000, CP91-2554-000, CP91-2555-000, CP91-2556-000]

Take notice that on July 23, 1991, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport natural gas on behalf of various shippers under its blanket certificates issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the indentity of the shipper, the date of the interruptible transportation agreement between Panhandle and the respective shipper, the contract number of the transportation agreement, function of the shipper, i.e., marketer, local distribution company, or intrastate pipeline, the type of transportation service, of the appropriate transportation rate schedule, and peak day, average day, and annual volumes, and the docket number and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Panhandle and is included in the attached appendix.

Panhandle alleges that it would provide the proposed service for each shipper under an executed transportation service agreement and would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: September 16, 1991, in accordance with Standard Paragraph G at the end of this notice.

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[6] These prior notice requests are not consolidated.

APPENDIX

Docket number, trans. agree. (Contract No.)	Shipper name	Shipper's function	Peak day [1] avg. annual	Points of—		Start up date, rate schedule, service type	Related [2] dockets
				Receipt	Delivery		
CP91-2551-000 5-9-91 (P-PLT-3692)	Amgas, Inc.	Marketer	20 10 7,300	Existing receipt points.	IL	5-22-91 PT Interruptible	ST91-9091-000
CP91-2552-000 4-1-91 (P-PLT-3631)	Northern Indiana Public Service Co.	Local Distribution Co	5,000 5,000 1,825,000	Existing receipt points.	IN 4-1-91 PT Firm [3]	ST91-9334-000	
CP91-2553-000 4-12-88 (P-PLT-1825)	BP Gas Inc	Marketer	50,000 50,000 18,250,000	Existing receipt points.	OH	5-1-91 PT Interruptible	ST91-9086-000
CP91-2554-000 4-1-91 (P-PLT-3630)	Northern Indiana Public Service Co.	Local Distribution Co	10,000 10,000 3,650,000	Existing receipt points.	IN	4-1-91 PT Firm [4]	ST91-9325-000
CP91-2555-000 4-12-88 (P-PLT-1826)	BP Gas Inc	Marketer	50,000 50,000 18,250,000	Existing receipt points.	OH	5-1-91 PT Interruptible	ST91-9090-000
CP91-2556-000 4-12-88 (P-PLT-1636)	BP Gas Inc	Marketer	50,000 50,000 18,250,000	Existing receipt points.	OH	5-1-91 PT Interruptible	ST91-9089-000

[1] Quantities are shown in decatherms.

[2] The ST docket indicates that 120-day transportation service was initiated under section 284.223(a) of the Commission's Regulations.

[3] Panhandle contends that it will also receive gas on an interruptible basis from the existing interruptible receipt points on its system.

[4] Id.

12. CNG Transmission Corporation

[Docket No. CP91-2524-000]

Take notice that on July 18, 1991, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed a request with the Commission in Docket No. CP91-2524-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a sales tap and appurtenant facilities for the delivery of natural gas to Potomac Electric Power Company (PEPCO), an existing customer, under CNG's blanket certificate issued in Docket No. CP82-537-000 purusant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

CNG proposes to construct and operate a sales tap, appurtenant metering and regulating facilities, and 3,900 feet of 20-inch connecting pipe from CNG's PL-1 pipeline to provide natural gas service to PEPCO's Dickerson Electric Generating Station, Montgomery County, Maryland. CNG states that its proposed facilities would enable CNG to provide direct and indirect service via Washington Gas Light Company (WGL) to PEPCO's existing and future facilities at the Dickerson Electric Generating Station. CNG also states that PEPCO would reimburse CNG for the $2,800,000 estimated construction expense.

CNG further states that PEPCO and CNG have agreed to add the proposed Dickerson metering and regulating facility as a delivery point for Washington Gas Light under CNG's FERC Rate Schedule CD, thereby enabling WGL to serve PEPCO's Dickerson Electric Generating Station with whatever future sales or transportation service may be agreed upon between it and PEPCO, plus any additional markets which WGL may secure using this metering and regulating facility.

Comment date: September 16, 1991, in accordance with Standard Paragraph G at the end of the notice.

13. Southern Natural Gas Company

[Docket Nos. CP91-2595-000, CP91-2596-000]

Take notice that Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202-2563, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket NO. CP88-316-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[7]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: September 16, 1991, in accordance with Standard Paragraph G at the end of this notice.

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[7] These prior notice requests are not consolidated.

APPENDIX

Docket number (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points [1]	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2595-000 (7-25-91)	Gulf Ohio Corporation (Marketer)	20,000 465 170,000	TX, OTX, LA, OLA, MS, AL.	GA	4-29-91 IT Interruptible	ST91-9099 5-23-91
CP91-2596-000 (7-25-91)	Emermax Corporation (Marketer)	150,000 1,000 365,000	TX, OTX, LA, OLA, MS, AL.	LA	5-8-91 IT Interruptible	ST91-9097 8-6-91

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

14. Viking Gas Transmission Company, United Gas Pipe Line Company

[Docket Nos. CP91-2581-000, CP91-2582-000, CP91-2583-000, CP91-2584-000, CP91-2585-000, CP91-2586-000]

Take notice that on July 25, 1991, Viking Gas Transmission Company, P.O. Box 2511, Houston, Texas 77252, and United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77251-1478, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued in Docket No. CP90-273-000, and Docket No. CP88-6-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[8]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: September 16, 1991, in accordance with Standard Paragraph G at the end of this notice.

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[8] These prior notice requests are not consolidated.

APPENDIX

Docket number (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2581-000 (7-25-91)	Santana Natural Gas Corp. (Marketer)	175,000 175,000 [1] 63,875,000	WI, MN, ND	WI, MN, ND	10-1-90 IT-2 Interruptible	ST91-9505-000 6-20-91
CP91-2582-000 (7-25-91)	Eastex Gas Transmission Co. (Intrastate Pipeline).	144,200 144,200 52,633,000	LA, Off LA, TX, MS	LA, TX, AL, FL, MS	1-9-87 [2] ITS Interruptible	ST91-9554-000 7-11-91
CP91-2583-000 (7-25-91)	SIGO Marketing, Inc. (Marketer)	4,893 4,893 1,785,945	LA, MS	LA	7-16-90 [3] ITS Interruptible	ST91-9556-000 5-25-91

APPENDIX—Continued

Docket number (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2584-000 (7-25-91)	SIGO Marketing, Inc. (Marketer)	4,893 4,893 1,785,945	LA, MS	LA	7-16-90 [4] ITS Interruptible	ST91-9557-000 7-12-91
CP91-2585-000 (7-25-91)	Bishop Pipeline Corp. (Intrastate Pipeline)	41,200 41,200 15,038,000	TX, LA, Off TX	LA, TX, AL, MS, FL, Off TX.	3-24-88 [5] ITS Interruptible	ST91-9558-000 7-11-91
CP91-2586-000 (7-25-91)	Bishop Pipeline Co. (Intrastate Pipeline)	41,200 41,200 15,038,000	LA, TX, Off TX	TX, LA, AL, MS, FL, Off TX.	3-24-88 [6] ITS Interruptible	ST91-9555-000 7-10-91

[1] Viking's quantities are in dekatherms.
[2] As amended 5-31-91.
[3] As amended 3-18-91.
[4] As amended 6-17-91.
[5] As amended 6-24-91.
[6] As amended 6-26-91.

15. Williston Basin Interstate Pipeline Company

[Docket Nos. CP91-2602-000, CP91-2603-000]

Take notice that on July 29, 1991, Williston Basin Interstate Pipeline Company (Williston Basin), suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under its blanket certificate issued in Docket No. CP89-1118-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[9]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Williston Basin and is summarized in the attached appendix.

Comment date: September 16, 1991, in accordance with Standard Paragraph G at the end of this notice.

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[9] These prior notice requests are not consolidated.

APPENDIX

Docket number (date filed)	Shipper name (type)	Peak day, average day, annual Dth	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2602-000 (7-29-91)	Hiland Partners (Producer)	69,800 69,800 25,477,000	WY, MT, ND, SD	WY, MT, SD, ND	5-2-91 [1] IT-1 Interruptible	ST91-9560-000 7-1-91
CP91-2603-000 (7-29-91)	Hiland Partners (Producer)	1,390 1,390 507,350	WY, MT, ND, SD	WY, MT, SD, ND	11-8-90 [2] IT-1 Interruptible	ST91-9551-000 6-17-91

[1] As amended on June 1, 1991, and July 1, 1991.
[2] As amended on June 17, 1991.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of ix—Continued

Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
LA, MS	LA	7-16-90 [4] ITS Interruptible	ST91-9557-000 7-12-91
TX, LA, Off TX	LA, TX, AL, MS, FL, Off TX.	3-24-88 [5] ITS Interruptible	ST91-9558-000 7-11-91
LA, TX, Off TX	TX, LA, AL, MS, FL, Off TX.	3-24-88 [6] ITS Interruptible	ST91-9555-000 7-10-91

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shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Williston Basin and is summarized in the attached appendix.

Comment date: September 16, 1991, in accordance with Standard Paragraph G at the end of this notice.

PPENDIX

Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
WY, MT, ND, SD	WY, MT, SD, ND	5-2-91 [1] IT-1 Interruptible	ST91-9560-000 7-1-91
WY, MT, ND, SD	WY, MT, SD, ND	11-8-90 [2] IT-1 Interruptible	ST91-9551-000 6-17-91

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Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of

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the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91-18684 Filed 8-6-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD91-06335T New Mexico-28]

State of New Mexico, Energy, Minerals and Natural Resources Department and the United States Department of the Interior, Bureau of Land Management; Determination Designating Tight Formation

July 31, 1991.

Take notice that on July 29, 1991, the Oil Conservation Division of the Energy, Minerals and Natural Resources Department for the State of New Mexico (New Mexico), and the United States Department of the Interior, Bureau of Land Management (BLM), submitted the above-referenced notice of determination to the Commission, pursuant to § 271.703(c)(3) of the Commission's regulations, that the Gallup Formation in portions of Rio Arriba, Sandoval, and San Juan Counties, New Mexico, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The notice of determination covers all of Sections 1-36 in T23N, R6W (NMPM), all of Sections 1-36 in T23N, R7W (NMPM), all of Section 1 in T23N, R8W (NMPM), all of Sections 18, 19, and 29-32 in T24N, R6W (NMPM), all of Sections 6-8 and 12-36 in T24N, R7W (NMPM), and all of Sections 5-8, 12, 13, 16-30, 35, and 36 in T24N, R8W (NMPM). The notice of determination also contains New Mexico's findings, and BLM's concurrence, that the referenced portions of the Gallup Formation meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR, §§ 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 91-18682 Filed 8-6-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD91-08284T Utah-5 Amendment]

State of Utah Department of Natural Resources; Determination Designating Tight Formation

July 31, 1991.

Take notice that on July 26, 1991, the State of Utah Department of Natural Resources, Board of Oil, Gas and Mining (Utah), submitted the above-referenced notice of determination to the Commission, pursuant to § 271.703(c)(3) of the Commission's regulations, that the Dakota Formation in a portion of Grand County, Utah, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The notice of determination covers all of section 31 in T16S, R25E, SLM, in Grand County, Utah. All of T16S, R25E, SLM, was excluded from Utah's notice of determination in Docket No. RM79-76-136 (Utah-5). The notice of determination also contains Utah's findings that the Dakota Formation in section 31, T16S, R25E, SLM, meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commissioin, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR, 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 91-18683 Filed 8-6-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-201-000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 31, 1991.

Take notice that on July 26, 1991, Columbia Gas Transmission Corporation, (Columbia) tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, with a proposed effective date of August 26, 1991:

First Revised Original Sheet No. 126
Third Revised Sheet No. 174

Columbia states that by this filing, Columbia proposes to implement a new tariff provision, section 25.5 of the General Terms and Conditions. Columbia further states that the proposed provision relates to Order No. 528 refunds paid to Columbia by an upstream pipeline supplier which must later be repaid to that upstream pipeline supplier due to a Commission ordered change in the upstream methodology.

Columbia notes that copies of the filing were served upon Columbia's jurisdictional customers, interested state commissions, and upon each person designated on the official service list compiled by the Commission's Secretary in docket Nos. RP88-187, RP89-181, RP89-214, RP89-229, TM89-3-21, TM89-4-21, TM89-5-21, TM89-7-21, RP90-26, TM90-2-21, TM90-5-21, TM90-6-21, TM90-7-21, TM90-8-21, TM90-10-21, TM90-12-21, TM90-13-21, TM91-2-21, RP91-41, RP91-90, TM91-9-21 and TM91-10-21.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 7, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-18679 Filed 8-6-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-171-011, CP81-108-009]

Tennessee Gas Pipeline Co., Application

July 30, 1991.

Take notice that on July 16, 1991, Tennessee Gas Pipeline Company (Tennessee), 1010 Milam Street, Houston, Texas 77002, filed in Docket No. CP88-171-001 and CP81-108-009 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity to authorize Tennessee to abandon a firm transportation service for National Fuel Gas Supply Corporation ("National Fuel") of up to 2,500 Mcf of natural gas per day and to amend two certificates of public convenience and necessity (1) to vacate authorizations for Tennessee to provide firm transportation services for Cogen Energy Technologies, Inc. ("CETI") and ANR Venture Springfield Company ("Springfield"), (2) to authorize Tennessee, in lieu of the services for CETI and Springfield, to provide equivalent firm transportation services for CNG Transmission Corporation ("CNG"), Capitol District Energy Center Cogeneration Associates ("CDECCA"), and Granite State Gas Transmission, Inc. ("Granite State"), (3) to authorize Tennessee to provide a higher delivery pressure for Ocean State Power II ("OSP II"), to collect an Incremental Pressure Charge from OSP II in connection therewith, and for pregranted abandonment of Tennessee's obligation to provide that service for OSP II, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee proposes to provide the following new or revised firm transportation services in lieu of the services to be vacated:

Shipper	Volumes (dth/day)	Receipt point	Delivery point
CNG	13,900	Niagara, NY.	Marilla, NY.
CDECCA	3,715	Vermillion Block 248.	Bloomfield, CT.
	3,715	East Cameron Block 313.	Bloomfield, CT.
	7,020	Ellisburg, PA Interconnect with CNG.	Bloomfield, CT.
Granite State.	7,120	Ellisburg, PA Interconnect with CNG.	Agawam, MA.

Tennessee states that there would be no net increase or decrease in authorized delivery volumes and that none of the proposed services or the other requested authorizations would entail the construction of any facilities, the incurrence of any costs, or any environmental impact.

Tennessee states that it is seeking authority to abandon the transportation of up to 2,500 Mcf of gas per day for National Fuel in accordance with a prior Commission order. Tennessee Gas Pipeline Co., 52 FERC 61,257 at 61,908 n. 12.

It is also stated that because of OSP II's potential need for a higher delivery pressure, OSP II has asked Tennessee to stand ready to deliver at a pressure of not less than 400 pounds per square inch (psig) rather than the 100 psig specified in Tennessee's transportation agreements with shipper in this and other Northeast projects.

Tennessee states that the pressure charge proposed to be collected from OSP II would permit Tennessee to recover the costs of providing the higher delivery pressure requested by OSP II and would ensure that other existing customers would not be affected.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 20, 1991, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely field, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Tennessee to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 91-18681 Filed 8-6-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-200-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 31, 1991.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on July 26, 1991 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

First Revised Sheet No. 483.1
Original Sheet No. 483.2
First Revised Sheet No. 483B.1
Original Sheet No. 483B.2
Second Revised Sheet No. 483D.1
Original Sheet No. 483D.2
First Revised Sheet No. 483F.1
Original Sheet No. 483F.2

Texas Eastern states that the tariff sheets submitted in this filing permit the direct payment of take-or-pay costs to Texas Eastern by Columbia Gas Transmission Corporation's ("Columbia") customers as described herein.

Texas Eastern states that on June 19, 1991, The Columbia Gas System announced that Columbia might be forced to seek bankruptcy protection in the event of failure to reestablish adequate credit lines with banks and to renegotiate problem gas purchase contracts with producers. The announcement raised concerns at Texas Eastern that Columbia might not be able to perform its obligations with respect to timely payment of bills to Texas Eastern and its obligations as an accounting conduit between Texas Eastern's upstream suppliers and Columbia's customers.

Texas Eastern states that following The Columbia Gas System's June 19 announcement, Texas Eastern expressed concerns to Columbia that future changes in allocation methodology may require Columbia to pay take-or-pay costs additional to those currently assessed under Texas Eastern's tariff provisions. To address one part of Texas Eastern's concerns, namely that Commission or court action may cause repayment, in whole or in part, of take-or-pay charge refunds that Texas Eastern has previously made to Columbia, the present filing by Texas Eastern and a contemporaneous filing by Columbia are being made. These tariff provisions will permit, in certain

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Lois D. Cashell,

Secretary.

[FR Doc. 91-18681 Filed 8-6-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-200-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 31, 1991.

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Original Sheet No. 483.2
First Revised Sheet No. 483B.1
Original Sheet No. 483B.2
Second Revised Sheet No. 483D.1
Original Sheet No. 483D.2
First Revised Sheet No. 483F.1
Original Sheet No. 483F.2

Texas Eastern states that the tariff sheets submitted in this filing permit the direct payment of take-or-pay costs to Texas Eastern by Columbia Gas Transmission Corporation's ("Columbia") customers as described herein.

Texas Eastern states that on June 19, 1991, The Columbia Gas System announced that Columbia might be forced to seek bankruptcy protection in the event of failure to reestablish adequate credit lines with banks and to renegotiate problem gas purchase contracts with producers. The announcement raised concerns at Texas Eastern that Columbia might not be able to perform its obligations with respect to timely payment of bills to Texas Eastern and its obligations as an accounting conduit between Texas Eastern's upstream suppliers and Columbia's customers.

Texas Eastern states that following The Columbia Gas System's June 19 announcement, Texas Eastern expressed concerns to Columbia that future changes in allocation methodology may require Columbia to pay take-or-pay costs additional to those currently assessed under Texas Eastern's tariff provisions. To address one part of Texas Eastern's concerns, namely that Commission or court action may cause repayment, in whole or in part, of take-or-pay charge refunds that Texas Eastern has previously made to Columbia, the present filing by Texas Eastern and a contemporaneous filing by Columbia are being made. These tariff provisions will permit, in certain

specified circumstances, the direct payment to Texas Eastern by Columbia's customers of take-or-pay charges that may be ordered by the Commission or result from future court actions. The charges paid to Texas Eastern will be calculated on the same basis as if Columbia had assessed the flowthrough charges itself. Columbia will provide its customers with applicable billing invoices.

Texas Eastern states that the current financial difficulties facing Columbia have precipitated the present filings by Texas Eastern and Columbia. In the circumstances addressed by the proposed tariff language, if Texas Eastern is authorized to collect additional costs from Columbia, which in turn Columbia's customers would be obligated to pay, Columbia's customers' payments to Columbia potentially could be impeded in reaching Texas Eastern by operation of bankruptcy procedures. It is these potential adverse effects that Texas Eastern seeks to prevent through the present filing, coupled with Columbia's filing to permit direct payment to an upstream supplier, like Texas Eastern, in the specified circumstances.

The proposed effective date of the tariff sheets listed above is August 26, 1991.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions. Texas Eastern further states that copies of the filing are also being mailed to all parties in Docket Nos. RP91-72, et al.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 7, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-18680 Filed 8-6-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

Metal Casting Industrial Advisory Board Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: DOE Metal Casting Industrial Advisory Board.

Date and Time: Tuesday, August 27, 1991, 8:30 a.m.-5 p.m.; Wednesday, August 28, 1991, 8:30 a.m.-3 p.m.

Location: American Foundrymen's Society Headquarters, 505 State Street; Des Plaines, IL 60016-8399.

Contact: David M. Pellish, Executive Secretary, DOE Metal Casting Industrial Advisory Board, U.S. Department of Energy, CE-231, Forrestal Building, Washington, DC 20585, Telephone: (202) 586-6436.

Purpose of Meeting: To discuss critical problems and issues facing the metal casting industry regarding competitiveness and energy efficiency. Environmental issues will also be emphasized.

Tentative Agenda: Second meeting of the Board—Tuesday August 27, 1991 and Wednesday, August 28, 1991.

- Opening Remarks and Welcome by Board Chairman.
- Board Secretary's Report on status of current activities associated with the Metal Casting Competitiveness Research Program.
- Discussions of problems affecting competitiveness, energy efficiency, and environmental issues of the metal casting industry by executives from various sectors of the industry.
- Other matters requiring consideration by the Board and a Public Comment period.

Note: Due to statutory requirements and Federal regulations, there will be no discussion of the solicitation or of proposals currently being considered by DOE.

Public Participation: The meeting is open to the public. The Chairmen of the Board are empowered to conduct the meeting to facilitate the orderly conduct of business. Any member of the public who wishes to make an oral statement pertaining to agenda items should contact the Executive Secretary at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes; Available for public review and copying at the Public Reading Room IE-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m. Monday through Friday except Federal holidays.

Issued at Washington, DC on August 2, 1991.

Stephen J. Garvey,

Deputy Advisory Committee Management Officer.

[FR Doc. 91-18741 Filed 8-6-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3982-2]

Expansion of Bioremediation Data in the Alternative Treatment Technology Information Center

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA's Office of Environmental Engineering and Technology Demonstration (OEETD) of the Office of Research and Development (ORD) is expanding the bioremediation data in the Alternative Treatment Technology Information Center (ATTIC). Bioremediation, for this purpose, is defined as the process in which soil, sludge, water, or an air stream is managed to encourage optimal activity of microorganisms in order to biodegrade or biotransform target contaminants. ATTIC is a computerized, on-line, information network that provides up-to-date technical information on innovative treatment methods for hazardous wastes to all members of the Federal, State, and private sector involved in site remediation. The information contained in ATTIC consists of a wide variety of data obtained from Federal, State, and private sector sources.

ADDRESSES: All interested parties may submit information on bioremediation to the following address: Katherine Devine, DEVO Enterprises, Inc., 704 9th Street SE., Washington, DC 20003-2804, (202) 543-2752, FAX (202) 547-2909.

FOR FURTHER INFORMATION CONTACT: Dr. Curtis C. Harlin, OEETD RD-681, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 479-9642.

SUPPLEMENTARY INFORMATION: As environmental pollution continues to escalate in our nation, the U.S. Environmental Protection Agency's mission to identify cost effective solutions becomes increasingly important. To fulfill this mission, the Agency actively encourages the use of promising innovative technologies through the dissemination of benefits and cost information on such technologies.

Two years ago, the EPA Office of Research and Development created an information system on alternative innovative technologies designed to increase communication among all parties involved in site remediation. This system is the Alternative

Treatment Technology Information Center.

Because bioremediation is increasingly being used for addressing pollution problems, ORD is making a special effort to augment the bioremediation information that currently exists in ATTIC with case study information voluntarily submitted by the public and private sector involved in bioremediation efforts. Interested parties, including bioremediation companies, may submit information, such as case studies, on technologies used for site clean-up for transfer to ATTIC by: (1) Mailing or faxing written material; (2) providing the information by telephone; (3) sending a copy of a report or a paper or presentation, on a clean-up activity, that may have been given at a conference or seminar, or published in a trade journal, and relevant information will be extracted by ATTIC staff; (4) entering information on-line (contact Katherine Devine or Curtis Harlin for method); or (5) a combination of the above.

At the present time, the ATTIC database contains over 1,600 technical documents and reports collected into a keyboard searchable format. Documentation includes Records of Decisions (RODs) from the Superfund program, SITE project summaries, reports from other Federal agencies, State agency reports, and industry studies. ATTIC is available through both the ATTIC System Operator and an easy-to-use online computer system and will provide technical assistance, conduct searches, and assist in document retrieval at no charge to the user. Currently, there is an average of over 600 monthly users of the system.

Dated: August 1, 1991.

Alfred W. Lindsey,

Director, Office of Environmental Engineering and Technology Demonstration.

[FR Doc. 91-18735 Filed 8-6-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3961-4]

Chesapeake Bay Program; 1987 Chesapeake Bay Agreement; Proposals for Review

Draft Baywide Fishery Management Plans for American Eel, Summer Flounder, and Atlantic Spot and Croaker, prepared pursuant to the 1987 Chesapeake Bay Agreement by the Living Resources Subcommittee of the Chesapeake Bay Program, are now available for public review. Public comments will be accepted through September 9, 1991. Comments on the American Eel and Atlantic Spot and Croaker plans should be sent to Mr. Pete Jensen, Maryland Department of Natural Resources, Tidewater Fisheries, Tawes State Office Building C-2, Annapolis, MD 21401; comments on the Summer Flounder should be sent to Jack Travelstead, Virginia Marine Resources Commission, Division of Fisheries Management, P.O. Box 756, Newport News, Virginia 23607-0756.

To obtain copies of the draft plans, call Carin Bisland, EPA Chesapeake Bay Program Office, 301/267-0061. For additional information, call Mr. Jensen at 301/974-3558.

Charles S. Spooner,

Deputy Director.

[FR Doc. 91-18734 Filed 8-6-91; 8:45 am]

BILLING CODE 6560-50-M

[OPP-100092; FRL-3935-8]

Food and Drug Administration and Mitre Corporation; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). The Food and Drug Administration (FDA) and its contractor, Mitre Corporation, under an Interagency Agreement (IAG) will perform work for EPA's Office of Health and Environmental Assessment, and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to FDA and the Mitre Corporation consistent with the requirements of 40 CFR 2.209(c), and 2.308(h)(2). This transfer will enable FDA and the Mitre Corporation to fulfill the obligations of an IAG, and this notice serves to notify affected persons.

DATES: FDA and the Mitre Corporation will be given access to this information no sooner than August 19, 1991.

FOR FURTHER INFORMATION CONTACT: By mail: Clare Grubbs, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 212, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-4460.

SUPPLEMENTARY INFORMATION: Under this IAG which supports the OPP regulatory efforts, FDA and the Mitre Corporation will perform tasks that will be related to improving test methods and reducing uncertainties in risk assessments in a variety of health areas including developmental and reproductive toxicity, carcinogenicity, mutagenicity, and pharmacokinetics. Data from pharmacokinetics, developmental toxicity, and reproductive toxicity studies will be compiled and analyzed.

The Office of Health and Environmental Assessment and Office of Pesticide Programs have jointly determined that the IAG herein described involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this IAG. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, and 6 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirement of 40 CFR 2.209(c), 2.307(h), and 2.308(h)(2), this IAG with FDA and Mitre Corporation, prohibits use of the information for any purpose other than the purposes specified in this IAG; prohibits disclosure of the information in any form to a third party without prior written approval; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. No information will be provided until the above requirements have been fully satisfied. Records of information provided under this IAG will be maintained by the Project Officer for this contract in the EPA Office of Health and Environmental Assessment.

All information supplied to FDA and Mitre Corporation by EPA for use in connection with this IAG will be returned to EPA when FDA and Mitre Corporation have completed their work.

Dated: July 25, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 91-18620 Filed 8-6-91; 8:45 am]

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Highway, Arlington, VA, (703) 557–4460.

SUPPLEMENTARY INFORMATION: Under this IAG which supports the OPP regulatory efforts, FDA and the Mitre Corporation will perform tasks that will be related to improving test methods and reducing uncertainties in risk assessments in a variety of health areas including developmental and reproductive toxicity, carcinogenicity, mutagenicity, and pharmacokinetics. Data from pharmacokinetics, developmental toxicity, and reproductive toxicity studies will be compiled and analyzed.

The Office of Health and Environmental Assessment and Office of Pesticide Programs have jointly determined that the IAG herein described involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this IAG. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, and 6 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirement of 40 CFR 2.209(c), 2.307(h), and 2.308(h)(2), this IAG with FDA and Mitre Corporation, prohibits use of the information for any purpose other than the purposes specified in this IAG; prohibits disclosure of the information in any form to a third party without prior written approval; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. No information will be provided until the above requirements have been fully satisfied. Records of information provided under this IAG will be maintained by the Project Officer for this contract in the EPA Office of Health and Environmental Assessment.

All information supplied to FDA and Mitre Corporation by EPA for use in connection with this IAG will be returned to EPA when FDA and Mitre Corporation have completed their work.

Dated: July 25, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 91–18620 Filed 8–6–91; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180847; FRL 3933–6]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the 24 States as listed below, and one to the Puerto Rico Department of Agriculture and to the United States Department of Agriculture. Crisis exemptions were initiated by 12 various States, and one by the United States Department of Agriculture. These exemptions, issued during the months of March and April, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. EPA denied specific exemption requests from the Michigan Department of Agriculture and the New York State Department of Environmental Conservation. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific and crisis exemption for its effective date.

FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1806).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Alabama Department of Agriculture and Industries for the use of fluvalinate on packaged bees to control varroa mites; April 16, 1991, to October 1, 1991. (Libby Pemberton)

2. California Department of Food and Agriculture for the use of benomyl on artichokes to control ramularia leaf spot; April 18, 1991, to December 31, 1991. (Susan Stanton)

3. California Department of Food and Agriculture for the use of zinc phosphide on sugarbeets to control meadow mice; April 1, 1991, to March 31, 1992. (Libby Pemberton)

4. California Department of Food and Agriculture for the use of triadimefon on artichokes to control powdery mildew; March 7, 1991, to December 31, 1991. (Susan Stanton)

5. California Department of Food and Agriculture for the use of fosetyl-aluminum (Aliette) on spinach to control downy mildew; March 1, 1991, to February 28, 1992. (Susan Stanton)

6. Colorado Department of Agriculture for the use of cypermethrin on dry bulb onions to control thrips; April 12, 1991, to September 15, 1991. (Andrea Beard)

7. Georgia Department of Agriculture for the use of sethoxydim on canola to control Italian ryegrass; March 5, 1991, to April 15, 1991. (Susan Stanton)

8. Georgia Department of Agriculture for the use of fluvalinate on packaged bees to control varroa mites; April 16, 1991, to October 1, 1991. Georgia had initiated a crisis exemption for this use. (Libby Pemberton)

9. Idaho Department of Agriculture for the use of sethoxydim on canola to control volunteer grains and grasses; April 23, 1991, to July 15, 1991. (Susan Stanton)

10. Idaho Department of Agriculture for the use of clopyralid on mint to control weeds; March 20, 1991, to November 30, 1991. (Susan Stanton)

11. Louisiana Department of Forestry for the use of clomazone on sweet potatoes to control annual broadleaf weeds and grasses; March 22, 1991, to July 15, 1991. (Libby Pemberton)

12. Maryland Department of Agriculture for the use of clomazone on watermelons to control broadleaf weeds and grasses; April 23, 1991, to August 20, 1991. (Susan Stanton)

13. Massachusetts Department of Food and Agriculture for the use of metalaxyl on cranberries to control phytophthora cinnamoni; April 1, 1991, December 31, 1991. (Robert Forrest)

14. Michigan Department of Agriculture for the use of pendimethalin on dry bulb onions grown on organic soils to control lambsquarter and prostrate spurge; April 1, 1991, to June 30, 1991. (Jim Tompkins)

15. Minnesota Department of Agriculture for the use of propiconazole on cultivated wild rice to control bipolaris oryzae; April 12, 1991, to August 31, 1991. (Jim Tompkins)

16. Minnesota Department of Agriculture for the use of pendimethalin on dry bulb onions grown on organic soils to control prostrate spurge; April 1, 1991, to June 30, 1991. (Jim Tompkins)

17. Minnesota Department of Agriculture for the use of fenoxaprop-ethyl (tiller) on wheat to control foxtail, mixed foxtail, and wild oat infestations; March 29, 1991, to July 15, 1991. (Susan Stanton)

18. Minnesota Department of Agriculture for the use of sethoxydim on canola to control volunteer grains and grasses; April 19, 1991, to July 31, 1991. (Susan Stanton)

19. Mississippi Department of Agriculture and Commerce for the use of clomazone on sweet potatoes to control annual broadleaf weeds and grasses; March 22, 1991, to July 15, 1991. (Libby Pemberton)

20. Mississippi Department of Agriculture and Commerce for the use of fluvalinate on packaged bees to control varroa mites; April 17, 1991, to October 1, 1991. (Libby Pemberton)

21. Missouri Department of Agriculture for the use of clomazone on cotton to control velvetleaf; April 19, 1991, to June 30, 1991. (Susan Stanton)

22. Montana Department of Agriculture for the use of sethoxydim on canola and mustard to control volunteer grains and grasses; April 23, 1991, to July 15, 1991. (Susan Stanton)

23. Montana Department of Agriculture for the use of clopyralid on peppermint and spearmint to control various weeds; April 17, 1991, to October 15, 1991. (Susan Stanton)

24. Montana Department of Agriculture for the use of fenoxaprop-ethyl + 2,4-D + MCPA on spring wheat to control green foxtail; March 29, 1991, to July 31, 1991. (Susan Stanton)

25. New Jersey Department of Agriculture for the use of metalaxyl on cranberries to control root rot; April 15, 1991, to December 31, 1991. (Andrea Beard)

26. North Carolina Department of Agriculture for the use of fluvalinate packaged bees to control varroa mites; April 19, 1991, to October 1, 1991. (Libby Pemberton)

27. North Dakota Department of Agriculture for the use of fenoxaprop-ethyl + 2,4-D + MCPA on spring wheat to control foxtail, mixed foxtail, and wild oats infestations; March 29, 1991, to July 15, 1991. (Susan Stanton)

28. North Dakota Department of Agriculture for the use of sethoxydim on canola to control volunteer grains and grasses; March 20, 1991, to July 31, 1991. (Susan Stanton)

29. North Dakota Department of Agriculture for the use of benomyl on canola to control sclerotinia stem rot; April 18, 1991, to July 15, 1991. (Susan Stanton)

30. Oregon Department of Agriculture for the use of oxyfluorfen on blackberries to suppress primocanes; March 7, 1991, to July 31, 1991. (Susan Stanton)

31. Oregon Department of Agriculture for the use of clopyralid on mint to control weeds; March 20, 1991, to November 15, 1991. (Susan Stanton)

32. Oregon Department of Agriculture for the use of oxyfluorfen on raspberries to suppress primocanes; March 7, 1991, to May 15, 1991. (Susan Stanton)

33. Oregon Department of Agriculture for the use of pendimethalin on dry bulb onions grown on organic soils to control lambsquarter, prostrate spurge, and purslane; April 1, 1991, to June 30, 1991. (Jim Tompkins)

34. Oregon Department of Agriculture for the use of cyfluthrin on pears to control pear psylla; March 6, 1991, to April 30, 1991. (Libby Pemberton)

35. Puerto Rico Department of Agriculture for the use triadimefon on coffee to control coffee rust; April 30, 1991, to April 29, 1992. (Libby Pemberton)

36. South Carolina Division of Fertilizer, Pesticide Control, Clemson University for the use of fluvalinate on packaged bees to control varroa mites; April 16, 1991, to October 1, 1991. (Libby Pemberton)

37. South Dakota Department of Agriculture for the use of tiller herbicide on hard red spring wheat to control green foxtail, yellow foxtail, millet, and wild proso millet; April 17, 1991, to July 15, 1991. (Susan Stanton)

38. Texas Department of Agriculture for the use of fluvalinate on packaged bees to control varroa mites; April 16, 1991, to October 1, 1991. (Libby Pemberton)

39. Utah Department of Agriculture for the use of carbaryl on barley to control cereal leaf beetles; April 17, 1991, to June 30, 1991. (Susan Stanton)

40. Utah Department of Agriculture for the use of cypermethrin on dry bulb onions to control thrips; April 30, 1991, to September 30, 1991. (Andrea Beard)

41. Virginia Department of Agriculture and Consumer Services for the use of clomazone on watermelons to control annual broadleaf weeds; April 1, 1991, to May 31, 1991. (Susan Stanton)

42. Washington Department of Agriculture for the use of methyl bromide on watermelons to control weeds; March 11, 1991, to April 30, 1991. (Libby Pemberton)

43. Washington Department of Agriculture for the use of cyfluthrin on interplanted apples to control pear psylla; March 6, 1991, to April 30, 1991. (Libby Pemberton)

44. Washington Department of Agriculture for the use of clopyralid on mint to control weeds; March 20, 1991, to November 30, 1991. (Susan Stanton)

45. Washington Department of Agriculture for the use of oxyfluorfen on raspberries to suppress primocanes; March 7, 1991, to June 1, 1991. (Susan Stanton)

46. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of pendimethalin on dry bulb onions to control lambsquarter, prostrate spurge, purslane, and kochia; April 1, 1991, to June 30, 1991. (Jim Tompkins)

47. Wisconsin Department of Agriculture, Trade, and Consumer Services for the use of mancozeb on cultivated American ginseng to control phytophthora cactorum and alternaria panax; April 17, 1991, to August 31, 1991. EBDC is subject to a Special Review. (Jim Tompkins)

48. Wisconsin Department of Agriculture, Trade, and Consumer Services for the use of metalaxyl on cultivated American ginseng to control phytophthora root rot; April 17, 1991, to August 31, 1991. (Jim Tompkins)

49. United States Department of Agriculture for the use of quaternary ammonium compounds on field equipment to devitalize witchweed seed; March 11, 1991, to March 10, 1994. (Jim Tompkins)

Crisis exemptions were initiated by the:

1. Alabama Department of Agriculture and Industries on April 4, 1991, for the use of fluvalinate on packaged bees to control varroa mites. This program is expected to last until October 1, 1991. (Libby Pemberton)

2. California Department of Food and Agriculture on March 14, 1991, for the use of gibberellins on lemons to control sour rot complex. This program is expected to last until August 31, 1991. (Susan Stanton)

3. California Department of Food and Agriculture on April 12, 1991, for the use of methyl bromide on sweet potatoes to control root knot nematodes. This program has ended. (Libby Pemberton)

4. Colorado Department of Agriculture on April 10, 1991, for the use of chlorpyrifos on wheat to control Russian wheat aphid. This program is expected to last until December 31, 1991. (Andrea Beard)

5. Georgia Department of Agriculture on April 2, 1991, for the use of fluvalinate on packaged bees to control varroa mites. This program is expected to last until October 1, 1991. (Libby Pemberton)

6. Mississippi Department of Agriculture and Commerce on April 4, 1991, for the use of fluvalinate on packaged bees to control varroa mites. This program is expected to last until October 1, 1991. (Libby Pemberton)

7. North Carolina Department of Agriculture on April 12, 1991, for the use of fluvalinate on packaged bees to control varroa mites. This program is expected to last until October 1, 1991. (Libby Pemberton)

8. North Carolina Department of Agriculture on April 12, 1991, for the use of naproamide on sweet potatoes to control broadleaf weeds. This program has ended. (Libby Pemberton)

9. North Carolina Department of Agriculture on April 12, 1991, for the use of clomazone on sweet potatoes to control annual broadleaf weeds. This program is expected to last until July 15, 1991. (Libby Pemberton)

10. South Carolina Division of Regulatory and Public Service Programs on April 3, 1991, for the use of fluvalinate on packaged bees to control varroa mites. This program is expected to last until October 1, 1991. (Libby Pemberton)

11. South Dakota Department of Agriculture on March 29, 1991, for the use of pendimethalin on mint to control kochia and redroot pigweed. This program has ended. (Jim Tompkins)

12. Texas Department of Agriculture on April 10, 1991, for the use of fluvalinate on packaged bees to control varroa mites. This program is expected to last until October 1, 1991. (Libby Pemberton)

13. United States Department of Agriculture on April 8, 1991, for the use of zinc phosphide on alfalfa, barley, beans, potatoes, sugar beets, wheat, and grass grown for seed to control voles. This program is expected to last until April 7, 1992. (Libby Pemberton)

EPA has denied specific exemption requests from the Michigan Department of Agriculture and the New York State Department of Environmental Conservation for the use of cyromazine on onions to control onion maggots. (Susan Stanton)

Authority: 7 U.S.C. 136.

Dated: July 12, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 91-18733 Filed 8-6-91; 8:45 am]

BILLING CODE 6560-50-F

[PP 1G3930/T612; FRL 3931-2]

Abamectin; Establishment of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a temporary tolerance for the combined residues of the pesticide abamectin and its delta 8,9-isomer in or on the raw agricultural commodity apples at 0.035 part per million (ppm).

DATES: This temporary tolerance expires June 15, 1992.

FOR FURTHER INFORMATION CONTACT: By mail: George LaRocca, Product Manager

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control broadleaf weeds. This program has ended. (Libby Pemberton)

9. North Carolina Department of Agriculture on April 12, 1991, for the use of clomazone on sweet potatoes to control annual broadleaf weeds. This program is expected to last until July 15, 1991. (Libby Pemberton)

10. South Carolina Division of Regulatory and Public Service Programs on April 3, 1991, for the use of fluvalinate on packaged bees to control varroa mites. This program is expected to last until October 1, 1991. (Libby Pemberton)

11. South Dakota Department of Agriculture on March 29, 1991, for the use of pendimethalin on mint to control kochia and redroot pigweed. This program has ended. (Jim Tompkins)

12. Texas Department of Agriculture on April 10, 1991, for the use of fluvalinate on packaged bees to control varroa mites. This program is expected to last until October 1, 1991. (Libby Pemberton)

13. United States Department of Agriculture on April 8, 1991, for the use of zinc phosphide on alfalfa, barley, beans, potatoes, sugar beets, wheat, and grass grown for seed to control voles. This program is expected to last until April 7, 1992. (Libby Pemberton)

EPA has denied specific exemption requests from the Michigan Department of Agriculture and the New York State Department of Environmental Conservation for the use of cyromazine on onions to control onion maggots. (Susan Stanton)

Authority: 7 U.S.C. 136.

Dated: July 12, 1991.

Douglas D. Campt,
Director, Office of Pesticide Programs.

[FR Doc. 91–18733 Filed 8–6–91; 8:45 am]

BILLING CODE 6560-50-F

[PP 1G3930/T612; FRL 3931-2]

Abamectin; Establishment of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a temporary tolerance for the combined residues of the pesticide abamectin and its delta 8,9-isomer in or on the raw agricultural commodity apples at 0.035 part per million (ppm).

DATES: This temporary tolerance expires June 15, 1992.

FOR FURTHER INFORMATION CONTACT: By mail: George LaRocca, Product Manager (PM) 15, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 204, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703)–557–2400.

SUPPLEMENTARY INFORMATION: Merck Sharp Dohme Research Laboratories, Division of Merck and Co., Inc., Hillsborough Rd., Three Bridges, NJ 08887, has requested in pesticide petition (PP) 1G3930, the establishment of a temporary tolerance for the combined residues of the pesticide abamectin and its delta 8,9-isomer in or on the raw agricultural commodity apples at 0.035 ppm. This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of the experimental use permit 618–EUP–13, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Merck and Co., Inc., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires June 15, 1992. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: July 10, 1991.

Anne E. Lindsay,
Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 91–18278 Filed 8–6–91; 8:45 am]

BILLING CODE 6560-50-F

[PP 1G2454/T614; FRL 3933-2]

Acetochlor; Renewal of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has renewed temporary tolerances for the combined residues of the herbicide acetochlor, and from the sum of its EMA-(2-ethyl-6-methyl aniline) yielding metabolites and its HEMA-[2-(1-hydroxyethyl)-6-methyl aniline] yielding metabolites (when calculated as acetochlor) in or on certain raw agricultural commodities.

DATES: These temporary tolerances expire May 1, 1993.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703)–557–1800.

SUPPLEMENTARY INFORMATON: EPA issued a notice, which was published in the **Federal Register** of April 6, 1983 (48 FR 15001), stating that temporary tolerances had been extended for the combined residues of the herbicide acetochlor [N-(ethoxymethyl)-2-methyl-6-ethyl-2-chloro-acetanilide], and from the sum of its EMA-(2-ethyl-6-methyl aniline) yielding metabolites and its HEMA-[2-(1-hydroxyethyl)-6-methyl aniline] yielding metabolites (when calculated as acetochlor) in or on the raw agricultural commodities field corn, grain at 0.04 part per million (ppm) and field corn, fodder, and forage at 0.50 ppm. These tolerances are being renewed in response to pesticide petition (PP) 1G2454, submitted by Monsanto Co., 700 14th St., NW., Suite 1100, Washington, DC 20005.

The company has requested a 1-year renewal of the temporary tolerances to permit the continued marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 524– EUP–56, which is being renewed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that a renewal of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been renewed on the condition that the herbicide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active herbicide to be used must not exceed the quantity authorized by the experimental use permit.

2. Monsanto Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance, and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire May 1, 1993. Residues not in excess of this amount remaining in or on the above raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: July 18, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 91-18279 Filed 8-6-91; 8:45 am]

BILLING CODE 6560-50-F

[PP 9G3742/T611; FRL 3931-4]

Amitraz; Extension of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended temporary tolerances for the combined residues of the insecticide/miticide amitraz and its metabolites in or on certain raw agricultural commodities.

DATES: These temporary tolerances expire May 30, 1992.

FOR FURTHER INFORMATION CONTACT By mail: Dennis Edwards, Product Manager (PM) 12, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 202, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703)–557–2386.

SUPPLEMENTARY INFORMATION: EPA issued a notice, which was published in the **Federal Register** of July 18, 1990 (55 FR 29263), announcing the establishment of temporary tolerances for the combined residues of the insecticide/miticide amitraz N'-(2,4-dimethylphenyl)-N-[[(2,4-dimethylphenyl)imino]methyl]-N-methylmethanimidamide and its metabolites containing the 2,4-dimethylaniline moiety (calculated as the parent compound) in or on the raw agricultural commodities cottonseed at 1.0 part per million (ppm), in eggs and the meat and fat of poultry, horses, goats, and sheep at 0.01 ppm, and in the meat by-products of poultry, horses, goats, and sheep at 0.05 ppm. These tolerances were issued in response to pesticide petition (PP) 9G3742, submitted by Nor-Am Chemical Co., 3509 Silverside Rd., P.O. Box 7495, Wilmington, DE 19803.

These temporary tolerances have been extended to permit the continued marketing of the raw agricultural commodities named above when treated in accordance with the provisions of experimental use permit 45639–EUP–46, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the extension of these temporary tolerances will protect the public health. Therefore, the temporary tolerances have been extended on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.
2. Nor-Am Chemical Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire May 30, 1992. Residues not in excess of this amount remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: July 12, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 91-18280 Filed 8-6-91; 8:45 am]

BILLING CODE 6560-50-F

[PP 4G3156/T613; FRL 3931-6]

Monoammonium; Extension of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended temporary tolerances for the combined residues of the herbicide monoammonium and its metabolite in or on certain raw agricultural commodities.

DATES: These temporary tolerances expire June 6, 1992.

FOR FURTHER INFORMATION CONTACT By mail: Joanne Miller, Product Manager (PM) 23, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703)–557–1830.

SUPPLEMENTARY INFORMATION: EPA issued a notice, which was published in the **Federal Register** of June 14, 1990 (55 FR 24152), announcing the establishment of temporary tolerances for the combined residues of the herbicide monoammonium 2-amino-4-(hydroxymethylphosphinyl) butanoate and its metabolite 3-methylphosphimicopropionic acid in or on the raw agricultural commodities citrus, pome fruit, grapes, and stone fruit at 0.05 part per million (ppm). These tolerances were issued in response to pesticide petition (PP) 4G3156, submitted by Hoechst Celanese Corp., Route 202–206, P.O. Box 2500, Somerville, NJ 08876–1258.

These temporary tolerances have been extended to permit the continued marketing of the raw agricultural commodities named above when treated in accordance with the provisions of experimental use permit 8340–EUP–10, which is being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the extension of these temporary tolerances will protect the public health. Therefore, the

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Dated: July 12, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 91–18280 Filed 8–6–91; 8:45 am]

BILLING CODE 6560-50-F

[PP 4G3156/T613; FRL 3931–6]

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AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended temporary tolerances for the combined residues of the herbicide monoammonium and its metabolite in or on certain raw agricultural commodities.

DATES: These temporary tolerances expire June 6, 1992.

FOR FURTHER INFORMATION CONTACT By mail: Joanne Miller, Product Manager (PM) 23, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703)–557–1830.

SUPPLEMENTARY INFORMATION: EPA issued a notice, which was published in the **Federal Register** of June 14, 1990 (55 FR 24152), announcing the establishment of temporary tolerances for the combined residues of the herbicide monoammonium 2-amino-4-(hydroxymethylphosphinyl) butanoate and its metabolite 3-methylphosphinicopropionic acid in or on the raw agricultural commodities citrus, pome fruit, grapes, and stone fruit at 0.05 part per million (ppm). These tolerances were issued in response to pesticide petition (PP) 4G3156, submitted by Hoechst Celanese Corp., Route 202–206, P.O. Box 2500, Somerville, NJ 08876–1258.

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The scientific data reported and other relevant material were evaluated, and it was determined that the extension of these temporary tolerances will protect the public health. Therefore, the temporary tolerances have been extended on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Hoechst Celanese Corp. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire June 6, 1992. Residues not in excess of this amount remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: July 12, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 91–18281 Filed 8–6–91; 8:45 am]

BILLING CODE 6560-50-F

[OPP–60021; FRL–3938–7]

Intent to Suspend Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of issuance of notices of intent to suspend.

SUMMARY: This Notice, pursuant to section 6(f)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., announces that EPA has issued Notices of Intent to Suspend pursuant to sections 3(c)(2)(B) and 4 of FIFRA. The Notices were issued following issuance of Section 4 Reregistration Requirements Notices by the Agency and the failure of registrants subject to the Section 4 Reregistration Requirements Notices to take appropriate steps to secure the data required to be submitted to the Agency. This Notice includes the text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information. Table A of this Notice further identifies the registrant to whom the Notices of Intent to Suspend were issued, the date each Notice of Intent to Suspend was issued, the active ingredient(s) involved, and the EPA registration numbers and names of the registered product(s) which are affected by the Notices of Intent to Suspend. Moreover, Table B of this Notice identifies the basis upon which the Notices of Intent to Suspend were issued. Finally, matters pertaining to the timing of requests for hearing are specified in the Notices of Intent to Suspend and are governed by the deadlines specified in section 3(c)(2)(B). As required by section 6(f)(2), the Notices of Intent to Suspend were sent by certified mail, return receipt requested, to each affected registrant at its address of record.

FOR FURTHER INFORMATION CONTACT: Stephen L. Brozena, Office of Compliance Monitoring (EN–342), Laboratory Data Integrity Assurance Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (703) 308–8267.

SUPPLEMENTARY INFORMATION:

I. Text of a Notice of Intent to Suspend

The text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information, follows:

United States Environmental Protection Agency

Office of Pesticides and Toxic Substances

Washington, DC 20460

Certified Mail

Return Receipt Requested

SUBJECT: Suspension of Registration of Pesticide Product(s) Containing ______________ for Failure to Comply with the Section 4 Reregistration Requirements

Notice for ______________ Dated ______________

Dear Sir/Madam:

This letter gives you notice that the pesticide product registrations listed in Attachment I will be suspended 30 days from your receipt of this letter unless you take steps within that time to prevent this Notice from automatically becoming a final and effective order of suspension. The Agency's authority for suspending the registrations of your products is sections 3(c)(2)(B) and 4(d)(6) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Upon becoming a final and effective order of suspension, any violation of the order will be an unlawful act under section 12(a)(2)(J) of FIFRA.

You are receiving this Notice of Intent to Suspend because you have failed to comply with the terms of the Phase 2 Data Requirements for Reregistration Notice imposed pursuant to Section 4 of FIFRA. Section 4(d)(6) provides that the Administrator "shall issue a Notice of Intent to Suspend the registration of a pesticide in accordance with the procedures prescribed by section 3(c)(2)(B)(iv) if the Administrator determines that (A) progress is insufficient to ensure submission of the data required for such pesticide under a commitment made under paragraph (3)(B) within the time period prescribed by paragraph (4)(B) or (B) the registrant has not submitted such data to the Administrator within such time period."

The specific basis for issuance of this Notice is stated in the Explanatory Appendix (Attachment III) to this Notice. Affected products and the requirements which you failed to satisfy are listed and described in the following three attachments:

Attachment I Suspension Report - Product List

Attachment II Suspension Report - Requirement List

Attachment III Suspension Report - Explanatory Appendix

The suspension of the registration of each product listed in Attachment I will become final unless at least one of the following actions is completed.

1. You may avoid suspension under this Notice if you or another person adversely affected by this Notice properly request a hearing within 30 days of your receipt of this Notice. If you request a hearing, it will be conducted in accordance with the requirements of section 6(d) of FIFRA and the Agency's procedural regulations in 40 CFR part 164.

Section 3(c)(2)(B), however, provides that the only allowable issues which may be addressed at the hearing are whether you have failed to take the actions which are the bases of this Notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA. Therefore, no substantive allegation or legal argument concerning other issues, including but not limited to the Agency's original decision to require the submission of data or other information, the need for or utility of any of the required data or other information or deadlines imposed, and the risks and benefits associated with continued registration of the affected product, may be considered in the proceeding. The Administrative Law Judge shall by order dismiss any objections which have no bearing on the allowable issues which may be considered in the proceeding.

Section 3(c)(2)(B)(iv) of FIFRA provides that any hearing must be held and a determination issued within 75 days after receipt of a hearing request. This 75-day period may not be extended unless all parties in the proceeding stipulate to such an extension. If a hearing is properly requested, the Agency will issue a final order at the conclusion of the hearing governing the suspension of your products.

A request for a hearing pursuant to this Notice must (1) include specific objections which pertain to the allowable issues which may be heard at the hearing, (2) identify the registrations for which a hearing is requested, and (3) set forth all necessary supporting facts pertaining to any of the objections which you have identified in your request for a hearing. If a hearing is requested by any person other than the registrant, that person must also state specifically why he asserts that he would be adversely affected by the suspension action described in this Notice. Three copies of the request must be submitted to: Hearing Clerk, A-110, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and an additional copy should be sent to the signatory listed below. The request must be *received* by the Hearing Clerk by the 30th day from your receipt of this Notice in order to be legally effective. The 30-day time limit is established by FIFRA and cannot be extended for any reason. Failure to meet the 30-day time limit will result in automatic suspension of your registration(s) by operation of law and, under such circumstances, the suspension of the registration for your affected product(s) will be final and effective at the close of business 30 days after your receipt of this Notice and will not be subject to further administrative review.

The Agency's Rules of Practice at 40 CFR 164.7 forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. Accordingly, the following EPA offices, and the staffs thereof, are designated as judicial staff to perform the judicial function of EPA in any administrative hearings on this Notice of Intent to Suspend: The Office of the Administrative Law Judges, the Office of the Judicial Officer, the Administrator, the Deputy Administrator, and the members of the staff in the immediate offices of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff shall have any *ex parte* communication with trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

2. You may also avoid suspension if, within 30 days of your receipt of this Notice, the Agency determines that you have taken appropriate steps to comply with the section 4 Data Requirements for Reregistration. In order to avoid suspension under this option, you must satisfactorily comply with Attachment II, Requirement List, for each product by submitting all required supporting data/information described in Attachment II and in the Explanatory Appendix (Attachment III) to the following address (preferably by certified mail):

Office of Compliance Monitoring (EN-342), Laboratory Data Integrity Assurance Division, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

For you to avoid automatic suspension under this Notice, the Agency must also determine within the applicable 30-day period that you have satisfied the requirements that are the bases of this Notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your product(s).

The suspension of the registration(s) of your company's product(s) pursuant to this Notice will be rescinded when the Agency determines you have complied fully with the requirements which were the bases of this Notice. Such compliance may only be achieved by submission of the data/information described in the attachments to the signatory below.

Your product will remain suspended, however, until the Agency determines you are in compliance with the requirements which are the bases of this Notice and so informs you in writing.

After the suspension becomes final and effective, the registrant subject to this Notice, including all supplemental registrants of product(s) listed in Attachment I, may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Persons other than the registrant subject to this Notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Nothing in this Notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I in any manner which would have been unlawful prior to the suspension.

If the registrations of your products listed in Attachment I are currently suspended as a result of failure to comply with another section 4 Data Requirements Notice or section 3(c)(2)(B) Data Call-In Notice, this Notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, i.e., all requirements which are the bases of the suspension must be satisfied before the registration will be reinstated.

You are reminded that it is your responsibility as the basic registrant to notify all supplementary registered distributors of your basic registered product that this suspension action also applies to their supplementary registered products and that you may be held liable for violations committed by your distributors. If you have any questions about the requirements and procedures set forth in this suspension notice or in the subject section 4 Data Requirements Notice, please contact Stephen L. Brozena at (703) 308-8267.

Sincerely yours,

Director, Office of Compliance Monitoring

Attachments:

Attachment I - Product List
Attachment II - Requirement List
Attachment III - Explanatory Appendix

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Your product will remain suspended, however, until the Agency determines you are in compliance with the requirements which are the bases of this Notice and so informs you in writing.

After the suspension becomes final and effective, the registrant subject to this Notice, including all supplemental registrants of product(s) listed in Attachment I, may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Persons other than the registrant subject to this Notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

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If the registrations of your products listed in Attachment I are currently suspended as a result of failure to comply with another section 4 Data Requirements Notice or section 3(c)(2)(B) Data Call-In Notice, this Notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, i.e., all requirements which are the bases of the suspension must be satisfied before the registration will be reinstated.

You are reminded that it is your responsibility as the basic registrant to notify all supplementary registered distributors of your basic registered product that this suspension action also applies to their supplementary registered products and that you may be held liable for violations committed by your distributors. If you have any questions about the requirements and procedures set forth in this suspension notice or in the subject section 4 Data Requirements Notice, please contact Stephen L. Brozena at (703) 308-8267.

Sincerely yours,

Director, Office of Compliance Monitoring

Attachments:
Attachment I - Product List
Attachment II - Requirement List
Attachment III - Explanatory Appendix

II. Registrant Receiving and Affected by Notices of Intent to Suspend; Date of Issuance; Active Ingredient and Products Affected

The following is a list of products for which a letter of notification has been sent:

TABLE A—LIST OF PRODUCTS

Registrant Affected	EPA Registration Number	Active Ingredient	Name of Product	Date Issued
McLaughlin Gormley King Company	1021-872	Methyl Nonyl Ketone	MGK Dog and Cat Repellent, Emulsifiable, 1770	7/15/91
	1021-873		MGK Dog and Cat Repellent	7/15/91
	1021-874		MGK Dog and Cat Repellent Concentrate, F-1769	7/15/91

III. Basis for Issuance of Notice of Intent; Requirement List

The following company failed to submit the following required data or information:

TABLE B—LIST OF REQUIREMENTS

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference Number	Original Due-Date
Methyl Nonyl Ketone	McLaughlin Gormley King Company	Product chemistry	61-1 through 63-13	10/24/90
		Acute avian oral quail/duck	71-1(a)	10/24/90
		Acute avian dietary quail	71-2(a)	10/24/90
		Acute avian dietary duck	71-2(b)	10/24/90
		Chemical identity	160-5	10/24/90
		Chemical identity	171-2	10/24/90
		Directions for use	171-3	10/24/90

IV. Attachment III Suspension Report—Explanatory Appendix

A discussion of the basis for the Notice of Intent to Suspend follows:

Methyl Nonyl Ketone

On July 24, 1989, EPA issued the Phase 2 Data Requirements for Reregistration Notice imposed pursuant to section 4 of FIFRA which required registrants of products containing methyl nonyl ketone to develop and submit certain data. These data were determined to be necessary to satisfy reregistration data requirements of section 4(d). Failure to comply with the requirements of a Phase 2 Data Requirements Notice is a basis for suspension under sections 3(c)(2)(B) and 4(d)(6) of FIFRA.

The Methyl Nonyl Ketone Reregistration Data Requirements Notice dated July 24, 1989 required each affected registrant to submit materials relating to the election of the options to address each of the data requirements. That submission was required to be received by the Agency within 90 days of the registrant's receipt of the Notice. The Agency received a response from you dated October 20, 1989 in which you as a methyl nonyl ketone registrant committed to undertake the required testing to meet the data requirements listed in Attachment II. The Notice further required that these data be submitted by deadlines noted for the subject data requirements on Attachment II. These deadlines have passed and to date the Agency has not received data to satisfy these data requirements. Because you have failed to provide appropriate or adequate data submissions within the time provided for the data requirements listed on Attachment II, the Agency is initiating through this Notice of Intent to Suspend the actions which FIFRA requires it to take under these circumstances.

V. Conclusions

EPA has issued Notices of Intent to Suspend on the dates indicated. Any further information regarding these Notices may be obtained from the contact person noted above.

Dated: August 1, 1991.

Michael M. Stahl,

Director, Office of Compliance Monitoring.

[FR Doc. 91-18732 Filed 8-6-91; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

July 26, 1991.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452-1422. For further information on this submission contact Judy Boley, Federal Communications

Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0416.

Title: Section 76.33, Standards for rate regulation.

Action: Revision.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion.

Estimated Annual Burden: 32,100 responses; 18.05 hours average burden per response; 579,500 hours total annual burden.

Needs and Uses: Section 76.33(a) requires certain documentation to be filed with the Commission by cable operators and franchisors in order for the Commission to resolve disputes concerning the applicability of the signal availability standard. Section 76.33(b) requires the franchise authority to give formal notice to the public when establishing any rate for the provision of basic cable service by cable systems. The data collected by § 76.33(a) is used by FCC staff to resolve disputes concerning the applicability of the signal availability standard. The formal notice required by § 76.33(b) is used by the public so that they may be provided an opportunity to make their views known at the local level on any rate provisions concerning cable service. The requirement for a written decision will ensure that local authorities are cognizant of and apply the standards for rate regulation required by the Commission.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–18634 Filed 8–6–91; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

July 30, 1991.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452–1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0068.

Title: Application for Consent to Assignment of Radio Station Construction Authorization or License—For stations in services other than Broadcast.

Form Number: FCC Form 702.

Action: Revision.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion.

Estimated Annual Burden: 1,000 responses; 5 hours average burden per response; 5,000 hours total annual burden.

Needs and Uses: FCC Form 702 is used by radio station permittees, conditional licensees or licensees to request authority to assign ownership of station assets. The affected public are individuals, partnerships or companies that are permittees, conditional licensees, and/or licensees of radio stations providing telecommunications. The data is used by the Commission to determine the qualifications of the applicant. This information collection has been revised to correct minor errors and several data elements were added to facilitate application processing. MMDS applicants must now respond to two new data elements pursuant to General Docket Nos. 90–54 and 80–113.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–18635 Filed 8–6–91; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

July 30, 1991.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452–1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0347.

Title: Section 97.311, SS emission types.

Action: Extension.

Respondents: Individuals or households.

Frequency of Response: Recordkeeping requirement.

Estimated Annual Burden: 25 recordkeepers; 1 hour average burden per recordkeeper; 25 hours total annual burden.

Needs and Uses: The recordkeeping requirement in § 97.311 is necessary to document all spread spectrum transmissions by amateur radio operators. It consists of a technical description of the transmission signal, pertinent parameters describing the transmitted signal, general description of information, method and frequencies used for station identification and date of beginning and date of ending use of each type of transmitted signal. This requirement is necessary so that quick resolution of any harmful interference problems can be achieved and to ensure that the station is operating in accordance with the Communications Act of 1934, as amended. The information is used by FCC staff during inspection and investigations to ensure compliance with applicable rules, statutes and treaties. In the absence of this recordkeeping requirement, field inspections and investigations related to the solution of cases of harmful interference would be severely hampered and needlessly prolonged due to the inability to quickly obtain vital information used to demodulate spread spectrum transmissions.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–18636 Filed 8–6–91; 8:45 am]

BILLING CODE 6712–01–M

Comments Invited on Illinois Regional Public Safety Plan

July 31, 1991.

The Commission has received the public safety radio communications plan for Illinois (Region 13).

In accordance with the Commission's Report and Order in General Docket No 87–112 implementing the Public Safety National Plan, parties may file comments on or before September 6, 1991, and reply comments on or before September 23, 1991. (See Report and Order, General Docket No. 87–112, 3 FCC Rcd 905 (1987), at paragraph 54.)

nt on this information
contact Jonas
f Management and
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OMB Number: 3060–0347.

Title: Section 97.311, SS emission types.

Action: Extension.

Respondents: Individuals or households.

Frequency of Response: Recordkeeping requirement.

Estimated Annual Burden: 25 recordkeepers; 1 hour average burden per recordkeeper; 25 hours total annual burden.

Needs and Uses: The recordkeeping requirement in § 97.311 is necessary to document all spread spectrum transmissions by amateur radio operators. It consists of a technical description of the transmission signal, pertinent parameters describing the transmitted signal, general description of information, method and frequencies used for station identification and date of beginning and date of ending use of each type of transmitted signal. This requirement is necessary so that quick resolution of any harmful interference problems can be achieved and to ensure that the station is operating in accordance with the Communications Act of 1934, as amended. The information is used by FCC staff during inspection and investigations to ensure compliance with applicable rules, statutes and treaties. In the absence of this recordkeeping requirement, field inspections and investigations related to the solution of cases of harmful interference would be severely hampered and needlessly prolonged due to the inability to quickly obtain vital information used to demodulate spread spectrum transmissions.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–18636 Filed 8–6–91; 8:45 am]

BILLING CODE 6712-01-M

Comments Invited on Illinois Regional Public Safety Plan

July 31, 1991.

The Commission has received the public safety radio communications plan for Illinois (Region 13).

In accordance with the Commission's Report and Order in General Docket No 87–112 implementing the Public Safety National Plan, parties may file comments on or before September 6, 1991, and reply comments on or before September 23, 1991. (See Report and Order, General Docket No. 87–112, 3 FCC Rcd 905 (1987), at paragraph 54.)

In accordance with the Commission's Memorandum Opinion and Order in General Docket No. 87–112, Region 13 consists of the State of Illinois, except for the following counties: Winnebago, McHenry, Cook, Kane, Kendall, Grundy, Boone, Lake, DuPage, DeKalb, Will and Kankakee Counties. (See Memorandum Opinion and Order, General Docket No. 87–112, 3 FCC Rcd 2113 (1988).)

Comments should be clearly identified as submissions to PR Docket 91–228 Illinois—Region 13, and commenters should send an original and five copies to the Secretary, Federal Communications Commission, Washington, DC 20554.

Questions regarding this public notice may be directed to Betty Woolford, Private Radio Bureau, (202) 632–6497 or Ray LaForge, Office of Engineering and Technology, (202) 653–8112.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–18637 Filed 8–6–91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Spain-Italy/Puerto Rico Island Pool; Agreement(s) Filed

The federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212–011213–022.

Title: Spain-Italy/Puerto Rico Island Pool Agreement.

Parties:

Compania Trasatlantica Espanola, S.A.
d'Amico Societa de Navigazione, S.p.A.,
Nordana Line A/S,.
Sea-Land Service, Inc.

Synopsis: The proposed amendment would add new provisions to the Agreement setting forth the method of disbursing excess funds remaining in the Pool Common Fund in the Spanish Range of the Pool after the payment of undercarrier compensation for the Pool period ending December 31, 1990. It would also set forth limits on liability for overcarriage payments by members in the Italian Range.

Dated: August 1, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–18676 Filed 8–6–91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Advance Bancorp, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than August 26, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Advance Bancorp, Inc., Chicago, Illinois; to acquire Homewood Federal Savings and Loan Association, Homewood, Illinois, and thereby indirectly acquire South Chicago Interim Bank, f.s.b., Chicago, Illinois, pursuant to § 225.25(b)(9) of the Board's Regulation Y. Interim Bank will acquire certain assets and assume certain liabilities of Homewood and will be merged with South Chicago Bank, Chicago, Illinois, in an Oakar transaction. Homewood's remaining assets and liabilities will be acquired by Advance's existing thrift subsidiary, Advance Bank, F.S.B., Lansing, Illinois.

2. NBD Bancorp, Inc., Detroit, Michigan; to acquire First Fidelity Trust, N.A., Boca Raton, Florida, and thereby engage in performing functions or activities that may be performed by a trust company (including activities of a fiduciary, agency, or custodial nature), pursuant to § 225.25(b)(3) of the Board's Regulation Y. **Comments on this application must be received by August 21, 1991.**

Board of Governors of the Federal Reserve System, August 1, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-18701 Filed 8-6-91; 8:45 am]

BILLING CODE 6210-01-F

Banc One Corporation; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 29, 1991.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Banc One Corporation*, Columbus, Ohio; to acquire 100 percent of the voting shares of Premier Bancorp, Inc., Baton Rouge, Louisiana, and thereby indirectly acquire Premier Bank, N.A., Baton Rouge, Louisiana.

In connection with this application, Applicant also proposes to acquire Premier Securities Corporation, Baton Rouge, Louisiana, and thereby indirectly acquire Premier Investment Advisors, Inc., Baton Rouge, Louisiana, and thereby engage in offering discount securities brokerage service activities, pursuant to § 225.25(b)(15) of the Board's Regulation Y; and providing investment advisory service activities to the trust department of Premier Bank, to certain nonaffiliated pension funds, and to a nonaffiliated mutual fund, pursuant to § 225.25(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 1, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-18702 Filed 8-6-91; 8:45 am]

BILLING CODE 6210-01-F

J. B. Morgan Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 26, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *J. B. Morgan Bancshares, Inc.*, Morgantown, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank, Morgantown, Indiana.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *GB Financial Services, Inc.*, Greenbush, Minnesota; to become a bank holding company by acquiring an additional 32.56 percent (totalling 52.55 percent) of the voting shares of Greenbush Bancshares, Inc., Greenbush, Minnesota, and thereby indirectly acquire Greenbush State Bank, Greenbush, Minnesota.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Big Bend Bancshares Corp.*, Presidio, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Rio Bancshares Corporation, Wilmington, Delaware, and thereby indirectly acquire First Presidio Bank, Presidio, Texas.

2. *Rio Bancshares Corporation*, Wilmington, Delaware; to become a bank holding company by acquiring 80 percent of the voting shares of First Presidio Bank, Presidio, Texas.

Board of Governors of the Federal Reserve System, August 1, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-18703 Filed 8-6-91; 8:45 am]

BILLING CODE 6210-01-F

Liberty National Bancorp, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 91-15411) published at page 29,655 of the issue for Friday, June 28, 1991.

Under the Federal Reserve Bank of St. Louis, the entry for Liberty National Bancorp, Inc. is amended to read as follows:

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Liberty National Bancorp, Inc.*, Louisville, Kentucky; to engage *de novo* through its subsidiary, Liberty Investment Services, Inc., Louisville, Kentucky, in providing investment advisory services to both institutional and retail customers pursuant to § 225.25(b)(4)(i)-(v) of the Board's Regulation Y separately and in combination with brokerage services for which it has previously received approval pursuant to § 225.25(b)(15) of the Board's Regulation Y. These activities will be conducted in Kentucky and Indiana.

Comments on this application must be received by August 26, 1991.

Board of Governors of the Federal Reserve System, August 1, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-18704 Filed 8-6-91; 8:45 am]

BILLING CODE 6210-01-F

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board; Meeting

AGENCY: General Accounting Office.

ACTION: Notice.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92-463), as amended, notice is hereby given that a meeting of the Federal Accounting Standards Advisory

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Holding Companies

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2. Rio Bancshares Corporation, Wilmington, Delaware; to become a bank holding company by acquiring 80 percent of the voting shares of First Presidio Bank, Presidio, Texas.

Board of Governors of the Federal Reserve System, August 1, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-18703 Filed 8-6-91; 8:45 am]

BILLING CODE 6210-01-F

Liberty National Bancorp, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

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1. Liberty National Bancorp, Inc., Louisville, Kentucky; to engage *de novo* through its subsidiary, Liberty Investment Services, Inc., Louisville, Kentucky, in providing investment advisory services to both institutional and retail customers pursuant to § 225.25(b)(4)(i)-(v) of the Board's Regulation Y separately and in combination with brokerage services for which it has previously received approval pursuant to § 225.25(b)(15) of the Board's Regulation Y. These activities will be conducted in Kentucky and Indiana.

Comments on this application must be received by August 26, 1991.

Board of Governors of the Federal Reserve System, August 1, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-18704 Filed 8-6-91; 8:45 am]

BILLING CODE 6210-01-F

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board; Meeting

AGENCY: General Accounting Office.

ACTION: Notice.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, notice is hereby given that a meeting of the Federal Accounting Standards Advisory

Board will be held on Thursday, August 22, 1991, from 9 a.m. until 4 p.m. in room 7313 of the General Accounting Office, 441 G St. NW., Washington, DC.

The agenda for the meeting will consist of a review of the minutes of the July 18 meeting, the continuation of discussion on Accounting Standards Exposure Draft, a discussion of credit subsidy accounting, and a discussion of the distinction between commercial and governmental type accounting. We advise that other items may be added to the agenda; interested parties should contact the Staff Director for more specific information.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Staff Director, 401 F St. NW., room 302, Washington, DC 20001, or call (202) 504–3336.

DATES: August 22, 1991.

ADDRESSES: 441 G St., NW., room 7313, Washington, DC 20548.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463, section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: July 31, 1991.

Ronald S. Young,

Staff Director.

[FR Doc. 91–18631 Filed 8–6–91; 8:45 am]

BILLING CODE 1610-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Program Announcement 146]

National Institute for Occupational Safety and Health; Development of a Model Disease and Injury Prevention and Health Promotion Program for Workers in the Construction Industry; Notice of Availability of Funds for Fiscal Year 1991

Introduction

The Centers for Disease Control (CDC), National Institute for Occupational Safety and Health (NIOSH), announces the availability of Fiscal Year 1991 funds for a cooperative agreement to develop a model disease and injury prevention and health promotion program for the construction industry in the United States. The cooperative agreement will significantly strengthen the occupational public health infrastructure by integrating resources for occupational safety and health research and public health prevention programs at the state and local levels.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objective of Healthy People 2000, a PHS-lead national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering a copy of Healthy People 2000, see the section where to obtain additional information.)

Authority

This program is authorized under section 21(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670(a)). Program regulations applicable to the cooperative agreement are set forth in title 42, part 87, of the U.S. Code of Federal Regulations entitled "NIOSH, Research and Demonstration Grants."

Eligible Applicants

Eligible applicants include nonprofit and for-profit organizations. Thus, universities, colleges, research institutions, groups representing construction workers, hospitals, and other public and private organizations, state and local health and labor departments, and small, minority, and/or women-owned businesses are eligible for this cooperative agreement.

Applicants must be able to demonstrate their ability to interact directly and provide leadership to a large, representative group of the nationwide construction workers. Additionally, the applicant must be able to demonstrate access to construction workers' medical histories, work histories, and medical and disability claims records. Finally, applicants must be able to demonstrate their position as leaders in the construction industry through recognition by federal, state, labor, and business groups.

Availability of Funds

Approximately $102,000 is available in Fiscal Year 1991 to fund this cooperative agreement. The award is expected to begin on or about September 30, 1991, for a 12-month budget period in a 3-year project period.

Purpose

The purpose of this cooperative agreement is for NIOSH to assist in the development and evaluation of a disease and injury prevention and health promotion program for workers in the construction industry so that by the Year 2000 differences in mortality rates between construction workers and the general population will be eradicated.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A. below, the CDC/NIOSH will be responsible for conducting activities under B. below:

A. Recipient Activities

1. Using employees' health and personnel records, the applicant will develop protocols and conduct research to evaluate morbidity and mortality risks to construction workers. Diseases and injuries to be considered will include, but are not limited to, certain respiratory diseases, skin diseases, traumatic injuries, musculoskeletal conditions, noise-induced hearing loss, and lead toxicity.
2. Develop a protocol to assess the risks associated with occupational and lifestyle behaviors of construction workers and involved family members.
3. Develop a preventive health program to include a periodic health assessment.
4. Develop a plan for the ongoing health education for construction workers and their families; that education campaign will include the appropriate health promotion and risk reduction techniques.
5. Develop a methodology for the periodic evaluation of the effectiveness and efficiency of the program.

B. CDC/NIOSH Activities

1. Provide the applicant with the most current scientific and epidemiologic information relative to risk identification and health promotion.
2. Provide scientific information and consultation related to study design.
3. Provide scientific information and consultation related to data analysis.
4. Assist in the development of intervention and health promotion strategies.
5. Assist in the development and implementation of an evaluation protocol for the program.
6. Review and participate in all publications resultant from this program.

Evaluation Criteria

The application will be reviewed based on the evidence submitted which specifically describes the applicant's ability to meet the following criteria:

1. Responsiveness to the objectives of the cooperative agreement including: (a) The applicant's understanding of the objectives of the proposed cooperative

agreement, and (b) the relevance of the proposal to the objectives. (25%)

2. Feasibility of meeting the proposed goals of the cooperative agreement including: (a) The proposed schedule for initiating and accomplishing each of the activities of the cooperative agreement, and (b) the proposed method for evaluating the accomplishment. (20%)

3. Strength of the program design which addresses the distinct characteristics and needs in the development of a disease prevention program for construction laborers. (25%)

4. Strength of the proposed program for health and safety research in the areas of health promotion and prevention research. (15%)

5. Training and experience of the proposed Program Director and staff including: (a) A Program Director who is a recognized scientist and technical expert, and (b) staff with training or experience sufficient to accomplish the proposed program. (15%)

6. The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of funds. (Not Scored)

Paperwork Reduction Act

The projects that will be funded through the cooperative agreement mechanism of this program that involve the collection of informatin from 10 or more individuals will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Executive Order 12372

Applications are not subject to review by Executive Order 12372, Intergovernmental Review of Federal Programs.

Catalog of Federal Domestic Assistance Number (CFDA)

The Catalog of Federal Domestic Assistance Number for this program is 93.262.

Application Submission and Deadline

The original and two copies of the application must be submitted on PHS Form 5161-1 (Revised 03/89) to Henry S. Cassell, III, Grants Mangement Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, Mailstop E-14, 255 East Paces Ferry Road N.E., Room 300, Atlanta, Georgia 30305, on or before September 5, 1991.

1. Deadline

Applications will be considered to have met the deadline if they are either:

A. Received on or before the deadline date, or

B. Sent on or before the deadline date and received in time for submission for the review process. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.

2. Applications that do not meet the criteria in 1.A or 1.B. above are considered late applications and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, an application package and Business Management Technical Assistance may be obtained from Lisa G. Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, Mailstop E-14, 255 East Paces Ferry Road, N.E., Room 300, Atlanta, Georgia 30305, (404) 842-6630 or FTS 236-6630.

Programmatic Technical Assistance may be obtained from Dr. Paul A. Schulte, NIOSH, Centers for Disease Control Robert A. Taft Laboratories, 4647 Columbia Parkway, Cincinnati, Ohio 45213, (513) 841-4475 or FTS 684-4475.

Please refer to Announcement Number 146 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, (202) 783-3238.

Dated: August 1, 1991.

Larry W. Sparks,

Acting Director, National Institute for Occupational Safety and Health.

[FR Doc. 91-18694 Filed 8-6-91; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 91N-0216]

Bolar Pharmaceutical Co., Inc., and Sanofi Animal Health, Inc.; Withdrawal of Approval of NADA's

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The food and drug administration (FDA) is withdrawing approval of three new animal drug applications (NADA's) held by Bolar Pharmaceutical Co., Inc., and two NADA's held by Sanofi Animal Health, Inc. Bolar requested withdrawal of approval because the products are no longer being marketed and in accordance with a plea agreement with the United States Department of Justice. Sanofi requested withdrawal of approval of the NADA's because the products are no longer being marketed.

EFFECTIVE DATE: August 19, 1991.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857 (301)-443-4093.

SUPPLEMENTARY INFORMATION: The sponsors of the NADA's listed below have informed FDA that the drug products approved under these NADA's are no longer beig marketed, and have requested that FDA withdraw approval of the applications. Bolar's request was made pursuant to a plea agreement with the United States Department of Justice.

The NADA's held by Bolar Pharmaceutical Co., Inc., 130 Lincoln St., Copiague, NY 11726, are identified as follows:

NADA 107-397, for Primidone tablets;

NADA 125-329, for Furosemide tablets;

NADA 135-299, for acepromazine maleate tablets.

The NADA's held by Sanofi Animal Health, Inc., 7101 College Blvd., suite 610, Overland Park, KS 66210, are identified as follows:

NADA 118-506, for Nitrofurazone ointment; and

NADA 119-974, for Nitrofurazone solution.

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115) notice is given that approval of the NADA's listed above and all supplements and amendments thereto is hereby withdrawn, effective August 19, 1991.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending 21 CFR 510.600(c) (1) and (c) (2), 520.23(a) (2), 520.1010a(b), 520.1900(b), 524.1580b(b), and 524.1580d(b) to reflect its withdrawal of approval of these NADA's.

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Additional Information

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E–14, 255 East Paces
Room 300, Atlanta,
4) 842–6630 or FTS

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ed 8–6–91; 8:45 am]

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and drug
A) is withdrawing approval of three new animal drug applications (NADA's) held by Bolar Pharmaceutical Co., Inc., and two NADA's held by Sanofi Animal Health, Inc. Bolar requested withdrawal of approval because the products are no longer being marketed and in accordance with a plea agreement with the United States Department of Justice. Sanofi requested withdrawal of approval of the NADA's because the products are no longer being marketed.

EFFECTIVE DATE: August 19, 1991.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857 (301)–443–4093.

SUPPLEMENTARY INFORMATION: The sponsors of the NADA's listed below have informed FDA that the drug products approved under these NADA's are no longer beig marketed, and have requested that FDA withdraw approval of the applications. Bolar's request was made pursuant to a plea agreement with the United States Department of Justice.

The NADA's held by Bolar Pharmaceutical Co., Inc., 130 Lincoln St., Copiague, NY 11726, are identified as follows:

NADA 107–397, for Primidone tablets;
NADA 125–329, for Furosemide tablets;
NADA 135–299, for acepromazine maleate tablets.

The NADA's held by Sanofi Animal Health, Inc., 7101 College Blvd., suite 610, Overland Park, KS 66210, are identified as follows:

NADA 118–506, for Nitrofurazone ointment; and
NADA 119–974, for Nitrofurazone solution.

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115) notice is given that approval of the NADA's listed above and all supplements and amendments thereto is hereby withdrawn, effective August 19, 1991.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending 21 CFR 510.600(c) (1) and (c) (2), 520.23(a) (2), 520.1010a(b), 520.1900(b), 524.1580b(b), and 524.1580d(b) to reflect its withdrawal of approval of these NADA's.

Dated: August 1, 1991.
Richard H. Teske,
Deputy Director,
Center for Veterinary Medicine.
[FR. Doc. 91–18760 Filed 8–6–91; 8:45 am]
BILLING CODE 4160-01-M

Health Resources and Services Administration

Program Announcement for Scholarships for Disadvantaged Students

The Health Resources and Services Administration (HRSA) announces that applications for fiscal year (FY) 1991 for the new Scholarships for Disadvantaged Students (SDS) program are now being accepted under the authority of new section 760 of the Public Health Service Act (the Act), as amended by The Disadvantaged Minority Health Improvement Act of 1990, Public Law 101–527.

Approximately $8,300,000 is available in FY 1991 for the competing applications for the SDS Program from eligible health professions and nursing schools. Of the funds available, 30 percent shall be made available to schools agreeing to expend the grants only for nursing scholarships. An estimated $2.9 million will support approximately 965 scholarships averaging $3,000 for students at schools of nursing. The balance of $5.4 million will support approximately 2,400 scholarships averaging $2,250 for eligible health professions students. (These estimates are based on actual experience with similar scholarship programs.) The period of fund availability will be for one academic year. Comments are invited on the proposed acceptability of undergraduate students, definitions, funding preference, methodology for implementing the statutory special consideration, nonstatutory special consideration, and procedures for calculating grant awards.

Purpose

The SDS program is a new program of grants to health professions and nursing schools for the purpose of assisting such schools in providing scholarships to individuals from disadvantaged backgrounds who are enrolled (or accepted for enrollment) as full-time students in the schools, as well as to undergraduate students who have demonstrated a commitment to pursuing a career in health professions. For purposes of the SDS program in FY 1991, an "individual from a disadvantaged background" will be defined as in 42 CFR, part 57, subpart S, as one who:

(1) Comes from an environment that has inhibited the individual from obtaining the knowledge, skill, and abilities required to enroll in and graduate from a health professions school, or from a program providing education or training in an allied health professions; or

(2) Comes from a family with an annual income below a level based on low income thresholds according to a family size published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index, and adjusted by the Secretary for use in all health professions programs. The Secretary will periodically publish these income levels in the **Federal Register**.

The following income figures determine what constitutes a low income family for purposes of the Scholarships for Disadvantaged Students program for FY 1991.

Size of parents' family [1]	Income level [2]
1	$8,600
2	11,400
3	13,500
4	17,300
5	20,400
6 or more	23,000

[1] Includes only dependents listed on Federal income tax forms.

[2] Adjusted gross income for calendar year 1990, rounded to $100.

Use of Funds

Funds awarded to a school under this program may be used as follows:

(1) To award scholarships to eligible students enrolled in the school, to be expended only for tuition expenses, other reasonable educational expenses, and reasonable living expenses (as defined by the school for all students attending the school) incurred while enrolled in a school as a full-time student. The amount of the scholarship may not, for any year of attendance, exceed the total amount required for the year for the expenses specified above.

(2) To provide financial assistance to undergraduate students who have demonstrated a commitment to pursuing a career in the health professions, in order to facilitate the completion of the educational requirements for such careers, provided that the total amount used for this purpose may not exceed 25 percent of the funds awarded to the school under this program.

Any school receiving SDS funds will be required to maintain separate accountability for these funds.

School Eligibility

Grants under this program will be made available to accredited public or nonprofit private health professions schools. For purposes of the SDS program, the term "health professions schools" means schools of medicine, dentistry, osteopathic medicine, pharmacy, optometry, podiatric medicine, veterinary medicine, and public health, as defined in section 701(4) of the Act, and which are accredited as provided in section 701(5) of the Act, schools of allied health as defined in section 701(10) of the Act, and which are located in States as defined in section 701(11) of the Act, and schools of nursing as defined in section 853 of the Act. The term also includes a "graduate program in clinical psychology" as defined in section 701(4) of the Act.

In accordance with congressional report language, funding of allied health schools or programs will be limited to the following: Dental hygiene, medical laboratory technology, occupational therapy, physical therapy and radiologic technology.

As required by statute, to qualify for participation in the SDS program, a school must be:

(1) Carrying out a program for recruiting and retaining students from disadvantaged backgrounds, including racial and ethnic minorities; and

(2) Carrying out a program for recruiting and retaining minority faculty.

If a school has no students from disadvantaged backgrounds, or no full-time minority faculty, or provides no data as required in the application materials, it is not eligible for participation in the SDS program. A school that is able to provide required data will be eligible for participation in the current award cycle. However, failure to provide certain additional data may make a school ineligible for special consideration (see below) and may jeopardize future program participation.

In addition, the school must agree in its fiscal year 1991 application to carry out all of the statutory requirements listed below:

(1) Ensure that adequate instruction regarding minority health issues is provided for in the curricula of the school. This does not include normal course work, that by definition includes minority health issues (e.g., sickle cell anemia in a pathology class), but refers to course work reflecting an institutional awareness of the special health needs of minority populations;

(2) Enter into arrangements with one or more health clinics providing services to a significant number of individuals who are from disadvantaged backgrounds, including members of minority groups, for the purpose of providing students of the school with

experience in providing clinical services to such individuals;

(3) Enter into arrangements with one or more public or nonprofit private secondary educational institutions and undergraduate institutions of higher education (feeder schools), for the purpose of carrying out programs regarding:

(a) The educational preparation of disadvantaged students, including minority students, to enter the health professions; and

(b) The recruitment of disadvantaged students, including minority students, into the health professions; and

(4) Establish a mentor program for assisting disadvantaged students, including minority students, regarding the completion of the educational requirements for degrees from the school. This program may include the involvement of students, community health professionals, faculty, alumni, past recipients of Health Career Opportunity Program (HCOP) funds, faculty/staff of feeder schools, etc., in institutionally organized activity (e.g., tutoring, counseling, and summer/bridge programs).

A school will be required to carry out each of the activities specified above by not later than one year after the date on which a grant is first made to the school under section 780. Funds awarded to a school under the SDS program may not be used to carry out any of the above activities which the school must be doing, or must agree to do. In addition, a school will be required to continue to carry out all described activities, and also the student/ faculty recruitment and retention activities, for as long as the SDS program is in operation in the school.

Evaluation Criteria for Fiscal Year 1992

Beginning with FY 1992 applications will be evaluated on the degree to which the schools meet the statutory requirements listed above. Guidance for presenting the information will be provided in the FY 1992 application materials.

Student Eligibility

As required by statute, to qualify for the SDS program, a student must:

(1) Be a citizen, a U.S. national, an alien lawfully admitted for permanent residency in the U.S., or a citizen of the Commonwealth of the Northern Mariana Islands, a citizen of the Commonwealth of Puerto Rico, a citizen of the Trust Territory of the Pacific Islands (consisting of the Republic of Palau) or a citizen of the Republic of Marshall Islands, the Federated States of Micronesia (both formally part of the Trust Territory of the Pacific Islands);

(2) Meet the definition of an "individual from a disadvantaged background" as defined above; and

(3)(a) Be enrolled in or accepted by an eligible school for enrollment as a full-time student; or

(b) Be an undergraduate student who has demonstrated a commitment to pursuing a career in health professions, including nursing.

Statutory Preference

The law requires that in providing SDS scholarships, the school give preference to students for whom the cost of attending an SDS school would constitute a severe financial hardship. Severe financial hardship will be determined by the school in accordance with standard need analysis procedures prescribed by the Department of Education for its Federal student aid programs.

Proposed Acceptability of Undergraduate Students

In the instance of (3) (b) above, it is proposed that the undergraduate students eligible for scholarships be at feeder schools and have signed statements that they are interested in health professions or nursing careers.

Proposed Definitions

Black means a person having origins in any of the black racial groups of Africa.

Hispanic means a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

American Indian or Alaskan Native means a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

Definitions listed above are contained in Directive No. 15 of Office of Management and Budget Circular No. A–46, dated May 3, 1974.

Native American as defined in Public Law 101–527, means American Indian, Alaskan Native, Aleut, or Native Hawaiian.

Minority with respect to faculty, refers to Blacks, Hispanics, Native Americans, Filipinos, Koreans, Pacific Islander, and Southeast Asians whose percentage among the total supply of practitioners in the applicable health profession is below that group's percentage in the total population. (House Report 101–804 reflects the intent of Congress that these groups be considered for participation in this program.)

Proposed Funding Preference

A funding preference means funding of a specific group of approved applications ahead of other categories of applications. Because of limited funding, it is proposed in FY 1991 that preferential funding be accorded to schools of medicine, osteopathic medicine and dentistry. This responds to the concern expressed in Congressional committee report language regarding the need to target monies toward programs that are focused on primary care. This funding preference will not affect the statutory requirement that 30% of the SDS funds shall be made available to schools agreeing to expend the grants only for nursing scholarships.

Proposed Methodology for Implementing the Statutory Special Consideration

In accordance with the statute, a special consideration will be given to eligible schools with an underrepresented minority enrollment that exceeds the national average for its particular discipline.

For purposes of determining eligibility of a school of medicine, osteopathic medicine and dentistry for the special consideration, Asians will not be included in the definition of underrepresented minorities for the school. Although certain Asian subgroups (i.e., Filipinos, Koreans, Pacific Islanders, and Southeast Asians) are considered to be underrepresented in the health professions and are included as minorities for purposes of program requirements relating to faculty recruitment and retention (see above), national data on these subgroups are not available as a basis for establishing national average enrollment of underrepresented minorities for the disciplines of medicine, osteopathic medicine, and dentistry.

For purposes of determining the eligibility of nursing schools for the special consideration, Asians will be included in the definition of underrepresented minorities since Asians as a whole do continue to be underrepresented in nursing.

For purposes of the FY 1991 award cycle, the national average enrollments of Blacks, Hispanics, and Native Americans (in combination) are: For medicine, 12.3 percent; osteopathic medicine, 6.9 percent; dentistry, 14.1 percent; and nursing, 16.4 percent (nursing percentage includes Asians).

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Proposed Nonstatutory Special Consideration for Baccalaureate Nursing Programs

Among schools of nursing, it is proposed that additional consideration be given to baccalaureate programs. One of the distinguishing features of baccalaureate education is the substantial focus on preparation for community health practice. Training nurses for community health practice is an integral component of the Department's access strategy.

Proposed Procedures for Calculating Scholarship Awards

Awards to eligible schools which have applied will be calculated by comparing the enrollment of disadvantaged students in each eligible school with the total enrollment of the disadvantaged students in all eligible schools. In the case of health professions schools, the calculation will be made first for schools of medicine, osteopathic medicine, and dentistry, with awards limited to the cost of attendance times the number of eligible disadvantaged students at the school. Any remaining funds will be made available to other eligible health professions schools.

A school with an enrollment of underrepresented minority students which is above the national average (for each discipline) will be given double credit (i.e., its enrollment of disadvantaged students would be doubled for awarding purposes). A baccalaureate nursing school will be given double credit. A baccalaureate nursing school with an underrepresented minority enrollment above the national average will be given quadruple credit (i.e., its enrollment of disadvantaged students will be multiplied by four for awarding purposes).

National Health Objectives for the Year 2000

The Public Health Service is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The Scholarships for Students from Disadvantaged Backgrounds program is related to the priority area of Educational and Community-Based Programs. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone (202) 783–3238).

Interested persons are invited to comment on the proposed acceptability of undergraduate students, definitions, funding preference, methodology for implementing the statutory special consideration, nonstatutory special consideration, and procedures for calculating scholarship awards. Normally, the comment period would be 60 days, but due to the need to implement the SDS Fiscal Year 1991 award cycle, this comment period has been reduced to 30 days.

All comments received on or before September 6, 1991, will be considered before the final acceptability of undergraduate students, definitions, funding preference, methodology for implementing the statutory special consideration, nonstatutory special consideration, and procedures for calculating scholarship awards are established. No funds will be allocated until a final notice is published stating whether the final acceptability of undergraduate students, definitions, funding preference, methodology for implementing the statutory special consideration, nonstatutory special consideration, and procedures for calculating scholarship awards will be applied.

Written comments should be addressed to: Mr. Michael Heningburg, Director, Division of Student Assistance; Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8–48, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–1173.

Application Requests

Application materials will be available when OMB approval is received.

Applications will be mailed to all eligible schools of medicine, osteopathic medicine, dentistry and nursing.

Requests for application materials and questions regarding programmatic information, policy, and technical and business management issues should be directed to: Bruce Baggett, Chief, Student Institutional Support Branch, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8–34, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–4776.

Completed applications should be forwarded to the Student Institutional Support Branch at the above address.

The application deadline date is September 6, 1991. Applications shall be considered as meeting the deadline if they are either:

(1) *Received or* or before the deadline date, or

(2) *Postmarked on* or before the deadline and received in time for consideration. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant. The application form and instructions have been submitted to Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act.

The Catalog of Federal Domestic Assistance Number for the Scholarships for Health Professions Students from Disadvantaged Backgrounds program is 93.925. This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: June 13, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91–18696 Filed 8–6–91; 8:45 am]

BILLING CODE 4160-15-M

Program Announcement for the Disadvantaged Health Professions Faculty Loan Repayment Program

The Health Resources and Services Administration (HRSA) announces that applications for fiscal year (FY) 1991 for the Disadvantaged Health Professions Faculty Loan Repayment Program are now being accepted under the new section 761 of the Public Health Service Act (the Act), as added by the Disadvantaged Minority Health Improvement Act of 1990, Public Law 101–527. Comments are invited on the proposed definitions, program requirements, review criteria and funding preference.

Approximately $975,000 is available in FY 1991 for competing applications for the Disadvantaged Health Professions Faculty Loan Repayment Program. It is expected that 30 awards averaging $32,000 ($16,000 per year for two years) will be supported with these funds.

Purpose

The purpose of the Disadvantaged Health Professions Faculty Loan Repayment Program (FLRP) is to attract and retain disadvantaged health professions faculty members for accredited health professions schools. The FLRP is directed at those individuals available to serve immediately or within a short time as full-time faculty members.

Eligible Individuals

Individuals from disadvantaged backgrounds are eligible to compete for participation in the FLRP if they:

1. Have a degree in medicine, osteopathic medicine, dentistry, nursing, pharmacy, podiatric medicine, optometry, veterinary medicine, or public health or a school that offers a graduate program in clinical psychology; or
2. Are enrolled in an approved graduate training program in one of the health professions listed above; or
3. Are enrolled as a full-time student in the final year of health professions training, leading to a degree from an eligible school.

Prior to submitting an application, eligible individuals must sign a contract as prescribed by the Secretary, setting forth the terms and conditions of the FLRP. This contract requires the individual to also have entered into a contract with an eligible school to serve as a full-time member of the faculty, as determined by the school, for not less than two years, whereby the school agrees to pay a sum (in addition to faculty salary) equal to that paid by the Secretary towards the repayment of the applicant's health professions educational loans.

Eligible Schools

Eligible health professions schools are accredited public or nonprofit private schools of medicine, osteopathic medicine, dentistry, pharmacy, podiatric medicine, optometry, veterinary medicine, public health, or schools that offer a graduate program in clinical psychology as defined in section 701(4) of the Act, and which are located in States as defined in section 701(11) of the Act, and which are accredited as provided in section 701(5) of the Act, and schools of nursing as defined in section 853 of the Act.

Provisions of the Loan Repayment Program

Section 761 authorizes the Secretary to repay up to $20,000 of the principal and interest of a participant's educational loans, but not to exceed 50 percent of the amounts due on such loans for such year for each year of eligible faculty service.

The school is required, for each such year, to make payments of principal and interest due, in an amount equal to the amount of payment made by the Secretary for that year. These payments must in addition to the faculty salary the participant otherwise would receive.

HRSA will pay on behalf of the participant the principal due for that year and interest on educational loans for the following expenses:

1. Tuition expenses;
2. All other reasonable educational expenses such as fees, books, supplies, educational equipment and materials required by the school, and incurred by the applicant;
3. Reasonable living expenses, as determined by the Secretary; and
4. Partial payments of the increased Federal income tax liability caused by the FLRP's payments and considered to be "other income," if the recipient requests such assistance.

Prior to entering an agreement for repayment of loans, the statute requires the Secretary to obtain satisfactory evidence of the existence and reasonableness of the individual's educational loans, including a copy of the written loan agreement establishing the loan, and a notarized statement that the copy is a true copy of the loan agreement.

Waiver Provision

In the event of undue financial hardship to a school, the school may obtain from the Secretary a waiver of its share of payments while the participant is serving under the terms of the contract. For purposes of this program, "undue financial hardship" means a situation where the school experiences a net loss as evidenced by the following: (1) The most current certified public accounting audit; and (2) the Balance Sheet and Statement of Income and Expenses for the last three years.

If the Secretary waives the school's payment requirement, the amount of the Federal loan repayment will not be subject to the 50 percent limit per year described above, but cannot exceed the $20,000 repayment limit applicable to the Secretary. The participant must pay that portion of loan payment due which is not covered.

Proposed Definition

For purposes of the FLRP in FY 1991, "Individuals from Disadvantaged Backgrounds" are defined as in 42 CFR, part 57, subpart S, as one who:

1. Comes from an environment that has inhibited the individual from obtaining the knowledge, skill, and abilities required to enroll in and graduate from a health professions school, or from a program providing education or training in an allied health professions; or
2. Comes from a family with an annual income below a level based on low income thresholds according to a family size published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index, and adjusted by the Secretary for use in all health professions programs. The Secretary will periodically publish these income levels in the **Federal Register.**

The following income figures determine what constitutes a low income family for purposes of the Faculty Loan Repayment Program for FY 1991.

Size of parents' family [1]	Income level [2]
1	$8,800
2	11,400
3	13,500
4	17,300
5	20,400
6 or more	23,000

[1] Includes only dependents listed on Federal income tax forms.

[2] Adjusted gross income for calendar year 1990, rounded to $100.

A revised definition of the term "individual from disadvantaged backgrounds" is being published for comment in a separate notice for use in implementing various training grant, cooperative agreement, and student assistance programs under the authority of titles VII and VIII of the Act in the future.

Definitions

The term *Living expenses* means the costs of room and board, transportation and commuting costs, and other costs incurred during an individual's attendance at a health professions school, as estimated each year by the school as part of the school's standard student budget. (National Health Service Corps Loan Repayment Program, 42 CFR part 62, § 62.22.)

The term *Reasonable educational expenses and living expenses* means the costs of those educational and living expenses which are equal to or less than the sum of the school's estimated standard student budgets for educational and living expenses for the degree program and for the year(s) during which the Program participant is/was enrolled in the school. (National Health Service Corps Loan Repayment Program, 42 CFR part 62, 62.22.)

The term *Unserved Obligation Penalty* means the amount equal to the number of months of obligated service that were not completed by an individual, multipled by $1,000, except that in any case in which the individual fails to serve 1 year, the unserved obligation penalty shall be equal to the full period of obligated service multiplied by $1,000. (Section 338E of the Act.) See "Breach of Contract" section below.

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The term *Reasonable educational expenses and living expenses* means the costs of those educational and living expenses which are equal to or less than the sum of the school's estimated standard student budgets for educational and living expenses for the degree program and for the year(s) during which the Program participant is/was enrolled in the school. (National Health Service Corps Loan Repayment Program, 42 CFR part 62, 62.22.)

The term *Unserved Obligation Penalty* means the amount equal to the number of months of obligated service that were not completed by an individual, multipled by $1,000, except that in any case in which the individual fails to serve 1 year, the unserved obligation penalty shall be equal to the full period of obligated service multiplied by $1,000. (Section 338E of the Act.) See "Breach of Contract" section below.

Proposed Program Requirements

The following requirements are proposed for the applicant and the school.

The Applicant

It is proposed that the applicant be required to do the following:

1. Submit a completed application, including the applicant's contract with an eligible school to serve as a full-time faculty member for not less than two years;

2. Provide evidence that the applicant has completely satisfied any other obligation for health professional service which is owed under an agreement with the Federal Government, State Government, or other entity prior to beginning the period of service under this program;

3. Certify that the applicant is not delinquent on any amounts which are owed to the Federal Government; and

4. Provide documentation to evidence the educational loans and to verify their status.

The School

It is proposed that the participating school be required to do the following:

1. Enter into a contractual agreement with the applicant whereby the school is required, for each year for which the participant serves as a faculty member, to make payments of principal and interest due for that year, in an amount equal to the amount of such payments made by the Secretary. These payments must be in addition to the faculty salary the participant otherwise would receive.

2. Verify the participant's continous employment at intervals as prescribed by the Secretary.

If the school is unable to meet the requirement of the FLRP for payment of principal and interest due because the requirement would impose undue financial hardship on the school, the school may requrest a waiver of this obligation from the Secretary.

The Secretary will pay participants in equal quarterly payments during the period of service.

Effective Date of Contract

After an applicant has been approved for participation in the FLRP, the Director, Division of Disadvantaged Assistance (DDA), will send the applicant a contract with the Secretary. The effective date is either the date work begins at the school as a faculty member or the date the Director, DDA, signs the FLRP contract, whichever is later. Service should begin no later than September 30, 1991.

Breach of Contract

The following areas under Breach of Contract are addressed in the appended contract:

1. If the participant fails to serve his or her period of obligated faculty service (minimum of two years) as contracted with the school, he/she is then in breach of contract, and neither the Secretary nor the school is obligated to continue loan payments as stated in the contract. The participant must then reimburse the Secretary and the participating school for all sums of principal and interest paid on their behalf as stated in the contract.

2. Regardless of the length of the agreed period of obligated service (two, three, or more years), a participant who serves less than the time period specified in his/her contract is liable for monetary damages to the United States amounting to the sum of the total of the amounts the Program paid his/her lenders, plus an "unserved obligation penalty" of $1,000 for each month unserved.

3. Any amount which the United States is entitled to recover because of a breach of the FLRP contract must be paid within one year from the day the Secretary determines the the participant is in breach of contract. If payment is not received by the payment due date, additional interest, penalties and administration charges will be assessed in accordance with Federal law.

Other Consideration

In making awards, HRSA hopes to achieve equitable distribution among health disciplines and among geographic areas.

Health needs of National significance will also be a consideration.

Proposed Review Criteria

The HRSA proposes to review Fiscal Year 1991 applications taking into consideration the following criteria:

1. The extent to which the applicant meets the requirements of section 761 of the Act;

2. The completeness, accuracy, and validity of the applicant's responses to application requirements;

3. The submission of the signed contract with the school;

4. An applicant's earliest available date to begin service as a faculty member provided funding is available for that year; and

5. An applicant's availability to enter into a service contract for a longer period than the mandatory two-year minimum.

In addition, the following mechanism may be applied in determining the funding of approved applications:

Funding preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications.

Proposed Funding Preference

It is proposed that a funding preference be given to individuals from disadvantaged (including racial and ethnic minorities) backgrounds who are new to the field of teaching. The Department intends to target FLRP assistance to disadvantaged health professions graduates serving as new faculty. This funding preference is designed to attract minorities to pursue teaching careers in the health professions.

Established faculty members are eligible to apply for funds under the FLRP, but new faculty repayments will be funded first.

National Health Objectives for the Year 2000

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The Disadvantaged Health Professions Faculty Loan Repayment Program is related to the priority area of Educational and Community-Based Programs. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone (202) 783–3238).

Interested persons are invited to comment on the proposed definitions, program requirements, review criteria and funding preference. Normally, the comment period would be 60 days. However, due to the need to implement this new program in Fiscal Year 1991, this comment period has been reduced to 30 days. All comments received on or before September 6, 1991, will be considered before the final definitions, program requirements, review criteria and funding preference are established. No funds will be allocated or final selections made until a final notice is published stating whether the proposed definitions, program requirements, review criteria and funding preference will be applied.

Written comments should be addressed to: Clay Simpson, Ph.D., Director, Division of Disadvantaged Assistance, Health Resources and Services Administration, Parklawn

Building, room 8A–09, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Disadvantaged Assistance, Bureau of Health Professions, at the address above weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

Application Requests

Requests for application materials and questions regarding program information should be directed to: Norman Roskos, Chief, Analysis and Evaluation Branch, Division of Disadvantaged Assistance, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 8A–09, Rockville, Maryland 20857, Telephone: (301) 443–3680.

Completed applications should be returned to the address listed above. The application deadline date is September 6, 1991. Applications shall be considered as meeting the deadline if they are either:

(1) *Received on* or before the deadline date, or

(2) *Postmarked on* or before the deadline and received in time for consideration. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant.

The application form and instructions have been submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act.

Application materials will be available when OMB approval is received. The Disadvantaged Health Professions Faculty Loan Repayment program is listed at 93.923 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: June 18, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91–18697 Filed 8–6–91; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Advisory Council on Historic Preservation; SES Performance Review Board

AGENCY: Department of the Interior.

ACTION: Notice of Senior Executive Service (SES) Performance Review Board Appointments.

SUMMARY: This notice provides the names of those individuals who have been appointed by the Chairman of the Advisory Council on Historic Preservation to serve as members of the Advisory Council's SES Performance Review Board. Pursuant to the Memorandum of Understanding between the Advisory Council and the Department of the Interior, the SES performance appraisal plan for the Department has been adopted for use by the Advisory Council. The Performance Review Board will review the appraisal, award, and bonus recommendations for the SES members of the Advisory Council staff, and recommend final action to the Chairman. This notice is processed on behalf of the Advisory Council, as required by 5 U.S.C. 4314(c)(4).

DATES: These appointments are effective August 15, 1991.

FOR FURTHER INFORMATION CONTACT: J. Lynn Smith, Personnel Officer, Office of the Secretary (PPSP), Department of the Interior, Washington, DC 20240, telephone number (202) 208–6702.

The names of the SES Performance Review Board members are:

Mr. Peter J. Basso (Career), Director, Office of Fiscal Services, Federal Highway Administration, Department of Transportation.

Mr. Charles B. Respass (Career), Deputy Assistant Secretary for Administration, Department of the Treasury.

Mr. Jerry L. Rogers (Career), Associate Director for Cultural Resources, National Park Services, Department of the Interior.

Dated: July 25, 1991.

John Schrote,

Assistant Secretary, Policy, Management and Budget.

[FR Doc. 91–18659 Filed 8–6–91; 8:45 am]

BILLING CODE 4310–70–M

Bureau of Land Management

[CO-920-91-4120-11; COC 52835]

Colorado; Invitation for Coal Exploration License Application, Cyprus Yampa Valley Coal Corp.

Pursuant to the Minerals Leasing Act of February 25, 1920, as amended, and to title 43, Code of Federal Regulations, part 3410, members of the public are hereby invited to participate with Cyprus Yampa Valley Coal Corporation, in a program for the exploration of unleased coal deposits owned by the United States of America in the following described lands located in Routt County, Colorado:

T. 5 N., R. 86 W., 6th P.M.
  sec. 21, N½NE¼, SW¼NE¼, and NW¼;
  sec. 31, lots 1 and 2, W½NE¼ and E½NW¼.
T. 5 N., R. 87 W., 6th P.M.
  sec. 36, lots 1 and 2, W½NE¼ and NW¼.

The area described contains approximately 824.08 acres.

The application for coal exploration license is available for public inspection during normal business hours under serial number COC 52835 at the Bureau of Land Management (BLM), Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, and at the BLM Craig District Office, 455 Emerson Street, Craig, Colorado 81625.

Written Notice to Intent to participate should be addressed to the following persons and must be received by them within 30 days after the publication of this Notice of Invitation in the **Federal Register:**

Richard D. Tate, Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

Charles N. Thompson or Richard Mills, Cyprus Yampa Valley Coal Corporation, 29587 Routt County Road 27 Oak Creek, Colorado 80467.

Any party electing to participate in this program must share all costs on a pro rata basis with the applicant and with any other party or parties who elect to participate.

Dated: July 29, 1991.

Alexa L. Watson,

Acting Chief, Mining Law and Solid Minerals Adjudication Section.

[FR Doc. 91–18715 Filed 8–6–91; 8:45 am]

BILLING CODE 4310–JB–M

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Bureau of Land Management

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Acting Chief, Mining Law and Solid Minerals Adjudication Section.

[FR Doc. 91–18715 Filed 8–6–91; 8:45 am]

BILLING CODE 4310–JB–M

[OR–110–8332–12: H–910–G1301]

Medford District Office; Off-Highway Motorized Vehicle Use on Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Medford District Office, notice given relating to off-highway motorized vehicle use on public lands.

SUMMARY: Notice is hereby given relating to the use of off-highway vehicles on certain public lands in accordance with the authority and requirements of Executive Orders 11644 and 11989 and regulations contained in 43 CFR part 8340.

The following lands under the administration of the Bureau of Land Management are changed from the existing open designation and are hereby redesignated as closed to off-highway motor vehicle use.

The areas affected by the designations are managed by the Medford District and are located in Jackson County, Oregon.

These designations are published as final until such time that changes in resource management warrant modifications.

FOR FURTHER INFORMATION CONTACT: Fred Tomlins, Outdoor Recreation Planner, Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97504, telephone (503) 770–2311, FTS 424–2311.

Closed Designations

The lands closed to off-highway vehicle use are located in the Grizzly Peak area approximately seven (7) air miles northeast of Ashland, Oregon. The legal description of the closed lands is:

Williamette Meridian

T. 38 S., R. 2 E.,
  Section 17, W½NE¼, NW¼.
  Section 18, S½NE¼, SW¼, SE¼.

These lands are closed to OHV use to prevent damage to vegetation, soils, and wildlife in the area and to prevent conflicting recreational uses.

These designations become effective upon publication in the **Federal Register** and will remain in effect until rescinded or modified by the Medford District Manager. Information and maps of the above areas are available at the Bureau of Land Management, Medford District Office, 3040 Biddle Road, Medford, Oregon 97504. Telephone (503) 770–2200.

Dated: July 29, 1991.

David A. Jones,

District Manager.

[FR Doc. 91–18660 Filed 8–6–91; 8:45 am]

BILLING CODE 4310–33–M

[CA–940–01–4212–24; CACA 28336]

Conveyance of Mineral Interests in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Segregative effect—conveyance of the reserved mineral interests.

SUMMARY: This notice will correct a typographical error in the land description in an application for the conveyance of mineral interest.

FOR FURTHER INFORMATION CONTACT: Judy Bowers, BLM California State Office, 2800 Cottage Way, room E–2841, Federal Office Building, Sacramento, California 95825, (916) 978–4820. The land description for serial No. CACA 28336, 56 FR 31418, July 10, 1991, is hereby corrected as follows: The land description shown as "T. 11 N., R. 3 W., San Bernardino Meridian" is hereby corrected to read "T. 11 N., R. 13 W., San Bernardino Meridian".

Dated: July 29, 1991.

Nancy J. Alex,

Chief, Lands Section.

[FR Doc. 91–18716 Filed 8–6–91; 8:45 am]

BILLING CODE 4310–40–M

[WY–060–01–4212–14; WYW116929]

Realty Action; Direct Sale of Public Lands; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Direct Sale of Public Lands in Natrona County, Wyoming.

SUMMARY: The Bureau of Land Management has determined the land described below is suitable for sale under section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976, 43 U.S.C. 1713, 1719:

Sixth Principal Meridian

T. 40 N., R. 79 W.
  sec. 7, lots 1, 2.

The above land aggregates 70.12 acres in Natrona County, Wyoming.

FOR FURTHER INFORMATION CONTACT: Bill Mortimer, Area Manager, Platte River Resource Area, (307) 261–7500.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management proposes to sell the surface estate to the Town of Edgerton, pursuant to section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 and 1719. The Town of Edgerton wishes to acquire the land for use as a sanitary landfill site for disposal of municipal solid waste.

The proposed direct sale is scheduled for September 30, 1991. The land parcel is to be offered at fair market value. Prior to consummation of the sale, the Town of Edgerton must provide evidence that a solid waste disposal permit has been issued by the Wyoming Department of Environmental Quality.

The proposed sale will serve important public objectives. This land has been evaluated and determined physically suited to operation of a sanitary landfill. The land contains no other known public values. Sale of the land is in conformance with the Platte River Resource Area Resource Management Plan, and Natrona County officials have been notified of the sale. Detailed information concerning the proposed sale including planning documents, mineral report, and environmental assessment is available at the Bureau of Land management, Platte River Resource Area Office, 815 Connie Street, P.O. Box 2420, Mills, WY 82644.

Conveyance of the above land will be subject to:

1. Reservation of a right-of-way for ditches or canals pursuant to the Act of August 30, 1890, 43 U.S.C. 945.
2. Reservation of all minerals to the United States with the right to prospect for, mine and remove the same.
3. Right-of-way WYW86233 for the Light Plant Road (County Road #116) held by Natrona County.
4. Oil and gas lease WYW105300 held by GLG Energy Company.

A portion of the public land involved was leased for grazing by Frank Shepperson (Lease No. 496014). The lease expired on March 31, 1991. A two year advance notice was afforded the lessee beginning May 16, 1989. Frank Shepperson is the owner of range improvement fence #1268 on the property being sold. The Town of Edgerton will be required to reimburse Frank Shepperson for the adjusted value of the improvements.

The public land described above shall be segregated from all forms of appropriation under the public land laws, including the mining and mineral leasing laws upon publication of this notice in the **Federal Register**. The segregative effect will end upon issuance of the patent or 270 days from the date of this publication, whichever comes first.

For a period of 45 days from the date of issuance of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Casper District, 1701 East E Street, Casper, Wyoming, 82601. Any adverse comments will be evaluated by the State

Director, who may sustain, vacate or modify the realty action. In the absence of adverse comments or in the absence of any action by the State Director, this realty action will become final.

Dated: July 29, 1991.

James W. Monroe,

District Manager.

[FR Doc. 91-18661 Filed 8-6-91; 8:45 am]

BILLING CODE 4310-22-M

[CO-942-91-4730-12]

Colorado: Filing of Plats of Survey

July 22, 1991.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m., June 22, 1991.

The plat representing the dependent resurvey of positions of the east boundary and subdivisional lines, an extension survey, and the subdivision of section 22, T. 4 S., R. 75 W., Sixth Principal Meridian, Colorado, Group No. 689, was accepted May 29, 1991.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of certain sections, T. 13 S., R. 86 W., Sixth Principal Meridan, Colorado, Group No. 882, was accepted June 14, 1991.

The plat representing the metes-and-bounds survey of lot 6 in section 2, T. 15 S., R. 103 W., Sixth Principal Meridan, Colorado, Group No. 911, was accepted June 13, 1991.

The plat representing the dependent resurvey of a portion of the Eleventh Standard Parallel North (south boundary, T. 45 N., R. 12 W.), survey of Tract 37, and the independent resurvey of the line between sections 3 and 4, T. 44 N., R. 12 W., New Mexico Principal Meridan, Colorado, Group No. 917, was accepted April 18, 1991.

The supplemental plat creating new lot 5 from previously designated lot 4, is based upon the plats approved April 15, 1924 and April 5, 1990, 10 S., R. 88 W., Sixth Principal Meridan, Colorado, was accepted May 30, 1991.

This supplemental plat was prepared to replace lot 4 in section 4 with new lot 5 which excludes a portion of the patented Carbonate lode, Mineral Survey No. 5443A.

The supplemental plat creating new lots 16, 17, 18, and 19, from previously designed lots 1 and 2, is based upon the plat approved August 17, 1988, T. 9 S., R. 81 W., Sixth Principal Meridian, was accepted June 13, 1991.

This supplemental plat was prepared to provide descriptions of public lands already withdrawn for the Bureau of Reclamation Frying Pan-Arkansas Project and lands that are proposed for withdrawal for project purposes.

The amended plat clarifying the measurements from the south ¼ section corner of section 36 to the witness corner of sections 35 and 36 on the First Standard Parallel South (south boundary), T. 5 S., R. 88 W., Sixth Principal Meridan, Colorado, was accepted May 7, 1991.

These surveys were executed to meet certain administrative needs of this Bureau.

The plat representing the dependent resurvey of the south boundary and portions of subdivisional lines, and the subdivision of certain sections, T. 42 N., R. 3 W., New Mexico Principal Meridan, Colorado, Group No. 890, was accepted June 14, 1991.

The plat representing the dependent resurvey of the north boundary, T. 41 N., R. 3 W., New Mexico Principal Meridian, Colorado, Group No. 890, was accepted June 14, 1991.

The following plat will be immediately placed in the open files and will be available to the pulbic as a matter of information. Copies of this plat may be furnished to the public upon payment of the appropriate fee. This plat will be regarded as officially filed as of 10 a.m. on September 16, 1991, as provided for in 43 CFR 1813.1-2 (BLM Manual) section 2097—Opening Orders is required.

The plat representing the original survey of the west boundary, T. 41½ N., R. 3 W., New Mexico Principal Meridan, Colorado, Group No. 890, was accepted June 14, 1991.

These surveys were executed to meet certain administrative needs of the Forest Service.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado.

[FR Doc. 91-18717 Filed 8-6-91; 8:45 am]

BILLING CODE 4310-JB-M

[MT-930-4214-10; NDM 79193]

Proposed Withdrawal and Opportunity for Public Meeting; North Dakota

Correction

In notice document 91-15719 appearing on Page 30399 in the issue of Tuesday, July 2, 1991, please make the following correction:

In the second line of the document heading, "Montana" should read "North Dakota."

Dated: July 18, 1991.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 91-17644 Filed 8-6-91; 8:45 am]

BILLING CODE 4310-DN-M

Bureau of Reclamation

Quarterly Status Tabulation of Water Service and Repayment Contract Negotiations

AGENCY: Bureau of Reclamation (Reclamation), Department of the Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of proposed contractual actions pending through September 1991. This notice is one of a variety of means being used to inform the public about proposed contractual actions for water service and repayment. The Reclamation announcements of individual repayment and water service contract actions will be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation requirements do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. The Secretary of the Interior or the district may invite the public to observe any contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act if Reclamation determines that the contract action may or will have "significant" environmental effects.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the supplementary information.

FOR FURTHER INFORMATION CONTACT: Dick L. Porter, Chief, Contracts and Repayment Division, Bureau of Reclamation, 1849 C Street NW.,

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Dated: July 18, 1991.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 91–17644 Filed 8–6–91; 8:45 am]

BILLING CODE 4310-DN-M

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FOR FURTHER INFORMATION CONTACT: Dick L. Porter, Chief, Contracts and Repayment Division, Bureau of Reclamation, 1849 C Street NW., Washington, DC 20240; telephone (202) 208–3014, (FTS) 268–3014.

SUPPLEMENTARY INFORMATION: Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273), and to section § 426.20 of the rules and regulations published in the **Federal Register** dated December 6, 1983, Vol. 48, page 54785, Reclamation will publish notice of proposed or amendatory repayment contract actions or any contract for the delivery of water for irrigation or other uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution and, pursuant to the "Final Revised Public Participation Procedures" for water service and repayment contract negotiations, published in the **Federal Register** dated February 22, 1982, Vol. 47, page 7763, a tabulation is provided below of all proposed contractual actions in each of the five Reclamation regions. Each proposed action listed is, or is expected to be, in some stage of the contract negotiation process during July, August, or September of 1991.

When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the Regional Directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

This notice is one of a variety of means being used to inform the public about proposed contractual actions. Individual notices of intent to negotiate, and other appropriate announcements, are made in the **Federal Register** for those actions found to have widespread public interest. When this is the case, the date of publication is given.

Acronym Definitions Used Herein

(FR) Federal Register
(ID) Irrigation District
(IDD) Irrigation and Drainage District
(M&I) Municipal and Industrial
(D&MC) Drainage and Minor Construction
(R&B) Rehabilitation and Betterment
(O&M) Operation and Maintenance
(CAP) Central Arizona Project
(CUP) Central Utah Project
(CVP) Central Valley Project
(P–SMBP) Pick-Sloan Missouri Basin Program
(CRSP) Colorado River Storage Project
(SRPA) Small Reclamation Projects Act
(BCP) Boulder Canyon Project

Pacific Northwest Region

Bureau of Reclamation, 550 West Fort Street, Box 043, Boise, Idaho 83724–0043, telephone (208) 334–1894.

1. Cascade Reservoir Water Users, Boise Project, Idaho: Repayment contract for irrigation and M&I water; 19,201 acre-feet of stored water in Cascade Reservoir.
2. Individual Irrigators, M&I, and Miscellaneous Water Users, Pacific Northwest Region, Idaho, Montana, Oregon, and Washington: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.
3. Rogue River Basin Water Users, Rogue River Basin Project, Oregon: Water service contracts; $5 per acre-foot or $50 minimum per annum for terms up to 40 years.
4. Willamette Basin Water Users, Willamette Basin Project, Oregon: Water service contracts; $1.50 per acre-foot or $50 minimum per annum for terms up to 40 years.
5. Irrigation Districts and Similar Water User Entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).
6. Forty-four Palisades Reservoir Shareholders, Minidoka Project, Idaho-Wyoming: Contract amendments to extend term for which contract water may be subleased to other parties.
7. City of Cle Elum, Yakima Project, Washington: Amendatory or replacement M&I water service contract; 2,200 acre-feet (1,350 gallons per minute) annually for the term of up to 40 years.
8. Baker Valley Irrigation District, Baker Project, Oregon: Irrigation water service contract on a surplus interruptible basis to serve up to 13,000 acres; sale of excess capacity in Mason Reservoir (Phillips Lake) for the term of up to 40 years.
9. Crooked River Project, Oregon: Irrigation repayment or water service contracts with several individuals, with the Ochoco Irrigation District, and with North Unit Irrigation District for a total of up to 25,000 acre-feet of storage space in Prineville Reservoir (Arthur R. Bowman Dam).
10. Minidoka-Palisades Project: Repayment contract with Palisades Water Users Inc., for additional 500 acre-feet of storage space in Palisades Reservoir.
11. Willow Creek Project, Oregon: Repayment or water service contracts for a total of up to 3,500 acre-feet of storage space in Willow Creek Reservoir.
12. Four Project Spaceholders, Minidoka-Palisades Project, Idaho-Wyoming: Contract amendments to provide for rental of water to other parties.
13. Bridgeport Irrigation District, Chief Joseph Dam Project, Washington: Warren Act contract for the use of an irrigation outlet in Chief Joseph Dam.
14. Hermiston Irrigation District, Umatilla Project, Oregon: Repayment contract for reimbursable cost for Safety-of-Dams repairs to Cold Springs Dam.
15. Ochoco Irrigation District and Various Individual Spaceholders, Crooked River Project, Oregon: Repayment contract for reimbursable cost for Safety-of-Dam repairs to Arthur R. Bowman Dam and Ochoco Dams.
16. The Dalles Irrigation District, The Dalles Project, Oregon: SRPA loan repayment contract; $2,000,000 proposed loan obligation.
17. Oroville-Tonasket Irrigation District, Chief Joseph Dam Project, Washington: SRPA loan repayment contract; $661,500 proposed loan obligation.
18. State of Idaho, Payette Division of the Boise Project, Idaho. Proposed repayment contracts with the State of Idaho for the sale of uncontracted space in Cascade and Deadwood Reservoirs.
19. Sidney Irrigation Cooperative, Willamette Basin Project, Oregon: Irrigation water service contract for approximately 2,300 acre-feet; $1.50 per acre-foot for a term of up to 40 years.
20. P.P.R.T. Water System, Inc., Idaho: Amendatory contract to defer the 1991 and 1992 construction installments of a contract for a loan to construct facilities authorized pursuant to the Emergency Drought Act of 1977. Replacement of facilities is needed and the contractor has experienced several years of drought conditions.
21. Douglas County, Oregon: SRPA loan repayment contract; proposed loan obligation of $20,715,760 and grant of $9,228,380.
22. Othello School District No. 147, Columbia Basin Project, Washington: 30 acre-feet for irrigation of lawns.
23. Ochoco Irrigation District, Crooked River Project, Oregon: 1-year temporary water service contract for 12,000 acre-feet of storage in Prineville Reservoir to reduce drought impacts.

Mid-Pacific Region

Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1989, telephone (916) 978–5030.

1. Tuolumne Regional Water District, CVP, California: Water service contract, up to 9,000 acre-feet from New Melones Reservoir.

2. Calaveras County Water District, CVP, California: Water service contract, up to 2,000 acre-feet from New Melones Reservoir; **Federal Register** notice published February 5, 1982, Vol. 47, page 5473.

3. Individual irrigators, M&I and miscellaneous water users, Mid-Pacific Region, California, Oregon, and Nevada. Temporary (interim) water service contracts for available project water for irrigation, M&I or fish and wildlife purposes providing up to 10,000 acre-feet of water annually for terms up to 5 years; temporary Warren Act contracts for use of project facilities for terms up to 1 year; long-term contracts for similar service for up to 1,000 acre-feet annually.

Note: Copies of the standard form of temporary water service contract for the various types of service are available, upon written request, from the Regional Director at the address shown above.

4. Friant Unit Contractors, CVP, California: Renewal of existing long-term water service contracts with numerous contractors on the Friant-Kern and Madera Canals, or who divert from Millerton Reservoir, whose contracts expire 1991–1997 with two contracts expiring later. Water quantities in existing contracts range from 1,200 to 175,440 acre-feet.

5. ID's and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub.L. 97–293)

6. State of California, CVP, California: Contract(s) for, (1) sale of interim water to the Department of Water Resources for use by the State Water Project Contractors, and (2) acquisition of conveyance capacity in the California Aqueduct for use by the CVP as contemplated in the Coordinated Operation Agreement.

7. Madera ID, Madera Canal, CVP, California: Warren Act contract to convey and/or store nonproject water through project facilities.

8. County of Tulare, CVP, California: Amendatory water service contract, to provide an additional 1,908 acre-feet and reallocate 400 acre-feet of water from the Ducor ID for a total increase of 2,308 acre-feet.

9. Shasta Dam area Public Utilities District, CVP, California: Renewal/Increase of M&I water supply contract. Less than 6,000 acre-feet.

10. U.S. Fish and Wildlife Service, CVP, California: Long-term contract for water supply for Federal refuge in Grasslands area of California.

11. North Kern Water Storage District, Buena Vista Water Storage District, Tulare Lake Basin Water Storage District, and Hacienda Water District, Kern River Project, California: Amendatory contract to provide storage space for M&I water.

12. Contra Costa Water district, CVP, California: Amendatory water service contract to add an additional point of delivery to accommodate the district's proposed Los Vaqueros Project. Amendment will also conform contract to current water ratesetting policies.

13. San Juan Suburban Water District, CVP, California: Amend Contract No. 14–06–0200–152A to provide for the current CVP water rates to conform the contract with the provisions of section 105 and 106 of Public Law 99–546.

14. Centerville Community Services District, CVP, California: Water service contract for up to 800 acre-feet of M&I water annually.

15. Shasta County Water Agency, CVP, California: Amendatory water service contract to provide for reduction in annual entitlement of 800 acre-feet.

16. Mid-Pacific Region, California, Oregon, Nevada: Amendatory contracts to include the provision of the Act of July 2, 1956 (70 Stat. 483) and/or the Act of June 21, 1963 (77 Stat. 68) in existing water service contracts.

17. California Department of Corrections, CVP, California: Water service for up to 1,000 acre-feet of water annually to serve the Sierra Conservation Center (a State prison) near Jamestown, California.

18. Redwood Valley Water District, SRPA, California: Amendatory loan repayment contract.

19. Placer County Water Agency, CVP, California: Amend Contract No. 14–06–200–5082A to provide for the current CVP water rates.

20. Broadview Water District, CVP, California: Amend Contract No. 14–06–200–8092 to provide for change in point of diversion, right to construct new turnout on the San Luis Canal, and contract renewal.

21. Sutter Butte Mutual Water Company, CVP, California: Water service contract for a long-term supplemental water supply. Contract will assure company's water users an alternate water supply during periods of deficiency in their appropriative water rights. Annual water quantity not determined at this time.

22. Paramount Citrus Association, CVP, California: Contract to convey nonproject water through Federal facilities with exemption of RRA under 43 CFR 426.18. Up to 4,000 acre-feet of water to be transferred through Friant-Kern Canal for delivery to Southern San Joaquin Municipal District.

23. Butte Slough Irrigation Company, CVP, California: Water service contract for a long-term supplemental water supply. Contract will assure company's water users an alternate water supply during periods of deficiency in their appropriative water rights. Annual water quantity not determined at this time.

24. Lindsay-Strathmore ID, Friant-Kern Canal, CVP, California: Warren Act contract to convey and/or store nonproject water through project facilities.

25. Madera ID, Hidden Unit, CVP, California: Renewal of existing water service contract for 24,000 acre-feet of water which expires February 29, 1992.

26. Chowchilla WD, Buchanan Unit, CVP, California: Renewal of existing water service contract for 24,000 acre-feet of water which expires February 29, 1992.

27. Truckee-Carson Irrigation District, Newlands Project, Nevada: Warren Act contract to convey and/or store nonproject water in Project facilities.

28. Truckee-Carson Irrigation District, Newlands Project, Nevada: Contract for repayment of construction costs of Newlands Project.

29. Santa Barbara County Water Agency, Cachuma Project, California: Repayment contract for reimbursement of funds expended under the Emergency Fund Act for continuation of water service.

30. San Luis Water District, CVP, California: Amendatory water service contract to provide that the district pay full O&M rate for all deliveries resulting from the Azhderian Pumping Plant enlargement and the cost of service rate for such deliveries beginning in 1996 and each year thereafter.

31. United Water Conservation District, SRPA, California: Amendatory loan repayment contract.

32. Carmichael Irrigation District, CVP, California: Water service contract for a long-term supplemental water supply. Contract will assure district's water users an alternate water supply during periods of deficiency in their appropriative water rights. Annual water quantity not determined at this time.

33. Delta-Mendota Canal Contractors, CVP, California: Renewal of existing long-term water service contracts with numerous contractors on the Delta-Mendota Canal whose contracts expire in 1994–2003. Water quantities in existing contracts range from 70 to 50,000 acre-feet.

34. Sacramento County Water Agency, CVP, California: Long-term

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23. Butte Slough Irrigation Company, CVP, California: Water service contract for a long-term supplemental water supply. Contract will assure company's water users an alternate water supply during periods of deficiency in their appropriative water rights. Annual water quantity not determined at this time.

24. Lindsay-Strathmore ID, Friant-Kern Canal, CVP, California: Warren Act contract to convey and/or store nonproject water through project facilities.

25. Madera ID, Hidden Unit, CVP, California: Renewal of existing water service contract for 24,000 acre-feet of water which expires February 29, 1992.

26. Chowchilla WD, Buchanan Unit, CVP, California: Renewal of existing water service contract for 24,000 acre-feet of water which expires February 29, 1992.

27. Truckee-Carson Irrigation District, Newlands Project, Nevada: Warren Act contract to convey and/or store nonproject water in Project facilities.

28. Truckee-Carson Irrigation District, Newlands Project, Nevada: Contract for repayment of construction costs of Newlands Project.

29. Santa Barbara County Water Agency, Cachuma Project, California: Repayment contract for reimbursement of funds expended under the Emergency Fund Act for continuation of water service.

30. San Luis Water District, CVP, California: Amendatory water service contract to provide that the district pay full O&M rate for all deliveries resulting from the Azhderian Pumping Plant enlargement and the cost of service rate for such deliveries beginning in 1996 and each year thereafter.

31. United Water Conservation District, SRPA, California: Amendatory loan repayment contract.

32. Carmichael Irrigation District, CVP, California: Water service contract for a long-term supplemental water supply. Contract will assure district's water users an alternate water supply during periods of deficiency in their appropriative water rights. Annual water quantity not determined at this time.

33. Delta-Mendota Canal Contractors, CVP, California: Renewal of existing long-term water service contracts with numerous contractors on the Delta-Mendota Canal whose contracts expire in 1994–2003. Water quantities in existing contracts range from 70 to 50,000 acre-feet.

34. Sacramento County Water Agency, CVP, California: Long-term

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water service contract for 22,000 acre-feet for M&I use.

35. San Juan Suburban Water District, CVP, California: Long-term water service contract for 13,000 acre-feet for M&I use.

36. El Dorado County Water Agency, CVP, California: Long-term water service contract for 15,000 acre-feet for M&I use.

37. East Bay Municipal Utility District, CVP, California: Amendatory Contract No. 14–06–200–5183A to provide for current CVP water rates and temporary change in point of diversion.

38. City of Redding, CVP, California: Amendment to Contract No. 14–06–200–5272A to add point of diversion on turnout, Spring Creek Power Conduit, to facilitate proposed water treatment plant for Buckeye service area.

39. United States Department of Veteran Affairs, CVP, California: Contract for M&I water purposes in support of the new Veterans National Cemetery under construction in Sanata Nella, California.

40. Century Ranch Water Company, Inc., CVP, California: Long-term exchange contract for M&I, less than 100 acre-feet, Stony Creek Watershed above Black Butte Dam.

41. State of California, Department of Forestry, CVP, California: Water right exchange agreement, less than 100 acre-feet, above Black Butte Dam.

Lower Colorado Region

Bureau of Reclamation, PO Box 427
(Nevada Highway and Park Street),
Boulder City, Nevada 89005, telephone
(702) 293–8536.

1. Agricultural and M&I water users, CAP, Arizona: Water service subcontracts—a certain percent of available supply for irrigation entities and up to 640,000 acre-feet per year for M&I use.

2. Southern Arizona Water Rights Settlement Act: Sale of up to 28,200 acre-feet per year of municipal effluent to the City of Tucson, Arizona.

3. Contracts with five agricultural entities located near the Colorado River, Boulder Canyon Project (BCP), Arizona: Water service contracts for up to 1,920 acre-feet per year total.

4. Gila River Indian Community, CAP, Arizona: Water service contract for delivery of up to 173,100 acre-feet per year.

5. Irrigation districts and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

6. Indian and non-Indian agricultural and M&I water users, CAP, Arizona: Contracts and amendments for repayment of Federal expenditures for construction of distribution systems.

7. State of Arizona, BCP, Arizona: Contract for an undetermined amount of Colorado River water for M&I use and for agricultural use and related purposes on State-owned land.

8. Imperial Irrigation District and/or the Coachella Valley Water District, California: Contract providing for exchange of up to 10,000 acre-feet of water per year from a well field to be constructed adjacent to the All-American Canal (AAC) for an equivalent quantity and quality of Colorado River water and for O&M of the well field, Lower Colorado Water Supply Project, California.

9. Lower Colorado Water Supply Project, California: Water service and repayment contracts with nonagricultural users in California adjacent to the Colorado River for an aggregate consumptive use of up to 10,000 acre-feet of Colorado River water per year in exchange for an equivalent amount of water to be pumped into the AAC from a well field to be constructed adjacent to the canal.

10. Transfer of present perfected water rights, Winterhaven and Yuma Associates, California: Hutchison present perfected rights contract assignment to reflect the transfer of part of the right to Winterhaven, California, and to Yuma Associates, California, Supreme Court Decree in *Arizona* v. *California* and BCP.

11. County of San Bernardino, SRPA, California: Repayment contract for a $29.6 million loan.

12. Tohono O'odham Nation, SRPA, Arizona: Repayment contract for a $7.3 million loan for the Schuk Toak District.

13. Sturges Trust, Supreme Court Decree in *Arizona* v. *California* and BCP, Arizona: Contract for delivery of 8,500 acre-feet of Colorado River water per year for agricultural use as recommended by the State of Arizona and to recognize a 780 acre-foot present perfected right to the use of Colorado River water.

14. BCP, Arizona: Contracts for additional allocations of Colorado River water to cities located along the Colorado River in Arizona for up to 15,076 acre-feet per year as recommended by the Arizona Department of Water Resources.

15. National Park Service for Lake Mead National Recreation Area, Supreme Court Decree in *Arizona* v. *California*, and BCP in Arizona and Nevada: Memorandum of Understanding for delivery of Colorado River water for its Federal Establishments' present perfected right of 500 acre-feet of diversions annually, and the Federal Establishments' perfected right pursuant to Executive Order No. 5125 (April 25, 1930).

16. Eastern Municipal Water District, SRPA, California: Repayment contract for a $31 million loan.

17. City of Yuma, Gila Project, Arizona: Contract to add an additional point of diversion and to provide for water treatment by the Yuma Desalting Plant.

18. Colorado River Commission of Nevada and Southern Nevada Water Purveyors, BCP, Nevada: Final allocations and contracts for Nevada's remaining apportionment of Colorado River Water.

19. The Metropolitan Water District of Southern California or Imperial Irrigation District, California: Construction and funding contract to conserve water along a portion of the AAC in accordance with the AAC Lining Act dated January 25, 1988.

20. Elsinore Valley Municipal Water District, SRPA, California: Repayment contract for a $22.3 million loan.

21. Cibola Valley Irrigation and Drainage District and Mohave Valley Irrigation and Drainage District, BCP, Arizona: Amendments of current contracts for service areas, diversion points, and other minor changes.

22. Miscellaneous present perfected rights holders, BCP, Arizona and California: Contracts for Supreme Court decreed entitlements of Colorado River water as identified in *Arizona* v. *California*, as supplemented or amended and as required by section 5 of the BCP.

23. Federal Establishments' present perfected rights holders: Individual contracts for administration of Colorado River water entitlements of the Colorado River, Fort Mohave, Fort Yuma, Quechan, and Cocopah Indian tribes.

Upper Colorado Region

Bureau of Reclamation, PO Box 11568
(125 South State Street), Salt Lake City,
Utah 84147, telephone (801) 524–5435.

1. Individual irrigators, M&I, and miscellaneous water users, Utah, Wyoming, Colorado, and New Mexico: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

(a) The Benevolent and Protective Order of the Elks, Lodge No. 1747, Farmington, New Mexico: Navajo Reservoir water service contract; 20 acre-feet per year for municipal use;

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contract term for 40 years from execution.

(b) Mt. Crested Butte Water and Sanitation District, Mt. Crested Butte, Colorado: Amendment of a previous 40-year water service contract from Blue Mesa Reservoir from current use of 53 acre-feet per year to 98 acre-feet per year for municipal purposes.

2. Southern Ute Indian Tribe, Animas-La Plata Project, Colorado: Repayment contract for 26,500 acre-feet per year for M&I use and 2,600 acre-feet per year for irrigation use in Phase One and 700 acre-feet in Phase Two. Contract terms to be consistent with binding cost sharing agreement and water rights settlement agreement in principle.

3. Ute Mountain Ute Tribe, Animas-La Plata Project, Colorado and New Mexico: Repayment contract; 6,000 acre-feet per year for M&I use in Colorado; 26,400 acre-feet per year for irrigation use in Colorado; 900 acre-feet per year for irrigation use in New Mexico. Contract terms to be consistent with binding cost sharing agreement and water rights settlement agreement.

4. Navajo Indian Tribe, Animas-La Plata Project, New Mexico: Repayment contract for 7,600 acre-feet per year for M&I use.

5. La Plata Conservancy District, Animas-La Plata Project, New Mexico: Repayment contract for 9,900 acre-feet per year for irrigation use.

6. Uintah Water Conservancy District, Jensen Unit, Central Utah Project, Utah: Amendatory repayment contract to reduce municipal and industrial water supply and corresponding repayment obligation.

7. Varmejo Conservancy District, Varmejo Project, New Mexico: Amendatory contract to relieve the district of further repayment obligation, presently exceeding $2 million, pursuant to Public Law 96–550.

8. Conejos Water Conservancy District, San Luis Valley Project, Colorado: Amendatory contract to place OM&R costs on a variable basis commensurate with the availability of project water.

9. Weber Basin Water Conservancy district, Weber Basin Project, Utah: Repayment contract for R&B work of selected project facilities.

10. San Juan Pueblo, San Juan-Chama Project, New Mexico: Repayment contract for up to 5,165 acre-feet of project water for irrigation purposes.

1. North Fork Water Conservancy District, Paonia Project, Colorado: Water lease agreement with the Ragged Mountain Water Users Association for 2,000 acre-feet of irrigation water.

Great Plains Region

Bureau of Reclamation, PO Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107–6900, telephone (406) 657–6413.

1. Individual irrigators, M&I, and miscellaneous water users, Great Plains Region: Montana, Wyoming, North Dakota, South Dakota, Colorado, Kansas, Nebraska, Oklahoma, and Texas: Temporary (interim) water service contract for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. Fort Shaw Irrigation District, Sun River Project, Montana: R&B loan repayment contract; up to $1.5 million.

3. Owl Creek Irrigation District, Owl Creek Unit, P–SMBP, Wyoming: Amendatory water service contract to reflect reduced water supply benefits being received from Anchor Reservoir.

4. Green Mountain Reservoir, Colorado-Big Thompson Project, Colorado: Water service contracts; contract negotiations for sale of water from the marketable yield to water users within the Colorado River Basin of Western Colorado.

5. Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado: Water service contracts; proposed second round contract negotiations for sale of agricultural, municipal, domestic, and industrial water from the regulatory capacity of Ruedi Reservoir.

6. Cedar Bluff Irrigation District No. 6, Cedar Bluff Unit, P–SMBP, Kansas: Repayment contract; pending passage of congressional legislation, terminate the Cedar Bluff Irrigation District's contract. The use of the district's portion of the reservoir storage capacity will be sold to the State of Kansas for fish, wildlife, recreation, and other purposes.

7. Frenchman Valley Irrigation District, Frenchman Unit, P–SMBP, Nebraska: Pending passage of congressional legislation, renegotiate district's existing contract to reduce payments based on payment ability and reduced water supply.

8. Garrison Diversion Unit, P–SMBP, North Dakota: Repayment contract; renegotiation of the master repayment contract with Garrison Diversion Conservancy District to bring the terms in line with the Garrison Diversion Unit Reformulation Act of 1986. Negotiation of repayment contracts with irrigators and M&I users.

9. Corn Creek Irrigation District, Glendo Unit, P–SMBP, Wyoming: Repayment contract for 10,350 acre-feet of supplemental irrigation water from Glendo Reservoir.

10. Glen Elder Unit, P–SMBP, Kansas: Negotiations for long-term contracts for agricultural water service from Waconda Lake.

11. Foss Reservoir Master Conservancy District, Washita Basin Project, Oklahoma: Amendatory repayment contract for remedial work.

12. Arbuckle Master Conservancy District, Arbuckle Project, Oklahoma: Contract for the repayment of costs incurred by the United States for the construction of the Sulphur, Oklahoma pipeline and pumping plant (if constructed).

13. Board of Water Commissioners of the City and County of Denver, the Colorado River Water Conservation District, and the Northern Colorado Water Conservancy District, Colorado Big Thompson Project, Colorado: Operating agreement for substitution of water in the proposed Woolford Mountain (Muddy Creek) Reservoir for Green Mountain Reservoir water.

14. Sargent Irrigation District, Middle Loup Division, P–SMBP, Nebraska: R&B loan repayment contract not to exceed $2,435,000.

15. Chinook Water Users Association, Milk River Project, Montana: SRPA contract for loan of up to $6,000,000 for improvements to the association's water conveyance system.

16. Heart River Unit, Dickinson Subunit, P–SMBP, North Dakota: Renegotiate water service Contract No. I79r–1412 with the City of Dickinson. Existing contract expired September 24, 1989.

17. Malta Irrigation District, Malta Division, Milk River Project, Montana: R&B contract for repayment of $5,600,000 loan.

18. Midvale Irrigation District, Riverton Unit, P–SMBP, Wyoming: Long-term contract for water service from Boysen Reservoir.

19. Tom Green County Water Control and Improvement District No. 1, San Angelo Project, Texas: Pending passage of congressional legislation, negotiate amendatory contract to increase irrigable acreage within the project.

20. Palmetto Bend Project, Texas: Amendment of the tripartite contract among the United States, the Lavaca-Navidad River Authority and the Texas Water Development Board to transfer the board's remaining repayment obligation and interest in the Palmetto Bend Project to the authority.

21. City of Havre, Milk River Project, Montana: New long-term water service contract for up to 2,800 acre-feet annually.

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16 North 26th Street,
59107–6900, telephone

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10. Glen Elder Unit, P–SMBP, Kansas: Negotiations for long-term contracts for agricultural water service from Waconda Lake.

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12. Arbuckle Master Conservancy District, Arbuckle Project, Oklahoma: Contract for the repayment of costs incurred by the United States for the construction of the Sulphur, Oklahoma pipeline and pumping plant (if constructed).

13. Board of Water Commissioners of the City and County of Denver, the Colorado River Water Conservation District, and the Northern Colorado Water Conservancy District, Colorado Big Thompson Project, Colorado: Operating agreement for substitution of water in the proposed Woolford Mountain (Muddy Creek) Reservoir for Green Mountain Reservoir water.

14. Sargent Irrigation District, Middle Loup Division, P–SMBP, Nebraska: R&B loan repayment contract not to exceed $2,435,000.

15. Chinook Water Users Association, Milk River Project, Montana: SRPA contract for loan of up to $6,000,000 for improvements to the association's water conveyance system.

16. Heart River Unit, Dickinson Subunit, P–SMBP, North Dakota: Renegotiate water service Contract No. I79r–1412 with the City of Dickinson. Existing contract expired September 24, 1989.

17. Malta Irrigation District, Malta Division, Milk River Project, Montana: R&B contract for repayment of $5,600,000 loan.

18. Midvale Irrigation District, Riverton Unit, P–SMBP, Wyoming: Long-term contract for water service from Boysen Reservoir.

19. Tom Green County Water Control and Improvement District No. 1, San Angelo Project, Texas: Pending passage of congressional legislation, negotiate amendatory contract to increase irrigable acreage within the project.

20. Palmetto Bend Project, Texas: Amendment of the tripartite contract among the United States, the Lavaca-Navidad River Authority and the Texas Water Development Board to transfer the board's remaining repayment obligation and interest in the Palmetto Bend Project to the authority.

21. City of Havre, Milk River Project, Montana: New long-term water service contract for up to 2,800 acre-feet annually.

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22. Lakeview Irrigation District, Shoshone Project, Wyoming: New long-term water service contract for up to 3,200 acre-feet of firm water supply annually and up to 11,800 acre-feet of interim water from Buffalo Bill Reservoir.

23. Hidalgo County Irrigation District No. 6, Texas: SRPA contract for a 25-year loan for up to $5,762,400 to rehabilitate the district's irrigation facilities.

24. City of Rapid City and Rapid Valley Water Conservancy District, Rapid Valley Unit, P-SMBP, South Dakota: Contract renewal for up to 55,000 acre-feet of storage capacity in Pactola Reservoir.

25. Shoshone, Heart Mountain, Willwood, and Deaver Irrigation Districts, Shoshone Project, Wyoming: R&B contracts for loans totalling $7,500,000 to rehabilitate project irrigation facilities.

26. City of Aurora, Fryingpan-Arkansas Project, Colorado: Long-term carriage contract for up to 1,000 acre-feet of conveyance capacity in the Fryingpan-Arkansas Project facilities.

27. Board of Commissioners of the City and County of Denver, Northern Colorado Water Conservancy District, Colorado River Water Conservation District, Colorado-Big Thompson Project, Colorado: Operating agreement for substitution of Williams Fork Reservoir water for Green Mountain Reservoir water.

28. Thirty Mile Canal Company, Nebraska: SRPA contract for a loan of $2,264,000 to reline the main canal, replace open laterals with buried pipe, and replace bridges.

Opportunity for public participation and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only person authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of the Bureau of Reclamation.

3. All written correspondence regarding proposed contracts will be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

4. Written comments on proposed contract or contract action must be submitted to the appropriate Reclamation officials at locations and within the time limits set forth in the advance public notice.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate Regional Director or his designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate Regional Director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors which shall be considered in making such a determination shall include, but are not limited to: (i) The significance of the impact(s) of the modification, and (ii) the public interest which has been expressed over the course of the negotiations. As a minimum, the Regional Director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Dated: July 31, 1991.

J. William McDonald,

Acting Assistant Commissioner, Program, Budget, and Liaison.

[FR Doc. 91–18645 Filed 8–6–91; 8:45 am]

BILLING CODE 4310-09-M

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On May 31, 1991, a notice was published in the **Federal Register**, Vol. 56, No. 105, Page 24830, that an application had been filed with the Fish and Wildlife Service by Homer Society of Natural History, Inc., Homer, AK, (PRT–756274) for a permit to import one mount and two pelts of one adult female and two pups to transport through the U.S. in a traveling exhibit to various museums for public display.

Notice is hereby given that on July 22, 1991, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

The permit documents themselves are available for public inspection by appointment during normal business hours (7:45–4:15) at the Fish and Wildlife Service's Office of Management Authority, 4401 North Fairfax Drive, Room 432, Arlington, Virginia 22203 (703/358–2104).

Other information in permit file is available under the Freedom of Information Act to any person who submits a written request to the Service's Office of Management Authority at the above address, in accordance with procedures set forth in Department of the Interior regulations. 43 CFR 2.

Dated: August 1, 1991.

R.K. Robinson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 91–18685 Filed 8–6–91; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Alaska Outer Continental Shelf (OCS): Public Scoping Meetings Regarding the Environmental Impact Statement for Proposed Oil and Gas Lease Sale No. 144; Beaufort Sea

The June 13, 1991, **Federal Register** contained a notice of intent to prepare an environmental impact statement (EIS) for proposed oil and gas lease Sale No. 144, Beaufort Sea.

The notice of intent for the proposed sale announced the scoping process that will be followed for the preparation of each EIS. The scoping process will involve Federal, State, and local governments and other interested parties aiding the Minerals Management Service in determining the significant issues and alternatives to be analyzed in the EIS. This will be done through mail solicitation and scoping meetings.

The area included in this sale is described in the **Federal Register** notice mentioned above. It is hoped that the information received at the scoping meetings will aid in identifying specific issues, proposals and alternatives.

Scoping meetings will be held as follows:

August 19, 1991, Community Hall, 7 to 9 p.m., Nuiqsut, Alaska
August 20, 1991, Community Hall, 7 to 9 p.m., Kaktovik, Alaska
August 21, 1991, Borough Assembly Chambers, 7 to 9 p.m., Barrow, Alaska

Additional information concerning these meetings can be obtained from: Minerals Management Service, Alaska OCS Region, Leasing and Environment Office, Attention: Ray Emerson, 949 East 36th Avenue, Anchorage, Alaska 99508.

Irven F. Palmer, Jr.,

Acting Regional Director.

[FR Doc. 91–18662 Filed 8–6–91; 8:45 am]

BILLING CODE 4310-MR-M

Assessments for Late Reports

July 25, 1991.

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of assessment rates; correction.

SUMMARY: The Minerals Management Service (MMS) published a Notice in the **Federal Register** on July 5, 1991, (56 FR 30764) to establish new assessment rates for late reporting based on experience with costs and improper reporting, in accordance with its regulations at 30 CFR 216.40 (g) and 218.40 (e). The purpose of this Notice is to correct the assessment rates established in that Notice that apply to magnetic media reports submitted late to MMS's Auditing and Financial System (AFS).

EFFECTIVE DATE: The effective date of this correction is August 1, 1991. This is the same effective date established in the July 5, 1991, **Federal Register** which informed the public of new assessment rates for late reporting. The corrected assessment rates will remain in effect until a subsequent Notice is published in the **Federal Register** which changes the rates.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, MS 3910, Minerals Management Service, P.O. Box 25165, Denver, Colorado 80225–0165, at (303) 231–3432 or (FTS) 326–3432.

SUPPLEMENTARY INFORMATION: The July 5, 1991, **Federal Register** Notice established the same new assessment rates for magnetic media reports submitted late to MMS's Production Accounting and Auditing System (PAAS) and to its AFS. The assessment rates established in the July 5, 1991, Notice apply only to magnetic media reports submitted late to the PAAS. The assessment rates for magnetic media reports submitted late to the AFS are not changed at this time. The public will be informed of any change in the assessment rates for magnetic media reports submitted late to the AFS in a future **Federal Register** Notice.

Dated: July 31, 1991.

Jimmy W. Mayberry,

Associate Director for Royalty Management.

[FR Doc. 91–18695 Filed 8–6–91; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Preservation of Jazz Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Preservation of Jazz Advisory Commission will be held on August 23 and 28, 1991, public hearings on August 24, 26, 27, 1991 and a Jazz History Workshop on August 28, 1991, in New Orleans, Louisiana.

The Preservation of Jazz Advisory Commission was established by Public Law 101–499 to advise the Secretary of the Interior in the preparation of a study of the suitability and feasibility of preserving and interpreting the origins of jazz in New Orleans.

The following is the schedule and purpose/agenda for the meetings, public hearings and workshop:

Dates and Times	Location	Purpose/Agenda
Friday, August 23, 1991, 2:30–4:30 pm	Advisory Commission Meeting, The Pontchartrain Hotel, 2031 St. Charles Ave., New Orleans, LA.	Review Background material gathered on jazz history. Prepare for public hearings.
Saturday, August 24, 1991, 2:00–6:00 pm	Public Hearings, Treme Community Center, Corner of N. Villere and St. Phillip, New Orleans, LA.	—The hearings will be conducted in an open-house style with the public free to attend between times indicated.
Monday, August 26, 1991, 4:00–8:00 pm	Public Hearings, Xavier University, Gold Room, Student Center, New Orleans, LA.	—The Commission will host the open-houses to inform the public of the purpose of the study and to get public input on the project scope and ideas on potential programs.
Tuesday, August 27, 1991, 4:00–8:00 pm	Public Hearings, Algiers Regional Library, 3014 Holiday Drive, New Orleans, LA.	
Wednesday, August 28, 1991, 1:00–4:00 pm	Jazz History Workshop, Loyola University, Dana Center, Audubon Room, New Orleans, LA.	—To gather information and ideas on the origins and early history of jazz in New Orleans and associated locations. The meeting is open to the public. Persons with special knowledge of jazz history are encouraged to attend.
4:30–6:30 pm	Advisory Commission Meeting, Loyola University, Dana Center, Octavia Room, New Orleans, LA.	—To initially summarize the input received over the week and to discuss the next phases of the study.

The meetings, public hearings, and workshop will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed at the commission meetings with the Superintendent, Jean Lafitte National Historical Park and Preserve. The public will also have an opportunity to submit written and oral comments for the record during the hearings.

Persons wishing further information concerning the meetings, public hearings, and workshop, or who wish to submit written statements may contact Robert Belous, Superintendent, Jean Lafitte National Historical Park and Preserve, U.S. Customs House, 423 Canal Street, room 210, New Orleans, Louisiana 70130–2341, Telephone 504/589–3882.

Minutes of the commission will be available for public inspection four weeks after the meeting at the office of Jean Lafitte National Historical Park and Preserve.

Dated: July 25, 1991.

Larry Belli,

Acting Regional Director, Southwest Region.

[FR Doc. 91–18699 Filed 8–6–91; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 20, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by August 22, 1991.

Carol D. Shull,

Chief of Registration, National Register.

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80225–0165, at (303)
326–3432.

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Dated: July 31, 1991.

Jimmy W. Mayberry,

Associate Director for Royalty Management.

[FR Doc. 91–18695 Filed 8–6–91; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

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ocation	Purpose/Agenda
Meeting, The Pontchartrain es Ave., New Orleans, LA.	Review Background material gathered on jazz history. Prepare for public hearings.
Community Center, Corner of lip, New Orleans, LA.	—The hearings will be conducted in an open-house style with the public free to attend between times indicated.
University, Gold Room, Stu- eans, LA.	—The Commission will host the open-houses to inform the public of the purpose of the study and to get public input on the project scope and ideas on potential programs.
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Meeting, Loyola University, Room, New Orleans, LA.	—To initially summarize the input received over the week and to discuss the next phases of the study.

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Carol D. Shull,

Chief of Registration, National Register.

HAWAII

Hawaii County

Hata, S., Building, 318 Kamehameha Ave., Hilo, 91001067

Honolulu County

Kelly, John and Kate, House, 4117 Blackpoint Rd., Honolulu, 91001085

Maui County

Hana District Police Station and Courthouse, Uakea Rd., Hana, 91001086

ILLINOIS

Cook County

Miller, Allan, House, 7121 S. Paxton Ave., Chicago, 91001082

IOWA

Jackson County

Bellevue Herald Building (Limestone Architecture of Jackson County MPS), 130 S. Riverview St., Bellevue, 91001079

Big Mill Homestead (Limestone Architecture of Jackson County MPS), Paradise Valley Rd. W of Bellevue, Bellevue vicinity, 91001075

Dyas, George, House (Limestone Architecture of Jackson County MPS), Co. Rd. Z–15, SW of jct. with US 52, Bellevue vicinity, 91001077

Dyas, William, Barn (Limestone Architecture of Jackson County MPS), Co. Rd. Z–15, SW of jct. with US 52, Bellevue vicinity, 91001078

Fritz Chapel (Limestone Architecture of Jackson County MPS), Spruce Creek Rd. W of jct. with US 52, Bellevue vicinity, 91001067

House at 101 North Riverview Street (Limestone Architecture of Jackson County MPS), 101 N. Riverview St., Belleview, 91001068

House at 126 South Riverview Street (Limestone Architecture of Jackson County MPS), 126 S. Riverview St., Bellevue, 91001070

House at 130—132 North Riverview Street (Limestone Architecture of Jackson County MPS), 130—132 N. Riverview St., Bellevue, 91001069

House at 306 South Second Street (Limestone Architecture of Jackson County MPS), 306 S. Second St., Bellevue, 91001071

House at 505 Court Street (Limestone Architecture of Jackson County MPS), 505 Court St., Bellevue, 91001073

Kucheman Building (Limestone Architecture of Jackson County MPS), 100 N. Second St., Bellevue, 91001072

Niemann, Theodore, House and Spring House (Limestone Architecture of Jackson County MPS), Spruce Creek Rd. W of jct. with US 52, Bellevue vicinity, 91001065

Robb House and Spring House (Limestone Architecture of Jackson County MPS), Paradise Valley Rd. W. of Bellevue, Bellevue vicinity, 91001076

Roling, Henry, House (Limestone Architecture of Jackson County MPS), Spruce Creek Rd. W of jct. with US 52, Bellevue vicinity, 91001066

Upper Paradise (Limestone Architecture of Jackson County MPS), Paradise Valley Rd. W of Bellevue, Bellevue vicinity, 91001074

Marion County

Pella Opera House, 611 Franklin St., Pella, 91001080

KANSAS

Shawnee County

Anton-Woodring House, 1011 Cambridge Ave., Topeka, 91001088

LOUISIANA

Claiborne Parish

Monk House, Claiborne Parish Rt. 39 and LA 9, Homer vicinity, 91001081

MINNESOTA

Dodge County

Mantorville and Red Wing Stage Road—Mantorville Section (Overland Staging Industry in Minnesota MPS), N side of 5th St., E of jct. with MN 57, Mantorville, 91001062

Todd County

Saint Cloud and Red River Valley Stage Road—Kandota Section (Overland Staging Industry in Minnesota MPS), Off Co. Hwy. 92 SE of West Union, Kandota Township, West Union vicinity, 91001061

Wabasha County

Lake City and Rochester Stage Road—Mount Pleasant Section (Overland Staging Industry in Minnesota MPS), Off US 63 SW of Lake City, Mount Pleasant Township, Lake City vicinity, 91001063

VIRGINIA

Rockbridge County

Vine Forest, US 11, 2 mi. W of Natural Bridge, Natural Bridge vicinity, 91001084

Roanoke Independent City

St. John's Episcopal Church, Jct. of Jefferson St. and Elm Ave., SW corner, Roanoke (Independent City), 91001083

The following property was listed under Iron County, Michigan, on a previous pending list:

MICHIGAN

Presque Isle County

Radka—Bradley House, 176 W. Michigan Ave., Rogers City, 91001019

[FR Doc. 91–18700 Filed 8–6–91; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–308 (Preliminary) and 731–TA–526 (Preliminary)]

Bulk Ibuprofen From India

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of preliminary countervailing duty and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigation No. 701–TA–308 (Preliminary) under section 703(a)) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and of preliminary antidumping investigation No. 731–TA–526 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from India of ibuprofen in bulk form, provided for in subheading 2916.15 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of India and to be sold in the United States at less than fair value. The Commission must complete preliminary countervailing duty and antidumping investigations in 45 days, or in these cases by September 16, 1991.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: July 31, 1991.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Haines (202–205–3200), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on July 31, 1991, by Ethyl Corporation, Richmond, VA.

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these preliminary investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on August 21, 1991, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Elizabeth A. Haines (202–205–3200) not later than August 16, 1991 to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before August 26, 1991, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs of written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

Issued: August 2, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–18742 Filed 8–6–91; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731–TA–523 (Preliminary)]

Determination; Commercial Microwave Ovens, Assembled or Unassembled, From Japan

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930,[3] that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of commercial microwave ovens (CMOs),[4] that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On June 10, 1991, a petition was filed with the Commission and the Department of Commerce by Menumaster, Inc., Sioux Falls, SD, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of CMOs from Japan. Accordingly, effective June 10, 1991, the Commission instituted antidumping investigation No. 731–TA–523 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 19, 1991.[5] The conference was held in Washington, DC, on July 1, 1991, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 25, 1991. The views of the Commission are contained in USITC Publication 2405 (July 1991), entitled "Commercial Microwave Ovens, Assembled or Unassembled, from Japan: Determination of the Commission in Investigation No. 731–TA–523 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: July 26, 1991.

By Order of the Commission:

Kenneth R. Mason,

Secretary.

[FR Doc. 91–18744 Filed 8–6–91; 8:45 am]

BILLING CODE 7020-02-M

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[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Acting Chairman Anne Brunsdale dissenting.

[3] 19 U.S.C. 1673b(a).

[4] The products covered by this investigation are all CMOs, whether assembled or unassembled. CMOs are electronic cooking devices which heat food by application of very high-frequency energy (microwaves), used for commercial or other than domestic purposes. CMOs are provided for in subheading 8419.81.10 but may be entering under subheading 8516.50.00 of the Harmonized Tariff Schedule of the United States (HTS). The latter subheading classifies microwave ovens intended for household use only.

[5] 56 FR 28171.

[Investigation No. 731-TA-471 (Final)]

Determination, Silicon Metal From Brazil

On the basis of the record [1] developed in the subject investigation, the Commission unanimously determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act), that an industry in the United States is materially injured by reason of imports from Brazil of silicon metal,[2] that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). The Commission also unanimously determines, pursuant to section 735(b)(4)(A) of the act (19 U.S.C. 1673d(b)(4)(A)), that critical circumstances do not exist with respect to imports of such merchandise; thus, the retroactive imposition of antidumping duties is not necessary.

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[1] The record is defined in section 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] The merchandise covered by this investigation is silicon metal containing at least 96.00 but less than 99.99 percent of silicon by weight. Silicon metal is currently provided for in subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule of the United States (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor-grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to this investigation.

and by publishing the notice in the **Federal Register** of June 19, 1991.[5] The conference was held in Washington, DC, on July 1, 1991, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 25, 1991. The views of the Commission are contained in USITC Publication 2405 (July 1991), entitled "Commercial Microwave Ovens, Assembled or Unassembled, from Japan: Determination of the Commission in Investigation No. 731–TA–523 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: July 26, 1991.

By Order of the Commission:

Kenneth R. Mason,

Secretary.

[FR Doc. 91–18744 Filed 8–6–91; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-471 (Final)]

Determination, Silicon Metal From Brazil

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[5] 56 FR 28171.

[1] The record is defined in section 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

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Background

The Commission instituted this investigation effective March 27, 1991, following a preliminary determination by the Department of Commerce that imports of silicon metal from Brazil were being sold at LTFV within the meaning of section 733(b) of the act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's final investigation and of a public hearing to be held in connection therewith was given by posting copies of the notices in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notices in the **Federal Register**. The hearing was held in Washington, DC, on April 25, 1991, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 24, 1991. The views of the Commission are contained in USITC Publication 2404 (July 1991), entitled "Silicon Metal from Brazil: Determination of the Commission in Investigation No. 731–TA–471 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: July 26, 1991.

By Order of the Commission:

Kenneth R. Mason,

Secretary.

[FR Doc. 91–18745 Filed 8–6–91; 8:45 am]

BILLING CODE 7020-02-M

Appointment of Individuals To Serve as Members of Performance Review Boards

AGENCY: United States International Trade Commission.

ACTION: Appointment of individuals to serve as members of Performance Review Boards.

EFFECTIVE DATE: August 7, 1991.

FOR FURTHER INFORMATION CONTACT: Terry P. McGowan, Director of Personnel, U.S. International Trade Commission, (202) 205–2651.

SUPPLEMENTARY INFORMATION: The Acting Chairman of the U.S. International Trade Commission has appointed the following individuals to serve on the Commission's Performance Review Board (PRB).

Chairman of PRB—Vice Chairman Anne E. Brunsdale
Member—Commissioner Seeley G. Lodwick
Member—Commissioner Donald E. Newquist
Member—Commissioner David B. Rohr
Member—Charles W. Ervin
Member—William L. Featherstone
Member—Lorin L. Goodrich
Member—Lynn I. Levine
Member—Robert A. Rogowsky
Member—Eugene A. Rosengarden
Member—Lyn M. Schlitt
Member—Marion L. Simpson
Member—John W. Suomela

Notice of these appointments is being published in the **Federal Register** pursuant to the requirement of 5 U.S.C. 4314(c)(4).

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

Issued: July 30, 1991.

By order of the Acting Chairman:

Kenneth R. Mason,

Secretary.

[FR Doc. 91–18743 Filed 8–6–91; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30186 (Sub-No. 2)]

Tongue River Railroad Co.—Rail Construction and Operation—Ashland to Decker, MT

AGENCY: Interstate Commerce Commission.

ACTION: Thirty-day extension to file comments and replies.

SUMMARY: In motions filed July 29, 1991, the Northern Cheyenne Tribe (Tribe) and Native Action (Action) request a 30-day extension to file comments on the application filed by the Tongue River Railroad Co. in this case. Comments are now due August 2, 1991. Both Tribe and Action say that the proposal will have a substantial effect on them and that they have not had adequate time to study the application. We will modify the July 16, 1991 notice by giving all parties until September 3, 1991 to file comments. Applicant may reply by September 10, 1991.

DATES: (1) Comments must be filed by September 3, 1991, and concurrently served on applicant's representatives. Each comment must contain the basis for the party's position either in support or opposition to the application.

(2) Applicant may reply by September 10, 1991.

ADDRESSES: Send an original plus 10 copies of all documents to: Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 30186 (Sub-No. 2), Interstate Commerce Commission, Washington, DC 20423 .

In addition, concurrently send one copy to each of applicant's representatives:

Thomas E. Ebzery, Esq., Village Center 1, 1500 Poly Drive, Billings, MT 59102, FAX: (406) 245–0834.
David M. Schwartz, Esq., Robert L. Calhoun, Esq., Sullivan & Worcester, 1025 Connecticut Ave., NW., Washington, DC 20036, FAX: (202) 293–2275.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245 [TTD for hearing impaired: (202) 275–1721].

Decided: July 31, 1991

By the Commission, Sidney L. Strickland, Jr., Secretary.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–18613 Filed 8–6–91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Small Business Retirement Plans of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 9:30 a.m. Wednesday, September 11, 1991, in room S–4215 AB, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This Small Business Retirement Plans Working Group was formed by the Advisory Council to study issues relating to Small Business for employee benefit plans covered by ERISA.

The purpose of the September 11 meeting is to address the following specific issues:

I. Determination of the magnitude and scope of "the problems" that may exist regarding retirement plan coverage among small employers.

II. Determination of the extent to which the complexity of rules and administrative burdens has contributed to diminished coverage, with related recommendations regarding simplification.

III. Determination of the appropriate degree of balance between benefit security for employees of small firms

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and measures to encourage small business coverage.

IV. Determination of what measures beyond simplification of existing rules might be taken by the government to improve the degree of meaningful secure coverage of employees of small business.

A number of various groups and individuals will be invited to address these issues. The Working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations, wishing to address the Working Group should submit written requests on or before September 6, 1991, to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before September 6, 1991.

Signed at Washington, DC, this 1st day of August, 1991.

David George Ball,

Assistant Secretary for Pension and Welfare Benefits Administration.

[FR Doc. 91–18687 Filed 8–6–91; 8:45 am]

BILLING CODE 4510–29–M

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Enforcement of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 9 a.m. Thursday, September 12, 1991, in room S–4215 AB, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This Enforcement Working Group was formed by the Advisory Council to study issues relating to Enforcement for employee benefit plans covered by ERISA.

The purpose of the September 12 meeting is to receive testimony from various organizations and individuals concerning:

I. Whether there is a need for alternatives to court litigation for resolving plan benefit claims and other ERISA claims, and

II. How alternative dispute resolution procedures can be effectively structured. Among the organizations invited to testify are the Pension Rights Center, the Pension Benefit Guaranty Corporation, the Federal Mediation & Conciliation Service, the Administrative Conference of the United States, the National Association of Insurance Commissioners, the National Association of Securities Dealers, the American Arbitration Association, and various employer and labor groups.

The working Group will also take testimony and or submissions from other interested individuals and groups, not mentioned above, regarding the subject matter.

Individuals, or representatives of organizations, wishing to address the Working Group should submit written requests on or before September 6, 1991, to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20 copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before September 6, 1991.

Signed at Washington, DC, this 1st day of August, 1991.

David George Ball,

Assistant Secretary for Pension and Welfare Benefits Administration.

[FR Doc. 91–18688 Filed 8–6–91; 8:45 am]

BILLING CODE 4510–29–M

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Retiree Medical Benefits of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 9:30 a.m. Friday, September 13, 1991, in room S–4215 AB, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This Retiree Medical Benefits Working Group was formed by the Advisory Council to study issues relating to Retiree Medical Benefits for employee benefit plans covered by ERISA.

The purpose of the September 13 meeting will be to hear expert testimony concerning the impact of: (1) Medical care cost of inflation, (2) changing demographics, (3) changed accounting rules for other post employment benefits, and (4) the lack of broad tax favored prefunding alternatives and associated minimum standards, on retiree medical plan design, coverage and benefits. The Working Group will also take testimony and or submission from other interested individuals and groups, not mentioned above, regarding the subject matter.

Individuals, or representatives of organizations, wishing to address the Working Group should submit written requests on or before September 6, 1991, to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Paper will be accepted and included in the record of the meeting if received on or before September 6, 1991.

Signed at Washington, DC, this 1st day of August, 1991.

David George Ball,

Assistant Secretary for Pension and Welfare Benefits Administration.

[FR Doc. 91–18689 Filed 8–6–91; 8:45 am]

BILLING CODE 4510–29–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–409]

Dairyland Power Coop; La Crosse Boiling Water Reactor (LACBWR); Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is

U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This Retiree Medical Benefits Working Group was formed by the Advisory Council to study issues relating to Retiree Medical Benefits for employee benefit plans covered by ERISA.

The purpose of the September 13 meeting will be to hear expert testimony concerning the impact of: (1) Medical care cost of inflation, (2) changing demographics, (3) changed accounting rules for other post employment benefits, and (4) the lack of broad tax favored prefunding alternatives and associated minimum standards, on retiree medical plan design, coverage and benefits. The Working Group will also take testimony and or submission from other interested individuals and groups, not mentioned above, regarding the subject matter.

Individuals, or representatives of organizations, wishing to address the Working Group should submit written requests on or before September 6, 1991, to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Paper will be accepted and included in the record of the meeting if received on or before September 6, 1991.

Signed at Washington, DC, this 1st day of August, 1991.

David George Ball,

Assistant Secretary for Pension and Welfare Benefits Administration.

[FR Doc. 91–18689 Filed 8–6–91; 8:45 am]

BILLING CODE 4510-29-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–409]

Dairyland Power Coop; La Crosse Boiling Water Reactor (LACBWR); Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order authorizing decommissioning and issuance of a renewal and amendment of Possession Only Licensee No. DPR–45 for Dairyland Power Cooperatives (DPC's) La Crosse Boiling Water Reactor (LACBWR). The Decommissioning Plan involves long-term storage of the facility (SAFSTOR) followed by dismantlement.

Description of Proposed Action

LACBWR has been shut down since April 30, 1987. All spent fuel has been removed from the reactor and is stored in the LACBWR Fuel Element Storage Well. Approval of the Decomissioning Plan and renewal of License No. DPR–45 will allow storage of spent fuel on site until a Federal repository is available and SAFSTOR of LACBWR until March 29, 2031.

Environmental Impacts

The NRC staff has reviewed the proposed decommissioning, the proposed renewal and amendment of the possession only license and DPC's Supplemental Environmental Report with respect to 10 CFR 51.53(b). To document its review, the staff has prepared an Environmental Assessment. The proposed SAFSTOR of LACBWR will prevent unrestricted use of a small area of land for the SAFSTOR period but will result in a reduced exposure of workers that do final dismantling and also result in a reduced volume of radioactive waste.

Finding of No Significant Impact

The staff has reviewed the proposed decommissioning, license renewal and amendment relative to the requirements set forth in 10 CFR part 51. Based upon the Environmental Assessment, the staff concluded that there are no significant environmental impacts associated with the proposed action and that the proposed action will not have a significant effect on the quality of the human environment. Therefore, the Commission had determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see: (1) The licensee's application for authorization to decommission the facility, dated December 21,, 1987, as revised February 22, 1988, September 9, 1988, September 30, 1988, January 26, 1989, March 28, 1989, June 6, 1989, October, 3, 1989, July 25, 1990, May 10, 1991, and July 25, 1991; (2) Amendment No. 66 to License No. DPR–45; (3) the Commission's related Safety Evaluation; and (4) the Environmental Assessment and Finding of No Significant Impact. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the La Crosse Public Library, 800 Main Street, La Crosse, Wisconsin 54601. Copies of items (2), (3), and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Advanced Reactors and Special Projects.

Dated at Rockville, Maryland this 31st day of July 1991.

For the Nuclear Regulatory Commission.

Richard F. Dudley, Jr.,

Acting Director Non-Power Reactors, Decommissioning and Environmental Project Directorate, Division of Advanced Reactors, and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 91 18724 Filed 8–6–91; 8:45 am]

BILLING CODE 7590-01-M

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from July 15, 1991 through July 26, 1991. The last biweekly notice was published on July 24, 1991 (56 FR 33950).

Notice of Consideration of Issuance of Amendment To Facility Operating License And Proposed No Significant Hazards Consideration Determination And Opportunity For Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 6, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to **(Project Director):** petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved

Arizona Public Service Company, et al., Docket No. STN 50-529, Palo Verde Nuclear Generating Station, Unit 2, Maricopa County, Arizona

Date of amendment request: July 13, 1991

Description of amendment request: This amendment request proposes to extend the surveillance requirement frequency for Unit 2 Diesel Generators (DGs) at PVNGS by allowing a one time extension to the current 18 month surveillance plus the additional 25% allowed by Section 4.0.2 of the Technical Specifications. The proposed Technical Specification amendment, in the form of a footnote to Surveillance Requirement 4.8.1.1.2.d.1, would allow the DGs to be inspected in accordance with procedures prepared in conjunction with its manufacturer's recommendations for this class of standby service (currently to be performed no later than September 29, 1991), to be deferred until the upcoming refueling outage, but not beyond December 31, 1991.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

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Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to **(Project Director):** petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved

Arizona Public Service Company, et al., Docket No. STN 50-529, Palo Verde Nuclear Generating Station, Unit 2, Maricopa County, Arizona

Date of amendment request: July 13, 1991

Description of amendment request: This amendment request proposes to extend the surveillance requirement frequency for Unit 2 Diesel Generators (DGs) at PVNGS by allowing a one time extension to the current 18 month surveillance plus the additional 25% allowed by Section 4.0.2 of the Technical Specifications. The proposed Technical Specification amendment, in the form of a footnote to Surveillance Requirement 4.8.1.1.2.d.1, would allow the DGs to be inspected in accordance with procedures prepared in conjunction with its manufacturer's recommendations for this class of standby service (currently to be performed no later than September 29, 1991), to be deferred until the upcoming refueling outage, but not beyond December 31, 1991.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

Standard 1 — Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment would extend the surveillance requirement interval of 18 months plus 25% to the end of the upcoming refueling outage or December 31, 1991, which ever[sic] is earlier. The objectives of the surveillance inspections are to detect possible equipment problems before they become serious enough to cause equipment malfunctions, and to verify that the diesel generator and its associated electrical equipment are in an operable condition.

Surveillance test 32-ST-9PE01-2 was last performed on Train "A" on January 5, 1990, and[on] Train "B" November 8, 1989, therefore, the 18 month plus 25% ST[Surveillance Test] is due November 28, 1991, and September 29, 1991, respectively. Train "B" will be the only DG which will be over the surveillance requirement timeframe, [which] will be from September 29, 1991, until October 19, 1991, a total of 20 days. Train "B" DG is scheduled to begin its ST on October 18, 1991.

The proposed extension will not impact the DG's ability to start and perform its intended safety function. Since initial licensing, train "A" has had 127 starts as of May 2, 1991, with only one failure to start. The failure on test start 119 (December 12, 1990) was caused by air in the fuel line which happened during post-maintenance testing after routine maintenance. Train "B" has had 120 starts as of May 9, 1991, and has had zero failures. Based on the past performance of the DG's, an extension of the surveillance requirement to the end of the refueling outage will not involve a significant increase in the probability of an accident previously evaluated. Train "A" DG will be operable while Train "B" is undergoing the 18 month inspection. Technical Specification 3.8.1.2 allows one DG to be out of service in Modes 5 and 6 to allow for inspections. When Train "B" is declared operable, scheduled for November 10, 1991, Train "A" will begin its 18 month inspection. During the refueling outage, at least one train of the DG will be operable. Therefore, the proposed Technical Specification amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Standard 2 — Create the possibility of a new or different kind of accident from any accident previously evaluated.

The objectives of the Surveillance Test are to detect possible equipment problems before they become serious enough to cause equipment malfunctions, and to verify that the diesel generator and its associated electrical equipment are in an operable condition. Train "A" will remain in an operable condition during the refueling outage until its scheduled surveillance of November 11, 1991. This[condition of Train "A'] is in accordance with Technical Specification 3.8.1.2 which requires that one diesel generator shall be operable in Modes 5 and 6. Train "B" is scheduled to begin its surveillance testing on October 19, 1991, with completion of the integrated safeguards testing on November 10, 1991, at which time Train "B" will be declared operable.

Train "B" diesel generator surveillance extension will be from September 29, 1991, until October 19, 1991, a total of 20 days. The diesel generator will still perform its intended function even after the 18 month plus 25% surveillance requirement. There is no reason to believe otherwise based on its past performance during its surveillances. Subjecting the diesel to inspection in accordance with procedures prepared in conjunction with the manufacturer's recommendations for this class of standby service provides additional assurance that the diesel generators will perform their safety function when called upon to do so. Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Standard 3 — Involve a significant reduction in a margin of safety.

The proposed amendment does not involve a significant reduction in the margin of safety because the extension of time sought for the diesel generator testing does not involve a change to safety limits, setpoints or design margins. At least one diesel generator will be operable during the refueling outage, [which] meets the Technical Specification requirements. Therefore, the proposed amendment will not involve in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensees' analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Attorney for licensees: Arthur C. Gehr, Esq., Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85073

NRC Project Director: James E. Dyer

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: July 2, 1991

Description of amendments request: The proposed amendments would revise the Technical Specifications (TS) for both Units 1 and 2. The proposed TS revisions are requested to support the planned upgrade of the spent fuel cask handling crane to a single-failure-proof design. The crane is being upgraded to handle the new spent fuel transfer cask which will be used to transfer spent fuel to the new Independent Spent Fuel Storage Installation (ISFSI) which is currently being constructed on the plant site. The ISFSI transfer cask will weigh 90 tons, when loaded with spent fuel, which is three times that previously analyzed for a cask load drop.

The current TS restrict the movement of heavy loads greater than 1600 pounds over fuel assemblies by the spent fuel cask handling crane. The proposed revision to TS 3/4.9.7 changes the Limiting Condition for Operation (LCO) to allow the movement of heavy loads in excess of 1600 pounds over fuel assemblies in the storage pool. The Surveillance Requirement, TS 3.9.7.1, is also revised to delete load weight verification when the new single-failure-proof crane is in use and adds new requirements. The new surveillance requirements include: visual inspection of slings and lifting devices, verifying operability, pre-operational and periodic tests, and the performance of preventative maintenance in accordance with plant procedures. TS 3/4.9.13, which currently has LCOs and surveillance requirements to prevent the movement of a spent fuel shipping cask within on cask length of any fuel assembly is deleted based on the proposed changes to TS 3/4.9.7 and 3/4.9.7.1. The Bases sections for TS 3/4.9.7 and 3/4.9.7.1 are revised to support the proposed changes and the Bases section for TS 3/4.9.13 is deleted.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated.

With a single-failure-proof crane, the probability of an accidental load drop while handling heavy loads over the spent fuel has been accepted to be insignificant in NUREG-0612, "Control of Heavy Loads at Nuclear Power Plants." The spent fuel cask crane currently meets the evaluation criteria of Section 5.1 of NUREG-0612 through Technical Specification restrictions, mechanical stops, and electrical interlocks in conjunction with a spent fuel cask drop analysis (Alternate 3, Seciton 5.1.2 of NUREG-0612). Under the proposed amendment, the evaluation criteria of Section 5.1 will be met with a single-failure-proof crane that satisfies the guidelines of Section 5.1.6 of NUREG-0612 (Alternate 1). A fault tree evaluation performed by NRC to establish the bases for NUREG-0612 guidelines shows the potential for unacceptable consequences is comparable for these alternatives. Therefore, the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) create the possibility of a new or different type of accident from any accident previously evaluated.

The proposed change will allow the handling of loads in excess of 1600 lbs over the fuel assemblies in the storage pool which is an area previously off limits for such loads. It will also allow the movement of heavy

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loads up to the maximum critical load rating of the main hoist (125 ton) which is more than the 35 ton spent fuel cask that has been previously shown to cause actual punching shear stress to the spent fuel pool floor, if dropped from a height of 42.5 ft. (3.5 ft. in the air, 39 ft. in the water). However, the single-failure-proof design will eliminate the need to address drops in the previously restricted areas. Further the capability of a single-failure-proof crane to handle heavy loads has been accepted as the equivalent in overall risk to the currently established heavy load controls of a non single-failure-proof crane. Therefore, operation of the facility in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) involve a significant reduction in a margin of safety.

The four alternative guidelines provided in Section 5.1.2 of NUREG-0612 for the spent fuel pool area have been shown to provide an essentially equivalent level of safety. In addition, heavy load handling operations at Calvert Cliffs continues to meet the seven general defense-in-depth guidelines of Section 5.1.1. Therefore, operation of the facility in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC. 20037.

NRC Project Director: Robert A. Capra

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: June 10, 1991

Description of amendments request: The proposed amendments would revise the Technical Specifications (TS) by removing the TS on radioactive effluents and radiological environmental monitoring and adding controls to include them in the Offsite Dose Calculational Manual (ODCM). Specifications on solid radioactive wastes will be relocated to the Process Control Program (PCP). This action is in response to Generic Letter 89-01 dated January 31, 1989.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

The proposed amendment relocates procedural details from the Byron and Braidwood TS to the ODCM or the PCP without revision. Administrative controls are to be placed in the TS to control these programs. As a result, all aspects of the Final Safety Analysis Report (FSAR) safety analyses will remain unchanged and there will be no physical change to the facility. Therefore, the proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed change relocates conformance details from the TS to the ODCM and PCP. This relocation of the radiological effluent TS program does not reduce the controls on radiological effluent. No plant design changes are necessary to implement these line-item improvements. Therefore, the current plant safety analyses remain complete and accurate in addressing the licensing basis events and analyzing the plant response and consequences. The proposed amendment cannot create the possibility of a new and different kind of accident than previously evaluated.

Radiological regulatory requirements are established in 10 CFR 20.106, 40 CFR Part 190, 10 CFR 50.36a, and Appendix I to 10 CFR Part 50. The limits defined for Byron and Braidwood based on these requirements will be relocated from the TS to the ODCM and PCP, unchanged. All technical content will be preserved. Since there will be no change to the physical design or operation of the plant, the proposed amendment will not involve a reduction in a safety margin.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: For Byron, the Byron Public Library, 109 N. Franklin, P. O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Richard J. Barrett

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: June 4, 1991

Description of amendments request: This amendment proposes to modify the Technical Specification (TS) requirements for the Anticipated Transient Without Scram - Recirculation Pump Trip (ATWS-RPT) to reflect improvements made to the logic and instrumentation system. The proposed changes include revising the minimum number of operable channels per trip system from one to two since the new logic system will use "1-out-of-2 taken twice" logic vice "1-out-of-4 taken once" logic. In addition, a shiftly channel check surveillance for the high pressure sensor will be added since the new instrumentation provides a direct pressure indicator which can be verified against other plant instruments. And finally, the action statements will be modified to reflect the various combinations of inoperable channels. The allowed outage time will be reduced from 14 days to 72 hours.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Based on the criteria for defining a significant hazards consideration established in 10 CFR 50.92, operation of LaSalle County Station Units 1 and 2 in accordance with the proposed amendment will not:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated because:

The action requirements for Technical Specifications 3.3.4.1 provides a higher degree of protection and operational flexibility by addressing all possible combinations of inoperable channels and trip systems. The allowed outage times in the proposed amendment become progressively more restrictive depending on the nature of any failures. The proposed allowed outage time for an inoperable trip channel is reduced from 14 days to 72 hours. The reduced outage times will not significantly increase the probability of an accident previously evaluated.

The proposed amendment to Table 3.3.4.1-1 increases the required number of instrumentation channels from 1 to 2 for each trip system. This enhanced design reflects modifications being made to the anticipated transient without scram-recirculation pump trip (ATWS-RPT) in response to 10 CFR Part 50.62 requirements. This change clarifies the channel operability requirements for the ATWS-RPT instrumentation and ensures consistent application of the requirements. This amendment will not affect the

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ensee: Michael I. Miller,
nd Austin, One First
Chicago, Illinois 60690.
irector: Richard J.

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: June 4, 1991

Description of amendments request: This amendment proposes to modify the Technical Specification (TS) requirements for the Anticipated Transient Without Scram - Recirculation Pump Trip (ATWS-RPT) to reflect improvements made to the logic and instrumentation system. The proposed changes include revising the minimum number of operable channels per trip system from one to two since the new logic system will use "1-out-of-2 taken twice" logic vice "1-out-of-4 taken once" logic. In addition, a shiftly channel check surveillance for the high pressure sensor will be added since the new instrumentation provides a direct pressure indicator which can be verified against other plant instruments. And finally, the action statements will be modified to reflect the various combinations of inoperable channels. The allowed outage time will be reduced from 14 days to 72 hours.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Based on the criteria for defining a significant hazards consideration established in 10 CFR 50.92, operation of LaSalle County Station Units 1 and 2 in accordance with the proposed amendment will not:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated because:

The action requirements for Technical Specifications 3.3.4.1 provides a higher degree of protection and operational flexibility by addressing all possible combinations of inoperable channels and trip systems. The allowed outage times in the proposed amendment become progressively more restrictive depending on the nature of any failures. The proposed allowed outage time for an inoperable trip channel is reduced from 14 days to 72 hours. The reduced outage times will not significantly increase the probability of an accident previously evaluated.

The proposed amendment to Table 3.3.4.1-1 increases the required number of instrumentation channels from 1 to 2 for each trip system. This enhanced design reflects modifications being made to the anticipated transient without scram-recirculation pump trip (ATWS-RPT) in response to 10 CFR Part 50.62 requirements. This change clarifies the channel operability requirements for the ATWS-RPT instrumentation and ensures consistent application of the requirements. This amendment will not affect the performance of the ATWS-RPT system. Therefore, the consequences of an accident previously evaluated are not significantly increased by enhancing the ATWS-RPT logic.

The proposed amendment to Table 4.3.4.1-1 adds a shiftly "channel check" requirement for the ATWS-RPT high reactor vessel pressure instrumentation. The addition of this requirement provides additional assurance of the ATWS-RPT instrumentation operability. The probability of an undetected instrument failure is lessened by the implementation of a shiftly "channel check". The current Technical Specifications do not require this surveillance.

This amendment also removes a footnote that allowed waiver of the 18 month surveillance interval for certain surveillance requirements during Unit 1 Cycle 1. This footnote is no longer applicable and the change has no impact on safety.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

The proposed amendments are intended to clarify and enhance the existing Technical Specification requirements. The proposal reflects improvements being made to the ATWS-RPT instrumentation and does not constitute a change to the operation of the facility as described in the UFSAR. The reduction of allowed outage times from 14 days to 72 hours for the ATWS-RPT trip channels does not involve any changes to the facility or the operation of the facility as described in the UFSAR. The proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

3) Involve a significant reduction in the margin of safety because:

The proposed amendments clarify and enhance the existing requirements for ATWS-RPT instrumentation. The changes will help to reduce the potential for misinterpretation of the requirements and institute additional surveillance requirements for the new instrumentation. Therefore, it is CECo's expectation that the proposed amendments will increase the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Richard J. Barrett

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: July 2, 1991

Description of amendment request: Connecticut Yankee Atomic Power Company (CYAPCO) has proposed to change Technical Specification Section 3.7.1.3 and the associated Bases Section to increase the demineralized water storage tank minimum volume from the present 50,000 gallons to a new minimum volume of 70,000 gallons.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed change will not significantly increase the probability or consequences of an accident previously evaluated. The proposed change will increase the minimum [auxiliary feedwater] pump AFW [Net Positive Suction Head] NPSH available during design basis events and also allow for greater operator action time than would otherwise be required with a 50,000-gallon initial [demineralized water storage tank] DWST inventory. Therefore, it is concluded that previously analyzed accidents are not affected.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed change will not create the possibility of a new or different kind of accident. Because the AFW pumps operate on the order of 2500 feet of total head, a change in DWST level has a negligible affect on AFW system flows. The NPSH available to NPSH required ratio increase is the only identified affect on the AFW system. Therefore, it is concluded that no new failure modes are introduced.

3. Involve a significant reduction in a margin of safety.

The proposed change does not have any adverse impact on the protective boundaries. Since the proposed change also does not affect the consequences of any accident previously analyzed, there is no reduction in a margin of safety. The proposed change increases the margin of safety since the increased inventory/level will correspond to an increase in the ratio of AFW pump NPSH available to NPSH required.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: June 18, 1991

Description of amendment request: The proposed change to Technical Specification (TS) 3.5.1.4 involves the addition of the following wording "...except during channel testing" to the TS clarifying that the key operated shutdown bypass switch is used during monthly channel testing in order to verify that the shutdown bypass logic is operable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

An evaluation of the proposed change has been performed in accordance with 10CFR50.91 (a) (1) regarding no significant hazards consideration using the standards in 10CFR50.92 (c). A discussion of those standards as they relate to this amendment request follows:

Criterion 1 - Does not involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change adds a clarifying statement which is provided for in the original design and therefore, does not involve any increase in the probability or consequence of an accident previously evaluated.

Criterion 2 - Does not create the possibility of a New or Different Kind of Accident from any Previously Evaluated.

In order to test the operability of the shutdown bypass logic during power operations the key operated shutdown bypass switch must be used. In as much as the reactor protection channel will already be bypassed pursuant to TS 3.5.1.3 this change would not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does not Involve a Significant Reduction in the Margin of Safety.

The proposed change is administrative in nature, is provided for in the original design, and is required to test shutdown bypass logic during power operations. This circuit does not affect the reactor protection system due to the associated protection channel already being bypassed. Therefore this change does not involve any reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas

Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: Theodore R. Quay

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: June 27, 1991

Description of amendment request: The proposed changes would revise Technical Specifications (TSs) 3.9 and 4.10 regarding the control room emergency ventilation (air conditioning and air filtration) system and control room isolation system, to achieve consistency with the requirements for Arkansas Nuclear One, Unit 2 and to avoid misinterpretation of the TSs and enhance the operability of the systems.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed changes retain the original requirements of the Technical Specifications or provides for more stringent requirements in the form of Regulatory Guide 1.52 Revision 2 and, therefore, does not involve an increase in the probability or consequences of an accident previously evaluated. Sealing the Control Room by use of the fire dampers or manually actuating a system provides the same amount of protection from toxic gas as do the isolation dampers. Subdividing the actions ensures that proper action is taken based on the failure mode. Thus, no increase in the probability or consequences of an accident previously evaluated is incurred.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed changes serve to update the requirements to Regulatory Guide 1.52 Revision 2 or provide equivalent protection in the form of use of fire dampers to isolate the Control Room and, therefore, does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety.

As these proposed changes will provide clarification of the requirements, update the Technical Specifications, and provide equivalent protection in the form of fire dampers for isolation of the Control Room, the margin of safety will not be reduced.

Based on the above evaluation, it is concluded that the proposed Technical Specification change does not constitute a significant hazards concern.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: Theodore R. Quay

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: June 27, 1991

Description of amendment request: The proposed change would amend Technical Specifications (TSs) 5.3.1.6 and 5.4.1.1 to increase the maximum allowable enrichment for future reload fuel from 3.5 to 4.1 weight percent uranium-235 (U-235). TS 5.4.1.1 would also be revised to delineate the allowable storage positions in the fresh fuel rack. Additionally, "235U" would be corrected to "U-235".

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Entergy Operations has concluded that the proposed changes to Technical Specifications 5.3.1.6 and 5.4.1.1 do not involve a significant hazards consideration because the operation of Arkansas Nuclear One, Unit 1 in accordance with these changes would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes will not significantly increase the probability or consequences of any accident previously evaluated since the effect of increasing fuel enrichment is included in the calculation of measurable core parameters each reload cycle and these, in turn, are reviewed to ensure adequate margins of safe operation and conformance to the safety limits and LCOs [limiting conditons for operation] established by Technical Specifications are met. The fission product inventory contained in the fuel is a function of burnup, not enrichment, so the consequences of postulated accident releases are unchanged.

The fuel loading errors originally addressed in the FSAR [Final Safety Analysis Report] have been reviewed and the statements made continue to be valid for the higher 4.1 weight percent enrichment. Gross core loading errors would be detected with an equal or higher probability and the strict administrative controls used to prevent pellet and rod enrichment errors continue to remain in effect.

Fresh fuel handling accidents remain bounded by the original FSAR analysis. The only accident scenarios for which the probability of occurrence are affected by fuel enrichment involve criticality events during fuel handling and storage. The enclosed criticality analysis demonstrates that the calculated k-effective, during fuel handling and storage, is adequate to ensure subcriticality for all defined accident conditions. Since subcriticality is maintained, no releases result from the above fuel handling criticality accident scenario.

(2) Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes will not create the possibility of a new or different kind of accident from any previously analyzed since the current request does not address the actual enrichment currently utilized in the ANO-1 core; but merely changes the maximum allowable enrichment limit for new fuel. A separate safety evaluation is required prior to the use of such reload fuel which will address specific enrichments. The possibility of loading assemblies into the prohibited spaces in the Fresh Fuel Storage Rack will be prevented by physical blockage of these spaces prior to any fuel storage in the Rack. It should be noted that if these spaces were not blocked through error and if the rack was fully loaded, then inadvertent criticality would still not occur until foam of the appropriate density was introduced into the racks.

(3) Involve a significant reduction in the margin of safety.

The proposed enrichment increase may cause an increase in future fresh fuel reactivity but it will not change or reduce the related margins of safety, such as the Limiting Condition for Operation which requires maintaining a 1% [delta]k/k shutdown margin or the Safety Limits on DNBR [departure from nucleate boiling ratio] or allowable power peaking.

The enclosed criticality analysis demonstrates that there is adequate margin to ensure subcriticality of the new fuel during storage and handling operations.

Therefore, based on the evaluation discussed above, Entergy Operations has concluded that the proposed changes do not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: June 27, 1991

Description of amendment request: The proposed change to the Technical Specifications (TS) would allow a spent fuel cask for Arkansas Nuclear One, Unit 1 (ANO-1) to be handled by the auxiliary building crane, for the period of October 15, 1991, through January 31, 1992, for the shipment of two spent fuel rods utilizing a 17-ton shipping cask.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

ANO's procedures, load paths, crane equipment certification, operator training and other related heavy load handling topics were evaluated as part of the control of heavy loads issue and found acceptable. Spent fuel cask handling is discussed in Section 9.6.2.6 of the ANO-1 SAR [Safety Analysis Report], which shows that the cask will never travel over spent fuel. Although cask handling is presently prohibited by TS 3.8.15, ANO-1 SAR Section 9.6.2.6 further evaluates the unlikely event of a cask drop accident and shows that the consequences are acceptable. An exception to TS 3.8.15 to allow handling of a spent fuel shipping cask by the Auxiliary Building crane will have no actual impact on the cask drop or any other previously analyzed accident.

The cask drop evaluation in ANO-1 SAR Section 9.6.2.6 assumes 15 full fuel assemblies, 100 days after shutdown, are involved. Although the DOE [Department of Energy] extended burnup fuel assemblies have longer operation than the three cycles assumed in the SAR evaluation, they have been stored in the ANO-1 fuel pool much longer than the assumed 100 days, thus the iodine and noble gas inventory available for release has decreased substantially due to isotopic decay. The proposed amendment will allow the movement of only 2 spent fuel rods, a very small fraction of the number of rods in 15 full assemblies (3120 fuel rods). The SAR analysis assumes twenty-five percent of the noble gases and ten percent of the available iodine from all 3120 fuel rods is released. This would be equivalent to the complete release of noble gases and iodine from several hundred individual rods. Therefore, the offsite doses resulting from a cask drop would be much lower than those presented in the SAR. Additionally, this is a one time exception request; only one cask will be moved which represents only a small increase in the probability of a cask drop accident due to reliability of the equipment and precautions utilized. This amendment request, therefore, does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2 - Create the Possibility of a New or Different Kind of Accident From any Accident Previously Evaluated.

The proposed amendment request will allow handling of a spent fuel shipping cask by the Auxiliary Building crane where previously prohibited due to pending NRC evaluation of the spent fuel cask drop accident and the crane design by AP&L [Arkansas Power & Light] and NRC review and approval. The cask handling methods and cask drop accident are discussed and evaluated in ANO-1 SAR Section 9.6.2.6. Additionally, the NRC performed an independent evaluation of the radiological consequences of a cask drop accident, as documented in the ANO-1 SER [Safety Evaluation Report] dated June 6, 1973. The evaluation of the unlikely event of a cask drop accident included assessment of equipment failures and has shown the consequences to be within acceptable bounds. No new accident scenarios can be identified related to the proposed amendment request, therefore, this change is bounded by the current analysis in the SAR. The proposed amendment request will, therefore, not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3 - Involve a Significant Reduction in the Margin of Safety.

Although allowing use of the Auxiliary Building crane where previously prohibited by the TS could increase the possibility of a cask drop accident, the margin of safety is preserved in that the acceptable consequences of the cask drop accident evaluation in SAR Section 9.6.2.6 are not affected by this change. The proposed amendment request will not adversely affect the adequacy and conservatism of the cask drop accident evaluation. The spent fuel cask certificate has been issued and continues to hold an NRC Certificate of Compliance for radioactive materials packages, and load paths and equipment to be used for cask handling have been reviewed and approved by the NRC with the resolution of the control of heavy loads issue. Additionally, this proposed amendment allows a one time use of the cask, which represents only a small increase in the probability of a cask drop accident due to the reliability of the equipment and precautions utilized. Therefore, the cask handling issue at ANO-1 continues to exhibit an acceptable margin of safety and this amendment request will not involve a significant reduction in the margin of safety.

Based on the above discussion and evaluation, Entergy Operations concluded that the proposed TS amendment request meets the standards for determining that no significant hazards consideration is involved and, therefore, concluded that this amendment application involves no significant hazards considerations.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: Theodore R. Quay

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: June 18, 1991

Description of amendment request: The proposed change to the Arkansas Nuclear One, Unit 2 (ANO-2) Technical Specifications (TS) would revise Section 4.8.1.1.2.C.8.c to provide for conserving starting air for Emergency Diesel Generators (EDG) in the event of an engine failure to start on a Safety Injection Actuation Signal (SIAS).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change to the Technical Specification 4.8.1.1.2.C.8.c excludes the engine start failure trip from the automatic bypass upon a Safety Injection Actuation Signal. The engine start failure logic is derived from two diverse signals, namely engine speed greater than 250 RPM and engine jacket coolant pressure greater than 8 psi. This logic of two independent measurements is recommended by position C-8 of Regulatory Guide 1.9 (1978) and is also applied to the lube oil pressure switches in the existing control circuit. Therefore, the probability of an EDG start failure has been minimized by application of dual diverse logic. In addition, this change will preserve starting air for additional start attempts without deviating from NRC guidelines and, therefore, does not involve an increase in the probability or consequences of an accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed change (i.e., excluding the engine failure to start from the automatic bypass upon a Safety Injection Actuation Signal) is intended to preserve starting air to allow restarting of the Emergency Diesel Generator. The control circuit design is in conformance with Regulatory Guide 1.9 (1978) position C-8. No new or different kind

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of accident from any previously evaluated is created by this change to the Technical Specifications and subsequent plant modification.

Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety.

The proposed change will not impair the ability of the onsite power system to supply electric power. It is intended to protect against the depletion of the starting air system in the event of a loss of offsite power coincident with SIAS and an engine failing to start. The circuit design is in conformance with position C-8 of Regulatory Guide 1.9. Therefore, the margin of safety will not be reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: Theodore R. Quay

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: July 18, 1991

Description of amendment request: Figure 3.4-2 of the Arkansas Nuclear One, Unit 2 (ANO-2) Technical Specifications (TS) entitled "Reactor Coolant System Temperature Limitations for 0 to 10 years of Full Power Operation", expires after 8.24 effective full power years (EFPY) of operation (10 years of 2900 MW_T operation at an 80% capacity factor; actual thermal rating of only 2815 MW_T). With ANO-2 approaching the expiration of the current pressure/temperature curves, the licensee is proposing changes to this figure, TS 3/4.4.9, and the associated Bases to reflect operational limitations through 21 EFPY.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes will not increase the probability or consequences of any accident previously evaluated since the proposed changes revise the pressure/temperature limits in accordance with 10 CFR 50, Appendix G utilizing the latest NRC guidelines in Regulatory Guide 1.99, Revision 2 relative to estimating neutron irradiation damage to the reactor vessel. The proposed changes also maintain the conservative limits with respect to the LTOP system.

(2) Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes will not create the possibility of a new or different kind of accident from any previously analyzed since they do not introduce new systems, failure modes, or other plant perturbations. The proposed changes revise the pressure/temperature limits in accordance with 10 CFR 50, Appendix G utilizing the latest NRC guidelines in Regulatory Guide 1.99, Revision 2 relative to estimating neutron irradiation damage to the reactor vessel.

(3) Involve a significant reduction in the margin of safety.

The proposed changes will not involve a significant reduction in the margin of safety since equal or more stringent pressure/temperature limitation requirements for reactor operation will be applied. The proposed changes were derived in accordance with approved NRC methodology which was developed to assure the RCS pressure boundary is designed with sufficient margin to withstand any condition during normal operation including anticipated operational occurrences and system inservice leak and hydrostatic tests.

These requirements were revised in accordance with 10 CFR 50, Appendix G utilizing the latest NRC guidance in Regulatory Guide 1.99, Revision 2 relative to estimating neutron irradiation damage to the reactor vessel. The LTOP system limits were also reanalyzed for the proposed changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: Theodore R. Quay

Entergy Operations, Inc., Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Unit Nos. 1 and 2 (ANO-1&2), Pope County, Arkansas

Date of amendment request: October 26, 1989 as supplemented by letter dated June 18, 1991

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) by adding requirements for additional Inadequate Core Cooling (ICC) Instrumentation. Specifically, operability and surveillance requirements for the Reactor Vessel Level Monitoring Systems (RVLMS) and the Hot Leg Level Measurement System (HLLMS) would be added into the Unit 1 TS, and the operability and surveillance requirements for the RVLMS would be added to the Unit 2 TS. Special Report Requirements associated with the changes will be reflected in Section 6, Administrative Controls, for each unit's TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with 10 CFR 50.92, AP&L has evaluated whether the proposed change involves a significant safety hazards consideration. AP&L has concluded that the proposed changes to incorporate operability and surveillance requirements for the reactor coolant inventory tracking portions of the ICC system do not involve a significant hazards consideration because the operation of Arkansas Nuclear One, Units 1 and 2 in accordance with this change would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The reactor coolant inventory tracking portion of the ICC instrumentation is used for operator information only. There are no safety system actuations or any specific operator actions taken solely on indications from the instrumentation addressed by this proposed change. Therefore, the accident mitigation features of the plant are not affected by the proposed change.

(2) Create the possibility of a new or different kind of accident from any previously evaluated.

No new possibility for an accident is introduced by incorporating operability and surveillance requirements for the reactor coolant inventory tracking instrumentation. The equipment addressed by the proposed change is not a part of plant control instruments or safety system actuation circuitry and is used only for operator information. Requirements related to systems that have only a passive monitoring function do not create the possibility of a new or different kind of accident.

(3) Involve a significant reduction in the margin of safety.

Addition of operability and surveillance requirements for the reactor coolant inventory tracking instrumentation constitutes an additional control not presently included in the ANO-1 and 2 Technical Specifications and will require that this equipment is properly maintained. The new and more stringent requirements related to equipment which provides additional operator information may therefore enhance the margin of safety. The potential for display of misleading information from this

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Inc., Docket Nos.
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Inadequate Core Cooling (ICC) Instrumentation. Specifically, operability and surveillance requirements for the Reactor Vessel Level Monitoring Systems (RVLMS) and the Hot Leg Level Measurement System (HLLMS) would be added into the Unit 1 TS, and the operability and surveillance requirements for the RVLMS would be added to the Unit 2 TS. Special Report Requirements associated with the changes will be reflected in Section 6, Administrative Controls, for each unit's TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with 10 CFR 50.92, AP&L has evaluated whether the proposed change involves a significant safety hazards consideration. AP&L has concluded that the proposed changes to incorporate operability and surveillance requirements for the reactor coolant inventory tracking portions of the ICC system do not involve a significant hazards consideration because the operation of Arkansas Nuclear One, Units 1 and 2 in accordance with this change would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The reactor coolant inventory tracking portion of the ICC instrumentation is used for operator information only. There are no safety system actuations or any specific operator actions taken solely on indications from the instrumentation addressed by this proposed change. Therefore, the accident mitigation features of the plant are not affected by the proposed change.

(2) Create the possibility of a new or different kind of accident from any previously evaluated.

No new possibility for an accident is introduced by incorporating operability and surveillance requirements for the reactor coolant inventory tracking instrumentation. The equipment addressed by the proposed change is not a part of plant control instruments or safety system actuation circuitry and is used only for operator information. Requirements related to systems that have only a passive monitoring function do not create the possibility of a new or different kind of accident.

(3) Involve a significant reduction in the margin of safety.

Addition of operability and surveillance requirements for the reactor coolant inventory tracking instrumentation constitutes an additional control not presently included in the ANO-1 and 2 Technical Specifications and will require that this equipment is properly maintained. The new and more stringent requirements related to equipment which provides additional operator information may therefore enhance the margin of safety. The potential for display of misleading information from this

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instrumentation has been evaluated and appropriately addressed and incorporated into plant emergency operating procedures.

Therefore, based on the evaluation discussed above, AP&L has concluded that the proposed change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: Theordore R. Quay

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: February 22, 1991

Description of amendment request: The proposed amendment would (1) delete the fire protection requirements from the Technical Specifications, (2) add a license condition to establish a change process for the Fire Protection Program, and (3) correct the remote shutdown system steam generator level instrumentation location and measurement range to accurately reflect the existing configuration of Crystal River Unit 3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change to the Fire Protection requirements [(relocation of existing Technical Specification requirements and establishment of a new license condition)] does not involve a significant hazards consideration. The removal of fire protection requirements from the Technical Specifications will remove those specifications that do not directly involve reactor control and safety; will remove those things that are not directly the responsibility of the operators; will improve the change process for [T]echnical [S]pecifications by reducing the number of requests for changes; and will meet guidelines established in Generic Letters 86-10 and 88-12 for control and changes to the fire protection program at Crystal River Unit 3.

Based on the above, it is concluded that this change will not:

1. Involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated because the existing fire protection program requirements have been incorporated into the [Final Safety Analysis Report (FSAR)] and site Fire Protection Plan, and, therefore, [the proposed changes do] not increase the probability of occurrence or consequences of previously evaluated accidents.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because this change is administrative in nature and is consistent with the guidance provided in Generic Letters 86-10 and 88-12. The requirements of the existing fire protection Technical Specifications have been incorporated into the FSAR and the site Fire Protection Plan.

3. Involve a significant reduction in a margin of safety because the existing requirements are maintained as a part of the Fire Protection Program and incorporated in the FSAR by reference.

Regarding the correction of the remote shutdown system steam generator level instrumentation location and measurement range in Table 3.3-9, this change is consistent with the licensee's submittal on remote shutdown capability previously accepted by the NRC staff. The correction of the measurement range for the reactor coolant temperature instrumentation will reflect the existing ranges for these instruments as installed on the remote shutdown panel.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. In addition, the change to the remote shutdown system steam generator level instrumentation location and measurement range updates data which is not current in the Technical Specifications and therefore does not involve a significant hazards consideration. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629

Attorney for licensee: A. H. Stephens, General Counsel, Florida Power Corporation, MAC - A5D, P. O. Box 14042, St. Petersburg, Florida 33733

NRC Project Director: Herbert N. Berkow

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: May 13, 1991

Description of amendment request: Technical Specification (TS) 3/4.5.3.2, "ECCS Subsystems - Tavg Less Than 350° F, Safety Injection Pumps," currently requires the safety injection (SI) pumps to be inoperable in Modes 4, 5, and 6 with the reactor vessel head on. The proposed amendments would revise:

1. The Applicability section of TS 3.5.3.2 so that one SI pump may be available in Mode 5 with the reactor coolant system (RCS) loops not filled and in Mode 6 with the reactor vessel head on and with the RCS loops not filled.

2. The bases for TS 3/4.5.3.2 to explain that one SI pump is allowed to be available in Modes 5 and 6 with the RCS loops not filled so that it can be used to mitigate the effects of a loss of decay heat removal capability during partially drained conditions. The bases will also state that the control room handswitch for the available SI pump will be in the pull-to-lock position to preclude the pump from being inadvertently started by a signal.

Basis for proposed no significant hazards consideration determination: Reducing the reactor coolant level during Modes 5 and 6 for refueling and maintenance creates the potential for the loss of suction to the residual heat removal (RHR) pumps. The reduced inventory condition, coupled with a loss of RHR capability and the potential for RCS openings due to maintenance activities, creates a concern for rapid core uncovery without a means of inventory addition. On October 17, 1988, the NRC issued Generic Letter (GL) 88-17 to address concern for loss of RHR during nonpower operation and to request several specific actions and program enhancements to prevent, mitigate and control such events. In GL 88-17, the NRC stated that TSs that restrict or limit the safety benefit of the actions identified in GL 88-17 should be identified and appropriate changes should be submitted. One of the examples cited in GL 88-17 in this respect was TSs that control equipment availability. According, the licensee has proposed using an SI pump during Modes 5 and 6, when the RCS loops are not filled and the vessel head is on, to mitigate the effects of a loss of RHR capability. The proposed TS change is intended to permit the availability of one intermediate head SI pump in Mode 5 with the RCS loops not filled and in Mode 6 with the reactor vessel head on and the RCS loops not filled.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The use of one SI pump in Modes 5 and 6 does not involve a significant increase in the probability or consequences of an accident previously evaluated in the Final Safety Analysis Report (FSAR). In this application, one SI pump will be used to mitigate a loss of RHR during Modes 5 and 6. This is not an accident previously evaluated in the FSAR, but it is a condition addressed in Generic Letter 88-17. The availability of the SI pump will allow restoration of RCS level after a loss of RHR cooling in order to prevent fuel failures due to excessive heatup. By maintaining RCS level with the SI pump, the potential for an accident involving fuel failures beyond that assumed in the FSAR is minimized. Therefore, the dose consequences defined in the FSAR remain bounding. Furthermore, based on the analysis presented..., the cold overpressurization analysis presented in FSAR section 5.2.2.10 remains valid.

2. The use of the SI pump in Modes 5 and 6 does not create the possibility of an accident which is different than any already evaluated in the FSAR. Cold overpressurization is a transient which is already considered in the FSAR as a result of charging pump operation. The evaluations presented have considered the potential for overpressurization resulting from SI pump operation and have defined conditions under which SI pump availability is acceptable. Failure of the nozzle dams or temporary thimble tube seals are not scenarios which would be created by the proposed amendment. They are possible under existing requirements. Furthermore, the evaluations, which are presented..., demonstrate that their [occurrence] is of no consequence from the standpoint of the safety analysis. No new performance requirements are being imposed on the SI pumps, since operation under the conditions in Modes 5 and 6 is similar to that experienced for operation in response to a loss of coolant accident (LOCA), for which the pumps have been designed. The availability of an SI pump in Modes 5 and 6 will not affect the integrity or reliability of the pumps to function in their normal emergency core cooling system mode in response to a LOCA. Therefore, no new credible single failure scenario has been created.

3. The proposed amendment does not involve a significant reduction in a margin of safety. The margin of safety provided by Technical Specification 3/4.5.3.2 provides assurance that a mass addition pressure transient can be relieved by the operation of a single pressurizer power operated relief valve or RHR suction relief valve. Analyses in support of SI pump availability have determined that sufficient operator action time exists, assuming operation of one SI pump, to prevent the overpressurization of the system. Therefore, the margin of safety as originally defined in Technical Specification 3.5.3.2 is maintained.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Candler Building, Suite 1400, 127 Peachtree Street, NE., Atlanta, Georgia 30043.

NRC Project Director: David B. Matthews

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: April 15, 1991

Description of amendment request: The amendment request proposes to modify Technical Specifications by eliminating the requirement for a Power Range, Neutron Flux High Negative Rate Trip (NFRT). The references to this trip in sections 2.2.1, 3.3.1, and item 4 in Tables 2.2-1, 3.3-1, 3.3-2, and 4.3-1, would be deleted. The deletion is requested as a result of an NRC-approved topical report by the Westinghouse Owners' Group which details a new dropped rod analysis in which reliance on the NFRT is not considered.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of a previously evaluated accident. The applicable accident is a Dropped Rod accident caused by an electrical or mechanical failure of RCCA(s). The proposed change does not modify the RCCAs or change the acceptance criteria for DNB and therefore cannot increase the probability or consequences of a previously evaluated accident.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated. The proposed change does not modify the design or operation of the RCCA and the deletion of the NFRT has been analyzed with acceptable results. The temporary modification of the NFRT has been evaluated for possible failure modes and it has been determined that the modification does not create the possibility of a new or different accident. Therefore, the proposed change does not create the possibility of a new or different accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety. The margin of safety is the difference between the DNB acceptance limit and the failure of the fuel rod cladding. The DNB acceptance limits are the same with the proposed change, therefore, the margin of safety remains unchanged.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Rooms Location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton Texas 77488

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, NW, Washington, DC 20036

NRC Project Director: George F. Dick, Acting Director

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: July 1, 1991

Description of amendment request: The proposed amendment would modify various setpoints identified in Technical Specification (TS) 3/4.3.2, "Containment and Reactor Vessel Isolation Control System," to accommodate TS surveillance intervals of 18 months.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1) Although this request involves changes to the trip setpoints and/or allowable values for certain CRVICS instruments, the safety bases for these setpoints have not been changed, and design calculations have been performed which demonstrate that the proposed setpoints still support the applicable safety bases. That is, for the proposed changes to allowable values, the design calculations demonstrate that the associated automatic isolations will still occur when required such that detection of and automatic isolation in response to a 25-gpm equivalent steam leak will occur as intended (and in all cases, within 10 minutes). The proposed setpoints will also continue to ensure that, in the event of a leak, temperatures do not exceed the environmental qualification temperature limits for safe-shutdown equipment located in the associated areas. Moreover, the proposed setpoints are supported by calculations which include instrument accuracy, calibration uncertainties and drift allowances during the time intervals between calibration. These proposed changes have also been

The margin of safety is the difference between the DNB acceptance limit and the failure of the fuel rod cladding. The DNB acceptance limits are the same with the proposed change, therefore, the margin of safety remains unchanged.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Rooms Location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton Texas 77488

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, NW, Washington, DC 20036

NRC Project Director: George F. Dick, Acting Director

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: July 1, 1991

Description of amendment request: The proposed amendment would modify various setpoints identified in Technical Specification (TS) 3/4.3.2, "Containment and Reactor Vessel Isolation Control System," to accommodate TS surveillance intervals of 18 months.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1) Although this request involves changes to the trip setpoints and/or allowable values for certain CRVICS instruments, the safety bases for these setpoints have not been changed, and design calculations have been performed which demonstrate that the proposed setpoints still support the applicable safety bases. That is, for the proposed changes to allowable values, the design calculations demonstrate that the associated automatic isolations will still occur when required such that detection of and automatic isolation in response to a 25-gpm equivalent steam leak will occur as intended (and in all cases, within 10 minutes). The proposed setpoints will also continue to ensure that, in the event of a leak, temperatures do not exceed the environmental qualification temperature limits for safe-shutdown equipment located in the associated areas. Moreover, the proposed setpoints are supported by calculations which include instrument accuracy, calibration uncertainties and drift allowances during the time intervals between calibration. These proposed changes have also been

reviewed to ensure that they do not result in spurious isolations during normal operating conditions. Therefore, these proposed changes will not increase the probability or the consequences of any accident previously evaluated.

2) The proposed changes only involve changes to trip setpoints and/or allowable values for the affected instruments. These proposed changes do not physically modify any existing system components, do not change the functional requirements of any system's components, nor do they affect existing system redundancy or failure analysis. Consequently, no new failure modes are introduced by the proposed changes. Therefore, these proposed changes cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

3) The proposed changes establish new instrument trip setpoints and/or allowable values to support an 18-month (rather than a 6-month) calibration frequency. While new instrument setpoints have been established which impact the automatic actuation points for affected instruments and equipment, these trip setpoints and allowable values have been established to account for the effects of increasing the calibration interval. The proposed trip setpoints and allowable values have been established in accordance with the methodology of Regulatory Guide 1.105. Accordingly, each proposed change is supported by calculations that include instrument accuracy, calibration uncertainties, and drift allowance during the 18-month calibration interval. By this methodology, trip setpoints and allowable values are established to ensure that an appropriate margin of safety is maintained and that the applicable automatic actions occur when intended or assumed by the applicable safety analyses. Further, the proposed changes have been reviewed to ensure that they will not result in spurious isolations and that they continue to limit area temperatures such that the qualification of safe-shutdown equipment located in the associated areas is not adversely impacted. Therefore, these proposed changes will not result in a significant reduction in the margin(s) of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

NRC Project Director: John N. Hannon

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: July 12, 1991

Description of amendment request: The proposed amendment regarding alternate snubber visual inspection intervals would allow the Clinton Power Station to extend snubber visual inspection intervals without reducing the confidence level provided by the currently existing inspection interval. This proposed change is in conformance with the guidance provided in Generic Letter 90-09, "Alternate Requirements for Snubber Visual Inspection Intervals and Corrective Actions."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1) Increasing the length of the snubber visual inspection interval does not affect the function, installation, location, or configuration of any snubbers nor does it affect the design or function of any piping or systems protected by snubbers. The existing snubber operability requirements are unchanged. Thus, the proposed change will not alter the plant configuration nor does it change the operation of any of the plant's systems or components. The proposed visual inspection requirements, together with the existing functional test requirements, will effectively verify snubber system reliability. Thus, adequate assurance exists that plant systems will remain operable and capable of performing their intended functions during postulated seismic and/or dynamic events. Also, lengthening the inspection interval involves no reduction in the confidence level associated with snubber testing and therefore has no effect on the probability of occurrence of an accident. Therefore, the proposed changes do not significantly increase the probability or the consequences of any accident previously evaluated for CPS.

2) Increasing the length of the snubber visual inspection interval does not affect the function, installation, location, or configuration of any snubbers nor does it affect the design or function of any piping or systems. Thus, the proposed change will not alter the plant configuration nor does it change the operation of any of the plant's systems or components. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated for CPS.

3) The proposed change involves only visual surveillance requirements and does not alter the current Limiting Condition for Operation or the accompanying ACTION statement for snubbers. The required functional testing of safety-related snubbers will maintain a 95 percent confidence that at least 90 percent of all Technical Specification required snubbers are operable. This functional testing, along with the proposed visual inspection intervals, will continue to provide adequate assurance that the snubber system will adequately perform its intended function. Therefore, the proposed changes do not involve a significant reduction in the margin of safety for CPS.

Based upon the foregoing, Illinois Power Company has concluded that the proposed changes do not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

NRC Project Director: John N. Hannon

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: March 8, 1991

Description of amendment request: The amendment would extend the license condition requiring a Plan for the Integrated Scheduling of Plant Modifications for another five years.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1) This proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This license amendment is purely administrative in nature and has no effect on existing plant systems or equipment. Therefore, the probability or consequences of an accident are not increased. Further, this amendment is identical to earlier amendments which have already been reviewed and approved by the NRC with the exception that this request is for a five-year extension instead of two years.

2) This proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

This license amendment is purely administrative in nature and has no effect on existing plant systems or equipment. Therefore, the possibility of a new or different kind of accident has not been created.

3) This proposed amendment does not involve a significant reduction in a margin of safety.

This license amendment is purely administrative in nature and has no effect on existing plant systems or equipment. Therefore, there is no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, N.W., Washington, D.C. 20036.

NRC Project Director: John N. Hannon

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: April 1, 1991

Description of amendment request: The amendment would replace the numerical limits for special nuclear material, source and byproduct materials, with a more generalized description.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1) This proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to the Operating License is administrative in nature and only replaces specific descriptions of special nuclear, source and byproduct material which appear in the license with a more-general description. The simplified format is consistent with wording contained in Operating Licenses issued after approximately 1975. No changes are proposed to the Technical Specifications. The requirements of 10 CFR 30, 40, and 70 must still be met. Therefore, the proposed change cannot increase the probability or consequences of a previously evaluated accident.

2) This proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

The purpose of the proposed change is to revise the Operating License to incorporate the now-standard language regarding special nuclear, source and byproduct material. The proposed change does not affect the function or operation of any equipment which could cause a new or different kind of accident. No changes are proposed which affect the Technical Specifications. The requirements of 10 CFR 30, 40, and 70 must still be met. Therefore, the proposed change does not create the possibility of a new or different kind of accident.

3) This proposed amendment does not involve a significant reduction in a margin of safety.

The proposed change is administrative in nature. The revised language, while more general, still provides the degree of specificity necessary to assure plant activities are conducted without reducing any margins of safety. No changes are proposed which affect the Technical Specifications or direct operation of the DAEC. The requirements of 10 CFR 30, 40, and 70 must still be met. Therefore, the proposed change will not involve a reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, N.W., Washington, D.C. 20036.

NRC Project Director: John N. Hannon.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: June 28, 1991

Description of amendment request: The amendment would revise the surveillance testing of the ESW flow rate by specifying a certain rate and total developed head which must be delivered. The curve previously used to determine the minimum acceptable rate would be removed. It would also delete the requirement to test each week when river water temperature exceeds 80° F.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. No physical changes will result from this amendment. The ESW system will still maintain its ability to support various safety related equipment which is designed to mitigate the consequences of certain accidents and transients. These safety related systems play no part in the probability of these accidents or transients occurring. Since the ESW system will continue to fully support the cooling requirements of the safety related equipment which mitigates the consequences of certain accidents and transients, this amendment will not affect the consequences of these accidents and transients. The re-analysis of the component heat loads assumed worse case conditions and involved conservative assumptions. Our continuing program for monitoring heat exchanger performance established in response to Generic Letter 89-13 will still verify that the individual components are capable of performing their design function. Therefore, the proposed amendment does not involve a change in the probability or consequences of an accident previously evaluated.

2. The proposed license amendment does not create the possibility of a new or different kind of accident from any previously evaluated. The safety function of the ESW system is unchanged. The revised flow requirements for the system have been established using conservative assumptions and worse case heat loads and are appropriately documented. This amendment will result in no physical changes to the ESW system and therefore, will not affect its ability to continue to provide reliable cooling water. Consequently, the proposed license amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change will not reduce the margin of safety. The re-analysis of the ESW flow rate requirements and component heat loads was performed using worst case assumptions and maximum component heat loads. Additionally, the 800 gpm requirement ensures sufficient margin above the minimum flow rate requirement while allowing for potential system expansion. The actual operation of the ESW system will not be changed. The ESW system is normally run at full flow and does not approach the 800 gpm limit. Any degradation of ESW pump performance would be detected long before reaching the 800 gpm requirement by the Inservice Testing (IST) program which requires quarterly testing of these pumps and monitoring of the pump's differential pressure. The 800 gpm limit represents the minimum flow rate requirement for the ESW system to satisfactorily perform its design function. Deleting the requirement to perform the surveillance weekly when river water temperature exceeds 80° F will not reduce the margin of safety because even at 95° F river water temperatures, the required ESW flow rate is well below the flow capacity of the pump. Deleting the weekly surveillance only eliminates unnecessary testing of the ESW pumps, thereby, reducing wear on the pump.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

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2. The proposed license amendment does not create the possibility of a new or different kind of accident from any previously evaluated. The safety function of the ESW system is unchanged. The revised flow requirements for the system have been established using conservative assumptions and worse case heat loads and are appropriately documented. This amendment will result in no physical changes to the ESW system and therefore, will not affect its ability to continue to provide reliable cooling water. Consequently, the proposed license amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change will not reduce the margin of safety. The re-analysis of the ESW flow rate requirements and component heat loads was performed using worst case assumptions and maximum component heat loads. Additionally, the 800 gpm requirement ensures sufficient margin above the minimum flow rate requirement while allowing for potential system expansion. The actual operation of the ESW system will not be changed. The ESW system is normally run at full flow and does not approach the 800 gpm limit. Any degradation of ESW pump performance would be detected long before reaching the 800 gpm requirement by the Inservice Testing (IST) program which requires quarterly testing of these pumps and monitoring of the pump's differential pressure. The 800 gpm limit represents the minimum flow rate requirement for the ESW system to satisfactorily perform its design function. Deleting the requirement to perform the surveillance weekly when river water temperature exceeds 80° F will not reduce the margin of safety because even at 95° F river water temperatures, the required ESW flow rate is well below the flow capacity of the pump. Deleting the weekly surveillance only eliminates unnecessary testing of the ESW pumps, thereby, reducing wear on the pump.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, N.W., Washington, D.C. 20036.

NRC Project Director: John N. Hannon.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: June 28, 1991

Description of amendment request: The proposed amendment would revise Fort Calhoun Station, Unit 1, Technical Specification 3.5(7) to adopt the guidance of NRC Regulatory Guide 1.35, Revision 3, July 1990, for the maintenance of the Prestressing System Surveillance Program.

The current specification was written to comply with the guidance of NRC Regulatory Guide 1.35, Revision 1, June 1974. It requires the inspection of three dome tendons and three helical wall tendons of each orientation at a five year frequency. The inspection is to include liftoff force measurements for each selected tendon, complete detensioning of all selected tendons to inspect for broken wires and any evidence of damage or deterioration of the anchorage hardware, and the removal of one wire from each of one dome tendon and three wall tendons for examination and tensile testing. It also requires a comparison be made between the quality control records and each of the surveillance inspection records for each of the surveillance tendons.

The proposed change to the specification would require the inspection of four dome tendons and five helical wall tendons of each orientation at a five year frequency. The inspections would include liftoff force measurements for each selected tendon, complete detensioning of one dome tendon and one helical wall tendon of each orientation to inspect for broken wires and any evidence of damage or deterioration of the anchorage hardware, and the removal of one wire from each of one dome tendon and one helical wall tendon of each orientation for examination and tensile testing. The new specification would require the laboratory testing of samples of filler grease from each tendon to determine water content, reserve alkalinity, and the concentrations of water soluble chlorides, nitrates and sulfides. It would also require the estimation of grease leakage from each selected tendon by measuring the difference between the amount of grease removed from a tendon and the amount of grease required to refill the tendon. These tests and examinations are recommended by Reg Guide 1.35, Revision 3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Will the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The prestressing system was designed to be tested and inspected. The activities required by the proposed change do not add any new stresses to the containment structure and the increase in sample size will not adversely affect any tendons since the tendons are designed to be tested in the manner prescribed. In the unlikely event that a design basis LOCA [loss of coolant accident] occurs during the performance of a prestressing system surveillance and one of the tendons is detensioned, sufficient prestress would still be applied to the containment concrete according to USAR [Updated Safety Analysis Report] Section 5:3.3, which stated,

The design of the containment satisfies the criteria of [USAR Sections] 5.5.1, 5.5.2.2, 5.5.2.3, and 5.5.2.4 with sufficient margin to compensate for the loss of approximately five to ten wall tendons and two to three dome tendons depending on their location and spacing relative to each other.

Will the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The prestressing system does not interface with any active systems of the station. The prestressing system was designed to be tested and inspected. Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Will the change involve a significant reduction in a margin of safety.

No. The change does not alter any testing practices in a way which would compromise containment structural integrity. The relaxation of the requirement to detension all selected tendons to detensioning one tendon per group increases the margin of safety by reducing the probability of prestressing tendon assembly degradation by component dismantling and reassembling. This should provide increased assurance of the overall margin of safety designed into the containment structure.

Therefore based on the above considerations, OPPD [Omaha Public Power District] does not believe that this proposed amendment involves a significant hazards consideration as defined by 10 CFR 50.92 and the proposed changes will not result in a condition which significantly alters the impact of the Station on the environment. Thus, the proposed change meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(e)(9) and pursuant to 10 CFR 51.22(b) no environmental assessment need by prepared.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1333 New Hampshire Avenue, N.W., Washington, D.C. 20036

NRC Project Director: Theodore R. Quay

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: June 5, 1991 (Reference LAR 91-05)

Description of amendment request: The proposed amendment would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant Unit Nos. 1 and 2 to relocate cycle-specific information to the Core Operating Limits Report (COLR) in accordance with Generic Letter 88-16. The specific TS changes are as follows:

(1) FQ(Z) and K(Z) functions in TS 3/4.2.2, "Heat Flux Hot Channel Factor FQ(Z)," would be relocated to the COLR. The numerical FQ limit referenced in TS 3/4.2.2 would be replaced with a function FQRTP (Rated Thermal Power), which is to be specified in the COLR. Figure 3.2-2, K(Z) vs. Core Height would be deleted from the TS and relocated to the COLR.

(2) Administrative changes would be made to TS 3/4.2.2 and 3/4.10 to change references and delete specific Unit 2 Cycle 3 requirements. Reference to Surveillance Requirements for W(z) and Fxy in TS 6.9.1.8.a, "Core Operating Limits Report," would be deleted. The COLR now references the entire TS for W(z) and Fxy.

(3) FN delta H in TS 3/4.2.3, "RCS Flow Rate and Nuclear Enthalpy Rise Hot Channel Factor," would be relocated to the COLR. The numerical values for the FN delta H limit and part power multiplier would be replaced with parameter FRTP delta H and Power Factor delta H (PF delta H), which are to be defined in the COLR. Figures 3.2-3a and 3.2-3b would be revised to be consistent with TS 3/4.2.3.

(4) The Bases for Heat Flux Hot Channel Factor and RCS Flow Rate and Nuclear Enthalpy Rise Hot Channel

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Factor would be revised to be consistent with their associated TS.

Generic Letter 88-16, "Removal of Cycle-Specific Parameter Limits from Technical Specifications," provides guidance for relocating cycle-specific parameters from the TS so that future reload designs can be implemented in accordance with 10 CFR 50.59. Generic Letter 88-16 requires that the cycle-specific parameters be maintained in a COLR and that the NRC be informed of changes to the COLR. Any changes to operating limits will be made using approved NRC methodology for DCPP.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Relocating the cycle-specific parameters of the Heat Flux Hot Channel Factor and the RCS Flow Rate and Nuclear Enthalpy Rise Hot Channel Factor TS to the COLR is an administrative change. Removal of the cycle-specific parameter limits from the TS has no influence or impact on the probability or consequences of a previously evaluated accident. The cycle-specific parameter limits, although not in the TS, will be maintained by the DCPP TS and the COLR. The proposed TS requires the same action to be taken if a limit is exceeded as is required by the current TS. Future reloads will be evaluated using NRC-approved methodologies and will be examined per the requirements of 10 CFR 50.59.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

There is neither physical alteration to any plant system, nor is there a change in the method by which any safety-related system performs its function. As stated above, the proposed change is administrative in nature.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in a margin of safety?

The margin of safety is not affected by the removal of a cycle-specific parameter limits from the TS. The proposed TS still require operation within the core limits as determined from the NRC-approved reload design methodologies. The development of the limits for future reloads will continue to conform to those methods described in NRC-approved documentation. In addition, each future reload will involve a 10 CFR 50.59 review. Appropriate actions will continue to be taken if limits are exceeded.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Attorney for licensee: Richard F. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120

NRC Project Director: James E. Dyer

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: June 5, 1991 (Reference LAR 91-06)

Description of amendment request: The proposed amendment would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant Unit Nos. 1 and 2 to support a comprehensive program to upgrade the plant Radiation Monitoring System (RMS).

The proposed changes to TS 3/4.3.2, "Engineered Safety Features Actuation System Instrumentation," are as follows:

(1) Tables 3.3-3, 3.3-4 and 4.3-2 would be revised to include Functional Unit 3.c.4) and footnotes (a) and (b). Functional Unit 3.c.4) would add RM-44A and 44B and remove RM-14A and 14B as inputs to the Solid State Protection System (SSPS) Containment Ventilation Isolation (CVI) actuation logic. Footnotes (a) and (b) would provide applicable requirements following installation of RM-44A and 44B.

Table 3.3-4 would be revised to remove the Cycle 3 and Cycle 4 notations from 4.d.1) as Unit 1 is in Cycle 5 and Unit 2 is in Cycle 4 and the notations are no longer applicable.

(2) Table 3.3-5 would be revised to include Initiating Signal and Function 12 and footnotes (a) and (b). Initiating Signal and Function 12 would add RM-44A and 44B and remove RM-14A and 14B as inputs to the SSPS CVI actuation logic. Footnotes (a) and (b) would provide applicable requirements following installation of RM-44A and 44B.

The proposed changes to TX 3/4.3.3.1, "Radiation Monitoring Instrumentation for Plant Operations," are as follows:

(1) Table 3.3-6 would be revised to include Instruments 3.a.3), 3.b.1), and 4, and footnotes (a) through (d). Instruments 3.a.3) and 3.b.1) would add RM-44A and 44B and remove RM-14A and 14B as the monitoring capability for containment exhaust and to provide containment ventilation isolation and would include the capability of RM-44A and 44B to monitor particulate as well as gaseous activity for containment exhaust. Instrument 4 would add RM-45A and 45B and remove RM-58 and 59 as inputs to the Fuel Handling Building (FHB) Ventilation System mode shift actuation logic.

Footnote (a) would provide applicable requirements following installation of RM-45A and 45B. Action 32 would not apply to the Fuel Storage Area instruments when RM-45A and 45B are installed, but would apply to FHB Ventilation System mode shift instruments.

Footnotes (b) and (c) would provide applicable requirements following installation of RM-44A and 44B.

Footnote (d) would provide applicable requirements following installation of RM-45A and 45B.

(2) Table 4.3-3 would be revised to include Instruments 3.a.3), 3.b.1) and 4, and footnotes (a) through (c). Instruments 3.a.3) and 3.b.1) would add RM-44A and 44B and remove RM-14A and 14B as inputs to the SSPS CVI actuation logic, and include the capability of RM-44A and 44B to monitor particulate as well as gaseous activity. Instrument 4 would add RM-45A and 45B and remove RM-58 and 59 as inputs to the FHB Ventilation System mode shift actuation logic.

Footnotes (a) and (b) would provide applicable requirements following installation of RM-44A and 44B. Footnote (c) would provide applicable requirements following installation of RM-45A and 45B.

The proposed changes to TS 3/4.3.3.10, "Radioactive Gaseous Effluent Monitoring Instrumentation," are as follows:

(1) Tables 3.3-13 and 4.3-9 would be revised to include Instruments 3.f and 5.b, and footnotes (a) through (e). Instrument 3.f would add new plant vent RMS flow rate monitors and remove the iodine sampler flow rate monitors. Instrument 5b would add RM-44A and 44B and remove RM-14A and 14B as inputs to the SSPS CVI actuation logic.

Footnote (a) would provide applicable requirements following installation of RM-14 and 14R. RM-14 and 14R are the

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The proposed changes to TX 3/4.3.3.1, "Radiation Monitoring Instrumentation for Plant Operations," are as follows:

(1) Table 3.3-6 would be revised to include Instruments 3.a.3), 3.b.1), and 4, and footnotes (a) through (d). Instruments 3.a.3) and 3.b.1) would add RM-44A and 44B and remove RM-14A and 14B as the monitoring capability for containment exhaust and to provide containment ventilation isolation and would include the capability of RM-44A and 44B to monitor particulate as well as gaseous activity for containment exhaust. Instrument 4 would add RM-45A and 45B and remove RM-58 and 59 as inputs to the Fuel Handling Building (FHB) Ventilation System mode shift actuation logic.

Footnote (a) would provide applicable requirements following installation of RM-45A and 45B. Action 32 would not apply to the Fuel Storage Area instruments when RM-45A and 45B are installed, but would apply to FHB Ventilation System mode shift instruments.

Footnotes (b) and (c) would provide applicable requirements following installation of RM-44A and 44B.

Footnote (d) would provide applicable requirements following installation of RM-45A and 45B.

(2) Table 4.3-3 would be revised to include Instruments 3.a.3), 3.b.1) and 4, and footnotes (a) through (c). Instruments 3.a.3) and 3.b.1) would add RM-44A and 44B and remove RM-14A and 14B as inputs to the SSPS CVI actuation logic, and include the capability of RM-44A and 44B to monitor particulate as well as gaseous activity. Instrument 4 would add RM-45A and 45B and remove RM-58 and 59 as inputs to the FHB Ventilation System mode shift actuation logic.

Footnotes (a) and (b) would provide applicable requirements following installation of RM-44A and 44B. Footnote (c) would provide applicable requirements following installation of RM-45A and 45B.

The proposed changes to TS 3/4.3.3.10, "Radioactive Gaseous Effluent Monitoring Instrumentation," are as follows:

(1) Tables 3.3-13 and 4.3-9 would be revised to include Instruments 3.f and 5.b, and footnotes (a) through (e). Instrument 3.f would add new plant vent RMS flow rate monitors and remove the iodine sampler flow rate monitors. Instrument 5b would add RM-44A and 44B and remove RM-14A and 14B as inputs to the SSPS CVI actuation logic.

Footnote (a) would provide applicable requirements following installation of RM-14 and 14R. RM-14 and 14R are the

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new, upgraded replacements for RM-14A and 14B.

Footnotes (b) and (c) would provide applicable requirements following installation of the plant vent RMS flow rate monitors.

Footnotes (d) and (e) would provide applicable requirements following installation of RM-44A and 44B.

The proposed change to TS 3/4.9.9, "Containment Ventilation Isolation System," would add footnote (a) regarding the addition of RM-44A and 44B and removal of RM-14A and 14B as inputs to the SSPS CVI actuation logic, and would provide applicable requirements following installation of RM-44A and 44B.

The proposed change to the Bases 3/4.9.12, "Fuel Handling Building Ventilation System," would add RM-45A and 45B and remove RM-58 and 59 as inputs to the FHB Ventilation System mode shift actuation logic, and would provide applicable requirements following installation of RM-45A and 45B.

From November 1987 to April 1990, DCPP experienced eight spurious CVIs due to voltage transients on radiation monitor power supplies. In that same time period, DCPP also experienced five spurious FHB ventilation shifts due to voltage transients on radiation monitor power supplies. As a result of the PG&E CVI Task Force evaluations, PG&E is initiating a comprehensive Radiation Monitoring System (RMS) Upgrade Program. As a result of the upgrade, RM-44A, RM-44B, RM-45A, and RM-45B will be less sensitive to the voltage transients than the currently installed types of RMS monitors and the occasions of spurious actuation should be reduced.

The upgrade program will include the following changes to portions of the RMS governed by the TS:

(1) Addition of radiation monitors to the Containment Ventilation exhaust line (RM-44A and RM-44B) and to the FHB Ventilation exhaust line (RM-45A and RM-45B).

(2) Modifications to the Plant Vent Noble Gas Activity Monitors (RM-14A and RM-14B) and the Fuel Storage Area Radiation Monitors (RM-58 and RM-59).

(3) Addition of Plant Vent RMS flow rate monitors and removal of the iodine sampler flow rate monitors.

These changes will improve RMS performance, reliability, and capability.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The requested changes to support completion of the RMS upgrade would not change any accident analysis assumptions or adversely affect any accident analysis results. The upgrade program would enhance RMS response to airborne radioactivity in the containment ventilation exhaust and in the fuel storage areas, allow monitoring of effluent streams previously not monitored directly, increase plant effluent analysis capabilities, and replace existing monitors with monitors incorporating improvements in sensitivity, range, and dependability compared to the existing monitors.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any previously evaluated

Airborne radioactivity in the containment ventilation exhaust and the fuel storage areas would be more effectively monitored following addition of RM-44A, 44B, 45A and 45B to the plant. The new monitors would also provide automatic termination of effluent streams using isolation signals from process monitors located in the containment purge and FHB ventilation effluent, instead of using provisions located further downstream in the plant vent or in the fuel storage areas. This capability, as specified in the SRP, Section 11.5, "Process and Effluent Radiological Monitoring."

Instrumentation and Sampling System," Table 1, does not exist with the current RMS design. Replacement of RM-14A, 14B, and the function of RM-58 and -59 with upgraded monitors would not remove the capability to monitor the plant vent for noble gas activity and would not remove the capability to monitor fuel storage area radiation. In addition, the new monitors would incorporate improvements in sensitivity, range, and dependability compared to the existing monitors. The addition of plant vent RMS flow rate monitor and removal of the iodine sampler flow rate monitor would increase plant vent effluent analysis capabilities.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

c. Does the change involve a significant reduction in a margin of safety?

The upgrade would enhance RMS response to airborne radioactivity in the containment ventilation exhaust and in the fuel storage areas and improve RMS performance, reliability, and capability.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Attorney for licensee: Richard F. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120

NRC Project Director: James E. Dyer

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: February 15, 1991

Description of amendment request: The proposed amendment would change the audit frequency described in the Ginna Technical Specifications 6.5.2.8d from "at least once every year" to "at least once per 24 months." This proposed change is consistent with the required audit frequency of NUREG-0452, "Standard Technical Specifications for Westinghouse Pressurized Water Reactors."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) There is no significant increase in the probability or consequences of an accident previously evaluated because accident conditions and assumptions are not affected by the proposed Technical Specification change.

(2) The possibility of a new or different kind of accident from any accident previously evaluated is not created. In matters related to nuclear safety, all accidents are bounded by previous analysis. The proposed change does not add or modify any equipment or system design nor does it involve any changes in the operation of any plant system. The absence of a hardware change means that the accident initiators remain unaffected, so no unique accident probability is created.

(3) The proposed amendment does not involve a significant reduction in the margin of safety as defined in the basis for any Technical Specification because the proposed amendment will continue to ensure that (1) performance based audits and assessments shall be in sufficient depth, (2) participating members are satisfied that items under review do not otherwise constitute a concern, and (3) all activities required by the Quality Assurance Program meet the criteria of Appendix B, 10 CFR 50. Further, the proposed amendment permits more efficient use of resources which in effect will enable the conduct of more assessments, both special and diagnostic. In addition to the above, this proposed amendment is consistent with the required audit frequency of 24 months identified in NUREG-0452, "Standard Technical Specifications for Westinghouse

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> Pressurized Water Reactors." Therefore, the proposed change to the operating license does not involve a significant reduction in the margin of safety as defined in the basis for any Technical Specification.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Attorney for licensee: Nicholas S. Reynolds, Bishop, Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005

NRC Acting Project Director: Susan F. Shankman

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: June 12, 1991

Description of amendment request: The proposed amendment would change the battery bank average temperature from greater than or equal to 65 degrees F to greater than or equal to 60 degrees F and the minimum battery bank capacity from 90 percent to 80 percent. These changes would reflect the fact that the replacement battery installed during refueling outage 5 meets the Institute of Electrical and Electronics Engineers (IEEE) Standard 450 1987, "Recommended Practice for Maintenance, Testing, and Replacement of Large Lead Storage Batteries for Generating Stations and Substations."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the Virgil C. Summer Nuclear Station (VCSNS) in accordance with the proposed amendment will not:

> (1) involve a significant increase in the probability or consequences of an accident previously evaluated. The class IE direct current power system for control and instrumentation neither contributes to the probability nor increases the consequences of a design basis accident. The replacement batteries maintain independence, redundancy, and capability of the original installation with additional enhanced capacity.
>
> (2) create the possibility of a new or different kind of accident from any previously evaluated.
>
> The proposed change will not make physical alterations to the class IE direct current power system configuration, nor will it change its method of operation. The increased capacity of the replacement batteries enhance[s] the system performance. The failure modes and effects of the batteries remain unchanged.
>
> (3) involve a significant reduction in a margin of safety.
>
> The class IE direct current power system with the batteries will provide sufficient capacity, including adequate operational margin, to satisfy the load demands of a design basis event or a station blackout period of four hours. The original system design basis as evaluated by NUREG-0717, *Safety Evaluation Report Related to the Operation of Virgil C. Summer Nuclear Station Unit No. 1,* remains unchanged. The proposed change does not decrease the margin of safety.

The NRC staff has reviewed the licensee's analysis; and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, P.O. Box 764, Columbia, South Carolina 29218

NRC Project Director: Elinor G. Adensam

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: June 28, 1991

Description of amendment request: The amendment requests revision of Technical Specification 3.5.1, "Emergency Core Cooling Systems Operating," to add an Action Statement to specify the actions to be taken in the event that the Automatic Depressurization System (ADS) supply header low pressure alarm system becomes inoperable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

> (1) The proposed change does not involve a significant increase in the probability or consequences of a previously evaluated accident because the proposed Action ensures that the ADS supply header pressure will be appropriately monitored utilizing backup instrumentation that has been determined to be adequate for this purpose.
>
> A periodic check of the backup indication is considered equivalent to a continuous monitor with alarm-only capability. This is especially true in view of the fact that the indicator(s), as long as it is periodically checked, can potentially indicate a degraded condition before the alarm setpoint would be reached on the currently utilized instrument. Also, periodic checks will be performed frequently enough such that the probability of occurrence of a leakage condition suddenly occurring between checks is acceptably low. Also, the ERIS computer system provides the capability for alarm annunciation of ADS supply header(s) pressure, equivalent to the Control Room panel annunciator. The alternate indication is already provided in the plant, and therefore no design changes are necessary to implement this change request. Since the normal and the alternate monitoring indications perform no active safety function, they cannot cause an accident to occur, therefore the probability of an accident is not increased. Also, since the ADS system pressure will be maintained, the ADS system will remain fully capable of responding in accordance with the design basis for any accident, in order to mitigate the consequences.
>
> (2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because no design changes or new or different modes of operation are proposed for the plant. Operation under the proposed Action statement (determined to be acceptable on the basis discussed above) does not constitute a different mode of operation since adequate monitoring of the ADS accumulator supply header pressure and adequate verification of instrument operability will be maintained.
>
> The proposed Action takes into account the accident scenarios assumed for the design and operational requirements established for the ADS supply header low pressure alarm system and no new scenarios have been introduced.
>
> (3) The proposed change does not involve a significant reduction in the margin of safety. As described in the answer to question 1 above ADS system operation is not impacted by the proposed change and no margin of safety is impacted with respect to supplying adequate pneumatic pressure to the ADS valves.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John
Hannon.

Toledo Edison Company, Cen
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No. 50-346, Davis-Besse Nucl
Station, Unit No. 1, Ottawa C
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Description of amendment
The amendment would revise
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TS 3.0.3 is also consistent wi
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will be appropriately monitored utilizing backup instrumentation that has been determined to be adequate for this purpose.

A periodic check of the backup indication is considered equivalent to a continuous monitor with alarm-only capability. This is especially true in view of the fact that the indicator(s), as long as it is periodically checked, can potentially indicate a degraded condition before the alarm setpoint would be reached on the currently utilized instrument. Also, periodic checks will be performed frequently enough such that the probability of occurrence of a leakage condition suddenly occurring between checks is acceptably low. Also, the ERIS computer system provides the capability for alarm annunciation of ADS supply header(s) pressure, equivalent to the Control Room panel annunciator. The alternate indication is already provided in the plant, and therefore no design changes are necessary to implement this change request. Since the normal and the alternate monitoring indications perform no active safety function, they cannot cause an accident to occur, therefore the probability of an accident is not increased. Also, since the ADS system pressure will be maintained, the ADS system will remain fully capable of responding in accordance with the design basis for any accident, in order to mitigate the consequences.

(2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because no design changes or new or different modes of operation are proposed for the plant. Operation under the proposed Action statement (determined to be acceptable on the basis discussed above) does not constitute a different mode of operation since adequate monitoring of the ADS accumulator supply header pressure and adequate verification of instrument operability will be maintained.

The proposed Action takes into account the accident scenarios assumed for the design and operational requirements established for the ADS supply header low pressure alarm system and no new scenarios have been introduced.

(3) The proposed change does not involve a significant reduction in the margin of safety. As described in the answer to question 1 above ADS system operation is not impacted by the proposed change and no margin of safety is impacted with respect to supplying adequate pneumatic pressure to the ADS valves.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: March 18, 1991

Description of amendment request: The amendment would revise Technical Specifications (TS) 3.0.3 and 3.0.5, "Applicability-Limiting Conditions for Operation." The proposed changes would affect TS 3.0.3 and 3.0.5 by revising the allowable time interval for achieving Hot Standby (Mode 3). Specifically, a change is proposed to TS 3.0.3 to increase the time interval allowed for reaching Hot Standby from 6 hours to 7 hours once TS 3.0.3 has been entered. A minor editorial correction is also proposed to this TS. Corresponding changes have been proposed to TS Bases 3.0.3. A similar change is proposed to TS 3.0.5 to increase the time interval from 6 hours to 8 hours allowed for reaching Hot Standby once TS 3.0.5 has been entered.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

1. The proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated because the increase of 1 or 2 hours for the plant to shut down pursuant to TS 3.0.3 or 3.0.5 does not significantly increase the probability of component or system failure and is consistent with NUREG-0103, Revision 4, "Standard Technical Specifications for Babcock and Wilcox Pressurized Water Reactors." Proposed TS 3.0.3 is also consistent with Generic Letter 87-09, "Sections 3.0 and 4.0 of the Standard Technical Specifications (STS) on the applicability of Limiting Conditions for Operation and Surveillance Requirements."

2. The proposed change will not create the possibility of a new or different kind of accident from any previously evaluated accident because no hardware changes are being made, no new testing is being created, and no new operating manipulations are being created.

3. The proposed change will not involve a significant reduction in a margin of safety because the increase of 1 or 2 hours for the plant to shut down pursuant to TS 3.0.3 or 3.0.5 does not significantly increase the probability of component or system failure and is consistent with NUREG-0103, Revision 4. Proposed TS 3.0.3 is also consistent with Generic Letter 87-09.

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Project Director: John N. Hannon

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of amendment request: October 23, 1990

Description of amendment request: The proposed amendment adds actions for inoperable scram discharge volume vent and/or drain valves to Limiting Condition for Operation 3.1.3.1 - Control Rods.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The Supply System has evaluated this amendment request per 10 CFR 50.92 and determined that it does not represent a significant hazards considerations because it does not:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The SDV vent/drain valves are not assumed in the initiation of an analyzed event. Their role is containing reactor coolant following analyzed events that cause a scram, and thereby limits accident consequences. The proposed action will not allow continuous operation and thereby adequately limits the probability of a single failure to create an unisolated path for reactor coolant release. Therefore, this proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the isolation function is maintained by either the remaining operable automatic isolation valve or manual isolation of the vent and/or drain path. The alarm, control rod block and reactor scram functions on increasing water level in the SDV are unaffected. Hence no new or different kind of accident is credible.

3) Involve a significant reduction in a margin of safety. The time allowed to continue operation with inoperable SDV vent and/or drain valves, prior to requiring a plant shutdown, is acceptable based on the small probability of an event requiring the SDV vent and drain valves to isolate and the desire to minimize unnecessary plant transients. The requested completion times may also provide sufficient time to repair the inoperable valves without subjecting the plant to a shutdown transient which would increase the probability of an event requiring the function of the SDV. The exposure of the plant to the small probability of an event requiring the SDV vent and drain valves during the increased time is insignificant and offset by the benefit of avoiding an unnecessary plant transient.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Attorney for licensee: Nicholas S. Reynolds, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: James E. Dyer

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of amendment request: December 31, 1990

Description of amendment request: The proposed amendment modifies the scram discharge volume trip setpoints to reflect the fact that a recent facility modification has made it impossible to achieve the current technical specification values.

The modification was performed to the scram discharge system in order to reduce stay time and personnel exposure during maintenance activities. Gauge glasses were added to facilitate calibration of the scram discharge volume level sensing instrumentation. Subsequent grade surveys identified that actual equipment elevation does not agree with those used to determine the SDV high level trip setpoints. Consequently, the trip setpoints specified in the technical specifications are in error.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The Supply System has evaluated this amendment per 10 CFR 50.92 and determined that it does not represent a significant hazard because it does not:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated because as discussed the decrease in margin for the trip setpoints and Allowable Values is insignificant. In both cases less than 0.8%. Therefore the probability or consequences of an accident previously evaluated are not significantly increased by these changes.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated because SDV operation, including the Scram and Rod Block functions, remains unaffected. No new modes of operation of any equipment result due to this change. Therefore this change will not result in, nor create, a new or different kind of accident from any accident previously evaluated.

3) Involve a significant reduction in a margin of safety because, as discussed above, the reduction in margins represented by these changes is insignificant, less than 0.8%. Therefore, this change will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Attorney for licensee: Nicholas S. Reynolds, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: James E. Dyer

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of amendment request: February 21, 1991

Description of amendment request: The proposed amendment increases the surveillance intervals for those channel functional tests of the control rod block instrumentation currently specified as monthly to quarterly.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because the changes have been shown to have negligible impact to overall control rod block function failure rates and operability as shown by NEDC-30851-P-A, Supplement 1, "Technical Specification Improvement Analysis for Control Rod Block Instrumentation." Hence, the probability or consequences of previously evaluated accidents are not significantly increased due to this change.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because control rod block function and reliability are not significantly degraded by these changes. No new modes of plant operation are introduced with these changes. No new or different kind of accident is therefore credible.

The proposed changes do not involve a significant reduction in a margin of safety because, as shown in NEDC-30851-P-A, Supplement 1, "Technical Specification Improvement Analysis for Control Rod Block Instrumentation," the changes have an insignificant impact on control rod block function availability and does not involve a significant reduction in the margin of safety.

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no signfificant hazards consideration.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Attorney for licensee: Nicholas S. Reynolds, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: James E. Dyer

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of amendment request: February 21, 1991

Description of amendment request: The proposed amendment increases the surveillance intervals for those channel functional tests of the emergency core cooling system actuation instrumentation currently specified as monthly to quarterly, with the exception of the 4.16 kV emergency bus undervoltage test which remains as currently specified. The proposed amendment also increases the allowable outage times for trip system channels from 2 hours to 6 hours and clarifies when the action associated with one or more ECCS actuation instrumentations channels inoperable should be taken.

The proposed amendment also modifies the reactor core isolation cooling system actuation instrumentation channel functional testing frequency from monthly to quarterly. The proposed amendment also increases the allowable outage times for trip system channels from 2 hours to 6 hours and clarifies when the action associated with the number of operable channels less than required should be taken.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because the changes have been shown to have insignificant impact on overall ECCS failure rates and operability. As shown by NEDC-30936P-A, Parts 1 and 2, "Technical Specification Improvement Methodology (With Documentation for BWR ECCS Actuation Instrumentation)" and the corresponding plant specific analyses, the changes do not degrade the reliability of the ECCS. Hence the probability or consequences of previously evaluated accidents are not significantly increased due to this change.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because ECCS function and reliability are not degraded by these changes. No new modes of plant operation are introduced with these changes. Hence, no new or different kind of accident is credible.

The proposed changes do not involve a significant reduction in a margin of safety because as shown in NEDC-30936P-A, Parts 1 and 2, "Technical Specification Improvement Methodology (With Documentation for BWR ECCS Actuation Instrumentation)" and the corresponding plant specific analyses, the changes represent an overall improvement in plant safety. As such, the margin of safety is enhanced by the proposed changes.

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the

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The proposed amendment also modifies the reactor core isolation cooling system actuation instrumentation channel functional testing frequency from monthly to quarterly. The proposed amendment also increases the allowable outage times for trip system channels from 2 hours to 6 hours and clarifies when the action associated with the number of operable channels less than required should be taken.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because the changes have been shown to have insignificant impact on overall ECCS failure rates and operability. As shown by NEDC-30936P-A, Parts 1 and 2, "Technical Specification Improvement Methodology (With Documentation for BWR ECCS Actuation Instrumentation)" and the corresponding plant specific analyses, the changes do not degrade the reliability of the ECCS. Hence the probability or consequences of previously evaluated accidents are not significantly increased due to this change.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because ECCS function and reliability are not degraded by these changes. No new modes of plant operation are introduced with these changes. Hence, no new or different kind of accident is credible.

The proposed changes do not involve a significant reduction in a margin of safety because as shown in NEDC-30936P-A, Parts 1 and 2, "Technical Specification Improvement Methodology (With Documentation for BWR ECCS Actuation Instrumentation)" and the corresponding plant specific analyses, the changes represent an overall improvement in plant safety. As such, the margin of safety is enhanced by the proposed changes.

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the

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amendment request involves no significant hazards consideration.

Local Public Document Room location: Richland Public Library, 955, Northgate Street, Richland, Washington 99352

Attorney for licensee: Nicholas S. Reynolds, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: James E. Dyer

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of amendment request: February 25, 1991

Description of amendment request: The proposed amendment modifies the jet pump surveillance delineated in section 4.4.1.2.1 of the technical specifications to delete the requirements that the surveillance be conducted with both flow control valves at the same position. The design of the Recirculation System at WNP-2 is such that the pumps run at a constant speed when driven by either the 15 Hz or 60 Hz power supplies. Therefore, the only way to vary flow in the recirculation loops is by the flow control valves. WNP-2 operates the recirculation loops to match flows versus flow control valve positions. Also, it is operationally more prudent to conduct the surveillance at matched flows and technical specification surveillance 4.4.1.2.1.a compares flow and flow control valve position against a baseline for signs of degradation. Therefore, the requirement for the flow control valves to be the same in surveillance 4.4.1.2.1 is not necessary.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

> The Supply System has evaluated this amendment request per 10 CFR 50.92 and determined that it does not represent a significant hazard because it does not:
>
> 1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change preserves the intent of the Technical Specification and assures compliance to Technical Specification 3.4.1.3. Because of plant design and the requirements for flow mismatch of Specification 3.4.1.3, the core conditions during which comparisons are made to baseline values will remain within acceptable bounds. Therefore, there is no increase in the probability or consequences of a previously evaluated accident.
>
> 2) Create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change does not implement any changes to the operation of the facility and no new modes of operation of any equipment are introduced. Therefore, no new or different kind of accident is created.
>
> 3) Involve a significant reduction in a margin of safety. As discussed above, the proposed change preserves the intent of the specification and also assures compliance with Specification 3.4.1.3. Because the change does not allow core conditions to change significantly there is no decrease in the probability that a degraded jet pump condition will remain undetected by the surveillance comparisons.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Attorney for licensee: Nicholas S. Reynolds, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: James E. Dyer

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of amendment request: March 11, 1991

Description of amendment request: The proposed amendment increases the surveillance intervals for those channel functional tests of the isolation actuation instrumentation currently specified as monthly to quarterly. The proposed amendment also increases the allowable outage times for single trip system channels from 2 hours to 6 hours and clarifies when the required action associated with one or more isolation actuation instrumentations channels inoperable should be taken. For those isolation actuation instruments which are common to both the Reactor Protection System and the isolation actuation instrumentation the more restrictive allowable outage times are proposed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because the changes have been shown to have negligible impact on overall isolation actuation function failures rates. As shown by NEDC-30851-P-A, Supplement 2, "Technical Specification Improvement Analysis for BWR Isolation Actuation Instrumentation Common to RPS and ECCS Instrumentation," and NEDC-31677P-A, "Technical Specification Improvement Analyses for BWR Isolation Actuation Instrumentation," the changes do not significantly degrade the reliability of the isolation actuation instrumentation. Hence, the probability or consequences of previously evaluated accidents are not significantly increased due to this change.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because isolation actuation function and reliability are not significantly degraded by these changes. No new modes of plant operation are introduced with these changes. No new or different kind of accident is therefore credible.

The proposed changes do not involve a significant reduction in a margin of safety because, as shown in NEDC-30851-P-A, "Technical Specification Improvement Analysis for BWR Isolation Actuation Instrumentation Common to RPS and ECCS Instrumentation" and NEDC-31677P-A, "Technical Specification Improvement Analyses for BWR Isolation Actuation Instrumentation," the changes represent an overall net improvement to plant safety and operations. Also, the changes were shown to have negligible impact on isolation function availability and reliability. As such, the margin of safety overall is enhanced by the proposed changes.

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Attorney for licensee: Nicholas S. Reynolds, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: James E. Dyer

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of amendment request: April 4, 1991

Description of amendment request: The proposed amendment removes the battery load profiles from the technical specifications with the understanding that they will be placed in the Final Safety Analysis Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The Supply System has evaluated this amendment request per 10 CFR 50.92 and determined that it does not represent a significant hazard because it does not:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change preserves the control of the battery(s) design limit and thereby ensures that design changes are not introduced that would exceed design limits. A design change that would impact the battery load would receive a design safety analysis. Part of this assessment would be the consideration of the revised load on the battery capacity. In addition, because plant design changes are always evaluated to the requirements of 10 CFR 50.59, the battery(s) will receive the same level of review as the entire plant. Therefore the relocation of the table will not introduce a higher probability of battery(s) failure. The design limits will be preserved. Therefore, there is no increase in the probability or consequences of a previously evaluated accident introduced by this change.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change does not implement any changes to the operation of the facility and no new modes of operation of any equipment are introduced. Therefore, no new or different kind of accident is created.

3) Involve a significant reduction in a margin of safety. No reduction in a margin of safety is possible as the battery(s) will continue to receive the same treatment as they presently do. Any future changes to the requirements as incorporated in the FSAR will be evaluated per the standards of 10 CFR 50.59 which is a more stringent review than the 10 CFR 50.92 process. Accordingly design margins will be preserved. Therefore, there is no significant reduction in a margin of safety represented by this change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Attorney for licensee: Nicholas S. Reynolds, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: James E. Dyer

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: June 4, 1991

Description of amendment request: This amendment would revise the Technical Specification (TS) in Section 4.13, "Radioactive Materials Sources," and Table 3.5-2, "Instrument Operation Conditions for Reactor Trip." The proposed amendments would add a new radiation calibrator and fission detectors to the list of sealed sources which are exempt from periodic leak testing, would state that fission detectors shall be leak tested prior to being subjected to core flux, and would describe the P-6 permissive setpoint in percent power consistent with the readout of the new fission detectors. Administrative changes are also being proposed dealing with format and typographical inconsistencies.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(a) Proposed Changes to TS 4.13-1 and TS 4.13-2

TS Section 4.13 is being revised due to the purchase and installation of new Gamma Metrics neutron fission detectors and the purchase of a new J. L. Shepherd Model 89-400 radiation calibrator.

This proposed amendment is consistent with the language contained in the Standard Technical Specifications. The proposed changes pose no significant hazards for the following reasons:

1. The proposed changes do not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated. The fissionable material used in a fission detector is inside the sealed detector chamber and therefore inaccessible. Standard Technical Specifications exempt fission detectors from periodic leak testing.

Leak testing of the J. L. Shepherd Model 89-400 is not advantageous as it is a totally enclosed instrument calibrating assembly. This model is similar to the model currently described in WPSC Technical Specifications. Leak testing would require disassembly of the calibration assembly shield, controls, etc., resulting in personnel exposure without corresponding benefits.

The revision to TS 4.13.5 regarding the transfer of a stored source is for clarification purposes only and is consistent with the Standard Technical Specifications.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed amendment does not alter the plant configuration, operating setpoints, or overall plant performance.

3. The proposed changes do not involve a significant decrease in the margin of safety. Fissionable material sealed inside a fission detector is considered a sealed source by 10 CFR 70.4. The fissionable material is therefore inaccessible. It does not affect any plant systems since it is internal to the detectors.

The J. L. Shepherd Model 89-400 is similar to the Eberline Model 1000 currently being used in that it is a totally enclosed instrument calibrating assembly for which leak testing of the enclosed sources is not practical. Leak testing of these sources would require disassembly of the calibration assembly shield, controls, etc., resulting in personnel exposure without corresponding benefits.

The change being made to TS 4.13.5 regarding the transfer of sealed sources is consistent with Standard Technical Specifications and is being made for clarification purposes only.

(b) Proposed Change to Table TS 3.5-2

Permissive condition for P-6 is being revised to specify that the bypass condition is satisfied when 1 of 2 Intermediate Range (IR) channels indicates [greater than] 10^{-2}% power, and administrative changes are being made.

The proposed change was reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed changes pose no significant hazards for the following reasons:

1. The proposed changes do not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

The proposed change does not affect the SR high neutron flux reactor trip as discussed in the USAR. The basis for the P-6 setpoint is to verify that the IR channel is functional prior to manually disabling the SR trip. The setpoint wording is being changed from specifying [greater than] 10^{-10} amps to [greater than] 10^{-2}% power which is the comparable value. Therefore, the proposed change will not increase the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The setpoint of 10^{-2}% power is comparable to 10^{-10} amps; therefore, the revision is only a change in nomenclature consistent with the display capabilities of the new neutron flux detectors. The proposed amendment does not alter the plant configuration, operating setpoints, or overall plant performance.

3. The proposed changes do not involve a significant decrease in the margin of safety.

The actual value of the setpoint is not altered by this proposed change. The purpose of the change is to revise the note in TS consistent with the readout capability of the new detection system. Therefore, there is no reduction to the margin of safety by this proposed change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request *tor:* James E. Dyer

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The J. L. Shepherd Model 89-400 is similar to the Eberline Model 1000 currently being used in that it is a totally enclosed instrument calibrating assembly for which leak testing of the enclosed sources is not practical. Leak testing of these sources would require disassembly of the calibration assembly shield, controls, etc., resulting in personnel exposure without corresponding benefits.

The change being made to TS 4.13.5 regarding the transfer of sealed sources is consistent with Standard Technical Specifications and is being made for clarification purposes only.

(b) Proposed Change to Table TS 3.5-2

Permissive condition for P-6 is being revised to specify that the bypass condition is satisfied when 1 of 2 Intermediate Range (IR) channels indicates [greater than] 10^{-5}% power, and administrative changes are being made.

The proposed change was reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed changes pose no significant hazards for the following reasons:

1. The proposed changes do not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

The proposed change does not affect the SR high neutron flux reactor trip as discussed in the USAR. The basis for the P-6 setpoint is to verify that the IR channel is functional prior to manually disabling the SR trip. The setpoint wording is being changed from specifying [greater than] 10^{-10} amps to [greater than] 10^{-5}% power which is the comparable value. Therefore, the proposed change will not increase the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The setpoint of 10^{-5}% power is comparable to 10^{-10} amps; therefore, the revision is only a change in nomenclature consistent with the display capabilities of the new neutron flux detectors. The proposed amendment does not alter the plant configuration, operating setpoints, or overall plant performance.

3. The proposed changes do not involve a significant decrease in the margin of safety.

The actual value of the setpoint is not altered by this proposed change. The purpose of the change is to revise the note in TS consistent with the readout capability of the new detection system. Therefore, there is no reduction to the margin of safety by this proposed change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: David Baker, Esq., Foley and Lardner, P. O. Box 2193 Orlando, Florida 31082.

NRC Project Director: John N. Hannon.

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: May 14, 1991

Description of amendment request: The amendment request proposes revising Technical Specification 3/4.4.4 and its associated Bases to modify the limiting conditions of operation of power-operated relief valves (PORVs) to follow the staff positions, with plant specific alternatives, as provided in Generic Letter 90-06, "Resolution of Generic Issue 70, 'Power-Operated Relief Valve and Block Valve Reliability,' and Generic Issue 94, 'Additional Low-Temperature Overpressure Protection for Light-Water Reactors,' Pursuant to 10 CFR 50.54(f)." Additionally, this amendment request proposes revising Technical Specification 3.4.9.3 to reflect the use of either the PORVs or the residual heat removal (RHR) suction relief valves for overpressure protection as provided in the generic letter.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Standard 1 - Involves a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed changes to Technical Specification 3/4.4.4 requires that with the block valve(s) closed, power be maintained to the valve(s) so they can be readily opened from the control room. This change would decrease the amount of time to initiate feed and bleed capabilities in the event an alternative measure to remove decay heat from the reactor core is necessary and thus be a benefit to plant safety. The proposed changes to Technical Specification 3.4.9.3 provides added flexibility and availability for providing low-temperature overpressure protection with no degradation in the level of plant safety. Therefore, the proposed changes to Technical Specifications 3/4.4.4, its associated Bases and 3.4.9.3 do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Standard 2 - Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed changes to Technical Specifications 3/4.4.4, its associated Bases and 3.4.9.3 do not create the possibility of a new or different kind of accident from any previously evaluated. No change to the design of the facility is being performed and the manner of plant operations is not significantly altered.

Standard 3 - Involve a Significant Reduction in the Margin of Safety.

The proposed changes to Technical Specification 3/4.4.4, its associated Bases and 3.4.9.3 do not involve a significant reduction in the margin of safety. The proposed changes to Technical Specification 3/4.4.4 increase the reliability of the power-operated relief valves (PORVs) and block valves to perform their intended function. The proposed changes to Technical Specification 3.4.9.3 increases the flexibility and availability of the overpressure protection system to mitigate a low-temperature overpressurization event. The changes do not affect any technical specification margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N. W., Washington, D. C. 20037

NRC Project Director: George F. Dick, Jr., Acting Director

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: June 11, 1991

Description of amendment request: The proposed license amendment revises Technical Specification Tables 2.2-1, 4.3-1 and associated Bases to accommodate the replacement of the existing resistance temperature detector (RTD) bypass system with an RTD thermowell system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Standard 1 - Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The existing RTD temperature outputs are used by the Reactor Protection System for the Overtemperature Delta-T (OTDT) and Overpower Delta-T (OPDT) trip functions. These trip functions provide primary protection against departure from nucleate boiling (DNB) and fuel centerline melting during postulated transients. The Loss of Flow trip function provides protection for DNB due to the loss of Reactor Coolant System (RCS) flow in one or more primary side loops. The Loss of Flow trip function is dependent upon the measured temperature since a primary parameter in the determination of RCS flow is the primary side enthalpy rise. Additionally, RTD temperature signals are utilized by other control systems.

Those transients and accidents that were effected by the OTDT, OPDT, and Loss of Flow trip functions were evaluated. This evaluation concluded that the OTDT, OPDT, and Loss of Flow trips will continue to function in a manner consistent with the existing analyses assumptions for these events. Evaluation of events initiated by a failure of those control systems that use temperature signals from the narrow range RTDs concluded that there will be no degradation in the performance of or increase in the number of challenges to equipment assumed to function during an accident situation. On this basis it is concluded that there will be no significant increase in the probability or consequences of previously evaluated accidents.

Standard 2 - Create the Possibility of a New or Different Kind of Accident from any Previously Analyzed.

The plant modification will be performed in a manner consistent with applicable standards, preserve the existing design bases, and will not adversely impact the qualification of any plant systems. This will preclude adverse control and protection system interactions. The design, installation and inspection of the RTD thermowell system will be done in accordance with ASME Boiler and Pressure Vessel Code criteria. By adherence to industry standards, the pressure boundary integrity will be preserved. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any previously analyzed.

Standard 3 - Involve a Significant Reduction in a Margin of Safety.

The applicable margins of safety are defined in Bases Sections 2.1.1 and 2.1.2. Bases Section 2.1.1 states that the minimum value of the departure from nucleate boiling ratio (DNBR) during steady state operation, normal operational transients, and anticipated transients corresponds to a 95 percent probability at a 95 percent confidence level that departure from nucleate boiling (DNB) will not occur. The restrictions of this fuel cladding integrity safety limit prevent overheating of the fuel and possible cladding perforation which would result in the release of fission products to the coolant. The minimum DNBR reported in the accident analyses will be unaffected by the plant modification. Bases Section 2.1.2 states that the Safety Limit on maximum RCS pressure protects the integrity of the RCS from overpressurization and thereby prevents the release of radionuclides contained in the reactor coolant from reaching the containment atmosphere. The maximum RCS pressure reported in the accident analyses is unaffected by the plant modification. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N. W., Washington, D. C. 20037

NRC Project Director: George F. Dick, Jr., Acting Director

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: June 21, 1991

Description of amendment request: The proposed license amendment revises Technical Specification 4.6.2.3, "Containment Cooling System," and affected Technical Specification Bases to reduce the minimum required cooling water flow to the containment cooling units during accident conditions. The proposed amendment also deletes a surveillance requirement for periodic measurement of cooling water flow to the containment cooling units in the normal operating alignment. Plant specific analyses have been performed to demonstrate continued adequate performance of the containment cooling system with the proposed reduced minimum flow requirement.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Standard I - Involves a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

This amendment request proposes to reduce the minimum cooling water flow requirement for the containment cooling system (CCS) for post- accident conditions and delete a surveillance requirement to verify a specified minimum flow rate in the normal operating mode of the CCS. The effect of the proposed reduction in the minimum required cooling water flow rate to the CCS has been evaluated and shown to have no significant effect on the consequences of postulated accidents. For a postulated Loss of Coolant Accident (LOCA), the calculated peak containment pressure is unchanged and the containment pressure response remains consistent with the assumptions used to evaluate the potential offsite radiological consequences of a LOCA due to leakage from the containment. For a postulated Main Steam Line Break (MSLB) event, the containment pressure remains well below the design pressure of the containment and safety related equipment located within the containment has been evaluated and found to remain fully qualified for the revised containment conditions. The deletion of the surveillance requirement for flow measurement during normal operations does not adversely affect the reliability of the CCS since ongoing performance monitoring of these heat exchangers provides more reliable indication of potential heat exchanger degradation. On these bases, it is concluded that there will be no significant increase in the probability of occurrence or consequences of previously evaluated accidents.

Standard II - Create the Possibility of a New or Different Kind of Accident From any Previously Evaluated.

The CCS serves to mitigate the consequences of postulated accidents, but is not associated with the initiation of design basis events and has no direct impact on the Reactor Coolant System or other structures or systems associated with the initiation of postulated accidents. Therefore, this proposed technical specification revision does not create the possibility of a new or different kind of accident from any previously evaluated.

Standard III - Involve a Significant Reduction in the Margin of Safety.

The proposed reduction in required cooling water flow has been shown to be acceptable based on revised accident analyses. For a LOCA the containment peak pressure and temperature were not increased. Although a slight increase in the MSLB peak containment pressure does occur as a result of this proposed change, the revised value remains well below the containment design pressure. The margin of safety between the containment design pressure and the pressure at which the containment would ultimately fail is unchanged by this proposed amendment. Therefore, it is concluded that there is no significant reduction in the margin of safety as described in the bases of any technical specification.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N. W., Washington, D. C. 20037

NRC Project Director: George F. Dick, Jr., Acting Director

Notice of Issuance of Amendment To Facility Operating License

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon

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Local Public Document Room Location: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N. W., Washington, D. C. 20037

NRC Project Director: George F. Dick, Jr., Acting Director

Notice of Issuance of Amendment To Facility Operating License

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon

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request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Carolina Power & Light Company, et al., Docket No. 50-324, Brunswick Steam Electric Plant, Unit 2, Brunswick County, North Carolina

Date of amendment request: April 23, 1991, as supplemented July 9, 1991

Brief description of amendment: The amendment changes the Technical Specification to change the minimum critical power ratio safety limit from 1.06 to 1.07. The change is necessary because a new fuel type (GE8x8NB-3) is being added to the core.

Date of issuance: July 18, 1991.

Effective date: July 18, 1991.

Amendment No.: 184

Facility Operating License No. DPR-62: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** May 29, 1991 (56 FR 24206) The July 9, 1991, supplement submitted updated Technical Specification pages and did not change the initial determination of no significant hazards consideration as published in the FEDERAL REGISTER. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 18, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Commonwealth Edison Company, Docket No. 50-265, Quad Cities Nuclear Power Station, Unit 2, Rock Island County, Illinois

Date of application for amendment: April 18, 1991

Brief description of amendment: Revision of Technical Specifications to reflect a modification to the fast acting solenoid valves which initiate rapid closure of the turbine control valves. The new design uses a pressure switch, rather than a limit switch, to initiate a reactor scram.

Date of issuance: July 23, 1991

Effective date: Startup from refueling outage No. 11

Amendment No.: 125

Facility Operating License No. DPR-30. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 29, 1991 (56 FR 24206) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 23, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station Units 1 and 2, Lake County, Illinois

Date of application for amendments: May 3, 1991

Brief description of amendments: The amendments revise Technical Specification 3.2.1.F to allow a reduction in the boric acid system concentration from 12% to 3.4%.

Date of issuance: July 17, 1991

Effective date: July 17, 1991

Amendment Nos.: 126 and 115

Facility Operating License Nos. DPR-39 and DPR-48. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 29, 1991 (56 FR 24207) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 17, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station Units 1 and 2, Lake County, Illinois

Date of application for amendments: May 15, 1991

Brief description of amendments: The amendments revise Technical Specification Tables 3.14-1 and 4.14-1 to incorporate the radiation monitoring instrumentation installed in the new Technical Support Center.

Date of issuance: July 22, 1991

Effective date: July 22, 1991

Amendment Nos.: 127 and 116

Facility Operating License Nos. DPR-39 and DPR-48. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 12, 1991 (56 FR 27040) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 22, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: April 11, 1991, as supplemented July 3, 1991.

Brief description of amendments: The amendments revise Technical Specifications 3/4.6.1.8, "Annulus Ventilation System," and 3/4.7.6, "Control Area Ventilation System," to revise the carbon adsorber test method and methyl iodide penetration criteria along with other administrative changes.

Date of issuance: July 15, 1991

Effective date: July 15, 1991

Amendment Nos.: 122 and 104

Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 15, 1991 (56 FR 22463)

The licensee's July 3, 1991, submittal provided supplemental information which did not affect the scope of the initial notice or the Commission's proposed significant hazards consideration analysis.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 15, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Duquesne Light Company, et. al, Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of application for amendments: April 4, 1990

Brief description of amendments: The proposed amendments would revise certain administrative control requirements, where applicable, previous titles with new titles developed for the Nuclear Group organization. Specifically, the title Plant Manger will be changed to General Manager Nuclear Operations, the title Radiological Control Manager will be changed to Health Physics Manager, and the title Plant Safety Review Director will be changed to Onsite Safety Committee Supervisor. These changes would affect TS Sections 6.1, 6.2, 6.5, 6.8, and 6.17. Additionally, TS Section 6.5 would be revised to provide for written notification to the next higher management level of disagreement between the Onsite Safety Committee and the General Manager Nuclear Operations.

Date of issuance: July 11, 1991

Effective date: July 11, 1991

Amendment Nos.: 159 and 38

Facility Operating License Nos. DPR-66 and NPF-73. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 30, 1990 (53 FR 21970) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 11, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Duquesne Light Company, et. al., Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of application for amendments: February 20, 1991

Brief description of amendments: The amendments revise the Appendix A Technical Specifications for determining containment leakage. Specifically, the amendments modify surveillance requirement (TS 4.6.1.2) to delete the reference to ANSI N45.4-1972, thereby directing the leakage rate be determined in accordance with Appendix J of 10 CFR Part 50. Appendix J includes both ANSI N45.4-1972 and alternate method ANSI/ANS 56.8-1987 as approved procedures for calculating containment leakage rate.

Date of issuance: July 11, 1991

Effective date: July 11, 1991

Amendment Nos.: 158 and 37

Facility Operating License Nos. DPR-66 and NPF-73: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 1, 1991 (56 FR 20035) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 11, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: May 9, 1991

Brief description of amendment: The amendment revised Technical Specification (TS) 3.6.3.1 on containment isolation valves. The change allows exceptions to the requirements of TS 3.0.4 on mode changes when the action statements that allow continued operation for an unlimited period of time are met.

Date of issuance: July 15, 1991

Effective date: July 15, 1991

Amendment No.: 121

Facility Operating License No. NPF-6. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 12, 1991 (56 FR 27043) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 15, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: November 27, 1990, as supplemented June 12, 1991

Brief description of amendments: These amendments provide for reduction of the boric acid concentration in the boric acid tanks and removal of heat tracing from the tanks and from the boric acid makeup system piping and valves. The amendments also include changes in the action statements for related component inoperability which affects both units to provide for orderly, sequential dual unit shutdown.

Date of issuance: July 16, 1991

Effective date: July 16, 1991

Amendment Nos.: 144, 139

Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 6, 1991 (56 FR 4863) The June 12, 1991 letter provided supplemental information which did not change the staff's initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 16, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit No. 2, Scriba, New York

Date of application for amendment: February 19, 1991, as supplemented May 8, 1991, and May 20, 1991

Brief description of amendment: The amendment permits increases in the Technical Specification setpoints of the Main Steam Line Radiation monitors during the performance of a special test in which hydrogen will be injected into the reactor coolant. The purpose of this test is to demonstrate that the injected hydrogen will reduce the concentration of oxygen in the reactor coolant. Reducing the concentration of oxygen in the reactor coolant decreases the susceptibility of the austenitic stainless steel in the reactor coolant system to intergranular stress corrosion cracking. However, this injection of hydrogen is expected to cause an increase in the carryover of N^{16} in the steam which will be detected by the Main Steam Line Radiation monitors as an increase in radiation levels. Therefore, it may be necessary to increase the high level alarm and trip setpoints for these radiation monitors during the test to prevent the occurrence of spurious alarms and/or reactor scrams.

Date of issuance: July 15, 1991

Effective date: July 15, 1991

Amendment No.: 33

Facility Operating License No. NPF-69: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** April 17, (56 FR 15644) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 15, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Public Service Company of New Hampshire, Docket No. 50-443, Seabrook Station, Rockingham County, New Hampshire

Date of application for amendment: November 13, 1990

Brief description of amendment: This amendment revises the Technical Specifications for Seabrook Station, Unit 1 involving testing of high pressure turbine control valves.

Date of issuance: July 24, 1991

Effective date: July 24, 1991

Amendment No.: 4

Facility Operating License No. NPF-86: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 29, 1991 (56 FR 24216). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 24, 1991

No significant hazards consideration comments received: No

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Technical Specification setpoints of the Main Steam Line Radiation monitors during the performance of a special test in which hydrogen will be injected into the reactor coolant. The purpose of this test is to demonstrate that the injected hydrogen will reduce the concentration of oxygen in the reactor coolant. Reducing the concentration of oxygen in the reactor coolant decreases the susceptibility of the austenitic stainless steel in the reactor coolant system to intergranular stress corrosion cracking. However, this injection of hydrogen is expected to cause an increase in the carryover of N^{16} in the steam which will be detected by the Main Steam Line Radiation monitors as an increase in radiation levels. Therefore, it may be necessary to increase the high level alarm and trip setpoints for these radiation monitors during the test to prevent the occurrence of spurious alarms and/or reactor scrams.

Date of issuance: July 15, 1991

Effective date: July 15, 1991

Amendment No.: 33

Facility Operating License No. NPF-69: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** April 17, (56 FR 15644) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 15, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Public Service Company of New Hampshire, Docket No. 50-443, Seabrook Station, Rockingham County, New Hampshire

Date of application for amendment: November 13, 1990

Brief description of amendment: This amendment revises the Technical Specifications for Seabrook Station, Unit 1 involving testing of high pressure turbine control valves.

Date of issuance: July 24, 1991

Effective date: July 24, 1991

Amendment No.: 4

Facility Operating License No. NPF-86: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 29, 1991 (56 FR 24216). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 24, 1991

No significant hazards consideration comments received: No

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Public Service Company of New Hampshire, Docket No. 50-443, Seabrook Station, Rockingham County, New Hampshire

Date of application for amendment: January 24, 1991, as supplemented on May 16, 1991

Brief description of amendment: The amendment revises the Technical Specifications for Seabrook Station, Unit 1 involving removal of the residual heat removal (RHR) isolation valve autoclosure interlock.

Date of issuance: July 15, 1991

Effective date: July 15, 1991

Amendment No.: 3

Facility Operating License No. NPF-86: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 12, 1991 (56 FR 27048) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 15, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: April 23, 1991, as supplemented June 11, 1991.

Brief description of amendment: The amendment changes the TS to remove the snubber visual examination schedule in the existing TS and replaces it with a refueling outage based visual examination schedule as shown in Table 4.7-2, "Snubber visual Inspection Interval," of Enclosure B to Generic Letter 90-09.

Date of issuance: July 15, 1991.

Effective date: July 15, 1991.

Amendment No.: 103

Facility Operating License No. NPF-12. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** March 6, 1991 (56 FR 9387). The June 11, 1991, supplement did not affect the staff's finding of no significant hazards considerations.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 15, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Southern California Edison Company, et al., Docket No. 50-361, San Onofre Nuclear Generating Station, Unit No. 2, San Diego County, California

Date of application for amendment: May 22, 1991

Brief description of amendment: The amendment revised Surveillance Requirement 4.8.1.1.2.d.1 in Technical Specification 3/4.8.1, "A.C. Sources." The amendment permitted a surveillance interval extension of up to one month, from 24 to 25 months, on a one-time basis for Cycle 5 to perform certain inspection activities. Additionally, this amendment corrects a typographical error that was found on TS page 3/4 8-3.

Date of issuance: July 12, 1991

Effective date: July 12, 1991

Amendment No.: 96

Facility Operating License No. NPF-10: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 12, 1991 (56 FR 27049) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 12, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713

Tennessee Valley Authority, Docket No. 50-327, Sequoyah Nuclear Plant, Unit 1 Hamilton County, Tennessee

Date of application for amendment: May 24, 1991

Brief description of amendment: The amendment changes the steam generator water level low-low setpoints for the reactor trip system and the engineered safety feature actuation system to reflect replacement of the unmodified Barton level transmitters with modified Barton level transmitters during the 1991 refueling outage.

Date of issuance: July 24, 1991

Effective date: July 24, 1991

Amendment No.: 151

Facility Operating License No. DPR-77:

Date of initial notice in **Federal Register:** June 26, 1991 The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 24, 1991.

No significant hazards consideration comments received: 1101 Broad Street, Chattanooga, Tennessee 37402

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: March 1, 1991

Brief description of amendment: The amendment allowed an alternate method of determining battery operability following service or performance discharge surveillance testing.

Date of issuance: July 16, 1991

Effective date: July 16, 1991

Amendment No. 158

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 3, 1991 (56 FR 13671) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 16, 1991

No significant hazards consideration comments received: No

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Unit Nos. 1 and 2, Louisa County, Virginia

Date of application for amendments: December 28, 1989, as modified February 14, 1991.

Brief description of amendment: The amendments revise the acceptance criteria for the monthly testing of auxiliary feedwater pumps and allow acceptable discharge pressure and flow rates to be established and periodically reevaluated by ASME Section XI testing.

Date of issuance: July 15, 1991

Effective date: July 15, 1991

Amendment Nos.: 147, 131

Facility Operating License No. NPF-/: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 12, 1991 (56 FR 27050) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 15, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Yankee Atomic Electric Company, Docket No.50-029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: March 14, 1991

Brief description of amendment: The amendment makes certain administrative changes to the Technical Specifications to incorporate the requirements of 10 CFR 50.55a by removing the outdated ASME Code Edition and Addenda references and replacing them with references to the requirements of 10 CFR 50.55a.

Date of issuance: July 23, 1991

Effective date: July 23, 1991

Amendment No.: 140

Facility Operating License No. DPR-3: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 17, 1991 (56 FR 15647). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 23, 1991.

No Significant Hazards Consideration Comments Received: No

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: April 24, 1991

Brief description of amendment: This amendment clarifies the ECCS requirements contained in the current Technical Specification which is applicable to both Mode 5 (average coolant temperature equal to or less than 200° F) and Mode 4 (average coolant temperature between 300° F and 200° F) with the main coolant pressure less than 1000 psig. The new Technical Specification is divided into two separate Specifications, one applicable to Mode 4 and one applicable to Mode 5 and Mode 6 (average coolant temperature equal to or below 140° F). Additionally, this change incorporates administrative requirements related to emergency core cooling system (ECCS) valve positions and ECCS pump operability.

Date of issuance: July 15, 1991

Effective date: July 15, 1991

Amendment No.: 139

Facility Operating License No. DPR-28: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:**

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 15, 1991

No significant hazards consideration comments received: No

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Notice of Issuance of Amendment To Facility Operating License And Final Determination of No Significant Hazards Consideration And Opportunity For Hearing (Exigent Or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By September 6, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be

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Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By September 6, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be

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affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (**Project Director**): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: July 10, 1991

Brief description of amendment: The amendment revised the Technical Specification (TS) setpoint for the Emergency Buses Loss of Voltage Relays associated with TS 3.2.B. The change corrects an error made when the setpoint was added to the TS as part of Amendment No. 143.

Date of issuance: July 17, 1991

Effective date: July 17, 1991

Amendment No.: 144

Facility Operating License No. DPR-46. Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated July 17, 1991.

Attorney for licensee: Mr. G. D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68602-0499

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

NRC Project Director: Theodore R. Quay

Dated at Rockville, Maryland, this 31st day of July 1991.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation

[Doc. 91-18603 Filed 8-6-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-302]

Florida Power Corp., Crystal River Unit 3 Nuclear Generating Plant; Receipt of Petition for Director's Decision

Notice is hereby given that by Petition of June 25, 1991, Edward S. Wollesen

VOL 56 SS 152 AG 7 1991 UMI

requested that the U.S. Nuclear Regulatory Commission take action regarding the Florida Power Corporation (FPC) Crystal River Unit 3 plant. Petitioner requests that the NRC institute a proceeding in accordance with § 2.206 of title 10 of the Code of Federal Regulations (10 CFR 2.206) to suspend or revoke FPC's license for the Crystal River facility or to take such other action as may be proper.

Petitioner asserts as bases for his request the following:

(1) 1,500 to 3,000 instruments in the plant, most of which are safety-related, are not properly identified and are not in a proper calibration program. There are no controlled calibration data sheets for the instruments, making it impossible to determine if the instruments are within engineering design standards. Moreover, engineering diagrams do not include these instruments, as required by the NRC.

(2) In recent quality audit reports FPC stated that its security and fire protection programs comply with NRC requirements, although the programs are not sufficiently defined to be auditable in accordance with NRC requirements.

(3) FPC has not adequately defined and does not know the exact requirements of the technical specifications for the plant.

(4) Contrary to American National Standards Institute (ANSI) Standard N45.2.10-1973, the FPC Plant Review Committee Guidelines Manual, an uncontrolled manual, includes mandatory instructions for nuclear operations.

(5) There is no assurance that safety-related instruments are in calibration. When informed of this problem, plant management ignored it.

Petitioner asserts that these deficiencies render ineffective the quality assurance program, the fire protection program, and other programs critical to nuclear safety.

The Petition has been referred to the Director of the Office of Nuclear Reactor Regulation pursuant to 10 CFR 2.206. As provided by § 2.206, appropriate action will be taken with regard to the specific issues raised by the Petition within a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the Crystal River facility located at the Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629.

Dated at Rockville, Maryland this 31 day of July, 1991.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 91-18725 Filed 8-6-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-424-OLA-2, 50-425-OLA-2; ASLBP No. 91-647-OLA-2]

Georgia Power Co., et al., (Vogtle Electric Generating Plant, Units 1 and 2)

July 30, 1991.

Order

(Scheduling Prehearing Conference)

Before Administrative Judges: Sheldon J. Wolfe, Chairman; Dr. James H. Carpenter, Dr. Thomas S. Elleman.

Supplementing our Memorandum and Order of July 23, 1991 (LBP-91-33), the Board orders that a prehearing conference will be held on September 12, 1991 at the Federal Trade Commission, room 1010, 1718 Peachtree Street NW., Atlanta, Georgia beginning at 9 a.m. Oral arguments upon the proposed contentions of Georgians Against Nuclear Energy (Petitioner) will be heard at that time.

Pursuant to § 2.715(a), limited appearance statements will not be heard at this prehearing conference; however, if one (or more) of the Petitioner's proposed contentions is admitted as an issue to be litigated, such limited appearance statements will be taken at the beginning of any subsequent conferences and the hearing.

It is so ordered.

Bethesda, Maryland, July 30, 1991.

For the Atomic Safety and Licensing Board.

Sheldon J. Wolfe,

Chairman, Administrative Judge.

[FR Doc. 91-18726 Filed 8-6-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-271-OLA-4, ASLBP No. 89-595-03-OLA]

Vermont Yankee Nuclear Power Station; Construction Period Recapture

Notice of Postponement of Prehearing Conference

August 1, 1991.

(Construction Period Recapture)

Before Administrative Judges: Robert M. Lazo, Chairman; Jerry R. Kline, Frederick J. Shon.

Please take notice that the Prehearing Conference in this proceeding scheduled for August 6 and 7, 1991, in Brattleboro, VT, has been postponed to facilitate current settlement negotiations by and between the parties.

If no agreement leading to termination of this proceeding has been approved by the Licensing Board by August 31, 1991, we will enter an Order rescheduling the Prehearing Conference for an early date convenient to the Board and parties.

It is so ordered.

Issued at Bethesda, Maryland, this 1st day of August 1991.

For the Atomic Safety and Licensing Board.

Robert M. Lazo,

Chairman, Administrative Judge.

[FR Doc. 91-18727 Filed 8-6-91; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Suspension of Duties Increased in the Japan Semiconductor Case; Notice of Effective Date

AGENCY: Office of the United States Trade Representative.

ACTION: Effective date with regard to suspension of duties increased in the Japan semiconductor case.

SUMMARY: On June 7, 1991, the Office of the United States Trade Representative (USTR) announced that, pursuant to authority delegated by the President in Proclamation No. 5631 of April 17, 1987, the USTR was suspending all remaining increased duties on imports of high performance portable and desktop computers and electropneumatic hammers from Japan effective upon the date of entry into force of the 1991 Arrangement between the Government of Japan and the Government of the United States of America Concerning Trade in Semicondutor Products (56 FR 26455). The action was taken in response to Japan's progress in implementing its obligations under the U.S.-Japan Arrangement concerning Trade in Semiconductor Products dated September 2, 1986 (the "1986 Arrangement"), and because the market access objectives are expected to be fully realized within the framework of a new arrangement which is to enter into force on August 1, 1991.

EFFECTIVE DATE: This action becomes effective with respect to merchandise entered or withdrawn from warehouse for consumption on or after August 1, 1991.

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-OLA-4, ASLBP No. 89-

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ive Judges: Robert M.
R. Kline, Frederick J.

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It is so ordered.

Issued at Bethesda, Maryland, this 1st day of August 1991.

For the Atomic Safety and Licensing Board.

Robert M. Lazo,

Chairman, Administrative Judge.

[FR Doc. 91-18727 Filed 8-6-91; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

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EFFECTIVE DATE: This action becomes effective with respect to merchandise entered or withdrawn from warehouse for consumption on or after August 1, 1991.

FOR FURTHER INFORMATION CONTACT: Wendy Silberman, (202) 395-6160 (for technical and policy information); Timothy Reif, (202) 395-6800 (for legal issues).

SUPPLEMENTARY INFORMATION: The background to this action is fully described in an earlier **Federal Register** notice (56 FR 26455). As stated in that earlier notice, as a result of Japan's progress in implementing its market access obligations under the 1986 Arrangement, and because the market access objectives are expected to be fully realized within the framework of the 1991 Arrangement, I have determined that it is in the interest of the United States to suspend the increased duties on the remainder of the products of Japan subject to increased duties under Proclamation 5631.

Consequently, I hereby order the suspension of the increased duties imposed by Proclamation 5631 on certain products covered by tariff items 9903.41.15, 9903.41.20 and 9903.41.30, effective with respect to merchandise entered or withdrawn from warehouse for consumption on or after August 1, 1991. The Harmonized Tariff Schedules of the United States shall be modified to reflect the suspension of the increased duties for articles provided for in those tariff items, as set forth in the Annex hereto.

This determination shall be published in the **Federal Register.**

Joshua B. Bolten,

Acting United States Trade Representative.

Annex

Articles From Japan

9903.41.15

Automatic data processing machines, of the type of which constituent units are integrated in the same housing, whether finished or unfinished, which incorporate a microprocessor-based calculating mechanism, are capable of handling data words of at least 16-bits off the microprocessor, and are designed for use with a non-cathode ray tube (non-CRT) display unit, whether or not capable of use without an external power source (provided for in subheading 8471.20).

Automatic data processing machines, of the type of which the constituent units are separately housed, whether finished or unfinished, which incorporate a microprocessor-based calculating mechanism, are capable of handling data words of at least 16-bits off the microprocessor, designed for use while affixed to or placed on a table, desk, or similar place.

9903.41.20

Having a microprocessor-based calculating mechanism capable of directly handling memory of over 8 megabits (provided for in subheading 8471.91).

Rotary drills, not battery powered, with a chuck capacity of ½ inch or more, electropneumatic rotary and percussion hammers; and grinders, sanders, and polishers, belt sanders, and orbital and straight-line sanders), the foregoing which are elctromechanical tools for working in the hand with self-contained electric motor:

9903.41.30

Electropneumatic rotary and percussion hammers (provided for in subheading 8508.80).

[FR Doc. 91-18712 Filed 8-6-91; 8:45 am]

BILLING CODE 3190-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2515, Amdt. 2]

Iowa and Contiguous Counties in Minnesota and Wisconsin); Delaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with an amendment dated July 25, 1991, to the President's major disaster declaration of July 12, to include the counties of Greene, Hamilton, and Hancock in the State of Iowa as a disaster area as a result of damages caused by severe storms and flooding which occurred June 1-15, 1991.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Calhoun, Carroll, Dallas, Webster, and Worth in the State of Iowa may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

All other information remains the same, i.e., the termination date for filing applications for physical damage is September 11, 1991, and for economic injury until the close of business on April 13, 1992.

The economic injury number for the State of Iowa is 734200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 30, 1991.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91-18690 Filed 8-6-91; 8:45 am]

BILLING CODE 8025-01

DEPARTMENT OF STATE

[Public Notice 1440]

United States Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Study Group C Meeting

The Department of State announces that Study Group C (Telephone Network Operations) of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on August 29, 1991, at the Newark Airport Marriott Hotel, Newark International Airport, Newark, New Jersey 07114. The room will be posted in the lobby. The meeting will begin at 9:30 a.m. and end at 4 p.m.

The agenda for the August 29th meeting will include consideration of optical fiber and optical fiber system issues in preparation for the CCITT SG XV meeting in Geneva, Switzerland beginning November 11, 1991. Other matters relevant to the competence of Study Group C may be raised and considered.

Members of the general public may attend the meeting and join in the discussion subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. Prior to the meeting persons who plan to attend should so advise Ellen Bradley on (908) 234-8624.

Dated: July 12, 1991.

Earl S. Barbely,

Director, Telecommunications and Information Standards, Chairman U.S. CCITT National Committee.

[FR Doc. 91-18663 Filed 8-6-91; 8:45 am]

BILLING CODE 4710-01-M

[Public Notice 1442]

United States Organization for the International Telegraph and Telephone Consultative Committee (CCITT) Strategic Planning Group

The Department of State announces that the Ad Hoc Strategic Planning Group of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on August 30, 1991 in room 1408 from 2 p.m. to 4 p.m., Department of State, 2201 C Street, NW., Washington, DC 20520.

The purpose of the meeting will be to review the works and future activities of the various task forces. They are:

(a) CCITT Relationship to other standards organizations.

(b) ONA/ONP.

(c) ITU Structure and Function.

(d) Selling U.S. Positions Abroad.

(e) EDI.

Members of the general public may attend the meetings and join in the discussions, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the Office of Earl Barbely, Department of State, 202–647–2592 (fax 202–647–7407). The above includes government and non-government attendees. Notification should include Date of Birth and Social Security Number. All attendees must use the C Sreet entrance.

Dated: July 24, 1991.

Earl S. Barbely,

Director, Telecommunications and Information Standards, Chairman U.S. CCITT National Committee.

[FR Doc. 91–18664 Filed 8–6–91; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice 1441]

United States Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Study Group D Meeting

The Department of State announces that Study Group D of the U.S. Organizations for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on September 16, 1991, in Room 1207 and the Message Handling Service-Management Domain (MHS–MD) Ad Hoc Group will meet on September 17 and 18, 1991 in room 1912 from 9 a.m. to 5 p.m., Department of State, 2201 C Street, NW., Washington, DC 20520.

The purpose of the September meeting will be to review US contributions for the October meetings of Study Groups XVII and VIII, and to consider any other business within the scope of US Study Group D.

The meeting will also consider proposals for the reorganization of Study Groups. The September 17 and 18 meetings will continue the work of the MHS–MD Ad Hoc Group.

Members of the general public may attend the meetings and join in the discussions, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the Office of Gary Fereno, Department of State, 202–647–2592 (fax 202–647–7407). The above includes government and non-government attendees. Notification should include Date of Birth and Social Security Number. All attendees must use the C Street entrance.

Dated: July 18, 1991.

Earl S. Barbely,

Director, Telecommunications and Information Standards, Chairman U.S. CCITT National Committee.

[FR Doc. 91–18665 Filed 8–6–91; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice 1448]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea Working Group on Bulk Chemicals; Meeting

The Working Group on Bulk Chemicals of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 1 p.m. on August 22, 1991, in room 2415, at U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001. The purpose of the meeting is to finalize preparation for the 21st Session of the Subcommittee on Bulk Chemicals of the International Maritime Organization (IMO) which is scheduled for September 9–13, 1991, at the IMO Headquarters in London.

Among other things, the items of particular interest are:

a. Amendments and interpretation of the Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (BCH Code) and the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC Code).

b. Amendments and interpretation of the provisions of Annex II of the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78).

c. Amalgamation of the lists of hazardous liquid substances carried in bulk under the requirements of Annex II of MARPOL 73/78 and the IBC Code and the BCH Code.

d. Amendments and interpretation of the provisions of the Code of the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk (GC Code) and the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk (IGC Code).

e. Guidelines for technical assessment for intervention under the 1973 Intervention Protocol.

f. Vapor emission control systems.

g. Transboundary movement of wastes by sea.

h. Role of the human element in maritime casualties.

i. Air pollution from ships.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: CDR K.J. Eldridge, U.S. Coast Guard (G–MTH–1), 2100 Second Street, SW., Washington, DC 20593–0001 or by calling (202) 267–1217.

Dated: July 29, 1991.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 91–18644 Filed 8–6–91; 8:45 am]

BILLING CODE 4710-7-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Milwaukee, Racine, and Kenosha Counties, WI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for the proposed extension of the Lake Arterial in Milwaukee, Racine and Kenosha Counties, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Ms. Jacki Lawton, Environmental Coordinator, Federal Highway Administration, 4502 Vernon Boulevard, Madison, Wisconsin 53705–4905. Telephone (608) 264–5967. You may also contact Ms. Carol Cutshall, Director, Office of Environmental Analysis, Wisconsin Department of Transportation, 4802 Sheboygan Avenue, Madison, Wisconsin 53705. Telephone (608) 266–9626.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wisconsin Department of Transportation, will prepare an Environmental Impact Statement on a proposal to extend the Lake Arterial between East Layton Avenue in Milwaukee County, and State Trunk Highway (STH) 31 in Kenosha County, Wisconsin, a distance of about 36.5 km (22 miles).

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Dated: July 29, 1991.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 91–18644 Filed 8–6–91; 8:45 am]

BILLING CODE 4710–7–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Milwaukee, Racine, and Kenosha Counties, WI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for the proposed extension of the Lake Arterial in Milwaukee, Racine and Kenosha Counties, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Ms. Jacki Lawton, Environmental Coordinator, Federal Highway Administration, 4502 Vernon Boulevard, Madison, Wisconsin 53705–4905. Telephone (608) 264–5967. You may also contact Ms. Carol Cutshall, Director, Office of Environmental Analysis, Wisconsin Department of Transportation, 4802 Sheboygan Avenue, Madison, Wisconsin 53705. Telephone (608) 266–9626.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wisconsin Department of Transportation, will prepare an Environmental Impact Statement on a proposal to extend the Lake Arterial between East Layton Avenue in Milwaukee County, and State Trunk Highway (STH) 31 in Kenosha County, Wisconsin, a distance of about 36.5 km (22 miles).

The extension of the Lake Arterial south of Layton Avenue is being considered to relieve existing congestion on north-south arterials and to provide for projected traffic demand in the study corridor. Alternatives under consideration include: (1) Take no action; (2) construct a new roadway adjacent to the Chicago and North Western Railroad right-of-way that would join STH 31 south of the Racine-Kenosha County line; (3) widen STH 38 (Howell Avenue) along its present alignment with a connection to the railroad alignment between STH 100 (Ryan Road) and Five Mile Road; and (4) widen Pennsylvania Avenue along its present alignment with a connection to the railroad alignment near Oakwood Road. Study of the various build alternatives will include multimodal transit considerations.

Information describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed, or are known to have interest in this proposal. A series of public meetings will be held in the project corridor throughout data gathering and development of alternatives. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing. As part of the scoping process, an interagency coordination meeting will be held. Agencies having an interest in, or jurisdiction regarding the proposed action will be contacted regarding the date and location of the meeting.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA or the Wisconsin Department of Transportation at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: July 29, 1991.

Robert W. Cooper,

District Engineer, Madison, Wisconsin.

[FR Doc. 91–18666 Filed 8–6–91; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement; Pulaski and Saline Counties, Arkansas

AGENCY: Federal Highway Administration (FHWA), DOT

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Pulaski and Saline counties, Arkansas.

FOR FURTHER INFORMATION CONTACT: H.C. Wieland, Division Administrator, Federal Highway Administration, 3128 Federal Office Building, Little Rock, Arkansas 72201, or Lynn Malbrough, Ecologist II, Environmental Division, Arkansas State Highway and Transportation Department, P.O. Box 2261, Little Rock, Arkansas 72203, Telephone: (501) 569–2281.

SUPPLEMENTARY INFORMATION: FHWA, in cooperation with the Arkansas State Highway and Transportation Department will prepare an environmental impact statement (EIS) on a proposal to widen Interstate 30 from four lanes to six lanes and to construct interchange and frontage road modifications on this controlled access facility. The project will serve central Arkansas, including Pulaski and Saline Counties; plus interstate traffic utilizing Interstate 30. The proposed project extends along Interstate 30 from Geyer Springs Road in southwestern Little Rock, Arkansas to the Sevier Street interchange in Benton, Arkansas. The proposed interstate modifications will increase the capacity of Interstate 30 in southwestern Little Rock and Saline County. The proposed project will match an existing six-lane roadway section that extends from the Geyer Springs interchange to the interchange of Interstate 30 with Interstate 40. The proposed interchange modifications include the elimination of slip ramps on to the two-way frontage roads, resulting in a more effective separation of the interstate and frontage road traffic. These design modifications will improve the capacity and safety of this section of Interstate 30 and its frontage road system. The primary purpose of the exit ramp and frontage road modifications is to improve roadway safety. The approximate length of the proposed project is 18 miles.

Alternatives to be considered are: (1) The "Do-Nothing" Alternative where roads are constructed according to the regional plan with the exception of the proposed facility; (2) the "Two-way Frontage Roads" Alternative will include the Interstate 30 widening plus modification of the ramps and frontage roads to eliminate the slip ramps between the main lanes and the two-way frontage roads; (3) the "One-way Frontage Road" Alternative will include the Interstate 30 widening plus modification of the ramps and frontage roads to provide one-way traffic movement. Various design schemes may be studied to accomplish the design goal of two-way or one-way frontage road traffic movements under these two basic alternatives.

Letters describing the proposed action to solicit comments will be sent to appropriate Federal, state and local agencies, major Arkansas newspapers, and to private organizations, including chambers of commerce, conservation groups, and groups of individuals who have voiced project opposition or concern regarding significant project impacts. After the letters have been sent a formal scoping meeting will be held to allow local officials and agency representatives an opportunity to discuss the range of alternatives, impacts, and significant issues related to the proposed project. Following the scoping meeting a series of public involvement sessions will be held in a mobile trailer situated directly in the areas to be affected by the proposed project. A public hearing will be held to solicit comments from the public, local officials and affected Federal, state and local agencies. The project's draft EIS will be available for public and agency review and comment prior to and during the public hearing. Public notice will be given of the time and place of the hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Issued on: July 30, 1991.

Carl Kraehmer,

Environmental and Design Specialist, Little Rock, Arkansas.

[FR Doc. 91–18718 Filed 8–6–91; 8:45 am]

BILLING CODE 4910–22–M

Corrections

Federal Register

Vol. 56, No. 152

Wednesday, August 7, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 91-083]

Witchweed Regulated Areas

Correction

In rule document 91-15592 beginning on page 29889, in the issue of Monday, July 1, 1991, make the following corrections:

§ 301.80-2a [Corrected]

1. On page 28991, in the first column, in § 301.80-2a, in the fifth paragraph, in the second line, "southeast" should read "southwest".

2. On the same page, in the same column, in the same section, in the 11th paragraph, in the last line, after "0.1" insert "mile"; and in the 13th paragraph, in the second line, "U.S. Highway 24" should read "State Highway 24".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

[Docket No. 910512-1180]

Reef Fish Fishery of the Gulf of Mexico

Correction

In rule document 91-17505 beginning on page 33883 in the issue of Wednesday, July 24, 1991, make the following correction:

On page 33883, in the second column, in the fourth line, the EFFECTIVE DATE "August 23, 1991" should read "August 19, 1991".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 901231-1134]

Taking and Importing of Marine Mammals Incidental to Commercial Fishing Operations

Correction

In notice document 91-13877 appearing on page 26995 in the issue of Wednesday, June 12, 1991, make the following corrections:

On the same page in the third column, in the first full paragraph a portion of the text was omitted and should read as set forth below:

On March 25, 1991, (56 FR 12367), NMFS published notification in the **Federal Register** of the effective dates and the scope of the intermediary nation provisions that apply under section 101(a)(2)(C) of the Marine Mammal Protection Act. That notification specified that NMFS will adhere to the terms of the court-ordered embargo with respect to any measures applied to intermediary nations and, therefore, will request the U.S. Customs Service to require declarations from importers stating that imports of yellowfin tuna and products derived from yellowfin tuna are not harvested with purse seines in the ETP by the embargoed harvesting nation.

The countries of Costa Rica, France, Italy, Japan and Panama are believed to have recently imported yellowfin tuna or tuna products from Mexico. Importers are hereby notified that imports of yellowfin tuna or tuna products from these five nations must be accompanied by a statement declaring that the imported merchandise was not harvested with purse seines in the ETP by Mexican vessels. This declaration is in addition to the Yellowfin Tuna Certificate of Origin, SF370-1, also required at the time of entry.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TQ91-4-21-001]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

Correction

In notice document 91-17630 appearing on page 34060 in the issue of Thursday, July 25, 1991, make the following correction:

On the same page, in the first column, the Docket Number was omitted from the heading and should read as shown above.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP91-196-000]

Florida Gas Transmission Co.; Petition for Limited Waiver

Correction

In notice document 91-17631 beginning on page 34060 in the issue of Thursday, July 25, 1991, make the following correction:

On the same page, in the third column, the Docket Number was omitted from the heading and should read as shown above.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N-0280]

Drug Export; Human T-Lymphotropic Virus Type 1 (HTLV-1)

Correction

In notice document 91-17822 beginning on page 34205 in the issue of Friday, July 26, 1991, make the following correction:

On the same page, in the third column a portion of the subject heading was incorrect and should read as shown above.

BILLING CODE 1505-01-D

Federal Register
Vol. 56, No. 152
Wednesday, August 7, 1991

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[Docket No. 91N-0280]

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On the same page, in the third column a portion of the subject heading was incorrect and should read as shown above.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-930-01-4214-11; A-9706]

Expiration of Withdrawal and Opening of Land; Arizona; Correction

Correction

In notice document 91-16587 appearing on page 31961, in the issue of Friday, July 12, 1991, in the third column, in the last line, "NE½". should read, "NE¼".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-930-4214-10; NDM 79193]

Proposed Withdrawal and Opportunity for Public Meeting; North Dakota

Correction

In notice document 91-15719 beginning on page 30399, in the issue of Tuesday, July 2, 1991, make the following corrections:

1. On page 30399, in the first column, the docket number should read as set forth above.

2. On the same page, in the same column, in the **SUMMARY**, in the second line, "4,988,84" should read "4,988.84".

3. On the same page, in the second column, in the land description, under T.134 N.,R. 69 W., in the first line, after "SW¼;" remove the ".".

4. On the same page, in the same column, in the land description, under T.135 N., R. 69 W., in the first line, after "NE¼" insert a ".".

5. On the same page, in the third column, in the land description, under T. 159 N., R. 100 W., in the first line, after "SW¼" insert a ",".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 90-AWP-14]

Consolidation of Restricted Areas R-3104A and R-3104B Island of Kahoolawe, HI

Correction

In rule document 91-15959 beginning on page 30685, in the issue of Friday, July 5, 1991, make the following correction:

§ 73.31 [Corrected]

On page 30686, in the first column, in § 73.31, in the next to last paragraph, in the second line, "Monday and Friday" should read "Monday to Friday".

BILLING CODE 1505-01-D

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federal register

Wednesday
August 7, 1991

Part II

Environmental Protection Agency

Pesticide Reregistration; Outstanding Data Requirements for Certain List B Active Ingredients (Second Notice)

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ENVIRONMENTAL PROTECTION AGENCY

[OPP-34015; FRL 3930-6]

Pesticide Reregistration; Outstanding Data Requirements for Certain List B Active Ingredients (Second Notice)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended in 1988 establishes a five-phase process for the reregistration of pesticide products containing active ingredients "contained in any pesticide first registered before November 1, 1984." During Phase 1 the Environmental Protection Agency (the Agency) divided the active ingredients subject to reregistration into four lists; List B was published in the **Federal Register** (54 FR 22706) on May 25, 1989. FIFRA requires the Administrator during Phase 4 of reregistration to publish the outstanding data requirements identified for those active ingredients being supported for reregistration. The Agency published in the **Federal Register** (56 FR 6849) on February 20, 1991 the first 10 active ingredients on List B and their outstanding data requirements. This second Notice now lists the outstanding data requirements for 30 more active ingredients on List B. The remaining ones will be addressed in one or more additional notices to be published in the next several months.

FOR FURTHER INFORMATION CONTACT: By mail, Denise Greenway, Special Review and Reregistration Division (H-7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, Crystal Station 1, 2800 Crystal Drive, Arlington, VA 22202. Telephone No. (703) 308-8179.

SUPPLEMENTARY INFORMATION: This Notice identifies, pursuant to FIFRA section 4(f)(1)(B), the outstanding data requirements needed for reregistration of certain of the active ingredients on List B. That section also calls for the separate issuance of Data Call-In notices to registrants to obtain information satisfying these data requirements. The Agency has recently issued such Data Call-In notices to the appropriate registrants.

This SUPPLEMENTARY INFORMATION is divided into four units. Unit I provides background information on pesticide reregistration. Unit II discusses the requirements of section 4(f)(1)(B). Unit III describes the process used by the Agency in identifying outstanding data requirements. It also contains a table of the outstanding data requirements for each active ingredient. Unit IV describes the Data Call-In notices that have been issued to obtain data to satisfy the data requirements identified in this Notice.

I. Background

Section 4 of FIFRA as amended in 1988 required the Agency to conduct pesticide reregistration of older pesticides in five phases. In Phase 1, the Agency published Lists A, B, C, and D of pesticide active ingredients subject to reregistration. For Lists B, C, and D in Phase 2, registrants seeking reregistration had to identify for the Agency any data requirements which registrants believe would apply to their active ingredients, and indicate the ones that they thought were now satisfied. For those that were not satisfied, registrants had to indicate how they would fulfill the remaining data requirements necessary for the reregistration of their products. In Phase 3, these registrants summarized and in some cases reformatted studies that they believed were adequate and that they had previously submitted to the Agency. In Phase 4, the Agency is directed to review the materials submitted by registrants in Phases 2 and 3, and to identify the outstanding data requirements that need to be fulfilled in order for the Agency to determine whether or not pesticides containing particular active ingredients are eligible for reregistration. The Agency is further directed to issue Data Call-In notices to obtain data to satisfy these outstanding requirements. Finally, in Phase 5, the Agency must review the data submitted by registrants; determine whether pesticides containing particular active ingredients are eligible for reregistration; obtain product-specific information needed to determine whether particular products should be reregistered; and make final determinations on whether such products should be reregistered. The final determination on reregistration is to be based on whether a pesticide meets the standards of FIFRA section 3(c)(5), which prescribes the standards for initial registration of pesticides. If the Administrator determines that a pesticide should not be reregistered, section 4 directs the Administrator to take appropriate regulatory action.

Pursuant to FIFRA section 4(c)(2)(B) the Agency published in the **Federal Register** on May 25, 1989, a list of 229 chemicals (in 149 review cases) constituting List B of reregistration. The Agency then sent guidance on how to comply with Phase 2 of reregistration to all registrants of pesticides containing active ingredients on List B. Registrants were required by August 25, 1989, to inform EPA of their intent to seek or not to seek reregistration, to identify data requirements they believe applied to their active ingredients in their products, to identify the data requirements for which they have already submitted adequate data, and to commit to replace missing or inadequate data concerning the List B active ingredients contained in their products.

To assist registrants in complying with Phase 3, the Agency issued on December 24, 1989 the FIFRA Accelerated Reregistration —Phase 3 Technical Guidance (EPA No. 540/09-90-078). This document provides detailed instructions on: (i) Summarizing studies, (ii) reformatting studies, (iii) identifying adverse information, and (iv) identifying previously submitted studies that may not fully satisfy current requirements. To meet the requirements for Phase 3, registrants were required to submit summaries of previously submitted studies that they wished to rely on for reregistration. Additionally, for studies submitted prior to January 1, 1982, registrants had to submit a reformatted version of the study, if data were for certain toxicological and residue chemistry guidelines. Registrants were to certify that the raw data for the previously submitted studies were either in their possession, or in the possession of the Agency, or were readily accessible elsewhere. Registrants were to identify and submit any data considered under section 6(a)(2) to show an adverse effect of the pesticide. Also, registrants were to identify any other information they considered to be supportive of registration. And registrants had to commit to fill any new data gaps identified by them. FIFRA required that these actions be completed by registrants of products containing List B chemicals by May 25, 1990.

In Phase 4, the Agency has been conducting a review of the adequacy of the data submitted by registrants for active ingredients on List B during Phases 2 and 3 and in compliance with any Data Call-In notices previously issued under section 3(c)(2)(B) of FIFRA. The purpose of the Agency's review was to systematically identify all data requirements for active ingredients that, based on information available to the Agency at this time, are necessary for a determination of eligibility for reregistration. For many active ingredients, registrants may have already committed to meet some of those requirements but have not yet submitted the results of their studies to

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II. Outstanding Data Requirements

Section 4 (f)(1)(B) of FIFRA requires the Agency to publish this Notice of outstanding data requirements for each active ingredient on Reregistration List B. The Agency has been conducting a review of the information provided on all List B submissions on record for data adequacy and completeness, and has identified in this followup Notice a partial list of those chemicals with outstanding data requirements. Section 2(ff) of FIFRA defines outstanding data requirements as "a requirement for any study, information, or data that is necessary to make a determination under section 3(c)(5) and which study, information, or data — (A) has not been submitted to the Administrator; or (B) if submitted to the Administrator, the Administrator has determined must be resubmitted because it is not valid, complete, or adequate to make a determination under section 3(c)(5) and the regulations and guidelines issued under such section."

For purposes of the **Federal Register** notice, outstanding data requirements include all requirements identified by the Agency which have yet to be satisfied at the active ingredient level, before or pursuant to Phases 2, 3, and 4 of reregistration. If registrants committed during Phases 2 and 3 or pursuant to prior actions to submit data to fulfill certain data requirements, and the data have not yet been submitted, the Agency is identifying them as outstanding. Upon review of the completed studies submitted either in response to earlier Data Call-In notices or as part of the reregistration process, the Agency may need to call in some additional studies before a final determination on reregistration can be made.

As in the previous **Federal Register** notice, the following Table 1 provides a complete listing of the Guideline Reference Numbers (GRN) and corresponding titles for the data requirements referred to in this Notice.

TABLE 1.— STUDY TITLES AND GUIDELINE REFERENCE NUMBERS OF REREGISTRATION DATA REQUIREMENTS

Guideline Reference No.	Test of Study
61-1	Product Identification and Disclosure of Ingredients[1]
61-2(a)	Description of Beginning Materials and Manufacturing Process[2]
61-2(b)	Discussion of Formation of Impurities[3]
62-1	Preliminary Analysis[4]
62-2	Certification of Limits[5]
62-3	Analytical Methods to Verify Certified Limits[6]
Physical and Chemical Characteristics[7]	
63-2	Color
63-3	Physical State
63-4	Odor
63-5	Melting Point
63-6	Boiling Point
63-7	Density, Bulk Density, or Specific Gravity
63-8	Solubility
63-9	Vapor Pressure
63-10	Dissociation Constant
63-11	Octanol/Water Partition Coefficient
63-12	pH
63-13	Stability
63-14	Oxidizing or Reducing Action
63-15	Flammability
63-16	Explodability
63-17	Storage Stability
63-18	Viscosity
63-19	Miscibility
63-20	Corrosion Characteristics
63-21	Dielectric Breakdown Voltage
64-1	Submittal of Samples
Wildlife and Aquatic Organisms Data Requirements[8]	
71-1(a)	Acute Avian Oral Toxicity (LD50) in Bobwhite Quail or Mallard Duck
71-1(b)	Acute Avian Oral Toxicity (LD50) in Bobwhite Quail or Mallard Duck (Using Typical End-Use Product)
71-2(a)	Acute Avian Dietary Toxicity (LC50) in Bobwhite Quail
71-2(b)	Acute Avian Dietary Toxicity (LC50) in Mallard Duck
71-3	Wild Mammal Toxicity Test
71-4(a)	Avian Reproductive Toxicity in Bobwhite Quail
71-4(b)	Avian Reproductive Toxicity in Mallard Duck
71-5(a)	Simulated Terrestrial Field Study
71-5(b)	Actual Terrestrial Field Study
72-1(a)	Fish Toxicity in Bluegill Sunfish
72-1(b)	Fish Toxicity in Bluegill Sunfish (Using Typical End-Use Product)
72-1(c)	Fish Toxicity in Rainbow Trout

TABLE 1.— STUDY TITLES AND GUIDELINE REFERENCE NUMBERS OF REREGISTRATION DATA REQUIREMENTS—Continued

Guideline Reference No.	Test of Study
72-1(d)	Fish Toxicity in Rainbow Trout (Using Typical End- Use Product)
72-2(a)	Invertebrate Toxicity Freshwater LC50 (*Daphnia* Preferred)
72-2(b)	Invertebrate Toxicity Freshwater LC50 (*Daphnia* Preferred-Using Typical End-Use Product)
72-3(a)	Toxicity to Estuarine and Marine Organisms (in Fish)
72-3(b)	Toxicity to Estuarine and Marine Organisms (in Mollusks)
72-3(c)	Toxicity to Estuarine and Marine Organisms (in Shrimp)
72-3(d)	Toxicity to Estuarine and Marine Organisms (in Fish - Using Typical End-Use Product)
72-3(e)	Toxicity to Estuarine and Marine Organisms (in Mollusks - Using Typical End-Use Product)
72-3(f)	Toxicity to Estuarine and Marine Organisms (in Shrimp - Using Typical End-Use Product)
72-4(a)	Early Life Stage in Fish
72-4(b)	Life Cycle in Aquatic Invertebrates (*Daphnia*/Mysid)
72-5	Fish Life Cycle Study
72-6	Aquatic Organism Accumulation Study
72-7(a)	Simulated Field Tests for Aquatic Organisms
72-7(b)	Actual Field Tests for Aquatic Organisms
Toxicology Data Requirements[9]	
81-1	Acute Oral Toxicity in the Rat
81-2	Acute Dermal Toxicity
81-3	Acute Inhalation Toxicity in the Rat
81-4	Primary Eye Irritation in the Rabbit
81-5	Primary Dermal Irritation
81-6	Dermal Sensitization
81-7	Acute Delayed Neurotoxicity in the Hen
82-1(a)	90-Day Feeding Study in the Rodent
82-1(b)	90-Day Feeding Study in the Non-Rodent
82-2	21-Day Dermal
82-3	90-Day Subchronic Dermal
82-4	90-Day Inhalation in Rat
82-5(a)	90-Day Neurotoxicity in Hen
82-5(b)	90-Day Neurotoxicity in the Mammal (Rat Preferred)
83-1(a)	Chronic Feeding Study in the Rodent
83-1(b)	Chronic Feeding Study in the Non-Rodent
83-2(a)	Oncogenicity Study in the Rat
83-2(b)	Oncogenicity Study in the Mouse
83-3(a)	Teratogenicity in the Rat
83-3(b)	Teratogenicity in the Rabbit
83-4	2-Generation Reproduction Study in the Rat
83-5	Chronic Feeding/Oncogenicity in the Rat
84-2(a)	Gene Mutation
84-2(b)	Structural Chromosome Aberration
84-4	Other Genotoxic Effects
85-1	General Metabolism
85-2	Dermal Penetration
86-1	Domestic Animal Safety
Plant Protection Data Requirements[10]	
Tier 1	
122-1(a)	Seed Germination and Seedling Emergence
122-1(b)	Vegetative Vigor
122-2	Aquatic Plant Growth
Tier 2	
123-1(a)	Seed Germination and Seedling Emergence
123-1(b)	Vegetative Vigor
123-2	Aquatic Plant Growth
Tier 3	
124-1	Terrestrial Field
124-2	Aquatic Field
Reentry Protection Data Requirements[11]	
132-1(a)	Foliar Residue Dissipation
132-1(b)	Soil Residue Dissipation
133-3	Dermal Passive Dosimetry Exposure
133-4	Inhalation Passive Dosimetry Exposure
Non-Target Insect Data Requirements[12]	
141-1	Honey Bee Acute Contact (LD50)
141-2	Honey Bee Toxicity of Residues on Foliage
141-5	Field Testing for Pollinators
Biochemical Pesticides Data Requirements[13]	
(a) Product Analysis Data Requirements	
151-10	Product Identity
151-11	Manufacturing Process
151-12	Discussion of Formation of Unintentional Ingredients
151-13	Analysis of Samples
151-15	Certification of Limits

MBERS OF REREGISTRATION DATA REQUIREMENTS—Continued

Test of Study
Fish Toxicity in Rainbow Trout (Using Typical End- Use Product)
Invertebrate Toxicity Freshwater LC50 (*Daphnia* Preferred)
Invertebrate Toxicity Freshwater LC50 (*Daphnia* Preferred-Using Typical End-Use Product)
Toxicity to Estuarine and Marine Organisms (in Fish)
Toxicity to Estuarine and Marine Organisms (in Mollusks)
Toxicity to Estuarine and Marine Organisms (in Shrimp)
Toxicity to Estuarine and Marine Organisms (in Fish - Using Typical End-Use Product)
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Life Cycle in Aquatic Invertebrates (*Daphnia*/Mysid)
Fish Life Cycle Study
Aquatic Organism Accumulation Study
Simulated Field Tests for Aquatic Organisms
Actual Field Tests for Aquatic Organisms
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Acute Inhalation Toxicity in the Rat
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Primary Dermal Irritation
Dermal Sensitization
Acute Delayed Neurotoxicity in the Hen
90–Day Feeding Study in the Rodent
90–Day Feeding Study in the Non-Rodent
21–Day Dermal
90–Day Subchronic Dermal
90–Day Inhalation in Rat
90–Day Neurotoxicity in Hen
90–Day Neurotoxicity in the Mammal (Rat Preferred)
Chronic Feeding Study in the Rodent
Chronic Feeding Study in the Non-Rodent
Oncogenicity Study in the Rat
Oncogenicity Study in the Mouse
Teratogenicity in the Rat
Teratogenicity in the Rabbit
2-Generation Reproduction Study in the Rat
Chronic Feeding/Oncogenicity in the Rat
Gene Mutation
Structural Chromosome Aberration
Other Genotoxic Effects
General Metabolism
Dermal Penetration
Domestic Animal Safety
Seed Germination and Seedling Emergence
Vegetative Vigor
Aquatic Plant Growth
Seed Germination and Seedling Emergence
Vegetative Vigor
Aquatic Plant Growth
Terrestrial Field
quatic Field
Foliar Residue Dissipation
Soil Residue Dissipation
Dermal Passive Dosimetry Exposure
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TABLE 1.— STUDY TITLES AND GUIDELINE REFERENCE NUMBERS OF REREGISTRATION DATA REQUIREMENTS—Continued

Guideline Reference No.	Test of Study
151–16	Analytical Methods
151–17(a)	Color
151–17(b)	Physical State
151–17(c)	Odor
151–17(d)	Melting Point
151–17(e)	Boiling Point
151–17(f)	Density, Bulk Density, Specific Gravity
151–17(g)	Solubility
151–17(h)	Vapor Pressure
151–17(i)	pH
151–17(j)	Stability
151–17(k)	Flammability
151–17(l)	Storage Stability
151–17(m)	Viscosity
151–17(n)	Miscibility
151–17(o)	Corrosion Characteristics
151–17(p)	Octanol/Water Partition Coefficient
151–18	Submittal of Samples
(b) Residue Data Requirements	
153–3(a)	Chemical Identity
153–3(b)	Directions for Use
153–3(c)	Nature of the Residue (plants)
153–3(d)	Nature of the Residue (livestock)
153–3(e)	Residue Analytical Method
153–3(f)	Magnitude of the Residue (crop field trials)
153–3(g)	Magnitude of the Residue (processed food/feed)
153–3(h)	Magnitude of the Residue (meat/milk/poultry/eggs)
153–3(i)	Magnitude of the Residue (potable water)
153–3(j)	Magnitude of the Residue (fish)
153–3(k)	Magnitude of the Residue (irrigated crops)
153–3(l)	Magnitude of the Residue (food handling)
153–3(m)	Reduction of Residue
153–3(n)	Proposed Tolerance
153–3(o)	Reasonable Grounds in Support of the Petition
(c) Toxicology Data Requirements	
Tier 1	
152–10	Acute Oral Toxicity
152–11	Acute Dermal Toxicity
152–12	Acute Inhalation
152–13	Primary Eye Irritation
152–14	Primary Dermal Irritation
152–15	Hypersensitivity Study
152–16	Hypersensitivity Incidents
152–17	Studies to Detect Genotoxicity
152–18	Immunotoxicity
152–20	90–Day Feeding
152–21	90–Day Dermal
152–22	90–Day Inhalation
152–23	Teratogenicity
Tier II	
152–19	Mammalian Mutagenicity Tests
152–24	Immune Response
Tier III	
152–26	Chronic Exposure
152–29	Oncogenicity
(d) Nontarget Organism, Fate and Expression Data Requirements	
Tier I	
154–6	Avian Acute Oral
154–7	Avian Dietary
154–8	Freshwater Fish LC50
154–9	Freshwater Invertebrate LC50
154–10	Nontarget Plant Studies
154–11	Nontarget Insect Testing
Tier II	
155–4(a)	Volatility Study (Lab)
155–4(b)	Volatility Study (Field)
155–5	Dispenser–Water Leaching
155–6	Adsorption–Desorption
155–7	Octanol–Water Partition
155–8	U.V. Absorption
155–9	Hydrolysis
155–10	Aerobic Soil Metabolism
155–11	Aerobic Aquatic Metabolism
155–12	Soil Photolysis
155–13	Aquatic Photolysis
Tier III	
154–12	Terrestrial Wildlife Testing

TABLE 1.— STUDY TITLES AND GUIDELINE REFERENCE NUMBERS OF REREGISTRATION DATA REQUIREMENTS—Continued

Guideline Reference No.	Test of Study
154–13	Aquatic Animal Testing
154–14	Nontarget Plant Studies
154–15	Nontarget Insect Testing
Environmental Fate Data Requirements[14]	
160–5	Chemical Identity (See also 61–1)
161–1	Hydrolysis
161–2	Photodegradation in Water
161–3	Photodegradation on Soil
161–4	Photodegradation in Air
162–1	Aerobic Soil Metabolism Study
162–2	Anaerobic Soil Metabolism Study
162–3	Anaerobic Aquatic Metabolism Study
162–4	Aerobic Aquatic Metabolism Study
163–1	Leaching and Adsorption/Desorption
163–2	Laboratory Volatility Study
163–3	Field Volatility Study
164–1	Soil Field Dissipation Study
164–2	Aquatic Sediment Field Dissipation Study
164–3	Forestry Field Dissipation Study
164–4	Combinations and Tank Mixes
164–5	Long Term Soil Dissipation Study
165–1	Confined Rotational Crop Study
165–2	Field Rotational Crop Study
165–3	Accumulation in Irrigated Crops
165–4	Accumulation in Fish
165–5	Accumulation in Aquatic Non-Target Organisms
Groundwater Studies Data Requirements[15]	
166–1	Small Scale Prospective Groundwater Monitoring Study
166–2	Small Scale Retrospective Groundwater Monitoring Study
166–3	Large Scale Retrospective Groundwater Monitoring Study
Residual Chemistry Data Requirements[16]	
171–2	Chemical Identity
171–3	Directions For Use
171–4(a)	Nature of Residue in Plants
171–4(b)	Nature of Residue in Livestock
171–4(c)	Residue Analytical Method (Plants)
171–4(d)	Residue Analytical Method (Animals)
171–4(e)	Storage Stability
171–4(f)	Magnitude of the Residue in Potable Water
171–4(g)	Magnitude of the Residue in Fish
171–4(h)	Magnitude of the Residue in Irrigated Crops
171–4(i)	Magnitude of the Residue in Food Handling
171–4(j)	Magnitude of the Residue in Meat/Milk/Poultry/Eggs (Feeding/Dermal Treatment)
171–4(k)	Crop Field Trials
171–4(l)	Magnitude of the Residue in Processed Food/Feed
171–5	Reduction of Residues
171–6	Proposed Tolerance
171–7	Reasonable Grounds in Support of Petition
171–13	Analytical Reference Standard
Spray Drift Data Requirements[17]	
201–1	Droplet Size Spectrum
202–1	Drift Field Evaluation

[1] 40 CFR 158.155: Product Composition; Subdivision D, Product Chemistry: NTIS PB83–153890; Addendum 1, NTIS PB88–191705

[2] 40 CFR 158.160: Description of Materials Used to Produce the Product; 40 CFR 158.162: Description of Production Process; 40 CFR 158.165: Description of Formulation Process; Subdivision D, Product Chemistry: NTIS PB83–153890; Addendum 1, NTIS PB88–191705.

[3] 40 CFR 158.167: Discussion of Formation of Impurities; Subdivision D, Product Chemistry: NTIS PB83–153890; Addendum 1, NTIS PB88–191705.

[4] 40 CFR 158.170: Preliminary Analysis; Subdivision D, Product Chemistry: NTIS PB 83–153890; Addendum 1, NTIS PB88–191705.

[5] 40 CFR 158.175: Certified Limits; Subdivision D, Product Chemistry: NTIS PB83–153890; Addendum 1, NTIS PB88–191705.

[6] 40 CFR 158.180: Enforcement Analytical Method; Subdivision D, Product Chemistry: NTIS PB83–153890; Addendum 1, NTIS PB88–191705.

[7] 40 CFR 158.190: Physical and Chemical Characteristics; Subdivision D, Product Chemistry: NTIS PB83–153890; Addendum 1, NTIS PB88–191705.

[8] 40 CFR 158.490; Subdivision E, Hazard Evaluation: Wildlife and Aquatic Organisms, NTIS PB83–153908; Addendum 1, NTIS PB86–248176; Addendum 2, PB87–207700; Addendum 3, NTIS PB88–117288.

[9] 40 CFR 158.340; Subdivision F, Hazard Evaluation: Human and Domestic Animals, NTIS PB83–153916 (old); NTIS PB86–108958 (revised); Addendum 1, NTIS PB86–248184; Addendum 2, NTIS PB88–162292; Addendum 3, NTIS PB88–161179; Addendum 4, NTIS PB88–162227; Addendum 5, NTIS PB88–162219; Addendum 6, NTIS PB89–124077; Addendum 7, NTIS PB89–124085; Position Document, Maximum Tolerated Dose, NTIS PB88–116738.

[10] 40 CFR 158.540; Subdivision J, Hazard Evaluation: Non-Target Plants, NTIS PB83–153940.

[11] 40 CFR 158.390: Exposure; Subdivision K, Reentry Protection: NTIS PB83–153940.

[12] 40 CFR 158.590; Subdivision L, Hazard Evaluation: Non-Target Insect, NTIS PB83–153957; Addendum 1, NTIS PB88–117296.

[13] 40 CFR 158.690: Biochemical Pesticides Data Requirements; Subdivision M, Biorational Pesticides: NTIS PB83–153965.

[14] 40 CFR 158.290; Subdivision N, Chemistry: Environmental Fate, NTIS PB83–153973; Addendum 1, NTIS PB86–247848; Addendum 2, NTIS PB87–208393; Addendum 3, NTIS PB88–159892; Addendum 4, NTIS PB88–159900; Addendum 5, NTIS PB88–161187; Addendum 6, NTIS PB88–161195; Addendum 7, NTIS PB88–191721; Addendum 8, NTIS PB88–191739.

[15] Pesticide Assessment Guidelines for groundwater studies are being developed; for further information, contact EPA's Office of Pesticide Programs, Environmental Fate and Effects Division, Environmental Fate and Groundwater Branch.

[16] 40 CFR 158.240; Subdivision O, Residue Chemistry: NTIS PB83–153961; Addendum 1, NTIS PB86–203734; Addendum 2, NTIS PB86–248192; Addendum 3, NTIS PB87–208641; Addendum 4, NTIS PB88–117270; Addendum 5, NTIS PB88–124003; Addendum 6, NTIS PB88–191713; Addendum 7, NTIS PB89–124598; Addendum 8, NTIS PB89–124606.

[17] 40 CFR 158.440; Subdivision R, Pesticide Spray Drift Evaluation: NTIS PB84–189216.

For further information and descriptions regarding specific data requirements, criteria for testing, and general guidance on data acceptability, consult the FIFRA Accelerated Reregistration—Phase 3 Technical Guidance document (December 24, 1989), and the Pesticide Assessment Guidelines available from the National Technical Information Service (NTIS), Attn: Order Desk, 5285 Port Royal Road, Springfield, VA 22161 (Tel: 703-487-4650).

III. Partial Listing of List B Active Ingredients Outstanding Data Requirements

The pesticide reregistration effort under section 4 has proved to be a monumental undertaking requiring significant effort and resources from both the Agency and the pesticide industry. The Agency received approximately 200 List B Phase 3 submissions for review of data requirements under Phase 4. The amount of data submitted by registrants was voluminous, and differed widely by active ingredient, the number of registrants supporting an ingredient, and the number and type of summaries and reformatted studies. In total this group of submissions contained some 5000 summaries, reformatted studies, and complete studies, and a similar number of study waiver requests that had to be reviewed and acted upon by the Agency.

For a variety of reasons EPA's issuance of the reregistration data requirements for active ingredients on List B was delayed beyond the statutory deadline of October 24, 1990. To fulfill its commitments in Phase 4 the Agency decided to publish a series of **Federal Register** notices and issue Data Call-In notices for groups of active ingredients as their outstanding data requirements are identified. The first **Federal Register** notice which contained 10 List B active ingredients and their outstanding data requirements was published on February 20, 1991. This second Notice contains 30 additional active ingredients and their unfulfilled data requirements.

The 149 List B cases involving 229 active ingredients, originally published in the **Federal Register** in May 1989, have been reduced to 105 cases and 141 active ingredients as of this date. Of these, 130 active ingredients in 102 cases are presently on the Phase 4 reregistration schedule. An additional 11 active ingredients in 7 cases previously unsupported in Phase 2 are now supported, and will be on a later reregistration schedule. Products containing the 88 unsupported active ingredients have been cancelled.

The following Table 2 contains 30 List B active ingredients with data requirements that are unfulfilled by registrants at this time.

TABLE 2.—OUTSTANDING DATA REQUIREMENTS FOR LIST B ACTIVE INGREDIENTS

Case No.	Chemical No.	Chemical Name	Outstanding Data Requirements(By Guideline No.)
2005	000701	Acrolein	61–1, 61–2(a), 61–2(b), 62–1, 62–2, 62–3, 63–6, 71–1(a), 72–1(a), 72–1(c), 72–2(a), 72–3(a), 72–3(b), 72–3(c), 72–4(a), 72–4(b), 72–5, 81–6, 83–4, 84–4, 85–1, 123–2, 161–2, 162–3, 162–4, 163–1, 164–2, 171–2, 171–4(a), 171–4(b), 171–4(c), 171–4(d), 171–4(e), 171–4(f), 171–4(g), 171–4(h), 233–x*, 234–x*
2030	084301	Butyl-*N*-ethyl-a,a,a-trifluoro-2,6-dinitro-*p*-toluidine	61–1, 61–2(a), 61–2(b), 62–1, 62–2, 62–3, 63–9, 63–11, 71–4(a), 71–4(b), 72–1(b), 72–1(d), 72–2(a), 72–2(b), 82–1(b), 82–2, 83–1(a), 83–1(b), 83–2(a), 83–3(b), 83–4, 122–1(b), 160–5, 161–1, 162–3, 164–1, 165–1, 171–2, 171–4(a), 171–4(b), 171–4(c), 171–4(e), 171–4(k), 171–4(l), 201–1, 202–1
2035	009801	*S*-(*O,O*-Diisopropyl phosphorodithioate) ester of *N*-(2-mercaptoethyl)benzenesulfonamide.	61–1, 63–7, 71–4(a), 71–4(b), 72–3(a), 72–3(b), 72–3(c), 81–7, 81–8*, 82–7, 82–2, 82–5(b), 83–1(a), 83–1(b), 83–2(a), 83–2(b), 83–3(b), 83–4, 84–2(b), 84–4, 85–1, 85–4*, 161–3, 163–1, 164–1, 165–1, 165–4, 171–4(a), 171–4(b), 171–4(c), 171–4(e), 171–4(k), 201–1, 202–1
2100	067707	2-((*p*-Chlorophenyl)phenylacetyl)-1,3-indandione	62–1, 62–2, 63–8, 63–9, 63–10, 63–11, 63–12, 71–3, 72–1(a), 72–1(c), 72–2(a), 81–1, 81–4, 82–1(a), 82–4, 83–4, 84–4, 132–1(a), 133–3, 133–4, 162–4, 163–2, 164–2, 164–3, 164–5, 165–1, 165–3, 165–4
2125	041301	*S*-ethyl *N*-ethylcyclohexanecarbamothioate	71–2(b), 71–4(a), 71–4(b), 82–2, 83–2(b), 83–3(b), 85–1, 161–2, 162–2, 162–3, 163–1, 163–2, 165–1, 165–4, 171–4(a), 171–4(b), 171–4(d), 171–4(j), 171–4(k), 171–4(l)
2145	074801	*S,S,S*-Tributyl phosphorotrithioate	72–2(b), 72–3(a), 72–3(b), 72–3(c), 81–1, 81–2, 81–3, 81–5, 82–2, 82–4, 82–5(a), 83–1(a), 83–1(b), 83–2(a), 83–4, 85–1, 85–2, 132–1(a), 133–3, 133–4, 162–1, 162–2, 162–3, 164–1, 165–4, 171–4(a), 171–4(b), 171–4(c), 171–4(d), 171–4(e), 171–4(j), 171–4(k), 171–4(l), 201–1, 202–1, 231–x*, 232–x*

TABLE 2.—OUTSTANDING DATA REQUIREMENTS FOR LIST B ACTIVE INGREDIENTS—Continued

Case No.	Chemical No.	Chemical Name	Outstanding Data Requirements(By Guideline No.)
2160	110902	Methyl 2-(4-(2,4-dichlorophenoxy)phenoxy) propanoate	62-1, 63-8, 63-10, 63-13, 71-4(a), 71-4(b), 72-4(a), 72-5, 81-4, 83-2(a), 83-4, 85-2, 132-1(a), 133-3, 133-4, 163-1, 164-1, 165-1, 165-4, 171-4(a), 171-4(b), 171-4(c), 171-4(d), 171-4(e), 171-4(j), 171-4(k), 171-4(l)
2375	109101	*N,N*-Dimethylpiperidinium chloride	61-1, 61-2(a), 61-2(b), 62-1, 62-2, 62-3, 63-11, 72-1(a), 72-1(c), 72-2(a), 81-3, 82-1(a), 83-1(a), 83-2(a), 83-2(b), 83-4, 122-1(b), 161-3, 162-2, 164-1, 165-1, 171-4(a), 171-4(b), 171-4(d), 171-4(e), 171-4(j), 171-4(k), 171-4(l), 201-1, 202-1
2380	051704	Sodium 2-mercaptobenzothiazolate	61-2(a), 61-2(b), 62-1, 63-5, 63-13, 71-1(a), 71-2(a), 72-1(c), 72-2(a), 82-1(a), 82-3, 83-1(a), 83-2(a), 83-2(b), 83-3(b), 83-4, 85-1, 85-2
2380	051705	Zinc 2-mercaptobenzothiazolate	61-2(a), 61-2(b), 62-3, 63-13, 71-1(a), 71-2(a), 72-1(c), 72-2(a), 82-1(a), 82-3, 83-3(a), 84-2(a), 84-2(b), 84-4
2395	013802	Disodium methanearsonate	61-1, 61-2(a), 61-2(b), 62-1, 62-2, 62-3, 63-5, 63-6, 63-7, 63-10, 63-11, 63-12, 63-13, 71-1(a), 71-2(a), 71-2(b), 72-1(a), 72-1(c), 72-2(a), 72-3(a), 72-3(b), 72-3(c), 81-1, 81-2, 81-3, 81-4, 81-5, 81-6, 82-1(b), 82-2, 83-2(b), 83-3(a), 83-4, 85-1, 123-1(a), 123-1(b), 123-2, 132-1(a), 133-3, 133-4, 141-1, 160-5, 161-1, 161-2, 161-3, 162-1, 162-3, 162-4, 164-1, 164-2, 164-3, 165-1, 165-3, 171-2, 171-4(a), 171-4(b), 171-4(c), 171-4(d), 171-4(e), 171-4(j), 171-4(k), 171-4(l), 201-1, 202-1, 231-x°, 232-x°
2395	013803	Monosodium methanearsonate	61-1, 61-2(a), 61-2(b), 62-2, 62-3, 63-2, 63-3, 63-4, 63-5, 63-6, 63-7, 63-8, 63-9, 63-11, 63-12, 63-13, 72-2(a), 72-3(a), 72-3(b), 72-3(c), 81-1, 81-2, 81-3, 81-4, 81-5, 81-6, 82-2, 83-1(b), 83-2(b), 83-3(a), 83-4, 85-1, 132-1(a), 132-1(b), 133-3, 133-4, 161-1, 161-2, 161-3, 162-1, 162-2, 162-3, 162-4, 164-1, 164-2, 164-3, 165-1, 165-3, 165-4, 171-4(a), 171-4(b), 171-4(c), 171-4(d), 171-4(e), 171-4(j), 171-4(k), 171-4(l), 201-1, 202-1, 231-x°, 232-x°
2395	013806	Calcium methanearsonate	61-1, 61-2(a), 61-2(b), 62-1, 62-2, 62-3, 63-2, 63-3, 63-4, 63-5, 63-6, 63-7, 63-8, 63-9, 63-10, 63-11, 63-12, 63-13, 71-1(a), 71-2(a), 71-2(b), 72-1(a), 72-1(c), 72-2(a), 81-1, 81-2, 81-3, 81-4, 81-5, 81-6, 82-2, 83-1(a), 83-1(b), 83-2(a), 83-2(b) 83-3(a), 85-1, 123-1(a), 123-1(b), 123-2, 132-1(a), 133-3, 133-4, 141-1, 160-5, 161-1, 161-2, 161-3, 162-1, 162-2, 162-3, 162-4, 164-1, 164-2, 164-3, 165-1, 165-4, 171-2, 171-4(a), 171-4(b), 171-4(c), 171-4(d), 171-4(e), 171-4(j), 201-1, 202-1, 231-x°, 232-x°
2400	106001	2-(3,4-Dichlorophenyl)-4-methyl-1,2,4-oxadiazolidine-3,5-dione	61-1, 61-2(a), 61-2(b), 62-1, 62-2, 62-3, 63-2, 63-3, 63-8, 63-9, 63-10, 63-11, 63-13, 72-3(a), 72-3(b), 72-3(c), 81-3, 83-1(a), 83-2(a), 83-3(a), 83-3(b), 83-4, 84-2(b), 160-5, 161-2, 161-3, 162-1, 162-3, 164-1, 165-1, 171-2, 171-4(a), 171-4(b), 171-4(c), 171-4(d), 171-4(e), 171-4(j), 171-4(k), 171-4(l), 201-1, 202-1
2450	103001	*N,N*-Diethyl-2-(1-naphthalenyloxy)propionamide	63-8, 71-4(a), 71-4(b), 81-3, 82-2, 83-1(a), 83-2(a), 83-2(b), 83-3(a), 83-3(b),

NTS FOR LIST B ACTIVE INGREDIENTS—Continued

	Outstanding Data Requirements(By Guideline No.)
	62-1, 63-8, 63-10, 63-13, 71-4(a), 71-4(b), 72-4(a), 72-5, 81-4, 83-2(a), 83-4, 85-2, 132-1(a), 133-3, 133-4, 163-1, 164-1, 165-1, 165-4, 171-4(a), 171-4(b), 171-4(c), 171-4(d), 171-4(e), 171-4(j), 171-4(k), 171-4(l)
	61-1, 61-2(a), 61-2(b), 62-1, 62-2, 62-3, 63-11, 72-1(a), 72-1(c), 72-2(a), 81-3, 82-1(a), 83-1(a), 83-2(a), 83-2(b), 83-4, 122-1(b), 161-3, 162-2, 164-1, 165-1, 171-4(a), 171-4(b), 171-4(d), 171-4(e), 171-4(j), 171-4(k), 171-4(l), 201-1, 202-1
	61-2(a), 61-2(b), 62-1, 63-5, 63-13, 71-1(a), 71-2(a), 72-1(c), 72-2(a), 82-1(a), 82-3, 83-1(a), 83-2(a), 83-2(b), 83-3(b), 83-4, 85-1, 85-2
	61-2(a), 61-2(b), 62-3, 63-13, 71-1(a), 71-2(a), 72-1(c), 72-2(a), 82-1(a), 82-3, 83-3(a), 84-2(a), 84-2(b), 84-4
	61-1, 61-2(a), 61-2(b), 62-1, 62-2, 62-3, 63-5, 63-6, 63-7, 63-10, 63-11, 63-12, 63-13, 71-1(a), 71-2(a), 71-2(b), 72-1(a), 72-1(c), 72-2(a), 72-3(a), 72-3(b), 72-3(c), 81-1, 81-2, 81-3, 81-4, 81-5, 81-6, 82-1(b), 82-2, 83-2(b), 83-3(a), 83-4, 85-1, 123-1(a), 123-1(b), 123-2, 132-1(a), 133-3, 133-4, 141-1, 160-5, 161-1, 161-2, 161-3, 162-1, 162-3, 162-4, 164-1, 164-2, 164-3, 165-1, 165-3, 171-2, 171-4(a), 171-4(b), 171-4(c), 171-4(d), 171-4(e), 171-4(j), 171-4(k), 171-4(l), 201-1, 202-1, 231-x°, 232-x°
	61-1, 61-2(a), 61-2(b), 62-2, 62-3, 63-2, 63-3, 63-4, 63-5, 63-6, 63-7, 63-8, 63-9, 63-11, 63-12, 63-13, 72-2(a), 72-3(a), 72-3(b), 72-3(c), 81-1, 81-2, 81-3, 81-4, 81-5, 81-6, 82-2, 83-1(b), 83-2(b), 83-3(a), 83-4, 85-1, 132-1(a), 132-1(b), 133-3, 133-4, 161-1, 161-2, 161-3, 162-1, 162-2, 162-3, 162-4, 164-1, 164-2, 164-3, 165-1, 165-3, 165-4, 171-4(a), 171-4(b), 171-4(c), 171-4(d), 171-4(e), 171-4(j), 171-4(k), 171-4(l), 201-1, 202-1, 231-x°, 232-x°
	61-1, 61-2(a), 61-2(b), 62-1, 62-2, 62-3, 63-2, 63-3, 63-4, 63-5, 63-6, 63-7, 63-8, 63-9, 63-10, 63-11, 63-12, 63-13, 71-1(a), 71-2(a), 71-2(b), 72-1(a), 72-1(c), 72-2(a), 81-1, 81-2, 81-3, 81-4, 81-5, 81-6, 82-2, 83-1(a), 83-1(b), 83-2(a), 83-2(b) 83-3(a), 85-1, 123-1(a), 123-1(b), 123-2, 132-1(a), 133-3, 133-4, 141-1, 160-5, 161-1, 161-2, 161-3, 162-1, 162-2, 162-3, 162-4, 164-1, 164-2, 164-3, 165-1, 165-4, 171-2, 171-4(a), 171-4(b), 171-4(c), 171-4(d), 171-4(e), 171-4(j), 201-1, 202-1, 231-x°, 232-x°
one	61-1, 61-2(a), 61-2(b), 62-1, 62-2, 62-3, 63-2, 63-3, 63-8, 63-9, 63-10, 63-11, 63-13, 72-3(a), 72-3(b), 72-3(c), 81-3, 83-1(a), 83-2(a), 83-3(a), 83-3(b), 83-4, 84-2(b), 160-5, 161-2, 161-3, 162-1, 162-3, 164-1, 165-1, 171-2, 171-4(a), 171-4(b), 171-4(c), 171-4(d), 171-4(e), 171-4(j), 171-4(k), 171-4(l), 201-1, 202-1
	63-8, 71-4(a), 71-4(b), 81-3, 82-2, 83-1(a), 83-2(a), 83-2(b), 83-3(a), 83-3(b),

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TABLE 2.—OUTSTANDING DATA REQUIREMENTS FOR LIST B ACTIVE INGREDIENTS—Continued

Case No.	Chemical No.	Chemical Name	Outstanding Data Requirements(By Guideline No.)
			85-1, 161-1, 161-3, 162-1, 162-2, 162-3, 165-1, 165-2, 171-4(a), 171-4(b), 171-4(d), 171-4(e), 171-4(j), 171-4(k), 171-4(l)
2460	056702	Nicotine	63-2, 63-3, 63-4, 63-5, 63-6, 63-7, 63-8, 63-9, 63-10, 63-11, 63-12, 63-13, 71-1(a), 71-2(a), 72-1(c), 72-2(a), 81-2, 81-3, 81-4, 82-1(a), 82-1(b). 82-2, 83-3(a), 84-2(a), 84-2(b), 84-4, 132-1(a), 132-1(b), 133-3, 133-4, 161-1, 162-1, 163-1, 163-2, 171-4(a), 171-4(b), 171-4(c), 171-4(d), 171-4(e), 171-4(j), 171-4(k), 171-4(l), 233-x°, 234-x°
2460	056703	Nicotine sulfate	61-1, 61-2(a), 61-2(b), 62-1, 62-2, 62-3, 63-2, 63-3, 63-4, 63-5, 63-6, 63-7, 63-8, 63-9, 63-10, 63-11, 63-12, 63-13, 71-1(a), 71-2(a), 72-1(c), 72-2(a), 81-2, 81-3, 81-4, 82-1(a), 82-1(b), 82-2, 83-3(a), 84-2(a), 84-2(b), 84-4, 132-1(a), 132-1(b), 133-3, 133-4, 161-1, 161-2, 161-3, 162-1, 162-2, 163-1, 171-2, 171-4(a), 171-4(b), 171-4(c), 171-4(d), 171-4(e), 171-4(j), 171-4(k), 171-4(l)
2460	056704	Tobacco dust	61-1, 61-2(a), 61-2(b), 62-1, 62-2, 62-3, 63-2, 63-3, 63-4, 63-5, 63-7, 63-8, 63-9, 63-10, 63-11, 63-12, 63-13, 71-1(a), 71-2(a), 72-1(c), 72-2(a), 160-5, 171-2
2465	056301	4-Nitrophenol	61-2(a), 61-2(b), 63-13, 71-1(a), 71-2(a), 71-2(b), 72-1(a), 72-1(c), 72-2(a), 81-1, 81-2, 81-3, 81-4, 81-5, 81-6, 82-2, 82-3, 83-1(a), 83-2(b), 83-3(b), 83-4, 84-2(a), 84-2(b), 84-4, 85-1, 160-5, 171-2
2495	054101	6-Methyl-2,3-quinoxalinedithiol cyclic *S,S*-dithiocarbonate	61-1, 61-2(b), 71-1(b), 71-4(a), 71-4(b), 72-1(a), 72-1(c), 72-2(a), 72-2(b), 72-3(b), 72-4(a), 72-6, 81-1, 82-1(b), 82-2, 83-1(a), 83-1(b), 83-2(a), 83-2(b), 83-3(b), 85-1, 85-2, 122-1(a), 122-1(b), 122-2, 160-5, 162-3, 163-2, 164-1, 165-1, 165-4, 171-2, 171-4(b), 171-4(e), 171-4(j), 171-4(k), 171-4(l), 201-1, 202-1
2500	041403	*S*-Propyl butylethylthiocarbamate	71-1(a), 81-8°, 82-2, 83-2(b), 83-4, 85-1, 123-1(a), 123-1(b), 123-2, 132-1(a), 133-3, 133-4, 161-2, 161-3, 162-1, 162-2, 162-3, 163-2, 165-1, 171-2, 171-4(a), 171-4(b), 171-4(c), 171-4(j), 171-4(k), 171-4(l), 201-1, 202-1, 231-x°, 232-x°
2560	042501	Propylene oxide	61-2(a), 61-2(b), 62-1, 62-2, 62-3, 63-3, 63-4, 63-6, 63-7, 63-8, 63-9, 63-10, 63-11, 63-12, 63-13, 81-1, 81-2, 81-3, 82-1(a), 82-1(b), 82-4, 83-3(a), 83-3(b), 83-4, 84-2(a), 84-2(b), 84-4, 85-1, 171-2, 171-4(a), 171-4(e), 171-4(k), 171-4(l), 233-x°, 234-x°
2570	069601	5-Amino-4-chloro-2-phenyl-3(2H)-pyridazinone	61-1, 61-2(a), 61-2(b), 62-1, 62-2, 62-3, 63-7, 63-8, 63-10, 63-13, 82-2, 83-1(a), 83-1(b), 83-2(a), 83-2(b), 83-3(a), 83-4, 85-1, 161-2, 161-3, 162-1, 163-1, 164-1, 165-1, 165-2, 171-4(a), 171-4(b), 171-4(c), 171-4(d), 171-4(e), 171-4(j), 171-4(k), 171-4(l)
2610	009901	3-Chloro-*p*-toluidine hydrochloride	62-1, 63-11, 63-12, 71-1(a), 71-2(a), 72-1(a), 72-1(c), 72-2(a), 81-6, 82-3, 83-3(a), 84-4, 85-2, 161-2, 165-4, 171-4(b), 171-4(d), 171-4(e), 171-4(l)
2680	102001	Dimethyl ((1,2-phenylene)bis(iminocarbonothioyl))bis(carbamate).	71-2(b), 71-4(a), 71-4(b), 72-1(c), 72-2(a), 72-3(a), 72-3(b), 72-3(c), 82-1(a), 82-1(b), 82-2, 83-1(a), 83-1(b), 83-2(a), 83-2(b),

TABLE 2.—OUTSTANDING DATA REQUIREMENTS FOR LIST B ACTIVE INGREDIENTS—Continued

Case No.	Chemical No.	Chemical Name	Outstanding Data Requirements(By Guideline No.)
			83–4, 85–1, 122–1(a), 122–1(b), 122–2, 161–3, 163–1, 164–1, 165–1, 165–4, 171–4(a), 171–4(b), 171–4(c), 171–4(d), 171–4(e), 171–4(j), 171–4(k), 171–4(l)
2700	109901	1-(4-Chlorophenoxy)-3,3-dimethyl-1-(1H-1,2,4-triazol-1-yl)-2-butanone.	81–2(a), 82–3, 63–11, 63–13, 71–1(a), 71–4(a), 71–4(b), 72–4(a), 72–4(b), 82–2, 83–1(a), 83–2(a), 84–4, 85–1, 132–1(a), 133–3, 133–4, 141–1, 161–1, 161–2, 161–3, 162–3, 163–1, 164–4, 165–1, 171–4(a), 171–4(b), 171–4(c), 171–4(e), 171–4(k), 171–4(l)
2735	041404	*S*-Propyl dipropylthiocarbamate	71–2(a), 71–2(b), 72–3(a), 72–3(b), 72–3(c), 81–8*, 82–7*, 83–3(b), 122–2, 132–1(a), 132–1(b), 133–3, 133–4, 161–2, 162–3, 163–2, 165–1, 171–4(a), 171–4(b), 171–4(d), 171–4(e), 171–4(j), 171–4(k), 171–4(l), 201–1, 202–1, 231–x*, 232–x*
2755	112701	3-(3-(4-Bromo-(1,1'-biphenyl)-4-yl)-1,2,3,4-tetrahydro-1-napthalenyl)-4-hydroxycoumarin.	63–2, 63–3, 63–4, 63–6, 63–7, 63–8, 63–9, 63–10, 63–11, 63–13, 71–3, 71–5(a), 71–5(b), 72–1(a), 72–1(b), 72–1(c), 72–1(d), 72–2(a), 72–2(b), 81–1, 81–2, 81–3, 81–4, 81–5, 82–2, 83–3(a), 83–3(b), 84–2(b), 85–1, 85–2, 86–1, 161–1, 162–1, 163–1, 164–1
2760	112001	3-(3-(4'-Bromo-(1,1'-biphenyl)-4-yl)-3-hydroxy-1-phenylpropyl)-4-hydroxycoumarin.	62–3, 63–2, 63–3, 63–4, 63–5, 63–7, 63–8, 63–9, 63–10, 63–11, 63–13, 81–1, 81–3, 81–4, 81–6, 82–1(a), 82–2, 85–1, 86–1, 160–5, 161–1, 162–1, 163–1, 171–2
2825	[illegible]	Calcium 2-isovaleryl-1,3-indandione	62–1, 63–2, 63–3, 63–4, 63–5, 63–6, 63–7, 63–8, 63–9, 63–10, 63–11, 63–12, 63–13, 71–1(a), 71–2(a), 71–2(b), 71–3, 72–1(a), 72–1(c), 72–2(a), 81–1, 81–2, 81–3, 81–4, 81–5, 81–6, 82–1(a), 83–3(a), 84–2(a), 84–2(b), 84–4, 85–1, 86–1, 160–5, 161–1, 162–1, 163–1, 171–2

Key: * Special Studies; Guidelines for the following studies are presently being developed (for more information, contact the person named in the Notice):

81–8 Acute Neurotoxicity Screening-Rat.
82–7 90 Day Neurotoxicity Screening-Rat.
85–4 Ocular Toxicity Study-Dog.
231–x Estimation of Dermal Exposure, Outdoor Sites.
232–x Estimation of Respiratory Exposure, Outdoor Sites.
233–x Estimation of Dermal Exposure, Indoor Sites.
234–x Estimation of Respiratory Exposure, Indoor Sites.

This list contains the currently supported active ingredients reviewed between January 22 and May 21, 1991, and their outstanding data requirements identified as Guideline Reference Numbers. In a number of instances, registrants have already committed to satisfy many of these requirements, with the remaining requirements being subject to the recently issued Data Call-In notices. Of these, some may have been partially satisfied by studies that can be upgraded or supplemented with additional data. The data needs for specific crops are not presented here; instead the overall Guideline Reference Number is listed if any crop specific data are outstanding, even though some individual crop data requirements under it may be in fact satisfied.

IV. Phase 4 List B Data Call-In Notices

Under FIFRA section 3(c)(2)(B) the Agency has issued to affected registrants Phase 4 List B Data Call-In notices for the outstanding data requirements that registrants have not previously committed to satisfy for the active ingredients listed on Table 2 of this Notice. Registrants with unfilled data requirements for their active ingredients must respond to the Agency within 90 days of receipt of their Data Call-In Notice to express their intent to satisfy the remaining data requirements. The data requirements identified in the Data Call-In notices must be submitted within the time schedule specified in them. Additional Data Call-In notices for the remaining List B chemicals not covered by this followup Notice will be sent to the affected registrants, coinciding with the publication of one or more additional **Federal Register** notices in the next several months.

Dated: July 24, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.3

[FR Doc. 91–18382 Filed 8–6–91; 8:45 am]

BILLING CODE 6560-50-F

TS FOR LIST B ACTIVE INGREDIENTS—Continued

	Outstanding Data Requirements(By Guideline No.)
	63–4, 65–1, 122–1(a), 122–1(b), 122–2, 161–3, 163–1, 164–1, 165–1, 165–4, 171–4(a), 171–4(b), 171–4(c), 171–4(d), 171–4(e), 171–4(j), 171–4(k), 171–4(l)
	61–2(a), 62–3, 63–11, 63–13, 71–1(a), 71–4(a), 71–4(b), 72–4(a), 72–4(b), 82–2, 83–1(a), 83–2(a), 84–4, 85–1, 132–1(a), 133–3, 133–4, 141–1, 161–1, 161–2, 161–3, 162–3, 163–1, 164–4, 165–1, 171–4(a), 171–4(b), 171–4(c), 171–4(e), 171–4(k), 171–4(l)
	71–2(a), 71–2(b), 72–3(a), 72–3(b), 72–3(c), 81–8*, 82–7*, 83–3(b), 122–2, 132–1(a), 132–1(b), 133–3, 133–4, 161–2, 162–3, 163–2, 165–1, 171–4(a), 171–4(b), 171–4(d), 171–4(e), 171–4(j), 171–4(k), 171–4(l), 201–1, 202–1, 231–x*, 232–x*
	63–2, 63–3, 63–4, 63–6, 63–7, 63–8, 63–9, 63–10, 63–11, 63–13, 71–3, 71–5(a), 71–5(b), 72–1(a), 72–1(b), 72–1(c), 72–1(d), 72–2(a), 72–2(b), 81–1, 81–2, 81–3, 81–4, 81–5, 82–2, 83–3(a), 83–3(b), 84–2(b), 85–1, 85–2, 86–1, 161–1, 162–1, 163–1, 164–1
)-4-	62–3, 63–2, 63–3, 63–4, 63–5, 63–7, 63–6, 63–9, 63–10, 63–11, 63–13, 81–1, 81–3, 81–4, 81–6, 82–1(a), 82–2, 85–1, 86–1, 160–5, 161–1, 162–1, 163–1, 171–2
	62–1, 63–2, 63–3, 63–4, 63–5, 63–6, 63–7, 63–8, 63–9, 63–10, 63–11, 63–12, 63–13, 71–1(a), 71–2(a), 71–2(b), 71–3, 72–1(a), 72–1(c), 72–2(a), 81–1, 81–2, 81–3, 81–4, 81–5, 81–6, 82–1(a), 83–3(a), 84–2(a), 84–2(b), 84–4, 85–1, 86–1, 160–5, 161–1, 162–1, 163–1, 171–2

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Data Call-In Notices

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Dated: July 24, 1991.

Douglas D. Campt,
Director, Office of Pesticide Programs.3

[FR Doc. 91–18382 Filed 8–6–91; 8:45 am]
BILLING CODE 6560-50-F

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federal register

Wednesday
August 7, 1991

Part III

Department of Education

Upward Bound Program, Math and Science Initiative, Proposed Funding Priority for Fiscal Year 1992; Notice

DEPARTMENT OF EDUCATION

Upward Bound Program

AGENCY: Department of Education.

ACTION: Notice of Proposed Funding Priority for Fiscal Year 1992.

SUMMARY: The Secretary proposes a funding priority for fiscal year 1992 for a special Math and Science Initiative to be supported under the Upward Bound program. The Secretary takes this action to focus Federal financial assistance on an identified national need. The priority is intended to increase the number of secondary school students who will consider pursuing postsecondary study in math and/or science.

DATES: Comments must be received on or before September 6, 1991.

ADDRESSES: Comments should be addressed to Jowava M. Leggett, Director, Division of Student Services, Office of Postsecondary Education, Room 3066, Regional Office Building #3, 400 Maryland Avenue, SW., Washington, DC 20202–5249. Telephone (202) 708–4804.

FOR FURTHER INFORMATION CONTACT: Goldia Hodgdon, Division of Student Services, U.S. Department of Education, 400 Maryland Avenue SW. (Room 3060 ROB–3), Washington, DC 20202–5249. Telephone (202) 708–4804. Deaf and hearing impaired individuals may call 1-800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The Upward Bound Program is designed to generate skills and motivation necessary for success in education beyond high school among low-income and potential first-generation college students who are enrolled in high school or who are veterans seeking to prepare themselves for entry into postsecondary programs.

The Secretary proposes to set aside a portion of the funds that will be available for the Upward Bound Program in fiscal year 1992 for a special Math and Science Initiative and to establish an absolute priority for the competition for funding under the initiative.

The Secretary will announce the final priority in a notice in the **Federal Register**. The final priority will be determined by responses to this notice, available funds, and other considerations of the Department. The Secretary particularly solicits comments from grantees with currently funded Upward Bound math and science projects. Funding of particular projects depends on the availability of funds, the nature of the final priority, and the quality of the applications received. The publication of this proposed priority does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priority does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of final priority.

Authorization for the Upward Bound program is scheduled to expire at the end of the fiscal year 1991. Congress and the Administration are considering reauthorization, on which action may not be completed prior to fiscal year 1992. Absent substantive legislative changes in the Upward Bound program, and if funds are made available to the program, we propose the following priority.

Proposed Priority

Under 34 CFR 75.105(c)(3), the Secretary proposes to set aside funds and give an absolute preference to applications that meet the following proposed priority under the set aside for fiscal year 1992. The Secretary proposes to fund under the set aside only applications that meet this absolute priority:

Under the priority for the Math and Science Initiative competition, funds would be used to establish regional centers, each of which would offer an intensified math and science curriculum along with other curricula for a six-week period during the summer to students who meet the criteria for participation in Upward Bound, without regard to 34 CFR 645.10(b). Projects must establish a cooperative relationship with other Federal and non-Federal science and mathematics teaching and learning activities, if any, in their areas, including (1) activities funded under the Eisenhower Mathematics and Science Education programs, (2) activities and programs funded by the National Science Foundation (NSF), and (3) if there are any Federal laboratories or science facilities in the area, with those facilities participating in the Secretary of Energy's initiative to relate those facilities to elementary and secondary school science teaching. Examples of cooperative relationships include student identification and recruitment, combined staff and program enrichment activities, sharing of teaching strategies and approaches, and joint evaluation or project activities.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding this priority.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 3060, Regional Office Building 3, 7th and D Streets SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations: 34 CFR part 645.

Authority: 20 U.S.C. 1070d–1a.

Dated: June 5, 1991.

Lamar Alexander,

Secretary of Education.

[FR Doc. 91–18710 Filed 8–6–91; 8:45 am]

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Dated: June 5, 1991.

Lamar Alexander,
Secretary of Education.

[FR Doc. 91–18710 Filed 8–6–91; 8:45 am]

BILLING CODE 4000-01-M

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federal register

Wednesday
August 7, 1991

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 333

Topical Acne Drug Products for Over-the-Counter Human Use; Amendment of Tentative Final Monograph; Notice of Proposed Rulemaking

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 333

[Docket No. 81N-114A]

RIN 0905-AA06

Topical Acne Drug Products for Over-the-Counter Human Use; Amendment of Tentative Final Monograph

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking amending the tentative final monograph (proposed rule) for over-the-counter (OTC) topical acne drug products. This amendment reclassifies the topical acne active ingredient benzoyl peroxide from its previously proposed monograph status (Category I) to "more-data-needed" (Category III) status. FDA is issuing this notice of proposed rulemaking after considering data and information on the safety of benzoyl peroxide. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments, objections, or requests for oral hearing on the proposed regulation before the Commissioner of Food and Drugs by October 7, 1991. New Data by August 7, 1992. Comments on the new data by October 7, 1992. Written comments on the agency's economic impact determination by October 7, 1991.

ADDRESSES: Written comments, objections, new data, or requests for oral hearing to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 1-23, 12420 Parklawn Drive, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 23, 1982 (47 FR 12430) FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC topical acne drug products, together with the recommendations of the Advisory Review Panel on OTC Antimicrobial (II) Drug Products (Antimicrobial II Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by June 21, 1982. Reply comments in response to comments filed in the initial comment period could be submitted by July 21, 1982.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were placed on display in the Dockets Management Branch (address above), after deletion of a small amount of trade secret information.

The agency's proposed regulation, in the form of a tentative final monograph, for OTC topical acne drug products was published in the **Federal Register** of January 15, 1985 (50 FR 2172). Interested persons were invited to file by May 15, 1985 written comments, objections, or requests for oral hearing before the Commissioner of Food and drugs regarding the proposal. New data could have been submitted until January 15, 1986, and comments on the new data until March 17, 1986.

The OTC drug procedural regulations (21 CFR 330.10) now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph. Accordingly, FDA will no longer use the terms "Category I" (generally recognized as safe and effective and not misbranded), "Category II" (not generally recognized as safe and effective or misbranded), and "Category III" (available data are insufficient to classify as safe and effective, and further testing is required) at the final monograph stage, but will use instead the terms "monograph conditions" (old Category I) and "nonmonograph conditions" (old Categories II and III). This document retains the concepts of Categories I, II, and III at this amended tentative final monograph stage.

In response to the proposed rule on OTC topical acne drug products, two drug manufacturers associations submitted comments on the safety of benzoyl peroxide. Copies of the comments received are on public display in the Dockets Management Branch (address above). Additional information on benzoyl peroxide that has come to the agency's attention since publication of the proposed rule is also on public display in the Dockets Management Branch.

The Antimicrobial II Panel in its advance notice of proposed rulemaking (47 FR 12430 at 12475) and the agency in its tentative final monograph (50 FR 2172 at 2181) proposed monograph status for the ingredient benzoyl peroxide for OTC topical use in the treatment of acne. However, subsequently the agency became aware of a 1981 study by Slage, et al. (Ref. 1) that raised a safety concern regarding benzoyl peroxide as a tumor promoter in mice and a 1984 study by Kurokawa, et al. (Ref. 2) that reported benzoyl peroxide to have tumor initiation potential. Neither of these studies was discussed by the Panel or by the agency in the **Federal Register** publications identified above.

Subsequently also, a drug manufacturers association submitted data and information in support of the safety of benzoyl peroxide (Refs. 3 through 6). FDA has evaluated these data and information and determined that the studies show that benzoyl peroxide is a skin tumor promoter in more than one strain of mice as well as in other laboratory animals tested. To date, topical studies (which have shown only tumor promotion) have been of short duration (about 52 weeks), which the agency considers insufficient to rule out the potential for carcinogenicity. Although extensive animal data and human epidemiology data are available, the agency is unable to state that benzoyl peroxide is generally recognized as safe at this time. The agency has determined that further study is necessary to adequately assess the tumorigenic potential of benzoyl peroxide. The agency believes that studies of 18 to 24 months in two species of animals (mouse and rat) are needed to rule out the possibility of carcinogenicity. While the agency finds that additional studies are needed to address concerns about benzoyl peroxide's possible tumor initiating and promotion potential, the agency is unable to state that this ingredient is unsafe for OTC use while these studies are being conducted. The agency acknowledges that it may take several years for these studies to be conducted and analyzed, and for a final determination to be made on benzoyl peroxide's safety. Because animal studies have shown that benzoyl peroxide is a skin tumor promoter and the relevance to humans is unknown, the agency is concerned about continued OTC marketing availability pending resolution of these unresolved safety issues. The agency specifically invites comments on this issue. The agency plans to discuss its concerns and comments received on the agency's conclusions on the data and on continued marketing of benzoyl peroxide with one of its advisory committees at a public meeting to be held in the near future. Notice of this

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the ingredient benzoyl peroxide for OTC topical use in the treatment of acne. However, subsequently the agency became aware of a 1981 study by Slage, et al. (Ref. 1) that raised a safety concern regarding benzoyl peroxide as a tumor promoter in mice and a 1984 study by Kurokawa, et al. (Ref. 2) that reported benzoyl peroxide to have tumor initiation potential. Neither of these studies was discussed by the Panel or by the agency in the **Federal Register** publications identified above.

Subsequently also, a drug manufacturers association submitted data and information in support of the safety of benzoyl peroxide (Refs. 3 through 6). FDA has evaluated these data and information and determined that the studies show that benzoyl peroxide is a skin tumor promoter in more than one strain of mice as well as in other laboratory animals tested. To date, topical studies (which have shown only tumor promotion) have been of short duration (about 52 weeks), which the agency considers insufficient to rule out the potential for carcinogenicity. Although extensive animal data and human epidemiology data are available, the agency is unable to state that benzoyl peroxide is generally recognized as safe at this time. The agency has determined that further study is necessary to adequately assess the tumorigenic potential of benzoyl peroxide. The agency believes that studies of 18 to 24 months in two species of animals (mouse and rat) are needed to rule out the possibility of carcinogenicity. While the agency finds that additional studies are needed to address concerns about benzoyl peroxide's possible tumor initiating and promotion potential, the agency is unable to state that this ingredient is unsafe for OTC use while these studies are being conducted. The agency acknowledges that it may take several years for these studies to be conducted and analyzed, and for a final determination to be made on benzoyl peroxide's safety. Because animal studies have shown that benzoyl peroxide is a skin tumor promoter and the relevance to humans is unknown, the agency is concerned about continued OTC marketing availability pending resolution of these unresolved safety issues. The agency specifically invites comments on this issue. The agency plans to discuss its concerns and comments received on the agency's conclusions on the data and on continued marketing of benzoyl peroxide with one of its advisory committees at a public meeting to be held in the near future. Notice of this meeting will appear in a future issue of the **Federal Register**.

Based on the above, the agency is amending the tentative final monograph for OTC topical acne drug products to reclassify benzoyl peroxide from Category I to Category III. As a result, in subpart D, it is being proposed that the ingredient benzoyl peroxide be removed from § 333.310 (21 CFR 333.310) and that the warning proposed for products containing benzoyl peroxide in § 333.350(c)(2) (21 CFR 333.350(c)(2)) be removed. The agency will publish its final decision on benzoyl peroxide in a future issue of the **Federal Register**.

This amendment of the tentative final monograph concerns only the ingredient benzoyl peroxide and labeling related to this specific ingredient. It does not concern any other OTC topical acne active ingredients or the labeling of products containing such ingredients. The agency advises that a final decision on benzoyl peroxide, if it is included in the final monograph for OTC topical acne drug products at a later date, will be effective 12 months after the date of publication of the final decision in the **Federal Register**. If a safety problem is identified for benzoyl peroxide, resulting in it being a nonmonograph condition, a shorter deadline may be set for removal of that ingredient from OTC drug products. On or after the effective date of any final rule pertaining to benzoyl peroxide, no OTC drug product containing benzoyl peroxide may be initially introduced or initially delivered for introduction into interstate commerce unless benzoyl peroxide is included in the final monograph for OTC topical acne drug products or, alternatively, the product is the subject of an approved application, if one is required for marketing.

I. The Agency's Conclusions on the Data

Since publication of the tentative final monograph for OTC topical acne drug products on January 15, 1985, the agency has evaluated substantial additional data on benzoyl peroxide. The data included in vitro and in vivo studies, epidemiological studies, and studies published in the literature. The agency's evaluation of these data follows.

A. Initiation/Promotion Studies

In a study by Sharrat, et al. (Ref. 7) albino mice or rats, 25 per dose per sex (strain and age not specified), were fed 0, 28, 280, or 2,800 milligrams/kilograms (mg/kg) benzoyl peroxide in a commercial diet with a commercial flour bleach consisting of 18 percent benzoyl peroxide, 78 percent calcium sulfate, and 4 percent magnesium carbonate. Controls received untreated flour in the diet. Test diets were fed to mice and rats for 80 and 120 weeks, respectively.

At 104 weeks, the number of surviving male/female rats was 12/14, 12/7, 13/9, and 11/11, respectively. No significant intergroup difference in tumor incidence between groups was observed; however, the incidence of testicular atrophy was higher in the male rats receiving 2,800 mg/kg benzoyl peroxide. At study termination, the number of surviving male/female mice per dose was 3/9, 10/11, 0/9, and 2/11, respectively. No significant difference in tumor incidence between groups was observed.

Using another protocol, groups of albino mice, 25 per sex (strain and age not specified), were fed a diet containing 2,800 mg/kg benzoyl peroxide and received simultaneous subcutaneous injection of 50 mg benzoyl peroxide in 20 percent starch solution. Mice were also painted 6 days per week with approximately 50 mg benzoyl peroxide from a 50 percent suspension of benzoyl peroxide in flour paste. At study termination (80 weeks), 3 males and 11 females survived. No intergroup difference in tumor incidence was observed.

Additional groups of albino mice, 25 per sex (strain and age not specified), were fed a diet containing 2,800 mg/kg benzoyl peroxide and received simultaneous subcutaneous injections of 120 mg benzoyl peroxide in 20 percent starch solution for 120 weeks. At 104 weeks, 14 males and 10 females were surviving. The overall tumor incidence was similar in the control and benzoyl peroxide groups.

In another protocol, albino mice, 25 per sex (age and strain not specified), received a single subcutaneous injection of 50 mg of a 20 percent suspension of benzoyl peroxide in starch solution or starch solution alone. The mice were sacrificed at 80 weeks. Male/female survivors were 9/7 in the test group and 0/6 in the control group. There were no tumors found in any group.

In a similar protocol with albino rats, after a single subcutaneous injection of 120 mg benzoyl peroxide, animals were followed for 120 weeks and then sacrificed. Mortality was checked at 26, 52, 78, and 104 weeks. Survivors at 104 weeks included 10 males and 9 females in the test group and 16 males and 17 females in the control group. No intergroup differences were observed in tumor incidence.

Hueper (Ref. 8) performed a 24-month controlled study on Bethesda (National Institutes of Health) black rats (20 males and 15 females). Animals received a subcutaneous implantation of 50 mg benzoyl peroxide in a gelatin capsule at the nape of the neck. Controls (21 males and 14 females) received a silicone rubber implant without benzoyl peroxide. The rats were followed for 24 months. Tumors were found at the implantation site in 10 control animals but in none of the benzoyl-peroxide-treated animals. Tumors found at other sites in test and control rats were reported to be spontaneous and not dose-related.

A vehicle controlled study by Poirier, et al. (Ref. 9) included 20 male rats (age not specified) in each group. Intramuscular injections of 2.9 mg benzoyl peroxide in 0.2 milliliters (mL) trioctanoin were given into the right hind leg twice a week for 12 weeks. No mortality or tumors were found during the 14-month study.

Saffiotti and Shubik (Ref. 10) used 0.5 percent benzoyl peroxide in acetone applied dermally to 21 female Swiss mice (age not specified) twice a week for 80 weeks. A second group of mice received a similar dose of benzoyl peroxide for 3 weeks, and after 1 week the mice were treated with 5 percent croton oil (in mineral oil) twice a week for 67 weeks. No skin tumors were observed.

In a study by Van Duuren, et al. (Ref. 11) the backs of 30 male ICR/Ha mice (8 weeks old) were painted 3 times per week with approximately 1,000 mg benzoyl peroxide in 5 percent benzene. Controls consisted of 150 mice divided into 4 groups and treated with benzene alone. The median survival time for benzoyl-peroxide-treated animals was 292 days, and 262 to 412 days for the control groups. One test mouse developed a skin papilloma, while 11 skin neoplasms (including 1 carcinoma) were observed in control mice. No benzoyl-peroxide-related increase in skin tumors was observed.

Sharrat, et al. (Ref. 7) conducted a study in which albino mice, 25 per sex, received dermal application of a 50 percent benzoyl peroxide suspension in flour paste (approximately 50 mg benzoyl peroxide per application) on the back of the neck six times per week for 80 weeks. Controls were painted with flour paste only. No skin neoplasms were found and overall tumor incidence did not differ significantly among groups.

Slaga, et al. (Ref. 1) conducted a 52-week study using female SENCAR mice (7 to 9 weeks old). Thirty mice were used per dose of benzoyl peroxide. One group of animals received a single dermal painting of 10 nanomole 7, 12-methylbenz(a)anthracene in 0.2 mL acetone followed by topical application of 0, 1, 10, 20, or 40 mg benzoyl peroxide in acetone twice a week. A second group of animals received only the various doses of benzoyl peroxide in acetone 2 times per week, while a third group received a single application of the 0 to 40 mg doses of benzoyl peroxide in acetone followed 1 week later by twice-weekly applications of 2 micrograms (µg) 12-O-tetradecanoylphorbol 13-acetate in acetone for 52 weeks.

In the first group, the incidence of papillomas at week 30 was as follows: Control (1/28), 1 mg benzoyl peroxide (9/29), 10 mg benzoyl peroxide (20/28), 20 mg benzoyl peroxide (21/27), 40 mg benzoyl peroxide (20/24). At the end of the study, the number of carcinomas was as follows: Control (0/28), 1 mg benzoyl peroxide (1/29), 10 mg benzoyl peroxide (6/28), 20 mg benzoyl peroxide (12/27), 40 mg benzoyl peroxide (10/24). In the second group studied, while no intergroup differences in papillomas or carcinomas were observed, the single application of benzoyl peroxide produced marked epidermal hyperplasia and a large number of dark basal keratinocytes. The group treated with only benzoyl peroxide showed no carcinomas or intergroup differences in the incidence of papillomas. It was inferred that benzoyl peroxide was not a complete carcinogen in SENCAR mice.

Klein-Szanto and Slaga (Ref. 12) gave female SENCAR mice (7 to 9 weeks old) a single topical application of 10, 20, or 40 mg of benzoyl peroxide in 0.2 mL acetone (16 to 20 mice per dose). Controls (12 mice) received only acetone. On days 1, 2, 4, 6, 8, and 10, groups of 2 to 4 mice were sacrificed. Skin sections were examined to count the number of darkly stained basal cells versus total number of basal cells. Beginning 48 hours after treatment, the mid- and high-level dosed animals demonstrated a marked incidence of epidermal hyperplasia characterized by acanthosis with hyperorthokeratinization. Within 2 to 4 days after application of benzoyl peroxide, the epidermis exhibited a 5-fold increase in dark cells. The agency considers these results as indicating a potent tumor-promoting ability of benzoyl peroxide.

Kurokawa, et al. (Ref. 2) conducted a 52-week study involving 15 to 20 female SENCAR mice (6 weeks old) that received a single application of 20 nanomole 7, 12-methylbenz(a)-anthracene in 0.2 mL acetone or acetone alone. One week later, the mice received an application of 10 percent benzoyl peroxide (20 mg), 12-O-tetradecanoylphorbol 13-acetate (2 µg), or acetone. These applications were continued for 51 weeks. Another group of animals received twice weekly applications of 10 percent benzoyl peroxide or acetone for 51 weeks. The frequency and distribution of neoplasms was as follows:

SKIN TUMOR PROMOTION TESTS IN FEMALE SENCAR MICE INITIATED WITH DMBA [1]

Group	Chemical	No. of affective mice	No. of mice with skin tumors at week				Maximum No. of skin tumors per mouse	No. of mice with squamous cell carcinoma (percent)	No. of mice with epidermal hyperplasia (percent)
			13	26	38	52			
2	Benzoyl peroxide	20	7	16	19	[2] 20	[2] 15.6	[2] [3] 18 (90)	[2] 20 (100)
7	TPA [4]	20	20	20	20	20	[2] 40.1	[2] [3] 20 (100)	[2] 20 (100)
8	Acetone	15	0	0	0	0	0	0	0

[1] 7, 12-methylbenz(a)anthracene.

[2] Significantly different from Group 8 ($p<0.01$).

[3] One lymph node metastasis.

[4] 12-O-tetradecanoylphorbol 13-acetate.

COMPETE SKIN CARCINOGENICITY TESTS IN FEMALE SENCAR MICE

Group	Chemical	No. of affective mice	No. of mice with skin tumors t week				Maximum No. of skin tumors per mouse	No. of mice with squamous cell carcinoma (percent)	No. of mice with epidermal hyperplasia (percent)
			13	26	38	51			
2	Benzoyl peroxide	20	0	2	6	[1] 8.	2.0	5 (25)	6(30)
7	Acetone	15	0	0	0	0	0	0	0

[1] Significantly different from Group 7 ($p < 0.05$).

Irrespective of the treatment protocol, a relatively high incidence of adenocarcinomas of the mammary gland and adenomas of the lung and uterus were observed in all groups. No intergroup differences in mean survival time were noted.

Reiners, et al. (Ref. 13) treated the shaved backs of female C57BL/6 and SENCAR mice (7 to 8 weeks old, 30 to 40 per group) with acetone, benzo (a) pyrene, or 7, 12-methylbenz (a) anthracene dissolved in acetone. One week after these treatments, the animals received twice-weekly applications of 2 µg (SENCAR) or 4 µg (C57BL/6) 12-O-tetradecanoylphorbol 13-acetate or 20 mg benzoyl peroxide. A large number of the benzoyl-peroxide-treated C57BL/6 mice developed skin carcinomas. The number of carcinomas following benzoyl peroxide promotion was greater compared to 12-O-tetradecanoylphorbol 13-acetate-promotion. Benzoyl peroxide significantly reduced the latency period for appearance of first skin tumor compared to 12-O-tetradecanoylphorbol 13-acetate.

The C57BL/6 mice promoted with benzoyl peroxide almost exclusively developed caracinomas, while SENCAR mice predominantly developed papillomas. However, 50 percent of the SENCAR mice did develop carcinomas by week 48 of the study.

In a study by Odukoya and Shklar (Ref. 14), 66 young adult Syrian golden hamsters (Lakeview strain) of both sexes were treated as follows:

Group 1: (8 pr sex) The left buccal pouches were painted 3 times per week for 10 weeks with a 0.1 percent solution of 7, 12-methylbenz (a) anthracene in heavy mineral oil. Two animals per sex were sacrificed at weeks 22, 23, 24, and 25.

Group 2: (8 per sex) After 10 weeks of 7, 12-mehtylbenz (a) anthracene painting, a 6-week treatment-free period followed. During weeks 17 to 22, the left buccal pouches were painted 3 times per week with 40 percent (20 mg) benzoyl peroxide in acetone. Animals were sacrificed as in Group 1.

Group 3: (8 per sex) This protocol was similar to Group 2, except instead of benzoyl peroxide, the animals were painted with acetone.

Group 4: (3 per sex) After a 16-week treatment-free period, animals were painted 3 times per week with benzoylperoxide for 6 weeks and sacrificed in equal numbers at weeks 22 and 23.

Group 5: (3 per sex) This protocol was the same as in Group 4, except the animals were painted with acetone.

Group 6: (3 per sex) Untreated controls, sacrificed in equal numbers at weeks 22 and 23.

At termination of the study, no tumors in buccal pouches were found in Groups 1, 3, 4, 5, and 6. In Group 2, where carcinogenesis was initiated with 7, 12-methylbenz(a)anthracene and promoted with benzoyl peroxide, animals rapidly developed cincinomas. The subthreshold of 7, 12-methylbenz(a)anthracene in itself was sufficient to result in carcinoma.

O'Connell, et al. (Ref. 15) induced skin tumors (papillomas) in female SENCAR (5 to 7 weeks old) mice using a single topical application of 10 nanomole 7, 12-methylbenz(a)anthracene as the initiator on the shaved backs of the animals. Two weeks after initiation, promotion was accomplished by twice weekly application of 1 μg 12-O-tetradecanoylphorbol 13-acetate. At study week 21, 21 papilloma-bearing mice were continued on the biweekly 12-O-tetradecanoylphorbol 13-acetate treatments, while 20 other mice received an application of 20 mg benzoyl peroxide twice a week. These treatments were continued until week 40. Prior to the benzoyl peroxide applications, the papilloma incidence was similar in both groups of mice designated for 12-O-tetradecanoylphorbol 13-acetate and benzoyl peroxide applications. However, at week 40, benzoyl-peroxide-treated mice compared to 12-O-tetradecanoylphorbol 13-acetate-control mice showed 54 and 325 percent higher incidences of carcinoma and cumulative carcinoma, respectively. Histopathologic examinations revealed that 44 percent of skin tunors in benzoyl-peroxide-treated mice were keratoacanthomas and that 59 percent of these showed y-glutamyltransferase foci. The agency considers the presence of these foci in the keratocanthomas as suggesting a possible role for these lesions as precursors of squamous cell carcinomas. Results indicate the benzoyl peroxide enhanced the progression of pre-existing papillomas.

Iverson (Ref. 16) conducted a 60-week study using 11 groups of hairless hr/hr Oslo mice (16 per sex per group; age and weight not specified). Six of the groups received a single application of 51.2 μg, 12-methylbenz(a)anthracene (in 100 microliters (μl) acetone) prior to one of the following treatments: No other treatment, the gel vehicle (without benzoyl peroxide) twice a week, 5 percent benzoyl peroxide in a gel twice a week, ultraviolet radiation twice a week, or 5 percent benzoyl peroxide in a gel before ultraviolet radiation twice a week. The other five groups received one of the following treatments: Gel vehicle followed by ultraviolet radiation twice a week, 5 percent benzoyl peroxide in a gel followed by ultraviolet radiation twice a week, ultraviolet radiation twice a week, 5 percent benzoyl peroxide in a gel twice a week, or gradually increased ultraviolet radiation followed by 5 percent benzoyl peroxide in a gel twice a week. Reportedly, no spontaneous skin tumors have been observed in this strain of mice. Two mice (sex not specified) that received 5 percent benzoyl peroxide in a gel alone twice a week developed squamous cell carcinoma near the tail root, far from the site of drug application. This incidence was reported to be a "random event." None of the mice in this group developed papillomas.

In a study by Rotstein, et al. (Ref. 17), female SENCAR mice (7 to 9 weeks old) received a single application of 10 nanomole 7, 12-methylbenz(a)anthracene. Two weeks later, the mice received applications of 2 μg 12-O-tetradecanoylphorbol 13-acetate twice a week for 16 weeks, followed by a 4-week treatment-free period. Groups of at least 30 papilloma-bearing mice received 20 μl acetone or 20 mg benzoyl peroxide (in acetone) twice a week for 12 weeks beginning week 21 of the study. One group received benzoyl peroxide for only 4 weeks, followed by acetone treatment for 8 weeks.

Twelve weeks after the benzoyl peroxide treatment, all benzoyl-peroxide-treated mice showed a significantly greater incidence of carcinoma than controls (37 versus 16 percent). All carcinomas arose from pre-existing papillomas. Animals treated for 4 weeks with benzoyl peroxide showed a similar incidence of carcinoma as the 12-week treated animals. The agency believes that this result infers that free-radical generating promoters can enhance tumor progression within a short period.

A study conducted by the National Toxicology Program (Ref. 18) involved comparing the sensitivity of SENCAR, Swiss CD–1, and B6C3F1 strains of mice in a dermal initiation-promotion protocol using different combinations of initiators and promoters (i.e., 7, 12-methylbenz(a)anthracene, benzoyl peroxide, and N-methyl-N-nitro-N-nitrosoguanidine). After a single dose of 7, 12-methylbenz(a)anthracene (0.25, 2.5, or 25.0 μg) or N-methyl-N-nitro-N-nitrosoguanidine (100, 500, or 1,000 μg), groups of 30 male/female of each strain of mice received topical applications of 20 mg benzoyl peroxide in acetone, once a week for 52 weeks. Animals for complete carcinogen testing received 20 mg benzoyl peroxide throughout the study. Controls received two dose levels of initiators once and only acetone thereafter, and the vehicle control received only applications of acetone.

The gross incidence of papilloma was more prevalent in 7, 12-methylbenz(a)anthracene-initiated/12-O-tetradecanoylphorbol 13-acetate-promoted SENCAR and Swiss mice; however, all strains were equally sensitive to carcinoma induction. The 7, 12-methylbenz(a)anthracene-initiated/benzoyl-peroxide-promoted SENCAR mice were comparatively much more sensitive to papilloma induction. Gross incidence of carcinoma was observed only in SENCAR mice. The mean time to papilloma induction in 7, 12-methylbenz(a)anthracene/12-O-tetradecanoylphorbol 13-acetate groups was shorter in SENCAR and Swiss strains. In the 7, 12-methylbenz(a)anthracene-benzoyl peroxide groups, the induction time was much shorter in SENCAR mice. In 7, 12-methylbenz(a)anthracene/12-O-tetradecanoylphorbol 13-acetate groups, papillomas appeared in both sexes of SENCAR and Swiss mice by 10 weeks, and by 20 in B6C3F1 male mice. In 7, 12-methylbenz(a)anthracene/benzoyl peroxide groups, papillomas appeared in SENCAR mice at week 20, and at week 30 in both sexes of the 2 other strains.

A majority of mice in the 7, 12-methylbenz(a)anthracene/7, 12-methylbenz(a)anthracene groups developed papillomas. Neoplasm multiplicity was comparable in the 3 strains. The induction of papilloma in 12-O-tetradecanoylphorbol 13-acetate/12-O-tetradecanoylphorbol 13-acetate groups was observed in both sexes of

Swiss mice only. Regarding tumor induction, no one strain responded to benzoyl peroxide/benzoyl peroxide, 7, 12-methylbenz(a)anthracene/acetone combinations, or repeated application of acetone.

In N-methyl-N-nitro-N-nitrosoguanidine-initiated/12-O-tetradecanoylphorbol 13-acetate-promoted groups, SENCAR and Swiss strains were more sensitive to papilloma incidence and multiplicity of tumors. However, on gross examination, all strains were found to be equally sensitive to carcinoma incidence. The sensitivity in the N-methyl-N-nitro-N-nitrosoguanidine/benzoyl peroxide groups, when compared for gross incidence of papilloma, decreased in this order: SENCAR, Swiss, B6C3F1. Carcinoma incidence was similar in females, while in males sensitivity decreased in this order: SENCAR, Swiss, B6C3F1. The papillomas response time in the N-methyl-N-nitro-N-nitrosoguanidine/12-O-tetradecanoylphorbol 13-acetate groups decreased in the same order. In N-methyl-N-nitro-N-nitrosoguanidine/benzoyl peroxide groups, SENCAR and Swiss mice showed similar papilloma-response time. All strains were positive for papilloma and carcinoma induction in 100 μg N-methyl-N-nitro-N-nitrosoguanidine-initiated-100 mg N-methyl-N-nitro-N-nitrosoguanidine-promoted groups. SENCAR mice were found to be much more sensitive with benzoyl peroxide promotion and with 7, 12-methylbenz(a)anthracene or N-methyl-N-nitro-N-nitrosoguanidine initiation. On the whole, the SENCAR strain proved to be the most sensitive in two-stage tumorigenesis.

Iverson (Ref. 19) look at equal numbers of male and female SENCAR and hr/hr Oslo mice in a 52-week study. Where applicable, a single 51.2 μg dose of 7, 12-methylbenz(a)anthracene was used as an initiator. Skin tumors were subjected to histopathologic examination. The following groups were studies:

Group A: (32 hr/hr) 5 percent benzoyl peroxide in a gel vehicle twice per week in the evening of 1 day, followed by ultraviolet exposure the next morning.

Group B: (32 hr/hr) twice per week ultraviolet radiation.

Group C: (32 hr/hr) Gel vehicle twice per week in the afternoon of one day, ultraviolet exposure next morning.

Group D: (32 hr/hr) twice per week ultraviolet exposure followed 5 minutes later by 5 percent benzoyl peroxide in a gel vehicle.

Group E: (32 hr/hr) twice per week ultraviolet exposure followed 5 minutes later by gel vehicle.

Group F: (32 hr/hr) Single dose of 7, 12-methylbenz (a)–anthracene; starting 1 week later, twice per week application of gel vehicle.

Group G: (32 Sencar) Single application of 100 μl acetone.

Group H: (32 Sencar) Gel vehicle twice per week.

Group I: (32 Sencar) 5 percent benzoyl peroxide in a gel vehicle twice per week.

Group J: (32 Sencar) 7, 12-methylbenz (a) anthracene, followed by continuous treatment with 5 percent benzoyl peroxide in a gel vehicle twice per week.

Group K: (32 Sencar) 7, 12-methylbenz (a) anthracene, followed by continuous treatment with gel vehicle twice per week.

Group L: (48 Sencar) One application of 7, 12-methylbenz (a) anthracene.

Group M: (176 Sencar) One application of 7, 12-methylbenz (a) anthracene (historical control group).

Group N: (32 hr/hr) 7, 12-methylbenz (a) anthracene and gel vehicle.

There were no significant intergroup differences in survival rate (73 to 91 percent) observed in the SENCAR mice; however, in the hr/hr Oslo mice survival rate was very low (19 to 41 percent) due to radiation effects. Group B (ultraviolet radiation twice a week in hr/hr Oslo mice) had the highest number of tumor-bearing mice and total number of carcinomas, indicating that neither the gel vehicle nor 5 percent benzoyl peroxide promoted tumorigenesis. The 7, 12-methylbenz (a) anthracene treatment produced more tumors in SENCAR mice with 3 low-grade fibrosarcomas in Group G and squamous cell carcinomas as follows: four in Group L (the highest number observed), two in Group J, and one each in Group H and I.

Schweizer, et al. (Ref. 20) conducted a 16-month study using 12-week old, pathogen-free Syrian golden hamsters (weighing about 100 grams (g)). The hamsters were randomly assigned to 1 of 5 test groups, each containing 20 animals. All animals received the following application and were examined for skin lesions.

Group I: (Control) Application of 1 mL acetone 3 times per week on the shaved dorsal area.

Group II: Initiation with a single dose of 10 mg/kg 7, 12-methylbenz (a) anthracene.

Group III: Topical application, 3 times per week, with 160 mg benzoyl peroxide in 1 mL acetone.

Group IV: Initiation with 7, 12-methylbenz (a) anthracene (Group II) and promotion with 80 mg benzoyl peroxide 3 times per week.

Group V: Repetitive applications of benzoyl peroxide after 7, 12-methylbenz (a) anthracene initiation.

Benzoyl peroxide alone increased generalized hyperpigmentation and scaling, but no tumors were observed. The 7, 12-methylbenz (a) anthracene alone induced a moderate number of melanotic foci and a small number of palpable melanotic tumors, both in the dermis. Papillomas were found in the epithelia of the tongue, esophagus, and forestomach. The 7, 12-methylbenz (a) anthracene and benzoyl peroxide at both dose levels drastically increased the number of melanotic foci and the incidence of tumors at later stages, implying that benzoyl peroxide promoted the incidence of papilloma, carcinoma, and melanotic tumors.

Hergenhahn (Ref. 21) conducted a study in which NMRI mice (age and sex not specified) received a single dose of 7, 12-methylbenz (a) anthracene followed by dermal applications of 40 mg benzoyl peroxide (in acetone) twice a week for 24 weeks. This treatment was followed by application of a second promoter, retinoyl phorbol acetate, for another 24 weeks. In the second experiment, mice received 20 mg benzoyl peroxide (in acetone) twice a week for 16 weeks. All animals in both groups were observed for 48 weeks. No results were provided except for a comment that benzoyl peroxide did not induce skin tumors in any group.

B. Promotional Studies

Slaga, et al. (Ref. 1) assessed the intercellular communication between Chinese hamster V79 (6-thioguanine-sensitive) cells measured by evaluating the metabolic cooperation between hypoxanthine-guanine phosphoribosyl transferase positive and hypoxanthine-guanine phosphoribosyl transferase negative cells. Inhibition of metabolic cooperation in these cells is a property of many structurally diverse tumor promoters. Benzoyl peroxide inhibited the intercellular communication between the cells.

Yuspa, et al. (Ref. 22) used benzoyl peroxide in 10 to 20 mg concentration incubated with epidermal cells prepared from newborn BALB/c mice. The induction of epidermal transglutaminase has been used as an indication for terminal differentiation in cultured epidermal cells. The phorbol esters are potent inducers of transglutaminase in vivo and in vitro. The high concentration of benzoyl peroxide used did not induce transglutaminase but was significantly cytotoxic to the cells.

In a study by Lawrence, et al. (Ref. 23) human epidermal keratinocytes (strain R), derived from a young donor's skin, were used to assess the effect of benzoyl peroxide on the cellular

hr) Single dose of 7,
-anthracene; starting 1
per week application

ncar) Single
ul acetone.
ncar) Gel vehicle

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Benzoyl peroxide alone increased generalized hyperpigmentation and scaling, but no tumors were observed. The 7, 12-methylbenz (a) anthracene alone induced a moderate number of melanotic foci and a small number of palpable melanotic tumors, both in the dermis. Papillomas were found in the epithelia of the tongue, esophagus, and forestomach. The 7, 12-methylbenz (a) anthracene and benzoyl peroxide at both dose levels drastically increased the number of melanotic foci and the incidence of tumors at later stages, implying that benzoyl peroxide promoted the incidence of papilloma, carcinoma, and melanotic tumors.

Hergenhahn (Ref. 21) conducted a study in which NMRI mice (age and sex not specified) received a single dose of 7, 12-methylbenz (a) anthracene followed by dermal applications of 40 mg benzoyl peroxide (in acetone) twice a week for 24 weeks. This treatment was followed by application of a second promoter, retinoyl phorbol acetate, for another 24 weeks. In the second experiment, mice received 20 mg benzoyl peroxide (in acetone) twice a week for 16 weeks. All animals in both groups were observed for 48 weeks. No results were provided except for a comment that benzoyl peroxide did not induce skin tumors in any group.

B. Promotional Studies

Slaga, et al. (Ref. 1) assessed the intercellular communication between Chinese hamster V79 (6-thioguanine-sensitive) cells measured by evaluating the metabolic cooperation between hypoxanthine-guanine phosphoribosyl transferase positive and hypoxanthine-guanine phosphoribosyl transferase negative cells. Inhibition of metabolic cooperation in these cells is a property of many structurally diverse tumor promoters. Benzoyl peroxide inhibited the intercellular communication between the cells.

Yuspa, et al. (Ref. 22) used benzoyl peroxide in 10 to 20 mg concentration incubated with epidermal cells prepared from newborn BALB/c mice. The induction of epidermal transglutaminase has been used as an indication for terminal differentiation in cultured epidermal cells. The phorbol esters are potent inducers of transglutaminase in vivo and in vitro. The high concentration of benzoyl peroxide used did not induce transglutaminase but was significantly cytotoxic to the cells.

In a study by Lawrence, et al. (Ref. 23) human epidermal keratinocytes (strain R), derived from a young donor's skin, were used to assess the effect of benzoyl peroxide on the cellular

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metabolic cooperation compared to acetone-treated control cells. Benzoyl peroxide at 0.5 μg/mL exhibited a small but significant effect, while doses between 1.0 and 3.6 μg/mL strongly inhibited metabolic cooperation. At the 3.6 μg/mL dose of benzoyl peroxide, the extent of nucleotide transfer compared to controls was only 31 percent. However, benzoyl peroxide showed no effect on cell survival, attachment, or keratinocyte morphology.

Armato, et al. (Ref. 24) tested on the activity of many tumor promoters by using primary liver cultures (with 40 to 50 percent hepatocytes) prepared from male and female Wistar rats (4 days old). Benzoyl peroxide was tested at 10^{-10} moles/liter (mol/L) dose. At this dose, benzoyl peroxide significantly stimulated the hepatocellular 24-hour deoxyribonucleic acid synthesis. The simulatory activity was inhibited by simultaneous addition of exogenous superoxide dismutase.

Fey and Sheldon (Ref. 25) incubated promoters with the Madin-Darby Canine Kidney cell line, which when injected into nude mice form highly differentiated epithelial colonies that are nontumorigenic. The epitheloid nature of these cuboidal cell colonies is altered on incubation with subnanomolar levels of promoters (i.e., individual cells become mobile, flattened, and elongated). Five structurally dissimilar complete or second-stage tumor promoters, including benzoyl peroxide, were shown to induce identical morphological changes (signatures) after 2 hours incubation with the Madin-Darby Canine Kidney cells.

Mass, et al. (Ref. 26) used tracheal cell cultures prepared from young pathogen-free male Fisher 344 rats to examine their proliferative response to a spectrum of known promoters. It has been observed that tumor promoters can induce terminal differentiation in a variety of cell types. This preneoplastic phenotype is characterized by the capacity of cells to grow in semi-solid medium, i.e., colony forming efficiency. It has also been reported that initiated mouse skin contains keratinocytes resistant to induction of terminal differentiation. Benzoyl peroxide neither stimulated nor diminished colony forming efficiency over the wide concentration range tested. It was inferred that benzoyl peroxide does not bind to the phorbol receptor and thus probably acts as a skin tumor promoter by a different mechanism than 12-O-tetradecanoyl-phorbol 13-acetate.

Gindhart, et al. (Ref. 27) used JB6 mouse epidermal cells (which are initiated and sensitive to further transformation by tumor promoters) to test the tumor promoting activity of benzoyl peroxide. In a dose-dependent fashion (10^{-9} to 10^{-5} Molar), benzoyl peroxide promoted further transformation of JB6 cells and caused a decrease in the net synthesis of the major ganglioside of epidermal cells, trisialoganglioside GT.

C. Reproductive and Developmental Toxicology Studies

Korhonen, et al. (Ref. 28) used various doses (0.05 to 1.7 micromole) of benzoyl peroxide in acetone injected into the inner shell membrane in the air chamber of 3-day old white Leghorn chicken eggs. Except for the lowest dose level tested, there was a dose-related increase in early embryonic deaths, with an estimated LD_{50} of 0.99 micromole per egg. At all dose levels, benzoyl peroxide increased malformation at a moderate frequency. The calculated median effective dose for mortality and malformations was 0.27 micromole per egg.

D. Genotoxicity Studies

Epstein, et al. (Ref. 29) used benzoyl peroxide given intraperitoneally at 52 and 64 mg/kg to 7 and 9 male ICR/Ha Swiss mice, respectively, in a dominant lethal assay evaluation. Each male was caged with three untreated virgin female mice for 1 week. Dams were replaced every week for 8 weeks, sacrificed, and examined for total implants, and early and late fetal deaths. Late fetal deaths were rare, while early fetal deaths and pre-implantation losses were within the control limits.

Litton Bionetics (Ref. 30) conducted a modified Ames assay using *Salmonella* strains TA 1535, 1537, and 1538, and *Saccharomyces cerevisiae* strain D–4 for a gene conversion assay. Benzoyl peroxide was evaluated at two concentration levels, one of which was half of the medium lethal concentration (1.8 mg/mL) value. All bacterial assays were performed with S–9 metabolic activation systems prepared from the lung, liver, and testes of mice, rats, and monkeys. Benzoyl peroxide was found to be nonmutagenic. The yeast assay performed in the presence/absence of S–9 fractions also gave negative results.

In another study, Yamaguchi and Yamashita (Ref. 31) conducted a slightly modified Ames assay using *Salmonella* strains TA 98 and 100. Benzoyl peroxide was tested in Tween 20T at a high dose of 300 μg per plate in the presence of a rat S–9 metabolic activation system. It was found to be nonmutagenic.

DeFlora, et al. (Ref. 32) evaluated benzoyl peroxide in the Ames test using *Salmonella typhimurium (S. typhimurium*) strains TA 1535, 1537, 1538, 98, and 100, and several isogenic strains of *Escherichia coli* (*E. coli*) (WP–2 wild type (repair-proficient), WP67–UVrA–, Pol A–, CM871–UVrA–, recA–, and lexA–). The names of the solvent used and the highest concentration tested were not given. Benzoyl peroxide was nonmutagenic but caused deoxyribonucleic acid damage in *E. coli* and was more toxic to deoxyribonucleic acid repair-deficient than to repair-proficient strains. It was lethal to WP–2 and WP 67 at 1,000 μg/mL and to CM 871 at 250 μg/mL, in both the absence and presence of S–9 fraction. In the presence of S–9 fraction, benzoyl peroxide was lethal to WP–2 (750 μg/mL) and to both repair-deficient strains (500 μg/mL).

Ishidate, et al. (Ref. 33) evaluated benzoyl peroxide in dimethyl sulfoxide (5 mg per plate) in *Salmonella* strains TA 1535, 1537, 92, 94, 98, and 100 in the presence and absence of S–9 fraction. In a second set of experiments, benzoyl peroxide in dimethyl sulfoxide (0.2 mg/mL) was tested for chromosomal aberrations in Chinese hamster fibroblasts. All assays gave negative results.

Jarventaus, et al. (Ref. 34) used Chinese hamster ovary cells to evaluate the effect of benzoyl peroxide on the incidence of sister chromatid exchange. Benzoyl peroxide induced a dose-dependent increase in the incidence of sister chromatid exchange only in the presence of S–9 fraction. At 1.0 millimole benzoyl peroxide concentration, sister chromatid exchange doubled.

Tainer (Ref. 35) reported benzoyl peroxide (in acetone or dimethyl sulfoxide) to be nonmutagenic, with or without hamster and rat liver S–9 fraction in *S. typhimurium* strain TA 1535, 97, 98, and 100.

Matula, et al. (Ref. 36) reported benzoyl peroxide (in acetone) was nonmutagenic with or without S–9 activating system in *S. typhimurium* strain TA 1535, 98, 100, and 102; however, it produced a dose-dependent increase in mutation with strain TA 97 in the absence of metabolic activation. Reportedly, these results were erratic due to high cell toxicity (dependent on the volume of acetone per plate). However, results were reconfirmed in a liposome vehicle with a commerical preparation in strain TA 97. Benzoyl peroxide (in acetone and a commerical lotion) also damaged deoxyribonucleic acid in the *E. coli* SOS test; however, a dose-dependent relationship was not observed. Weak mutagenic activity of benzoyl peroxide was inferred from these results.

Swierenga (Ref. 37) investigated the cytotoxicity and genotoxicity of benzoyl peroxide for epithelial cells by using proliferating T–51–B cells or rat hepatocytes. Benzoyl peroxide was extremely toxic to these cells. Depending on cell density, exposure duration, and media composition, the median lethal concentration of benzoyl peroxide varied from 5 to 50 μg/mL. Deoxyribonucleic acid strand breaks, but no mutations, were observed at these concentrations. Hepatocytes tolerated up to 300 micromole benzoyl peroxide over a 24-hour period. Latent random cell death was observed in all cultures. When the assay conditions were adjusted to enhance cell survival, both strand breaks and mutation were observed. In addition, benzoyl peroxide showed some ability to induce deoxyribonucleic acid repair in hepatocytes and sister chromatid exchange in V79 cells. It was inferred that benzoyl peroxide showed weak genotoxicity at concentrations 10^4 fold lower than present in the commercial preparations.

Birnboim (Ref. 38) studied a spectrum of phorbol and nonphorbol promoters incubated with white blood cells isolated from human blood. Cells were examined for deoxyribonucleic acid strand breaks. Benzoyl peroxide induced a dose-dependent break in deoxyribonucleic acid strands.

Gensler and Bowden (Ref. 39) evaluated initiated epidermal JB6 cells for clastogenic events after a single treatment with a noncytotoxic dose (50 micromole) of benzoyl peroxide. Deoxyribonucleic acid single-strand scissions did not occur, suggesting a dissociation between the induction of deoxyribonucleic acid strand breaks and late-stage promotion.

Saladino, et al. (Ref. 40) assessed the effect of benzoyl peroxide and other drugs on clonal growth rate, squamous differentiation, deoxyribonucleic acid damage, ornithine decarboxylase activity, nucleic acid synthesis, aryl hydrocarbon hydroxide activity, and arachidonic acid and choline release measured in normal human bronchial epithelial cells. Benzoyl peroxide increased the promotion of cross-linked envelopes and depressed ribonucleic acid synthesis more than deoxyribonucleic acid synthesis. In addition, it produced detectable amounts of both single-strand breaks and deoxyribonucleic acid-protein cross links, and inhibited growth.

Hartley, et al. (Ref. 41) investigated the degree of deoxyribonucleic acid strand break in cultured keratinocytes (BALB/c mice) and the cell lines D, F, and 308 (derived from primary mouse epidermal cultures by carcinogen treatment) after exposure to phorbol esters and benzoyl peroxide. Benzoyl peroxide at 10^{-4} Molar concentration induced single strand breaks in basal keratinocytes within 1 hour, and attached cells exhibited extensive single strand breaks by 12 hours. It was inferred that benzoyl peroxide-produced breaks were due to a direct mechanism of deoxyribonucleic acid damage.

Birnboim (Ref. 42) reported that deoxyribonucleic acid strand breaks produced in human leukocytes by benzoyl peroxide (50 micromole), anthralin and 12–O–tetradecanoylphorbol 13–acetate were not repaired during a 30-minute period following treatment. However, under the same assay conditions, substantial repair of ionizing radiation-induced breaks was observed.

An abstract by Swierenga (Ref. 37) inferred that in vitro benzoyl peroxide induced deoxyribonucleic acid strand breaks in rat hepatocytes.

E. Biochemistry Studies

Molloy, et al. (Ref. 43) conducted a study in which the dorsal skins of female CD–1 (7 to 10 weeks old) mice were painted with benzoyl peroxide (in acetone) or acetone alone. Skins were excised, cultured, and pulse-labeled with ^{35}S-methionine 24 hours after treatment. Qualitative changes in synthesized epidermal proteins were examined using one- and two-dimensional gel electrophoresis. Benzoyl peroxide-treated epidermal proteins resembled those of controls compared to 12-O-tetradecanoyl-phorbol 13-acetate- and anthralin-treated skins. It was inferred that benzoyl peroxide may act by a mechanism distinct from the other two promoters.

Binder and Volpenhein (Ref. 44) investigated the induction of ornithine decarboxylase activity by 12-O-tetradecanoyl-phorbol 13-acetate and benzoyl peroxide in female SENCAR mice. The 12-O-tetradecanoylphorbol 13-acetate (2 μg) caused induction of ornithine decarboxylase activity 30 times greater than benzoyl peroxide (20 mg, in acetone) applied once to dorsal skin. The activity level was 10 percent greater after 3 or more doses of benzoyl peroxide (20 mg) applied 2 to 7 days apart. However, the additive effect of doses was reported as not responsible for the enhanced induction because ornithine decarboxylase activity was at the basal level at the time of the last dose. Benzoyl peroxide applied once a day for 5 consecutive days resulted in only one-tenth the enzyme activity by the same number of doses given 2 or more days apart. Pretreatment with benzoyl peroxide (20 mg) once a day for 4 days greatly enhanced the ornithine decarboxylase activity by a one-time application of 12-O-tetradecanoylphorbol 13-acetate (2 μg) 24 hours after the last benzoyl peroxide dose. It was inferred that while the 2 promoters operate through different mechanisms, their promotional effects are synergistic.

Kensler, et al. (Ref. 45) used skin-trapping and electron skin resonance techniques to characterize free-radical metabolites of benzoyl peroxide in target keratinocytes isolated from neonatal SENCAR mice. Cell incubation with benzoyl peroxide gave an electron skin resonance spectrum characteristic of alkyl radical adducts. No detectable electron skin resonance spectrum were observed in heat denatured cells or in the absence of benzoyl peroxide. It was inferred that the peroxide bond undergoes cleavage to yield benzoyloxyl radicals, which then break to form a phenyl radical (skin trapped species).

In another experiment, liposome-containing ^{14}C ring-labeled benzoyl peroxide was incubated with keratinocytes for 1 hour, and covalent binding to macromolecules was determined. Substantial covalent binding of radioactivity with proteins, but not deoxyribonucleic acid, was detected. The assumed limit of detection was in the range of 1.5 picomole/mg deoxyribonucleic acid. The results were consistent with the reported nil/low mutagenic, initiating and complete carcinogenic activity of benzoyl peroxide.

F. Absorption, Distribution, and Excretion Studies

Nacht, et al. (Ref. 46) assessed absorption and biodisposition of ^{14}C-benzoyl peroxide both in vitro (excised human skin) and in vivo (rhesus monkeys). In vitro, benzoyl peroxide penetrated through the stratum corneum, follicular openings, or both, and was recovered on the dermal side of the skin as benzoic acid. In vivo, following topical and intramuscular administration of ^{14}C-benzoyl peroxide, 45 and 98 percent, respectively, of the radioactivity was found in the benzoic acid in urine. Benzoyl peroxide penetrated into skin layers, was metabolized to benzoic acid, and then absorbed into the systemic circulation. No hippuric acid was found in monkey urine, implying that renal clearance of benzoyl peroxide metabolites was sufficiently rapid which precluded its hepatic conjugation with glycine.

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Morsches and Holzmann (Ref. 47) used in vitro and in vivo methods to assess percutaneous penetration and metabolism of benzoyl peroxide in human skin and five patients with leg ulcers. Benzoyl peroxide absorbed in vitro was metabolized (preferably in the dermis) to benzoic acid. The portion which penetrated the intact skin was benzoic acid only.

In a study by Wepierre, et al. (Ref. 48), hairless Sprague Dawley male rats received topical application of ^{14}C-benzoyl peroxide 10 percent gel. Distribution and dissociation were studied at 3, 8, and 24 hours. Most of the applied dose was retained in the horny layer, where metabolic conversion to benzoic acid was low. In the dermis, conversion to benzoic acid increased sharply, and the metabolite was taken up by the systemic circulation.

G. Epidemiological Studies

Sakabe and Fukuda (Ref. 49) reported two cases of lung cancer in industrial workers in a small plant in Japan where benzoyl peroxide and benzoyl chloride were produced. The number of workers in the factory varied from 13 in 1952 to 40 in 1963. The first worker was a 40-year-old male smoker with 17 years of service in the manufacture of benzoyl peroxide and intermittent exposure to benzoyl chloride; the second was a 35-year-old male nonsmoker with squamous-cell carcinoma, who had had about 4 years of exposure to benzoyl peroxide production starting about 15 years prior to detection, and had worked for 1 year in benzoyl chloride production. Both workers would also have been exposed to a number of precursors in the production process, including benzotrichloride.

Wright, et al. (Ref. 50) reviewed 43 cases of cancer, grouped by occupation for unusual risk for melanoma. Eleven subjects had melanomas and 32 had other cancers. Cases included all white male chemists with cutaneous malignant melanoma diagnosed between 1972 and 1979. The control group included all white male chemists with other cancers diagnosed during the same period. Patients with melanoma were supposed to have been exposed to more individual chemicals than controls and reported more work with solvents, pesticides, plastics, ionizing radiation, and benzoyl peroxide. There was little difference between cases and controls for other chemical exposures.

Hogan (Ref. 51) reviewed 870 subjects and 1,250 age, sex- and location-matched controls for skin cancer. Analysis was performed for cases of basal cell carcinoma, squamous cell carcinoma of the lip, and cutaneous malignant melanoma. A family history of skin cancer and exposure to agro-chemicals were the most significant risk factors analyzed for skin cancer. Other factors included prominent freckles during childhood, history of severe sunburn, light skin color, and skin types 1 and 2. The strongest risk factor for basal cell carcinoma was a family history of skin cancer. The past history of acne was the second strongest correlate with subsequent development of basal cell carcinoma in over 600 patients. However, the study failed to trace the treatment of patients to determine if they had applied benzoyl peroxide.

Elwood, et al. (Ref. 52) analyzed case histories of 651 patients with cutaneous malignant melanoma and matched controls. The distribution of pathologic lesions was as follows: 415 individuals exhibited superficial spreading melanoma, 128 nodular melanoma, 52 unclassified or borderline melanoma, and 56 lentigo maligna melanoma. Subjects more frequently used soaps and sulfur or resorcinol compounds; benzoyl peroxide preparations were used by very few subjects, and there were no differences in the types of drugs used by cases and controls. It was inferred that reported frequencies of acne and psoriasis were not related to any substantial increase or decrease in melanoma formation. Because benzoyl peroxide preparations were not used very extensively in these patients, no definite correlation was visible between benzoyl peroxide and melanoma risk.

Cartwright, et al. (Ref. 53) investigated cases of malignant skin melanoma in subjects under the age of 45, reported between 1984 and 1986 inclusive, from hospital and general practitioners' patient records. Data were compared with subjects of the same age and sex without malignant disease. The analyzed risk factors included acne, any skin medication, and prolonged exposure to sunlight. Of 213 identified melanomas, 159 (75 percent) were investigated further. The incidences of clinical and physiological acne were 15 and 65 percent, respectively. Reportedly, the study had several limitations. The number of subjects was limited, and no direct contact was made to trace whether they had purchased benzoyl peroxide without prescription. Irrespective of these limitations, the study authors concluded that benzoyl peroxide posed no major risk of an association with malignant melanoma.

Ewing, et al. (Ref. 54) designed a study to determine whether Stage I promotion could occur prior to initiation and to examine its role in carcinoma development. SENCAR mice received two applications of various complete, first, and second stage promoters prior to being initiated with 7, 12-methylbenz(a)-anthracene (2µg). Two weeks later animals received twice-weekly applications of mezerein (2µg). Benzoyl peroxide (20 mg) given either 2, 5, or 10 weeks prior to initiation had no effect on the subsequent promoting activity of mezerein.

In a 62-week study, Epstein (Ref. 55) examined the effect of benzoyl peroxide on ultraviolet-radiation-initiated tumor formation. Uscd strain albino hairless mice (4 months old) received 270 millijoule/square centimeter of ultraviolet (280 to 320 nanometer) radiation 3 times a week for 8 weeks to the posterior halves of their backs. Four weeks later, mice were treated with one of the following: Croton oil (in acetone) 5 times per week for 50 weeks; acetone alone; benzoyl peroxide in an aqueous diluent 5 times per week for 50 weeks, or benzoyl peroxide diluent alone. Results demonstrated that croton oil promoted ultraviolet-initiated tumor formation, but benzoyl peroxide did not.

In another 62-week study, Epstein (Ref. 56) compared the effects of chronic applications of croton oil and benzoyl peroxide on epidermal deoxyribonucleic acid synthesis in ultraviolet-initiated skin. Uscd strain albino hairless mice (3 to 4 months old) were irradiated with 125 millijoule/square centimeter of ultraviolet (280 to 320 nanometer) radiation energy 3 times a week for 8 weeks. Four weeks later, animals were treated with one of the following: 0.1 mL croton oil solution 5 times per week; acetone alone; 5 percent benzoyl peroxide; or aqueous base solution. Treatment continued for 50 weeks. Results indicated that croton oil applications stimulated a deoxyribonucleic acid synthesis level that was significantly greater than all other groups, including the mice receiving benzoyl peroxide. The mechanism of the promoting effects or croton oil and benzoyl peroxide to be different.

Naito, et al. (Ref. 57) examined histogolical effects of multiple applications of 12-O-tetradecanoylphorbol 13-acetate (6.8 nanomole), teleocidin (6.8 nanomole), chrysarobin (220 nanomole), mezerein (6.8 nanomole), 4-O-Methyl-12-O-tetrade-canoylphorbol 13-acetate (150 µg), and benzoyl peroxide (20 mg) on the skin of DBA/2 and C57BL/6 mice. Benzoyl peroxide and 4-O-Methyl-12-O-tetradecanoylphorbol 13-acetate (given twice a week for 2 weeks) induced only a week sustained epidermal hyperplasia, dark basal keratinocyte

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response, and labeling index of similar magnitude in both strains of mice. No other morphological changes were attributed to benzoyl peroxide treatment.

Hartley, et al. (Ref. 58) used alkaline elution to examine deoxyribonucleic acid single-strand breaks in cultured normal and carcinogen-altered mouse keratinocytes exposed to 12-O-tetradecanoylphorbol 13-acetate and benzoyl peroxide. Benzoyl peroxide induced extensive strand breaks in normal keratinocytes at both 6 and 24 hours, and was associated with marked cytoxicity. Nine of 10 cell lines showed complete or partial resistance to strand breaks following benzoyl peroxide exposure. The differential resistance to deoxyribonucleic acid strand breaks and cytotoxicity among normal and carcinogen altered cells suggest a biological basis for the promoting action of benzoyl peroxide.

In a study by Pelling, et al. (Ref. 59), papillomas were induced in 7, 12-methylbenz (a) anthracene-initiated SENCAR mouse epidermis by complete promotion with benzoyl peroxide or 12-O-tetradecanoylphorbal 13-acetate and two-state promotion with 12-O-tetradecanoylphorbol 13-acetate for 2 weeks followed by mezerein for 9 weeks. Results of Northern blot hybridization analyses showed that early papillomas in 7, 12-methylbenz(a)-anthracene-initiated epidermis contained elevated levels of Ha-ras specific polyadenylated transfer ribonucleic acid irrespective of the tumor promoter regimen used.

The agency's detailed comments and evaluations on the data are on file in the Dockets Management Branch (Refs. 60 and 61).

H. Tumor Promoters

The agency notes that a prominent feature of skin tumor promoters is that they all cause release of free oxygen radicals. These species stimulate cells to produce active forms of oxygen (Ref. 62). The agency believes that evidence that promotion involves free radicals is supported by the following observations: Free-radical generating compounds are promoters; 12-O-tetradecanoylphorbol 13-acetate-type promoters have been shown to stimulate formation of oxyradicals; promoters can modulate the anti-oxidant defense mechanisms; and antioxidants are antipromoters. Presumably, promotion of mouse skin transformation occurs in two stages, both of which involve active oxygen (Ref. 63). Free radicals, especially peroxyl radicals, may be involved in both the initiation and promotion stages of multistage carcinogenesis (Ref. 64). A second characteristic of skin tumor promoters is that they all induce epidermal hyperplasia, i.e., the appearance of dark basal cells in the epidermis (Ref. 1). The agency points out that these dark basal cells are normally present in large numbers in embryonic skin, papillomas, and carcinomas and are considered a reliable marker of stage I promotion (Refs. 63, 65, 66, and 67). Stage II promotion is accompanied by various biochemical changes, many of which are related to the stimulation of cell proliferation.

These include increased levels of polyamines, prostaglandins, and induction of some embryonic conditions; decreased activity of two detoxifying enzymes (i.e., superoxide dismutase and catalase); and increased activity of ornithine decarboxylase in the skin (Refs. 68 and 69). The agency notes that the induction of ornithine decarboxylase activity and increased levels of polyamines are considered necessary indicators for tumor promotion by phorbol esters. It is also noted that another enzyme activated by the tumor promoter 12-O-tetradecanoylphorbol 13-acetate is protein kinase C, which is generally regarded as being synonymous with the phorbol ester receptor (Refs. 70, 71, and 72).

I. Conclusions

A significant amount of research has been conducted on benzoyl peroxide since the Panel's deliberations were completed in 1980. Some of this research was conducted after the 1985 tentative final monograph for OTC topical acne drug products (50 FR 2172) was published. The agency has determined from its evaluation of the data that some of the studies contained procedural deficiencies including the following: Inadequate numbers of animals, low doses, inadequate data on animal survival, and lack of adequate controls. In addition body weight, age, strain, and sex of the animals were not provided for some studies and, in certain other studies, data for both sexes of the animals were pooled. The agency finds that, despite all the research conducted to date, a definitive study to assess the complete carcinogenicity of benzoyl peroxide has not, as yet, been conducted.

Benzoyl peroxide was initially shown to be a promoter in a two-stage, initiation-promotion skin carcinogenesis study in mice (Ref. 1). Because mouse skin is responsive to the two-stage system of tumor promotion, it has been widely used for initiation-promotion studies. In fact, the agency notes that all national and international regulatory agencies have accepted mice as a standard model for testing potential carcinogens. The agency's position is that because many of the known human tumor initiators, promoters, and carcinogens have initially been identified in rodents, positive results in this species would suggest the need for further investigation.

The agency considers the status of benzoyl peroxide as a free-radical-generating compound to be well established (Ref. 45). The agency believes that there is strong evidence to suggest that the free-radical generating ability of benzoyl peroxide is responsible for its promotional effects. These include an increase in dark basal keratinocytes and epidermal hyperplasia, increased terminal differentiation and ornithine decarboxylase levels, and inhibition of intracellular communication in mouse, hamster, and human cells (Refs. 1, 12, 23, 40, and 44). In addition, benzoyl peroxide activates protein kinase C (Ref. 73), and promotes chemically-initated transformation of mouse epidermal cells (Refs. 1, 11, 27, 74, 75, and 76).

The agency notes that most of the topical studies with benzoyl peroxide have been conducted in mice. While promotion was observed in almost all studies, carcinogenesis was observed in a select few that primarily used SENCAR (i.e., sensitive to carcinogens) mice, bred to have a unique sensitivity to cancer. Benzoyl peroxide has also promoted tumor development in C57BL/6 mice (Ref. 75) and demonstrated tumor-promoting activity in another species, the Syrian golden hamster (Ref. 14).

The agency contends that benzoyl peroxide not only shares most of the tumor-promoting features of 12-O-tetradecanoyl-phorbol 13-acetate, but also exhibits several properties of complete carcinogenesis not shared by 12-O-tetradecanoylphorbol 13-acetate. Included among these are resistance to inhibition by retinoic acid and induction of a high ratio of papillomas to carcinomas (Refs. 12, 75, and 77). In addition, benzoyl peroxide characteristically induced single-strand breaks in deoxyribonucleic acid, and it increased the rate of malignant progression of benign epidermal papillomas to squamous cell carcinomas (Refs. 15 and 39).

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epidermal cells, deoxyribonucleic acid-protein cross-linking in human cells, neoplastic transformation in mouse epidermal cells, and sister chromatid exchange (Refs. 27, 34, 39, 40, and 41). Also, the agency notes that a single teratology study in white Leghorn chicken eggs indicated that benzoyl peroxide increased malformations at a moderate frequency and, except for the lowest dose level, there was a dose-related increase in embryonic deaths (Ref. 28).

The agency concludes that the evidence (as described above) is substantial to establish benzoyl peroxide as a potent skin tumor promoter in more than one strain of mice and other laboratory animals tested. In addition, it appears that benzoyl peroxide shares a spectrum of characteristic features with the true (complete carcinogen) initiators. The most critical of these features is that benzoyl peroxide increased the rate of malignant progression of benign epidermal papillomas to squamous cell carcinomas in mice. While the promotional activity of benzoyl peroxide appears to predominate over initiator activity, the agency believes that it is possible that benzoyl peroxide could have a longer latency period as an initiator. The agency finds that initiation and complete carcinogenicity have not been evaluated in adequate studies of sufficient duration.

To date, benzoyl peroxide has not been subjected to the normally expected long-term (18 to 24 months) carcinogenicity studies in rodents. The agency considers the short duration (about 52 weeks) of topical studies which have shown only "promotion" to be insufficient to rule out the possibility of "initiation." In a complete carcinogenicity test by Kurokawa, et al. (Ref. 2) using female SENCAR mice, treatment with benzoyl peroxide alone resulted in two mice with skin tumors at 6 months. There were six mice with skin tumors at 9 months and eight mice with skin tumors at 12 months, a three- and four-fold increase, respectively.

Because of the general observation that most chemically-induced tumors have not become apparent until 18 months, the agency has extended the duration of bioassay for potential carcinogens to 24 months. In addition, current agency criteria are that a carcinogenicity study must cover a major part of an animal's lifespan (i.e., 18 months in the mouse, and 24 months in the rat).

In view of these findings, the agency concludes that it is unable to state, at this time, that benzoyl peroxide is generally recognized as safe. The agency's position is that long-term topical studies (18 to 24 months) in two species (mouse and rat) need to be conducted to adequately address the issue of benzoyl peroxide's safety as an OTC topical acne ingredient. Accordingly, the agency is amending the tentative final monograph for OTC topical acne drug products to reclassify benzoyl peroxide from Category I to Category III.

On May 18, 1990, the agency received a submission (Ref. 78) from a drug manufacturers association in response to the agency's letter of February 1, 1990 (Ref. 60). The drug manufacturers association stated that it had carefully considered the agency's evaluations of the data and information regarding the safety of benzoyl peroxide, but it did not agree with all of the agency's interpretations of the data. The drug manufacturers association remains convinced that benzoyl peroxide fulfills monograph conditions (i.e., generally recognized as safe and effective). However, the association agreed (as previously stated in a letter to the agency dated January 10, 1990 (Ref. 79)) that an additional animal study would be appropriate to more fully confirm benzoyl peroxide's safety. In addition, the association included in its response new data (an abstract of a recently completed epidemiologic study (Ref. 78) on benzoyl peroxide). The association mentioned that the results from this study indicate that there is no statistically significant association between benzoyl peroxide use and the subsequent development of skin cancer in humans.

The agency met with industry representatives on June 28, 1990 (Ref. 61) to discuss its evaluation of the benzoyl peroxide data and the additional long-term studies that need to be conducted. This meeting did not change the agency's position that additional long-term studies in animals are needed before benzoyl peroxide can be declared generally recognized as safe as an OTC topical acne active ingredient, as stated above in this amended tentative final monograph.

J. Labeling

One comment addressed a warning that the agency had proposed in the tentative final monograph of January 15, 1985 for products containing benzoyl peroxide. That warning in proposed § 333.350(c)(2) (50 FR 2172 at 2181) read as follows:

> Do not use this medication if you have very sensitive skin or if you are sensitive to benzoyl peroxide. This product may cause irritation, characterized by redness, burning, itching, peeling, or possibly swelling. More frequent use or higher concentrations may aggravate such irritation. Mild irritation may be reduced by using the product less frequently or in a lower concentration. If irritation becomes severe, discontinue use; if irritation still continues, consult a doctor. Keep away from eyes, lips, and mouth. This product may bleach hair or dyed fabrics.

One comment contended this proposed warning was overly lengthy and, thus, might discourage consumers from reading it. The comment added that the language used could be ambiguous and confusing to consumers. Therefore, the comment proposed an alternative warning, which it felt was more direct and more easily understood, as follows:

> This product may cause irritation if you have very sensitive skin or are sensitive to benzoyl peroxide. Should your skin become red and you experience itching, burning, peeling or swelling, discontinue use. If these symptoms persist, consult a physician. Mild irritation may be reduced by using the product less frequently or in a lower concentration. Keep away from eyes, lips and mouth. This product may bleach hair or dyed fabrics.

The agency's and the comment's proposed warnings differ in several ways. The agency's warning alerts individuals who have very sensitive skin or who are sensitive to benzoyl peroxide not to use acne preparations containing this ingredient. The Panel noted that certain types of complexion are more sensitive to environmental factors as well as topical drugs and that people with an atopic background (an inherited tendency to develop allergy) may also be more easily irritated by certain topical preparations (47 FR 12430 at 12444). Benzoyl peroxide is known to produce a primary irritant dermatitis in certain people with sensitive skin. There is evidence that the higher the concentration of benzoyl peroxide, the greater the irritation. Therefore, the Panel believed people should be warned that if they have excessive irritation or allergic reaction to benzoyl peroxide, they should not use this ingredient (Ref. 80). The alternative warning recommended by the comment only indicates that individuals with one or the other of these sensitivities may experience irritation from use of products containing benzoyl peroxide. It does not state that these individuals should not use the product but only tells them to discontinue use if symptoms of irritation occur. The agency does not find this approach to be adequate because some individuals should not use the ingredient under any conditions. Therefore, the agency cannot agree with the comment's suggestion.

The agency considers its proposed warning as more clearly describing the characteristics of a potential irritant type skin reaction than the comment's proposed alternative. The agency's proposed warning emphasizes irritation as the main side effect that may occur and then describes the nature of that irritation, whereas the comment's proposed warning does not as clearly link the irritation that may occur with the descriptive symptoms. However, the agency agrees with the comment's argument regarding the ambiguity of some of the language (i.e., "more frequent use or higher concentrations may aggravate such irritation") included in its proposed warning. The agency believes that the sentence "mild irritation may be reduced by using the product less frequently or in a lower concentration," contained in both warnings, clearly conveys the agency's intended message, and that the sentence "more frequent use or higher concentrations may aggravate such irritation," in the agency's proposal, is duplicative and not needed. Accordingly, the proposed warning in § 333.350 for products containing benzoyl peroxide would be revised to state:

> Do not use this medication if you have very sensitive skin or if you are sensitive to benzoyl peroxide. This product may cause irritation, characterized by redness, burning, itching, peeling, or possibly swelling. Mild irritation may be reduced by using the product less frequently or in a lower concentration. If irritation becomes severe, discontinue use; if irritation still continues, consult a doctor. Keep away from eyes, lips, and mouth. This product may bleach hair or dyed fabrics.

This revised warning will be added to the final monograph for OTC topical acne drug products if benzoyl peroxide is determined to be generally recognized as safe in the final rule pertaining to this ingredient, which will be published in a future issue of the **Federal Register**. Other general labeling issues for OTC topical acne drug products will be discussed in the final rule for these products, which will be published in a future issue of the **Federal Register**. That final rule will represent final agency action on all conditions in this rulemaking except for the ingredient benzoyl peroxide.

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(79) Comment No. LET7, Docket No. 81N–0114, Dockets Management Branch.

(80) Minutes of the 51st Meeting of the Advisory Review Panel on OTC Antimicrobial (II) Drug Products, June 6, and 7, 1980, pp. 98–103.

II. Summary of the Agency's Changes to the Proposed Rule

A. Ingredient Changes

1. The agency is reclassifying the ingredient benzoyl peroxide from Category I to Category III. Based on new data and information, the agency has determined that additional information is needed to adequately assess the tumor initiation potential of benzoyl peroxide. To date, topical studies have been of short duration (about 52 weeks).

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The agency has determined that studies of 18 to 24 months duration in two species of animals (mouse and rat) are needed to definitively address the safety status of benzoyl peroxide for the topical treatment of acne. (See section I. paragraph I. above.)

2. The agency is removing benzoyl peroxide from the proposed list of Category I active ingredients in § 333.310(a) and redesignating paragraphs (b) through (f) as paragraphs (a) through (e) in § 333.310 of this amended tentative final monograph.

3. The agency is revising the § 333.310 cross-references that appear in § 333.320 to reflect the redesignations that have occurred in § 333.310.

B. Labeling Changes

1. The agency is deleting the warning proposed in § 333.350(c)(2) of the previous tentative final monograph. This warning was proposed specifically for products containing benzoyl peroxide. Should benzoyl peroxide be included in the final monograph, the agency will slightly modify the previously proposed warning. (See section I. paragraph J. above.)

2. The warnings in § 333.350 (c)(3) and (c)(4) are redesignated (c)(2) and (c)(3), respectively.

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that not one of these rules, including this amendment of the tentative final monograph for OTC topical acne drug products, is a major rule.

In the economic assessment, the agency also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96–354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC topical acne drug products is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC topical acne drug products. Types of impact may include, but are not limited to, costs associated with product testing, relabeling, repackaging, or reformulating. Comments regarding the impact of this rulemaking on OTC topical acne drug products should be accompanied by appropriate documentation. A period of 60 days from the date of publication of this proposed rulemaking in the **Federal Register** will be provided for comments on this subject to be developed and submitted. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule on benzoyl peroxide in OTC topical acne drug products.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before October 7, 1991, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, written comments, objections, or requests for oral hearing before the Commissioner on the proposed regulation. A request for an oral hearing must specify points to be covered and time requested. Written comments on the agency's economic impact determination may be submitted on or before October 7, 1991. Three copies of all comments, objections, and requests are to be submitted, except that individuals may submit one copy. Comments, objections, and requests are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments, objections, and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Any scheduled oral hearing will be announced in the **Federal Register**.

Interested persons, on or before August 7, 1992, may also submit in writing new data demonstrating the safety of those conditions not classified in Category I. Written comments on the new data may be submitted on or before October 7, 1992. These dates are consistent with the time periods specified in the agency's final rule revising the procedural regulations for reviewing and classifying OTC drugs, published in the **Federal Register** of September 29, 1981 (46 FR 47730). Three copies of all data and comments on the data are to be submitted, except that individuals may submit one copy, and all data and comments are to be identified with the docket number found in brackets in the heading of this document. Data and comments should be addressed to the Dockets Management Branch (HFA–305) (address above). Received data and comments may also be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In establishing a final monograph, the agency will ordinarily consider only data submitted prior to the closing of the administrative record on October 7, 1992. Data submitted after the closing of the administrative record will be reviewed by the agency only after a final monograph is published in the **Federal Register**, unless the Commissioner finds good cause has been shown that warrants earlier consideration.

List of Subjects in 21 CFR Part 333

Labeling, Over-the-counter drugs, Topical acne drug products.

Therefore, under the Federal Food, Drug, and Cosmetic Act, it is proposed that part 333 of subchapter D of chapter I of title 21 of the Code of Federal Regulations (as proposed in the **Federal Register** of January 15, 1985; 50 FR 2172) be amended as follows:

PART 333—TOPICAL ANTIMICROBIAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 333 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

§ 333.310 [Amended]

2. Section 333.310 *Acne active ingredients* is amended by removing paragraph (a) and redesignating paragraphs (b) through (f) as paragraphs (a) through (e).

3. Section 333.320 is revised to read as follows:

§ 333.320 Permitted combinations of active ingredients.

(a) Resorcinol identified in § 333.310(a) when combined with sulfur identified in § 333.310(e) provided the product is labeled according to § 333.350.

(b) Resorcinol monoacetate identified in § 333.310(b) when combined with sulfur identified in § 333.310(e) provided

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§ 333.350 [Amended]

4. Section 333.350 *Labelin*
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Dated: June 4, 1991.

David A. Kessler,

Commissioner of Food and Dru

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List of Subjects in 21 CFR Part 333

Labeling, Over-the-counter drugs, Topical acne drug products.

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PART 333—TOPICAL ANTIMICROBIAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 333 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

§ 333.310 [Amended]

2. Section 333.310 *Acne active ingredients* is amended by removing paragraph (a) and redesignating paragraphs (b) through (f) as paragraphs (a) through (e).

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§ 333.320 Permitted combinations of active ingredients.

(a) Resorcinol identified in § 333.310(a) when combined with sulfur identified in § 333.310(e) provided the product is labeled according to § 333.350.

(b) Resorcinol monoacetate identified in § 333.310(b) when combined with sulfur identified in § 333.310(e) provided the product is labeled according to § 333.350.

§ 333.350 [Amended]

4. Section 333.350 *Labeling of acne drug products* is amended by removing paragraph (c)(2) and redesignating paragraphs (c)(3) and (c)(4) as paragraphs (c)(2) and (c)(3).

Dated: June 4, 1991.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 91-18696 Filed 8-6-91; 8:45 am]

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Part V

Department of Transportation

Office of Hearings

U.S.-Brazil Combination Service Case; Notice

DEPARTMENT OF TRANSPORTATION

Office of Hearings

[Docket 47676]

Combination Service Case; U.S.-Brazil

In the matter of prehearing conference order of Administrative Law Judge Robert L. Barton, Jr.

In Order 91-8-4, hereinafter referred to as the Instituting Order or the I.O., the Department has required that the Recommended Decision (R.D.) be rendered no later than November 22, 1991. Given that this date is approximately three and a half months from now, I must proceed to set the procedural dates for this case without waiting for a prehearing conference. While I realize that the dates are extremely stringent, and that the parties also may be participating in the U.S.-Italy Service Case, Docket 47654, given the very short time period set by the Department for the R.D. in this case, I do not intend to consider requests for modifications of the procedural dates unless there is a compelling reason for change. Therefore, the following procedural dates are hereby set:

Information Responses (see appendix B, IIIA of I.O.)[1] and Submission of Service Proposals:	August 13, 1991.
Prehearing Conference:	August 15, 1991.
Direct Exhibits:	August 19, 1991.
Rebuttal Exhibits:	September 16, 1991.
Commencement of Hearing:[2]	September 23, 1991.
Public Counsel's Statement of Position:	September 30, 1991.
Briefs:	October 15, 1991.[3]
Recommended Decision:	November 22, 1991.

[1] Appendix B, IIIA of the Instituting Order requires certain information responses from Public Counsel and incumbent carriers. These information responses shall be submitted no later than August 13, 1991, and three copies shall be submitted to the Judge in addition to the copy made available to the parties in room 4201 at the Department of Transportation, 400 7th Street, SW., Washington, DC. See Order 91-8-4, appendix B. On August 13, 1991 the applicants also shall serve the Judge and all parties with a statement of their service proposals, including routing, frequency, aircraft, equivalent frequencies, and proposed startup date. After August 13, the applicants will be permitted to change their service proposals only with the prior permission of the judge, and only upon a showing of exceptional circumstances warranting such a change. See 14 CFR 302.5 and 302.18.

[2] Because the Recommended Decision in the proceeding must be issued no later than November 22, 1991, only one week will be allotted for the hearing. If necessary, therefore, the hearing will include evening and weekend sessions. Moreover, strict limitations on direct and cross-examination will be set.

[3] Due to the short deadline for the R.D., reply briefs will not be permitted.

The prehearing conference will be held on August 15, 1991 at 10 a.m. in room 5332, 400 Seventh St. SW., Washington, DC. In order to facilitate the conduct of the conference, all parties shall submit, by August 12, 1991, one copy to each party and three copies to the judge of (1) a proposed statement of the issues or matters to be addressed at the conference; (2) any proposed stipulations; and (3) any additional requests for information other than those set forth in the Instituting Order. If no such submissions are received from the parties by August 12, I may cancel the prehearing conference.

Some civic parties may wish to file petitions to intervene. See 14 CFR 302.15. Any such motions to intervene must be filed no later than August 19, 1991, and their direct exhibits will be due that date as well. Such presentations usually do not require extensive direct or cross-examination. All parties in the proceeding will be required to indicate in advance of the hearing which witnesses they intend to cross-examine. If no parties wish to cross, the written statements may be offered in evidence without oral testimony. See attached ground rules.

Absent prior permission by the judge, Rule 14 participants, see 14 CFR 302.14, who wish to participate will be required to offer written presentations without oral testimony. Such statements must be submitted no later than 5 p.m. on the first day of the hearing in this case. Moreover, they must be served on the parties, the judge, and the hearing docket in the same manner required for exhibits submitted by the parties. *Ex parte* submissions to the judge will be rejected and returned to the sender.

The ground rules for the conduct of the preceeding are contained in appendix A and will govern unless modified as exigencies warrant. Exhibits which do not comply with these rules may be rejected.

Any questions about this order should be raised at the prehearing conference or presented as motions and served on all parties. *Ex parte* inquiries will not be considered.

A service list, which is derived from the Instituting Order, is included as appendix B. If not already contained therein, the parties should provide each other and the Judge with their full address, including room number, telephone number and fax number.

Robert L. Barton, Jr.,

Administrative Law Judge.

Ground Rules

1. *Evidence*

Evidence shall be prepared in written exhibit form and shall be served on the dates set forth in this order. Evidence as to events occurring after the exhibit-exchange dates shall be presented by revised exhibits.

The evidentiary record shall be limited to factual material. Argument shall be presented in briefs and not submitted as evidence.

Since the burden of showing the relevance and the probative value of evidence is on the proponent, any parties presenting econometric analyses will bear the burden of showing the relevance and value of such evidence in this proceeding. See U.S.-Japan Service Case, Docket 46438, Recommended Decision of Judge Ronnie A. Yoder, p. 71, n. 74, February 8, 1990.

Further, advertising or promotional materials generally will not be considered relevant.

However, as indicated at the prehearing conference, the parties are strongly encouraged to submit evidence relating to the comparative performance of the carriers at the proposed gateways. This would include specific information as to the on-time performance and passenger complaint rates of each carrier.

2. *Format of Exhibits*

The direct exhibits and rebuttal exhibits each shall contain a table of contents. The principal title of each exhibit should state precisely what it contains and should indicate the purpose for which the exhibit is offered. However, such statements will not be considered part of the evidentiary record.

The exhibits shall be numbered sequentially, and shall be on 8½×11 paper, unless otherwise ordered. Three copies of the exhibits (all of which are tabbed) shall be filed with the judge and copies shall be sent to the parties in accordance with the exhibit exchange list attached to this report. The tabs should be typed or printed in black letters on white tabs or dividers. Rebuttal exhibits shall refer specifically to the exhibits being rebutted.

Where one part of a multi-page exhibit is based on another part, appropriate cross-reference shall be made. For example, a profit-and-loss forecast based on detailed estimates appearing on other pages should contain specific references showing which pages support the different individual items of the forecast. Such exhibits shall be arranged in an organized manner in accordance with the party's theory of the case.

3. *Requirement for Submission of Corrected Copies of Exhibits*

Each party shall provide an original and three fully corrected copies of its exhibits received in evidence. If submitted at the hearing, the original is presented to the reporter and ultimately is transmitted to the Department for inclusion in the original docket of this proceeding. A revision date should be shown on all revised exhibits, and the submitting party should ensure that the revisions are physically inserted in the record copies.

4. *Authenticity of Documents*

The authenticity of all documents submitted as proposed exhibits in advance of the hearing shall be deemed admitted unless written objection is filed prior to the hearing, except that a party will be permitted to challenge authenticity at a later time by

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Further, advertising or promotional materials generally will not be considered relevant.

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The exhibits shall be numbered sequentially, and shall be on 8½×11 paper, unless otherwise ordered. Three copies of the exhibits (all of which are tabbed) shall be filed with the judge and copies shall be sent to the parties in accordance with the exhibit exchange list attached to this report. The tabs should be typed or printed in black letters on white tabs or dividers. Rebuttal exhibits shall refer specifically to the exhibits being rebutted.

Where one part of a multi-page exhibit is based on another part, appropriate cross-reference shall be made. For example, a profit-and-loss forecast based on detailed estimates appearing on other pages should contain specific references showing which pages support the different individual items of the forecast. Such exhibits shall be arranged in an organized manner in accordance with the party's theory of the case.

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Each party shall provide an original and three fully corrected copies of its exhibits received in evidence. If submitted at the hearing, the original is presented to the reporter and ultimately is transmitted to the Department for inclusion in the original docket of this proceeding. A revision date should be shown on all revised exhibits, and the submitting party should ensure that the revisions are physically inserted in the record copies.

4. *Authenticity of Documents*

The authenticity of all documents submitted as proposed exhibits in advance of the hearing shall be deemed admitted unless written objection is filed prior to the hearing, except that a party will be permitted to challenge authenticity at a later time by

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showing good cause for having failed to file a written objection (*e.g.*, absent objection, if an exhibit purporting to be a copy of a letter mailed on a certain date were submitted, it would not be necessary to prove such mailing or the accuracy of the copy).

5. *Hearing*

A. *Direct Examination*

The applicant's direct exhibits shall describe its service proposal *in detail*, including the proposed routing, frequency, aircraft, frequencies, and startup date. However, the service proposal in the direct exhibits shall not deviate from the service proposal presented with the Information Responses without prior permission of the Judge.

A party that believes it has evidence which is appropriate for receipt in evidence without a sponsoring witness may present, with its exhibits, (1) an affidavit, by the person or persons who prepared the exhibits stating that the exhibits were prepared by them, or under their direction, and are true and correct; and (2) a request that the exhibits be received in evidence without a witness at the hearing. Any party who desires to cross-examine and, therefore, objects to such a request, shall advise the requesting party in writing, with a copy to the judge, setting forth those objections and specifying the witness or witnesses it intends to cross-examine. If no objections are received, the exhibit will be received without a sponsoring witness at the hearing, subject to the right of objection on other grounds.

Further, any other witness who has submitted testimony in written form need not appear at the hearing unless a party states that it wishes to cross-examine the witness. The parties must indicate witnesses they wish to cross-examine no later than November 29, 1990.

Civic parties will proceed first, followed by the carriers, each proceeding in the same alphabetical order as shown in the service list. Parties are expected to present their cases in order. Witnesses will be taken out of order for good cause, such as illness, severe family crisis, or other unavoidable and unforeseen circumstances.

Direct oral examination of witnesses for the purpose of responding to rebuttal exhibits shall be strictly limited. General questions will not be permitted. Such examination shall be specific in nature and not lengthy. Witnesses shall state in precise terms their disagreement with the rebuttal exhibit and not read from prepared statements or merely restate information contained in other exhibits.

B. *Cross-Examination*

Cross-examination shall be limited to the scope of the direct examination and to witnesses whose testimony is adverse to the party desiring to cross-examine. Thus, "friendly cross-examination" will not be permitted. Parties with common interests will be aligned for purposes of the hearing. See 14 CFR 399.61. If the parties do not formally align, I may consider them aligned in any event to the extent they have common interests.

Cross will not be permitted on the same areas of testimony of a party with a common interest. Where carriers and civic parties are aligned or have common interests, they should consult before beginning cross of a particular witness and determine who is going to conduct the cross-examination of that witness.

Even to the extent that parties do not have related interests, they still will not be allowed to engage in duplicative cross-examination. I will prohibit, either on objection of a party or on my own, cross-examination of areas which have already been covered by another party.

Unless the parties agree otherwise, the order of cross-examination will be in alphabetical order, with carriers first.

Cross-examination generally will be limited to fifteen minutes per party. I may allow additional time if a party advises me prior to the beginning of the cross of the need for extra time, demonstrates good cause for a longer examination, and states how much time is needed. Recross normally will not be permitted.

C. *Motions and Objections*

Oral argument on any motion or objection may be limited to the party or parties making the motion or objection and to the party or parties against which the motion or objection is directed.

6. *Withdrawal of an Applicant*

If a party decides at some point in the proceeding not to prosecute its application, I expect it promptly to notify me and to withdraw its application. If it fails to do so, I may dismiss the application on my own initiative.

7. *Exceptions to the Rules*

These rules are deemed consistent with the orderly conduct of this proceeding but exceptions may be made by the judge, either in response to a party's motion or on his own initiative.

Service List

U.S.-Brazil Combination Service Case

American Airlines, Inc.

Carl B. Nelson, Jr., Esq., American Airlines, Inc., 1101 17th Street, NW., Suite 600, Washington, DC 20036, TEL: (202) 857-4228, FAX: (202) 857-4246.

Delta Air Lines, Inc.

Robert E. Cohn, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Fifth Floor, Washington, DC 20037, TEL: (202) 663-8060, FAX: (202) 663-8007.

Northwest Airlines, Inc.

Mr. Elliott Seiden, Northwest Airlines, Inc., 901 15 Street, NW., suite 500, Washington, DC 20005.

Pan American World Airways, Inc.

Richard Mathias, Esq., Pan American World Airways, Inc., 1200 17th Street, NW., suite 500, Washington, DC 20036, TEL: (202) 659-7722.

United Air Lines, Inc.

Joel Stephen Burton, Esq., Ginsburg, Feldman & Bress, Chartered, 1250 Connecticut Avenue, NW., suite 800, Washington, DC 20036, TEL: (202) 637-9130, FAX: (202) 637-6776.

California Parties

Mr. Douglas H. Gordon, Vice President-Corporate Affairs, California Chamber of Commerce, 1201 K Street, 12th Floor, P.O. Box 1736, Sacramento, California 95812-1736.

Mr. James K. Hahn, City Attorney's Office, Department of Airports, 1 World Way, room 104, P.O. Box 92216, Los Angeles, California 90009-2216.

Mr. Donald D. Doyle, President, San Francisco Chamber of Commerce, 465 California Street, Ninth Floor, San Francisco, California 94104.

Georgia & Atlanta Parties

Bill Alberger, Esq., Stoel Rives Boley Jones & Grey, 1275 K Street, NW., suite 1100, Washington, DC 20005.

Brazil

Embassy of Brazil, 3006 Massachusetts Avenue, NW., Washington, DC 20016.

U.S. State Department

Mr. Charles Angevine, Deputy Assistant Secretary for Transportation Affairs, U.S. Department of State, 2201 C Street, NW., room 5830, Washington, DC 20520.

U.S. Department of Transportation

The Honorable Robert L. Barton, Jr., Administration Law Judge, Office of Hearings, M-50, room 9228, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, TEL: (202) 366-2140, FAX: (202) 366-7536.

Mr. Robert S. Goldner, Office of the Deputy Assistant Secretary for Policy & International Affairs, room 9216, P-7, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, TEL: (202) 366-4826.

Docket Section, room 4107, C-55, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

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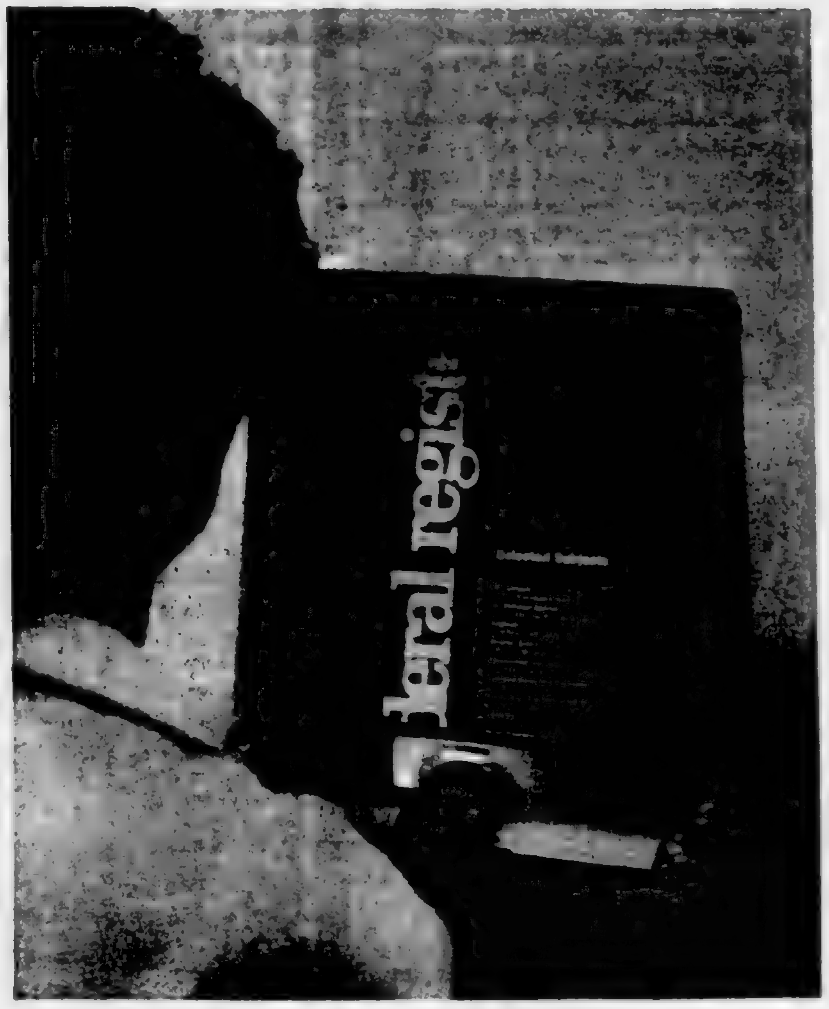

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Reader Aids

Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

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published under 50 titles pursua
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The Code of Federal Regulation
by the Superintendent of Docum
Prices of new books are listed
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week.

DEPARTMENT OF AGRICULT

Agricultural Marketing Servic

7 CFR Part 905

[Docket No. FV-90-202FR]

Oranges, Grapefruit, Tangerin
Tangelos Grown in Florida; Re
of Grade and Size Requiremen

AGENCY: Agricultural Marketing
USDA.

ACTION: Final rule.

SUMMARY: The U.S. Departmen
Agriculture (Department) is ad
without modification as a final
three interim final rules as they
to minimum grade and size req
for Florida citrus for portions o
1990–91 season. Those rules te
relaxed minimum grade and siz
requirements for fresh shipmen
Dancy tangerines, red and whit
seedless grapefruit, and Valenc
other late type oranges. Those
relaxations were designed to e
handlers to maximize shipment
market channels consistent wit
overall size and quality of the r
crops and anticipated market d

EFFECTIVE DATE: August 8, 1991

FOR FURTHER INFORMATION CON
Gary D. Rasmussen, Marketing
Specialist, Marketing Order
Administration Branch, Fruit a
Vegetable Division, AMS, USD
Box 96456, room 2525–S, Wash
DC 20090–6456; telephone: (202)
3918.

SUPPLEMENTARY INFORMATION:
final rule is issued under Mark
Agreement and Marketing Ord
905, both as amended (7 CFR p
regulating the handling of oran
grapefruit, tangerines, and tang
grown in Florida. This order is
under the Agricultural Marketi
Agreement Act of 1937, as ame

Rules and Regulations

Federal Register
Vol. 56, No. 153
Thursday, August 8, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV-90-202FR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Relaxation of Grade and Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture (Department) is adopting without modification as a final rule three interim final rules as they applied to minimum grade and size requirements for Florida citrus for portions of the 1990–91 season. Those rules temporarily relaxed minimum grade and size requirements for fresh shipments of Dancy tangerines, red and white seedless grapefruit, and Valencia and other late type oranges. Those relaxations were designed to enable handlers to maximize shipments to fresh market channels consistent with the overall size and quality of the remaining crops and anticipated market demand.

EFFECTIVE DATE: August 8, 1991.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 475–3918.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 90 Florida citrus handlers subject to regulation under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida, and about 12,000 producers of these citrus fruits in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A minority of these handlers and a majority of the producers may be classified as small entities.

The Citrus Administrative Committee (CAC), which administers the order locally, met on September 11, 1990, January 29, 1991, and April 2, 1991, and unanimously recommended several grade and size relaxations for Dancy tangerines, red and white seedless grapefruit, and Valencia and other late type oranges. These relaxations were based on the CAC's assessment of crop and market conditions and the remaining available supply of these citrus fruits. The CAC meets prior to and during each season to review the handling requirements, effective on a continuous basis, for each regulated citrus fruit. CAC meetings are open to the public and interested persons may express their views at these meetings. The Department reviews CAC recommendations and information submitted by the CAC and other available information and determines whether modification, suspension, or termination of the handling requirements would tend to effectuate the declared policy of the Act.

The first interim final rule issued October 19, 1990 and published in the **Federal Register** (55 FR 42843, October 24, 1990), provided for the filing of comments through November 23, 1990. No comments were received. That rule amended § 905.306 (7 CFR 905.306) which specifies minimum grade and size requirements for Florida citrus in Table I of paragraph (a) for domestic shipments, and in Table II of paragraph (b) for export shipments. The minimum size requirement for domestic shipments of Dancy tangerines were relaxed to size 210 ($2\frac{1}{16}$ inches in diameter) from size 176 ($2\frac{4}{16}$ inches) for the period November 5, 1990 through August 18, 1991. In addition, that interim final rule relaxed the minimum size requirement for domestic shipments of red seedless grapefruit to size 56 ($3\frac{5}{16}$ inches in diameter) for the period October 22, 1990 through October 20, 1991. In the absence of that action, the minimum size requirement for red grapefruit would have increased to size 48 ($3\frac{9}{16}$ inches in diameter).

The first interim final rule also similarly relaxed the size requirements for grapefruit imported into the United States specified in § 944.106 (7 CFR 944.106), pursuant to section 8e of the Act (7 U.S.C. 608e–1). Subsequently, the grapefruit import requirements were temporarily suspended beginning March 11, 1991 (56 FR 10792, March 14, 1991), to provide the U.S. Trade Representative (USTR) an opportunity to review contemplated changes in the grapefruit import requirements. Therefore, this final rule does not apply to imported grapefruit. Any grapefruit import requirements issued by the Department will be included in a separate action.

The second interim final rule issued March 8, 1991 and published in the **Federal Register** (56 FR 10790, March 14, 1991), provided for the filing of comments through April 15, 1991. No comments were received. That rule further amended § 905.306, relaxing the minimum external quality requirement for domestic and export shipments of red seedless grapefruit to U.S. No. 2 grade from Improved No. 2 grade for the period March 11, 1991, through August 18, 1991. In addition, that rule relaxes the minimum size requirement for domestic shipments of white seedless grapefruit to size 56 ($3\frac{5}{16}$ inches in diameter) from size 48 ($3\frac{9}{16}$ inches in diameter) for the period April 15, 1991, through August 18, 1991.

The third interim final rule issued May 8, 1991 and published in the **Federal Register** (56 FR 21915, May 13, 1991), provided for the filing of comments through June 12, 1991. No comments were received. That rule further amended § 905.306 temporarily relaxing the minimum grade requirement for domestic and export shipments of Valencia and other late type oranges to U.S. No. 1 Golden from U.S. No. 1 for the period May 6, 1991, through September 22, 1991. That rule also relaxed the minimum size requirement for domestic and export shipments of Valencia and other late type oranges to 2–4/16 inches in diameter (size 163) from 2–8/16 inches in diameter (size 125) for the period May 6, 1991, through September 22, 1991. In addition, that rule relaxed the minimum grade requirement for domestic shipments of white seedless grapefruit to U.S. No. 2 from Improved No. 2 for the period May 6, 1991, through May 19, 1991, and further relaxed such requirement to U.S. No. 2 Russet for the period May 20, 1991, through August 18, 1991. Further, that rule relaxed the minimum grade requirement for domestic shipments of red seedless grapefruit to U.S. No. 2 Russet from U.S. No. 2 for the period May 6, 1991, through August 18, 1991.

The CAC recommended these relaxations based on analysis of this season's remaining Florida Dancy tangerine, grapefruit, and Valencia and other late type orange crops. Relaxing the minimum grade requirements for these fruits was designed to assure that fresh markets were supplied with the best quality fruit available from this season's remaining crops. The grade relaxations pertained only to the external characteristics of the fruit, not the internal quality, and recognized the fact that the external appearance of these fruits tends to decline later in the season. Relaxing the minimum size requirements for these fruits was designed to make smaller fruit available of acceptable maturity and flavor to meet consumer needs. The relaxations were designed to enable handlers to maximize shipments to fresh market channels consistent with the overall size and quality of the remaining crops and anticipated market demand.

Under this marketing order, handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day, and up to two standard packed cartons of fruit per day in gift packages which are individually addressed and not for resale, under exemption provisions. Fruit shipped for animal feed is also exempt under specific conditions. In addition, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements.

The Department's view if that these relaxations have had a beneficial impact on producers and handlers since they allow Florida citrus handlers to continue to ship those grades and sizes of fruit available to meet consumer needs consistent with this season's crop and market conditions.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the CAC, and other information, it is found that this final rule finalizing three interim final rules, each of which amended the provisions of § 905.306, as published in the **Federal Register** (55 FR 42844, October 24, 1990; 56 FR 10791, March 14, 1991; and 56 FR 21917, May 13, 1991), will tent to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action maintains relaxed grade and size requirements currently in effect for Dancy tangerines, red and white seedless grapefruit, and Valencia and other late type oranges grown in Florida; (2) the Florida citrus shipping season for these citrus fruit is nearly finished; (3) Florida citrus handlers will need no additional time to continue complying with the relaxed requirements; (4) each interim final rule provided a 30-day comment period, and no comments were received; and (5) no useful purpose will be served by delaying the effective date until 30 days after publication.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: Secs. 1–19, 48 Stats. 31, as amended; 7 U.S.C. 601–674.

2. Accordingly, the interim final rules amending the provisions of § 905.306, published in the **Federal Register** (55 FR 42844, October 24, 1990; 56 FR 10791, March 14, 1991; and 56 FR 21917, May 13, 1991), are adopted as final rules without change.

Note: These sections will appear in the annual Code of Federal Regulations.

Dated: August 2, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–18886 Filed 8–7–91; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 989

[FV–91–267FR]

Raisins Produced From Grapes Grown in California; Revising the Desirable Carryout Formula

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the administrative rules and regulations of the California raisin marketing order. This action changes the desirable carryout level from three months of shipments to two and one-half months of shipments. The Raisin Administrative Committee (Committee) has determined that the use of the current desirable carryout level results in excessive supplies of marketable tonnage early in the crop year. This action is intended to stabilize marketing conditions for California raisins. This change was recommended by the Committee, which is responsible for local administration of the Federal marketing order regulating the handling of raisins produced from grapes grown in California.

EFFECTIVE DATE: August 8, 1991.

FOR FURTHER INFORMATION CONTACT: Richard Lower, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–3923.

SUPPLEMENTARY INFORMATION: This final rule is issued under marketing agreement and Order No. 989 (7 CFR part 989), both as amended, regulating

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7 CFR Part 905

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art 905 is amended as

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: Secs. 1–19, 48 Stats. 31, as amended; 7 U.S.C. 601–674.

2. Accordingly, the interim final rules amending the provisions of § 905.306, published in the **Federal Register** (55 FR 42844, October 24, 1990; 56 FR 10791, March 14, 1991; and 56 FR 21917, May 13, 1991), are adopted as final rules without change.

Note: These sections will appear in the annual Code of Federal Regulations.

Dated: August 2, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–18886 Filed 8–7–91; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 989

[FV–91–267FR]

Raisins Produced From Grapes Grown in California; Revising the Desirable Carryout Formula

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the administrative rules and regulations of the California raisin marketing order. This action changes the desirable carryout level from three months of shipments to two and one-half months of shipments. The Raisin Administrative Committee (Committee) has determined that the use of the current desirable carryout level results in excessive supplies of marketable tonnage early in the crop year. This action is intended to stabilize marketing conditions for California raisins. This change was recommended by the Committee, which is responsible for local administration of the Federal marketing order regulating the handling of raisins produced from grapes grown in California.

EFFECTIVE DATE: August 8, 1991.

FOR FURTHER INFORMATION CONTACT: Richard Lower, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–3923.

SUPPLEMENTARY INFORMATION: This final rule is issued under marketing agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 25 handlers of California raisins who are subject to regulation under the raisin marketing order, and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A majority of producers and a minority of handlers of California raisins may be classified as small entities.

This final rule changes the administrative rules and regulations of the raisin marketing order. The Committee recommended this action by a 32 to 11 vote at its March 5, 1991, meeting.

The change revises the desirable carryout level which appears in § 989.154. The desirable carryout level is the amount of tonnage from the prior crop year that is considered necessary for the industry to have available during the first part of the succeeding crop year to meet market needs, before the crop is harvested. Currently, § 989.154 provides that the desirable carryout level shall be equal to the shipments of free tonnage to all outlets for each varietal type during the period from August through October of the prior crop year. The desirable carryout figure is used in marketing policy calculations to determine trade demand. The trade demand is 90 percent of prior year's shipments, adjusted by the carryin and desirable carryout. The trade demand is then used to help determine the volume regulation percentages for each crop year, if necessary.

The current desirable carryout figure was established on June 9, 1989 (54 FR 25669). At that time, the Committee determined that the desirable carryout levels for certain varietal types of raisins specified in the order were too low and that higher levels were more appropriate because they would allow handlers to have adequate inventory to meet shipment needs during the early months of the crop year. The desirable carryout level of three months' shipments was used for the first time in marketing policy calculations for the 1989–90 crop year. The change in the desirable carryout level increased the desirable carryout from 60,000 tons to 103,090 tons for Natural (sun-dried) Seedless raisins (the major varietal type of raisin).

After two crop years' experience, the Committee has determined that the use of the three month desirable carryout level has resulted in excessive supplies of marketable tonnage early in the season. The majority of the Committee members believe that this causes unstable market conditions during the early part of the crop year, resulting in a reduction of trade prices.

In order to correct the oversupply of marketable raisin tonnage early in the season, the Committee has recommended that the desirable carryout level be revised from three months of shipments to two and one-half months of shipments from the prior crop year. For example, the Committee would use the total shipments for each varietal type from the prior year for the months of August and September, and one-half of the total shipments in October, for computing free and reserve percentages for the applicable crop year. The change in the desirable carryout level will reduce the trade demand and the free tonnage percentage, thus making less free tonnage available to handlers for immediate use. However, handlers will still be provided an opportunity to increase their inventory, if necessary, by purchasing raisins from the reserve pool under the 10 plus 10 offers during November and other releases of reserve pool raisins available under the marketing order. The 10 plus 10 offers are two simultaneous offers of reserve pool raisins which are made available to handlers each season. For each such offer, a quantity of raisins equal to 10 percent of the prior year's shipments is made available for free use.

A proposed rule on this action was published in the **Federal Register** on May 20, 1991 (56 FR 23033). The proposed provided interested persons the opportunity to file written comments through June 19, 1991. A total of 117 comments were submitted prior to the close of the comment period. One hundred and three comments were opposed to the proposal. The remaining 14 of the 117 comments supported the proposal.

Prior to the May 20, 1991, publication of the proposed rule to revise the desirable carryout formula in the **Federal Register** (56 FR 23033), the Department received approximately 67 letters from interested persons opposing the Committee's recommendation. These individuals opposed the recommendation because they believed that: (1) Demand for California raisins will not be increased by a reduction to the industry's free tonnage; (2) a tightening of supply and increased prices will reduce the supply of California raisins at a time when the industry is investing funds in export promotion programs to increase shipments; (3) purchases of over 20,000 tons from this year's 10 plus 10 offers indicate that handlers were not overburdened with free tonnage; and (4) producers may be economically impacted by the decrease in free tonnage due to the reduction in the desirable carryout level. In view of these concerns, the Department requested comments specifically addressing these issues.

Commenters who favored the proposed desirable carryout level change addressed these issues. In reply to the first issue, one commenter stated that the demand for California raisins will neither increase nor decrease as a result of the change. Demand for California raisins is determined by consumer and customer preferences and the available supply from competing countries. It is expected that the change in the desirable carryout level will not affect demand for California raisins.

In response to the second issue, one commenter stated that the industry would make available adequate supplies to cover all projected demand even with the proposed change. Further, the change in the desirable carryout level is consistent with the Department's 1982 "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" which specifies that reserve pool programs make available a quantity equal to 110 percent of recent years' sales. In fact, since the advent of the

Export Incentive Program in 1983, the 110 percent guideline has been exceeded and the recommended change to the carryout level will not result in a reduction of this figure.

In response to the third issue, one commenter stated that the demand for the 10 plus 10 purchases was quite high for the three years prior to the 1989 change in the desirable carryout level. Since the 1989 desirable carryout level change, the 10 plus 10 purchases have decreased dramatically. For 1986, 1987 and 1988, the 10 plus 10 purchases were:

1986	44,207 (tons)
1987	49,715 (tons)
1988	64,546 (tons)

However, the 10 plus 10 purchases since 1989 were:

1989	30,345 (tons)
1990	20,296 (tons)

The reduction from 64,546 tons in 1988 before the change in the desirable carryout level to 20,926 tons in 1990 demonstrates that there has been a substantial change in market conditions. In fact, the low level of 10 plus 10 purchases in 1990 indicates that some handlers are overburdened with raisins and are cutting back their purchases out of the 10 plus 10 offers, thus, adjusting their inventory positions down.

Another commenter stated that the opposition's third issue supports this rule change because only 20,000 tons of raisins were purchased out of the first 10 percent offer. The commenter also stated that this purchase (20,000 tons) did not take into consideration the second 10 percent offer, in which packers would purchase raisins in anticipation of a sales increase. In 1990, approximately 30,000 tons of raisins were available for the first 10 percent offer and an additional 30,000 tons of raisins were available for the second 10 percent offer. However, only 20,000 tons of raisins were purchased. Thus, the fact that approximately 40,000 tons (10,000 tons from the first 10 percent offer and 30,000 tons from the second 10 percent offer) were not purchased by the packers shows that there is excess free tonnage inventory in the industry.

In reply to the fourth issue, several commenters acknowledged that it is possible that, in enacting this change, raisin growers' initial free tonnage could be reduced by approximately 5 percent. However, in subsequent years, the negative impact on their free tonnage may be offset by smaller carryins. The commenters also stated that the Committee's recommendation aims to more accurately reflect the annual desirable free tonnage carryout to bring supply more closely in line with demand. Furthermore, the 10 plus 10 offer is always available to raisin handlers and, if there is strong demand, purchases may be made due to the confidence in market stability.

Several of the comments received in opposition to the recommendation were from raisin producers. Some commenters opposed any change that would reduce the free tonnage of raisins. However, they provided the Department with no additional information to support their opposition.

Other raisin producers commented that they would be affected by the change since it would decrease the free tonnage percentage for the 1991–92 crop by approximately 5 percent. They supported keeping the current desirable carryout level in order to maintain aggressive sales; to avoid increasing the amount of tonnage in the reserve pool; and to prevent further reduction of their income which is used to meet the continuous rise in operational costs.

Comments submitted by interested persons in opposition to the proposal also asserted that the decrease in the free tonnage percentage and increase in the reserve pool percentage will reduce immediate income to producers, since producers are usually paid for their free tonnage portion of the raisin crop at the time of delivery to handlers. Another commenter stated that a large handler has been successful in increasing its market share and stimulating sales under the current desirable carryout level. The commenter requested that the Department allow more time prior to issuing this proposal in order to determine if there are any positive benefits in revising the desirable carryout level.

As previously mentioned, the initial free tonnage could possibly be reduced by approximately 5 percent. However, as one raisin producer who supported the rule stated, "We must look not only at the short-term consequences of an action, but the long-term dividends that can be obtained. The raisin producer can reasonably expect an increase in the 10 plus 10 purchases which have dwindled each season since the three-month shipment formula was initiated."

Another commenter stated that the approximate 5 percent decrease may be more than offset by an increase in 10 plus 10 purchases and an increase in field prices. If such a change is not implemented soon, the proponents of the revision in the desirable carryout level feel that market instability and lower prices will continue.

With regard to several commenters' opposition to the proposal, one supporter of the change to the desirable carryout figure from three months of shipments to two and one-half months of shipments believes that the change is reasonable and is supported by both producers and handlers. The supporter commented that since the inception of the raisin marketing order in 1949 until 1976, there was no specific mathematical formula for determining the volume of free tonnage raisins to be released to the handlers without restrictions. Instead, for 27 years, the industry would debate each year the proper amount of raisins to be released. Due to differences of opinion, the eventual decisions by the industry were unpredictable. In 1976, the raisin industry strongly supported the creation of a mathematical formula to further orderly marketing. In order to provide orderly marketing while permitting for growth in sales, the industry recommended to the Department a policy of raisins equal to 110 percent of the previous years shipments be made available to handlers. This was accomplished by setting the free tonnage volume at 90 percent of previous year's shipments, and allowing two offers of 10 percent to bring the total tonnage available to 110 percent (90 percent plus 10 percent plus 10 percent).

The commenter further stated that the Committee's proposal is necessary to correct a mistake in the formula when it was last amended in 1989. The commenter pointed out that the 1989 change has over the last two marketing seasons created an industry oversupply early in the season; hindered handlers with excess inventory from adjusting their positions; and created a sudden change which has resulted in market instability and lower prices.

In conclusion, it is the Agency's view that the increase to a three-month desirable carryout level contributed to instability in the market, i.e., oversupply early in the season and reduced 10 plus 10 purchases. In addition, the desirable carryout was set at a level which created an industry oversupply early in the season which may have resulted in lower grower returns.

Based on available information, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the Committee's recommendation, the comments received, and other available information, it is found that the revision

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The commenter further stated that the Committee's proposal is necessary to correct a mistake in the formula when it was last amended in 1989. The commenter pointed out that the 1989 change has over the last two marketing seasons created an industry oversupply early in the season; hindered handlers with excess inventory from adjusting their positions; and created a sudden change which has resulted in market instability and lower prices.

In conclusion, it is the Agency's view that the increase to a three-month desirable carryout level contributed to instability in the market, i.e., oversupply early in the season and reduced 10 plus 10 purchases. In addition, the desirable carryout was set at a level which created an industry oversupply early in the season which may have resulted in lower grower returns.

Based on available information, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the Committee's recommendation, the comments received, and other available information, it is found that the revision

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of the desirable carryout level from three months to two and one-half months of shipments which appears in section 989.154 relating to the desirable carryout level will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because the Committee is required to meet on or before August 15 to compute the trade demand for the new crop year, and this rule affects one portion of that computation.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 989.154 is revised to read as follows:

(Note: This action will appear in the annual Code of Federal Regulations).

§ 989.154 Desirable carryout levels.

The desirable carryout levels to be used in computing and announcing a crop year's marketing policy shall be equal to the total shipments of free tonnage of the prior crop year during the months of August and September, and one-half of the total shipments for the month of October, for each varietal type, converted to a natural condition basis: *Provided*, That should the prior year's shipments be limited because of crop conditions, the Committee may select the total shipments during the months of August and September, and one-half of the total shipments for the month of October, during one of the three years preceding the prior crop year.

Dated: August 5, 1991.

Robert C. Kenney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–18928 Filed 8–6–91; 2:48 pm]

BILLING CODE 3410-02-M

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7 CFR Part 998

[Docket No. FV-91-262FR]

Marketing Agreement No. 146 Regulating the Quality of Domestically Produced Peanuts; Changes in the Outgoing Quality Regulation and Terms and Conditions of Indemnification for 1991 Crop Peanuts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes the outgoing quality regulations and the current terms and conditions of indemnification for 1991 crop peanuts regulated under Marketing Agreement No. 146. The outgoing regulation is changed to allow for more efficient utilization of peanut meal resulting from the crushing of peanuts for peanut oil. The terms and conditions of indemnification are changed to set a $9,000,000 limit on indemnification expenses (including $5,000,000 in insurance coverage) and to establish a payment schedule and criteria which will ensure that all indemnification claims are handled equitably and are paid as soon as it can be ascertained that the $9,000,000 limit will not be exceeded. The limit on indemnification expenditures is intended to ensure that indemnification expenses incurred do not exceed the Peanut Administrative Committee's (Committee) ability to cover such expenses in the event of a crop year with an unusually high incidence of aflatoxin.

EFFECTIVE DATE: August 8, 1991.

FOR FURTHER INFORMATION CONTACT: Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–475–3862.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 146 (7 CFR part 998), regulating the quality of domestically produced peanuts, hereinafter referred to as the agreement. This agreement is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) (the Act).

This final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are 68 handlers of peanuts subject to regulation under the agreement, and there are about 46,950 peanut growers in the 16 states covered under the program. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. Some of the handlers signatory to the agreement are small entities, and a majority of the growers may be classified as small entities.

There are three major peanut production areas in the United States covered under the agreement: (1) Virginia-Carolina, (2) Southeast, and (3) Southwest. These areas encompass 16 states. The Virginia-Carolina area (primarily Virginia and North Carolina) usually produces about 18 percent of the total U.S. crop. The Southeast area (primarily Georgia, Florida and Alabama) usually produces about two-thirds of the crop. The Southwest area (primarily Texas, Oklahoma, and New Mexico) produces about 15 percent of the crop. Based upon the most current information, U.S. peanut production in 1990 totalled 3.60 billion pounds, a 10 percent decrease from 1989 and 1988. The 1990 crop value is $1.26 billion, up 13 percent from 1989.

The objective of the agreement is to ensure that only wholesome peanuts enter edible market channels. Since aflatoxin was found in peanuts in the mid-1960's, the domestic peanut industry has sought to minimize aflatoxin contamination in peanuts and peanut products.

The agreement plays a very important role in the industry's quality control efforts. It has been in place since 1965 with over 90 percent of U.S. shellers (handlers) participating. The participating shellers handle about 95 percent of the crop. Under the agreement, farmer's stock peanuts with visible *Aspergillus flavus* mold (the principal source of aflatoxin) are required to be diverted to non-edible uses. Each lot of shelled peanuts for edible use must be officially sampled and chemically tested for aflatoxin by the Department or in laboratories approved by the Committee. The Committee works with the Department in administering the marketing

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agreement program. The inspection and chemical analysis programs are administered by the Department. A sheller who has complied with these requirements, is eligible for indemnification of losses incurred if the sheller's peanuts are deemed unsuitable for human consumption because of aflatoxin. All indemnification and administration costs are paid by assessments levied on handlers signatory to the agreement.

The incoming quality regulation specifies the quality of farmers' stock peanuts which handlers may purchase from producers. Handlers are required to purchase only good quality, wholesome peanuts for edible products. The outgoing quality regulation requires shellers to mill peanuts to meet certain quality specifications and to have them inspected before such peanuts can be sold to edible outlets. Foreign material and damaged and immature peanuts are removed in the milling operation. Each lot of milled peanuts must be sampled and the samples chemically analyzed for aflatoxin. If the chemical assay shows that the lot is positive as to aflatoxin, the lot is not allowed to go to edible channels. Lower quality peanuts are crushed for oil and meal. The end result is that only good quality peanuts end up in human consumption outlets.

On January 23-24, 1991, the Committee unanimously recommended changes in paragraphs (g)(3)(ii) and (l)(2) of § 998.200 *Outgoing Regulation* to require that meal produced from the crushing of all "restricted" categories of peanuts be sampled as prescribed by the Committee and tested for aflatoxin, and that the numeric test results be shown on the certificate accompanying each shipment of meal produced from the crushing of "restricted" categories of peanuts. The Committee also recommended that the current restrictions regarding the use and disposition of meal produced from the crushing of "restricted" peanuts be removed from the regulations. Meal produced from the crushing of "unrestricted" categories of peanuts will continue to be exempt from aflatoxin testing requirements and will be eligible for feed use without testing.

Generally, restricted categories of peanuts are peanuts which were determined to be Segregation III or peanuts which contain or are likely to contain significant levels of aflatoxin. Unrestricted categories of peanuts are peanuts which have been determined to be Segregation I or II pursuant to § 998.100 or have been determined to be negative (based on the criteria applicable to non-edible quality categories) as to aflatoxin content.

Currently, meal produced from restricted categories of peanuts, unless detoxified, must be disposed of for fertilizer or other non-feed uses. The Committee reported that other Federal and State requirements or criteria for the disposition of peanut meal in certain food outlets are less restrictive than those currently in effect under the agreement. Therefore, the regulations under the agreement restrict dispositions of peanut meal for feed use that would be authorized under other State and Federal requirements or criteria. The changes will provide crushers and meal receivers with certified information as to the aflatoxin content of meal produced from restricted categories of peanuts. Receivers will then make usage determinations based upon Federal or State requirements or criteria in effect for the desired outlet. This will allow for more efficient utilization of peanut meal, eliminate differences between the agreement regulations and other State or Federal requirements or criteria, and simplify the requirements in effect for the disposition of peanut meal under the agreement.

At its February 27 meeting, the Committee recommended changes in § 998.300 *Terms and conditions of indemnification* to limit indemnification expenses on 1991 crop peanuts to $9,000,000, including $5,000,000 of insurance coverage. The Committee's recommendation would cause payment of the applicable indemnification payment on indemnified 1991 crop peanuts to be withheld until the loan acquired for the purposes of paying indemnities on 1990 crop peanuts is repaid (by December 31, 1991). The Committee also recommended the establishment of a payment schedule, to be utilized after the loan is repaid, to allow 1991 crop indemnification payments to be made as soon as possible while ensuring that all indemnification claims are handled equitably and that the $9,000,000 limit is not exceeded. The payment schedule provides that:

—The cost of preparation, delivery and assays on Samples 2-AB and 3-AB, crushing supervision, and other indemnification costs not allocated to claims, shall be paid, without delay, in accordance with established

—Authorized costs for blanching and remilling fees, freight, and assay costs allocated to claims shall be paid pursuant to the Terms and Conditions of Indemnification, unless the Committee projects that these costs, plus the costs listed above, are likely to exceed the $9,000,000 limitation, in which case alternative rates of payment would be recommended to the Secretary;

—If not more than 800 claims for indemnification have been filed with the Committee by December 31 of the current crop year, the Committee will pay claimants for the applicable indemnification payment on indemnified peanuts covered by claims which are determined to be valid pursuant to the Terms and Conditions of Indemnification;

—If more than 800 but not more than 1300 claims for indemnification have been filed with the Committee by December 31 of the current crop year, the Committee will pay claimants at the rate prescribed in paragraph (x) of the Terms and Conditions, for "additional peanuts", on indemnified peanuts covered by claims determined to be valid pursuant to the Terms and Conditions of Indemnification;

—If more than 1300 but not more than 2500 claims for indemnification have been filed with the Committee by December 31 of the current crop year, indemnification payments for the peanuts removed in the remilling and/or blanching process will continue to be withheld until December 31 of the calendar year following the crop year (December 31, 1992), or until other action is prescribed by the Committee, with the approval of the Secretary; and

—If more than 2500 claims have been filed with the Committee on or before December 31 of the current crop year, or if projections indicate that the total claims during the crop year may be approximately 6,000 or more, or if projections indicate that the aggregate costs of the expense items referred to in paragraphs (z)(1) and (z)(2) herein, less receipts for salvage, might exceed the $9,000,000 limit, alternative methods or rates of payment shall be prescribed by the Committee, with the approval of the Secretary.

The payment schedule is based on historical data on the receipt of indemnification claims by the Committee. Using the number of claims received by December 31 and other information, the Committee can project the number of claims likely to be received for the remainder of the current crop year and the payment levels at which all claims may be processed while remaining within the $9,000,000 limit on total indemnification expenses for the 1991 crop.

The changes in the Terms and Conditions of Indemnification for 1991 crop peanuts are intended to ensure that

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—If not more than 800 claims for indemnification have been filed with the Committee by December 31 of the current crop year, the Committee will pay claimants for the applicable indemnification payment on indemnified peanuts covered by claims which are determined to be valid pursuant to the Terms and Conditions of Indemnification;

—If more than 800 but not more than 1300 claims for indemnification have been filed with the Committee by December 31 of the current crop year, the Committee will pay claimants at the rate prescribed in paragraph (x) of the Terms and Conditions, for "additional peanuts", on indemnified peanuts covered by claims determined to be valid pursuant to the Terms and Conditions of Indemnification;

—If more than 1300 but not more than 2500 claims for indemnification have been filed with the Committee by December 31 of the current crop year, indemnification payments for the peanuts removed in the remilling and/or blanching process will continue to be withheld until December 31 of the calendar year following the crop year (December 31, 1992), or until other action is prescribed by the Committee, with the approval of the Secretary; and

—If more than 2500 claims have been filed with the Committee on or before December 31 of the current crop year, or if projections indicate that the total claims during the crop year may be approximately 6,000 or more, or if projections indicate that the aggregate costs of the expense items referred to in paragraphs (z)(1) and (z)(2) herein, less receipts for salvage, might exceed the $9,000,000 limit, alternative methods or rates of payment shall be prescribed by the Committee, with the approval of the Secretary.

The payment schedule is based on historical data on the receipt of indemnification claims by the Committee. Using the number of claims received by December 31 and other information, the Committee can project the number of claims likely to be received for the remainder of the current crop year and the payment levels at which all claims may be processed while remaining within the $9,000,000 limit on total indemnification expenses for the 1991 crop.

The changes in the Terms and Conditions of Indemnification for 1991 crop peanuts are intended to ensure that

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indemnification expenses incurred do not exceed the Committee's ability to cover such expenses in the event of a crop year with an unusually high incidence of aflatoxin. Heretofore, no upper limits have been fixed on total committee indemnification expenditures for handler indemnification claims. The limit on indemnification expenditures is in response to the large number of indemnification claims on 1990 crop peanuts. Expenditures from these claims exceeded the $7.8 million which was available to cover 1990 crop indemnification expenses. This resulted in a $14 million dollar deficit in the indemnification reserve. The Committee has negotiated a line of credit to pay 1990 crop indemnification expenses until sufficient income is received from 1991 crop assessments. An indemnification assessment of $15.00 per ton of 1991 crop peanuts has been established to cover expenses from the 1990 crop and to continue the indemnification program. The changes in the terms and conditions will protect the Committee from such unlimited liabilities in the future. This will protect handlers from unreasonably high assessment rates and help ensure the integrity of the indemnification program.

Notice of this action was published in the **Federal Register** on May 31, 1991 (55 FR 24743). The comment period ended June 17, 1991. No comments were received.

One non-substantive clarifying change is being made in the terms and conditions of indemnification (§ 998.300). Paragraph (i) of that section will be changed to specify that indemnification claims on peanut products manufactured from all edible quality grades of 1990 and subsequent crop peanuts may be filed with the Committee no later than November 1 of the second year following the year that the peanuts were produced. Prior to issuance of the 1990 crop terms and conditions of indemnification, indemnification claims on products could only be filed on those products manufactured from indemnifiable grades of peanuts. Also, these claims had to be filed with the Committee by November 1, following the end of the current crop year. The 1990 crop terms and conditions extended indemnification protection to products manufactured from all edible grades of peanuts and extended the deadline for filing claims on such products an additional year. In order to effectuate the change for 1990 crop peanuts it was necessary to include the specific crop year and corresponding deadline in the terms and conditions. This language is now being removed since it is no longer needed. It will be replaced by generic language to alleviate the need of updating paragraph (i) each crop year to insert the new deadlines.

No changes were recommended in § 998.100 *Incoming quality regulation* for the 1991 crop. Therefore, the incoming regulation applicable to 1990 crop peanuts will be effective for 1991 crop peanuts. The section heading of that section is changed accordingly.

Based on the above, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

The information collection requirements contained in the sections of these regulations which are being amended have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0067.

After consideration of all relevant matter presented, including the information and unanimous recommendation submitted by the committee, and other available information, it is found that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because the 1991 crop year began July 1 and therefore this action should be implemented as soon as possible.

List of Subjects in 7 CFR Part 998

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 998 is amended as follows: (These sections will appear in the annual Code of Federal Regulations.)

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

1. The authority citation for 7 CFR part 998 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 998.100 is amended by revising the section heading to read as follows:

§ 998.100 Incoming quality regulation—1991 crop peanuts.

* * * * *

3. Section 998.200 is amended by revising the section heading, revising paragraph (g)(3)(ii), adding a new paragraph (l)(2)(viii) and revising the sixth sentence of the concluding text of paragraph (l)(2) to read as follows:

§ 998.200 Outgoing quality regulation—1991 crop peanuts.

* * * * *

(g) * * *

(3) * * *

(ii) Meal produced from the crushing of loose shelled kernels, fall through, and pickouts, which have not been certified negative as to aflatoxin content, and meal produced from the crushing of other "restricted" categories of peanuts listed in paragraph (l)(2) of this section, shall be prepared for disposition in specifically identified lots not exceeding 200,000 pounds. Handlers or crushers, at their own expense, shall cause each such lot of meal to be sampled, as prescribed by the Committee, by an inspector of the Federal or Federal-State Inspection Service and tested for aflatoxin in a laboratory approved by the Committee or by a USDA laboratory. The numerical test result of the chemical assay shall be shown on a certificate covering each lot of meal produced from "restricted" peanuts, and a copy of the certificate shall accompany each shipment or disposition. However, meal produced from the crushing of loose shelled kernels, fall through, and pickouts, which have been certified negative as to aflatoxin content, and meal produced from the crushing of other categories of peanuts determined by paragraph (l)(1) of this regulation to be eligible for "unrestricted" crushing, shall be exempt from the aflatoxin testing requirements.

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(l) * * *

(2) * * *

(viii) PAC indemnified peanuts.

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* * * Meal produced from the crushing of "restricted" categories of peanuts described in this paragraph (l)(2) shall be tested and certified as to aflatoxin content pursuant to the requirements of paragraph (g)(3)(ii) of this section, applicable to such "restricted" categories of peanuts. * * *

* * * * *

4. Section 998.300 is amended by revising the section heading, revising the third sentence of paragraph (i), removing the fourth sentence of paragraph (i), and by adding a new paragraph (z) to read as follows:

§ 998.300 Terms and conditions of indemnification—1991 crop peanuts.

* * * * *

(i) * * * On products manufactured from edible quality grades of peanuts,

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such claims may be filed with the committee no later than November 1 of the second year following the year in which the peanuts were produced.

* * * * *

(z) Notwithstanding the provisions of any other paragraph of these Terms and Conditions, the total payments for indemnification plus expenses, minus salvage received by the Committee on indemnified peanuts delivered for crushing, shall not exceed $9,000,000 in the aggregate, for the crop year. To assure that the $9,000,000 limit is not exceeded while dealing with all expenses and claims on an equitable basis, the following payment schedule shall be followed:

(1) Cost of preparation, delivery and assays on Samples 2–AB and 3–AB, as prescribed in section 998.200(c)(2), crushing supervision, and other indemnification costs not allocated to claims, shall be paid, without delay, in accordance with the procedures in this part.

(2) Authorized costs for blanching and remilling fees, freight, and assay costs allocated to claims shall be paid pursuant to these Terms and Conditions, unless the Committee projects that these costs, plus the costs listed in paragraph (z)(1), are likely to exceed the $9,000,000 limitation.

(3) If not more than 800 claims for indemnification have been filed with the Committee by December 31 of the current crop year, the Committee shall pay claimants for the applicable indemnification payment on indemnified peanuts covered by claims, which are determined to be valid, pursuant to these Terms and Conditions.

(4) If more than 800 but not more than 1300 claims for indemnification have been filed with the Committee by December 31 of the current crop year, the Committee shall pay claimants at the rate prescribed in paragraph (x) of these Terms and Conditions, for "additional peanuts", on indemnified peanuts covered by claims, as determined to be valid pursuant to these Terms and Conditions.

(5) However, with respect to paragraphs (z)(3) and (z)(4) above, indemnification payments for the peanuts removed in the remilling and/or blanching process shall be delayed until such time as the loan acquired for the purposes of paying indemnities on 1990 crop peanuts is repaid.

(6) If more than 1300 but not more than 2500 claims for indemnification have been filed with the Committee by December 31 of the current crop year, indemnification payments for the peanuts removed in the remilling and/or blanching process shall be delayed until December 31 of the calendar year following the current crop year, or until other action is prescribed by the Committee, with the approval of the Secretary.

(7) If more than 2500 claims for indemnification have been filed with the Committee on or before December 31 of the current crop year, or if projections indicate that the total number of claims during the crop year may be approximately 6,000 or more, or if projections indicate that the aggregate costs of the expense items referred to in paragraph (z)(1) and (z)(2), minus salvage, might exceed the $9,000,000 limit, alternative methods or rates of payment shall be prescribed by the Committee, with the approval of the Secretary.

Dated: August 2, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–18867 Filed 8–7–91; 8:45 am]

BILLING CODE 3410-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Regulations; Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Notice to waive the "Nonmanufacturer Rule" for hack saw blades, computer disk drives, and laser printers.

SUMMARY: This notice advises the public that the Small Business Administration (SBA) is establishing a waiver of the "Nonmanufacturer Rule" for the products listed. These products are being granted waivers because no small business manufacturer or processor is supplying them to the Federal Government. The effect of a waiver is to allow an otherwise qualified regular dealer to supply the product of any domestic manufacturer on a Federal contract set aside for small business or awarded through the SBA 8(a) program.

PSC	Product lines granted waivers
7025	Laser printers.
3405	Hack saw blades.
7025	Disk drives, computer.

EFFECTIVE DATE: August 8, 1991.

FOR FURTHER INFORMATION CONTACT: James Fairbairn, Industrial Specialist, phone (202) 205–6465.

SUPPLEMENTARY INFORMATION: After an initial survey of these product lines, SBA notified the public by notice in the Federal Register on May 15, 1991 (Vol. 56, No. 99 p. 23526), of its proposed intention to grant a waiver for the products indicated, plus certain pneumatic tires. After a fifteen day comment period, small business sources were identified for the pneumatic tires. Tires are therefore deleted from this notice of final waiver. The basis for a waiver is that no small business manufacturer or processor is supplying these specific product lines to the Federal Government.

On November 15, 1988, Public Law 100–656 incorporated into the Small Business Act the existing SBA policy that recipients of contracts set aside for small business or the SBA 8(a) Program shall provide the products of small business manufacturers or processors. This requirement is commonly known as the "Nonmanufacturer Rule". The SBA regulations imposing this requirement are found in 13 CFR 121.906(b) and 121.1106(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any "class of products" for which there are no small business manufacturers or processors in the Federal market. A class of products is considered to be a particular Product and Service Code (PSC) under the Federal Procurement Data System or an SBA recognized product line within a PSC. To be considered in the Federal market, a small business must have been awarded a contract by the Federal Government to supply that particular class of products within the past three years. SBA has been requested to issue a waiver for each of the products listed above because of an apparent lack of any small business manufacturers or processors for them within the Federal market. SBA searched its Procurement Automated Source System (PASS) for small business manufacturers or processors that have sold to the Federal Government. When no small business manufacturers or processors were identified within the Federal market by the PASS search, we published a notice to the public in the Federal Register stating our proposed intention to grant waivers for these products unless new information was found. The notice described the legal provisions for a waiver, how SBA defines the market, and requested information as to whether small businesses manufacturers have sold them to the Federal Government during the past three years.

We received only one comment on the notice of intent to issue waiver. The Army Tank and Automotive Command (TACOM) identified small businesses manufacturers of pneumatic tires. They

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have thus been deleted from this final waiver. These waivers are being granted pursuant to statutory authority under section 303(h) of Public Law 100–656. A waiver for the designated products is for an indefinite period, but is subject to an annual review or upon receipt of information indicating that the conditions required for a waiver no longer exist. If SBA determines that the conditions required for a waiver no longer exist, the waiver will be terminated. That termination will be published in the Federal Register.

Dated: July 29, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 91–18797 Filed 8–7–91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–ANE–19; Amendment 39–7068; 91–15–05]

Airworthiness Directives; Rolls-Royce plc (RR) GEM Mk 530 Series Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments and withdrawal of earlier AD.

SUMMARY: This amendment withdraws an earlier version of Amendment 39–7068, Airworthiness Directive (AD) 91–15–05 published at 56 FR 33705 (July 23, 1991) and adopts a new version of that AD, applicable to RR GEM Mk 530 series engines, which requires a repetitive leak check inspection of the hydromechanical fuel control unit (HMU). This AD also requires a one-time x-ray or disassembly inspection to confirm correct assembly of the HMU. This amendment is prompted by two events of significant external fuel leakage from the HMU. This condition, if not corrected, could result in a fire hazard in the engine nacelle.

DATES: The AD at 56 FR 33705 (July 23, 1991) is withdrawn August 8, 1991.

This final rule is effective August 19, 1991.

Incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 19, 1991.

Comments must be received no later than September 9, 1991.

ADDRESSES: Submit comments in duplicate to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–ANE–19, 12 New England Executive Park, Burlington, Massachusetts 01803–5299, or deliver in duplicate to room 311 at the above address.

Comments may be inspected at the above location between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service information may be obtained from United Technologies Corporation, Hamilton-Standard Division, Technical Publications Department, One Hamilton Road, Windsor Locks, Connecticut 06096–1010, and Rolls-Royce plc, Leavesden; WD27BZ, England. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Diane Cook, Engine Certification Office, ANE–142, Engine and Propeller Directorate, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone (617) 273–7082.

SUPPLEMENTARY INFORMATION: Due to a clerical error, the incorrect version was published in the Federal Register at 56 FR 33705 (July 23, 1991). Accordingly, that incorrect version is withdrawn and this newer version is published in its place. This newer version has the same compliance requirements, but contains some editorial changes.

Two revenue service events have occurred where significant fuel has leaked from the HMU in the area of the electrical connector. The cause of the leakage has been determined to be incorrect assembly of the torque motor transfer tube preformed packing and backup retaining ring assembly. The FAA has determined that the misassembly can occur at HMU overhaul, or at new HMU manufacture. The population of affected units is unknown, and timely execution and completion of the requirements in this AD requires initiations of the x-ray or disassembly one-time inspection. Further, any delay in incorporation of the one-time inspection requirement may result in a very short compliance interval. This condition, if not corrected, could result in external fuel leakage from the HMU, and a fire hazard in the engine nacelle.

Since this situation is likely to exist or develop on other engines of the same type design, this AD requires repetitive visual inspection of the HMU for external fuel leakage. This AD also requires a one-time x-ray or disassembly inspection of the HMU preformed packing and backup retaining ring assembly to determined correct assembly. The repetitive inspection program is not required for HMU's determined to be assembled correctly.

Since this condition could result in a fire hazard to the engine nacelle, there is a need to minimize the exposure of revenue service aircraft to this unsafe condition. Therefore, safety in air transportation requires adoption of this regulation prior to notice and public comment. Based on the above and the need to inspect the HMU to identify external fuel leakage and incorrect assembly as soon as practicable, a situation exists that requires the immediate adoption of this regulation. Therefore, it is found that notice and public procedure are impracticable, and good cause exists for the adoption of the amendment prior to public comment, and good cause exists for making this amendment effective in less than 30 days.

Although this action is in the form of a final rule, which involves an emergency and, thus, was not preceded by notice and public procedure, interested persons are invited to submit such written data, views, or arguments as they may desire regarding this AD. Communications should identify the docket number and be submitted to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–ANE–19, 12 New England Executive Park, Burlington, Massachusetts 01803–5299. All communications received by the deadline date indicated above will be considered by the Administrator, and the AD may be changed in light of the comments received.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency

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regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

91–15–05 **Rolls-Royce plc:** Amendment 39–7068. Docket No. 91–ANE–19.

Applicability: Rolls-Royce plc (RR) GEM Mk 530 series engines, installed on, but not limited to, Westland 30 aircraft.

Compliance: Required as indicated, unless previously accomplished.

To prevent external fuel leakage from the hydromechanical fuel control unit (HMU) which could result in a fire hazard in the engine nacelle, accomplish the following:

(a) For engines equipped with Hamilton-Standard Model JFC118–22 HMU, part numbers 779218–3, 779218–6, 779218–9, 779218–12, excluding HMU's marked "MS090-001" adjacent to the identification plate, perform the following:

(1) Perform an HMU leak check inspection in accordance with RR Service Bulletin (SB) GEM–73–24, dated October 29, 1990, within the next 15 hours time in service after the effective date of this AD.

(2) Thereafter, reinspect the HMU daily for fuel leakage within 30 minutes of the last shut-down of the day, in accordance with RR SB GEM–73–24.

(3) Remove from service, prior to further flight, HMU's exhibiting any fuel leakage when inspected in accordance with paragraphs (a)(1) or (a)(2) of this AD.

(4) X-ray or disassemble inspect the HMU for correct assembly in accordance with the Accomplishment Instructions of Hamilton-Standard (HS) SB JFC118–22–73–10, dated November 21, 1990, at the next engine shop visit or HMU removal, or by December 31, 1991, whichever occurs first.

(5) Remove from service, prior to further flight, HMU's confirmed incorrectly assembled when inspected in accordance with paragraph (a)(4) of this AD.

(6) For HMU's determined to be correctly assembled when inspected in accordance with paragraph (a)(4) of this AD, the repetitive inspections of paragraphs (a)(1) or (a)(2) of this AD are no longer required.

(b) For the purpose of this AD, shop visit is defined as the induction of an engine into a shop for the conduct of maintenance.

(c) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(d) Upon submission of substantiating data by an owner or operator through an FAA Inspector (maintenance, avionics, or operations, as appropriate), an alternate method of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD may be approved by the Manager, Engine Certification Office, Aircraft Certification Service, Engine and Propeller Directorate, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803–5299.

(e) The leak check inspection and the x-ray and disassembly inspection shall be done in accordance with the following documents:

Document	Page	Revision	Date
RR SB GEM–73–24 Total Pages: 4.	1–4	Original	Oct. 29, 1990.
HS SB JFC118–22–73–10 Total Pages: 12.	1–12	Original	Nov. 21, 1990.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the United Technologies Corporation, Hamilton-Standard Division, Technical Publications Department, One Hamilton Road, Windsor Locks, Connecticut 06096–1010, and Rolls-Royce plc, Leavesden, WD27BZ, England. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, room 311, Burlington, Massachusetts, or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

This amendment (39–7068, AD 91–15–05) becomes effective August 19, 1991.

Issued in Burlington, Massachusetts, on August 2, 1991.

Jay J. Pardee,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 91–18898 Filed 8–7–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

RIN 1218–AA 82

Occupational Exposure to Formaldehyde

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Extension of administrative stay.

SUMMARY: On December 4, 1987, the Occupational Safety and Health Administration (OSHA) published a final rule in the **Federal Register** on occupational exposure to formaldehyde (29 CFR 1910.1048, 52 FR 46168). In response to numerous public comments which indicated confusion about the hazard warning provisions of the newly revised Formaldehyde Standard, on December 13, 1988, OSHA announced an administrative stay of paragraphs (m)(1)(i) through (m)(4)(ii) for a period of nine months. OSHA also announced its intention to revoke paragraphs (m)(1)(i) through (m)(4)(ii) and invite comments on replacing them with the Hazard Communication Standard (29 CFR 1910.1200) or another equally protective alternative which would be less confusing to the public (53 FR 50198). The stay was subsequently extended (54 FR 35639, August 29, 1989; 55 FR 24070, June 13, 1990; 55 FR 32616, August 10, 1990; 55 FR 51698, December 17, 1990; 56 FR 10377, March 12, 1991; 56 FR 26909, June 12, 1991).

On July 15, 1991 OSHA published a proposal to resolve several remaining issues on formaldehyde, including those raised by the stayed paragraphs (56 FR 32302). The public was given until August 14, 1991 to comment on the proposal. Consequently the stay is being extended for an additional 90 days. While this stay is in effect, affected

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(5) Remove from service, prior to further flight, HMU's confirmed incorrectly assembled when inspected in accordance with paragraph (a)(4) of this AD.

(6) For HMU's determined to be correctly assembled when inspected in accordance with paragraph (a)(4) of this AD, the repetitive inspections of paragraphs (a)(1) or (a)(2) of this AD are no longer required.

(b) For the purpose of this AD, shop visit is defined as the induction of an engine into a shop for the conduct of maintenance.

(c) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(d) Upon submission of substantiating data by an owner or operator through an FAA Inspector (maintenance, avionics, or operations, as appropriate), an alternate method of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD may be approved by the Manager, Engine Certification Office, Aircraft Certification Service, Engine and Propeller Directorate, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803–5299.

(e) The leak check inspection and the x-ray and disassembly inspection shall be done in accordance with the following documents:

	Page	Revision	Date
	1–4	Original	Oct. 29, 1990.
	1–12	Original	Nov. 21, 1990.

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employers must continue to comply with the provisions of OSHA's Hazard Communication Standard.

EFFECTIVE DATE: The administrative stay of 29 CFR 1910.1048 (m)(1)(i) through (m)(4)(ii) will be effective until November 6, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Occupational Safety and Health Administration, Office of Information and Consumer Affairs, U.S. Department of Labor, room N–3647, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 523–8151.

Authority and Signature

This document was prepared under the direction of Gerard F. Scannell, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210.

This action is taken pursuant to section 4(b), 6(b), and 8(c) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1597, 1599; 29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 1–90 (55 FR 9033) and 29 CFR part 1911.

List of Subjects in 29 CFR Part 1910

Formaldehyde, Occupational safety and health, Chemicals, Cancer, Health, Risk assessment.

§ 1910.1048 [Stayed in part]

Therefore, 29 CFR 1910.1048 (m)(1)(i) through (m)(4)(ii) is stayed until November 6, 1991.

Signed at Washington, DC this 2nd day of August, 1991.

Gerard F. Scannell,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 91–18851 Filed 8–7–91; 8:45 am]

BILLING CODE 4510–26–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3972–6]

Approval and Promulgation of Air Quality Implementation Plans; Oklahoma; Oklahoma County Carbon Monoxide Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice approves Oklahoma's State Implementation Plan (SIP) revision for attainment of the carbon monoxide National Ambient Air Quality Standard (NAAQS) in Oklahoma County. EPA proposed approval of the Oklahoma County carbon monoxide SIP on September 30, 1986, at 51 FR 34669. No comments were received on the proposal. This notice discusses EPA's final action.

The revision was originally submitted by the Governor on October 17, 1985, with supporting submittals of January 29, 1986, November 7, 1986, October 12, 1990, and October 15, 1990. These submittals were in response to the October 5, 1984, and May 26, 1988, letters from EPA requesting a SIP revision because Oklahoma County was not attaining the carbon monoxide standard.

EFFECTIVE DATE: This rule will become effective on September 9, 1991.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–AP), 1445 Ross Avenue, Dallas, Texas 75202.

Oklahoma State Department of Health, Air Quality Service, 1000 Northeast 10th Street, Oklahoma City, Oklahoma 73117.

Public Information Reference Unit (PIRU), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Gregg Guthrie or Robin Sullivan, telephone (214) 655–7214 or (FTS) 255–7214.

SUPPLEMENTARY INFORMATION:

A. Background

EPA described the facts and regulatory history from which this SIP revision arose in its proposed approval on September 30, 1986, at 51 FR 34669. The Agency will not repeat that description here, but will briefly summarize the major issues and respond to comments it received on the notice of proposed rulemaking. EPA recommends that interested readers examine that notice for a complete understanding of today's action.

Ten violations of the carbon monoxide NAAQS occurred during 1984. Consequently, on October 5, 1984, EPA issued a letter to the Governor of Oklahoma calling for a revision to correct the inadequacy of the existing SIP. As a newly discovered CO nonattainment area, EPA required the implementation of a vehicle Inspection/Maintenance program and CO attainment demonstration, although the area was never formally redesignated as a nonattainment area under section 107(d) of the Clean Air Act.

On October 17, 1985, the Governor of Oklahoma submitted a SIP revision designed to achieve the carbon monoxide standard in Oklahoma County. Supplemental information was submitted on January 29, 1986, November 7, 1986, October 12, 1990, and October 15, 1990. On July 20, 1985, the Oklahome Department of Public Safety (DPS) submitted the proposed anti-tampering regulation for Oklahoma County to EPA. The DPS conducted a public hearing on the proposed anti-tampering program on May 7, 1985. The final anti-tampering regulation was submitted to EPA by the Governor on October 8, 1985.

Because 1985 and 1986 monitoring data did not demonstrate attainment of the carbon monoxide NAAQS, the Oklahoma City metropolitan statistical area (MSA) was identified as a potential 1988 SIP Call area in appendix A of the proposed Post-1987 Ozone/Carbon Monoxide strategy that was published in the **Federal Register** on November 24, 1987. EPA issued a Phase I SIP Call for the Oklahoma City MSA on May 26, 1988, since the 1986 and 1987 ambient monitoring data continued to reveal the area as nonattainment. As a Phase I SIP Call area, the State was required to correct deficiencies and inconsistencies in their existing SIP, and begin updating their emission inventory to reflect current emission levels in the Oklahoma City MSA.

B. Plan Review

The control strategy for attainment of the carbon monoxide NAAQS in Oklahoma County was prepared by the Oklahoma State Department of Health (OSDH). The OSDH's Air Quality Service (AQS) is the agency designated by the State as the principal authority for air pollution control matters in Oklahoma. The Association of Central Oklahoma Governments (ACOG) is the planning agency for development of the transportation portion of the SIP in Oklahoma County.

EPA reviewed the submittals and developed a Technical Support Document (TSD).[1] This document is available for inspection by interested parties during normal business hours at the locations listed in the **ADDRESSES** section of this notice.

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[1] Evaluation Report for the Oklahoma County Carbon Monoxide State Implementation Plan submitted by the Governor of Oklahoma on October 17, 1985, January 1986; amended by Technical Support Document for EPA's Review of the Oklahoma County, Oklahoma, State Implementation Plan Revision for Carbon Monoxide Attainment, November 1990.

The carbon monoxide SIP submittals for Oklahoma County were reviewed by EPA in accordance with the requirements of the CAA and the January 27, 1984, Guidance Document for Correction of Part D SIPs in Nonattainment Areas. The results of that review are contained in this notice and the TSD cited previously in this notice.

C. Air Quality Data

EPA's decision that Oklahoma County would be unable to demonstrate compliance with the carbon monoxide NAAQS was based on review of 1984 ambient carbon monoxide monitoring data in the National Aerometric Data Bank (NADB). Oklahoma County experienced ten exceedances of the carbon monoxide NAAQS in 1984. Only one exceedance of the carbon monoxide NAAQS per monitoring site per year is allowed. Since 1984, two of the three sites have experienced exceedances of the CO NAAQS.

These data were collected at three sites within Oklahoma City; Site 018 located at 2045 NW. 10th Street; Site 047 located at 36th and Classen Blvd; and Site 033 located at the OSDH on NE. 10th and Stonewall. These sites are located in a roughly east to west line across Oklahoma City. Only two sites were experiencing exceedances of the carbon monoxide standard and therefore site 033 was discontinued in 1988. Site 018 is situated at the center of a traffic island surrounded by three heavily traveled streets. The number of carbon monoxide exceedances are summarized below:

TABLE 1.—CARBON MONOXIDE EXCEEDANCES PER YEAR

Site No.	1985	1986	1987	1988	1989
018	3	3	4	none	1
047	1	none	none	none	none
033	none	none	none	n/a	n/a

D. Modified Rollback Analysis and Control Strategy

The modified rollback method used to determine the percent reduction needed was performed by the State and verified by EPA. The calculation showed that the CO reduction needed to bring Oklahoma County into attainment was 32 percent of the 1984 emissions level. The 1984 emissions inventory shows the VOC breakdown as 4 percent from stationary sources and 96 percent from mobile sources. The revision demonstrated that the implementation of the anti-tampering program along with the continuation of the Federal Motor Vehicle Control Program (FMVCP) would reduce the automobile CO emissions by 36.1 percent by April of 1988.

Adequate supporting documentation was provided for all of the modified rollback expression input parameters. The EPA agrees with the State's demonstration of a CO reduction requirement of 32 percent. The 32 percent estimate results from using a design value of 14.8 micrograms per cubic meter (ug/m^3). EPA is approving the control strategy and attainment demonstration.

E. New Source Review

The OSDH has developed a new source permitting program that will ensure new sources of pollution will not contribute to a new violation of the NAAQS. These programs are implemented through OAPCR 1.4 "Permits." Oklahoma's requirements listed in OAPCR 1.4 (Air Resources Management: Permits Required) in general as well as the specific requirements of section 1.4.4 (Major Sources—Prevention of Significant Deterioration (PSD) Attainment Areas), will ensure that the emissions from new sources will not cause deterioration of the present air quality. OAPCR 1.4 will require an air quality analysis to ensure no emission increases before new major sources or modifications could be approved for construction. The new source review program also requires the application of Best Available Control Technology (BACT). EPA approved OAPCR 1.4.4 on August 25, 1983, at 48 FR 38635.

F. Transportation Control Measures

The January 29, 1986, supplemental submittal included a discussion of the transportation control plan (TCP). The TCP was originally approved with 1979 Oklahoma County ozone SIP revision and included a commitment to implement transportation control measures (TCMs) if and when necessary. No reduction credit for TCMs were assumed in the CO SIP revision.

G. Vehicle Inspection and Maintenance (I/M)

The State of Oklahoma has implemented an anti-tampering program [2] in Oklahoma County, Oklahoma. The Oklahoma I/M program places emphasis on the reduction of excess emissions resulting because of tampering or misfueling of vehicles. The program includes an annual vehicle inspection for tampering and misfueling, a mechanic training program, a public awareness program, and enforcement of State regulations against tampering and misfueling. It also includes a visual check of the components of the vehicle emission control systems and a tailpipe test to detect lead in vehicles requiring unleaded gasoline.

The Oklahoma I/M program consists of the following segments:

1—An annual inspection of vehicles for tampering of the emission control systems or fuel-switching, and a repair requirement to correct any deficiencies before an inspection sticker is issued.
2—A Public Information Program.
3—An Inspector Training Program.
4—Active enforcement of the inspection requirement.
5—Certification of stations and inspectors.
6—An effective quality control program over the inspections and recordkeeping.

The anti-tampering program was implemented on January 1, 1987, and it is conducted in conjunction with the annual vehicle safety inspection program administered by the Department of Public Safety (DPS). The legal authority for the anti-tampering program is contained in section 856 of title 47 of the Oklahoma Statutes. Section 854 authorizes and directs the Commissioner of the DPS to make the necessary rules and regulations for the administration and enforcement of the anti-tampering inspection program.

The vehicle inspection requirements applies to all 1979 and later model year gasoline powered automobiles and trucks up to 8500 pounds gross vehicle weight owned and operated in the program area. The visual inspection is designed to identify any evidence of tampering or obvious need for service. The presence of lead in cars which should be using unleaded fuel will also be checked.

The September 30, 1986, proposed approval notice identified five items that the State was to complete before EPA would publish a final rulemaking action. Those five items were: (1) Submittal of a public information plan; (2) a written interpretation of the term "proper replacement" in section 851(c) of the Oklahoma Statutes; (3) a quality

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[2] The Oklahoma State legislature passed House Bill No. 13889 which authorizes an anti-tampering program. On July 20, 1985, the Oklahoma Department of Public Safety submitted their proposed anti-tampering regulation. The DPS conducted a public hearing on the proposed anti-tampering program on May 7, 1985. On October 8, 1985, the Governor submitted the final DPS anti-tampering regulation for the State.

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assurance/audit surveillance plan; (4) an enforcement plan discussing legal authority and penalties; and (5) train all inspectors prior to program startup. All five items have been satisfactorily addressed by the State and are discussed in the following paragraphs.

The vehicle will fail inspection if any emission control component is missing, disconnected or shows evidence that tampering has occurred or, if the lead detection test reveals lead in the tailpipe of a vehicle requiring unleaded fuel. Vehicles that fail the catalyst, fuel inlet restrictor, or lead detection test must replace the catalyst before being reinspected. Vehicles that fail any item of the inspection will have to be repaired by a mechanic of the owner's choice and returned for reinspection within thirty (30) days. If the vehicle passes reinspection, then a certificate of inspection will be issued.

The DPS rules and regulations require "proper replacement" of tampered or missing items. The State has submitted a written interpretation by the DPS dated July 28, 1987, of the term "proper replacement" in § 856.1(C) of the Oklahoma statutes to mean "original equipment manufacturer (OEM) or equivalent." The catalytic converter may be replaced by an OEM aftermarket catalytic converter, or one that has demonstrated compliance with EPA policy.

The annual anti-tampering inspection requirement will be enforced through a windshield sticker system. Vehicles subject to the anti-tampering inspection will display a larger and different colored windshield sticker than vehicles subject only to the safety inspection. The sticker will also have the word "EMISSION"' across the front.

Although the program will be enforced by State, County and City Police Departments, primary enforcement will rest with the Oklahoma City Police Department. Oklahoma City has adopted the State's regulation and citations can be issued with a maximum penalty of $500 to owners operating non-complying vehicles. The Oklahoma City Police Department has committed to aggressively enforce the anti-tampering program. When a citation is issued, the owner has fifteen (15) days to secure a proper inspection.

The rules and regulations manual requires vehicles owned and operated in the program area to be inspected in that area. All inspection stations, statewide, are required to verify the residence of the vehicle owner prior to conducting an inspection. This will be accomplished by checking the owner's driver's license and the certificate of insurance. The insurance certificate was determined to be the best method of verifying residence since State law requires the certificate to be carried at all times and it must be renewed every six months. If a vehicle subject to the program is presented for inspection outside the program area, the inspection station will not inspect the vehicle and will inform the owner that the vehicle must be inspected in the program area.

A vehicle which has failed an inspection will be easily identified by law enforcement officers since the sticker will be marked with a large "X". Inspection stations are required to remove stickers which have expired when the vehicle is presented for inspection. If the sticker has not expired and the vehicle failed the inspections, it will be marked with an "X". All motorists have the right to appeal to the DPS any rejection certificate issued within seven days. When an inspection decision is appealed, the DPS will reinspect the vehicle within 30 days.

The DPS has trained all inspectors in the I/M program area. The training consists of inspecting the emission control systems and detecting tampering and misfueling. To be certified, an inspector must complete the prescribed training and pass a written test. Inspectors may not transfer from one station to another without being recertified and they are subject to reexamination at any time.

Each inspection station will be visited by a DPS trooper at least once every two months. The trooper will audit the records to ensure that the stickers are accountable and he will observe inspections to ensure compliance with the proper procedures. If deviations are noted, the station and/or inspector is subject to suspension or revocation of license or recertification by the DPS. Any station operator or inspector who is convicted of a violation is subject to a fine of up to $500 and/or imprisonment for not more than 30 days. As committed in a February 7, 1991, letter, the DPS will annually conduct unannounced visits to 10 percent of the Oklahoma inspection stations in unmarked cars driven by troopers in civilian clothes to insure that inspections are being properly conducted. The February 7, 1991, letter states that a minimum of six inspections will be accomplished each calendar quarter. The DPS will also investigate all complaints received from the public with regard to inspection stations or inspectors.

The I/M plan contains recordkeeping or record submittal commitments. The State has committed, in an October 12, 1990, letter to report semiannually to EPA, information relating to the effectiveness and enforcement of the I/M program. Items to be reported include: (1) The approximate number of vehicles to be inspected based on vehicle type, age, fuel type, (2) the number of vehicles receiving and passing initial inspections, (3) the number of vehicles failing the initial inspection, (4) the number passing after repair, (5) the number failing for each emission control device, and (6) the number of inspection stickers issued. The state also committed to report data concerning inspection facilities. Data that will be reported include: (1) The number of facilities licensed to perform inspections, and (2) the number of facility licensees and inspector certificates suspended and revoked.

A public information plan was submitted to EPA on November 7, 1988. That plan described the program that was implemented by the OSDH. Periodic news releases began in October 1986 and increased near the program start date of January 1987 and continued into that year. A brochure, which explains the program, was distributed in June 1986 by the DPS and the OSDH. Other activities during the month of October 1986 were free tampering inspections and the distribution of pamphlets which discussed the tampering inspection program and the health effects of automobile emissions.

I. Reasonable Further Progress (RFP)

The Reasonable Further Progress (RFP) curve submitted with the Oklahoma carbon monoxide SIP predicted sufficient reductions would be achieved to attain the carbon monoxide NAAQS. The curve showed that a decrease of 103,535 tons of CO, or 36.1 percent, would occur in Oklahoma County between 1984 and 1988. The OSDH demonstrated that a 32 percent decrease of CO emissions was required to attain the carbon monoxide standard. The RFP report projected an attainment date of April 1988. Since December 31, 1987, no violations of the carbon monoxide NAAQS have occurred in Oklahoma County.

The RFP curve demonstrated that predicted reductions would be achieved with the implementation of the I/M anti-tampering program and the continuation of the Federal Motor Vehicle Control Program.

The State has also committed to report annually on how the I/M program contributes to reasonable further progress. These reports have been submitted by the State for years 1986 through 1988 and indicate that RFP was being met during those years.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future

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request revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

J. Final Action

Today, EPA is approving the SIP revision submittals of October 17, 1985, January 29, 1986, November 7, 1986, October 12, 1990, and October 15, 1990, which include: (1) The I/M plan with an anti-tampering regulation; and (2) the carbon monoxide plan control strategy and attainment demonstration.

Regulatory Process

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709)

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 7, 1991. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

The Agency has reviewed this request for revision of the federally approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the adoption of the revision by the State preceded the date of enactment.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Note: Incorporation by reference of the State Implementation Plan for the State of Oklahoma was approved by the Director of the Federal Register on July 1, 1982.

Dated: June 28, 1991.

William K. Reilly,

Administrator.

40 CFR part 52, Subpart LL, is amended as follows:

Subpart LL—Oklahoma

1. The Authority citation for part 52 continues to read as follows:

Authority: 42 U S C. 7401–7642.

2. Section 52.1920 is amended by adding paragraph (c)(40) to read as follows:

§ 52.1920 Identification of plan.

* * * * *

(c) * * *

(40) On October 17, 1985, the Governor of Oklahoma submitted a SIP revision designed to achieve the carbon monoxide standard in Oklahoma County. Supplemental information was submitted on January 29, 1986, November 7, 1986, October 12, 1990, and October 15, 1990. The anti-tampering regulation was submitted to EPA by the Governor on October 8, 1985.

(i) Incorporation by reference.

(A) Oklahoma Official Motor Vehicle Inspection Rules and Regulations Manual adopted December 5, 1985, and effective January 1, 1986.

(B) 47 O.S. SUPP. Section 856.1 et seq. adopted May 24, 1984, and effective May 24, 1984.

(C) OP. Oklahoma Attorney General number 84–174 (December 12, 1984).

(D) October 17, 1985, plan reporting commitments for Oklahoma County Reasonable Further Progress schedule, page 6.

(E) The City of Oklahoma City Ordinance No. 12,575, as passed by the Council of the City of Oklahoma City on March 31, 1970, and approved by the Mayor on March 31, 1970.

(ii) Additional material.

(A) A February 7, 1991, commitment letter stating that the DPS will annually conduct unannounced visits at 10 percent of the Oklahoma County inspection stations.

(B) An October 12, 1990, letter committing to report semiannually to EPA, information relating to the effectiveness and enforcement of the I/M program.

[FR Doc. 91–18828 Filed 8–7–91; 8:45 am]

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40 CFR Part 81

[AD–FRL–3962–5]

Designations and Classifications for Initial PM–10 Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice correcting EPA's announcement of the designations and classifications for the initial PM–10 (particulate matter nominally 10 microns or smaller in diameter) nonattainment areas.

SUMMARY: On March 15, 1991 (56 FR 11101), EPA announced the designations and classifications of areas with respect to the national ambient air quality standards (NAAQS) for PM–10 occurring by operation of law upon enactment of the 1990 Amendments to the Clean Air Act (Act) (the "initial PM–10 nonattainment areas").

Sections 107(d)(2) (referencing section 107(d)(4) designations) and 188(a) of the Act specify that EPA must make these announcements. In the March 1991 notice, EPA explained the operative legal provisions governing the designation and classification of these initial areas (see e.g., sections 107(d)(4)(B) (i), (ii), (iii), and 188(a) of the Act).

The EPA also provided an opportunity for the public to comment on EPA's announcement. As noted, this did not stem from any legal obligation. Rather, as a matter of policy, EPA requested public comment on the announcement in order to facilitate public participation and avoid committing errors. In today's action, EPA has responded to pertinent comments addressing the March 1991 **Federal Register** notice. Where EPA believed appropriate and where there was a legal basis to do so, EPA has made adjustments to the initial PM–10 nonattainment areas in light of the comments. Finally, note that for informational purposes, EPA has restated some of the background discussion provided in the March 1991 notice.

EFFECTIVE DATES: For those areas that have remained unchanged, the effective date of the announcement of the designation and classification of the areas is May 14, 1991, as indicated in the March 15, 1991 **Federal Register** notice (56 FR 11101).

For those areas where EPA has adjusted or corrected the boundaries, the effective date of the announcement of the designation and classification of such areas is August 8, 1991. (see discussion below).

FOR FURTHER INFORMATION CONTACT: Larry D. Wallace, Particulate Matter Programs Section, Air Quality Management Division (MD–15), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711. Mr. Wallace's phone number is (919) 541–0906 or FTS 629–0906.

SUPPLEMENTARY INFORMATION: The air quality monitoring data supporting the nonattainment designation of the former Group II and III areas monitoring violations of the PM–10 NAAQS prior to January 1, 1989 are available from the respective EPA Regional Office which serves the State where the affected area is located. The addresses of the Regional Offices are as follows:

- State Air Programs Branch, EPA Region I, J.F.K. Federal Building, Boston, MA 02203–2211.
- Air Programs Branch, EPA Region II, 26 Federal Plaza, New York, NY 10278.
- Air Programs Branch, EPA Region III, 841 Chestnut Building, Philadelphia, PA 19107.
- Air Programs Branch, EPA Region IV, 345 Courtland Street, NE., Atlanta, GA 30365.
- Air and Radiation Branch, EPA Region V, 230 South Dearborn Street, Chicago, IL 60604.
- Air Programs Branch, EPA Region VI, 1445 Ross Avenue, Dallas, TX 75202–2733.
- Air Branch, EPA Region VII, 726 Minnesota Avenue, Kansas City, KS 66101.
- Air Programs Branch, EPA Region VIII, 999 18th Street, Denver Place—suite 500, Denver, CO 80202–2405.
- Air Programs Branch, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105.
- Air Programs Branch, EPA Region X, 1200 Sixth Avenue, Seattle, WA 98101.

I. Background

A. 1987 Revision of the NAAQS for Particulate Matter

On July 1, 1987 EPA revised the NAAQS for particulate matter, replacing total suspended particulates (TSP) as the indicator for particulate matter with a new indicator that included only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (called "PM–10") (see 52 FR 24634). At the same time EPA set forth regulations for implementing the revised particulate matter standards and announced EPA's State implementation plan (SIP) development policy elaborating PM–10 control strategies necessary to assure attainment and maintenance of the PM–10 NAAQS (see generally 52 FR 24672). The EPA adopted a PM–10 SIP development policy dividing all areas of the country into three categories based on their probability of violating the new NAAQS:

1. Areas with a strong likelihood of violating the PM–10 NAAQS and requiring substantial SIP adjustment were placed in Group I.

2. Areas where attainment of the PM–10 NAAQS was possible and existing SIP's needed less adjustment were placed in Group II.

3. Areas with a strong likelihood of attaining PM–10 NAAQS and therefore needing adjustment only to their preconstruction review program and monitoring network were placed in Group III (see 52 FR 24672, 24679–24682).

B. Prior Listing of the Modification to PM–10 Group I, II, and III Areas

In accordance with the standards, policies, and regulations published on July 1, 1987 for revising and implementing the new particulate matter standard, EPA identified and listed the Group I and Group II areas in each State in a notice published on August 7, 1987 (see 52 FR 29383). The 1987 notice also indicated that any area of the country not listed as Group I or II was placed in Group III (see 52 FR 29383).

The EPA subsequently modified the identification for three areas and announced these revisions in a notice published on March 28, 1989 (see 54 FR 12620). Specifically, the 1989 notice indicated that Porter County, Indiana, was changed from Group I to Group II; Mono Basin, California, was changed from Group III to Group II; and Sandpoint, Idaho, was changed from Group I to Group II.

On October 31, 1990 EPA published technical corrections modifying the identification of the locations of concern for some of the areas previously identified as Group I and II areas (see 55 FR 45799). When EPA listed the initial groupings for areas in the August 1987 notice, the Group I and II areas of concern were generally described as cities, towns, counties, or planning areas. The EPA indicated at that time that these descriptions were only the initial definitions of the areas to be investigated in the SIP development process and would be better defined later. The modifications to the identification of the Group I and II areas announced in the October 1990 notice specifically defined and delineated the boundaries of the Group I and Group II areas in question based on information obtained in the SIP development process and EPA guidelines and procedures for determining particulate matter boundaries. Generally, prior to modifying the identification of boundaries in the October 1990 notice, EPA consulted with the affected States, reviewed technical information, and was guided by applicable EPA policy. Weighing these various factors, EPA set the boundaries it believed appropriate.

II. Today's Action

On March 15, 1991 (56 FR 11101), EPA announced the designations and classifications occurring for PM–10 by operation of law upon enactment of the Act (the "initial PM–10 nonattainment areas").[1] Sections 107(d)(2)(A) (referencing section 107(d)(4) designations) and 188(a) of the Act specify that EPA must make these announcements. In the March 1991 notice, EPA explained the operative legal provisions governing the designation and classification of these initial areas (see, e.g., sections 107(d)(4)(B)(i), (ii), (iii), and 188(a) of the Act). The EPA also provided an opportunity for the public to comment on EPA's announcement. As noted, this did not stem from any legal obligation.[2] Rather, as a matter of policy, EPA requested public comment on the announcement in order to facilitate public participation and avoid committing errors. In today's action, EPA has responded to pertinent comments addressing the March 15, 1991 notice.[3] The EPA has made adjustments

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[1] In that notice EPA deferred codification of the PM–10 designations and classifications until EPA codifies the designations and classifications of areas across the country with respect to the NAAQS for other pollutants. This codification should occur sometime within the next few months. As discussed below, codification of the designation of the initial PM–10 nonattainment areas will represent the Agency's final action on those designations within the meaning of section 307(b) of the Act, 42 U.S.C. 7607(b).

[2] In the March 15, 1991 notice EPA noted (and has reiterated in today's notice) that neither the announcement of the initial designations nor the initial classifications for PM–10 were subject to the requirements for notice-and-comment rulemaking under either the Administrative Procedure Act (APA) (5 U.S.C. 553–557) or section 307(d) of the Act (see generally 56 FR 11103). Regarding designations, section 107(d)(2) of the Act requires the Administrator to publish a notice announcing designations occurring pursuant to section 107(d)(4), but explicitly provides that such announcement is not subject to APA notice-and-comment rulemaking procedures. Thus, Congress has expressly exempted from the notice-and-comment procedural requirements of the APA the announcement of those areas designated nonattainment for PM–10 by operation of law under section 107(d)(4)(B). Regarding classifications, section 188(a) of the Act requires the Administrator to publish a notice announcing the classifications of these areas. Section 188(a) explicitly states that the provisions of section 172(a)(1)(B) pertaining to lack of notice and comment and judicial review shall apply when the Administrator announces these classifications. Section 172(a)(1)(B), in turn, expressly exempts the classification announcement from the notice-and-comment procedures set forth in 5 U.S.C. 553–557.

[3] The EPA received many pertinent comments in direct response to the notice. However, EPA has attempted also to respond to pertinent comments received from affected States submitted in response to another Agency action. In January and February of 1991, EPA Regional Administrators provided letters to the Nation's Governors explaining some of the specific State actions that were to be completed in order to initiate implementation of title I of the Act as recently amended by the 1990 Amendments ("RA Letters"). Regarding PM–10, for example, EPA informed the Governors of those areas designated nonattainment for PM–10 by operation of law upon enactment of the Act and explained some of the SIP requirements applicable to such areas under the

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to the initial PM–10 nonattainment areas in light of the comments, where EPA believed appropriate and where there was a legal basis to do so.

A. Legal Framework

Section 107(d)(4)(B)(i) of the Act clearly specifies those former Group I areas that were designated nonattainment at enactment. That provision states that each former Group I area identified in 52 FR 29383 (August 7, 1987) or modified before enactment of the Act (November 15, 1990) is designated nonattainment for PM–10. As discussed previously, the **Federal Register** notice published on October 31, 1990 (55 FR 45799) clarified or "modified" EPA's identification of the Group I areas listed in the August 1987 notice.[4] Thus, as explicitly provided by the statute, the Group I areas listed in the October 1990 notice became nonattainment for PM–10 by operation of law upon enactment of the Act on November 15, 1990. The EPA, then, announced that these areas were among the initial PM–10 nonattainment areas in its March 15, 1991 **Federal Register** notice. Because the Act explicitly provided that the former Group I areas identified in the October 1990 notice became nonattainment for PM–10 by operation of law at enactment, EPA believes the law generally prohibits any modification of these areas at this juncture. The one exception is where, before enactment, EPA committed error in identifying and/or modifying a Group I area as referenced in section 107(d)(4)(B)(i) of the Act.

There are a few circumstances where there is evidence that EPA intended that the boundary for a Group I area identified and/or modified in its October 31, 1990 **Federal Register** notice (and reiterated in the March 1991 announcement of initial PM–10 nonattainment areas) be different and through administrative oversight or other error failed to so provide.[5] In one instance, for example, EPA mislabeled a highway number. EPA has made adjustments to the boundaries in such circumstances. Faced with the choice of designating erroneous nonattainment areas or interpreting section 107(d)(4)(B)(i) such that it includes the areas identified before enactment in the October 31, 1990 notice but corrected for error, EPA believes the latter approach the most reasonable.[6] Moreover, EPA believes that in providing that the areas identified and/or modified in the October 31, 1990 notice would be nonattainment areas by operation of law upon enactment of the 1990 Amendments, Congress and the President could not have intended to ratify dysfunctional or evidently erroneous boundaries not grounded in fact. Note that these circumstances are in contrast to the situation where commenters requested modification of a former Group I area because they believe, as a technical or policy matter, that all or part of the area should not be designated nonattainment. EPA has not adjusted former Group I areas where there is a judgment dispute about the proper scope of the area or its very designation as nonattainment.[7]

The prior categorization as a Group II or III area bears differently on an area's nonattainment status, in comparison with the Acts' treatment of former Group I areas. Specifically, section 107(d)(4)(B)(ii) of the Act states that "any area containing a site for which air quality monitoring data show a violation of the national ambient air quality standards for PM–10 before January 1, 1989 (as determined under part 50, appendix K, of title 40 of the Code of Federal Regulations) is hereby designated nonattainment for PM–10." [8] The language of section 107(d)(4)(B)(ii) suggests that EPA has more discretion in determining which of the former Group II and III areas were designated nonattainment by operation of law upon enactment of the Act. For example, EPA must exercise some judgment in construing what is a violation within the meaning of 40 CFR part 50, appendix K, to the extent these regulations leave discretion.

Further, section 107(d)(4)(B)(ii) does not define the boundaries of "any area" measuring a pre-1989 violation. The Act does, however, set forth a revised definition of nonattainment area for purposes of section 107(d) designations generally. Specifically, section 107(d)(1)(A)(i) of the Act defines a nonattainment area as "any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for the pollutant." Thus, coincident with providing that certain former Group II and III areas were designated nonattainment by operation of law at enactment, the Act provided a standard to govern the scope of what that area should be. This definition suggests that EPA must apply its expertise and knowledge to isolate as nonattainment any area it believes violates the standard or any area that significantly contributes to such violation in a nearby area.[9] Further, nonattainment area definition is being applied to these areas for the first time since under EPA's pre-enactment grouping scheme they were not designated nonattainment. The EPA therefore believes that, consistent with this new standard, it has some discretion to apply its technical expertise and appropriately adjust the boundaries of the former Group II or III areas for purposes of determining which

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revised law. By these letters EPA also initiated the process of redesignating additional areas as nonattainment for PM–10, pursuant to section 107(d)(3) of the Act. Section 107(d)(3) expressly provides an opportunity for State participation in redesignating additional PM–10 nonattainment areas. Section 107(d)(4)(B), the provision addressing designation of the initial PM–10 nonattainment areas (i.e., those occurring by operation of law upon enactment), does not contemplate such a process. Nevertheless, some Governors and State agency officials submitted comments on the initial areas in responding to EPA's suggested additional nonattainment areas. The EPA has responded to any such pertinent comments in this notice.

[4] Pre-enactment modifications to the August 1987 notice were also made in the **Federal Register** notice published on March 20, 1990, discussed previously.

[5] This error was brought to EPA's attention in comments submitted in response to EPA's March 15, 1991 announcement or in EPA's review of its records in preparing responses to comments.

[6] Further, section 110(k)(6) expressly authorizes the Administrator to revise designations, classifications, etc. where the Administrator determines that such designations, classifications, etc. were in error.

[7] In cases where there are disputes regarding the proper scope of the designation, if a State later makes a persuasive demonstration (SIP equivalent) that EPA's factual conclusions in identifying a former Group I area were in error, the Agency will consider whether it would be appropriate to correct the error relying on the authority in section 110(k)(6) of the Act.

[8] Since EPA grouped all areas of the country as I, II, or III when it revised the PM–10 NAAQS (see previous discussion) and because all former Group I areas were designated nonattainment by operation of law under section 107(d)(4)(B)(i), the reference to "any area" in section 107(d)(4)(B)(ii) de facto applies to all areas formerly grouped as II and III.

That all former Group I areas would be designated nonattainment by operation of law upon enactment of the Act, while former Group II/III areas would have to measure a violation prior to January 1, 1989 to be so designated, is grounded in some logic and reason. As noted above, when EPA placed areas of the country into Groups I, II, or III, Group I areas were those with a strong likelihood of violating the PM–10 standard.

[9] In the context where the Agency has adjusted the boundaries of a former Group II or III area because it contributes to a violation in a nearby area, the Agency has construed the definition of nonattainment area to require some material or significant contribution to such a violation. The Agency believes that something greater than a molecular impact is required. Further, EPA has adjusted the boundaries of former Group II and III areas designated nonattainment in reliance on its general technical expertise and has not conducted, for example, rigorous modeling analysis. The timeframes set forth in the statute do not contemplate such detailed analysis. For example, the law mandates that all of the areas designated nonattainment by operation of law upon enactment of the Act must submit SIP revisions by November 15, 1991. Such tight deadlines do not afford time for more sophisticated technical analysis.

areas were actually designated nonattainment by operation of law.[10]

Where appropriate, EPA has exercise both types of discretion in responding to comments addressing former Group II and III areas that were announced as initial PM–10 nonattainment areas in the March 1991 notice. Specifically, EPA has considered whether a violation within the meaning of part 50, appendix K, occurred and EPA has adjusted nonattainment area boundaries for those areas based on the standard set forth in section 107(d)(1)(A)(i).[11]

B. Responses to Comments

1. Former Group I Areas

a. Hayden/Miami Planning Area, Arizona. Comments were submitted on behalf of ASARCO, Incorporated (ASARCO), addressing EPA's designation of the Hayden/Miami Planning Area in Arizona as an initial PM–10 nonattainment area. ASARCO acknowledged that as a former Group I area "the 'Hayden/Miami' Group I area identified in the notice published at 52 FR 29383 on August 7, 1987, must be designated a nonattainment area * * *" However, ASARCO stated that the March 1991 notice "expands the boundaries of the Hayden/Miami nonattainment area far beyond the limits of the planning area used by the state when developing its PM–10 SIP for Hayden." ASARCO commented that these boundaries are unsupported by ambient monitoring data, information the State of Arizona discovered in its SIP development for the Group I area, EPA guidance documents, and the language of the amended law. Consequently, ASARCO requested that the boundaries of the area be substantially revised.

ASARCO has misinterpreted the legal weight of the October 1990 notice. In its August 1987 notice, EPA only generally referenced the "Hayden/Miami area." In the October 1990 notice, EPA modified and clarified this, enumerating in detail, portions of the Hayden/Miami planning area deemed Group I. These modifications, in turn, were adopted by operation of law upon enactment of the Act (see section 107(d)(4)(B)(i)).

ASARCO argues that EPA can disregard the boundaries in the October 1990 notice because it "did not 'modif[y]' the 'identification' of PM–10 nonattainment areas; rather, that notice defined the boundaries of nonattainment areas that had already been identified in previous notices." This extreme reading of section 107(d)(4)(B)(i) has no basis in reason. An area is identified by its boundaries. Thus, when EPA modified the boundary of a Group I area in its October 1990 notice, it was modifying the identification of the area as section 107(d)(4)(B)(i) expressly contemplates.

ASARCO also argues that the October 1990 notice is not within the intended ambit of section 107(d)(4)(B)(i) because the operative language appeared in the legislative history before the publication of the October notice. This argument ignores the express and plain meaning of the text of section 107(d)(4)(B)(i). That provision states that any modification of the August 1987 notice "before the date of enactment of the Act" is effective. It clearly does not state, for example, that only modifications occurring before legislation or legislative history was introduced are effective, as the commenter apparently believes it should be read.

The EPA has no basis to disregard the boundaries for this former Group I area as modified in the October 1990 notice and adopted by operation of law. ASARCO argues, for example, that EPA should adjust the boundaries because they are inconsistent with the Group I SIP develop for that area, monitoring data, and EPA guidance documents. That the State of Arizona was developing a SIP focusing on certain portions of this former Group I area does not compel EPA either to agree with the SIP's scope or to adjust the area boundaries to comport with that scope. In fact, EPA has taken no action on the former Group I SIP for this area. Generally, prior to modifying the boundaries in the October 1990 notice, EPA consulted with the affected States, reviewed technical information, and was guided by applicable EPA policy. Weighing these various factors, EPA set the boundaries it believed appropriate, and on November 15, 1990 these boundaries were adopted as the nonattainment boundaries for the former Group I area in question.

The Governor of Arizona also submitted comments addressing the Hayden/Miami PM–10 nonattainment area. The Governor commented that the State has submitted a SIP demonstrating attainment in the Hayden area. He also commented that since 1988, monitoring in the vicinity of industrial sources at Miami has not revealed any violations of the PM–10 standards. The Governor stated that the State of Arizona "will be submitting a SIP revision to designate only the area within T5S, R15E as nonattainment." However, in an attachment to the Governor's letter, he provided a more detailed and apparently inconsistent description of portions of Hayden that the Governor believed should be designated nonattainment.

As indicated in response to ASARCO's comments, there is no evidence that EPA intended to provide boundaries for the Hayden/Miami area that are different from those identified in the October 1990 notice and announced in EPA's March 1991 notice in reliance on the October notice. Essentially, there is no evidence of EPA error. Moreover, as explained in the response to ASARCO's comments, EPA is in no way obligated to set nonattainment boundaries for former Group I areas according to the scope of the State's implementation plan for the former Group I area. In fact, EPA has taken no action on the former Group I SIP for this area. In sum, the boundaries for this initial PM–10 nonattainment area will remain as set forth in the March 15, 1991 **Federal Register** notice.

b. New Haven, Connecticut. The Governor of Connecticut and the State of Connecticut Department of Environmental Protection (CDEP) submitted comments requesting that the boundaries for the New Haven nonattainment area be modified to include only that portion of the city east of the Quinnipiac River. The CDEP noted that CDEP staff had sought to have the boundary revised in the October 31, 1990 notice but that EPA had informed them that "a municipality was the smallest geographic area that could be designated." The CDEP also commented that CDEP staff were told by EPA that the State would have another opportunity to refine the boundaries.

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[10] Former Group II areas, for example, present an extreme case, clearly compelling EPA to exercise discretion in this way. The August 1987 and October 1990 **Federal Register** notices stated that any area of a State not listed as Group I or II is considered to be Group III (see 52 FR 29384 and 55 FR 45799). Where EPA determined that such an area measured a violation of the PM–10 standard prior to January 1, 1989, it would be irrational for the Agency to designate as nonattainment entire portions of States far removed from and not significantly contributing to the area monitoring the violation. Rather, EPA must exercise some judgment.

[11] In contrast, unless EPA has committed an error, the statute's treatment of former Group I areas does not contemplate such adjustment. As mentioned, the provision of the Act addressing the nonattainment designation of former Group I areas is quite specific. Section 107(d)(4)(B)(i) calls for the nonattainment designation of "each area identified in 52 FR 29383" or as subsequently modified before the date of enactment of the Act. Thus, the law specifies "each area" that was designated nonattainment. The EPA cannot rely on the Act's definition of nonattainment to adjust these area. The EPA believes such adjustment would contravene the general canon of statutory construction that when interpreting the Act, specific provisions control those that are more general. In this case, EPA believes that Congress has specified that former Group I areas will be nonattainment and EPA cannot rely on the general definition of nonattainment area to adjust the boundaries of these area.

The EPA regrets any miscommunication between Connecticut and EPA that may have occurred when discussing the modification of Group I areas for the October 1990 notice. However, Connecticut has not submitted any documentation indicating that EPA committed an error in designating the City of New Haven as an initial PM–10 nonattainment area, in reliance on the October 1990 notice. There is no evidence that EPA intended that the boundaries for this area be different from those set forth in the March notice and through administrative oversight or other error failed to so provide. Thus, the City of New Haven is a PM–10 nonattainment area, as described in the March 1991 notice.

c. Pinehurst, Idaho. The Administrator of the Idaho Division of Environmental Quality (IDEQ), on behalf of the Governor, requested that EPA significantly adjust the City of Pinehurst nonattainment area. Believing the nonattainment problem in this area to be a valley airshed problem, IDEQ requested that EPA expand the boundaries to include additional townships along Silver Valley.

There is no documented evidence that EPA committed an error when it modified the boundary for this area in its October 1990 notice or as reiterated in its March 1991 notice announcing the initial PM–10 nonattainment designations. Thus, there is no basis to alter the boundaries identified as the "City of Pinehurst" and set forth in the March 1991 notice.

Nevertheless, to the extent that the boundaries described in the State's correspondence are broader than those initially designated nonattainment, EPA is considering whether the State's submittal should be treated as an unsolicited redesignation request within the meaning of section 107(d)(3)(D) of the Act. Under that provision EPA must "approve or deny" a revised designation "[w]ithin 18 months of receipt of a complete State redesignation submittal * * *."

If EPA finds that the submittal is complete and approves the submittal, then the City of Pinehurst and any revised nonattainment area surrounding it in the Silver Valley will be subject to somewhat different statutory deadlines for SIP submittal, attainment demonstration, etc. Compare, e.g., section 189(a)(2)(A) (first SIP for initial nonattainment area due 1 year from enactment) and section 189(a)(2)(B) (first SIP for later redesignated nonattainment area due 18 months from the nonattainment designation). However, EPA notes that nothing in the Act prohibits the State from submitting a SIP for the entire area they have identified by November 15, 1991, the SIP submittal deadline applicable to the portion of the area initially designated nonattainment and announced in the March 15, 1991 notice.

d. Pocatello, Idaho. The Administrator of the IDEQ submitted information to EPA indicating what portion of the Pocatello area in Bannock and Power counties should be designated nonattainment. In the October 1990 and March 1991 notices, this area was listed as "City of Pocatello." Both of those notices identified Bannock and Power as the affected counties. After reviewing IDEQ's submittal, EPA realized that the "City of Pocatello" sits only in Bannock County. Thus, there is a disconnect or gap between EPA's listing of the "City of Pocatello" as the nonattainment area for both Bannock and Power Counties.

As evidenced by its listing of both counties, EPA intended to include that portion of the Pocatello area in both Bannock and Power Counties in the October 1990 notice. The EPA now realizes that listing was in error. This error, then, was adopted inadvertently in EPA's March 1991 notice announcing the initial nonattainment areas for PM–10. The EPA corrects this error in today's notice as explained in the "Legal Framework" discussion above. The EPA has clarified the boundary for this area consistent with IDEQ's request and EPA's original intent.

The Shoshone-Bannock Tribes also submitted information addressing the boundary for the Pocatello nonattainment area. The Tribes indicated that they agreed with the clarification and expansion of the Pocatello nonattainment area as indicated in IDEQ's submittal. They also requested that EPA include an additional section which they said would include a seasonally operated "open pit silica mine with a rock crushing operation and attendant storage piles * * *."

The EPA has corrected the error it committed with respect to Pocatello as described previously. However, EPA does not believe that the additional section identified by the Tribes was among those intended to be included with the initial Pocatello nonattainment area. Thus, at this time, EPA will not adjust the boundaries for this area to include this section. Nevertheless, if after further study EPA concludes that there is evidence that this area violates the PM–10 standards or significantly contributes to such a violation in a nearby area, then EPA would initiate the process to redesignate this area nonattainment pursuant to section 107(d)(3)(A) of the Act.

e. Cook County, Illinois. The EPA received no formal comments about the portion of Cook County, Illinois, designated nonattainment for PM–10. However, in reviewing records subsequent to the publication of the March 1991 notice, EPA realized that a highway number in the description of this area had been inadvertently mislabeled. This announcement corrects that error in accordance with the legal rationale described above.

f. Presque Isle, Maine. The Maine Department of Environmental Protection (MDEP) and the City of Presque Isle submitted comments addressing EPA's designation of the City of Presque Isle as an initial PM–10 nonattainment area. The City of Presque Isle commented that Presque Isle was incorrectly placed in Group I in August 1987, the notice first announcing groupings after EPA revised the NAAQS for PM–10 in July 1987. Thus, the city requested that it be removed from nonattainment status. The MDEP also objected to the designation of the city as nonattainment and, alternatively, argued that the boundaries of the nonattainment area should be reduced to include a ½ mile radius in the city's urban center. The MDEP submitted a number of supporting documents.

The designation of Presque Isle as nonattainment and the scope of its boundaries appears to be a judgment dispute. In its October 1990 notice, EPA modified the boundaries for this Group I area as it believed appropriate. This area and attendant boundaries then became nonattainment for PM–10 by operation of law upon enactment of the Act. The EPA regrets any miscommunication between EPA and MDEP which may have occurred during the development of the October notice. Nevertheless, this is not a situation where EPA intended that the boundaries in the October 1990 notice be different and, through an error, failed to so provide. Thus, as announced in EPA's March 1991 notice, the boundaries of the Presque Isle PM–10 nonattainment area will consist of the entire city (see section 107(d)(4)(B)(i)).

g. Libby, Montana. The State of Montana submitted information to EPA in conjunction with EPA's development of the October 1990 notice. The EPA reviewed this information and intended to modify the boundaries for this area in accordance with the State's submittal. Through administrative oversight, this modification was not reflected in the October 1990 notice and, consequently, was not announced in the March 1991 notice. The EPA has corrected that error

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f. Presque Isle, Maine. The Maine Department of Environmental Protection (MDEP) and the City of Presque Isle submitted comments addressing EPA's designation of the City of Presque Isle as an initial PM–10 nonattainment area. The City of Presque Isle commented that Presque Isle was incorrectly placed in Group I in August 1987, the notice first announcing groupings after EPA revised the NAAQS for PM–10 in July 1987. Thus, the city requested that it be removed from nonattainment status. The MDEP also objected to the designation of the city as nonattainment and, alternatively, argued that the boundaries of the nonattainment area should be reduced to include a ½ mile radius in the city's urban center. The MDEP submitted a number of supporting documents.

The designation of Presque Isle as nonattainment and the scope of its boundaries appears to be a judgment dispute. In its October 1990 notice, EPA modified the boundaries for this Group I area as it believed appropriate. This area and attendant boundaries then became nonattainment for PM–10 by operation of law upon enactment of the Act. The EPA regrets any miscommunication between EPA and MDEP which may have occurred during the development of the October notice. Nevertheless, this is not a situation where EPA intended that the boundaries in the October 1990 notice be different and, through an error, failed to so provide. Thus, as announced in EPA's March 1991 notice, the boundaries of the Presque Isle PM–10 nonattainment area will consist of the entire city (see section 107(d)(4)(B)(i)).

g. Libby, Montana. The State of Montana submitted information to EPA in conjunction with EPA's development of the October 1990 notice. The EPA reviewed this information and intended to modify the boundaries for this area in accordance with the State's submittal. Through administrative oversight, this modification was not reflected in the October 1990 notice and, consequently, was not announced in the March 1991 notice. The EPA has corrected that error

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in today's notice in accordance with the legal rationale described above.

h. Missoula County, Montana. The Governor of Montana submitted comments to EPA indicating that EPA committed an error in modifying the Group I area of concern for this county in EPA's October 1990 notice. Through administrative oversight EPA inadvertently omitted sections of this area that records indicate it intended to include. This error then was reiterated in EPA's March 1991 notice announcing the initial nonattainment areas. The EPA has corrected its error in accordance with the legal rationale explained above.

i. Butte, Montana. As was the case with Libby, the State of Montana submitted information to EPA in conjunction with EPA's development of the October 1990 notice and, after deciding to include it in the notice, EPA inadvertently omitted the information. As with Libby, this error was reiterated in the March 1991 notice announcing the initial PM–10 nonattainment areas. The EPA has remedied its administrative oversight and corrected the boundaries as originally intended in accordance with the legal rationale described above.

In a February 27, 1991 letter to EPA, the Governor of Montana submitted additional information addressing Libby's PM–10 boundaries. The Governor indicated that Montana had completed technical analyses since the publication of the October 1990 notice and submitted detailed boundaries. The Governor indicated that the suggested boundaries would expand the Butte nonattainment area, as listed in the October 1990 notice, far beyond the city limits. Upon comparing the nonattainment boundary submitted by the Governor and the corrected boundary in today's notice, EPA has determined that the boundaries are similar; however, the Governor's suggested boundary for the area is slightly broader. There is no evidence that EPA intended to include the additional area identified in the Governor's letter when EPA modified Group I areas in the October 1990 notice (or announced the initial PM–10 nonattainment areas in the March 1991 notice, in reliance on the October 1990 notice) and through administrative error failed to so provide. Thus, EPA will not adjust the boundary for this area to include the additional area identified in the Governor's letter.

However, to the extent that the boundary described in the Governor's correspondence is broader than that listed in today's notice, EPA will treat the Governor's submittal as an unsolicited request for redesignation with the meaning of section 107(d)(3)(D) of the Act. Under that provision, EPA must approve or deny a revised designation within 18 months of receipt of a complete State redesignation submittal.

If EPA finds that the submittal is complete and approves the submittal, then the additional area submitted by the Governor for the Butte nonattainment area will be subject to somewhat different statutory deadlines for SIP submittal, attainment demonstrations, etc. Compare, e.g., section 189(a)(2)(A) (first SIP for initial nonattainment area due 1 year from enactment) and section 189(a)(2)(B) (first SIP for later redesignated nonattainment areas due 18 months from the nonattainment designation). However, EPA notes that nothing in the Act prohibits the State from submitting a SIP for the entire area they have identified by November 15, 1991, the SIP submittal deadline applicable to the portion of the area initially designated nonattainment and announced in today's notice.

j. Anthony, New Mexico (Dona Ana County). The State of New Mexico Environment Department (NMED) submitted comments addressing the nonattainment designation of the Anthony, New Mexico, area. The NMED stated that Anthony is a rural fugitive dust area (RFDA) and under EPA's "Rural Fugitive Dust Policy" (RFDP), "RFDA sites shall not be designated nonattainment." Further NMED stated that EPA's RFDP remains in effect because EPA indicated "in the October 29, 1990 **Federal Register**, the existing RFDA policy shall remain in effect until it is revised by EPA." Finally, NMED requested that former RFDA's now designated nonattainment have most of their requirements waived if EPA discontinues the RFDP.

Two 1977 EPA memoranda constitute what has been called EPA's "Rural Fugitive Dust Policy." These memoranda set forth treatment of areas identified as "Rural Fugitive Dust Areas" for the purposes of attainment/nonattainment status as well as SIP development and new source review under the Act before the 1990 Amendments (see, e.g., 52 FR 24716 (July 1, 1987) (historical discussion)). This policy was issued when TSP was the indicator for particulate matter. When EPA revised the particulate matter NAAQS in July 1987, changing the indicator to PM–10, EPA proposed a number of alternative policies. In that notice EPA indicated that the existing policy would remain in effect until EPA adopted a final policy (see 52 FR 24716 (July 1, 1987)).

Since then, the 1990 Amendments to the Act were enacted. As discussed, section 107(d)(4)(B)(i) of the Act provides that all former Group I areas were designated nonattainment by operation of law upon enactment of the Amendments. Further, EPA is unaware of any error it may have committed when it modified the boundary for the Anthony area in its October 1990 notice. Thus, on November 15, 1990 the Anthony, New Mexico, area (as listed in the October 1990 notice) became nonattainment for PM–10 by operation of law. The EPA announced this designation in its March 1991 notice.

The EPA believes the waiver provision alluded to in NMED's comments provides a statutory alternative to EPA's RFDP (see section 18(f) of the Act). The EPA intends to provide guidance to the States on the meaning of section 188(f) later this year. In the meantime, areas designated nonattainment for PM–10, including former RFDA's, should proceed with SIP development in accordance with the new law.

The October 29, 1990 **Federal Register** notice referenced by NMED was EPA's semiannual Regulatory Agenda (see 55 FR 45134, 45198). This notice is published for informational purposes and has no regulatory effect. In addition, the October publication preceded enactment of the Act. Any confusion created by the reference to the RFDA in that notice should be cleared by today's notice. Finally, EPA notes that former RFDA's will receive the same treatment that all other areas requesting a waiver will receive. If EPA finds that an area satisfied the operative legal standard then, within the construction of the law, EPA will waive those requirements it believes appropriate.

k. Jefferson County, Ohio. Ohio EPA (OEPA) submitted comments indicating that EPA erred in setting the boundaries for that portion of Jefferson County, Ohio, that was designated nonattainment at enactment. After examining the documentation submitted by OEPA, EPA agrees that an error was committed. In both the October 1990 and March 1991 notices, EPA identified a boundary for this area that was incomplete. It appears, for example, that EPA failed to clearly delineate a western boundary. The EPA has corrected its error in accordance with legal rationale described above.

l. El Paso, Texas. The Texas Air Control board submitted comments on this area noting that "on March 8, 1991, the Texas Air Control Board (TACB) passed a resolution * * * approving the Texas Air Control Board Designation Proposal, where the nonattainment area for PM–10 in El Paso was changed to the

City of El Paso including Fort Bliss." Apparently, TACB sought to clarify that Fort Bliss, which is within the city limits but not part of the municipal entity, was included in the City of El Paso nonattainment area. Generally, when EPA lists municipal boundaries or other boundaries identifying a perimeter, all of the area within those boundaries is part of the nonattainment area unless otherwise specified. More specifically, Federal facilities are subject to the requirements of the Act unless thay have been expressly exempted from a requirement because the President has determined that it is in the "paramount interest of the United States to do so" (see section 118 of the amended Act). The EPA is unaware of any such exemption for Fort Bliss. Thus, as indicated in EPA's March 1991 notice, the City of El Paso, and any area within its municipal boundaries, is an initial PM–10 nonattainment area.

m. Wallula, Washington. The Governor of Washington submitted information to EPA requesting that the Wallula nonattainment area be expanded to include Kennewick, Washington. The Governor's submittal stated that these two areas should be combined into one nonattainment area because the Wallula nonattainment area does not include all of the major sources which contribute to the air quality problem in the area. The Governor also noted the close proximity of the monitoring sites in the two areas.

The Wallula area, as described in the October 1990 and March 1991 **Federal Register** notices, was designated nonattainment by operation of law upon enactment. Further, there is no evidence that in developing either of these notices EPA intended the boundary to be different, but through an error failed to so provide. Thus, the Wallula area is currently a moderate PM–10 nonattainment area. As such, the State of Washington must submit a SIP revision for the area by November 15, 1991 containing the applicable statutory requirements and demonstrating attainment by December 31, 1994 (see generally subpart 4 of part D of title I of the Act).

The EPA agrees that Kennewick has a PM–10 air quality problem and has already initiated the process to redesignate this area nonattainment (see January 31, 1991 letter to the Governor of Washington from the Regional Administrator of EPA Region X; see also 56 FR 16274 (April 22, 1991)). However, absent error, EPA cannot expand the boundaries of the Wallula nonattainment area to include Kennewick. If Kennewick is designated as an additional PM–10 nonattainment area, it will be subject to statutory deadlines for SIP submittal, attainment demonstration, etc., which are different from those of Wallula. However, EPA notes that nothing prevents the State from submitting a SIP for the entire Wallula and Kennewick area by the November 15, 1991 SIP submittal deadline applicable to the initial PM–10 nonattainment areas and, consequently, treating this as a single nonattainment area. The opposite is not true. Under the law, the State of Washington cannot defer submittal of a SIP for Wallula until a SIP for Kennewick is due, assuming Kennewick is ultimately redesignated to nonattainment.

n. Yakima, Washington. The EPA received no formal comments about the portion of Yakima, Washington, designated nonattainment for PM–10. However, in reviewing records subsequent to the publication of the March 1991 notice, EPA realized that a set of coordinates were missing from the boundary description for the area. This announcement corrects that error in accordance with the legal rationale described above.

2. Former Group II and III Areas

a. Ajo, Arizona. Comments were submitted on behalf of the Phelps Dodge Corporation (Phelps Dodge) addressing EPA's announcement of the Ajo planning area as an initial PM–10 nonattainment area. Phelps Dodge commented that air quality data do not show "a violation of the national ambient air quality standard for PM–10 before January 1, 1989 (as determined under part 50, appendix K of title 40 of the Code of Federal Regulations)" because only one exceedance of the 24-hour standard has been measured (see section 107(d)(4)(B)(ii) of the Act). Phelps Dodge commented that, alternatively, the exceedance in question should be treated as an exceptional event.

The PM–10 standard is expressed in terms of an expected value. Section 3.1 of 40 CFR part 50, appendix K, describes the adjustments that must be made to 24-hour data in order to estimate the number of expected exceedances when PM–10 sampling is not conducted on a daily basis. Section 3.1 states that "[i]n this adjustment, the assumption is made that the fraction of missing values that would have exceeded the standard level is identical to the fraction of measured values above this level." The regulations recognize that this adjustment may lead to overprediction. Thus, § 3.1 also states as follows: "To reduce the potential for overestimating the number of expected exceedances, the correction for missing data will not be required for a calendar quarter in which the first observed exceedance has occurred if: (a) There was only one exceedance in the calendar quarter, (b) everyday sampling is subsequently initiated and maintained for 4 calendar quarters in accordance with 40 CFR 58.13, and (c) data capture of 75 percent is achieved during the required period of everyday sampling."

Sampling is conducted once every 6 days at the Ajo Station monitoring site. After the exceedance in question was measured, daily sampling was not commenced. Thus, the regulations require correction for the missing data. After applying the adjustment referenced above, the expected exceedances of the 24-hour standard at Ajo constitute a violation of the PM–10 standard consistent with part 50, appendix K.

Section 2.4 of part 50, appendix K, governs the inquiry of whether the exceedance measured at Ajo should be treated as an "exceptional event." That regulation states that an exceptional event is "an uncontrollable event caused by natural sources of particular matter or an event that is not expected to recur at a given location." Phelps Dodge commented that "gusts in excess of 20 mph" were measured at the closest meteorological station on the day the exceedance was measured. The level of the wind gusts was noted presumably to illustrate the anomalous nature of the event. However, Phelps Dodge submitted no information indicating whether that high wind was the cause of the exceedance and, if so, whether the wind was likely to recur. In fact, Phelps Dodge suggested that the wind gusts were due to the area's seasonal monsoon. Specifically, Phelps Dodge stated that "[t]he conditions at Ajo were characteristic of monsoon weather patterns in southern Arizona." Further, recent meteorological data collected near Ajo by the Arizona Department of Environmental Quality indicate that hourly wind gusts greater than or equal to 20 miles per hour occur at least 7 days per year. The EPA, therefore, does not believe the event is properly deemed exceptional. Thus, as described in the March 1991 notice, the Ajo planning area is an initial PM–10 nonattainment area.

Finally, the State of Arizona appears to agree with the Ajo boundaries. In a May 15, 1991 letter to EPA, the Governor of Arizona suggested boundaries for the Ajo nonattainment area that were consistent with those set forth in EPA's March 1991 announcement.

b. Bullhead City, Arizona. The Arizona Center for Law in the Public

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Sampling is conducted once every 6 days at the Ajo Station monitoring site. After the exceedance in question was measured, daily sampling was not commenced. Thus, the regulations require correction for the missing data. After applying the adjustment referenced above, the expected exceedances of the 24-hour standard at Ajo constitute a violation of the PM–10 standard consistent with part 50, appendix K.

Section 2.4 of part 50, appendix K, governs the inquiry of whether the exceedance measured at Ajo should be treated as an "exceptional event." That regulation states that an exceptional event is "an uncontrollable event caused by natural sources of particular matter or an event that is not expected to recur at a given location." Phelps Dodge commented that "gusts in excess of 20 mph" were measured at the closest meteorological station on the day the exceedance was measured. The level of the wind gusts was noted presumably to illustrate the anomalous nature of the event. However, Phelps Dodge submitted no information indicating whether that high wind was the cause of the exceedance and, if so, whether the wind was likely to recur. In fact, Phelps Dodge suggested that the wind gusts were due to the area's seasonal monsoon. Specifically, Phelps Dodge stated that "[t]he conditions at Ajo were characteristic of monsoon weather patterns in southern Arizona." Further, recent meteorological data collected near Ajo by the Arizona Department of Environmental Quality indicate that hourly wind gusts greater than or equal to 20 miles per hour occur at least 7 days per year. The EPA, therefore, does not believe the event is properly deemed exceptional. Thus, as described in the March 1991 notice, the Ajo planning area is an initial PM–10 nonattainment area.

Finally, the State of Arizona appears to agree with the Ajo boundaries. In a May 15, 1991 letter to EPA, the Governor of Arizona suggested boundaries for the Ajo nonattainment area that were consistent with those set forth in EPA's March 1991 announcement.

b. Bullhead City, Arizona. The Arizona Center for Law in the Public

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Interest (the Center) commented that "EPA should add the Bullhead City, Arizona, planning area (Mohave County) to the list of initial PM–10 nonattainment areas based on its violation of the annual standard in 1989 and its exceedance of the 24-hour standard in the same year."

Bullhead City was a former PM–10 Group III area. Section 107(d)(4)(B)(ii) governs the initial nonattainment designations of former Group II and III areas. That provision indicates that a former Group II or III area can be designated nonattainment by operation of law upon enactment of the Act only if "monitoring data show a violation of the NAAQS for PM–10 before January 1, 1989 * * *." Violations of the standard occurring in 1989 would not qualify as a violation occurring before January 1, 1989.

Note, however, that pursuant to section 107(d)(3) of the Act, EPA has initiated the process to redesignate this area as nonattainment for PM–10. By letter dated January 24, 1991, the Regional Administrator of EPA Region IX notified the Governor of Arizona that available information indicates that Bullhead City should be redesignated nonattainment for PM–10 and, on that basis, called on the State to submit a redesignation for the area (see also 56 FR 16274 (April 22, 1991)).

c. Payson, Arizona. The Center submitted comments claiming that Payson, Arizona, should be designated as an initial PM–10 nonattainment area. The Center stated that "Payson violated the annual mean PM–10 standard in 1988 and 1989, and also recorded five violations of the 24-hour standard in 1989 * * *."

Payson was a former Group III area. For the reasons noted in the Bullhead City response, those violations occurring on or after January 1, 1989 cannot be a basis for designating Payson as an initial PM–10 nonattainment area.

Further, the 1988 data record for this area did not meet EPA's general data capture requirements (i.e., was incomplete) and was not otherwise sufficiently unambiguous to establish nonattainment (see § 2.3 of part 50, appendix K). More specifically, § 2.3 states that it is "generally necessary" for a monitoring site to have data which includes a minimum of 75 percent of the scheduled PM–10 samples per quarter in order to assess whether a violation of the standard has been recorded. With a minimum sampling frequency of once in 6 days, a valid annual mean must be based on at least 48 observations (12 observations per calendar quarter). However, § 2.3 also states that there are "less stringent data requirements for showing that a monitor has failed an attainment test and thus has recorded a violation of the particulate matter standard." Section 2.3 sets out examples of how nonattainment may be demonstrated when a monitoring site does not meet the completeness criteria. With respect to the annual standard, § 2.3 provides, for example, that nonattainment may be demonstrated "on the basis of quarterly mean concentrations developed from observed data combined with one-half the minimum detectable concentration substituted for missing values."

Applying this analysis to the data collected in 1988 at the Payson monitoring station, EPA concluded that Payson should not be an initial PM–10 nonattainment area. First, according to the State of Arizona data report, a total of 19 PM–10 samples were produced in 1988 by the Payson monitor. This clearly fails the completeness requirement. If, then, one-half the minimum detectable concentration of (4.0 micrograms per cubic meter ($\mu g/m^3$)) is substituted for the missing values (say, 29, i.e., $29+19=48$), then the resulting annual mean would be approximately 32 $\mu g/m^3$, which is below the annual PM–10 standard.

However, similar to the Bullhead City situation, pursuant to section 107(d)(3) of the Act, EPA has initiated the process to redesignate this area as nonattainment for PM–10. By letter dated January 24, 1991, the Regional Administrator of EPA Region IX notified the Governor of Arizona that available information indicates that Payson should be redesignated nonattainment for PM–10, and on that basis called on the State to submit a redesignation for the area (see also 56 FR 16274 (April 22, 1991)).

d. Tucson, Arizona. The Arizona Center for Law in the Public Interest also commented that Tucson should be an initial PM–10 nonattainment area. The Center's request was based on monitoring data from three different sites in the Tucson area.

First, the Center stated that the Orange Grove Road sampling station monitored one 24-hour exceedance in 1985 and two in 1988. Since the 1985 exceedance was produced prior to the promulgation of the PM–10 NAAQS (see generally 52 FR 24634, July 1, 1987), EPA did not adjust it for incompleteness of sampling and counted it as 1.0 in the calculation of the average number of estimated exceedances.[12] The analysis specified in § 3.2 of part 50, appendix K, was then applied to the two exceedances observed in 1988.[13] On this basis, EPA calculated 3.1 exceedances for 1988. Section 2.1 specifies that the number of exceedances is determined by averaging the number of exceedances over the past 3 calendar years. Therefore, the number of expected exceedances for the 3-year period from 1986–88 is 1.033. After the rounding called for in § 2.1, 1.033 would be less than or equal to 1.0 which does not constitute a violation of the standard. Assuming for purposes of illustration that the 4-year period from 1985–88 is representative, then, consistent with § 2.3, the 1985 exceedance may be considered. In this situation, the expected number of exceedances would be 4.1 over a 4-year period which is 1.025. After the rounding called for in § 2.1, this would be less than or equal to 1.0 and would not constitute a violation of the standard.

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[12] Generally when sampling is not conducted on a daily basis, EPA adjusts exceedances of the 24-hour standard in order to estimate the number of expected exceedances (see § 3.1 of 40 CFR part 50, appendix K). Section 3.1 states that "(i)n this adjustment, the assumption is made that the fraction of missing values that would have exceeded the standard level is identical to the fraction of measured values above this level."

However, some monitoring of PM–10 occurred prior to the promulgation of part 50, appendix K. This is true of the 24-hour exceedance measured in 1985 at the Orange Grove Road sampling site in Tucson. Part 50, appendix K, was published on July 1, 1987 (effective date of July 31, 1987) when EPA revised the indicator for particulate matter to PM–10 (see generally 52 FR 24634). When it revised the PM–10 standards and promulgated appendix K, EPA did not designate areas and, therefore, could not have intended to subject pre-promulgation data to adjustment due to less than daily sampling for the purpose of designating an area nonattainment. Further, because those collecting data before the rule's promulgation had no notice of the consequences of less-than-every-day sampling, it would be unfair to adjust data collected pre-promulgation at this time. Thus, EPA interprets appendix K such that data collected prior to the rule's promulgation and used for establishing an area's designation is not construed as constituting "incomplete data" within the meaning of appendix K for the narrow purpose of adjusting data for less than daily sampling.

The manner in which the Agency has implemented part 50, appendix K, provides evidence of the Agency's general concern with the unfairness of subjecting pre-promulgation data to adjustment for incompleteness, even before the newly revised Act provided designation for PM–10. In a June 1988 policy document, EPA noted that if the first exceedance in an area occurred prior to the promulgation of the PM–10 standard, it would be exempt from the daily sampling requirement (see generally Response to Questions Regarding PM–10 State Implementation Plan (SIP) Development at page 27). Finally, there is no evidence in the newly revised Act that Congress intended EPA to apply appendix K in a manner different from how the Agency had applied it prior to enactment.

[13] The computations for estimating exceedances to adjust for missing data are performed quarterly. There are special appendix K formulas to address the situation with unscheduled samples in order to reduce a bias which may be introduced by nonuniform sampling during the quarter. During the third quarter of 1988, when the two exceedances occurred, there was a change in sampling frequency from every-other-day to every-day. Accordingly, for the purposes of estimating exceedances, the sample schedule was assumed to be every-other-day for the entire quarter and, for computational purposes, some of the every-day samples are treated as unscheduled.

The Center commented that elevated levels of PM–10 were monitored at the Congress Street station. Specifically, the Center states that the annual standard was violated in 1989 and that three exceedances were monitored in 1989. Tucson was a former Group II area. As noted, under section 107(d)(4)(B)(ii) a former Group II area can be designated nonattainment by operation of law upon enactment of the Act only if "monitoring data show a violation of the national ambient air quality standard for PM–10 before January 1, 1989 * * *." Because the violations cited by the Center occurred on or after this date, they would not constitute a basis for designating Tucson as an initial PM–10 nonattainment area.

The Center also commented that the monitor located at Prince Road monitored a violation of the 1989 annual standard. Again, EPA notes that a violation must be monitored prior to January 1, 1989 to constitute a basis for designating Tucson as an initial FM–10 nonattainment area.

Correcting EPA's announcement of the initial PM–10 nonattainment areas is the narrow question addressed by the Agency in today's action. Nevertheless, the Center has alerted EPA to possible attainment problems in the Tucson area which may be a basis for redesignating this area as nonattainment pursuant to section 107(d)(3) of the Act. The EPA will review the PM–10 data collected in Tucson on or after January 1, 1989 and expects that it will reach a conclusion about Tucson's status (and whether to initiate the section 107(d)(3) redesignation process) sometime this Fall.

e. Bonner County, Idaho. The Administrator of the IDEQ submitted comments addressing the Bonner County nonattainment area. The EPA announced that "Bonner County" was an initial nonattainment area in the March 1991 notice. The IDEQ submitted a more detailed description, isolating that portion of Bonner County believed to warrant nonattainment designation. Consistent with the definition of nonattainment area in section 107(d)(1)(A)(i) of the Act, in today's notice EPA has refined the boundaries for this area as requested by IDEQ.

f. Oglesby, Illinois. The Governor of Illinois submitted information to EPA requesting that an additional section be added to that portion of Oglesby designated nonattainment for PM–10. Consistent with the definition of nonattainment area in section 107(d)(1)(A)(i), EPA has added the section and announces that the Oglesby PM–10 nonattainment area is as described in Table I.

In January 28, 1991 correspondence to the Governor of Illinois, the Regional Administrator of EPA Region V had initiated the process to redesignate as nonattainment this portion of LaSalle County. That process has been mooted by the action announced in today's notice.

g. Clinton Township, Indiana. The Indiana Department of Environmental Management (IDEM) requested that the boundaries for the Clinton Township nonattainment area be reduced to include eight sections in the Township and submitted technical information supporting their request. The EPA has reviewed the information submitted by IDEM and agrees that the area should be modified to include only the eight sections identified. The IDEM's information shows that violations of the standard are attributable to a coal mine in the area. The EPA believes that limiting the boundaries to the eight sections suggested by IDEM does not exclude any significant sources or any likely nonattainment portions of this area. Thus, EPA is refining the boundaries of that portion of Clinton Township that is designated as nonattainment for PM–10 to include these eight sections, consistent with the definition of nonattainment area in section 107(d)(1)(A)(i) of the Act.

h. Rochester, Minnesota. The Minnesota Pollution Control Agency (MPCA) commented on the City of Rochester's nonattainment status. The MPCA requested that the boundaries for the nonattainment area not include the entire city. They submitted information supporting this request including documents indicating that EPA had intended to include the modified boundaries in its March 1991 notice but through administrative oversight failed to do so.

The EPA believes that the nonattainment area should be less than the entire city, and EPA intended to provide more refined boundaries in its March 1991 notice. Violations in Rochester have been attributed to coal storage at a power plant. This facility is the only significant source in the city. The EPA's refined nonattainment area includes the source and all the area EPA believes to be monitoring violations of the NAAQS due to the source. Thus, consistent with the definition of nonattainment area in section 107(d)(1)(A)(i) of the Act, EPA has refined the nonattainment area.

Rochester Public Utilities (RPU) also submitted comments addressing this area. The RPU requested that EPA reconsider Rochester's nonattainment designation. The RPU commented that no violation of the NAAQS has occurred in the area. Specifically, RPU asserted that there has been no violation of the NAAQS because only one exceedance of the standard has been measured and there have never been two exceedances during any 1 year. Further, RPU commented that the event causing the exceedance was an "exceptional meteorological event" and should not trigger a nonattainment designation. The RPU also commented that the sampler malfunctioned and did not reliably measure PM–10 on the day the exceedance occurred.

The PM–10 NAAQS is expressed in terms of an expected value. Section 3.1 of 40 CFR part 50, appendix K, describes the adjustments that must be made to 24-hour data in order to estimate the number of expected exceedances when PM–10 sampling is not conducted on a daily basis. Section 3.1 states that "[i]n this adjustment, the assumption is made that the fraction of missing values that would have exceeded the standard level is identical to the fraction of measured values above this level." The regulations recognize that this adjustment may lead to overprediction. Thus, § 3.1 also states as follows: "To reduce the potential for overestimating the number of expected exceedances, the correction for missing data will not be required for a calendar quarter in which the first observed exceedance has occurred if: (a) There was only one exceedance in the calendar quarter, (b) everyday sampling is subsequently initiated and maintained for 4 calendar quarters in accordance with 40 CFR 58.13, and (c) data capture of 75 percent is achieved during the required period of everyday sampling."

Sampling is conducted once every 6 days at the site where the exceedance in Rochester was measured. Daily sampling was not commenced after the exceedance. Thus, the regulations require a correction for the missing data. After applying the adjustment referenced above, the expected exceedances of the 24-hour NAAQS at Rochester constitutes a violation of the PM–10 NAAQS consistent with part 50, appendix K.

Section 2.4 of part 50, appendix K, governs the inquiry of whether the exceedance measured at the Rochester monitoring site should be treated as an "exceptional event." That regulation states that an exceptional event is "an uncontrollable event caused by natural sources of particulate matter or an event

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Rochester Public Utilities (RPU) also submitted comments addressing this area. The RPU requested that EPA reconsider Rochester's nonattainment designation. The RPU commented that no violation of the NAAQS has occurred in the area. Specifically, RPU asserted that there has been no violation of the NAAQS because only one exceedance of the standard has been measured and there have never been two exceedances during any 1 year. Further, RPU commented that the event causing the exceedance was an "exceptional meteorological event" and should not trigger a nonattainment designation. The RPU also commented that the sampler malfunctioned and did not reliably measure PM–10 on the day the exceedance occurred.

The PM–10 NAAQS is expressed in terms of an expected value. Section 3.1 of 40 CFR part 50, appendix K, describes the adjustments that must be made to 24-hour data in order to estimate the number of expected exceedances when PM–10 sampling is not conducted on a daily basis. Section 3.1 states that "[i]n this adjustment, the assumption is made that the fraction of missing values that would have exceeded the standard level is identical to the fraction of measured values above this level." The regulations recognize that this adjustment may lead to overprediction. Thus, § 3.1 also states as follows: "To reduce the potential for overestimating the number of expected exceedances, the correction for missing data will not be required for a calendar quarter in which the first observed exceedance has occurred if: (a) There was only one exceedance in the calendar quarter, (b) everyday sampling is subsequently initiated and maintained for 4 calendar quarters in accordance with 40 CFR 58.13, and (c) data capture of 75 percent is achieved during the required period of everyday sampling."

Sampling is conducted once every 6 days at the site where the exceedance in Rochester was measured. Daily sampling was not commenced after the exceedance. Thus, the regulations require a correction for the missing data. After applying the adjustment referenced above, the expected exceedances of the 24-hour NAAQS at Rochester constitutes a violation of the PM–10 NAAQS consistent with part 50, appendix K.

Section 2.4 of part 50, appendix K, governs the inquiry of whether the exceedance measured at the Rochester monitoring site should be treated as an "exceptional event." That regulation states that an exceptional event is "an uncontrollable event caused by natural sources of particulate matter or an event

that is not expected to recur at a given location." The RPU commented that extremely high winds occurred on the day the exceedance was measured. The RPU cited a memorandum by MPCA requesting that EPA treat the exceedance as an exceptional event and noting that the Rochester National Weather Service Office measured wind speeds in excess of 40 miles per hour on the day the exceedance was measured.

As noted, EPA believes that coal storage at a power plant is responsible for the exceedance. Thus, the event in question would not qualify for treatment as an exceptional event under the first prong of the exceptional events standard since it is controllable and was not caused by natural sources. Further, EPA has no basis to believe the event would meet the second prong of the operative legal standard. While high winds were cited, no information was submitted indicating whether that high wind was the cause of the exceedance and, if so, whether the wind was likely to recur.

The EPA also believes there is insufficient technical basis to cast doubt upon the reliability of the measurement. The RPU noted that it had been informed by MPCA that the sampler was encumbered with large particles and possibly a dirty sampler head "such that quantification of PM–10 could not be accurately and reliably measured * * *." Previously, MPCA had submitted to EPA a microscopist's analysis of the filter sample. The analysis concluded that large particles were collected which should not have been measured and suggested that the sample point be invalidated. The EPA found the microscopist's analysis technically deficient since it did not document the quantity of large particles collected and encumbering the sampler. Thus, EPA will not disregard the data due to the inadequately substantiated claim that the sampler malfunctioned.

In sum, EPA has adjusted the boundaries for this area in light of MPCA's comments and consistent with the definition of nonattainment area under section 107(d)(1)(A)(i) of the Act. However, for all of the reasons explained above, EPA denies RPU's request to totally eliminate this area's nonattainment designation.

i. Audrain County, Missouri. The Missouri Department of Natural Resources (MDNR) submitted comments addressing EPA's designation of Audrain County, Missouri, as an initial PM–10 nonattainment area. The EPA identified Audrain County as an initial nonattainment area because of an exceedance of the PM–10 24-hour standard occurring on August 1, 1987. The MDNR submitted information suggesting that these data were invalid. After reviewing the technical information associated with this measured exceedance, EPA has concluded that the PM–10 sampler malfunctioned on August 1, 1987 and operated for a period exceeding 24 hours. Section 1.0 of part 50, appendix K, specifies that a "daily value" is a "24-hour average concentration of PM–10 calculated or measured from midnight to midnight * * *." The EPA has invalidated the exceedance since EPA believes the sampler ran for longer than 24 hours and was not measured from midnight to midnight. By today's notice EPA removes Audrain from the list of initial PM–10 nonattainment areas because EPA believes Audrain County has not measured a "violation" of the PM–10 NAAQS within the meaning of part 50, appendix K.

j. Columbia Falls, Montana (Flathead County). The Governor of Montana requested that EPA expand, by adding one section, the Columbia Falls nonattainment area. In light of the Governor's comments and consistent with the definition of nonattainment area set forth in section 107(d)(1)(A)(i) of the Act, EPA has adjusted the boundaries set forth in the March 1991 notice.

k. Lubbock, Texas. The TACB as well as the City of Lubbock submitted comments on the March 15, 1991 **Federal Register** notice providing an analysis of the Lubbock PM–10 air quality data collected over a 4-year period from 1986–1989. The TACB commented that they had performed an analysis of all PM–10 filters showing an exceedance of the NAAQS. These analyses included an interpretation and evaluation of soil samples and particulate matter collected on the filters. The results of the analysis of the filter and soil samples indicated that there was a distinct difference between the particulate matter deposited on the filters from routine monitoring days and those from the days of high gusty winds and blowing dust. The three exceedances of the PM–10 24-hour standard at the Lubbock monitoring sites since 1986 were determined by the TACB to be influenced by wind-blown dust transported from out of State sources. As a result, the TACB and the City of Lubbock contend that the days on which exceedances were measured were days with unusually high wind gusts and, as such, these days should be considered as exceptional events and excluded from the records in accordance with EPA's exceptional events policy under 40 CFR part 50, appendix K, § 2.4. They also contend that if the days with the high winds were excluded as exceptional events, the highest 24-hour concentration recorded at the Lubbock monitoring sites would be 126 $\mu g/m^3$, which is below the national standard of 150 $\mu g/m^3$.

The EPA has reviewed all data submitted by the TACB and the City of Lubbock in making its decision on the attainment status of the Lubbock area. Section 2.4 of part 50, appendix K, indicates that certain exceedances of the PM–10 NAAQS can be adjusted to take exceptional events and trends into account. The data available indicate that Lubbock has monitored a limited number of PM–10 levels in excess of the 24-hour PM–10 standard. Further, the influence of long-range transport of wind-blown dust on these measured exceedances makes it difficult to determine the associated frequency and nature of these exceedances. This results in uncertainty in how to treat these exceedance events. Because of this uncertainty, EPA feels that an unclassified status is appropriate for Lubbock while additional information is collected.

III. Table Describing the Initial Moderate PM–10 Nonattainment Areas Corrected by Today's Notice

Based on the foregoing discussion, EPA today is changing its March 15, 1991 (56 FR 11101) announcement of the initial PM–10 nonattainment areas. The nonattainment designations for those areas corrected by today's notice are set forth in the following table. Consistent with EPA's announcement in the March 1991 notice, all of these areas were classified as "moderate" PM–10 nonattainment areas by operation of law, pursuant to section 188(a) of the Act.

TABLE I.—PM–10 INITIAL NONATTAINMENT AREAS[14],[15],[16],[17]

State and counties	Area of concern
Idaho:	
Bannock and Power	The City of Pocatello: Sections 13–36 of range 33 east and township 5 south; Sections 15–23 and 25–36 of range 34 east and township 5 south; Section 31 of range 35 east and township 5 south; Sections 1–36 of range 33 east and township 6 south; Sections 1–36 of range 34 east and township 6 south; Sections 5–36 of range 35 east and township 6 south; Sections 7, 8, 15–22, and 27–35 of range 36 east and township 6 south; Sections 4–6 of range 33 east and township 7 south; Sections 1–4, 10–14, and 24 of range 34 east and township 7 south; Sections 1–30, and 32–36 of range 35 east and township 7 south; Sections 2–11, 14–23, and 26–35 of range 36 east and township 7 south; Sections 1–4 of range 35 east and township 8 south; Sections 3–6 of range 36 east and township 8 south.
Bonner County	The Sandpoint area: Sections 1–3, 9–12, 15, 16, 21, 22, 27, 28 of range 2 west and township 57 north; and the western ½ of Sections 14, 23, and 26 of the same township and range coordinates.
Illinois:	
Cook	a. Lyons Township. b. The area bounded on the north by 79th Street, on the west by Interstate 57 between Sibley Boulevard and Interstate 94 and by Interstate 94 between Interstate 57 and 79th Street, on the south by Sibley Boulevard, and on the east by the Illinois/Indiana State line.
LaSalle	Oglesby including the following Townships, ranges, and sections: T32N, R1E, S1; T32N, R2E, S6; T33N, R1E, S24; T33N, R1E, S25; T33N, R2E, S31; T33N, R1E, S36; and T33N, R2E, S30.
Indiana:	
Vermillion	Part of Clinton Township including the following sections: Sections 15, 16, 21, 22, 27, 28, 33 and 34.
Minnesota:	
Olmsted	The area bounded on the south by U.S. Highway 14; on the west by U.S. Highway 52; on the north by 14th Street NW. between U.S. Highway 52 and U.S. Route 63 (Broadway Avenue), U.S. Route 63 north to Northern Heights Drive, NE., and Northern Heights Drive NE. extended east to the 1990 City of Rochester limits; and on the east by the 1990 City of Rochester limits.
Montana:	
Flathead	The area bounded by lines from Universal Transmercator (UTM) coordinate 700000mE, 534700mN, east to 704000mE, 5347000mN, south to 704000mE, 5341000mN, west to 703000mE, 5341000mN, south to 703000mE, 5340000mN, west to 702000mE, 5340000mN, south to 702000mE, 5339000mN, east to 703000mE, 5339000mN, south to 703000mE, 5338000mN, east to 704000mE, 5338000mN, south to 704000mE, 5336000mN, west to 702000mE, 5336000mN, south to 702000mE, 5335000mN, west to 700000mE, 5335000mN, north to 700000mE, 5340000mN, west to 695000mE, 5340000mN, north to 695000mE, 5345000mN, east to 700000mE, 5345000mN, north to 700000mE, 5347000mN. Columbia Falls and vicinity: Township T30N, R20W—Sections 7, 8, 9, 16, 17, and 18.
Lincoln	Libby and vicinity: T30N, R31W—Sections 2, 3, 4, 5, 9, 10, 11, 14, 15, 23, 26, 35, and west ½ of Section 24, west ½ of Section 25, and west ½ of Section 36; plus T31N, R31W—Sections 26, 27, 29, the east ½ of Sections 30, 32, 33, 34, and 35.
Missoula	Missoula and vicinity including the following sections: T13N, R19W—Sections 2, 8, 11, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 27, 28, 29, 30, 31, 32, 33, and 34; T12N, R19W—Sections 4, 5, 6, 7; T13N, R20W—Sections 23, 24, 25, 26, 35, and 36.
Silver Bow	Butte: The Northwest corner of section 2, T.3N., R.8W., thence Easterly to Northeast corner Section 5, T.3N, R.7W.; thence Southerly to Northwest corner Section 9, T.3N., R.7W; thence Easterly to Northeast corner Section 10, T.3N, R.7W.; thence Southerly to Southeast corner Section 22, T.2N., R.7W.; thence Westerly to Southwest corner Section 19, T.2N., R.7W.; thence Northerly to Northwest corner Section 19, T.2N., R.7W.; thence Westerly to Southwest corner Section 14, T.2N., R.8W.; thence Northerly to Southwest corner Section 35, T.3N., R.8W.; thence Westerly to Southwest corner Section 34, T.3N., R.8W.; thence Northerly to Northwest corner Section 27, T.3N., R.8W.; thence Westerly to Southwest corner Section 20, T.3N., R.8W.; thence Northerly to Northwest corner Section 17, T.3N., R.8W.; thence Easterly to Northwest corner Section 14, T.3N., R.8W.; thence northerly to the point of beginning.
Ohio:	
Jefferson	The area bounded by Market Street (State Route 43) from the West Virginia/Ohio border west to Sunset Blvd. (U.S. Route 22). Sunset Blvd. west to the Steubenville Township/Cross Creek Township boundary, the township boundary south to the Steubenville Corporation limit, the corporation boundary east to State Route 7, State Route 7 South to the Steubenville Township/Wells Township boundary, the township boundary east to the West Virginia/Ohio border, and North on the border to Market Street.
Washington:	
Yakuma	The area bounded on the south by a line from UTM coordinate 694000mW, 5157000mN, west to 681000mW, 5157000mN, thence north along a line to coordinate 681000mN, 5172000mN, thence east to 694000mW, 5172000mN, thence south to the beginning coordinate 694000mW, 5157000mN.

[14] When cities or towns are shown, the area of concern is defined by the municipal boundary limits as of November 15, 1990 (the date of enactment of the Act) except for areas which were formerly Group I, in which case the area of concern is defined by the municipal boundary limits as of October 31, 1990 (See 55 FR 45799). (This footnote is applicable to today's action and also corrects the first footnote to the table listed in the March 15, 1991 FEDERAL REGISTER notice (56 FR 11105).)

[15] When a planning area is shown, the area of concern includes the entire planning area as of November 15, 1990 (the date of enactment of the Act) except for areas which were formerly Group I, in which case the area of concern is defined by the entire planning area as of October 31, 1990 (see 55 FR 45799). This is true except to the extent the planning area is further defined (e.g., by township, range, and/or section). Such geographical descriptors remain a part of the nonattainment boundaries irrespective of whether they are included in the planning area. (This footnote is applicable to today's action and also corrects the second footnote to the table listed in the March 15, 1991 FEDERAL REGISTER notice (56 FR 11105).)

[16] Audrain County, Missouri, was removed as an initial PM–10 nonattainment area. See comments above.

[17] Lubbock, Texas, was removed as an initial PM–10 nonattainment area. See comments above.

IV. Significance of Today's Action

By November 15, 1991, States must adopt and submit to EPA a SIP revision for all those areas that were classified as moderate PM–10 nonattainment areas by operation of law upon enactment of the Act (see subpart 4 of part D of title I of the Act as amended). In particular, section 189(a) of the Act requires that all of the initial moderate PM–10 nonattainment areas submit a SIP by November 15, 1991 which includes the following: (1) Either a demonstration (including air quality modeling) that the plan will provide for attainment by December 31, 1994 or a demonstration that attainment by that date is impracticable; and (2) provisions to assure that reasonably available control measures (including reasonably available control technology) for the control of PM–10 are implemented by December 10, 1993. In addition, a new source permit program meeting the requirements of part D of the Act is required for the construction and operation of new and modified major stationary sources of PM–10 (including, in some cases, PM–10 precursors). A SIP revision meeting this requirement is due by June 30, 1992 for all of the initial moderate PM–10 nonattainment areas. The EPA will provide additional

ONATTAINMENT AREAS[14],[15],[16],[17]

Area of concern

ge 33 east and township 5 south; Sections 15–23 and 25–36 of range 34 east and
east and township 5 south; Sections 1–36 of range 33 east and township 6 south;
ip 6 south; Sections 5–36 of range 35 east and township 6 south; Sections 7, 8, 15–
ip 6 south; Sections 4–6 of range 33 east and township 7 south; Sections 1–4, 10–14,
uth; Sections 1–30, and 32–36 of range 35 east and township 7 south; Sections 2–11,
nship 7 south; Sections 1–4 of range 35 east and township 8 south; Sections 3–6 of

16, 21, 22, 27, 28 of range 2 west and township 57 north; and the western ¾ of
ip and range coordinates.

reet, on the west by Interstate 57 between Sibley Boulevard and Interstate 94 and by
th Street, on the south by Sibley Boulevard, and on the east by the Illinois/Indiana

nges, and sections: T32N, R1E, S1; T32N, R2E, S6; T33N, R1E, S24; T33N, R1E,
T33N, R2E, S30.

g sections: Sections 15, 16, 21, 22, 27, 28, 33 and 34.

way 14; on the west by U.S. Highway 52; on the north by 14th Street NW. between
dway Avenue), U.S. Route 63 north to Northern Heights Drive, NE., and Northern
90 City of Rochester limits; and on the east by the 1990 City of Rochester limits.

nsmercator (UTM) coordinate 700000mE, 534700mN, east to 704000mE, 5347000mN,
703000mE, 5341000mN, south to 703000mE, 5340000mN, west to 702000mE,
0mN, east to 703000mE, 5339000mN, south to 703000mE, 5338000mN, east to
E, 5336000mN, west to 702000mE, 5336000mN, south to 702000mE, 5335000mN,
700000mE, 5340000mN, west to 695000mE, 5340000mN, north to 695000mE,
, north to 700000mE, 5347000mN.
20W—Sections 7, 8, 9, 16, 17, and 18.
, 4, 5, 9, 10, 11, 14, 15, 23, 26, 35, and west ½ of Section 24, west ½ of Section 25,
R31W—Sections 26, 27, 29, the east ½ of Sections 30, 32, 33, 34, and 35.
ctions: T13N, R19W—Sections 2, 8, 11, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 27, 28,
W—Sections 4, 5, 6, 7; T13N, R20W—Sections 23, 24, 25, 26, 35, and 36.
.3N., R.8W., thence Easterly to Northeast corner Section 5, T.3N, R.7W.; thence
T.3N., R.7W; thence Easterly to Northeast corner Section 10, T.3N, R.7W.; thence
.2N., R.7W.; thence Westerly to Southwest corner Section 19, T.2N., R.7W.; thence
.2N., R.7W.; thence Westerly to Southwest corner Section 14, T.2N., R.8W.; thence
T.3N., R.8W.; thence Westerly to Southwest corner Section 34, T.3N., R.8W.; thence
.3N., R.8W.; thence Westerly to Southwest corner Section 20, T.3N., R.8W.; thence
T.3N., R.8W.; thence Easterly to Northwest corner Section 14, T.3N., R.8W.; thence

oute 43) from the West Virginia/Ohio border west to Sunset Blvd. (U.S. Route 22).
ownship/Cross Creek Township boundary, the township boundary south to the
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undary east to the West Virginia/Ohio border, and North on the border to Market

UTM coordinate 694000mW, 5157000mN, west to 681000mW, 5157000mN, thence
5172000mN, thence east to 694000mW, 5172000mN, thence south to the beginning

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footnote to the table listed in the March 15, 1991 FEDERAL REGISTER notice (56 FR

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guidance on SIP requirements for these areas in the near future. Also note that EPA will be reclassifying some of these initial PM–10 nonattainment areas from moderate to serious because they cannot practicably attain the PM–10 air quality standards by December 31, 1994 (see section 188(b)(1) of the Act). If reclassified as serious, these areas will be subject to additional control requirements and a new attainment date. The EPA will work with the States in order to develop a proposed list of moderate areas to be reclassified as serious.

V. Effective Date of This Notice

As mentioned, the effective date of the announcement of the designation and classification of areas adjusted or corrected in today's notice is August 8, 1991. While 5 U.S.C. 553(d) (the APA) states that the effective date of certain administrative actions must be 30 days after publication, EPA does not believe that provision of the APA is applicable to this action. Section 107(d)(2) of the Act expressly states that "promulgation or announcement" of a designation under section 107(d)(4) shall not be subject to 5 U.S.C. 553–557. The provision establishing the PM–10 designations that occurred by operation of law upon enactment of the Act (the designation of the "initial PM–10 nonattainment areas") appears at section 107(d)(4)(B). Thus, announcement of the initial PM–10 nonattainment areas is exempt from the notice-and-comment rulemaking procedures set forth in 5 U.S.C. 553–557, including the § 553(d) requirement that the effective date of certain actions must be 30 days after publication.[18]

VI. Finality

The EPA will take final action on the initial designations for PM–10 (under section 107(d)(4)(B) of the Clean Air Act) for the purposes of section 307(b) of the Act when EPA formally codifies these designations in 40 CFR part 81. This includes those designations announced in the March 15, 1991 notice and any subsequent modifications made in this notice. As noted, EPA is expected to complete a part 81 codification for PM–10 and other title I air pollutants in the near future.

VII. Authority

Sections 107(d)(2), 107(d)(4), 110 (including 110(k)(6)), 188(a), and 301 of the Act provide authority for today's action.

Dated: July 31, 1991.

Michael Shapiro,

Assistant Administrator for Air and Radiation.

[FR Doc. 91–18827 Filed 8–7–91; 8:45 am]

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[18] If the APA requirement that publication precede the effective date of certain actions by 30 days was deemed applicable to today's action, EPA believes this action would be within the purview of the good cause exception to this requirement. See 5 U.S.C. 553(d)(3). The March 15, 1991 **Federal Register** notice announcing the initial PM–10 nonattainment areas was effective 60 days after publication (i.e., May 14, 1991) in order to allow for a 30-day comment period and any appropriate follow-up adjustments by EPA. In this **Federal Register** notice, EPA responds to comments addressing the March 1991 notice. Thus, there is no reason to defer the effective date further.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 91–217]

Standards for Assessing Forfeitures

AGENCY: Federal Communications Commission.

ACTION: Policy statement.

SUMMARY: This policy statement establishes standards to be used by the Commission in assessing forfeitures. Adoption of the Policy Statement will assist the Commission in ensuring that similarly situated violators are treated in a similar manner and will provide guidance to the public regarding the forfeitures that can be expected in connection with specific violations.

EFFECTIVE DATE: August 8, 1991.

FOR FURTHER INFORMATION CONTACT: David H. Solomon, Office of General Counsel, Federal Communications Commission (202) 632–6990.

SUPPLEMENTARY INFORMATION:

Policy Statement

Adopted: July 11, 1991; Released: August 1, 1991.

By the Commission:

I. Introduction

1. In this Policy Statement, we establish standards for assessing forfeitures. These standards are set forth in the appendix. We intend to be guided in the future by these standards, although we note that we remain "free to exercise * * * discretion in situations that arise" in specific case. See *Guardian Federal Savings & Loan Ass'n* v. *Federal Savings and Loan Insurance Co.*, 589 F. 2d 658, 666 (DC Cir. 1978).

II. Background

2. The Commission has traditionally assessed forfeitures on a case-by-case basis, in light of relevant precedent. In 1989, Congress substantially increased the dollar amounts of our forfeiture authority. Public Law No. 100–239, 103 Stat. 2131. As the Commission implements this increased forfeiture authority, we believe it is appropriate to depart from our traditional case-by-case approach and adopt more specific standards for assessing forfeitures. Such standards will assist the Commission in ensuring that similarly situated violators are treated in a comparable manner, and will provide guidance to the public regarding the forfeitures that can be expected in connection with specific violations. (The Commission remains free, of course, to respond to violations with other or additional action, for example, admonishment, revocation or non-renewal.) Establishing forfeiture standards is consistent with a recommendation of the Administrative Conference of the United States (ACUS), and is similar to approaches taken by some other independent regulatory agencies. See Agency Assessment and Mitigation of Civil Money Penalties, Recommendation No. 79–3, 1 CFR 305.79–3; General Statement of Policy and Procedure for NRC Enforcement Actions, 10 CFR chapter 1, part 2, appendix C.

III. Discussion

3. *Section 503 Forfeitures.* Most Commission forfeitures are issued under the Commission's general forfeiture authority contained in section 503 of the Act. Under section 503(b)(2), for each violation or each day of a continuing violation, the Commission may now assess forfeitures of up to $25,000 against broadcasters, cable operators or applicants for such facilities, $100,000 against common carriers or applicants for such facilities, and $10,000 against others. In addition, there is a limit on forfeitures for continuing violations involving a single act or failure to act of $250,000 for broadcasters, cable operators or applicants for such facilities and $1,000,000 for common carriers or applicants for such facilities. A limit of $75,000 applies to continuing violations involving a single act or failure to act by others.

4. Our new standards for section 503 forfeitures establish base forfeiture amounts for specific classes of section 503 forfeitures. The base forfeiture amounts are based on a ranking of a relative gravity of the violation involved. The base amounts are computed as a percentage of the statutory maximum for the service involved. For example, failure to comply with prescribed tower lighting and

marking requirements is generally an extremely grave offense and thus has a base forfeiture amount of 80 percent of the relevant statutory maximum—$20,000 for broadcasters and cable operators, $80,000 for common carrier and $8,000 for others. In contrast, failure to provide required station identification is generally a more minor offense and thus has a base forfeiture amount of 10 percent of the relevant statutory maximum—$2,500 for broadcasters and cable operators, $10,000 for common carriers and $1,000 for others. We recognize that one effect of this approach is that licensees in different services will receive different forfeitures for the same offense. We believe this approach is consistent with congressional intent in establishing different statutory maxima for different services, and at the same time ensures that all similarly situated entities are treated similarly.

5. Once the relevant base forfeiture amount is determined for a section 503 forfeiture, the next step under our standards is to apply the relevant upward and downward adjustment criteria to the base amount. Each of the upward and downward adjustment criteria is assigned a specific percentage range that is applied against the base forfeiture amount. The adjustment criteria we have selected are derived from section 503(b)(2)(D) of the Act, which instructs the Commission to "take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require." In establishing specific criteria to carry out this statutory mandate, we have also been guided by the ACUS recommendation on forfeiture standards. See 1 CFR 305.79–3 (suggesting that agencies take into account the economic benefit of the violation, the harm caused by the violation and the violator's financial condition).

6. How the standards work can be illustrated with the following example involving a broadcast licensee who, for one day, broadcasts using unauthorized equipment. Under the standards, a base forfeiture amount of $10,000 is established. If the relevant upward adjustment criteria were determined to be a 70% increase for intentional violation and a 40% increase for substantial harm, each of which is within the range established in the standards, increases of $7,000 (70% of $10,000) and $4,000 (40% of $10,000) would be added to the base forfeiture, for an adjusted forfeiture of $21,000. If it were also determined that there should be a 30% downward adjustment for a history of overall compliance by the licensee, which is also within the established range, the forfeiture would be reduced by $3,000 (30% of 10,000) to $18,000. If the broadcaster made a specific showing that an $18,000 forfeiture would cause substantial economic hardship, the forfeiture would be further reduced.[1] If application of the criteria led to an amount exceeding the statutory ceiling, the forfeiture amount would be reduced to the statutory ceiling.

7. *Non-Section 503 Forfeitures.* Various sections of the Communications Act provide the Commission with forfeiture authority regarding specific statutory violations. These sections of the Act generally state a prescribed forfeiture amount (rather than a maximum) for violation of that section. For example, section 220(d) of the Act provides that a common carrier that fails to comply with prescribed accounting and other record-keeping requirements shall forfeit $6,000 per day. Under our forfeiture standards, such statutory amounts will be used as the base forfeiture amounts for non-section 503 forfeitures. Consistent with section 504(b) of the Act, which permits remission or mitigation of the Commission the same downward adjustment criteria to be used in section 503 forfeiture proceedings will also be used in non-section 503 forfeiture proceedings.

IV. Conclusion

8. We believe adoption and publication of these forfeiture policies will assist the Commission in ensuring that similarly situated violators are subjected to comparable forfeitures and will aid our enforcement efforts by making clear in advance the likely consequences of violations.

9. Accordingly, it is ordered that this Policy Statement is adopted, to be effective upon publication in the **Federal Register**.

10. The notice and comment and effective date provisions of the Administrative Procedure Act do not apply to this Policy Statement. 5 U.S.C. 553(b)(A), (d)(2).

11. This action is taken pursuant to sections 4(i), 202(c), 203(e), 205(b), 214(d), 219(b), 220(d), 223, 303(r), 364, 386, 503(b), 504, 506 and 634 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 202(c), 203(e), 205(b), 214(d), 219(b), 220(d), 223, 303(r), 362, 386, 503(b), 504, 507, 554.

List of Subjects in 47 CFR Part 1

Penalties.

Federal Communications Commission.

Donna R. Searcy,
Secretary.

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[1] See appendix, note 6.

APPENDIX—STANDARDS FOR ASSESSING FCC FORFEITURES

I. Base Amounts for Section 503 Forfeitures

Violation	Percent of Stat. Max.[1]	BC/Cable ($25,000)	CC ($100,000)	Other ($10,000)
Misrepresentation/lack of candor	80	20,000	80,000	8,000
Failure to comply with prescribed lighting and marking	80	20,000	80,000	8,000
Construction and/or operation without an instrument of authorization for the service	80	20,000	80,000	8,000
Unauthorized substantial transfer of control	80	20,000	80,000	8,000
Violations of rules relating to distress and safety frequencies	80	20,000	80,000	8,000
False distress communications	80	20,000	80,000	8,000
Failure to permit inspection	75	18,750	75,000	7,500
Violations of operator services requirements	75	N.A.	75,000	7,500
Malicious interference	70	17,500	70,000	7,000
Failure to respond to Commission communications	70	17,500	70,000	7,000
Importation or marketing of unauthorized equipment	70	N.A.	70,000	7,000
Exceeding authorized antenna height	60	15,000	60,000	6,000
Exceeding power limits	50	12,500	50,000	5,000
Unauthorized emissions	50	12,500	50,000	5,000

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IV. Conclusion

8. We believe adoption and publication of these forfeiture policies will assist the Commission in ensuring that similarly situated violators are subjected to comparable forfeitures and will aid our enforcement efforts by making clear in advance the likely consequences of violations.

9. Accordingly, it is ordered that this Policy Statement is adopted, to be effective upon publication in the **Federal Register**.

10. The notice and comment and effective date provisions of the Administrative Procedure Act do not apply to this Policy Statement. 5 U.S.C. 553(b)(A), (d)(2).

11. This action is taken pursuant to sections 4(i), 202(c), 203(e), 205(b), 214(d), 219(b), 220(d), 223, 303(r), 364, 386, 503(b), 504, 506 and 634 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 202(c), 203(e), 205(b), 214(d), 219(b), 220(d), 223, 303(r), 362, 386, 503(b), 504, 507, 554.

List of Subjects in 47 CFR Part 1

Penalties.

Federal Communications Commission.

Donna R. Searcy,
Secretary.

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te 6.

OR ASSESSING FCC FORFEITURES

for Section 503 Forfeitures

	Percent of Stat. Max.[1]	BC/Cable ($25,000)	CC ($100,000)	Other ($10,000)
	80	20,000	80,000	8,000
	80	20,000	80,000	8,000
ervice	80	20,000	80,000	8,000
	80	20,000	80,000	8,000
	80	20,000	80,000	8,000
	80	20,000	80,000	8,000
	75	18,750	75,000	7,500
	75	N.A.	75,000	7,500
	70	17,500	70,000	7,000
	70	17,500	70,000	7,000
	70	N.A.	70,000	7,000
	60	15,000	60,000	6,000
	50	12,500	50,000	5,000
	50	12,500	50,000	5,000

APPENDIX—STANDARDS FOR ASSESSING FCC FORFEITURES—Continued

Violation	Percent of Stat. Max.[1]	BC/Cable ($25,000)	CC ($100,000)	Other ($10,000)
Using unauthorized frequency	50	12,500	50,000	5,000
EBS equipment not installed or operational	50	12,500	N.A.	N.A.
Transmission of indecent/obscene material	50	12,500	N.A.	5,000
Violation of broadcast EEO rules	50	12,500	N.A.	N.A.
Violation of political rules: reasonable access, lowest unit charge, equal opportunities and discrimination	50	12,500	N.A.	N.A.
Unauthorized discontinuance of service	40	10,000	40,000	4,000
Use of unauthorized equipment	40	10,000	40,000	4,000
Violation of children's television commercialization or programming requirements	40	10,000	N.A.	N.A.
Violation of main studio rule	40	10,000	N.A.	N.A.
Construction or operation at unauthorized location	40	10,000	40,000	4,000
Failure to engage in required frequency coordination	40	10,000	40,000	4,000
Failure to file required forms or information	30	7,500	30,000	3,000
Violation of public file rules	30	7,500	N.A.	N.A.
Violation of sponsorship ID requirements	25	6,250	N.A.	N.A.
Violation of requirements pertaining to broadcasting of lotteries or contests	25	6,250	N.A.	N.A.
Violation of technical logs/time brokerage agreements file requirements	20	5,000	N.A.	N.A.
Broadcasting telephone conversations without authorization	20	5,000	N.A.	N.A.
Failure to make required measurements or conduct required monitoring	10	2,500	10,000	1,000
Violation of enhanced underwriting requirements	10	2,500	N.A.	N.A.
Failure to provide station ID	10	2,500	10,000	1,000
Unauthorized pro forma transfer of control	10	2,500	10,000	1,000
Failure to maintain required records	10	2,500	10,000	1,000
Miscellaneous violations	5	1,250	5,000	500

[1] The forfeiture ceilings per violation or per day of a continuing violation contained in section 503 of the Communications Act and the Commission's Rules are $100,000 for common carriers or applicants, $25,000 for broadcasters and cable operators or applicants, and $10,000 for all others. 47 U.S.C. 503(b)(2); 47 CFR 1.80. In addition, for continuing violations involving a single act or failure to act, there is an overall limit of $1,000,000 for common carriers or applicants, $250,000 for broadcasters and cable operators or applicants, and $75,000 for all others. *Id.* The base amounts listed are for a single violation or single day of a continuing violation. Unless Commission authorization is required for the behavior involved, a section 503 forfeiture proceeding against a non-licensee or non-applicant who is not a cable operator or is not operating in the radio control or citizens band radio services can only be initiated for a second violation, after issuance of a citation in connection with a first violation. 47 U.S.C. 503(b)(5). Forfeitures issued under other sections of the Act are dealt with separately in Section III below.

II. Adjustment Criteria for Section 503 Forfeitures

Upward Adjustment Criteria[2]	
(1) Egregious misconduct	50–90%.
(2) Ability to pay/relative disincentive[3]	50–90%.
(3) Intentional violation	50–90%.
(4) Substantial harm	40–70%.
(5) Prior violations of same or other requirements	40–70%.
(6) Substantial economic gain	20–50%.
(7) Repeated or continuous violation	Varies.[4]
Downward Adjustment Criteria	
(1) Minor violation[5]	50–90%.
(2) Good faith or voluntary disclosure	30–60%.
(3) History of overall compliance	20–50%.
(4) Inability to pay	Varies.[6]

[2] Both upward and downward adjustments are applied to the base forfeiture amount. More than one factor may apply in a given case.

[3] The Commission is required by the Communications Act to take ability to pay into consideration in assessing forfeiture amounts. 47 U.S.C. 503(b)(2)(D).

[4] The percentage adjustment for this criterion could vary up to the statutory maximum per violation or per day of a continuing violation.

[5] A "minor" violation is misconduct which is at a low level of seriousness within the violation category. A minor violation is the opposite of "egregious misconduct."

[6] As noted above, the Commission is required by the Communications Act to take ability to pay into consideration in assessing forfeiture amounts. 47 U.S.C. 503(b)(2)(D). The application of a downward adjustment for inability to pay is based upon a showing of substantial financial hardship. Inability to pay would generally be considered as a downward adjustment factor only upon a specific showing by the entity against whom forfeiture action is taken.

III. Non-Section 503 Forfeitures

Violation		Statutory amount[7]
Section 202(c)	Common carrier discrimination	$6,000 + $300/day.
Section 203(e)	Common carrier tariffs	$6,000 + $300/day.
Section 205(b)	Common carrier prescriptions	$12,000.
Section 214(d)	Common carrier line extensions	$1,200/day.
Section 219(b)	Common carrier reports	$1,200.
Section 220(d)	Common carrier records & accounts	$6,000/day.
Section 223	Dial-a-Porn	$50,000 maximum.
Section 364/386	Ship radio	$5,000 (owner). $1,000 (master).
Section 506	Great Lakes Agreement	$500 (owner). $100 (master).
Section 634	Cable EEO	$200.

NOTE: Non-section 503 forfeitures may be adjusted downward using the "Downward Adjustment Criteria" shown for section 503 forfeitures in section II above.

[7] Unlike section 503, which establishes maximum forfeiture amounts, other sections of the Act, with one exception, state prescribed amounts of forfeitures for violations of the relevant section. These amounts are then subject to mitigation or remission under section 504 of the Act. The one exception is section 223 of the Act, which provides a maximum of $50,000. For convenience, the Commission will treat the $50,000 set forth in section 223 as if it were a prescribed base amount, subject to downward adjustments.

[FR Doc. 91–18900 Filed 8–7–91; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

48 CFR Part 352

Acquisition Regulation; Publication; Correction

AGENCY: Department of Health and Human Services (HHS).

ACTION: Interim rule with request for comments; correction.

SUMMARY: The Department of Health and Human Services is correcting the signature block in the preamble which appeared in the **Federal Register** on July 24, 1991 (56 FR 33881).

FOR FURTHER INFORMATION CONTACT: Mr. Ed Lanham at (202) 245–8890.

SUPPLEMENTARY INFORMATION: The signature block which appeared in the referenced **Federal Register** is corrected to read as follows:

Terrence J. Tychan,

Acting Deputy Assistant Secretary for Management and Acquisition.

Dated: August 1, 1991.

Terrence J. Tychan,

Director, Office of Acquisition and Grants Management.

[FR Doc. 91–18868 Filed 8–7–91; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB67

Endangered and Threatened Wildlife and Plants; Emergency Rule to List the Kanab Ambersnail as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Emergency rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) exercises its emergency authority to determine the Kanab ambersnail (*Oxyloma haydeni* ssp. *kanabensis*) to be an endangered species pursuant to the Endangered Species Act of 1973 (Act), as amended. Only two populations of this snail are known to exist, both on wetlands on private lands in Kane County, Utah. A status survey completed in 1991 discovered that one population is nearly extirpated, while the other population has been subjected to major habitat alteration and destruction. Both populations are exceptionally vulnerable to extinction from natural or human-caused events. Immediate listing would trigger the protections in sections 7 and 9 of the Act, and allow the Service to begin pursuing land acquisition. The Service finds that good cause exists to make this emergency rule effective upon publication. The emergency rule will implement Federal protection for 240 days. A proposed rule to list the Kanab ambersnail as endangered will follow this emergency rulemaking, and will allow for public comment.

DATES: This emergency determination is effective on August 8, 1991, and expires on April 3, 1992.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Salt Lake City Fish and Wildlife Enhancement Field Office, 2078 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104.

FOR FURTHER INFORMATION CONTACT: Clark D. Johnson at the above address, telephone 801/524–4430 or FTS 588–4430.

SUPPLEMENTARY INFORMATION:

Background

The Kanab ambersnail is a terrestrial snail in the family Succineidae. It has a mottled grayish-amber to yellowish-amber colored shell. The shell is dextral, thin-walled, with an elevated spire and a broad, patulous (expanded) aperture. Fully mature individuals are about 14 to 19 mm (½ to ¾ inch) long, 7 to 9 mm (¼ to ⅓ inch) in diameter, with 3¼ to 3¾ whorls in a drawn out spire. Its eyes are borne at the ends of long peduncles (stalks), while the tentacles are reduced to small protuberances at the base of the eye stalks (Pilsbry 1948, Clarke 1991).

Specimens of the Kanab ambersnail were first collected in 1909 by James Ferriss from " 'The Greens,' 6 miles above Kanab, on Kanab Wash, on a wet ledge among moss and cypripediums" (Ferriss 1910, Pilsbry 1948). These specimens were originally placed in the species *Succinea hawkinsi* (Ferriss 1910, Chamberlin and Jones 1929). Henry Pilsbry (1948) transferred these specimens to the genus *Oxyloma* and erected the subspecies *kanabensis* in the species *haydeni* for them. Clarke (1991) notes that Pilsbry's decision to accord the Kanab ambersnail subspecific status was based on shell features alone, and that, as Pilsbry himself noted, its taxonomic status should be reevaluated. Clarke (1991) suggests that the Kanab ambersnail may deserve species status. For the purpose of this listing action, the Service will recognize this taxon at the subspecies level. If the Kanab ambersnail is later recognized as a species, this will not affect its designation as endangered.

The Kanab ambersnail lives in marshes watered by springs and seeps at the base of sandstone cliffs. It is absolutely associated with a perennially wet soil surface or shallow standing water. None were found in drier areas, even under logs or in other microhabitats commonly frequented by other land snails (Clarke 1991).

The presence of cattail (*Typha domingensis*), or at least the permanently wet ground which *Typha* indicates, is believed to be a critical component of the species habitat. It is most densely aggregated under fallen *Typha* stalks at the edges of thick *Typha* stands. The snails are also frequently seen just within the mouths of vole burrows. *Typha* may provide crucial vegetative cover for the snails. The American robin (*Turdas migratorius*) has been observed to feed on the Kanab ambersnail and may be the snail's principal natural predator (Clarke 1991).

The Kanab ambersnail is known from two populations about 2.1 km (1.3 miles) apart. Both populations are on privately owned lands. Other likely sites in the area have been searched on foot by a knowledgeable local biologist (Mr. Blaine Lunceford) and during the recent status survey effort (Clarke 1991), but no other snail colonies were discovered.

The nearly extirpated population is located in a marsh at the foot of a cliff in Kanab Creek Canyon. The Kanab ambersnail was once common at this site. Though once larger, this habitat was discovered to have been reduced to a long narrow marsh measuring about 46 m (150 feet) long and 15 cm (6 inches) wide in 1990. The marsh is watered by a seep, but had been partially dewatered by the installation of a ditch and drainpipe by the landowner to provide water for domestic livestock which graze in a field below. An intensive search of this habitat in 1990 revealed only three live snails (Clarke 1991).

The larger population is located in Three Lakes Canyon, a tributary drainage of Kanab Creek, about 10 km (6 miles) northwest of the town of Kanab, Utah. The Kanab ambersnail occurs throughout the marshes and wet meadows which surround the "Three Lakes" ponds, an area about 0.8 km (0.5 miles) long and up to 91 m (100 yards) wide. This population was estimated to have as many as 100,000 individuals in June 1990. Soon thereafter, a significant portion of this snail colony was

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destroyed by earth-moving equipment (Clarke 1991, U.S. Fish and Wildlife Service 1991). In February 1991, the landowners were alerted by a service representative to the presence of this imperiled snail on their property. At that time, the owners indicated a willingness to conserve the Kanab ambersnail.

Federal action on this species began on May 22, 1984, when the Service published a notice of review of invertebrate wildlife for listing as endangered or threatened species, which included the Kanab ambersnail as a category 2 species (49 FR 21664). Category 2 comprises species for which the Service has information indicating the appropriateness of a proposal to list the species as endangered or threatened but for which more substantial data are needed on biological vulnerability and threats. On January 6, 1989, the Service published an updated notice of review of animals for listing as endangered or threatened which maintained the Kanab ambersnail as a category 2 species (54 FR 554).

In 1990, the Service commissioned a status survey of candidate Utah snails, including the Kanab ambersnail. The final report was completed in April 1991 and concluded that the Kanab ambersnail was in imminent danger of extinction and that immediate action should be taken to save it (Clarke 1991). The Service considers the information developed in the 1991 report sufficient to elevate the Kanab ambersnail from a category 2 to a category 1 species. The recent precipitous decline of the snail, combined with the species' extreme vulnerability to further habitat modification or other catastrophes has prompted the Service to prepare this emergency listing (see "Reason for Emergency Determination"). In July 1991, the Service informally notified the Utah Department of Natural Resources of the Service's intent to pursue an emergency listing for the Kanab ambersnail. Pursuant to 16 U.S.C. 1533(b)(7), the Service will immediately provide the Utah Department of Natural Resources formal notice of the emergency listing.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Kanab ambersnail (*Oxyloma haydeni* ssp. *kanabensis* Pilsbry) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* As noted previously, the Kanab ambersnail is absolutely associated with a perennially wet soil surface or shallow standing water at the two locations described earlier. This habitat type is rare in extreme south-central Utah.

The smaller population in Kanab Creek Canyon was much bigger previously, but the recent dewatering of this habitat to provide water for livestock has nearly extirpated this population.

The larger population in Three Lakes Canyon was estimated to number 100,000 snails in June 1990. Early in 1991, the open marshy area above the uppermost of the three lakes was graded in an attempt to smooth its contours to improve its aesthetic appeal for future development purposes. The private landowner had seriously contemplated draining the largest pond, which could devastate the snail population, but appears to have abandoned the idea for the time being (U.S. Fish and Wildlife Service 1991). The private landowner also has plans for building a retirement home and/or developing a recreational vehicle park and campground in the Three Lakes area, which could result in further habitat alteration or destruction.

Historically, the snail's habitat has been used for grazing purposes, which could have impacted the snails in the past and may have been a factor in the species' current limited distribution. A low level of grazing continues in the species' known habitat.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Overutilization is not known to be a threat. However, the Kanab ambersnail may be vulnerable to collecting either for scientific or private shell collections.

C. *Disease or predation.* Disease and predation are not believed to be major problems affecting the continued survival of the Kanab ambersnail. The snail is preyed upon by the American robin (*Turdas migratorius*), but this is a natural condition. At present, predation is not thought to be significant to the species, provided crucial environmental factors that reduce the degree of predation are not significantly altered, such as loss of vegetative cover.

D. *The inadequacy of existing regulatory mechanisms.* No Federal or State laws or regulations mandate protection of the Kanab ambersnail or its habitat.

E. *Other natural or manmade factors affecting its continued existence.* Almost all known individuals of the Kanab ambersnail are found in the Three Lakes Canyon population. This extremely localized population may be vulnerable to natural disasters such as extreme drought, flood, fire, or disease. It can also be jeopardized by human activities such as periodic burning to improve the area for cattle grazing or other economic activity, or poisoning of the ponds so that more desirable sportfish might thrive (Clark 1991). The Kanab Creek population may be nearly extirpated, but is potentially important as a source of genetic diversity (Clark 1991).

Critical Habitat

This emergency listing will not address the question of whether critical habitat should be designated for the Kanab ambersnail. Per section 4(b)(6)(C)(i) of the Act, it is not necessary to designate critical habitat concurrently with a final rule determining that a species is endangered or threatened if it is essential to the conservation of such species that the regulation implementating such determination be promptly published. The Kanab ambersnail is on the edge of extinction, and immediate listing is necessary. Emergency listing will trigger the protections of sections 7 and 9 of the Act and will allow important recovery measures to be initiated expeditiously. The question of whether to propose critical habitat will be addressed in the proposed rulemaking to list the Kanab ambersnail as endangered that will soon follow this emergency rule.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies; groups; and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal Agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal Agencies to evaluate their actions with respect to any species that is proposed or listed as endangered

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or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal Agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal Agency must enter into formal consultation with the Service.

All known populations of the Kanab ambersnail are on private lands. The Federal Government may have programs or regulatory authority capable of influencing privately undertaken activities in the habitat of the Kanab ambersnail. Private activities involving dredge and fill of wetlands would be required to have a 404 permit issued by the Corps of Engineers under the authority of the Clean Water Act. In addition, the landowners may avail themselves of technical assistance offered by the Soil Conservation Service for onfarm soil and water conservation programs which may affect the snail.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. Under section 9 of the Act, these prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect: or to attempt any of these), import or export, ship in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. Requests for copies of the regulations on animals and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, room 432, 4401 North Fairfax Drive, Arlington, Virginia (telephone 703/358–2093; FTS 921–2093)

Reason for Emergency Determination

In February 1991, the Secretary reviewed the draft status survey on Utah snails. The near-extirpation of the Kanab Creek Canyon population and the major losses documented for the Three Lakes Canyon population were sufficient to cause the Service to consider immediately proposing the Kanab ambersnail as an endangered species.

On February 25, 1991, a Service field biologist met with the private landowners of the Three Lakes Canyon property to inform them of the existence of the Kanab ambersnail on their property and to request and encourage them to provide for the conservation of the species. At that time, the landowners explained their current activities in the wetlands area (surface soil grading in order to improve the aesthetic appeal of the their property) and their future development plans for this property (which ranged from building a retirement home to possibly developing a recreational vehicle park and campground and using the area for grazing common and exotic livestock, such as Shetland ponies and ostriches). The landowners were, however, willing to discuss the possibility of having the Service or another group such as The Nature Conservancy acquire the property. At that time, the landowners indicated a willingness to conserve the Kanab ambersnail.

On June 13, 1991, the Service field biologist received a phone call from one of the landowners. Neither the Service nor anyone else had contacted him since February 25, 1991. Among other things, the landowner was concerned about the length of time it was taking to pursue possible land acquisition. The Service field biologists explained that the process of land acquisition takes a long time and, for the Federal Government, could not begin until after the snail is listed. A listing proposal already had been prepared by the Service's field office and was undergoing review in the Service's Regional Office. Given the landowner's concerns, the Service field biologist indicated that the Service's field office would recommend expediting the listing.

The Nature Conservancy is working with the landowners in an effort to work out a mutually agreeable arrangement for land acquisition. The Service believes the landowners are willing to take conservation of the Kanab ambersnail into consideration, but the Service is concerned about the precarious status of the snail.

If the normal listing process was used to list the snail, the Kanab ambersnail would not be listed until late 1992. This length of time is unlikely to be acceptable to the landowners, who have indicated that they may proceed with their original plans to develop the property before the normal listing process could be completed. Such development could cause the extinction of the Kanab ambersnail. Thus, the Service decided this emergency rule was essential to protect the snail. Emergency listing will legally protect the snail from actions that would lead to its extinction and expedite the Service's ability to begin negotiations to acquire the property containing the largest snail population.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Chamberlin, R.V. and D.T. Jones. 1929. A descriptive catalog of the Mollusca of Utah. Bull. of the Univ. of Utah 19(4):i–x + 1–203.

Clarke, A.H. 1991. Status survey of selected land and freshwater gastropods in Utah. Unpublished report prepared for the U.S. Fish and Wildlife Service, Denver, Colorado. 70 pp + cxii.

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U.S. Fish and Wildlife Service. 1991. Supplemental status report for the Kanab ambersnail (*Oxyloma haydeni kanabensis*). U.S. Fish and Wildlife Service. Salt Lake City, Utah. 3 pp.

Authors

The primary authors of this emergency rule are John L. England, U.S. Fish and Wildlife Service (see **ADDRESSES** above, telephone 801/524–4430 or FTS 588–4430) and Nancy Chu, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado (telephone 303/236–7398 or FTS 776–7398).

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List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, until April 3, 1992, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–265, 100 Stat. 3500, unless otherwise noted.

2. Amended § 17.11(h) by adding the following, in alphabetical order under "SNAILS," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

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Species		Range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
SNAILS							
*	*	*	*	*	*	*	
Kanab ambersnail	*Oxyloma haydeni kanabensis.*	U.S.A. (UT)	NA	E		NA	NA
*	*	*	*	*	*	*	

Dated: July 25, 1991.

Richard N. Smith,

Deputy Director, Fish and Wildlife Service.

[FR Doc. 91–18892 Filed 8–7–91; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 910498–1098]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule; extension of effective date and request for comments.

SUMMARY: An emergency interim rule setting the Oregon Coastal Natural (OCN) coho ocean harvest rate at 46 percent and providing for management of Hood Canal coho to protect long-term productivity is in effect until August 6, 1991. The Secretary of Commerce (Secretary) extends the emergency interim rule for an additional 90 days (through November 4, 1991). This action is necessary because the conditions justifying the emergency action remain unchanged. These regulations are intended to prevent overfishing and to apportion the ocean harvest equitably among non-treaty commercial and recreational and treaty Indian fisheries. These regulations also are calculated to allow a portion of the salmon runs to escape the ocean fisheries to provide for treaty Indian and non-treaty inside fisheries and spawning escapement.

DATES: *Effective:* The emergency amendments to part 661 published at 56 FR 21328 are effective from 0001 hours Pacific Daylight Time (P.d.t.) August 7, 1991, through 2400 hours P.d.t., November 4, 1991.

Comments: Comments on the extension of the effective date of the emergency interim rule will be accepted until August 22, 1991.

ADDRESSES: Comments on the extension of the effective date of the emergency interim rule may be submitted to, and copies of the environmental assessment may be obtained from, Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115–0070; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

FOR FURTHER INFORMATION CONTACT: Joe Scordino at 206–526–6140, or Rodney R. McInnis at 213–514–6199.

SUPPLEMENTARY INFORMATION: Under section 305(c) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), the Secretary promulgated an emergency interim rule on May 8, 1991, which was published with the notice of the 1991 fishery management measures for the ocean salmon fisheries off Washington, Oregon, and California (56 FR 21311). The emergency rule provided for two deviations from the regulations implementing the 1984 framework amendment to the Fishery Management Plan for Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California. The ocean harvest rate for OCN coho was reduced from 53 percent to 46 percent to compensate for an apparent faulty ocean abundance predictor that would have allowed an insufficient number of natural spawners to escape the ocean fisheries to meet spawning needs. An ocean coho salmon total allowable catch north of Cape Falcon, Oregon, is established that does not meet the 19,100 fish spawning escapement goal because that goal could not be attained without almost complete closure of both non-treaty and treaty ocean and inside fisheries. There was no biological evidence to indicate that reducing the ocean total allowable catch to 200,000 coho would justify the economic hardships and dislocation that would result. Therefore, an ocean harvest of 320,000 coho was specified that would result in a difference of 400 spawners.

This rule became effective May 2, 1991, and remains effective for 90 days after the publication date, through August 6, 1991. At its July 10–12, 1991, meeting in Seattle, Washington, the Pacific Fishery Management Council recommended this extension. The Secretary concurs and extends the emergency interim rule for an additional 90 days, under section 305(c)(3)(B) of the Magnuson Act, because conditions justifying the emergency action remain unchanged. The 90-day extension will allow continuation of the management regime for the ocean salmon fisheries through the end of the 1991 fishing season. All provisions of the emergency interim rule remain in effect through November 4, 1991.

Response to Comments Received

Comment: The commenter stated that the 1991 ocean fishery management

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measures do not provide sufficient protection for stocks that have been petitioned for listing under the Endangered Species Act (ESA), specifically Snake River spring, summer, and fall chinook salmon and lower Columbia River coho salmon. The commenter also asserted that Snake River fall chinook salmon need a harvest reduction of at least 35 to 40 percent if they are to continue to exist.

Response: Proposed rules to list Snake River spring/summer and fall chinook salmon as threatened species under the ESA were published in the **Federal Register** on July 27, 1991 (56 FR 29542 and 29547). On the same date, a notice of determination was published announcing that lower Columbia River coho salmon do not constitute a "species" under the ESA. Therefore, a proposal to list is not warranted at this time (56 FR 29553). At the request of the Pacific Fishery Management Council (Council), the Salmon Technical Team (Team) assessed the impacts of the 1991 management measures on Snake River spring, summer, and fall chinook salmon stocks by ocean salmon fisheries off the coasts of Washington, Oregon, and California. This assessment is included in the Team's "Preseason Report III, Analysis of Council-Adopted Management Measures for 1991 Ocean Salmon Fisheries." Snake River spring/summer chinook salmon are minor contributors (5 percent or less) to the fisheries off Washington, Oregon, and California. Since the stocks contribute to the fishery at a very low level, the impacts of the 1991 management measures are relatively minor. With respect to Snake River all chinook salmon, the fishery impacts of the 1991 management measures were estimated to reduce the total ocean exploitation rate by 20 percent relative to 1990 harvest rates. This reduction coupled with the proposed improvements in the freshwater environment are expected to result in increased numbers of spawners. There is no current information supporting the commenter's assertion that a harvest reduction of at least 35 percent to 40 percent is needed.

The emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. This rule was reported to the Director of the Office of Management and Budget with an explanation of why following the procedures of that order was impracticable.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Recordkeeping and reporting requirements.

Dated: August 2, 1991.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 91-18806 Filed 8-5-91; 11:17 am]

BILLING CODE 3510-22-M

Proposed Rules

This section of the FEDERAL RE
contains notices to the public of
proposed issuance of rules and
regulations. The purpose of these
is to give interested persons an
opportunity to participate in the ru
making prior to the adoption of t
rules.

FEDERAL DEPOSIT INSURANC
CORPORATION

12 CFR Part 356

RIN 3064-AA9

Insider Transactions—Conflicts
Interest

AGENCY: Federal Deposit Insuran
Corporation ("FDIC").

ACTION: Proposed rule.

SUMMARY: The FDIC is proposing
a new part to its regulations that
(1) Provide that business dealing
than extensions of credit) betwe
insured nonmember bank and its
directors, executive officers, prin
shareholders and related interest
such persons ("bank insiders") m
meet an arms-length standard, (2
require that covered business de
be approved by the bank's board
directors in advance if the dollar
of the business dealings exceeds
certain aggregate figure, (3) requi
insiders to disclose their conflicts
interest, (4) provide for certain
recordkeeping requirements, (5) r
the bank's board of directors to a
written guidelines governing cove
business dealings, and (6) prohibi
insured nonmember banks from
investing in real estate in which a
the bank's directors, executive of
principal shareholders or related
interests of such persons has an e
interest.

DATES: Comments must be receiv
later than October 7, 1991.

ADDRESSES: Send comments to H
Robinson, Executive Secretary, F
Deposit Insurance Corporation, 5
Street, NW., Washington, DC 204
Comments may be hand delivered
room F-402, 1776 F St., NW.,
Washington, DC 20429 on busines
between 8:30 a.m. and 5 p.m. Com
may also be inspected in room F-
between 8:30 a.m. and 5 p.m. on
business days. (FAX number: (20
3838).

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The emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. This rule was reported to the Director of the Office of Management and Budget with an explanation of why following the procedures of that order was impracticable.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Recordkeeping and reporting requirements.

Dated: August 2, 1991.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 91–18806 Filed 8–5–91; 11:17 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 153
Thursday, August 8, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 356

RIN 3064–AA94

Insider Transactions—Conflicts of Interest

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Proposed rule.

SUMMARY: The FDIC is proposing to add a new part to its regulations that would: (1) Provide that business dealings (other than extensions of credit) between an insured nonmember bank and its directors, executive officers, principal shareholders and related interests of such persons ("bank insiders") must meet an arms-length standard, (2) require that covered business dealings be approved by the bank's board of directors in advance if the dollar value of the business dealings exceeds a certain aggregate figure, (3) require bank insiders to disclose their conflicts of interest, (4) provide for certain recordkeeping requirements, (5) require the bank's board of directors to adopt written guidelines governing covered business dealings, and (6) prohibit insured nonmember banks from investing in real estate in which any of the bank's directors, executive officers, principal shareholders or related interests of such persons has an equity interest.

DATES: Comments must be received no later than October 7, 1991.

ADDRESSES: Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand delivered to room F–402, 1776 F St., NW., Washington, DC 20429 on business days between 8:30 a.m. and 5 p.m. Comments may also be inspected in room F–402 between 8:30 a.m. and 5 p.m. on business days. (FAX number: (202) 898–3838).

FOR FURTHER INFORMATION CONTACT: Pamela E. F. LeCren, Counsel, (202) 898–3730, Legal Division, FDIC, 550 17th Street, NW., Washington, DC, 20429; Michael Jenkins, Examination Specialist, (202) 898–6896, Division of Supervision, FDIC, 550 17th Street, NW., Washington, DC 20429; or David S. Holland, Senior Financial Analyst, (202) 898–3947, Division of Research and Statistics, FDIC, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this rule has been submitted to the Office of Management and Budget for review pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Comments on the collection of information should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Deposit Insurance Corporation, with copies of such comments to be sent to Steven F. Hanft, Assistant Executive Secretary (Administration), room F–453, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. The collection of information in this regulation is in §§ 356.4(a), (b), and (d), 356.5(c) and (d), 356.6, 356.7, and 356.8. This information is required by the Federal Deposit Insurance Corporation so that examiners can ensure that boards of directors of banks properly discharge their fiduciary obligations. It will also aid significantly in the detection and investigation of insider fraud and abuse. Banks should directly benefit from the requirement to maintain the records as the collected information will help them to monitor insider transactions and prevent transactions from arising that are not in the best interests of the bank.

It is estimated that all but 700 of the banks covered by this proposed regulation are already in compliance. Therefore, the estimated annual reporting burden for the collection of information in the regulation is summarized as follows:

Number of Preparers: 700.

Number of Policies and Record Systems Prepared: 1.

Total Annual Preparations: 700.

Hours Per Policy and Record System: 32.

Total Annual Burden Hours: 22,400.

Discussion of Proposed Regulation

The proposal is designed to address conflicts of interest in two areas and can be divided into two segments. The first major portion of the proposal consists of provisions covering the business dealings, other than extensions of credit, between an insured nonmember bank and its directors, executive officers and principal shareholders, as well as their related interests ("bank insiders"). The second segment of the proposal carves out business dealings involving investments in real estate and establishes a prohibition on an insured nonmember bank investing in real estate in which one of its insiders has an equity interest. While the second category of transactions is prohibited, the first is merely subjected to a requirement that business dealings must meet an arms-length type standard, must receive board approval in certain instances, and must be recorded by the bank. The purpose, basis and need for the proposal, as well as the specific details of the various provisions of the proposal, are discussed at length below.

Basis and Purpose

The purpose of the proposal is to establish certain requirements designed to ensure that business dealings between insured nonmember banks and the bank's insiders are conducted in the arm's length fashion necessary to promote safe and sound banking including adequate review and control by the bank's board of directors.[1] Where the risks that arise from the conflicts of interest are considered too great (*i.e.*, in the case of investments in real estate along with insiders) the business dealing is prohibited. The reason the FDIC feels that there is a need to propose this regulation is set out below.

In today's complex, competitive and rapidly changing banking environment, it is imperative for all members of a financial institution's management team to be aware of the responsibilities entrusted to them and to discharge those responsibilities in a manner that will ensure the stability and soundness of the institutions they serve. This is necessary so that the financial institutions will be able to provide the communities in which they are located the financial services for which they were created. In order to adequately fulfill its responsibilities, management needs to avoid self-serving practices and conflicts of interest that could endanger the institution's safety and soundness and undermine confidence in the financial system. Management must act so as to put the performance of their duties above personal gain and must never abuse, for personal advantage, their influence with respect to the institution's management. Insider abuse is a threat to safety and can lead to insolvency. Left unchecked, insider abuse could eventually threaten the solvency of the federal deposit insurance fund.

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[1] The proposal only addresses FDIC-insured State chartered banks that are not members of the Federal Reserve System ("insured nonmember banks"). It is the FDIC's understanding that the Office of the Comptroller of the Currency and the Board of Governors of the Federal Reserve System are considering similar action for national banks and State banks that are members of the Federal Reserve System, respectively.

Over the past several years the FDIC has encountered insider abuse and fraud in banks in numerous instances. Significant insider abuse was identified in 42% of the 184 banks that failed in 1987; 31% of the 200 banks that failed in 1988; and 25% of the 206 banks that failed in 1989. Insider fraud has accounted for over one half of *all* the financial institution fraud and embezzlement cases brought by the FBI during the past several years. The total losses involved in those cases amount to several hundred million dollars.

Insider abuse and fraud is not confined to the loan area. The FDIC has seen losses stemming from other practices as well. The following are examples thereof:

(1) Failure by an insider to disclose that his/her interests have business dealings with the bank;

(2) Diversion of bank assets and income by an insider for the insider's own use;

(3) Abuse of expense accounts by insiders;

(4) Existence of insider "perks" such as expensive automobiles, boats, airplanes and housing which are excessive for the extent and type of business conducted by the bank;

(5) Approval of questionable transactions that involve an insider's relatives;

(6) Acceptance of bribes and gratuities;

(7) Sale by a bank of its assets to an insider or to an insider's related interest for less than fair market value;

(8) Purchase by a bank of assets from an insider or an insider's related interest for more than fair market value;

(9) Exclusive or extensive use of the related interest of an insider to perform services for the bank at inflated prices that result in significant financial gain for the related interest;

(10) Purchase of furniture, fixtures and leasehold improvements by a bank from an insider or an insider's related interest at fair market value but in amounts that are excessive given the bank's needs, financial condition and business plan;

(11) Payment of fees to the related interest of an insider for services that were never rendered; and

(12) Compensating insiders in excessive amounts on the basis of work performed for the benefit of the insider rather than for the benefit of the bank.

The FDIC's past experience has shown that insider abuse is difficult to detect. What is more, investigations for insider fraud and abuse, when suspected, are very time consuming. Our experience has shown that the lack of adequate recordkeeping nearly always contributes to insider abuse and that investigations for such abuse are often hampered by the lack of adequate records. It is typical to find in the case of fraud and abuse that the institution involved lacked policies and procedures designed to detect insider involvement in transactions early enough to prevent abuse. In short, the internal routines and controls of the banks in question were inadequate in the monitoring of insider conflicts. It is the FDIC's strong opinion that policies governing insider transactions and adequate recordkeeping are imperative if a bank is to be managed in a safe and sound manner. A board of directors is not properly discharging its fiduciary obligations unless it pays sufficient attention to these issues. Proper policies and procedures would include reviewing and acting upon any significant transactions in which an insider or a related interest of an insider is involved either directly or indirectly. Such transactions should not be permitted to arise unless the transaction is in the best interests of the bank.

The dangers presented by transactions by bank and thrift insiders with their institutions have been well-documented. A General Accounting Office review of regulatory and examination documents related to the 184 insured banks that failed in 1987 found some form of insider abuse in 64 percent of the cases.[2] Poor quality loans to directors or officers were present in 22 percent of the banks, and an excessive number of loans to directors or officers in 17 percent.

Another General Accounting Office study, this one of 26 thrifts that failed between January 1, 1985, and September 30, 1987, found conduct amounting to fraud and insider abuse in 100 percent of the cases.[3] In its cover letter transmitting the study to Congress, the GAO stated: "Serious internal control weaknesses contributed significantly to virtually all of these thrift failures."[4] A 1988 congressional committee report on fraud, abuse, and misconduct in federally insured financial institutions found that over three-fourths of S&L insolvencies were linked to serious abuses by insiders.[5] In a study of bank insider borrowing, Kummer, Arshadi, and Lawrence concluded that "excessive insider borrowings are associated with inferior performance."[6] Their study covered a sample of banks for the years 1984 through 1987 and further concluded that banks with high levels of insider borrowings had relatively lower returns on equity and relatively higher failure rates. A study by the Comptroller of the Currency of 171 national banks that failed between 1979 and 1987 found insider abuse and fraud to be significant factors in more than one-third of the cases.[7] All but 7 percent of the banks had significant internal problems related to management.

In addition to establishing certain requirements governing insider business dealings, the FDIC proposes to prohibit one class of insider dealing, investments by an insured nonmember bank in real estate in which a bank insider has an equity interest. There are two interrelated reasons for the prohibition: (1) Real estate investment activities where otherwise authorized involve significantly greater degrees of risk than

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[2] General Accounting Office, *Bank Failures: Independent Audits Needed to Strengthen Internal Control and Bank Management*, GAO/AFMD–89–25 (May 1989), at 25, 27. Using narrower criteria requiring a more substantial showing of insider abuse, the FDIC has identified such abuse in 42 percent of the banks that failed in 1987.

[3] General Accounting Office, *Thrift Failures; Costly Failures Resulted From Regulatory Violations and Unsafe Practices*, GAO/AFMD–89–62 (June 1989), at 23.

[4] *Id.*, at 1.

[5] *Combating Fraud, Abuse, and Misconduct in the Nation's Financial Institutions: Current Efforts Are Inadequate*, House Government Operations Committee, House Report No. 100–1088, October 13, 1988, at 10.

[6] Donald R. Kummer, Nasser Arshadi, and Edward C. Lawrence, "Incentive Problems in Bank Insider Borrowing," 3 *Journal of Financial Services Research* (1989) 17, 29.

[7] "An Evaluation of the Factors Contributing to the Failure of National Banks: Phase II," 7 *Quarterly Journal*, Comptroller of the Currency (1988 No. 3) 9.

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[7] "An Evaluation of the Factors Contributing to the Failure of National Banks: Phase II," 7 *Quarterly Journal*, Comptroller of the Currency (1988 No. 3) 9.

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do most other activities in which banks are permitted to engage, and (2) the dangers of bank real estate investment activities are exacerbated when a bank insider has an interest in the real estate.

With regard to the first reason, a number of factors make real estate investment activities more risky than most permissible bank activities. As a general matter, making equity investments in any given industry is more risky than making loans to individuals or business entities engaged in activities in the industry. Investors are usually risk takers fully aware of the rewards and losses that can result from their decisions. Lenders, on the other hand, normally make greater efforts to minimize risk. Although loans can be risky, they are often repaid in full even when a project shows no profit or shows a loss. Returns on equity investments are dependent upon the eventual success of a project, and a project that does not show a profit can result in a total loss for the equity holder. Another consideration arising from the distinction between loans and equity investments is that projects offered to financial institutions for direct investment are probably riskier than projects for which straight loans are sought. Real estate developers are likely to be less willing to share the rewards of equity that are provided by their better projects.

The profitability of many real estate investments depends on two factors: (1) Income, and (2) capital appreciation. Income to be derived from a project can be estimated in advance with at least a small degree of confidence, but capital appreciation is much more subject to the vagaries of the marketplace.[8] Thus, to the extent that the profitability of a particular real estate investment rests upon hopes of capital appreciation rather than on estimates of operating revenues, expected returns are largely speculative.

The cyclical nature of real estate markets contributes to the riskiness of real estate investments by increasing the volatility of the returns on those investments. Time lags between initial construction and the final completion of real estate development projects are both a cause of these cycles and a major hazard for real estate equity investors. Projects initiated when markets are strong are often completed after the markets have weakened, the result being that the profit expectations of equity investors cannot be met in the deteriorated market. In fact, instead of profits being made, losses are incurred.

A prime recent example of the devastating nature of real estate cycles is provided by Texas real estate markets during the 1980s. For much of the decade, growth in office space outpaced growth in office employment. The over building resulted in office vacancy rates of 25 to 30 percent in the major metropolitan areas in the years 1986 through 1989.

Real estate investments present still other difficulties for banks. Compared to many bank assets, real estate equity investments are illiquid. In periods of economic distress when cash flow considerations are most likely to require the selling of assets, real estate assets might be particularly difficult to dispose.

Information gaps involving real estate can increase the riskiness of real estate investment activities. Millions of active traders and frequent transactions keep stock prices near their "true" or realizable value. The thinness of real estate markets, on the other hand, makes them more prone to pricing errors. Knowledge about a given property is likely to be highly specialized and costly to obtain because there may be a mere handful of potential buyers having an interest in a property's value at any given time.

Moreover, few transactions involving similar, neighboring properties may have transpired in the recent past. Thus buyers and sellers may have little guidance as to what prices are "realistic." Locating those who have the best information may be difficult, especially if the potential buyer, or seller, is not familiar with the local real estate market. The high cost of obtaining adequate information creates a significant probability that uneconomic purchases and sales will be made. The problem is compounded by the need to diversify real estate investments geographically for safety purposes. Real estate investors may be exposed to markets about which they have little first-hand knowledge.

A number of studies have confirmed the relatively risky nature of real estate investments.[9] From a portfolio analysis standpoint, the fact that real estate activities are more risky than most banking activities does not necessarily mean that bank investments in real estate are unwise. In theory, the addition of risky assets to a portfolio can sometimes reduce the variability of the portfolio's earnings. Such a result would occur if a "risky" asset produced most of its earnings when earnings from the rest of the portfolio were weak but produced few earnings when earnings from the rest of the portfolio were strong. Several studies, however, have concluded that the theoretical benefits from the diversification of banks into real estate investment activities are minimal at best.[10]

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[8] For example, the FRC Property Index, which measures the historic performance of income-producing properties owned directly and indirectly by certain institutional investors, had one-year returns ranging from 5.7 percent to 14.8 percent for the years 1983 through 1989 (see Table I). The income portion of the returns showed little volatility, ranging from 6.8 percent to 8.0 percent. The capital appreciation portion of the returns, on the other hand, varied significantly: the low was −1.3 percent, and the high was 7.1 percent.

TABLE I—RETURNS FOR FRC PROPERTY INDEX ONE-YEAR PERIODS ENDING 3RD QUARTER

[In percent]

	Income	Appreciation	Total
1989	6.8	−0.1	6.7
1988	7.0	−0.2	6.8
1987	7.0	−1.3	5.7
1986	7.3	0.3	7.7
1985	7.5	3.0	10.7
1984	7.5	7.1	14.8
1983	8.0	2.9	11.0

Source: *The NCREIF Real Estate Performance Report, Third Quarter 1989.*

[9] Richard J. Rosen, Peter R. Lloyd-Davies, Myron L. Kwast, and David B. Humphrey, "New Banking Powers: A Portfolio Analysis of Bank Investment in Real Estate," 13 *Journal of Banking and Finance* (1989) 355. Steven Felgran, "Bank Participation in Real Estate: Conduct, Risk, and Regulation," *New England Economic Review* (November/December 1988) 57. Other studies that have found more variability in returns from the real estate industry than in returns from the banking industry include: L. Wall and R. Eisenbeis, "Risk Considerations in Deregulating Banking Activities," 6 *Economic Review*, Federal Reserve Bank of Atlanta, (May 1984) 12; J. Boyd, G. Hanweck, and P. Pithyachariyakul, "Bank Holding Company Diversification," *Proceedings of a Conference on Bank Structure and Competition*. Federal Reserve Bank of Chicago, (1980) 105; and P. Eisemann, "Diversification and the Congeneric Bank Holding Company," 7 *Journal of Bank Research* (Spring 1976) 68.

[10] Felgran, *supra* note 5, at 71. (Felgran concluded that the real estate share of a bank's portfolio could not exceed 6 percent before the portfolio became more risky). Rosen, Lloyd-Davies, Kwast, and Humphrey, *supra* note 4, at 357–358. (Rosen, Lloyd-Davies, Kwast, and Humphrey found the diversification benefits of real estate investments by banks to be either nonexistent or extinguished at a level of 4 percent of assets). C.S. Sirmans, "Deriving a Thrift Institution's Efficient Frontiers in Constrained and Unconstrained Environments," Office of Policy and Economic Research, Federal Home Loan Bank Board (Nov. 29, 1984), and "Reestimation of a Thrift Institution's Efficient Frontiers," Office of Policy and Economic Research,

Continued

Moreover, even if some benefits of diversification into real estate investment activities exist, there are practical problems in achieving them. Adequate diversification requires diversification in terms of both number and location of investments. Indeed, in most of the studies concerning the variability of returns on real estate investments, the real estate data were aggregated for a number of projects. The return on any individual real estate investment could show a substantial deviation from the mean return of the investments in the data set. Achieving adequate diversification in terms of number of investments, however, can tax the financial and analytical capabilities of many prospective real estate investors.

Regarding geographic diversification, a real estate investor who does not diversify geographically is most likely subject to greater risk than one who does. The reason is that real estate investments in any particular area are usually strongly correlated. On the other hand, investors who do try to diversify geographically may expose themselves to markets about which they have little knowledge.

In summary, real estate investment activities are risky activities. Furthermore, any portfolio benefits from the inclusion of real estate investments in bank portfolios are minimal at best and are negated by practical problems involving investment diversification. As indicated above, it is the FDIC's view that the dangers of real estate investment are exacerbated when a bank insider has an interest in real estate along with the bank.[11] A review of some of the specific types of internal problems in failed national banks reveals situations that might be particularly likely to give rise to difficulties when banks and insiders are allowed equity interests in the same real estate transaction. Among the problems found in the Comptroller's study, along with the percentage of banks experiencing the problems, were the following:

Nonexistent or poorly followed loan policies (81%);

Inadequate systems to ensure compliance with internal policies or banking laws (69%);

Inadequate controls or supervision of key bank officers or departments (63%);

Decisions made by one dominant individual, such as the CEO, chairman, or principal shareholder (57%);

Nonexistent or poorly followed asset and liability management policies (49%); and

Inappropriate lending policies, including liberal repayment terms, lax collection practices, and loose credit standards (86%).

These types of problems are likely to be exacerbated in situations in which a bank and a bank insider have interests in the same real estate transaction or project.

One area in which the existence of common interests poses particular difficulties concerns appraisals. Real estate appraising is not an exact science, and inaccurate appraisals contributed to the difficulties experienced by banks and thrifts in the 1980s. Indeed, the purpose of title XI ("Real Estate Appraisal Reform Amendments") of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") was to bring about reform in the appraisal industry. The existence of a common equity interest with an insider in a real estate project may prevent a bank from reviewing an appraisal with sufficient objectivity. The bank insider may be able to influence both the appraisal process and the bank's review of that process.

Another area that could produce difficulties when a bank and an insider are both involved in real estate equity investments is portfolio selection. A bank allowed to invest in real estate projects should select projects on the basis of the impact on its entire portfolio of loans and investments. The correlation between the project's risk and return and the remainder of the portfolio's risk and return needs to be considered. An unbiased examination of these considerations is difficult if an insider also has an interest in the real estate project.

To summarize, insider transactions are not easily policed. They have been a major contributor to bank and thrift troubles in the 1980s. The problems that arise from insider transactions, and the extreme difficulties encountered in supervising those transactions, are only amplified when the subject of a transaction is a risky activity such as a real estate equity investment. We therefore conclude that investments by an insured nonmember bank in real estate in which a bank insider has an equity interest should be prohibited.

Statutory Authority

As discussed at length above, the FDIC has determined that insider business dealings have given rise to unsafe and unsound banking practices that have resulted in losses to the deposit insurance fund. In order to prevent those losses from occurring the FDIC is proposing the regulatory action more fully described below. The FDIC's action in doing so is fully consistent with the FDIC's purpose and is authorized by sections 6, 8, 9, and 30 of the Federal Deposit Insurance Act ("FDI Act", 12 U.S.C. 1816, 1818, 1819, and 1831(g)).

The FDIC has the broad general authority to adopt these regulations under section 9 of the FDI Act which authorizes the FDIC to issue whatever regulations "it may deem necessary to carry out the provisions of the (Federal Deposit Insurance Act) or of any other law which it has the responsibility of administering or enforcing * * *" 12 U.S.C. 1819 (Tenth). Pursuant to this authority the FDIC may adopt substantive regulations designed to further the purposes for which the federal deposit insurance system was established. It is settled that binding legislative-type rules based on general rulemaking authority may be issued so long as the rules are reasonably related to the purpose of the enabling legislation containing the general rulemaking authority. *Mourning* v. *Family Publications Services*, 411 U.S. 356, 369 (1973) (quoting *Thorpe* v. *Housing Authority of the City of Durham*, 393 U.S. 268, 280–281 (1969). It is clear from the legislative history of the FDI Act that in the shadow of the banking collapse Congress sought to restore public confidence in the banking system, promote safe and sound banking practices, eliminate runs on banks by depositors, and safeguard deposits. It did so through the mechanism of providing for a system of federal deposit insurance and creating the FDIC to administer the deposit insurance program. *FDIC* v. *Allen*, 584 F.Supp. 386 (E.D. Tenn. 1984). Administering that program means, among other things, taking action to protect the solvency of the deposit insurance fund. As the safety and soundness of the deposit insurance fund is inextricably linked with the safety and soundness of insured banks, *Federal Deposit Insurance Corporation* v. *Citizens State Bank*, 130 F.2d 102, 104 n.6 (8th Cir. 1942), and the FDIC is directed under section 11(f) of the FDI Act to pay

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Federal Home Loan Bank Board (Dec. 10, 1985). (Sirmans found portfolio benefits only at very low levels of direct real estate investment by the thrifts. Depending on the real estate data used, portfolio benefits disappeared when direct real estate investments exceeded either 2.8 percent or 9.5 percent of total assets).

[11] The FDIC is presently undertaking a review of "expanded" powers and is studying real estate investment as well as other activities in conjunction with that study. It is possible that as a result of that study the FDIC will propose to limit or prohibit real estate investment activities on the part of insured institutions.

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insured deposits whenever an insured depository institution is closed "on account of inability to meet the demands of its depositors" (12 U.S.C. 1821(f)), the FDIC must preserve the solvency of the insurance fund in order to fulfill its mandate when called upon. Any banking practice that may jeopardize bank safety and soundness and which could ultimately affect the deposit insurance fund is therefore a proper target of the FDIC's regulatory oversight.

From the outset it was recognized that in order to safeguard the banking system, the FDIC must have the ability to admit to the insurance fund only sound banks. Almost more importantly, however, it was also recognized that the FDIC must also have the ability to supervise banks on an ongoing basis. 79 Cong. Rec. 6743 (May 1, 1935, remarks of Rep. Dirksen); H.R. Rep. No. 74–742, 74th Cong. 1st Sess. 3 (1935); 79 Cong. Rec. 6944 (May 4, 1935, remarks of Rep. Farley); 79 Cong. Rec. 6945 (May 4, 1935, remarks of Rep. Spence); Hearing before the Committee on Banking and Currency, House of Representatives, 74th Cong. 1st Sess. 48, 67, 72–74, 90, 99, 109 (1935) (testimony of Leo T. Crowley, Chairman, FDIC).

The surest way to defeat deposit insurance and to bring about another paralysis of our banking is to deny to the Corporation its right to examine banks before and after they are admitted to the Fund and to make it a mere disbursing agency without a voice in the supervision of going banks and the liquidation of closed banks. 79 Cong. Rec. 6922 (May 3, 1935, remarks of Rep. Igoe).

The FDIC was, therefore, clearly intended to act on an ongoing basis to bring about the purposes for which the deposit insurance system was created and to do so pursuant to regulations reasonably expected to accomplish those goals.

The ability of a federal bank regulatory agency to adopt regulations in harmony with the types of concerns described above based upon general rulemaking authority was judicially recognized long ago. *Continental Banking and Trust Company* v. *Woodall*, 239 F.2d 707, 710 (10th Cir.), *cert. denied*, 353 U.S. 909 (1957). It was reaffirmed by the D.C. Circuit in a case involving a challenge to a regulation adopted by an agency which at the time was another federal insurer of deposits. *Lincoln Savings and Loan Association* v. *Federal Home Loan Bank Board*, 856 F.2d 1558 (D.C. Cir. 1988). The D.C. Circuit Court of Appeals held that the Federal Home Loan Bank Board ("FHLBB") (the predecessor agency to the Office of Thrift Supervision) had the authority to regulate the direct investments of institutions insured by the Federal Savings and Loan Insurance Corporation ("FSLIC") based upon that agency's general authority to prescribe rules and regulations to carry out the purposes of the National Housing Act (12 U.S.C. 1725(a)). The FHLBB had determined that the increasing trend of thrifts to make direct investments (primarily in the area of real estate) had a direct correlation to increasing financial difficulties in thrifts. In short, such investments were found to pose undue risks to FSLIC insured institutions and the FSLIC insurance fund and FHLBB acted accordingly to prohibit or restrict those investments. Appellants charged that FHLBB's general rulemaking authority only extended to the authority to adopt rules governing the insurance fund itself and would not support the FHLBB's action. In response the court said,

> [The National Housing Act] is concerned with far more than the operations of the FSLIC. It deals with every aspect of the savings and loan insurance program, one of whose specific purposes is to protect savings through a system of deposit insurance. The ability of the FSLIC to provide that protection depends in substantial part on the integrity of the fund created under the NHA to meet potential claims. As in the case of other insurers, it is to be expected that the FSLIC would take measures from time to time to require insured institutions to meet certain standards as a condition to continued protection. Otherwise, excessive risks created by the improvident practices of certain institutions could jeopardize the FSLIC's ability to meet its commitments to depositors nationwide. Therefore, absent evidence that Congress intended otherwise, it appears to us that the Board's authority to issue the challenged rule is inherent in its mandate, under section 1725(a), to prescribe the rules and regulations required for carrying out the purposes of the (National Housing Act). *Lincoln*, 1561.

As the purpose of the National Housing Act is very similar to the FDI Act and the general rulemaking authority conferred on the FHLBB thereunder is virtually identical to that conferred on the FDIC by section 9 of the FDI Act, it stands to reason that section 9 (FDIC's general rulemaking authority) would be found by a reviewing court to be sufficient authority for the Board of Directors' to propose this regulation.

There is additional support for the Board's action, however, elsewhere in the FDI Act.[12] The FDIC was given the authority, and the responsibility, under section 8 of the FDI Act to ensure that banks observe safe and sound banking practices. This was done so that the FDIC might act to ensure that the banking system will function properly; that the public confidence in the banking system does not falter; and that the solvency of the deposit insurance fund is not endangered due to bank failures. Over the years the FDIC's enforcement powers have been strengthened by Congress in an ever increasing recognition that the FDIC needs strong tools to accomplish its purposes. A wide latitude of discretion was given to the FDIC "in filling in and administering the details embodied by the general standard" in the FDI Act to promote safe and sound banking practices. *Independent Bankers Association* v. *Heimann*, 613 F.2d 1164, 1169 (D.C. Cir. 1979), *cert. denied*, 449 U.S. 823 (1980). what is and is not an unsafe or unsound banking practice and what constitutes an unsafe or unsound condition is left to the FDIC to determine in its expertise as "* * * one of the purposes of the banking acts is clearly to commit the progressive definition and eradication of (unsafe and unsound banking) practices to the expertise of the appropriate regulatory agencies." *Groos National Bank* v.

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[12] In general the FDIC carries out its functions through a system of supervision, regulation, and examination. The FDIC is required by statute (12 U.S.C. 1815) to grant or deny deposit insurance to state chartered nonmember banks and branches of foreign banks, based upon the agency's evaluation of the factors set forth in section 6 of the Federal Deposit Insurance Act (12 U.S.C. 1816). Among the factors listed therein is whether or not the applicant's corporate powers are consistent with the purposes of the FDI Act. The FDIC may issue cease and desist orders against an insured nonmember bank or any insured branch of a foreign bank (with certain limitations, see 12 U.S.C. 1813(q)) that is engaging in, or about to engage in, any unsafe or unsound banking practice (12 U.S.C. 1818(b)) and may terminate deposit insurance for any insured bank or insured branch of a foreign bank in accordance with the provisions of section 8(a) of the FDI Act if an institution is engaging in an unsafe or unsound banking practice or is in an unsafe or unsound condition (12 U.S.C. 1818(a). The FDIC is specifically directed to prescribe regulations to carry out the provisions of a newly enacted section of the FDI Act (section 30) which prohibits insured depository institutions from entering into any contract under which goods, products, or services would be provided to the institution if the performance of the contract would adversely affect the institution's safety or soundness. (12 U.S.C. 1831(g)). The FDIC may examine any state chartered insured nonmember bank and any insured state branch of a foreign bank and may conduct special examinations of any other insured bank or affiliate thereof. (12 U.S.C. 1820). The FDIC is empowered to require reports as it deems necessary to carry out its functions (12 U.S.C. 1817(a)) and as described above may prescribe rules and regulations as it deems necessary to carry out the provisions of the FDI Act (12 U.S.C. 1819). Upon the failure of any insured bank the FDIC is required by statute to pay the insured deposits of said institution as soon as possible (by cash or by making available to each depositor a transferred deposit in another insured institution). (12 U.S.C. 1821(f).)

Comptroller of the Currency, 573 F.2d 889, 897 (5th Cir. 1978). The FDIC may do so either by order or regulation. It was established by the court in *Heimann* that the Office of the Comptroller of the Currency, which has the authority to initiate a cease-and-desist action against a national bank, is not confined to initiating individual enforcement actions under section 8 but may, at its discretion, adopt substantive regulations defining what constitutes an unsafe or unsound practice and what practices involve the violation of particular statutes or regulations.

> (A) Regulation giving advance notice of conduct which the Comptroller disapproves as threatening to the safety and soundness of the banks he regulates is wholly consistent with the statutory scheme * * *. His ability to forewarn by specifying and clarifying the nature and scope of his concerns will at the same time minimize the necessity for recurrent and costly investigation into the conduct of the many individual banks under his supervision. *Heimann*, 1168–1169.

That the principle in *Heimann* applies equally in the case of other federal financial regulators which were given cease-and-desist authority over the institutions they supervise was made clear in *Lincoln*, 856 F.2d at 1563. The *Lincoln* court citing *Heimann* as precedent equally applicable to the FHLBB found that the FHLBB's power to issue an order to cease-and-desist engaging in an unsafe and unsound banking practice carries with it the authority to announce by regulation what constitutes an unsafe or unsound banking practice. Like the Comptroller of the Currency and the FHLBB, the FDIC can rely upon the provisions of the FDI Act granting it authority to issue cease-and-desist orders (section 8(b)) and to promulgate rules with respect to such proceedings (section 8(n)) as authority for this regulation.

The proposed rule is also authorized by section 8(a) of the FDI Act. As indicated above, section 8(a) permits the FDIC to terminate deposit insurance when it is determined that an institution is in an unsafe or unsound condition. That provision provides the authority for the adoption of substantive rules designed to protect bank safety and soundness and protect the deposit insurance fund in much the same way that section 8(b) authorizes the adoption of substantive regulations. The FDIC is permitted to announce by regulation the banking practices which it has determined to be unsafe and unsound and thereby forewarn of the circumstances in which termination of deposit insurance may be sought. *National Council of Savings Institutions* v. *Federal Deposit Insurance Corporation*, 664 F.Supp. 572 (D.D.C. 1987).

Section 6 of the FDI Act represents an additional source of authority for the FDIC to adopt the proposed regulation apart from that derived from the FDIC's authority to terminate insurance and to issue cease-and-desist orders. Section 6 provides the FDIC with express authority to determine what activities are appropriate to banking in light of the federal deposit insurance safety net. Before a bank receives deposit insurance the FDIC must be satisfied that the bank will exercise its corporate powers properly, that those powers are not inconsistent with the purposes for which the deposit insurance system was established, and that the admission of the bank to the deposit insurance system will not pose an undue risk to the fund. The FDIC's ability to determine what corporate powers of an insured bank are consistent with the purposes of the FDI Act in essence creates a fundamental condition of deposit insurance. This provision of the Act confers an important power and responsibility on the FDIC to assess its insurance risk and the corollary responsibility and authority to take steps to limit that risk. Clearly then, Congress intended for the FDIC to have effective means to define those powers by banks that would be inconsistent with their entry into, or continued presence in, the deposit insurance fund. That intent is evidenced by the Act's legislative history.

Lastly, the proposal is in part specifically authorized by section 30 of the FDI Act which, as referenced above, prohibits insured depository institutions from entering into certain contracts that could adversely effect their safety and soundness.

Section 30 specifically directs the FDIC to adopt regulations to carry out the purposes of, and prevent evasions of, that section.

The proposal is not an unreasonable, nor unwarranted, intrusion upon the exercise of powers granted insured nonmember banks by their chartering authority nor is it an unlawful preemption of state law. In fact, any conflict between the proposal and state law is not properly considered a preemption as membership in the federal deposit insurance system is voluntary for state nonmember banks. *Lincoln*, 856 F.2d at 1562. Even if the rule is characterized as a preemptive rule, when an institution seeks deposit insurance, it agrees to be governed by the FDIC's rules and regulations. The dual banking concept does not require the FDIC to abdicate its responsibilities to carry out the purposes of the FDI Act. *Lincoln*. Lawfully promulgated regulations within the authority of a federal agency may preempt state law. *City of New York* v. *FCC*, _____ U.S. _____, 108 S.Ct. 1637, 1642 (1988); *Louisiana Public Service Comm* v. *FCC*, 476 U.S. 355 (1986); *Fidelity Federal Savings and Loan* v. *De La Cuesta*, 458 U.S. 141 (1982); *Conference of State Bank Supervisors* v. *Conover*, 710 F.2d 878 (D.C. Cir., 1983). Such regulations will be upheld if they represent a reasonable accommodation of policy choices left to the discretion of the agency and the agency has not acted arbitrarily nor has exceeded its statutory authority. The agency's statute need not expressly authorize the agency to adopt preemptive regulations. The policy choices left to agency discretion should not be disturbed unless it appears from the statute or its legislative history that the policy choice made is one that Congress would not have sanctioned. *U.S.* v. *Shimer*, 367 U.S. 374 (1961); *De La Cuesta*. The definition of what is and is not an unsafe or unsound banking practice has been clearly left to the FDIC's discretion and the policy choice embodied in this proposal is undeniably consistent with the FDIC's purpose.

Summary of Proposal

1. Prohibited Transactions

Business Dealings—Under § 356.3(a)(1) of the proposal, an insured nonmember bank is prohibited from entering into any insider transaction unless certain conditions are met. For the purposes of part 356 an "insider transaction" is any business dealing with a director, executive officer, principal shareholder or any related interest of any such person in connection with which the director, executive officer, principal shareholder or related interest receives any direct or indirect economic benefit. The FDIC considered covering any business dealing which "benefits" an insider in some fashion as an insider transaction.

For the purposes of the proposal, however, the Board of Directors opted to propose covering only those transactions that provide an economic benefit to a bank insider. Comment is specifically requested on whether the regulation should cover as an insider transaction any transaction in which one can identify a quid pro quo that benefits a bank insider.

Section 356.2(a) of the proposal defines "business dealing" to include: (1) The sale, purchase or other conveyance of assets, goods or services to or from an insured nonmember bank;

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(2) the use of the bank's facilities, real or personal property, or its personnel; (3) the lease of property, equipment or other assets to or from an insured nonmember bank; (4) the payment by the bank of commissions and/or fees, including, but not limited to, brokerage commissions and management, consultant, architectural and legal fees; (5) service agreements; and (6) the payment of interest on deposits to the extent that the rate of such interest exceeds the amount paid to other depositors on similar deposits. It should be noted that it is the FDIC's opinion that § 356.2(a)(1) includes within its scope the sale or purchase of all types of non-deposit liabilities and the payment of interest thereon by an insured nonmember bank.

In order to be permissible under the proposed regulation, a business dealing between an insured nonmember bank and a bank insider must meet three tests: (1) The business dealing must be intended for the benefit of the bank and not be entered into by the bank merely as an accommodation for the benefit of the bank insider; (2) the business dealing must be made on terms, and under circumstances, that are substantially the same, or at least as favorable, as those prevailing at the time for comparable business dealings with persons not covered by the regulation; and (3) the business dealing must be approved in advance by a majority of the bank's board of directors in accordance with, and as required by, § 356.5 of the proposed regulation. In the absence of comparable business dealings, the terms and circumstances of the business dealing with the bank insider must be substantially the same, or at least as favorable, as those that would in good faith be offered to, or that would apply to, business dealings with persons not covered by the proposed regulation.

In essence, § 356.3(a)(1) subjects business dealings between an insured nonmember bank and its "official family" to an arm's-length standard similar to that applicable to extensions of credit to such persons under § 18(j)(2) of the FDI Act (12 U.S.C. 1828(j)(2)) and § 337.3 of the FDIC's regulations (12 CFR 337.3). Section 18(j)(2) makes the provisions of section 22(h) of the Federal Reserve Act (12 U.S.C. 375) applicable to insured nonmember banks. Section 337.3 of the FDIC's regulations cross references Federal Reserve Board Regulation O (12 CFR 215). The requirement that a business dealing shall not be entered into merely as an accommodation for the benefit of a bank insider does not have a similar parallel in the FDI Act or elsewhere in FDIC's regulations. This language is designed to ensure that the bank does not enter into a business transaction or business relationship with a bank insider solely to accommodate the interests of the insider when to do so would either be detrimental to the bank's interests or would not serve the interests of the bank. For example, if an insured nonmember bank enters into a long term lease for a large number of automobiles with an automobile leasing company in which a director has a substantial interest when the bank has no immediate or foreseeable need for that number of automobiles, the FDIC would consider the business dealing to have been entered into as an accommodation for an insider. It would not matter that the terms of the lease were substantially the same as would be made available to the bank by any automobile leasing company. In short, it is expected that a bank's board of directors will fully consider whether or not the overall business transaction, as well as its particular terms, is one that is appropriate for the bank and serves the bank's best interests.

Attribution of Business Dealings—Sections 356.3 (a)(2), (a)(3), and (a)(4) set forth attribution rules which are designed to prevent evasions of the proposed regulation. Under (a)(2), any business dealing between an insured nonmember bank and any person that is not a bank insider that results in a direct or indirect economic benefit to a bank insider shall be considered an insider transaction subject to the proposed regulation. Under (a)(3), any business dealing between an insured nonmember bank and the spouse, child, parent, or sibling of a bank insider shall be considered an insider transaction subject to the proposed regulation. In this instance there is no need to establish that the bank insider obtained an economic benefit. Under (a)(4), any business dealing between a subsidiary of an insured nonmember bank and a bank insider shall be considered to be an insider transaction subject to the proposed regulation.

Real Estate Investments—Section 356.3(b) provides that no insured nonmember bank may invest in real estate in which a bank insider has an equity interest. Any investment by a subsidiary of an insured nonmember bank in real estate in which a bank insider holds an equity interest shall be considered to be made by the insured nonmember bank thus making the investment prohibited under the regulation. (The phrase "invest in real estate", which is defined in § 356.2(k) of the proposal, is discussed below in paragraph #7.) The FDIC has found, as discussed in the Basis and Purpose portion of this **Federal Register** notice, that equity investments in real estate can pose a significant risk to the safety and soundness of insured depository institutions. Given the risk attendant to such investments, it is the FDIC's opinion that it is especially inappropriate for an insured nonmember bank to participate in real estate equity investments along with bank insiders. The conflicts of interest that would arise in such instances will only serve to magnify the risks naturally attendant to real estate investments. The FDIC is of the opinion that these magnified risks cannot be adequately controlled by anything less than a flat prohibition on banks and their insiders jointly investing in real estate. The proposal does not prohibit sales of real estate owned by an insider to the bank. However, those sales are subject to the requirements applicable to insider transactions under the proposal.

2. Written Policies Governing Insider Business Dealings

Section 356.4 of the proposal requires that all insured nonmember banks must adopt written guidelines governing the circumstances and the conditions under which the bank may enter into business dealings with bank insiders. In addition, the bank must establish and maintain procedures for the review of transactions subject to the proposed regulation. If the guidelines are found by the FDIC not to be reasonable and consistent with the purposes of part 356, then the bank will not be considered to have satisfied the regulatory requirement to adopt guidelines under § 356.4. This will be done as part of the examination process. The guidelines must be reviewed and approved at least annually by the bank's board of directors and disseminated annually to all of the bank's directors, executive officers, and principal shareholders. Related interests of such persons are not required to be sent the guidelines. It is expected that insured nonmember banks will satisfy the requirement to adopt procedures to ensure the review of insider transactions by making the review of insider business dealings part of their normal internal routines and controls and/or their internal audit. For the most part, any well run institution already has guidelines governing insider business dealings with the bank and the review of such transactions is a part of its normal internal controls. It is anticipated, therefore, that the requirement in the proposal to establish such guidelines and procedures should

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not be burdensome. It is expected that the guidelines will set forth the extent to which, if any, an insider who is an interested party with respect to any given business dealing may participate (other than in board discussions or a board vote) in the bank's consideration of the business deal.

Commentors should note that the proposal specifically requires that the written guidelines address the conditions and circumstances under which the insured nonmember bank will make the use of its facilities, real or personal property or its personnel available to bank insiders for their personal use and enjoyment. The proposal further allows insured nonmember banks to specify by category, dollar amount, or by some other means, business dealings with bank insiders that the bank's board of directors has determined to be inconsequential and as such should be considered insignificant for the purposes of the regulation. Insignificant transactions are excluded from the class of insider "business dealing" transactions that would otherwise be subject to the proposal (see proposed definition of "insider transaction" contained in § 356.2(g)). The board of directors thus has the discretion under the proposal to cause certain events that would otherwise give rise to insider transactions to fall outside of the regulation in all respects save one. Insider transactions that are determined to be "insignificant" are to be included in the bank's policies and procedures regarding the review of insider transactions. It is expected that the board of directors will act to ensure that the criteria it has established for treating certain business dealings as inconsequential are being followed. Thus the requirement in § 356.4(b) of the proposal that procedures for the review of insider transactions are to be established should be read to include measures to ensure that business dealings that do not in fact satisfy the identified criteria are treated as insider transactions subject to the proposal.

Both of these aspects of the proposal are designed to deal with fringe benefits, "perks" of office, and the ordinary, insubstantial "personal" use by bank insiders of bank property such as use of copying machines, etc. As the term "business dealing" includes the use of the bank's facilities, real or personal property, or personnel, the proposed regulation could have an unjustifiably broad impact on fringe benefits, "perks" of office, and certain minor or incidental uses of bank property. Upon careful reflection, it is the opinion of the FDIC that the best way to keep the regulation from being overly broad, but at the same time not leave an area of potential abuse, would be to require each bank to carefully review insider use of property, etc. and to establish what terms and conditions are appropriate in its estimation regarding such use. The FDIC does not intend, however, to abdicate supervision in this area. The bank's guidelines, as well as its determination as to what is and is not an inconsequential transaction not deserving of coverage under the regulation, will be subject to careful review as part of the examination process. Any guidelines and determinations found to be unreasonable, inconsistent with the purposes of Part 356, or inconsistent with safe and sound banking practices, will be treated accordingly.

Insured nonmember banks should note that the proposal does not represent an attempt by the FDIC to define the entire class of conflicts of interest that can give rise to an unsafe or unsound banking practice and thus trigger a cease-and-desist action or other appropriate supervisory response on the part of the FDIC. The FDIC is therefore not precluded from identifying practices or circumstances not set out herein as unsafe or unsound banking practices and/or breaches of fiduciary obligation on the part of bank insiders.

3. Prior Approval of Insider Transactions

Section 356.5 of the proposal sets forth prior board of directors' approval requirements with respect to insider transactions. Under the proposal, "major" insider transactions must be approved in advance by a majority of the entire board of directors of the bank. A major insider transaction is defined under § 356.2(1) of the proposal as any insider transaction having a value that when aggregated with the value of all other insider transactions involving the same insider during the bank's current fiscal year exceeds the *lower* of $500,000 or 2 and ½ percent of the bank's tier 1 capital. (Tier 1 capital has the meaning as set forth in Part 325 of the FDIC's regulations. 12 CFR 325.)

This section requires that the minutes of the board meeting at which an insider transaction is approved must contain: (1) The names of the parties to the transaction other than the bank, (2) the relationship of the parties to the bank (or the insider as the case may be), (3) a brief description of the transaction and its terms, and (4) a notation of any dissenting votes cast along with the basis of the dissent. All interested parties must abstain from voting or participating directly or indirectly in the deliberations regarding approval. It is expected that any director who is an interested party will disclose to the board all relevant, material, nonconfidential information regarding the transaction for the purposes of allowing for full and adequate evaluation of the transaction by the board.

The FDIC considered proposing a prior approval requirement on all insider transactions regardless of amount but rejected that approach as impractical. Instead the agency opted for a regulatory scheme in which board approval would be required once the bank's exposure as a result of transactions with any particular bank insider exceeded a certain dollar figure. Only those transactions which cause the aggregate trigger figure to be exceeded need be approved. It should be noted that insider transactions that are not required to be approved in advance must nonetheless satisfy the arm's-length standards of the proposal. In sum, one could describe the proposal as creating three classes of business dealings between an insured nonmember bank and its bank insiders:

(1) Business dealings that are insignificant in nature and effect which do not warrant the protections established by the regulation;

(2) Business dealings that while significant enough to warrant coverage under the arm's-length standards of the regulation do not need prior approval; and

(3) Business dealings that rise to such a level as to warrant prior approval by the bank's board of directors.

Directors of insured nonmember banks should be aware that the approval of a particular transaction as required by the proposal will not necessarily preclude an action by the FDIC as a receiver of a closed bank against directors of the closed institution for breach of fiduciary obligation. In short, this provision should not be read as a safe harbor in all circumstances.

Timing of Prior Approval—For the purposes of the proposed regulation an insider transaction will be considered to have occurred at the *earlier* of (1) the time the bank enters into a contract, binding commitment, or other agreement which gives rise to the transaction in question, (2) the time the bank transfers any economic benefit to the insider, or (3) in the case of the use of bank facilities, real or personal property, or personnel, at the time of such use.

Valuing Insider Transactions for Purpose of Identifying "Major" Insider

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Valuing Insider Transactions for Purpose of Identifying "Major" Insider Transactions—Section 356.2(r) of the proposal defines the value of an insider transaction as the total dollar amount to be paid or received by an insured nonmember bank under the contract or other agreement; the sale price of an asset, good, or service purchased or sold; the total payments to be made over the term of a lease, unless the property is acquired by the bank to be leased to the insider in which case the value of the lease is the purchase price of the property; the fair market value of the use of the bank's facilities, real or personal property, or personnel, (*i.e.*, the dollar amount that the insider would have paid some other entity for the use of similar facilities, etc.); or the dollar amount of commissions and fees paid.

Prior Approval of a Series of Related Transactions—Section 356.5(c) of the proposal attempts to relieve what could otherwise be a burden in the prior approval of a series of continuing business dealings with the same insider. Under the proposal, if an insured nonmember bank enters into a major insider transaction of a continuing nature with the same bank insider, the bank may elect to satisfy the prior approval requirements of the regulation by approving the transactions in advance for a reasonable maximum dollar amount without the need for individually approving each transaction in the series. The approval of the continuing insider transactions as a series of related transactions is only good until the earlier of: (1) The beginning of the bank's next fiscal year, or (2) such time as the value of the transactions exceed the amount approved. For example, if an insured nonmember bank regularly purchases office supplies to satisfy its needs for two months at a time from a related interest of one of the bank's executive officers, the bank may approve several purchases at once up to a maximum dollar figure. Additional purchases need not be approved in advance until the earlier of the next fiscal year or until such time as the value of purchases would exceed the dollar figure previously approved.

4. Duty To Disclose Conflicts of Interest and Major Insider Transactions

The purpose of this provision is to clearly establish an obligation upon bank insiders to disclose their conflicts of interests in regard to any business dealings that come before the bank. Section 356.6 of the proposal does so by requiring that a bank insider that is an interested party with respect to a business deal before the bank must disclose his/her interest in the deal to the bank along with all relevant, material, nonprivileged information regarding the deal. Section 356.6 also imposes a requirement on a bank insider that has engaged in a major insider transaction which was not reviewed and approved in advance as required by the regulation to promptly disclose the transaction to the bank's board of directors. This provision is intended to reinforce the obligation to disclose conflicts and to act as an internal control mechanism.

Prior Approval by a Committee—The FDIC is requesting comment on whether to allow a committee of the board of directors to review and approve insider transactions as an alternative to approval by the full board of directors.

5. Recordkeeping

Section 356.7 of the proposal requires that an insured nonmember bank keep adequate, centralized records of all insider transactions (whether or not they qualify as "major" insider transactions) in a form and manner that will enable easy, independent review. The records must identify all directors, executive officers and principal shareholders of the bank and the related interests of such persons. In addition, the records should contain the names of the parties to the transaction other than the bank; the relationship of the parties to the bank (or a bank insider as appropriate); a brief description of the transaction and its terms; and a notation of any dissenting votes cast at the time the transaction received board prior approval. As these four items of information are the same as that required to be reflected in the bank's minutes from its board meetings at which insider transactions are approved, those minutes may be used to satisfy this portion of the recordkeeping requirements.

Insured nonmember banks are already required by existing federal regulation pertaining to extensions of credit to bank insiders (See 12 CFR 337.3, and 12 CFR 215) to maintain records identifying their directors, executive officers, principal shareholders and the related interests of such persons. Therefore, the requirement imposed by this section of the proposal to keep such records will not create any new recordkeeping burden. To the extent the relevant definitions differ for the purposes of this proposal from the definitions used in 12 CFR 337.3 and 12 CFR 215 (see discussion of definitions in Paragraph #8 below) there may be some additional information that insured nonmember banks will need to keep.

6. Board Review of Violations

Section 356.8 of the proposal requires that the bank's board of directors shall review any violation of part 356 brought to its attention and consider measures to correct the violation. The minutes of the board of directors meeting at which the violation is reviewed should indicate the specific measures so adopted. This provision of the proposal places an affirmative obligation on the bank's board of directors to specifically oversee the bank's compliance with part 356 and to consider what measures are appropriate in light of any particular violation to correct the problem. Banks should be advised, however, that the FDIC would not thereby relinquish its authority under section 8 of the FDI Act to take whatever enforcement measures are appropriate in its opinion to redress violations of the regulation.

7. Definition of the Phrase "Invest in Real Estate"

As indicated above, the proposal would prohibit any insured nonmember bank from investing in real estate in which a bank insider has an equity interest. Under § 356.2(k) of the proposal, the phrase "invest in real estate" is defined to mean any form of direct or indirect ownership of any interest in real property, whether in the form of an equity interest, partnership, joint venture or other form, that is accounted for as an investment in real estate or real estate joint ventures under generally accepted accounting principles or that is otherwise determined to be an investment in a real estate venture under Federal Financial Institutions Examination Council call report instructions for schedule RC–M, Memoranda Item on Direct and Indirect Investments in Real Estate Ventures. The FDIC will look to guidance prepared by the American Institute of Certified Public Accountants (AICPA) in assessing whether or not something should be considered an investment in real estate. Specifically, we will look to the Notices to Practitioners issued by the AICPA in November, 1983, November, 1984 and February, 1986. Real estate acquisition, development or construction arrangements which are accounted for as direct investments in real estate or as real estate joint ventures in accordance with the generally accepted accounting principles set out therein will be considered investments in real estate for the purposes of the prohibition in the proposal. Likewise, any other loans secured by real estate or advanced for real estate acquisition, development or investment purposes that are found, in accordance with the call report instructions, to give the bank virtually the same risks and potential rewards as an investor in the borrower's real estate will be considered investments in real estate.

Real Estate Lending—The following considerations will be considered by the FDIC to provide evidence that a transaction structured as a real estate loan, or some other form of transaction, is in substance an investment in real estate: (1) The bank provides all or substantially all of the funds for the real estate venture while the borrower, although legally holding title to the property, has little or no equity in the property, (2) the bank funds the loan commitment or origination fees for the borrower by including them in the amount of the loan, (3) the bank funds accrued interest during the term of the loan by adding interest to the borrower's loan balance, or by debiting an interest reserve account established from a portion of the loan proceeds, (4) the loan is secured only by the real estate and the lender has no or limited recourse to other substantive assets of the borrower and the borrower has not guaranteed the debt, (5) the bank, in addition to receiving interest rates at a fair market rate, participates in a substantial percent of the expected residual profits during the life of the real estate project or upon the sale of the real property, (6) the bank in order to recover its investment must rely on the ability of the borrower to sell the real property or obtain refinancing from another source, and (7) the bank structures the lending arrangement so that foreclosure during the project's development is unlikely as the borrower is not required to fund any payments until the project is completed.

Exclusions From Definition of "Investment in Real Estate"—The proposal contains three exceptions from the definition. An insured nonmember bank's interests in real property that is primarily used or intended to be used by the bank, its subsidiaries, or affiliates as offices or related facilities for the conduct of business or future expansion of business will not be considered an investment in real estate subject to the prohibition. Thus, a bank could acquire an interest in property owned by a bank insider if the property is used, or intended to be used, for the conduct of the bank's business now or in the future. That acquisition, however, would be subject to the arm's-length standards contained in § 356.3(a); may be subject to prior board or committee approval; the bank would need to maintain certain records with regard to the transaction; and the acquisition would have to conform to the bank's written guidelines adopted pursuant to § 356.4.

In addition to this exception, the proposal excepts interests in real property that are acquired in satisfaction of a debt previously contracted for in good faith, acquired in sales under judgments, decrees or mortgages held by the bank, or acquired under deed in lieu of foreclosure provided that the real estate so acquired is not held for investment purposes but is expected to be disposed of in a timely fashion. This exception basically covers what is known as DPC property. Lastly, the proposal excepts interests in real property that are primarily in the nature of charitable contributions to community development. Again, although neither of the interests described in this paragraph is subject to the prohibition contained in § 356.3(b) of the proposal, the acquisition of such interest may, depending upon the circumstances, be subject to the other provisions of the proposed regulation.

8. Definition of "Director", "Executive Officer", "Principal Shareholder", "Related Interest", "Subsidiary", "Company", and "Control".

With one exception, the term "director" and "executive officer" have the same meaning as those terms have for the purposes of § 337.3 of the FDIC's regulations concerning extensions of credit to bank insiders. Any person who is a director or an executive officer of a company that controls an insured nonmember bank (regardless of whether that company is a bank holding company for the purposes of the Bank Holding Company Act (12 U.S.C. 1841)) or that is controlled by a company that controls an insured nonmember bank, will be considered a director or executive officer of the bank for the purposes of part 356.

Likewise, the term "principal shareholder" essentially has the same meaning as that term is used for the purposes of § 337.3 of the FDIC's regulations (any person that directly or indirectly, or acting through or in concert with one or more persons, owns, controls, or has the power to vote more than 10 percent of the voting stock of a bank). The definition in the two sections of FDIC's regulations are the same, including the 18 percent ownership to qualify as a principal shareholder in towns with a population of less than 30,000 and the attribution of ownership within a family, with two exceptions. For the purposes of proposed part 356, a principal shareholder includes any company that controls 10 percent of the bank's voting securities (regardless of whether or not that company is a bank holding company for the purposes of the Bank Holding Company Act), any person that controls 10 percent of the voting securities of a company that controls the bank, and any person that controls 10 percent of the voting securities of any company also controlled by such a company.

"Related interest" has the same meaning as used for the purposes of § 337.3 of the FDIC's regulations as does the term "control". The term "company" has the same meaning as in § 337.3 of the FDIC's regulations except that a bank is a company for the purposes of part 356 whereas banks are excluded from that term for the purposes of § 337.3. "Subsidiary" is defined to mean any company that is directly or indirectly controlled by an insured nonmember bank.

Regulatory Flexibility Analysis

If adopted, these amendments would establish certain regulatory compliance requirements including the obligation (1) to maintain certain records, (2) to adopt written guidelines covering insider business dealings with the bank, (3) to review insider business dealings for compliance with the regulation, and (4) to ensure that all insider business dealings subject to the regulation are done on an arm's-length basis. The Board of Directors is of the opinion that the amendments, if adopted, would not have a differential adverse impact on small banks in terms of the compliance required. Therefore, for the reasons set forth below, the Board of Directors hereby certifies pursuant to section 605 of the Regulatory Flexibility Act (12 U.S.C. 605) that the amendments, if adopted, will not have a significant economic impact on a substantial number of small entities.

It is the Board of Directors' considered opinion that compliance with this regulation will not necessitate the development of sophisticated recordkeeping and reporting systems by small institutions nor the expertise of specialized staff accountants, lawyers, or managers on the part of small institutions. For example, the recordkeeping requirements of the proposal will, for the most part, not entail any additional recordkeeping on the part of insured nonmember banks. The records are in some instances already being kept pursuant to other regulatory requirements and in other instances would normally be kept by any well managed institution in the proper course of its business. Section 356.7 of the proposal which requires that insured nonmember banks maintain a

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It is the Board of Directors' considered opinion that compliance with this regulation will not necessitate the development of sophisticated recordkeeping and reporting systems by small institutions nor the expertise of specialized staff accountants, lawyers, or managers on the part of small institutions. For example, the recordkeeping requirements of the proposal will, for the most part, not entail any additional recordkeeping on the part of insured nonmember banks. The records are in some instances already being kept pursuant to other regulatory requirements and in other instances would normally be kept by any well managed institution in the proper course of its business. Section 356.7 of the proposal which requires that insured nonmember banks maintain a list of their executive officers, directors, principal shareholders, and the related interests of such persons should be easily satisfied provided that the bank is complying with similar requirements contained in Federal Reserve Board Regulation O (12 CFR 215.7). Although there are some differences in the relevant definition of the terms "executive officer", "director", "principal shareholder", and "related interest" for the purposes of the proposal and Regulation O, those differences should not pose a significant added burden in terms of compliance. Likewise, the requirement established by § 356.4 of the proposal for insured nonmember banks to adopt written guidelines governing business dealings between the bank and the bank's insiders should not result in added costs for insured nonmember banks. Nor should the development of those guidelines necessitate the hiring of additional personnel or consultants. In fact, the requirement that the guidelines be approved annually and sent to the bank's insiders will probably be less costly for small banks than larger banks. Although the proposal does require that insured nonmember banks establish procedures for the review of business dealings with bank insiders, it is expected that banks can simply expand their internal audit to include the review of insider business dealings. This should not significantly add to a bank's costs. What is more, the well run bank should already have such a review in place. While the proposal does require that business dealings between a bank and its insiders must be on terms and conditions are least as favorable as those prevailing at the time for comparable transactions with persons not covered by the regulation, it is not felt that this requirement will necessitate the hiring of consultants or market analysts. It should be sufficient if the bank can establish that it was satisfied that it could not have entered into the business dealing with a non-insider on terms more favorable to the bank. While it may take some effort on the part of banks in general to satisfy this requirement, small and large insured nonmember banks alike must be able to make this type of determination in order to comply with the existing requirement in section 23B of the Federal Reserve Act (12 U.S.C. 371c–1) (made applicable to insured nonmember banks by (12 U.S.C. 1828(j)) that sales of securities and other assets to an affiliate of the bank, and the furnishing of services to an affiliate, must be on terms substantially the same, or at least as favorable as, those prevailing at the time for comparable transactions with nonaffiliates. The requirement in the proposal should not, therefore, add to the compliance burden for small banks.

List of Subjects in 12 CFR Part 356

Banks, banking, Conflicts of interest, Reporting and recordkeeping requirements, Investments, Real property acquisitions.

In consideration of the foregoing, the FDIC is proposing to add part 356 to subchapter B of title 12 CFR to read as follows:

PART 356—INSIDER TRANSACTIONS—CONFLICTS OF INTEREST

§ 356.1 Purpose and scope.
§ 356.2 Definitions.
§ 356.3 Prohibited transactions involving bank insiders.
§ 356.4 Written policies governing insider transactions.
§ 356.5 Prior approval of major insider transactions.
§ 356.6 Duty of insiders to disclose conflicts of interest and major insider transactions.
§ 356.7 Recordkeeping.
§ 356.8 Board review of violations.

Authority 12 U.S.C. 1818, 12 U.S.C. 1819, 12 U.S.C. 1831(g).

§ 356.1 Purpose and scope.

The purpose of this part is to ensure that business dealings (other than extensions of credit) between insured nonmember banks and state licensed insured branches of foreign banks and their "insiders" are conducted in an arms length fashion so that insiders do not abuse their position for personal gain.

§ 356.2 Definitions.

For the purposes of this part, the following terms shall be defined as set forth below:

(a) *Business dealing* shall include:

(1) The sale, purchase or other conveyance of assets, goods or services to or from an insured nonmember bank;

(2) The use of an insured nonmember bank's facilities, real or personal property, or its personnel;

(3) The lease of property, equipment or other assets to or from an insured nonmember bank;

(4) The payment by an insured nonmember bank of commissions and/or fees, including, but not limited to, brokerage commissions and management, consultant, architectural and legal fees;

(5) Service agreements; and

(6) The payment by an insured nonmember bank of interest on the deposits of an insider to the extent that the rate of such interest exceeds the amount paid to other depositors on similar deposits with the bank.

(b) *Company* shall mean any bank, corporation, partnership, business trust, association, joint venture, pool syndicate, sole proprietorship, or other similar business organization.

(c) *Control* of a company shall mean that a person directly or indirectly, or acting through or in concert with one or more persons, owns, controls, or has the power to vote 25 per centum or more of the voting stock of a company; has the ability to control in any manner the election of a majority of a company's directors; or has the ability to exercise a controlling influence over the management and policies of a company. A person is presumed to have control, including the power to exercise a controlling influence over the management or policies, of a company if:

(1) The person is an executive officer or director of the company and directly or indirectly owns, controls, or has the power to vote more than 10 per cent of any class of voting securities of the company; or

(2) The person directly or indirectly owns, controls, or has the power to vote more than 10 per cent of any class of voting securities of the company and no other person owns, controls, or has the power to vote a greater percentage of that class of voting securities. A person is not considered to have control, including the power to exercise a controlling influence over the management or policies of a company solely by virtue of the person's position as an officer or director of the company.

(d) *Director* shall mean any director, advisory director or trustee of an insured nonmember bank or subsidiary of an insured nonmember bank, whether or not that individual receives compensation; any director, advisory director or trustee of a company which controls the insured nonmember bank; and any director, advisory director or trustee of any other company controlled by the company which controls the insured nonmember bank. An advisory director is not considered a director if the advisory director is not elected by the shareholders of the company; is not authorized to vote on matters before the board of directors or trustees; and provides solely general policy advice to the board of directors or trustees.

(e) *Executive officer* of an insured nonmember bank shall mean a person who participates or has the authority to participate (other than in the capacity of a director) in major policymaking functions of a bank whether or not such person has an official title, the title designates such person as an assistant, or such person is serving without salary or other compensation.[1] The chairman of the board, the president, every vice president, the cashier, the secretary and the treasurer of an insured nonmember bank are considered executive officers unless:

(1) Such person is excluded, by resolution of the board of directors or by the bylaws of the bank from participation (other than in the capacity of a director) in major policymaking functions of the bank; and

(2) Such person does not actually participate therein.

For the purposes of this part an executive officer of an insured nonmember bank includes an executive officer of any subsidiary of an insured nonmember bank or any company which controls the insured nonmember bank. Any executive officer of any other company controlled by such company will also be considered an executive officer of the insured nonmember bank unless such person is excluded from participation in major policymaking functions with respect to the insured nonmember bank by the board of directors of both the bank and the controlled company, and such person does not actually participate in major policymaking functions with respect to the bank.

(f) *Insider* shall mean a director, executive officer, or principal shareholder of an insured nonmember bank and any related interest of any such person.

(g) *Insider transaction* means any business dealing with an insider, other than an insignificant transaction as defined in § 356.2(h), in which an insider receives any direct or indirect economic benefit.

(h) *An insignificant transaction* is a business dealing that the board of directors of the insured nonmember bank has determined, pursuant to § 356.4, to have so little value as to be inconsequential for purposes of this part.

(i) *Insured nonmember bank* means, for the purposes of this part, any insured state bank which is not a member of the Federal Reserve System and any state licensed insured branch of a foreign bank.

(j) *Interested party* means, with respect to an insider transaction, an insider who is expected to receive any direct or indirect economic benefit from the transaction.

(k) The phrase *invest in real estate* shall mean any form of direct or indirect ownership of any interest in real property, whether in the form of an equity interest, partnership, joint venture or other form, which is accounted for as an investment in real estate or real estate joint ventures under generally accepted accounting principles or is otherwise determined to be an investment in a real estate venture under Federal Financial Institutions Examination Council Call Report instructions. The term shall include, for example, real estate acquisition, development or construction arrangements which are accounted for as direct investments in real estate or as real estate joint ventures in accordance with generally accepted accounting principles,[2] and any other loans secured by real estate or advanced for real estate acquisition, development or investment purposes if the bank in substance has virtually the same risks and potential rewards as an investor in the borrower's real estate.[3] The phrase *invest in real estate* shall not include the following:

(1) An interest in real property that is primarily used or intended to be used by the bank, its subsidiaries, or affiliates as offices or related facilities for the conduct of its business or future expansion of its business;

(2) An interest in real property that is acquired in satisfaction of debts previously contracted for in good faith or acquired in sales under judgments, decrees or mortgages held by the bank or acquired under deed in lieu of foreclosure provided that the property is not intended to be held for real estate investment purposes but is expected to be disposed of in a timely fashion as permitted by any applicable law or regulation; and

(3) Interests in real property that are primarily in the nature of charitable contributions to community development.

(l) *Major insider transaction* means any insider transaction having a value that, when aggregated with the value of all other insider transactions involving the same insider during the bank's current fiscal year, exceeds the lower of $500,000 or 2½ percent of the bank's tier 1 capital.

(m) *Person* shall mean an individual or a company.

(n) *Principal shareholder* of an insured nonmember bank shall mean any person that directly or indirectly, or acting through or in concert with one or more persons, owns, controls, or has the power to vote more than 10 per cent of any class of voting securities of an insured nonmember bank. If the insured nonmember bank is located in a city, town or village with a population of less than 30,000, the requisite percentage shall be 18 per cent. Shares owned or controlled by the spouse of an individual, the individual's minor children, or any of the individual's children (including adults) residing in the individual's home, shall be considered to be held by the individual. A principal shareholder of an insured nonmember bank includes a principal shareholder of a company which controls the insured nonmember bank as well as a principal shareholder of any other company controlled by such a company.

(o) *Related interest* shall mean a company that is controlled by a person, or a political or campaign committee that is controlled by a person or the funds or services of which will benefit a person.

(p) *Subsidiary* shall mean any company directly or indirectly controlled by an insured nonmember bank.

(q) *Tier 1 capital* has the meaning as set forth in 12 CFR 325 as calculated as of the date of the bank's latest report of income and condition.

(r) The *value* of an insider transaction shall mean the total dollar amount to be paid or received by the insured nonmember bank under the contract or other agreement; the sale price of an asset, good, or service purchased or sold; the total payments to be made over the term of a lease, unless the property is acquired by the bank to be leased to the insider, in which case the value of the lease is the purchase price of the property; the fair market value of the use of the bank's facilities, real or personal property, or its personnel, (*i.e.*, the dollar amount that the insider would have paid some other entity for the use of similar facilities, real or personal ranch of a foreign

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[1] The term is not intended to include persons who may have official titles and may exercise a certain measure of discretion in the performance of their duties but who do not participate in the determination of major policies of the bank and whose decisions are limited by policy standards fixed by the senior management of the bank or company. For example, the term does not include a manager or assistant manager of a branch of a bank unless that individual participates, or is authorized to participate, in major policymaking functions of the bank.

[2] See guidance prepared by the American Institute of Certified Public Accountants (AICPA) in Notices to Practitioners issued in November 1983, November 1984, and February 1986, available from the AICPA, 1211 Avenue of the Americas, New York, New York, 10036.

[3] See Federal Financial Institutions Examination Council Call Report Instructions on Schedule RC–M—Memoranda Item on Direct and Indirect Investments in Real Estate Ventures, available from Federal Deposit Insurance Corporation, Office of Corporate Communications, 550 17th Street, NW., Washington, DC 20429.

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(l) *Major insider transaction* means any insider transaction having a value that, when aggregated with the value of all other insider transactions involving the same insider during the bank's current fiscal year, exceeds the lower of $500,000 or 2½ percent of the bank's tier 1 capital.

(m) *Person* shall mean an individual or a company.

(n) *Principal shareholder* of an insured nonmember bank shall mean any person that directly or indirectly, or acting through or in concert with one or more persons, owns, controls, or has the power to vote more than l0 per cent of any class of voting securities of an insured nonmember bank. If the insured nonmember bank is located in a city, town or village with a population of less than 30,000, the requisite percentage shall be 18 per cent. Shares owned or controlled by the spouse of an individual, the individual's minor children, or any of the individual's children (including adults) residing in the individual's home, shall be considered to be held by the individual. A principal shareholder of an insured nonmember bank includes a principal shareholder of a company which controls the insured nonmember bank as well as a principal shareholder of any other company controlled by such a company.

(o) *Related interest* shall mean a company that is controlled by a person, or a political or campaign committee that is controlled by a person or the funds or services of which will benefit a person.

(p) *Subsidiary* shall mean any company directly or indirectly controlled by an insured nonmember bank.

(q) *Tier 1 capital* has the meaning as set forth in 12 CFR 325 as calculated as of the date of the bank's latest report of income and condition.

(r) The *value* of an insider transaction shall mean the total dollar amount to be paid or received by the insured nonmember bank under the contract or other agreement; the sale price of an asset, good, or service purchased or sold; the total payments to be made over the term of a lease, unless the property is acquired by the bank to be leased to the insider, in which case the value of the lease is the purchase price of the property; the fair market value of the use of the bank's facilities, real or personal property, or its personnel, (*i.e.*, the dollar amount that the insider would have paid some other entity for the use of similar facilities, real or personal property, or personnel); or the dollar amount of commissions and fees paid.

d by the American
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§ 356.3 Prohibited transactions involving bank insiders.

(a) *Business dealings.* (1) No insured nonmember bank may enter into an insider transaction unless the business dealing is:

(i) Intended for the benefit of the bank and is not merely an accommodation for the bank insider's benefit;

(ii) The transaction is made on terms, and under circumstances, that are substantially the same, or at least as favorable as, those prevailing at the time for comparable business dealings with persons not covered by this part (or in the absence of comparable business dealing, on terms and under circumstances that in good faith would be offered to, or would apply to, business dealings with, persons not covered by this part); and

(iii) The bank complies with the prior approval requirements set forth in § 356.5 to the extent that they are applicable.

(2) A business dealing between an insured nonmember bank and any person not covered by this part which results in a direct or indirect economic benefit to a bank insider shall be considered to be a business dealing between the bank and the insider.

(3) For the purposes of this part, a business dealing between an insured nonmember bank and the spouse, child, parent, or sibling of a bank insider shall be considered to be a business dealing subject to this part.

(4) Any business dealing between a subsidiary of an insured nonmember bank and a bank insider shall be considered to be a business dealing between the insured nonmember bank and such insider.

(b) *Real estate investments prohibited.* No insured nonmember bank may invest in real estate in which a bank insider has an equity interest. For the purposes of this section, an investment in real estate by a subsidiary of an insured nonmember bank shall be considered to be an investment by the insured nonmember bank.

§ 356.4 Written policies governing insider transactions.

(a) The board of directors or trustees of an insured nonmember bank shall adopt written guidelines consistent with the purposes of this part governing the circumstances, and the conditions under which, the bank may enter into insider transactions. The guidelines must specifically address the conditions and circumstances under which the bank will make the use of its facilities, real or personal property or its personnel available to bank insiders for their personal use and enjoyment. The guidelines should specifically identify by category, dollar amount, or some other means, business dealings that would otherwise be insider transactions which the board determines are inconsequential and as such do not warrant coverage under this part.

(b) All insured nonmember banks shall establish and maintain a policy and implementing procedures for the review of insider transactions.

(c) The bank's guidelines and procedures must be reasonable. Guidelines and procedures found by the FDIC not to be fully consistent with the purposes of this part will not satisfy the requirements of paragraph (a) of this section.

(d) Guidelines adopted pursuant to paragraph (a) of this section must be reviewed and approved at least annually by the bank's board of directors or trustees and disseminated annually to all of the bank's directors, executive officers, and principal shareholders.

§ 356.5 Prior approval of major insider transactions.

(a) *Board approval of major insider transactions.* Except as provided by paragraph (c) of this section, no insured nonmember bank may enter into any major insider transaction unless a majority of the entire board of directors of the bank approves the transaction in advance. Any interested party must abstain from voting or participating directly or indirectly in the deliberations regarding approval.

(b) An insured nonmember bank and an insider shall be considered to have engaged in an insider transaction at the earlier of:

(1) The time the bank enters into a contract, binding commitment, or other agreement which gives rise to the insider transaction in question;

(2) The time the bank transfers any economic benefit to the insider; or

(3) In a case in which the bank's facilities, real or personal property, or its personnel are used, at the time of such use.

(c) *Series of related transactions.* If an insured nonmember bank enters into a major insider transaction of a continuing nature with the same bank insider, the bank's board of directors may, at its option, elect to satisfy the prior approval requirements of this section by approving the transaction(s) in advance for a reasonable maximum dollar amount. The board need not approve the transaction(s) again until the earlier of:

(1) The beginning of the next fiscal year; or

(2) Such time as the value of the transaction(s) exceed(s) the amount approved. Records must be maintained with regard to the individual transactions in accordance with § 356.7.

(d) The minutes of the board meeting at which an insider transaction is approved must contain the information about the transaction required by § 356.7 of this part.

§ 356.6 Duty of insiders to disclose conflicts of interest and major insider transactions.

A bank insider that is an interested party within the meaning of § 356.2(j) with respect to any anticipated business dealing with the bank must disclose to the bank prior to the time the bank authorizes the business dealing the insider's interest in the business dealing along with all relevent, material, nonprivileged information regarding the anticipated business dealing known to the insider. Any bank insider that has engaged in a major insider transaction which has not been reviewed and approved in advance by the bank's board of directors must promptly disclose the transaction to the bank's board of directors.

§ 356.7 Recordkeeping.

Insured nonmember banks shall maintain adequate, centralized records in a form and manner that will enable easy, independent review of all insider transactions. The records shall identify all directors, executive officers and principal shareholders of the bank and the related interests of such persons. In addition, the records maintained on insider transactions should normally:

(1) Specify the names of the parties to the transaction other than the bank;

(2) Specify the relationship of the parties to the bank or where appropriate the relationship of the parties to any bank insider;

(3) Include a brief description of the transaction and its terms; and

(4) Contain a notation of any dissenting votes cast at the time the board approved the transaction along with the basis of the dissent. The bank may use the minutes from board meetings to comply with the requirements of this section.

§ 356.8 Board review of violations.

The board shall review any violation of this part brought to its attention and indicate in the minutes of the board meeting the specific measures adopted by the board to correct the violation.

VOL 56 ISS 153 AG 8 1991 UMI

By Order of the Board of Directors. Dated at Washington, DC this 30th day of July, 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91-18534 Filed 8-7-91; 8:45 am]

BILLING CODE 6714-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 744

[OPTS-62100A; FRL 3938-5]

Proposed Regulation of Land Application of Sludge From Pulp and Paper Mills Using Chlorine and Chlorine Derivative Bleaching Processes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period and announcement of public hearing.

SUMMARY: Notice is hereby given that the period for filing public comment on the proposed rule for Land Application of Sludge from Paper Mills Using Chlorine and Chlorine-Derivative Bleaching Processes (56 FR 21802, May 10, 1991) is extended, and that an informal public hearing on the proposed rule will be held. The American Paper Institute (API) filed a request for an extension of the public comment period through September 17, 1991. API also filed a request for the scheduling of an informal public hearing.

DATES: Public comments must be received on or before September 17, 1991. Written notice of intent to participate in the informal hearing must be received on or before October 8, 1991. The informal public hearing will begin on October 29, 1991, in Washington, DC.

ADDRESSES: Non-confidential comments should be sent in triplicate to: U.S. Environmental Protection Agency, rm. NEG-004 (TS-793), 401 M St., SW., Washington, DC 20460, Attention: OPTS- 62100. Comments should also include the docket number (OPTS-62100). Non-confidential comments will be placed in the rulemaking record for public inspection. See SUPPLEMENTARY INFORMATION for information on submitting comments containing confidential business information (CBI). The exact time and location of the hearing may be obtained by contacting the Environmental Assistance Division at (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), U.S. Environmental Protection Agency, 401 M St., SW., rm. E-543B, Washington, DC 20460, telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: On May 10, 1991, EPA issued Land Application of Sludge from Pulp and Paper Mills Using Chlorine and Chlorine-Derivative Bleaching Processes; Proposed Rules (56 FR 21802). Written comments on the proposed rule were to be received on or before August 8, 1991. On July 3, 1991, the American Paper Institute (API) filed a request for an extension of the public comment period through September 17, 1991. API indicated that an extension would be necessary in order for it to complete its analysis of the risk assessment background documents which support the proposed rule. API also filed a request for the scheduling of an informal public hearing. EPA hereby grants an extension of time for the submission of public comments on this proposed rule. Written comments must be received on or before September 17, 1991. The informal public hearing will begin on October 29, 1991, in Washington, DC. This hearing will be conducted in accordance with EPA's "Procedures for Conducting Rulemaking Under Section 6 of the Toxic Substances Control Act" (40 CFR part 750). Persons or organizations desiring to participate in the informal hearing must file a written request to participate. The written request must be sent to the Environmental Assistance Division at the address listed under FOR FURTHER INFORMATION CONTACT, and must be received on or before October 8, 1991. The written request must include:

1. A brief statement of the interest of the person or organization in the proceeding.
2. A brief outline of the points to be addressed.
3. An estimate of the time required.
4. If the request comes from an organization, a non- binding list of the persons to take part in the presentation.

Organizations are requested to bring with them, to the extent possible, employees or representatives with individual expertise in and responsibility for each of the areas to be addressed. Organizations which do not submit comments on the proposed rule will not be allowed to participate at the hearing, unless the Record and Hearing Clerk grants a waiver of this requirement in writing.

Reply comments on the proposed rule must be received no later than two weeks after the close of all hearings, and must be restricted to comments on:

1. Other comments.
2. Material in the hearing record.
3. Material which was not and could not reasonably have been available to the commenting party a sufficient time before main comments were due.

EPA is conducting a peer review of the risk assessments supporting the proposed rule. EPA anticipates that the review will be complete and its results entered into the rulemaking record on or about October 18, 1991. The peer review results may be addressed in oral comments made at the informal hearing and in the written reply comments.

Any person who submits written comments containing confidential business information (CBI) must mark the comments as "Confidential Business Information." Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as "Confidential Business Information" will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be CBI must prepare and separately submit a public version of the comments that EPA can place in the public file. CBI comments should be submitted in triplicate to: Document Control Office (TS-790), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. CBI comments should be mailed in a double envelope with "CBI" and the docket number OPTS-62100 marked on the inner envelope, and the comments should be marked with docket number OPTS-62100.

List of Subjects in 40 CFR Part 744

Environmental protection, Hazardous substances, Reportingand recordkeeping requirements, Sludge, Toxic substances.

Dated: August 1, 1991.

Mark A. Greenwood,

Director, Office of Toxic Substances.

[FR Doc. 91-18731 Filed 8-6-91; 8:45 am]

BILLING CODE 6560-50-F

Notices

This section of the FEDERAL
contains documents other tha
proposed rules that are applic
public. Notices of hearings an
investigations, committee meet
decisions and rulings, delegati
authority, filing of petitions an
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DEPARTMENT OF AGRICU

Forms Under Review by Of Management and Budget

August 2, 1991.

The Department of Agricu
submitted to OMB for revie
following proposals for the c
information under the provi
Paperwork Reduction Act (4
chapter 35) since the last lis
published. This list is groupe
proposals, revisions, extensi
reinstatements. Each entry c
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(1) Agency proposing the
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Name and telephone numbe
agency contact person.

Questions about the items
listing should be directed to
person named at the end of
Copies of the proposed form
supporting documents may
from: Department Clearance
USDA, OIRM, room 404-W
Bldg., Washington, DC 2025
2118.

Extension

- National Agricultural Sta
  Service.
  Honey Survey.
  Annually.
  Farms; 9,000 responses; 1
  Larry Gambrell (202) 447-

Reinstatement

- Agricultural Stabilization
  Conservation Service.
  7 CFR part 700—Rural Cl
  Program (RCWP) Regu
  Form RCWP-1, Reques
  Sharing.

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t (202) 382–3532.
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addressed. Organizations which do not submit comments on the proposed rule will not be allowed to participate at the hearing, unless the Record and Hearing Clerk grants a waiver of this requirement in writing.

Reply comments on the proposed rule must be received no later than two weeks after the close of all hearings, and must be restricted to comments on:

1. Other comments.
2. Material in the hearing record.
3. Material which was not and could not reasonably have been available to the commenting party a sufficient time before main comments were due.

EPA is conducting a peer review of the risk assessments supporting the proposed rule. EPA anticipates that the review will be complete and its results entered into the rulemaking record on or about October 18, 1991. The peer review results may be addressed in oral comments made at the informal hearing and in the written reply comments.

Any person who submits written comments containing confidential business information (CBI) must mark the comments as "Confidential Business Information." Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as "Confidential Business Information" will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be CBI must prepare and separately submit a public version of the comments that EPA can place in the public file. CBI comments should be submitted in triplicate to: Document Control Office (TS–790), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. CBI comments should be mailed in a double envelope with "CBI" and the docket number OPTS–62100 marked on the inner envelope, and the comments should be marked with docket number OPTS–62100.

List of Subjects in 40 CFR Part 744

Environmental protection, Hazardous substances, Reportingand recordkeeping requirements, Sludge, Toxic substances.

Dated: August 1, 1991.

Mark A. Greenwood,

Director, Office of Toxic Substances.

[FR Doc. 91–18731 Filed 8–6–91; 8:45 am]

BILLING CODE 6560-50-F

Notices

Federal Register
Vol. 56, No. 153
Thursday, August 8, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

August 2, 1991.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Extension

- National Agricultural Statistics Service.
  Honey Survey.
  Annually.
  Farms; 9,000 responses; 1,500 hours.
  Larry Gambrell (202) 447–7737.

Reinstatement

- Agricultural Stabilization and Conservation Service.
  7 CFR part 700—Rural Clean Water Program (RCWP) Regulations and Form RCWP–1, Request for Cost-Sharing.
  RCWP–1.
  On occasion.
  Individuals or households; farms; 50 responses; 25 hours.
  Paul E. Smith (202) 447–5784.

Larry K. Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 91–18865 Filed 8–7–91; 8:45 am]

BILLING CODE 3410-01-M

National Agricultural Statistics Service

Initiate Cotton Ginnings Report

The U.S. Department of Agriculture's National Agricultural Statistics Service will initiate the publication of "Cotton Ginnings" reports on August 12, 1991. The first report will contain cotton ginnings data for Texas. Following the initial August report, reports will be issued twice montly from September 1991 through March 1992, and a final report will be released in May 1992. The first report each month, issued on or about the 10th of the month, will contain U.S. and State cotton ginnings information as of the 1st of the month. The second report, issued on or about the 25th of each month, will contain U.S. and State cotton ginnings information as of the 15th of the month, and will also contain district and county ginnings data as of the 1st of the month. Also included in the report released on the 25th of each month will be any revisions to U.S. and State cotton ginnings data published in the report issued on or about the 10th. A detailed report covering the entire crop year will be issued in May.

Done at Washington, DC this 5th day of August 1991.

Charles E. Caudill,

Administrator.

[FR Doc. 91–18870 Filed 8–7–91; 8:45 am]

BILLING CODE 3410-20-M

Soil Conservation Service

Hatch Valley Arroyos Watershed Project Site #3 Rehabilitation, New Mexico

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CF part 1500); and the Soil Conservation Service Rules (7 CF part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Hatch Valley Arroyos Watershed Project Site 3, Dona Ana County, New Mexico.

FOR FURTHER INFORMATION CONTACT: Ray T. Margo, Jr., State Conservationist, Soil Conservation Service, 517 Gold Ave., SW., rm. 3301, Albuquerque, NM 87102–3157, telephone 505–766–3277.

Hatch Valley Arroyos Watershed Project Site 3, New Mexico Notice of a Finding of No Significant Impact

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the human environment. As a result of these findings, Ray T. Margo, Jr., State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The measure concerns the treatment of a gully encroaching on the emergency spillway of an existing floodwater retarding structure (Hatch Valley Arroyos Site 3). A design oversight caused the gully because design and subsequent construction concentrated surface flow over the left abutment. The selected alternative is to construct a diversion above the gully and place earth fill in the gully. This treatment would safely dispose of the uncontrolled surface runoff and restore the integrity of the emergency spillway.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and various Federal, State, and local agencies and interested parties. The environmental assessment has had a 30 day review by concerned Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment is on file and may be reviewed by contacting Ray T. Margo Jr.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State an local officials).

Dated: July 25, 1991.

Ray T. Margo, Jr.,

State Conservationist.

[FR Doc. 91–18890 Filed 8–7–91; 8:45 am]

BILLING CODE 3420-16-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit: Sea World, Inc. (P2V)

On March 14, 1991, notice was published in the **Federal Register** (56 FR 10862) that an application had been filed by Sea World, Inc. for a permit to import one (1) killer whale (*Orcinus orca*) for public display at any of the Sea World parks.

Notice is hereby given that on July 31, 1991, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) the National Marine Fisheries Service issued a Permit for the above importation subject to certain conditions set forth therein.

Issuance of this permit is based on a finding that the proposed taking is consistent with the purposes and policy of the Marine Mammal Protection Act. The Service has determined that Sea World, Inc. offers an acceptable program for education or conservation purposes. The Sea World facilities are open to the public on a regularly scheduled basis and access to the facilities is not limited or restricted other than by the charging of an admission fee.

The Permit is available for review by interested persons by appointment in the following offices:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Highway, room 7324, Silver Spring, Maryland 20910 (301/427–2289);

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, Massachusetts 01930 (508/281–9200);

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Boulevard, St. Petersburg, Florida 33702 (813/893–3141); and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731 (213)/514–6196).

Dated: July 31, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91–18779 Filed 8–7–91; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Czechoslovakia

August 2, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: August 12, 1991.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–5810. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 443 is being increased by recrediting unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 56 FR 21132, published on May 7, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 2, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on May 2, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool and man-made fiber textile products, produced or manufactured in Czechoslovakia and exported during the twelve-month period which began on June 1, 1991 and extends through May 31, 1992.

Effective on August 12, 1991, you are directed to amend the directive dated May 2, 1991 to increase the limit for Category 443 to 60,270 numbers [1], as provided under the terms of the current bilateral agreement between the Governments of the United States and the Czech and Slovak Federal Republic.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91–18824 Filed 8–7–91; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Malaysia

August 2, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 9, 1991.

FOR FURTHER INFORMATION CONTACT: Kim-Bang Nguyen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6496. For information on embargoes and quota re-openings, call (202) 377–3715.

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[1] The limit has not been adjusted to account for any imports exported after May 31, 1991.

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Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 2, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on May 2, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool and man-made fiber textile products, produced or manufactured in Czechoslovakia and exported during the twelve-month period which began on June 1, 1991 and extends through May 31, 1992.

Effective on August 12, 1991, you are directed to amend the directive dated May 2, 1991 to increase the limit for Category 443 to 60,270 numbers [1], as provided under the terms of the current bilateral agreement between the Governments of the United States and the Czech and Slovak Federal Republic.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-18824 Filed 8-7-91; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Malaysia

August 2, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 9, 1991.

FOR FURTHER INFORMATION CONTACT: Kim-Bang Nguyen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6496. For information on embargoes and quota re-openings, call (202) 377-3715.

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[1] The limit has not been adjusted to account for any imports exported after May 31, 1991.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 338/339, 347/348, and 638/639 are being increased by application of swing. The limit for Categories 300/301 is being decreased to account for the increases.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 49675, published on November 30, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 2, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 26, 1990, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of cotton and man-made fiber textiles and textile products, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 1991 and extends through December 31, 1991.

Effective on August 9, 1991, you are directed to amend further the directive dated November 26, 1990 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Malaysia:

Category	Adjusted twelve-month limit [1]
300/301	1,926,741 kilograms.
338/339	759,617 dozen.
347/348	300,730 dozen.
638/639	331,049 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1990.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-18822 Filed 8-7-91; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of an Import Limit and Sublimit for Certain Cotton Textile Products Produced or Manufactured in Peru

August 2, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit and sublimit.

EFFECTIVE DATE: August 9, 1991.

FOR FURTHER INFORMATION CONTACT: J. Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 338/339 and sublimit for Categories 338-S/339-S are being increased by recrediting unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 50861, published on December 11, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 2, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 5, 1990, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Peru and exported during the twelve-month period which began on January 1, 1991 and extends through December 31, 1991.

Effective on August 9, 1991, you are directed to increase the limit and sublimit for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Peru:

Category	Adjusted twelve-month limit [1]
Limit not in a group 338/339	742,000 dozen of which not more than 630,700 dozen shall be in Categories 338-S/339-S [2].

[1] The limits have not been adjusted to account for any imports exported after December 31, 1990.

[2] Category 338-S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.0068, 6112.11.0030 and 6114.20.0005; Category 339-S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.0070, 6112.11.0040, 6114.20.0010 and 6117.90.0022.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-18823 Filed 8-7-91; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

OMB Clearance Request for Preaward Survey Forms

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of a request for an extension of a currently approved information collection requirement (9000-0011).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal

Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request for an extension of a currently approved information collection requirement concerning Preaward Survey Forms.

DATES: Comments may be submitted on or before October 7, 1991.

ADDRESSES: Send comments to Mr. Peter Weiss, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott, Office of Federal Acquisition Policy, GSA (202) 501–0168.

SUPPLEMENTARY INFORMATION:

A. Purpose

To protect the Government's interest and to ensure timely delivery of items of the requisite quality, contracting officers, prior to award, must make an affirmative determination that the prospective contractor is responsible, i.e., capable of performing the contract. Before making such a determination, the contracting officer must have in his possession or must obtain information sufficient to satisfy himself that the prospective contractor (i) has adequate financial resources, or the ability to obtain such resources, (ii) is able to comply with required delivery schedule, (iii) has a satisfactory record of performance, (iv) has a satisfactory record of integrity, and (v) is otherwise qualified and eligible to receive an award under appropriate laws and regulations. If such information is not in the contracting officer's possession, it is obtained through a preaward survey conducted by the contract administration office responsible for the plant and/or the geographic area in which the plant is located. The necessary data is collected by contract administration personnel from available data or through plant visits, phone calls, and correspondence and entered on Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408 in detail commensurate with the dollar value and complexity of the procurement. The information is used by Federal contracting officers to determine whether a prospective contractor is responsible.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 12,000; responses per respondent, .5; total annual responses, 6,000; preparation hours per response, 24; and total response burden hours, 144,000.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies from the General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Clearance Request for Preaward Survey Forms, OMB Control No. 9000–0011, in all correspondence.

Dated: July 31, 1991.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 91–18781 Filed 8–7–91; 8:45 am]

BILLING CODE 6820-JC-M

OMB Clearance Request for SF 129, Solicitation Mailing List Application

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of a request for an extension of a currently approved information collection requirement (9000–0002).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request for an extension of a currently approved information collection requirement concerning Standard Form 129, Solicitation Mailing List Application.

DATES: Comments may be submitted on or before October 7, 1991.

ADDRESSES: Send comments to Mr. Peter Weiss, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott, Office of Federal Acquisition Policy (202) 501–0168.

SUPPLEMENTARY INFORMATION:

A. Purpose.

The Standard Form 129, Solicitation Mailing List Application, is used by all Federal agencies as an application form for perspective contractors to provide information needed to establish and maintain a list of firms interested in selling to the Government. The information is used to establish lists of firms to be solicited when the products or services they provide are needed by the Government.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 243,000; responses per respondent, 4; total annual responses, 972,000; preparation hours per response, .58; and total response burden hours, 563,760.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies from the General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Clearance Request for SF 129, Solicitation Mailing List Application, OMB Control No. 900–0002, in all correspondence.

Dated: July 31, 1991.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 91–18782 Filed 8–7–91; 8:45 am]

BILLING CODE 6820-JC-M

[90000—0097]

OMB Clearance Request for Information Reporting to the Internal Revenue Service and Taxpayer Identification Number

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of OMB request to review and approve an extension for information collection requirement.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve extension for an information collection requirement concerning Information Reporting to the Internal Revenue Service (IRS) (Taxpayer Identification Number).

DATES: Comments may be submitted on or before October 7, 1991.

ADDRESSES: Send comments to Mr. Peter Weiss, FAR Desk Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition Policy, GSA (202) 501-3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

Supart 4.9, Information Reporting to the Internal Revenue Service (IRS), and the clause at 52.204-3, Taxpayer Identification, implement statutory and

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OBTAINING COPIES OF PROPOSALS: Requester may obtain copies from the General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Clearance Request for SF 129, Solicitation Mailing List Application, OMB Control No. 9000–0002, in all correspondence.

Dated: July 31, 1991.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 91–18782 Filed 8–7–91; 8:45 am]

BILLING CODE 6820-JC-M

[90000—0097]

OMB Clearance Request for Information Reporting to the Internal Revenue Service and Taxpayer Identification Number

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of OMB request to review and approve an extension for information collection requirement.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve extension for an information collection requirement concerning Information Reporting to the Internal Revenue Service (IRS) (Taxpayer Identification Number).

DATES: Comments may be submitted on or before October 7, 1991.

ADDRESSES: Send comments to Mr. Peter Weiss, FAR Desk Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition Policy, GSA (202) 501-3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

Supart 4.9, Information Reporting to the Internal Revenue Service (IRS), and the clause at 52.204-3, Taxpayer Identification, implement statutory and

regulatory requirements pertaining to taxpayer identification and reporting. 26 U.S.C. 6041, 6041A, and 26 U.S.C. 6050M, in part, require payors, including Federal Government agencies, to report to the IRS certain payments made to certain contractors. The collection of the information specified in the clause assists in fulfilling these requirements.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows:

Respondents, 225,000; *responses per respondent,* 12; *total annual responses,* 2,700,000; *preparation per response,* .0028; *and total response burden hours,* 7,560.

Obtaining Copies of Proposals: Requester may obtain copies from the General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Clearance Request for Information Reporting to the Internal Revenue Service (Taxpayer Identification Number), OMB Control No. 9000–0097, in all correspondence.

Dated: August 1, 1991.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 91–18834 Filed 8–7–91; 8:45 am]

BILLING CODE 6820-JC-M

Defense Logistics Agency

Meeting: Department of Defense Clothing and Textiles Board

AGENCY: Defense Logistics Agency, Department of Defense.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Deputy Director for Acquisition Management, Defense Logistics Agency, announces the final meeting of the Department of Defense Clothing and Textiles (DoD C&T) Board. This is an emergency meeting which is being held to meet time constraints of authorized tenure of the Board.

DATES: August 13, 1991.

ADDRESS AND TIME: The Pentagon, room 3D1019, Washington, DC, 1100–1145.

FOR FURTHER INFORMATION CONTACT: Ms. Maxine James; Quality Assurance Specialist, Product Quality Management Division, Defense Logistics Agency, Department of Defense, Cameron Station, Alexandria, VA, (202) 274–7141.

SUPPLEMENTARY INFORMATION: Purpose of the meeting is to present the final report to the Under Secretary of Defense (Acquisition).

Capt. M. J. Schildwachter, USN,

Executive Secretary, DoD C&T Board.

[FR Doc. 91–18901 Filed 8–7–91; 8:45 am]

BILLING CODE 3620-01-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.021A]

Fulbright Hays Group Projects Abroad; Inviting Applications for New Awards Fiscal Year 1992

AGENCY: Department of Education.

ACTION: Notice inviting applications for New Awards under the Fulbright-Hays Group Projects Abroad program for Fiscal Year 1992.

Purpose of Program: The Group Projects Abroad program provides grants to institutions of higher education, State departments of education, and private nonprofit educational organizations to support overseas projects in training, research, and curriculum development in modern foreign languages and area studies by teachers, students, and faculty engaged in a common endeavor.

Eligible Applicants: Institutions of higher education, State departments of education, private nonprofit educational organizations, and consortia of such institutions, departments, and organizations.

Deadline for Transmittal of Applications: October 21, 1991.

Applications Available: August 30, 1991.

Available Funds: The Administration has requested $2,220,000 for this program of FY 1992. However, the actual level of funding is contingent upon final congressional action.

Estimated Range of Awards: $40,000 to $200,000.

Estimated Average Size of Awards: $69,000.

Estimated Number of Awards: 32.

Project Period: 5 weeks to 12 months.

Applicable Regulations: (a) Higher Education Programs in Modern Foreign Language Training and Area Studies—Group Projects Abroad program, 34 CFR part 664; and (b) Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 80, 81, 82, 85 and 86.

Priorities: Section 664.32 of the regulations governing the Group Projects Abroad program provides for the establishment of funding priorities for this program. These priorities will be applied in accordance with the provisions of the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.105.

Pursuant to 34 CFR 75.105(c)(2), the Secretary gives a competitive preference to applications that meet the following priority: Short-term seminars that develop the improve foreign language and area studies at elementary and secondary schools. The Secretary may award up to 5 points to applications that address this priority in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for the program.

Pursuant to 34 CFR 75.105(c)(3), the Secretary also establishes an absolute preference for applications that meet one of the following priorities. The priorities are the following world areas: (1) Sub-Saharan Africa; (2) Latin America and the Caribbean; (3) East Asia; (4) Southeast Asia and the Pacific; (5) Eastern Europe and the U.S.S.R.; (6) the Near East and North Africa; or (7) South Asia. All available funds for this program will be reserved solely for applications that meet this priority. Applications that propose projects focusing on Western Europe or Canada will not be funded.

For Applications or Information Contact: Lungching Chiao or Gwendolyn Weaver, Telephone (202) 708–7238, U.S. Department of Education, 400 Maryland Avenue, SW., room 3052, ROB–3, Washington, DC 20202–5332. Deaf and hearing impaired individuals may call the Federal Dual Relay Service at 1–800–877–8339 (in the Washington, DC area code, telephone 708–9300 between 8 a.m. and 7 p.m., Eastern time).

Authority: 22 U.S.C. 2452(b)(6).

Dated: August 1, 1991.

Michael J. Farrell,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 91–18805 Filed 8–7–91; 8:45 am]

BILLING CODE 4000-01-M

[CFDA Nos. 84.016 and 84.153]

Undergraduate International Studies and Foreign Language Program and the Business and International Education Program; Inviting Applications for Fiscal Year 1992 New Awards

AGENCY: Department of Education.

ACTION: Combined notice inviting applications for Fiscal Year 1992 New Awards under the Undergraduate International Studies and Foreign Language Program and the Business and International Education Program.

Purpose

Applications are invited for new awards for Fiscal Year 1992 under title VI of the Higher Education Act of 1965, as amended (the HEA), for the Undergraduate International Studies and Foreign Language Program (34 CFR part 658) and the Business and International Education Program (34 CFR part 661).

The Undergraduate International Studies and Foreign Language Program provides grants to strengthen and improve undergraduate instruction in international studies and foreign languages in the United States.

The Business and International Education Program provides grants to enhance international business education programs and to expand the capacity of the business community to engage in international economic activities.

Deadlines for Transmittal of Applications: For the Undergraduate International Studies and Foreign Language Program—November 4, 1991, and

For the Business and International Education Program—November 8, 1991.

Deadlines for Intergovernmental Review: For the Undergraduate International Studies and Foreign Language Program—January 6, 1992, and

For the Business and International Education Program—January 7, 1992.

Applications Available: September 3, 1991.

Eligible Applicants: For the Undergraduate International Studies and Foreign Language Program, eligible applicants are institutions of higher education, combinations of institutions of higher education, and public and private nonprofit agencies and organizations, including professional and scholarly associations.

For the Business and International Education Program, eligible applicants are institutions of higher education.

INTERNATIONAL EDUCATION PROGRAMS

Title and CFDA number	Available funds	Estimated range of awards	Estimated size of awards	Estimated number of awards	Project period in months
Undergraduate International Studies and Foreign Language Program (CFDA No. 84.016).	$1,350,000	$30,000 to $75,000	$54,000	25	24 to 36.
Business and International Education Program (CFDA No. 84.153).	1,095,000	$40,000 to $100,000	$73,000	15	24.

Applicable Regulations: (a) Undergraduate International Studies and Foreign Language Program, 34 CFR parts 655 and 658; (b) Business and International Education Program, 34 CFR parts 655 and 661; and (c) Education Department General Administrative Regulations, 34 CFR parts 74, 75, 77, 79, 82, 85 and 86.

For Applications or Information Contact: Christine Corey (Undergraduate International Studies and Foreign Language Program), telephone (202) 708–7283, and Susanna C. Easton (Business and International Education Program), telephone (202) 708–7283, U.S. Department of Education, 400 Maryland Avenue SW., room 3053, ROB–3, Washington, DC 20202–5332. Deaf and hearing impaired individuals may call the Federal Dual Relay Service at 1–800–877–8339 (in the Washington, DC area code, telephone 708–9300 between 8 a.m. and 7 p.m., Eastern time).

Authority: Undergraduate International Studies and Foreign Language Program.

(20 U.S.C. 1124)

Business and International Education Program.

(20 U.S.C. 1130–1130b)

Dated: August 1, 1991.

Michael J. Farrell,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 91–18804 Filed 8–7–91; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Morgantown Energy Technology Center Financial Assistance Award; West Virginia Univ.—Grant

AGENCY: Department of Energy (DOE), Morgantown Energy Technology Center.

ACTION: Notice of noncompetitive financial assistance application for a grant to West Virginia University.

SUMMARY: Based upon a determination pursuant to 10 CFR 600.7(b)(2)(i)(B), which authorizes an award to be made if the activity is being or would be conducted by the applicant using its own resources or those donated or provided by third parties; however, DOE support of that activity would enhance the public benefits to be derived and DOE knows of no other entity which is conducting or is planning to conduct such an activity the DOE, Morgantown Energy Technology Center, gives notice of its plans to award a twelve (12) month Research Grant to West Virginia University, Morgantown, West Virginia in the approximate amount of $72,000 for research entitled "Ground Movements Associated with Gas Hydrate Production."

FOR FURTHER INFORMATION CONTACT: Ms. Diane Roth, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, WV 26507–0880, Telephone: (304) 291–4090, Grant No.: DE–FG21–91MC28080.

SUPPLEMENTARY INFORMATION: The pending award is based on an application for a research project entitled, "Ground Movements Associated with Gas Hydrate Production" which was submitted by West Virginia University. The general objective of the research project is to perform modeling of subsidence caused by hydrate dissociation. The investigation will be based on the theories of continuum mechanics and thermomechanical behavior of frozen geo-materials.

Issued: July 30, 1991.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 91–18893 Filed 8–7–91; 8:45 am]

BILLING CODE 6450–01–M

Conservation and Renewable Energy

Renewable Energy and Energy Efficiency Joint Ventures Advisory Committee; Notice of Open Meeting

Under the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting: NAME: Renewable Energy and Energy Efficiency Joint Ventures Advisory Committee.

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For the Business and International Education Program—January 7, 1992.

Applications Available: September 3, 1991.

Eligible Applicants: For the Undergraduate International Studies and Foreign Language Program, eligible applicants are institutions of higher education, combinations of institutions of higher education, and public and private nonprofit agencies and organizations, including professional and scholarly associations.

For the Business and International Education Program, eligible applicants are institutions of higher education.

UCATION PROGRAMS

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26507–0880, Telephone: (304) 291–4090, Grant No.: DE–FG21–91MC28080.

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Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 91–18893 Filed 8–7–91; 8:45 am]

BILLING CODE 6450-01-M

Conservation and Renewable Energy

Renewable Energy and Energy Efficiency Joint Ventures Advisory Committee; Notice of Open Meeting

Under the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting: NAME: Renewable Energy and Energy Efficiency Joint Ventures Advisory Committee.

Date and Time: August 27, 1991 9 a.m.–5 p.m., August 28, 1991 9 a.m.–12 p.m.

Place: The Key Bridge Marriott, 1401 Lee Highway, Rosslyn, VA 22209.

Contact: Elaine S. Guthrie, Office of Technical Assistance (CE–54), Conservation and Renewable Energy, U.S. Department of Energy, Washington, DC 20585, Telephone: 202/586–1719.

Purpose of Committee: To advise the Secretary of Energy on the development of the solicitation and evaluation criteria for joint ventures, and on otherwise carrying out his responsibilities under the Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989 (Pub. L. 101–218, 42 U.S.C. 12005).

Tentative Agenda: Second Meeting of the Committee. Briefings and discussions of:

- Discussion of a Proposed Financial Structure for the Joint Ventures Program
- Presentation from the Private Investment Community
- Characteristics of the Draft Solicitation
- Overview of Reports to Congress
- Discussion of Criteria for Selection of Joint Venture Projects
- Other Matters Requiring Committee Consideration, and Public Comment Period.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Elaine Guthrie at the address or telephone number listed above. Requests to make oral presentations must be received 5 days prior to the meeting; reasonable provision will be made to include the statement in the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on August 2, 1991.

Stephen J. Garvey,

Deputy Advisory Committee Management Officer.

[FR Doc 91–18894 Filed 8–7–91; 8:45 a.m.]

BILLING CODE 6450-10-M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration

ACTION: Notice of requests submitted for review by the Office of Management and Budget

SUMMARY: The Energy Information Administration (EIA) has submitted the energy informaton collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96–511, 44 U.S.C. 3501 et seq.). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of responses per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed by September 9, 1991. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address coments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 586–2171.

SUPPLEMENTARY INFORMATION:

The energy information collection submitted to OMB for review was:

1. Energy Information Administraton.
2. EIA–876A/E.
3. 1905–0066.
4. Residential Transportation Energy Consumption Survey.
5. Revision.
6. Triennial.
7. Voluntary.
8. Individuals or households.
9. 3,000 respondents.
10. 1 response.
11. .251 hours per response.
12. 752 hours.
13. Forms EIA–876A/E will provide information on the number and types of vehicles per household, annual mileage, gallons of fuel consumed, fuel type used, price paid for fuel, annual fuel expenditures and fuel efficiency as measured by miles-per-gallon. Data will be published. Repsondents are households.

Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC., August 5, 1991.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc 91–18895 Filed 8–7–91; 8:45 a.m.]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CS91–11–000]

Mustang Fuel Corp. and Mustang Fuel Corp. of Oklahoma; Application for Small Producer Certificate

August 1, 1991.

Take notice that on July 18, 1991, Mustang Fuel Corporation and Mustang Fuel Corporation of Oklahoma (Applicants) of 2000 Classen Center-800 East, Oklahoma City, Oklahoma 73106 filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Commission's regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the application which is on file with the

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Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 19, 1991, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-18796 Filed 8-7-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-65-004]

Arkla Energy Resources; Tariff Filing

August 2, 1991.

Take Notice that on July 29, 1991, Arkla Energy Resources ("AER"), a division of Arkla, Inc., filed revised tariff sheets to Second Revised Volume No. 1 and First Revised Volumn No. 1-A of its FERC Gas Tariff to become effective July 1, 1991. AER states that these tariff sheets are filed in order to comply with the Commission's order dated July 22, 1991, which required AER to utilize total annual throughput determinants, including gathering only volumes, to calculate its Order 528 commodity charge. AER states that a copy of the accompanying tariff sheets has been served on all jurisdictional customers and interested state Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's rules of practice and procedure, 18 CFR 385.211. All such protests should be filed on or before August 9, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-18878 Filed 8-7-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA92-1-32-000]

Colorado Interstate Gas Co.; Filing of Annual Purchased Gas Adjustment

August 2, 1991.

On July 31, 1991, Colorado Interstate Gas Company ("CIG") filed the following proposed tariff sheets to reflect an annual purchased gas adjustment ("PGA"):

Eighth Revised First Revised Sheet No. 7.1
Eighth Revised First Revised Sheet No. 7.2
Eighth Revised First Revised Sheet No. 8.1
Eighth Revised First Revised Sheet No. 8.2

CIG requests that these proposed tariff sheets be made effective on October 1, 1991.

CIG notes that the tariff rates underlying Eighth Revised First Revised Sheet Nos. 7.1 through 8.2 reflect a net 0.51 cent decrease in the commodity rate for the G-1, P-1, SG-1, H-1, F-1 and PS-1 Rate Schedules, which includes a 1.48 cent decrease in the current adjustment attributable to projected purchased gas costs for the quarter beginning October 1, 1991, and a 0.97 cent increase attributable to the expiration of the current "credit" surcharge (5.54 cents) on September 30, 1991. CIG states that there is no change in the Demand-1 or Demand-2 rates because it currently does not incur "as billed" charges from its suppliers. CIG states that the proposed rates compare with those it filed on May 31, 1991, in Docket No. TQ91-3-32, which rates were accepted by Commission Letter Order dated July 24, 1991, to become effective on July 1, 1991.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies, and the filing is available for public inspection at CIG's offices in Colorado Spring, Colorado.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests should be filed on or before August 22, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-18879 Filed 8-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER91-457-000]

Central Maine Power Co., Order Conditionally Accepting Rates as Modified and Notices of Termination, Ordering Refunds and Payment of Additional Filing Fees Announcing Policy Concerning the Timing of Electric Rate Filings

Issued August 2, 1991.

Background

On May 1991, Central Maine Power Company (Central Maine) filed 14 agreements providing for the separate sale of short-term capacity and energy from Central Maine to each of the following entities: Boston Edison Company (Boston Edison), Massachusetts Municipal Wholesale Electric Company (MMWEC), Public Service Company of New Hampshire (PSNH), New England Power Company (NEPCO), and Canal Electric Company (Canal). The agreements involve sales varying in duration from one month to 18 months. Service for these transactions commenced on various dates between May 1, 1987 and June 1, 1990, and terminated on various dates between October 31, 1987 and October 31, 1990. Central Maine asserts that:

> All sales have occurred on mutually agreed terms and conditions, determined by arms'-length negotiation as evidenced by the executed agreements filed herewith.
>
> The charges for capacity were separately negotiated for each transaction and vary with market conditions at the time each agreement was entered into.
>
> Energy charges in each instance were (Central Maine's) actual unit fuel costs for the energy sold.[1]

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[1] Central Maine Filing at 2. Central Maine adds that rates for two of the negotiated transactions (sales to PSNH and to NEPCO in October 1988) included a transmission component of $15.79 per kw/year (pro-rated monthly). Central Maine states that this transmission rate is identical to the rate filed by Central Maine and accepted by the Commission, for separate transmission service furnished to PSNH and to Boston Edison covering the same period of time (Central Maine Rate Schedule FERC No. 87). *Id.*

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Lois D. Cashell,
Secretary.

[FR Doc. 91–18879 Filed 8–8–91; 8:45 am]

BILLING CODE 6717-01-M

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In support of these assertions, Central Maine refers to a number of the Commission's recent orders accepting market-based rates.[2] Central Maine claims that the 14 agreements submitted here meet the criteria for Commission approval set forth in those orders. Because Central Maine requests approval for the rates as market-based, Central Maine has submitted no cost of service data.

Central Maine also requests waiver of the Commission's notice and filing requirements to permit the agreements to become effective as of the date service commenced under each agreement. 18 CFR 35.3(a). Central Maine claims that the one-to-four-year delay in filing the 14 agreements was "inadvertent and unintentional." Central Maine further argues that good cause exists to grant the requested waivers because of the "consensual and short-term nature of the transactions, the short notice on which most of these sales commenced, and the press of other business."[3]

Because service under each of the 14 agreements terminated prior to Central Maine's filing, Central Maine submits a notice of termination for each agreement. Central Maine also requests waiver of the notice requirement so that the proposed notices of termination may become effective on the dates the agreements expired by their own terms. Finally, Central Maine requests waiver of the Commission's regulations concerning the filing of cost-of-service data.[4]

Notice of Central Maine's filing was published in the **Federal Register**,[5] with comments, protests, and interventions due on or before June 19, 1991. None were filed.

Discussion

As discussed below, we will conditionally accept Central Maine's rates as modified pursuant to this order. Further, we will order refunds, with interest pursuant to 18 CFR 35.19a.

We note that service under all 14 of the agreements at issue concluded before the agreements were even filed. The Commission has on several occasions expressed its disapproval of parties transacting business in violation of the Federal Power Act (FPA) and the Commission's regulations.[6] Section 205(c) of the FPA requires that agreements for jurisdictional transmission and sales be on file with the Commission.[7]

In *Portland General Exchange, Inc. (PGE–PGX),*[8] *the Commission stated:*

> [W]e do not look favorably upon utilities undertaking sales such as these in violation of the section 205 FPA requirement that a rate schedule be on file for any wholesale sale in interstate commerce. It is particularly troublesome in a case such as this, where non-traditional rates are being sought for a long-term power sale and our ability to effectively remedy the defect in the rates is restricted as a result of the sales taking place without Commission approval.[9]

The reasoning in *PGE–PGX* applies *a fortiori* here: in *PGE–PGX*, the filing utility delayed filing a single, 30-year transaction until 11 months after service began. Here, Central Maine has delayed the filing of 14 separate agreements under which service commenced between one and four years before the date of filing; further, service under all 14 agreements is now complete. Central Maine's stated explanation for its delay in filing, focusing on the "short-term," "consensual" nature of the transactions and the "press of other business," simply does not excuse its noncompliance with the explicit filing requirements of the FFA and our regulations.

More recently, in Central Vermont Public Service Corporation (Central Vermont),[10] the Commission stated that prior Commission approval is absolutely necessary in order for parties to receive approval of non-traditional rates.[11] In that case, Central Vermont completed several transactions prior to filing an application for Commission approval, provided service at non-traditional rates, and failed to support adequately the rates embodied in the submitted agreements.[12]

We find that Central Maine's filing presents a situation comparable to that in *Central Vermont.*[13] Additionally, we note that despite the Commission's statements in *PGE–PGX* and in *Central Vermont*, Central Maine apparently continued to see no immediate need to file the 14 agreements. Accordingly, as in *Central Vermont*, we will direct Central Maine to revise its rates for the 14 transactions to a level reflecting a 100 percent contribution to the fixed costs of the facilities used to provide the service We will, accordingly, also direct Central Maine to refund all amounts it has collected in excess of the revised rates, together with interest calculated in accordance with the Commission's regulations.[14]

In addition, we shall require Central Maine to pay the appropriate filing fees, which would have been applicable to the timely filing of the 14 agreements. Central Maine paid $2,970, the appropriate amount for a single filing made after October 11, 1990, the effective date of the Commission's new filing fee structure.[15] However, since all of the transactions should have been filed prior to that date,[16] Central Maine must pay the fees applicable under the old fee structure. Thus, we shall require Central Maine to submit filing fees in the amount of $89,850 (14 agreements, times the applicable filing fee ($6,630), less $2,970), plus interest (calculated in accordance with the Commission's regulations) accrued from the dates the applicable fees should have been paid. We shall accept the rates only on the condition that this fee is paid within 45 days of the date of this order.

Furthermore, strictly based on Central Maine's agreement to the above conditions we find that good cause exists to grant a waiver of the notice requirements (for the filing of the rates as well as the notices of termination).

Policy Concerning the Timing of Electric Rate Filings

Under section 205(d) of the FPA, all jurisdictional rates must be filed with the Commission in a timely manner, in accordance with part 35 of the

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[2] Central Maine Transmittal Letter at 2–3, *citing, inter alia,* Cleveland Electric Illuminating Co., 55 FERC ¶ 61,172 (1991); Central Maine Power Co., 53 FERC ¶ 61,465 (1990); Commonwealth Atlantic Limited Partnership, 51 FERC ¶ 61,368 (1990); Public Service Company of Indiana, Inc. (*PSI*), Opinion No. 349, 51 FERC ¶ 61,367, order on rehearing, PSI Energy, Inc., Opinion No. 349–A, 52 FERC ¶ 61,260 (1990).

[3] Central Maine Filing at 7.

[4] 18 CFR 35.13.

[5] 56 FR 27005 (1991).

[6] Most recently, in Nevada Power Company, 55 FERC ¶ 61,379 at 62,153 n.14 (1991), we expressed our concern at the "increasing number of rate filings made long after the parties have undertaken new obligtions." We cautioned filing utilities "that we may not be as generous in the future in finding good cause to grant waiver if presented with, *inter alia,* unexplained filing delays."

[7] 16 U.S.C. 824d(c) (1988).

[8] 51 FERC ¶ 61,108 (1990), *order granting clarification* 51 FERC ¶ 61,379 (1990), *order accepting compliance filing*, 53 FERC ¶ 61,216 (1990).

[9] 51 FERC at 61,246 n.67.

[10] 54 FERC ¶ 61,153 (1991).

[11] *Id.* at 61,484–85.

[12] *Id.* at 61,484.

[13] *Central Vermont* was issued on February 15, 1991, more than three months before the filing in this case.

[14] *See* 18 CFR 35.19a. Refunds will be deferred until the Commission accepts Central Maine's compliance filing.

[15] *See* Revision of Rate Schedule Filings under Sections 205 and 206 of the Federal Power Act, Order No. 527, 55 Federal Register 41,996, 53 FERC ¶ 61,043 [FERC Statutes and Regulations ¶ 30,900] (1990), *clarified*, Order No. 527–A, 56 Federal Register 3,029, 54 FERC ¶ 61,034 (FERC Statutes and Regulations ¶ 30,912) (1991).

[16] T3See id.

Commission's regulations. The statute and the Commission's regulations also give the Commission the discretion to allow rates to take effect with less than sixty-days' notice for good cause shown.[17] As noted above, in several recent cases public utilities have delayed tendering rate filings to the Commission until after service has begun, and in some cases, as here, completed. Such delay has occurred in instances where utilities have sought to justify their rates on a cost basis, as well as in instances where non-traditional (market-based) rates have been requested. Delay in tendering rate filings can place the Commission in a difficult position, regardless of whether the rates are cost- or market-based. However, this problem is most acute when market-based rates are requested. Timing is critical in such cases. The Commission cannot cure a defective market or market process retroactively. Therefore, *all* rates submitted on a non-traditional basis must be filed with the Commission at least 60 days before the expected date of commencement of service, in accordance with § 35.3(a) of the Commission's regulations.[18] Furthermore, only in extreme circumstances will we consider exercising our discretion to waive the sixty-day notice requirement for non-traditional rate filings.

To the extent utilities are transacting under existing agreements embodying non-traditional rates that have not yet been filed with the Commission, we hereby announce that such utilities have 60 days after publication of this order in the **Federal Register** to file such rates.[19] We will permit the seller to recover no more than a 100 percent contribution to fixed costs as described above from the date service commenced until the date the Commission accepts the rates. We will require refunds, with interest pursuant to 18 CFR 35.19a (1991), for all amounts in excess thereof. However, with respect to all non-traditional rates that are not timely filed and are filed more than 60 days after publication of this order in the **Federal Register**, the Commission will permit the seller to recover no more than the variable operation and maintenance (O&M) costs from the date service commenced until the date the Commission accepts the rates and will require refunds, with interest pursuant to 18 CFR 35.19a, for all amounts in excess thereof.

In addition, the Commission is announcing a similar policy with respect to traditional cost-based rates. We are aware of the argument that, due to the need to respond quickly to market changes and opportunities for coordination, in some cases transactions must begin before the utility has a chance to file the rate reflecting the transaction with the Commission. While this argument has some merit, we note that many utilities have managed to avoid this problem by having tariffs on file that permit transactions to be negotiated subject to a cap of 100 percent contribution to fixed costs. The Commission has allowed market-based pricing under a similar tariff in *PSI*, note 2, *supra*. Such tariffs give the selling utility the flexibility to respond to market opportunities while satisfying its obligation to have its rate on file. While we do not want to discourage these types of short-term coordination transactions, we cannot allow utilities to ignore our regulations.

Our regulations require rates to be filed 60 days before the expected date of commencement of service, in accordance with § 35.3 of the Commission's regulations. Only upon good cause shown will we grant waiver of the sixty-day notice requirement for cost-based rate filings. Accordingly, to the extent that utilities are transacting under agreements embodying cost-based rates that have not yet been filed with the Commission, we hereby announce that such utilities have 60 days after publication of this order in the **Federal Register** to file such rates. If the rates are filed within 60 days of publication of this order, we will permit the seller to recover no more than a 100 percent contribution to fixed costs. However, with respect to all cost-based rates that are not timely filed and are filed more than 60 days after publication of this order in the **Federal Register**, the Commission will permit the seller to recover no more than the variable O&M costs from the date service commenced until the date the Commission accepts the rates. The Commission will order refunds, with interest pursuant to 18 CFR 35.19(a), for all amounts in excess thereof.

The Commission Orders

(A) Central Maine's agreements and notices of termination are hereby conditionally accepted as modified, as discussed in the body of this order.

(B) Waiver of the Commission's notice requirements is hereby granted for the filing of the rates and the notices of termination, as discussed in the body of this order.

(C) Central Maine is hereby directed to file revised rates reflecting changes discussed in the body of this order within 45 days of the date of issuance of this order. If a request for rehearing is pending at the expiration of the 45-day period, such filing shall be made within 15 days of the date the Commission disposes of the rehearing.

(D) Central Maine is hereby directed to refund all amounts received in excess of the revised rates determined in accordance with Ordering Paragraph (C) above, within 15 days of the date the Commission accepts Central Maine's compliance filing plus interest calculated in accordance with 18 CFR 35.19a.

(E) Central Maine is hereby directed to file a refund report within 15 days of making the appropriate refunds pursuant to Ordering Paragraph (D), above.

(F) Central Maine is hereby directed to submit, within 45 days of the date of issuance of this order, additional filing fees in the amount of $89,850, as discussed in the body of this order, plus interest calculated in accordance with 18 CFR 35.19a. However, if a request for rehearing is pending at the expiration of the 45-day period, the additional filing fees shall be paid within 15 days of the date the Commission disposes of the rehearing.

(G) The Secretary shall promptly publish a copy of this order in the **Federal Register**.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 91-18677 Filed 8-7-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-12-001]

Granite State Gas Transmission, Inc.; Compliance Filing

August 2, 1991.

Take notice that on July 31, 1991, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581-5039 filed the revised tariff sheets listed below in its FERC Gas Tariff, Second Revised Volume No. 1, for effectiveness on August 1, 1991:

Fourth Revised Sixth Revised Sheet No. 21
Revised First Revised Sheet No. 36

According to Granite State, the revised tariff sheets listed above are filed in compliance with a Stipulation and Agreement in Docket No. RP91-12-000 approved by the Commission in an

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[17] *See* 16 U.S.C. 824d(d) (1988); 18 CFR 35.3(a), 35.11; *see also, e.g., San Diego Gas & Electric Co.* v. *FERC*, 904 F.2d 727, 731 (D.C Cir. 1990); *City of Girard* v. *FERC*, 790 F.2d 919, 925 (D.C. Cir. 1986).

[18] 18 CFR 35.3(a).

[19] This policy applies to service under new agreements and in no way affects our current policies regarding increases in rates under existing agreements currently on file.

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termination, as discussed in the body of this order.

(C) Central Maine is hereby directed to file revised rates reflecting changes discussed in the body of this order within 45 days of the date of issuance of this order. If a request for rehearing is pending at the expiration of the 45-day period, such filing shall be made within 15 days of the date the Commission disposes of the rehearing.

(D) Central Maine is hereby directed to refund all amounts received in excess of the revised rates determined in accordance with Ordering Paragraph (C) above, within 15 days of the date the Commission accepts Central Maine's compliance filing plus interest calculated in accordance with 18 CFR 35.19a.

(E) Central Maine is hereby directed to file a refund report within 15 days of making the appropriate refunds pursuant to Ordering Paragraph (D), above.

(F) Central Maine is hereby directed to submit, within 45 days of the date of issuance of this order, additional filing fees in the amount of $89,850, as discussed in the body of this order, plus interest calculated in accordance with 18 CFR 35.19a. However, if a request for rehearing is pending at the expiration of the 45-day period, the additional filing fees shall be paid within 15 days of the date the Commission disposes of the rehearing.

(G) The Secretary shall promptly publish a copy of this order in the **Federal Register**.

By the Commission.

Lois D. Cashell,
Secretary.

[FR Doc. 91-18877 Filed 8-7-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-12-001]

Granite State Gas Transmission, Inc.; Compliance Filing

August 2, 1991.

Take notice that on July 31, 1991, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581-5039 filed the revised tariff sheets listed below in its FERC Gas Tariff, Second Revised Volume No. 1, for effectiveness on August 1, 1991:

Fourth Revised Sixth Revised Sheet No. 21
Revised First Revised Sheet No. 36

According to Granite State, the revised tariff sheets listed above are filed in compliance with a Stipulation and Agreement in Docket No. RP91-12-000 approved by the Commission in an

order issued July 25, 1991. It is stated that the Stipulation and Agreement is an uncontested settlement of Granite State's restatement rate filing. Granite State further states that, in the settlement, it agreed to reduce the non-gas components in the Commodity Rates of its Rate Schedules CD-1 and CD-2 for sales to Bay State Gas Company and Northern Utilities, Inc., respectively, effective on the first day of the month following Commission approval of the settlement. It is further stated that the reduction in the non-gas component of the Commodity rate for sales also results in an equivalent reduction of the Overrun Rates for sales. Accordingly, Granite State states that the revised tariff sheets submitted with its filing reflect the agreed upon reductions in the non-gas components of its sales rates and the Overrun Rates for sales.

According to Granite State, copies of its filing were served upon its customers, all intervenors in Docket No. RP91-12-000 and the regulatory commission of the states of Maine, New Hampshire and Massachusetts.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's rules of practice and procedure 18 CFR 385.211. All such protests should be filed on or before August 9, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91-18880 Filed 8-7-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT91-5-000]

Northwest Pipeline Corp.; FERC Order No. 493 Electronic Filing

August 1, 1991.

Take notice that on October 25, 1990, Northwest Pipeline Corporation (Northwest) tendered for filing Original Sheet Nos. 1 through 303 to its FERC Gas Tariff, Second Revised Volume No. 1 (which supersedes First Revised Volume No. 1); and Original Sheet Nos. 1 through 602 to its FERC Gas Tariff, First Revised Volume No. 1-A (which supersedes Original Volume No. 1-A). The purpose of this filing is to refile Northwest's tariff electronically, as required by FERC Order No. 493. Northwest states that copies of the filing were mailed to all of its jurisdictional customers and affected state commissions.

The Commission, by letter order dated November 21, 1990, accepted and suspended the above referenced tariff sheets, permitting them to become effective November 25, 1990, subject to refund and further review.

Any person desiring to be heard or protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with rule 214 and 211 of the Commission's rules of practice and procedure (18 CFR 385.214 and 385.211). All such motions or protests must be filed on or before August 16, 1991. Protects will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 91-18795 Filed 8-7-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-3-55-000]

Questar Pipeline Co.; Rate Change

August 2, 1991.

Take notice that on July 31, 1991, Questar Pipeline Company tendered for filing and acceptance to its FERC Gas Tariff to be effective September 1, 1991, First Revised Thirteenth Revised Sheet No. 12, Original Volume No. 1.

Questar states that the purpose of this filing is to adjust the purchased gas cost under Questar's sale-for-resale Rate Schedule CD-1 effective September 1, 1991.

Questar states that the First Revised Thirteenth Revised Sheet No. 12 shows a commodity base cost of purchased gas as adjusted of $2.74201/Dth which is $0.22590 lower than the currently effective rate of $2.96791/Dth. The demand base cost of purchased gas as adjusted increased $0.00013/Dth from $0.00601/Dth to $0.00614/Dth.

Questar states that it has provided a copy of the filing to Mountain Fuel Supply Company and interested state public service commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211. All such protests should be filed on or before August 9, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91-18881 Filed 8-7-91; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10813-000; West Virginia]

Town of Summersvile, WV; Notice Declaring Application Ready for Environmental Analysis

August 1, 1991.

Take notice that the application for license for the Summersville Project No. 10813, is ready for environmental analysis and comments are sought on the merits of the application.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108 (May 20, 1991)), that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the date of this notice (including mandatory and recommended terms and conditions or prescriptions pursuant to sections 4(e), 18, 30(c) of the Federal Power Act (FPA), and section 405(d) of the Public Utility Regulatory Policies Act, the Fish and Wildlife Coordination Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, and other applicable statutes). All reply comments must be filed with the Commission within 105 days from the date of this notice.

The Commission has received comments and recommendations from the West Virginia Division of Natural Resources dated March 14 and 15, 1991, and the U.S. Department of the Interior, Office of the Secretary, dated March 1, 1991, in response to the public notice of the application issued on January 11, 1991; these agencies need not refile their previous comments and recommendations.

All filings must: (1) Bear in all capital letters the title "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list and any affected resource agencies and Indian tribes.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008. Requests for additional procedures and replies to such requests may be filed in accordance with 18 CFR 4.34 (a) and (c).

You are advised to contact Michael Dees on (202) 219-2807, if you have any questions about this notice.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-18794 Filed 8-7-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP90-8-006 and RP90-8-007]

Transcontinental Gas Pipeline Corporation; Informal Settlement Conference

August 1, 1991.

Take notice that an informal settlement conference will be convened in this proceeding on August 9, 1991, at 9:30 a.m., in the Commission offices, 810 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of issues related to Transco's Mobile Bay Pipeline Facilities.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Sandra J. Delude (202) 208-2161.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-18792 Filed 8-7-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-3-56-000]

Valero Interstate Transmission Co.; Proposed Change in FERC Gas Tariff

August 2, 1991.

Take notice that Valero Interstate Transmission Company ("Vitco"), on July 31, 1991, tendered for filing the following tariff sheet as required by Orders 483 and 483-A containing changes in Purchased Gas Cost Rates pursuant to such provisions:

FERC Gas Tariff, Original Volume No. 2

36th Revised Sheet No. 6

Vitco states that this filing reflects changes in its purchased gas cost rates pursuant to the requirements of Orders 483 and 483-A. Vitco states that the change in rates to Rate Schedule S-3 includes an increase in purchased gas cost of $0.1630 per MMBtu.

The proposed effective date of the above filing is September 1, 1991. Vitco requests a waiver of any Commission order or regulations which would prohibit implementation by September 1, 1991.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 9, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-18882 Filed 8-7-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed During the Week of June 21 Through June 28, 1991

During the Week of June 21 through June 28, 1991, the applications for relief listed in the appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an agrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: August 2, 1991.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of June 21 through June 28, 1991]

Date	Name and location of applicant	Case No.	Type of submission
June 21, 1991	Amoto I/Washington, National Helium/Washington, Olympia, Washington.	RM21-253, RM21-254	Request for modification/rescission in the Amoco I & Nat'l Helium Second Stage Refund Proceeding. *If Granted:* The 06/08/84 & 01/13/86 Decisions and Orders (Case Nos. RQ21-56 and RQ2-236) issued to the State of Washington would be modified regarding the State's application for refund submitted in the Amoco & National Helium second stage refund proceeding.

3-006 and RP90-9-007]

Gas Pipeline
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ed 8-7-91; 8:45 am]

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Transmission Co.;
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Valero Interstate
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Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 9, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 91-18882 Filed 8-7-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed During the Week of June 21 Through June 28, 1991

During the Week of June 21 through June 28, 1991, the applications for relief listed in the appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an agrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: August 2, 1991.

Thomas O. Mann,
Acting Director, Office of Hearings and Appeals.

OFFICE OF HEARINGS AND APPEALS

rough June 28, 1991]

Case No.	Type of submission
253, RM21-	Request for modification/rescission in the Amoco I & Nat'l Helium Second Stage Refund Proceeding. *If Granted:* The 06/08/84 & 01/13/86 Decisions and Orders (Case Nos. RQ21-56 and RQ2-236) issued to the State of Washington would be modified regarding the State's application for refund submitted in the Amoco & National Helium second stage refund proceeding.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of June 21 through June 28, 1991]

Date	Name and location of applicant	Case No.	Type of submission
May 28, 1991	Texaco/Gerstmann Texaco, Bossier, Louisiana	RR321-73	Request for modification/rescission in the Texaco Refund Proceeding. *If Granted:* The 05/10/91 Decision and Order (Case No. RF321-14983) issued to Gerstmann Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.

REFUND APPLICATIONS RECEIVED

[Week of June 21 to June 28, 1991]

Date received	Name of refund proceeding/name of refund applicant	Case No.
06/21/91	American Cyanamid Co	RF336-14
06/24/91	Arax Gas Station	RF329-5
06/24/91	Muladelphia Electric Co	RF336-5
06/24/91	Corey Oil Co	RF315-10149
06/26/91	Gem Oil Company	RF330-30
06/24/91	Defense Fuel Supply Center.	RF326-310
06/27/91	Fall River Housing Authority.	RF336-16
06/27/91	Mapleton School Dist	RF272-125
06/21/91 thru 06/28/91.	Texaco Refund applications received.	RF321-15780 thru RF321-16194
06/21/91 thru 06/28/91.	Crude Oil Refund applications received.	RF272-89428 thru RF272-89441
06/21/91 thru 06/28/91.	Gulf Oil Refund applications received.	RF300-17081 thru RF300-17132
06/21/91 thru 06/28/91.	Atlantic Richfield Refund applications received.	RF304-12307 thru RF304-12352

[FR Doc. 91-18896 Filed 8-7-91; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Salt Lake City Area Integrated Projects Proposed Single-issue Power Rate Adjustment

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed Salt Lake City area integrated projects single-issue power rate adjustment.

SUMMARY: The Western Area Power Administration (Western) is proposing a single-issue rate increase for firm power from the Salt Lake City Area Integrated Projects (Integrated Projects) beginning December 1, 1991, and extending through the end of FY 1992 or until a regular rate adjustment (scheduled for July 1, 1992) is put in place, whichever occurs first. The Integrated Project consist of the Colorado River Storage Project (CRSP), the Collbran Project, and the Rio Grande Project, which have been integrated for marketing and power ratesetting purposes. The rate increase is neeed on an expedited basis to cover the cost of increased purchased power that will be required as the operation of Glen Canyon Dam is modified by release constraints (interim releases). These interim releases are presently anticipated to be placed in effect by the Department of the Interior in the near future.

The interim releases are intended to improve environmental conditions downstream of Glen Canyon Dam by changing the present operation of the Glen Canyon Dam and powerplant. The interim releases are intended to stay in effect until implementation of the Secretary of the Interior's Record of Decsion associated with the Glen Canyon Dam Environmental Impact Statement currently scheduled for October 1993. Alternative proposals for interim releases are being recommended by the Bureau of Reclamation (Reclamation) and others. Under Western's proposal for interim releases, additional purchase power costs could amount to $7 million in FY 1992. Other proposals could result in additional purchase power costs of as much as $30 million in FY 1992. For purposes of this notice, additional purchase power cost of $22.7 million were used to establish the proposed rate increase.

The proposed power rate increase would amount to an additional capacity charge of $.70 per kilowatt-month (kW-month) for a total capacity charge of $3.78/kW-month. An additional energy charge of 1.65 mills per kilowatthour (mills/kWh) for a total charge of 8.9 mills/kWh, which would result in a proposed combined rate increase of 3.3 mill/kWh (17.8 mills total) calculated at a 58.2-percent load factor. The proposed rate increase would become effective December 1, 1991. This increase is 22.6 percent over the existing combined rate of 14.5 mills/kWh calculated at a load factor of 58.2 percent, which is composed of a $3.08/kW-month capacity charge and a 7.25 mills/kWh energy charge.

An explanation of the need for this single/issue rate increase due to interim releases and the methodology used in developing the proposed rate will be distributed to Integrated Projects power customers and other interested parties following publication of this notice.

Customers and interested parties are invited to comment on the proposed rates and methodology.

The proposed Integrated Projects firm power rate adjustment is a major rate adjustment because annual Integrated Projects sales are normally more than 100 million kilowatthours. Therefore, in accordance with the Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions (10 CFR part 903), a public information forum and a public comment forum will be held; however, due to the need to expedite this rate process, the consultation and comment period will be shortened.

Following review of public comments, Western will recommend final proposed rates to the Deputy Secretary of Energy to be placed in effect on an interim basis prior to submission to the Federal Energy Regulatory Commission (FERC) for approval on a final basis.

DATES: The consultation and comment period will begin with publication of this notice in the **Federal Register** and will end on September 24, 1991.

A public information forum, at which Western will outline the methodology used in developing the proposed rate increase and answer questions, will be held at the Red Lion Inn, 255 South West Temple, Salt Lake City, Utah, at 9:30 a.m. on September 9, 1991. Immediately following the information forum, a public comment forum will be held at which Western will receive oral and written comments. Thse forums will be transcribed by a court reporter. Written comments should be received by the end of the consultation end comment period to be assured consideration. For comments or futher information contact: Mr. Lloyd Greiner, Area Manager, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606,

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Salt Lake City, UT 84147–0606, (801) 524–5493.

SUPPLEMENTARY INFORMATION: Power rates for the Integrated Projects are established pursuant to the DOE Organization Act of August 4, 1977, 42 U.S.C. 7101, *et seq.*; the Reclamation Act of 1902, ch. 1093, 372 Stat 388 (1902), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c); and other acts specifically applicable to the projects involved.

By Delegation Order No. 0204–108, effective December 14, 1983 (48 FR 55664), as amended May 30, 1986 (51 FR 19744), reassigned by DOE Notice 1110.29 dated October 27, 1988, and clarified by Secretary of Energy Notice SEN–10–89 dated August 3, 1989, and subsequent revisions, the Secretary of Energy delegated (1) the authority on a nonexclusive basis to develop long-term power and transmission rates to the Administrator of Western; (2) the authority to confirm, approve, and place such rates in effect on an interim basis to the Deputy Secretary of DOE; and (3) the authority to confirm, approve, and place in effect on a final basis, to remand, or to disapprove such rates to FERC.

The procedures for public participation in rate adjustments for power and transmission service marketed by Western at 10 CFR part 903 were published in the **Federal Register** at 50 FR 37835 on September 18, 1985.

Availability of Information

All brochures, studies, comments, letters, memorandums, and other documents made or kept by Western for the purpose of developing the proposed rate are available for inspection and copying at the Salt Lake City Area Office, 257 East 200 South, suite 475, Salt Lake City, Utah.

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969, Council of Environmental Quality Regulations (40 CFR parts 1500 through 1508), and DOE guidelines published at 52 FR 47662 on December 15, 1987, Western will conduct an environmental evaluation of the Integrated Projects rate adjustment and develop the appropriate level of environmental documentation prior to the implementation of any rate increase.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the initiation of the proposed rate relates to nonregulatory services provided by Western at a particular rate. Under 5 U.S.C. 601(2), rules of particular applicability relating to rates or services are not considered rules within the meaning of the Act. Because the proposed rates are of limited applicability, Western believes that no flexibility analysis is required.

Determination Under Executive Order 12291

DOE has determined that this is not a major rule because it does not meet the criteria of Section 1(b) of Executive Order 12291 (46 FR 13193, published February 19, 1981). In addition, Western has an exemption from Sections 3, 4, and 7 of Executive Order 12291, and therefore, will not prepare a regulatory impact statement.

Issued at Golden, Colorado, August 1, 1991.

William H. Clagett,

Administrator.

[FR Doc. 91–18897 Filed 8–7–91; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3982–7]

Enhanced Monitoring and Compliance Certification Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability and of public meeting.

SUMMARY: The EPA is planning to propose regulations on enhanced monitoring and compliance certification as required by section 702(b) of the Clean Air Act Amendments of 1990 (the Amendments). These regulations will apply to all major stationary sources as defined under the provisions of the Clean Air Act and will impose new requirements on those sources related to monitoring and submission of compliance certifications.

Because of the broad application of this regulation and the complexities of the issues it will address, EPA believes that the many parties potentially affected by the regulation should have an opportunity to discuss the issues raised by the regulation with EPA in advance of EPA's formal proposal of the regulation. This notice announces the public availability of a public information document and EPA's intent to conduct a one-day public meeting to discuss some of the issues of particular concern to the parties that will be affected by the regulation. In addition, the Agency will accept written comments on the public information document provided that comments are received by August 30, 1991. The Agency plans to use this process to obtain public comment before developing and promulgating a proposed regulation.

DATES: The public meeting will be held August 22, 1991 from 8:30 a.m. to 5 p.m.

ADDRESSES: The public meeting will be held at the J.W. Marriott Hotel at National Place in Washington, DC, 1331 Pennsylvania Avenue NW., (202) 393–2000. Participants should advise the hotel that they are attending the EPA meeting on the enhanced monitoring and compliance certification regulation.

To assist EPA in planning the public meeting, persons interested in attending should contact Ms. Julia Rottman, Public Meeting Coordinator, at (804) 979–3700, telefax (804) 296–2860, Perrin Quarles Associates, Inc., 501 Faulconer Drive, suite 2–D, Charlottesville, Virginia 22901, to give their name and affiliation. Please register by August 19, 1991.

COMMENTS: Written comments are due on or before August 30, 1991. Comments should be submitted (in duplicate, if possible) to: Air Dockets Section (A–131), Attention: Docket No. A–91–52, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

AVAILABILITY OF PUBLIC INFORMATION DOCUMENT: The public information document on enhanced monitoring and compliance certification is available for copying from the docket (address below). Please refer to "Public Information Document: Enhanced Monitoring and Compliance Certification." A reasonable fee may be charged for copying multiple copies.

DOCKET: Docket No. A–91–52 is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, Waterside Mall, room 1500, 1st floor, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Rapp at (703) 308–8697, Compliance Analysis Section, Compliance Monitoring Branch (EN–341–W), U.S. Environmental Protection

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DATES: The public meeting will be held August 22, 1991 from 8:30 a.m. to 5 p.m.

ADDRESSES: The public meeting will be held at the J.W. Marriott Hotel at National Place in Washington, DC, 1331 Pennsylvania Avenue NW., (202) 393–2000. Participants should advise the hotel that they are attending the EPA meeting on the enhanced monitoring and compliance certification regulation.

To assist EPA in planning the public meeting, persons interested in attending should contact Ms. Julia Rottman, Public Meeting Coordinator, at (804) 979–3700, telefax (804) 296–2860, Perrin Quarles Associates, Inc., 501 Faulconer Drive, suite 2–D, Charlottesville, Virginia 22901, to give their name and affiliation. Please register by August 19, 1991.

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FOR FURTHER INFORMATION CONTACT: Mr. Steven Rapp at (703) 308–8697, Compliance Analysis Section, Compliance Monitoring Branch (EN–341–W), U.S. Environmental Protection

Agency, 401 M Street SW., Washington, DC 20460.

Richard Biondi,

Director, Stationary Source Compliance Division, Office of Air Quality Planning and Standards.

[FR Doc. 91–18966 Filed 8–7–91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

American President Lines, Ltd., et al.; Agreement(s) Filed

The Federal maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011340.

Title: American President Lines, Ltd./Orient Overseas Container Line Inc. Reciprocal Slot Exchange and Coordinated Sailing Agreement.

Parties: American President Lines, Ltd. Orient Overseas Container Line Inc.

Synopsis: The proposed Agreement would authorize the parties to discuss and voluntarily agree on rates, service contracts and other matters in the U.S./Far East trade. It would also permit the parties to charter space on each other's vessels, establish sailing schedules, service frequency and port rotations.

Dated: August 2, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–18786 Filed 8–7–91; 8:45 am]

BILLING CODE 6730-01-M

Cooper/T. Smith Corporation et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 224–200491–002.

Title: Independent Marine Terminal Operators Discussion Agreement.

Parties: Cooper/T. Smith Corporation, Continental Stevedoring & Terminals, Inc., Eller & Company, Inc., Harrington & Company, Inc., International Terminal Operating Co., Inc., Maher Terminals, Inc., Marine Terminals Corp., Metropolitan Stevedore Company, Ryan-Walsh, Inc., Stevedoring Services of America, Ceres Terminals, Inc., Strachan Shipping Co.

Synopsis: The Agreement, filed July 31, 1991, amends the parties' basic agreement by adding Ceres Terminals, Inc. and Strachan Shipping Co. as parties to the agreement.

Dated: August 2, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–18787 Filed 8–7–91; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Committee, 1100 L Street, NW., room 10220. Insterested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in §§ 560.602 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No: 224–200553.

Title: Port of New Orleans/Dupuy Storage and Forwarding Corporation Terminal Agreement.

Parties: The Board of Commissioners of the Port of New Orleans (Board), Dupuy Storage and Forwarding Corporation (Dupuy).

Filing Party: Ms. Julia Ann Berrone, Staff Attorney, Port of New Orleans, P.O. Box 60046, New Orleans, LA 70160.

Synopsis: The Agreement, filed August 1, 1991, provides for the lease of 86,400 sq. ft. of the Florida Avenue Wharf facility located on the Inner Harbor-Navigational Canal, City of New Orleans, Louisiana on a month-to-month basis. Dupuy shall pay the Port a base rent of $86,400.00 per year and applicable tariff, dockage and wharfage charges (not demurrage and sheddage). Dupuy shall use the facility for the loading and unloading of cargo from vessels, barges, and other watercraft.

Dated: August 5, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–18906 Filed 8–7–91; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Club Med Sales, Inc., Services et Transports Cruise Lines, Credit Lyonnais, Societe Generale and Banque Nationale de Paris, 40 West 57th Street, New York, NY 10019.

Vessel: Club Med 1

Dated: August 5, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–18907 Filed 8–7–91; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Alaska Sightseeing Tours, Inc., West Marine, Inc. and West Travel, Inc., 4th and Battery Bldg., #700, Seattle, WA 98121.

Vessel: Spirit of Glacier Bay.

Dated: August 5, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–18908 Filed 8–7–91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

AmFirst Financial Services, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 27, 1991.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *AmFirst Financial Services, Inc.*, McCook, Nebraska; to acquire 100 percent of the voting shares of State Bancshares, Inc., Benkleman, Nebraska.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Assistant Vice President) 101 Market Street, San Francisco, California 94105:

1. *AmFirst Bancorporation*, Everett, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of American First National Bank, Everett, Washington.

Board of Governors of the Federal Reserve System, August 2, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-18818 Filed 8-7-91; 8:45 am]

BILLING CODE 6210-01-F

Sidney L. Knopf, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 27, 1991.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Sidney L. Knopf*, Dallas, Texas; to acquire an additional 15.01 percent (totalling 25.0 percent) of the voting shares of Eastpark Bancshares, Inc., Dallas, Texas, and thereby indirectly acquire Eastpark National Bank, Dallas, Texas.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Assistant Vice President) 101 Market Street, San Francisco, California 94105:

1. *Harry T. Goss*, Phoenix, Arizona; to retain 8.85 percent (up to 14.99 percent) of the voting shares of Republic National Bancorp, Inc., Phoenix, Arizona, and thereby indirectly retain Republic National Bank of Arizona, Phoenix, Arizona.

Board of Governors of the Federal Reserve System, August 2, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-18819 Filed 8-7-91; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

[G-91-3]

Delegation of Authority to the Chairman

Pursuant to the authority vested in me by section 3726 of title 31, United States Code, I have determined that it is cost-effective or otherwise in the public interest to delegate authority to the Chairman of the U.S. Nuclear Regulatory Commission to conduct a prepayment audit of transportation bills relating to the movement of foreign and domestic household goods, subject to the provisions of the Federal Property Management Regulations, title 41, Code of Federal Regulations, subpart 101–41, and amendments thereto. This prepayment audit will be conducted at the U.S. Nuclear Regulatory Commission, Division of Accounting and Finance, Washington, DC.

The Chairman may redelegate this authority to any officer, official, or employee of the U.S. Nuclear Regulatory Commission.

The Chairman shall notify the General Services Administration in writing of these redelegations. This delegation is effective upon publication in the **Federal Register**.

Dated: July 15, 1991.

Richard G. Austin,

Adminstrator of General Services.

[FR Doc. 91–18836 Filed 8–7–91; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Office for Substance Abuse Prevention Meeting

Pursuant to Public Law 92–463, notice is hereby give of the meeting of the advisory committees of the Office for Substance Abuse Prevention for September 1991.

The Advisory Committee on Substance Abuse Prevention will be

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Board of Governors of the Federal Reserve System, August 2, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-18819 Filed 8-7-91; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

[G-91-3]

Delegation of Authority to the Chairman

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The Chairman may redelegate this authority to any officer, official, or employee of the U.S. Nuclear Regulatory Commission.

The Chairman shall notify the General Services Administration in writing of these redelegations. This delegation is effective upon publication in the **Federal Register**.

Dated: July 15, 1991.

Richard G. Austin,

Administrator of General Services.

[FR Doc. 91-18636 Filed 8-7-91; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Office for Substance Abuse Prevention Meeting

Pursuant to Public Law 92-463, notice is hereby give of the meeting of the advisory committees of the Office for Substance Abuse Prevention for September 1991.

The Advisory Committee on Substance Abuse Prevention will be

performing review of applications for Federal assistance; therefore, a portion of this meeting will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. 2, 10(d).

A summary of the meeting and roster of committee members may be obtained from: Ms. D. Herman, (Acting) OSAP Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration, Rockwall II Building, Suite 630, 5600 Fishers Lane, Rockville, MD 20857 (Telephone: 301-443-7390).

Substantive program information may be obtained from the contact whose name, room number, and telephone number is listed below.

Committee Name: Advisory Committee on Substance Abuse Prevention.

Meeting Date(s): September 10-11, 1991.

Place: Executive Plaza North, 6130 Executive Boulevard, Rockville, MD 20852.

Open: September 10, 9 a.m.-12 p.m.

Closed: September 11, 9 a.m.-3 p.m. Otherwise

Contact: DeLoris L. James Hunter, Ph.D., Rockwall II Building, room 9D-10, Telephone (301) 443-0365.

Dated: August 5, 1991.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 91-18909 Filed 8-7-91; 8:45 am]

BILLING CODE 4160-20-M

Centers for Disease Control

[Announcement 143]

Cooperative Agreement for Improved Surveillance Methods for Fetal Alcohol Syndrome in a Community-Based High-Risk Infant Follow Up Program; Availability of Funds for Fiscal Year 1991

Introduction

The Centers for Disease Control (CDC), announces the availability of cooperative agreement funds in Fiscal Year 1991 for the development and testing of improved surveillance methods for fetal alcohol syndrome (FAS) in a community-based high-risk infant follow up program. The principal elements of the project are enhanced identification of high-risk newborns fitting an FAS profile, focused physical assessment of those meeting the FAS high-risk profile, developmental assessments during the follow up period, and assessment of maternal alcohol consumption during pregnancy.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Environmental Health, Maternal and Infant Health, and Alcohol and Other Drugs. (For ordering a copy of Healthy People 2000, see the section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under sections 301 (42 U.S.C. 241) and 311 (42 U.S.C. 243) of the Public Health Service Act, as amended.

Eligible Applicants

Eligible applicants include nonprofit and for-profit organizations. Thus, universities, colleges, research institutions, hospitals, and other public and private organizations, state and local health departments and small, minority and or women-owned businesses are eligible for these cooperative agreements. Applicant institutions must serve discrete geographical areas such as counties or cities with a minimum of 10,000 resident births per year. Applicants must demonstrate successful operation of an established high-risk infant tracking and follow up program to serve as a basis for a pilot FAS surveillance project. The infant tracking program must demonstrate established relationships with the pertinent clinical (e.g. labor and delivery and nurseries) and medical record units at all the hospitals in the geographical area under consideration.

The hospitals in the county, or other geographical area served by the applicant, should have, at a minimum, the following data routinely reported in infant charts and preferably in a central log or computerized database: Birth weight, length, head circumference, gestational age assessed by examination of the baby (not estimated by ultrasound or fundal height by obstetrical examination of the mother), and major birth defects apparent at birth.

Availability of Funds

It is anticipated that approximately $175,000 will be available in Fiscal Year 1991 to fund one cooperative agreement for Improved Surveillance Methods of Fetal Alcohol Surveillance in a Community-based High-risk Infant Follow up Program. The award is expected to begin by September 30, 1991. The award is expected to be for a 12-month budget period within a project period not to exceed 5 years. The funding estimate may vary and is subject to change, depending upon the availability of funds. Continuation awards will be based on satisfactory progress, need to continue the pilot program, and the availability of funds.

Purpose

The purpose of the cooperative agreement is to develop and implement a pilot surveillance system in a discrete geographical area such as a city or county or group of counties served by a health department or other health-related institution with a well established system for identifying high-risk infants with a profile similar to that required for FAS surveillance screening. The objectives of the surveillance pilot are (1) to develop improved surveillance methods for FAS; (2) to test these screening methods by examining a comparison group of children and surveying mothers of both groups for alcohol consumption and other possible exposures; and (3) to add to knowledge of biological risk factors for FAS through determination of enzyme polymorphisms for alcohol dehydrogenase and aldehyde dehydrogenase.

The cooperative agreement award will enable a health department or other health-related institution to enhance their existing high-risk infant tracking in order (1) to select the infants most likely to manifest FAS, (2) to examine these infants for signs of fetal alcohol exposure, (3) to assess development for any delay possibly attributable to fetal alcohol exposure, (4) to facilitate administration of a maternal questionnaire by telephone to ascertain demographic information, alcohol consumption, and other possible exposures, and (5) to collect maternal and infant blood specimens by fingerstick/heelstick using filter paper technique for metabolic and genetic studies. The cooperative agreement award will enable the recipient to collaborate to develop epidemiological studies related to FAS surveillance.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A. below, and CDC will be responsible for conducting activities under B. below;

A. Recipient Activities:

1. Develop a population surveillance pilot program for FAS with the following five activities:

a. Systematic identification of all resident Small for Gestational Age

(SGA) and Intrauterine Growth Retardation (IUGR) births with and without microcephaly or major birth defects;

b. Focused physical examination to detect signs of FAS;

c. Collection of filter paper blood specimens from mothers and infants;

d. Develop a maternal telephone questionnaire to obtain demographic and alcohol consumption data; and

e. Developmental assessments at specified ages.

2. Develop detailed methods and protocol for the five activities listed in Recipient Activity No. 1.

3. Develop FAS physical examination instrument with CDC assistance.

4. Develop maternal questionnaire with CDC assistance.

5. Enhance knowledge and skills of professional and clerical staff to perform these activities.

6. Develop adequate means to assure quality of examinations and procedures and to limit intra- and inter-examiner variability.

7. Develop and maintain appropriate data management system for collection, storage, retrieval, and analysis of project data.

8. Collaborate to develop epidemiological studies relevant to FAS surveillance.

B. CDC Activities:

1. Provide consultation and technical assistance for the development and implementation of the project protocol.

2. Provide consultation and technical assistance for the development of a focused FAS screening physical examination instrument.

3. Provide assistance to develop and arrange for administration of maternal questionnaire.

4. Provide consultation and technical assistance to recipient to develop procedures for physical and developmental examinations, for maternal questionnaire administration, and for collection and transport of biological specimens.

5. Assist with the review of the conduct of the surveillance pilot, as outlined in the project protocol.

6. Provide technical assistance in developing procedures for data collection, management, and analysis.

7. Provide technical consultation in the review of the analysis of data gathered in the pilot.

8. Consult with recipient prior to recipient's release of surveillance information to third parties while the project is in progress.

9. Review reports of results being submitted for publication.

10. Provide technical assistance for the development of epidemiological studies of FAS.

Evaluation Criteria

A. Applicant's Understanding of the Problem (10%)

The extent to which the applicant has a clear, concise understanding of the requirements, objectives, and purpose of the cooperative agreement. The extent to which the application reflects an understanding of the complexities of the recognition and identification of FAS.

B. Organizational Experience (30%)

The extent to which the applicant has skills and experience with comprehensive, systematic identification, tracking and follow-up of high-risk infants, and with performance of neonatal and postnatal physical and developmental assessments.

C. Approach and Capability (30%)

The extent to which the applicant has included a description of their approach to screening and follow up activities and the ability to implement these. The applicant shall describe and indicate the availability of facilities and equipment necessary to carry out this project.

D. Program Personnel (20%)

The adequacy of the description of capability to assemble competent and trained staff to conduct on-site surveillance screening activities and to evaluate infants individually through focused physical examinations and developmental assessments, to acquire biological specimens, and to facilitate telephone administration of a questionnaire to the mothers.

The applicant shall identify all current and potential personnel who will be utilized to work on this cooperative agreement, including qualifications and specific experience as it relates to the requirements set forth in this request.

E. Collaborative Abilities (10%)

The extent to which the applicant has described ability to collaborate with hospital staff and other relevant health agencies in the different aspects of the surveillance project and the ability to collaborate to develop epidemiological studies relevant to surveillance of FAS.

Executive Order 12372

The intergovernmental review requirements of Executive Order 12372, as implemented by DHHS regulations in 45 CFR part 100, are applicable to this program. Executive Order 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than Federally-recognized Indian tribal governments) should contact their state Single Point of Contact (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOCs is included in the application kit. The due date for state process recommendations is 30 days after the application deadline for new and competing continuation awards. The granting agency does not guarantee to "accommodate or explain" for state process recommendations is receives after that date.

Other Requirements

A. Individual projects may include research on human subjects, including access to personal identifiers to link revelant data sets. Therefore, applicant must consider appropriate compliance with Public Law 93–148 regarding the protection of human subjects. Assurances must be provided that the project or activity will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing evidence of this assurance in accordance with the appropriate guidelines and forms provided in the application kit.

B. The project to be funded through this cooperative agreement will involve the collection of information from 10 or more individuals and will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Catalog of Federal Domestic Assistance Number (CFDA)

The Catalog of Federal Domestic Assistance number in 93.283.

Application Submission and Deadline

The original and two copies of the application must be submitted on PHS form 5161–1, to Henry S. Cassell, III, Grants Management Officer, Centers for Disease Control, Grants Management Branch, Procurement and Grants Office, 255 East Paces Ferry Road, NE., room 415, Atlanta, GA 30305 on or before September 6, 1991.

A. Deadline

Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Sent on or before the deadline date and received in time for submission for the review process. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly

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Federally-recognized Indian tribal governments) should contact their state Single Point of Contact (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOCs is included in the application kit. The due date for state process recommendations is 30 days after the application deadline for new and competing continuation awards. The granting agency does not guarantee to "accommodate or explain" for state process recommendations is receives after that date.

Other Requirements

A. Individual projects may include research on human subjects, including access to personal identifiers to link revelant data sets. Therefore, applicant must consider appropriate compliance with Public Law 93–148 regarding the protection of human subjects. Assurances must be provided that the project or activity will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing evidence of this assurance in accordance with the appropriate guidelines and forms provided in the application kit.

B. The project to be funded through this cooperative agreement will involve the collection of information from 10 or more individuals and will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Catalog of Federal Domestic Assistance Number (CFDA)

The Catalog of Federal Domestic Assistance number in 93.283.

Application Submission and Deadline

The original and two copies of the application must be submitted on PHS form 5161–1, to Henry S. Cassell, III, Grants Management Officer, Centers for Disease Control, Grants Management Branch, Procurement and Grants Office, 255 East Paces Ferry Road, NE., room 415, Atlanta, GA 30305 on or before September 6, 1991.

A. Deadline

Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Sent on or before the deadline date and received in time for submission for the review process. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly

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dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

B. Late Applications:

Applications which do meet the criteria in A.1. or A.2. above are considered late applications and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures and application package and business management technical assistance may be obtained from Adrienne McCloud, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 415, Mail Stop E-14, Atlanta, Georgia 30305, (404) 842-6630 or FTS 236-6630.

Programmatic technical assistance may be obtained from Margarett Davis, M.D., Medical Officer, Birth Defects and Genetic Diseases Branch, Division of Birth Defects and Developmental Disabilities, Center for Environmental Health and Injury Control, Centers for Disease Control, 1600 Clifton Road, NE., Mail Stop F-45, Atlanta, Georgia 30333, Telephone: (404) 488-4380 or FTS 236-4380.

Please refer to Announcement Number 143 when requesting information or submitting the application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone (202) 783–3238).

Dated: August 2, 1991.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 91–18816 Filed 8–7–91; 8:45 am]

BILLING CODE 4160-18-M

[Program Announcement 152]

Cooperative Agreements to Coordinate Local Programs to Prevent Human Immunodeficiency Virus (HIV) Infection and Related Priority Health Problems Among Youth in High-Risk Situations

Introduction

The Centers for Disease Control (CDC) announces the availability of funds for Fiscal Year 1991 for cooperative agreements to assist cities with the highest cumulative number of reported cases of AIDS to establish, coordinate, and institutionalize coalitions among health, education, social service, and other programs to prevent behaviors that result in human immunodeficiency virus (HIV) infection and related priority health problems among youth aged 10–24 years, in high-risk situations. Funds are also available to support an optional training and demonstration component.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of HIV Infection. (To order a copy of Healthy People 2000, refer to the section entitled Where to Obtain Additional Information.)

The CDC releases this Program Announcement to complement the anticipated Program Announcement "Evaluation and Enhancement of HIV Prevention Street Outreach Programs That Serve Injecting Drug Users and Youth in High-Risk Situations." It also complements current funding by CDC to (a) "Minority and Other Community-Based HIV Prevention Projects," (b) "U.S. Conference of Mayors HIV Education Grants to Community-Based Organizations," (c) CDC HIV Prevention Cooperative Agreements with State and Local Health Departments," and (d) "National AIDS Minority Information and Education Program."

Authority

These programs are authorized under sections 301(a) and 311 (b) and (c) of the Public Health Service Act [42 U.S.C. 241(a) and 243 (b) an (c)], as amended.

Eligible Applicants

Eligible applicants for both components are the official local public health agencies in cities with a cumulative total of 4,000 or more AIDS cases reported to CDC as of January 31, 1991. Based on this criterion, the local health agency in the following eight cities is eligible: Chicago, Houston, Los Angeles, Miami, Newark, New York, San Francisco, and Washington DC. Eligible applicants for the optional training and demonstration component are limited to those applicants funded under this announcement for coalition-building and coordination.

Availability of Funds

Approximately $945,000 will be available in Fiscal Year 1991 to fund approximately three cooperative agreements for coalition-building and coordination components. It is expected that the average award will be $315,000. In addition, approximately $315,000 will be available to support one optional Training and Demonstration Center component.

Awards are expected to begin on or before September 27, 1991, for a 12-month budget period within a 1- to 5-year project period. Continuation awards within the approved project period will be made on the basis of satisfactory performance and availability of funds. Funding estimates outlined above may vary and are subject to change.

Purpose

The purpose of this program is to prevent HIV infection and related priority health problems among youth aged 10–24 years in high-risk situations by establishing or strengthening the capacity of the adolescent health unit of the local health department to coordinate with public and private agencies serving youth.

The purpose of the optional training and demonstration component is to assist teams from other cities to develop coalitions to collaboratively work to prevent HIV infection and related priority health problems among youth in high risk situations.

Cooperative Activities

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting specified activities under section A. or A. and B. below, and CDC shall be responsible for conducting activities under section C. The applications should be presented in a manner that demonstrates the applicant's ability to address the proposed activities in a collaborative manner with CDC.

A. Recipient Activities for Coalition-Building Component

1. Identify local agencies, including education, social service and health service agencies, that serve youth in high-risk situations, describe their capabilities, current efforts, and needs to provide effective programs to prevent HIV infection and related priority health problems.

2. Identify existing coalitions that address youth in high-risk situations and determine ways to establish or strengthen collaboration or coordination with these coalitions to ensure effective programming and non-duplication of efforts. Special consideration should be provided to coalitions established by federally funded entities such as the Ryan White C.A.R.E. Act, the Pediatric

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AIDS Demonstration Program, and the CDC projects listed in the Introduction section.

3. Establish and maintain, or strengthen and expand, a coalition composed of (a) representatives from local agencies and community groups that serve these youth; and (b) youth who represent the target populations. The coalition should participate in all phases of program planning, development, implementation, institutionalization, and evaluation.

4. Establish systematic policies and procedures to obtain baseline data that describe the following:

a. The size, characteristics, and accessibility of youth in high-risk situations and of targeted youth populations.

b. Current levels of risk behaviors (the applicant may consider the use of CDC's Youth Risk Behavior Survey available from the CDC National Center for Chronic Disease Prevention and Health Promotion).

c. The availability of prevention programs as described in the introduction.

5. Plan and implement collaborative strategies to: reduce modifiable barriers to the implementation and diffusion of effective HIV prevention programs; establish means to sustain the coalition and institutionalize these activities when federal funding is discontinued; promote coordination among local, state and national organizations.

6. Build the capacity of coalition members to provide effective programs. This assistance should include, but not be limited to, assisting agencies (a) develop policies and guidelines related to HIV; (b) implement effective educational strategies; (c) train staff and volunteers; (d) strengthen agency linkages and referral systems; and (e) increase services.

7. Identify, develop, modify, and disseminate educational strategies, materials, and resources to assist community agencies in providing effective programs.

8. Provide a copy of HIV prevention education curricula, program descriptions, progress reports, and educational materials for inclusion in CDC's AIDS Adolescent and School Health Subfile on the Combined Health Information Database and National AIDS Information Clearinghouse. Applicants should plan to share information through the Comprehensive Health Education Network electronic bulletin board.

9. Participate in an annual CDC conference with other organizations and attend at least one other workshop on preventing HIV infection and related priority health problems among these youth.

10. Develop and distribute a description of the program established and its impact. The program description should provide information that can be used by others to establish similar efforts to address these youth within their own communities.

B. Recipient Activities—Optional Training and Demonstration Component

1. Develop, implement, and conduct two to four training and demonstration sessions per year for teams from other cities in the United States. Approximately 160 participants should be trained each year.

2. Work closely with CDC, state and local health departments, education agencies, and relevant national organizations in identifying participants for training and in carrying out training and demonstration sessions. It is expected that each team will include, but not be limited to, representatives from the local health and education departments, community health centers, shelters for runaway youth, juvenile justice programs, and local organizations that serve youth in high-risk situations.

3. Plan and provide financial assistance for travel, per diem, and lodging expenses for approximately 160 participants.

C. CDC Activities

1. Disseminate updated information about AIDS and the prevention of HIV infection and related priority health problems.

2. Collaborate in the development or selection of curricula, strategies, educational materials, and assessment instruments.

3. Provide information about resources relevant to HIV education in alternative and nonschool settings; and assure the availability of such information in CDC's AIDS Adolescent and School Health Subfile on the Combined Health Information Database.

4. Plan national meetings related to improving programs.

Evaluation Criteria for Coalition-Building Component

Applications submitted under this announcement will be evaluated by a CDC-convened review committee according to the following criteria:

A. Need/Background (20 points)

Evidence of need for program support, with letters of support and background information documenting this need.

B. Capacity (25 points)

Evidence of the applicant's capacity to carry out effective adolescent health programs as demonstrated by past experience with coalition-building; ties with local agencies that serve youth in high-risk situations; qualifications and appropriateness of proposed staff; programmatic and organizational support from within the applicant's agency; and placement of the program within the agency.

C. Coordination (25 points)

1. The extent to which the applicant demonstrates the appropriate involvement of relevant local agencies in developing the application; the appropriateness and feasibility of the applicant's plan to use its coalition in providing ongoing direction and guidance to program activities; and evidence of the coalition members' support for, and future role in, proposed activities.

2. The appropriateness and feasibility of the applicant's plan to coordinate proposed activities with other units within the local health department, relevant existing coalitions, and relevant local, state, and national organizations.

D. Program Plan (30 points)

The quality and feasibility of the following:

1. The applicant's proposed objectives, including the extent to which the proposed objectives are specific, measurable, achievable, realistic, and time-phased.

2. The extent to which the plan of operation is consistent with the required recipient activities; appropriateness of activities planned to achieve the objectives, and the feasibility of the applicant's timetable for conducting the program activities.

3. The evaluation plan for monitoring progress in increasing the number of organizations and the number of targeted youth that receive such programs. The plan should provide for assessing program impact and the status of risk behaviors among participating youth.

4. The plan to share a description of the program, evidence of its effectiveness, educational materials developed with other agencies, and the applicant's plans to participate in an annual meeting sponsored by CDC.

E. Budget and Budget Justification Narrative (not scored)

The extent to which the applicant provides reasonable and appropriate justification for budget items that are lems among these

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B. Capacity (25 points)

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C. Coordination (25 points)

1. The extent to which the applicant demonstrates the appropriate involvement of relevant local agencies in developing the application; the appropriateness and feasibility of the applicant's plan to use its coalition in providing ongoing direction and guidance to program activities; and evidence of the coalition members' support for, and future role in, proposed activities.

2. The appropriateness and feasibility of the applicant's plan to coordinate proposed activities with other units within the local health department, relevant existing coalitions, and relevant local, state, and national organizations.

D. Program Plan (30 points)

The quality and feasibility of the following:

1. The applicant's proposed objectives, including the extent to which the proposed objectives are specific, measurable, achievable, realistic, and time-phased.

2. The extent to which the plan of operation is consistent with the required recipient activities; appropriateness of activities planned to achieve the objectives, and the feasibility of the applicant's timetable for conducting the program activities.

3. The evaluation plan for monitoring progress in increasing the number of organizations and the number of targeted youth that receive such programs. The plan should provide for assessing program impact and the status of risk behaviors among participating youth.

4. The plan to share a description of the program, evidence of its effectiveness, educational materials developed with other agencies, and the applicant's plans to participate in an annual meeting sponsored by CDC.

E. Budget and Budget Justification Narrative (not scored)

The extent to which the applicant provides reasonable and appropriate justification for budget items that are

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consistent with the intent of the program announcement and clearly linked to objectives and activities proposed for the budget period.

Evaluation Criteria for Optional Training and Demonstration Program

A. Capacity to Implement (15 points)

The applicant's demonstrated ability and the quality of the plan to implement the coalition-buiilding component of the program.

B. Capacity to Train (15 points)

Evidence of the applicant's capacity to organize, plan, and conduct major training activities.

C. Coordination (30 points)

The appropriateness of the plan to coordinate the training center activities with the coalition-building component, state and local health departments, education agencies, and other national, state, and local agencies.

D. Program Plan (40 points)

1. The quality of the plan to train teams from other cities in the United States.

2. The quality of the objectives in terms of specificity, measurability, achievability, realism, and feasibility.

3. The quality of the applicant's plan of operation and timetable.

4. The quality of the evaluation plan for assessing progress in meeting objectives, monitoring the effectiveness of activities, and improving program operations.

5. The number, qualifications, and time allocations of proposed staff.

6. The feasibility of the plan to provide for the travel, per diem, and lodging expenses for up to 160 training participants.

E. Budget and Budget Justification Narrative (not scored)

The extent to which the budget for the training and demonstration program is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

Executive Order 12372 Review

Applicants are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. Executive 12372 establishes a system for state and local government review of proposed Federal assistance applications. Applicants should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOCs is included in the application kit. The due date for state process recommendations is 30 days after the application deadline date for new and competing continuation awards (the appropriations for these financial assistance awards were received late in the fiscal year and would not allow for an application receipt date which would accommodate the 60 day state recommendtion process withing fiscal year 1991). If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Centers for Disease Control, Procurement and Grants Office, Grants Management Branch, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305. The granting agency does not guarantee to "accommodate or explain" state process recommendations it receives after that date.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number assigned to this program is 93.118.

Other Requirements

Recipients must comply with the document titled, "Content of AIDS-related Writen Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs," dated January 1991, a copy of which is included in the application kit.

Application Submission and Deadline

The original and two copies of the application (PHS Form 5161–1) must be submitted to Candice Nowicki-Lehnherr, Grants Management Office, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mail Stop E–14, Atlanta, GA 30305, on or before August 15, 1991.

A. Deadline: Applications shall be considered as meeting the deadline if they are either received on or before the deadline date, or sent on or before the deadline date and received in time for submission to the independent review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

B. Late Applications: Applications that do not meet the criteria in A. are considered late. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, application package, and business management technical assistance may be obtained from Leah D. Simpson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mail stop E–14, Atlanta, GA 30305; Telephone (404) 842–6594 or FTS (404) 236–6594.

Programmatic technical assistance may be obtained from Nancy B. Watkins, Chief, Program Development Section, Program Development and Services Branch, Division of Adolescent and School Health, National Center for Chronic Disease Prevention and Health Promotion, Mail Stop K–31, Centers for Disease Control, 1600 Clifton Road, NE., Atlanta, GA 30333; telephone (404) 488–5356 or FTS (404) 236–5356. Please refer to Announcement Number 152 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock Number 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone (202) 783–3238).

Dated: August 2, 1991.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 91–18813 Filed 8–7–91; 8:45 am]

BILLING CODE 4160-18-M

[Announcement Number 156]

Childhood Lead Poisoning Prevention Program for Charleston County, South Carolina; Availability of Funds for Fiscal Year 1991

Introduction

The Centers for Disease Control (CDC) announces the availability of grant funds in Fiscal Year 1991 to address the severe childhood lead poisoning problem in Charleston County, South Carolina, a problem exacerbated by the housing devastation caused by Hurricane Hugo. This program is expected to: (1) Screen high-risk infants and children for elevated blood lead levels, (2) assure referral for treatment of, and environmental intervention for, infants and children with such blood lead levels, and (3) provide education about childhood lead poisoning.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Environmental Health and Maternal and Infant Health. (For ordering a copy of Healthy People 2000, see Where to Obtain Additional Information section.)

Authority

This program is authorized under sections 301(a) (42 U.S.C. 241(a)) and 317A (42 U.S.C. 247(b)(1)) of the Public Health Service Act, as amended. Program regulations are set forth in title 42, Code of Federal Regulations, part 51b.

Eligible Applicants

Assistance will be provided only to the South Carolina Department of Health and Environmental Control for expansion of childhood lead poisoning prevention efforts in Charleston County. In Charleston County, a survey of high-risk children in 1970 showed that as many as 40 percent of those between the ages of 1 and 6 who were screened for lead poisoning had blood lead levels above 40 μg/dL. Many of these children were of low-income families living in homes built in the nineteenth century and painted with lead-based paint. This housing had begun to deteriorate in the 1950's, as wealthier city dwellers migrated to the suburbs. Mass screening of children, public education, and other activities began in the 1970s and continued until 1981 when limited resources resulted in a cessation of intensive screening efforts and significantly reduced intervention efforts. Now, nearly 10 years later, with further housing deterioration, the childhood lead poisoning problem remains significant.

On September 21, 1989, Hurricane Hugo passed over South Carolina, destroying or damaging over 10,000 housing units in Charleston County alone. In its aftermath, repairs to the damaged housing have brought unprecedented lead contamination to house interiors and soil around houses. Because of the large scale and slowness of repair work, many families were unable to find alternative housing during repairs. Many children, especially from low-income families, have remained in houses where new lead hazards have been created. The result has been a significant increase in childhood lead poisoning cases.

Without intensive screening efforts, most of the children with elevated blood lead levels in Charleston County will remain undetected. This grant program is intended to respond to this acute problem. No other applications will be solicited or will be accepted.

Availability of Funds

Approximately $210,000 will be available in Fiscal Year 1991. The project award, expected to begin on or about September 16, 1991, will be made for a 12-month budget period within a project period not to exceed 5 years. The funding estimate may vary and is subject to change, depending on the availability of funds. Continuation awards will be for the recommended project period indicated in the original award and will be based on satisfactory progress and the availability of funds.

This grant is intended to expand and improve program efforts in those areas of Charleston County with demonstrated high-risk populations. This Grant award cannot supplant existing funding for childhood lead poisoning prevention programs or activities. Grant funds should increase the level of expenditures from the state, local, and other funding sources for childhood lead poisoning prevention. The award will be made with the expectation that program activities will continue when grant funds are terminated at the end of the project period.

At the request of the applicant, Federal personnel may be assigned to a project in lieu of a portion of the financial assistance.

Note: Grant funds may not be expended for medical care and treatment or for environmental remediation of lead sources. However, the applicant must provide an acceptable plan to ensure that these activities are appropriately carried out.

Background

Lead poisoning, an environmental disease of young children in the United States, can have profoundly adverse health effects. Severe lead exposure can cause coma, convulsions, and even death. Lower levels of lead, which rarely cause symptoms, can result in decreased intelligence, developmental disabilities, behavioral disturbances, and disorders of blood production. These consequences are particularly important because they result from levels of lead exposure that previously were considered safe.

Childhood lead poisoning is the most common environmental disease in South Carolina. There are an estimated 256,000 children, 1 to 6 years old, in the state who are at risk for lead poisoning. In 1990, the state screened 62,212 children (3,456 children were screened in Charleston County) through various health programs, however, the preponderance of the 218 children who were found with lead poisoning resided in Charleston County where the problem is particularly severe because of the deteriorated, older housing stock. This already severe problem was exacerbated by Hurricane Hugo. Water and other damages caused already deteriorated housing conditions to worsen and with the lack of adequate housing, many families remained in their homes during the renovation process further exposing their children to lead hazards. Many of these homes continue to remain in a state of disrepair. Repairs and renovations will increase the amount of lead dust circulating in those houses with lead based paint.

A door-to-door survey of Charleston County (supported by the state legislature) in 1990 shows that over 10 percent of the children screened had blood levels at or above 25 μg/dL. Screening data from 1978 to the present are maintained at the University of South Carolina, and the state maintains a register on all lead poisoned children and ensures their follow-up .

Purpose

The purpose of this award is to enable the South Carolina Department of Health and Environmental Control to expand childhood lead poisoning prevention program efforts in Charleston County, where damage to housing, caused by Hurricane Hugo has exacerbated an already severe childhood lead poisoning problem.

Program Requirements

The Charleston County program will: (1) Screen and identify large numbers of infants and young children for lead poisoning, (2) identify their possible sources of lead exposure, (3) monitor medical and environmental management of lead-poisoned children, (4) provide information on childhood lead poisoning, its prevention, and management to the public, specifically, parents and guardians of children with elevated blood lead levels, health professionals, and policy and decision-makers, and (5) encourage community action programs directed to the goal of eliminating childhood lead poisoning.

The award recipient is expected to:

1. Establish or expand screening services in areas of Charleston County where there is a demonstrated severe chidhood lead poisoning problem.

2. Intensify efforts to ensure medical management so that children with lead

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The award recipient is expected to:

1. Establish or expand screening services in areas of Charleston County where there is a demonstrated severe chidhood lead poisoning problem.

2. Intensify efforts to ensure medical management so that children with lead

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poisoning receive appropriate and timely follow-up services.

3. Establish, expand, or improve environmental investigations so that sources of lead are rapidly identified.

4. Develop an efficient information/management system compatible with CDC data guidelines to monitor and evaluate program progress.

5. Improve the actions of other agencies and organizations to facilitate the rapid abatement of lead sources in high risk communities.

6. Enhance knowledge and skills of program staff through training and other methods.

7. Provide information on childhood lead poisoning to the public, policy-makers, the academic community, and others based upon program findings.

This grant award will address the problem of childhood lead poisoning in high-risk areas of Charleston County with a high percentage of older, damaged, and deteriorated housing through a coordinated and comprehensive screening, medical, and environmental management program. Education and outreach activities are an important aspect of the program as well as activities that create community awareness of the problem, especially among community and business leaders, the medical community, parents, educators, and property owners. Program goals and objectives should reflect national, state, and local priorities, and established guidelines (e.g., the CDC statement, Preventing Lead Poisoning in Young Children).

The following are essential requirements:

1. A full-time director/coordinator with authority and responsibility to carry out program requirements.

2. Qualified staff, other resources, and knowledge to implement program provisions.

3. Established capacity to collect and analyze data.

4. Demonstrated experience in conducting and evaluating public health programs.

5. Ability to translate program findings to state and local public health officials, policy and decision-makers, and to others seeking to strengthen program efforts.

6. Information that describes why areas of Charleston County were selected for screening activities, including information on housing conditions, income, other socioeconomic factors, and previous surveys or screening activities for childhood lead poisoning.

7. Effective, well-defined working relationships within and outside the public health agency at national, state, and community levels (e.g., Department of Housing and Urban Development, environmental agencies, maternal and child health programs, state and local housing rehabilitation offices schools of public health and medical schools, and environmental interest groups) to address the needs and requirements of programs (e.g., training to ensure the safety of abatement workers) in the implementation of proposed activities. This includes the establishment of networks with other state and local agencies with expertise in childhood lead poisoning prevention programming.

8. A plan to ensure continuation of the childhood lead poisoning prevention program beyond expiration of grant support.

9. For awards to state agencies there must be a demonstrated commitment to provide technical, analytical, and program assistance to local agencies interested in developing or strengthening childhood lead poisoning prevention programs.

Evaluation Criteria

The major factors to be considered in the evaluation of the application are:

1. Identification of the Childhood Lead Poisoning Problem (30%)

The applicant's ability to identify populations and communities at high risk, as defined by data from previous screening efforts, environmental data, and/or demographic data.

2. Understanding the Problem (10%)

The applicant's understanding of the requirements, objectives, and complexities of and interactions required for a successful program.

3. Program Personnel (15%)

The extent to which the proposal has described: (a) The qualifications and commitment of the applicant, (b) detailed allocations of time and effort of staff devoted to the project, (c) information on how the applicant will develop, implement and administer the program, and (d) the qualifications of the support staff.

4. Technical Approach (20%)

The overall balance of the program design and measured in terms of intensive screening, medical management, lead hazard abatement, and education and outreach activities. The adequacy of the program design includes the extent to which the evaluation plan can be used to effectively measure progress towards the stated objectives.

Collaboration (15%)

The applicant should demonstrate the ability to collaborate with political subdivisions of the state in developing childhood lead poisoning prevention programs and collaboration with other program-related entities. Letters of support are encouraged.

6. Plans to become self-sustaining (10%)

The applicant should provide an explanation of how program services will be continued after termination of Federal grant funds, including identifying other sources of support that will be utilized during the project period. By the end of the second budget year, the grantee must have concrete plans to ensure institutionalization of the program after termination of grant support.

7. Budget Justification and Adequacy of Facilities (NOT SCORED)

The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of grant funds. The adequacy of existing and proposed facilities to support program activities also will be evaluated.

Executive Order 12373 Review

Applications are subject to the Intergovernmental review of Federal Programs as governed by Executive Order 12372. Executive Order 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than Federally-recognized Indian tribal governments) should contact their state Single Point of Contact (SPOCs) as early as possible to alert than to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305, no later than 30 days after the deadline date for new and competing awards. The granting agency does not guarantee to "accommodate or explain" state process recommendations it receives after that date.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.197.

Application Submission and Deadline

South Carolina Department of Health and Environmental Control must submit the original and two copies of the application PHS Form 5161-1, and should carefully adhere to the instruction sheet and information provided. The application should be submitted on or before August 12, 1991 to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, GA 30305.

Where To Obtain Additional Information

If you are interested in obtaining addition information regarding this project, please refer to announcement 156 and contact the following: Business Management Technical Assistance, Lisa Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E-14, Atlanta, Georgia 30305, (404) 842-6630 or FTS 236-6630.

Programmatic Technical Assistance may be obtained from Jerry Hershovitz, Deputy Chief, Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects, Center for Environmental Health and Injury Control, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop F-28, Atlanta, Georgia 30333, (404) 488-4880 or FTS 236-4880.

A copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001-00473-1), referenced in the Introduction may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, telephone (202) 783-3238.

Dated: August 2, 1991.

Robert L. Foster,

Acting Director, Office of Program Support, Centers For Disease Control.

[FR Doc. 91-18614 Filed 8-7-91; 8:45 am]

BILLING CODE 4160-18-M

[Announcement Number 150]

Availability of Funds for Fiscal Year 1991 Modified System for AIDS Case Reporting and Ascertainment of HIV-Related Morbidity

Introduction

The Center for Disease Control (CDC) announces a program for competitive cooperative agreement applications to assist state and local health departments in simplifying reporting of AIDS and HIV-related morbidity. Throughout program activities, special emphasis is to be placed on developing and evaluating a simplified, yet effective surveillance system for symptomatic HIV-related disease, while maintaining quality of data collection and the integrity of the current AIDS surveillance system. The new system will be based on a modified surveillance definition which includes CD4+ cell counts.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of HIV Infection and Surveillance and Data Systems. (For ordering a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

Authority

These cooperative agreements are authorized under sections 301(a) [42 U.S.C. 241(a)] and 311 [42 U.S.C. 243] of the Public Health Service Act, as amended.

Eligible Applicants

Eligible applicants are official state and local health agencies who are current recipients of HIV/AIDS surveillance cooperative agreements who have reported at least 1,000 cumulative cases of AIDS to CDC as of December 31, 1990.

Availability of Funds

Approximately $800,000 will be available in Fiscal Year 1991 to fund 2-4 cooperative agreements. Awards are expected to range from $200,000-$400,000. Awards will begin on or about September 27, 1991 and will be for a 23-month budget period within a 2-year project period. Funding estimates may vary and are subject to change, depending on the availability of funds. Continuation awards within the project period will be made on the basis of satisfactory progress and on the availability of funds.

Purpose

The purpose of this announcement for cooperative agreements is to provide assistance to state and local public health departments in the development, implementation, and evaluation of a simplified method of reporting AIDS and HIV-related morbidity, which will be based on CD4+ cell counts and clinical symptoms. The new system must not interfere with the integrity of the existing national surveillance system while under development and evaluation. It is anticipated that the simplified reporting system proposed in response to this announcement may vary with local conditions and practices. It is anticipated that successful components of this pilot project will be incorporated into a modified national surveillance system.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A. below and CDC will be responsible for conducting activities under B. below. The application should be presented in a manner that demonstrates the applicant's ability to address the proposed activities in a collaborative manner with CDC.

A. Recipient Activities

1. Participate in national planning and implementation meetings supported through travel funds awarded in this cooperative agreement.
2. Develop and implement data collection procedures and forms for core data items that can be aggregated by CDC. The minimum core data items shall include, but not necessarily be limited to, demographic and immunologic characteristics, e.g., CD4+ cell count, risk category, and selected clinical conditions.
3. Ensure confidentiality of persons with confirmed or suspected HIV infection.
4. Maintain responsibility for analysis and presentation of data collected for local purposes.
5. Develop an effective and efficient simplified case reporting system which would monitor indicator conditions and other modified elements of the current surveillance system through sampling or other mechanisms.
6. Demonstrate the ability to collect case reports on HIV disease using a surveillance definition which incorporates absolute CD4+ cell counts.
7. Maintain the integrity of the existing national HIV/AIDS reporting system during the development and evaluation of the proposed project and

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Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A. below and CDC will be responsible for conducting activities under B. below. The application should be presented in a manner that demonstrates the applicant's ability to address the proposed activities in a collaborative manner with CDC.

A. Recipient Activities

1. Participate in national planning and implementation meetings supported through travel funds awarded in this cooperative agreement.
2. Develop and implement data collection procedures and forms for core data items that can be aggregated by CDC. The minimum core data items shall include, but not necessarily be limited to, demographic and immunologic characteristics, e.g., CD4+ cell count, risk category, and selected clinical conditions.
3. Ensure confidentiality of persons with confirmed or suspected HIV infection.
4. Maintain responsibility for analysis and presentation of data collected for local purposes.
5. Develop an effective and efficient simplified case reporting system which would monitor indicator conditions and other modified elements of the current surveillance system through sampling or other mechanisms.
6. Demonstrate the ability to collect case reports on HIV disease using a surveillance definition which incorporates absolute CD4+ cell counts.
7. Maintain the integrity of the existing national HIV/AIDS reporting system during the development and evaluation of the proposed project and

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demonstrate coordination with existing HIV/AIDS surveillance activities.

8. Evaluate the usefulness of the modified system in comparison to the existing AIDS surveillance system.
9. Identify and select appropriate staff.

B. CDC Activities

1. Assist in the development, implementation, and evaluation of general and site-specific methods for simplifying surveillance of HIV/AIDS-related morbidity.
2. Provide assistance to the collaborator in the design and conduct of the project, including technical guidance in the development of reporting protocols, data collection forms, training and pretesting methods, and the design of data management systems.
3. Provide coordination among participants for the project to ensure comparability of core data items.
4. Maintain responsibility for the compilation of analyses, and presentation of results of aggregate data from multiple sites.

Evaluation Criteria

Eligible applications submitted under this announcement will be evaluated according to the following criteria:

1. The quality of plans to develop and implement the surveillance system describing how potential sources of surveillance data will be identified, accessed, used, and verified, including a plan to protect the confidentiality of all surveillance data. The plan should also address the applicant's authority to collect or ability to accept, on a voluntary basis, reports of cases meeting a revised surveillance definition. (30 points)
2. The applicant's current activities in the surveillance of AIDS, other HIV disease, and asymptomatic infection. Higher priority will be given to sites that demonstrate the ability to conduct population-based surveillance for a broad spectrum of HIV-related disease including assessment of underlying immune status (i.e. CD4+ cell counts). The cumulative number of reported AIDS cases will be a consideration. (20 points)
3. The applicant's understanding of the purpose of the project and the applicant's ability, willingness and/or need to cooperate in the project with CDC and other participants. (20 points)
4. The quality of the applicant's plan to evaluate the usefulness of the proposed system in comparison to the existing AIDS reporting system. (15 points)
5. The extent to which the proposal describes how the project will be administered, including the size, qualifications, and time allocation of the proposed staff and the availability of facilities to be used during the surveillance pilot and a schedule for accomplishing the activities of the pilot, including time frames. (15 points)
6. The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds. (Not Weighted)

Other Requirements

Recipients must comply with the document titled Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions (January 1991). In complying with the Program Review Panel requirements contained in this document, recipients are encouraged to use an existing Program Review Panel such as the one created by the health department's HIV/AIDS Prevention Program.

Projects involving the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than Federally-recognized Indian tribal governments) should contact their state Single Point of Contact (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOCs is included in the application kit. The due date for state process recommendations will be 30 days after the application deadline date for new and competing continuation awards (the appropriations for these financial assistance awards were received late in the fiscal year and would not allow for an application receipt date which would accommodate the 60 day state recommendation process within fiscal year 1991). If SPOCs have any state process recommendations on applications submitted to CDC, they should submit them to Candice Nowicki, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, room 300, Mailstop E–14, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305. The granting agency does not guarantee to "accommodate or explain" for state process recommendations it receives after that date.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number assigned to this program is 93.118.

Application Submission and Deadline

The original and two copies of the application form PHS–5161–1 (Rev. 3/89) must be submitted to Candice Nowicki, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, room 300, Mailstop E–14, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305, on or before August 16, 1991.

1. *Deadline*: Applications shall be considered as meeting the deadline if they are either:
   a. Received on or before the deadline date, or
   b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants should request a legibly-dated U.S. Postal Service postmark or obtain a legibly-dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)
2. *Late Applications*: Applications that do not meet the criteria in either paragraph 1.a. or 1.b. immediately above are considered late applications and will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Nealean Austin, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E–14, Atlanta, Georgia, 30305, (404) 842–6743 or FTS 236–6743.

Please refer to Announcement Number 150, when requesting information and submitting any application.

Programmatic technical assistance may be obtained from Ruth Berkelman, M.D., Chief, Surveillance Branch,

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Division of HIV/AIDS, Center for Infectious Diseases, 1600 Clifton Road, NE., Mailstop E-47, Centers for Disease Control, Atlanta, GA 30333, (404) 639-2050 or FTS 236-2050.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone (202) 783-3238).

Dated: August 2, 1991.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 91-18815 Filed 8-7-91; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 91F-0271]

Atochem North America, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Atochem North America, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of β,3(or 4)-bis(octadecylthio)cyclohexylethane as an antioxidant in polymeric articles intended for food contact applications.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 1B4274) has been filed by Atochem North America, Inc., c/o 1150 17th St. NW., Washington, DC 20036, proposing that the food additive regulations in § 176.170 Components of paper and paperboard in contact with aqueous and fatty foods (21 CFR 176.170) be amended to provide for the safe use of β,3(or 4)-bis(octadecylthio)cyclohexylethane as an antioxidant in polymeric articles intended for food contact applications.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: July 28, 1991.

L. Robert Lake,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-18910 Filed 8-7-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91P-0166]

Cottage Cheese Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been assigned to Crowley Foods, Inc., to market test a product designated as "nonfat cottage cheese" that deviates from the U.S. standards of identity for cottage cheese (21 CFR 133,128), dry curd cottage cheese (21 CFR 133,129), and lowfat cottage cheese (21 CFR 133.131). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product, identify mass production problems, and assess commercial feasibility.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than November 6, 1991.

FOR FURTHER INFORMATION CONTACT: Howard A. Anderson, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-485-0349.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Crowley Foods, Inc., Metro Center, 49 Court St., P.O. Box 549, Binghamton, NY 13902.

The permit covers limited interstate marketing tests of a nonfat cottage cheese, formulated from dry curd cottage cheese and a dressing, such that the finished product contains less than 0.5 percent milkfat. The food deviates from the U.S. standards of identity for cottage cheese (21 CFR 133.128) and lowfat cottage cheese (21 CFR 133.131) in that the milkfat content of cottage cheese is not less than 4.0 percent, and the milkfat content of lowfat cottage cheese ranges from 0.5 to 2.0 percent. The test product also deviates from the U.S. standard of identity for dry curd cottage cheese (21 CFR 133.129) because of the added dressing. The test product meets all requirements of the standards with the exception of these deviations. The purpose of these variations is to offer the consumer a product that is nutritionally equivalent to cottage cheese products with dressing but contains less fat.

For the purpose of this permit, the name of the product is "nonfat cottage cheese." The information panel of the label must bear nutritional labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 600,000 pounds (272,155 kilograms) of the test product. The product will be manufactured at Crowley Foods, Inc., Theresa Rd., LaFargeville, NY 13636, and distributed in Alabama, Connecticut, Delaware, Florida, Georgia, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, and West Virginia.

Each of the ingredients used in the food must be stated on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced into interstate commerce, but not later than November 6, 1991.

Dated: July 30, 1991.

L. Robert Lake,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-18826 Filed 8-7-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91G-0253]

Procter & Gamble Co.; Filing of Petition for Affirmation of Gras Status

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Procter & Gamble Co. has filed a petition (GRASP 1G0373), proposing to affirm that caprenin, a triglyceride derived from the esterification of glycerol with capric, caprylic, and behenic acids, is generally recognized as

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For the purpose of this permit, the name of the product is "nonfat cottage cheese." The information panel of the label must bear nutritional labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 600,000 pounds (272,155 kilograms) of the test product. The product will be manufactured at Crowley Foods, Inc., Theresa Rd., LaFargeville, NY 13636, and distributed in Alabama, Connecticut, Delaware, Florida, Georgia, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, and West Virginia.

Each of the ingredients used in the food must be stated on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced into interstate commerce, but not later than November 6, 1991.

Dated: July 30, 1991.

L. Robert Lake,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-18826 Filed 8-7-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91G-0253]

Procter & Gamble Co.; Filing of Petition for Affirmation of Gras Status

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Procter & Gamble Co. has filed a petition (GRASP 1G0373), proposing to affirm that caprenin, a triglyceride derived from the esterification of glycerol with capric, caprylic, and behenic acids, is generally recognized as safe (GRAS) for use as a confectionery fat in soft candy and confectionery coatings.

DATES: Written comment by October 7, 1991.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Lawrence J. Lin, Center for Food Safety and Applied Nutrition (HFF-333), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sections 201(s), 409 (21 U.S.C. 321(s), 348)) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that Procter & Gamble Co., 6300 Center Hill Rd., Cincinnati, OH 45224, has filed a petition (GRASP 1G0373), proposing that caprenin, a triglyceride derived from the esterification of glycerol with capric, caprylic, and behenic acids, be affirmed as GRAS for use as a confectionery fat in soft candy and confectionery coatings. The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the requirements outlined in §§ 170.30 and 170.35 (21 CFR 170.30 and 170.35) is filed by the agency. There is no prefiling review of the adequacy of data to suppport a GRAS conclusion. Thus, the filing of this petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability of caprenin for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Interested persons may, on or before October 7, 1991, review the petition and/or file comments (two copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). Comments should include any available information that would be helpful in determining whether the substance is, or is not, GRAS for the proposed use. A copy of the petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 29, 1991.

L. Robert Lake,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-18911 Filed 8-7-91; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Program Announcement and Final Project Requirements, Funding Preference and Priority for Grants for Interdisciplinary Training for Health Care for Rural Areas

The Health Resources and Services Administration (HRSA) announces the final project requirements, funding preference and priority for fiscal year (FY) 1991, Grants for Interdisciplinary Training for Health Care for Rural Areas, section 799A of the Public Health Service (PHS) Act, as amended.

Purposes

Section 799A of the Public Health Service Act, as amended by Public Law 100-607, authorizes the Secretary to award grants for interdisciplinary training projects designed to provide or improve access to health care in rural areas. Specifically, projects funded under this authority shall be designed to:

(a) Use new and innovative services in rural areas; practitioners to provide services in rural areas;

(b) Demonstrate and evaluate innovative interdisciplinary methods and models designed to provide access to cost-effective comprehensive health care;

(c) Deliver health care services to individuals residing in rural areas;

(d) Enhance the amount of relevant reserach conducted concerning health care issues in rural areas; and

(e) Increase the recruitment areas and make rural practice a more attractive career choice for health care practitioners.

A recipient of funds may use various methods in carrying out the projects described above. The legislation cites the following methods as examples:

(a) The distribution of stipends to students of eligible applicants;

(b) The establishment of a postdoctoral fellowship program;

(c) The training of faculty in the economic and logistical problems confronting rural health care delivery systems; or

(d) The purchase or rental of transportation and telecommunication equipment where the need for such equipment due to unique characteristics of the rural area is demonstrated by the recipient.

Healthy People 2000 Objectives

The PHS is committed to achieving the health promotion and disease prevention objections of Healthy People 2000 a PHS-led national activity for setting priority areas. This program of Grants for Interdisciplinary Training for Health Care for Rural Areas is related to the priority area of Educational and Community-Based Programs.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) of Healthy People 2000 (Summary Report; Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone 202-783-3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between its training programs and U.S. Public Health Service programs which provide comprehensive primary health care services to the underserved. Applicants are encouraged to offer clinical training in facilities serving the underserved.

Eligibility

To the eligible for a Grant for Interdisciplinary Training for Health Care for Rural Areas, each applicant must be located in a State and be:

1. A local health department, or
2. A nonprofit organization, or
3. A public or nonprofit college, university or school of, or program that specializes in nursing, psychology, social work, optometry, public health, dentistry, osteopathic medicine, physician assistants, pharmacy, podiatric medicine, allopathic medicine, chiropractic, or allied health professions.

For-profit entities are not eligible to obtain funds under section 799A either directly or through subgrants or subcontracts.

Each application must be jointly submitted by at least two eligible applicants. One of the applicants must be an academic institution. Each application must demonstrate the need and demand for health care services, knowledge of available resources and the most significant service and educational gaps within its targeted geographic area. One applicant must be designated the principal organization responsible and accountable for the conduct of the proposed project.

Statutory Project Requirements

Interdisciplinary training projects funded under section 799A must:

1. Assist individuals in academic institutions in establishing long-term collaborative relationships with health care facilities and providers in rural areas, and

2. Designate a rural health care agency or agencies for clinical treatment or training, including hospitals, community health centers, migrant health centers, rural health clinics, community mental health centers, long-term care facilities, facilities operated by the Indian Health Service or an Indian tribe or tribal organization or Indian organization under a contract with the Indian Health Service under the Indian Self-Determination and Education Assistance Acts, or Native Hawaiian health centers.

Not more than 10 percent of the individuals receiving training with section 799A funds shall be trained as doctors of medicine or osteopathic medicine. A grantee may not use more than 10 percent of the grant funds for administrative costs.

The following project requirements were established in fiscal year 1990, after public comment and are being extended in FY 1991.

Established Nonstatutory Project Requirements

A project supported under this grant program must meet the following requirements:

(1) Carry out the following two project purposes at a minimum, among those authorized by section 799A:

(a) interdisciplinary training to prepare health care practitioners to provide services in rural areas; and

(b) increase the recruitment and retention of health care practitioners in rural areas.

(2) Collaborate with the resources of an Area Health Education Center (AHEC) or Geriatric Education Center (GEC) if these centers are present in a State or part of a State where the rural interdisciplinary training project is conducted.

(3) Evaluate in a systematic manner, as prescribed by the Secretary, its project activity, including determination of a baseline at the outset of the project and measurement of progress by trainees and faculty.

(4) Provide and clearly define for each level of training (undergraduate, graduate, postgraduate, continuing education and faculty training) the disciplines and numbers of students to receive training as well as the duration of the training. This is to include an outline of basic criteria for the selection of students to participate in the training. These project elements are to be tracked and linked to project outcomes.

(5) Provide specific indicators of the extent and means by which it plans to become self-sufficient.

Final Nonstatutory Project Requirements

In addition to the nonstatutory project requirements cited above, each project must provide the following:

1. Integrated recruitment and retention strategies (An example of retention strategies might include provision of continuing education to National Health Service Corps Scholar (NHSC) and loan repayors early in their periods of service);

2. Curriculum elements that address the uniqueness of health conditions and ethnic or cultural characteristics of the populations in the rural areas to be served; and

3. Enrollment of a significant proportion of individuals from rural areas, particularly rural health professions shortage areas or medically underserved areas.

4. Inclusion of one project collaborator which is an entity in a primary care health professional shortage area which employs or is eligible to employ National Health Service Corps Scholars or loan repayors. (See statutory project requirement number 1.)

These requirements are designed to better assure that trainees will practice in rural areas. Research indicates that optimal strategies for rural practice should include early promotion of careers, the provision of financial and cultural support during training, the development of technical and collegial support systems, and some limited use of economic and service incentives.

Definitions

Accredited Health Professions Institutions means schools of medicine, dentistry, osteopathic medicine, pharmacy, optometry, podiatric medicine, veterinary medicine, public health, and chiropractic, as defined in section 701(4) of the Act, schools of allied health as defined in section 701(10) of the Act, and schools of nursing as defined in section 853 of the Act, which are located in States as defined in section 701(11) of the Act and which are accredited as provided in section 701(5) of the Act. The term also includes a "graduate program in health administration", a "graduate program in clinical psychology" as defined in section 701(4) and a "program for the training of physician assistants" as defined in section 701(8)(A) of the Act.

Clinical Treatment or Training means direct, supervised participation in patient care by observation, examination and performance of procedures as are appropriate for the assigned role of the trainee on the rural health care team.

Community Health Center means an entity as defined in section 330(a) of the Act and in regulations at 42 CFR 51c.102(c).

Community Mental Health Center means for purposes of this grant program a multiservice mental health facility which provides essential elements of comprehensive mental health services:

(1) Inpatient services;

(2) Outpatient services;

(3) Partial hospitalization services—must include at least day care service;

(4) Emergency services provided 24 hours per day—must be available within at least one of the first three services listed above; and/or

(5) Consultation and education services available to community agencies and professions personnel.

Continuing Medical Education or *Continuing Education* means any education for the purpose of maintaining or enhancing the knowledge, attitudes, or abilities of a physician or health professional in his or her field which does not lead to any formal advanced standing in the given profession.

Geographic Area means a contiguous geopolitical unit, which may include counties, minor civil divisions, census county divisions, groups of census tracts, or a combination of such units.

Indian Tribe or *Tribal Organization* means an organization or entity as defined in section 4(e) and 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

Interdisciplinary Training means a planned and coordinated program of education or training aimed at preparation of functioning teams of two or more health care practitioners from different health disciplines who will coordinate their activities to provide services to a client or group of clients.

Long-Term Care Facility is a facility which offers services designed to provide diagnostic, preventive, therapeutic, rehabilitative, supportive and maintenance services for individuals who have chronic physical or mental impairments. This facility may have a variety of institutional and non-institutional health settings, including the home, and the goal of the service provided is to promote the optimum

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Continuing Medical Education or *Continuing Education* means any education for the purpose of maintaining or enhancing the knowledge, attitudes, or abilities of a physician or health professional in his or her field which does not lead to any formal advanced standing in the given profession.

Geographic Area means a contiguous geopolitical unit, which may include counties, minor civil divisions, census county divisions, groups of census tracts, or a combination of such units.

Indian Tribe or *Tribal Organization* means an organization or entity as defined in section 4(e) and 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

Interdisciplinary Training means a planned and coordinated program of education or training aimed at preparation of functioning teams of two or more health care practitioners from different health disciplines who will coordinate their activities to provide services to a client or group of clients.

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level of physical, social and psychological functioning.

Migrant Health Center means an entity as defined in section 329(a) of the Act and in regulations at 42 CFR 56.102(g)(1).

Native Hawaiian Health Center means an entity as defined in the Native Hawaiian Health Care Act of 1988 (Pub. L. 100–579) (42 U.S.C. 11707(4)).

Nonprofit as applied to any entity means one, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

Postdoctoral Fellowship Program means a program of advanced academic or professional work, after the attainment of a doctoral degree, that is sponsored by a school of/or program that specializes in medicine, osteopathic medicine, nursing, dentistry, psychology, social work, optometry, public health, pharmacy, podiatric medicine, or allied health.

Rural Area means a Non-Metropolitan Statistical Area or an area located outside a Metropolitan Statistical Area as defined by standards followed by the Office of Management and Budget. "Rural Area," as defined in section 799A, includes a "frontier area" in which the population density is less than 7 individuals per square mile.

Rural Health Care Agency means a hospital, community health center, migrant health center, rural health clinic, community mental health center, long-term care facility, facility operated by the Indian Health Service or an Indian tribe or tribal organization under a contract with the Indian Health Service under the Indian Self-Determination and Education Assistance Act, or Native Hawaiian health centers.

Rural Health Clinic means an entity as defined under section 1861(aa)(2) of the Social Security Act and in regulations at 42 CFR 491.2.

State means, in addition to the 50 States, only the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia.

Review Criteria

The HRSA will review applications taking into consideration the following factors:

(1) The potential effectiveness of the proposed project in carrying out the training purposes of section 799A of the Act;

(2) The extent to which the project explains and documents the need for the project in the rural area to be served;

(3) The degree to which the proposed project adequately provides for the interdisciplinary training of health professionals to practice in the rural area to be addressed by the project;

(4) The degree to which the applicant offers appropriate clinical training experiences in rural health care settings;

(5) The degree to which the applicant demonstrates a commitment to establishing and maintaining long-term collaborative relationships between academic institutions and health care facilities and providers in rural areas;

(6) The effectiveness of the organizational arrangements necessary to carry out the project;

(7) The administrative and management capability of the applicant to carry out the proposed project in a cost-effective manner;

(8) The capability of the proposed staff and faculty to provide the proposed instruction;

(9) The extent to which the trainee recruitment and selection process assures that qualified trainees with significant interest or background in rural health care are involved in the project;

(10) The extent to which the budget justification is reasonable and indicates that institutional and community support to the project are provided to the maximum extent possible; and

(11) The extent to which the financial information provided indicates an effective utilization of grant funds and indicates that the project will continue on a self-sustaining basis.

Established Funding Preference and Priority

The following funding preference and priority were established in FY 1990, after public comment, and the Administration is extending them in FY 1991.

In making awards in Fiscal Year 1991, a funding preference will be given to interdisciplinary training involving three or more disciplines. This funding preference will be given to applicants that propose and implement training for health care practitioners, faculty or students representing three or more disciplines.

In determining the order of funding of approved applications funding priority will be given for applicants that plan to conduct a substantial part of the proposed interdisciplinary training in a "frontier area" or in a designated health professional shortage area as part of the rural region to be served by the project. "Frontier areas" are those areas with a population density of less than 7 individuals per square mile.

Proposed project requirements, a proposed funding preference and funding priority were published for public comment in the **Federal Register** on April 24, 1991 (56 FR 18824). The Department received three comments from two respondents on these proposals during the 30-day comment period. The comments and the Department's responses are summarized below.

A comment was received from one respondent concerning an aspect of the program for which public comment was not requested.

One respondent expressed concern about the funding preference designed to increase minority health professionals, and suggested that we expand the definition of "minority" to include disadvantaged populations. As directed by the Disadvantaged Minority Health Improvement Act of 1990, Public Law 101–527, the Bureau is developing a new definition of "disadvantaged." This definition will be published in the **Federal Register** for public comment before it is applied to Bureau programs.

That same respondent expressed support for the proposed nonstatutory project requirement that places emphasis on the retention of graduates in rural areas, and for the funding preference for interdisciplinary projects that offer training for nurse-midwives.

The Department has finalized the project requirements, funding preference and funding priority as proposed. The final funding preference and priority do not preclude funding of other eligible approved applications. Accordingly, entities which do not qualify for or elect to request consideration under the preference or priority are encouraged to submit applications.

Final Funding Preference

In addition, for FY 1991, a funding preference will be given to interdisciplinary projects that offer training for nurse practitioners, nurse midwives, physician assistants, or nurse anesthetists.

Final Funding Priority

In addition, for FY 1991, a funding priority will be given to projects designed to increase the availability of minority health professionals or all types to serve rural minority populations including Blacks, Hispanics, Native Americans, Alaskan Natives and Native Hawaiians. Increasing the number of minority health professionals is an important strategy to better meet the health care needs of these populations.

Minority health professionals tend to practice in underserved or socio-economically deprived areas in greater proportion than majority health professionals.

Questions regarding programmatic information should be directed to: Dr. Robert W. Beck, Program Officer, Division of Associated and Dental Health Professions, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8C–15, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–6837.

The Catalog of Federal Domestic Assistance number for this program is 93.192. This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: August 2, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91–18912 Filed 8–7–91; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Institute of Deafness and Other Communication Disorders; Meeting of the Ad Hoc Voice and Voice Disorders Subcommittee of the National Deafness and Other Communication Disorders Advisory Board

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Ad Hoc Voice and Voice Disorders Subcommittee of the National Deafness and Other Communication Disorders Advisory Board on September 17, 1991. The meeting will take place from 8:30 a.m. to adjournment in Conference Room 8, Building 31, C-Wing, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting will be open to the public so that the Subcommittee may compare the research portfolio of the Institute to the National Strategic Research Plan, identify changes in the field since the plan was developed, recommend levels and areas of research activity, and suggest potential initiatives. Attendance by the public will be limited to space available.

Summaries of the Subcommittee meeting and a roster of members may be obtained from Mrs. Monica Davies, National Institute on Deafness and Other Communication Disorders, Building 31, room 3C08, National Institutes of Health, Bethesda, Maryland 20892, 301–402–1129, upon request.

(Catalog of Federal Domestic Assistance Program No. 13.173 Biological Research Related to Deafness and Other Communication Disorders

Dated: July 31, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91–18807 Filed 8–7–91; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Deafness and Other Communication Disorders; Meeting of the Ad Hoc Hearing and Hearing Impairment Subcommittee of the National Deafness and Other Communication Disorders Advisory Board

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Ad Hoc Hearing and Hearing Impairment Subcommittee of the National Deafness and Other Communication Disorders Advisory Board on October 16, 1991. The meeting will take place from 8:30 a.m. to adjournment in room 3C07, Building 31, C–Wing, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting will be open to the public so that the Subcommittee may compare the research portfolio of the Institute to the National Strategic Research Plan, identify changes in the field since the Plan was developed, recommend levels and areas of research activity, and suggest potential initiatives. Attendance by the public will be limited to space available.

Summaries of the Subcommittee meeting and a roster of members may be obtained from Mrs. Monica Davies, National Institute on Deafness and Other Communication Disorders, Building 31, room 3C08, National Institutes of Health, Bethesda, Maryland 20892, 301–402–1129, upon request.

(Catalog of Federal Domestic Assistance Program No. 13.173 Biological Research Related to Deafness and Other Communication Disorders)

Dated: July 31, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91–18808 Filed 8–7–91; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Meeting of the National Advisory Board on Medical Rehabilitation Research

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Board on Medical Rehabilitation Research, National Institutes of Child Health and Human Development, September 12–13, 1991, Gaithersburg Marriott, 620 Perry Parkway, Gaithersburg, Maryland 20877

The entire meeting will be open to the public from 9 a.m. on September 12 to adjournment on September 13. Attendance by the public will be limited to space available. The Board will review and assess Federal research priorities, activities, and findings regarding medical rehabilitation research and shall advise on the provisions of the statute-required comprehensive plan for the conduct and support of medical rehabilitation research.

Ms. Mary Plummer, Board Secretary, NICHD, Executive Plaza North, room 520, National Institutes of Health, Bethesda, Maryland 20892, Area Code 301, 496–1485, will provide substantive program information, a summary of the meeting and a roster of members. If you have specific disability-related requirements, please call.

Dated: July 31, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH

[FR Doc. 91–18809 Filed 8–7–91; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–060–01–5440–10 B021]

Proposed Plan Amendment, Land Exchange and Right-of-Way for Bolo Station Landfill, San Bernardino County

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that Bureau of Land Management and the County of San Bernardino will prepare a joint Federal-County Environmental Impact Statement/Report (EIS/EIR) for a proposed land exchange, right-of-way and plan amendment to the California Desert Conservation Area Plan for the Rail-Cycle, LP proposed Class III Bolo Station landfill disposal site.

Rail-Cycle, LP, a partnership of Waste Management of North America and Atchison, Topeka and Sante Fe Railroad Company, has filed an application to acquire through exchange two and one-half sections (1,500 acres) of public land. The parcels are located between Amboy and Cadiz, south of U.S. Route 66, about 35 miles north east of the City of Twentynine Palms and about 45 miles east of Ludlow. The proposed right-of-

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Betty J. Beveridge,

Committee Management Officer, NIH

[FR Doc. 91-18809 Filed 8-7-91; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-01-5440-10 B021]

Proposed Plan Amendment, Land Exchange and Right-of-Way for Bolo Station Landfill, San Bernardino County

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that Bureau of Land Management and the County of San Bernardino will prepare a joint Federal-County Environmental Impact Statement/Report (EIS/EIR) for a proposed land exchange, right-of-way and plan amendment to the California Desert Conservation Area Plan for the Rail-Cycle, LP proposed Class III Bolo Station landfill disposal site.

Rail-Cycle, LP, a partnership of Waste Management of North America and Atchison, Topeka and Sante Fe Railroad Company, has filed an application to acquire through exchange two and one-half sections (1,500 acres) of public land. The parcels are located between Amboy and Cadiz, south of U.S. Route 66, about 35 miles north east of the City of Twentynine Palms and about 45 miles east of Ludlow. The proposed right-of-

way provides access from Route 66 to the landfill site. The parcels would be part of a 4,800 acre waste-by-rail landfill system. Refuse would be processed for recyclables at a Materials Recovery Facility (MRF) in Southern California. The residue would be packed in containers and carried by Sante Fe train to the Bolo Station site. Initially, Rail-Cycle expects to receive 3,000 tons of processed waste per day, transported by one train. Within five years, it is anticipated that the processed waste will increase to 21,000 tons per day, utilizing seven trains. The service life of the landfill would be 59 years at 21,000 tons per day and would have a total capacity of 364 million tons. At capacity, the site would occupy 2,100 acres and would be about 420 feet in height at its center. Presently, a MRF has been identified for the San Gabriel Valley. It is anticipated that other MRF's will be developed as demand occurs.

The site underlying the refuse would be lined and pollution control systems to be constructed include: groundwater monitoring wells, leachate collection and treatment, and gas control. Also, there will be facilities for composting of "green waste".

Since the proposed action is not consistent with the California Desert Plan guidelines for one of the three parcels, a plan amendment is necessary. A 90-day review of the draft EIS will be provided. The document will consider several issues, including air quality, minerals, water quality and wildlife.

Three public scoping meetings will be conducted to identify public concerns, issues, and viable alternative sites which should be addressed by the EIS. Date, time and location of the public meetings are:

August 27, 1991, 7 p.m.
  Twentynine Palms Junior High School, Multipurpose Room, 5798 Utah Trail, Twentynine Palms, CA.
August 28, 1991, 7 p.m.
  Holiday Inn, 1511 E. Main St., Barstow, CA.
August 29, 1991, 7 p.m.
  Joshua Room, San Bernardino Government Center, 1st Floor, 385 N. Arrowhead Ave., San Bernardino, CA.

DATES: Written comments will be accepted, if received on or before September 9, 1991.

ADDRESSES: For further information contact Ken McMullen, Bureau of Land Management, Needles Resource Area, 101 W. Spikes Road, Needles, CA 92363.

Dated: August 2, 1991.

Alan Stein,

Acting District Manager.

[FR Doc. 91-18812 Filed 8-7-91; 8:45 am]

BILLING CODE 4310-40-M

[NV-020-4370-10]

Winnemucca District Advisory Council Meeting

SUMMARY: Notice is herey given in accordance with Public Law 92-463 that a meeting of the Winnemucca District Advisory Council will be held on Wednesday September 11, and Thursday September 12, 1991.

The meeting will begin at 8 a.m. in the conference room of the Bureau of Land Management Office at 705 East Fourth Street, Winnemucca, Nevada 89445.

The Agenda for the meeting will include:

1. An update on the National Conservation Area Proposal;
2. Review of our draft "interim" management plan for the Black Rock/High Rock area;
3. Review of the Little Owyhee Allotment Evaluation and draft proposal (involving livestock, wildlife, and wild horse issues).

In order to familiarize the council with the issues involved in the Little Owyhee Area, Wednesday, September 11th will be a tour of that area.

The meeting is open to the public. Interested persons may make oral statements to the Council at 10 a.m. on Thursday, September 12th, or file written statements for the Councils consideration. Anyone wishing to make an oral statement must notify the District Manager by Monday, September 9, 1991. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the Council Meeting will be maintained in the District Office and will be available for public inspection (during regular business hours) within 30 days following the meeting.

Dated: July 30, 1991.

Robert J. Neary,

Acting District Manager.

[FR Doc. 91-18831 Filed 8-7-91; 8:45 am]

BILLING CODE 4310-84-M

[AZ-020-01-5410-10]

Conveyance of Mineral Interests Applications

Notice is hereby given that pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1719(b), the following applications have been filed for the conveyance of certain Federally-owned mineral interests within each accompanying land description:

Gila and Salt River Meridian, Ariz

AZA-11970

T. 5 N., R. 2 E.,
  Sec. 13.
T. 5 N., R. 3 E.,
  Sec. 27.

AZA-13979

T. 10 S., R. 7 E.,
  Secs. 1, 9, 12, 13, 26, and 27.
T. 10 S., R. 8 E.,
  Secs. 5 and 11.
T. 10 S., R. 9 E.,
  Secs. 5 and 6.

AZA-17364

T. 4 N., R. 3 E.,
  Secs. 3 and 10.
T. 5 N., R. 3 E.,
  Secs. 33 and 34.

AZA-19070

T. 8 N., R 5 W.,
  Secs. 7, 8, and 17 to 21, incl.

AZA-19074

T. 9 N., R. 5 W.,
  Secs. 1, 11, 15, and 22.

AZA-19081

T. 22 N., R. 16 W.,
  Sec. 22.

AZA-19175

T. 7 N., R. 5 W.,
  Secs. 9, 17, 18, and 20.

AZA-20613

T. 7 N., R. 1 W.,
  Sec. 6.
T. 7 N., R. 2 W.,
  Sec. 1.

AZA-21174

T. 7 N., R. 5 W.,
  Sec. 15.

AZA-21222

T. 10 N., R. 5 W.,
  Secs. 3, 9, and 15.
T. 11 N., R. 5 W.,
  Secs. 23, 26, 27, 33, 34, and 35.
T. 9 N., R. 6 W.,
  Secs. 12, 13, 14 and 24.

AZA-21807

T. 14 N., R. 9 W.,
  Secs. 10 and 11.

AZA-21966

T. 6 N., R. 4 E.,
  Sec. 15.

AZA-22076

T. 11 N., R. 5 W.,
  Secs. 27 and 28.

AZA-22103

T. 6 N., R. 4 E.,
  Sec. 24.

AZA-22112

T. 7 N., R. 5 W.,
  Sec. 3.
T. 8 N., R. 5 W.,
  Sec. 34.

AZA-22303

T. 8 N., R. 5 W.,
  Sec. 30

AZA-22526

T. 7 N., R. 5 W.,
Secs. 11.

AZA-22531

T. 1 N., R. 7 E.,
Sec. 3.

AZA-22543

T. 7 N., R. 5 W.,
Sec. 3.

AZA-22628

T. 7 N., R. 4 W.,
Sec. 17.

AZA-22865

T. 7 N., R. 1 W.,
Sec. 6.
T. 7 N., R. 2 W.,
Sec. 1.

AZA-22887

T. 10 S., R. 14 E.,
Secs. 23, 26, and 27.

AZA-22922

T. 10 S., R. 14 E.,
Sec. 12.
T. 10 S., R. 15 E.,
Secs. 5, 7, and 8.
T. 8 S., R. 16 E.,
Sec. 31.

AZA-23133

T. 6 N., R. 4 E.,
Sec. 10.

AZA-23150

T. 11 N., R. 3 W.,
Secs. 8, 9, 17, 19, 20, 21, 29, and 30.

AZA-23151

T. 11 N., R. 5 W.,
Secs. 20 and 21.

AZA-23180

T. 6 N., R. 4 E.,
Sec. 17.

AZA-23386

T. 9 N., S., R. 2 E.,
Sec. 13.
T. 9 N., S., R. 3 E.,
Secs. 29 and 30.

AZA-23415

T. 20 S., R. 9 E.,
Sec. 25.
T. 20 S., R. 10 E.,
Secs. 13, 14, 15, 23, 24, 25, 28, 29, 30, 32, and 36.

AZA-23506

T. 9 N., R. 4 W.,
Sec. 8.
T. 9 N., R. 5 W.,
Secs. 1, 11, 15, and 22.
T. 10 N., R. 5 W.,
Secs. 21 and 28.
T. 9 N., R. 6 W.,
Secs. 12, 13, and 14.

AZA-23553

T. 6 N., R. 3 E.,
Sec. 13.
T. 6 N., R. 4 E.,
Sec. 18.

AZA-23560

T. 7 S., R. 11 E.,
Sec. 25.
T. 6 S., R. 12 E.,
Secs. 33 and 34.
T. 7 S., R. 12 E.,
Sec. 3
T. 7 S., R. 13 E.,
Secs. 12, 13, and 27.
T. 8 S., R. 13 E.,
Secs. 8, 9, 11 to 15, incl., 22, 23, 25, 26, and 27.
T. 7 S., R. 14 E.,
Secs. 17, 21, 26 to 33, and 35.
T. 8 S., R. 14 E.,
Secs. 2, 5 to 8, incl., 11, 14, 20, 22, 23, 24, 26, 27, 29, and 30.

AZA-23806

T. 14 N., R. 1 W.,
Sec. 21.

AZA-23870

T. 11 N., R. 24 E.,
Secs. 8, 10, 12, 14, and 22.

AZA-24035

T. 6 N., R. 1 W.,
Secs. 22 and 23.

AZA-24036

T. 6 N., R. 1 W.,
Sec. 23.

AZA-24062

T. 19 S., R. 14 E.,
Secs. 27 and 28.

AZA-24090

T. 19 S., R. 14 E.,
Secs. 21 and 22.

AZA-24106

T. 10 N., R. 5 W.,
Sec. 10.

AZA-24246

T. 6 N., R. 4 E.,
Sec. 3.

AZA-24411

T. 10 N., R. 3 W.,
Secs. 5 to 8, incl., 17, and 18.
T. 11 N., R. 3 W.,
Secs. 6, 7, 18, 21, 22, 23, and 26 to 31, incl.
T. 12 N., R. 3 W.,
Secs. 5, 6, 8, 17, 18, 20, and 29.
T. 10 N., R. 4 W.,
Sec. 13.
T. 11 N., R. 4 W.,
Secs. 1, 2, and 24.
T. 12 N., R. 4 W.,
Secs. 11, 13, 14, 15, 21, 22, 23, 25, and 26.

AZA-24479

T. 10 N., R. 5 W.,
Secs. 7, 8, 9, 17, and 18.
T. 10 N., R. 6 W.,
Secs. 1, 4, 5, 13, 21, 24, 25, 27, 28, and 35.
T. 11 N., R. 6 W.,
Sec. 33.
T. 10 N., R. 7 W.,
Secs. 21, 22, 27, and 28.
T. 11 N., R. 7 W.,
Secs. 25, 26, 27, 34, and 35.

AZA-24549

T. 12 S., R. 6 W.,
Sec. 21.

AZA-24570

T. 11 N., R. 3 W.,
Sec. 4.

AZA-24574

T. 12 N., R. 24 E.,
Sec. 31.

AZA-25358

T. 8 N., R. 1 W.,
Secs. 7 and 30.
T. 8 N., R. 2 W.,
Secs. 12, 13, and 24.

The mineral interests may be conveyed in whole or in part.

The purpose of the conveyances is to allow consolidation of surface and subsurface ownership where there are no known mineral values, or in those instances where the reservation of mineral interests to the United States interferes with or precludes appropriate non-mineral development of the lands and such development would be a more beneficial use.

Additional information concerning the applications may be obtained from the Phoenix District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Upon publication of this notice in the **Federal Register**, the mineral interests owned by the United States in the lands under application shall be segregated to the extent that they will not be open to appropriation under the mining and mineral leasing laws. The segregative effect of the applications shall terminate upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application, or two years from the date of publication of this notice, whichever comes first.

Dated: August 2, 1991.

Henri R. Bisson,

District Manager.

[FR Doc. 91-18830 Filed 8-7-91; 8:45 am]

BILLING CODE 4310-32-M

[NM-940-4214-11; NMNM 094303]

Proposed Continuation of Withdrawal; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, proposes that a 416.045 acre withdrawal of Santa Fee National Forest land for use in connection with three recreation areas, one picnic area, and two summer home areas continues for an additional 20 years. The land will remain closed to mining. The land has been and remains open to such forms of disposition as may by law be made of

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Sec. 4.

AZA–24574

T. 12 N., R. 24 E.,
Sec. 31.

AZA–25358

T. 8 N., R. 1 W.,
Secs. 7 and 30.
T. 8 N., R. 2 W.,
Secs. 12, 13, and 24.

The mineral interests may be conveyed in whole or in part.

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Dated: August 2, 1991.

Henri R. Bisson,

District Manager.

[FR Doc. 91–18830 Filed 8–7–91; 8:45 am]

BILLING CODE 4310–32–M

[NM–940–4214–11; NMNM 094303]

Proposed Continuation of Withdrawal; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, proposes that a 416.045 acre withdrawal of Santa Fee National Forest land for use in connection with three recreation areas, one picnic area, and two summer home areas continues for an additional 20 years. The land will remain closed to mining. The land has been and remains open to such forms of disposition as may by law be made of

National Forest System land, and mineral leasing.

DATES: Comments should be received by November 6, 1991.

ADDRESSES: Comments should be sent to the New Mexico State Director, BLM, P.O. Box 1449, Sante Fe, New Mexico 87504–1449.

FOR FURTHER INFORMATION CONTACT: Clarence F. Hougland, BLM, New Mexico State Office, 505–988–6071.

SUPPLEMENTARY INFORMATION: The United States Department of Agriculture, Forest Service, proposes that the existing withdrawal made by Public Land Order No. 2830 be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

Santa Fe National Forest

Windy Bridge Picnic Area (24.80 acres)

T. 17 N., R. 12 E.,
Sec. 17, lot 11.

Winsor Creek Summer Home Area (89.10 acres)

T. 18 N., R. 12 E.
Sec. 3, N½NW¼ of lot 5, NE¼ of lot 5, NW¼ of lot 6, S½NE¼ of lot 6, and N½ SE¼ of lot 6.
T. 19 N., R. 12 E.
Sec. 33, N½SW¼SE¼, SW¼NW¼SE¼ SE¼, N½SW¼SE¼SE¼, and SE¼SE¼ SE¼;
Sec. 34, S½SW¼SW¼SW¼.

Holy Ghost Recreation Area (106.70 acres)

T. 18N., R. 12 E.,
Sec. 20, W½ of lot 1, and that portion that lies outside the Pecos Wilderness described as SE¼NW¼NW¼NW¼, E½ SE¼NW¼NW¼, W½SE¼NW¼NW¼, NE¼SW¼NW¼, E½SE¼SW¼NW¼, SW¼SE¼NW¼, NW¼NE¼SW¼, E½ SW¼NE¼SW¼, W½SE¼NE¼SW¼, NE¼SE¼SW¼, and S½SE¼SW¼.

Holy Ghost Summer Home Area (133.405 acres)

T. 18 N., R. 12 E.,
Sec. 29, E½ of lot 7;
Sec. 32, NE¼NE¼NE¼ and N½SE¼NE¼ NE¼;
Sec. 33, lot 6, SW¼NW¼NW¼NW¼, SW¼NW¼NW¼, N½SW¼NW¼, SE¼ SW¼NW¼, and SW¼SE¼NW¼,

Winsor Creek Recreation Area (10 acres)

T. 19 N., R. 12 E.,
That portion outside the Pecos Wilderness described as Sec. 33, S½N½S½SW¼ and N½S½S½SW¼.

Upper Bull Creek Recreation Area (52.04 acres)

T. 17 N., R. 13 E.,
Sec. 28, lot 2, W½SE¼NW¼.

The areas described aggregate 416.045 acres more or less in San Miguel County.

The purpose of the withdrawal is for the use and protection of substantial capital improvements in connection with three recreation areas, one picnic area, and two summer home areas. All of the land is and remains segregated from operation of the mining laws, but not to such forms of disposition as may by law be made of National Forest System land, and the mineral leasing laws.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, in connection with the proposed withdrawal continuation, may present them in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources.

A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether the withdrawal will be continued, and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: August 2, 1991.

Jon H. Idso,

Acting State Director.

[FR Doc. 91–18829 Filed 8–7–91; 8:45 am]

BILLING CODE 4310–FB–M

[NM–940–4214–11; NMNM 094303]

Proposed Continuation of Withdrawal; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, proposes that a 770-acre withdrawal of Cibola National Forest land for use in connection with five recreation areas and one administrative site continue for an additional 20 years. The land will remain closed to mining. The land has been and remains open to such forms of disposition as may by law be made of National Forest System land, and mineral leasing.

DATES: Comments should be received by November 6, 1991.

ADDRESSES: Comments should be sent to the New Mexico State Director, BLM, P.O. Box 1449, Santa Fe, New Mexico 87504–1449.

FOR FURTHER INFORMATION CONTACT: Clarence F. Hougland, BLM, New Mexico State Office, 505–988–6071.

SUPPLEMENTARY INFORMATION: The United States Department of Agriculture, Forest Service, proposes that the existing withdrawal made by Public Land Order No. 2830 be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

Cibola National Forest

Cienega Recreation Area (120 acres)

T. 11 N., R. 5 E.,
Sec. 23, S½S½NE¼, SE¼SE¼NW¼, N½ SW¼SE¼NW¼, S½NE¼SE¼NW¼, NW¼SE¼NW¼, NE¼SW¼NW¼, W½ SW¼NE¼NW¼, SE¼NW¼NW¼, SW¼NW¼NW¼, NW¼NW¼NW¼ and S½NE¼NW¼NW¼.

Las Huertas Recreation Area (60 acres)

T. 12 N., R. 5 E.,
Sec. 28, SE¼SE¼ and S½NE¼SE¼

McGaffey Recreation Area (360 acres)

T. 13 N., R. 16 W.,
Sec. 10, NE¼, SE¼NW¼, E½SW¼, and W½SE¼.

McGaffey Administrative Site (80 acres)

T. 13 N., R. 16 W.,
Sec. 10, NW¼NW¼ and NE¼NW¼.

Wingate Recreation Area (90 acres)

T. 14 N., R. 16 W.,
Sec. 28, SE¼SW¼, E½SW¼SW¼, S½ NE¼SW¼, and SE¼NW¼SW¼.

Quaking Aspen Recreation Area (60 acres)

T. 14 N., R. 16 W.,
Sec. 33, NE¼NW¼ and W½NW¼NE¼.

The acres described aggregate 770 acres more or less in Bernalillo, Sandoval, and McKinley Counties.

The purpose of the withdrawal is for the use and protection of substantial capital improvements in connection with five recreation areas and one administrative site. The land is segregated from operation of the mining laws, but not the mineral leasing laws. The land will remain closed to location and entry under the mining laws, but will remain open to such forms of disposition as may by law be made of National Forest System land, and mineral leasing.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, in connection with the proposed withdrawal continuation, may present them in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources.

A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, will determine whether the withdrawal will be continued, and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: August 2, 1991.

Jon H. Idso,

Acting State Director.

[FR Doc. 91-18832 Filed 8-7-91; 8:45 am]

BILLING CODE 4310-FB-M

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's Information Collection Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service and OMB, Paperwork Reduction Project (1018-0015), Washington, DC 20503, telephone 202-395-7340.

Title: Waterfowl Harvest Surveys.

OMB Approval Number: 1018-0015.

Abstract: The Migratory Bird Treaty Act and the Fish and Wildlife Act of 1956, authorize the Secretary of the Interior to collect such information as is necessary to determine and set appropriate regulations for the hunting of migratory birds, with due regard for maintaining such populations at healthy levels. Information on the magnitude and composition of the harvest is needed for sound management and to preclude over-harvest of the species involved.

In an effort to solve serious non-response problems with the current survey procedures, the Service is requesting an expansion of the current waterfowl harvest survey to include other migratory birds that are not currently surveyed. Also, the Service will require all migratory bird hunters to obtain a Migratory Bird Harvest Information Program Card. The major problem is the Service's inability to obtain the names and addresses of migratory hunters under the current survey procedures, so that they may be sent hunting record forms to record their harvest. The National Migratory bird Harvest Information Program will be phased in, starting with four to six States in January 1992, and expand to ten States in 1993. To maintain comparability among estimates, both the current harvest survey and the new Migratory Bird Harvest Survey would be run concurrently in each state for two to three years before the Waterfowl Harvest Survey is discontinued.

Service Form Number(s): Survey Card, Form No. 3-1823D, Federal Duck Stamp Cards; Form 3-2056I, hunting record form—ducks and geese; Form 3-2056J, hunting record form doves and woodcock; Form 3-2056K, hunting record form—snipe, rail and crane.

Frequency: Annually

Description of Respondents: Individuals and Households.

Estimated Completion Time: The annual reporting burden for the new survey in ten states is estimated to be 38,932 hours, or 1.09 minutes per respondent. For both surveys combined, there is an average of 1.0132 responses per respondent and an average of 0.02389 hours or 1.4 minutes per response.

Annual Responses: 2,365,274.

Annual Burden Hours: The annual burden for the new survey in ten states is estimated to be 38,932 hours, excluding the burden of the existing survey, 17,584 hours.

Service Information Collection Clearance Officer: James E. Pinkerton, Mail Stop—224 Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240; telephone 703/358-1943.

Dated: June 20, 1991.

John G. Rogers, Jr.,

Acting Assistant Director—Refuges and Wildlife.

[FR Doc. 91-18891 Filed 8-7-91; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Application for Permit

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR part 18).

File no. PRT-740507

Applicant—Name: U.S. Fish and Wildlife Service, Alaska Fish & Wildlife Research Center, 1011 East Tudor Road, Anchorage, Alaska 99503.

Type of Permit: Scientific Research

Name of Animals: Alaska sea otters (*Enhydra lutris*)

Summary of Activity to be Authorized: The applicant proposes to renew their current permit to continue scientific research studies related to the Exxon Valdez oil spill and amend their permit to increase the number of takes (capture/recapture, transport, temporarily maintain, drug, flipper tag, blood sample, inject with subcutaneous transponder chip, urine sample, biopsy oral and vaginal lesions, and release) of sea otters by 312 animals. Their current permit authorizes the surgical implantation of a radio transmitter on up to 111 otters. Therefore, of the 312 animals up to 111 of these may be surgically implanted with a radio transmitter. They are not requesting any additional radio transmitter implants.

Source of Marine Mammals for Research: Prince William Sound and southeast Alaska.

Period of Activity: At least through December 1992.

Concurrent with the publication of this notice, the Office of Management Authority is forwarding copies of the application(s) to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments and/or requests for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45-4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358-2204); FAX: (703/358-2281)

Dated: August 2, 1991.

Marshall P. Jones, Jr.,

Chief, Office of Management Authority.

[FR Doc. 91-18803 Filed 8-7-91; 8:45 am]

BILLING CODE 4310-55-M

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.S. Fish and Wildlife
sh & Wildlife Research

Center, 1011 East Tudor Road, Anchorage, Alaska 99503.

Type of Permit: Scientific Research

Name of Animals: Alaska sea otters (*Enhydra lutris*)

Summary of Activity to be Authorized: The applicant proposes to renew their current permit to continue scientific research studies related to the Exxon Valdez oil spill and amend their permit to increase the number of takes (capture/recapture, transport, temporarily maintain, drug, flipper tag, blood sample, inject with subcutaneous transponder chip, urine sample, biopsy oral and vaginal lesions, and release) of sea otters by 312 animals. Their current permit authorizes the surgical implantation of a radio transmitter on up to 111 otters. Therefore, of the 312 animals up to 111 of these may be surgically implanted with a radio transmitter. They are not requesting any additional radio transmitter implants.

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Period of Activity: At least through December 1992.

Concurrent with the publication of this notice, the Office of Management Authority is forwarding copies of the application(s) to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments and/or requests for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

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Dated: August 2, 1991.

Marshall P. Jones, Jr.,

Chief, Office of Management Authority.

[FR Doc. 91–18803 Filed 8–7–91; 8:45 am]

BILLING CODE 4310–55–M

INTERSTATE COMMERCE COMMISSION

[Directed Service Order No. 1511]

Chicago Central & Pacific Railroad Co.—Directed Service—Cedar Valley Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Supplemental Order No. 1 to Directed Service Order No. 1511.

SUMMARY: Directed Service Order No. 1511 (DSO No. 1511) authorized the Chicago Central & Pacific Railroad Company (CCP), pursuant to 49 U.S.C. 11125 and without subsidy or other Federal compensation, to operate over lines of the Cedar Valley Railroad Company (CVR) as "Directed Rail Carrier" (DRC) for a period of sixty (60) days, or until August 3, 1991. Supplemental Order No. 1 to DSO No. 1511 extends the effectiveness of that order for 180 days, or until January 30, 1992, and clarifies the order's Terms and Conditions with respect to revisions to tariffs that can be made by the DRC.

EFFECTIVE DATE: This decision was effective at 11:59 p.m., on August 3, 1991.

FOR FURTHER INFORMATION CONTACT: Bernard Gaillard, (202) 275–7849

or

Melvin F. Clemens, Jr., (202) 275–1559 [TDD for hearing impaired: (202) 275–1721]

SUPPLEMENTARY INFORMATION: Due to a cessation of service by CVR over its entire system without authority, DSO No. 1511 was entered pursuant to 49 U.S.C. 11125, authorizing CCP to operate as a DRC, uncompensated and without Federal subsidy under 49 U.S.C. 11125(b)(5). The Commission has certified, in this decision, that the emergency which prompted entry of the initial order continues to exist, and that there is cause to extend the order for an additional 180 days, or until January 30, 1992. By letter dated July 3, 1991, CCP expressed its willingness to continue to provide uncompensated directed service for up to the maximum additional 180 days permitted by 49 U.S.C. 11125(b)(1).

As a result of the impending expiration of DSO No. 1511, and in an effort to resolve questions regarding the propriety of certain actions by the DRC to change tariffs by canceling joint rates, the Commission requested comments from interested parties on whether cause exists to extend DSO No. 1511 beyond the initial sixty (60) day period, and on whether we should allow the cancellation of participation in joint line rates on grain movements previously in effect between CVR and SOO over Charles City, IA.

Based on the comments received, the Commission has determined that cause exists for the extension of DSO No. 1511 for an additional 180 days, and that tariff changes requested by the DRC which result in the cancellation of joint rates between CVR and Soo Line Railroad Company (SOO) over Charles City, IA are permissible and do not substantially alter preexisting traffic patterns or impact adversely on shippers.

To purchase a copy of the decision, write to, call or pick up a copy in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275–1721.]

Decided: August 1, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips and McDonald. Chairman Philbin and Vice Chairman Emmett did not participate in the disposition of this proceeding.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–18884 Filed 8–7–91; 8:45 am]

BILLING CODE 7035–01–M

Release of Waybill Data for Use by Intermodal Policy Division (IPD); Association of American Railroads

The Commission has received a request from the Intermodal Policy Division, Association of American Railroads (AAR) for permission to use certain data from the Commission's 1990 ICC Waybill Sample.

A copy of the request (WB573—7/30/91) may be obtained from the ICC Office of Economics.

The Waybill Sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data (Ex Parte 385 (Sub-No. 2)) are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 275–6864.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–18883 Filed 8–7–91; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree in United States v. Goldline Wrecking Co. Under the Claim Air Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that on July 30, 1991, a proposed consent decree in *United States* v. *Goldline Wrecking Co.*, Civil Action No. 5:90CV0783, was lodged with the United States District Court for the Northern District of Ohio.

The proposed Consent Decree resolves the claims against Goldline Wrecking Co. for violating section 112(c) of the Clean Air Act, 42 U.S.C. 7412(c), and the National Emission Standards for Hazardous Air Pollutants for Asbestos, 40 CFR part 61, subpart M. The proposed Consent Decree requires Goldline Wrecking Co. to (a) comply with the notice and work standard provisions of the National Emission Standards for Hazardous Air Pollutants for Asbestos; (b) appropriately train personnel utilized by Goldline Wrecking Co. for asbestos removal; (c) report all bids submitted for work potentially involving the removal of suspected asbestos-containing material; and (d) pay a $3,200 civil penalty.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC, 20444. All comments should refer to *United States* v. *Goldline Wrecking Co.* DOJ Ref. No. 90–5–2–1–1451.

The proposed Consent Decree may be examined at the Office of the United States Attorney, suite 208, Federal Building, 2 South Main Street, Akron, Ohio, 44308 and at the Region V Office of the U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the proposed Consent Decree may also be obtained in person or by mail from the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004 ((202) 347–2072). Any request for a copy of the Decree should be accompanied by a check in the amount of $4.50 (18 pages at

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Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-18784 Filed 8-7-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Department Policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States* v. *Meng Feng Corp., Ltd. and Wang Ching Hua*, No. 89-00035, was lodged with the United States District Court for the District of Guam on July 3, 1991.

The proposed consent decree concerns alleged violations of sections 301 and 404 of of the Clean Water Act, 33 U.S.C. 1131, 1344, as a result of discharges of fill material onto portions of property located in Talofofo, Guam, which are alleged to constitute "waters of the United States." The consent decree requires defendants Meng Feng Corporation, Ltd. and Wang Ching Hua, to pay at least thirty thousand dollars ($30,000), and to provide restoration and mitigation for certain wetlands located at the site. The consent decree requires defendants to apply for permits pursuant to section 404 of the Clean Water Act, 33 U.S.C. 1344, for the work that was completed prior to the issuance of a cease-and-desist order by the Army Corps of Engineers.

The Department of Justice will receive until thirty (30) days from the date of this notice written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Attention: Peter W. Colby, Attorney, Environment and Natural Resources Division, United States Department of Justice, 10th and Pennsylvania Avenue NW., Washington, DC 20530; and should refer to *United States* v *Meng Feng Corp., Ltd. and Wang Ching Hua*, DJ Reference No. 90-5-1-1-3112.

The consent decree may be examined at the Clerk's Office, United States District Court, District of Guam, 6th Floor, Pacific News Building, 238 O'Hara Street, Agana, Guam, during regular business hours; or, upon request to Peter W. Colby (202) 514-3376, At the United States Department of Justice, 10th and Pennsylvania Avenue NW., Washington, DC.

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-18783 Filed 8-7-91; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

National Cooperative Research Act of 1984—Dialkyl Project; Lonza Inc.

Notice is hereby given that, on July 17, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Lonza Inc. has filed written notification simultaneously with the Attorney General and the Federal Trade Commission regarding a Restated and Revised Agreement Between Members of the Dialkyl Project (the "Restated and Revised Agreement"). The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the Restated and Revised Agreement and its general objectives are given below.

The parties to the Restated and Revised Agreement are the same as in the original notice: Lonza Inc.; Huntington Laboratories, Inc.; Mason Chemical Company; and Stepan Company.

The objectives of the Project are to conduct toxicological research to be submitted to the United States Environmental Protection Agency in connection with the reregistration and data call-in of pesticides containing Dialkyl quaternary ammonium compounds as active ingredients. The purposes of the Restated and Revised Agreement are to consolidate the original Dialkyl Project Agreement and the Amendment to the original Dialkyl Project Agreement and to revise certain conditions for subsequent membership in the Dialkyl Project.

On August 3, 1988, the Dialkyl Project filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on August 25, 1988, 53 FR 32480. On March 20, 1990 the Dialkyl Project filed its notice of an Amendment to the Dialkyl Project Agreement pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on April 26, 1990, 55 FR 17681.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-18839 Filed 8-7-91; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Controlled Substances: Proposed 1991 Aggregate Production Quota for 2,5-dimethoxyamphetamine

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of a proposed 1991 aggregate production quota.

SUMMARY: This notice proposes a 1991 aggregate production quota for 2,5-dimethoxyamphetamine, a Schedule I controlled substance.

DATES: Comments or objections must be received on or before September 9, 1991.

ADDRESSES: Send comments or objections in quintuplicate to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attn: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307-7183.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act, (21 U.S.C. 826), requires that the Attorney General establish aggregate production quotas for all controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the DEA pursuant to section 0.100 of title 28 of the Code of Federal Regulations.

An application has been made for a manufacturing quota for the Schedule I controlled substance, 2,5-dimethoxyamphetamine. Based on a review of this application and other information available to DEA, the Administrator of the DEA, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826) and delegated to the Administrator by section 0.100 of title 28 of the Code of Federal Regulations, hereby proposes the 1991 aggregate production quota for 2,5-dimethoxyamphetamine, expressed in grams of anhydrous base, be established as follows:

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SUMMARY: This notice proposes a 1991 aggregate production quota for 2,5-dimethoxyamphetamine, a Schedule I controlled substance.

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An application has been made for a manufacturing quota for the Schedule I controlled substance, 2,5-dimethoxyamphetamine. Based on a review of this application and other information available to DEA, the Administrator of the DEA, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826) and delegated to the Administrator by section 0.100 of title 28 of the Code of Federal Regulations, hereby proposes the 1991 aggregate production quota for 2,5-dimethoxyamphetamine, expressed in grams of anhydrous base, be established as follows:

Basic class	Proposed 1991 aggregate production quota (grams)
2,5 dimethoxyamphetamine	30,000

All interested persons are invited to submit comments or objections in writing regarding this proposal. Comments and objections should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative, and must be received by September 9, 1991. If a person believes that one or more issues raised by him warrant a hearing, he should so state and summarize the reasons for his belief.

In the event that comments or objections to this proposal raise one or more issues which the Administrator finds warrant a hearing, the Administrator shall order a public hearing by notice in the Federal Register, summarizing the issues to be heard and setting the time for the hearing.

Pursuant to section 3(c)(3) and 3(e)(2)(C) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that this matter does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The establishment of annual production quotas for Schedules I and II controlled substances is mandated by law and by international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Dated: July 25, 1991.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 91-18774 Filed 8-7-91; 8:45 am]

BILLING CODE 4410-09-M

Controlled Substances; Proposed Aggregate Production Quotas for 1992

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed aggregate production quotas for 1992.

SUMMARY: This notice proposes initial 1992 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act.

DATES: Comments or objections should be received on or before September 9, 1991.

ADDRESSES: Send comments or objections to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attn: DEA Federal Register Representative (CCR).

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307-7183.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for all controlled substances listed in Schedules I and II. This responsibility has been delegated to the Administrator of the DEA by § 0.100 of title 28 of the Code of Federal Regulations.

The quotas are to provide adequate supplies of each substance for: (1) The estimated medical, scientific, research, and industrial needs of the United States; (2) lawful export requirements; and (3) the establishment and maintenance of reserve stocks.

In determining the below listed proposed 1992 aggregate production quotas, the Administrator considered the following factors: (1) Total actual 1990 and estimated 1991 and 1992 net disposals of each substance by all manufacturers; (2) estimates of 1991 year end inventories of each substance and of any substance manufactured from it and trends in accumulation of such inventories; and (3) projected demand as indicated by procurement quota applications filed pursuant to § 1303.12 of title 12 of the Code of Federal Regulations.

Pursuant to § 1303.23(c) of title 21 of the Code of Federal Regulations, the Administrator of the DEA will, in early 1992, adjust individual manufacturing quotas allocated for the year based upon 1991 year-end inventory and actual 1991 disposition data supplied by quota recipients for each basic class of Schedule I or II controlled substance.

Based upon consideration of the above factors, the Administrator of the DEA hereby proposes that aggregate production quotas for 1992 for the following controlled substances, expressed in grams of anhydrous acid or base, be established as follows:

Basic class	Proposed 1992 quotas
Schedule I:	
2,5-Dimethoxyamphetamine	13,500,000
Lysergic acid diethylamide	9
3,4-Methylenedioxyamphetamine	2
3,4-Methylenedioxymethamphetamine	2
Tetrahydrocannabinols	18,000
Psilocyn	5
Psilocybin	5
4-Methylaminorex	2
Methaqualone	2
N-Hydroxy-3,4-methylenedioxyamphetamine	2
Schedule II:	
Alfentanil	6,300
Amobarbital	356,000
Amphetamine	285,000
Cocaine	699,000
Codeine (for sale)	63,726,000
Codeine (for conversion)	6,477,000
Desoxyephedrine	1,068,000
1,043,000 grams of levodesoxyephedrine for use in a noncontrolled, nonprescription product and 25,000 grams for methamphetamine.	
Dextropropoxyphene	88,065,000
Dihydrocodeine	569,000
Diphenoxylate	695,000
Ecgonine (for conversion)	650,000
Fentanyl	45,500
Glutethimide	0
Hydrocodone	3,891,000
Hydromorphone	222,000
Levorphanol	10,000
Meperidine	8,533,000
Methadone	2,181,000
Methadone Intermediate(4-Cyano-2-dimethylamino-4,4-diphenylbutane)	2,726,000
Methamphetamine (for conversion)	724,000
Methylphenidate	2,147,000
Mixed Alkaloids of Opium	0
Morphine (for sale)	4,937,000
Morphine (for conversion)	74,753,000
Opium (tinctures, extracts, etc. expressed in terms of USP powdered opium)	1,034,000
Oxycodone (for sale)	2,757,000
Oxycodone (for conversion)	6,300
Oxymorphone	2,500
Pentobarbital	15,178,000
Phencyclidine	5
Phenylacetone (for conversion)	856,000
Secobarbital	650,000
Sufentanil	450
Thebaine	8,450,000

All interested persons are invited to submit their comments and objections in writing regarding this proposal. A person may object to or comment on the proposal relating to any of the above-mentioned substances without filing comments or objections regarding the others. If a person believes that one or more of these issues warrant a hearing, the individual should so state and summarize the reasons for this belief.

In the event that comments or objections to this proposal raise one or more issues which the Administrator finds warrant a hearing, the Administrator shall order a public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing.

Pursuant to section (3)(c)(3) and 3(e)(2)(C) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that this matter does not have sufficient federalism implications to warrant the preparations of a Federalism Assessment.

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning of and intent of the Regulatory Flexibility Act, 5 U.S.C., 601, et seq. The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by the international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Dated: July 22, 1991.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 91-18775 Filed 8-7-91; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements under Review: As necessary, the Department of Labor will publish a list of the Agency recorkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recorkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills, telephone (202) 523-5095. Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Infomration and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

New

Employment and Training Administration.
Fiscal Year 1992 Employment Service Automation Funds Field Memorandum and Employment Service Program Letter.
As needed.
State or local governments.
40 respondents; 4,800 total hours; 120 hrs. per respondent; no forms.
Issues procedures for State Employment Service agencies to use when applying for ES automation funds and provide for appropriate review by ETA Regional Offices.

Reinstatement

Assistant Secretary for Occupational Safety and Health.
The Supplementary Record of Occupational Injuries and Illnesses, OSHA No. 101, The Log and Summary of Occupational Injuries and Illnesses, OSHA No. 200 Brief Guide to Recordkeeping.
Requirements for Occupational Injuries and Illnesses, Recordkeeping Guidelines for Occupational Injuries and Illnesses.
1220-0029.
Recordkeeping.
State or local governments; farms; businesses or other forprofit; non-profit institutions; small businesses or organizations.
6,100 respondents; 534,828 total burden hours; 33.3 average hours per response.

The OSHA Act and 29 CFR, 1904 prescribe that certain employers maintain, and report when requested, records of job-related injuries and illnesses. The data are needed by BLS and OSHA to report on, and carry out enforcement of standards to guarantee workers' safety and health on the job. Currently 1,500,000 employers maintain records, but only 65% have recordable cases.

Signed at Washington, DC this 2nd day of August, 1991.

Patrick M. Skees,

Acting Departmental Clearance Office.

[FR Doc. 91-18768 Filed 8-7-91; 8:45 am]

BILLING CODE 4510-22-M

Employment and Training Administration

TA-W-25, 586 Air Baby, Inc., Blauvelt, NY, TA-W-25, 586A Williams Products Corp., Luquillo, PR; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 24, 1991, applicable to all workers of Air Baby, Inc., Blauvelt, New York. The notice was published in the **Federal Register** on June 11, 1991 (56 FR 26841).

The Department inadvertently left off from the subject certification the manufacturing arm for Air Baby, Inc.—Williams Products Corporation of Luquillo, Puerto Rico. Both companies are owned by the same person. Employment and production information

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Reinstatement

Assistant Secretary for Occupational Safety and Health.

The Supplementary Record of Occupational Injuries and Illnesses, OSHA No. 101, The Log and Summary of Occupational Injuries and Illnesses, OSHA No. 200 Brief Guide to Recordkeeping.

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Recordkeeping.

State or local governments; farms; businesses or other forprofit; non-profit institutions; small businesses or organizations.

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Signed at Washington, DC this 2nd day of August, 1991.

Patrick M. Skees,

Acting Departmental Clearance Office.

[FR Doc. 91–18768 Filed 8–7–91; 8:45 am]

BILLING CODE 4510-22-M

Employment and Training Administration

TA–W–25, 586 Air Baby, Inc., Blauvelt, NY, TA–W–25, 586A Williams Products Corp., Luquillo, PR; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 24, 1991, applicable to all workers of Air Baby, Inc., Blauvelt, New York. The notice was published in the **Federal Register** on June 11, 1991 (56 FR 26841).

The Department inadvertently left off from the subject certification the manufacturing arm for Air Baby, Inc.—Williams Products Corporation of Luquillo, Puerto Rico. Both companies are owned by the same person. Employment and production information

collected in the Department's investigation included data from both companies. All production of women's, children and men's slippers at Luquillo ceased in November, 1990. All workers at Luquillo were laid off in February 1991.

U.S. imports of nonrubber footwear increased in the first half of 1990 compared to the same period in 1989. Major customers increased their imports of women's, men's and children slippers and casual footwear in the relevant period.

Therefore, the certification is amended to show the correct worker group. The amended notice applicable to TA–W–25, 586 is hereby issued as follows:

> All workers of Air Baby, Inc., Blauvelt, New York and Williams Products Corporation, Luquillo, Puerto Rico who became totally or partially separated from employment on or after March 11, 1990 and before March 31, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 30th day of July 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91–18764 Filed 8–7–91; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of July 1991.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–25,606; Pratt & Whitney Co, Inc., Precision Grinding, Worcester, MA
TA–W–25,834; Cherry Electrical Products, Printed Circuit Div., Waukegan, IL
TA–W–25,771; Bell Plastic, Inc., Royal Oak, MI
TA–W–25,853; W.A. Schaerr, Inc, Delhi, NY
TA–W–25,639; Boris Kroll Fabrics, Inc., Boris Kroll Jacquard Looms, Inc., Paterson, NJ
TA–W–25,834; Cherry Electrical Products, Printed Circuit Div., Waukegan, IL
TA–W–25,801; First Phillips Manufacturing Corp., Sunbury, PA
TA–W–25,806; Hughes H. Wilson Corp., Sunbury, PA
TA–W–25,755; Shelgo, Inc., New York, NY
TA–W–25,855; Witco Corp., Richardson Battery Parts Div., Indianapolis, Plant, Indianapolis, IN
TA–W–25,738; Camp Hosiery, Inc., Lenori City, TN
TA–W–25,779; Laribee Wire Mfg Co., Camden, NY
TA–W–25,780; Laribee Wire Mfg Co., Jordan, NY
TA–W–25,880; Mallon Resources Corp/Mallon Minerals Corp., Denver, CO
TA–W–810; North American Biologicals, Inc., El Paso Plasma Center, El Paso, TX
TA–W–25,798; Delta Faucet Co., Plumbing Fixtures Div., Decatur, MI
TA–W–25,797; Columbia Chemicals Co., Mapico Div., Monmouth Junction, NJ

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA–W–25,828; ADT Security Systems, Jonesboro, AR

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–25,903; Pori International, Morrisville, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–25,850; Sol Duc Shakes & Shingles, Forks, WA

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–25,882; The Proctor & Gamble Manufacturing Co., Avenel, NJ

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–25,877; JMS, Inc., Parachute, CO

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–25,977; Plant & Field Services Corp., Parachute, CO

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–25,892; C.J., Langenfelder, Morrisville, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–25,844; Johnson Controls, Inc., Automotive Systems Group, Hoover Universal Shop, Adrian, MI

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–25,897; Golden Capital Distributors, Inc., East Hanover, NJ

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–25, 713; Lowrance Electronics, Inc., Tulsa, OK

Investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevent period as required certification.

TA–W–25, 718; N.R.M. Steelastic, Inc., Akron, OH

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–25, 758; U.S., Electric Motors, Cedarburg, WI

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–25, 790; Waco Lehigh Portland Cement Co., Waco, TX

The investigation revealed that criterion (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification. The investigation also revealed that criterion (2) was not met. Sales or production did not decline during the relevant period as required for certification.

TA–W–25, 874; Herman Geist Apparel Corp., Norwood, MA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–25, 837; Endicott Johnson Corp., Riverside Warehouse, Johnson City, NY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–25, 838 & 25, 838A; Endicott Johnson Corp., Victory Warehouse, & Crown Warehouse, Johnson City, NY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–25, 839 & 25, 839A; Endicott Johnson Corp., Apex Warehouse & Retail Warehouse, Oak Hill Ave., Endicott, NY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

Affirmative Determinations

TA–W–25, 881; North American Royalties, Inc., Gulf Coast District, Lafayette, LA

A certification was issued covering all workers separated on or after December 12, 1990 and before June 1, 1991.

TA–W–25, 890; American Olean Tile Co., Lansdale, PA

A certification was issued covering all workers separated on or after May 23, 1990.

TA–W–25, 883; The Proctor & Gamble Manufacturing Co., Staten Island, NY

A certification was issued covering all workers engaged in the production of Coast Soap separated on or after May 1, 1991.

TA–W–25, 811; Olde New England Leather, Rockland, MA

A certification was issued covering all workers separated on or after May 6, 1990.

TA–W–25, 895; Evenflo Juvenile Furniture Co., Lullabye Plant, Stevens Point, WI

A certification was issued covering all workers separated on or after May 9, 1990.

TA–W–25, 876; Jerell, Inc., San Antonio, TX

A certification was issued covering all workers separated on or after May 17, 1991.

TA–W–25, 836; Dana Corp., Spicer Axle Div., Syracuse, IN

A certification was issued covering all workers separated on or after May 9, 1990.

TA–W–25, 798; The Coe Manufacturing Co., Painesville, OH

A certification was issued covering all workers separated on or after April 29, 1990.

TA–W–25, 860; Carlon/Thyrocon, Telford, PA

A certification was issued covering all workers separated on or after May 16, 1990.

TA–W–25, 832; B & W Shake Co., Inc., Forks, WA

A certification was issued covering all workers separated on or after May 6, 1990.

TA–W–25, 781; Masonite Corp., Watsontown, PA

A certification was issued covering all workers separated on or after April 25, 1990.

TA–W–25, 829; Ali-Court Sportswear, Inc., Alburtis, PA

A certification was issued covering all workers separated on or after May 13, 1990.

TA–W–25, 858; Bestform Foundation, Inc., Johnstown, PA

A certification was issued covering all workers separated on or after May 11, 1990.

TA–W–25, 816; Sandy Dee Fashions, Scranton, PA

A certification was issued covering all workers separated on or after April 30, 1990.

TA–W–25, 861; Comfab Technologies, Addison, IL

A certification was issued covering all workers separated on or after May 17, 1990.

TA–W–25, 878; Keptel, Inc., Tinton Falls, NJ

A certification was issued covering all workers separated on or after May 17, 1990.

I hereby certify that the aforementioned determinations were issued during the months of July 1991. Copies of these determinations are available for inspection in room C–4318, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: July 29, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91–18765 Filed 8–7–91; 8:45 am]

BILLING CODE 4510-30-M

[TA–W–25,826]

Vending Services, Inc., Eau Claire, WI; Negative Determination Regarding Application for Reconsideration

By an application dated July 9, 1991, the petitioners requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice for petition TA–W–25,826 was signed on June 28, 1991 and published in the **Federal Register** on July 24, 1991 (56 FR 33943).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The workers at Vending Services, Inc., provide cafeteria and vending services for workers of the Eau Claire plant of Uniroyal-Goodrich Tire Company whose workers are certified for adjustment assistance under petition TA–W–24,109. However, investigation findings show that there is no corporate-affiliation between Vending Services, Inc., and the Uniroyal-Goodrich Tire Company.

The petitioners claim that their jobs are totally dependent on the Eau Claire plant of Uniroyal-Goodrich continuing in operation. Although the services provided by Vending Services are dependent on the Uniroyal-Goodrich plant, this would not form a basis for a worker group certification.

The Department's denial is based on the facts that the workers do not produce an article within the meaning of the Trade Act of 1974 nor are they corporately related to Uniroyal-Goodrich in Eau Claire. These points were addressed in the Department's notice of negative determination issued on June 28, 1991.

In order for workers providing services to the Uniroyal-Goodrich plant in Eau Claire to become certified eligible to apply for adjustment assistance, their separations must be caused importantly

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Dated: July 29, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91–18765 Filed 8–7–91; 8:45 am]

BILLING CODE 4510-30-M

[TA–W–25,826]

Vending Services, Inc., Eau Claire, WI; Negative Determination Regarding Application for Reconsideration

By an application dated July 9, 1991, the petitioners requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice for petition TA–W–25,828 was signed on June 28, 1991 and published in the **Federal Register** on July 24, 1991 (56 FR 33943).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The workers at Vending Services, Inc., provide cafeteria and vending services for workers of the Eau Claire plant of Uniroyal-Goodrich Tire Company whose workers are certified for adjustment assistance under petition TA–W–24,109. However, investigation findings show that there is no corporate-affiliation between Vending Services, Inc., and the Uniroyal-Goodrich Tire Company.

The petitioners claim that their jobs are totally dependent on the Eau Claire plant of Uniroyal-Goodrich continuing in operation. Although the services provided by Vending Services are dependent on the Uniroyal-Goodrich plant, this would not form a basis for a worker group certification.

The Department's denial is based on the facts that the workers do not produce an article within the meaning of the Trade Act of 1974 nor are they corporately related to Uniroyal-Goodrich in Eau Claire. These points were addressed in the Department's notice of negative determination issued on June 28, 1991.

In order for workers providing services to the Uniroyal-Goodrich plant in Eau Claire to become certified eligible to apply for adjustment assistance, their separations must be caused importantly

by a reduced demand for their services from a parent firm, a firm otherwise related to the subject firm by ownership, or a firm related by control. Investigation findings show that Uniroyal-Goodrich does not own nor does it control Vending Services, Inc.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the facts or of the law which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC, this 29th day of July 1991.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91–18766 Filed 8–7–91; 8:45 am]

BILLING CODE 4510-30-M

Advisory Panel for the Dictionary of Occupational Titles (APDOT); Open Meeting

AGENCY: Employment and Training Administration, Labor.

ACTION: The Advisory Panel for the Dictionary of Occupational Titles (APDOT) was established in accordance with the Federal Advisory Committee Act (Pub. L. 92–463) on August 28, 1990.

The APDOT was established as part of the Secretary of Labor's Workforce Quality Agenda to improve the quality of the work force. The APDOT will assist the Department of Labor in meeting the goals of the Secretary's Agenda by providing a diversified range of user perspectives on the Dictionary of Occupational Titles (DOT). The DOT is a document which is used extensively in business, education and government. It defines, classifies and describes occupations in the labor market. The fourth edition of the DOT was published in 1977. A revised fourth edition is scheduled for publication in September 1991. The APDOT will provide advice on a new, fifth edition.

The APDOT will report to and advise the Assistant Secretary for Employment and Training on the development, publication and dissemination of the DOT.

TIME: The meeting will begin at 1 p.m. on September 26, 1991, and continue until 5 p.m. that day; and will reconvene at 8:30 a.m. on September 27, 1991, and adjourn at 3 p.m. that day.

PLACE: The Holiday Inn Capitol, 550 C Street, SW., Washington, DC 20024.

AGENDA: Matters to be considered as part of the agenda for the APDOT meeting include:

- Update on Canadian Occupational System.
- Panel Discussion on Uses of DOT.
- Panel Discussion on Federal Statistical Users of the DOT.
- Status Report on DOT Review Activities.

PUBLIC PARTICIPATION: The meeting will be open to the public. A half hour (8:30 a.m.–9 a.m.) on September 27 will be set aside for public comments. Individuals wishing to speak to the panel should call Dr. Marilyn Silver at 202–535–0161. Seating will be available for the public on a first-come first-serve basis.

Individuals or organizations wishing to submit written statements should send 14 copies to Dr. Marilyn B. Silver, Executive Director, Advisory Panel for the Dictionary of Occupational Titles, room N4470, Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Dr. Marilyn B. Silver, Executive Director, Advisory Panel for the Dictionary of Occupational Titles, room N4470, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 535–0161.

Signed at Washington, DC this 30th day of July 1991.

Roberts T. Jones,

Assistant Secretary for Employment and Training.

[FR Doc. 91–18767 Filed 8–7–91; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

Summary of Decisions Granting in Whole or in Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101(c) of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor may modify the application of a mandatory safety standard to a mine if the Secretary determines either that an alternate method exists at a specific mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard at a specific mine will result in a dimunition of safety to the affected miners.

Summaries of petitions received by the Secretary appear periodically in the **Federal Register**. Final decisions on these petitions are based upon the petitioner's statements, comments and information submitted by interested persons and a field investigation of the conditions at the mine. MSHA has granted or partially granted the requests for modification submitted by the petitioners listed below. In some instances the decisions are conditioned upon compliance with stipulations stated in the decision.

FOR FURTHER INFORMATION CONTACT: The petitions and copies of the final decision are available for examination by the public in the Office of Standards, Regulations and Variances, MSHA, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Dated: July 30, 1991.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Affirmative Decisions on Petitions for Modification

Docket No.: M–89–105–C.
FR Notice: 54 FR 32145.
Petitioner: Consolidation Coal Company.
Reg Affected: 30 CFR 77.213.
Summary of Findings: Petitioner's proposal to install safety equipment and inspect the tunnel for fire or smoke prior to entry in lieu of installing an escapeway in the tunnel considered acceptable alternative method. Granted with conditions.

Docket No.: M–89–148–C.
FR Notice: 54 FR 43150.
Petitioner: Cyprus Empire Corporation.
Reg Affected: 30 CFR 75.507.
Summary of Findings: Petitioner's proposal to use three non-permissible submersible pumps in boreholes drilled into sump areas of the mine, and install additional pumps in the future considered acceptable alternative method. Granted with conditions.

Docket No.: M–89–182–C.
FR Notice: 54 FR 53398.
Petitioner: Soldier Creek Coal Company.
Reg Affected: 30 CFR 75.326.
Summary of Findings: Petitioner's proposal to use a two-entry system for longwall panel gateroad development with the belt conveyor in the return aircourse considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–04–C.

FR Notice: 55 CFR 4032.
Petitioner: Cyprus Empire Corporation.
Reg Affected: 30 CFR 75.321.
Summary of Findings: Petitioner's proposal to utilize a common ground field for each submersible pump with the casing as the primary grounding medium for the installation considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–16–C.
FR Notice: 55 FR 5705.
Petitioner: Tunnelton Mining Company.
Reg Affected: 30 CFR 75.802(a).
Summary of Findings: Petitioner's proposal that the grounding conductor which extends along the power conductors for surface stationary high-voltage equipment be connected to the substation ground grid rather than to the isolated mine field grounding resistor considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–24–C.
FR Notice: 55 FR 8619.
Petitioner: Old Ben Coal Company.
Reg Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal to use 2400-volt electricity to power the longwall mining equipment throughout the mine considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–25–C.
FR Notice: 55 FR 8619.
Petitioner: Old Ben Coal Company.
Reg Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal to use 2400-volt electricity to power the longwall mining equipment throughout the mine considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–14–C.
FR Notice: 55 FR 5087.
Petitioner: Island Creek Coal Company.
Reg Affected: 30 CFR 75.326.
Summary of Findings: Petitioner's proposal to use belt air to ventilate the working face and to remove restrictions on the velocity of air in the belt entries considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–31–C.
FR Notice: 55 FR 9377.
Petitioner: Consolidation Coal Company.
Reg Affected: 30 CFR 75.1105.
Summary of Findings: Petitioner's proposal to enclose rectifiers in a fireproof structure and install a fire suppression device over the rectifiers considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–35–C.
FR Notice: 55 FR 10525.
Petitioner: Island Creek Coal Company.
Reg Affected: 30 FR 75.1103–4.
Summary of Findings: Petitioner's proposal to use belt air to ventilate the working faces and to remove restrictions on the velocity of air in the belt entries considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–38–C.
FR Notice: 55 FR 11273.
Petitioner: Cypress Emerald Resources Corporation.
Reg Affected: 30 CFR 75.902.
Summary of Findings: Petitioner's proposal to use contactors for undervoltage protection which will open when either the ground or pilot check wire is broken considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–51–C.
FR Notice: 55 FR 15037.
Petitioner: Arch of West Virginia, Inc.
Reg Affected: 30 CFR 77.811.
Summary of Findings: Petitioner's proposal to use a rubber-tired, trailer-mounted, portable generator to move large electric mining shovels and draglines considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–52–C.
FR Notice: 55 FR 15037.
Petitioner: Enlow Fork Mining Company.
Reg Affected: 30 CFR 75.1103–4.
Summary of Findings: Petitioner's proposal to install an early warning fire detection system utilizing a low-level carbon monoxide system to identify each belt flight considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–53–C.
FR Notice: 55 FR 15058.
Petitioner: Enlow Fork Mining Company.
Reg Affected: 30 CFR 75.326.
Summary of Findings: Petitioner's proposal to use air in the belt entry to ventilate active working places and planned longwall panels considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–61–C.
FR Notice: 55 FR 21125.
Petitioner: West Elk Coal Company.
Reg Affected: 30 CFR 75.326.
Summary of Findings: Petitioner's proposal to use belt air to ventilate active working places considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–67–C.
FR Notice: 55 FR 20670.
Petitioner: Consolidation Coal Company.
Reg Affected: 30 CFR 75.305.
Summary of Findings: Petitioner's proposal to monitor the air from checkpoints established at specific locations in the return entries in lieu of traveling in their entirety considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–77–C.
FR Notice: 55 FR 26795.
Petitioner: Kerr-McGee Coal Corporation.
Reg Affected: 30 CFR 75.901.
Summary of Findings: Petitioner's proposal to use a diesel-powered generator without an earth referenced ground considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–79–C.
FR Notice: 55 FR 20685.
Petitioner: Twentymile Coal Company.
Reg Affected: 30 CFR 75.507.
Summary of Findings: Petitioner's proposal to operate two non-permissible pumps in boreholes that are drilled into a sump area of the mine considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–80–C.
FR Notice: 55 FR 28110.
Petitioner: Twentymile Coal Company.
Reg Affected: 30 CFR 75.507.
Summary of Findings: Petitioner's proposal to monitor the high-voltage circuits of the two high voltage submersible pumps considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–81–C.
FR Notice: 55 FR 28110.
Petitioner: Kerr-McGee Coal Corporation.
Reg Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal to continue using high-voltage cables to supply power to permissible longwall face considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–82–C.
FR Notice: 55 FR 26796.
Petitioner: Tanoma Mining Company, Inc.
Reg Affected: 30 CFR 75.1103–4.
Summary of Findings: Petitioner's proposal to install an early warning fire detection system utilizing a low-level carbon monoxide system in all belt entries considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–94–C.
FR Notice: 55 FR 29684.
Petitioner: Grace Coal Corporation.

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Elk Coal Company.
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Petitioner: Consolidation Coal Company.

Reg Affected: 30 CFR 75.305.

Summary of Findings: Petitioner's proposal to monitor the air from checkpoints established at specific locations in the return entries in lieu of traveling in their entirety considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–77–C.

FR Notice: 55 FR 26795.

Petitioner: Kerr-McGee Coal Corporation.

Reg Affected: 30 CFR 75.901.

Summary of Findings: Petitioner's proposal to use a diesel-powered generator without an earth referenced ground considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–79–C.

FR Notice: 55 FR 20685.

Petitioner: Twentymile Coal Company.

Reg Affected: 30 CFR 75.507.

Summary of Findings: Petitioner's proposal to operate two non-permissible pumps in boreholes that are drilled into a sump area of the mine considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–80–C.

FR Notice: 55 FR 28110.

Petitioner: Twentymile Coal Company.

Reg Affected: 30 CFR 75.507.

Summary of Findings: Petitioner's proposal to monitor the high-voltage circuits of the two high voltage submersible pumps considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–81–C.

FR Notice: 55 FR 28110.

Petitioner: Kerr-McGee Coal Corporation.

Reg Affected: 30 CFR 75.1002.

Summary of Findings: Petitioner's proposal to continue using high-voltage cables to supply power to permissible longwall face considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–82–C.

FR Notice: 55 FR 26796.

Petitioner: Tanoma Mining Company, Inc.

Reg Affected: 30 CFR 75.1103–4.

Summary of Findings: Petitioner's proposal to install an early warning fire detection system utilizing a low-level carbon monoxide system in all belt entries considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–94–C.

FR Notice: 55 FR 29684.

Petitioner: Grace Coal Corporation.

Reg Affected: 30 CFR 75.1710.

Summary of Findings: Due to the undulation of the roof and floor petitioner states that installation of canopies on the mine's electric face equipment would result in a dimunition of safety to miners. Granted with conditions for specific equipment.

Docket No.: M–90–99–C.

FR Notice: 55 FR 29120.

Petitioner: Rough Hill Coal Company.

Reg Affected: 30 CFR 75.313.

Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on permissible three-wheel battery-powered tractors used to load coal considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–100–C.

FR Notice: 55 FR 29685

Petitioner: Rickett Branch Mining.

Reg Affected: 30 CFR 75.313.

Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three-wheel battery-powered tractors used to load coal considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–101–C.

FR Notice: 55 FR 31664.

Petitioner: Shamrock Coal Company.

Reg Affected: 30 CFR 75.1103–4.

Summary of Findings: Petitioner's proposal to install an early warning fire detection system utilizing low-level carbon monoxide system in all belt entries used as intake aircourses considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–102–C.

FR Notice: 55 FR 32709.

Petitioner: Shamrock Coal Company.

Reg Affected: 30 CFR 75.326.

Summary of Findings: Petitioner's proposal to use air in the belt entry to ventilate active working places considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–103–C.

FR Notice: 55 FR 31461.

Petitioner: Freeman United Coal Company.

Reg Affected: 30 CFR 75.1002.

Summary of Findings: Petitioner's proposal to use high-voltage cables to power longwall mining equipment considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–108–C.

FR Notice: 55 FR 31461.

Petitioner: Four G Coal Company.

Reg Affected: 30 CFR 75.313.

Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors instead of methane monitors on permissible three-wheel battery-powered tractors used to load coal considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–109–C.

FR Notice: 55 FR 31461.

Petitioner: Steel Hollow Mining, Inc.

Reg Affected: 30 CFR 75.313.

Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen methane monitors instead of methane monitors on permissible three-wheel battery-powered tractors used to load coal considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–117–C.

FR Notice: 55 FR 34094.

Petitioner: Consolidation Coal Company.

Reg Affected: 30 CFR 75.305.

Summary of Findings: Petitioner's proposal to establish evaluation points to measure the air quantity and quality in areas that cannot be traveled in their entirety considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–126–C.

FR Notice: 55 FR 35195.

Petitioner: Enlow Fork Mining Company.

Reg Affected: 30 CFR 75.1002.

Summary of Findings: Petitioner's proposal to high-voltage cables inby the last open crosscut and within 150 feet of pillar workings considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–130–C.

FR Notice: 55 FR 38596.

Petitioner: Cyprus Empire Corporation.

Reg Affected: 30 CFR 75.507.

Summary of Findings: Petitioner's proposal to a nonpemissible pump in a borehole considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–134–C.

FR Notice: 55 FR 38872.

Petitioner: West Elk Coal Company, Inc.

Reg Affected: 30 CFR 75.300–4.

Summary of Findings: Petitioner's proposal to install a monitoring system to monitor four conditions of the fan and automatically telephone designated persons when conditions warrant considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–139–C.

FR Notice: 55 FR 41396.

Petitioner: Eastern Associated Coal Corporation.

Reg Affected: 30 CFR 75.701.

Summary of Findings: Petitioner's proposal to use a modified drill pattern with a long rib hole considered acceptable alternate method. Granted with conditions, where mining projections are directed parallel to the adjacent workings.

Docket No.: M–90–141–C.

FR Notice: 55 FR 41276.

Petitioner: Shamrock Coal Company.

Reg Affected: 30 CFR 75.1002.

Summary of Findings: Petitioner's proposal to continue using high-voltage cables to supply power to longwall mining equipment considered acceptable alternate method. Granted with conditions, for Longwall No. 1 located in the No. 18 Serices mine.

Docket No.: M–90–145–C.

FR Notice: 55 FR 41904.

Petitioner: Rawl Sales and Processing Company.

Reg Affected: 30 CFR 75.700.

Summary of Findings: Petitioner's proposal to use shunt-trip circuit breakers and relays to obtain undervoltage protection using specific equipment and procedures outlined in the petition considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–149–C.

FR Notice: 55 FR 42520.

Petitioner: Minton Hickory Coal Company.

Reg Affected: 30 CFR 75.313.

Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors instead of methane monitors on permissible three-wheel battery-powered tractors used to load coal considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–150–C.

FR Notice: 55 FR 35875.

Petitioner: Peabody Coal Company, Inc.

Reg Affected: 30 CFR 75.305.

Summary of Findings: Petitioner's proposal to establish six evaluation points to monitor the ventilation in lieu of traveling the aircourse in its entirety considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–152–C.

FR Notice: 55 FR 46264.

Petitioner: Rawl Sales and Processing Company.

Reg Affected: 30 CFR 75.900.

Summary of Findings: Petitioner's proposal to use a shunt-trip circuit breaker and relays to obtain undervoltage protection using specific equipment and procedures outlined in the petition considered acceptable alternate method. Granted with conditions

Docket No.: M–90–154–C.
FR Notice: 55 FR 46264.
Petitioner: Consolidation Coal Company.
Reg Affected: 30 CFR 75.326.
Summary of Findings: Petitioner's proposal to use belt air to ventilate active working places considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–156–C.
FR Notice: 55 FR 46264.
Petitioner: Consolidation Coal Company.
Reg Affected: 30 CFR 75.1700.
Summary of Findings: Petitioner's request to amend petition for modification (Docket No. M–90–59–C) granted August 8, 1979, which allows pluging and mining through oil and gas wells. Granted with conditions.

Docket No.: M–90–157–C.
FR Notice: 55 FR 49721.
Petitioner: West End Coal Company.
Reg Affected: 30 CFR 75.301.
Summary of Findings: Petitioner's proposal allowing reduced air quantities at the face in the anthracite mine considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–159–C.
FR Notice: 55 FR 47953.
Petitioner: Mason and Dixon Coal Company.
Reg Affected: 30 CFR 75.1400.
Summary of Findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–162–C.
FR Notice: 55 FR 47953.
Petitioner: Dominion Coal Company.
Reg Affected: 30 CFR 75.1701.
Summary of Findings: Petitioner's proposal to drill five holes in the face, spaced at 5-foot intervals, in a pattern that would provide a 10-foot barrier in all directions considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–166–C.
FR Notice: 55 FR 48305.
Petitioner: Serendipity Mining, Inc.
Reg Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors instead of methane monitors on permissible three-wheel battery-powered tractors used to load coal considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–168–C.
FR Notice: 55 FR 49350.
Petitioner: Beech Nut Mining, Inc.
Reg Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxgen and methane monitors instead of methane monitors on permissible three-wheel battery/powered tractors used to load coal considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–170–C.
FR Notice: 55 FR 49721.
Petitioner: Deerpath Corporation.
Reg Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxgen and methane monitors instead of methane monitors on permissible three-wheel battery/powered tractors used to load coal considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–179–C.
FR Notice: 55 FR 52391.
Petitioner: C & H Mining Company.
Reg Affected: 30 CFR 75.313.
Summary of Findings: Petitioner's proposal to use hand-held continuous oxgen and methane monitors instead of methane monitors on permissible three-wheel battery/powered tractors used to load coal considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–187–C.
FR Notice: 55 FR 52898.
Petitioner: Consolidation Coal Company.
Reg Affected: 30 CFR 75.326.
Summary of Findings: Petitioner's proposal to use belt air to ventilate active working places considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–188–C.
FR Notice: 55 FR 52897.
Petitioner: Consolidation Coal Company.
Reg Affected: 30 CFR 75.326.
Summary of Findings: Petitioner's proposal to use belt air to ventilate active working places considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–200–C.
FR Notice: 55 FR 2047.
Petitioner: Kinney Branch Coal Company.
Reg Affected: 30 CFR 75.305.
Summary of Findings: Petitioner's proposal to establish evaluation points and monitor the quality and quantity of air entering and exiting an area that cannot be traveled considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–206–C.
FR Notice: 55 FR 2047.
Petitioner: McElroy Coal Company.
Reg Affected: 30 CFR 75.305.
Summary of Findings: Petitioner's proposal to establish evaluation points and monitor the quality and quantity of air entering and exiting an area that cannot be traveled considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–208–C.
FR Notice: 55 FR 2537.
Petitioner: Western-Fuels Utah, Inc.
Reg Affected: 30 CFR 75.1105.
Summary of Findings: Petitioner's proposal to course air over two electrical installations and a pump and into a belt entry using specific equipment and procedures outlined in the petition establish evaluation considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–07–C.
FR Notice: 55 FR 8800.
Petitioner: Arch of Kentucky, Inc.
Reg Affected: 30 CFR 75.326.
Summary of Findings: Petitioner's proposal to use belt air to ventilate active working places considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–11–C.
FR Notice: 56 FR 8800.
Petitioner: Island Creek Coal Company.
Reg Affected: 30 CFR 75.305.
Summary of Findings: Due to hazardous roof conditions, petitioner's proposal to monitor for hazardous conditions outby the seals considered acceptable alternate method. Granted with conditions.

Docket No.: M–89–24–M.
FR Notice: 55 FR 53198.
Petitioner: Becker Minerals, Inc.
Reg Affected: 30 CFR 56.14102.
Summary of Findings: Petitioner's proposal to provide warnings and flagman at crossings in lieu of installing a braking system on railroad cars used to cross secondary roads considered acceptable alternate method. Granted with conditions.

Docket No.: M–89–28–M.
FR Notice: 55 FR 2714.
Petitioner: Manville Sales Corporation.
Reg Affected: 30 CFR 56.13020.
Summary of Findings: Petitioner's proposal that employees be allowed to use a blow-off nozzle regulated at no more than 3 psi to blow dust from their clothing considerd acceptable alternate method. Granted with conditions.

Docket No.: M–90–01–M.
FR Notice: 55 FR 4918.
Petitioner: Sunshine Mining Company.
Reg Affected: 30 CFR 57.19011.

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FR Notice: 55 FR 2047.
Petitioner: McElroy Coal Company.
Reg Affected: 30 CFR 75.305.
Summary of Findings: Petitioner's proposal to establish evaluation points and monitor the quality and quantity of air entering and exiting an area that cannot be traveled considered acceptable alternate method. Granted with conditions.

Docket No.: M–90–208–C.
FR Notice: 55 FR 2537.
Petitioner: Western-Fuels Utah, Inc.
Reg Affected: 30 CFR 75.1105.
Summary of Findings: Petitioner's proposal to course air over two electrical installations and a pump and into a belt entry using specific equipment and procedures outlined in the petition establish evaluation considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–07–C.
FR Notice: 55 FR 8800.
Petitioner: Arch of Kentucky, Inc.
Reg Affected: 30 CFR 75.326.
Summary of Findings: Petitioner's proposal to use belt air to ventilate active working places considered acceptable alternate method. Granted with conditions.

Docket No.: M–91–11–C.
FR Notice: 56 FR 8800.
Petitioner: Island Creek Coal Company.
Reg Affected: 30 CFR 75.305.
Summary of Findings: Due to hazardous roof conditions, petitioner's proposal to monitor for hazardous conditions outby the seals considered acceptable alternate method. Granted with conditions.

Docket No.: M–89–24–M.
FR Notice: 55 FR 53198.
Petitioner: Becker Minerals, Inc.
Reg Affected: 30 CFR 56.14102.
Summary of Findings: Petitioner's proposal to provide warnings and flagman at crossings in lieu of installing a braking system on railroad cars used to cross secondary roads considered acceptable alternate method. Granted with conditions.

Docket No.: M–89–28–M.
FR Notice: 55 FR 2714.
Petitioner: Manville Sales Corporation.
Reg Affected: 30 CFR 56.13020.
Summary of Findings: Petitioner's proposal that employees be allowed to use a blow-off nozzle regulated at no more than 3 psi to blow dust from their clothing considerd acceptable alternate method. Granted with conditions.

Docket No.: M–90–01–M.
FR Notice: 55 FR 4918.
Petitioner: Sunshine Mining Company.
Reg Affected: 30 CFR 57.19011.

Summary of Findings: Petitioner's proposal to use new drum face liners in lieu of adequate flanges considered acceptable alternate method. Granted with conditions.

[FR Doc. 91–18769 Filed 8–7–91; 8:45 am]

BILLING CODE 4510–43–M

NATIONAL EDUCATION GOALS PANEL

Meeting

AGENCY: The National Education Goals Panel.

ACTION: Notice of meeting.

SUMMARY: The National Education Goals Panel was established by a joint statement between the President and the Nation's Governors dated July 31, 1990. The panel will determine how to measure and monitor progress toward achieving the national education goals and to report to the nation on the progress toward the goals. Members of the National Education Goals Panel are six governors appointed by the Chairman of the National Governor's Association, four senior Administration officials, and four Congressional leaders. Governor Roy Romer of Colorado is the initial chairman.

TENTATIVE AGENDA ITEMS: The tentative agenda for the meeting includes a discussion relating to the first report of the National Education Goals.

DATE: The eighth meeting is scheduled for Monday, August 20, 1991, 3:30-4:30 p.m.

ADDRESS: Washington State Convention and Trade Center, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Pat Forgione at the National Education Goals Panel office to indicate attendance or for further information on specific time and location. The phone number is (202) 632–0952.

Dated: August 5, 1991.

Roger B. Porter,

Assistant to the President for Economic and Domestic Policy.

[FR Doc. 91–19001 Filed 8–7–91; 8:45 am]

BILLING CODE 3127–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Polar Programs; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Polar Programs.

Dates & Times: August 27–29, 1991 8 a.m.–5:30 p.m. daily.

Location: National Science Foundation, 1800 G Street, NW., Washington, DC 20550, room 1242.

Type of Meeting: Closed.

Agenda: Review and evaluate research proposals on polar biology and medicine research.

Contact Person: Dr. Polly A. Penhale, Program Manager, Polar Biology and Medicine Program, National Science Foundation, Washington, DC 20550. Telephone (202) 357–7894.

Dated: August 5, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–18843 Filed 8–7–91; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Science and Technology Centers Development; Meetings

Name: Site Visits for Subatantive Review of Eleven Science and Technology Centers to Determine Future Funding.

Date	Place	Time
8/26–27/91....	University of California, Santa Barbara, CA.	8:30–5
9/11–12/91....	University of Illinois, Urbana, IL.	8:30–5
9/11–12/91....	Northwestern University, Evanston, IL.	8:30–5
9/11–13/91....	University of Oklahoma, Norman, OK.	8:30–5
9/12–13/91....	Michigan State University, East Lansing, MI.	8:30–5
9/18–19/91....	University of Rochester, Rochester, NY.	8:30–5
9/18–19/91....	Virginia Polytechnic Institute, Blacksburg, VA.	8:30–5
9/19–20/91....	Rutgers University, Piscataway, NJ.	8:30–5
9/23–25/91....	University of California, Berkeley, CA.	8:30–5
9/24–25/91....	Rice University, Houston, TX.	8:30–5
9/30–10/91....	California Institute of Technology, Pasadena, CA.	8:30–5

Type of Meeting: Closed.

Contact: Dr. Sonja Sperlich, Senior Manager, Science & Technology Centers, Office of Science & Technology Infrastructure, National Science Foundation, Washington, DC 20550, Telephone: 202/357–9808.

Purpose of Meeting: To provide advice and recommendations concerning future funding of these Centers.

Agenda: Review and evaluation of these Centers to determine further funding.

Reason for Closing: These Centers being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the Centers. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: August 5, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–18842 Filed 8–7–91; 8:45 am]

BILLING CODE 7555–01–M

Division of Atmospheric Sciences; Committee of Visitors—Atmospheric Chemistry Program; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposal actions and provide NSf with an assessment of program-level technical and managerial matters pertaining to proposal decisions and program operations. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C., 552b(c), Government in the Sunshine Act.

Name: Committee of Visitors, Subcommittee of the Advisory Committee for Atmospheric Sciences.

Date: August 26 and 27, 1991.

Time: 9 a.m. to 5 p.m. each day.

Place: Room 523, National Science Foundation, 1800 G Street, NW., Washington, DC.

Type of Meeting: Closed.

Agenda: Review and evaluation of proposal actions of the Atmospheric Chemistry Program.

Contact: Dr. Jarvis L. Moyers, Program Director, Atmospheric Chemistry Program, Lower Atmosphere Research Section, Division of Atmospheric Sciences, National

Science Foundation, Washington, DC (202) 357–9657.

Dated: August 5, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–18844 Filed 8–7–91; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Nuclear Safety Research Review Committee; Request for Nominations

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of request for nominations for the Nuclear Safety Research Review Committee.

SUMMARY: The Nuclear Regulatory Commission is seeking nominations of individuals qualified to fill a vacancy on its Nuclear Safety Research Review Committee. The Committee advises the NRC's Director of Nuclear Regulatory Research on matters of overall management importance and meets about three times a year in the Washington, DC, area or at a research institution.

SUPPLEMENTARY INFORMATION: The Nuclear Safety Research Review Committee was established by NRC in 1988. The 12-member committee is composed of senior experts in nuclear engineering or science who are qualified to provide technical advice on the broad range of topics that are the subject of nuclear regulatory safety research applicable to NRC-licensed nuclear power plants and other licensed facilities and activities. An important consideration in selecting members for the committee is to maintain a balance and diversity of skills and judgment.

The composition of the committee currently is well balanced with experts in the areas of human factors, instrumentation and control, waste management, nuclear plant operations, severe accidents and other areas of nuclear engineering. Nominees for the vacancy should have broad, management-oriented experience. They also should have a nuclear engineering background with scientific research experience at a major laboratory or university, have progressed to a position of research management at a high level, and have a good understanding of nuclear power plant regulation. Membership on the National Academy of Sciences, the National Academy of Engineering or one of their committees also would be desirable.

Nominations should include a resume describing the educational and professional qualifications of the nominee, and a current address and daytime telephone number. Nominations should be submitted to the Secretary of the Commission, Nuclear Regulatory Commission, Washington, DC 20555, Attention: Advisory Committee Management Officer.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Meyer, Office of Nuclear Regulatory Research, Washington, DC 20555, Telephone: (301) 492–3700.

Dated: August 2, 1991.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 91–18872 Filed 8–7–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–219]

GPU Nuclear Corporation; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operting License No. DPR–16, issued to GPU Nuclear Corporation (GPUN, the licensee), for operation of the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey.

The proposed amendment would revise Technical Specification section 5.2.A to change the current containment drywell design pressure of 62 psig to the new design pressure of 44 psig. Related changes to Technical Specification Bases are also required. Unrelated editorial changes to the Bases of Technical Specifications 3.4 and 3.5 are also proposed.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By September 9, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the local public document room located at Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish

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Building, 2120 L Street NW., Washington, DC 20555 and at the local public document room located at Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish

those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisifes these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated July 22, 1991, which is available for public inspection at the Commission's public document room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the local public document room, Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Dated at Rockville, Maryland, this 2nd day of August 1991.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–18873 Filed 8–7–91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–72]

The University of Utah (The Utah AGN–201M Research Reactor); Order Authorizing Dismantling of Facility and Disposition of Component Parts

By application dated July 17, 1990, as supplemented on July 18, 1990 and June 12, 1991, the University of Utah (the licensee) requested authorization to dismantle the AGN–201M research reactor facility, License No. R–25, located on the licensee's campus in Salt Lake City, Utah and to dispose of the component parts, in accordance with the decommissioning plan submitted as part of the application. A "Notice of Proposed Issuance of Orders Authorizing Disposition of Components Parts and Terminating Facility License" was published in the **Federal Register** on May 9, 1991 (56 FR 21508). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The U.S. Nuclear Regulatory Commission (the Commission) has reviewed the application with respect to the provisions of the Commission's rules and regulations and has found that the dismantling and disposal of component parts as stated in the licensee's decommissioning plan will be consistent with the regulations in 10 CFR chapter I, and will not be inimical to the common defense and security or to the health and safety of the public. The basis of these findings is set forth in the concurrently issued Safety Evaluation by the Office of Nuclear Reactor Regulation.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact for the proposed action. Based on that Assessment, the Commission has determined that the proposed action will not result in any significant environmental impact and that an environmental impact statement need not be prepared. (56 FR 36850 August 1, 1991)

Accordingly, the licensee is hereby ordered to dismantle the AGN–201M research facility covered by License No. R–25, as amended, and dispose of the component parts in accordance with its decommissioning plan and the Commission's rules and regulations.

After completion of the dismantling and disposal, the licensee will submit a report on the radiation survey it has performed to confirm that radiation and surface contamination levels in the facility area satisfy the values specified in the decommissioning plan and in the Commission's guidance. Following an inspection by representatives of the Commission to verify the radiation and contamination levels in the facility, consideration will be given to issuance of a further order terminating Facility Operating License No. R–25.

For further details with respect to this action, see (1) the licensee's application for authorization to dismantle the facility, dispose of component parts, and terminate Facility Operating License No. R–25, dated July 17, 1990, as supplemented; (2) the Commission's Safety Evaluation; and (3) the Environmental Assessment and Finding of No Significant Impact. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of items (2) and (3) may be obtained by request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Advanced Reactors and Special Projects.

Dated at Rockville, Maryland, this 1st day of August 1991.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Director, Division of Advanced Reactors and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 91–18874 Filed 8–7–91; 8:45 am]

BILLING CODE 7590-01-M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

[RFP 01-92-ProPAC]

Request for Proposal on Measurement of Road-Mile and Air-Mile Distances Between U.S. Hospitals

The Prospective Payment Assessment Commission (ProPAC) is seeking a contractor to measure road and air mile distances between U.S. hospitals. The data will be organized into a computer file to be usable by ProPAC. The data will be used by ProPAC to develop and analyze alternative hospital labor market definitions. A single contractor is being sought to complete this project under a fixed-price contract within a two- to three-month period. The contractor selected should have extensive experience in mapping and distance measure. The contractor will have the capability to create logical and efficient computer files of the data base for all the collected data. Some familiarity with the hospital industry would be helpful but is not required.—RFP 01–92 ProPAC will be issued on or about August 19, 1991. Interested sources must submit a written request for a copy of this RFP.

Donald A. Young,

Executive Director.

[FR Doc. 91–18762 Filed 8–7–91; 8:45 am]

BILLING CODE 6820-BW-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title*: Requests for Consultative Medical Examinations.

(2) *Form(s) submitted*: RL–12/ID–31a.

(3) *OMB Number*: 3220–0124.

(4) *Expiration date of current OMB clearance*: Three years from date of OMB approval.

(5) *Type of request*: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(6) *Frequency of response*: On occasion.

(7) *Respondents*: Businesses or other for profit, Small businesses or organizations.

(8) *Estimated annual number of respondents*: 10,050.

(9) *Total annual responses*: 10,050.

(10) *Average time per response*: 1 hour.

(11) *Total annual reporting hours*: 10,050.

(12) *Collection description*: Under section 2 of the RRA and section 2 of the RUIA, disability and sickness benefits are respectively provided for qualified railroad employees. The collection obtains consultative evidence of inability to work when needed to supplement evidence obtained from other sources.

Additional Information or Comments

Copies of the proposed forms and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 91–18838 Filed 8–7–91; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272–2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, 450 Fifth Street, NW., Washington, DC 20549.

Extension

Rule 20a–1	File No. 270–132
Rule 20a–2	File No. 270–133
Rule 20a–3	File No. 270–134

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval rule 20a–1 (17 CFR 270.20a–1), rule 20a–2 (17 CFR 270.20a–2), and rule 20a–3 (17 CFR 270.20a–3) under the Investment Company Act of 1940 ("1940 Act").

Rules 20a–1 through 20a–3 set forth various requirements with respect to solicitation of proxies, consents, and authorizations on behalf of registered investment companies. About 970 investment companies spend a total of approximately 94,284 hours annually complying with these rules.

The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and Gary Waxman, Clearance Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (Paperwork Reduction Act Projects 3235–0158), room 3208, NEOB, Washington, DC 20503.

Dated: July 9, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–18852 Filed 8–7–91; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272–2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, 450 Fifth Street, NW., Washington, DC 20549.

Extension

Rule 17f–5, File No. 270–529

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval rule 17f–5 under the Investment Company Act of 1940 (17 CFR 270.17f–5).

Rule 17f–5 regulates the custody of investment company assets located outside the United States. Approximately 40 respondents spend about 4 hours each, annually, keeping records relating to requirements of the rule.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a

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Dated: July 9, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–18852 Filed 8–7–91; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272–2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, 450 Fifth Street, NW., Washington, DC 20549.

Extension

Rule 17f–5, File No. 270–529

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval rule 17f–5 under the Investment Company Act of 1940 (17 CFR 270.17f–5).

Rule 17f–5 regulates the custody of investment company assets located outside the United States. Approximately 40 respondents spend about 4 hours each, annually, keeping records relating to requirements of the rule.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a

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representative survey or study of the costs of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and Gary Waxman, Clearance Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (Paperwork Reduction Project 3235–0269), room 3208 NEOB, Washington, DC 20503.

Dated: July 9, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–18853 Filed 8–7–91; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance officer: Kenneth A. Fogash (202) 272–2142.

Upon Written Request Copy Available From: Securities and Exchange Commission Office of Filings, Information and Consumer Services 450 Fifth Street NW, Washington, DC 20549.

Extension

Rule 11a–3, File No. 270–321

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval rule 11a–3 (17 CFR 270.11a–3) under the Investment Company Act of 1940 ("1940 Act").

Rule 11a–3 allows certain open-end investment companies and their principal underwriters to make certain exchange offers to their own shareholders or to shareholders of another fund in the same group of funds.

Any of the 2,800 open-end investment companies may rely on rule 11a–3. The annual burden for each company is estimated to be two hours annually. The estimated average burden hours are made solely for the purpose of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Projects 3235–0358 (rule 11a–3)), Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 8, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–8854 Filed 8–7–91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29511; File No. SR-Amex-91-19]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of a Proposed Rule Change Relating to Additional Delivery Periods

July 31, 1991.

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] Notice is hereby given that on July 30, 1991, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Amex. The Commission is granting accelerated approval of the proposed rule change on a temporary basis through January 31, 1992.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to extend for an additional six months the pilot program under which Amex Rule 124 is amended to provide for any additional settlement periods as the Exchange may from time to time determine. These additional periods for the delivery of Amex securities currently include the second, third, and fourth days after the trade date ("T").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Under proposed Amex Rule 124(e), bids and offers may specify that an order be subject to any additional settlement periods as the Exchange may from time to time determine. Previously, the Commission approved on a temporary basis a rule permitting the delivery of Amex securities on the second, third, and fourth days following the trade date ("T"). The temporary approval is for an eighteen month period and expires on August 1, 1991.[2] The Commission also has approved next day ("T+1") delivery under rule 124(b).[3] The Amex proposes that procedures to accommodate the additional settlement periods of T+2 through T+4 be approved by the Commission on a temporary basis for an additional six month period.

The Amex has reviewed operation of the T+1 through T+4 delivery periods during the period of the eighteen month pilot program and has concluded that member firm clearance and settlement procedures have adequately accommodated such non-regular way delivery. The Amex is aware of no difficulties occurring as a result of such transactions settling directly between the parties involved and outside of the facilities of a registered clearing agency. In addition, such additional delivery periods have afforded greater flexibility to members and their customers in structuring investment strategies and advancing their investment objectives.

(2) Basis

The proposed rule change is consistent and furthers the objectives and section 6(b)[4] of the Act in general and furthers the objectives of section 6(b)(5)[5] in particular that it fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

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[1] 15 U.S.C. 78s(b).

[2] Securities Exchange Act Release No. 27665 (February 1, 1990), 55 FR 4503. (File No. SR–Amex–88–20).

[3] Securities Exchange Act Release No. 26127 (September 29, 1988), 53 FR 38388. (File No. SR–Amex–88–20).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing of Commission Action

The Amex requests the Commission to find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. Such accelerated approval would permit the Amex to offer continuity of service to clearing members while providing the Exchange with additional time to analyze its procedures relating to additional settlement periods.

The Commission finds that the Amex's proposal to extend the pilot program procedures for an additional six months is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6(b)(5) of the Act. The proposed rule change will permit Amex member firms to accommodate the needs of their customers with respect to transactions on the Amex by providing market facilities for investors who wish to execute transactions for settlement on time frames shorter than the traditional five day settlement period. Moreover, because this proposal provides for an extension of the pilot program for an additional six months, the Exchange will be in a position to continue to monitor and to assess any effects the alternate delivery periods may have on member firm settlement procedures.[6]

The Commission also finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of filing. Accelerated approval will permit the Amex's program relating to T+2 through T+4 settlement to continue without interruption. The proposed additional settlement periods have imposed no significant burdens on member firm clearance and settlement procedures and are similar to non-regular way settlement time frames currently permitted by other national securities exchanges. An extension of the pilot program for an additional six month period will permit the Exchange to further assess operation of the procedures and to collect and provide to the Commission additional data relating to T+2 through T+4 trades.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–91–19 and should be submitted by August 29, 1991.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–Amex–91–19) be, and hereby is, approved on a temporary basis through January 31, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–18855 Filed 8–7–91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–29515; File No. SR-Amex-91–15]

Self-Regulatory Organizations; Notice of Filing and Order Granting Partial Temporary Accelerated Approval of Proposed Rule Change Relating to the American Stock Exchange's After-Hours Trading Facility

August 2, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 5, 1991, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to commence a pilot program extending its trading hours to establish an after-hours trading facility that would permit the execution of (1) single-sided closing-price orders; and (2) crosses of closing-price buy and sell orders.[1] The Exchange requests that the proposed rule change be approved on an accelerated basis. This order grants temporary approval to a portion of the filing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

For some time, the Exchange has been considering the introduction of after-hours trading in its equities. As an initial effort in this area, the Amex proposes that a facility be established to permit the execution of (1) single-sided closing-price orders and (2) crosses of closing-price buy and sell orders after the close of the ordinary 9:30 a.m. to 4 p.m. auction market session ("after-hours trading facility"). Although, as will be discussed herein, there are some operational differences, the Amex's proposed facility will be substantially

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[6] As set forth in Securities Exchange Act Release 27665, the Exchange will continue to provide the Commission with quarterly reports of trades subject to T+1 through T+4 settlement.

[7] 15 U.S.C. 78s(b)(2).

[8] 17 U.S.C. 200.30–3(a)(12).

[1] The exact text of the proposed rule change was attached to the rule filing as exhibit A and is available at the Amex and the Commission at the address noted in Item III below.

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I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to commence a pilot program extending its trading hours to establish an after-hours trading facility that would permit the execution of (1) single-sided closing-price orders; and (2) crosses of closing-price buy and sell orders.[1] The Exchange requests that the proposed rule change be approved on an accelerated basis. This order grants temporary approval to a portion of the filing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

For some time, the Exchange has been considering the introduction of after-hours trading in its equities. As an initial effort in this area, the Amex proposes that a facility be established to permit the execution of (1) single-sided closing-price orders and (2) crosses of closing-price buy and sell orders after the close of the ordinary 9:30 a.m. to 4 p.m. auction market session ("after-hours trading facility"). Although, as will be discussed herein, there are some operational differences, the Amex's proposed facility will be substantially

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[1] The exact text of the proposed rule change was attached to the rule filing as exhibit A and is available at the Amex and the Commission at the address noted in Item III below.

similar to the New York Stock Exchange's ("NYSE") "Crossing Session I," which was approved recently by the Commission and began operation on June 13, 1991.[2]

Under the Amex proposal, the after-hours trading facility would enable members and member organizations ("members"), including specialits,[3] to enter both proprietary and agency orders in any Exchange-traded equity security (e.g., stocks, rights, warrants, primes and scores, American Depository Receipts ("ADRs"), and equity derivative products[4] for execution at the Exchange's last closing regular way price.[5] Specifically, commencing at 4:15 p.m.,[6] single-sided round lot orders can be entered through the PER system [7] or left with the specialist or his or her authorized representative for matching and execution at 5 p.m. at the Exchange's last closing regular way price, *i.e.*, the last price at which the equity traded on the Exchange during the normal 9:30 a.m. to 4 p.m. trading session.[8] In addition, coupled buy and sell round lot, odd lot, and partial round lot orders can be entered through PER or left with the specialist or his or her representative for execution at 5 p.m. against each other at the Exchange's last regular way price.[9]

Members also will be able to designate good 'til cancelled ("GTC") [10] limit orders entered during the 9:30 a.m. to 4 p.m. trading session as eligible for execution during the after-hours session. Such orders will be identified as "GTX," indicating that after the close of the normal trading session, those that are executable at the Exchange's last closing regular way price will migrate to the after-hours facility for possible execution. Only unconditioned round lot and partial round lot limit orders will be allowed to be designated as GTX; any market, stop, stop limit, or odd lot orders so designated will be rejected. For purposes of execution during the after-hours session, GTX orders will have priority over all other single-sided closing-price orders, and, among themselves, will retain the same priority as they had on the specialist's book. Members will be permitted to designate both GTC orders transmitted through PER and manually delivered to the specialist during the regular trading session as eligible for after-hours execution.

The after-hours facility will allow for the entry of closing-price single-sided and coupled orders and the cancellation of closing-price and GTX orders until 5 p.m. However, the session will not be available for any issue that remained halted as of the close of the regular trading session. Similarly, trading in the after-hours session will not take place if a market-wide "circuit breaker" trading halt remained in effect at the close of the regular trading session. In addition, if at any time between 4 and 5 p.m. the Exchange determines, based on news or other events, that the after-hours facility should not be available for a particular issue, a notice of such determination will be disseminated through a Common Message Switch ("CMS") broadcast and over the Consolidated Tape System ("CTS") high-speed line and low speed ticker, and all single-sided and coupled closing-price orders in that issue will be considered cancelled. GTX orders which had migrated to the after-hours session will be returned to the specialist's book, where they will retain the same priority among themselves as they had originally.

After commencement of the after-hours trading session, employees of the specialist unit will "strip their racks," or remove from their limit order books, all GTX orders executable at the Exchange's last closing regular way price. Single-sided and coupled closing-price orders transmitted through PER will print out at the specialist post continuously until 5 p.m., during which time members will also be able to manually deliver such orders to the post. Specialists or their employees will match GTX and single-sided closing-price buy and sell orders on a first-in, first-out ("FIFO") basis and set them aside for execution at 5 p.m. (As noted above, GTX orders will have priority over single-sided closing-price orders entered after commencement of the after-hours session.) In the event of cancellations, the specialists or their employees will re-match the remaining orders to ensure that they retain their FIFO priority.

At 5 p.m., all matched GTX and single-sided closing-price orders will be executed by the specialists, with reports of execution being delivered to the entering members (either though PER or manually, depending on how the order was entered). Any unmatched, and therefore unexecuted, single-sided closing-price order will be reported back as such to the entering firm. Any unexecuted portion of a GTX order will be returned to the specialist's book, maintaining its priority, and may therefore participate in the next day's normal trading session, unless cancelled beforehand. Coupled closing-price orders, if not cancelled, will also be executed at 5 p.m.

In order to facilitate use of the after-hours facility, the Exchange proposes to modify the current PER parameters. With respect to single-sided orders entered during the after-hours session, PER would be modified to accommodate round lot market orders of up to 30,000 shares.[11] For coupled orders entered during the after-hours session, PER would be modified to accommodate market orders of up to 30,099 shares (i.e., round lots with associated odd lots).[12] Finally, with respect to GTC orders entered during the regular trading session and designated as eligible for execution during the after-hours session ("GTX" orders), where such orders are entered directly by the upstairs firm into the PER system, they will be limited to the 5,099 share parameter currently applicable to limit orders.[13] The PER system would be modified, however, to accept a GTX order of up to 30,099 shares if it is first transmitted to a broker on the trading floor, who in turn would bring it to the PER Service Desk for entry into the system.[14] (Except as discussed above, and except as may be determined in accordance with a previously-approved unrelated Exchange proposal,[15] the current PER parameters of 3,099 shares for market orders and 5,099 shares for limit orders will remain unchanged during the 9:30 a.m. to 4 p.m. trading session).

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[2] The NYSE's Off-Hours Trading ("OHT") facility extends the NYSE's trading hours beyond the 9:30 a.m. to 4 p.m. trading session to establish two trading sessions: Crossing Session I, which permits the execution of single-stock single-sided closing-price orders, and crosses of single-stock closing-price buy and sell orders; and Crossing Session II, which allows the execution of crosses of multiple-stock aggregate-price buy and sell orders. See Securities Exchange Act Release No. 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) ("NYSE OHT Release") (approving Files No. SR–NYSE–90–52 and NYSE–90–53). The NYSE's OHT facility was approved by the Commission on May 20, 1991, and began operation on June 13, 1991.

[3] The Commission is approving today on an accelerated basis only that portion of the proposed rule change which establishes the after-hours trading facility and which allows members, not including specialists, to enter proprietary and agency orders in Exchange-traded equities. The Commission is not granting accelerated approval to the portion of the proposed rule change which allows specialists to participate in the after-hours trading facility by entering proprietary or customer orders; this portion of the proposal, which may raise new regulatory issues that have to be considered by the Commission, will be published for public notice and comment. See discussion, *infra*, and letter from Scott I. Noah, Assistant Vice President and Associate General Counsel, legal & Regulatory Policy Division, Amex, to Mary Revell, Branch Chief, Branch of Exchange Regulation, Division of Market Regulation, SEC, dated July 24, 1991.

[4] The Commission notes that the term "equity derivative products" in the context of this rule filing is limited only to products that may be derivative of another equity security and eligible for routing through the PER system. It does not include standardized options, such as options on individual stocks or on indexes of securities, such as Amex's Major Market Index ("XMI").

[5] The Amex's proposed rule change consists of changes to existing Amex rules and the adoption of a new "1300 series" of rules that would apply solely to the after-hours facility ("Rules for After-Hours Trading Facility").

[6] The 15-minute interval between the close of the normal trading session and the commencement of the after-hours facility will allow Exchange systems sufficient time for switch-over to the operations necessary for the after-hours facility.

[7] The Amex's Post Execution Reporting Service ("PER") electronically routes market and limit orders in equity securities to the applicable specialist post.

[8] The Amex states that it will use its existing systems to implement the proposed rule change and execute single-sided, coupled, and GTX orders. The Amex represents that it has no systems capacity concerns regarding the execution of single-sided, coupled, and GTX orders, and that modifications to its systems to permit the execution of those orders were tested successfully prior to this order.

[9] A member will not be permitted to enter coupled buy and sell orders if both are for accounts in which any member, or an associated person, has a direct or indirect interest.

[10] A GTC order is an order to buy or sell which remains in effect until it is either executed or cancelled. Amex Rule 131(j).

After 5 p.m., there will be separate prints for each issue that participated in the after-hours session: the first representing the aggregate number of shares of the issue that was traded through single-sided (including GTX) orders, and the second representing the aggregate number of shares traded through coupled orders. The latter will be printed as a "sold" sale to ensure that the price of coupled orders is not selected as the day's consolidated closing price or used as the basis for the next day's Intermarket Trading System ("ITS") pre-opening application.

The proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–91–15 and should be submitted by August 29, 1991.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission believes that the portion of the Amex proposal establishing an after-hours session which would enable members, not including specialists, to enter both proprietary and agency orders in any Exchange-traded equity security, including stocks, rights, warrants, primes and scores, ADRs, and non-option equity derivative products, for execution at the Exchange's last closing regular way price, is reasonably designed to promote just and equitable principles of trade, perfect the mechansim of a free and open national market system, and, in general, further investor protection and the public interest in fair and orderly markets on national securities exchanges, as well as facilitate the linking of qualified markets through appropriate communication systems and the practicability of brokers executing investors' orders in the best market. For these reasons and for the additional reasons set forth below, the Commission finds that approval, for a temporary period ending on May 24, 1993, of the portion of the Exchange's proposed rule change establishing an after-hours facility which enables members, not including specialists, to enter both proprietary and agency orders in any Exchange-traded equity security is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of sections 6 and 11A of the Act.[16]

In the recent Commission release approving the NYSE's OHT facility, the Commission noted the benefits that would accrue to investors through development of an after-hours trading session. The Commission stated that the NYSE OHT sessions should enhance competition by providing a service to customers that other exchanges currently are not providing, and also noted that innovation that provides marketplace benefit to attract order flow to one marketplace does not result in unfair competition if the other markets are free to compete in the same manner.[17] In this regard, the Commission noted that, if other U.S. securities marketplaces desire to compete with the NYSE's OHT facility, they could provide a similar service.[18]

The Commission believes that the portion of the Amex proposal which establishes an after-hours session that enables members, not including specialists, to enter proprietary and agency orders in any Exchange-traded equity security for execution at the Exchange's last closing regular way price is substantially similar, and a reasonable competitive response, to the NYSE's Crossing Session I. By allowing

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[11] See, letter from Scott I. Noah, Assistant Vice President and Associate General Counsel, Legal & Regulatory Policy Division, Amex, to Elizabeth A. Pucciarelli, Attorney, Branch of Exchange Regulation, Division of Market Regulation, SEC, dated July 30, 1991 ("July 30 letter").

[12] *Id.*

[13] See *infra.*

[14] See July 30 letter, *supra*, note 10. If a GTX order becomes executable during the 9:30 a.m. to 4 p.m. trading session, it would, to the extent possible, be eligible for execution in its entire amount.

[15] See Securities Exchange Act Release No. 28891 (February 15, 1991), 56 FR 7438 (File No. SR–Amex–90–37), which gives the Exchange discretion, as early as August 1991, to increase the size eligibility of PER market orders to 5,099.

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[18] *Id.* Subsequently, the Boston, Midwest, Pacific, and Philadelphia Stock Exchanges, as a competitive response to the NYSE's OHT facility, adopted rules that require their specialists to provide primary market protection for limit orders, designated as executable after the close of the regional exchange market trading session, based on volume that prints in the primary market's after-hours session. See Securities Exchange Act Release Nos. 29301 (June 13, 1991), 56 FR 28182 (granting temporary accelerated approval to File No. BSE–91–4); 29297 (June 13, 1991), 56 FR 28191 (granting temporary accelerated approval to File No. MSE–91–11); 29305 (June 13, 1991), 56 FR 28206 (granting partial temporary accelerated approval to File No. PSE–91–21); and 29300 (June 13, 1991), 56 FR 28212 (granting temporary accelerated approval to File No. Phlx–91–26).

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members to enter single-sided and coupled orders into an after-hours facility, as well as permitting the migration of certain limit orders (GTX orders) from the regular 9:30 a.m. to 4 p.m. trading session for possible execution in the after-hours facility, the Exchange is providing a mechanism for maintaining its own individual marketplace on a competitive level with the NYSE and the regional exchanges. Accordingly, the Commission believes that the portion of the proposed rule change establishing an after-hours facility which would enable members to enter both proprietary and agency orders in Exchange-traded equity securities, including stocks, rights, warrants, primes and scores, ADRs, and non-option equity derivative products, for execution at the Exchange's last closing regular way price should be approved for many of the same reasons that the Commission approved the NYSE OHT facility.[19]

The Commission believes that both the instant Amex proposal and the NYSE's OHT facility, as well as the rules which have recently been put in place at the regional exchanges, demonstrate the competitiveness of the U.S. securities markets. As a result of these marketplace initiatives, U.S. investors soon will have new opportunities for trading, including the ability to have their orders executed on both the NYSE and the Amex after the close of the regular 9:30 a.m. to 4. p.m. trading session at the closing price of the respective marketplace. Moreover, the Commission believes that the increased competition that would result from allowing the Amex to establish an after-hours facility would benefit the entire marketplace.

In addition, the Commission believes that, although Amex specialists will know which limit orders are designated "GTX" and will manually execute matched GTX and one-sided orders, they should not be able to use this information to their own advantage because specialists will be prohibited from entering orders into the after-hours facility. The Commission expects, however, that the Amex will monitor carefully the execution of GTX, single-sided, and coupled orders to ensure that Amex specialists are not taking unfair advantage of this information. In this regard, the Commission expects the Amex to report within 16 months of the date of the approval of this order, on this issue.

The Commission notes that the NYSE's OHT facility was approved for a two year temporary period, commencing on May 24, 1993. In approving the NYSE proposal for a temporary period, the Commission noted that the NYSE OHT facility raised several "intermarket" issues, such as: (1) Whether ITS should be operational during any time period when both the NYSE Crossing Sessions and another ITS market are accepting orders; (2) whether the NYSE should be required to permit orders entered "GTX" on the books of regional specialists to "migrate" automatically at the close(s) of such regional exchanges to the NYSE Crossing Session I order books; (3) if so, with what priority, if any; and (4) who should bear the cost of developing a working mechanism for such transmittal. In the release approving the NYSE OHT facility, the Commission also noted that, because at least one other exchange had proposed a trading session similar or identical to the NYSE's OHT facility, significant national market system issues would have to be resolved by the NYSE and the competing market, in conjuction with the SEC. Because the Amex proposal would establish an after-hours trading system that will compete directly with NYSE Crossing Session I, the Commission believes that a temporary approval period ending on May 24, 1993 is also appropriate for the Amex proposal.[20]

The Commission believes that this time period will provide an opportunity for the Commission and market participants to observe the actual operation of the Amex's after-hours facility. Based on these observations the Commission and market participants will be in a better position to evaluate whether further steps to link the Amex's after-hours facility with comparable systems operating at the same time are necessary or appropriate to protect investors or promote fair competition and whether any other linkage issues arise. In this regard, 16 months from the date of approval of the instant proposal, the Amex should submit a new filing pursuant to rule 19b–4 under the Act requesting permanent approval of its proposed rule change, as well as a report describing the Amex's experience with the new rule during that 16-month period. The report should include, but not be limited to, the following information (broken down by month) for the 16-month period:

- Trading volume (trades and number of shares) in after-hours session
- The number, if any, of (1) single-sided orders; (2) coupled buy and sell orders; and (3) GTX orders executed in the after-hours session
- The number, if any, of single-sided and coupled orders comprised of primes and scores or comprised of equity derivative products that are executed in the after-hours session
- The number, if any, of (1) single-sided orders; and (2) single-sided GTX orders that remained unexecuted at the end of the after-hours session
- The number and percentage of GTC orders on the book that were designated "GTX"
- The number of member firms participating in the after-hour session
- Whether the Amex marketplace has experienced any increased volatility during the last hour of the 9:30 a.m. to 4 p.m. trading session after the initiation of the after-hours session
- Whether there were greater (wider) quote spreads during the last hour of the 9:30 a.m. to 4 p.m. trading session after the initiation of the after-hours session
- Whether there was a diminution in the number of block transactions during the last hour after the initiation of the after-hours session
- The degree to which transactions were entered in the after-hours session to avoid the restrictions of the short sale rule in the 9:30 a.m. to 4 p.m. trading session

The Commission notes that, because the Amex after-hours facility is comparable to Crossing Session I of the NYSE's OHT facility, the Amex's report should also indicate: (1) How its after-hours facility could link with the NYSE's OHT facility and any other systems approved during the 16-month period; (2) how orders entered on other marketplaces could interact with orders in the Amex's after-hours facility; and (3) how the intermarket issues discussed in this order would be addressed. In this connection, however, the Commission underscores its strong belief that resolution of intermarket issues would not be solely a responsibility of the Amex, but would fall equally upon all self-regulatory organizations proposing after-hours sessions.

In addition to the above information, the Commission expects that the Amex, through use of its surveillance procedures, will monitor for, and report to the Commission, any patterns of manipulation or trading abuses or unusual trading activity in the after-hours facility. Specifically, the Commission expects the Amex to monitor closely the trading of primes shares.[11] For coupled orders entered during the after-hours session, PER would be modified to accommodate market orders of up to 30,099 shares (i.e., round lots with associated odd lots).[12] Finally, with respect to GTC orders entered during the regular trading session and designated as eligible for execution during the after-hours session ("GTX" orders), where such orders are entered directly by the upstairs firm into the PER system, they will be limited to the 5,099 share parameter currently applicable to limit orders.[13] The PER system would be modified, however, to accept a GTX order of up to 30,099 shares if it is first transmitted to a broker on the trading floor, who in turn would bring it to the PER Service Desk for entry into the system.[14] (Except as discussed above, and except as may be determined in accordance with a previously-approved unrelated Exchange proposal,[15] the current PER parameters of 3,099 shares for market orders and 5,099 shares for limit orders will remain unchanged during the 9:30 a.m. to 4 p.m. trading session).

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[19] See NYSE OHT Release, *supra*, note 2. The Commission incorporates by reference any discussion in its order approving the NYSE's OHT facility (*supra*, note 2) which may relate to the instant proposed rule change.

[20] To achieve uniformity, the temporary approval period would run until May 24, 1993, the sunset of the NYSE's OHT facility.

After 5 p.m., there will be separate prints for each issue that participated in the after-hours session: the first representing the aggregate number of shares of the issue that was traded through single-sided (including GTX) orders, and the second representing the aggregate number of shares traded through coupled orders. The latter will be printed as a "sold" sale to ensure that the price of coupled orders is not selected as the day's consolidated closing price or used as the basis for the next day's Intermarket Trading System ("ITS") pre-opening application.

The proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-91-15 and should be submitted by August 29, 1991.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

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- The number, if any, of (1) single-sided orders; and (2) single-sided GTX orders that remained unexecuted at the end of the after-hours session
- The number and percentage of GTC orders on the book that were designated "GTX"
- The number of member firms participating in the after-hour session
- Whether the Amex marketplace has experienced any increased volatility during the last hour of the 9:30 a.m. to 4 p.m. trading session after the initiation of the after-hours session
- Whether there were greater (wider) quote spreads during the last hour of the 9:30 a.m. to 4 p.m. trading session after the initiation of the after-hours session
- Whether there was a diminution in the number of block transactions during the last hour after the initiation of the after-hours session
- The degree to which transactions were entered in the after-hours session to avoid the restrictions of the short sale rule in the 9:30 a.m. to 4 p.m. trading session

The Commission notes that, because the Amex after-hours facility is comparable to Crossing Session I of the NYSE's OHT facility, the Amex's report should also indicate: (1) How its after-hours facility could link with the NYSE's OHT facility and any other systems approved during the 16-month period; (2) how orders entered on other marketplaces could interact with orders in the Amex's after-hours facility; and (3) how the intermarket issues discussed in this order would be addressed. In this connection, however, the Commission underscores its strong belief that resolution of intermarket issues would not be solely a responsibility of the Amex, but would fall equally upon all self-regulatory organizations proposing after-hours sessions.

In addition to the above information, the Commission expects that the Amex, through use of its surveillance procedures, will monitor for, and report to the Commission, any patterns of manipulation or trading abuses or unusual trading activity in the after-hours facility. Specifically, the Commission expects the Amex to monitor closely the trading of primes and scores and equity derivative products in the after-hours facility to ensure that trading in these issues is not subject to any patterns of manipulation or trading abuses or unusual trading activity. Moreover, the Commission expects the Amex to keep the Commission apprised of any technical problems which may arise regarding the operation of the after-hours facility, such as difficulties in order execution or order cancellation.

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[19] See NYSE OHT Release, *supra*, note 2. The Commission incorporates by reference any discussion in its order approving the NYSE's OHT facility (*supra*, note 2) which may relate to the instant proposed rule change.

[20] To achieve uniformity, the temporary approval period would run until May 24, 1993, the sunset of the NYSE's OHT facility.

Finally, the Commission finds good cause for approving the portion of the proposed rule change establishing an after-hours facility which enables members, no including specialists, to enter proprietary and agency orders in Exchange-traded equity securities, including stocks, rights, warrants, primes and scores, ADRs, and non-option equity derivative products, for execution at the Exchange's last closing regular way price prior to the thirtieth day after the date of publication of notice of filing thereof. This portion of the Amex proposal raises no new regulatory issues that have not already been addressed in the order approving the NYSE's OHT system. In addition, the Commission believes that good cause exists for accelerated approval of the portion of the proposed rule change which would modify the current PER parameters to accommodate trading in the after-hours facility. The Amex has represented to the Commission that it has no system capacity concerns regarding order execution in connection with single-sided and coupled orders entered into the after-hours session or with GTX orders entered during the regular 9:30 a.m. to 4 p.m. trading session and that modification to its systems to permit the execution of these orders were tested successfully. Accordingly, the Commission believes it is appropriate to approve these portions of the proposed rule change on an accelerated basis in order to permit the Amex to compute with the NYSE's OHT facility, which in turn should benefit investors and promote competition among markets.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[31] that the portion of the proposed rule change establishing an after-hours trading facility in which members, not including specialists, may enter both proprietary and agency orders in Exchange-traded equity securities for execution at the Exchange's closing price, and in which GTX orders will be eligible for execution, is approved for a temporary period ending on May 24, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[32]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-18856 Filed 8-7-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29520; International Series Release No. 302; File No. SR-Amex-91-04]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Listing Standards for Non-U.S. Issuers

August 2, 1991.

I. Introduction

On March 13, 1991, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b-4 thereunder,[2] a proposed rule change to amend section 110 of the Amex Company Guide in order to eliminate its alternate financial guidelines for non-U.S. issuers and reduce its alternate distribution criteria for such companies.

The proposed rule change was noticed in Securities Exchange Act Release No. 29031 and International Series Release No. 249 (April 1, 1991), 56 FR 14279 (April 8, 1991). No comments were received on the proposal.

II. Background

According to the Exchange, the Amex's alternate listing standards applicable to foreign issuers were adopted in 1977 to accommodate non-U.S. issuers which were unable to satisfy the Exchange's domestic public share distribution standards. The alternate listing standards, therefore, focus on worldwide distribution as opposed to U.S. distribution of the foreign company's shares, while imposing size and earnings criteria which, by comparison, greatly surpass the comparable standards applicable to U.S. or Canadian issuers.

According to the Exchange, the alternate standards initially were devised to lure financial "giants" to the Amex because the Exchange assumed that only these issuers could attract the necessary research coverage to stimulate investments by prospective U.S. shareholders. In addition, the Amex believed that smaller issuers were less likely to satisfy the Exchange's corporate government requirements.

The current interest in overseas markets has prompted the Amex to change its viewpoint, however, and the Exchange now believes that smaller foreign issuers can attract sufficient investor interest as to warrant listing on a U.S. exchange. In addition, the Amex is aware that foreign issuers are eligible for exceptions to the corporate governance rules of all major marketplaces. For these two reasons, the Exchange believes that there no longer is any justification for requiring higher financial or market capitalization standards to list non-U.S. companies.

II. Proposal

The Exchange proposes to eliminate its alternate size and earnings listing criteria for non-U.S. issuers and, alternatively, apply its domestic size and earnings guidelines to all issuers, domestic and foreign. The current alternate listing guidelines for non-U.S. issuers, which the Amex proposes to eliminate, require a minimum of $25,000,000 in stockholders' equity; $30,000,000 of cumulative total pre-tax income for the latest three fiscal years with a minimum of $7,500,000 in each year; and a $20,000,000 aggregate market value for publicly held shares. The current domestic size and earnings guidelines, which would be the only standards that would apply to non-U.S. issuers, would require a company to maintain stockholders' equity of $4,000,000; pre-tax income of $750,000 in the last fiscal year or in two of the last three fiscal years; and market capitalization of $3,000,000.[3] The proposal, therefore, would substantially decrease the size and earnings criteria required for listing non-U.S. issuers on the Exchange.

In addition, the Exchange proposes to decrease its alternate distribution criterion for non-U.S. issuers, which requires 2,000 holders currently. According to the Amex, its experience in trading foreign securities has made clear that specialists and other investors can easily convert foreign shares into American Depository Receipts ("ADRs") and vice versa. The Amex has stated that since liquidity is not solely a function of U.S. or foreign shareholders, but of total trading in an issue on a worldwide basis, it should not be difficult to maintain a market in a foreign issue during the nascent period of the U.S. market. Nevertheless, the Amex believes that in order to increase

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[31] 15 U.S.C. 78s(b)(2) (1988).

[32] 17 CFR 200.30-3(a)(12) (1990).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1990).

[3] See sections 101-102 of the Amex Company Guide.

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II. Proposal

The Exchange proposes to eliminate its alternate size and earnings listing criteria for non-U.S. issuers and, alternatively, apply its domestic size and earnings guidelines to all issuers, domestic and foreign. The current alternate listing guidelines for non-U.S. issuers, which the Amex proposes to eliminate, require a minimum of $25,000,000 in stockholders' equity; $30,000,000 of cumulative total pre-tax income for the latest three fiscal years with a minimum of $7,500,000 in each year; and a $20,000,000 aggregate market value for publicly held shares. The current domestic size and earnings guidelines, which would be the only standards that would apply to non-U.S. issuers, would require a company to maintain stockholders' equity of $4,000,000; pre-tax income of $750,000 in the last fiscal year or in two of the last three fiscal years; and market capitalization of $3,000,000.[3] The proposal, therefore, would substantially decrease the size and earnings criteria required for listing non-U.S. issuers on the Exchange.

In addition, the Exchange proposes to decrease its alternate distribution criterion for non-U.S. issuers, which requires 2,000 holders currently. According to the Amex, its experience in trading foreign securities has made clear that specialists and other investors can easily convert foreign shares into American Depository Receipts ("ADRs") and vice versa. The Amex has stated that since liquidity is not solely a function of U.S. or foreign shareholders, but of total trading in an issue on a worldwide basis, it should not be difficult to maintain a market in a foreign issue during the nascent period of the U.S. market. Nevertheless, the Amex believes that in order to increase

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[3] See sections 101-102 of the Amex Company Guide.

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the likelihood that a liquid U.S. market will develop, the proposal would require non-U.S. issuers to have a minimum of 800 public holders worldwide and a minimum public float of one million shares.[4] This guideline remains significantly different from the current domestic guideline of 400 U.S. holders for an issuer with one million or more shares held publicly.

III. Discussion and Conclusion

After careful consideration, the Commission has concluded, for the reasons set forth below, that the proposed rule change is consistent with section 6 of the Act[5] and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes that the proposal is consistent with the section 6(b)(5) requirement that the rules of an exchange be designed to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Because of the ever increasing globalization of the securities markets, there has been heightened interest by U.S. investors in trading the securities of foreign companies. The Amex's proposal is designed to address this interest by allowing additional foreign companies to list on the Amex. This, in turn, will provide U.S. investors desiring to trade the shares of these companies with the benefits of a U.S. trading market.

Foreign issuers choosing to list on the Amex do so in anticipation of deriving certain benefits from listing for both themselves and the investors in their securities. The potential benefits from trading a security listed on the Amex may include greater public exposure through publicity afforded by the various information services, a greater opportunity for investors to obtain agency-type limit order protection, and the possibility of increased ease of access to new capital. In addition, the Commission believes that the listing of additional foreign issuers on the Amex may work to increase competition between the exchanges.

The foreign issuers that list on the Amex pursuant to the proposed criteria will be subject to the Exchange's reporting requirements and surveillance procedures. Thus, the proposal provides the added benefit of Exchange oversight of the trading of these foreign securities, thereby providing better protection to the U.S. shareholders investing in the securities of these foreign companies.

As set forth above, the proposal would require foreign companies to meet domestic size and earnings criteria, while the distribution criteria will continue to be based on a minimum worldwide distribution, with the shareholder requirement remaining higher than the level provided for by the domestic company listing standards. While the proposal substantially reduces the size and earnings criteria for foreign companies, it does not lower such criteria below the level currently applicable to domestic companies. It is not inconsistent with the Act for the Amex to apply its domestic size and earnings requirements to foreign issuers. As with domestic companies, these requirements work to ensure that only genuine companies capable of meeting their financial obligations will be eligible for listing and that there will be broad public ownership of the issuer's securities. Moreover, the Commission agrees with the Amex that U.S. investors are interested in trading the securities of smaller foreign issues, not merely the top echelon foreign companies which the alternate listing criteria were intended to attract. The proposal, therefore, will provide U.S. investors with the ability to invest in a wider range of foreign companies, while ensuring the protection of investors by requiring that a foreign company accepted to listing on the Exchange is sufficiently capitalized and, as discussed below, has a broad enough shareholder base to support a national market in the U.S.[6]

The Amex's proposal reduces the distribution criteria applicable to foreign issuers, but keeps the criteria higher than the domestic requirements.[7] This should assure that those foreign companies meeting the size and earnings criteria also have a sufficient public distribution to maintain a market in the U.S. The Commission believes that the proposed distribution criteria are reasonable in this regard. Because these companies' primary shareholder base remains outside of the U.S., it is important for the Amex to ensure that there exists sufficient shareholder interest in the product so that a liquid market can be maintained on the Amex. As a result, it is logical for the Amex to require a higher shareholder number for foreign issuers. The Commission believes that the standard selected by the Amex—800 shareholders worldwide—while lessening the current requirement for foreign issuers, should be sufficiently high to provide for an adequate pool of potential shareholder interest for trading on the Amex.

Finally, the proposal is consistent with section 6(b)(5) of the Act by not permitting unfair discrimination between issuers on the Exchange. Indeed, pursuant to the proposal, foreign and domestic companies must meet identical size and earnings standards to be listed on the Exchange, as well as meet a minimum public float of one million shares. For this reason, therefore, and the additional reasons set forth above, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-18857 Filed 8-7-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

August 2, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12(f)-1 thereunder for unlisted trading privileges in the following securities:

Enquirer/Star Group, Inc.
  Class A Common Stock, $0.01 Par Value (File No. 7-7123).
Exel Ltd.
  Ordinary Shares $0.01 Par Value (File No. 7-7124).

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[4] The Exchange's proposal does not alter the minimum public float currently required by the alternate criteria.

[5] 15 U.S.C. 78f (1988).

[6] It is important to note that the Amex's proposal does not alter the disclosure requirements for foreign issuers. All foreign companies listed on the Amex pursuant to the reduced listing standards will have to fulfill the same registration and periodic reporting requirements under the federal securities laws as do currently listed foreign issuers.

[7] The share distribution standards for domestic companies require either a minimum public distribution of 500,000 shares and a minimum of 800 public holders or 1,000,000 shares and 400 holders. The proposed share distribution criteria for foreign companies, which will require both 1,000,000 publiclyheld shares and 800 holders, remain significantly higher than the standards currently applicable to domestic issuers.

[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30-3(a)(12) (1990).

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Manpower, Inc.
  Common Stock, $0.01 Par Value (File No. 7-7125).
Marvel Entertainment Group, Inc.
  Common Stock, $0.01 Par Value (File No. 7-7126).
Potomac Electric Power Co.
  Serial Pfd. $3.89 of 1991, $50.00 Par Value (File No. 7-7127).
Sea Containers Ltd.
  $4.00 Conv. Cum. Pfd., $0.01 Par Value (File No. 7-7128).
Singer Co. NV
  Common Stock, $0.01 Par Value (File No. 7-7129).
Swift Energy Co.
  Common Stock, $0.01 Par Value (File No. 7-7130).
Telecom Corp. of New Zealand Ltd.
  American Depositary Shares (20 Ordinary Shares NZ $1.00 Par Value (File No. 7-7131).
International Corona Corp.
  Class A Common Stock, No Par Value (File No. 7-7132).

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system. Interested persons are invited to submit on or before August 23, 1991, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 91-18788 Filed 8-7-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

August 2, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following security:

Smart & Final, Inc.
  Common Stock, $.01 Par Value (File No. 7-7133)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 23, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 91-18789 Filed 8-7-91; 8:45 am]

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[Release No. 34-29512; File No. SR-NASD-91-20]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Forwarding of Material on the Issuer's Behalf of Beneficial Owners of NASDAQ Securities

July 31, 1991.

I. Introduction

The National Association of Securities Dealers, Inc. ("NASD") submitted on April 29, 1991, a proposed rule change pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 ("Act") and rule 19b-4 [2] to amend the Interpretation of the Board of Governors—Forwarding of Proxy and Other Materials, article III, section 1 of the NASD Rules of Fair Practice. Notice of the proposed rule change together with the terms of substance of the proposal was provided by the issuance of a Commission release (Securities Exchange Act Release No. 29344 (June 19, 1991) and by publication in the **Federal Register**, 56 FR 12573, (June 26, 1991). In response to our solicitation of comments, the Commission received no comments on the proposed rule change. This order approves SR-NASD-91-20 as originally proposed.

II. Proposed Amendments

1. Forwarding of Proxy and Other Materials

The NASD proposed in the aforementioned rule filing amendments which if implemented will create a uniform standard of duty among NASD members to forward material to beneficial owners furnished by the NASDAQ company that is the issuer of the securities. The standard proposed for adoption is presently embodied in New York Stock Exchange ("NYSE") Rule 465.

The NASD believes the proposed amendments are necessary, because it has come to their attention that a disparity exists among different NASD members regarding their duty to forward to beneficial owners the proxy and other material furnished by the NASDAQ company that is the issuer of the securities.[3] The current Interpretation of the NASD Board of Governors—Forwarding of Proxy and Other Materials to article III, section 1 of the Rules of Fair Practice ("Interpretation") limits the duty of a member to forward material furnished to it by the issuer of the securities to "all proxy material, annual reports, information statements and other material required by law to be sent to stockholders periodically." Currently, NASD members who are members of the NYSE are held to a broader standard under NYSE Rule 465 that requires a member organization to forward "copies of interim reports of earnings and other material being sent to stockholders." NYSE Rule 465 does not reference underlying requirements of law as a prerequisite of the NYSE member's duty to forward material.

This disparity in the duty of NASD members to forward information has created a situation such that a NASDAQ

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1989).

[3] While this rule change would create a uniform standard for forwarding information furnished by NASDAQ companies, the standard for forwarding information furnished by persons other than the issuer of the securities will not be uniform for NASD members that are NYSE-affiliated and NASD members that are not affiliated with the NYSE. NYSE Rule 451 contains a broader standard for forwarding proxy information to the beneficial owners of stock than what is currently required by the NASD's Rules of Fair Practice. NYSE rules require that members forward proxy material when requested by a person. The NASD's rules, however, limit the duty of its members to forward proxy materials to those materials which are furnished by the issuer of the securities. The NASD is presently reviewing the feasibility of changing their rules to reflect the standard for forwarding proxy information embodied in NYSE Rule 451.

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comments, the Commission received no comments on the proposed rule change. This order approves SR–NASD–91–20 as originally proposed.

II. Proposed Amendments

1. Forwarding of Proxy and Other Materials

The NASD proposed in the aforementioned rule filing amendments which if implemented will create a uniform standard of duty among NASD members to forward material to beneficial owners furnished by the NASDAQ company that is the issuer of the securities. The standard proposed for adoption is presently embodied in New York Stock Exchange ("NYSE") Rule 465.

The NASD believes the proposed amendments are necessary, because it has come to their attention that a disparity exists among different NASD members regarding their duty to forward to beneficial owners the proxy and other material furnished by the NASDAQ company that is the issuer of the securities.[3] The current Interpretation of the NASD Board of Governors—Forwarding of Proxy and Other Materials to article III, section 1 of the Rules of Fair Practice ("Interpretation") limits the duty of a member to forward material furnished to it by the issuer of the securities to "all proxy material, annual reports, information statements and other material required by law to be sent to stockholders periodically." Currently, NASD members who are members of the NYSE are held to a broader standard under NYSE Rule 465 that requires a member organization to forward "copies of interim reports of earnings and other material being sent to stockholders." NYSE Rule 465 does not reference underlying requirements of law as a prerequisite of the NYSE member's duty to forward material.

This disparity in the duty of NASD members to forward information has created a situation such that a NASDAQ company requesting that material be forwarded to its beneficial owners may receive different levels of service from certain NASD members resulting from the application of the NYSE Rule 465 to NASD members that are NYSE-affiliated and the NASD members that are not affiliated with the NYSE.

To eliminate the existing disparity of service to NASDAQ companies, the NASD proposal amends the Introduction to the Interpretation to reflect the standard currently embodied in NYSE Rule 465. Accordingly, in addition to proxy material, annual reports and information statements that were previously required to be forwarded pursuant to NASD rules, upon implementation of the rule change, NASD members will also be required to forward copies of all other material being sent to stockholders.

2. Charges for Mailings

The proposed rule change also contains amendments to section 4 of the Interpretation to reflect the additional mailing requirements imposed on NASD members. Currently, NASD members are reimbursed for expenses incurred in forwarding material furnished by the issuer of securities pursuant to section 4 of the Interpretation. The rates for such reimbursement are set forth under the appendix to the Interpretation. The proposed rule change amends section 4 and the appendix to the Interpretation to clarify the application of the reimbursement rate to the additional material required to be forwarded.

III. Conclusion

Having reviewed the proposed rule change, the Commission believes the proposed amendments are consistent with and further the goals of the Act for the reasons which follow. First, we believe that by requiring NASD members to forward additional material as proposed, investors will be aided in evaluating the character of the securities they hold and in their ability to act upon the rights and responsibilities that accompany ownership of such stock. Furthermore, we are of the opinion that the broadened standard imposed on NASD members for fowarding corporate correspendence will be of mutual benefit of NASDAQ companies and their respective shareholders. The rule change will enable NASDAQ companies to apprise stockholders of such options as dividend reinvestment programs by furnishing such mailings to NASD members for forwarding to stockholders. These amendments, we believe, are vital safeguards for assuring that the beneficial owners of stock receive all essential communications and disclosures requested by NASDAQ companies to be forwarded. Finally, because these amendments will prevent the unwarranted discrimination in information provided to investors by creating a uniform level of service to NASD members forwarding information to the beneficial owners of stock, the Commission finds that the proposed rule change is consistent with the requirements of the Act, specifically section 15A(b)(6), which requires that the rules of a registered securities association be designed to prevent fraudulent and manipulative practices, promote just and equitable principles of trade, provide for an equitable allocation of fees, and, in general, protect investors and the public.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved. This rule change shall become effective within 45 days of this order.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–18858 Filed 8–7–91; 8:45am]

BILLING CODE 8010–01–M

[Rel. No. IC–18259; 812–7682]

CoreFunds, Inc.; Application

August 2, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: CoreFunds, Inc. ("CoreFunds"), all other registered investment companies distributed or advised now or in the future by Fairfield Group, Inc. ("Fairfield"), CoreStates Investment Advisers, Inc. ("CoreStates Advisers"), or one of Fairfield's or CoreStates Advisers' affiliates as defined in section 2(a)(3) of the Act (Corefunds and such other registered investment companies are sometimes referred to herein collectively as the "Funds"), Fairfield, and CoreStates Advisers. The Funds, Fairfield, and CoreStates Advisers are sometimes collectively referred to herein as the "Applicants."

RELEVANT ACT SECTIONS: Exemption requested pursuant to section 6(c) from sections 18(f), 18(g), and 18(i).

SUMMARY OF APPLICATION: Applicants seek a conditional order pursuant to section 6(c) of the Act to permit the issuance and sale of multiple classes of securities representing interests in some or all of the Funds' existing and future investment portfolios. The classes would be identical in all respects except for differences relating to distribution expenses, shareholder service plan expenses, dividend payments, and net asset value as a result of differing rule 12b–1 or shareholder service plan fees and transfer agency expenses allocated to specific classes of shares, voting rights, certain exchange privileges and the designation of each class of shares of a portfolio.

FILING DATE: The application was filed on February 13, 1991 and was amended on March 18, 1991, April 1, 1991, July 8, 1991, and July 12, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 27, 1991, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants: CoreFunds or Fairfield, 200 Gibraltar Road, Horsham, Pennsylvania 19044; CoreStates Advisers, PNB Building, Broad and Chestnut Streets, Philadelphia, Pennsylvania 19101.

FOR FURTHER INFORMATION CONTACT: Elizabeth G. Osterman, Staff Attorney, at (202) 504–2524, or Jeremy N. Rubenstein, Assistant Director, at (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. CoreFunds is an open-end management investment company, registered under the Act, that is authorized to issue multiple classes of shares representing interests in separate investment portfolios ("Portfolios").

2. Fairfield, a registered broker-dealer, serves as CoreFunds' distributor and administrator. CoreStates Advisers, a wholly-owned subsidiary of CoreStates

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[3] While this rule change would create a uniform standard for forwarding information furnished by NASDAQ companies, the standard for forwarding information furnished by persons other than the issuer of the securities will not be uniform for NASD members that are NYSE-affiliated and NASD members that are not affiliated with the NYSE. NYSE Rule 451 contains a broader standard for forwarding proxy information to the beneficial owners of stock than what is currently required by the NASD's Rules of Fair Practice. NYSE rules require that members forward proxy material when requested by a person. The NASD's rules, however, limit the duty of its members to forward proxy materials to those materials which are furnished by the issuer of the securities. The NASD is presently reviewing the feasfbility of changing their rules to reflect the standard for forwarding proxy information embodied in NYSE Rule 451.

Bank, N.A., which is in turn a wholly-owned subsidiary of CoreStates Financial Corp ("CoreStates Corp"), acts as investment adviser to CoreFunds.

3. CoreFunds' shares currently are sold to banks affiliated with CoreStates Corp., other financial institutions such as banks and broker-dealers, and institutional investors acting on behalf of certain customers. Financial institutions to which shares are sold typically act in a fiduciary, agency or custodial capacity.[1] In addition, shares may be sold to retail investors.

4. Shares of each Portfolio currently are offered at net asset value without a sales load or redemption charge, although financial institutions holding shares for customer accounts may charge customers for services provided in connection with the purchase or redemption of shares. Applicants seek an exemptive order from the SEC permitting the Funds to offer multiple classes of shares representing differing interests in some or all of the Funds' existing and future Portfolios. Under the proposed arrangement, each share in a particular Portfolio, regardless of class, would represent an equal pro rata interest in such Portfolio and would have identical voting, dividend, liquidation, and other rights, except for: (a) The amount and type of fees permitted by different distribution plans adopted pursuant to rule 12b–1 under the Act ("12b–1 Plans") and related distribution agreements or the amount and type of fees permitted by non-rule 12b–1 shareholder service plans (the "Shareholder Service Plans") and related agreements, (b) voting rights with respect to 12b–1 Plans, (c) the impact of any incremental transfer agency fees directly attributable to a particular class of shares and any other incremental expenses allocated on a class basis which are specifically approved by the SEC pursuant to an amended exemptive order ("Class Expenses"), (d) any differences in dividends and net asset value resulting from different fees under a 12b–1 Plan or Shareholder Service Plan and Class Expenses, (e) exchange privileges, and (f) the designation of classes. The investment objectives, policies and limits, and all other rights and fees (including advisory fees) will be identical for all classes of a particular Portfolio.

5. CoreFunds expects to offer four different classes of shares, as described herein. In addition, other classes of the Funds' existing and future Portfolios may be offered from time to time in connection with 12b–1 Plans or Shareholder Service Plans which may differ from the plans described herein, or with no distribution plan or payments at all. Any such classes would, however, comply with all representations and conditions contained herein.

6. Class A Shares[2] will be identical to the shares currently offered by CoreFunds. Class A will not adopt a 12b–1 Plan or pay any rule 12b–1 distribution expenses. Class A Shares will be sold and redeemed without any sales load or redemption charge imposed by a Fund, although financial institutions holding Class A Shares for customer accounts may charge customers for services provided in connection with the purchase or redemption of Class A Shares. Class A Shares will be offered primarily to institutions affiliated with, and subsidiary banks of, CoreStates Corp. Shares also may be offered in the future to other institutions satisfying certain substantial minimum investment requirements and institutions which act as an investment adviser to the Portfolio in which they are investing.

7. Class B Shares will be identical to Class A Shares, except that Class B will be subject to a 12b–1 Plan and related distribution agreement which will provide that the Fund will reimburse the distributor for certain expenses as provided in a budget approved annually and reviewed quarterly by the board of directors. The expenses subject to reimbursement are limited to: (a) The cost of preparing, producing and delivering prospectuses, shareholder reports, sales literature and other materials for distribution to potential shareholders; (b) advertising; and (c) expenses incurred in connection with the promotion and sale of the Fund's shares, including the distributor's expenses for travel, communication and compensation and benefits of sales personnel (collectively, "Distribution Expenses"). The 12b–1 Plan will limit the annual distribution budget and expenditures under the budget to a maximum of .25% of the average daily net assets of the class or such other limit as may be approved by the shareholders. Class B Shares will be offered for purchase only by or through financial institutions.

8. Class C Shares will be identical to Class A Shares and Class B Shares, except that Class C will be subject to a modified 12b–1 Plan and related distribution agreement. The modified 12b–1 Plan and related distribution agreement will be identical to the Class B 12b–1 Plan, except that Class C Shares will be required to pay the distributor an additional distribution fee equal to .25% of the average daily net assets of the class. The distributor is authorized to pay all or any part of the fees derived from these payments as distribution-related service payments to financial institutions which enter into shareholder servicing agreements (the "Distribution Service Agreements") with the distributor. Such financial institutions will provide Account Administration Services, as defined below, to Class C customer accounts under the Distribution Service Agreements. No service payments will be made to financial institutions with respect to any amounts that are invested for the institution's own account. Class C Shares will be offered for purchase only by or through financial institutions.

9. Class D Shares will be identical to Class A, Class B and Class C Shares, except that Class D Shares will be offered to retail investors for purchase at net asset value plus a front-end sales load, which will not exceed 5% of the offering price. Class D will be subject to a 12b–1 Plan and related distribution agreement on terms similar to those of the 12b–1 Plan and related distribution agreement to which Class B is subject. As permitted by section 22(d) of the Act and rule 22c–1 thereunder, the sales load will be waived in connection with investments by certain persons and in respect of certain transactions and also will be subject to reduction for large purchases and purchases under rights of accumulation and letters of intent.

10. The distributor will provide distribution-related administrative services to Class A, Class B, and Class D Shares. Such services shall include: (a) Establishing and maintaining customer accounts and records; (b) aggregating and processing purchase and redemption requests from customers and placing net purchase and redemption orders with the distributor; (c) automatically investing customer account cash balances; (d) providing periodic statements to customers; (e) arranging for bank wires; (f) answering routine customer inquiries concerning investments in the shares offered in connection with the 12b–1 Plans and agreements, if applicable; (g) assisting

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[1] A fiduciary account generally is one in which a financial institution has discretionary investment authority. An agency account generally is one in which the financial institution is investing upon the instruction of another party because the institution does not possess investment discretion. A custodial account generally is one in which the primary role of the financial institution is to act as custodian of assets.

[2] Each class described herein may not be offered by each Portfolio. Accordingly, the alphabetical designations used herein are not necessarily those that will be used by a specific Portfolio.

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9. Class D Shares will be identical to Class A, Class B and Class C Shares, except that Class D Shares will be offered to retail investors for purchase at net asset value plus a front-end sales load, which will not exceed 5% of the offering price. Class D will be subject to a 12b–1 Plan and related distribution agreement on terms similar to those of the 12b–1 Plan and related distribution agreement to which Class B is subject. As permitted by section 22(d) of the Act and rule 22c–1 thereunder, the sales load will be waived in connection with investments by certain persons and in respect of certain transactions and also will be subject to reduction for large purchases and purchases under rights of accumulation and letters of intent.

10. The distributor will provide distribution-related administrative services to Class A, Class B, and Class D Shares. Such services shall include: (a) Establishing and maintaining customer accounts and records; (b) aggregating and processing purchase and redemption requests from customers and placing net purchase and redemption orders with the distributor; (c) automatically investing customer account cash balances; (d) providing periodic statements to customers; (e) arranging for bank wires; (f) answering routine customer inquiries concerning investments in the shares offered in connection with the 12b–1 Plans and agreements, if applicable; (g) assisting

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customers in changing dividend options, account designations and addresses; (h) performing sub-accounting functions; (i) processing dividend payments from a Fund on behalf of customers; and (j) forwarding certain shareholder communications from a Fund (such as proxies, shareholder reports and dividend, distribution and tax notices) to customers (collectively, "Account Administration Services"). The distributor will not provide Account Administration Services to the beneficial owners of class C Shares directly. Instead, those services will be provided to such beneficial owners by the applicable financial institution pursuant to a Distribution Service Agreement.

11. Currently, Portfolio shares may be exchanged without charge or commission for shares in another Portfolio. Under the proposed arrangement, if a Fund issues multiple classes of shares in one Portfolio, shares of a class of a Portfolio will be exchanged only for shares of the same class of another Portfolio.

12. The adoption and implementation of a 12b–1 Plan or Shareholder Service Plan by a Fund in relation to any of its Portfolios and classes is independent of, and not conditioned upon, the adoption or implementation of such a plan by that or any other Fund in relation to any other Portfolio and class. The level of payments made pursuant to a 12b–1 Plan or Shareholder Service Plan may vary based upon an independent determination by the board of directors of a Fund. Each 12b–1 Plan is subject to approval by the shareholders of the affected class. No Fund will use rule 12b–1 fees charged to one class within a Portfolio to support the marketing of any other class of shares within that Portfolio or any other Portfolio. With the exception of voting rights, the protections provided pursuant to rule 12b–1 to shareholders adopting a 12b–1 Plan will be provided to shareholders of a class adopting a Shareholder Service Plan also. Under a Shareholder Service Plan, the distributor may enter into agreements with financial institutions to provide administrative services to customer accounts. Such services would be substantially similar to the Account Administration Services described above.

13. Each class of shares of a Portfolio will bear, *pro rata* with every other class of shares of such Portfolio, all Portfolio expenses (except Class Expenses) not covered by the 12b–1 Plans and Shareholder Service Plans. Such Portfolio expenses will be allocated to each class of shares of a Portfolio based upon the net assets of each individual class of shares. Investment income, including amortization of discount and premium, where applicable, also will be allocated to each class of shares of a Portfolio based on its percentage of the total net assets.

14. The expenses incurred pursuant to the 12b–1 Plan or Shareholder Service Plan of a particular class will be borne solely by that class. Dividends payable to the holders of shares of each such class will reflect differences resulting from the different fees under a 12b–1 Plan or Shareholder Service Plan and incremental transfer agency and other Class Expenses borne by that class. Accordingly, dividends distributed to shareholders of one class may differ from the dividends distributed to shareholders of any other class within the same Portfolio. Classes of Portfolios which are not money market funds may have different net asset values per share between dividend declaration dates because expenses will be accrued at different rates for those respective classes and because of the different fees charged to each such class under a 12b–1 Plan or Shareholder Service Plan. The methodology and procedures used to calculate the net asset value of each class of a Portfolio will be identical.

Applicants' Legal Arguments

1. Applicants assert that the proposed multiple class structure will enable each Portfolio to reflect more precisely the different costs and related administrative expense incurred in connection with making sales to, and servicing the accounts of, different categories of investors.

2. Applicants request an exemptive order under section 6(c) to permit the proposed creation, issuance and sale of multiple classes of shares representing interests in each of a Fund's Portfolios to the extent that such issuance and sale might (a) be deemed to result in a "senior security" within the meaning of section 18(g) of the Act, (b) be prohibited by section 18(f)(1), and (c) violate the equal voting provisions of section 18(i).

3. Applicants assert that the requested relief does not present the concerns that section 18 was designed to address. The proposed arrangement does not involve borrowings, affect any Fund's existing assets or reserves, or increase the speculative character of any Portfolio's shares. The proposed capital structure will not induce any group of shareholders to invest in risky securities to the detriment of any other group of shareholders because the investment risks will be borne equally by all shareholders.

4. Applicants state that mutuality of risk will be preserved with respect to all shares in a portfolio because (a) all shares will be redeemable at any time, and (b) no class of shares will have any distribution or liquidation preferences with respect to particular assets and no class will be protected by any special reserve or other account.

5. Applicants also state that insiders will not be able to manipulate expenses and profits among the classes of shares because no Fund or Portfolio is organized in a pyramid fashion, all classes will have equal voting rights with other classes within the same portfolio, except that Class B Shares, Class C Shares and Class D Shares will have exclusive voting rights regarding their 12b–1 Plans and all expenses and profits of a Portfolio, except expenses incurred pursuant to a 12b–1 Plan or Shareholder Service Plan and Class Expenses, will be allocated pro rata to each class of the Portfolio based on the net assets of such individual class of shares. The danger that a complex capital structure may shift control to those without equity or other investment is not present.

6. Applicants argue that the proposed arrangement raises no valuation concerns because all classes of shares have pro rata interests in the same pool of assets. Moreover, applicants will implement steps to ensure that the respective performance data of a Portfolio's classes are fairly disclosed in the relevant prospectus and shareholder reports.

7. Applicants assert that the proposed arrangement would permit a Fund to facilitate the distribution of its securities and expands the scope and depth of administrative services without assuming excessive organizational, legal, administrative, accounting and bookkeeping costs or unnecessary investment risks. It also would permit each Fund to save organizational and other continuing costs associated with establishing a separate portfolio for each class of shares. Moreover, all shareholders, regardless of class, may benefit to the extent that (a) the pro rata operating expenses per share are lower due to economies of scale and spreading fixed costs over a larger asset base, and (b) a larger pool of assets better enables the investment adviser to achieve investment objectives, including portfolio diversification.

8. Applicants submit that allocation of expenses relating to 12b–1 Plans and Shareholder Service Plans, as described herein, and allocation of voting rights relating to rule 12b–1, as described herein, is equitable and would not

discriminate against any group of shareholders. Investors purchasing shares in a particular class and receiving the services provided under a 12b–1 Plan or Shareholder Service Plan would bear the costs associated with those services. Investors receiving services provided under a 12b–1 Plan would enjoy exclusive shareholder voting rights with respect to matters affecting such plan.

Conditions to Relief

If the requested relief is granted, applicants agree to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of a Portfolio and will be identical in all respects, except as set forth below. The only differences between classes of shares of the same Portfolio will relate solely to: (a) The impact of the disproportionate payments under the respective 12b–1 Plans and Distribution Service Agreements, and under any Shareholder Service Plans and shareholder services agreements, any incremental transfer agency fees directly attributable to a particular class of shares, and any other incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the SEC pursuant to an amended order, (b) voting rights on matters which pertain to the 12b–1 Plans, (c) certain exchange privileges, and (d) the designation of each class of shares of a Portfolio.

2. The board of directors of a Fund, including a majority of the independent directors, will approve the offering of different classes of shares (the "Multi-Class System"). The minutes of the meetings of the dirctors of the Fund regarding the deliberations of the directors with respect to the approvals necessary to implement the Multi-Class System will reflect in detail the reasons for the directors' determination that the proposed Multi-Class System is in the best interests of both the Fund and its shareholders.

3. On an ongoing basis, the directors of a Fund, pursuant to fiduciary responsibilities under the Act and otherwise, will monitor each Portfolio for the existence of any material conflicts among the interests of the various classes of shares. The directors of a Fund, including a majority of the independent directors, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The adviser and the distributor of a Fund shall be responsible for reporting any potential or existing conflicts to the directors. If a conflict arises, the adviser and the distributor of a Fund, at their own cost, will remedy such conflicts, up to and including establishing a new registered management investment company.

4. Any 12b–1 Plan adopted or amended to permit the assessment of a rule 12b–1 fee on any class of shares which has not had its 12b–1 Plan approved by the public shareholders of that class will be submitted to the public shareholders of such class for approval at the next meeting of shareholders after the initial issuance of the class of shares. Such meeting is to be held within 16 months of the date that the registration statement relating to such class first becomes effective or, if applicable, the date that the amendment to the registration statement necessary to offer such shares first becomes effective.

5. Any Shareholder Service Plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1 (b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders will not enjoy the voting rights specified in rule 12b–1. In evaluating the Shareholder Service Plan and related agreements, the directors will specifically consider whether (a) the Shareholder Service Plan and related agreements are in the best interests of the applicable classes and their respective shareholders, (b) the services to be performed pursuant to the Shareholder Service Plans are required for the operation of the applicable classes, (c) the service organizations can provide services at least equal, in nature and quality, to those provided by others, including the Fund, providing similar services, and (d) the fees for such services are fair and reasonable in light of the usual and customary charges made by other entities, especially non-affiliated entities, for services of the same nature and quality.

6. Each Distribution Service Agreement entered into, and each shareholder services agreement entered into pursuant to a Shareholder Service Plan, will contain a representation by the service provider that any compensation payable to the service provider in connection with the investment of its customers' assets in a class (a) will be disclosed by it to its customers, (b) will be authorized by its customers, and (c) will not result in an excessive fee to the service provider.

7. Each Distribution Service Agreement will provide that, in the event an issue pertaining to the 12b–1 Plan is submitted for shareholder approval, the service provider will vote any shares held for its own account in the same proportion as the vote of those shares held for its customers' accounts. Any shareholder services agreement entered into pursuant to a Shareholder Service Plan will provide that, in the event an issue pertaining to the Shareholder Service Plan is submitted for shareholder approval, the service provider will vote any shares held for its own account in the same proportion as the vote of these shares held for its customers' accounts.

8. The directors will receive quarterly and annual statements concerning the amounts expended under the 12b–1 Plans and the Distribution Service Agreements and under any Shareholder Service Plans and agreements thereunder complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class of shares will not be presented to the directors to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent directors in the exercise of their fiduciary duties.

9. Dividends paid by the Fund with respect to a class of shares of a Portfolio, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount as dividends paid by the Fund with respect to each other class of shares in the same Portfolio, except that distribution fee payments made by a class under its 12b-1 Plan, payments under any Shareholder Service Plans, any incremental transfer agency fees directly attributable to a particular class and any other incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the SEC pursuant to an amended order will be borne exclusively by that class.

10. The methodology and procedures for calculating the net asset value and dividends and distributions of the various classes and the proper allocation of expenses among the classes has been reviewed by an expert (the "Expert") who has rendered a report to the applicants, which has been provided to the staff of the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations would be made in an appropriate manner. On an ongoing basis, the Expert, or an

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8. The directors will receive quarterly and annual statements concerning the amounts expended under the 12b–1 Plans and the Distribution Service Agreements and under any Shareholder Service Plans and agreements thereunder complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class of shares will not be presented to the directors to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent directors in the exercise of their fiduciary duties.

9. Dividends paid by the Fund with respect to a class of shares of a Portfolio, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount as dividends paid by the Fund with respect to each other class of shares in the same Portfolio, except that distribution fee payments made by a class under its 12b-1 Plan, payments under any Shareholder Service Plans, any incremental transfer agency fees directly attributable to a particular class and any other incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the SEC pursuant to an amended order will be borne exclusively by that class.

10. The methodology and procedures for calculating the net asset value and dividends and distributions of the various classes and the proper allocation of expenses among the classes has been reviewed by an expert (the "Expert") who has rendered a report to the applicants, which has been provided to the staff of the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations would be made in an appropriate manner. On an ongoing basis, the Expert, or an

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appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Experts shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Funds (which the Funds agree to provide) will be available for inspection by the SEC staff upon the written request to the Funds for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" and the ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in SAS No. 44 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

11. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the various classes of shares and the proper allocation of expenses among the classes of shares and this representation has been concurred with by the Expert in the initial report referred to in condition 10 above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition 10 above. Applicants will take immediate corrective measures if this representation is not concurred in by the Expert or appropriate substitute Expert.

12. The prospectuses of a Fund or of each class of a Portfolio will include a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Fund shares may receive different compensation with respect to one particular class of shares over another in the Portfolio.

13. The distributor will adopt compliance standards as to when each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Funds to agree to conform to such standards.

14. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the directors of the Funds with respect to the Multi-Class System will be set forth in guidelines which will be furnished to the directors.

15. Each Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads and exchange privileges applicable to each class of shares of a Portfolio in every prospectus, regardless of whether all classes of shares of a Portfolio are offered through each prospectus. The Fund will disclose the respective expenses and performance data applicable to all classes of shares of a Portfolio in every shareholder report. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares of a Portfolio, it will also disclose the respective expenses and/or performance data applicable to all classes of shares of such Portfolio. The information provided by applicants for publication in any newspaper or similar listing of a Fund's net asset value and public offering price will present each class of shares of a Portfolio separately.

16. Applicants acknowledge that the grant of the exemptive order requested by the application will not imply SEC approval, authorization or acquiescence in any particular level of payments that the Funds may make pursuant to any 12b–1 Plan, any Shareholder Service Plan, or any agreements under any of such plans in reliance on the exemptive order.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–18850 Filed 8–7–91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC–18258; File No. 812–7713]

The Equitable Life Assurance Society of the United States, et al.

August 2, 1991.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of Application for Approval and Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: The Equitable Life Assurance Society of the United States ("Equitable"), Integrity Life Insurance Company ("Integrity"), National Integrity Life Insurance Company ("National Integrity") (collectively, the "Insurance Companies"), Separate Account No. 301 of Equitable ("SA 301"), Separate Account A of Equitable ("SA A"), Separate Account INA of Integrity ("SA INA"), Separate Account NIA of National Integrity ("SA NIA") (collectively, the "Separate Accounts"), Prism Investment Trust ("Prism"), The Equitable Trust ("Equitable Trust"), The Hudson River Trust ("Hudson River"), (collectively, the "Trusts") and Equitable Capital Management Corporation ("Equitable Capital").

RELEVANT 1940 ACT SECTIONS: Order requested under section 26(b) approving proposed substitutions; order requested under section 6(c) and/or section 17(d) and rule 17d-1 thereunder approving certain joint transactions; and exemption requested under sections 6(c) and/or 17(b) from section 17(a) for certain purchase and sale transactions.

SUMMARY OF APPLICATIONS: Applicants seek orders pursuant to section 26(b) of the 1940 Act, respectively approving the substitution of shares of Hudson River for shares of Prism and of Equitable Trust held by SA 301 and SA A (the "Hudson River Substitution") and the substitution of shares of Variable Insurance Products Fund ("VIP Fund I") and Variable Insurance Products Fund II ("VIP Fund II") (together, the "VIP Funds") for shares of Prism held by SA INA and SA NIA (the "VIP Funds Substitution") (collectively, the "Substitutions"); (2) Applicants that are parties to the Hudson River Substitution seek an order pursuant to sections 6(c) and/or 17(b) of the 1940 Act, granting an exemption from section 17(a) of the 1940 Act to permit the purchase and sale of securities and property between affiliates in connection with the Hudson River Substitution; and (3) Applicants that are parties to the Hudson River Substitution seek an order pursuant to sections 6(c) and/or 17(d) and rule 17d–1 thereunder, approving the joint arrangement associated with the Hudson River Substitution.

FILING DATES: The application was filed on April 18, 1991 and amended on July 23, 1991.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on August 27, 1991. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the Commission, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Naomi Friedland-Wechsler, Esq., The Equitable Life Assurance Society of the United States, 787 Seventh Avenue, New York, New York 10019 and Robert M. Hersh, Esq., Integrity Life Insurance Company, 1325 Avenue of the Americas, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Wendy B. Finck, Attorney, at (202) 272-3045, or Barry D. Miller, Senior Attorney, at (202) 272-3012, Office of Insurance Products and Legal Compliance (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations [1]

1. Equitable is a mutual life insurance company organized under New York Law. Integrity is a stock life insurance company organized under Arizona law. National Integrity, a wholly-owned subsidiary of Integrity, is a stock life insurance company organized under New York Law.

2. The Separate Accounts are segregated investment accounts registered under the 1940 Act as unit investment trusts. SA 301 is used to fund benefits under certain annuity contracts issued by Equitable in connection with retirement programs that qualify for favorable tax treatment under the Internal Revenue Code of 1986, as amended (the "IRC"). These group annuity contracts and certificates ("SA 301 Contracts") are no longer actively marketed by Equitable. SA 301 currently has seven investment divisions ("SA 301 Investment Divisions"), each of which invests exclusively in shares of a corresponding investment portfolio ("Fund") of Prism. Transfers among the SA 301 Investment Divisions may be made without charge or limitation on the number of transfers that may be made.

3. SA A is used to fund benefits under group annuity contracts and certificates, as well as individual annuity contracts issued by Equitable ("SA A Contracts"). The SA A Contracts are vehicles for the funding of various retirement benefits, most of which qualify for favorable tax treatment under the IRC. The individual annuity contracts funded through SA A are no longer offered for sale, although new contributions are accepted from existing holders of these contracts. SA A currently has five investment divisions ("SA A Investment Divisions"), each of which invests exclusively in shares of a corresponding investment portfolio of Equitable Trust. Transfers among the SA A Investment Divisions available under each SA A Contract are permitted at any time without charge or limitation on the number of transfers that may be made. However, under the SA A Contracts currently marketed, transfers into the Money Market Division from any of the other SA A Investment Divisions are not permitted.

4. SA INA is used to fund benefits under certain flexible payment variable annuity group contracts and certificates and individual contracts ("SA INA Contracts"). SA INA Contracts are vehicles for the funding of various retirement benefits, most of which qualify for favorable tax treatment under the IRC. SA INA currently has seven investment divisions ("SA INA Investment Divisions"), each of which invests in shares of a corresponding Fund of Prism. Transfers among the SA INA Investment Divisions may be made without charge or limitation on the number of transfers that may be made.

5. SA INA is used to fund benefits under certain flexible payment variable annuity group contracts and certificates and individual contracts ("SA NIA Contracts"). SA NIA Contracts are vehicles for the funding of various retirement benefits, most of which qualify for favorable tax treatment under the IRC. SA NIA participants, together with SA 301, SA A and SA INA participants, are referred to collectively as the "Participants." SA NIA currently has seven investment divisions ("SA NIA Investment Divisions"), each of which invests in shares of a corresponding Fund of Prism. Transfers among the SA NIA Investment Divisions may be made without charge or limitation on the number of transfers that may be made.

6. Prism and Equitable Trust are registered as open-end, diversified management investment companies. Prism currently offers its shares exclusively to SA 301, SA INA and SA NIA in order to fund variable annuities. Shares of Equitable Trust are currently being offered exclusively to SA A in order to fund variable annuities. Equitable serves as the investment adviser and Equitable Capital serves as subadviser to Prism and Equitable Trust.

7. Hudson River is an open-end, management investment company, which currently offers shares of its ten investment portfolios to separate accounts of Equitable Variable Life Insurance Company ("Equitable Variable"), a wholly-owned subsidiary of Equitable, and to separate accounts of six other insurance companies, including Integrity and National Integrity, which are not affiliated with Equitable.

8. The VIP Funds are open-end, diversified management investment companies. VIP Fund I has five investment portfolios and VIP Fund II has two investment portfolios. Shares of the VIP Funds are currently available to separate accounts of a number of insurance companies, both affiliated and unaffiliated with Fidelity Management and Research Company ("FMR"). FMR serves as the investment adviser to the VIP Funds.

9. Equitable, on its own behalf as depositor, and on behalf of SA 301 and SA A, proposes to effect the Hudson River Substitution. Integrity, on its own behalf as depositor, and on behalf of SA INA, and National Integrity, on its own behalf as depositor, and on behalf of SA NIA, each propose to effect the VIP Funds Substitution.

10. The Substitutions are intended to consolidate the assets of the Prism Funds and Equitable Trust, eliminate duplicative administrative functions, and create the potential for greater economies of scale, more efficient management and improved investment performance.

11. Under the terms of the Hudson River Substitution, all of the shares of Prism's Money Market, Common Stock, Bond, Balanced, Aggressive Stock, Global and High Yield Funds held by SA 301 will be replaced, respectively, by shares of Hudson River's Money Market, Common Stock, Intermediate Government Securities, Balanced, Aggressive Stock, Global and High Yield Portfolios. In addition, the shares of Equitable Trust's Money Market, Stock, Bond, Balanced and Aggressive Stock Portfolios, all of which are held by SA A, will be replaced, respectively, by shares of Hudson River's Money Market, Common Stock, Intermediate

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[1] Representations made by the Applicants throughout the application are made by each Insurance Company with regard to its own Substitution and not the Substitution of the other Insurance Companies and by each Trust and each other Applicant with regard only to its own participation in the transactions described in the application.

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7. Hudson River is an open-end, management investment company, which currently offers shares of its ten investment portfolios to separate accounts of Equitable Variable Life Insurance Company ("Equitable Variable"), a wholly-owned subsidiary of Equitable, and to separate accounts of six other insurance companies, including Integrity and National Integrity, which are not affiliated with Equitable.

8. The VIP Funds are open-end, diversified management investment companies. VIP Fund I has five investment portfolios and VIP Fund II has two investment portfolios. Shares of the VIP Funds are currently available to separate accounts of a number of insurance companies, both affiliated and unaffiliated with Fidelity Management and Research Company ("FMR"). FMR serves as the investment adviser to the VIP Funds.

9. Equitable, on its own behalf as depositor, and on behalf of SA 301 and SA A, proposes to effect the Hudson River Substitution. Integrity, on its own behalf as depositor, and on behalf of SA INA, and National Integrity, on its own behalf as depositor, and on behalf of SA NIA, each propose to effect the VIP Funds Substitution.

10. The Substitutions are intended to consolidate the assets of the Prism Funds and Equitable Trust, eliminate duplicative administrative functions, and create the potential for greater economies of scale, more efficient management and improved investment performance.

11. Under the terms of the Hudson River Substitution, all of the shares of Prism's Money Market, Common Stock, Bond, Balanced, Aggressive Stock, Global and High Yield Funds held by SA 301 will be replaced, respectively, by shares of Hudson River's Money Market, Common Stock, Intermediate Government Securities, Balanced, Aggressive Stock, Global and High Yield Portfolios. In addition, the shares of Equitable Trust's Money Market, Stock, Bond, Balanced and Aggressive Stock Portfolios, all of which are held by SA A, will be replaced, respectively, by shares of Hudson River's Money Market, Common Stock, Intermediate

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Government Securities, Balanced and Aggressive Stock Portfolios.

12. Under the terms of the VIP Funds Substitution, shares of the Equity-Income, Money Market, Growth and Overseas Portfolios of VIP Fund I will be substituted, respectively, for shares of the Common Stock, Money Market, Aggressive Stock and Global Funds of Prism held by SA INA and SA NIA. Shares of the Asset Manager Portfolio of VIP Fund II will be substituted for shares of the Balanced Fund of Prism held by SA INA and SA NIA. Shares of the Investment Grade Bond Portfolio of VIP Fund II will be substituted for shares of the Bond and High Yield Funds of Prism held by SA INA and SA NIA.

13. Shortly after the filing of this application with the Commission, the Insurance Companies will supplement or amend the respective prospectuses of their Separate Accounts to reflect the respective Substitutions. Within five days after the Substitutions, the Insurance Companies will send Participants in each of the Separate Accounts a written notice, which will identify the portfolios that have been eliminated and the portfolios that have been substituted, together with a current prospectus for Hudson River or the VIP Funds, as appropriate, and a revised prospectus or supplement for the respective Separate Accounts. The notices to SA INA Participants and SA NIA Participants will indicate that higher costs may be incurred by the Participants following the VIP Funds Substitutions in one or more of the Divisions in which they are invested, but that Participants will be free to transfer to any other Division that does not have higher costs.[2] Equitable will pay all expenses and/or transaction costs of the Substitutions incurred by Prism and by Equitable Trust, including any applicable brokerage commissions.

14. On the date of the Hudson River Substitution, Equitable will cause SA 301 to request that Prism transfer to Hudson River the assets attributable to the shares held by the SA 301 Investment Divisions. Similarly, Equitable will cause SA A to request that Equitable Trust transfer to Hudson River the assets attributable to the shares held by the SA A Investment Divisions. Simultaneously, Hudson River will issue shares of its portfolios to SA 301 and SA A in amounts which correspond to the transferred assets. The transactions implementing the Hudson River Substitution will be effected in conformity with section 22(c) of the 1940 Act and rule 22c–1 thereunder. Equitable believes that the decision to effect the transfers in-kind will minimize transaction costs and maximize the full investment of the corresponding portfolios of Hudson River.

15. On the date of the VIP Funds Substitutions, Integrity will cause SA INA to request the redemption of all Prism shares which SA INA holds, and National Integrity will cause SA NIA to request the redemption of all Prism shares which SA NIA holds. On that date, Integrity and National Integrity will also cause SA INA and SA NIA, respectively, to place purchase orders with the VIP Funds in amounts equal to the redemption proceeds attributable to SA INA and SA NIA Participants. These redemption requests and purchase orders will be made before the time at which Prism prices its shares for redemption and the VIP Funds price their shares for purchase. Consequently, SA INA and SA NIA will redeem their shares at the same moment that the VIP Funds record the purchase of their shares by the two separate accounts. Prism proposes to effect redemptions by SA INA and SA NIA in cash because of the relatively small holdings of SA INA and SA NIA in Prism, and, consequently, the relatively small dollar amount of their respective redemption requests.

16. Applicants represent that the purposes, terms and conditions of the Substitutions are consistent with the principles and purposes of section 26(b) and do not entail any of the abuses it is designed to prevent. Moreover, the Substitutions will result in certain benefits to Participants. The variable annuities and variable life insurance policies issued by Equitable and Equitable Variable are currently funded by separate accounts which invest in three different underlying mutual funds, Prism, Equitable Trust and Hudson River, all having similar characteristics. Previous business and legal concerns which favored separateness have been eliminated. The unification of all Equitable and Equitable Variable underlying life and annuity funds in a single vehicle with sizable portfolios is expected to result in cost savings, through economies of scale and reduced administrative expenses, as well as more effective management. The Substitutions will also cure certain problems peculiar to Prism. Currently none of the annuity products funded through Prism is actively marketed. The Substitutions are an appropriate solution to the problem of Prism's modest growth since its establishment and its limited possibilities for future growth.

17. Applicants represent that the Substitutions will not result in the type of costly forced redemption that section 26(b) was intended to guard against and that the Substitutions are consistent with the protection of all investors and the purposes fairly intended by the 1940 Act for the following reasons: (1) The Substitutions are for shares of the respective portfolios of either Hudson River or the VIP Funds, whose objectives, policies and restrictions are either identical or sufficiently similar to those of the substituted Prism and Equitable Trust portfolios so as to continue fulfilling the Participants' objectives and expectations; (2) Participants will have prior knowledge regarding the Substitutions in the form of prospectus disclosure; (3) the Substitutions will be at net asset value of the respective shares, without the imposition of any transfer or similar charge and with no change in the dollar amount of a Participant's investment in the Separate Account; (4) the Substitutions do not involve any contractual provisions that limit allowable transfers; (5) the Substitutions will in no way alter the annuity benefits to any of the Participants or the contractual obligations of the Insurance Companies; (6) none of the Participants will incur any fees or charges as a result of the Substitutions; (7) all expenses incurred in connection with the Substitutions, including legal and accounting fees and expenses, and the cost of prospectus disclosure, this application, and notices, will be paid by the Insurance Companies; (8) the Substitutions will have no adverse tax consequences for Participants; (9) for reasons stated in greater detail at paragraphs 18 and 19; Applicants represent that the Substitutions are not expected to cause the fees and charges currently being paid by Participants to be greater after the Substitutions than before the Substitutions; (10) the Participants may choose to withdraw amounts credited to them following the Substitutions under the conditions that currently exist; and (11) the Substitutions are expected to confer benefits on Participants.

18. Equitable has determined that the Hudson River Substitution is in the best interests of the SA 301 and SA A Participants based on the following facts and circumstances. Hudson River portfolios are identical or similar to both the Prism Funds and Equitable Trust portfolios. While no portfolio of Hudson

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[2] Applicants involved in the VIP Funds Substitution represent that, during the Notice Period, the application will be amended to reflect this representation.

River is identical to the bond portfolios of Prism and Equitable Trust, Hudson River's Government Portfolio does provide a reasonable, closely comparable alternative. Like the Prism and Equitable Trust bond options, the Government Portfolio seeks to achieve current income as part of its investment objective. Though not specifically dictated by their investment objective, both bond portfolios have been invested primarily in long-term debt securities issued by the U.S. Government and its agencies. The investment management responsibilities for the Trusts are shared by Equitable and Equitable Capital. The custodian and independent accountants are the same for all three. A comparison of the Trusts' overall investment returns reveals that the performance of the Hudson River portfolios is either closely competitive or superior to the performance of the corresponding portfolios of Prism and Equitable Trust. The consolidation of 19 separate portfolios into seven portfolios is expected to result in greater economies of scale and reduced administration costs. The expense ratios of Hudson River have been lower than those of Prism. Equitable therefore believes it is reasonable to anticipate that the SA 301 Participants will benefit from the significantly lower expense ratios of Hudson River. As more fully demonstrated in the application, differences between the expense ratios of Hudson River and those of Equitable Trust are not expected to have any impact on SA A Participants. The SA A Contracts insulate SA A Participants from the consequences of any potential expense increase by fixing an expense limitation that applies to all SA A investment divisions. This contractual limitation cannot be exceeded without the consent of each affected SA A Participant.

19. Integrity and National Integrity have determined that the substitution of shares of the VIP Funds for shares of Prism will serve the best interests of SA INA and SA NIA Participants based on the following facts and circumstances. All of the Funds of Prism have counterparts in the portfolios of the VIP Funds. The shares of the Investment Grade Bond Portfolio of VIP Fund II will be substituted for shares of the High Yield Fund of Prism, rather than the High Income Portfolio of VIP Fund I, because the High Yield Fund has assets with significantly higher credit ratings than the assets of the High Income Portfolio. Otherwise, the investment objectives of the VIP Funds portfolios are substantially similar to the investment objectives of the Prism Funds to be substituted. Following the VIP Funds Substitution, SA INA Participants and SA NIA Participants will be afforded the same transfer rights, with regard to amounts invested under the SA INA Contracts and SA NIA Contracts, respectively, as they currently have. In the exercise of these rights, Participants will be able to effect transfer from a portfolio of VIP Fund I to a portfolio of VIP Fund II and vice versa. The investment performance for the VIP Funds is generally comparable to that of Prism, and in some cases is superior. Because of the greater net asset size of the VIP Funds, the economies of scale that will be available are expected to benefit SA INA and SA NIA Participants. For 1990, the expense ratios of the Equity-Income, Money Market, Growth and Overseas Portfolios, which are the oldest Portfolios in the VIP Funds, were equal to or less than the ratios of the Common Stock, Money Market, Aggressive Stock and Global Funds of Prism. The Investment Grade Bond Portfolio, after the reimbursement of expenses by FMR, for 1990 had an expense ratio that was only slightly higher than that of the Bond Fund in Prism and was substantially lower than the expense ratio of Prism's High Yield Fund. FMR has advised Integrity and National Integrity that it has no present intention to remove or modify the current expense reimbursements. The Asset Manager Portfolio, the newest portfolio, was the only VIP Funds Portfolio that had an expense ratio for 1990 that was significantly higher than the ratio of its Prism counterpart, the Balanced Fund. As its assets increase, the expense ratios of the Asset Manager Portfolio are also expected to decrease. In contrast, the expense ratios of the Prism Funds are expected to increase in the future because the contracts utilizing SA INA, SA NIA and SA 301 no longer are being actively marketed, are not expected to be actively marketed in the future, and since the fourth quarter of 1990, Prism has been experiencing net redemptions of its shares. Thus, Applicants assume that Prism's asset base will decrease and, accordingly, that its total weighted expense ratio and the respective expense ratios of its Funds will increase.

20. Equitable, Integrity, and National Integrity reserved the right of substitution and elimination of investment divisions in their Separate Account prospectuses, subject to the Commission's approval, if necessary to adapt to changing circumstances.

21. Sections 17(a)(1) and 17(a)(2) of the 1940 Act prohibit any affiliated person of a registered investment company, or an affiliated person of such affiliated person, from selling to or purchasing from a registered investment company any security or other property. The Applicants involved in the Hudson River Substitution may be deemed to be affiliated persons of each other or affiliated persons of an affiliated person under section 2(a)(3) of the 1940 Act; and the Hudson River Substitution may be deemed to entail one or more purchases or sales of securities or property between certain of those Applicants. Assets of Prism and Equitable Trust will be transferred to Hudson River.

22. Applicants involved in the Hudson River Substitution also request an order of the Commission, pursuant to sections 6(c) and/or 17(b), exempting them from the provisions of section 17(a) in connection with the transfer of assets and unit values that may be deemed to be prohibited by section 17(a). Applicants represent that the Hudson River Substitution meets all of the requirements of sections 6(c) and 17(b) of the 1940 Act and that an order should be granted exempting the Hudson River Substitution from the provisions of section 17(a). Applicants involved in the Hudson River Substitution represent that the terms of the proposed transactions, as described in this notice and more fully in the application, are reasonable and fair, including the consideration to be paid and received; do not involve overreaching on the part of any person concerned; are consistent with the investment policy of each registered investment company concerned; and are consistent with the general purposes of the 1940 Act.

23. Although the Trusts have adopted no procedures pursuant to rule 17a–7 under the 1940 Act, the proposed transactions involved in the Hudson River Substitution may fall within the intent of rule 17a–7. The Trusts represent that they will comply with the conditions set forth in subparagraphs (b), (c) and (d) of rule 17a–7. Although the Trusts cannot meet the conditions of subparagraphs (a), (e) and (f) of rule 17a–7, each Trust represents that the Hudson River Substitution will be effected pursuant to the Trust's procedures for valuing portfolio securities. Hudson River further represents that it will maintain all records relating to the Hudson River Substitution in a manner consistent with rule 17a–7(f). Applicants further represent that the transactions that may be deemed to be within the scope of section 17(a) have been the subject of Commission review in the context of reorganizations of separate accounts to

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an affiliated person of such affiliated person, from selling to or purchasing from a registered investment company any security or other property. The Applicants involved in the Hudson River Substitution may be deemed to be affiliated persons of each other or affiliated persons of an affiliated person under section 2(a)(3) of the 1940 Act; and the Hudson River Substitution may be deemed to entail one or more purchases or sales of securities or property between certain of those Applicants. Assets of Prism and Equitable Trust will be transferred to Hudson River.

22. Applicants involved in the Hudson River Substitution also request an order of the Commission, pursuant to sections 6(c) and/or 17(b), exempting them from the provisions of section 17(a) in connection with the transfer of assets and unit values that may be deemed to be prohibited by section 17(a). Applicants represent that the Hudson River Substitution meets all of the requirements of sections 6(c) and 17(b) of the 1940 Act and that an order should be granted exempting the Hudson River Substitution from the provisions of section 17(a). Applicants involved in the Hudson River Substitution represent that the terms of the proposed transactions, as described in this notice and more fully in the application, are reasonable and fair, including the consideration to be paid and received; do not involve overreaching on the part of any person concerned; are consistent with the investment policy of each registered investment company concerned; and are consistent with the general purposes of the 1940 Act.

23. Although the Trusts have adopted no procedures pursuant to rule 17a–7 under the 1940 Act, the proposed transactions involved in the Hudson River Substitution may fall within the intent of rule 17a–7. The Trusts represent that they will comply with the conditions set forth in subparagraphs (b), (c) and (d) of rule 17a–7. Although the Trusts cannot meet the conditions of subparagraphs (a), (e) and (f) of rule 17a–7, each Trust represents that the Hudson River Substitution will be effected pursuant to the Trust's procedures for valuing portfolio securities. Hudson River further represents that it will maintain all records relating to the Hudson River Substitution in a manner consistent with rule 17a–7(f). Applicants further represent that the transactions that may be deemed to be within the scope of section 17(a) have been the subject of Commission review in the context of reorganizations of separate accounts to

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unit investment trust accounts and the transfer of assets to an underlying mutual fund. The terms and conditions of the transfers of assets entailed in the Hudson River Substitution are consistent with such precedent and the precedent under section 26(b).

24. Section 17(d) of the 1940 Act prohibits any affiliated person of a registered investment company, or any affiliated person of such an affiliated person, acting as principal, from effecting any transaction in which such registered investment company is a joint participant with such person, in contravention of Commission rules designed to limit or prevent participation by the registered investment company "on a basis different from or less advantageous than" that of the affiliated person. Rule 17d–1(a) prohibits any of the persons described above, acting as principal, from participating in, or effecting "any transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which any such registered investment company, or a company controlled by such registered company, is a Participant" unless the Commission, upon application, has entered an order approving the joint enterprise, arrangement or plan.

25. The Hudson River Substitution will involve transactions that may be deemed to be of the type for which an application is required under section 17(d) of the 1940 Act and rule 17d–1 thereunder. The Hudson River Substitution anticipates simultaneous purchase and sale transactions involving a number of registered investment companies, and each such purchase and sale transaction is dependent on the other. Each purchase and sale transaction is, thus, an essential aspect of a more comprehensive plan. In this sense, each transaction may be deemed to be in connection with a joint arrangement within the contemplation of section 17(d) of the 1940 Act and rule 17d–1 thereunder.

26. Applicants involved in the Hudson River Substitution also request an order pursuant to section 6(c) and/or rule 17d–1 to eliminate any question of compliance with section 17(d) and rule 7d–1. They further represent that the Hudson River Substitution and related transactions meet all of the requirements of sections 6(c) and 17(d) of the 1940 Act, and rule 17d–1 thereunder. For all the reasons summarized in this notice and discussed fully in the application, Applicants involved in the Hudson River Substitution submit that the participation of each of the parties to the Hudson River Substitution will be on an equal basis and consistent with their respective participation in the transactions, and is consistent with the provisions, policies and purposes of the 1940 Act. These Applicants further represent that the terms of the Hudson River Substitution are consistent with precedent.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–18860 Filed 8–7–91; 8:45 am]

BILLING CODE 8010–01–M

[Rel No. IC–18254; 812–7603]

Mortgage Securities Trust (CMO Series 1 and Subsequent Series), et al.; Application

August 1, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Mortgage Securities Trust (CMO Series 1 and Subsequent Series ("MST"); Municipal Securities Trust (Series 1 and Subsequent Series); New York Municipal Trust (Series 1 and Subsequent Series); A Corporate Trust (Series 1 and Subsequent Series) (the foregoing trusts, other than MST, are referred to collectively as the "Existing Trusts"); Bear, Stearns & Co. Inc.; and Gruntal & Co. Incorporated.

RELEVANT 1940 ACT SECTIONS: Applicants seek an amendment to an SEC order that approved certain offers to exchange units of the Existing Trusts for units of other unit investment trusts. The amended order, which would be issued under sections 11(a) and 11(c), would include a newly-formed unit investment trust in the previously approved exchange program.

SUMMARY OF APPLICATION: In 1980 and 1981, the SEC issued orders permitting the Existing Trusts to conduct an "exchange privilege" and a "conversion offer." The exchange privilege allows unitholders of any Existing Trust to exchange their units for units of any other Existing Trust upon payment of a sales charge reduced from that which a purchaser of the units normally would pay. The conversion offer permits unitholders of registered unit investment trusts that lack an active secondary market to redeem their units and apply the proceeds to the purchase of units of any Existing Trust upon payment of a reduced sales charge. Applicants seek an amendment to their orders extending them to include MST within the existing exchange privilege and conversion offer. In addition, the requested order would amend the existing exchange privilege and conversion offer to conform to the features of the exchange privilege and conversion offer involving MST.

FILING DATES: The application was filed on October 2, 1990, and amended on May 7, 1991 and May 23, 1991. An additional amendment will be filed during the notice period, the substance of which is reflected herein.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 27, 1991, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Bear, Stearns & Co. Inc., MST and the Existing Trusts, 245 Park Avenue, New York, New York 10167; Gruntal & Co. Incorporated, 14 Wall Street, New York, New York 10005.

FOR FURTHER INFORMATION CONTACT: C. Christopher Sprague, Senior Staff Attorney, at (202) 272–3035, or Max Berueffy, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Existing Trusts and MST are registered under the 1940 Act as unit investment trusts, and their units of interest are registered under the Securities Act of 1933. Bear, Stearns & Co. Inc. ("Bear Stearns"), one of the co-sponsors of MST, sponsors the Existing Trusts and numerous other unit investment trusts. Gruntal & Co. Incorporated ("Gruntal") co-sponsors MST and various other unit investment trusts with Bear Stearns (Bear Stearns

and Gruntal are referred to hereafter as the "Sponsors").

2. In Investment Company Act Release No. 11184 (May 23, 1980), the SEC issued an order under section 11(a) of the 1940 Act approving offers of exchange by Bear Stearns and the Existing Trusts pursuant to which an Existing Trust unitholder may exchange his or her units for units in another Existing Trust upon payment of a fixed, reduced sales charge (the "Exchange Privilege"). The SEC's order also permitted Bear Stearns and the Existing Trusts to offer to exchange units of an Existing Trust for units of any registered unit investment trust without an active secondary market upon payment of a fixed, reduced sales charge (the "Conversion Offer"). In Investment Company Act Release No. 11754 (Apr. 29, 1981), the SEC issued an order modifying the manner in which the price of units is determined under the Exchange Privilege and the Conversion Offer. (The order issued in Release No. 11184, as amended in Release No. 11754, is hereafter referred to as the "Prior Order".)

3. MST is a newly-formed unit investment trust consisting of a portfolio of collateralized mortgage obligations ("CMOs"). MST may include either a "short-intermediate portfolio" of securities with an average maturity of 3–10 years, or a "long-intermediate portfolio" of securities with an average maturity of 10–15 years. During the initial public offering period, MST units will be sold subject to a sales charge of (a) 3.5% for the short-intermediate portfolio, and (b) 4.0% for the long-intermediate protfolio. However, there are specified volume discounts for purchases of more than 100,000 units.

4. Applicants seek an amendment to the Prior Order to include units of MST in the Exchange Privilege and the Conversion Offer. If the requested relief is granted, unitholders of MST or any of the Existing Trusts could exchange any or all of their units for units in none of more available series of MST, Municipal Securities Trust, New York Municipal Trust, or A Corporate Trust (the foregoing trusts are referred to hereafter as the "Exchange Trusts"), upon payment of the reduced sales charge described below. In addition, the Conversion Offer would be expanded so that unitholders of any registered unit investment trust for which there is no active secondary market (a "Redemption Trust") could redeem their units with their respective trustees and apply the proceeds to the purchase of units of one or more series of MST, as well as any Existing Trust, upon payment of the same reduced sales charge. (With respect to the Conversion Offer, MST and the Existing Trusts are referred to collectively as the "Conversion Trusts".)

5. To exercise the Exchange Privilege, a unitholder would first tender his or her units to one of the Sponsors. The Sponsor would repurchase the units and sell to the investor Existing Trust or MST units at prices determined as set forth in the Prior Order.[1] The investor would also pay any accrued interest on the acquired units and a reduced sales charge as set forth in paragraph 10 below.

6. The Exchange Privilege will be available provided that (a) the Sponsors are maintaining a secondary market in the units to be exchanged as well as in the Existing Trust or MST units that the investor wishes to acquire, and (b) the units to be acquired are available for sale, either through the initial primary distribution or in the Sponsor's secondary market. Exchanges would be affected only in whole units or, in the case of MST, in blocks of 1,000 units.

7. The Sponsors intend to maintain a secondary market in MST and Existing Trust units after the initial public offering of such units has concluded. The Sponsors may redeem units that they have repurchased in the secondary market if they deem such redemption to be in their best interest. As is the case for unit investment trusts generally, unitholders also have the right to redeem their units.

8. The Sponsors reserve the right to suspend, modify or terminate the Exchange Privilege. However, as discussed below, the Sponsors will provide unitholders with 60 days' prior written notice of any termination or material amendment of the Exchange Privilege. During that 60 day period, the sponsors would continue to maintain a secondary market in units of all Exchange Trusts that could be acquired by affected unitholders. Thus, unitholders could exercise the Exchange Privilege in accordance with its original terms during that period.

9. The amendment order sought by applicants also would expand the Conversion Offer to include units of MST. To exercise the Conversion Offer, there must be units of the desired series of the Conversion Trust available either in primary distribution or in the secondary market. The purchase price for units of the Conversion Trust will be determined according to the Prior Order, and will include accrued interest and the reduced sales charge set out below. Exchanges would be effected only in whole units or, in the case of MST, in blocks of 1,000 units.

10. The sales charge applicable to a unitholder's purchase of units in either the Exchange Privilege or the Conversion Offer would be $15 per unit (or per 1,000 units for MST) unless the unitholder exchanges units within five months of their purchase. In that event, the applicable sales charge for units with a higher sales charge than that paid on the units being exchanged would be the greater of (a) $15 per unit (or per 1,000 units for MST), or (b) an amount which, when added to the sales charge the investor would pay if he or she purchased directly the units being acquired, determined as of the date of the exchange.

11. The Sponsors reserve the right to modify, suspend or terminate the Conversion Offer at any time without prior notice to Redemption Trust unitholders. The Sponsors also reserve the right to raise the sales charge applicable to acquisitions of MST units, based on actual increases in their costs of administering the Conversion Offer, up to a maximum sales charge of $20 per 1,000 MST units.

12. Consistent with the Prior Order, except for the applicable sales charge as described herein, the pricing of units purchased or sold under the Conversion Offer and the Exchange Privilege would be the same as the pricing of Existing Trust and MST units purchased from and sold to public investors in regular primary and secondary market transactions.

Applicants' Legal Analysis

1. Section 11(a) and 11(c) of the 1940 Act prohibit applicants from making an offer to unitholders of a unit investment trust to exchange those units for the securities of any investment company unless the terms of the offer have first been submitted to and approved by the Commission. The proposed Exchange

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[1] Under the Prior Order, purchases and sales of units of an Existing Trust during the initial offering period are made at prices based on the offering prices of the Existing Trust's portfolio securities, whereas purchases and sales of Existing Trust units in the secondary market are at prices based on the bid prices of the Existing Trust's portfolio securities. Applicants represent that the offer side evaluation generally is 1½ to 2% higher than the bid side evaluation.

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9. The amendment order sought by applicants also would expand the Conversion Offer to include units of MST. To exercise the Conversion Offer, there must be units of the desired series of the Conversion Trust available either in primary distribution or in the secondary market. The purchase price for units of the Conversion Trust will be determined according to the Prior Order, and will include accrued interest and the reduced sales charge set out below. Exchanges would be effected only in whole units or, in the case of MST, in blocks of 1,000 units.

10. The sales charge applicable to a unitholder's purchase of units in either the Exchange Privilege or the Conversion Offer would be $15 per unit (or per 1,000 units for MST) unless the unitholder exchanges units within five months of their purchase. In that event, the applicable sales charge for units with a higher sales charge than that paid on the units being exchanged would be the greater of (a) $15 per unit (or per 1,000 units for MST), or (b) an amount which, when added to the sales charge the investor would pay if he or she purchased directly the units being acquired, determined as of the date of the exchange.

11. The Sponsors reserve the right to modify, suspend or terminate the Conversion Offer at any time without prior notice to Redemption Trust unitholders. The Sponsors also reserve the right to raise the sales charge applicable to acquisitions of MST units, based on actual increases in their costs of administering the Conversion Offer, up to a maximum sales charge of $20 per 1,000 MST units.

12. Consistent with the Prior Order, except for the applicable sales charge as described herein, the pricing of units purchased or sold under the Conversion Offer and the Exchange Privilege would be the same as the pricing of Existing Trust and MST units purchased from and sold to public investors in regular primary and secondary market transactions.

Applicants' Legal Analysis

1. Section 11(a) and 11(c) of the 1940 Act prohibit applicants from making an offer to unitholders of a unit investment trust to exchange those units for the securities of any investment company unless the terms of the offer have first been submitted to and approved by the Commission. The proposed Exchange

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Privilege and Conversion Offer therefore require SEC approval.

2. Applicants seek an order under sections 11(a) and 11(c) amending the Prior Order to include MST units in the Exchange Privilege and Conversion Offer previously approved, and to modify such programs as described in the application. For example, the existing Exchange Privilege would be amended to require 60 days' prior written notice of the termination or material amendment of the privilege.[2] Such modifications would make unitholders exercising the existing Exchange Privilege and Conversion Offer subject to the same terms as would apply to the Exchange Privilege and Conversion Offer as proposed to be amended.

3. Applicants state that the Exchange Privilege and Conversion Offer provide investors whose investment goals have changed with a convenient means of transferring their interests at a reduced sales charge. If Applicants do not offer these exchanges, investors seeking to change the nature of their investment would be required to dispose of their units, either in the secondary market or through redemption, and then reinvest the proceeds after paying the full sales charge.

4. Applicants maintain that the full sales charge is necessary to fully compensate and reimburse the Sponsors and underwriters for the costs of registering Existing Trust and MST units, and for their sales and soliciation efforts on regular transactions. A reduced sales charge, however, is fair to investors who have purchased Existing Trust or MST units in regular transactions subject to the full sales charge, because participants in the Conversion Offer and Exchange Privilege paid a full sales charge on their original purchase of units. Applicants further state that the proposed reduced sales charge applicable to the Exchange Privilege and Conversion Offer would fairly and adequately compensate the Sponsors and the participating underwriters and brokers for their services and expenses associated with administering those programs.

5. Applicants also state that imposing the alternative sales charges discussed above on unitholders exercising the Exchange Privilege or Conversion Offer within five months of their purchase of the units being exchanged is consistent with prior SEC orders concerning exchange offers among unit investment trusts, and is intended to maintain the equitable treatment of various investors in series of the Existing Trusts and MST. See, e.g., Shearson Lehman Brothers Inc., Investment Company Act Release Nos. 18145 (May 14, 1991) (notice) and 18141 (June 11, 1991) (order).

6. Applicants submit that the Conversion Offer would have little, if any, competitive effect on the unit trust market, because it would be available only to holders of units for which there is no active secondary market. Furthermore, the Sponsors do not intend to conduct an active advertising or sales campaign. Rather, the Sponsors anticipate that eligible investors would learn of the program only after making inquiry with their retail brokers.

Applicants' Conditions

Applicants agree that the following conditions may be imposed in any order granting the requested relief:

1. Participants in the Exchange Privilege and the Conversion Offer will, in the purchase and sale of units of the Existing Trusts and MST, be subject to the same portfolio pricing terms as are set forth in the Prior Order, and will purchase and sell units of the Existing Trusts and MST based on the same portfolio pricing terms as apply to all other investors who purchase and sell Existing Trust and MST units from the Sponsors or the underwriters in regular transactions.

2. The prospectus of each Exchange Trust and any sales literature or advertising that mentions the existence of the Exchange Privilege will disclose that the Exchange Privilege is subject to termination and that its terms are subject to change.

3. Whenever the Exchange Privilege is to be terminated or its terms are to be amended materially, any holder of a security subject to that privilege will be given prominent written notice of the impending termination or amendment at least 60 days prior to the date of termination or the effective date of the amendment, *Provided that:*

(i) No such notice need be given if the only material effect of an amendment is to reduce or eliminate the sales charge payable at the time of an exchange, to add one or more new series eligible for the Exchange Privilege, or to delete a series which has terminated, and

(ii) No notice need be given if, under expraordinary circumstances, either—

(A) There is a suspension of the redemption of units of an Exchange Trust under section 22(e) of the 1940 Act and the rules and regulations thereunder, or

(B) An Exchange Trust temporarily delays or ceases the sale of its units because it is unable to invest amounts effectively in accordance with applicable investment objectives, policies and restrictions.

4. During the 60 day period described in condition 4 above, the Sponsors will maintain a secondary market in units that could be acquired by affected unitholders.

5. The applicable sales charge for unitholders who wish to exchange their units prior to the expiration of five months from the date of purchase for units of an Exchange Trust, the applicable public offering price for which includes higher sales charges than the sales charges applicable to the units being exchanged, will be the greater of the $15 per unit (or per 1,000 units for MST) reduced sales charge, or an amount which, together with the sales charge actually paid on acquisition of the units being exchanged, equals the sales charge applicable to direct purchases of the quantity of Exchange Trust units being acquired, determined as of the date of the exchange.

6. The applicable sales charge for Redemption Trust unitholders who wish to exchange their units prior to the expiration of five months from the date of purchase for units of a Conversion Trust, the applicable public offering price for which includes higher sales charges than the sales charges applicable to the units being exchanged, will be the greater of the $15 per unit (or per 1,000 units for MST) reduced sales charge, or an amount which, together with the sales charge actually paid on acquisition of the units being exchanged, equals the sales charge applicable to direct purchases of the quantity of Conversion Trust units being acquired, determined as of the date of the exchange.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-18861 Filed 8-7-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25357]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

August 2, 1991.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

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[2] Redemption Trust unitholders would not ordinarily acquire their units with the expectation of participating in the Conversion Offer and, accordingly, the Conversion offer could be terminated or amended materially without any notice to such unitholders.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 26, 1991 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Arkansas Power & Light Company (70–7813)

Arkansas Power & Light Company ("AP&L"), 425 West Capitol, 40th Floor, Little Rock, Arkansas 72201, an electric public-utility subsidiary company of Entergy Corporation, a registered holding company, has filed a declaration under section 12(d) of the Act and rule 44 thereunder. The Commission first issued a notice on January 25, 1991 (HCAR No. 25349). AP&L has significantly amended its proposal requiring a new notice to be issued.

AP&L proposes to sell substantially all its retail distribution and related transmission facilities in Missouri ("Missouri Property") to Union Electric Company ("Union Electric"), an exempt electric utility operating in Missouri for $63,134,586, subject to certain adjustments. As part of the transaction with Union Electric, AP&L also proposes to transfer certain transmission and distribution assets in Missouri, including certain franchise agreements, relating to AP&L's provision of electric service to approximately 1,400 retail customers in and around Alton and Thayer to Sho-Me Power Corporation ("Sho-Me") for $4,035,000, subject to certain adjustments. In order to facilitate the transaction with Union Electric, AP&L proposes to sell a 161 KV switching station and a 161 KV line located in Missouri to Associated Electric Cooperative, Inc. ("AECI"), an electrical cooperative operating in Missouri, for $1,031,000, subject to certain adjustments. Finally, AP&L has agreed in conjunction with the settlement of regulatory proceedings relating to these proposed transactions to sell seven substations located in Missouri to a group of three mining customers of AP&L ("Mining Customers") for an aggregate of $887,000, subject to certain adjustments. AP&L and Union Electric have executed a Contract for Purchase and Sale of Certain Assets and Real Estate, Assignment of Easements, Leases and Licenses, as amended ("Agreement of Sale") reflecting the terms and conditions of sale of the Missouri Property.

The proposed sale to Union Electric also includes other assets relating to the Missouri Property such as customer accounts receivable and unbilled revenue, computer equipment, materials and supplies, the purchase price of which will be calculated prior to closing and added to the base purchase price.

Several agreements are required to be executed as part of the Agreement of Sale. Among these is a power purchase agreement, as amended ("Power Agreement") by which Union Electric has agreed to purchase 120 megawatts ("MW") of capacity and associated energy from AP&L under a wholesale fixed rate for an initial period of ten years which capacity will be increased by 40 MW on January 1, 1995 until the end of the initial term. In addition, AP&L and Union Electric will enter into a service boundary agreement whereby AP&L and Union Electric will agree, upon request, to construct any extensions necessary to connect borderline customers in their respective service territories of Arkansas and Missouri to the distribution facilities of the other party. The requesting party shall reimburse the constructing party for costs incurred in the construction, and AP&L and Union Electric will agree to supply power to the other at specific boundary line connections. Furthermore, AP&L and Union Electric have entered into an interchange agreement pursuant to which each party has agreed to provide, maintain, and operate connections, interconnection points, delivery points, and facilities for the sale, purchase, delivery and receipt of power and energy under the Power Agreement and operate such equipment and facilities at its own cost and expense.

In addition, AP&L, Union Electric, and AECI will enter into an interconnection agreement ("Interconnection Agreement"), whereby AECI will reserve capacity, and subject to availability of adequate capacity in the AECI transmission system, AECI will provide a secondary transmission path for capacity under the Power Agreement through its transmission sysem in the event that capacity under the Interconnection Agreement is unavailable. AECI also has agreed to enter into an interconnection agreement with AP&L and to cancel AECI's existing transmission coordination agreement with AP&L.

All the assets to be sold by AP&L are currently subject to, and will be released from, the lien of AP&L's Mortgage and Deed of Trust dated October 1, 1944, as supplemented ("Mortgage").

AP&L plans to use the proceeds received from Union Electric, Sho-Me, AECI, and the Mining Customers for general corporate purposes such as operations and maintenance expenses, construction expenditures, payroll, taxes, interest payments, payment of common stock and preferred stock dividends and any such other cash requirements of AP&L.

Eastern Edison Company, et al. (70–7865)

Eastern Edison Company ("Eastern Edison"), 110 Mulberry Street, Brockton, Massachusetts 02403, an electric public-utility subsidiary company of Eastern Utilities Associates, a registered holding company, and Montaup Electric Company ("Montaup"), P.O. Box 2333, Boston, Massachusetts 02107, an electric public-utility subsidiary company of Eastern Edison, have filed a declaration under sections 12(c) and 12(d) of the Act and rules 42 and 43 thereunder.

Eastern Edison proposes to acquire and retire, in one or more transactions, up to an aggregate amount of $50,000,000 of any combination of classes or series of its outstanding long-term debt or preferred stock, from time to time through December 21, 1993. The proposed transactions in which such securities are to be acquired may include: (i) Purchases on the open market; (ii) purchases in privately negotiated transactions; and (iii) acquisitions pursuant to cash tender offers to the then current holders of certain of Eastern Edison's securities. Depending upon the timing of such transactions, Eastern Edison could pay a premium over par value or pay less than par value to acquire such securities. Any premiums paid for such open market purchases will be equal to the difference between the par value of the security purchased and the market price of the security at the time of purchase. However, if the securities are acquired by means of tender offers or privately

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All the assets to be sold by AP&L are currently subject to, and will be released from, the lien of AP&L's Mortgage and Deed of Trust dated October 1, 1944, as supplemented ("Mortgage").

AP&L plans to use the proceeds received from Union Electric, Sho-Me, AECI, and the Mining Customers for general corporate purposes such as operations and maintenance expenses, construction expenditures, payroll, taxes, interest payments, payment of common stock and preferred stock dividends and any such other cash requirements of AP&L.

Eastern Edison Company, et al. (70-7865)

Eastern Edison Company ("Eastern Edison"), 110 Mulberry Street, Brockton, Massachusetts 02403, an electric public-utility subsidiary company of Eastern Utilities Associates, a registered holding company, and Montaup Electric Company ("Montaup"), P.O. Box 2333, Boston, Massachusetts 02107, an electric public-utility subsidiary company of Eastern Edison, have filed a declaration under sections 12(c) and 12(d) of the Act and rules 42 and 43 thereunder.

Eastern Edison proposes to acquire and retire, in one or more transactions, up to an aggregate amount of $50,000,000 of any combination of classes or series of its outstanding long-term debt or preferred stock, from time to time through December 21, 1993. The proposed transactions in which such securities are to be acquired may include: (i) Purchases on the open market; (ii) purchases in privately negotiated transactions; and (iii) acquisitions pursuant to cash tender offers to the then current holders of certain of Eastern Edison's securities. Depending upon the timing of such transactions, Eastern Edison could pay a premium over par value or pay less than par value to acquire such securities. Any premiums paid for such open market purchases will be equal to the difference between the par value of the security purchased and the market price of the security at the time of purchase. However, if the securities are acquired by means of tender offers or privately

negotiated transactions, Eastern Edison may offer to acquire specified amounts of a particular class or series or an entire class or series of such securities at a premium necessary to entice the holders to tender such securities.

Eastern Edison has proposed to finance such acquisitions through one or any combination of the following methods: (i) Available cash; (ii) existing bank lines of credit for short-term borrowings; (iii) the proceeds from new issuances of long-term securities, including but not limited to, the issuance of secured and unsecured medium-term notes previously authorized by the Commission in an order dated December 10, 1990 (HCAR No. 25204); and/or (iv) the proceeds from the sale of Montaup common stock to Montaup or the redemption of Montaup debentures held by Eastern Edison. Eastern Edison expects that funds for the repayment of its short-term borrowings will be provided by internally generated cash or by sales of long-term securities.

Montaup proposes to acquire and retire up to an aggregate amount of $50,000,000 of its outstanding common stock from Eastern Edison from time to time through December 31, 1993, for the purchase price of $100 (par value) per share. Montaup currently has outstanding 836,000 shares of common stock, par value $100 per share, for an aggregate par value of $83,600,000. All of Montaup's outstanding common stock is owned by Eastern Edison. Montaup proposes to finance such acquisition through the use of available cash and existing bank lines of credit for short-term borrowings. Montaup expects that funds for the repayment of its short-term borrowings will be provided by internally generated cash.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-18662 Filed 8-7-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-18253; Int'l Series Release No. 301; 812-7742]

Quest for Value Global Equity Fund, Inc., et al.; Application

August 1, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Quest for Value Global Equity Fund, Inc., Quest for Value Fund, Inc., Quest for Value Family of Funds, Quest for Value Accumulation Trust, and any other open-end investment company which is or may become a member of the Quest for Value Advisor's "group of investment companies" as that phrase is defined by paragraph (c)(4) of rule 11a-3 under the 1940 Act.

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) of the 1940 Act that would grant an exemption from section 12(d)(3) of the 1940 Act and rule 12d-3.

SUMMARY OF APPLICATION: Applications seek a conditional order under section 6(c) of the 1940 Act to permit them to invest in equity and/or convertible securities of foreign issuers that, in their most recent fiscal year, derived more than 15 percent of their gross annual revenues from securities related activities ("foreign securities companies") in accordance with the conditions of the proposed amendments to rule 12d3-1 under the 1940 Act.

FILING DATE: The application was filed on June 21, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 27, 1991, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicants, One World Financial Center, New York, New York 10281.

FOR FURTHER INFORMATION CONTACT: Thomas G. Sheehan, Staff Attorney, (202) 272-7324, or Jeremy N. Rubenstein, Assistant Director (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Applicants are open-end management investment companies registered under the 1940 Act. Quest for Value Global Equity Fund, Inc. and Quest for Value Fund, Inc. are Maryland corporations. Quest for Value Family of Funds and Quest for Value Accumulation Trust are Massachusetts business trusts. Quest for Value Advisors is the investment advisor for all of the Applicants and also serves as administrator to the Quest for Value Global Equity Fund, Inc. Globe Finlay Inc. acts as subadviser to Quest for Value Global Equity Fund, Inc. Oppenheimer & Co., Inc. acts as sub-adviser to one of the portfolios of the Quest for Value Family of Funds.

2. Applicants seek to invest equity and/or convertible securities issued by foreign issuers that, in their msot recent fiscal year, derived more than 15 percent of their gross revenues from their activities as broker, dealer, underwirter or investment adviser ("Foreign Securities Companies").

3. Applicants seek relief from section 12(d)(3) of the 1940 Act and rule 12d3-1 thereunder to invest in securities of Foreign Securities Companies to the extent allowed in the proposed amendments to rule 12d3-1. See Investment Company Act Release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989). Applicants' proposed acquisition of securities issued by Foreign Securities Companies will satisfy each of the requirements of proposed amended rule 12d3-1.

Applicants' Legal Conclusions

1. Section 12(d)(3) of the 1940 Act generally prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter, or investment adviser. Rule 12d3-1 under the 1940 Act provides an exemption from section 12d(3) for investment companies acquiring securities of an issuer that derived more than 15 percent of its gross revenues in its most fiscal year from securities related activities, provided the acquisitions satisfy certain conditions set forth in the rule. Subparagraph (b)(4) of rule 12d3-1 provides that "at the time of acquisition, any equity security of the issuer * * * [must be] a 'margin security' as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve System." Since a margin security generally maut be one which is traded in United States markets, securities issued by many Foreign Securities Companies would not meet this test. Accordingly, applicants

seek an exemption from the margin security requirements of rule 12d3–1.[1]

2. Proposed amended rule 12d3–1 provides that the margin security requirement would be excused if the acquiring company purchases the equity securities of Foregin Securities Companies that meet criteria comparable to those applicable to equity securities of United States securities related businesses. The criteria, as set forth in the proposed amendments, "are based particularly on the policies that underlie the requirements for inclusion on the list of over-the-counter margin stocks." Investment Company Act Release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989).

Applicants' Condition

Applicants agree that any relief will be subject to the following condition:

1. Applicants will comply with the proposed amendments to rule 12d3–1 under the 1940 Act as they are currently proposed (Investment Company Act Release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989)), or as they may be reproposed, adopted or amended.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–18863 Filed 8–7–91; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster Loan Areas #7365 and #7366]

California (With Contiguous Counties in Oregon); Declaration of Disaster Loan Area

Shasta and Siskiyou Counties and the contiguous counties of Del Norte, Humboldt, Lassen, Modoc, Plumas, Tehama, and Trinity in the State of California, and Jackson, Josephine and Klamath Counties in the State of Oregon constitute an Economic Injury Disaster Loan Area due to damages caused by a toxic herbicide spill into the Sacramento River as the result of a train derailment north of Dunsmuir, California, on July 14, 1991. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on May 1, 1992 at the address listed below: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, California 95853–4795, or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The economic injury number assigned to the State of California is 736500 and for the State of Oregon the number is 736600.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: August 1, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 91–18798 Filed 8–7–91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 91–7–51]

Fitness Determination of Sky One Express Airlines, Inc. D/B/A Sky One Express

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination, order to show cause.

SUMMARY: The Department of Transportation is proposing to find Sky One Express Airlines, Inc. d/b/a Sky One Express fit, willing, and able to provide commuter air service under section 419(e)(1) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P–56, room 6401, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than August 16, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Delores King, Air Carrier Fitness Division (P–56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2343.

Dated: August 1, 1991.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 91–18799 Filed 8–7–91; 8:45 am]

BILLING CODE 4910-62-M

[Order 91–7–50]

Fitness Determination of Charles J. Colgan & Associates, Inc.; d/b/a National Capital Airways

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination, order to show cause.

SUMMARY: The Department of Transportation is proposing to Charles J. Colgan & Associates, Inc. d/b/a National Capital Airways fit, willing, and able to provide commuter air service under section 419(e) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P–56, Department of Transportation, 400 Seventh Street, SW., room 6401, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than August 16, 1991.

FOR FURTHER INFORMATION CONTACT: Mrs. Kathy Lusby Cooperstein, Air Carrier Fitness Division (P–56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2337.

Dated: August 1, 1991.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 91–18801 Filed 8–7–91; 8:45 am]

BILLING CODE 4910-62-M

[Order 91–7–52]

Fitness Determination of Sierra Nevada Airways, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination, order to show cause.

SUMMARY: The Department of Transportation is proposing to find that Sierra Nevada Airways, Inc., is fit, willing, and able to provide commuter air service under section 419(e)(1) of the Federal Aviation Act.

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[1] The staff of the Division of Investment Management notes that the Board of Governors of the Federal Reserve System has amended Regulation T to include "foreign margin stock." However, because the requirements for inclusion on the Board's "List of Foreign Margin Stocks" are genreally more restrictive than the requirements for a "margin security" traded in United States markets, securities issued by many foreign securities firms are not included in the definition of "foreign margin stock" under Regulation T. See 12 CFR § 220.2(i) and (g) (6).

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Dated: August 1, 1991.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 91–18799 Filed 8–7–91; 8:45 am]

BILLING CODE 4910-62-M

[Order 91–7–50]

Fitness Determination of Charles J. Colgan & Associates, Inc.; d/b/a National Capital Airways

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination, order to show cause.

SUMMARY: The Department of Transportation is proposing to Charles J. Colgan & Associates, Inc. d/b/a National Capital Airways fit, willing, and able to provide commuter air service under section 419(e) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P–56, Department of Transportation, 400 Seventh Street, SW., room 6401, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than August 16, 1991.

FOR FURTHER INFORMATION CONTACT: Mrs. Kathy Lusby Cooperstein, Air Carrier Fitness Division (P–56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2337.

Dated: August 1, 1991.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 91–18801 Filed 8–7–91; 8:45 am]

BILLING CODE 4910-62-M

[Order 91–7–52]

Fitness Determination of Sierra Nevada Airways, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination, order to show cause.

SUMMARY: The Department of Transportation is proposing to find that Sierra Nevada Airways, Inc., is fit, willing, and able to provide commuter air service under section 419(e)(1) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P–56, room 6401, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than August 16, 1991.

FOR FURTHER INFORMATION CONTACT: Mrs. Janet A. Davis, Air Carrier Fitness Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

Dated: August 1, 1991.

Patrick V. Murphy,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 91–18800 Filed 8–7–91; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended July 26, 1991

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (see 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 47210.

Date filed: July 22, 1991.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: August 19, 1991.

Description: Amendment Number One to the Application of Eva Airways Corporation pursuant to section 402 of the Act and subpart Q of the Regulations, requests a foreign air carrier permit to engage in scheduled foreign air transportation of persons, property and mail as follows: Between the coterminal points, Taipai and, Republic of China, via intermediate points in the Pacific, and the coterminal points Guam, Honolulu, Hawaii, Seattle, Washington, San Francisco and Los Angeles, California, Dallas, Texas and New York, New York, United States of America, and beyond to Amsterdam, The Netherlands.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91–18802 Filed 8–7–91; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–36; OTS No. 0555]

Albemarle Savings and Loan Association, Elizabeth City, NC; Final Action; Approval of Conversion Application

Notice is hereby given that on June 18, 1991, the Office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to delegated authority, approved the application of Albemarle Savings and Loan Association, Elizabeth City, North Carolina for permission to convert to the stock form of organization. Copies of the application are available for inspection at the information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552 and at the Southwest Regional Office, Office of Thrift Supervision, 1475 Peachtree Street, NE., Atlanta, Georgia 30348–5217.

By the Office of Thrift Supervision.

Dated: August 1, 1991.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–18885 Filed 8–7–91; 8:45 am]

BILLING CODE 6720-01-M

[AC–39; OTS No. 0922]

First Federal Savings and Loan Association of Idaho Falls, Idaho Falls, ID; Final Action; Approval of Conversion Application

Notice is hereby given that on June 12, 1991, the Office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of Idaho Falls, Idaho Falls, Idaho for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and Deputy Regional Office, Office of Thrift Supervision of Seattle, 12201 Sixth Avenue, suite 1500, Seattle, Washington 98121–1889.

By the Office of Thrift Supervision.

Dated: August 1, 1991.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–18886 Filed 8–7–91; 8:45 am]

BILLING CODE 6720-01-M

[AC–37; OTS No. 0283]

Gate City Federal Savings and Loan Association, Greensboro, NC; Final Action; Approval of Conversion Application

Notice is hereby given that on June 18, 1991, the Office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to delegated authority, approved the application of Gate City Federal Savings and Loan Association, Greensboro, North Carolina for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street, NE., Atlanta, Georgia 30348–5217.

By the Office of Thrift Supervision.

Dated: August 1, 1991.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–18887 Filed 8–7–91; 8:45 am]

BILLING CODE 6720-01-M

[AC–38; OTS No. 5949]

Grandview Savings Association, Pittsburgh, PA; Final Action; Approval of Conversion Application

Notice is hereby given that on June 26, 1991, the Office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to delegated authority, approved the application of Grandview Savings Association, Pittsburgh, Pennsylvania for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and District Director, Office of Thrift Supervision of Pittsburgh, One Riverfront Center, Twenty Stanwix Street, Pittsburgh, Pennsylvania, 15222–4893.

By the Office of Thrift Supervision.

Dated: August 1, 1991.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–18888 Filed 8–7–91; 8:45 am]

BILLING CODE 6720-01-M

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OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Generalized System of Preferences (GSP); Notice of Special Review To Consider Requests From the Governments of Czechoslovakia, Hungary, Poland and Yugoslavia To Add Products to the List of Articles Eligible for Duty-Free Treatment Under the GSP and Deadlines for Public Comment

At the direction of the President, the GSP Subcommittee of the Trade Policy Staff Committee (TPSC) is initiating a special review to consider requests from the Governments of Czechoslovakia, Hungary, Poland, and Yugoslavia to add products to the list of articles eligible for duty-free treatment under the GSP. Notice is hereby given that, in order to be considered in the special review, all petitions requesting the additions to the list of articles eligible for duty-free treatment under the Generalized System of Preferences (GSP) must be received at the Office of the U.S. Trade Representative no later than 5 p.m. on October 1, 1991. The GSP provides for the duty-free importation of qualifying articles when imported from designated beneficiary developing countries. The GSP is authorized by title V of the Trade Act of 1974, as amended, and was implemented by Executive Order 11888 of November 24, 1975, as modified by subsequent Executive Orders and Presidential Proclamations.

Special GSP Review for Countries in Central and Eastern Europe

The Government of Czechoslovakia, Hungary, Poland, and Yugoslavia may submit petitions requesting the President (1) to designate additional articles as eligible for GSP; (2) to waive the competitive need limits with respect to specific GSP eligible articles; and (3) to otherwise expand GSP coverage. Requests to expand GSP product coverage from parties other than the Governments noted above, and requests for other modifications of the GSP may not be submitted at this time. Such requests can be submitted in the 1992 GSP annual review, with a tentative submission deadline of June 1, 1992.

As directed by the President, the TPSC will waive 15 CFR 2007.0(a)(1), and will re-review the following previously denied Central and Eastern European petitions:

Case Number	HTS Number	Product Description	Country
90–5	0406.90.30	Goya cheese, not grated or powdered, not processed.	Hungary
90–16	2003.10.00	Mushrooms, prepared or preserved otherwise than by vinegar or acetic acid.	Hungary
90–21 90–22	2204.21.40	Grape wine, not sparkling or effervescent, not over 14% vol. alcohol, in containers holding 2 liters or less.	Hungary
90–23	2204.21.80	Grape wine, other than "Marsala," not sparkling or effervescent, over 14% vol. alcohol, in containers holding 2 liters or less.	Hungary
90–63	7318.15.80	Screws and bolts of iron or steel, having shanks or threads 6 mm or more in diameter.	Poland

The TPSC will also waive 15 CFR 2007.0(a)(1) for other petitions that may be submitted by the Governments of Czechoslovakia, Hungary, Poland and Yugoslavia during this review.

Submission of Petitions and Requests

Petitions and requests to expand GSP treatment should be addressed to: GSP Subcommittee, Office of the U.S. Trade Representative, 600 17th Street, NW., room 517, Washington, DC 20506. Petitions which are hand carried should be delivered to room 517. All such submissions must conform with regulations codified in 15 CFR part 2007, except as mentioned in this notice. In addition to these requirements, the petition should identify the product of interest in the Harmonized Tariff Schedule of the United States (HTS) nomenclature. Trade data for the last three years should be provided in the HTS category.

Information submitted will be subject to public inspection by appointment only with the staff of the USTR Reading room, except for information granted "business confidential" status pursuant to 15 CFR 2003.6 and 15 CFR 2006.10. The telephone number for the USTR Reading room is (202) 395–6186. Petitions and requests must be submitted in fourteen (14) copies in English. If the petition or request contains business confidential information, fourteen (14) copies of a nonconfidential version of the submission along with fourteen (14) copies of the confidential version must be submitted. In addition, the submission containing confidential information must clearly be marked "confidential" at the top and bottom of each and every page of the submission. The version that does not contain business confidential information (the public version) should also clearly be marked at the top and bottom of each page (either "public version" or "nonconfidential").

Prospective petitioners are strongly advised to review the GSP regulations published in the **Federal Register** on Tuesday, February 11, 1986 (51 FR 5037). Prospective petitioners are reminded that submissions which do not provide adequate information required by 15 CFR 2007.1 will not be accepted for review unless the petitioner has made a good faith effort to obtain the information required. Petitions with respect to competitive need waivers must meet the informational requirements for product addition requests in 15 CFR 2007.1(c). A model petition format is available from the GSP Information Center ((202) 395–6971) and USTR Reading room and is published in the publication A Guide to the U.S. Generalized System of Preferences Prospective petitioners are requested to use this model petition format so as to ensure that all informational requirements are met. Furthermore, prospective petitioners submitting petitions that request modifications with respect to specific articles should list on the first page of the petition the following information: (1) The requested action; and (2) the classification of the subject article(s) in HTS nomenclature. Questions about the preparation of petitions and requests should be directed to the staff of the GSP Information Center.

Notice of petitions and requests accepted for review will be published in the **Federal Register** on or about November 15. The notice will also provide updated information concerning the opportunity for interested parties to comment on requests accepted for review through public hearings and written submissions. The tentative schedule for public hearing and comment is as follows:

Deadline for Czechoslovakia, Hungary, Poland and Yugoslavia to submit petitions: October 1.
Deadline for submitting pre-hearing briefs: December 16.
Public hearings: January 6–8, 1992.

Product Description	Country
Goya cheese, not grated or powdered, not processed.	Hungary
Mushrooms, prepared or preserved otherwise than by vinegar or acetic acid.	Hungary
Grape wine, not sparkling or effervescent, not over 14% vol. alcohol, in containers holding 2 liters or less.	Hungary
Grape wine, other than "Marsala," not sparkling or effervescent, over 14% vol. alcohol, in containers holding 2 liters or less.	Hungary
Screws and bolts of iron or steel, having shanks or threads 6 mm or more in diameter.	Poland

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Notice of petitions and requests accepted for review will be published in the **Federal Register** on or about November 15. The notice will also provide updated information concerning the opportunity for interested parties to comment on requests accepted for review through public hearings and written submissions. The tentative schedule for public hearing and comment is as follows:

Deadline for Czechoslovakia, Hungary, Poland and Yugoslavia to submit petitions: October 1.
Deadline for submitting pre-hearing briefs: December 18.
Public hearings: January 6–8, 1992.

Deadline for submitting post-hearing briefs: January 20.
Deadline for submitting rebuttal briefs: February 20.
Deadline for public comment on USITC advice: March 30.

Depending on the number of petitions received, the GSP Subcommittee may shorten this schedule.

Should Bulgaria be designated a GSP beneficiary developing country prior to the petition submission deadline, the GSP Subcommittee will consider requests from the Government of Bulgaria to add products to the list of GSP eligible articles until October 15, 1991.

Any modifications to the GSP resulting from the GSP special review will be announced on or about April 10, 1992, and will take effect on or about May 1, 1992.

David A. Weiss,

Chairman, Trade Policy Staff Committee.

[FR Doc. 91–18998 Filed 8–7–91; 8:45 am]

BILLING CODE 3190-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 153
Thursday, August 8, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given of the following meeting of the Board:

TIME AND DATE: 9:00 a.m., Saturday, August 24, 1991.

PLACE: Building 1 Auditorium, Department of Commerce, 325 Broadway Boulder, Colorado.

STATUS: Open. While the Government in the Sunshine Act does not require that the scheduled briefing the conducted in a meeting, the Board has determined that an open meeting in this specific case furthers the public interests underlying both the Sunshine Act and the Board's enabling legislation. As time permits following the briefing, members of the public will be afforded an opportunity to comment.

MATTERS TO BE CONSIDERED: Briefing will be given by the Department of Energy and its contractors and outside experts on the status of the operational readiness reviews (ORRs) being conducted prior to the resumption of operations in Building 559 at the Rocky Flats Plant.

FOR MORE INFORMATION CONTACT: Kenneth M. Pusateri, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004, (202) 208–6400 (FTS 268–6400).

SUPPLEMENTARY INFORMATION: Requests to speak at the meeting should be submitted in writing, describe the nature and scope of the oral presentation, and be transmitted in time to assure receipt by the General Manager by 5 p.m. on August 20, 1991. The length of the oral statement shall be limited to 5 minutes.

Anyone who wishes to comment may do so in writing, either in lieu of, or in addition to, making an oral presentation. Any written submittals must be received by the Board no later than August 20, 1991. The Board members may question witnesses to the extent deemed appropriate. The Board will hold the record open until September 6, 1991, for the receipt of additional materials. A transcript of the meeting will be made avaiable by the Board for inspection by the public at the Defense Nuclear Facilities Safety Board's Washington office and at the DOE's Reading Room at Front Range Community College, 3645 West 112 Avenue, Westminster, CO 80030.

The Board specifically reserves its right to further schedule and otherwise regulate the course of the meeting, to recess, reconvene, postpone, or adjourn the meeting, and otherwise exercise its powers under the Atomic Energy Act of 1954, as amended.

Dated: August 6, 1991.

Kenneth M. Pusateri,

General Manager.

[FR Doc. 91–19005 Filed 8–6–91; 2:31 pm]

BILLING CODE 6820-KD-M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, August 13, 1991, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, August 15, 1991, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Reconsideration of Advisory Opinion 1991–13: Richard Casagrande on behalf of the New York State Public Employees Federation, AFL–CIO
Advisory Opinion 1991–21: Robert Weiss on behalf of the Alliance for Representative Government
Advisory Opinion 1991–23: Michael Nemeroff on behalf of the National Association of Retail Druggist (NARD)
Petition for Rulemaking filed by Common Cause
Guideline for Presentation in Good Order
Updated Forecast on the Solvency of the Presidential Election Campaign Fund
Status of Presidential Audits
Administrative Matters

PERSON TO CONTACT FOR INFORMAITON: Mr. Fred Eiland, Press Officer, Telephone: (202) 376–3155.

Delores Harris,

Administrative Assistant, Office of the Secretariat.

[FR Doc. 91–19014 Filed 8–6–91; 3:58 pm]

BILLING CODE 6715-01-M

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COMMISSION
esday, August 13,

N.W., Washington,

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, August 15, 1991, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Reconsideration of Advisory Opinion 1991-13: Richard Casagrande on behalf of the New York State Public Employees Federation, AFL-CIO
Advisory Opinion 1991-21: Robert Weiss on behalf of the Alliance for Representative Government
Advisory Opinion 1991-23: Michael Nemeroff on behalf of the National Association of Retail Druggist (NARD)
Petition for Rulemaking filed by Common Cause
Guideline for Presentation in Good Order
Updated Forecast on the Solvency of the Presidential Election Campaign Fund
Status of Presidential Audits
Administrative Matters

PERSON TO CONTACT FOR INFORMAITON: Mr. Fred Eiland, Press Officer, Telephone: (202) 376-3155.

Delores Harris,
Administrative Assistant, Office of the Secretariat.

[FR Doc. 91-19014 Filed 8-6-91; 3:58 pm]

BILLING CODE 6715-01-M

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federal register

Thursday
August 8, 1991

Part II

National Credit Union Administration

12 CFR Part 747
Administrative Actions, Adjudicative Hearings, Rules of Practice and Procedure, and Investigations; Final Rule

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 747

[Docket No. 91-06-C]

Administrative Actions, Adjudicative Hearings, Rules of Practice and Procedure, and Investigations

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: Section 916 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") requires that the National Credit Union Administration ("NCUA"), the Office of the Comptroller of the Currency ("OCC"), the Board of Governors of the Federal Reserve System ("Board of Governors"), the Federal Deposit Insurance Corporation ("FDIC"), and the Office of Thrift Supervision ("OTS") (collectively, "the Agencies") develop a set of uniform rules of practice and procedure to govern formal administrative proceedings ("Uniform Rules"). Section 916 further requires the Agencies to promulgate Uniform Rules providing for summary judgment in cases where there is no dispute as to the material facts.

To comply with the mandate of section 916 of FIRREA, this final rule makes uniform those rules concerning formal enforcement actions common to at least four of the listed Agencies. In addition to these Uniform Rules, the NCUA and each of the other Agencies are adopting complementary "Local Rules" to supplement the Uniform Rules. These Local Rules address formal enforcement actions not within the scope of the Uniform Rules; informal actions which are not subject to the Administrative Procedure Act ("APA"); and procedures which supplement or facilitate investigations and the processing of administrative enforcement actions within the NCUA and the other Agencies. This final rule is intended to standardize procedures governing formal administrative actions and to facilitate administrative practice before the Agencies.

EFFECTIVE DATE: August 9, 1991.

FOR FURTHER INFORMATION CONTACT: Steven W. Widerman, Trial Attorney, Office of General Counsel, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456. Telephone: 202/682-9630.

SUPPLEMENTARY INFORMATION:

I. Background

Section 916 of FIRREA, Public Law No. 101-73, 103 Stat. 183 (1989), requires that the NCUA, FDIC, OCC, Board of Governors and OTS develop a set of uniform rules and procedures for administrative hearings. By including this provision in FIRREA, Congress intended that the listed Agencies, by promulgating uniform procedures, would improve and expedite their administrative proceedings. The statutory provision is a reflection of "recent recommendations of the Administrative Conference of the United States and the House Government Operations Committee." H.R. Rep. No. 54, 101st Cong., 1st Sess., pt.1, at 396. The Administrative Conference of the United States found in its December 30, 1987, recommendation that "given the similar statutory bases for these enforcement actions, the five agencies jointly should be able to develop substantially similar rules of procedure and practice for formal enforcement proceedings." 1 CFR 305.87-12.

To comply with the requirements of section 916, the NCUA and the other Agencies issued for public notice and comment a Joint Notice of Proposed Rulemaking on June 17, 1991 (56 FR 27790). The proposed rules contained one set of Uniform Rules applicable to all of the Agencies and separate Local Rules applicable to each individual Agency.

The NCUA has received comments on the joint proposed rule and is now issuing a final rule. This final rule is intended to standardize procedures governing formal administrative actions common to at least four of the five Agencies and to facilitate administrative practice before the Agencies.

II. Analysis of Comments and Modifications

A. Comment Summary

In response to the June 17, 1991, joint notice of proposed rulemaking, the NCUA and the other Agencies received three comment letters. The Agencies have jointly reviewed the portions of the comments concerning the Uniform Rules. The comments raised certain questions and objections, but were narrowly focused given the magnitude of the regulation. One comment commended the Agencies for meeting the mandate of section 916 of FIRREA and creating a set of uniform rules of practice and procedures. The NCUA received no comments regarding its Local Rules. The specific comments and the Agencies' responses are discussed below.

B. Discussion of Comments and Agency Responses

(1) Rule 747.3(e)

One commenter suggested that the definition of "Decisional employee" in proposed § 747.3(e) be expanded to preclude from service in a decisional capacity any employee of the Agencies who had served within the previous twelve months on the enforcement staff of any of the Agencies. The commenter suggested that this expansion would protect against bias and conflicting interest.

This suggested amendment is not adopted because the final rule incorporates the formulation of the APA. The APA forbids an employee from acting in a decisional capacity in a specific case where the employee has acted in an investigative or prosecutorial function in that same case or in a factually related case. 5 U.S.C. 554(d). Accordingly, Congress has already drawn the line defining conflict of interest in this context, and the Agencies find no basis for modification.

(2) Rule 747.18(b)

A recommendation was made that § 747.18(b) be modified to require that an agency set forth in a notice not only those facts showing that an agency is entitled to relief of some kind, but also those facts required for the particular relief requested.

With respect to the amount of particularity with which a notice should be pleaded, the Agencies believe that § 747.18(b) meets those standards for notice set forth in Rule 8 of the Federal Rules of Civil Procedure. The Agencies have determined that this is sufficient pleading for administrative proceedings. *See First National Monetary Corp.* v. *Weinberger*, 819 F.2d 1334, 1339 (6th Cir. 1987); *Boise Cascade Corp.* v. *FTC*, 498 F.Supp. 772, 780 (D. Del. 1980).

(3) Rule 747.19(c)(1)

One commenter criticized the proposed rule for failing to accommodate default situations where good cause could be shown for the failure to file an Answer. This comment reflects a misunderstanding of the proposed Uniform Rules, which address such situations by allowing an administrative law judge to extend time limits for good cause (§ 747.13), and by requiring that defaults be entered only upon a motion for default filed by Enforcement Counsel (§ 747.19), thereby permitting respondents an opportunity to oppose such a motion. To alleviate confusion, the wording of the final

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default rule has been modified to make this process more explicit.

(4) Rule 747.22(b)

One commenter suggested that the proposed § 747.22(b) regarding severance of proceedings is unduly stringent in light of the severity of sanctions at stake. The commenter argued that any inconsistency or conflict in the positions of respondents should warrant severance without the necessity of weighing any countervailing interests. The commenter further argued that concerns regarding administrative economy are not entitled to weight in light of the small number of cases that have been adjudicated by the Agencies in the past.

This suggestion was not adopted. A similar weighing test for severance is applied by federal courts in criminal cases, see *e.g.*, *Roach* v. *National Transportation Safety Board*, 804 F.2d 1147, 1151 (10th Cir. 1986), *cert. denied*, 496 U.S. 1006 (1988), demonstrating that the weighing test appropriately may be applied in cases involving substantial sanctions and penalties. In addition, the general interest in economy and efficiency in resolving an administrative adjudication exists independently of the total volume of adjudications at any particular time.

(5) Rule 747.24(a)(2)

An issue was raised by two of the commenters concerning the different positions taken by the Agencies on discovery depositions. The commenters stated that use of discovery depositions would encourage settlements and would result in the increased use of summary judgment by establishing the absence of disputes as to material facts.

The scope of discovery which would be permitted in the Uniform Rules was considered at length. It was determined that broad document discovery would be permitted generally; however, it was recognized that there is no constitutional right to prehearing discovery, including deposition discovery, in Federal administrative proceedings. *See Sims* v. *National Transportation Safety Board*, 662 F.2d 668, 671 (10th Cir. 1981); *P.S.C. Resources, Inc.* v. *NLRB*, 576 F.2d 380, 386 (1st Cir. 1978); *Silverman* v. *CFTC*, 549 F.2d 28, 33 (7th Cir. 1977). Further, the APA contains no provision for prehearing discovery, and the discovery provisions of the Federal Rules of Civil Procedure do not apply to administrative proceedings. *Frillette* v. *Kimberlin*, 508 F.2d 205 (3d Cir. 1974) *cert. denied* 421 U.S. 980 (1975). Rather, each agency determines the extent of discovery to which a party in an administrative proceeding is entitled. *McClelland* v. *Andrus*, 606 F.2d 1278, 1285 (D.C. Cir. 1979).

The Agencies attempted to strike a balance between the due process interests of respondents in obtaining pretrial disclosure, including discovery depositions, and the Agencies' need for swift adjudication while preserving limited resources. This process included taking into account the various interests and concerns of both the industry and public constituencies which each Agency serves, as well as each Agency's own institutional interests and concerns. The contrasting interests and concerns are reflected in the types, complexity and quantity of enforcement actions brought by each Agency; the methods of litigation and opportunity for settlement in such actions; the structure and available resources of each regulator; and the supervisory procedures developed internally by each Agency. This process resulted in divergent provisions on the use of discovery depositions.

Thus, the experience of the OCC, the Board of Governors and the OTS resulted in a finding that discovery depositions served a useful purpose by promoting fact finding and encouraging settlements. Because of the increasing complexity of its enforcement actions, where there were typically multiple counts and multiple parties and where several types of enforcement actions were combined into one, it was found that discovery depositions could be useful in aiding both respondents and the regulator in resolving cases expeditiously. Discovery depositions for the OCC, the Board of Governors and the OTS, however, are limited to witnesses who have factual, direct and personal knowledge of the matters at issue. The FDIC and the NCUA determined that the interests of respondents in further pretrial disclosure in their respective proceedings were mitigated by the availability under the Uniform Rules of extensive document discovery that complements the document intensive nature of their proceedings.

(6) Rule 747.24(c)

Section 747.24(c) provides that privileged documents are not discoverable. One commenter objected to the right of Enforcement Counsel to assert the deliberative process privilege on grounds that, in some instances, it is subject to abuse by Enforcement Counsel seeking to prevent disclosure of relevant and probative material. The commenter suggested, instead, that all material for which the deliberative process privilege is claimed should be produced pursuant to a protective order barring public disclosure, and that § 747.24 should provide for *in camera* inspection of disputed privileged material by the administrative law judge.

The Agencies have concluded that Enforcement Counsel should retain the right to assert the deliberative process privilege at the outset. Ample means to challenge an improper assertion of privilege already are available to respondents without modifying § 747.24. Section 747.25(e) provides that all documents withheld from production on grounds of privilege must be reasonably identified and must be accompanied by a statement of the basis for the assertion of privilege. In the event that a respondent believes that Enforcement Counsel's assertion of the deliberative process privilege is improper, respondent would be able to utilize the identifying information and statement to challenge the assertion of the privilege before the administrative law judge. Confronted with such a challenge, an administrative law judge would need no further specific authority by rule to inquire of enforcement counsel as to the basis of the assertion of the privilege, to conduct an inspection of the assertedly privileged material *in camera*, and to then rule whether the privilege can be maintained.

(7) Rule 747.33(b)

One commenter suggested that the determination to seal a document pursuant to § 747.33(b) should be subject to review by an administrative law judge under an abuse of discretion standard. It was also proposed that a respondent should be able to request that certain information such as confidential personal information be filed under seal.

The Uniform Rules accommodate this last concern by permitting a respondent to file a motion to seal a document containing confidential personal information. However, the statutory language of 12 U.S.C. 1786(s)(6), 1818(u)(6) vests the Agencies with exclusive authority to seal all or part of a document if disclosure would be contrary to the public interest.

(8) Rule 747.36(c)(2)

One commenter suggested that deletion of § 747.36(c)(2), which provides that any document prepared by a Federal financial institutions regulatory agency or by a state regulatory agency is admissible with or without a sponsoring witness. The commenter argued that the provision violates normal evidentiary standards and raises due process concerns.

The Agencies disagree with the commenter. The first sentence of § 747.36(c)(2) cross-references § 747.36(a), which makes agency prepared documents subject to the same evidentiary standards as those that are applicable to non-agency prepared documents. Moreover, the same types of agency prepared documents tend to be introduced into evidence in every case. These documents, such as examination reports, rarely give rise to authentication issues. Thus, the Agencies feel that requiring a sponsoring witness for such documents needlessly consumes judicial resources and impedes the hearing process.

(9) Rule 747.39(b)(2)

One commenter stated that, under § 747.39(b)(2), a party should be able to raise a new legal argument in the exceptions filed to an administrative law judge's recommended decision, and that the Agency Head should not be precluded from considering such an argument.

The Agencies agree with the commenter that the Agency Head should have the discretion to determine whether a new argument that is raised for the first time in the exceptions should be considered, even if the party had a prior opportunity to make the argument. For example, the Agency Head should have the discretion to consider whether a new argument has important legal and policy implications which warrant its consideration. Accordingly, the language of § 747.39(b)(2) is amended to read that "No exception *need* be considered * * *." (Emphasis added.)

The Agencies do not agree with the commenter that the Agency Head should, in effect, be required to consider new arguments raised for the first time in the exceptions. Such a provision could encourage careless or even deceptive pleading. Generally, a party should be permitted to submit a new argument if there was no previous opportunity to present the argument, *e.g.*, a relevant court decision has been issued in the interim since the filing of the recommended decision.

(10) Miscellaneous

Another issue raised by one of the commenters concerns the apparent differences in procedures for formal investigations, rules of practice before the Agencies, and rules concerning the Equal Access to Justice Act. Additionally, this commenter proposed that rules should be drafted governing informal enforcement mechanisms, such as a memoranda of understanding, "fifteen-day letter" procedures for initiation of civil money penalties, commitment letters and other informal procedures. Finally, the commenter made a suggestion that the Agencies consider other rules to promote uniformity such as the publication of all enforcement decisions of the Agencies in a loose-leaf service or on-line computer service.

The differences in the various informal or non-APA procedures is based upon the scope of section 916. The purpose behind section 916 of FIRREA is to improve and expedite formal administrative proceedings conducted pursuant to the APA. As was stated in the Report of the House of Representatives, this statutory provision is a reflection of "recent recommendations of the Administrative Conference of the United States and the House Government Operations Committee." H.R. Rep. No. 54, 101st Cong., 1st Sess., pt. 1, at 396. The Administrative Conference of the United States found in its December 30, 1987, recommendation that "[g]iven the similar statutory bases for these enforcement actions, the five agencies jointly should be able to develop substantially similar rules of procedure and practice for *formal enforcement proceedings.*" (Emphasis supplied.) 1 CFR 305.87-12. Thus, the inclusion of non-APA proceedings would exceed the statutory mandate of section 916 and would present practical implementation problems as well.

For example, the Uniform Rules do not contain provisions for formal investigations. This is because such investigations are not APA proceedings. In addition, the statutory authority for formal investigations arises in several statutes (*e.g.*, the Federal Credit Union Act and the Federal Deposit Insurance Act) and the Agencies have differing policies concerning the frequency, length, and procedures for formal investigations. This diversity in statutory authority is reflected in the independent and separate procedures of each agency.

Similarly, the Uniform Rules do not contain provisions addressing the Equal Access to Justice Act. Again, the diversity of agency structure is a determining factor here. Both the OCC and the OTS are bureaus of the U.S. Department of Treasury. As such, they are subject to Treasury's Equal Access to Justice Act regulatory provisions found at 31 CFR part 6.

With respect to the publication of enforcement orders, the Agencies have already addressed this concern. Pursuant to 12 U.S.C. 1786(s), 1818(u), each of the Agencies has procedures implementing this statutory directive and most, if not all, enforcement decisions may be found by consulting the Public Reading Room or library of each Agency. In addition, each of the Agencies issues press releases concerning recent cases.

C. Additional Modifications to Uniform Rules and NCUA Local Rules

1. Uniorm Rules

In conjunction with the other Agencies, the NCUA is amending the Uniform Rules to replace generic definitional terms with terms specifically applicable to the NCUA and its operations. Thus, the NCUA is replacing the terms "Agency Head" and "Agency" with "NCUA Board" and "NCUA", respectively, and is restricting the "scope" provisions of § 747.1 to those statutes subject to NCUA jurisdiction. Further conforming changes have been made to the definitions of Local Rules, Uniform Rules, and the Office of Financial Institution Adjudication ("OFIA"). The other Agencies have made similar changes. The purpose of these changes is to make the Uniform Rules easier to understand and to use. These changes do not affect the substance of the Uniform Rules.

The NCUA also is making various other minor technical and conforming revisions to the Uniform Rules and the NCUA Local Rules to improve the clarity and consistency of the rules.

2. NCUA Local Rules

As proposed, subpart B of part 747 was reserved for Local Rules of Practice and Procedure, unique to NCUA proceedings, which the NCUA might wish to develop in the future in light of experience with the Uniform Rules. However, the NCUA has since determined to adopt § 747.100 in subpart B to limit discovery in its proceedings to the production of documents, as provided in § 747.24.

NCUA proceedings are document intensive and rely heavily on comprehensive Reports of Examination which are available through document discovery. The basis of an NCUA enforcement action is thoroughly revealed, during the examination process, at meetings and in correspondence with a credit union's board of directors. Thereofre, the NCUA believes that the Uniform Rules provide adequate pretrial disclosure to respondents in the form of pretrial submissions, document discovery, the exchange of proposed trial exhibits, proposed stipulations, and a list of witnesses which includes a summary of the expected testimony of each witness.

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Section 747.24(a)(2) expressly permits the NCUA Board to adopt a Local Rule governing discovery through depositions. The NCUA's present rules of practice in existing subpart A do not address depositions on the theory that administrative law judges would not allow depositions in NCUA proceedings if the NCUA's rules of practice did not expressly provide for them. In practice, this has uniformly been the case.

With the establishment of OFIA to preside over the NCUA's formal proceedings, however, the NCUA Board is concerned that administrative law judges would feel free to allow depositions in the absence of a Local Rule prohibiting them. The implicit objective of the NCUA's silence regarding depositions in the present rules of practice [existing Subpart A] is to discourage them in order to expedite NCUA proceedings and to conserve the time and resources of the parties. This objective will be defeated if administrative law judges misinterpret the NCUA's continued silence regarding depositions as authority to allow them. Accordingly, § 747.100 expressly codifies, but does not change, the long-standing practice of conducting NCUA proceedings without depositions. Section 747.100 is identical in substance to 12 CFR 308.107, adopted by the FDIC to limit discovery in its formal proceedings.

III. Subpart-By-Subpart Summary of Uniform Rules And NCUA Local Rules

Subpart A—Uniform Rules of Practice and Procedure

Subpart A sets forth uniform rules of practice and procedure governing the conduct of administrative hearings required by the APA to be held on the record. The Uniform Rules address commencement of enforcement proceedings, filing the service of papers, motions, discovery, depositions, prehearing conferences, public hearings, hearing subpoenas, conflict of interest, *ex parte* communication, rules of evidence, and post-hearing procedures.

The Uniform Rules replace the NCUA's own rules of practice and procedure contained in existing subpart A. In addition, the Uniform Rules govern the conduct of administrative hearings addressing actions by the NCUA to issue a cease-and-desist order, to assess civil penalties, and to prohibit, remove or suspend credit union officials. Because the Uniform Rules incorporate the functions of existing subparts C, D and E pertaining to these types of actions, the new subpart A replaces these existing subparts.

Finally, the provisions of the Uniform Rules supplement the rules and procedures prescribed in new subparts C, E and I, which provide for formal adjudications, except when the new subpart A is inconsistent with those rules and procedures.

Subpart B—Local Rules of Practice and Procedure

This sole provision in this subpart, § 747.100, proscribes, depositions and all forms of discovery other than production of documents. In addition, in the event that a person producing documents to a subpoena for documents is permitted to be deposed, the provision strictly limits questioning of that person to the identification of, and adequacy of the search for, those documents. The balance of subpart B is reserved for other Local Rules which the NCUA may develop in the future to augment the Uniform Rules prescribed in subpart A.

Subpart C—Local Rules and Procedures Applicable to Proceedings for the Involuntary Termination of Insured Status

This subpart redesignates and renumbers existing subpart B governing proceedings to terminate the insured status of a credit union. Such proceedings are formal adjudications. The text of existing subpart B is imported without revision, except that its scope now incorporates the provisions of the Uniform Rules, as set forth in subpart A, to the extent they are not inconsistent with the rules and procedures of subpart C.

Subpart D—Local Rules and Procedures Applicable to Suspensions and Prohibitions Where Felony Charged

This subpart redesignates and renumbers existing subpart F, governing proceedings to suspend or prohibit from participation in the affairs of a credit union any institution-affiliated party which is charged with a felony. Such proceedings are not formal adjudications. The text of existing subpart F is imported substantially without revision. Cross-references in existing § 746.602 to certain rules of practice in existing subpart A have, due to the elimination of that subpart, been replaced in new § 747.302 with the text of the former rules. Likewise, cross-references in existing § 747.507 to § 747.602 ("Remainder of the Board of Directors") of existing subpart E have, due to the elimination of that subpart, been replaced in new § 747.302 with the text of former § 747.507. The text of these and other provisions of new subpart D (§§ 747.302, 747.306, and 747.307) contain technical revisions to clarify and reflect that proceedings under this subpart are not formal adjudications conducted by an administrative law judge, but rather, are limited, informal proceedings conducted by a Presiding Officer designated by the Board. New subpart D does not incorporate the Uniform Rules, as set forth in subpart A, because those rules do not apply to informal adjudications.

Subpart E—Local Rules and Procedures Applicable to Proceedings Relating to the Suspension of Revocation of Charters and to Involuntary Liquidations

This subpart redesignates and renumbers existing subpart G governing proceedings to suspend or revoke a solvent credit union's charter and to place a solvent credit union into involuntary liquidation under title I of the FCUA. See 12 U.S.C. 1766(b)(1). Such proceedings are formal adjudications. The text of existing subpart G is imported without revision, except that the scope of new subpart E incorporates the provisions of the Uniform Rules, as set forth in subpart A, to the extent they are not inconsistent with the rules and procedures of new subpart E. New subpart E also contains technical revisions to clarify and reflect that a hearing requested under this subpart is referred by the Board to OFIA and conducted by an administrative law judge.

Subpart F—Local Rules and Procedures Applicable to Proceedings Relating to the Termination of Membership in the Central Liquidity Facility

This subpart redesignates existing subpart H, which is reserved for rules and procedures governing proceedings to terminate a credit union's membership in the NCUA's Central Liquidity Facility.

Subpart G—Local Rules and Procedures Applicable to Recovery of Attorneys Fees and Other Expenses Under the Equal Access to Justice Act in Board Adjudications

This subpart redesignates and renumbers existing subpart I governing claims proceedings under the Equal Access to Justice Act. Such proceedings are formal adjudications. The text of existing subpart I is imported without revision except for the following revisions to its scope and to the eligibility and application requirements for an award. First, new § 747.601 incorporates the provisions of the Uniform Rules, as set forth in subpart A, to the extent they are not inconsistent with the rules and procedures of new

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subpart G. Second, paragraph (b) of existing § 747.801 has been eliminated as moot, as there is no adjudication currently pending before the NCUA which was begun prior to September 30, 1984. Third, in new § 747.602(a), the maximum net worth of an individual applicant for an award has been increased to $2 million, and the maximum net worth of an applicant who is a sole proprietor of an unincorporated business or which is a partnership, corporation, association, or public or private organization, has been increased to $7 million. These increases in maximum net worth are mandated by amendments to the Equal Access to Justice Act. Finally, in new § 747.606(c), the statement that the application and documentation requirements of subpart G are exempt from the Paperwork Reduction Act has been eliminated as superfluous. The exemption clearly is warranted because a decade of experience with the Equal Access to Justice Act has shown that fewer than ten persons or entities in a 12-month period will be subject to the application and documentation requirements of subpart G. See 5 CFR 1320.7(c) and 1320.7(s).

Subpart H—Local Rules and Procedures Applicable to Investigations

This subpart redesignates and renumbers existing subpart J governing both formal and informal investigations conducted by the NCUA. Such investigations are not adjudicative proceedings. The text of existing subpart H is imported without revision. New subpart H does not incorporate the Uniform Rules, as set forth in subpart A, because those rules do not apply to non-adjudicative proceedings.

Subpart I—Local Rules Applicable to Formal Investigative Proceedings

This subpart redesignates and renumbers existing subpart K governing formal investigations conducted by the NCUA. Such investigations are not adjudicative proceedings. The text of existing subpart K is imported without revision. New subpart I does not incorporate the Uniform Rules, as set forth in subpart A, because those rules do not apply to non-adjudicative proceedings.

Subpart J—Local Procedures and Standards Applicable to a Notice of Change in Senior Executive Officers, Directors or Committee Members Pursuant to Section 212 of the Act

This subpart redesignates and renumbers existing subpart L governing notice to the NCUA of a change in senior executive officers, directors or committee members of a credit union. The notice procedure is not a formal adjudication. The text of existing subpart L is imported without revision. New subpart J does not incorporate the Uniform Rules, as set forth in subpart A, because those rules do not apply to non-adjudicative proceedings.

IV. Rationale for Expedited Publication

The NCUA Board is adopting this regulation effective upon publication in the **Federal Register**, without the usual 30-day delay of effectiveness provided for in the APA, 5 U.S.C. 553. While the APA requires publication of a substantive regulation not less than 30 days before its effective date, the delayed effective date requirement may be waived for "good cause."

Good cause for the waiver of the 30-day requirement may be found if the delayed effective date is "impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(B). See *Central Lincoln Peoples' Utility Dist.* v. *Johnson*, 735 F.2d 1101, 1117 (9th Cir. 1984). The necessity for compliance with a statutorily prescribed time limit can also contribute to a finding of good cause. See *Philadelphia Citizens in Action* v. *Schweiker*, 669 F.2d 877, 881–888 (3d Cir. 1982). In the present case, the implementation of a delayed effective date would impair the ability of the Agencies to comply with the statutory mandate in section 916 of FIRREA and would be impracticable and contrary to the public interest.

Section 916 of FIRREA contains a dual mandate from Congress to the five Agencies to (1) establish their own pool of administrative law judges and (2) develop Uniform Rules and procedures for administrative hearings "(b)efore the close of the 24-month period beginning on the date of the enactment of this Act (August 9, 1989)." In order to properly address these two requirements, the Uniform Rules and the administrative law judge pool, OFIA, should be implemented in a coordinated and harmonious fashion. If OFIA is established prior to the rules, the administrative law judges may be required to adjudicate some cases under prior regulations before the Uniform Rules are effective. The result would be confusion for parties and a lack of uniformity in adjudication directly contrary to the purpose of section 916. It would, therefore, be impracticable and contrary to the public interest to delay the effective date for implementation of the Uniform Rules.

V. Applicability of Uniform Rules to Enforcement Proceedings

Part 747, as revised by this final rule, applies to any proceeding that is commenced by the issuance of a notice on or after August 9, 1991. The former version of part 747 applies to any proceeding commenced prior to August 9, 1991, unless, with the consent of the administrative law judge, the parties agree to have the proceeding governed by revised part 747.

VI. Regulatory Flexibility Act Statement

Pursuant to section 605(b) of the Regulatory Flexibility Act, the NCUA, hereby certifies that this notice of proposed uniform rule is not expected to have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

This rule implements section 916 of FIRREA which requires the NCUA and other Agencies to develop a set of uniform rules and procedures for administrative hearings. The purpose of this revised regulation is to secure a just and orderly determination of administrative proceedings. Because the Agencies already have in place rules of practice and procedure, this rule should not result in an additional burden for regulated institutions. Furthermore, the rule imposes only minor burdens on all institutions, regardless of size and should not, therefore, cause a significant economic impact on a substantial number of small entities.

VII. Executive Order 12612

This proposed rule, like the current part 747 it is replacing, will apply to all federally insured credit unions. The NCUA Board, pursuant to Executive Order 12612, has determined, however, that the proposed rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among various levels of government. Further, the proposed rule will not preempt provisions of State law or regulations.

List of Subjects in 12 CFR Part 747

Administrative practice and procedure, Bank deposit insurance, Claims, Credit unions, Equal Access to Justice, Hearing procedures, Investigations, Lawyers, Penalties.

Authority and issuance: For the reasons set forth in the preamble, part 747 of chapter VII of title 12 of the Code of Federal Regulations is revised to read as follows:

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Administrative practice and procedure, Bank deposit insurance, Claims, Credit unions, Equal Access to Justice, Hearing procedures, Investigations, Lawyers, Penalties.

Authority and issuance: For the reasons set forth in the preamble, part 747 of chapter VII of title 12 of the Code of Federal Regulations is revised to read as follows:

PART 747—ADMINISTRATIVE ACTIONS, ADJUDICATIVE HEARINGS, RULES OF PRACTICE AND PROCEDURE, AND INVESTIGATIONS

Sec.
§ 747.0 Scope of part 747.

Subpart A—Uniform Rules of Practice and Procedure

§ 747.1 Scope.
§ 747.2 Rules of construction.
§ 747.3 Definitions.
§ 747.4 Authority of NCUA Board.
§ 747.5 Authority of the administrative law judge.
§ 747.6 Appearance and practice in adjudicatory proceedings.
§ 747.7 Good faith certification.
§ 747.8 Conflicts of interest.
§ 747.9 Ex parte communications.
§ 747.10 Filing of papers.
§ 747.11 Service of papers.
§ 747.12 Construction of time limits.
§ 747.13 Change of time limits.
§ 747.14 Witness fees and expenses.
§ 747.15 Opportunity for informal settlement.
§ 747.16 NCUA's right to conduct examination.
§ 747.17 Collateral attacks on adjudicatory proceeding.
§ 747.18 Commencement of proceeding and contents of notice.
§ 747.19 Answer.
§ 747.20 Amended pleadings.
§ 747.21 Failure to appear.
§ 747.22 Consolidation and severance of actions.
§ 747.23 Motions.
§ 747.24 Scope of document discovery.
§ 747.25 Request for document discovery from parties.
§ 747.26 Document subpoenas to nonparties.
§ 747.27 Deposition of witness unavailable for hearing.
§ 747.28 Interlocutory review.
§ 747.29 Summary disposition.
§ 747.30 Partial summary disposition.
§ 747.31 Scheduling and prehearing conferences.
§ 747.32 Prehearing submissions.
§ 747.33 Public hearings.
§ 747.34 Hearing subpoenas.
§ 747.35 Conduct of hearings.
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§ 747.37 Proposed findings and conclusions.
§ 747.38 Recommended decision and filing of record.
§ 747.39 Exceptions to recommended decision.
§ 747.40 Review by the NCUA Board.
§ 747.41 Stays pending judicial review.

Subpart B—Local Rules of Practice and Procedure

§ 747.100 Discovery limitations.

Subpart C—Local Rules and Procedures Applicable to Proceedings for the Involuntary Termination of Insured Status

§ 747.201 Scope.
§ 747.202 Grounds for termination of insurance.
§ 747.203 Notice of charges.
§ 747.204 Notice of intention to terminate insured status.
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§ 747.305 Effectiveness of suspension or removal until completion of hearing.
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§ 747.310 Reconsideration by the NCUA Board.
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Subpart E—Local Rules and Procedures Applicable to Proceedings Relating to the Suspension or Revocation of Charters and to Involuntary Liquidations

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§ 747.402 Grounds for suspension or revocation of charter and for involuntary liquidation.
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§ 747.405 Issuance of order.
§ 747.406 Cancellation of charter.

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§ 747.602 Eligibility of applicants.
§ 747.603 Prevailing party.
§ 747.604 Standards for award.
§ 747.605 Allowable fees and expenses.
§ 747.606 Contents of application.
§ 747.607 Statement of net worth.
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§ 747.702 Information obtained in investigations.
§ 747.703 Authority to conduct investigations.

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§ 747.802 Non-public formal investigative proceedings.
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§ 747.807 Rights of witnesses.

Subpart J—Local Procedures and Standards Applicable to a Notice of Change in Senior Executive Officers, Directors or Committee Members Pursuant to Section 212 of the FCUA

§ 747.901 Scope.
§ 747.902 Grounds for disapproval of notice.
§ 747.903 Procedures where notice of disapproval issued; reconsideration.
§ 747.904 Appeal.
§ 747.905 Judicial review.

Authority: 12 U.S.C. 1766, 12 U.S.C. 1786, 12 U.S.C. 1784, 12 U.S.C. 1787.

§ 747.0 Scope of part 747.

(a) This part describes the various formal and informal adjudicative actions and non-adjudicative proceedings available to the National Credit Union Administration Board ("NCUA Board"), the grounds for those actions and proceedings, and the procedures used in formal and informal hearings related to each available action. As mandated by section 916 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1818 note), this part incorporates uniform rules of practice and procedure governing formal adjudications generally, as well as proceedings involving cease-and-desist actions, assessment of civil money penalties, and removal, prohibition and suspension actions. In addition, the Uniform Rules are incorporated in other subparts of this part which provide for formal adjudications. The administrative actions and proceedings described herein, as well as the grounds and hearing procedures for each, are controlled by sections 120(b) (except where the Federal credit union is closed due to insolvency), 202(a)(3), 206 and 304(c)(3) of the FCUA. Should any provision of this part be inconsistent with these or any other provisions of the FCUA, as amended, the FCUA shall control. Judicial enforcement of any action or order described in this part, as well as judicial review thereof, shall be as prescribed under the FCUA (12 U.S.C. 1751 *et seq.*) and the Administrative Procedure Act (5 U.S.C. 500 *et seq.*).

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(b) As used in this part, the term insured credit union means any Federal credit union or any state chartered credit union insured under subchapter II of the FCUA unless the context indicates otherwise.

Subpart A—Uniform Rules of Practice and Procedure

§ 747.1 Scope.

This subpart prescribes uniform rules of practice and procedure applicable to adjudicatory proceedings required to be conducted on the record after opportunity for a hearing under the following statutory provisions:

(a) Cease-and-desist proceedings under section 206(e) of the Federal Credit Union Act ("FCUA") (12 U.S.C. 1786(e));

(b) Removal and prohibition proceedings under section 206(g) of the FCUA (12 U.S.C. 1786(g));

(c) Assessment of civil money penalties by the National Credit Union Administration Board ("NCUA Board") against institutions and institution-affiliated parties for any violation of:

(1) Section 202 of the FCUA, pursuant to 12 U.S.C. 1782(a);

(2) Section 1120 of FIRREA (12 U.S.C. 3349), or any order or regulation issued thereunder; and

(3) The terms of any final or temporary order issued under section 206 of the FCUA or any written agreement executed by the National Credit Union Administration ("NCUA"), any condition imposed in writing by the NCUA in connection with the grant of an application or request, certain unsafe or unsound practices or breaches of fiduciary duty, or any law or regulation not otherwise provided herein, pursuant to 12 U.S.C. 1786(k);

(d) This subpart also applies to all other adjudications required by statute to be determined on the record after opportunity for an agency hearing, unless otherwise specifically provided for in subparts B through J of this part.

§ 747.2 Rules of construction.

For purposes of this subpart:

(a) Any term in the singular includes the plural, and the plural includes the singular, if such use would be appropriate;

(b) Any use of a masculine, feminine, or neuter gender encompasses all three, if such use would be appropriate;

(c) The term *counsel* includes a non-attorney representative; and

(d) Unless the context requires otherwise, a party's counsel of record, if any, may, on behalf of that party, take any action required to be taken by the party.

§ 747.3 Definitions.

For purposes of this subpart, unless explicitly stated to the contrary:

(a) *Administrative law judge* means one who presides at an administrative hearing under authority set forth at 5 U.S.C. 556.

(b) *Adjudicatory proceeding* means a proceeding conducted pursuant to this subpart and leading to the formulation of a final order other than a regulation.

(c) *Decisional employee* means any member of the NCUA's or administrative law judge's staff who has not engaged in an investigative or prosecutorial role in a proceeding and who may assist the Agency or the administrative law judge, respectively, in preparing orders, recommended decisions, decisions, and other documents under the Uniform Rules.

(d) *Enforcement Counsel* means any individual who files a notice of appearance as counsel on behalf of the NCUA in an adjudicatory proceeding.

(e) *Final order* means an order issued by the NCUA with or without the consent of the affected institution or the institution-affiliated party, that has become final, without regard to the pendency of any petition for reconsideration or review.

(f) *Institution* includes:

(1) Any Federal credit union as that term is defined in section 101(1) of the FCUA (12 U.S.C. 1752(1)); and

(2) Any insured state credit union as that term is defined in section 101(7) of the FCUA (12 U.S.C. 1752(7)).

(g) *Institution-affiliated party* means any institution-affiliated party as that term is defined in section 206(r) of the FCUA (12 U.S.C. 1786(r)).

(h) *Local Rules* means those rules promulgated by the NCUA in the subparts of this part other than subpart A of this part.

(i) *OFIA* means the Office of Financial Institution Adjudication, which is the executive body charged with overseeing the administration of administrative enforcement proceedings for the NCUA, the Office of the Comptroller of the Currency ("OCC"), the Board of Governors of the Federal Reserve System ("Board"), the Federal Deposit Insurance Corporation ("FDIC"), and the Office of Thrift Supervision ("OTS").

(j) *Party* means the NCUA and any person named as a party in any notice.

(k) *Person* means an individual, sole proprietor, partnership, corporation, unincorporated association, trust, joint venture, pool, syndicate, agency or other entity or organization, including an institution as defined in paragraph (f) of this section.

(l) *Respondent* means any party other than the NCUA.

(m) *Uniform Rules* means those rules in subpart A of this part that are common to the NCUA, the OCC, the Board, the FDIC and the OTS.

(n) *Violation* includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

§ 747.4 Authority of the NCUA Board.

The NCUA Board may, at any time during the pendency of a proceeding perform, direct the performance of, or waive performance of, any act which could be done or ordered by the administrative law judge.

§ 747.5 Authority of the administrative law judge.

(a) *General rule.* All proceedings governed by this part shall be conducted in accordance with the provisions of chapter 5 of title 5 of the United States Code. The administrative law judge shall have all powers necessary to conduct a proceeding in a fair and impartial manner and to avoid unnecessary delay.

(b) *Powers.* The administrative law judge shall have all powers necessary to conduct the proceeding in accordance with paragraph (a) of this section, including the following powers:

(1) To administer oaths and affirmations;

(2) To issue subpoenas, subpoenas duces tecum, and protective orders, as authorized by this part, and to quash or modify any such subpoenas and orders;

(3) To receive relevant evidence and to rule upon the admission of evidence and offers of proof;

(4) To take or cause depositions to be taken as authorized by this subpart;

(5) To regulate the course of the hearing and the conduct of the parties and their counsel;

(6) To hold scheduling and/or pre-hearing conferences as set forth in § 747.31;

(7) To consider and rule upon all procedural and other motions appropriate in an adjudicatory proceeding, provided that only the NCUA Board shall have the power to grant any motion to dismiss the proceeding or to decide any other motion that results in a final determination of the merits of the proceeding;

(8) To prepare and present to the NCUA Board a recommended decision as provided herein;

(9) To recuse himself or herself by motion made by a party or on his or her own motion;

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(7) To consider and rule upon all procedural and other motions appropriate in an adjudicatory proceeding, provided that only the NCUA Board shall have the power to grant any motion to dismiss the proceeding or to decide any other motion that results in a final determination of the merits of the proceeding;

(8) To prepare and present to the NCUA Board a recommended decision as provided herein;

(9) To recuse himself or herself by motion made by a party or on his or her own motion;

(10) To establish time, place and manner limitations on the attendance of the public and the media for any public hearing; and

(11) To do all other things necessary and appropriate to discharge the duties of a presiding officer.

§ 747.6 Appearance and practice in adjudicatory proceedings.

(a) *Appearance before the NCUA or an administrative law judge.* (1) *By attorneys.* Any member in good standing of the bar of the highest court of any state, commonwealth, possession, territory of the United States, or the District of Columbia may represent others before the NCUA if such attorney is not currently suspended or debarred from practice before the NCUA.

(2) *By non-attorneys.* An individual may appear on his or her own behalf; a member of a partnership may represent the partnership; a duly authorized officer, director, or employee of any government unit, agency, institution, corporation or authority may represent that unit, agency, institution, corporation or authority if such officer, director, or employee is not currently suspended or debarred from practice before the NCUA.

(3) *Notice of appearance.* Any individual acting as counsel on behalf of a party, including the NCUA, shall file a notice of appearance with the OFIA at or before the time that individual submits papers or otherwise appears on behalf of a party in the adjudicatory proceeding. Such notice of appearance shall include a written declaration that the individual is currently qualified as provided in paragraph (a)(1) or (a)(2) of this section and is authorized to represent the particular party. By filing a notice of appearance on behalf of a party in an adjudicatory proceeding, the counsel thereby agrees, and represents that he or she is authorized, to accept service on behalf of the represented party.

(b) *Sanctions.* Dilatory, obstructionist, egregious, contemptuous or contumacious conduct at any phase of any adjudicatory proceeding may be grounds for exclusion or suspension of counsel from the proceeding.

§ 747.7 Good faith certification.

(a) *General requirement.* Every filing or submission of record following the issuance of a notice shall be signed by at least one counsel of record in his or her individual name and shall state that counsel's address and telephone number. A party who acts as his or her own counsel sign his or her individual name and state his or her address and telephone number on every filing or submission of record.

(b) *Effect of signature.* (1) The signature of counsel or a party shall constitute a certification that: the counsel or party has read the filing or submission of record; to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the filing or submission of record is well-grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and the filing or submission of record is not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) If a filing or submission of record is not signed, the administrative law judge shall strike the filing or submission of record, unless it is signed promptly after the omission is called to the attention of the pleader or movant.

(c) *Effect of making oral motion or argument.* The act of making any oral motion or oral argument by any counsel or party constitutes a certification that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, his or her statements are well-grounded in fact and are warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and are not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

§ 747.8 Conflicts of interest.

(a) *Conflict of interest in representation.* No person shall appear as counsel for another person in an adjudicatory proceeding if it reasonably appears that such representation may be materially limited by that counsel's responsibilities to a third person or by the counsel's own interests. The administrative law judge may take corrective measures at any stage of a proceeding to cure a conflict of interest in representation, including the issuance of an order limiting the scope of representation or disqualifying an individual from appearing in a representative capacity for the duration of the proceeding.

(b) *Certification and waiver.* If any person appearing as counsel represents two or more parties to an adjudicatory proceeding or a party and an institution to which notice of the proceeding must be given, counsel must certify in writing at the time of filing the notice of appearance required by § 747.6(a):

(1) That the counsel has personally and fully discussed the possibility of conflicts of interest with each such party or institution;

(2) That each such party or institution has advised its counsel that to its knowledge there is no existing or anticipated material conflict between its interests and the interests of others represented by the same counsel or his or her firm; and

(3) That each such party or institution waives any right it might otherwise have had to assert any known conflicts of interest or to assert any non-material conflicts of interest during the course of the proceeding.

§ 747.9 Ex parte communications.

(a) *Definition.* (1) *Ex parte communication* means any material oral or written communication concerning the merits of an adjudicatory proceeding that was neither on the record nor on reasonable prior notice to all parties that takes place between:

(i) A party, his or her counsel, or another person interested in the proceeding; and

(ii) The administrative law judge handling that proceeding, the NCUA Board, or a decisional employee.

(2) *Exception.* A request for status of the proceeding does not constitute an ex parte communication.

(b) *Prohibition of ex parte communications.* From the time the notice is issued by the NCUA Board until the date that the NCUA Board issues its final decision pursuant to § 747.40(c), no party, interested person or counsel therefor shall knowingly make or cause to be made an ex parte communication concerning the merits of the proceeding to the NCUA Board, the administrative law judge, or a decisional employee. No member of the NCUA Board, administrative law judge, or decisional employee shall knowingly make or cause to be made to a party, or any interested person or counsel therefor, any ex parte communication relevant to the merits of proceeding.

(c) *Procedure upon occurrence of ex parte communication.* If an ex parte communication is received by the administrative law judge, a member of the NCUA Board or any other person identified in paragraph (a) of this section, that person shall cause all such written communications (or, if the communication is oral, a memorandum stating the substance of the communication) to be placed on the record of the proceeding and served on all parties. All other parties to the proceeding shall have an opportunity, within ten days of receipt of service of the ex parte communication, to file responses thereto and to recommend any sanctions, in accordance with paragraph (d) of this section, that they believe to be appropriate under the circumstances.

(d) *Sanctions.* Any party or his or her counsel who makes a prohibited ex parte communication, or who encourages or solicits another to make any such communication, may be subject to any appropriate sanction or sanctions imposed by the NCUA Board the administrative law judge including, but not limited to, exclusion from the proceedings and an adverse ruling on the issue which is the subject of the prohibited communication.

§ 747.10 Filing of papers.

(a) *Filing.* Any papers required to be filed, excluding documents produced in response to a discovery request pursuant to §§ 747.25 and 747.26, shall be filed with the OFIA, except as otherwise provided.

(b) *Manner of filing.* Unless otherwise specified by the NCUA Board or the administrative law judge, filing may be accomplished by:

(1) Personal service;

(2) Delivering the papers to a reliable commercial courier service, overnight delivery service, or to the U.S. Post Office for Express Mail delivery;

(3) Mailing the papers by first class, registered, or certified mail; or

(4) Transmission by electronic media, only if expressly authorized, and upon any conditions specified, by the NCUA Board or the administative law judge. All papers filed by electronic media shall also concurrently be filed in accordance with paragraph (c) of this section.

(c) *Formal requirements as to papers filed.* (1) *Form.* All papers filed must set forth the name, address, and telephone number of the counsel or party making the filing and must be accompanied by a certification setting forth when and how service has been made on all other parties. All papers filed must be double-spaced and printed or typewritten on 8½ x 11 inch paper, and must be clear and legible.

(2) *Signature.* All papers must be dated and signed as provided in § 747.7.

(3) *Caption.* All papers filed must include at the head thereof, or on a title page, the name of the NCUA and of the filing party, the title and docket number of the processing, and the subject of the particular paper.

(4) *Number of copies.* Unless otherwise specified by the NCUA Board, or the administrative law judge, an original and one copy of all documents and papers shall be filed, except that only one copy of transcripts of testimony and exhibits shall be filed.

§ 747.11 Service of papers.

(a) *By the parties.* Except as otherwise provided, a party filing papers shall serve a copy upon the counsel of record for all other parties to the proceeding so represented, and upon any party not so represented.

(b) *Method of service.* Except as provided in paragraphs (c)(2) and (d) of this section, a serving party shall use one or more of the following methods of service:

(1) Personal service;

(2) Delivering the papers to a reliable commercial courier service, overnight delivery service, or to the U.S. Post Office for Express Mail delivery;

(3) Mailing the papers by first class, registered, or certified mail; or

(4) Transmission by electronic media, only if the parties mutually agree. Any papers served by electronic media shall also concurrently be served in accordance with the requirements of § 747.10(c).

(c) *By the NCUA Board or the administrative law judge.* (1) All papers required to be served by the NCUA Board or the administrative law judge upon a party who has appeared in the proceeding in accordance with § 747.6, shall be served by any means specified in paragraph (b) of this section.

(2) If a party has not appeared in the proceeding in accordance with § 747.6, the NCUA Board or the administrative law judge shall make service by any of the following methods:

(i) By personal service;

(ii) By delivery to a person of suitable age and discretion at the party's residence;

(iii) By registered or certified mail addressed to the party's last known address; or

(iv) By any other method reasonably calculated to give actual notice.

(b) *Subpoenas.* Service of a subpoena may be made by personal service, by delivery to an agent, by delivery to a person of suitable age and discretion at the subpoenaed person's residence, by registered or certified mail addressed to the person's last known address, or in such other manner as is reasonably calculated to give actual notice.

(e) *Area of service.* Service in any state, territory, possession of the United States, or the District of Columbia, on any person or company doing business in any state, territory, possession of the United States, or the District of Columbia, or on any person as otherwise provided by law, is effective without regard to the place where the hearing is held, provided that if service is made on a foreign bank in connection with an action or proceeding involving one or more of its branches or agencies located in any state, territory, possession of the United States, or the District of Columbia, service shall be made on at least one branch or agency so involved.

§ 747.12 Construction of time limits.

(a) *General rule.* In computing any period of time prescribed by this subpart, the date of the act or event from which the designated period of time begins to run is not included. The last day so computed is included unless it is a Saturday, Sunday, or Federal holiday. When the last day is a Saturday, Sunday, or Federal holiday, the period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Intermediate Saturdays, Sundays, and Federal holidays are included in the computation of time, except that, when the time period within which an act is to be performed is ten days or less, intermediate Saturdays, Sundays, and Federal holidays are not included.

(b) *When papers are deemed to be filed or served.* (1) Filing and service are deemed to be effective:

(i) In the case of personal service or same day commercial courier delivery, upon actual service;

(ii) In the case of overnight commercial delivery service, U.S. Express Mail delivery, or first class, registered, or certified mail, upon deposit in or delivery to an appropriate point of collection;

(iii) In the case of transmission by electronic media, as specified by the authority receiving the filing, in the case of filing, and as agreed among the parties, in the case of service.

(2) The effective filing and service dates specified in paragraph (b)(1) of this section may be modified by the NCUA Board or administrative law judge in the case of filing or by agreement of the parties in the case of service.

(c) *Calculation of time for service and filing of responsive papers.* Whenever a time limit is measured by a prescribed period from the service of any notice or paper, the applicable time limits are calculated as follows:

(1) If service is made by first class, registered or certified mail, add three days to the prescribed period;

(2) If service is made by express mail or overnight delivery service, add one day to the prescribed period;

(3) If service is made by electronic media transmission, add one day to the prescribed period, unless otherwise determined by the NCUA Board or the administrative law judge in the case of

located in any state, territory, possession of the United States, or the District of Columbia, service shall be made on at least one branch or agency so involved.

§ 747.12 Construction of time limits.

(a) *General rule.* In computing any period of time prescribed by this subpart, the date of the act or event from which the designated period of time begins to run is not included. The last day so computed is included unless it is a Saturday, Sunday, or Federal holiday. When the last day is a Saturday, Sunday, or Federal holiday, the period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Intermediate Saturdays, Sundays, and Federal holidays are included in the computation of time, except that, when the time period within which an act is to be performed is ten days or less, intermediate Saturdays, Sundays, and Federal holidays are not included.

(b) *When papers are deemed to be filed or served.* (1) Filing and service are deemed to be effective:

(i) In the case of personal service or same day commercial courier delivery, upon actual service;

(ii) In the case of overnight commercial delivery service, U.S. Express Mail delivery, or first class, registered, or certified mail, upon deposit in or delivery to an appropriate point of collection;

(iii) In the case of transmission by electronic media, as specified by the authority receiving the filing, in the case of filing, and as agreed among the parties, in the case of service.

(2) The effective filing and service dates specified in paragraph (b)(1) of this section may be modified by the NCUA Board or administrative law judge in the case of filing or by agreement of the parties in the case of service.

(c) *Calculation of time for service and filing of responsive papers.* Whenever a time limit is measured by a prescribed period from the service of any notice or paper, the applicable time limits are calculated as follows:

(1) If service is made by first class, registered or certified mail, add three days to the prescribed period;

(2) If service is made by express mail or overnight delivery service, add one day to the prescribed period;

(3) If service is made by electronic media transmission, add one day to the prescribed period, unless otherwise determined by the NCUA Board or the administrative law judge in the case of

filing, or by agreement among the parties in the case of service.

§ 747.13 Change of time limits.

Except as otherwise provided by law, the administrative law judge may, for good cause shown, extend the time limits prescribed by the Uniform Rules or by any notice or order issued in the proceedings. After the referral of the case to the NCUA Board pursuant to § 747.38, the NCUA Board may grant extensions of the time limits for good cause shown. Extensions may be granted upon the motion of a party after notice and opportunity to respond is afforded all non-moving parties, or upon the NCUA Board's or the administrative law judge's own motion.

§ 747.14 Witness fees and expenses.

Witnesses subpoenaed for testimony or depositions shall be paid the same fees for attendance and mileage as are paid in the United States district courts in proceedings in which the United States is a party, provided that, in the case of a discovery subpoena addressed to a party, no witness fees or mileage need be paid. Fees for witnesses shall be tendered in advance by the party requesting the subpoena, except that fees and mileage need not be tendered in advance where the NCUA is the party requesting the subpoena. The NCUA shall not be required to pay any fees to, or expenses of, any witness not subpoenaed by the NCUA.

§ 747.15 Opportunity for informal settlement.

Any respondent may, at any time in the proceeding, unilaterally submit to Enforcement Counsel written offers or proposals for settlement of a proceeding, without prejudice to the rights of any of the parties. No such offer or proposal shall be made to any NCUA representative other than Enforcement Counsel. Submission of a written settlement offer does not provide a basis for adjourning or otherwise delaying all or any portion of a proceeding under this part. No settlement offer or proposal, or any subsequent negotiation or resolution, is admissible as evidence in any proceeding.

§ 747.16 NCUA's right to conduct examination.

Nothing contained in this subpart limits in any manner the right of the NCUA to conduct any examination, inspection, or visitation of any institution or institution-affiliated party, or the right of the Agency to conduct or continue any form of investigation authorized by law.

§ 747.17 Collateral attacks on adjudicatory proceeding.

If an interlocutory appeal or collateral attack is brought in any court concerning all or any part of an adjudicatory proceeding, the challenged adjudicatory proceeding shall continue without regard to the pendency of that court proceeding. No default or other failure to act as directed in the adjudicatory proceeding within the times prescribed in this subpart shall be excused based on the pendency before any court of any interlocutory appeal or collateral attack.

§ 747.18 Commencement of proceeding and contents of notice.

(a) *Commencement of proceeding.* (1) A proceeding governed by this subpart is commenced by issuance of a notice by the NCUA Board.

(2) The notice must be served by the NCUA Board upon the respondent and given to any other appropriate financial institution supervisory authority where required by law.

(3) The notice must be filed with the OFIA.

(b) *Contents of notice.* The notice must set forth:

(1) The legal authority for the proceeding and for the NCUA's jurisdiction over the proceeding;

(2) A statement of the matters of fact or law showing that the NCUA is entitled to relief;

(3) A proposed order or prayer for an order granting the requested relief;

(4) The time, place, and nature of the hearing as required by law or regulation;

(5) The time within which to file an answer as required by law or regulation;

(6) The time within which to request a hearing as required by law or regulation; and

(7) That the answer and/or request for a hearing shall be filed with OFIA.

§ 747.19 Answer.

(a) *When.* Within 20 days of service of the notice, respondent shall file an answer as designated in the notice. In a civil money penalty proceeding, respondent shall also file a request for a hearing within 20 days of service of the notice.

(b) *Content of answer.* An answer must specifically respond to each paragraph or allegation of fact contained in the notice and must admit, deny, or state that the party lacks sufficient information to admit or deny each allegation of fact. A statement of lack of information has the effect of a denial. Denials must fairly meet the substance of each allegation of fact denied; general denials are not permitted. When a respondent denies part of an allegation, that part must be denied and the remainder specifically admitted. Any allegation of fact in the notice which is not denied in the answer must be deemed admitted for purposes of the proceeding. A respondent is not required to respond to the portion of a notice that constitutes the prayer for relief or proposed order. The answer must set forth affirmative defenses, if any, asserted by the respondent.

(c) *Default.*—(1) *Effect of failure to answer.* Failure of a respondent to file an answer required by this section within the time provided constitutes a waiver of his or her right to appear and contest the allegations in the notice. If no timely answer is filed, the administrative law judge, upon motion of the Enforcement Counsel, shall file with the NCUA Board a recommended decision containing the findings and the relief sought in the notice. Any final order issued by the NCUA Board based upon a respondent's failure to answer is deemed to be an order issued upon consent.

(2) *Effect of failure to request a hearing in civil money penalty proceedings.* If respondent fails to request a hearing as required by law within the time provided, the notice of assessment constitutes a final and unappealable order.

§ 747.20 Amended pleadings.

(a) *Amendments.* The notice or answer may be amended or supplemented at any stage of the proceeding by leave of the administrative law judge. Such leave will be freely given. The respondent shall answer an amended notice within the time remaining for the respondent's answer to the original notice, or within ten days after service of the amended notice, whichever period is longer, unless the NCUA Board or administrative law judge orders otherwise for good cause shown.

(b) *Amendments to conform to the evidence.* When issues not raised in the notice or answer are tried at the hearing by express or implied consent of the parties, they will be treated in all respects as if they had been raised in the notice or answer, and no formal amendments are required. If evidence is objected to at the hearing on the ground that it is not within the issues raised by the notice or answer, the administrative law judge may allow the notice or answer to be amended. The administrative law judge will do so freely when the determination of the merits of the action is served thereby and the objecting party fails to satisfy the administrative law judge that the

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admission of such evidence would unfairly prejudice that party's action or defense upon the merits. The administrative law judge may grant a continuance to enable the objecting party to meet such evidence.

§ 747.21 Failure to appear.

Failure of a respondent to appear in person at the hearing or by a duly authorized counsel constitutes a waiver of respondent's right to a hearing and is deemed an admission of the facts as alleged and consent to the relief sought in the notice. Without further proceedings or notice to the respondent, the administrative law judge shall file with the NCUA Board a recommended decision containing the findings and the relief sought in the notice.

§ 747.22 Consolidation and severance of actions.

(a) *Consolidation.* (1) On the motion of any party, or on the administrative law judge's own motion, the administrative law judge may consolidate, for some or all purposes, any two or more proceedings, if each such proceeding involves or arises out of the same transaction, occurrence or series of transactions or occurrences, or involves at least one common respondent or a material common question of law or fact, unless such consolidation would cause unreasonable delay or injustice.

(2) In the event of consolidation under paragraph (a)(1) of this section, appropriate adjustment to the prehearing schedule must be made to avoid unnecessary expense, inconvenience, or delay.

(b) *Severance.* The administrative law judge may, upon the motion of any party, sever the proceeding for separate resolution of the matter as to any respondent only if the administrative law judge finds that:

(1) Undue prejudice or injustice to the moving party would result from not severing the proceeding; and

(2) Such undue prejudice or injustice would outweigh the interests of judicial economy and expedition in the complete and final resolution of the proceeding.

§ 747.23 Motions.

(a) *In writing.* (1) Except as otherwise provided herein, an application or request for an order or ruling must be made by written motion.

(2) All written motions must state with particularity the relief sought and must be accompanied by a proposed order.

(3) No oral argument may be held on written motions except as otherwise directed by the administrative law judge. Written memorandum, briefs, affidavits or other relevant material or documents may be filed in support of or in opposition to a motion.

(b) *Oral motions.* A motion may be made orally on the record unless the administrative law judge directs that such motion be reduced to writing.

(c) *Filing of motions.* Motions must be filed with the administrative law judge, except that upon the filing of the recommended decision, motions must be filed with the NCUA Board.

(d) *Responses.* (1) Except as otherwise provided herein, within ten days after service of any written motion, or within such other period of time as may be established by the administrative law judge or the NCUA Board, any party may file a written response to a motion. The administrative law judge shall not rule on any oral or written motion before each party has had an opportunity to file a response.

(2) The failure of a party to oppose a written motion or an oral motion made on the record is deemed a consent by that party to the entry of an order substantially in the form of the order accompanying the motion.

(e) *Dilatory motions.* Frivolous, dilatory or repetitive motions are prohibited. The filing of such motions may form the basis for sanctions.

(f) *Dispositive motions.* Dispositive motions are governed by §§ 747.29 and 747.30.

§ 747.24 Scope of document discovery.

(a) *Limits on discovery.* (1) Parties to proceedings under this subpart may obtain document discovery through the production of documents, including writings, drawings, graphs, charts, photographs, recordings, and other data compilations from which information can be obtained, or translated, if necessary, by the parties through detection devices into reasonably usable form.

(2) Discovery by use of deposition is governed by subpart B of this part.

(b) *Relevance.* Parties may obtain document discovery regarding any matter, not privileged, which has material relevance to the merits of the pending action. It is not a ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to discovery of admissible evidence. The request may not be unreasonable, oppressive, excessive in scope or unduly burdensome.

(c) *Privileged matter.* Privileged documents are not discoverable. Privileges include the attorney-client privilege, work-product privilege, any government's or government agency's deliberative-process privilege, and any other privileges the Constitution, any applicable act of Congress, or the principles of common law provide.

(d) *Time limits.* All discovery, including all responses to discovery requests, shall be completed at least 20 days prior to the date scheduled for the commencement of the hearing, except as provided in the Local Rules. No exceptions to this time limit shall be permitted, unless the administrative law judge finds on the record that good cause exists for waiving the requirements of this paragraph.

§ 747.25 Request for document discovery from parties.

(a) *General rule.* Any party may serve on any other party a request to produce for inspection any discoverable documents which are in the possession, custody, or control of the party upon whom the request is served. The request must identify the documents to be produced either by individual item or by category, and must describe each item and category with reasonable particularity. Documents must be produced as they are kept in the usual course of business and shall be organized to correspond with the categories in the request.

(b) *Production or copying.* The request must specify a reasonable time, place, and manner for production and performing any related acts. In lieu of inspecting the documents, the requesting party may specify that all or some of the responsive documents are to be copied and the copies delivered to the requesting party. If copying of fewer than 250 pages is requested, the party to whom the request is addressed shall bear the cost of copying and shipping charges. If more than 250 pages of copying is requested, the requesting party shall pay for the copying, unless the parties agree otherwise, at the current per-page copying rate imposed by the NCUA's rules implementing the Freedom of Information Act (5 U.S.C. 552a) plus the cost of shipping.

(c) *Obligation to update responses.* A party who has responded to a discovery request with a response that was complete when made is not required to supplement the response to include documents thereafter acquired, unless the responding party learns that:

(1) The response was materially incorrect when made; or

(2) The response, though correct when made, is no longer true and a failure to amend the response is, in substance, a knowing concealment.

(d) *Motions to limit discovery.* (1) Any party that objects to a discovery request

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(d) *Time limits.* All discovery, including all responses to discovery requests, shall be completed at least 20 days prior to the date scheduled for the commencement of the hearing, except as provided in the Local Rules. No exceptions to this time limit shall be permitted, unless the administrative law judge finds on the record that good cause exists for waiving the requirements of this paragraph.

§ 747.25 Request for document discovery from parties.

(a) *General rule.* Any party may serve on any other party a request to produce for inspection any discoverable documents which are in the possession, custody, or control of the party upon whom the request is served. The request must identify the documents to be produced either by individual item or by category, and must describe each item and category with reasonable particularity. Documents must be produced as they are kept in the usual course of business and shall be organized to correspond with the categories in the request.

(b) *Production or copying.* The request must specify a reasonable time, place, and manner for production and performing any related acts. In lieu of inspecting the documents, the requesting party may specify that all or some of the responsive documents are to be copied and the copies delivered to the requesting party. If copying of fewer than 250 pages is requested, the party to whom the request is addressed shall bear the cost of copying and shipping charges. If more than 250 pages of copying is requested, the requesting party shall pay for the copying, unless the parties agree otherwise, at the current per-page copying rate imposed by the NCUA's rules implementing the Freedom of Information Act (5 U.S.C. 552a) plus the cost of shipping.

(c) *Obligation to update responses.* A party who has responded to a discovery request with a response that was complete when made is not required to supplement the response to include documents thereafter acquired, unless the responding party learns that:

(1) The response was materially incorrect when made; or

(2) The response, though correct when made, is no longer true and a failure to amend the response is, in substance, a knowing concealment.

(d) *Motions to limit discovery.* (1) Any party that objects to a discovery request

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may, within ten days of being served with such request, file a motion in accordance with the provisions of § 747.23 to strike or otherwise limit the request. If an objection is made to only a portion of an item or category in a request, the portion objected to shall be specified. Any objections not made in accordance with this paragraph and § 747.23 are waived.

(2) The party who served the request that is the subject of a motion to strike or limit may file a written response within five days of service of the motion. No other party may file a response.

(e) *Privilege.* At the time other documents are produced, all documents withheld on the grounds of privilege must be reasonably identified, together with a statement of the basis for the assertion of privilege.

(f) *Motions to compel production.* (1) If a party withholds any documents as privileged or fails to comply fully with a discovery request, the requesting party may, within ten days of the assertion of privilege or of the time the failure to comply becomes known to the requesting party, file a motion in accordance with the provisions of § 747.23 for the issuance of a subpoena compelling production.

(2) The party who asserted the privilege or failed to comply with the request may file a written response to a motion to compel within five days of service of the motion. No other party may file a response.

(g) *Ruling on motions.* After the time for filing responses pursuant to this section has expired, the administrative law judge shall rule promptly on all motions filed pursuant to this section. If the administrative law judge determines that a discovery request, or any of its terms, is unreasonable, unduly burdensome, excessive in scope, repetitive of previous requests or seeks to obtain privileged documents, he or she may modify the request, and may issue appropriate protective orders, upon such conditions as justice may require. The pendency of a motion to revoke or limit discovery or to compel production shall not be a basis for staying or continuing the proceeding, unless otherwise ordered by the administrative law judge.

(h) *Enforcing discovery subpoenas.* If the administrative law judge issues a subpoena compelling production of documents by a party, the subpoenaing party may, in the event of noncompliance and to the extent authorized by applicable law, apply to any appropriate United States district court for an order requiring compliance with the subpoena. A party's right to seek court enforcement of a subpoena shall not in any manner limit the sanctions that may be imposed by the administrative law judge against a party who fails to produce subpoenaed documents.

§ 747.26 Document subpoenas to nonparties.

(a) *General rules.* (1) Any party may apply to the administrative law judge for the issuance of a document discovery subpoena addressed to any person who is not a party to the proceeding. The application must contain a proposed document subpoena and a brief statement showing the general relevance and reasonableness of the scope of documents sought. The subpoenaing party shall specify a reasonable time, place, and manner for making production in response to the document subpoena.

(2) A party shall only apply for a document subpoena under this section within the time period during which such party could serve a discovery request under § 747.24(d). The party obtaining the document subpoena is responsible for serving it on the subpoenaed person and for serving copies on all parties. Document subpoenas may be served in any state, territory, or possession of the United States, the District of Columbia, or as otherwise provided by law.

(3) The administrative law judge shall promptly issue any document subpoena requested pursuant to this section. If the administrative law judge determines that the application does not set forth a valid basis for the issuance of the subpoena, or that any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may refuse to issue the subpoena or may issue it in a modified form upon such conditions as may be consistent with the Uniform Rules.

(b) *Motion to quash or modify.* (1) Any person to whom a document subpoena is directed may file a motion to quash or modify such subpoena, accompanied by a statement of the basis for quashing or modifying the subpoena. The movant shall serve the motion on all parties, and any party may respond to such motion within ten days of service of the motion.

(2) Any motion to quash or modify a document subpoena must be filed on the same basis, including the assertion of privilege, upon which a party could object to a discovery request under § 747.25(d), and during the same time limits during which such an objection could be filed.

(c) *Enforcing document subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or any order of the administrative law judge which directs compliance with all or any portion of a document subpoena, the subpoenaing party or any other aggrieved party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with so much of the document subpoena as the administrative law judge has not quashed or modified. A party's right to seek court enforcement of a document subpoena shall in no way limit the sanctions that may be imposed by the administrative law judge on a party who induces a failure to comply with subpoenas issued under this section.

§ 747.27 Deposition of witness unavailable for hearing.

(a) *General rules.* (1) If a witness will not be available for the hearing, a party desiring that witness' testimony for the record may apply in accordance with the procedures set forth in paragraph (a)(2) of this section, to the administrative law judge for the issuance of a subpoena, including a subpoena duces tecum, requiring the attendance of the witness at a deposition. The administrative law judge may issue a deposition subpoena under this section upon showing that:

(i) The witness will be unable to attend or may be prevented from attending the hearing because of age, sickness or infirmity, or will otherwise be unavailable;

(ii) The witness' unavailability was not procured or caused by the subpoenaing party;

(iii) The testimony is reasonably expected to be material; and

(iv) Taking the deposition will not result in any undue burden to any other party and will not cause undue delay of the proceeding.

(2) The application must contain a proposed deposition subpoena and a brief statement of the reasons for the issuance of the subpoena. The subpoena must name the witness whose deposition is to be taken and specify the time and place for taking the deposition. A deposition subpoena may require the witness to be deposed at any place within the country in which that witness resides or has a regular place of employment or such other convenient place as the administrative law judge shall fix.

(3) Any requested subpoena that sets forth a valid basis for its issuance must be promptly issued, unless the administrative law judge on his or her own motion, requires a written response or requires attendance at a conference

concerning whether the requested subpoena should be issued.

(4) The party obtaining a deposition subpoena is responsible for serving it on the witness and for serving copies on all parties. Unless the administrative law judge orders otherwise, no deposition under this section shall be taken on fewer than ten days' notice to the witness and all parties. Deposition subpoenas may be served in any state, territory, possession of the United States, or the District of Columbia, on any person or company doing business in any state, territory, possession of the United States, or the District of Columbia, or as otherwise permitted by law.

(b) *Objections to deposition subpoenas.* (1) The witness and any party who has not had an opportunity to oppose a deposition subpoena issued under this section may file a motion with the administrative law judge to quash or modify the subpoena prior to the time for compliance specified in the subpoena, but not more than ten days after service of the subpoena.

(2) A statement of the basis for the motion to quash or modify a subpoena issued under this section must accompany the motion. The motion must be served on all parties.

(c) *Procedure upon deposition.* (1) Each witness testifying pursuant to a deposition subpoena must be duly sworn, and each party shall have the right to examine the witness. Objections to questions or documents must be in short form, stating the grounds for the objection. Failure to object to questions or documents is not deemed a waiver except where the ground for the objection might have been avoided if the objection had been timely presented. All questions, answers, and objections must be recorded.

(2) Any party may move before the administrative law judge for an order compelling the witness to answer any questions the witness has refused to answer or submit any evidence the witness has refused to submit during the deposition.

(3) The deposition must be subscribed by the witness, unless the parties and the witness, by stipulation, have waived the signing, or the witness is ill, cannot be found, or has refused to sign. If the deposition is not subscribed by the witness, the court reporter taking the deposition shall certify that the transcript is a true and complete transcript of the deposition.

(d) *Enforcing subpoenas.* If a subpoenaed person fails to comply with any order of the administrative law judge which directs compliance with all or any portion of a deposition subpoena under paragraph (b) or (c)(3) of this section, the subpoenaing party or other aggrieved party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with the portions of the subpoena that the administrative law judge has ordered enforced. A party's right to seek court enforcement of a deposition subpoena in no way limits the sanctions that may be imposed by the administrative law judge on a party who fails to comply with, or procures a failure to comply with, a subpoena issued under this section.

§ 747.28 Interlocutory review.

(a) *General rule.* The NCUA Board may review a ruling of the administrative law judge prior to the certification of the record to the NCUA Board only in accordance with the procedures set forth in this section and § 747.23.

(b) *Scope of review.* The NCUA Board may exercise interlocutory review of a ruling of the administrative law judge if the NCUA Board finds that:

(1) The ruling involves a controlling question of law or policy as to which substantial grounds exist for a difference of opinion;

(2) Immediate review of the ruling may materially advance the ultimate termination of the proceeding;

(3) Subsequent modification of the ruling at the conclusion of the proceeding would be an inadequate remedy; or

(4) Subsequent modification of the ruling would cause unusual delay or expense.

(c) *Procedure.* Any request for interlocutory review shall be filed by a party with the administrative law judge within ten days of his or her ruling and shall otherwise comply with § 747.23. Any party may file a response to a request for interlocutory review in accordance with § 747.23(d). Upon the expiration of the time for filing all responses, the administrative law judge shall refer the matter to the NCUA Board for final disposition.

(d) *Suspension of proceeding.* Neither a request for interlocutory review nor any disposition of such a request by the NCUA Board under this section suspends or stays the proceeding unless otherwise ordered by the administrative law judge or the NCUA Board.

§ 747.29 Summary disposition.

(a) *In general.* The administrative law judge shall recommend that the NCUA Board issue a final order granting a motion for summary disposition if the undisputed pleaded facts, admissions, affidavits, stipulations, documentary evidence, matters as to which official notice may be taken, and any other evidentiary materials properly submitted in connection with a motion for summary disposition show that:

(1) There is no genuine issue as to any material fact; and

(2) The moving part is entitled to a decision in its favor as a matter of law.

(b) *Filing of motions and responses.* (1) Any party who believes that there is no genuine issue of material fact to be determined and that he or she is entitled to a decision as a matter of law may move at any time for summary disposition in its favor of all or any part of the proceeding. Any party, within 20 days after service of such a motion, or within such time period as allowed by the administrative law judge, may file a response to such motion.

(2) A motion for summary disposition must be accompanied by a statement of the material facts as to which the moving party contends there is no genuine issue. Such motion must be supported by documentary evidence, which may take the form of admissions in pleadings, stipulations, depositions, investigatory depositions, transcripts, affidavits and any other evidentiary materials that the moving party contends support his or her position. The motion must also be accompanied by a brief containing the points and authorities in support of the contention of the moving party. Any party opposing a motion for summary disposition must file a statement setting forth those material facts as to which he or she contends a genuine dispute exists. Such opposition must be supported by evidence of the same type as that submitted with the motion for summary disposition and a brief containing the points and authorities in support of the contention that summary disposition would be inappropriate.

(c) *Hearing on motion.* At the request of any party or on his or her own motion, the administrative law judge may hear oral argument on the motion for summary disposition.

(d) *Decision on motion.* Following receipt of a motion for summary disposition and all responses thereto, the administrative law judge shall determine whether the moving party is entitled to summary disposition. If the administrative law judge determines that summary disposition is warranted, the administrative law judge shall submit a recommended decision to that effect to the NCUA Board. If the administrative law judge finds that no party is entitled to summary disposition,

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(1) There is no genuine issue as to any material fact; and

(2) The moving part is entitled to a decision in its favor as a matter of law.

(b) *Filing of motions and responses.* (1) Any party who believes that there is no genuine issue of material fact to be determined and that he or she is entitled to a decision as a matter of law may move at any time for summary disposition in its favor of all or any part of the proceeding. Any party, within 20 days after service of such a motion, or within such time period as allowed by the administrative law judge, may file a response to such motion.

(2) A motion for summary disposition must be accompanied by a statement of the material facts as to which the moving party contends there is no genuine issue. Such motion must be supported by documentary evidence, which may take the form of admissions in pleadings, stipulations, depositions, investigatory depositions, transcripts, affidavits and any other evidentiary materials that the moving party contends support his or her position. The motion must also be accompanied by a brief containing the points and authorities in support of the contention of the moving party. Any party opposing a motion for summary disposition must file a statement setting forth those material facts as to which he or she contends a genuine dispute exists. Such opposition must be supported by evidence of the same type as that submitted with the motion for summary disposition and a brief containing the points and authorities in support of the contention that summary disposition would be inappropriate.

(c) *Hearing on motion.* At the request of any party or on his or her own motion, the administrative law judge may hear oral argument on the motion for summary disposition.

(d) *Decision on motion.* Following receipt of a motion for summary disposition and all responses thereto, the administrative law judge shall determine whether the moving party is entitled to summary disposition. If the administrative law judge determines that summary disposition is warranted, the administrative law judge shall submit a recommended decision to that effect to the NCUA Board. If the administrative law judge finds that no party is entitled to summary disposition,

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he or she shall make a ruling denying the motion.

§ 747.30 Partial summary disposition.

If the administrative law judge determines that a party is entitled to summary disposition as to certain claims only, he or she shall defer submitting a recommended decision as to those claims. A hearing on the remaining issues must be ordered. Those claims for which the administrative law judge has determined that summary disposition is warranted will be addressed in the recommended decision filed at the conclusion of the hearing.

§ 747.31 Scheduling and prehearing conferences.

(a) *Scheduling conference.* Within 30 days of service of the notice or order commencing a proceeding or such order time as parties may agree, the administrative law judge shall direct counsel for all parties to meet with him or her in person at a specified time and place prior to the hearing or to confer by telephone for the purpose of scheduling the recourse and conduct of the proceeding. This meeting or telephone conference is called a "scheduling conference." The identification of potential witnesses, the time for and manner of discovery, and the exchange of any prehearing materials including witness lists, statements of issues, stipulations, exhibits and any other materials may also be determined at the scheduling conference.

(b) *Prehearing conferences.* The administrative law judge may, in addition to the scheduling conference, on his or her own motion or at the request of any party, direct counsel for the parties to meet with him or her (in person or by telephone) at a prehearing conference to address any or all of the following:

(1) Simplification and clarification of the issues;

(2) Stipulations, admissions of fact, and the contents, authenticity and admissibility into evidence of documents;

(3) Matters of which official notice may be taken;

(4) Limitation of the number of witnesses;

(5) Summary disposition of any or all issues;

(6) Resolution of discovery issues or disputes;

(7) Amendments to pleadings; and

(8) Such other matters as may aid in the orderly disposition of the proceeding.

(c) *Transcript.* The administrative law judge, in his or her discretion, may require that a scheduling or prehearing conference be recorded by a court reporter. A transcript of the conference and any materials filed, including orders, becomes part of the record of the proceeding. A party may obtain a copy of the transcript at its expense.

(d) *Scheduling or prehearing orders.* At or within a reasonable time following the conclusion of the scheduling conference or any prehearing conference, the administrative law judge shall serve on each party an order setting forth any agreements reached and any procedural determinations made.

§ 747.32 Prehearing submissions.

(a) Within the time set by the administrative law judge, but in no case later than 14 days before the start of the hearing, each party shall serve on every other party, his or her:

(1) Prehearing statement;

(2) Final list of witnesses to be called to testify at the hearing, including name and address of each witness and a short summary of the expected testimony of each witness;

(3) List of the exhibits to be introduced at the hearing along with a copy of each exhibit; and

(4) Stipulations of fact, if any.

(b) *Effect of failure to comply.* No witness may testify and no exhibits may be introduced at the hearing if such witness or exhibit is not listed in the prehearing submissions pursuant to paragraph (a) of this section, except for good cause shown.

§ 747.33 Public hearings.

(a) *General rule.* All hearings shall be open to the public, unless the Agency, in its discretion, determines that holding an open hearing would be contrary to the public interest. Within 20 days of service of the notice or, in the case of change-in-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)), within 20 days from service of the hearing order, any respondent may file with the NCUA Board a request for a private hearing, and any party may file a pleading in reply to such a request. Such requests and replies are governed by § 747.23. Failure to file a request or a reply is deemed a waiver of any objections regarding whether the hearing will be public or private.

(b) *Filing document under seal.* Enforcement Counsel, in his or her discretion, may file any document or part of a document under seal if disclosure of the document would be contrary to the public interest. The administrative law judge shall take all appropriate steps to preserve the confidentiality of such documents or parts thereof, including closing portions of the hearing to the public.

§ 747.34 Hearing subpoenas.

(a) *Issuance.* (1) Upon application of a party showing general relevance and reasonableness of scope of the testimony or other evidence sought, the administrative law judge may issue a subpoena or a subpoena duces tecum requiring the attendance of a witness at the hearing or the production of documentary or physical evidence at such hearing. The application for a hearing subpoena must also contain a proposed subpoena specifying the attendance of a witness or the production of evidence from any state, territory, or possession of the United States, the District of Columbia or as otherwise provided by law at any designated place where the hearing is being conducted.

(2) A party may apply for a hearing subpoena at any time before the commencement of a hearing. During a hearing, such applications may be made orally on the record before the administrative law judge. The party making the application shall serve a copy of the application and the proposed subpoena on every other party to the proceeding.

(3) The administrative law judge shall promptly issue any hearing subpoena requested pursuant to this section. If the administrative law judge determines that the application does not set forth a valid basis for the issuance of the subpoena, or that any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may refuse to issue the subpoena or may issue it in a modified form upon any conditions consistent with these rules.

(b) *Motion to quash or modify.* (1) Any person to whom a hearing subpoena is directed may file a motion to quash or modify such subpoena, accompanied by a statement of the basis for quashing or modifying the subpoena. The movant shall serve the motion on all parties, and any party may respond to such motion within ten days of service of the motion.

(2) Any motion to quash or modify a hearing subpoena must be filed prior to the time specified in the subpoena for compliance, but not more than ten days after the date of service of the subpoena upon the movant.

(c) *Enforcing subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or any order of the administrative law judge which directs compliance with all or any portion of a document subpoena, the subpoenaing party or any other aggrieved party may

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seek enforcement of the subpoena pursuant to § 747.26(c).

§ 747.35 Conduct of hearings.

(a) *General rules.* (1) Hearings shall be conducted so as to provide a fair and expeditious presentation of the relevant disputed issues. Each party has the right to present its case or defense by oral and documentary evidence and to conduct such cross examination as may be required for full disclosure of the facts.

(2) *Order of hearing.* Enforcement Counsel shall present its case-in-chief first, unless otherwise ordered by the administrative law judge, or unless otherwise expressly specified by law or regulation. Enforcement Counsel shall be the first party to present an opening statement and a closing statement, and may make a rebuttal statement after the respondent's closing statement. If there are multiple respondents, respondents may agree among themselves as to their order of presentation of their cases, but if they do not agree the administrative law judge shall fix the order.

(3) *Stipulations.* Unless the administrative law judge directs otherwise, all stipulations of fact and law previously agreed upon by the parties, and all documents, the admissibility of which have been previously stipulated, will be admitted into evidence upon commencement of the hearing.

(b) *Transcript.* The hearing must be recorded and transcribed. The transcript shall be made available to any party upon payment of the cost thereof. The administrative law judge shall have authority to order the record corrected, either upon motion to correct, upon stipulation of the parties, or following notice to the parties upon the administrative law judge's own motion. The administrative law judge shall serve notice upon all parties that the certified transcript, together with all hearing exhibits and exhibits introduced but not admitted into evidence at the hearing, has been filed.

§ 747.36 Evidence.

(a) *Admissibility.* (1) Except as is otherwise set forth in this section, relevant, material, and reliable evidence that is not unduly repetitive is admissible to the fullest extent authorized by the Administrative Procedure Act and other applicable law.

(2) Evidence that would be admissible under the Federal Rules of Evidence is admissible in a proceeding conducted pursuant to this subpart.

(3) Evidence that would be inadmissible under the Federal Rules of Evidence may not be deemed or ruled to be inadmissible in a proceeding conducted pursuant to this subpart if such evidence is relevant, material, reliable and not unduly repetitive.

(b) *Official notice.* (1) Official notice may be taken of any material fact which may be judicially noticed by a United States district court and any material information in the official public records of any Federal or state government agency.

(2) All matters officially noticed by the administrative law judge or NCUA Board shall appear on the record.

(3) If official notice is requested or taken of any material fact, the parties, upon timely request, shall be afforded an opportunity to object.

(c) *Documents.* (1) A duplicate copy of a document is admissible to the same extent as the original, unless a genuine issue is raised as to whether the copy is in some material respect not a true and legible copy of the original.

(2) Subject to the requirements of paragraph (a) of this section, any document, including a report of examination, supervisory activity, inspection or visitation, prepared by an appropriate Federal financial institution regulatory agency or by a state regulatory agency, is admissible either with or without a sponsoring witness.

(3) Witnesses may use existing or newly created charts, exhibits, calendars, calculations, outlines or other graphic material to summarize, illustrate, or simplify the presentation of testimony. Such materials may, subject to the administrative law judge's discretion, be used with or without being admitted into evidence.

(d) *Objections.* (1) Objections to the admissibility of evidence must be timely made and rulings on all objections must appear on the record.

(2) When an objection to a question or line of questioning propounded to a witness is sustained, the examining counsel may make a specific proffer on the record of what he or she expected to prove by the expected testimony of the witness, either by representation of counsel or by direct interrogation of the witness.

(3) The administrative law judge shall retain rejected exhibits, adequately marked for identification, for the record, and transmit such exhibits to the NCUA Board.

(4) Failure to object to admission of evidence or to any ruling constitutes a waiver of the objection.

(e) *Stipulations.* The parties may stipulate as to any relevant matters of fact or the authentication of any relevant documents. Such stipulations must be received in evidence at a hearing, and are binding on the parties with respect to the matters therein stipulated.

(f) *Depositions of unavailable witnesses.* (1) If a witness is unavailable to testify at a hearing, and that witness has testified in a deposition to which all parties in a proceeding had notice and an opportunity to participate, a party may offer as evidence all or any part of the transcript of the deposition, including deposition exhibits, if any.

(2) Such deposition transcript is admissible to the same extent that testimony would have been admissible had that person testified at the hearing, provided that if a witness refused to answer proper questions during the depositions, the administrative law judge may, on that basis, limit the admissibility of the deposition in any manner that justice requires.

(3) Only those portions of a deposition received in evidence at the hearing constitute a part of the record.

§ 747.37 Proposed findings and conclusions.

(a) *Proposed findings and conclusions and supporting briefs.* (1) Any party may file with the administrative law judge proposed findings of fact, proposed conclusions of law, and a proposed order within 30 days after the parties have received notice that the transcript has been filed with the administrative law judge, unless otherwise ordered by the administrative law judge.

(2) Proposed findings and conclusions must be supported by citation to any relevant portions of the record. A post-hearing brief may be filed in support of proposed findings and conclusions, either as part of the same document or in a separate document. Any party who fails to file timely with the administrative law judge any proposed finding or conclusion is deemed to have waived the right to raise in any subsequent filing or submission any issue not addressed in such party's proposed finding or conclusion.

(b) *Reply briefs.* Reply briefs may be filed within 15 days after the date on which the parties' proposed findings, conclusions, and order are due. Reply briefs must be strictly limited to responding to new matters, issues, or arguments raised in another party's papers. A party who has not filed proposed findings of fact and conclusions of law or a post-hearing brief may not file a reply brief.

(c) *Simultaneous filing required.* The administrative law judge shall not order the filing by any party of any brief or reply brief in advance of the other party's filing of its brief.

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(2) Such deposition transcript is admissible to the same extent that testimony would have been admissible had that person testified at the hearing, provided that if a witness refused to answer proper questions during the depositions, the administrative law judge may, on that basis, limit the admissibility of the deposition in any manner that justice requires.

(3) Only those portions of a deposition received in evidence at the hearing constitute a part of the record.

§ 747.37 Proposed findings and conclusions.

(a) *Proposed findings and conclusions and supporting briefs.* (1) Any party may file with the administrative law judge proposed findings of fact, proposed conclusions of law, and a proposed order within 30 days after the parties have received notice that the transcript has been filed with the administrative law judge, unless otherwise ordered by the administrative law judge.

(2) Proposed findings and conclusions must be supported by citation to any relevant portions of the record. A post-hearing brief may be filed in support of proposed findings and conclusions, either as part of the same document or in a separate document. Any party who fails to file timely with the administrative law judge any proposed finding or conclusion is deemed to have waived the right to raise in any subsequent filing or submission any issue not addressed in such party's proposed finding or conclusion.

(b) *Reply briefs.* Reply briefs may be filed within 15 days after the date on which the parties' proposed findings, conclusions, and order are due. Reply briefs must be strictly limited to responding to new matters, issues, or arguments raised in another party's papers. A party who has not filed proposed findings of fact and conclusions of law or a post-hearing brief may not file a reply brief.

(c) *Simultaneous filing required.* The administrative law judge shall not order the filing by any party of any brief or reply brief in advance of the other party's filing of its brief.

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§ 747.38 Recommended decision and filing of record.

Within 45 days after expiration of the time allowed for filing reply briefs under § 747.37(b), the administrative law judge shall file with and certify to the NCUA Board for decision the record of the proceeding. The record must include the administrative law judge's recommended decision, recommended findings of fact, recommended conclusions of law, and proposed order; all prehearing and hearing transcripts, exhibits, and rulings; and the motions, briefs, memoranda, and other supporting papers filed in connection with the hearing. The administrative law judge shall serve upon each party the recommended decision, findings, conclusions, and proposed order.

§ 747.39 Exceptions to recommended decision.

(a) *Filing exceptions.* Within 30 days after service of the recommended decision, findings, conclusions, and proposed order under § 747.38, a party may file with the NCUA Board written exceptions to the administrative law judge's recommended decision, findings, conclusions or proposed order, to the admission or exclusion of evidence, or to the failure of the administrative law judge to make a ruling proposed by a party. A supporting brief may be filed at the time the exceptions are filed, either as part of the same document or in a separate document.

(b) *Effect of failure to file or raise exceptions.* (1) Failure of a party to file exceptions to those matters specified in paragraph (a) of this section within the time prescribed is deemed a waiver of objection thereto.

(2) No exception need be considered by the NCUA Board if the party taking exception had an opportunity to raise the same objection, issue, or argument before the administrative law judge and failure to do so.

(c) *Contents.* (1) All exceptions and briefs in support of such exceptions must be confined to the particular matters in, or omissions from, the administrative law judge's recommendations to which that party takes exception.

(2) All exceptions and briefs in support of exceptions must set forth page or paragraph references to the specific parts of the administrative law judge's recommendations to which exception is taken, the page or paragraph references to those portions of the record relied upon to support each exception, and the legal authority relied upon to support each exception.

§ 747.40 Review by the NCUA Board.

(a) *Notice of submission to NCUA Board.* When the NCUA Board determines that the record in the proceeding is complete, the NCUA Board shall serve notice upon the parties that the proceedings has been submitted to the NCUA Board for final decision.

(b) *Oral argument before NCUA Board.* Upon the initiative of the NCUA Board or on the written request of any party filed with the NCUA Board within the time for filing exceptions, the NCUA Board may order and hear oral argument on the recommended findings, conclusions, decision, and order of the administrative law judge. A written request by a party must show good cause for oral argument and state reasons why arguments cannot be presented adequately in writing. A denial of a request for oral argument may be set forth in the NCUA Board's final decision. Oral argument before the NCUA Board must be on the record.

(c) *Final Decision of NCUA Board.* (1) Decisional employees may advise and assist the NCUA Board in the consideration and disposition of the case. The final decision of the NCUA Board will be based upon review of the entire record of the proceeding, except that the NCUA Board may limit the issues to be reviewed to those findings and conclusions to which opposing arguments or exceptions have been filed by the parties.

(2) The NCUA Board shall render a final decision within 90 days after notification of the parties that the case has been submitted for final decision, or 90 days after oral argument, whichever is later, unless the NCUA Board orders that the action or any aspect thereof be remanded to the administrative law judge for further proceedings. Copies of the final decision and order of the NCUA Board shall be served upon each party to the proceeding, upon other persons required by statute, and, if directed by the NCUA Board or required by statute, upon any appropriate state or Federal supervisory authority.

§ 747.41 Stays pending judicial review.

The commencement of proceedings for judicial review of a final decision and order of the NCUA Board may not, unless specifically ordered by the NCUA Board or a reviewing court, operate as a stay of any order issued by the NCUA Board. The NCUA Board may, in its discretion, and on such terms as it finds just, stay the effectiveness of all or any part of its order pending a final decision on a petition for review of that order.

Subpart B—Local Rules of Practice and Procedure

§ 747.100 Discovery limitations.

(a) Parties to a proceeding set forth either at § 747.1 of subpart A or in subpart C, E or G of this part may obtain discovery only through the production of documents. No other form of discovery shall be allowed.

(b) In the event that a person producing documents pursuant to a document subpoena is permitted to be deposed, all questioning shall be strictly limited to the identification of documents produced by that person and a reasonable examination to determine whether the subpoenaed person made an adequate search for, and has produced, all subpoenaed documents.

Subpart C—Local Rules and Procedures Applicable to Proceedings for the Involuntary Termination of Insured Status

§ 747.201 Scope.

Under the authority of section 206(b) of the FCUA (12 U.S.C. 1786(b)), the NCUA Board may terminate the insured status of an insured credit union upon the grounds set forth therein and enumerated in § 747.202. The procedure for terminating the insured status of an insured credit union as therein prescribed will be followed and hearings required thereunder will be conducted in accordance with the rules and procedures set forth in this subpart and subpart A of this part. To the extent any rule or procedure of subpart A is inconsistent with a rule or procedure prescribed in this subpart C, subpart C shall control.

§ 747.202 Grounds for termination of insurance.

The NCUA Board may institute proceedings to terminate the insured status of an insured credit union whenever it determines that an insured credit union is:

(a) Engaging or has engaged in unsafe or unsound practices in conducting its business;

(b) In unsafe or unsound condition to continue as an insured credit union; or

(c) Violating or has violated any applicable law, rule, regulation, order, written condition imposed by the NCUA Board in response to any application or request of the credit union, or any written agreement entered into with the NCUA Board.

§ 747.203 Notice of charges.

(a) Whenever the NCUA Board determines that grounds for termination of insured status exists, it will, for the purpose of securing correction of errant or illegal conditions, serve a notice of charges upon the concerned credit union. This notice will contain a statement describing the unsafe or unsound practices, condition or the relevant violations.

(b) In the case of an insured State-chartered credit union, the NCUA Board shall send a copy of the Notice of Charges to the appropriate State authority, if any, having supervision over the credit union.

§ 747.204 Notice of intention to terminate insured status.

Unless correction of the practices, condition, or violations set forth in the Notice of Charges is made within 120 days after service of such statement, or within a shorter period of not less than 20 days after such service as the NCUA Board may require in any case where it determines that the insurance risk with respect to such credit union could be unduly jeopardized by further delay or as the appropriate State supervisory authority shall require in the case of an insured State-chartered credit union, the Board, if it determines to proceed further, shall give to the credit union not less than 30 days written notice of its intent to terminate the status of the credit union as an insured credit union. The notice shall contain a statement of the facts constituting the alleged unsafe or unsound practices or conditions or violations on which a hearing will be held. Such hearing shall commence not earlier than 30 days nor later than 60 days after the date of service of such notice upon the credit union, unless an earlier or later date is set by the NCUA Board at the request of the credit union.

§ 747.205 Order terminating insured status.

If, upon the record of the hearing held pursuant to § 747.204, the NCUA Board finds that any unsafe or unsound practice or condition or violation specified in the notice has been established and has not been corrected within the time prescribed under § 747.204, the NCUA Board may issue and serve upon the credit union an order terminating its status as an insured credit union on a date subsequent to the date of such finding and subsequent to the expiration of the time specified in the Notice.

§ 747.206 Consent to termination of insured status.

Unless the credit union appears at the hearing designated in the notice of hearing by a duly authorized representative, it will be deemed to have consented to the termination of its status as an insured credit union. In the event the credit union fails to so appear at such hearing, the administrative law judge shall forthwith report the matter to the NCUA Board and the NCUA Board may thereupon issue an order terminating the credit union's insured status.

§ 747.207 Notice of termination of insured status.

Prior to the effective date of the termination of the insured status of an insured credit union under section 206(b) of the FCUA (12 U.S.C. 1786(b)) and at such time as the Board shall specify, the credit union shall mail to each member at his or her last address of record on the books of the credit union, and publish in not less than two issues of a local newspaper of general circulation, notices of the termination of its insured status, and the credit union shall furnish the NCUA Board with proof of publication of such notice. The notice shall be as follows:

NOTICE

(Date)

1. The status of the _____ as an insured credit union under the provisions of the Federal Credit Union Act, will terminate as of the close of business on the ____ day of ____;

2. Any deposits made by you after that date, either new deposits or additions to existing accounts, will not be insured by the National Credit Union Administration;

3. Accounts in the credit union on the ____ day of ____, ____ up to a maximum of $100,000 for each member, will continue to be insured, as provided by the Federal Credit Union Act, for one (1) years after the close of business on the ____ day of ____, ____: *Provided, however,* That any withdrawals after the close of business on the day of ____, ____; will reduce the insurance coverage by the amount of such withdrawals.

(Name of Credit Union)
(Address)

§ 747.208 Duties after termination.

(a) After the termination of the insured status of any credit union under section 206(b) of the FCUA (12 U.S.C. 1786(b)), insurance of its member accounts to the extent they were insured on the effective date of such termination, less any amounts thereafter withdrawn which reduce the accounts below the amount covered by insurance on the effective date of such termination, shall continue for a period of one year, but no shares issued by the credit union or deposits made after the date of such termination shall be insured by the NCUA Board.

(b) The credit union shall continue to pay premiums to the NCUA Board during such period and the Board shall have the right to examine the credit union from time to time during the period. The credit union shall, in all other respects, be subject to the duties and obligations of an insured credit union during the one year period. If the credit union is closed for liquidation within this period, the Board shall have the same powers and rights with respect to such credit union as in the case of an insured credit union.

Subpart D—Local Rules and Procedures Applicable to Suspensions and Prohibitions Where Felony Charged

§ 747.301 Scope.

The rules and procedures set forth in this subpart are applicable to informal proceedings conducted by the NCUA Board, or a Presiding Officer designated by the Board, pursuant to section 206(i) of the FCUA (12 U.S.C. 1786(i)), to suspend, remove and/or prohibit from office or from further participation any institution-affiliated party of an insured credit union who:

(a) Is charged in a state, Federal or territorial information or indictment or complaint with committing or participating in a crime involving dishonesty or breach of trust, which crime is punishable by imprisonment for a term exceeding one year under state or Federal law; or

(b) Enters a pretrial diversion or other similar program as result of being charged in such information or indictment or complaint with participating or committing such crime; or

(c) Is convicted of such crime.

Subpart A of this part does not apply to proceedings under this subpart.

§ 747.302 Rules of practice; remainder of board of directors.

Except as otherwise specifically provided in this subpart, the following provisions shall apply to proceedings conducted under this subpart:

(a)(1) *Power of attorney and notice of appearance.* Any person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia may represent others before the NCUA Board or Presiding Officer designated by the NCUA Board upon filing with the NCUA Board a written declaration that he or she is currently qualified as provided by this paragraph, and is authorized to represent the particular party or whose behalf he acts. Any other person desiring to appear before or transact business with the NCUA Board in a representative capacity may be required to file with the NCUA Board a power of

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Subpart D—Local Rules and Procedures Applicable to Suspensions and Prohibitions Where Felony Charged

§ 747.301 Scope.

The rules and procedures set forth in this subpart are applicable to informal proceedings conducted by the NCUA Board, or a Presiding Officer designated by the Board, pursuant to section 206(i) of the FCUA (12 U.S.C. 1786(i)), to suspend, remove and/or prohibit from office or from further participation any institution-affiliated party of an insured credit union who:

(a) Is charged in a state, Federal or territorial information or indictment or complaint with committing or participating in a crime involving dishonesty or breach of trust, which crime is punishable by imprisonment for a term exceeding one year under state or Federal law; or

(b) Enters a pretrial diversion or other similar program as result of being charged in such information or indictment or complaint with participating or committing such crime; or

(c) Is convicted of such crime.

Subpart A of this part does not apply to proceedings under this subpart.

§ 747.302 Rules of practice; remainder of board of directors.

Except as otherwise specifically provided in this subpart, the following provisions shall apply to proceedings conducted under this subpart:

(a)(1) *Power of attorney and notice of appearance.* Any person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia may represent others before the NCUA Board or Presiding Officer designated by the NCUA Board upon filing with the NCUA Board a written declaration that he or she is currently qualified as provided by this paragraph, and is authorized to represent the particular party or whose behalf he acts. Any other person desiring to appear before or transact business with the NCUA Board in a representative capacity may be required to file with the NCUA Board a power of

attorney showing his or her authority to act in such capacity, and he or she may be required to show to the satisfaction of the NCUA Board the he or she has the requisite qualifications. Attorneys and representatives of parties to proceedings shall file a written notice of appearance with the NCUA Board or with the Presiding Officer designated by the NCUA Board.

(2) *Summary suspension.* Contemptuous conduct by any person at an argument before the NCUA Board or at the hearing before a Presiding Officer shall be grounds for exclusion therefrom and suspension for the duration of the argument or hearing.

(b)(1) *Notice of hearing.* Whenever a hearing within the scope of this subpart is ordered by the NCUA Board, a notice of hearing shall be given by the NCUA Board to the party afforded the hearing and to any appropriate state supervisory authority. The notice shall state the time, place, and nature of the hearing and the legal authority and jurisdiction under which the hearing is to be held, and shall contain a statement of the matters of fact or law constituting the grounds for the hearing. It shall be delivered by personal service, by registered or certified mail to the last known address, or by other appropriate means, not later than 30 nor earlier than 60 days before the hearing.

(2) *Party.* The term "party" means a person or agency named or admitted as a party, or any person or agency who has filed a written request and is entitled as of right to be admitted as a party; but a person or agency may be admitted for a limited purpose.

(c)(1) *Computation of time.* In computing any period of time prescribed or allowed by this subpart, the date of the act, event or default from which the designated period of time begins to run is not to be included. The last day so computed shall be included, unless it is a Saturday, Sunday or legal holiday in the District of Columbia, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, nor such legal holiday. Intermediate Saturdays, Sundays, and legal holidays shall be included in the computation unless the time within which the act is to be performed is ten days or less in which event Saturdays, Sundays, and legal holidays shall not be included.

(2) *Service by mail.* Whenever any party has the right or is required to do some act or take some proceeding, within a period of time prescribed in this subpart, after the service upon him of any document or other paper of any kind, and such service is made by mail, three days shall be added to the prescribed period from the date when the matter served is deposited in the U.S. mail.

(d) *Nonpublication of submissions.* Unless and until otherwise ordered by the NCUA Board, the notice of hearing, the transcript, written materials submitted during the hearing, the Presiding Officer's recommendation to the NCUA Board and any other papers filed in connection with a hearing under this subpart, shall not be made public, and shall be for the confidential use only of the NCUA Board, the Presiding Officer, the parties and appropriate authorities.

(e) *Remainder of board of directors.* (1) If at any time, because of the suspension of one or more directors pursuant to this subpart, there shall be on the board of directors of an insured credit union less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum on the board of directors.

(2) In the event all of the directors of an insured credit union are suspended pursuant to this subpart, the NCUA Board shall appoint persons to serve temporarily as directors in their place pending the termination of such suspensions, or until such time as those who have been suspended cease to be directors of the credit union and their respective successors have been elected by the members at an annual or special meeting and have taken office.

(3) Directors appointed temporarily by the NCUA Board pursuant to paragraph (e)(2) of this section, shall, within 30 days following their appointment, call a special meeting for the election of new directors, unless during such 30-day period—

(i) the regular annual meeting is convened; or

(ii) the suspensions giving rise to the appointment of temporary directors are terminated.

§ 747.303 Notice of suspension or prohibition.

Whenever an institution-affiliated party of an insured credit union is charged in any state, Federal or territorial information or indictment or complaint with the commission of or participation in a crime involving dishonesty or breach of trust, which crime is punishable by imprisonment for a term exceeding one year under state or Federal law, the NCUA Board may, if continued service or participation by the concerned party may pose a threat to the interests of the credit union's members or may threaten to impair public confidence in the credit union, by written notice served upon such party, suspend him or her from office, or prohibit him or her from further participation in any manner in the affairs of the credit union, or both. A copy of the notice of suspension or prohibition shall also be served upon the credit union. This suspension or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of, or until such suspension or prohibition is terminated by the NCUA Board.

§ 747.304 Removal or permanent prohibition.

In the event that a judgment of conviction or an agreement to enter a pretrial diversion or other similar program is entered against the institution-affiliated party, and at such time as the judgment, if any, is not subject to further appellate review, the NCUA Board may, if continued service or participation by such party may pose a threat to the interests of the credit union's members or may threaten to impair public confidence in the credit union, issue and serve upon the individual an order removing him or her from office or prohibiting him or her from further participation in any manner in the conduct of the affairs of the credit union except with the consent of the NCUA Board. A copy of such order will also be served upon such credit union. A finding of not guilty or other disposition of the charge will not preclude the NCUA Board from thereafter instituting proceedings, pursuant to the provisions of section 206(g) of the FCUA (12 U.S.C. 1786(g)) and subpart A of this part, to remove such director, committee member, officer, or other person from office or to prohibit his or her further participation in the affairs of the credit union.

§ 747.305 Effectiveness of suspension or removal until completion of hearing.

Any notice of suspension or prohibition issued under § 747.303 and any order of removal or prohibition issued under § 747.304 will be effective upon service on the concerned party and will remain effective and outstanding until the completion of any hearing or appeal authorized under section 206(i) of the FCUA (12 U.S.C. 1786(i)) and this subpart, unless such notice of suspension or order of removal is terminated by the NCUA Board.

§ 747.306 Notice of opportunity for hearing.

(a) Any notice of suspension or prohibition issued pursuant to § 747.303, and any order of removal or prohibition issued pursuant to § 747.404, shall be accompanied by a further notice to the concerned individual that he or she may, within 30 says of service of such notice, request in writing an informal hearing at which he or she may present evidence and argument that his or her continued service to or participation in the conduct of the affairs of the credit union does not, or is not likely to, pose a threat to the interests of the credit union's members or threaten to impair confidence in the credit union. Any notice of the opportunity for such a hearing shall be accompanied by a description of the hearing procedure and the criteria to be considered.

(b) A request for a hearing filed pursuant to paragraph (a) of this section shall state with particularly the relief desired, the grounds thereof, and shall include, when available, supporting evidence. The request and supporting evidence shall be filed in writing with the Secretary of the Board, National Credit Union Administration, Washington, DC 20456.

§ 747.307 Hearing.

(a) Upon receipt of a request for a hearing which complies with § 747.306, the NCUA Board will order an informal hearing to commence within the following 30 days in Washington, DC, or at such other place as the NCUA Board designates, before a Presiding Officer designated by the NCUA Board to conduct the hearing. At the request of the concerned party, the NCUA Board may order the hearing to commence at a time more than 30 days after the receipt of the request for such hearing.

(b) The notice of hearing shall be served by the NCUA Board upon the party or parties afforded the hearing and shall set forth the time and place of the hearing and the name and address of the Presiding Officer.

(c) The subject individual may appear at the hearing personally, through counsel, or personally with counsel. The individual shall have the right to introduce relevant and material written materials (or, at the discretion of the NCUA Board, oral testimony), and to present an oral argument before the Presiding Officer. A member of the enforcement staff of the Office of General Counsel of the NCUA may attend the hearing and may participate as a party. Neither the formal rules of evidence nor the adjudicative procedures of the Administrative Procedure Act (5 U.S.C. 554–557), nor subpart A of this part shall apply to the hearing. The proceedings shall be recorded and a transcript furnished to the individual upon request and after the payment of the cost thereof. The NCUA Board shall have the discretion to permit the presentation of witnesses, within specified time limits, so long as a list of such witnesses is furnished to the Presiding Officer at least ten days prior to the hearing. Witnesses shall not be sworn, unless specifically requested by either party or directed by the Presiding Officer. The Presiding Officer may examine any witnesses and each party shall have the opportunity to cross-examine any witness presented by an opposing party. Upon the request of either the subject individual or the representative of the Office of General Counsel, the record shall remain open for a period of five business days following the hearing, during which time the parties may make any additional submissions to the record. Thereafter, the record shall be closed.

(d) In the course of or in connection with any proceeding under this subpart, the NCUA Board and the Presiding Officer will have the power to administer oaths and affirmations, to take or cause depositions to be taken, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum. If the NCUA Board permits the presentation of witnesses, the NCUA Board or the Presiding Officer may require the attendance of witnesses from any place in any state or in any territory or other place subject to the jurisdiction of the United States at any designated place where such proceeding is being conducted. Witnesses subpoenaed shall be paid the same fees and mileage as are paid witnesses in the District Courts of the United States. The NCUA Board or the Presiding Officer may require the production of documents from any place in any such state, territory, or other place.

(e) The Presiding Officer will make his or her recommendations to the Board, where possible, within ten business days following the close of the record.

§ 747.308 Waiver of hearing; failure to request hearing or review based on written submissions; failure to appear.

(a) The subject individual may, in writing, waive an oral hearing and instead elect to have the matter determined by the NCUA Board on the basis of written submissions alone.

(b) Should any concerned party fail to request in writing an oral hearing or consideration based on written submissions alone within 30 days of service of the notice described in § 747.306, he or she will be deemed to have consented to the NCUA Board's action.

(c) Unless the concerned party appears at the hearing personally or by duly appointed representative, he or she will be deemed to have consented to the NCUA Board's action.

§ 747.309 Decision of the NCUA Board.

Within 60 days following the hearing, or receipt of the subject individual's written submissions where hearing has been waived pursuant to § 747.308, the NCUA Board shall notify the institution-affiliated party whether the suspension or prohibition will be continued, terminated, or otherwise modified, or whether the order of removal or prohibition will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for the decision of the NCUA Board, if that decision is adverse to the respondent party. In the case of a decision favorable to the respondent on the subject of a prior order of removal or prohibition, the NCUA Board shall take prompt action to rescind or otherwise modify the order of removal or prohibition.

§ 747.310 Reconsideration by the NCUA Board.

(a) The subject individual shall have ten business days following receipt of the decision of the NCUA Board in which to petition the NCUA Board for initial reconsideration.

(b) The subject individual also shall be entitled to petition the NCUA Board for reconsideration of its decision any time after the expiration of a 12-month period from the date of the NCUA Board's decision, but no petition for reconsideration may be made within 12 months of a previous petition.

(c) Any petition shall state with particularity the basis for reconsideration, the relief sought, and any exceptions the individual has to the NCUA Board's findings. An individual's petition may be accompanied by a memorandum of points and authorities in support of his or her petition and any supporting documentation the individual may wish to have considered.

(d) No hearing need be granted on such petition for reconsideration. Promptly following receipt of the petition, the Board shall render its decision.

§ 747.311 Relevant considerations.

In deciding the question of suspension, prohibition, or removal under this subpart, the NCUA Board will consider the following:

(a) Whether the alleged offense is a crime which is punishable by imprisonment for a term exceeding one year under state or Federal law, and which involves dishonesty or breach of trust;

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§ 747.309 Decision of the NCUA Board.

Within 60 days following the hearing, or receipt of the subject individual's written submissions where hearing has been waived pursuant to § 747.308, the NCUA Board shall notify the institution-affiliated party whether the suspension or prohibition will be continued, terminated, or otherwise modified, or whether the order of removal or prohibition will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for the decision of the NCUA Board, if that decision is adverse to the respondent party. In the case of a decision favorable to the respondent on the subject of a prior order of removal or prohibition, the NCUA Board shall take prompt action to rescind or otherwise modify the order of removal or prohibition.

§ 747.310 Reconsideration by the NCUA Board.

(a) The subject individual shall have ten business days following receipt of the decision of the NCUA Board in which to petition the NCUA Board for initial reconsideration.

(b) The subject individual also shall be entitled to petition the NCUA Board for reconsideration of its decision any time after the expiration of a 12-month period from the date of the NCUA Board's decision, but no petition for reconsideration may be made within 12 months of a previous petition.

(c) Any petition shall state with particularity the basis for reconsideration, the relief sought, and any exceptions the individual has to the NCUA Board's findings. An individual's petition may be accompanied by a memorandum of points and authorities in support of his or her petition and any supporting documentation the individual may wish to have considered.

(d) No hearing need be granted on such petition for reconsideration. Promptly following receipt of the petition, the Board shall render its decision.

§ 747.311 Relevant considerations.

In deciding the question of suspension, prohibition, or removal under this subpart, the NCUA Board will consider the following:

(a) Whether the alleged offense is a crime which is punishable by imprisonment for a term exceeding one year under state or Federal law, and which involves dishonesty or breach of trust;

(b) Whether the continued presence of the subject individual in his or her position may pose a threat to the interests of the credit union's members because of the nature and extent of the individual's participation in the affairs of the insured credit union and/or the nature of the offense with the commission of or participation in which the individual has been charged;

(c) Whether there is cause to believe that there may be an erosion of public confidence in the integrity, safety, or soundness of a particular credit union (either generally or in the particular locality in which the credit union is situated) if the subject individual is permitted to remain in his or her position in an insured credit union;

(d) Whether the individual is covered by the credit union's fidelity bond and, if so, whether the bond is likely to be revoked, or whether coverage under the bond will be affected adversely as a result of the information, indictment, complaint, judgment of conviction or entry into a pretrial diversion or other similar program; and

(e) The NCUA Board may consider any other factors which, in the specific case, appear relevant to the decision to continue in effect, rescind, terminate, or modify a suspension, prohibition, or removal order, except that it shall not consider the ultimate question of the guilt or innocence of the subject individual with regard to the crime with which he or she has been charged.

Subpart E—Local Rules and Procedures Applicable to Proceedings Relating to the Suspension or Revocation of Charters and to Involuntary Liquidations

§ 747.401 Scope.

The rules and procedures set forth in this subpart and subpart A of this part are applicable to proceedings by the NCUA Board pursuant to section 120(b)(1) of the FCUA (12 U.S.C. 1766(b)(1)) to suspend or revoke the charter of a solvent Federal credit union, and to place a solvent Federal credit union into involuntary liquidation. To the extent a rule or procedure set forth in subpart A of this part is inconsistent with a rule or procedure set forth in this subpart E, subpart E shall control.

§ 747.402 Grounds for suspension or revocation of charter and for involuntary liquidation.

(a) *Grounds in general.* The NCUA Board may suspend or revoke the charter of any Federal credit union, and place such credit union into involuntary liquidation and appoint a liquidating agent therefor, upon its finding that the credit union has violated any provision of its charter or bylaws or of the FCUA or regulations issued thereunder.

(b) *Immediate suspension.* In any case where the Board determines that the grounds set forth in paragraph (a) of this section exist and that immediate action is necessary in order to prevent further dissipation or credit union assets or earnings, or further weakening of the credit union's condition, or to otherwise protect the interest of the credit union's insured members or the National Credit Union Share Insurance Fund, it may order without prior notice the immediate suspension of the charter of such credit union, and if the circumstances so warrant, may take possession of all books, records, assets, and property of every description of such credit union.

§ 747.403 Notice of intent to suspend or revoke charter; notice of suspension.

(a) Upon its determination that one or more of the grounds listed in § 747.402(a) exists, or that because of conditions described in § 747.402(b) immediate suspension of charter is necessary, the NCUA Board shall cause to be served upon that credit union a notice of intent to suspend or revoke charter and of intent to place into involuntary liquidation, or a notice of suspension. Such notice shall contain a statement of the facts which constitute the grounds for this action, a recitation of the options available to the credit union under paragraph (b) of this section, and an explanation of the results that will occur if the credit union fails to exercise said options.

(b) Not later than 40 days after the receipt of the notice provided for in paragraph (a) of this section, the Federal credit union may file with the NCUA Board a statement in writing setting forth the grounds and reasons why its charter should not be suspended or revoked and why it should not be placed into involuntary liquidation; or in lieu of a written statement, request an oral hearing which shall be conducted in accordance with the procedures set forth in this subpart. This statement or request shall be accompanied by a certified copy of a resolution of the board of directors of the Federal credit union concerned authorizing such statement or request, such certification to be made by the president and secretary of the board of directors.

(c) If the Federal credit union concerned does not exercise either alternative available in paragraph (b) of this section within the time required, it shall be deemed to have admitted the facts alleged in the notice and may be deemed to have consented to the relief sought.

§ 747.404 Notice of hearing.

(a) Upon receipt of a request for hearing which complies with § 747.403(b), the NCUA Board shall transmit the request to the Office of Financial Institution Adjudication ("OFIA"). Such hearing shall commence no earlier than 30 days nor later than 60 days after the date the OFIA receives the request for a hearing, unless an earlier or later date is requested by the Federal credit union concerned and is granted by the NCUA Board in its discretion.

(b) Except as provided in § 747.405(b), the procedures of the Administrative Procedure Act (5 U.S.C. 554–557) and subpart A of this part will apply to the hearing.

(c) Unless the Federal credit union shall appear at such hearing by a duly authorized representative it shall be deemed to have consented to the suspension or revocation of its charter and to the placing of said credit union into involuntary liquidation.

§ 747.405 Issuance of order.

(a) In the event of such consent as referred to in §§ 747.403(c) or 747.404(c), or if upon the record made at any such hearing as referred to in § 747.403(b), the NCUA Board finds that the charter of the Federal credit union concerned should be suspended or revoked and the credit union closed and placed into involuntary liquidation, it shall cause to be served on such credit union an order directing the suspension or revocation of its charter and directing that it be closed and placed into involuntary liquidation. Such order shall contain a statement of the findings upon which the order is based. Additionally, the NCUA Board shall appoint a liquidating agent or agents.

(b) The NCUA Board shall render its decision and cause such order to be served not later than 45 days after receipt of consent, or written submissions as the case may be, or in the case of a formal hearing after service or the notice of submission referred to in § 747.40(a).

(c) Upon the receipt of a copy of the order which provides that the Federal credit union concerned be placed into involuntary liquidation, the officers and directors of that Federal credit union shall immediately deliver to the agent for the liquidating agent possession and control of all books, records, assets, and property of every description of the Federal credit union, and the agent for the liquidating agent shall proceed to convert said assets to cash, collect all debts due to said Federal credit union

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and to wind up its affairs in accordance with the provisions of the FCUA.

§ 747.406 Cancellation of charter.

Upon the completion of the liquidation and certification by the agent for the liquidating agent that the distribution of the assets of the Federal credit union has been completed, the NCUA Board shall cancel the charter of the Federal credit union concerned.

Subpart F—Local Rules and Procedures Applicable to Proceedings Relating to the Termination of Membership in the Central Liquidity Facility [Reserved]

Subpart G—Local Rules and Procedures Applicable to Recovery of Attorneys Fees and Other Expenses Under the Equal Access To Justice Act in NCUA Board Adjudications

§ 747.601 Purpose and scope.

This subpart contains the regulations of the NCUA implementing the Equal Access to Justice Act (5 U.S.C. 504), as amended ("EAJA"). The EAJA provides for the award of attorneys fees and other expenses to eligible individuals and entities who are parties to proceedings conducted under this part. An eligible party may receive an award when it prevails over NCUA in a proceeding, or in a significant and discrete substantive portion of the proceeding, unless the position of the NCUA was substantially justified or special circumstances make an award unjust. The rules in this subpart describe the parties eligible for fee awards, explain how to apply for awards and the procedures and standards that NCUA will use to make them. To the extent a rule or procedure set forth in subpart A of this part is inconsistent with a rule or procedure set forth in this subpart G, subpart G will control.

§ 747.602 Eligibility of applicants.

(a) To be eligible for an award of attorneys fees and expenses, an applicant must be a prevailing party in the proceeding for which it seeks an award and must be:

(1) An individual with a net worth of not more than $2 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests and not more than 500 employees at the time the proceeding was commenced (an applicant who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests);

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees; or

(5) Any other partnership, corporation, association, or public or private organization with a net worth of not more than $7 million and not more than 500 employees.

(b) For the purpose of determining eligibility, the net worth of an applicant and the number of employees of an applicant shall be determined as of the date the proceeding was initiated.

(c) The applicant's net worth includes the value of any assets disposed of for the purpose of meeting an eligibility standard and excludes any obligations incurred for this purpose. Transfers of assets or obligations incurred for less than reasonably equivalent value will be presumed to have been made for this purpose.

(d) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control; part-time employees shall be included on a proportional basis.

(e) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this subpart, unless the NCUA Board determines that such treatment would be unjust and contrary to the purposes of the EAJA in light of the actual relationship between the affiliated entities. In addition, the NCUA board may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(f) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

§ 747.603 Prevailing party.

An eligible applicant may be a "prevailing party" if the applicant wins an action after a full hearing or trial on the merits, if a settlement of the proceeding was effected on terms favorable to it, or if the proceeding against it has been dismissed. In appropriate situations an applicant may also have prevailed if the outcome of the proceeding has substantially vindicated the applicant's position on the significant substantive matters at issue, even though the applicant has not totally avoided adverse final action.

§ 747.604 Standards for award.

(a) A prevailing party may receive an award for fees and expenses incurred in connection with a proceeding, or in a significant and discrete substantive portion of the proceeding, by or against NCUA unless the position of NCUA during the proceeding was substantially justified. The burden of proving that an award should not be made is on counsel for NCUA. To avoid an award, counsel for NCUA must show that its position was reasonable in law and in fact.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

(c) Where an applicant has prevailed on one or more discrete substantive issues in a proceeding, even though all the issues were not resolved in its favor, any award shall be based on the fees and expenses incurred in connection with the discrete significant substantive issue or issues on which the applicant's position has been upheld. If such segregation of costs is not practicable, the award may be based on a fair proration of those fees and expenses incurred in the entire proceeding which would be recoverable under this section if proration were not performed.

(d) Whether separate or prorated treatment under the preceding paragraph, including the applicable proration percentage, is appropriate shall be determined on the facts of the particular case. Attention shall be given to the significance and nature of the respective issues and their separability and interrelationship.

§ 747.605 Allowable fees and expenses.

(a) Except as provided by § 747.604(b), awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents and expert witnesses, even if the services were made available without charge or at a reduced rate.

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§ 747.603 Prevailing party.

An eligible applicant may be a "prevailing party" if the applicant wins an action after a full hearing or trial on the merits, if a settlement of the proceeding was effected on terms favorable to it, or if the proceeding against it has been dismissed. In appropriate situations an applicant may also have prevailed if the outcome of the proceeding has substantially vindicated the applicant's position on the significant substantive matters at issue, even though the applicant has not totally avoided adverse final action.

§ 747.604 Standards for award.

(a) A prevailing party may receive an award for fees and expenses incurred in connection with a proceeding, or in a significant and discrete substantive portion of the proceeding, by or against NCUA unless the position of NCUA during the proceeding was substantially justified. The burden of proving that an award should not be made is on counsel for NCUA. To avoid an award, counsel for NCUA must show that its position was reasonable in law and in fact.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

(c) Where an applicant has prevailed on one or more discrete substantive issues in a proceeding, even though all the issues were not resolved in its favor, any award shall be based on the fees and expenses incurred in connection with the discrete significant substantive issue or issues on which the applicant's position has been upheld. If such segregation of costs is not practicable, the award may be based on a fair proration of those fees and expenses incurred in the entire proceeding which would be recoverable under this section if proration were not performed.

(d) Whether separate or prorated treatment under the preceding paragraph, including the applicable proration percentage, is appropriate shall be determined on the facts of the particular case. Attention shall be given to the significance and nature of the respective issues and their separability and interrelationship.

§ 747.605 Allowable fees and expenses.

(a) Except as provided by § 747.604(b), awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents and expert witnesses, even if the services were made available without charge or at a reduced rate.

(b) No award under this subpart for the fee of an attorney or agent may exceed $75.00 per hour. No award to compensate an expert witness may exceed the highest rate at which NCUA is permitted to pay expert witnesses. However, an award may also include the reasonable expenses of the attorney, agent or witness as a separate item, if the attorney, agent or witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, the NCUA Board shall consider the following:

(1) If the attorney, agent, or expert witness is in private practice, his or her customary fee for like services, or, if he or she is an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent, or expert witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) Such other factors as may bear on the value of the services provided.

(d) The reasonable cost of any study, analysis, report, test, project, or similar matter prepared on behalf of the party may be awarded to the extent that the charge for the service does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of the applicant's case.

§ 747.606 Contents of application.

(a) A prevailing eligible party, as defined in §§ 747.602, 747.603, and 747.604, seeking an award under this section, must file an application for an award of fees and expenses with the Secretary of the NCUA Board. The application shall include the following information:

(1) The identity of the applicant and the proceeding for which an award is sought;

(2) A showing that the applicant has prevailed and an identification of the issues in the proceeding on which the applicant believes that the position of NCUA was not substantially justified;

(3) A statement, with supporting documentation, that the applicant is an eligible party, as defined by § 747.602. If the applicant is an individual, he or she must state that his or her net worth does not exceed $2 million. If the applicant is not an individual, it shall state the number of its employees and that its net worth does not exceed $7 million as of the date the proceeding was initiated. However, an applicant may omit a statement of net worth if:

(i) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (28 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(ii) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a));

(4) A Statement of the amount of fees and expenses for which an award is sought; and

(5) Any other matters that the applicant believes may assist or wishes the NCUA Board to consider in determining whether and in what amount an award should be made.

(b) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

(c) The application and documentation requirements of this subpart are required by law as a prerequisite to obtaining a benefit under the Equal Access to Justice Act and this subpart.

§ 747.607 Statement of net worth.

(a) Each applicant (other than a qualified tax exempt organization or cooperative association) must provide a detailed statement showing the net worth of the applicant and any affiliates, as defined in § 747.602(a), when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant is an eligible party. The administrative law judge or the NCUA Board may require additional information from the applicant to determine eligibility. Unless otherwise ordered by the Board or required by law, the statement shall be kept confidential and used by the NCUA Board only in making its determination of an award.

(b) If the applicant or any of its affiliates is a Federal credit union, the portion of the statement of net worth which relates to the Federal credit union shall consist of a copy of the Federal credit union's last Statement of Financial Condition filed before the initiation of the underlying proceeding.

(c) All statements of net worth shall describe any transfers of assets from or obligations incurred by the applicant or any affiliate, occurring in the six-month period prior to the date on which the proceeding was initiated, which reduced the net worth of the applicant and its affiliates below the applicable net-worth ceiling. If there were none, the applicant shall so state.

§ 747.608 Documentation of fees and expenses.

The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, audit, test, project or similar matter, for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The administrative law judge or the NCUA Board may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

§ 747.609 Filing and service of applications.

(a) An application may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, but in no case later than 30 days after the Board's final disposition of the proceeding.

(b) If review or reconsideration is sought or taken of a decision on which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy.

(c) As used in this subpart, final disposition means the issuance of a final order or any other final resolution of a proceeding, such as a settlement or voluntary dismissal.

(d) Any application for an award of fees and expenses shall be filed with the Secretary of the Board, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456. Any application for an award and any other pleading or document related to an application, shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding, except as provided in § 747.607(a) for statements of net worth.

§ 747.610 Answer to application.

(a) Within 30 days after service of an application, counsel for NCUA may file an answer to the application. Unless counsel for NCUA requests and is granted an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file an answer within the 30-day period will be treated as a consent to the award requested.

(b) If counsel for NCUA and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the NCUA Board upon the joint request of counsel for NCUA and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, counsel shall include with the answer a request for further proceedings under § 747.613.

(d)(1) The applicant may file a reply if counsel for NCUA has addressed in his or her answer any of the following issues:

(i) That the position of NCUA in the proceeding was substantially justified;

(ii) That the applicant unduly protracted the proceedings; or

(iii) That special circumstances make an award unjust.

(2) The reply shall be filed within 15 days after service of the answer. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply a request for further proceedings under § 747.613.

§ 747.611 Comments by other parties.

Any party to a proceeding other than the applicant and counsel for NCUA may file comments on an application within 30 days after service of the application or on an answer within 15 days after service of the answer. A commenting party may not participate further in proceedings on the application unless the administrative law judge or the NCUA Board determines that the public interest requires such participation in order to permit full exploration of matters raised in the comment.

§ 747.612 Settlement.

The applicant and counsel for NCUA may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded, in accordance with NCUA's standard settlement procedure. If a prevailing party and counsel for NCUA agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 747.613 Further proceedings.

(a) After the expiration of the time allowed for the filing of all documents necessary for the determination of a recommended fee award, the NCUA Board shall transmit the entire record to the administrative law judge who presided at the underlying proceeding. Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or counsel for NCUA, or on its own initiative, the administrative law judge or the NCUA Board may order further proceedings, such as an informal conference, oral argument, additional written submissions or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible.

(b) A request that the administrative law judge or the NCUA Board order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

§ 747.614 Recommended decision.

The administrative law judge shall file a recommended decision on the application with the NCUA Board within 60 days after completion of the proceedings on the application. The recommended decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The recommended decision shall also include, if at issue, findings on whether NCUA's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the recommended decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made. The administrative law judge shall file with and certify to the NCUA Board the record of the proceeding on the fee application, the recommended decision and proposed order. Promptly upon such filing, the NCUA Board shall serve upon each party to the proceeding a copy of the administrative law judge's recommended decision, findings, conclusions and proposed order. The provisions of this section and § 747.613 shall not apply, however, in any case where the hearing was held before the NCUA Board.

§ 747.615 Decision of the NCUA Board.

Within 15 days after service of the recommended decision, findings, conclusions, and proposed order, the applicant or counsel for NCUA may file with the NCUA Board written exceptions thereto. A supporting brief may also be filed. The NCUA Board shall render its decision within 60 days after the matter is submitted to it. The NCUA Board shall furnish copies of its decision and order to the parties. Judicial review of the NCUA Board's final decision and order may be obtained as provided in 5 U.S.C. 504(c)(2).

§ 747.616 Payment of award.

An applicant seeking payment of an award granted by the NCUA Board shall submit to the NCUA's Office of the Controller a copy of the NCUA Board's Final Decision and Order granting the award, accompanied by a statement that it will not seek review of the decision and order in the United States court. All submissions shall be addressed to the Office of the Controller, National Credit Union Administration, 1776 G Street NW., Washington, DC 20456. The NCUA will pay the amount awarded within 60 days after receiving the applicant's statement, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

Subpart H—Local Rules and Procedures Applicable to Investigations

§ 747.701 Applicability.

The rules in this subpart apply only to informal and formal investigations conducted by the NCUA Board itself or its delegates. They do not apply to adjudicative or rulemaking proceedings or to routine, periodic or special examinations conducted by the NCUA Board's staff.

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§ 747.702 Information obtained in investigations.

Information and documents obtained by the Board in the course of any investigation, unless made a matter of public record by the NCUA Board, shall be deemed non-public, but the NCUA Board approves the practice whereby the General Counsel may engage in, and may authorize any person acting on his or her behalf or at his or her direction to engage in, discussions with representatives of domestic or foreign governmental authorities, self-regulatory organizations, and with receivers, trustees, masters and special counsels or special agents appointed by and subject to the supervision of the courts of the United States, concerning information obtained in individual investigations, including investigations conducted pursuant to any order entered by the NCUA Board or its General Counsel pursuant to delegated authority.

§ 747.703 Authority to conduct investigations.

(a) The General Counsel and persons acting on his or her behalf and at his or her direction may conduct such investigations into the affairs of any insured credit union or institution-affiliated parties as deemed appropriate to determine whether such credit union or party has violated, is violating or is about to violate any provision of the FCUA, the NCUA Board's regulations or other relevant statutes or regulations that may bear on a party's fitness to participate in the affairs of a credit union. The General Counsel and persons acting on his or her behalf may investigate whether any party is unfit to participate in the affairs of a credit union, whether formal enforcement proceedings are warranted, or such other matters as the General Counsel or his or her designee, in his or her discretion, shall deem appropriate. Such investigations may be conducted either informally or formally.

(b) Formal investigations involve the exercise of the NCUA Board's subpoena power and are referred to here as formal investigative proceedings. In formal investigative proceedings, the General Counsel and those to whom he or she delegates authority to act on his or her behalf and at his or her direction have augmented investigatory powers and need not rely on the powers available to them in informal investigations, and they may gather evidence through the issuance of subpoenas compelling the production of documents or testimony as well. In informal investigations evidence may be gathered ordinarily through the use of investigatory procedures or credit union examinations and through voluntary statements and submissions.

(c) The NCUA Board has delegated authority to the General Counsel, or designee thereof, to institute formal investigative proceedings by the entry of an order indicating the purpose of the investigation and the designation of persons to conduct that investigation on his or her behalf and at his or her direction. This delegation also extends to the NCUA Board's role as liquidator and conservator of insured credit unions. The power to issue a subpoena may not be delegated outside the agency. The General Counsel may amend such order as he deems appropriate.

Subpart I—Local Rules Applicable to Formal Investigative Proceedings

§ 747.901 Applicability.

The rules in this subpart are applicable to a witness who is sworn in a formal investigative proceeding. Formal investigative proceedings may be held before the NCUA Board, before one or more of its members, or before any officer designated by the NCUA Board or its General Counsel, as described in subpart H of this part, and with or without the assistance of such other counsel as the NCUA Board deems appropriate, for the purpose of taking testimony of witnesses, conducting an investigation and receiving other evidence. The term "officer conducting the investigation" shall mean any of the foregoing.

§ 747.902 Non-public formal investigative proceedings.

Unless otherwise ordered by the NCUA Board, all formal investigative proceedings shall be non-public.

§ 747.903 Subpoenas.

(a) *Issuance.* In the course of a formal investigative proceeding the officer conducting the investigation may issue a subpoena directing the party named therein to appear before the officer conducting the investigation at a specified time and place to testify or to produce documentary evidence, or both, relating to any matter under investigation.

(b) *Service.* Service of subpoenas shall be effected in the following manner:

(1) *Service upon a natural party.* Delivery of a copy of a subpoena to a natural person may be effected by—

(i) Handling it to the person;

(ii) Leaving it at his or her office with the person in charge thereof or, if there is no one in charge, by leaving it at a conspicuous place there;

(iii) Leaving it at his or her dwelling place or usual place of abode with some person of suitable age and discretion who is found there; or

(iv) Mailing it be registered or certified mail to him at his or her last known address. In the event that personal service as described in this paragraph is impracticable, any other method where by actual notice is given to the respondent may be employed.

(2) *Service upon other persons.* When the person to be served is not a natural person, delivery of a copy of the subpoena may be effected by—

(i) Handing it to a registered agent for service, or to any officer, director, or agent in charge of any office of such person;

(ii) Mailing it by registered or certified mail to any such representative at his or her last known address; or

(iii) Any other method whereby actual notice is given to any such representative.

(c) *Witness fees and mileage.* Witnesses appearing pursuant to subpoena shall be paid the same fees and mileage that are paid to witnesses in the United States district courts. Any such fees and mileage payments need be paid only upon submission of a properly completed application for reimbursement and in no event need they be paid sooner than 30 days after the appearance of the witness pursuant to subpoena.

(d) *Enforcement.* Whenever it appears to the General Counsel that any person upon whom a subpoena was properly served pursuant to these Rules is refusing to fully comply with the terms of that subpoena, then the General Counsel, in his or her discretion, may apply to the courts of the United States for enforcement of such subpoena.

§ 747.904 Oath; false statements.

At the discretion of the officer conducting the investigation, testimony of a witness may be taken under oath and administered by the officer. Any person making false statements under oath during the course of a formal investigative proceeding is subject to the criminal penalties for perjury in 18 U.S.C. 1621. Any person who knowingly and willfully makes false and fraudulent statements, whether under oath or otherwise, or who falsifies, conceals or covers up any material fact, or submits any false, fictitious or fraudulent information in connection with such a proceeding, is subject to the criminal penalties set forth in 18 U.S.C. 1001.

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§ 747.805 Self-incrimination; immunity.

(a) *Self-incrimination.* Except as provided in paragraph (b) of this section, a witness testifying or otherwise giving information in a formal investigative proceeding may refuse to answer questions on the basis of his or her right against self-incrimination granted by the Fifth Amendment of the Constitution of the United States.

(b) *Immunity.* (1) No officer conducting any formal investigative proceeding (or any other informal investigation or examination) shall have the power to grant or promise any party any immunity from criminal prosecution under the laws of the United States or of any other jurisdiction.

(2) If the NCUA Board believes that the testimony or other information sought to be obtained from any party may be necessary to the public interest and that party has refused or is likely to refuse to testify or provide other information on the basis of his or her privilege against self-incrimination, the NCUA Board, with the approval of the Attorney General, may issue an order requiring the party to give testimony or provide other information that he or she has previously refused to provide on the basis of self-incrimination.

(3) Whenever a witness refuses, on the basis of his privilege against self-incrimination, to testify or provide other information in a formal investigative proceeding, and the officer conducting the investigation communicates to that person an order of the NCUA Board requiring him or her to testify or provide other information, the witness may not refuse to comply with the order on the basis of his or her privilege against self-incrimination; but no testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information) may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

§ 747.806 Transcripts.

Transcripts, if any, of formal investigative proceedings shall be recorded solely by the official reporter, or by any other person or means designated by the officer conducting the investigation. A party who has submitted documentary evidence or testimony in a formal investigative proceeding shall be entitled, upon written request, to procure a copy of his or her documentary evidence or a transcript of his or her testimony on payment of the appropriate fees; provided, however, that in a non-public formal investigative proceeding the NCUA Board may for good cause deny such request or the NCUA Board may place reasonable limitations upon the use of the documentary evidence and transcript. In any event, any witness, upon proper identification, shall have the right to inspect the official transcript of the witness's own testimony.

§ 747.807 Rights of witnesses.

(a) In the event that a formal investigative proceeding is conducted pursuant to a specific order entered by the NCUA Board or by its General Counsel, then any party who is compelled or requested to provide documentary evidence or testimony as part of such proceeding shall, upon request, be shown a copy of the NCUA Board's or its delegate's order. Copies of such orders shall not be provided for their retention to such persons requesting same except in the sole discretion of the General Counsel or his designee.

(b) Any party compelled to appear, or who appears by request or permission of the officer conducting the investigation, in person at a formal investigative proceeding may be accompanied, represented and advised by counsel who is a member of the bar of the highest court of any state; provided however, that all witnesses in such proceeding shall be sequestered, and unless permitted in the discretion of the officer conducting the investigation, no witness or the counsel accompanying any such witness shall be permitted to be present during the examination of any other witness called in such proceeding.

(c)(1) The right of a witness to be accompanied, represented and advised by counsel shall mean the right to have an attorney present during any formal investigative proceeding and to have the attorney—

(i) Advise such person before, during and after such testimony;

(ii) Question such person briefly at the conclusion of his testimony to clarify any answers such person has given; and

(iii) Make summary notes during such testimony solely for the use of such person.

(2) From time to time, in the discretion of the officer, it shall be necessary for persons other than the witness and his or her counsel to attend non-public investigative proceedings. For example, the officer may deem it appropriate that outside counsel to the NCUA Board attend and advise him or her concerning the proceeding including the examination of a particular witness. In these circumstances, outside counsel would not be an officer as that term is used. In other circumstances, it may be appropriate that a technical expert (such as an accountant) accompany the witness and his or her counsel in order to assist counsel in understanding technical issues. These latter circumstances should be rare, are left to the discretion of the officer conducting the investigation, and shall not in any event be allowed to serve as a ruse to coordinate testimony between witnesses, to oversee or supervise the testimony of any witnesses, or otherwise defeat the beneficial effects of the witness sequestration rule.

(d) The officer conducting the investigation may report to the NCUA Board any instances where any witness or counsel has been guilty of dilatory, obstructionist or contumacious conduct during the course of a formal investigative proceeding or any other instance of violations of these rules. The NCUA Board will thereupon take such further action as the circumstance may warrant including barring the offending person from further participation in the particular formal investigative proceeding or even from further practice before the Board.

Subpart J—Local Procedures and Standards Applicable to a Notice of Change in Senior Executive Officers, Directors of Committee Members Pursuant to Section 212 of the FCUA

§ 747.901 Scope.

The rules and procedures set forth in this subpart shall apply to the notice filed by a credit union pursuant to section 212 of the FCUA (12 U.S.C. 1791) and § 701.14 of this chapter, for the consent of the NCUA to add to or replace an individual on the board of directors or supervisory or credit committee, or to employ any individual as a senior executive office or change the responsibilities of any individual to a position of senior executive officer where the credit union either has been chartered less than 2 years; or is in "troubled condition," as defined in § 701.14 of this chapter. Subpart A of this part shall not apply to any proceeding under this subpart.

§ 747.902 Grounds for disapproval of notice.

The NCUA Board or its designee may issue a notice of disapproval with respect to a notice submitted by a credit union pursuant to section 212 of the FCUA (12 U.S.C. 1791) and § 701.14 of this chapter, where the competence, experience character or integrity of the individual with respect to whom such notice is submitted indicates that it would not be in the best interest of the

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appropriate that a technical expert (such as an accountant) accompany the witness and his or her counsel in order to assist counsel in understanding technical issues. These latter circumstances should be rare, are left to the discretion of the officer conducting the investigation, and shall not in any event be allowed to serve as a ruse to coordinate testimony between witnesses, to oversee or supervise the testimony of any witnesses, or otherwise defeat the beneficial effects of the witness sequestration rule.

(d) The officer conducting the investigation may report to the NCUA Board any instances where any witness or counsel has been guilty of dilatory, obstructionist or contumacious conduct during the course of a formal investigative proceeding or any other instance of violations of these rules. The NCUA Board will thereupon take such further action as the circumstance may warrant including barring the offending person from further participation in the particular formal investigative proceeding or even from further practice before the Board.

Subpart J—Local Procedures and Standards Applicable to a Notice of Change in Senior Executive Officers, Directors of Committee Members Pursuant to Section 212 of the FCUA

§ 747.901 Scope.

The rules and procedures set forth in this subpart shall apply to the notice filed by a credit union pursuant to section 212 of the FCUA (12 U.S.C. 1791) and § 701.14 of this chapter, for the consent of the NCUA to add to or replace an individual on the board of directors or supervisory or credit committee, or to employ any individual as a senior executive office or change the responsibilities of any individual to a position of senior executive officer where the credit union either has been chartered less than 2 years; or is in "troubled condition," as defined in § 701.14 of this chapter. Subpart A of this part shall not apply to any proceeding under this subpart.

§ 747.902 Grounds for disapproval of notice.

The NCUA Board or its designee may issue a notice of disapproval with respect to a notice submitted by a credit union pursuant to section 212 of the FCUA (12 U.S.C. 1791) and § 701.14 of this chapter, where the competence, experience character or integrity of the individual with respect to whom such notice is submitted indicates that it would not be in the best interest of the

members of the credit union or the public to permit the individual to be employed by or associated with, such credit union.

§ 747.903 Procedures where notice of disapproval issued; reconsideration.

(a) The notice of disapproval shall be served upon the federally insured credit union and the candidate for director, committee member or senior executive officer. The notice of disapproval shall:

(1) Summarize or cite the relevant consideration specified in § 747.902;

(2) Inform the individual and the credit union that, within 15 days of receipt of the notice of disapproval, they can request reconsideration by the Regional Director of the initial determination, or can appeal the determination directly to the NCUA Board;

(3) Specify what additional information, if any, must be constant in the reconsideration.

(b) The request for reconsideration by the Regional Director must be filed at the appropriate Regional Office.

(c) The Regional Director shall act on a request for reconsideration within 30 days of its receipt.

§ 747.904 Appeal.

(a) *Time for filing.* Within 15 days after issuance of a Notice of Disapproval or a determination on a request for reconsideration by the Regional Director, the individual or credit union (henceforth petitioner) may appeal by filing with the NCUA Board a written request for appeal.

(b) *Contents of request.* Any appeal must be in writing and include:

(1) The reasons why NCUA should review its disapproval; and

(2) Relevant, substantive and material facts that for good cause were not previously set forth in the notice required to be filed pursuant to section 212 of the FCUA (12 U.S.C. 1791) and § 701.14 of this chapter.

(c) *Procedures for review of request.* Within 30 days of the NCUA Board's receipt of an appeal, the NCUA Board may request in writing that the petitioner submit additional facts and records to support the appeal. The petitioner shall have 15 days from the date of issuance of such written request to provide such additional information. Failure by the petitioner to provide additional information may, as determined solely by the NCUA Board or its designee, result in denial of the petitioner's appeal.

(d) *Determination on appeal by NCUA Board or its designee.* (1) Within 90 days from the date of the receipt of an appeal by the NCUA Board or its designee or of its receipt of additional information requested under paragraph (c) of this section, the NCUA Board or its designee shall notify the petitioner whether the disapproval will be continued, terminated, or otherwise modified. The NCUA Board or its designee shall promptly rescind or modify the notice of disapproval where the decision is favorable to the petitioner.

(2) The determination by the NCUA Board on the appeal shall be provided to the petitioner in writing, stating the basis for any decision of the NCUA Board or its designed that is adverse to the petitioner, and shall constitute a final order of the NCUA Board.

(3) Failure by the NCUA Board to issue a determination on the petitioner's appeal within the 90-day period prescribed under paragraph (d)(1) of this section shall be deemed a denial of the appeal for purpose of § 747.905.

747.905 Judicial review.

(a) Failure to file an appeal within the applicable time periods, either to the initial determination or to the decision a request for reconsideration, shall constitute a failure by the petitioner to exhaust available administrative remedies and, due to such failure, any objections to the initial determination or request for reconsideration shall be deemed to be waived and such determination shall be deemed to have been accepted by, and shall be binding upon, the petitioner.

(b) For purposes of seeking judicial review of actions taken pursuant to this section, suit may be filed in the United States District Court for the district where the requester resides, for the district where the credit union's principal place of business is located, or for the District of Columbia.

Dated: July 30, 1991.

Becky Baker,

Secretary of the Board, National Credit Union Administration.

[FR Doc. 91-18579 8-7-91; 8:45 am]

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Thursday
August 8, 1991

Part III

Department of the Interior

Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization; Meeting; Notices

DEPARTMENT OF THE INTERIOR

Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization, Public Meeting

AGENCY: Department of the Interior.

ACTION: Notice.

SUMMARY: Pursuant to Public Law 101–512, the Office of the Assistant Secretary—Indian Affairs is announcing the forthcoming meeting of the Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization (Task Force).

DATES, TIMES, AND PLACE: September 4, 5, and 6, 1991; 9 a.m. to 5:30 p.m. daily; the Sheraton Inn-Bismarck Galleria, 605 E. Broadway, Bismarck, North Dakota. The meeting of the Task Force is open to the public.

FOR FURTHER INFORMATION CONTACT: Additional information concerning this meeting of the Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization may be obtained by contacting Veronica L. Murdock, Designated Federal Officer, at (202) 208–4173.

Agenda

The Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization will discuss the conceptual organizational structure adopted by the Task Force at its last meeting. The Task Force will identify specific functions, authorities, and structures for implementation by the Bureau at its headquarters, area, and agency offices.

Dated: August 1, 1991.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 18772 Filed 8–7–91; 8:45 am]

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[FR Doc. 18772 Filed 8-7-91; 8:45 am]

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federal register

Thursday
August 8, 1991

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 310

Weight Control Drug Products for Over-the-Counter Human Use; Certain Active Ingredients; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 81N-0022]

RIN 0905-AA06

Weight Control Drug Products for Over-the-Counter Human Use; Certain Active Ingredients

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule establishing that certain active ingredients in over-the-counter (OTC) weight control drug products are not generally recognized as safe and effective or are misbranded. FDA is issuing this final rule after considering the report and recommendations of the Advisory Review Panel on OTC Miscellaneous Internal Drug Products and public comments on the agency's advance notice of proposed rulemaking that was based on those recommendations. No substantive comments and no new data or information were submitted to FDA under 21 CFR 330.10(a)(6)(iv) opposing nonmonograph status for these ingredients. FDA has determined that these ingredients would result in an OTC weight control drug product not being generally recognized as safe and effective or would result in its misbranding. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: February 8, 1991.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 26, 1982 (47 FR 8466), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC weight control drug products, together with the recommendations of the Advisory Review Panel on OTC Miscellaneous Internal Drug Products (Miscellaneous Internal Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. The Miscellaneous Internal Panel classified a total of 113 OTC weight control drug product ingredients. Two ingredients were classified in Category I (safe and effective for OTC use): Phenylpropanolamine hydrochloride and benzocaine. One hundred ingredients were classified in Category II (not safe and effective for OTC use), and 11 ingredients were classified in Category III (insufficient data to classify in Category I or Category II, more studies are needed). The ingredients classified in Category II included all of the ingredients listed in the call-for-data notice published in the **Federal Register** of August 27, 1975 (40 FR 38179) for which the Panel was not able to locate, and was not aware of, any significant body of data demonstrating the safety and effectiveness of use for weight control (47 FR 8466 at 8471). Of the 11 ingredients that the Panel classified in Category III, no data were submitted on 6 ingredients: Carrageenan, chondrus, guar gum, karaya gum, sea kelp, and psyllium, all of which are hydrophilic colloids. The Panel received safety and effectiveness data on the other 5 ingredients: Alginic acid, carboxymethylcellulose sodium, methylcellulose, sodium bicarbonate (in combination with bulking agents), and xanthan gum. Although the effectiveness data were insufficient, the Panel classified these 5 ingredients in Category III. The Panel stated that these ingredients may act as bulking agents and possibly could be shown effective for weight control use. The Panel did not question the safety of bulking agents because "they have been in use for years as food additives and some have had medicinal use," (47 FR 8477).

Interested persons were invited to submit comments on the Panel's recommendations by May 27, 1982. Reply comments in response to comments filed in the initial comment period could be submitted by June 28, 1982. In a notice published in the **Federal Register** of April 23, 1982 (47 FR 17576), the agency advised that it had extended the comment period until July 26, 1982, and the reply comment period until August 27, 1982.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were placed on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, after deletion of a small amount of trade secret information. In response to the advance notice of proposed rulemaking, 6 drug manufacturers, 1 drug manufacturers' association, 1 clinical consulting firm, 6 professional associations, 8 physicians, 1 nutritionist, 1 health department, 2 Congressmen, 1 consumer organization, and 10 individuals submitted comments. No comments or data were submitted on OTC weight control drug products containing any ingredient that the Panel had classified as nonmonograph (Category II or Category III). Copies of the comments received are on public display in the Dockets Management Branch.

Under the OTC drug review administrative procedures (21 CFR 330.10(a)(7)(ii)), the Commissioner may publish a separate tentative order covering active ingredients that have been reviewed and may propose that these ingredients be excluded from an OTC drug monograph on the basis of the Commissioner's determination that they would result in a drug product not being generally recognized as safe and effective or would result in misbranding. This order may include active ingredients for which no substantial comments were received in opposition to the advisory panel's proposed classification and for which no new data and information were received pursuant to § 330.10(a)(6)(iv) (21 CFR 330.10(a)(6)(iv)).

In the **Federal Register** of October 30, 1990 (55 FR 45788), FDA published, under § 330.10(a)(7)(ii), a proposed rulemaking encompassing the 111 active ingredients classified as Category II and Category III in the advance notice of proposed rulemaking. No significant comments or new data have been submitted to upgrade the status of these 111 active ingredients. Comments and new data were received on the two proposed Category I ingredients, phenylpropanolamine hydrochloride and benzocaine. Comments were also received on the labeling proposed for this class of OTC drug products.

The Commissioner is issuing a separate final rule on the 111 Category II and III ingredients prior to completing the rulemaking on the Category I ingredients. The Commissioner has determined that these 111 ingredients are not generally recognized as safe and effective. Therefore, any OTC weight control drug product containing any of these active ingredients may not continue to be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. FDA has completed action on these ingredients before finalizing the rest of the monograph in order to expedite removal from the market of products that lack adequate evidence of effectiveness.

FDA advises that the active ingredients listed in this final rule will not be included in the tentative final monograph for OTC weight control drug

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In the **Federal Register** of October 30, 1990 (55 FR 45788), FDA published, under § 330.10(a)(7)(ii), a proposed rulemaking encompassing the 111 active ingredients classified as Category II and Category III in the advance notice of proposed rulemaking. No significant comments or new data have been submitted to upgrade the status of these 111 active ingredients. Comments and new data were received on the two proposed Category I ingredients, phenylpropanolamine hydrochloride and benzocaine. Comments were also received on the labeling proposed for this class of OTC drug products.

The Commissioner is issuing a separate final rule on the 111 Category II and III ingredients prior to completing the rulemaking on the Category I ingredients. The Commissioner has determined that these 111 ingredients are not generally recognized as safe and effective. Therefore, any OTC weight control drug product containing any of these active ingredients may not continue to be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. FDA has completed action on these ingredients before finalizing the rest of the monograph in order to expedite removal from the market of products that lack adequate evidence of effectiveness.

FDA advises that the active ingredients listed in this final rule will not be included in the tentative final monograph for OTC weight control drug

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products because they have not been shown to be generally recognized as safe and effective for weight control use. The agency is amending 21 CFR part 310 to list all of the active ingredients covered by this final rule by adding to subpart E, new § 310.545(a)(20) (21 CFR 310.545(a)(20)). The agency further advises that these active ingredients for OTC weight control use should be eliminated from OTC drug products by February 8, 1991, regardless of whether further testing is undertaken to justify future use. Therefore, on or after February 8, 1991, no OTC drug product containing any active ingredient listed in § 310.545(a)(20), either labeled or intended as an active ingredient for weight control use, may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product containing any active ingredient subject to this final rule that is repackaged or relabeled after the effective date of this final rule must be in compliance with the final rule regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are urged to comply voluntarily with this final rule at the earliest possible date.

The agency points out that publication of this final rule does not preclude a manufacturer's testing an ingredient. New, relevant data can be submitted to the agency at a later date as the subject of an application that may provide for prescription or OTC marketing status. (See 21 CFR part 314.) As an alternative, where there are adequate data establishing general recognition of safety and effectiveness, such data may be submitted in an appropriate citizen petition to amend or establish a monograph, as appropriate. (See 21 CFR 10.30.) However, marketing of products containing these active ingredients may not begin or continue while the data are being evaluated by the agency.

In response to the proposed rule on OTC weight control Category II and III ingredients, three drug manufacturers, one trade association, the Attorney General of Iowa, and six individuals submitted comments. Copies of the comments received are on public display in the Dockets Management Branch (address above). Any additional information that has come to the agency's attention since publication of the proposed rule is also on public display in the Dockets Management Branch.

I. The Agency's Conclusions on the Comments

A. General Comments

1. Two comments expressed support for the agency's proposal to prohibit the continued marketing of certain OTC weight control drug products that contain active ingredients that are not generally recognized as safe and effective or are misbranded. One comment stated that if sufficient evidence is not available to demonstrate that an ingredient is both safe and effective, it should be prohibited from use. The other comment estimated that ineffective weight loss products cost consumers billions of dollars per year. The comment added that while a certain amount of risk is inherent in taking any drug product, taking such risk is clearly unwarranted and unnecessary where the products have not been shown to be effective for their intended use. The comment asserted that under the Federal Food, Drug, and Cosmetic Act (the act) all drugs, including weight control drugs, either must be generally recognized by experts as safe and effective for their intended use or they must be the subject of a new drug application approved by the FDA. The comment contended that continued marketing of Category II and III OTC weight loss products is inconsistent with this statutory mandate.

The comment contended that consumers taking questionable diet products are often subjected to serious health risks. The comment mentioned an instance where a consumer suffered an epileptic seizure because a fiber-based diet pill absorbed the medication meant to control seizures (Ref. 1). The comment discussed another instance where a person was hospitalized due to complications resulting from taking a diet pill and following a diet program that has not been shown to be safe or effective. Lastly, the comment noted the agency's discussion of the serious safety hazard that guar gum used in diet products can pose, and stated that many individuals had been hospitalized and at least one person had died from complications resulting from esophageal obstruction caused by consumption of guar gum diet products (Ref. 1).

Reference

(1) Comment No. C00042, Docket No. 81N–0022, Dockets Management Branch.

2. One comment questioned whether the proposed rule applied to foods for special dietary use, as defined in 21 CFR part 105. The comment particularly referred to products known as formulated meal replacements, which supply nutrients and micronutrients and are intended to replace normal meals. The comment stated that a number of vitamins and minerals are classified in Category II as active ingredients for weight control. According to the comment, however, it would be reasonable to combine a weight control active ingredient with such nutritional supplements in order to replace essential vitamins and minerals missing from the reduced calorie diets normally followed by individuals attempting to lose weight. The comment added that a number of these vitamins and minerals are generally recognized by FDA as safe for use as nutritional supplements.

Part 105 of the regulations covers foods for special dietary use. The term "special dietary use" is defined in § 105.3(a)(1). Other sections set out labeling and other requirements that such products must meet.

The scope of this document, however, is limited to drug products intended for weight control use. It does not apply to foods for special dietary use as covered by 21 CFR part 105. Some foods regulated under part 105 are also Category II and III active ingredients in this final rule. When products containing such ingredients are labeled for drug use such as for appetite control, they will be regulated as drugs under § 310.545(a)(20). These same products when labeled as foods for special dietary use will be subject to part 105.

The agency recognizes that it may be difficult for a person on a diet to achieve the recommended dietary intake of essential nutrients, particularly vitamins and minerals, while using an OTC weight control drug product. The United States Department of Agriculture (Ref. 1) has stated that it is hard for a person to get the recommended levels of essential nutrients in diets of fewer that 1,800 calories, and this is particularly true of vitamins and minerals, which are present only in low concentrations in most foods. The same view has been expressed for diets ranging from 1,000 to 1,600 calories per day (Refs. 2 through 5). A publication from the National Academy of Sciences, in cautioning about the difficulty of designing a nutritionally-adequate 1,000 calorie diet, states that such a diet "* * * would have to supply most nutrients in at least double the allowance per thousand calories, an objective that is difficult to maintain without supplementation," (Ref. 5). The agency agrees with the comment that it would be reasonable to allow such nutrients to be combined with an active weight control drug. Such combination products will be discussed further in the notice of proposed rulemaking for Category I weight control drug products in a future issue of the **Federal Register**.

References

(1) "Ideas for Better Eating," U.S. Department of Agriculture, p. 11, January 1981.

(2) Lasagna, L., "One-A-Day, Plus C," The Sciences, 21:35, 1981.

(3) Olson, R.E., "Letter to the Editor-Reply," Nutrition Reviews, 40:160, 1982.

(4) Blonz, E.R., and J.S. Stern, "Obesity and Fad Diets," in "Contemporary Issues in Clinical Nutrition: Controversies in Nutrition," Vol. 2, edited by L. Ellenbogen, Churchill Livingstone, New York, p. 120, 1981.

(5) "Recommended Dietary Allowances," 9th Ed., National Academy of Sciences, Washington, p. 13, 1980.

3. Five comments stated that the entire OTC weight control drug products rulemaking was unconstitutional under the ninth amendment of the Constitution. The comments contended that FDA has no authority to regulate the purchase, sale, manufacture, or labeling of any or all Category I, II, or III OTC weight control ingredients and that consumers have the right of freedom of choice and a "health care" right to purchase any Category I, II, or III OTC weight control ingredient.

FDA's statutory mandate includes protection and promotion of the public health by ensuring that drugs are not only safe but also effective for their intended use. The Commissioner's Decision on the Status of Laetrile, published in the **Federal Register** of August 5, 1977 (42 FR 39768), expresses the agency's position on freedom of choice with respect to ensuring that drugs are not only safe, but also effective. That statement reads in part as follows:

> In passing the 1962 Amendments to the act—the amendments that require that a drug be proved effective before it may be marketed—Congress indicated its conclusions that the absolute freedom to choose an ineffective drug was properly surrendered in exchange for the freedom from the danger to each person's health and well-being from the sale and use of worthless drugs * * *. To the extent that any freedom has been surrendered by the passage of the legislation which bans from the marketplace drugs that have not been proven to be effective, that surrender was a rational decision which has resulted in the achievement of a greater freedom from the dangers to health and welfare represented by such drugs.

It is settled law that there is no constitutional right to privacy allowing a person specific drugs regardless of FDA's determination as to their safety and effectiveness. While a patient may have a protected right not to seek treatment, the selection of a particular treatment or medication is well within the recognized area of governmental interest in protecting the public health. *Rutherford* v. *U.S.*, 616 F.2d 455, 456–457 (10th Cir.), *cert. denied*, 449 U.S. 937 (1980). The drug premarketing review provisions of the act and FDA's implementing programs, including the OTC drug review, are a legitimate exercise of congressional authority limiting a person's choice of drugs. FDA's OTC drug review has been discussed and tacitly approved in numerous court decisions. See *Cutler* v. *Hayes*, 818 F.2d 879, 895 (DC Cir. 1987), for discussion of the Supreme Court's implicit approval of the OTC drug review in *Weinberger* v. *Bentex Pharmaceuticals*, 412 U.S. 645 (1973). The review was also implicitly approved in *Cutler* v. *Kennedy*, 475 F. Supp 844, 845 (D.D.C. 1979) and *Cutler* v. *Hayes*, 549 F. Supp. 1341, 1344 (D.D.C. 1982).

OTC weight control drug products that are subject to this rulemaking, and that are not the subject of an approved new drug application (NDA), will have to comply with the final rule. In the absence of data demonstrating that the ingredients present in OTC weight control drug products are generally recognized as safe and effective, these ingredients cannot be included in an OTC drug monograph. After the effective date of the final regulation, any such OTC weight control drug product initially introduced or initially delivered for introduction into interstate commerce that is not in compliance with this regulation will be subject to regulatory action.

4. One comment disagreed with the agency's policy that the proposed rulemaking "does not constitute a reopening of the administrative record or an opportunity to submit any new data to the OTC weight control rulemaking." (See 55 FR 45788 at 45789.) The comment argued that this approach is contrary to the FDA's rulemaking regulations and the Administrative Procedure Act. The comment argued that FDA's procedure has denied the public the opportunity to submit information and substantive comments for inclusion in the administrative record because the proposed rule announces a new rulemaking, separate from the rulemaking indicated in 1982. The comment contended that because the administrative record had been closed for over 8 years, it should now be reopened so that relevant information and data can be considered by FDA before the final rule is issued. Specifically, the comment wanted the administrative record to be reopened so that additional data regarding the safety and effectiveness of guar gum could be considered before the final rule is issued. The comment indicated that FDA should consider this request to be a petition to reopen the administrative record.

FDA administrative procedures for classifying OTC drugs and for establishing monographs in 21 CFR 330.10(a)(7)(ii) provide that the Commissioner may publish a separate tentative order covering active ingredients that have been reviewed and may propose that these ingredients be excluded from an OTC drug monograph on the basis of the Commissioner's determination that they would result in a drug not being generally recognized as safe and effective or would result in misbranding. This order may include active ingredients for which no substantial comments in opposition to the advisory panel's proposed classification and for which no new data and information were received pursuant to 21 CFR 330.10(a)(6)(iv). As noted in the proposal, no substantive comments or new data were submitted to support reclassification of any of these 111 Category II and Category III OTC weight control ingredients to monograph status (55 FR 45788). Thus, the agency precisely followed its administrative procedures in issuing the notice of proposed rulemaking on October 30, 1990 stating that these ingredients are proposed for nonmonograph status.

Regarding the specific ingredient guar gum mentioned by the comment, the agency specifically discussed both the safety and effectiveness of this ingredient in the notice of proposed rulemaking (55 FR 45788 at 45790 to 45792). The agency mentioned a number of safety problems and health risks associated with the OTC use of guar gum-containing weight control drug products. Further, the agency stated that available effectiveness data were inadequate to support effectiveness of guar gum for this use. In the absence of data establishing general recognition of safety and effectiveness, the agency has concluded that guar gum-containing weight control drug products are not appropriate for OTC use and should not continue to be marketed.

The administrative procedures in 21 CFR 330.10(a)(7)(v) for classifying OTC drugs and for establishing monographs address the question of new data and information submitted after the times provided in other parts of the regulations but prior to the establishment of a final monograph. These procedures provide that such data and information will be considered as a petition to amend the monograph and will be considered by the Commissioner only after a final monograph has been

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issued. The comment indicated that FDA should consider this request to be a petition to reopen the administrative record.

FDA administrative procedures for classifying OTC drugs and for establishing monographs in 21 CFR 330.10(a)(7)(ii) provide that the Commissioner may publish a separate tentative order covering active ingredients that have been reviewed and may propose that these ingredients be excluded from an OTC drug monograph on the basis of the Commissioner's determination that they would result in a drug not being generally recognized as safe and effective or would result in misbranding. This order may include active ingredients for which no substantial comments in opposition to the advisory panel's proposed classification and for which no new data and information were received pursuant to 21 CFR 330.10(a)(6)(iv). As noted in the proposal, no substantive comments or new data were submitted to support reclassification of any of these 111 Category II and Category III OTC weight control ingredients to monograph status (55 FR 45788). Thus, the agency precisely followed its administrative procedures in issuing the notice of proposed rulemaking on October 30, 1990 stating that these ingredients are proposed for nonmonograph status.

Regarding the specific ingredient guar gum mentioned by the comment, the agency specifically discussed both the safety and effectiveness of this ingredient in the notice of proposed rulemaking (55 FR 45788 at 45790 to 45792). The agency mentioned a number of safety problems and health risks associated with the OTC use of guar gum-containing weight control drug products. Further, the agency stated that available effectiveness data were inadequate to support effectiveness of guar gum for this use. In the absence of data establishing general recognition of safety and effectiveness, the agency has concluded that guar gum-containing weight control drug products are not appropriate for OTC use and should not continue to be marketed.

The administrative procedures in 21 CFR 330.10(a)(7)(v) for classifying OTC drugs and for establishing monographs address the question of new data and information submitted after the times provided in other parts of the regulations but prior to the establishment of a final monograph. These procedures provide that such data and information will be considered as a petition to amend the monograph and will be considered by the Commissioner only after a final monograph has been

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published in the **Federal Register** unless the Commissioner finds that good cause has been shown that warrants earlier consideration. At this time, the Commissioner does not find that good cause has been shown to warrant earlier consideration or to allow guar gum to remain under consideration in the ongoing rulemaking for OTC weight control drug products. Because this rulemaking is not likely to be finalized in the near future, any manufacturer interested in the continued marketing of guar gum for weight control use should proceed under the new drug procedures in 21 CFR parts 312 and 314.

The agency points out that publication of a final rule under this current proceeding does not preclude a manufacturer from testing any ingredient covered by the final rule. New, relevant data can be submitted to the agency at a later date as the subject of an NDA that may provide for prescription or OTC marketing status. (See 21 CFR part 314.) As an alternative, if a manufacturer believes it has adequate data establishing general recognition of safety and effectiveness for any of these ingredients, such data may be submitted to the agency in an appropriate citizen petition to amend or establish a monograph, as appropriate. (See 21 CFR 10.30.) However, products containing such ingredients may not continue to be marketed while the agency evaluates any new, relevant data provided. Accordingly, the agency is not denying manufacturers an opportunity to submit information, but rather it is following the act and its regulations to ensure the safety and effectiveness of OTC drug products in the marketplace.

5. One comment contended the FDA should provide the public with detailed information regarding the requirements for studies necessary to support future petitions to modify the monograph to add Category I ingredients. The comment argued that current guidelines in this regard are vague and do not provide sufficient guidance, that such studies are costly to the manufacturers, and the public should be advised of the agency's requirements before manufacturers incur the expense of conducting such studies.

The Miscellaneous Internal Panel provided fairly extensive testing guidelines in its report (47 FR 8466 at 8480 to 8483). However, the agency is not addressing specific testing guidelines in this document. In revising the OTC drug review procedures relating to Category III ingredients, published in the **Federal Register** of September 29, 1981 (46 FR 47730), the agency advised that tentative final and final monographs will not include recommended testing guidelines for conditions that industry wishes to upgrade to monograph status. In the same issue of the **Federal Register** (46 FR 47740), the agency published a policy statement concerning the submission and review of protocols to evaluate an ingredient or condition in the OTC drug review. The agency will meet with manufacturers, at their request, to discuss protocols and other testing issues involving conditions that industry is interested in upgrading and to advise industry on the adequacy of proposed testing protocols.

6. One comment stated that the proposed rule is likely to cause a major increase in costs to consumers who wish to lose weight. The comment contended that increased costs to consumers would result from the agency's initial determination that all OTC drug ingredients, other than non-time-released phenylpropanolamine hydrochloride and benzocaine, would be banned unless an approved NDA is obtained under section 505 of the act (21 U.S.C. 355) and 21 CFR part 314. The comment estimated the cost of the agency's drug approval process as between $50 million and $150 million and contended that these costs of regulatory approval will be passed on to the consumer, resulting in major price increases. The comment argued that the proposed rule is likely to have a severe adverse effect on competition and innovation because small companies are not capable of funding the new drug approval process. The comment contended that competition would be limited to the few existing major drug companies. The comment disagreed with the agency's position that the proposed rule is not a major rule under Executive Order 12291 and that it would not have a significant impact on small business. The comment concluded that the proposed rule would create an insurmountable barrier to small businesses seeking access to the OTC weight loss drug market and, therefore, the agency needs to reevaluate the impact of its proposed rule.

The agency does not agree with the comment. In the **Federal Register** of February 8, 1983 (48 FR 5806), FDA announced the availability of an assessment of the economic impacts of the OTC drug review process. The assessment was prepared to determine whether the economic effects of the OTC drug review process, as a whole, are sufficient to warrant a Regulatory Impact Analysis (as specified in Executive Order 12291) or a Regulatory Flexibility Analysis (as required by the Regulatory Flexibility Act, Pub. L. 96–354). The assessment evaluates the economic effects (costs) of any required labeling, reformulation, and/or testing of OTC drug products as a direct result of the OTC drug review process. The assessment also examines the economic impact of the establishment of a monograph for any particular therapeutic class of OTC drugs. The assessment demonstrates that the review process in its entirety will not have a "major impact" as defined in Executive Order 12291 and probably will not have a "significant economic impact on a substantial number of small entities," as defined in the Regulatory Flexibility Act.

Regarding this specific rule for OTC weight control drug products, the agency has determined that this rule will actually result in savings for consumers who are now spending billions of dollars a year for OTC weight control drug products containing certain ingredients that have not been proven to be safe and/or effective. Although a large number of ingredients are covered by this final rule, the agency estimates that the market impact by sales volume of the products affected by this final rule is quite small. Most of the major selling OTC weight control drug products contain the ingredients phenylpropanolamine hydrochloride or benzocaine. These ingredients are not affected by this final rule. For example, of 27 products listed in an "appetite suppressant product table" in the latest edition of the Handbook of Nonprescription Drugs (Ref. 1), all contain either phenylpropanolamine hydrochloride or benzocaine. In the same table, only five products are listed as "bulk producers" weight control products. Three of these products are marketed primarily as laxatives, not as weight control products, and may remain on the market after this final rule becomes effective. The other 2 products contain ingredients that the Panel placed in Category III, for which no additional data have been submitted. Finally, the agency believes that many of the 111 ingredients covered by this final rule, for which the Panel was not able to locate nor was aware of any significant body of data demonstrating use for weight control (39 FR 8466 at 8471), are not currently marketed as OTC weight control active ingredients. Nonetheless, a regulation is still needed to prevent their future marketing for this use and to complete the rulemaking for those ingredients.

Companies that market products containing ingredients, affected by this

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final rule may (1) obtain a new drug application, (2) submit a citizen petition with supporting data to include the ingredient in the OTC weight control drug products monograph, or (3) reformulate to use alternative ingredients being considered as being generally recognized as safe and effective, without incurring additional expense of clinical testing for those ingredients. The agency does not agree with the comment that this rule would create an insurmountable barrier to small businesses because virtually all companies affected by this final rule can reformulate their products. Some products may need stability data (if none exists) or new labeling. These should be one-time expenses. In some instances, companies might be able to revise their labeling to delete claims promoting their products as effective for weight control and continue to market the products as nutritional supplements.

Many companies that market ingredients affected by this rulemaking are small companies that are not manufacturers, but rather are distributors that have their products manufactured for them by other companies that produce custom products on order. Thus, the actual reformulation will be handled by the manufacturer, not the distributor.

In its 1983 assessment, FDA states that the outcome of the OTC drug review will produce social benefits to the extent that unsafe and ineffective OTC drug ingredients are removed from the market. Private costs to manufacturers associated with any loss of markets for products using withdrawn ingredients that are not generally recognized as safe and effective, do not translate into social costs. Rather, they indicate the social benefits of the OTC drug review by reallocating consumer expenditures and industry resources away from socially counterproductive OTC drugs. The assessment also contains a detailed discussion of testing costs. The agency has reevaluated the impacts of this proposed rule for OTC weight control drug products in light of the assessment of the economic impacts of the entire OTC drug review process that was prepared in 1983. The agency concludes that the basic principles of that assessment are still applicable today. The agency also concludes that the final rule in the current proceeding is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act. Accordingly, the rulemaking to remove these drugs from the marketplace will not be delayed to allow interested persons another opportunity to submit data for the FDA to review. Such an approach would only result in further delay and continued marketing of potentially unsafe and ineffective drugs at the expense of consumers. (See discussion regarding the agency's formal determination of economic impact in section II.)

Reference

(1) "Handbook of Nonprescription Drugs," 9th Ed., The American Pharmaceutical Association, Washington, pp. 578–580, 1990.

7. One comment requested clarification that this rulemaking does not affect the use of saccharin and other listed ingredients as inactive or "formulation" ingredients in OTC weight control drug products, or in drugs generally.

This final rule affects the use of the listed ingredients only as active ingredients for the specific indication of weight control. The agency recognizes that some of the ingredients included in this final rule have valid uses as inactive ingredients. Examples include the use of dextrose, fructose, saccharin, and sucrose for sweetening. It is possible that one or more of these ingredients could be present for this purpose in an OTC weight control drug product containing a monograph ingredient. This final rule does not affect such use. However, any inactive ingredient present in a product should have an appropriate purpose and be safe and suitable for use in the product in accord with 21 CFR 330.1(e).

B. Comments On Guar Gum

8. Two comments objected to the agency's determination that guar gum is unsafe and ineffective (55 FR 45788 at 45790). One comment contended that the agency did not have sufficient data to justify the reclassification of guar gum from Category III to Category II. The comment argued that the vast majority of the data discussed in the proposed rule related to a specific product. This particular product contained high levels of guar gum (another comment stated these levels were 60 to 90 percent) and was manufactured in a manner that contributed to the problem of esophageal obstruction. The comment added that FDA is aware that guar gum is safe when consumed in certain amounts.

Another comment asserted that while guar gum may be unsafe at high concentrations, it has been used safely as a food ingredient at levels of 10 percent or less. The comment requested FDA to approve the use of 10 percent or less guar gum in dietary food products that contain at least 50 percent of food grade, natural, nonswellable, cellulose fibers. Another comment described personal experience in manufacturing guar gum tablets. The comment stated that there are various grades of guar gum powder from which to choose, and each grade of guar gum appears to have different rates of gelling. The comment stated that the guar gum product that caused the esophageal obstruction problems discussed in the agency's proposal was manufactured by at least four different companies. The comment suggested that before FDA condemns guar gum as unsafe, it should try to determine if the esophageal obstruction was caused by a particular manufacturer's version of this guar gum product. The comment argued that it would be unfair to condemn guar gum because of one or two irresponsible manufacturers/distributors. The comment also mentioned that the vast majority of guar gum tablets sold over the years were manufactured by "food supplement" manufacturers without the regulatory oversight afforded to "drug manufacturers." The comment mentioned several studies that support the safety and effectiveness of guar gum (Refs. 1, 2, and 3) and stated that the medical literature is replete with studies conducted with guar gum, with minimal side effects (bloating, transient diarrhea, and flatulence) being reported.

The request for FDA to approve use of 10 percent or less guar gum in dietary food products that contain at least 50 percent of food grade, natural, nonswellable, cellulose fibers is outside the scope of the current rulemaking. The agency notes that guar gum is listed in 21 CFR 184.1339 as a direct food substance affirmed as generally recognized as safe. Various uses at low levels (with a maximum usage level of 2 percent permitted) are allowed in food products. As discussed in comment 2 above, these food uses of guar gum are not affected by this rulemaking.

The agency agrees with the comment that there may be methods of formulation and manufacture of tablets containing high concentrations of guar gum as an active weight control drug ingredient that could result in a safe product having little or no risk of esophageal obstruction. For some of the very reasons mentioned by one comment, however, the agency considers the method of manufacture and exact details of formulation, as well as dissolution and gelling data, to be critical in determining the safety and effectiveness of each product. Accordingly, the agency has determined that individual product testing and that contain at least 50 percent of food grade, natural, nonswellable, cellulose fibers. Another comment described personal experience in manufacturing guar gum tablets. The comment stated that there are various grades of guar gum powder from which to choose, and each grade of guar gum appears to have different rates of gelling. The comment stated that the guar gum product that caused the esophageal obstruction problems discussed in the agency's proposal was manufactured by at least four different companies. The comment suggested that before FDA condemns guar gum as unsafe, it should try to determine if the esophageal obstruction was caused by a particular manufacturer's version of this guar gum product. The comment argued that it would be unfair to condemn guar gum because of one or two irresponsible manufacturers/distributors. The comment also mentioned that the vast majority of guar gum tablets sold over the years were manufactured by "food supplement" manufacturers without the regulatory oversight afforded to "drug manufacturers." The comment mentioned several studies that support the safety and effectiveness of guar gum (Refs. 1, 2, and 3) and stated that the medical literature is replete with studies conducted with guar gum, with minimal side effects (bloating, transient diarrhea, and flatulence) being reported.

The request for FDA to approve use of 10 percent or less guar gum in dietary food products that contain at least 50 percent of food grade, natural, nonswellable, cellulose fibers is outside the scope of the current rulemaking. The agency notes that guar gum is listed in 21 CFR 184.1339 as a direct food substance affirmed as generally recognized as safe. Various uses at low levels (with a maximum usage level of 2 percent permitted) are allowed in food products. As discussed in comment 2 above, these food uses of guar gum are not affected by this rulemaking.

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approval under the new drug approval procedures, rather than an OTC drug monograph, are necessary to ensure the safety of such products. For this reason, the agency is not addressing the safety and efficacy data provided by the comment, but rather is deferring any further evaluation until such data are submitted as part of an NDA.

References

(1) Uncited studies by Mendeloff, A. I., and M. McIver, Comment No. C44, Docket No. 81N-0022, Dockets Management Branch.

(2) Krotkiewski, M., "Use of Various Fibres in Different Weight Reduction Programs," draft of unpublished study, Exhibit No. 1 in Comment No. C44, Docket No. 81N-0022, Dockets Management Branch.

(3) Evans, E., and D.S. Miller, "Bulking Agents in The Treatment of Obesity," *Nutrition and Metabolism*, 18:199-203, 1975.

II. The Agency's Final Conclusions on Certain OTC Weight Control Category II and III Active Ingredients

The agency has determined that no substantive comments or adequate additional data have been submitted to the OTC drug review to support any of the ingredients listed below as being generally recognized as safe and effective for use in OTC weight control drug products. Based on the agency's procedural regulations (21 CFR 330.10(a)(7)(ii)), the agency has determined that the following ingredients are not generally recognized as safe and effective and are misbranded when present in OTC weight control drug products:

Alcohol
Alfalfa
Alginic acid
Anise oil
Arginine
Ascorbic acid [1]
Bearberry [2]
Biotin
Bone marrow, red [3]
Buchu
Buchu, potassium extract
Caffeine
Caffeine citrate
Calcium
Calcium carbonate
Calcium caseinate
Calcium lactate
Calcium pantothenate [4]
Carboxymethylcellulose sodium
Carrageenan
Cholecalciferol [5]
Choline
Chondrus
Citric acid
Cnicus benedictus
Copper
Copper gluconate
Corn oil
Corn syrup
Corn silk, potassium extract
Cupric sulfate
Cyanocobalamin (vitamin B_{12})
Cystine
Dextrose
Docusate sodium [6]
Ergocalciferol [7]
Ferric ammonium citrate
Ferric pyrophopshate
Ferrous fumarate
Ferrous gluconate
Ferrous sulfate (iron)
Flax seed
Folic acid
Fructose
Guar gum
Histidine
Hydrastis canadensis
Inositol
Iodine
Isoleucine
Juniper, potassium extract
Karaya gum
Kelp [8]
Lactose
Lecithin
Leucine
Liver concentrate
Lysine [9]
Lysine hydrochloride [10]
Magnesium
Magnesium oxide
Malt
Maltodextrin
Manganese citrate
Mannitol
Methionine
Methylcellulose
Mono- and di-glycerides [11]
Niacinamide
Organic vegetables
Pancreatin [12]
Pantothenic acid
Papain
Papaya enzymes
Pepsin
Phenacetin [13]
Phenylalanine
Phosphorus
Phytolacca [14]
Pineapple enzymes
Plantago seed [15]
Potassium citrate
Pyridoxine hydrochloride (vitamin B_6)
Riboflavin
Rice polishings
Saccharin
Sea minerals
Sesame seed
Sodium
Sodium bicarbonate
Sodium caseinate
Sodium chloride (salt)
Soybean protein [16]
Soy meal
Sucrose
Thiamine hydrochloride (vitamin B_1)
Thiamine mononitrate (vitamin B_1 mononitrate)
Threonine
Tricalcium phosphate
Tryptophan
Tyrosine
Uva ursi, potassium extract
Valine
Vegetable
Vitamin A

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[1] The Panel designated this ingredient "ascorbic acid (vitamin C)." However, "ascorbic acid" is the official name for this ingredient in the "USAN and the USP dictionary of drug names, 1990."

[2] The Panel designated this ingredient "uva ursi." However, "bearberry" is the official name for this ingredient in the Center for Drug Evaluation and Research dictionary of drug names.

[3] The Panel designated this ingredient "bone marrow-red-glycerin extract." However, "bone marrow, red" is the official name for this ingredient in the Center for Drug Evaluation and Research dictionary of drug names.

[4] The Panel designated this ingredient "calcium pantothenate (D-calcium pantothenate)." However, "calcium pantothenate" is the official name for this ingredient in the "USAN and the USP dictionary of drug names, 1990."

[5] The Panel designated this ingredient "vitamin D." However, "cholecalciferol" is the official name for this ingredient in the "United States Pharmacopeia XXII—National Formulary XVII," 1990.

[6] The Panel designated this ingredient "dioctyl sodium sulfosuccinate." However, "docusate sodium" is the official name for this ingredient in the "USAN and the USP dictionary of drug names, 1990."

[7] The Panel designated this ingredient "vitamin D_2." However, "ergocalciferol" is the official name for this ingredient in the "United States Pharmacopeia XXII—National Formulary XVII," 1990.

[8] The Panel designated this ingredient "sea kelp." However, "kelp" is the official name for this ingredient in the "USAN and the USP dictionary of drugs names, 1990."

[9] The Panel designated this ingredient "L-lysine." However, "lysine" is the official name for this ingredient in the "USAN and the USP dictionary of drug names, 1990."

[10] The Panel designated this ingredient "L-lysine monohydrochloride." However, "lysine hydrochloride" is the official name for this ingredient in the "USAN and the USP dictionary of drug names, 1990."

[11] The Panel designated these ingredients "glycerides (mono and di)." However, "mono- and di-glycerides" is the official name for this ingredient in the "United States Pharmacopeia XXII—National Formulary XVII," 1990.

[12] The Panel designated this ingredient "pancreatin enzymes." However, "pancreatin" is the official name for this ingredient in the "USAN and the USP dictionary of drug names, 1990."

[13] In the **Federal Register** of October 5, 1983 (48 CFR 45466), the agency stated that effective November 4, 1983, products containing phenacetin are considered new drugs for which an approved NDA is required for marketing. This action was taken because of phenacetin's high potential for misuse and its unfavorable benefit-to-risk ratio with chronic use.

[14] The Panel designated this ingredient "phytolacca berry juice." However "phytolacca" is the official name for this ingredient in the Center for Drug Evaluation and Research dictionary of drug names.

[15] The Panel designated this ingredient "psyllium." However, "plantago seed" is the official name for this ingredient in the "USAN and the USP dictionary of drug names, 1990."

[16] The Panel designated this ingredient "soy bean protein." However, "soybean protein" is the official name for this ingredient in the Center for Drug Evaluation and Research dictionary of drug names.

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Vitamin A acetate
Vitamin A palmitate
Vitamin E
Wheat germ
Xanthan gum
Yeast

The agency is amending 21 CFR 310.545 by adding new paragraph (a)(20) and by revising paragraph (d) to establish that certain active ingredients in OTC weight control drug products are not generally recognized as safe and effective. Any drug product containing any of these active ingredients and labeled for OTC weight control use will be considered nonmonograph and misbranded under section 502 of the act (21 U.S.C. 352) and a new drug under section 201(p) of the act (21 U.S.C. 321(p)) for which an approved application under section 505 of the act (21 U.S.C. 355) and 21 CFR part 314 of the regulations is required for marketing. As an alternative, where there are adequate data establishing general recognition of safety and effectiveness, such data may be submitted in a citizen petition to amend the OTC weight control drug products monograph, after it is finalized, to include any of the above active ingredients in OTC weight control drug products. (See 21 CFR 10.30.) Products containing such ingredients may not be marketed while the agency is evaluating the petition.

Any OTC drug product containing any of the above ingredients either labeled or intended as an OTC weight control active ingredient that is initially introduced or initially delivered for introduction into interstate commerce after February 8, 1991, and that is not the subject of an approved application will be in violation of sections 502 and 505 of the act (21 U.S.C. 352 and 355) and, therefore, subject to regulatory action. Further, any OTC drug product containing an ingredient subject to this rulemaking that is repackaged or relabeled after February 8, 1991, must be in compliance with the rule regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the rule at the earliest possible date.

One comment was received in response to the agency's request for specific comment on the economic impact of this rulemaking (55 FR 45788 at 45792). The issues raised by this comment are discussed in comment 6 above. There currently are two other ingredients being considered for monograph status that manufacturers can use to reformulate affected products. As a result of this final rule, manufacturers may need to reformulate some products prior to promulgation of the applicable final monograph. However, there will be no additional costs because reformulation would be required, in any event, when the final monograph is published.

Early finalization of the nonmonograph status of the ingredients listed in this notice will benefit both consumers and manufacturers. Consumers will benefit from the early removal from the marketplace of ingredients for which safety and effectiveness have not been established. This will result in a direct economic savings to consumers. Most manufacturers will benefit from being able to use alternative ingredients that have been recommended by the Panel as being generally recognized as safe and effective, without incurring additional expense of clinical testing for these ingredients. Based on the above, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, subchapter D of Chapter I of title 21 of the Code of Federal Regulations is amended in part 310 as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512–516, 520, 601(a), 701, 704, 705, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 376); secs. 215, 301, 302(a), 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b–263n).

2. Section 310.545 is amended by adding new paragraph (a)(20) and by revising paragraph (d) to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(20) *Weight control drug products.*

Alcohol
Alfalfa
Alginic acid
Anise oil
Arginine
Ascorbic acid
Bearberry
Biotin
Bone marrow, red
Buchu
Buchu, potassium extract
Caffeine
Caffeine citrate
Calcium
Calcium carbonate
Calcium caseinate
Calcium lactate
Calcium pantothenate
Carboxymethylcellulose sodium
Carrageenan
Cholecalcierol
Choline
Chondrus
Citric acid
Cnicus benedictus
Copper
Copper gluconate
Corn oil
Corn syrup
Corn silk, potassium extract
Cupric sulfate
Cyanocobalamin (vitamin B_{12})
Cystine
Dextrose
Docusate sodium
Ergocalciferol
Ferric ammonium citrate
Ferric pyrophosphate
Ferrous fumarate
Ferrous gluconate
Ferrous sulfate (iron)
Flax seed
Folic acid
Fructose
Guar gum
Histidine
Hydrastis canadensis
Inositol
Iodine
Isoleucine
Juniper, potassium extract
Karaya gum
Kelp
Lactose
Lecithin
Leucine
Liver concentrate
Lysine
Lysine hydrochloride
Magnesium
Magnesium oxide
Malt
Maltodextrin
Manganese citrate
Mannitol
Methionine
Methylcellulose
Mono- and di-glycerides
Niacinamide
Organic vegetables
Pancreatin
Pantothenic acid
Papain
Papaya enzymes

Pepsin
Phenacetin
Phenylalanine
Phosphorus
Phytolacca
Pineapple enzymes
Plantago seed
Potassium citrate
Pyridoxine hydrochloride (vit
Riboflavin
Rice polishings
Saccharin
Sea minerals
Sesame seed
Sodium
Sodium bicarbonate
Sodium caseinate
Sodium chloride (salt)
Soybean protein
Soy meal

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his action is of a
dividually or
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CFR Part 310

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dure Act,
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Regulations is
as follows:

UGS

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read as follows:

301, 501, 502, 503, 505,
01(a), 701, 704, 705, 706
ug, and Cosmetic Act
352, 353, 355, 356, 357,
371, 374, 375, 376);
1, 354–360F of the
ct (42 U.S.C. 216, 241,

s amended by
h (a)(20) and by
) to read as

cts containing
nts offered over-the-
ain uses.

(20) *Weight control drug products.*

Alcohol
Alfalfa
Alginic acid
Anise oil
Arginine
Ascorbic acid
Bearberry
Biotin
Bone marrow, red
Buchu
Buchu, potassium extract
Caffeine
Caffeine citrate
Calcium
Calcium carbonate
Calcium caseinate
Calcium lactate
Calcium pantothenate
Carboxymethylcellulose sodium
Carrageenan
Cholecalcierol
Choline
Chondrus
Citric acid
Cnicus benedictus
Copper
Copper gluconate
Corn oil
Corn syrup
Corn silk, potassium extract
Cupric sulfate
Cyanocobalamin (vitamin B_{12})
Cystine
Dextrose
Docusate sodium
Ergocalciferol
Ferric ammonium citrate
Ferric pyrophosphate
Ferrous fumarate
Ferrous gluconate
Ferrous sulfate (iron)
Flax seed
Folic acid
Fructose
Guar gum
Histidine
Hydrastis canadensis
Inositol
Iodine
Isoleucine
Juniper, potassium extract
Karaya gum
Kelp
Lactose
Lecithin
Leucine
Liver concentrate
Lysine
Lysine hydrochloride
Magnesium
Magnesium oxide
Malt
Maltodextrin
Manganese citrate
Mannitol
Methionine
Methylcellulose
Mono- and di-glycerides
Niacinamide
Organic vegetables
Pancreatin
Pantothenic acid
Papain
Papaya enzymes

Pepsin
Phenacetin
Phenylalanine
Phosphorus
Phytolacca
Pineapple enzymes
Plantago seed
Potassium citrate
Pyridoxine hydrochloride (vitamin B_6)
Riboflavin
Rice polishings
Saccharin
Sea minerals
Sesame seed
Sodium
Sodium bicarbonate
Sodium caseinate
Sodium chloride (salt)
Soybean protein
Soy meal
Sucrose
Thiamine hydrochloride (vitamin B_1)
Thiamine mononitrate (vitamin B_1 mononitrate)
Threonine
Tricalcium phosphate
Tryptophan
Tyrosine
Uva ursi, potassium extract
Valine
Vegetable
Vitamin A
Vitamin A acetate
Vitamin A palmitate
Vitamin E
Wheat germ
Xanthan gum
Yeast

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(d) Any OTC drug product that is not in compliance with this section is subject to regulatory action if initially introduced or initially delivered for introduction into interstate commerce after the dates specified in paragraphs (d)(1) and (d)(2) of this section.

(1) May 7, 1991, for products subject to paragraphs (a)(1) through (a)(19) of this section; and

(2) February 8, 1991, for products subject to paragraph (a)(20) of this section.

Dated: April 18, 1991.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 91-18756 Filed 8-7-91; 8:45 am]

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Thursday
August 8, 1991

Part V

Department of Commerce

International Trade Administration

19 CFR Part 356

Panel Rule Under Article 1904 of the U.S. Canada Free Trade Agreement; Final Rule

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 356

[Docket No. 81141-1052]

RIN 0525-AA33

Panel Rule Under Article 1904 of the U.S.-Canada Free Trade Agreement

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: Title IV of the United States-Canada Free-Trade Implementation Act of 1988, Public Law No. 100-4-49, 102 Stat. 1851 (1988) ("the FTA Act"), establishes procedures for review by a binational panel of United States antidumping and countervailing duty final determinations involving Canadian products and for requesting panel review of Canadian antidumping and countervailing duty final determinations involving products of the United States. Title IV implements chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement"). As authorized by section 405(d) of the FTA Act, an interim-final rule was published on December 30, 1988 (53 FR 53232) requesting comments with respect to these regulations. These regulations are intended to implement certain administrative procedures required by Article 1904 of the Agreement and the FTA Act and have been modified in response to the comments received.

EFFECTIVE DATE: August 8, 1991.

FOR FURTHER INFORMATION CONTACT: Lisa B. Koteen, Senior Counsel for Trade Agreements, or Diane M. McDevitt, Attorney-Adviser, room B-099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230; (202) 377-5285 or 377-0834, respectively.

SUPPLEMENTARY INFORMATION:

Administrative Procedure Act

This final rule is exempt from all requirements of Section 553 of the Administrative Procedure Act (5 U.S.C. 553), including notice and opportunity to comment and a delay of the effective date because it implements Chapter 19 of the Agreement and thus relates to a foreign affairs function of the United States.

Executive Order 12291

Because this rule concerns a foreign affairs function of the United States, it is not a rule within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no Regulatory Impact Analysis was prepared.

Paperwork Reduction Act

This rule does not contain a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq*). The collection of information contained in these regulations occur within the course of ongoing investigations or actions initiated prior to the determinations that are reviewable by binational panels under the Agreement. Thus they are not covered by the Paperwork Reduction Act. See 5 CFR 1320.3(c).

Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because the rule was not required to be promulgated as a proposed rule before issuance as a final rule by Section 553 of the Administrative Procedure Act or by any other law. Accordingly, neither an initial nor final Regulatory Flexibility Analysis, has been or will be prepared.

Executive Order 12612

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612 (52 FR 41685, October 30, 1987).

Background

Some of the amendments to the interim-final rule involve the correction of typographical errors or minor ministerial corrections that do not warrant explanation. Other changes result from the comments received in response to the interim-final rule and request for comments that was published on December 30, 1988 (53 FR 53232). These comments and the Department's responses to them are summarized below.

Section 356.2

Note: We have deleted the definition of "Court" because the only reference to this term in § 356.4 has been deleted in the final rule. We have added a definition for "privileged information" because a definition of this term was omitted inadvertently from the interim-final rule.

Section 356.3 (a) and (b)

Note: We have increased the number of copies of a Notice of Intent to Commence Judicial Review and Request for Panel Review that are filed with the United States or Canadian Secretary to meet the Secretariat's filing needs. In addition, we have rearranged paragraphs (a) and (b) and have addressed the two documents separately for ease of reference. Finally, rather than repeat the specific filing and service requirements in this section, we refer to the respective sections governing the time limits fixed for filing a Notice Of Intent to Commence Judicial Review and a Request for Panel Review, and the U.S. Secretary's service requirements for Requests for Panel Review filed with the Canadian Secretary.

Section 356.4

Comment: We received several comments noting the confusion that the interim-final rule has caused among practitioners. For example, paragraph (a) repeated the service requirements articulated in § 356.3. In addition, some practitioners were listing the address of the party to the proceeding as the service address, even if the party to the proceeding had counsel.

Department Position: We agree. For ease of reference, we have rearranged the requirements set forth in § 356.4. We have deleted the service requirements listed in paragraph (a) of the interim-final rule and merely cross-reference § 356.3 for such requirements in paragraph (c) of the final rule. We have revised the language in paragraph (b) of the interim-final rule to conform with the Article 1904 Panel Rules, as amended, (54 FR 53165, December 27, 1989) which clarified what information was required in a Notice of Intent to Commence Judicial Review. In particular, "service address" is a defined term. If the party to the proceeding is represented by counsel, the service address is the address of counsel; otherwise, the service address is the address of the party to the proceeding.

Section 356.5(a)

Comment: We have received several comments noting that paragraph (a) erroneously requires that a Request for Panel Review must be filed with the United States Secretary, thus, precluding the parties from filing a Request with the Canadian Secretary.

Department Position: We agree. Because the FTA and existing Article 1904 Panel Rules permit the filing of a Request for Panel Review with either Secretary, we have revised the language accordingly.

Section 356.5(c)

Comment: We received several comments noting the confusion that the interim-final rule has caused among practitioners. For example, it was unclear under paragraph (c) of the interim-final rule whether the party to the proceeding filing a Request for Panel Review should list as the service address counsel's address or the party's own address.

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Department Position: We agree. For ease of reference, we have rearranged the requirements set forth in § 356.4. We have deleted the service requirements listed in paragraph (a) of the interim-final rule and merely cross-reference § 356.3 for such requirements in paragraph (c) of the final rule. We have revised the language in paragraph (b) of the interim-final rule to conform with the Article 1904 Panel Rules, as amended, (54 FR 53165, December 27, 1989) which clarified what information was required in a Notice of Intent to Commence Judicial Review. In particular, "service address" is a defined term. If the party to the proceeding is represented by counsel, the service address is the address of counsel; otherwise, the service address is the address of the party to the proceeding.

Section 356.5(a)

Comment: We have received several comments noting that paragraph (a) erroneously requires that a Request for Panel Review must be filed with the United States Secretary, thus, precluding the parties from filing a Request with the Canadian Secretary.

Department Position: We agree. Because the FTA and existing Article 1904 Panel Rules permit the filing of a Request for Panel Review with either Secretary, we have revised the language accordingly.

Section 356.5(c)

Comment: We received several comments noting the confusion that the interim-final rule has caused among practitioners. For example, it was unclear under paragraph (c) of the interim-final rule whether the party to the proceeding filing a Request for Panel Review should list as the service address counsel's address or the party's own address.

Department Position: See the Department's response to comments on § 356.4.

Section 356.5(d)

Note: Because § 356.5 of the interim-final rule made no reference to service requirements, we have added a provision to the final rule which cross-references the appropriate service provision in § 356.3.

Section 356.7 (b) and (c)

Comment: We received one comment recommending that § 356.7(b) should conform with 19 CFR 353.31 (d) and (e)(2) and 355.31 (d) and (e)(2), the Department's antidumping and countervailing duty regulations pertaining to the submission of factual information in administrative proceedings. The comment suggests that the latter procedures should apply to this section as well because a request under this section is filed with the Department as part of an administrative proceeding and requires a response from the Department. Likewise, the comment notes that § 356.7(c) should conform to 19 CFR 353.31(g) and 355.31(g) because the requester should be required to serve a copy of its request on the interested parties, just as with any other document filed with the Department that requires further administrative action.

Department Position: We agree that the filing and service requirements for requests to determine when the Canadian Government was informed of a scope determination should conform to the Department's regulations pertaining to filings made during an administrative proceeding. We have amended the interim-final rule accordingly.

Section 356.8(d)(1)

Comment: We received one comment recommending that § 356.8(d)(1) should conform with 19 CFR 353.31 (d) and (e)(2) and 355.31 (d) and (e)(2), the Department's antidumping and countervailing duty regulations pertaining to the submission of factual information in administrative proceedings. The comment suggests that the latter procedures should apply to this section as well because a request under this section is filed with the Department as part of an administrative proceeding and requires responsive action by the Department. In addition, several parties argue that the ten-day deadline for filing a Request for Continued Suspension of Liquidation is unfair and contrary to the statute.

Department Position: Consistent with the Department's response to comments on § 356.7(b), we agree that the filing requirements should conform to those for administrative proceedings under §§ 353 and 355, and have made the necessary changes. With respect to the ten-day deadline for filing a Request for Continued Suspension of Liquidation, we agree that the interim-final rule is unnecessarily strict. The formulation in the interim-final rule reflected the reasonable interpretation of the statute that the Department cannot continue the suspension of liquidation if the suspension has already been lifted. Nevertheless, this interpretation may be unduly technical. The chance that some entries might have been liquidated should not act as a prohibition against requesting suspension generally. A party may make such a request whenever it wishes but the party must realize that is does so at its own peril.

Section 356.9(f)

Note: In the final rule we have added to the list of persons eligible to receive access to business proprietary information in the administrative record those officials of the Canadian Government who are designated to determine whether to seek an extraordinary challenge committee. This addition conforms to the amendments to section 777(d) of the Tariff Act of 1930 that were enacted in section 134(a)(4)(B)(iv) of the Customs and Trade Act of 1990, Public Law No. 380 (1990). Comparable conforming changes have been made to paragraphs 356.10 (b)(2) and (c).

Section 356.10(b)(1)

Note: We note in the final rule that the Department has adopted application forms for the disclosure of proprietary information and provide information regarding the availability of such forms. We further note that such forms may be amended from time to time.

Section 356.10(b)(2)

Comment: We have received comments regarding the deadline for the submission of protective order applications for counsel and professionals described in § 356.9(b). The comments note that the interim-final rule incorrectly requires counsel and professionals to file their applications at the same time that they file their complaint or notice of appearance in order for the Department to consider their applications timely filed.

Department Position: We agree. Thus, we have clarified the timing of applications on behalf of counsel and professionals by providing that persons described in § 356.9(b) may file their applications at the same time that they file their complaint or notice of appearance or any time thereafter. We have also amended the timing of applications for the Secretariat staff and now require the staff to file their applications immediately upon assuming their official duties because they need access to proprietary information as soon as practicable in order for these individuals to afford the efficient, prompt service contemplated under the FTA.

Section 356.10(b)(3)

Note: We have rearranged and renumbered subsections (i), (ii), and (iii) and have added subsection (iv) to provide clearer guidance with respect to the filing and service requirements governing protective order applications for the release of proprietary information.

Section 356.10(b)(3)(i)

Comment: We have received one comment suggesting that the processing of protective orders for persons described under § 356.9(a) (panelists, extraordinary challenge committee members and assistants), would proceed much smoother if the Department only required these persons to submit their completed applications to the United States Secretary for handling.

Department Position: We agree. In order to further assist panelists, extraordinary challenge committee members and assistants, the final rule requires these persons to submit the completed original application only to the United States Secretary. The United States Secretary, in turn, shall file the original plus six copies along with an appropriate letter of transmittal with the competent investigating authority.

Section 356.10(b)(3)(ii)

Comment: We received one comment recommending that § 356.10(b)(3)(ii) should conform with 19 CFR 353.31 (d) and (e)(2) and 19 CFR 355.31 (d) and (e)(2), the Department's antidumping and countervailing duty regulations pertaining to the submission of factual information in administrative proceedings. The comment notes that these procedures should apply here as well because a request under this section is filed with the Department and requires further administrative processing.

Department Position: We agree. Because a request under this section is filed with the Department and requires further administrative processing, the final rule requires the applicants to file the appropriate number of copies and a letter of transmittal in conformity with other administrative filings. It is hoped through this change that the Department will be able to process these applications in a more efficient, expeditious manner.

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Section 356.10(b)(3)(iv)

Note: In order to eliminate the repetitious listing of the specific methods of service required under the FTA, we have cross-referenced § 356.3(c)–(e), the general provision regarding the service of documents in a binational panel proceeding.

Section 356.10(c)(1) (ii) and (iii)

Note: In order to further assist the members and staff of binational panels and extraordinary challenge committees in the release of proprietary information pursuant to protective order, the final rule merely requires that these applicants submit one copy of the Department's protective order to the United States Secretary. The United States Secretary, in turn, will transmit a copy of the countersigned order (panelists only) to the Department and make the appropriate copies for the United States and the Canadian Secretariat files.

Section 356.10(d) (1) and (2)

Comment: We received several comments that this section is unclear with respect to the Department's timing of decisions on applications filed by counsel or professionals. For example, § 356.10(d)(1) of the interim-final rule led the reader to believe that the Department's decision would be rendered on the tenth day following the filing of the application.

Department Position: We agree. In order to eliminate the noted confusion, we have clarified the first paragraph to read that the Department's decision will not be made until at least the tenth day following the request. In addition, we have added a paragraph to this section and have renumbered the remaining paragraphs in order to further clarify when the Department will normally render decisions on applications filed by counsel and professionals and to bring this section into conformity with 19 CFR 353.34(b)(5) and 355.34(b)(5), the Department's antidumping and countervailing duty regulations dealing with the disclosure of proprietary information under protective order. Thus, barring any objection, § 356.10(d)(2) of the final rule requires the Department normally to render a decision to approve or deny an application for protective order within fourteen days. Where an objection has been filed, the Department normally will render a decision within 30 days. With respect to service requirements, we have merely cross-referenced § 356.3(c)–(e) in subparagraph (1) of the final rule, rather than repeat the methods of service required pursuant to this rule.

Section 356.10(d) (3) and (4)

Note: We have eliminated the requirement in these paragraphs that the Department serve the submitter of proprietary information with a copy of the protective order or denial letter. Because the recipient of a protective order is required under § 356.10(d)(5) to serve a copy of the protective order on all participants in the panel review, the former service requirement resulted in unnecessary, duplicated service.

Section 356.10(d)(5)

See the above Comment and Department Position pertaining to § 356.10(b)(3)(iv).

Section 356.10(e)

Note: We have relettered this subsection to correct a previous lettering error (*e.g.*, no paragraph (e) in the interim-final rule). In addition, we have changed the terminology in this section from "motion" to "notification" to more accurately characterize the action taken before the Department.

Section 356.11(a)

See the above Comment and Department Position pertaining to § 356.10(b)(3)(i).

Section 356.11(a)(3)

See Note pertaining to § 356.9(f).

Section 356.11(b)(1)

See Note pertaining to § 356.10(b)(1).

Section 356.11(b)(2)(i)

Comment: We have received a few comments noting the confusion in this section because under the interim-final rule, it appeared that the persons listed in category (C) were already covered in category (B). In addition, the interim-final rule inadvertently failed to include mention of the staff of extraordinary challenge committee members.

Department Position: We agree. Accordingly, in the final rule, we have eliminated the specific reference to officials of the United States Government appointed by the United States Trade Representative and have included persons retained or employed by an extraordinary challenge committee member.

Section 356.11(b)(2)(iv)

Note: We have renumbered this paragraph in the final rule (paragraph (3) in the interim-final rule) and have made the appropriate changes so that this paragraph conforms grammatically with paragraphs (i), (ii), and (iii).

Section 356.11(d)(2)

See the Department's Note regarding § 356.10(c)(1) (ii) and (iii).

Section 356.11(e)

Note: We have changed the terminology in this section from "motion" to "notification" to more accurately reflect the action taken before the Department.

Section 356.27(e)

Comment: We received a comment that the interim-final rule was unclear concerning the United States Government's handling of violations of Canadian disclosure undertakings.

Department Position: We agree. We have clarified this provision in the final rule, noting that a final decision made in the United States in conjunction with a charge by an authorized agency of Canada will be forwarded to the Secretariat for transmittal to that agency for publication.

List of Subjects in 19 CFR Part 356

Antidumping, Canada, Countervailing Duty, Imports, Judicial Review, Trade Agreements.

Dated: July 1, 1991.

J. Michael Farren,

Under Secretary for International Trade.

For the reasons set forth in the preamble, 19 CFR part 356 is revised to read as follows:

PART 356—PROCEDURES AND RULES FOR IMPLEMENTING ARTICLE 1904 OF THE UNITED STATES-CANADA FREE-TRADE AGREEMENT

Subpart A—Scope and Definitions

Sec.
356.1 Scope.
356.2 Definitions.

Subpart B—Procedures for Commencing Review of Final Determinations

356.3 Filing and Service Requirements.
356.4 Notice of Intent to Commence Judicial Review.
356.5 Request For Panel Review.
356.6 Receipt of Notice of Scope Determinations by the Government of Canada.
356.7 Request to Determine When the Government of Canada Received Notice of a Scope Determination.
356.8 Continued Suspension of Liquidation.

Subpart C—Proprietary and Privileged Information

356.9 Persons Authorized to Receive Proprietary Information.
356.10 Procedures for Obtaining Access to Proprietary Information.
356.11 Procedures for Obtaining Access to Privileged Information.

Subpart D—Violation of a Protective Order or a Disclosure Undertaking

356.12 Sanctions for Violation of a Protective Order or Disclosure Undertaking.
356.13 Suspension of Rules.
356.14 Report of Violation and Investigation.
356.15 Initiation of Proceedings.
356.16 Charging Letter.
356.17 Request to Charge.
356.18 Interim Sanctions.
356.19 Request for a Hearing.

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Department Position: We agree. We have clarified this provision in the final rule, noting that a final decision made in the United States in conjunction with a charge by an authorized agency of Canada will be forwarded to the Secretariat for transmittal to that agency for publication.

List of Subjects in 19 CFR Part 356

Antidumping, Canada, Countervailing Duty, Imports, Judicial Review, Trade Agreements.

Dated: July 1, 1991.

J. Michael Farren,

Under Secretary for International Trade.

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PART 356—PROCEDURES AND RULES FOR IMPLEMENTING ARTICLE 1904 OF THE UNITED STATES-CANADA FREE-TRADE AGREEMENT

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356.19 Request for a Hearing.

356.20 Discovery.
356.21 Subpoenas.
356.22 Prehearing Conference.
356.23 Hearing.
356.24 Proceeding Without a Hearing.
356.25 Witnesses.
356.26 Initial Decision.
356.27 Final Decision.
356.28 Reconsideration.
356.29 Confidentiality.
356.30 Sanctions for Violations of a Protective Order for Privileged Information.

Authority: 19 U.S.C. 1516a and 1677f(d).

Subpart A—Scope and Definitions

§ 356.1 Scope.

This part sets forth procedures and rules for the implementation of Article 1904 of the United States-Canada Free-Trade Agreement under the Tariff Act of 1930, as amended by title IV of the United States-Canada Free-Trade Agreement Implementation Act of 1988 ("FTA Act") (19 U.S.C. 1516a and 1677f(d)).

§ 356.2 Definitions.

For purposes of this part:

(a) *Act* means the Tariff Act of 1930, as amended;

(b) *Administrative law judge* means the person appointed under 5 U.S.C. 3105 who presides over the taking of evidence as provided by Subpart D;

(c) *Affected party* means a person against whom sanctions have been proposed for alleged violation of a protective order or disclosure undertaking but who is not a charged party;

(d) *Agreement* means the Free-Trade Agreement between Canada and the United States of America entered into between the Government of Canada and the Government of the United States of America, which took effect on January 1, 1989;

(e) *APO Sanctions Board* means the Administrative Protective Order Sanctions Board;

(f) *Authorized agency of Canada* means any Canadian government agency that is authorized by Canadian law to request the Department to initiate proceedings to impose sanctions for an alleged violation of a disclosure undertaking;

(g) *Binational panel* means a binational panel established pursuant to annex 1901.2 to chapter 19 of the Agreement for the purpose of reviewing a final determination;

(h) *Canadian Secretary* means the Secretary of the Canadian section of the Secretariat and includes any person authorized to act on behalf of the Secretary;

(i) *Charged party* means a person who is charged by the Deputy Under Secretary with violating a protective order or an undertaking;

(j) *Chief Counsel* means the Chief Counsel for Import Administration, U.S. Department of Commerce, or designee;

(k) *Competent investigating authority* means the agency of a government that issued the final determination at issue, which may be:

(1) in the case of Canada,

(i) the Deputy Minister of National Revenue for Customs and Excise as defined in the Special Import Measures Act, or his successor, or

(ii) the Canadian International Trade Tribunal, or its successor; and

(2) in the case of the United States,

(i) the International Trade Administration of the United States Department of Commerce, or its successor, or

(ii) the United States International Trade Commission, or its successor;

(l) *Date of service* means, for purposes of Subpart C only, the day a document is deposited in the mail or delivered in person;

(m) *Days* means calendar days, except that a deadline which falls on a weekend or holiday shall be extended to the next working day;

(n) *Department* means the U.S. Department of Commerce;

(o) *Deputy Under Secretary* means the Deputy Under Secretary for International Trade, U.S. Department of Commerce;

(p) *Director* means an Office Director under the Deputy Assistant Secretary for Investigations, U.S. Department of Commerce, or designee, if the panel review is of a final determination by the Department under section 751 of the Act, or an Office Director under the Deputy Assistant Secretary for Compliance, or designee, if the panel review is of a final determination by the Department under section 705(a) or 735(a) of the Act;

(q) *Disclosure undertaking* means the Canadian mechanism for protecting proprietary or privileged information during proceedings pursuant to Article 1904 of the Agreement, as prescribed by § 77.21(2) of the Special Import Measures Act;

(r) *Extraordinary challenge committee* means the committee established pursuant to section 407 of the FTA Act to review decisions of a panel or conduct of a panelist;

(s) *Final determination* has the meaning assigned to the term "final determination" by Article 1911 of the Agreement and includes a Canadian definitive decision within the meaning of § 77.1(1) of the Special Import Measures Act;

(t) *Lesser-included sanction* means a sanction of the same type but of more limited scope than the proposed sanction for violation of a protective order or disclosure undertaking; thus, a one-year bar on representation before the Department is a lesser-included sanction of a proposed seven-year bar;

(u) *Panel review* means review of a final determination pursuant to chapter 19 of the Agreement;

(v) *Party to the proceeding* means a person that would be entitled, under section 516A of the Act, to commence proceedings for judicial review of a final determination;

(w) *Participant* means a party to the proceeding that files a Complaint or a Notice of Appearance in a panel review, or the Department;

(x) *Parties* means, in an action under subpart D, the Department and the charged party or affected party;

(y) *Person* means, an individual, partnership, corporation, association, organization, or other entity;

(z) *Privileged information* means

(1) With respect to a panel review of a final determination made in the United States, information of the investigating authority that is subject to the attorney-client, attorney work product or government deliberative process privilege under the laws of the United States and with respect to which the privilege has not been waived, and;

(2) With respect to a panel review of a final determination made in Canada, information of the Government of Canada that is subject to the solicitor-client privilege under the laws of Canada or that constitutes part of the deliberative process with respect to the final determination and with respect to which the privilege has not been waived.

(aa) *Proprietary information* means information the disclosure of which the Department has decided is limited under the procedures adopted pursuant to Article 1904.14 of the Agreement, including business or trade secrets; production costs; terms of sale; prices of individual sales, likely sales, or offers; names of customers, distributors, or suppliers; exact amounts of the subsidies received and used by a person; names of particular persons from whom proprietary information was obtained; and any other business information the release of which to the public would cause substantial harm to the competitive position of the submitter; or information the disclosure of which an authorized agency of Canada has decided is limited under the procedures adopted pursuant to Article 1904.14 of the Agreement;

(bb) *Protective order* means an administrative protective order issued by the Department under 19 CFR 356.10(c)(1), 356.10(c)(2), 356.10(d)(2) or 356.11(c)(1);

(cc) *Scope determination* means a determination by the Department, reviewable under section 516A(a)(2)(B)(vi) of the Act, as to whether a particular type of merchandise is within the class or kind of merchandise described in an existing finding of dumping or an antidumping or countervailing duty order covering Canadian merchandise;

(dd) *Secretariat* means the Secretariat established pursuant to Article 1909 of the Agreement and includes the Secretariat sections located in both Canada and the United States;

(ee) *Service address* means the facsimile number, if any, and address set out by a party to the proceeding as the address of counsel at which the party may be served, or, where the party is not represented by counsel, the facsimile number, if any, and address of the party;

(ff) *Service list* means, with respect to a panel review,

(1) Where the final determination was made in the United States, the list maintained by the competent investigating authority of parties to the proceeding leading to the final determination, and

(2) Where the final determination was made in Canada, the list of persons to whom notice of the final determination was sent by the Deputy Minister or the list of persons that appeared in the proceedings before the Tribunal, as the case may be;

(gg) *Under Secretary* means the Under Secretary for International Trade, U.S. Department of Commerce, or designee;

(hh) *United States Secretary* means the Secretary of the United States section of the Secretariat and includes any person authorized to act on behalf of the Secretary.

Subpart B—Procedures for Commencing Review of Final Determinations

§ 356.3 Filing and service requirements.

(a) *Notice of Intent to Commence Judicial Review.* Where a party to the proceeding intends to commence judicial review of a final determination, the party shall serve an original and 8 copies of the Notice of Intent to Commence Judicial Review on the United States Secretary or the Canadian Secretary during normal business hours of the Secretariat and within the time limits established in § 356.4(b). The party shall serve the Notice on all other parties to the proceeding and the competent investigating authority in accordance with paragraph (c) of this section.

(b) *Request for Panel Review.* Where a party to the proceeding seeks panel review of a final determination by filing a Request for Panel Review with the United States Secretary, the party shall file an original and 8 copies of the Request for Panel Review during the normal business hours of the Secretariat and within the time limits established in § 356.5(a). The party shall serve the Request on all other parties to the proceeding and the competent investigating authority, except where the document is required to be served by the United States Secretary, as provided in § 356.5(e).

(c) Service of a document on a party to the proceeding may be effected in the following manner:

(1) By delivering a copy of the document to the service address of the party to the proceeding, as defined in § 356.2(ee);

(2) By sending a copy of the document to the service address of the party to the proceeding, as defined in § 356.2(ee) by facsimile transmission or an expedited delivery courier or mail service, such as express mail; or

(3) By personal service on the party to the proceeding.

(d) Service of a document on the competent investigating authority may be effected in any manner provided in paragraph (c) of this section, when made on the General Counsel of the competent investigating authority.

(e) A certificate of service or certificate of receipt shall appear on, or be affixed to, the documents referred to in paragraphs (a) and (b) of this section.

(f) Where a Notice of Intent to Commence Judicial Review or a Request for Panel Review is served by an expedited delivery courier or mail service, the date of service set out in the certificate of service shall be the day on which the document is consigned to the courier service or mailed.

(g)(1) The normal business hours during which the offices of the United States section of the Secretariat shall be open to the public are 9:00 a.m. to 5:00 p.m. each weekday except for legal holidays of the United States section of the Secretariat, as defined in the rules of procedure adopted pursuant to Article 1904.14 of the Agreement.

(2) The normal business hours during which the offices of the Canadian section of the Secretariat shall be open to the public are 9:00 a.m. to 5:00 p.m. each weekday except for legal holidays of the Canadian section of the Secretariat, as defined in the rules of procedure adopted pursuant to Article 1904.14 of the Agreement.

(h)(1) The United States section of the Secretariat is located at Room 4012, U.S. Department of Commerce, Pennsylvania Avenue & 14th Street, NW., Washington, DC 20230.

(2) The Canadian section of the Secretariat is located at Royal Bank Center, suite 705, 90 Sparks Street, Ottawa, Ontario, Canada K1P5B4.

§ 356.4 Notice of intent to commence judicial review.

(a) A Notice of Intent to Commence Judicial Review shall include the following information:

(1) The name of the party to the proceeding filing the Notice;

(2) The name of counsel for the party to the proceeding, if any;

(3) The service address, as defined in § 356.2(ee);

(4) The telephone number of counsel for the party to the proceeding, or where the party is not represented by counsel, the telephone number of the party;

(5) The title of the final determination for which judicial review is sought, the case number assigned by the competent investigating authority, and the appropriate citation if the final determination was published in the **Federal Register**; and

(6) If the final determination is a scope determination, the date on which notice of the scope determination was received by the Government of Canada.

(b) A Notice of Intent to Commence Judicial Review shall be deemed to be timely filed if a Notice in compliance with these regulations is delivered no later than 20 days after:

(1) The date the final determination was published in the **Federal Register**; or

(2) If the final determination is a scope determination, the date on which notice of the scope determination was received by the Government of Canada.

(c) A Notice of Intent to Commence Judicial Review shall be served in accordance with § 356.3 of these regulations.

§ 356.5 Request for panel review.

(a) Only a party to the proceeding may request binational panel review of a final determination. To make such a request, a party shall file a Request for Panel Review with the United States Secretary or the Canadian Secretary no later than the date that is 30 days after:

(1) The date the final determination was published in the **Federal Register** or **Canada Gazette**; or

(2) If the final determination is a scope determination, the date on which notice

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(h)(1) The United States section of the Secretariat is located at Room 4012, U.S. Department of Commerce, Pennsylvania Avenue & 14th Street, NW., Washington, DC 20230.

(2) The Canadian section of the Secretariat is located at Royal Bank Center, suite 705, 90 Sparks Street, Ottawa, Ontario, Canada K1P5B4.

§ 356.4 Notice of intent to commence judicial review.

(a) A Notice of Intent to Commence Judicial Review shall include the following information:

(1) The name of the party to the proceeding filing the Notice;

(2) The name of counsel for the party to the proceeding, if any;

(3) The service address, as defined in § 356.2(ee);

(4) The telephone number of counsel for the party to the proceeding, or where the party is not represented by counsel, the telephone number of the party;

(5) The title of the final determination for which judicial review is sought, the case number assigned by the competent investigating authority, and the appropriate citation if the final determination was published in the **Federal Register**; and

(6) If the final determination is a scope determination, the date on which notice of the scope determination was received by the Government of Canada.

(b) A Notice of Intent to Commence Judicial Review shall be deemed to be timely filed if a Notice in compliance with these regulations is delivered no later than 20 days after:

(1) The date the final determination was published in the **Federal Register**; or

(2) If the final determination is a scope determination, the date on which notice of the scope determination was received by the Government of Canada.

(c) A Notice of Intent to Commence Judicial Review shall be served in accordance with § 356.3 of these regulations.

§ 356.5 Request for panel review.

(a) Only a party to the proceeding may request binational panel review of a final determination. To make such a request, a party shall file a Request for Panel Review with the United States Secretary or the Canadian Secretary no later than the date that is 30 days after:

(1) The date the final determination was published in the **Federal Register** or **Canada Gazette**; or

(2) If the final determination is a scope determination, the date on which notice

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of the scope determination was received by the government of the other country.

(b) Receipt of a request in compliance with this section by the United States Secretary or the Canadian Secretary, shall be deemed to be a request for binational panel review within the meaning of section 516A(g)(8) of the Act.

(c) A Request for Panel Review shall contain the following information:

(1) The name of the party to the proceeding requesting panel review;

(2) The name of counsel for the party to the proceeding, if any;

(3) The service address, as defined in § 356.2(ee);

(4) The telephone number of counsel for the party to the proceeding, or where the party is not represented by counsel, the telephone number of the party;

(5) The title of the final determination for which panel review is requested, the case number assigned by the competent investigating authority, and the appropriate citation if the final determination was published in the **Federal Register** or **Canada Gazette**;

(6) Where a Notice of Intent to Commence Judicial Review has been served and the sole reason that the Request for Panel Review is made is to require review of the final determination by a panel, a statement to that effect;

(7) If the final determination is a scope determination, the date on which notice of the scope determination was received by the government of the other country; and

(8) The service list.

(d) A Request for Panel Review shall be filed and served in accordance with § 356.3 of these regulations.

(e) Where a party to the proceeding files a Request for Panel Review with the Canadian Secretary, the United States Secretary shall serve a copy of the request on:

(1) Any other party to the proceeding; and

(2) The competent investigating authority.

§ 356.6 Receipt of notice of scope determinations by the Government of Canada.

(a) Where the Department has made a scope determination, notice of such determination shall be deemed received by the Government of Canada when a certified copy of the determination is delivered to the Chancery of the Embassy of Canada during its normal business hours.

(b) Where feasible, the Department, or an agent therefor, will obtain a certificate of receipt signed by a person authorized to accept delivery of documents to the Embassy of Canada acknowledging receipt of the scope determination. The certificate will describe briefly the document being delivered to the Embassy of Canada, state the date and time of receipt, and include the name and title of the person who signs the certificate. The certificate will be retained by the Department in its public files pertaining to the scope determination at issue.

§ 356.7 Request to determine when the Government of Canada received notice of a scope determination.

(a) Pursuant to section 516A(g)(10) of the Act, any party to the proceeding may request in writing from the Department the date on which the Government of Canada received notice of a scope determination made by the Department.

(b) A request shall be made by filing a written request and the correct number of copies in accordance with the requirements set forth in 19 CFR 353.31 (d) and (e)(2) or 355.31 (d) and (e)(2) with the Secretary of Commerce, Attention: Import Administration, Central Records Unit, room B–099, U.S. Department of Commerce, Pennsylvania Ave. & 14th Street NW., Washington, DC 20230. A letter of transmittal must be bound to the original and each copy as the first page of the request. The letter of transmittal must be marked according to the requirements of 19 CFR 353.31(e)(2)(i)–(v) or 355.31(e)(2)(i)–(v).

(c) The requesting party shall serve a copy of the Request to Determine When the Government of Canada Received Notice of a Scope Determination by first class mail or personal service on any interested party on the Department's service list in accordance with the service requirements listed in 19 CFR 353.31(g) or 355.31(g).

(d) The Department will respond to the request referred to in paragraph (b) of this section within five business days of receipt.

§ 356.8 Continued suspension of liquidation.

(a) *In General.* In the case of an administrative determination specified in clause (iii) or (vi) of section 516A(a)(2)(B) of the Act and involving Canadian merchandise, the Department shall not order liquidation of entries of merchandise covered by such a determination until the forty-first day after the date of publication of the notice described in clause (iii) or receipt of the determination described in clause (vi), as appropriate. If requested, the Department will order the continued suspension of liquidation of such entries in accordance with the terms of paragraphs (b), (c), and (d) of this section.

(b) *Eligibility To Request Continued Suspension of Liquidation.*

(1) A participant in a binational panel review that was a domestic party to the proceeding, as described in section 771(9) (C), (D), (E), (F), or (G) of the Act, may request continued suspension of liquidation of entries of merchandise covered by the administrative determination under review by the panel and that would be affected by the panel review.

(2) A participant in a binational panel review that was a party to the proceeding, as described in section 771(9)(A) of the Act, may request continued suspension of liquidation of the merchandise which it manufactured, produced, exported, or imported and which is covered by the administrative determination under review by the panel.

(c) A request for continued suspension of liquidation must include:

(1) The name of the final determination subject to binational panel review and the case number assigned by the Department;

(2) The caption of the binational panel proceeding;

(3) The name of the requesting participant;

(4) The requestor's status as a party to the proceeding and as a participant in the binational panel review; and

(5) The specific entries to be suspended by name of manufacturer, producer, exporter, or U.S. importer.

(d) *Filing and Service.*

(1) A request for Continued Suspension of Liquidation must be filed with the Assistant Secretary for Import Administration, room B–099, Pennsylvania Ave. at 14th Street NW., Washington, DC 20230, in accordance with the requirements set forth in 19 CFR 353.31 (d) and (e)(2) or 355.31 (d) and (e)(2). A letter of transmittal must be bound to the original and each copy as the first page of the request. The letter of transmittal must be marked according to the requirements of 19 CFR 353.31(e)(2)(i)–(v) or 355.31(e)(2)(i)–(v). The envelope and the first page of the request must be marked: Panel Review—Request for Continued Suspension of Liquidation. The request may be made no earlier than the date on which the first request for binational panel review is filed.

(2) The requesting party shall serve a copy of the Request for Continued Suspension of Liquidation on the United States Secretary and all parties to the Proceeding in accordance with the requirements of 19 CFR 353.31(g), or 19 CFR 355.31(g).

(e) *Termination of Continued Suspension.* Upon completion of the panel review, including any panel review of remand determinations and any review by an extraordinary challenge committee, the Department will order liquidation of entries, the suspension of which was continued pursuant to this section.

Subpart C—Proprietary and Privileged Information

§ 356.9 Persons authorized to receive proprietary information.

Persons described in paragraphs (a), (d), (e), and (f) of this section shall, and persons described in paragraphs (b) and (c) of this section may, be authorized by the Department to receive access to proprietary information if they comply with these regulations and such other conditions imposed upon them by the Department;

(a) The members of, and appropriate staff of, a binational panel or extraordinary challenge committee;

(b) Counsel to participants in panel reviews and professionals retained by, or under the direction or control of such counsel, provided that the counsel or professional does not participate in competitive decision-making activity (such as advice on production, sales, operations, or investments, but not legal advice) for the participant represented or for any person who would gain competitive advantage through knowledge of the proprietary information sought;

(c) Other persons who are retained or employed by and under the direction or control of a counsel or professional, panelist, or committee member who has been issued a protective order, such as paralegals, law clerks, and secretaries, if such other persons are:

(1) Not involved in the competitive decision-making of a participant to the panel review or for any person who would gain competitive advantage through knowledge of the proprietary information sought; and

(2) Have agreed to be bound by the terms set forth on the application for protective order of the counsel or professional, panelist, or committee member;

(d) The Secretaries of the United States and Canadian sections of the Secretariat and persons retained or employed by the Secretaries, including court reporters hired by the Secretariat to transcribe panel reviews;

(e) Such officials of the United States government as the United States Trade Representative informs the Department require access to proprietary information for the purpose of evaluating whether the United States should seek an extraordinary challenge committee review of a panel determination; and

(f) Such officials of the Canadian government as an authorized agency of Canada informs the Department require access to proprietary information for the purpose of evaluating whether Canada should seek an extraordinary challenge committee review of a panel determination.

§ 356.10 Procedures for obtaining access to proprietary information.

(a) *Persons Who Must File An Application for Disclosure Under Protective Order.* In order to be permitted access to proprietary information in the administrative record of a final determination under review by a panel, all persons described in § 356.9(a), (b), (d), (e), or (f) shall file an application for a protective order.

(b) *Procedures for Applying for a Protective Order.*

(1) *Contents of Applications.* (i) The Department has adopted application forms for disclosure of proprietary information to those persons described in § 356.9 (a), (b), (d), (e), and (f). Application forms for persons described in § 356.9, (a), (d), (e), and (f) are available from the United States Secretariat. Application forms for persons described in § 356.9(b) are available from the Central Records Unit, room B–099, U.S. Department of Commerce, Pennsylvania Avenue & 14th Street NW., Washington, DC 20230. These forms may be amended from time to time.

(ii) Such forms require the applicant to submit a personal sworn statement stating, in addition to such other terms as the Department may require, that the applicant shall:

(A) Not disclose any proprietary information obtained under protective order and not otherwise available to the applicant, to any person other than:

(*1*) An official of the Department involved in the particular panel review in which the proprietary information is part of the administrative record,

(*2*) The person from whom the information was obtained,

(*3*) A person who has been granted access to the proprietary information at issue under § 356.9; and

(*4*) A person employed by and under the direction or control of a counsel or professional, panelist, or committee member who has been issued a protective order, such as a paralegal, law clerk, or secretary if such person:

(*i*) Is not involved in competitive decision-making for a participant in the panel review or for any person that would gain competitive advantage through knowledge of the proprietary information sought, and

(*ii*) Has agreed to be bound by the terms set forth in the application for protective order by the counsel, professional, panelist, or committee member;

(B) Not use any of the proprietary information not otherwise available to the applicant for purposes other than proceedings pursuant to Article 1904 of the Agreement; and

(C) Upon completion of the panel review, or at such earlier date as may be determined by the Department, return to the Department or certify to the Department the destruction of all documents released under the protective order and all other documents containing the proprietary information (such as briefs, notes, or charts based on any such information received under the protective order).

(D) Acknowledge that breach thereof may subject the signatory to sanctions under § 356.12.

(2) *Timing of Applications.* Any person described in § 356.9(a) may file an application for disclosure under protective order after a Notice of Request for Panel Review has been filed with the Secretariat. Any person described in § 356.9(b) may file at any time but not before that person files a Complaint or a Notice of Appearance. Any person described in § 356.9(d) shall file an application immediately upon assuming official responsibilities in the United States or Canadian Secretariat. Any person described in § 356.9(e) shall submit an application to the United States Trade Representative for filing with the Department. Any person described in § 356.9(f) shall submit an application to the Canadian Secretary for filing with the Department.

(3) *Filing and Service of Applications.* (i) *Applications of Persons Described in § 356.9(a).*

A person described in 356.9(a) shall submit the completed original of this form to the United States Secretary, FTA Binational Secretariat, room 4012, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230. The United States Secretary, in turn, shall file the original plus six copies of the application with the competent investigating authority. A letter of transmittal must be bound to the original and each copy as the first page of this document. The letter of transmittal must be marked according to the requirements of 19 CFR 353.31(e)(2)(i)–(v) or 355.31(e)(2)(i)–(v).

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(*ii*) Has agreed to be bound by the terms set forth in the application for protective order by the counsel, professional, panelist, or committee member;

(B) Not use any of the proprietary information not otherwise available to the applicant for purposes other than proceedings pursuant to Article 1904 of the Agreement; and

(C) Upon completion of the panel review, or at such earlier date as may be determined by the Department, return to the Department or certify to the Department the destruction of all documents released under the protective order and all other documents containing the proprietary information (such as briefs, notes, or charts based on any such information received under the protective order).

(D) Acknowledge that breach thereof may subject the signatory to sanctions under § 356.12.

(2) *Timing of Applications.* Any person described in § 356.9(a) may file an application for disclosure under protective order after a Notice of Request for Panel Review has been filed with the Secretariat. Any person described in § 356.9(b) may file at any time but not before that person files a Complaint or a Notice of Appearance. Any person described in § 356.9(d) shall file an application immediately upon assuming official responsibilities in the United States or Canadian Secretariat. Any person described in § 356.9(e) shall submit an application to the United States Trade Representative for filing with the Department. Any person described in § 356.9(f) shall submit an application to the Canadian Secretary for filing with the Department.

(3) *Filing and Service of Applications.* (i) *Applications of Persons Described in § 356.9(a).*

A person described in 356.9(a) shall submit the completed original of this form to the United States Secretary, FTA Binational Secretariat, room 4012, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230. The United States Secretary, in turn, shall file the original plus six copies of the application with the competent investigating authority. A letter of transmittal must be bound to the original and each copy as the first page of this document. The letter of transmittal must be marked according to the requirements of 19 CFR 353.31(e)(2)(i)–(v) or 355.31(e)(2)(i)–(v).

(ii) *Applications of Persons Described in § 356.9(b).*

A Person described in Paragraph (b) of § 356.9 shall submit the completed original and correct number of copies of this form in accordance with the requirements set forth in 19 CFR 353.31(d) and (e)(2) or 355.31 (d) and (e)(2). A letter of transmittal must be bound to the original and each copy as the first page of this document. The letter of transmittal must be marked according to the requirements of 19 CFR 353.31(e)(2)(i)–(v) or 19 CFR 355.31(e)(2)(i)–(v). If the application is filed before the date on which notices of appearance must be filed in the panel review, such person shall concurrently serve four copies of such application on the United States Secretary and one copy on each person listed on the service list. If the application is filed after the deadline for filing a Notice of Appearance, such person shall serve four copies of the application on the United States Secretary and one copy on each participant in the panel review.

(iii) *Applications of Persons Described in § 356.9 (d) and (e).* Any person described in paragraph (d) or (e) of § 356.9 who files an application with the Department shall file four copies with the United States section of the Secretariat, for placement in the public inspection files of the United States and Canadian sections of the Secretariat.

(iv) *Method of Service.* Service of an application shall be made in accordance with § 356.3(c)–(e).

(4) *Release to Employees of Panelists, Committee Members, and Counsel or Professionals.* A person described in paragraph (c) of § 356.9, including a paralegal, law clerk, or secretary, may be permitted access to proprietary information disclosed under protective order by the counsel or professional, panelist, or committee member who retains or employs such person, if such person has agreed to the terms of the protective order issued to the counsel or professional, panelist, or committee member, by signing and dating a completed copy of the application for protective order of the representative panelist, or committee member in the location indicated in that application;

(5) *Counsel or Professional Who Retains Access to Proprietary Information Under a Protective Order Issued During the Administrative Proceeding.* Any counsel or professional who has been granted access to proprietary information under protective order during an administrative proceeding that resulted in a final determination that becomes the subject of panel review may, if permitted by the terms of the protective order previously issued by the Department, retain such information until the applicant receives a protective order under this part.

(c) *Issuance of a Protective Order to Persons Described in § 356.9 (a), (d), (e), and (f).*

(1) *Issuance to Persons Described in § 356.9 (a) and (d).* (i) Upon receipt by the Department of an application from a person described in paragraph (a) or (d) of § 356.9, the Department will issue a protective order authorizing disclosure of proprietary information included in the administrative record of the final determination that is the subject of the panel review at issue.

(ii) Any panelist to whom the Department issues a protective order must countersign the protective order, and return one copy of the countersigned protective order to the United States Secretary who shall return one copy to the Department and retain four copies for placement in the public inspection files of the United States and Canadian sections of the Secretariat.

(iii) When the Department issues a protective order to any person described in paragraph (a) of § 356.9, other than a panelist, that person shall return one copy to the United States Secretary who shall retain four copies for placement in the public inspection files of the United States and Canadian sections of the Secretariat.

(2) *Issuance to Persons Described in § 356.9 (e) or (f).* Upon receipt by the Department from the United States Trade Representative or from the Canadian government of applications from persons requiring access to proprietary information for the purpose of evaluating whether the United States or Canada should request an extraordinary challenge committee, the Department will issue a protective order authorizing disclosure of proprietary information included in the record of the panel review at issue.

(3) The terms and obligations of any protective order issued under this paragraph will be the same as those established in paragraph (b)(1) of this section.

(d) *Consideration of Applications From Counsel or Professionals.* (1) *Opportunity to Object to Disclosure to Persons Described in § 356.9 (b) or (c).* The Department will not rule on an application for a protective order filed by a counsel or professional until at least ten days after the request is filed, unless there is compelling need to rule more expeditiously. Unless the Department has indicated otherwise, any person may file an objection to the application within seven days of filing of the application. Any such objection shall state the specific reasons in the view of such person why the application should not be granted. One copy of the objection shall be served on the applicant and on all persons who were served with the application. Service shall be made in accordance with § 356.3(c)–(e). Any reply to an objection will be considered if it is filed before the Department renders a decision.

(2) *Timing of Decisions on Applications.* Normally, the Department will render a decision to approve or deny an application for protective order within 14 days. If the person who submitted the information files an objection, the Department will normally render the decision within 30 days.

(3) *Approval of the Applications.* If appropriate, the Department will issue a protective order permitting the release of proprietary information to an applicant.

(4) *Denial of the Application.* If the Department denies an application, it shall issue a letter notifying the applicant of its decision and the reasons therefor.

(5) *Service of a Protective Order.* If the Department issues a protective order to a person pursuant to paragraph (d)(3) of this section, such person shall immediately file four copies of the protective order with the United States Secretariat and, as soon as the deadline for the filing of Notices of Appearances has passed in the appropriate panel review, shall serve a copy of that order upon all participants in that review. Service upon the Secretariat and the participants shall be made in accordance with § 356.3(c)–(e).

(e) *Modification or Revocation of Protective Orders.* If any person believes that changed conditions of fact or law, or the public interest, may require that a protective order issued pursuant to paragraph (c) of this section be modified or revoked, in whole or in part, such person may notify the Department in writing. The notification shall state the changes desired and the changed circumstances warranting such action and shall include materials and argument in support thereof. Such notification shall be served by the person submitting it upon the person to whom the Protective Order was issued. Responses to the notification may be filed within 20 days after the notification is filed unless the Department indicates otherwise. The Department may also consider such action *sua sponte.*

§ 356.11 Procedures for obtaining access to privileged information.

(a) *Persons Who May Apply for Access to Privileged Information Under Protective Order.* (1) *Panelists.*

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(i) If a panel decides that *in camera* examination of a document containing privileged information in an administrative record is necessary in order for the panel to determine whether the document, or portions thereof, should be disclosed under a Protective Order for Privileged Information to counsel or professionals retained by or under the direction or control of counsel, each panelist who is to conduct the *in camera* review, pursuant to the rules of procedure adopted by the United States and Canada to implement Article 1904 of the Agreement, shall submit an application for disclosure of the privileged information under Protective Order for Privileged Information to the United States Secretary for filing with the Department; and

(ii) If a panel orders disclosure of a document containing privileged information, any panelist who has not filed an application pursuant to paragraph (a)(1)(i) of this section shall submit an application for disclosure of the privileged information under a Protective Order for Privileged Information to the United States Secretary for filing with the Department.

(2) *Designated Officials of the United States Government.* Where, in the course of a panel review, the panel has reviewed privileged information under a Protective Order for Privileged Information, and the issue to which such information pertains is relevant to the evaluation of whether the United States should request an extraordinary challenge committee, each official of the United States government whom the United States Trade Representative informs the Department requires access for the purpose of such evaluation shall file an application for a Protective Order for Privileged Information.

(3) *Designated Officials of the Government of Canada.* Where, in the course of a panel review, the panel has reviewed privileged information under a Protective Order for Privileged Information, and the issue to which such information pertains is relevant to the evaluation of whether the United States government should request an extraordinary challenge committee, each official of the Canadian government whom an authorized agency of Canada informs the Department requires access for the purpose of such evaluation shall file an application for a Protective Order for Privileged Information.

(4) *Members of an Extraordinary Challenge Committee.* Where an extraordinary challenge record contains privileged information and a Protective Order for Privileged Information was issued to counsel or professionals representing participants in the panel review at issue, each member of the extraordinary challenge committee shall submit an application for a Protective Order for Privileged Information to the United States Secretary for filing with the Department.

(5) *Other Designated Persons.* If the panel decides, in accordance with the rules of procedure adopted by the United States and Canada to implement Article 1904 of the FTA, that disclosure of a document containing privileged information is appropriate, any person identified in such a decision as entitled to release under Protective Order for Privileged Information, *e.g.* counsel or a professional under the direction or control of counsel, Secretariat personnel, or a member of the staff of the panel, shall file an application for release under Protective Order for Privileged Information with the Department.

(b) *Contents of Applications for Release Under Protective Order for Privileged Information.* (1) The Department has adopted application forms for disclosure of privileged information to those persons described in section 356.11(a). Application forms for persons described in paragraphs (a)(1) and (4) of this section, Secretariat personnel, and members of the staff of a panelist or extraordinary challenge committee member are available from the United States Secretariat. Application forms for counsel or professionals are available from the Central Records Unit, room B-099, U.S. Department of Commerce, Pennsylvania Avenue & 14th Street NW., Washington, DC 20230. These forms may be amended from time to time.

(2) Such forms require the applicant for release of privileged information under Protective Order for Privileged Information to submit a personal sworn statement stating, in addition to such other conditions as the Department may require, that the applicant shall:

(i) Not disclose any privileged information obtained under protective order to any person other than:

(A) Officials of the Department involved in the particular panel review in which the privileged information is part of the record;

(B) A person who has furnished a similar application and who has been issued a Protective Order for Privileged Information concerning the privileged information at issue; and

(C) A person retained or employed by counsel, a professional, a panelist or extraordinary challenge committee member who has been issued a Protective Order for Privileged Information, such as a paralegal, law clerk, or secretary, if such person has agreed to be bound by the terms set forth in the application for Protective Order for Privileged Information of the counsel, professional, panelist or extraordinary challenge committee member by signing and dating the completed application at the location indicated in such application.

(ii) Use such information solely for purposes of the proceedings under Article 1904 of the Agreement;

(iii) Upon completion of the panel review, or at such earlier date as may be determined by the Department, return to the Department or certify to the Department the destruction of all documents released under the Protective Order for Privileged Information and all other documents containing the privileged information (such as briefs, notes, or charts based on any such information received under the Protective Order for Privileged Information); and

(iv) Acknowledge that breach thereof may subject the signatory to sanctions under §§ 356.12 and 356.30.

(c) *Issuance of Protective Orders for Privileged Information.* Upon receipt of an application for protective order under this section, the Department shall issue a protective order.

(d) *Service of Protective Order for Privileged Information.* (1) If the Department issues a Protective Order for Privileged Information to a counsel or professional, such person shall immediately file four copies of the application and Protective Order for Privileged Information with the United States section of the Secretariat and, as soon as the deadline for the filing of a Notice of Appearance has passed in the appropriate panel review, shall serve a copy of that application and order upon all participants in the panel review.

(2) If the Department issues a Protective Order for Privileged Information to any other person, such person shall return one copy to the United States Secretary, who shall return one copy to the Department and retain four copies for placement in the public inspection files of the United States and Canadian sections of the Secretariat. If the person described in the above sections is a panelist, the panelist shall countersign the protective order, and return one copy of the countersigned protective order to the United States Secretary, who shall return one copy to the Department and retain four copies for placement in the public inspection files of the United States and Canadian sections of the Secretariat.

(e) *Modification or Revocation of Protective Order for Privileged*

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(ii) Use such information solely for purposes of the proceedings under Article 1904 of the Agreement;

(iii) Upon completion of the panel review, or at such earlier date as may be determined by the Department, return to the Department or certify to the Department the destruction of all documents released under the Protective Order for Privileged Information and all other documents containing the privileged information (such as briefs, notes, or charts based on any such information received under the Protective Order for Privileged Information); and

(iv) Acknowledge that breach thereof may subject the signatory to sanctions under §§ 356.12 and 356.30.

(c) *Issuance of Protective Orders for Privileged Information.* Upon receipt of an application for protective order under this section, the Department shall issue a protective order.

(d) *Service of Protective Order for Privileged Information.* (1) If the Department issues a Protective Order for Privileged Information to a counsel or professional, such person shall immediately file four copies of the application and Protective Order for Privileged Information with the United States section of the Secretariat and, as soon as the deadline for the filing of a Notice of Appearance has passed in the appropriate panel review, shall serve a copy of that application and order upon all participants in the panel review.

(2) If the Department issues a Protective Order for Privileged Information to any other person, such person shall return one copy to the United States Secretary, who shall return one copy to the Department and retain four copies for placement in the public inspection files of the United States and Canadian sections of the Secretariat. If the person described in the above sections is a panelist, the panelist shall countersign the protective order, and return one copy of the countersigned protective order to the United States Secretary, who shall return one copy to the Department and retain four copies for placement in the public inspection files of the United States and Canadian sections of the Secretariat.

(e) *Modification or Revocation of Protective Order for Privileged*

Information. If any person believes that changed conditions of fact or law, or the public interest, may require that a Protective Order for Privileged Information be modified or revoked, in whole or in part, such person may notify the Department in writing. The notification shall state the changes desired and the changed circumstances warranting such action and shall include materials and argument in support thereof. Such notification shall be served by the person submitting it upon the person to whom the Protective Order for Privileged Information was issued. Responses to the notification may be filed within 20 days after the notification is filed unless the Department indicates otherwise. The Department may also consider such action *sua sponte.*

Subpart D—Violation of a Protective Order or a Disclosure Undertaking

§ 356.12 Sanctions for violation of a protective order or disclosure undertaking.

(a) A person determined under this part to have violated a protective order or a disclosure undertaking may be subjected to any or all or the following sanctions:

(1) Liable to the United States for a civil penalty not to exceed $100,000 for each violation;

(2) Barred from appearing before the Department to represent another for a designated time period from the date of publication in the **Federal Register** or **Canada Gazette** of a notice that a violation has been determined to exist;

(3) Denied access to proprietary information for a designated time period from the date of publication in the **Federal Register** or **Canada Gazette** of a notice that a violation has been determined to exist;

(4) Other appropriate administrative sanctions, including striking from the record of the panel review any information or argument submitted by, or on behalf of, the violating party or the party represented by the violating party; terminating any proceeding then in progress; or revoking any order then in effect; and

(5) Required to return material previously provided by the investigating authority, and all other materials containing the proprietary information, such as briefs, notes, or charts based on any such information received under a protective order or a disclosure undertaking.

(b)(1) The firm of which a person determined to have violated a protective order or a disclosure undertaking is a partner, associate, or employee; any partner, associate, employer, or employee of such person; and any person represented by such person may be barred from appearing before the Department for a designated time period from the date of publication in the **Federal Register** or **Canada Gazette** of notice that a violation has been determined to exist or may be subjected to the sanctions set forth in paragraph (a) of this section, as appropriate.

(2) Each person against whom sanctions are proposed under paragraph (b)(1) of this section is entitled to all the administrative rights set forth in this subpart separately and apart from rights provided to a person subject to sanctions under paragraph (a), including the right to a charging letter, right to representation, and right to a hearing, but subject to joinder or consolidation by the administrative law judge under § 356.23(b).

§ 356.13 Suspension of rules.

Upon request by the Deputy Under Secretary, a charged or affected party, or the APO Sanctions Board, the administrative law judge may modify or waive any rule in this subpart upon determining that no party will be unduly prejudiced and the ends of justice will thereby be served and upon notice to all parties.

§ 356.14 Report of violation and investigation.

(a) An employee of the Department or any other person who has information indicating that the terms of a protective order or a disclosure undertaking have been violated will provide the information to a Director or the Chief Counsel.

(b) Upon receiving information which indicates that a person may have violated the terms of a protective order or an undertaking, the Director will conduct an investigation concerning whether there was a violation of a protective order or a disclosure undertaking, and who was responsible for the violation, if any. For purposes of this subpart, the Director will be supervised by the Deputy Under Secretary with guidance from the Chief Counsel. The Director will conduct an investigation only if the information is received within 30 days after the alleged violation occurred or, as determined by the Director, could have been discovered through the exercise of reasonable and ordinary care.

(c) The Director will provide a report of the investigation to the Deputy Under Secretary, after review by the Chief Counsel, no later than 180 days after receiving information concerning a violation. Upon the Director's request, and if extraordinary circumstances exist, the Deputy Under Secretary may grant the Director up to an additional 180 days to conduct the investigation and submit the report.

(d) The following examples of actions that constitute violations of an administrative protective order shall serve as guidelines to each person subject to a protective order. These examples do not represent an exhaustive list. Evidence that one of the acts described in the guidelines has been committed, however, shall be considered by the Director as reasonable cause to believe a person has violated a protective order within the meaning of § 356.15.

(1) Disclosure of proprietary information to any person not granted access to that information by protective order, including an official of the Department or member of the Secretariat staff not directly involved with the panel review pursuant to which the proprietary information was released, an employee of any other United States, foreign government, or international agency, or a member of Congress or the Canadian Parliament.

(2) Failure to follow the detailed procedures outlined in the protective order for safeguarding proprietary information, including maintaining a log showing when each proprietary document is used, and by whom, and requiring all employees who obtain access to proprietary information (under the terms of a protective order granted their employer) to sign and date a copy of that protective order.

(3) Loss of proprietary information.

(4) Failure to return or destroy all copies of the original documents and all notes, memoranda, and submissions containing proprietary information at the close of the proceeding for which the data were obtained by burning or shredding of the documents or by erasing electronic memory, computer disk, or tape memory, as set forth in the protective order.

(5) Failure to delete proprietary information from the public version of a brief or other correspondence filed with the Secretariat.

(6) Disclosure of proprietary information during a public hearing.

(e) Each day of a continuing violation shall constitute a separate violation.

§ 356.15 Initiation of proceedings.

(a) If the Deputy Under Secretary concludes, after an investigation and report by the Director under § 356.14(c) and consultation with the Chief Counsel, that there is reasonable cause to believe that a person has violated a protective order or a disclosure undertaking and that sanctions are appropriate for the

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violation, the Deputy Under Secretary will, at his discretion, either initiate a proceeding under this subpart by issuing a charging letter as set forth in § 356.16 or request that the authorized agency of Canada initiate a proceeding by issuing a request to charge as set forth in § 356.17. In determining whether sanctions are appropriate and, if so, what sanctions to impose, the Deputy Under Secretary will consider the nature of the violation, the resulting harm, and other relevant circumstances of the case. The Deputy Under Secretary will decide whether to initiate a proceeding no later than 60 days after receiving a report of the investigation.

(b) If the Department receives a request to charge from an authorized agency of Canada, the Deputy Under Secretary will promptly initiate proceedings under this part by issuing a charging letter as set forth in § 356.16.

§ 356.16 Charging letter.

(a) *Contents of Letter.* The Deputy Under Secretary will initiate proceedings by issuing a charging letter to each charged party and affected party which includes:

(1) A statement of the allegation that a protective order or a disclosure undertaking has been violated and the basis thereof;

(2) A statement of the proposed sanctions;

(3) A statement that the charged or affected party is entitled to review the documents or other physical evidence upon which the charge is based and the method for requesting access to, or copies of, such documents;

(4) A statement that the charged or affected party is entitled to a hearing before an administrative law judge if requested within 30 days of the date of service of the charging letter and the procedure for requesting a hearing, including the name, address, and telephone number of the person to contact if there are further questions;

(5) A statement that the charged or affected party has a right, if a hearing is not requested, to submit documentary evidence to the Deputy Under Secretary and an explanation of the method for submitting evidence and the date by which it must be received; and

(6) A statement that the charged or affected party has a right to retain counsel at the party's own expense for purposes of representation.

(b) *Settlement and Amendment of the Charging Letter.* The Deputy Under Secretary may amend, supplement, or withdraw the charging letter at any time with the approval of an administrative law judge if the interests of justice would thereby be served. If a hearing has not been requested, the Deputy Under Secretary will ask the Under Secretary to appoint an administrative law judge to make this determination. If a charging letter is withdrawn after a request for a hearing, the administrative law judge will determine whether the withdrawal will bar the Deputy Under Secretary from seeking sanctions at a later date for the same alleged violation. If there has been no request for a hearing, or if supporting information has not been submitted under § 356.28, the withdrawal will not bar future actions on the same alleged violation. The Deputy Under Secretary and a charged or affected party may settle a charge brought under this Subpart by mutual agreement at any time after service of the charging letter; approval of the administrative law judge or the APO Sanctions Board is not necessary.

(c) *Service of Charging Letter on a Resident of the United States.* (1) Service of a charging letter on a United States resident will be made by:

(i) Mailing a copy by registered or certified mail addressed to the charged or affected party at the party's last known address;

(ii) Leaving a copy with the charged or affected party or with an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service for the party; or

(iii) Leaving a copy with a person of suitable age and discretion who resides at the party's last known dwelling.

(2) Service made in the manner described in paragraph (c)(1) (ii) or (iii) of this section shall be evidenced by a certificate of service signed by the person making such service, stating the method of service and the identity of the person with whom the charging letter was left.

(d) *Service of Charging Letter on a Non-resident.* If applicable laws or intergovernmental agreements or understandings make the methods of service set forth in paragraph (c) of this section inappropriate or ineffective, service of the charging letter on a person who is not a resident of the United States may be made by any method that is permitted by the country in which the person resides and that, in the opinion of the Deputy Under Secretary, satisfies due process requirements under United States law with respect to notice in administrative proceedings.

§ 356.17 Request To charge.

Upon deciding to initiate a proceeding pursuant to § 356.15, the Deputy Under Secretary will request an authorized agency of Canada to initiate a proceeding for imposing sanctions for violation of a protective order or a disclosure undertaking by issuing a letter of request to charge that includes a statement of the allegation that a protective order or a disclosure undertaking has been violated and the basis thereof.

§ 356.18 Interim sanctions.

(a) If the Deputy Under Secretary concludes, after issuing a charging letter under § 356.16 and before a final decision is rendered, that interim sanctions are necessary to protect the interests of the Department, an authorized agency of Canada, or others, including the protection of proprietary information, the Deputy Under Secretary may petition an administrative law judge to impose such sanctions.

(b) The administrative law judge may impose interim sanctions against a person upon determining that:

(1) There is probable cause to believe that there was a violation of a protective order or a disclosure undertaking and the Department is likely to prevail in obtaining sanctions under this Subpart,

(2) The Department, authorized agency of Canada, or others are likely to suffer irreparable harm if the interim sanctions are not imposed, and

(3) The interim sanctions are a reasonable means for protecting the rights of the Department, authorized agency of Canada, or others while preserving to the greatest extent possible the rights of the person against whom the interim sanctions are proposed.

(c) Interim sanctions which may be imposed include any sanctions that are necessary to protect the rights of the Department, authorized agency of Canada, or others, including, but not limited to:

(1) Denying a person further access to proprietary information,

(2) Barring a person from representing another person before the Department,

(3) Barring a person from appearing before the Department, and

(4) Requiring the person to return material previously provided by the Department or the competent investigating authority of Canada, and all other materials containing the proprietary information, such as briefs, notes, or charts based on any such information received under a protective order or disclosure undertaking.

(d) The Deputy Under Secretary will notify the person against whom interim sanctions are sought of the request for interim sanctions and provide to that person the material submitted to the administrative law judge to support the request. The notice will include a

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§ 356.18 Interim sanctions.

(a) If the Deputy Under Secretary concludes, after issuing a charging letter under § 356.16 and before a final decision is rendered, that interim sanctions are necessary to protect the interests of the Department, an authorized agency of Canada, or others, including the protection of proprietary information, the Deputy Under Secretary may petition an administrative law judge to impose such sanctions.

(b) The administrative law judge may impose interim sanctions against a person upon determining that:

(1) There is probable cause to believe that there was a violation of a protective order or a disclosure undertaking and the Department is likely to prevail in obtaining sanctions under this Subpart,

(2) The Department, authorized agency of Canada, or others are likely to suffer irreparable harm if the interim sanctions are not imposed, and

(3) The interim sanctions are a reasonable means for protecting the rights of the Department, authorized agency of Canada, or others while preserving to the greatest extent possible the rights of the person against whom the interim sanctions are proposed.

(c) Interim sanctions which may be imposed include any sanctions that are necessary to protect the rights of the Department, authorized agency of Canada, or others, including, but not limited to:

(1) Denying a person further access to proprietary information,

(2) Barring a person from representing another person before the Department,

(3) Barring a person from appearing before the Department, and

(4) Requiring the person to return material previously provided by the Department or the competent investigating authority of Canada, and all other materials containing the proprietary information, such as briefs, notes, or charts based on any such information received under a protective order or disclosure undertaking.

(d) The Deputy Under Secretary will notify the person against whom interim sanctions are sought of the request for interim sanctions and provide to that person the material submitted to the administrative law judge to support the request. The notice will include a

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reference to the procedures of this section.

(e) A person against whom interim sanctions are proposed has a right to oppose the request through submission of material to the administrative law judge. The administrative law judge has discretion to permit oral presentations and to allow further submissions.

(f) The administrative law judge will notify the parties of the decision on interim sanctions and the basis therefor within five days of the conclusion of oral presentations or the date of final written submissions.

(g) If interim sanctions have been imposed, the investigation and any proceedings under this Subpart will be conducted on an expedited basis.

(h) An order imposing interim sanctions may be revoked at any time by the administrative law judge and expires automatically upon the issuance of a final order.

(i) The administrative law judge may reconsider imposition of interim sanctions on the basis of new and material evidence or other good cause shown. The Deputy Under Secretary or a person against whom interim sanctions have been imposed may appeal a decision on interim sanctions to the APO Sanctions Board, if such an appeal is certified by the administrative law judge as necessary to prevent undue harm to the Department or authorized agency of Canada, a person against whom interim sanctions have been imposed or others, or is otherwise in the interests of justice. Interim sanctions which have been imposed remain in effect while an appeal is pending, unless the administrative law judge determines otherwise.

(j) The Deputy Under Secretary may request an administrative law judge to impose emergency interim sanctions to preserve the status quo. Emergency interim sanctions may last no longer than 48 hours, excluding weekends and holidays. The person against whom such emergency interim sanctions are proposed need not be given prior notice or an opportunity to oppose the request for sanctions. The administrative law judge may impose emergency interim sanctions upon determining that the Department or authorized agency of Canada is, or others are, likely to suffer irreparable harm if such sanctions are not imposed and that the interests of justice would thereby be served. The administrative law judge will promptly notify a person against whom emergency sanctions have been imposed of the sanctions and their duration.

(k) If a hearing has not been requested, the Deputy Under Secretary will request that the Under Secretary appoint an administrative law judge for making determinations under this section.

(l) The Deputy Under Secretary will notify the Secretariat concerning the imposition or revocation of interim sanctions or emergency interim sanctions.

§ 356.19 Request for a hearing.

(a) Any party may request a hearing by submitting a written request to the Under Secretary within 30 days after the date of service of the charging letter. However, the Deputy Under Secretary may request a hearing only if the interests of justice would thereby be served.

(b) Upon timely receipt of a request for a hearing, the Under Secretary will appoint an administrative law judge to conduct the hearing and render an initial decision.

§ 356.20 Discovery.

(a) *Voluntary Discovery.* All parties are encouraged to engage in voluntary discovery procedures regarding any matter, not privileged, which is relevant to the subject matter of the pending sanctions proceeding.

(b) *Limitations on Discovery.* The administrative law judge shall place such limits upon the kind or amount of discovery to be had or the period of time during which discovery may be carried out as shall be consistent with the time limitations set forth in this Part.

(c) *Interrogatories and Requests for Admissions or Production of Documents.* A party may serve on any other party interrogatories, requests for admissions, or requests for production of documents for inspection and copying, and the party may then apply to the administrative law judge for such enforcement or protective order as that party deems warranted concerning such discovery. The party will serve a discovery request at least 20 days before the scheduled date of a hearing, if a hearing has been requested and scheduled, unless the administrative law judge specifies a shorter time period. Copies of interrogatories, requests for admissions, and requests for production of documents and responses thereto will be served on all parties. Matters of fact or law of which admission is requested will be deemed admitted unless, within a period designated in the request (at least 10 days after the date of service of the request, or within such further time as the administrative law judge may allow), the party to whom the request is directed serves upon the requesting party a sworn statement either admitting or denying specifically the matters of which admission is requested or setting forth in detail the reasons why the party cannot truthfully either admit or deny such matters.

(d) *Depositions.* Upon application of a party and for good cause shown, the administrative law judge may order the taking of the testimony of any person who is a party, or under the control or authority of a party, by deposition and the production of specified documents or materials by the person at the deposition. The application shall state the purpose of the deposition and shall set forth the facts sought to be established through the deposition.

(e) *Supplementation of Responses.* A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows:

(1) A party is under a duty to seasonably supplement his response with respect to any question directly addressed to:

(i) The identity and location of persons having knowledge of discoverable matters; and

(ii) The identity of each person expected to be called as an expert witness at a hearing, the subject matter on which the witness is expected to testify, and the substance of the testimony.

(2) A party is under a duty to seasonably amend a prior response if the party obtains information upon the basis of which he or she:

(i) Knows the response was incorrect when made; or

(ii) Knows that the response, though correct when made, is no longer true, and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the administrative law judge, agreement of the parties, or at any time prior to a hearing through new requests for supplementation of prior responses.

(f) *Enforcement.* The administrative law judge may order a party to answer designated questions, to produce specified documents or items, or to take any other action in response to a proper discovery request. If a party does not comply with such an order, the administrative law judge may make any determination or enter any order in the proceedings as he or she deems reasonable and appropriate. The administrative law judge may strike related charges or defenses in whole or in part, or may take particular facts relating to the discovery request to which the party failed or refused to respond as being established for purpose of the proceeding in accordance with the contentions of the party seeking discovery. In issuing a discovery order, the administrative law judge will consider the necessity to protect proprietary information and will not order the release of information in circumstances where it is reasonable to conclude that such release will lead to unauthorized dissemination of such information.

§ 356.21 Subpoenas.

(a) *Application for Issuance of a Subpoena.* An application for issuance of a subpoena requiring a person to appear and depose or testify at the taking of a deposition or at a hearing shall be made to the administrative law judge. An application for issuance of a subpoena requiring a person to appear and depose or testify and to produce specified documents, papers, books, or other physical exhibits at the taking of a deposition, at a prehearing conference, at a hearing, or under any other circumstances, shall be made in writing to the administrative law judge and shall specify the material to be produced as precisely as possible, showing the general relevancy of the material and the reasonableness of the scope of the subpoena.

(b) *Use of Subpoena for Discovery.* Subpoenas may be used by any party for purposes of discovery or for obtaining documents, papers, books, or other physical exhibits for use in evidence, or for both purposes. When used for discovery purposes, a subpoena may require a person to produce and permit the inspection and copying of nonprivileged documents, papers, books, or other physical exhibits which constitute or contain evidence relevant to the subject matter involved and which are in the possession, custody, or control of such person.

(c) *Application for Subpoenas for Nonparty Department Records or Personnel or for Records or Personnel of Other Government Agencies.* (1) An application for issuance of a subpoena requiring the production of nonparty documents, papers, books, physical exhibits, or other material in the records of the Department, or requiring the appearance of an official or employee of the Department, or requiring the production of records or personnel of other Government agencies shall specify as precisely as possible the material to be produced, the nature of the information to be disclosed, or the expected testimony of the official or employee, and shall contain a statement showing the general relevancy of the material, information, or testimony and the reasonableness of the scope of the application, together with a showing that such material, information, or testimony or their substantial equivalent could not be obtained without undue hardship by alternative means.

(2) Such applications shall be ruled upon by the administrative law judge. To the extent that the motion is granted, the administrative law judge shall provide such terms and conditions for the production of the material, the disclosure of the information, or the appearance of the official or employee as may appear necessary and appropriate for the protection of the public interest.

(3) No application for a subpoena for production of documents grounded upon the Freedom of Information Act (5 U.S.C. 552) shall be entertained by the administrative law judge.

(d) *Motion To Limit or Quash.* Any motion to limit or quash a subpoena shall be filed within 10 days after service thereof, or within such other time as the administrative law judge may allow.

(e) *Ex Parte Rulings on Applications for Subpoenas.* Applications for the issuance of subpoenas pursuant to this section may be made *ex parte,* and, if so made, such applications and rulings thereon shall remain *ex parte* unless otherwise ordered by the administrative law judge.

(f) *Role of the Under Secretary.* If a hearing has not been requested, the party seeking enforcement will ask the Under Secretary to appoint an administrative law judge to rule on applications for issuance of a subpoena under this section.

§ 356.22 Prehearing conference.

(a)(1) If an administrative hearing has been requested, the administrative law judge will direct the parties to attend a prehearing conference to consider:

(i) Simplification of issues;

(ii) Obtaining stipulations of fact and of documents to avoid unnecessary proof;

(iii) Settlement of the matter;

(iv) Discovery; and

(v) Such other matters as may expedite the disposition of the proceedings.

(2) Any relevant and significant stipulations or admissions will be incorporated into the initial decision.

(b) If a prehearing conference is impractical, the administrative law judge will direct the parties to correspond with each other or to confer by telephone or otherwise to achieve the purposes of such a conference.

§ 356.23 Hearing.

(a) *Scheduling of Hearing.* The administrative law judge will schedule the hearing at a reasonable time, date, and place, which will be in Washington, DC, unless the administrative law judge determines otherwise based upon good cause shown, that another location would better serve the interests of justice. In setting the date, the administrative law judge will give due regard to the need for the parties adequately to prepare for the hearing and the importance of expeditiously resolving the matter.

(b) *Joinder or Consolidation.* The administrative law judge may order joinder or consolidation if sanctions are proposed against more than one party or if violations of more than one protective order or disclosure undertaking are alleged if to do so would expedite processing of the cases and not adversely affect the interests of the parties.

(c) *Hearing Procedures.* Hearings will be conducted in a fair and impartial manner by the administrative law judge, who may limit attendance at any hearing or portion thereof if necessary or advisable in order to protect proprietary information from improper disclosure. The rules of evidence prevailing in courts of law shall not apply, and all evidentiary material the administrative law judge determines to be relevant and material to the proceeding and not unduly repetitious may be received into evidence and given appropriate weight. The administrative law judge may make such orders and determinations regarding the admissibility of evidence, conduct of examination and cross-examination, and similar matters as are necessary or appropriate to ensure orderliness in the proceedings. The administrative law judge will ensure that a record of the hearing will be taken by reporter or by electronic recording, and will order such part of the record to be sealed as is necessary to protect proprietary information.

(d) *Rights of Parties.* At a hearing each party shall have the right to:

(1) Introduce and examine witnesses and submit physical evidence,

(2) Confront and cross-examine adverse witnesses,

(3) Present oral argument, and

(4) Receive a transcript or recording of the proceedings, upon request, subject to the administrative law judge's orders regarding sealing the record.

(e) *Representation.* Each charged or affected party has a right to represent himself or herself or to retain private counsel for that purpose. The Chief

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(e) *Representation.* Each charged or affected party has a right to represent himself or herself or to retain private counsel for that purpose. The Chief

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Counsel will represent the Department, unless the General Counsel of the Department determines otherwise. The administrative law judge may disallow a representative if such representation constitutes a conflict of interest or is otherwise not in the interests of justice and may debar a representative for contumacious conduct relating to the proceedings.

(f) *Ex Parte Communications.* The parties and their representatives may not make any *ex parte* communications to the administrative law judge concerning the merits of the allegations or any matters at issue, except as provided in § 356.18(j) regarding emergency interim sanctions.

§ 356.24 Proceeding without a hearing.

If no party has requested a hearing, the Deputy Under Secretary, within 40 days after the date of service of a charging letter, will submit for inclusion into the record and provide each charged or affected party information supporting the allegations in the charging letter. Each charged or affected party has the right to file a written response to the information and supporting documentation within 30 days after the date of service of the information provided by the Deputy Under Secretary unless the Deputy Under Secretary alters the time period for good cause. The Deputy Under Secretary may allow the parties to submit further information and argument.

§ 356.25 Witnesses.

Witnesses summoned before the Department shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

§ 356.26 Initial decision.

(a) *Initial Decision.* The administrative law judge, if a hearing was requested, or the Deputy Under Secretary will submit an initial decision to the APO Sanctions Board, providing copies to the parties. The administrative law judge or the Deputy Under Secretary will ordinarily issue the decision within 20 days of the conclusion of the hearing, if one was held, or within 15 days of the date of service of final written submissions. The initial decision will be based solely on evidence received into the record and the pleadings of the parties.

(b) *Findings and Conclusions.* The initial decision will state findings and conclusions as to whether a person has violated a protective order or a disclosure undertaking; the basis for those findings and conclusions; and whether the sanctions proposed in the charging letter, or lesser included sanctions, should be imposed against the charged or affected party. The administrative law judge or the Deputy Under Secretary may impose sanctions only upon determining that the preponderance of the evidence supports a finding of violation of a protective order or a disclosure undertaking and that the sanctions are warranted against the charged or affected party.

(c) *Finality of Decision.* If the APO Sanctions Board has not issued a decision on the matter within 60 days after issuance of the initial decision, the initial decision becomes the final decision of the Department.

§ 356.27 Final decision.

(a) *APO Sanctions Board.* Upon request of a party, the initial decision will be reviewed by the members of the APO Sanctions Board. The Board consists of the Under Secretary for International Trade, who shall serve as Chairperson, the Under Secretary for Economic Affairs, and the General Counsel.

(b) *Comments on Initial Decision.* Within 30 days after issuance of the initial decision, a party may submit written comments to the APO Sanctions Board on the initial decision, which the Board will consider when reviewing the initial decision. The parties have no right to an oral presentation, although the Board may allow oral argument in its discretion.

(c) *Final Decision by the APO Sanctions Board.* Within 60 days but not sooner than 30 days after issuance of an initial decision, the APO Sanctions Board may issue a final decision which adopts the initial decision in its entirety; differs in whole or in part from the initial decision, including the imposition of lesser included sanctions; or remands the matter to the administrative law judge or the Deputy Under Secretary for further consideration. The only sanctions that the Board can impose are those sanctions proposed in the charging letter or lesser included sanctions.

(d) *Contents of Final Decision.* If the final decision of the APO Sanctions Board does not remand the matter and differs from the initial decision, it will state findings and conclusions which differ from the initial decision, if any, the basis for those findings and conclusions, and the sanctions which are to be imposed, to the extent they differ from the sanctions in the initial decision.

(e) *Public Notice of Sanctions.* If the final decision is that there has been a violation of a protective order or a disclosure undertaking and that sanctions are to be imposed, notice of the decision will be published in the **Federal Register** and forwarded to the Secretariat. Such publication will be no sooner than 30 days after issuance of a final decision or after a motion to reconsider has been denied, if such a motion was filed. If the final decision is made in a proceeding based upon a request to charge by an authorized agency of Canada, the decision will be forwarded to the Secretariat for transmittal to the authorized agency of Canada for publication in the **Canada Gazette** or other appropriate action. The Deputy Under Secretary will also provide such information to the ethics panel or other disciplinary body of the appropriate bar associations or other professional associations whenever the Deputy Under Secretary subjects a charged or affected party to a sanction under paragraph (a)(2) of § 356.12 and to any Federal agency likely to have an interest in the matter and will cooperate in any disciplinary actions by any association or agency.

§ 356.28 Reconsideration.

Any party may file a motion for reconsideration with the APO Sanctions Board. The party must state with particularity the grounds for the motion, including any facts or points of law which the party claims the APO Sanctions Board has overlooked or misapplied. The party may file the motion within 30 days of the issuance of the final decision or the adoption of the initial decision as the final decision, except that if the motion is based on the discovery of new and material evidence which was not known, and could not reasonably have been discovered through due diligence prior to the close of the record, the party shall file the motion within 15 days of the discovery of the new and material evidence. The party shall provide a copy of the motion to all other parties. Opposing parties may file a response within 30 days of the date of service of the motion. The response shall be considered as part of the record. The parties have no right to an oral presentation on a motion for reconsideration, but the Board may permit oral argument at its discretion. If the motion to reconsider is granted, the Board will review the record and affirm, modify, or reverse the original decision or remand the matter for further consideration to an administrative law judge or the Deputy Under Secretary, as warranted.

§ 356.29 Confidentiality.

(a) All proceedings involving allegations of a violation of a protective order or a disclosure undertaking shall be kept confidential until such time as the Department makes a final decision under these regulations, which is no longer subject to reconsideration, imposing a sanction.

(b) The charged party or counsel for the charged party will be, to the extent possible, granted access to proprietary information in these proceedings, as necessary, under administrative protective order, consistent with the provisions of § 356.10.

§ 356.30 Sanctions for violations of a protective order for privileged information.

The provisions of this Subpart shall apply to persons who are alleged to have violated a Protective Order for Privileged Information.

[FR Doc. 91-16427 Filed 8-7-91; 8:45 am]

BILLING CODE 3510-GT-M

federal register

Thursday
August 8, 1991

Part VI

The President

Presidential Certification—Cook Inlet Regional Citizens Advisory Council

Title 3—

The President

[FR Doc. 91-19075
Filed 8-7-91; 11:09 am]
Billing code 3195-01-M

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Presidential Documents

Title 3—

The President

Presidential Certification of August 6, 1991

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 5002(o)(2) of the Oil Pollution Act of 1990, I hereby certify for the year 1991 the following:

(1) that the Cook Inlet Regional Citizens Advisory Council has met the general goals and purposes of section 5002 of the Oil Pollution Act of 1990 for the year 1991; and

(2) that the Cook Inlet Regional Citizens Advisory Council is broadly representative of the communities and interests in the vicinity of the terminal facilities and offshore facilities in Cook Inlet.

This certification shall be published in the **Federal Register**.

Bush

THE WHITE HOUSE,
August 6, 1991.

[FR Doc. 91-19075
Filed 8-7-91; 11:09 am]
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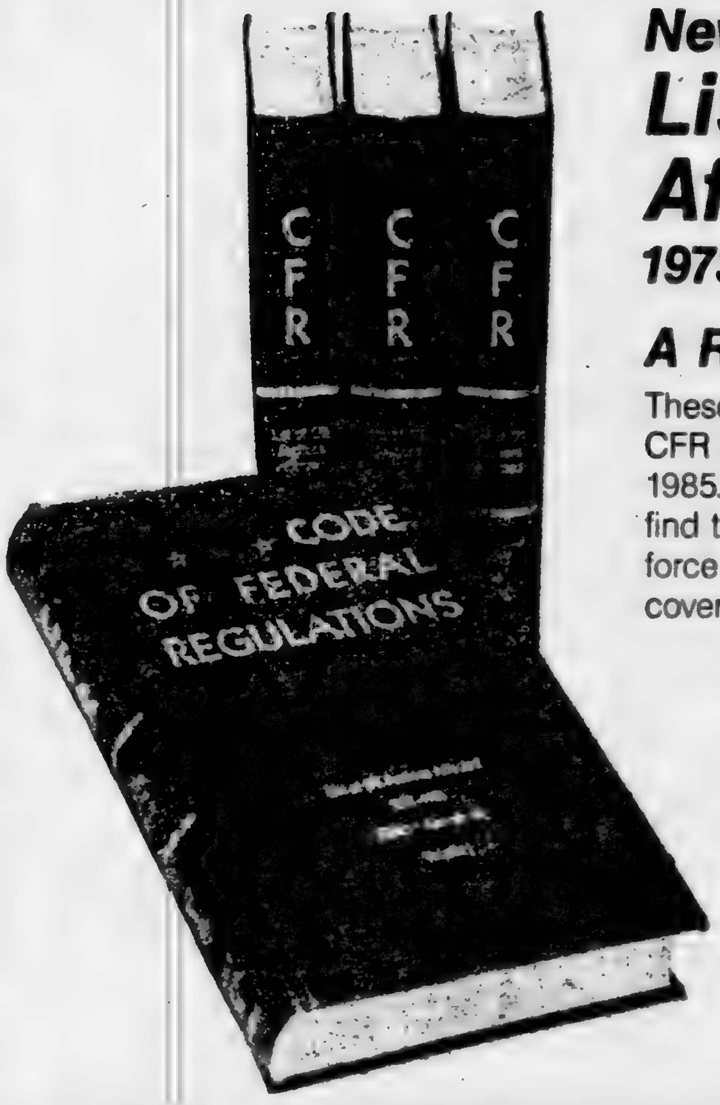

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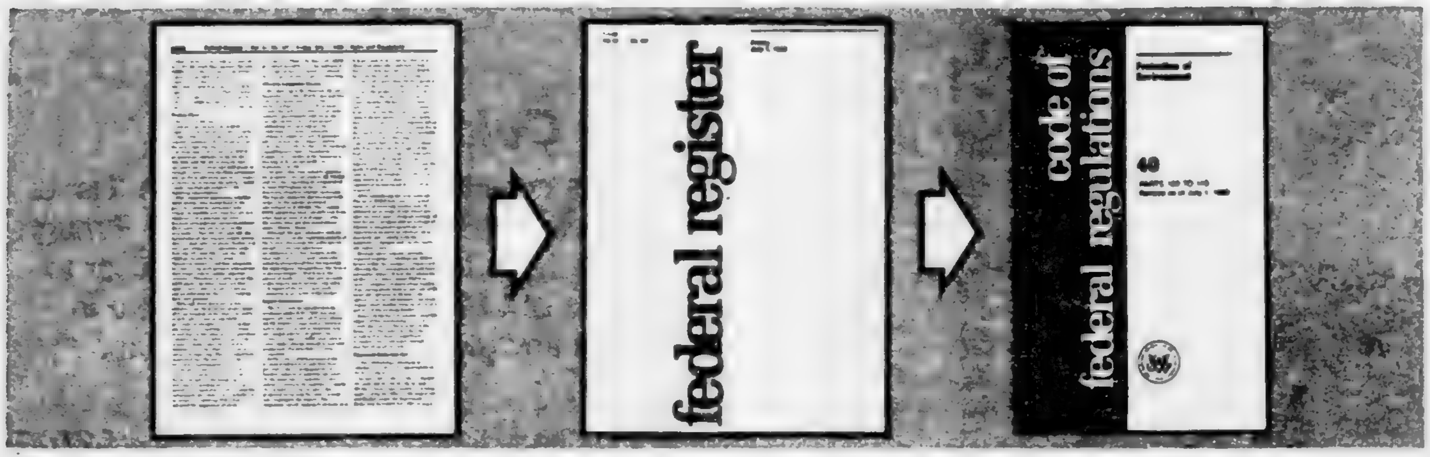

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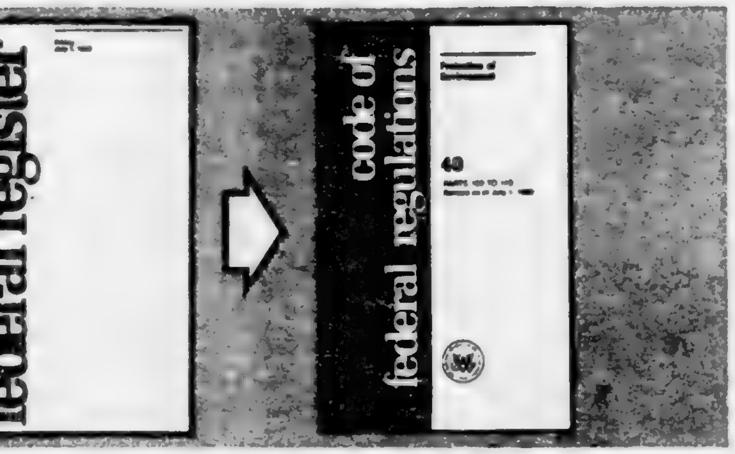

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DEPARTMENT OF AGRICULTU

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV-91-286FR]

Expenses and Assessment Ra
Specified Marketing Orders

AGENCY: Agricultural Marketing
USDA.

ACTION: Final rule.

SUMMARY: This final rule author
expenditures and establishes
assessment rates for the 1991–9
year (March 1–February 29) und
Marketing Order Nos. 916 and 9
These expenditures and assess
rates are needed by the Nectari
Administrative Committee and
Commodity Committee establis
under the orders to cover marke
order expenses and collect asse
from handlers to pay those expe
This action also corrects sectio
numbers incorrectly assigned to
proposed rule for this action. Th
enables the committees to perfo
duties and the orders to operate

EFFECTIVE DATE: Sections 916.2
917.253 are effective for the peri
March 1, 1991, through February
1992.

FOR FURTHER INFORMATION CON
George Kelhart, Marketing Orde
Administration Branch, F&V, A
USDA, P.O. Box 96456, room 25
Washington, DC 20090–6456, tel
(202) 475–3919.

SUPPLEMENTARY INFORMATION:
is issued under Marketing Agre
and Marketing Order Nos. 916 [
part 916] regulating the handlin
nectarines grown in California,
[7 CFR part 917] regulating the h
of fresh pears, plums, and peac
grown in California. These agre
and orders are effective under t

Rules and Regulations

Federal Register
Vol. 56, No. 154
Friday, August 9, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV-91-286FR]

Expenses and Assessment Rate for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes assessment rates for the 1991–92 fiscal year (March 1–February 29) under Marketing Order Nos. 916 and 917. These expenditures and assessment rates are needed by the Nectarine Administrative Committee and Peach Commodity Committee established under the orders to cover marketing order expenses and collect assessments from handlers to pay those expenses. This action also corrects section numbers incorrectly assigned to the proposed rule for this action. This action enables the committees to perform their duties and the orders to operate.

EFFECTIVE DATE: Sections 916.229 and 917.253 are effective for the period March 1, 1991, through February 29, 1992.

FOR FURTHER INFORMATION CONTACT: George Kelhart, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone: (202) 475–3919.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Marketing Order Nos. 916 [7 CFR part 916] regulating the handling of nectarines grown in California, and 917 [7 CFR part 917] regulating the handling of fresh pears, plums, and peaches grown in California. These agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This rule has been reviewed by the U.S. Department of Agriculture, (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 300 handlers of California peaches and nectarines subject to regulation under Marketing Order Nos. 916 and 917 and about 1,800 producers of these commodities in California. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

These marketing orders, administered by the Department, require that assessment rates for a particular fiscal year shall apply to all assessable fresh fruit handled from the beginning of such year. An annual budget of expenses is prepared by each marketing committee and submitted to the Department for approval. The members of these committees are handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by the packages of fresh fruit expected to be shipped under the order. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Nectarine Administrative Committee (NAC) met on May 2, 1991, and unanimously recommended a 1991–92 budget with expenditures of $4,276,873, which includes a total of $250,000 in anticipated uncollected assessments. In comparison, the 1990–91 fiscal year actual expenditures were $3,119,055. Major expenditures projected for 1991–92 with actual 1990–91 expenditures in parenthesis are: Salaries and employee benefits, $292,589 ($211,271); production research, $127,128 ($92,330); market development and promotion, $2,372,367 ($1,650,270); inspection, $1,036,440 ($951,897); and uncollected assessment accounts, $250,000 ($44,070).

The NAC estimates available 1991–92 assessment income at $2,902,505. This amount is based on assessments totaling $3,152,505 (17,274,000 packages of assessable nectarines shipped at $0.1825 per 25-pound package or equivalent), less $250,000 in anticipated uncollected contested assessments. Last year's assessment rate was $0.18. Assessment income will be supplemented with interest income from the reserve account estimated at $40,000 and income from export development and research subsidies from State and Federal agencies estimated at $451,000. In addition, the NAC had $866,477 in reserves as of March 1, 1991, an amount well within the maximum authorized. Total income and available reserves will be sufficient to cover all anticipated 1991–92 expenditures.

The Peach Commodity Committee (PCC) met on May 2, 1991, and unanimously recommended 1991–92 marketing order expenditures of $3,887,673, which includes a total of

$115,000 in anticipated uncollected contested assessments. In comparison, 1990–91 fiscal year expenditures were $2,996,066. Major PCC expenditures projected for 1991–92 with actual 1990–91 expenditures in parenthesis are: Salaries and employee benefits, $262,750 ($197,486); production research, $141,321 ($63,738); market development and promotion, $2,092,765 ($1,557,180); inspection $1,088,990 ($1,009,631); and uncollected assessment accounts, $115,000 ($7,158).

The PCC estimates available 1991–92 assessment income at $2,840,830. This amount is based on assessments totaling $2,955,830 (15,557,000 packages of assessable peaches at $0.19 per 25-pound package or equivalent), less $115,000 in anticipated uncollected contested assessments. Last year's assessment rate was $.018 per package. Assessment income will be supplemented with interest income estimated at $34,000, and income from export development and research subsidies from State and Federal agencies estimated at $410,000. In addition, the PCC had $566,148 in reserves as of March 1, 1991, an amount well within the maximum authorized. Total projected income and available reserves will be sufficient to cover all anticipated 1991–92 expenditures.

While this action imposes some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This action adds new §§ 916.229 and 917.253, and is based on the committees' recommendations and other information. A proposed rule concerning this action was published in the **Federal Register** [56 FR 30881, July 8, 1991]. In that proposed rule, the section numbers were incorrectly identified as §§ 916.228 and 917.252. However, these section numbers applied to last year's (1990–91) nectarine and peach budgets and each should have been increased by one for the 1991–92 fiscal period.

Comments on the proposed rule were invited from interested persons until July 18, 1991. No comments were received.

After consideration of all relevant matter presented, including the committees' recommendations and other information, it is found that this final rule will tend to effectuate the declared policy of the Act.

This final rule should be expedited because of the committees need to have sufficient funds to pay their expenses, which are incurred on a continuous basis. In addition, handlers are aware of these actions which were recommended at public meetings. Therefore, it is found that good cause exists for not postponing the effective dates of these actions until 30 days after publication in the **Federal Register** [5 U.S.C. 553].

List of Subjects in 7 CFR Parts 916 and 917

Marketing agreements, Nectarines, Peaches, Pears, Plums, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 916 and 917 are amended as follows:

1. The authority citation for 7 CFR parts 916 and 917 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 916.229 is added to read as follows:

Note: These sections will not appear in the annual Code of Federal Regulations.

PART 916—NECTARINES GROWN IN CALIFORNIA

§ 916.229 Expenses and assessment rate.

Expenses of $4,276,873 by the Nectarine Administrative Committee are authorized, and an assessment of $0.1825 per 25-pound package or equivalent of assessable nectarines is established for the fiscal year ending February 29, 1992. Any unexpended funds from the 1990–91 fiscal year may be carried over as a reserve.

PART 917—FRESH PEARS, PLUMS AND PEACHES GROWN IN CALIFORNIA

3. A new § 917.253 is added to read as follows:

§ 917.253 Expenses and assessment rate.

Expenses of $3,887,673 by the Peach Commodity Committee are authorized, and an assessment of $0.19 per 25-pound package or equivalent of assessable peaches is established for the fiscal year ending February 29, 1992. Any unexpended funds from the 1990–91 fiscal year may be carried over as a reserve.

Dated: August 5, 1991.

William J. Doyle,

Deputy Associate Director, Fruit and Vegetable Division.

[FR Doc. 91–18956 Filed 8–8–91; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 945

[Docket No. FV-91-402]

Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order 945 for the 1991–92 fiscal period. Authorization of this budget enables the Idaho-Eastern Oregon Potato Committee (committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATES: August 1, 1991, through July 31, 1992.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone, 202–447–2431.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement No. 98 and Marketing Order No. 945, both as amended (7 CFR part 945) regulating the handling of Irish potatoes grown in designated counties in Idaho and Malheur County, Oregon. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

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7 CFR Part 945

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AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order 945 for the 1991–92 fiscal period. Authorization of this budget enables the Idaho-Eastern Oregon Potato Committee (committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATES: August 1, 1991, through July 31, 1992.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone, 202–447–2431.

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This rule has been reviewed by the Department of Agriculture in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

Thus, both statutes have small entities orientation and compatibility.

There are approximately 66 handlers and approximately 3,100 producers of potatoes in Idaho-Eastern Oregon. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of Idaho-Eastern Oregon potato producers and handlers may be classified as small entities.

The budget of expenses for the 1991–92 fiscal period was prepared by the Idaho-Eastern Potato Committee, the agency responsible for local administration of the order, and submitted to the Department of Agriculture for approval. The members of the committee are producers and handlers of Idaho-Eastern Oregon potatoes. These producers and handlers are familiar with the committee's needs and with the costs for goods and services in their local area and are in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The recommended assessment rate was derived by dividing anticipated expenses by expected shipments of fresh Idaho-Eastern Oregon potatoes. Because that rate will be applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expenses. A recommended budget and rate of assessment is usually acted upon before the season starts and expenses are incurred on a continuous basis.

The committee met on June 11, 1991, and unanimously recommended a 1991–92 budget of $104,738 and an assessment rate of $0-0026 per hundredweight. The assessment rate is the same as that in effect each year over the past decade, and is the maximum allowed by the order. The budget is $6,338 more than last year's due to increases in expenditures for salaries and contingencies; however, this is partially offset by a decrease of $3,000 in the reserve for auto purchase. The recommended assessment rate, when applied to anticipated fresh market potato shipments of 25,000,000 hundredweight, will yield $65,000 in assessment revenue which, when added to $6,000 in fees and interest income and $33,738 from reserve funds will be adequate to cover budgeted expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the **Federal Register** on July 15, 1991 (56 FR 32128). This document contained a proposal to add § 945.244 to authorize expenses and establish an assessment rate for the committee. That rule provided that interested persons could file comments through July 25, 1991. No comments were received

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this section until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1991 fiscal period began on August 1, 1991, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable potatoes handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting.

List of Subjects in 7 CFR Part 945

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 945 is hereby amended as follows:

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR part 945 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 945.244 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 945.244 Expenses and assessment rate.

Expenses of $104,738 by the Idaho-Eastern Oregon Potato Committee are authorized, and an assessment rate of $0.0026 per hundredweight of potatoes is established for the fiscal period ending July 31, 1992. Unexpended funds may be carried over as a reserve.

Dated: August 5, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–18957 Filed 8–8–91; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 113

[Docket No. 91–053]

Viruses, Serums, Toxins, and Analogous Products; Revision of Standard Requirements for Clostridium Bacterin-Toxoids and Tetanus Toxoid

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends the test methods used in conducting potency tests for serial release of Clostridium Novyi Bacterin-Toxoid, Clostridium Sordellii Bacterin-Toxoid, and Tetanus Toxoid. The current test methods for Clostridium Novyi Bacterin-Toxoid and Clostridium Sordellii Bacterin-Toxoid products require that potency be measured in a valid vaccination-challenge test in guinea pigs. The amended tests for these products involve serological conversion in rabbits and quantitation of the antitoxins in mice. The potency of Tetanus Toxoid products is currently determined by measuring the neutralization capacity of pooled serum from vaccinated guinea pigs. In the amended test for Tetanus Toxoid products, an enzyme-linked immunosorbent assay (ELISA) is used to quantitate the Antitoxin Units per ml of a serum pool derived from vaccinated guinea pigs. The new test procedures measure antitoxin responses which have been correlated to protective levels of antitoxin in the host species. These procedures will result in a more precise evaluation of potency of the products than test procedures which have been used. The new test procedures for Clostridium Novyi and Clostridium Sordellii Bacterin-Toxoids also allow for testing multiple antigens in the same test animals which results in using a reduced number of animals in potency tests for serial release.

EFFECTIVE DATE: September 9, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Espeseth, Deputy Director, Veterinary Biologics; Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 838, Federal Building, 6506 Belcrest Road, Hyattsville, MD 20782, (301) 436–8245.

SUPPLEMENTARY INFORMATION:

Background

Clostridium Novyi Bacterin-Toxoid and Clostridium Sordellii Bacterin-Toxoid

The current Standard Requirements for Clostridium Novyi Bacterin-Toxoid and Clostridium Sordellii Bacterin-Toxoid specify that each serial of product be tested for potency in guinea pigs prior to release. The test animals are vaccinated with a prescribed dose of the product. Fourteen to fifteen days after a second injection, vaccinated animals, along with an acceptable number of controls, are challenged with an applicable virulent organism generally furnished by the Animal and Plant Health Inspection Service (APHIS). For a test to be satisfactory, at least 80 percent of the guinea pigs used as controls must die during the 3-day post challenge observation period and seven of eight treated animals must survive the challenge. If two of the vaccinated animals succumb to the challenge, the current standards provide for a second stage test. The use of virulent, spore forming challenge organisms in guinea pigs resulted in progressive, fatal disease in virtually all the controls. In the current test procedure, guinea pigs can be tested for only a single antigen. Therefore, each product was tested separately, since the test did not allow for differentiation of multicomponent products.

The Animal and Plant Health Inspection Service and the manufacturers of the products discussed in this final rule have cooperated in developing new tests modeled after the potency test currently codified in §§ 113.111 (formerly § 113.96) and 113.112 (formerly § 113.97) for Clostridium Perfringens Type C Bacterin-Toxoid and Clostridium Perfringens Type D, Bacterin-Toxoid, respectively. The cooperative effort was undertaken to (1) determine the minimum protective levels of antitoxin in sheep and cattle (animals for which these products are indicated); and, (2) to develop a potency test that would correlate the serological response and protective levels of antitoxin in sheep and cattle to the serological response in rabbits. The new tests which were developed allow for serological conversion in rabbits and quantitation of the antibody (antitoxin) level in mice. Using these tests, a product containing more than one antigen can be inoculated into rabbits and the serological responses to individual antigens measured in mice. Quantitating the response to individual antigens is accomplished by determining the neutralizing capacity of each antitoxin against its homologous antigen. For each antitoxin to be measured, an equal quantity of serum from each test rabbit is combined and tested as a single serum pool. At lease seven rabbits are required to make an acceptable serum pool. Graded volumes of the undiluted srum pool are combined with prescribed amounts of diluted Standard Toxin, as specified in the test procedures, and allowed to neutralize. Each resulting diluted mixture is then injected into five mice (for each antitoxin being measured).

Although the highest dilution of antitoxin will not protect mice from death, the disease process is not progressive and therefore is more humane than the spore challenge of guinea pigs.

The data accumulated from the cooperative studies with nine participating manufacturers has been analyzed. Based on that analysis, the Agency has concluded that these potency tests conserve time and animals, are more humane, and are a more accurate measurement of the quantity of antigens in the products and the quality of antitoxins produced in the host animals. The tests are more precise than the current tests used for evaluating products containing a single antigen or multiple antigens.

Tetanus Toxoid

The current Standard Requirement for Tetanus Toxoid specifies that each serial of product must be tested for potency in 10 guinea pigs. The test animals are vaccinated with a prescribed dose of the produce and bled 6 weeks later. An equal volume of serum from each of at least 10 guinea pigs is combined to make a serum pool. A prescribed amount of serum from the pool is combined with a standard amount of tetanus toxin, and inoculated into additional guinea pigs to determine if the serum from the vaccinated guinea pigs contain sufficient antitoxin to neutralize the toxin. A failure to neutralize the toxin would result in the deaths of the inoculated guinea pigs. It had been determined that the pool of guinea pig serum must contain at least 2.0 antitoxin units (A.U.) per ml for the product serial to be satisfactory. If the serial test is unsatisfactory, the pooled serum can be retested using 20 guinea pigs.

The Animal and Plant Health Inspection Service (APHIS) and manufacturers of Tetanus Toxoid have developed an assay method to replace the toxin neutralization test conducted in guinea pigs. The cooperative effort resulted in an enzyme-linked immunosorbent assay (ELISA) which accurately quantitates the A.U. per ml of the serum pool from the guinea pigs vaccinated with toxoid without requiring the inoculation and death of the additional guinea pigs used in the toxin neutralization test. The minimum antitoxin level required for a satisfactory guinea pig serum pool is retained at 2 A.U. per ml. Because the ELISA is more precise than the toxin neutralization test, the prescribed retest of unsatisfactory serials is conducted in 10 rather than 20 animals.

The Agency analyzed the data accumulated from cooperative studies with six participating manufacturers. It has concluded that the new potency test would conserve time and animals, and is more humane and economical than the current potency test. This test accurately measures the quantity of antitoxin(s) produced by the product in susceptible host species.

The final rule specifies that the antitoxin level shall be determined by an ELISA acceptable to the Animal and Plant Health Inspection Service. The Agency has prepared a Supplemental Assay Method (SAM) in accordance with 9 CFR 113.2(a) which details the ELISA test procedure that is used by the Animal and Plant Health Inspection Service.

Comments Received

On October 25, 1990, we published a proposed rule in the **Federal Register** (55 FR 42990–42993, Docket No. 90–042) discussing this revision. The proposed rule provided that comments would be accepted for 30 days, until December 24, 1990.

We received comments from four licensed manufacturers, one national trade association representing major research-based U.S. manufacturers of animal health products, and one regulatory agency.

All comments were favorable and supported the proposed rule. It should be noted that the sections in part 113 of the regulations and standards have been renumbered since the proposed rule was published. Therefore, proposed § 113.93 is not § 113.108, § 113.94 is § 113.109, and § 113.99 is § 113.114.

Three commenters noted that the potency test for tetanus toxoid in

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The Animal and Plant Health Inspection Service (APHIS) and manufacturers of Tetanus Toxoid have developed an assay method to replace the toxin neutralization test conducted in guinea pigs. The cooperative effort resulted in an enzyme-linked immunosorbent assay (ELISA) which accurately quantitates the A.U. per ml of the serum pool from the guinea pigs vaccinated with toxoid without requiring the inoculation and death of the additional guinea pigs used in the toxin neutralization test. The minimum antitoxin level required for a satisfactory guinea pig serum pool is retained at 2 A.U. per ml. Because the ELISA is more precise than the toxin neutralization test, the prescribed retest of unsatisfactory serials is conducted in 10 rather than 20 animals.

The Agency analyzed the data accumulated from cooperative studies with six participating manufacturers. It has concluded that the new potency test would conserve time and animals, and is more humane and economical than the current potency test. This test accurately measures the quantity of antitoxin(s) produced by the product in susceptible host species.

The final rule specifies that the antitoxin level shall be determined by an ELISA acceptable to the Animal and Plant Health Inspection Service. The Agency has prepared a Supplemental Assay Method (SAM) in accordance with 9 CFR 113.2(a) which details the ELISA test procedure that is used by the Animal and Plant Health Inspection Service.

Comments Received

On October 25, 1990, we published a proposed rule in the **Federal Register** (55 FR 42990–42993, Docket No. 90–042) discussing this revision. The proposed rule provided that comments would be accepted for 30 days, until December 24, 1990.

We received comments from four licensed manufacturers, one national trade association representing major research-based U.S. manufacturers of animal health products, and one regulatory agency.

All comments were favorable and supported the proposed rule. It should be noted that the sections in part 113 of the regulations and standards have been renumbered since the proposed rule was published. Therefore, proposed § 113.93 is not § 113.108, § 113.94 is § 113.109, and § 113.99 is § 113.114.

Three commenters noted that the potency test for tetanus toxoid in

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§ 113.99(c), as proposed, specified injecting guinea pigs with 0.4 of the horse dose recommended on the product label. However, since some of the licensed tetanus toxoid products are recommended for cattle, sheep, and other species, but not for horses, they recommended modification of the potency test to provide for those products. The Agency agrees and § 113.99(c) has been modified to address this by changing the reference from the "horse dose" to the "largest dose" recommended on the product label.

One commenter noted that in the proposed § 113.99(c)(1) the wording should be amended to clarify that the serum from all the guinea pigs should be pooled. We have revised the wording for clarity, as suggested. There is no substantive change.

Based on the rationale set forth in the proposal and in this document, we are adopting the provision of the proposal with changes as a final rule.

In the final rule published in the **Federal Register** (55 FR 35556–35563, Docket No. 89–151) the Standard Requirements for § 113.93 Clostridium Novyi Bacterin-Toxoid; § 113.94 Clostridium Sordellii Bacterin-Toxoid; and § 113.99 Tetanus Toxoid were designated as §§ 113.108, 113.109 and 113.114, respectively. These changes have been made in this final rule.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1 and has been determined not to be a "major rule." Based on information compiled by the Department, it has been determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The purpose of this action is to codify in the Standard Requirements updated procedures for conducting potency tests for serial release that are more economical, more humane, and more accurate than the superseded test procedures in measuring the quantity of antigen and quality of these products.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et. seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR part 113

Animal biologics.

PART 113—STANDARD REQUIREMENTS

Accordingly, title 9, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 113 will continue to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.15, and 371.2(d).

2. In § 113.108, paragraph (c), is revised to read as follows:

§ 113.108 Clostridium Novyi Bacterin-Toxoid.

* * * * *

(a) * * *
(b) * * *

(c) *Potency test.* Bulk or final container samples of completed product from each serial shall be tested for potency using the Alpha toxin-neutralization test provided in this paragraph.

(1) When used in this test, the following words and terms shall mean:

(i) *International antitoxin unit.* (I.U.) That quantity of Alpha Antitoxin which reacts with Lo and L+ doses of Standard Toxin according to their definitions.

(ii) *Lo dose.* The largest quantity of toxin which can be mixed with one unit of Standard Antitoxin and not cause sickness or death in injected mice.

(iii) *L+ dose.* The smallest quantity of toxin which can be mixed with one unit of Standard Antitoxin and cause death in at least 80 percent of injected mice.

(iv) *Standard antitoxin.* The Alpha Antitoxin preparation which has been standardized as to antitoxin unitage on the basis of the International *Clostridium novyi* Alpha Antitoxin Standard and which is either supplied by or acceptable to the Animal and Plant Health Inspection Service. The antitoxin unit value shall be stated on the label.

(v) *Standard toxin.* The Alpha toxin preparation which is supplied by or is acceptable to the Animal and Plant Health Inspection Service.

(vi) *Diluent.* The solution used to make proper dilutions prescribed in this test. Such solutions shall be made by dissolving 1 gram of peptone and 0.25 gram of sodium chloride in each 100 ml of distilled water; adjusting the pH to 7.2; autoclaving at 121 °C for 25 minutes; and storing at 4 °C until used.

(2) Each of at least eight rabbits of a strain acceptable to the Animal and Plant Health Inspection Service, each weighing 4–8 pounds, shall be injected subcutaneously with not more than half of the recommended cattle dose. *Provided,* That, if the product is recommended only for sheep, half of the recommended sheep dose shall be used. A second dose shall be given not less than 20 days nor more than 23 days after the first dose.

(3) Fourteen to seventeen days after the second dose, all surviving rabbits shall be bled, and the serum tested for antitoxin content.

(i) At least seven rabbits are required to make an acceptable serum pool.

(ii) Equal quantities of serum from each rabbit shall be combined and tested as a single pooled serum.

(iii) If less than seven rabbits are available, the test is invalid and shall be repeated: *Provided,* That, if the test is not repeated, the serial shall be declared unsatisfactory.

(4) The antitoxin content of the rabbit serums shall be determined by the serum neutralization test as follows:

(i) Make a dilution of Standard Antitoxin to contain 0.1 International Unit of antitoxin per ml.

(ii) Make a dilution of Standard Toxin in which 0.1 Lo dose is contained in a volume of 1 ml or less. Make a second dilution of Standard Toxin in which 0.1 L+ dose is contained in a volume of 1 ml or less.

(iii) Combine 0.1 International Unit of Standard Antitoxin with 0.1 Lo dose of diluted Standard Toxin and combine 0.1 International Unit of Standard Antitoxin with 0.1 L+ dose of diluted Standard Toxin. Each mixture is adjusted to a final volume of 2.0 ml with diluent.

(iv) Combine 0.1 Lo dose of diluted Standard Toxin with a 0.2 ml volume of undiluted serum. The mixture is adjusted to a final volume of 2.0 ml with diluent.

(v) Neutralize all toxin-antitoxin mixtures at room temperature for 1 hour and hold in ice water until injections of mice can be made.

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(vi) Five Swiss white mice, each weighing 16–20 grams, shall be used for each toxin-antitoxin mixture. A dose of 0.2 ml shall be injected intravenously into each mouse. Conclude the test 72 hours post injection and record all deaths.

(5) Test Interpretation shall be as follows:

(i) If any mice inoculated with the mixture of 0.1 International Unit of Standard Antitoxin and 0.1 Lo doses of Standard Toxin die, the results of the serum neutralization test are inconclusive and shall be repeated: *Provided*, That, if the test is not repeated, the serial shall be declared unsatisfactory.

(ii) If less than 80 percent of the mice inoculated with the mixture of 0.1 International Unit of Standard Antitoxin and 0.1 L+ doses of Standard Toxin die, the results of the serum neutralization test are inconclusive and shall be repeated: *Provided*, That, if the test is not repeated, the serial shall be declared unsatisfactory.

(iii) If any mice inoculated with the mixture of 0.2 ml undiluted serum with 0.1 Lo dose of Standard Toxin die, the serum is considered to contain less than 0.50 International Units per ml.

(iv) If the single pooled serum from seven or more rabbits contains less than 0.5 International Unit per ml, the serial is unsatisfactory.

3. In § 113.109, paragraph (c), is revised to read as follows:

§ 113.109 Clostridium Sordellii Bacterin-Toxoid.

* * * * *

(a) * * *

(b) * * *

(c) *Potency test.* Bulk or final container samples of completed product from each serial shall be tested for potency using the toxin-neutralization test provided in this paragraph.

(1) When used in this test, the following words and terms shall mean:

(i) *International antitoxin unit.* (I.U.) That quantity of antitoxin which reacts with Lo and L+ doses of Standard Toxin according to their definitions.

(ii) *Lo dose.* The largest quantity of toxin which can be mixed with one unit of Standard Antitoxin and not cause sickness or death in injected mice.

(iii) *L+ dose.* The smallest quantity of toxin which can be mixed with one unit of Standard Antitoxin and cause death in at least 80 percent of injected mice.

(iv) *Standard antitoxin.* The antitoxin preparation which has been standardized as to antitoxin unitage on the basis of the International *Clostridium sordellii* Antitoxin Standard and which is either supplied by or acceptable to the Animal and Plant Health Inspection Service. The antitoxin unit value shall be stated on the label.

(v) *Standard toxin.* The toxin preparation which is supplied by or is acceptable to the Animal and Plant Health Inspection Service.

(vi) *Diluent.* The solution used to make proper dilutions prescribed in this test. Such solutions shall be made by dissolving 1 gram of peptone and 0.25 gram of sodium chloride in each 100 ml of distilled water; adjusting the pH to 7.2; autoclaving at 121 °C for 25 minutes; and storing at 4 °C until used.

(2) Each of at least eight rabbits of a strain acceptable to the Animal and Plant Health Inspection Service, each weighing 4–8 pounds, shall be injected subcutaneously with not more than half of the recommended cattle dose: *Provided*, That, if the product is recommended only for sheep, half of the recommended sheep dose shall be used. A second dose shall be given not less than 20 days nor more than 23 days after the first dose.

(3) Fourteen to seventeen days after the second dose, all surviving rabbits shall be bled, and the serum tested for antitoxin content.

(i) At least seven rabbits are required to make an acceptable serum pool.

(ii) Equal quantities of serum from each rabbit shall be combined and tested as a single pooled serum.

(iii) If less than seven rabbits are available, the test is invalid and shall be repeated: *Provided*, That, if the test is not repeated, the serial shall be declared unsatisfactory.

(4) The antitoxin content of the rabbit serums shall be determined by the serum neutralization test as follows:

(i) Make a dilution of Standard Antitoxin to contain 1.0 international unit of antitoxin per ml.

(ii) Make a dilution of Standard Toxin in which 1.0 Lo dose is contained in a volume of 1 ml or less. Make a second dilution of Standard Toxin in which 1.0 L+ dose is contained in a volume of 1 ml or less.

(iii) Combine 1.0 International Unit Standard Antitoxin with 1.0 Lo dose of diluted Standard Toxin and combine 1.0 International Unit of Standard Antitoxin with 1.0 L+ dose of diluted Standard Toxin. Each mixture is adjusted to a final volume of 2.0 ml with diluent.

(iv) Combine 1.0 Lo dose of diluted Standard Toxin with a 1.0 ml volume of undiluted serum. This mixture is adjusted to a final volume of 2.0 ml with diluent.

(v) Neutralize all toxin-antitoxin mixtures at room temperature for 1 hour and hold in ice water until injections of mice can be made.

(vi) Five Swiss white mice, each weighing 16–20 grams, shall be used for each toxin-antitoxin mixture. A dose of 0.2 ml shall be injected intravenously into each mouse. Conclude the test 72 hours post injection and record all deaths.

(5) Test Interpretation shall be as follows:

(i) If any mice inoculated with the mixture of 1.0 International Unit of Standard Antitoxin and 1.0 Lo doses of Standard Toxin die, the results of the serum neutralization test are inconclusive and shall be repeated: *Provided*, That, if the test is not repeated, the serial shall be declared unsatisfactory.

(ii) If less than 80 percent of the mice inoculated with the mixture of 1.0 International Unit of Standard Antitoxin and 1.0 L+ doses of Standard Toxin die, the results of the serum neutralization test are inconclusive and shall be repeated: *Provided*, That, if the test is not repeated, the serial shall be declared unsatisfactory.

(iii) If any mice inoculated with the mixture of 1.0 ml undiluted serum with 1.0 Lo dose of Standard Toxin die, the serum is considered to contain less than 1.0 International Units per ml.

(iv) If the single pooled serum from seven or more rabbits contains less than 1.0 International Unit per ml, the serial is unsatisfactory.

4. In § 113.114, paragraph (c), is revised to read as follows:

§ 113.114 Tetanus Toxoid.

* * * * *

(a) * * *

(b) * * *

(c) *Potency test.* Bulk or final container samples of completed product from each serial shall be tested for potency. A group of 10 guinea pigs consisting of an equal number of males and females weighing 450 to 550 grams shall each be injected subcutaneously with 0.4 of the largest dose recommended on the product labels.

(1) Six weeks after injection, all surviving guinea pigs shall be bled and equal portions of serum, but not less than 0.5 ml from each, shall be pooled. For a valid test, the pool shall contain the serum from at least eight animals.

(2) The antitoxin titer of the pooled serum shall be determined in antitoxin units (A.U.) per ml using an enzyme-linked immunosorbent assay method acceptable to the Animal and Plant Health Inspection Service.

(3) If the antitoxin titer of the serum pool is at least 2.0 A.U. per ml, the serial is satisfactory. If the antitoxin titer of the serum pool is less than 2.0 A.U. per

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(vi) Five Swiss white mice, each weighing 16–20 grams, shall be used for each toxin-antitoxin mixture. A dose of 0.2 ml shall be injected intravenously into each mouse. Conclude the test 72 hours post injection and record all deaths.

(5) Test Interpretation shall be as follows:

(i) If any mice inoculated with the mixture of 1.0 International Unit of Standard Antitoxin and 1.0 Lo doses of Standard Toxin die, the results of the serum neutralization test are inconclusive and shall be repeated: *Provided*, That, if the test is not repeated, the serial shall be declared unsatisfactory.

(ii) If less than 80 percent of the mice inoculated with the mixture of 1.0 International Unit of Standard Antitoxin and 1.0 L+ doses of Standard Toxin die, the results of the serum neutralization test are inconclusive and shall be repeated: *Provided*, That, if the test is not repeated, the serial shall be declared unsatisfactory.

(iii) If any mice inoculated with the mixture of 1.0 ml undiluted serum with 1.0 Lo dose of Standard Toxin die, the serum is considered to contain less than 1.0 International Units per ml.

(iv) If the single pooled serum from seven or more rabbits contains less than 1.0 International Unit per ml, the serial is unsatisfactory.

4. In § 113.114, paragraph (c), is revised to read as follows:

§ 113.114 Tetanus Toxoid.

* * * * *

(a) * * *

(b) * * *

(c) *Potency test.* Bulk or final container samples of completed product from each serial shall be tested for potency. A group of 10 guinea pigs consisting of an equal number of males and females weighing 450 to 550 grams shall each be injected subcutaneously with 0.4 of the largest dose recommended on the product labels.

(1) Six weeks after injection, all surviving guinea pigs shall be bled and equal portions of serum, but not less than 0.5 ml from each, shall be pooled. For a valid test, the pool shall contain the serum from at least eight animals.

(2) The antitoxin titer of the pooled serum shall be determined in antitoxin units (A.U.) per ml using an enzyme-linked immunosorbent assay method acceptable to the Animal and Plant Health Inspection Service.

(3) If the antitoxin titer of the serum pool is at least 2.0 A.U. per ml, the serial is satisfactory. If the antitoxin titer of the serum pool is less than 2.0 A.U. per ml, the serial may be retested by the following procedure: *Provided*, That, if the serial is not retested, it shall be declared unsatisfactory.

(4) For serials in which the serum pool contains less than 2.0 A.U. per ml, the individual serum that constituted the pool may be tested by the enzyme-linked immunosorbent assay. If at least 80 percent of the individual serums have an antitoxin titer of at least 2.0 A.U. per ml, the serial is satisfactory. If less than 80 percent of the individual serums have an antitoxin titer of at least 2.0 A.U. per ml, the serial may be retested in 10 guinea pigs using the procedure described in (c) (1) and (2) above. The antitoxin titer of the pooled serum from the guinea pigs used in the retest shall be averaged with the antitoxin level of the pooled serum from the initial test. If the average of the two pools is at least 2.0 A.U. per ml, the serial is satisfactory. If the average of the two pools is less than 2.0 A.U. per ml, the serial is unsatisfactory and shall not be retested further.

Done in Washington, DC, this 6th day of August 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-18960 Filed 8-8-91; 8:45 am]

BILLING CODE 3410-10-M

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9 CFR Part 166

[Docket No. 90-250]

Swine Health Protection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Swine Health Protection regulations by removing North Dakota from the list of States that prohibit garbage feeding. This action is necessary to reflect changes in the status of North Dakota, and thereby facilitate the administration of the Swine Health Protection regulations.

EFFECTIVE DATE: September 9, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. Delorias M. Lenard, Senior Staff Veterinarian, Swine Diseases Staff, VS, APHIS, USDA, room 736–A, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–7767.

SUPPLEMENTARY INFORMATION:

Background

The Swine Health Protection regulations (contained in 9 CFR part 166 and referred to below as the regulations) were established under the Swine Health Protection Act (contained in 7 U.S.C. 3801 *et seq.*, and referred to below as the Act). The Act and the regulations contain provisions concerning the treatment of garbage to be fed to swine and the feeding of that garbage to swine. These provisions operate as safeguards against the spread of certain swine diseases in the United States.

Some States prohibit the feeding of garbage to swine. Other States permit the feeding of treated garbage to swine. North Dakota is currently listed in § 166.15(b) as a State that permits the feeding of treated garbage to swine. However, North Dakota law now prohibits the feeding of garbage to swine. We are therefore removing it from the list of States in § 166.15(b) and adding it to the list of States in § 166.15(a) that prohibit the feeding of garbage to swine. This action amends the regulations to accurately reflect North Dakota's garbage feeding status.

North Dakota remains on the list of States in § 166.15(c) that have primary enforcement responsibility under the Act.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprise to compete with foreign-based enterprises in domestic or export markets.

This action simply reflects changes that North Dakota has already made by statute with respect to Swine Health Protection.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Effective Date

We are taking this action to update our regulations with respect to changes that have already occurred in North Dakota's law regarding the feeding of garbage to swine. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedures with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the **Federal Register**.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 166

African swine fever, Animal diseases, Food-and-mouth disease, Garbage, Hog cholera, Hogs, Reporting and recordkeeping requirements, Swine vesicular disease, Vesicular exanthema of swine.

PART 166—SWINE HEALTH PROTECTION

Accordingly, 9 CFR part 166 is amended as follows:

1. The authority citation for part 166 continues to read as follows:

Authority: 7 U.S.C. 3802, 3803, 3804, 3808, 3809, 3811; 7 CFR 2.17, 2.51, and 371.2(d).

§ 166.15 [Amended]

2. Paragraph (b) of § 166.15 is amended by removing "North Dakota,".

3. Paragraph (a) of § 166.15 is amended by adding "North Dakota," immediately after "New York,".

Done in Washington, DC, this 6th day of August 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-18959 Filed 8-8-91; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 52, 71, 170, and 171

RIN 3150-AD67

Revision of Fee Schedules; 100% Fee Recovery, Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule, correction.

SUMMARY: This document corrects a final rule appearing in the **Federal Register** on July 10, 1991 (56 FR 31472), that amended the regulations governing the licensing, inspection, and annual fees charged to Nuclear Regulatory Commission licensees. This action is necessary to correct several errors that occurred in final document preparation and printing.

EFFECTIVE DATE: August 9, 1991.

FOR FURTHER INFORMATION CONTACT: C. James Holloway, Jr., Office of the Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301-492-4301.

1. On page 31486, first column, first paragraph under item 3, fourth line, "$28.4 million" should read "$33.3 million."

2. On page 31486, second column, third paragraph under item b, first line, "$28.4 million" should read "$33.3 million."

3. On page 31487, first column, in the last full paragraph, the introductory phrase should appear in italics as follows:

"Activities and budgeted costs not currently assessed 10 CFR part 170 licensing and inspection fees based on Commission policy."

4. On page 31492, table IV, the direct FTE under the program element total for the line item "Decommissioning" which reads "144" should be revised to read "14.4."

5. On page 31492, the numbers in the entries directly following table IV were not properly aligned. These numbers should have appeared as follows:

$362.8 million [2]
−71.9 million

$290.9 million

6. On page 31495, the headings to table VI should be corrected to appear in the same manner as the headings for table VII. Specific changes are as follows:

a. The word "Total" should appear over the first and second columns entitled "Program support $K" and "FTE."

b. The words "Allocated to fuel facility" should appear over the third and fourth columns.

c. The subheading for column three should read "Program Support $K."

d. The subheading for column four should read "FTE."

7. On page 31495, the numbers in the entries directly following table VI were not properly aligned. These numbers should have appeared as follows:

$13.3 million [2]
−2.7 million

$10.6 million

8. On page 31495, in table VII, dollar signs should appear before the totals of $3,372, $1,973, $3,034, $4,183, and $27.2.

9. On page 31496, in the table at the top of the page, dollars signs should appear before the subtotals $936, $3,222, $4,158, and $1,080 and the totals $3,186, $7,452, and $10,638.

10. On page 31504, § 170.31, fee category 15, the introductory text of item 15c should be revised to read:

"c. All other export/import licenses/approvals."

11. On page 31506, § 171.15(d), in the second line, the word "and" should be removed. As correctly revised § 171.15(d) reads as follows:

"(d) The FY 1991 part 171 annual fees for operating power reactors are as follows:"

Dated at Rockville, Maryland, this 2d day of August 1991.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 91-18871 Filed 8-8-91; 8:45 am]

BILLING CODE 7590-01-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Loan Interest Rates

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The current 18 percent per year Federal credit union loan rate ceiling is scheduled to revert to 15 percent on September 9, 1991, unless otherwise provided by the NCUA Board. A 15 percent ceiling would restrict certain categories of credit and adversely affect the financial condition of a number of Federal credit unions. At the same time, prevailing market rates and economic conditions do not justify a rate higher than the current 18 percent ceiling. Accordingly, the NCUA Board hereby continues an 18 percent Federal credit union loan rate ceiling for the period from September 8, 1991 through March 8, 1993. Loans and line of credit balances existing prior to May 15, 1987 may continue to bear their contractual rate of interest, not to exceed 21 percent. Further, the NCUA Board is prepared to reconsider the 18 percent ceiling at any time should changes in economic conditions warrant.

EFFECTIVE DATE: September 9, 1991.

ADDRESSES: National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Charles H. Bradford, Chief Economist at the above address. Telephone number: (202) 682-9621.

SUPPLEMENTARY INFORMATION:

Background

Public Law 96-221, enacted in 1979, raised the loan interest rate ceiling for Federal credit unions from 1 percent per month (12 percent per year) to 15 percent per year. It also authorized the NCUA Board to set a higher limit, after consultation with Congress, the Department of the Treasury, and other Federal financial agencies, for a period not to exceed 18 months, if the Board should determine that: (i) Money market interest rates have risen over the preceding six months; and (ii) prevailing interest rate levels threaten the safety and soundness of individual credit unions as evidenced by adverse trends in growth, liquidity, capital, and earnings.

On December 3, 1980, the NCUA Board determined that the foregoing conditions had been met. Accordingly, the Board raised the loan ceiling for 9 months to 21 percent. In the unstable environment of the first half of the 1980's, the NCUA extended the 21 percent ceiling four additional times. On March 11, 1987, the NCUA Board lowered the loan rate ceiling from 21 percent to 18 percent effective May 15, 1987. This action was taken in an environment of falling market interest rates from 1980 to early 1987. See Table I.

The Board felt the 18 percent ceiling would fully accommodate an inflow of liquidity into the system, preserve flexibility in the system so that credit unions could react to any adverse economic developments, and would ensure that any increase in the cost of funds would not impinge on earnings of Federal credit unions.

The NCUA Board would prefer not to set loan interest rate ceilings for Federal

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EFFECTIVE DATE: September 9, 1991.

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On December 3, 1980, the NCUA Board determined that the foregoing conditions had been met. Accordingly, the Board raised the loan ceiling for 9 months to 21 percent. In the unstable environment of the first half of the 1980's, the NCUA extended the 21 percent ceiling four additional times. On March 11, 1987, the NCUA Board lowered the loan rate ceiling from 21 percent to 18 percent effective May 15, 1987. This action was taken in an environment of falling market interest rates from 1980 to early 1987. See Table I.

The Board felt the 18 percent ceiling would fully accommodate an inflow of liquidity into the system, preserve flexibility in the system so that credit unions could react to any adverse economic developments, and would ensure that any increase in the cost of funds would not impinge on earnings of Federal credit unions.

The NCUA Board would prefer not to set loan interest rate ceilings for Federal credit unions. In the final analysis the market sets the rates. The Board supports free lending markets and the ability of Federal credit union boards of directors to establish loan rates that reflect current market conditions and the interests of credit union members. Congress has, however, imposed loan rate ceilings since 1934. In 1979 Congress set the ceiling at 15 percent but authorized the NCUA Board to set a ceiling in excess of 15 percent if the Board can justify it. The following analysis justifies a ceiling above 15 percent, but at the same time does not support a ceiling above the current 18 percent. The Board is prepared to reconsider this action at any time should changes in economic conditions warrant.

Justification for a Ceiling No Higher than 18 Percent

Table I shows interest rates on Prime Rate loans, 3-month Treasury Bills, 3-year Treasury securities and 30-year Treasury bonds, from December 1965 through December 1990, and monthly rates for the first six months of 1991. Clearly, interest rates fluctuate. But with generally declining market interest rates since 1988, which in turn affect credit union cost of funds, there is no justification for raising the current loan ceiling above 18 percent.

TABLE I.—SELECTED MARKET INTEREST RATES

December of	Prime rate	Treasury securities		
		3-month	3-year	30-year
1965	4.92	4.38	4.79	....
1970	6.92	4.87	5.75	....
1975	7.26	5.44	7.43	....
1980	20.35	15.49	13.65	12.40
1985	9.50	7.10	8.40	9.54
1986	7.50	5.53	6.43	7.37
1987	8.75	5.77	8.13	9.12
1988	10.50	8.07	9.11	9.01
1989	10.50	7.63	7.77	7.90
1990	10.00	6.74	7.47	8.24
Monthly averages:				
January 1991	9.52	6.22	7.38	8.27
February	9.05	5.94	7.08	8.03
March	9.00	5.91	7.35	8.29
April	9.00	5.65	7.23	8.21
May	8.50	5.46	7.12	8.27
June	8.50	5.57	7.39	8.47

Source: Federal Reserve System.

From March 1987, when an 18 percent ceiling was first established, short and intermediate rates rose, irregularly, about 300 basis points over the next two years, peaking in March 1989. Thirty-year rates rose about 160 basis points over the same period. In the 2¼ years since March 1989 all rates have cycled down to near their March 1987 levels.

If credit unions were able to live with an 18 percent loan ceiling under the market interest rate conditions of 1988 and 1989, they should be able to operate profitably with market rates which are below those levels currently.

Justification for a Ceiling Above 15 Percent

On the other hand, a ceiling above 15 percent is necessary. A drop in the loan ceiling to 15 percent could threaten the safety and soundness of many credit unions by giving rise to adverse trends in growth and earnings.

With all interest rates rising in June 1991 and the prospect of rising interest rates over the next year; with declining earning spreads; with a sizeable number of credit unions showing losses and the need to charge relatively high rates on unsecured loans (including credit card loans) because of high costs; with high losses associated with these loans, all of these factors combine to argue against allowing the ceiling to drop to 15 percent.

Market Interest Rate Trends

As noted above, market interest rates have been in an irregular downtrend for over two years, and particularly the past year. However, this is about to change. The economy is near the bottom of its current economic cycle. All major economic indicators point to the fact that the recovery from the 1990–1991 recession is about to begin. That means upward pressure on interest rates, and May 1991 may have been the trough for this cycle on short term rates. The intermediate 3-year securities and the 30-year bond rates troughed earlier, in February.

Rates were up across the board in June. As evidence of recovery mounts in the second half of 1991, the Federal Reserve will probably allow rates to move back up. We can look for rates in the short term area of 6¾ to 7 percent by Spring of 1992 and long term rates of 8¾ to 9 percent or more by then. (The long rates should drop back later next year as the numbers show that inflation is under control).

Furthermore, despite the downtrend in rates the past two years, and especially the past year, they are still higher today (except for 3 month Treasury bills) than they were when the Board acted in March 1987 to establish an 18 percent ceiling. With the prospect that rates will likely rise from here for a year or so, a lower loan ceiling could jeopardize credit union growth and earnings.

Growth

Federal credit union growth has slowed significantly the past few years. Following share and asset growth rates of over 20 percent in 1985 and 1986, Federal credit union share growth slowed to 5 percent in 1989, rising slightly faster at 7.5 percent in 1990. Asset growth slowed to 5.3 percent in 1989, rising slightly faster at 7.8 percent in 1990.

Earnings

Earning margins of Federal credit unions have declined somewhat over the past five years:

- Despite the decline in the cost of funds of Federal credit unions in recent years, spreads have declined. Since 1985, gross spreads have fallen by 41 basis points and net spreads by 10 basis points. See Table II. Both gross and net spreads have essentially levelled out the past three years, but gross spreads are still very close to their 1988 lows and net spreads are close to their 1987 lows.

TABLE II.—FEDERAL CREDIT UNION SPREADS DECEMBER 1985–1990

	June					
	1985	1986	1987	1988	1989	1990
Return on:						
Loans	13.52%	12.68%	11.58%	11.32%	11.43%	11.49%
Investments	9.47	7.94	7.67	7.66	8.43	8.91
Earning Assets	12.18	10.91	10.11	10.02	10.46	10.25
Gross return on total Assets	11.60	10.39	9.64	9.55	10.00	9.86
Cost of total Assets	7.23%	6.37%	5.85%	5.60%	5.96%	5.90%

TABLE II.—FEDERAL CREDIT UNION SPREADS DECEMBER 1985–1990—Continued

	June					
	1985	1986	1987	1988	1989	1990.
	(Basis Points From Here Down)					
= Gross spread	437	402	399	395	402	396
− Operating expenses	337	315	308	309	321	321
+ Other Income	48	55	46	52	24	29
= Net Spread [1]	148	142	137	138	139	138

[1] Net spread before net loan charge offs and interest refunds, and before statutory reserve transfers.

- Credit union losses represent a significant and growing problems that must be weighed in setting a loan rate ceiling. Table III shows the number of credit unions, by size, experiencing losses in June 1989 and December 1990. The June 1989 data were used to help justify the last extension of the 18 percent interest rate ceiling. The total number has increased from 1,060 in June 1989, a total of 11.8 percent of Federal credit unions, to 1,090 in 1990, 12.8 percent of Federal credit unions. Most credit unions with negative earnings are small, less than $10 million in assets. While there has been a decline in the number of larger credit unions showing negative earnings, there has been a marked increase in the very smallest credit unions (less than $1 million in assets) showing losses. These credit unions would be among those most adversely affected by a reduction in the interest rate ceiling to 15 percent.

TABLE III.—FEDERAL CREDIT UNIONS EXPERIENCING LOSSES

Asset size	Number as of		Change
	June 1989	Dec. 1990	
Less than $1 million	387	545	+158
$1–2 million	168	139	−29
$2–5 million	185	172	−13
$5–10 million	135	99	−36
$10–20 million	71	69	−2
$20–50 million	73	48	−25
$50 million and over	41	18	−23
Total	1,060	1,090	+30

In summary, declining earning spreads, and a sizeable number of credit unions showing losses, raise a warning flag against setting the loan rate ceiling too low. This could threaten the safety and soundness of many credit unions by reducing their flexibility.

Table IV shows the number of Federal credit unions offering selected types of loans at various interest rates. Under a grandfather clause, a few credit unions still have on the books loans made at rates above 18 percent. These are loan contracts made prior to May 15, 1987, when the ceiling was 21 percent. Since May 15, 1987, no new loan can be made at a rate above 18 percent.

TABLE IV.—DISTRIBUTION OF FEDERAL CREDIT UNION LOAN INTEREST RATES

[Number of credit unions making indicated loans at indicated interest rates]

December 1990

Rate	Unsecured loans	New auto loans	Used auto loans	Fixed rate first mortgages	Fixed rate second mortgages
10.0% or less	59	1976	198	551	126
10.1–14.0%	2626	5362	6246	1165	2342
14.1–15.0%	2738	103	744	44	93
15.1–16.0%	1252	8	90	4	11
16.1–17.0%	639	4	18	2	4
17.1–18.0%	955	9	53	2	7
18.1–21.0%	6	3	4	8	2
Total [1]	8,275	7,467	7,353	1,776	2,585

[1] The number of credit unions offering the loan type and reporting rates charged. Some did not offer the loan type or report rates accordingly, the totals will be less than the number of federal credit unions (8,511).

Over one-third (2,852) of the Federal credit unions that offer unsecured personal loans charge more than 15 percent for these loans. This includes credit card lines of credit. While loan rates are, on average, lower for other types of loans, a few credit unions charge rates above 15 percent for these other loans as well. Credit unions charging between 15 and 18 percent on loans would be adversely affected by a 15 percent ceiling.

Efficiency of operations is an important determinant in setting a loan rate. Unfortunately, some inefficient credit unions—particularly small ones—could be forced into insolvency with a loan ceiling as low as 15 percent. It would place severe strains on a large segment of the credit union movement. Yet, market interest rate trends do not justify a rate above 18 percent.

In conclusion, the NCUA Board has continued the Federal credit union loan interest rate ceiling of 18 percent per year for the period from September 9, 1991 through March 8, 1993.

As previously indicated, loans and line of credit balances existing on or before May 15, 1987 may continue to bear their contractual rate, not to

PREADS DECEMBER 1985–1990—Continued

	June					
	1985	1986	1987	1988	1989	1990
	(Basis Points From Here Down)					
	437	402	399	395	402	396
	337	315	308	309	321	321
	48	55	40	52	24	29
	148	142	137	136	139	138

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	Number as of		Change
	June 1989	Dec. 1990	
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	168	139	−29
	185	172	−13
	135	99	−36
	71	69	−2
	73	48	−25
	41	18	−23
	1,060	1,090	+30

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	6	3	4	8	2
	8,275	7,467	7,353	1,778	2,585

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exceed 21 percent. Finally, the Board is prepared to reconsider the 18 percent ceiling at any time during the extension period, should changes in economic conditions warrant it.

Regulatory Procedures

Administrative Procedures Act

The NCUA Board has determined that notice and public comment on this rule are impractical and not in the public interest, 5 U.S.C. 553(b)(B). Due to the need for a planning period and the threat to the safety and soundness of individual credit unions with insufficient flexibility to determine loan rates, final action on the loan rate ceiling is necessary.

Regulatory Flexibility Act

For the same reasons, a regulatory flexibility analysis is not required, 5 U.S.C. 604(a). However, the NCUA Board has considered the need for this rule, and the alternatives, as set forth above.

Executive Order 12612

This Final rule does not affect state regulation of credit unions. It implements provisions of the Federal Credit Union Act applying only to Federal Credit Unions.

List of Subjects in 12 CFR Part 701

Credit Unions, Loan interest rates.

By the National Credit Union Administration July 18, 1991.

Effective date of this final rule is September 9, 1991.

Becky Baker,
Secretary of the Board.

Accordingly, NCUA has amended its regulations as follows:

PART 701—[AMENDED]

1. The authority citation for part 701 is continued to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789, 1798, and Public Law 101–73. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 et seq., 42 U.S.C. 1981 and 42 U.S.C. 3601–3610.

2. Section 701.21(c)(7) is revised to read as follows:

§ 701.21 Loans to members and lines of credit to members.

* * * * *

(c) * * *

(7) *Loan interest rates*—(i) *General.* Except when a higher maximum rate is provided for in paragraph (c)(7)(ii) of this section, a Federal credit union may extend credit to its members at rates not to exceed 15 percent per year on the unpaid balance inclusive of all finance charges. Variable rates are permitted on the condition that the effective rate over the term of the loan (or line of credit) does not exceed the maximum permissible rate.

(ii) *Temporary rates*—(A) *21 percent maximum rate.* Effective from December 3, 1980 through May 14, 1987, a Federal credit union may extend credit to its members at rates not to exceed 21 percent per year on the unpaid balance inclusive of all finance charges. Loans and line of credit balances existing on or before May 14, 1987, may continue to bear rates of interest of up to 21 percent per year after May 14, 1987.

(B) *18 percent maximum rate.* Effective May 15, 1987, a Federal credit union may extend credit to its members at rates not to exceed 18 percent per year on the unpaid balance inclusive of all finance charges.

(C) *Expiration.* After March 9, 1993, or as otherwise ordered by the NCUA Board, the maximum rate on Federal credit union extensions of credit to members shall revert to 15 percent per year. Higher rates may, however, be charged, in accordance with paragraph (c)(7)(ii) (A) and (B) of this section, on loans and line of credit balances existing on or before March 9, 1993.

* * * * *

[FR Doc. 91–18975 Filed 8–8–91; 8:45 am]

BILLING CODE 7535-01-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Reloadable Tube Aerial Shell Fireworks Devices; Final Rule

AGENCY: Consumer Product Safety Commission.

ACTION: Final Rule.

SUMMARY: The Commission is amending its fireworks regulations in order to ban reloadable tube aerial shell devices with shells larger than 1.75 inches in outer diameter.[1] Requirements currently enforced by the Commission do not adequately address the risk of serious injury posed by these fireworks devices. No voluntary standard relating to the risk of injury has been implemented, benefits of the regulation bear a reasonable relationship to the costs, and the regulation imposes the least burdensome requirement that prevents or adequately reduces the risk of injury. The Commission is issuing this rule under the authority of the Federal Hazardous Substances Act.

DATES: This rule will become effective on October 8, 1991, and will apply to reloadable shell fireworks devices with shells larger than 1.75 inches in outer diameter that are imported on or after that date, except that the filing of proper objections would stay provisions to which objections are directed.

Adversely affected persons have until September 9, 1991 to file objections to this rule, stating reasonable grounds therefor, and to request a public hearing on those objections. Objections and requests for hearings must be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to the Office of the Secretary, room 420, 5401 Westbard Avenue, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Susan B. Kyle, Project Manager, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6994.

SUPPLEMENTARY INFORMATION:

A. Background

Reloadable tube aerial shell fireworks devices (also referred to in this notice as "reloadable shell devices") typically consist of a cardboard launcher tube approximately 10 to 12 inches tall and separate shells that the user places inside of the tube. The user ignites the fuse which extends slightly above the top of the tube, and the shell is projected approximately 75 to 250 feet in the air where it bursts with another powder charge, releasing a colorful starburst. They are classified by the Department of Transportation ("DOT") as Class C common fireworks devices. Class C fireworks devices are suitable for use by consumers. These reloadable shell devices have become increasingly popular in the past three to four years. Four nominal sizes of shells are available at this time for consumer use: 1.5, 1.75, 2.0, and 2.25 inches in outer diameter. This amendment concerns only shells that are larger than 1.75 inches.

The Commission has received reports of thirty-nine incidents involving reloadable shells that have occurred since 1986. A majority of incidents in which the size of the shell was reported (23 of 31) involved shells larger than 1.75 inches. According to information from

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[1] The Commission voted to issue the final rule by a 2–1 vote, with Commissioner Carol G. Dawson voting against the rule. Copies of the Commissioner's statements are available upon request from the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; (301) 492-6800.

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an insurance carrier, detailed investigations conducted by the Commission, and other data gathered by the Commission, the resulting injuries have been severe injuries to the facial area, particularly to eyes. Injuries have resulted in serious burns and loss or impairment of sight. (See Refs. Nos. 1 and 15.)

The Commission regulates fireworks devices pursuant to the provisions of the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261 *et seq.* Under current regulations, the Commission has declared certain specified fireworks devices to be "banned hazardous substances." 16 CFR 1500.17(a) (3), (8), and (9). Additional regulations prescribe the requirements that fireworks devices not specifically listed as banned must meet to avoid being classified as banned hazardous substances. 16 CFR part 1507. Finally, additional Commission regulations prescribe specific warnings required on various legal fireworks devices, 16 CFR 1500.14(b)(7), and designate the size and location of these warnings. 16 CFR 1500.121. Under the Commission's existing regulations, reloadable tube aerial shell fireworks devices that comply with applicable requirements are not banned hazardous substances.

On July 31, 1990, the Commission issued an advance notice of proposed rulemaking ("ANPR") discussing the hazard presented by reloadable shells larger than 1.75 inches in diameter. 55 FR 31069. The ANPR also discussed the concern that smaller shells with an explosive power exceeding that of existing 1.75 inch shells might be produced in the future to circumvent a ban based purely on size. In the ANPR, the Commission noted that injury data indicated a distinction between shells larger than 1.75 inches and shells 1.75 inches or smaller. On February 15, 1991, the Commission published a proposed rule in which it proposed to ban reloadable shells larger than 1.75 inches in outer diameter. 56 FR 6321 (1991). After investigating "explosive power," the Commission concluded that it was currently unable to link the factor of explosive power with the potential to produce injury. Thus, the Commission did not propose a restriction on explosive power.

B. Statutory Authority

This proceeding is conducted under provisions of the FHSA, 15 U.S.C. 1261 *et seq.* Fireworks are "hazardous substances" within the meaning of section 2(f)(1)(A) of the FHSA because they are flammable or combustible substances, or they generate pressure through decomposition, heat, or other means, and they "may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use * * *." 15 U.S.C. 1261(f)(1)(A).

Under section 2(q)(1)(B) of the FHSA, the Commission may classify as a "banned hazardous substance" any hazardous substance intended for household use which, notwithstanding the precautionary labeling required by the FHSA, presents such a hazard that keeping the substance out of interstate commerce is the only adequate means of protecting the public. *Id.* section 1261(q)(1)(B). A proceeding to promulgate a regulation classifying a substance as a banned hazardous substance under section 2(q)(1) of the FHSA is governed by the requirements set forth in section 3(f)–(i) of the FHSA, and by the provisions of section 701(e) of the Federal Food, Drug, and Cosmetic Act ("FDCA") (21 U.S.C. 371(e)) made applicable by section 2(q)(2) of the FHSA (15 U.S.C. 1261(q)(2)).

The July 31, 1990, ANPR was the first step necessary to declare the specified reloadable shell devices banned hazardous substances under section 2(q)(1). See 15 U.S.C. 1262(f). The notice of proposed rulemaking continued the regulatory process in accordance with the requirements of 15 U.S.C. 1262(h). The Commission has determined to issue a final rule, and is publishing the text of the final rule along with a final regulatory analysis, *id.* section 1262(i)(1). It is also making findings required under section 3(i)(2) of the FHSA concerning voluntary standards, the relationship of the costs and benefits of the rule, and the burden imposed by the regulation. *Id.* section 1262(i)(2).

C. Filing Objections Under § 701(e) of the FDCA

This proceeding is also governed by procedures established under section 701(e) of the FDCA. 15 U.S.C. 1261(q)(2). These procedures provide that once the Commission issues a final rule, adversely affected persons have a period of thirty (30) days in which to file objections stating reasonable grounds therefor, and to request a public hearing on those objections. If no objections are filed, the order becomes effective on the last day for objections. If objections are filed, implementation of the provisions to which the objections are directed would be stayed. Should objections be filed, the presiding officer would issue an order after the hearing, based upon substantial evidence. 21 U.S.C. 371(e). The Commission has published procedural rules that would apply to such a hearing. 56 FR 9276 (1991) (to be codified at 16 CFR part 1502).

Objections and requests for a hearing must be filed with the Office of the Secretary. They will be accepted for filing if they meet the following conditions: (1) They are submitted within the time period specified; (2) each objection is separately numbered; (3) each objection specifies with particularity the provision(s) of the regulation to which the objection is directed; (4) each objection on which a hearing is requested specifically requests a hearing; and (5) each objection for which a hearing is requested includes a detailed description of the basis for the objection and the factual information or analysis in support thereof (failure to include this information constitutes a waiver of the right to a hearing on that objection). 56 FR 9276 (to be codified at 16 CFR 1502.6). The Commission will publish in the **Federal Register** a notice specifying any parts of the regulation that have been stayed by the filing of proper objections or, if no objections have been filed, stating that fact. *Id.* (to be codified at *id.* section 1502.7). As soon as practicable, the Commission will review any objections and requests for hearing that have been filed to determine whether the regulation should be modified or revoked, and whether a hearing has been justified. *Id.* (to be codified at *id.* section 1502.8).

D. The Product

As explained in earlier notices, this product's reloadability differentiates the devices from other products in the mine and shell category of fireworks, which typically are an integral unit with one common fuse and are designed for a single use. Approximately ten different models of reloadable shell devices with four sizes of shells are believed to be available in the market for consumer use: shells which are 1.5, 1.75, 2.0, and 2.25 inches in outer diameter.

To operate these devices the user must unwind the fuse (approximately 12.5 inches long) from around the shell, insert the shell into the launcher tube in the proper orientation, leaving a very short length of fuse (1 to 2 inches) projecting from the top of the tube, and then light the fuse. Because the fuse must be lit from the top of the tube, some part of the user's body may remain over the firing path of the device when it is launched. Additionally, the length of the fuse (10 to 16 inches rather than 1 to 2 inches typical of other fireworks devices) may create a false impression that the fuse will burn for a significantly longer time. (See Ref. No. 3.) The fuse

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consists of two different types of fuse joined together; a one to two inch length of relatively slow burning fuse, known as "safety fuse," that ignites a very fast burning fuse, known as "quickmatch," which in turn ignites the lift propellant inside the shell.

Annual U.S. sales of reloadable shells from 1987 to 1989 are estimated to be between 15 and 22 million units. Approximately 3.5 million of these shells (roughly 15% of the 1989 total) are larger than 1.75 inches. Eight to ten companies export reloadable shells from China to the United States. The largest trading companies each market three or four brands of reloadable shells. Other firms market a single brand. One dominant brand among large reloadable shells accounts for the great majority of all 2.25 inch devices. There are approximately one hundred U.S. importers of reloadable shell devices, almost all of whom market both reloadable shells larger than 1.75 inches and smaller reloadable shells. Retail prices for reloadable shell devices vary greatly, ranging from about $10 to over $40. The estimated average retail price of a single device (typically including either six large shells or twelve small ones) is approximately $20. Prices appear to vary regionally. (See Ref. No. 2.)

Industry representatives have reported that approximately 42 million of the small (1.5 inch and 1.75 inch) shells were shipped to the United States from 1987 to 1989, while approximately 5 million of the large (2.0 inch and 2.25 inch) shells were imported during this time period. Shipments for 1989 are estimated at about 18.5 million small and 3.5 million large shells. (See Refs. Nos. 5 and 6.)

Other products exist which retailers and consumers could substitute for reloadable devices using shells larger than 1.75 inches once the ban becomes effective. In addition to reloadable shell devices using shells 1.75 inches and smaller, there are non-reloadable aerial devices which provide either single or multiple shots—sometimes up to 100 per device. Such non-reloadable devices are sold already assembled, with the fuse extending from the bottom of the tube rather than from the top, so that the user does not have to place the shell inside of the launcher tube. In addition, some types of fireworks devices, known as missiles, are also available for home use and have fuses that light from the bottom. The prices of all of the known substitute products vary within the same approximate range ($5 to over $40) as the prices of reloadable shell devices. (See Ref. No. 2.)

E. Risk of Injury

The Commission has received reports of thirty-nine incidents reported to have involved reloadable shells that have occurred since 1985. The Commission has performed in-depth investigations ("IDI's") in twenty of these cases. Information concerning the other incidents is less complete. Many of these thirty-nine incidents were reported, at the Commission's request, by the major insurance carrier for the fireworks industry. Of the thirty-nine incidents, nineteen reportedly involved 2.25 inch shells, three involved 2.0 inch shells, one involved a 1.75 inch shell, and seven involved 1.5 inch shells. One case involved a shell that was either 2 or 2.25 inches in diameter. In eight cases the size of the shell was not known. (See Refs. Nos. 1 and 15.)

The majority of incidents resulted in serious facial and eye injuries. Fourteen of the twenty investigated incidents reportedly involved eye injuries; eight of these resulted in loss of any eye. Other injuries included burns, facial lacerations and disfigurement, and loss of teeth. (See Refs. Nos. 1, 7, and 15.)

The staff reviewed sixteen of these investigations to identify injury scenarios. (Information in one of the investigated cases was insufficient to be included in the staff's analysis, and three of the investigations were not completed until after the staff's review of injury scenarios.) In ten of these sixteen investigated cases the shell launched earlier than the victim had expected. The actual time between lighting the fuse and launch is unknown. Several victims said that they expected to have more time to get away because of the length of the fuse and because their experience of previously firing shells led them to believe they would have more time to get away. In one of these cases, the shell reportedly launched before the operator lit the fuse, the device tipped over and an onlooker standing 10 feet away was struck in the face by the shell. (See Ref. No. 3.)

In three cases, the victims were injured when the shell exploded in the launch tube. One of these incidents involved the victims holding the tube while firing the shell, resulting in a hand injury. In one case, the shell exploded immediately upon leaving the launch tube. It is unclear, however, whether the shell actually exploded or the tube tipped directing the shell toward the victim. In one case, the victim was injured when, after waiting "one minute," he went back to check the device and was struck in the face. In one case, the victim held the shell in his hand while lighting the fuse, then put it into the tube. (See Ref. No. 3.)

After examining the IDIs, the Commission staff noted several patterns associated with the incidents. Two primary factors were (1) the position the victims appeared to use when lighting the fuse which placed their face near or over the launcher tube and (2) inconsistency in fuse burn time. In contrast to non-reloadable shell devices that have a fuse located at the base of the device, with reloadable shells the user must place the shell inside of the tube with the end of the fuse extending out of the launch tube. The Commission staff observed several individuals who were simulating lighting the fuse of a reloadable shell device. These individuals bent at the waist and squatted with the knees bent only enough to reach the fuse. If a victim used this same position he/she would be placed in a forward leaning pose with the head very near or over the tube. The length of the fuse may contribute to the risk of injury. The long fuse gives the impression that ample time exists to get away after lighting the fuse in contrast to devices with shorter fuses. This perception may lead some people to leave "slowly." The victim might not believe his (or her) body position was hazardous because the fuse length indicates ample time to get away. Additionally, previous firing of shells might have demonstrated there was time to get away; failure of the fuse to perform always as expected indicates that the fuse may also be a factor in the incidents. (See Ref. No. 3.)

The Commission's injury data indicate that fewer injuries have occurred with shell 1.75 inches or smaller than with shells larger than 1.75 inches. Of the thirty-one reported incidents in which the size of the shell is identified, twenty-three involved shells larger than 1.75 inches, while only eight incidents involved smaller shells (seven with 1.5 inch shells and one with a 1.75 inch shell). This also represents a much smaller proportion of injuries since the industry has reported to the CPSC that approximately 42 million of the smaller shell devices have been imported from 1987 to 1989, while only approximately 5 million of the larger shell (shells larger than 1.75 inches) devices have been imported during the same time period.

F. Comments Responding to the Proposed Rule

The Commission received four comments in response to the proposed rule published on February 15, 1991. All comments supported the proposed rule. The National Fire Protection

Association, a voluntary non-profit organization concerned with limiting the possibility and effect of fire, wrote that it supports the Commission's proposed ban of reloadable shells larger than 1.75 inches in outer diameter in order to reduce the risk and number of injuries to consumers from these devices.

The National Association of Consumer Agency Administrators ("NACCA"), a membership organization of approximately 150 administrators of federal, state, and local governmental consumer protection programs, wrote in support of the proposed ban. NACAA noted that based on the number and severity of injuries reported, NACAA believes that ample justification exists to ban the large reloadable shells.

A letter of support came from the American Pyrotechnics Association ("APA"), a trade association which represents approximately 80 percent of all fireworks manufacturers, importers, and distributors, and whose membership accounts for approximately 90 percent of all class C fireworks sold and used in the United States. APA agreed with the Commission's decision to drop a quantification of explosive power and it supported the proposed ban of reloadable shells larger than 1.75 inches in outer diameter.

The American Fireworks Standards Laboratory ("AFSL") confirmed its continuing support for a ban on reloadable shells larger than 1.75 inches. AFSL also stated its belief that "practical considerations together with continuing efforts of the AFSL" would address the Commission's concerns regarding the production of more powerful small shells. AFSL also repeated its support for revising the regulatory requirement for fuse burn time to extend the limit from six to nine seconds. As the Commission stated in its response to comments on the ANPR, amending the fuse burn time requirement for all shells is beyond the scope of this rulemaking.

G. Regulatory Analysis

Introduction

The Commission has determined that reloadable shell devices larger than 1.75 inches in outer diameter present a risk of serious burns and eye injuries. Accordingly, as explained earlier in this notice, the Commission is taking action under the FHSA to ban these reloadable shell devices. Section 3(i)(1) of the FHSA requires the Commission to prepare and publish with the final regulation a final regulatory analysis containing:

(A) A description of the potential benefits and potential costs of the regulation, including costs and benefits that cannot be quantified in monetary terms, and the identification of those likely to receive the benefits and bear the costs.

(B) A description of any alternatives to the final regulation which were considered by the Commission, together with a summary description of their potential benefits and costs and a brief explanation of the reasons why these alternatives were not chosen.

(C) A summary of any significant issues raised by the comments submitted during the public comment period in response to the preliminary regulatory analysis, and a summary of the assessment by the Commission of such issues.

15 U.S.C. 1261(i)(1).

The following discussion addresses these requirements.

Potential Benefits of a Ban

The ban of reloadable shells greater than 1.75 inches in outer diameter ("large reloadable shell devices") is intended to reduce or eliminate the risk of injury associated with the reasonably foreseeable use of such products. It is expected that the removal of large reloadable shells from the market would virtually eliminate the injuries associated with these items. Some offsetting increase in the number of injuries, due to the use of substitute Class C fireworks products available to consumers, would probably occur; however, this effect is not expected to be substantial.

An estimated 360 injuries associated with reloadable shells were treated in hospital emergency rooms during the 1990 Fourth of July season.[2] Since 1987, this holiday season has accounted for an average of about two-thirds of the total annual estimated injuries associated with all fireworks. Assuming that this proportion is roughly applicable to the reloadable shell subcategory, total injuries in 1990 may have been as high as 550.[3]

The distribution of injuries among the various reloadable shell devices is not precisely known; however, information from cases investigated by the Commission suggests that the majority may be associated with devices using large (2" and 2.25") shells. Injuries range in nature from minor hand or arm burns, for which individuals are treated and then released from hospital emergency rooms, to severe eye and face injuries that require hospitalization and may result in temporary or permanent vision loss. The range of costs associated with individual injuries is from under $1,000 to about $50,000. The total estimated annual cost to the public of injuries associated with large reloadable shells is approximately $1 million. This constitutes the maximum level of potential benefits to be derived from a ban.

Virtually no large reloadable shells are reported to have been shipped to the U.S. for the 1991 Fourth of July selling season. The discontinuation of sales of large reloadable shells may prompt some consumers to use other substitute products (e.g., small shell devices, missiles, or rockets); the risk associated with these substitutes, however, appears slight compared to large reloadable shells. Thus, benefits are not likely to be offset substantially by an increase in the use of substitutes.

Potential Costs of a Ban

The annual costs of a ban are estimated to be very low. Included are potential costs to foreign manufacturers and U.S. importers from sales losses, production changes, and inventory retrofitting, and slightly reduced market choices for consumers who purchase aerial display fireworks. Costs to each of these sectors are estimated to be slight, and are reduced to the extent that existing alternative products are perceived as adequate substitutes for large reloadable shells.

Effects on Industry

All reloadable shells marketed in the U.S. are imported from the People's Republic of China. No domestic fireworks manufacturer is known to produce these items. To comply with the ban, U.S. importers would simply discontinue shipment of large reloadable shells from Chinese trading companies and export brokers in Hong Kong. To a great extent, this has reportedly already occurred; as noted above, there have been virtually no import shipments of large reloadable shells in 1991. Some large reloadable shells may still be imported to the U.S. as Class B items for use in public displays; others are expected to be shipped to Europe or other international markets, or consumed in the Chinese home market.

Production facilities are expected to be converted to the manufacture of small-shell devices in most cases. Some production molds may have to be discarded or converted. One-time mold replacement or conversion costs to foreign manufacturers that could be attributed to the imposition of a ban are estimated at roughly $200,000. The amount and nature of hand labor that goes into reloadable shell production would probably be unaffected. The effect of a ban on overall production

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[2] CPSC/Epidemiology estimate National Electronic Injury Surveillance System ("NEISS").

[3] CPSC/Economic Analysis estimate based on 1987–89 data for all fireworks.

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costs for manufacturing firms is expected, therefore, to be temporary and quite small.

Manufacturers and importers would lose sales revenues from large reloadable shells; however, all of the known firms also market small-shell devices and other aerial display items that are close substitutes for large reloadable shells. Large reloadable shells account for a very small proportion of total fireworks sales for each affected firm. It is believed that sales of substitute products will make up for any revenue losses that might result from the ban, and that there would be no significant adverse impact on any one manufacturer or importer.

Some U.S. importers and distributors may have inventories of unsold large reloadable shells on or after the effective date of the ban. These reloadable shells would not be affected by the ban, and could be distributed for sale to the public, if the products were imported prior to the effective date. Manufacturers' and trading companies' inventories could not, however, be imported into the U.S. on or after the effective date; these would have to be converted to other (Class B) products, or shipped to other markets like any other new production units. Any repackaging costs to manufacturers would be sufficiently small that such costs would probably not be reflected in the form of higher prices for Class B fireworks, especially in view of the small volume of units likely to be repackaged.

It appears unlikely that significant effects on competition among marketers of fireworks devices would accompany a ban. Since all known manufacturers and U.S. importers of large reloadable shells also market small shells and other aerial display products, no economic advantage would likely be gained by any firm or set of firms (e.g., domestic manufacturers, none of which markets reloadable shells) as a result of a ban.

Effects on Consumers

The ban would limit consumer choice slightly by removing from the market an increasingly popular product. Consumers may perceive some loss of enjoyment as a result; however, other similar aerial display fireworks products would continue to be available at roughly similar prices. Reloadable shell packages vary in retail price from about $10 to over $40. Smaller shells provide somewhat less dramatic bursting effects, but provide more shells per package (usually 12 instead of 6) for about the same price. Non-reloadable single- and multi-shot missiles deliver similar pyrotechnic effects, and retail for a similarly wide range of prices.

About one-half million large reloadable shells were sold annually during the late 1980's. If the price of the largest substitutes were higher, on the average, than the price of the banned items, and consumers purchased those substitutes in sufficient numbers, total consumer expenditures for aerial display fireworks could increase as a result of a ban. As noted above, a mix of different potential substitutes may be expected to be purchased by consumers; some of these may be higher in price than large reloadable shells, while some are reportedly lower. The most likely direct substitute, small reloadable shell devices, are about the same in average price as large shells. Industry representatives believe that consumers often purchase total-dollar "baskets" of fireworks for a given occasion, and may not perceive significant differences among the various aerial display items available. Thus, the true cost to consumers of a ban in terms of retail expenditures is estimated to be close to zero.

A low level of net benefits to consumers may result from a ban of large reloadable shells. The estimated net benefits range from essentially zero to close to $1 million annually, depending on the net number of injuries avoided, and depending on the effect of product substitution on consumers' retail outlays and enjoyment of substitute products. Overall, it appears that benefits and costs associated with a ban of large reloadable shells would both be low. Although the number and total cost of serious accidents associated with the use of large reloadable shells are small, the cost to consumers of removing these articles from the market may approach zero, especially since the use of substitutes is already widespread.

Alternatives to the Ban

The Commission considered three basic kinds of alternatives to the ban. These involve: (a) Performance or design requirements in addition to or instead of specific provisions of the ban; (b) labeling as an alternative approach; and (c) the general alternative of no regulatory action on large reloadable shells. Under the no action alternative, the voluntary standard developed by the American Fireworks Standards Laboratory (AFSL) would be relied upon to provide safety to the public.

Alternative Performance Requirements

In the ANPR of July 31, 1990, the Commission stated its intention to investigate the safety of large reloadable shells and smaller shells exhibiting "equivalent explosive force." Consideration was given at the proposal stage to banning devices using smaller shells (i.e., 1.75 inches or less in outer diameter) that operated with observed kinetic energy levels above an established minimum level. A kinetic energy level of 70 joules (a unit of measurement equal to 0.738 ft-lbs. of force) was considered for this alternative.

The potential benefits of this alternative are uncertain, but would probably be somewhat greater than those associated with a ban based on shell size alone. The maximum possible additional injury-reduction benefits (i.e., the increment above the benefits of a shell-size ban) would be roughly $1 million per year, if all small shell-related injuries were attributable to the use of devices with sufficient kinetic energy levels to be banned. The relation of kinetic energy to injury potential is unclear, however; no data exist upon which to base a reliable estimate of the number of accidents that might be avoided if high-kinetic-energy small shells were also banned. Thus, the additional, or incremental, benefits associated with this alternative could be much smaller than $1 million, and could be near zero.

Costs could be slightly higher under this alternative. Manufacturers would have to effect new production controls to be sure that average kinetic energy levels of small shells were below the specification. The associated cost would probably be small; it is uncertain whether any manufacturing cost increases would be passed on in the form of higher retail prices for reloadable shells. Such costs may, however, be passed on ultimately in the form of higher fireworks prices generally. It cannot be concluded from the available information that significant net benefits would accompany this alternative.

Alternate Design/Performance Requirements

A substantial proportion of the most serious injuries reported to the Commission involved fuse burn-time variability (usually a too-quick ignition), or consumers' perceptions thereof. The Commission could have required that large reloadable shells be equipped with an improved fuse system in order to achieve a more consistent—and perhaps longer—average burn time; devices without such features would be banned. This remedy is viewed by AFSL as the most important overall safety improvement that could be made to reloadable shells. Although under the AFSL voluntary standard, the one-piece fuse provision applies only to smaller reloadable shells, such a requirement could be made equally applicable to all sizes of reloadable shells.

Another aspect of alternate banning requirements involves a prohibition (also contained in the AFSL standard) against plastic shell materials that may break into hazardous shards upon bursting. This provision may help reduce the severity of injuries, notwithstanding any fuse requirements.

Imposing design or performance requirements under this alternative would allow large shells to stay on the market, thereby preserving the existing degree of consumer choice among aerial display Class C fireworks. One-piece safety fuses are under development in China, and are reported to be technically feasible for use in all reloadable shell devices. Safer plastics are also reportedly available that might be suitable for use in reloadable shells. Such requirements may, however, have some impact on the manufacturing cost—and average retail price—of the products. A $1.00 per unit price increase for large reloadables (probably a reasonable maximum) would result in an annual cost to consumers of about $0.5 million.

Although safer plastic shells may reduce the severity of injuries that continued to occur, a safety fuse requirement for large reloadable shells would probably not reduce the risk to the same extent as would an outright ban, even if a very effective fuse system were developed. Not all accidents associated with large reloadable shells involve fuse problems: even properly operating fuses may not eliminate those "reasonably foreseeable misuse" accidents in which victims hold lighted shells in their hands or look down the launch tube at the wrong time. It is also possible that different fuse designs would make the shells more difficult to insert in their tubes; a short-length requirement could eliminate the reloadable characteristic of the product. Further, concerns exist about quality control among fuse suppliers and about the Chinese fireworks producers' ability to assemble reloadable shells with safety fuses that operate any more reliably than present versions. Thus, higher costs and lower benefits could be associated with design or performance requirements than would be associated with a ban.

Alternate Labeling Requirements

The Commission could require that additional cautionary and safe-use labeling be placed on each product. Such labeling would be intended to address the most serious eye and facial injuries observed in the investigated cases.

Like the alternate performance or design requirements discussed above, labeling or instructional materials requirements would allow large reloadable shells to remain on the market. Potential costs to industry may be lower than under a ban, assuming that the cost of providing additional information to consumers is very low. Manufacturing costs associated with labeling—probably no more than 1–2 cents per unit—would be lower than costs associated with providing separate instructional materials, e.g., printed sheets, which may add 2–5 cents per unit.

No labeling or instructional materials requirements would result in significant increases in overall production costs. The small increases attributable to labels or instructions would probably not, given the price-competitive nature of the fireworks market, be reflected in retail price increases for reloadable shell devices. Although such costs are usually passed on to consumers eventually, these would likely be spread over firms' entire product lines over a long period of time, without noticeable effects on the price of any one item or group of items.

Existing reloadable shells carry fairly strong, specific warnings and instructions. There are not data to suggest that a significant number, if any, of the accidents that occur would likely be avoided if all large reloadable shells carried warning labels or instructions that are more detailed than they already are. It cannot be concluded that potential benefits would be greater than zero. Further, most substitutes for large reloadables generally appear to be safer; injuries would probably be reduced, on balance, as a result of the use of these substitutes. The benefits of substitute use may outweigh the potentially higher cost to consumers. Therefore, it appears that greater potential net benefits would accompany the removal of large reloadable shell devices from the market.

No Action/Voluntary Standard

The AFSL has, in consultation with CPSC officials, developed a voluntary safety standard for all reloadable shells. Among the major provisions of this standard is a 1.75 inch outer diameter limit on shell size. This standard, if universally conformed to, would essentially achieve the objective of a mandatory ban. The Commission considered whether, based on the available information, no mandatory action is reasonably necessary to reduce the risk associated with large reloadable shells. Potential product liability exposure may be a powerful incentive for manufacturers and importers to conform to the AFSL standard; in 1990, liability insurance coverage for large shells was reportedly cancelled by at least one major insurance carrier representing importers accounting for the majority of those products.

Firms accounting for an estimated 80–90% of all reloadable shells shipped in 1989 are continuing to withhold shipments of large shells in 1991 under an informal agreement with CPSC. This action is consistent with the shell size limit provision of the AFSL voluntary standard. Some imports of large shells would probably continue if the mandatory ban were not enacted, however. Consumer demand may lead importers back into the large-shell market in the U.S. despite increasing liability concerns. Thus, a lack of voluntary action by only one or two firms—a realistic possibility, according to industry representatives—may result in limited voluntary conformance to the size-restriction provision of the AFSL standard.

Industry costs associated with widespread conformance to the AFSL standard could, therefore, be somewhat lower than under a mandatory ban; potential benefits would also be somewhat lower to the extent that non-conforming (i.e., large) shells continued to be imported, principally from existing manufacturers' inventories. It is uncertain whether any net benefits to consumers would result from the no-action alternative, since the level of injury reduction could be near zero if, as is judged likely, some firms chose not to conform with some or all of the AFSL standard (it should be noted that the AFSL standard contains a number of other safety provisions, conformance to which is unknown but expected to be high). Given this uncertainty, it is not reasonable to conclude that the AFSL voluntary standard would adequately reduce the risk associated with large reloadable shells within a sufficiently short period of time.

At this time, the voluntary standard has not been implemented in that "substantial industry wide production of products that comply with the standard" has not begun. H.R. Rep. No. 208, 97th Cong., 1st Sess. 875 (1981).

Comments on the Proposal

A summary of the comments submitted during the public comment period and the Commission's responses is included in section F of this notice. None of these comments raised any n the investigated

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issues concerning the preliminary regulatory analysis.

H. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, agencies are generally required to prepare proposed and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities, unless the head of the agency certifies that the rule will not, if promulgated, have a significant effect on a substantial number of small entities. The notice of proposed rulemaking discussed the potential effect of the proposed amendment on industry and concluded that any relative impact on importers' sales would likely be minimal. Potential effects on small firms would not be disproportionate to the effects on larger importers or domestic manufacturers. Thus, the Commission certifies that no significant adverse impact on a substantial number of small firms or entities would result from the rule.

I. Environmental Considerations

The Commission's regulations governing environmental review procedures provide that the amendment of rules or safety standards establishing design or performance requirements for products normally have little or no potential for affecting the human environment. See 16 CFR 1021.6(c)(1). As stated in the proposal, the Commission does not foresee that this amendment to the existing fireworks regulations would involve any special or unusual circumstances that might alter this conclusion. Thus, the Commission concludes that no environmental assessment or environmental impact statement is required in this proceeding.

J. Effective Date

The rule will become effective 60 days from publication of the final rule in the **Federal Register** and will apply to reloadable shell fireworks devices with shells larger than 1.75 inches in outer diameter that are imported on or after that date, except as to any provision that may be stayed by the filing of proper objections. Notice of the filing of objections or lack thereof will be given by publication in the **Federal Register**. The Commission had proposed a 30 day effective date in order to allow maximum impact on fireworks importations. Since the height of the shipping season has passed, the rationale for a short effective date no longer exists.

List of Subjects in 16 CFR Part 1500

Consumer protection, Hazardous materials, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, and Toys.

Conclusion

For the reasons given above, the Commission concludes that reloadable tube aerial shell devices with shells larger than 1.75 inches in outer diameter are hazardous substances due to their flammability or combustibility, or because they generate pressure through heat. 15 U.S.C. 1261(f)(1)(A). These reloadable shells are banned hazardous substances because, notwithstanding cautionary labeling required under the FHSA, the degree or nature of the hazard involved in the presence or use of these reloadable shall devices in households is such that public health and safety can be adequately served only by keeping them out of interstate commerce. *Id.* section 1261(q)(1)(B).

Further, in accordance with section 3(i)(2) of the FHSA, the Commission finds that (1) a voluntary standard has been adopted but not implemented, (2) the benefits of the regulation stated below bear a reasonable relationship to its costs, and (3) the rule is the least burdensome alternative that will adequately reduce the risk of injury. *Id.* section 1262(i)(2). Thus, the Commission amends Title 16 of the Code of Federal Regulation to read as follows:

PART 1500—HAZARDOUS SUBSTANCE AND ARTICLES: ADMINISTRATION AND ENFORCEMENT REGULATIONS

1. The authority for part 1500 continues to read as follows:

Authority: 15 U.S.C. 1261–1276.

2. Section 1500.17 is amended to add a new paragraph (a)(11) to read as follows:

§ 1500.17 Banned hazardous substances.

(a) * * *

(11)(i) Reloadable tube aerial shell fireworks devices that use shells larger than 1.75 inches in outer diameter and that are imported on or after October 8, 1991.

(ii) Findings.

(A) *General.* In order to issue a rule under section 2(q)(1) of the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261(q)(1), classifying a substance or article as a banned hazardous substance, the FHSA requires the Commission to make certain findings and to include these findings in the regulation. These findings are discussed below.

(B) *Voluntary standard.* Although a voluntary standard relating to the risk of injury associated with reloadable tube aerial shells has been adopted, it has not been implemented. Thus, the Commission is not required to make findings covering the likelihood that the voluntary standard would result in elimination or adequate reduction of the risk of injury or that there would be substantial compliance with the voluntary standard.

(C) *Relationship of benefits to costs.* The Commission estimates that the removal of large reloadable shells from the market is likely to virtually eliminate the number of associated injuries, with only a slight offsetting increase in the number of injuries due to the use of substitute Class C fireworks products available to consumers. The estimated net benefits range from essentially zero to close to $1 million annually. The annual costs of a ban are estimated to be very low. Included are potential costs to foreign manufacturers and U.S. importers from sales losses, production changes, and inventory retrofitting, and slightly reduced market choices for consumers who purchase aerial display fireworks. Costs to each of these sectors are estimated to be slight, and are reduced to the extent that alternative products are perceived as adequate substitutes for large reloadable shells. Thus, the Commission finds that the benefits expected from the regulation bear a reasonable relationship to its costs.

(D) *Least burdensome requirement.* The Commission considered several alternatives to the ban. These included: Design or performance criteria; additional or alternative labeling; inclusion of some reloadable shells 1.75 inches or smaller in the ban; and no action in reliance on the voluntary standard. The Commission determined that a ban of reloadable shells larger than 1.75 inches in outer diameter is the least burdensome alternative that would prevent or adequately reduce the risk of injury.

(*1*) Regarding design or performance criteria, the Commission considered requirements similar to those stated in the voluntary standard of the American Fireworks Standards Laboratory ("AFSL"). However, such criteria may increase the cost of the product and would not address all factors involved in the incidents. Further, concerns exist about the feasibility of criteria and quality control.

(*2*) Regarding additional or alternative labeling, the users' perception and experience concerning the amount of time available to get away may lead them to disregard an inconsistent warning. There are no data to suggest that a significant number, if any, incidents would be avoided if large reloadable shells carried more detailed labels or instructions than they currently do. It cannot be concluded that potential benefits would be greater than zero.

(*3*) The Commission considered including reloadable shells that are 1.75 inches or less in outer diameter and have the "equivalent explosive power" of larger shells. A kinetic energy level of 70 joules was considered to evaluate explosive power. However, any potential benefits are uncertain since the Commission concluded that a clear relation between kinetic energy and injury potential could not be established. Also, costs could be slightly higher.

(*4*) The Commission also considered imposing no mandatory requirements on large reloadable shells and relying instead on the AFSL voluntary standard. However, it is uncertain whether any net benefits to consumers would result from this alternative, since the level of injury reduction could be near zero if, as is probable, some firms chose not to conform with some or all of the AFSL standard.

Dated: August 1, 1991.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Reference Documents

The following documents contain information relevant to this rulemaking proceeding and are available for inspection at the Office of the Secretary, Consumer Product Safety Commission, room 420, 5401 Westbard Avenue, Bethesda, Maryland:

1. Memorandum from James Eisele, EPHA, to David Schmeltzer, AED, CA, dated October 19, 1990, Reloadable Shell Fireworks Injuries.
2. Memorandum from Dale R. Ray, ECPA, to John D. Rogers, CARM, dated November 28, 1990, entitled Regulatory Analyses of Proposed Fireworks Amendment.
3. Memorandum from Warren Mathers, EPHF, to John D. Rogers, CARM, dated October 23, 1990, entitled Reloadable Tube Aerial Shell Fireworks Incidents.
4. Memorandum from John R. Whitaker, HSHL, to John D. Rogers, CARM, dated October 19, 1990, entitled Laboratory and Field Analysis of Reloadable Shell Mortar Devices.
5. Letters dated February 22, 1990, and March 21, 1990, from the Drayton Insurance Brokers, Inc.
6. Letter dated March 10, 1990, from the American Pyrotechnics Association.
7. Memorandum from A. Esch, M.D., Health Sciences, to John D. Rogers, CARM, dated October 16, 1990, entitled Injuries Associated with Fireworks (Mortar Shells).
8. Memorandum from Warren K. Porter, Jr., Director, HSHL, to John Rogers, CARM, dated October 25, 1990, entitled Summary of the U.S. Bureau of Mines Testing Data on Reloadable Mortar Devices, and including Test Report from Bureau of Mines, entitled Evaluation of Reloadable Tube Aerial Shell Fireworks Devices.
9. Memorandum from Division of Regulatory Management, dated October 29, 1990, entitled Specific Performance Requirements for Reloadable Shells.
10. Briefing Package from John Rogers, Project Manager, to the Commission, November 13, 1990.
11. Memorandum from John Rogers, CARM, to the Commission, dated November 29, 1990, entitled Supplemental Memorandum to November 13, 1990 Reloadable Shell Fireworks Briefing Package.
12. Memorandum from John Rogers, CARM, to the Commission, dated January 14, 1991, entitled Responses to Questions Raised by Commissioners During Briefing on Reloadable Shell Fireworks Devices.
13. Memorandum from Dale R. Ray, ECPA, to John D. Rogers, CARM, dated January 23, 1991, entitled Reloadable Shell Fireworks: Changes to Draft **Federal Register** Notice of Proposed Rulemaking to Reflect Commission Vote on Kinetic Energy.
14. Memorandum from Dale R. Ray, ECPA, to Susan B. Kyle, HSHE, dated April 8, 1991, entitled Final Regulatory Analysis of Fireworks Amendment To Ban Large Reloadable Shell Devices.
15. Memorandum from Charles A. Nicholls, EPHA, to Susan Kyle, HSHE, dated April 11, 1991, entitled Reloadable Shell Fireworks.

[FR Doc. 91–18773 Filed 8–8–91; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 24

Current IRS Interest Rate Used in Calculating Interest on Overdue Accounts and Refunds

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of calculation and interest.

SUMMARY: This notice advises the public of the interest rates for overpayments and underpayments of Customs duties. The rates are 9 percent for overpayments and 10 percent for underpayments for the quarter beginning July 1, 1991. This notice is being published for the convenience of the importing public and Customs personnel.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Robert B. Hamilton, Jr., Revenue Branch, National Finance Center, (317) 298–1245.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of Customs duties shall be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621. Interest rates are determined based on the short-term Federal rate. The interest rate that Treasury pays on overpayments will be the short-term Federal rate plus two percentage points. The interest rate paid to the Treasury for underpayments will be the short-term Federal rate plus three percentage points. The rates will be rounded to the nearest full percentage.

The interest rates are determined by the Internal Revenue Service on behalf of the Secretary of the Treasury based on the average market yield on outstanding marketable obligations of the U.S. with remaining periods to maturity of 3 years or less and are to fluctuate quarterly. The rates are determined during the first month of a calendar quarter and become effective for the following quarter.

The rates of interest for the period of July 1, 1991–September 30, 1991, are 9 percent for overpayments and 10 percent for underpayments. These rates will remain in effect through September 30, 1991, and are subject to change on October 1, 1991.

Dated: July 31, 1991.

Carol Hallett,

Commissioner of Customs.

[FR Doc. 91–18921 Filed 8–8–91; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

[Docket No. 86N–0451]

New Animal Drugs for Use in Animal Feeds; Removal of Portions of a Regulation; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that was published in the **Federal Register** of April 26, 1991 (56 FR

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SUPPLEMENTARY INFORMATION:

Background

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The rates of interest for the period of July 1, 1991–September 30, 1991, are 9 percent for overpayments and 10 percent for underpayments. These rates will remain in effect through September 30, 1991, and are subject to change on October 1, 1991.

Dated: July 31, 1991.

Carol Hallett,
Commissioner of Customs.

[FR Doc. 91-18921 Filed 8-8-91; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

[Docket No. 86N-0451]

New Animal Drugs for Use in Animal Feeds; Removal of Portions of a Regulation; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that was published in the **Federal Register** of April 26, 1991 (56 FR 19263). The final rule amended the animal drug regulations by removing portions of the regulations pertaining to: (1) Butynorate (dibutyltin dilaurate) and arsanilic acid, to codify them to reflect previously approved new animal drug applications (NADA's); (2) nitarsone, which was previously codified; and (3) neomycin, phenothiazine, and piperazine, when used as sole drug ingredients in Type A medicated articles or in Type B or C medicated feeds, intended for use in food-producing animals, because none of these drugs was the subject of an approved NADA. The agency is correcting typographical errors that appeared in the preamble of the final rule and in the language amending 21 CFR 558.62. That language incorrectly revised all of paragraph (c) instead of paragraph (c)(1).

FOR FURTHER INFORMATION CONTACT: William D. Price, Center for Veterinary Medicine (HFV-220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4436.

In FR Doc. 91-9913, appearing at page 19263 in the **Federal Register** of Friday, April 26, 1991, the following corrections are made:

1. On page 19264, in the third column, in the fourth line, "*Article of * * * Neo-Terramycin*" should read "*Article of Drug Neo-Terramycin*".

2. On page 19265, in the first column, in the last paragraph, line 10, the words "New-Drug status opinions; statement of policy" should have appeared in italic typeface; in the second column, in the last paragraph, in the fourth line from the bottom of the page, the acronym "AFCO" should read "AAFCO"; in the third column, in the first paragraph, line 5, the words "the 'FDA states'" should read "the 'FDA status'"; line 8, the words "The Feed Additive Compendium" should have appeared in italic typeface; and in the fifth paragraph, in the second line from the bottom, the words "Public Law" should be abbreviated to read "Pub. L."

§ 558.62 [Corrected]

3. On page 19268, in the third column, amendment "5.", "paragraphs (a) and (c)" are corrected to read "paragraphs (a) and (c)(1)."

Dated: August 5, 1991.

Michael R. Taylor,
Deputy Commissioner for Policy.

[FR Doc. 91-18052 Filed 8-8-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

Maryland Regulatory Program; Permit Applications, General Requirements; Hydrologic Balance; Definitions; Ponds and Sediment Control Measures; Revegetation; Civil Penalties

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing approval, with certain exceptions, of a proposed amendment to the Maryland regulatory program (hereinafter referred to as the Maryland program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment modifies several Maryland rules in the areas of definitions, permit applications, hydrologic balance, ponds and sediment control measures, revegetation, and civil penalties for the purpose of clarifying existing rules and maintaining consistency with revised Federal standards.

EFFECTIVE DATE: August 9, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. James C. Blankenship, Jr., Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347-7158.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program
II. Submission of Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Maryland Program

On February 18, 1982, the Secretary of the Interior approved the Maryland program. Information regarding general background on the Maryland program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Maryland program can be found in the February 18, 1982, **Federal Register** (47 FR 7214-7217). Subsequent actions concerning amendments to the Maryland program are contained in 30 CFR 920.12, 920.15, and 920.16.

II. Submission of Amendment

By letter of October 31, 1989 (Administrative Record No. MD-428), the Maryland Department of Natural Resources, Energy Administration, Bureau of Mines (MDBOM) submitted a proposed amendment to modify the following sections of the Code of Maryland (COMAR) 08.13.09.01, 08.13.09.02, 08.13.09.23, 08.13.09.24, 08.13.09.35, and 08.13.09.41.

This proposed amendment represents the third phase of Maryland's response to a letter dated July 8, 1986, from OSM in which OSM identified areas of the State's program determined to be less effective than the Federal requirements for surface mining and reclamation operations (Administrative Record No. MD-351).

OSM announced receipt of the proposed amendments in the January 22, 1990, **Federal Register** (55 FR 2111-2116), and opened the public comment period and provided for a public hearing on the adequacy of the proposed amendments. The comment period closed on February 21, 1990. No public comments were received and the scheduled public hearing was not held as no one requested an opportunity to provide testimony.

By letter dated February 13, 1990 (Administrative Record No. MD-440), Maryland requested that OSM withdraw that portion of their October 31, 1989, submission that related to COMAR 08.13.09.24—Ponds and Sediment Control Measures, so that the State might make additional changes. Maryland submitted changes to COMAR 08.13.09.24 and 08.13.09.01B on March 9, 1990 (Administrative Record No. MD-443). OSM announced receipt of these new changes in the April 25, 1990 **Federal Register** (55 FR 17445-17458), and reopened the public comment period. No comments were received during the extended comment period which closed on May 25, 1990.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendments to the Maryland program.

1. COMAR 08.13.09.01B Definitions

(a) Under COMAR 08.13.09.01B(42), Maryland proposes to add the definition for "impounding structure." The language is the same as the Federal definition at 30 CFR 701.5 and, therefore, the Director finds it to be no less effective than the Federal rule.

(b) Under COMAR 08.13.09.01B(63), Maryland proposes to add the definition for "permanent impoundment." The language is the same as the Federal definition at 30 CFR 701.5 and, therefore, the Director finds it to be no less effective than the Federal rule.

(c) Under COMAR 08.13.09.01B(81), Maryland defines a "sedimentation pond" as a primary sediment control structure used to allow sediment to settle out. The Director finds that the proposal is no less effective than the Federal definition at 30 CFR 701.5 which states that the structure is used to remove solids from water.

(d) Under COMAR 08.13.09.01B(94), Maryland proposes to add the definition for "temporary impoundment." The language is the same as the Federal definition at 30 CFR 701.5 and, therefore, the Director finds it to be no less effective than the Federal counterpart.

2. COMAR 08.13.09.02K General Requirements for Permit Applications

(a) *Use of terms.* In COMAR 08.13.09.02K(1), Maryland is deleting the term "mine plan area" and replacing it with "permit" [area]. The revised rule is substantively the same as that of 30 CFR 779.11. Therefore, the Director finds it to be no less effective than its Federal counterpart.

(b) *Ground-water hydrology.* Maryland proposes to revise COMAR 08.13.09.02K(2)(c) to require that specific baseline groundwater hydrology information furnished by the applicant must be in sufficient detail to assist in determining the Probable Hydrologic Consequences (PHC) of a proposed operation. In addition to the ground water information requirements of 30 CFR 780.21(b)(1), the State rule also requires information on sulfates, acidity and alkalinity. Therefore, the Director finds the proposal to be no less effective than the Federal rule.

(c) *Surface-water hydrology.* Maryland proposes to revise COMAR 08.13.09.02K(2)(d) to require that specific baseline surface water hydrology information must be furnished by the applicant in sufficient detail to assist in determining the PHC of an operation. In addition to the surface water requirements of 30 CFR 780.21(b)(2), the Maryland proposal also requires a water analysis for sulfates. Therefore, the Director finds the revision to be no less effective than the Federal rule.

(d) *Geologic information.* Maryland proposes to revise COMAR 08.13.09.02K(2)(e) to require the applicant to furnish specific geologic information for the permit and adjacent area in sufficient detail to assist in the determination of the PHC of a proposed operation. The revised rules are substantively identical to the provisions of the Federal counterpart at 30 CFR 780.22. Therefore, the Director finds the revision to be no less effective than the Federal rule.

(e) *Water quality and quantity.* Maryland proposes to revise COMAR 08.13.09.02K(2)(f) by requiring that the PHC furnished be based upon the required baseline information. It allows the use of modeling, interpolation, or statistical techniques, and requires that PHC determinations include findings whether adverse impacts occur within, or adjacent to the permit area. These requirements are substantively identical to the Federal rules of 30 CFR 780.21 (b)(3) and (f) (1), (2), and (3). Although the proposed revision does not contain a separate specific requirement for a review by the regulatory authority to determine if permit revisions need new PHC data as required by paragraph (f)(4) of the Federal rule, the State rule at COMAR 08.13.09.08B(2)(b) provides that an application for permit revision is subject to the general permit application requirements of COMAR 08.13.09.02, including the PHC determination requirements of subsection K(2)(f). When read together with COMAR 08.13.09.08B(2)(b), the Director finds the proposal to be no less effective than the Federal rule.

(f) *Alternative water source information.* COMAR 08.13.09.02K(2)(g) is revised to require information on water availability and alternative water sources if PHC determination indicates contamination, diminution or interruption of a water source. Since the revision contains the same language as 30 CFR 780.21(e), the Director finds it to be no less effective than the Federal rule.

(g) *Cumulative hydrologic impact information.* Maryland proposes to revise COMAR 08.13.09.02K(2)(h) to require that hydrologic and geologic information for assessment of probable cumulative hydrologic impact of the proposed operation and all anticipated mining on the cumulative impact study area designated by the MDBOM be furnished, if required by MDBOM, and the necessary information is available from appropriate Federal or State agencies. Further, the proposal provides that if the information is not available from such agencies, the applicant may gather and submit the required information as part of the permit application. While the proposal does not contain a provision similar to 30 CFR 780.21(c)(3) which does not allow approval of a permit until the necessary hydrologic and geologic information is made available to the regulatory authority, Maryland explained (Administrative Record No. MD-463) that the requirement that the Bureau not issue a permit until the permit application complies with all requirements is contained on COMAR 08.13.09.05A(1). That section provides that "a permit may not be approved unless the Bureau finds, in writing, on the basis of information set forth in the application, or information otherwise available and documented in the approval notice * * * that * * * the permit application complies with all requirements of the Regulatory Program." Maryland further stated that it has always interpreted the general requirement of .05A(1) as applying to the permit application hydrologic and geologic information requirements of COMAR 08.13.09.02. When read together with COMAR 08.13.09.05A(1), the Director finds the proposal to be no less effective than the Federal rule.

(h) *Water quality sampling and analysis.* Maryland proposes to add COMAR 08.13.09.02K(3) to require the methodology for water quality sampling and analysis be conducted according to either the 15th edition of "Standard Methods for the Examination of Water and Wastewater," or the methology delineated in 40 CFR parts 136 and 434. These requirements are the same as in 30 CFR 780.21 (a) and (d). Therefore, the Director finds the State revision to be no less effective than the Federal rule.

3. COMAR 08.13.09.020 Hydrologic Reclamation Plan

(a) *Maps and cross-sections.* Maryland proposes to amend COMAR 08.13.09.020(12) to require a reclamation plan that includes maps and cross-sections indicating the measurers to be taken during mining and reclamation through bond release to protect the environment, meet State and Federal water quality laws and protect the rights of water users. Since the proposal contains substantively identical language as provisions in 30 CFR 780.21(h), the Director finds it to be no less effective than its Federal counterpart.

(b) *Drainage water.* Maryland proposes to revise COMAR 08.13.09.020(13) to require control or treatment of surface water and ground water drainage into, through and out of the permit area during the life of the permit to avoid acid or toxic drainage and prevent additional suspended soils to stream flow. Since the proposal contains substantively identical language as provisions in 30 CFR 780.21(h), the Director finds it to be no less effective than its Federal counterpart.

(c) *Adverse hydrologic consequences.* Maryland proposes to require a plan in COMAR 08.13.09.020(14) to address

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(h) *Water quality sampling and analysis.* Maryland proposes to add COMAR 08.13.09.02K(3) to require the methodology for water quality sampling and analysis be conducted according to either the 15th edition of "Standard Methods for the Examination of Water and Wastewater," or the methology delineated in 40 CFR parts 136 and 434. These requirements are the same as in 30 CFR 780.21 (a) and (d). Therefore, the Director finds the State revision to be no less effective than the Federal rule.

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(a) *Maps and cross-sections.* Maryland proposes to amend COMAR 08.13.09.020(12) to require a reclamation plan that includes maps and cross-sections indicating the measurers to be taken during mining and reclamation through bond release to protect the environment, meet State and Federal water quality laws and protect the rights of water users. Since the proposal contains substantively identical language as provisions in 30 CFR 780.21(h), the Director finds it to be no less effective than its Federal counterpart.

(b) *Drainage water.* Maryland proposes to revise COMAR 08.13.09.020(13) to require control or treatment of surface water and ground water drainage into, through and out of the permit area during the life of the permit to avoid acid or toxic drainage and prevent additional suspended soils to stream flow. Since the proposal contains substantively identical language as provisions in 30 CFR 780.21(h), the Director finds it to be no less effective than its Federal counterpart.

(c) *Adverse hydrologic consequences.* Maryland proposes to require a plan in COMAR 08.13.09.020(14) to address

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adverse hydrologic consequences identified in the PHC determination which would include preventive and remedial measures. Since the proposal contains substantively identical language as provisions in 30 CFR 780.21(h), the Director finds it to be no less effective than its Federal counterparts.

(d) *Permit area.* Maryland is changing the term "mine plan area" to "permit area" in COMAR 08.13.09.020(15). This proposed language is substantively the same as that contained in the Federal counterpart at 30 CFR 780.21(h). Therefore the Director finds it to be no less effective than the Federal rule.

(e) *Water monitoring based on PHC.* Maryland proposes to revise COMAR 08.13.09.020 (16) and (17) to require a plan for monitoring ground water and surface water based upon the PHC determination and the analyses of all baseline hydrologic, geologic, and other information provided in the application to determine the impacts of the operation on the hydrologic balance. Although the proposed revision at COMAR 08.13.09.020(17) does not require that the plan provide for monitoring the parameters for effluent limitations of the Bureau's counterpart to 40 CFR Part 434, as required by 30 CFR 780.21(j)(1), the State explained (Administrative Record No. MD–458B) that the requirements are prescribed by the State's performance standards at COMAR 08.13.09.23D(3). The Director has determined that, when read together with 23D(3). The Director has determined that, when read together with 23D(3), the proposal is no less effective than its Federal counterpart.

4. COMAR 08.13.09.23 Hydrologic Balance

(a) *Water monitoring plan.* Maryland proposes to revise COMAR 08.13.09.23D(1) and 08.13.09.23E(1) to require that ground and surface water monitoring be conducted according to an approved plan. Since the language is substantively identical to 30 CFR 816.41(c)(1) and 816.41(e)(1), the Director finds the revisions to be no less effective than the corresponding Federal rules.

(b) *Water monitoring frequency.* Maryland proposes to revise COMAR 08.13.09.23D(2) and 08.13.09.23E(2) to establish frequency of monitoring. The revisions would also require the operator to immediately take appropriate action and notify the MDBOM if an analysis of any ground water sample indicates noncompliance with a permit condition. In addition to containing language substantively identical to that of 30 CFR 816.41(c)(2) and 816.41(e)(2), the revisions would also require minimum sampling intervals during each quarter. Therefore, the Director finds the revisions to be no less effective than the Federal rules.

(c) *Monitoring parameters.* In COMAR 08.13.09.23D(3) and 08.13.09.23E(3), Maryland proposes to require specific minimum parameters be monitored at each monitoring location. Since the proposals not only include substantively the same language as that of 30 CFR 780.21(i)(1) and 780.21(j)(2)(i), but also impose additional parameters to be monitored beyond those specified in the Federal rule, the Director finds the proposals to be no less effective the Federal rule.

(d) *Monitoring discharges from permit area.* Maryland proposes to add a requirement at COMAR 08.13.09.23E(4) that the permittee submit proof of filing forms for NPDES reporting requirements for the permit area; that discharges from the permit area be monitored in accordance with NPDES permits issued by the Maryland Department of Environment; and that in those cases where analytical units of sample collections indicate noncompliance with a permit condition or applicable standard, the operator shall notify MDBOM and immediately take action provided in regulations COMAR 08.13.09.020 (12), (13), (14) and 08.13.09.05D(3). There is no direct Federal rule counterpart, but the requirement for monitoring discharges from the permit area is not inconsistent with the permitting requirements of section 516 of SMCRA. Therefore, the Director finds this proposal to be no less effective than the Federal rules.

(e) *Duration of surface water monitoring.* Maryland proposes to add a provision by COMAR 08.13.09.23E(5) that would require surface water monitoring through mining and reclamation until bond release, or until certain other specified requirements are met. The proposal would allow monitoring to cease if an operation is shown to minimize disturbances to the hydrologic balance in the permit and offsite areas. Maryland stated that because mining operations under paragraph COMAR .23E(4) are subject to separate NPDES monitoring requirements imposed by the Maryland Department of Environment, the NPDES monitoring would not necessarily be curtailed should SMCRA related monitoring cease (Administrative Record No. MD–458B). The Maryland rule is substantively the same as 30 CFR 816.41(e)(3) except the Federal rule additionally requires a demonstration that the operation prevented material damage to the hydrologic balance outside the permit area. Maryland's proposal fails to provide for such a demonstration. Therefore, the Director is requiring Maryland to amend its program to correct this omission.

(f) *Transfer of Wells.* Maryland proposes to revise COMAR 08.13.09.23I(1) by inserting the phrase, "and in accordance with State and local laws" at the end of the first sentence as an added requirement pertaining to the transfer of a prospect or monitoring well for further use as a water well. Since the language would impose substantively the same requirement for management of wells as 30 CFR 816.41(g), the Director finds the revision to be no less effective than the Federal rule.

(g) *Discharge of water.* Maryland proposes to revise COMAR 08.13.09.23J(1) by including the phrase, "and prevent material damage outside the permit area" among the justifications for allowing the discharging of water into an underground mine. Since the added language is the same as that found in 30 CFR 816.41(i), the Director finds the revision to be no less effective than its Federal counterpart.

5. COMAR 08.13.09.24A Ponds and Sediment Control Measures

Maryland proposes to add subsection A(6) to require that all water accumulated in any pit be removed and the pit maintained in a dewatered condition whenever water quality or spoil stability is affected or prior to cessation of mining activities. While there is no direct Federal counterpart to this proposal, the Director finds it to be not inconsistent with the requirements of SMCRA and the Federal regulations.

6. COMAR 08.13.09.24C Diversion Design

Maryland proposes to add COMAR 08.13.09.24C(2)(f) to require that diversions be designed to minimize adverse impacts to the hydrologic balance, to prevent material damage and to assure the public safety. Since the proposed language is substantively the same as that of 30 CFR 816.43(a)(1), the Director finds it to be no less effective than its Federal counterpart.

7. COMAR 08.13.09.24D Stream Channel Diversions

(a) *Diversion of perennial and intermittent streams.* Maryland is revising paragraph (1)(a) to allow diversions for perennial and intermittent streams if there is a finding that the diversion will not adversely affect the water quality and related environmental resources of the stream. Since the revised language would be substantively the same as that contained in 30 CFR 816.43(b)(1), the Director finds the revision to be no less effective than its Federal counterpart.

(b) *Certification.* Maryland proposes in paragraph (2)(c) to add the requirement that design and construction of stream channel diversions be certified by a qualified professional engineer as meeting the performance standards and design criteria of the regulatory program. Since the proposed language is substantively the same as that of 30 CFR 816.43(b)(4), the Director finds it to be no less effective than its Federal counterpart.

8. COMAR 08.13.09.24F Siltation Structures

(a) *Definitions.* Maryland proposes in COMAR 08.13.09.24F(1) to add the definitions for "siltation structure," "disturbed areas" and "other treatment facilities." Since the proposal has identical language as the Federal program at 30 CFR 816.46(a) (1), (2), and (3), the Director finds the proposal to be no less effective than the Federal rule.

(b) *General requirements.* Maryland proposes to add COMAR 08.13.09.24F(2) (a) through (g) as the general requirements for siltation structures.

(i) Paragraph (2)(a) would require use of best technology available in order to prevent additional contributions of suspended solids to runoff or streamflow outside the permit area. Since the proposed language is substantively the same as in 30 CFR 816.46(b)(1), the Director finds the proposal to be no less effective than its Federal counterpart.

(ii) Paragraph (2)(b) would require all surface drainage from the disturbed area to be passed through a siltation structure before leaving the permit area, except as provided in paragraph (G)(1)(d). The reference to paragraph (G)(1)(d) is incorrect and should be proposed paragraph F(5), "*Exemptions.*" Maryland has acknowledged the error and agreed to correct the reference (Administrative Record No. MD–463). This corrected proposal would allow an exemption to the requirement if the total area disturbed is small, and the operator demonstrates that siltation structures and alternate sediment control measures are not necessary to meet effluent limitations and applicable State and Federal water quality standards for receiving waters. With the understanding that Maryland will correct the erroneous reference prior to promulgating amended regulations, the Director finds the proposal to be no less effective than its Federal counterpart at 30 CFR 816.46(b)(2).

(iii) Paragraph (2)(c) would require that siltation structures be built before beginning surface mine activities and that upon construction the structures shall be certified by a qualified registered professional engineer. Since the proposed language is substantively the same as 30 CFR 816.46(b)(3), the Director finds the proposal to be no less effective than its Federal counterpart.

(iv) Paragraph (2)(d) would require that any siltation structure which impounds water be designed, constructed and maintained in accordance with sections .24G and .24H of the Maryland program. Since the proposed provision is substantively the same as 30 CFR 816.46(b)(4), the Director finds the proposal to be no less effective than its Federal counterpart.

(v) Paragraph (2)(e) would require that any siltation structure be maintained until removal is authorized by the Bureau, and in no case removed if augmented seeding occurred within the last two years. Since the proposal is substantively the same as 30 CFR 816.46(b)(5), the Director finds the proposal to be no less effective than its Federal counterpart.

(vi) Paragraph (2)(f) would require that when a siltation structure is removed, the area be regraded and revegetated in accordance with the approved reclamation plan. Since the proposed language is substantively the same at 30 CFR 816.46(b)(6), the Director finds the proposal to be no less effective than the Federal rule.

(vii) Paragraph (2)(g) would clarify that design, construction and maintenance of any siltation structure does not relieve the person responsible from compliance with applicable effluent limitations. There is no corresponding Federal rule, but the proposed language does not conflict with the general hydrological standards of section 515(b)(10)(B) of SMCRA. Therefore, the Director finds that proposal is not inconsistent with the requirements of SMCRA and the Federal regulations.

(c) *Sedimentation ponds.* Maryland proposes new sedimentation pond requirements at COMAR 08.13.09.24F(3) (a) through (c).

(i) Paragraph (3)(a) would require that sedimentation ponds be designed, constructed and maintained in accordance with section .24G and .24H of this regulation. While there is no Federal counterpart to this proposal, the Director finds it to be not inconsistent with the requirements of SMCRA and the Federal regulations.

(ii) Paragraph (3)(b) would require that sedimentation ponds be located as near as possible to the disturbed area and out of perennial streams unless approved by the MDBOM. Since the proposed language is substantively the same as 30 CFR 816.46(c)(1)(ii), the Director finds the proposal to be no less effective than its Federal counterpart.

(iii) Paragraph (3)(c) would require that sedimentation ponds be designed, constructed and maintained to: (i) Provide a minimum storage volume of 67 cubic yards per acre of drainage area to the pond; (ii) provide adequate detention time; (iii) contain or treat a ten-year precipitation event as approved by the MDBOM; (iv) provide a dewatering device adequate to maintain the detention time; (v) minimize short circuiting; and (vi) provide removal of sediment to maintain 60 percent of the sediment storage volume. The proposed language of paragraphs (3)(c) (ii), (iii) and (v) is substantively the same as 30 CFR 816.46(c)(1)(iii) (B), (C) and (E), respectively. The proposed rule at paragraph (3)(c)(i) would require 67 cubic yards of storage volume per acre while 30 CFR 816.46(c)(iii)(A) requires "adequate" storage volume. The proposed language of paragraph (3)(c)(iv) would allow alternative positioning of a dewatering device adequate to maintain the prescribed detention time while § 816.46(c)(iii)(D) merely requires a dewatering device adequate to maintain the prescribed detention time. Proposed paragraph (3)(c)(vi) would require sediment removal to maintain 60 percent of the storage volume while § 816.46(c)(iii)(F) requires removal to maintain an adequate volume. The proposed language of paragraph (3)(c)(iv) restricts the location of the dewatering device to an elevation no lower than the maximum elevation of the sediment storage volume, unless approved by the Bureau. The restriction on the location of the dewatering device is being imposed in order to improve the efficiency and effectiveness of the device and to enhance removal of water storage resulting from inflow. The Director finds the proposal to be no less effective than its Federal counterpart.

(d) *Other treatment facilities.* Maryland proposes in COMAR 08.13.09.24F(4) to require that other treatment facilities be designed in accordance with the applicable requirements of this section and to contain or treat the 10–year, 24–hour precipitation event unless a lesser design event is approved by the MDBOM. Since the proposed language is substantively the same as 30 CFR 816.46(d), the Director finds the proposal to be no less effective than its Federal counterpart.

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(iii) Paragraph (3)(c) would require that sedimentation ponds be designed, constructed and maintained to: (i) Provide a minimum storage volume of 67 cubic yards per acre of drainage area to the pond; (ii) provide adequate detention time; (iii) contain or treat a ten-year precipitation event as approved by the MDBOM; (iv) provide a dewatering device adequate to maintain the detention time; (v) minimize short circuiting; and (vi) provide removal of sediment to maintain 60 percent of the sediment storage volume. The proposed language of paragraphs (3)(c) (ii), (iii) and (v) is substantively the same as 30 CFR 816.46(c)(1)(iii) (B), (C) and (E), respectively. The proposed rule at paragraph (3)(c)(i) would require 67 cubic yards of storage volume per acre while 30 CFR 816.46(c)(iii)(A) requires "adequate" storage volume. The proposed language of paragraph (3)(c)(iv) would allow alternative positioning of a dewatering device adequate to maintain the prescribed detention time while § 816.46(c)(iii)(D) merely requires a dewatering device adequate to maintain the prescribed detention time. Proposed paragraph (3)(c)(vi) would require sediment removal to maintain 60 percent of the storage volume while § 816.46(c)(iii)(F) requires removal to maintain an adequate volume. The proposed language of paragraph (3)(c)(iv) restricts the location of the dewatering device to an elevation no lower than the maximum elevation of the sediment storage volume, unless approved by the Bureau. The restriction on the location of the dewatering device is being imposed in order to improve the efficiency and effectiveness of the device and to enhance removal of water storage resulting from inflow. The Director finds the proposal to be no less effective than its Federal counterpart.

(d) *Other treatment facilities.* Maryland proposes in COMAR 08.13.09.24F(4) to require that other treatment facilities be designed in accordance with the applicable requirements of this section and to contain or treat the 10–year, 24–hour precipitation event unless a lesser design event is approved by the MDBOM. Since the proposed language is substantively the same as 30 CFR 816.46(d), the Director finds the proposal to be no less effective than its Federal counterpart.

(e) *Exemptions.* Maryland proposes to add COMAR 08.13.09.24F(5) which would provide that exemptions to the requirements of this section may be granted if the disturbed drainage area within the total disturbed area is small and the operator demonstrates that siltation structures and alternate sediment control measures are not necessary to meet effluent limitations in this regulation. The proposed language is substantively the same as 30 CFR 816.46(e). Therefore, the Director finds the proposal to be no less effective than its Federal counterpart.

9. COMAR 08.13.09.24H Impoundments

Maryland proposes new language for the permanent and temporary impoundment rules and is changing the section name to "Impoundments."

(a) *General requirements.* Maryland proposes to add subsection COMAR 08.13.09.24H(1) (a) through (l) as the general requirements for impoundments. COMAR 08.13.09.24H(1) requires that impoundments (a) be designed and constructed so that the minimum elevation at the top of the settled embankment will be one foot above the water surface in the pond with the emergency spillway flowing at design depth; (b) be designed and constructed so the constructed dam height is at least five percent over design height to allow for settlement; (c) be designed and constructed to ensure that all perimeter slopes are stable, are not steeper than 2:1, and are protected against erosion; (d) be designed and constructed so the crest of the emergency spillway is a minimum of one foot above the crest of the principal spillway; (e) comply with COMAR 08.05.03.05 if the embankment is more than 15 feet in height as measured from the upstream toe of the embankment to the crest of the emergency spillway; (f) be revegetated immediately upon completion of construction; (g) have embankment slope protection against surface erosion and damage due to sudden drawdown; (h) have vegetated embankment faces except that faces where water is impounded may be riprapped or otherwise stabilized in accordance with accepted design practices; (i) be designed by or under the supervision of a registered professional engineer (RPE) using current, prudent, engineering practices and design criteria, and certified by a RPE; (j) be inspected during construction under the supervision of and certified after construction by a registered professional engineer; (k) be routinely maintained during mining operations; and, (l) be designed and constructed in accordance with U.S. Soil Conservation Service Practice Standard 378 "Ponds," if impoundments do not meet the size or other criteria of 30 CFR 77.216(a) and are located where failure would not be expected to cause loss of life or serious property damages.

Paragraph (a) provides for a minimum freeboard of 1 foot as opposed to 30 CFR 816.49(a)(4) which requires impoundments to have adequate freeboard. Maryland stated that a minimum freeboard of 1 foot is provided for in U.S. Soil Conservation Service Practice Standard 378, "Ponds," October, 1978, and is the standard used nationwide to ensure adequate freeboard on ponds to prevent overtopping by waves or increases in storage volume (Administrative Record No. MD–463). Paragraphs (b), (c), and (d) provide for specific design criteria while 30 CFR 816.49(a)(2) allows for any design criteria that may be established by the regulatory authority. Paragraph (e), for which there is no general Federal counterpart, requires compliance with regulations of the State's Water Resources Administration of the Department of Natural Resources (dealing with dams and reservoirs) when the embankment is more than 15 feet in height. The requirements imposed by the referenced regulation in connection with the construction, reconstruction, repair or alteration of a dam or reservoir provide a further level of compliance review for larger-type embankments not required by SMCRA or the Federal regulations.

Paragraph (f), for which there is no direct Federal counterpart, requires that impoundments be vegetated immediately upon completion of construction. This provision is consistent with the general contemporaneous reclamation requirements of 30 CFR 816.100.

The provisions of paragraphs (g), (h), and (l) are substantively the same as those contained in 30 CFR 816.49(a) (6), (7), and (3) respectively.

Paragraphs (i) and (j) are similar to the provisions of 30 CFR 816.49(a)(2) and (a)(10), respectively, except that the State proposals do not require that the registered professional engineer, who designed and certified the impoundment, and inspected the impoundment during and after construction, be experienced in the design and construction of impoundments as required by the Federal rules. Maryland stated that the reference to experience in the design and construction of impoundments was deleted since the Federal regulations failed to quantify "experience" or provide standards for accepting or rejecting a registered professional engineer's (RPE) impoundment design. Further, Maryland stated that impoundment designs are reviewed by the Bureau of Mines and are not accepted, whether certified by an RPE with or without experience in the design and construction of impoundments until the Bureau is confident that the design meets the required standards set forth in the State regulations (Administrative Record No. MD–463).

Based upon the clarification provided by the State, the Director feels that the fact that certified designs are subsequently reviewed by the Bureau of Mines should be sufficient to ensure the integrity of the designs and, therefore, the lack of a requirement for experience in the design and construction of impoundments does not make proposed rule 08.13.09.24H(1)(i) less effective than the Federal rule at 30 CFR 816.49(a)(2). In addition, although proposed rule 08.13.09.24H(1)(j) does not include an experience requirement similar to the Federal rule at 30 CFR 816.49(a)(10), the proposed rule at .24H(6), as discussed in Finding 9(f), does provide that inspections during and upon completion of construction be conducted by professional engineers or specialists experienced in the construction of impoundments. However, the proposed rules do not require that the professional engineers or specialists conducting annual inspections be experienced in the construction of impoundments as required by 30 CFR 816.49(a)(10).

There is no Federal rule counterpart for the maintenance requirements of the State's proposed subparagraph (k). However, the removal of combustible material and cleaning of ditches and spillways would facilitate the inspection requirements of 30 CFR 816.49(a)(11).

On the basis of the above, the Director finds that the proposals contained in subsections H(1) (a) through (l) are no less effective than the cited Federal regulations, except to the extent that the proposals fail to require that the professional engineers or specialists conducting annual inspections be experienced in the construction of impoundments. Therefore, the Director is requiring Maryland to amend its program to correct this deficiency.

(b) *Stability.* Maryland proposes to add subsection COMAR 08.13.09.24H(2)(a), (b) and (c) (i) through (vi) to identify impoundment size and safety factor criteria. Subsection H(2) requires that impoundments: (a) meeting the size or other criteria of 30 CFR 77.216(a), or located where failure could cause loss of life or serious property damage, or a coal mine waste impounding structure shall have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions and a seismic safety factor of at least 1.2; (b) not meeting the size or other criteria of 30 CFR 77.216(a), except for coal mine waste impounding structures and located where failure would not be expected to cause loss of life or serious property damage, shall be constructed to achieve a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions; (c) shall be deemed to meet a minimum static safety factor of 1.3 for a normal pool with steady state seepage conditions if: (i) The impoundment is designed and constructed so the top width of the embankment is no less than the quotient of (H+35)/5, where H is the height, in feet, of the embankment as measured from the upstream toe of the embankment; (ii) the impoundment is designed and constructed so the combined upstream and downstream sideslopes of the settled embankment are not less than 5:1 with neither slope steeper than 2:1; (iii) the embankment foundation is cleared of all organic material, the surface of the area is sloped to no steeper than 1:1 and the entire area is scarified; (iv) a cutoff trench is designed and constructed prior to initiating the placement of fill material for the embankment; (v) the fill material used in construction of the embankment is free of sod, large roots and other vegetative matter, frozen soil and coal processing waste; and, (vi) the construction of the embankment begins by placing and spreading fill material at the lowest point of foundation, the fill is brought up in horizontal layers not to exceed eight inches as required to facilitate compaction, and is compacted as specified in the approved design.

Paragraph (a) is substantively the same as 30 CFR 816.49(a)(3)(i) and paragraph (b) is substantively the same as 30 CFR 816.49(a)(3)(ii).

30 CFR 780.25(c)(3) provides that for impoundments not meeting the size and other criteria of 30 CFR 77.216(a) and located where failure would not be expected to cause loss of life or serious property damage, the regulatory authority may establish through the State program approval process engineering design standards that ensure stability comparable to a 1.3 minimum static safety factor in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3 specified in 30 CFR 816.49(a)(3)(ii). Pursuant to the provisions of § 780.25(c)(3), Maryland has proposed, in COMAR 08.13.09.24H(2)(c), six specific criteria by which impoundments shall be deemed to meet a minimum static safety factor of 1.3 for a normal pool with steady state seepage conditions.

OSM has reviewed the criteria specified by the State, and feels that the following clarifications are necessary to ensure that COMAR 08.13.09.24H(2)(c) is no less effective than the Federal regulations.

—The State should specify that the listed criteria apply to impoundments not meeting the size or other criteria of 30 CFR 77.216(a) and located where failure would not be expected to result in loss of life or serious property damage.

—The proposal in subsection (c)(iii) states that "* * * the surface of the foundation area is sloped to not steeper than 1:1 * * *." This slope is too steep for construction of an embankment with combined side slopes of 5:1, as specified in subsection (c)(ii). If the 1:1 slope is to represent the maximum slope allowable on the flanks of the valley where the impoundment is to be constructed, then the proposed rule should so state. Also, the maximum allowable slope of the valley floor should be designated.

—To ensure impoundment stability with a static safety factor of 1.3, Maryland should develop a worse-case-scenario for the soils and slopes typical of the western Maryland coal bearing areas. The stability analysis of this scenario would be technical justification for establishing minimum guidelines for meeting the Federal requirements.

The Director finds the proposed rules in COMAR 08.13.09.24H(2) (a) and (b) to be no less effective than the Federal rules at 30 CFR 816.49(a)(3) (i) and (ii), respectively. In addition, the Director finds the proposed rule at COMAR 08.13.09.24H(2)(c) to be less effective than the Federal regulations and is requiring Maryland to amend its program to provide the cited clarifications.

(c) *Foundation.* Maryland proposes in COMAR 08.13.09.24H(3) to require that foundations and abutments for an impounding structure be stable during all phases of construction and operation and be designed based on adequate and accurate information on the foundation conditions. For an impoundment meeting the size or other criteria of 30 CFR 77.216(a), the foundation investigation, as well as any necessary laboratory testing of foundation material, shall be performed to determine the design requirements for foundation stability. Since the proposal is substantively the same as 30 CFR 816.49(a)(5)(i), the Director finds it to be no less effective than its Federal counterpart.

(d) *Spillways.* Maryland proposes in COMAR 08.13.09.24H(4) to require: (a) That an impoundment include either a combination of principal and emergency spillways or a single spillway configured, as specified in paragraph (b), which ensures design and construction to safely pass the applicable design precipitation event specified in paragraph (c) which follows; (b) that the MDBOM may approve a single open-channel spillway that is: (i) Of nonerodible construction and designed to carry sustained flows; or (ii) rock or grass-lined and designed to carry short term infrequent flows at nonerosive velocities where sustained flows are not expected; and (c) that the required design precipitation event for impoundments meeting the spillway requirements of subsections H(5) or H(6) following are: (i) for an impoundment meeting the size or other criteria of 30 CFR 77.216(a), a 100-year, 6-hour event or larger event specified by the MDBOM; or, (ii) for impoundments not meeting the size or other criteria of 30 CFR 77.216(a), a 25-year 24-hour event, or larger event specified by the MDBOM.

COMAR 08.13.09.24H(4) (a) and (b) are substantively the same as 30 CFR 816.49(a)(8) and 816.49(a)(8)(i) respectively. COMAR 08.13.09.24H(4)(c) differs from the Federal rule at 30 CFR 816.49(a)(8)(ii) only for the duration of the design events for impoundments not meeting the size or other criteria of 30 CFR 77.216(a). Maryland has elected to retain design events with a 24-hour duration. The Federal rule provides for 6-hour duration design events. OSM conducted a study of the differences in peak flows generated by events of these durations under the various conditions encountered in Maryland (Administrative Record No. MD–510). The study concluded that under most conditions the peak runoff from a 24-hour event would exceed that from a 6-hour event or that the difference was insignificant in terms of design considerations. Based upon the study, the Director believes that the State's use of the 24-hour design event rather than the 6-hour event is as stringent or more stringent than the corresponding Federal requirement.

Accordingly, the Director finds the proposed rules at .24H (a), (b), and (c) are no less effective than the Federal counterparts at 30 CFR 816.49(a)(8)–(8)(ii).

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(d) *Spillways.* Maryland proposes in COMAR 08.13.09.24H(4) to require: (a) That an impoundment include either a combination of principal and emergency spillways or a single spillway configured, as specified in paragraph (b), which ensures design and construction to safely pass the applicable design precipitation event specified in paragraph (c) which follows; (b) that the MDBOM may approve a single open-channel spillway that is: (i) Of nonerodible construction and designed to carry sustained flows; or (ii) rock or grass-lined and designed to carry short term infrequent flows at nonerosive velocities where sustained flows are not expected; and (c) that the required design precipitation event for impoundments meeting the spillway requirements of subsections H(5) or H(6) following are: (i) for an impoundment meeting the size or other criteria of 30 CFR 77.216(a), a 100-year, 6-hour event or larger event specified by the MDBOM; or, (ii) for impoundments not meeting the size or other criteria of 30 CFR 77.216(a), a 25-year 24-hour event, or larger event specified by the MDBOM.

COMAR 08.13.09.24H(4) (a) and (b) are substantively the same as 30 CFR 816.49(a)(8) and 816.49(a)(8)(i) respectively. COMAR 08.13.09.24H(4)(c) differs from the Federal rule at 30 CFR 816.49(a)(8)(ii) only for the duration of the design events for impoundments not meeting the size or other criteria of 30 CFR 77.216(a). Maryland has elected to retain design events with a 24-hour duration. The Federal rule provides for 6-hour duration design events. OSM conducted a study of the differences in peak flows generated by events of these durations under the various conditions encountered in Maryland (Administrative Record No. MD–510). The study concluded that under most conditions the peak runoff from a 24-hour event would exceed that from a 6-hour event or that the difference was insignificant in terms of design considerations. Based upon the study, the Director believes that the State's use of the 24-hour design event rather than the 6-hour event is as stringent or more stringent than the corresponding Federal requirement.

Accordingly, the Director finds the proposed rules at .24H (a), (b), and (c) are no less effective than the Federal counterparts at 30 CFR 816.49(a)(8)–(8)(ii).

(e) *Other qualifying criteria.* Maryland proposes to require in COMAR 08.13.09.24H(5) that impoundments meeting the size or other qualifying criteria of 30 CFR 77.216(a) comply with 30 CFR 77.216 and this section. The plan required to be submitted to the District Manager of MSHA under 30 CFR 77.216 shall also be submitted to the MDBOM as part of the permit application. Since the proposal is substantively the same as provisions of 30 CFR 780.25(c)(2), the Director finds it to be no less effective than its Federal counterpart.

(f) *Inspections.* Maryland proposes in COMAR 08.13.09.24H(6) to require that a qualified registered professional engineer or other qualified specialist, under the direction of the professional engineer, inspect the impoundment. The professional engineer or specialist shall be experienced in the construction of impoundments. These inspections shall be made (a) at appropriate times during construction, including: (i) Site preparation; (ii) construction of the cut-off trench; (iii) placement of the principal spillway pipe, including anti-seep collars and riser base; and, (iv) placement and compaction of fill material around the principal spillway, and (b) upon completion of construction. In addition, the State proposes in COMAR 08.13.09.24H(9) to require that an impoundment be inspected at least annually by a registered professional engineer or other qualified specialist under the direction of the RPE until removal of the impoundment or release of performance bond. The Director finds that COMAR 08.09.13.24H(6), when read together with the annual inspection requirement of proposed COMAR 08.09.13.24H(9) is substantively the same as and, therefore, is no less effective than the Federal requirement at 30 CFR 816.49(a)(10)(i).

(g) *Certification.* Maryland proposes to add COMAR 08.13.09.24H(7) that would require upon completion of construction that a certification statement and an as-built drawing shall be submitted for each impoundment and impounding structure. The as-built drawing shall show the approved design and any modification or minor changes. The certification statement shall be signed and sealed by a registered professional engineer, registered in the State of Maryland and shall certify that: (a) The impoundment and impounding structure has been constructed in accordance with the plans and specifications in the approved permit; (b) observations and measurements were made at appropriate times during and following construction by a registered professional engineer or a qualified person experienced in the design and construction of impoundments and impounding structures acting as a representative and reporting directly to the registered professional engineer; (c) the completed impoundment and impounding structure meets the safety requirements of safe engineering practices, the regulatory program and the design approved in the permit application; and (d) modifications made during construction meet the requirements of the regulatory program.

30 CFR 816.49(a)(10)(ii) provides that after each inspection required in 30 CFR 816.49(a)(10)(i), a qualified professional engineer, or qualified registered professional land surveyor, shall promptly provide to the regulatory authority a certified report that the impoundment has been constructed and/or maintained as designed and in accordance with the approved plan. The report shall include discussion of any appearance of instability, structural weakness or other hazardous condition, depth and elevation of any impounded waters, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability.

The Director finds the proposal to be as effective as its Federal counterpart, except to the extent that the proposal fails to require a certified report after each inspection conducted during and upon completion of construction, and to the extent the proposal fails to require that such certified reports contain the specific information set forth in the Federal counterpart at 30 CFR 816.49(a)(10)(ii). The Director is requiring Maryland to amend its program to correct these deficiencies.

(h) *Color photographs.* Maryland proposes in COMAR 08.13.09.24H(8) that the MDBOM may require color photographs to be taken at the appropriate times specified in COMAR 08.09.13.24H(6) and submitted with the certification statement. There is no direct Federal rule counterpart, but the requirement for photographs is not inconsistent with the general certification requirements of 30 CFR 816.49. Therefore, the Director finds this proposal to be no less effective than the Federal rules.

(i) *Annual inspection.* Maryland proposes in COMAR 08.13.09.24H(9) to require that: (a) An impoundment be inspected at least annually by a registered professional engineer or other qualified specialist under the direction of the registered professional engineer until removal of the impoundment or release of performance bond; and, (b) after each annual inspection the registered professional engineer submit to the MDBOM a certified report that the impoundment has been maintained in accordance with the approved plan and this regulation. The report shall include a discussion of any appearances of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded waters, existing storage capacity, and existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability. A copy of the report shall be retained at or near the mine site.

The Federal rule at 30 CFR 816.49(a)(10)(i) requires inspections to be made regularly during construction, upon completion of construction, and annually thereafter. As discussed in Finding 9(f) herein, the Director finds the proposed requirement for an annual inspection when read together with proposed COMAR 08.13.09.24H(6) which requires inspections during, and upon completion of construction, is no less effective than the Federal rule. As discussed above in Finding 9(g), the Federal rule at 30 CFR 816.49(a)(10)(ii) requires a detailed certified report be provided to the regulatory authority after each inspection conducted during and upon completion of construction and annually thereafter. The failure of the Maryland program to require such reports during and upon completion of construction is responded to in that Finding. To the extent that Maryland's proposal at COMAR 08.13.09.24H(9)(b) relates to detailed certified reports after each annual inspection, the Director finds it no less effective than the annual reporting requirements of the Federal rule.

(j) *Examinations.* Maryland proposes in COMAR 08.13.09.24H(10) to require that impoundments subject to 30 CFR 77.216 must be examined in accordance with 30 CFR 77.216–3. Other impoundments shall be examined at least quarterly by a qualified person for appearance of structural weakness and other hazardous conditions. Since this proposal is substantively the same as 30 CFR 816.49(a)(11), the Director finds it to be no less effective than the Federal rule.

(k) *Emergency procedures.* Maryland proposes to add COMAR 08.13.09.24H(11) to require that if any examination or inspection discloses that a potential hazard exists, the permittee shall immediately notify the MDBOM of the hazard and of the emergency procedures formulated for public protection and remedial action. If adequate emergency procedures cannot be formulated or implemented, the MDBOM shall be notified immediately. The MDBOM shall then immediately notify the appropriate agencies that other emergency procedures are required to protect the public. Because the proposal is substantively identical to 30 CFR 816.49(a)(12), the Director finds it to be no less effective than the Federal rule.

(l) *Permanent impoundments.* Maryland proposes in COMAR 08.13.09.24H(12) that a permanent impoundment of water may be created, if authorized in the approved permit, based upon the following demonstration that: (a) The size and configuration of the impoundment will be adequate for its intended purposes; (b) the quality of the impounded water will be suitable on a permanent basis for its intended use, and after reclamation, will meet all applicable water quality standards; (c) the water level will be sufficiently stable and capable of supporting the intended use; (d) final grading will provide for adequate safety and access for proposed water users; (e) the impoundment will not result in diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses; (f) the impoundment will be suitable for the approved post-mining land use; and (g) the vertical portion of any remaining highwall shall be located far enough below the low water line along the full extent of the highwall to provide adequate safety and access for the proposed water users. Paragraphs (a) through (f) of subsection H(12) are substantively identical to 30 CFR 816.49(b) (1) through (6). Paragraph (g) is substantively identical to 30 CFR 816.49(a)(9). Therefore, the Director finds the proposal to be no less effective than the Federal rules.

(m) *Temporary impoundments.* Maryland proposes to add COMAR 08.13.09.24H(13) that would allow the MDBOM to authorize the construction of temporary impoundments as part of a surface coal mining operation. Since the proposed language of this subsection is substantively the same as 30 CFR 816.49(c)(1), the Director finds it to be no less effective than the Federal rule.

(n) *Modification of impoundments.* Maryland proposes to add COMAR 08.13.09.24H(14) to require that plans for any enlargement, reduction in size, reconstruction, or other modification of dams or impoundments be submitted to the MDBOM and shall comply with the requirements of COMAR 08.13.09.24H. Except where a modification is required to eliminate an emergency condition constituting a hazard to public health, safety or the environment, the MDBOM shall approve the plans before the modification begins.

There is no direct Federal rule counterpart to this subsection. Its modification provisions do not conflict with the general Federal impoundment rules at 30 CFR 816.49 but for the emergency condition exception to the requirement that the State must give prior approval to plans before the modifications begin. This is a necessary exception for a situation not contemplated by the Federal impoundment rules. Therefore, the Director finds the proposal no less effective than these rules.

10. COMAR 08.13.09.24I Post-Mining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments, and Treatment Facilities

Maryland is revising the last sentence of this subsection to read: "Before final bond release of the permit area, the permittee shall renovate all permanent sedimentation ponds, diversions, impoundments and treatment facilities to meet the criteria for permanent structures and impoundments." However, the Federal rule at 30 CFR 816.56, in addition to containing substantively the same language, also requires that all temporary structures be removed and reclaimed before abandoning a permit area or seeking bond release. The Director finds the proposal to be as effective as its Federal counterpart except to the extent that Maryland's proposed rule does not provide for the removal and reclamation of temporary structures, and he is requiring Maryland to amend its program to correct this omission.

11. COMAR 08.13.09.35A General Requirements for Revegetation

(a) *Revegetative cover.* Maryland proposes to revise COMAR 08.13.09.35A(1) to require the permittee to establish a vegetative cover on regraded areas and on all other disturbed areas directed toward stabilizing the soil, minimizing downstream sediment and runoff damage, and establishing permanent vegetative cover compatible with approved post-mining land use (excluding roads and water areas) meeting specified performance standards. Since the language of the revision is substantively the same as in 30 CFR 816.111(a), the Director finds the revision no less effective than the Federal rule.

(b) *Reestablishing vegetative cover.* Maryland proposed to revise COMAR 03.13.09.35A(2) to require that the reestablished vegetative cover meet specified standards for compatibility; for seasonal growth characteristics; for self-regeneration and plant succession; and meet the State and Federal laws and regulations. Since the proposed language of the revision is substantively the same as in 30 CFR 816.111(b), the Director finds the revision no less effective than the Federal rule.

(c) *Exception to cover requirements.* Maryland proposes to revise COMAR 08.13.09.35A(3) to allow exceptions to paragraphs A(2)(b) and A(2)(c) when the species are necessary to get quick vegetative cover and where measures to establish permanent vegetation are included in the approved permit and reclamation plans. Since the language of the revision is substantively the same as in 30 CFR 816.111(c), the Director finds the revision to be no less effective than the Federal rule.

(d) *Exception to land use requirement.* Maryland proposes to revise COMAR 08.13.09.35A(4) to permit a waiver to the requirements of paragraphs A(1)(a), A(1)(c), A(2)(b) and A(2)(c) when a cropland post-mining land use is approved. Since the language of the revision is substantively the same as in 30 CFR 816.111(d), the Director finds the revision no less effective than the Federal rule.

12. COMAR 08.13.09.35C Plant Species Selection and Land Treatment

Maryland proposes to revise COMAR 08.13.09.35C(1) to require that all planting plans include provisions for a herbaceous cover coordinated with the proposed post-mining land use, elevation, and soil conditions, and to revise COMAR 08.13.09.35C(2) to define the treatment required for establishment of a temporary or permanent herbaceous cover. There are no direct Federal rule counterparts for these proposed revisions. However, the Director finds the proposals are not inconsistent with 30 CFR 816.100 which allows the regulatory authority to establish schedules that define contemporaneous reclamation, and 30 CFR 816.113 which describes the normal period for favorable planting.

13. COMAR 08.13.09.35D Revegetation Plan

Maryland proposes to revise COMAR 08.13.09.35D(1) to define guidelines for use in development of a revegetation plan for the selected post-mining use. There is no corresponding Federal rule. However, 30 CFR 780.18(b)(5) requires specific revegetation information and practices to be included in every

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03.13.09.35A(2) to require that the reestablished vegetative cover meet specified standards for compatibility; for seasonal growth characteristics; for self-regeneration and plant succession; and meet the State and Federal laws and regulations. Since the proposed language of the revision is substantively the same as in 30 CFR 816.111(b), the Director finds the revision no less effective than the Federal rule.

(c) *Exception to cover requirements.* Maryland proposes to revise COMAR 08.13.09.35A(3) to allow exceptions to paragraphs A(2)(b) and A(2)(c) when the species are necessary to get quick vegetative cover and where measures to establish permanent vegetation are included in the approved permit and reclamation plans. Since the language of the revision is substantively the same as in 30 CFR 816.111(c), the Director finds the revision to be no less effective than the Federal rule.

(d) *Exception to land use requirement.* Maryland proposes to revise COMAR 08.13.09.35A(4) to permit a waiver to the requirements of paragraphs A(1)(a), A(1)(c), A(2)(b) and A(2)(c) when a cropland post-mining land use is approved. Since the language of the revision is substantively the same as in 30 CFR 816.111(d), the Director finds the revision no less effective than the Federal rule.

12. COMAR 08.13.09.35C Plant Species Selection and Land Treatment

Maryland proposes to revise COMAR 08.13.09.35C(1) to require that all planting plans include provisions for a herbaceous cover coordinated with the proposed post-mining land use, elevation, and soil conditions, and to revise COMAR 08.13.09.35C(2) to define the treatment required for establishment of a temporary or permanent herbaceous cover. There are no direct Federal rule counterparts for these proposed revisions. However, the Director finds the proposals are not inconsistent with 30 CFR 816.100 which allows the regulatory authority to establish schedules that define contemporaneous reclamation, and 30 CFR 816.113 which describes the normal period for favorable planting.

13. COMAR 08.13.09.35D Revegetation Plan

Maryland proposes to revise COMAR 08.13.09.35D(1) to define guidelines for use in development of a revegetation plan for the selected post-mining use. There is no corresponding Federal rule. However, 30 CFR 780.18(b)(5) requires specific revegetation information and practices to be included in every

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revegetation plan. The same specific revegetation plan requirements are contained in COMAR 08.13.09.02P(6). Therefore, when read in conjunction with COMAR 08.13.09.02P(6), the Director finds the proposal to be no less effective than the revegetation plan requirements of the Federal rules.

14. COMAR 08.13.09.35E Soil Stabilizing Practices

(a) *Mulching application rate.* Maryland proposes to revise COMAR 08.13.09.35E(1) to allow the MDBOM to modify the mulch and other soil stabilizing practices requirement if various factors result in conditions where a lower application rate is adequate to control erosion. Since the revision is substantively the same as 30 CFR 816.114, the Director finds the revision to be no less effective than the Federal rule.

(b) *Minimum application rate and other mulching materials.* Maryland proposes to add COMAR 08.13.09.35E(5) to set a minimum mulch application rate of 3 tons per acre, and COMAR 08.13.09.35E(6) to allow substitution of alternative mulching materials upon written request by the operator and approval by the MDBOM. There are no direct counterparts in the Federal rule at 30 CFR 816.114 governing mulching. Erosion control would still be required under COMAR 08.13.09.35E(1), which the Director is approving in Finding 14(a). The Director finds these two proposals to be not inconsistent with the requirements of SMCRA and the Federal rules.

15. COMAR 08.13.09.35F Revegetation Reports and Inspection

(a) *Backfilling and planting report.* Maryland proposes to add COMAR 08.13.09.35F(1) to require that a backfilling and planting report, including a location map, be prepared by the permittee. There are no corresponding Federal regulations or statutes dealing with preparation of a backfilling and planting report. However, COMAR 08.13.09.35F(1) does not conflict with the backfilling and revegetation requirements of the Federal program at 30 CFR 816.102 and 816.111. Therefore, the Director finds the proposal to be no less effective than the Federal rules.

(b) *Replanting deficient areas.* Maryland proposes to add COMAR 08.13.09.35F(2) to require the permittee to inspect all planted areas prior to recognized planting seasons and replant deficient areas. There are no corresponding Federal regulations or statutes. However, COMAR 08.13.09.35F(2) does not conflict with the general revegetation requirements of the Federal programs at 30 CFR 816.11. Therefore, the Director finds the proposal to be no less effective than these Federal rules.

(c) *Revegetation inspection.* Maryland proposes to revise COMAR 08.13.09.35F(3) to provide that the MDBOM and the Land Reclamation Committee make a vegetation inspection when the planted areas have survived two years after the last augmented seeding. If standards of success are met, the MDBOM would notify the operator and may reduce the amount of the bond in accordance with COMAR 08.13.09.15, Performance Bonds. If standards of success are not met, the MDBOM may order the operator to correct deficiencies. To clarify this proposal, the State has confirmed that the bond reduction referred to in this rule represents Phase II bond release, and the State rule at COMAR 08.13.09.15H(2) requires that sufficient bond be retained to ensure completion of any required revegetation (Administrative Record No. MD–539). There is no comparable Federal rule, but the Director finds the proposed rule to be no less effective than the revegetation success standards of 30 CFR 816.116 and the bond release standards of 30 CFR 800.40.

(d) *Final revegetation inspection.* Maryland proposes in COMAR 08.13.09.35F(4) to provide that the MDBOM will make a final inspection of planted areas at the end of the five-year responsibility period. It would require MDBOM to notify the permittee in writing of its approval or disapproval. On those areas approved, bond release procedures would be implemented. The MDBOM would be required to notify the permittee of reasons for disapproving revegetation areas. There are no corresponding Federal regulations or statutes dealing with notification procedures. However, COMAR 08.13.09.35F(4) does not conflict with the bond release standards of 30 CFR 800.40 or the revegetation success standards of 30 CFR 816.116. Therefore, the Director finds the proposal to be no less effective than these Federal rules.

16. COMAR 08.13.09.35G Revegetation Success Standards

(a) *Judging effectiveness of revegetation.* Maryland proposes to revise COMAR 08.13.09.35G(1) to require that success of revegetation be judged on the effectiveness of the vegetation for the approved post-mining land use, extent of cover when compared to cover occurring in natural vegetation of the area, and the general requirements of COMAR 08.13.09.35A. Success standard would be considered achieved when they are not less than 90 percent of the success standard using a 90 percent statistical confidence interval. Since the proposed success standards are substantively the same as those of 30 CFR 816.116(a), the Director finds the proposal to be no less effective than the Federal rule.

(b) *Applying standards to post-mining land use.* Maryland proposes to add COMAR 08.13.09.35G(2) (a) through (f) as standards for success of revegetation.

Paragraphs (a) through (e) provide that success standards are to be applied in accordance with the individual approved post-mining land uses, and set forth the specific minimum standards to be met for each use. The standards proposed are substantively the same as those contained in 30 CFR 816.116(b) (1) through (5) except that they do not require specific consultation with and approval by state agencies responsible for administration of forestry and wildlife programs, as required by (b)(3)(i) of the Federal rule. In a letter dated July 23, 1990 (Administrative Record No. MD–463), the State explained that the Forest Park and Wildlife Service is within the Maryland Department of Natural Resources (MDNR) as is the Bureau of Mines. The Secretary of the MDNR programmatically approves post-mining land use as is prescribed under the Federal rule. Proposed paragraph (f) provides for a period of extended responsibility of not less than five years. The period shall begin with the last year of augmented seeding, fertilizing, or other work, excluding normal conservation and management practices approved by the Bureau. This proposal is substantively identical to the Federal counterpart at 30 CFR 816.116(c) (1) and (2). Therefore, the Director finds the proposal to be no less effective than the Federal counterparts.

17. COMAR 08.13.09.41 Civil Penalties: General

(a) *Use of terms.* Throughout COMAR 08.13.09.41, the terms "Violation Notice of Cease and Desist Order" are replaced with "Notice of Violation or Cessation Order" and the term "operator" is replaced by "person." The proposed terms are consistent with the use of such terms in 30 CFR parts 843, 845, and 846. Therefore, the Director finds Maryland's proposed language to be no less effective than that of the Federal program.

(b) *Penalty for creating imminent danger.* COMAR 08.13.09.41A(3) requires that civil penalties shall be assessed whenever the MDBOM issues a cessation order for a violation that creates an imminent danger to the health and safety of the public; or is causing or can reasonably be expected to cause significant, imminent environmental harm. This proposal is substantively the same as 30 CFR 843.11(a)(1) (i) and (ii); therefore, the Director finds it to be no less effective than the Federal rules.

(c) *Worksheet.* COMAR 08.13.09.41B(2)(e) is proposed to require that a Notice of Proposed Assessment contain a worksheet showing the computation of the proposed assessment. Because the proposed worksheet requirement is substantively the same as that of 30 CFR 845.17(b), the Director finds the proposal to be no less effective than the Federal rule.

(d) *Serving the assessment.* Maryland proposes to revise COMAR 08.13.09.41B(3) to require that a "Service of the Notice of Proposed Assessment" shall be complete upon mailing in accordance with regulation 08.13.09.40H, the procedures for serving assessments. COMAR 08.13.09.41B(4) is revised to require that failure to serve any proposed assessment within 30 days of the issuance of a notice of violation or cessation order shall not be grounds for dismissal of all or part of such assessment unless the person against whom the proposed penalty has been assessed (i) proves actual prejudice as a result of the delay; and (ii) makes a timely objection to the delay. Since these revisions when read in concert with COMAR 08.13.09.40H, are substantively the same as 30 CFR 845.17(b) (1) and (2), the Director finds the revisions to be no less effective than the Federal rules.

18. COMAR 08.13.09.41C Informal Review: Assessment Conference Procedures

(a) *Conference request.* Maryland proposes in COMAR 08.13.09.41C(1) a provision for allowing a person against whom a penalty has been assessed to request an assessment conference regarding the amount of penalty if the request is made within 15 days after the Notice of Proposed Assessment is served. 30 CFR 845.18(a) allows 30 days from the date an assessment is received for filing of a request for conference. The Director finds the provision to be as effective as the Federal rule at 30 CFR 845.18(a) except to the extent that the proposal allows 15 days to request an assessment conference and he is requiring the States to amend the provision to be no less effective than its Federal counterpart.

(b) *Nature and purpose of conference.* Maryland proposes in COMAR 08.13.09.41C(2) that an assessment conference be informal, be conducted by the Director of the MDBOM or his designee, and that its purpose be restricted to a discussion of the amount of penalty only. There is no direct Federal counterpart of this proposal. The Director finds the proposal is substantively the same as provisions within 30 CFR 845.18(a), (b)(1), and (b)(3) and therefore no less effective than these counterpart Federal provisions.

(c) *Timing of conference.* Maryland proposes in COMAR 08.13.09.41C(3) to require that the assessment conference be held within 60 days from the date of issuance of the notice of proposed assessment, or the end of the abatement period, whichever is later. Failure to hold the conference within this time period will not be grounds for dismissal of all or part of the proposed assessment unless assessee can prove prejudice as a result of the delay. Since the proposal has substantively the same language as that found in 30 CFR 845.18(b)(1), the Director finds the proposal to be no less effective than its Federal counterpart.

(d) *Date of conference.* Maryland proposes to add COMAR 08.13.09.41C(4) which would require posting of the date and time of the assessment conference at least 5 days before the conference, and provides that any person has the right to attend or participate in the conference. Since the proposal is substantively the same as 30 CFR 845.18(b)(2), the Director finds the proposal to be no less effective than the Federal rule.

(e) *Amount of penalty.* Maryland proposes in COMAR 08.13.09.41C(5) to provide that an assessment conference may result in an increase or decrease in the amount of the penalty. Since the proposal has substantively the same language as that found in 30 CFR 845.18(b)(3)(ii), the Director finds the proposal to be no less effective than its Federal counterpart.

(f) *Settlement agreement.* Maryland proposes in COMAR 08.13.09.41C(6) to provide that a settlement agreement may be entered at the conference under which the operator waives all further rights of appeal except as stated in the agreement. If, within 30 days, the operator defaults on the agreement, the MDBOM may enforce it or rescind it and proceed with final assessment within 30 days from the date of rescission. Since the proposal is substantively the same as 30 CFR 845.18(d), the Director finds the proposal to be no less effective than the Federal rule.

(g) *Notice of final assessment.* Maryland proposes in COMAR 08.13.09.41C(7) to require that the MDBOM send by certified mail a Notice of Final Assessment (NOFA) within 30 days of the conclusion of the assessment conference, if any, or within 30 days of issuance of the notice of proposed assessment. The notice shall contain the basis of the violation, the amount of penalty and a worksheet if the penalty has been adjusted. Also, COMAR 08.13.09.41C(8) would require that the service of the NOFA shall be complete upon mailing in accordance with COMAR Regulation 40H. The proposals at C (7) and (8) are substantively the same as 30 CFR 845.18(c) except that the Federal rule states that a person shall be promptly served a notice while the State would require notice to be served within 30 days. The Director finds that the proposals are no less effective than the Federal counterparts.

19. COMAR 08.13.09.41D Formal Review: Hearing Procedures

(a) *Final assessment and contesting a violation.* Maryland proposes to add COMAR 08.13.09.41D(1) that would permit formal review of final penalty assessment upon submittal of an escrow deposit equal to the final assessment amount along with a request for formal review within 30 days of receipt of the NOFA. The hearing would be conducted in accordance with COMAR Regulation 08.13.09.43. The formal review of assessment may be combined with the formal review of violation if the violator has requested a formal review of the underlying violation under COMAR 08.13.09.40J and the fact of violation has not been adjudicated. Maryland is also proposing COMAR 08.13.09.41D(2) which would indicate that the fact of violation (FOV) may not be contested if no hearing to review the notice of violation (NOV) or cessation order (CO) has been requested or if the FOV has been decided in a review proceeding under COMAR Regulation .40. These provisions are similar to those of 30 CFR 845.19(a) except that the latter do not require the person to have first requested a separate formal review of the underlying violation before seeking a combined review of the violation and penalty assessment. This difference in the Maryland rule will not procedurally disadvantage such persons. The Director finds the Maryland proposal to be no less effective than the Federal rule.

(b) *Final assessment adjustment.* Maryland proposes in COMAR 08.13.09.41D(3) to permit the hearing officer to increase or decrease the final assessment at the conclusion of an adjudicatory hearing. Since the language is substantively the same as 30 CFR 845.18(b)(3)(ii), the Director finds the proposal to be no less effective than the Federal rule.

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19. COMAR 08.13.09.41D Formal Review: Hearing Procedures

(a) *Final assessment and contesting a violation.* Maryland proposes to add COMAR 08.13.09.41D(1) that would permit formal review of final penalty assessment upon submittal of an escrow deposit equal to the final assessment amount along with a request for formal review within 30 days of receipt of the NOFA. The hearing would be conducted in accordance with COMAR Regulation 08.13.09.43. The formal review of assessment may be combined with the formal review of violation if the violator has requested a formal review of the underlying violation under COMAR 08.13.09.40J and the fact of violation has not been adjudicated. Maryland is also proposing COMAR 08.13.09.41D(2) which would indicate that the fact of violation (FOV) may not be contested if no hearing to review the notice of violation (NOV) or cessation order (CO) has been requested or if the FOV has been decided in a review proceeding under COMAR Regulation .40. These provisions are similar to those of 30 CFR 845.19(a) except that the latter do not require the person to have first requested a separate formal review of the underlying violation before seeking a combined review of the violation and penalty assessment. This difference in the Maryland rule will not procedurally disadvantage such persons. The Director finds the Maryland proposal to be no less effective than the Federal rule.

(b) *Final assessment adjustment.* Maryland proposes in COMAR 08.13.09.41D(3) to permit the hearing officer to increase or decrease the final assessment at the conclusion of an adjudicatory hearing. Since the language is substantively the same as 30 CFR 845.18(b)(3)(ii), the Director finds the proposal to be no less effective than the Federal rule.

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20. COMAR 08.13.09.41E Penalty Assessment Criteria

Maryland proposes to revise COMAR 08.13.09.41E(1)(a) by increasing from $1,000 to $2,000 the maximum assessment for which a violation will not be considered if it was subsequently vacated, or is still being contested or appealed by the operator. This amount is the same allowed under the Federal program in 30 CFR 845.13(b)(1) which allows up to 30 points for a history of previous violations. In the Schedule under 30 CFR 845.14, 30 points translates to $2,000. MDBOM agreed (Administrative Record No. MD–458B) to correct a typographical error by adding the words "the violation" to the beginning of the third sentence of paragraph (1)(a) in the final rule language.

In paragraphs (1)(c) and (1)(d), Maryland is replacing the term "operator" with that or "person." The corresponding Federal regulations governing the assessment of civil penalties at 30 CFR 845.13 use the more restrictive terms "person to whom the notice or order was issued" or "permittee." In COMAR 08.13.09.41E(1)(e), the maximum amount of penalty for effect of violation on reclamation is reduced from $1,500 to $500. The Federal rule at 30 CFR 845.13(b)(3)(i) assigns up to 25 points for degree of fault to a person to whom notice or order was issued for failing to correct a violation. The points equal an assessment of $500 under the schedule in 30 CFR 845.14. With the understanding that Maryland make the agreed to change to paragraph (1)(a) before promulgation of the rules, the Director finds the Maryland proposals to be no less effective than their Federal counterparts.

21. COMAR 08.13.09.41F Payment of Penalty Amount

In COMAR 08.13.09.41F(3), Maryland proposes to revise the time for refunds where appeals result in elimination or reduction of a penalty, from 15 days to 30 days. Since the language is substantively the same as in 30 CFR 845.20(c), the Director finds the revision to be no less effective than the Federal program.

22. COMAR 08.13.09.41G Individual Civil Penalties

(a) *Definitions.* Maryland proposes to define in COMAR 08.13.09.41G(1), the terms: (i) "Knowingly," (ii) "Violation, failure or refusal," and (iii) "Willfully." Since the definitions are substantively the same as the Federal definitions in 30 CFR 846.5, the Director finds them to be no less effective than the Federal rule.

(b) *Who may be assessed.* Maryland proposes in COMAR 08.13.09.41G(2) to provide that the MDBOM may assess an individual civil penalty against any corporate permittee officer, agent or director responsible for a violation, failure or refusal. Since the proposal is substantively the same as 30 CFR 846.12(a), the Director finds the proposal to be no less effective than the Federal rule.

(c) *When an assessment can be made.* Maryland proposes in COMAR 08.13.09.41G(3), that when an individual civil penalty is due to a corporate permittee, a permit violation cannot be assessed until a CO has been issued to the corporate permittee for the violation and the CO has remained unabated for 30 days. Since the proposal is substantively the same as 30 CFR 846.12(b), the Director finds the proposal to be no less effective than the Federal rule.

(d) *Criteria for determining amount of penalty.* In COMAR 08.13.09.41G(4), Maryland defines the criteria for determining the amount of an individual civil penalty to be assessed. Since the proposal is substantively the same as 30 CFR 846.14(a), the director finds the proposal to be no less effective than the Federal rule.

(e) *Limit of penalty for each violation.* Maryland proposes in COMAR 08.13.09.41G(5), that each penalty violation shall not exceed $5,000. Each day of a continuing violation may be deemed a separate violation and a separate individual civil penalty may be assessed for each day the violation, failure or refusal continues. The proposal is substantively the same as 30 CFR 846.14(b); therefore, the Director finds it to be no less effective than the Federal rule.

(f) *Notice of proposed assessment.* Maryland proposes in COMAR 08.13.09.41G(6) to require the MDBOM to serve notice or proposed individual civil penalty assessments, including an explanation of the amount to be assessed and a copy of the underlying notice of Violation or cessation order. The proposal is substantively the same as 30 CFR 846.17(a); therefore, the Director finds it to be no less effective than the Federal rule.

(g) *Final order.* Maryland proposes in COMAR 08.13.09.41G(7) that the proposed individual civil penalty notice will become a final order 30 days after service of the individual unless: (i) the individual files a petition for review within 30 days of service, or (ii) the MDBOM and involved parties agree, within 30 days of the service, to a schedule or a plan for abatement or correction of the violation. Since the language of the proposal is substantively the same as 30 CFR 846.17(b) (1) and (2), the Director finds the proposal to be no less effective than the Federal rule.

(h) *Service.* Maryland proposes to require by COMAR 08.13.09.41G(8), that service of the Notice shall be complete upon mailing in accordance with COMAR Regulation. 40H. Maryland has stated that in all cases, it is their policy that service of the notice shall be by certified mail (Administrative Record No. MD–539). Since the requirement would be in accordance with the approved Maryland program at COMAR 08.13.09.40H and consistent with 30 CFR 846.17(c), the Director finds the proposal to be no less effective than Federal program.

(i) *Absence of agreement or appeal.* Maryland proposes to require in COMAR 08.13.09.41G(9), that if a notice of proposed individual civil penalty assessment becomes a final order without a petition for review or abatement agreement, the penalty would be due upon issuance of the final order. Since the language is substantively the same as is 30 CFR 846.18(a), the Director finds the proposal to be no less effective than Federal rule.

(j) *Appeals.* Maryland proposes in COMAR 08.13.09.41G(10) to require that if an individual named in the notice of proposed individual civil penalty assessment files a petition for review, the penalty shall be due upon issuance of a final administrative order affirming, increasing or decreasing the proposed penalty. The language is substantively the same as 30 CFR 846.18(b); therefore, the Director finds the proposal to be no less effective than the Federal rule.

(k) *Abatement agreement.* In COMAR 08.13.09.41G(11), Maryland proposes that upon execution of a written plan for compliance with an unabated order, an individual named in the notice may postpone payment until receipt of a final order stating that the penalty is due, or by written notice that abatement/compliance is satisfactory and the penalty is withdrawn. Since the proposed rule is substantively the same as 30 CFR 846.18(c), the Director finds the proposal to be no less effective than the Federal rule.

(l) *Delinquent payment.* Maryland proposes in COMAR 08.13.09.41G(12), that following expiration of 30 days after the issuance of a final order assessing an individual civil penalty, a delinquent penalty shall be subject to interest at the rate of 6 percent per annum. The civil

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penalty is payable to the State and collectable in any manner provided by law for collection of debts. Since the language of the proposed rule is substantively the same as provisions of 30 CFR 846.18(d), the Director finds the proposal to be no less effective that its Federal counterparts.

IV. Summary and Disposition of Comments

Public Comments. The public comments period and opportunity to request a public hearing announced in the January 22, 1990, **Federal Register** (55 FR 2111–2116) ended February 21, 1990. An extended comment period announced in the April 25, 1990, **Federal Register** (55 FR 17455–17458) ended May 25, 1990. No public comments were received and the scheduled public hearing was not held as no one requested an opportunity to provide testimony.

Agency Comments. Pursuant to section 503(b) of SMCRA and the implementing regulations of 30 CFR 732.17(h), comments were solicited from various Federal agencies with an actual or potential interest in the Maryland program.

The Soil Conservation Service, Bureau of Land Management, the Mine Safety and Health Administration, and the Army Corps of Engineers all generally supported the amendment and subsequent revisions, or had no substantive comments.

V. Director's Decision

Based on the above findings, the Director is approving, with exceptions, the proposed program amendments submitted by Maryland on October 31, 1989, and modified on March 9, 1990. The Federal regulations at 30 CFR 920 codifying decisions concerning the Maryland program are being amended to implement this decision. The Director is approving these State rules with the understanding that they be promulgated in a form identical to that submitted to OSM and reviewed by the public. Any differences between these rules and the State's final promulgated rules will be processed as a separate amendment subject to public review at a later date.

As discussed in the findings listed below, the Director in not approving proposed provisions in the cited sections of the Maryland program which have been found to be less effective than the counterpart Federal regulations and he is requiring Maryland to further amend its program to correct the deficiencies identified.

Finding No.	COMAR
4(e)	08.13.09.23E(5)
9(a)	08.13.09.24H(1)(i)
9(b)	08.13.09.24H(2)(c)
9(g)	08.13.09.24H(7)
10	08.13.09.24I
18(a)	08.13.09.41C(1)

Environmental Protection Agency (EPA) Concurrence

In accordance with 30 CFR 732.17(h), OSM solicited EPA's concurrence in the approval of Maryland's program. EPA concurred (Administrative Record No. MD–471) in the State's proposed amendments as they can be implemented consistent with applicable Clean Water Act (CWA) requirements. However, EPA expressed concern that certain situations possibly related to instream treatment could result in conditions that would not assure compliance with applicable State water quality standards as required by the CWA. Specifically, COMAR 08.13.09.24F(3)(b) would provide that sedimentation ponds be located as near as possible to the disturbed area and out of perennial streams, unless approved by MDBOM. EPA's definition of waters of the United States at 40 CFR 122.2 includes perennial streams as well as intermittent and ephemeral streams. Additionally, EPA believes that the regulations of COMAR 08.13.09.24H could allow the placement of impoundments in the waters of the United States. Despite these concerns, "EPA believes that Maryland's regulations require compliance with applicable CWA requirements."

The Director acknowledges these concerns but notes that neither the cited Maryland regulations nor their Federal counterparts at 30 CFR 816.46 and 30 CFR 816.49, specifically mention instream treatment facilities. None the less, the Director is approving the cited Maryland regulations with the understanding and on the basis that they do not supersede the applicable CWA requirements.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Maryland program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Maryland of only such provisions.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA (30 U.S.C. 1292(d)), no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs, by OMB. Therefore, this action is exempt from the preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 920

Intergovernmental regulations, Surface mining, Underground mining.

Dated: July 31, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended set as forth below:

PART 920—MARYLAND

1. The authority citation for part 920 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 920.15, a new paragraph (m) is added to read as follows:

COMAR
08.13.09.23E(5)
08.13.09.24H(1)(j)
08.13.09.24H(2)(c)
08.13.09.24H(7)
08.13.09.24I
08.13.09.41C(1)

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Executive Order 12291 and the Regulatory Flexibility Act

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The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 920

Intergovernmental regulations, Surface mining, Underground mining.

Dated: July 31, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended set as forth below:

PART 920—MARYLAND

1. The authority citation for part 920 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 920.15, a new paragraph (m) is added to read as follows:

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§ 920.15 Approval of amendments to State regulatory program.

* * * * *

(m) The following amendments submitted to OSM on October 31, 1989, and modified and resubmitted on March 9, 1990, are approved with the exceptions noted herein, effective August 9, 1991. The approved amendments consist of the following modifications to the Maryland regulations (COMAR):

08.13.09.01B Definitions.
08.13.09.02K Description Included in Permit Application.
08.13.09.02O Hydrologic Reclamation Plan.
08.13.09.23D Ground Water Monitoring.
08.13.09.23E Surface Water Monitoring.
—Except for Subsection E(5) regarding prevention of material damage to the hydrologic balance outside the permit area.
08.13.09.23I Transfer of Wells.
08.13.09.23J Discharge of Water into an Underground Mine.
08.13.09.24A General Requirements for Ponds and Sediment Control Measures.
08.13.09.24C Diversions and Conveyance of Overland Flow and Shallow Groundwater Flow, and Ephemeral Streams.
08.13.09.24D Stream Channel Diversions.
08.13.09.24F Siltation Structures.
08.13.09.24H Impoundments.
—Except Subsection H(1)(j) regarding inspection of impoundments.
—Except Subsection H(2)(c) regarding impoundments deemed to meet a minimum static safety factor of 1.3.
—Except Subsection H(7) regarding submission of certified reports.
08.13.09.24I Postmining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments and Treatment Facilities.
—Except for failure to include removal of temporary structures.
08.13.09.35A General Requirements for Revegetation.
08.13.09.35C Plant Species Selection and Land Treatment.
08.13.09.35D Revegetation Plan.
08.13.09.35E Soil Stabilizing Practices.
08.13.09.35F Backfilling and Planting.
08.13.09.35G Standards for Success.
08.13.09.41 Civil Penalties: General.
08.13.09.41B Civil Penalties: Procedure.
08.13.09.41C Informal Review.
—Except Subsection C(1) regarding time period within which to request an assessment conference.
08.13.09.41D Formal Review.
08.13.09.41E Penalty Assessment Criteria.
08.13.09.41F Payment of Penalty Amount.
08.13.09.41G Individual Civil Penalties.

3. In § 920.16, paragraphs (b), (c), (d), (e), (f) and (g) are added to read as follows:

§ 920.16 Required program amendments.

* * * * *

(b) By February 10, 1992, Maryland shall amend its rules at COMAR 08.13.09.23E(5) or otherwise amend its program to be no less effective than 30 CFR 816.41(e)(3) by requiring an operator to demonstrate that the operations prevented material damage to the hydrologic balance outside the permit area, before the regulatory authority may modify surface-water monitoring requirements.

(c) By February 10, 1992, Maryland shall amend its rules at COMAR 08.13.09.24H(1)(j) and/or 08.13.09.24H(9) to clarify that the required annual inspections of impoundments are to be conducted by professional engineers or specialists experienced in the construction of impoundments.

(d) By February 10, 1992, Maryland shall amend its rules at COMAR 08.13.09.24H(2)(c) to clarify the engineering design standards that ensure stability comparable to a 1.3 minimum static safety factor.

(e) By February 10, 1992, Maryland shall amend its rules at COMAR 08.13.09.24H(7) or otherwise amend its program to be no less effective than 30 CFR 816.49(a)(10)(ii) by requiring the submission of a certified report after each inspection conducted during and upon completion of construction, and annually thereafter, containing the specific information described in 30 CFR 816.49(a)(10)(11).

(f) By February 10, 1992, Maryland shall amend its rules at COMAR 08.13.09.24I or otherwise amend its program to be no less effective than 30 CFR 816.56 by requiring the operator to ensure that all temporary structures are removed and reclaimed before abandoning a permit area or seeking bond release.

(g) By February 10, 1992, Maryland shall amend its rules at COMAR 08.13.09.41C(1) or otherwise amend its program to be no less effective than 30 CFR 845.18(a) by allowing a period of 30 days within which a person against whom a penalty has been assessed may request an assessment conference.

[FR Doc. 91-18810 Filed 8-8-91; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Hampton Roads, Regulation 91-06]

Safety Zone Regulations; Chesapeake Bay, Norfolk Harbor Channel Reach, Port of Hampton Roads, VA

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a temporary 500 yard safety zone around those vessels anchored in positions 36–56'55"N/76–03'16"W, 36–56'14"N/76–03'08"W, 36–56'44"N/76–02'31"W, and 36–56'37"N/76–01'50"W, and around the floating pier and elevated causeway extending from the beach into Anchorage A from September 4 through October 8, 1991. The zone is needed to protect mariners in the vicinity from the hazards which may result from a military exercise. Entry into this zone is prohibited unless authorized by the Captain of the Port or his designated representative.

EFFECTIVE DATES: This regulation becomes effective at 12:01 a.m. on September 4, 1991, and terminates at 11:59 p.m. on October 8, 1991, unless sooner terminated by the Captain of the Port, Hampton Roads, Virginia.

FOR FURTHER INFORMATION CONTACT: LT J.S. Dunphy, Project Officer, USCG Marine Safety Office Hampton Roads, telephone number (804) 441–3294.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to protect mariners operating in the vicinity of Thimble Shoal Channel, Hampton Roads and Norfolk Harbor Reach Channel during a military exercise.

Drafting Information

The drafters of this regulation are LT J.S. Dunphy, project officer for the Captain of the Port, Hampton Roads, and CDR S.R. Campbell, project attorney, Fifth Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring the regulation is a military exercise around vessels anchored in positions 36–56'55"N/76–03'16"W, 36–56'14"N/76–

03'08"W, 36–56'44"N/76–02'31"W, and 36–56'37"N/76–01'50"W, and around the floating pier and elevated causeway extending from the beach into Anchorage A from September 4 through October 8, 1991. Individuals or vessels will not be permitted within 500 yards of the vessels, floating pier, or elevated causeway. The safety zone will be enforced twenty four hours a day throughout the exercise dates. Entry into this zone is prohibited unless authorized by the Captain of the Port or his designated representative. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

Regulatory Evaluation

This regulation is considered to be non-major under Executive Order 12291 and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). The economic impact of this rule has been found to be so minimal that a full regulatory evaluation is unnecessary. This regulation is temporary in nature and will not impede the flow of normal commercial traffic that is currently allowed to transit Thimble Shoal Channel. Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

This regulation contains no information collection or record keeping requirements.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart F of part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new temporary 165.T540 is added, to read as follows:

§ 165.T540 Safety Zone: Chesapeake Bay, Norfolk Harbor Reach, Port of Hampton Roads, Virginia.

(a) *Location.* The following area is a safety zone: The waters of Norfolk Harbor Reach within 500 yards of vessels anchored in positions 36–56'55"N/76–03'16"W, 36–56'14"N/76–03'08"W, 36–56'44"N/76–02'31"W, and 36–56'37"N/76–01'50"W, and around the floating pier, and elevated causeway extending from the beach into Anchorage A.

(b) *Effective date.* This regulation is effective from 12:01 a.m., on September 4, 1991. It terminates at 11:59 p.m. on October 8, 1991, unless terminated sooner by the Captain of the Port.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads, Virginia or his designated representative. The general requirements of § 165.23 also apply to this regulation.

(2) Persons or vessels requiring entry into or passage through the safety zone must first request authorization from the Captain of the Port or his designated representative. The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf. The following officers have been designated by the Captain of the Port: The senior Coast Guard boarding officer on each vessel enforcing the safety zone, the Coast Guard Patrol Commander, and the Duty Officer at the Marine Safety Office, Norfolk, VA. The Coast Guard Patrol Commander and the senior boarding officer on each vessel enforcing the safety zone can be contacted on VHF–FM channels 13 and 16. The Captain of the Port, Hampton Roads, and the Duty Officer at the Marine Safety Office, Norfolk, Virginia can be contacted at telephone number (804) 441–3307.

(3) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign, and

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

Dated: July 29, 1991.

G.J.E. Thornton,

Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.

[FR Doc. 91–18848 Filed 8–8–91; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD1 91–118]

Safety Zone Regulations; Raritan Bay, Sandy Hook, New York and New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in Raritan Bay, New Jersey. This zone is needed to protect the maritime community from the possible dangers and hazards to navigation associated with an Army training exercise involving numerous parachutists entering a drop zone in this area. Entry into or movement within this zone is prohibited unless authorized by the Captain of the Port, New York.

EFFECTIVE DATES: This regulation becomes effective at 6:00 a.m., 25 August 1991. It terminates at 12:00 p.m., 25 August 1991.

FOR FURTHER INFORMATION CONTACT: QMC Honke of Group Sandy Hook Operations at (201) 872–0300.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to any potential hazards.

Drafting Information

The drafters of this regulation are LTJG C.W. JENNINGS, project officer, Captain of the Port New York, and LT JOHN B. GATELY, project attorney, First Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation result from the possible dangers and hazards to navigation associated with an Army Training Exercise. This regulation is effective from 11 a.m., 25 August 1991 to 2 p.m., 25 August 1991. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

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Dated: July 29, 1991.

G.J.E. Thornton,

Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.

[FR Doc. 91–18848 Filed 8–8–91; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD1 91–118]

Safety Zone Regulations; Raritan Bay, Sandy Hook, New York and New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in Raritan Bay, New Jersey. This zone is needed to protect the maritime community from the possible dangers and hazards to navigation associated with an Army training exercise involving numerous parachutists entering a drop zone in this area. Entry into or movement within this zone is prohibited unless authorized by the Captain of the Port, New York.

EFFECTIVE DATES: This regulation becomes effective at 6:00 a.m., 25 August 1991. It terminates at 12:00 p.m., 25 August 1991.

FOR FURTHER INFORMATION CONTACT: QMC Honke of Group Sandy Hook Operations at (201) 872–0300.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to any potential hazards.

Drafting Information

The drafters of this regulation are LTJG C.W. JENNINGS, project officer, Captain of the Port New York, and LT JOHN B. GATELY, project attorney, First Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation result from the possible dangers and hazards to navigation associated with an Army Training Exercise. This regulation is effective from 11 a.m., 25 August 1991 to 2 p.m., 25 August 1991. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 USC 1225 and 1231; 50 USC 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

2. A new temporary 165.0118 is added to read as follows:

§ 165.0118 Safety Zone: Raritan Bay, New Jersey.

(a) *Location.* The following area has been declared a Safety Zone: All waters of Raritan Bay within a 1000 yard radius of a point located at 40°28'30" North and 074°06'00" West.

(b) *Effective date.* This regulation becomes effective at 6:00 a.m., 25 August 1991. It terminates at 12:00 p.m., 25 August 1991.

(c) *Regulations.* In accordance with the general regulations in Section 165.23 of this part entry into or movement within this zone is prohibited unless authorized by the Captain of the Port.

Dated: July 22, 1991.

R.M. Larrabee,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 91–18847 Filed 8–8–91; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[GEN Docket No. 88–96; FCC 91–194]

Allocation of the 849–851/894–896 MHz Bands for Air-Ground Radiotelephone Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: This action grants in part petitions for reconsideration filed by McCaw Cellular Communications, Inc. (McCaw) and GTE Airfone Incorporated (GTE) of the Report and Order in GEN Docket No. 88–96, 55 FR 25840 (June 25, 1990). The objective of this action is to ensure greater opportunity for competition in the 800 MHz air-ground radiotelephone market.

EFFECTIVE DATE: September 9, 1991.

FOR FURTHER INFORMATION CONTACT: Carl Huie, (202) 653–8112.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order adopted June 25, 1991, and released July 11, 1991. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch, Public Reference Room (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's duplication contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452–1422.

Summary of Memorandum Opinion and Order

1. On April 12, 1990, the Commission adopted a Report and Order, GEN Docket No. 88–96, 55 FR 25840 (June 25, 1990), establishing an air-ground (AG) radiotelephone service to operate on the 849–851/894–896 MHz frequency bands. Petitions for reconsideration were timely filed by McCaw and GTE addressing among other things: (1) Whether GTE's airline contracts that were entered into prior to release of the Report and Order should be invalidated; (2) whether resale of GTE's AG service should be mandated on an interim basis; (3) whether federal preemption of state regulation of AG communications should be expanded; (4) whether the transition period for GTE to change its system from experimental to regular service should be extended; (5) whether the technical rules should be amended to reduce potential interference; and, (6) whether the Commission should establish an AG advisory committee to recommend technical improvements and to assist in resolving disputes among licensees.

2. With respect to GTE's contracts with airlines entered into prior to the establishment of AG service, the Commission determined that to allow competition to develop fully in the AG market, airlines need to be able to terminate, at their option and without penalty, contracts entered into with GTE prior to December 24, 1990, for equipment installed prior to July 11, 1991. Therefore, the Commission decided to impose restrictions on the AG license that will be granted GTE that require GTE to refrain from enforcing any restrictive provisions in the contracts that obligate the airlines to operate their AG services exclusively with GTE. GTE will be required to notify all affected parties within 30 days that the relevant contractual provisions will not be enforced.

3. With respect to resale, the Commission determined that GTE's head start and competitive advantage is such that it is necessary to require the resale of GTE's AG service to facilitate the entry of other AG providers. Accordingly, the Commission is requiring GTE to make its service available to the other AG licensees for resale at non-discriminatory rates based upon current resale policies.

4. The Commission declined GTE's request to extend federal preemption of AG communications to all aircraft that fly interstate routes, noting that the states have shown no interest in regulating AG communications. The Commission stated that it will not act with regard to additional preemption unless and until a specific situation arises that requires its attention.

5. The Commission agreed with GTE that the 12 months granted for its transition period is unrealistically short for redesigning, procuring, testing, and retrofitting all of its ground stations and aircraft with new equipment. Concerned that if GTE is required to cease operation because the transition period is too short, which would result in lost service to the public, the Commission provided GTE 22 months to modify its current equipment for narrow control channel operation (3.2 kHz bandwidth) in the lower portion of each channel block and a total of 60 months to bring its AG service into full compliance with the rules. The Commission also provided GTE six months to bring its cordless telephones used in AG service into compliance with part 15 standards.

6. Additionally, the Commission amended its technical rules to reduce the potential for interference while providing AG licensees flexibility in their system designs. The major technical issues involved the channel plan, control channel bandwidth, coordination of available channels, communication with aircraft on the ground, and equipment specifications and design requirements. The Commission also corrected the list of ground station locations set forth in its rules.

7. With respect to the channel plan, the Commission increased the center frequencies by 1.5 kHz in order to be consistent with GTE's experimental system and facilitate the transition.

8. To enable the new licensees to initiate AG service without waiting for GTE to narrow its control channels, the Commission reassigned communications channels C–28 through C–31 and moved the control channels from the lower end to the upper end of each channel block. Removing channels C–28 through C–31

also will permit two more control channels that can accommodate two additional licensees. The channel numbers were renumbered accordingly. GTE will have 22 months to narrow its wideband control channels and vacate new communications channel C–1 and C–3, and an additional 38 months to replace its experimental control channel at C–2 with its regular control channel at the upper end of each channel block.

9. The Commission decided not to increase the control channel bandwidth to 6 kHz to accommodate future signaling needs, stating that some of the signal messages and information might be sent on the communications channels and expressed concern that expanding the bandwidth to 6 kHz would mean the loss of 3 communications channels.

10. The Commission also decided not to require that all AG licensees establish land-links among the ground stations in each location to coordinate available channel information, stating that radio frequency signal monitoring as required in the rules is a reliable method for determining channel availability and that requiring land-link monitoring would be excessively burdensome and expensive for all of the licensees.

11. With respect to deleting rules concerning reuse of the allotted channel blocks for communication with aircraft on the ground, the Commission expressed its belief that it is important to allow AG licensees to provide service to aircraft on the ground, but did agree to revise the antenna radiation pattern requirements in § 22.1109(a) by replacing the radiation pattern with a requirement that ground stations providing service to aircraft on the ground be located at least 300 miles from other ground stations using the same channel blocks to communicate with airborne mobile stations. Also, the Commission reduced the transmitter output power to 1 watt ERP for ground stations operating under this section.

12. With respect to equipment specifications and design requirements, the Commission amended its rules to add an adjacent channel interference standard based on maximum power limits, but retained a modified emission mask for transmitter tests and certification. The Commission denied other proposals to amend the technical rules, but encouraged licensees to employ techniques they view necessary for the efficent operation of AG radiotelephone service.

13. The Commission decided that establishing an advisory committee for the AG service would be unnecessary, stating that the rules provide adequate government policy direction to foster the growth and development of AG service. The Commission did encourage licensees to form their own association.

14. Accordingly, *it is ordered* That the petitions for reconsideration filed by McCaw Cellular Communications, Inc. and GTE Airfone Incorporated *are granted* to the extent indicated herein. *It is further ordered* That under the authority contained in 47 U.S.C. 154(i), 303(c), 303(f), 303(g), and 303(r), part 22 of the Commission's Rules *are amended* as specified below, effective 30 days after publication in the Federal Register.

List of Subjects in 47 CFR Part 22

Communications common carriers, radio

Rule Changes

Part 22 of chapter I of title 47 of the Code of Federal Regulations, is amended as follows:

PART 22—PUBLIC MOBILE SERVICE

1. The authority citation in part 22 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1083, as amended; 47 U.S.C. 154, 303.

2. Section 22.1107 is amended by revising the section heading, paragraphs (a)(1), (a)(2) introductory text, (a)(2)(ii), and (b), and by removing paragraph (a)(iii), to read as follows:

§ 22.1107 Channel plan.

* * * * *

(a) * * *

(1) Each channel block is subdivided into 6 control channels labeled P–1 through P–6, and 29 communications channels labeled C–1 through C–29.

(2) The authorized channel bandwidths are as follows:

* * * * *

(ii) Each communications channel has a bandwidth of 6 kHz.

* * * * *

(b) The center frequencies of the communications and control channels are listed in the following table. Guardbands are labeled "GB".

GROUND TO AIR CHANNELS

[Center frequency in MHz]

Channel No.	Channel Block				
	10	9	8	7	6
C–1	849.0055	849.2055	849.4055	849.6055	849.8055
C–2	849.0115	849.2115	849.4115	849.6115	849.8115
C–3	849.0175	849.2175	849.4175	849.6175	849.8175
C–4	849.0235	849.2235	849.4235	849.6235	849.8235
C–5	849.0295	849.2295	849.4295	849.6295	849.8295
C–6	849.0355	849.2355	849.4355	849.6355	849.8355
C–7	849.0415	849.2415	849.4415	849.6415	849.8415
C–8	849.0475	849.2475	849.4475	849.6475	849.8475
C–9	849.0535	849.2535	849.4535	849.6535	849.8535
C–10	849.0595	849.2595	849.4595	849.6595	849.8595
C–11	849.0655	849.2655	849.4655	849.6655	849.8655
C–12	849.0715	849.2715	849.4715	849.6715	849.8715
C–13	849.0775	849.2775	849.4775	849.6775	849.8775
C–14	849.0835	849.2835	849.4835	849.6835	849.8835
C–15	849.0895	849.2895	849.4895	849.6895	849.8895
C–16	849.0955	849.2955	849.4955	849.6955	849.8955
C–17	849.1015	849.3015	849.5015	849.7015	849.9015
C–18	849.1075	849.3075	849.5075	849.7075	849.9075
C–19	849.1135	849.3135	849.5135	849.7135	849.9135
C–20	849.1195	849.3195	849.5195	849.7195	849.9195
C–21	849.1255	849.3255	849.5255	849.7255	849.9255
C–22	849.1315	849.3315	849.5315	849.7315	849.9315
C–23	849.1375	849.3375	849.5375	849.7375	849.9375
C–24	849.1435	849.3435	849.5435	849.7435	849.9435

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's Rules *are amended*
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n the Federal Register.

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§ 22.1107 Channel plan.

* * * * *

(a) * * *

(1) Each channel block is subdivided into 6 control channels labeled P–1 through P–6, and 29 communications channels labeled C–1 through C–29.

(2) The authorized channel bandwidths are as follows:

* * * * *

(II) Each communications channel has a bandwidth of 6 kHz.

* * * * *

(b) The center frequencies of the communications and control channels are listed in the following table. Guardbands are labeled "GB".

O AIR CHANNELS

quency in MHz]

	Channel Block				
	10	9	8	7	6
	849.0055	849.2055	849.4055	849.6055	849.8055
	849.0115	849.2115	849.4115	849.6115	849.8115
	849.0175	849.2175	849.4175	849.6175	849.8175
	849.0235	849.2235	849.4235	849.6235	849.8235
	849.0295	849.2295	849.4295	849.6295	849.8295
	849.0355	849.2355	849.4355	849.6355	849.8355
	849.0415	849.2415	849.4415	849.6415	849.8415
	849.0475	849.2475	849.4475	849.6475	849.8475
	849.0535	849.2535	849.4535	849.6535	849.8535
	849.0595	849.2595	849.4595	849.6595	849.8595
	849.0655	849.2655	849.4655	849.6655	849.8655
	849.0715	849.2715	849.4715	849.6715	849.8715
	849.0775	849.2775	849.4775	849.6775	849.8775
	849.0835	849.2835	849.4835	849.6835	849.8835
	849.0895	849.2895	849.4895	849.6895	849.8895
	849.0955	849.2955	849.4955	849.6955	849.8955
	849.1015	849.3015	849.5015	849.7015	849.9015
	849.1075	849.3075	849.5075	849.7075	849.9075
	849.1135	849.3135	849.5135	849.7135	849.9135
	849.1195	849.3195	849.5195	849.7195	849.9195
	849.1255	849.3255	849.5255	849.7255	849.9255
	849.1315	849.3315	849.5315	849.7315	849.9315
	849.1375	849.3375	849.5375	849.7375	849.9375
	849.1435	849.3435	849.5435	849.7435	849.9435

GROUND TO AIR CHANNELS—Continued

[Center frequency in MHz]

Channel No.	Channel Block				
	10	9	8	7	6
C–25	849.1495	849.3495	849.5495	849.7495	849.9495
C–26	849.1555	849.3555	849.5555	849.7555	849.9555
C–27	849.1615	849.3615	849.5615	849.7615	849.9615
C–28	849.1675	849.3675	849.5675	849.7675	849.9675
C–29	849.1735	849.3735	849.5735	849.7735	849.9735
GB	849.1765–849.1797	849.3765–849.3797	849.5765–849.5797	849.7765–849.7797	849.9765–849.9797
P–6	849.1813	849.3813	849.5813	849.7813	849.9813
P–5	849.1845	849.3845	849.5845	849.7845	849.9845
P–4	849.1877	849.3877	849.5877	849.7877	849.9877
P–3	849.1909	849.3909	849.5909	849.7909	849.9909
P–2	849.1941	849.3941	849.5941	849.7941	849.9941
P–1	849.1973	849.3973	849.5973	849.7973	849.9973
Channel No.	5	4	3	2	1
C–1	850.0055	850.2055	850.4055	850.6055	850.8055
C–2	850.0115	850.2115	850.4115	850.6115	850.8115
C–3	850.0175	850.2175	850.4175	850.6175	850.8175
C–4	850.0235	850.2235	850.4235	850.6235	850.8235
C–5	850.0295	850.2295	850.4295	850.6295	850.8295
C–6	850.0355	850.2355	850.4355	850.6355	850.8355
C–7	850.0415	850.2415	850.4415	850.6415	850.8415
C–8	850.0475	850.2475	850.4475	850.6475	850.8475
C–9	850.0535	850.2535	850.4535	850.6535	850.8535
C–10	850.0595	850.2595	850.4595	850.6595	850.8595
C–11	850.0655	850.2655	850.4655	850.6655	850.8655
C–12	850.0715	850.2715	850.4715	850.6715	850.8715
C–13	850.0775	850.2775	850.4775	850.6775	850.8775
C–14	850.0835	850.2835	850.4835	850.6835	850.8835
C–15	850.0895	850.2895	850.4895	850.6895	850.8895
C–16	850.0955	850.2955	850.4955	850.6955	850.8955
C–17	850.1015	850.3015	850.5015	850.7015	850.9015
C–18	850.1075	850.3075	850.5075	850.7075	850.9075
C–19	850.1135	850.3135	850.5135	850.7135	850.9135
C–20	850.1195	850.3195	850.5195	850.7195	850.9195
C–21	850.1255	850.3255	850.5255	850.7255	850.9255
C–22	850.1315	850.3315	850.5315	850.7315	850.9315
C–23	850.1375	850.3375	850.5375	850.7375	850.9375
C–24	850.1435	850.3435	850.5435	850.7435	850.9435
C–25	850.1495	850.3495	850.5495	850.7495	850.9495
C–26	850.1555	850.3555	850.5555	850.7555	850.9555
C–27	850.1615	850.3615	850.5615	850.7615	850.9615
C–28	850.1675	850.3675	850.5675	850.7675	850.9675
C–29	850.1735	850.3735	850.5735	850.7735	850.9735
GB	850.1765–850.1797	850.3765–850.3797	850.5765–850.5797	850.7765–850.7797	850.9765–850.9797
P–6	850.1813	850.3813	850.5813	850.7813	850.9813
P–5	850.1845	850.3845	850.5845	850.7845	850.9845
P–4	850.1877	850.3877	850.5877	850.7877	850.9877
P–3	850.1909	850.3909	850.5909	850.7909	850.9909
P–2	850.1941	850.3941	850.5941	850.7941	850.9941
P–1	850.1973	850.3973	850.5973	850.7973	850.9973

AIR TO GROUND CHANNELS

[Center frequency in MHz]

Channel No.	Channel block				
	10	9	8	7	6
C–1	894.0055	894.2055	894.4055	894.6055	894.8055
C–2	894.0115	894.2115	894.4115	894.6115	894.8115
C–3	894.0175	894.2175	894.4175	894.6175	894.8175
C–4	894.0235	894.2235	894.4235	894.6235	894.8235
C–5	894.0295	894.2295	894.4295	894.6295	894.8295
C–6	894.0355	894.2355	894.4355	894.6355	894.8355
C–7	894.0415	894.2415	894.4415	894.6415	894.8415
C–8	894.0475	894.2475	894.4475	894.6475	894.8475
C–9	894.0535	894.2535	894.4535	894.6535	894.8535
C–10	894.0595	894.2595	894.4595	894.6595	894.8595
C–11	894.0655	894.2655	894.4655	894.6655	894.8655
C–12	894.0715	894.2715	894.4715	894.6715	894.8715
C–13	894.0775	894.2775	894.4775	894.6775	894.8775

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AIR TO GROUND CHANNELS—Continued

[Center frequency in MHz]

Channel No.	Channel block				
	10	9	8	7	6
C-14	894.0835	894.2835	894.4835	894.6835	894.8835
C-15	894.0895	894.2895	894.4895	894.6895	894.8895
C-16	894.0955	894.2955	894.4955	894.6955	894.8955
C-17	894.1015	894.3015	894.5015	894.7015	894.9015
C-18	894.1075	894.3075	894.5075	894.7075	894.9075
C-19	894.1135	894.3135	894.5135	894.7135	894.9135
C-20	894.1195	894.3195	894.5195	894.7195	894.9195
C-21	894.1255	894.3255	894.5255	894.7255	894.9255
C-22	894.1315	894.3315	894.5315	894.7315	894.9315
C-23	894.1375	894.3375	894.5375	894.7375	894.9375
C-24	894.1435	894.3435	894.5435	894.7435	894.9435
C-25	894.1495	894.3495	894.5495	894.7495	894.9495
C-26	894.1555	894.3555	894.5555	894.7555	894.9555
C-27	894.1615	894.3615	894.5615	894.7615	894.9615
C-28	894.1675	894.3675	894.5675	894.7675	894.9675
C-29	894.1735	894.3735	894.5735	894.7735	894.9735
GB	894.1765– 894.1795	894.3765– 894.3795	894.5765– 894.7595	894.7765– 894.7795	894.9765– 894.9795
P-6	894.1813	894.3813	894.5813	894.7813	894.9813
P-5	894.1845	894.3845	894.5845	894.7845	894.9845
P-4	894.1877	894.3877	894.5877	894.7877	894.9877
P-3	894.1909	894.3909	894.5909	894.7909	894.9909
P-2	894.1941	894.3941	894.5941	894.7941	894.9941
P-1	894.1973	894.3873	894.5973	894.7973	894.9973
Channel No.	5	4	3	2	1
C-1	895.0055	895.2055	895.4055	895.6055	895.8055
C-2	895.0115	895.2115	895.4115	895.6115	895.8115
C-3	895.0175	895.2175	895.4175	895.6175	895.8175
C-4	895.0235	895.2235	895.4235	895.6235	895.8235
C-5	895.0295	895.2295	895.4295	895.6295	895.8295
C-6	895.0355	895.2355	895.4355	895.6355	895.8355
C-7	895.0415	895.2415	895.4415	895.6415	895.8415
C-8	895.0475	895.2475	895.4475	895.6475	895.8475
C-9	895.0535	895.2535	895.4353	895.6535	895.8535
C-10	895.0595	895.2595	895.4595	895.6595	895.8595
C-11	895.0655	895.2655	895.4655	895.6655	895.8655
C-12	895.0715	895.2715	895.4715	895.6715	895.8715
C-13	895.0775	895.2775	895.4775	895.6775	895.8775
C-14	895.0835	895.2835	895.4835	895.6835	895.8835
C-15	895.0895	895.2895	895.4895	895.6895	895.8895
C-16	895.0955	895.2955	895.4955	895.6955	895.8955
C-17	895.1015	895.3015	895.5015	895.7015	895.9015
C-18	895.1075	895.3075	895.5075	895.7075	895.9075
C-19	895.1135	895.3135	895.5135	895.7135	895.9135
C-20	895.1195	895.3195	895.5195	895.7195	895.9195
C-21	895.1255	895.3255	895.5255	895.7255	895.9255
C-22	895.1315	895.3315	895.5315	895.7315	895.9315
C-23	895.1375	895.3375	895.5375	895.7375	895.9375
C-24	895.1435	895.3435	895.5435	895.7435	895.9435
C-25	895.1495	895.3495	895.5495	895.7495	895.9495
C-26	895.1555	895.3555	895.5555	895.7555	895.9555
C-27	895.1615	895.3615	895.5615	895.7615	895.9615
C-28	895.1675	895.3675	895.5675	895.7675	895.9675
C-29	895.1735	895.3735	895.5735	895.7735	895.9735
GB	895.1765– 895.1797	895.3765– 895.3797	895.5765– 895.5797	895.7765– 895.7797	895.9765– 895.9797
P-6	895.1813	895.3813	895.5813	895.7813	895.9813
P-5	895.1845	895.3845	895.5845	895.7845	895.9845
P-4	895.1877	895.3877	895.5877	895.7877	895.9877
P-3	895.1909	895.3909	895.5909	895.7909	895.9909
P-2	895.1941	895.3941	895.5941	895.7941	895.9941
P-1	895.1973	895.3973	895.5973	895.7973	895.9973

3. Section 22.1109 is amended by revising the section heading, the introductory text and table and paragraph (a) to read as follows:

§ 22.1109 Geographical channel block layout.

Except as provided in paragraphs (a) and (b) of this section, ground station locations must be within one mile of the locations listed in this paragraph. The channel block allotted for each location must be used to provide service to airborne mobile stations in flight and may be used to provide service to airborne mobile stations on ground.

CHANNELS—Continued

quency in MHz]

Channel block				
10	9	8	7	6
894.0835	894.2835	894.4835	894.6835	894.8835
894.0895	894.2895	894.4895	894.6895	894.8895
894.0955	894.2955	894.4955	894.6955	894.8955
894.1015	894.3015	894.5015	894.7015	894.9015
894.1075	894.3075	894.5075	894.7075	894.9075
894.1135	894.3135	894.5135	894.7135	894.9135
894.1195	894.3195	894.5195	894.7195	894.9195
894.1255	894.3255	894.5255	894.7255	894.9255
894.1315	894.3315	894.5315	894.7315	894.9315
894.1375	894.3375	894.5375	894.7375	894.9375
894.1435	894.3435	894.5435	894.7435	894.9435
894.1495	894.3495	894.5495	894.7495	894.9495
894.1555	894.3555	894.5555	894.7555	894.9555
894.1615	894.3615	894.5615	894.7615	894.9615
894.1675	894.3675	894.5675	894.7675	894.9675
894.1735	894.3735	894.5735	894.7735	894.9735
894.1765–	894.3765–	894.5765–	894.7765–	894.9765–
894.1795	894.3795	894.7595	894.7795	894.9795
894.1813	894.3813	894.5813	894.7813	894.9813
894.1845	894.3845	894.5845	894.7845	894.9845
894.1877	894.3877	894.5877	894.7877	894.9877
894.1909	894.3909	894.5909	894.7909	894.9909
894.1941	894.3941	894.5941	894.7941	894.9941
894.1973	894.3873	894.5973	894.7973	894.9973
5	4	3	2	1
895.0055	895.2055	895.4055	895.6055	895.8055
895.0115	895.2115	895.4115	895.6115	895.8115
895.0175	895.2175	895.4175	895.6175	895.8175
895.0235	895.2235	895.4235	895.6235	895.8235
895.0295	895.2295	895.4295	895.6295	895.8295
895.0355	895.2355	895.4355	895.6355	895.8355
895.0415	895.2415	895.4415	895.6415	895.8415
895.0475	895.2475	895.4475	895.6475	895.8475
895.0535	895.2535	895.4353	895.6535	895.8535
895.0595	895.2595	895.4595	895.6595	895.8595
895.0655	895.2655	895.4655	895.6655	895.8655
895.0715	895.2715	895.4715	895.6715	895.8715
895.0775	895.2775	895.4775	895.6775	895.8775
895.0835	895.2835	895.4835	895.6835	895.8835
895.0895	895.2895	895.4895	895.6895	895.8895
895.0955	895.2955	895.4955	895.6955	895.8955
895.1015	895.3015	895.5015	895.7015	895.9015
895.1075	895.3075	895.5075	895.7075	895.9075
895.1135	895.3135	895.5135	895.7135	895.9135
895.1195	895.3195	895.5195	895.7195	895.9195
895.1255	895.3255	895.5255	895.7255	895.9255
895.1315	895.3315	895.5315	895.7315	895.9315
895.1375	895.3375	895.5375	895.7375	895.9375
895.1435	895.3435	895.5435	895.7435	895.9435
895.1495	895.3495	895.5495	895.7495	895.9495
895.1555	895.3555	895.5555	895.7555	895.9555
895.1615	895.3615	895.5615	895.7615	895.9615
895.1675	895.3675	895.5675	895.7675	895.9675
895.1735	895.3735	895.5735	895.7735	895.9735
895.1765-	895.3765-	895.5765-	895.7765-	895.9765-
895.1797	895.3797	895.5797	895.7797	895.9797
895.1813	895.3813	895.5613	895.7813	895.9813
895.1845	895.3845	895.5845	895.7845	895.9845
895.1877	895.3877	895.5877	895.7877	895.9877
895.1909	895.3909	895.5909	895.7909	895.9909
895.1941	895.3941	895.5941	895.7941	895.9941
895.1973	895.3973	895.5973	895.7973	895.9973

hical channel block

led in paragraphs (a)
ion, ground station
within one mile of the
this paragraph. The
channel block allotted for each location must be used to provide service to airborne mobile stations in flight and may be used to provide service to airborne mobile stations on ground.

Location	N. Latitude	W. Longitude	Channel Block
Alaska:			
Anchorage	61°11′06″	149°54′42″	8
Cordova	60°33′00″	145°43′00″	5
Ketchikan	55°21′20″	131°42′33″	5
Juneau	58°21′18″	134°34′30″	4
Sitka	57°03′30″	135°22′01″	7
Yakutat	59°30′30″	142°30′00″	8
Alabama:			
Birmingham	33°23′24″	086°39′59″	2
Arizona:			
Phoenix	33°35′39″	112°05′12″	4
Winslow	35°01′17″	110°43′02″	6
Arkansas:			
Pine Bluff	34°10′56″	091°56′18″	8
California:			
Blythe	33°36′39″	114°42′24″	10
Eureka	40°42′59″	124°12′09″	8
Los Angeles	33°56′45″	118°23′03″	4
Oakland	37°51′12″	122°12′30″	1
S. San Francisco	37°41′15″	122°26′01″	6
Visalia	36°19′36″	119°23′22″	7
Colorado:			
Colorado Springs	38°44′39″	104°51′46″	8
Denver	39°46′45″	104°50′49″	1
Hayden	40°29′04″	107°13′08″	6
Florida:			
Miami	25°48′27″	80°16′30″	4
Orlando	28°26′53″	81°22′00″	2
Tallahassee	30°24′02″	84°21′18″	7
Georgia:			
Atlanta	33°39′05″	84°25′54″	5
St. Simons Island	31°09′22″	81°23′14″	6
Hawaii:			
Mauna Kapu	21°24′24″	158°06′02″	5
Idaho:			
Blackfoot	43°11′34″	112°20′57″	8
Caldwell	43°38′45″	116°38′44″	10
Illinois:			
Chicago	41°46′49″	87°45′20″	3
Kewanee	41°12′05″	[illegible]	5
Schiller Park	41°57′18″	87°52′57″	2
Indiana:			
Fort Wayne	40°59′16″	85°11′31″	7
Iowa:			
Des Moines	41°31′58″	93°38′54″	1
Kansas:			
Garden City	37°59′35″	100°54′04″	3
Wichita	37°37′24″	97°27′15″	7
Kentucky:			
Fairdale	38°04′48″	85°47′33″	6
Louisiana:			
Kenner	30°00′44″	90°13′30″	3
Shreveport	32°27′09″	93°49′38″	5
Massachusetts:			
Boston	42°23′15″	71°01′03″	7
Michigan:			
Bellville	42°12′17″	[illegible]	8
Flint	42°58′21″	83°44′22″	9
Sault Ste. Marie	46°28′45″	84°21′31″	6
Minnesota:			
Bloomington	44°51′30″	93°13′19″	9
Mississippi:			
Meridian	32°19′10″	88°41′33″	9
Missouri:			
Kansas City	39°18′37″	94°41′07″	6
St. Louis	38°42′45″	90°19′19″	4
Springfield	37°14′28″	93°22′54″	9
Montana:			
Lewistown	47°02′56″	109°27′27″	5
Miles City	46°25′30″	105°52′30″	8
Missoula	47°01′05″	114°00′41″	3
Nebraska:			
Grand Island	40°58′00″	98°19′11″	2
Ogallala	41°07′11″	101°45′37″	4
Nevada:			
Las Vegas	36°05′35″	115°10′25″	1
Reno	39°35′13″	119°55′52″	3
Tonopah	38°03′42″	117°13′24″	9
Winnemucca	41°00′39″	117°45′58″	4
New Mexico:			
Alamogordo	32°54′46″	105°56′41″	8

Location	N. Latitude	W. Longitude	Channel Block
Albuquerque	35°03'05"	106°37'13"	10
Aztec	36°48'42"	107°53'46"	9
Clayton	36°27'29"	103°11'16"	5
New Jersey:			
Woodbury	39°50'01"	75°09'21"	3
New York:			
E. Elmhurst	40°46'21"	73°52'42"	1
Schuyler	43°09'09"	75°07'50"	2
Staten Island	40°36'05"	74°06'35"	9
North Carolina:			
Greensboro	36°05'54"	79°56'42"	9
Wilmington	34°16'10"	77°54'24"	3
North Dakota:			
Dickinson	46°51'05"	102°47'35"	7
Ohio:			
Pataskala	40°04'38"	82°41'57"	1
Oklahoma:			
Warner	35°29'31"	95°18'25"	4
Woodward	36°24'42"	99°28'50"	9
Oregon:			
Alabany	44°38'24"	123°03'36"	5
Klamath Falls	42°06'30"	121°38'00"	2
Pendleton	45°35'45"	118°31'02"	7
Pennsylvania:			
Coraopolis	40°30'33"	80°13'27"	4
New Cumberland	40°11'30"	76°52'02"	8
South Carolina:			
Charleston	32°54'10"	80°01'20"	4
South Dakota:			
Aberdeen	45°27'21"	98°25'26"	6
Rapid City	44°02'36"	103°03'36"	5
Tennessee:			
Elizabethton	36°26'04"	82°08'06"	7
Memphis	35°01'44"	89°56'15"	10
Nashville	36°06'44"	86°41'31"	3
Texas:			
Austin	30°16'37"	97°49'34"	2
Bedford	32°50'19"	97°08'03"	1
Houston	29°54'37"	95°24'39"	9
Lubbock	33°37'06"	101°52'14"	7
Monahans	31°34'56"	102°54'16"	6
Utah:			
Abajo Peak	37°50'21"	109°27'42"	7
Delta	39°23'15"	112°30'44"	2
Escalante	37°45'19"	111°52'27"	5
Green River	38°57'54"	110°13'40"	3
Salt Lake City	40°39'11"	112°12'06"	1
Virginia:			
Arlington	38°52'55"	77°06'16"	6
Washington:			
Seattle	47°26'06"	122°17'35"	4
Cheney	47°33'14"	117°43'35"	1
West Virginia:			
Charleston	38°19'47"	81°39'36"	2
Wisconsin:			
Stevens Point	44°33'06"	89°25'27"	8
Wyoming:			
Riverton	43°03'37"	108°27'23"	9

(a) Air-ground licensees may use any of the channels to provide service from any location to airborne mobile stations on the ground, provided that no interference is caused to service provided by ground stations operating in accordance with the geographical channel block layout or with paragraph (b) of this section, and provided that the locations of ground stations providing such service are at least 300 miles from all locations using the channel block(s) for communication with 800 MHz airborne mobile stations in flight.

* * * * *

4. Section 22.1111 is amended by removing and reserving paragraph (b) and by revising paragraphs (a), (c), and (d) to read as follows:

§ 22.1111 Emission limitations.

* * * * *

(a) *All transmitters.* The power of any emission in each of the adjacent channels must be at least 30 decibels below the peak envelope power of the main emission and the power of any emission in any of the channels other than the one being used and the adjacent channels must be at least 50 decibels below the peak envelope power of the main emission. Additionally, for:

(1) *Airborne mobile stations.* The power of any emission in each of the adjacent channels must not exceed −30 dBm at any ground station receiver, assuming a 0 dBi receive antenna. The power of any emission in any of the channels other than the one being used and the adjacent channels must not exceed −148 dBm at any ground station receiver, assuming a 0 dBi receive antenna.

(2) *Ground stations.* The effective radiated power (ERP) of any emission outside of the frequency range allocated

	N. Latitude	W. Longitude	Channel Block
	35°03′05″	106°37′13″	10
	36°48′42″	107°53′48″	9
	36°27′29″	103°11′16″	5
	39°50′01″	75°09′21″	3
	40°46′21″	73°52′42″	1
	43°09′09″	75°07′50″	2
	40°36′05″	74°06′35″	9
	36°05′54″	79°56′42″	9
	34°16′10″	77°54′24″	3
	46°51′05″	102°47′35″	7
	40°04′38″	82°41′57″	1
	35°29′31″	95°18′25″	4
	36°24′42″	99°28′50″	9
	44°38′24″	123°03′36″	5
	42°06′00″	121°38′00″	2
	45°35′45″	118°31′02″	7
	40°30′33″	80°13′27″	4
	40°11′30″	76°52′02″	8
	32°54′10″	80°01′20″	4
	45°27′21″	98°25′26″	6
	44°02′36″	103°03′36″	5
	36°26′04″	82°08′06″	7
	35°01′44″	89°56′15″	10
	36°08′44″	86°41′31″	3
	30°16′37″	97°49′34″	2
	32°50′19″	97°08′03″	1
	29°54′37″	95°24′39″	9
	33°37′06″	101°52′14″	7
	31°34′56″	102°54′16″	8
	37°50′21″	109°27′42″	7
	39°23′15″	112°30′44″	2
	37°45′19″	111°52′27″	5
	38°57′54″	110°13′40″	8
	40°39′11″	112°12′06″	1
	38°52′55″	77°06′16″	6
	47°26′06″	122°17′35″	4
	47°33′14″	117°43′35″	1
	36°19′47″	81°39′36″	2
	44°33′06″	89°25′27″	8
	43°03′37″	106°27′23″	9

1 is amended by
rving paragraph (b)
ragraphs (a), (c), and
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limitations.

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must be at least 50

decibels below the peak envelope power of the main emission. Additionally, for;

(1) *Airborne mobile stations.* The power of any emission in each of the adjacent channels must not exceed −30 dBm at any ground station receiver, assuming a 0 dBi receive antenna. The power of any emission in any of the channels other than the one being used and the adjacent channels must not exceed −148 dBm at any ground station receiver, assuming a 0 dBi receive antenna.

(2) *Ground stations.* The effective radiated power (ERP) of any emission outside of the frequency range allocated

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to this service (see § 22.1105) must not exceed −10 dBm. The ERP of any emission in each of the adjacent channels must not exceed +10 dBm. The ERP of any emission in any of the channels other than the one being used and the adjacent channels must not exceed −5 dBm.

(b) (reserved)

(c) If an emission on any frequency outside of the authorized bandwidth causes harmful interference, the Commission may require greater attenuation of that emission than required in paragraph (a) of this section.

(d) The provisions of § 22.106 of this part do not apply to 800 MHz air-ground systems. Instead, the provisions of paragraphs (a) and (c) of this section apply to systems of the 800 MHz Air-Ground Radiotelephone Service.

5. Section 22.1115 is amended by revising the section heading and paragraphs (a) and (d), and by adding new paragraph (e) to read as follows:

§ 22.1115 Automatic channel selection procedures.

* * * * *

(a) A communications channel is not available for use by a ground station if it is already in use by another ground station at the same location. Ground station equipment must automatically determine whether channels are in use by other ground stations at the same location, and may employ radio frequency signal monitoring to do so. For example, a communications channel may be determined to be in use if the received signal power on that channel at the ground station exceeds −115 dBm, assuming a 0 dB gain 895 MHz receive antenna, which corresponds to a field strength of approximately 19 dBu V/m. Ground stations may employ an alternative method of determining whether a communications channel is in use provided that such procedure is at least as reliable as radio frequency signal monitoring.

* * * * *

(d) A ground station may not transmit on a communications channel unless it has received the proper identification code. After a ground station has begun to transmit on a communications channel, that channel is not available to ground stations other than the one from which service has been requested until the call is terminated.

(e) A call is terminated by the ground station when either a hang-up signal is transmitted by the airborne mobile station, or the signal from the airborne mobile station on the communications channel is lost for a period of 15 continuous seconds. The hang-up signal is the on-off keying (50% duty cycle) of an unmodulated carrier over a period of one second with pulse duration of 5 milliseconds. However, if all 800 MHz air-ground licensees agree that an alternative hang-up signal and/or procedure would be more efficient or beneficial, such alternative hang-up signal and/or procedure may be used. The licensees must jointly give prior notification to the Commission if an alternative hang-up signal and/or procedure is used.

(6) Section 22.1117 is revised to read as follows:

§ 22.1117 Limitations on effective radiated power.

The effective radiated power (ERP) of airborne mobile station transmitters shall not exceed 30 watts. The ERP of ground station transmitters using the allotted channel blocks in § 22.1109 must not exceed 100 watts. The ERP of ground station transmitters operating pursuant to § 22.1109(a) must not exceed 1 watt.

(7) Section 22.1119 is revised to read as follows:

§ 22.1119 Assignment of control channels.

The Commission will select and assign exclusively one control channel to each air-ground licensee after receiving written notification that the licensee's system will begin providing service within one month.

(8) Section 22.1121 is added to read as follows:

§ 22.1121 Control channel transition period.

In converting its experimental air-ground system to one that conforms to the other rules of this section, the experimental licensee is authorized to use the lower 20 kHz of each channel block, which includes communications channels C–1, C–2, and C–3, for control channels until July 9, 1993. After that date communications channels C–1 and C–3 will be available to all air-ground licensees as communications channels and the experimental licensee is authorized to use a 3.2 kHz control channel located in communications channel C–2 of each channel block until September 9, 1996. After that date communications channel C–2 will be available to all air-ground licensees as a communications channel.

Federal Communications Commission.

Donna R. Searcy,
Secretary.

[FR Doc. 91–18914 Filed 8–8–91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF JUSTICE

48 CFR Part 2801

[Justice Acquisition Circular 91-2]

Amendment to the Justice Acquisition Regulations (JAR) Regarding Contracting Officers Technical Representatives

AGENCY: Office of the Procurement Executive, Justice Management Division, Justice.

ACTION: Final rule.

SUMMARY: Justice Acquisition Circular (JAC) 91–2 amends the JAR, 48 CFR Chapter 28, by revising subpart 2801.70 to add eligibility standards for individuals who will be designated as Contracting Officers Technical Representatives (COTRs) for departmental contracts.

EFFECTIVE DATE: August 9, 1991.

FOR FURTHER INFORMATION CONTACT: W.L. Vann, Procurement Executive, Justice Management Division (202) 514–6868.

SUPPLEMENTARY INFORMATION: The determination is hereby made that this amendment must be issued as a final rule. This amendment was not published for public comment because it does not have an effect beyond the internal operating procedures of the agency. The Director, Office of Management and Budget, by memorandum dated December 14, 1984, exempted agency procurement regulations from review under Executive Order 12291 except for selected areas. The exception applies to this rule. The Department of Justice certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601–612).

List of Subjects in 48 CFR Part 2801

Government procurement.

Harry H. Flickinger,
Assistant Attorney General for Administration.

For the reasons set out in the preamble, title 48, chapter 28 of the Code of Federal Regulations is amended as follows:

PART 2801—DEPARTMENT OF JUSTICE ACQUISITION REGULATIONS SYSTEM

1. The authority citation for part 2801 continues to read as follows:

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75 (j) and 28 CFR 0.76(j).

2. Part 2801 is amended by revising subpart 2801.70 to read as follows:

Subpart 2801.70—Contracting Officer's Technical Representative (COTR's)

Sec.
2801.7001-701 General.
2801.7001-702 Selection, Appointment, Limitation of Authority.
2801.7001-703 Performance Standards.

Subpart 2801.70—Contracting Officer's Technical Representative

2801.7001-701 General.

Contracting officers may appoint individuals selected by program offices to act as authorized representatives in the monitoring and administration of a contract. Such officials shall be designated as Contracting Officers' Technical Representatives (COTR's).

2801.7001-702 Selection, appointment, limitation of authority.

(a) *COTR Standards Program.* This subpart sets forth policies and procedures for establishing standards for COTR's in DOJ. The program sets forth minimum standards for individuals to be eligible for an appointment as a COTR.

(b) *Applicability.* The eligibility requirements of this subpart apply to all individuals who are designated by the contracting officer as COTR's.

(c) *Eligibility standards.* To be determined eligible for an appointment as a DOJ COTR, the following standards must be met:

(1) The candidate must attend and successfully complete a minimum of a 16-hour basic COTR course;

(2) The candidate must attend a minimum of 3 hours training specifically in procurement ethics, either through courses offered periodically by the Department, the bureaus, or a commercial vendor; and

(3) The candidate must sign the certification for procurement officials required by the recent Procurement Integrity Act.

(d) *Certification and appointment.* (1) In accordance with bureau procedures, the individual must provide the contracting activity with evidence of completion of the COTR course, procurement ethics training, and with the certification required by the Procurement Integrity Act. Upon determination that the required standards have been met, the Bureau Procurement Chief will issue a one-time Certificate of COTR Appointment, Form DOJ–539, to the individual. All contracting activities shall develop and maintain a listing of individuals who have met the Program standards and have been issued a Certificate of COTR Appointment.

(2) Once the COTR standards have been met and a Certificate of Appointment has been issued, an individual may be designated and appointed by a contracting officer to serve as a COTR for a particular contract. The individual shall be designated in the contract schedule as the COTR and shall be notified in writing by the contracting officer of the scope and limitations of the COTR's authority as it pertains to the particular contract the individual will administer.

(e) *Limitations.* Each appointment of a COTR made by the contracting officer shall clearly state that the representative is not an authorized contracting officer and does not have the authority under any circumstances to:

(1) Award, agree to award, or execute any contract, contract modification, notice of intent, or other form of binding agreement;

(2) Obligate, in any manner, the payment of money by the Government;

(3) Make a final decision on any contract matter which is subject to the clause at FAR 52.233–1, Disputes; or,

(4) Terminate, suspend, or otherwise interfere with the contractor's right to proceed, or direct any changes in the contractor's performance that are inconsistent with or materially change the contract specifications.

(f) *Termination.* Termination of the COTR's appointment shall be made in writing by the contracting officer and shall give the effective date of the termination. The contracting officer shall promptly modify the contract once a COTR termination notice has been issued. A termination notice is not required when the COTR's appointment terminates upon expiration of the contract.

(g) *Implementation schedule and waivers.* Effective one year from the incorporation of this Standards Program into the JAR, no individual may serve as a COTR on any contract without the requisite training and signed COTR certificate for the file. In the rare event there is an urgent requirement for a specific individual to serve as a COTR and the individual has not successfully completed the required training, the Procurement Executive may waive the training requirements and authorize the individual to perform the COTR duties, for a period of time not to exceed 120 days. The waiver may be granted in accordance with the following procedures:

(1) The request for a waiver must be submitted in writing by the Bureau Procurement Chief and contain a full description of the circumstances and rationale for the request;

(2) The individual must review and discuss with the cognizant contracting officer the OPE published "Procurement Information Guide for Contracting Officers' Technical Representatives (COTR)." When practicable, these discussions should be held face-to-face; and

(3) The individual agrees to attend the next scheduled COTR training course.

2801.7001-703 Performance standards.

Supervisors of COTR's are encouraged to include successful contract administration in performance standards for individuals with contract administration responsibility.

[FR Doc. 91–18841 Filed 8–8–91; 8:45 am]

BILLING CODE 4410-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1011 and 1151

[Ex Parte No. 395 (Sub-No. 2)]

RIN 3120-AB66

Revision of Feeder Railroad Development Rules

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission amends 49 CFR part 1151 to facilitate public participation in feeder railroad application proceedings under 49 U.S.C 10910. A Notice of Proposed Rulemaking was published on January 11, 1990 at 55 FR 1067. The feeder railroad procedures are modified to provide for Federal Register notice accepting an application as complete. Waiver procedures are added. Discovery procedures are clarified. The 140-day deadline for issuing a decision and obsolete provisions are removed. Also, the Commission will discontinue its policy of automatically rejecting feeder line applications when an abandonment proceeding involving the same track is pending, and instead, will decide whether to accept them on a case-by-case basis. To effect the modifications, appropriate delegations of authority to the Director of the Office of Proceedings to accept or reject applications and to grant waivers are adopted.

EFFECTIVE DATE: The amendments are effective on September 8, 1991.

FOR ADDITIONAL INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245 (TDD for hearing impaired: (202) 275–1721).

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INTERSTATE COMMERCE COMMISSION

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EFFECTIVE DATE: The amendments are effective on September 8, 1991.

FOR ADDITIONAL INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245 (TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 275-4357. (Assistance for the hearing impaired is available through TDD services (202) 275-1721.)

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

This action will not have a significant effect on a substantial number of small entities.

List of Subjects

49 CFR Part 1011

Administrative practice and procedure, Authority delegations, Organizations and functions.

49 CFR Part 1151

Administrative practice and procedure, Railroads.

Authority: 5 U.S.C. 553 and 49 U.S.C. 10301, 10305, 10321 and 10910.

Decided: July 24, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald. Chairman Philbin concurred in part and dissented in part with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, parts 1011 and 1151 of the Code of Federal Regulations are amended as follows:

PART 1011—COMMISSION ORGANIZATION; DELEGATIONS OF AUTHORITY

1. The authority citation for part 1011 continues to read as follows:

Authority: 49 U.S.C. 10301, 10302, 10304, 10305, 10321; 31 U.S.C. 9701; 5 U.S.C. 553.

2. Section 1011.2 is amended by removing the word "and" at the end of paragraph (a)(8)(iv); changing the period at the end of paragraph (a)(8)(v) to a semicolon and adding the word "and"; and adding a new paragraph (a)(8)(vi) to read as follows:

§ 1011.2 The Commission.

(a) * * *

(8) * * *

(vi) In proceedings under the Feeder Railroad Development Program under 49 CFR part 1151:

(A) Whether to accept or reject initial applications under § 1151.2(b); competing applications under § 1151.2(c); and incomplete initial or competing applications under § 1151.2(d).

(B) Whether to grant waivers from specific provisions of 49 CFR part 1151.

* * * * *

3. Section 1011.8 is amended by adding a new paragraph (c)(9) to read as follows:

§ 1011.8 Delegations of authority by the Interstate Commerce Commission to specific bureaus and offices of the Commission.

* * * * *

(c) * * *

(9) In proceedings under the Feeder Railroad Development Program under 49 CFR part 1151:

(i) Whether to accept or reject primary applications under § 1151.2(b); competing applications under § 1151.2(c); and incomplete applications under § 1151.2(d).

(ii) Whether to grant waivers from specific provisions of 49 CFR part 1151.

PART 1151—FEEDER RAILROAD DEVELOPMENT PROGRAM

4. The authority citation for part 1151 continues to read as follows:

Authority: 5 U.S.C. 553; 49 U.S.C. 10910.

§ 1151.1 [Amended]

5. The last sentence in § 1151.1 is removed.

6. Section 1151.2 is revised to read as follows:

§ 1151.2 Procedures.

(a) Service. When an application is filed, applicant must concurrently serve a copy of the application by first class mail on:

(1) The owning railroad;

(2) All rail patrons who originated and/or received traffic on the line during the 12-month period preceding the month in which the application is filed;

(3) The designated State agency in the State(s) where the property is located;

(4) County governments where the line is located;

(5) The National Railroad Passenger Corporation (Amtrak) (if Amtrak operates on the line);

(6) And the national offices of rail unions with employees on the line.

(b) Acceptance or rejection of an application.

(1) The Commission, through the Director of the Office of Proceedings, will accept a complete application no later than 30 days after the application is filed by publishing a notice in the **Federal Register**. An application is complete if it has been properly served and contains substantially all information required by § 1151.3, except as modified by advance waiver. The notice will also announce the schedule for filing of competing applications and responses.

(2) The Commission, through the Director of the Office of Proceedings, will reject an incomplete application by serving a decision no later than 30 days after the application is filed. The decision will explain specifically why the application was incomplete. A revised application may be submitted, incorporating portions of the prior application by reference.

(c) Competing applications.

(1) Unless otherwise scheduled in the notice, competing applications by other parties seeking to acquire all or any portion of the line sought in the initial application are due within 30 days after the initial application is accepted.

(2) The Commission, through the Director of the Office of Proceedings, will issue a decision accepting or rejecting a competing application no later than 15 days after it is filed. A competing application will be rejected if it does not substantially contain the information required by § 1151.3, except as modified by advance waiver.

(d) Incomplete applications.

(1) If an applicant seeking to file an initial or competing application is unable to obtain required information that is primarily or exclusively within the personal knowledge of the owning carrier, the applicant may file an incomplete application if it files at the same time a request for discovery under 49 CFR part 1114 to obtain the needed information from the owning carrier.

(2) The Commission, through the Director of the Office of Proceedings, will by decision conditionally accept incomplete initial or competing applications, if the Director determines that the discovery sought is necessary for the application and primarily or exclusively within the knowledge of the owning carrier.

(3) When the information sought through discovery has been filed for an initial application, **Federal Register** notice under paragraph (b) of this section will be published.

(4) When the information sought through discovery has been filed for a competing application, a decision will be issued under paragraph (c) of this section.

(e) Comments. Unless otherwise scheduled in the notice, verified statements and comments addressing both the initial and competing applications must be filed within 60 days after the initial application is accepted.

(f) Replies. Unless otherwise scheduled in the notice, verified replies by applicants and other interested parties must be filed within 80 days after the initial application is accepted.

(g) Publication. If the Commission finds that the public convenience and necessity require or permit sale of the line, the Commission shall concurrently publish this finding in the **Federal Register**.

(h) Acceptance or rejection. If the Commission concludes that sale of the line should be required, the applicant(s) must file a notice with the Commission and the owning railroad accepting or rejecting the Commission's determination. The notice must be filed within 10 days of the service date of the decision.

(i) Selection. If two or more applicants timely file notices accepting the Commission's determination, the owning railroad must select the applicant to which it will sell the line and file notice of its selection with the Commission and serve a copy on the applicants within 15 days of the service date of the Commission decision.

(j) Waiver. Prior to filing an initial or competing application, an applicant may file a petition to waive or clarify specific portions of part 1151. A decision by the Director of the Office of Proceedings granting or denying a petition for waiver or clarification will be issued within 30 days of the date the petition is filed. Appeals from the Director's decision will be decided by the entire Commission.

(k) Extension. Extensions of filing dates may be granted for good cause.

7. In § 1151.3, paragraphs (a)(17) and (b) are removed; paragraph (c) is redesignated as paragraph (b) and paragraphs (a) introductory text, (a)(14), (a)(16), and newly redesignated paragraph (b) are revised to read as follows:

§ 1151.3 Contents of application.

(a) The initial application and all competing applications must include the following information in the form of verified statements:

* * * * *

(14) If applicant requests Commission prescribed joint rates and divisions in the feeder line proceeding, a description of any joint rate and division agreement that must be established. The description must contain the following information:

(i) The railroad(s) involved;

(ii) the estimated revenues that will result from the division(s);

(iii) The total costs of operating the line segment purchased (including any trackage rights fees).

(iv) Information sufficient to allow the Commission to determine that the line sought to be acquired carried less than 3 million gross ton-miles of traffic per mile in the preceding calendar year [1]; and

(v) Any other pertinent information.

* * * * *

(16) A certificate stating that the service requirements of § 1151.2(a) have been met.

(b) Applicant must make copies of the application available to interested parties upon request.

§ 1151.5 [Removed]

8. Section 1151.5 is removed.

[FR Doc. 91-18978 Filed 8-8-91; 8:45 am]

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[1] Gross ton-miles are calculated by adding the ton-miles of the cargo and the ton-miles related to the tare (empty) weight of the freight cars used to transport the cargo in the loaded movement. In calculating the gross ton-miles, only those related to the portion of the segment purchased shall be included.

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(iv) Information sufficient to allow the Commission to determine that the line sought to be acquired carried less than 3 million gross ton-miles of traffic per mile in the preceding calendar year [1]; and

(v) Any other pertinent information.

* * * * *

(16) A certificate stating that the service requirements of § 1151.2(a) have been met.

(b) Applicant must make copies of the application available to interested parties upon request.

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Proposed Rules

Federal Register
Vol. 56, No. 154
Friday, August 9, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 917

[Docket No. FV-91-415PR]

Proposed Expenses and Assessment Rate for Marketing Order Covering Fresh Pears Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate for the 1991–92 fiscal year (March 1–February 29) under Marketing Order No 917. The expenditures and assessment rate are needed by the Pear Commodity Committee (committee) established under the order to pay marketing order expenses and collect assessments from handlers to pay those expenses. The proposed action would enable the committee to perform its duties and the order to operate.

DATES: Comments must be received by August 19, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted. Copies of material received will be made available for public inspection in the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: George Kelhart, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone: (202) 475–3919).

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Marketing Order No. 917 (7 CFR part 917) regulating the handling of fresh pears, plums, and peaches grown in California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 45 handlers of California pears subject to regulation under Marketing Order No. 917 and about 300 producers of pears in California. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those with annual receipts of less than $3,500,000 and small agricultural producers have been defined as those having annual receipts of less than $500,000. The majority of these handlers and producers may be classified as small entities.

Marketing orders, administered by the Department, require that assessment rates for a particular fiscal year shall apply to all assessable fresh fruit handled from the beginning of such year. An annual budget of expenses is prepared by the committee and submitted to the Department for approval. The members of the committee are handlers and producers of the regulated commodities. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local areas, and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by the number of packages of fresh fruit expected to be shipped under the order. Because the rate is applied to actual shipments, it must be established at a level that will produce sufficient income to pay the committee's expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committee will have funds to pay its expenses.

The Pear Commodity Committee met June 25, 1991, and unanimously recommended 1991–92 marketing order expenditures of $1,298,824 and an assessment of $0.25 per 36-pound package or equivalent. In comparison, 1990–91 fiscal year expenditures were $1,126,800 and the assessment rate was $0.25 per 36-pound package or equivalent. Major committee expenditures projected for 1991–92, with actual 1990–91 expenditures in parenthesis, are: Salaries and employee benefits, $88,279 ($97,752); market development and promotion, $1,104,501 ($952,696); and uncollected assessment accounts, $5,000 ($9,256).

The committee estimates available 1991–92 marketing order income at $1,323,006. This amount is based on assessments totaling $990,000 (3,960,000 packages of assessable pears at $.025 per 36-pound package), less $5,000 in anticipated uncollected assessments. Assessment income would be supplemented with interest income estimated at $4,000, income from export development and research subsidies from State and Federal agencies estimated at $164,000, and a $75,000 grant from the Program Committee of the Pear Zone for fresh pear promotion.

In addition, the committee had $90,006 in reserves as of March 1, 1991, an amount well within the maximum authorized. Total projected income and available reserves will be sufficient to cover all anticipated 1991–92 expenditures.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 10 days is appropriate because establishing the level of expenses and assessment rate for this program should be expedited. The committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 917

Marketing agreements, Pears, Plums and peaches, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 917 be amended as follows:

PART 917—FRESH PEARS, PLUMS AND PEACHES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 917 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 917.254 is added to read as follows:

§ 917.254 Expenses and assessment rate.

Expenses of $1,289,824 by the Pear Commodity Committee are authorized, and an assessment of $0.25 per 36-pound package or equivalent of assessable pears, is established for the fiscal year ending February 29, 1992. Unexpended funds from the 1990–91 fiscal year may be carried over as a reserve.

Dated: August 5, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–18958 Filed 8–8–91; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 245

[INS No. 1440–91]

Adjustment of Status to That of Person Admitted for Permanent Residence

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule with request for comments.

SUMMARY: This proposed rulemaking amends those regulations relating to adjustment of status from a temporary (or nonimmigrant) classification to a permanent (or immigrant) one. These changes are proposed in order to facilitate implementation of the Immigration Act of 1990 (IMMACT), Public Law 101–649, November 29, 1990, and to eliminate provisions relating to sections of law under which aliens may no longer apply for benefits. The proposed rulemaking would simplify the adjustment of status regulations and improve the efficiency of the adjudications program.

DATES: Written comments must be received on or before September 9, 1991.

ADDRESSES: Written comments should be submitted in triplicate to the Record Systems Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, room 5304, 425 I Street NW., Washington, DC 20536. Include INS number 1440–91 on the mailing envelope to ensure proper and timely handling.

FOR FURTHER INFORMATION CONTACT: Michael L. Shaul, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street NW., room 7122, Washington, DC 20536, telephone (202) 514–3946.

SUPPLEMENTARY INFORMATION: 8 CFR part 245 sets forth eligibility, documentation and other requirements for adjustment of status from a nonimmigrant to an immigrant under a number of provisions in the Immigration and Nationality Act ("the Act") and related laws. A number of those related laws only allowed applicants to file for benefits during a limited period of time which has now expired. Such former provisions of law include the proviso to the former section 203(a)(7) of the Act (which was replaced by the Refugee Act of 1980), the Nonimmigrant Alien Adjustment Act of 1982 (which required the applicant to file for benefits by September 30, 1983), the Indochina Refugee Adjustment Act of 1977 (which required the applicant to file for benefits by October 28, 1983), and the Cuban-Haitian Adjustment Act which required the applicant to file for benefits by November 6, 1988). Since all of these provisions have now expired, references to them are being eliminated from the regulations.

Secondly, the rulemaking will eliminate the provision allowing the simultaneous filing of a petition for employment-based immigrant visa classification and an application for adjustment of status. Under this proposed rulemaking, an application for adjustment based on a petition to classify an alien under the provisions of section 203(b) of the Act cannot be filed until that petition has been approved. This allows the Service to examine all such petitions through the four Service Centers where we are able to maintain higher standards of uniformity and shorter processing times. With the implementation of the multitude of changes in the law arising out of IMMACT, the need to maintain the higher standards and shorter processing times is more acute than ever. The resulting increase in efficiency of operations will benefit both the Service and the public.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant economic impact on a substantial number of small entities. This is not a major rule as defined in section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

The information collection requirement contained in this rule has been cleared by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The clearance number for this collection is contained in 8 CFR 299.5.

List of Subjects in 8 CFR Part 245

Aliens, Employment, Health care, Immigration, Immigration and Nationality Act, Passports and visas.

Accordingly, part 245 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

1. The authority citation for part 245 continues to read as follows:

F JUSTICE

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FORMATION: 8 CFR
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Secondly, the rulemaking will eliminate the provision allowing the simultaneous filing of a petition for employment-based immigrant visa classification and an application for adjustment of status. Under this proposed rulemaking, an application for adjustment based on a petition to classify an alien under the provisions of section 203(b) of the Act cannot be filed until that petition has been approved. This allows the Service to examine all such petitions through the four Service Centers where we are able to maintain higher standards of uniformity and shorter processing times. With the implementation of the multitude of changes in the law arising out of IMMACT, the need to maintain the higher standards and shorter processing times is more acute than ever. The resulting increase in efficiency of operations will benefit both the Service and the public.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant economic impact on a substantial number of small entities. This is not a major rule as defined in section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

The information collection requirement contained in this rule has been cleared by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The clearance number for this collection is contained in 8 CFR 299.5.

List of Subjects in 8 CFR Part 245

Aliens, Employment, Health care, Immigration, Immigration and Nationality Act, Passports and visas.

Accordingly, part 245 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

1. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1154, 1182, 1186A, 1255 and 1257; 8 CFR part 2.

§ 245.1 [Amended]

2. Section 245.1 is amended in paragraph (b)(8) by removing the word "Any" and adding in its place the words "Except for an alien who is applying for residence under the provisions of section 133 of the Immigration Act of 1990, any".

§ 245.1 [Amended]

3. Section 245.1 is amended in paragraph (b)(10) by changing the reference to "203(a)(1) through 203(a)(6)" to "203(a) or 203(b)".

§ 245.1 [Amended]

4. Section 245.1 is amended in paragraph (b)(12) by adding "or 216A" after the citation "section 216".

5. Section 245.1 is amended by:

a. Revising paragraph (d)(1);

b. Removing paragraph (d)(2);

c. Redesignating paragraph (d)(3) as paragraph (d)(2);

d. Revising paragraph (f);

e. Removing paragraph (g);

f. Redesignating paragraph (h) as paragraph (g) and revising it to read as follows:

§ 245.1 Eligibility.

* * * * *

(d) * * *

(1) *Alien medical graduates.* Any alien who is a medical graduate for special immigrant classification under section 101(a)(27)(H) of the Act and is the beneficiary of an approved petition as required under section 204(a)(1)(E)(i) of the Act is eligible for adjustment of status. An accompanying spouse and children also may apply for adjustment of status under this section. Temporary absences from the United States for 30 days or less do not interrupt the continuous presence requirement during which the applicant was practicing or studying medicine. Temporary absence authorized under the Service's advance parole procedures will not be considered interruptive of continuous presence when the alien applies for adjustment of status.

* * * * *

(f) *Availability of immigrant visas under section 245 and priority dates*—(1) *Availability of immigrant visas under section 245.* An alien is ineligible for the benefits of section 245 of the Act unless an immigrant visa is immediately available to him or her at the time the application is filed. If the applicant is a preference alien, the current Department of State Visa Office Bulletin on Availability of Immigrant Visa Numbers will be consulted to determine whether an immigrant visa is immediately available. An immigrant visa is considered available for accepting and processing the application Form I–485 if the preference category applicant has priority date on the waiting list which is no later than the date shown in the Bulletin (or the Bulletin shows that numbers for visa applicants in his or her category are current), and (if the applicant is seeking status pursuant to section 203(b) of the Act) the applicant presents evidence that the appropriate petition filed in his or her behalf has been approved. An immigrant visa is also considered immediately available if the applicant establishes eligibility for the benefits of Public Law 101–238. Information as to the immediate availability of an immigrant visa may be obtained at any Service office.

(2) *Priority dates.* The priority date of an applicant who is seeking the allotment of an immigrant visa number under one of the preference classes specified in sections 203(a) or 203(b) of the Act by virtue of a valid visa petition approved in his or her behalf shall be fixed by the date on which such approved was filed.

(g) *Conditional basis of status.* Whenever an alien spouse (as defined in section 216(g)(1) of the Act), an alien son or daughter (as defined in section 216(g)(2) of the Act), an alien entrepreneur (as defined in section 216A(f)(1) of the Act), or an alien spouse or child (as defined in section 216A(f)(2) of the Act) is granted adjustment of status to that of lawful permanent residence, the alien shall be considered to have obtained such status on a conditional basis subject to the provisions of section 216 or 216A of the Act, as appropriate.

§ 245.2 [Amended]

6. Section 245.2 is amended in paragraph (a)(1) by removing the phrase "or section 101 or 104 of the Act of October 28, 1977," in the first and second sentences.

7. Section 245.2 is amended by removing paragraphs (a)(2)(i) and (a)(2)(iii), by redesignating paragraph (a)(2)(ii) as paragraph (a)(2)(i), by redesignating paragraph (a)(2)(iv) as paragraph (a)(2)(ii), and by revising the newly redesignated paragraph (a)(2)(i) to read as follows:

§ 245.2 Application.

(a) * * *

(2) * * *

(i) *Under section 245.* Before an application for adjustment of status under section 245 of the Act may be considered properly filed, a visa must be immediately available. If a visa would be immediately available upon approval of a visa petition, the application will not be considered properly filed unless such petition has first been approved. If an immediate relative petition filed for classification under section 201(b)(2)(A)(i) of the Act or a preference petition filed for classification under section 203(a) of the Act is submitted simultaneously with the adjustment application, the adjustment application shall be retained for processing only if approval of the visa petition would make a visa immediately available at the time of filing the adjustment application. If the visa petition is subsequently approved, the date of filing the adjustment application shall be deemed to be the date on which the accompanying petition was filed.

* * * * *

8. Section 245.2 is amended in paragraph (a)(3)(i) by removing the phrase "the Act of October 28, 1977," in the first sentence, by removing paragraph (a)(3)(iii), and by redesignating paragraph (a)(3)(iv) as paragraph (a)(3)(iii).

§ 245.2 [Amended]

9. Section 245.2 is amended by removing paragraph (a)(4)(iii) and redesignating paragraph (a)(4)(iv) as paragraph (a)(4)(iii).

§ 245.2 [Amended]

10. Section 245.2 is amended by removing paragraph (a)(5)(iii) and redesignating paragraph (a)(5)(iv) as paragraph (a)(5)(iii).

§ 245.2 [Amended]

11. Section 245.2 is amended by removing paragraphs (a) and (e) and by redesignating paragraphs (c) and (d) as paragraphs (b) and (c), repectively.

§ 245.4 [Removed]

12. Section 245.4 is removed.

§ 245.5 [Removed]

13. Section 245.5 is removed.

§ 245.6 [Removed]

14. Section 245.6 is removed.

§ 245.7 [Redesignated as § 245.4]

15. Section 245.7 is redesignated as § 245.4.

§ 245.8 [Redesignated as § 245.5 and Amended]

16. Section 245.8 is redesignated as § 245.5 and revised to read as follows:

§ 245.5 Medical examination.

Pursuant to section 234 of the Act, an applicant for adjustment of status shall be required to have a medical examination by a designated civil surgeon, whose report setting forth the findings of the mental and physical condition of the applicant shall be incorporated into the record. A medical examination shall not be required of an applicant for adjustment of status who entered the United States as a nonimmigrant fiance or fiancee of a United States citizen as defined in section 101(a)(15)(K) of the Act pursuant to § 214.2(k) of this chapter if the applicant was medically examined prior to, and as a condition of, the issuance of the nonimmigrant visa; provided that the medical examination must have occurred not more than one year prior to the date of application for adjustment of status. Any applicant certified under paragraphs (1)(A)(ii) or (1)(A)(iii) of section 212(a) of the Act may appeal to a Board of Medical Officers of the U.S. Public Health Service as provided in section 234 of the Act and part 235 of this chapter.

§ 245.9 [Redesignated as § 245.6 and Amended]

17. Section 245.9 is redesignated as § 245.6 and amended by changing the term "is filed" to "was filed" in the second sentence.

§ 245.10 [Redesignated as § 245.7]

18. Section 245.10 is redesignated as § 245.7.

Dated: July 2, 1991.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 91-18778 Filed 8-8-91; 8:45 am]

BILLING CODE 4410-10-M

INTER-AMERICAN FOUNDATION

22 CFR Part 1007

Claims Collection; Salary Offset

AGENCY: Inter-American Foundation.

ACTION: Proposed Rule.

SUMMARY: These regulations implement the collection Procedures of the Debt Collection Act of 1982, Public Law 97-365, codified in 5 U.S.C. 5514, which authorize the federal government to collect debts owed by a federal employee to the United States through salary offset.

DATES: Comments must be received on or before September 9, 1991.

FOR FURTHER INFORMATION CONTACT: Adolfo A. Franco, Deputy General Counsel, 1515 Wilson Boulevard, Rosslyn, VA 22209, (703) 841-3894.

SUPPLEMENTARY INFORMATION: Under the Debt Collection Act of 1982, when the head of a federal agency determines that an employee of an agency is indebted to the United States or is notified by a head of another federal agency that an agency employee is indebted to the United States, the employee's debt may be offset against his or her salary. Certain due process rights must be afforded to an employee before salary offset deductions begin. As is required by the Debt Collection Act of 1982, this regulation is consistent with salary offset regulations issued by the Office of Personnel Management on July 3, 1984, 40 FR 27470, codified in 5 CFR part 550, subpart K.

Paperwork Reduction Act

Under section 3518 of the Paperwork Reduction Act of 1980, 5 CFR 1320.3(c), the information collection provisions contained in these regulations are not subject to review and approval by the Office of Management and Budget.

Executive Order 12291

This rule has been reviewed and determined not to be a "major rule" as defined in Executive Order 12291 dated February 17, 1981, because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) A major increase in costs or prices for consumers, individuals, industries, federal, state, or local government agencies, or geographic regions; or (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

This rule applies only to individual federal employees. It will have no "significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Public Law 96-354, 5 U.S.C. 805 (b). Accordingly, no regulatory flexibility analysis is required.

List of Subjects in 22 CFR Part 1007

Administrative Offset, Administrative practice and procedure, Claims, Debt collection, Government employees, and Wages.

For the reasons set out in the Preamble Chapter X of title 22 of the Code of Federal Regulations is amended by adding part 1007 to read as follows:

PART 1007—SALARY OFFSET

Sec.
1007.1 Purpose and scope.
1007.2 Definitions.
1007.3 Applicability.
1007.4 Notice requirements.
1007.5 Hearing.
1007.6 Written decision.
1007.7 Coordinating offset with another Federal Agency.
1007.8 Procedures for salary offset.
1007.9 Refunds.
1007.10 Statute of limitations.
1007.11 Non-waiver of rights.
1007.12 Interest, penalties, and administrative costs.

Authority: 5 U.S.C. 5514; E.O. 12107, 3 CFR, 1978 Comp., p. 264; 5 CFR part 550, subpart K, and 22 U.S.C. 290f(e)(11).

§ 1007.1 Purpose and scope.

(a) This regulation provides procedures for the collection by administrative offset of a federal employee's salary without his/her consent to satisfy certain debts owed to the federal government. These regulations apply to all federal employees who owe debts to the Inter-American Foundation (IAF) and to current employees of the Inter-American Foundation who owe debts to other federal agencies. This regulation does not apply when the employee consents to recovery from his/her current pay account.

(b) This regulation does not apply to debts or claims arising under:

(1) The Internal Revenue Code of 1954, as amended, 26 U.S.C. 1 *et seq.;*

(2) The Social Security Act, 42 U.S.C. 301 *et seq.;*

(3) The tariff laws of the United States; or

(4) Any case where a collection of a debt by salary offset is explicitly provided for or prohibited by another statute.

(c) This regulation does not apply to any adjustment to pay arising out of an employee's selection of coverage or a change in coverage under a federal benefits program requiring periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less.

(d) This regulation does not preclude the compromise, suspension, or termination of collection action where appropriate under the standards implementing the Federal Claims Collection Act, 31 U.S.C. 3711 *et seq.*, 4 CFR parts 101 through 105, 45 CFR part 1177.

(e) This regulation does not preclude an employee from requesting waiver of an overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774 or 32 U.S.C. 716 or in any way questioning the amount or validity of the debt by submitting a subsequent claim to the General Accounting Office. This regulation does not Preclude an

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(e) This regulation does not preclude an employee from requesting waiver of an overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774 or 32 U.S.C. 716 or in any way questioning the amount or validity of the debt by submitting a subsequent claim to the General Accounting Office. This regulation does not Preclude an

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employee from requesting a waiver pursuant to other statutory provisions applicable to the particular debt being collected.

(f) Matters not addressed in these regulations should be reviewed in accordance with the Federal Claims Collection Standards at 4 CFR 101.1 *et seq.*

§ 1007.2 Definitions.

For the purposes of the part, the following definitions will apply:

Agency means an executive agency as defined at 5 U.S.C. 105 including the U.S. Postal Service, the U.S. Postal Commission, a military department as defined at 5 U.S.C. 102, an agency or court in the judicial branch, an agency of the legislative branch including the U.S. Senate and House of Representatives and other independent establishments that are entities of the Federal government.

Creditor Agency means the agency to which the debt is owed.

Debt means an amount owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interests, fines, forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

Disposable pay means the amount that remains from an employee's federal pay after the required deductions for social security, federal, state or local income tax, health insurance premiums, retirement contributions, life insurance premiums, federal employment taxes, and any other deductions that are required to be withheld by law.

Hearing official means an individual responsible for conducting any hearing with respect to the existence or amount of a debt claimed and who renders a decision on the basis of such hearing. A hearing official may not be under the supervision or control of the President of the Inter-American Foundation.

Paying Agency means the agency that employs the individual who owes the debt and authorizes the payment of his/her current pay.

President means the President of the Inter-American Foundation or the President's designee.

Salary offset means an administrative offset to collect a debt pursuant to 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his/her consent.

§ 1007.3 Applicability.

(a) These regulations are to be followed when:

(1) The Inter-American Foundation is owed a debt by an individual currently employed by another federal agency;

(2) The Inter-American Foundation is owed a debt by an individual who is a current employee of the Inter-American Foundation; or

(3) The Inter-American Foundation employs an individual who owes a debt to another federal agency.

§ 1007.4 Notice requirements.

(a) Deductions shall not be made unless the employee is provided with written notice, signed by the President, of the debt at least 30 days before salary offset commences.

(b) The written notice shall contain:

(1) A statement that the debt is owed and an explanation of its nature and amount;

(2) The agency's intention to collect the debt by deducting from the employee's current disposable pay account;

(3) The amount, frequency, proposed beginning date, and duration of the intended deduction(s);

(4) An explanation of interest, penalties, and administrative charges, including a statement that such charges will be assessed unless excused in accordance with the Federal Claims Collections Standards at 4 CFR 101.1 *et seq.;*

(5) The employee's right to inspect, request, and receive a copy of government records relating to the debt;

(6) The opportunity to establish a written schedule for the voluntary repayment of the debt;

(7) The right to a hearing conducted by an impartial hearing official;

(8) The methods and time period for petitioning for hearings;

(9) A statement that the timely filing of a petition for a hearing will stay the commencement of collection proceedings;

(10) A statement that a final decision on the hearing will be issued not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings;

(11) A statement that knowingly false or frivolous statements, representations, or evidence may subject the employee to appropriate disciplinary procedures;

(12) A statement of other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(13) Unless there are contractual or statutory provisions to the contrary, a statement that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.

§ 1007.5 Hearing.

(a) *Request for hearing.* (1) An employee must file a petition for a hearing in accordance with the instructions outlined in the agency's notice to offset.

(2) A hearing may be requested by filing a written petition addressed to the President of the Inter-American Foundation stating why the employee disputes the existence or amount of the debt. The petition for a hearing must be received by the President no later than fifteen (15) calendar days after the date of the notice to offset unless the employee can show good cause for failing to meet the deadline date.

(b) *Hearing procedures.* (1) The hearing will be presided over by an impartial hearing official.

(2) The hearing shall conform to procedures contained in the Federal Claims Collection Standards, 4 CFR 102.3(c). The burden shall be on the employee to demonstrate that the existence or the amount of the debt is in error.

§ 1007.6 Written decision.

(a) The hearing official shall issue a written opinion no later than 60 days after the hearing.

(b) The written opinion will include: a statement of the facts presented to demonstrate the nature and origin of the alleged debt; the hearing official's analysis, findings and conclusions; the amount and validity of the debt, and the repayment schedule.

§ 1007.7 Coordinating offset with another Federal agency.

(a) *The Inter-American Foundation as the creditor agency.* (1) When the President determines that an employee of another federal agency owes a delinquent debt to the Inter-American Foundation, the President shall as appropriate:

(i) Arrange for a hearing upon the proper petitioning by the employee;

(ii) Certify to the paying agency in writing that the employee owes the debt, the amount and basis of the debt, the date on which payment is due, the date the Government's right to collect the debt accrued, and that Foundation regulations for salary offset have been approved by the Office of Personnel Management;

(iii) If collection must be made in installments, the President must advise the paying agency of the amount or percentage of disposable pay to be collected in each installment;

(iv) Advise the paying agency of the actions taken under 5 U.S.C. 5514(b) and provide the dates on which action was taken unless the employee has consented to salary offset in writing or signed a statement acknowledging receipt of procedures required by law. The written consent or acknowledgment must be sent to the paying agency;

(v) If the employee is in the process of separating, the Foundation must submit its debt claim to the paying agency as provided in this part. The paying agency must certify any amounts already collected, notify the employee, and send a copy of the certification and notice of the employee's separation to the Inter-American Foundation. If the paying agency is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund or similar payments, it must certify to the agency responsible for making such payments the amount of the debt and that the provisions of 5 CFR 550.1108 have been followed; and

(vi) If the employee has already separated and all the payments due from the paying agency have been paid, the President may request unless otherwise prohibited, that money payable to the employee from the Civil Service Retirement and Disability Fund or other similar funds be collected by administrative offset.

(b) *The Foundation as the paying agency.* (1) Upon receipt of a properly certified debt claim from another agency, deductions will be scheduled to begin at the next established pay interval. The employee must receive written notice that the Inter-American Foundation has received a certified debt claim from the creditor agency, the amount of the debt, the date salary offset will begin, and the amount of the deduction(s). The Inter-American Foundation shall not review the merits of the creditor agency's determination of the validity or the amount of the certified claim.

(2) If the employee transfers to another agency after the creditor agency has submitted its debt claim to the Inter-American Foundation and before the debt is collected completely, the Inter-American Foundation must certify the total amount collected. One copy of the certification must be furnished to the employee. A copy must be furnished to the creditor agency with notice of the employee's transfer.

§ 1007.8 Procedures for salary offset.

(a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in the President's notice of intention to offset as provided in § 1007.4. Debts will be collected in one lump sum where possible. If the employee is financially unable to pay in one lump sum, collection must be made in installments.

(b) Debts will be collected by deduction at officially established pay intervals from an employee's current pay account unless alternative arrangements for repayment are made.

(c) Installment deductions will be made over a period not greater than the anticipated period of employment. The size of installment deductions must bear a reasonable relationship to the size of the debt and the employee's ability to pay. The deduction for the pay interval for any period must not exceed 15% of disposable pay unless the employee has agreed in writing to a deduction of a greater amount.

(d) Unliquidated debts may be offset against any financial payment due to a separated employee including but not limited to final salary or leave payments in accordance with 31 U.S.C. 3716.

§ 1007.9 Refunds.

(a) The Inter-American Foundation will refund promptly any amounts deducted to satisfy debts owed to the IAF when the debt is waived, found not owed to the IAF, or when directed by an administrative or judicial order.

(b) The creditor agency will promptly return any amounts deducted by IAF to satisfy debts owed to the creditor agency when the debt is waived, found not owed, or when directed by an administrative or judicial order.

(c) Unless required by law, refunds under this subsection shall not bear interest.

§ 1007.10 Statute of limitations.

If a debt has been outstanding for more than 10 years after the agency's right to collect the debt first accrued, the agency may not collect by salary offset unless facts material to the Government's right to collect were not known and could not reasonably have been known by the official or officials who were charged with the responsibility for discovery and collection of such debts.

§ 1007.11 Non-waiver of rights.

An employee's involuntary payment of all or any part of a debt collected under these regulations will not be construed as a waiver of any rights that employee may have under 5 U.S.C. 5514 or any other provision of contract or law unless there are statutes or contract(s) to the contrary.

§ 1007.12 Interest, penalties, and administrative costs.

Charges may be assessed for interest, penalties, and administrative costs in accordance with the Federal Claims Collection Standards, 4 CFR 102.13.

Dated: August 2, 1991.

Adolfo A. Franco,

Acting General Counsel, Inter-American Foundation.

[FR Doc. 91-18820 Filed 8-8-91; 8:45 am]

BILLING CODE 7025-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Regulatory Program Amendment; Archaeological and Historic Preservation

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt of a proposed amendment submitted by Indiana as a modification to the State's regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment (Program Amendment Number 91-8) submitted consists of proposed changes to the Indiana Surface Mining rules concerning archaeological and historic preservation. The amendment is intended to provide rules to allow the director to implement the archaeological and historic preservation requirements contained in Public Law (Pub. L.) 108-1988 as amended

This notice sets forth the times and locations that the Indiana program and the proposed amendment to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed for a public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on September 9, 1991; if requested, a public hearing on the proposed amendment is scheduled for 1 p.m. on September 3, 1991; and requests to present oral testimony at the hearing must be

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Dated: August 2, 1991.

Adolfo A. Franco,

Acting General Counsel, Inter-American Foundation.

[FR Doc. 91–18820 Filed 8–8–91; 8:45 am]

BILLING CODE 7025-01-M

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DATES: Written comments must be received on or before 4 p.m. on September 9, 1991; if requested, a public hearing on the proposed amendment is scheduled for 1 p.m. on September 3, 1991; and requests to present oral testimony at the hearing must be

received on or before 4 p.m. on August 26, 1991.

ADDRESSES: Written comments and requests to testify at the hearing should be directed to Mr. Richard D. Rieke, Director, Indianapolis Field Office, at the address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Indiana program, the amendment, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for public review at the following locations, during normal business hours, Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204. Telephone (317)226–6166.

Indiana Department of Natural Resources, 402 West Washington Street, room 295, Indianpolis, IN 46204. Telephone (317)232–1547.

Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSM Indianapolis Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Reike, Director, telephone (317) 226–6166; (FTS) 331–6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 Federal Register (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Discussion of the Proposed Amendments

By an undated letter received by the OSM on July 10, 1991 (Administrative Record No. IND–1902), the Indiana Department of Natural Resources (IDNR) submitted a proposed amendment to the Indiana program at Indiana Administrative Code (IAC) 310 IAC 12–0.5, 12–2, and 12–3. The proposed amendment is intended to provide State rules to implement and enforce the Indiana archaeological and historic preservation Statute at Public Law 108–1988 (SEA–121) as amended by Public Law 104–1990 (SEA–378) and SEA–154. These three statutes are presently being reviewed by the OSM as proposed program amendments.

The full text of the proposed program amendment submitted by Indiana is available for public inspection at the addresses listed above. The Director now seeks public comment on whether the proposed amendment is no less effective than the Federal regulations. If approved, the amendment will become part of the Indiana program.

III. Public Comment Procedures

In accordance with provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Indiana satisfies the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendment is deemed adequate, it will become part of the Indiana program.

Written Comments

Written comments should be specific, pertain only to issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contract the person listed under "**FOR FURTHER INFORMATION CONTACT**" by the close of business on August 26, 1991. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been shceduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons who desire to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the Indianapolis Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed above under "**ADDRESSES**". A summary of the meeting will be included in the Administrative Record.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

August 1, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 91–18942 Filed 8–8–91; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 914

Indiana Regulatory Program Amendment; Delegation of Authority

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt of a proposed amendment submitted by Indiana as a modification to the State's regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment (Program Amendment Number 91–9) consists of proposed changes to the Indiana rules provisions concerning delegation of authority by the Natural Resources Commission (the Commission). The amendment is intended to make changes to the delegations for programs administered by the Division of Reclamation.

This notice sets forth the times and locations that the Indiana program and the proposed amendment to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed for a public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on September 9, 1991; if requested, a public hearing on the proposed amendment is scheduled for 1 p.m. on September 3, 1991; and requests to present oral testimony at the hearing must be

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received on or before 4 p.m. on August 26, 1991.

ADDRESSES: Written comments and requests to testify at the hearing should be directed to Mr. Richard D. Rieke, Director, Indianapolis Field Office, at the address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Indiana program, the amendment, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for public review at the following locations, during normal business hours, Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204. Telephone (317)226–6166.

Indiana Department of Natural Resources, 402 West Washington Street, room 295, Indianapolis, IN 46204. Telephone (317)232-1547.

Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSM Indianapolis Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Rieke, Director, telephone (317) 226–6166; (FTS) 331–6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Discussion of the Proposed Amendments

By letter dated July 11, 1991, (Administrative Record Number IND-0914), the Indiana Department of Natural Resources (IDNR) submitted a proposed amendment to the Indiana program at Indiana Administrative Code (IAC) 310 IAC 0.7–3–5. The proposed amendment is part of Indiana's rules at ICA Title 310, article 0.7 and makes changes to the authority granted by the Commission to the Director and Deputy Director of the State Regulatory Authority.

The full text of the proposed program amendment submitted by Indiana is available for public inspection at the addresses listed above. The Director now seeks public comment on whether the proposed amendment is no less effective than the Federal regulations. If approved, the amendment will become part of the Indiana program.

III. Public Comment Procedures

In accordance with provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Indiana satisfies the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendment is deemed adequate, it will become part of the Indiana program.

Written Comments

Written comments should be specific, pertain only to issues proposed in this rulemaking, and include explanations in support of the commenter's recommenations. Comments received after the time indicated under "DATES" or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by the close of business on August 26, 1991. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified data until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons who desire to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet the OSM representatives to discuss the proposed amendment may request a meeting at the Indianapolis Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed above under "**ADDRESSES**". A summary of the meeting will be included in the Administrative Record.

List of Subjects in 20 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 1, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 91–18943 Filed 8–8–91; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 931

New Mexico Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of additional explanatory information and revisions pertaining to a previously proposed amendment to the New Mexico permanent regulatory program (hereinafter, the "New Mexico program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The additional explanatory information and revisions for New Mexico's proposed rules pertain to protection of hydrologic balance; reclamation plans; transportation facilities; subsidence control; permit information requirements; performance standards for coal exploration; the protection of threatened and endangered species; revegetation; roads; cessation orders; and requirements for exemption. The amendment is intended to revise the New Mexico program to be consistent with the corresponding Federal regulations and to provide additional safeguards.

This notice sets forth the times and locations that the New Mexico program and proposed amendment to that program are available for public inspection and the reopened comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received by 4 p.m., m.d.t., August 26, 1991.

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Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed above under "**ADDRESSES**". A summary of the meeting will be included in the Administrative Record.

List of Subjects in 20 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 1, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 91-18943 Filed 8-8-91; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 931

New Mexico Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of additional explanatory information and revisions pertaining to a previously proposed amendment to the New Mexico permanent regulatory program (hereinafter, the "New Mexico program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The additional explanatory information and revisions for New Mexico's proposed rules pertain to protection of hydrologic balance; reclamation plans; transportation facilities; subsidence control; permit information requirements; performance standards for coal exploration; the protection of threatened and endangered species; revegetation; roads; cessation orders; and requirements for exemption. The amendment is intended to revise the New Mexico program to be consistent with the corresponding Federal regulations and to provide additional safeguards.

This notice sets forth the times and locations that the New Mexico program and proposed amendment to that program are available for public inspection and the reopened comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received by 4 p.m., m.d.t., August 26, 1991.

ADDRESSES: Written comments should be mailed or hand delivered to Robert H. Hagen at the address listed below.

Copies of the New Mexico program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., suite 310, Albuquerque, NM 87102, telephone (505) 766-1486.

New Mexico Energy & Minerals Department, Mining and Minerals Division, 2040 South Pacheco Street, Santa Fe, NM 87505, telephone (505) 827-5970.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Director, Albuquerque Field Office or telephone number (505) 766-1486.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program.

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program can be found in the December 31, 1980, **FEDERAL REGISTER** (45 FR 86459). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.15, 931.16, and 931.30.

II. Proposed Amendment.

By letter dated January 16, 1991 (Administrative Record No. NM-623), New Mexico submitted a proposed amendment to its program pursuant to SMCRA. New Mexico submitted the proposed amendment in response to letters dated May 11 and November 1, 1989, and February 7 and June 22, 1990, that OSM sent to New Mexico in accordance with 30 CFR 732.17(c) (Administrative Record Nos. NM-494, NM-550, NM-563, and NM-596).

The rules that New Mexico proposed to revise were: Coal Surface Mining Commission (CSMC) Rules 80-1-1-5, 11-17, and 11-19, ownership and control; CSMC Rules 80-1-7-13, 7-14, 11-29, and 30-11, permit information requirements; CSMC Rule 80-1-9-25, reclamation plans; CSMC Rules 80-1-9-37, 9-40, 19-15, 20-150, and 20-151, roads and transportation facilities; CSMC Rules 80-1-9-39, 20-121, and 20-124, subsidence control; CSMC Rules 80-1-11-20 and 11-24, permit rescission; CSMC Rules 80-1-12-10, 34-1, 34-2, 34-3, 34-4, 34-5, 34-6, 34-7, 34-8, 34-9, and 34-10, exemption for coal extraction incidental to the extraction of other minerals; CSMC Rule 80-1-19-17, coal exploration; CSMC Rule 80-1-20-93, coal processing waste; and CSMC Rules 80-1-20-116 and 20-117, revegetation.

OSM published a notice in the January 29, 1991, **Federal Register** (56 FR 3234) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (Administrative Record No. NM-626). The public comment period closed February 28, 1991.

By letter dated February 6, 1991, New Mexico submitted, on its own initiative, a proposed revision to CSMC Rule 80-1-20-97(b) pertaining to threatened and endangered species (Administrative Record No. NM-627) and requested that the proposed revision be included in the amendment it proposed on January 16, 1991. By letter dated March 26, 1991, New Mexico proposed further revisions to CSMC Rule 80-1-20-97(b) (Administrative Record No. NM-635).

During its review of the amendment, OSM identified concerns relating to CSMC Rule 80-1-9-25(c), reclamation plans for permanent and temporary impoundments; CSMC Rule 80-1-9-37, transportation facilities; CSMC Rule 80-1-9-39 (b) and (c), 20-121(a), and 20-124, subsidence control; CSMC 80-1-11-29(a), permit information requirements; CSMC Rule 80-1-19-15(c)(4), performance standards for coal exploration; CSMC Rule 80-1-20-93(e), coal processing waste; CSMC Rule 80-1-20-97 (b) and (c), protection of threatened and endangered species; CSMC Rules 80-1-20-116 and 20-117, revegetation; CSMC Rules 80-1-20-150(d)(1), roads; CSMC Rule 80-1-30-11(a), cessation orders; and CSMC Rule 80-1-34-6(a)(2), requirements for exemption. OSM notified New Mexico of the concerns by letter dated April 15, 1991 (Administrative Record No. NM-636).

New Mexico responded in a letter dated July 22, 1991 by submitting a revised amendment (Administrative Record No. NM-645). The regulations that new Mexico proposes to amend are: CSMC Rule 80-1-9-21(c), protection of the hydrologic balance; CSMC Rule 80-1-9-25 (b) and (e), reclamation plans related to sedimentation ponds and coal processing waste dams and embankments; CSMC Rule 80-1-9-37, transportation facilities; CSMC Rule 80-1-9-39 (b), (c) and (d), subsidence control; CSMC Rule 80-1-11-29 (a) and (d), permit information requirements; CSMC Rule 80-1-19-15(c), performance standards for coal exploration; CSMC Rule 80-1-20-97 (b) and (c), the protection of threatened and endangered species; CSMC Rules 80-1-20-116 and 20-117(c), revegetation; CSMC Rule 80-1-20-150, roads; CSMC Rule 80-1-30-11, cessation orders; and CSMC Rule 80-1-34-6, requirements for exemption

III. Public Comment Procedures.

OSM is reopening the comment period on the proposed New Mexico program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the New Mexico program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Albuquerque Field office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 2, 1991.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 91-18944 Filed 8-8-91; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 935

Ohio Permanent Regulatory Program; Revision of Administrative Rule

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of proposed Program Amendment Number 51 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface nining

Control and Reclamation Act of 1977 (SMCRA). The amendment was initiated by Ohio and is intended to revise one rule in the Ohio Administrative Code to authorize the use of excess spoil from a valid, permitted coal mining operation for the reclamation of an adjacent unreclaimed area.

This notice sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on September 9, 1991. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on September 3, 1991. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on August 26, 1991.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Richard J. Seibel, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays.

Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232, telephone (614) 866–0578

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H–3, Columbus, Ohio 43224, telephone (614) 265–6675

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendment

By letter dated July 9, 1991 (Administrative Record No. OH–1546), the Director of OSM provided Ohio with clarification concerning OSM's position on the reclamation of abandoned mined lands by a mine operator in conjunction with surface coal mining and reclamation operations conducted by that operator. The Director noted that a contract for reclamation approved under title IV of SMCRA (or under an equivalent State AML program) is equivalent to a permit and bond and is thus consistent with the excess spoil disposal requirements of section 515 of SMCRA. State programs which issue such contracts under a non-Federally funded program must provide a degree of security comparable to that afforded by a Federally funded AML reclamation project. Before issuing such contracts, States must first submit and receive OSM approval of the State policies and procedures applicable to such non-Federally funded contracts.

In response to the Director's letter, Ohio submitted proposed Program Amendment Number 51 by letter dated July 22, 1991 (Administrative Record No. OH–1547). The amendment proposes to add a new paragraph (H) to Ohio Administrative Code (OAC) rule 1501:13–9–07 to authorize the use of excess spoil from a valid, permitted coal mining operation for the reclamation of an adjacent unreclaimed area. This new paragraph (H) would read as follows:

(H) Excess spoil may be used outside the permit area to reclaim unreclaimed mined lands adjacent to the permit area under a reclamation contract executed pursuant to section 1513.18, 1513.27 or 1513.37 of the [Ohio] Revised Code, provided that:

(1) If the unreclaimed lands are abandoned mined lands, they are eligible for reclamation under section 1513.27 or 1513.37 of the [Ohio] Revised Code;

(2) The excess spoil is placed in an environmentally and technically sound manner; and

(3) The excess spoil is placed where it will not destroy or degrade features of environmental value.

As part of and in support of proposed Program Amendment Number 51, Ohio also submitted Administrative Record information on the relevant provisions of the Ohio Revised Code, a draft policy statement clarifying eligibility requirements and performance standards for off-permit spoil placement, and an example of a reclamation contract executed pursuant to section 1513.27 of the Ohio Revised Code.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Ohio satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. comments received after the time indicated under "**DATES**" or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 pm. on August 26, 1991. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the Columbus Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under "**ADDRESSES.**"

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III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Ohio satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. comments received after the time indicated under "**DATES**" or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 pm. on August 26, 1991. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the Columbus Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under "**ADDRESSES.**"

A written summary of each public meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 29, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 91–18811 Filed 8–8–91; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 950

Wyoming Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Department of Interior.

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: OSM is announcing receipt of additional explanatory information pertaining to a previously proposed amendment to the Wyoming permanent regulatory program (hereinafter, the "Wyoming program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment would revise statutory provisions pertaining to the review of mine permit applications, land use definitions, and standards for the Wyoming Game and Fish Commission in providing consultation on and approval of the reclamation of surface mined land for fish and wildlife habitat. The proposed amendment is intended to revise the State program to clarify ambiguities and improve operational efficiency.

This notice sets forth the times and locations that the Wyoming program and proposed amendment to that program are available for public inspection and the comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received by 4 p.m., m.d.t., August 26, 1991.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below. Copies of the Wyoming program, the proposed amendment, the additional explanatory information, and all written comments received in response to this notice will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, room 2128, Casper, WY 82601–1918; telephone (307) 261–5776.

Wyoming Department of Environmental Quality, Land Quality Division, Herschler Building—Third Floor West, 122 West 25th Street, Cheyenne, WY 82002; telephone (307) 777–7756.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Director, Casper Field Office on telephone number (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program

On November 26, 1980, the Secretary of the Interior conditionally approved the Wyoming program. General background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Wyoming program can be found in the November 26, 1980, **Federal Register** (45 FR 78637). Subsequent actions concerning Wyoming's program and program amendments can be found at 30 CFR 950.12, 950.15, 950.16, and 950.20.

II. Proposed Amendment

By letter dated March 21, 1991 (administrative record No. Wy–15–1), Wyoming submitted a proposed amendment to its program pursuant to SMCRA. Wyoming submitted the proposed amendment at its own initiative to clarify ambiguities and improve operational efficiency of its program.

Wyoming proposes to amend the following provisions of the Wyoming Environmental Quality Act: W.S. 35–11–406(h) (new language has been proposed for insertion that would preclude the Administrator from raising as issues any items not previously identified as deficient at the close of the first 150-day review period, unless the applicant in subsequent revisions significantly modifies the application); W.S. 35–11–103 (proposes the addition of definitions for fish and wildlife habitat and grazing land); and W.S. 35–11–402 (proposal would establish standards to be used by the Wyoming Game and Fish Commission in providing consultation on and approval of the reclamation of surface mined land for fish and wildlife habitat).

OSM published a notice in the April 5, 1991, **Federal Register** (56 FR 14041) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (administrative record No. WY–15–7). The public comment period closed May 6, 1991. A public meeting was requested and held on June 14, 1991. The summary notes for that meeting (administrative record No. WY–15–18) are available for public review at the locations listed under "**ADDRESSES.**"

During its review of the amendment, OSM identified some concerns relating to the proposed statutory changes at W.S. 35–11–406(h), 35–11–103, and 35–11–402. OSM notified Wyoming of the concerns by letter dated July 1, 1991 (administrative record No. WY–15–19). Wyoming responded by submitting, in a letter dated July 10, 1991, additional explanatory information (Administrative record No. WY–15–20).

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Wyoming amendment to provide the public an opportunity to reconsider the adequacy of the amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Wyoming program.

Written Comments

Written comments should be specific, pertaining only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 2, 1991.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 91–18945 Filed 8–8–91; 8:45 am]

DEPARTMENT OF DEFENSE

Office of the Inspector General

32 CFR Part 295

Office of the Inspector General, Freedom of Information Act Program

AGENCY: Office of the Inspector General (OIG), Defense.

ACTION: Proposed rule.

SUMMARY: The Department of Defense, Office of the Inspector General has been designated a DoD Component for the purposes of responding to requests made pursuant to the Freedom of Information Act (FOIA). This proposed rule establishes the policy and procedures by which the public may request information from the Office of the Inspector General under the FOIA.

DATES: Written comments must be received by September 9, 1991.

ADDRESSES: Send comments to the Assistant Director, FOIA/PA Division, Assistant Inspector General for Investigations, room 1016, 400 Army Navy Drive, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: C. Sue Nelson, (703) 697–6035.

SUPPLEMENTARY INFORMATION: In FR Doc. 88–28271 appearing on December 13, 1988, the Office of the Secretary of Defense published a notice announcing the redesignation of the Department of Defense, Office of the Inspector General as a DoD Component for responding to FOIA requests. The proposed rule that was published in FR Doc. 89–11237 appearing on March 17, 1989, was never finalized because of a change in the incumbent Inspector General, amendment of the Department of Defense Regulation implementing the FOIA, and the need for coordinating the amended portions of the Regulation within the Office of the Inspector General. This proposed rule replaces the prior proposed rule.

List of Subjects in 32 CFR Part 295

Freedom of Information

Accordingly, title 32, chapter 1, subchapter P, is proposed to be amended to add part 295 as follows:

PART 295—OFFICE OF THE INSPECTOR GENERAL, FREEDOM OF INFORMATION ACT PROGRAM

Sec.

295.1 Purpose.
295.2 Applicability.
295.3 Definition of OIG records.
295.4 Other definitions.
295.5 Policy.
295.6 Responsibilities.
295.7 Procedures.
295.8 Annual report.
295.9 Organization and mission.

Appendix A to Part 295—For Official Use Only (FOUO).

Appendix B to Part 295—Exemptions.

Authority: 5 U.S.C. 552.

§ 295.1 Purpose.

This part establishes the policy and sets forth the procedures by which the public may obtain information and records from the Inspector General (IG) under the Freedom of Information Act (FOIA). It implements title 5, United States Code (U.S.C.) section 552, as amended by the Freedom of Information Reform Act of 1986, 32 CFR part 285 and 32 CFR part 286.

§ 295.2 Applicability.

The provisions of this part are applicable to all components of the Office of the Inspector General (OIG) and govern the procedures by which FOIA requests for information will be processed and records may be released under the FOIA.

§ 295.3 Definition of OIG records.

(a) The products of data compilation, such as books, papers, maps, and photographs, machine readable materials or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law in connection with the transaction of public business and in the OIG's possession and control at the time the FOIA request is made.

(b) The following are not included within the definition of the word "record":

(1) Objects or articles, such as structures, furniture, vehicles and equipment, whatever their historical value, or value as evidence.

(2) Administrative tools by which records are created, stored, and retrieved, if not created or used as sources of information about organizations, policies, functions, decisions, or procedures of the OIG. Normally, computed software, including source code, object code, and listings of source and object codes, regardless of medium are not agency records. (This does not include the underlying data which is processed and produced by such software and which may in some instances be stored with the software.) Exceptions to this position are outlined in § 295.4(c).

(3) Anything that is not a tangible or documentary record, such as an individual's memory or oral communication.

(4) Personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an OIG employee, and not distributed to any other OIG employee for their official use, or otherwise disseminated for official use.

(5) Information stored within a computer for which there is no existing computer program for retrieval of the requested information.

(c) In some instances, computer software may have to be treated as an agency record and processed under the FOIA. These situations are rare, and shall be treated on a case-by-case basis. Examples of when computer software may have to be treated as an agency record are:

(1) When the data is embedded within the software and can not be extracted without the software. In this situation, both the data and the software must be reviewed for release or denial under the FOIA.

(2) Where the software itself reveals information about organizations, policies, functions, decisions, or procedures of the OIG, such as computer models used to forecast budget outlays, calculate retirement system costs, or optimization models on travel costs.

(3) See appendix B to this part for further information on release determinations of computer software.

(d) If unaltered publications and processed documents, such as regulations, manuals, maps, charts, and related geophysical materials are available to the public through an established distribution system with or without charge, the provisions of 5 U.S.C. 552(a)(3) normally do not apply and they need not be processed under the FOIA. Normally, documents disclosed to the public by publication in the **Federal Register** also require no processing under the FOIA. In such cases, the OIG will direct the requester to the appropriate source to obtain the record.

§ 295.4 Other definitions.

(a) *FOIA Request.* A written request for OIG records, made by any person, including a member of the public (U.S. or foreign citizen), an organization, or a business, but not including a Federal agency or a fugitive from the law that either explicitly or implicitly invokes the FOIA, 32 CFR part 285 and 32 CFR part 286, or this part.

(b) *Initial Denial Authority (IDA).* The official who has been granted authority to withhold records requested under the FOIA, for one or more of the nine categories of records exempt from mandatory disclosure, by the head of the OIG Component designated by the IG to administer the IG FOIA Program.

(c) *Appellate Authority.* The IG or his or her designee having jurisdiction for this purpose over the record.

(d) *Administrative Appeal.* A request by a member of the general public, made under the FOIA, asking the appellate authority of the OIG to reverse an IDA decision to withhold all or part of a requested record or an IDA decision to

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(2) Where the software itself reveals information about organizations, policies, functions, decisions, or procedures of the OIG, such as computer models used to forecast budget outlays, calculate retirement system costs, or optimization models on travel costs.

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(c) *Appellate Authority.* The IG or his or her designee having jurisdiction for this purpose over the record.

(d) *Administrative Appeal.* A request by a member of the general public, made under the FOIA, asking the appellate authority of the OIG to reverse an IDA decision to withhold all or part of a requested record or an IDA decision to deny a request for waiver or reduction of fees.

(e) *Public Interest.* Public interest is official information that sheds light on an agency's performance of its statutory duties because the information falls within the statutory purpose of the FOIA of informing citizens about what their Government is doing. That statutory purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files that reveals little or nothing about an agency's or official's own conduct.

§ 295.5 Policy.

(a) *General.* (1) It is the policy of the OIG to promote public trust by conducting its activities in an open manner, and by providing the public with the maximum amount of accurate and timely information concerning those activities, consistent with the need for security and adherence to other requirements of law and regulation.

(2) Records not specifically exempt from disclosure under the FOIA or prohibited by statutory or other regulatory requirements will, upon request, be made readily accessible to the public.

(3) Records that are specifically exempt from disclosure under the FOIA or prohibited by statutory or other regulatory requirements will be withheld from the public only upon the determination of the Initial Denial Authorities identified in § 295.6 of this part, or the designated Appellate Authority.

(b) *News Media Requests.* (1) Requests from news media representatives for records that would not be withheld if requested under the FOIA or prohibited from release under other statutory or regulatory authority, will be released promptly by the OIG element originating the record.

(2) Requests from news media representatives for records that are exempt from release under the FOIA, or prohibited from release under other statutory or regulatory authority will be provided to the Freedom of Information Act and Privacy Act (FOIA/PA) Division, Office of the Assistant Inspector General for Investigations, along with the requested records, for review and a release determination and the news media representatives will be so advised.

(3) Extracts of the nonexempt portions of such records may be prepared in response to a specific request from a news media representative but shall be coordinated for release with the FOIA/PA Division. Extracts shall be prepared in accordance with the sample at appendix to § 295.5.

(c) *Control System.* (1) A request for OIG records that invokes the FOIA shall enter a formal control system designed to ensure compliance with the FOIA. A release determination must be made and the requester informed within the time limits specified in this part.

(2) Any request for OIG records that either explicitly or implicitly cites the FOIA will be processed under the provisions set forth in this part, unless otherwise required by § 295.5(m) of this part. All such requests shall be forwarded to the FOIA/PA Division.

(d) *Promptness of Response.* (1) A request from a member of the public for OIG records will be responded to within 10 working days of the date of its receipt in the FOIA/PA Division, unless a delay is authorized.

(2) Receipt of the request will be acknowledged and the requester will be promptly advised of any additional information needed to assure compliance with procedures established in this Part. In the event there are a significant number of requests, e.g., 10 or more, the requests will be processed in order of date of receipt. This does not preclude the OIG from completing action on a request which can be easily answered, regardless of its ranking within the order of receipt. The OIG may expedite action on a request regardless of its ranking within the order of receipt upon a showing of exceptional need or urgency. Exceptional need will be determined at the discretion of the OIG.

(3) These provisions also apply to a request received on referral from another DoD Component or government agency and time limits will begin on the date of receipt in the OIG FOIA/PA Division.

(e) *Use of Exemptions.* It is OIG policy to make records publicly available unless they qualify for exemption under one or more of the nine exemptions. The OIG may elect to make a discretionary release, however, a discretionary release is generally not appropriate for records exempt under exemptions (b)(1), (b)(3), (b)(4), (b)(6) and (b)(7)(C). Exemptions (b)(4), (b)(6) and (b)(7)(C) can not be claimed when the requester is the submitter of the information. The categories of records which are exempt from release are identified in appendix B of this part.

(f) *For Official Use Only (FOUO).* The use of FOUO markings will be accomplished in accordance with the provisions of appendix A of this part, and exemptions (b)(2) through (b)(9) as set forth in appendix B of this part. Additional guidance will be provided to OIG elements, as needed, by the FOIA/PA Division.

(g) *Public Domain.* Nonexempt records released under the authority of this part are considered to be in the public domain. Such records may also be made available in the OIG Reading Room located in the FOIA/PA Division. Exempt records released pursuant to this part or other statutory or regulatory authority, however, may be considered to be in the public domain only when their release constitutes a waiver of the FOIA exemption. When the release does not constitute such a waiver, such as when disclosure is made to a properly constituted advisory committee or to a Congressional Committee, or to an individual to whom the record pertains, the released records do not lose their exempt status. Also, while authority may exist to disclose records to individuals in their official capacity, the provisions of this part apply if the same individual seeks to use the records in a private or personal capacity.

(h) *Creation of Records.* (1) A record must exist and be in the possession or control of the OIG at the time of the request to be considered subject to release under this part and the FOIA. Mere possession of a record does not presume OIG control and such records, or identifiable portions thereof, will be referred to the originating agency for a release determination and/or direct response to the requester. There is no obligation to create nor compile a record to satisfy a FOIA request; however, the OIG may compile a new record when doing so would result in a more useful response to the requester, or be less burdensome to the OIG than providing the existing records, and the requester does not object. The cost of creating or compiling such a record will not be charged to the requester unless the fee is equal to, or less than, the fee that would be charged for providing the existing record. Any fee assessments will be made in accordance with chapter VI of DoD 5400.7–R (32 CFR part 286).

(2) With respect to electronic data, the issue of whether records are actually created or merely extracted from an existing database is not always readily apparent. Consequently, when responding to FOIA requests for electronic data where creation of a record, programming, or particular format are questionable, the OIG will apply a standard of reasonableness. In other words, if the capability exists to respond to the request, and the effort would be a business as usual approach, then the request will be processed. However, the request will not be processed where the capability to

respond does not exist without a significant expenditure of resources, thus not be normal business as usual approach.

(i) *Describing Records Sought.* (1) It is the responsibility of the member of the public requesting records to adequately identify the records. A member of the public must describe the records sought with sufficient information to permit the OIG to locate the records with a reasonable amount of effort, since the FOIA does not authorize "fishing expeditions." Descriptive information about a record may be divided into two broad categories:

(i) Category I is file-related and includes information such as type of record (for example, memorandum), title, index citation, subject area, date the record was created, and originator.

(ii) Category II is event-related and includes the circumstances that resulted in the record being created or the date and circumstances surrounding the event the record covers.

(2) When the OIG receives a request that does not "reasonably describe" the requested record with sufficient Category I information to permit the conduct of an organized nonrandom search, or sufficient Category II information to permit inference of the Category I elements needed to conduct such a search, the requester will be notified in writing of the defect and of the need for more specific identification of the records sought. The specificity letter will provide guidance in identifying the records sought and in reformulating the request to reduce the burden on the OIG in complying with the FOIA. The OIG is not obligated to act on requests until an adequate description is provided by the requester.

(3) When the OIG receives a request in which only personal identifiers, e.g., name and Social Security Account Number, are provided in connection with the request for records concerning the requester, only records retrievable by personal identifiers will be searched. The search for such records may be conducted under Privacy Act procedures. No record will be denied that is releasable under the FOIA.

(j) *Referrals.* (1) The OIG has the responsibility of protecting the identify of individuals who make protected disclosures of wrongdoing on the part of others, under the "Whistleblower Protection Acts". When a FOIA requester has identified himself/herself as the "Whistleblower" in the matter for which records are being sought, in accordance with § 295.7(b)(3) of this part, or the FOIA/PA Division can reasonably determine that the FOIA requester is the "Whistleblower", the individual's identity will continue to be protected in all of the following circumstances involving referrals, except to the extent that such protection will impede the release of responsive records to the requester. In such event, the requester will be advised of the impedance and offered the option of allowing himself/herself to be identified solely for the purpose of obtaining maximum release of records responsive to the FOIA request. If the requester chooses to continue anonymity, the request will be processed only to the extent that will allow continued protection of the individual's identity.

(1) The OIG will refer a FOIA request to another DoD Component or to a Government agency outside the DoD when the OIG has no records responsive to the request, but believes the other DoD Component or outside agency may have, and the other DoD Component or outside agency has confirmed that it holds the record. When the other DoD Component or outside agency agrees to the referral, the requester will be advised of the referral and that the OIG has no responsive records, with the following exceptions:

(i) If it is determined by the other DoD Component or outside agency that the existence or nonexistence of the record itself is classified, the OIG will inform the requester only that the OIG has no responsive record and no referral will take place.

(ii) If the record falls under one or more of the "Exclusions" under the FOIA (see appendix B of this part), as determined by the other DoD Component or outside agency, the OIG will advise the requester only that the OIG has no responsive record and no referral will take place.

(2) The OIG will refer a record, or portions of a record that holds but that was originated by another DoD Component or outside agency, or for a record that contains substantial information that originated with another DoD Component or outside agency, to that Component or agency (unless the agency is not subject to the FOIA) for a release determination and/or direct response to the requester. In any such case, direct coordination will be effected and concurrence obtained from the other Component or agency prior to the referral. A copy of the record will be provided to the Component or agency with the referral, and the requester will be notified of the referral, consistent with any security requirements or "Exclusion" provisions of the FOIA. The OIG will not, in any case, release or deny such records without prior consultation with the other DoD Component or outside agency. If the requester is the "Whistleblower", the record or portion of the record will be provided to the DoD Component or agency, with a request for a release determination and return of the record to the OIG for response to the requester.

(3) The OIG will refer a FOIA request for a classified record that it holds, but did not originate, to the originating DoD Component or outside agency (unless the agency is not subject to to the FOIA). If the record originated with the OIG but the classification is derivative, i.e., contains classified information that originated elsewhere and was incorporated in the OIG record, the record will be referred to the originating authority with a recommendation for release; or, after consultation with the originating authority, with a request for a declassification review and/or release determination and return of the record. If the requester is the "Whistleblower", the record will be provided to the originating authority with a request for a release determination and return of the record to the OIG for response to the requester.

(4) The OIG may also refer a request for a record that was originated by the OIG for the use of another DoD Component or outside agency, to that Component or agency with a recommendation for release, after any necessary coordination. The requester will be notified of such action consistent with any security requirements or "Exclusion" provisions of the FOIA.

(5) A FOIA request for investigative, intelligence, or any other type of record on loan from another DoD Component or outside agency to the OIG for a specific purpose will be referred to the DoD Component or outside agency that provided the records, if the records are restricted from further release and so marked. However, if for investigative or intelligence purposes, the outside Component or agency desires anonymity as determined through coordination, the OIG will respond directly to the requester.

(6) A FOIA request for a record, or portions of a record, held by the OIG, that originated with a non-U.S. government agency that is not subject to the FOIA, will be responded to by the OIG.

(7) Notwithstanding anything to the contrary in this section, all requesters seeking National Security Council (NSC) or White House documents will be advised that they should write directly to the NSC or White House for such documents. Should the requester insist upon an OIG search for these records, the OIG will conduct an appropriate search pursuant to the FOIA. OIG/DoD

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(3) The OIG will refer a FOIA request for a classified record that it holds, but did not originate, to the originating DoD Component or outside agency (unless the agency is not subject to to the FOIA). If the record originated with the OIG but the classification is derivative, i.e., contains classified information that originated elsewhere and was incorporated in the OIG record, the record will be referred to the originating authority with a recommendation for release; or, after consultation with the originating authority, with a request for a declassification review and/or release determination and return of the record. If the requester is the "Whistleblower", the record will be provided to the originating authority with a request for a release determination and return of the record to the OIG for response to the requester.

(4) The OIG may also refer a request for a record that was originated by the OIG for the use of another DoD Component or outside agency, to that Component or agency with a recommendation for release, after any necessary coordination. The requester will be notified of such action consistent with any security requirements or "Exclusion" provisions of the FOIA.

(5) A FOIA request for investigative, intelligence, or any other type of record on loan from another DoD Component or outside agency to the OIG for a specific purpose will be referred to the DoD Component or outside agency that provided the records, if the records are restricted from further release and so marked. However, if for investigative or intelligence purposes, the outside Component or agency desires anonymity as determined through coordination, the OIG will respond directly to the requester.

(6) A FOIA request for a record, or portions of a record, held by the OIG, that originated with a non-U.S. government agency that is not subject to the FOIA, will be responded to by the OIG.

(7) Notwithstanding anything to the contrary in this section, all requesters seeking National Security Council (NSC) or White House documents will be advised that they should write directly to the NSC or White House for such documents. Should the requester insist upon an OIG search for these records, the OIG will conduct an appropriate search pursuant to the FOIA. OIG/DoD

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documents in which the NSC or White House has a concurrent reviewing interest will be forwarded by the FOIA/PA Division to the Director, Freedom of Information and Security Review (DFOISR), Office of the Assistant Secretary of Defense (Public Affairs) (OASD(PA)), which shall effect coordination with the NSC or White House, and return the documents to the originating agency after NSC review and determination. The FOIA/PA Division will forward any documents found in OIG files that are responsive to the FOIA request to DFOISR, OASD(PA) for their coordination with the NSC or White House, and return to the OIG with a release determination for final processing of the request.

(8) On occasion, the OIG receives FOIA requests for General Accounting Office (GAO) documents containing OIG information. Even though the GAO is outside of the Executive Branch, and not subject to the FOIA, all FOIA requests for GAO documents containing DoD information received directly from the public, or on referral from the GAO, will be processed under the provisions of the FOIA.

(k) *Authentication of Records.* Records provided under this Part will be authenticated, upon written request, to fulfill an official Government or other legal function. This service is in addition to that required under the FOIA and is not included in the FOIA fee schedule; therefore, a fee of $5.20 may be charged for each such authentication.

(l) *Records Management.* FOIA records shall be maintained and disposed of in accordance with Inspector General Defense Manual (IGDM) 5015.2,[1] "Records Management Program".

(m) *Relationship Between the FOIA and the Privacy Act (PA).* Not all requesters are knowledgeable of the appropriate statutory authority to cite when requesting records. In some instances, they may cite neither Act, but will imply one or both Acts. For these reasons, the following guidelines are provided to ensure that requesters receive the greatest amount of access rights under both Acts:

(1) Where requesters seek records about themselves which are contained in a PA system of records and cite or imply the PA, the OIG will process their requests under the provisions of the PA.

(2) Where requesters seek records about themselves which are not contained in a PA system of records and cite or imply the PA, the requests will be processed under the provisions of the FOIA, since they have no access under the PA.

(3) Where requesters seek records about themselves that are contained in a PA system of records and cite or imply the FOIA or both Acts, the requests will be processed under the time limits of the FOIA and the exemptions and fees of the PA. This is appropriate since greater access will generally be received under the PA.

(4) Where requesters seek agency records (as opposed to personal records) and cite or imply the PA and FOIA, or where requesters cite or imply only the FOIA, the requests will be processed under the FOIA.

(5) Requesters will be advised in the final responses to their requests why a particular Act was used in processing their requests.

(n) *Index and "(a)(2)" Materials.* (1) No order, opinion, statement of policy, interpretation, staff manual or instruction (except as indicated below) issued after July 4, 1967, which is not indexed and either made available or published, may be relied upon, used, or cited as a precedent against any member of the public unless that individual has actual and timely notice of the contents of such materials. Such actual and timely notice may not be after-the-fact; i.e., after the individual has suffered some adverse effect. Materials identified as "(a)(2)" are:

(i) Final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases, as defined in 5 U.S.C. 551, that may be cited, used, or relied upon as precedents in future adjudications.

(ii) Statements of policy and interpretations that have been adopted by the agency and are not published in the **Federal Register**.

(iii) Administrative staff manuals and instructions, or portions thereof, that establish OIG policy or interpretations of policy that affect a member of the public. This provision does not apply to instructions for employees on tactics and techniques to be used in performing their duties, or to instructions relating only to the internal management of the OIG. Examples of manuals and instructions not normally made available are:

(A) Those issued for audit, investigation, and inspection purposes, or those that prescribe operational tactics, standards of performance, or criteria for defense, prosecution, or settlement of cases.

(B) Operations and maintenance manuals and technical information concerning munitions, equipment, systems, and foreign intelligence operations.

(2) Thus, materials considered to meet the preceding definition of the FOIA "(a)(2)" requirements will be made available for public inspection and copying upon written request to the address indicated in § 295.7(b)(1) of this part, unless such materials have been published and are offered for sale or subscription. Upon receipt of the request, arrangements will be made at a time convenient to both the requester and the OIG, for the review and copying. If the publishing activity is out of stock of the published, for sale material and does not intend to reprint, then the preceding procedure will apply to the published material as well.

(3) When appropriate, the cost of copying any "(a)(2)" materials will be imposed upon the individual requesting the copy in accordance with chapter VI of DoD 5400.7–R (32 CFR part 286).

(4) The OIG will prepare an index of "(a)(2)" materials, or supplement thereto, arranged topically or by descriptive words rather than by case name or numbering system so that members of the public can readily locate material. Separate case name and numbering arrangements may be added for OIG convenience.

(5) The IG has determined that it is not practical nor feasible to prepare an index of the "(a)(2)" materials on a quarterly basis, nor to publish the annual "IG Publications Index" in the **Federal Register** because of the volume. This index is available to the public at no cost upon written request to: Acquisition and Resources administration Directorate, Publications management Branch, room 413, 400 Army Navy Drive, Arlington, Virginia 22202–2884. It may be necessary to deny all or portions of some documents listed in the index that fall within one or more exemptions of the FOIA.

(o) *Fees and Fee Waivers.* (1) Fees will be assessed under the FOIA as set forth in chapter VI of DoD 5400.7–R (32 CFR part 286).

(2) Requesters must indicate their willingness to pay fees in their initial FOIA request. If a waiver of fees is requested, a statement regarding their willingness to pay fees in the event a waiver or reduction of fees is denied is still required. Any requests not containing a statement regarding a willingness to pay assessed fees will not be processed and the requester will be so advised.

(3) Fees will not be required to be paid in advance of processing the request for release of the records requested except:

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[1] Copies may be obtained, if needed, from the Information and Operations Support Directorate, Publications Management Branch, room 420, 400 Army Navy Drive, Arlington, VA 22202–2884.

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(i) When the requester is known to be in default of payment of fees incurred in connection with a previous request.

(ii) When the total amount of estimated fees assessable to the requester exceeds $250.00 and waiver is not appropriate, a "good faith" deposit of half of the amount of the estimated fees may be required before completing the processing of the request, or providing the requested records, in the case of a requester with no history of payment. Where the requester has a history of prompt payment, the OIG will notify the requester of the likely cost and obtain satisfactory assurance of full payment.

(4) When the OIG has completed all work on a request and the documents are ready for release, advance payment may be requested before forwarding the documents if there is no payment history on the requester. Where there is a history of prompt payment by the requester. Where there is a history of prompt payment by the requester, the OIG will not hold documents ready for release pending payment.

(5) Fee waivers will be granted on a case-by-case basis when the OIG determines that waiver or reduction of the fees is in the public interest because furnishing the information is likely to contribute significantly to public understanding of the operations or activities of the OIG and the Department of Defense; and, is not primarily in the commercial interest of the requester. In any request for waiver of fees, the requester must provide sufficient information to enable the IDA to make a proper determination of whether or not the fees should be waived.

(6) In cases where the requester fails to provide sufficient persuasive information upon which to make a determination for waiver of the fees, the requester shall be so informed and given the opportunity to submit additional justification. Absent such justification, the requester may be required to pay fees appropriate to his/her category, if provision of the information is determined not to be in the public interest of benefit.

(7) Payments of fees must be by check or U.S. Postal money order made payable to the Treasurer of the United States. Cash payments cannot be accepted.

(p) *Appeals and Judicial Action.* (1) If the designated IDA declines to provide a requested record because the official considers it exempt from disclosure under one or more of the nine exemptions of the FOIA, that decision may be appealed by the requester to the designated Appellate Authority. The appeal should be submitted in writing by the requester within 60 calendar days after the date of the initial denial letter. In cases where incremental release actions have been taken on an initial request, the time for the appeal will not begin until the date of the last denial of release letter.

(2) A "no record" finding may be considered to be adverse, and if so interpreted by the requester, may be appealed using the normal OIG appeal procedures. The OIG will conduct an additional search of files, based on the receipt of an appeal to a "no record" response, as a part of the appellate process.

(3) All final decisions rendered on appeals will be made to the requesters in writing by the Appellate Authority, after consultation with the Office of General Counsel (OGC) representative to the OIG, and other appropriate OIG elements.

(4) Final determinations on appeals normally shall be made within 20 working days after receipt. The appeal will be deemed to have been received when it reaches the FOIA/PA Division, for administrative processing on behalf of the Appellate Authority. Misdirected appeals are to be referred expeditiously to the FOIA/PA Division.

(5) A requester will be deemed to have exhausted his/her administrative remedies after he/she has been denied the requested record or waiver/reduction of fees, by the designated Appellate Authority, or when the OIG FOIA/PA Division fails to respond to the request within the time limits prescribed by the FOIA, DoD 5400.7–R (32 CFR part 286) and this part. The requester may then seek judicial action from a U.S. District Court in the district in which the requester resides, has a principal place of business, in the district in which the record is located, or in the District of Columbia.

(6) Records that are denied on appeal shall be retained for a period of six years, in accordance with IGDM 5015.2,[2] "Records Management Manual," to meet the statute of limitations of claims requirements.

Appendix to § 295.5—Extract

The material contained herein is an Extract of information from (Name of Original Document), which has been determined to be in the public domain. The remaining material not provided herein may be requested under the provisions of the Freedom of Information Act.

§ 295.6 Responsibilities.

(a) The Assistant Inspector General (AIG) for investigations is responsible for the overall implementation and administration of the FOIA program in the OIG, and for the designation of the IDAs.

(b) The Director, Investigative Support is designated as an IDA and is responsible for the overall operation of the FOIA program in the OIG.

(c) The Assistant Director, FOIA/PA Division, Investigative Support Directorate is designated as an IDA and will:

(1) Serve as the point of contact on all FOIA matters for the OIG.

(2) Coordinate and respond to all requests received from the public for records in accordance with the policy established and procedures set forth in this part, and in all applicable DoD directives, regulations and instructions.

(3) Coordinate requests received from the public for records to the extent considered necessary, with the DFOISR, OASD(PA), other DoD Components, other Federal agencies, and other OIG elements.

(4) Arrange for the collection of fees as prescribed by the policy established in this Part.

(5) Maintain the FOIA case files in accordance with IGD Manual (IGDM) 5015.2,[3] "Records Management Program".

(6) Recommend action to be taken on all appeals of fees, appeals of fee waiver denials, and appeals of denials to access of records requested, to the Appellate Authority.

(7) Review OIG publications to assure that those which meet the FOIA "(a)(1)" and "(a)(2)" requirements for publication in the **Federal Register** are prepared in proper form and transmitted promptly for publication in the **Federal Register**.

(8) Maintain copies of material required to be made available under the "(a)(2)" provisions of the FOIA for examination and copying by the public, and provide the required FOIA Reading Room for use by the public in doing so.

(9) Establish a training program of OIG personnel who are involved in preparing responsive records for release to the public under the FOIA.

(10) Prepare the Annual Report on the FOIA for forwarding to DFOISR, OASD(PA) as required by 32 CFR part 286.

(d) The AIGs and the Director, IG Regional Office-Europe will:

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[2] See footnote 1 to § 295.5(l).

[3] See footnote 1 to § 295.5(l).

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(b) The Director, Investigative Support is designated as an IDA and is responsible for the overall operation of the FOIA program in the OIG.

(c) The Assistant Director, FOIA/PA Division, Investigative Support Directorate is designated as an IDA and will:

(1) Serve as the point of contact on all FOIA matters for the OIG.

(2) Coordinate and respond to all requests received from the public for records in accordance with the policy established and procedures set forth in this part, and in all applicable DoD directives, regulations and instructions.

(3) Coordinate requests received from the public for records to the extent considered necessary, with the DFOISR, OASD(PA), other DoD Components, other Federal agencies, and other OIG elements.

(4) Arrange for the collection of fees as prescribed by the policy established in this Part.

(5) Maintain the FOIA case files in accordance with IGD Manual (IGDM) 5015.2,[3] "Records Management Program".

(6) Recommend action to be taken on all appeals of fees, appeals of fee waiver denials, and appeals of denials to access of records requested, to the Appellate Authority.

(7) Review OIG publications to assure that those which meet the FOIA "(a)(1)" and "(a)(2)" requirements for publication in the **Federal Register** are prepared in proper form and transmitted promptly for publication in the **Federal Register**.

(8) Maintain copies of material required to be made available under the "(a)(2)" provisions of the FOIA for examination and copying by the public, and provide the required FOIA Reading Room for use by the public in doing so.

(9) Establish a training program of OIG personnel who are involved in preparing responsive records for release to the public under the FOIA.

(10) Prepare the Annual Report on the FOIA for forwarding to DFOISR, OASD(PA) as required by 32 CFR part 286.

(d) The AIGs and the Director, IG Regional Office-Europe will:

295.5(l).

[3] See footnote 1 to § 295.5(l).

(1) Comply with, and assure compliance by all of their subcomponents with, the policy established and the procedures set forth in this Part.

(2) Appoint a Point of Contact (POC) to interact with the FOIA/PA Division on all FOIA matters, and notify the FOIA/PA Division of any changes in the appointment.

(3) Provide all records responsive to a request as directed by the FOIA/PA Division.

(4) Recommend release/denial action to be taken, indicate applicable exemptions, and provide appropriate rationales.

(e) The Freedom of Information Act Appellate Authority is designated by the Inspector General and will:

(1) Determine the action to be taken on all appeals made by the public of fees, fee waiver/reduction denials, and access denials in accordance with chapter V, section 3, of DoD 5400.7–R (32 CFR part 286).

(2) Coordinate all appellate decisions with the Office of General Counsel, Assistant General Counsel (Fiscal and Inspector General).

(f) The AIG for Administration and Information Management will:

(1) Prepare annually an index of IG publications, statements and documents pertaining to any matter issued, adopted, or promulgated and required to be made available to the public by publication or sale.

(2) Establish and implement any necessary procedures to effect disciplinary action recommended by the Special Counsel of the Merit System Protection Board in cases involving the arbitrary and capricious withholding of information and records requested under the FOIA as required by chapter V, section 4, of DoD 5400.7–R (32 CFR part 286).

§ 295.7 Procedures.

(a) *General.* The provisions of the FOIA are reserved for persons with private interests as opposed to Federal governmental agencies seeking official information. The procedures for making requests, whether as a private party or governmental representative, are set forth below.

(b) *Requests from Private Parties.* (1) Members of the public may make requests in writing for copies of records, or permission to examine or copy records, directly to the FOIA/PA Division addressed to: Assistant Director, FOIA/PA Division, OAIG for Investigations, 400 Army Navy Drive, Arlington, VA 22202–2884.

(2) Requests must identify each record sought with sufficient specificity to enable the custodian to locate the record with a reasonable amount of effort. Requesters should provide such information as where the record originated and by whom, its subject matter, its approximate date or timeframe, which element of the OIG is likely to have custodianship, or any other similar information that would assist in locating the record. Requests must also contain a statement regarding willingness to pay fees.

(3) A request from an individual who made an allegation of wrongdoing to the IG, or any protected disclosure under the "Whistleblower Protection Acts," and who is seeking the results of any investigation or inquiry conducted into the allegation, should identify him/herself as the "Whistleblower" in the request. The request should indicate whether he/she wishes to continue anonymity, should be notarized to avoid the risk of losing the anonymity, and should contain a statement regarding willingness to pay fees.

(4) A request for a personal record or investigative record pertaining to the individual making the request, that is in a system of records whether nonexempt or exempted from mandatory release under the Privacy Act, must be notarized to avoid the risk of invasion of personal privacy. In any such request, the individual may designate another individual to act as his/her representative in making the request and in receiving the records on his/her behalf; however the authorization must be in writing, specifically name the representative and kinds of records authorized to be provided, and be notarized to avoid the risk of invasion of personal privacy.

(5) A request for a record that was obtained from a non-U.S. Government source, and that is subject to exemption (b)(4) under the FOIA, will be released to the individual or firm making the request without further exception, if:

(i) The individual or firm is clearly the submitter of the information and/or is clearly acting on behalf of the submitter in making the request.

(ii) The request contains a statement from a company official or other representative of the submitter clearly capable of certifying that the requester is acting on behalf of the submitter of the information in making the request; i.e., a Vice-President certifies on his/her company letterhead that XYZ Law Firm is acting on behalf of the company in requesting copies of documents submitted to the government by the company. A mere assertion by the requester that the requester is acting on behalf of the submitter in making the request will not be honored, if it can not be readily verified through records available to the OIG.

(c) *Requests from Government Officials.* (1) Requests from officials of State, or local Governments for OIG records will be considered the same as any other requester, except where the request is for a personal record in a system of records subject to the Privacy Act, in which case the provisions of DoD 5400.11–R (32 CFR part 286a) apply.

(2) Requests from members of Congress, or their staffs, not seeking records on behalf of a Congressional Committee, Subcommittee, or either House sitting as a whole, will be considered the same as any other requester. Requests from members of Congress, or their staffs, made on behalf of their constituents will also be considered the same as any other requester.

(3) Requests from officials of foreign governments shall be considered the same as any other requester. Requests from officials of foreign governments that do not invoke the FOIA shall be referred to appropriate foreign disclosure channels and the requester so notified.

(d) *Misdirected Requests.* Requests misdirected to other OIG elements will be forwarded promptly to the FOIA/PA Division. The statutory period allowed for response to a request misdirected by the requester shall not begin until the request is received in the FOIA/PA Division. The OIG components and field elements receiving misdirected requests should advise the requester that the request is being forwarded to the office having the authority to act on and respond to the request.

(e) *Privileged Release to Officials.* (1) Subject to DoD 5200.1-R,[4] "Information Security Program Regulation," applicable to classified information, DoD Directive 5400.11 (32 CFR part 286a), applicable to personal privacy or other applicable law, records exempt from release under appendix B of this part may be authenticated and released, without requiring release to other FOIA requesters, in accordance with OIG rules to U.S. Government officials requesting them on behalf of Federal governmental bodies, whether legislative, executive, administrative, or judicial, as follows:

(i) To a Committee or Subcommittee of Congress, or to either House sitting as a whole in accordance with DoD Directive 5400.4,[5] "Provision of Information to Congress," and this part.

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[4] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[5] See footnote 4 to § 295.7(e).

(ii) To the Federal courts whenever ordered by officers of the court as necessary for the proper administration of justice

(iii) To other Federal agencies both executive and administrative as determined by the IG or the IG's designee.

(2) On all such releases, the officials receiving records under the above provisions will be informed in writing that the records are exempt from public release under the FOIA and are privileged. The OIG components will also advise the receiving officials of any special handling instructions.

(f) *Processing Requests.* (1) Upon receipt in the FOIA/PA Division, a request for records will be assigned a control number, logged, and reviewed for adequacy and compliance with the procedures for submitting requests outlined in § 295.7(b).

(2) If the request does not meet the adequacy of description test, contain a statement regarding fees, or contain a notarized signature/authorization or a certification of submitter representation, if applicable; the request will be acknowledged as having been received and the requester will be notified of the defect and advised of the means necessary to correct the defect and comply with the procedures. If the requester does not correct the defect within the time allowed (generally 30 calendar days) in the defect notice, the following actions will be taken:

(i) Where the request does not meet the adequacy of description test, the request will be administratively closed and the requester so advised.

(ii) Where the request meets the adequacy of description test but fails to comply with the remaining procedural requirements, and the time allowed in the defect notice for compliance by the requester has elapsed, the request will be processed to the extent possible consistent with DoD 5400.7–R (32 CFR part 286) and this part.

(3) When it is determined that a request complies with all applicable procedures, the necessary search and collection of responsive records will be initiated through the Component(s) of the OIG likely to have custodianship of the sought records.

(4) Where the appropriate OIG Component has determined that no record responsive to the request exists, the POC for the OIG component will so advise the FOIA/PA Division within the due date assigned to the POC. The requester will be notified in writing by the IDA, within 10 working days from the date of receipt of the request, that no responsive records exist; and, of the right and means by which to appeal the no record response as an adverse determination.

(5) When it is determined that the records sought are part of an ongoing audit, inspection, or investigation, the requester will be advised of such (subject to the "Exclusions" under the FOIA identified in appendix B, of this part). The requester will be informed of the estimated timeframe for completion of the ongoing audit, inspection, or investigation and asked if he/she wishes to withdraw the request and resubmit it upon completion of the ongoing process. If the requester chooses not to withdraw the request, the processing will be continued and an appropriate release determination will be made, consistent with the statutory provisions of the FOIA.

(6) When responsive records have been located, the POC for the OIG element having the records will forward the records to the FOIA/PA Division with a recommendation for release on SD Form 472, "Request Information Sheet," along with a completed DD Form 2086, Record of Freedom of Information (FOI) Processing Cost." The records will be reviewed and an initial determination to release or deny will be made.

(g) *Initial Determinations.* (1) The initial determination of whether to make a record available upon request may be made only by the IDAs designated by the IG in this part. Further, the number of IDAs designated by the IG will be limited and based on a balance of the goals of centralization of authority to promote uniform decisions and decentralization to facilitate responding to each request within the time limitations of the FOIA.

(2) Other than statutory denials, there are six other reasons for not complying with a request for a record:

(i) The request is transferred to another DoD component or Federal agency.

(ii) The request is withdrawn by the requester.

(iii) The information requested is not a record within the meaning of the FOIA and § 295.3(a) of this part.

(iv) A record has not been described with sufficient particularly to enable theso that OIG to locate it by conducting a reasonable search.

(v) The requester has failed unreasonably to comply with the procedural requirements, including the payment of fees, imposed by 32 CFR part 286 and this part.

(vi) The OIG has determined through knowledge of its files and reasonable search efforts that it neither controls nor possesses the requested record.

(3) Initial determinations to release or deny a record normally will be made and the decision reported to the requester within 10 working days, provided that the requester has complied with the preliminary procedural requirements.

(4) When requests are denied in whole or in part, the requester will be informed in writing of the reasons for the denial, the identity of the official making the denial, the right of appeal of the decision, and the identity and address of the official to whom an appeal may be made.

(5) The explanation of the substantive basis for a denial will include specific citation of the statutory exemption applied under provisions of the FOIA. Mere reference to a classification or to a "For Official Use Only" marking will not constitute a basis for invoking an exemption. When the initial denial is based in whole or in part on a security classification, the explanation will include a summary of the applicable criteria for the classification.

(h) *Denial Tests.* (1) To deny a requested record that is in the possession and control of the OIG, it must be determined that the record is included in one or more of the nine categories of records exempt from mandatory disclosure as provided by the FOIA and outlined in chapter 111 of DoD 5400.7–R (32 CFR part 286), and this part. No OIG record may be otherwise withheld from the public, whether in whole or in part, except as determined by the designated IDAs in accordance with FOIA exemptions.

(2) Although portions of some records may be denied, the remaining reasonable segregable portions will be released to the requester when it can be assumed that a skillful and knowledgeable person could not reconstruct the excised information. When a record is denied in whole, the IDA will advise the requester of that determination.

(i) *Extension of Time.* (1) In unusual circumstances, responsive records may be located by the office having custodianship over the record, but the records can not be made immediately available to the FOIA/PA Division, or the FOIA/PA Division can not make them immediately available to the requester. The unusual circumstances justifying the delay will be the result of the following:

(i) The requested record is located in whole or in part at another geographic location than that of the FOIA/PA Division.

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(5) The explanation of the substantive basis for a denial will include specific citation of the statutory exemption applied under provisions of the FOIA. Mere reference to a classification or to a "For Official Use Only" marking will not constitute a basis for invoking an exemption. When the initial denial is based in whole or in part on a security classification, the explanation will include a summary of the applicable criteria for the classification.

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(2) Although portions of some records may be denied, the remaining reasonable segregable portions will be released to the requester when it can be assumed that a skillful and knowledgeable person could not reconstruct the excised information. When a record is denied in whole, the IDA will advise the requester of that determination.

(i) *Extension of Time*. (1) In unusual circumstances, responsive records may be located by the office having custodianship over the record, but the records can not be made immediately available to the FOIA/PA Division, or the FOIA/PA Division can not make them immediately available to the requester. The unusual circumstances justifying the delay will be the result of the following:

(i) The requested record is located in whole or in part at another geographic location than that of the FOIA/PA Division.

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(ii) The request requires the collection and/or evaluation of a substantial number of records.

(iii) Consultation is required with other DoD Components or agencies having substantial interest in the subject matter to determine whether the records requested are exempt from disclosure in whole or in part under provisions of the FOIA and this Part or should be released as a matter of discretion.

(2) In any such event, efforts will be made to negotiate an informal extension in time with the requester by the FOIA/PA Division. If the requester chooses not to agree informally to an extension in time, a written explanation of the reasons for delay will be provided to the requester and the requester will be asked to await a substantive response by an anticipated date.

(j) *Fee Assessments*. (1) When it is determined that the fees assessable to a request undergoing final processing may exceed the limit established by the requester, or may be in excess of $250, the processing will be discontinued and the requester notified so that he/she may advise of his/her desire to continue.

(2) If a "good faith" deposit is required, the requester will be allowed a reasonable time (generally 30 calendar days) in which to provide payment. If the requester fails to provide the "good faith" deposit within the time allowed, the request will be closed and the requester so notified.

(3) In all other cases, the requester will be notified of any fees due at the time the requested records are provided to the requester, and allowed a reasonable time (generally 30 calendar days) in which to pay the fees.

(4) If the requester fails to pay the fees in the time allowed, a notice of nonpayment will be placed in the formal control system and no further FOIA requests from the requester will be honored until the fees have been paid.

(k) *Records of Non-U.S. Government Sources*. (1) When it is determined that the records or data contained within the records responsive to a request were obtained from a non-U.S. Government source by the OIG, and the requester is not the submitter of the non-U.S. Government record nor acting as the submitter's representative; and it is further determined the source or submitter may have a valid objection to release of the material, the submitter will be promptly notified of the request and afforded a reasonable time (generally 30 calendar days) to present any objections to the release.

(2) This procedure is required for those FOIA requests for data not deemed clearly exempt from disclosure under exemption (b)(4). If, for example, the record or data was submitted by the non-U.S. Government source with the actual or presumptive knowledge of the source, and established that it would be made available to the public upon request, there is no requirement to notify the source.

(3) All objections will be evaluated. When a substantial issue has been raised, the OIG may seek additional information and afford the source and requester reasonable opportunities to present their arguments on the legal and substantive issues involved prior to making a determination.

(4) The OIG will not ordinarily exercise its discretionary authority to release information clearly meeting the exemption (b)(4) criteria. Further, the final decision to disclose information not deemed to clearly meet exemption (b)(4) criteria will be made by an official equivalent in rank or greater to the official who would make the decision to withhold that data under a FOIA appeal.

(5) When the source or submitter advises of the intent to seek a restraining order or to take court action to prevent release of the data, the requester will be notified and action will not be taken on the request until after the outcome of the court action is known. Then the requester brings court action to compel disclosure, the source shall be promptly notified of this action.

(6) These procedures also apply to any non-U.S. Government record in the possession and control of the OIG from multi-national organizations,such as the North Atlantic Treaty Organization (NATO) and the North American Aerospace Defense Command (NORAD), or foreign governments. Coordination of such FOIA requests with foreign governments will be made through the Department of State by the FOIA/PA Division.

(l) *Coordination with Department of Justice*. (1) Where the custodian of an OIG element determines that records responsive to a FOIA request are pertinent to pending or potential litigation involving the United States, the FOIA/PA POC for the element shall promptly notify the FOIA/PA Division so that the necessary coordination can be effected with the Office of General Counsel (OGC) representative to the IG.

(2) The OGC representative shall effect all necessary coordination with the United States Attorney and/or Department of Justice prior to any release of such records.

(m) *Procedures for Appeals*. (1) A requester may appeal the initial decision to deny access to requested records. In writing, to the designated OIG Appellate Authority. The requester may also appeal a no record determination, any fees assessed and the denial of a request for waiver/reduction of fees. All such appeals should be made no later than 60 calendar days after the date of initial denial letter or letter of advisement regarding fees.

(2) All appeals should provide sufficient information and justification upon which a determination may be made by the Appellate Authority as to whether to grant or deny the appeal; or, in the event of a "no record determination," sufficient information and/or justification upon which additional record searches may be based. A copy of the initial request and initial denial, and "no record" or fee advisement letter should be included.

(3) The FOIA/PA Division administers the appeals for the Appellate Authority. All appeals should be addressed to the Assistant Director, FOIA/PA Division, OAIG for Investigations, 400 Army Navy Drive, Arlington, VA 22202–2884.

(4) Upon receipt in the FOIA/PA Division, the appeal will be assigned a control number, logged, and prepared for provision to the Appellate Authority for a final determination. Receipt will be Acknowledge in writing within 10 working days and the requester advised of any additional time needed due to the unusual circumstances described in § 295.7(i) of this part.

(5) If additional time is required, the final decision may be delayed for the number of working days (not to exceed 10) that were not used as additional time for responding to the initial request. If no additional time is required, the requester will be advised in writing of the final decision within 20 working days.

(6) If the appeal is approved in part or in whole, or responsive records located upon additional search, the requester will be informed and promptly provided any records determined to be releasable.

(7) If "no records" can be located in response to the appeal, the requester will be informed that no records were located, of the identify of the official making the final determination, and of the right to judicial review.

(8) If the appeal of the initial denial of responsive records is denied in part or in whole, the requester will be advised of the applicable statutory exemption or exemptions invoked under the provision of the FOIA for the denial, the identity of the official making the final determination, that meaningful portions of any denied records were not reasonably segregable, and of the right to judicial review.

(9) When the final refusal is based in whole or in part on a security

classification, the explanation shall include a determination that the record meets the cited criteria and rationale of the governing Executive Order, and that this determination is based on a declassification review, with an explanation of how that review confirmed the continuity validity of the security classification.

(10) Final refusal involving issues not previously resolved or that the OIG knows to be inconsistent with rulings of other DoD Components ordinarily will not be made before consultation with the Assistant General Counsel (Fiscal and Inspector General), OGC, DoD.

(11) Tentative decisions to deny records that raise new or significant legal issues of potential significance to other agencies of the Government shall be provided to the Department of Justice, ATTN: Office of Legal Policy, Office of Information and Policy, Washington, DC 20530 after coordination with the Assistant General Counsel (Fiscal and Inspector General), OGC, DoD.

§ 295.8 Annual report.

The FOIA Annual Report, assigned Report Control System DD–PA (A) 1365, will be prepared by the FOIA/PA Division for the preceding calendar year and submitted to the Assistant Secretary of Defense (PA) on or before February 1 of each year. The report will be compiled and formatted in accordance with chapter VII, DoD 5400.7–R (32 CFR part 286).

§ 295.9 Organization and mission.

(a) The organization of the OIG includes the Headquarters located in Arlington, Virginia, consisting of the Inspector General, Deputy Inspector General, the Offices of the Assistant Inspector (AIG) for Analysis and Followup, the AIG for Audit Policy and Oversight, the AIG for Auditing with its subordinate field elements located throughout the Continental United States (CONUS), the AIG for Investigations with its field elements located throughout the CONUS and Europe, the AIG for Administration and Information Management, the AIG for Departmental Inquiries, the AIG for Inspections, and the Director, IG Regional Office-Europe (IGROE) located in Wiesbaden, Germany. The IGROE has representatives assigned from the Offices of the AIG for Investigations, the AIG for Inspections, the AIG for Auditing and the AIG for Departmental Inquiries, who fulfill the missions of their respective components.

(b) The "Organization and Staff Listing" (Inspector General, Defense List (IGDL) 1400.7);[6] provides organization charts for the OIG elements and mailing addresses of all OIG operating locations and will be made available to the public upon written request.

(c) As an independent and objective office in the Department of Defense (DoD) the mission of the of the OIG is to:

(1) Conduct, supervise, monitor, and initiate audits, inspections and investigations relating to programs and operations of the DoD.

(2) Provide leadership and coordination and recommend policies for activities designed to promote economy, efficiency, and effectiveness in the administration of, and to prevent and detect fraud and abuse in, such programs and operations.

(3) Provide a means for keeping the Secretary of Defense and the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action.

(4) Further information regarding the responsibilities and functions of the IG is encompassed in Public Law 95–452, the "Inspector General Act of 1978," as amended and 32 CFR part 373.

Appendix A to Part 295—For Official Use Only (FOUO)

I. General Provisions

A. General. Information that has not been given a security classification pursuant to the criteria of an Executive Order, but which may be withheld from the public for one or more of the reasons cited in FOIA exemptions (b)(2) through (b)(9) shall be considered as being for official use only. No other material shall be considered or marked "For Official Use Only" (FOUO), and FOUO is not authorized as an anemic form of classification to protect national security interests.

B. Prior FOUO Application. The prior application of FOUO markings is not a conclusive basis for withholding a record that is requested under the FOIA. when such a record is requested, the information in it shall be evaluated to determine whether, under current circumstances, FOIA exemptions apply in withholding the record or portions of it. If any exemption or exemptions apply or applies, it may nonetheless be released when it is determined that no governmental interest will be jeopardized by its release.

C. Historical Papers. Records such as notes, working papers, and drafts retained as historical evidence of actions enjoy no special status apart from the exemptions under the FOIA.

D. Time to Mark Records. The marking of records at the time of their creation provides notice of FOUO content and facilitates review when a record is requested under the FOIA. Records requested under the FOIA that do not bear such markings, shall not be assumed to be releasable without examination for the presence of information that requires continued protection and qualifies as exempt from public release.

E. Distribution Statement. Information in a technical document that requires a distribution statement pursuant to DoD Directive 5230.24,[1] "Distribution Statements on Technical Documents", shall bear that statement and may be marked FOUO, as appropriate.

II. Markings

A. Location of Markings: (1) An unclassified document containing FOUO information shall be marked "For Official use Only" at the bottom on the outside of the front cover (if any), on each page continuing FOUO information, and on the outside of the back cover (if any).

(2) Within a classified document, an individual page that contains both FOUO and classified information shall be marked at the top and bottom with the highest security classification of information appearing on the page.

(3) within a classified document, an individual page that contains FOUO information but no classified information shall be marked "For Official Use Only" at the bottom of the page.

(4) Other records, such as, photographs, films, tapes, or slides, shall be marked "For Official Use Only" or "FOUO" in a manner that ensures that a recipient or viewer is aware of the status of the information therein.

(5) The FOUO material transmitted outside the Department of Defense requires application of an expanded marking to explain the significance of the FOUO marking. This may be accomplished by typing or stamping the following statement on the record prior to transfer:

> This document contains information EXEMPT FROM MANDATORY DISCLOSURE under the FOIA. Exemptions * * * * * apply

III. Dissemination and Transmission

A. Release and Transmission Procedures. Until FOUO status is terminated, the release and transmission instructions that follow apply:

(1) The FOUO information may be disseminated within DoD Components and between officials of DoD Components and DoD contractors, consultants, and grantees to conduct official business for the Department of Defense. Recipients shall be made aware of the status of such information, and transmission shall be by means that preclude unauthorized public disclosure. Transmittal documents shall call attention to the presence of FOUO attachments.

(2) The DoD holders of FOUO information are authorized to convey such information to officials in other departments and agencies of the executive and judicial branches fulfill a Government function, except to the extent prohibited by the Privacy Act. Records thus transmitted shall be marked "For Official Use

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[6] See footnote 1 to § 295.5(1).

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

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assumed to be releasable without examination for the presence of information that requires continued protection and qualifies as exempt from public release.

E. Distribution Statement. Information in a technical document that requires a distribution statement pursuant to DoD Directive 5230.24,[1] "Distribution Statements on Technical Documents", shall bear that statement and may be marked FOUO, as appropriate.

II. Markings

A. Location of Markings: (1) An unclassified document containing FOUO information shall be marked "For Official use Only" at the bottom on the outside of the front cover (if any), on each page continuing FOUO information, and on the outside of the back cover (if any).

(2) Within a classified document, an individual page that contains both FOUO and classified information shall be marked at the top and bottom with the highest security classification of information appearing on the page.

(3) within a classified document, an individual page that contains FOUO information but no classified information shall be marked "For Official Use Only" at the bottom of the page.

(4) Other records, such as, photographs, films, tapes, or slides, shall be marked "For Official Use Only" or "FOUO" in a manner that ensures that a recipient or viewer is aware of the status of the information therein.

(5) The FOUO material transmitted outside the Department of Defense requires application of an expanded marking to explain the significance of the FOUO marking. This may be accomplished by typing or stamping the following statement on the record prior to transfer:

This document contains information EXEMPT FROM MANDATORY DISCLOSURE under the FOIA. Exemptions * * * * * apply

III. Dissemination and Transmission

A. Release and Transmission Procedures. Until FOUO status is terminated, the release and transmission instructions that follow apply:

(1) The FOUO information may be disseminated within DoD Components and between officials of DoD Components and DoD contractors, consultants, and grantees to conduct official business for the Department of Defense. Recipients shall be made aware of the status of such information, and transmission shall be by means that preclude unauthorized public disclosure. Transmittal documents shall call attention to the presence of FOUO attachments.

(2) The DoD holders of FOUO information are authorized to convey such information to officials in other departments and agencies of the executive and judicial branches fulfill a Government function, except to the extent prohibited by the Privacy Act. Records thus transmitted shall be marked "For Official Use

Only", and the recipient shall be advised that the information has been exempted from public disclosure, pursuant to the FOIA, and that special handling instructions do or do not apply.

(3) Release of FOUO information to Members of Congress is governed by DoD Directive 5400.4,[2] "Provision of Information to Congress". Release to the GAO is governed by DoD Directive 7650.1,[3] "General Accounting Office Access to Records". Records released to the Congress or GAO should be reviewed to determine whether the information warrants FOUO status. If not, prior FOUO markings shall be removed or effaced. If withholding criteria are met, the records shall be marked FOUO and the recipient provided an explanation for such exemption and marking. Alternatively, the recipient may be requested, without marking the record, to protect against its public disclosure for reasons that are explained.

B. Transporting FOUO information. Records containing FOUO information shall be transported in a manner that precludes disclosure of the contents. When not commingled with classified information, FOUO information may be sent via first-class mail or parcel post. Bulky shipments, such as distributions of FOUO Directives or testing materials, that otherwise qualify under postal regulations may be sent by fourth-class mail.

C. Electrically Transmitted Messages. Each part of electrically transmitted messages containing FOUO information shall be marked appropriately. Unclassified messages containing FOUO information shall contain the abbreviated "FOUO" before the beginning of the text. Such messages shall be transmitted in accordance with communications security procedures in ACP-121 (United States Supplement 1) for FOUO information.

IV. Safeguarding FOUO Information

A. During Duty Hours. During normal working hours, records determined to be FOUO shall be placed in an out-of-sight location if the work area is accessible to non-governmental personnel.

B. During Non-duty Hours. At the close of business, FOUO records shall be stored so as to preclude unauthorized access. Filing such material with other unclassified records in unlocked files or desks, etc., is adequate when normal U.S. Government or government-contractor internal building security is provided during nonduty hours. When such internal security control is not exercised, locked buildings or rooms normally provide adequate after-hours protection. If such protection is not considered adequate, FOUO material shall be stored in locked receptacles such as file cabinets, desks, or bookcases. FOUO records that are subject to the provisions of Public Law 86–36, National Security Agency Act shall meet the safeguards outlined for that group of records.

V. Termination, Disposal and Unauthorized Disclosures

A. Termination. The originator or other competent authority, e.g., initial denial and appellate authorities, shall terminate "For Official Use Only" markings or status when circumstances indicate that the information no longer requires protection from public disclosure. When FOUO status is terminated, all known holders shall be notified, to the extent practical. Upon notification, holders shall efface or remove the "For Official Use Only" makings, but records in file or storage need not be retrieved solely for that purpose.

B. Disposal. (1) Nonrecord copies of FOUO materials may be destroyed by tearing each copy into pieces to preclude reconstructing, and placing them in regular trash containers. When local circumstances or experience indicates that this destruction method is not sufficiently protective of FOUO information, local authorities may direct other methods but give due consideration to the additional expense balanced against the degree of sensitivity of the type of FOUO information contained in the records.

(2) Record copies of FOUO documents shall be disposed of in accordance with the disposal standards established under 44 U.S.C. chapter 33, as implemented by Inspector General Defense Manual (IGDM) 5015.2,[4] "Records Management Program".

C. Unauthorized Disclosure. The unauthorized disclosure of FOUO records does not constitute as unauthorized disclosure of DoD information classified for security purposes. Appropriate administrative action shall be taken, however, to fix responsibility for unauthorized disclosure whenever feasible, and appropriate disciplinary action shall be taken against those responsible. Unauthorized disclosure of FOUO information that is protected by the Privacy Act may also result in civil and criminal sanctions against responsible persons. The DoD Component that originated the FOUO information shall be informed of its unauthorized disclosure.

Appendix B to Part 295—Exemptions

I. General

The exemptions listed apply to categories of records that may be withheld in whole or in part from public disclosure, unless otherwise prescribed by law. A discretionary release (see also § 295.5(e) of this part) to one requester may preclude the withholding of the same record under a FOIA exemption if the record is subsequently requested by someone else. In applying the exemptions, the identity of the requester and the purpose for which the record is sought are irrelevant with the exception that an exemption may not be invoked where the particular interest to be protected is the requester's interest. The examples provided of the types of records that may be exempted from release are not at all inclusive.

II. FOIA Exemptions

A. Exemption (b)(1). Those properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under the criteria established by executive order and implemented by regulations, such as DoD 5200.1–R [1] (32 CFR part 159a), "Information Security Program Regulation". Although material is not classified at the time of the FOIA request, a classification review may be undertaken to determine whether the information should be classified. The procedures in DoD 5200.1–R, section 2–204f, apply. In addition, this exemption shall be invoked when the following situations are apparent:

(1) The fact of the existence or nonexistence of a record would itself reveal classified information. In this situation, the OIG shall neither confirm nor deny the existence or nonexistence of the record being requested. A "refusal to confirm or deny" response will be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a "no record" response when a record does not exist will itself disclose national security information.

(2) information that concerns one or more of the classification categories established by executive order and DoD 5200.1–R (32 CFR part 159a) shall be classified if its unauthorized disclosure, either by itself or in the context of other information, reasonably could be expected to cause damage to the national security.

B. Exemption (b)(2). Those related solely to the internal personnel rules and practices of DoD or the OIG. This exemption has two profiles, high (b)(2) and low (b)(2).

(1) Records qualifying under high (b)(2) are those containing or constituting statutes, rules, regulations, orders, manuals, directives, and instructions the release of which would allow circumvention of these records, thereby substantially hindering the effective performance of a significant function of the DoD or OIG. Examples include:

(a) Those operating rules, guidelines, and manuals, for DoD and OIG investigators, inspectors, auditors, or examiners that must remain privileged in order for the OIG to fulfill a legal requirement.

(b) Personnel and other administrative matters, such as examination questions and answers used in training courses or in the determination of the qualification of candidates for employment, entrance on duty, advancement, or promotion.

(c) Computer software meeting the standards of § 295.3(c) of this part, the release of which would allow circumvention of a statute or DoD rules, regulations, orders, manuals, directives, or instructions. In this situation, the use of the software must be closely examined to ensure a circumvention possibility exists.

(2) Records qualifying under the low (b)(2) profile are those that are trivial and housekeeping in nature for which there is no legitimate public interest or benefit to be gained by release, and it would constitute an administrative burden to process the request in order to disclose the records. Examples include: rules of personnel's use of parking facilities or regulation of lunch hours,

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95.5(1).

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to section I.E. of this appendix.

[3] See footnote 1 to section I.E. of this appendix.

[4] Copies may be obtained, if needed, from the Information and Operations Support Directorate, Publications Management Branch, room 420, 400 Army Navy Drive, Arlington, VA 22202–2884.

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

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statements of policy as to sick leave, and trivial administrative data such as file numbers, mail routing stamps, initials, data processing notations, brief references to previous communications, and other like administrative markings.

C. Exemption (b)(3). Those concerning matters that a statute specifically exempts from disclosure by terms that permit no discretion on the issue, or in accordance with criteria established by that statute for withholding or referring to particular types of matters to be withheld. Examples of statutes are:

(1) National Security Agency Act information exemption. Public Law 86-36, section 6.

(2) Patent Secrecy, 35 U.S.C. 181-188. Any records containing information relating to inventions that are the subject of patent applications on which Patent Secrecy Orders have been issued.

(3) Restricted Data and Formerly Restricted Data, 42 U.S.C. 2162.

(4) Communication intelligence, 18 U.S.C. 798.

(5) Authority to Withhold from Public Disclosure Certain Technical Data, 10 U.S.C. 130, and 32 CFR part 250.

(6) Confidentiality of Medical Quality Records: Qualified Immunity Participants, 10 U.S.C. 1102.

(7) Physical Protection of Special Nuclear Material: Limitation on Dissemination of Unclassified Information, 10 U.S.C. 128.

(8) Protection of Intelligence Sources and Methods, 50 U.S.C. 403(d)(3).

D. Exemption (b)(4): Those containing trade secrets or commercial or financial information that the OIG receives from a person or organization outside the Government with the understanding that the information or record will be retained on a privileged or confidential basis in accordance with the customary handling of such records. Records within the exemption must contain trade secrets, or commercial or financial records, the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information; impair the Government's ability to obtain necessary information in the future; or impair some other legitimate Government interest. Examples include:

(1) Commercial or financial information received in confidence in connection with loans, bids, contracts, or proposals, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries, or other proprietary data. See also 32 CFR part 286h, "Release of Acquisition-Related Information".

(2) Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures, if offered and received in confidence from a contractor or potential contractor.

(3) Personal statements given in the course of inspections, investigations, or audits, when such statements are received in confidence from the individual and retained in confidence because they reveal trade secrets or commercial or financial information normally considered confidential or privileged.

(4) Financial data provided in confidence by private employers in connection with locality wage surveys that are used to fix and adjust pay schedules applicable to the prevailing wage rate of employees within the Department of Defense.

(5) Scientific and manufacturing processes or developments concerning technical or scientific data or other information submitted with an application for a research grant, or with a report while research is in progress.

(6) Technical or scientific data developed by a contractor or subcontractor exclusively at private expense, and technical or scientific data developed in part with federal funds and in part at private expense, wherein the contractor or subcontractor has retained legitimate proprietary interest in such data in accordance with title 10, U.S.C. 2320-2321 and DoD Federal Acquisition Regulation Supplement (DFARS), subpart 27.4 (see section C.(5) of this appendix).

(7) Computer software meeting the conditions of § 295.3(c), which is copyrighted under the Copyright Act of 1976 (17 U.S.C. 106), the disclosure of which would have an adverse impact on the potential market value of a copyrighted work.

E. Exemption (b)(5). Except as provided in subsections (2) through (5), below, internal advice, recommendations, and subjective evaluations, as contrasted with factual matters, that are reflected in records pertaining to the decision-making process of an agency, whether within or among agencies (as defined in 5 U.S.C. 552(e)), DoD Components or OIG components. Also exempted are records pertaining to attorney-client privilege and the attorney work-product privilege.

(1) Examples include:

(a) The nonfactual portions of staff papers, to include after action-reports and situation reports containing staff evaluations, advice, opinions, or suggestions.

(b) Advice, suggestions, or evaluations prepared on behalf of the Department of Defense by individual consultants or by boards, committees, councils, groups, panels, conferences, commissions, task forces, or other similar groups that are formed for the purpose of obtaining advice and recommendations.

(c) Those non-factual portions or evaluations by DoD or OIG Components personnel of contractors and their products.

(d) Information of a speculative, tentative, or evaluative nature of such matters as proposed plans to procure, lease or otherwise acquire and dispose of materials, real estate, facilities or functions, when such information would provide undue or unfair competitive advantage to private personal interests or would impede legitimate Government functions.

(e) Trade secret or other confidential research development, or commercial information owned by the Government, where premature release is likely to affect the Government's negotiating position or other commercial interests.

(f) Records that are exchanged among agency personnel within and among DoD Components or agencies as part of the preparation for anticipated administrative proceeding by an agency or litigation before any Federal, state, or military court, as well as records that qualify for the attorney-client privilege.

(g) Those portions of official reports of inspection, reports of the Inspector General, audits, investigations, or surveys pertaining to safety, security, or the internal management, administration, or operation of one or more DoD Components, when these records have traditionally been treated by the courts as privileged against disclosure in litigation.

(h) Computer software meeting the standards of § 295.3(c), which is deliberative in nature, the disclosure of which would inhibit or chill the decision-making process. In this situation, the use of software must be closely examined to ensure its deliberative nature.

(i) Planning, programming, and budgetary information which is involved in the defense planning and resource allocation process.

(2) If any such intra or interagency record or reasonably segregable portion of such record hypothetically would be made available routinely through the "discovery process" in the course of litigation with the agency, i.e., the process by which litigants obtain information from each other that is relevant to the issues in a trial or hearing, then it should not be withheld from the general public even though discovery has not been sought in actual litigation. If, however, the information hypothetically would only be made available through the discovery process by special order of the court based on the particular needs of a litigant, balanced against the interests of the agency in maintaining its confidentiality, then the record or document need not be made available under this part. Consult with legal counsel to determine whether exemption 5 material would be routinely made available through the discovery process.

(3) Intra or interagency memoranda or letters that are factual, or those reasonably segregable portions that are factual, are routinely made available through "discovery," and shall be made available to a requester, unless the factual material is otherwise exempt from release, inextricably intertwined with the exempt information, so fragmented as to be uninformative, or so redundant of information already available to the requester as to provide no new substantive information.

(4) A direction or order from a superior to a subordinate, though contained in an internal communication, generally cannot be withheld from a requester if it constitutes policy guidance or a decision, as distinguished from a discussion of preliminary matters or a request for information or advice that would compromise the decision-making process.

(5) An internal communication concerning a decision that subsequently has been made a matter of public record must be made available to a requester when the rationale for the decision is expressly adopted or incorporated by reference in the record containing the decision.

F. Exemption (b)(6). Information in personnel and medical files, as well as similar personal information in other files, that, if disclosed to the requester would result in a clearly unwarranted invasion of personal privacy. Release of information about an individual contained in a Privacy Act System of records would constitute a clearly unwarranted invasion of privacy is prohibited, and could subject the releaser to civil and criminal penalties.

(1) Examples of other files containing personal information similar to that contained in personnel and medical files include:

(a) Those compiled to evaluate or adjudicate the suitability of candidates for civilian employment or membership in the Armed Forces, and the eligibility of individuals (civilian, military, or contractor employees) for security clearances, or for access to particularly sensitive classified information.

(b) Files containing reports, records, and other material pertaining to personnel matters in which administrative action, including disciplinary action, may be taken.

(2) Home addresses are normally not releasable without the consent of the individuals concerned. In addition, the release of lists of DoD military and civilian personnel's names and duty addresses who are assigned to units that are sensitive, routinely deployable, or stationed in foreign territories can constitute a clearly unwarranted invasion of personal privacy.

(a) Privacy interest. A privacy interest may exist in personal information even though the information has been disclosed at some place and time. If personal information is not freely available from sources other than the Federal Government, a privacy interest exists in its nondisclosure. The fact that the Federal Government expended funds to prepare, index and maintain records on personal information, and the fact that a requester invokes FOIA to obtain these records indicates the information is not freely available.

(b) Published telephone directories, organizational charts, rosters and similar materials for personnel assigned to units that are sensitive, routinely deployable, or stationed in foreign territories are withholdable under this exemption.

(3) This exemption shall not be used in an attempt to protect the privacy of a deceased person, but it may be used to protect the privacy of the deceased person's family.

(4) Individuals' personnel, medical, or similar file may be withheld from them or their designated legal representative only to the extent consistent with DoD Directive 5400.11 (32 CFR part 286a).

(5) A clearly unwarranted invasion of the privacy of the persons identified in a personnel, medical or similar record may constitute a basis for deleting those reasonably segregable portions of that record, even when providing it to the subject of the record. When withholding personal information from the subject of the record, legal counsel should first be consulted.

G. Exemption (b)(7). Records or information compiled for law enforcement purposes; i.e., civil, criminal, or military law, including the implementation of executive orders or regulations issued pursuant to law. This exemption may be invoked to prevent disclosure of documents not originally created for, but later gathered for law enforcement purposes.

(1) This exemption applies, however, only to the extent that production of such law enforcement records or information could result in the following:

(a) Could reasonably be expected to interfere with enforcement proceedings.

(b) Would deprive a person of the right to a fair trial or to an impartial adjudication.

(c) Could reasonably be expected to constitute an unwarranted invasion of personal privacy of a living person, including surviving family members of an individual identified in such a record.

(i) This exemption also applies when the fact of the existence or nonexistence of a responsive record would itself reveal personally private information and the public interest in disclosure is not sufficient to outweigh the privacy interest. In this situation, the OIG shall neither confirm nor deny the existence or nonexistence of the record being requested.

(ii) A "refusal to confirm or deny" response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a "no records" response when a record does not exist and a "refusal to confirm or deny" when a record does exist will itself disclose personally private information.

(iii) Refusal to confirm or deny should not be used when (1) the person whose personal privacy is in jeopardy has provided the requester with a waiver of his or her privacy rights; or (2) the person whose personal privacy is in jeopardy is deceased, and the OIG is aware of that fact.

(d) Could reasonably be expected to disclose the identity of a confidential source, including a source within the Department of Defense, a State, local, or foreign agency or authority, or any private institution which furnishes the information on a confidential basis.

(e) Could disclose information furnished from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation or by an agency conducting a lawful national security intelligence investigation.

(f) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

(g) Could reasonably be expected to endanger the life or physical safety of any individual.

(2) Examples include:

(a) Statements of witnesses and other material developed during the course of the investigation and all materials prepared in connection with related government litigation or adjudicative proceedings.

(b) The identity of firms or individuals being investigated for alleged irregularities involving contracting with Department of Defense when no indictment has been obtained nor any civil action filed against them by the United States.

(c) Information obtained in confidence, expressed or implied, in the course of a criminal investigation by a criminal law enforcement agency or office within a DoD Component, or a lawful national security intelligence investigation conducted by an authorized agency or office within a DoD Component. National security intelligence investigations include background security investigations and those investigations conducted for the purpose of obtaining affirmative or counterintelligence information.

(3) The right of individual litigants to investigative records currently available by law (such as, the Jencks Act, 18 U.S.C. 3500) is not diminished.

(4) When the subject of an investigative record is the requester of the record, it may be withheld only as authorized by DoD Directive 5400.11 (32 CFR part 286a).

(5) Exclusions. Excluded from the above exemptions are the following two situations as applicable to the Department of Defense and the OIG:

(a) Whenever a request is made which involves access to records or information compiled for law enforcement purposes, and the investigation or proceeding involves possible violation of criminal law where there is reason to believe that the subject of the investigation or proceeding is unaware of its pendency, and the disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the OIG may, during only such times as that circumstance continues, treat the records or information as not subject to the FOIA. In such situation, the response to the requesters will state that no records were found.

(b) Whenever informant records maintained by a criminal law enforcement organization within the OIG under the informant's name or personal identifier are requested by a third party using the informant's name or personal identifier, the OIG may treat the records as not subject to the FOIA, unless the informant's status as an informant has been officially confirmed. If it is determined that the records are subject to exemption (b)(7), the response to the requester will state that no records were found.

H. Exemption (b)(8). Those contained in or related to examination, operation or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

I. Exemption (b)(9): Those containing geological and geophysical information and data (including maps) concerning wells.

Dated August 2, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-18776 Filed 8-8-91; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD1 91–074]

Special Local Regulation: New York National Championship Race, New York, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a special local regulation for the New York National Championship Race. The event, sponsored by Offshore Professional Tour, Inc., is scheduled to take place on Sunday, October 6th, 1991. Closure of the lower Hudson River from Battery Park to the George Washington Bridge is needed to protect the boating public from the hazards associated with high speed powerboat racing in confined waters.

DATES: Comments must be received on or before September 15th, 1991.

ADDRESSES: Comments should be mailed to Commander, Coast Guard Group New York, Bldg. 109, Governors Island, New York, NY 10004–5096. The comments and other materials referenced in this notice will be available for inspection and copying at the Waterways Management Office, Bldg. 109, Governors Island, New York. Normal Office hours are between 8 am and 4:30 pm, Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) C.W. Jennings, Waterways Management Officer, Coast Guard Group New York (212) 668–7933.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD1 91–074) and the specific section of the proposal to which their comments apply, and give reasons for each comment. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are LTJG C.W. Jennings, project officer, Coast Guard Group New York, and LT J.B. Gately, project attorney, First Coast Guard Director Legal Division.

Discussion of Proposed Regulations

On March 1, 1991 the sponsor, Offshore Professional Tour, submitted a request to hold an offshore powerboat race on the Hudson River, alongside Manhattan. This event will include up to 40 powerboats competing on an oval course for 150 miles at speeds approaching 100 m.p.h. Due to the type of race, the speed at which the participants will be moving, and the type of watercraft involved it is believed that the river will have to be closed to all other traffic for the duration of the event. This closure will include all waters of the Hudson River south of the George Washington Bridge and north of Battery Park. This action is needed to protect the maritime community from the hazards associated with this race. Environmental impact of this event is expected to be minimal. Risks associated with this event are expected to pose no threat to environmentally sensitive areas.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This is due to the limited duration of the race, the extensive advisories that have been and will be made to the affected maritime community, and the fact that the event is taking place on a Sunday afternoon which is normally a very light volume day for commercial marine traffic. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 100 of title 33, Code of Federal Regulations as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35 T1074 is added to read as follows:

§ 100.35–T1074 New York National Championship Race.

(a) Regulated area. The regulated area includes all waters of the Lower Hudson River south of the George Washington Bridge and north of a line drawn between Battery Park, Manhattan and the southernmost slip of the Central Railroad, Jersey City Station in Liberty State Park, described by the following points:

Commencing
SW Latitude 40 41.8 N
Longitude 074 02.3 W then East to
SE Latitude 40 41.8 N
Longitude 074 01.0 W then Northeast to
NE Latitude 40 49.5 N
Longitude 073 57.4 W then Northwest to
NW Latitude 40 51.0 N
Longitude 074 00.0 W then Southwest to the origin.

(b) Special local regulations. (1) Commander, Coast Guard Group New York reserves the right to delay, modify or cancel the race as conditions or circumstances require.

(2) No person or vessel may enter, transit, or remain in the regulated area during the effective period of regulation unless participating in the event or as authorized by the sponsor or Coast Guard patrol commander. The Coast Guard patrol commander will attempt to minimize any delays for commercial vessels transiting the area and will be monitoring channel 16 VHF.

(3) Vessels less than 20 meters in length may transit the regulated area if escorted by official regatta patrol vessels specified in paragraph (b)(5) of this section.

(4) Unless otherwise directed by the Coast Guard patrol commander, transiting vessels shall: Proceed at no wake speeds; remain clear of the race course area as marked by the sponsor provided buoys; not interfere with races or make stops; and keep to the western edge of the Hudson River.

(5) Official patrol vessels include Coast Guard and Coast Guard Auxiliary vessels and other vessel so designated by the regatta sponsor or Coast Guard patrol personnel.

(6) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast

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33 CFR Part 100

Navigation (water).

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  Longitude 074 02.3 W then East to
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(b) Special local regulations. (1) Commander, Coast Guard Group New York reserves the right to delay, modify or cancel the race as conditions or circumstances require.

(2) No person or vessel may enter, transit, or remain in the regulated area during the effective period of regulation unless participating in the event or as authorized by the sponsor or Coast Guard patrol commander. The Coast Guard patrol commander will attempt to minimize any delays for commercial vessels transiting the area and will be monitoring channel 16 VHF.

(3) Vessels less than 20 meters in length may transit the regulated area if escorted by official regatta patrol vessels specified in paragraph (b)(5) of this section.

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(5) Official patrol vessels include Coast Guard and Coast Guard Auxiliary vessels and other vessel so designated by the regatta sponsor or Coast Guard patrol personnel.

(6) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast

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Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(7) The sponsor shall be responsible for proper marking of the course within the regulated area and adequately marking the boundaries of the spectator area. All turn and spectator area buoys shall be established in a position agreeable to the Coast Guard Patrol Commander not later than one hour prior to the start of the event. All buoys marking the course and spectator area must be removed not later than one hour after completion of the event.

(8) The sponsor shall be required to provide no less than (6) six vessels for spectator control and to secure the race area. If insufficient sponsor provided vessels are controlling the event, the Coast Guard patrol commander may terminate the event. These vessels shall be on scene no later than one hour prior to the start of the event.

(9) In the event of an emergency or as directed by the Coast Guard patrol commander, the sponsor shall dismantle the race course to allow the passage of any U.S. Government vessel or any other designated emergency vessel. At the discretion of the patrol commander, any violation of the provisions contained within this regulation shall be sufficient grounds to terminate the event.

(c) Effective period. These regulations, if adopted, will be effective from 11 a.m. through 4 p.m. on October 6th, 1991. In case of inclement weather, this regulation, if adopted, will be effective from 11 a.m. through 4 p.m. on October 7th 1991.

Dated: August 5, 1991.

K.W. Thompson,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 91-18846 Filed 8-8-91; 8:45 am]

BILLING CODE 4910-14-M

Notices

Federal Register
Vol. 56, No. 154
Friday, August 9, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Assessment of Fees for Dairy Import Licenses

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of the fee for dairy import licenses for the 1992 quota year.

SUMMARY: This notice announces that the fee to be charged for the 1992 quota year for each license issued to a person or firm by the Department of Agriculture authorizing the importation of certain dairy articles which are subject to quotas proclaimed under the authority of section 22 of the Agricultural Adjustment Act of 1933, as amended, will be $75.00.

EFFECTIVE DATE: January 1, 1992.

FOR FURTHER INFORMATION CONTACT: Richard P. Warsack, Import Quota Manager, Import Policy and Trade Analysis Division, room 5531–South Building, U.S. Department of Agriculture, Washington, DC 20250–1000 or telephone at (202) 447–2916.

SUPPLEMENTARY INFORMATION: Regulations promulgated by the Department of Agriculture and codified at 7 CFR 6.20–6.34 provide for the issuance of licenses to importers of certain dairy articles which are subject to quotas proclaimed by the President pursuant to section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624). Those dairy articles may only be entered into the United States by or for the account of a person or firm to whom such licenses have been issued and only in accordance with the terms and conditions of such licenses and the regulations.

The licenses are issued on a calendar year basis, and each license authorizes the license holder to import a specified quantity and type of dairy article from a specified country. The use of licenses by the license holder to import dairy articles is monitored by the Import Quota Manager, Import Licensing Group, Import Policy and Trade Analysis Division, Foreign Agricultural Service, U.S. Department of Agriculture (the "Licensing Authority") and the U.S. Customs Service.

Regulations at 7 CFR 6.33(a) provide that a fee will be charged for each license issued to a person or firm by the Licensing Authority in order to reimburse the Department of Agriculture for the costs of administering the licensing system under this regulation. The fee is to be based upon the total cost to the Department of Agriculture of administering the licensing system during the calendar year preceding the year for which the fee is to be charged, divided by the average number of licenses issued per year for the three years preceding the year for which the fee is to be assessed.

Regulations at 7 CFR 6.33(b) provide that the Licensing Authority will announce the annual fee for each license and that such fee will be set out in a notice to be filed with the **Federal Register**. Accordingly, this notice sets out the fee for the licenses to be issued for the 1992 calendar year.

Notice

The total cost to the Department of Agriculture of administering the licensing system during 1991 has been determined to be $284,791. Of this amount, $163,541 represents the cost of the staff and supervisory hours devoted directly to administering the licensing system during 1991 (total personnel costs for the Import Licensing Group of the Foreign Agricultural Service equaled $132,851; a proportionate share of the supervisory costs devoted directly to administering the licensing system equaled $30,690); $46,000 represents the cost of the computer on-line entry system used to monitor the use of licenses during 1991; and $75,250 represents other miscellaneous costs, including travel, postage, and an in-house computer system and contractor. The average number of licenses issued per year for the three years immediately preceding 1992 has been determined to be 3,786. Accordingly, notice is hereby given that the fee for each license issued to a person or firm for the 1991 calendar year, in accordance with the regulations codified at 7 CFR 6.20–6.34, will be $75.00 per license.

Issued at Washington, DC the 6th day of August, 1991.

Richard P. Warsack,

Licensing Authority.

[FR Doc. 91–18996 Filed 8–8–91; 8:45 am]

BILLING CODE 3410–10–M

Forest Service

New World Project, Gold/Copper/Silver Mine, Gallatin National Forest, Park County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service, Gallatin National Forest (GNF), in conjunction with Montana's Department of State Lands (DSL), will prepare an environmental impact statement (EIS) for a proposal to permit the development of the New World Project. The New World Project, a gold, copper, and silver mine proposed by Crown Butte Mines, Inc. and Noranda Minerals Corporation, is located about 3 miles north of Cooke City, Montana. The proposed plan of operations was submitted on November 15, 1990 pursuant to the Forest Service locatable mineral regulations 36 CFR part 228, chapter II, subpart A, and to the State of Montana Metal Mine Reclamation Act title 82, chapter 4, part 3, MCA.

ADDRESSES: Send written comments and suggestions concerning the scope of the analysis to David P. Garber, Forest Supervisor, Gallatin National Forest, P.O. Box 130, Bozeman, Montana 59771.

FOR FURTHER INFORMATION CONTACT: Sherm Sollid, Geologist, Gallatin National Forest, P.O. Box 130, Bozeman, Montana 59771, telephone 406–587–6709.

SUPPLEMENTARY INFORMATION: The New World Project, was submitted by Crown Butte Mines and Noranda Minerals on November 15, 1990 in their Proposed Plan of Operations, would consist of a 1000 ton-per-day mine and mill complex. The ore would be mined from an underground mine and from two open-pits. Ore would be crushed and conveyed to a mill in the Fisher Creek drainage. Ore would be ground at the mill and the gold, cooper, and silver

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Issued at Washington, DC the 6th day of August, 1991.

Richard P. Warsack,

Licensing Authority.

[FR Doc. 91–18996 Filed 8–8–91; 8:45 am]

BILLING CODE 3410-10-M

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concentrated by conventional froth flotation and tailings leach methods. Tailings from the mill process would be conveyed through a pipeline to the tailings disposal impoundment located less than ½ mile upstream from the mill in Fisher Creek. Concentrates from the mill would be shipped by truck to Cody, Wyoming and then by train to a smelter. The project would require construction of about 68 miles of 69kV transmission powerline from Cody, Wyoming to Cooke City, Montana. The mine life is estimated to be 12–15 years with a workforce of approximately 150 people. The companies have developed a reclamation plan to rehabilitate all disburbed areas following construction, opeation, and mine closure.

The Gallatin Forest Supervisor and the Shoshone Forest Supervisor are the responsible officials for the Forest Service action related to this project. In addition to the Montana Department of State Lands, cooperating agencies that have been identified at this time are the Bureau of Land Management, the Army Corps of Engineers, the Montana Department of Health and Environmental Sciences, and the Wyoming Public Service Commission.

Governmental agencies and the public who may be interested in or affected by the proposal are invited to participate in the scoping process.

The scoping process is designed to obtain input to identify potential issues related to the proposed project. The Forest Service, in conjunction with the Montana Department of State Lands, will hold a public scoping meeting on Wednesday, August 14, 1991 at the Range Riders Lodge in Silver Gate, Montana at 10 a.m. Additional scoping meetings are planned for Livingston, Montana and Cody, Wyoming at a later date. The dates of these scoping meetings will be published in appropriate local newspapers.

The EIS will consider a range of alternatives based on the issues, concerns and opportunities associated with the project. The estimated date for issuance of the draft environmental impact statement is June, 1992. A public meeting will be held in conjunction with the issuance of the draft environmental impact statement. The final impact statement is expected to be available in October, 1992. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritage, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

Dated: August 1, 1991.

David P. Garber,

Forest Supervisor, Gallatin National Forest.

[FR Doc. 91–18917 Filed 8–8–91; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 33–91]

Foreign-Trade Zone 125—South Bend, IN; Application for Subzone; Coachmen Company Recreational Vehicle Plant; Extension of Public Comment

The comment period for the above case, requesting special-purpose subzone status for a propose compant recreational vehicle (RV) assembly operation at the plant of Coachmen Recreational Vehicle Company located in Middlebury, Indiana (56 FR 28370, 6/20/91), is extended to August 30, 1991, to allow interested parties additional time in which to comment on the proposal.

Comments in writing are invited during this period. Submissions should include 5 copies. Material submitted will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: August 5, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91–18988 Filed 8–8–91; 8:45 am]

BILLING CODE 3510-DS-M

(Docket 43–91)

Foreign-Trade Zone 92—Harrison Co. MS; Application for Expansion and Application for Subzone, Avondale Shipyard

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Gulfport/Biloxi Foreign-Trade Zone, Inc., grantee of FTZ 92, requesting authority to expand its zone in Harrison County, Mississippi, within the Gulfport Customs port of entry, and requesting special-purpose subzone status at the shipyard of Avondale Enterprises, Inc., located in Harrison County. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 16, 1991.

FTZ 92 was approved on November 4, 1983 (Board Order 232, 48 FR 52107, 11/16/83), and currently covers 4 sites in Harrison County, Mississippi: Site 1—5 acres within the Port of Gulfport Complex; Site 2—99 acres at the Gulfport/Biloxi Regional Airport; Site 3—97 acres within the Bernard Bayou Industrial Park; and Site 4—27 acres within the Long Beach Industrial Park.

The grantee now requests authority to expand all four of its general-purpose zone sites to include the larger projects of which they are a part. Site 1 would cover the entire 167-acre Port of Gulfport complex located on Highway 90 and 30th Avenue in Gulfport. Site 2 would involve a 717-acre industrial area within the regional airport at 14035 Airport Road, Gulfport. Site 3 would cover the Bernard Bayou Industrial Park (2,501 acres) 1 mile north of Gulfport. Site 4 would involve the entire Long Beach Industrial Park (484 acres) 5 miles west of Gulfport between Espy Avenue and Beat Line Road. No manufacturing authority is being sought for the general-purpose zone sites. Such requests would be made to the Board on a case-by-case basis.

The proposed subzone for the Avondale shipyard (122 acres) is located at 13301 Industrial Seaway Road at the Bernard Bayou Industrial Park. The facility is used for the construction, repair and conversion of commercial and military vessels for domestic and international customers. Foreign components used by the company include clutches, compressors, depth sounders, diesel engines, electric motors, gate valves, generators, hatch covers and hydraulic lifts. While there is no indicated use of foreign steel mill products, the applicant is aware that Board decisions on shipyard cases have included a standard restriction requiring the payment of full duties on such products.

Zone procedures will help Avondale reduce production costs on its current orders and compete internationally for new contracts. Most of the foreign components are subject to Customs duties, which range from 2 to 6 percent, while the finished products, as oceangoing vessels, are duty free.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; David L. Willette, District Director, U.S. Customs Service, South Central Region, 150 North Royal, Mobile, Alabama 36602; and, Colonel Michael F. Thuss, District Engineer, U.S. Army Engineer District Mobile, P.O. Box 2288, Mobile, Alabama 36628–0001.

Comments concerning the proposed expansion are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before September 20, 1991.

A copy of the application is available for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, One Government Plaza Building, Gulfport, Mississippi 39502.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., room 3716, Washington, DC 20230.

Dated: August 1, 1991.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 91–18990 Filed 8–8–91; 8:45 am]

BILLING CODE 3510-DS-M

[Docket 19–91]

Foreign-Trade Subzone 78A, Nissan Auto/Truck Plant Smyrna, TN, Application for Expansion; Extension of Public Comment Period

The comment period for the above case, requesting authority to expand the subzone and the scope of manufacturing authority for Foreign-Trade Subzone 78A of Nissan Motor Manufacturing Corporation U.S.A. (56 FR 16067, 4/19/91), is further extended to September 25, 1991, to allow interested parties additional time in which to comment on the proposal.

Comments in writing are invited during this period. Submissions should include 5 copies. Material submitted will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: August 5, 1991.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 91–18991 Filed 8–8–91; 8:45 am]

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[Order No. 524]

Resolution and Order Approving the Application of the Calhoun-Victoria Foreign-Trade Zone, Inc. for a Special-Purpose Subzone at the Alcoa Alumina and Aluminum Fluoride Manufacturing Plant in Calhoun County, Texas

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Calhoun-Victoria Foreign-Trade Zone, Inc., grantee of FTZ 155, filed with the Foreign-Trade Zones Board (the Board) on February 9, 1990, requesting special-purpose subzone status at the alumina and aluminum fluoride manufacturing plant of Aluminum Company of America, Inc., in Calhoun County, Texas, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish a Foreign-Trade Subzone in Calhoun County, Texas

Whereas, By an act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, The Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, The Calhoun-Victoria Foreign-Trade Zones, Inc., Grantee of FTZ 155, has made application (filed February 9, 1990, FTZ Docket 4–90, 55 FR 6027, 2/21/90) in due and proper form to the Board for authority to establish a special-purpose subzone at the alumina and aluminum fluoride manufacturing plant of the Aluminum Company of America, Inc., (Alcoa) in Calhoun County, Texas;

Whereas, Notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, The Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, Therefore, In accordance with the application filed February 9, 1990, the Board hereby authorizes the establishment of a subzone at the Alcoa plant in Calhoun County, Texas, designated on the records of the Board as Foreign-Trade Subzone 155C, at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express condition and limitations:

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as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish a Foreign-Trade Subzone in Calhoun County, Texas

Whereas, By an act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, The Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, The Calhoun-Victoria Foreign-Trade Zones, Inc., Grantee of FTZ 155, has made application (filed February 9, 1990, FTZ Docket 4–90, 55 FR 6027, 2/21/90) in due and proper form to the Board for authority to establish a special-purpose subzone at the alumina and aluminum fluoride manufacturing plant of the Aluminum Company of America, Inc., (Alcoa) in Calhoun County, Texas;

Whereas, Notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, The Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, Therefore, In accordance with the application filed February 9, 1990, the Board hereby authorizes the establishment of a subzone at the Alcoa plant in Calhoun County, Texas, designated on the records of the Board as Foreign-Trade Subzone 155C, at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express condition and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from federal, state, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to releive responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In Witness Whereof, The Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Office or his delegate at Washington, DC, this 5th day of August, 1991, pursuasnt to Order of the Board.

Eric I. Garfinkel,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

[FR Doc. 91–18992 Filed 8–8–91; 8:45 am]

BILLING CODE 3510-DS-M

[Docket 25–91]

Foreign-Trade Zone 125—South Bend, IN; Request for Manufacturing; Vehicle Concepts Recreational Vehicle Plant; Extension of Comment Period

The comment period for the above case, requesting authority to manufacture recreational vehicles and ambulances under zone procedures within FTZ 125, South Bend, Indiana, for Vehicle Concepts (56 FR 22395, 5/15/91), is further extended to August 30, 1991, to allow interested parties additional time in which to comment on the proposal.

Comments in writing are invited during this period. Submissions should include 5 copies. Material submitted will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: August 5, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91–18989 Filed 8–8–91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A–357–804]

Final Determination of Sales at Less Than Fair Value: Silicon Metal From Argentina

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: August 9, 1991.

FOR FURTHER INFORMATION CONTACT: Stefanie Amadeo or James Terpstra, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–1174 or (202) 377–3695, respectively.

Final Determination

Background

Since the publication of our affirmative preliminary determination on March 29, 1991 (56 FR 13116), the following events have occurred.

On April 2, 1991, the Department sent a deficiency letter to Electrometalurgica Andina, S.A.I.C. (Andina) based on its response to Section D of the questionnaire. On April 3, 1991, Andina requested, and was granted, an extension to respond to the Department's April 2, 1991, deficiency letter. Petitioners submitted issues for the Department's verification in Argentina on April 5, 1991. On April 16, 1991, Andina submitted its response to the Department's April 2, 1991, deficiency letter, and its Section D response. On April 18, 1991, Andina submitted corrections to its Sections A, B, and C responses.

Pursuant to an April 5, 1991, request by Andina, on April 30, 1991, we postponed the final determination until not later than August 12, 1991 (56 FR 19835 (April 30, 1991)).

We conducted verification of Andina's questionnaire responses between April 22 and April 26, 1991, in Argentina.

On May 28, 1991, petitioners, Silarsa, and Andina submitted case briefs. On May 30, 1991, petitioners and Andina submitted rebuttal briefs. A public hearing was held on May 31, 1991.

Scope of Investigation

The merchandise covered by this investigation is silicon metal containing at least 96.00 but less than 99.99 percent of silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor-grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to this investigation. Given that this investigation is not limited to silicon metal used as an alloying agent or in the chemical industry, we have deleted the sentence regarding the uses for silicon metal from the scope of this investigation. Although the HTS numbers are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) is March 1, 1990, through August 31, 1990.

Such or Similar Comparisons

We established one such or similar category of merchandise, consisting of silicon metal, in accordance with section 771(16) of the Act. Comparisons were made on the basis of the following grade classifications: (1) Chemical grade, having a silicon content of 98.50 through 99.98 percent and an iron content of 0.00 through 0.65 percent; (2) primary-aluminum grade, having a silicon content of 98.50 through 99.98 percent and an iron content of 0.66 through 1.00 percent; (3) secondary-aluminum grade, having a silicon content of 98.00 through 98.49 percent; and (4) other, with a silicon content of 96.00 through 97.99 percent.

Standing

Our position on standing remains unchanged from that in our preliminary determination. See Preliminary Determination of Sales at Less Than Fair Value: Silicon Metal From Argentina, 56 FR 13116 (March 29, 1991) (Silicon Metal).

Critical Circumstances

Our position on critical circumstances remains unchanged from that in our preliminary determination. See Silicon Metal.

Exclusion Request

On November 21, 1990, Silarsa requested that it be excluded from any antidumping duty order issued in this investigation, pursuant to 19 CFR 353.14. Silarsa requested exclusion from any antidumping duty order issued in this investigation because Silarsa believes that it is in a unique position. Silarsa considers its position to be unique because it is a joint venture operation that began investing in plant and equipment four years ago, without the benefit of knowledge of any possible antidumping duty order being issued. Silarsa further states that, although it was already on-line when the petition was filed, it had not yet begun production and therefore could not participate in the investigation as a voluntary respondent. In a February 21, 1991, submission, Silarsa stated that if it was not granted an exclusion, a zero deposit rate would be a possible option. On March 19, 1991, petitioners opposed Silarsa's request for exclusion from any antidumping duty order issued in this investigation and the assignment of a zero deposit rate for Silarsa.

In the preliminary determination, we denied Silarsa's exclusion request because Silarsa did not possess a "track record" with which to demonstrate that, in accordance with 19 CFR 353.14, it is not dumping. We did not assign Silarsa a zero deposit rate in the preliminary determination because we determined that Silarsa's position, once it begins to export to the United States, will be similar to that of any other new shipper of the subject merchandise. While the specific facts underlying Silarsa's request may appear somewhat unusual in that Silarsa was already on-line when the petition in this case was filed but had not yet begun production, we are unable to grant Silarsa's exclusion request. In accordance with 19 CFR 353.14, exclusion of a particular exporter is possible only if that exporter can demonstrate that it is not dumping. That is, if a company is to be excluded from an order, the company must certify not only that it will not dump in the future, but it must also demonstrate that its pricing practices during the POI did not result in sales at less than fair value. Silarsa cannot satisfy this latter requirement. The Department's antidumping determinations are not limited only to those exporters who are respondents in an investigation; rather, our determinations cover all exports of the specified merchandise from the country subject to an investigation, regardless of whether particular exporters had sales during the POI. Accordingly, we determine that Silarsa will not be excluded from the determination.

Furthermore, we cannot assign Silarsa a zero deposit rate because Silarsa's position, once it begins exporting to the United States, will be similar to that of any other new shipper of the subject merchandise. Accordingly, Silarsa is subject to the "All Others" rate, as would be any new shipper of the subject merchandise from Argentina. This approach is consistent with the Department's long-standing practice. Accordingly, absent actual sales by Silarsa, assigning it the "All Others" rate based on the data of the other Argentine company that has been found to sell at less than fair value is the only action supported by the facts developed in this investigation.

If an antidumping duty order is issued in this investigation, Silarsa will have an opportunity to request an administrative review under section 751 of the Act. If its entries are found to be priced at not less than foreign market value, no duties will be assessed and any deposits of estimated antidumping duties it was required to make will be refunded with interest.

Fair Value Comparisons

To determine whether sales of silicon metal from Argentina to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We based the USP on purchase price, in accordance with section 772(b) of the Act, both because the subject merchandise was sold to unrelated purchasers in the United States prior to importation into the United States and because exporter's sales price (ESP) methodology was not indicated by other circumstances. We calculated purchase price based on packed, f.o.b. prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, labor at port, customs fees, and Argentine export duties, in accordance with section 772(d)(2) of the Act. We increased purchase price for taxes rebated and taxes uncollected by reason of exportation, in accordance with section 772(d)(1)(C) of the Act. Because of inconsistencies found in the response, we used verified duty drawback rates when adjusting for taxes rebated and taxes uncollected by reason of exportation.

Foreign Market Value

In order to determine whether there were sufficient sales of silicon metal in the home market to serve as the basis for calculating FMV, we compared the volume of home market sales of the such or similar category (*i.e.*, all silicon metal) to the aggregate volume of third country sales, in accordance with section 773(a)(1) of the Act. For Andina, the volume of home market sales was greater than five percent of the aggregate volume of third country sales. Therefore, we determined that home market sales constituted a viable basis for calculating FMV, in accordance with 19 CFR 353.48.

On February 5, 1991, petitioners alleged that home market sales were made at less than the cost of production (COP) and that constructed value (CV) should be used to compute FMV. Because we had reasonable grounds to believe or suspect that Andina sold in the home market at less than the COP, we initiated a cost investigation in accordance with section 773(b) of the Act.

We also determined Argentina's economy to be hyperinflationary. Therefore, in order to eliminate the distortive effect of hyperinflation and in accordance with the Department's longstanding practice, we calculated separate COPs and CVs for each month of the POI. See, *e.g.*, Amended Final Determination of Sales at Less Than Fair Value and Amended Antidumping Duty Order, Tubeless Steel Disc Wheels from Brazil, 53 FR 34566 (September 7, 1988) (Disc Wheels).

In order to determine whether home market sales were above the COP, we calculated monthly COPs on the basis of Andina's cost of materials, labor, other fabrication costs, general expenses, and packing. We relied on the COP data submitted by Andina except in the following instances where the costs were not appropriately quantified or valued: We adjusted Andina's crushing costs based on the percentage of crushed raw material used in silicon metal production; we increased general and administrative expenses (G&A) to include "other expenses" as reflected on the financial statements; we reallocated factory administrative charges based on information on the record; we recalculated electricity costs based on information on the record; we calculated an offset for scrap sales; and we corrected certain clerical errors in Andina's submission.

We compared individual home market prices with the monthly COPs. We found that during the POI there were sufficient sales overall above the COP to use as FMV. However, for the month of July 1990, all sales in the home market were made at prices below the COP. Therefore, for this month, we based FMV on CV. See Final Determination of

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On February 5, 1991, petitioners alleged that home market sales were made at less than the cost of production (COP) and that constructed value (CV) should be used to compute FMV. Because we had reasonable grounds to believe or suspect that Andina sold in the home market at less than the COP, we initiated a cost investigation in accordance with section 773(b) of the Act.

We also determined Argentina's economy to be hyperinflationary. Therefore, in order to eliminate the distortive effect of hyperinflation and in accordance with the Department's longstanding practice, we calculated separate COPs and CVs for each month of the POI. See, *e.g.*, Amended Final Determination of Sales at Less Than Fair Value and Amended Antidumping Duty Order, Tubeless Steel Disc Wheels from Brazil, 53 FR 34566 (September 7, 1988) (Disc Wheels).

In order to determine whether home market sales were above the COP, we calculated monthly COPs on the basis of Andina's cost of materials, labor, other fabrication costs, general expenses, and packing. We relied on the COP data submitted by Andina except in the following instances where the costs were not appropriately quantified or valued: We adjusted Andina's crushing costs based on the percentage of crushed raw material used in silicon metal production; we increased general and administrative expenses (G&A) to include "other expenses" as reflected on the financial statements; we reallocated factory administrative charges based on information on the record; we recalculated electricity costs based on information on the record; we calculated an offset for scrap sales; and we corrected certain clerical errors in Andina's submission.

We compared individual home market prices with the monthly COPs. We found that during the POI there were sufficient sales overall above the COP to use as FMV. However, for the month of July 1990, all sales in the home market were made at prices below the COP. Therefore, for this month, we based FMV on CV. See Final Determination of

Sales at Less Than Fair Value: Tubeless Steel Disc Wheels from Brazil, 54 FR 8948 (March 20, 1987).

We calculated CV in accordance with section 773(e)(1) of the Act. The monthly CV includes materials, fabrication, general expenses, profit and packing. We used the following as the basis for calculating CV:

(1) Andina's actual general expenses because they exceed the statutory ten percent minimum of materials and fabrication, in accordance with section 773(e)(1)(B)(i) of the Act; and

(2) The statutory minimum profit of eight percent, in accordance with section 773(e)(1)(B)(ii) of the Act, as Andina's profit was less that eight percent of the sum of general expenses and the cost of manufacture (COM).

We used Andina's submitted monthly costs except for the following instances where the costs were not appropriately quantified or valued: we adjusted Andina's crushing costs based on the percentage of crushed raw material used in silicon metal production; we increased G&A to include "other expenses" as reflected on the financial statements; we reallocated factory administrative charges based on information on the record; we recalculated electricity costs based on information on the record; we corrected certain clerical errors in Andina's submission; and we added imputed credit and packing costs.

We made circumstance of sale adjustments, where appropriate, for differences in credit expenses, in accordance with 19 CFR 353.56(a). In addition, when the U.S. date of sale occurred in a calendar month preceding the date of shipment, we made a circumstance of sale adjustment to account for hyperinflation between the exchange rate on the date of sale and the exchange rate on the date of shipment. Because the CV is calculated as of the date of exportation (shipment), we made this adjustment to eliminate the artificial distortion of value caused by the rapid depreciation of Argentina's currency. See Disc Wheels.

For price-to-price comparisons, we calculated FMV based on the unpacked, ex-factory prices denominated in U.S. dollars to unrelated customers in Argentina. We added U.S. packing costs to the home market price in accordance with section 773(a)(1) of the Act. We added the separate profit Andina realizes from the sale of packing to the home market price.

Because all price-to-price comparisons involved purchase price sales, we made a circumstance of sale adjustment for differences in credit expenses, in accordance with 19 CFR 353.56. We recalculated credit using interest rates available to Andina during the POI for borrowings in foreign currencies.

We made an upward adjustment to the tax-exclusive home market prices for the taxes we computed for the USP.

Currency Conversion

No certified rates of exchange, as furnished by the Federal Reserve Bank of New York, were available for the POI. In place of those rates, we used the daily official exchange rates for Argentina published by the National Bank of Argentina.

Verification

As provided in section 776(b) of the Act, we verified all information provided by the respondent by using standard verification procedures, including on-site inspection of manufacturers' facilities, the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Interested Party Comments

Comment 1: Petitioners argue that the Department should not make an upward adjustment to U.S. price for the turnover tax and the lote hogar tax which are assessed on gross home market revenues but not on export revenues. Contrary to Andina's claim in its January 11, 1991, submission that these taxes are indirect taxes which are included in the price of silicon metal sold in the home market, petitioners maintain that these taxes are actually taxes on the gross revenue. Petitioners state that neither the turnover tax nor the lote hogar tax are indirect taxes, and that Andina has not shown that it passes these taxes through to customers by including these taxes in, or adding them to, the home market selling price.

Petitioners also contend that, even if it were appropriate to make an addition to U.S. price for the turnover tax and the lote hogar tax, the amount of the adjustment made in the preliminary determination overstated the actual incidence of these taxes on home market sales. Petitioners claim that these taxes are imposed only on home market sales within the province of San Juan, and that such sales constitute only a small percentage of Andina's total home market sales. Therefore, petitioners argue that the amount that should be added to the U.S. price for the turnover tax and the lote hogar tax should not exceed the tax rate multiplied by the percentage of Andina's sales in San Juan.

Andina claims that the turnover tax and the lote hogar tax are indirect taxes on the sales value of the subject merchandise, and that Andina must pay these taxes on the price of all of its home market sales. Andina states that the taxes are not paid separately on each sales transaction; rather, at the end of the month total home market sales are taxed. Therefore, Andina asserts that these taxes are not direct taxes like an income tax, but instead are taxes on the gross revenue of home market sales.

Andina also argues that it pays the turnover tax and the lote hogar tax on all its home market sales, with different tax rates for the different provinces. Andina further claims that it has understated the amount of the taxes to be added to the U.S. sales price, since the reported percentage is only for sales in San Juan province, rather than an average of the tax rates for the different provinces.

DOC Position: We agree in part with petitioners. In our preliminary determination, we added the combined turnover tax and the lote hogar tax, reported by Andina as indirect taxes, to U.S. price and made a circumstance of sale (COS) adjustment to home market prices for the difference in the tax amounts in the two markets. However, at verification, we observed that Andina pays these taxes on monthly revenue inclusive of home market sales revenue, interest income, bond revenue, and other miscellaneous revenues, but exclusive of export revenues.

Section 771(d)(1)(C) of the Act provides that the Department make a COS adjustment for any indirect taxes imposed directly upon the "merchandise or components thereof" that have not been collected by reason of exportation of the merchandise to the United States, but only to the extent that such taxes are added to or included in the price of the merchandise when sold in the home market. See, *e.g.*, Frozen Concentrated Orange Juice From Brazil; Final Results and Termination in Part of Antidumping Duty Administrative Review, 55 FR 47502 (November 14, 1990) (FCOJ). There is no evidence on the record that the turnover tax and the lote hogar tax are paid by the purchaser, nor is there evidence that Andina takes these taxes into account in setting its home market prices. Since we have determined that the taxes in question should be viewed as taxes on gross revenue exclusive of export revenue, not taxes imposed directly upon the merchandise or components thereof, we have not made any adjustment for these taxes in the final determination.

Comment 2: Petitioners argue that any adjustments the Department may make for the rebate of indirect taxes under

Argentina's reembolso program should be only to the extent that the indirect taxes are paid in the home market on silicon metal or on inputs that are physically incorporated into silicon metal. In support of this argument they cite to Carbon Steel Wire Rod from Argentina, 49 FR 38170 (1984) (Argentina Wire Rod), Barbed and Barbless Wire from Argentina, 50 FR 38563 (1985) (Argentina Barbed Wire), and Carbon Steel Pipe and Tube from Thailand, 55 FR 42596 (1990) (Thailand Pipe and Tube).

Petitioners also argue that no adjustment should be made for the following indirect taxes: The turnover tax, the loto hogar tax, import duties, the statistics tax, and the merchant marine fund tax, because these taxes are already the subject of separately claimed adjustments. Petitioners maintain that including them for purposes of determining the amount of any adjustment under the reembolso rebate program would result in their being double counted.

Andina argues that because the base upon which the reembolso rate is applied is the FOB export price less the cost of the imported electrodes, the effective rate which the Department added to the U.S. price was less than the stated reembolso rate. Andina maintains that under the Argentine tax system, it qualifies for a rebate of all the taxes listed in its January 11, 1991, submission.

Andina claims that an adjustment for the turnover tax and the loge hogar under the reembolso program would not result in their being double counted if they are also the subject of a separate adjustment because these taxes have two effects at two different stages. Andina claims that it not only pays these taxes on its sales income, but also on the products it purchases from its suppliers because these taxes are passed onto Andina through the prices charged by Andina's suppliers.

However, Andina does agree with petitioners that the import duties, the statistics tax, and merchant marine fund tax would be double counted if the Department were to consider them for purposes of the reembolso rebate adjustment.

DOC Position: We disagree with petitioners' argument that the adjustment to U.S. price for the rebate of indirect taxes must be limited to the rebate of taxes paid on inputs that are physically incorporated into the subject merchandise.

Prior to the Trade Act of 1974, sections 203 and 204 of the Antidumping Act of 1921, 19 U.S.C. 162 and 163, provided for an upward adjustment to U.S. price for taxes rebated or not collected by reason of exportation "in respect to the manufacture, production, or sale of the merchandise." H.R. Rep. No. 93–571, 93rd Cong., 1st Sess. 69–70 (1973). This allowed for an adjustment to U.S. price for a broad range of taxes. In the legislative history to the Trade Act of 1974, Congress expressed concern that the adding back of such taxes under the Antidumping Act had "the effect of reducing or eliminating any dumping margins that may exist." *Id.* at 70.

Accordingly, section 321(b) of the Trade Act of 1974 amended section 203 and 204 of the Antidumping Act to provide for an upward adjustment to U.S. price for "any taxes imposed in the country of exportation directly upon the exported merchandise or components thereof," and which have been rebated or not collected by reason of exportation of the merchandise to the United States. See 19 U.S.C. 1677a(d)(1)(C). Thus, with this amendment, Congress limited the adjustment to U.S. price for the rebate of taxes to those instances in which "the direct relationship of the tax to the product being exported, or components thereof, could be demonstrated." H.R. No. 93–571, at 69. Accord S. Rep. No. 93–1298, 93rd Cong., 2nd Sess. 172 (1974). This is the same standard used in a CVD investigation in determining whether a foreign company has received a countervailable benefit for the rebate of indirect taxes. See H.R. Rep. No. 93–571 at 69 (amendment would "conform the standard in the Antidumping Act to the standard under the CVD law, thereby harmonizing tax treatment under the two statutes); S. Rep. No. 93–1298, at 172 (the standard in the amendment "parallels that standard employed by the Treasury Department under the countervailing duty law in determining whether tax rebated and remissions constitute bounties or grants").

It might be argued that by including the "directly related" standard, Congress intended that a separate subsidy investigation be undertaken whenever an adjustment involving the rebate of indirect taxes is to be made pursuant to section 772(d)(1)(C). However, other than indicating that the adjustment should be limited where the existence of an excessive rebate is established, neither the statutory language nor the legislative history of this provision contains any express indication that Congress intended that the administering authority conduct a separate CVD investigation within an AD investigation in order to limit U.S. price adjustments. Moreover, there is no indication that the Treasury Department, which was involved in the drafting of the 1974 Trade Act and which was responsible for administering the AD law until 1980, ever interpreted the amended U.S. price section to require that a subsidy inquiry for information on physical incorporation be conducted in the context of a stand-alone AD investigation. Therefore, when there is a companion CVD proceeding on the merchandise subject to an AD proceeding, the Department limits adjustments to U.S. price for the rebate of indirect taxes to taxes paid on inputs that are physically incorporated into the subject merchandise. The Department, however, does not limit such adjustments to U.S. price when there is no companion CVD proceeding on the subject merchandise.

Furthermore, the adjustment required by section 772(d)(1)(D) of the Act indicates that the adjustment for the rebate of indirect taxes, pursuant to section 772(d)(1)(C), should be limited to taxes paid on inputs physically incorporated into the subject merchandise only when there is a companion CVD proceeding. Under section 321(b) of the 1974 Trade Act, Congress also amended section 203 of the Antidumping Act to provide that purchase price shall be increased by "the amount of any countervailing duty imposed on the merchandise under part 1 of this subtitle or section 1303 of this title to offset an export subsidy." See 19 USC 1677a(d)(1)(D). Although this provision of the Act is designed to prevent what would be a double assessment on a respondent when there is a companion CVD proceeding, see H.R. Rep. No. 93–571, at 70; S. Rep. No. 93–1298, at 172, it is not meant to provide a benefit to the respondent. A benefit would occur, however, if, as under the pre-1974 statute, any countervailable rebate of taxes were included in the upward adjustment to U.S. price.

Accordingly, in order to properly give effect to section 772(d)(1)(D) when there is a companion CVD case, adjustments to U.S. price under section 772(d)(1)(C) must be limited to the amount of the rebate of indirect taxes on inputs that are physically incorporated into the exported merchandise. In this regard, the Department notes that U.S. price adjustments, pursuant to section 772(d)(1)(C), should not be limited when there is an "allied" CVD case, *i.e.*, one which deals with a principal upstream input such as in Argentine Barbed Wire, and does not intend in the future to limit U.S. price adjustments in such cases to the amount of the rebate of indirect taxes paid on inputs that are physically incorporated into the subject merchandise.

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The complex nature of the investigation that must be undertaken to resolve the issue of "physical incorporation" also suggests that Congress did not intend that a separate CVD investigation be conducted in the context of a stand-alone AD investigation. For example, certain countries, such as Argentina, employ a "cascade" tax system in which turnover taxes are assessed on every product within the production chain of all goods produced in the country, with no credit given (as with value-added taxes) for taxes already paid. The indirect taxes imposed upon the inputs to the final product (and upon the inputs to the inputs, etc.) are, in effect, multiplied to the extent that the effective indirect tax burden borne by the final product usually is several times the nominal rate of any turnover tax. When conducting a normal CVD investigation to determine whether the rebate of indirect taxes under a "cascade" tax system is excessive, the Department must deal extensively with the foreign government in question to explore the nature of any government studies (typically sector-specific "input-output" econometric studies) which document specific and cumulative tax burdens for all inputs and products. Such a proceeding ordinarily is very complex and time-consuming. In contrast, AD investigations in market economy countries rarely involve government-to-government contact because all of the information relevant to antidumping determinations (concerning prices and costs) is possessed by the private companies involved.

In addition, the courts have explicitly stated that there are good reasons why the Department should refrain from making a subsidy determination in the context of an AD investigation. For example, as the court explained in *Huffy Corp.* v. *United States,* 632 F. Supp. 50 (CIT 1986): "The determination of whether a countervailable subsidy exists is a complex one and Congress has provided a separate set of guidelines for the inquiry. In a dumping investigation the ITA is not seeking the same information or asking the same questions it would in a countervailing duty investigation." *Id.* at 55. *Accord Far East Machinery Co., Ltd.* v. *United States,* 699 F. Supp. 309 (CIT 1988), *Sawhill Tubular Div. Cyclops Corp.* v. *United States,* 651 F. Supp. 1421 (CIT 1986).

Therefore, even without taking into account the turnover tax, and the lote hogar tax, which we have determined are not indirect taxes, (See DOC Position to Comment 1), and the import duties, the statistics tax, and the merchant marine tax, which we have already adjusted for as duty drawbacks, we are satisfied that the reembolso program qualifies as a rebate of indirect taxes within the meaning of section 772(d)(1)(C) of the Act, and an adjustment for the amount of the reemboslo rebate is proper. We have verified that Andina receives a rebate under the reembolso program for taxes imposed directly upon the product or its components. Accordingly, we made an upward adjustment to U.S. price for the amount of this rebate.

Comment 3: Petitioners claim that the amount of duty drawback recalculated at verification overstated the amount of merchant marine tax per metric ton of silicon metal that should be included in the COS adjustment for duty drawback.

Petitioners argue that the amount of merchant marine tax calculated by Andina should be multiplied by the amount of electrodes used per metric ton of silicon metal in order to calculate the amount of merchant marine tax per metric ton of silicon metal.

Andina agrees with petitioners.

DOC Position: We agree with petitioners. At verification, we observed that the merchant marine tax is applied per metric ton (MT) of silicon metal. We also noted that Andina's duty drawback calculation had not been multiplied by the electrode usage per MT of silicon metal. Andina's duty drawback calculation for the merchant marine tax should have been multiplied by the verified electrode usage per MT of silicon metal in order to calculate the proper amount of electrode freight cost per MT of silicon metal to be included in the COS adjustment for duty drawback. We used this corrected merchant marine tax in our calculation of duty drawback.

Comment 4: Petitioners argue that in its April 18, 1991, submission, Andina provided information concerning the amount of an export tax paid on its August U.S. sales, and that the Department should make a downward adjustment to U.S. price for the export tax assessed on these sales. Petitioners argue that the Department should use the amount of tax paid, as reported by Andina, as best information available (BIA) for the amount of the adjustment.

Andina agrees with petitioners. Andina concedes that the August charges are not actually taxes, but are warehousing expenses Andina incurred on the August shipments which a customs official recorded in the column in a shipping permit where export duties used to appear. Therefore, Andina argues that although these charges were not taxes, they have the same effect as if they had been reported as a tax.

DOC Position: We agree with petitioners. In its April 18, 1991, submission, Andina reported this amount as an export tax. Later, in its May 30, 1991, rebuttal brief, Andina referred to this amount as a type of warehousing charge. Although Andina could not demonstrate what this charge was for, at verification we observed that Andina did in fact pay this charge on its August export sales. Accordingly, as BIA we used the amount reported and verified for this charge and made a downward adjustment to U.S. price.

Comment 5: Petitioners argue that because Andina pays a tax on its inland freight, the Department should include this tax in the amount deducted from U.S. price for foreign inland freight.

Andina argues that it has reported the full amount of the freight invoice in its sales listing. Andina claims that the difference between the freight invoice and what Andina paid to the freight company is a withholding of income tax on behalf of the freight company. Andina maintains that it retains a percentage of the invoice amount equal to the tax amount and remits this to the federal government. Therefore, Andina argues that it does not pay a tax on its inland freight and that there should be no adjustment for this tax because Andina has already reported and paid the full price on the freight invoice as Andina's freight cost.

DOC Position: We agree with Andina. At verification, we observed that Andina had reported the full amount of the freight invoice in its sales listing. Andina pays a percentage of the freight invoice amount to the government. Therefore, the withholding tax is included in the amount of freight reported by Andina.

Comment 6: Petitioners argue that the Department should use home market price in australes rather than U.S. dollars as the basis for FMV. Petitioners maintain that Andina sets its prices and incurs its expenses in australes, not U.S. dollars. Petitioners argue that since Andina provided the australes price on the date of payment and the exchange rates used in calculating the australes prices in its March 20, 1991, submission, the use of dollar prices as BIA is no longer necessary and the Department should use these reported australes prices when calculating FMV.

Petitioners also maintain that for those home market sales for which Andina has not yet received payment and does not have final australes prices, the Department should exclude such sales.

Andina argues that its sales are priced in U.S. dollars and that the austral amounts that it assigns to its sales are for accounting purposes only. Andina further argues that, because of hyperinflation, some of the australes amounts during the POI are meaningless, and that using the australes amounts for its home market sales would be much less accurate than using the reported U.S. dollar amounts.

Andina maintains that all of its invoices for home market sales contain dollar unit prices and that these dollar prices are the basis for all of Andina's calculations. Andina also states that the Argentine Government has "dollarized" the entire Argentine economy. This system is officially recognized by the Argentine Government in the Convertibility Law, whereby the Subsecretary of Foreign Trade allows the commercial practice of listing both austral and dollar prices on all invoices.

DOC Position: We agree with Andina. All of Andina's calculations and invoices contain the dollar value of its home market sales. At verification we saw evidence that the Argentine economy is indeed dollarized, and that sales and purchases are negotiated in U.S. dollars in the normal course of trade. The Department requires respondents to provide all prices and expenses in the currency in which they were incurred to facilitate accurate computations. See Preliminary Determination of Sales at Less Than Fair Value; Martial Arts Uniforms from Taiwan, 54 FR 18562 (May 1, 1989). In this case, the respondent has given ample proof that sales and purchases are valued in U.S. dollars in the normal course of trade in Argentina, and there is nothing in the Act or regulations precluding the use of dollar denominated home market prices. Therefore, we determine that using the reported U.S. dollar values for Andina's home market sales is appropriate in this investigation.

Since we are basing FMV on the reported U.S. dollar values, we do not need the final austral prices for the home market sales on which Andina has not yet received payment. These sales do not need to be excluded from our FMV calculation because Andina has reported the prices of these home market sales in U.S. dollars in its original sales listing.

Comment 7: Petitioners argue that the Department should follow its established practice and calculate Andina's home market credit expense based on the australes price on the date of sale. Andina argues that this proposal is not reasonable from an economic or financial point of view because Andina gives no significance to the sale price in australes at the date of sale.

DOC Position: We agree with petitioners that the home market credit expense should be based on the price on the date of sale. See Final Results of Antidumping Duty Administrative Review; Certain Fresh Cut Flowers from Mexico, 56 FR 1794 (January 17, 1991). The Department makes an adjustment for credit expenses in order to take into account the opportunity costs incurred by a seller when it does not receive payment immediately. Therefore, the price at the date of sale is the appropriate measure of the revenue foregone by Andina. However, we agree with Andina that the australes price on the date of sale is not the appropriate base on which to calculate credit expense. The price in U.S. dollars on the date of sale is the most accurate basis for measuring the revenue foregone by Andina to use when calculating Andina's home market credit expense. See also DOC Position in Comment 6.

Comment 8: Petitioners maintain that an average of the interest rates for foreign currency borrowing available to Andina during the POI is the most appropriate interest rate to use to calculate Andina's home market credit expense. Petitioners argue that, in light of the wide disparity of interest rates for austral borrowing during the POI, using an average of the foreign currency borrowing rates is more appropriate.

Andina argues that petitioners are being inconsistent in arguing for the use of dollar interest rates for credit expense on one hand, and for the use of austral home market sales prices on the other hand. Andina maintains that petitioners cite no legal authority for using interest rates in one currency and prices in another currency. Andina claims that the wide disparity in the austral borrowing rates during the POI was caused by hyperinflation, and that the credit expense should be calculated on the basis of the dollar sales price using dollar interest rates.

DOC Position: We agree with Andina. At verification we observed that Andina had access to foreign currency borrowings. Given that we are using the U.S. dollar denominated prices, the U.S. dollar interest rates are the appropriate rates to use to calculate Andina's home market credit expense.

Comment 9: Petitioners argue that the prices reported for Andina's purchases of packing material for its home market sales are less than the prices that Andina charges its customers for packing. Petitioners maintain that it is the Department's practice to add to FMV the revenue earned on packing. Therefore, petitioners maintain that the packing revenue that Andina earns on its home market sales should be added to Andina's home market prices.

Andina claims that the method used to report packing is correct and allows the Department to do a valid comparison. Andina argues that the adjustment proposed by petitioners is incorrect because Andina packs its home market sales in boxes, which cost more, and all of its U.S. sales in bags, which cost less. Andina maintains that the packing methodology used in the preliminary determination is correct.

DOC Position: We agree with petitioners. At verification, we observed that the price Andina charges its home market customers for packing is more than the cost that Andina incurs for its purchases of packing material. We view the price for packing, which is separately stated on Andina's home market sales invoices, as an integral part of the overall price of the merchandise. Since Andina realizes a separate profit on its price for packing in the home market, we have revised our calculations to include this profit in the home market prices for silicon metal. Since Andina uses both bags and boxes for home market packing but did not report which was used for each sale, we have used, as BIA, a packing cost which assumes equal use of bags and boxes. For this adjustment, we added the separate packing price to home market prices, then subtracted from this amount the average cost of home market packing, and finally added back the actual cost of packing for sales to the United States.

Comment 10: Andina argues that the Department should recalculate its export duty for U.S. sales. Andina maintains that the Department applied the rate of the export duty in effect on the date of sale in its preliminary determination. However, Andina argues that, at verification, the Department officials observed that Decree 713, Resolution 100/89 calls for the export duty to be applied to export sales on the date of shipment, not the date of sale. Therefore, Andina argues that the Department should use the export duty in effect on the date of shipment, not the date of sale when calculating U.S. price.

Andina also maintains that the Department incorrectly applied the export duty rate directly to the sales price in its preliminary determination. Andina argues that Department officials observed at verification that the taxable base on which the export duty is applied is the sales price less the cost of imported electrodes. Therefore, Andina argues that the Department should recalculate the export duty using the

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DOC Position: We agree with petitioners. At verification, we observed that the price Andina charges its home market customers for packing is more than the cost that Andina incurs for its purchases of packing material. We view the price for packing, which is separately stated on Andina's home market sales invoices, as an integral part of the overall price of the merchandise. Since Andina realizes a separate profit on its price for packing in the home market, we have revised our calculations to include this profit in the home market prices for silicon metal. Since Andina uses both bags and boxes for home market packing but did not report which was used for each sale, we have used, as BIA, a packing cost which assumes equal use of bags and boxes. For this adjustment, we added the separate packing price to home market prices, then subtracted from this amount the average cost of home market packing, and finally added back the actual cost of packing for sales to the United States.

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Andina also maintains that the Department incorrectly applied the export duty rate directly to the sales price in its preliminary determination. Andina argues that Department officials observed at verification that the taxable base on which the export duty is applied is the sales price less the cost of imported electrodes. Therefore, Andina argues that the Department should recalculate the export duty using the

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sales price less the cost of imported electrodes as the taxable base.

DOC Position: We agree with Andina. At verification, we noted that the rate of export duty applied to export sales is based on the date of shipment, not the date of sale. We also noted that the export duty is applied to the sales price less the cost of imported electrodes.

Comment 11: Petitioners argue that since the Department was unable to confirm the chemical composition of Andina's sales, the Department should continue to compare all sales in the home market to all U.S. sales, with the exception of the sale in each market designated by Andina as "sil. polv." Petitioners argue that Andina has disclaimed any sales of material with a silicon content below 99 percent even though Andina's home market sales listing refers to sales of silicon metal with a silicon content of 98 percent. Petitioners maintain that there is no other evidence on the record indicating that Andina sold silicon metal during the POI with a silicon content of less than 98.5 percent or an iron content of more than 0.65 percent. Therefore, petitioners argue that, for purposes of price comparison, all of Andina's U.S. and home market sales (other than "sil. polv.") should be considered to be sales of grade 1 material.

Andina argues that the chemical analysis of the impurities in all silicon metal Andina produced in 1990 that Andina gave to the Department during verification can be used to calculate the silicon content of all silicon metal that Andina produced during the POI.

DOC Position: We agree with petitioners. Andina reported the silicon content of its sales as either 98 percent or 99 percent. In the preliminary determination, we compared all grade 1 sales, as defined in our questionnaire, in the home market to all grade 1 U.S. sales; and grade 4 sales to grade 4 sales in both markets. At verification, we were unable to verify the exact silicon content of any of Andina's sales during the POI. No chemical analysis or chemical certificates existed for Andina's individual sales during the POI. Because we were unable to verify the specific chemical composition of Andina's sales, as best information available (BIA) we compared all sales in the home market to all U.S. sales as grade 1 material.

We have excluded the product designated as "sil. polv." from our analysis for purposes of the final determination. This product, which accounts for an extremely small percentage of total U.S. sales, is similar to scrap or off-specification merchandise (*i.e.*, its silicon content was below customer requirements and it could not be sold at normal prices for silicon metal.) To account for this type of merchandise in our COP and CV analysis would pose an extremely complicated task in a hyperinflationary economy where our analysis is already difficult. Given that Andina's sales of grade 1 material account for well over 85 percent of the exports to the United States during the POI, the additional complexity of analysis required to include this extremely small percentage of sales in our analysis is not justified. The percentage of sales examined is well in excess of the Department's 60 percent dollar value and volume guidelines. See 19 CFR 353.42(b).

Comment 12: Petitioners argue that the Department should define the scope of investigation to include "silicon metal" with a silicon content of less than 96 percent. Petitioners maintain that the petition and a letter supplementing the petition did not set a minimum silicon content. Petitioners assert that Census Bureau import data show that substantial quantities of silicon metal containing less than 96 percent silicon already have entered the United States. Moreover, petitioners point to additional evidence that demonstrates that silicon metal containing less than 96 percent silicon is being imported into the United States.

Petitioners urge the Department not to specify a minimum silicon content. However, should the Department set a minimum content, petitioners maintain that it should be 90 percent. If the Department declines to alter the scope, petitioners suggest that the Department recognize that imports of a product with less than 96 percent silicon may be covered by an order issued in this proceeding as a "minor alteration" of the subject merchandise within the meaning of section 781(c) of the Act.

DOC Position: We have determined to leave the scope of this investigation unchanged. Prior to defining the scope of this investigation, we considered information from the petition, the Bureau of Mines, and the Customs Service. This information clearly indicates a common commercial meaning for "silicon metal" as a product with a silicon content between 96.00 and 99.99 percent. Furthermore, we have seen no evidence that merchandise containing less than 96 percent silicon and called "silicon metal" is being sold or offered for sale by Argentine producers. Therefore, we are unable to conclude, based on the information before us, that the less than 96 percent product is of the same class or kind as the above 96 percent product.

Comment 13: Petitioners contend that the Department should reject Andina's formula for allocating quartz and charcoal crushing expenses because Andina has understated its crushing costs in its silicon metal production. Petitioners argue that, because some of the crushed material is placed into inventory and not used in production, Andina has understated its crushing costs. Petitioners contend that the Department should allocate crushing costs based on a ratio of quartz/charcoal tonnage consumed in silicon metal production to total tonnage consumed, or a ratio of tonnage crushed for silicon metal use to total tonnage crushed.

Andina states that it calculated the cost of crushing quartz and charcoal for each month, and then assigned this cost to the cost of producing silicon metal on the basis of the amount of quartz or charcoal consumed in each furnace. Andina argues that this is the most reasonable methodology for calculating and allocating the crushing cost.

DOC Position: We agree with petitioners. We reviewed Andina's allocation methodology and determined that it did not provide an accurate measure of the crushing costs associated with silicon metal. Andina had allocated quartz and charcoal crushing costs to silicon metal each month based on the ratio of quartz and charcoal used in silicon metal production to the total amount of quartz and charcoal crushed. This methodology understated the crushing costs incurred by Andina in its silicon metal production because some crushed material is placed into inventory and not used in production. Therefore, for the cost calculations we allocated crushing costs based on the ratio of quartz/charcoal tonnage consumed in silicon metal production to total tonnage consumed.

Comment 14: Petitioners argue that since Andina provided no explanation as to why its claimed POI G&A expenses are so low, the Department should use a G&A ratio as BIA for both COP and CV calculations. Petitioners further contend that, if the Department does not use BIA for the allocation of G&A expenses, that the Department should use as BIA 10 percent of Andina's COM, according to section 773(e)(1)(B) of the Act. Petitioners argue that "other expenses" includes reserves which relate to the cost of Andina's operations; therefore, these "other expenses" should be included in the COP and CV.

Andina argues that the Department's calculation of G&A includes the income statement caption "other expenses." All

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of the "other expenses" recorded in its financial statements reflect reserves for contingencies and not actual costs incurred. Andina further argues that the amount of unused reserves is added to its income for tax purposes; therefore, these "other expenses" are clearly not costs and should not be added to the COP.

DOC Position: We agree with petitioners. Andina did not provide any evidence that the expenses recorded on its financial statements reflected reserves for which no expenses had actually been incurred. Andina did not explain why it had continued to add to these "reserves" each year if no expenses had actually been incurred. Absent specific evidence to the contrary, the Department considers the costs recorded on a company's audited financial statements to be a reliable reflection of the company's actual income and expenses. See, e.g., Final Determination of Sales at Less Than Fair Value: Sweaters of Man-Made Fiber from Taiwan, 55 FR 34585 (August 10, 1990). Accordingly, we have included the "other expenses" listed in the company's financial statement in the G&A expenses for our COP/CV calculations.

Comment 15: Petitioners argue that Andina's allocation of factory overhead on the basis of price and production capacity is flawed and that the Department should use those costs actually incurred for a particular product. Petitioners contend that since Andina has understated its factory overhead expenses, the Department should use, as BIA, the verified May 1990 direct costs attributable to silicon metal as a percentage of Andina's total direct costs. Andina contends that its methodology for allocating factory overhead is reasonable. If the Department reallocates these costs, however, Andina contends they should be allocated to intermediate cost centers, and to any idle furnaces since overhead is not affected by the fact that a furnace is not operating.

DOC Position: We agree with petitioners. Andina's use of sales price and production capacity as a basis for allocating financial expenses is not appropriate. See e.g., Final Determination of Sales at Less Than Fair Value; Color Picture Tubes from Japan. 52 FR 44171 (November 18, 1987). Therefore, as BIA, we have reallocated factory overhead based on silicon metal's percentage of direct costs incurred in May 1990, as urged by petitioners.

Comment 16: Petitioners argue that Andina failed to allocate any indirect selling expenses to silicon metal. Petitioners contend that since Andina reported that it maintains a sales office in Buenos Aires, it obviously incurred indirect selling expenses. Petitioners believe that, as BIA for these selling expenses, the Department should use the result of the multiplication of two expenses to cost of goods sold ratios.

Andina argues that it has allocated indirect selling expenses, as described in its April 16, 1991, submission. Andina contends that all the expenses for its Buenos Aires sales office are reported in G&A.

DOC Position: We disagree with petitioners. At verification, we observed certain indirect selling expenses and have included these items as indirect selling expenses in the COP/CV calculations.

Comment 17: Petitioners contend that Andina's calculation of electricity cost is flawed because it is based on an average annual cost rather than actual monthly expenses. Petitioners argue that replacement costs for electricity in australes should be used instead of Andina's adjusted power costs.

Andina argues that its methodology was used in order to adjust seasonal changes in electricity costs to a constant production process. Andina contends that the unit cost of generating electric energy for a particular month is irrelevant because the monthly variations are determined by the seasonal period and that, because of the seasonal fluctuation in electric energy generation, it has calculated a weighted-average cost of electricity. Andina contends that it expressed its energy cost in dollars because the price of the invoiced energy is constant in dollar terms.

DOC Position: We agree with petitioners in that the submitted calculations do not provide an adequate basis for our final calculations. We have relied upon the actual monthly costs incurred and kilowatts consumed during the POI in preparing our COP/CV calculations.

Comment 18: Petitioners argue that although Andina assumed that all of its monthly materials purchases were made at month-end prices, Andina is in fact invoiced twice a month by most of its materials suppliers. Petitioners contend that if the first monthly invoice from Andina's suppliers covers material purchased by Andina during the previous month, the invoice should only be used in the calculation of the previous month's materials costs. Therefore, petitioners believe that the Department should review which monthly invoices should be used in the calculation of materials costs.

Andina argues that all material purchase invoices were reviewed at verification.

DOC Position: We reviewed materials purchase invoices at verification and have calculated replacement cost based on the month-end materials purchase invoices.

Comment 19: Petitioners argue that although Andina stated that furnaces are only shut down for maintenance approximately every third year, the cost of furnace maintenance is an expense that is borne by a furnace during its operation. Petitioners contend that, if Andina has not allocated to the POI expenses for silicon metal furnace maintenance performed during shutdowns, the Department should include any unallocated maintenance costs in Andina's cost data.

Andina contends that it has already allocated all of its maintenance costs relating to major furnace repairs. Andina argues that major repairs are allocated to an accrual account, which increases even when Andina does not have any major repairs. Andina further contends that this accrual account is offset by the expense account and is thus a cost for the period.

DOC Position: We agree with Andina. At verification, we did not note any unallocated maintenance costs. Accordingly, reported maintenance costs do not require adjustment.

Comment 20: Petitioners argue that freight and other transportation charges should be included in the costs of all materials. Petitioners state that if Andina has excluded transportation charges from its reported cost data, the Department must add them back in.

Andina contends that it has not excluded freight costs from reported electrode costs or any other costs; therefore, no further adjustments for transportation are necessary.

DOC Position: We agree with Andina. At verification, we observed that Andina's reported materials cost includes all applicable freight charges.

Comment 21: Andina states that any gain or loss attributable to carrying inventory would be insignificant. Andina believes that because the most significant inputs to its production process are acquired in dollars and because the finished product is priced in dollars, it is somewhat "immune" from Argentine inflation.

Petitioners argue that since Andina has reported inventory carrying gain/loss data for only its finished goods, the Department should impute inventory carrying costs for work in process and raw materials.

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DOC Position: We agree with Andina. At verification, we did not note any unallocated maintenance costs. Accordingly, reported maintenance costs do not require adjustment.

Comment 20: Petitioners argue that freight and other transportation charges should be included in the costs of all materials. Petitioners state that if Andina has excluded transportation charges from its reported cost data, the Department must add them back in.

Andina contends that it has not excluded freight costs from reported electrode costs or any other costs; therefore, no further adjustments for transportation are necessary.

DOC Position: We agree with Andina. At verification, we observed that Andina's reported materials cost includes all applicable freight charges.

Comment 21: Andina states that any gain or loss attributable to carrying inventory would be insignificant. Andina believes that because the most significant inputs to its production process are acquired in dollars and because the finished product is priced in dollars, it is somewhat "immune" from Argentine inflation.

Petitioners argue that since Andina has reported inventory carrying gain/loss data for only its finished goods, the Department should impute inventory carrying costs for work in process and raw materials.

DOC Position: We agree with Andina. We have analyzed the information submitted by Andina and the information obtained at verification. Based on our analysis of this information, we are satisfied that Andina did not experience a loss as a result of carrying inventory during an inflationary period. Therefore, we have not included any amount for inventory carrying gain/loss in our COP/CV calculations.

Comment 22: Petitioners argue that since the COP data were reported exclusive of taxes on inputs, the taxes must be deducted from the home market sales prices in determining whether home market sales were made at less than COP.

DOC Position: We agree with petitioners. We have compared the COP with a tax-exclusive home market price.

Continuation of Suspension of Liquidation: In accordance with section 735(d)(1) of the Act, for Andina and all other producers/manufacturers/exporters, we are directing the Customs Service to continue to suspend liquidation of all entries of silicon metal from Argentina, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after March 29, 1991, which is the date of publication of our preliminary determination in the **Federal Register**.

The Customs Service shall require a cash deposit or posting or a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice.

Producer/manufacturer/exporter	Weighted average margin percentage	Critical circumstances
Andina	8.65	No.
All others	8.65	No.

ITC Notification: In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration. The ITC will make its determination whether these imports materially injure, or threaten material injury, to a U.S. industry within 45 days of publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled.

However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on silicon metal entered, or withdrawn from warehouse, for consumption on or after the date of suspension of liquidation, equal to the amount by which the foreign market value of the merchandise exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)), and 19 CFR 353.20.

Dated: August 1, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-18993 Filed 8-8-91; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Additions and Deletions

AGENCY: Committe for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to and deletions from procurement list.

SUMMARY: This action adds to and deletes from the Procurement List commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: September 9, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On March 22, April 5, May 3, 31, June 14 and 21, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (56 FR 12193, 14090, 20414, 24790, 27502 and 28540) of proposed additions to and deletions from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified workshops to produce the commodities and provide the services at a fair market price and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Slacks, Woman's, 8410-01-224-3326 thru -3367, 8410-01-105-4668 thru -4708
Paper, Toilet Tissue, 8540-00-530-3770, (Requirements for GSA Zone 4 only)

Services

Grounds Maintenance, Lexington Blue Grass Army Depot, Richmond, Kentucky
Grounds Maintenance, Department of Energy, Western Area Power Administration, Bismarck District Office, Bismarck, North Dakota
Janitorial/Custodial, Federal Building, 250 West Cherry Street, Carbondale, Illinois
Janitorial/Custodial, Building 243 "A-G" Bay, McClellan Air Force Base, California

Janitorial/Custodial for the following location in Peoria, Illinois:

Federal Building and U.S. Courthouse, 100 NE. Monroe Street, Social Security Administration Building, 2700 N. Knoxville Avenue
Janitorial/Custodial, Umatilla Depo. Activity, Hermiston, Oregon
Janitorial/Custodial, U.S. Army Reserve Centers, #1-9 Chisolm Street, #2-1050 Redmound Road, Charleston, South Carolina

Janitorial/Custodial, Fort Worth Federal Center, Fort Worth, Texas, for the following buildings:

Warehouse #31	Section A–L
Warehouse #3	Bin Area A–F
Warehouse #8 thru #12	Office and Rest Rooms
Warehouse #14	Rest Rooms
Warehouse #23, 24 & 50	

Janitorial/Custodial, Federal Building, 7th & Lafayette Streets, Moundsville, West Virginia

Janitorial/Custodial, Social Security Administration, 16th & Chapeline Streets, Wheeling, West Virginia

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Deletions

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

Accordingly, the following commodities are hereby deleted from the Procurement List:

Topper, Woman's:

8410–01–187–9630
8410–01–187–9631
8410–01–187–9632
8410–01–187–9633
8410–01–187–9634
8410–01–187–9635
8410–01–187–9636
8410–01–187–9637
8410–01–187–9638
8410–01–187–9639
8410–01–187–9640
8410–01–187–9641
8410–01–187–9642
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8410–01–187–9702
8410–01–187–9703
8410–01–187–9704
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8410–01–187–9707
8410–01–187–9708
8410–01–187–9709
8410–01–187–9710
8410–01–187–9711

Pants, Woman's:

8410–01–187–9909
8410–01–187–9910
8410–01–187–9911
8410–01–187–9912
8410–01–187–9913
8410–01–187–9914
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8410–01–187–9917
8410–01–187–9918
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8410–01–187–9932
8410–01–190–9271
8410–01–190–9272
8410–01–190–9273
8410–01–190–9274
8410–01–190–9275
8410–01–190–9276
8410–01–190–9277
8410–01–190–9278
8410–01–190–9279
8410–01–190–9280
8410–01–190–9281
8410–01–190–4257

Beverly L. Milkman,
Executive Director.

[FR Doc. 91–18940 Filed 8–8–91; 8:45 am]

BILLING CODE 6820–33–M

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From the Blind and Other Severely Handicapped.

ACTION: Proposed additions to and deletions from procurement list.

SUMMARY: The Committee has received proposals to add to and delete from the Procurement List commodities and services to be furnished by nonprofit agencies employing the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: September 9, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing the blind or other severely handicapped.

It is proposed to add the following commodities and services to the Procurement List:

Commodities

Box, Wood
8115–00–NSH–0156
8115–00–NSH–0157
8115–00–NSH–0158
8115–00–NSH–0159
8115–00–NSH–0160
8115–00–NSH–0161
8115–00–NSH–0162
8115–00–NSH–0164
8115–00–NSH–0167
8115–00–NSH–0168
8115–00–NSH–0169
8115–00–NSH–0173
8115–00–NSH–0174
8115–00–NSH–0175
8115–00–NSH–0178
8115–00–NSH–0180
8115–00–NSH–0192
8115–00–NSH–0197

(Requirements for the Naval Regional Contracting Center, San Diego, CA only)

Services

Janitorial/Custodial, U.S. Army Reserve Center, 3001 Pleasant Valley Road, Altoona, Pennsylvania

Janitorial/Custodial, U.S. Army Reserve Center, 4th & Hiller Street, Brownsville, Pennsylvania

Janitorial/Custodial, U.S. Army Corps of Engineers, Raystown Lake, Raystown, Pennsylvania

Deletions

It is proposed to delete the following commodity and service from the Procurement List:

Commodity

Rag, Wiping, 7920–00–205–1711, (Requirements for Warner Robins AFB, GA only)

Service

Grounds Maintenance, Wheeler National Wildlife Refuge, Decatur, Alabama

Beverly L. Milkman,
Executive Director.

[FR Doc. 91–18941 Filed 8–8–91; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, And Applicable OMB Control Number

DOD FAR Supplement, part 228, Bonds and Insurance, and the clauses at 252.228; OMB Control Number 0704–0216.

Type Of Request: Extension.

Average Burden Hours/Minutes Per Response: 1.093 hours.

Responses Per Respondent: 1.

Number Of Respondents: 1,450.

Annual Burden Hours: 1,585.

Needs and Uses: DOD FAR Supplement part 228 and the clauses ... § 252.228 require contractors to submit information concerning certain data required to enable processing and/or monitoring of accident reports/insurance claims relating to various insurance clauses including but not

8410-01-190-9272
8410-01-190-9273
8410-01-190-9274
8410-01-190-9275
8410-01-190-9276
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8410-01-190-9278
8410-01-190-9279
8410-01-190-9280
8410-01-190-9281
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Proposed Additions

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22202–3509.

RMATION CONTACT:
703) 557–1145.

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8115-00-NSH-0169
8115-00-NSH-0173
8115-00-NSH-0174
8115-00-NSH-0175
8115-00-NSH-0178
8115-00-NSH-0186
8115-00-NSH-0192
8115-00-NSH-0197

(Requirements for the Naval Regional Contracting Center, San Diego, CA only)

Services

Janitorial/Custodial, U.S. Army Reserve Center, 3001 Pleasant Valley Road, Altoona, Pennsylvania
Janitorial/Custodial, U.S. Army Reserve Center, 4th & Hiller Street, Brownsville, Pennsylvania
Janitorial/Custodial, U.S. Army Corps of Engineers, Raystown Lake, Raystown, Pennsylvania

Deletions

It is proposed to delete the following commodity and service from the Procurement List:

Commodity

Rag, Wiping, 7920–00–205–1711, (Requirements for Warner Robins AFB, GA only)

Service

Grounds Maintenance, Wheeler National Wildlife Refuge, Decatur, Alabama

Beverly L. Milkman,
Executive Director.

[FR Doc. 91–18941 Filed 8–8–91; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

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ACTION: Notice.

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Title, Applicable Form, And Applicable OMB Control Number

DOD FAR Supplement, part 228, Bonds and Insurance, and the clauses at 252.228; OMB Control Number 0704–0216.

Type Of Request: Extension.

Average Burden Hours/Minutes Per Response: 1.093 hours.

Responses Per Respondent: 1.

Number Of Respondents: 1,450.

Annual Burden Hours: 1,585.

Needs and Uses: DOD FAR Supplement part 228 and the clauses ... § 252.228 require contractors to submit information concerning certain data required to enable processing and/or monitoring of accident reports/insurance claims relating to various insurance clauses including but not

limited to war hazard losses, aircraft/missile accidents and munitions accidents.

Affected Public: Businesses or other for-profit, non-profit institutions and small businesses or organizations.

Frequency: On occasion.

Respondent Obligation: Required to obtain a benefit.

Desk Officer: Mr. Peter Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DOD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Davis Highway, suite 1204, Arlington, Virginia, 22202–4302.

Dated: August 5, 1991.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–18922 Filed 8–8–91; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary of Defense

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, September 3, 1991; and Tuesday, September 10, 1991; Tuesday, September 17, 1991; and Tuesday, September 24, 1991, at 10 a.m. in room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 93–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy/Equal Opportunity) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, room 3D264, The Pentagon, Washington, DC 20301.

Dated: August 5, 1991.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–18923 Filed 8–8–91; 8:45 am]

BILLING CODE 3810-01-M

Defense Advisory Committee on Women in the Services; Meeting

AGENCY: Defense Advisory Committee on Women in the Services (DACOWITS), DOD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the Executive Committee of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the meeting is to review unresolved resolutions made by the committee at the DACOWITS 1991 Spring Conference; review the Subcommittee Issue Agenda; review the proposed agenda for the DACOWITS 1991 Fall Conference; and discuss issues relevant to women in the Services. All meeting sessions will be open to the public.

DATES: September 9, 1991, 9:30 a.m.–4 p.m.

ADDRESSES: SECDEF Conference room 3E869, The Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Captain Branda M. Weidner, Office of the DACOWITS and Military Women Matters, OASD (Force Management and Personnel), The Pentagon, room 3D769, Washington, DC 20301–4000; telephone (703) 697–2122.

Dated: 6 August 1991.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–18962 Filed 8–8–91; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before September 9, 1991. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact lsited below.)

ADDRESSES: Address comments to the Department of Energy Desk Office, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 586–2171.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Federal Energy Regualtory Commission.
2. FERC–515.
3. 1902–0097.
4. Hydorpower License—Declaration of Intention.
5. Extension.
6. On occasion.
7. Mandatory.
8. Business or other for-profit.
9. 4 respondents.
10. 1 response.
11. 80 hours per response.
12. 320 hours.
13. To carry out the requirements of part I, section 23(b) of the Federal Power Act, the Declaration of Intention is filed by a prospective hydropower developer on a stream other than defined as U.S. jurisdictional waters thereby causing the Commission to establish whether or not it has jurisidiction over the proposed projects.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC August 5, 1991.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 91–18986 Filed 8–8–91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER91–357–000, et al.]

The Kansas Power and Light Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. The Kansas Power and Light Company

[Docket No. ER91–357–000]

August 1, 1991.

Take notice that on July 30, 1991, The Kansas Power and Light Company (KPL) tendered for filing an amendment to its original filing in the above captioned docket related to a proposed change in its Electric Interconnection Contract with Midwest Energy, Inc. (MWE) identified as Federal Energy Regulatory Commission Electric Rate Schedule No. 123.

Service Schedule P and Rate Schedule for Service Schedule P as amended are tendered for filing for the purpose of superseding Service Schedules K and L, and the pricing schedules and addenda related thereto.

KPL and MWE have determined that it is beneficial to both parties to revise the Term and Cancellation provision of the Electric Interconnection Contract to provide for a longer term mutual commitment, to revise other aspects of the participation power agreement and to consolidate the provisions of Service Schedule L into Service Schedule P.

Copies of the amendment were served upon Midwest Energy, Inc. and the Kansas Corporation Commission.

Comment date: August 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Oildale Cogeneration Partners, L.P., a Delaware Limited Partnership

[Docket No. QF84–518–003]

August 1, 1991.

On July 11, 1991, as supplemented on July 30, 1991, Oildale Cogeneration Partners, L.P., (Applicant) a Delaware limited partnership, 23293 South Pointe Drive, suite 100, Laguna Hills, California 92653, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located at the Witco refinery near Oildale, California, and will include combustion turbine generator, heat recovery boiler and Sealtherm oil heat recovery system.

The original certification was issued on April 25, 1985, (31 FERC 62,117). The instant recertification is requested due to an increase in the net electric power production capacity from 29MW to 38MW and a change in the ownership structure. CSW Development–I, Inc., an indirect wholly-owned subsidiary of Central and South West Corporation, a registered holding company under the Public Utility Holding Company Act of 1935, will have an ownership interest in the facility.

Comment date: 30 days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

3. The Cleveland Electric Illuminating Company

[Docket No. ER91–558–000]

August 1, 1991.

Take notice that on July 26, 1991, The Cleveland Electric Illuminating Company (CEI) tendered for filing a proposed amendment to the 1975 Interconnection Agreement between CEI and the City of Cleveland, Ohio (the City). CEI states that the amendment will provide for a third synchronous interconnection between the CEI system and the system operated by the Cleveland Public Power of the City, and for compensation to CEI for net interconnection (transfer) reactive power.

CEI has requested a waiver of the Commission's regulations in order to permit the amendment to become effective as of January 1, 1990. CEI states that the City does not oppose this request.

Comment date: August 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. Central Vermont Public Service Corporation

[Docket No. ER91–151–000]

August 1, 1991.

Take notice that on July 29, 1991, Central Vermont Public Service Corporation (CVPS) tendered for filing supplemental information and a notice of termination in the above docket.

CVPS requests the Commission to waive its notice of filing requirements to permit the rate schedules that were filed in this docket to become effective according to their terms.

Comment date: August 16, 1991, in accordance with Standard Paragraph E end of this notice.

5. PSI Energy, Inc.

[Docket No. ER91–474–000]

August 1, 1991.

Take notice that PSI Energy, Inc. (PSI), tendered for filing an Amendment to the FERC Filing in Docket No. ER91–474–000.

This Amendment gives a definition for the third party energy rates contained in the Interconnection Agreement with Northern Indiana Public Service Company as a result of a request by FERC Staff.

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Public Utility Holding Company Act of 1935, will have an ownership interest in the facility.

Comment date: 30 days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

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CEI has requested a waiver of the Commission's regulations in order to permit the amendment to become effective as of January 1, 1990. CEI states that the City does not oppose this request.

Comment date: August 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. Central Vermont Public Service Corporation

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CVPS requests the Commission to waive its notice of filing requirements to permit the rate schedules that were filed in this docket to become effective according to their terms.

Comment date: August 16, 1991, in accordance with Standard Paragraph E end of this notice.

5. PSI Energy, Inc.

[Docket No. ER91–474–000]

August 1, 1991.

Take notice that PSI Energy, Inc. (PSI), tendered for filing an Amendment to the FERC Filing in Docket No. ER91–474–000.

This Amendment gives a definition for the third party energy rates contained in the Interconnection Agreement with Northern Indiana Public Service Company as a result of a request by FERC Staff.

PSI has requested that the effective date, per the original filing, of April 15, 1991, remain unchanged.

The definition for third party energy rates contained in this filing will also apply to the Interconnection and Power Coordination Agreements with Louisville Gas and Electric Company, Cincinnati Gas and Electric Company, Central Illinois Public Service Company, Southern Indiana Gas and Electric Company, Hoosier Energy Rural Electric Cooperative, Inc., and Wabash Valley Power Association, Inc.

Copies of the filing were served on Northern Indiana Public Service Company, Louisville Gas and Electric Company, Cincinnati Gas and Electric Company, Central Illinois Public Service Company, Southern Indiana Gas and Electric Company, Hoosier Energy Rural Electric Cooperative, Inc., Wabash Valley Power Association, Inc., the Illinois Commerce Commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: August 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. Iowa Public Service Company

[Docket No. ER91–554–000]

August 1, 1991.

Take notice that on July 25, 1991, Iowa Public Service Company (IPS) tendered for filing Emergency Electric Interconnection and Operating Agreement (Interconnection Agreement) with East River Electric Power Cooperative (East River).

IPS indicates that the Interconnection Agreement reflects the establishment of a transmission interconnection between the two systems. This agreement does allow for East River to take power and energy from the Company. Paybacks to the Company shall be in the form of inkind payments.

IPS states that copies of this filing were served on East River Electric Power Cooperative, the Iowa Utilities Board, Rural Electrification Administration, and South Dakota PUC.

Comment date: August 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. PacifiCorp Electric Operations

[Docket No. ER91–553–000]

August 1, 1991.

Take notice that PacifiCorp Electric Operations ("PacifiCorp") on July 25, 1991, tendered for filing, in accordance with 18 CFR 35.13 of the Commission's Rules and Regulations, an Electric Supply Agreement ("Agreement" between PacifiCorp and Brigham City Corporation ("Brigham").

The Agreement provides for the sale to Brigham of supplemental power and energy.

PacifiCorp respectfully requests, pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations that a waiver of prior notice be granted and that an effective date of October 1, 1989 be assigned. Such date being consistent with the date service under the Agreement commenced.

Copies of this filing have been supplied to Brigham and the Utah Public Service Commission.

Comment date: August 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

8. Niagara Mohawk Power Corporation

[Docket No. ER91–555–000]

August 1, 1991.

Take notice that Niagara Mohawk Power Corporation (Niagara), on July 25, 1991, tendered for filing an agreement between Niagara Mohawk and Indeck Energy Services of Corinth, Inc. ("Indeck") dated June 28, 1991 providing for certain transmission services to Indeck. This agreement provides for the transmission and delivery by Niagara Mohawk of specified quantities of power produced by Indeck to be sold by Indeck to Consolidated Edison Company of New York (Con Ed) under separate agreement. Firm services under this agreement are proposed to commence as of the commercial operation date of Indeck's Production Facility, as that term is defined in the Indeck-Con Ed power purchase agreement. (The commercial operation date is currently projected by Indeck to be April 1993.)

Niagara Mohawk requests waiver of the Commission's notice requirements. Niagara states that waiver is warranted because approval of this contract at this time is necessary for the successful obtainment of financing for construction of the Production Facility.

Copies of this filing were served upon Indeck and the New York State Public Service Commission.

Comment date: August 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

9. Iowa Southern Utilities Company

[Docket No. ER91–559–000]

August 1, 1991.

Take notice that Iowa Southern Utilities Company (ISU) on July 29, 1991, tendered for filing as an initial rate schedule a Transmission Agreement whereby ISU will provide transmission services to the city of Pella, an Iowa Municipal Utility (Pella) during a one year term to enable Pella to receive energy from Muscatine Power and Water (MPW). ISU proposes an effective date of May 1, 1991, and requests waiver of the Commission's notice requirement

A copy of the filing was served upon the Iowa State Utilities Board and Pella.

Comment date: August 12, 1991 in accordance with Standard Paragraph E at the end of this notice.

10. PacifiCorp Electric Operations

[Docket Nos. ER89–493–003 and ER89–494–002]

August 1, 1991.

Take notice that on July 25, 1991, PacifiCorp Electric Operations (PacifiCorp), tendered for filing in compliance with the Commission's letter order dated June 18, 1991, a compliance report showing the refunds forwarded to all of PacifiCorp's customers which were due refunds as a result of the March 18, 1991 Settlement Agreement under Docket Nos. ER89–493-000 and ER89–494–000.

Copies of the filing were served upon all parties hereto, the Wyoming Public Service Commission, the Utah Public Service Commission, the Public Utility Commission of Oregon, the Idaho Public Utilities Commission, the Public Utilities Commission of Colorado, the Montana Public Service Commission, the Public Utilities Commission of California, the Nevada Public Service Commission, the Arizona Corporation Commission and the Washington Utilities & Transportation Commission.

Comment date: August 16, 1991, in accordance with Standard paragraph E at the end of this notice.

11. Iowa Public Service Company

[Docket No. ER91–557–000]

August 1, 1991.

Take notice that on July 25, 1991, Iowa Public Service Company (IPS) tendered for filing revised Electric Transmission Interconnection Agreement (Interconnection Agreement) and revised exhibits A and B to the Interconnection Agreement with Corn Belt Power Cooperative (CBPC), dated March 1, 1991.

IPS indicates that the revised Interconnection Agreement and revised Exhibits reflect and changes the parties have made in the points of interconnection and the interconnection facilities between the two systems.

IPS also requests a waiver of the Commission's rules so that the Interconnection Agreement may be approved retroactive to March 1, 1991.

IPS states that copies of this filing were served on Corn Belt Power

Cooperative and the Iowa Utilities Board.

Comment date: August 16, 1991, in accordance with Standard paragraph E at the end of this notice.

12. Georgia Power Company

[Docket Nos. ER91-171-000, ER91-204-000 and ER91-205-000]

August 2, 1991.

Take notice that on August 1, 1991, Georgia Power Company (Georgia Power) tendered for filing supplemental information concerning Georgia Power's December 21, 1990 filing of a revised and Restated Integrated Transmission System Agreement, a Block Power Sale Agreement and a Coordination Service Agreement.

Georgia Power states that the supplemental information provided in this filing addresses questions raised by the Commission in response to the aforementioned December 21, 1990 filings.

Comment date: August 12, 1991 in accordance with Standard Paragraph E at the end of this notice.

13. Detroit Edison Company

[Docket No. ER91-211-000]

August 2, 1991.

Take notice that on July 22, 1991, Detroit Edison Company (Detroit Edison) tendered for filing additional materials in connection with an initial electric rate scheduled entitled Belle River Participation Agreement between Detroit Edison and Michigan Public Power Agency in this docket.

Comment date: August 16, 1991, in accordance with Standard Paragraph E end of this notice.

14. Arkansas Power & Light Company

[Docket No. ER91-549-000]

August 2, 1991.

Take notice that on July 22, 1991, Arkansas Power & Light Company tendered for filing the following documents:

1. Addendum to Agreement for Purchase of Electric Service by City of Benton, Arkansas from Arkansas Power & Light Company.
2. Addendum to Agreement for Purchase of Electric Service by City of Prescott, Arkansas from Arkansas Power and Light Company.
3. Addendum to Agreement for Purchase of Electric Service by Farmers Electric Cooperative Corporation and Arkansas Power and Light Company.

Comment date: August 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

15. Pennsylvania Power & Light Company

[Docket No. ER91-356-000]

August 2, 1991.

Take notice that on July 18, 1991, Pennsylvania Power & Light Company (PP&L) tendered for filing Supplemental information in response to Commission staff concerns with certain provisions of the Agreement between PP&L and Public Service Electric and Gas Company in this docket.

Comment date: August 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

16. American Municipal Power-Ohio, Inc. and Connecticut Municipal Electric Energy Cooperative v. Niagara Mohawk Power Corporation

[Docket No. EL91-47-000]

August 2, 1991.

Take notice that on July 26, 1991, American Municipal Power-Ohio, Inc. and the Connecticut Municipal Electric Energy Cooperative (CMEEC) tendered for filing a complaint against Niagara Mohawk Power Corporation and request for establishment of refund effective date and motion to consolidate with Docket EL91-44-000.

Comment date: September 3, 1991, in accordance with Standard Paragraph E at the end of this notice.

17. American Municipal Power-Ohio, Inc. and City of Cuyahoga Falls, Ohio v. Ohio Edison Company

[Docket No. EL91-48-000]

August 2, 1991.

Take notice that on July 26, 1991, American Municipal Power-Ohio, Inc. (AMP-Ohio) and City of Cuyahoga Falls, Ohio tendered for filing a complaint and Motion for Summary Disposition against Ohio Edison Company.

AMP-Ohio alleges that Ohio Edison has charged and proposed to continue to charge AMP-Ohio and/or Cuyahoga Falls for certain costs of improvements to transmission facilities Ohio Edison claims are necessary to provide Cuyahoga Falls with permanent transmission service at 138 kV.

Comment date: September 3, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-18934 Filed 8-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 8221-022 and 9049-008]

Hydroelectric Applications (Alaska Energy Authority and Carex Hydro); Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application:* Amendment of License.

b. *Project No.:* 8221-022.

c. *Date Filed:* June 7, 1991.

d. *Applicant:* Alaska Energy Authority.

e. *Name of Project:* Bradley Lake Project.

f. *Location:* The project is located on the Bradley River in Kenai Peninsula Borough, Alaska.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Charlie Bussell, Executive Director, Alaska Energy Authority, 701 East Tudor Road, P.O. Box 190869, Anchorage, AK 99519-0869, (907) 561-7877.

i. *FERC Contact:* Kenneth Fearon, (202) 219-2657.

j. *Comment Date:* August 21, 1991.

k. *Description of Amendment:* The licensee propose to construct a 25-foot by 25-foot by 3-foot deep intake basin and a 10-foot-high diversion dike at the foot of a small waterfall which presently discharges onto a narrow bench above Bradley Lake and flows into upper Battle Creek. A 1,900-foot-long diversion ditch will be constructed from the diversion dike and intake basin through three existing ponds to Bradley Lake. The diversion would add approximately 0.9 square miles of drainage basin to the Bradley Lake Project for power generation.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

2 a. *Type of Application:* Surrender of License.

Power & Light

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Lois D. Cashell,
Secretary.

[FR Doc. 91-18934 Filed 8-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 8221-022 and 9049-008]

Hydroelectric Applications (Alaska Energy Authority and Carex Hydro); Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application:* Amendment of License.

b. *Project No.:* 8221-022.

c. *Date Filed:* June 7, 1991.

d. *Applicant:* Alaska Energy Authority.

e. *Name of Project:* Bradley Lake Project.

f. *Location:* The project is located on the Bradley River in Kenai Peninsula Borough, Alaska.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Charlie Bussell, Executive Director, Alaska Energy Authority, 701 East Tudor Road, P.O. Box 190869, Anchorage, AK 99519-0869, (907) 561-7877.

i. *FERC Contact:* Kenneth Fearon, (202) 219-2657.

j. *Comment Date:* August 21, 1991.

k. *Description of Amendment:* The licensee propose to construct a 25-foot by 25-foot by 3-foot deep intake basin and a 10-foot-high diversion dike at the foot of a small waterfall which presently discharges onto a narrow bench above Bradley Lake and flows into upper Battle Creek. A 1,900-foot-long diversion ditch will be constructed from the diversion dike and intake basin through three existing ponds to Bradley Lake. The diversion would add approximately 0.9 square miles of drainage basin to the Bradley Lake Project for power generation.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

2 a. *Type of Application:* Surrender of License.

b. *Project No.:* 9049-008.

c. *Date Filed:* June 3, 1991.

d. *Applicant:* Carex Hydro.

e. *Name of Project:* Pioneer.

f. *Location:* On Deckers Creek, Monongalia County, West Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Jacky Trotignon, Western Equipment Corp., 2175 Lemoine Avenue, suite 507, Fort Lee, NJ 07024, (201) 947-0260.

i. *FERC Contact:* Michael Dees, (202) 219-2807.

j. *Comment Date:* August 22, 1991.

k. *Description of Project:* On June 29, 1989, a license was issued to construct, operate and maintain the Pioneer Project No. 9049. The project would have consisted of: (1) A reinforced concrete dam 120 feet long, 10 feet high, and incorporating an intake, weir, and sedimentation cell; (b) a reservoir of one-half acre surface area and 2.5 acre-feet volume at a normal maximum surface elevation of 1,289 feet msl; (c) a 42-inch diameter steel penstock 4,200 feet long; (d) a powerhouse 20 feet high, 45 feet long, and 30 feet wide housing two turbine-generators of 1.5 MW combined capacity; (e) the 0.48-kV generator leads; (f) a 0.48/12.5-kV transformer; (g) a 12.5-kV transmission line 3 miles long; and (h) appurtenant facilities.

The licensee has decided to surrender the license because the existing land owner has terminated the lease agreement and the new rates for purchase of power have dropped to 1.5 cents per kilowatthour. No construction has commenced.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

Standard Paragraphs

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory Commission, room 1027 (810 1st), at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtain by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: August 5, 1991, Washington, DC.

Lois D. Cashell,
Secretary.

[FR Doc. 91-18937 Filed 8-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-2562-000, et al.]

Northwest Pipeline Corp., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Northwest Pipeline Corporation

[Docket No. CP91-2562-000]

August 1, 1991.

Take notice that on July 23, 1991, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158-0900, filed in Docket No. CP91-2562-000 an application pursuant to section 7(b) of the Natural Gas Act, for permission and approval to abandon partially a gas gathering and transportation service provided to Natural Gas Pipeline Company of America (NGPL) and a request for any necessary waivers of the first-come, first-serve provisions of Northwest's FERC Gas Tariff, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest proposes to abandon the gas gathering and transportation agreement with NGPL dated December 20, 1977 (the agreement), which was authorized by the Commission in an order issued April 17, 1979, in Docket No. CP78-183 (7 FERC 61,057). It is stated that the agreement is set forth in Northwest's FERC Gas Tariff, Original Volume No. 2, as Rate Schedule X-53. Northwest states that pursuant to the agreement, Northwest gathers and transports up to 25,000 Mcf per day of natural gas from reserves that NGPL would either develop or otherwise acquire in Northwest's Bar X, Grand Valley and Grand Gas Gathering System in Uintah and Grand Counties, Utah. It is stated that Northwest delivers this gas to an existing point of interconnection with El Paso Natural Gas Company (El Paso) near Ignacio, Colorado in La Plata County. Northwest further states that pursuant to the agreement it has the option to purchase up to 25 percent of the gas gathered for NGPL.

It is indicated that by a terminationagreement dated April 15, 1991, Northwest and NGPL mutually agreed to terminate the agreement effective April 15, 1991, provided that Northwest receives Commission approval to retain the priority of service date established under the agreement for any future transportation under a replacement blanket certificate transportation agreement of the supplies now subject to Rate Schedule X-53. Thus, Northwest also requests any necessary waiver of the first come, first serve provisions of its FERC Gas Tariff in order to retain the priority of service date of December 20, 1977.

Northwest states that it has entered into a nonjurisdictional replacement gas gathering agreement with NGPL dated April 15, 1991, for up to 25,000 MMBtu of natural gas per day from all gathering receipt points served by Northwest. Northwest also states that as a replacement for the transportation service in Rate Scheudle X-53, Northwest and NGPL have entered into an open access, interruptible transportation agreement under Northwest's Rate Schedule TI-1. It is indicated that this replacement transportation agreement provides for the transportation of up to 25,000 MMBtu per day from the Grand Valley, Grand Gas, and Bar X mainline receipt points to the Ignacio interconnection with El Paso in La Plata County, Colorado.

Northwest states that in the event the Commission does not grant the requested waiver, Northwest alternatively requests approval to abandon only the gathering service provided under Rate Schedule X-53. Northwest indicates that it would then

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retain Rate Schedule X–53 solely to provide the transportation service.

Northwest does not propose to abandon any facilities.

Comment date: August 22, 1991, in accordance with Standard Paragraph F at the end of this notice.

2. Columbia Gas Transmission Corporation

[Docket No. CP91–2601–000]

August 1, 1991.

Take notice that on July 26, 1991, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP91–2601–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate eleven (11) additional points of delivery for existing wholesale customers for mainline taps under Columbia's blanket certificate issued in Docket No. CP83–76–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia states that it requests authorization to construct and operate the facilities necessary to provide the additional points of delivery, as follows:

Wholesale customer	Commercial	Residential	Industrial	Annual volumes (Dth)
Columbia Gas of Ohio, Inc	1	9		49,000
Mountaineer Gas Company		1		150

Columbia states that the additional points of delivery have been requested by its wholesale customers for residential, commercial and/or industrial service. Columbia further states that it has been advised that no major non-jurisdictional facilities would be required as a result of the proposed service. It is indicated that the amount of any such non-jurisdictional construction associated with the proposed points of delivery has been included in the individual project description with the exception of residential hookups. It is further indicated that Columbia will comply with the environmental requirements of § 157.206(d) of the Commission's Regulations prior to the construction of its facilities.

Columbia states that the quantities to be provided through the new delivery points would be within its currently authorized level of service and would be within existing peak day and annual proposed seasonal entitlements of such customers. Columbia further states that the sales to be made through the proposed points of delivery would be under its currently effective service agreements with such customers under Rate Schedule CDS.

Comment date: September 16, 1991, in accordance with Standard Paragraph G at the end of this notice.

3. Gulf States Transmission Corporation

[Docket Nos. CP91–2606–000, CP91–2607–000]

August 1, 1991.

Take notice that on July 30, 1991, Gulf States Transmission Corporation (Applicant), 1324 North Hearne, Suite 300, Shreveport, Louisiana 71107, filed in the above referenced dockets prior notice requests pursuant to §§ 157.205 and 284.23 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP90–239–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: September 16, 1991, in accordance with Standard Paragraph G at the end of this notice.

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[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name	Peak day,[1] average day, annual	Receipt points	Delivery points	Start up date, rate schedule, service type	Related [2] docket contract date
CP91–2606–000 (7–30–91	Crosstex Marketing Company.	20,000 16,000 5,600,000	TX, LA	LA, TX	5–01–91, IT, interruptible.	ST91–8864–000 3–01–91
CP91–2607–000 (7–30–91	Westchester Gas Company.	50,000 40,000 14,000,000	TX	LA	5–01–91, IT, interruptible.	ST91–8865–000 1–04–91

[1] Quantities are shown in Mcf.

[2] If an ST docket is shown, 120-day transportation service was reported in it.

4. Algonquin Gas Transmission Company, Texas Eastern Transmission Corporation

[Docket No. CP91–1580–001]

August 2, 1991.

Take notice that on July 25, 1991, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135 and Texas Eastern Transmission Corporation (Tetco), 5400 Westheimer Court, Houston, Texas 77056, jointly referred to as Applicants, filed in Docket No. CP91–1580–001 a joint application, as supplemented on July 31, 1991, pursuant to section 7(c) of the Commission's Regulations under the natural Gas Act to amend the application filed by Applicants in Docket No. CP91–1580–000 to request a reallocation of quantities between two customers under Algonquin's proposed Rate Schedules AWS, WPS and WFT and to reallocate

Resi-dential	Indus-trial	Annual vol-umes (Dth)
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3. Gulf States Transmission Corporation

[Docket Nos. CP91–2606–000, CP91–2607–000]

August 1, 1991.

Take notice that on July 30, 1991, Gulf States Transmission Corporation (Applicant), 1324 North Hearne, Suite 300, Shreveport, Louisiana 71107, filed in the above referenced dockets prior notice requests pursuant to §§ 157.205 and 284.23 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP90–239–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: September 16, 1991, in accordance with Standard Paragraph G at the end of this notice.

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[1] These prior notice requests are not consolidated.

ipt points	Delivery points	Start up date, rate schedule, service type	Related [2] docket contract date
	LA, TX	5–01–91, IT, interruptible.	ST91–8664–000 3–01–91
	LA	5–01–91, IT, interruptible.	ST91–8865–000 1–04–91

Soldiers Field Road,
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to section 7(c) of the Commission's Regulations under the natural Gas Act to amend the application filed by Applicants in Docket No. CP91–1580–000 to request a reallocation of quantities between two customers under Algonquin's proposed Rate Schedules AWS, WPS and WFT and to reallocate

volumes between Algonquin and another customer under Tetco's Rate Schedule SS–1, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Algonquin proposes to reallocate 125 MMBtu per day from the Town of Middleborough, Massachusetts under proposed Rate Schedule AWS to Consolidated Edison Company of New York, Inc. (Con Ed) under proposed Rate Schedules WPS and WFT, 14 and 111 MMBtu per day, respectively. Tetco also requests to reallocate 111 MMBtu per day of storage service under Rate Schedule SS–1 from Algonquin to Con Ed.

Comment date: August 23, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

5. Texas Gas Transmission Corporation, Midwestern Gas Transmission Company

[Docket Nos. CP91–2618–000, CP91–2619–000, CP91–2620–000, CP91–2629–000]

August 2, 1991.

Take notice that Texas Gas Transmission Corporation, 3800 Frederica Street, Owensboro, Kentucky 42301; and Midwestern Gas Transmission Company, P.O. Box 2511, Houston, Texas 77252, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued in Docket No. CP88–686–000 and Docket No. CP90–174–000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: September 16, 1991, in accordance with Standard Paragraph G at the end of this notice.

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[2] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, Average day, Annual MMBtu	Receipt [1] point	Delivery points	Contract date, rate schedule, service type	Related docket, Start up date
CP91–2618–000 (7–30–91)	Indiana Gas Company, Inc.	8,000 4,869 1,777,100	LA, IN, KY, TX, OLA, TN, OTX, IL, AR, OH.	IN	May 8, 1991 FT firm.	ST91–9475–000 7–01–91
CP91–2619–000 (7–30–91)	Tejas Power Corporation	0,000 25,000 36,500,000	LA, IN, KY, TX, OLA, TN, OTX, IL, AR, OH.	LA	August 11, 1989 IT, interruptible.	ST91–9477–000 7–01–91
CP91–2620–000 (7–30–91)	TXG Gas Maketing Company.	5,062 2,000 730,000	KY	KY	May 25, 1990 IT, interruptible.	ST91–9476–000 7–02–91
CP91–2629–000 (7–31–91)	Meridian Oil Trading, Inc.	100,000 10,000 [2] 36,500,000	TN, IL, IN, KY	TN, IL, IN, KY	July 1, 1991 IT, interruptible.	ST91–9786–000 7–01–91

[1] Offshore Louisiana and offshore Texas are shows as OLA and OTX.
[2] Midwestern's quantities are in dekaterms.

6. Panhandle Eastern Pipe Line Company

[Docket No. CP91–2604–000]

August 2, 1991.

Take notice that on July 29, 1991, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251, filed in Docket No. CP91–2604–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation and gas storage service provided by Panhandle for the Village of Morton, Illinois (Morton), an existing sales customer of Panhandle, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle proposes to abandon the service to Morton which was authorized by the Commission in Docket No. CP79–84 and was carried out pursuant to the provisions of a Gas Storage and Transportation Agreement between Panhandle and Morton dated October 13, 1978, on file with the Commission as Panhandle's Rate Schedule TS–4. Panhandle states that in a letter agreement dated September 20, 1990, Panhandle and Morton agreed to terminate the transportation and gas storage service. Panhandle requests that the abandonment authorization be made effective retroactive to April 1, 1991. It is asserted that the proposal involves no abandonment of facilities. It is stated that no other customers of Panhandle would be affected by the proposed abandonment.

Comment date: August 23, 1991, in accordance with Standard Paragraph F at the end of the notice.

7. Texas Gas Transmission Corporation

[Docket No. CP91–2597–000]

August 2, 1991.

Take notice that on July 26, 1991, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed a Docket No. CP91–2597–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to partially abandon firm sales service to the Dayton Power and Light Company (Dayton), all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that Texas Gas provides for the firm sale of up to 102,656 MMBtu of natural gas to Dayton pursuant to a November 1, 1990, service agreement. Texas Gas states that by letter dated May 31, 1991, Dayton requested that it be allowed to convert 15,000 MMBtu per day to firm transportation service, effective August 1, 1991. Texas Gas states that because the service agreement between Texas Gas and Dayton is not "an eligible firm sales service agreement", Texas Gas cannot utilize the automatic abandonment authority provided in § 284.10 of the Commission's Regulations; therefore, Texas Gas is seeking authority to abandon its sales obligation to Dayton by the amount sought to be converted by Dayton effective the date of such conversion.

It is stated that no abandonment of facilities is requested.

Comment date: August 23, 1991, in accordance with Standard Paragraph F at the end of this notice.

Viking Gas Transmission Company, Midwestern Gas Transmission Company, Transwestern Pipeline Company, Northern Natural Gas Company, Tennessee Gas Pipeline Company

[Docket Nos. CP91-2610-000,[3] CP91-2611-000, CP91-2612-000, CP91-2613-000, CP2614-000]

August 2, 1991.

Take notice that the above reference companies (Applicants) filed in the above reference dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: September 16, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket no. (date filed)	Applicant	Shipper name	Peak day [1] average annual	Points of		Start up date, rate schedule	Related 2 dockets
				Receipt	Delivery		
CP91-2610-000 (7-30-91)	Viking Gas Transmission Company, P.O. Box 2511, Houston, Texas 77252.	Aquila Energy Marketing Corporation.	100,000 100,000 36,500,000	WI, MN, ND	WI, MN, ND	06-01-91, IT-2	ST91-9542-000 CP90-273-000
CP91-2611-000 (7-30-91)	Midwestern Gas Transmission Company, P.O. Box 2511, Houston, Texas 77252.	Williams Gas Marketing Company.	50,000 50,000 18,250,000	TN, IL, IN, KY	IL, IN, KY	07-04-91, IT	ST91-9541-000 CP90-174-000
CP91-2612-000 (7-30-91)	Transwestern Pipeline Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188.	Western Counties Gas Co., Inc.	5,000 3,750 1,825,000	AZ, NM, OK, TX	AZ, NM, OK, TX	07-01-91, ITS-1	ST91-9641-000 CP88-133-000
CP91-2613-000 (7-30-91)	Northern Natural Gas Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188.	Tenaska Marketing Ventures.	250,000 187,500 91,250,000	OK, TX, KS, NM, WI, IA, MN, NE.	KS, TX, OK, WI, IA, SD, MN, NM, NE, MI, IL.	07-01-91, IT-1	ST91-9563-000 CP86-435-000
CP91-2614-000 (7-30-91)	Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77252.	Polaris Pipeline Corporation.	100,000 100,000 36,500,000	OLA, LA, OTX, TX, MS, TN, AL, NY, NJ, KY, WV, AR.	LA, TX, MA, NY, NJ, MS, PA, WV, RI, AL, NH, CT, TN, OH, KY, AR.	07-08-91, IT	ST91-9465-000 CP87-115-000

[1] Quantities are shown in dt for Viking, Midwestern and Tennessee; and MMBtu for Transwestern and Northern.
[2] Offshore Louisiana and offshore Texas are shown as OLA and OTX, respectively.
[3] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it

9. Panhandle Eastern Pipe Line Company

[Docket No. CP91-2605-000]

August 2, 1991.

Take notice that on July 29, 1991, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed an application pursuant to section 7(b) of the Natural Gas Act to abandon a transportation service for Zenith Natural Gas Company (Zenith) under Rate Schedule T-45, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle indicates that it was authorized by order issued July 30, 1981, in Docket No. CP91-171-000 to implement that portion of an August 26, 1980, agreement between Panhandle and Zenith which permitted Panhandle to transport for Zenith up to 1,500 Mcf per day from a point of interconnection of the facilities of Zenith and Cities Service Gas Company (now Williams Natural Gas Company) in Barber County, Kansas to Zenith at a point on Panhandle's facilities west of Haven, Kansas. Panhandle states that Williams would receive the gas at the Barber County, Kansas point and redeliver thermally equivalent volumes to Panhandle at existing points of interconnection in Kingfisher County, Oklahoma and Grant County, Kansas through an exchange arrangement authorized by order issued April 7, 1981, in Docket Nos. CP80–557–000, CP81–60–000 and CP81–60–001. Panhandle states that by letter dated April 25, 1991, it invoked its contractual right to terminate the agreement.

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[3] These prior notices requests are not consolidated.

No abandonment of facilities is proposed.

Comment date: August 23, 1991, in accordance with Standard Paragraph F at the end of the notice.

10. Steuben Gas Storage Company

[Docket No. CP89–1684–004]

August 2, 1991.

Take notice that on July 16, 1991, Steuben Gas Storage Company (Applicant) 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89–1684–004, pursuant to section 7(c) of the Natural Gas Act (NGA), as amended, and § 157.6 of the Federal Energy Regulatory Commission's (FERC or Commission) Regulations thereunder, a petition to amend a certificate of public convenience and necessity, issued on September 19, 1990, and as amended on October 25, 1990, which authorized the Applicant to develop, construct, and operate an underground gas storage field and related facilities and to render firm gas storage service to certain distribution companies located in the states of Massachusetts, New Jersey, and South Carolina, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicant states that as a result of the delay in the commencement of storage service, and the unavailability of transportation service from Transcontinental Gas Pipe Line Company during the 1991–92 storage season, several of the Applicant's customers have made alternative arrangements with respect to the service proposed by Applicant.

Specifically, two customers, New Jersey Natural Gas Company (New Jersey Natural) and City of Union, South Caroline (City of Union), have terminated their storage agreements with Applicant. A third customer, Elizabethtown Gas Company (Elizabethtown), has requested to assign during the first year of service, its Gas Storage Agreement to another customer, Commonwealth Gas Company (Commonwealth). The service released by New Jersey Natural has been acquired by Public Service Electric and Gas Company, and the service released by City of Union has been acquired by Commonwealth.

As a result of the proposed assignment and contract terminations, the customer mix for Applicant's storage service has changed. However, the total volume of storage service to be provided, and the rates and cost of service have not. Applicant has filed to amend its certificate to reflect the new customer mix.

Comment date: August 23, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

11. United Gas Pipe Line Company

[Docket No. CP91–2616–000]

August 2, 1991.

Take notice that on July 30, 1991, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP91–2616–000 a request pursuant to § 157.205, 157.211 of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate approximately 1,600 feet of 6-inch pipeline, a six-inch delivery tap and related facilities, located in St. Charles, Louisiana, under United's blanket certificate issued in Docket No. CP82–430–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that the proposed pipeline, delivery tap, and related facilities would enable United to transport an estimated average of 25,000 Mcf per day of natural gas for LaSER Marketing Company to serve Union Carbide's Taft Plant under United's ITS Rate Schedule.

United further states that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers.

Comment date: September 16, 1991, in accordance with Standard Paragraph G at the end of this notice.

12. Superior Offshore Pipeline Co., Columbia Gas Transmission Corporation

[Docket Nos. CP91–2631–000, CP91–2632–000]

August 2, 1991.

Take notice that on July 31, 1991, Superior Offshore Pipeline Co., 12450 Greenspoint Drive, Houston, Texas 77060, and Columbia Gas Transmission Corporation, 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued in Docket No. CP86–387–000, and Docket No. CP86–240–000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: September 16, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt point [1]	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2631-000 (7-31-91)	Linder Oil Company	13,250 13,250 1,590,000	OLA	LA	6-1-91, T-1, Firm	ST91-9785-000 6-22-91

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[4] These prior notice requests are not consolidated

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt point [1]	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2632-000 (7-31-91)	Bishop Pipeline Corporation (marketer).	757,000 505,600 276,305,000	KY, PA, OH, WV, NY	Various	5-16-91, ITS, Interruptible.	ST91-9112-000 5-23-91

[1] Offshore Louisiana is shown as OLA.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91-18935 Filed 8-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. EF91-2011-000, EF91-2021-000, EF91-2041-000 and EF91-2071-000]

United States Department of Energy—Bonneville Power Administration; Filing

August 2, 1991.

Take notice that on August 2, 1991, the Bonneville Power Administration (BPA) tendered for filing proposed rate adjustments for its wholesale power and transmission rates pursuant to section 7(a)(2) of the Northwest Power Act, 16 U.S.C. 839e(a)(2). Pursuant to Commission regulation 300.21, 18 CFR 300.21, BPA seeks final confirmation of the proposed rates, effective October 1, 1991. In the alternative, BPA seeks interim approval effective October 1, 1991, pursuant to Commission regulation 300.20. Exceptions to these requested approval dates are hereafter noted.

BPA's wholesale power rates and transmission rates are proposed to be increased. BPA's proposed wholesale power rates are designed to increase revenues over the two-year test period by approximately $57.0 million, which represents an increase of approximately 1.4 percent. BPA's proposed transmission rates are designed to increase revenues by approximately $39.7 million, or 15.8 percent. With these increases BPA's total test year revenues will be approximately $4.5 billion.

BPA request approval effective October 1, 1991 through September 30, 1933 for the following proposed wholesale power rates and their associated General Rate Schedule Provisions: PF-91 Priority Firm Power Rate; IP-91 Industrial Firm Power Rate; SI-91 Special Industrial Firm Power Rate; CF-91 Firm Capacity Rate; CE-91 Emergency Capacity Rate; NR-91 New Resource Firm Power Rate; NF-91 Nonfirm Energy Rate; SS-91 Share-the-Savings Energy Rate; RP-91 Reserve Power Rate. BPA requests approval of its proposed SP-91 Short-Term Surplus Firm Power Rate effective October 1, 1991 through September 30, 1996. BPA requests approval of its proposed VI-91 Variable Industrial Power Rate for the period beginning July 1, 1993 through June 30, 1996. BPA requests approval for an extension of its IP-PF Rate Link Methodology for the period beginning October 1, 1991 through September 30, 1995, or alternatively through June 30, 1996 if the VI-91 rate is approved. BPA requests approval for the PPL-90 Pacific Power & Light Company Capacity Contract Formula Rate, as modified in this rate filing, for the period beginning October 1, 1991 through August 31, 2011.

BPA requests approval effective October 1, 1991 through September 30, 1993 for the following proposed transmission rate schedules and their associated General Transmission Rate Schedule Provisions: FPT-91.1 Formula Power Transmission; IR-91 Integration of Resources; IS-91 Southern Intertie Transmission; IN-91 Northern Intertie Transmission; IE-91 Eastern Intertie Transmission; ET-91 Energy Transmission; MT-91 Market Transmission; FPT-91-3 Formula Power Transmission; UFT-83 Use-of-Facilities Transmission; TGT-1 Townsend-Garrison Transmission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 16, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

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Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-18936 Filed 8-8-91; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3982-9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 22, 1991 through July 26, 1991 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 5, 1991 (56 FR 14096).

Draft EISs

ERP No. D-UMT-K54020-CA Rating EC2, Tasman Corridor Mass Transit System Improvements, between Milpitas and Northern San Jose and Mountain View/Sunnyvale, Funding, Santa Clara County, CA.

Summary

EPA expressed concerns with potential impacts to wetlands, floodplains and water quality. EPA also requested documentation concerning project impacts to threatened and endangered species, noise impacts and other natural resources.

EPA No. D-USA-D11017-00 Rating EC2, Cameron Station Comprehensive Base Closure and Realignment of Fort Belvoir, Fort Myer and Fort McNair, Implementation, Fairfax and Arlington Counties, VA and Washington, DC.

Summary

EPA's primary basis for the EC-2 rating is the failure to provide air analyses data to ensure there are no adverse impacts to the air quality resulting from the additional 3,835 employees commuting to and from the Fort Belvoir installation.

ERP No. D-USN-B35019-CT Rating EO2, Thames River Navigation Channel Dredging Project, Mouth of the River to Pier 33 at the Naval Submarine Base, Implementation and COE Section 404 Permit, Groton and New London, New London County, CT.

Summary

EPA commented that the draft EIS does not adequately assess the potential environmental impact of the proposed action and that more scientific information, particularly the suitability of the sediment for ocean disposal and the availability of clean material for capping, must be provided. With this information, EPA will oppose the issuance of a 404 permit to allow disposal of the dredged material and recommend that other alternatives to dredging and ocean disposal be more fully evaluated and considered in the EIS.

Final EISs

ERP No. F-AFS-K65129-CA, Stormy II Watershed/Fire Recovery, Implementation, Sequoia National Forest, San Joaquin Valley Air Basin, Tulare and Kern Counties, CA.

Summary

Review of the final EIS was not deemed necessary. No formal letter was sent to the agency.

ERP No. F-COE-G32010-AR, Montgomery Point Lock and Dam Construction, McClellan-Kerr Arkansas River Navigation System, Implementation, Desha County, AR.

Summary

EPA has no further comments on the selected action.

ERP No. F1-AFA-D65103-PA, Allegheny National Forest Understory Vegetation Management Amendment, Implementation, Warren, McKean, Forest and Elk Counties, PA.

Summary

EPA concurs with the decision to amend the Allegheny National Forest Plan with alternative 2 as described in the final EIS.

Dated: August 5, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91-18964 Filed 8-8-91; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3982-8]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities. General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements Filed July 29, 1991 Through August 2, 1991 Pursuant to 40 CFR 1506.9.

EIS No. 910258, Final EIS, AFS, CA, Mount Vida Planning Area Integrated Resource Management Plan, Implementation, Modoc National Forest, Warner Mountain Ranger District, Modoc County, CA Due: September 9, 1991, Contact: Douglas Schultz (916) 279-6116.

EIS No. 910259, Draft EIS, MMS, AL, CA, FL, LA, NC, AK, DE, GA, MD, NJ, NY, RI, TX, WA, OR, SC, VA, Mid 1991 thru Mid 1997 Outer Continental Shelf (OCS) Comprehensive Gas and Oil Resources Management Program, Schedule of Sales Adoption, Leasing, Offshore Coastal Counties of AL, AK, CA, DE, FL, GA, LA, MD, NJ, NY, NC, OR, RI, SC, TX, VA and WA, Due: October 29, 1991, Contact: Debra Purvis (703) 787-1674.

EIS No. 910260, Final EIS, AFS, UT, Brighton Ski Resort Area Development and Master Plan, Approval, Possible New Long-Term Special Use Permit and COE section 404 Permit, Wasatch-Cache and Uinta National Forests, Big Cottonwood Canyon, Salt Lake and Wasatch Counties, UT, Due: September 9, 1991, Contact: Julie Hubbard (801) 524-5030.

EIS No. 910261, Final EIS, USA, MA, NJ, VA, MA, MI, Army Materials Technology Laboratory Closure and Realignments, Transfers to Detroit Arsenal, MI; Picatinny Arsenal, NJ; and Fort Belvoir, VA Middlesex, Norfolk, Suffolk and Essex Counties, MA, Due: September 9, 1991, Contact: Susan Brown (617) 647-6536.

EIS No. 910262, Draft EIS, EPA, VA, Offshore Norfolk Ocean Dredged Material Disposal Site, Designation, Norfolk, VA, Due: September 30, 1991, Contact: William Muir (215) 597-2541.

Amended Notices

EIS No. 910216, Draft Supplement, AFS, CA, Goleta and Gaviota Substations 66 kV Transmission Line Construction, Phase I, New Alternative and Updated Information, Goleta Substation to Exgen Substation in Las Flores Canyon, Santa Barbara County, CA, Due: August 19, 1991, Contact: Lawrence Bembry (805) 683-6711.

Published FR 7-05-91—Officially Withdrawn by Preparing Agency.

Dated: August 6, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91-18965 Filed 8-8-91; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3981-1]

Coast of Oregon and Washington: Designation of Ocean Dredged Material Disposal Sites; Intent to Prepare Environmental Impact Statements

AGENCY: U.S. Environmental Protection Agency (EPA) Region 10.

ACTION: Notice of Intent to prepare environmental impact statements (EIS) on the final designation of Ocean Dredged Material Disposal Sites (ODMDS) located off the coast of Oregon and Washington.

PURPOSE: Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* (MPRSA), gives the Administrator of the U.S. Environmental Protection Agency (EPA) the authority to designate sites where ocean dumping may be permitted. On October 1, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. EPA has voluntarily committed to prepare EISs in connection with ocean dumping site designations (39 FR 16186, May 7, 1974).

The U.S. EPA, Region 10, in accordance with section 102(2) (c) of the National Environmental Policy Act (NEPA) will prepare draft EISs on the designation of ODMDS off six estuaries along the coast of Oregon and Washington. Five EISs will be prepared, with the cooperation of the U.S. Army Corps of Engineers, Portland District, for fiscal designation of ODMDS off of Tillamook Bay, Yaquina Bay, the Siuslaw River, Umpqua River, and Port Orford, in the State of Oregon. One EIS will be prepared, with the cooperation of the U.S. Army Corps of Engineers, Seattle District, for final designation of an ODMDS off of Willapa Bay in the State of Washington. These EISs will provide the information necessary to designate one or two ODMDS at each location. This Notice of Intent is issued pursuant to section 102 of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1977, and 40 CFR part 228 (Criteria for the Management of Disposal Sites for Ocean Dumping).

FOR FURTHER INFORMATION AND TO BE PLACED ON THE PROJECT MAILING LIST CONTACT: Mr. John Malek, Dredging and Ocean Dumping Coordinator, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, WD-128, Seattle, Washington, 98101-3188, Phone (206) 553-1286.

SUMMARY: Federally-authorized navigation channels exist at each of these locations along the northwestern Pacific coast which require periodic maintenance dredging to ensure safe navigation. In 1977, EPA designated interim ODMDS at each location which have been used as necessary to receive volumes of dredged sediments (40 CFR 228.12). These interim sites usually were locations that had long historical use as disposal sites. Studies to support final site designation were conducted by the Corps of Engineers and Coordinated with EPA. Designation of final ODMDS sites at these locations will provide a feasible and environmentally acceptable disposal site for present and anticipated future maintenance work in the area.

Since 1977, twelve ODMDS have received final designation within Region 10: Nome, AK (2 sites); Grays Harbor, WA (2 sites); Mouth of the Columbia River, WA and OR (4 sites); Coos Bay, OR (3 sites); and Coquille, OR (1 site). In addition, draft EISs have been or are being prepared for two other ODMDS designations: Chetco, OR (1 site) and Rogue River, OR (1 site). A final EIS for designation of the Chetco, OR ODMDS and a draft EIS for designation of the Rouge River, OR ODMDS are scheduled for public release later this summer 1991. Preparation of EISs for each of the remaining interim sites will support EPA's designation actions for those locations.

NEED FOR ACTION: The Corps of Engineers, Portland District, has requested that EPA designate an ODMDS offshore of Tillamook Bay, Yaquina Bay, the Siuslaw River, Umpqua River, and Port Orford, Oregon, for disposal of sediments dredged to maintain the federally-authorized navigation projects at each location and for disposal of materials during other actions authorized in accordance with section 103 of the MPRSA. The Corps of Engineers, Seattle District, has made similar request for an ODMDS offshore of Willapa Bay, Washington. EPA has voluntarily committed to prepare EISs in conjunction with ocean dumping site designations. An EIS will be prepared for each designation action that will provide the necessary information to evaluate alternatives and designate a preferred ODMDS.

Alternatives

1. No action: The no action alternative is defined as not designating an ocean disposal site and termination of ocean disposal for this area.
2. Alternative disposal options in the nearshore, mid-shelf, and shelf break region of the Pacific Ocean, and on the uplands. This may include evaluation of adjusting the interim ODMDS.

Scoping

Scoping meetings are not contemplated. Scoping for each EIS will be accomplished with affected federal state, and local agencies, and with interested parties by correspondence, telephone contact, etc.

Estimated Date of Release

One or two draft EISs are scheduled to be available for public comment each year beginning this year. The First ODMDS EIS will be for Umpqua, OR, and should be available in late summer 1991. EISs for the remaining sites will be released in approximately the following order: Siuslaw, OR; Tillamook Bay, OR; Willapa Bay, WA; Yaquina Bay, OR; and Port Orford, OR.

Responsible Official

Dana Rasmussen, Regional Administrator, Region 10.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91-18967 Filed 8-8-91; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-00108; FRL-3933-1]

Carpet Policy Dialogue; Memorandum of Understanding: Testing Program for Carpet Products and Receipt of the Carpet Policy Dialogue Interim Progress Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA has entered into a Memorandum of Understanding (MOU) with the Carpet and Rug Institute (CRI) for the purpose of initiating the provisions stated within the context of the Carpet Policy Dialogue--Consensus Statement: Testing Program for Carpet Products. The MOU provides for carpet product testing for total volatile organic compound emissions (TVOC) and reporting of data as outlined in the testing program. EPA has received an Interim Progress Report from the Carpet Policy Dialogue describing activities from August 21, 1990 through April 10, 1991.

DATES: The MOU was entered into on May 22, 1991.

FOR FURTHER INFORMATION CONTACT: The MOU and the Interim Progress Report are available to the public in the Carpet Emissions Administrative Record located at the TSCA Public Docket Office. This Administrative Record is available for reviewing and copying from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, excluding legal

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Scoping

Scoping meetings are not contemplated. Scoping for each EIS will be accomplished with affected federal state, and local agencies, and with interested parties by correspondence, telephone contact, etc.

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Responsible Official

Dana Rasmussen, Regional Administrator, Region 10.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91-18967 Filed 8-8-91; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-00108; FRL-3933-1]

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DATES: The MOU was entered into on May 22, 1991.

FOR FURTHER INFORMATION CONTACT: The MOU and the Interim Progress Report are available to the public in the Carpet Emissions Administrative Record located at the TSCA Public Docket Office. This Administrative Record is available for reviewing and copying from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, excluding legal

holidays at the following address: Environmental Protection Agency, rm. NE-G004, 401 M St., SW., Washington, DC 20460. Copies may be obtained from the following address: Dave Kling, Acting Director. Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Telephone: (202)554-1404, TDD: (202)554-0557, or FAX (202)554-5603 (document requests only). For further information on the Carpet Policy Dialogue Project contact Richard W. Leukroth, Jr., Carpet Policy Dialogue Coordinator, Telephone: (202)382-3832.

SUPPLEMENTARY INFORMATION:

I. Background

On January 11, 1990, EPA received a petition under section 21 of the Toxic Substances Control Act (TSCA) seeking regulatory action to address carpet emissions. EPA denied the petition (55 FR 17404, April 24, 1990). In lieu of the section 21 proceedings, EPA convened the Carpet Policy Dialogue on August 21, 1991, and set a different mission for the group. EPA charged the dialogue to work out the details of voluntary product testing programs that report TVOC emissions that off-gas from carpet, carpet installation adhesives, and carpet cushion products. In addition, the Carpet Policy Dialogue was asked to explore and, where possible, reach agreement on a variety of issues including: The sampling and analytical methods for the voluntary product testing for TVOC's, any additional information needed, identification of cost-effective process changes to reduce TVOC emissions, information about carpet installation practices, and to provide the interested public with information on TVOC emissions.

The Carpet Policy Dialogue formed three working Subgroups (Product Testing, Process Engineering, and Public Communications) to respond to the EPA charter. The Carpet Policy Dialogue on TVOC emissions is a nonregulatory approach focusing on responsible care/product stewardship through voluntary actions on the part of industry. It emphasizes pollution prevention, exposure reduction, and addresses the public desire for information that could lead to consumer choice. The Carpet Policy Dialogue is an example of how government, industry, public interest groups, and the scientific community can work together to resolve exposure reduction and pollution prevention issues, including those related to indoor air exposures. Proposed testing programs are developed during Subgroup discussion and submitted to the Carpet Policy Dialogue for the benefit of a consensus process of review and comment. In reaching consensus and accepting the carpet testing program, the Carpet Policy Dialogue indicates to its sponsor (EPA) that such a statement can provide the basis for a MOU to initiate voluntary action(s) in response to the charter set by EPA in the **Federal Register** notices (55 FR 17404 and 55 FR 31640).

II. Memorandum of Understanding

The EPA and CRI entered into the MOU on May 22, 1991. The MOU signed by EPA and CRI formally establishes a framework in which a voluntary program response for actions described in the **Federal Register** notices noted above can be fulfilled. It contains provisions initiating the Carpet Testing Program on TVOC emissions and certain follow-on activities.

A. Carpet Testing Program

Under the terms and conditions of the MOU, the CRI has voluntarily agreed to conduct product testing to determine TVOC emissions factors from samples of 25 representative carpet product types. The objectives of the Carpet Testing Program are to: (1) Study carpet emissions decay curve data, (2) characterize quantitatively the profile of TVOC emissions of carpet product types currently in commerce, and (3) address the question of TVOC emission variability, or the lack thereof, across carpet product types.

B. Participants

Placement of responsibilities for the actions described in the MOU is with the President of the Carpet and Rug Institute and the Director of EPA's Office of Toxic Substances.

III. Carpet Policy Dialogue - Interim Progress Report

In conjunction with the public outreach activities of the Carpet Policy Dialogue an Interim Progress Report was submitted to EPA. This report reviews activities and accomplishments of the Carpet Policy Dialogue from August 21, 1990 through April 10, 1991. The report is a product of the Public Communications Subgroup of the Carpet Policy Dialogue. It was reviewed and approved for submission to the EPA by the Carpet Policy Dialogue Plenary.

The report contains background information about the dialogue process, describes structural organization, and explains the nature of consensus and voluntary actions. It describes the activities of the three working Subgroups, lists both direct and indirect accomplishments attributed to the Carpet Policy Dialogue, and contains five appendices that list participants and describe Carpet Policy Dialogue products or proposed products.

It is the intent of the Carpet Policy Dialoque to update the Interim Progress Report and submit a final Compendium Report to EPA after the conclusion of their deliberations.

Dated: July 8, 1991.

Mark A. Greenwood,

Director, Office of Toxic Substances.

[FR Doc. 91-18971 Filed 8-8-91; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for four new FM stations:

Applicant, city/state	File No.	MM Docket No.
I		
A. Edward F. and Pamela J. Levine; Endwell, NY.	BPH-900514MM	91-198
B. Virginia Caldwell Kozlowski; Endwell, NY.	BPH-900514MN	
C. Maurice F.A. Battisti; Endwell, NY.	BPH-900515ME	
D. Lois W. O'Connor; Endwell, NY.	BPH-900515MG	
E. Great Scott Broadcasting; Endwell, NY.	BPH-900516ML	
F. JB Communications; Endwell, NY.	BPH-900516MO	
G. Altswell Broadcasting, Inc.; Endwell, NY.	BPH-900516MP	
H. Mary C. Murray; Endwell, NY.	BPH-900516MT	
I. Carol A. Morgan; Endwell, NY.	BPH-900516MU	
J. Endwell FM Associates; Endwell, NY.	BPH-900516MQ	(Dismissed)
Issue Heading and Applicants 1. Air Hazard, G 2. Contingent Environmental, A, B, C, D, F, G, H, I 3. Comparative, A, B, C, D, E, F, G, H, I 4. Ultimate, A, B, C, D, E, F, G, H, I		
II		
A. Lenora Alexander; Strasburg, CO.	BPH-900102MI	91-195

VOL 56 ISS 154 AG 9 1991 UMI

Applicant, city/state	File No.	MM Docket No.
B. MYM Communications, Limited Partnership; Strasburg, CO.	BPH-900102MJ	

Issue Heading and Applicants

1. Contingent Environmental, A, B
2. Comparative, A, B
3. Ultimate, A, B

III

A. Kenneth Osborne; Virgie, KY.	BPH-891219MI	91-197
B. Hobart C. Johnson; Virgie, KY.	BPH-891227MG	

Issue Heading and Applicants

1. Contingent Environmental, A, B
2. Comparative, A, B
3. Ultimate, A, B

IV

A. WLIK, Inc.; Newport, TN.	BPH-900222MP	91-196
B. WNPC, Inc.; Newport, TN.	BPH-900222MQ	

Issue Heading and Applicants

1. Contingent Environmental, A, B
2. Comparative, A, B
3. Ultimate, A, B

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth above. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used to signify whether the issue in question applies to that particular applicant.

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commissioin's duplicating contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036 (telephone 202-452-1422).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 91-18915 Filed 8-8-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Forms Submitted to the Office of Management and Budget for Clearance

The Administration for Children and Families will publish on Fridays information collection packages submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). Following is the package submitted to OMB since the last publication.

(For a copy of a package, call the FSA, Report Clearance Officer, 202-401-5604)

State Legalization Impact Assistance Grants (SLIAG)—0970—0079—section 204 of Public Law 99-603 requires that states submit annual applications for funding and that the Secretary report annually to Congress. In order to carry out the requirements of the statute, we require that states submit annual reports, in addition to the annual application.

Respondents: State or local government;
Number of Respondents: 54;
Frequency of Response: Annually;
Average Burden per Response: 50 hours;
Estimated Annual Burden: 5,400 hours.
OMB Desk Clearance Officer: Laura Oliven.

Written comments and recommendations for the proposed information collection should be sent directly to the appropriate OMB Desk Officers designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3201, 725 17th Street NW., Washington, DC 20503.

Dated: July 25, 1991.

Sylvia E. Vela,

Deputy Associate Administrator, OMIS.

[FR Doc. 91-18728 Filed 8-8-91; 8:45 am]

BILLING CODE 4150-04-M

Centers for Disease Control

[Announcement Number 175]

Availability of Funds for Fiscal Year 1991 For A Cooperative Agreement for Preventive Health Services Assessment of the Year 2000 Prevention Objectives

Introduction

The Centers for Disease Control (CDC) announces the availability of funds in Fiscal Year 1991 (FY 1991) for a supplemental award to the Public Health Foundation for the Preventive Health Services Assessment of the Year 2000 Objectives. This award will augment and expand the existing cooperative agreement by: Increasing the capacity of state and local health departments to evaluate the accomplishments and services delivered to both general and minority populations, setting priorities, and planning programs funded under the Preventive Health and Health Services (PHHS) Block Grant.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Surveillance and Data Systems. (For ordering a copy of Healthy People 2000, see the section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**)

Authority

This cooperative agreement is authorized under section 301(a) of the Public Health Service Act (42 U.S.C. 241(a)) as amended.

Eligible Applicants

This is not a formal request for applications. Assistance will be provided only to the Public Health Foundation for the continued conduct of this project. No other application is solicited.

Availability of Funds

Approximately $500,000 will be available in FY 1991 for a supplemental award to build capacity in program evaluation, particularly related to programs funded under the PHHS Block Grant. Funding estimates may vary and are subject to change.

Purpose

The purpose of this cooperative agreement is to accumulate and provide to state and local health officials programmatic and expenditure information and, through mini-grants and workshops, to (1) build state and local capacity to evaluate the accomplishments and services delivered to both the general and to minority populations, set priorities, and plan programs funded through the PHHS Block Grant; and (2) take advantage of unique data sources in states to expand the knowledge base on minority health.

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Program Requirements

In performing activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A. below and CDC will be responsible for conducting activities under B. below. The application should be presented in a manner that demonstrates the applicant's ability to address the proposed activities in a collaborative manner with CDC.

A. Recipient Activities

1. The recipient will conduct program activities designed to increase the capacity of state and local health departments to evaluate the accomplishments and services delivered, set priorities, and plan programs funded under the PHHS Block Grant.
2. The recipient will develop programs to increase the capacity of state and local health departments to assess accomplishments and services delivered, set priorities, plan programs for the general population, and analyze existing data on minority populations and subpopulations, particularly as defined by the Year 2000 Objectives and, where possible, utilizing health status indicators called for in objectives specified in the priority area of Surveillance and Data Systems.
3. The recipient will design and conduct workshops for state and local health officials to standardize data elements to determine achievement of the year 2000 Health status objectives, and evaluate the accomplishments of programs funded by the PHHS Block Grant to develop and conduct training for the Public Health Foundation Core Data set.
4. The recipient will complete all details related to conducting the workshops described in 2. above (including identifying site, negotiating cost, inviting participants, arranging travel for participants, and participating in the workshops.)

B. CDC Activities

1. Collaborate in the design of workshops.
2. Jointly facilitate workshops.
3. Disseminate results of workshops.

Evaluation Criteria

The application for supplemental funds will be received by a CDC established Objective Review Committee and evaluated on the basis of the following weighted criteria:

1. Evidence of the recipient's understanding of the problem and the purpose of this supplemental award and its relationship to existing approved programmatic activities. (10 points)
2. The consistency of the measurable objectives with the stated purpose of the cooperative agreement and the ability to meet the objectives and timetable within the specified period. (20 points)
3. The adequacy of the applicant's plan to carry out the activities proposed. (30 points)
4. The adequacy of the applicant's plan to monitor progress toward meeting the objectives of the project. (30 points)
5. The applicant's capability to provide the staff and resources necessary to perform their part of the project. (10 points)
6. The extent to which the budget is reasonable, adequately justified, and consistent with the intended use of the cooperative agreement funds. (Not Weighted)

Executive Order 12372 Review

The intergovernmental review requirements of Executive Order 12372, as implemented by DHHS regulations in 45 CFR 100, are not applicable to this program.

Catalog of Federal Assistance Number

The Catalog of Federal Domestic Assistance number assigned to this program is 93.283.

Application Submission and Deadline

The original and two copies of the application Form PHS-5161-1 must be submitted to Candice Nowicki, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, room 300, Mailstop E-14, 255 East Paces Ferry, NE., Atlanta, Georgia 30305, on or before September 4, 1991.

1. Deadline: The application shall be considered as meeting the deadline if it is either:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (The applicant should request a legibly-dated U.S. Postal Service Postmark or obtain a legibly-dated receipt from a commercial carrier or the U.S. Postal Service. A private metered postmark shall not be acceptable as proof of timely mailing.)

2. Late Application: An application which does not meet the criteria in either 1.a. or 1.b. above is considered a late application. A late application will be returned to the applicant.

Where to Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please reference Announcement number 175 and contact the following:

Business management technical assistance may be obtained from Leah D. Simpson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, room 300, Mailstop E-14, 255 East Paces Road, NE., Atlanta, GA 30305, (404) 842-6594 or FTS 236-6594.

Programmatic technical assistance may be obtained from Edward L. Hunter, NCHS, Presidential Building, 6525 Belcrest Road, room 1100, Hyattsville, MD, 20782, (301) 436-7142 or C. Joseph Webb, 1600 Clifton Road NE., (K30), Atlanta, GA 30333, (404) 488-5299 or FTS 236-5299.

A copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock No. 017-001-00473-1) referenced in the INTRODUCTION may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone (202) 783-3238).

Dated: August 1, 1991.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 91-18950 Filed 8-8-91; 8:45 am]

BILLING CODE 4160-16-M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of September 1991:

Name: National Advisory Committee on Rural Health.

Date and Time: September 23, 1991; 8:45 a.m.-12:30 p.m.

Place: Cannon House Office Building, room 210, First and Independence Avenue, SE. Washington, DC 20515.

Date and Time: September 23-25, 1991; 2:30 p.m.

Place: Wyndom Bristol Hotel, 2430 Pennsylvania Avneue. NW., Washington, DC 20037.

The meeting is open to the public.

Purpose: The Committee provides advice and recommendations to the Secretary with respect to the delivery, financing, research, development and administration of health care services in rural areas.

Agenda: During this meeting, the Committee intends to continue monitoring progress on many of the issues raised in its first three years.

Eight newly appointed members will be introduced and retiring members will be recognized. Some portion of the Work Groups (Health Care Financing Work Group, Health Personnel Work Group, and Health Services Delivery Work Group) meetings will be devoted to developing recommendations to be reported in the Fourth Report to the Secretary.

Anyone requiring information regarding the subject Council should contact Mr. Jeffrey Human, Executive Secretary, National Advisory Committee on Rural Health, Health Resources and Services Administration, room 14-22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-0835.

Persons interested in attending any portion of the meeting should contact Ms. Arlene Granderson, Director of Operations, Office of Rural Health Policy, Health Resources and Services Administration, Telephone (301) 443-0835.

Agenda items are subject to change as priorities dictate.

Dated: August 6, 1991.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 91-19000 Filed 8-8-91; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on July 26, 1991.

(Call PHS Reports Clearance Officer on 202-245-2100 for copies of request)

1. National Environmental Policy Act: Policies and Procuedres—21 CFR part 25—0910-0910—The National Environmental Policy Act (NEPA) requires each Federal Agency to consider the environmental effects of its actions. Firms wishing to market new products regulated by FDA must submit applications requesting approval. Certain applications must contain environmental information for determining whether the proposed action will have a significant environmental impact. *Respondents:* Businesses or other for-profit, Federal Agencies or employees, small businesses or organizations. *Burden per Response:* 1 hour.

(NOTE: Burden for these information requirements is included in individual clearances where NEPA considerations apply).

2. Methadone Treatment Quality Assurance System Feasibility Study—New—This project will assess the feasibility of establishing a national system to monitor and report the quality and effectiveness of treatment provided by registered methadone programs. Client level data will be collected by interviews and record abstraction. *Respondents:* Individuals or households or other for-profit, businesses, Federal agencies or employees, non-profit institutions and small businesses or organizations. *Number of Respondents:* 5,430; *Number of Responses per Respondent:* 1; *Average Burden per Response:* .64 hours; *Estimated Annual Burden:* 3,511 hours.

3. Individual National Research Service Award (NRSA) and Related Form—0925-0002—The NRSA program provides to selected individuals support on training experiences in biomedical and behavioral research. Awards are made to individual applicants for specified training proposals, selected as a result of a national competition. This series of forms is used by individuals to apply for, activate, terminate, travel, and provide for payback of a National Research Service Award. *Respondents:* Individuals or households, businesses or other for-profit, Federal agencies or employees, non-profit institutions and small businesses or organizations.

	No. of respondents	No. of respondents per respondent	Average burden per response
Initial Application	3,309	1	20 hours.
Application for Continuation	1,414	1	7 hours.
Activation Notice	881	1	.08 hour.
Termination Notice	4,914	1	.50 hour.
Payback Agreement	3,060	1	.08 hour.
Annual Payback Activities Certification	20,000	1	.33 hour.
Reference Letter	9,927	1	.33 hour.

Estimated Total Annual Burden: 88,709 hours.

4. Validation of Pneumococcal Vaccination Status Among Hawaii Medicare Eligibile—New—A study to validate the vaccination status (pneumococcal vaccine) of a sample of Medicare beneficiaries will be conducted for the Centers for Disease Control in collaboration with the Health Care Financing Administration. The beneficiaries as well as their health care providers will be surveyed. This survey is part of a larger study to examine the clinical effectiveness of pneumococcal vaccination. *Respondents:* Individuals or households; *Number of Respondents:* 1,125; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 0.237 hours; *Estimated Annual Burden:* 267 hours.

5. Technical Assistance to Enhance the Statistical and Analytic Capacity of State and Local Public Health Professionals for Year 2000 Applications—New—Applicants for training in setting and evaluating health objectives for the Year 2000 must complete an application form for use by the instructor in selecting training applicants. An annual survey of training need of public health employees will be conducted among State Centers/Public Health Agencies. *Respondents:* Individuals or households; State or local governments.

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	No. of respondents	No. of respondents per respondent	Average burden per response
	3,309	1	20 hours.
	1,414	1	7 hours.
	661	1	.08 hour.
	4,914	1	.50 hour.
	9,060	1	.08 hour.
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	9,927	1	.33 hour.

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Professionals for Year 2000 Applications—New—Applicants for training in setting and evaluating health objectives for the Year 2000 must complete an application form for use by the instructor in selecting training applicants. An annual survey of training need of public health employees will be conducted among State Centers/Public Health Agencies. *Respondents:* Individuals or households; State or local governments.

	No. of respondents	No. of respondents per respondent	Average burden per response
Application for Training	330	1	.25 hour.
Annual Needs Survey	56	1	.33 hour.

Estimated Annual Burden: 101.

6. Family of HIV Seroprevalence Surveys—0920-0232—This study is designed to measure the level of HIV prevalence in selected populations in the U.S. It consists of a family of both blinded and non-blinded serologic surveys among patients in TB clinics, STD clinics, family planning and other women's health clinics and drug abuse treatment clinics, as well as studies among HIV positive blood donors, transfusion recipients and their heterosexual partners and homeless persons. *Respondents:* Individuals or households; *Number of Respondents:* 60,149; *Number of Responses per Respondent:* 1; *Average Burden per Response:* .255 hours; *Estimated Annual Burden:* 15,364 hours.

7. Pilot Study on Sample Surveys of National Drug and Alcohol Treatment Units/Clients (The National treatment Study)—New—This pilot study will collect data from 32 drug and alcohol treatment units and 224 clients recently admitted for treatment. The purpose of this data collection is to describe the National drug and alcohol addiction treatment system. Results from this pilot study will be used for a national treatment study of 400 facilities and 3000 clients. *Respondents:* State or local governments, Individuals or households, businesses or other for-profit, non-profit institutions, and small businesses or organizations.

	No. of respondents	No. of responses per respondent	Average burden per response
Clients	224	1	1 hour
Providers	416	1	.36 hour

Estimated Annual Burden: 376.

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address: Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: August 2, 1991.

Phyllis Zucker,

Acting Deputy Assistant Secretary for Public Health Policy.

[FR Doc. 91-18869 Filed 8-8-91; 8:45 am]

BILLING CODE 4160-17-M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96-511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on August 2, 1991.

(Call Reports Clearance Officer on (301) 965-4149 for copies of package)

Applications For Benefits Under the Federal Mine Safety and Health Act of 1977, As Amended (Widow's Claim, Child's Claim, Dependent Claims)—0960-0118—The information collected on the forms SSA-47/48/49 is used by the Social Security Administration (SSA) to identify those claimants eligible for benefits under the appropriate provisions of the Federal Mine Safety and Health Act of 1977, as Amended. The affected public consists of widows, surviving children, parents and sisters of a deceased miner.

Number of Respondents: 2700.

Frequency of Response: 1.

Average Burden Per Response: 11 minutes.

Estimated Annual Burden: 495.

OMB Desk Officer: Laura Oliven.

(Call Reports Clearance Officer on (301) 965-4149 for copies of Package)

Railroad Employment Questionnaire—0960-0078—The information is used by the Social Security Administration (SSA) to coordinate with the Railroad Retirement Board in the processing of certain claims for Social Security benefits. The affected public consists of claimants who indicate employment in the railroad industry.

Number of Respondents: 125,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 10,417.

OMB Desk Officer: Laura Oliven.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: August 2, 1991.

Ron Compston,

Social Security Administration, Reports Clearance Officer.

[FR Doc. 91-18916 Filed 8-8-91; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-91-3299]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

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ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Wendy Swire, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 30, 1991.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Annual Contributions for Operating Subsidies—Peformance Funding System: Determination of Operating Subsidy (FR-2784).

Office: Public and Indian Housing.

Description of the Need for the Information and Its Proposed Use: Public Housing Authorities (PHAs) and Indian Housing Authorities (IHAs) must determine an appropriate "projected occupancy percentage" to be used in calculating operating subsidy eligibility under the Performance Funding System. Effective in FY 92, projected occupancy percentage is to be 98 percent of available units (up from 97 percent under previous rule); comprehensive occupancy plans are eliminated.

Form Number: HUD-52728A.

Respondents: State or local governments and non-profit institutions.

Frequency of Submission: On occasion.

Reporting Burden:

	No. of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
905.720(b)(1)	2,400		1		1		2,400
905.108(b)(1)							
905.720(b)(2)(i)(e)							
905.108(b)(2)(i)(e)							
905.725(b)(3)	2,400		1		.5		1,200
990.109(b)(3)	2,400		1		.75		1,800
905.730(e)							
0.110(e)	2,400		1		.75		1,800

Total Estimated Burden Hours: 7,200.

Status: Reinstatement.

Contact: John T. Comerford, HUD, (202) 708-1872, Wendy Swire, OMB, (202) 395-6880.

Dated: July 30, 1991.

Proposal: Floodplain Management and Protection of Wetlands.

Office: Community Planning and Development.

Description of the Need for the Information and its Proposed Use: 24 CFR part 55 prescribes decisionmaking procedures that applicants and grantees in certain programs must comply with before HUD assistance can be used for projects that may affect floodplains and wetlands. Records must be kept and maintained by the recipients to document compliance of projects with the Executive Orders.

Form Number: None.

Respondents: State or local governments.

Frequency of Submission: On occasion.

Reporting Burden:

	No. of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Recordkeeping	3,200		1		.40		1,280

Total Estimated Burden Hours: 1,280.

Status: New.

Contact: Truman Goins, HUD, (202) 708-2894, Wendy Swire, OMB, (202) 395-6880.

Dated July 30, 1991.

Proposal: Public and Indian Housing Drug Eliminating Program.

Office: Public and Indian Housing.

Description of the Need for the Information and its Proposed Use: Public Housing Authorities (PHAs) and Indian Housing Authorities (IHAs) must apply for grant funds to use in eliminating drug-related crime in public and Indian housing projects. The application process includes developing a plan, strategy, seeking tenant comments, certifying compliance with HUD requirements and providing a comprehensive drug prevention program.

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	No. of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
	2,400		1		1		2,400
	2,400		1		.5		1,200
	2,400		1		.75		1,800
	2,400		1		.75		1,800

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	3,200		1		.40		1,280

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Funding System: Determination of Operating Subsidy (FR–2784).

Office: Public and Indian Housing.

Description of the Need for the Information and Its Proposed Use: Public Housing Authorities (PHAs) and Indian Housing Authorities (IHAs) must determine an appropriate "projected occupancy percentage" to be used in calculating operating subsidy eligibility under the Performance Funding System. Effective in FY 92, projected occupancy percentage is to be 98 percent of available units (up from 97 percent under previous rule); comprehensive occupancy plans are eliminated.

Form Number: HUD–52728A.

Respondents: State or local governments and non-profit institutions.

Frequency of Submission: On occasion.

Reporting Burden:

maintained by the recipients to document compliance of projects with the Executive Orders.

Form Number: None.

Respondents: State or local governments.

Frequency of Submission: On occasion.

Reporting Burden:

eliminating drug-related crime in public and Indian housing projects. The application process includes developing a plan, strategy, seeking tenant comments, certifying compliance with HUD requirements and providing a comprehensive drug prevention program.

Form Number: None.

Respondents: State or local governments and non-profit institutions.

Frequency of Submission: On occasion.

Reporting Burden:

	No. of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Section 961.15	1,000		1		24		24,000
Section 961.18	5,000		1		1		5,000
Section 961.20	1,000		1		32		32,000
Section 961.28(a)	1,000		2		24		48,000
Section 961.28(b)	1,000		1		8		8,000

Total Estimated Burden Hours: 117,000.

Status: Reinstatement.

Contact: Mike Main, HUD, (202) 708–1197, Wendy Swire, OMB, (202) 395–6880.

Dated: July 30, 1991.

Proposal: Handbook 4315.1, Property Disposition Handbook-Multifamily Properties.

Office: Housing.

Discription of the Need for the Information and its Proposed Use: When the Department becomes owner or mortgagee-in-possession of an apartment project, HUD contracts for professional real estate management services, including the inventorying of chattels, making a management survey, accounting for project expenses, and renting apartments.

Form: HUD Handbook 4315.1.

Respondents: Individuals or households, businesses or other for-profit, small businesses of organizations.

Frequency of Submission: On occasion.

Reporting Burden:

	No. of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection Varies from	75–2,200		1–1,150		1/60–22		9,855

Total Estimated Burden Hours: 9,855.

Status: Extension.

Contact: Marc A. Harris, HUD, (202) 708–4280, Wendy Swire, OMB, (202) 395–6880.

Dated: July 30, 1991.

[FR Doc. 91–18951 Filed 8–8–91; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–91–1917; FR–2934–N–38]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free title V information line at 1-800–927–7588 .

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR Part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C).

Properties reviewed are listed in this Notice according to the following categories: suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

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For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice, (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholdings agencies at the following addresses: U.S. Army: Robert Conte, Dept. of Army, Military Facilities, DAEN-ZCI-P; Rm. 1E671, Pentagon, Washington, DC 20310-2600; (202) 693-4583; GSA: Ronald Rice, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 501-0067; Dept. of Transportation: Angelo Picillo, Deputy Director, Administrative Services & Property Management, DCT, 400 Seventh Street SW., room 10317, Washington, DC 20590; (202) 366-5601. (These are not toll-free numbers.)

Dated: August 2, 1991.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 08/09/91

Suitable/Available, Buildings (by State)

Alabama

Bldg. T00108
Fort Rucker
6th Avenue
Fort Rucker, Co: Dale AL 36362-
Landholding Agency: Army
Property Number: 219120270
Status: Unutilized
Comment: 24,992 sq. ft., 1 story wood structure, most recent use—youth center gymnasium, possible asbestos, off-site use only

Arizona

Bldg. 70117—Fort Huachuca
Sierra Vista, Co: Cochise AZ 85635-
Landholding Agency: Army
Property Number: 219120306
Status: Excess
Comment: 3,434 sq. ft., 1 story wood structure, presence of asbestos, most recent use—general instructional

Bldg. 70118—Fort Huachuca
Sierra Vista, Co: Cochise AZ 85635-
Landholding Agency: Army
Property Number: 219120307
Status: Excess
Comment: 3,434 sq. ft., 1 story wood structure, presence of asbestos, most recent use—general instructional

Bldg. 70119—Fort Huachuca
Sierra Vista, Co: Cochise AZ 85635-
Landholding Agency: Army
Property Number: 219120308
Status: Excess
Comment: 3,434 sq. ft., 1 story wood structure, presence of asbestos, most recent use—general instructional

Bldg. 70120—Fort Huachuca
Sierra Vista, Co: Cochise AZ 85635-
Landholding Agency: Army
Property Number: 219120309
Status: Excess
Comment: 3,434 sq. ft., 1 story wood structure, presence of asbestos, most recent use—admin. gen. purpose

Bldg. 70225—Fort Huachuca
Sierra Vista, Co: Cochise AZ 85635-
Landholding Agency: Army
Property Number: 219120310
Status: Excess
Comment: 3,813 sq. ft., 1 story wood structure, presence of asbestos, most recent use—admin. gen. purpose

Bldg. 83006—Fort Huachuca
Sierra Vista, Co: Cochise AZ 85635-
Landholding Agency: Army
Property Number: 219120311
Status: Excess
Comment: 2,062 sq. ft., 1 story wood structure, presence of asbestos, most recent use—admin. gen. purpose

Bldg. 83007—Fort Huachuca
Sierra Vista, Co: Cochise AZ 85635-
Landholding Agency: Army
Property Number: 219120312
Status: Excess
Comment: 2,000 sq. ft., 1 story wood structure, presence of asbestos, most recent use—admin. gen. purpose

Bldg. 83008—Fort Huachuca
Sierra Vista, Co: Cochise AZ 85635-
Landholding Agency: Army
Property Number: 219120313
Status: Excess
Comment: 2,192 sq. ft., 1 story wood structure, presence of asbestos, most recent use—admin. gen. purpose

Bldg. 83015—Fort Huachuca
Sierra Vista, Co: Cochise AZ 85635-
Landholding Agency: Army
Property Number: 219120314
Status: Excess
Comment: 2,325 sq. ft., 1 story wood structure, presence of asbestos, most recent use—admin. gen. purpose

California

Bldg. 60
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos, Co: Orange CA 90720-5001
Landholding Agency: Army
Property Number: 219120315
Status: Unutilized
Comment: 1,024 sq. ft., 2 story concrete-wood plaster, possible asbestos, off-site use only, most recent use—nose hangar

Bldg. 95
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos, Co: Orange CA 90720-5001
Landholding Agency: Army
Property Number: 219120316
Status: Unutilized
Comment: 392 sq. ft., 1 story raised portable. off-site use only, most recent use—radar maint. shop

Bldg. 186
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos, Co: Orange CA 90720-5001
Landholding Agency: Army
Property Number: 219120317
Status: Unutilized
Comment: 996 sq. ft., 1 story steel, off-site use only, most recent use—storage

Bldg. 196
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos, Co: Orange CA 90720-5001
Landholding Agency: Army
Property Number: 219120318
Status: Unutilized
Comment: 1,029 sq. ft., stucco structure, off-site use only, most recent use—storage

Bldg. 197
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos, Co: Orange CA 90720-5001
Landholding Agency: Army
Property Number: 219120319
Status: Unutilized
Comment: 720 sq. ft. 1 story stucco structure, off-site use only, most recent use—storage, possible asbestos

Bldg. 262
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos, Co: Orange CA 90720-5001
Landholding Agency: Army
Property Number: 219120320
Status: Unutilized
Comment: 448 sq. ft. trailer, off-site use only, most recent use—storage.

Bldg. 263
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos, Co: Orange CA 90720-5001
Landholding Agency: Army
Property Number: 219120321
Status: Unutilized
Comment: 448 sq. ft. trailer, off-site use only, most recent use—storage

Bldg. 265
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos, Co: Orange CA 90720-5001
Landholding Agency: Army
Property Number: 219120322
Status: Unutilized
Comment: 448 sq. ft. trailer, off-site use only, most recent use—storage

Bldg. 266
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos, Co: Orange CA 90720-5001
Landholding Agency: Army

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Status: Unutilized
Comment: 1,024 sq. ft., 2 story concrete-wood plaster, possible asbestos, off-site use only, most recent use—nose hangar

Bldg. 95
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos, Co: Orange CA 90720–5001
Landholding Agency: Army
Property Number: 219120316
Status: Unutilized
Comment: 392 sq. ft., 1 story raised portable. off-site use only, most recent use—radar maint. shop

Bldg. 186
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos, Co: Orange CA 90720–5001
Landholding Agency: Army
Property Number: 219120317
Status: Unutilized
Comment: 996 sq. ft., 1 story steel, off-site use only, most recent use—storage

Bldg. 196
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos, Co: Orange CA 90720–5001
Landholding Agency: Army
Property Number: 219120318
Status: Unutilized
Comment: 1,029 sq. ft., stucco structure, off-site use only, most recent use—storage

Bldg. 197
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos, Co: Orange CA 90720–5001
Landholding Agency: Army
Property Number: 219120319
Status: Unutilized
Comment: 720 sq. ft. 1 story stucco structure, off-site use only, most recent use—storage, possible asbestos

Bldg. 262
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos, Co: Orange CA 90720–5001
Landholding Agency: Army
Property Number: 219120320
Status: Unutilized
Comment: 448 sq. ft. trailer, off-site use only, most recent use—storage.

Bldg. 263
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos, Co: Orange CA 90720–5001
Landholding Agency: Army
Property Number: 219120321
Status: Unutilized
Comment: 448 sq. ft. trailer, off-site use only, most recent use—storage

Bldg. 265
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos, Co: Orange CA 90720–5001
Landholding Agency: Army
Property Number: 219120322
Status: Unutilized
Comment: 448 sq. ft. trailer, off-site use only, most recent use—storage

Bldg. 268
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos, Co: Orange CA 90720–5001
Landholding Agency: Army

Property Number: 219120323
Status: Unutilized
Comment: 448 sq. ft. trailer, off-site use only, most recent use—storage

Georgia

Bldg. 95
Fort Benning
Ft. Benning, Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120253
Status: Unutilized
Comment: 1,006 sq. ft. 1 story, most recent use—fire station annex, needs rehab.

Bldg. 1234
Fort Benning
Ft. Benning, Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120254
Status: Unutilized
Comment: 16,186 sq. ft., 2 story, most recent use—officer's club, needs rehab

Bldg. 1684
Fort Benning
Ft. Benning, Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120255
Status: Unutilized
Comment: 2,671 sq. ft., 1 story, needs rehab, most recent use—administraion/general purpose.

Bldg. 1724
Fort Benning
Ft. Benning, Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120256
Status: Unutilized
Comment: 943 sq. ft., 1 story, needs rehab, most recent use—general purpose warehouse.

Bldg. 1827
Fort Benning
Ft. Benning, Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120257
Status: Unutilized
Comment: 943 sq. ft., 1 story, needs rehab, most recent use—administration/general purpose.

Bldg. 2150
Fort Benning
Ft. Benning, Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120258
Status: Unutilized
Comment: 3,909 sq. ft., 1 story, needs rehab, most recent use—general inst. bldg.

Bldg. 2212
Fort Benning
Ft. Benning, Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120259
Status: Unutilized
Comment: 4,720 sq. ft., 2 story, needs rehab, most recent use—drug abuse center.

Bldg. 2213
Fort Benning
Fort Benning, Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120260
Status: Unutilized
Comment: 4,720 sq. ft., 2 story, needs rehab, most recent use—drug abuse center.

Bldg. 2214
Fort Benning
Fort Benning, Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120261
Status: Unutilized
Comment: 2,253 sq. ft., 1 story, needs rehab, most recent use—enlisted persons dining room.

Bldg. 2215
Fort Benning
Fort Benning, Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120262
Status: Unutilized
Comment: 1,844 sq. ft., 1 story, needs rehab, most recent use—day room.

Bldg. 2409
Fort Benning
Fort Benning, Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120263
Status: Unutilized
Comment: 9,346 sq. ft., 1 story, needs rehab, most recent use—general purpose warehouse.

Bldg. 2548
Fort Benning
Fort Benning, Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120264
Status: Unutilized
Comment: 2,337 sq. ft., 2 story, needs rehab, most recent use—clinic w/o beds.

Bldg. 2590
Fort Benning
Fort Benning, Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120265
Status: Unutilized
Comment: 3,132 sq. ft., 1 story, needs rehab, most recent use—vehicle maintenance shop.

Bldg. 3828
Fort Benning
Fort Benning, Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120266
Status: Unutilized
Comment: 628 sq. ft., 1 story, needs rehab, most recent use—general storehouse.

Bldg. 5204
Fort Benning
Fort Benning, Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120267
Status: Unutilized
Comment: 5,310 sq. ft., 2 story, needs rehab, most recent use—trainee barracks.

Bldg. 194
Fort George G. Meade
½ Street
Fort Meade, Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 219120252
Status: Unutilized
Comment: 1,550 sq. ft., wood frame, possible asbestos, needs rehab, most recent use—storage, off-site use only.

Tennessee

Area Q—Housing Area—Q-4
Milan Army Ammunition Plant
Milan, Co: Carroll TN 38358–
Landholding Agency: Army
Property Number: 219120272
Status: Underutilized
Comment: 2,024 sq. ft., 2 story wood frame, most recent use—residence, intermittently used during selected periods.

Area Q—Housing Area—Q-15
Milan Army Ammunition Plant
Milan, Co: Carroll TN 38358–
Landholding Agency: Army
Property Number: 219120273
Status: Underutilized
Comment: 2,024 sq. ft., 2 story wood frame, most recent use—residence, intermittently used during selected periods.

Area Q—Housing Area—Q-19
Milan Army Ammunition Plant
Milan, Co: Carroll TN 38358–
Landholding Agency: Army
Property Number: 219120274
Status: Underutilized
Comment: 2,024 sq. ft., 2 story wood frame, most recent use—residence, intermittently used during selected periods.

Texas

Harlingen USARC
1920 East Washington
Harlingen, Co: Cameron TX 78550–
Landholding Agency: Army
Property Number: 219120304
Status: Excess
Comment: 19,440 sq. ft., 1 story wood brick, needs rehab, with approx. 6 acres including parking areas, most recent use—Army Reserve Training Center.

Land (by State)

Illinois

Portion, JAAP
Joliet Army Ammunition Plant, Co: Will IL 60436–
Location: Approx. 15 miles south of Joliet on the east side of Interstate 55
Landholding Agency: GSA
Property Number: 549130003
Status: Excess
Comment: 1.25 acres, most recent use—aquatic sampling station, subject to occasional flooding
GSA Number: 2-GR(1)-IL-450-FF

Minnesota

Land
Twin Cities Army Ammunition Plant
New Brighton, Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219120269
Status: Underutilized
Comments: Approx. 25 acres, possible contamination, secured area with alternate access.

Suitable/Unavailable Properties, Buildings (by State)

New York

Federal Building I
630 Third Avenue
Brooklyn, Co: Kings NY 11232–
Landholding Agency: GSA
Property Number: 549130004
Status: Excess
Comment: 77,157 sq. ft., 8 story concrete steel frame, needs rehab, portion of space occupied.
GSA Number: G-NY-806

Tennessee

Area Q—Housing Area—Q-1
Milan Army Ammunition Plant
Milan, Co: Carroll TN 38358–
Landholding Agency: Army
Property Number: 219120271
Status: Underutilized
Comment: 2,024 sq. ft., 2 story wood frame, most recent use—residence, intermittently used during selected periods.

Area Q—Housing Area—Q-29
Milan Army Ammunition Plant
Milan, Co: Carroll TN 38358–
Landholding Agency: Army
Property Number: 219120275
Status: Underutilized
Comment: 2,024 sq. ft., 2 story wood frame, most recent use—residence, intermittently used during selected periods.

Utah

Bldg. 101
Tooele Army Depot, North Area
2 miles south of Tooele on State Hwy 36
Tooele, Co: Tooele UT 84074–5008
Landholding Agency: Army
Property Number: 219120305
Status: Underutilized
Comment: 1,698 sq. ft., 1 story, most recent use—admin. and supply

Unsuitable Properties, Buildings (by State)

Tennessee

U.S. Army Reserve Center
920 Cherokee Avenue
Nashville, Co: Davidson TN 37027–
Landholding Agency: GSA
Property Number: 549120066
Status: Excess
Reason: Other
Comment: extensive deterioration
GSA Number: 4–D–TN–630

Properties To Be Excessed, Buildings (by State)

California

Bldg. 270
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos, Co: Orange CA 90720–5001
Landholding Agency: Army
Property Number: 219120324
Status: Unutilized
Comment: 90 sq. ft., concrete/aluminum, off-site use only, most recent use—aircraft steam cleaning bldg.

South Carolina

Bldg. #1 U.S. Coast Guard
Folly Island Loran Station
Folly Island, Co: Charleston SC 29401–
Landholding Agency: DOT
Property Number: 879120096
Status: Unutilized
Comment: 2,340 sq. ft., one story concrete block; most recent use—communications station.

Bldg. #2 U.S. Coast Guard
Folly Island Loran Station
Folly Island, Co: Charleston SC 29401–
Landholding Agency: DOT
Property Number: 879120097
Status: Unutilized
Comment: 2,050 sq. ft., one story concrete block; most recent use—communications station.

Land (by State)

Michigan

U.S. Coast Guard—Air Station
Traverse City, Co: Grand Traverse MI 49684–
Landholding Agency: DOT
Property Number: 879120099
Status: Underutilized
Comment: 21.7 acres, most recent use—Helo landings.

South Carolina

Land—U.S. Coast Guard
Folly Island Loran Station
Folly Island, Co: Charleston SC 29401–
Landholding Agency: DOT
Property Number: 879120098
Status: Unutilized
Coment: 55 acres (88 acres submerged) tidal marshland, potential utilities.

[FR Doc. 91–18736 Filed 8–8–91; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–010–01–4320–01]

Meeting of the Elko District Grazing Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Elko District Grazing Advisory Board Meeting.

SUMMARY: A meeting of the Elko District Grazing Advisory Board will be held on September 11, 1991. The meeting will begin at 9 a.m. in the conference room of the Bureau of Land Management Office at 3900 E. Idaho St., Elko, Nevada 89801.

The Board will review:

1. Range improvement projects for Fiscal Year 1991 and 1992.
2. Proposed allotment Management Plans, and
3. Allotment evaluations and proposed grazing agreements and decisions, as well as other matters that may come before the Board.

The meeting is open to the public. Interested persons may make oral statements to the Board between 11 a.m. and 11:30 p.m. or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, 3900 E. Idaho St., Elko, NV 89801 by September 4, 1991.

Dated: August 2, 1991.

Rodney Harris,

District Manager.

[FR Doc. 91–18961 Filed 8–8–91; 8:45 am]

BILLING CODE 4310-HC-M

[CO–070–01–4320–12–241A]

Grand Junction District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of meeting of Grand Junction District Advisory Board.

SUMMARY: Notice is hereby given that a meeting of the Grand Junction District Grazing Advisory Board will be held on Thursday, September 12, 1991. The meeting will convene in the conference room at the Bureau of Land Management Glenwood Springs Resource Area Office, 50629, Highway 6 & 24, Glenwood Springs, Colorado at 9 a.m.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include: (1) Introductions; (2) minutes of the previous meeting; (3) Colorado Range Update; (4) "The New Range Wars;" (5) The Eagle County Sludge Disposal; (6) Equipment costs; (7) Range Betterment Fund project proposals; (8) Public presentations; (9) Advisory Board project status and proposals; and (10) schedule for next meeting.

The meeting is open to the public. Interested persons may make oral statements to the Board between 1:30 p.m. and 2 p.m. or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81506 by September 11, 1991. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager. Minutes of the district office will be available for public inspection and reproduction (during regular business hours) after thirty (30) days following the meeting.

Further information on the meeting may be obtained at the above address, or by calling (303) 243–6552.

Bruce Conrad,

District Manager.

[FR Doc. 91–18918 Filed 8–8–91; 8:45 am]

BILLING CODE 4310-84-M

[UT–942–00–4212–13; U–65689]

Issuance of Land Exchange Conveyance Document; Utah

AGENCY: Bureau of Land Management, Interior.

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89801 by September

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d 8–8–91; 8:45 am]

[CO-070-01-4320-12-241A]

Grand Junction District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of meeting of Grand Junction District Advisory Board.

SUMMARY: Notice is hereby given that a meeting of the Grand Junction District Grazing Advisory Board will be held on Thursday, September 12, 1991. The meeting will convene in the conference room at the Bureau of Land Management Glenwood Springs Resource Area Office, 50629, Highway 6 & 24, Glenwood Springs, Colorado at 9 a.m.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include: (1) Introductions; (2) minutes of the previous meeting; (3) Colorado Range Update; (4) "The New Range Wars;" (5) The Eagle County Sludge Disposal; (6) Equipment costs; (7) Range Betterment Fund project proposals; (8) Public presentations; (9) Advisory Board project status and proposals; and (10) schedule for next meeting.

The meeting is open to the public. Interested persons may make oral statements to the Board between 1:30 p.m. and 2 p.m. or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81506 by September 11, 1991. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager. Minutes of the district office will be available for public inspection and reproduction (during regular business hours) after thirty (30) days following the meeting.

Further information on the meeting may be obtained at the above address, or by calling (303) 243–6552.

Bruce Conrad,
District Manager.

[FR Doc. 91–18918 Filed 8–8–91; 8:45 am]

BILLING CODE 4310-84-M

[UT-942-00-4212-13; U-65689]

Issuance of Land Exchange Conveyance Document; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of public and private lands.

SUMMARY: This action informs the public of the conveyance of 1,119.58 acres of public land out of Federal ownership. This action will also open 1,099.53 acres of reconveyed lands to surface entry, mining, and mineral leasing.

FOR FURTHER INFORMATION CONTACT: Michael Barnes, BLM Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145–0155, 801–539–4119.

SUPPLEMENTARY INFORMATION:

1. The United States has issued an exchange conveyance document to Stanley R. and Steven G. Smith, for the following described lands pursuant to section 206 of the Act of October 21, 1976, 90 Stat. 2756; 43 U.S.C. 1716.

Salt Lake Meridian, Utah

T. 8 S., R. 8 W.
  Sec. 1, lots 2, 3, 4, SW¼NW¼, W½SW¼;
  Sec. 11, E½E½;
  Sec. 12, W½W½, SE¼SW¼, SW¼SE¼;
  Sec. 13, NW¼NE¼, N½NW¼;
  Sec. 14, NE¼NE¼;
  Sec. 23, Lot 8, 9, and 10;
  Sec. 24, W½SW¼;
  Sec. 25, SE¼SE¼, NE¼SW¼, SE¼NW¼.

Containing 1119.58 acres.

2. In exchange for these lands, the United States acquired the surface of the following described lands.

Salt Lake Meridian, Utah

T. 8 S., R. 2 W.,
  Sec. 31, Lots 3 and 4.
T. 9 S., R. 2 W.,
  Sec. 6, Lots 1, 2, 3, 4, 5, and S½NE¼, SE¼, SE¼SW¼.
T. 8 S., R. 3 W.,
  Sec. 26, SW¼SE¼, E½SE¼SW¼;
  Sec. 36, S½, NW¼.

Containing 1,099.53 acres.

3. At 7:45 a.m., on September 9, 1991, the lands described in paragraph 2 will be open to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 7:45 a.m., on the date stated above, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

4. The purpose of this exchange was to acquire non-federal lands which have high public access, wildlife, and grazing values.

Ted D. Stephenson,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 91–18948 Filed 8–8–91; 8:45 am]

BILLING CODE 4310-DQ-M

[WY-060-4212-14; W-81563]

Realty Action; Competitive Sale; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, competitive sale of public lands in Sheridan County.

SUMMARY: The following public surface estate has been determined to be suitable for disposal by competitive sale under section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976, (90 Stat. 2750; 43 U.S.C. 1713). The Bureau of Land Management (BLM) is required to receive fair market value for the land sold and any bid for less than fair market value will be rejected. The BLM may accept or reject any and all offers, or withdraw any land or interest on the land for sale if the sale would not be consistent with FLPMA or other applicable law.

Sixth Principal Meridian

T. 55 N., R. 77 W.,
  Section 34, Lot 17

The above land aggregates 42.57 acres in Sheridan County, Wyoming. Appraised Value: $3,000.00.

FOR FURTHER INFORMATION CONTACT: David Pomerinke, Area Manager, Buffalo Resource Area, 189 North Cedar, Buffalo, Wyoming 82834, (307) 684–5586.

SUPPLEMENTARY INFORMATION: This sale is consistent with Bureau of Land Management policies and the Buffalo Resource Area Management Plan. The purpose of this sale is to dispose of a small isolated tract of public land.

The parcel will be offered to the general public under the competitive sale procedures. Legal access to the parcel exists via Powder River County Road No. 269.

The publication of this notice segregates the public land described above from entry under the public land laws including the mining laws. Any subsequent application shall not be accepted, shall not be considered as filed, and shall be returned to the applicant if the notice segregates the land from the use applied for in the application. The segregative effect by this notice will terminate upon issuance of a conveyance document, 270 days, or when a cancellation notice is published, whichever comes first.

Sale Procedures include the following conditions:

(1) The sale will be conducted by competitive procedures. The parcel will be offered by sealed bid process to the general public.

(2) All bidders must be U.S. citizens, 18 years of age or older, corporation authorized to own real estate in the State of Wyoming, a State, State instrumentality or political subdivision authorized to hold property, or an entity legally capable of conveying and holding land or interests in Wyoming.

(3) Sealed bidding is the only acceptable method of bidding. All bids must be received in the Buffalo Resource Area Office by 4 p.m. on October 23, 1991, at which time the sealed bid envelopes will be opened and the high bid announced. Bid envelopes must be marked on the left front corner with the parcel number (W–81563) and the sale date. The high bidder will be notified in writing within 30 days whether or not the BLM will accept the bid.

(4) Each sealed bid shall be accompanied by a certified check, postal money order, bank draft or cashiers check made payable to the Department of Interior, BLM, for not less than 10 percent of the amount bid.

(5) Failure to pay the remainder of the full bid price within 180 days of the sale will disqualify the apparent high bidder and the deposit shall be forfeited and disposed of as other receipts of the sale. If the apparent high bidder is disqualified, the next highest qualified bid will be honored or the land will be reoffered under competitive procedures. If two (2) or more envelopes containing valid bids of the same amount are received, supplemental sealed bidding will be used to determine the high bid. Additional sealed bids will be submitted to resolve all ties.

(6) If the parcel fails to sell, it will be reoffered for sale under competitive procedures. For reoffered land, bids must be received in the Buffalo Resource Area Office by 4:30 p.m. on the fourth (4th) Wednesday of each month begining November 27, 1991. Reoffered land will remain available for sale until sold or until the sale action is cancelled or terminated. Reappraisals of the parcels will be made periodically to reflect the current market value. If the value of the parcel changes, it will be published and the land will remain open for competitive bidding according to the procedures and conditions of this notice.

Patent Terms and Conditions

1. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. A more detailed description or this reservation, which will be incorporated in the patent document, is available for review at this office.

2. A right-of-way is reserved for ditches and canals constructed by the

authority of the United States under the authority of the Act of August 30, 1890 (26 Stat. 291; 43 U.S.C. 945).

3. The patent will be subject to all valid existing rights including telephone rights-of-way, W-90182, and the Powder River County Road No. 269.

For a period of forty-five (45) days from the date of issuance of this notice in the **Federal Register**, interested parties may submit comments to the Bureau of Land Management, District Manager, Casper, 1701 East "E" Street, Casper, Wyoming 82601. Any adverse comments will be evaluated by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this proposed realty action will become final.

Dated: August 2, 1991.

James W. Monroe,

District Manager.

[FR Doc. 91-18919 Filed 8-8-91; 8:45 am]

BILLING CODE 4310-22-M

[UT-020-00-4212-08; U-65692]

Pony Express Resource Management Plan Proposed Planning Amendment; Availability

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of the proposed planning amendment for the Pony Express Resource Management Plan (RMP) to permit disposal of land in Tooele County, Utah.

SUMMARY: This notice of availability is to advise the public that the proposed planning amendments is available for public review. The RMP lands decision number one (1) did not provide for any disposal of land in the Callao area. The proposed amendment will allow for the disposal of 70 acres near Callao, Utah. These lands are described as follows:

Salt Lake Meridian, Utah

T. 10 S., R. 17 W.,
  Sec. 26, SW¼SE¼;
  Sec. 35, N½NW¼NE¼, N½S½NW¼;
  containing 70 acres.

A 30-day protest period for the planning amendment will commence with publication of this notice of availability.

FOR FURTHER INFORMATION CONTACT: Howard Hedrick, Pony Express Resource Area Manager, 2370 South 2300 West, Salt Lake City, Utah 84119, (801) 977-4300.

SUPPLEMENTARY INFORMATION: This action is announced pursuant to section 202(a) of the Federal Land Policy and Management Act of 1976 and 43 CFR part 1610. The proposed planning amendment is subject to protest from any adversely affected party who participated in the planning process. Protest must be made in accordance with the provisions of 43 CFR 1610.5-2. Protest must be received by the Director (WO-760) of the BLM, 18th and C Street NW., Washington, DC 20240, within 30 days after the date of publication of this notice of availability for the proposed planning amendment

Dated: August 2, 1991.

James M. Parker,

State Director.

[FR Doc. 91-18949 Filed 8-8-91; 8:45 am]

BILLING CODE 4310-DQ-M

[NV-930-91-4212-22]

Filing of Plat of Survey; Nevada

July 29, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the latest filing of Plat of Survey in Nevada.

EFFECTIVE DATE: Filing was effective at 10 a.m. on July 23, 1991.

FOR FURTHER INFORMATION CONTACT: John S. Parrish, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 702-785-6541.

SUPPLEMENTARY INFORMATION: The Plat of Survey of land described below was officially filed at the Nevada State Office, Reno, Nevada on July 23, 1991.

Mount Diablo Meridian, Nevada

T. 46 N., R. 53 E.—Dependent Resurvey and Survey.

The survey plat for T. 46 N., R. 53 E., was accepted July 15, 1991. The survey was executed to meet certain administrative needs of the U.S. Forest Service.

The above listed survey is now the basic record for describing the lands for all authorized purposes. The survey will be placed in the open files in the BLM Nevada State Office and will be available to the public as a matter of information. Copies of the survey and related field notes may be furnished to the public upon payment of the appropriate fee.

Robert Steele,

Deputy State Director, Operations.

[FR Doc. 91-18927 Filed 8-8-91; 8:45 am]

BILLING CODE 4310-HC-M

[OR-942-00-4730-12; GP1-307]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 4 S., R. 7 W., accepted July 19, 1991 (Sheets 1 & 2)
T. 5 S., R. 7 W., accepted July 19, 1991
T. 16 S., R. 3 E., accepted July 19, 1991
T. 22 S., R. 10 E., accepted July 23, 1991
T. 23 S., R. 10 E., accepted July 23, 1991
T. 16 S., R. 17 E., accepted July 25, 1991 (Sheets 1 through 3)

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1300 NE 44th Avenue, Portland, Oregon 97213, and will be available to the public as a matter of informaton only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1300 NE 44th Avenue, P.O. Box 2965, Portland, Oregon 97208.

Dated: August 1, 1991.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 91-18920 Filed 8-8-91; 8:45 am]

BILLING CODE 4310-33-M

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[OR-942-00-4730-12; GP1-307]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

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The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1300 NE 44th Avenue, P.O. Box 2965, Portland, Oregon 97208.

Dated: August 1, 1991.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 91-18920 Filed 8-8-91; 8:45 am]

BILLING CODE 4310-33-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 27, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by August 26, 1991.

Carol D. Shull,

Chief of Registration, National Register.

GEORGIA

Oglethorpe County

Watson Mill Covered Bridge and Mill Historic District, Along S. Fork Broad R., Watson Mill State Park, Comer vicinity, 91001147

MISSOURI

Jackson County

Attucks School (18th and Vine Area of Kansas City MPS), 1815 Woodland Ave., Kansas City, 91001150
Paseo YMCA (18th and Vine Area of Kansas City MPS), Kansas City, 91001151

MONTANA

Ravalli County

First Baptist Church (Stevensville MPS), 402 Church, Stevensville, 91000737

NEW YORK

Niagara County

Van Horn Mansion, 2165 Lockport—Olcott Rd., Newfane vicinity, 91001149

Suffolk County

Caroline Church and Cemetery, Jct. of Dyke and Bates Rds., Brookhaven, 91001148

PENNSYLVANIA

Allegheny County

Highland Building, 121 S. Highland Mall, Pittsburgh, 91001123

Berks County

Dale Furnace and Forge Historic District (Iron and Steel Resources in Pennsylvania MPS), Forgedale Rd. NW of Bally, Washington Township, Bally vicinity, 91001134
Mary Ann Furnace Historic District (Iron and Steel Resources in Pennsylvania MPS), Centennial Rd. SE of Longswamp, Longswamp Township, Longswamp vicinity, 91001141
Robesonia Furnace Historic District (Iron and Steel Resources in Pennsylvania MPS), Furnace, S. Church and Freeman Sts. and Mountain and E. Meadow Aves., Robesonia, 91001128

Blair County

Allegheny Furnace (Iron and Steel Resources in Pennsylvania MPS), 3400 Crescent Rd., Altoona, 91001131
Etna Furnace (Boundary Increase and Decrease) (Iron and Steel Resources in Pennsylvania MPS), Roughly, area S and E of Frankstown Br. Juniata R. bend at Mt. Etna, Catherine Township, Mt. Etna, 91001145

Bucks County

Summers, Lewis, Farm, 60 Headquarters Rd., Tinicum Township, Ottsville, 91001124

Cambria County

Eliza Furnace (Iron and Steel Resources in Pennsylvania MPS), Lower Main St., Buffington and Blacklick Townships, Vintonville, 91001138

Chester County

Isabella Furnace (Iron and Steel Resources in Pennsylvania MPS), Bollinger Dr. just N of Creek Rd., Nantmeal Township, Brandywine Manor vicinity, 91001135
Middle Pickering Rural Historic District, Pikeland, Yellow Springs, Merlin, Church and Pickering Rds., Phoenixville, E. Pikeland and W. Pikeland Townships, Phoenixville vicinity, 91001125

Clarion County

Buchanan Furnace (Iron and Steel Resources in Pennsylvania MPS), Off PA 378 at Clarion R., Licking Township, Callensburg vicinity, 91001129

Clinton County

Farrandsville Iron Furnace (Iron and Steel Resources in Pennsylvania MPS), Jct. of Graham and Old Carrier Rds., Colebrook Township, Farrandsville, 91001137

Fayette County

Alliance Furnace (Iron and Steel Resources in Pennsylvania MPS), Off T 568 at Jacob's Cr., Perry Township, Perryopolis vicinity, 91001130
Mount Vernon Furnace (Iron and Steel Resources in Pennsylvania MPS), Entsey Rd. E of PA 982, Bullskin Township, Scottdale vicinity, 91001127
Wharton Furnace (Iron and Steel Resources in Pennsylvania MPS), Wharton Furnace—Hull Rd. S of US 40, Wharton Township, Hopwood vicinity, 91001143

Franklin County

Carrick Furnace (Iron and Steel Resources in Pennsylvania MPS), PA 75 N of Metal, Metal Township, Metal vicinity, 91001133
Franklin Furnace Historic District (Iron and Steel Resources in Pennsylvania MPS), Roughly bounded by Circle Dr. and Cinder St., St. Thomas Township, Edenville vicinity, 91001136

Lackawanna County

Lackawanna Iron and Coal Company Furnace (Iron and Steel Resources in Pennsylvania MPS), 159 Cedar Ave., Scranton, 91001126

Lancaster County

Davies, Edward, House, S side of PA 23, W of Water St., Caernarvon Township, Churchtown, 91001122
Mount Hope Estate (Boundary Increase) (Iron and Steel Resources in Pennsylvania MPS), Roughly, along Shearer's Cr. E of Mansion House Rd. and N of PA Tpk., Penn and Rapho Townships, Mount Hope, 91001146

Schuylkill County

Swatara Furnace (Iron and Steel Resources in Pennsylvania MPS), Old Forge Rd. E of Lebanon Reservoir, Pine Grove Township, Suedberg vicinity, 91001140

Venango County

Rockland Furnace (Iron and Steel Resources in Pennsylvania MPS), On Shull Run N of the Allegheny R., NW of Emlenton, Emlenton vicinity, 91001139

Westmoreland County

Ross Furnace (Iron and Steel Resources in Pennsylvania MPS), SW of Tubmill Reservoir off PA 711, Fairfield Township, West Fairfield vicinity, 91001142

York County

Codorus Forge and Furnace Historic District (Iron and Steel Resources in Pennsylvania MPS), Jct. of River Farm and Furnace Rds., Hellam Township, Saginaw vicinity, 91001132

[FR Doc. 91-18997 Filed 8-8-91; 8:45 am]

BILLING CODE 4310-70-M

Bureau of Reclamation

All-American Canal Lining Project, Imperial County, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public hearing for the draft environmental impact statement/draft environmental impact report (DEIS/DEIR): INT DES-91-18.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, and section 21002 of the California Environmental Quality Act, Reclamation and the Imperial Irrigation District have issued a joint DEIS/DEIR on a proposed project to line a section of the All-American Canal between Pilot Knob and Drop 4. The document evaluates alternatives to line the All-American Canal to conserve water. Public hearings on the DEIS/DEIR have been scheduled to solicit public comment on the contents of the environmental document.

DATES: The hearings will be held at the times, locations, and addresses listed below:

- Wednesday, September 11, 1991, 6:30 p.m., U.S. Bureau of Reclamation, Yuma Projects Office Auditorium, 7301 Calle Agua Salada, Yuma, Arizona.

- Thursday, September 12, 1991, 1 p.m., Imperial Irrigation District Auditorium, 1284 Main Street, El Centro California.

ADDRESSES: Single copies of the DEIR/DEIS may be obtained on request to the Regional Director at the address below:

- Regional Director (Attention: LC–150
- Bureau of Reclamation, Lower Colorado Region, P.O. Box 61470, Boulder City, NV 89006–1470, telephone (702) 293–8510.

Copies of the DEIS/DEIR are available for public inspection and review at the following locations:

- Bureau of Reclamation, Technical Liaison Division, U.S. Department of the Interior, 1849 C Street NW., room 7456, Washington, DC 20240, telephone: (202) 208–4662.
- Bureau of Reclamation, Denver Office Library, Building 67, Denver Federal Center, 6th and Kipling, Denver, CO 80225, telephone: (303) 236–6963.
- Bureau of Reclamation, Yuma Projects Office, 7301 Calle Agua Salada, Yuma, AZ 85366, telephone: (602) 343–8100.
- Imperial Irrigation District, 333 East Barioni Boulevard, Imperial, CA 92251.

Metrpolitan Water District of Southern California, 1111 Sunset Boulevard, Los Angeles, CA 90012.

- Coachella Valley Water District, Corner of Highway 111 and Avenue 52, Coachella, CA 92236.

Public Libraries

Located in El Centro, Imperial, Coachella, San Diego, Brawley, Holtville, Calexico, and Los Angeles (Main Library), California; and Yuma, Arizona.

FOR FURTHER INFORMATION CONTACT: Mr. Martin P. Einert, Bureau of Reclamation, Lower Colorado Region, P.O. Box 61470, Boulder City, NV 89006–1470, telephone: (702) 293–8510; Public Information Office, Imperial Irrigation District, P.O. Box 937, Imperial, CA 92251, telephone: (619) 339–9426.

SUPPLEMENTARY INFORMATION: Organizations and individuals wishing to present statements at the hearing should contact the Bureau of Reclamation, Lower Colorado Regional Office, at the above address, to announce their intention to participate. Requests for scheduled presentations will be accepted through 10 a.m. on August 23, 1991.

Oral comments at the hearing will be limited to 5 minutes. The hearing officer may allow any speaker to provide additional oral comments after all persons wishing to comment have been heard. Whenever possible, speakers will be scheduled according to the time preference mentioned in their letter or telephone requests. Speakers not present when called will lose their privilege in the schedule order, and will be recalled at the end of the scheduled speakers.

Written comments from those unable to attend or those who wish to supplement their oral presentations at the hearing should be received by Reclamation's Lower Colorado Regional Office at the above address by September 20, 1991.

Dated: July 30, 1991.

Margaret W. Sibley,

Assistant Commissioner—Administration.

[FR Doc. 91–18929 Filed 8–8–91; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–6 (Sub No. 334X)]

Burlington Northern Railroad Co.; Exemption, Abandonment Between Estelline and Plainview, TX

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by the Burlington Northern Railroad Company of 82.95 miles of rail line between Estelline and Plainview, TX, subject to standard labor protective conditions, a historic resources condition, and environmental conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on September 8, 1991. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [1] and requests for a public use condition must be filed by August 19, 1991. Petitions to stay must be filed by August 26, 1991, and petitions for reconsideration must be filed by September 3, 1991.

ADDRESSES: Send pleadings referring to Docket No. AB–6 (Sub-No. 334X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and (2) Petitioner's Representatives: Douglas J. Babb, Michael E. Roper, Sarah J. Whitley, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202)–275–7245. [TDD for hearing impaired: (202)–275–1721).]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD service (202) 275–1721.)

Decided: August 2, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald. Vice Chairman Emmett did not participate in the disposition of this proceeding.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–18976 Filed 8–8–91; 8:45 am]

BILLING CODE 7035-01-M

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[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[Docket No. AB–55 (Sub-No. 377X)]

CSX Transportation, Inc.; Abandonment Exemption in Thomas County, GA, and Jefferson County, FL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by CSX Transportation, Inc., of 11.85 miles of rail line between milepost AND–703.0, at Metcalf, GA, and milepost AND–714.85, at Monticello, FL, subject to the following conditions: (1) Standard labor protection; (2) environmental; and (3) limited public use.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on September 8, 1991. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by August 19, 1991, petitions to stay must be filed by August 26, 1991 and petitions for reconsideration must be filed by September 3, 1991. Requests for broader public use conditions must be filed by August 19, 1991.

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[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

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Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202)–275–7245. [TDD for hearing impaired: (202)–275–1721).]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD service (202) 275–1721.)

Decided: August 2, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald. Vice Chairman Emmett did not participate in the disposition of this proceeding.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–18976 Filed 8–8–91; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–55 (Sub-No. 377X)]

CSX Transportation, Inc.; Abandonment Exemption in Thomas County, GA, and Jefferson County, FL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by CSX Transportation, Inc., of 11.85 miles of rail line between milepost AND–703.0, at Metcalf, GA, and milepost AND–714.85, at Monticello, FL, subject to the following conditions: (1) Standard labor protection; (2) environmental; and (3) limited public use.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on September 8, 1991. Formal expressions of intent to file an offer[1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by August 19, 1991, petitions to stay must be filed by August 26, 1991 and petitions for reconsideration must be filed by September 3, 1991. Requests for broader public use conditions must be filed by August 19, 1991.

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bandonment—Offers of
4 (1987).

[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

ADDRESSES: Send pleadings referring to Docket No. AB–55 (Sub-No. 377X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423 and

(2) Petitioner's representative: Charles M. Rosenberger—J150, CSX Transportaion Inc., 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275–7245 [TDD for hearing impaired (202) 275–1721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pickup in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD service (202) 275–1721.)

Decided: July 30, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–18977 Filed 8–8–91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Immigration Nursing Relief Advisory Committee; Appointment of Members

This is to announce the appointment of members to the Immigration Nursing Relief Advisory Committee, established under Public Law 101–238, Immigration Nursing Relief Act of 1989.

The membership of the Committee and the organizations represented are as follows: Lenore Appenzeller, National League for Nursing; Don C. Bedell, American Health Care Association; Debra R. Bowland, U.S. Department of Labor; Alan H. Channing, American Hospital Association; Barbara Faruggio, Voluntary Hospitals of America Inc.; Rex J. Ford, U.S. Department of Justice; Pat Ford-Roegner, Service Employees International Union; Evelynn C. Gioiella, American Association of Colleges of Nursing; Jack Golodner, Department for Professional Employees, AFL–CIO; O. Marie Henry, U.S. Department of Health and Human Services; Sara J. Keele, American Organization of Nurse Executives; Filipinas Juan Lowery, Philippine Nurses Association of America; Virginia M. Maroun, Commission on Graduates of Foreign Nursing Schools; Doris E. Nay, National Council of State Boards of Nursing Inc.; Barbara Nichols, American Nurses Association; Marilyn E. Rollins, National Advisory Council for the National Health Services Corps; Edwin R. Rubin, American Immigration Lawyers Association; and Sharon M. Weinstein, National Federation for Specialty Nursing Organizations.

The members will serve until January 30, 1993. Evelynn C. Gioiella will serve as Committee Chairperson.

Signed at Washington, DC this 5th day of August 1991.

Debra R. Bowland,

Acting Assistant, Secretary for Policy.

[FR Doc. 91–18984 Filed 8–8–91; 8:45 am]

BILLING CODE 4510-23-M

Immigration Nursing Relief Advisory Committee; Open Meeting

SUMMARY: The Secretary's Immigration Nursing Relief Advisory Committee (INRAC) was established in accordance with Public Law 101–238, Immigration Nursing Relief Act of 1989, on January 30, 1991. The Committee is to advise the Secretary on the effectiveness of the Immigration Nursing Relief Act of 1989 (INRA) and on needed changes to that legislation. The Committee will be charged with assessing: The impact of the INRA on the nursing shortage; programs that medical institutions implement to recruit and retain nurses who are U.S. citizens, or immigrants authorized to perform nursing services; the formulation of State recruitment and retention plans under the INRA; and the advisability of extending the provisions of INRA beyond the 5-year period specified in the Act.

TIME AND PLACE: The first meeting will be held September 13, 1991 from 10 a.m. until 4:30 p.m. at the Washington Vista Hotel, 1400 M Street NW., Washington, DC.

AGENDA: The agenda provides for:

1. Introductions and Welcome.
2. Background Presentations.
3. INRAC Goals, and Strategies to be employed to meet them.
4. Organizational Matters.

PUBLIC PARTICIPATION: The meeting will be open to the public. The last thirty minutes will be set aside for public comment. Seating will be available for the public on a first-come, first-serve basis.

Individuals or organizations wishing to submit written statements should send 10 copies to Mrs. Karlyn Davis, Executive Director, Immigration Nursing Relief Advisory Committee—Room S–2114, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Papers received on or before September 2, 1991 will be included in the record of the meeting.

FOR FURTHER INFORMATION CONTACT: Mrs. Karlyn Davis, Exec. Dir., INRAC—room S–2114, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523–6026.

Signed at Washington, DC this 5th day of August, 1991.

Debra R. Bowland,

Acting Assistant, Secretary for Policy.

[FR Doc. 91–18983 Filed 8–8–91; 8:45 am]

BILLING CODE 4510-23-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 19, 1991.

Interested person are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 19, 1991.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 29th day of July 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Airpax (Wkrs)	Frederick, MD	07/29/91	07/15/91	26,119	Relays and Solenoids.
Ann Will Garment ILGWU	Kingston, PA	07/29/91	07/16/91	26,120	Women's Dresses.
Ansell, Inc (CO)	Tucson, AZ	06/29/91	07/28/91	26.121	Latex Examination Gloves.
Church and Co. (CO)	Bloomfield, NJ	07/29/91	07/12/91	26,122	Precious Metal Jewelry.
Diamond M On Shore, Inc. (Wkrs)	Alice, TX	07/29/91	06/26/91	26,123	Oil Drilling.
Duramic Products, Inc (Wkrs)	Palisades Park, NJ	07/29/91	07/16/91	26,124	Ceramic Fixtures, Safety Tools.
Electrosound Group Midwest (CO)	Shelbyville, IN	07/29/91	07/15/91	26,125	Tapes & LP Records.
Erico Fastening Systems (IUE)	Morrestown, NJ	07/29/91	07/18/91	26,126	Construction Equipment.
Fay Swafford Originals (Wkrs)	Cleveland, TN	06/29/91	07/15/91	26,127	Knitwear Apparel, Handbags.
Frontier Transports, Inc (Wkrs)	Wilson, OK	07/29/91	07/16/91	26,128	Oil Drilling.
High Country Ford, Inc (Wkrs)	Newland, NC	07/29/91	07/16/91	26,129	Ford Dealership.
Kenner Products Div. (CO)	Cincinnati, OH	07/29/91	07/17/91	26,130	Toys and Games.
Mercury Knitting Mills (Wkrs)	Brooklyn, NY	07/29/91	07/12/91	26,131	Ladies Sweaters.
Omega Tube & Conduit, Corp (CO)	Little Rock, AR	07/29/91	07/19/91	26,132	Steel Mechanical Tubing.
Parker Brothers Div. (CO)	Beverly, MA	07/29/91	07/17/91	26,133	Toys and Games
Parker Brothers Div. (CO)	Salem, MA	07/29/91	07/17/91	26,134	Toys and Games.
PEP Drilling Co. (CO)	Mt. Vernon, IL	07/29/91	07/18/91	26,135	Home Office.
PEP Drilling Co. (CO)	Carrollton, OH	07/29/91	07/18/91	26,136	Oil Drilling.
PPG Industries, Inc, Works #7 AB&GWU	Cumberland, MD	07/29/91	07/18/91	26,137	Glass.
Rawlings Sporting Goods Co, Plt 7 ACTWU	Licking, MO	07/29/91	07/05/91	26,138	Sporting Goods.
Red Tiger Drilling Co. (Wkrs)	Wichita, KS	07/29/91	07/10/91	26,139	Oil Drilling.
Rome Turney Radiator Co (Wkrs)	Rome, NY	07/29/91	07/16/91	26,140	Heat Exchangers.
Semon Bache & Co. GWW&PH	Brooklyn, NY	07/29/91	07/16/91	26,141	Plate Glass and mirrors.
Sinclair Radio Laboratories, Inc (Wkrs)	Tonawanda, NY	07/29/91	07/07/91	26,142	Communication Equipment.
Tonka Crop. (CO)	St. Louis Park, MN	07/29/91	07/17/91	26,143	Toys.
Tonka Products Div. (CO)	St. Louis Park, MN	07/29/91	07/17/91	26,144	Toys and Games.
Tonka Products Div. (CO)	El Paso, TX	07/29/91	07/17/91	26,145	Toys and Games.
Vernell's Fine Candies BC&TW	Bellevue, WA	07/29/91	07/19/91	26,146	Candy.

[FR Doc. 91-18985 Filed 8-8-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,938]

Liberty Machine Co., Inc., Paterson, NJ; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 17, 1991 in response to a worker petition which was filed on June 17, 1991 on behalf of workers at Liberty Machine Co., Inc., Paterson, New Jersey.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 2nd day of August, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-18980 Filed 8-8-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,759]

Unibar Drilling Fluids, Inc., Rocky Mountain Division, Denver, CO; Revised Determination on Reconsideration

On July 23, 1991, the Department, issued an Affirmative Determination Regarding Application for Reconsideration for workers of the Rocky Mountain Division of Unibar Drilling Fluids, Inc., Denver, Colorado. The notice will soon be published in the **Federal Register**.

The initial investigation resulted in a negative determination on June 20, 1991. In that determination the Department considered the subject firm as a manufacturer of drilling muds. U.S. imports of drilling muds are negligible.

New findings, on reconsideration, show that the Rocky Mountain does not produce drilling muds but customizes the drilling muds at each drilling site for unaffiliated firms in the oil and gas industry. The workers apply the muds and remain at the drilling site until the drilling phase is complete.

Other findings show decreased revenues in the first 6 months of 1991 compared to the same period in 1990. Average employment decreased in the first six months of 1991 compared to the same period in 1990.

U.S. imports of crude oil increased absolutely and relative to domestic shipments in 1989 compared to 1988 and in the first 10 months of 1990 compared to the same period in 1989.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that increased imports of articles like or directly competitive with crude oil contributed importantly to the decline in sales and to the total or partial separation of workers at the Rocky Mountain Division of Unibar Drilling Fluids, Denver, Colorado. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

> All workers of the Rocky Mountain Division of Unibar Drilling Fluids, Inc., Denver, Colorado who became totally or partially separated from employment on or after January 1, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

ENDIX

Date eceived	Date of petition	Petition No.	Articles produced
07/29/91	07/15/91	26,119	Relays and Solenoids.
07/29/91	07/16/91	26,120	Women's Dresses.
06/29/91	07/28/91	26,121	Latex Examination Gloves.
07/29/91	07/12/91	26,122	Precious Metal Jewelry.
07/29/91	06/26/91	26,123	Oil Drilling.
07/29/91	07/16/91	26,124	Ceramic Fixtures, Safety Tools.
07/29/91	07/15/91	26,125	Tapes & LP Records.
07/29/91	07/18/91	26,126	Construction Equipment.
06/29/91	07/15/91	26,127	Knitwear Apparel, Handbags.
07/29/91	07/16/91	26,128	Oil Drilling.
07/29/91	07/16/91	26,129	Ford Dealership.
07/29/91	07/17/91	26,130	Toys and Games.
07/29/91	07/12/91	26,131	Ladies Sweaters.
07/29/91	07/19/91	26,132	Steel Mechanical Tubing.
07/29/91	07/17/91	26,133	Toys and Games
07/29/91	07/17/91	26,134	Toys and Games.
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07/29/91	07/18/91	26,137	Glass.
07/29/91	07/05/91	26,138	Sporting Goods.
07/29/91	07/10/91	26,139	Oil Drilling.
07/29/91	07/16/91	26,140	Heat Exchangers.
07/29/91	07/16/91	26,141	Plate Glass and mirrors.
07/29/91	07/07/91	26,142	Communication Equipment.
07/29/91	07/17/91	26,143	Toys.
07/29/91	07/17/91	26,144	Toys and Games.
07/29/91	07/17/91	26,145	Toys and Games.
07/29/91	07/19/91	26,146	Candy.

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U.S. imports of crude oil increased absolutely and relative to domestic shipments in 1989 compared to 1988 and in the first 10 months of 1990 compared to the same period in 1989.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that increased imports of articles like or directly competitive with crude oil contributed importantly to the decline in sales and to the total or partial separation of workers at the Rocky Mountain Division of Unibar Drilling Fluids, Denver, Colorado. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

> All workers of the Rocky Mountain Division of Unibar Drilling Fluids, Inc., Denver, Colorado who became totally or partially separated from employment on or after January 1, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 31st day of July, 1991.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-18981 Filed 8-8-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,789]

VTC Inc., Subsidiary of Control Data Corp.; Bloomington, MN; Negative Determination Regarding Application for Reconsideration

By an application dated July 18, 1991, one of the petitioners requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on June 25, 1991 and published in the **Federal Register** on July 11, 1991 (56 FR 31678).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

> (1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;
>
> (2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or
>
> (3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The workers were engaged in the assembly and packaging of semiconductor devices mainly for classified projects for its parent company—Control Data Corporation.

The petitioner claims that the major portion of the assembly work performed at VTC was non-classified and that the workers were adversely affected by imports.

The Department's denial was based on the fact that employment and production declines at the subject plant were the result of the sale of the business to other domestic companies.

Investigation findings show that Control Data disposed of VTC in three pieces—by selling VTC Bipolar in October 1990 and VTC Cmos in January 1991 and retaining only a small assembly and packaging operation for classified projects for Control Data. Other investigation findings show that since the last quarter of 1989, the vast majority of the assembly and packaging work was for classified projects which for national security reasons could only be assembled in the United States. Workers in the remaining small packaging unit were laid off in May 1991 because their customer chose not to remain in the classified semiconductor business.

None of the above findings would form a basis for a worker group certification.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 31st day of July 1991.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-18982 Filed 8-8-91; 8:45 am]

BILLING CODE 4510-30-M

Attestations Filed by Facilities Using Nonimmigrant Aliens as Registered Nurses

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities which plan on employing nonimmigrant alien nurses. These organizations have attestations on file with DOL for that purpose.

ADDRESSES: Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the Immigration Nursing Relief Act Public Disclosure Room, U.S. Employment Service, Employment and Training Administration, Department of Labor, room N4456, 200 Constitution Avenue, NW., Washington, DC 20210.

Any complaints regarding a particular attestation or a facility's activities under that attestation, shall be filed with a local office of the Wage and Hour Division of the Employment Standards Administration, U.S. Department of Labor. The address of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, room S3502, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Regarding the Attestation Process:

The Employment and Training Administration has established a voice-mail service for the H-1A nurse attestation process. Call Telephone Number: 202-535-0643 (this is not a toll-free number). At that number, a caller can:

(1) Listen to general information on the attestation process for H-1A nurses;

(2) Request a copy of the Department of Labor's regulations (20 CFR part 655, subparts D and E, and 29 CFR part 504, subparts D and E) for the attestation process for H-1A nurses, including a copy of the attestation form (form ETA 9029) and the instructions to the form:

(3) Listen to information on H-1A attestations filed within the preceding 30 days;

(4) Listen to information pertaining to public examination of H-1A attestations filed with the Department of Labor;

(5) Listen to information on filing a complaint with respect to a health care facility's H-1A attestation (however, see the telephone number regarding complaints, set forth below); and

(6) Request to speak to a Department of Labor employee regarding questions not answered by Nos. (1) through (4) above.

Regarding the Complaint Process

Questions regarding the complaint process for the H-1A nurse attestation program shall be made to the Chief, Farm Labor Program, Wage and Hour Division. Telephone: 202-523-7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H-1A visa petitions for bringing nonimmigrant registered nurses to the United States. 26 U.S.C. 1101(a)(15)(H)(i)(a) and 1181(m). The regulations implementing the nursing attestation program are at 20 CFR part 655 and 29 CFR part 504, 55 FR 50500 (December 8, 1990). The Employment and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing.

The list of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staffs. If U.S. registered nurses or other persons which to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities' chief executive officers also are listed, to aid public inquiries. In addition, attestations and supporting short explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the **ADDRESSES** section of this notice.

If a person wishes to file a complaint regarding a particular attestation or a facility's activities under that attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Standards Administration set forth in the **ADDRESSES** section of this notice.

Signed at Washington, DC, this 1st day of August, 1991.

Robert A. Schaerfl,

Director, United States Employment Service.

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS

[07/01/91 to 07/31/91]

CEO-name/facility name/address	State	Approval date
Mr. W. Perry Kinder, Doctors Hospital, HCA Health Service, Inc., Little Rock, AR 72205, 501-661-4000	AR	07/09/91
Mr. Terry Granger, Life Care Center of Paradise, 4065 E. Bell Rd., Phoenix, AZ 85032, 602-867-0212	AZ	07/18/91
Mr. Charles R. Brackney, Lutheran Helathcare Network, 6644 Baywood Ave., Mesa, AZ 85206, 602-981-4131	AZ	07/26/91
Sandra Rodiles, Desert Valley Dialysis Center, 100 South Fifth Street, El Centro, CA 92243, 619-353-0353	CA	07/03/91
Ms. Sheila Elaine Miller, Mission Hospital, 3111 E. Florence Avenue, Huntington Park, CA 90255, 213-582-8261	CA	07/09/91
Ms. Judy Williams, International Nurses Who Care, 1747 Brown Avenue, Woodland, CA 95695, 916-661-1493	CA	07/09/91
Mr. Stephen Reissman, Country Villa Ser. Corp., Villa del Sol, Los Angeles, CA 90033, 213-265-5034	CA	07/09/91
Mr. Ephraim Barsam, Nursing Management Services, (USA), Inc., Los Angeles, CA 90067, 213-553-6024	CA	07/15/91
Mr. Lenard Heffner, St. Helena Hospital & Health, P.O. Box 250, Dee Park, CA 94576, 707-963-3611	CA	07/17/91
Mr. John M. Wilson, San Pedro Peninsula Hospital, 1300 West Seventh Street, San Pedro, CA 90732, 213-514-5203	CA	07/18/91
Sister Regina Clare Salazar, Daniel Freeman Memorial Hosp., 333 North Prairie Avenue, Inglewood, CA 90306, 213-674-7050	CA	07/18/91
Mer. Ermanno Mariani, Pacifica Hosp. of the Valley, Sun Valley Health Group, Inc., Sun Valley, CA 91352, 818-767-3310	CA	07/23/91
Mr. Victor M. Marefka, South Bay Nursing Center, Southern Care Corp., Long Beach, CA 90804, 213-498-7790	CA	07/23/91
Mr. David Banks, Sherman Oaks Conval. Hosp., Beverly Enterprises, Sherman Oaks, CA 91403, 818-986-7242	CA	07/23/91
Mr. Robert D. Hansen, Community Hospital of Chula Vista, 751 Medical Center, Chula Vista, CA 91911, 619-421-6110	CA	07/25/91
Mr. Donald Berstein, Granada Hills Community Hosp., 10445 Baboa Blvd., Granada Hills, CA 91344, 818-360-1021	CA	07/25/91
Mr. Keith N. Wolfe, Community Hosp. of Huntington, 2623 East Slauson Avenue, Huntington Park, CA 90255, 213-582-1931	CA	07/25/91
Mr. Michael E. Schrader, Bridgeport Hospital, 267 Grant Street, Bridgeport, Connecticut 06610, 203-384-3005	CT	07/18/91
Ms. Constance U. Battle, The Hospital for Sick Children, 1731 Bunker Hill Road, NE., Washington, DC 20017, 202-832-4400	DC	07/03/91
Ms. Elizabeth A. Abramowitz, PSI Associates, Inc. 1000 Vermont Avenue, NW., Washington, DC, 202-842-2790	DC	07/09/91
Mr. A. Jason Geisinger, Hillhaven Healthcare Center, 950 Mellonville, Avenue, Sanford, IL 32771, 407-322-8566	FL	07/03/91
Ms. Cynthia Y. Palermo, South Dade Catholic Nursing Home, Inc., Miami, FL 33177, 305-252-4000	FL	07/03/91
Mr. A. Jason Geisinger, Town and Country Conval. Ctr., First Health care Corp., d.b.a., Tampa FL 33615, 813-885-6053	FL	07/08/91
Mr. Richard Castillo, Plantation Gen'l. Hosp., 401 N.W. 42nd Ave., Plantation, FL 33317, 305-797-6450	FL	07/09/91
Mr. A. Jason Geisinger, Titusville Nur. Conval. Ctr., First Healthcare Corp., d.b.a., Titusville, FL 32796, 407-269-5720	FL	07/18/91
Mr. Wayne Deschambeau, Riverside Hospital, RHPC Inc. d/b/a, New Port Richey, FL 34652, 813-842-8468	FL	07/18/91
Mr. A. Jason Geisinger, East Manor Medical Care Center, First Healthcare Corp., d.b.a., Sarasota, FL 34239, 813-365-2422	FL	07/18/91
Mr. A. Jason Geisinger, Orlando Memorial Conval. Center, First Healthcare Corp., d.b.a., Orlando, FL 32806, 407-423-1612	FL	07/18/91
Mr. William J. Byron, Good Samaritan Hospital, Flagler Drive at Palm Beach Lakes Blvd., West Palm Beach, FL 33402, 407-655-5511	FL	07/23/91
Mr. A. Jason Geisinger, Menorah House-Hillhaven, First Healthcare Corp., d.b.a., Boca Raton, FL 33428, 407-483-0498	FL	07/25/91
Mr. Lionel N. Jadoo, Dania Nursing Home, Inc., 4400 Phippen Road, Dania, FL 33004, 305-927-0508	FL	07/26/91
Mr. R. Edward Howell, Medical College of Ga. Hosp., 1120 15th Street, BIF 206, 30912, 404-721-3921	GA	07/18/91
Mr. A. Jason Geisinger, Savannah Convalscent Center, First Healthcare Corp., d.b.a., Savannah, GA 31405, 912-352-8615	GA	07/23/91
Mr. A. Jason Geisinger, Hillhaven Rehab. & Conval., First Healthcare Corp., d.b.a., Marietta, GA 30060, 404-422-8913	GA	07/23/91
Mr. A. Jason Geisinger, Hillhaven Convalescent Center, First Healthcare Corp., d.b.a., Savannah, GA 31499, 912-925-4402	GA	07/23/91
Mr. Patrick J. Duarte, Rehabilitation Hosp. of the P, 226 N. Kuakini Street, Wahiawa, HI 96786, 808-531-3511	HI	07/09/91
Mr. David L. Hill, Wahiawa General Hospital, 128 Lehua Street, Wahiawa, HI 96786, 808-621-8411	HI	07/18/91
Mr. Sam Gorenstein, Metro. Nursing Center of Elgin, 50 N. Jane Drive, Elgin, Illinois, 60123, 708-697-3750	IL	07/03/91
Mr. Sam Gorenstein, Edgewater Nursing & Geriatric, 5838 N. Sheridan Road, Chicago, Illinois 60660, 312-769-2230	IL	07/03/91
Mr. Sam Gorenstein, Metro. Nursing Center of Oak, 625 N. Harlem Avenue, Oak Park, Illinois 60302, 708-848-5966	IL	07/03/91
Mr. Sam Gorenstein, Chicago Ridge Nursing Center, 10602 Southwest Highway, Chicago, Illinois 60415, 708-448-1540	IL	07/03/91
Mr. Sidney Glenner, Glen Oaks Nursing Center, 270 Skokie Blvd., Northbrook, IL 60062, 708-498-9320	IL	07/09/91
Mr. Leslie Zun, Loretto Hospital, 645 S. Central Avenue, Chicago, IL 60644, 312-626-4300	IL	07/09/91
Mr. Sidney Glenner, GlenCrest Nursing and Rehab., 2451 W. Touhy, Chicago, IL 60646, 312-338-6800	IL	07/09/91
Mr. Sidney Glenner, Elston Nursing Home, 4340 N. Keystone, Chicago, IL 60641, 312-545-8700	IL	07/09/91
Ms. Flora Steinberg/Shirley Holt, York Convalescent Center, 127 W. Diversey, Elmhurst, IL 60126, 708-530-5225	IL	07/18/91
Ms. Joanne T. Jurkovic, Mercy Health Care & Rehab. Ct., 19000 South Halsted Street, Homewood, IL 60430, 708-957-9200	IL	07/18/91
Mr. John Samatas, Omni Health Care Ctr., Inc., D, Lexington Health Care Ctr. Schaumburg, Lombard, IL 60148, 708-495-1700	IL	07/18/91
Mr. John Samatas, Lexington Health Care Ctr. of Bloomingdale, Inc., Lombard, IL 60148, 708-495-1700	IL	07/18/91
Mr. John Samatas, Lexington Health Care Ctr., I, 1300 S. Main, Lombard, IL 60148, 708-495-1700	IL	07/18/91
Mr. John Harper, South Shore Hospital, 8012 S. Crandon, Ave., Chicago, IL 60617, 312-768-0810	IL	07/23/91
Sam Gorenstein, Metropolitan Nursing Ctr. of, 222 N. Hammes, Joliet, IL 60435, 812-725-0443	IL	07/23/91
Ms. Theresa Okun, Wheaton Convalescent Center, 1325 Manchester Road, Wheaton, IL 60187, 708-668-2500	IL	07/25/91
Mr. Frank Klienerman, Lake Shore Nursing Center, Inc., 7200 N. Sheridan Road, Chicago, IL 60626, 312-973-7200	IL	07/25/91
Mr. John Birdzell, St. Mary Medical Center (Hoba), Lakeshore Health System, Hobart, IN 46342, 219-947-6140	IN	07/18/91
Ms. Bain J. Farris, St. Vincent Hosp. & Health Care, 2001 West 86th Street, Indianapolis, IN 46260, 317-870-8166	IN	07/25/91
Mr. William H. Kelleher, Dept. of Veterans Affairs Med., 940 Belmont Street, Brockton, MA 02401, 508-583-4500	MA	07/18/91
Mr. Ronald R. Peterson, The Francis Scott Key Med. Ctr., 4940 Eastern Avenue, Baltimore, MD 21224, 301-550-0100	MD	07/03/91
Mr. Brian Goodell, MD, Swedish Hospital Medical Center, 747 Summit Ave., Seattle, Washington 98104, 206-386-2141	MD	07/03/91
Mr. L. Barney Johnson, Harbor Hospital Center, 3001 S. Hanover Street, Baltimore, MD 21230, 301-347-3201	MD	07/18/91
Mr. Salvatore D. Benisatio, Qualicare Nursing Home, 695 E. Grant Blvd., Detroit, MI 48207	MI	07/03/91
Mr. Salvatore D. Benisatto, Westwood Nursing Center, 16588 Schaefer, Detroit, MI 48235, 313-345-5000	MI	07/03/91
Mr. Salvatore D. Benisatto, LaVille Nursing Home, 660 E. Grand Blvd., Detroit, MI 48207, 313-923-5800	MI	07/03/91

public inquiries. In
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statements (but not
documentation) are
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facility's activities under that attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Standards Administration set forth in the **ADDRESSES** section of this notice.

Signed at Washington, DC, this 1st day of August, 1991.

Robert A. Schaerfl,

Director, United States Employment Service.

TIFICATIONS APPROVED ATTESTATIONS

91 to 07/31/91]

dress	State	Approval date
72205, 501-661-4000	AR	07/09/91
85032, 602-867-0212	AZ	07/18/91
esa, AZ 85206, 602-981-4131	AZ	07/26/91
, CA 92243, 619-353-0353	CA	07/03/91
Park, CA 90255, 213-582-8261	CA	07/09/91
and, CA 95695, 916-661-1493	CA	07/09/91
90033, 213-265-5034	CA	07/09/91
CA 90067, 213-553-6024	CA	07/15/91
94576, 707-963-3611	CA	07/17/91
San Pedro, CA 90732, 213-514-5203	CA	07/18/91
Avenue, Inglewood, CA 90306, 213-674-7050	CA	07/18/91
c., Sun Valley, CA 91352, 818-767-3310	CA	07/23/91
each, CA 90804, 213-498-7790	CA	07/23/91
Oaks, CA 91403, 818-986-7242	CA	07/23/91
Chula Vista, CA 91911, 619-421-6110	CA	07/25/91
ada Hills, CA 91344, 818-360-1021	CA	07/25/91
, Huntington Park, CA 90255, 213-582-1931	CA	07/25/91
necticut 06610, 203-384-3005	CT	07/18/91
NE., Washington, DC 20017, 202-832-4400	DC	07/03/91
Washington, DC, 202-842-2790	DC	07/09/91
anford, IL 32771, 407-322-8566	FL	07/03/91
177, 305-252-4000	FL	07/03/91
d.b.a., Tampa FL 33615, 813-885-6053	FL	07/08/91
33317, 305-797-6450	FL	07/09/91
, Titusville, FL 32796, 407-269-5720	FL	07/18/91
y, FL 34652, 813-842-8468	FL	07/18/91
, d.b.a., Sarasota, FL 34239, 813-365-2422	FL	07/18/91
., d.b.a., Orlando, FL 32806, 407-423-1612	FL	07/18/91
es Blvd., West Palm Beach, FL 33402, 407-655-5511	FL	07/23/91
, Boca Raton, FL 33428, 407-483-0498	FL	07/25/91
33004, 305-927-0508	FL	07/26/91
, 30912, 404-721-3921	GA	07/18/91
d.b.a., Savannah, GA 31405, 912-352-8615	GA	07/23/91
a., Marietta, GA 30060, 404-422-8913	GA	07/23/91
d.b.a., Savannah, GA 31499, 912-925-4402	GA	07/23/91
awa, HI 96786, 808-531-3511	HI	07/09/91
786, 808-621-8411	HI	07/18/91
nois, 60123, 708-697-3750	IL	07/03/91
icago, Illinois 60660, 312-769-2230	IL	07/03/91
Park, Illinois 60302, 708-848-5966	IL	07/03/91
Chicago, Illinois 60415, 708-448-1540	IL	07/03/91
60062, 708-498-9320	IL	07/09/91
-626-4300	IL	07/09/91
60646, 312-338-6800	IL	07/09/91
, 312-545-8700	IL	07/09/91
lmhurst, IL 60126, 708-530-5225	IL	07/18/91
Street, Homewood, IL 60430, 708-957-9200	IL	07/18/91
chaumburg,"Lombard, IL 60148, 708-495-1700	IL	07/18/91
L 60148, 708-495-1700	IL	07/18/91
48, 708-495-1700	IL	07/18/91
17, 312-768-0810	IL	07/23/91
812-725-0443	IL	07/23/91
eaton, IL 60187, 708-668-2500	IL	07/25/91
Chicago, IL 60626, 312-973-7200	IL	07/25/91
obart, IN 46342, 219-947-6140	IN	07/18/91
anapolis, IN 46260, 317-870-8166	IN	07/25/91
ckton, MA 02401, 508-583-4500	MA	07/18/91
, Baltimore, MD 21224, 301-550-0100	MD	07/03/91
ttle, Washington 98104, 206-386-2141	MD	07/03/91
re, MD 21230, 301-347-3201	MD	07/18/91
MI 48207	MI	07/03/91
MI 48235, 313-345-5000	MI	07/03/91
I 48207, 313-923-5800	MI	07/03/91

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS—Continued

[07/01/91 to 07/31/91]

CEO-name/facility name/address	State	Approval date
Mr. Salvatore D. Benisatto, Eastwood Nursing Center, 626 E. Grand Blvd. Detroit, MI 48207, 313-923-5816	MI	07/03/91
Mr. Kenneth J. Matzick, William Beaumont Hosp.—Roya, 3601 West Thirteen Mile Road, Royal Oak, MI 48073, 313-637-6914	MI	07/18/91
Mr. Salvatore D. Benisatto, Alpha Manor Nursing Home, 440 E. Grand Blvd. Detroit, MI 48207, 313-579-2900	MI	07/18/91
Mr. Reynold Banks, Capitol View Care Center, 707 Armstrong, Lansing, MI 48911, 517-393-5080	MI	07/25/91
Mr. Jerry Jurena, Trinity Hospital, 315 Knapp Street, Wolf Point, MT 59201, 406-653-2100	MT	07/25/91
Mr. Larry Bishop, Union Memorial Hosp., 600 Hospital Dr., Monroe, NC 28111, 704-283-3100	NC	07/23/91
Mr. D. Max Francis, Bishop Clarkson Memorial Hosp., 44th & Dewey Ave., Omaha, NE 68105, 402-552-2000	NE	07/09/91
Mr. John Matuska, St. Peter's Medical Center, 254 Easton Ave., New Brunswick, NJ 08903, 908-745-8600	NJ	07/03/91
Ms. Linda DiNolfo, Hudson View Care & Rehab. Ctr., 9020 Wall Street, North Bergen, NJ, 07047, 201-861-4040	NJ	07/03/91
Mr. Joseph Jordano, Harborview Health Care Facility, 178-198 Ogden Ave., Jersey City, NJ 07307, 201-963-1800	NJ	07/09/91
Mr. Lloyd Currier, Christ Hospital, 176 Palisade Avenue, Jersey City, NJ 07306, 201-795-8355	NJ	07/11/91
Mr. Bernard Dickens, Sr., United Hospitals Med. Ctr., 15 South Ninth Street, Newark, NJ 07107, 201-268-8578	NJ	07/18/91
Mr. Alex De Venecia, Lifeline International, NJ Co., 309 Bidwin Avenue, Jersey City, NJ 07306, 201-420-6331	NJ	07/19/91
Mr. Oscar Heller, Bayview Conval. Center, Lake Boulevard, Bayville, NJ 08721, 908-269-0500	NJ	07/23/91
Mr. Berel Tennenbaum, Perth Amboy Nursing Home, 303 Elm Street, Perth Amboy, NJ 08861, 908-442-9540	NJ	07/25/91
Mr. Marc H. Lory, UMDNJ—University Hosp., 150 Bergen Street, Newark, NJ 07103, 201-456-5858	NJ	07/25/91
Mr. Thomas Schember, St. Francis Hospital, Franciscan Health System of NJ, Inc., Jersey City, NJ 07302, 201-714-8900	NJ	07/25/91
Mr. R. Gordon Taylor, Lea Regional Hospital, 5410 Lovington Highway, Hobbs, NM 88240, 505-392-6581	NM	07/25/91
Mr. Alan Kopman, Westchester Square Med. Ctr., 2475 St. Raymond Ave., Bronx, NY 10461, 212-430-7300	NY	07/02/91
Ms. Marily Baader, Crouse Irving Memorial Hosp., 736 Irving Avenue, Syracuse, NY 13210, 315-470-7521	NY	07/12/91
Mr. Don A. Corey, Niagara Falls Memorial Med. Ctr., 621—10th Street, Niagara Falls, NY 14302, 716-278-4340	NY	07/25/91
Ms. Deborah D. Dobson, HCR DBA Oakmont West Nur. Ctr., 600 Sulphur Springs Rd., Greenville, SC 29611, 803-246-2721	SC	07/03/91
Mr. Bruce W. Reinhardt, Coronado Hospital, One Medical Plaza, Pampa, TX 79065, 806-665-3721	TX	07/03/91
Mr. Williams Burns, HCA Rio Grande Regional Hosp., 101 East Ridge Road, McAllen, TX 78503, 512-632-6000	TX	07/09/91
Mr. Steve Jackson, Southwest Gen'l Hosp. 7400 Barlite Blvd., San Antonio, TX 78224, 512-921-2000	TX	07/16/91
Mr. Wiliam R. Blanchard, DeTar Hospital, 501 East San Antonio, Victoria, TX 77901, 512-575-7441	TX	07/18/91
Mr. William E. Ball, Outreach Health Ser. of San Antonio, 1111 Babcock Road, San Antonio, TX 78201, 512-736-2868	TX	07/23/91
Ms. Bridgete Martin, Trinity Nursing Services, Inc., 507 North Belt East, suite 450, Houston, TX 77060, 713-931-4960	TX	07/23/91
Mr. William E. Ball, BWB Sunbelt Home Health Agency, 1711 Montana Avenue, El Paso, TX 79902, 915-532-5942	TX	07/23/91
Mr. Charles Van Vorst, Santa Rosa Health Care Corp., 519 W. Houston Street, San Antonio, TX 78207, 512-228-2011	TX	07/23/91
Mr. David J. Holly, Southeast Texas Rehab. Hosp., 3340 Plaza 10 Blvd., Beaumont, TX 77707, 409-835-0835	TX	07/23/91
Sister Getchen Konz, St. Joseph Hosp. & Health Ctr., 2801 Franciscan Drive, Bryan, TX 77802, 409-776-2515	TX	07/25/91

Total Attestations—95

[FR Doc. 91-18979 Filed 8-8-91; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I	
District of Columbia, DC91–1 (Feb. 22, 1991).	p. 79, pp. 80–90.
Massachusetts:	
MA91–1 (Feb. 22, 1991)	p. 421, pp. 423, 425, 426.
MA91–3 (Feb. 22, 1991)	p. 453, pp. 454–455.
New York:	
NY91–8 (Feb. 22, 1991)	p. 857, pp. 858–[illegible]
NY91–12 (Feb. 22, 1991)	p. 893, pp. 893–900.
Rhode Island, RI91–1 (Feb. 22, 1991).	p. 1149, pp. 1150–1152.
West Virginia, WV91–2 (Feb. 22, 1991).	p. 1421, pp. 1422–1444b.
Volume II	
Minnesota, MN91–7 (Feb. 22, 1991).	p. 587, pp. 587–606b.
New Mexico, NM91–1 (Feb. 22, 1991).	p. 779, p. 780.
Texas, TX91–17 (Feb. 22, 1991).	p. 1061, p. 1062.
Wisconsin:	
WI91–7 (Feb. 22, 1991)	p. 1221.
WI91–11 (Feb. 22, 1991)	p. 1259.
WI91–13 (Feb. 22, 1991)	p. 1267.
WI91–14 (Feb. 22, 1991)	p. 1271.
Volume III	
Idaho, ID91–5 (Feb. 22, 1991).	p. 229, p. 230.
Washington:	
WA91–1 (Feb. 22, 1991)	p. 451, pp. 457–458, 472.
WA91–2 (Feb. 22, 1991)	p. 477, pp. 478–[illegible]
WA91–3 (Feb. 22, 1991)	p. 487, p. 488.
WA91–6 (Feb. 22, 1991)	p. 499, p. 500.
WA91–7 (Feb. 22, 1991)	p. 501.

Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC, 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, D.C. this 2nd day of August 1991.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 91–18763 Filed 8–8–91; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Challenge/Advancement Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Challenge/Advancement Advisory Panel (Design Arts Challenge III section) to the National Council on the Arts will be held on August 27, 1991 from 9 a.m.–5:30 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9 a.m.–10 a.m. and 4:30 p.m.–5:30 p.m. The topics will be welcoming remarks, overview of Challenge III, and policy discussion.

The remaining portion of this meeting from 10 a.m.–4:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 5, 1991, this session will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: August 6, 1991.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–18994 Filed 8–8–91; 8:45 am]

BILLING CODE 7537-01-M

Inter-Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Inter-arts Advisory Panel (Presenting Organizations "B" Section) to the National Council on the Arts will be held on August 27, 1991 from 9 a.m.–7 p.m., August 28–29 from 9 a.m.–8 p.m. and August 30 from 9 a.m.–5 p.m. in room M–14 at the Nancy Hanks Center 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 30 from 2 p.m.–5 p.m. The topics will be guidelines review and policy discussion.

The remaining portions of this meeting on August 27 from 9 a.m.–7 p.m., August 28–29 from 9 a.m.–8 p.m. and August 30 from 9 a.m.–2 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 5, 1991, these sessions will be closed to the

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Wage Determinations.

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Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: August 6, 1991.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–18994 Filed 8–8–91; 8:45 am]

BILLING CODE 7537-01-M

Inter-Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Inter-arts Advisory Panel (Presenting Organizations "B" Section) to the National Council on the Arts will be held on August 27, 1991 from 9 a.m.–7 p.m., August 28–29 from 9 a.m.–8 p.m. and August 30 from 9 a.m.–5 p.m. in room M–14 at the Nancy Hanks Center 1100 Pennsylvania Avenue NW., Washington, DC 20506.

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The remaining portions of this meeting on August 27 from 9 a.m.–7 p.m., August 28–29 from 9 a.m.–8 p.m. and August 30 from 9 a.m.–2 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 5, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B` of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: August 6, 1991.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–18995 Filed 8–8–91; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–315 and 50–316]

Indiana Michigan Power Co.; Exemption

In the Matter of Indiana Michigan Power Co. (Donald C. Cook Nuclear Plant Units 1 and 2).

I

The Indiana Michigan Power Company, (the licensee) is the holder of Facility Operating License Nos. DPR–58 and DPR–74, which authorizes operation of the Donald C. Cook Nuclear Plants at steady-state power levels not in excess of 3250 and 3411 megawatts thermal, respectively. The facilities are pressurized water reactors located at the licensee's site in Berrien County, Michigan. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

General Design Criterion (GDC) 2 of appendix A to 10 CFR part 50 requires that structures, systems, and components important to safety shall be designed to withstand the effects of natural phenomena such as earthquakes, tornadoes, hurricanes, floods, tsunami and seiches without loss of capability to perform their safety functions. The design bases for these structures, systems, and components shall reflect: (1) Appropriate consideration of the most severe of the natural phenomena that have been historically reported for the site and the surrounding area, with sufficient margin for the limited accuracy, quantity, and period of time in which the historical data have been accumulated; (2) appropriate combinations of the effects of normal and accident conditions with the effects of the natural phenomena; and (3) the importance of the safety functions to be performed.

The NRC may grant exemptions from the requirements of the regulations which, pursuant to 10 CFR 50.12(a), are (1) authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) present special circumstances. Section 50.12(a)(2)(v) of 10 CFR part 50 indicates that special circumstances exist when an exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation.

III

By letter dated July 19, 1991, the licensee requested an exemption from the requirements of GDC 2 of appendix A to 10 CFR part 50 for the emergency diesel generator (EDG) combination air intake piping including silencer and intake filters, the EDG exhaust piping including silencer, and the EDG room ventilation supply ductwork to be able to withstand the effects of a tornado. The licensee requested that this exemption remain in effect until August 17, 1991, to allow time to implement plant modifications designed to strengthen the tornado resistance of the affected components and bring the affected components into compliance with GDC 2.

The licensee first identified a concern with the ability of the affected components to withstand the effects of a tornado during conduct of a licensee electrical distribution system functional inspection (EDSFI) readiness review. Questions arose as to the existence of proper documentation to support diesel generator operation during a tornado.

The specific items in question are the ventilation ductwork which supplies cooling air to the rooms in which the diesel generators are located, the intake silencer for the diesel generator combustion air, and the diesel generator exhaust piping.

In the highly unlikely event that a tornado passes over the Cook Nuclear Plant, the intake ductwork supplying the diesel generator room ventilation may be subjected to an unacceptable decrease in internal pressure. If the ventilation system is not running at the time the tornado passes, a damper in the line would be closed, effectively isolating the internal area of the ducting from the diesel generator room. Because the ducting passes through the diesel generator room and the room would not be vented, a differential pressure would be imposed across the ducting upsteam of the damper.

The licensee was unable to locate documentation which demonstrates the ability of the ductwork to survive the differential pressure associated with this tornado condition. Their preliminary assessment concluded that duct collapse may be possible. A similar concern exists for the diesel generator combustion air intake silencer located inside the diesel generator room.

Additionally, the supply and exhaust piping have components which are located outside of the builing. These components, exhaust silencer, intake filters, and piping could be exposed to high wind forces. The licensee has been unable to locate documentation which demonstrates the ability of these components to withstand the forces associated with the wind loadings.

IV

The buildings and structures housing safety-related equipment at the D.C. Cook Nuclear Plant were designed to withstand the effects of a tornado. The EDG exhaust silencer, combustion air intake, and ventilation intake components are located such that structures provide a measure of shielding from tornado effects. Further, the licensee has implemented compensatory actions to alleviate the concerns associated with vacuum-induced pressure differential across the ventilation ductwork and the combustion air intake silencer. These including running the EDG room ventilation fans continuously. This opens the damper which provides a path for pressure equalization. Also, doors to the diesel generator rooms and doors

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and manways in other compartments through which the ventilation ductwork passes have been opened (and appropriate fire watches stationed as necessary) to allow for a vent path and reduce the potential for a pressure differential to exist. Other compensatory actions (modifications to external components) are underway and include using cables to provide additional support and removal of a portion of the ventilation intake which protrudes outside the building. These modifications will address the tornado wind loading concerns and are to be completed no later than August 17, 1991, and will include development of adequate procedures for installation.

Using preliminary results from their probabilistic risk assessment, the licensee calculated that tornadoes resulting in 90 mph or greater winds occur with a frequency of 2×10^{-4} per year within a 125-mile radius of the D.C. Cook Nuclear Plant. Further, the majority of tornadoes within a 125-mile radius of the plant occur in the months of April, May, and June. When considering whether a tornado of 90 mph or greater winds would occur and cause both a loss of off-site power and loss of the EDGs, the probability is even lower.

V

The staff has reviewed the information supplied by the licensee and has had numerous discussions with the licensee concerning the circumstances of the event, their operability determination, and their compensatory and corrective actions. The licensee has determined that these actions would bring the EDGs into compliance with GDC 2 and would be fully implemented no later than August 17, 1991. The staff agrees with the licensee that the actions they have described will adequately enhance the ability of the affected components to withstand the effects of a tornado. Additionally, the staff concurs with the licensee's determination that the occurrence of a tornado during the short duration that this exemption will be in effect is a low probability event. The staff notes also that upon discovery of the nonconforming condition, the licensee made a good faith effort to comply with the regulations through immediate implementation of compensatory actions.

Accordingly, the Commission has determined pursuant to 10 CFR 50.12(a) that (1) this exemption as described in section III is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security, and (2) special circumstances as provided in 10 CFR 50.12(a)(2)(v) are present for this exemption in that the exemption would provide only temporary relief from the applicable regulation and the licensee has made a good faith effort to comply with the regulation. Therefore, the Commission hereby grants the Exemption request identified in section III above. The Exemption shall remain in effect until August 17, 1991, or until such time as the licensee completes modifications to achieve compliance with GDC 2, whichever is sooner.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (56 FR 36849).

This Exemption is effective as of the date of its issuance.

Dated at Rockville, Maryland this 1st day of August 1991.

For the Nuclear Regulatory Commission.

Bruce A. Boger,

Director, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91-18963 Filed 8-8-91; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-69A]

Japanese Government Procurement Policies Affecting Architectural, Engineering and Construction Services and Related Consulting Services

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Notice of bilateral agreement and further monitoring pursuant to section 306 of the Trade Act of 1974 (the "Trade Act"), as amended, 19 U.S.C. 2416.

SUMMARY: This notice provides follow-up information to a notice published in the **Federal Register** on May 1, 1991 (56 FR 20057). On November 21, 1989, the USTR determined, pursuant to section 304(a)(1)(A) of the Trade Act, that certain acts, policies and practices of the Government of Japan with respect to the procurement of architectural, engineering and construction services and related consulting services by the Japanese Government were unreasonable and burdened or restricted U.S. commerce. The USTR further determined, pursuant to section 304(a)(1)(B) of the Trade Act, that no responsive action under section 301 of the Act was appropriate at that time in light of certain commitments made by the Government of Japan. The USTR has been monitoring Japan's implementation of these commitments pursuant to section 306 of the Trade Act, and has been seeking a satisfactory resolution of additional concerns in bilateral negotiations, which have included a full review of the "Major Projects Arrangements" (MPA) concluded by the United States and Japan in 1988.

As of April 1991, those negotiations had not yet resulted in a satisfactory agreement. Therefore, on April 26, 1991, the USTR proposed to impose restrictions on the provision in the United States of architectural, engineering and construction-related services of Japan, by determining that no Japanese contractor or subcontractor would be eligible to enter into such services contracts with certain federal agencies for the construction, alteration, or repair of any public buildings or public works in the United States. Notice of the proposed action was published in the **Federal Register** on May 1, 1991 (56 FR 20057), and public comment was solicited and received.

On June 1, 1991, negotiations with the Government of Japan resulted in an agreement that substantially improves procedures in the MPA and expands its coverage, addressing many of the U.S. concerns regarding the Japanese Government procurement policies affecting architectural, engineering and construction services and related consulting services identified in the USTR's determination of November 21, 1989. Therefore, the USTR will not take action at this time against Japan under section 301 of the Trade Act. The United States will monitor Japan's implementation of this trade agreement pursuant to section 306 of the Trade Act.

ADDRESSES: Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Erin Endean, Director for Japan, Office of Japan and China Affairs, USTR, (202) 395-5071; or Terri Van Hoozer, Office of Japan, U.S. Department of Commerce, (202) 377-4527.

SUPPLEMENTARY INFORMATION: On November 21, 1988, pursuant to section 1305 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. No. 100-418, 102 Stat. 1182), the United States Trade Representative initiated an investigation under section 302 of the Trade Act regarding those acts, policies and practices of the Government of Japan, and of entities owned, financed, or otherwise controlled by the Government of Japan, that are barriers in Japan to the offering or performance in Japan by United States persons of

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As of April 1991, those negotiations had not yet resulted in a satisfactory agreement. Therefore, on April 26, 1991, the USTR proposed to impose restrictions on the provision in the United States of architectural, engineering and construction-related services of Japan, by determining that no Japanese contractor or subcontractor would be eligible to enter into such services contracts with certain federal agencies for the construction, alteration, or repair of any public buildings or public works in the United States. Notice of the proposed action was published in the **Federal Register** on May 1, 1991 (56 FR 20057), and public comment was solicited and received.

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On the basis of the invsetigation and after consulations with the Government of Japan and the affected U.S. industry, the USTR determined, on November 21, 1989, pursuant to section 304(a)(1)(A) of the Trade Act, that certain acts, policies and practices of the Government of Japan with respect to the procurement of architectural, engineering and construction services and related consulting services by the Japanese Government were unreasonable and burdened or restricted U.S. commerce.

The USTR further determined, pursuant to section 304(a)(1)(B) of the Trade Act, that no responsive action under section 301 of the Act was appropriate at that time in light of (a) written commitments made by the Government of Japan regarding actions the Government of Japan intended to take to improve access for U.S. firms to its market, and (b) written commitments made by the Government of Japan to ongoing bilateral consultations on all unresolved matters regarding access to the construction market, including consultations that had been scheduled for spring 1990 in the context of a review of the Major Projects Arrangements concluded by the Governments of Japan and the United States in May 1988.

The USTR found it unreasonable, and a burden or restriction on U.S. commerce, that the Government of Japan implemented procurement policies in the construction sector in a way that limited competition and facilitated collusive bidding practices ("dango"), including inadequate use of administrative measures restricting collusive bidding activities, and operation of the designated bidder system. Specific reasons for the USTR's determination were set forth in a **Federal Register** notice published on November 29, 1989 (54 FR 49150).

In addition, the USTR found it unreasonable, and a burden or restriction on U.S. commerce, that the Government of Japan used open bidding procedures only in the 14 construction projects covered by the Major Projects Arrangements. In negotiations with the Government of Japan following these determinations, the United States sought to expand the coverage of those Arrangements to additional public works projects, and to revise the Arrangements to address existing problems. However, as of April 1991, those negotiations had not yet resulted in a satisfactory agreement. Therefore, on April 26, 1991, the USTR proposed to impose restrictions on the provision in the United States of architectural, engineering and construction-related services of Japan, by determining that no Japanese contractor or subcontractor would be eligible to enter into such services contracts with certain federal agencies for the construction, alteration, or repair of any public buildings or public works in the United States. Specifically, the proposed action would have barred Japanese contractors or subcontractors from federal or federally-funded public buildings or public works procurements by the U.S. Departments of Energy, Transportation, and Defense, including the U.S. Army Corps of Engineers, and the Bureau of Reclamation of the Department of Interior, in a manner consistent with the obligations of the United States under the General Agreement on Tariffs and Trade (GATT) and the Agreement on Government Procurement negotiated under the auspices of the GATT. Notice of the proposed action was published in the **Federal Register** on May 1, 1991 (56 FR 20057), and public comment was solicited and received.

On June 1, 1991, U.S. and Japanese negotiators concluded an agreement and a formal exchange of letters was signed on July 31, 1991. The agreement provides procedural improvements to the MPA, expands the scope of its coverage, requires a review after one year, and commits the Government of Japan to take further steps to open its construction market to foreign firms.

A copy of the agreement has been docketed in USTR Docket Number 301-69A. The docket is available for public inspection at the USTR Reading Room, where copies of the agreement can be made: Room 101, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC. An appointment to review the docket may be made by calling Brenda Webb, (202) 395-6186. The USTR Reading Room is open to the public from 10 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday. In addition, further information regarding the agreement may be obtained from the Office of Japan, U.S. Department of Commerce, Attn: Terri Van Hoozer, (202) 377-4527.

Since the agreement resolves many U.S. concerns, and provides for periodic review of the implementation of the agreement, the USTR has determined that no action should be taken under section 301, and that the United States will monitor Japan's implementation of the agreement pursuant to section 306 of the Trade Act. If Japan's implementation of the agreement is unsatisfactory, the USTR shall consider at that time what further action may be appropriate under section 301 of the Trade Act.

A. Jane Bradley,
Chairman, Section 301 Committee.

[FR Doc. 91-18999 Filed 8-8-91; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD8 91-16]

Vessel Certificates and Exemptions Under the International Regulations for Preventing Collisions at Sea (72 COLREGS)

AGENCY: Coast Guard, DOT.

ACTION: Notice of granting of certificates of alternative compliance to vessels.

SUMMARY: This notice lists commercial vessels granted Certificates of Alternative Compliance by the Commander, Eighth Coast Guard District, since 1 May 1990. This notice lists vessels which, due to their special construction and purpose, cannot comply fully with certain provisions of the International Navigation Rules for Preventing Collisions at Sea (72 COLREGS) without interfering with the vessel's special functions. The intent of this notice is to advise the mariner of those vessels that have been granted Certificates of Alternative Compliance.

EFFECTIVE DATE: August 9, 1991.

FOR FURTHER INFORMATION CONTACT: Commander David A. Riikonen, USCG, c/o Commander, Eighth Coast Guard District (mvs), Hale Boggs Federal Building, room 1341, 501 Magazine Street, New Orleans, LA 70130-3396. Telephone (504) 589-6271.

SUPPLEMENTARY INFORMATION: Under the provisions of subsection 1605(c) of title 33 United States Code, the Coast Guard publishes, in the **Federal Register**, a listing of vessels granted Certificates of Alternative Compliance. Certificates of Alternative Compliance are based on a determination that a vessel cannot comply fully with International Rules for light(s), shape(s), and sound signal provisions without interference with the vessel's special function. The alternative permitted results in the closest possible compliance with Annex I of the 72 COLREGS. The Eighth Coast Guard District has on record a total of 114 vessels to which it granted Certificates of Alternative Compliance since 1 May 1990. These vessels are incapable of complying with the 72 COLREGS provisions. Following is a list of commercial vessels that are not in compliance with the 72 COLREGS and have been issued Certificates of Alternative Compliance.

Vessel	Official No.	Alternative
Helena Lynn II	5876363	Carries its sidelights atop the pilothouse cabin, approximately 1 M forward of the masthead light.
Casey Chouest	637056	Carries its not-under-command lights on the main mast some 12.7 M above the main and 19.4 M abaft the stem.
Cape Hatteras	Leevac Hull No. 284.	Carries its second mast-head light on a mast located some 16.7 M above the main deck and some 17 M abaft the forward masthead light.
Chesley E	632776	Carries its sidelights atop the pilothouse, some 2.1 M inboard from the side and some 7.6 M abaft the forward plane of the tow knee.
J.E. O'Donnell	640379	Carries its sidelights atop the pilothouse, some 2.1 M inboard from the side and some 9.1 M abaft the forward plane of the tow knee.
Capt. Jim Green	562434	Carries its sidelights atop the pilothouse, some 1.9 M inboard from the side and some 8.6 M abaft the forward plane of the tow knee.
John T. Stellman	542081	Carries its sidelights atop the pilothouse, some 1.9 M inboard from the side and some 8.5 M abaft the forward plane of the tow knee.
Capt. Charlie Lawrence.	615633	Carries its sidelights atop the pilothouse, some 2.3 M inboard from the side and some 7.4 M abaft the forward plane of the tow knee.
Challenger	659953	Carries its sidelights atop the pilothouse, some 2.2 M inboard from the side and some 8.7 M abaft the forward plane of the tow knee.
Voyager	563475	Carries its sidelights atop the pilothouse, some 2.3 M inboard from the side and some 8.6 M abaft the forward plane of the tow knee.
Venture	644762	Carries its sidelights atop the pilothouse, some 2.5 M inboard from the side and some 9.8 M abaft the forward plane of the tow knee.
Enterprise	550135	Carries its sidelights atop the pilothouse, some 2.5 M inboard from the side and some 6.7 M abaft the forward plane of the tow knee.
Discovery	562649	Carries its sidelights atop the pilothouse, some 2.5 M inboard from the side and some 6.1 M abaft the forward plane of the tow knee.
W.C. Binion	626319	Carries its sidelights atop the pilothouse, some 2.1 M inboard from the side and some 6.4 M abaft the forward plane of the tow knee.
Coldfire	566496	Carries its sidelights atop the pilothouse, some 2.4 M inboard from the side and some 8.9 M abaft the forward plane of the tow knee.
Royal Enterprise	615633	Carries its second masthead lights on a mast structure some 17.9 M above the main deck and some 16.8 M abaft the stem.
Antelope	554968	Carries its second masthead lights on a mast structure some 16.1 M above the main deck and some 15.2 M abaft the forward masthead light.
Frances Drake	519922	Carries its sidelights atop the pilothouse cabin. some 2.4 M inboard from the vessel's side and some 8.5 M abaft the forward plane of the tow knee.
Saga Service	640553	Carries its second masthead light on a mast structure some 15.9 M above the main deck and some 13 M abaft the forward perpendicuar.
J. Ann	570130	Carries its sidelights atop the pilothouse cabin, some 2.4 M inboard from the vessel's side and some 6.1 M abaft the forward plane of the tow knee.
Banda Seahorse	561338	Carries its second masthead light on a mast structure some 12.5 M abaft the forward masthead light and some 13.4 M above the main deck.
Miss Pat	542543	Carries its sidelights atop the pilothouse, some 2 M inboard from the vessel's side and some 7 M abaft the forward plane of the tow knee.
D. Mark	293340	Carries its sidelights atop the pilothouse, some 2.4 M inboard from the side and some 5.2 M abaft the forward plane of the tow knee.
Mr. Jimmy	612130	Carries its sidelights atop the pilothouse, some .9 M inboard from the side and some 6.7 M abaft the forward plane of the tow knee.
Martin Voyager	523750	
Martin Pride	580543	
E.A. Gonsulin	530861	Carries its sidelights atop the pilothouse, some 3 M inboard from the side and some 8 M abaft the forward plane of the tow knee.
Johnny Sr	643266	Carries its sidelights atop the pilothouse, some 2.4 M inboard from the side and some 8.5 M abaft the forward plane of the tow knee.
Jimmy P. Lafont	565687	Carries its sidelights atop the pilothouse, some 2.1 M inboard from the side and some 8.2 M abaft the forward plane of the tow knee.
Johnny James	562794	Carries its sidelights atop the pilothouse, some 2.7 M inboard from the side and some 8.8 M abaft the forward plane of the tow knee.
Trojan Warrior	570738	Carries its sidelights atop the pilothouse, some 2.8 M inboard from the side and some 10.2 M abaft the forward plane of the tow knee.
Pere Marquette	571622	
Compass Ideal	555976	Carries its sidelights atop the pilothouse, some 2.0 M inboard from the side and some 7.4 M abaft the forward plane of the tow knee.
Compass Hero	554249	Carries its sidelights atop the pilothouse, some 2.1 M inboard from the side and some 7.4 M abaft the forward plane of the tow knee.
Compass Crest	512615	Carries its sidelights atop the pilothouse, some 1.6 M inboard from the side and some 7.4 M abaft the forward plane of the tow knee.
Pam D	512698	
Compass Flag	512697	
Compass Enterprise	559972	Carries its sidelights atop the pilothouse, some 2.7 M inboard from the side and some 6.9 M abaft the forward plane of the tow knee.
Compass Glory	553409	
Compass Freedom	551557	
Lois Ann	556629	Carries its sidelights atop the pilothouse, some 4.7 M inboard from the side and some 7.0 M abaft the forward plane of the tow knee.
Vecturian	294085	Carries its sidelights atop the pilothouse, some 2.4 M inboard from the side and some 5.5 M abaft the forward plane of the tow knee.
Argonaut	582640	Carries its sidelights atop the pilothouse, some 5.5 M inboard from the side and some 9.9 M abaft the forward plane of the tow knee.
Jason	557274	Carries its sidelights atop the pilothouse, some 5.5 M inboard from the side and some 8.9 M abaft the forward plane of the tow knee.
Orleanian	535492	Carries its sidelights atop the pilothouse, some 3.9 M inboard from the side and some 13.9 M abaft the forward plane of the tow knee.
Sarah Elizabeth	518938	Carries its sidelights atop the pilothouse, some 3.9 M inboard from the side and some 10.9 M abaft the forward plane of the tow knee.

Alternative

cabin, approximately 1 M forward of the masthead light.
on the main mast some 12.7 M above the main and 19.4 M abaft the stem.
mast located some 16.7 M above the main deck and some 17 M abaft the forward

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mast structure some 16.1 M above the main deck and some 15.2 M abaft the forward

cabin. some 2.4 M inboard from the vessel's side and some 8.5 M abaft the forward

mast structure some 15.9 M above the main deck and some 13 M abaft the forward

cabin, some 2.4 M inboard from the vessel's side and some 6.1 M abaft the forward

nast structure some 12.5 M abaft the forward masthead light and some 13.4 M above

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, some 2.8 M inboard from the side and some 10.2 M abaft the forward plane of the

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some 2.1 M inboard from the side and some 7.4 M abaft the forward plane of the tow

some 1.6 M inboard from the side and some 7.4 M abaft the forward plane of the tow

some 2.7 M inboard from the side and some 6.9 M abaft the forward plane of the tow

, some 4.7 M inboard from the side and some 7.0 M abaft the forward plane of the tow

some 2.4 M inboard from the side and some 5.5 M abaft the forward plane of the tow

, some 5.5 M inboard from the side and some 9.9 M abaft the forward plane of the tow

some 5.5 M inboard from the side and some 8.9 M abaft the forward plane of the tow

, some 3.9 M inboard from the side and some 13.9 M abaft the forward plane of the

, some 3.9 M inboard from the side and some 10.9 M abaft the forward plane of the

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Vessel	Official No.	Alternative
City of St Louis	502876	Carries its sidelights atop the pilothouse, some 3.9 M inboard from the side and some 10.6 M abaft the forward plane of the tow knee.
Daniel Webster	298062	
Roy Mechling	501192	
Lynn B	272165	Carries its sidelights atop the pilothouse, some 3.0 M inboard from the side and some 9.4 M abaft the forward plane of the tow knee.
Craig M	272240	
Bill McCormick	278014	Carries its sidelights atop the pilothouse, some 3.0 M inboard from the side and some 7.7 M abaft the forward plane of the tow knee.
Dela Salle	614608	Carries its sidelights atop the pilothouse, some 3.5 M inboard from the side and some 6.5 M abaft the forward plane of the tow knee.
James F. Towey	568705	Carries its sidelights atop the pilothouse, some 5.3 M inboard from the side and some 7.9 M abaft the forward plane of the tow knee.
Northern	512466	Carries its sidelights atop the pilothouse, some 2.9 M inboard from the side and some 9.3 M abaft the forward plane of the tow knee.
Theresa Seley	275952	Carries its sidelights atop the pilothouse, some 2.9 M inboard from the side and some 7.0 M abaft the forward plane of the tow knee.
Southern	298359	Carries its sidelights atop the pilothouse, some .6 M inboard from the side and some 9.4 M abaft the forward plane of the tow knee.
Buckles	542067	Carries its sidelights atop the pilothouse, some 2.4 M inboard from the side and some 5.9 M abaft the forward plane of the tow knee.
Miss Laurie	575834	Carries its sidelights atop the pilothouse, some 1.8 M inboard from the side and some 4.9 M abaft the forward plane of the tow knee.
Belgian	626287	Carries its sidelights atop the pilothouse, some 1.7 M inboard from the side and some 6.1 M abaft the forward plane of the tow knee.
Clydesdale	524128	
Cyndi Spanier	563581	Carries its sidelights atop the pilothouse, some 2.1 M inboard from the side and some 6.9 M abaft the forward plane of the tow knee.
Kurt Spanier	563142	
Louise Spanier	554085	Carries its sidelights atop the pilothouse, some 1.7 M inboard from the side and some 8.4 M abaft the forward plane of the tow knee.
Luby Guidry	557119	
Percheron	617862	Carries its sidelights atop the pilothouse, some 2.9 M inboard from the side and some 5.4 M abaft the forward plane of the tow knee.
Shire	610520	Carries its sidelights atop the pilothouse, some 2.0 M inboard from the side and some 8.3 M abaft the forward plane of the tow knee.
Bud Spanier	569124	Carries its sidelights atop the pilothouse, some 2.1 M inboard from the side and some 4.6 M abaft the forward plane of the tow knee.
Albert Cenac	291746	Carries its sidelights atop the pilothouse, some 1.8 M inboard from the side and some 7.9 M abaft the forward plane of the tow knee.
Tee Cenac	642927	Carries its sidelights atop the pilothouse, some 2.2 M inboard from the side and some 8.6 M abaft the forward plane of the tow knee.
Justin Cenac	643832	Carries its sidelights atop the pilothouse, some 2.4 M inboard from the side and some 8.0 M abaft the forward plane of the tow knee.
Clinton Cenac	556371	
Camie Cenac	650588	
O.J. Cenac	294775	Carries its sidelights atop the pilothouse, some 1.8 M inboard from the side and some 8.2 M abaft the forward plane of the tow knee.
A.J. Cenac	501746	Carries its sidelights atop the pilothouse, some 1.8 M inboard from the side and some 8.3 M abaft the forward plane of the tow knee.
Robert P. Frazier	557739	Carries its sidelights atop the pilothouse, some 1.5 M inboard from the side and some 10.0 M abaft the forward plane of the tow knee.
Traveler	552463	Carries its sidelights atop the pilothouse, some 0.9 M inboard from the side and some 10.0 M abaft the forward plane of the tow knee.
Creole Lady	510586	Carries its sidelights atop the pilothouse, some 2.0 M inboard from the side and some 5.8 M abaft the forward plane of the tow knee.
Creole Jane	285776	Carries its sidelights atop the pilothouse, some 1.7 M inboard from the side and some 6.6 M abaft the forward plane of the tow knee.
Creole Pass	294760	Carries its sidelights atop the pilothouse, some 1.8 M inboard from the side and some 4.3 M abaft the forward plane of the tow knee.
Creole Sue	521156	Carries its sidelights atop the pilothouse, some 2.8 M inboard from the side and some 5.1 M abaft the forward plane of the tow knee.
Creole Sunn	513369	Carries its sidelights atop the pilothouse, some 2.4 M inboard from the side and some 6.2 M abaft the forward plane of the tow knee.
Creole Rivers	590667	Carries its sidelights atop the pilothouse, some 2.7 M inboard from the side and some 3.7 M abaft the forward plane of the tow knee.
Miss Rita	561160	Carries its sidelights atop the pilothouse, some 1.2 M inboard from the side and some 7.3 M abaft the forward plane of the tow knee.
Creole Ann	519093	Carries its sidelights atop the pilothouse, some 2.1 M inboard from the side and some 4.9 M abaft the forward plane of the tow knee.
Creole Chief	566823	Carries its sidelights atop the pilothouse, some 2.3 M inboard from the side and some 5.6 M abaft the forward plane of the tow knee.
Medicine Bow	568290	Carries its sidelights atop the pilothouse, some 2.1 M inboard from the side and some 7.0 M abaft the forward plane of the tow knee.
Charlotte	571331	Carries its sidelights atop the pilothouse, some 3.0 M inboard from the side and some 9.1 M abaft the forward plane of the tow knee.
Lime Rock	538804	Carries its sidelights atop the pilothouse, some 2.7 M inboard from the side and some 7.0 M abaft the forward plane of the tow knee.
Daytona	550007	Carries its sidelights atop the pilothouse, some 3.5 M inboard from the side and some 11.9 M abaft the forward plane of the tow knee.
Sugarland	515199	Carries its sidelights atop the pilothouse, some 3.6 M inboard from the side and some 5.1 M abaft the forward plane of the tow knee.
Long Beach	561813	Carries its sidelights atop the pilothouse, some 3.3 M inboard from the side and some 12.0 M abaft the forward plane of the tow knee.
Pocono	641470	Carries its sidelights atop the pilothouse, some 1.1 M inboard from the side and some 5.9 M abaft the forward plane of the tow knee.
Pebble Beach	643916	
Riverside	560292	Carries its sidelights atop the pilothouse, some 2.6 M inboard from the side and some 6.4 M abaft the forward plane of the tow knee.

Vessel	Official No.	Alternative
Chotin	549164	Carries its sidelights atop the pilothouse, some 4.1 M inboard from the side and some 7.3 M abaft the forward plane of the tow knee.
Noble C. Parsonage	558334	Carries its sidelights atop the pilothouse, some 4.3 M inboard from the side and some 12.8 M abaft the forward plane of the tow knee.
Leviticus	577329	Carries its sidelights atop the pilothouse, some 4.0 M inboard from the side and some 5.0 M abaft the forward plane of the tow knee.
Tiffany	638361	Carries its sidelights atop the pilothouse, some 2.0 M inboard from the side and some 5.5 M abaft the forward plane of the tow knee.
Habibi	611407	
Morgan	637538	Carries its sidelights atop the pilothouse, some 2.3 M inboard from the side and some 5.5 M abaft the forward plane of the tow knee.
Dottie	626296	
Gene Neal	563529	Carries its sidelights atop the pilothouse, some 3.9 M inboard from the side and some 6.4 M abaft the forward plane of the tow knee.
Dennis Ross	544705	Carries its sidelights atop the pilothouse, some 3.8 M inboard from the side and some 6.8 M abaft the forward plane of the tow knee.
General Washington	6243349	Carries its sidelights atop the pilothouse, some 2.4 M inboard from the side and some 7.2 M abaft the forward plane of the tow knee.
Precursor	560594	Carries its sidelights atop the pilothouse, some 2.7 M inboard from the side and some 4.9 M abaft the forward plane of the tow knee.
Ivis	534836	Carries its sidelights atop the pilothouse, some 0.7 M inboard from the side and some 6.9 M abaft the forward plane of the tow knee.
John Clayton	641329	Carries its sidelights atop the pilothouse, some 1.8 M inboard from the side and some 6.6 M abaft the forward plane of the tow knee.
Janice Carol	639580	
Lucille Brooks	674615	Carries its sidelights atop the pilothouse, some 1.8 M inboard from the side and some 7.2 M abaft the forward plane of the tow knee.
E. A. Gonsoulin	530861	Carries its sidelights atop the pilothouse, some 3.0 M inboard from the side and some 8.0 M abaft the forward plane of the tow knee.
Binton	626319	Carries its sidelights atop the pilothouse, some 2.1 M inboard from the side and some 6.4 M abaft the forward plane of the tow knee.
Challenger	659953	Carries its sidelights atop the pilothouse, some 2.2 M inboard from the side and some 6.7 M abaft the forward plane of the tow knee.

Dated: August 5, 1991.

T.D. Fisher,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard Dist.

[FR Doc. 91-18845 Filed 8-8-91; 8:45 am]

BILLING CODE 4910-14-M

National Highway Traffic Safety Administration

[Docket No. 91-37; Notice 1]

Receipt of Petition for Determination That Nonconforming 1989 BMW Model 525i Passenger Cars are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1989 Model 525i passenger cars are eligible for importation.

SUMMARY: This notice announces receipt of a petition by the National Highway Traffic Safety Administration (NHTSA) for a determination that a 1989 BMW Model 525i that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to two vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is September 9, 1991.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that

> (I) the motor vehicle is * * * substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 [of the Act], and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards * * *.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register.**

G&K Automotive Conversion, Inc. of Anaheim, California (Registered Importer No. R-90-007) has petitioned NHTSA to determine whether the 1989 BMW Model 525i passenger cars are eligible for importation into the United States. The vehicles which G&K believes are substantially similar are the U.S.-companion model 1989 BMW 525i and the 1989 BMW Model 535i and it has submitted information indicating that these companion models have been offered for sale in the United States. These models were manufactured by Bayerische Motoren-Werke A.G. and were certified as conforming to all applicable Federal motor vehicle safety standards.

The petitioner notes that the agency, on its own initiative, has already made a determination of substantial similarity covering 1989 Model 535i vehicles that Bayerische Motoren-Werke A.G. did not certify and offer for sale in the United States (55 FR 47418). The petitioner stated that it had carefully compared the

525i with U.S.-companion models 525i and 535i, and found that they were substantially similar with respect to most applicable Federal motor vehicle safety standards.

G&K submitted information with its petition intended to demonstrate that the 1989 model 525i, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as the 1989 U.S.-companion models 525i and 535i, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the 1989 model 525i is identical to the U.S. certified 1989 models 525i and 535i with respect to compliance with Standards Nos. 102 Transmission Shift Lever Sequence * * *, 103 Defrosting and Defogging Systems, 104 Windshield Wiping and Washing Systems, 105 Hydraulic Brake Systems, 106 Brake Hoses, 107 Reflecting Surfaces, 109 New Pneumatic Tires, 113 Hood Latch Systems, 116 Brake Fluids, 124 Accelerator Control Systems, 201 Occupant Protection in Interior Impact, 202 Head Restraints, 203 Impact Protection for the Driver From the Steering Control System, 204 Steering Control Rearward Displacement, 205 Glazing Materials, 206 Door Locks and Door Retention Components, 207 Seating Systems, 209 Seat Belt Assemblies, 210 Seat Belt Assembly Anchorages, 211 Wheel Nuts, Wheel Discs and Hubcaps, 212 Windshield Retention, 216 Roof Crush Resistance, 219 Windshield Zone Intrusion, and 302 Flammability of Interior Materials.

Petitioner also contends that the vehicle is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 Controls and Displays: (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 Lamps, Reflective Devices and Associated Equipment: (a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam-type headlamps; (b) installation of front and rear sidemarker lamps and reflex reflectors; (c) installation of U.S.-model taillamp assemblies bearing the DOT symbol; (d) installation of a high mounted stop lamp.

Standard No. 110 Tire Selection and Rims: Installation of a tire information placard.

Standard No. 111 Rearview Mirrors: Replacement of the passenger's outside rearview mirror, which is convex and does not bear the required warning statement.

Standard No. 114 Theft Protection: Installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 Vehicle Identification Number: Installation of a VIN plate that can be read from the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 Power Window Systems: Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 Occupant Crash Protection: (a) Installation of a U.S.-model seat belt in the driver's position or a belt webbing-actuated microswitch in the driver's belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer.

Standard No. 214 Side Door Strength: Installation of reinforcing beams.

Standard No. 301 Fuel System Intergrity: Installation of a rollover valve in the fuel tank vent line between the fuel and the evaporative emissions collection cannister.

Additionally, the petitioner states that the bumpers on the 1989 model 525i must be reinforced to comply with the Bumper Standard found in 49 CFR part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: September 9, 1991.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(II) and (C)(iii); 49 CFR 593.8; delegation of authority at 49 CFR 1.50.

Issued on August 6, 1991.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 91–18974 Filed 8–8–91; 8:45 am]

BILLING CODE 4910–59–M

Research and Special Programs Administration

Hazardous Materials Safety; Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before September 9, 1991.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

VOL 56 ISS 154 AG 9 1991 UMI

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10643–N	Thiokol Corporation, Brigham City, UT	49 CFR 173.92	To authorize the transportation of rocket motors, equipped with handling rings, classed as Class B explosives in specially designed packaging. (Mode 1.)
10644–N	Ulrich Chemical, Inc., Terre Haute, IN	49 CFR 174.87(i)(j)	To authorize chlorine filled tank cars to stand with unloading connections attached during unloading without the physical presence of an unloader. (Mode 2.)
10645–N	Essex Cryogenics of Missouri, Inc., St. Louis, MO	49 CFR 178.57	To authorize the manufacture, marking and sell of one-liter non-DOT specification cylinders comparable to specification 4L for shipment of oxygen. (Mode 1.)
10646–N	Schlumberger Technology Corporation, Houston, TX	49 CFR 173.302	To manufacture, mark, and sell a non-DOT specification oil well sampling device for shipment of various compressed gases. (Modes 1, 2, 3, 4.)
10647–N	The McGregor Co., Colfax, WA	49 CFR 174.67(i)+(j)	To authorize anhydrous ammonia filled tank cars to stand with unloading connections attached during unloading without the physical presence of an unloader. (Mode 2.)
10648–N	Arrow Air Inc., Miami, FL	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b)	To authorize the transportation of Class A, B, and C explosives which are forbidden for shipment by cargo air or exceed quantity limitations authorized by cargo air. (Modes 1, 2, 4.)
10649–N	The Narragansett Bay Commission, Providence, RI	49 CFR 174.67(i)	To authorize chlorine filled tank cars to stand with unloading connections attached during unloading without the physical presence of an unloader. (Mode 2.)
10650–N	Unitd Agri Products, Greeley, CO	49 CFR 174.67(i)(j)	To authorize tank cars containing various classes of material to stand with unloading connections attached during unloading without the physical presence of an unloader. (Mode 2.)
10651–N	Ashland Chemical, Inc., Columbus, OH	49 CFR 173.34(e)	To eliminate the periodic retest, reinspection and marking requirements for DOT Specification 4BW cylinders authorized for the transportation of flammable liquids. (Mode 1.)
10653–N	Florida West Airlines, Miami, FL	49 CFR 172.101, 172.204(c)(3), 173.27, 175.320(b), Part 107, Appendix B.	To authorize the transportation of Class A, B and C explosives which are forbidden for shipment by cargo air or exceed quantity limitations authorized cargo aircraft. (Mode 4.)
10656–N	Conference of Radiation Control Program Dir., Inc., Frankfort, KY	49 CFR 107, appendix B, 172.203(d), 49 CFR Part, of Part 172, Paragraph (1), Subparts C, D, E, F and G, to subpart B	To authorize shipment of metals and scrap contaminated with small amounts of radioactive materials to be contained in non-DOT specification packaging, without regard to marking, labeling, placarding and certain shipping paper requirements. (Modes 1, 2.)
10657–N	Bioqual, Inc., Rockville, MD	49 CFR 173.416(c)	To authorize a one time only, short distancer, domestic shipment of a radioactive material contained in a specially designed packaging which is only authorized for export and import shipments. (Mode 1.)
10658–N	Air Care, Inc., South St. Paul, MN	49 CFR 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), 49 CFR 172.101, 49 CFR part 107, appendix B	To authorize the transportation of certain Class A, B and C explosives which are either forbidden for shipment by cargo air or exceed the quantity limitations authorized for shipment of cargo air. (Mode 4.)
10659–N	Consani Engineering (PTY) Limited, Republic of South Africa	49 CFR 178.345–8	To authorize the manufacture, mark and sell of non-DOT specification portable tank containers complying with specifications DOT–407 and DOT 412 for transportation hazardous waste substances. (Modes 1, 2, 3.)
10660–N	American Radiolabeled Chemicals, Inc., St. Louis, MO	49 CFR 172.402(a)(1), 172.403(e), 173.4(a)(1)(i–iii), 173.4(a)(1)(iv)	To exempt from labeling shipment of radioactive materials with secondary hazard classification for transportation by passenger carrying aircraft. (Mode 5.)

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on August 6, 1991.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 91–18972 Filed 8–8–91; 8:45 am]

BILLING CODE 4910–60–M

Hazardous Materials Safety; Applications for Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions or applications to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g., to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "X" denote a modification request. Application numbers with th suffix "P" denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before August 26, 1991.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of

EXEMPTIONS

n(s) affected	Nature of exemption thereof
	To authorize the transportation of rocket motors, equipped with handling rings, classed as Class B explosives in specially designed packaging. (Mode 1.)
)	To authorize chlorine filled tank cars to stand with unloading connections attached during unloading without the physical presence of an unloader. (Mode 2.)
	To authorize the manufacture, marking and sell of one-liter non-DOT specification cylinders comparable to specification 4L for shipment of oxygen. (Mode 1.)
	To manufacture, mark, and sell a non-DOT specification oil well sampling device for shipment of various compressed gases. (Modes 1, 2, 3, 4.)
- (j)	To authorize anhydrous ammonia filled tank cars to stand with unloading connections attached during unloading without the physical presence of an unloader. (Mode 2.)
101, 172.204(c)(3), a)(1), 175.320(b)	To authorize the transportation of Class A, B, and C explosives which are forbidden for shipment by cargo air or exceed quantity limitations authorized by cargo air. (Modes 1, 2, 4.)
	To authorize chlorine filled tank cars to stand with unloading connections attached during unloading without the physical presence of an unloader. (Mode 2.)
)	To authorize tank cars containing various classes of material to stand with unloading connections attached during unloading without the physical presence of an unloader. (Mode 2.)
	To eliminate the periodic retest, reinspection and marking requirements for DOT Specification 4BW cylinders authorized for the transportation of flammable liquids. (Mode 1.)
101, 172.204(c)(3), (b), Part 107, Appen-	To authorize the transportation of Class A, B and C explosives which are forbidden for shipment by cargo air or exceed quantity limitations authorized cargo aircraft. (Mode 4.)
endix B, 172.203(d), Part 172, Paragraph , D, E, F and G, to	To authorize shipment of metals and scrap contaminated with small amounts of radioactive materials to be contained in non-DOT specification packaging, without regard to marking, labeling, placarding and certain shipping paper requirements. (Modes 1, 2.)
)	To authorize a one time only, short distancer, domestic shipment of a radioactive material contained in a specially designed packaging which is only authorized for export and import shipments. (Mode 1.)
.204(c)(3), 173.27, 75.320(b), 49 CFR R part 107, appendix	To authorize the transportation of certain Class A, B and C explosives which are either forbidden for shipment by cargo air or exceed the quantity limitations authorized for shipment of cargo air. (Mode 4.)
3	To authorize the manufacture, mark and sell of non-DOT specification portable tank containers complying with specifications DOT–407 and DOT 412 for transportation hazardous waste substances. (Modes 1, 2, 3.)
02(a)(1), 172.403(e), 173.4(a)(1)(iv)	To exempt from labeling shipment of radioactive materials with secondary hazard classification for transportation by passenger carrying aircraft. (Mode 5.)

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provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "X" denote a modification request. Application numbers with th suffix "P" denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before August 26, 1991.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of

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comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Unit, room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
7648–X	Sunwest Aviation, Ogden, UT (See footnote 1).	7648
8967–X	Hercules, Inc., Wilmington, DE (See footnote 2).	8967
9265–X	Guinn Flying Service, Houston, TX (See footnote 3).	9265
9618–X	ENPAC Corporation, Jacksonville, FL (See footnote 4).	9618
10102–X	ENPAC Corporation, Jacksonville, FL (See footnote 5).	10102
10130–X	UF Strainrite, Lewiston, ME (See footnote 6).	10130
10193–X	Anderson Company, Gainesville, TX (See footnote 7).	10193
10242–X	ENPAC Corporation, Jacksonville, FL (See footnote 8).	10242
10272–X	Olin Corporation, Charleston, TN (See footnote 9).	10272
10318–X	Sonoco Fibre Drum, Inc., Lombard, IL (See footnote 10).	10318

(1) To modify the exemption to increase the number of flares to be transported per test flight to eight.

(2) To renew and modify the exemption to authorize the transportation of an additional Class B explosive.

(3) To modify the exemption to authorize one pilot aboard a multi-engine aircraft carrying explosives.

(4) To renew and modify the exemption to authorize cargo vessel as an additional mode of transportation.

(5) To modify the exemption to include cargo vessel as an additional mode of transportation.

(6) To modify the exemption to authorize radioactive waste as an additional commodity and air cargo as an additional mode of transportation.

(7) To modify the exemption to provide for various modifications to the non-DOT specification portable tank and to authorize the transportation of various additional commodities.

(8) To modify the exemption to include cargo vessel as an additional mode of transportation.

(9) To authorize a DOT–MC–331 cargo tank for nonflammable gas to be lined with a PVCF or equivalent lining; to provide optional valve and authorize a second manway without appurtenances and cover.

(10) To modify the exemption to provide for additional commodities classed as Class B poison and corrosive material with secondary hazards.

Application No.	Applicant	Parties to exemption
2582–P	Presto Technologies, Inc., West Hartford, CT.	2582
3004–P	Presto Technologies, Inc., West Hartford, CT.	3004
4453–P	Gary James Trucking, Palmyra, MO.	4453
4631–P	Gary James Trucking, Palmyra, MO.	4631
4884–P	Presto Technologies, Inc., West Hartford, CT.	4884
5206–P	Gary James Trucking, Palmyra, MO.	5206
6530–P	The Jimmie Jones Company, Tulsa, OK.	6530
6543–P	Presto Technologies, Inc., West Hartford, CT.	6543
6543–P	Liquid Carbonic, Chicago, IL.	6543
6563–P	Presto Technologies, Inc., West Hartford, CT.	6563
6626–P	Airgas, Inc., Theodore, AL	6626
6657–P	Airgas, Inc., Theodore, AL	6657
6691–P	Presto Technologies, Inc., West Hartford, CT.	6691
6691–P	Airgas, Inc., Theodore, AL	6691
6805–P	Presto Technologies, Inc., West Hartford, CT.	6805
7268–P	Presto Technologies, Inc., West Hartford, CT.	7268
7274–P	Presto Technologies, Inc., West Hartford, CT.	7274
7451–P	Presto Technologies, Inc., West Hartford, CT.	7451
7617–P	Elgin, Joliet and Eastern Railway Company, Joliet, IL.	7616
7616–P	Montana Rail Link, Inc., Missoula, MT.	7616
8009–P	SRI International, Menlo Park, CA.	8009
8013–P	Presto Technologies, Inc., West Hartford, CT.	8013
8453–P	Gary James Trucking, Palmyra, MO.	8453
8554–P	Gary James Trucking, Palmyra, MO.	8554
8862–P	Presto Technologies, Inc., West Hartford, CT.	8862
8915–P	Presto Technologies, Inc., West Hartford, CT.	8915
8944–P	Presto Technologies, Inc., West Hartford, CT.	8944
8986–P	Gary James Trucking, Palmyra, MO.	8986
9110–P	EKA Nobel Inc., Columbus, MS.	9110
9275–P	SmithKlein Beecham Consumer Brands, Pittsburgh, PA.	9275
9414–P	Presto Technologies, Inc., West Hartford, CT.	9414
9694–P	DXI Industries, Inc., Houston, TX.	9694
9723–P	Chem-Freight, Inc., Cleveland, OH.	9723
9723–P	Evergreen Transportation, Inc., Cleveland, OH.	9723
10022–P	Presto Technologies, Inc., West Hartford, CT.	10022
10084–P	K.T. Specialties, Inc., Corona, CA (See Footnote 1).	10084
10288–P	Rohm and Haas Company, Philadelphia, PA.	10288

(1) To manufacture, mark and sell non-DOT specification glass fiber reinforced plastic cargo tanks for shipment of certain flammable, corrosive or poision B materials.

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with part 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on August 5, 1991.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 91–18973 Filed 8–8–91; 8:45 am]

BILLING CODE 4910-60-M

Meetings of Pipeline Safety Advisory Committees

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. app. 1) notice is hereby given of the following meetings of the Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee. Each meeting will be in room 4234 of the Department of Transportation Building, 400 Seventh Street, SW., Washington, DC.

On September 10, 1991, at 9 a.m., the Technical Pipeline Safety Standards Committee will meet to informally discuss the following topics:

1. Excess Flow Valves in Gas Service Lines
2. Petroleum Gas Systems and National Fire Protection Association Standards 58 and 59
3. Gas Distribution System Definitions
4. Passage of Instrumented Internal Inspection Devices
5. Mandatory Participation of Gas Pipelines in One-Call Systems
6. Operator Submission of Annual Drug Testing Data
7. Performance-Based Grant Allocation Formula
8. Legislative Developments

On September 11, 1991, at 9 a.m., the Technical Hazardous Liquid Pipeline Safety Standards Committee will meet to informally discuss the following topics:

1. Pipelines Operating at 20 Percent or Less of Specified Minimum Yield Strength
2. Passage of Instrumental Internal Inspection Devices
3. Mandatory Participation of Hazardous Liquid and Carbon Dioxide Pipelines in One-Call Systems
4. Operator Submission of Annual Drug Testing Data
5. Performance-Based Grant Allocation Formula
6. Legislative Developments

Each meeting will be open to the public, but attendance will be limited to the space available. With approval of the Executive Director of the Committees, members of the public may present oral statements on the topics. Due to the limited time available, each person who wants to make an oral statement must notify Rebecca Key, room 8417, Department of Transportation Building, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366–1640, not later than Tuesday, September 3, 1991, of the topics to be addressed and the time requested to address each topic. The presiding officer may deny any request to present an oral statement and may limit the time of any oral presentation. Members of the public may present written statements to the Committees before or after any meeting.

Dated: August 5, 1991.

Cesar De Leon,

Executive Director, Technical Pipeline Safety Standards Committee and Technical Hazardous Liquid Pipeline Safety Standards Committee.

[FR Doc. 91–18933 Filed 8–8–91; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

August 1, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0041

Form Number: CF 6059B

Type of Review: Extension

Title: U.S. Customs Declaration

Description: The Customs Form 6059B facilitates the clearance of persons and their goods upon arrival in the territory of the U.S. by requiring basic information necessary to determine Customs exception status and if any duties or taxes are due. The form is used for the enforcement of other Federal agencies' laws and regulations.

Respondents: Individuals or households, small businesses or organizations.

Estimated Number of Respondents: 20,000,000.

Estimated Burden Hours Per Response: 3 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,000,000 hours.

Clearance Officer: Ralph Meyer, (202) 566–9182, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue NW., Washington, DC 20229

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91–18930 Filed 8–8–91; 8:45 am]

BILLING CODE 4820-02-M

Public Information Collection Requirements Submitted to OMB for Review

August 1, 1991.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0089

Form Number: 1040NR

Type of Review: Revision.

Title: U.S. Nonresident Alien Income Tax Return

Description: This form is used by nonresident alien individuals and foreign estates and trusts to report their income subject to tax and compute the correct tax liability. The information on the return is used to determine whether income, deductions, credits, payments, etc., are correctly figured. Affected public are nonresident alien individuals, estates, and trusts

Respondents: Individuals or households, farms, businesses or other for-profit, small businesses or organizations.

Estimated Number of Respondents: 253,000.

Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping—6 hours, 33 minutes

Learning about the law or the form—1 hour, 59 minutes

Preparing the form—4 hours, 8 minutes

Copying, assembling, and sending the form to the IRS—1 hour, 37 minutes

Frequency of Response: Annually.

Estimated Total Recordkeeping/Reporting Burden: 3,360,272 hours

Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91–18931 Filed 8–8–91; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

August 5, 1991.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Bureau of the Public Debt

OMB Number: New

Form Number: PD F 345

Type of Review: New Collection

Title: Description of Registered Securities

Description: PD F 345 is used to collect information needed to describe registered securities for the purpose of identifying accounts and/or requesting a change of address for the mailing of interest due on the securities

Respondents: Individuals or households, State or local governments, businesses or other for-profit, non-profit institutions, small businesses or organizations.

Estimated Number of Respondents: 5,000.

Estimated Burden Hours Per Response: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,250 hours.

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Preparing the form—4 hours, 8 minutes

Copying, assembling, and sending the form to the IRS—1 hour, 37 minutes

Frequency of Response: Annually.

Estimated Total Recordkeeping/Reporting Burden: 3,360,272 hours

Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91–18931 Filed 8–8–91; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

August 5, 1991.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Bureau of the Public Debt

OMB Number: New
Form Number: PD F 345
Type of Review: New Collection
Title: Description of Registered Securities
Description: PD F 345 is used to collect information needed to describe registered securities for the purpose of identifying accounts and/or requesting a change of address for the mailing of interest due on the securities

Respondents: Individuals or households, State or local governments, businesses or other for-profit, non-profit institutions, small businesses or organizations.

Estimated Number of Respondents: 5,000.

Estimated Burden Hours Per Response: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,250 hours.

OMB Number: New
Form Number: PD F 4094
Type of Review: New Collection
Title: Affidavit by Individual Surety
Description: PD F 4094 serves as an affidavit from individuals who agree to act as surety for an indemnification agreement on a Bond of Indemnity submitted in connection with a claim for relief due to lost, stolen or destroyed U.S. Registered Securities. The individual must state their assets and liabilities to certify they are eligible to act as surety

Respondents: Individuals or households.

Estimated Number of Respondents: 500.

Estimated Burden Hours Per Response: 55 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 460 hours.

OMB Number: 1535–0004
Form Number: PD F 1522
Type of Review: Reinstatement
Title: Special Form of Request for Payment of United States Savings and Retirement Securities Where Use of a Detached Request is Authorized
Description: Form PD F 1522 is used by owners of savings bonds/notes to request payment

Respondents: Individuals or households.

Estimated Number of Respondents: 56,000.

Estimated Burden Hours Per Response: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 14,000 hours.

OMB Number: 1535–0006
Form Number: PD F 2458
Type of Review: Reinstatement
Title: Certificate of Entitlement, United States Savings and Retirement Securities and Checks After Administration of Decedent's Estate
Description: Form PD F 2458 is used to establish who is entitled to savings bonds/notes, and checks issued in payment thereof, in an amount not exceeding $1,000; which belonged to a decedent whose estate was administered in court and settled without effecting disposition of the bonds and checks

Respondents: Individuals or households.

Estimated Number of Respondents: 7,000.

Estimated Burden Hours Per Response: 8 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 938 hours.

OMB Number: 1535–0007
Form Number: PD F 1946
Type of Review: Reinstatement
Title: Application for Disposition, United States Savings Bonds/Notes and/or Related Checks (In a combined amount not exceeding $1,000) Owned by Decedent Whose Estate is Being Settled Without Administration
Description: Form PD F 1946 is used by person(s) entitled to a decedent's estate not being administered to request payment or reissue of savings bonds/notes and/or related checks not exceeding $1,000

Respondents: Individuals or households.

Estimated Number of Respondents: 40,000.

Estimated Burden Hours Per Response: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 20,000 hours.

OMB Number: 1535–0008
Form Number: PD F 1938
Type of Review: Reinstatement
Title: Request for Reissue of United States Savings Bonds/Notes During the Lives of Both Coowners
Description: Form PD F 1938 is used to request reissue of savings bonds/notes during the lives of both coowners.

Respondents: Individuals or households

Estimated Number of Respondents: 37,000.

Estimated Burden Hours Per Response: 10 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 6,179 hours.

OMB Number: 1535–0010
Form Number: PD F 1782, and Schedules C, J, P, and T
Type of Review: Reinstatement
Title: Application for Redemption at Par of United States Treasury Bonds Eligible for Payment of Federal Estate Tax; Schedule C—Bonds Held as Community Property; Schedule J—Bonds Jointly Held; Schedule P—Bonds Held in Partnership; Schedule T—Bonds Held in Trust
Description: PD F 1782 is used to apply for redemption at par of certain Treasury Bonds eligible for payment of Federal estate tax assessed against a decedent's estate

Respondents: Individuals or households

Estimated Number of Respondents: 2,500.

Estimated Burden Hours Per Response: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,250 hours.

OMB Number: 1535–0012
Form Number: PD F 1455
Type of Review: Reinstatement
Title: Request by Fiduciary for Reissue of United States Savings Bonds/Notes
Description: Form PD F 1455 is used by fiduciary to request distribution of savings bonds/notes to the person(s) entitled.

Respondents: Individuals or households, farms, businesses or other for-profit.

Estimated Number of Respondents: 72,000.

Estimated Burden Hours Per Response: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 36,000 hours.

OMB Number: 1535–0058
Form Number: PD F 1646
Type of Review: Reinstatement
Title: Application for Disposition, United States Registered Securities and Related Checks Without Administration of Deceased Owner's Estate
Description: PD F 1646 lessens the paperwork necessary to apply for the disposition of U.S. Registered Securities and interest due thereon in accordance with state law for a decedent's estate which is not being administered by a court appointed representative

Respondents: Individuals or households.

Estimated Number of Respondents: 625.

Estimated Burden Hours Per Response: 1 hour, 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 938 hours.

OMB Number: 1535–0067
Form Number: PD F 974
Type of Review: Extension
Title: Certificate by Owner of United States Registered Securities Concerning Forged Requests for Payment or Assignments
Description: Form PD F 974 is used by owners of United States securities to certify that the signature was forged to a request for payment or an assignment

Respondents: Individuals or households

Estimated Number of Respondents: 3,000.

Estimated Burden Hours Per Response: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 750 hours.

Clearance Officer: Rita DeNagy, (202) 447–1315, Bureau of the Public Debt, room 137, BEP Annex, 300 13th Street SW., Washington, DC 20239–0001.

OMB Reviewer: Miko Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91–18932 Filed 8–8–91; 8:45 am]

BILLING CODE 4810-40-M

Public Information Collection Requirements Submitted to OMB for Review

August 5, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Customs Service

OMB Number: 1515–0013.

Form Number: CF 3171.

Type of Review: Extension.

Title: Application—Permit—Special License Unlading-Lading-Overtime Services

Description: This is an application, permit, and special license for unlading of passengers, cargo, and baggage from a vessel arriving from any port or place outside the Customs territory of the U.S., or the lading of cargo, baggage or other articles destined to a port or place outside the Customs territory of the U.S. It is also an application for overtime or clearance of a vessel.

Respondents: Businesses or other for-profit, small businesses or organizations.

Estimated Number of Respondents: 1,500.

Estimated Burden Hours Per Response: 6 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 39,900 hours.

Clearance Officer: Ralph Meyer (202) 566–9182, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91–18954 Filed 8–8–91; 8:45 am]

BILLING CODE 4830-02-M

Office of the Secretary

[Department Circular—Public Debt Series—No. 26–91]

Treasury Bonds of August 2021

Washington, August 1, 1991.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $12,000,000,000 of United States securities, designated Treasury Bonds of August 2021 (CUSIP No. 912810 EK 0), hereafter referred to as Bonds. The Bonds will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Bonds and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Bonds may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Bonds may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Bonds will be dated August 15, 1991, and will accrue interest from that date, payable on a semiannual basis on February 15, 1992, and each subsequent 6 months on August 15 and February 15 through the date that the principal becomes payable. They will mature August 15, 2021, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Bonds are subject to all taxes imposed under the Internal Revenue Code of 1954. The Bonds are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Bonds will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Bonds will be issued only in book-entry form in a minimum amount of $1,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. A Bond may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, transfer, and reconstitution of Principal and Interest Components are set forth in section 6 of this circular. Subsections 2.1. through 2.4. of this section are descriptive of Bonds in their fully constituted form; the description of the separate Principal and Interest components is set forth in section 6 of this circular.

2.6. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2–86 (31 CFR part 357), apply to the Bonds offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500, Thursday, August 8, 1991, prior to 12 noon, Eastern Daylight Saving time, for noncompetitive tenders and prior to 1 p.m., Eastern Daylight Saving time, for competitive tenders. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, August 7, 1991, and received no later than Thursday, August 15, 1991.

3.2. The par amount of Bonds bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

: Milo Sunderhauf (202)
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, 3001, New Executive
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4 Filed 8-8-91; 8:45 am]
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monies. They will not be acceptable in payment of Federal taxes.

2.4. The Bonds will be issued only in book-entry form in a minimum amount of $1,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. A Bond may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, transfer, and reconstitution of Principal and Interest Components are set forth in section 6 of this circular. Subsections 2.1. through 2.4. of this section are descriptive of Bonds in their fully constituted form; the description of the separate Principal and Interest components is set forth in section 6 of this circular.

2.6. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2-86 (31 CFR part 357), apply to the Bonds offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, Thursday, August 8, 1991, prior to 12 noon, Eastern Daylight Saving time, for noncompetitive tenders and prior to 1 p.m., Eastern Daylight Saving time, for competitive tenders. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, August 7, 1991, and received no later than Thursday, August 15, 1991.

3.2. The par amount of Bonds bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of competitive tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Bonds applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservation expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 92.500. That stated rate of interest will be paid on all of the Bonds. Based on such interest rate, the price of each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted as the price equivalent to the weighted average yields of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any of all tenders in whole or in part, to allot more or less than the amount of Bonds specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for the Bonds allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of Public Debt, whenever the tender was submitted. Settlement on Bonds allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5 must be made or completed on or before Thursday, August 15, 1991. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Tuesday, August 13, 1991. When payment has been submitted with the tender and the purchase price of the bonds allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Bonds allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Bonds allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Bond being purchased. In any such case, the tender form used to place the Bonds allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS Program (Separate Trading of Registered Interest and Principal of Securities), a Bond may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The separate STRIPS components are: each future semiannual interest payment (referred to as an Interest Component) and the principal payment (referred to as the Principal Component). Each Interest Component and the Principal Component shall have an identifying designation and CUSIP number, which are set forth in Attachment A to this circular.

6.2. Attachment A also provides the payable dates for the separate components. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

6.3. For a Bond to be separated into the components described in section 6.1., the par amount of the Bond must be in an amount which, based on the stated interest rate of the Bond, will produce a semiannual interest payment of $1,000 or a multiple of $1,000. Attachment B to this circular provides the minimum par amounts required to separate a security at various interest rates, as well as the interest payments corresponding to those minimum par amounts. Par amounts greater than the minimum amount must be in multiples of that amount. The minimum par amount for this offering will be provided in the public announcement of the amount and yield range of accepted bids.

6.4. A Bond may be separated into its components at any time from the issue date until maturity. A request for separation must be made to the Federal Reserve Bank maintaining the account for the Bonds. Once a Bond has been separated into its components, the components may be maintained and transferred in multiples of $1,000.

6.5. Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

6.6. Interest and Principal Components of separated securities may be reconstituted, i.e., restored to their fully constituted form, on the book-entry records of the Federal Reserve Banks. A Principal Component and all related unmatured Interest Components, in the appropriate minimum or multiple amounts previously announced, must be submitted together for reconstitution.

6.7. Detached physical interest coupons, coupons held under the CUBES Program, or cash payments may not be substituted for missing Interest or Principal Components. Any reconstitution request which does not comprise all of the necessary STRIPS components in the appropriate amounts will not be accepted.

6.8. The book-entry transfer of each Interest Component and Principal Component included in a reconstitution transaction will be subject to the fee schedule generally applicable to transfers of book-entry Treasury securities.

6.9. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Bonds separated into their components.

7. General Provisions

7.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Bonds.

7.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Bonds. Public announcement of such changes will be promptly provided.

7.3. The Bonds issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Bonds.

7.4. Attachments A and B are incorporated as part of this circular.

Gerald Murphy,

Fiscal Assistant Secretary.

Attachment A—CUSIP Numbers and Designations for the Principal Component and Interest Components of Treasury Bonds of August 15, 2021, CUSIP No. 912810 EK 0

The Principal Component is designated (Interest Rate) Treasury Principal (TPRN) 2021 due August 15, 2021, due August 15, 2021, CUSIP No. 912803 AX 1.

INTEREST COMPONENTS

Designation	CUSIP NO. 912833
Treasury Interest (TINT) due:	
Feb. 15, 1992	BK 5
Aug. 15, 1992	BL 3
Feb. 15, 1993	BM 1
Aug. 15, 1993	BN 9
Feb. 15, 1994	BP 4
Aug. 15, 1994	BQ 2
Feb. 15, 1995	BR 0
Aug. 15, 1995	BS 8
Feb. 15, 1996	BT 6
Aug. 15, 1996	BU 3
Feb. 15, 1997	BV 1
Aug. 15, 1997	BW 9
Feb. 15, 1998	BX 7
Aug. 15, 1998	BY 5
Feb. 15, 1999	BZ 2
Aug. 15, 1999	CA 6
Feb. 15, 2000	CB 4
Aug. 15, 2000	CC 2
Feb. 15, 2001	CD 0
Aug. 15, 2001	CE 8
Feb. 15, 2002	CF 5
Aug. 15, 2002	CG 3
Feb. 15, 2003	CH 1
Aug. 15, 2003	CJ 7
Feb. 15, 2004	CK 4
Aug. 15, 2004	CL 2
Feb. 15, 2005	CM 0
Aug. 15, 2005	CN 8
Feb. 15, 2006	CP 3
Aug. 15, 2006	CQ 1
Feb. 15, 2007	CR 9
Aug. 15, 2007	CS 7
Feb. 15, 2008	CT 5
Aug. 15, 2008	CU 2
Feb. 15, 2009	CV 0
Aug. 15, 2009	CW 8
Feb. 15, 2010	CX 6
Aug. 15, 2010	CY 4
Feb. 15, 2011	CZ 1
Aug. 15, 2011	DA 5
Feb. 15, 2012	DB 3
Aug. 15, 2012	DC 1
Feb. 15, 2013	DD 9
Aug. 15, 2013	DE 7
Feb. 15, 2014	DF 4
Aug. 15, 2014	DG 2
Feb. 15, 2015	DH 0
Aug. 15, 2015	JT 8
Feb. 15, 2016	KG 4
Aug. 15, 2016	KJ 8
Feb. 15, 2017	KL 3
Aug. 15, 2017	KN 9
Feb. 15, 2018	KQ 2
Aug. 15, 2018	KS 8
Feb. 15, 2019	KU 3
Aug. 15, 2019	KW 9
Feb. 15, 2020	KY 5
Aug. 15, 2020	LA 6
Feb. 15, 2021	LC 2
Aug. 15, 2021	LE 8

ATTACHMENT B—MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1,000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1,000

Coupon (percent)	Minimum face	Interest payment
5.000	$40,000.00	$1,000.00
5.125	1,600,000.00	41,000.00
5.250	800,000.00	21,000.00
5.375	1,600,000.00	43,000.00
5.500	400,000.00	11,000.00
5.625	320,000.00	9,000.00
5.750	800,000.00	23,000.00
5.875	1,600,000.00	47,000.00
6.000	100,000.00	3,000.00
6.125	1,600,000.00	49,000.00
6.250	32,000.00	1,000.00
6.375	1,600,000.00	51,000.00
6.500	400,000.00	13,000.00
6.625	1,600,000.00	53,000.00
6.750	800,000.00	27,000.00
6.875	320,000.00	11,000.00
7.000	200,000.00	7,000.00
7.125	1,600,000.00	57,000.00
7.250	800,000.00	29,000.00
7.375	1,600,000.00	59,000.00
7.500	80,000.00	3,000.00
7.625	1,600,000.00	61,000.00
7.750	800,000.00	31,000.00
7.875	1,600,000.00	63,000.00
8.000	25,000.00	1,000.00
8.125	320,000.00	13,000.00
8.250	800,000.00	33,000.00
8.375	1,600,000.00	67,000.00
8.500	400,000.00	17,000.00
8.625	1,600,000.00	69,000.00
8.750	160,000.00	7,000.00
8.875	1,600,000.00	71,000.00
9.000	200,000.00	9,000.00
9.125	1,600,000.00	73,000.00
9.250	800,000.00	37,000.00
9.375	64,000.00	3,000.00
9.500	400,000.00	19,000.00
9.625	1,600,000.00	77,000.00
9.750	800,000.00	39,000.00
9.875	1,600,000.00	79,000.00
10.000	20,000.00	1,000.00
10.125	1,600,000.00	81,000.00
10.250	800,000.00	41,000.00
10.375	1,600,000.00	83,000.00
10.500	400,000.00	21,000.00
10.625	320,000.00	17,000.00
10.750	800,000.00	43,000.00
10.875	1,600,000.00	87,000.00
11.000	200,000.00	11,000.00
11.125	1,600,000.00	89,000.00
11.250	160,000.00	9,000.00
11.375	1,600,000.00	91,000.00
11.500	400,000.00	23,000.00
11.625	1,600,000.00	93,000.00
11.750	800,000.00	47,000.00
11.875	320,000.00	19,000.00
12.000	50,000.00	3,000.00
12.125	1,600,000.00	97,000.00
12.250	800,000.00	49,000.00

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USIP Numbers and
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15, 2021, due August 15, 2021,
AX 1.

ST COMPONENTS

ation	CUSIP NO. 912833
NT) due:	
	BK 5
	BL 3
	BM 1
	BN 9
	BP 4
	BQ 2
	BR 0
	BS 8
	BT 6
	BU 3
	BV 1
	BW 9
	BX 7
	BY 5
	BZ 2
	CA 6
	CB 4
	CC 2
	CD 0
	CE 8
	CF 5
	CG 3
	CH 1
	CJ 7
	CK 4
	CL 2
	CM 0
	CN 8
	CP 3
	CQ 1
	CR 9
	CS 7
	CT 5
	CU 2
	CV 0
	CW 8
	CX 6
	CY 4
	CZ 1
	DA 5
	DB 3
	DC 1
	DD 9
	DE 7
	DF 4
	DG 2
	DH 0
	JT 6
	KG 4
	KJ 8
	KL 3
	KN 8
	KQ 2
	KS 8

INTEREST COMPONENTS—Continued

Designation	CUSIP NO. 912833
Feb. 15, 2019	KU 3
Aug. 15, 2019	KW 9
Feb. 15, 2020	KY 5
Aug. 15, 2020	LA 6
Feb. 15, 2021	LC 2
Aug. 15, 2021	LE 8

ATTACHMENT B—MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1,000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1,000

Coupon (percent)	Minimum face	Interest payment
5.000	$40,000.00	$1,000.00
5.125	1,600,000.00	41,000.00
5.250	800,000.00	21,000.00
5.375	1,600,000.00	43,000.00
5.500	400,000.00	11,000.00
5.625	320,000.00	9,000.00
5.750	800,000.00	23,000.00
5.875	1,600,000.00	47,000.00
6.000	100,000.00	3,000.00
6.125	1,600,000.00	49,000.00
6.250	32,000.00	1,000.00
6.375	1,600,000.00	51,000.00
6.500	400,000.00	13,000.00
6.625	1,600,000.00	53,000.00
6.750	800,000.00	27,000.00
6.875	320,000.00	11,000.00
7.000	200,000.00	7,000.00
7.125	1,600,000.00	57,000.00
7.250	800,000.00	29,000.00
7.375	1,600,000.00	59,000.00
7.500	80,000.00	3,000.00
7.625	1,600,000.00	61,000.00
7.750	800,000.00	31,000.00
7.875	1,600,000.00	63,000.00
8.000	25,000.00	1,000.00
8.125	320,000.00	13,000.00
8.250	800,000.00	33,000.00
8.375	1,600,000.00	67,000.00
8.500	400,000.00	17,000.00
8.625	1,600,000.00	69,000.00
8.750	160,000.00	7,000.00
8.875	1,600,000.00	71,000.00
9.000	200,000.00	9,000.00
9.125	1,600,000.00	73,000.00
9.250	800,000.00	37,000.00
9.375	64,000.00	3,000.00
9.500	400,000.00	19,000.00
9.625	1,600,000.00	77,000.00
9.750	800,000.00	39,000.00
9.875	1,600,000.00	79,000.00
10.000	20,000.00	1,000.00
10.125	1,600,000.00	81,000.00
10.250	800,000.00	41,000.00
10.375	1,600,000.00	83,000.00
10.500	400,000.00	21,000.00
10.625	320,000.00	17,000.00
10.750	800,000.00	43,000.00
10.875	1,600,000.00	87,000.00
11.000	200,000.00	11,000.00
11.125	1,600,000.00	89,000.00
11.250	160,000.00	9,000.00
11.375	1,600,000.00	91,000.00
11.500	400,000.00	23,000.00
11.625	1,600,000.00	93,000.00
11.750	800,000.00	47,000.00
11.875	320,000.00	19,000.00
12.000	50,000.00	3,000.00
12.125	1,600,000.00	97,000.00
12.250	800,000.00	49,000.00

ATTACHMENT B—MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1,000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1,000—Continued

Coupon (percent)	Minimum face	Interest payment
12.375	1,600,000.00	99,000.00
12.500	16,000.00	1,000.00
12.625	1,600,000.00	101,000.00
12.750	800,000.00	51,000.00
12.875	1,600,000.00	103,000.00
13.000	200,000.00	13,000.00
13.125	320,000.00	21,000.00
13.250	800,000.00	53,000.00
13.375	1,600,000.00	107,000.00
13.500	400,000.00	27,000.00
13.625	1,600,000.00	109,000.00
13.750	160,000.00	11,000.00
13.875	1,600,000.00	111,000.00
14.000	100,000.00	7,000.00
14.125	1,600,000.00	113,000.00
14.250	800,000.00	57,000.00
14.375	320,000.00	23,000.00
14.500	400,000.00	29,000.00
14.625	1,600,000.00	117,000.00
14.750	800,000.00	59,000.00
14.875	1,600,000.00	119,000.00
15.000	40,000.00	3,000.00
15.125	1,600,000.00	121,000.00
15.250	800,000.00	61,000.00
15.375	1,600,000.00	123,000.00
15.500	400,000.00	31,000.00
15.625	64,000.00	5,000.00
15.750	800,000.00	63,000.00
15.875	1,600,000.00	127,000.00
16.000	25,000.00	2,000.00
16.125	1,600,000.00	129,000.00
16.250	160,000.00	13,000.00
16.375	1,600,000.00	131,000.00
16.500	400,000.00	33,000.00
16.625	1,600,000.00	133,000.00
16.750	800,000.00	67,000.00
16.875	320,000.00	27,000.00
17.000	200,000.00	17,000.00
17.125	1,600,000.00	137,000.00
17.250	800,000.00	69,000.00
17.375	1,600,000.00	139,000.00
17.500	80,000.00	7,000.00
17.625	1,600,000.00	141,000.00
17.750	800,000.00	71,000.00
17.875	1,600,000.00	143,000.00
18.000	100,000.00	9,000.00
18.125	320,000.00	29,000.00
18.250	800,000.00	73,000.00
18.375	1,600,000.00	147,000.00
18.500	400,000.00	37,000.00
18.625	1,600,000.00	149,000.00
18.750	32,000.00	3,000.00
18.875	1,600,000.00	151,000.00
19.000	200,000.00	19,000.00
19.125	1,600,000.00	153,000.00
19.250	800,000.00	77,000.00
19.375	320,000.00	31,000.00
19.500	400,000.00	39,000.00
19.625	1,600,000.00	157,000.00
19.750	800,000.00	79,000.00
19.875	1,600,000.00	159,000.00
20.000	10,000.00	1,000.00
20.125	1,600,000.00	161,000.00
20.250	800,000.00	81,000.00

[FR Doc. 91-18924 Filed 8-8-91; 8:45 am]

BILLING CODE 4810-40-M

Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to section 10 of Public Law 92-463, that a special meeting will be held at the Federal Reserve Bank of New York on September 4, 1991, of the following debt management advisory committee:

Public Securities Association
Treasury Borrowing Advisory Committee

The agenda for the Public Securities Association Treasury Borrowing Advisory Committee meeting provides for a working session in connection with a written report to the Secretary of the Treasury.

Pursuant to the authority placed in Heads of Departments by section 10(d) of Public Law 92-463, and vested in me by Treasury Department Order 101-05, I hereby determine that this meeting is concerned with information exempt from disclosure under section 552b(c)(4) and (9)(A) of title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

My reasons for this determination are as follows. The Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community, which committees have been utilized by the Department at meetings called by representatives of the Secretary. When so utilized, such a committee is recognized to be an advisory committee under Public Law 92-463. The advice provided consists of commercial and financial information given and received in confidence. As such debt management advisory committee activities concern matters which fall within the exemption covered by section 552b(c)(4) of title 5 of the United States Code for matters which are "trade secrets and commercial or financial information obtained from a person a privileged or confidential."

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of an advisory committee, premature disclosure of these reports would lead to significant financial speculation in the securities market. Thus, these meetings also fall within the exemption covered by section 552b(c)(9)(A) of title 5 of the United States Code.

The Assistant Secretary (Domestic Finance) shall be responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of section 552b of title 5 of the United States Code.

Dated: August 5, 1991.

Jerome H. Powell,

Assistant Secretary (Domestic Finance).

[FR Doc. 91-18946 Filed 8-8-91; 8:45 am]

BILLING CODE 4810-25-M

[Department Circular-Public Debt Series-No. 25-91]

Treasury Notes of August 15, 2001, Series C-2001

Washington, August 1, 1991.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $12,000,000,000 of United States securities, designated Treasury Notes of August 15, 2001, Series C-2001 (CUSIP No. 912827 B9 2), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1 The Notes will be dated August 15, 1991, and will accrue interest from that date, payable on a semiannual basis on February 15, 1992, and each subsequent 6 months on August 15 and February 15 through the date that the principal becomes payable. They will mature August 15, 2001, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2 The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount of $1,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5 A Note may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, transfer, and reconstitution of Principal and Interest Components are set forth in section 6 of this circular. Subsections 2.1. through 2.4. of this section are descriptive of Notes in their fully constituted form; the description of the separate Principal and Interest components is set forth in section 6 of this circular.

2.6 The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2-86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, Wednesday, August 7, 1991, prior to 12 noon, Eastern Daylight Saving time, for noncompetitive tenders and prior to 1 p.m., Eastern Daylight Saving time, for competitive tenders. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, August 6, 1991, and received no later than Thursday, August 15, 1991.

3.2 The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of competitive tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers are the amount for each customer and furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of competitive tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 97.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Thursday, August 15, 1991. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no

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3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Thursday, August 15, 1991. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted; which must be received from institutional investors no

later than Tuesday, August 13, 1991. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be complete to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS Program (Separate Trading of Registered Interest and Principal of Securities), a Note may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The separate STRIPS components are: each future semiannual interest payment (referred to as an Interest Component) and the principal payment (referred to as the Principal component). Each Interest Component and the Principal Component shall have an identifying designation and CUSIP number, which are set forth in Attachment A to this circular.

6.2. Attachment A also provides the payable dates for the separate components. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

6.3. For a Note to be separated into the components described in section 6.1., the par amount of the Note must be in an amount which, based on the stated interest rate of the Note, will produce a semiannual interest payment of $1,000 or a multiple of $1,000. Attachment B to this circular provides the minimum par amounts required to separate a security at various interest rates, as well as the interest payments corresponding to those minimum par amounts. Par amounts greater than the minimum amount must be in multiples of that amount. The minimum par amount for this offering will be provided in the public announcement of the amount and yield range of accepted bids.

6.4. A Note may be separated into its components at any time from the issue date until maturity. A request for separation must be made to the Federal Reserve Bank maintaining the account for the Notes. Once a Note has been separated into its components, the components may be maintained and transferred in multiples of $1,000.

6.5. Interest Components and Principle Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

6.6. Interest and Principal Components of separated securities may be reconstituted, i.e., restored to their fully constituted form, on the book-entry records of the Federal Reserve Banks. A Principal Component and all related unmatured Interest Components, in the appropriate minimum or multiple amounts previously announced, must be submitted together for reconstitution.

6.7. Detached physical interest coupons, coupons held under the CUBES Program, or cash payments may not be substituted for missing Interest or Principal Components. Any reconstitution request which does not comprise all of the necessary STRIPS components in the appropriate amounts will not be accepted.

6.8. The book-entry transfer of each Interest Component and Principal Component included in a reconstitution transaction will be subject to the fee schedule generally applicable to transfers of book-entry Treasury securities.

6.9. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Notes separated into their components.

7. General Provisions

7.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payments for, and to issue, maintain, service, and make payments on the Notes.

7.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

7.3. The Notes issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

7.4. Attachments A and B are incorporated as part of this circular.

Gerald Murphy,

Fiscal Assistant Secretary.

Attachment A—CUSIP Numbers and Designations for the Principal Component and Interest Components of Treasury Notes of August 15, 2001, Series C–2001, CUSIP No. 912827 BS 2.

The Principal Component is designated (Interest Rate) Treasury Principal (TPRN) Series C–2001 due August 15, 2001, CUSIP No. 912820 BB 2.

INTEREST COMPONENTS

Designation	CUSIP No. 912833
Treasury Interest (TINT) due	
Feb. 15, 1992	BK 5
Aug. 15, 1992	BL 3
Feb. 15, 1993	BM 1
Aug. 15, 1993	BN 9
Feb. 15, 1994	BP 4
Aug. 15, 1994	BQ 2
Feb. 15, 1995	BR 0
Aug. 15, 1995	BS 8
Feb. 15, 1996	BT 6
Aug. 15, 1996	BU 3
Feb. 15, 1997	BV 1
Aug. 15, 1997	BW 9
Feb. 15, 1998	BX 7
Aug. 15, 1998	BY 5
Feb. 15, 1999	BZ 2
Aug. 15, 1999	CA 6
Feb. 15, 2000	CB 4
Aug. 15, 2000	CC 2
Feb. 15, 2001	CD 0
Aug. 15, 2001	CE 8

ATTACHMENT B—MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1,000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1,000

Coupon (percent)	Minimum face	Interest payment
5.000	40,000.00	1,000.00
5.125	1,600,000.00	41,000.00
5.250	800,000.00	21,000.00
5.375	1,600,000.00	43,000.00
5.500	400,000.00	11,000.00
5.625	320,000.00	9,000.00
5.750	800,000.00	23,000.00
5.875	1,600,000.00	47,000.00
6.000	100,000.00	3,000.00
6.125	1,600,000.00	49,000.00
6.250	32,000.00	1,000.00
6.375	1,600,000.00	51,000.00
6.500	400,000.00	13,000.00
6.625	1,600,000.00	53,000.00
6.750	800,000.00	27,000.00
6.875	320,000.00	11,000.00

ATTACHMENT B—MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1,000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1,000—Continued

Coupon (percent)	Minimum face	Interest payment
7.000	200,000.00	7,000.00
7.125	1,600,000.00	57,000.00
7.250	800,000.00	29,000.00
7.375	1,600,000.00	59,000.00
7.500	80,000.00	3,000.00
7.625	1,600,000.00	61,000.00
7.750	800,000.00	31,000.00
7.875	1,600,000.00	63,000.00
8.000	25,000.00	1,000.00
8.125	320,000.00	13,000.00
8.250	800,000.00	33,000.00
8.375	1,600,000.00	67,000.00
8.500	400,000.00	17,000.00
8.625	1,600,000.00	69,000.00
8.750	160,000.00	7,000.00
8.875	1,600,000.00	71,000.00
9.000	200,000.00	9,000.00
9.125	1,600,000.00	73,000.00
9.250	800,000.00	37,000.00
9.375	64,000.00	3,000.00
9.500	400,000.00	19,000.00
9.625	1,600,000.00	77,000.00
9.750	800,000.00	39,000.00
9.875	1,600,000.00	79,000.00
10.000	20,000.00	1,000.00
10.125	1,600,000.00	81,000.00
10.250	800,000.00	41,000.00
10.375	1,600,000.00	83,000.00
10.500	400,000.00	21,000.00
10.625	320,000.00	17,000.00
10.750	800,000.00	43,000.00
10.875	1,600,000.00	87,000.00
11.000	200,000.00	11,000.00
11.125	1,600,000.00	89,000.00
11.250	160,000.00	9,000.00
11.375	1,600,000.00	91,000.00
11.500	400,000.00	23,000.00
11.625	1,600,000.00	93,000.00
11.750	800,000.00	47,000.00
11.875	320,000.00	19,000.00
12.000	50,000.00	3,000.00
12.125	1,600,000.00	97,000.00
12.250	800,000.00	49,000.00
12.375	1,600,000.00	99,000.00
12.500	16,000.00	1,000.00
12.625	1,600,000.00	101,000.00
12.750	800,000.00	51,000.00
12.875	1,600,000.00	103,000.00
13.000	200,000.00	13,000.00
13.125	320,000.00	21,000.00
13.250	800,000.00	53,000.00
13.375	1,600,000.00	107,000.00
13.500	400,000.00	27,000.00
13.625	1,600,000.00	109,000.00
13.750	160,000.00	11,000.00
13.875	1,600,000.00	111,000.00
14.000	100,000.00	7,000.00
14.125	1,600,000.00	113,000.00
14.250	800,000.00	57,000.00
14.375	320,000.00	23,000.00
14.500	400,000.00	29,000.00
14.625	1,600,000.00	117,000.00
14.750	800,000.00	59,000.00
14.875	1,600,000.00	119,000.00
15.000	40,000.00	3,000.00
15.125	1,600,000.00	121,000.00
15.250	800,000.00	61,000.00
15.375	1,600,000.00	123,000.00
15.500	400,000.00	31,000.00
15.625	64,000.00	5,000.00
15.750	800,000.00	63,000.00
15.875	1,600,000.00	127,000.00
16.000	25,000.00	2,000.00
16.125	1,600,000.00	129,000.00
16.250	160,000.00	13,000.00
16.375	1,600,000.00	131,000.00
16.500	400,000.00	33,000.00
16.625	1,600,000.00	133,000.00
16.750	800,000.00	67,000.00
16.875	320,000.00	27,000.00
17.000	200,000.00	17,000.00
17.125	1,600,000.00	137,000.00
17.250	800,000.00	69,000.00
17.375	1,600,000.00	139,000.00
17.500	80,000.00	7,000.00
17.625	1,600,000.00	141,000.00
17.750	800,000.00	71,000.00
17.875	1,600,000.00	143,000.00
18.000	100,000.00	9,000.00
18.125	320,000.00	29,000.00
18.250	800,000.00	73,000.00
18.375	1,600,000.00	147,000.00
18.500	400,000.00	37,000.00
18.625	1,600,000.00	149,000.00
18.750	32,000.00	3,000.00
18.875	1,600,000.00	151,000.00
19.000	200,000.00	19,000.00
19.125	1,600,000.00	153,000.00
19.250	800,000.00	77,000.00
19.375	320,000.00	31,000.00
19.500	400,000.00	39,000.00
19.625	1,600,000.00	157,000.00
19.750	800,000.00	79,000.00
19.875	1,600,000.00	159,000.00
20.000	10,000.00	1,000.00
20.125	1,600,000.00	161,000.00
20.250	800,000.00	81,000.00

[FR Doc. 91–18925 Filed 8–8–91; 8:45 am]

BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 24–91]

Treasury Notes of August 15, 1994, Series T–1994

Washington, August 1, 1991.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $14,000,000,000 of United States securities, designated Treasury Notes of August 15, 1994, Series T–1994 (CUSIP No. 912827 B8 4), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated August 15, 1991, and will accrue interest from that date, payable on a semiannual basis on February 15, 1992, and each subsequent 6 months on August 15 and February 15 through the date that the principal becomes payable. They will mature August 15, 1994, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount of $5,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2–86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500, Tuesday, August 6, 1991, prior to 12 noon, Eastern Daylight Saving time, for noncompetitive tenders and prior to 1 p.m., Eastern Daylight Saving time, for competitive tenders. Noncompetitive tenders as defined below will be

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num face	Interest payment
00,000.00	129,000.00
60,000.00	13,000.00
00,000.00	131,000.00
00,000.00	33,000.00
00,000.00	133,000.00
00,000.00	67,000.00
20,000.00	27,000.00
00,000.00	17,000.00
00,000.00	137,000.00
00,000.00	69,000.00
00,000.00	139,000.00
30,000.00	7,000.00
00,000.00	141,000.00
00,000.00	71,000.00
00,000.00	143,000.00
00,000.00	9,000.00
20,000.00	29,000.00
00,000.00	73,000.00
00,000.00	147,000.00
90,000.00	37,000.00
00,000.00	149,000.00
32,000.00	3,000.00
00,000.00	151,000.00
80,000.00	19,000.00
00,000.00	153,000.00
00,000.00	77,000.00
20,000.00	31,000.00
00,000.00	39,000.00
00,000.00	157,000.00
00,000.00	79,000.00
00,000.00	159,000.00
0,000.00	1,000.00
00,000.00	161,000.00
00,000.00	81,000.00

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2. Description of Securities

2.1. The Notes will be dated August 15, 1991, and will accrue interest from that date, payable on a semiannual basis on February 15, 1992, and each subsequent 6 months on August 15 and February 15 through the date that the principal becomes payable. They will mature August 15, 1994, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount of $5,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2–86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500, Tuesday, August 6, 1991, prior to 12 noon, Eastern Daylight Saving time, for noncompetitive tenders and prior to 1 p.m., Eastern Daylight Saving time, for competitive tenders. Noncompetitive tenders as defined below will be

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considered timely if postmarked no later than Monday, August 5, 1991, and received no later than Thursday, August 15, 1991.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of noncompetitive tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan association; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

4.6. Immediately after the deadline for receipt of competitive tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rates will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.250. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Thursday, August 15, 1991. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash, in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Tuesday, August 13, 1991. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2 The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 91–18926 Filed 8–8–91; 8:45 am]

BILLING CODE 4810–40–M

VOL 56 SS 154 AG 9 1991 UMI

Sunshine Act Meetings

Federal Register
Vol. 56, No. 154
Friday, August 9, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, August 20, 1991.

PLACE: 2033 K St. NW., Washington, D.C. 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91-19051 Filed 8-7-91; 8:53 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, August 27, 1991.

PLACE: 2033 K St., N.W., Washington, D.C., Lower Lobby Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

- —Application of the Chicago Board of Trade for contract designation in cash settled short term (two year) U.S. Treasury Note futures
- —Proposed amendment to Rule 32.4 to permit trade options on agricultural commodities

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91-19052 Filed 8-7-91; 8:53 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Tuesday, August 27, 1991.

PLACE: 2033 K St., NW., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91-19053 Filed 8-7-91; 8:53 am]

BILLING CODE 6351-01-M

FARM CREDIT ADMINISTRATION

Farm Credit Administration; Amendment to Sunshine Act Meeting

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on August 6, 1991 (56 FR 37393) of the regular meeting of the Farm Credit Administration Board (Board) scheduled for August 8, 1991. This notice is to amend the agenda for that meeting to remove an item form the open session.

FOR FURTHER INFORMATION CONTACT: Nan P. Mitchem, Acting Secretary to the Farm Credit Administration Board, (703) 883-4003, TDD (703) 883-4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of the meeting of the Board were open to the public (limited space available), and parts of the meeting were closed to the public. The agenda for August 8, 1991, is amended to remove the following item from the open session:

Open Session

A. Approval of Minutes.

Dated: August 7, 1991.

Nan P. Mitchem,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 91-19081 Filed 8-7-91; 1:51 pm]

BILLING CODE 6705-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:11 p.m. on Tuesday, August 6, 1991, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the probable failure of certain insured banks.

Recommendations concerning administrative enforcement proceedings.

Recommendations regarding the liquidation of depository institutions' assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,728
Small Pool Liquidation Agreement
Case No. 47,725
The Bank of New England National Association, Boston, Massachusetts
Case No. 47,706
Cibraltar Savings Association, Houston, Texas

Matters relating to a certain financial institution.

Matters relating to an assistance agreement with an insured bank.

Matters relating to Corporation litigation.

Matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), Vice Chairman Andrew C. Hove, Jr., and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street NW., Washington, DC.

Dated: August 7, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91-19106 Filed 8-7-91; 1:52 pm]

BILLING CODE 6714-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, August 14, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne,

Assistant to the Board; (202)
You may call (202) 452-3207,
at approximately 5 p.m. two
days before this meeting, for
announcement of bank and b
holding company application
for the meeting.

Dated: August 6, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board

[FR Doc. 91-19065 Filed 8-7-91; 1

BILLING CODE 6210-01-M

SECURITIES AND EXCHANGE C

Agency Meetings

Notice is hereby given, pur
provisions of the Governmen
Sunshine Act, Pub. L. 94-409,
Securities and Exchange Con
will hold the following meeti
the week of August 12, 1991.

A closed meeting will be h
Tuesday, August 13, 1991, at
An open meeting will be held
Thursday, August 15, 1991, a
in Room 1C30.

Commissioners, Counsel to
Commissioners, the Secretar
Commission, and recording
will attend the closed meeti
staff members who have an
the matters may also be pres

The General Counsel of th
Commission, or his designee
certified that, in his opinion,
of the exemptions set forth i
552b(c) (4), (8), (9)(A) and (1
CFR 200.402(a) (4), (8), (9)(i)
permit consideration of the
matters at a closed meeting.

Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 6, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–19065 Filed 8–7–91; 11:18 am]

BILLING CODE 6210-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of August 12, 1991.

A closed meeting will be held on Tuesday, August 13, 1991, at 2:30 p.m. An open meeting will be held on Thursday, August 15, 1991, at 10:00 a.m., in Room 1C30.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, August 13, 1991, at 2:30 p.m., will be:

Institution of injunctive actions.

Settlement of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

The subject matter of the open meeting scheduled for Thursday, August 15, 1991, at 10:00 a.m., will be:

1. Consideration of whether to propose for public comment rules implementing the Shareholder Communications Improvement Act of 1990. The proposed rules would: (1) Revise the shareholder communications rules to require brokers and banks that hold shares in nominee name to forward to beneficial owners of securities the proxy materials and information statements of investment companies registered under the Investment Company Act of 1940; (2) revise the shareholder communications rules to require brokers and banks to forward to beneficial owners the information statements of registrants under Section 12 of the Securities Exchange Act of 1934; and (3) revise the information statement rules to require all investment companies registered under the Investment Company Act of 1940 to transmit information statements to shareholders where proxies are not solicited. For further information, please contact Kathleen K. Clarke at (202) 272–2107.

2. Consideration of whether to adopt a new rule, Rule 3a–6 under the Investment Company Act of 1940 (the "Act"). The rule would provide an exception from the definition of "investment company" for foreign banks and foreign insurance companies for all purposes under the Act. Adoption of the rule would permit foreign banks, foreign insurance companies, and related entities such as finance subsidiaries and holding companies, to offer and sell their securities in the United States without registering as investment companies under the Act or seeking individual exemptions from the Act's requirements. For further information, please contact Ann M. Glickman at (202) 272–3042.

3. Consideration of whether to propose for public comment rules implementing the large trader reporting section of the Market Reform Act of 1990. The proposed rules would: (1) Require a person that effects significant quantities of transactions in publicly traded securities to file Form 13H with the Commission disclosing such person's identity, affiliations, and accounts; (2) require broker-dealers that carry accounts to maintain records of transactions in publicly traded securities effected by or for such person's accounts; and (3) require such broker-dealers to report to the Commission upon request, transactions in publicly traded securities effected by or for such person's accounts. For further information, please contact Nicholas T. Chapekis at (202) 272–3115.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Edward Pittman at (202) 272–2400.

Dated: August 6, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–19018 Filed 8–6–91; 4:21 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 56, No. 154
Friday, August 9, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 220

School Breakfast Program—Program Outreach

Correction

In rule document 91-15662 beginning on page 30309 in the issue of Tuesday, July 2, 1991, make the following correction:

On page 30311, in the first column, in amendatory instruction 2, in the first line, "(1)" should read "(l)".

BILLING CODE 1505-01-D

DELAWARE RIVER BASIN COMMISSION

18 CFR Part 401

Amendment to Comprehensive Plan, Water Code of the Delaware River Basin and Administrative Manual—Rules of Practice and Procedure

Correction

In rule document 91-15753, beginning on page 30500, in the issue of Wednesday, July 3, 1991, make the following corrections:

§ 401.35 [Corrected]

On page 30502, in the first column, in § 401.35(a)(17) and (18), the first line of both paragraphs should read as follows: "The diversion or transfer of water".

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket Nos. 90-4, 84-1296, FCC 91-184]

Cable Service; Effective Competition Standard for Cable Basic Service Rates

Correction

In rule document 91-17102, beginning on page 33387, in the issue of Monday, July 22, 1991, make the following correction:

§ 76.33 [Corrected]

On page 33391, in the third column, in the Note, in the second line, "duplicated" should read "unduplicated".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 888

[Docket No. 89P-0387]

Orthopedic Devices; Hip Joint Metal/Polymer/Metal Semiconstrained Porous-Coated Uncemented Prosthesis

Correction

In proposed rule document 91-16729 beginning on page 32145 in the issue of Monday, July 15, 1991, make the following corrections:

1. On page 32148, in the first column, in the second full paragraph, in the sixth line from the bottom, "foillowup" should read "followup".

2. On page 32149, in the third column, in the fourth full paragraph, in the last line, "135a" should read "135".

BILLING CODE 1505-01-D

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BILLING CODE 1505-01-D

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BILLING CODE 1505-01-D

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federal register

Friday
August 9, 1991

Part II

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Red Lake Band of Chippewa Indians; Notice

VOL 56 ISS 154 AG 9 1991 UMI

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming; Red Lake Band of Chippewa Indians

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register** notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority has approved a Tribal-State Compact between the Red Lake Band of Chippewa and the State of Minnesota executed on May 6, 1991.

SUPPLEMENTARY INFORMATION: Because of a typographical error, "Section 287" as referenced in the tribal trust land description in the second paragraph of the tribal-state compact should correctly be referenced as "Section 28".

DATES: This action is effective August 9, 1991.

ADDRESSES: Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, MS/MIB 4603, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Joyce Grisham, Bureau of Indian Affairs, Washington, DC 20240, (202) 208–7445.

Dated: August 2, 1991.

David Matheson,

Assistant Secretary—Indian Affairs.

[FR Doc. 91–18947 Filed 8–8–91; 8:45 am]

BILLING CODE 4310-02-M

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Assistant Secretary—
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State of Minnesota
, 1991.

FORMATION: Because
error, "Section 287"
e tribal trust land
econd paragraph of
pact should correctly
Section 28".

DATES: This action is effective August 9, 1991.

ADDRESSES: Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, MS/MIB 4603, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Joyce Grisham, Bureau of Indian Affairs, Washington, DC 20240, (202) 208–7445.

Dated: August 2, 1991.

David Matheson,

Assistant Secretary—Indian Affairs.

[FR Doc. 91–18947 Filed 8–8–91; 8:45 am]

BILLING CODE 4310-02-M

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federal register

Friday
August 9, 1991

Part III

Department of Defense

48 CFR Parts 219, 232, and 252

Pilot Mentor-Protege Program; Notice of Partial Implementation and Final Rule

DEPARTMENT OF DEFENSE

Pilot Mentor-Protege Program

AGENCY: Department of Defense (DoD).

ACTION: Notice of partial implementation of the Pilot Mentor-Protege Program, final policy.

SUMMARY: The Department of Defense (DoD) is issuing a final policy which represents a partial implementation of the Pilot Mentor-Protege Program established under section 831 of Public Law 101–510. Under this implementation phase of the program, companies may request approval as mentor firms to provide developmental assistance to identified small disadvantaged businesses (SDBs) as protege firms. If approved as a mentor firm, DoD may provide the company with credit against SDB subcontracting goals, reimbursement or a combination of credit and reimbursement. Reimbursement under this phase of the program may only be requested by companies that are able to identify funding from a DoD contract program manager. Companies interested in becoming mentor firms will be solely responsible for the selection of SDBs as protege firms.

The DoD policy sets forth the implementation plan for the program with respect to companies that are interested in becoming mentor firms and want to receive credit against SDB subcontracting goals, reimbursement through funds identified by a DoD contract program manager or a combination of credit and reimbursement. The proposed DFARs coverage provides guidance on contracting officer's responsibilities regarding these aspects of the program.

EFFECTIVE DATE: October 1, 1991.

FOR FURTHER INFORMATION CONTACT: Tracey Pinson Dennis, OUSD(A)SADBU, The Pentagon, room 2A340, Washington, DC 20301–3061.

SUPPLEMENTARY INFORMATION:

Background

Section 831 of Public Law 101–510 as amended, establishes the Pilot Mentor-Protege Program. The purpose of the program is to provide incentives to major DoD contractors to furnish SDBs with assistance designed to enhance their capabilities to perform as subcontractors and suppliers under DoD contracts and other contracts, in order to increase the participation of these concerns as subcontractors and suppliers under DoD contracts, other Federal Government contracts, and commercial contracts. Incentives for major DoD contractors to provide developmental assistance to SDBs consist of cost reimbursement, credit against SDB subcontracting goals established under DoD contracts or both.

A notice of the proposed policy was published for public comment on May 2, 1991, 56 FR 20318. In response to the proposed policy, DoD received approximately 65 comments. These comments were thoroughly analyzed and many of the recommendations have been adopted in the partial implementation of the final policy.

Pursuant to this implementation phase of the program, effective October 1, 1991, companies that are interested in being approved as mentor firms and are interested in either: (1) Receiving credit against SDB subcontracting goals or, (2) reimbursement as a result of the identification of funding by a DoD contract program manager, may apply to DoD to participate in the program. In order to be approved as a mentor firm, a company must be performing under at least one active subcontracting plan negotiated pursuant to FAR 19.7. A company must also submit: Their concept for participation in the program, information regarding their overall SDB program, data on awards to SDBs over the two preceding fiscal years and a letter of intent between the company and the selected protege firm indicating that, once approved as a mentor firm, they will negotiate a mentor-protege agreement. Upon review of this information, DoD will notify the requestor of approval or disapproval as a mentor firm (within 30 days). If a request is not approved the company may submit additional information for reconsideration. Once the mentor-protege agreement is negotiated and signed by both parties, it must be submitted to DoD. The review of the mentor-protege agreement will be to ensure that the agreement contains the elements required by the statute. The developmental assistance program may be implemented by the mentor firm after the mentor-protege agreement is approved (within 5 business days).

Companies that are interested in becoming mentor firms will be responsible for the selection of SDBs as protege firms. DoD will not be involved in the selection of protege firms, however, SDBs chosen as protege firms by the prospective mentor firm must meet the eligibility criteria with respect to size and disadvantage status set forth in the DoD policy.

The proposed DoD policy on the Pilot Mentor-Protege Program is as follows:

DoD Policy For The Pilot Mentor-Protege Program (Partial Implementation)

I. Purpose

A. This policy implements the Pilot Mentor-Protege Program (hereinafter referred to as the "Program") established under section 831 of Pub. L. 101–510, The National Defense Authorization Act for Fiscal Year 1991 as amended. The purpose of the Program is to:

(1) Provide incentives to major DoD contractors performing under at least one active approved subcontracting plan (may include a plan negotiated on a company wide or division wide basis) negotiated with DoD or other Federal agencies, to assist small disadvantaged businesses (SDBs) in enhancing their capabilities to satisfy DoD and other contract and subcontract requirements;

(2) Increase the overall participation of SDBs as subcontractors and suppliers under DoD contracts, other Federal agency contracts and commercial contracts and;

(3) Foster the establishment of long term business relationships between SDBs and such contractors.

B. Under the Program, eligible contractors approved as mentor firms will enter into mentor-protege agreements with eligible SDBs as protege firms to provide appropriate developmental assistance to enhance the capabilities of SDBs to perform as subcontractors and suppliers. According to the law, the Department of Defense may, provide the mentor firm with either cost reimbursement, credit against SDB subcontracting goals established under contracts with DoD or other Federal agencies, or a combination of credit and reimbursement.

C. DoD will measure the overall success of the Program by the extent to which the Program results in:

(1) An increase in the dollar value and percentage of subcontracts awarded to SDBs by mentor firms under DoD contracts;

(2) An increase in the dollar value of contract and subcontract awards to protege firms (under DoD contracts, contracts awarded by other Federal agencies and under commercial contracts) since the date of their entry into the Program;

(3) An increase in the number and dollar value of subcontracts awarded to a protege firm (or former protege firm) by its mentor firm (or former mentor firm);

(4) An improvement in the participation of SDBs in DoD, other Federal agencies, and commercial

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DoD Policy For The Pilot Mentor-Protege Program (Partial Implementation)

I. Purpose

A. This policy implements the Pilot Mentor-Protege Program (hereinafter referred to as the "Program") established under section 831 of Pub. L. 101–510, The National Defense Authorization Act for Fiscal Year 1991 as amended. The purpose of the Program is to:

(1) Provide incentives to major DoD contractors performing under at least one active approved subcontracting plan (may include a plan negotiated on a company wide or division wide basis) negotiated with DoD or other Federal agencies, to assist small disadvantaged businesses (SDBs) in enhancing their capabilities to satisfy DoD and other contract and subcontract requirements;

(2) Increase the overall participation of SDBs as subcontractors and suppliers under DoD contracts, other Federal agency contracts and commercial contracts and;

(3) Foster the establishment of long term business relationships between SDBs and such contractors.

B. Under the Program, eligible contractors approved as mentor firms will enter into mentor-protege agreements with eligible SDBs as protege firms to provide appropriate developmental assistance to enhance the capabilities of SDBs to perform as subcontractors and suppliers. According to the law, the Department of Defense may, provide the mentor firm with either cost reimbursement, credit against SDB subcontracting goals established under contracts with DoD or other Federal agencies, or a combination of credit and reimbursement.

C. DoD will measure the overall success of the Program by the extent to which the Program results in:

(1) An increase in the dollar value and percentage of subcontracts awarded to SDBs by mentor firms under DoD contracts;

(2) An increase in the dollar value of contract and subcontract awards to protege firms (under DoD contracts, contracts awarded by other Federal agencies and under commercial contracts) since the date of their entry into the Program;

(3) An increase in the number and dollar value of subcontracts awarded to a protege firm (or former protege firm) by its mentor firm (or former mentor firm);

(4) An improvement in the participation of SDBs in DoD, other Federal agencies, and commercial

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contracting opportunities that can be attributed to the development of SDBs as protege firms under the Program;

(5) An increase in subcontracting with SDB concerns in industry categories where SDBs have not traditionally participated within the mentor firm's vendor base;

(6) The involvement of emerging SDBs in the Program;

(7) An expanded relationship between mentor firms and protege firms to include non-DoD programs; and

(8) The development of protege firms that are competitive as subcontractors and suppliers to DoD or in other federal agencies or commercial markets.

D. This policy sets forth the procedures for participation in the Program applicable to companies that are interested in either receiving credit against SDB subcontracting goals or receiving reimbursement as a result of funding identified by a DoD contract program manager.

II. General Procedures

A. At any time between October 1, 1991 and September 30, 1994, companies interested in becoming mentor firms that want to take credit only for providing developmental assistance to one or more protege firms may apply to the Department of Defense for participation in the Program pursuant to the application process in VI (A) below,

B. At any time between October 1, 1991 and September 30, 1994, companies interested in becoming mentor firms that are able to identify funding from a DoD contract program manager(s) to provide developmental assistance to one or more protege firms apply to the Department of Defense for participation in the Program, pursuant to the application process in VI (E) below.

III. Program Duration

Activities under the program may only occur during the following periods:

(a) Approval of companies to participate in the Program as mentor firms, as described under section II, will be provided by DoD from October 1, 1991 until September 30, 1994;

(b) Performance under a mentor-protege agreement, only if such agreement was executed by the mentor firm and its protege firm and approved by DoD prior to October 1, 1994;

(c) Reimbursement of mentor firm's costs of providing developmental assistance to a protege firm(s), but only if the funding for such costs have been identified by a DoD contract program manager and such costs are incurred pursuant to the execution of a modification to a DoD contract(s) prior to October 1, 1996;

(d) Accord credit to a mentor firm toward the attainment of such firm's goals for subcontract awards to SDBs for costs of providing developmental assistance to its protege firms, only if such costs are incurred after the approval of a mentor-protege agreement and prior to October 1, 1999.

IV. Eligibility Requirements for a Protege Firm

A. A company may qualify as a protege firm if it is:

(1) A business concern as defined by section 8(d)(3)(C) of the Small Business Act (15 U.S.C. 637(D)(3)(C)).

(2) Eligible for the award of Federal contracts.

(3) A small business according to the SBA size standard in the Standard Industrial Code (SIC) which represents the contemplated supplies or services to be provided by the protege firm to the mentor firm.

B. A protege firm may self-certify to a mentor firm that it meets each of the eligibility requirements in A (1), (2) and (3) above. Mentor firms may rely in good faith on a written representation of a business concern that such business concern meets the requirements in A (1), (2) and (3) above.

C. A protege firm may only have one active mentor-protege agreement.

V. Selection of Protege Firms

A. Mentor firms will be solely responsible for selecting protege firms. Mentor firms are encouraged to identify and select protege firms that are defined as emerging SDB concerns.

B. The selection of protege firms by mentor firms may not be protested, except as in C below.

C. In the event of a protest regarding the size or disadvantaged status of a business concern to be a protege firm, the mentor firm shall refer the protest to the SBA to resolve in accordance with 13 CFR part 121 (with respect to size) or 13 CFR part 124 (with respect to disadvantaged status).

D. If at any time the protege firm is determined by the Small Business Administration not to be a small disadvantaged business concern, assistance furnished such business concern by the mentor firm after the date of the determination, may not be considered assistance furnished under the program.

VI. Approval Process for Companies to Participate in the Program as Mentor Firms

A. On or after October 1, 1991, a company interested in becoming a mentor firm and is seeking credit against SDB subcontracting goals for costs incurred under the Program, must submit a request to the DoD, USD(A) OSADBU to be approved as a mentor firm under the Program. The request will be evaluated on the extent to which the company's proposal addresses the items listed in B and C below. To the maximum extent possible, the request should be limited to not more than 20 pages, single spaced. A company may identify more than one protege in its request for approval under the Program. The information required in B and C below must be submitted to be considered for approval as a mentor firm, and may cover one or more proposed mentor-protege relationships.

B. A company must submit the following information:

(1) A statement that the company is currently performing under at least one active approved subcontracting plan (may include a plan negotiated on a company wide or division wide basis) negotiated with DoD or another federal agency pursuant to FAR 19.702, and that the company is currently eligible for the award of federal contracts.

(2) The number of proposed mentor-protege relationships covered by the request for approval as a mentor firm.

(3) A summary of the company's historical and recent activities and accomplishments under their SDB program. The company is encouraged to include any initiatives or outreach information believed to be pertinent to being approved as a mentor firm.

(4) The total dollar amount of DoD contracts and subcontracts received by the company during the two preceding fiscal years (show prime contracts and subcontracts separately per year.)

(5) The total dollar amount of all other federal agency contracts and subcontracts received by the company during the two preceding fiscal years (show prime contracts and subcontracts separately per year.)

(6) The total dollar amount of subcontracts awarded by the company under DoD contracts during the two preceding fiscal years.

(7) The total dollar amount of subcontracts awarded by the company under all other federal agency contracts during the two preceding fiscal years.

(8) The total dollar amount and percentage of subcontract awards made to all SDB firms under DoD contracts and other Federal Agency contracts during the two preceding fiscal years (show DoD subcontract awards and other Federal agency subcontract awards separately.) If presently required to submit a SF 295, provide copies of the two preceding year's end report.

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(9) The number and total dollar amount of subcontract awards made to the identified protege firm(s) during the two preceding fiscal years (if any). Show DoD subcontract awards and other Federal agency subcontract awards separately.

c. In addition to the information required by B above companies must submit the following information for each proposed mentor-protege relationship:

(1) Information on the company's ability to provide developmental assistance to the identified protege firm and how that assistance will potentially increase subcontracting opportunities for the protege firm, including subcontracting opportunities in industry categories where SDBs are not dominant in the company's vendor base.

(2) A letter of intent indicating that both the mentor firm and the protege firm will negotiate a mentor-protege agreement. The letter of intent must be signed by both parties and contain the following information:

(a) The name, address and phone number of both parties.

(b) The protege firm's business classification, based upon the SIC code(s) which represents the contemplated supplies or services to be provided by the protege firm to the mentor firm.

(c) A statement that the protege firm meets the eligibility criteria in IV A (1)–(3).

(d) A preliminary assessment of the developmental needs of the protege firm and the proposed developmental assistance the mentor firm envisions providing the protege firm to address those needs and enhance the protege firm's ability to perform successfully under contracts or subcontracts with DoD, other federal agencies and commercial contracts.

(e) An estimate of the dollar amount of subcontracts that will be awarded by the mentor firm to the protege firm.

(f) Information as to whether the protege firm's development will be concentrated on a single major system(s), a service or supply program, research and development programs, initial production, mature systems, or in the mentor firm's overall contract base.

(3) An estimate of the cost of the developmental assistance program.

D. A company that has identified developmental assistance funds to be made available through a DoD contract program manager(s), must provide: (1) The information in B and C above to both the USD(A) OSADBU and the appropriate program manager(s) and (2) the USD(A) OSADBU with a letter signed by the appropriate program manager indicating the amount of funding that has been identified for the developmental assistance program.

E. Companies seeking credit only, or reimbursement through a DoD contract only, shall submit four copies of the information specified in B and C above to: DoD, USD(A)/OSADBU, room 2A340, The Pentagon, Washington, DC 20301–3061, Attn: Pilot Mentor-Protege Program Application. Upon receipt of this information, OSADBU will review and evaluate each request and, to the maximum extent possible, within 30 days advise each applicant of approval or rejection of its request to become a mentor firm.

F. A company approved as a mentor firm for credit only or reimbursement through a DoD contract, shall proceed with the negotiation of the mentor-protege agreement with the identified protege firm(s).

G. Companies that are not approved for participation under the Program will be provided the reasons therefor and will also be provided an opportunity to submit additional information for reconsideration.

H. A company may not be approved for participation in the Program as a mentor firm if at the time of requesting participation in the Program it is currently debarred or suspended from contracting with the Federal Government pursuant to FAR part 9.4.

I. If the mentor firm is suspended or debarred while performing under an approved mentor-protege agreement, the mentor firm:

(1) May continue to provide assistance to its protege firms pursuant to approved mentor-protege agreements entered into prior to the imposition of such suspension or debarment;

(2) May not be reimbursed to take credit for any costs of providing developmental assistance to its protege firm, incurred more than 30 days after the imposition of such suspension or debarment; and

(3) Shall promptly give notice of its suspension or debarment to its protege firm and OSADBU.

VII. Mentor-Protege Agreements

A. Subsequent to approval as a mentor firm, a signed mentor-protege agreement for each mentor-protege relationship identified under VI(B)(2), must be submitted to USD(A) OSADBU for approval before developmental assistance costs may be reimbursed through a DoD contract or credited against SDB subcontracting goals. To the maximum extent possible, such mentor-protege agreements will be approved within 5 business days of receipt.

B. Each signed mentor-protege agreement submitted for approval under the Program shall include:

(1) The name, address and telephone number of the mentor firm and the protege firm and a point of contact within the mentor firm who will administer the developmental assistance program;

(2) The SIC code which represents the contemplated supplies or services to be provided by the protege firm to the mentor firm and a statement that at the time the agreement is submitted for approval, the protege firm does not exceed the size standard for the appropriate SIC code.

(3) A developmental program for the protege firm specifying the type of assistance identified in (F) below that will be provided. The developmental program shall also include the following:

(a) Factors to assess the protege firm's developmental progress under the Program including milestones for providing the identified assistance and;

(b) The anticipated number and type of subcontracts to be awarded the protege firm consistent with the nature of mentor firm's business.

(4) A program participation term for the protege firm which shall not exceed five years and may be renewed for four years.

(5) Procedures for the mentor firm to notify the protege firm in writing at least 30 days in advance of the mentor firm's intent to voluntarily withdraw from the Program.

(6) Procedures for a protege firm to notify the mentor firm in writing at least 30 days in advance of the protege firm's intent to voluntarily terminate the mentor-protege agreement.

(7) Procedures for the mentor firm to terminate the mentor-protege agreement for cause which provide:

(a) The protege firm shall be furnished a written notice of the proposed termination, stating the specific reasons for such action, at least 30 days in advance of the effective date of such proposed termination.

(b) The protege firm shall have 30 days to respond to such notice of proposed termination, and may rebut any findings believed to be erroneous and offer a remedial program.

(c) Upon prompt consideration of the protege firm's response, the mentor firm shall either withdraw the notice of proposed termination and continue the protege firm's participation, or issue the notice of termination.

(d) The decision of the mentor firm regarding termination for cause, conforming with the requirements of this

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B. Each signed mentor-protege agreement submitted for approval under the Program shall include:

(1) The name, address and telephone number of the mentor firm and the protege firm and a point of contact within the mentor firm who will administer the developmental assistance program;

(2) The SIC code which represents the contemplated supplies or services to be provided by the protege firm to the mentor firm and a statement that at the time the agreement is submitted for approval, the protege firm does not exceed the size standard for the appropriate SIC code.

(3) A developmental program for the protege firm specifying the type of assistance identified in (F) below that will be provided. The developmental program shall also include the following:

(a) Factors to assess the protege firm's developmental progress under the Program including milestones for providing the identified assistance and;

(b) The anticipated number and type of subcontracts to be awarded the protege firm consistent with the nature of mentor firm's business.

(4) A program participation term for the protege firm which shall not exceed five years and may be renewed for four years.

(5) Procedures for the mentor firm to notify the protege firm in writing at least 30 days in advance of the mentor firm's intent to voluntarily withdraw from the Program.

(6) Procedures for a protege firm to notify the mentor firm in writing at least 30 days in advance of the protege firm's intent to voluntarily terminate the mentor-protege agreement.

(7) Procedures for the mentor firm to terminate the mentor-protege agreement for cause which provide:

(a) The protege firm shall be furnished a written notice of the proposed termination, stating the specific reasons for such action, at least 30 days in advance of the effective date of such proposed termination.

(b) The protege firm shall have 30 days to respond to such notice of proposed termination, and may rebut any findings believed to be erroneous and offer a remedial program.

(c) Upon prompt consideration of the protege firm's response, the mentor firm shall either withdraw the notice of proposed termination and continue the protege firm's participation, or issue the notice of termination.

(d) The decision of the mentor firm regarding termination for cause, conforming with the requirements of this

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section, shall be final and is not reviewable by DoD.

(8) Procedures for the termination of individual elements of developmental assistance.

(9) Additional terms and conditions as may be agreed upon by both parties.

C. A copy of any termination notices shall be sent by the mentor firm to the DoD, USD(A) OSADBU, and where funding is made available through a DoD contract, also to the appropriate PCO or ACO.

D. Termination of a mentor-protege agreement shall not impair the obligations of the mentor firm to perform pursuant to the contractual obligations under government contracts and subcontracts. Termination of all or part of the mentor-protege agreement shall not impair the obligations of the protege firm to perform pursuant to the contractual obligations under any contract awarded to the protege firm by the mentor firm.

E. Only developmental assistance provided after the DoD approval of the mentor-protege agreement may be reimbursed through a DoD contract(s) or credited against SDB subcontracting goals.

F. The mentor-protege agreement may provide for the mentor firm to furnish any or all of the types of developmental assistance as follows:

(1) Assistance by mentor firm personnel in:

(a) General business management including organizational management, financial management and personnel management, marketing, business development and overall business planning;

(b) Engineering and technical matters such as production inventory control, quality assurance and

(c) Any other assistance designed to develop the capabilities of the protege firm under the developmental program.

(2) Award of subcontracts under DoD contracts or other contracts on a non-competitive basis.

(3) Payment of progress payments for the performance of subcontracts by a protege firm in amounts as provided for in the subcontract; but in no event may any such progress payment exceed 100% of the costs incurred by the protege firm for the performance of the subcontract. Provision of progress payments by a mentor firm to a protege firm at a rate other than the customary rate for small disadvantaged businesses shall be implemented in accordance with FAR 32.504(c).

(4) Advance Payments under such subcontracts. Advance payments must be administered by the mentor firm in accordance with FAR 32.4.

(5) Loans.

(6) Investment(s) in the protege firm in exchange for an ownership interest in the protege firm, not to exceed 10% of the total ownership interest. Investments may include but not be limited to cash, stock, contributions in kind, etc.

(7) Assistance obtained by the mentor firm for the protege firm from one or more of the following:

(a) Small Business Development Centers (SBDC) established pursuant to section 21 of the Small Business Act (15 U.S.C. 648).

(b) Entities providing procurement technical assistance pursuant to chapter 142 of Title 10 U.S.C. (Procurement Technical Assistance Centers).

(c) Historically Black Colleges and Universities as defined 34 CFR part 608.2.

(d) Minority Institutions of Higher Education.

G. A mentor firm may not require a SDB concern to enter into a mentor-protege agreement as a condition for being awarded a contract by the mentor firm including a subcontract under a DoD contract awarded to the mentor firm.

VIII. Reimbursement Procedures

A. A mentor firm may only be reimbursed for the cost of developmental assistance incurred by the mentor firm and provided to a protege firm under VII (F) (1) and (7), and pursuant to an approved mentor-protege agreement. Reimbursement shall only be made through a separately priced cost reimbursement contract line item added to a DoD cost reimbursement contract. No other means for the reimbursement of the costs of developmental assistance provided under VII (F)(1) and (7) are authorized under the Program.

B. Assistance provided in the form of progress payments in excess of the customary progress payment rate for SDBs, shall only be reimbursed if implemented in accordance with FAR 32.504(c).

C. Assistance provided in the form of advance payments shall only be reimbursed if they have been provided to a protege firm under subcontract terms and conditions similar to FAR 52.232–12. Reimbursement of any advance payments shall be made pursuant to the inclusion of DFAR 252.232–7008, "Reimbursement of Advance Payments—DoD Pilot Mentor-Protege Program (October, 1991)" in appropriate contracts. In requesting reimbursement, the mentor firm agrees that the risk of any financial loss due to the failure or inability of a protege firm to repay any unliquidated advance payments shall be the sole responsibility of the mentor firm.

D. No other forms of developmental assistance are authorized for reimbursement under the Program.

E. No profit may be associated with the reimbursement of developmental assistance costs under the Program.

IX. Credit for Unreimbursed Developmental Assistance Costs

A. Developmental assistance costs incurred by a mentor firm for providing such assistance to a protege firm pursuant to an approved mentor protege agreement, which would otherwise be reimbursed under VIII (A), in the absence of available funding may not be reimbursed under any other DoD contract. However, except as provided in E below, such costs shall be recognized for credit in lieu of subcontract awards for determining the performance of such mentor firm in attaining a SDB subcontracting goal(s) established under:

(1) a DoD contract; or

(2) Any division wide or company wide subcontracting plan which the mentor firm has negotiated with DoD or another Executive agency.

B. The amount of credit a mentor firm may receive for any such unreimbursed developmental assistance costs shall be equal to:

(1) Four times the total amount of such cost attributable to assistance provided by SBDCs, HBCUs, MIs, and PTACs.

(2) Three times the total amount of such costs attributable to assistance furnished by the mentor's employees.

(3) Two times the total amount of other such costs incurred by the mentor in carrying out the developmental assistance program.

C. A mentor firm shall receive credit toward the attainment of a SDB subcontracting goal(s) for each subcontract awarded for a product or a service by the mentor firm to a business concern that, except for its size would be a small business concern owned and controlled by socially and economically disadvantaged individuals, but only if:

(1) The size of such business concern is not more than two times the appropriate size standard;

(2) The business concern formerly had a mentor-protege agreement with such mentor firm that was not terminated for cause; and

(3) The credit is taken not later than October 1, 1999.

D. Amounts credited toward the SDB goal(s) for unreimbursed costs under the program shall be separately identified from the amounts credited toward the

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goal resulting from the award of actual subcontracts to protege firms. The combination of the two shall equal the mentor firm's overall accomplishment toward the SDB goal(s).

E. Adjustments may be made to the amount of credit claimed under A and B above if the Director, DoD, USD(A)/OSDBU determines that:

(1) A mentor firm's performance in the attainment of its SDB subcontracting goals through actual subcontract awards declined from the prior fiscal year without justifiable cause.

(2) Imposition of such a limitation on credit appears to be warranted to prevent abuse of this incentive for mentor firm's participation in the Program.

F. The mentor firm shall be afforded the opportunity to explain the decline in SDB participation before imposition of any such limitation on credit. In making the final decision to impose a limitation on credit, the following shall be considered:

(1) the mentor firm's overall SDB participation rates (in terms of percentages of subcontract awards and dollars awarded) as compared to the participation rates existing during the two fiscal years prior to the firm's admission to the Program;

(2) the mentor firm's aggregate prime contract awards during the prior two fiscal years and the total amount of subcontract awards under such contracts; and

(3) such other information the mentor firm may wish to submit.

G. The decision of the Director regarding the imposition of a limitation on credit shall be final.

H. Any prospective limitation on credit imposed by the Director shall be expressed as a percentage of otherwise eligible credit and shall apply beginning on a specific date in the future and continue until a date certain during the current fiscal year.

I. Any retroactive limitation on credit imposed by the Director shall reflect the actual costs incurred for developmental assistance (not exceeding the maximum amount reimbursed.)

J. For purposes of calculating any incentives to be paid to a mentor firm for exceeding a SDB subcontracting goal pursuant to 252.219-7009, incentives shall only be paid of a SDB subcontracting goal has been exceeded as a result of actual subcontract awards to SDBs.

K. Unreimbursed developmental assistance costs that are incurred pursuant to an approved mentor-protege agreement shall not be charged to, or otherwise reimbursed under any other DoD contract, irrespective of whether they have been recognized for credit against SDB subcontracting goals.

L. Developmental assistance provided under an approved mentor-protege agreement is distinct from, and shall not duplicate, any effort that is the normal and expected product of the award and administration of the mentor firm's subcontracts. Costs associated with the latter shall be accumulated and charged in accordance with the contractor's approved accounting practices.

X. Advance Agreements on the Treatment of Development Assistance Costs

Pursuant to FAR 31.109, approved mentor firms seeking reimbursement, credit, or a combination thereof, are encouraged to enter into an advance agreement with the contracting officer responsible for determining final indirect cost rates under FAR 42.705. The purpose of the advance agreement is to establish the accounting treatment of the costs of the development assistance pursuant to the mentor-protege agreement prior to the incurring of any costs by the mentor firm. While not mandatory, an advance agreement is an attempt by both the Government and the mentor firm to avoid possible subsequent dispute based on questions related to reasonableness, allocability, or allowability of the costs of developmental assistance under the Program. Absent an advance agreement, mentor firms are advised to establish the accounting treatment of such costs and address the need for any changes to their cost accounting practices that may result from the implementation of a mentor-protege agreement, prior to incurring any costs, and irrespective of whether costs will be reimbursed, credited or a combination thereof.

XI. Reporting Requirements and Program Reviews

A. Mentor firms shall report on the progress made under active mentor-protege agreements semi-annually, including an attachment to their SF 295 providing:

(1) The number of active mentor-protege agreements in effect; and

(2) The progress in achieving the developmental assistance objectives under each mentor-protege agreement, including whether the objectives of the Program set forth in the DoD policy statement were met, any problem areas encountered, and any other appropriate information.

(3) A copy of the SF 294 for each contract where developmental assistance was credited, with a statement in Block 18 identifying:

(a) The amount of dollars credited to the SDB subcontract goal as a result of developmental assistance provided to protege firms under the Program; and

(b) An explanation as to the relationship between the developmental assistance provided the protege firm(s) under the Program and the activities under the contract covered by the SF 294(s).

(c) The number and dollar value of subcontracts awarded to the protege firm(s).

B. For companies participating in the DoD "Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans", indicate in Block 16 of the SF 295:

(1) The total dollars credited to the SDB goal as a result of developmental assistance provided to a protege firm(s) under the Program.

(2) The total dollar amount of subcontracts awarded to the protege firm(s).

C. OSADBU will conduct an annual performance review of the progress and accomplishments realized under approved mentor-protege agreements.

XII. Definitions

A. *Emerging SDB Concern* means a small disadvantaged business whose size is no greater than 50% of the numerical size standard applicable to the industrial code for the supplies or services which the protege firm provides or would provide to the mentor firm.

B. *Minority Institution of Higher Education* means an institution of higher education with a student body that reflects the composition specified in 312(b) (3), (4) and (5) of the Higher Education Act of 1965 (20 U.S.C. 1058(b)(3), (4) and (5).

Horace J. Crouch,

Director, Small and Disadvantaged Business Utilization.

[FR Doc. 91-18705 Filed 8-8-91; 8:45 am]

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DEPARTMENT OF DEFENSE

48 CFR Parts 219, 232, and 25

**Acquisition Regulations; Pilot
Protege Program**

AGENCY: Department of Defens

ACTION: Final rule.

SUMMARY: The Defense Acquis
Regulations (DAR) Council ha
the Defense Federal Acquisitio
Regulation Supplement (DFAR
implement a pilot Mentor-Prot
Program, as provided by the N
Defense Authorization Act for
Year 1991. This Program autho
incentives for DoD contractors
provide developmental assista
small disadvantaged business

EFFECTIVE DATE: October 1, 19

FOR FURTHER INFORMATION CO
Mrs. Alyce Sullivan, Defense
Acquisition Regulations Syste
(A) DP, Pentagon, Washington
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SUPPLEMENTARY INFORMATION

A. Background

Section 831, Public Law 101-
enacted November 5, 1990 pro
the establishment of a pilot "N
Protege Program." This Progra
authorizes incentives for DoD
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addressed in a DoD policy sta
entitled: "DoD Policy for the F
Mentor-Protege Program." Th
statement addresses the Prog
purpose, procedures, duration
requirements, approval proce
Mentor-Protege Agreements.
DFARS revisions in this final
based on the DoD policy stat

B. Regulatory Flexibility Act

This rule was published for
comment on May 2, 1991 (56 F
The comments that were rece
considered in development of
rule. A Final Regulatory Flexi
Analysis has been prepared a
forwarded to the Chief Couns
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(2) The progress in achieving the developmental assistance objectives under each mentor-protege agreement, including whether the objectives of the Program set forth in the DoD policy statement were met, any problem areas encountered, and any other appropriate information.

(3) A copy of the SF 294 for each contract where developmental assistance was credited, with a statement in Block 18 identifying:

(a) The amount of dollars credited to the SDB subcontract goal as a result of developmental assistance provided to protege firms under the Program; and

(b) An explanation as to the relationship between the developmental assistance provided the protege firm(s) under the Program and the activities under the contract covered by the SF 294(s).

(c) The number and dollar value of subcontracts awarded to the protege firm(s).

B. For companies participating in the DoD "Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans", indicate in Block 16 of the SF 295:

(1) The total dollars credited to the SDB goal as a result of developmental assistance provided to a protege firm(s) under the Program.

(2) The total dollar amount of subcontracts awarded to the protege firm(s).

C. OSADBU will conduct an annual performance review of the progress and accomplishments realized under approved mentor-protege agreements.

XII. Definitions

A. *Emerging SDB Concern* means a small disadvantaged business whose size is no greater than 50% of the numerical size standard applicable to the industrial code for the supplies or services which the protege firm provides or would provide to the mentor firm.

B. *Minority Institution of Higher Education* means an institution of higher education with a student body that reflects the composition specified in 312(b) (3), (4) and (5) of the Higher Education Act of 1965 (20 U.S.C. 1058(b)(3), (4) and (5).

Horace J. Crouch,
Director, Small and Disadvantaged Business Utilization.

[FR Doc. 91-18705 Filed 8-8-91; 8:45 am]

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DEPARTMENT OF DEFENSE

48 CFR Parts 219, 232, and 252

Acquisition Regulations; Pilot Mentor-Protege Program

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Defense Acquisition Regulations (DAR) Council has revised the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a pilot Mentor-Protege Program, as provided by the National Defense Authorization Act for Fiscal Year 1991. This Program authorizes incentives for DoD contractors which provide developmental assistance to small disadvantaged businesses (SDBs).

EFFECTIVE DATE: October 1, 1991.

FOR FURTHER INFORMATION CONTACT: Mrs. Alyce Sullivan, Defense Acquisition Regulations System, OUSD (A) DP, Pentagon, Washington, DC 20301-3000.

SUPPLEMENTARY INFORMATION:

A. Background

Section 831, Public Law 101-510, enacted November 5, 1990 provides for the establishment of a pilot "Mentor-Protege Program." This Program authorizes incentives for DoD contractors which provide developmental assistance to small disadvantaged businesses (SDBs).

Participation in the Program is voluntary. Prospective mentor firms must apply to and be approved by the Department of Defense's Office of Small and Disadvantaged Business Utilization, OUSD (A) SADBU. Prospective protege firms are selected by mentor firms.

DoD implementation of section 831 is addressed in a DoD policy statement, entitled: "DoD Policy for the Pilot Mentor-Protege Program." The policy statement addresses the Program's purpose, procedures, duration, eligibility requirements, approval process, and Mentor-Protege Agreements. The DFARS revisions in this final rule are based on the DoD policy statement.

B. Regulatory Flexibility Act

This rule was published for public comment on May 2, 1991 (56 FR 20322). The comments that were received were considered in development of the final rule. A Final Regulatory Flexibility Analysis has been prepared and forwarded to the Chief Counsel for Advocacy of the Small Business Administration. Copies of the Regulatory Flexibility Analysis are available upon written request. Please cite DAR Case 90-314 and submit the request to: Defense Acquisition Regulations System, OUSD (A) DP, ATTN: Mrs. Alyce Sullivan, Pentagon, Washington, DC 20301-3000.

C. Paperwork Reduction Act

This rule contains information collection requirements which increase the estimates for the Standard Form 295, Summary Subcontract Report, which is currently approved under OMB Clearance Number 9000-0007. Accordingly, a revised burden estimate has been prepared and forwarded to the Office of Management and Budget (OMB) for clearance.

List of Subjects in 48 CFR Parts 219, 232, and 252

Government procurement.

Claudia L. Naugle,
Executive Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 219, 232, and 252 are amended as follows:

1. The authority citation for 48 CFR parts 219, 232, and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and FAR subpart 1.3.

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

219.708 [Amended]

2. Section 219.708 is amended by adding a third sentence to paragraph (c)(1) (S-70) to read as follows: "Incentives for exceeding SDB subcontracting goals shall be paid only if an SDB subcontracting goal was exceeded as a result of actual subcontract awards to SDBs, and not as a result of developmental assistance credit under the Pilot Mentor-Protege Program (see subpart 219.71)."

3. Subpart 219.71 is added to read as follows:

Subpart 219.71—Pilot Mentor-Protege Program

Sec.
219.7100 Scope.
219.7101 Policy.
219.7102 General.
219.7103 Procedures.
219.7103-1 General.
219.7103-2 Contracting officer responsibilities.
219.7104 Developmental assistance costs eligible for reimbursement or credit under the Program.
219.7105 Other forms of assistance.
219.7106 Reporting.

219.7100 Scope.

This subpart implements the Pilot Mentor-Protege Program (the Program), established under section 831 of the National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510, as amended. The purpose of the Program is to provide incentives for DoD contractors to assist small disadvantaged businesses in enhancing their capabilities and to increase participation of such firms in Government and commercial contracts.

219.7101 Policy.

DoD policy for implementation of the Program is contained in a policy statement entitled, "DoD Policy for the Pilot Mentor-Protege Program." This statement addresses the program purpose, general procedures, duration, eligibility requirements, the selection/approval process, the mentor-protege agreement, advance agreements on the treatment of developmental assistance costs, and reporting requirements. A copy of the statement may be obtained from the Office of Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense for Acquisition, OUSD (A) SADBU, room 2A340, The Pentagon, Washington, DC 20301-3061, (703) 697-1688.

219.7102 General.

The Program consists of:

(a) Mentor firms, which are prime contractors with at least one active subcontracting plan negotiated under FAR subpart 19.7

(b) Protege firms, which are small disadvantaged business (SDB) concerns, eligible for receipt of Federal contracts and selected by the mentor firm.

(c) Mentor-protege agreements which establish a developmental assistance program for a protege firm.

(d) Incentives, which may be provided to mentor firms by the DoD including:

(1) Reimbursement for developmental assistance costs through a modification to an existing cost reimbursement contract to establish a separately priced contract line item;

(2) Credit toward SDB subcontracting goals, established under a subcontracting plan negotiated under FAR subpart 19.7, for developmental assistance costs not reimbursed; or

(3) A combination of reimbursement and credit.

219.7103 Procedures.

219.7103-1 General.

(a) In accordance with the DoD policy statement, a prospective mentor firm shall:

(1) Apply to OUSD(A) SADBU when seeking credit only or when funding is made available from a DoD program manager to implement a mentor-protege agreement; and

(2) Subsequent to approval as a mentor firm, submit a signed mentor-protege agreement to OUSD(A) SADBU for approval before developmental assistance costs may be reimbursed through an existing DoD contract or credited against SDB subcontracting goals.

(b) OUSD(A) SADBU shall have responsibility for:

(1) Approving contractors as mentor firms;

(2) Approving mentor-protege agreements; and

(3) Forwarding the approved mentor-protege agreement to contracting officer(s) when program funding is available through a DoD program manager.

219.7103-2 Contracting officer responsibilities.

Contracting officers shall:

(a) Negotiate an advance agreement on the treatment of developmental assistance costs for credit, reimbursement, or both, if the mentor firm proposes such an agreement, or delegate this authority to the administrative contracting officer (See FAR 31.109).

(b) Modify (without consideration) applicable contract(s) to incorporate the clause at 252.232-7008, Reimbursement of Subcontractor Advance Payments-DoD Pilot Mentor-Protege Program, when advance payments are provided by a mentor firm to a protege firm under the Program and the mentor firm requests reimbursement of advance payments.

(c) Modify (without consideration) applicable contract(s) to incorporate other than customary progress payments for small disadvantaged businesses in accordance with FAR 32.504(c), if such payments are provided by a mentor firm to a protege firm and the mentor firm requests reimbursement.

(d) Modify applicable contract(s) to establish a contract line item for reimbursement of developmental assistance costs when—

(1) Funds have been made available for that purpose by a DoD program manager; and

(2) The contractor has an approved Mentor-Protege Agreement.

(e) Advise contractors of reporting requirements (see 219.7106).

219.7104 Developmental assistance costs eligible for reimbursement or credit under the program

(a) Developmental assistance provided under an approved mentor-protege agreement is distinct from, and shall not duplicate, any effort that is the normal and expected product of the award and administration of the mentor firm's subcontracts. Costs associated with the latter shall be accumulated and charged in accordance with the contractor's approved accounting practices. The following costs incurred by mentor firms are eligible for reimbursement or credit:

(1) Assistance to the protege firm by mentor firm personnel in—

(i) General business management including organizational management;

(ii) Financial management;

(iii) Personnel management;

(iv) Marketing;

(v) Business development and overall business planning;

(vi) Engineering and technical matters such as production, inventory control, and quality assurance;

(vii) Any other assistance designed to develop the capabilities of the protege firm under the developmental program.

(2) Assistance to the protege firm provided by—

(i) Small Business Development Centers established pursuant to section 21 of the Small business Act (15 U.S.C. 648);

(ii) Entities providing technical assistance pursuant to chapter 142 of Title 10 U.S.C.;

(iii) Historically Black Colleges and Universities (HBCUs) as defined by 34 CFR part 608.2; and

(iv) Minority Institutions of Higher Education with a student body as specified in 20 U.S.C. 1058(b) (3), (4), and (5).

(b) No profit may be associated with the reimbursement of developmental assistance costs.

(c) Before incurring any costs under the Program, mentor firms need to establish the accounting treatment of developmental assistance costs eligible for reimbursement or credit. Advance agreements are encouraged. To be eligible for reimbursement under the Program, costs must be incurred before October 1, 1996.

(d) If a mentor firm is suspended or debarred while performing under an approved mentor-protege agreement, the mentor firm may not be reimbursed or credited for developmental assistance costs incurred more than 30 days after the imposition of the suspension or debarment.

(e) Developmental assistance costs incurred before October 1, 1999 by a mentor firm pursuant to an approved mentor-protege agreement, that are not funded either directly or indirectly under any other DoD contract, may be credited towards subcontracting plan goals as follows:

(1) Four times the total amount of developmental assistance costs provided to protege firms by small business development centers, HBCUs, MIs, and entities providing technical assistance (see paragraph (a)(2) of this section);

(2) Three times the total amount of developmental assistance costs incurred by mentor firm personnel (see paragraph (a)(1) (i) through (vi) of this section); or

(3) Two times the total amount of other developmental assistance costs (see paragraph (a)(1)(vii) of this section).

219.7105 Other forms of assistance.

(a) Mentor firm subcontracts with protege firms may contain provisions for progress payments up to 100 percent (see FAR 32.504(c)) or advance payments (see 232.412(S-72)). However, DoD will reimburse the mentor firm for advance payments only when such payments have been provided under subcontract terms and conditions similar to FAR 52.232-12, Advance Payments.

(b) In accordance with paragraph (f) of section 831 of Public Law 101-510, mentor firms may award subcontracts to protege firms on a non-competitive basis under DoD or other contracts.

219.7106 Reporting.

(a) Mentor firms shall report on the progress made under active mentor-protege agreements semi-annually by including with their SF 295, Summary Subcontract Report:

(1) An attachment which identifies—

(i) The number of active mentor-protege agreements in effect; and

(ii) The progress in achieving the developmental assistance objectives under each mentor-protege agreement, including whether the objectives of the Program set forth in the DoD policy statement were met, and problem areas encountered, and any other appropriate information; and

(2) A copy of the SF 294, Subcontracting Report for Individual Contracts, for each contract where developmental assistance was credited, with a statement in Block 18 of the SF 294 identifying:

(i) The amount of dollars credited to the SDB subcontract goal as a result of developmental assistance provided to protege firms under the Program;

(ii) An explanation as to the relationship between the developmental assistance provided the protege firm(s) under the Program and the activities under the contract covered by the SF 294(s); and

(iii) The number and dollar value of subcontracts awarded to the protege firm(s).

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(b) In accordance with paragraph (f) of section 831 of Public Law 101–510, mentor firms may award subcontracts to protege firms on a non-competitive basis under DoD or other contracts.

219.7106 Reporting.

(a) Mentor firms shall report on the progress made under active mentor-protege agreements semi-annually by including with their SF 295, Summary Subcontract Report:

(1) An attachment which identifies—

(i) The number of active mentor-protege agreements in effect; and

(ii) The progress in achieving the developmental assistance objectives under each mentor-protege agreement, including whether the objectives of the Program set forth in the DoD policy statement were met, and problem areas encountered, and any other appropriate information; and

(2) A copy of the SF 294, Subcontracting Report for Individual Contracts, for each contract where developmental assistance was credited, with a statement in Block 18 of the SF 294 identifying:

(i) The amount of dollars credited to the SDB subcontract goal as a result of developmental assistance provided to protege firms under the Program;

(ii) An explanation as to the relationship between the developmental assistance provided the protege firm(s) under the Program and the activities under the contract covered by the SF 294(s); and

(iii) The number and dollar value of subcontracts awarded to the protege firm(s).

(b) Mentor firms, which are also participants in DoD's comprehensive subcontracting plan test program (see 219.702(a)), shall indicate in Block 16 of the SF 295, Summary Subcontract Report:

(1) The total dollars credited to the SDB goal as a result of developmental assistance provided a protege firm(s) under the Program; and

(2) The total dollar amount of subcontracts awarded to the protege firm(s).

(c) OUSD(A) SADBU will conduct an annual performance review of the progress and accomplishments realized under approved mentor-protege agreements.

PART 232—CONTRACT FINANCING

4. Section 232.412 is amended by adding paragraph (S–72) to read as follows:

232.412 Contract Clause.

* * * * *

(S–72) In the event that advance payments are provided by a prime contractor to a subcontractor pursuant to an approved Mentor-Protege Agreement (see subpart 219.71) and the prime contractor requests reimbursement of advance payments, use the clause at 252.232–7008, Reimbursement of Subcontractor Advance Payments—DoD Pilot Mentor-Protege Program.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 252.232–7008 is added to read as follows:

252.232-7008 Reimbursement of Subcontractor Advance Payments—DoD Pilot Mentor-Protege Program.

. As prescribed in 232.412(S–72), use the following clause:

Reimbursement of Subcontractor Advance Payments—DOD Pilot Mentor-Protege Program (Oct 1991)

(a) The Government will reimburse the Contractor for any advance payments made by the Contractor, as a mentor firm, to a small disadvantaged business, as a protege firm, pursuant to an approved mentor-protege agreement, provided that:

(1) The Contractor's subcontract with the protege firm includes a provision substantially the same as FAR 52.232–12, Advance Payments;

(2) The Contractor has administered the advance payments in accordance with the policies of FAR Subpart 32.4; and

(3) The Contractor agrees that any financial loss resulting from the failure or inability of the protege firm to repay any unliquidated advance payments is the sole financial responsibility of the Contractor.

(b) For a fixed price type contract, advance payments made to a protege firm shall be paid and administered as if they were 100 percent progress payments. The Contractor shall include as a separate attachment with each Standard Form (SF) 1195, Request for Progress Payments, a request for reimbursement of advance payments made to a protege firm. The attachment shall provide a separate calculation of lines 14a through 14e of SF 1195 for each protege, reflecting the status of advance payments made to that protege.

(c) For cost reimbursable contracts, reimbursement of advance payments shall be made via public voucher. The Contractor shall show the amounts of advance payments made to each protege on the public voucher, in the form and detail directed by the cognizant contracting officer or contract auditor.

[End of clause]

[FR Doc. 91–18706 Filed 8–8–91; 8:45 am]

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August 9, 1991

Part IV

Federal Deposit Insurance Corporation

12 CFR Part 308

Uniform Rules of Practice and Procedure; Final Rule

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 308

RIN 3064–AA64

Uniform Rules of Practice and Procedure

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: Section 916 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Public Law No. 101–73, 103 Stat. 183 (1989), requires that the Office of the Comptroller of the Currency ("OCC"), Board of Governors of the Federal Reserve System ("Board of Governors"), Federal Deposit Insurance Corporation ("FDIC"), Office of Thrift Supervision ("OTS"), and the National Credit Union Administration ("NCUA") (collectively, the "Agencies") develop a set of uniform rules of practice and procedures for administrative hearings ("Uniform Rules"). Section 916 further requires that the agencies promulgate provisions for summary judgment rulings where there are no disputes as to the material facts of a case.

In compliance with the mandate of section 916, this final rule makes uniform those rules concerning formal enforcement actions common to at least four of the listed Agencies. In addition to these Uniform Rules, the FDIC and each of the other listed Agencies is adopting complementary "Local Rules" to supplement the Uniform Rules in order to address some or all of the following: Formal enforcement actions not within the scope of the Uniform Rules, informal actions which are not subject to the Administrative Procedure Act ("APA"), and procedures to supplement or facilitate the processing of administrative enforcement actions within the FDIC and the other Agencies. This final rule is intended to standardize procedures for formal administrative actions and to facilitate administrative practice before the Agencies.

EFFECTIVE DATE: August 9, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy L. Alper, Counsel, Compliance and Enforcement Section, telephone 202/898–3720, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

Section 916 of FIRREA requires that the FDIC, OCC, Board of Governors, OTS and NCUA develop a set of uniform rules and procedures for administrative hearings. By including this provision in FIRREA, Congress intended that the listed Agencies, by promulgating uniform procedures, would improve and expedite their administrative proceedings. The statutory provision is a reflection of "recent recommendations of the Administrative Conference of the United States and the House Government Operations Committee." H.R. Rep. No. 54, 101st Cong., 1st Sess., pt.1, at 396. The Administrative Conference of the United States found in its December 30, 1987 recommendation that "[g]iven the similar statutory bases for these enforcement actions, the five agencies jointly should be able to develop substantially similar rules of procedure and practice for formal enforcement proceedings." 1 CFR 305.87–12.

To comply with the requirements of section 916, the FDIC and the other Agencies issued for public notice and comment a Joint Notice of Proposed Rulemaking on June 17, 1991 (56 FR 27790). The proposed rules contained one set of Uniform Rules applicable to the Agencies and separate Local Rules applicable to each agency.

The FDIC has received comments on the joint proposed rule and is now issuing a final rule. This final rule is intended to standardize procedures for formal administrative actions common to at least four of the five Agencies and to facilitate administrative practice before the Agencies.

II. Comments and Discussion

A. Comment Summary

In response to the June 17, 1991, joint notice of proposed rulemaking, the FDIC and the other Agencies received three comment letters on its June 17, 1991 proposed rule. The Agencies have reviewed jointly the portions of the comments concerning the Uniform Rules. Overall, while the comments raised certain questions and objections, given the magnitude of the regulation the comments were focused narrowly. One comment commended the Agencies for meeting the mandate of section 916 of FIRREA and creating a set of uniform rules of practice and procedures. The specific questions and objections are discussed below.

B. Discussion of Comments and Agency Responses

1. Uniform Rules

(a) One commenter criticized the proposed rule for failing to accommodate default situations where good cause could be shown for the failure to file an answer. This comment reflects a misunderstanding of the proposed Uniform Rules, which address such situations by allowing an administrative law judge to extend time limits for good cause (§ 308.13), and by requiring that defaults be entered only upon a motion for default filed by Enforcement Counsel (§ 308.19), thereby permitting respondents an opportunity to oppose such a motion. To alleviate confusion, the wording of the final default rule has been modified to make this process more explicit.

(b) Another issue raised by one of the commenters concerns the apparent differences in procedures for formal investigations, rules of practice before the Agencies, and rules concerning the Equal Access to Justice Act. Additionally, this commenter proposed that rules should be drafted governing informal enforcement mechanisms, such as memoranda of understanding, "fifteen-day letter" procedures for initiation of civil money penalties, commitment letters and other informal procedures. Finally, the commenter made a suggestion that the Agencies consider other rules to promote uniformity such as the publication of all enforcement decisions of the Agencies in a loose-leaf service or on-line computer service.

The differences in the various informal or non-APA procedures are based upon the scope of section 916. The purpose behind section 916 of FIRREA was the improvement and expedition of formal administrative proceedings to be conducted pursuant to the Administrative Procedure Act. As was stated in the Report of the House of Representatives, this statutory provision is a reflection of "recent recommendations of the Administrative Conference of the United States and the House Government Operations Committee." H.R. Rep. No. 54, 101st Cong., 1st Sess., pt. 1, at 396. The Administrative Conference of the United States found in its December 30, 1987 recommendation that "[g]iven the similar statutory bases for these enforcement actions, the five agencies jointly should be able to develop substantially similar rules of procedure and practice for *formal enforcement proceedings.*" (Emphasis supplied.) 1 CFR 305.87–12. Thus, the inclusion of non-APA proceedings would exceed the statutory mandate of section 916 and would present practical implementation problems as well.

For example, the Uniform Rules do not contain provisions for formal investigations. This is because they are not APA proceedings. In addition, the statutory authority for formal

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investigations arises in several
not just the Federal Deposit Ins
Act, and the Agencies have diff
policies concerning the frequen
length, and procedures for form
investigations. This diversity in
statutory authority is reflected
independent and separate proc
each agency.

Similarly, the Uniform Rules
contain provisions addressing
Access to Justice Act. Again, th
diversity of agency structure is
determining factor here. Both th
and the OTS are bureaus of the
Department of Treasury. As su
are subject to Treasury's Equal
to Justice Act regulatory provis
found at 31 CFR part 6.

With respect to the publicati
enforcement orders, the Agenci
already addressed this concern
Pursuant to section 8(u) of the
Deposit Insurance Act, 12 U.S.
each of the Agencies has proce
implementing this statutory dir
and most, if not all, enforcemen
decisions may be found by con
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each Agency. In addition, each
Agencies frequently issues pre
releases concerning recent cas

(c) An issue was raised by tw
commenters concerning the dif
positions taken by the Agencie
discovery depositions. The com
stated that use of discovery de
would encourage settlements a
result in the increased use of s
judgment by establishing the a
disputes as to material facts.

The scope of discovery whic
be permitted in the Uniform Ru
considered at length. It was de
that broad document discovery
be permitted generally; howev
recognized that there is no con
right to prehearing discovery, i
deposition discovery, in Federa
administrative proceedings. Se
National Transportation Safety
662 F.2nd 668, 671 (10th Cir. 19
Resources, Inc. v. *N.L.R.B.*, 576
380, 386 (1st Cir. 1978); *Silverm*
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F.2nd 28, 33 (7th Cir. 1977). Fur
Administrative Procedure Act
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F.2nd 205 (3rd Cir. 1974,) *cert.*
421 U.S. 980 (1975). Rather, eac
determines the extent of disco
which a party in an administra
hearing is entitled. *McClelland*
Andrus, 606 F.2nd 1278, 1285 (
1979).

investigations arises in several statutes, not just the Federal Deposit Insurance Act, and the Agencies have differing policies concerning the frequency, length, and procedures for formal investigations. This diversity in statutory authority is reflected in the independent and separate procedures of each agency.

Similarly, the Uniform Rules do not contain provisions addressing the Equal Access to Justice Act. Again, the diversity of agency structure is a determining factor here. Both the OCC and the OTS are bureaus of the U.S. Department of Treasury. As such, they are subject to Treasury's Equal Access to Justice Act regulatory provisions found at 31 CFR part 6.

With respect to the publication of enforcement orders, the Agencies have already addressed this concern. Pursuant to section 8(u) of the Federal Deposit Insurance Act, 12 U.S.C. 1818(u), each of the Agencies has procedures implementing this statutory directive and most, if not all, enforcement decisions may be found by consulting the Public Reading Rooms or libraries of each Agency. In addition, each of the Agencies frequently issues press releases concerning recent cases.

(c) An issue was raised by two of the commenters concerning the different positions taken by the Agencies on discovery depositions. The commenters stated that use of discovery depositions would encourage settlements and would result in the increased use of summary judgment by establishing the absence of disputes as to material facts.

The scope of discovery which would be permitted in the Uniform Rules was considered at length. It was determined that broad document discovery would be permitted generally; however, it was recognized that there is no constitutional right to prehearing discovery, including deposition discovery, in Federal administrative proceedings. See, *Sims* v. *National Transportation Safety Board*, 662 F.2nd 668, 671 (10th Cir. 1981); *P.S.C. Resources, Inc.* v. *N.L.R.B.*, 576 F.2nd 380, 386 (1st Cir. 1978); *Silverman* v. *Commodity Futures Trading Comm.*, 549 F.2nd 28, 33 (7th Cir. 1977). Further, the Administrative Procedure Act contains no provisions for prehearing discovery, and the discovery provisions of the Federal Rules of Civil Procedure are inapplicable to administrative proceedings. *Frillette* v. *Kimberlin*, 508 F.2nd 205 (3rd Cir. 1974,) *cert. denied*. 421 U.S. 980 (1975). Rather, each agency determines the extent of discovery to which a party in an administrative hearing is entitled. *McClelland* v. *Andrus*, 606 F.2nd 1278, 1285 (DC Cir. 1979).

The Agencies attempted to strike a balance between the due process interests of respondents in obtaining pretrial disclosure, including discovery depositions, and the Agencies' need for swift adjudication while preserving limited resources. This process included taking into account the various interests and concerns of both the industry and public constituencies which each Agency serves, as well as each Agency's own institutional interests and concerns. The contrasting interests and concerns are reflected in the types, complexity and quantity of enforcement actions brought by each Agency; the methods of litigation and opportunity for settlement in such actions; the structure and available resources of each regulator; and the supervisory procedures developed internally by each Agency. This process resulted in divergent provisions on the use of discovery depositions.

Thus, the experiences of the OCC, the Board of Governors and the OTS resulted in a finding that discovery depositions served a useful purpose by promoting fact finding and encouraging settlements. Because of the increasing complexity of enforcement actions, where there were typically multiple counts and multiple parties and where several types of enforcement actions were combined into one, it was found that discovery depositions could be useful in aiding both respondents and the regulator in resolving cases expeditiously. Discovery depositions for the OCC, Board of Governors and the OTS, however, are limited to witnesses that have factual, direct and personal knowledge of the matters at issue and expert witnesses. The FDIC and the NCUA determined that the interests of respondents in further pretrial disclosure in their respective proceedings were mitigated by the availability of extensive document discovery that complements the document intensive nature of their proceedings.

(d) A commenter suggested that the definition of "decisional employee" in proposed rule § 308.3(3) be expanded to preclude from service in a decisional capacity any employee of the Agencies who had served within the previous twelve months on the enforcement staff of any of the Agencies. The commenter stated that this expansion would protect against bias or conflict of interest.

This suggested amendment is not adopted because the final rules incorporate the formulation of the Administrative Procedure Act. The APA forbids an employee from acting in a decisional capacity in a specific case where the employee has acted in an investigative or prosecutorial function in that same case or in a factually related case. 5 U.S.C. 554(d). Accordingly, Congress already has drawn the line defining conflicts of interest in this context, and the Agencies find no basis for modification.

(e) A recommendation was made that § 308.18(b) should be modified to require that an agency set forth in a notice not only those facts showing that an agency is entitled to relief of some kind but also those facts required for the particular relief requested.

With respect to the comment concerning the amount of particularity with which a notice should be pleaded, the Agencies believe that § 308.18(b) meets those standards for notice pleading set forth in Rule 8 of the Federal Rules of Civil Procedure. The Agencies have determined that this is sufficient pleading for administrative proceedings. See *First National Monetary Corporation* v. *Weinberger*, 819 F.2d 1334, 1339 (6th Cir. 1987); *Boise Cascade Corporation* v. *Federal Trade Commission*, 498 F.Supp. 772, 780 (D.Del.1980).

(f) One commenter suggested that the proposed rules regarding severance of proceedings are unduly stringent in light of the severity of sanctions at stake. The commenter argued that any inconsistency or conflict in the positions of respondents should warrant severance without the necessity of weighing any countervailing interests. The commenter further argued that concerns regarding administrative economy are not entitled to weight in light of the small number of cases that have been adjudicated by the Agencies in the past.

This suggestion was not adopted. A similar weighing test for severance is applied by federal courts in criminal cases, *see, e.g., Roach* v. *National Transportation Safety Board*, 804 F 2d 1147, 1151 (10th Cir. 1986), *cert. denied*, 486 U.S. 1006 (1988), demonstrating that the weighing test appropriately may be applied in cases involving substantial sanctions and penalties. In addition, the general interest in economy and efficiency in resolving an administrative adjudication exists independently of the total volume of adjudications at any particular time.

(g) Uniform Rules § 308.24(c) provides that privileged documents are not discoverable. One commenter objected to the right of Enforcement Counsel to assert the deliberative process privilege on the grounds that, in some instances, it is subject to abuse by Enforcement Counsel seeking to prevent disclosure of relevant and probative material. The

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commenter suggested, instead, that all material for which the deliberative process privilege is claimed should be produced pursuant to a protective order barring public disclosure, and that Uniform Rule 308.24 should provide for in camera inspection of disputed privileged material by the administrative law judge.

The Agencies have concluded that Enforcement Counsel should retain the right to assert the deliberative process privilege at the outset. Ample means to challenge an improper assertion of privilege already are available to respondents without § 308.24. Section 308.25(e) provides that all documents withheld from production on grounds of privilege must be reasonably identified and must be accompanied by a statement of the basis for the assertion of privilege. In the event that a respondent believes that grounds exist to challenge Enforcement Counsel's assertion of the deliberative process privilege, respondent would be able to utilize the identifying information and statement to challenge the assertion of the privilege before the administrative law judge. Confronted with such a challenge, an administrative law judge would need no further specific authority by rule to inquire of Enforcement Counsel as to the basis of the assertion of the privilege, to conduct an inspection of the assertedly privileged material in camera, and to then rule whether the privilege can be maintained.

(h) One commenter suggested that the determination to seal a document pursuant to § 308.33(b) should be subject to review by an administrative law judge under an abuse of discretion standard. It also was proposed that a respondent should be able to request that certain information such as confidential personal information be filed under seal.

The Uniform Rules accommodate the latter concern of the commenter by permitting a respondent to file a motion to seal a document containing confidential personal information. However, the statutory language of 12 U.S.C. 1818(u)(6) vests the Agencies with exclusive authority to seal all or a part of a document if disclosure would be contrary to the public interest. Thus, the Agencies disagree with the commenter that this determination should be subject to review by the administrative law judge.

(i) One commenter suggested the deletion of § 308.36(c)(2), which provides that any document prepared by a Federal financial institutions regulatory agency or by a state regulatory agency is admissible with or without a sponsoring witness. The commenter argued that the provision violates normal evidentiary standards and raises due process concerns.

The Agencies disagree with the commenter. The first sentence of § 308.36(c)(2) cross-references § 308.36(a), which makes agency prepared documents subject to the same evidentiary standards as those that are applicable to non-agency prepared documents. Moreover, the same types of agency prepared documents tend to be introduced into evidence in every case. These documents, such as examination reports, rarely give rise to authentication issues, and the Agencies feel that requiring a sponsoring witness for such documents needlessly consumes judicial resources and impedes the hearing process.

(j) One commenter stated that, under § 308.39(b)(2), a party should be able to raise a new legal argument in the exceptions filed to the administrative law judge's recommended decision and that the Agency Head should not be precluded from considering such an argument.

The Agencies agree with the commenter that the Agency Head should have the discretion to determine whether a new argument that is raised for the first time in the exceptions should be considered, even if the party had a prior opportunity to make the argument. For example, the Agency Head should have the discretion to consider whether a new argument has important legal and policy implications which warrant its consideration. Accordingly, the language of § 308.39(b)(2) is amended to read that "No exception *need* be considered * * *." (Emphasis added.)

The Agencies do not agree with the commenter that the Agency Head should, in effect, be required to consider new arguments raised for the first time in the exceptions. Such a provision could encourage careless or even deceptive pleading. Generally, a party should be permitted to submit a new argument only if there was no previous opportunity to present the argument, *e.g.*, a relevant court decision has been issued in the interim since the filing of the recommended decision.

2. Local Rules

(a) One commenter objected to the FDIC's having informal hearings in three types of proceedings—change-in-control applications filed pursuant to 12 U.S.C. 1817(j), section 32 notifications filed pursuant to 12 U.S.C. 1831i, and section 19 applications filed pursuant to 12 U.S.C. 1829—and also objected to the allocation of the burden of proof to the applicants.

Proceedings such as these involve various types of applications. [With respect to change-in-control applications it should be noted that the commenter was not correct in referring to the hearing provided in this type of action as informal. Hearings in change-in-control proceedings are formal APA hearings. See 12 U.S.C. 1817(j)(4).] Section 556(d) of the APA (5 U.S.C. 556(d)), states "Except as otherwise provided by statute, the proponent of the rule or order has the burden of proof." Courts have interpreted this section as imposing the burden of proof in licensing or applications cases upon the applicant. *See Savage* v. *Commodity Futures Trading Commission*, 548 F.2d 192 (7th Cir. 1977). The FDIC has adopted this position in *In the Matter of Peder D. Sletteland*, 2 P–H FDIC Enf. Dec. & Ord. ¶ 5152, at p. A–1518. Accordingly, the FDIC has determined that in these proceedings the applicant shall bear the ultimate burden of persuasion while the FDIC has the burden of going forward with a *prima facie* case.

(b) One commenter filed his comment with the FDIC after the comment period had closed. The comment raised the issue of discovery depositions and the FDIC's position on the matter. As stated above, the FDIC has experiences that differ from those of the OCC, the Board of Governors and the OTS. The FDIC's proceedings are document intensive and rely heavily upon detailed Reports of Examination which are available through document discovery. The basis of an FDIC enforcement action is thoroughly revealed during the examination process at meetings and in correspondence with an institution's board of directors. Accordingly, the FDIC concluded that the Uniform Rules accord adequate due process to respondents in the form of pretrial submissions, document discovery, the exchange of proposed trial exhibits, proposed stipulations, and witness lists, including a summary of the expected testimony of each witness.

C. Additional Modifications to the Uniform Rules and the Local Rules

In conjunction with the other Agencies, the FDIC is amending the Uniform Rules to replace generic definitional terms with terms specifically applicable to the FDIC and its operations. Thus, the FDIC is replacing the terms "Agency Head" and "Agency" with "Board of Directors" or "Board" and "FDIC", respectively, and is restricting the "scope" provisions of § 308.01 to those statutes subject to FDIC jurisdiction. Further conforming

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changes have been made to the definitions of Local Rules, Uniform Rules, and Office of Financial Institution Adjudication ("OFIA"). Thus, the FDIC has moved the definitional provisions set forth in § 308.100 of the Local Rules to § 308.03, the definition section of the Uniform Rules. The other Agencies have made similar changes. The purpose of these changes is to make the Uniform Rules easier to understand and use. These changes do not affect the substance of the Uniform Rules.

The FDIC is making various other technical and conforming changes to the Uniform and Local Rules to improve the clarity and consistency of the rules, as well as to make amendments to conform to the recent decision handed down by the United States Court of Appeals for the Fifth Circuit, *Amberg* v. *FDIC,* 934 F.2d 681 (5th Cir. 1991). Thus, to ensure consistency of administration, those sections which provide for a waiver of a hearing if an applicant fails to file an answer or request a hearing have been amended to provide the same procedures as in § 308.19(c) of the Uniform Rules. The FDIC believes that these changes adequately address those issues raised in *Amberg.*

III. Rationale for Expedited Publication

The Board of Directors is adopting this regulation effective upon publication in the **Federal Register**, without the usual 30-day delay of effectiveness provided for in the APA, 5 U.S.C. 553. While the APA requires publication of a substantive regulation not less than 30 days before its effective date, the delayed effective date requirement may be waived for "good cause."

Good cause for the waiver of the 30-day requirement may be found if the delayed effective date is "impracticable, unnecessary, or contrary to the public interest," 5 U.S.C. 553(b)(B). See *Central Lincoln Peoples' Utility Dist.* v. *Johnson,* 735 F.2d 1101, 1117 (9th Cir. 1984). The necessity for compliance with a statutorily prescribed time limit can also contribute to a finding of good cause. See *Philadelphia Citizens in Action* v. *Schweiker,* 669 F.2d 877, 881–886 (3rd Cir. 1982). In the present case, the implementation of a delayed effective date would impair the ability of the Agencies to comply with the statutory mandate in section 916 of FIRREA and would be impracticable and contrary to the public interest.

Section 916 of FIRREA contains a dual mandate from Congress to the five Agencies to (1) establish their own pool of administrative law judges and (2) develop Uniform Rules and procedures for administrative hearings "[b]efore the close of the 24-month period beginning on the date of the enactment of this Act [August 9, 1989]." In order to properly address these two requirements, the Uniform Rules and the administrative law judge pool should be implemented in a coordinated and harmonious fashion. If the pool is established prior to the rules, the administrative law judges may be required to adjudicate some cases under prior regulations before the Uniform Rules are effective. The result would be confusion for parties and a lack of uniformity in adjudication directly contrary to the purpose of section 916. It would, therefore, be impracticable and contrary to the public interest to delay the effective date for implementation of the Uniform Rules.

IV. Applicability of Revised Rules to Enforcement Proceedings

Part 308, as revised by this final rule, applies to any proceeding that is commenced by the issuance of a notice on or after August 9, 1991. The former version of Part 308 applies to any proceeding commenced prior to August 9, 1991 unless, with the consent of the administrative law judge or the Board of Directors, the parties agree to have the proceeding governed by revised part 308.

V. Section-by-Section Summary and Discussion

Subpart A—Uniform Rules of Practice and Procedure

This subpart sets forth rules of practice and procedure governing formal administrative actions, including rules on commencing enforcement proceedings, filing and service of papers, motions, discovery, depositions, prehearing conferences, public hearings, hearing subpoenas, conflict of interest, ex parte communication, rules of evidence, and post-hearing procedures.

Subpart B—General Rules of Procedure

As stated above, in amending the Uniform Rules to replace generic definitional terms with terms specifically applicable to the FDIC and its operations, the FDIC has deleted § 308.100 which contained definitions and moved the definitions to § 308.03 of the Uniform Rules.

Section 308.101, "Scope of Local Rules," makes clear that the rules contained in subpart A, "Uniform Rules", and subpart B, "General Rules of Procedure", of part 308 do not apply to subparts D through P of part 308 unless specifically provided. Subpart C, "Rules of Practice Before the FDIC and Standards of Conduct" shall apply to any proceeding initiated by the FDIC under part 308.

Section 308.102, "Authority of Board of Directors and Executive Secretary", makes explicit that the Board may perform, direct the performance of, or waive the performance of any act which could be done or ordered by the Executive Secretary. This is in addition to the power to do such with regard to any act that could be performed by the administrative law judge. The rule provides that the Executive Secretary shall have the ability to act in place of the administrative law judge but may not hear a case on the merits or make a recommended decision.

Section 308.103, "Appointment of administrative law judge", contains the procedures by which the appointment of an administrative law judge will be accomplished. It provides that all hearings within the scope of part 308 shall be held before an administrative law judge of OFIA unless the Board directs otherwise, or unless the Local Rules specifically provide to the contrary. The Executive Secretary shall immediately upon the issuance of a Notice, refer a proceeding to OFIA for the appointment of the administrative law judge. OFIA shall then advise the parties when a judge has been appointed. This differs from current practice insofar as an administrative law judge is not now appointed until after a respondent requests a hearing or files an answer. It also reflects the establishment of OFIA as the appointing body rather than the Executive Secretary.

Sections 308.104 and 308.105 address housekeeping matters concerning maintenance of the record and the filing of papers. Section 308.104, "Filing with the Board of Directors", makes clear that any papers required to be filed with the Board should be filed with the Executive Secretary at the stated address. Such filings include the record in the case which is to be filed with the Executive Secretary following the issuance of a recommended decision; the recommended decision filed by the administrative law judge after a motion for summary disposition; referrals by the administrative law judge to the Board for interlocutory review; motions filed by the parties after the record has been certified to the Board; exceptions and requests for oral argument; and any other papers required to be filed with the Board under part 308. This reflects the approach stated in § 308.105, that the Executive Secretary will be the official custodian of the record in a case, except when the administrative law judge has jurisdiction over the case.

Section 308.105, "Custodian of the record", makes clear that the Executive Secretary is the official custodian of the record at all times during which the administrative law judge does not have jurisdiction in the case.

Section 308.106, "Written testimony in lieu of oral hearing", preserves current practice at the FDIC, which authorizes hearings in which most, or all, of the direct testimony is presented in written form. Absent objection by a party, the administrative law judge may order that the parties present their cases in chief and rebuttal in the form of exhibits and written statements sworn to by the witness offering the evidence. Any such order shall also allow any party to call adverse witnesses or parties to testify orally, and shall provide for a right to cross examination. Written testimony on direct, exhibits, and rebuttal are to be simultaneously submitted by the parties. The failure of any party to submit written testimony pursuant to such an order is deemed to be a waiver of that party's right to present evidence, except the testimony of a previously identified hostile witness or adverse party. A party's failure to present rebuttal evidence in written form, if not so specifically ordered, is not waived by that party's failure to file written testimony. Late filings may be allowed and accepted only for good cause shown.

Section 308.107, "Document discovery", provides that unless expressly provided in specific subparts, discovery may be had only through the production of documents, and no other form of discovery shall be allowed. Questioning of persons providing documents pursuant to a subpoena shall be limited to the identification of such documents and a reasonable examination as to whether such person conducted an adequate search for and produced all subpoenaed documents. This is the current practice of the FDIC.

Subpart C—Rules of Practice Before the FDIC and Standards of Conduct

Section 308.108, "Sanctions," is included in revised subpart C to make clear that administrative law judges and the Board of Directors have authority to effectively deal with the significant problem of parties and their counsel failing to comply with the requirements of part 308 and/or with orders. Under § 308.108(a), sanctions may be imposed when any counsel or party has acted in a manner contrary to any applicable statute, regulation, or order, and the party's or counsel's conduct is contemptuous or has materially injured or prejudiced some other party.

Sanctions imposed in accordance with § 308.108(b) may include one or more of the following: (1) Issuing an order against the party; (2) striking any testimony, rejecting any documentary evidence offered, or striking papers filed by the party; (3) precluding the party from contesting specific issues; (4) precluding the party from challenging certain evidence offered by another party; (5) refusing a late filing or conditioning acceptance of a late filing on any terms that are just; and (6) assessing reasonable expenses, including attorney's fees, incurred by the other party as a result of the offending party's improper action or inaction.

Under § 308.108(c), dismissal of an action as a sanction for the failure to hold a hearing within the time period specified in part 308 or based upon the failure of an administrative law judge to render a recommended decision within the time period specified in part 308 may only be granted if the delay is solely the result of the conduct of the FDIC enforcement counsel, that conduct is unexcused, the moving respondent took all reasonable steps to oppose and prevent the delay, the respondent has been materially prejudiced or injured, and no lesser or different sanction is adequate.

Paragraph (d) of § 308.108 sets out the general procedure for the imposition of sanctions. The administrative law judge may impose sanctions on his or her own motion or at the request of any party. Prior to their imposition, all sanctions, except the refusal to accept late papers, require notice to the parties and opportunity for counsel or the party against whom sanctions would be imposed to be heard. The form that the opportunity to be heard shall take is largely left to the discretion of the administrative law judge. For example, the opportunity to be heard may be limited to an oral response immediately after the violative action or inaction is noted by the administrative law judge. Requests for, and the imposition of, sanctions are to be treated for interlocutory review purposes in the same manner as any other ruling by the administrative law judge, i.e., in accordance with § 308.28 of the Uniform Rules.

Section 308.109, "Suspension and disbarment," authorizes summary suspension from practice in a particular FDIC matter based upon contemptuous conduct in that matter. Section 308.109 of the proposed regulations provides for mandatory and automatic suspension and disbarment of attorneys under certain circumstances and gives the Board of Directors discretion to suspend and disbar under other circumstances.

Under § 308.109(a), the Board of Directors has the power to suspend or revoke an attorney's privilege of practicing before the FDIC based not only on a finding by the Board of Directors that the attorney engaged in contemptuous conduct before the agency, but also upon a finding that the attorney does not possess the requisite qualifications to represent others, is seriously lacking in integrity or has engaged in material unethical or improper professional conduct, or has engaged in or aided another in engaging in a material and knowing violation of the Federal Deposit Insurance Act ("FDIA"). The Board may suspend or revoke the privilege to practice before the FDIC on these grounds only after notice of and opportunity for a hearing.

Once suspended or disbarred from practice before the FDIC by the Board pursuant to § 308.109(a), a counsel may not make an application for reinstatement for at least one year, and thereafter, may make a new request for reinstatement no sooner than one year after the counsel's most recent reinstatement application. A counsel may be reinstated by the Board for good cause shown.

Under § 308.109(b) a party's counsel is automatically suspended or disbarred if he or she is suspended or disbarred by any court of the United States or by the OCC, the Board of Governors, the OTS, the Securities and Exchange Commission, or the Commodity Futures Trading Commission. A person who has within the past ten years been convicted of a felony, or of a misdemeanor involving moral turpitude, is also automatically suspended from practicing before the FDIC.

Reinstatement after a suspension or disbarment under § 308.109(b) may be made by the Executive Secretary if all grounds for suspension are subsequently removed by a reversal of the conviction or termination of the underlying suspension or disbarment. An application for reinstatement under § 308.109(b) on any other grounds may be filed at any time not less than one year after the applicant's most recent application. Until the Board has reinstated the applicant for good cause shown, the suspension shall continue.

An applicant for reinstatement under either the discretionary or mandatory suspension and disbarment provisions may, in the Board's sole discretion, be afforded a hearing. Hearings conducted

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Under § 308.109(b) a party's counsel is automatically suspended or disbarred if he or she is suspended or disbarred by any court of the United States or by the OCC, the Board of Governors, the OTS, the Securities and Exchange Commission, or the Commodity Futures Trading Commission. A person who has within the past ten years been convicted of a felony, or of a misdemeanor involving moral turpitude, is also automatically suspended from practicing before the FDIC.

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An applicant for reinstatement under either the discretionary or mandatory suspension and disbarment provisions may, in the Board's sole discretion, be afforded a hearing. Hearings conducted

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pursuant to this section shall be handled in the same manner as other hearings under this subpart C, except that in proceedings to terminate an existing FDIC suspension or disbarment order, the person seeking the termination shall bear the burden of going forward with the application and with proof, and provided that the Board of Directors may limit any such hearings to written submissions.

Finally, § 308.109(d) of the proposed regulations provides that any counsel found in contempt by the administrative law judge may be summarily suspended from participation in that proceeding.

Preamble to Subparts D–P

Subparts D–P contain rules and procedures that govern specific types of formal and informal proceedings conducted by the FDIC. Generally, revisions made to these subparts are either clarifying in nature, were made to bring the rules into compliance with the statutory provisions of FIRREA or the Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990 ("Crime Bill"), Public Law 101–647, 104 Stat. 4789 (1990), or were made to conform the subparts to, or avoid overlaps with, the Uniform Rules.

Subpart D—Rules and Procedures Applicable to Proceedings Relating to Disapproval of Acquisition of Control

Subpart D governs proceedings in connection with the disapproval of a proposed acquisition of control of an insured nonmember bank. Various changes to subpart D were made to make this subpart consistent with the Uniform Rules. A new section, § 308.114, was added to this subpart on procedures relating to disapproval of acquisition of control. That section provides that the person proposing to acquire control of an insured depository institution shall bear the ultimate burden of persuasion and that the FDIC has the burden of going forward with a *prima facie* case. This accords with section 556(d) of the APA (5 U.S.C. 556(d)), which states "Except as otherwise provided by statute, the proponent of the rule or order has the burden of proof." Courts have interpreted this section as imposing the burden of proof in licensing or applications cases upon the applicant. *See Savage* v. *Commodities Futures Trading Commission,* 548 F.2d 192 (7th Cir. 1977). The FDIC has adopted this position in *In the Matter of Peder D. Sletteland,* 2 P–H FDIC Enf. Dec. & Ord. ¶ 5152, at p. A–1518.

Subpart E—Rules and Procedures Applicable to Proceedings Relating to Assessments of Civil Penalties for Willful Violations of the Change in Bank Control Act

Subpart E governs proceedings relating to assessments of civil penalties for willful violations of the Change in Bank Control Act. This subpart has been revised in order to comply with the changes to these provisions made by FIRREA and to make this subpart consistent with the Uniform Rules.

Subpart F—Rules and Procedures Applicable to Proceedings for Involuntary Termination of Insured Status

Subpart F governs proceedings for the involuntary termination of insured status. This type of action is to be conducted according to the Uniform Rules. Similar to the preceding subparts, this subpart has been changed to make the provisions conform with the changes to the FDIA made by FIRREA. This includes changing the time frames to correspond with those of FIRREA, substituting the term, "insured depository institution," for that of "insured bank" and describing the notification to primary regulator and the notice of intent to terminate insured status.

Subpart G—Rules and Procedures Applicable to Proceedings Relating to Cease-and-Desist Orders

Subpart G governs proceedings relating to cease-and-desist orders. The changes in subpart G were made for purposes of clarity and to make changes to the provisions as mandated by the amendments to the FDIA made by FIRREA.

Subpart H—Rules and Procedures Applicable to Proceedings Relating to Assessment and Collection of Civil Penalties for the Violation of Cease-and-Desist Orders and of Certain Federal Statutes

Subpart H governs proceedings relating to assessment and collections of civil money penalties for the violation of cease-and-desist orders and of certain Federal statutes. Several sections of old subpart H have been deleted as being redundant with provisions of the Uniform Rules, and other provisions, including those concerning call report penalties, have been added to reflect the changes made by FIRREA.

Subpart I—Rules and Procedures for Imposition of Sanctions Upon Municipal Securities Dealers or Persons Associated With Them and Clearing Agencies or Transfer Agents

Subpart I governs procedures for the imposition of sanctions upon municipal securities dealers or persons associated with them and clearing agencies or transfer agents. There have been minor modifications made in this subpart in order to make the provisions herein consistent with the Uniform Rules.

Subpart J—Rules and Procedures Relating to Exemption Proceedings Under Section 12(h) of the Securities Exchange Act of 1934

Subpart J governs exemption proceedings under section 12(h) of the Securities Exchange Act. Like subpart I, there have been minor structural changes in order to make these provisions consistent with the Uniform Rules.

Subpart K—Procedures Applicable to Investigations Pursuant to Section 10(c) of the FDIA

Subpart K governs procedures applicable to investigations pursuant to section 10(c) of the FDIA. The provisions are designed to spell out the scope of the FDIC's authority under section 10(c) of the FDIA to conduct investigations of both open and failed insured banks, institutions making applications to become insured banks, and any other types of investigations. The provisions make specific certain of the procedures to be used during such investigations.

Section 308.144, "Scope," indicates that the FDIC's investigatory power under section 10(c) of the FDIA extends to both open and failed insured banks.

Section 308.145, "Conduct of investigation," has been modified to state that persons authorized to issue orders of investigation are set forth in part 303. The order of investigation indicates the purpose of the investigation and that the persons who authorized the investigation terminate it upon completion.

Section 308.146, "Powers of person conducting investigation," spells out the Board's authority to summarily suspend for contemptuous conduct any counsel representing a witness during the investigation. This section also has made explicit that the person conducting the investigation may obtain assistance from others both within and outside the FDIC.

Section 308.148, "Rights of witnesses," spells out that a witness is to be furnished with a copy of the order of investigation if the witness so requests.

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Subpart L—Procedures and Standards Applicable to a Notice of Change in Senior Executive Officer or Director Pursuant to Section 32 of the FDIA

Subpart L governs proceedings for the disapproval of candidates for senior executive officer and director.

Modifications in this subpart include re-designating the appeal procedures in §§ 308.153 and 308.154 and labeling them "request for review," as well as making these provisions consistent with the Uniform Rules. Under § 308.155, an applicant is given an opportunity for an oral hearing. The hearing is conceived as an informal proceeding where a presiding officer determines whether to allow the presentation of witnesses. No discovery is permitted; however, an applicant may introduce relevant and material documents on the record. Like the provisions on change-in-control proceedings in subpart D, the ultimate burden of persuasion in § 308.155(b) is imposed upon the candidate for director or senior executive officer for the same rationale, and the FDIC has the burden of going forward with its *prima facie* case.

Subpart M—Procedures and Standards Applicable to an Application Pursuant to Section 19 of the FDIA

Subpart M governs proceedings for applications under section 19 of the FDIA. This subpart has been revised in order to comply with the changes to section 19 made by FIRREA and the Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990, and to make this subpart consistent with the Uniform Rules. Section 308.158(b) of subpart M permits the filing of a section 19 application at any time more than one year after the issuance of a decision denying an application filed pursuant to section 19. Under § 308.160, an applicant is given an opportunity for an oral hearing. The hearing is conceived as an informal proceeding where a presiding officer determines whether to allow the presentation of witness. No discovery is permitted; however, an applicant may introduce relevant and material documents on the record. Like the provisions for the change-in-control proceedings and the procedures for section 32 of the FDIA, the burden of proof in § 308.160(b) has been shifted to the applicant, and the FDIC has the burden of going forward with its *prima facie* case.

Subpart N—Rules and Procedures Applicable to Proceedings Relating to Suspension, Removal, and Prohibition Where a Felony Is Charged

Subpart N governs proceedings for suspension, removal, and prohibition pursuant to section 8(g) of the FDIA where a felony is charged. The changes in subpart N were made for purposes of clarity and to make changes to the provisions as mandated by the amendments to the FDIA made by FIRREA. Consistent with other proceedings in which a presiding officer makes recommended decisions to the Board of Directors, there is no discovery in proceedings conducted under this subpart.

Subpart O—Liability of Commonly-Controlled Depository Institutions

Subpart O is a new subpart of part 308 and governs proceedings pertaining to section 5(e) of the FDIA. The procedures set forth herein reflect those that have been used by the FDIC under current part 308 since the passage of section 5(e) of the FDIA.

Section 308.165, "Scope", states that, in addition to the procedures set forth in this subpart, the procedures in subpart B shall apply to proceedings in connection with the assessment of cross guaranty liability against commonly-controlled institutions. Section 308.166, "Grounds for assessment of liability", restates the statutory requirements for the assessment of liability.

Section 308.167, "Notice of assessment of liability", sets forth the matters that must be contained in the Notice of Assessment of Liability, including the basis for the FDIC's jurisdiction; a statement of the FDIC's good faith estimate of the amount of loss that it has incurred or anticipates incurring; a statement of the method used to calculate such loss; a proposed order directing the payment by the liable institution of the amount of loss and the schedule under which the payment will be due; and, in cases in which more than one liable institution is involved, each institutions's share of the liability. Furthermore, the Notice must advise the liable institution(s) that an answer and a request for a hearing must be filed within 20 days of the service of the Notice, and that failure to timely file a request for a hearing will render the Notice of Assessment a final and unappealable order. Finally, the Notice must state that, if a hearing is requested, such hearing will be held 120 days after service of the Notice in the judicial district where the liable institution is located; or in cases involving more than one liable institution, the hearing will be held in the judicial district in which at least one of the institutions is found. Section 308.168, "Effective date of and payment under an order to pay", makes clear that the payment of the assessed amount shall be due on or before the 21st day after service of the Notice of Assessment in accordance with the terms and schedule set forth therein. Where any Order to Pay has become final and unappealable by reason of default under § 308.19(c)—which provides that failure to request a hearing within the time limits provided by this subpart shall render the Notice of Assessment final and unappealable—payment shall automatically be deemed to have become due and payable upon service of the Order to Pay, or as otherwise stated therein. All payments collected under section 5(e) of the FDIA are to be paid to the FDIC.

Subpart P—Rules and Procedures Relating to the Recovery of Attorney Fees and Other Expenses

Subpart P governs proceedings relating to the recovery of attorney fees and other expenses under the Equal Access to Justice Act, 5 U.S.C. 504. The revisions to this subpart are minor and are made to make this subpart conform to the Uniform Rules.

VI. Regulatory Flexibility Act Statement

The Board of Directors certifies pursuant to section 605(b) of the Regulatory Flexibility Act, that this uniform rule is not expected to have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

This rule implements section 916 of FIRREA which requires the Federal banking agencies and the NCUA to develop a set of uniform rules and procedures for administrative hearings. The purpose of this revised regulation is to secure a just and orderly determination of administrative proceedings. Because the Agencies already have in place rules of practice and procedure, this rule should not result in an additional burden for regulated institutions. Furthermore, the rule imposes only minor burdens on all institutions, regardless of size and should not, therefore, cause a significant economic impact upon a substantial number of small entities.

List of Subjects in 12 CFR Part 308

Administrative practice and procedure, Banks, banking, *Ex parte* communication, Hearing procedure, Penalties, State nonmember banks.

Authority and Issuance

For the reasons set forth in th
preamble, part 308 of chapter II
12 of the Code of Federal Regul
revised as set forth below:

PART 308—RULES OF PRACT PROCEDURE

Subpart A—Uniform Rules of Prac Procedure

Sec.
308.1 Scope.
308.2 Rules of construction.
308.3 Definitions.
308.4 Authority of Board of Direct
308.5 Authority of the administrat judge.
308.6 Appearance and practice in adjudicatory proceedings.
308.7 Good faith certification.
308.8 Conflicts of interest.
308.9 Ex parte communications.
308.10 Filing of papers.
308.11 Service of papers.
308.12 Construction of time limits.
308.13 Change of time limits.
308.14 Witness fees and expenses.
308.15 Opportunity for informal se
308.16 FDIC's right to conduct exa
308.17 Collateral attacks on adjud proceeding.
308.18 Commencement of proceedi contents of notice.
308.19 Answer.
308.20 Amended pleadings.
308.21 Failure to appear.
308.22 Consolidation and severanc actions.
308.23 Motions.
308.24 Scope of document discove
308.25 Request for document disco parties.
308.26 Document subpoenas to no
308.27 Deposition of witness unav hearing.
308.28 Interlocutory review.
308.29 Summary disposition.
308.30 Partial summary dispositio
308.31 Scheduling and prehearing conferences.
308.32 Prehearing submissions.
308.33 Public hearings.
308.34 Hearing subpoenas.
308.35 Conduct of hearings.
308.36 Evidence.
308.37 Proposed findings and conc
308.38 Recommended decision and record.
308.39 Exceptions to recommende decision.
308.40 Review by Board of Directo
308.41 Stays pending judicial revie

Subpart B—General Rules of Proc

308.101 Scope of Local Rules.
308.102 Authority of Board of Dire Executive Secretary.
308.103 Appointment of administra judge.
308.104 Filings with the Board of D
308.105 Custodian of the record.
308.106 Written testimony in lieu o hearing.
308.107 Document discovery.

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FDIA. The procedures
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FDIC under current
passage of section 5(e)

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on 308.166, "Grounds
liability", restates the
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List of Subjects in 12 CFR Part 308

Administrative practice and procedure, Banks, banking, *Ex parte* communication, Hearing procedure, Penalties, State nonmember banks.

Authority and Issuance

For the reasons set forth in the preamble, part 308 of chapter III of title 12 of the Code of Federal Regulations is revised as set forth below:

PART 308—RULES OF PRACTICE AND PROCEDURE

Subpart A—Uniform Rules of Practice and Procedure

Sec.
308.1 Scope.
308.2 Rules of construction.
308.3 Definitions.
308.4 Authority of Board of Directors.
308.5 Authority of the administrative law judge.
308.6 Appearance and practice in adjudicatory proceedings.
308.7 Good faith certification.
308.8 Conflicts of interest.
308.9 Ex parte communications.
308.10 Filing of papers.
308.11 Service of papers.
308.12 Construction of time limits.
308.13 Change of time limits.
308.14 Witness fees and expenses.
308.15 Opportunity for informal settlement.
308.16 FDIC's right to conduct examination.
308.17 Collateral attacks on adjudicatory proceeding.
308.18 Commencement of proceeding and contents of notice.
308.19 Answer.
308.20 Amended pleadings.
308.21 Failure to appear.
308.22 Consolidation and severance of actions.
308.23 Motions.
308.24 Scope of document discovery.
308.25 Request for document discovery from parties.
308.26 Document subpoenas to nonparties.
308.27 Deposition of witness unavailable for hearing.
308.28 Interlocutory review.
308.29 Summary disposition.
308.30 Partial summary disposition.
308.31 Scheduling and prehearing conferences.
308.32 Prehearing submissions.
308.33 Public hearings.
308.34 Hearing subpoenas.
308.35 Conduct of hearings.
308.36 Evidence.
308.37 Proposed findings and conclusions.
308.38 Recommended decision and filing of record.
308.39 Exceptions to recommended decision.
308.40 Review by Board of Directors.
308.41 Stays pending judicial review.

Subpart B—General Rules of Procedure

308.101 Scope of Local Rules.
308.102 Authority of Board of Directors and Executive Secretary.
308.103 Appointment of administrative law judge.
308.104 Filings with the Board of Directors.
308.105 Custodian of the record.
308.106 Written testimony in lieu of oral hearing.
308.107 Document discovery.

Subpart C—Rules of Practice Before the FDIC and Standards of Conduct

308.108 Sanctions.
308.109 Suspension and disbarment.

Subpart D—Rules and Procedures Applicable to Proceedings Relating to Disapproval of Acquisition of Control

308.110 Scope.
308.111 Grounds for disapproval.
308.112 Notice of disapproval.
308.113 Answer to notice of disapproval.
308.114 Burden of proof.

Subpart E—Rules and Procedures Applicable to Proceedings Relating to Assessment of Civil Penalties for Willful Violations of the Change in Bank Control Act

308.115 Scope.
308.116 Assessment of penalties.
308.117 Effective date of, and payment under, an order to pay.
308.118 Collection of penalties.

Subpart F—Rules and Procedures Applicable to Proceedings for Involuntary Termination of Insured Status

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308.120 Grounds for termination of insurance.
308.121 Notification to primary regulator.
308.122 Notice of intent to terminate.
308.123 Notice to depositors.
308.124 Involuntary termination of insured status for failure to receive deposits.
308.125 Temporary suspension of deposit insurance.
308.126 Special supervisory associations.

Subpart G—Rules and Procedures Applicable to Proceedings Relating to Cease-and-Desist Orders

308.127 Scope.
308.128 Grounds for cease-and-desist orders.
308.129 Notice to state supervisory authority.
308.130 Effective date of order and service on bank.
308.131 Temporary cease-and-desist order.

Subpart H—Rules and Procedures Applicable to Proceedings Relating to Assessment and Collection of Civil Money Penalties for Violation of Cease-and-Desist Orders and of Certain Federal Statutes, Including Call Report Penalties

308.132 Assessment of penalties.
308.133 Effective date of, and payment under, an order to pay.

Subpart I—Rules and Procedures for Imposition of Sanctions Upon Municipal Securities Dealers or Persons Associated With Them and Clearing Agencies or Transfer Agents

308.134 Scope.
308.135 Grounds for imposition of sanctions.
308.136 Notice to and consultation with the Securities and Exchange Commission.
308.137 Effective date of order imposing sanctions.

Subpart J—Rules and Procedures Relating to Exemption Proceedings Under Section 12(h) of the Securities Exchange Act of 1934

308.138 Scope.
308.139 Application for exemption.
308.140 Newspaper notice.
308.141 Notice of hearing.
308.142 Hearing.
308.143 Decision of Board of Directors.

Subpart K—Procedures Applicable to Investigations Pursuant to Section 10(c) of the FDIA

308.144 Scope.
308.145 Conduct of investigation.
308.146 Powers of person conducting investigation.
308.147 Investigations confidential.
308.148 Rights of witnesses.
308.149 Service of subpoena.
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Subpart L—Procedures and Standards Applicable to a Notice of Change in Senior Executive Officer or Director Pursuant to Section 32 of the FDIA

308.151 Scope.
308.152 Grounds for disapproval of notice.
308.153 Procedures where notice of disapproval issues pursuant to § 303.14 of this chapter.
308.154 Decision on review.
308.155 Hearing.

Subpart M—Procedures and Standards Applicable to an Application Pursuant to Section 19 of the FDIA

308.156 Scope.
308.157 Relevant considerations.
308.158 Filing papers and effective date.
308.159 Denial of applications.
308.160 Hearings.

Subpart N—Rules and Procedures Applicable to Proceedings Relating to Suspension, Removal, and Prohibition Where a Felony Is Charged

308.161 Scope.
308.162 Relevant considerations.
308.163 Notice of suspension, and orders of removal or prohibition.
308.164 Hearings.

Subpart O—Liability of Commonly Controlled Depository Institutions

308.165 Scope.
308.166 Grounds for assessment of liability.
308.167 Notice of assessment of liability.
308.168 Effective date of and payment under an order to pay.

Subpart P—Rules and Procedures Relating to the Recovery of Attorney Fees and Other Expenses

308.169 Scope.
308.170 Filing, content, and service of documents.
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308.174 Standards for awards.
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308.179 Settlement negotiations.
308.180 Further proceedings.
308.181 Recommended decision.
308.182 Board of Directors action.
308.183 Payment of awards.

Authority: 12 U.S.C. 1815(e), 1817 (a) and (j), 1818, 1820, 1828(j), 1829, 1831i; 15 U.S.C. 78l(h), 78m, 78n(a), 78n(c), 78n(d), 78n(f), 78o, 78o–4(c)(5), 78p, 78q, 78q–1, 78s; 5 U.S.C. 504; 5 U.S.C. 554–557.

Subpart A—Uniform Rules of Practice and Procedure

§ 308.1 Scope.

This subpart prescribes rules of practice and procedure applicable to adjudicatory proceedings as to which hearings on the record are provided for by the following statutory provisions:

(a) Cease-and-desist proceedings under section 8(b) of the Federal Deposit Insurance Act ("FDIA") (12 U.S.C. 1818(b));

(b) Removal and prohibition proceedings under section 8(e) of the FDIA (12 U.S.C. 1818(e));

(c) Change-in-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)) to determine whether the Federal Deposit Insurance Corporation ("FDIC"), should issue an order to approve or disapprove a person's proposed acquisition of an institution and/or institution holding company;

(d) Proceedings under section 15C(c)(2) of the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78o–5), to impose sanctions upon any government securities broker or dealer or upon any person associated or seeking to become associated with a government securities broker or dealer for which the FDIC is the appropriate regulatory agency;

(e) Assessment of civil money penalties by the FDIC against institutions, institution-affiliated parties, and certain other persons for which it is the appropriate regulatory agency for any violation of:

(1) Sections 22(h) and 23 of the Federal Reserve Act ("FRA"), or any regulation issued thereunder, and certain unsafe or unsound practices or breaches of fiduciary duty, pursuant to 12 U.S.C. 1828(j);

(2) Section 106(b) of the Bank Holding Company Act Amendments of 1970 ("BHCA Amendments of 1970"), and certain unsafe or unsound practices or breaches of fiduciary duty, pursuant to 12 U.S.C. 1972(2)(F);

(3) Any provision of the Change in Bank Control Act of 1978, as amended (the "CBCA"), or any regulation or order issued thereunder, and certain unsafe or unsound practices, or breaches of fiduciary duty, pursuant to 12 U.S.C. 1817(j)(16);

(4) Section 7(a)(1) of the FDIA, pursuant to 12 U.S.C. 1817(a)(1);

(5) Any provision of the International Lending Supervision Act of 1983 ("ILSA"), or any rule, regulation or order issued thereunder, pursuant to 12 U.S.C. 3909;

(6) Any provision of the International Banking Act of 1978 ("IBA"), or any rule, regulation or order issued thereunder, pursuant to 12 U.S.C. 3108;

(7) Certain provisions of the Exchange Act, pursuant to section 21B of the Exchange Act (15 U.S.C. 78u–2);

(8) Section 1120 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") (12 U.S.C. 3349), or any order or regulation issued thereunder; and

(9) The terms of any final or temporary order issued under section 8 of the FDIA or of any written agreement executed by the FDIC, the terms of any condition imposed in writing by the FDIC in connection with the grant of an application or request, certain unsafe or unsound practices or breaches of fiduciary duty, or any law or regulation not otherwise provided herein pursuant to 12 U.S.C. 1818(i)(2);

(f) This subpart also applies to all other adjudications required by statute to be determined on the record after opportunity for an agency hearing, unless otherwise specifically provided for in the FDIC's Local Rules.

§ 308.2 Rules of construction.

For purposes of this subpart:

(a) Any term in the singular includes the plural, and the plural includes the singular, if such use would be appropriate;

(b) Any use of a masculine, feminine, or neuter gender encompasses all three, if such use would be appropriate;

(c) The term *counsel* includes a non-attorney representative; and

(d) Unless the context requires otherwise, a party's counsel of record, if any, may, on behalf of that party, take any action required to be taken by the party.

§ 308.3 Definitions.

For purposes of this subpart, unless explicitly stated to the contrary:

(a) *Administrative law judge* means one who presides at an administrative hearing under authority set forth at 5 U.S.C. 556.

(b) *Adjudicatory proceeding* means a proceeding conducted pursuant to these rules and leading to the formulation of a final order other than a regulation.

(c) *Board of Directors* or *Board* means the Board of Directors of the Federal Deposit Insurance Corporation or its designee.

(d) *Decisional employee* means any member of the Federal Deposit Insurance Corporation's or administrative law judge's staff who has not engaged in an investigative or prosecutorial role in a proceeding and who may assist the Board of Directors or the administrative law judge, respectively, in preparing orders, recommended decisions, decisions, and other documents under the Uniform Rules.

(e) *Designee* of the Board of Directors means officers or officials of the Federal Deposit Insurance Corporation acting pursuant to authority delegated by the Board of Directors as provided in 12 CFR part 303 of this chapter or by specific resolution of the Board of Directors.

(f) *Enforcement Counsel* means any individual who files a notice of appearance as counsel on behalf of the FDIC in an adjudicatory proceeding.

(g) *Executive Secretary* means the Executive Secretary of the Federal Deposit Insurance Corporation or his or her designee.

(h) *FDIC* means the Federal Deposit Insurance Corporation.

(i) *Final order* means an order issued by the FDIC with or without the consent of the affected institution or the institution-affiliated party, that has become final, without regard to the pendency of any petition for reconsideration or review.

(j) *Institution* includes:

(1) Any bank as that term is defined in section 3(a) of the FDIA (12 U.S.C. 1813(a));

(2) Any bank holding company or any subsidiary (other than a bank) of a bank holding company as those terms are defined in the BHCA (12 U.S.C. 1841 *et seq.*);

(3) Any savings association as that term is defined in section 3(b) of the FDIA (12 U.S.C. 1813(b)), any savings and loan holding company or any subsidiary thereof (other than a bank) as those terms are defined in section 10(a) of the HOLA (12 U.S.C. 1467(a));

(4) Any organization operating under section 25 of the FRA (12 U.S.C. 601 *et seq.*);

(5) Any foreign bank or company to which section 8 of the IBA (12 U.S.C. 3106), applies or any subsidiary (other than a bank) thereof; and

(6) Any federal agency as that term is defined in section 1(b) of the IBA (12 U.S.C. 3101(5)).

(k) *Institution-affiliated party* means any institution-affiliated party as that term is defined in section 3(u) of the FDIA (12 U.S.C. 1813(u)).

(l) *Local Rules* means those rules promulgated by the FDIC in those subparts of this part other than subpart A.

(m) *Office of Financial Institution Adjudication* ("OFIA") means the executive body charged with overseeing the administration of administrative enforcement proceedings of the Office of the Comptroller of the Currency ("OCC"), the Board of Governors of the Federal Reserve Board ("FRB"), the FDIC, the Office of Thrift Supervision ("OTS") and the National Credit Union Administration ("NCUA").

(n) *Party* means the FDIC and any person named as a party in any notice.

(o) *Person* means an individual, sole proprietor, partnership, corporation, unincorporated association, trust, joint venture, pool, syndicate, agency or other entity or organization, including an institution as defined in paragraph (j) of this section.

(p) *Respondent* means any party other than the FDIC.

(q) *Uniform Rules* means those rules in subpart A of this part that pertain to the types of formal administrative enforcement actions set forth at § 308.01 and as specified in subparts B through P of this part.

(r) *Violation* includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

§ 308.4 Authority of Board of Directors.

The Board of Directors may, at any time during the pendency of a proceeding, perform, direct the performance of, or waive performance of, any act which could be done or ordered by the administrative law judge.

§ 308.5 Authority of the administrative law judge.

(a) *General rule.* All proceedings governed by this part shall be conducted in accordance with the provisions of chapter 5 of title 5 of the United States Code. The administrative law judge shall have all powers necessary to conduct a proceeding in a fair and impartial manner and to avoid unnecessary delay.

(b) *Powers.* The administrative law judge shall have all powers necessary to conduct the proceeding in accordance with paragraph (a) of this section, including the following powers:

(1) To administer oaths and affirmations;

(2) To issue subpoenas, subpoenas duces tecum, and protective orders, as authorized by this part, and to quash or modify any such subpoenas and orders;

(3) To receive relevant evidence and to rule upon the admission of evidence and offers of proof;

(4) To take or cause depositions to be taken as authorized by this subpart;

(5) To regulate the course of the hearing and the conduct of the parties and their counsel;

(6) To hold scheduling and/or pre-hearing conferences as set forth in § 308.31;

(7) To consider and rule upon all procedural and other motions appropriate in an adjudicatory proceeding, provided that only the Board of Directors shall have the power to grant any motion to dismiss the proceeding or to decide any other motion that results in a final determination of the merits of the proceeding;

(8) To prepare and present to the Board of Directors a recommended decision as provided herein;

(9) To recuse himself or herself by motion made by a party or on his or her own motion;

(10) To establish time, place and manner limitations on the attendance of the public and the media for any public hearing; and

(11) To do all other things necessary and appropriate to discharge the duties of a presiding officer.

§ 308.6 Appearance and practice in adjudicatory proceedings.

(a) *Appearance before the FDIC or an administrative law judge.* (1) *By attorneys.* Any member in good standing of the bar of the highest court of any state, commonwealth, possession, territory of the United States, or the District of Columbia may represent others before the FDIC if such attorney is not currently suspended or debarred from practice before the FDIC.

(2) *By non-attorneys.* An individual may appear on his or her own behalf; a member of a partnership may represent the partnership; a duly authorized officer, director, or employee of any government unit, agency, institution, corporation or authority may represent that unit, agency, institution, corporation or authority if such officer, director, or employee is not currently suspended or debarred from practice before the FDIC.

(3) *Notice of appearance.* Any individual acting as counsel on behalf of a party, including the FDIC, shall file a notice of appearance with the OFIA at or before the time that individual submits papers or otherwise appears on behalf of a party in the adjudicatory proceeding. Such notice of appearance shall include a written declaration that the individual is currently qualified as provided in paragraph (a)(1) or (a)(2) of this section and is authorized to represent the particular party. By filing a notice of appearance on behalf of a party in an adjudicatory proceeding, the counsel thereby agrees, and represents that he or she is authorized, to accept service on behalf of the represented party.

(b) *Sanctions.* Dilatory, obstructionist, egregious, contemptuous or contumacious conduct at any phase of any adjudicatory proceeding may be grounds for exclusion or suspension of counsel from the proceeding.

§ 308.7 Good faith certification.

(a) *General requirement.* Every filing or submission of record following the issuance of a notice shall be signed by at least one counsel of record in his or her individual name and shall state that counsel's address and telephone number. A party who acts as his or her own counsel shall sign his or her individual name and state his or her address and telephone number on every filing or submission of record.

(b) *Effect of signature.* (1) The signature of counsel or a party shall constitute a certification that: The counsel or party has read the filing or submission of record; to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the filing or submission of record is well-grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and the filing or submission of record is not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) If a filing or submission of record is not signed, the administrative law judge shall strike the filing or submission of record, unless it is signed promptly after the omission is called to the attention of the pleader or movant.

(c) *Effect of making oral motion or argument.* The act of making any oral motion or oral argument by any counsel or party constitutes a certification that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, his or her statements are well-grounded in fact and are warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and are not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

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§ 308.8 Conflicts of interest.

(a) *Conflict of interest in representation.* No person shall appear as counsel for another person in an adjudicatory proceeding if it reasonably appears that such representation may be materially limited by that counsel's responsibilities to a third person or by the counsel's own interests. The administrative law judge may take corrective measures at any stage of a proceeding to cure a conflict of interest in representation, including the issuance of an order limiting the scope of representation or disqualifying an individual from appearing in a representative capacity for the duration of the proceeding.

(b) *Certification and waiver.* If any person appearing as counsel represents two or more parties to an adjudicatory proceeding or a party and an institution to which notice of the proceeding must be given, counsel must certify in writing at the time of filing the notice of appearance required by § 308.6(a):

(1) That the counsel has personally and fully discussed the possibility of conflicts of interest with each such party or institution;

(2) That each such party or institution has advised its counsel that to its knowledge there is no existing or anticipated material conflict between its interests and the interests of others represented by the same counsel or his or her firm; and

(3) That each such party or institution waives any right it might otherwise have had to assert any known conflicts of interest or to assert any non-material conflicts of interest during the course of the proceeding.

§ 308.9 Ex parte communications.

(a) *Definition.* (1) *Ex parte communication* means any material oral or written communication concerning the merits of an adjudicatory proceeding that was neither on the record nor on reasonable prior notice to all parties that takes place between:

(i) A party, his or her counsel, or another person interested in the proceeding; and

(ii) The administrative law judge handling that proceeding, the Board of Directors, or a decisional employee.

(2) *Exception.* A request for status of the proceeding does not constitute an ex parte communication.

(b) *Prohibition of ex parte communications.* From the time the notice is issued by the FDIC until the date that the Board of Directors issues its final decision pursuant to § 308.40(c), no party, interested person or counsel therefore shall knowingly make or cause to be made an ex parte communication concerning the merits of the proceeding to any member of the Board of Directors, the administrative law judge, or a decisional employee. No member of the Board of Directors, an administrative law judge, or decisional employee shall knowingly make or cause to be made to a party, or any interested person or counsel therefor, an ex parte communication relevant to the merits of a proceeding.

(c) *Procedure upon occurrence of ex parte communication.* If an ex parte communication is received by the administrative law judge, any member of the Board of Directors or other person identified in paragraph (a) of this section, that person shall cause all such written communications (or, if the communication is oral, a memorandum stating the substance of the communication) to be placed on the record of the proceeding and served on all parties. All other parties to the proceeding shall have an opportunity, within ten days of receipt of service of the ex parte communication, to file responses thereto and to recommend any sanctions that they believe to be appropriate under the circumstances. The administrative law judge or the Board of Directors shall then determine whether any action should be taken concerning the ex parte communication in accordance with paragraph (d) of this section.

(d) *Sanctions.* Any party or his or her counsel who makes a prohibited ex parte communication, or who encourages or solicits another to make any such communication, may be subject to any appropriate sanction or sanctions imposed by the Board of Directors or the administrative law judge including, but not limited to, exclusion from the proceedings and an adverse ruling on the issue which is the subject of the prohibited communication.

§ 308.10 Filing of papers.

(a) *Filing.* Any papers required to be filed, excluding documents produced in response to a discovery request pursuant to §§ 308.25 and 308.26, shall be filed with the OFIA, except as otherwise provided.

(b) *Manner of filing.* Unless otherwise specified by the Board of Directors or the administrative law judge, filing may be accomplished by:

(1) Personal service;

(2) Delivering the papers to a reliable commercial courier service, overnight delivery service, or to the U.S. Post Office for Express Mail delivery;

(3) Mailing the papers by first class, registered, or certified mail; or

(4) Transmission by electronic media, only if expressly authorized, and upon any conditions specified, by the Board of Directors or the administrative law judge. All papers filed by electronic media shall also concurrently be filed in accordance with paragraph (c) of this section.

(c) *Formal requirements as to papers filed.*—(1) *Form.* All papers filed must set forth the name, address, and telephone number of the counsel or party making the filing and must be accompanied by a certification setting forth when and how service has been made on all other parties. All papers filed must be double-spaced and printed or typewritten on 8½×11 inch paper, and must be clear and legible.

(2) *Signature.* All papers must be dated and signed as provided in § 308.7.

(3) *Caption.* All papers filed must include at the head thereof, or on a title page, the name of the FDIC and of the filing party, the title and docket number of the proceeding, and the subject of the particular paper.

(4) *Number of copies.* Unless otherwise specified by the Board of Directors, or the administrative law judge, an original and one copy of all documents and papers shall be filed, except that only one copy of transcripts of testimony and exhibits shall be filed.

§ 308.11 Service of papers.

(a) *By the parties.* Except as otherwise provided, a party filing papers shall serve a copy upon the counsel of record for all other parties to the proceeding so represented, and upon any party not so represented.

(b) *Method of service.* Except as provided in paragraphs (c)(2) and (d) of this section, a serving party shall use one or more of the following methods of service:

(1) Personal service;

(2) Delivering the papers to a reliable commercial courier service, overnight delivery service, or to the U.S. Post Office for Express Mail delivery;

(3) Mailing the papers by first class, registered, or certified mail; or

(4) Transmission by electronic media, only if the parties mutually agree. Any papers served by electronic media shall also concurrently be served in accordance with the requirements of § 308.10(c).

(c) *By the Board of Directors.* (1) All papers required to be served by the Board of Directors or the administrative law judge upon a party who has appeared in the proceeding in accordance with § 308.6, shall be served by any means specified in paragraph (b) of this section.

(2) If a party has not appeared in the proceeding in accordance with § 308.6, the Board of Directors or the administrative law judge shall make service by any of the following methods:

(i) By personal service;

(ii) By delivery to a person of suitable age and discretion at the party's residence;

(iii) By registered or certified mail addressed to the party's last known address; or

(iv) By any other method reasonably calculated to give actual notice.

(d) *Subpoenas.* Service of a subpoena may be made by personal service, by delivery to an agent, by delivery to a person of suitable age and discretion at the subpoenaed person's residence, by registered or certified mail addressed to the person's last known address, or in such other manner as is reasonably calculated to give actual notice.

(e) *Area of service.* Service in any state, territory, possession of the United States, or the District of Columbia, on any person or company doing business in any state, territory, possession of the United States, or the District of Columbia, or on any person as otherwise provided by law, is effective without regard to the place where the hearing is held, provided that if service is made on a foreign bank in connection with an action or proceeding involving one or more of its branches or agencies located in any state, territory, possession of the United States, or the District of Columbia, service shall be made on at least one branch or agency so involved.

§ 308.12 Construction of time limits.

(a) *General rule.* In computing any period of time prescribed by this subpart, the date of the act or event from which the designated period of time begins to run is not included. The last day so computed is included unless it is a Saturday, Sunday, or Federal holiday. When the last day is a Saturday, Sunday, or Federal holiday, the period runs until the end of the next day that is not a Saturday, Sunday, or federal holiday. Intermediate Saturdays, Sundays, and Federal holidays are included in the computation of time, except that, when the time period within which an act is to be performed is ten days or less, intermediate Saturdays, Sundays, and Federal holidays are not included.

(b) *When papers are deemed to be filed or served.* (1) Filing and service are deemed to be effective:

(i) In the case of personal service or same day commercial courier delivery, upon actual service;

(ii) In the case of overnight commercial delivery service, U.S. Express Mail delivery, or first class, registered, or certified mail, upon deposit in or delivery to an appropriate point of collection;

(iii) In the case of transmission by electronic media, as specified by the authority receiving the filing, in the case of filing, and as agreed among the parties, in the case of service.

(2) The effective filing and service dates specified in paragraph (b) (1) of this section may be modified by the Board of Directors or administrative law judge in the case of filing or by agreement of the parties in the case of service.

(c) *Calculation of time for service and filing of responsive papers.* Whenever a time limit is measured by a prescribed period from the service of any notice or paper, the applicable time limits are calculated as follows:

(1) If service is made by first class, registered or certified mail, add three days to the prescribed period;

(2) If service is made by express mail or overnight delivery service, add one day to the prescribed period;

(3) If service is made by electronic media transmission, add one day to the prescribed period, unless otherwise determined by the Board of Directors or the administrative law judge in the case of filing, or by agreement among the parties in the case of service.

§ 308.13 Change of time limits.

Except as otherwise provided by law, the administrative law judge may, for good cause shown, extend the time limits prescribed by the Uniform Rules or by any notice or order issued in the proceedings. After the referral of the case to the Board of Directors pursuant to § 308.38, the Board of Directors may grant extensions of the time limits for good cause shown. Extensions may be granted at the motion of a party or of the Board of Directors after notice and opportunity to respond is afforded all non-moving parties, or on the administrative law judge's own motion.

§ 308.14 Witness fees and expenses.

Witnesses subpoenaed for testimony or depositions shall be paid the same fees for attendance and mileage as are paid in the United States district courts in proceedings in which the United States is a party, provided that, in the case of a discovery subpoena addressed to a party, no witness fees or mileage need be paid. Fees for witnesses shall be tendered in advance by the party requesting the subpoena, except that fees and mileage need not be tendered in advance where the FDIC is the party requesting the subpoena. The FDIC shall not be required to pay any fees to, or expenses of, any witness not subpoenaed by the FDIC.

§ 308.15 Opportunity for informal settlement.

Any respondent may, at any time in the proceeding, unilaterally submit to Enforcement Counsel written offers or proposals for settlement of a proceeding, without prejudice to the rights of any of the parties. No such offer or proposal shall be made to any FDIC representative other than Enforcement Counsel. Submission of a written settlement offer does not provide a basis for adjourning or otherwise delaying all or any portion of a proceeding under this part. No settlement offer or proposal, or any subsequent negotiation or resolution, is admissible as evidence in any proceeding.

§ 308.16 FDIC's right to conduct examination.

Nothing contained in this subpart limits in any manner the right of the FDIC to conduct any examination, inspection, or visitation of any institution or institution-affiliated party, or the right of the FDIC to conduct or continue any form of investigation authorized by law.

§ 308.17 Collateral attacks on adjudicatory proceeding.

If an interlocutory appeal or collateral attack is brought in any court concerning all or any part of an adjudicatory proceeding, the challenged adjudicatory proceeding shall continue without regard to the pendency of that court proceeding. No default or other failure to act as directed in the adjudicatory proceeding within the times prescribed in this subpart shall be excused based on the pendency before any court of any interlocutory appeal or collateral attack.

§ 308.18 Commencement of proceeding and contents of notice.

(a) *Commencement of proceeding.* (1) (i) Except for change-in-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)), a proceeding governed by this subpart is commenced by issuance of a notice by the FDIC.

(ii) The notice must be served by the Executive Secretary upon the respondent and given to any other appropriate financial institution supervisory authority where required by law.

(iii) The notice must be filed with the OFIA.

(2) Change-in control proceedings under section 7(j)(4) of the FDIA (12

U.S.C. 1817(j)(4)) commence with the issuance of an order by the FDIC.

(b) *Contents of notice.* The notice must set forth:

(1) The legal authority for the proceeding and for the FDIC's jurisdiction over the proceeding;

(2) A statement of the matters of fact or law showing that the FDIC is entitled to relief;

(3) A proposed order or prayer for an order granting the requested relief;

(4) The time, place, and nature of the hearing as required by law or regulation;

(5) The time within which to file an answer as required by law or regulation;

(6) The time within which to request a hearing as required by law or regulation; and

(7) That the answer and/or request for a hearing shall be filed with OFIA.

§ 308.19 Answer.

(a) *When.* Within 20 days of service of the notice, respondent shall file an answer as designated in the notice. In a civil money penalty proceeding, respondent shall also file a request for a hearing within 20 days of service of the notice.

(b) *Content of answer.* An answer must specifically respond to each paragraph or allegation of fact contained in the notice and must admit, deny, or state that the party lacks sufficient information to admit or deny each allegation of fact. A statement of lack of information has the effect of a denial. Denials must fairly meet the substance of each allegation of fact denied; general denials are not permitted. When a respondent denies part of an allegation, that part must be denied and the remainder specifically admitted. Any allegation of fact in the notice which is not denied in the answer must be deemed admitted for purposes of the proceeding. A respondent is not required to respond to the portion of a notice that constitutes the prayer for relief or proposed order. The answer must set forth affirmative defenses, if any, asserted by the respondent.

(c) *Default.*—(1) *Effect of failure to answer.* Failure of a respondent to file an answer required by this section within the time provided constitutes a waiver of his or her right to appear and contest the allegations in the notice. If no timely answer is filed, Enforcement Counsel may file a motion for entry of an order of default. Upon a finding that no good cause has been shown for the failure to file a timely answer, the administrative law judge shall file with the Board of Directors a recommended decision containing the findings and the relief sought in the notice. Any final order issued by the Board of Directors based upon a respondent's failure to answer is deemed to be an order issued upon consent.

(2) *Effect of failure to request a hearing in civil money penalty proceedings.* If respondent fails to request a hearing as required by law within the time provided, the notice of assessment constitutes a final and unappealable order.

§ 308.20 Amended pleadings.

(a) *Amendments.* The notice or answer may be amended or supplemented at any stage of the proceeding by leave of the administrative law judge. Such leave will be freely given. The respondent shall answer an amended notice within the time remaining for the respondent's answer to the original notice, or within ten days after service of the amended notice, whichever period is longer, unless the Board of Directors or administrative law judge orders otherwise for good cause shown.

(b) *Amendments to conform to the evidence.* When issues not raised in the notice or answer are tried at the hearing by express or implied consent of the parties, they will be treated in all respects as if they had been raised in the notice or answer, and no formal amendments are required. If evidence is objected to at the hearing on the ground that it is not within the issues raised by the notice or answer, the administrative law judge may allow the notice or answer to be amended. The administrative law judge will do so freely when the determination of the merits of the action is served thereby and the objecting party fails to satisfy the administrative law judge that the admission of such evidence would unfairly prejudice that party's action or defense upon the merits. The administrative law judge may grant a continuance to enable the objecting party to meet such evidence.

§ 308.21 Failure to appear.

Failure of a respondent to appear in person at the hearing or by a duly authorized counsel constitutes a waiver of respondent's right to a hearing and is deemed an admission of the facts as alleged and consent to the relief sought in the notice. Without further proceedings or notice to the respondent, the administrative law judge shall file with the Board of Directors a recommended decision containing the findings and the relief sought in the notice.

§ 308.22 Consolidation and severance of actions.

(a) *Consolidation.* (1) On the motion of any party, or on the administrative law judge's own motion, the administrative law judge may consolidate, for some or all purposes, any two or more proceedings, if each such proceeding involves or arises out of the same transaction, occurrence or series of transactions or occurrences, or involves at least one common respondent or a material common question of law or fact, unless such consolidation would cause unreasonable delay or injustice.

(2) In the event of consolidation under paragraph (a)(1) of this section, appropriate adjustment to the prehearing schedule must be made to avoid unnecessary expense, inconvenience, or delay.

(b) *Severance.* The administrative law judge may, upon the motion of any party, sever the proceeding for separate resolution of the matter as to any respondent only if the administrative law judge finds that:

(1) Undue prejudice or injustice to the moving party would result from not severing the proceeding; and

(2) Such undue prejudice or injustice would outweigh the interests of judicial economy and expedition in the complete and final resolution of the proceeding.

§ 308.23 Motions.

(a) *In writing.* (1) Except as otherwise provided herein, an application or request for an order or ruling must be made by written motion.

(2) All written motions must state with particularity the relief sought and must be accompanied by a proposed order.

(3) No oral argument may be held on written motions except as otherwise directed by the administrative law judge. Written memoranda, briefs, affidavits or other relevant material or documents may be filed in support of or in opposition to a motion.

(b) *Oral motions.* A motion may be made orally on the record unless the administrative law judge directs that such motion be reduced to writing.

(c) *Filing of motions.* Motions must be filed with the administrative law judge, except that following the filing of the recommended decision, motions must be filed with the Executive Secretary for disposition by the Board of Directors.

(d) *Responses.* (1) Except as otherwise provided herein, within ten days after service of any written motion, or within such other period of time as may be established by the administrative law judge or the Executive Secretary, any party may file a written response to a

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(3) No oral argument may be held on written motions except as otherwise directed by the administrative law judge. Written memoranda, briefs, affidavits or other relevant material or documents may be filed in support of or in opposition to a motion.

(b) *Oral motions.* A motion may be made orally on the record unless the administrative law judge directs that such motion be reduced to writing.

(c) *Filing of motions.* Motions must be filed with the administrative law judge, except that following the filing of the recommended decision, motions must be filed with the Executive Secretary for disposition by the Board of Directors.

(d) *Responses.* (1) Except as otherwise provided herein, within ten days after service of any written motion, or within such other period of time as may be established by the administrative law judge or the Executive Secretary, any party may file a written response to a motion. The administrative law judge shall not rule on any oral or written motion before each party has had an opportunity to file a response.

(2) The failure of a party to oppose a written motion or an oral motion made on the record is deemed a consent by that party to the entry of an order substantially in the form of the order accompanying the motion.

(e) *Dilatory motions.* Frivolous, dilatory or repetitive motions are prohibited. The filing of such motions may form the basis for sanctions.

(f) *Dispositive motions.* Dispositive motions are governed by §§ 308.29 and 308.30.

§ 308.24 Scope of document discovery.

(a) *Limits on discovery.* (1) Parties to proceedings under this subpart may obtain document discovery through the production of documents, including writings, drawings, graphs, charts, photographs, recordings, and other data compilations from which information can be obtained, or translated, if necessary, by the parties through detection devices into reasonably usable form.

(2) Discovery by use of deposition is governed by the § 308.107 of subpart B of this part.

(b) *Relevance.* Parties may obtain document discovery regarding any matter, not privileged, which has material relevance to the merits of the pending action. It is not a ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to discovery of admissible evidence. The request may not be unreasonable, oppressive, excessive in scope or unduly burdensome.

(c) *Privileged matter.* Privileged documents are not discoverable. Privileges include the attorney-client privilege, work-product privilege, any government's or government agency's deliberative-process privilege, and any other privileges the Constitution, any applicable act of Congress, or the principles of common law provide.

(d) *Time limits.* All discovery, including all responses to discovery requests, shall be completed at least 20 days prior to the date scheduled for the commencement of the hearing. No exceptions to this time limit shall be permitted, unless the administrative law judge finds on the record that good cause exists for waiving the requirements of this paragraph.

§ 308.25 Request for document discovery from parties.

(a) *General rule.* Any party may serve on any other party a request to produce for inspection any discoverable documents which are in the possession, custody, or control of the party upon whom the request is served. The request must identify the documents to be produced either by individual item or by category, and must describe each item and category with reasonable particularity. Documents must be produced as they are kept in the usual course of business and shall be organized to correspond with the categories in the request.

(b) *Production or copying.* The request must specify a reasonable time, place, and manner for production and performing any related acts. In lieu of inspecting the documents, the requesting party may specify that all or some of the responsive documents are to be copied and the copies delivered to the requesting party. If copying of fewer than 250 pages is requested, the party to whom the request is addressed shall bear the cost of copying and shipping charges. If more than 250 pages of copying is requested, the requesting party shall pay for copying, unless the parties agree otherwise, at the current per-page copying rate imposed by each Agency's rules implementing the Freedom of Information Act (5 U.S.C. 552a) plus the cost of shipping.

(c) *Obligation to update responses.* A party who has responded to a discovery request with a response that was complete when made is not required to supplement the response to include documents thereafter acquired, unless the responding party learns that:

(1) The response was materially incorrect when made; or

(2) The response, though correct when made, is no longer true and a failure to amend the response is, in substance, a knowing concealment.

(d) *Motions to limit discovery.* (1) Any party that objects to a discovery request may, within ten days of being served with such request, file a motion in accordance with the provisions of § 308.23 to strike or otherwise limit the request. If an objection is made to only a portion of an item or category in a request, the portion objected to shall be specified. Any objections not made in accordance with this paragraph and § 308.23 are waived.

(2) The party who served the request that is the subject of a motion to strike or limit may file a written response within five days of service of the motion. No other party may file a response.

(e) *Privilege.* At the time other documents are produced, all documents withheld on the grounds of privilege must be reasonably identified, together with a statement of the basis for the assertion of privilege.

(f) *Motions to compel production.* (1) If a party withholds any documents as privileged or fails to comply fully with a discovery request, the requesting party may, within ten days of the assertion of privilege or of the time the failure to comply becomes known to the requesting party, file a motion in accordance with the provisions of § 308.23 for the issuance of a subpoena compelling production.

(2) The party who asserted the privilege or failed to comply with the request may file a written response to a motion to compel within five days of service of the motion. No other party may file a response.

(g) *Ruling on motions.* After the time for filing responses pursuant to this section has expired, the administrative law judge shall rule promptly on all motions filed pursuant to this section. If the administrative law judge determines that a discovery request, or any of its terms, is unreasonable, unduly burdensome, excessive in scope, repetitive of previous requests or seeks to obtain privileged documents, he or she may modify the request, and may issue appropriate protective orders, upon such conditions as justice may require. The pendency of a motion to revoke or limit discovery or to compel production shall not be a basis for staying or continuing the proceeding, unless otherwise ordered by the administrative law judge.

(h) *Enforcing discovery subpoenas.* If the administrative law judge issues a subpoena compelling production of documents by a party, the subpoenaing party may, in the event of noncompliance and to the extent authorized by applicable law, apply to any appropriate United States district court for an order requiring compliance with the subpoena. A party's right to seek court enforcement of a subpoena shall not in any manner limit the sanctions that may be imposed by the administrative law judge against a party who fails to produce subpoenaed documents.

§ 308.26 Document subpoenas to nonparties.

(a) *General rules.* (1) Any party may apply to the administrative law judge for the issuance of a document discovery subpoena addressed to any person who is not a party to the proceeding. The application must contain a proposed document subpoena and a brief statement showing the general relevance and reasonableness of the scope of documents sought. The subpoenaing party shall specify a reasonable time, place, and manner for making production in response to the document subpoena.

(2) A party shall only apply for a document subpoena under this section within the time period during which such party could serve a discovery request under § 308.24(d). The party obtaining the document subpoena is responsible for serving it on the subpoenaed person and for serving copies on all parties. Document subpoenas may be served in any state, territory, or possession of the United States, the District of Columbia, or as otherwise provided by law.

(3) The administrative law judge shall promptly issue any document subpoena requested pursuant to this section. If the administrative law judge determines that the application does not set forth a valid basis for the issuance of the subpoena, or that any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may refuse to issue the subpoena or may issue it in a modified form upon such conditions as may be consistent with the Uniform Rules.

(b) *Motion to quash or modify.* (1) Any person to whom a document subpoena is directed may file a motion to quash or modify such subpoena, accompanied by a statement of the basis for quashing or modifying the subpoena. The movant shall serve the motion on all parties, and any party may respond to such motion within ten days of service of the motion.

(2) Any motion to quash or modify a document subpoena must be filed on the same basis, including the assertion of privilege, upon which a party could object to a discovery request under § 308.25(d), and during the same time limits during which such an objection could be filed.

(c) *Enforcing document subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or any order of the administrative law judge which directs compliance with all or any portion of a document subpoena, the subpoenaing party or any other aggrieved party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with so much of the document subpoena as the administrative law judge has not quashed or modified. A party's right to seek court enforcement of a document subpoena shall in no way limit the sanctions that may be imposed by the administrative law judge on a party who induces a failure to comply with subpoenas issued under this section.

§ 308.27 Deposition of witness unavailable for hearing.

(a) *General rules.* (1) If a witness will not be available for the hearing, a party desiring to preserve that witness' testimony for the record may apply in accordance with the procedures set forth in paragraph (a)(2) of this section, to the administrative law judge for the issuance of a subpoena, including a subpoena duces tecum, requiring the attendance of the witness at a deposition. The administrative law judge may issue a deposition subpoena under this section upon showing that:

(i) The witness will be unable to attend or may be prevented from attending the hearing because of age, sickness or infirmity, or will otherwise be unavailable;

(ii) The witness' unavailability was not procured or caused by the subpoenaing party;

(iii) The testimony is reasonably expected to be material; and

(iv) Taking the deposition will not result in any undue burden to any other party and will not cause undue delay of the proceeding.

(2) The application must contain a proposed deposition subpoena and a brief statement of the reasons for the issuance of the subpoena. The subpoena must name the witness whose deposition is to be taken and specify the time and place for taking the deposition. A deposition subpoena may require the witness to be deposed at any place within the country in which that witness resides or has a regular place of employment or such other convenient place as the administrative law judge shall fix.

(3) Any requested subpoena that sets forth a valid basis for its issuance must be promptly issued, unless the administrative law judge on his or her own motion, requires a written response or requires attendance at a conference concerning whether the requested subpoena should be issued.

(4) The party obtaining a deposition subpoena is responsible for serving it on the witness and for serving copies on all parties. Unless the administrative law judge orders otherwise, no deposition under this section shall be taken on fewer than ten days' notice to the witness and all parties. Deposition subpoenas may be served in any state, territory, possession of the United States, or the District of Columbia, on any person or company doing business in any state, territory, possession of the United States, or the District of Columbia, or as otherwise permitted by law.

(b) *Objections to deposition subpoenas.* (1) The witness and any party who has not had an opportunity to oppose a deposition subpoena issued under this section may file a motion with the administrative law judge to quash or modify the subpoena prior to the time for compliance specified in the subpoena, but not more than ten days after service of the subpoena.

(2) A statement of the basis for the motion to quash or modify a subpoena issued under this section must accompany the motion. The motion must be served on all parties.

(c) *Procedure upon deposition.* (1) Each witness testifying pursuant to a deposition subpoena must be duly sworn, and each party shall have the right to examine the witness. Objections to questions or documents must be in short form, stating the grounds for the objection. Failure to object to questions or documents is not deemed a waiver except where the ground for the objection might have been avoided if the objection had been timely presented. All questions, answers, and objections must be recorded.

(2) Any party may move before the administrative law judge for an order compelling the witness to answer any questions the witness has refused to answer or submit any evidence the witness has refused to submit during the deposition.

(3) The deposition must be subscribed by the witness, unless the parties and the witness, by stipulation, have waived the signing, or the witness is ill, cannot be found, or has refused to sign. If the deposition is not subscribed by the witness, the court reporter taking the deposition shall certify that the transcript is a true and complete transcript of the deposition.

(d) *Enforcing subpoenas.* If a subpoenaed person fails to comply with any order of the administrative law judge which directs compliance with all or any portion of a deposition subpoena under paragraph (b) or (c)(3) of this section, the subpoenaing party or other aggrieved party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with the portions of the subpoena that the administrative law judge has ordered enforced. A party's right to seek court enforcement of a deposition subpoena in no way limits the sanctions that may be imposed by the administrative law judge on a party who fails to comply with, or procures a

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(b) *Objections to deposition subpoenas.* (1) The witness and any party who has not had an opportunity to oppose a deposition subpoena issued under this section may file a motion with the administrative law judge to quash or modify the subpoena prior to the time for compliance specified in the subpoena, but not more than ten days after service of the subpoena.

(2) A statement of the basis for the motion to quash or modify a subpoena issued under this section must accompany the motion. The motion must be served on all parties.

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failure to comply with, a subpoena issued under this section.

§ 308.28 Interlocutory review.

(a) *General rule.* The Board of Directors may review a ruling of the administrative law judge prior to the certification of the record to the Board of Directors only in accordance with the procedures set forth in this section and § 308.23.

(b) *Scope of review.* The Board of Directors may exercise interlocutory review of a ruling of, the administrative law judge if the Board of Directors finds that:

(1) The ruling involves a controlling question of law or policy as to which substantial grounds exist for a difference of opinion;

(2) Immediate review of the ruling may materially advance the ultimate termination of the proceeding;

(3) Subsequent modification of the ruling at the conclusion of the proceeding would be an inadequate remedy; or

(4) Subsequent modification of the ruling would cause unusual delay or expense.

(c) *Procedure.* Any request for interlocutory review shall be filed by a party with the administrative law judge within ten days of his or her ruling and shall otherwise comply with § 306.23. Any party may file a response to a request for interlocutory review in accordance with § 308.23(d). Upon the expiration of the time for filing all responses, the administrative law judge shall refer the matter to the Board of Directors for final disposition.

(d) *Suspension of proceeding.* Neither a request for interlocutory review nor any disposition of such a request by the Board of Directors under this section suspends or stays the proceeding unless otherwise ordered by the administrative law judge or the Board of Directors.

§ 308.29 Summary disposition.

(a) *In general.* The administrative law judge shall recommend that the Board of Directors issue a final order granting a motion for summary disposition if the undisputed pleaded facts, admissions, affidavits, stipulations, documentary evidence, matters as to which official notice may be taken, and any other evidentiary materials properly submitted in connection with a motion for summary disposition show that:

(1) There is no genuine issue as to any material fact; and

(2) The moving party is entitled to a decision in its favor as a matter of law.

(b) *Filing of motions and responses.* (1) Any party who believes that there is no genuine issue of material fact to be determined and that he or she is entitled to a decision as a matter of law may move at any time for summary disposition in its favor of all or any part of the proceeding. Any party, within 20 days after service of such a motion, or within such time period as allowed by the administrative law judge, may file a response to such motion.

(2) A motion for summary disposition must be accompanied by a statement of the material facts as to which the moving party contends there is no genuine issue. Such motion must be supported by documentary evidence, which may take the form of admissions in pleadings, stipulations, depositions, investigatory depositions, transcripts, affidavits and any other evidentiary materials that the moving party contends support his or her position. The motion must also be accompanied by a brief containing the points and authorities in support of the contention of the moving party. Any party opposing a motion for summary disposition must file a statement setting forth those material facts as to which he or she contends a genuine dispute exists. Such opposition must be supported by evidence of the same type as that submitted with the motion for summary disposition and a brief containing the points and authorities in support of the contention that summary disposition would be inappropriate.

(c) *Hearing on motion.* At the request of any party or on his or her own motion, the administrative law judge may hear oral argument on the motion for summary disposition.

(d) *Decision on motion.* Following receipt of a motion for summary disposition and all responses thereto, the administrative law judge shall determine whether the moving party is entitled to summary disposition. If the administrative law judge determines that summary disposition is warranted, the administrative law judge shall submit a recommended decision to that effect to the Board of Directors. If the administrative law judge finds that no party is entitled to summary disposition, he or she shall make a ruling denying the motion.

§ 308.30 Partial summary disposition.

If the administrative law judge determines that a party is entitled to summary disposition as to certain claims only, he or she shall defer submitting a recommended decision as to those claims. A hearing on the remaining issues must be ordered. Those claims for which the administrative law judge has determined that summary disposition is warranted will be addressed in the recommended decision filed at the conclusion of the hearing.

§ 308.31 Scheduling and prehearing conferences.

(a) *Scheduling conference.* Within 30 days of service of the notice or order commencing a proceeding or such other time as parties may agree, the administrative law judge shall direct counsel for all parties to meet with him or her in person at a specified time and place prior to the hearing or to confer by telephone for the purpose of scheduling the course and conduct of the proceeding. This meeting or telephone conference is called a "scheduling conference." The identification of potential witnesses, the time for and manner of discovery, and the exchange of any prehearing materials including witness lists, statements of issues, stipulations, exhibits and any other materials may also be determined at the scheduling conference.

(b) *Prehearing conferences.* The administrative law judge may, in addition to the scheduling conference, on his or her own motion or at the request of any party, direct counsel for the parties to meet with him or her (in person or by telephone) at a prehearing conference to address any or all of the following:

(1) Simplification and clarification of the issues;

(2) Stipulations, admissions of fact, and the contents, authenticity and admissibility into evidence of documents;

(3) Matters of which official notice may be taken;

(4) Limitation of the number of witnesses;

(5) Summary disposition of any or all issues;

(6) Resolution of discovery issues or disputes;

(7) Amendments to pleadings; and

(8) Such other matters as may aid in the orderly disposition of the proceeding.

(c) *Transcript.* The administrative law judge, in his or her discretion, may require that a scheduling or prehearing conference be recorded by a court reporter. A transcript of the conference and any materials filed, including orders, becomes part of the record of the proceeding. A party may obtain a copy of the transcript at his or her expense.

(d) *Scheduling or prehearing orders.* At or within a reasonable time following the conclusion of the scheduling conference or any prehearing conference, the administrative law judge shall serve on each party an order setting forth any agreements reached and any procedural determinations made.

§ 308.32 Prehearing submissions.

(a) Within the time set by the administrative law judge, but in no case later than 14 days before the start of the hearing, each party shall serve on every other party, his or her:

(1) Prehearing statement;

(2) Final list of witnesses to be called to testify at the hearing, including name and address of each witness and a short summary of the expected testimony of each witness;

(3) List of the exhibits to be introduced at the hearing along with a copy of each exhibit; and

(4) Stipulations of fact, if any.

(b) Effect of failure to comply. No witness may testify and no exhibits may be introduced at the hearing if such witness or exhibit is not listed in the prehearing submissions pursuant to paragraph (a) of this section, except for good cause shown.

§ 308.33 Public hearings.

(a) *General rule.* All hearings shall be open to the public, unless the FDIC, in its discretion, determines that holding an open hearing would be contrary to the public interest. Within 20 days of service of the notice or, in the case of change-in-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817 (j)(4)), within 20 days from service of the hearing order, any respondent may file with the Executive Secretary a request for a private hearing, and any party may file a pleading in reply to such a request. Such requests and replies are governed by § 308.23. Failure to file a request or a reply is deemed a waiver of any objections regarding whether the hearing will be public or private.

(b) *Filing document under seal.* Enforcement Counsel, in his or her discretion, may file any document or part of a document under seal if disclosure of the document would be contrary to the public interest. The administrative law judge shall take all appropriate steps to preserve the confidentiality of such documents or parts thereof, including closing portions of the hearing to the public.

§ 308.34 Hearing subpoenas.

(a) *Issuance.* (1) Upon application of a party showing general relevance and reasonableness of scope of the testimony or other evidence sought, the administrative law judge may issue a subpoena or a subpoena duces tecum requiring the attendance of a witness at the hearing or the production of documentary or physical evidence at such hearing. The application for a hearing subpoena must also contain a proposed subpoena specifying the attendance of a witness or the production of evidence from any state, territory, or possession of the United States, the District of Columbia or as otherwise provided by law at any designated place where the hearing is being conducted.

(2) A party may apply for a hearing subpoena at any time before the commencement of a hearing. During a hearing, such applications may be made orally on the record before the administrative law judge. The party making the application shall serve a copy of the application and the proposed subpoena on every other party to the proceeding.

(3) The administrative law judge shall promptly issue any hearing subpoena requested pursuant to this section. If the administrative law judge determines that the application does not set forth a valid basis for the issuance of the subpoena, or that any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may refuse to issue the subpoena or may issue it in a modified form upon any conditions consistent with this subpart.

(b) *Motion to quash or modify.* (1) Any person to whom a hearing subpoena is directed may file a motion to quash or modify such subpoena, accompanied by a statement of the basis for quashing or modifying the subpoena. The movant shall serve the motion on all parties, and any party may respond to such motion within ten days of service of the motion.

(2) Any motion to quash or modify a hearing subpoena must be filed prior to the time specified in the subpoena for compliance, but not more than ten days after the date of service of the subpoena upon the movant.

(c) *Enforcing subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or any order of the administrative law judge which directs compliance with all or any portion of a document subpoena, the subpoenaing party or any other aggrieved party may seek enforcement of the subpoena pursuant to § 308.26(c).

§ 308.35 Conduct of hearings.

(a) *General rules.* (1) Hearings shall be conducted so as to provide a fair and expeditious presentation of the relevant disputed issues. Each party has the right to present its case or defense by oral and documentary evidence and to conduct such cross examination as may be required for full disclosure of the facts.

(2) Order of hearing. Enforcement Counsel shall present its case-in-chief first, unless otherwise ordered by the administrative law judge, or unless otherwise expressly specified by law or regulation. Enforcement Counsel shall be the first party to present an opening statement and a closing statement, and may make a rebuttal statement after the respondent's closing statement. If there are multiple respondents, respondents may agree among themselves as to their order of presentation of their cases, but if they do not agree the administrative law judge shall fix the order.

(3) Stipulations. Unless the administrative law judge directs otherwise, all stipulations of fact and law previously agreed upon by the parties, and all documents, the admissibility of which have been previously stipulated, will be admitted into evidence upon commencement of the hearing.

(b) *Transcript.* The hearing must be recorded and transcribed. The transcript shall be made available to any party upon payment of the cost thereof. The administrative law judge shall have authority to order the record corrected, either upon motion to correct, upon stipulation of the parties, or following notice to the parties upon the administrative law judge's own motion. The administrative law judge shall serve notice upon all parties that the certified transcript, together with all hearing exhibits and exhibits introduced but not admitted into evidence at the hearing, has been filed.

§ 308.36 Evidence.

(a) *Admissibility.* (1) Except as is otherwise set forth in this section, relevant, material, and reliable evidence that is not unduly repetitive is admissible to the fullest extent authorized by the Administrative Procedure Act and other applicable law.

(2) Evidence that would be admissible under the Federal Rules of Evidence is admissible in a proceeding conducted pursuant to this subpart.

(3) Evidence that would be inadmissible under the Federal Rules of Evidence may not be deemed or ruled to be inadmissible in a proceeding conducted pursuant to this subpart if such evidence is relevant, material, reliable and not unduly repetitive.

(b) *Official notice.* (1) Official notice may be taken of any material fact which may be judicially noticed by a United States district court and any material information in the official public records of any Federal or state government agency.

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(3) Stipulations. Unless the administrative law judge directs otherwise, all stipulations of fact and law previously agreed upon by the parties, and all documents, the admissibility of which have been previously stipulated, will be admitted into evidence upon commencement of the hearing.

(b) *Transcript.* The hearing must be recorded and transcribed. The transcript shall be made available to any party upon payment of the cost thereof. The administrative law judge shall have authority to order the record corrected, either upon motion to correct, upon stipulation of the parties, or following notice to the parties upon the administrative law judge's own motion. The administrative law judge shall serve notice upon all parties that the certified transcript, together with all hearing exhibits and exhibits introduced but not admitted into evidence at the hearing, has been filed.

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(b) *Official notice.* (1) Official notice may be taken of any material fact which may be judicially noticed by a United States district court and any material information in the official public records of any Federal or state government agency.

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(2) All matters officially noticed by the administrative law judge or Board of Directors shall appear on the record.

(3) If official notice is requested or taken of any material fact, the parties, upon timely request, shall be afforded an opportunity to object.

(c) *Documents.* (1) A duplicate copy of a document is admissible to the same extent as the original, unless a genuine issue is raised as to whether the copy is in some material respect not a true and legible copy of the original.

(2) Subject to the requirements of paragraph (a) of this section, any document, including a report of examination, supervisory activity, inspection or visitation, prepared by an appropriate Federal financial institution regulatory agency or state regulatory agency, is admissible either with or without a sponsoring witness.

(3) Witnesses may use existing or newly created charts, exhibits, calendars, calculations, outlines or other graphic material to summarize, illustrate, or simplify the presentation of testimony. Such materials may, subject to the administrative law judge's discretion, be used with or without being admitted into evidence.

(d) *Objections.* (1) Objections to the admissibility of evidence must be timely made and rulings on all objections must appear on the record.

(2) When an objection to a question or line of questioning propounded to a witness is sustained, the examining counsel may make a specific proffer on the record of what he or she expected to prove by the expected testimony of the witness, either by representation of counsel or by direct interrogation of the witness.

(3) The administrative law judge shall retain rejected exhibits, adequately marked for identification, for the record, and transmit such exhibits to the Board of Directors.

(4) Failure to object to admission of evidence or to any ruling constitutes a waiver of the objection.

(e) *Stipulations.* The parties may stipulate as to any relevant matters of fact or the authentication of any relevant documents. Such stipulations must be received in evidence at a hearing, and are binding on the parties with respect to the matters therein stipulated.

(f) *Depositions of unavailable witnesses.* (1) If a witness is unavailable to testify at a hearing, and that witness has testified in a deposition to which all parties in a proceeding had notice and an opportunity to participate, a party may offer as evidence all or any part of the transcript of the deposition, including deposition exhibits, if any.

(2) Such deposition transcript is admissible to the same extent that testimony would have been admissible had that person testified at the hearing, provided that if a witness refused to answer proper questions during the depositions, the administrative law judge may, on that basis, limit the admissibility of the deposition in any manner that justice requires.

(3) Only those portions of a deposition received in evidence at the hearing constitute a part of the record.

§ 308.37 Proposed findings and conclusions.

(a) *Proposed findings and conclusions and supporting briefs.* (1) Any party may file with the administrative law judge proposed findings of fact, proposed conclusions of law, and a proposed order within 30 days after the parties have received notice that the transcript has been filed with the administrative law judge, unless otherwise ordered by the administrative law judge.

(2) Proposed findings and conclusions must be supported by citation to any relevant authorities and by page references to any relevant portions of the record. A post-hearing brief may be filed in support of proposed findings and conclusions, either as part of the same document or in a separate document. Any party who fails to file timely with the administrative law judge any proposed finding or conclusion is deemed to have waived the right to raise in any subsequent filing or submission any issue not addressed in such party's proposed finding or conclusion.

(b) *Reply briefs.* Reply briefs may be filed within 15 days after the date on which the parties' proposed findings, conclusions, and order are due. Reply briefs must be strictly limited to responding to new matters, issues, or arguments raised in another party's papers. A party who has not filed proposed findings of fact and conclusions of law or a post-hearing brief may not file a reply brief.

(c) *Simultaneous filing required.* The administrative law judge shall not order the filing by any party of any brief or reply brief in advance of the other party's filing of its brief.

§ 308.38 Recommended decision and filing of record.

Within 45 days after expiration of the time allowed for filing reply briefs under § 308.37(b), the administrative law judge shall file with and certify to the Executive Secretary for decision the record of the proceeding. The record must include the administrative law judge's recommended decision, recommended findings of fact, recommended conclusions of law and proposed order; all prehearing and hearing transcripts, exhibits, and rulings; and the motions, briefs, memoranda, and other supporting papers filed in connection with the hearing. The administrative law judge shall serve upon each party the recommended decision, findings, conclusions, and proposed order.

§ 308.39 Exceptions to recommended decision.

(a) *Filing exceptions.* Within 30 days after service of the recommended decision, findings, conclusions, and proposed order under § 308.38, a party may file with the Executive Secretary written exceptions to the administrative law judge's recommended decision, findings, conclusions or proposed order, to the admission or exclusion of evidence, or to the failure of the administrative law judge to make a ruling proposed by a party. A supporting brief may be filed at the time the exceptions are filed, either as part of the same document or in a separate document.

(b) *Effect of failure to file or raise exceptions.* (1) Failure of a party to file exceptions to those matters specified in paragraph (a) of this section within the time prescribed is deemed a waiver of objection thereto.

(2) No exception need be considered by the Board of Directors if the party taking exception had an opportunity to raise the same objection, issue, or argument before the administrative law judge and failed to do so.

(c) *Contents.* (1) All exceptions and briefs in support of such exceptions must be confined to the particular matters in, or omissions from, the administrative law judge's recommendations to which that party takes exception.

(2) All exceptions and briefs in support of exceptions must set forth page or paragraph references to the specific parts of the administrative law judge's recommendations to which exception is taken, the page or paragraph references to those portions of the record relied upon to support each exception, and the legal authority relied upon to support each exception.

§ 308.40 Review by Board of Directors.

(a) *Notice of submission to Board of Directors.* When the Executive Secretary determines that the record in the proceeding is complete, the Executive Secretary shall serve notice upon the parties that the proceeding has been submitted to the Board of Directors for final decision.

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(b) *Oral argument before the Board of Directors.* Upon the initiative of the Board of Directors or on the written request of any party filed with the Executive Secretary within the time for filing exceptions, the Board of Directors may order and hear oral argument on the recommended findings, conclusions, decision, and order of the administrative law judge. A written request by a party must show good cause for oral argument and state reasons why arguments cannot be presented adequately in writing. A denial of a request for oral argument may be set forth in the Board of Directors' final decision. Oral argument before the Board of Directors must be on the record.

(c) *Final decision.* (1) Decisional employees may advise and assist the Board of Directors in the consideration and disposition of the case. The final decision of the Board of Directors will be based upon review of the entire record of the proceeding, except that the Board of Directors may limit the issues to be reviewed to those findings and conclusions to which opposing arguments or exceptions have been filed by the parties.

(2) The Board of Directors shall render a final decision within 90 days after notification of the parties that the case has been submitted for final decision, or 90 days after oral argument, whichever is later, unless the Board of Directors orders that the action or any aspect thereof be remanded to the administrative law judge for further proceedings. Copies of the final decision and order of the Board of Directors shall be served upon each party to the proceeding, upon other persons required by statute, and, if directed by the Board of Directors or required by statute, upon any appropriate state or Federal supervisory authority.

§ 308.41 Stays pending judicial review.

The commencement of proceedings for judicial review of a final decision and order of the FDIC may not, unless specifically ordered by the Board of Directors or a reviewing court, operate as a stay of any order issued by the FDIC. The Board of Directors may, in its discretion, and on such terms as it finds just, stay the effectiveness of all or any part of its order pending a final decision on a petition for review of that order.

Subpart B—General Rules of Procedure

§ 308.101 Scope of Local Rules.

(a) Subparts B and C of the Local Rules prescribe rules of practice and procedure to be followed in the administrative enforcement proceedings initiated by the FDIC as set forth in § 308.01 of the Uniform Rules.

(b) Except as otherwise specifically provided, the Uniform Rules and subpart B of the Local Rules shall not apply to subparts D through P of the Local Rules.

(c) Subpart C of the Local Rules shall apply to any administrative proceeding initiated by the FDIC.

§ 308.102 Authority of Board of Directors and Executive Secretary.

(a) *The Board of Directors.* (1) The Board of Directors may, at any time during the pendency of a proceeding, perform, direct the performance of, or waive performance of, any act which could be done or ordered by the Executive Secretary.

(2) Nothing contained in this part 308 shall be construed to limit the power of the Board of Directors granted by applicable statutes or regulations.

(b) *The Executive Secretary.* When no administrative law judge has jurisdiction over a proceeding, the Executive Secretary may act in place of, and with the same authority as, an administrative law judge, except that the Executive Secretary may not hear a case on the merits or make a recommended decision on the merits to the Board of Directors.

§ 308.103 Appointment of administrative law judge.

(a) *Appointment.* Unless otherwise directed by the Board of Directors or as otherwise provided in the Local Rules, a hearing within the scope of this part 308 shall be held before an administrative law judge of the Office of Financial Institution Adjudication ("OFIA").

(b) *Procedures.* (1) The Executive Secretary shall promptly after issuance of the notice refer the matter to the OFIA which shall secure the appointment of an administrative law judge to hear the proceeding.

(2) OFIA shall advise the parties, in writing, that an administrative law judge has been appointed.

§ 308.104 Filings with the Board of Directors.

(a) *General Rule.* All materials required to be filed with or referred to the Board of Directors in any proceedings under this part 308 shall be filed with the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

(b) *Scope.* Filings to be made with the Executive Secretary include pleadings and motions filed during the proceeding; the record filed by the administrative law judge after the issuance of a recommended decision; the recommended decision filed by the administrative law judge following a motion for summary disposition; referrals by the administrative law judge of motions for interlocutory review; motions and responses to motions filed by the parties after the record has been certified to the Board of Directors; exceptions and requests for oral argument; and any other papers required to be filed with the Board of Directors under this part 308.

§ 308.105 Custodian of the record.

The Executive Secretary is the official custodian of the record when no administrative law judge has jurisdiction over the proceeding. As the official custodian, the Executive Secretary shall maintain the official record of all papers filed in each proceeding.

§ 308.106 Written testimony in lieu of oral hearing.

(a) *General rule.* (1) At any time more than fifteen days before the hearing is to commence, on the motion of any party or on his or her own motion, the administrative law judge may order that the parties present part or all of their case-in-chief and, if ordered, their rebuttal, in the form of exhibits and written statements sworn to by the witness offering such statements as evidence, provided that if any party objects, the administrative law judge shall not require such a format if that format would violate the objecting party's right under the Administrative Procedure Act, or other applicable law, or would otherwise unfairly prejudice that party.

(2) Any such order shall provide that each party shall, upon request, have the same right of oral cross-examination (or redirect examination) as would exist had the witness testified orally rather than through a written statement. Such order shall also provide that any party has a right to call any hostile witness or adverse party to testify orally.

(b) *Scheduling of submission of written testimony.* (1) If written direct testimony and exhibits are ordered under paragraph (a) of this section, the administrative law judge shall require that it be filed within the time period for commencement of the hearing, and the hearing shall be deemed to have commenced on the day such testimony is due.

(2) Absent good cause shown, written rebuttal, if any, shall be submitted and the oral portion of the hearing begun within 30 days of the date set for filing written direct testimony.

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(2) Any such order shall provide that each party shall, upon request, have the same right of oral cross-examination (or redirect examination) as would exist had the witness testified orally rather than through a written statement. Such order shall also provide that any party has a right to call any hostile witness or adverse party to testify orally.

(b) *Scheduling of submission of written testimony.* (1) If written direct testimony and exhibits are ordered under paragraph (a) of this section, the administrative law judge shall require that it be filed within the time period for commencement of the hearing, and the hearing shall be deemed to have commenced on the day such testimony is due.

(2) Absent good cause shown, written rebuttal, if any, shall be submitted and the oral portion of the hearing begun within 30 days of the date set for filing written direct testimony.

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(3) The administrative law judge shall direct, unless good cause requires otherwise, that—

(i) All parties shall simultaneously file any exhibits and written direct testimony required under paragraph (b)(1) of this section; and

(ii) All parties shall simultaneously file any exhibits and written rebuttal required under paragraph (b)(2) of this section.

(c) *Failure to comply with order to file written testimony.* (1) The failure of any party to comply with an order to file written testimony or exhibits at the time and in the manner required under this section shall be deemed a waiver of that party's right to present any evidence, except testimony of a previously identified adverse party or hostile witness. Failure to file written testimony or exhibits is, however, not a waiver of that party's right of cross-examination or a waiver of the right to present rebuttal evidence that was not required to be submitted in written form.

(2) Late filings of papers under this section may be allowed and accepted only upon good cause shown.

§ 308.107 Document discovery.

(a) Parties to proceedings set forth at § 308.01 of the Uniform Rules and as provided in the Local Rules may obtain discovery only through the production of documents. No other form of discovery shall be allowed.

(b) Any questioning at a deposition of a person producing documents pursuant to a document subpoena shall be strictly limited to the identification of documents produced by that person and a reasonable examination to determine whether the subpoenaed person made an adequate search for, and has produced, all subpoenaed documents.

Subpart C—Rules of Practice Before the FDIC and Standards of Conduct

§ 308.108 Sanctions.

(a) *General rule.* Appropriate sanctions may be imposed when any counsel or party has acted, or failed to act, in a manner required by applicable statute, regulations, or order, and that act or failure to act:

(1) Constitutes contemptuous conduct;

(2) Has in a material way injured or prejudiced some other party in terms of substantive injury, incurring additional expenses including attorney's fees, prejudicial delay, or otherwise;

(3) Is a clear and unexcused violation of an applicable statute, regulation, or order; or

(4) Has unduly delayed the proceeding.

(b) *Sanctions.* Sanctions which may be imposed include any one or more of the following:

(1) Issuing an order against the party;

(2) Rejecting or striking any testimony or documentary evidence offered, or other papers filed, by the party;

(3) Precluding the party from contesting specific issues or findings;

(4) Precluding the party from offering certain evidence or from challenging or contesting certain evidence offered by another party;

(5) Precluding the party from making a late filing or conditioning a late filing on any terms that are just; and

(6) Assessing reasonable expenses, including attorney's fees, incurred by any other party as a result of the improper action or failure to act.

(c) *Limits on dismissal as a sanction.* No recommendation of dismissal shall be made by the administrative law judge or granted by the Board of Directors based on the failure to hold a hearing within the time period called for in this part 308, or on the failure of an administrative law judge to render a recommended decision within the time period called for in this part 308, absent a finding:

(1) That the delay resulted solely or principally from the conduct of the FDIC enforcement counsel;

(2) That the conduct of the FDIC enforcement counsel is unexcused;

(3) That the moving respondent took all reasonable steps to oppose and prevent the subject delay;

(4) That the moving respondent has been materially prejudiced or injured; and

(5) That no lesser or different sanction is adequate.

(d) *Procedure for imposition of sanctions.* (1) The administrative law judge, upon the request of any party, or on his or her own motion, may impose sanctions in accordance with this section, provided that the administrative law judge may only recommend to the Board of Directors the sanction of entering a final order determining the case on the merits.

(2) No sanction, other than refusing to accept late papers, authorized by this section shall be imposed without prior notice to all parties and an opportunity for any counsel or party against whom sanctions would be imposed to be heard. Such opportunity to be heard may be on such notice, and the response may be in such form, as the administrative law judge directs. The opportunity to be heard may be limited to an opportunity to respond orally immediately after the act or inaction covered by this section is noted by the administrative law judge.

(3) Requests for the imposition of sanctions by any party, and the imposition of sanctions, shall be treated for interlocutory review purposes in the same manner as any other ruling by the administrative law judge.

(4) *Section not exclusive* Nothing in this section shall be read as precluding the administrative law judge or the Board of Directors from taking any other action, or imposing any restriction or sanction, authorized by applicable statute or regulation.

§ 308.109 Suspension and disbarment.

(a) *Discretionary suspension and disbarment.* (1) The Board of Directors may suspend or revoke the privilege of any counsel to appear or practice before the FDIC if, after notice of and opportunity for hearing in the matter, that counsel is found by the Board of Directors:

(i) Not to possess the requisite qualifications to represent others;

(ii) To be seriously lacking in character or integrity or to have engaged in material unethical or improper professional conduct;

(iii) To have engaged in, or aided and abetted, a material and knowing violation of the FDIA; or

(iv) To have engaged in contemptuous conduct before the FDIC. Suspension or revocation on the grounds set forth in paragraphs (a)(1) (ii), (iii), and (iv) of this section shall only be ordered upon a further finding that the counsel's conduct or character was sufficiently egregious as to justify suspension or revocation.

(2) Unless otherwise ordered by the Board of Directors, an application for reinstatement by a person suspended or disbarred under paragraph (a)(1) of this section may be made in writing at any time more than three years after the effective date of the suspension or disbarment and, thereafter, at any time more than one year after the person's most recent application for reinstatement. The suspension or disbarment shall continue until the applicant has been reinstated by the Board of Directors for good cause shown or until, in the case of a suspension, the suspension period has expired. An applicant for reinstatement under this provision may, in the Board of Directors' sole discretion, be afforded a hearing.

(b) *Mandatory suspension and disbarment.* (1) Any counsel who has been and remains suspended or disbarred by a court of the United States or of any state, territory, district, commonwealth, or possession; or any person who has been and remains suspended or barred from practice before the OCC, Board of Governors, the OTS, the NCUA, the Securities and Exchange Commission, or the Commodity Futures Trading Commission; or any person who has been convicted of a felony, or of a misdemeanor involving moral turpitude, within the last ten years, shall be suspended automatically from appearing or practicing before the FDIC. A disbarment, suspension, or conviction within the meaning of this paragraph (b) shall be deemed to have occurred when the disbarring, suspending, or convicting agency or tribunal enters its judgment or order, regardless of whether an appeal is pending or could be taken, and includes a judgment or an order on a plea of nolo contendere or on consent, regardless of whether a violation is admitted in the consent.

(2) Any person appearing or practicing before the FDIC who is the subject of an order, judgment, decree, or finding of the types set forth in paragraph (b)(1) of this section shall promptly file with the Executive Secretary a copy thereof, together with any related opinion or statement of the agency or tribunal involved. Failure to file any such paper shall not impair the operation of any other provision of this section.

(3) A suspension or disbarment under paragraph (b)(1) of this section from practice before the FDIC shall continue until the applicant has been reinstated by the Board of Directors for good cause shown, provided that any person suspended or disbarred under paragraph (b)(1) of this section shall be automatically reinstated by the Executive Secretary, upon appropriate application, if all the grounds for suspension or disbarment under paragraph (b)(1) of this section are subsequently removed by a reversal of the conviction (or the passage of time since the conviction) or termination of the underlying suspension or disbarment. An application for reinstatement on any other grounds by any person suspended or disbarred under paragraph (b)(1) of this section may be filed at any time not less than one year after the applicant's most recent application. An applicant for reinstatement under this provision may, in the Board of Directors' sole discretion, be afforded a hearing.

(c) *Hearings under this section.* Hearings conducted under this section shall be conducted in substantially the same manner as other hearings under the Uniform Rules, provided that in proceedings to terminate an existing FDIC suspension or disbarment order, the person seeking the termination of the order shall bear the burden of going forward with an application and with proof, and that the Board of Directors may, in its sole discretion, direct that any proceeding to terminate an existing suspension or disbarment by the FDIC be limited to written submissions.

(d) *Summary suspension for contemptuous conduct.* A finding by the administrative law judge of contemptuous conduct during the course of any proceeding shall be grounds for summary suspension by the administrative law judge of a counsel or other representative from any further participation in that proceeding for the duration of that proceeding.

(e) *Practice defined.* Unless the Board of Directors orders otherwise, for the purposes of this section, practicing before the FDIC includes, but is not limited to, transacting any business with the FDIC as counsel or agent for any other person and the preparation of any statement, opinion, or other paper by a counsel, which statement, opinion, or paper is filed with the FDIC in any registration statement, notification, application, report, or other document, with the consent of such counsel.

Subpart D—Rules and Procedures Applicable to Proceedings Relating to Disapproval of Acquisition of Control

§ 308.110 Scope.

Except as specifically indicated in this subpart, the rules and procedures in this subpart, subpart B of the Local Rules, and the Uniform Rules shall apply to proceedings in connection with the disapproval by the Board of Directors or its designee of a proposed acquisition of control of an insured nonmember bank.

§ 308.111 Grounds for disapproval.

The following are grounds for disapproval of a proposed acquisition of control of an insured nonmember bank:

(a) The proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or attempt to monopolize the banking business in any part of the United States;

(b) The effect of the proposed acquisition of control in any section of the United States may be to substantially lessen competition or to tend to create a monopoly or would in any other manner be in restraint of trade, and the anticompetitive effects of the proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served;

(c) The financial condition of any acquiring person might jeopardize the financial stability of the bank or prejudice the interests of the depositors of the bank;

(d) The competence, experience, or integrity of any acquiring person or of any of the proposed management personnel indicates that it would not be in the interest of the depositors of the bank, or in the interest of the public, to permit such person to control the bank;

(e) Any acquiring person neglects, fails, or refuses to furnish to the FDIC all the information required by the FDIC; or

(f) The FDIC determines that the proposed acquisition would result in an adverse effect on the Bank Insurance Fund or the Savings Association Insurance Fund.

§ 308.112 Notice of disapproval.

(a) *General rule.* (1) Within three days of the decision by the Board of Directors or its designee to disapprove a proposed acquisition of control of an insured nonmember bank, a written notice of disapproval shall be mailed by first class mail to, or otherwise served upon, the party seeking acquire control.

(2) The notice of disapproval shall:

(i) Contain a statement of the basis for the disapproval; and

(ii) Indicate that a hearing may be requested by filing a written request with the Executive Secretary within ten days after service of the notice of disapproval; and if a hearing is requested, that an answer to the notice of disapproval, as required by § 308.113, must be filed within 20 days after service of the notice of disapproval.

(b) *Waiver of hearing.* Failure to request a hearing pursuant to this section shall constitute a waiver of the opportunity for a hearing and the notice of disapproval shall constitute a final and unappealable order.

(c) Section 308.18(b) of the Uniform Rules shall not apply to the content of the Notice of Disapproval.

§ 308.113 Answer to notice of disapproval.

(a) *Contents.* (1) An answer to the notice of disapproval of a proposed acquisition of control shall be filed within 20 days after service of the notice of disapproval and shall specifically deny those portions of the notice of disapproval which are disputed. Those portions of the notice of disapproval which are not specifically denied are deemed admitted by the applicant.

(2) Any hearing under this subpart shall be limited to those parts of the notice of disapproval that are specifically denied.

(b) *Failure to answer.* Failure of a respondent to file an answer required by this section within the time provided constitutes a waiver of his or her right to appear and contest the allegations in the notice of disapproval. If no timely answer is filed, Enforcement Counsel may file a motion for entry of an order of default. Upon a finding that no good cause has been shown for the failure to file a timely answer, the administrative law judge shall file a recommended decision containing the findings and relief sought in the notice. A final order issued by the Board of Directors based upon a respondent's failure to answer is deemed to be an order issued upon consent.

§ 308.114 Burden of proof.

The ultimate burden of proof shall be upon the person proposing to acquire a depository institution. The burden of going forward with a *prima facie* case shall be upon the FDIC.

Subpart E—Rules and Procedures Applicable to Proceedings Relating to Assessment of Civil Penalties for Willful Violations of the Change in Bank Control Act

§ 308.115 Scope.

The rules and procedures of this subpart, subpart B of the Local Rules and the Uniform Rules shall apply to proceedings to assess civil penalties against any person for willful violation of the Change in Bank Control Act of 1978 (12 U.S.C. 1817(j)), or any regulation or order issued pursuant thereto, in connection with the affairs of an insured nonmember bank

§ 308.116 Assessment of penalties.

(a) *In general.* The civil money penalty shall be assessed upon the service of a Notice of Assessment which shall become final and unappealable unless the respondent requests a hearing pursuant to § 308.19(c)(2).

(b) *Amount.* (1) Any person who violates any provision of the Change in Bank Control Act or any rule, regulation, or order issued by the FDIC pursuant thereto, shall forfeit and pay a civil money penalty of not more than $5,000 for each day the violation continues.

(2) Any person who violates any provision of the Change in Bank Control Act or any rule, regulation, or order issued by the FDIC pursuant thereto; or recklessly engages in any unsafe or unsound practice in conducting the affairs of a depository institution; or breaches any fiduciary duty; which violation, practice or breach is part of a pattern of misconduct; or causes or is likely to cause more than a minimal loss to such institution; or results in pecuniary gain or other benefit to such person, shall forfeit and pay a civil money penalty of not more than $25,000 for each day such violation, practice or breach continues.

(3) Any person who knowingly violates any provision of the Change in Bank Control Act or any rule, regulation, or order issued by the FDIC pursuant thereto; or engages in any unsafe or unsound practice in conducting the affairs of a depository institution; or breaches any fiduciary duty; and knowingly or recklessly causes a substantial loss to such institution or a substantial pecuniary gain or other benefit to such institution or a substantial pecuniary gain or other benefit to such person by reason of such violation, practice or breach, shall forfeit and pay a civil money penalty not to exceed:

(i) In the case of a person other than a depository institution—$1,000,000 per day for each day the violation, practice or breach continues; or

(ii) In the case of a depository institution—an amount not to exceed the lesser of $1,000,000 or one percent of the total assets of such institution for each day the violation, practice or breach continues.

(c) *Mitigating factors.* In assessing the amount of the penalty, the Board of Directors or its designee shall consider the gravity of the violation, the history of previous violations, respondent's financial resources, good faith, and any other matters as justice may require.

(d) *Failure to answer.* Failure of a respondent to file an answer required by this section within the time provided constitutes a waiver of his or her right to appear and contest the allegations in the notice of disapproval. If no timely answer is filed, Enforcement Counsel may file a motion for entry of an order of default. Upon a finding that no good cause has been shown for the failure to file a timely answer, the administrative law judge shall file a recommended decision containing the findings and relief sought in the notice. A final order issued by the Board of Directors based upon a respondent's failure to answer is deemed to be an order issued upon consent.

§ 308.117 Effective date of, and payment under, an order to pay.

If the respondent both requests a hearing and serves an answer, civil penalties assessed pursuant to this subpart are due and payable 60 days after an order to pay, issued after the hearing or upon default, is served upon the respondent, unless the order provides for a different period of payment. Civil penalties assessed pursuant to an order to pay issued upon consent are due and payable within the time specified therein.

§ 308.118 Collection of penalties.

The FDIC may collect any civil penalty assessed pursuant to this subpart by agreement with the respondent, or the FDIC may bring an action against the respondent to recover the penalty amount in the appropriate United States district court. All penalties collected under this section shall be paid over to the Treasury of the United States.

Subpart F—Rules and Procedures Applicable to Proceedings for Involuntary Termination of Insured Status

§ 308.119 Scope.

(a) *Involuntary termination of insurance pursuant to section 8(a) of the FDIA.* The rules and procedures in this subpart, subpart B of the Local Rules and the Uniform Rules shall apply to proceedings in connection with the involuntary termination of the insured status of an insured bank depository institution or an insured branch of a foreign bank pursuant to section 8(a) of the FDIA (12 U.S.C. 1818(a)), except that the Uniform Rules and subpart B of the Local Rules shall not apply to the temporary suspension of insurance pursuant to section 8(a)(8) of the FDIA (12 U.S.C. 1818(a)(8)).

(b) *Involuntary termination of insurance pursuant to section 8(p) of the Act.* The rules and procedures in § 308.124 of this subpart F shall apply to proceedings in connection with the involuntary termination of the insured status of an insured depository institution or an insured branch of a foreign bank pursuant to section 8(p) of the FDIA (12 U.S.C. 1818(p)). The Uniform Rules shall not apply to proceedings under section 8(p) of the FDIA.

§ 308.120 Grounds for termination of insurance.

(a) *General rule.* The following are grounds for involuntary termination of insurance pursuant to section 8(a) of the FDIA:

(1) An insured depository institution or its directors or trustees have engaged or are engaging in unsafe or unsound practices in conducting the business of such depository institution;

(2) An insured depository institution is in an unsafe or unsound condition such that it should not continue operations as an insured depository institution; or

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(3) An insured depository institution or its directors or trustees have violated an applicable law, rule, regulation, order, condition imposed in writing by the FDIC in connection with the granting of any application or other request by the insured depository institution or have violated any written agreement entered into between the insured depository institution and the FDIC.

(b) *Extraterritorial acts of foreign banks.* An act or practice committed outside the United States by a foreign bank or its directors or trustees which would otherwise be a ground for termination of insured status under this section shall be a ground for termination if the Board of Directors finds:

(1) The act or practice has been, is, or is likely to be a cause of, or carried on in connection with or in furtherance of, an act or practice committed within any state, territory, or possession of the United States or the District of Columbia that, in and of itself, would be an appropriate basis for action by the FDIC; or

(2) The act or practice committed outside the United States, if proven, would adversely affect the insurance risk of the FDIC.

(c) *Failure of foreign bank to secure removal of personnel.* The failure of a foreign bank to comply with any order of removal or prohibition issued by the Board of Directors or the failure of any person associated with a foreign bank to appear promptly as a party to a proceeding pursuant to section 8(e) of the FDIA (12 U.S.C. 1818(e)), shall be a ground for termination of insurance of deposits in any branch of the bank.

§ 308.121 Notification to primary regulator.

(a) *Service of notification.* (1) Upon a determination by the Board of Directors or its designee pursuant to § 308.120 of an unsafe or unsound practice or condition or of a violation, a notification shall be served upon the appropriate Federal banking agency of the insured depository institution, or the State banking supervisor if the FDIC is the appropriate Federal banking agency.

The notification shall be served not less than 30 days before the Notice of Intent to Terminate Insured Status required by section 8(a)(2)(B) of the FDIA (12 U.S.C. 1818(a)(2)(B)), and § 308.122, except that this period for notification may be reduced or eliminated with the agreement of the appropriate Federal banking agency.

(2) *Appropriate Federal banking agency* shall have the meaning given that term in section 3(q) of the FDIA (12 U.S.C. 1813(q)), and shall be the OCC in the case of a national bank, a District bank or an insured Federal branch of a foreign bank; the FDIC in the case of an insured nonmember bank, including an insured State branch of a foreign bank; the Board of Governors in the case of a state member bank; or the OTS in the case of an insured Federal or state savings association.

(3) In the case of a state nonmember bank, insured Federal branch of a foreign bank, or state member bank, in addition to service of the notification upon the appropriate Federal banking agency, a copy of the notification shall be sent to the appropriate State banking supervisor.

(4) In instances in which a Temporary Order Suspending Insurance is issued pursuant to section 8(a)(8) of the FDIA (12 U.S.C. 1818(a)(8)), the notification may be served concurrently with such order.

(b) *Contents of notification.* The notification shall contain the FDIC's determination, and the facts and circumstances upon which such determination is based, for the purpose of securing correction of such practice, condition, or violation.

§ 308.122 Notice of intent to terminate.

(a) If, after serving the notification under § 308.121, the Board of Directors determines that any unsafe or unsound practices, condition, or violation, specified in the notification, requires the termination of the insured status of the insured depository institution, the Board of Directors or its designee, if it determines to proceed further, shall cause to be served upon the insured depository institution a notice of its intention to terminate insured status not less than 30 days after service of the notification, unless a shorter time period has been agreed upon by the appropriate Federal banking agency.

(b) The Board of Directors or its designee shall cause a copy of the notice to be sent to the appropriate Federal banking agency and to the appropriate state banking supervisor, if any.

§ 308.123 Notice to depositors.

If the Board of Directors enters an order terminating the insured status of an insured depository institution or branch, the insured depository institution shall, on the day that order becomes final, or on such other day as that order prescribes, mail a notification of termination of insured status to each depositor at the depositor's last address of record on the books of the insured depository institution or branch. The insured depository institution shall also publish the notification in two issues of a local newspaper of general circulation and shall furnish the FDIC with proof of such publications. The notification to depositors shall include information provided in substantially the following form:

Notice

(Date)________.

1. The status of the ________, as an (insured depository institution) (insured branch) under the provisions of the Federal Deposit Insurance Act, will terminate as of the close of business on the ______ day of__________, 19____.

2. Any deposits made by you after that date, either new deposits or additions to existing deposits, will not be insured by the Federal Deposit Insurance Corporation.

3. Insured deposits in the (depository institution) (branch) on the ______ day of__________, 19____, will continue to be insured, as provided by Federal Deposit Insurance Act, for *2 years* after the close of business on the ______ day of __________, 19____. Provided, however, that any withdrawals after the close of business on the ______ day of __________, 19____, will reduce the insurance coverage by the amount of such withdrawals.

(Name of (depository institution or branch)

(Address)

The notification may include any additional information the depository institution deems advisable, provided that the information required by this section shall be set forth in a conspicuous manner on the first page of the notification.

§ 308.124 Involuntary termination of insured status for failure to receive deposits.

(a) *Notice to show cause.* When the Board of Directors or its designee has evidence that an insured depository institution is not engaged in the business of receiving deposits, other than trust funds, the Board of Directors or its designee shall give written notice of this evidence to the depository institution and shall direct the depository institution to show cause why its insured status should not be terminated under the provisions of section 8(p) of the FDIA (12 U.S.C. 1818(p)). The insured depository institution shall have 30 days after receipt of the notice, or such longer period as is prescribed in the notice, to submit affidavits, other written proof, and any legal arguments that it is engaged in the business of receiving deposits other than trust funds.

(b) *Notice of termination date.* If, upon consideration of the affidavits, other written proof, and legal arguments, the Board of Directors determines that the depository institution is not engaged in the business of receiving deposits, other than trust funds, the finding shall be conclusive and the Board of Directors

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Notice

(Date)__________.

1. The status of the __________, as an (insured depository institution) (insured branch) under the provisions of the Federal Deposit Insurance Act, will terminate as of the close of business on the ________ day of__________, 19____.

2. Any deposits made by you after that date, either new deposits or additions to existing deposits, will not be insured by the Federal Deposit Insurance Corporation.

3. Insured deposits in the (depository institution) (branch) on the ________ day of__________, 19____, will continue to be insured, as provided by Federal Deposit Insurance Act, for *2 years* after the close of business on the ________ day of __________, 19____ Provided, however, that any withdrawals after the close of business on the ________ day of __________, 19____, will reduce the insurance coverage by the amount of such withdrawals.

(Name of (depository institution or branch)

(Address)

The notification may include any additional information the depository institution deems advisable, provided that the information required by this section shall be set forth in a conspicuous manner on the first page of the notification.

§ 308.124 Involuntary termination of insured status for failure to receive deposits.

(a) *Notice to show cause.* When the Board of Directors or its designee has evidence that an insured depository institution is not engaged in the business of receiving deposits, other than trust funds, the Board of Directors or its designee shall give written notice of this evidence to the depository institution and shall direct the depository institution to show cause why its insured status should not be terminated under the provisions of section 8(p) of the FDIA (12 U.S.C. 1818(p)). The insured depository institution shall have 30 days after receipt of the notice, or such longer period as is prescribed in the notice, to submit affidavits, other written proof, and any legal arguments that it is engaged in the business of receiving deposits other than trust funds.

(b) *Notice of termination date.* If, upon consideration of the affidavits, other written proof, and legal arguments, the Board of Directors determines that the depository institution is not engaged in the business of receiving deposits, other than trust funds, the finding shall be conclusive and the Board of Directors

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shall notify the depository institution that its insured status will terminate at the expiration of the first full semiannual assessment period following issuance of that notification.

(c) *Notification to depositors of termination of insured status.* Within the time specified by the Board of Directors and prior to the date of termination of its insured status, the depository institution shall mail a notification of termination of insured status to each depositor at the depositor's last address of record on the books of the depository institution. The depository institution shall also publish the notification in two issues of a local newspaper of general circulation and shall furnish the FDIC with proof of such publications. The notification to depositors shall include information provided in substantially the following form:

Notice

(Date)__________.

The status of the __________, as an (insured depository institution) (insured branch) under the Federal Deposit Insurance Act, will terminate on the ________ day of__________, 19____, and its deposits will thereupon cease to be insured.

(Name of depository institution or branch)

(Address)

The notification may include any additional information the depository institution deems advisable, provided that the information required by this section shall be set forth in a conspicuous manner on the first page of the notification.

§ 308.125 Temporary suspension of deposit insurance.

(a) If, while an action is pending under section 8(a)(2) of the FDIA (12 U.S.C. 1818(a)(2)), the Board of Directors, after consultation with the appropriate Federal banking agency, finds that an insured depository institution (other than a special supervisory association to which § 308.126 of this subpart applies) has no tangible capital under the capital guidelines or regulations of the appropriate Federal banking agency, the Board of Directors may issue a Temporary Order Suspending Deposit Insurance, pending completion of the proceedings under section 8(a)(2) of the FDIA (12 U.S.C. 1818(a)(2)).

(b) The temporary order shall be served upon the insured institution and a copy sent to the appropriate Federal banking agency and to the appropriate State banking supervisor.

(c) The temporary order shall become effective ten days from the date of service upon the insured depository institution. Unless set aside, limited, or suspended in proceedings under section 8(a)(8)(D) of the FDIA (12 U.S.C. 1818 (a)(8)(D)), the temporary order shall remain effective and enforceable until an order terminating the insured status of the institution is entered by the Board of Directors and becomes final, or the Board of Directors dismisses the proceedings.

(d) Notification to depositors of suspension of insured status. Within the time specified by the Board of Directors and prior to the suspension of insured status, the depository institution shall mail a notification of suspension of insured status to each depositor at the depositor's last address of record on the books of the depository institution. The depository institution shall also publish the notification in two issues of a local newspaper of general circulation and shall furnish the FDIC with proof of such publications. The notification to depositors shall include information provided in substantially the following form:

Notice

(Date)__________.

1. The status of the __________, as an (insured depository institution) (insured branch) under the provisions of the Federal Deposit Insurance Act, will be suspended as of the close of business on the ________ day of __________, 19____, pending the completion of administrative proceedings under section 8(a) of the Federal Deposit Insurance Act.

2. Any deposits made by you after that date, either new deposits or additions to existing deposits, will not be insured by the Federal Deposit Insurance Corporation.

3. Insured deposits in the (depository institution) (branch) on the ________ day of __________, 19____, will continue to be insured for __________ after the close of business on the__________ day of __________, 19____ Provided, however, that any withdrawals after the close of business on the ________ day of__________, 19____, will reduce the insurance coverage by the amount of such withdrawals.

(Name of depository institution or branch)

(Address)

The notification may include any additional information the depository institution deems advisable, provided that the information required by this section shall be set forth in a conspicuous manner on the first page of the notification.

§ 308.126 Special supervisory associations.

If the Board of Directors finds that a savings association is a special supervisory association under the provisions of section 8(a)(8)(B) of the FDIA (12 U.S.C. 1818(a)(8)(B)) for purposes of temporary suspension of insured status, the Board of Directors shall serve upon the association its findings with regard to the determination that the capital of the association, as computed using applicable accounting standards, has suffered a material decline; that such association or its directors or officers, is engaging in an unsafe or unsound practice in conducting the business of the association; that such association is in an unsafe or unsound condition to continue operating as an insured association; or that such association or its directors or officers, has violated any law, rule, regulation, order, condition imposed in writing by any Federal banking agency, or any written agreement, or that the association failed to enter into a capital improvement plan acceptable to the Corporation prior to January, 1990.

Subpart G—Rules and Procedures Applicable to Proceedings Relating to Cease-and-Desist Orders

§ 308.127 Scope.

(a) *Cease-and-desist proceedings under section 8 of the FDIA.* The rules and procedures of this subpart, subpart B of the Local Rules and the Uniform Rules shall apply to proceedings to order an insured nonmember bank or an institution-affiliated party to cease and desist from practices and violations described in section 8(b) of the FDIA, 12 U.S.C. 1818(b); provided that the provisions of the Uniform Rules and subpart B of the Local Rules shall not apply to the issuance of temporary cease-and-desist orders pursuant to section 8(c) of the FDIA (12 U.S.C. 1818(c)).

(b) *Proceedings under the Securities Exchange Act of 1934.* (1) The rules and procedures of this subpart, subpart B of the Local Rules and the Uniform Rules shall apply to proceedings by the Board of Directors to order a municipal securities dealer to cease and desist from any violation of law or regulation specified in section 15B(c)(5) of the Securities Exchange Act, as amended (15 U.S.C. 78o–4(c)(5)) where the municipal securities dealer is an insured

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nonmember bank or a subsidiary thereof.

(2) The rules and procedures of this subpart, subpart B of the Local Rules and the Uniform Rules shall apply to proceedings by the Board of Directors to order a clearing agency or transfer agent to cease and desist from failure to comply with the applicable provisions of section 17, 17A and 19 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78q, 78q–1, 78s), and the applicable rules and regulations thereunder, where the clearing agency or transfer agent is an insured nonmember bank or a subsidiary thereof.

§ 308.128 Grounds for cease-and-desist orders.

(a) *General rule*. The Board of Directors or its designee may issue and have served upon any insured nonmember bank or an institution-affiliated party a notice, as set forth in § 308.18 of the Uniform Rules for practices and violations as described in § 308.127.

(b) *Extraterritorial acts of foreign banks*. An act, violation or practice committed outside the United States by a foreign bank or an institution-affiliated party that would otherwise be a ground for issuing a cease-and-desist order under paragraph (a) of this section or a temporary cease-and-desist order under section 308.131 of this subpart, shall be a ground for an order if the Board of Directors or its designee finds that:

(1) The act, violation or practice has been, is, or is likely to be a cause of, or carried on in connection with or in furtherance of, an act, violation or practice committed within any state, territory, or possession of the United States or the District of Columbia which act, violation or practice, in and of itself, would be an appropriate basis for action by the FDIC; or

(2) The act, violation or practice, if proven, would adversely affect the insurance risk of the FDIC.

§ 308.129 Notice to state supervisory authority.

The Board of Directors or its designee shall give the appropriate state supervisory authority notification of its intent to institute a proceeding pursuant to subpart G of this part, and the grounds thereof. Any proceedings shall be conducted according to subpart G of this part, unless, within the time period specified in such notification, the state supervisory authority has effected satisfactory corrective action. No insured institution or other party who is the subject of any notice or order issued by the FDIC under this section shall have standing to raise the requirements of this subpart as grounds for attacking the validity of any such notice or order.

§ 308.130 Effective date of order and service on bank.

(a) *Effective date*. A cease-and-desist order issued by the Board of Directors after a hearing, and a cease-and-desist order issued based upon a default, shall become effective at the expiration of 30 days after the service of the order upon the bank or its official. A cease-and-desist order issued upon consent shall become effective at the time specified therein. All cease-and-desist orders shall remain effective and enforceable, except to the extent they are stayed, modified, terminated, or set aside by the Board of Directors or its designee or by a reviewing court.

(b) *Service on banks*. In cases where the bank is not the respondent, the cease-and-desist order shall also be served upon the bank.

§ 308.131 Temporary cease-and-desist order.

(a) *Issuance*. (1) When the Board of Directors or its designee determines that the violation, or the unsafe or unsound practice, as specified in the notice, or the continuation thereof, is likely to cause insolvency or significant dissipation of assets or earnings of the bank, or is likely to weaken the condition of the bank or otherwise prejudice the interests of its depositors prior to the completion of the proceedings under section 8(b) of the FDIA (12 U.S.C. 1818(b)) and § 308.128 of this subpart, the Board of Directors or its designee may issue a temporary order requiring the bank or an institution-affiliated party to immediately cease and desist from any such violation, practice or to take affirmative action to prevent such insolvency, dissipation, condition or prejudice pending completion of the proceedings under section 8(b) of the FDIA (12 U.S.C. 1818(b)).

(2) When the Board of Directors or its designee issues a Notice of charges pursuant to 12 U.S.C. 1818(b)(1) which specifies on the basis of particular facts and circumstances that a bank's books and records are so incomplete or inaccurate that the FDIC is unable, through the normal supervisory process, to determine the financial condition of the bank or the details or purpose of any transaction or transactions that may have a material effect on the financial condition of the bank, then the Board of Directors or its designee may issue a temporary order requiring:

(i) The cessation of any activity or practice which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books or records; or

(ii) Affirmative action to restore such books or records to a complete and accurate state, until the completion of the proceedings under section 8(b) of the FDIA (12 U.S.C. 1818(b)).

(3) The temporary order shall be served upon the bank or the institution-affiliated party named therein and shall also be served upon the bank in the case where the temporary order applies only to an institution-affiliated party.

(b) *Effective date*. A temporary order shall become effective when served upon the bank or the institution-affiliated party. Unless the temporary order is set aside, limited, or suspended by a court in proceedings authorized under section 8(c)(2) of the FDIA (12 U.S.C. 1818(c)(2)), the temporary order shall remain effective and enforceable pending completion of administrative proceedings pursuant to section 8(b) of the FDIA (12 U.S.C. 1818(b)) and entry of an order which has become final, or with respect to paragraph (a)(2) of this section the FDIC determines by examination or otherwise that the bank's books and records are accurate and reflect the financial condition of the bank.

(c) *Uniform Rules do not apply*. The Uniform Rules and subpart B of the Local Rules shall not apply to the issuance of temporary orders under this section.

Subpart H—Rules and Procedures Applicable to Proceedings Relating to Assessment and Collection of Civil Money Penalties for Violation of Cease-and-Desist Orders and of Certain Federal Statutes, Including Call Report Penalties

§ 308.132 Assessment of penalties.

(a) *Scope*. The rules and procedures of this subpart, subpart B of the Local Rules, and the Uniform Rules shall apply to proceedings to assess and collect civil money penalties, including civil money penalties for violation of section 7(a) of the FDIA (12 U.S.C. 1817(a)).

(b) *Relevant considerations*. In determining the amount of the civil penalty to be assessed, the Board of Directors or its designee shall consider the financial resources and good faith of the bank or official, the gravity of the violation, the history of previous violations, and any such other matters as justice may require.

(c) *Amount*. (1) The Board of Directors or its designee may assess civil money penalties pursuant to section 8(i) of the

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(ii) Affirmative action to restore such books or records to a complete and accurate state, until the completion of the proceedings under section 8(b) of the FDIA (12 U.S.C. 1818(b)).

(3) The temporary order shall be served upon the bank or the institution-affiliated party named therein and shall also be served upon the bank in the case where the temporary order applies only to an institution-affiliated party.

(b) *Effective date.* A temporary order shall become effective when served upon the bank or the institution-affiliated party. Unless the temporary order is set aside, limited, or suspended by a court in proceedings authorized under section 8(c)(2) of the FDIA (12 U.S.C. 1818(c)(2)), the temporary order shall remain effective and enforceable pending completion of administrative proceedings pursuant to section 8(b) of the FDIA (12 U.S.C. 1818(b)) and entry of an order which has become final, or with respect to paragraph (a)(2) of this section the FDIC determines by examination or otherwise that the bank's books and records are accurate and reflect the financial condition of the bank.

(c) *Uniform Rules do not apply.* The Uniform Rules and subpart B of the Local Rules shall not apply to the issuance of temporary orders under this section.

Subpart H—Rules and Procedures Applicable to Proceedings Relating to Assessment and Collection of Civil Money Penalties for Violation of Cease-and-Desist Orders and of Certain Federal Statutes, Including Call Report Penalties

§ 308.132 Assessment of penalties.

(a) *Scope.* The rules and procedures of this subpart, subpart B of the Local Rules, and the Uniform Rules shall apply to proceedings to assess and collect civil money penalties, including civil money penalties for violation of section 7(a) of the FDIA (12 U.S.C. 1817(a)).

(b) *Relevant considerations.* In determining the amount of the civil penalty to be assessed, the Board of Directors or its designee shall consider the financial resources and good faith of the bank or official, the gravity of the violation, the history of previous violations, and any such other matters as justice may require.

(c) *Amount.* (1) The Board of Directors or its designee may assess civil money penalties pursuant to section 8(i) of the

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FDIA (12 U.S.C. 1818(i)), and § 308 01(e)(1) of the Uniform Rules.

(2) The Board of Directors or its designee may assess civil penalties pursuant to section 7(a) of the FDIA (12 U.S.C. 1817(a)) as follows:

(i) *Late filing—Tier One penalties.* In cases in which a bank fails to make or publish its Report of Condition and Income ("Call Report") within the appropriate time periods, the Board of Directors or its designee may assess a civil money penalty of not more than $2,000 per day where the bank maintains procedures in place reasonably adapted to avoid inadvertent error and the late filing occurred unintentionally and as a result of such error; or the bank inadvertently transmitted a Call Report which is minimally late.

(A) *First offense.* Generally, in such cases, the amount assessed shall be $300 per day for each of the first 15 days for which the failure continues, and $600 per day for each subsequent day the failure continues, beginning on the sixteenth day. For banks with less than $25,000,000 in assets, the amount assessed shall be the greater of $100 per day or 1/1000th of the bank's total assets (1/10th of a basis point) for each of the first 15 days for which the failure continues, and $200 or 1/500th of the bank's total assets, ⅕ of a basis point) for each subsequent day the failure continues, beginning on the sixteenth day.

(B) *Second offense.* Where the bank has been delinquent in making or publishing its Call Report within the preceding five quarters, the amount assessed for the most current failure shall generally be $500 per day for each of the first 15 days for which the failure continues, and $1,000 per day for each subsequent day the failure continues, beginning on the sixteenth day. For banks with less than $25,000,000 in assets, those amounts, respectively, shall be 1/500th of the bank's total assets and 1/250th of the bank's total assets.

(C) *Mitigating factors.* The amounts set forth in paragraph (c)(2)(i)(A) of this section may be reduced based upon the factors set forth in paragraph (b) of this section.

(D) *Lengthy or repeated violations.* The amounts set forth in paragraph (c)(2)(i) of this section will be assessed on a case-by-case basis where the amount of time of the bank's delinquency is lengthy or the bank has been delinquent repeatedly in making or publishing its Call Reports.

(E) *Waiver.* Absent extraordinary circumstances outside the control of the bank, penalties assessed for late filing shall not be waived.

(ii) *Late filing—Tier Two penalties.* Where a bank fails to make or publish its Call Report within the appropriate time period, the Board of Directors or its designee may assess a civil money penalty of not more than $20,000 per day for each day the failure continues.

(iii) *False or misleading reports or information.*— (A) *Tier One penalties.* In cases in which a bank submits or publishes any false or misleading Call Report or information, the Board of Directors or its designee may assess a civil money penalty of not more than $2,000 per day for each day the information is not corrected, where the bank maintains procedures in place reasonably adapted to avoid inadvertent error and the violation occurred unintentionally and as a result of such error; or the bank inadvertently transmits a Call Report or information which is false or misleading.

(B) *Tier Two penalties.* Where a bank submits or publishes any false or misleading Call Report or other information, the Board of Directors or its designee may assess a civil money penalty of not more than $20,000 per day for each day the information is not corrected.

(C) *Tier Three penalties.* Where a bank knowingly or with reckless disregard for the accuracy of any Call Report or information submits or publishes any false or misleading Call Report or other information, the Board of Directors or its designee may assess a civil money penalty of not more than the lesser of $1,000,000 or 1 percent of the bank's total assets per day for each day the information is not corrected.

(D) *Mitigating factors.* The amounts set forth in paragraph (c)(2) of this section may be reduced based upon the factors set forth in paragraph (b) of this section.

§ 308.133 Effective date of, and payment under, an order to pay.

(a) *Effective date.* (1) Unless otherwise provided in the Notice, except in situations covered by paragraph (a)(2) of this section, civil penalties assessed pursuant to this subpart are due and payable 60 days after the Notice is served upon the respondent.

(2) If the respondent both requests a hearing and serves an answer, civil penalties assessed pursuant to this subpart are due and payable 60 days after an order to pay, issued after the hearing or upon default, is served upon the respondent, unless the order provides for a different period of payment. Civil penalties assessed pursuant to an order to pay issued upon consent are due and payable within the time specified therein.

(b) *Payment.* All penalties collected under this section shall be paid over to the Treasury of the United States.

Subpart I—Rules and Procedures for Imposition of Sanctions Upon Municipal Securities Dealers or Persons Associated With Them and Clearing Agencies or Transfer Agents

§ 308.134 Scope.

The rules and procedures in this subpart, subpart B of the Local Rules and the Uniform Rules shall apply to proceedings by the Board of Directors or its designee:

(a) To censure, limit the activities of, suspend, or revoke the registration of, any municipal securities dealer for which the FDIC is the appropriate regulatory agency;

(b) To censure, suspend, or bar from being associated with such a municipal securities dealer, any person associated with such a municipal securities dealer; and

(c) To deny registration, to censure limit the activities of, suspend, or revoke the registration of, any transfer agent or clearing agency for which the FDIC is the appropriate regulatory agency. This subpart and the Uniform Rules shall not apply to proceedings to postpone or suspend registration of a transfer agent or clearing agency pending final determination of denial or revocation of registration.

§ 308.135 Grounds for imposition of sanctions.

(a) *Action under section 15(b)(4) of the Exchange Act.* The Board of Directors or its designee may issue and have served upon any municipal securities dealer for which the FDIC is the appropriate regulatory agency, or any person associated or seeking to become associated with a municipal securities dealer for which the FDIC is the appropriate regulatory agency, a written notice of its intention to censure, limit the activities or functions or operations of, suspend, or revoke the registration of, such municipal securities dealer, or to censure, suspend, or bar the person from being associated with the municipal securities dealer, when the Board of Directors or its designee determines:

(1) That such municipal securities dealer or such person

(i) Has committed any prohibited act or omitted any required act specified in subparagraph (A), (D), or (E) of section 15(b)(4) of the Exchange Act, as amended (15 U.S.C. 78o);

(ii) Has been convicted of any offense specified in section 15(b)(4)(B) of the Exchange Act within ten years of commencement of proceedings under this subpart; or

(iii) Is enjoined from any act, conduct, or practice specified in section 15(b)(4)(C) of the Exchange Act; and

(2) That it is in the public interest to impose any of the sanctions set forth in paragraph (a) of this section.

(b) *Action under sections 17 and 17A of the Exchange Act.* The Board of Directors or its designee may issue, and have served upon any transfer agent or clearing agency for which the FDIC is the appropriate regulatory agency, a written Notice of its intention to deny registration to, censure, place limitations on the activities or function or operations of, suspend, or revoke the registration of, the transfer agent or clearing agency, when the Board of Directors or its designee determines:

(1) That the transfer agent or clearing agency has willfully violated, or is unable to comply with, any applicable provision of section 17 or 17A of the Exchange Act, as amended, or any applicable rule or regulation issued pursuant thereto; and

(2) That it is in the public interest to impose any of the sanctions set forth in paragraph (b) of this section.

§ 308.136 Notice to and consultation with the Securities and Exchange Commission.

Before initiating any proceedings under § 308.135, the FDIC shall:

(a) Notify the Securities and Exchange Commission of the identity of the municipal securities dealer or associated person against whom proceedings are to be initiated, and the nature of and basis for the proposed action; and

(b) Consult with the Commission concerning the effect of the proposed action on the protection of investors and the possibility of coordinating the action with any proceeding by the Commission against the municipal securities dealer or associated person.

§ 308.137 Effective date of order imposing sanctions.

An order issued by the Board of Directors after a hearing or an order issued upon default shall become effective at the expiration of 30 days after the service of the order, except that an order of censure, denial, or revocation of registration is effective when served. An order issued upon consent shall become effective at the time specified therein. All orders shall remain effective and enforceable except to the extent they are stayed, modified, terminated, or set aside by the Board of Directors, its designee, or a reviewing court, provided that orders of suspension shall continue in effect no longer than 12 months.

Subpart J—Rules and Procedures Relating to Exemption Proceedings Under Section 12(h) of the Securities Exchange Act of 1934

§ 308.138 Scope.

The rules and procedures of this subpart J shall apply to proceedings by the Board of Directors or its designee to exempt, in whole or in part, an issuer of securities from the provisions of sections 12(g), 13, 14(a), 14(c), 14(d), or 14(f) of the Exchange Act, as amended (15 U.S.C. 78l, 78m, 78n (a), (c) (d) or (f)), or to exempt an officer or a director or beneficial owner of securities of such an issuer from the provisions of section 16 of the Exchange Act (15 U.S.C. 78p).

§ 308.139 Application for exemption.

Any interested person may file a written application for an exemption under this subpart with the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. The application shall specify the exemption sought and the reason therefor, and shall include a statement indicating why the exemption would be consistent with the public interest or the protection of investors.

§ 308.140 Newspaper notice.

(a) *General rule.* If the Board of Directors or its designee, in its sole discretion, decides to further consider an application for exemption, there shall be served upon the applicant instructions to publish one notification in a newspaper of general circulation in the community where the main office of the issuer is located. The applicant shall furnish proof of such publication to the Executive Secretary or such other person as may be directed in the instructions.

(b) *Contents.* The notification shall contain the name and address of the issuer and the name and title of the applicant, the exemption sought, a statement that a hearing will be held, and a statement that within 30 days of publication of the newspaper notice, interested persons may submit to the FDIC written comments on the application for exemption and a written request for an opportunity to be heard. The address of the FDIC must appear in the notice.

§ 308.141 Notice of hearing.

Within ten days after expiration of the period for receipt of comments pursuant to § 308.140, the Executive Secretary shall serve upon the applicant and any person who has requested an opportunity to be heard written notification indicating the place and time of the hearing. The hearing shall be held not later than 30 days after service of the notification of hearing. The notification shall contain the name and address of the presiding officer designated by the Executive Secretary and a statement of the matters to be considered.

§ 308.142 Hearing.

(a) *Proceedings are informal.* Formal rules of evidence, the adjudicative procedures of the APA (5 U.S.C. 554–557), the Uniform Rules and § 308.108 of subpart B of the Local Rules shall not apply to hearings under this subpart.

(b) *Hearing Procedure.* (1) Parties to the hearing may appear personally or through counsel and shall have the right to introduce relevant and material documents and to make an oral statement.

(2) There shall be no discovery in proceeding under this subpart J.

(3) The presiding officer shall have discretion to permit presentation of witnesses within specified time limits, provided that a list of witnesses is furnished to the presiding officer prior to the hearing. Witnesses shall be sworn, unless otherwise directed by the presiding officer. The presiding officer may ask questions of any witness and each party may cross-examine any witness presented by an opposing party.

(4) The proceedings shall be on the record and the transcript shall be promptly submitted to the Board of Directors. The presiding officer shall make recommendations to the Board of Directors, unless the Board of Directors, in its sole discretion, directs otherwise.

§ 308.143 Decision of Board of Directors.

Following submission of the hearing transcript to the Board of Directors, the Board of Directors may grant the exemption where it determines, by reason of the number of public investors, the amount of trading interest in the securities, the nature and extent of the issuer's activities, the issuer's income or assets, or otherwise, that the exemption is consistent with the public interest or the protection of investors. Any exemption shall be set forth in an order specifying the terms of the exemption, the person to whom it is granted, and the period for which it is granted. A copy of the order shall be served upon each party to the proceeding.

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person who has requested an opportunity to be heard written notification indicating the place and time of the hearing. The hearing shall be held not later than 30 days after service of the notification of hearing. The notification shall contain the name and address of the presiding officer designated by the Executive Secretary and a statement of the matters to be considered.

§ 308.142 Hearing.

(a) *Proceedings are informal.* Formal rules of evidence, the adjudicative procedures of the APA (5 U.S.C. 554–557), the Uniform Rules and § 308.108 of subpart B of the Local Rules shall not apply to hearings under this subpart.

(b) *Hearing Procedure.* (1) Parties to the hearing may appear personally or through counsel and shall have the right to introduce relevant and material documents and to make an oral statement.

(2) There shall be no discovery in proceeding under this subpart J.

(3) The presiding officer shall have discretion to permit presentation of witnesses within specified time limits, provided that a list of witnesses is furnished to the presiding officer prior to the hearing. Witnesses shall be sworn, unless otherwise directed by the presiding officer. The presiding officer may ask questions of any witness and each party may cross-examine any witness presented by an opposing party.

(4) The proceedings shall be on the record and the transcript shall be promptly submitted to the Board of Directors. The presiding officer shall make recommendations to the Board of Directors, unless the Board of Directors, in its sole discretion, directs otherwise.

§ 308.143 Decision of Board of Directors.

Following submission of the hearing transcript to the Board of Directors, the Board of Directors may grant the exemption where it determines, by reason of the number of public investors, the amount of trading interest in the securities, the nature and extent of the issuer's activities, the issuer's income or assets, or otherwise, that the exemption is consistent with the public interest or the protection of investors. Any exemption shall be set forth in an order specifying the terms of the exemption, the person to whom it is granted, and the period for which it is granted. A copy of the order shall be served upon each party to the proceeding.

Subpart K—Procedures Applicable to Investigations Pursuant to Section 10(c) of the FDIA

§ 308.144 Scope.

The procedures of this subpart shall be followed when an investigation is instituted and conducted in connection with any open or failed insured depository institution, any institutions making application to become insured depository institutions, and affiliates thereof, or with other types of investigations to determine compliance with applicable law and regulations, pursuant to section 10(c) of the FDIA (12 U.S.C. 1820(c)). The Uniform Rules and subpart B of the Local Rules shall not apply to investigations under this subpart.

§ 308.145 Conduct of investigation.

An investigation conducted pursuant to section 10(c) of the FDIA shall be initiated only upon issuance of an order by the Board of Directors; or by the General Counsel, the Director of the Division of Supervision, the Director of the Division of Liquidation, or their respective designees as set forth at § 303.9 of this chapter. The order shall indicate the purpose of the investigation and designate FDIC's representative(s) to direct the conduct of the investigation. Upon application and for good cause shown, the persons who issue the order of investigation may limit, quash, modify, or withdraw it. Upon the conclusion of the investigation, an order of termination of the investigation shall be issued by the persons issuing the order of investigation.

§ 308.146 Powers of person conducting investigation.

The person designated to conduct a section 10(c) investigation shall have the power, among other things, to administer oaths and affirmations, to take and preserve testimony under oath, to issue subpoenas and subpoenas duces tecum and to apply for their enforcement to the United States District Court for the judicial district or the United States court in any territory in which the main office of the bank, institution, or affiliate is located or in which the witness resides or conducts business. The person conducting the investigation may obtain the assistance of counsel or others from both within and outside the FDIC. The persons who issue the order of investigation may limit, quash, or modify any subpoena or subpoena duces tecum, upon application and for good cause shown. The person conducting an investigation may report to the Board of Directors any instance where any attorney has been guilty of contemptuous conduct. The Board of Directors, upon motion of the person conducting the investigation, or on its own motion, may make a finding of contempt and may then summarily suspend, without a hearing, any attorney representing a witness from further participation in the investigation.

§ 308.147 Investigations confidential.

Investigations conducted pursuant to section 10(c) shall be confidential. Information and documents obtained by the FDIC in the course of such investigations shall not be disclosed, except as provided in part 309 of this chapter and as otherwise required by law.

§ 308.148 Rights of witnesses.

In an investigation pursuant to section 10(c):

(a) Any person compelled or requested to furnish testimony, documentary evidence, or other information, shall upon request be shown and provided with a copy of the order initiating the proceeding;

(b) Any person compelled or requested to provide testimony as a witness or to furnish documentary evidence may be represented by a counsel who meets the requirements of § 308.06 of the Uniform Rules. That counsel may be present and may:

(1) Advise the witness before, during, and after such testimony;

(2) Briefly question the witness at the conclusion of such testimony for clarification purposes; and

(3) Make summary notes during such testimony solely for the use and benefit of the witness;

(c) All persons testifying shall be sequestered. Such persons and their counsel shall not be present during the testimony of any other person, unless permitted in the discretion of the person conducting the investigation;

(d) In cases of a perceived or actual conflict of interest arising out of an attorney's or law firm's representation of multiple witnesses, the person conducting the investigation may require the attorney to comply with the provisions of § 308.08 of the Uniform Rules; and

(e) Witness fees shall be paid in accordance with § 308.14 of the Uniform Rules.

§ 308.149 Service of subpoena.

Service of a subpoena shall be accomplished in accordance with § 308.11 of the Uniform Rules.

§ 308.150 Transcripts.

(a) *General rule.* Transcripts of testimony, if any, in an investigation pursuant to section 10(c) shall be recorded by an official reporter, or by any other person or means designated by the person conducting the investigation. A witness may, solely for the use and benefit of the witness, obtain a copy of the transcript of his or her testimony at the conclusion of the investigation or, at the discretion of the person conducting the investigation, at an earlier time, provided the transcript is available. The witness requesting a copy of his or her testimony shall bear the cost thereof.

(b) *Subscription by witness.* The transcript of testimony shall be subscribed by the witness, unless the person conducting the investigation and the witness, by stipulation, have waived the signing, or the witness is ill, cannot be found, or has refused to sign. If the transcript of the testimony is not subscribed by the witness, the official reporter taking the testimony shall certify that the transcript is a true and complete transcript of the testimony.

Subpart L—Procedures and Standards Applicable to a Notice of Change in Senior Executive Officer or Director Pursuant to Section 32 of the FDIA

§ 308.151 Scope.

The rules and procedures set forth in this subpart shall apply to the notice filed by a state nonmember bank pursuant to Section 32 of the FDIA (12 U.S.C. 1831i) for the consent of the FDIC to add to or replace an individual on the Board of Directors, or to employ any individual as a senior executive officer, or change the responsibilities of any individual to a position of senior executive officer where the bank:

(a) Has been chartered and operating as an insured nonmember bank for less than two years or the insured state branch has been licensed and operating as an insured branch for less than two years;

(b) Has undergone a change in control within the preceding two years; or

(c) Is not in compliance with the minimum capital requirement applicable to it or is otherwise in a troubled condition as determined by the FDIC on the basis of such institution's most recent report of condition or report of examination or inspection.

§ 308.152 Grounds for disapproval of notice.

The Board of Directors or its designee may issue a notice of disapproval with respect to a notice submitted by a state nonmember bank pursuant to section 32 of the FDIA (12 U.S.C. 1831i) where:

(a) The competence, experience, character, or integrity of the individual with respect to whom such notice submitted indicates that it would not be in the best interests of the depositors of the state nonmember bank to permit the individual to be employed by or associated with such bank; or

(b) The competence, experience, character, or integrity of the individual with respect to whom such notice is submitted indicated that it would not be in the best interests of the public to permit the individual to be employed by, or associated with, the state nonmember bank.

§ 308.153 Procedures where notice of disapproval issues pursuant to § 303.14 of this chapter.

(a) The Notice of Disapproval shall be served upon the insured state nonmember bank and the candidate for director or senior executive officer. The Notice of Disapproval shall:

(1) Summarize or cite the relevant considerations specified in § 308.152;

(2) Inform the individual and the bank that a request for review of the disapproval may be filed within fifteen days of receipt of the Notice of Disapproval; and

(3) Specify that additional information, if any, must be contained in the request for review.

(b) The request for review must be filed at the appropriate regional office.

(c) The request for review must be in writing and should:

(1) Specify the reasons why the FDIC should reconsider its disapproval; and

(2) Set forth relevant, substantive and material documents, if any, that for good cause were not previously set forth in the notice required to be filed pursuant to section 32 of the FDIA (12 U.S.C. 1831i).

§ 308.154 Decision on review.

(a) Within 30 days of receipt of the request for review, the Board of Directors or its designee, shall notify the bank and/or the individual filing the reconsideration (hereafter "petitioner") of the FDIC's decision on review.

(b) If the decision is to grant the review and approve the notice, the bank and the individual involved shall be so notified.

(c) A denial of the request for review pursuant to section 32 of the FDIA shall:

(1) Inform the petitioner that a written request for a hearing, stating the relief desired and the grounds therefore, may be filed with the Executive Secretary within 15 days after the receipt of the denial; and

(2) Summarize or cite the relevant considerations specified in § 308.152.

(d) If a decision is not rendered within 30 days, the petitioner may file a request for a hearing within fifteen days from the date of expiration.

§ 308.155 Hearing.

(a) *Hearing dates.* The Executive Secretary shall order a hearing to be commenced within 30 days after receipt of a request for a hearing filed pursuant to § 308.154. Upon request of the petitioner or the FDIC, the presiding officer or the Executive Secretary may order a later hearing date.

(b) *Burden of proof.* The ultimate burden of proof shall be upon the candidate for director or senior executive officer. The burden of going forward with a *prima facie* case shall be upon the FDIC.

(c) *Hearing procedure.* (1) The hearing shall be held in Washington, DC or at another designated place, before a presiding officer designated by the Executive Secretary.

(2) The provisions of §§ 308.06 through 308.12, 308.16, and 308.21 of the Uniform Rules and §§ 308.101 through 308.102, and 308.104 through 308.106 of subpart B of the Local Rules shall apply to hearings held pursuant to this subpart.

(3) The petitioner may appear at the hearing and shall have the right to introduce relevant and material documents and make an oral presentation. Members of the FDIC enforcement staff may attend the hearing and participate as representatives of the FDIC enforcement staff.

(4) There shall be no discovery in proceedings under this subpart.

(5) At the discretion of the presiding officer, witnesses may be presented within specified time limits, provided that a list of witnesses is furnished to the presiding officer and to all other parties prior to the hearing. Witnesses shall be sworn, unless otherwise directed by the presiding officer. The presiding officer may ask questions of any witness. Each party shall have the opportunity to cross-examine any witness presented by an opposing party. The transcript of the proceedings shall be furnished, upon request and payment of the cost thereof, to the petitioner afforded the hearing.

(6) In the course of or in connection with any hearing under paragraph (c) of this section the presiding officer shall have the power to administer oaths and affirmations, to take or cause to be taken depositions of unavailable witnesses, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum. Where the presentation of witnesses is permitted, the presiding officer may require the attendance of witnesses from any state, territory, or other place subject to the jurisdiction of the United States at any location where the proceeding is being conducted. Witness fees shall be paid in accordance with § 308.14 of the Uniform Rules.

(7) Upon the request of the applicant afforded the hearing, or the members of the FDIC enforcement staff, the record shall remain open for five business days following the hearing for the parties to make additional submissions to the record.

(8) The presiding officer shall make recommendations to the Board of Directors or its designee, where possible, within fifteen days after the last day for the parties to submit additions to the record.

(9) The presiding officer shall forward his or her recommendation to the Executive Secretary who shall promptly certify the entire record, including the recommendation to the Board of Directors or its designee. The Executive Secretary's certification shall close the record.

(d) *Written submissions in lieu of hearing.* The petitioner may in writing waive a hearing and elect to have the matter determined on the basis of written submissions.

(e) *Failure to request or appear at hearing.* Failure to request a hearing shall constitute a waiver of the opportunity for a hearing. Failure to appear at a hearing in person or through an authorized representative shall constitute a waiver of hearing. If a hearing is waived, the order shall be final and unappealable, and shall remain in full force and effect.

(f) *Decision by Board of Directors or its designee.* Within 45 days following the Executive Secretary's certification of the record to the Board of Directors or its designee, the Board of Directors or its designee shall notify the affected individual whether the denial of the notice will be continued, terminated, or otherwise modified. The notification shall state the basis for any decision of the Board of Directors or its designee that is adverse to the petitioner. The Board of Directors or its designee shall promptly rescind or modify the denial where the decision is favorable to the petitioner.

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(7) Upon the request of the applicant afforded the hearing, or the members of the FDIC enforcement staff, the record shall remain open for five business days following the hearing for the parties to make additional submissions to the record.

(8) The presiding officer shall make recommendations to the Board of Directors or its designee, where possible, within fifteen days after the last day for the parties to submit additions to the record.

(9) The presiding officer shall forward his or her recommendation to the Executive Secretary who shall promptly certify the entire record, including the recommendation to the Board of Directors or its designee. The Executive Secretary's certification shall close the record.

(d) *Written submissions in lieu of hearing.* The petitioner may in writing waive a hearing and elect to have the matter determined on the basis of written submissions.

(e) *Failure to request or appear at hearing.* Failure to request a hearing shall constitute a waiver of the opportunity for a hearing. Failure to appear at a hearing in person or through an authorized representative shall constitute a waiver of hearing. If a hearing is waived, the order shall be final and unappealable, and shall remain in full force and effect.

(f) *Decision by Board of Directors or its designee.* Within 45 days following the Executive Secretary's certification of the record to the Board of Directors or its designee, the Board of Directors or its designee shall notify the affected individual whether the denial of the notice will be continued, terminated, or otherwise modified. The notification shall state the basis for any decision of the Board of Directors or its designee that is adverse to the petitioner. The Board of Directors or its designee shall promptly rescind or modify the denial where the decision is favorable to the petitioner.

Subpart M—Procedures and Standards Applicable to an Application Pursuant to Section 19 of the FDIA

§ 308.156 Scope.

The rules and procedures set forth in this subpart shall apply to an application filed pursuant to section 19 of the FDIA (12 U.S.C. 1829) by an insured depository institution and a person, who has been convicted of any criminal offense involving dishonesty or a breach of trust or who has agreed to enter into a pretrial diversion or similar program in connection with the prosecution of such offense, to seek the prior written consent of the FDIC to become or continue as an institution-affiliated party with respect to an insured depository institution; to own or control directly or indirectly an insured depository institution; or to participate directly or indirectly in any manner in the conduct of the affairs of an insured depository institution.

§ 308.157 Relevant considerations.

(a) In proceedings under § 308.156 on an application to become or continue as an institution-affiliated party with respect to an insured depository institution; to own or control directly or indirectly an insured depository institution; or to participate directly or indirectly in any manner in the conduct of the affairs of an insured depository institution, the following shall be considered:

(1) Whether the conviction or entry into a pretrial diversion or similar program is for a criminal offense involving dishonesty or breach of trust;

(2) Whether participation directly or indirectly by the person in any manner in the conduct of the affairs of the insured depository institution constitutes a threat to the safety or soundness of the insured depository institution or the interests of its depositors, or threatens to impair public confidence in the insured depository institution;

(3) Evidence of the applicant's rehabilitation;

(4) The position to be held by the applicant;

(5) The amount of influence and control the applicant will be able to exercise over the affairs and operations of the insured depository institution;

(6) The ability of the management at the insured depository institution to supervise and control the activities of the applicant;

(7) The level of ownership which the applicant will have at the insured depository institution;

(8) Applicable fidelity bond coverage for the applicant; and

(9) Additional factors in the specific case that appear relevant.

(b) The question of whether a person, who was convicted of a crime or who agreed to enter a pretrial diversion or similar program, was guilty of that crime shall not be at issue in a proceeding under this subpart.

§ 308.158 Filing papers and effective date.

(a) *Filing with the regional office.* Applications pursuant to section 19 shall be filed in the appropriate regional office.

(b) *Effective date.* An application pursuant to section 19 may be made in writing at any time more than one year after the issuance of a decision denying an application pursuant to section 19. The removal and/or prohibition pursuant to section 19 shall continue until the applicant has been reinstated by the Board of Directors or its designee for good cause shown.

§ 308.159 Denial of applications.

A denial of an application pursuant to section 19 shall:

(a) Inform the applicant that a written request for a hearing, stating the relief desired and the grounds therefor and any supporting evidence, may be filed with the Executive Secretary within 60 days after the denial; and

(b) Summarize or cite the relevant considerations specified in § 308.157 of this subpart.

§ 308.160 Hearings.

(a) *Hearing dates.* The Executive Secretary shall order a hearing to be commenced within 60 days after receipt of a request for hearing on an application filed pursuant to § 308.159. Upon the request of the applicant or FDIC enforcement counsel, the presiding officer or the Executive Secretary may order a later hearing date.

(b) *Burden of proof.* The ultimate burden of proof shall be upon the person proposing to become or continue as an institution-affiliated party with respect to an insured depository institution; to own or control directly or indirectly an insured depository institution; or to participate directly or indirectly in any manner in the conduct of the affairs of an insured depository institution. The burden of going forward with a *prima facie* case shall be upon the FDIC.

(c) *Hearing procedure.* (1) The hearing shall be held in Washington, DC, or at another designated place, before a presiding officer designated by the Executive Secretary.

(2) The provisions of §§ 308.06 through 308.12, 308.16, and 308.21 of the Uniform Rules and §§ 308.101 through 308.102 and 308.104 through 308.106 of subpart B of the Local Rules shall apply to hearings held pursuant to this subpart.

(3) The applicant may appear at the hearing and shall have the right to introduce relevant and material documents and oral argument. Members of the FDIC enforcement staff may attend the hearing and participate as a party.

(4) There shall be no discovery in proceedings under this subpart.

(5) At the discretion of the presiding officer, witnesses may be presented within specified time limits, provided that a list of witnesses is furnished to the presiding officer and to all other parties prior to the hearing. Witnesses shall be sworn, unless otherwise directed by the presiding officer. The presiding officer may ask questions of any witness. Each party shall have the opportunity to cross-examine any witness presented by an opposing party. The transcript of the proceedings shall be furnished, upon request and payment of the cost thereof, to the applicant afforded the hearing.

(6) In the course of or in connection with any hearing under this subsection, the presiding officer shall have the power to administer oaths and affirmations, to take or cause to be taken depositions of unavailable witnesses, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum. Where the presentation of witnesses is permitted, the presiding officer may require the attendance of witnesses from any state, territory, or other place subject to the jurisdiction of the United States at any location where the proceeding is being conducted. Witness fees shall be paid in accordance with § 308.14 of the Uniform Rules.

(7) Upon the request of the applicant afforded the hearing, or FDIC enforcement staff, the record shall remain open for five business days following the hearing for the parties to make additional submissions to the record.

(8) The presiding officer shall make recommendations to the Board of Directors, where possible, within 20 days after the last day for the parties to submit additions to the record.

(9) The presiding officer shall forward his or her recommendation to the Executive Secretary who shall promptly certify the entire record, including the recommendation to the Board of Directors or its designee. The Executive Secretary's certification shall close the record.

(d) *Written submissions in lieu of hearing.* The applicant or the bank may in writing waive a hearing and elect to have the matter determined on the basis of written submissions.

(e) *Failure to request or appear at hearing.* Failure to request a hearing shall constitute a waiver of the opportunity for a hearing. Failure to appear at a hearing in person or through an authorized representative shall constitute a waiver of hearing. If a hearing is waived, the person shall remain barred under section 19.

(f) *Decision by Board of Directors or its designee.* Within 60 days following the Executive Secretary's certification of the record to the Board of Directors or its designee, the Board of Directors or its designee shall notify the affected person whether the person shall remain barred under section 19. The notification shall state the basis for any decision of the Board of Directors or its designee that is adverse to the applicant.

Subpart N—Rules and Procedures Applicable to Proceedings Relating to Suspension, Removal, and Prohibition Where a Felony Is Charged

§ 308.161 Scope.

The rules and procedures set forth in this subpart shall apply to the following proceedings:

(a) To suspend an institution-affiliated party of an insured state nonmember bank, or to prohibit such party from further participation in the conduct of the affairs of the bank, where the individual is charged in any state, Federal, or territorial information or indictment, or complaint, with the commission of, or participation in, a crime involving dishonesty or breach of trust punishable by imprisonment exceeding one year under state or Federal law; or

(b) To remove from office or to prohibit an institution-affiliated party from further participation in the conduct of the affairs of the bank, except with the consent of the Board of Directors or its designee, if continued service or participation by such party poses a threat to the interests of the bank's depositors or threatens to impair public confidence in the depository institution, where a judgment of conviction or an agreement to enter a pre-trial diversion or other similar program is entered against such party, not subject to further appellate review, has been entered against the individual for the commission of, or participation in, a crime involving dishonesty or breach of trust punishable by imprisonment exceeding one year under state or Federal law.

§ 308.162 Relevant considerations.

(a)(1) In proceedings under § 308.161 (a) and (b) for a suspension, removal or prohibition order, the following shall be considered:

(i) Whether the alleged offense is a crime which is punishable by imprisonment for a term exceeding one year under state or Federal law, and which involves dishonesty or breach of trust; and

(ii) Whether continued service or participation by the institution-affiliated party may pose a threat to the interest of the bank's depositors, or threatens to impair public confidence in the bank.

(2) Additional factors in the specific case that appear relevant to its decision to continue in effect, rescind, terminate, or modify a suspension, removal or prohibition order may be considered.

(b) The question of whether an institution-affiliated party charged with a crime is guilty of the crime charged shall not be tried or considered in a proceeding under this subpart.

§ 308.163 Notice of suspension, and orders of removal or prohibition.

(a) *Notice of suspension or prohibition.* (i) The Board of Directors or its designee may suspend or prohibit from further participation in the conduct of the affairs of the bank an institution-affiliated party by written notice of suspension or prohibition upon a determination by the Board of Directors or its designee that the grounds for such suspension or prohibition exist. The written notice of suspension or prohibition shall be served upon the institution-affiliated party and the bank.

(2) The written notice of suspension shall:

(i) Inform the institution-affiliated party that a written request for a hearing, stating the relief desired and grounds therefore, and any supporting evidence, may be filed with the Executive Secretary within 30 days after receipt of the written notice; and

(ii) Summarize or cite to the relevant considerations specified in § 308.162 of this subpart.

(3) The suspension or prohibition shall be effective immediately upon service on the institution-affiliated party, and shall remain in effect until final disposition of the information, indictment, complaint, or until it is terminated by the Board of Directors or its designee under the provisions of § 308.164 or otherwise.

(b) *Order of removal or prohibition.* (1) The Board of Directors or its designee may issue an order removing or prohibiting from further participation in the conduct of the affairs of the bank an institution-affiliated party, when:

(i) A final judgment of conviction not subject to further appellate review is entered against the individual for a crime referred to in § 308.161(b); and

(ii) The Board of Directors or its designee determines that continued service or participation of the institution-affiliated party may threaten the interests of the bank's depositors or may threaten to impair public confidence in the bank.

(2) The order shall be served upon the institution-affiliated party and the bank.

(3) The order shall:

(i) Inform the institution-affiliated party that a written request for a hearing, stating the relief desired and grounds therefor, and any supporting evidence, may be filed with the Executive Secretary within 30 days after receipt of the order; and

(ii) Summarize or cite the relevant considerations specified in § 308.162 of this subpart.

(4) The order shall be effective immediately upon service on the institution-affiliated party, and shall remain in effect until it is terminated by the Board of Directors or its designee under the provisions of § 308.164 or otherwise.

§ 308.164 Hearings.

(a) *Hearing dates.* The Executive Secretary shall order a hearing to be commenced within 30 days after receipt of a request for hearing on an application filed pursuant to § 308.163. Upon the request of the applicant, the presiding officer or the Executive Secretary may order a later hearing date.

(b) *Hearing procedure.* (1) The hearing shall be held in Washington, DC, or at another designated place, before a presiding officer designated by the Executive Secretary.

(2) The provisions of §§ 308.06 through 308.12, 308.16, and 308.21 of the Uniform Rules and §§ 308.101 through 308.102 and 308.104 through 308.106 of subpart B of the Local Rules shall apply to hearings held pursuant to this subpart.

(3) The applicant may appear at the hearing and shall have the right to introduce relevant and material documents and oral argument. Members of the FDIC enforcement staff may attend the hearing and participate as representatives of the FDIC enforcement staff.

(4) There shall be no discovery in proceedings under this subpart.

(5) At the discretion of the presiding officer, witnesses may be presented within specified time limits, provided that a list of witnesses is furnished to the presiding officer and to all other

(i) A final judgment of conviction not subject to further appellate review is entered against the individual for a crime referred to in § 308.161(b); and

(ii) The Board of Directors or its designee determines that continued service or participation of the institution-affiliated party may threaten the interests of the bank's depositors or may threaten to impair public confidence in the bank.

(2) The order shall be served upon the institution-affiliated party and the bank.

(3) The order shall:

(i) Inform the institution-affiliated party that a written request for a hearing, stating the relief desired and grounds therefor, and any supporting evidence, may be filed with the Executive Secretary within 30 days after receipt of the order; and

(ii) Summarize or cite the relevant considerations specified in § 308.162 of this subpart.

(4) The order shall be effective immediately upon service on the institution-affiliated party, and shall remain in effect until it is terminated by the Board of Directors or its designee under the provisions of § 308.164 or otherwise.

§ 308.164 Hearings.

(a) *Hearing dates.* The Executive Secretary shall order a hearing to be commenced within 30 days after receipt of a request for hearing on an application filed pursuant to § 308.163. Upon the request of the applicant, the presiding officer or the Executive Secretary may order a later hearing date.

(b) *Hearing procedure.* (1) The hearing shall be held in Washington, DC, or at another designated place, before a presiding officer designated by the Executive Secretary.

(2) The provisions of §§ 308.06 through 308.12, 308.16, and 308.21 of the Uniform Rules and §§ 308.101 through 308.102 and 308.104 through 308.106 of subpart B of the Local Rules shall apply to hearings held pursuant to this subpart.

(3) The applicant may appear at the hearing and shall have the right to introduce relevant and material documents and oral argument. Members of the FDIC enforcement staff may attend the hearing and participate as representatives of the FDIC enforcement staff.

(4) There shall be no discovery in proceedings under this subpart.

(5) At the discretion of the presiding officer, witnesses may be presented within specified time limits, provided that a list of witnesses is furnished to the presiding officer and to all other

parties prior to the hearing. Witnesses shall be sworn, unless otherwise directed by the presiding officer. The presiding officer may ask questions of any witness. Each party shall have the opportunity to cross-examine any witness presented by an opposing party. The transcript of the proceedings shall be furnished, upon request and payment of the cost thereof, to the applicant afforded the hearing.

(6) In the course of or in connection with any hearing under paragraph (b) of this section, the presiding officer shall have the power to administer oaths and affirmations, to take or cause to be taken depositions of unavailable witnesses, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum. Where the presentation of witnesses is permitted, the presiding officer may require the attendance of witnesses from any state, territory, or other place subject to the jurisdiction of the United States at any location where the proceeding is being conducted. Witness fees shall be paid in accordance with § 308.14 of the Uniform Rules.

(7) Upon the request of the applicant afforded the hearing, or the members of the FDIC enforcement staff, the record shall remain open for five business days following the hearing for the parties to make additional submissions to the record.

(8) The presiding officer shall make recommendations to the Board of Directors, where possible, within ten days after the last day for the parties to submit additions to the record.

(9) The presiding officer shall forward his or her recommendation to the Executive Secretary who shall promptly certify the entire record, including the recommendation to the Board of Directors. The Executive Secretary's certification shall close the record.

(c) *Written submissions in lieu of hearing.* The applicant or the bank may in writing waive a hearing and elect to have the matter determined on the basis of written submissions.

(d) *Failure to request or appear at hearing.* Failure to request a hearing shall constitute a waiver of the opportunity for a hearing. Failure to appear at a hearing in person or through an authorized representative shall constitute a waiver of hearing. If a hearing is waived, the order shall be final and unappealable, and shall remain in full force and effect pursuant to § 308.163.

(e) *Decision by Board of Directors or its designee.* Within 60 days following the Executive Secretary's certification of the record to the Board of Directors or its designee, the Board of Directors or its designee shall notify the affected individual whether the order of removal or prohibition will be continued, terminated, or otherwise modified. The notification shall state the basis for any decision of the Board of Directors or its designee that is adverse to the applicant. The Board of Directors or its designee shall promptly rescind or modify an order of removal or prohibition where the decision is favorable to the applicant.

Subpart O—Liability of Commonly Controlled Depository Institutions

§ 308.165 Scope.

The rules and procedures in this subpart, subpart B of the Local Rules and the Uniform Rules shall apply to proceedings in connection with the assessment of cross-guaranty liability against commonly controlled depository institutions.

§ 308.166 Grounds for assessment of liability.

Any insured depository institution shall be liable for any loss incurred or reasonably anticipated to be incurred by the corporation, subsequent to August 9, 1989, in connection with the default of a commonly controlled insured depository institution, or any loss incurred or reasonably anticipated to be incurred in connection with any assistance provided by the Corporation to any commonly controlled depository institution in danger of default.

§ 308.167 Notice of assessment of liability.

(a) The amount of liability shall be assessed upon service of a Notice of Assessment of Liability upon the liable depository institution, within two years of the date the Corporation incurred the loss.

(b) *Contents of Notice.* (1) The Notice of Assessment of Liability shall set forth:

(i) The basis for the FDIC's jurisdiction over the proceeding;

(ii) A statement of the Corporation's good faith estimate of the amount of loss it has incurred or anticipates incurring;

(iii) A statement of the method by which the estimated loss was calculated;

(iv) A proposed order directing payment by the liable institution of the FDIC's estimated amount of loss, and the schedule under which the payment will be due;

(v) In cases involving more than one liable institution, the estimated amount of each institution's share of the liability.

(2) The Notice of Assessment of Liability shall advise the liable institution(s):

(i) That an answer must be filed within 20 days after service of the Notice;

(ii) That, if a hearing is requested, a request for a hearing must be filed within 20 days after service of the Notice;

(iii) That if a hearing is requested, such hearing will be held within the judicial district in which the liable institution is found, or, in cases involving more than one liable institution, within a judicial district in which at least one liable institution is found;

(iv) That, unless the administrative law judge sets a different date, the hearing will commence 120 days after service of the Notice of Assessment of Liability; and

(v) That failure to request a hearing shall render the Notice of Assessment a final and unappealable order.

§ 308.168 Effective date of and payment: under an order to pay.

(a) Unless otherwise provided in the Notice of Assessment of Liability, payment of the assessment shall be due on or before the 21st day after service of the Assessment of Liability, under the terms of the schedule for payment set forth therein.

(b) All payments collected shall be paid to the Corporation.

(c) Failure to request a hearing as prescribed herein shall render the order to pay final and unappealable.

Subpart P—Rules and Procedures Relating to the Recovery of Attorney Fees and Other Expenses

§ 308.169 Scope.

This subpart, and the Equal Access to Justice Act (5 U.S.C. 504), which it implements, apply to adversary adjudications before the FDIC. The types of adjudication covered by this subpart are those listed in § 308.01 of the Uniform Rules. The Uniform Rules and subpart B of the Local Rules apply to any proceedings to recover fees and expenses under this subpart.

§ 308.170 Filing, content, and service of documents.

(a) *Time to file.* An application and any other pleading or document related to the application may be filed with the Executive Secretary whenever the applicant has prevailed in the proceeding or in a discrete significant substantive portion of the proceeding within 30 days after service of the final order of the Board of Directors in disposition of the proceeding.

(b) *Content.* The application and related documents shall conform to the requirements of § 308.10 of the Uniform Rules.

(c) *Service.* The application and related documents shall be served on all parties to the adversary adjudication in accordance with § 308.11 of the Uniform Rules, except that statements of net worth shall be served only on counsel for the FDIC.

(d) Upon receipt of an application, the Executive Secretary shall refer the matter to the administrative law judge who heard the underlying adversary proceeding, provided that if the original administrative law judge is unavailable, or the Executive Secretary determines, in his or her sole discretion, that there is cause to refer the matter to a different administrative law judge, the matter shall be referred to a different administrative law judge.

§ 308.171 Responses to application.

(a) *By FDIC.* (1) Within 20 days after service of an application, counsel for the FDIC may file with the Executive Secretary and serve on all parties an answer to the application. Unless counsel for the FDIC requests and is granted an extension of time for filing or files a statement of intent to negotiate under § 308.179 of this subpart, failure to file an answer within the 20-day period will be treated as a consent to the award requested.

(2) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of the FDIC's position. If the answer is based on any alleged facts not already in the record of the proceeding, the answer shall include either supporting affidavits or a request for further proceedings under § 308.180.

(b) *Reply to answer.* The applicant may file a reply if the FDIC has addressed in its answer any of the following issues: that the position of the FDIC was substantially justified, that the applicant unduly protracted the proceedings, or that special circumstances make an award unjust. The reply shall be filed within 15 days after service of the answer. If the reply is based on any alleged facts not already in the record of the proceeding, the reply shall include either supporting affidavits or a request for further proceedings under § 308.180.

(c) *By other parties.* Any party to the adversary adjudication, other than the applicant and the FDIC, may file comments on an application within 20 days after service of the application. If the applicant is entitled to file a reply to the FDIC's answer under paragraph (b) of this section, another party may file comments on the answer within 15 days after service of the answer. A commenting party may not participate in any further proceedings on the application unless the administrative law judge determines that the public interest requires such participation in order to permit additional exploration of matters raised in the comments.

(d) *Additional response.* Additional filings in the nature of pleadings may be submitted only by leave of the administrative law judge.

§ 308.172 Eligibility of applicants.

(a) *General rule.* To be eligible for an award under this subpart, an applicant must have been named or admitted as a party to the proceeding. In addition, the applicant must show that it meets all other conditions of eligibility set out in paragraph (b) of this section.

(b) *Types of eligible applicant.* The types of eligible applicant are:

(1) An individual with a net worth of not more than $2,000,000 at the time the adversary adjudication was initiated; or

(2) Any owner of an unincorporated business, or any partnership, corporation, associations, unit of local government or organization, the net worth of which did not exceed $7,000,000 and which did not have more than 500 employees at the time the adversary adjudication was initiated.

(c) *Factors to be considered.* In determining the types of eligible applicants:

(1) An applicant who owns an unincorporated business shall be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which he or she prevails are related to personal interests rather than to business interests.

(2) An applicant's net worth includes the value of any assets disposed of for the purpose of meeting an eligibility standard and excludes the value of any obligations incurred for this purpose. Transfers of assets or obligations incurred for less than reasonably equivalent value will be presumed to have been made for this purpose.

(3) The net worth of a bank shall be established by the net worth information reported in conformity with applicable instructions and guidelines on the bank's Consolidated Report of Condition and Income filed for the last reporting date before the initiation of the adversary adjudication.

(4) The employees of an applicant include all those persons who were regularly providing services for remuneration for the applicant, under its direction and control, on the date the adversary adjudication was initiated. Part-time employees are included as though they were full-time employees.

(5) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. The aggregated net worth shall be adjusted if necessary to avoid counting the net worth of any entity twice. As used in this subpart, "affiliates" are individuals, corporations, and entities that directly or indirectly or acting through one or more entities control a majority of the voting shares of the applicant; and corporations and entities of which the applicant directly or indirectly owns or controls a majority of the voting shares. The Board of Directors may, however, on the recommendation of the administrative law judge, or otherwise, determine that such aggregation with regard to one or more of the applicant's affiliates would be unjust and contrary to the purposes of this subpart in light of the actual relationship between the affiliated entities. In such a case the net worth and employees of the relevant affiliate or affiliates will not be aggregated with those of the applicant. In addition, the Board of Directors may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(6) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

§ 308.173 Prevailing party.

(a) *General rule.* An eligible applicant who, following an adversary adjudication has gained victory on the merits in the proceeding is a "prevailing party". An eligible applicant may be a "prevailing party" if a settlement of the proceeding was effected on terms favorable to it or if the proceeding against it has been dismissed. In appropriate situations an applicant may also have prevailed if the outcome of the proceeding has substantially vindicated the applicant's position on the significant substantive matters at issue, even though the applicant has not totally avoided adverse final action.

(b) *Segregation of costs.* When a proceeding has presented a number of discrete substantive issues, an applicant may have prevailed even though all the issues were not resolved in its favor. If such an applicant is deemed to have prevailed, any award shall be based on the fees and expenses incurred in

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(5) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. The aggregated net worth shall be adjusted if necessary to avoid counting the net worth of any entity twice. As used in this subpart, "affiliates" are individuals, corporations, and entities that directly or indirectly or acting through one or more entities control a majority of the voting shares of the applicant; and corporations and entities of which the applicant directly or indirectly owns or controls a majority of the voting shares. The Board of Directors may, however, on the recommendation of the administrative law judge, or otherwise, determine that such aggregation with regard to one or more of the applicant's affiliates would be unjust and contrary to the purposes of this subpart in light of the actual relationship between the affiliated entities. In such a case the net worth and employees of the relevant affiliate or affiliates will not be aggregated with those of the applicant. In addition, the Board of Directors may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(6) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

§ 308.173 Prevailing party.

(a) *General rule.* An eligible applicant who, following an adversary adjudication has gained victory on the merits in the proceeding is a "prevailing party". An eligible applicant may be a "prevailing party" if a settlement of the proceeding was effected on terms favorable to it or if the proceeding against it has been dismissed. In appropriate situations an applicant may also have prevailed if the outcome of the proceeding has substantially vindicated the applicant's position on the significant substantive matters at issue, even though the applicant has not totally avoided adverse final action.

(b) *Segregation of costs.* When a proceeding has presented a number of discrete substantive issues, an applicant may have prevailed even though all the issues were not resolved in its favor. If such an applicant is deemed to have prevailed, any award shall be based on the fees and expenses incurred in

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connection with the discrete significant substantive issue or issues on which the applicant's position has been upheld. If such segregation of costs is not practicable, the award may be based on a fair proration of those fees and expenses incurred in the entire proceeding which would be recoverable under § 308.175 if proration were not performed, whether separate or prorated treatment is appropriate, and the appropriate proration percentage, shall be determined on the facts of the particular case. Attention shall be given to the significance and nature of the respective issues and their separability and interrelationship.

§ 308.174 Standards for awards.

A prevailing applicant may receive an award for fees and expenses unless the position of the FDIC during the proceeding was substantially justified or special circumstances make the award unjust. An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceedings. Awards for fees and expenses incurred before the date on which the adversary adjudication was initiated are allowable if their incurrence was necessary to prepare for the proceeding.

§ 308.175 Measure of awards.

(a) *General rule.* Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents, and expert witnesses, even if the services were made available without charge or at a reduced rate, provided that no award under this subpart for the fee of an attorney or agent may exceed $75 per hour. No award to compensate an expert witness may exceed the highest rate at which the FDIC pays expert witnesses. An award may include the reasonable expenses of the attorney, agent, or expert witness as a separate item, if the attorney, agent, or expert witness ordinarily charges clients separately for such expenses.

(b) *Determination of reasonableness of fees.* In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, the administrative law judge shall consider the following:

(1) If the attorney, agent, or expert witness is in private practice, his or her customary fee for like services, or, if he or she is an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent, or expert witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

(c) *Awards for studies.* The reasonable cost of any study, analysis, test, project, or similar matter prepared on behalf of an applicant may be awarded to the extent that the charge for the service does not exceed the prevailing rate payable for similar services, and the study or other matter was necessary for preparation of the applicant's case and not otherwise required by law or sound business or financial practice.

§ 308.176 Application for awards.

(a) *Contents.* An application for an award of fees and expenses under this subpart shall contain:

(1) The name of the applicant and an identification of the proceeding;

(2) A showing that the applicant has prevailed, and an identification of each issue with regard to which the applicant believes that the position of the FDIC in the proceeding was not substantially justified;

(3) A statement of the amount of fees and expenses for which an award is sought;

(4) If the applicant is not an individual, a statement of the number of its employees on the date the proceeding was initiated;

(5) A description of any affiliated individuals or entities, as defined in § 308.172(c)(5), or a statement that none exist;

(6) A declaration that the applicant, together with any affiliates, had a net worth not more than the ceiling established for it by § 308.172(b) as of the date the proceeding was initiated; and

(7) Any other matters that the applicant wishes the FDIC to consider in determining whether and in what amount an award should be made.

(b) *Verification.* The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application and supporting documents is true and correct.

§ 308.177 Statement of net worth.

(a) *General rule.* A statement of net worth must be filed with the application for an award of fees. The statement shall reflect the net worth of the applicant and all affiliates of the applicant.

(b) *Contents.* (1) The statement of net worth may be in any form convenient to the applicant which fully discloses all the assets and liabilities of the applicant and all the assets and liabilities of its affiliates, as of the time of the initiation of the adversary adjudication. Unaudited financial statements are acceptable unless the administrative law judge or the Board of Directors otherwise requires. Financial statements or reports to a Federal or state agency, prepared before the initiation of the adversary adjudication for other purposes, and accurate as of a date not more than three months prior to the initiation of the proceeding, are acceptable in establishing net worth as of the time of the initiation of the proceeding, unless the administrative law judge or the Board of Directors otherwise requires.

(2) In the case of applicants or affiliates that are not banks, net worth shall be considered for the purposes of this subpart to be the excess of total assets over total liabilities, as of the date the underlying proceeding was initiated, except as adjusted under § 308.172(c)(2). Assets and liabilities of individuals shall include those beneficially owned within the meaning of the FDIC's rules and regulations.

(3) If the applicant or any of its affiliates is a bank, the portion of the statement of net worth which relates to the bank shall consist of a copy of the bank's last Consolidated Report of Condition and Income filed before the initiation of the adversary adjudication. In all cases the administrative law judge or the Board of Directors may call for additional information needed to establish the applicant's net worth as of the initiation of the proceeding. Except as adjusted by additional information that was called for under the preceding sentence, net worth shall be considered for the purposes of this subpart to be the total equity capital (or, in the case of mutual savings banks, the total surplus accounts) as reported, in conformity with applicable instructions and guidelines, on the bank's Consolidated Report of Condition and Income filed for the last reporting date before the initiation of the proceeding.

(c) *Statement confidential.* Unless otherwise ordered by the Board of Directors or required by law, the statement of net worth shall be for the confidential use of counsel for the FDIC, the Board of Directors, and the administrative law judge.

§ 308.178 Statement of fees and expenses.

The application shall be accompanied by a statement fully documenting the fees and expenses for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in work in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services performed. The administrative law judge or the Board of Directors may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

§ 308.179 Settlement negotiations.

If counsel for the FDIC and the applicant believe that the issues in a fee application can be settled, they may jointly file with the Executive Secretary a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer under § 308.171 for an additional 20 days, and further extensions may be granted by the administrative law judge upon the joint request of counsel for the FDIC and the applicant.

§ 308.180 Further proceedings.

(a) *General rule.* Ordinarily, the determination of a recommended award will be made by the administrative law judge on the basis of the written record. However, on request of either the applicant or the FDIC, or on his or her own initiative, the administrative law judge may order further proceedings such as an informal conference, oral argument, additional written submissions, or an evidentiary hearing. Such further proceedings will be held only when necessary for full and fair resolution of the issues arising from the application and will be conducted promptly and expeditiously.

(b) *Request for further proceedings.* A request for further proceedings under this section shall specifically identify the information sought or the issues in dispute and shall explain why additional proceedings are necessary.

(c) *Hearing.* Ordinarily, the administrative law judge shall hold an oral evidentiary hearing only on disputed issues of material fact which cannot be adequately resolved through written submissions.

§ 308.181 Recommended decision.

The administrative law judge shall file with the Executive Secretary a recommended decision on the fee application not later than 90 days after the filing of the application or 30 days after the conclusion of the hearing, whichever is later. The recommended decision shall include written proposed findings and conclusions on the applicant's eligibility and its status as a prevailing party and an explanation of the reasons for any difference between the amount requested and the amount of the recommended award. The recommended decision shall also include, if at issue, proposed findings on whether the FDIC's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. The administrative law judge shall file the record of the proceeding on the fee application and, at the same time, serve upon each party a copy of the recommended decision, findings, conclusions, and proposed order.

§ 308.182 Board of Directors action.

(a) *Exceptions to recommended decision.* Within 20 days after service of the recommended decision, findings, conclusions, and proposed order, the applicant or counsel for the FDIC may file with the Executive Secretary written exceptions thereto. A supporting brief may also be filed.

(b) *Decision of Board of Directors.* The Board of Directors shall render its decision within 60 days after the matter is submitted to it by the Executive Secretary. The Executive Secretary shall furnish copies of the decision and order of the Board of Directors to the parties. Judicial review of the decision and order may be obtained as provided in 5 U.S.C. 504(c)(2).

§ 308.183 Payment of awards.

An applicant seeking payment of an award made by the Board of Directors shall submit to the Executive Secretary a statement that the applicant will not seek judicial review of the decision and order or that the time for seeking further review has passed and no further review has been sought. The FDIC will pay the amount awarded within 30 days after receiving the applicant's statement, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

By order of the Board of Directors. Dated at Washington, DC, this 30th day of July, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91-18780 Filed 8-8-91; 8:45 am]

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Deputy Executive Secretary.

[FR Doc. 91-18780 Filed 8-8-91; 8:45 am]

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federal register

Friday
August 9, 1991

Part V

Department of Commerce

National Telecommunications and Information Administration

15 CFR Part 2301

Public Telecommunications Facilities Program (PTFP); Policy Statement; Proposed Rules

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

15 CFR Part 2301

[Docket No. 91-0635-1135]

Public Telecommunications Facilities Program (PTFP); Policy Statement

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Proposal to issue further statement of Program Policy relating to the Public Telecommunications Facilities Program and request for public comments thereon.

SUMMARY: The National Telecommunications and Information Administration (NTIA) proposed to issue a Further Statement of Program Policy relating to the Public Telecommunications Facilities Program (PTFP). The Further Statement of Program Policy will provide guidance for PTFP grant applicants on funding considerations relating to three project categories: educational and instructional projects; projects to expand nonbroadcast services; and local matching funds requirements for broadcast improvement or augmentation projects. The proposed Statement will assist potential grant applicants in determining whether to apply for PTFP funds for specific projects within these categories and will respond on a uniform basis to frequently arising questions respecting the competitiveness of certain applications. The proposed Statement further is intended to encourage the submission of applications seeking to further public education efforts through use of telecommunications.

NTIA requests public comment on this proposed Further Statement of Program Policy.

In a separate Notice of Proposed Rulemaking, NTIA further proposes to clarify and/or to revise the rules governing the administration of the PTFP [15 CFR part 2301]. That Proposed Rulemaking is issued as a separate document in this issue of the **Federal Register**.

DATES: Comments must be submitted on or before September 9, 1991.

ADDRESSES: Persons interested in commenting on the proposed Statement of Program Policy must send three copies of any comments to: Office of the Chief Counsel, NTIA/DOC, 14th Street and Constitution Avenue NW., room H-4713, Washington, DC 20230, Attention: Brian E. Harris.

FOR FURTHER INFORMATION CONTACT: Dennis R. Connors, Director, Public Telecommunications Facilities Program, NTIA/DOC, 14th Street and Constitution Avenue NW., room H-4625, Washington, DC 20230; telephone: (202) 377-1835.

SUPPLEMENTARY INFORMATION:

Further Statement of Program Policy

The National Telecommunications and Information Administration, (NTIA), U.S. Department of Commerce, is charged with administration of the Public Telecommunications Facilities Program (PTFP).[1] In order to assist potential PTFP grant applicants to evaluate the potential for obtaining PTFP grant funding for certain projects, NTIA summarizes below its programmatic concerns and the legal considerations affecting funding of three types of project proposals, *i.e.*,

(1) Educational and instructional projects;

(2) Projects to expand or improve nonbroadcast services; and

(3) Broadcast improvement and augmentation projects. NTIA encourages public comment upon the various issues that it identifies as pertinent to these projects and particularly seeks assistance in evaluating the rapidly evolving needs of the public for federally-assisted telecommunications projects.

Educational and Instructional Projects

Introduction

Public education is an important element in any country's competitive arsenal, and the United States has come to recognize that a well-educated work force is a necessity if it wishes to maintain its high standard of living. In its administration of the PTFP, NTIA has always sought to support educational projects, through its broad-based assistance for public broadcasting services and by funding of nonbroadcast projects offering specific educational or instructional benefits.

NTIA would like to encourage the submission of more applications focusing on educational objectives, and believes that it has sufficient latitude within its current legislative and regulatory mandate to fund a wide range of both broadcast and nonbroadcast projects of this nature. NTIA already has a funding category called Special Applications. [Rules 2301.-Appendix] This category is related to, but apart from, the PTFP funding priorities; only broadcast applications are placed into the formal priority structure. Important educational and instructional projects—whether broadcast or nonbroadcast—can be given preferential consideration, in the Administrator's discretion, within this category.

NTIA, therefore, seeks in this policy statement to identify factors that should be relevant in exercising its discretion to fund educational projects. NTIA welcomes comments on the general topic of how it might most productively expend its resources to assist the nation in achieving its educational objectives and specifically on whether there are factors beyond those it has identified that should be considered.

Background

NTIA is authorized to use PTFP funds to support the purchase of telecommunications equipment to be used by public telecommunications entities to provide educational programming to the public. [Sections 390-393, 397] NTIA has exercised that authority to fund educational projects using both broadcast and nonbroadcast technologies.

In the field of broadcast instruction, PTFP funds are consistently made available to noncommercial television and radio stations, the former of which are generally stations affiliated with the Public Broadcasting Services (PBS). Typically, such PTFP grants have been awarded to local public broadcast stations providing educational services as part of their programming day. In some cases, those services are directed to the school population, sometimes to the public at large.

With respect to nonbroadcast instruction, NTIA has awarded grants to support the activation and extension of satellite networks to distribute instructional programming to a large geographical area, often nationwide. The networks so funded have usually been composed of entities at the college or university level and have offered coursework in advanced fields, such as engineering, science, math, agricultural science and management.

NTIA also has awarded grants to nonbroadcast projects to establish local instructional television networks. The technology involved usually has been microwave, utilized as Instructional Television Fixed Service (ITFS) systems. The entities funded have included regional school systems, state telecommunications organizations, vocational schools, and colleges and universities. Such systems offer many channels of instruction and usually

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[1] 47 U.S.C. 390-393, 397. The Communications Act of 1934, as amended (1988). Unless otherwise noted all statutory cites are to Title 47 of the United States Code. PTFP rules are at 15 CFR part 2301 ([illegible]). [Hereinafter Rules 2301.]

ORMATION CONTACT:
s, Director, Public
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Street and
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INFORMATION:

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from, the PTFP funding priorities; only broadcast applications are placed into the formal priority structure. Important educational and instructional projects—whether broadcast or nonbroadcast—can be given preferential consideration, in the Administrator's discretion, within this category.

NTIA, therefore, seeks in this policy statement to identify factors that should be relevant in exercising its discretion to fund educational projects. NTIA welcomes comments on the general topic of how it might most productively expend its resources to assist the nation in achieving its educational objectives and specifically on whether there are factors beyond those it has identified that should be considered.

Background

NTIA is authorized to use PTFP funds to support the purchase of telecommunications equipment to be used by public telecommunications entities to provide educational programming to the public. [Sections 390–393, 397] NTIA has exercised that authority to fund educational projects using both broadcast and nonbroadcast technologies.

In the field of broadcast instruction, PTFP funds are consistently made available to noncommercial television and radio stations, the former of which are generally stations affiliated with the Public Broadcasting Services (PBS). Typically, such PTFP grants have been awarded to local public broadcast stations providing educational services as part of their programming day. In some cases, those services are directed to the school population, sometimes to the public at large.

With respect to nonbroadcast instruction, NTIA has awarded grants to support the activation and extension of satellite networks to distribute instructional programming to a large geographical area, often nationwide. The networks so funded have usually been composed of entities at the college or university level and have offered coursework in advanced fields, such as engineering, science, math, agricultural science and management.

NTIA also has awarded grants to nonbroadcast projects to establish local instructional television networks. The technology involved usually has been microwave, utilized as Instructional Television Fixed Service (ITFS) systems. The entities funded have included regional school systems, state telecommunications organizations, vocational schools, and colleges and universities. Such systems offer many channels of instruction and usually

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reflect the educational concerns of a community or relatively small region. Both satellite networks and ITFS system transmissions are usually one-way video with a two-way, telephone line audio interconnection for question-and-answer periods.

As summarized above, PTFP's own grant history illustrates that education may be brought to citizens in many ways. Of greatest current interest to NTIA is the concept of "distance learning", which NTIA interprets to mean the use of telecommunications to make instruction available to students at locations apart from the teacher.

Funding Considerations

To further its statutory mandate to advance educational goals [sections 390(2), 397(14)], NTIA believes it is timely to reemphasize that education is a significant PTFP program purpose within the meaning of its existing Rules and to amplify how the existing Funding Criteria set forth therein may be applied to such project proposals [Rules 2301.2, .13–.14]

Public Availability

In seeking to define its role in providing funding support, NTIA is attentive to certain threshold considerations. The first is the requirement, arising from PTFP's authorizing statute, that NTIA look only to projects offering instruction "to the public" [sections 392(a)(1), 397(12)]. Thus, NTIA would exclude from its purview televised coursework that is both produced and received within the confines of either a school building or a single campus. In contrast, a distance learning project such as a communications satellite network offers students expert instruction in an advanced subject while they remain hundreds or thousands of miles from the instructor.

Technology

Secondly, as indicated above, NTIA's experience is that education can be provided effectively to distant students through both broadcast and nonbroadcast technologies, and its own legislative authority allows funding of projects within both categories [section 390(1)]. Accordingly, NTIA believes that it should not automatically favor one technology over another with respect to educational project applications, but rather should consider the services to be rendered and the efficiency of the technology proposed.

Project Purposes

Given the extraordinary diversity within the field, NTIA suggests that a project will be considered more highly competitive for funding if it promises to accomplish one or more of the following:

- Reach a large number of potential students, especially those in remote isolated areas;
- Reach students who clearly would never receive the coursework offered without the project;
- Reach a high number of potential beneficiaries (an example might be a project resulting in the activation of a series of satellite transmit earth stations [uplinks] to form the nucleus of a far-ranging course distribution system);
- Meet some special need; *e.g.*, a state mandate to raise substantially the educational achievement level of all students, including those in isolated areas; and
- Assisting the nation's international competitiveness.

NTIA also regards as particularly relevant the participation of minorities and women in providing instructional programming or in receiving it. [Sections 390(2), 393(b)(3)]

The suggested factors are not rigid criteria, nor do they supplant the existing funding criteria and priorities. [Sections 390(1)–(3), 393(b), Rules 2301.13–.14, Appendix] Like all applications, educational/distance learning applications will continue to be evaluated on a case-by-case basis, and other factors might raise the competitiveness of any given application.

Further, NTIA has not made prejudgments about a variety of other issues that educators themselves might view as important to judging the merits of a particular proposal. It welcomes comment on issues such as whether one-way video broadcasting, without the possibility of student feedback, should be considered comparable to more sophisticated two-way educational systems. Similarly, does a course have to be "live" to count as effective distance learning? Is there a "reach threshold"—that is, a number of students who realistically will receive programming—below which NTIA should not consider a project application for funding? Should NTIA reassess what sort of equipment it will consider eligible for funding in educational projects? These, and other questions, will occur to those who address this subject.

Improvement of Nonbroadcast Telecommunications Services. Every year NTIA receives applications that raise the question of whether the applicant is proposing an improvement of an already operating nonbroadcast facility and, thus, whether the project is eligible for PTFP funds pursuant to statutory guidelines. [Section 393(b)(1)–(2)] In contrast to the authority granted to fund improvements of broadcast projects, [sections 390(3), 393(b)(4)] the statute limits funding on nonbroadcast projects to those designed for the provision of new telecommunications facilities to extend service to areas currently not receiving public telecommunications services [or] the expansion of the service areas of existing public telecommunications entities. [Section 393(b)(1)–(2)] NTIA has always interpreted the phrases "extend service to areas" and "expansion of the service areas" to mean an enlargement of geographic scope or a targeting of a new and distinct audience. Nonbroadcast applications submitted by operating entities that do not expand the geographic scope or target a new and distinct audience have been ineligible for funding. However, there are other complexities presented in applying the statutory text to specific circumstances. NTIA has identified six further issues that frequently arise, and on which public comment would be helpful to NTIA's analysis.

1. Issue One: To what extent do an applicant's pre-existing activities affect the eligibility of a nonbroadcast application? Some PTFP nonbroadcast applicants have had some previous telecommunications experience. For example, many colleges have a small studio for producing instructional materials, or a satellite downlink, for on-campus distribution of programming. Should the possession of such facilities disqualify an applicant from obtaining PTFP funds for the establishment of a new nonbroadcast entity on the grounds that the new activity is solely an "improvement" outside the scope of NTIA's funding authority?

Of relevance here is the Act's formal definition of a "noncommercial telecommunications entity" [section 397(97)]; *i.e.*, an organization which disseminates audio or video noncommercial educational, instructional or cultural programming to the public by nonbroadcast means, such as coaxial cable, optical fiber, satellite, microwave, or ITFS transmission. NTIA suggests, therefore, that a vital factor in determining whether an applicant is an already-operating nonbroadcast entity is its ability to distribute programming to the public.

NTIA considers the distribution of programming when confined to either a single building or a single campus to be "closed circuit" transmissions and not dissemination of programming to the public. Thus, an organization that possesses only a satellite downlink, or that produces instructional programs not disseminated to the public, is not a noncommercial telecommunications entity as PTFP uses the term. Its PTFP application for nonbroadcast equipment—assuming that the equipment would be used to establish a public nonbroadcast service—would therefore be eligible for consideration for PTFP funding.

2. Issue Two: In establishing a new nonbroadcast telecommunications entity, may an applicant use PTFP funds to acquire origination (production) equipment to replace old or non-standard equipment owned by the applicant? Sometimes colleges or universities have studio equipment not used for public telecommunications, as that term is discussed in Issue One, above. The existing equipment may consist only of consumer- or industrial-level quality. Occasionally, it is of broadcast-level quality, but obviously obsolete and fit only for closed-circuit purposes.

NTIA insists that all equipment acquired with PTFP funds be of professional broadcast quality. It does so to ensure that the equipment will provide a high quality, reliable service to the public. NTIA also wants to be assured that the equipment purchased will hold up for the full period of Federal interest in it.

Under these circumstances, NTIA believes that it is appropriate for PTFP to fund new production equipment to replace substandard equipment as part of a project to establish a new nonbroadcast entity. NTIA also supports the purchase of new production equipment to complement existing equipment—even if the latter is of broadcast quality—if the result would be to bring the applicant's production capability to the minimum recognized standard for broadcast operations.

3. Issue Three: Must a nonbroadcast telecommunications entity have studio production capability? Some PTFP applicants request funds to establish a production studio for use with an already-operating nonbroadcast dissemination facility. NTIA suggests that a nonbroadcast telecommunications entity can acquire and distribute programming without the use of studio production equipment and thus studio production capability is not necessary for the operation of a nonbroadcast entity. While production equipment admittedly would strengthen the entity's service, a request to acquire production equipment in these circumstances would appear to be an improvement and therefore not eligible for PTFP funds.

4. Issue Four: In a service expansion project, should the applicant be permitted to use PTFP funds to acquire origination (production) equipment if it is to replace leased, borrowed, or inferior equipment? Periodically, an already operating nonbroadcast entity proposes to expand its existing service area and includes in its PTFP application a request for funds to replace existing production equipment.

With respect to already operating nonbroadcast entities, NTIA suggests that this purchase would represent an improvement in the applicant's capabilities. Therefore, the portion of the application involving production equipment would not be eligible for PTFP funding. The application could be accepted for consideration, but the only equipment eligible for funding would be that required for expansion of the service area, primarily dissemination and interconnection equipment.

NTIA believes that applications for funds to acquire new production equipment rather than relying on leased or borrowed equipment, should also be denied. Customarily, applicants in these situations point out that they do not currently own any production equipment and characterize this part of the project as the "establishment" or as the "completion of construction" of their nonbroadcast facility. As noted in the preceding section, NTIA believes that a nonbroadcast entity does not require a local production facility in order to provide service to the public. Therefore, an applicant already disseminating nonbroadcast services to the public is not eligible to improve its facility by constructing a production studio with the use of PTFP funds.

5. Issue Five: What is the effect of an applicant's activating a nonbroadcast facility between the closing date and the award date, or the effect of such action on the reactivation of a deferred application? Applicants have submitted proposals which indicate that a substantial portion of the proposed nonbroadcast project will be activated after the closing date (when the application is due at NTIA), but before the award period start date. The latter is the date on which the project period begins, generally eight or nine months after the closing date. NTIA has determined that the legal nature of a nonbroadcast application does not change when, after the closing date, the applicant acquires equipment from the proposed equipment list and begins project operations. In such an instance, the application continues to be eligible during the grant cycle for which it is submitted.

The activation of a proposed nonbroadcast facility, however, represents a substantial change in the applicant's circumstances. Activation of the facility creates a "public telecommunications entity", and subsequent applications would be eligible for funding only if the project is an "expansion" of service area as outlined above. In the event the original application is not granted by NTIA, the activation of the nonbroadcast facility disqualifies the applicant from reactivating the application for further consideration in subsequent grant cycles.

6. Issue Six: Should a university that operates a full broadcast standard production facility in one of its colleges be permitted to receive PTFP funds for the establishment of a nonbroadcast production facility in a different college? In the past, NTIA has received requests for nonbroadcast studio equipment in these circumstances, and looks to the following factors to confirm that the project is an eligible service "expansion":

- The dedication of the existing production facility to serving a distinctly different audience from that to be reached by the proposed facility, with a distinctly different curriculum and, perhaps, via a different distribution system;
- The full utilization of the existing facility and its consequent unavailability for the proposed project;
- The prohibitively high cost of renting the existing facility's equipment;
- The expense of interconnecting the existing production facility with that of the proposed project; or,
- The inaccessibility of the existing production facility.

Broadcasting Improvement and Augmentation Projects. NTIA wishes to clarify its policy on local fund matching requirements. In its existing policy NTIA states that it will fund projects to provide first service to a geographic area at up to 75% of the eligible project costs while a presumption of 50% Federal funding would be the general rule for equipment replacement projects. [Section 392(b), 52 FR 31,497 (1987)] The policy further states that the agency will accept showings of extraordinary need such as regional economic problems in agriculture or other industries or emergency situations as justification for submission of a replacement application for more than 50% Federal funding.

NTIA established this policy so it could participate in a greater number of replacement projects. NTIA continues to believe that encouraging greater Federal/local partnership in this way, along with an allowance for hardships and special circumstances as previously

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announced, is an efficient means of administering PTFP funds.

NTIA proposes to treat broadcast "improvement" and "augmentation" projects as "replacement" projects that normally are supported only at the 50% Federal funding level. NTIA believes that this addition is consistent with the existing policy and allows for more equitable treatment of applications. Again a showing of extraordinary need for an emergency situation will be taken into consideration as justification for grants of up to 75% of the project cost.

As a related matter, NTIA also takes this opportunity to reaffirm its existing policy on the use of Corporation for Public Broadcasting (CPB) funds to meet the local matching requirements of the PTFP grant. [Section 392(b), Rules 2301.16(a)(2)]. As previously announced, CPB grants are not considered "funds supplied by Federal departments and agencies" within the meaning of the Rules and therefore there is no absolute proscription against the use of such CPB grants. [Rules 2301.16 and 44 FR 30,898 at 30,907 (1979)].

However, NTIA continues to believe that the policies and purposes underlying the PTFP requirements could be significantly frustrated if applicants routinely relied upon another federally supported grant program for its local match. Accordingly, NTIA has limited the use of CPB funds for the non-Federal share of PTFP projects to circumstances of "clear and compelling need." [Rules 2301.16(a)(4)]. It intends to maintain that standard and to apply it on a case-by-case basis in future years.

Public Comment Period and Other Information. The PTFP policy statement is exempt from the notice and comment requirements by section 553(b)(A) of the Administrative Procedures Act [5 U.S.C. 553 (b)(A)]; it may be made effective immediately upon publication in the **Federal Register** under 5 U.S.C. 553 (d)(2). However, NTIA believes the public interest will be best served by accepting comments by the deadline specified above under the heading DATES and by issuing a final policy statement based on evaluation of those comments.

Under Executive Order (E.O.) 12291, the Department must determine whether a regulation is a "major" rule within the meaning of section 1 of E.O. 12291 and therefore subject to the requirement that a Regulatory Impact Analysis be performed. This policy statement is not a major rule because it is not "likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries * * *; or (3) significant adverse effects on competition, employment, investment, productivity or innovation * * *." Therefore, preparation of a Regulatory Impact Analysis is not required.

The Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*] does not apply to this proposed policy statement, because, as explained above, the proposed policy statement was not required to be promulgated as a proposed policy statement before issuance as a Final Policy Statement by section 553 of the Administrative Procedures Act [5 U.S.C. 553] or by any other law or regulation. Neither an initial nor final Regulatory Flexibility Analysis was prepared. This proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

The Office of Management and Budget has approved the information collection requirements contained in this policy statement pursuant to the Paperwork Reduction Act under OMB Control No. 0660-0003.

Dated: August 5, 1991.

Janice Obuchowski,

Assistant Secretary for Communications and Information.

[FR Doc. 91-18849 Filed 8-8-91; 8:45 am]

BILLING CODE 3510-60-M

DEPARTMENT OF COMMERCE

15 CFR Part 2301

[Docket No. 91-0636-1136]

Public Telecommunications Facilities Program

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Telecommunications and Information Administration (NTIA) is issuing a Notice of Proposed Rulemaking. This Notice is issued to clarify and/or revise the rules and appendix governing administration of the Public Telecommunications Facilities Program (PTFP). Applicant guidelines are clarified or revised under the headings of Priorities, Catastrophic Damage, Additional Information for Applications, Withdrawals and Deferrals, Appropriate Applicant/PTFP Contact, Filing of FCC Applications, Support for Salary Expenses, Premature Obligation of Non-Federal Funds, and Assurances. Grantee responsibilities are clarified under the headings Site Right Documentation and Administration of Federal Grant Funds and Control and Use of Facilities. This action is undertaken to eliminate uncertainty about PTFP requirements.

In a separate Proposal to Issue Further Statement of Program Policy, NTIA provides guidance to PTFP grant applicants on various funding considerations relating to three types of project categories. The proposed policy statement appears as a separate document in this issue of the **Federal Register**.

DATES: Comments must be submitted on or before September 9, 1991.

ADDRESSES: Persons interested in commenting on these proposed policies and rules must send three copies of any comments to: Office of the Chief Counsel, NTIA/DOC, 14th Street and Constitution Avenue NW., room H-4713, Washington, DC 20230, Attention: Brian E. Harris.

FOR FURTHER INFORMATION CONTACT: Dennis R. Connors, Director, Public Telecommunications Facilities Program, NTIA/DOC, 14th Street and Constitution Avenue NW., room H-4625, Washington, DC 20230; telephone: (202) 377-1835.

SUPPLEMENTARY INFORMATION:

1. Notice is hereby given of proposed rulemaking in the above matter.

2. The National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce (DOC), is charged with the administration of the Public Telecommunications Facilities Program (PTFP). PTFP's primary objective is to "assist, through matching grants, in the planning and construction of public telecommunications facilities in order to * * * extend delivery of public telecommunications services to as many citizens of the United States as possible by the most economical and efficient means * * *, increase public telecommunications services and facilities available to, operated by, and owned by minorities and women; and strengthen the capability of existing public television and radio stations * * *."[1]

3. The Secretary of Commerce is charged with the establishment of rules necessary to carry out the PTFP's objectives, including rules relating to the order of Priority in approving construction projects and the amount for each grant. [section 392(e)]. The purpose of this proceeding is to clarify and revise the rules and appendix governing administration of the PTFP. NTIA hopes

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[1] 47 U.S.C. 390 (1)-(3). The Communications Act of 1934, as amended (1988). Unless otherwise noted, all statutory cites are to title 47 of the United States Code. PTFP Rules are set out at 15 CFR part 2301 (1989). [Hereinafter Rules 2301.]

that this proceeding will give applicants a clearer understanding of the types of projects PTFP is most likely to fund, and given grantees a better understanding of their responsibilities upon receipt of a grant.

4. The clarifications and revisions may be broken into two broad categories, Applicant Guidelines and Grantee Responsibilities. Clarifications or revisions for Applicant Guidelines are proposed under the following headings—Priorities, Catastrophic Damage, Additional Information for Applications, Withdrawals and Deferrals, Appropriate Applicant/PTFP Contact, Filing of FCC Applications, Support for Salary Expenses, Premature Obligation of Non-Federal Funds, and Assurances. Clarifications or revisions of Grantee responsibilities are proposed under the headings Site Right Documentation and Administration of Federal Grant Funds and Control and Use of Facilities.

5. NTIA hopes that the public comments received on the various matters set out below will help in clarifying the revising PTFP Rules and Priorities. NTIA is also receptive to comments suggesting additional areas where clarification or revision would be beneficial to grantees and applicants.

Applicant Guidelines

A. Funding Priorities

6. PTFP's funding Priorities, listed in the Rules, at the Appendix, have reflected NTIA's perception of its original authorizing legislation. [sections 390–393, 397] NTIA believes that it is desirable to revisit the Priorities in light of changing conditions to ensure that they continue to reflect legislative intent. In doing so, NTIA has tentatively determined that it is appropriate to accord higher status to some types of projects within the present Priorities, to adjust the Priorities of other types of projects, and to end the policy of considering cable television coverage when evaluating television activation projects.

NTIA proposes, therefore, the following specific changes:

7. Priority 1B—Deletion of the reference in the present rules to "cable penetration" in the criteria used to determine the priority of television station activations. Since cable companies are no longer subject to Federal Communications Commission (FCC) "must carry" rules [47 CFR 76.57–76.61 (1986)], the availability of cable and its penetration in a community are no longer necessarily relevant to determining whether a community has public television available to it.

8. Priority 1C—Creation of a new subcategory to enable NTIA to assign Priority 1 status to applications from noncommercial radio stations for receive-only satellite earth stations (downlinks) when such a downlink would bring satellite-distributed public radio programming to the applicant's service area for the first time. NTIA considers such projects to be clearly in the spirit of the PTFP's highest Priority and notes that such projects will extend nationally-distributed programming to areas of the country presently unable to hear such programming.

9. In part, this proposal is a response to the recommendations contained in the January 1990 report of the Public Radio Expansion Task Force [2], on which NTIA was represented. In addition, NTIA sees this proposal as assisting the efforts of the Corporation for Public Broadcasting (CPB) to upgrade small public radio stations because it will enable some of them to improve their circumstances to the point that they become eligible for CPB-awarded Community Service Grants. By giving them access to vast amounts of diversified programming, the downlinks may ease their operational costs, improve their standing in the community, and result in increased donations, expanded underwriting, and generally greater financial stability and independence. NTIA also hopes that this change will materially assist Native American and minority stations in bringing their listeners specialized programming available only by satellite.

10. Priority 2—Clarification of the criteria for Priority 2 by expressly including "urgency" in the discussion of funding considerations. "Urgency of acquisition or replacement" is a fundamental criterion in evaluating such applications, and is explicitly included in the Rules governing funding criteria. [Rules 2301.13(d)(3)] For consistency, NTIA believes that the concept should be reflected in the Appendix discussion of Priority 2.

11. Priority 4—Creation of two subcategories within Priority 4. In order to improve the processing of the large number of applications, NTIA proposes to divide Priority 4 into two sub-categories. Priority 4A is for four types of projects that NTIA thinks should receive enhanced emphasis. The first type is projects for the purchase of urgently needed replacement equipment for stations that cannot qualify for a Priority 2, *i.e.*, stations providing either the only public telecommunications signal or the only locally originated public telecommunications signal to a geographic area.

12. This subcategory also includes projects to replace or improve equipment at stations that produce a high percentage of the public television and public radio programming that is distributed nationally. In accordance such projects somewhat higher status, NTIA wishes to recognize the important place that these relatively few stations occupy in the national system.

13. NTIA further proposes to extend Priority 4A status to applications for downlinks from radio stations in areas already served by one or more full-service public radio stations if the applicant demonstrates that it would use the downlink to provide its listeners with a program service that does not duplicate the public radio service(s) already available in its area. As with Priority 1C, this action responds to recommendations of the Public Radio Expansion Task Force by enlarging the program offerings of more stations nationwide and increasing the variety of public radio services available to the general public.

14. Priority 4A is also reserved for projects involving public broadcasting stations that, sometime in the preceding five years, have gone on the air without PTFP support and with a complement of equipment well short of what PTFP considers to be basic for effective operation. This type of project will permit such stations to acquire additional basic equipment so as to allow them to offer a higher quality public broadcasting service to the community.

15. In addition, NTIA proposes to create within Priority 4 subcategory 4B. Into this subcategory would fall applications for the improvement and non-urgent replacement of equipment at any public broadcasting station for projects that do not qualify for 4A status. Priority 4B is also for applications to activate public broadcast stations in areas already served by a station or stations with local origination capability, when the proposed stations would not merit substantial Special Consideration because of significant participation by minorities or women. (The latter applications will continue to be assigned to the Special Applications category.) At present, all such activation projects are considered to be Special Applications. NTIA intends to move most of them—*i.e.*, all without notable minority/women participation—to this subcategory so as to concentrate virtually all broadcast projects in the formal Priorities. This reserves the

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[2] Public Radio in the 1990s: Fulfilling the Promise, The Report of the Public Radio Expansion Task Force, Dale K. Ouzts, Chairman, January 1990.

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14. Priority 4A is also reserved for projects involving public broadcasting stations that, sometime in the preceding five years, have gone on the air without PTFP support and with a complement of equipment well short of what PTFP considers to be basic for effective operation. This type of project will permit such stations to acquire additional basic equipment so as to allow them to offer a higher quality public broadcasting service to the community.

15. In addition, NTIA proposes to create within Priority 4 subcategory 4B. Into this subcategory would fall applications for the improvement and non-urgent replacement of equipment at any public broadcasting station for projects that do not qualify for 4A status. Priority 4B is also for applications to activate public broadcast stations in areas already served by a station or stations with local origination capability, when the proposed stations would not merit substantial Special Consideration because of significant participation by minorities or women. (The latter applications will continue to be assigned to the Special Applications category.) At present, all such activation projects are considered to be Special Applications. NTIA intends to move most of them—*i.e.*, all without notable minority/women participation—to this subcategory so as to concentrate virtually all broadcast projects in the formal Priorities. This reserves the

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Special Applications category almost entirely for nonbroadcast and highly specialized broadcast applications.

B. Catastrophic Damage

16. NTIA wishes to be able to give timely assistance to public broadcast stations that suffer catastrophic damage from natural or manmade causes and need assistance in the replacement of their equipment so as to return to the air and restore public telecommunications services to their communities. Procedures are outlined to enable PTFP to accept applications for such purposes outside of the normal application review cycle. [Rules, 2301.5(g)]

C. Additional Information for Applications

17. To expedite its evaluations of applications, NTIA proposes to eliminate the 45-day period after the closing date during which applicants have been permitted to submit additional information concerning their applications and to make minor changes in the applications. This practice delayed PTFP review of applications by nearly six weeks. Most deficiencies that had to be corrected were quite minor and did not warrant the formal 45-day period. Moreover, the presence of this period clearly encouraged some applicants to regard the closing date as merely an interim deadline, with the "real" deadline being the end of the 45-day period.

18. NTIA retains its ability to request additional information form applicants and establishes a 15-day deadline for applicant response. [Rules 2301.6(a)] In addition, NTIA requires applicants to provide information concerning changes in the status of material information critical to funding decisions whenever such changes occur. [Rules 2301.6(b)] To provide applicants time to adjust to the elimination of the 45-day period, the closing date for FY 1992 applications will be moved somewhat later; *e.g.*, it might be set for January 31, 1992, rather than, as has been customary recently, towards the middle of January.

D. Withdrawals and Deferrals of Applications

19. Previously the rules made no provision for an applicant to withdraw an application, although NTIA traditionally has permitted this to be done. NTIA believes that it is desirable to provide explicitly in the Rules for the formal withdrawal of an application to take place, without affecting future funding decisions. [Rules 2301.9(g)(1)]

20. NTIA also proposes that applicant requests for application deferral be treated as requests for withdrawal and the application returned to the applicant. [Rules 2301.9(g)-(2)] In the past, applicants have occasionally submitted applications and then asked that they be deferred to the next grant cycle. Such requests can be used to gain competitive advantage before the FCC, and the situation lent itself to potential abuse of the spirit of PTFP procedures. The new Rule will not alter the current practice of applications being automatically deferred by NTIA if they are not funded, and applicants may reactivate the deferred applications in the next grant cycle.

21. Finally, NTIA wishes to limit the number of times a deferred application may be reactivated. [Rules 2301.9(h)] NTIA intends to allow only two reactivations of an application. Some applicants have reactivated deferred applications for three, four, or more years. If the application calls for the replacement of equipment, repeated deferrals over a period of years raise a question about the urgency of the need. NTIA believes that after three years of consideration the applicant should reevaluate its commitment to the project and the cogency of its argument in favor of the project. If, after such a reevaluation, an applicant desires to resubmit a proposal, a new application must be submitted and it will be considered as such by PTFP.

E. Appropriate Applicant/PTFP Contacts

22. As a publicly funded discretionary grant program, NTIA must follow procedures that are fair and impartial to all applicants. It seeks, therefore, to avoid the appearance of impropriety that might result from certain seemingly innocent contacts between NTIA/PTFP and applicants, and proposes to incorporate into the Rules a statement formalizing its guidelines on the topic. [Rules § 2301.15(f)] In particular, in order to maintain the integrity of the application review process, NTIA/PTFP staff are not authorized to discuss the merits of an application when it is under review. However, some contacts during the grant review cycle are appropriate, and they are likewise indicated in the Rules. This addition formalizes a policy statement previously distributed to all 1991 applicants.

F. Filing of FCC Applications

23. The Rules stipulate at § 2301.8(a) that, "Each applicant whose project requires FCC authorization must file an application for that authorization on or before the closing date." If the applicant does not file an application with the FCC, or if the FCC application is dismissed, returned, or denied, NTIA may return the application submitted to PTFP. [Rules 2301.8(f) *and* 2301.9(f)]

24. The primary purpose of the requirement is to ensure that the FCC has ample time in which to review the applications and to notify PTFP whether any necessary authorizations for the project will be issued. NTIA requires grantees to begin construction projects promptly and, therefore, does not award funds for projects that may be long-delayed due to difficulties in obtaining proper FCC authorization. Applications that are delayed in obtaining FCC authorizations are deferred for consideration in the next grant cycle.

25. A second purpose of the requirement is to provide NTIA with appropriate technical documentation with which to evaluate requests for equipment. NTIA recognizes that the FCC now accepts applications for some facilities, such as low power television stations and television translators, only during specified periods of the year. Since NTIA does not control the scheduling of these FCC "windows", it will accept and process grant applications for television translators and low power television facilities before the FCC applications are filed, provided that the PTFP application includes a copy of the application that will be filed at the FCC when the "window" opens. [Rules 2301.8(b)]

26. In addition, ancillary authorizations such as for Studio-Transmitter Links (STLs) and remote pick-up units are closely associated with a station's main authorization and are routinely granted by the FCC. Therefore, NTIA will no longer require that FCC applications for this equipment be filed by the closing date. PTFP, however, requires technical information about the related equipment for its review, and NTIA will require that copies of STL applications as they will be filed at the FCC be included in the PTFP application submitted by the closing date.

27. Similarly, in the cases of C-band downlink facilities and of Very Small Aperture Terminals (VSATs) NTIA will no longer require that the relevant FCC applications be filed at the FCC on or before the PTFP closing date. Two factors have shaped NTIA's decision. First, the technical parameters of both C-band downlinks and VSATs are well established and PTFP can review the grant applications without having the pertinent FCC filings on hand. Second, the FCC does not require licensing of C-band downlinks and its licensing of VSATs has become routine. Although NTIA is relaxing its FCC filing requirement for these facilities, NTIA will continue to require FCC licensing of

both C-band downlinks and VSATs in order to fully protect the Federal interest in the equipment.

28. NTIA emphasizes that, if a PTFP grant is eventually awarded to help purchase the facilities contemplated here, it will require receipt of copies of the FCC authorizations prior to the release of Federal funds to the grantee.

G. Support for Salary Expenses

29. NTIA wishes to clarify its policy concerning the support of salary expenses for construction projects. NTIA regards its primary mandate to be funding the acquisition of equipment and only secondarily the funding of salary expenses, even when allowed by law. Moreover, NTIA notes that competition for PTFP funding remains intense. To ensure that PTFP monies are distributed as effectively as possible in this competitive atmosphere, NTIA must weigh carefully its support for any project cost not directly involved with the purchase of equipment.

30. Therefore, as has been the policy for the past few years, NTIA proposes generally not to fund salary expenses, including staff installation costs, pre-application legal and engineering fees, and pre-operational expenses of new entities. NTIA will support such costs only when the applicant demonstrates that exceptional need exists or that substantially greater efficiency would result from the use of staff installation instead of contractor installation. [Rules 2301.17(b)(3)]

31. As regards the installation of transmission equipment, NTIA strongly favors the use of either manufacturer or professional contractor personnel and commonly funds these costs. NTIA believes that the value of transmission equipment and the complicated nature of its installation require expertise beyond that normally found on station staffs. NTIA will rarely support requests for assistance for the installation of studio and test equipment, however, whether that installation is by staff or by contract employees. Such installation is normally of minimum difficulty, and the associated installation costs should be absorbed in the recipient's normal operating budget. Again, NTIA will take into account demonstrations of exceptional need.

H. Premature Obligation of Non-Federal Funds

32. NTIA wishes to remove an inconsistency in the rule on the premature obligation of non-Federal funds. The subject is addressed twice in the existing Rules, and two different dates are identified as the permissible point for applicant obligation of funds. The first stipulated what an applicant may do "after the filing of its application"; the second referred to "the closing date." [Rules 2301.16(a)(3)(c)] Since these can be markedly different dates, the revision removes the ambiguity by using the phrase "the closing date" in both places.

33. NTIA thinks that clarifying the date by which applicants may obligate non-Federal funds could substantially reduce the possibility of an applicant's inadvertently violating the rule.

I. Assurances

34. Changes in the law since the 1987 Rules revision require NTIA to add two further requirements to the list of applicant Assurances in its Rules and application. [Rules, § 2301.5] First, applicants must promise to maintain a drug-free workplace. [15 CFR 26.600–630 (1990)] Second, they must certify that no Federally appropriated funds have been paid to a Federal employee to influence the award of a grant. [31 U.S.C. 1352 (1988)] Language reflecting these requirements is included in the new rules. [Rules 2301.5(d)(2)(xx)] Because these are obligations imposed by law, no public comment is sought on this addition to the Rules.

Grantee Responsibilities

J. Site Rights Documentation

35. NTIA recently revised its requirements pertaining to documentation of leases and site rights for PTFP projects. NTIA believes that an attorney who is familiar with the local laws should review this aspect of a grantee's documentation. Accordingly, the program now usually requires only an opinion letter containing PTFP-specified certifications and signed by the grant recipient's attorney. The change formalizes the procedure instituted in 1990. [Rules 2301.5(d)(2)(ix)]

K. Administration of Federal Grant Funds and Control and Use of Facilities

36. In 1987, when the PTFP Rules were last revised, some sections were deleted in an effort to simplify the rules. Experience in administering PTFP grants since then indicates the desirability of reinserting some of the deleted sections. This action places all of PTFP's rules and requirements in one convenient document, and NTIA believes that reinserting these rules will assist applicants, PTFP staff, and grant recipients. NTIA welcomes public comment on these rules, in particular whether they will serve the intended purpose of facilitating administration of PTFP grants.

37. The first item of reinserted material requires applicants to make copies of their applications available at their offices for public inspection during normal business hours. [Rules 2301.11(a)] The second states the method by which the final total project cost shall be calculated. [Rules 2301.16(d)] It is needed to give grant recipients a comprehensive understanding of the administration of their awards. The other reinserted sections are explained below:

- *§ 2301.18—Payment of the Federal Grant* was reinserted to conform the PTFP Rules to OMB Circular A–110, Attachment I, ¶7.
- *§ 2301.19—Retention of Records* will help NTIA protect the 10-year Federal reversionary interest created by § 392(g).
- *§ 2301.20—Completion of Projects* and *§ 2301.21, Annual Status Report for Construction Projects* are reinserted to give grant recipients guidance in writing their status and final reports and to help NTIA ascertain that the grant funds are being used for their intended purposes.
- *§ 2301.22—Conditions Attached to the Federal Grant* sets out grant conditions that are unique to PTFP. The award document *incorporates* the Uniform Administrative Requirements of OMB Circular A–110 and 15 CFR part 24.
- *§ 2301.23—Grant Suspensions, Terminations, and Transfers* are reinserted to give applicants and grantees notice of PTFP grant suspension, termination and transfer procedures.
- *§ 2301.24—Equipment* ensures that federal funds are used to provide the highest quality service possible.

38. Some revisions have been made in the reinserted sections. They are minor, reflecting changes in the relevant PTFP guidelines or elaborations of points that NTIA decided needed clarification.

Public Comment Period and Rulemaking Requirements

The PTFP Rules described above relate to a Federal grant-in-aid program; thus, under section 553(a)(2) of the Administrative Procedures Act [5 U.S.C. section 553(a)(2)], they may be issued and made effective immediately without notice of proposed rulemaking, opportunity for comment, or 30-day deferral of effectiveness after publication. However, NTIA believes the public interest will be best served by accepting comments by the deadline specified above under the heading DATES and by issuing Final Rules based on evaluation of those comments.

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Under Executive Order (E.O.) 12291, the Department must determine whether a regulation is a "major" rule within the meaning of section 1 of E.O. 12291 and therefore subject to the requirement that a Regulatory Impact Analysis be performed. This regulation is not a major rule because it is not "likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumer, individual industries * * *; or (3) significant adverse effects on competition, employment, investment, productivity or innovation * * *." Therefore, preparation of a Regulatory Impact Analysis is not required.

A Regulatory Flexibility Analysis is not required under The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because as explained above, the rules were not required to be promulgated as proposed rules before issuance as final rules by § 553 of the Administrative Procedures Act (5 U.S.C. 553) or by any other law. This proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

The Department has determined that this rule will not significantly affect the quality of the human environment. Therefore, no draft or final Environmental Impact Statement has been or will be prepared.

The Office of Management and Budget has approved the information collection requirements contained in this rule pursuant to the Paperwork Reduction Act under OMB Control No. 0660–0003.

List of Subjects in 15 CFR Part 2301

Administrative practice and procedure, Grant programs—communications, Telecommunications.

Dated: August 5, 1991.

Janice Obuchowski,
Administrator.

For the reasons set out above, it is proposed to amend 15 CFR chapter XXIII by revising Part 2301 to read as follows:

PART 2301—PUBLIC TELECOMMUNICATIONS FACILITIES PROGRAM

Subpart A—Definitions, Program Purposes and Special Consideration

Sec.
2301.1 Definitions.
2301.2 Program Purposes.
2301.3 Special Consideration.

Subpart B—Eligibility and Application Procedures

2301.4 Eligible Organizations and Projects.
2301.5 Application Procedures.
2301.6 Additional Information.
2301.7 Service of Applications.
2301.8 Federal Communications Commission Authorization.
2301.9 Acceptance for Filing.
2301.10 Appeals.
2301.11 Public Comments.
2301.12 Coordination with Interested Agencies and Organizations.
2301.13 Funding Criteria for Construction Applications.
2301.14 Funding Criteria for Planning Applications.
2301.15 Action on All Applications.

Subpart C—Federal Financial Participation

2301.16 Amount of the Federal Grant.
2301.17 Items and Costs Ineligible for Federal Funding.
2301.18 Payment of the Federal Grant.

Subpart D—Accountability for Federal Funds

2301.19 Retention of Records.
2301.20 Completion of Projects.
2301.21 Annual Status Report for Construction Projects.

Subpart E—Control and Use of Facilities

2301.22 Conditions Attached to the Federal Grant.
2301.23 Grant Suspensions, Terminations, and Transfers.
2301.24 Equipment.

Subpart F—Waivers

2301.25 Waivers.

Appendix to Part 2301—Special Application and Priorities

Authority: Public Telecommunications Financing Act of 1978, Pub. L. 95–567, 92 Stat. 2405, codified at 47 U.S.C. 390–394, 397–399b; and the Public Broadcasting Amendments Act of 1981, Pub. L. 97–35, 95 Stat. 725, and the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, 5001, 100 Stat. 82, 117 (1986).

Subpart A—Definitions, Program Purposes and Special Consideration

§ 2301.1 Definitions.

Act means Part IV of Title III of the Communications Act of 1934, 47 U.S.C. 390–394 and 397–399b, as amended.

Administrator means the Assistant Secretary for Communications and Information of the United States Department of Commerce.

Agency means the National Telecommunications and Information Administration of the United States Department of Commerce.

Broadcast means the distribution of electronic signals to the public at large using television (VHF or UHF) or radio (AM or FM) technologies.

Construction (as applied to public telecommunications facilities) means acquisition (including acquisition by lease), installation, and improvement of public telecommunications facilities and preparatory steps incidental to any such acquisition, installation or improvement.

Department means the United States Department of Commerce.

FCC means the Federal Communications Commission.

Federal interest period means the period of time during which the Federal Government retains a reversionary interest in all facilities constructed with Federal grant funds. This period begins with the purchase of the facilities and continues for ten (10) years after the official completion date of the project.

Nonbroadcast means the distribution of electronic signals by a means other than broadcast technologies. Examples of nonbroadcast are Instructional Television Fixed Service (ITFS), teletext, and cable.

Noncommercial educational broadcast station or "public broadcast station" means a television or radio broadcast station that is eligible to be licensed by the FCC as a noncommercial educational radio or television broadcast station and that is owned (controlled) and operated by a state, a political or special purpose subdivision of a state, public agency or nonprofit private foundation, corporation, institution, or association, or owned (controlled) and operated by a municipality and transmits only noncommercial educational, cultural or instructional programs.

Noncommercial telecommunications entity means any enterprise that is owned (controlled) and operated by a state, a political or special purpose subdivision of a state, a public agency, or a nonprofit private foundation, corporation, institution, or association; and that has been organized primarily for the purpose of disseminating audio or video noncommercial educational, cultural or instructional programs to the public by means other than a primary television or radio broadcast station, including, but not limited to, coaxial cable, optical fiber, broadcast translators, cassettes, discs, satellite, microwave or laser transmission.

Non-Federal financial support means the total value of cash and the fair market value of property and services received.

(1) As gifts, grants, bequests, donations, or other contributions for the construction or operation of noncommercial educational broadcast stations, or for the production, acquisition, distribution, or dissemination of educational, cultural or instructional television or radio programs, and related activities, from any source other than (i) the United States or any agency or instrumentality

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of the United States; or (ii) any public broadcasting entity; or,

(2) As gifts, grants, donations, contributions, or payments from any State, or any educational institution, for the construction or operation of noncommercial educational broadcast stations or for the production, acquisition, distribution, or dissemination of educational, cultural or instructional television or radio programs, or payments in exchange for services or materials with respect to the provision of educational, cultural or instructional television or radio programs.

Nonprofit (as applied to any foundation, corporation, institution or association) means a foundation, corporation, institution, or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

Operational cost means those approved costs incurred in the operation of an entity or station such as overhead labor, material, contracted services (such as building or equipment maintenance), including capital outlay and debt service.

Pre-operational expenses means all nonconstruction costs incurred by new public telecommunications entities before the date on which they began providing service to the public, and all nonconstruction costs associated with the expansion of existing stations before the date on which such expanded capacity is activated, except that such expenses shall not include any portion of the salaries of any personnel employed by an operating public telecommunications entity.

PTFP means the Public Telecommunications Facilities Program, which is administered by the Agency.

PTFP Director means the Agency employee who recommends final action on public telecommunications facilities applications grants to the Administrator.

Public telecommunications entity means any enterprise which is a public broadcast station or noncommercial telecommunications entity and which disseminates public telecommunication services to the public.

Public telecommunications facilities means apparatus necessary for production, interconnection, captioning, broadcast, or other distribution of programming, including but not limited to studio equipment, cameras, microphones, audio and video storage or processors and switchers, terminal equipment, towers, antennas, transmitters, remote control equipment, transmission line, translators, microwave equipment, mobile equipment, satellite communications equipment, instructional television fixed service equipment, subsidiary communications authorization transmitting and receiving equipment, cable television equipment, optical fiber communications equipment and other means of transmitting, emitting, storing, and receiving images and sounds or information, except that such term does not include the buildings to house such apparatus (other than small equipment shelters that are part of satellite earth stations, translators, microwave interconnection facilities, and similar facilities).

Public telecommunications services means noncommercial educational and cultural radio and television programs, and related noncommercial instructional or informational material that may be transmitted by means of electronic communications. It does not include essentially sectarian programming.

Sectarian means that which has the purpose or function of advancing or propagating a religious belief.

State includes each of the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

System of public telecommunications entities means any combination of public telecommunications entities acting cooperatively to produce, acquire or distribute programs, or to undertake related activities.

§ 2301.2 Program purposes.

(a) The Agency's determination to fund an application and the amount of the grant awarded shall be governed by whether the application will, in the following order of priority, result in:

(1) The establishment of new public telecommunications facilities to extend services to areas not currently receiving such services;

(2) The expansion of the service areas of existing public telecommunications entities; or,

(3) The improvement of the capabilities of existing licensed public broadcasting stations to provide public telecommunications services.

(b) Notwithstanding paragraph (a) of this section, the Agency may award a grant to an applicant which is otherwise eligible for funding, but whose proposal does not specifically meet any of the purposes enumerated above. Such grant, however, must fulfill the overall objectives of the Act.

§ 2301.3 Special consideration.

In accordance with Section 392(f) of the Act, the Agency will give special consideration to applications that foster ownership or control of, operation of, and participation in public telecommunications entities by minorities and women. The Agency interprets "ownership" and "owned" as meaning control of an entity through the possession or exercise of the normal incidents of ownership, such as participation on the governing board or holding corporate offices. The Agency will accord special consideration only where women and/or minorities hold more than fifty (50) percent control of the applicant. The Agency will consider the composition of the applicant's governing body, management levels, or policy-making positions.

Subpart B—Eligibility and Application Procedures

§ 2301.4 Eligible organizations and projects.

(a) *Eligible applicants (Construction Grants).* In order to apply for and receive a PTFP Construction Grant, an applicant must be:

(1) A public or noncommercial educational broadcast station;

(2) A noncommercial telecommunications entity;

(3) A system of public telecommunications entities;

(4) A nonprofit foundation, corporation, institution, or association organized primarily for educational or cultural purposes; or,

(5) A state or local government or agency, or a political or special purpose subdivision of a state.

(b) *Eligible applicants (Planning Grants).* In order to apply for and receive a PTFP Planning Grant, an applicant must be:

(1) Any of the organizations described in paragraph (a) of this section; or,

(2) A nonprofit foundation, corporation, institution, or association organized for any purpose except primarily religious.

(c) *Eligible projects.* An applicant that is eligible under paragraph (a) or (b) of this section may file an application with the Agency for a planning or construction grant to achieve the following:

(1) The provision of new public telecommunications facilities to extend service to areas currently not receiving public telecommunications services;

(2) The expansion of the service areas of existing public telecommunications entities;

(3) The establishment of new public telecommunications entities serving areas currently receiving public telecommunications services; or,

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(1) Any of the organizations described in paragraph (a) of this section; or,

(2) A nonprofit foundation, corporation, institution, or association organized for any purpose except primarily religious.

(c) *Eligible projects.* An applicant that is eligible under paragraph (a) or (b) of this section may file an application with the Agency for a planning or construction grant to achieve the following:

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(2) The expansion of the service areas of existing public telecommunications entities;

(3) The establishment of new public telecommunications entities serving areas currently receiving public telecommunications services; or,

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(4) The improvement of the capabilities of existing licensed public broadcast stations to provide public telecommunications services.

(d) Applicants must certify whether they are delinquent on any Federal debt. In accordance with OMB Circular A-129, an applicant with outstanding accounts receivable with any agency of the Federal Government will not receive an NTIA grant until the debt is paid or arrangements to repay which are satisfactory to the government agency in question are made. This includes debts incurred by sub-units of the applicant other than the sub-unit that is applying to NTIA, and includes debts owed to any agency of the Federal Government, not just to the Department of NTIA.

(e) An applicant whose proposal requires an authorization from the FCC must be eligible to receive such authorization.

(f) *Preliminary determination of eligibility.* In order to obtain a preliminary determination of applicant or proposal eligibility, a prospective applicant must send a letter requesting such determination to the Agency.

(1) The request letter should be addressed to: PTFP Director, NTIA/DOC, 14th Street and Constitution Avenue, NW., room H-4625, Washington, DC 20230.

(2) In the request letter the prospective applicant must:

(i) Describe the proposed project;

(ii) Include a copy of the organization's articles of incorporation and bylaws, or other similar documentation, which specifies the nature and powers of the prospective applicant (unless the prospective applicant has received a PTFP grant within the last ten (10) years, in which case only a copy of the most recent Annual Report or Quarterly Performance Report and any changes in the articles of incorporation and bylaws since the last grant must be provided); and,

(iii) If the prospective applicant is a nonprofit foundation, corporation, institution, or association which has not received a PTFP grant within the previous ten (10) years, provide a copy of a letter from the Internal Revenue Service granting the prospective applicant tax exempt status under section 501(c)(3) of the Internal Revenue Code, or other legal documentation of nonprofit status.

(3) A favorable preliminary determination of eligibility does not guarantee that the Agency will accept a future application for filing or award a subsequent grant.

(4) A prospective applicant may appeal an unfavorable preliminary determination of eligibility to the Administrator under § 2301.10.

§ 2301.5 Application procedures.

(a) *Address.* The following address should be used for all communications with the Agency: Public Telecommunications Facilities Program, NTIA/DOC, 14th Street and Constitution Avenue, NW., room H-4625, Washington, DC 20230.

(b) Application materials may be obtained from the address listed in paragraph (a).

(c) *Closing date.* The Administrator shall select and publish in the **Federal Register** a date by which applications for funding in a current fiscal year are to be filed.

(d) *New applications.* (1) All applications, whether mailed or hand delivered, must be received by the Agency at the address listed in the annual **Federal Register** announcement requesting applications at or before 5 p.m. on the closing date.

(2) A complete application must include an original and one copy of the Agency application form with the signature of an officer of the applicant who is legally authorized to sign for the applicant, and all the information required by the Agency application materials, which shall include:

(i) A brief narrative statement (of not more than four (4) pages) describing the proposed project with particular attention to satisfying the appropriate funding criteria as listed in §§ 2301.13 or 2301.14 of these Rules;

(ii) If the applicant has not received a PTFP grant within the previous ten (10) years, a copy of the applicant's articles of incorporation, bylaws, a list of the members of the board of directors, and other similar documentation specifying the nature and powers of the applicant, except that state or local government entities need only provide a reference to the statutory or other authority under which they operate;

(iii) If the applicant is a nonprofit foundation, corporation, institution or association which has not received a PTFP grant within the previous ten (10) years, a copy of a letter from the Internal Revenue Service granting the applicant tax exempt status under section 501(c)(3) of the Internal Revenue Code, or other legal documentation of nonprofit status.

(iv) If the applicant received a PTFP grant within the previous ten (10) years, then it must reference the number of the previous grant, provide a copy of the most recent Annual Report or Quarterly Performance Report submitted to the PTFP, and submit a copy of any changes in the applicant's articles of incorporation or bylaws which have taken effect since the last grant was awarded;

(v) If the applicant applied for a preliminary determination of eligibility and received a positive determination, it may submit a copy of the official notification from the PTFP in lieu of the eligibility requirements of this section;

(vi) Documentation that the applicant will have, when needed, the funds to construct any facilities for which the Agency has granted matching funds;

(vii) Documentation that the applicant will have the funds necessary to operate and maintain those facilities once constructed;

(viii) Documentation of the amount of Federal and non-Federal financial support received by the applicant organization during each of the preceding three fiscal years or for the length of time the organization has been in existence if less than three years;

(ix) Applications requesting transmission or interconnection equipment should include an opinion letter from the applicant's attorney stating that the applicant will have either fee simple title or a long-term (i.e., ten-year) lease, or an option to obtain same, to any real or personal property necessary for the installation of the equipment. Applications for studio or test equipment should include similar materials regarding main transmission sites to ensure that a grant recipient will be able to utilize PTFP-funded equipment to provide public telecommunications services throughout the Federal interest period. The applicant must have the right to occupy, construct, maintain, operate, inspect, and remove the project equipment without impediment, and nothing must prevent the Federal government from entering the property and reclaiming or securing PTFP-funded property. The Agency reserves the right to review an applicant's site rights documents if deemed necessary;

(x) An inventory of all equipment (if any) currently owned by the applicant that corresponds to the type of equipment requested in the current application or that would be closely associated with the proposed project. The inventory should include manufacturers' names, model numbers, production years, and the dates of acquisition;

(xi) Within the narrative or as an optional exhibit no longer than two pages, a five-year plan outlining the applicant's projected facilities requirements and the projected costs of such requirements;

(xii) If special consideration is requested under § 2301.3, information detailing the basis for the request on the exhibit form provided by the Agency;

(xiii) Copies of letters transmitting a copy of the application to each of the entities required under § 2301.7;

(xiv) Significant documentation supporting the applicant's request for equipment, including as necessary the proper FCC authorization(s) cited in §§ 2301.8 and 2301.9, and if applicable, documentation indicating high incidence of repair or periods of inoperability;

(xv) Evidence that the applicant has participated (or, in the case of a planning grant, will participate) in comprehensive planning for the proposed project, including community involvement, an evaluation of alternate technologies and coordination with state telecommunications agencies, if any;

(xvi) Assurance that during the period in which the applicant possesses or uses the Federally funded facilities (whether or not this period extends beyond the Federal interest period), the applicant will not use or allow the use of the Federally funded equipment for essentially sectarian purposes;

(xvii) A detailed explanation of any complaints of discrimination currently pending or decided against the applicant before any court or governmental agency;

(xviii) A copy of any Environmental Impact Statement or other environmental assessment document prepared in conjunction with the proposed project as may be required by any Federal, state, or local law or regulation;

(xix) Assurance of compliance with all applicable Federal laws, rules or regulations relating to the project, as described on the application form provided by the Agency;

(xx) Assurance of compliance with all provisions of the Drug-Free Workplace Requirements and the Certifications for Contracts, Grants, Loans and Cooperative Agreements found in the application form;

(xxi) Assurance that the applicant has taken into account all non-Federal sources of financial support for this project; that the non-Federal share stated by the Applicant as being available for this project is the maximum amount available from such sources; and that the applicant will initiate and complete the work within the applicable time frame after receipt of approval from the Agency; and,

(xxii) Assurance that the applicant will make the most economical and efficient use of the Federal funds.

(e) *Deferred applications.* (1) An applicant may reactivate an application deferred by the Agency during the prior year under § 2301.15 if the applicant has not substantially changed the stated purpose of the application.

(2) An applicant may reactivate a deferred application only during the two consecutive years following the application's initial acceptance for filing by the Agency.

(3) To reactivate a deferred application, the applicant must file the information described in paragraph (e)(4), of this section below, whether mailed or hand delivered, at or before 5 p.m. on the closing date.

(4) To file a complete reactivation request, the applicant must submit an original and one copy of the following:

(i) Part I of the approved Agency application form with the original signature of an officer of the applicant who is legally authorized to sign for the applicant, with a notation of the file number of the earlier application;

(ii) A brief narrative statement (not more than four (4) pages) describing the project proposed in the current application;

(iii) An update of the availability of operating funds and the necessary non-Federal share of the project;

(iv) An update of the financial information required by paragraph (d)(2)(viii) of this section;

(v) A revised listing of current eligible project costs, if necessary;

(vi) A revised inventory as described in paragraph (d)(2)(x) of this section. Applicants having previously submitted an inventory need submit only updated information;

(vii) A revised five-year plan as described in paragraph (d)(2)(xi) of this section outlining the applicant's projected facilities requirements and the projected costs of such requirements;

(viii) If special consideration is requested under § 2301.3, current information detailing the basis for the request on the exhibit form provided by the Agency;

(ix) Copies of letters transmitting a copy of the current application to each of the entities required under § 2301.7;

(x) An updated explanation of any complaints of discrimination currently pending or decided against the applicant before any court or governmental agency; and,

(xi) Assurance of compliance with all applicable Federal laws, rules or regulations relating to the project, as described on the application form provided by the Agency.

(f) Deferred applications that are resubmitted under paragraph (e) of this section and contain substantial changes will be considered as new applications and must comply with the requirements of § 2301.5(d). All deferred applications may be subject to a second determination of eligibility.

(g) *Applications resulting from catastrophic damage.* (1) An application may be filed with a request for a waiver of the closing date, as provided in § 2301.25, when an eligible broadcast applicant suffers catastrophic damage to the basic equipment essential to its continued operation as a result of a natural or manmade disaster and is in dire need of assistance in funding replacement of the damaged equipment.

(2) The request for a waiver must set forth the circumstances that prompt the request and be accompanied by appropriate supporting documentation.

(3) A waiver will not be granted if it is determined that the applicant has not carried proper insurance.

(4) Applications filed and accepted pursuant to this paragraph must contain all of the elements stipulated in paragraph (d) or (e), above, and will be subject to the same review and evaluation process followed for applications accepted for filing in the normal application cycle, although the Administrator may establish a special timetable for review and evaluation to permit an appropriately timely decision.

§ 2301.6 Additional information.

(a) The Agency may request from the applicant any additional information that the Agency deems necessary or pertinent. Applicants must provide to the Agency two copies of any additional information that the Agency requests within fifteen (15) days of the date of the Agency's letter.

(b) Applicants must immediately provide to the Agency two copies of information received after the closing date that materially affects the application, including:

(1) State Single Point of Contact and State Telecommunications Agency comments on applications;

(2) FCC file numbers and changes in the status of FCC applications necessary for the proposed project;

(3) Changes in the status of proposed local matching funds, including notification of the passage (including reduction or rejection) of a proposed state appropriation or receit (or denial) of a proposed substantial matching gift;

(4) Changes in the licensee, in the licensee's board structure, in the applicant's IRS section 501(c)(3) status, or in the applicant's Articles of Incorporation or Bylaws;

(5) Changes in the status of proposed production, participation or distribution agreements (if relevant to the proposed project);

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(2) The request for a waiver must set forth the circumstances that prompt the request and be accompanied by appropriate supporting documentation.

(3) A waiver will not be granted if it is determined that the applicant has not carried proper insurance.

(4) Applications filed and accepted pursuant to this paragraph must contain all of the elements stipulated in paragraph (d) or (e), above, and will be subject to the same review and evaluation process followed for applications accepted for filing in the normal application cycle, although the Administrator may establish a special timetable for review and evaluation to permit an appropriately timely decision.

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(a) The Agency may request from the applicant any additional information that the Agency deems necessary or pertinent. Applicants must provide to the Agency two copies of any additional information that the Agency requests within fifteen (15) days of the date of the Agency's letter.

(b) Applicants must immediately provide to the Agency two copies of information received after the closing date that materially affects the application, including:

(1) State Single Point of Contact and State Telecommunications Agency comments on applications;

(2) FCC file numbers and changes in the status of FCC applications necessary for the proposed project;

(3) Changes in the status of proposed local matching funds, including notification of the passage (including reduction or rejection) of a proposed state appropriation or receit (or denial) of a proposed substantial matching gift;

(4) Changes in the licensee, in the licensee's board structure, in the applicant's IRS section 501(c)(3) status, or in the applicant's Articles of Incorporation or Bylaws;

(5) Changes in the status of proposed production, participation or distribution agreements (if relevant to the proposed project);

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(6) Changes in lease or site rights agreements; and

(7) Complete failure of major items of equipment for which replacement costs have been requested or changes in the status of the needs of the equipment requested.

(c) Applicants must place copies of any additional information submitted to the Agency in the copy of the application available for public inspection pursuant to § 2301.11.

(d) Potential grant recipients may be subject to the following Department Pre-Award Administrative Requirements and Policies:

(1) Name Check forms (Form CD–346) may be used to ascertain background information on key individuals associated with potential grantees. The Name Check requests information to determine if any key individuals in the organization have been convicted of, or are under indictment or have been charged with criminal offenses such as fraud, theft, perjury, or other matters pertinent to management honesty or financial integrity;

(2) Potential grantee organizations may also be subject to reviews of Dun and Bradstreet data or other similar credit checks.

§ 2301.7 Service of applications.

On or before the closing date all new or deferred applicants must serve a copy of the application on the following agencies:

(a) In the case of an application for a construction grant for which FCC authorization is necessary, the Secretary, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554;

(b) The state or local agency(-ies), if any, having jurisdiction over the development of broadcast and/or nonbroadcast telecommunications in the state(s) and the community(-ies) to be served by the proposed project; and,

(c) The state office established to review applications under Executive Order 12372 as amended by Executive Order 12416, if the state has established such an office and wishes to review these applications.

§ 2301.8 Federal Communications Commission authorization.

(a) Each applicant whose project required FCC authorization must file an application for that authorization on or before the closing date. Recommended submission date for applications to the FCC is at least 60 days prior to the closing date. The applicant should clearly identify itself as a PTFP applicant.

(b) In the case of FCC authorizations where it is not possible or practical to submit the FCC license application with the PTFP application, such as C-band satellite uplinks, low power television stations and translators, remote pickups, studio-to-transmitter links, and Very Small Aperture Terminals, a copy of the FCC application as it will be submitted to the FCC, or the equivalent engineering data, must be included in the PTFP application.

(c) Any FCC authorization required for the project must be in the name of the applicant for the PTFP grant.

(d) If the project is to be associated with an existing station, FCC operating authority for that station must be current and valid.

(e) For any project requiring new authorization(s) from the FCC, the applicant must file a copy of each FCC application and any amendments with the Agency.

(f) If the applicant fails to file the required FCC application(s) by the closing date, or if the FCC returns, dismisses, or denies an application required for the project or any part thereof, or for the operation of the station with which the project is associated, the Agency may return the application.

(g) No grant will be awarded until confirmation has been received from the FCC that any necessary authorization will be issued.

§ 2301.9 Acceptance for filing.

After the closing date, the Agency will examine each application for timeliness, completeness, eligibility, and FCC authorization.

(a) The Agency will publish a notice in the Federal Register listing all applications accepted for filing. Acceptance of an application for filing does not preclude subsequent return or disapproval of the application, nor does it assure that the application will be funded. Publication merely operates to qualify the application to compete for funding with other applications accepted for filing.

(b) The notice of acceptance for filing will also include a request for comments on the applications from any interested party. The procedural requirements of § 2301.11 will be set forth in the notice.

(c) Substantially incomplete applications will be returned by the Agency.

(d) Any application, amendment to an application, or request to reactivate a deferred application that is filed after the closing date will be returned by the Agency.

(e) When the Agency finds that either the applicant or the project is ineligible under the Act and/or these Rules, it will return the application and inform the applicant of the denial of eligibility.

(f) If the Agency finds that a proposed project requires authorization from the FCC and that the applicant did not tender its application for such authorization, the Agency will return the application.

(g) With respect to requests to withdraw or to defer applications fro consideration:

(1) Applicants may request withdrawal of an application from consideration for funding. Withdrawn applications will be returned by the Agency.

(2) Applicants may not request that the Agency defer an application for subsequent consideration. A request for deferral of an application will be considered a request for withdrawal.

(h) Deferred applications that are submitted for reactivation for a third time will be returned by the Agency.

§ 2301.10 Appeals.

(a) Within 15 calendar days after the date on which the Agency sends a written notice to an applicant denying the eligibility of the applicant or the proposed project, or notifying an applicant that its application is substantially incomplete, the applicant may file a written notice of appeal with the Administrator at the address listed in § 2301.5(a). Applicants may not appeal the return of applications filed after the closing date.

(b) The notice of appeal must show that the denial of eligibility or determination of incompleteness is factually or legally incorrect. If the applicant relies on any written documents or other materials to dispute the Agency's action, the applicant should list and attach a copy of each item or indicate that the Agency has a copy of the item in its possession.

(c) Upon receipt of the notice of appeal, the Administrator will review the appeal in consultation with the Chief Counsel and the PTFP Director and will render a written decision within 30 calendar days.

(d) If the Administrator sustains the denial of eligibility or the determination of incompleteness, the Agency will return the application to the applicant.

(e) All decisions of the Administrator made under paragraph (c) of this section are final.

§ 2301.11 Public comments.

(a) The applicant shall make a copy of its application available at its offices for public inspection during normal business hours.

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(b) Any interested party may file comments with the Agency supporting or opposing an application and setting forth the grounds for support or opposition. Such comments must contain a certification that a copy of the comments has been delivered to the applicant. Comments must be sent to the address listed in § 2301.5(a).

(c) The Agency will incorporate all comments from the public and any replies from the applicant in the applicant's official file.

§ 2301.12 Coordination with interested agencies and organizations.

In acting on applications and carrying out other responsibilities under the Act, the Agency shall consult with:

(a) The FCC, with respect to functions that are of interest to, or affect other functions of the FCC;

(b) The Corporation for Public Broadcasting, public broadcasting agencies, organizations, other agencies, and institutions administering programs which may be coordinated effectively with Federal assistance provided under the Act; and,

(c) The state office established to review applications under Executive Order 12372 as amended by Executive Order 12416, if the state has established such an office and wishes to review these applications.

§ 2301.13 Funding criteria for construction applications.

In determining whether to approve or defer a construction grant application, in whole or in part, and the amount of such grant, the Agency will evaluate all the information in the application file and consider the following factors, each of which has equal weight:

(a) The extent to which the project meets the program purposes set forth in § 2301.2 as well as the specific program priorities set forth in the appendix of these Rules;

(b) The adequacy and continuity of financial resources for long-term operational support;

(c) The extent to which non-Federal funds will be used to meet the total cost of the project;

(d) The extent to which the applicant has:

(1) Assessed specific educational, informational, and cultural needs of the community(-ies) to be served, and the extent to which the proposed service will not duplicate service already available.

(2) Evaluated alternative technologies and the bases upon which the technology was selected;

(3) Provided significant documentation of its equipment requirements, and the urgency of acquisition or replacement;

(4) Provided documentation of an increasing pattern or substantial non-Federal financial support;

(5) Provided other evidence of community support, such as letters from elected or appointed policy-making officials, and from agencies for which the applicant produces or will produce programs or other materials;

(e) The extent to which the evidence supplied in the application reasonably assures an increase in public telecommunications services and facilities available to, operated by, and owned or controlled by minorities and women;

(f) The extent to which various items of eligible apparatus proposed are necessary to, and capable of, achieving the objectives of the project and will permit the most efficient use of the grant funds;

(g) The extent to which the eligible equipment requested meets current broadcast industry performance standards;

(h) The extent to which the applicant will have available sufficient qualified staff to operate and maintain the facility and provide services of professional quality;

(i) The extent to which the applicant has planned and coordinated the proposed services with other telecommunications entities in the service area;

(j) The extent to which the project implements local, statewide or regional public telecommunications systems plans, if any; and

(k) The readiness of the FCC to grant any necessary authorization.

§ 2301.14 Funding criteria for planning applications.

In determining whether to approve or defer a planning grant application, in whole or in part, and the amount of such grant, the Agency will evaluate all the information in the application file and consider, in no order of priority, the following factors:

(a) The extent to which the applicant's interests and purposes are consistent with the purposes of the Act and the priorities of the Agency;

(b) The qualifications of the proposed project planner;

(c) The extent to which the project's proposed procedural design assures that the applicant would adequately:

(1) Obtain financial, human and support resources necessary to conduct the plan;

(2) Coordinate with other telecommunications entities at the local State, regional and national levels;

(3) Evaluate alternative technologies and existing services; and

(4) Receive participation by the public to be served (and by minorities and women in particular) in the project planning;

(d) Any pre-planning studies conducted by the applicant showing the technical feasibility of the proposed planning project (such as the availability of a frequency assignment, if necessary, for the project); and,

(e) The feasibility of the proposed procedure and timetable for achieving the expected results

§ 2301.15 Action on all applications.

(a) After consideration of an application which the Agency has accepted for filing, any comments filed by interested parties and replies thereto, and any other relevant information, the Agency will take one of the following actions:

(1) Select the application for funding, in whole or in part;

(2) Defer the application for subsequent consideration;

(3) Return the application as ineligible pursuant to § 2301.9 with a notice of the grounds and reason; or,

(4) Return applications which remain unfunded after consideration by the Agency for three years.

(b) Upon the approval or deferral, in whole or in part, of an application, the Agency will inform:

(1) The applicant;

(2) Each State educational television, radio, or telecommunications agency, if any, in any state any part of which lies within the service area of the applicant's facility;

(3) The FCC; and,

(4) The Corporation for Public Broadcasting and, as appropriate, other public telecommunications entities.

(c) If the Agency decides to fund an application, the award documents will include grant terms and conditions and whatever other provisions are required by Federal law or regulations, or which may be deemed necessary or desirable for the achievement of program purposes.

(d) An applicant or an objecting party may not appeal to the Administrator the Agency's determination to fund or not fund a particular application.

(e) Information about grant terms and conditions or other applicable laws and regulations is available from PTFP at the address listed in § 2301.5(a).

(f) Written and oral contacts between PTFP staff members and applicants and their representatives during the application review period are governed by the following:

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(3) Evaluate alternative technologies and existing services; and

(4) Receive participation by the public to be served (and by minorities and women in particular) in the project planning;

(d) Any pre-planning studies conducted by the applicant showing the technical feasibility of the proposed planning project (such as the availability of a frequency assignment, if necessary, for the project); and,

(e) The feasibility of the proposed procedure and timetable for achieving the expected results

§ 2301.15 Action on all applications.

(a) After consideration of an application which the Agency has accepted for filing, any comments filed by interested parties and replies thereto, and any other relevant information, the Agency will take one of the following actions:

(1) Select the application for funding, in whole or in part;

(2) Defer the application for subsequent consideration;

(3) Return the application as ineligible pursuant to § 2301.9 with a notice of the grounds and reason; or,

(4) Return applications which remain unfunded after consideration by the Agency for three years.

(b) Upon the approval or deferral, in whole or in part, of an application, the Agency will inform:

(1) The applicant;

(2) Each State educational television, radio, or telecommunications agency, if any, in any state any part of which lies within the service area of the applicant's facility;

(3) The FCC; and,

(4) The Corporation for Public Broadcasting and, as appropriate, other public telecommunications entities.

(c) If the Agency decides to fund an application, the award documents will include grant terms and conditions and whatever other provisions are required by Federal law or regulations, or which may be deemed necessary or desirable for the achievement of program purposes.

(d) An applicant or an objecting party may not appeal to the Administrator the Agency's determination to fund or not fund a particular application.

(e) Information about grant terms and conditions or other applicable laws and regulations is available from PTFP at the address listed in § 2301.5(a).

(f) Written and oral contacts between PTFP staff members and applicants and their representatives during the application review period are governed by the following:

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(1) Members of the PTFP staff are not authorized to discuss the merits of an application when it is under review.

(2) Applicants are expected to notify PTFP of events that occur after the closing date and that materially affect the application, including those items requested in § 2301.6(b).

(3) Other permissible contacts include:

(i) Appeals of PTFP determinations of the eligibility of an application, pursuant to § 2301.10;

(ii) Responses to adverse comments filed by members of the public pursuant to § 2301.11; and

(iii) Discussion of matters relating to other PTFP awards an organization may have.

(4) Nothing in this section should be interpreted as preventing PTFP staff from requesting an applicant to submit information that may not have been included in the original submission.

Subpart C—Federal Financial Participation

§ 2301.16 Amount of the Federal grant.

(a) *Construction grants.* (1) A Federal grant for the construction of a public telecommunications facility shall be in an amount determined by the Agency and set forth in the award document. Such amount may not exceed seventy-five (75) percent of the amount determined by the Agency to be the reasonable and necessary cost of such project.

(2) No part of the grantee's matching share of the eligible project costs may be met with funds paid by the Federal government, except where the use of such funds to meet a Federal matching requirement is specifically and expressly authorized by the relevant Federal statute.

(3) After the closing date, the applicant may, at its own risk, obligate non-Federal matching funds for the acquisition of proposed equipment. No funds from the Federal share of the total project cost may be obligated until the award period start date. If an applicant or recipient obligates Federal Award funds before the start date, the Department may refuse to offer the award or, if the award has already been granted, terminate the grant.

(4) Funds supplied to an applicant by the Corporation for Public Broadcasting may not be used for the required non-Federal matching purposes, except upon a clear compelling showing of need.

(b) *Planning grants.* A Federal grant for the planning of a public telecommunications facility shall be in an amount determined by the Agency and set forth in the award document and the attachments thereto. The Agency may provide up to one hundred (100) percent of the funds necessary for the planning of a public telecommunications construction project.

(c) Project costs do not include the value of eligible apparatus owned or acquired by the applicant prior to the closing date. Accepting title to donated equipment prior to the closing date is considered ownership or acquisition of equipment.

(d) If the actual costs incurred in completing the planning or construction project are less than the estimated project total costs, which were the basis for the Agency's determination of the initial grant award, the Agency shall reduce the amount of the final grant award so that the final grant award bears the same ratio to the actual cost of the project as the initial grant award bore to the estimated total project costs. In no case will the final grant award exceed the initial grant award.

§ 2301.17 Items and costs ineligible for Federal funding.

The following items and costs are ineligible for funding under the Act:

(a) *Equipment and supplies.* Each year, the Agency will review its list of ineligible equipment and supplies. A copy of the currently applicable list of ineligible equipment will be provided with every application package for PTFP grants.

(b) *Other expenses ineligible for funding.* (1) Buildings and modifications to buildings to house eligible equipment and fences surrounding them are not themselves eligible for funding under this program, except that small equipment shelters that are part of satellite earth stations, translators, microwave interconnection facilities, and similar facilities are eligible for funding;

(2) Land and land improvements;

(3) Salaries of personnel employed by an operating public telecommunications entity and other operational costs, except

(i) for planning projects (see section 392(c) of the Act); or,

(ii) to the extent that an applicant can demonstrate exceptional need or that substantially greater efficiency would result from staff installation.

(4) Moving costs required by relocations;

(5) Such other expenses as the Agency may determine prior to the award of a grant.

§ 2301.18 Payment of the Federal grant.

(a) The Department will not make any payment under an award, unless and until the recipient complies with all relevant requirements imposed by this Part. Additionally:

(1) With regard to a public telecommunications entity requiring FCC authorization, the Department will not make any payment until it receives confirmation that the FCC has granted any necessary authorization;

(2) The Department will not make any payment under an award unless and until any special award conditions stated in the award documents are met; and

(3) An agreement to share ownership of the grant equipment (*e.g.*, a joint venture for a tower) must be approved by the Agency before any funds for the project will be released.

(b) After the conditions indicated in paragraph (a) of this section have been satisfied, the Department will make payments to the grantee in such installments consistent with the percentage of project completion. As a general matter, the Agency expects grantees to expend local matching funds at a rate at least equal to the ratio of the local match to the Federal grant as stipulated in the grant award.

(c) When an applicant completes a construction project, the Agency will assign a completion date that the Agency will use to calculate the termination date of the Federal interest period. The completion date will be the date on which the grantee certifies in writing that the project is complete and in accord with the terms and conditions of the grant, as required under § 2301.20. If the PTFP Director determines that the grantee improperly certified the project to be complete, the PTFP Director will amend the completion date accordingly.

Subpart D—Accountability for Federal Funds

§ 2301.19 Retention of records.

(a) Each recipient of assistance under this program shall keep intact and accessible the following records:

(1) A complete and itemized inventory of all public telecommunications facilities under the control of the grantee, whether or not financed, in whole or in part, with Federal funds;

(2) Complete and current financial records that fully disclose the total amount of the project; the amount of the grant; the disposition of the grant proceeds; and the amount, nature and source of non-Federal funds associated with the project; and,

(3) All records specified in Office of Management and Budget Circular A-110 (for educational institutions, hospitals and nonprofit organizations) and 15 CFR

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part 24 (for State and Local Governments).

(b) The grantee shall mark project apparatus in a permanent manner in order to assure easy and accurate identification and reference to inventory records. The marking shall include the PTFP grant number and a unique inventory number assigned by the grantee.

§ 2301.20 Completion of Projects.

(a) Upon completion of a planning project, the grantee must promptly provide to the Administrator two copies of any report or study conducted in whole or in part with funds provided under this program by sending the copies to the Agency. This report shall meet the goals and objectives for which the grant is awarded and shall follow the written instructions and guidance provided by the Agency. The grant award goals and objectives are stated in the planning narrative as amended and are incorporated by reference into the award agreement. The Agency shall review this report for the extent to which those goals and objectives are addressed and met, for evidence that the work contracted for under the grant award was in fact performed, and that the written instructions and guidance provided by the Agency, if any, were followed. If this report fails to address or meet any grant award goals or objectives, or if there is no evidence that the work contracted for was in fact performed, or if this report clearly indicates that the written instructions and guidance provided by the Agency, if any, were disregarded, then the Agency may pursue remedial action. Remedial action includes, but is not limited to, demand for submission, in whole or in part, of an acceptable final report. An unacceptable final report may result in the establishment of an account receivable by the Department.

(b) Upon completion of a construction project, the grantee must:

(1) Certify that the grantee has acquired, installed and begun operating the project equipment in accordance with the project as approved by the Agency and has complied with all terms and conditions of the grant as specified in § 2301.5;

(2) Certify that the grantee has obtained any necessary FCC authorizations to operate the project apparatus following the acquisition and installation of the apparatus and document the same;

(3) Certify that the facilities have been acquired, that they are in operating order and that the grantee is using the facilities to provide public telecommunications services in accordance with the project as approved by the Agency and document same;

(4) Certify that the grantee has obtained adequate insurance to protect the Federal interest in the project in the event of loss through casualty and provide the Agency with a copy of its insurance policy;

(5) Certify, if not previously provided, that the grantee has acquired all necessary leases or other site rights required for the project;

(6) Certify, if appropriate, that the grantee has qualified for receipt of funds from the Corporation for Public Broadcasting;

(7) Provide a complete and accurate final inventory of equipment acquired under the project and a final accounting of all project expenditures, including non-equipment costs (*e.g.*, installation costs); and

(8) Execute and record a final priority lien reflecting the completed project and assuring the Federal government's reversionary interest in all equipment purchased under the grant project for the duration of the Federal interest period.

§ 2301.21 Annual status report for construction projects.

(a) Recipients of construction grants are require to submit an Annual Status Report for each grant project that is in the Federal interest period. The Reports are due no later than April 1 in each year of the period. In the Annual Status Report, the grant recipient must certify:

(1) That it remains an eligible entity as defined in the PTFP Rules and Regulations;

(2) That it continues to use the equipment purchased under the grant to provide public telecommunications services as approved by the Agency for the original purposes of the grant;

(3) That it continues to hold any FCC authorizations necessary to operate the project apparatus;

(4) That it continues to protect all equipment purchased under the grant with adequate insurance coverage;

(5) That it remains in compliance with all of the terms and conditions of the grant; and

(6) That no significant changes have occurred during the reporting period with respect to any of the terms and conditions of the grant.

(b) In addition, the grant recipient must:

(1) Provide information as to whether any discrimination complaints are pending against it and whether, during the reporting period, any adverse judgments have been rendered against it because of discriminatory practices—

(i) Pending complaints must be described and their status given; adverse judgments must be summarized and a description given of what action the recipient has taken or is taking to remedy the effects of the adjudged discrimination;

(ii) If the recipient is a non-profit institution, or a college or university, discrimination complaints and adverse judgments must be reported for the entire organization, not just for the broadcast station. If the recipient is a state or municipal agency, discrimination complaints and adverse judgments should be reported only for the agency that received the Federal grant money, not the entire state or municipal government;

(2) Certify, if it is an academic institution, that it does not discriminate in its admissions policies or in the opportunities it affords to persons to participate in the receiving or providing of services (*Nota Bene*: this certification applies to the entire academic institution, not just to the entity that was the subject of the grant);

(3) Submit a separate Annual Status Report with an original signature for each grant it has received that is still in the Federal interest period; and

(4) Take whatever steps may be necessary to ensure that the Federal government's reversionary interest continues to be protected for the 10-year period by recording, when and where required, a lien continuation statement and reporting that fact in the Annual Status Report.

Subpart E—Control and Use of Facilities

§ 2301.22 Conditions attached to the Federal grant.

When an applicant is awarded a Federal grant under the PTFP, the applicant (now the grantee) takes the grant subject to certain conditions concerning the uses of the Federal monies and the equipment obtained with those monies. The conditions are those listed at § 2301.15(c) plus the following specific conditions:

(a) In order to assure that the Federal investment in public telecommunications facilities funded under the Act will continue to be used to provide public telecommunications services to the public during the period of Federal interest, which shall be no less than ten (10) years from the date of completion of the project, all grantees shall:

(1) Execute and record a document establishing that the Federal government has a priority lien on any

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(2) Certify, if it is an academic institution, that it does not discriminate in its admissions policies or in the opportunities it affords to persons to participate in the receiving or providing of services (*Nota Bene*: this certification applies to the entire academic institution, not just to the entity that was the subject of the grant);

(3) Submit a separate Annual Status Report with an original signature for each grant it has received that is still in the Federal interest period; and

(4) Take whatever steps may be necessary to ensure that the Federal government's reversionary interest continues to be protected for the 10-year period by recording, when and where required, a lien continuation statement and reporting that fact in the Annual Status Report.

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(a) In order to assure that the Federal investment in public telecommunications facilities funded under the Act will continue to be used to provide public telecommunications services to the public during the period of Federal interest, which shall be no less than ten (10) years from the date of completion of the project, all grantees shall:

(1) Execute and record a document establishing that the Federal government has a priority lien on any

facilities purchased with funds under the Act during the period of continuing Federal interest. The document shall be recorded where liens are normally recorded in the community where the facility is located and in the community where the grantee's headquarters are located;

(2) File a certified copy of the recorded lien with the Administrator ninety days after the grant award is received;

(3) Not dispose of or encumber its title or other interests in the equipment acquired under this grant and will, if applicable, file any continuation statements necessary to preserve the Federal Government's secured interest in the equipment acquired with Federal funds.

(b) During the construction of a project and the Federal interest period, the grantee must:

(1) Continue to be an eligible organization as described in § 2301.4, above;

(2) Obtain and continue to hold any necessary FCC authorization(s);

(3) Use the Federal funds for which the grant was made for the equipment and other expenditure items specified in the application for inclusion in the project, except that the grantee may substitute other items where necessary or desirable to carry out the purpose of the project as approved in advance by the agency in writing;

(4) Use the facilities and any monies generated through the use of the facilities primarily for the provision of public telecommunications services and ensure that the use of the facilities for other than public telecommunications purposes does not interfere with the provision of the public telecommunications services for which the grant was made;

(5) Not make its facilities available to any person for the broadcast or other transmission intended to be received directly by the public, of any advertisement, unless such broadcast or transmission is expressly and specifically permitted by law or authorized by the FCC;

(6) Hold appropriate title or lease satisfactory to protect the Federal interest to the site or sites on which apparatus proposed in the project will be operated, including the right to construct, maintain, operate, inspect and remove such apparatus, sufficient to assure continuity of operation of the facility;

(7) Maintain protection against common hazards through adequate insurance coverage or other equivalent undertakings, except that, to the extent the applicant follows a different policy of protection with respect to its other property, the applicant may extend such policy to apparatus acquired and installed under the project, if they receive express written approval for this different policy from the Director. The grantee will purchase flood insurance (in communities where such insurance is available) if the facilities will be constructed in any areas that has been identified by the Secretary of Health and Human Services as having special flood hazards;

(8) Submit, in triplicate, within 30 calendar days of the award date, to the Agency a construction schedule or a revised planning timetable that will include the information requested in the grant terms and conditions in the award package;

(9) Comply with 15 CFR part 24 and the provisions of the Office of Management and Budget Circular A–128 (for State and Local Governments and political subdivisions) and OMB Circulars A–110 and A–122 and 15 CFR part 29b (for institutions of higher education, hospitals and other nonprofit organizations) for the procurement of equipment and services funded in whole or in part with Federal monies;

(10) Remit interest earned on advances of Federal funds to the Agency in accordance with all relevant Federal laws and regulations;

(11) State when advertising for bids for the purchase of equipment that the Federal Government has an interest in facilities purchased with Federal funds under this program which begins with the purchase of the facilities and continues for ten (10) years after the completion of the project;

(12) Submit, during the construction of this project, both performance reports and the required financial reports, in triplicate, on a calendar year quarterly basis for the periods ending March 31, June 30, September 30, and December 31, or any portion thereof. Reports are due no later than 30 days following the end of each reporting period. The Quarterly Performance Reports should contain the following information:

(i) A comparison of actual accomplishments during the reporting period with the goals and dates established in the Construction or Planning Schedule for that reporting period;

(ii) Description of any problems that have arisen or reasons why established goals have not been met;

(iii) Actions taken to remedy any failures to meet goals; and

(iv) Construction projects must also include a list of equipment purchased during the reporting period compared with the equipment authorized. This information must include manufacturer, make and model number, brief description and number of the items purchased, cost;

(13) Promptly complete the project and place the public telecommunications facility into operation;

(14) Permit inspections during normal working hours by the Agency and the Comptroller General of the United States or their duly authorized representatives, of the public telecommunications facilities acquired with Federal financial assistance or of any books, documents, papers, and records relating to those facilities;

(15) Comply with Federal statutes relating to nondiscrimination. These include but are not limited to: (i) Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352), which prohibits discrimination on the basis of race, color or national origin; (ii) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (iii) section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794, which prohibits discrimination on the basis of handicaps; (iv) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101–6107), which prohibits discrimination on the basis of age; (v) the Drug Abuse Office and Treatment Act of 1972 (Pub. L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (vi) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (Pub. L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (vii) section 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (viii) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (ix) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (x) the requirements of any other nondiscrimination statute(s) which may apply to the application.

(16) Obtain the Agency's prior approval for substantial changes in the approved grant project, including but not limited to the following:

(i) Costs (including planning costs),

(ii) Essential specifications of the equipment,

(iii) The engineering configuration of the project,

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(iv) Extensions of the approved grant award period, and

(v) Transfers of a grant award to a successor in interest, pursuant to § 2301.23(c)(1).

(17) Comply with all applicable Federal laws, rules or regulations relating to the project.

(c) The Agency will allow the acquisition of facilities by lease; however, several provisions must be followed:

(1) The lease must be for a term of years not greater than the remaining useful life of the facilities nor less than ten (10) years following completion of the project (including renewal options);

(2) The cost of the lease must not be more than the total of the non-Federal share of the matching funds;

(3) The actual amount of the lease must not be more than the outright purchase price would be; and

(4) The lease agreement must state that in the event of anticipated or actual termination of the lease, the Federal Government through the Agency has the right to transfer and assign the leasehold to a new grantee for the duration of the lease contract.

(d) During the period in which the grantee possesses or uses the Federally funded facilities (whether or not this period extends beyond the Federal interest period), the grantee may not use or allow the use of the Federally funded equipment for purposes the essential thrust of which are sectarian.

§ 2301.23 Grant suspensions, terminations, and transfers.

(a) *Suspension or termination for cause.* If a grantee fails to meet any conditions attached to the grant, as specified in sections 2301.15(c) and 2301.22 of this part, the Agency reserves the right to recommend any appropriate action including, but not limited to:

(1) Suspending a particular grant in whole or in part and withholding further payments under that grant, pending corrective action by the grantee;

(2) Prohibiting a grantee from incurring additional obligations of funds, pending corrective action by the grantee;

(3) Where the grantee cannot (or will not) comply with the condition (or conditions) attached to a particular grant, terminating the grant and requiring the grantee to repay the Federal Government an amount bearing the same ratio to the fair market value of the facilities at the time of termination as the Federal grant bore to the project;

(4) Where the condition (or conditions) is also attached to other grants that the grantee has received from the Agency, suspending payments under all these other grants;

(5) Where the condition (or conditions) is also attached to other grants that the grantee has received from the Agency, terminating all these other grants and requiring the grantee to repay the Federal Government an amount bearing the same ratio to the fair market value of the facilities at the time of termination as the Federal grants bore to the projects for which they were granted.

(b) *Termination for convenience.* When the Agency and the grantee agree that the continuation of the project would not produce beneficial results commensurate with the expenditure of further Federal funds, the parties may terminate the grant, in whole or in part, with all the conditions and on an effective date that the parties have mutually agreed in writing.

(c) *Transfers.* If necessary to further the purpose of the Act, the Agency may approve transfers as follows:

(1) *Transfer of grant.* The Agency may transfer a grant to a successor in interest or subsidiary corporation of a grantee in cases where a similar operational entity remains in control of the grant and the original objectives of the grant remain in effect.

(2) *Transfer of equipment.* Where the grant equipment is no longer needed for the original purposes of the project, the Agency may transfer the equipment to the Federal government or an eligible third party, in accordance with Office of Management and Budget guidelines.

(3) *Transfer of Federal interest to different equipment.* The Agency may transfer the Federal interest in PTFP-funded equipment to other eligible equipment presently owned or to be purchased by the grantee with non-Federal monies.

(i) Equipment previously funded by PTFP that is within the Federal interest period, may not be used in a transfer request as the designated equipment to which the Federal interest is to be transferred.

(ii) The same item can be used only once to substitute for the Federal interest; however, it may be used to cover grants if the request for each is submitted at the same time.

(iii) A lien on equipment transferred to the Federal interest must be recorded in accordance with § 2301.22 of the PTFP Rules. A copy of the lien document must be filed with the PTFP within 60 days of the date of approval of the transfer of Federal interest.

(iv) If the Federal interest is to be transferred to other equipment presently owned or to be purchased by a grantee, the Federal interest in the new equipment must be at least equal to the Federal interest in the original equipment.

(d) *Termination by buy-out.* A grantee may terminate the PTFP grant by buying out the Federal interest with non-Federal monies. Buy-outs may be requested at any time.

§ 2301.24 Equipment.

All equipment, which a grantee acquires under this program, shall be of professional broadcast quality. An applicant proposing to utilize nonbroadcast technology shall propose and purchase equipment that is compatible with broadcast equipment wherever the two types of apparatus interface.

Subpart F—Waivers

§ 2301.25 Waivers.

For good cause shown, the Administrator may waive the regulations adopted pursuant to section 392(e) of the Act.

Appendix to Part 2301—Special Applications and Priorities

Special Applications

NTIA possesses the discretionary authority to recommend awarding grants to eligible broadcast and nonbroadcast applicants whose proposals are so unique or innovative that they do not clearly fall within the priorities listed below. Innovative projects submitted under this category must address demonstrated and substantial community needs (*e.g.*, service to identifiable ethnic or linguistic minority audiences, service to the blind or deaf, electronic text, and nonbroadcast projects offering educational or instructional services).

Priorities

Priority 1—Provision of Public Telecommunications Facilities for First Radio and Television Signals to a Geographic Area. Within this category, NTIA establishes three subcategories:

A. *Projects that include local origination capacity.* This subcategory includes the planning or construction of new facilities that can provide a full range of radio and/or television programs including material that is locally produced. Eligible projects include new radio or television broadcast stations, new cable systems, or first public telecommunications service to existing cable systems, provided that such projects include local origination capacity.

B. *Projects that do not include local origination capacity.* This subcategory includes projects such as increases in tower height and/or power of existing stations and construction of translators, cable networks and repeater transmitters that will result in providing public telecommunications services to previously unserved areas.

C. *Projects that provide first nationally distributed programming.* This subcategory includes projects that provide satellite

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B. *Projects that do not include local origination capacity.* This subcategory includes projects such as increases in tower height and/or power of existing stations and construction of translators, cable networks and repeater transmitters that will result in providing public telecommunications services to previously unserved areas.

C. *Projects that provide first nationally distributed programming.* This subcategory includes projects that provide satellite

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downlink facilities to noncommercial radio stations that would bring nationally distributed public radio programming to a geographic area for the first time.

Priority 1 and its subcategories only apply to grant applicants proposing to plan or construct new facilities to bring public telecommunications services to geographic areas that are presently unserved, *i.e.*, areas that do not receive any public telecommunications services whatsoever. (It should be noted that television and radio are considered separately for the purposes of determining coverage.)

An applicant proposing to plan or construct a facility to serve a geographical area that is presently unserved, should indicate the number of persons who would receive a first public telecommunications signal as a result of the proposed project.

Priority 2—Replacement of Basic Equipment of Existing Essential Broadcast Stations. Projects eligible for consideration under this category include the urgent replacement of obsolete or worn out equipment in existing broadcast stations that provide either the only public telecommunications signal or the only locally originated public telecommunications signal to a geographical area.

In order to show that the urgent replacement of equipment is necessary, applicants must provide documentation indicating excessive downtime, or a high incidence of repair (*i.e.*, copies of repair records, or letters documenting non-availability of parts.) Additionally, applicants must show that the station is the only public telecommunications station providing a signal to a geographical area or the only station with local origination capacity in a geographical area.

The distinction between Priority 2 and Priority 4 is that Priority 2 is for the urgent replacement of basic equipment for essential stations. Where an applicant seeks to "improve" basic equipment in its station (*i.e.*, where the equipment is not "worn out"), or where the applicant is not an essential station, NTIA would consider the applicant's project under Priority 4.

Priority 3—Establishment of a First Local Origination Capacity in a Geographical Area. Projects in this category include the planning or construction of facilities to bring the first local origination capacity to an area already receiving public telecommunications services from distant sources through translators, repeaters or cable systems.

Applicants seeking funds to bring the first local origination capacity to an area already receiving some public telecommunications services may do so, either by establishing a new (and additional) public telecommunications facility, or by adding local origination capacity to an existing facility. A source of a public telecommunications signal is distant when the geographical area to which the source is brought is beyond the grade B contour of the origination facility.

Priority 4—Replacement and Improvement of Basic Equipment for Existing Broadcast Stations. Projects eligible for consideration under this category include the replacement of obsolete or worn-out equipment and the upgrading of existing origination or delivery capacity to current industry performance standards (e.g., improvements to signal quality, and significant improvements in equipment flexibility or reliability). As under Priority 2, applicants seeking to replace or improve basic equipment under Priority 4 should show that the replacement of the equipment is necessary by including in their applications data indicating excessive downtime, or a high incidence of repair (such as documented in repair records). Within this category, NTIA establishes two subcategories:

4A. This subcategory includes the replacement and improvement of basic equipment at existing public broadcasting stations that do not provide either the only public telecommunications signal or the only locally originated public telecommunications signal to a geographical area and therefore cannot qualify for Priority 2 consideration.

Under Priority 4A, NTIA will consider applications to replace urgently needed equipment from public broadcasting stations that do not meet the Priority 2 criteria. NTIA will also consider applications that improve as well as replace urgently needed equipment at public radio and television stations that do not qualify for Priority 2 consideration but that produce, on a continuing basis, significant amounts of programming distributed nationally to public radio or television stations.

This subcategory will also enable the acquisition of satellite downlinks for public radio stations in areas already served by one or more full-service public radio stations. The applicant must demonstrate that it will broadcast a program schedule unique to its service area, not one merely duplicative of what is already available, and certify that it will continue to provide such a schedule for a minimum of five (5) years after completion of the project.

The final projects included in this subcategory would enable the acquisition of the necessary items of equipment to bring the inventory of an already-operating station to the basic level of equipment requirements established by PTFP. This is intended to assist stations that went on the air within the prior five (5) years with a complement of equipment well short of what the Agency considers as the basic complement.

4B. This subcategory includes the improvement and non-urgent replacement of equipment at any public broadcasting station. Also included would be the activation of a broadcast station in an area already served by one or more stations with local origination capability when the applicant does not qualify for Special Consideration for minority/women participation.

Priority 5—Augmentation of Existing Broadcast Stations. Projects in this category would equip an existing station beyond a basic capacity to broadcast programming from distant sources and to originate local programming.

A. *Projects to equip auxiliary studios at remote locations, or to provide mobile origination facilities.* An applicant must demonstrate that significant expansion in public participation in programming will result. This subcategory includes mobile units, neighborhood production studios or facilities in other locations within a station's service area that would make participation in local programming accessible to additional segments of the population.

B. *Projects to augment production capacity beyond basic level in order to provide programming or related materials for other than local distribution.* This subcategory would provide equipment for the production of programming for regional or national use. Need beyond existing capacity must be justified.

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Part VI

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Part 19

Uniform Rules of Practice and Procedure; Final Rule

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 19

[Docket No. 91-9]

Uniform Rules of Practice and Procedure

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: Section 916 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") requires that the Office of the Comptroller of the Currency ("OCC"), Board of Governors of the Federal Reserve System ("Board of Governors"), Federal Deposit Insurance Corporation ("FDIC"), Office of Thrift Supervision ("OTS"), and National Credit Union Administration ("NCUA") (collectively, the "Agencies") develop a set of uniform rules and procedures for administrative hearings ("Uniform Rules"). Section 916 further requires that the Agencies promulgate provisions for summary judgment rulings where there are no disputes as to the material facts of a case.

In compliance with the mandate of section 916, this final rule makes uniform those rules concerning formal enforcement actions common to at least four of the listed Agencies. In addition to these Uniform Rules, the OCC and each of the other Agencies is adopting complementary "Local Rules" to supplement the Uniform Rules in order to address some or all of the following: Formal enforcement actions not within the scope of the Uniform Rules, informal actions which are not subject to the Administrative Procedure Act ("APA"), and procedures to supplement or facilitate the processing of administrative enforcement actions within the OCC and the other Agencies. This final rule is intended to standardize procedures for formal administrative actions and to facilitate administrative practice before the Agencies.

EFFECTIVE DATE: August 9, 1991.

FOR FURTHER INFORMATION CONTACT: Barrett Aldemeyer, Senior Attorney, Legislative and Regulatory Analysis Division (202/874–5090), or Daniel Stipano, Assistant Director, Enforcement and Compliance Division (202/874–4800).

SUPPLEMENTARY INFORMATION:

A. Background

Section 916 of FIRREA, Public Law No. 101–73, 103 Stat. 183 (1989), requires that the OCC, Board of Governors, FDIC, OTS, and NCUA develop a set of uniform rules and procedures for administrative hearings. By including this provision in FIRREA, Congress intended that the listed Agencies, by promulgating uniform procedures, would improve and expedite their administrative proceedings. The statutory provision is a reflection of "recent recommendations of the Administrative Conference of the United States and the House Government Operations Committee." H.R. Rep. No. 54, 101st Cong., 1st Sess., pt. 1, at 396. The Administrative Conference of the United States found in its December 30, 1987 recommendation that

> "[g]iven the similar statutory bases for these enforcement actions, the five agencies jointly should be able to develop substantially similar rules of procedure and practice for formal enforcement proceedings."

1 CFR 305.87–12.

To comply with the requirements of section 916, the OCC and the other financial institutions regulatory Agencies issued for comment a Joint Notice of Proposed Rulemaking on June 17, 1991 (56 FR 27790). The joint proposed rule contained one set of Uniform Rules applicable to all the Agencies and separate Local Rules applicable to each agency.

The OCC has received comments on the joint proposed rule and is now issuing a final rule. This final rule is intended to standardize procedures for formal administrative actions common to at least four of the five Agencies and to facilitate administrative practice before the Agencies.

Subpart A of the OCC's final rule in 12 CFR part 19, the "Uniform Rules," sets forth the uniform rules of practice and procedure for those formal enforcement actions which are required by statute to be determined on the record after an opportunity for an agency hearing and which are common to at least four of the Agencies. The Uniform Rules in subpart A of this final rule generally replace the procedures governing formal adjudications in 12 CFR part 19, subparts A through J, which were adopted on April 6, 1990 (55 FR 13014). Each agency is adopting substantially similar Uniform Rules.

The OCC's Local Rules in subparts B through L of this final rule address the following topics: Certain formal enforcement actions not addressed in the Uniform Rules, informal actions which are not subject to the APA, and procedures to supplement or facilitate the processing of administrative enforcement actions within the OCC. The Local Rules replace the procedures in subparts K through O of part 19 concerning certain formal and informal adjudications, practice before the OCC, and formal investigations. The revised text of subparts C, D, E, J, and K corresponds to the text of subparts K, M, L, N, and O, respectively. In the event of inconsistency with the provisions of subpart A, the Local Rules govern. The Local Rules also provide additional rules applicable to formal adjudications, discovery depositions, and other document filings with the OCC.

B. Subpart-by-Subpart Summary and Discussion of Uniform and Local Rules

Subpart A—Uniform Rules of Practice and Procedure

This subpart sets forth rules of practice and procedure governing formal administrative actions, including rules on commencing enforcement proceedings, filing and service of papers, motions, discovery, prehearing conferences, public hearings, hearing subpoenas, conflict of interest, ex parte communications, rules of evidence, and post-hearing procedures.

Subpart B—Filings With the Comptroller

This is a new subpart which incorporates the procedures found in § 19.11. All materials to be filed with or referred to the Comptroller or the administrative law judge under part 19 are to be filed with the Hearing Clerk. This does not include requests for document discovery or responses to such requests because these documents are not required to be filed with the administrative law judge or the Comptroller.

Subpart C—Removals, Suspensions, and Prohibitions When a Crime Is Charged or a Conviction Is Obtained

This subpart applies to informal hearings afforded an institution-affiliated party who has been suspended or removed from office or prohibited from further participation in bank affairs by the Comptroller. The text of this subpart corresponds to the text of former subpart K, which is incorporated into this subpart with minor changes.

Subpart D—Exemption Hearings Under Section 12(h) of the Securities Exchange Act of 1934

This subpart applies to informal hearings that may be held by the Comptroller, pursuant to the authority of the Securities Exchange Act of 1934 ("Exchange Act"), to grant certain exemptions from the securities laws. The text of this subpart corresponds to the text of former subpart M, which has

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Subpart E—Disciplinary Proceedings Involving the Federal Securities Laws

This subpart governs formal adjudications pursuant to the authority of the Exchange Act to take disciplinary actions against banks acting as a municipal securities dealer, a government securities broker or dealer, or a transfer agent, or persons associated with, or seeking to become associated with the above entities.

The text of this subpart corresponds to the text of the former subpart L, which has been incorporated into this subpart with minor changes. The proceedings shall be instituted on a public basis. Pursuant to § 19.33 of subpart A, a request for a private hearing may be filed within 20 days of service of the notice of charges. Except as provided in this subpart, the Uniform Rules in subpart A apply to these proceedings.

Subpart F—Civil Money Penalty Authority Under the Securities Laws

This subpart governs formal adjudications pursuant to the authority of section 21B of the Exchange Act (15 U.S.C. 78u–2), as added by section 202 of the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 (Pub. L. 101–429). These provisions provide for the issuance of civil money penalties against banks acting as a municipal securities dealer, a government securities broker or dealer, or a transfer agent, or persons associated with, or seeking to become associated with the above entities.

The provisions of subpart A apply to these proceedings. The proceedings shall be instituted on a public basis. Pursuant to § 19.33 of subpart A, a request for a private hearing may be filed within 20 days of service of the notice of assessment.

Subpart G—Cease-and-desist Authority Under the Securities Laws

This subpart governs informal adjudications pursuant to the authority of section 21C of the Exchange Act (15 U.S.C. 78u–3), as added by section 203 of the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 (Pub. L. 101–429). These provisions provide for the institution of cease-and-desist proceedings against a bank for violation of certain provisions of the Exchange Act.

These proceedings are not "required by statute to be determined on the record after opportunity for an agency hearing," and thus are not "formal" adjudications subject to the APA. See 5 U.S.C. 554(a). The OCC has determined, however, that these proceedings should be conducted in a manner comparable to a formal adjudication to afford affected parties with the procedural protection of the APA.

This subpart provides, therefore, that the provisions for formal adjudications in subpart A are applicable to these proceedings. The proceedings shall be instituted on a public basis. Pursuant to § 19.33 of subpart A, any request for a private hearing must be filed within 20 days of service of the notice of charges.

Subpart H—Change in Bank Control

This subpart governs formal adjudications under section 7(j) of the Federal Deposit Insurance Act ("FDIA") (12 U.S.C. 1817(j)) concerning the review of a determination by the Comptroller disapproving an application to acquire control of a national bank.

Upon issuance of the OCC's written disapproval of a change-in-control application, the applicant may file a written request for a hearing within ten days after service of the notice of disapproval. To preserve the applicant's right to a hearing, an answer must also be filed within 20 days of the date of the notice, specifically denying those portions of the notice which are disputed. If the applicant fails to file a timely answer, Enforcement Counsel may file a motion for a default judgment. Absent a finding of good cause for failure to file a timely answer, the administrative law judge shall issue a recommended decision containing the findings and relief sought in the notice.

As provided in § 19.18(a)(2) of subpart A, change-in-control proceedings commence with the issuance of an order by the Comptroller. This hearing order will set forth the OCC's jurisdictional authority over the proceeding and will address the applicant's request for hearing. Except as provided in this subpart, the Uniform Rules in subpart A apply to these proceedings.

Subpart I—Discovery Depositions and Subpoenas

This subpart provides that a party may take the deposition of an expert or of another person, including another party, who has direct knowledge of matters that are non-privileged, relevant, and material to the proceeding and where there is a need for the deposition. While permitting the depositions of experts and persons having direct knowledge of the matters at issue in a proceeding, this provision is not intended to allow unlimited deposition discovery or the taking of senior OCC officials' depositions, unless those individuals have direct knowledge about the facts of the case. Rather, it is intended to permit limited deposition discovery of experts and persons having direct knowledge of the facts who may be called on to testify at the administrative hearing.

This subpart also provides that at the request of a party, the administrative law judge shall issue a subpoena requiring the attendance of a witness at a deposition. The party requesting the subpoena is responsible for serving it on the person named therein, or on that person's counsel. The person named in the subpoena may file a motion to quash or modify the subpoena within the time for compliance set forth in the subpoena, but in no case later than ten days after the date of service.

Subpart J—Formal Investigations

This subpart and the conflict of interest provision of the Uniform Rules (§ 19.8 of subpart A) apply to formal investigations initiated by order of the Comptroller or the Comptroller's delegate, pursuant to the authority of the banking laws and the Exchange Act. The text of this subpart corresponds to the text of former subpart N, which has been incorporated into this subpart with minor modifications to reference the Uniform Rules.

Subpart K—Parties and Representational Practice Before the OCC: Standards of Conduct

This subpart sets forth rules relating to parties and representational practice before the OCC, including the imposition of disciplinary sanctions against individuals who appear before the OCC in a representational capacity in an adjudicatory proceeding under this part or in other matters relating to a client's rights, privileges, or liabilities. The text of this subpart corresponds to the text of former subpart O, which has been incorporated into this subpart with minor modifications to reference the Uniform Rules and to clarify the scope of the proceedings.

Subpart L—Equal Access to Justice Act

This subpart directs the reader to 31 CFR part 6 which contains the regulations governing Equal Access to Justice claims with respect to OCC formal adjudicatory proceedings.

C. Comments

In response to the June 17, 1991, joint notice of proposed rulemaking, the OCC and the other Agencies received three comment letters. The five Agencies have jointly reviewed the portions of the comments concerning the Uniform Rules. The specific questions and objections pertaining to the Uniform Rules are discussed below.

(1) One commenter stated that, in light of the decision of the United States Court of Appeals for the Fifth Circuit in *Amberg* v. *FDIC*, July 2, 1991, the provisions in § 19.19 requiring an administrative law judge to grant a default order against a respondent who has not filed a timely answer are not consistent with the holding in *Amberg*. The commenter suggested that changes be made to the section to allow a late filing if good cause is shown and recommended that "good cause" be defined consistent with the definition appearing in the Federal Rules of Civil Procedure.

The Uniform Rules allow an administrative law judge to extend time limits for good cause (§ 19.13) and require that defaults be entered only upon a motion for default filed by Enforcement Counsel (§ 19.19), thereby permitting respondents an opportunity to oppose such a motion. Thus, the rules address the concerns raised by the commenter. However, to alleviate confusion, the Agencies have changed the wording of the final default rule to make this process more explicit.

(2) A commenter suggested that uniform rules should also be drafted for formal investigations, Equal Access to Justice Act implementation, sanctions, and a number of other procedures.

The lack of uniformity in these areas is based on the scope of section 916 of FIRREA. As noted above, the purpose for the enactment of section 916 was the improvement and expedition of formal enforcement proceedings subject to the APA. *Cf.* 1 CFR 305.87–12; H.R. Conf. Rep. No. 222, 101st Cong., 1st Sess. 442 (1989). Accordingly, the inclusion of non-APA proceedings would exceed the statutory mandate of section 916 and would present practical implementation problems as well. For example, the Uniform Rules do not contain provisions for formal investigations. This is because investigatory proceedings are not formal adjudicatory proceedings subject to the APA. In addition, the statutory authority for formal investigations arises in several statutes, and the Agencies have differing policies concerning the frequency, length, and procedures for formal investigations. This diversity in statutory authority is reflected in the independent and separate procedures of each agency. Therefore, the Agencies have not changed these provisions.

(3) The same commenter suggested that the Agencies consider adopting rules concerning the publication of enforcement orders and actions to promote uniformity.

Congress recently addressed this concern when it amended 12 U.S.C. 1818(u) in Title XXV of the Crime Control Act of 1990, Public Law No. 101–647, 104 Stat. 4789. The Agencies are required by statute to publish all final orders and other documents subject to enforcement action. Each of the Agencies has procedures implementing this statutory directive and most, if not all, enforcement decisions may be found by consulting the Public Reading Rooms or libraries of each agency. In addition, each of the Agencies frequently issues press releases concerning recent cases and decisions. Therefore, no change in the Uniform Rules is warranted.

(4) An issue was raised by two of the commenters concerning the different positions taken by the Agencies on discovery depositions. The commenters stated that use of discovery depositions would encourage settlements and would result in the increased use of summary judgment by establishing the absence of disputes as to material facts.

The scope of discovery which would be permitted in the Uniform Rules was considered at length. The Agencies determined that broad document discovery would be permitted generally; however, they recognized that there is no constitutional right to prehearing discovery, including deposition discovery, in Federal administrative proceedings. See *Sims* v. *National Transportation Safety Board*, 662 F.2d 668, 671 (10th Cir. 1981); *P.S.C. Resources. Inc.* v. *N.L.R.B.*, 576 F.2d 380, 386 (1st Cir. 1978); *Silverman* v. *Commodity Futures Trading Comm.*, 549 F.2d 28, 33 (7th Cir. 1977). Further, the APA contains no provisions for prehearing discovery, and the discovery provisions of the Federal Rules of Civil Procedure are inapplicable to administrative proceedings. *Frillette* v. *Kimberlin*, 508 F.2d 205 (3rd Cir. 1974), *cert. denied* 421 U.S. 980 (1975). Rather, each agency determines the extent of discovery to which a party in an administrative hearing is entitled. *McClelland* v. *Andrus*, 606 F.2d 1278, 1285 (D.C. Cir. 1979).

The Agencies attempted to strike a balance between the due process interests of respondents in obtaining pretrial disclosure, including discovery depositions, and the Agencies' need for swift adjudication while preserving limited resources. This process included taking into account the various interests and concerns of both the industry and public constituencies which each agency serves, as well as each agency's own institutional interests and concerns. The contrasting interests and concerns are reflected in the types, complexity, and quantity of enforcement actions brought by each agency; the methods of litigation and opportunity for settlement in such actions; the structure and available resources of each regulator; and the supervisory procedures developed internally by each agency. This process resulted in divergent provisions on the use of discovery depositions.

Thus, the experiences of the OCC, the Board of Governors, and the OTS resulted in a finding that discovery depositions served a useful purpose by promoting fact finding and encouraging settlements. Because of the increasing complexity of enforcement actions, where typically multiple counts, multiple parties, and several types of enforcement actions are combined into one, it was found that discovery depositions could be useful in aiding both respondents and the regulator in resolving cases expeditiously. Discovery depositions for the OCC, the Board of Governors, and the OTS, however, are limited to witnesses that have factual, direct, and personal knowledge of the matters at issue and expert witnesses. The FDIC and the NCUA determined that the interests of respondents in further pretrial disclosure in their respective proceedings were mitigated by the availability of extensive document discovery that complements the document-intensive nature of their proceedings.

(5) A commenter suggested that the definition of "decisional employee" in § 19.3(e) be expanded to preclude from service in a decisional capacity any employee of the Agencies who had served within the previous 12 months on the enforcement staff of any of the Agencies. The commenter suggested that this expansion would protect against bias and conflicting interest.

The Agencies did not adopt this suggestion. The APA forbids an employee from acting in a decisional capacity in a specific case where the employee has acted in an investigative or prosecutorial function in that same case or in a factually related case. 5 U.S.C. 554(d). Accordingly, Congress has already drawn the line defining conflicts of interest in this context. The Agencies determined that following the APA formulation was the preferred course of action.

(6) A commenter recommended that § 19.18(b) be modified to require that an agency set forth in a notice not only those facts showing that an agency is entitled to relief of some kind but also those facts required for the particular relief requested.

The Agencies believe that § 19.18(b) meets the standards for notice pleading

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The Agencies believe that § 19.18(b) meets the standards for notice pleading

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set forth in Rule 8 of the Federal Rules of Civil Procedure. The Agencies have determined that this is sufficient pleading for administrative proceedings. See *First National Monetary Corporation* v. *Weinberger*, 819 F.2d 1334, 1339 (6th Cir. 1987); *Boise Cascade Corporation* v. *Federal Trade Commission*, 498 F.Supp. 772, 780 (D.Del. 1980). Therefore, no change in the Uniform Rules is warranted.

(7) A commenter suggested that the Uniform Rules regarding severance of proceedings are unduly stringent in light of the severity of sanctions at stake. The commenter stated that any inconsistency or conflict in the position of respondents should warrant severance without the necessity of weighing any countervailing interests. The commenter further stated that concerns regarding administrative economy are not entitled to weight in light of the small number of cases that have been adjudicated by the Agencies in the past.

The Agencies noted that a similar weighing test for severance is applied by Federal courts in criminal cases, see *e.g.*, *Roach* v. *National Transportation Safety Board*, 804 F.2d 1147, 1151 (10th Cir. 1986), *cert. denied*, 486 U.S. 1006 (1988), demonstrating that the weighing test appropriately may be applied in cases involving substantial sanctions and penalties. In addition, the general interest in economy and efficiency in resolving an administrative adjudication exists independent of the total volume of adjudications at any particular time. Therefore, the Agencies did not change this provision.

(8) Section 19.24(c) provides that privileged documents are not discoverable. A commenter questioned the right of Enforcement Counsel to assert the deliberative process privilege pursuant to § 19.24(c) on grounds that, in some instances, it is subject to abuse by Enforcement Counsel seeking to prevent disclosure of relevant and probative material. The commenter suggested instead that all material for which the deliberative process privilege is claimed should be produced pursuant to a protective order barring public disclosure, and that § 19.24 should provide for *in camera* inspection of disputed privileged material by the administrative law judge.

The Agencies believe that Enforcement Counsel should retain the right to assert the deliberative process privilege at the outset. Ample means to challenge an improper assertion of privilege already are available to respondents without modifying § 19.24. Section 19.25(e) provides that all documents withheld from production on grounds of privilege must be reasonably identified and must be accompanied by a statement of the basis for the assertion of privilege. In the event that a respondent believes that grounds exist to challenge Enforcement Counsel's assertion of the deliberative process privilege, respondent would be able to utilize the identifying information and statement to challenge the assertion of the privilege before the administrative law judge. Confronted with such a challenge, an administrative law judge would need no further specific authority by rule to inquire of Enforcement Counsel as to the basis of the assertion of the privilege, to conduct an inspection of the assertedly privileged material *in camera*, and then to rule whether the privilege can be maintained. For these reasons, no change has been made in this provision.

(9) A commenter suggested that the determination to seal a document pursuant to § 19.33(b) should be subject to review by an administrative law judge under an abuse of discretion standard. It was also proposed that a respondent should be able to request that certain information such as confidential personal information be filed under seal.

The Uniform Rules accommodate this last concern by permitting a respondent to file a motion to seal a document containing confidential personal information. However, the statutory language of 12 U.S.C. 1818(u)(6) and 1786(s)(6) vests the Agencies with exclusive authority to seal all or part of a document if disclosure would be contrary to the public interest. Thus, the Agencies disagree with the commenter that this determination should be subject to review by an administrative law judge.

(10) A commenter suggested deleting § 19.36(c)(2), which provides that any document prepared by a Federal financial institutions regulatory agency or by a state regulatory agency is admissible with or without a sponsoring witness. The commenter stated that the provision violates normal evidentiary standards and raises due process concerns.

The first sentence of § 19.36(c)(2) cross-references § 19.36(a), which makes agency prepared documents subject to the same evidentiary standards as those that are applicable to non-agency prepared documents. Moreover, the same types of agency prepared documents tend to be introduced into evidence in every case. These documents, such as examination reports, rarely give rise to authentication issues, and the Agencies feel that requiring a sponsoring witness for such documents needlessly consumes judicial resource and impedes the hearing process. Therefore, no change has been made in this provision.

(11) A commenter suggested that, under § 19.39(b)(2), a party should be able to raise a new legal argument in the exceptions filed to an administrative law judge's recommended decision and that the Agency Head should not be precluded from considering such an argument.

The Agencies agree with the commenter that the Agency Head should have the discretion to determine whether a new argument that is raised for the first time in the exceptions should be considered, even if the party had a prior opportunity to make the argument. For example, the Agency Head should have the discretion to consider whether a new argument has important legal and policy implications which warrant its consideration. Accordingly, the language of § 19.39(b)(2) is amended to read that "No exception *need* be considered * * *" [emphasis added]

However, the Agencies do not believe that the Agency Head should, in effect, be required to consider new arguments raised for the first time in the exceptions. Such a provision could encourage careless or even deceptive pleading. Generally, a party should be permitted to submit a new argument only if there was no previous opportunity to present the argument, *e.g.*, a relevant court decision has been issued in the interim since the filing of the recommended decision.

D. Additional Modifications to the Uniform and Local Rules

In conjunction with the other financial institutions regulatory agencies, the OCC is amending the Uniform Rules to replace generic definitional terms with terms specifically applicable to the OCC and its operations. Thus, the OCC is replacing the terms "Agency Head" and "Agency" with "Comptroller" and "OCC," and is restricting the "scope" provision to those statutes subject to OCC jurisdiction. Further conforming changes have been made to the definitions of Local Rules, Uniform Rules, and OFIA. Each of the other Agencies has made similar changes.

The purpose of these changes is to make the Uniform Rules easier to understand and use. These changes do not affect the substance of the Uniform Rules.

The OCC is making various other minor technical and conforming changes to the Uniform and Local Rules to

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improve the clarity and consistency of the rules, including the following.

To ensure consistency of administration, § 19.161(c), which provides for waiver of hearing if an applicant fails to file an answer or a request for hearing on a change-in-bank-control disapproval, has been amended to provide the same procedures as in § 19.19(c) of the Uniform Rules.

Section 19.170 has been amended to clarify that discovery depositions may be taken only in formal administrative actions instituted under subpart A or other actions subject to the procedures of subpart A. Discovery depositions may not be taken in informal administrative actions under subparts C and D which are not subject to the rules in subpart A.

To reflect the changes made in subparts A and H concerning change-in-bank-control proceedings, technical amendments to 12 CFR 5.50 (Change in bank control) will be made in a separate final rule.

E. Immediate Effective Date

The Comptroller is adopting this regulation effective upon publication in the **Federal Register**, without the usual 30-day delay of effectiveness provided for in the APA, 5 U.S.C. 553. While the APA requires publication of a substantive regulation not less than 30 days before its effective date, the delayed effective date requirement may be waived for "good cause."

Good cause for the waiver of the 30-day requirement may be found if the delayed effective date is "impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(B). See *Central Lincoln Peoples' Utility Dist.* v. *Johnson*, 735 F.2d 1101, 1117 (9th Cir. 1984). The necessity for compliance with a statutorily prescribed time limit can also contribute to a finding of good cause. See *Philadelphia Citizens in Action* v. *Schweiker*, 669 F.2d 877, 881–888 (3rd Cir. 1982). In the present case, the implementation of a delayed effective date would impair the ability of the Agencies to comply with the statutory mandate in section 916 of FIRREA and would be impracticable and contrary to the public interest.

Section 916 of FIRREA contains a dual mandate from Congress to the five agencies to (1) establish their own pool of administrative law judges and (2) to develop Uniform Rules and procedures for administrative hearings "[b]efore the close of the 24-month period beginning on the date of the enactment of this Act [August 9, 1989]." In order to properly address these two requirements, the Uniform Rules and the administrative law judge pool should be implemented in a coordinated and harmonious fashion. If the pool is established prior to the rules, the administrative law judges may be required to adjudicate some cases under prior regulations before the Uniform Rules are effective. The result would be confusion for parties and a lack of uniformity in adjudication directly contrary to the purpose of section 916. It would, therefore, be impracticable and contrary to the public interest to delay the effective date for implementation of the Uniform Rules.

F. Applicability of Revised Rules to Enforcement Proceedings

Part 19, as revised by this final rule, applies to any proceeding that is commenced by the issuance of a notice on or after August 9, 1991. The former version of Part 19 applies to any proceeding commenced prior to August 9, 1991 unless, with the consent of the presiding officer, the parties agree to have the proceeding governed by revised Part 19.

G. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OCC certifies that this final rule is not expected to have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

This rule implements section 916 of FIRREA which requires the Federal banking agencies and the NCUA to develop a set of uniform rules and procedures for administrative hearings. The purpose of the OCC's revised regulation is to secure a just and orderly determination of administrative proceedings. Because the OCC already has in place rules of practice and procedure, this final rule imposes only minor burdens on all institutions, regardless of size.

H. Executive Order 12291

The OCC has determined that this final rule does not constitute a "major rule" within the meaning of Executive Order 12291 and Treasury Department Guidelines. Accordingly, a Regulatory Impact Analysis is not required on the grounds that this final rule (1) will not have an annual effect on the economy of $100 million or more, (2) will not result in a major increase in the cost of financial institution operations or governmental supervision, and (3) will not have a significant adverse effect on competition (foreign and domestic), employment, investment, productivity or innovation, within the meaning of the executive order.

This final rule implements section 916 of FIRREA which requires the Federal banking agencies and the NCUA to develop a set of uniform rules and procedures for administrative hearings. Because the OCC already has in place rules of practice and procedure, this final rule should result in no significant additional burden for regulated institutions. The final rule would not have a significant impact on competition or impose other significant economic burdens.

List of Subjects in 12 CFR Part 19

Administrative practice and procedure, Crime, Ex parte communications, Hearing procedure, Investigations, National banks, Penalties, Securities.

Authority and Issuance

For the reasons set out in the common preamble, part 19 of chapter I of title 12 of the Code of Federal Regulations, is revised to read as follows:

PART 19—RULES OF PRACTICE AND PROCEDURE

Subpart A—Uniform Rules of Practice and Procedure

Sec.
19.1 Scope.
19.2 Rules of construction.
19.3 Definitions.
19.4 Authority of the Comptroller.
19.5 Authority of the administrative law judge.
19.6 Appearance and practice in adjudicatory proceedings.
19.7 Good faith certification.
19.8 Conflicts of interest.
19.9 Ex parte communications.
19.10 Filing of papers.
19.11 Service of papers.
19.12 Construction of time limits.
19.13 Change of time limits.
19.14 Witness fees and expenses.
19.15 Opportunity for informal settlement.
19.16 OCC's right to conduct examination.
19.17 Collateral attacks on adjudicatory proceeding.
19.18 Commencement of proceeding and contents of notice.
19.19 Answer.
19.20 Amended pleadings.
19.21 Failure to appear.
19.22 Consolidation and severance of actions.
19.23 Motions.
19.24 Scope of document discovery.
19.25 Request for document discovery from parties.
19.26 Document subpoenas to nonparties.
19.27 Deposition of witness unavailable for hearing.
19.28 Interlocutory review.
19.29 Summary disposition.
19.30 Partial summary disposition.
19.31 Scheduling and prehearing conferences.
19.32 Prehearing submissions.
19.33 Public hearings.

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List of Subjects in 12 CFR Part 19

Administrative practice and procedure, Crime, Ex parte communications, Hearing procedure, Investigations, National banks, Penalties, Securities.

Authority and Issuance

For the reasons set out in the common preamble, part 19 of chapter I of title 12 of the Code of Federal Regulations, is revised to read as follows:

PART 19—RULES OF PRACTICE AND PROCEDURE

Subpart A—Uniform Rules of Practice and Procedure

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19.1 Scope.
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19.31 Scheduling and prehearing conferences.
19.32 Prehearing submissions.
19.33 Public hearings.

Sec.
19.34 Hearing subpoenas.
19.35 Conduct of hearings.
19.36 Evidence.
19.37 Proposed findings and conclusions.
19.38 Recommended decision and filing of record.
19.39 Exceptions to recommended decision.
19.40 Review by the Comptroller.
19.41 Stays pending judicial review.

Subpart B—Procedural Rules for OCC Adjudications

19.100 Scope.
19.101 Delegation to OFIA.

Subpart C—Removals, Suspensions, and Prohibitions When a Crime Is Charged or a Conviction Is Obtained

19.110 Scope.
19.111 Suspension or removal.
19.112 Informal hearing.
19.113 Recommended and final decisions.

Subpart D—Exemption Hearings Under Section 12(h) of the Securities Exchange Act of 1934

19.120 Scope.
19.121 Application for exemption.
19.122 Newspaper notice.
19.123 Informal hearing.
19.124 Decision of the Comptroller.

Subpart E—Disciplinary Proceedings Involving the Federal Securities Laws

19.130 Scope
19.131 Notice of charges and answer.
19.132 Disciplinary orders.

Subpart F—Civil Money Penalty Authority Under the Securities Laws

19.140 Scope.

Subpart G—Cease-and-desist Authority Under the Securities Laws

19.150 Scope.

Subpart H—Change in Bank Control

19.160 Scope.
19.161 Hearing request and answer.
19.162 Hearing order.

Subpart I—Discovery Depositions and Subpoenas

19.170 Discovery depositions.
19.171 Deposition subpoenas.

Subpart J—Formal Investigations

19.180 Scope.
19.181 Confidentiality of formal investigations.
19.182 Order to conduct a formal investigation.
19.183 Rights of witnesses.
19.184 Service of subpoena and payment of witness fees.

Subpart K—Parties and Representational Practice Before the OCC; Standards of Conduct

19.190 Scope.
19.191 Definitions.
19.192 Sanctions relating to conduct in an adjudicatory proceeding.
19.193 Censure, suspension or debarment.
19.194 Eligibility of attorneys and accountants to practice.
19.195 Incompetence.
19.196 Disreputable conduct.
19.197 Initiation of disciplinary proceeding.
19.198 Conferences.
19.199 Proceedings under this subpart.
19.200 Effect of suspension, debarment or censure.
19.201 Petition for reinstatement.

Subpart L—Equal Access to Justice Act

19.210 Scope.

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 164, 504, 505, 1817, 1818, 1820, 1972, 3102, 3108(a), and 3909; 15 U.S.C. 78*l*(h) and (i), 78o–4(c), 78o–5, 78q–1, 78u, 78u–2, 78u–3, and 78w; and 31 U.S.C. 330.

Subpart A—Uniform Rules of Practice and Procedure

§ 19.1 Scope.

This subpart prescribes Uniform Rules of practice and procedure applicable to adjudicatory proceedings required to be conducted on the record after opportunity for a hearing under the following statutory provisions:

(a) Cease-and-desist proceedings under section 8(b) of the Federal Deposit Insurance Act ("FDIA") (12 U.S.C. 1818(b));

(b) Removal and prohibition proceedings under section 8(e) of the FDIA (12 U.S.C. 1818(e));

(c) Change-in-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)) to determine whether the Office of the Comptroller of the Currency ("OCC") should issue an order to approve or disapprove a person's proposed acquisition of an institution;

(d) Proceedings under section 15C(c)(2) of the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78o–5), to impose sanctions upon any government securities broker or dealer or upon any person associated or seeking to become associated with a government securities broker or dealer for which the OCC is the appropriate agency;

(e) Assessment of civil money penalties by the OCC against institutions, institution-affiliated parties, and certain other persons for which it is the appropriate agency for any violation of:

(1) Any provision of law referenced in 12 U.S.C. 93, or any regulation issued thereunder, and certain unsafe or unsound practices and breaches of fiduciary duty, pursuant to 12 U.S.C. 93;

(2) Sections 22 and 23 of the Federal Reserve Act ("FRA"), or any regulation issued thereunder, and certain unsafe or unsound practices and breaches of fiduciary duty, pursuant to 12 U.S.C. 504 and 505;

(3) Section 106(b) of the Bank Holding CompanyAmendments of 1970, pursuant to 12 U.S.C. 1972(2)(F);

(4) Any provision of the Change in Bank Control Act of 1978 or any regulation or order issued thereunder, and certain unsafe or unsound practices and breaches of fiduciary duty, pursuant to 12 U.S.C. 1817(j)(16);

(5) Any provision of the International Lending Supervision Act of 1983 ("ILSA"), or any rule, regulation or order issued thereunder, pursuant to 12 U.S.C. 3909;

(6) Any provision of the International Banking Act of 1978 ("IBA"), or any rule, regulation or order issued thereunder, pursuant to 12 U.S.C. 3108;

(7) Section 5211 of the Revised Statutes (12 U.S.C. 161), pursuant to 12 U.S.C. 164;

(8) Certain provisions of the Exchange Act, pursuant to section 21B of the Exchange Act (15 U.S.C. 78u–2);

(9) Section 1120 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") (12 U.S.C. 3349), or any order or regulation issued thereunder; and

(10) The terms of any final or temporary order issued under section 8 of the FDIA or any written agreement executed by the OCC, the terms of any condition imposed in writing by the OCC in connection with the grant of an application or request, certain unsafe or unsound practices, breaches of fiduciary duty, or any law or regulation not otherwise provided herein, pursuant to 12 U.S.C. 1818(i)(2);

(f) This subpart also applies to all other adjudications required by statute to be determined on the record after opportunity for an agency hearing, unless otherwise specifically provided for in the Local Rules.

§ 19.2 Rules of construction.

For purposes of this part:

(a) Any term in the singular includes the plural, and the plural includes the singular, if such use would be appropriate;

(b) Any use of a masculine, feminine, or neuter gender encompasses all three, if such use would be appropriate;

(c) The term *counsel* includes a non-attorney representative; and

(d) Unless the context requires otherwise, a party's counsel of record, if any, may, on behalf of that party, take any action required to be taken by the party.

§ 19.3 Definitions.

For purposes of this part, unless explicitly stated to the contrary:

(a) *Administrative law judge* means one who presides at an administrative hearing under authority set forth at 5 U.S.C. 556.

(b) *Adjudicatory proceeding* means a proceeding conducted pursuant to these rules and leading to the formulation of a final order other than a regulation.

(c) *Comptroller* means the Comptroller of the Currency or a person delegated to perform the functions of the Comptroller of the Currency under this part.

(d) *Decisional employee* means any member of the Comptroller's or administrative law judge's staff who has not engaged in an investigative or prosecutorial role in a proceeding and who may assist the Comptroller or the administrative law judge, respectively, in preparing orders, recommended decisions, decisions, and other documents under the Uniform Rules.

(e) *Enforcement Counsel* means any individual who files a notice of appearance as counsel on behalf of the OCC in an adjudicatory proceeding.

(f) *Final order* means an order issued by the Comptroller with or without the consent of the affected institution or the institution-affiliated party, that has become final, without regard to the pendency of any petition for reconsideration or review.

(g) *Institution* includes any national bank, District of Columbia bank, or Federal branch or agency of a foreign bank.

(h) *Institution-affiliated party* means any institution- affiliated party as that term is defined in section 3(u) of the FDIA (12 U.S.C. 1813(u)).

(i) *Local Rules* means those rules promulgated by the OCC in the subparts of this part excluding subpart A.

(j) *OCC* means the Office of the Comptroller of the Currency.

(k) *OFIA* means the Office of Financial Institution Adjudication, the executive body charged with overseeing the administration of administrative enforcement proceedings for the OCC, the Board of Governors of the Federal Reserve System ("Board of Governors"), the Federal Deposit Insurance Corporation ("FDIC"), the Office of Thrift Supervision ("OTS"), and the National Credit Union Administration ("NCUA").

(l) *Party* means the OCC and any person named as a party in any notice.

(m) *Person* means an individual, sole proprietor, partnership, corporation, unincorporated association, trust, joint venture, pool, syndicate, agency or other entity or organization, including an institution as defined in paragraph (g) of this section.

(n) *Respondent* means any party other than the OCC.

(o) *Uniform Rules* means those rules in subpart A of this part that are common to the OCC, the Board of Governors, the FDIC, the OTS, and the NCUA.

(p) *Violation* includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

§ 19.4 Authority of the Comptroller.

The Comptroller may, at any time during the pendency of a proceeding, perform, direct the performance of, or waive performance of, any act which could be done or ordered by the administrative law judge.

§ 19.5 Authority of the administrative law judge.

(a) *General rule.* All proceedings governed by this part shall be conducted in accordance with the provisions of Chapter 5 of Title 5 of the United States Code. The administrative law judge shall have all powers necessary to conduct a proceeding in a fair and impartial manner and to avoid unnecessary delay.

(b) *Powers.* The administrative law judge shall have all powers necessary to conduct the proceeding in accordance with paragraph (a) of this section, including the following powers:

(1) To administer oaths and affirmations;

(2) To issue subpoenas, subpoenas duces tecum, and protective orders, as authorized by this part, and to quash or modify any such subpoenas and orders;

(3) To receive relevant evidence and to rule upon the admission of evidence and offers of proof;

(4) To take or cause depositions to be taken as authorized by this subpart;

(5) To regulate the course of the hearing and the conduct of the parties and their counsel;

(6) To hold schedule and/or pre-hearing conferences as set forth in § 19.31;

(7) To consider and rule upon all procedural and other motions appropriate in an adjudicatory proceeding, provided that only the Comptroller shall have the power to grant any motion to dismiss the proceeding or to decide any other motion that results in a final determination of the merits of the proceeding;

(8) To prepare and present to the Comptroller a recommended decision as provided herein;

(9) To recuse himself or herself by motion made by a party or on his or her own motion;

(10) To establish time, place and manner limitations on the attendance of the public and the media for any public hearing; and

(11) To do all other things necessary and appropriate to discharge the duties of a presiding officer.

§ 19.6 Appearance and practice in adjudicatory proceedings.

(a) *Appearance before the OCC or an administrative law judge*—(1) *By attorneys.* Any member in good standing of the bar of the highest court of any state, commonwealth, possession, territory of the United States, or the District of Columbia may represent others before the OCC if such attorney is not currently suspended or debarred from practice before the OCC.

(2) *By non-attorneys.* An individual may appear on his or her own behalf; a member of a partnership may represent the partnership; a duly authorized officer, director, or employee of any government unit, agency, institution, corporation or authority may represent that unit, agency, institution, corporation or authority if such officer, director, or employee is not currently suspended or debarred from practice before the OCC.

(3) *Notice of appearance.* Any individual acting as counsel on behalf of a party, including the OCC, file a notice of appearance with OFIA at or before the time that individual submits papers or otherwise appears on behalf of a party in the adjudicatory proceeding. Such notice of appearance shall include a written declaration that the individual is currently qualified as provided in paragraph (a)(1) or (a)(2) of this section and is authorized to represent the particular party. By filing a notice of appearance on behalf of a party in an adjudicatory proceeding, the counsel thereby agrees, and represents that he or she is authorized, to accept service on behalf of the represented party.

(b) *Sanctions.* Dilatory, obstructionist, egregious, contemptuous or contumacious conduct at any phase of any adjudicatory proceeding may be grounds for exclusion or suspension of counsel from the proceeding.

§ 19.7 Good faith certification.

(a) *General requirement.* Every filing or submission of record following the issuance of a notice shall be signed by at least one counsel of record in his or her individual name and shall state that counsel's address and telephone number. A party who acts as his or her own counsel shall sign his or her individual name and state his or her address and telephone number on every filing or submission of record.

(b) *Effect of signature.* (1) The signature of counsel or a party shall constitute a certification that: the counsel or party has read the filing or

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(11) To do all other things necessary and appropriate to discharge the duties of a presiding officer.

§ 19.6 Appearance and practice in adjudicatory proceedings.

(a) *Appearance before the OCC or an administrative law judge*—(1) *By attorneys.* Any member in good standing of the bar of the highest court of any state, commonwealth, possession, territory of the United States, or the District of Columbia may represent others before the OCC if such attorney is not currently suspended or debarred from practice before the OCC.

(2) *By non-attorneys.* An individual may appear on his or her own behalf; a member of a partnership may represent the partnership; a duly authorized officer, director, or employee of any government unit, agency, institution, corporation or authority may represent that unit, agency, institution, corporation or authority if such officer, director, or employee is not currently suspended or debarred from practice before the OCC.

(3) *Notice of appearance.* Any individual acting as counsel on behalf of a party, including the OCC, file a notice of appearance with OFIA at or before the time that individual submits papers or otherwise appears on behalf of a party in the adjudicatory proceeding. Such notice of appearance shall include a written declaration that the individual is currently qualified as provided in paragraph (a)(1) or (a)(2) of this section and is authorized to represent the particular party. By filing a notice of appearance on behalf of a party in an adjudicatory proceeding, the counsel thereby agrees, and represents that he or she is authorized, to accept service on behalf of the represented party.

(b) *Sanctions.* Dilatory, obstructionist, egregious, contemptuous or contumacious conduct at any phase of any adjudicatory proceeding may be grounds for exclusion or suspension of counsel from the proceeding.

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(a) *General requirement.* Every filing or submission of record following the issuance of a notice shall be signed by at least one counsel of record in his or her individual name and shall state that counsel's address and telephone number. A party who acts as his or her own counsel shall sign his or her individual name and state his or her address and telephone number on every filing or submission of record.

(b) *Effect of signature.* (1) The signature of counsel or a party shall constitute a certification that: the counsel or party has read the filing or submission of record; to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the filing or submission of record is well-grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and the filing or submission of record is not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) If a filing or submission of record is not signed, the administrative law judge shall strike the filing or submission of record, unless it is signed promptly after the omission is called to the attention of the pleader or movant.

(c) *Effect of making oral motion or argument.* The act of making any oral motion or oral argument by any counsel or party constitutes a certification that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, his or her statements are well-grounded in fact and are warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and are not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

§ 19.8 Conflicts of interest.

(a) *Conflict of interest in representation.* No person shall appear as counsel for another person in an adjudicatory proceeding if it reasonably appears that such representation may be materially limited by that counsel's responsibilities to a third person or by the counsel's own interests. The administrative law judge may take corrective measures at any stage of a proceeding to cure a conflict of interest in representation, including the issuance of an order limiting the scope of representation or disqualifying an individual from appearing in a representative capacity for the duration of the proceeding.

(b) *Certification and waiver.* If any person appearing as counsel represents two or more parties to an adjudicatory proceeding or a party and an institution to which notice of the proceeding must be given, counsel must certify in writing at the time of filing the notice of appearance required by § 19.6(a):

(1) That the counsel has personally and fully discussed the possibility of conflicts of interest with each such party or institution;

(2) That each such party or institution has advised its counsel that to its knowledge there is no existing or anticipated material conflict between its interests and the interests of others represented by the same counsel or his or her firm; and

(3) That each such party or institution waives any right it might otherwise have had to assert any known conflicts of interest or to assert any non-material conflicts of interest during the course of the proceeding.

§ 19.9 Ex parte communications.

(a) *Definition*—(1) *Ex parte communication* means any material oral or written communication concerning the merits of an adjudicatory proceeding that was neither on the record nor on reasonable prior notice to all parties that takes place between:

(i) A party, his or her counsel, or another person interested in the proceeding; and

(ii) The administrative law judge handling that proceeding, the Comptroller, or a decisional employee.

(2) *Exception.* A request for status of the proceeding does not constitute an ex parte communication.

(b) *Prohibition of ex parte communications.* From the time the notice is issued by the Comptroller until the date that the Comptroller issues his or her final decision pursuant to § 19.40(c), no party, interested person or counsel therefor shall knowingly make or cause to be made an ex parte communication concerning the merits of the proceeding to the Comptroller, the administrative law judge, or a decisional employee. The Comptroller, administrative law judge, or decisional employee shall not knowingly make or cause to be made to a party, or any interested person or counsel therefor, an ex parte communication relevant to the merits of a proceeding.

(c) *Procedure upon occurrence of ex parte communication.* If an ex parte communication is received by the administrative law judge, the Comptroller or any other person identified in paragraph (a) of this section, that person shall cause all such written communications (or, if the communication is oral, a memorandum stating the substance of the communication) to be placed on the record of the proceeding and served on all parties. All other parties to the proceeding shall have an opportunity, within ten days of receipt of service of the ex parte communication, to file responses thereto and to recommend any sanctions, in accordance with paragraph (d) of this section, that they believe to be appropriate under the circumstances.

(d) *Sanctions.* Any party or his or her counsel who makes a prohibited ex parte communication, or who encourages or solicits another to make any such communication, may be subject to any appropriate sanction or sanctions imposed by the Comptroller or the administrative law judge including, but not limited to, exclusion from the proceedings and an adverse ruling on the issue which is the subject of the prohibited communication.

§ 19.10 Filing of papers.

(a) *Filing.* Any papers required to be filed, excluding documents produced in response to a discovery request pursuant to §§ 19.25 and 19.26, shall be filed with OFIA, except as otherwise provided.

(b) *Manner of filing.* Unless otherwise specified by the Comptroller or the administrative law judge, filing may be accomplished by:

(1) Personal service;

(2) Delivering the papers to a reliable commercial courier service, overnight delivery service, or to the U.S. Post Office for Express Mail delivery;

(3) Mailing the papers by first class, registered, or certified mail; or

(4) Transmission by electronic media, only if expressly authorized, and upon any conditions specified, by the Comptroller or the administrative law judge. All papers filed by electronic media shall also concurrently be filed in accordance with paragraph (c) of this section.

(c) *Formal requirements as to papers filed*—(1) *Form.* All papers filed must set forth the name, address, and telephone number of the counsel or party making the filing and must be accompanied by a certification setting forth when and how service has been made on all other parties. All papers filed must be double-spaced and printed or typewritten on 8½×11 inch paper, and must be clear and legible.

(2) *Signature.* All papers must be dated and signed as provided in § 19.7.

(3) *Caption.* All papers filed must include at the head thereof, or on a title page, the name of the OCC and of the filing party, the title and docket number of the proceeding, and the subject of the particular paper.

(4) *Number of copies.* Unless otherwise specified by the Comptroller or the administrative law judge, an original and one copy of all documents and papers shall be filed, except that only one copy of transcripts of testimony and exhibits shall be filed.

§ 19.11 Service of papers.

(a) *By the parties.* Except as otherwise provided, a party filing papers shall serve a copy upon the counsel of record for all other parties to the proceeding so represented, and upon any party not so represented.

(b) *Method of service.* Except as provided in paragraphs (c)(2) and (d) of this section, a serving party shall use one or more of the following methods of service:

(1) Personal service;

(2) Delivering the papers to a reliable commercial courier service, overnight delivery service, or to the U.S. Post Office for Express Mail delivery;

(3) Mailing the papers by first class, registered, or certified mail; or

(4) Transmission by electronic media, only if the parties mutually agree. Any papers served by electronic media shall also concurrently be served in accordance with the requirements of § 19.10(c).

(c) *By the Comptroller or the administrative law judge.*—(1) All papers required to be served by the Comptroller or the administrative law judge upon a party who has appeared in the proceeding in accordance with § 19.6 shall be served by any means specified in paragraph (b) of this section.

(2) If a party has not appeared in the proceeding in accordance with § 19.6, the Comptroller or the administrative law judge shall make service by any of the following methods:

(i) By personal service;

(ii) By delivery to a person of suitable age and discretion at the party's residence;

(iii) By registered or certified mail addressed to the party's last known address; or

(iv) By any other method reasonably calculated to give actual notice.

(d) *Subpoenas.* Service of a subpoena may be made by personal service, by delivery to an agent, by delivery to a person of suitable age and discretion at the subpoenaed person's residence, by registered or certified mail addressed to the person's last known address, or in such other manner as is reasonably calculated to give actual notice.

(e) *Area of service.* Service in any state, territory, possession of the United States, or the District of Columbia, on any person or company doing business in any state, territory, possession of the United States, or the District of Columbia, or on any person as otherwise provided by law, is effective without regard to the place where the hearing is held, provided that if service is made on a foreign bank in connection with an action or proceeding involving one or more of its branches or agencies located in any state, territory, possession of the United States, or the District of Columbia, service shall be made on at least one branch or agency so involved.

§ 19.12 Construction of time limits.

(a) *General rule.* In computing any period of time prescribed by this subpart, the date of the act or event from which the designated period of time begins to run is not included. The last day so computed is included unless it is a Saturday, Sunday, or Federal holiday. When the last day is a Saturday, Sunday, or Federal holiday, the period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Intermediate Saturdays, Sundays, and Federal holidays are included in the computation of time, except that, when the time period within which an act is to be performed is ten days or less, intermediate Saturdays, Sundays, and Federal holidays are not included.

(b) *When papers are deemed to be filed or served.* (1) Filing and service are deemed to be effective:

(i) In the case of personal service or same day commercial courier delivery, upon actual service;

(ii) In the case of overnight commercial delivery service, U.S. Express Mail delivery, or first class, registered, or certified mail, upon deposit in or delivery to an appropriate point of collection;

(iii) In the case of transmission by electronic media, as specified by the authority receiving the filing, in the case of filing, and as agreed among the parties, in the case of service.

(2) The effective filing and service dates specified in paragraph (b)(1) of this section may be modified by the Comptroller or administrative law judge in the case of filing or by agreement of the parties in the case of service.

(c) *Calculation of time for service and filing of responsive papers.* Whenever a time limit is measured by a prescribed period from the service of any notice or paper, the applicable time limits are calculated as follows:

(1) If service is made by first class, registered or certified mail, add three days to the prescribed period;

(2) If service is made by express mail or overnight delivery service, add one day to the prescribed period;

(3) If service is made by electronic media transmission, add one day to the prescribed period, unless otherwise determined by the Comptroller or the administrative law judge in the case of filing, or by agreement among the parties in the case of service.

§ 19.13 Change of time limits.

Except as otherwise provided by law, the administrative law judge may, for good cause shown, extend the time limits prescribed by the Uniform Rules or by any notice or order issued in the proceedings. After the referral of the case to the Comptroller pursuant to § 19.38, the Comptroller may grant extensions of the time limits for good cause shown. Extensions may be granted at the motion of a party after notice and opportunity to respond is afforded all non-moving parties or on the Comptroller's or the administrative law judge's own motion.

§ 19.14 Witness fees and expenses.

Witnesses subpoenaed for testimony or depositions shall be paid the same fees for attendance and mileage as are paid in the United States district courts in proceedings in which the United States is a party, provided that, in the case of a discovery subpoena addressed to a party, no witness fees or mileage need be paid. Fees for witnesses shall be tendered in advance by the party requesting the subpoena, except that fees and mileage need not be tendered in advance where the OCC is the party requesting the subpoena. The OCC shall not be required to pay any fees to, or expenses of, any witness not subpoenaed by the OCC.

§ 19.15 Opportunity for informal settlement.

Any respondent may, at any time in the proceeding, unilaterally submit to Enforcement Counsel written offers or proposals for settlement of a proceeding, without prejudice to the rights of any of the parties. No such offer or proposal shall be made to any OCC representative other than Enforcement Counsel. Submission of a written settlement offer does not provide a basis for adjourning or otherwise delaying all or any portion of a proceeding under this part. No settlement offer or proposal, or any subsequent negotiation or resolution, is admissible as evidence in any proceeding.

§ 19.16 OCC's right to conduct examination.

Nothing contained in this subpart limits in any manner the right of the OCC to conduct any examination, inspection, or visitation of any institution or institution-affiliated party, or the right of the OCC to conduct or continue any form of investigation authorized by law.

§ 19.17 Collateral attacks on adjudicatory proceeding.

If an interlocutory appeal or collateral attack is brought in any court concerning all or any part of an adjudicatory proceeding, the challenged adjudicatory proceeding shall continue without regard to the pendency of that court proceeding. No default or other n of time limits.

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§ 19.17 Collateral attacks on adjudicatory proceeding.

If an interlocutory appeal or collateral attack is brought in any court concerning all or any part of an adjudicatory proceeding, the challenged adjudicatory proceeding shall continue without regard to the pendency of that court proceeding. No default or other

failure to act as directed in the adjudicatory proceeding within the times prescribed in this subpart shall be excused based on the pendency before any court of any interlocutory appeal or collateral attack.

§ 19.18 Commencement of proceeding and contents of notice.

(a) *Commencement of proceeding.* (1)(i) Except for change-in-control proceedings under section 7(j)(4) of the FDIA, 12 U.S.C. 1817(j)(4), a proceeding governed by this subpart is commenced by issuance of a notice by the Comptroller.

(ii) The notice must be served by the Comptroller upon the respondent and given to any other appropriate financial institution supervisory authority where required by law.

(iii) The notice must be filed with OFIA.

(2) Change-in control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)) commence with the issuance of an order by the Comptroller.

(b) *Contents of notice.* The notice must set forth:

(1) The legal authority for the proceeding and for the OCC's jurisdiction over the proceeding;

(2) A statement of the matters of fact or law showing that the OCC is entitled to relief;

(3) A proposed order or prayer for an order granting the requested relief;

(4) The time, place, and nature of the hearing as required by law or regulation;

(5) The time within which to file an answer as required by law or regulation;

(6) The time within which to request a hearing as required by law or regulation; and

(7) That the answer and/or request for a hearing shall be filed with OFIA.

§ 19.19 Answer.

(a) *When.* Within 20 days of service of the notice, respondent shall file an answer as designated in the notice. In a civil money penalty proceeding, respondent shall also file a request for a hearing within 20 days of service of the notice.

(b) *Content of answer.* An answer must specifically respond to each paragraph or allegation of fact contained in the notice and must admit, deny, or state that the party lacks sufficient information to admit or deny each allegation of fact. A statement of lack of information has the effect of a denial. Denials must fairly meet the substance of each allegation of fact denied; general denials are not permitted. When a respondent denies part of an allegation, that part must be denied and the remainder specifically admitted. Any allegation of fact in the notice which is not denied in the answer must be deemed admitted for purposes of the proceeding. A respondent is not required to respond to the portion of a notice that constitutes the prayer for relief or proposed order. The answer must set forth affirmative defenses, if any, asserted by the respondent.

(c) *Default*— (1) *Effect of failure to answer.* Failure of a respondent to file an answer required by this section within the time provided constitutes a waiver of his or her right to appear and contest the allegations in the notice. If no timely answer is filed, Enforcement Counsel may file a motion for entry of an order of default. Upon a finding that no good cause has been shown for the failure to file a timely answer, the administrative law judge shall file with the Comptroller a recommended decision containing the findings and the relief sought in the notice. Any final order issued by the Comptroller based upon a respondent's failure to answer is deemed to be an order issued upon consent.

(2) *Effect of failure to request a hearing in civil money penalty proceedings.* If respondent fails to request a hearing as required by law within the time provided, the notice of assessment constitutes a final and unappealable order.

§ 19.20 Amended pleadings.

(a) *Amendments.* The notice or answer may be amended or supplemented at any stage of the proceeding by leave of the administrative law judge. Such leave will be freely given. The respondent shall answer an amended notice within the time remaining for the respondent's answer to the original notice, or within ten days after service of the amended notice, whichever period is longer, unless the Comptroller or administrative law judge orders otherwise for good cause shown.

(b) *Amendments to conform to the evidence.* When issues not raised in the notice or answer are tried at the hearing by express or implied consent of the parties, they will be treated in all respects as if they had been raised in the notice or answer, and no formal amendments are required. If evidence is objected to at the hearing on the ground that it is not within the issues raised by the notice or answer, the administrative law judge may allow the notice or answer to be amended. The administrative law judge will do so freely when the determination of the merits of the action is served thereby and the objecting party fails to satisfy the administrative law judge that the admission of such evidence would unfairly prejudice that party's action or defense upon the merits. The administrative law judge may grant a continuance to enable the objecting party to meet such evidence.

§ 19.21 Failure to appear.

Failure of a respondent to appear in person at the hearing or by a duly authorized counsel constitutes a waiver of respondent's right to a hearing and is deemed an admission of the facts as alleged and consent to the relief sought in the notice. Without further proceedings or notice to the respondent, the administrative law judge shall file with the Comptroller a recommended decision containing the findings and the relief sought in the notice.

§ 19.22 Consolidation and severance of actions.

(a) *Consolidation.* (1) On the motion of any party, or on the administrative law judge's own motion, the administrative law judge may consolidate, for some or all purposes, any two or more proceedings, if each such proceeding involves or arises out of the same transaction, occurrence or series of transactions or occurrences, or involves at least one common respondent or a material common question of law or fact, unless such consolidation would cause unreasonable delay or injustice.

(2) In the event of consolidation under paragraph (a)(1) of this section, appropriate adjustment to the prehearing schedule must be made to avoid unnecessary expense, inconvenience, or delay.

(b) *Severance.* The administrative law judge may, upon the motion of any party, sever the proceeding for separate resolution of the matter as to any respondent only if the administrative law judge finds that:

(1) Undue prejudice or injustice to the moving party would result from not severing the proceeding; and

(2) Such undue prejudice or injustice would outweigh the interests of judicial economy and expedition in the complete and final resolution of the proceeding.

§ 19.23 Motions.

(a) *In writing.* (1) Except as otherwise provided herein, an application or request for an order or ruling must be made by written motion.

(2) All written motions must state with particularity the relief sought and must be accompanied by a proposed order.

(3) No oral argument may be held on written motions except as otherwise directed by the administrative law

judge. Written memoranda, briefs, affidavits or other relevant material or documents may be filed in support of or in opposition to a motion.

(b) *Oral motions.* A motion may be made orally on the record unless the administrative law judge directs that such motion be reduced to writing.

(c) *Filing of motions.* Motions must be filed with the administrative law judge, except that following the filing of the recommended decision, motions must be filed with the Comptroller.

(d) *Responses.* (1) Except as otherwise provided herein, within ten days after service of any written motion, or within such other period of time as may be established by the administrative law judge or the Comptroller, any party may file a written response to a motion. The administrative law judge shall not rule on any oral or written motion before each party has had an opportunity to file a response.

(2) The failure of a party to oppose a written motion or an oral motion made on the record is deemed a consent by that party to the entry of an order substantially in the form of the order accompanying the motion.

(e) *Dilatory motions.* Frivolous, dilatory or repetitive motions are prohibited. The filing of such motions may form the basis for sanctions.

(f) *Dispositive motions.* Dispositive motions are governed by §§ 19.29 and 19.30.

§ 19.24 Scope of document discovery.

(a) *Limits on discovery.* (1) Parties to proceedings under this subpart may obtain document discovery through the production of documents, including writings, drawings, graphs, charts, photographs, recordings, and other data compilations from which information can be obtained, or translated, if necessary, by the parties through detection devices into reasonably usable form.

(2) Discovery by use of deposition is governed by subpart I of this part.

(b) *Relevance.* Parties may obtain document discovery regarding any matter, not privileged, which has material relevance to the merits of the pending action. It is not a ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to discovery of admissible evidence. The request may not be unreasonable, oppressive, excessive in scope or unduly burdensome.

(c) *Privileged matter.* Privileged documents are not discoverable. Privileges include the attorney-client privilege, work-product privilege, any government's or government agency's deliberative process privilege, and any other privileges the Constitution, any applicable act of Congress, or the principles of common law provide.

(d) *Time limits.* All discovery, including all responses to discovery requests, shall be completed at least 20 days prior to the date scheduled for the commencement of the hearing, except as provided in the Local Rules. No exceptions to this time limit shall be permitted, unless the administrative law judge finds on the record that good cause exists for waiving the requirements of this paragraph.

§ 19.25 Request for document discovery from parties.

(a) *General rule.* Any party may serve on any other party a request to produce for inspection any discoverable documents which are in the possession, custody, or control of the party upon whom the request is served. The request must identify the documents to be produced either by individual item or by category, and must describe each item and category with reasonable particularity. Documents must be produced as they are kept in the usual course of business and shall be organized to correspond with the categories in the request.

(b) *Production or copying.* The request must specify a reasonable time, place, and manner for production and performing any related acts. In lieu of inspecting the documents, the requesting party may specify that all or some of the responsive documents are to be copied and the copies delivered to the requesting party. If copying of fewer than 250 pages is requested, the party to whom the request is addressed shall bear the cost of copying and shipping charges. If more than 250 pages of copying is requested, the requesting party shall pay for copying, unless the parties agree otherwise, at the current per-page copying rate imposed by the OCC's rules in Part 4 of this chapter implementing the Freedom of Information Act (5 U.S.C. 552a) plus the cost of shipping.

(c) *Obligation to update responses.* A party who has responded to a discovery request with a response that was complete when made is not required to supplement the response to include documents thereafter acquired, unless the responding party learns that:

(1) The response was materially incorrect when made; or

(2) The response, though correct when made, is no longer true and a failure to amend the response is, in substance, a knowing concealment.

(d) *Motions to limit discovery.* (1) Any party that objects to a discovery request may, within ten days of being served with such request, file a motion in accordance with the provisions of § 19.23 to strike or otherwise limit the request. If an objection is made to only a portion of an item or category in a request, the portion objected to shall be specified. Any objections not made in accordance with this paragraph and § 19.23 are waived.

(2) The party who served the request that is the subject of a motion to strike or limit may file a written response within five days of service of the motion. No other party may file a response.

(e) *Privilege.* At the time other documents are produced, all documents withheld on the grounds of privilege must be reasonably identified, together with a statement of the basis for the assertion of privilege.

(f) *Motions to compel production.* (1) If a party withholds any documents as privileged or fails to comply fully with a discovery request, the requesting party may, within ten days of the assertion of privilege or of the time the failure to comply becomes known to the requesting party, file a motion in accordance with the provisions of § 19.23 for the issuance of a subpoena compelling production.

(2) The party who asserted the privilege or failed to comply with the request may file a written response to a motion to compel within five days of service of the motion. No other party may file a response.

(g) *Ruling on motions.* After the time for filing responses pursuant to this section has expired, the administrative law judge shall rule promptly on all motions filed pursuant to this section. If the administrative law judge determines that a discovery request, or any of its terms, is unreasonable, unduly burdensome, excessive in scope, repetitive of previous requests or seeks to obtain privileged documents, he or she may modify the request, and may issue appropriate protective orders, upon such conditions as justice may require. The pendency of a motion to revoke or limit discovery or to compel production shall not be a basis for staying or continuing the proceeding, unless otherwise ordered by the administrative law judge.

(h) *Enforcing discovery subpoenas.* If the administrative law judge issues a subpoena compelling production of documents by a party, the subpoenaing party may, in the event of noncompliance and to the extent authorized by applicable law, apply to any appropriate United States district

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(d) *Motions to limit discovery.* (1) Any party that objects to a discovery request may, within ten days of being served with such request, file a motion in accordance with the provisions of § 19.23 to strike or otherwise limit the request. If an objection is made to only a portion of an item or category in a request, the portion objected to shall be specified. Any objections not made in accordance with this paragraph and § 19.23 are waived.

(2) The party who served the request that is the subject of a motion to strike or limit may file a written response within five days of service of the motion. No other party may file a response.

(e) *Privilege.* At the time other documents are produced, all documents withheld on the grounds of privilege must be reasonably identified, together with a statement of the basis for the assertion of privilege.

(f) *Motions to compel production.* (1) If a party withholds any documents as privileged or fails to comply fully with a discovery request, the requesting party may, within ten days of the assertion of privilege or of the time the failure to comply becomes known to the requesting party, file a motion in accordance with the provisions of § 19.23 for the issuance of a subpoena compelling production.

(2) The party who asserted the privilege or failed to comply with the request may file a written response to a motion to compel within five days of service of the motion. No other party may file a response.

(g) *Ruling on motions.* After the time for filing responses pursuant to this section has expired, the administrative law judge shall rule promptly on all motions filed pursuant to this section. If the administrative law judge determines that a discovery request, or any of its terms, is unreasonable, unduly burdensome, excessive in scope, repetitive of previous requests or seeks to obtain privileged documents, he or she may modify the request, and may issue appropriate protective orders, upon such conditions as justice may require. The pendency of a motion to revoke or limit discovery or to compel production shall not be a basis for staying or continuing the proceeding, unless otherwise ordered by the administrative law judge.

(h) *Enforcing discovery subpoenas.* If the administrative law judge issues a subpoena compelling production of documents by a party, the subpoenaing party may, in the event of noncompliance and to the extent authorized by applicable law, apply to any appropriate United States district

court for an order requiring compliance with the subpoena. A party's right to seek court enforcement of a subpoena shall not in any manner limit the sanctions that may be imposed by the administrative law judge against a party who fails to produce subpoenaed documents.

§ 19.26 Document subpoenas to nonparties.

(a) *General rules.* (1) Any party may apply to the administrative law judge for the issuance of a document discovery subpoena addressed to any person who is not a party to the proceeding. The application must contain a proposed document subpoena and a brief statement showing the general relevance and reasonableness of the scope of documents sought. The subpoenaing party shall specify a reasonable time, place, and manner for making production in response to the document subpoena.

(2) A party shall only apply for a document subpoena under this section within the time period during which such party could serve a discovery request under § 19.24(d). The party obtaining the document subpoena is responsible for serving it on the subpoenaed person and for serving copies on all parties. Document subpoenas may be served in any state, territory, or possession of the United States, the District of Columbia, or as otherwise provided by law.

(3) The administrative law judge shall promptly issue any document subpoena requested pursuant to this section. If the administrative law judge determines that the application does not set forth a valid basis for the issuance of the subpoena, or that any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may refuse to issue the subpoena or may issue it in a modified form upon such conditions as may be consistent with the Uniform Rules.

(b) *Motion to quash or modify.* (1) Any person to whom a document subpoena is directed may file a motion to quash or modify such subpoena, accompanied by a statement of the basis for quashing or modifying the subpoena. The movant shall serve the motion on all parties, and any party may respond to such motion within ten days of service of the motion.

(2) Any motion to quash or modify a document subpoena must be filed on the same basis, including the assertion of privilege, upon which a party could object to a discovery request under § 19.25(d), and during the same time limits during which such an objection could be filed.

(c) *Enforcing document subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or any order of the administrative law judge which directs compliance with all or any portion of a document subpoena, the subpoenaing party or any other aggrieved party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with so much of the document subpoena as the administrative law judge has not quashed or modified. A party's right to seek court enforcement of a document subpoena shall in no way limit the sanctions that may be imposed by the administrative law judge on a party who induces a failure to comply with subpoenas issued under this section.

§ 19.27 Deposition of witness unavailable for hearing.

(a) *General rules.* (1) If a witness will not be available for the hearing, a party desiring to preserve that witness' testimony for the record may apply in accordance with the procedures set forth in paragraph (a)(2) of this section, to the administrative law judge for the issuance of a subpoena, including a subpoena duces tecum, requiring the attendance of the witness at a deposition. The administrative law judge may issue a deposition subpoena under this section upon showing that:

(i) The witness will be unable to attend or may be prevented from attending the hearing because of age, sickness or infirmity, or will otherwise be unavailable;

(ii) The witness' unavailability was not procured or caused by the subpoenaing party;

(iii) The testimony is reasonably expected to be material; and

(iv) Taking the deposition will not result in any undue burden to any other party and will not cause undue delay of the proceeding.

(2) The application must contain a proposed deposition subpoena and a brief statement of the reasons for the issuance of the subpoena. The subpoena must name the witness whose deposition is to be taken and specify the time and place for taking the deposition. A deposition subpoena may require the witness to be deposed at any place within the country in which that witness resides or has a regular place of employment or such other convenient place as the administrative law judge shall fix.

(3) Any requested subpoena that sets forth a valid basis for its issuance must be promptly issued, unless the administrative law judge on his or her own motion, requires a written response or requires attendance at a conference concerning whether the requested subpoena should be issued.

(4) The party obtaining a deposition subpoena is responsible for serving it on the witness and for serving copies on all parties. Unless the administrative law judge orders otherwise, no deposition under this section shall be taken on fewer than ten days' notice to the witness and all parties. Deposition subpoenas may be served in any state, territory, possession of the United States, or the District of Columbia, on any person or company doing business in any state, territory, possession of the United States, or the District of Columbia, or as otherwise permitted by law.

(b) *Objections to deposition subpoenas.* (1) The witness and any party who has not had an opportunity to oppose a deposition subpoena issued under this section may file a motion with the administrative law judge to quash or modify the subpoena prior to the time for compliance specified in the subpoena, but not more than ten days after service of the subpoena.

(2) A statement of the basis for the motion to quash or modify a subpoena issued under this section must accompany the motion. The motion must be served on all parties.

(c) *Procedure upon deposition.* (1) Each witness testifying pursuant to a deposition subpoena must be duly sworn, and each party shall have the right to examine the witness. Objections to questions or documents must be in short form, stating the grounds for the objection. Failure to object to questions or documents is not deemed a waiver except where the ground for the objection might have been avoided if the objection had been timely presented. All questions, answers, and objections must be recorded.

(2) Any party may move before the administrative law judge for an order compelling the witness to answer any questions the witness has refused to answer or submit any evidence the witness has refused to submit during the deposition.

(3) The deposition must be subscribed by the witness, unless the parties and the witness, by stipulation, have waived the signing, or the witness is ill, cannot be found, or has refused to sign. If the deposition is not subscribed by the witness, the court reporter taking the deposition shall certify that the transcript is a true and complete transcript of the deposition.

(d) *Enforcing subpoenas.* If a subpoenaed person fails to comply with

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any order of the administrative law judge which directs compliance with all or any portion of a deposition subpoena under paragraph (b) or (c)(3) of this section, the subpoenaing party or other aggrieved party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with the portions of the subpoena that the administrative law judge has ordered enforced. A party's right to seek court enforcement of a deposition subpoena in no way limits the sanctions that may be imposed by the administrative law judge on a party who fails to comply with, or procures a failure to comply with, a subpoena issued under this section.

§ 19.28 Interlocutory review.

(a) *General rule.* The Comptroller may review a ruling of the administrative law judge prior to the certification of the record to the Comptroller only in accordance with the procedures set forth in this section and § 19.23.

(b) *Scope of review.* The Comptroller may exercise interlocutory review of a ruling of the administrative law judge if the Comptroller finds that:

(1) The ruling involves a controlling question of law or policy as to which substantial grounds exist for a difference of opinion;

(2) Immediate review of the ruling may materially advance the ultimate termination of the proceeding;

(3) Subsequent modification of the ruling at the conclusion of the proceeding would be an inadequate remedy; or

(4) Subsequent modification of the ruling would cause unusual delay or expense.

(c) *Procedure.* Any request for interlocutory review shall be filed by a party with the administrative law judge within ten days of his or her ruling and shall otherwise comply with § 19.23. Any party may file a response to a request for interlocutory review in accordance with § 19.23(d). Upon the expiration of the time for filing all responses, the administrative law judge shall refer the matter to the Comptroller for final disposition.

(d) *Suspension of proceeding.* Neither a request for interlocutory review nor any disposition of such a request by the Comptroller under this section suspends or stays the proceeding unless otherwise ordered by the administrative law judge or the Comptroller.

§ 19.29 Summary disposition.

(a) *In general.* The administrative law judge shall recommend that the Comptroller issue a final order granting a motion for summary disposition if the undisputed pleaded facts, admissions, affidavits, stipulations, documentary evidence, matters as to which official notice may be taken, and any other evidentiary materials properly submitted in connection with a motion for summary disposition show that:

(1) There is no genuine issue as to any material fact; and

(2) The moving party is entitled to a decision in its favor as a matter of law.

(b) *Filing of motions and responses.* (1) Any party who believes there is no genuine issue of material fact to be determined and that he or she is entitled to a decision as a matter of law may move at any time for summary disposition in its favor of all or any part of the proceeding. Any party, within 20 days after service of such a motion, or within such time period as allowed by the administrative law judge, may file a response to such motion.

(2) A motion for summary disposition must be accompanied by a statement of the material facts as to which the moving party contends there is no genuine issue. Such motion must be supported by documentary evidence, which may take the form of admissions in pleadings, stipulations, depositions, investigatory depositions, transcripts, affidavits and any other evidentiary materials that the moving party contends support his or her position. The motion must also be accompanied by a brief containing the points and authorities in support of the contention of the moving party. Any party opposing a motion for summary disposition must file a statement setting forth those material facts as to which he or she contends a genuine dispute exists. Such opposition must be supported by evidence of the same type as that submitted with the motion for summary disposition and a brief containing the points and authorities in support of the contention that summary disposition would be inappropriate.

(c) *Hearing on motion.* At the request of any party or on his or her own motion, the administrative law judge may hear oral argument on the motion for summary disposition.

(d) *Decision on motion.* Following receipt of a motion for summary disposition and all responses thereto, the administrative law judge shall determine whether the moving party is entitled to summary disposition. If the administrative law judge determines that summary disposition is warranted, the administrative law judge shall submit a recommended decision to that effect to the Comptroller. If the administrative law judge finds that no party is entitled to summary disposition, he or she shall make a ruling denying the motion.

§ 19.30 Partial summary disposition.

If the administrative law judge determines that a party is entitled to summary disposition as to certain claims only, he or she shall defer submitting a recommended decision as to those claims. A hearing on the remaining issues must be ordered. Those claims for which the administrative law judge has determined that summary disposition is warranted will be addressed in the recommended decision filed at the conclusion of the hearing.

§ 19.31 Scheduling and prehearing conferences.

(a) *Scheduling conference.* Within 30 days of service of the notice or order commencing a proceeding or such other time as parties may agree, the administrative law judge shall direct counsel for all parties to meet with him or her in person at a specified time and place prior to the hearing or to confer by telephone for the purpose of scheduling the course and conduct of the proceeding. This meeting or telephone conference is called a "scheduling conference." The identification of potential witnesses, the time for and manner of discovery, and the exchange of any prehearing materials including witness lists, statements of issues, stipulations, exhibits and any other materials may also be determined at the scheduling conference.

(b) *Prehearing conferences.* The administrative law judge may, in addition to the scheduling conference, on his or her own motion or at the request of any party, direct counsel for the parties to meet with him or her (in person or by telephone) at a prehearing conference to address any or all of the following:

(1) Simplification and clarification of the issues;

(2) Stipulations, admissions of fact, and the contents, authenticity and admissibility into evidence of documents;

(3) Matters of which official notice may be taken;

(4) Limitation of the number of witnesses;

(5) Summary disposition of any or all issues;

(6) Resolution of discovery issues or disputes;

(7) Amendments to pleadings; and

(8) Such other matters as may aid in the orderly disposition of the proceeding.

(c) *Transcript.* The administrative law judge, in his or her discretion may

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(b) *Prehearing conferences.* The administrative law judge may, in addition to the scheduling conference, on his or her own motion or at the request of any party, direct counsel for the parties to meet with him or her (in person or by telephone) at a prehearing conference to address any or all of the following:

(1) Simplification and clarification of the issues;

(2) Stipulations, admissions of fact, and the contents, authenticity and admissibility into evidence of documents;

(3) Matters of which official notice may be taken;

(4) Limitation of the number of witnesses;

(5) Summary disposition of any or all issues;

(6) Resolution of discovery issues or disputes;

(7) Amendments to pleadings; and

(8) Such other matters as may aid in the orderly disposition of the proceeding.

(c) *Transcript.* The administrative law judge, in his or her discretion may require that a scheduling or prehearing conference be recorded by a court reporter. A transcript of the conference and any materials filed, including orders, becomes part of the record of the proceeding. A party may obtain a copy of the transcript at his or her expense.

(d) *Scheduling or prehearing orders.* At or within a reasonable time following the conclusion of the scheduling conference or any prehearing conference, the administrative law judge shall serve on each party an order setting forth any agreements reached and any procedural determinations made.

§ 19.32 Prehearing submissions.

(a) Within the time set by the administrative law judge, but in no case later than 14 days before the start of the hearing, each party shall serve on every other party, his or her:

(1) Prehearing statement;

(2) Final list of witnesses to be called to testify at the hearing, including name and address of each witness and a short summary of the expected testimony of each witness;

(3) List of the exhibits to be introduced at the hearing along with a copy of each exhibit; and

(4) Stipulations of fact, if any.

(b) Effect of failure to comply. No witness may testify and no exhibits may be introduced at the hearing if such witness or exhibit is not listed in the prehearing submissions pursuant to paragraph (a) of this section, except for good cause shown.

§ 19.33 Public hearings.

(a) *General rule.* All hearings shall be open to the public, unless the Comptroller, in his or her discretion, determines that holding an open hearing would be contrary to the public interest. Within 20 days of service of the notice or, in the case of change-in-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)), within 20 days from service of the hearing order, any respondent may file with the Comptroller a request for a private hearing, and any party may file a pleading in reply to such a request. Such requests and replies are governed by § 19.23. Failure to file a request or a reply is deemed a waiver of any objections regarding whether the hearing will be public or private.

(b) *Filing document under seal.* Enforcement Counsel, in his or her discretion, may file any document or part of a document under seal if disclosure of the document would be contrary to the public interest. The administrative law judge shall take all appropriate steps to preserve the confidentiality of such documents or parts thereof, including closing portions of the hearing to the public.

§ 19.34 Hearing subpoenas.

(a) *Issuance.* (1) Upon application of a party showing general relevance and reasonableness of scope of the testimony or other evidence sought, the administrative law judge may issue a subpoena or a subpoena duces tecum requiring the attendance of a witness at the hearing or the production of documentary or physical evidence at such hearing. The application for a hearing subpoena must also contain a proposed subpoena specifying the attendance of a witness or the production of evidence from any state, territory, or possession of the United States, the District of Columbia or as otherwise provided by law at any designated place where the hearing is being conducted.

(2) A party may apply for a hearing subpoena at any time before the commencement of a hearing. During a hearing, such applications may be made orally on the record before the administrative law judge. The party making the application shall serve a copy of the application and the proposed subpoena on every other party to the proceeding.

(3) The administrative law judge shall promptly issue any hearing subpoena requested pursuant to this section. If the administrative law judge determines that the application does not set forth a valid basis for the issuance of the subpoena, or that any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may refuse to issue the subpoena or may issue it in a modified form upon any conditions consistent with this subpart.

(b) *Motion to quash or modify.* (1) Any person to whom a hearing subpoena is directed may file a motion to quash or modify such subpoena, accompanied by a statement of the basis for quashing or modifying the subpoena. The movant shall serve the motion on all parties, and any party may respond to such motion within ten days of service of the motion.

(2) Any motion to quash or modify a hearing subpoena must be filed prior to the time specified in the subpoena for compliance but not more than ten days after the date of service of the subpoena upon the movant.

(c) *Enforcing subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or any order of the administrative law judge which directs compliance with all or any portion of a document subpoena, the subpoenaing party or any other aggrieved party may seek enforcement of the subpoena pursuant to § 19.26(c).

§ 19.35 Conduct of hearings.

(a) *General rules.* (1) Hearings shall be conducted so as to provide a fair and expeditious presentation of the relevant disputed issues. Each party has the right to present its case or defense by oral and documentary evidence and to conduct such cross examination as may be required for full disclosure of the facts.

(2) Order of hearing. Enforcement Counsel shall present its case-in-chief first, unless otherwise ordered by the administrative law judge, or unless otherwise expressly specified by law or regulation. Enforcement Counsel shall be the first party to present an opening statement and a closing statement, and may make a rebuttal statement after the respondent's closing statement. If there are multiple respondents, respondents may agree among themselves as to their order of presentation of their cases, but if they do not agree, the administrative law judge shall fix the order.

(3) Stipulations. Unless the administrative law judge directs otherwise, all stipulations of fact and law previously agreed upon by the parties, and all documents, the admissibility of which have been previously stipulated, will be admitted into evidence upon commencement of the hearing.

(b) *Transcript.* The hearing must be recorded and transcribed. The transcript shall be made available to any party upon payment of the cost thereof. The administrative law judge shall have authority to order the record corrected, either upon motion to correct, upon stipulation of the parties, or following notice to the parties upon the administrative law judge's own motion. The administrative law judge shall serve notice upon all parties that the certified transcript, together with all hearing exhibits and exhibits introduced but not admitted into evidence at the hearing, has been filed.

§ 19.36 Evidence.

(a) *Admissibility.* (1) Except as is otherwise set forth in this section, relevant, material, and reliable evidence that is not unduly repetitive is admissible to the fullest extent authorized by the Administrative Procedure Act and other applicable law.

(2) Evidence that would be admissible under the Federal Rules of Evidence is admissible in a proceeding conducted pursuant to this subpart.

(3) Evidence that would be inadmissible under the Federal Rules of

Evidence may not be deemed or ruled to be inadmissible in a proceeding conducted pursuant to this subpart if such evidence is relevant, material, reliable and not unduly repetitive.

(b) *Official notice.* (1) Official notice may be taken of any material fact which may be judicially noticed by a United States district court and any material information in the official public records of any Federal or state government agency.

(2) All matters officially noticed by the administrative law judge or the Comptroller shall appear on the record.

(3) If official notice is requested or taken of any material fact, the parties, upon timely request, shall be afforded an opportunity to object.

(c) *Documents.* (1) A duplicate copy of a document is admissible to the same extent as the original, unless a genuine issue is raised as to whether the copy is in some material respect not a true and legible copy of the original.

(2) Subject to the requirements of paragraph (a) of this section, any document, including a report of examination, supervisory activity, inspection or visitation, prepared by an appropriate Federal financial institutions regulatory agency or by a state regulatory agency, is admissible either with or without a sponsoring witness.

(3) Witnesses may use existing or newly created charts, exhibits, calendars, calculations, outlines or other graphic material to summarize, illustrate, or simplify the presentation of testimony. Such materials may, subject to the administrative law judge's discretion, be used with or without being admitted into evidence.

(d) *Objections.* (1) Objections to the admissibility of evidence must be timely made and rulings on all objections must appear on the record.

(2) When an objection to a question or line of questioning propounded to a witness is sustained, the examining counsel may make a specific proffer on the record of what he or she expected to prove by the expected testimony of the witness either by representation of counsel or by direct interrogation of the witness.

(3) The administrative law judge shall retain rejected exhibits, adequately marked for identification, for the record, and transmit such exhibits to the Comptroller.

(4) Failure to object to admission of evidence or to any ruling constitutes a waiver of the objection.

(e) *Stipulations.* The parties may stipulate as to any relevant matters of fact or the authentication of any relevant documents. Such stipulations must be received in evidence at a hearing and are binding on the parties with respect to the matters therein stipulated.

(f) *Depositions of unavailable witnesses.* (1) If a witness is unavailable to testify at a hearing, and that witness has testified in a deposition to which all parties in a proceeding had notice and an opportunity to participate, a party may offer as evidence all or any part of the transcript of the deposition, including deposition exhibits, if any.

(2) Such deposition transcript is admissible to the same extent that testimony would have been admissible had that person testified at the hearing, provided that if a witness refused to answer proper questions during the depositions, the administrative law judge may, on that basis, limit the admissibility of the deposition in any manner that justice requires.

(3) Only those portions of a deposition received in evidence at the hearing constitute a part of the record.

§ 19.37 Proposed findings and conclusions.

(a) *Proposed findings and conclusions and supporting briefs.* (1) Any party may file with the administrative law judge proposed findings of fact, proposed conclusions of law, and a proposed order within 30 days after the parties have received notice that the transcript has been filed with the administrative law judge, unless otherwise ordered by the administrative law judge.

(2) Proposed findings and conclusions must be supported by citation to any relevant authorities and by page references to any relevant portions of the record. A post-hearing brief may be filed in support of proposed findings and conclusions, either as part of the same document or in a separate document. Any party who fails to file timely with the administrative law judge any proposed finding or conclusion is deemed to have waived the right to raise in any subsequent filing or submission any issue not addressed in such party's proposed finding or conclusion.

(b) *Reply briefs.* Reply briefs may be filed within 15 days after the date on which the parties' proposed findings, conclusions, and order are due. Reply briefs must be strictly limited to responding to new matters, issues, or arguments raised in another party's papers. A party who has not filed proposed findings of fact and conclusions of law or a post-hearing brief may not file a reply brief.

(c) *Simultaneous filing required.* The administrative law judge shall not order the filing by any party of any brief or reply brief in advance of the other party's filing of its brief.

§ 19.38 Recommended decision and filing of record.

Within 45 days after expiration of the time allowed for filing reply briefs under § 19.37(b), the administrative law judge shall file with and certify to the Comptroller for decision the record of the proceeding. The record must include the administrative law judge's recommended decision, recommended findings of fact, recommended conclusions of law, and proposed order; all prehearing and hearing transcripts, exhibits, and rulings; and the motions, briefs, memoranda, and other supporting papers filed in connection with the hearing. The administrative law judge shall serve upon each party the recommended decision, findings, conclusions, and proposed order.

§ 19.39 Exceptions to recommended decision.

(a) *Filing exceptions.* Within 30 days after service of the recommended decision, findings, conclusions, and proposed order under § 19.38, a party may file with the Comptroller written exceptions to the administrative law judge's recommended decision, findings, conclusions or proposed order, to the admission or exclusion of evidence, or to the failure of the administrative law judge to make a ruling proposed by a party. A supporting brief may be filed at the time the exceptions are filed, either as part of the same document or in a separate document.

(b) *Effect of failure to file or raise exceptions.* (1) Failure of a party to file exceptions to those matters specified in paragraph (a) of this section within the time prescribed is deemed a waiver of objection thereto.

(2) No exception need be considered by the Comptroller if the party taking exception had an opportunity to raise the same objection, issue, or argument before the administrative law judge and failed to do so.

(c) *Contents.* (1) All exceptions and briefs in support of such exceptions must be confined to the particular matters in, or omissions from, the administrative law judge's recommendations to which that party takes exception.

(2) All exceptions and briefs in support of exceptions must set forth page or paragraph references to the specific parts of the administrative law judge's recommendations to which exception is taken, the page or paragraph references to those portions of the record relied upon to support each

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§ 19.39 Exceptions to recommended decision.

(a) *Filing exceptions.* Within 30 days after service of the recommended decision, findings, conclusions, and proposed order under § 19.38, a party may file with the Comptroller written exceptions to the administrative law judge's recommended decision, findings, conclusions or proposed order, to the admission or exclusion of evidence, or to the failure of the administrative law judge to make a ruling proposed by a party. A supporting brief may be filed at the time the exceptions are filed, either as part of the same document or in a separate document.

(b) *Effect of failure to file or raise exceptions.* (1) Failure of a party to file exceptions to those matters specified in paragraph (a) of this section within the time prescribed is deemed a waiver of objection thereto.

(2) No exception need be considered by the Comptroller if the party taking exception had an opportunity to raise the same objection, issue, or argument before the administrative law judge and failed to do so.

(c) *Contents.* (1) All exceptions and briefs in support of such exceptions must be confined to the particular matters in, or omissions from, the administrative law judge's recommendations to which that party takes exception.

(2) All exceptions and briefs in support of exceptions must set forth page or paragraph references to the specific parts of the administrative law judge's recommendations to which exception is taken, the page or paragraph references to those portions of the record relied upon to support each

exception, and the legal authority relied upon to support each exception.

§ 19.40 Review by the Comptroller.

(a) *Notice of submission to the Comptroller.* When the Comptroller determines that the record in the proceeding is complete, the Comptroller shall serve notice upon the parties that the proceeding has been submitted to the Comptroller for final decision.

(b) *Oral argument before the Comptroller.* Upon the initiative of the Comptroller or on the written request of any party filed with the Comptroller within the time for filing exceptions, the Comptroller may order and hear oral argument on the recommended findings, conclusions, decision, and order of the administrative law judge. A written request by a party must show good cause for oral argument and state reasons why arguments cannot be presented adequately in writing. A denial of a request for oral argument may be set forth in the Comptroller's final decision. Oral argument before the Comptroller must be on the record.

(c) *Comptroller's final decision.* (1) Decisional employees may advise and assist the Comptroller in the consideration and disposition of the case. The final decision of the Comptroller will be based upon review of the entire record of the proceeding, except that the Comptroller may limit the issues to be reviewed to those findings and conclusions to which opposing arguments or exceptions have been filed by the parties.

(2) The Comptroller shall render a final decision within 90 days after notification of the parties that the case has been submitted for final decision, or 90 days after oral argument, whichever is later, unless the Comptroller orders that the action or any aspect thereof be remanded to the administrative law judge for further proceedings. Copies of the final decision and order of the Comptroller shall be served upon each party to the proceeding, upon other persons required by statute, and, if directed by the Comptroller or required by statute, upon any appropriate state or Federal supervisory authority.

§ 19.41 Stays pending judicial review.

The commencement of proceedings for judicial review of a final decision and order of the Comptroller may not, unless specifically ordered by the Comptroller or a reviewing court, operate as a stay of any order issued by the Comptroller. The Comptroller may, in his or her discretion, and on such terms as he or she finds just, stay the effectiveness of all or any part of an order pending a final decision on a petition for review of that order.

Subpart B—Procedural Rules for OCC Adjudications

§ 19.100 Scope.

All materials required to be filed with or referred to the Comptroller or the administrative law judge in any proceedings under this part must be filed with the Hearing Clerk, Office of the Comptroller of the Currency, Washington, DC 20219. Filings to be made with the Hearing Clerk include the notice and answer; motions and responses to motions; briefs; the record filed by the administrative law judge after the issuance of a recommended decision; the recommended decision filed by the administrative law judge following a motion for summary disposition; referrals by the administrative law judge of motions for interlocutory review; exceptions and requests for oral argument; and any other papers required to be filed with the Comptroller or the administrative law judge under this part.

§ 19.101 Delegation to OFIA.

Unless otherwise ordered by the Comptroller, administrative adjudications subject to subpart A of this part shall be conducted by an administrative law judge assigned to OFIA.

Subpart C—Removals, Suspensions, and Prohibitions When a Crime Is Charged or a Conviction Is Obtained

§ 19.110 Scope.

This subpart applies to informal hearings afforded to any institution-affiliated party who has been suspended or removed from office or prohibited from further participation in bank affairs by a notice or order issued by the Comptroller.

§ 19.111 Suspension or removal.

The Comptroller may serve a notice of suspension or order of removal or prohibition on an institution-affiliated party. A copy of such notice or order will be served on the bank, whereupon the institution-affiliated party involved must immediately cease service to the bank or participation in the affairs of the bank. The notice or order will indicate the basis for suspension, removal or prohibition and will inform the institution-affiliated party of the right to request in writing, to be received by the OCC within 30 days from the date that the institution-affiliated party was served with such notice or order, an opportunity to show at an informal hearing that continued service to or participation in the conduct of the affairs of the bank does not, or is not likely to, pose a threat to the interest of the bank's depositors or threaten to impair public confidence in the bank. The written request must be sent by certified mail to, or served personally with a signed receipt on, the District Administrator in the OCC district in which the bank in question is located, or to the Deputy Comptroller for Multinational Banking, Office of the Comptroller of the Currency, Washington, DC 20219, if the bank is supervised by the Multinational Banking Department. The request must state specifically the relief desired and the grounds on which that relief is based.

§ 19.112 Informal hearing.

(a) *Issuance of hearing order.* After receipt of a request for hearing, the District Administrator or the Deputy Comptroller for Multinational Banking, whichever is appropriate, shall notify the petitioner requesting the hearing and the OCC's Enforcement and Compliance Division of the date, time, and place fixed for the hearing. The hearing will be scheduled to be held not later than 30 days from the date when a request for hearing is received unless the time is extended at the written request of the petitioner. The District Administrator or the Deputy Comptroller for Multinational Banking, whichever is appropriate, shall extend the hearing date only for a specific period of time and shall take appropriate action to ensure that the hearing is not unduly delayed.

(b) *Appointment of presiding officer.* The Comptroller shall appoint one or more OCC employees as the presiding officer to conduct the hearing. The presiding officer(s) shall not have been involved in the proceeding, a factually related proceeding or the underlying enforcement action in a prosecutorial or investigative role. The OCC's Enforcement and Compliance Division shall appoint an attorney to represent the OCC at the hearing.

(c) *Waiver of oral hearing.* The petitioner may elect to have the matter determined by the presiding officer solely on the basis of written submissions. The petitioner must present the submissions to the presiding officer not later than ten days prior to the hearing, or within such shorter time period as the presiding officer permits, along with a signed document waiving the statutory right to appear and make oral argument.

(d) *Hearing procedures*—(1) *Conduct of hearing.* Hearings under this subpart are not subject to the provisions of

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subpart A of this part or the adjudicative provisions of the Administrative Procedure Act (5 U.S.C. 554–557).

(2) *Powers of the presiding officer.* The presiding officer shall determine all procedural issues that are governed by this subpart. The presiding officer may also permit or limit the number of witnesses and impose time limitations as he or she deems reasonable. The informal hearing will not be governed by the formal rules of evidence. All oral presentations, when permitted, and documents deemed by the presiding officer to be relevant and material to the proceeding and not unduly repetitious will be considered. The presiding officer may ask questions of any person participating in the hearing and may make any rulings reasonably necessary to facilitate the effective and efficient operation of the hearing.

(3) *Presentation.* (i) The petitioner may appear personally or through counsel at the hearing to present relevant written materials and oral argument. Copies of affidavits, memoranda, or other written material to be presented at the hearing must be provided to the presiding officer and to the other parties in the oral argument not later than ten days prior to the hearing or within such shorter time period as permitted by the presiding officer.

(ii) If the petitioner or the appointed OCC attorney desires to present oral testimony or witnesses at the hearing, he or she must file a written request with the presiding officer not later than ten days prior to the hearing, or within a shorter time period as permitted by the presiding officer. The names of proposed witnesses should be included, along with the general nature of the expected testimony, and the reasons why oral testimony is necessary. The presiding officer generally will not admit oral testimony or witnesses unless a specific and compelling need is demonstrated. Witnesses, if admitted, shall be sworn.

(iii) In deciding on any suspension, the presiding officer shall not consider the ultimate question of the guilt or innocence of the individual with respect to the criminal charges which are outstanding. In deciding on any removal, the presiding officer shall not consider challenges to or efforts to impeach the validity of the conviction. The presiding officer may consider facts in either situation, however, which show the nature of the events on which the indictment or conviction was based.

(4) *Record.* A transcript of the proceedings may be taken if the petitioner requests a transcript and agrees to pay all expenses or if the presiding officer determines that the nature of the case warrants a transcript. The presiding officer may order the record to be kept open for a reasonable period following the hearing, not to exceed five business days, to permit the petitioner or the appointed OCC attorney to submit additional documents for the record. Thereafter, no further submissions may be accepted except for good cause shown.

§ 19.113 Recommended and final decisions.

(a) The presiding officer shall issue a recommended decision to the Comptroller and shall serve promptly a copy of the decision on the parties to the proceeding. The decision shall include a summary of the facts and arguments of the parties. Within ten days of service, parties may submit to the Comptroller comments on the presiding officer's recommended decision.

(b) Within 60 days following the hearing or receipt of the petitioner's written submission, the Comptroller shall notify the petitioner by registered mail as to whether the suspension or removal from office, and prohibition from participation in any manner in the affairs of the bank, will be affirmed, terminated or modified. The Comptroller's decision must include a statement of reasons supporting the decision. The Comptroller's decision is a final and unappealable order.

(c) A finding of not guilty or other disposition of the charge on which a notice of suspension was based does not preclude the Comptroller from thereafter instituting removal proceedings pursuant to section 8(e) of the FDIA (12 U.S.C. 1818(e)) and subpart A of this part.

(d) A removal or prohibition by order remains in effect until terminated by the Comptroller. A suspension or prohibition by notice remains in effect until the criminal charge is disposed of or until terminated by the Comptroller.

(e) A suspended or removed individual may petition the Comptroller to reconsider the decision any time after the expiration of a 12-month period from the date of the decision, but no petition for reconsideration may be made within 12 months of a previous petition. The petition must state specifically the relief sought and the grounds therefor, and may be accompanied by a supporting memorandum and any other documentation the petitioner wishes to have considered. No hearing need be granted on the petition for reconsideration.

Subpart D—Exemption Hearings Under Section 12(h) of the Securities Exchange Act of 1934

§ 19.120 Scope.

The rules in this subpart apply to informal hearings that may be held by the Comptroller to determine whether, pursuant to authority in sections 12 (h) and (i) of the Exchange Act (15 U.S.C. 78*l* (h) and (i)), to exempt in whole or in part an issuer or a class of issuers from the provisions of section 12(g), or from section 13 or 14 of the Exchange Act (15 U.S.C. 78*l*(g), 78m or 78n), or whether to exempt from section 16 of the Exchange Act (15 U.S.C. 78p) any officer, director, or beneficial owner of securities of an issuer. The only issuers covered by this subpart are banks whose securities are registered pursuant to section 12(g) of the Exchange Act (15 U.S.C. 78*l*(g)). The Comptroller may deny an application for exemption without a hearing.

§ 19.121 Application for exemption.

An issuer or an individual (officer, director or shareholder) may submit a written application for an exemption order to the Securities and Corporate Practices Division, Office of the Comptroller of the Currency, Washington, DC 20219. The application must specify the type of exemption sought and the reasons therefor, including an explanation of why an exemption would not be inconsistent with the public interest or the protection of investors. The Securities and Corporate Practices Division shall inform the applicant in writing whether a hearing will be held to consider the matter.

§ 19.122 Newspaper notice.

Upon being informed that an application will be considered at a hearing, the applicant shall publish a notice one time in a newspaper of general circulation in the community where the issuer's main office is located. The notice must state: the name and title of any individual applicants; the type of exemption sought; the fact that a hearing will be held; and a statement that interested persons may submit to the Securities and Corporate Practices Division, Office of the Comptroller of the Currency, Washington, DC 20219, within 30 days from the date of the newspaper notice, written comments concerning the application and a written request for an opportunity to be heard. The applicant shall promptly furnish a copy of the notice to the Securities and Corporate Practices Division, and to bank shareholders.

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§ 19.123 Informal hearing.

(a) *Conduct of proceeding.* Th
adjudicative provisions of the
Administrative Procedure Act,
rules of evidence and subpart A
part do not apply to hearings co
under this subpart, except as pr
in § 19.100(b).
(b) *Notice of hearing.* Followi
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(c) *Presiding officer.* The Com
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(d) *Attendance.* The applican
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hearing shall be open to the pu
addition, the applicant and any
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testimony through such witness
presiding officer shall permit.
(e) *Order of presentation.* (1)
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hearing participants, or one am
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may make an oral presentation
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(3) After the above presentat
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their position.
(f) *Witnesses.* The obtaining
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Subpart D—Exemption Hearings Under Section 12(h) of the Securities Exchange Act of 1934

§ 19.120 Scope.

The rules in this subpart apply to informal hearings that may be held by the Comptroller to determine whether, pursuant to authority in sections 12 (h) and (i) of the Exchange Act (15 U.S.C. 78l (h) and (i)), to exempt in whole or in part an issuer or a class of issuers from the provisions of section 12(g), or from section 13 or 14 of the Exchange Act (15 U.S.C. 78l(g), 78m or 78n), or whether to exempt from section 16 of the Exchange Act (15 U.S.C. 78p) any officer, director, or beneficial owner of securities of an issuer. The only issuers covered by this subpart are banks whose securities are registered pursuant to section 12(g) of the Exchange Act (15 U.S.C. 78l(g)). The Comptroller may deny an application for exemption without a hearing.

§ 19.121 Application for exemption.

An issuer or an individual (officer, director or shareholder) may submit a written application for an exemption order to the Securities and Corporate Practices Division, Office of the Comptroller of the Currency, Washington, DC 20219. The application must specify the type of exemption sought and the reasons therefor, including an explanation of why an exemption would not be inconsistent with the public interest or the protection of investors. The Securities and Corporate Practices Division shall inform the applicant in writing whether a hearing will be held to consider the matter.

§ 19.122 Newspaper notice.

Upon being informed that an application will be considered at a hearing, the applicant shall publish a notice one time in a newspaper of general circulation in the community where the issuer's main office is located. The notice must state: the name and title of any individual applicants; the type of exemption sought; the fact that a hearing will be held; and a statement that interested persons may submit to the Securities and Corporate Practices Division, Office of the Comptroller of the Currency, Washington, DC 20219, within 30 days from the date of the newspaper notice, written comments concerning the application and a written request for an opportunity to be heard. The applicant shall promptly furnish a copy of the notice to the Securities and Corporate Practices Division, and to bank shareholders.

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§ 19.123 Informal hearing.

(a) *Conduct of proceeding.* The adjudicative provisions of the Administrative Procedure Act, formal rules of evidence and subpart A of this part do not apply to hearings conducted under this subpart, except as provided in § 19.100(b).

(b) *Notice of hearing.* Following the comment period, the Comptroller shall send a notice which fixes a date, time and place for hearing to each applicant and to any person who has requested an opportunity to be heard.

(c) *Presiding officer.* The Comptroller shall designate a presiding officer to conduct the hearing. The presiding officer shall determine all procedural questions not governed by this subpart and may limit the number of witnesses and impose time and presentation limitations as are deemed reasonable. At the conclusion of the informal hearing, the presiding officer shall issue a recommended decision to the Comptroller as to whether the exemption should issue. The decision shall include a summary of the facts and arguments of the parties.

(d) *Attendance.* The applicant and any person who has requested an opportunity to be heard may attend the hearing, with or without counsel. The hearing shall be open to the public. In addition, the applicant and any other hearing participant may introduce oral testimony through such witnesses as the presiding officer shall permit.

(e) *Order of presentation.* (1) The applicant may present an opening statement of a length decided by the presiding officer. Then each of the hearing participants, or one among them selected with the approval of the presiding officer, may present an opening statement. The opening statement should summarize concisely what the applicant and each participant intends to show.

(2) The applicant shall have an opportunity to make an oral presentation of facts and materials or submit written materials for the record. One or more of the hearing participants may make an oral presentation or a written submission.

(3) After the above presentations, the applicant, followed by one or more of the hearing participants, may make concise summary statements reviewing their position.

(f) *Witnesses.* The obtaining and use of witnesses is the responsibility of the parties afforded the hearing. All witnesses shall be present on their own volition, but any person appearing as a witness may be questioned by each applicant, any hearing participant, and the presiding officer. Witnesses shall be sworn unless otherwise directed by the presiding officer.

(g) *Evidence.* The presiding officer may exclude data or materials deemed to be improper or irrelevant. Formal rules of evidence do not apply. Documentary material must be of a size consistent with ease of handling and filing. The presiding officer may determine the number of copies that must be furnished for purposes of the hearing.

(h) *Transcript.* A transcript of each proceeding will be arranged by the OCC, with all expenses, including the furnishing of a copy to the presiding officer, being borne by the applicant.

§ 19.124 Decision of the Comptroller.

Following the conclusion of the hearing and the submission of the record and the presiding officer's recommended decision to the Comptroller for decision, the Comptroller shall notify the applicant and all persons who have so requested in writing of the final disposition of the application. Exemptions granted must be in the form of an order which specifies the type of exemption granted and its terms and conditions.

Subpart E—Disciplinary Proceedings Involving the Federal Securities Laws

§ 19.130 Scope.

(a) Except as provided in this subpart, subpart A of this part applies to proceedings by the Comptroller to determine whether, pursuant to authority contained in sections 15B(c)(5), 15C(c)(2)(A), 17A(c)(3), and 17A(c)(4)(C) of the Exchange Act (15 U.S.C. 78o–4(c)(5), 78o–5(c)(2)(A), 78q–1(c)(3)(A), and 78q–1(c)(4)(C)), to take disciplinary action against the following:

(1) A bank which is a municipal securities dealer, or any person associated or seeking to become associated with such a municipal securities dealer;

(2) A bank which is a government securities broker or dealer, or any person associated with such government securities broker or dealer; or

(3) A bank which is a transfer agent, or any person associated or seeking to become associated with such transfer agent.

(b) In addition to the issuance of disciplinary orders after opportunity for hearing, the Comptroller or the Comptroller's delegate may issue and serve any notices and temporary or permanent cease-and-desist orders and take any actions that are authorized by section 8 of the FDIA (12 U.S.C. 1818), sections 15B(c)(5), 15C(c)(2)(B), and 17A(d)(2) of the Exchange Act, and other subparts of this part against the following:

(1) The parties listed in paragraph (a) of this section; and

(2) A bank which is a clearing agency.

(c) Nothing in this subpart impairs the powers conferred on the Comptroller by other provisions of law.

§ 19.131 Notice of charges and answer.

(a) Proceedings are commenced when the Comptroller serves a notice of charges on a bank or associated person. The notice must indicate the type of disciplinary action being contemplated and the grounds therefor, and fix a date, time and place for hearing. The hearing must be set for a date at least 30 days after service of the notice. A party served with a notice of charges may file an answer as prescribed in § 19.19. Any party who fails to appear at a hearing personally or by a duly authorized representative shall be deemed to have consented to the issuance of a disciplinary order.

(b) All proceedings under this subpart must be commenced, and the notice of charges must be filed, on a public basis, unless otherwise ordered by the Comptroller. Pursuant to § 19.33(a), a request for a private hearing may be filed within 20 days of service of the notice.

§ 19.132 Disciplinary orders.

(a) In the event of consent, or if on the record filed by the administrative law judge, the Comptroller finds that any act or omission or violation specified in the notice of charges has been established, the Comptroller may serve on the bank or persons concerned a disciplinary order, as provided in the Exchange Act. The order may:

(1) Censure, limit the activities, functions or operations, or suspend or revoke the registration of a bank which is a municipal securities dealer;

(2) Censure, suspend or bar any person associated or seeking to become associated with a municipal securities dealer;

(3) Censure, limit the activities, functions or operations, or suspend or bar a bank which is a government securities broker or dealer;

(4) Censure, limit the activities, functions or operations, or suspend or bar any person associated with a government securities broker or dealer;

(5) Deny registration to, limit the activities, functions, or operations or suspend or revoke the registration of a bank which is a transfer agent; or

(6) Censure or limit the activities or functions, or suspend or bar, any person

associated or seeking to become associated with a transfer agent.

(b) A disciplinary order is effective when served on the party or parties involved and remains effective and enforceable until it is stayed, modified, terminated, or set aside by action of the Comptroller or a reviewing court.

Subpart F—Civil Money Penalty Authority Under the Securities Laws

§ 19.140 Scope.

(a) Except as provided in this subpart, subpart A of this part applies to proceedings by the Comptroller to determine whether, pursuant to authority contained in section 21B of the Exchange Act (15 U.S.C. 78u–2), in proceedings commenced pursuant to sections 15B, 15C, and 17A of the Exchange Act (15 U.S.C. 78o–4, 78o–5, or 78q–1) for which the OCC is the appropriate regulatory agency under section 3(a)(34) of the Exchange Act (15 U.S.C. 78c(a)(34)), the Comptroller may impose a civil money penalty against the following:

(1) A bank which is a municipal securities dealer, or any person associated or seeking to become associated with such a municipal securities dealer;

(2) A bank which is a government securities broker or dealer, or any person associated with such government securities broker or dealer; or

(3) A bank which is a transfer agent, or any person associated or seeking to become associated with such transfer agent.

(b) All proceedings under this subpart must be commenced, and the notice of assessment must be filed, on a public basis, unless otherwise ordered by the Comptroller. Pursuant to § 19.33(a), any request for a private hearing must be filed within 20 days of service of the notice.

Subpart G—Cease-and-Desist Authority Under the Securities Laws

§ 19.150 Scope.

(a) Except as provided in this subpart, subpart A of this part applies to proceedings by the Comptroller to determine whether, pursuant to authority contained in sections 12(i) and 21C of the Exchange Act (15 U.S.C. 78*l*(i) and 78u–3), the Comptroller may initiate cease-and-desist proceedings against a national bank for violations of sections 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Exchange Act or regulations or rules issued thereunder (15 U.S.C. 78*l*, 78m, 78n(a), 78n(c), 78n(d), 78n(f), and 78p).

(b) All proceedings under this subpart must be commenced, and the notice of charges must be filed, on a public basis, unless otherwise ordered by the Comptroller. Pursuant to § 19.33(a), any request for a private hearing must be filed within 20 days of service of the notice.

Subpart H—Change in Bank Control

§ 19.160 Scope.

(a) Section 7(j) of the FDIA (12 U.S.C. 1817(j)) provides that no person may acquire control of an insured depository institution unless the appropriate Federal bank regulatory agency has been given prior written notice of the proposed acquisition. If, after investigating and soliciting comment on the proposed acquisition, the agency decides that the acquisition should be disapproved, the agency shall notify the acquiring party in writing within three days of the decision. The party can then request an agency hearing on the proposed acquisition. The OCC's procedures for reviewing notices of proposed acquisitions in change-in-control proceedings are set forth in § 5.50 of this chapter.

(b) Unless otherwise provided in this subpart, the rules in subpart A of this part set forth the procedures applicable to requests for OCC hearings.

§ 19.161 Hearing request and answer.

(a) *Hearing request.* The OCC's written disapproval of a proposed acquisition of control of a national bank, must:

(1) Contain a statement of the basis for the disapproval; and

(2) Indicate that—

(i) A hearing may be requested by filing a written request with the Comptroller within ten days after service of the notice of disapproval; and

(ii) If a hearing is requested, that an answer to the notice of disapproval must be filed within 20 days after service of the notice of disapproval.

(b) *Answer.* An answer to the notice of disapproval must specifically deny those portions of the notice of disapproval which are disputed. Those portions of the notice which are not specifically denied are deemed admitted by the applicant. Any hearing under this subpart shall be limited to those portions of the notice that are specifically denied.

(c) *Default—(1) Effect of failure to answer.* Failure of an applicant to file an answer required by this section within the time provided constitutes a waiver of his or her right to appear and contest the allegations in the notice. If no timely answer is filed, Enforcement Counsel may file a motion for entry of an order of default. Upon a finding that no good cause has been shown for the failure to file a timely answer, the administrative law judge shall file with the Comptroller a recommended decision containing the findings and the relief sought in the notice. Any final order issued by the Comptroller based upon an applicant's failure to answer is deemed to be an order issued upon consent.

(2) *Effect of failure to request a hearing in civil money penalty proceedings.* If respondent fails to request a hearing as required by law within the time provided, the notice of disapproval constitutes a final and unappealable order.

§ 19.162 Hearing order.

Upon receipt of a request for hearing and an answer pursuant to § 19.161, the Comptroller or the Comptroller's designee shall issue an order setting forth the legal authority for the OCC's jurisdiction over the proceeding and shall address the request for hearing.

Subpart I—Discovery Depositions and Subpoenas

§ 19.170 Discovery depositions.

(a) *General rule.* In any proceeding instituted under or subject to the provisions of subpart A of this part, a party may take the deposition of an expert, or of a person, including another party, who has direct knowledge of matters that are non-privileged, relevant, and material to the proceeding, and where there is need for the deposition. The deposition of experts shall be limited to those experts who are expected to testify at the hearing.

(b) *Notice.* A party desiring to take a deposition shall give reasonable notice in writing to the deponent and to every other party to the proceeding. The notice must state the time and place for taking the deposition, and the name and address of the person to be deposed.

(c) *Time limits.* A party may take depositions at any time after the commencement of the proceeding, but no later than ten days before the scheduled hearing date, except with permission of the administrative law judge for good cause shown.

(d) *Conduct of the deposition.* The witness shall be duly sworn, and each party shall have the right to examine the witness with respect to all non-privileged, relevant, and material matters of which the witness has factual, direct, and personal knowledge. Objections to questions or exhibits shall be in short form, stating the grounds for the objection. Failure to object to questions or exhibits is not a waiver except where the grounds for the

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cause has been shown for the failure to file a timely answer, the administrative law judge shall file with the Comptroller a recommended decision containing the findings and the relief sought in the notice. Any final order issued by the Comptroller based upon an applicant's failure to answer is deemed to be an order issued upon consent.

(2) *Effect of failure to request a hearing in civil money penalty proceedings.* If respondent fails to request a hearing as required by law within the time provided, the notice of disapproval constitutes a final and unappealable order.

§ 19.162 Hearing order.

Upon receipt of a request for hearing and an answer pursuant to § 19.161, the Comptroller or the Comptroller's designee shall issue an order setting forth the legal authority for the OCC's jurisdiction over the proceeding and shall address the request for hearing.

Subpart I—Discovery Depositions and Subpoenas

§ 19.170 Discovery depositions.

(a) *General rule.* In any proceeding instituted under or subject to the provisions of subpart A of this part, a party may take the deposition of an expert, or of a person, including another party, who has direct knowledge of matters that are non-privileged, relevant, and material to the proceeding, and where there is need for the deposition. The deposition of experts shall be limited to those experts who are expected to testify at the hearing.

(b) *Notice.* A party desiring to take a deposition shall give reasonable notice in writing to the deponent and to every other party to the proceeding. The notice must state the time and place for taking the deposition, and the name and address of the person to be deposed.

(c) *Time limits.* A party may take depositions at any time after the commencement of the proceeding, but no later than ten days before the scheduled hearing date, except with permission of the administrative law judge for good cause shown.

(d) *Conduct of the deposition.* The witness shall be duly sworn, and each party shall have the right to examine the witness with respect to all non-privileged, relevant, and material matters of which the witness has factual, direct, and personal knowledge. Objections to questions or exhibits shall be in short form, stating the grounds for the objection. Failure to object to questions or exhibits is not a waiver except where the grounds for the

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objection might have been avoided if the objection had been timely presented. The court reporter shall transcribe or otherwise record the witness's testimony, as agreed among the parties.

(e) *Protective orders.* At any time after notice of a deposition has been given, a party may file a motion for the issuance of a protective order. Such protective order may prohibit, terminate, or limit the scope or manner of the taking of a deposition. The administrative law judge shall grant such protective order upon a showing of sufficient grounds, including that the deposition:

(1) Is unreasonable, oppressive, excessive in scope, or unduly burdensome;

(2) Involves privileged, irrelevant, or immaterial matters;

(3) Involves unwarranted attempts to pry into a party's preparation for trial; or

(4) Is being conducted in bad faith or in such manner as to unreasonably annoy, embarrass, or oppress the witness.

(f) *Fees.* Deposition witnesses, including expert witnesses, shall be paid the same expenses in the same manner as are paid witnesses in the district courts of the United States in proceedings in which the United States is a party. Expenses in accordance with this paragraph shall be paid by the party seeking to take the deposition.

§ 19.171 Deposition subpoenas.

(a) *Issuance.* At the request of a party, the administrative law judge shall issue a subpoena requiring the attendance of a witness at a discovery deposition under paragraph (a) of this section. The attendance of a witness may be required from any place in any state or territory that is subject to the jurisdiction of the United States or as otherwise permitted by law.

(b) *Service.* The party requesting the subpoena shall serve it on the person named therein, or on that person's counsel, by personal service, certified mail, or overnight delivery service. The party serving the subpoena shall file proof of service with the administrative law judge.

(c) *Motion to quash.* A person named in a subpoena may file a motion to quash or modify the subpoena. A statement of the reasons for the motion must accompany it and a copy of the motion must be served on the party which requested the subpoena. The motion must be made prior to the time for compliance specified in the subpoena and not more than ten days after the date of service of the subpoena, or if the subpoena is served within 15 days of the hearing, within five days after the date of service.

(d) *Enforcement of deposition subpoena.* Enforcement of a deposition subpoena shall be in accordance with the procedures of § 19.27(d).

Subpart J—Formal Investigations

§ 19.180 Scope.

This subpart and § 19.8 apply to formal investigations initiated by order of the Comptroller or the Comptroller's delegate and pertain to the exercise of powers specified in 12 U.S.C. 481, 1818(n) and 1820(c), and section 21 of the Exchange Act (15 U.S.C. 78u). This subpart does not restrict or in any way affect the authority of the Comptroller to conduct examinations into the affairs or ownership of banks and their affiliates.

§ 19.181 Confidentiality of formal investigations.

Information or documents obtained in the course of a formal investigation are confidential and may be disclosed only in accordance with the provisions of part 4 of this chapter.

§ 19.182 Order to conduct a formal investigation.

A formal investigation begins with the issuance of an order signed by the Comptroller or the Comptroller's delegate. The order must designate the person or persons who will conduct the investigation. Such persons are authorized, among other things, to issue subpoenas duces tecum, to administer oaths, and receive affirmations as to any matter under investigation by the Comptroller. Upon application and for good cause shown, the Comptroller may limit, modify, or withdraw the order at any stage of the proceedings.

§ 19.183 Rights of witnesses.

(a) Any person who is compelled or requested to furnish testimony, documentary evidence, or other information with respect to any matter under formal investigation shall, on request, be shown the order initiating the investigation.

(b) Any person who, in a formal investigation, is compelled to appear and testify, or who appears and testifies by request or permission of the Comptroller, may be accompanied, represented, and advised by counsel. The right to be accompanied, represented, and advised by counsel means the right of a person testifying to have an attorney present at all times while testifying and to have the attorney—

(1) Advise the person before, during and after the conclusion of testimony;

(2) Question the person briefly at the conclusion of testimony to clarify any of the answers given; and

(3) Make summary notes during the testimony solely for the use of the person.

(c) Any person who has given or will give testimony and counsel representing the person may be excluded from the proceedings during the taking of testimony of any other witness.

(d) Any person who is compelled to give testimony is entitled to inspect any transcript that has been made of the testimony but may not obtain a copy if the Comptroller's representatives conducting the proceedings have cause to believe that the contents should not be disclosed pending completion of the investigation.

(e) Any designated representative conducting an investigative proceeding shall report to the Comptroller any instances where a person has been guilty of dilatory, obstructionist or insubordinate conduct during the course of the proceeding or any other instance involving a violation of this part. The Comptroller may take such action as the circumstances warrant, including exclusion of the offending individual or individuals from participation in the proceedings.

§ 19.184 Service of subpoena and payment of witness fees.

A subpoena may be served on the person named therein, or such person's attorney, by personal service or certified mail. A witness who is subpoenaed will be paid the same expenses in the same manner as witnesses in the district courts of the United States. The expenses need not be tendered at the time a subpoena is served.

Subpart K—Parties and Representational Practice Before OCC; Standards of Conduct

§ 19.290 Scope.

This subpart contains rules relating to parties and representational practice before the OCC. This subpart includes the imposition of sanctions by the administrative law judge, any other presiding officer appointed pursuant to subparts C and D of this part, or the Comptroller against parties or their counsel in an adjudicatory proceeding under this part. This subpart also covers other disciplinary sanctions—censure, suspension or debarment—against individuals who appear before the OCC in a representational capacity either in an adjudicatory proceeding under this part or in any other matters connected with presentations to the OCC relating

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to a client's rights, privileges, or liabilities. This representation includes, but is not limited to, the practice of attorneys and accountants. Employees of the OCC are not subject to disciplinary proceedings under this subpart.

§ 19.191 Definitions.

As used in §§ 19.190 through 19.201, the following terms shall have the meaning given in this section unless the context otherwise requires:

(a) *Practice before the OCC* includes any matters connected with presentations to the OCC or any of its officers or employees relating to a client's rights, privileges or liabilities under laws or regulations administered by the OCC. Such matters include, but are not limited to, representation of a client in an adjudicatory proceeding under this part; the preparation of any statement, opinion or other paper or document by an attorney, accountant, or other licensed professional which is filed with, or submitted to, the OCC, on behalf of another person in, or in connection with, any application, notification, report or document; the representation of a person at conferences, hearings and meetings; and the transaction of other business before the OCC on behalf of another person. The term "practice before the OCC" does not include work prepared for a bank solely at its request for use in the ordinary course of its business.

(b) *Attorney* means any individual who is a member in good standing of the bar of the highest court of any state, possession, territory, commonwealth, of the United States or the District of Columbia.

(c) *Accountant* means any individual who is duly qualified to practice as a certified public accountant or a public accountant in any state, possession, territory, commonwealth of the United States, or the District of Columbia.

§ 19.192 Sanctions relating to conduct in an adjudicatory proceeding.

(a) *General rule.* Appropriate sanctions may be imposed when any party or person representing a party in an adjudicatory proceeding under this part has failed to comply with an applicable statute, regulation, or order, and that failure to comply:

(1) Constitutes contemptuous conduct;

(2) Materially injures or prejudices another party in terms of substantive injury, incurring additional expenses including attorney's fees, prejudicial delay, or otherwise;

(3) Is a clear and unexcused violation of an applicable statute, regulation, or order; or

(4) Unduly delays the proceeding.

(b) *Sanctions.* Sanctions which may be imposed include any one or more of the following:

(1) Issuing an order against the party;

(2) Rejecting or striking any testimony or documentary evidence offered, or other papers filed, by the party;

(3) Precluding the party from contesting specific issues or findings;

(4) Precluding the party from offering certain evidence or from challenging or contesting certain evidence offered by another party;

(5) Precluding the party from making a late filing or conditioning a late filing on any terms that are just; and

(6) Assessing reasonable expenses, including attorney's fees, incurred by any other party as a result of the improper action or failure to act.

(c) *Procedure for imposition of sanctions.* (1) Upon the motion of any party, or on his or her own motion, the administrative law judge or other presiding officer may impose sanctions in accordance with this section. The administrative law judge or other presiding officer shall submit to the Comptroller for final ruling any sanction entering a final order that determines the case on the merits.

(2) No sanction authorized by this section, other than refusal to accept late filings, shall be imposed without prior notice to all parties and an opportunity for any party against whom sanctions would be imposed to be heard. Such opportunity to be heard may be on such notice, and the response may be in such form as the administrative law judge or other presiding officer directs. The administrative law judge or other presiding officer may limit the opportunity to be heard to an opportunity of a party or a party's representative to respond orally immediately after the act or inaction covered by this section is noted by the administrative law judge or other presiding officer.

(3) Requests for the imposition of sanctions by any party, and the imposition of sanctions, are subject to interlocutory review pursuant to § 19.25 in the same manner as any other ruling.

(d) *Section not exclusive.* Nothing in this section shall be read as precluding the administrative law judge or other presiding officer or the Comptroller from taking any other action, or imposing any restriction or sanction, authorized by applicable statute or regulation.

§ 19.193 Censure, suspension or debarment.

The Comptroller may censure an individual or suspend or debar such individual from practice before the OCC if he or she is incompetent in representing a client's rights or interest in a significant matter before the OCC; or engages, or has engaged, in disreputable conduct; or refuses to comply with the rules and regulations in this part; or with intent to defraud in any manner, willfully and knowingly deceives, misleads, or threatens any client or prospective client. The suspension or debarment of an individual may be initiated only upon a finding by the Comptroller that the basis for the disciplinary action is sufficiently egregious.

§ 19.194 Eligibility of attorneys and accountants to practice.

(a) *Attorneys.* Any attorney who is qualified to practice as an attorney and is not currently under suspension or debarment pursuant to this subpart may practice before the OCC.

(b) *Accountants.* Any accountant who is qualified to practice as a certified public accountant or public accountant and is not currently under suspension or debarment by the OCC may practice before the OCC.

§ 19.195 Incompetence.

Incompetence in the representation of a client's rights and interests in a significant matter before the OCC is grounds for suspension or debarment. The term "incompetence" encompasses conduct that reflects a lack of the knowledge, judgment and skill that a professional would ordinarily and reasonably be expected to exercise in adequately representing the rights and interests of a client. Such conduct includes, but is not limited to:

(a) Handling a matter which the individual knows or should know that he or she is not competent to handle, without associating with a professional who is competent to handle such matter.

(b) Handling a matter without adequate preparation under the circumstances.

(c) Neglect in a matter entrusted to him or her.

§ 19.196 Disreputable conduct.

Disreputable conduct for which an individual may be censured, debarred or suspended from practice before the OCC includes, but is not limited to:

(a) Willfully violating or willfully aiding and abetting the violation of any provision of the Federal banking or applicable securities laws or the rules and regulations thereunder or conviction of any offense involving dishonesty or breach of trust.

(b) Knowingly giving false or misleading information, or participating

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(b) Knowingly giving false or misleading information, or participating

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in any way in the giving of false information to the OCC or any officer or employee thereof, or to any tribunal authorized to pass upon matters administered by the OCC in connection with any matter pending or likely to be pending before it. The term "information" includes facts or other statements contained in testimony, financial statements, applications for enrollment, affidavits, declarations, or any other document or written or oral statement.

(c) Directly or indirectly attempting to influence, or offering or agreeing to attempt to influence, the official action of any officer or employee of the OCC by the use of threats, false accusations, duress or coercion, by the offer of any special inducement or promise of advantage or by the bestowing of any gift, favor, or thing of value.

(d) Disbarment or suspension from practice as an attorney, or debarment or suspension from practice as a certified public accountant or public accountant, by any duly constituted authority of any state, possession, or commonwealth of the United States, or the District of Columbia for the conviction of a felony or misdemeanor involving moral turpitude in matters relating to the supervisory responsibilities of the OCC, where the conviction has not been reversed on appeal.

(e) Knowingly aiding or abetting another individual to practice before the OCC during that individual's period of suspension, debarment, or ineligibility.

(f) Contemptuous conduct in connection with practice before the OCC, and knowingly making false accusations and statements, or circulating or publishing malicious or libelous matter.

(g) Suspension or debarment from practice before the Board of Governors, the FDIC, the OTS, the Securities and Exchange Commission, the Commodity Futures Trading Commission, or any other Federal agency based on matters relating to the supervisory responsibilities of the OCC.

(h) Willful violation of any of the regulations contained in this part.

§ 19.197 Initiation of disciplinary proceeding.

(a) *Receipt of information.* An individual, including any employee of the OCC, who has reason to believe that an individual practicing before the OCC in a representative capacity has engaged in any conduct that would serve as a basis for censure, suspension or debarment under § 19.192, may make a report thereof and forward it to the OCC or to such person as may be delegated responsibility for such matters by the Comptroller.

(b) *Censure without formal proceeding.* Upon receipt of information regarding an individual's qualification to practice before the OCC, the Comptroller or the Comptroller's delegate may, after giving the individual notice and opportunity to respond, censure such individual.

(c) *Institution of formal disciplinary proceeding.* When the Comptroller has reason to believe that any individual who practices before the OCC in a representative capacity has engaged in conduct that would serve as a basis for censure, suspension or debarment under § 19.192, the Comptroller may, after giving the individual notice and opportunity to respond, institute a formal disciplinary proceeding against such individual. The proceeding will be conducted pursuant to § 19.99 and initiated by a complaint which names the individual as a respondent and is signed by the Comptroller or the Comptroller's delegate. Except in cases of willfulness, or when time, the nature of the proceeding, or the public interest do not permit, a proceeding under this section may not be commenced until the respondent has been informed, in writing, of the facts or conduct which warrant institution of a proceeding and the respondent has been accorded the opportunity to comply with all lawful requirements or take whatever action may be necessary to remedy the conduct that is the basis for the commencement of the proceeding.

§ 19.198 Conferences.

(a) *General.* The Comptroller may confer with a proposed respondent concerning allegations of misconduct or other grounds for censure, debarment or suspension, regardless of whether a proceeding for debarment or suspension has been commenced. If a conference results in a stipulation in connection with a proceeding in which the individual is the respondent, the stipulation may be entered in the record at the request of either party to the proceeding.

(b) *Resignation or voluntary suspension.* In order to avoid the institution of, or a decision in, a debarment or suspension proceeding, a person who practices before the OCC may consent to suspension from practice. At the discretion of the Comptroller, the individual may be suspended or debarred in accordance with the consent offered.

§ 19.199 Proceedings under this subpart.

Any hearing held under this subpart is held before an administrative law judge pursuant to procedures set forth in subpart A of this part. The Comptroller or the Comptroller's delegate shall appoint a person to represent the OCC in the hearing. Any person having prior involvement in the matter which is the basis for the suspension or debarment proceeding is disqualified from representing the OCC in the hearing. The hearing will be closed to the public unless the Comptroller on his or her own initiative, or on the request of a party, otherwise directs. The administrative law judge shall issue a recommended decision to the Comptroller who shall issue the final decision and order. The Comptroller may censure, debar or suspend an individual, or take such other disciplinary action as the Comptroller deems appropriate.

§ 19.200 Effect of suspension, debarment or censure.

(a) *Debarment.* If the final order against the respondent is for debarment, the individual may not practice before the OCC unless otherwise permitted to do so by the Comptroller.

(b) *Suspension.* If the final order against the respondent is for suspension, the individual may not practice before the OCC during the period of suspension.

(c) *Censure.* If the final order against the respondent is for censure, the individual may be permitted to practice before the OCC, but such individual's future representations may be subject to conditions designed to promote high standards of conduct. If a written letter of censure is issued, a copy will be maintained in the OCC's files.

(d) *Notice of debarment or suspension.* Upon the issuance of a final order for suspension or debarment, the Comptroller shall give notice of the order to appropriate officers and employees of the OCC and to interested departments and agencies of the Federal government. The Comptroller or the Comptroller's delegate shall also give notice to the appropriate authorities of the state in which any debarred or suspended individual is or was licensed to practice.

§ 19.201 Petition or reinstatement.

At the expiration of the period of time designated in the order of debarment, the Comptroller may entertain a petition for reinstatement from any person debarred from practice before the OCC. The Comptroller may grant reinstatement only if satisfied that the petitioner is likely to act in accordance with the regulations in this part, and that granting reinstatement would not be contrary to the public interest. Any request for reinstatement shall be limited to written submissions unless the Comptroller, in his or her discretion, affords the petitioner a hearing.

Subpart L—Equal Access to Justice Act

§ 19.210 Scope.

The Equal Access to Justice Act regulations applicable to formal OCC adjudicatory proceedings under this part are set forth at 31 CFR part 6.

Dated: August 5, 1991.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 91-18864 Filed 8-8-91; 8:45 am]

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federal register

Friday
August 9, 1991

Part VII

Federal Reserve System

12 CFR Parts 225, 262, and 263

Uniform Rules of Practice and Procedures; Final Rule

VOL 56 ISS 154 AG 9 1991 UMI

FEDERAL RESERVE SYSTEM

12 CFR Parts 225, 262, and 263

[Docket No. R-0733]

RIN 7100-AB23

Uniform Rules of Practice and Procedures

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: Section 916 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") requires that the Office of the Comptroller of the Currency (the "OCC"), the Board of Governors of the Federal Reserve System (the "Board"), the Federal Deposit Insurance Corporation (the "FDIC"), the Office of Thrift Supervision (the "OTS"), and the National Credit Union Administration (the "NCUA") (collectively, the "Agencies") develop a set of uniform rules of practice and procedures for administrative hearings ("Uniform Rules"). Section 916 further requires that the Agencies promulgate provisions for summary judgment rulings where there are no disputes as to the material facts of a case.

In compliance with the mandate of section 916, this final rule makes uniform those rules concerning the types of formal enforcement actions common to at least four of the listed Agencies. In addition to these Uniform Rules, the Board and each of the other Agencies are adopting complementary "Local Rules" to supplement the Uniform Rules in order to address some or all of the following: formal enforcement actions not within the scope of the Uniform Rules, informal actions which are not subject to the Administrative Procedure Act ("APA"), and procedures to supplement or facilitate the processing of administrative enforcement actions within the Board and the other Agencies. This final rule is intended to standardize procedures for formal administrative actions and to facilitate administrative practice before the Agencies.

EFFECTIVE DATE: August 9, 1991.

FOR FURTHER INFORMATION CONTACT: Douglas B. Jordan, Senior Attorney, Legal Division, (202/452-3787) or Ann Marie Kohlligian, Senior Counsel, Division of Banking Supervision and Regulation, (202/452-3528).

SUPPLEMENTARY INFORMATION:

A. Background

Section 916 of FIRREA, Public Law No. 101-73, 103 Stat. 183 (1989), requires that the FDIC, OCC, the Board, OTS, and NCUA develop a set of uniform rules and procedures for administrative hearings. By including this provision in FIRREA, Congress intended that the listed Agencies, by promulgating uniform procedures, would improve and expedite their administrative proceedings. The statutory provision is a reflection of "recent recommendations of the Administrative Conference of the United States and the House Government Operations Committee." H.R. Rep. No. 54, 101st Cong., 1st Sess., pt. 1, at 396. The Administrative Conference of the United States found in its December 30, 1987 recommendation that "[g]iven the similar statutory bases for these enforcement actions, the five agencies jointly should be able to develop substantially similar rules of procedure and practice for formal enforcement proceedings." 1 CFR 305.87-12.

To comply with the requirements of section 916, the Board and the other Agencies issued for public notice and comment a Joint Notice of Proposed Rulemaking on June 17, 1991 (56 FR 27790). The proposed rules contained one set of Uniform Rules applicable to all of the Agencies and separate Local Rules specific to each Agency.

The Agencies have received comments on the Joint Proposed Rule, and the Board has also received comments on its proposed Local Rules. The Board is now issuing final Uniform and Local Rules incorporating changes, discussed below, that respond to the comments received. The Board's final Uniform Rules also replace generic references in the Proposed Uniform Rules with references specific to the Board, as discussed below.

B. Subpart-by-Subpart Summary and Discussion of Uniform and Local Rules

Subpart A—Uniform Rules of Practice and Procedure

This subpart sets forth rules of practice and procedure governing formal administrative actions, including rules for initiating enforcement proceedings, filing and service of papers, motions, discovery, prehearing conferences, public hearings, hearing subpoenas, conflicts of interest, ex parte communications, rules of evidence, and post-hearing procedures.

Subpart B—Board Local Rules Supplementing the Uniform Rules

This subpart addresses subjects contained in the Board's previous Subpart A, "Rules of Practice for Formal Hearings", that are not addressed in the Uniform Rules, such as terms specific to the Board, the Board's procedures for discovery depositions, and provisions for certain proceedings where the Board orders that a formal hearing be held.

Subpart C—Procedures for Assessment of Civil Money Penalties

This subpart supplements the Uniform Rules as they apply to civil money penalty proceedings. The subpart contains Board rules for such proceedings corresponding to rules contained in previous subpart B, such as the opportunity for an informal proceeding, and rules for the assessment and payment of such penalties.

Subpart D—Rules and Procedures Applicable to Suspension or Removal of an Institution-Affiliated Party Where a Felony is Charged or Proven

This subpart applies to informal hearings afforded an institution-affiliated party who has been suspended or removed from office or prohibited from further participation in an institution's affairs by the Board. The only significant change in the text of this subpart from the text of former subpart C is the substitution pursuant to FIRREA of the terms "institution" and "institution-affiliated party" for the terms "state member bank" and "bank official" in the former subpart C.

Subpart E—Procedures for Issuance and Enforcement of Directives to Maintain Adequate Capital

This subpart addresses procedures under which the Board may take action to require a bank or bank holding company to achieve and maintain adequate capital. The text of this subpart corresponds to the text of former subpart D, which is incorporated into this subpart with minor changes.

Subpart F—Practice Before the Board

Subpart F, Practice Before the Board, is a new subpart containing provisions for the discipline of practitioners before the Board through sanctions that extend beyond a specific proceeding. This subpart therefore supplements the sanctions contained in the Uniform Rules that relate only to the proceeding at hand. These disciplinary practice sanctions are new to the Board, but resemble rules that have been adopted by other federal agencies.

Subpart G—Rules Regarding Claims Under the Equal Access to Justice Act

Subpart G is a new subpart implementing the provisions of the

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Equal Access to Justice Act, which provides that certain private parties that prevail against an agency in an adversary adjudication may recover their costs and attorneys fees if the agency was not substantially justified in its position. The subpart addresses eligibility standards for an award, the required contents of an application for an award, standards for the reasonableness of claimed fees, and procedures for adjudicating an application for an award.

C. Comments and Discussion

In response to the June 17, 1991, Joint Notice of Proposed Rulemaking, the Board and the other Agencies received three comment letters. The Agencies have jointly reviewed the portions of the comments concerning the Uniform Rules and separately considered the comments directed to specific Local Rules. The suggestions and criticisms conveyed in these comments, and the responses of the Board and the other Agencies, are discussed below.

Uniform Rules

(1) One commenter criticized the proposed Rules for failing in proposed § 263.19 to accommodate default situations where good cause could be shown for the failure to file an answer. This comment reflects a misunderstanding of the proposed Rules, which address such situations by allowing an administrative law judge to extend time limits for good cause shown (§ 263.13), and by requiring that defaults be entered only upon a motion for default filed by Enforcement Counsel (§ 263.19), thereby permitting respondents an opportunity to oppose such a motion. To alleviate confusion, the wording of the final default rule has been modified to make this process more explicit.

(2) Another issue raised by a commenter concerns the apparent difference among the Agencies in rules for such procedures as formal investigations, Equal Access to Justice Act proceedings, and sanctions. The lack of uniformity in these areas is based on the scope of section 916 and differences in the statutory authority and structure among the Agencies.

As noted above, section 916 was designed to improve and expedite formal administrative proceedings conducted by the Agencies pursuant to the Administrative Procedure Act ("APA"), especially where the Agencies' enforcement authority derived from a common statute. *See* H.R. Conf. Rep. No. 222, 101st Cong., 1st Sess. 442 (1989); 1 CFR 305.87-12. Accordingly, the statutory mandate did not extend to non-APA proceedings, which tend to reflect differences in authority and operations among the Agencies. For example, the Uniform Rules do not contain provisions for formal investigations, which are not APA proceedings, and which are conducted pursuant to statutory authority which varies among the agencies. Differences in Agency structure also contribute to differing policies concerning the frequency, length, and procedures for formal investigations. Agency structure is also a reason why the Uniform Rules do not contain provisions addressing the Equal Access to Justice Act. Both the OCC and the OTS are bureaus of the Department of the Treasury and, as such, are subject to Treasury's Equal Access to Justice Act regulations, unlike the other Agencies. *See* 31 CFR part 6.

(3) An issue was raised by two of the commenters concerning the different positions taken by the Agencies on discovery depositions. The commenters stated that use of discovery depositions would encourage settlements and would result in the increased use of summary judgment by establishing the absence of disputes as to material facts.

The scope of discovery which would be permitted in the Uniform Rules was considered at length. It was determined that broad document discovery would be permitted; however, it was recognized that there is no constitutional right to prehearing discovery, including deposition discovery, in Federal administrative proceedings. *See, Sims* v. *National Transportation Safety Board*, 662 F.2d 668, 671 (10th Cir. 1981); *P.S.C. Resources, Inc.* v. *N.L.R.B.*, 576 F.2d 380, 386 (1st Cir. 1978); *Silverman* v. *Commodities Futures Trading Comm.*, 549 F.2d 28, 33 (7th Cir. 1977). Further, the APA contains no provisions for prehearing discovery, and the discovery provisions of the Federal Rules of Civil Procedure are inapplicable to administrative proceedings. *Frillette* v. *Kimberlin*, 508 F.2d 205 (3rd Cir. 1974), *cert. denied*, 421 U.S. 980 (1975). Rather, each agency determines the extent of discovery to which a party in an administrative hearing is entitled. *McClelland* v. *Andrus*, 606 F.2d 1278, 1285 (D.C. Cir. 1979).

The Agencies attempted to strike a balance accommodating the due process interests of respondents in obtaining prehearing discovery, the public interest in swift adjudications, and the Agencies' need to use limited resources efficiently. This process included consideration of the various interests of the entities regulated by each Agency as well as each Agency's institutional interests. The contrasting considerations are reflected in the types, complexity and number of enforcement actions brought by each Agency, the methods of litigation and opportunity for settlement in such actions, the structure and available resources of each Agency, and the supervisory procedures developed internally by each Agency. This process resulted in divergent conclusions among the Agencies as to the use of discovery depositions.

Thus, the experiences of the OCC, the OTS, and the Board resulted in a finding that discovery depositions could serve a useful purpose by promoting fact finding and encouraging settlements. Because of the increasing numbers of complex enforcement actions, typically involving multiple counts, multiple parties, and different types of enforcement actions combined into one case, it was found that discovery depositions could be useful to both respondents and the regulator in resolving cases expeditiously. To avoid undue burden and delay, however, discovery depositions for the OCC, the OTS, and the Board are limited to witnesses that have factual, direct and personal knowledge of the matters at issue and expert witnesses. The FDIC and the NCUA determined that the interests of respondents in further prehearing disclosure in their respective proceedings were mitigated by the availability of extensive document discovery that complements the document-intensive nature of their proceedings.

(4) One commenter suggested that the definition of "Decisional employee" in proposed rule 263.3(e) be expanded to preclude from service in a decisional capacity any employee of the Agencies who had served within the previous twelve months on the enforcement staff of any of the Agencies. The commenter suggested that this expansion would protect against bias and conflicts of interest.

This suggested amendment is not adopted because the definition in § 263.3(c) incorporates the formulation of the APA. The APA forbids an employee from acting in a decisional capacity where the employee has acted in an investigative or prosecutorial function in that same case or in a factually related case. 5 U.S.C. 554(d) Accordingly, Congress has already drawn the line defining conflicts of interest in this context, and the Agencies find no basis for altering that determination.

(5) A recommendation was made that § 263.18(b) should be modified to require that an Agency set forth in a notice not

only those facts showing that the Agency is entitled to relief of some kind but also those facts required for the particular relief requested.

The Agencies disagree, finding that § 263.18(b) meets the standards for notice pleading set forth in Rule 8 of the Federal Rules of Civil Procedure. The Agencies have determined that these requirements are sufficiently particular to provide notice for pleading in administrative proceedings. *See First National Monetary Corporation* v. *Weinberger*, 819 F.2d 1334, 1339 (6th Cir. 1987); *Boise Cascade Corporation* v. *Federal Trade Commission*, 498 F. Supp. 772, 780 (D.Del. 1980).

(6) One commenter suggested that the proposed Rule regarding severance of proceedings is unduly stringent in light of the severity of sanctions at stake in some of the proceedings governed by the Rules. The commenter argued that any inconsistency or conflict in the positions of respondents warrants severance without the necessity of weighing any countervailing interests. The commenter further argued that concerns regarding administrative economy are not entitled to weight in light of the small number of cases that have been adjudicated by the Agencies in the past.

This suggestion is not adopted. A similar weighing test for severance is applied by federal courts in criminal cases, see, *e.g., United States* v. *Walton*, 552 F.2d 1354, 1362 (10th Cir.), *cert. denied*, 431 U.S. 959 (1977), demonstrating that the weighing test appropriately may be applied in cases involving substantial sanctions and penalties. In addition, the general interest in economy and efficiency in resolving an administrative adjudication exists independently of the Agencies' overall caseload burden at any particular time.

(7) Uniform Rule 263.24(c) provides that privileged documents are not discoverable. One commenter objected to the right of Enforcement Counsel to assert the deliberative process privilege on the ground that, in some cases, it is subject to abuse by Enforcement Counsel seeking to prevent disclosure of relevant and probative material. The commenter suggested, instead, that all material for which the deliberative process privilege is claimed should be produced pursuant to a protective order barring public disclosure, and that Uniform Rule 263.24 should provide for *in camera* inspection of disputed privileged material by the administrative law judge.

The Agencies have concluded that Enforcement Counsel should retain the right to assert the deliberative process privilege at the outset. Ample means to challenge an improper assertion of privilege are available to respondents without modifying Uniform Rule 263.24. Uniform Rule 263.25(e) provides that all documents withheld from production on grounds of privilege must be reasonably identified and must be accompanied by a statement of the basis for the assertion of privilege. In the event that a respondent believes that grounds exist to challenge Enforcement Counsel's assertion of the deliberative process privilege, the respondent would be able to utilize the identifying information and statement to challenge the assertion of the privilege before the administrative law judge. In such a case, an administrative law judge would need no further specific authority by rule to inquire as to the basis of the assertion of privilege or to conduct an inspection of the assertedly privileged material *in camera*, and to then rule whether the privilege can be sustained.

(8) One commenter suggested that the determination to seal a document pursuant to § 263.33(b) should be subject to review by an administrative law judge under an abuse of discretion standard. It was also suggested that a respondent should be able to request that certain information such as confidential personal information be filed under seal.

The Uniform Rules accommodate a respondent's concern about personal information by permitting a respondent to file a motion to seal a document containing confidential personal information. However, the statutory language of 12 U.S.C. 1818(u)(6) vests the Agencies with exclusive authority to seal all or part of a document if disclosure would be contrary to the public interest. Thus, the Agencies disagree with the commenter that this determination should be subject to review by an administrative law judge.

(9) One commenter suggested the deletion of § 263.36(c)(2), which provides that any document prepared by a Federal financial institutions regulatory agency or by a state regulatory agency is admissible with or without a sponsoring witness. The commenter argued that the provision violates normal evidentiary standards and raises due process concerns.

The Agencies disagree with the commenter. The first sentence of § 263.36(c)(2) cross-references § 263.36(a), which makes agency-prepared documents subject to the same evidentiary standards as those applicable to documents not prepared by the agency. Moreover, the same types of agency prepared-documents tend to be introduced into evidence in every case. These documents, such as examination reports, rarely give rise to authentication issues, and the Agencies feel that requiring a sponsoring witness for such documents needlessly lengthens proceedings, consumes judicial resources, and impedes the hearing process.

(10) One commenter stated that, under § 263.39(b)(2), a party should be able to raise a new legal argument in the exceptions filed to the administrative law judge's recommended decision and that the Agency Head should not be precluded from considering such an argument.

The Agencies agree with the commenter that the Agency Head should have the discretion to determine whether a new argument that is raised for the first time in the exceptions should be considered, even if the party had a prior opportunity to make the argument. For example, the Agency Head should have the discretion to consider whether a new argument has important legal and policy implications which warrant its consideration. Accordingly, the language of § 263.39(b)(2) is amended to read that "No exception *need* be considered * * * " (emphasis added).

The Agencies do not agree with the commenter that the Agency Head should, in effect, be required to consider new arguments raised for the first time in the exceptions. Such a provision could encourage careless or deceptive pleading. Generally, a party should be permitted to submit a new argument only if there was no previous opportunity to present the argument, *e.g.*, a relevant court decision has been issued in the interim since the filing of the recommended decision.

(11) Another suggestion by a commenter recommended wider publication of enforcement orders and actions. This is an area recently addressed by Congress in amendments to 12 U.S.C. 1818(u), which required the Agencies to publish all final orders and other documents subject to enforcement action. *See* the "Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990", Title XXV of the Crime Control Act of 1990, Public Law No. 101-647, 104 Stat. 4789. Each of the Agencies has implemented procedures to give effect to this statutory directive and enforcement decisions may be found by consulting the public information office, reading room, or library of each Agency. In addition, each Agency frequently issues press releases concerning recent cases and decisions.

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Board Local Rules

(1) One commenter criticized the language of proposed § 263.85(b)(4), a republication of an existing Board rule, suggesting that it represented an attempt by the Board to make informal enforcement actions, such as memoranda of understanding, legally enforceable through the capital directive process. The commenter misunderstood the import of this provision, which provides that the Board may enforce capital directives or capital plans designed to achieve the levels of capital required in the directive where the level is higher than the applicable regulatory minimum. The Board's regulations provide in § 263.84 that the higher capital levels contained in a memorandum of understanding may not be enforced unless the Board first issues a capital directive that sets forth such a level. The commenter's assertion that the Board is attempting to subvert the requirements of 12 U.S.C. 1818(b) is therefore incorrect.

(2) One commenter criticized the Board's local rules for discovery deposition procedure because they require the administrative law judge to authorize a deposition by issuing a subpoena, rather than permitting depositions to be freely noticed by the parties.

The Board has retained its existing procedure for depositions by requiring that discovery depositions be taken only pursuant to a subpoena issued by the administrative law judge. This process reflects the Board's belief that the nature of the formal administrative proceedings conducted by the Board does not require wide-ranging discovery and that depositions will rarely be allowed of persons other than identified hearing witnesses. The subpoena process permits the administrative law judge to make the determination at the outset whether the testimony sought is properly within the scope allowed by the Board's discovery rules, *i.e.*, that of a fact or expert witness with relevant information. It has been the Board's experience that respondents occasionally allege that presentation of their case requires depositions of persons without factual information who participated in the Board's deliberative process, such as members of the Board or other Board officials with supervisory responsibility. This practice, which represents attempts to inquire into privileged communications, also serves to burden Board officials unconnected with the prosecution of the case. Accordingly, the Board's procedure permits the administrative law judge to make the initial determination as to relevance and burden of the proposed deposition before the deposition is scheduled.

D. Technical Modifications to the Uniform Rules

In conjunction with the other Agencies, the Board is amending the Uniform Rules proposed in the Joint Notice of Proposed Rulemaking to replace generic definitional terms with terms specifically applicable to the Board and its operations. Thus, the Board is replacing the terms "Agency Head" and "Agency" with "Board" or "Board of Governors", and is restricting the "scope" provisions of § 263.01 to those statutes subject to Board jurisdiction. Further conforming changes have been made to the definitions of "Local Rules", "Uniform Rules", and "OFIA". The other Agencies have made similar changes. The purpose of these changes is to make the Board's Uniform Rules easier to understand and to use. These changes do not affect the substance of the Uniform Rules.

E. Immediate Effective Date

The Board is adopting this regulation effective upon publication in the **Federal Register**, without the usual 30-day delay of effectiveness provided for in the APA, 5 U.S.C. 553. While the APA requires publication of certain regulations not less than 30 days before its effective date, the delayed effective date requirement may be waived for "good cause."

Good cause for the waiver of the 30-day requirement may be found if the delayed effective date is "impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(B). *See Central Lincoln Peoples' Utility Dist.* v. *Johnson*, 735 F.2d 1101 (9th Cir. 1984). The necessity for compliance with a statutorily prescribed time limit can also contribute to a finding of good cause. *See Philadelphia Citizens in Action* v. *Schweiker*, 669 F.2d 877, 888 (3rd Cir. 1982). In the present case, the implementation of a delayed effective date would impair the ability of the Agencies to comply with the statutory mandate in section 916 of FIRREA and would be contrary to the public interest.

Section 916 of FIRREA contains a dual mandate from Congress to the Agencies to (1) establish their own pool of administrative law judges and (2) to develop Uniform Rules and procedures for administrative hearings "[b]efore the close of the 24-month period beginning on the date of the enactment of this Act [August 9, 1989]." The immediate effectiveness of these Uniform Rules is concurrent with the beginning of OFIA operations, thereby providing a clear demarcation between the new system and the old. If the effective date of the Rules were delayed, OFIA would be forced to begin its operations under the diverse existing regulations before switching to the new Uniform Rules. The result would be uncertainty, confusion, and a lack of uniformity in adjudication directly contrary to the purpose of section 916. Furthermore, there is no apparent necessity for delay in the effective date of the regulations. Accordingly, because delay in the effective date of the regulations would be impracticable, unnecessary, and contrary to the public interest, the Board finds that good cause exists to make the Uniform Rules effective upon publication in the Federal Register.

F. Applicability of Revised Rules to Enforcement Proceedings

Part 263, as revised by this final rule, applies to any proceeding that is commenced by the issuance of a notice on or after August 9, 1991. The former version of part 263 applies to any proceeding commenced prior to August 9, 1991 unless, with the consent of the administrative law judge or the Board, the parties agree to have the proceeding governed by revised part 263.

G. Regulatory Flexibility Act Statement

The Board certifies pursuant to section 605(b) of the Regulatory Flexibility Act, that this final rule is not expected to have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

This rule implements section 916 of FIRREA, which requires the Federal banking agencies and the NCUA to develop a set of uniform rules and procedures for administrative hearings. The purpose of this revised regulation is to secure a just and orderly determination of administrative proceedings. Because the Board already has in place rules of practice and procedure, this rule should not result in an additional burden for regulated institutions. Furthermore, the rule imposes only minor burdens on all institutions, regardless of size and should not, therefore, cause a significant economic impact on a substantial number of small entities.

List of Subjects

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies,

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Reporting and recordkeeping requirements.

12 CFR Part 262

Administrative practice and procedure, Federal Reserve System.

12 CFR Part 263

Administrative practice and procedure, Banks, banking, Equal access to justice, Federal Reserve System, Hearing and appeal procedures, Penalties.

Authority and Issuance

For the reasons set out in the preamble, parts 225, 262, and 263 of chapter II of title 12 of the Code of Federal Regulations is amended as set forth below:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831 i, 1843(c)(8), 1844(b), 1972(l), 3106, 3108, 3907, 3909, 3310, and 3331-3351.

§ 225.6 [Amended]

2. 12 CFR 225.6(a) is amended by removing the two references to "subpart B" from the second sentence of that paragraph, and inserting in their place "subpart C".

PART 262—RULES OF PROCEDURE

3. The authority citation for part 262 continues to read as follows:

Authority: 5 U.S.C. 552

§ 262.3 [Amended]

4. 12 CFR 262.3(i)(2) is amended by removing the last sentence of that paragraph and by adding the sentence "Any such formal hearing is conducted by an administrative law judge in accordance with subparts A and B of the Board's Rules of Practice For Hearings (part 262 of this chapter)." as the new last sentence of that paragraph.

5. Part 263 is revised to read as follows

PART 263—RULES OF PRACTICE FOR HEARINGS

Subpart A—Uniform Rules of Practice and Procedure

Sec.
263.1 Scope.
263.2 Rules of construction.
263.3 Definitions.
263.4 Authority of the Board.
263.5 Authority of the administrative law judge.
263.6 Appearance and practice in adjudicatory proceedings.
263.7 Good faith certification.
263.8 Conflicts of interest.
263.9 Ex parte communications.
263.10 Filing of papers.
263.11 Service of papers.
263.12 Construction of time limits.
263.13 Change of time limits.
263.14 Witness fees and expenses.
263.15 Opportunity for informal settlement.
263.16 The Board's right to conduct examination.
263.17 Collateral attacks on adjudicatory proceeding.
263.18 Commencement of proceeding and contents of notice.
263.19 Answer.
263.20 Amended pleadings.
263.21 Failure to appear.
263.22 Consolidation and severance of actions.
263.23 Motions.
263.24 Scope of document discovery.
263.25 Request for document discovery from parties.
263.26 Document subpoenas to nonparties.
263.27 Deposition of witness unavailable for hearing.
263.28 Interlocutory review.
263.29 Summary disposition.
263.30 Partial summary disposition.
263.31 Scheduling and prehearing conferences.
263.32 Prehearing submissions.
263.33 Public hearings.
263.34 Hearing subpoenas.
263.35 Conduct of hearings.
263.36 Evidence.
263.37 Proposed findings and conclusions.
263.38 Recommended decision and filing of record.
263.39 Exceptions to recommended decision.
263.40 Review by the Board.
263.41 Stays pending judicial review.

Subpart B—Board Local Rules Supplementing the Uniform Rules

263.50 Purpose and scope.
263.51 Definitions.
263.52 Address for filing.
263.53 Discovery depositions.
263.54 Delegation to the Office of Financial Institution Adjudication.
263.55 Board as Presiding Officer
263.56 Initial Licensing Proceedings

Subpart C—Rules and Procedures for Assessment and Collection of Civil Money Penalties

263.60 Scope.
263.61 Opportunity for informal proceeding.
263.62 Relevant considerations for assessment of civil penalty.
263.63 Assessment order.
263.64 Payment of civil penalty.

Subpart D—Rules and Procedures Applicable to Suspension or Removal of an Institution-Affiliated Party Where a Felony Is Charged or Proven

263.70 Purpose and scope.
263.71 Notice of order of suspension, removal, or prohibition.
263.72 Request for informal hearing.
263.73 Order for informal hearing.
263.74 Decision of the Board.

Subpart E—Procedures for Issuance and Enforcement of Directives to Maintain Adequate Capital

263.80 Purpose and scope.
263.81 Definitions.
263.82 Establishment of minimum capital levels.
263.83 Issuance of capital directives.
263.84 Enforcement of directive.
263.85 Establishment of increased capital level for specific institutions.

Subpart F—Practice Before the Board

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263.91 Censure, suspension or debarment.
263.92 Definitions.
263.93 Eligibility to practice.
263.94 Conduct warranting sanctions.
263.95 Initiation of disciplinary proceeding.
263.96 Conferences.
263.97 Proceedings under this subpart.
263.98 Effect of suspension, debarment or censure.
263.99 Petition for reinstatement.

Subpart G—Rules Regarding Claims Under the Equal Access to Justice Act

263.100 Authority and scope.
263.101 Standards for awards.
263.102 Prevailing party.
263.103 Eligibility of applicants.
263.104 Application for awards.
263.105 Statement of net worth.
263.106 Measure of awards.
263.107 Statement of fees and expenses.
263.108 Responses to application.
263.109 Further proceedings.
263.110 Recommended decision.
263.111 Action by the Board.

Authority: 5 U.S.C. 504; 12 U.S.C. 248, 324, 504, 505, 1817(j), 1818, 1828(c), 1847(b), 1847(d), 1884(b), 1972(2)(F), 3108, 3907, 3909; 15 U.S.C. 21, 78, o-4, 78o-5, and 78u-2.

Subpart A—Uniform Rules of Practice and Procedure

§ 263.1 Scope.

This subpart prescribes Uniform Rules of practice and procedure applicable to adjudicatory proceedings required to be conducted on the record after opportunity for hearing under the following statutory provisions:

(a) Cease-and-desist proceedings under section 8(b) of the Federal Deposit Insurance Act ("FDIA") (12 U.S.C. 1818(b));

(b) Removal and prohibition proceedings under section 8(e) of the FDIA (12 U.S.C. 1818(e));

(c) Change-in-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)) to determine whether the Board of Governors of the Federal Reserve System ("Board") should issue an order to approve or disapprove a person's proposed acquisition of a state member bank or bank holding company;

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263.74 Decision of the Board.

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263.80 Purpose and scope.
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263.84 Enforcement of directive.
263.85 Establishment of increased capital level for specific institutions.

Subpart F—Practice Before the Board

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Subpart A—Uniform Rules of Practice and Procedure

§ 263.1 Scope.

This subpart prescribes Uniform Rules of practice and procedure applicable to adjudicatory proceedings required to be conducted on the record after opportunity for hearing under the following statutory provisions:

(a) Cease-and-desist proceedings under section 8(b) of the Federal Deposit Insurance Act ("FDIA") (12 U.S.C. 1818(b));

(b) Removal and prohibition proceedings under section 8(e) of the FDIA (12 U.S.C. 1818(e));

(c) Change-in-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)) to determine whether the Board of Governors of the Federal Reserve System ("Board") should issue an order to approve or disapprove a person's proposed acquisition of a state member bank or bank holding company;

(d) Proceedings under section 15C(c)(2) of the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78o-5), to impose sanctions upon any government securities broker or dealer or upon any person associated or seeking to become associated with a government securities broker or dealer for which the Board is the appropriate agency;

(e) Assessment of civil money penalties by the Board against institutions, institution-affiliated parties, and certain other persons for which the Board is the appropriate agency for any violation of:

(1) Any provision of the Bank Holding Company Act of 1956, as amended ("BHC Act"), or any order or regulation issued thereunder, pursuant to 12 U.S.C. 1847(b) and (d);

(2) Sections 19, 22, 23A and 23B of the Federal Reserve Act ("FRA"), or any regulation or order issued thereunder and certain unsafe or unsound practices or breaches of fiduciary duty, pursuant to 12 U.S.C. 504 and 505;

(3) Section 9 of the FRA pursuant to 12 U.S.C. 324;

(4) Section 106(b) of the Bank Holding Company Act Amendments of 1970 and certain unsafe or unsound practices or breaches of fiduciary duty, pursuant to 12 U.S.C. 1972(2)(F);

(5) Any provision of the Change in Bank Control Act of 1978, as amended, or any regulation or order issued thereunder and certain unsafe or unsound practices or breaches of fiduciary duty, pursuant to 12 U.S.C. 1817(j)(16);

(6) Any provision of the International Lending Supervision Act of 1983 ("ILSA") or any rule, regulation or order issued thereunder, pursuant to 12 U.S.C. 3909;

(7) Any provision of the International Banking Act of 1978 ("IBA") or any rule, regulation or order issued thereunder, pursuant to 12 U.S.C. 3108;

(8) Certain provisions of the Exchange Act, pursuant to section 21B of the Exchange Act (15 U.S.C. 78u-2);

(9) Section 1120 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3349), or any order or regulation issued thereunder; and

(10) The terms of any final or temporary order issued under section 8 of the FDIA or of any written agreement executed by the Board, the terms of any condition imposed in writing by the Board in connection with the grant of an application or request, and certain unsafe or unsound practices or breaches of fiduciary duty or law or regulation pursuant to 12 U.S.C. 1818(i)(2);

(f) This subpart also applies to all other adjudications required by statute to be determined on the record after opportunity for an agency hearing, unless otherwise specifically provided in subparts B through G of this part.

§ 263.2 Rules of construction.

For purposes of this subpart:

(a) Any term in the singular includes the plural, and the plural includes the singular, if such use would be appropriate;

(b) Any use of a masculine, feminine, or neuter gender encompasses all three, if such use would be appropriate;

(c) The term *counsel* includes a non-attorney representative; and

(d) Unless the context requires otherwise, a party's counsel of record, if any, may, on behalf of that party, take any action required to be taken by the party.

§ 263.3 Definitions.

For purposes of this subpart, unless explicitly stated to the contrary:

(a) *Administrative law judge* means one who presides at an administrative hearing under authority set forth at 5 U.S.C. 556.

(b) *Adjudicatory proceeding* means a proceeding conducted pursuant to these rules and leading to the formulation of a final order other than a regulation.

(c) *Decisional employee* means any member of the Board's or administrative law judge's staff who has not engaged in an investigative or prosecutorial role in a proceeding and who may assist the Agency or the administrative law judge, respectively, in preparing orders, recommended decisions, decisions, and other documents under the Uniform Rules.

(d) *Enforcement Counsel* means any individual who files a notice of appearance as counsel on behalf of the Board in an adjudicatory proceeding.

(e) *Final order* means an order issued by the Board with or without the consent of the affected institution or the institution-affiliated party, that has become final, without regard to the pendency of any petition for reconsideration or review.

(f) *Institution* includes: (1) Any bank as that term is defined in section 3(a) of the FDIA (12 U.S.C. 1813(a));

(2) Any bank holding company or any subsidiary (other than a bank) of a bank holding company as those terms are defined in the BHC Act (12 U.S.C. 1841 *et seq.*);

(3) Any organization operating under section 25 of the FRA (12 U.S.C. 601 *et seq.*);

(4) Any foreign bank or company to which section 8 of the IBA (12 U.S.C. 3106), applies or any subsidiary (other than a bank) thereof; and

(5) Any Federal agency as that term is defined in section 1(b) of the IBA (12 U.S.C. 3101(5)).

(g) *Institution-affiliated party* means any institution-affiliated party as that term is defined in section 3(u) of the FDIA (12 U.S.C. 1813(u)).

(h) *Local Rules* means those rules promulgated by the Board in this part other than subpart A.

(i) *OFIA* means the Office of Financial Institution Adjudication, the executive body charged with overseeing the administration of administrative enforcement proceedings for the Board, the Office of Comptroller of the Currency (the "OCC"), the Federal Deposit Insurance Corporation (the "FDIC"), the Office of Thrift Supervision (the "OTS"), and the National Credit Union Administration (the "NCUA").

(j) *Party* means the Board and any person named as a party in any notice.

(k) *Person* means an individual, sole proprietor, partnership, corporation, unincorporated association, trust, joint venture, pool, syndicate, agency or other entity or organization, including an institution as defined in paragraph (f) of this section.

(l) *Respondent* means any party other than the Board.

(m) *Uniform Rules* means those rules in subpart A of this part that are common to the Board, the OCC, the FDIC, the OTS and the NCUA.

(n) *Violation* includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

§ 263.4 Authority of the Board.

The Board may, at any time during the pendency of a proceeding, perform, direct the performance of, or waive performance of, any act which could be done or ordered by the administrative law judge.

§ 263.5 Authority of the administrative law judge.

(a) *General rule.* All proceedings governed by this part shall be conducted in accordance with the provisions of chapter 5 of title 5 of the United States Code. The administrative law judge shall have all powers necessary to conduct a proceeding in a fair and impartial manner and to avoid unnecessary delay.

(b) *Powers.* The administrative law judge shall have all powers necessary to conduct the proceeding in accordance with paragraph (a) of this section, including the following powers:

(1) To administer oaths and affirmations;

(2) To issue subpoenas, subpoenas duces tecum, and protective orders, as authorized by this part, and to quash or modify any such subpoenas and orders;

(3) To receive relevant evidence and to rule upon the admission of evidence and offers of proof;

(4) To take or cause depositions to be taken as authorized by this subpart;

(5) To regulate the course of the hearing and the conduct of the parties and their counsel;

(6) To hold scheduling and/or prehearing conferences as set forth in § 263.31;

(7) To consider and rule upon all procedural and other motions appropriate in an adjudicatory proceeding, provided that only the Board shall have the power to grant any motion to dismiss the proceeding or to decide any other motion that results in a final determination of the merits of the proceeding;

(8) To prepare and present to the Board a recommended decision as provided herein;

(9) To recuse himself or herself by motion made by a party or on his or her own motion;

(10) To establish time, place and manner limitations on the attendance of the public and the media for any public hearing; and

(11) To do all other things necessary and appropriate to discharge the duties of a presiding officer.

§ 263.6 Appearance and practice in adjudicatory proceedings.

(a) *Appearance before the Board or an administrative law judge.*—(1) *By attorneys.* Any member in good standing of the bar of the highest court of any state, commonwealth, possession, territory of the United States, or the District of Columbia may represent others before the Board if such attorney is not currently suspended or debarred from practice before the Board.

(2) *By non-attorneys.* An individual may appear on his or her own behalf; a member of a partnership may represent the partnership; a duly authorized officer, director, or employee of any government unit, agency, institution, corporation or authority may represent that unit, agency, institution, corporation or authority if such officer, director, or employee is not currently suspended or debarred from practice before the Board.

(3) *Notice of appearance.* Any individual acting as counsel on behalf of a party, including the Board, shall file a notice of appearance with OFIA at or before the time that individual submits papers or otherwise appears on behalf of a party in the adjudicatory proceeding. Such notice of appearance shall include a written declaration that the individual is currently qualified as provided in paragraph (a)(1) or (a)(2) of this section and is authorized to represent the particular party. By filing a notice of appearance on behalf of a party in an adjudicatory proceeding, the counsel thereby agrees, and represents that he or she is authorized, to accept service on behalf of the represented party.

(b) *Sanctions.* Dilatory, obstructionist, egregious, contemptuous or contumacious conduct at any phase of any adjudicatory proceeding may be grounds for exclusion or suspension of counsel from the proceeding.

§ 263.7 Good faith certification.

(a) *General requirement.* Every filing or submission of record following the issuance of a notice shall be signed by at least one counsel of record in his or her individual name and shall state that counsel's address and telephone number. A party who acts as his or her own counsel shall sign his or her individual name and state his or her address and telephone number on every filing or submission of record.

(b) *Effect of signature.* (1) The signature of counsel or a party shall constitute a certification that: the counsel or party has read the filing or submission of record; to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the filing or submission of record is well-grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and the filing or submission of record is not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) If a filing or submission of record is not signed, the administrative law judge shall strike the filing or submission of record, unless it is signed promptly after the omission is called to the attention of the pleader or movant.

(c) *Effect of making oral motion or argument.* The act of making any oral motion or oral argument by any counsel or party constitutes a certification that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, his or her statement is well-grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and is not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

§ 263.8 Conflicts of interest.

(a) *Conflict of interest in representation.* No person shall appear as counsel for another person in an adjudicatory proceeding if it reasonably appears that such representation may be materially limited by that counsel's responsibilities to a third person or by the counsel's own interests. The administrative law judge may take corrective measures at any stage of a proceeding to cure a conflict of interest in representation, including the issuance of an order limiting the scope of representation or disqualifying an individual from appearing in a representative capacity for the duration of the proceeding.

(b) *Certification and waiver.* If any person appearing as counsel represents two or more parties to an adjudicatory proceeding or a party and an institution to which notice of the proceeding must be given, counsel must certify in writing at the time of filing the notice of appearance required by § 263.6(a):

(1) That the counsel has personally and fully discussed the possibility of conflicts of interest with each such party or institution;

(2) That each such party or institution has advised its counsel that to its knowledge there is no existing or anticipated material conflict between its interests and the interests of others represented by the same counsel or his or her firm; and

(3) That each such party or institution waives any right it might otherwise have had to assert any known conflicts of interest or to assert any non-material conflicts of interest during the course of the proceeding.

§ 263.9 Ex parte communications.

(a) *Definition.*—(1) *Ex parte communication* means any material oral or written communication concerning the merits of an adjudicatory proceeding that was neither on the record nor on reasonable prior notice to all parties that takes place between:

(i) A party, his or her counsel, or another person interested in the proceeding; and

(ii) The administrative law judge handling that proceeding, a member of the Board, or a decisional employee.

(2) *Exception.* A request for status of the proceeding does not constitute an ex parte communication.

(b) *Prohibition of ex parte communications.* From the time the notice is issued by the Board until the date that the Board issues its final decision pursuant to § 263.40(c), no party, interested person or counsel therefor shall knowingly make or cause

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§ 263.8 Conflicts of interest.

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(b) *Certification and waiver.* If any person appearing as counsel represents two or more parties to an adjudicatory proceeding or a party and an institution to which notice of the proceeding must be given, counsel must certify in writing at the time of filing the notice of appearance required by § 263.6(a):

(1) That the counsel has personally and fully discussed the possibility of conflicts of interest with each such party or institution;

(2) That each such party or institution has advised its counsel that to its knowledge there is no existing or anticipated material conflict between its interests and the interests of others represented by the same counsel or his or her firm; and

(3) That each such party or institution waives any right it might otherwise have had to assert any known conflicts of interest or to assert any non-material conflicts of interest during the course of the proceeding.

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(i) A party, his or her counsel, or another person interested in the proceeding; and

(ii) The administrative law judge handling that proceeding, a member of the Board, or a decisional employee.

(2) *Exception.* A request for status of the proceeding does not constitute an ex parte communication.

(b) *Prohibition of ex parte communications.* From the time the notice is issued by the Board until the date that the Board issues its final decision pursuant to § 263.40(c), no party, interested person or counsel therefor shall knowingly make or cause

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to be made an ex parte communication concerning the merits of the proceeding to a member of the Board, the administrative law judge, or a decisional employee. No member of the Board, administrative law judge, or decisional employee shall knowingly make or cause to be made to a party, or any interested person or counsel therefor, any ex parte communication relevant to the merits of a proceeding.

(c) *Procedure upon occurrence of ex parte communication.* If an ex parte communication is received by the administrative law judge, a member of the Board or any other person identified in paragraph (a) of this section, that person shall cause all such written communications (or, if the communication is oral, a memorandum stating the substance of the communication) to be placed on the record of the proceeding and served on all parties. All other parties to the proceeding shall have an opportunity, within ten days of receipt of service of the ex parte communication. to file responses thereto and to recommend any sanctions, in accordance with paragraph (d) of this section, that they believe to be appropriate under the circumstances.

(d) *Sanctions.* Any party or his or her counsel who makes a prohibited ex parte communication, or who encourages or solicits another to make any such communication, may be subject to any appropriate sanction or sanctions imposed by the Board or the administrative law judge including, but not limited to, exclusion from the proceedings and an adverse ruling on the issue which is the subject of the prohibited communication.

§ 263.10 Filing of papers.

(a) *Filing.* Any papers required to be filed, excluding documents produced in response to a discovery request pursuant to §§ 263.25 and 263.26, shall be filed with OFIA, except as otherwise provided.

(b) *Manner of filing.* Unless otherwise specified by the Board or the administrative law judge, filing may be accomplished by:

(1) Personal service;

(2) Delivering the papers to a reliable commercial courier service, overnight delivery service, or to the U.S. Post Office for Express Mail delivery;

(3) Mailing the papers by first class, registered, or certified mail; or

(4) Transmission by electronic media, only if expressly authorized, and upon any conditions specified, by the Board or the administrative law judge. All papers filed by electronic media shall also concurrently be filed in accordance with paragraph (c) of this section.

(c) *Formal requirements as to papers filed*—(1) *Form.* All papers filed must set forth the name, address, and telephone number of the counsel or party making the filing and must be accompanied by a certification setting forth when and how service has been made on all other parties. All papers filed must be double-spaced and printed or typewritten on 8 1/2 x 11 inch paper, and must be clear and legible.

(2) *Signature.* All papers must be dated and signed as provided in § 263.7.

(3) *Caption.* All papers filed must include at the head thereof, or on a title page, the name of the Board and of the filing party, the title and docket number of the proceeding, and the subject of the particular paper.

(4) *Number of copies.* Unless otherwise specified by the Board, or the administrative law judge, an original and one copy of all documents and papers shall be filed, except that only one copy of transcripts of testimony and exhibits shall be filed.

§ 263.11 Service of papers.

(a) *By the parties.* Except as otherwise provided, a party filing papers shall serve a copy upon the counsel of record for all other parties to the proceeding so represented, and upon any party not so represented.

(b) *Method of service.* Except as provided in paragraphs (c)(2) and (d) of this section, a serving party shall use one or more of the following methods of service:

(1) Personal service;

(2) Delivering the papers to a reliable commercial courier service, overnight delivery service, or to the U.S. Post Office for Express Mail delivery;

(3) Mailing the papers by first class, registered, or certified mail; or

(4) Transmission by electronic media, only if the parties mutually agree. Any papers served by electronic media shall also concurrently be served in accordance with the requirements of § 263.10(c).

(c) *By the Board or the administrative law judge.* (1) All papers required to be served by the Board or the administrative law judge upon a party who has appeared in the proceeding in accordance with § 263.6 , shall be served by any means specified in paragraph (b) of this section.

(2) If a party has not appeared in the proceeding in accordance with § 263.6, the Board or the administrative law judge shall make service by any of the following methods:

(i) By personal service;

(ii) By delivery to a person of suitable age and discretion at the party's residence;

(iii) By registered or certified mail addressed to the party's last known address; or

(iv) By any other method reasonably calculated to give actual notice.

(d) *Subpoenas.* Service of a subpoena may be made by personal service, by delivery to an agent, by delivery to a person of suitable age and discretion at the subpoenaed person's residence, by registered or certified mail addressed to the person's last known address, or in such other manner as is reasonably calculated to give actual notice.

(e) *Area of service.* Service in any state, territory, possession of the United States, or the District of Columbia, on any person or company doing business in any state, territory, possession of the United States, or the District of Columbia, or on any person as otherwise provided by law, is effective without regard to the place where the hearing is held, provided that if service is made on a foreign bank in connection with an action or proceeding involving one or more of its branches or agencies located in any state, territory, possession of the United States, or the District of Columbia, service shall be made on at least one branch or agency so involved.

§ 253.12 Construction of time limits.

(a) *General rule.* In computing any period of time prescribed by this subpart, the date of the act or event from which the designated period of time begins to run is not included. The last day so computed is included unless it is a Saturday, Sunday, or Federal holiday. When the last day is a Saturday, Sunday, or Federal holiday, the period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Intermediate Saturdays, Sundays, and Federal holidays are included in the computation of time, except that, when the time period within which an act is to be performed is ten days or less, intermediate Saturdays, Sundays, and Federal holidays are not included.

(b) *When papers are deemed to be filed or served.* (1) Filing and service are deemed to be effective:

(i) In the case of personal service or same-day commercial courier delivery, upon actual service;

(ii) In the case of overnight commercial delivery service, U.S. Express Mail delivery, or first class, registered, or certified mail, upon deposit in or delivery to an appropriate point of collection;

(iii) In the case of transmission by electronic media, as specified by the authority receiving the filing, in the case of filing, and as agreed among the parties, in the case of service.

(2) The effective filing and service dates specified in paragraph (b)(1) of this section may be modified by the Board or administrative law judge in the case of filing or by agreement of the parties in the case of service.

(c) *Calculation of time for service and filing of responsive papers.* Whenever a time limit is measured by a prescribed period from the service of any notice or paper, the applicable time limits are calculated as follows:

(1) If service is made by first class, registered or certified mail, add three days to the prescribed period;

(2) If service is made by express mail or overnight delivery service, add one day to the prescribed period;

(3) If service is made by electronic media transmission, add one day to the prescribed period, unless otherwise determined by the Board or the administrative law judge in the case of filing, or by agreement among the parties in the case of service.

§ 263.13 Change of time limits.

Except as otherwise provided by law, the administrative law judge may, for good cause shown, extend the time limits prescribed by the Uniform Rules or by any notice or order issued in the proceedings. After the referral of the case to the Board pursuant to § 263.38, the Board may grant extensions of the time limits for good cause shown. Extensions may be granted at the motion of a party after notice and opportunity to respond is afforded all non-moving parties or *sua sponte* by the Board or the administrative law judge.

§ 263.14 Witness fees and expenses.

Witnesses subpoenaed for testimony or depositions shall be paid the same fees for attendance and mileage as are paid in the United States district courts in proceedings in which the United States is a party, provided that, in the case of a discovery subpoena addressed to a party, no witness fees or mileage need be paid. Fees for witnesses shall be tendered in advance by the party requesting the subpoena, except that fees and mileage need not be tendered in advance where the Board is the party requesting the subpoena. The Board shall not be required to pay any fees to, or expenses of, any witness not subpoenaed by the Board.

§ 263.15 Opportunity for informal settlement.

Any respondent may, at any time in the proceeding, unilaterally submit to Enforcement Counsel written offers or proposals for settlement of a proceeding, without prejudice to the rights of any of the parties. No such offer or proposal shall be made to any Board representative other than Enforcement Counsel. Submission of a written settlement offer does not provide a basis for adjourning or otherwise delaying all or any portion of a proceeding under this part. No settlement offer or proposal, or any subsequent negotiation or resolution, is admissible as evidence in any proceeding.

§ 263.16 The Board's right to conduct examination.

Nothing contained in this subpart limits in any manner the right of the Board or any Federal Reserve Bank to conduct any examination, inspection, or visitation of any institution or institution-affiliated party, or the right of the Agency to conduct or continue any form of investigation authorized by law.

§ 263.17 Collateral attacks on adjudicatory proceeding.

If an interlocutory appeal or collateral attack is brought in any court concerning all or any part of an adjudicatory proceeding, the challenged adjudicatory proceeding shall continue without regard to the pendency of that court proceeding. No default or other failure to act as directed in the adjudicatory proceeding within the times prescribed in this subpart shall be excused based on the pendency before any court of any interlocutory appeal or collateral attack.

§ 263.18 Commencement of proceeding and contents of notice.

(a) *Commencement of proceeding.* (1)(i) Except for change-in-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)), a proceeding governed by this subpart is commenced by issuance of a notice by the Board.

(ii) The notice must be served by the Board upon the respondent and given to any other appropriate financial institution supervisory authority where required by law.

(iii) The notice must be filed with OFIA.

(2) Change-in-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)) commence with the issuance of an order by the Board.

(b) *Contents of notice.* The notice must set forth:

(1) The legal authority for the proceeding and for the Board's jurisdiction over the proceeding;

(2) A statement of the matters of fact or law showing that the Board is entitled to relief;

(3) A proposed order or prayer for an order granting the requested relief;

(4) The time, place, and nature of the hearing as required by law or regulation;

(5) The time within which to file an answer as required by law or regulation;

(6) The time within which to request a hearing as required by law or regulation; and

(7) That the answer and/or request for a hearing shall be filed with OFIA.

§ 263.19 Answer.

(a) *When.* Within 20 days of service of the notice, respondent shall file an answer as designated in the notice. In a civil money penalty proceeding, respondent shall also file a request for a hearing within 20 days of service of the notice.

(b) *Content of answer.* An answer must specifically respond to each paragraph or allegation of fact contained in the notice and must admit, deny, or state that the party lacks sufficient information to admit or deny each allegation of fact. A statement of lack of information has the effect of a denial. Denials must fairly meet the substance of each allegation of fact denied; general denials are not permitted. When a respondent denies part of an allegation, that part must be denied and the remainder specifically admitted. Any allegation of fact in the notice which is not denied in the answer must be deemed admitted for purposes of the proceeding. A respondent is not required to respond to the portion of a notice that constitutes the prayer for relief or proposed order. The answer must set forth affirmative defenses, if any, asserted by the respondent.

(c) *Default*—(1) *Effect of failure to answer.* Failure of a respondent to file an answer required by this section within the time provided constitutes a waiver of his or her right to appear and contest the allegations in the notice. If no timely answer is filed, Enforcement Counsel may file a motion for entry of an order of default. Upon a finding that no good cause has been shown for the failure to file a timely answer, the administrative law judge shall file with the Board a recommended decision containing the findings and the relief sought in the notice. Any final order issued by the Board based upon a respondent's failure to answer is deemed to be an order issued upon consent.

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(4) The time, place, and nature of the hearing as required by law or regulation;

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(b) *Content of answer.* An answer must specifically respond to each paragraph or allegation of fact contained in the notice and must admit, deny, or state that the party lacks sufficient information to admit or deny each allegation of fact. A statement of lack of information has the effect of a denial. Denials must fairly meet the substance of each allegation of fact denied; general denials are not permitted. When a respondent denies part of an allegation, that part must be denied and the remainder specifically admitted. Any allegation of fact in the notice which is not denied in the answer must be deemed admitted for purposes of the proceeding. A respondent is not required to respond to the portion of a notice that constitutes the prayer for relief or proposed order. The answer must set forth affirmative defenses, if any, asserted by the respondent.

(c) *Default*—(1) *Effect of failure to answer.* Failure of a respondent to file an answer required by this section within the time provided constitutes a waiver of his or her right to appear and contest the allegations in the notice. If no timely answer is filed, Enforcement Counsel may file a motion for entry of an order of default. Upon a finding that no good cause has been shown for the failure to file a timely answer, the administrative law judge shall file with the Board a recommended decision containing the findings and the relief sought in the notice. Any final order issued by the Board based upon a respondent's failure to answer is deemed to be an order issued upon consent.

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(2) *Effect of failure to request a hearing in civil money penalty proceedings.* If respondent fails to request a hearing as required by law within the time provided, the notice of assessment constitutes a final and unappealable order.

§ 263.20 Amended pleadings.

(a) *Amendments.* The notice or answer may be amended or supplemented at any stage of the proceeding by leave of the administrative law judge. Such leave will be freely given. The respondent shall answer an amended notice within the time remaining for the respondent's answer to the original notice, or within ten days after service of the amended notice, whichever period is longer, unless the Board or administrative law judge orders otherwise for good cause shown.

(b) *Amendments to conform to the evidence.* When issues not raised in the notice or answer are tried at the hearing by express or implied consent of the parties, they will be treated in all respects as if they had been raised in the notice or answer, and no formal amendments are required. If evidence is objected to at the hearing on the ground that it is not within the issues raised by the notice or answer, the administrative law judge may allow the notice or answer to be amended. The administrative law judge will do so freely when the determination of the merits of the action is served thereby and the objecting party fails to satisfy the administrative law judge that the admission of such evidence would unfairly prejudice that party's action or defense upon the merits. The administrative law judge may grant a continuance to enable the objecting party to meet such evidence.

§ 263.21 Failure to appear.

Failure of a respondent to appear in person at the hearing or by a duly authorized counsel constitutes a waiver of respondent's right to a hearing and is deemed an admission of the facts as alleged and consent to the relief sought in the notice. Without further proceedings or notice to the respondent, the administrative law judge shall file with the Board a recommended decision containing the findings and the relief sought in the notice.

§ 263.22 Consolidation and severance of actions.

(a) *Consolidation.* (1) On the motion of any party, or on the administrative law judge's own motion, the administrative law judge may consolidate, for some or ll purposes, any two or more proceedings, if each such proceeding involves or arises out of the same transaction, occurrence or series of transactions or occurrences, or involves at least one common respondent or a material common question of law or fact, unless such consolidation would cause unreasonable delay or injustice.

(2) In the event of consolidation under paragraph (a)(1) of this section, appropriate adjustment to the prehearing schedule shall be made to avoid unnecessary expense, inconvenience, or delay.

(b) *Severance.* The administrative law judge may, upon the motion of any party, sever the proceeding for separate resolution of the matter as to any respondent only if the administrative law judge finds that:

(1) Undue prejudice or injustice to the moving party would result from not severing the proceeding; and

(2) Such undue prejudice or injustice would outweigh the interests of judicial economy and expedition in the complete and final resolution of the proceeding.

§ 263.23 Motions.

(a) *In writing.* (1) Except as otherwise provided herein, an application or request for an order or ruling must be made by written motion.

(2) All written motions must state with particularity the relief sought and must be accompanied by a proposed order.

(3) No oral argument may be held on written motions except as otherwise directed by the administrative law judge. Written memoranda, briefs, affidavits or other relevant material or documents may be filed in support of or in opposition to a motion.

(b) *Oral motions.* A motion may be made orally on the record unless the administrative law judge directs that such motion be reduced to writing.

(c) *Filing of motions.* Motions must be filed with the administrative law judge, except that following the filing of the recommended decision, motions must be filed with the Board.

(d) *Responses.* (1) Except as otherwise provided herein, within ten days after service of any written motion, or within such other period of time as may be established by the administrative law judge or the Board, any party may file a written response to a motion. The administrative law judge shall not rule on any oral or written motion before each party has had an opportunity to file a response.

(2) The failure of a party to oppose a written motion or an oral motion made on the record is deemed a consent by that party to the entry of an order substantially in the form of the order accompanying the motion.

(e) *Dilatory motions.* Frivolous, dilatory or repetitive motions are prohibited. The filing of such motions may form the basis for sanctions.

(f) *Dispositive motions.* Dispositive motions are governed by §§ 263.29 and 263.30.

§ 263.24 Scope of document discovery.

(a) *Limits on discovery.* (1) Parties to proceedings under this subpart may obtain document discovery through the production of documents, including writings, drawings, graphs, charts, photographs, recordings, and other data compilations from which information can be obtained, or translated, if necessary, by the parties through detection devices into reasonably usable form.

(2) Discovery by use of deposition is governed by § 263.53 of subpart B of this part.

(b) *Relevance.* Parties may obtain document discovery regarding any matter, not privileged, which has material relevance to the merits of the pending action. It is not a ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to discovery of admissible evidence. The request may not be unreasonable, oppressive, excessive in scope or unduly burdensome.

(c) *Privileged matter.* Privileged documents are not discoverable. Privileges include the attorney-client privilege, work-product privilege, any government's or government agency's deliberative-process privilege, and any other privileges the Constitution, any applicable act of Congress, or the principles of common law provide.

(d) *Time limits.* All discovery, including all responses to discovery requests, shall be completed at least 20 days prior to the date scheduled for the commencement of the hearing. No exceptions to this time limit shall be permitted, unless the administrative law judge finds on the record that good cause exists for waiving the requirements of this paragraph.

§ 263.25 Request for document discovery from parties.

(a) *General rule:* Any party may serve on any other party a request to produce for inspection any discoverable documents which are in the possession, custody, or control of the party upon whom the request is served. The request must identify the documents to be produced either by individual item or by category, and must describe each item and category with reasonable particularity. Documents must be produced as they are kept in the usual course of business and shall be organized to correspond with the categories in the request.

(b) *Production or copying.* The request must specify a reasonable time, place, and manner for production and performing any related acts. In lieu of inspecting the documents, the requesting party may specify that all or some of the responsive documents are to be copied and the copies delivered to the requesting party. If copying of fewer than 250 pages is requested, the party to whom the request is addressed shall bear the cost of copying and shipping charges. If more than 250 pages of copying is requested, the requesting party shall pay for copying, unless the parties agree otherwise, at the current per-page copying rate imposed by the Board's rules at 12 CFR 261.10, appendix A implementing the Freedom of Information Act (5 U.S.C. 552a) plus the cost of shipping.

(c) *Obligation to update responses.* A party who has responded to a discovery request with a response that was complete when made is not required to supplement the response to include documents thereafter acquired, unless the responding party learns that:

(1) The response was materially incorrect when made; or

(2) The response, though correct when made, is no longer true and a failure to amend the response is, in substance, a knowing concealment.

(d) *Motions to limit discovery.* (1) Any party that objects to a discovery request may, within ten days of being served with such request, file a motion in accordance with the provisions of § 263.23 to strike or otherwise limit the request. If an objection is made to only a portion of an item or category in a request, the portion objected to shall be specified. Any objections not made in accordance with this paragraph and § 263.23 are waived.

(2) The party who served the request that is the subject of a motion to strike or limit may file a written response within five days of service of the motion. No other party may file a response.

(e) *Privilege.* At the time other documents are produced, all documents withheld on the grounds of privilege must be reasonably identified, together with a statement of the basis for the assertion of privilege.

(f) *Motions to compel production.* (1) If a party withholds any documents as privileged or fails to comply fully with a discovery request, the requesting party may, within ten days of the assertion of privilege or of the time the failure to comply becomes known to the requesting party, file a motion in accordance with the provisions of § 263.23 for the issuance of a subpoena compelling production.

(2) The party who asserted the privilege or failed to comply with the request may file a written response to a motion to compel within five days of service of the motion. No other party may file a response.

(g) *Ruling on motions.* After the time for filing responses pursuant to this section has expired, the administrative law judge shall rule promptly on all motions filed pursuant to this section. If the administrative law judge determines that a discovery request, or any of its terms, is unreasonable, unduly burdensome, excessive in scope, repetitive of previous requests or seeks to obtain privileged documents, he or she may modify the request, and may issue appropriate protective orders, upon such conditions as justice may require. The pendency of a motion to strike or limit discovery or to compel production shall not be a basis for staying or continuing the proceeding, unless otherwise ordered by the administrative law judge.

(h) *Enforcing discovery subpoenas.* If the administrative law judge issues a subpoena compelling production of documents by a party, the subpoenaing party may, in the event of noncompliance and to the extent authorized by applicable law, apply to any appropriate United States district court for an order requiring compliance with the subpoena. A party's right to seek court enforcement of a subpoena shall not in any manner limit the sanctions that may be imposed by the administrative law judge against a party who fails to produce subpoenaed documents.

§ 263.26 Document subpoenas to nonparties.

(a) *General rules.* (1) Any party may apply to the administrative law judge for the issuance of a document discovery subpoena addressed to any person who is not a party to the proceeding. The application must contain a proposed document subpoena and a brief statement showing the general relevance and reasonableness of the scope of documents sought. The subpoenaing party shall specify a reasonable time, place, and manner for making production in response to the document subpoena.

(2) A party shall only apply for a document subpoena under this section within the time period during which such party could serve a discovery request under § 263.24(d). The party obtaining the document subpoena is responsible for serving it on the subpoenaed person and for serving copies on all parties. Document subpoenas may be served in any state, territory, or possession of the United States, the District of Columbia, or as otherwise provided by law.

(3) The administrative law judge shall promptly issue any document subpoena requested pursuant to this section. If the administrative law judge determines that the application does not set forth a valid basis for the issuance of the subpoena, or that any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may refuse to issue the subpoena or may issue it in a modified form upon such conditions as may be consistent with the Uniform Rules.

(b) *Motion to quash or modify.* (1) Any person to whom a document subpoena is directed may file a motion to quash or modify such subpoena, accompanied by a statement of the basis for quashing or modifying the subpoena. The movant shall serve the motion on all parties, and any party may respond to such motion within ten days of service of the motion.

(2) Any motion to quash or modify a document subpoena must be filed on the same basis, including the assertion of privilege, upon which a party could object to a discovery request under § 263.25(d), and during the same time limits during which such an objection could be filed.

(c) *Enforcing document subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or any order of the administrative law judge which directs compliance with all or any portion of a document subpoena, the subpoenaing party or any other aggrieved party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with so much of the document subpoena as the administrative law judge has not quashed or modified. A party's right to seek court enforcement of a document subpoena shall in no way limit the sanctions that may be imposed by the administrative law judge on a party who induces a failure to comply with subpoenas issued under this section.

§ 263.27 Deposition of witness unavailable for hearing.

(a) *General rules.* (1) If a witness will not be available for the hearing, a party desiring to preserve that witness's testimony for the record may apply in accordance with the procedures set

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(3) The administrative law judge shall promptly issue any document subpoena requested pursuant to this section. If the administrative law judge determines that the application does not set forth a valid basis for the issuance of the subpoena, or that any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may refuse to issue the subpoena or may issue it in a modified form upon such conditions as may be consistent with the Uniform Rules.

(b) *Motion to quash or modify.* (1) Any person to whom a document subpoena is directed may file a motion to quash or modify such subpoena, accompanied by a statement of the basis for quashing or modifying the subpoena. The movant shall serve the motion on all parties, and any party may respond to such motion within ten days of service of the motion.

(2) Any motion to quash or modify a document subpoena must be filed on the same basis, including the assertion of privilege, upon which a party could object to a discovery request under § 263.25(d), and during the same time limits during which such an objection could be filed.

(c) *Enforcing document subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or any order of the administrative law judge which directs compliance with all or any portion of a document subpoena, the subpoenaing party or any other aggrieved party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with so much of the document subpoena as the administrative law judge has not quashed or modified. A party's right to seek court enforcement of a document subpoena shall in no way limit the sanctions that may be imposed by the administrative law judge on a party who induces a failure to comply with subpoenas issued under this section.

§ 263.27 Deposition of witness unavailable for hearing.

(a) *General rules.* (1) If a witness will not be available for the hearing, a party desiring to preserve that witness's testimony for the record may apply in accordance with the procedures set

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forth in paragraph (a)(2) of this section, to the administrative law judge for the issuance of a subpoena, including a subpoena duces tecum, requiring the attendance of the witness at a deposition. The administrative law judge may issue a deposition subpoena under this section upon a showing that:

(i) The witness will be unable to attend or may be prevented from attending the hearing because of age, sickness or infirmity, or will otherwise be unavailable;

(ii) The witness's unavailability was not procured or caused by the subpoenaing party;

(iii) The testimony is reasonably expected to be material; and

(iv) Taking the deposition will not result in any undue burden to any other party and will not cause undue delay of the proceeding.

(2) The application must contain a proposed deposition subpoena and a brief statement of the reasons for the issuance of the subpoena. The subpoena must name the witness whose deposition is to be taken and specify the time and place for taking the deposition. A deposition subpoena may require the witness to be deposed at any place within the country in which that witness resides or has a regular place of employment or such other convenient place as the administrative law judge shall fix.

(3) Any requested subpoena that sets forth a valid basis for its issuance must be promptly issued, unless the administrative law judge on his or her own motion, requires a written response or requires attendance at a conference concerning whether the requested subpoena should be issued.

(4) The party obtaining a deposition subpoena is responsible for serving it on the witness and for serving copies on all parties. Unless the administrative law judge orders otherwise, no deposition under this section shall be taken on fewer than ten days' notice to the witness and all parties. Deposition subpoenas may be served in any state, territory, possession of the United States, or the District of Columbia, on any person or company doing business in any state, territory, possession of the United States, or the District of Columbia, or as otherwise permitted by law.

(b) *Objections to deposition subpoenas.* (1) The witness and any party who has not had an opportunity to oppose a deposition subpoena issued under this section may file a motion with the administrative law judge to quash or modify the subpoena prior to the time for compliance specified in the subpoena, but not more than ten days after service of the subpoena.

(2) A statement of the basis for the motion to quash or modify a subpoena issued under this section must accompany the motion. The motion must be served on all parties.

(c) *Procedure upon deposition.* (1) Each witness testifying pursuant to a deposition subpoena must be duly sworn, and each party shall have the right to examine the witness. Objections to questions or documents must be in short form, stating the grounds for the objection. Failure to object to questions or documents is not deemed a waiver except where the ground for the objection might have been avoided if the objection had been timely presented. All questions, answers, and objections must be recorded.

(2) Any party may move before the administrative law judge for an order compelling the witness to answer any questions the witness has refused to answer or submit any evidence the witness has refused to submit during the deposition.

(3) The deposition must be subscribed by the witness, unless the parties and the witness, by stipulation, have waived the signing, or the witness is ill, cannot be found, or has refused to sign. If the deposition is not subscribed by the witness, the court reporter taking the deposition shall certify that the transcript is a true and complete transcript of the deposition.

(d) *Enforcing subpoenas.* If a subpoenaed person fails to comply with any order of the administrative law judge which directs compliance with all or any portion of a deposition subpoena under paragraph (b) or (c)(3) of this section, the subpoenaing party or other aggrieved party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with the portions of the subpoena that the administrative law judge has ordered enforced. A party's right to seek court enforcement of a deposition subpoena in no way limits the sanctions that may be imposed by the administrative law judge on a party who fails to comply with, or procures a failure to comply with, a subpoena issued under this section.

§ 263.28 Interlocutory review.

(a) *General rule.* The Board may review a ruling of the administrative law judge prior to the certification of the record to the Board only in accordance with the procedures set forth in this section and § 263.23.

(b) *Scope of review.* The Board may exercise interlocutory review of a ruling of the administrative law judge if the Board finds that:

(1) The ruling involves a controlling question of law or policy as to which substantial grounds exist for a difference of opinion;

(2) Immediate review of the ruling may materially advance the ultimate termination of the proceeding;

(3) Subsequent modification of the ruling at the conclusion of the proceeding would be an inadequate remedy; or

(4) Subsequent modification of the ruling would cause unusual delay or expense.

(c) *Procedure.* Any request for interlocutory review shall be filed by a party with the administrative law judge within ten days of his or her ruling and shall otherwise comply with § 263.23. Any party may file a response to a request for interlocutory review in accordance with § 263.23(d). Upon the expiration of the time for filing all responses, the administrative law judge shall refer the matter to the Board for final disposition.

(d) *Suspension of proceeding.* Neither a request for interlocutory review nor any disposition of such a request by the Board under this section suspends or stays the proceeding unless otherwise ordered by the administrative law judge or the Board.

§ 263.29 Summary disposition.

(a) *In general.* The administrative law judge shall recommend that the Board issue a final order granting a motion for summary disposition if the undisputed pleaded facts, admissions, affidavits, stipulations, documentary evidence, matters as to which official notice may be taken, and any other evidentiary materials properly submitted in connection with a motion for summary disposition show that:

(1) There is no genuine issue as to any material fact; and

(2) The moving party is entitled to a decision in its favor as a matter of law.

(b) *Filing of motions and responses.* (1) Any party who believes that there is no genuine issue of material fact to be determined and that he or she is entitled to a decision as a matter of law may move at any time for summary disposition in its favor of all or any part of the proceeding. Any party, within 20 days after service of such a motion, or within such time period as allowed by the administrative law judge, may file a response to such motion.

(2) A motion for summary disposition must be accompanied by a statement of the material facts as to which the moving party contends there is no

genuine issue. Such motion must be supported by documentary evidence, which may take the form of admissions in pleadings, stipulations, depositions, investigatory depositions, transcripts, affidavits and any other evidentiary materials that the moving party contends support his or her position. The motion must also be accompanied by a brief containing the points and authorities in support of the contention of the moving party. Any party opposing a motion for summary disposition must file a statement setting forth those material facts as to which he or she contends a genuine dispute exists. Such opposition must be supported by evidence of the same type as that submitted with the motion for summary disposition and a brief containing the points and authorities in support of the contention that summary disposition would be inappropriate.

(c) *Hearing on motion.* At the request of any party or on his or her own motion, the administrative law judge may hear oral argument on the motion for summary disposition.

(d) *Decision on motion.* Following receipt of a motion for summary disposition and all responses thereto, the administrative law judge shall determine whether the moving party is entitled to summary disposition. If the administrative law judge determines that summary disposition is warranted, the administrative law judge shall submit a recommended decision to that effect to the Board. If the administrative law judge finds that no party is entitled to summary disposition, he or she shall make a ruling denying the motion.

§ 263.30 Partial summary disposition.

If the administrative law judge determines that a party is entitled to summary disposition as to certain claims only, he or she shall defer submitting a recommended decision as to those claims. A hearing on the remaining issues must be ordered. Those claims for which the administrative law judge has determined that summary disposition is warranted will be addressed in the recommended decision filed at the conclusion of the hearing.

§ 263.31 Scheduling and prehearing conferences.

(a) *Scheduling conference.* Within 30 days of service of the notice or order commencing a proceeding or such other time as parties may agree, the administrative law judge shall direct counsel for all parties to meet with him or her in person at a specified time and place prior to the hearing or to confer by telephone for the purpose of scheduling the course and conduct of the proceeding. This meeting or telephone conference is called a "scheduling conference." The identification of potential witnesses, the time for and manner of discovery, and the exchange of any prehearing materials including witness lists, statements of issues, stipulations, exhibits and any other materials may also be determined at the scheduling conference.

(b) *Prehearing conferences.* The administrative law judge may, in addition to the scheduling conference, on his or her own motion or at the request of any party, direct counsel for the parties to meet with him or her (in person or by telephone) at a prehearing conference to address any or all of the following:

(1) Simplification and clarification of the issues;

(2) Stipulations, admissions of fact, and the contents, authenticity and admissibility into evidence of documents;

(3) Matters of which official notice may be taken;

(4) Limitation of the number of witnesses;

(5) Summary disposition of any or all issues;

(6) Resolution of discovery issues or disputes;

(7) Amendments to pleadings; and

(8) Such other matters as may aid in the orderly disposition of the proceeding.

(c) *Transcript.* The administrative law judge, in his or her discretion, may require that a scheduling or prehearing conference be recorded by a court reporter. A transcript of the conference and any materials filed, including orders, becomes part of the record of the proceeding. A party may obtain a copy of the transcript at his or her expense.

(d) *Scheduling or prehearing orders.* At or within a reasonable time following the conclusion of the scheduling conference or any prehearing conference, the administrative law judge shall serve on each party an order setting forth any agreements reached and any procedural determinations made.

§ 263.32 Prehearing submissions.

(a) Within the time set by the administrative law judge, but in no case later than 14 days before the start of the hearing, each party shall serve on every other party, his or her:

(1) Prehearing statement;

(2) Final list of witnesses to be called to testify at the hearing, including name and address of each witness and a short summary of the expected testimony of each witness;

(3) List of the exhibits to be introduced at the hearing along with a copy of each exhibit; and

(4) Stipulations of fact, if any.

(b) Effect of failure to comply. No witness may testify and no exhibits may be introduced at the hearing if such witness or exhibit is not listed in the prehearing submissions pursuant to paragraph (a) of this section, except for good cause shown.

§ 263.33 Public hearings.

(a) *General rule.* All hearings shall be open to the public, unless the Board, in its discretion, determines that holding an open hearing would be contrary to the public interest. Within 20 days of service of the notice or, in the case of change-in-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)), within 20 days from service of the hearing order, any respondent may file with the Board a request for a private hearing, and any party may file a pleading in reply to such a request. Such requests and replies are governed by § 263.23. Failure to file a request or a reply is deemed a waiver of any objections regarding whether the hearing will be public or private.

(b) *Filing document under seal.* Enforcement Counsel, in his or her discretion, may file any document or part of a document under seal if disclosure of the document would be contrary to the public interest. The administrative law judge shall take all appropriate steps to preserve the confidentiality of such documents or parts thereof, including closing portions of the hearing to the public.

§ 263.34 Hearing subpoenas.

(a) *Issuance.* (1) Upon application of a party showing general relevance and reasonableness of scope of the testimony or other evidence sought, the administrative law judge may issue a subpoena or a subpoena duces tecum requiring the attendance of a witness at the hearing or the production of documentary or physical evidence at such hearing. The application for a hearing subpoena must also contain a proposed subpoena specifying the attendance of a witness or the production of evidence from any state, territory, or possession of the United States, the District of Columbia or as otherwise provided by law at any designated place where the hearing is being conducted.

(2) A party may apply for a hearing subpoena at any time before the commencement of a hearing. During a hearing, such applications may be made orally on the record before the

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(4) Stipulations of fact, if any.

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(b) *Filing document under seal.* Enforcement Counsel, in his or her discretion, may file any document or part of a document under seal if disclosure of the document would be contrary to the public interest. The administrative law judge shall take all appropriate steps to preserve the confidentiality of such documents or parts thereof, including closing portions of the hearing to the public.

§ 263.34 Hearing subpoenas.

(a) *Issuance.* (1) Upon application of a party showing general relevance and reasonableness of scope of the testimony or other evidence sought, the administrative law judge may issue a subpoena or a subpoena duces tecum requiring the attendance of a witness at the hearing or the production of documentary or physical evidence at such hearing. The application for a hearing subpoena must also contain a proposed subpoena specifying the attendance of a witness or the production of evidence from any state, territory, or possession of the United States, the District of Columbia or as otherwise provided by law at any designated place where the hearing is being conducted.

(2) A party may apply for a hearing subpoena at any time before the commencement of a hearing. During a hearing, such applications may be made orally on the record before the administrative law judge. The party making the application shall serve a copy of the application and the proposed subpoena on every other party to the proceeding.

(3) The administrative law judge shall promptly issue any hearing subpoena requested pursuant to this section. If the administrative law judge determines that the application does not set forth a valid basis for the issuance of the subpoena, or that any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may refuse to issue the subpoena or may issue it in a modified form upon any conditions consistent with this subpart.

(b) *Motion to quash or modify.* (1) Any person to whom a hearing subpoena is directed may file a motion to quash or modify such subpoena, accompanied by a statement of the basis for quashing or modifying the subpoena. The movant shall serve the motion on all parties, and any party may respond to such motion within ten days of service of the motion.

(2) Any motion to quash or modify a hearing subpoena must be filed prior to the time specified in the subpoena for compliance, but not more than ten days after the date of service of the subpoena upon the movant.

(c) *Enforcing subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or any order of the administrative law judge which directs compliance with all or any portion of a document subpoena, the subpoenaing party or any other aggrieved party may seek enforcement of the subpoena pursuant to § 263.26(c).

§ 263.35 Conduct of hearings.

(a) *General rules.* (1) Hearings shall be conducted so as to provide a fair and expeditious presentation of the relevant disputed issues. Each party has the right to present its case or defense by oral and documentary evidence and to conduct such cross examination as may be required for full disclosure of the facts.

(2) *Order of hearing.* Enforcement Counsel shall present its case-in-chief first, unless otherwise ordered by the administrative law judge, or unless otherwise expressly specified by law or regulation. Enforcement Counsel shall be the first party to present an opening statement and a closing statement, and may make a rebuttal statement after the respondent's closing statement. If there are multiple respondents, respondents may agree among themselves as to their order of presentation of their cases, but if they do not agree the administrative law judge shall fix the order.

(3) *Stipulations.* Unless the administrative law judge directs otherwise, all stipulations of fact and law previously agreed upon by the parties, and all documents, the admissibility of which have been previously stipulated, will be admitted into evidence upon commencement of the hearing.

(b) *Transcript.* The hearing must be recorded and transcribed. The transcript shall be made available to any party upon payment of the cost thereof. The administrative law judge shall have authority to order the record corrected, either upon motion to correct, upon stipulation of the parties, or following notice to the parties upon the administrative law judge's own motion. The administrative law judge shall serve notice upon all parties that the certified transcript, together with all hearing exhibits and exhibits introduced but not admitted into evidence at the hearing, has been filed.

§ 263.36 Evidence.

(a) *Admissibility.* (1) Except as is otherwise set forth in this section, relevant, material, and reliable evidence that is not unduly repetitive is admissible to the fullest extent authorized by the Administrative Procedure Act and other applicable law.

(2) Evidence that would be admissible under the Federal Rules of Evidence is admissible in a proceeding conducted pursuant to this subpart.

(3) Evidence that would be inadmissible under the Federal Rules of Evidence may not be deemed or ruled to be inadmissible in a proceeding conducted pursuant to this subpart if such evidence is relevant, material, reliable and not unduly repetitive.

(b) *Official notice.* (1) Official notice may be taken of any material fact which may be judicially noticed by a United States district court and any material information in the official public records of any Federal or state government agency.

(2) All matters officially noticed by the administrative law judge or Board shall appear on the record.

(3) If official notice is requested or taken of any material fact, the parties, upon timely request, shall be afforded an opportunity to object.

(c) *Documents.* (1) A duplicate copy of a document is admissible to the same extent as the original, unless a genuine issue is raised as to whether the copy is in some material respect not a true and legible copy of the original.

(2) Subject to the requirements of paragraph (a) of this section, any document, including a report of examination, supervisory activity, inspection or visitation, prepared by an appropriate Federal financial institution regulatory agency or state regulatory agency, is admissible either with or without a sponsoring witness.

(3) Witnesses may use existing or newly created charts, exhibits, calendars, calculations, outlines or other graphic material to summarize, illustrate, or simplify the presentation of testimony. Such materials may, subject to the administrative law judge's discretion, be used with or without being admitted into evidence.

(d) *Objections.* (1) Objections to the admissibility of evidence must be timely made and rulings on all objections must appear on the record.

(2) When an objection to a question or line of questioning propounded to a witness is sustained, the examining counsel may make a specific proffer on the record of what he or she expected to prove by the expected testimony of the witness, either by representation of counsel or by direct interrogation of the witness.

(3) The administrative law judge shall retain rejected exhibits, adequately marked for identification, for the record, and transmit such exhibits to the Board.

(4) Failure to object to admission of evidence or to any ruling constitutes a waiver of the objection.

(e) *Stipulations.* The parties may stipulate as to any relevant matters of fact or the authentication of any relevant documents. Such stipulations must be received in evidence at a hearing, and are binding on the parties with respect to the matters therein stipulated.

(f) *Depositions of unavailable witnesses.* (1) If a witness is unavailable to testify at a hearing, and that witness has testified in a deposition to which all parties in a proceeding had notice and an opportunity to participate, a party may offer as evidence all or any part of the transcript of the deposition, including deposition exhibits, if any.

(2) Such deposition transcript is admissible to the same extent that testimony would have been admissible had that person testified at the hearing, provided that if a witness refused to answer proper questions during the depositions, the administrative law judge may, on that basis, limit the admissibility of the deposition in any manner that justice requires.

(3) Only those portions of a deposition received in evidence at the hearing constitute a part of the record.

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§ 263.37 Proposed findings and conclusions.

(a) *Proposed findings and conclusions and supporting briefs.* (1) Any party may file with the administrative law judge proposed findings of fact, proposed conclusions of law, and a proposed order within 30 days after the parties have received notice that the transcript has been filed with the administrative law judge, unless otherwise ordered by the administrative law judge.

(2) Proposed findings and conclusions must be supported by citation to any relevant authorities and by page references to any relevant portions of the record. A post-hearing brief may be filed in support of proposed findings and conclusions, either as part of the same document or in a separate document. Any party who fails to file timely with the administrative law judge any proposed finding or conclusion is deemed to have waived the right to raise in any subsequent filing or submission any issue not addressed in such party's proposed finding or conclusion.

(b) *Reply briefs.* Reply briefs may be filed within 15 days after the date on which the parties' proposed findings, conclusions, and order are due. Reply briefs must be strictly limited to responding to new matters, issues, or arguments raised in another party's papers. A party who has not filed proposed findings of fact and conclusions of law or a post-hearing brief may not file a reply brief.

(c) *Simultaneous filing required.* The administrative law judge shall not order the filing by any party of any brief or reply brief in advance of the other party's filing of its brief.

§ 263.38 Recommended decision and filing of record.

Within 45 days after expiration of the time allowed for filing reply briefs under § 263.37(b), the administrative law judge shall file with and certify to the Board for decision the record of the proceeding. The record must include the administrative law judge's recommended decision, recommended findings of fact, recommended conclusions of law, and proposed order; all prehearing and hearing transcripts, exhibits, and rulings; and the motions, briefs, memoranda, and other supporting papers filed in connection with the hearing. The administrative law judge shall serve upon each party the recommended decision, findings, conclusions, and proposed order.

§ 263.39 Exceptions to recommended decision.

(a) *Filing exceptions.* Within 30 days after service of the recommended decision, findings, conclusions, and proposed order under § 263.38, a party may file with the Board written exceptions to the administrative law judge's recommended decision, findings, conclusions or proposed order, to the admission or exclusion of evidence, or to the failure of the administrative law judge to make a ruling proposed by a party. A supporting brief may be filed at the time the exceptions are filed, either as part of the same document or in a separate document.

(b) *Effect of failure to file or raise exceptions.* (1) Failure of a party to file exceptions to those matters specified in paragraph (a) of this section within the time prescribed is deemed a waiver of objection thereto.

(2) No exception need be considered by the Board if the party taking exception had an opportunity to raise the same objection, issue, or argument before the administrative law judge and failed to do so.

(c) *Contents.* (1) All exceptions and briefs in support of such exceptions must be confined to the particular matters in, or omissions from, the administrative law judge's recommendations to which that party takes exception.

(2) All exceptions and briefs in support of exceptions must set forth page or paragraph references to the specific parts of the administrative law judge's recommendations to which exception is taken, the page or paragraph references to those portions of the record relied upon to support each exception, and the legal authority relied upon to support each exception.

§ 263.40 Review by the Board.

(a) *Notice of submission to the Board.* When the Board determines that the record in the proceeding is complete, the Board shall serve notice upon the parties that the proceeding has been submitted to the Board for final decision.

(b) *Oral argument before the Board.* Upon the initiative of the Board or on the written request of any party filed with the Board within the time for filing exceptions, the Board may order and hear oral argument on the recommended findings, conclusions, decision, and order of the administrative law judge. A written request by a party must show good cause for oral argument and state reasons why arguments cannot be presented adequately in writing. A denial of a request for oral argument may be set forth in the Board's final decision. Oral argument before the Board must be on the record.

(c) *Agency final decision.* (1) Decisional employees may advise and assist the Board in the consideration and disposition of the case. The final decision of the Board will be based upon review of the entire record of the proceeding, except that the Board may limit the issues to be reviewed to those findings and conclusions to which opposing arguments or exceptions have been filed by the parties.

(2) The Board shall render a final decision within 90 days after notification of the parties that the case has been submitted for final decision, or 90 days after oral argument, whichever is later, unless the Board orders that the action or any aspect thereof be remanded to the administrative law judge for further proceedings. Copies of the final decision and order of the Board shall be served upon each party to the proceeding, upon other persons required by statute, and, if directed by the Board or required by statute, upon any appropriate state or Federal supervisory authority.

§ 263.41 Stays pending judicial review.

The commencement of proceedings for judicial review of a final decision and order of the Board may not, unless specifically ordered by the Board or a reviewing court, operate as a stay of any order issued by the Board. The Board may, in its discretion, and on such terms as it finds just, stay the effectiveness of all or any part of its order pending a final decision on a petition for review of that order.

Subpart B—Board Local Rules Supplementing the Uniform Rules

§ 263.50 Purpose and scope.

(a) This subpart prescribes the rules of practice and procedure governing formal adjudications set forth in § 263.50(b) of this subpart, and supplements the rules of practice and procedure contained in subpart A of this part.

(b) The rules and procedures of this subpart and subpart A of this part shall apply to the formal adjudications set forth in § 263.1 of subpart A and to the following adjudications:

(1) Suspension of a member bank from use of credit facilities of the Federal Reserve System under section 4 of the FRA (12 U.S.C. 301);

(2) Termination of a bank's membership in the Federal Reserve System under section 9 of the FRA (12 U.S.C. 327);

(3) Issuance of a cease-and-desist order under section 11 of the Clayton Act (15 U.S.C. 21);

(4) Adjudications under sections 2, 3, or 4 of the BHC Act (12 U.S.C. 1841, 1842, or 1843);

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(2) The Board shall render a final decision within 90 days after notification of the parties that the case has been submitted for final decision, or 90 days after oral argument, whichever is later, unless the Board orders that the action or any aspect thereof be remanded to the administrative law judge for further proceedings. Copies of the final decision and order of the Board shall be served upon each party to the proceeding, upon other persons required by statute, and, if directed by the Board or required by statute, upon any appropriate state or Federal supervisory authority.

§ 263.41 Stays pending judicial review.

The commencement of proceedings for judicial review of a final decision and order of the Board may not, unless specifically ordered by the Board or a reviewing court, operate as a stay of any order issued by the Board. The Board may, in its discretion, and on such terms as it finds just, stay the effectiveness of all or any part of its order pending a final decision on a petition for review of that order.

Subpart B—Board Local Rules Supplementing the Uniform Rules

§ 263.50 Purpose and scope.

(a) This subpart prescribes the rules of practice and procedure governing formal adjudications set forth in § 263.50(b) of this subpart, and supplements the rules of practice and procedure contained in subpart A of this part.

(b) The rules and procedures of this subpart and subpart A of this part shall apply to the formal adjudications set forth in § 263.1 of subpart A and to the following adjudications:

(1) Suspension of a member bank from use of credit facilities of the Federal Reserve System under section 4 of the FRA (12 U.S.C. 301);

(2) Termination of a bank's membership in the Federal Reserve System under section 9 of the FRA (12 U.S.C. 327);

(3) Issuance of a cease-and-desist order under section 11 of the Clayton Act (15 U.S.C. 21);

(4) Adjudications under sections 2, 3, or 4 of the BHC Act (12 U.S.C. 1841, 1842, or 1843);

(5) Formal adjudications on bank merger applications under section 18(c) of the FDIA (12 U.S.C. 1828(c));

(6) Issuance of a divestiture order under section 5(e) of the BHC Act (12 U.S.C. 1844(e));

(7) Imposition of sanctions upon any municipal securities dealer for which the Board is the appropriate regulatory agency, or upon any person associated or seeking to become associated with such a municipal securities dealer, under section 15B(c)(5) of the Exchange Act (15 U.S.C. 78o-4); and

(8) Proceedings where the Board otherwise orders that a formal hearing be held.

§ 263.51 Definitions.

As used in subparts B through G of this part:

(a) *Secretary* means the Secretary of the Board of Governors of the Federal Reserve System;

(b) *Member bank* means any bank that is a member of the Federal Reserve System.

§ 263.52 Address for filing.

All papers to be filed with the Board shall be filed with the Secretary of the Board of Governors of the Federal Reserve System, Washington, DC 20551.

§ 263.53 Discovery depositions.

(a) *In general.* In addition to the discovery permitted in subpart A of this part, limited discovery by means of depositions shall be allowed for individuals with knowledge of facts material to the proceeding that are not protected from discovery by any applicable privilege, and of identified expert witnesses. Except in unusual cases, accordingly, depositions will be permitted only of individuals identified as hearing witnesses, including experts. All discovery depositions must be completed within the time set forth in § 263.24(d).

(b) *Application.* A party who desires to take a deposition of any other party's proposed witnesses, shall apply to the administrative law judge for the issuance of a deposition subpoena or subpoena duces tecum. The application shall state the name and address of the proposed deponent, the subject matter of the testimony expected from the deponent and its relevancy to the proceeding, and the address of the place and the time, no sooner than ten days after the service of the subpoena, for the taking of the deposition. Any such application shall be treated as a motion subject to the rules governing motions practice set forth in § 263.23.

(c) *Issuance of subpoena.* The administrative law judge shall issue the requested deposition subpoena or subpoena duces tecum upon a finding that the application satisfies the requirements of this section and of § 263.24. If the administrative law judge determines that the taking of the deposition or its proposed location is, in whole or in part, unnecessary, unreasonable, oppressive, excessive in scope or unduly burdensome, he or she may deny the application or may grant it upon such conditions as justice may require. The party obtaining the deposition subpoena or subpoena duces tecum shall be responsible for serving it on the deponent and all parties to the proceeding in accordance with § 263.11.

(d) *Motion to quash or modify.* A person named in a deposition subpoena or subpoena duces tecum may file a motion to quash or modify the subpoena or for the issuance of a protective order. Such motions must be filed within ten days following service of the subpoena, but in all cases at least five days prior to the commencement of the scheduled deposition. The motion must be accompanied by a statement of the reasons for granting the motion and a copy of the motion and the statement must be served on the party which requested the subpoena. Only the party requesting the subpoena may file a response to a motion to quash or modify, and any such response shall be filed within five days following service of the motion.

(e) *Enforcement of a deposition subpoena.* Enforcement of a deposition subpoena shall be in accordance with the procedures set forth in § 263.27(d).

(f) *Conduct of the deposition.* The deponent shall be duly sworn, and each party shall have the right to examine the deponent with respect to all non-privileged, relevant and material matters. Objections to questions or evidence shall be in the short form, stating the ground for the objection. Failure to object to questions or evidence shall not be deemed a waiver except where the grounds for the objection might have been avoided if the objection had been timely presented. The discovery deposition shall be transcribed or otherwise recorded as agreed among the parties.

(g) *Protective orders.* At any time during the taking of a discovery deposition, on the motion of any party or of the deponent, the administrative law judge may terminate or limit the scope and manner of the deposition upon a finding that grounds exist for such relief. Grounds for terminating or limiting the taking of a discovery deposition include a finding that the discovery deposition is being conducted in bad faith or in such a manner as to:

(1) Unreasonably annoy, embarrass, or oppress the deponent;

(2) Unreasonably probe into privilege, irrelevant or immaterial matters; or

(3) Unreasonably attempt to pry into a party's preparation for trial.

§ 263.54 Delegation to the Office of Financial Institution Adjudication.

Unless otherwise ordered by the Board, administrative adjudications subject to subpart A of this part shall be conducted by an administrative law judge of OFIA.

§ 263.55 Board as Presiding Officer.

The Board may, in its discretion, designate itself, one or more of its members, or an authorized officer, to act as presiding officer in a formal hearing. In such a proceeding, proposed findings and conclusions, briefs, and other submissions by the parties permitted in subpart A shall be filed with the Secretary for consideration by the Board. Sections 263.38 and 263.39 of subpart A will not apply to proceedings conducted under this section.

§ 263.56 Initial Licensing Proceedings.

Proceedings with respect to applications for initial licenses shall include, but not be limited to, applications for Board approval under section 3 of the BHC Act and such proceedings as may be ordered by the Board with respect to applications under section 18(c) of the FDIA. In such initial licensing proceedings, the procedures set forth in subpart A of this part shall apply, except that the Board may designate a Board Counsel to represent the Board in a nonadversary capacity for the purpose of developing for the record information relevant to the issues to be determined by the Presiding Officer and the Board. In such proceedings, Board Counsel shall be considered to be a decisional employee for purposes of §§ 263.9 and 263.40 of subpart A.

Subpart C—Rules and Procedures for Assessment and Collection of Civil Money Penalties

§ 263.60 Scope.

The Uniform Rules set forth in subpart A of this part shall govern the procedures for assessment of civil money penalties, except as otherwise provided in this subpart.

§ 263.61 Opportunity for informal proceeding.

In the sole discretion of the Board's General Counsel, the General Counsel may, prior to the issuance by the Board of a notice of assessment of civil

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penalty, advise the affected person that the issuance of a notice of assessment of civil penalty is being considered and the reasons and authority for the proposed assessment. The General Counsel may provide the person an opportunity to present written materials or request a conference with members of the Board's staff to show that the penalty should not be assessed or, if assessed, should be reduced in amount.

§ 263.62 Relevant considerations for assessment of civil penalty.

In determining the amount of the penalty to be assessed, the Board shall take into account the appropriateness of the penalty with respect to the financial resources and good faith of the person charged, the gravity of the misconduct, the history of previous misconduct, the economic benefit derived by the person from the misconduct, and such other matters as justice may require.

§ 263.63 Assessment order.

(a) In the event of consent to an assessment by the person concerned, or if, upon the record made at an administrative hearing, the Board finds that the grounds for having assessed the penalty have been established, the Board may issue a final order of assessment of civil penalty. In its final order, the Board may modify the amount of the penalty specified in the notice of assessment.

(b) An assessment order is effective immediately upon issuance, or upon such other date as may be specified therein, and shall remain effective and enforceable until it is stayed, modified, terminated, or set aside by action of the Board or a reviewing court.

§ 263.64 Payment of civil penalty.

(a) The date designated in the notice of assessment for payment of the civil penalty will normally be 60 days from the issuance of the notice. If, however, the Board finds in a specific case that the purposes of the authorizing statute would be better served if the 60-day period is changed, the Board may shorten or lengthen the period or make the civil penalty payable immediately upon receipt of the notice of assessment. If a timely request for a formal hearing to challenge an assessment of civil penalty is filed, payment of the penalty shall not be required unless and until the Board issues a final order of assessment following the hearing. If an assessment order is issued, it will specify the date by which the civil penalty should be paid or collected.

(b) Checks in payment of civil penalties should be made payable to the "Board of Governors of the Federal Reserve System." Upon collection, the Board shall forward the amount of the penalty to the Treasury of the United States.

Subpart D—Rules and Procedures Applicable to Suspension or Removal of an Institution-Affiliated Party Where a Felony Is Charged or Proven

§ 263.70 Purpose and scope.

The rules and procedures set forth in this subpart apply to informal hearings afforded to any institution-affiliated party for whom the Board is the appropriate regulatory agency, who has been suspended or removed from office or prohibited from further participation in any manner in the conduct of the institution's affairs by a notice or order issued by the Board upon the grounds set forth in section 8(g) of the FDIA (12 U.S.C. 1818(g)).

§ 263.71 Notice or order of suspension, removal, or prohibition.

(a) *Grounds.* The Board may suspend an institution-affiliated party from office or prohibit an institution-affiliated party from further participation in any manner in the conduct of an institution's affairs when the person is charged in any information, indictment, or complaint authorized by a United States attorney with the commission of, or participation in, a crime involving dishonesty or breach of trust that is punishable by imprisonment for a term exceeding one year under State or Federal law. The Board may remove an institution-affiliated party from office or prohibit an institution-affiliated party from further participation in any manner in the conduct of an institution's affairs when the person is convicted of such an offense and the conviction is not subject to further direct appellate review. The Board may suspend or remove an institution-affiliated party or prohibit an institution-affiliated party from participation in an institution's affairs in these circumstances if the Board finds that continued service to the financial institution or participation in its affairs by the institution-affiliated party may pose a threat to the interests of the institution's depositors or may threaten to impair public confidence in the financial institution.

(b) *Contents.* The Board commences a suspension, removal, or prohibition action under this subpart with the issuance, and service upon a institution-affiliated party, of a notice of suspension from office, or order of removal from office, or notice or order of prohibition from participation in the financial institution's affairs. Such a notice or order shall indicate the basis for the suspension, removal, or prohibition and shall inform the institution-affiliated party of the right to request in writing, within 30 days of service of the notice or order, an opportunity to show at an informal hearing that continued service to, or participation in the conduct of the affairs of, the financial institution does not and is not likely to pose a threat to the interests of the financial institution's depositors or threaten to impair public confidence in the financial institution. Failure to file a timely request for an informal hearing shall be deemed to be a waiver of the right to request such a hearing. A notice of suspension or prohibition shall remain in effect until the criminal charge upon which the notice is based is finally disposed of or until the notice is terminated by the Board.

(c) *Service.* The notice or order shall be served upon the affiliated financial institution concerned, whereupon the institution-affiliated party shall immediately cease service to the financial institution or further participation in any manner in the conduct of the affairs of the financial institution. A notice or order of suspension, removal, or prohibition may be served by any of the means authorized for service under § 263.11(c)(2) of subpart A.

§ 263.72 Request for informal hearing.

An institution-affiliated party who is suspended or removed from office or prohibited from participation in the institution's affairs may request an informal hearing within 30 days of service of the notice or order. The request shall be filed in writing with the Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. The request shall state with particularity the relief desired and the grounds therefor and shall include, when available, supporting evidence in the form of affidavits. If the institution-affiliated party desires to present oral testimony or witnesses at the hearing, the institution-affiliated party must include a request to do so with the request for informal hearing. The request to present oral testimony or witnesses shall specify the names of the witnesses and the general nature of their expected testimony.

§ 263.73 Order for informal hearing.

(a) *Issuance of hearing order.* Upon receipt of a timely request for an informal hearing, the Secretary shall promptly issue an order directing an informal hearing to commence within 30 days of the receipt of the request. At the

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for the suspension, removal, or prohibition and shall inform the institution-affiliated party of the right to request in writing, within 30 days of service of the notice or order, an opportunity to show at an informal hearing that continued service to, or participation in the conduct of the affairs of, the financial institution does not and is not likely to pose a threat to the interests of the financial institution's depositors or threaten to impair public confidence in the financial institution. Failure to file a timely request for an informal hearing shall be deemed to be a waiver of the right to request such a hearing. A notice of suspension or prohibition shall remain in effect until the criminal charge upon which the notice is based is finally disposed of or until the notice is terminated by the Board.

(c) *Service.* The notice or order shall be served upon the affiliated financial institution concerned, whereupon the institution-affiliated party shall immediately cease service to the financial institution or further participation in any manner in the conduct of the affairs of the financial institution. A notice or order of suspension, removal, or prohibition may be served by any of the means authorized for service under § 263.11(c)(2) of subpart A.

§ 263.72 Request for informal hearing.

An institution-affiliated party who is suspended or removed from office or prohibited from participation in the institution's affairs may request an informal hearing within 30 days of service of the notice or order. The request shall be filed in writing with the Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. The request shall state with particularity the relief desired and the grounds therefor and shall include, when available, supporting evidence in the form of affidavits. If the institution-affiliated party desires to present oral testimony or witnesses at the hearing, the institution-affiliated party must include a request to do so with the request for informal hearing. The request to present oral testimony or witnesses shall specify the names of the witnesses and the general nature of their expected testimony.

§ 263.73 Order for informal hearing.

(a) *Issuance of hearing order.* Upon receipt of a timely request for an informal hearing, the Secretary shall promptly issue an order directing an informal hearing to commence within 30 days of the receipt of the request. At the

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request of the institution-affiliated party, the Secretary may order the hearing to commence at a time more than 30 days after the receipt of the request for hearing. The hearing shall be held in Washington, DC, or at such other place as may be designated by the Secretary, before presiding officers designated by the Secretary to conduct the hearing. The presiding officers normally will include representatives from the Board's Legal Division and the Division of Banking Supervision and Regulation and from the appropriate Federal Reserve Bank.

(b) *Waiver of oral hearing.* A institution-affiliated party may waive in writing his or her right to an oral hearing and instead elect to have the matter determined by the Board solely on the basis of written submissions.

(c) *Hearing procedures.* (1) The institution-affiliated party may appear at the hearing personally, through counsel, or personally with counsel. The institution-affiliated party shall have the right to introduce relevant written materials and to present an oral argument. The institution-affiliated party may introduce oral testimony and present witnesses only if expressly authorized by the Board or the Secretary. Except as provided in § 263.11, the adjudicative procedures of the Administrative Procedure Act (5 U.S.C. 554-557) and of subpart A of this part shall not apply to the informal hearing ordered under this subpart unless the Board orders that subpart A of this part applies.

(2) The informal hearing shall be recorded and a transcript shall be furnished to the institution-affiliated party upon request and after the payment of the cost thereof. Witnesses need not be sworn, unless specifically requested by a party or the presiding officers. The presiding officers may ask questions of any witness.

(3) The presiding officers may order the record to be kept open for a reasonable period following the hearing (normally five business days), during which time additional submissions to the record may be made. Thereafter, the record shall be closed.

(d) *Authority of presiding officers.* In the course of or in connection with any proceeding under this subpart, the Board or the presiding officers are authorized to administer oaths and affirmations, to take or cause to be taken depositions, to issue, quash or modify subpoenas and subpoenas duces tecum, and, for the enforcement thereof, to apply to an appropriate United States district court. All action relating to depositions and subpoenas shall be in accordance with the rules provided in §§ 263.34 and 263.53.

(e) *Recommendation of presiding officers.* The presiding officers shall make a recommendation to the Board concerning the notice or order of suspension, removal, or prohibition within 20 calendar days following the close of the record on the hearing.

§ 263.74 Decision of the Board.

(a) Within 60 days following the close of the record on the hearing, or receipt of written submissions where a hearing has been waived, the Board shall notify the institution-affiliated party whether the notice of suspension or prohibition will be continued, terminated, or otherwise modified, or whether the order of removal or prohibition will be rescinded or otherwise modified. The notification shall contain a statement of the basis for any adverse decision by the Board. In the case of a decision favorable to the institution-affiliated party, the Board shall take prompt action to rescind or otherwise modify the order of suspension, removal or prohibition.

(b) In deciding the question of suspension, removal, or prohibition under this subpart, the Board shall not rule on the question of the guilt or innocence of the individual with respect to the crime with which the individual has been charged.

Subpart E—Procedures for Issuance and Enforcement of Directives to Maintain Adequate Capital

§ 263.80 Purpose and scope.

This subpart establishes procedures under which the Board may issue a directive or take other action to require a state member bank or a bank holding company to achieve and maintain adequate capital.

§ 263.81 Definitions.

(a) *Bank holding company* means any company that controls a bank as defined in section 2 of the BHC Act, 12 U.S.C. 1841, and in the Board's Regulation Y (12 CFR 225.2(b)) or any direct or indirect subsidiary thereof other than a bank subsidiary as defined in section 2(c) of the BHC Act, 12 U.S.C. 1841(c), and in the Board's Regulation Y (12 CFR 225.2(a)).

(b) *Capital Adequacy Guidelines* means those guidelines for bank holding companies and state member banks contained in appendices A and D to the Board's Regulation Y (12 CFR Part 225), and in Appendix A to the Board's Regulation H (12 CFR part 208), or any succeeding capital guidelines promulgated by the Board.

(c) *Directive* means a final order issued by the Board pursuant to ILSA (12 U.S.C. 3907(b)(2)) requiring a state member bank or bank holding company to increase capital to or maintain capital at the minimum level set forth in the Board's Capital Adequacy Guidelines or as otherwise established under procedures described in § 263.85 of this subpart.

(d) *State member bank* means any state-chartered bank that is a member of the Federal Reserve System.

§ 263.82 Establishment of minimum capital levels.

The Board has established minimum capital levels for state member banks and bank holding companies in its Capital Adequacy Guidelines. The Board may set higher capital levels as necessary and appropriate for a particular state member bank or bank holding company based upon its financial condition, managerial resources, prospects, or similar factors, pursuant to the procedures set forth in § 263.85 of this subpart.

§ 263.83 Issuance of capital directives.

(a) *Notice of intent to issue directive.* If a state member bank or bank holding company is operating with less than the minimum level of capital established in the Board's Capital Adequacy Guidelines, or as otherwise established under the procedures described in § 263.85 of this subpart,the Board may issue and serve upon such state member bank or bank holding company written notice of the Board's intent to issue a directive to require the bank or bank holding company to achieve and maintain adequate capital within a specified time period.

(b) *Contents of notice.* The notice of intent to issue a directive shall include:

(1) The required minimum level of capital to be achieved or maintained by the institution;

(2) Its current level of capital;

(3) The proposed increase in capital needed to meet the minimum requirements;

(4) The proposed date or schedule for meeting these minimum requirements;

(5) When deemed appropriate, specific details of a proposed plan for meeting the minimum capital requirements; and

(6) The date for a written response by the bank or bank holding company to the proposed directive, which shall be at least 14 days from the date of issuance of the notice unless the Board determines a shorter period is necessary because of the financial condition of the bank or bank holding company.

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(c) *Response to notice.* The bank or bank holding company may file a written response to the notice within the time period set by the Board. The response may include:

(1) An explanation why a directive should not be issued;

(2) Any proposed modification of the terms of the directive;

(3) Any relevant information, mitigating circumstances, documentation or other evidence in support of the institution's position regarding the proposed directive; and

(4) The institution's plan for attaining the required level of capital.

(d) *Failure to file response.* Failure by the bank or bank holding company to file a written response to the notice of intent to issue a directive within the specified time period shall constitute a waiver of the opportunity to respond and shall constitute consent to the issuance of such directive.

(e) *Board consideration of response.* After considering the response of the bank or bank holding company, the Board may:

(1) Issue the directive as originally proposed or in modified form;

(2) Determine not to issue a directive and so notify the bank or bank holding company; or

(3) Seek additional information or clarification of the response by the bank or bank holding company.

(f) *Contents of directive.* Any directive issued by the Board may order the bank or bank holding company to:

(1) Achieve or maintain the minimum capital requirement established pursuant to the Board's Capital Adequacy Guidelines or the procedures in § 263.85 of this subpart by a certain date;

(2) Adhere to a previously submitted plan or submit for approval and adhere to a plan for achieving the minimum capital requirement by a certain date;

(3) Take other specific action as the Board directs to achieve the minimum capital levels, including requiring a reduction of assets or asset growth or restriction on the payment of dividends; or

(4) Take any combination of the above actions.

(g) *Request for reconsideration of directive.* Any state member bank or bank holding company, upon a change in circumstances, may request the Board to reconsider the terms of a directive and may propose changes in the plan under which it is operating to meet the required minimum capital level. The directive and plan continue in effect while such request is pending before the Board.

§ 263.84 Enforcement of directive.

(a) *Judicial and administrative remedies.* (1) Whenever a bank or bank holding company fails to follow a directive issued under this subpart, or to submit or adhere to a capital adequacy plan as required by such directive, the Board may seek enforcement of the directive, including the capital adequacy plan, in the appropriate United State district court, pursuant to section 908 (b)(2)(B)(ii) of ILSA (12 U.S.C. 3907(b)(2)(B)(ii)) and to section 8(i) of the FDIA (12 U.S.C. 1818(i)), in the same manner and to the same extent as if the directive were a final cease-and-desist order.

(2) The Board, pursuant to section 910(d) of ILSA (12 U.S.C. 3909(d)), may also assess civil money penalties for violation of the directive against any bank or bank holding company and any institution-affiliated party of the bank or bank holding company, in the same manner and to the same extent as if the directive were a final cease-and-desist order.

(b) *Other enforcement actions.* A directive may be issued separately, in conjunction with, or in addition to any other enforcement actions available to the Board, including issuance of cease-and-desist orders, the approval or denial of applications or notices, or any other actions authorized by law.

(c) *Consideration in application proceedings.* In acting upon any application or notice submitted to the Board pursuant to any statute administered by the Board, the Board may consider the progress of a state member bank or bank holding company or any subsidiary thereof in adhering to any directive or capital adequacy plan required by the Board pursuant to this subpart, or by any other appropriate banking supervisory agency pursuant to ILSA. The Board shall consider whether approval or a notice of intent not to disapprove would divert earnings, diminish capital, or otherwise impede the bank or bank holding company in achieving its required minimum capital level or complying with its capital adequacy plan.

§ 263.85 Establishment of increased capital level for specific institutions.

(a) *Establishment of capital levels for specific institutions.* The Board may establish a capital level higher than the minimum specified in the Board's Capital Adequacy Guidelines for a specific bank or bank holding company pursuant to:

(1) A written agreement or memorandum of understanding between the Board or the appropriate Federal Reserve Bank and the bank or bank holding company;

(2) A temporary or final cease-and-desist order issued pursuant to section 8(b) or (c) of the FDIA (12 U.S.C. 1818(b) or (c));

(3) A condition for approval of an application or issuance of a notice of intent not to disapprove a proposal;

(4) Or other similar means; or

(5) The procedures set forth in paragraph (b) of this section.

(b) *Procedure to establish higher capital requirement*—(1) *Notice.* When the Board determines that capital levels above those in the Board's Capital Adequacy Guidelines may be necessary and appropriate for a particular bank or bank holding company under the circumstances, the Board shall give the bank or bank holding company notice of the proposed higher capital requirement and shall permit the bank or bank holding company an opportunity to comment upon the proposed capital level, whether it should be required and, if so, under what time schedule. The notice shall contain the Board's reasons for proposing a higher level of capital.

(2) *Response.* The bank or bank holding company shall be allowed at least 14 days to respond, unless the Board determines that a shorter period is necessary because of the financial condition of the bank or bank holding company. Failure by the bank or bank holding company to file a written response to the notice within the time set by the Board shall constitute a waiver of the opportunity to respond and shall constitute consent to issuance of a directive containing the required minimum capital level.

(3) *Board decision.* After considering the response of the institution, the Board may issue a written directive to the bank or bank holding company setting an appropriate capital level and the date on which this capital level will become effective. The Board may require the bank or bank holding company to submit and adhere to a plan for achieving such higher capital level as the Board may set.

(4) *Enforcement of higher capital level.* The Board may enforce the capital level established pursuant to the procedures described in this section and any plan submitted to achieve that capital level through the procedures set forth in § 263.84 of this subpart.

Subpart F—Practice Before the Board

§ 263.90 Scope.

This subpart prescribes rules relating to general practice before the Board on one's own behalf or in a

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(2) A temporary or final cease-and-desist order issued pursuant to section 8(b) or (c) of the FDIA (12 U.S.C. 1818(b) or (c));

(3) A condition for approval of an application or issuance of a notice of intent not to disapprove a proposal;

(4) Or other similar means; or

(5) The procedures set forth in paragraph (b) of this section.

(b) *Procedure to establish higher capital requirement*—(1) *Notice.* When the Board determines that capital levels above those in the Board's Capital Adequacy Guidelines may be necessary and appropriate for a particular bank or bank holding company under the circumstances, the Board shall give the bank or bank holding company notice of the proposed higher capital requirement and shall permit the bank or bank holding company an opportunity to comment upon the proposed capital level, whether it should be required and, if so, under what time schedule. The notice shall contain the Board's reasons for proposing a higher level of capital.

(2) *Response.* The bank or bank holding company shall be allowed at least 14 days to respond, unless the Board determines that a shorter period is necessary because of the financial condition of the bank or bank holding company. Failure by the bank or bank holding company to file a written response to the notice within the time set by the Board shall constitute a waiver of the opportunity to respond and shall constitute consent to issuance of a directive containing the required minimum capital level.

(3) *Board decision.* After considering the response of the institution, the Board may issue a written directive to the bank or bank holding company setting an appropriate capital level and the date on which this capital level will become effective. The Board may require the bank or bank holding company to submit and adhere to a plan for achieving such higher capital level as the Board may set.

(4) *Enforcement of higher capital level.* The Board may enforce the capital level established pursuant to the procedures described in this section and any plan submitted to achieve that capital level through the procedures set forth in § 263.84 of this subpart.

Subpart F—Practice Before the Board

§ 263.90 Scope.

This subpart prescribes rules relating to general practice before the Board on one's own behalf or in a representational capacity, including the circumstances under which disciplinary sanctions – censure, suspension, or debarment – may be imposed upon persons appearing in a representational capacity, including attorneys and accountants, but not including employees of the Board. These disciplinary sanctions, which continue in effect beyond the duration of a specific proceeding, supplement the provisions of § 263.6(b) of subpart A, which address control of a specific proceeding.

§ 263.91 Censure, suspension or debarment.

The Board may censure an individual or suspend or debar such individual from practice before the Board if he or she engages, or has engaged, in conduct warranting sanctions as set forth in § 263.94; refuses to comply with the rules and regulations in this part; or with intent to defraud in any manner, willfully and knowingly deceives, misleads, or threatens any client or prospective client. The suspension or debarment of an individual shall be initiated only upon a finding by the Board that the conduct that forms the basis for the disciplinary action is egregious.

§ 263.92 Definitions.

(a) As used in this subpart, the following terms shall have the meaning given in this section unless the context otherwise requires.

(b)(1) *Practice before the Board* includes any matters connected with presentations to the Board or to any of its officers or employees relating to a client's rights, privileges or liabilities under laws or regulations administered by the Board. Such matters include, but are not limited to, the preparation of any statement, opinion or other paper or document by an attorney, accountant, or other licensed professional which is filed with, or submitted to, the Board, on behalf of another person in, or in connection with, any application, notification, report or document; the representation of a person at conferences, hearings and meetings; and the transaction of other business before the Board on behalf of another person.

(2) *Practice before the Board* does not include work prepared for an institution solely at its request for use in the ordinary course of its business.

(c) *Attorney* means any individual who is a member in good standing of the bar of the highest court of any state, possession, territory, commonwealth, or the District of Columbia.

(d) *Accountant* means any individual who is duly qualified to practice as a certified public accountant or a public accountant in any state, possession, territory, commonwealth, or the District of Columbia.

§ 263.93 Eligibility to practice.

(a) *Attorneys.* Any attorney who is qualified to practice as an attorney and is not currently under suspension or debarment pursuant to this subpart may practice before the Board.

(b) *Accountants.* Any accountant who is qualified to practice as a certified public accountant or public accountant and is not currently under suspension or debarment by the Board may practice before the Board.

§ 263.94 Conduct warranting sanctions.

Conduct for which an individual may be censured, debarred or suspended from practice before the Board includes, but is not limited to:

(a) Willfully violating or willfully aiding and abetting the violation of any provision of the Federal banking laws or the rules and regulations thereunder or conviction of any offense involving dishonesty or breach of trust;

(b) Knowingly giving false or misleading information, or participating in any way in the giving of false information to the Board or to any Board officer or employee, or to any tribunal authorized to pass upon matters administered by the Board in connection with any matter pending or likely to be pending before it. The term "information" includes facts or other statements contained in testimony, financial statements, applications, affidavits, declarations, or any other document or written or oral statement;

(c) Directly or indirectly attempting to influence, or offering or agreeing to attempt to influence, the official action of any officer or employee of the Board by the use of threats, false accusations, duress or coercion, by the offer of any special inducement or promise of advantage or by the bestowing of any gift, favor, or thing of value;

(d) Disbarment or suspension from practice as an attorney, or debarment or suspension from practice as a certified public accountant or public accountant, by any duly constituted authority of any state, possession, commonwealth, or the District of Columbia for the conviction of a felony or misdemeanor involving personal dishonesty or breach of trust in matters relating to the supervisory responsibilities of the Board, where the conviction has not been reversed on appeal;

(e) Knowingly aiding or abetting another individual to practice before the Board during that individual's period of suspension, debarment, or ineligibility;

(f) Contemptuous conduct in connection with practice before the Board, and knowingly making false accusations and statements, or circulating or publishing malicious or libelous matter;

(g) Suspension or debarment from practice before the OCC, the FDIC, the OTS, the Securities and Exchange Commission, the NCUA, or any other Federal agency based on matters relating to the supervisory responsibilities of the Board;

(h) Willful or knowing violation of any of the regulations contained in this part.

§ 263.95 Initiation of disciplinary proceeding.

(a) *Receipt of information.* An individual, including any employee of the Board, who has reason to believe that an individual practicing before the Board in a representative capacity has engaged in any conduct that would serve as a basis for censure, suspension or debarment under § 263.94, may make a report thereof and forward it to the Board.

(b) *Censure without formal proceeding.* Upon receipt of information regarding an individual's qualification to practice before the Board, the Board may, after giving the individual notice and opportunity to respond, censure such individual.

(c) *Institution of formal disciplinary proceeding.* When the Board has reason to believe that any individual who practices before the Board in a representative capacity has engaged in conduct that would serve as a basis for censure, suspension or debarment under § 263.94 the Board may, after giving the individual notice and opportunity to respond, institute a formal disciplinary proceeding against such individual. The proceeding shall be conducted pursuant to § 263.97 and shall be initiated by a complaint issued by the Board that names the individual as a respondent. Except in cases when time, the nature of the proceeding, or the public interest do not permit, a proceeding under this section shall not be instituted until the respondent has been informed, in writing, of the facts or conduct which warrant institution of a proceeding and the respondent has been accorded the opportunity to comply with all lawful requirements or take whatever action may be necessary to remedy the conduct that is the basis for the initiation of the proceeding.

§ 263.96 Conferences.

(a) *General.* The Board's staff may confer with a proposed respondent concerning allegations of misconduct or other grounds for censure, debarment or suspension, regardless of whether a proceeding for debarment or suspension has been instituted. If a conference results in a stipulation in connection with a proceeding in which the individual is the respondent, the stipulation may be entered in the record at the request of either party to the proceeding.

(b) *Resignation or voluntary suspension.* In order to avoid the institution of, or a decision in, a debarment or suspension proceeding, a person who practices before the Board may consent to suspension from practice. At the discretion of the Board, the individual may be suspended or debarred in accordance with the consent offered.

§ 263.97 Proceedings under this subpart.

Except as otherwise provided in this subpart, any hearing held under this subpart shall be held before an administrative law judge of the OFIA pursuant to procedures set forth in subparts A and B of this part. The Board shall appoint a person to represent the Board in the hearing. Any person having prior involvement in the matter which is the basis for the suspension or debarment proceeding shall be disqualified from representing the Board in the hearing. The hearing shall be closed to the public unless the Board, sua sponte or on the request of a party, otherwise directs. The administrative law judge shall refer a recommended decision to the Board, which shall issue the final decision and order. In its final decision and order, the Board may censure, debar or suspend an individual, or take such other disciplinary action as the Board deems appropriate.

§ 263.98 Effect of suspension, debarment or censure.

(a) *Debarment.* If the final order against the respondent is for debarment, the individual will not thereafter be permitted to practice before the Board unless otherwise permitted to do so by the Board pursuant to § 263.99 of this subpart.

(b) *Suspension.* If the final order against the respondent is for suspension, the individual will not thereafter be permitted to practice before the Board during the period of suspension.

(c) *Censure.* If the final order against the respondent is for censure, the individual may be permitted to practice before the Board, but such individual's future representations may be subject to conditions designed to promote high standards of conduct. If a written letter of censure is issued, a copy will be maintained in the Board's files.

(d) *Notice of debarment or suspension.* Upon the issuance of a final order for suspension or debarment, the Board shall give notice of the order to appropriate officers and employees of the Board, to interested departments and agencies of the Federal Government, and to the appropriate authorities of the State in which any debarred or suspended individual is or was licensed to practice.

§ 263.99 Petition for reinstatement.

The Board may entertain a petition for reinstatement from any person debarred from practice before the Board. The Board shall grant reinstatement only if the Board finds that the petitioner is likely to act in accordance with the regulations in this part, and that granting reinstatement would not be contrary to the public interest. Any request for reinstatement shall be limited to written submissions unless the Board, in its discretion, affords the petitioner an informal hearing.

Subpart G—Rules Regarding Claims Under the Equal Access to Justice Act

§ 263.100 Authority and scope.

This subpart implements the provisions of the Equal Access to Justice Act (5 U.S.C. 504) as they apply to formal adversary adjudications before the Board. The types of proceedings covered by this subpart are listed in §§ 263.1 and 263.50.

§ 263.101 Standards for awards.

A respondent in a covered proceeding that prevails on the merits of that proceeding against the Board, and that is eligible under this subpart as defined in § 263.103, may receive an award for fees and expenses incurred in the proceeding unless the position of the Board during the proceeding was substantially justified or special circumstances make an award unjust. The position of the Board includes, in addition to the position taken by the Board in the adversary proceeding, the action or failure to act by the Board upon which the adversary proceeding was based. An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceedings.

§ 263.102 Prevailing party.

Only an eligible applicant that prevailed on the merits of an adversary proceeding may qualify for an award under this subpart.

§ 263.103 Eligibility of applicants.

(a) *General rule.* To be eligible for an award under this subpart, an applicant must have been named as a party to the adjudicatory proceeding and show that it meets all other conditions of eligibility set forth in paragraphs (b) and (c) of this section.

(b) *Types of eligible applicant.* An applicant is eligible for an award only if it meets at least one of the following descriptions:

(1) An individual with a net worth of not more than $2 million at the time the adversary adjudication was initiated;

(2) Any sole owner of an unincorporated business, or any partnership, corporation, associations, unit of local government or organization, the net worth of which did not exceed $7,000,000 and which did not have more than 500 employees at the time the adversary adjudication was initiated;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees at the time the adversary proceeding was initiated; or

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees at the time the adversary proceeding was initiated.

(c) *Factors to be considered.* In determining the eligibility of an applicant:

(1) An applicant who owns an unincorporated business shall be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which he or she prevailed are related to personal interests rather than to business interests.

(2) An applicant's net worth includes the value of any assets disposed of for the purpose of meeting an eligibility standard and excludes the value of any obligations incurred for this purpose. Transfers of assets or obligations incurred for less than reasonably equivalent value will be presumed to have been made for this purpose.

(3) The net worth of a financial institution shall be established by the net worth information reported in conformity with applicable instructions and guidelines on the financial institution's financial report to its supervisory agency for the last reporting date before the initiation of the adversary proceeding. A bank holding company's net worth will be considered on a consolidated basis even if the bank holding company is not required to file its regulatory reports to the Board on a consolidated basis.

(4) The employees of an applicant include all those persons who were regularly providing services for

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(b) *Types of eligible applicant.* An applicant is eligible for an award only if it meets at least one of the following descriptions:

(1) An individual with a net worth of not more than $2 million at the time the adversary adjudication was initiated;

(2) Any sole owner of an unincorporated business, or any partnership, corporation, associations, unit of local government or organization, the net worth of which did not exceed $7,000,000 and which did not have more than 500 employees at the time the adversary adjudication was initiated;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees at the time the adversary proceeding was initiated; or

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees at the time the adversary proceeding was initiated.

(c) *Factors to be considered.* In determining the eligibility of an applicant:

(1) An applicant who owns an unincorporated business shall be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which he or she prevailed are related to personal interests rather than to business interests.

(2) An applicant's net worth includes the value of any assets disposed of for the purpose of meeting an eligibility standard and excludes the value of any obligations incurred for this purpose. Transfers of assets or obligations incurred for less than reasonably equivalent value will be presumed to have been made for this purpose.

(3) The net worth of a financial institution shall be established by the net worth information reported in conformity with applicable instructions and guidelines on the financial institution's financial report to its supervisory agency for the last reporting date before the initiation of the adversary proceeding. A bank holding company's net worth will be considered on a consolidated basis even if the bank holding company is not required to file its regulatory reports to the Board on a consolidated basis.

(4) The employees of an applicant include all those persons who were regularly providing services for

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remuneration for the applicant, under its direction and control, on the date the adversary proceeding was initiated. Part-time employees are counted on a proportional basis.

(5) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. As used in this subpart, "affiliates" are: individuals, corporations, and entities that directly or indirectly or acting through one or more entities control at least 25% of the voting shares of the applicant, and corporations and entities of which the applicant directly or indirectly owns or controls at least 25% of the voting shares. The Board may determine, in light of the actual relationship among the affiliated entities, that aggregation with regard to one or more of the applicant's affiliates would be unjust and contrary to the purposes of this subpart and decline to aggregate the net worth and employees of such affiliate; alternatively, the Board may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

§ 263.104 Application for awards.

(a) *Time to file.* An application and any other pleading or document related to the application may be filed with the Board whenever the applicant has prevailed in the proceeding within 30 days after service of the final order of the Board disposing of the proceeding.

(b) *Contents.* An application for an award of fees and expenses under this subpart shall contain:

(1) The name of the applicant and an identification of the proceeding;

(2) A showing that the applicant has prevailed, and an identification of the way in which the applicant believes that the position of the Board in the proceeding was not substantially justified;

(3) If the applicant is not an individual, a statement of the number of its employees on the date the proceeding was initiated;

(4) A description of any affiliated individuals or entities, as defined in § 263.103(c)(5), or a statement that none exist;

(5) A declaration that the applicant, together with any affiliates, had a net worth not more than the maximum set forth in § 263.103(b) as of the date the proceeding was initiated, supported by a net worth statement conforming to the requirements of § 263.105;

(6) A statement of the amount of fees and expenses for which an award is sought conforming to § 263.107; and

(7) Any other matters that the applicant wishes the Board to consider in determining whether and in what amount an award should be made.

(c) *Verification.* The application shall be signed by the applicant or an authorized officer of or attorney for the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application and supporting documents is true and correct.

(d) *Service.* The application and related documents shall be served on all parties to the adversary proceeding in accordance with § 263.11, except that statements of net worth shall be served only on counsel for the Board.

(e) *Presiding officer.* Upon receipt of an application, the Board shall, if feasible, refer the matter to the administrative law judge who heard the underlying adversary proceeding.

§ 263.105 Statement of net worth.

(a) *General rule.* A statement of net worth shall be filed with the application for an award of fees. The statement shall reflect the net worth of the applicant and all affiliates of the applicant, as specified in § 263.103(c)(5). In all cases, the administrative law judge or the Board may call for additional information needed to establish the applicant's net worth as of the initiation of the proceeding.

(b) *Contents.* (1) Except as otherwise provided herein, the statement of net worth may be in any form convenient to the applicant which fully discloses all the assets and liabilities of the applicant and all the assets and liabilities of its affiliates, as of the time of the initiation of the adversary adjudication. Unaudited financial statements are acceptable for individual applicants as long as the statement provides a reliable basis for evaluation, unless the administrative law judge or the Board otherwise requires. Financial statements or reports filed with or reported to a Federal or State agency, prepared before the initiation of the adversary proceeding for other purposes, and accurate as of a date not more than three months prior to the initiation of the proceeding, shall be acceptable in establishing net worth as of the time of the initiation of the proceeding, unless the administrative law judge or the Board otherwise requires.

(2) In the case of applicants or affiliates that are not banks, net worth shall be considered for the purposes of this subpart to be the excess of total assets over total liabilities, as of the date the underlying proceeding was initiated, except as adjusted under § 263.103(c)(5). The net worth of a bank holding company shall be considered on a consolidated basis. Assets and liabilities of individuals shall include those beneficially owned.

(3) If the applicant or any of its affiliates is a bank, the portion of the statement of net worth which relates to the bank shall consist of a copy of the bank's last Consolidated Report of Condition and Income filed before the initiation of the adversary adjudication. Net worth shall be considered for the purposes of this subpart to be the total equity capital (or, in the case of mutual savings banks, the total surplus accounts) as reported, in conformity with applicable instructions and guidelines, on the bank's Consolidated Report of Condition and Income filed for the last reporting date before the initiation of the proceeding.

(c) *Statement confidential.* Unless otherwise ordered by the Board or required by law, the statement of net worth shall be for the confidential use of the Board, counsel for the Board, and the administrative law judge.

§ 263.106 Measure of awards.

(a) *General rule.* Awards shall be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents, and expert witnesses, provided that no award under this subpart for the fee of an attorney or agent shall exceed $75 per hour. No award to compensate an expert witness shall exceed the highest rate at which the Board pays expert witnesses. An award may include the reasonable expenses of the attorney, agent, or expert witness as a separate item, if the attorney, agent, or expert witness ordinarily charges clients separately for such expenses.

(b) *Determination of reasonableness of fees.* In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, subject to the limits set forth above, the administrative law judge shall consider the following:

(1) If the attorney, agent, or expert witness is in private practice, his or her customary fee for like services;

(2) The prevailing rate for similar services in the community in which the attorney, agent, or expert witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

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(c) *Awards for studies.* The reasonable cost of any study, analysis, test, project, or similar matter prepared on behalf of an applicant may be awarded to the extent that the charge for the service does not exceed the prevailing rate payable for similar services, and the study or other matter was necessary solely for preparation of the applicant's case and not otherwise required by law or sound business or financial practice.

§ 263.107 Statement of fees and expenses.

The application shall be accompanied by a statement fully documenting the fees and expenses for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in work in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services performed. The administrative law judge or the Board may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

§ 263.108 Responses to application.

(a) *By counsel for the Board.* (1) Within 20 days after service of an application, counsel for the Board may file an answer to the application.

(2) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of the Board's position. If the answer is based on any alleged facts not already in the record of the proceeding, the answer shall include either supporting affidavits or a request for further proceedings under § 263.109, or both.

(b) *Reply to answer.* The applicant may file a reply only if the Board has addressed in its answer any of the following issues: that the position of the agency was substantially justified, that the applicant unduly protracted the proceedings, or that special circumstances make an award unjust. Any reply authorized by this section shall be filed within 15 days of service of the answer. If the reply is based on any alleged facts not already in the record of the proceeding, the reply shall include either supporting affidavits or a request for further proceedings under § 263.109, or both.

(c) *Additional response.* Additional filings in the nature of pleadings may be submitted only by leave of the administrative law judge.

§ 263.109 Further proceedings.

(a) *General rule.* The determination of a recommended award shall be made by the administrative law judge on the basis of the written record of the adversary adjudication, including any supporting affidavits submitted in connection with the application, unless, on the motion of either the applicant or Board counsel, or sua sponte, the administrative law judge or the Board orders further proceedings to amplify the record such as an informal conference, oral argument, additional written submissions, or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application and shall be conducted promptly and expeditiously.

(b) *Request for further proceedings.* A request for further proceedings under this section shall specifically identify the information sought or the issues in dispute and shall explain why additional proceedings are necessary.

(c) *Hearing.* The administrative law judge shall hold an oral evidentiary hearing only on disputed issues of material fact which cannot be adequately resolved through written submissions.

§ 263.110 Recommended decision.

The administrative law judge shall file with the Board a recommended decision on the fee application not later than 30 days after the submission of all pleadings and evidentiary material concerning the application. The recommended decision shall include written proposed findings and conclusions on the applicant's eligibility and its status as a prevailing party and, if applicable, an explanation of the reasons for any difference between the amount requested and the amount of the recommended award. The recommended decision shall also include, if at issue, proposed findings as to whether the Board's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. The administrative law judge shall file the record of the proceeding on the fee application upon the filing of the recommended decision and, at the same time, serve upon each party a copy of the recommended decision, findings, conclusions, and proposed order.

§ 263.111 Action by the Board.

(a) *Exceptions to recommended decision.* Within 20 days after service of the recommended decision, findings, conclusions, and proposed order, the applicant or counsel for the Board may file written exceptions thereto. A supporting brief may also be filed.

(b) *Decision by the Board.* The Board shall render its decision within 90 days after it has notified the parties that the matter has been received for decision. The Board shall serve copies of the decision and order of the Board upon the parties. Judicial review of the decision and order may be obtained as provided in 5 U.S.C. 504(c)(2).

Board of Governors of the Federal Reserve System, August 5, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-18913 Filed 8-8-91; 8:45 am]

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Secretary of the Board.

[FR Doc. 91-18913 Filed 8-8-91; 8:45 am]

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S.J. Res. 40/Pub. L. 102–80

Designating the week beginning September 8, 1991, and the week beginning September 6, 1992, each as "National Historically Black Colleges Week". (Aug. 6, 1991; 105 Stat. 373; 1 page) Price: $1.00

S.J. Res. 142/Pub. L. 102–81

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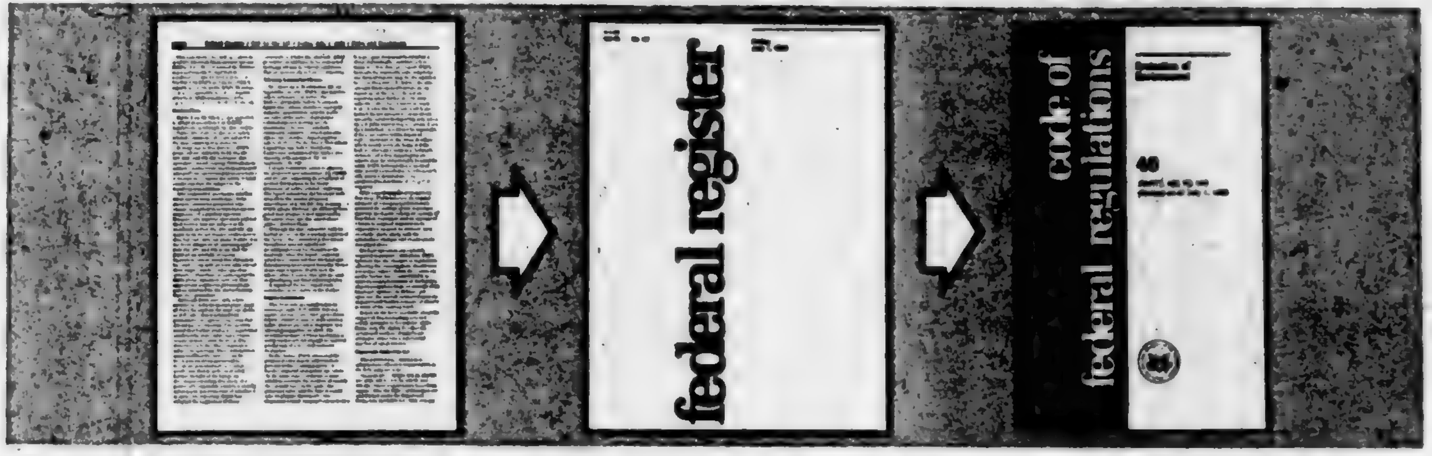

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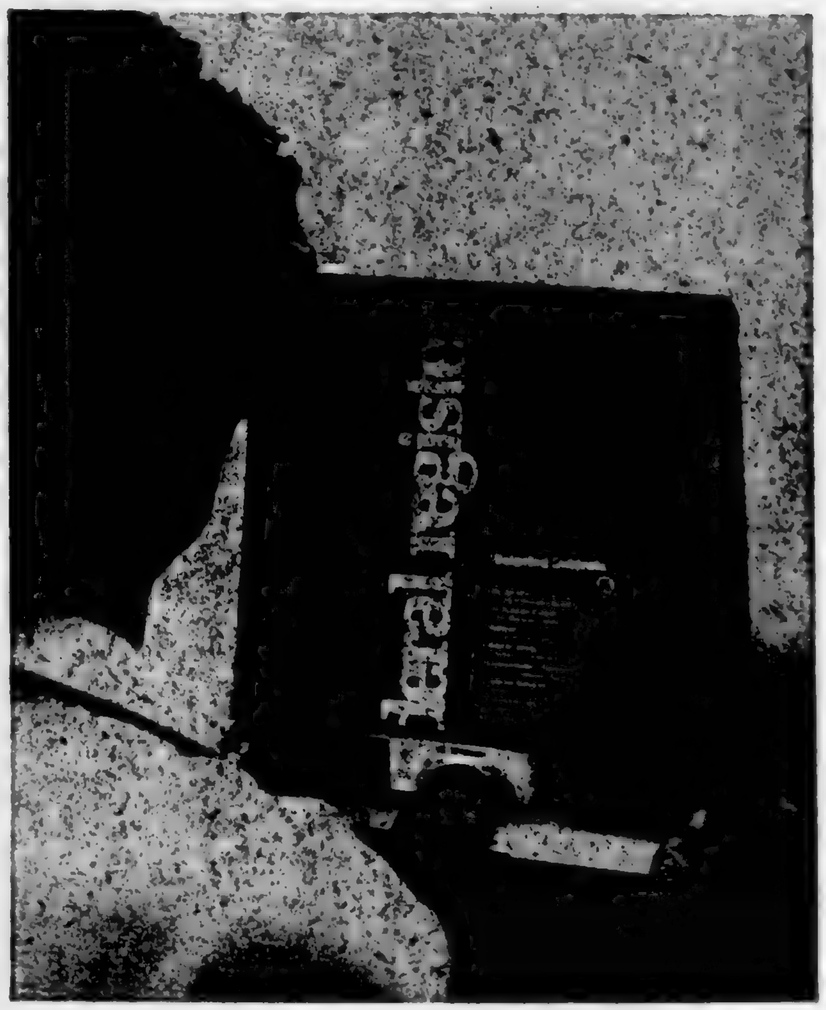

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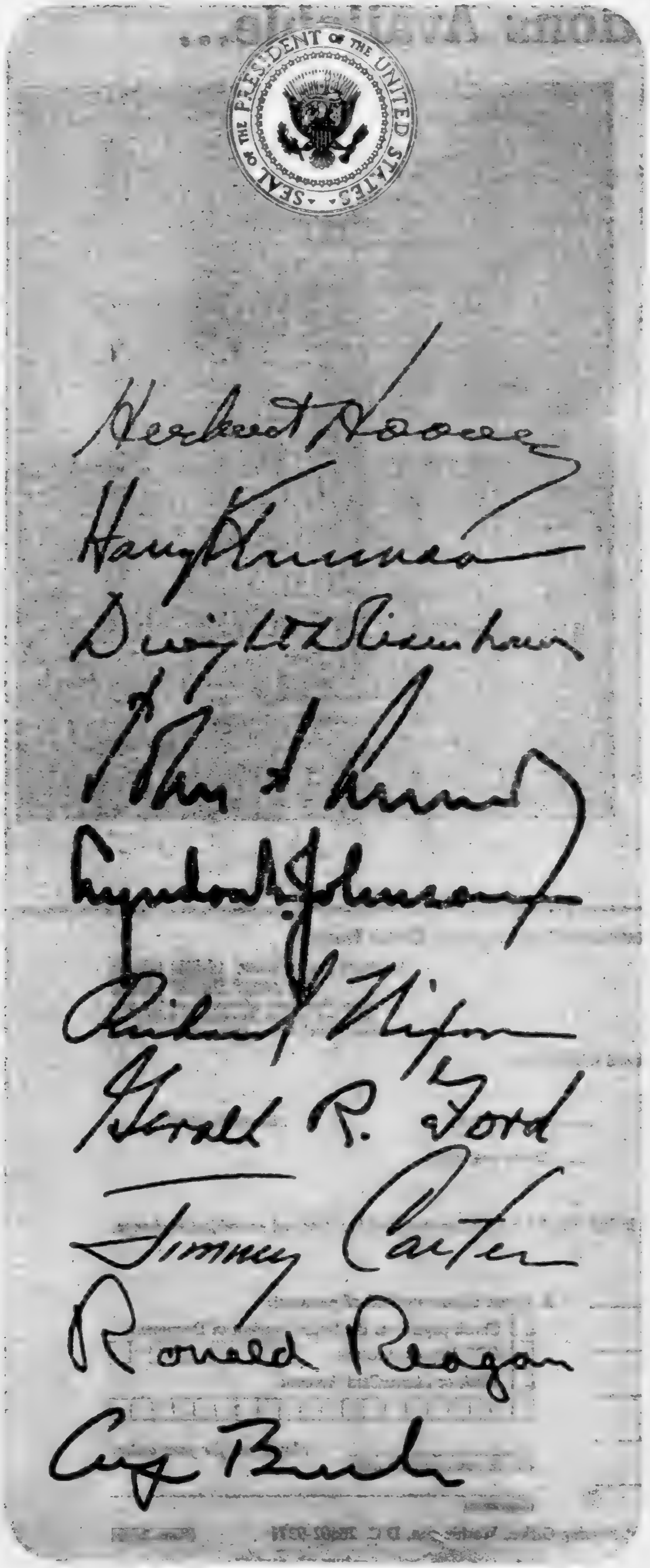
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DEPARTMENT OF AGRICULTU

Agricultural Marketing Servic

7 CFR Part 989

[FV-91-258FR]

Raisins Produced from Grape
in California; Revising Reserv
Requirements for Certain See
Raisins

AGENCY: Agricultural Marketing
USDA.

ACTION: Final rule.

SUMMARY: This final rule revise
administrative rules and regula
the California raisin marketing
This action will revise the reser
requirements for raisins produc
Fiesta, Emerald Seedless, Perle
Delight, and other similar grape
varieties. This revision was
recommended by the Raisin
Administrative Committee (Co
which is responsible for the loc
administration of the Federal m
order regulating the handling o
produced from grapes grown in
California.

EFFECTIVE DATE: August 12, 199

FOR FURTHER INFORMATION CON
Richard Lower, Marketing Spec
Marketing Order Administratio
Fruit and Vegetable Division, A
USDA, Room 2524-S, PO Box 9
Washington, DC 20090-6456; te
(202) 475-3861.

SUPPLEMENTARY INFORMATION:
final rule is issued under mark
agreement and Order No. 989 (
part 989), both as amended, reg
the handling of raisins produce
grapes grown in California, her
referred to as the "order." The
effective under the Agricultural
Marketing Agreement Act of 19

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Federal Register
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[FV-91-258FR]

Raisins Produced from Grapes Grown in California; Revising Reserve Pool Requirements for Certain Seedless Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the administrative rules and regulations of the California raisin marketing order. This action will revise the reserve pool requirements for raisins produced from Fiesta, Emerald Seedless, Perlette, Delight, and other similar grape varieties. This revision was recommended by the Raisin Administrative Committee (Committee), which is responsible for the local administration of the Federal marketing order regulating the handling of raisins produced from grapes grown in California.

EFFECTIVE DATE: August 12, 1991.

FOR FURTHER INFORMATION CONTACT: Richard Lower, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2524-S, PO Box 96456, Washington, DC 20090-6456; telephone: (202) 475-3861.

SUPPLEMENTARY INFORMATION: This final rule is issued under marketing agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act".

This final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 25 handlers of California raisins who are subject to regulation under the raisin marketing order, and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A majority of producers and a minority of handlers of California raisins may be classified as small entities.

This action revises the reserve pool requirements for raisins produced from Fiesta, Perlette, Delight, Emerald Seedless and other similiar grape varieties. Currently, these varietal types are included under the Natural (sun-dried) Seedless raisin category.

Section 989.110(a) of the rules and regulations provides the definition for Natural (sun-dried) Seedless varietal type of raisin which includes all sun-dried seedless raisins that possess characteristics similar to Natural Thompson Seedless raisins. The above-mentioned grape varieties fit into this varietal type category when they are sun-dried into raisins. Raisins made from Fiesta, Perlette, Delight, Emerald Seedless and other similiar grape varieties that meet the minimum grade and condition standards may be placed in the Natural (sun-dried) Seedless reserve pool by handlers to satisfy their reserve pool obligations (see § 989.66). The reserve portion of a crop must be held by handlers for the account of the Committee to be sold into specified outlets throughout the crop year.

Reserve pool raisins must be stored by handlers until they are relieved of their responsibility by the Committee. The Committee may relieve a handler's reserve pool responsibility by transferring reserve pool raisins to another handler who needs reserve pool raisins for an authorized reserve pool purchase. The Committee has found that some handlers are reluctant to accept raisins from the Natural (sun-dried) Seedless reserve pool that are of the Fiesta, Perlette, Delight, Emerald Seedless, and other similiar grape varieties from other handlers because the receiving handlers do not have a market for them. Raisins made from these varietal types are somewhat larger than raisins made from the Thompson Seedless grape and generally are sold into different markets.

Therefore, the Committee has recommended that handlers who acquire raisins made from the Fiesta, Perlette, Delight, Emerald Seedless, and other similiar grape varieties from producers and place them in the Natural (sun-dried) Seedless reserve pool be required to utilize such raisins. With this revision, handlers may not transfer reserve pool raisins made from the above-mentioned varietal types unless the transfer to another handler is acceptable to the Committee or the receiving handler.

Handlers acquiring raisins made from the Fiesta, Perlette, Delight, Emerald Seedless, and other similiar grape varieties from producers can place such raisins in the reserve pool. They will be required to use the above mentioned raisins rather than transfer them to another handler. This will alleviate the concerns receiving handlers have in accepting such raisins when they have no market in which to sell them.

In the case where handlers may not have any other reserve pool raisins besides raisins made from the Fiesta, Perlette, Delight, Emerald Seedless, and other similiar grape varieties, handlers may substitute free tonnage raisins that will be acceptable to the Committee for the varieties mentioned above. Substitution of free tonnage for reserve pool tonnage is authorized under § 989(b)(3) of the marketing order.

The rules and regulations currently provide that handlers must identify each lot of raisins received by having the Inspection Service attach control cards to one container on each pallet or to each bin of raisins in a lot. Thus, each lot of raisins received and placed in the reserve pool can be identified as to its varietal type and can be properly disposed of by handlers. Therefore, this change may be easily implemented since containers are properly marked as to the varietal type of raisins.

A proposed rule on this action was published in the **Federal Register** on May 28, 1991 (56 FR 24041). The proposal provided interested persons the opportunity to file written comments through June 27, 1991. One comment was submitted. The commenter inquired what the penalty would be if the raisin packer does not comply with this rule; what would happen if the packer runs out of raisins or goes bankrupt; and would the packers post a bond for the total amount of product worth for reserve raisins. After the effective date of this rule, if there is a raisin packer who does not comply with this rule, runs out of raisins or goes bankrupt, the Committee could conduct an investigation and submit the results with a recommended action to the Department. The Department would review the information and proceed with the appropriate action authorized under the Act. In response to the third question, there is no provision which requires raisin packers to post a bond while handling reserve raisins.

Based on available information, the Administrator of the AMS has determined that the issuance of this final rule will not have a sigificant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the Committee's recommendation, the one comment received, and other available information, it is found that revising the reserve pool requirements for certain seedless raisins will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because transfers of raisins between handlers are heaviest during the period from June through September and it is desirable that this rule cover as many of the transfers as possible.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is revised as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 989.166 is amended by revising paragraph (a)(1) to read as follows:

Note: This will appear in the annual Code of Federal Regulations.

§ 989.166 Reserve tonnage generally.

(a) *Set-aside obligations.*—(1) *Natural (sun-dried) Seedless.* Handlers who acquire any lot of natural condition Natural (sun-dried) Seedless raisins which have been dipped in or sprayed with water, with or without chemicals prior to or during the drying process, for purposes other than to expedite drying, or that have been produced from seedless varieties of grapes other than Thompson Seedless (i.e., Fiesta, Emerald Seedless, Perlette, Delight, and other similiar grape varieties), may set aside such raisins to satisfy their reserve pool obligation: *Provided,* That such raisins shall be identified by the Inspection Service affixing to one container on each pallet or to each bin in each lot, a prenumbered RAC control card (to be furnished by the Committee) which shall remain affixed until raisins are processed or disposed of as natural condition raisins: and *Provided further,* That such raisins shall not be deliverered to the Committee or transferred to another handler without approval of the Committee or the receiving handler.

* * * * *

Dated: August 5, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–19117 Filed 8–9–91; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7–91–74]

Drawbridge Operation Regulations; Gulf Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the City of St. Petersburg Beach and the Florida Department of Transportation, the Coast Guard is changing the operating regulations governing the Pinellas Bayway Structure "C" bridge, mile 114, at St. Petersburg Beach by permitting the number of openings to be limited during certain periods. This change is being made because periods of peak vehicular traffic have changed. This action will accommodate the needs of vehicular traffic and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on September 11, 1991.

FOR FURTHER INFORMATION CONTACT: Ian MacCartney, (305) 536–4103.

SUPPLEMENTARY INFORMATION: On May 23, 1991, the Coast Guard published proposed rule (56 FR 23666) concerning this amendment.

The Commander, Seventh Coast Guard District, also published the proposal as a Public Notice dated June 13, 1991. In each notice, interested persons were given until July 8, 1991, to submit comments.

Drafting Information:

The drafters of these regulations are Ian MacCartney, project officer, and LT Genelle Tanos, project attorney.

Discussion of Comments:

Eight comments and a petition were received in response to the proposed rule. Two commenters were opposed to any change in the regulations; two commenters preferred a 15-minute schedule instead of the proposed 20-minute schedule; four commenters and 370 signatories to a petition supported the proposed change in regulations. The Coast Guard has carefully considered the comments. No new information was provided to justify a change to the

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Robert C. Keeney,

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[FR Doc. 91–19117 Filed 8–9–91; 8:45 am]

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FOR FURTHER INFORMATION CONTACT: Ian MacCartney, (305) 536–4103.

SUPPLEMENTARY INFORMATION: On May 23, 1991, the Coast Guard published proposed rule (56 FR 23666) concerning this amendment.

The Commander, Seventh Coast Guard District, also published the proposal as a Public Notice dated June 13, 1991. In each notice, interested persons were given until July 8, 1991, to submit comments.

Drafting Information:

The drafters of these regulations are Ian MacCartney, project officer, and LT Genelle Tanos, project attorney.

Discussion of Comments:

Eight comments and a petition were received in response to the proposed rule. Two commenters were opposed to any change in the regulations; two commenters preferred a 15-minute schedule instead of the proposed 20-minute schedule; four commenters and 370 signatories to a petition supported the proposed change in regulations. The Coast Guard has carefully considered the comments. No new information was provided to justify a change to the

proposed rule published on May 23, 1991.

Federalism:

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Ecomomic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulations and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact is expected to be minimal, the Coast Guard certifies that they will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations:

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.287(e) is revised to read as follows:

§ 117.287 Gulf Intracoastal Waterway.

* * * * *

(e) The draw of the Pinellas Bayway, Structure "C" bridge, mile 114, at St. Petersburg Beach shall open on signal; except that from 7 a.m. to 7 p.m., the draw need open only on the hour, and forty minutes past the hour.

* * * * *

Dated: July 29, 1991.

K.M. Dantyne,

Acting Captain, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 91–19104 Filed 8–9–91; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3981–3]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Air Pollution Episode Contingency Plan for Albuquerque/Bernalillo County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: This notice approves the Air Pollution Episode Contingency Plan for Albuquerque/Bernalillo County, as adopted by the Albuquerque/Bernalillo County Air Quality Control Board on January 26, 1989. The Air Pollution Episode Contingency Plan for Albuquerque/Bernalillo County was submitted by the Governor of New Mexico to EPA on April 14, 1989. This plan adequately addresses the requirements of 40 Code of Federal Regulations (CFR), part 51, subpart H (Prevention of Air Pollution Emergency Episodes), and is comparable to the New Mexico Environmental Improvement Board's Air Pollution Episode Contingency Plan, as adopted on July 7, 1988. EPA approved this plan on August 21, 1990 (55 FR 34013).

DATES: This action will be effective October 11, 1991 unless notice is received within 30 days of publication that adverse or critical comments will be submitted. If the effective date is delayed timely notice will be published in the **Federal Register.**

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs at the EPA Regional Office listed below. Copies of the documents relevant to this proposed action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–AP), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Albuquerque Environmental Health Department, The City of Albuquerque, One Civic Plaza Northwest, 5th and Marquette Street NW., P.O. Box 1293, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Sather, Planning Section (6T–AP), Air Programs Branch, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Telephone (214) 655–7214, or (FTS) 255–7214.

SUPPLEMENTARY INFORMATION: This section contains an evaluation of the Air Pollution Episode Contingency Plan for Albuquerque/Bernalillo County. The Governor of New Mexico submitted the Air Pollution Episode Contingency Plan for Albuquerque/Bernalillo County to EPA on April 14, 1989. This plan was reviewed for consistency with the requirements of 40 CFR subpart H, § 51.150 (Classification of regions for episode plans), § 51.151 (Significant harm levels), and § 51.152 (Contingency plans).

The Air Pollution Episode Contingency Plan for Albuquerque/Bernalillo County addresses all the necessary requirements for a Priority I region (defined in 40 CFR 51.150). First, the plan includes significant harm levels for sulfur dioxide, PM_{10}, carbon monoxide, ozone, and nitrogen dioxide as per 40 CFR 51.151. Second, the plan adequately addresses all requirements for contingency plans outlined in 40 CFR 51.152. Three stages of episode criteria as per 40 CFR 51.152 (a)(1) and 40 CFR 51, appendix L, are set forth: air pollution alert, air pollution warning, and air pollution emergency. The Episode Stage Criteria Table on page 3 of the plan shows alert, warning, emergency, and significant harm levels for the pollutants sulfur dioxide, PM_{10}, carbon monoxide, ozone, and nitrogen dioxide. The plan also provides for public announcement of, and specifies adequate emission control actions to be taken at, each episode stage (40 CFR 51.152 (a)(2) and 40 CFR 51.152 (a)(3)). Finally, the plan sufficiently addresses the requirements of 51.152(b)(1–3) concerning prompt acquisition of forecasts of atmospheric stagnation conditions including updates, source compliance inspections, and communication procedures.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective October 11, 1991 unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a

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proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective October 11, 1991.

Final Action

The EPA is today approving the Air Pollution Episode Contingency Plan for Albuquerque/Bernalillo County, as adopted by the Albuquerque/Bernalillo County Air Quality Control Board on January 26, 1989. This plan adequately addresses the requirements of 40 CFR, part 51, subpart H (Prevention of Air Pollution Emergency Episodes).

The EPA has reviewed this request for revision of the federally-approved State implementation plan for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

This action has been classified as a table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived tables 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 11, 1991. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7642.

Dated: June 19, 1991.

W.B. Hathaway,

Acting Regional Administrator (6A).

40 CFR Part 52, Subpart GG, is amended as follows:

PART 52—[AMENDED]

1. The Authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart GG—New Mexico

2. Section 52.1639 is revised to read as follows:

§ 52.1639 Prevention of air pollution emergency episodes.

(a) The plan submitted by the Governor of New Mexico on August 19, 1988, and as adopted on July 7, 1988, by the New Mexico Environmental Improvement Board, entitled Air Pollution Episode Contingency Plan for New Mexico, is approved as meeting the requirements of section 110 of the Clean Air Act and 40 CFR part 51, subpart H. This plan is only approved for the State of New Mexico outside of the boundaries of Bernalillo County.

(b) The plan submitted by the Governor in (a) for the Air Pollution Episode Contingency Plan is not applicable to Bernalillo County. Therefore, the following plan described below is applicable to sources located within the boundaries of Bernalillo County (including the City of Albuquerque). This plan, submitted by the Governor of New Mexico on April 14, 1989, and adopted on January 26, 1989, by the Albuquerque/Bernalillo County Air Quality Control Board, entitled Air Pollution Episode Contingency Plan for Bernalillo County, is approved as meeting the requirements of section 110 of the Clean Air Act and 40 CFR part 51, subpart H.

[FR Doc. 91–18740 Filed 8–9–91; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 400, 406 and 407

Medicare and Medicaid; Eligibility for Premium Hospital Insurance; State Buy-in Agreements

[BPD–668–FC]

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: These rules—

1. Set forth the requirements and procedures for certain individuals under age 65 to enroll and become entitled to Medicare Part A benefits through payment of monthly premiums;

2. Revise the rules on State buy-in for Medicare benefits to provide that—

- After 1988, a State may, at any time, request a buy-in agreement or a modification of an existing agreement, including a modification under which the State may enroll a pay Part B premiums on behalf of a new buy-in coverage group—Qualified Medicare Beneficiaries (QMBs); and
- After 1989, a State may request and obtain a modification of an existing agreement, under which the State may also enroll QMB's in Part A and pay Part A premiums on their behalf.

These amendments are necessary to conform HCFA rules to changes made by section 9010 of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), section 301 of the Medicare Catastrophic Coverage Act of 1988 (MCCA), and sections 6012 and 6013 of the Omnibus Budget Reconciliation Act of 1989 (OBRA '89).

The purposes of the amendments are—

1. To make it possible for certain disabled individuals to become entitled to Medicare Part A benefits that require payment of a monthly premium. The provisions apply to an individual under age 65 who loses entitlement to Medicare Part A without premiums because his or her earnings exceed the limit imposed for entitlement to social security disability benefits, on which Medicare Part A entitlement was based; and

2. To make available to States, for payment of premiums for QMBs, the administrative and cost efficiencies of the State buy-in procedures.

EFFECTIVE DATE: These regulations are effective September 11, 1991.

COMMENT DATE: To be considered, comments must be mailed or delivered

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 400, 406 and 407

Medicare and Medicaid; Eligibility for Premium Hospital Insurance; State Buy-in Agreements

[BPD–668–FC]

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: These rules—

1. Set forth the requirements and procedures for certain individuals under age 65 to enroll and become entitled to Medicare Part A benefits through payment of monthly premiums;

2. Revise the rules on State buy-in for Medicare benefits to provide that—

- After 1988, a State may, at any time, request a buy-in agreement or a modification of an existing agreement, including a modification under which the State may enroll a pay Part B premiums on behalf of a new buy-in coverage group—Qualified Medicare Beneficiaries (QMBs); and
- After 1989, a State may request and obtain a modification of an existing agreement, under which the State may also enroll QMB's in Part A and pay Part A premiums on their behalf.

These amendments are necessary to conform HCFA rules to changes made by section 9010 of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), section 301 of the Medicare Catastrophic Coverage Act of 1988 (MCCA), and sections 6012 and 6013 of the Omnibus Budget Reconciliation Act of 1989 (OBRA '89).

The purposes of the amendments are—

1. To make it possible for certain disabled individuals to become entitled to Medicare Part A benefits that require payment of a monthly premium. The provisions apply to an individual under age 65 who loses entitlement to Medicare Part A without premiums because his or her earnings exceed the limit imposed for entitlement to social security disability benefits, on which Medicare Part A entitlement was based; and

2. To make available to States, for payment of premiums for QMBs, the administrative and cost efficiencies of the State buy-in procedures.

EFFECTIVE DATE: These regulations are effective September 11, 1991.

COMMENT DATE: To be considered, comments must be mailed or delivered

to the appropriate address, as provided below, and must be received by 5 p.m. on October 11, 1991.

ADDRESSES: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–668–FC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or
Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments.

In commenting, please refer to file code BPD–668–FC. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202–245–7890).

FOR FURTHER INFORMATION, CONTACT: Denis Garrison, (301) 966–5643.

SUPPLEMENTARY INFORMATION:

A. Entitlement to Premium Hospital Insurance

1. Statutory Provisions

Before enactment of OBRA '89, only an individual who had attained age 65 and who met other specified conditions was eligible to enroll for "premium" hospital insurance, that is, Part A benefits for which payment of monthly premiums is required.

Section 6012 of OBRA '89 adds to the Act a new section 1818A to provide that an individual who has not attained age 65 is also eligible to enroll for premium hospital insurance if he or she meets the following requirements:

- Has been entitled to Part A benefits under section 226(b) of the Act (entitlement based on entitlement to social security disability benefits);
- Continues to have the disabling physical or mental impairment on the basis of which the individual qualified for disability benefits; but
- Loses entitlement under section 226(b) due solely to having earnings that exceed the "substantial gainful activity" limit established by the social security regulations at 20 CFR 404.1574; and
- Is not otherwise entitled to Part A benefits.

Section 6408(d) of OBRA '89 amends the Medicaid statute as follows:

- Provides for Medicaid payment of Part A premiums on behalf of individuals who are eligible to enroll for Part A under section 1818A of the Act (identified as Qualified Disabled and Working Individuals or QDWIs), who meet specified income and resources tests, and who are not otherwise eligible for Medicaid.
- Excludes QDWIs from the definition of QMB.

The amendment does not authorize use of the State buy-in procedures to pay the premiums for QDWIs. The Medicaid provisions applicable to QDWIs are set forth in a separate proposed rule (MB–031–P).

2. Changes in the Regulations

Revised designation scheme.

In anticipation of changes likely to be made by future statutory amendments, we have revised the designation scheme of part 406 of our rules (Hospital Insurance Eligibility and Entitlement) to make room for adding new provisions in logical order. We have also made substantive changes, as discussed below.

a. In § 406.1 (Statutory basis), we have added reference to the new section 1818A of the law, and in § 406.5 (Basis of eligibility and entitlement), we have stated that certain persons under age 65 may also obtain Part A benefits by paying a premium.

b. In § 406.20 (Basic requirements), we have revised paragraphs (a) and (b) and added a new paragraph (c) to set forth the requirements for the new under age 65 group.

c. In § 406.21 (now called "Individual enrollment"), we have—

- Expanded a cross-reference in paragraph (a)
- Revised paragraph (b) to specify the initial enrollment period for those under age 65;
- Revised paragraph (d) to make clear that the "deemed" initial enrollment period applies only to those age 65 or over; and
- Expanded paragraph (e)(1) to include a definition of "large group health plan" (LGHP), because the "special enrollment period" provisions of the paragraph apply with respect to LGHPs as well as to the "employer group health plan" (EGHP) that was already defined in the paragraph.

d. We have expanded the "effect of enrollment" provisions of current § 406.21 to add the effect on the new under age 65 group, and redesignated all those provisions under a new § 406.22-Effect of month of enrollment on entitlement.

e. We have redesignated § 406.25 as § 406.28 (End of entitlement), and made the following changes:

- Revised paragraph (c) to make clear that loss of SMI benefits ends entitlement only for those age 65 or over; and
- Added a new paragraph (f) to specify that, for those under age 65, entitlement ends with the end of the month after the month in which the individual receives notice of medical improvement.

f. We have redesignated § 406.22 (Monthly premiums) as § 406.32 and added new paragraphs (e) and (f) to specify—

- The months for which premiums are due; and
- The option for public or private organizations to pay Part A premiums on behalf of individuals.

g. Since Part A premiums for QDWIs may not be paid under a State buy-in agreement, the Medicare rules need only make clear that individuals who qualify as QDWIs may not qualify as QMBs. This is accomplished by defining QDWIs and QMBs in § 400.200 of the HCFA rules.

B. Extension of Disability Reentitlement Period

1. Statutory Provision

Section 9010 of the Omnibus Budget Reconciliation Act of 1987 amended sections 223(a)(i) and sections 202 (d), (e), and (f) of the Act to extend the disability reentitlement period from 15 months to 36 months, effective January 1, 1988. Section 9010 also amended section 226(b) of the Act to stipulate that Medicare must end as though the reentitlement period was still only 15 months long.

2. Changes in the Regulations

We have revised § 406.12(e) to reflect the effect of the new provisions on Medicare entitlement.

C. Expansion of State Buy-in Options

1. Statutory Provisions

Prior to 1970 and again during 1981, States were permitted, under section 1843 of the Act, to request a buy-in agreement with the Secretary, or to request a modification to broaden an existing agreement. Under the agreement (or modified agreement) States could elect to enroll in Medicare Part B and pay Part B premiums for certain Medicaid recipients who were also eligible for Part B coverage. The States had two basic options with respect to buy-in: They could limit buy-in to Medicaid recipients who were cash assistance recipients or they could elect a broad buy-in group consisting of all Medicaid recipients who were also eligible for Medicare Part B. Part B enrollment and premium payment under the section 1843 buy-in provisions is determined without regard to the enrollment and coverage period and the premium computation rules applicable to people who enroll for Part B on an individual basis. Some States have elected to buy-in only for their cash assistance recipients, while a number of others elected to buy-in for all Medicaid recipients who are eligible for Medicare Part B.

Section 301 of the MCCA amended section 1843 of the Act to—

- Provide that States may, at any time after 1988, request a buy-in agreement or a modification of an existing agreement; and
- Establish Qualified Medicare Beneficiaries (QMBs)[1] as a group for which States may pay Part B premiums through buy-in. This means that a State that has a buy-in agreement covering only cash assistance recipients may broaden that agreement to include QMBs or all Medicaid recipients.

With respect to Part B buy-in for QMBs, unless a State indicated to us that it wished to use a different method, we considered that the State had requested and been granted a modification of its buy-in agreement to include Part B premiums for QMBs, effective January 1, 1989. All States currently have such a modification in effect.

Section 6013 of OBRA '89 added to section 1818 of the Act a new subsection (g) which requires the Secretary, at the request of a State after 1989, to enter into a modification of its buy-in agreement under which the State may enroll QMBs in Part A and pay the Part A premiums on their behalf.

Before enactment of section 6013, an individual who failed to enroll for premium Part A during his or her initial enrollment period (generally the 7-month period surrounding the month of attainment of age 65) could enroll only during the annual 3-month (January–March) general enrollment period (GEP). Coverage based on a GEP enrollment is effective the following July 1. This meant that an individual who first met the QMB eligibility requirements (other than entitlement to Part A) shortly after March 31 could not enroll until the next GEP, with coverage beginning the following July, as many as 15 months after the individual met the income and resource standards for QMB status. In such cases, QMB status would be significantly delayed by the individual's inability to enroll in Part A outside a GEP.

Furthermore, if an individual enrolled in Part A more than one year after initial eligibility, the State have been required to pay a premium increased because of late enrollment. In States that elect the buy-in method, individuals can become entitled to Part A benefits when they first meet all other QMB eligibility requirements, without regard to the enrollment period and premium increase rules that apply to individual enrollment. In order to make this possible, we will consider that an individual who, as determined by the State, meets the QMB requirements becomes a QMB at the instant in which the buy-in becomes effective with respect to that individual. This is necessary because the Medicaid statute provides that an individual must be entitled to Medicare Part A in order to be a QMB, but only QMBs can qualify for enrollment outside the established initial and general enrollment periods. By considering that the individual's QMB status becomes effective at the same instant that the buy-in becomes effective, we can honor the intent of section 6013—to avoid delay in qualifying for QMB status.

The State buy-in procedure is the most efficient way for a State to obtain coverage and pay Part A premiums for QMBs, and most closely fulfills the intent of Congress that State payment of Part premium for QMBs begin without significant delays. According, we informed the States that we would consider all States to have requested modification of their buy-in agreements to cover Part A for QMBs, unless they notified us, by a specified date, that they did not wish to use the buy-in procedure. Following is a list of the 35 States that have buy-in agreement modifications to include payment of Part A premium for QMBs:

Alaska
Arizona
Arkansas
Connecticut
Delaware
District of Columbia
Florida
Georgia
Hawaii
Idaho
Indiana
Iowa
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Montana
Nevada
New Hampshire
New York
North Carolina
North Dakota
Ohio
Oklahoma
Pennsylvania
Rhode Island
South Dakota
Tennessee
Vermont
West Virginia
Washington
Wisconsin
Wyoming

In general, for QMBs who meet the SMI or premium HI eligibility requirements, enrollment is effective with the month in which they are determined to have QMB status. However, if enrollment is under a State buy-in agreement, that enrollment cannot be effective until the effective month of the agreement modification that covers QMBs.

2. Changes in the Regulations

Changes required in the Medicaid rules for buy-in are included in a proposed rule (MB-024-P) that contains all of the Medicaid provisions applicable to QMBs. This document contains only the changes that affect the Medicare rules, specifically, part 406—Hospital Insurance Eligibility and Entitlement, and part 407—Supplementary Medical Insurance (SMI) Enrollment and Entitlement.

a. In § 400.200, we have added a definition of "Qualified Medicare Beneficiary" or "QMB."

b. In part 406, we have added a new § 406.26 to set forth the rules that apply when a State enrolls QMBs in premium hospital insurance (Premium HI) under a State buy-in agreement. Section 406.26 makes clear the following:

- Premium HI buy-in for QMBs is effective beginning in 1990.
- Buy-in coverage begins when the individual has QMB status and the agreement modification covering Part A premiums for QMBs is effective.
- Buy-in coverage ends when HCFA receives the State's notice of loss of QMB status, the buy-in agreement is terminated, or the individual becomes entitled to premium-free hospital insurance.
- When buy-in coverage ends, the individual is deemed to have enrolled during his or her initial enrollment period, in premium-HI, unless buy-in coverage ended because the individual had become eligible for premium-free hospital insurance; and
- The individual is free to terminate the deemed enrollment.

c. In § 407.40, (Enrollment under a State buy-in agreement), we have—

- Expanded the "Statutory basis" paragraph to refer to section 301 of the MCCA and section 6013 of OBRA '89; and
- Added a definition of "Qualified Medicare Beneficiary," citing § 400.200.

d. In §§ 407.42 and 407.43, we have added a new buy-in category: Individuals who are Qualified Medicare Beneficiaries, and footnoted this new category to indicate that the rules for buy-in for Part A benefits for QMBs are set forth in § 406.26 of the Medicare rules.

e. We have also taken advantage of this opportunity to simplify the terminology and the description of the buy-in groups.

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[1] Section 9403 of the Omnibus Reconciliation Act of 1986 defined QMBs (in section 1905(p) of the Act) and gave States the option of paying Medicare cost-sharing on their behalf.

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a. In § 400.200, we have added a definition of "Qualified Medicare Beneficiary" or "QMB."

b. In part 406, we have added a new § 406.26 to set forth the rules that apply when a State enrolls QMBs in premium hospital insurance (Premium HI) under a State buy-in agreement. Section 406.26 makes clear the following:

- Premium HI buy-in for QMBs is effective beginning in 1990.
- Buy-in coverage begins when the individual has QMB status and the agreement modification covering Part A premiums for QMBs is effective.
- Buy-in coverage ends when HCFA receives the State's notice of loss of QMB status, the buy-in agreement is terminated, or the individual becomes entitled to premium-free hospital insurance.
- When buy-in coverage ends, the individual is deemed to have enrolled during his or her initial enrollment period, in premium-HI, unless buy-in coverage ended because the individual had become eligible for premium-free hospital insurance; and
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c. In § 407.40, (Enrollment under a State buy-in agreement), we have—

- Expanded the "Statutory basis" paragraph to refer to section 301 of the MCCA and section 6013 of OBRA '89; and
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d. In §§ 407.42 and 407.43, we have added a new buy-in category: Individuals who are Qualified Medicare Beneficiaries, and footnoted this new category to indicate that the rules for buy-in for Part A benefits for QMBs are set forth in § 406.26 of the Medicare rules.

e. We have also taken advantage of this opportunity to simplify the terminology and the description of the buy-in groups.

Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposal. The notice identifies the legal authority under which the rule is proposed, and the terms and substance of the proposed rule or a description of the subjects and issues involved. The proposed rulemaking procedure can be waived when an agency finds that it is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding of good cause in a final rule.

These rules conform HCFA regulations to three self-executing amendments to the Medicare law (title XVIII of the Social Security Act). These amendments to the Act are so specific and detailed that they leave little or no room for alternative interpretations or implementation. Accordingly, we find that there is good cause to dispense with proposed rulemaking as unnecessary.

However, as indicated under "Dates" above, we will consider timely comments. Although we cannot acknowledge comments individually, if we revise these regulations as a result of comments, we will discuss all timely comments in the preamble to the revised rules.

Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, that is likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This final rule specifies the requirements and procedures regarding premium hospital insurance for individuals under age 65. However, Medicare program costs will not increase since the individuals affected have been covered under premium free Part A and these rules permit Part A coverage to continue if certain conditions are met and premium payments are made.

This proposal also revises the rules on State buy-in for Qualified Medicare Beneficiaries (QMBs) under Medicare Parts A and B.

As a result of the Part A State buy-in, we expect that approximately 200,000 individuals will be added to the Medicare Part A rolls. It is estimated that, as a result of these new enrollees, Medicare Part A income and outlays will increase by $425 million. However, we do not project any significant increase in net Medicare program costs since the monthly Part A premium covers the estimated monthly average Medicare Part A expenditure per entitled aged beneficiary. If these enrollees have higher utilization rates or use higher cost services (by being sicker or older, or for any other reason) than the average Medicare Part A entitled aged beneficiary, then their costs would exceed the premium payments made on their behalf, resulting in an increase in net Medicare program costs; however, data to substantiate or refute this possibility is not available at this time.

We also do not have data to determine how the cost of the Part A premium compares to average Medicaid hospital costs per recipient for these new Part A enrollees. If these costs are comparable, then there will be no significant impact on Medicaid expenditures resulting from the Part A buy-in. To the extent these new enrollees have higher costs than the average Part A enrollee, Medicaid program costs will decrease; however, low Medicaid hospital reimbursement rates may result in an offsetting increase in program payments when Part A premium payments under the buy-in are substituted for direct provider reimbursement.

With regard to Medicare Part B, all States have buy-in agreements and will initially expend funds by paying premiums on behalf of QMB's. However, the States' financial burden for QMBs will ease as claims for services are submitted to Medicare for payment. The effects of Part B QMBs on Medicare expenditures will be discussed in a separate proposed rule, "Medicaid Payment of Medicare Cost Sharing for QMBs."

Since this rule does not meet any of the E.O. 12291 criteria listed above, this rule is not a major rule and a regulatory impact analysis is not required.

B. Regulatory Flexibility Act (RFA)

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (5 U.S.C. 601 through 612) unless the Secretary certifies that a rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals. This rule affects only individuals and States. We have not prepared a regulatory flexibility analysis or rural impact statement because we have determined, and the Secretary certifies, that this rule will not have a significant impact on a substantial number of small entities or on the operations of a substantial number of small rural hospitals.

Paperwork Reduction Act

These regulations contain no new information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

List of Subjects

42 CFR Part 400

Grant programs—health, Health facilities, Health maintenance organizations (HMO), Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 406

Health facilities, Kidney diseases, Medicare.

42 CFR Part 407

Medicare Part B enrollment and entitlement, State buy-in agreements.

42 CFR chapter IV is amended as set forth below:

PART 400—INTRODUCTION; DEFINITIONS

1. The authority citation continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and 44 U.S.C. Chapter 35.

§ 400.200 [Amended]

2. In § 400.200, the following statements and definitions are added, in alphabetical order:

* * * * *

QDWI stands for Qualified Disabled and Working Individual.

QMB stands for Qualified Medicare Beneficiary.

Qualified Disabled and Working Individual means an individual who—

(1) Is eligible to enroll for Medicare Part A under section 1818A of the Act.

(2) Has income, as determined in accordance with SSI methodologies, that does not exceed 200 percent of the Federal poverty guidelines (as defined and revised annually by the Office of Management and Budget) for a family of the size of the individual's family;

(3) Has resources, as determined in accordance with SSI methodologies, that

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do not exceed twice the relevant maximum amount established, for SSI eligibility, for an individual or for an individual and his or her spouse; and

(4) Is not otherwise eligible for Medicaid.

Qualified Medicare Beneficiary means an individual who—

(1) Is entitled to Medicare Part A, with or without payment of premiums, but is not entitled solely because he or she is eligible to enroll as a QDWI;

(2) Has resources, as determined in accordance with SSI methodologies, that do not exceed twice the maximum amount established for SSI eligibility; and

(3) Has income, as determined in accordance with SSI methodologies, that does not exceed 100 percent of the Federal poverty guidelines.

* * * * *

PART 406—HOSPITAL INSURANCE ELIGIBILITY AND ENTITLEMENT

1. The table of contents is revised to read as follows:

Subpart A—General Provisions

Sec.
406.1 Statutory basis.
406.2 Scope.
406.3 Definitions.
406.5 Basis of eligibility and entitlement.
406.6 Application or enrollment.
406.7 Forms to apply for entitlement under Medicare Part A.

Subpart B—Hospital Insurance Without Premiums

406.10 Individual age 65 or over who is entitled to social security or railroad retirement benefits.
406.11 Individual age 65 or over who is eligible as a social security or railroad retirement beneficiary, or on the basis of government employment.
406.12 Individual under age 65 who is entitled to social security or railroad retirement disability benefits.
406.13 Individual who has end-stage renal disease.
406.15 Special provisions applicable to Medicare qualified government employment.

Subpart C—Premium Hospital Insurance

406.20 Basic requirements.
406.21 Individual enrollment.
406.22 Effect of month of enrollment on entitlement.
406.26 Enrollment under State buy-in.
406.28 End of entitlement.
406.32 Monthly premiums.
406.33 Determination of months to be counted for premium increase: Enrollment.
406.34 Determination of months to be counted for premium increase: Reenrollment.
406.38 Prejudice to enrollment rights because of Federal Government error.

Subpart D—Special Circumstances That Affect Entitlement to Hospital Insurance

406.50 Nonpayment of benefits on behalf of certain aliens.
406.52 Conviction of subversive activities.

Authority: Secs. 202(t), 202(u), 226, 226A, 1102, 1818, and 1871 of the Social Security Act (42 U.S.C. 402(t), 402(u), 426, 426-1, 1302, 1395i-2, and 1395hh) and 3103 of Pub. L. 89-97 (42 U.S.C. 426a) unless otherwise noted.

§ 406.1 [Amended]

2. In § 406.1, in line one, "and 1818" is changed to "1818 and 1818A".

3. Section 406.5 is amended by revising paragraph (b) to read as follows:

§ 406.5 Basis of eligibility and entitlement.

* * * * *

(b) *Premium hospital insurance.* Many individuals who are age 65 or over, but do not meet the requirements set forth in subpart B of this part, and certain individuals under age 65, may obtain the benefits by paying a premium. Section 406.20 of this part explains the requirements individuals must meet to obtain premium hospital insurance.

4. In § 406.12, paragraph (e) is revised to read as follows:

§ 406.12 Individual under age 65 who is entitled to social security or railroad retirement disability benefits.

* * * * *

(e) *Continuation of Medicare entitlement when disability benefit entitlement ends because of substantial gainful activity (SGA).*—(1) *Definitions.* As used in this section—

Trial work period means the 9-month period provided under title II of the Act and as defined 20 CFR 404.1592, during which the individual may test his or her ability to work and still receive disability cash benefits; and

Reentitlement period means a period as defined in 20 CFR 404.1592a that begins with the first month after the trial work period and ends with the 36th month after the trial work period or, if earlier, with the first month in which the impairment no longer exists or is no longer disabling. (During the reentitlement period, benefits may be discontinued because of SGA. However, if SGA is later discontinued, benefits may be restricted without a new application and a new disability determination.)

(2) *Duration of continued Medicare entitlement.* Effective January 1, 1988, if an individual's entitlement to disability benefits or status as a qualified disabled railroad retirement beneficiary ends because he or she engaged in, or demonstrated the ability to engage in, substantial gainful activity after the 36 months following the end of the trial work period, Medicare entitlement continues until the earlier of the following:

(i) The last day of the 24th month following the first month of SGA occurring after the 15th month of the individual's reentitlement period or, if later, the end of the month following the month the individual's disability benefit entitlement ends.

(ii) The last day of the month following the month in which notice is mailed to the individual indicating that he or she is no longer entitled to hospital insurance because of an event or circumstance (for example, there has been medical improvement, or the disabled widow has remarried) that would terminate disability benefit entitlement if it had not already been terminated because of substantial gainful activity.

5. Section 406.20 is revised to read as follows:

§ 406.20 Basic requirements.

(a) *General provisions.* Hospital insurance benefits are available to most individuals age 65 or over and to certain individuals under age 65 who do not qualify for these benefits under subpart B of this part and are willing to pay a monthly premium. This is called premium hospital insurance.

(b) *Eligibility of individuals age 65 or over to enroll for premium hospital insurance.* Any individual is eligible to enroll for Medicare Part A if he or she—

(1) Has attained age 65;

(2) Is a resident of the United States and is either—

(i) A citizen of the United States; or

(ii) An alien lawfully admitted for permanent residence who has resided in the United States continuously for the 5-year period immediately preceding the month in which he or she meets all other requirements;

(3) Is not eligible for Part A benefits under subpart B of this part; and

(4) Is entitled to supplementary medical insurance (Part B of Medicare) or is eligible and has enrolled for it during an enrollment period.

(c) *Eligibility of individuals under age 65 to enroll for premium hospital insurance.* An individual who has not attained age 65 is eligible to enroll for Medicare Part A if he or she—

(1) Has been entitled to Medicare Part A (under § 406.12 or § 406.15) on the basis of entitlement or deemed entitlement to social security disability benefits, as provided under section 226(b) of the Act.

(2) Continues to have a disabling physical or mental impairment.

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work period, Medicare entitlement continues until the earlier of the following:

(i) The last day of the 24th month following the first month of SGA occurring after the 15th month of the individual's reentitlement period or, if later, the end of the month following the month the individual's disability benefit entitlement ends.

(ii) The last day of the month following the month in which notice is mailed to the individual indicating that he or she is no longer entitled to hospital insurance because of an event or circumstance (for example, there has been medical improvement, or the disabled widow has remarried) that would terminate disability benefit entitlement if it had not already been terminated because of substantial gainful activity.

5. Section 406.20 is revised to read as follows:

§ 406.20 Basic requirements.

(a) *General provisions.* Hospital insurance benefits are available to most individuals age 65 or over and to certain individuals under age 65 who do not qualify for those benefits under subpart B of this part and are willing to pay a monthly premium. This is called premium hospital insurance.

(b) *Eligibility of individuals age 65 or over to enroll for premium hospital insurance.* Any individual is eligible to enroll for Medicare Part A if he or she—

(1) Has attained age 65;

(2) Is a resident of the United States and is either—

(i) A citizen of the United States; or

(ii) An alien lawfully admitted for permanent residence who has resided in the United States continuously for the 5-year period immediately preceding the month in which he or she meets all other requirements;

(3) Is not eligible for Part A benefits under subpart B of this part; and

(4) Is entitled to supplementary medical insurance (Part B of Medicare) or is eligible and has enrolled for it during an enrollment period.

(c) *Eligibility of individuals under age 65 to enroll for premium hospital insurance.* An individual who has not attained age 65 is eligible to enroll for Medicare Part A if he or she—

(1) Has been entitled to Medicare Part A (under § 406.12 or § 406.15) on the basis of entitlement or deemed entitlement to social security disability benefits, as provided under section 226(b) of the Act.

(2) Continues to have a disabling physical or mental impairment.

(3) Loses entitlement to disability benefits (and therefore also loses entitlement to Medicare Part A under § 406.12) solely because his or her earnings exceed the amount allowed under the social security regulations pertaining to "substantial gainful activity" (20 CFR 404.1571–404.1574); and

(4) Is not otherwise entitled to Medicare Part A.

6. Section 406.21 is amended to revise the heading and paragraphs (a), (b), (d), and (e), to read as follows:

§ 406.21 Individual enrollment.

(a) *Basic provision.* An individual who meets the requirements of § 406.20 (b) or (c) may enroll for premium hospital insurance only during his or her "initial enrollment period", a "general enrollment period", or a "special enrollment period", as set forth in paragraphs (b) through (e) of this section.

(b) *Initial enrollment periods*—(1) *Initial enrollment period for individual age 65 or over.* The initial enrollment period extends for 7 months, from the third month before the month the individual first meets the requirements of § 406.20 (b)(1) through (b)(3) through the third month after that first month of eligibility.

(2) *Initial enrollment period of individual under age 65.* The initial enrollment period begins with the month in which the individual receives notice that entitlement to Medicare Part A will end because he or she has lost entitlement to disability benefits solely because of earnings in excess of the amounts allowed under the social security regulations on substantial gainful activity (20 CFR 404.1571–404.1574). It continues for 7 full months after that month.

* * * * *

(d) *"Deemed" initial enrollment period for individual age 65 or over.* If an individual who has attained age 65 fails to enroll during the initial enrollment period because of reliance on incorrect documentary information which led him or her to believe that he or she was not yet age 65, an initial enrollment period may be established for him or her as though he or she had attained age 65 on the date indicated by the incorrect documentary information.

(2) The deemed initial enrollment period will be used to determine the individual's premium and right to enroll in a general enrollment period if such use is advantageous to the individual.

(e) *Special enrollment period*—(1) *Terminology.* As used in this paragraph—

(i) *Active individual* means an employee, an employer, a self-employed individual (such as the employer), an individual associated with the employer in a business relationship, or a family member of any of these persons.

(ii) *Employer plan* has, to the extent not inconsistent with section 1837 of the Act, either of the following meanings:

(A) *Employer group health plan* (EGHP), as defined in section 5000(b)(1) of the Internal Revenue Code (IRC) of 1986 which reads: "* * * 'group health plan' means any plan of, or contributed to by, an employer, to provide medical care * * * to his employees, former employees, or the families of such current or former employees, directly, or through insurance, reimbursement or otherwise.".

(B) *Large group health plan* (LGHP), as defined in section 5000(b)(2) of the IRC of 1986, which reads: "* * * a plan of, or contributed to by an employer or employee organization * * * to provide health care * * * to the employees, former employees, the employer, others associated or formerly associated with the employer in a business relationship, or their families, that covers employees of at least one employer that normally employed at least 100 employees on a typical business day during the previous calendar year."

(iii) *Family member* means any person who is enrolled in an LGHP because of a relationship to an active individual, including, for example, a divorced or common-law spouse, a step-child, step-brother, or step-sister, or a natural, adopted, or foster child.

(iv) The phrase "plan of" encompasses a plan that is under the auspices of an employer who makes no financial contribution—a so-called "employee-pay-all" plan. Since section 1837(i)(1)(B) of the Act (which is made applicable to premium hospital insurance by section 1818 of the Act) requires that the individual be covered under the plan "by reason of the individual's or the individual's spouse's current employment", the "former employee" language of the IRC definition does not apply.

(v) "Special enrollment period" (SEP) is a 7-month period that begins when any individual is no longer covered by an EGHP based on the individual's or the individual's spouse's current employment; or when an individual under age 65 is no longer covered by a LGHP as an active individual.

(2) *Basic rule.* Effective August 1, 1986, individuals may enroll in premium hospital insurance during SEPs that are available to them if they meet the following requirements:

(i) When first eligible to enroll for premium hospital insurance under § 406.20 (b) or (c), the individual was—

(A) Covered under an EGHP, by reason of current employment of the individual or the individual's spouse; or

(B) Covered under an LGHP, as an active individual under age 65.

(ii) The EGHP and LGHP coverage has ended because of termination of the employment or for any other reason.

(3) *Beginning date of SEP.* If the individual enrolls during the month in which employer plan coverage ends, that month is considered the first month of the SEP. Otherwise, the SEP begins with the following month.

(4) *Effective date of coverage.* Enrollment during the first month of the SEP will result in coverage effective with the first day of that month; enrollment in the second through seventh months of the SEP will result in coverage effective with the month following the month of enrollment.

(5) *Limitation on right to subsequent SEPs.* Subsequent SEPs become available if the individual reacquires employer plan coverage based on current employment and later loses it. Generally, if an individual fails to enroll during any available SEP, no further SEPs become available. However, if an individual failed to enroll during a previous SEP because employer plan coverage (under the same or a different plan) was restored before the end of that SEP, that failure to enroll would not preclude another SEP now or in the future.

7. Section 406.22 is redesignated as § 406.32 and a new 406.22 is added, to read as follows:

§ 406.22 Effect of month of enrollment on entitlement.

(a) *Individual age 65 or over.* For an individual who has attained age 65, the following rules apply:

(1) If the individual enrolls during the 3 months before the first month of eligibility, entitlement begins with the first month of eligibility.

(2) If the individual enrolls in the first month of eligibility, entitlement begins with the following month.

(3) If the individual enrolls during the month after the first month of eligibility, entitlement begins with the second month after the month of enrollment.

(4) If the individual enrolls in either of the last 2 months of the enrollment period, entitlement begins with the third month after the month of enrollment.

(b) *Individual under age 65.* For an individual who has not attained age 65, the following rules apply:

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(1) If the individual enrolls before the month in which he or she meets the requirements of § 406.20(c), entitlement begins with the month in which the individual meets those requirements.

(2) If the individual enrolls in the month in which he or she first meets the requirements of § 406.20(c), entitlement begins with the following month.

(3) If the individual enrolls in the month following the month in which he or she meets the requirements of § 406.20(c), entitlement begins with the second month after the month of enrollment.

(4) If the individual enrolls more than one month after the month in which he or she first meets the requirements of § 406.20(c), entitlement begins with the third month after the month of enrollment.

8. Section 406.26 is redesignated as § 406.38 and a new § 406.26 is added, to read as follows:

§ 406.26 Enrollment under State buy-in.

(a) *Enrollment of QMBs under a State buy-in agreement*—(1) *Effective date.* Beginning with calendar year 1990, a State may request and be granted a modification of its buy-in agreement to include enrollment and payment of Part A premiums for QMBs (as defined in section 1905(p)(1) of the Act) who can become entitled to Medicare Part A only by paying a premium.

(2) *Amount of premium.* Premiums paid under State buy-in are not subject to increase because of late enrollment or reenrollment.

(b) *Beginning of coverage under buy-in.* The coverage period begins with the latest of the following:

(1) The third month following the month in which the agreement modification covering QMBs is effectuated.

(2) The first month in which the individual is entitled to premium hospital insurance under § 406.20(b) and has QMB status.

(3) The date specified in the agreement modification.

(c) *End of coverage under buy-in.* Buy-in coverage ends with the earlier of the following:

(1) *Death.* Coverage ends on the last day of the month in which the QMB dies.

(2) *Loss of QMB status.* If the individual loses eligibility for QMB status, coverage ends on the last day of the month in which HCFA receives the State's notice of ineligibility.

(3) *Termination of buy-in agreement.* If the State's buy-in agreement is terminated, coverage ends on the last day of the last month for which the agreement is in effect.

(4) *Entitlement to premium-free Part A.* If the individual becomes entitled to premium-free Part A, buy-in coverage ends on the last day of entitlement to premium Part A.

(d) *Continuation of coverage: Individual enrollment following termination of buy-in coverage.*—(1) *Deemed enrollment.* If coverage under a buy-in agreement ends because the agreement is terminated or the individual loses QMB status, the individual—

(i) Is considered to have enrolled during his or her initial enrollment period; and

(ii) Is entitled to Part A benefits and liable for Part A premiums beginning with the first month for which he or she is no longer covered under the buy-in agreement.

(2) *Voluntary termination.* (i) An individual may voluntarily terminate entitlement acquired under paragraph (d)(1) of this section by filing, with SSA or HCFA, a request for disenrollment.

(ii) Voluntary disenrollment is effective as follows:

(A) If the individual files a request within 30 days after the date of HCFA's notice that buy-in coverage has ended, the individual's entitlement ends on the last day of the last month for which the State paid the premium.

(B) If the individual files the request more than 30 days but not more than 6 months after buy-in coverage ends, entitlement ends on the last day of the month in which the request is filed.

(C) If the individual files the request later than the 6th month after buy-in coverage ends, entitlement ends at the end of the month after the month in which request is filed.

9. Section 406.25 is redesignated as § 406.28, and amended to revise the heading, the introductory text, and paragraph (c), and add a new paragraph (f), to read as follows:

§ 406.28 End of entitlement.

Any of the following actions or events ends entitlement to premium hospital insurance:

* * * * *

(c) *End of entitlement to supplementary medical insurance (SMI) for individual who has attained age 65.* In the case of an individual enrolled on the basis of § 406.20(b), entitlement to premium hospital insurance ends on the same date that entitlement to SMI ends.

* * * * *

(f) *End of disabling impairment for individual under age 65.* In the case of an individual enrolled on the basis of § 406.20(c), entitlement to premium hospital insurance ends on the last day of the month after the month in which the individual is notified that he or she no longer has a disabling impairment.

10. In redesignated § 406.32, new paragraphs (e) and (f) are added, to read as follows:

§ 406.32 Monthly premiums.

* * * * *

(e) *Months for which payment is due.* (1) A premium payment is due for each month beginning with the first month of coverage and continuing through the month of death or if earlier, the month in which coverage ends.

(2) A premium is due for the month of death if coverage is still in effect, even if the individual dies on the first day of the month.

(f) *Option for group payments.* A public or private organization may pay the premiums on behalf of one or more enrollees under a contract or other arrangement with HCFA if HCFA determines that this method of payment is administratively feasible. (The rules set forth in subpart E of part 408 of this chapter, for SMI premiums, also apply to group payment of Part A premiums.)

PART 407—SUPPLEMENTARY MEDICAL INSURANCE (SMI) ENROLLMENT AND ENTITLEMENT

1. The authority citation continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) unless otherwise noted.

2. The table of contents of part 407, subpart C is amended by revising the headings of §§ 407.42 and 407.43 to read as follows:

* * * * *

Subpart C—State Buy-in Agreements

* * * * *

407.42 Buy-in groups available to the 50 States, the District of Columbia, and the Northern Mariana Islands.

407.43 Buy-in groups available to Puerto Rico, Guam, the Virgin Islands, and American Samoa.

* * * * *

3. Section 407.40 is revised to read as follows:

§ 407.40 Enrollment under a State buy-in agreement.

(a) *Statutory basis.* (1) Section 1843 of the Act, as amended through 1969, permitted a State to enter into an agreement with the Secretary to enroll in the SMI program certain individuals who are eligible for SMI and who are members of the buy-in group specified in the agreement. A buy-in group could include certain individuals receiving Federally-aided State cash assistance

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10. In redesignated § 406.32, new paragraphs (e) and (f) are added, to read as follows:

§ 406.32 Monthly premiums.

* * * * *

(e) *Months for which payment is due.* (1) A premium payment is due for each month beginning with the first month of coverage and continuing through the month of death or if earlier, the month in which coverage ends.

(2) A premium is due for the month of death if coverage is still in effect, even if the individual dies on the first day of the month.

(f) *Option for group payments.* A public or private organization may pay the premiums on behalf of one or more enrollees under a contract or other arrangement with HCFA if HCFA determines that this method of payment is administratively feasible. (The rules set forth in subpart E of part 408 of this chapter, for SMI premiums, also apply to group payment of Part A premiums.)

PART 407—SUPPLEMENTARY MEDICAL INSURANCE (SMI) ENROLLMENT AND ENTITLEMENT

1. The authority citation continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) unless otherwise noted.

2. The table of contents of part 407, subpart C is amended by revising the headings of §§ 407.42 and 407.43 to read as follows:

* * * * *

Subpart C—State Buy-in Agreements

* * * * *

407.42 Buy-in groups available to the 50 States, the District of Columbia, and the Northern Mariana Islands.
407.43 Buy-in groups available to Puerto Rico, Guam, the Virgin Islands, and American Samoa.

* * * * *

3. Section 407.40 is revised to read as follows:

§ 407.40 Enrollment under a State buy-in agreement.

(a) *Statutory basis.* (1) Section 1843 of the Act, as amended through 1969, permitted a State to enter into an agreement with the Secretary to enroll in the SMI program certain individuals who are eligible for SMI and who are members of the buy-in group specified in the agreement. A buy-in group could include certain individuals receiving Federally-aided State cash assistance

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(with the option of excluding individuals also entitled to social security benefits or railroad retirement benefits) or could include all individuals eligible for Medicaid. Before 1981, December 31, 1969 was the last day on which a State could request a buy-in agreement or a modification to include a coverage group broader than the one originally selected.

(2) Section 945(e) of the Omnibus Reconciliation Act of 1980 (Pub. L. 96–499) further amended section 1843 to provide that, during calendar year 1981, a State could request a buy-in agreement if it did not already have one, or request a broader coverage group for an existing agreement.

(3) Several laws enacted during 1980–1987 had the effect of requiring that the buy-in groups available under section 1843 of the Act be expanded to include certain individuals who lose eligibility for cash assistance payments but are treated as if they were cash assistance recipients for Medicaid eligibility purposes.

(4) Section 301(e)(1) of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360) amends section 1843 of the Act to restore the 1981 provisions on a permanent basis, effective "after 1988."

(5) The same section 301, as amended by sections 608(d)(14)(H) of the Family Support Act of 1988 (Pub. L. 100–485), further amended section 1843 of the Act, beginning January 1, 1989, to establish a new buy-in category consisting of Qualified Medicare Beneficiaries and to provide that a State may request a buy-in agreement if it does not already have one, or request a broader buy-in group for the existing agreement.

(b) *Definitions.* As used in this section, unless the context indicates otherwise—

Cash assistance means any of the following kinds of monthly cash benefits, authorized by specified titles of the Act and, for convenience, represented by initials, as follows:

AABD stands for aid to the aged, blind or disabled under the first title XVI of the Act in effect until December 31, 1973.

AB stands for aid to the blind under title X of the Act.

AFDC stands for aid to families with dependent children under Part A of title IV of the Act.

APTD stands for aid to the permanently and totally disabled under title XIV of the Act.

OAA stands for old-age assistance under title I of the Act.

SSI stands for supplemental security income for the aged, blind, and disabled under the second title XVI of the Act, effective January 1, 1974.

SSP stands for State supplementary

Qualified Medicare Beneficiary or *QMB* means an individual who meets the definition in § 400.200 of this chapter and, therefore, is eligible to have the State Medicaid agency pay Medicare cost sharing amounts on his or her behalf.

Railroad retirement beneficiary means an individual entitled to receive an annuity under the Railroad Retirement Act of 1974.

State means one of the 50 States, the District of Columbia, Guam, Puerto Rico, the Virgin Islands, American Samoa, or the Northern Mariana Islands, except when reference is made to "the 50 States".

State buy-in agreement or *buy-in agreement* means an agreement authorized by section 1843 of the Act, under which a State secures SMI or premium HI coverage for individuals who are members of the buy-in group specified in the agreement, by enrolling them and paying the premiums on their behalf.

(c) *Basic rules.*

(1) A State that has a buy-in agreement in effect must enroll any individual who is eligible to enroll in SMI under § 407.10.

(2) Any State that does not have a buy-in agreement in effect may request buy-in for any one of the groups specified in §§ 407.42 and 407.43.

(3) Any State that does have an agreement may request a modification to cover a broader buy-in group or cancel its current agreement and request a new agreement to cover a narrower group.

4. Section 407.42 is revised to read as follows:

§ 407.42 Buy-in groups available to the 50 States, the District of Columbia, and the Northern Mariana Islands.

(a) *Categories included in the buy-in groups.* The buy-in groups that are available to the 50 States, the District of Columbia, and the Northern Mariana Islands are specified in paragraph (b) of this section in terms of the following categories:

(1) *Category A:* Individuals who—

(i) Receive SSI or SSP or both; and

(ii) Are covered under the State's Medicaid plan as categorically needy.

(2) *Category B:* Individuals who—

(i) Under the Act or any other provision of Federal law are treated, for Medicaid eligibility purposes, as though they were receiving SSI or SSP; and

(ii) Are covered under the State's Medicaid plan as categorically needy.

(3) *Category C:* Individuals who are receiving AFDC.

(4) *Category D:* Individuals who, under the Act or any other provision of Federal law, are treated, for Medicaid eligibility purposes, as though they were receiving AFDC.

(5) *Category E:* Individuals who, in accordance with § 435.114 or § 435.134 of this chapter, are covered under the State's Medicaid plan despite the increase in social security benefits provided by Public Law 92–336.

(6) *Category F:* Individuals who are Qualified Medicare Beneficiaries.[1]

(7) *Category G:* All other individuals who are eligible for Medicaid.

(b) *Buy-in groups available.* Any of the 50 States, the District of Columbia, and the Northern Mariana Islands may buy-in for one of the following groups:

(1) *Group 1:* Categories A through G.

(2) *Group 2:* Categories A through F.

(3) *Group 3:* Categories A through E.

(4) *Group 4:* Categories A, B, and F, individuals in categories C and D who are not social security or railroad retirement beneficiaries, and individuals in category E who are included in that category (in accordance with § 435.134 of this chapter) because they received OAA, AB, APTD, or AABD in August 1972 or would have been eligible to receive such cash assistance for that month if they had applied or had not been institutionalized.

(5) *Group 5:* Categories A and B, individuals in categories C and D who are not social security or railroad retirement beneficiaries, and individuals in category E who are included in that category (in accordance with § 435.134 of this chapter) because they received OAA, AB, APTD, or AABD in August 1972 or would have been eligible to receive such cash assistance for that month if they had applied or had not been institutionalized.

(6) *Group 6:* Categories A, B, and F, and individuals in category E who are included in that category (in accordance with § 435.134 of this chapter) because they received AABD in August 1972 or would have been eligible to receive AABD for that month if they had applied or had not been institutionalized. This option is available only to those States that had an AABD program as of December 31, 1973.

(7) *Group 7:* Categories A and B, and individuals in category E who are included in that category (in accordance with § 435.134 of this chapter) because they received AABD in August 1972 or would have been eligible to receive AABD for that month if they had applied or had not been institutionalized. This

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[1] Rules for buy-in for premium hospital insurance for QMBs are set forth in § 406.26 of this chapter.

option is available only to those States that had an AABD program as of December 31, 1973.

5. Section 407.43 is revised to read as follows:

§ 407.43 Buy-in groups available to Puerto Rico, Guam, the Virgin Islands, and American Samoa.

(a) *Categories included in buy-in groups.* The buy-in groups that are available to Puerto Rico, Guam, the Virgin Islands, and American Samoa, which are not covered by the SSI program, are described in paragraph (b) of this section in terms of the following categories:

(1) *Category A:* Individuals receiving OAA, AB, APTD, or AFDC.

(2) *Category B:* Individuals who, under the Act or any other provision of Federal law, are treated, for Medicaid eligibility purposes, as though they were receiving AFDC.

(3) *Category C:* Individuals who, in accordance with § 436.112 of this chapter, are covered under the State's Medicaid plan despite the increase in social security benefits provided by Public Law 92–336.

(4) *Category D:* Individuals who are Qualified Medicare Beneficiaries.[3]

(5) *Category E:* All other individuals who are eligible for Medicaid.

(b) *Buy-in groups available.* Puerto Rico, Guam, the Virgin Islands, and American Samoa may choose any of the following coverage groups:

(1) *Group 1:* Categories A through E.

(2) *Group 2:* Categories A through D.

(3) *Group 3:* Categories A through C.

(4) *Group 4:* Individuals in category D, and individuals in categories A and B who are not social security or railroad retirement beneficiaries.

(5) *Group 5:* Individuals in categories A and B who are not social security or railroad retirement beneficiaries.

(6) *Group 6:* Individuals in category D, individuals in category A who are receiving OAA, and individuals in category C who are included in that category (in accordance with § 436.112 of this chapter) because they received OAA for August 1972 or would have been eligible to receive OAA for that month if they had applied or had not been institutionalized.

(7) *Group 7:* Individuals in category A who are receiving OAA, and individuals in category C who are included in that category (in accordance with § 436.112 of this chapter) because they received OAA for August 1972 or would have been eligible to receive OAA for that month if they had applied or had not been institutionalized.

(8) *Group 8:* Individuals in category D and individuals in category A who are receiving OAA and are not social security or railroad retirement beneficiaries.

(9) *Group 9:* Individuals in category A who are receiving OAA and are not social security or railroad retirement beneficiaries.

6. Section 407.47 is revised to read as follows:

§ 407.47 Beginning of coverage under a State buy-in agreement.

(a) *General rule.* The beginning of an individual's coverage period depends on two factors:

(1) The individual's meeting the SMI eligibility requirements and the requirements for being a member of the buy-in group; and

(2) The effective date of the buy-in agreement or agreement modification that covers the group to which the individual belongs, and which may not be earlier than the third month after the month in which the agreement or modification is executed.

(b) *Application of general rule: Medicaid eligibles who are, or are treated as, cash assistance recipients.* For Medicaid eligibles who are, or are treated as, cash assistance recipients (that is, are members of categories A through E of § 407.42(a) or categories A through C of § 407.43(a)), coverage begins with the later of the following:

(1) The first month in which the individual—

(i) Meets the SMI eligibility requirements specified in § 407.10; and

(ii) Is a member of one of those categories.

(2) The month in which the buy-in agreement is effective.

(c) *Application of general rule: Qualified Medicare Beneficiaries.* For individuals who are QMBs (that is, are members of category F of § 407.42 or category D of § 407.43(a)), coverage begins with the later of the following:

(1) The first month in which the individual meets the SMI eligibility requirements specified in § 407.10, and has QMB status.

(2) The month in which the buy-in agreement or agreement modification covering QMBs is effective.

(d) *Application of general rule: Other individuals eligible for Medicaid.* For individuals who are members of category G of § 407.42(a) or category E of § 407.43(a), coverage begins with the later of the following:

(1) The second month after the month in which the individual—

(i) Meets the SMI eligibility requirements specified in § 407.10; and

(ii) Is determined to be eligible for Medicaid.

(2) The month in which the buy-in agreement or agreement modification is effective.

(e) *Coverage based on erroneous report.* If the State erroneously reports to SSA that an individual is a member of its coverage group, the rules of paragraphs (a) through (d) of this section apply, and coverage begins as though the individual were in fact a member of the group. Coverage will end only as provided in § 407.48.

7. Section 407.48 is amended by revising paragraphs (c) introductory text, and (d) to read as follows:

§ 407.48 Termination of coverage under a State buy-in agreement.

* * * * *

(c) *Loss of eligibility for the buy-in group.* If an individual loses eligibility for inclusion in the buy-in group, buy-in coverage ends as follows:

* * * * *

(d) *Termination or modification of buy-in agreement.* If the State's buy-in agreement is terminated, or modified to substitute a narrower buy-in group, coverage ends on the last day of the last month for which the agreement was in effect, or covered the broader buy-in group.

8. Section 407.50 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 407.50 Continuation of coverage: Individual enrollment following end of coverage under a State buy-in agreement.

(a) *Deemed enrollment.* When coverage under a buy-in agreement ends because the agreement terminates, or is modified to substitute a narrower buy-in group, or because the individual is no longer eligible for inclusion in the buy-in group, the individual—

* * * * *

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance, and No. 13.774, Medicare-Supplementary Medical Insurance)

Dated: October 8, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: March 26, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91–19009 Filed 8–9–91; 8:45 am]

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[3] Rules for buy-in for premium hospital insurance for QMBs are set forth in § 406.26 of this chapter.

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(i) Meets the SMI eligibility requirements specified in § 407.10; and

(ii) Is determined to be eligible for Medicaid.

(2) The month in which the buy-in agreement or agreement modification is effective.

(e) *Coverage based on erroneous report.* If the State erroneously reports to SSA that an individual is a member of its coverage group, the rules of paragraphs (a) through (d) of this section apply, and coverage begins as though the individual were in fact a member of the group. Coverage will end only as provided in § 407.48.

7. Section 407.48 is amended by revising paragraphs (c) introductory text, and (d) to read as follows:

§ 407.48 Termination of coverage under a State buy-in agreement.

* * * * *

(c) *Loss of eligibility for the buy-in group.* If an individual loses eligibility for inclusion in the buy-in group, buy-in coverage ends as follows:

* * * * *

(d) *Termination or modification of buy-in agreement.* If the State's buy-in agreement is terminated, or modified to substitute a narrower buy-in group, coverage ends on the last day of the last month for which the agreement was in effect, or covered the broader buy-in group.

8. Section 407.50 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 407.50 Continuation of coverage: Individual enrollment following end of coverage under a State buy-in agreement.

(a) *Deemed enrollment.* When coverage under a buy-in agreement ends because the agreement terminates, or is modified to substitute a narrower buy-in group, or because the individual is no longer eligible for inclusion in the buy-in group, the individual—

* * * * *

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance, and No. 13.774, Medicare-Supplementary Medical Insurance)

Dated: October 8, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: March 26, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91–19009 Filed 8–9–91; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6866

[WY-930-4214-10; WYW 84553]

Partial Revocation of Executive Order No. 5327 as Amended by Public Land Order No. 4522; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order insofar as it affects 30 acres of public land withdrawn from lease or other disposal of oil shale deposits. The land is no longer needed for the purpose for which it was withdrawn. The revocation is necessary to permit disposal of the land through a land sale under section 203 of the Federal Land Policy and Management Act of 1976. This action will open 30 acres to surface entry, mining, and mineral leasing for minerals other than oil, gas, and sodium. They have been and remain open to oil, gas, and sodium leasing unless segregated by other action or policy.

EFFECTIVE DATE: September 11, 1991.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, BLM, Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6115.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Executive Order No. 5327, as amended by Public Land Order No. 4522, which withdrew public land from lease or other disposal of oil shale deposits, is hereby revoked insofar as it affects the following described land:

Sixth Principal Meridian

T. 19 N., R. 105 W.,
Sec. 8, S½N½SE¼SE¼, S½SE¼SE¼.

The area described contains 30 acres in Sweetwater County.

2. At 9 a.m. on September 11, 1991, the public land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of the record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on September 11, 1991 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on September 11, 1991, the public land will be opened to mining location and to mineral leasing for minerals other than oil, gas, and sodium. Appropriation of the land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: July 26, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91–19095 Filed 8–9–91; 8:45 am]

BILLING CODE 4310-22-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 87

[PR Docket No. 90–340; FCC 91–216]

Amendment of the Aviation Services Rules concerning the frequency tolerance for VHF aircraft radios

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In 1984 the Commission amended the Aviation Services Rules to conform to the Final Acts of the 1979 WARC. Among other things, the frequency tolerance requirements of VHF aircraft radio stations was changed from a maximum 50 parts per million (ppm) to 30 ppm for transmitters installed after January 1, 1985, and for all transmitters after January 1, 1990. As a result of a petition by the aviation interests, the Commission extended the January 1, 1990, effective date on January 1, 1992, and the Commission issued a Notice of Proposed Rule Making (Notice) in PR Docket No. 90–340, proposing to "grandfather" installed aircraft radio stations. The instant Report and Order "grandfathers" the subject aircraft radio stations until January 1, 1997.

EFFECTIVE DATE: September 19, 1991.

FOR FURTHER INFORMATION CONTACT: William P. Berges, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632–7175.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in PR Docket No. 90–340, FCC 91–216, adopted July 11, 1991, and released August 5, 1991. The full text of this Commission decision, including the adopted rule changes, is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this rule making may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1114 21st Street, NW., Washington, DC 20036.

Summary of Report and Order

1. In response to a written request filed by the Aircraft Owners and Pilots Association, the Experimental Aircraft Association, the General Aviation Manufacturers Association and the Helicopter Association International, the Commission released a Notice, PR Docket No. 90–340, 55 FR 31859 (1990), which proposed to allow currently installed radios operating with 50 ppm frequency tolerance to be used indefinitely, in lieu of the FCC Rule which would have required all radios to meet a 30 ppm frequency tolerance by January 1, 1990. The 50 ppm frequency tolerance is associated with radios that are designed to operate on channel spacing every 50 kHz and generally have 360 channels. The 30 ppm frequency tolerance is associated with radios that are designed to operate on channels spaced every 25 kHz and have 720 channels. The Commission emphasized, however, that the FAA is implementing 25 kHz spaced channels nationwide and aircraft flying into FAA controlled airspace may encounter rerouting and other delays unless equipped with 25 kHz spaced radios.

2. The Commission noted that the FAA has not yet implemented 25 kHz channel assignments nationwide and that there are aircraft operations in many rural areas that do not need 720 channels and concluded that a reasonable compromise was to "grandfather" 50 ppm transmitters for an additional 5 years. This Report and Order "grandfathers" until January 1, 1997, all VHF aircraft radios with 50 ppm frequency tolerance and 50 kHz channel spacing that were installed prior to January 2, 1985.

3. In accordance with the authority contained in section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

It is ordered That part 87 of the Commission's Rules is amended as shown at the end of this document on the date shown on the "EFFECTIVE DATE" paragraph of this document.

It is further ordered That a copy of this Report and Order will be served the Chief Counsel for Advocacy of the Small Business Administration.

It is further ordered That this proceeding is terminated.

List of Subjects in 47 CFR Part 87

Aviation services, Aeronautical mobile stations, Radio.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rule Changes

Part 87 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 87—AVIATION SERVICES

1. The authority citation for part 87 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–156, 301–609.

2. Section 87.133(a) is amended by adding footnote 10 to the table in paragraphs (a)(5) and (a)(6) to read as follows:

§ 87.133 Frequency stability.

(a) * * *

Frequency band (lower limit exclusive, upper limit inclusive), and categories of stations.	Tolerance [1].	Tolerance [2]
(5) * * *		
Aircraft and other mobile stations in the Aviation Services.	50 [5]	30 [10]
* * * * *		
(6) * * *		
Aircraft stations	50 [5]	30 [10]
* * * * *		

[1] This tolerance is the maximum permitted until January 1, 1990, for transmitters installed before January 2, 1985, and used at the same installation. Tolerance is indicated in parts in 10^6 unless shown as Hertz (Hz).

[2] This tolerance permitted after January 1, 1985, for new and replacement transmitters and to all transmitters after January 1, 1990. Tolerance is indicated in parts in 10^6 unless shown in Hertz (Hz).

* * * * *

[5] The tolerance for transmitters type accepted after January 1, 1974, is 30 parts in 10^6.

[9] In the 5000 to 5250 MHz band, the FAA requires tolerance of ±10 kHz for Microwave Landing System stations which are to be a part of the National Airspace System (FAR 171).

* * * * *

[10] Until January 1, 1997, the maximum frequency tolerance for transmitters with 50 kHz channel spacing installed before January 2, 1985, is 50 parts in 10^6.

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[FR Doc. 91–19002 Filed 8–9–91; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 82–05; Notice 4]

RIN 2127–AA46

Federal Motor Vehicle Safety Standards; Seating Reference Point

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends the definition of "seating reference point," a term used in this agency's safety standards. "Seating reference point" identifies a single adjustment point for each seating position. That point is used in determining if the vehicle complies with requirements set forth in several of the safety standards.

This rule amends the definition of "seating reference point" to clarify that it is not necessarily the absolute rearmost point to which a seat can be adjusted. This rule also amends the definition to provide that the "seating reference point" is established using 95th percentile adult male leg segments, instead of the smaller 90th percentile adult male leg segments specified in the current definition.

DATES: The amendment to the definition of "seating reference point" made in this rule is effective as of September 1, 1992. At their option, manufacturers may begin using the post-September 1992 definition, in place of the current one, after September 11, 1991.

Any petitions for reconsideration of this rule must be received by NHTSA no later than September 11, 1991.

ADDRESSES: Any petitions for reconsideration should refer to Docket No. 82–05; Notice 4 and be submitted to: NHTSA Docket Section, room 5109, 400 Seventh Street SW., Washington, DC 20590. (Docket hours are 9:30 am to 4 p.m. Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Jere Medlin, Crash Avoidance Division, NRM–11, room 5307, NHTSA, 400 Seventh Street SW., Washington, DC 20590 (202–366–5276).

SUPPLEMENTARY INFORMATION:

Seating Reference Point

For the purposes of the Federal Motor Vehicle Safety Standards, the term *seating reference point* is currently defined in 49 CFR 571.3 as:

[T]he manufacturer's design reference point which—

(a) Establishes the rearmost normal design driving or riding position of each designated seating position in a vehicle;

(b) Has coordinates established relative to the designed vehicle structure;

(c) Simulates the position of the pivot center of the human torso and thigh; and

(d) Is the reference point employed to position the two dimensional templates described in SAE Recommended Practice J826, Manikins for Use in Defining Vehicle Seating Accommodations, November 1962.

The four conditions set forth in the definition of "seating reference point" are intended to ensure that only one point will be the "seating reference point" for any seating position in a motor vehicle, and to ensure that all parties can agree where that one point is located for a particular seating position. The "seating reference point" is used, either directly or indirectly, as a reference point in determining compliance with several of the agency's safety standards. Standards No. 102 and 104 each use the "seating reference point" as a reference point to define a field of view or certain areas of the windshield that must comply with specified requirements. Standards No. 201, 202, 207, and 210 each use the "seating reference point" as a reference point for determining the components that are subject to the requirements of the standard or for positioning the seats to determine compliance with the requirements of the standard.

Rulemaking History

In 1980, Mercedes-Benz of North America, Inc. (Mercedes) petitioned the agency to amend the definition of "seating reference point" to specify 95th percentile thigh and lower leg segments in determining the location of the "seating reference point." In 1982, in response to the Mercedes petition, the agency published an advance notice of proposed rulemaking (ANPRM) stating that the "seating reference point" is not necessarily the absolute rearmost position to which a seat can be adjusted and that the agency intended to issue a notice of proposed rulemaking (NPRM) to change the definition of "seating reference point" (47 FR 9865; March 8, 1982). The purpose of the ANPRM was to allow interested parties an opportunity to raise issues and provide information that the agency should consider when formulating its proposal.

After evaluating the comments received on the ANPRM, the agency published an NPRM which differed substantially from the ANPRM (51 FR 20536; June 5, 1986). The NPRM stated

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Rulemaking History

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After evaluating the comments received on the ANPRM, the agency published an NPRM which differed substantially from the ANPRM (51 FR 20536; June 5, 1986). The NPRM stated

that the interpretation in the ANPRM that "seating reference point" was not necessarily the absolute rearmost position of the seat was incorrect. The new interpretation was based on two circumstances. First, Standard No. 210 used the SRP as its reference point and required the seat to be in its rearmost position. Thus, the location dictated by Standard No. 210 would prevent a manufacturer from establishing a seating position rearward of the SRP. Second, the agency surveyed the location of the SRP in vehicles in the most recent compliance testing program and discovered that all manufacturers had determined the SRP with the seat in its rearmost position. In addition, the agency was concerned that the ANPRM interpretation could lead a manufacturer to conclude that a seating position rearward of the SRP could be occupied while the vehicle was in motion. This could result in an upper anchorage location being forward of the occupant's shoulder, resulting in increased head movement and potentially increasing the risk of head injury.

Because the agency had determined that the location of the SRP should always be determined with the seat in its rearmost position, the agency proposed to delete the reference to leg segment length in the definition. Leg segment length was used in the current definition to determine the seat adjustment position used to locate the SRP. Since the NPRM proposed to specify the seat adjustment position at which the SRP was located as the rearmost position, there was no longer any need to refer to a particular leg segment length.

After further consideration, the agency tentatively concluded that the NPRM approach was not the best approach for this rulemaking. The agency decided that there were simpler, but equally effective, ways of ensuring that seats are positioned in the rearmost position for determining the upper anchorage locations in Standard No. 210. In April 1990, the agency published a final rule amending Standard No. 210 so that it no longer referred to "seating reference point" (55 FR 17970). In September 1990, the agency published a supplementary notice of proposed rulemaking (SNPRM) on the definition of "seating reference point," proposing to return to the approach originally discussed in the ANPRM (55 FR 37719). The definition proposed in the SNPRM was based upon the recommended practice of the Society of Automotive Engineers (SAE). (For interested parties, the history of this rulemaking is explained in greater detail in the SNPRM.)

NHTSA received 10 comments in response to the SNPRM. Eight of the nine automotive manufacturers who commented on the SNPRM unanimously supported adopting the proposed definition. Mercedes supported "the Agency's approach to clarifying the inconsistencies related to the definition of the seating reference point," but recommended the adoption of the wording they suggested in their comments on the NPRM. The only other commenter, the Automotive Occupants Restraints Council, deferred to the responses of the vehicle manufacturers. Commenters also raised six other issues relevant to this rulemaking, which are discussed below.

Comments

1. Adopt Mercedes Definition for the "Seating Reference Point"

Although Mercedes supported "the Agency's approach to clarifying the inconsistencies related to the definition of the seating reference point," they recommended adoption of their wording of paragraph (a), as suggested in their comments of May 5, 1983, to Docket 82-05, Notice 2:

"(a) Establishes the rearmost normal design driving or riding position as stipulated by the manufacturer, which accounts for all modes of cushion adjustment—including horizontal, vertical, and tilt—that are available in the seat, but not to include seat track travel used for purposes other than normal driving and riding positions."

The language preferred by Mercedes attempts to further clarify that the "seating reference point" is established by the manufacturer and is not the absolute rearmost point to which a seat can be adjusted.

Paragraphs (a), (b), (c), and (d)(1) of NHTSA's proposed definition are nearly identical with the SAE definition. In addition, all of the commenters except Mercedes supported the definition as proposed. Mercedes' recommendation that the agency adopt their unique language appears based upon preference only, and does not appear to significantly improve or clarify the proposed definition of "seating reference point" as proposed.

2. Adoption of "(SgRP)" in the Definition of "Seating Reference Point"

General Motors (GM) recommended that the agency adopt the phrase "(SgRP)" that is found after the wording "seating reference point" in SAE J1100 Jun84. GM stated that this would further clarify the meaning of the wording used in the standard and parallel current industry practice. GM stated that the "SRP" acronym used by NHTSA when referring to "seating reference point" may create confusion in some situations because GM and others in the industry use the "SRP" acronym to refer to the absolute rearmost position for the seat.

In the SNPRM, the agency stated that the proposed "definition of SRP is similar to the SgRP concept used by the SAE." In fact, the two definitions are virtually identical. Since the inclusion of the phrase "(SgRP)" in the definition would not change its meaning or require any additional modifications to any safety standards, the agency has decided to include the phrase to avoid any possible confusion. Hereinafter, the phrase "SgRP" will be used for the term "seating reference point" in this notice.

3. Allow Use of Either the Present or Proposed Definition of "Seating Reference Point"

In its comments, Volvo requested that manufacturers be allowed to choose between either the present or proposed definition in the future. Volkswagen stated that the final rule should allow immediate optional compliance with either the present or proposed definition.

The only reason offered by Volvo to support its suggestion was that manufacturers would not have to recertify their vehicles. The agency does not find this to be a compelling argument. Any rulemaking may require that manufacturers recertify their vehicles. In addition, four of the commenters (Chrysler, Ford, Volkswagen, and Freightliner) indicated that this rulemaking would have little or no effect on their current practices.

Volkswagen requested that the Final Rule allow optional use of either definition from publication of the final rule until the September 1, 1992 effective date. This would allow manufacturers who can comply with the 95th percentile location without product design changes to harmonize with European requirements as soon as possible. The agency finds this request to be reasonable.

Since no commenter suggested that the proposed September 1, 1992 effective date was not reasonable, it has been adopted. In addition, optional use of the new definition is permissible effective September 11, 1991.

4. Revision of Other Safety Standards

The SNPRM requested comments on whether adoption of the proposed change to the SgRP definition would create a need to amend safety standards which currently use the seating reference point or similar terminology. Commenters raised issues involving several standards.

GM recommended modifications of Standard No. 104, Windshield Wiping and Washing Systems. GM stated:

> "FMVSS No. 104 and, by reference, FMVSS No. 103 substitute the term "seating reference point" for the terms "manikin H point" and "H point" wherever either of those terms appears in any SAE Standard or Recommended Practice referred to in the standard. This substitution of terms results in references to "seating reference point with seat in rearmost position" (SAE Recommended Practice J903a, Figure 1). This terminology is potentially internally contradictory when the "seating reference point" is defined to permit a location at some point other than the rearmost position of the seat."

NHTSA agrees with GM that the amended definition of SgRP will create potentially contradictory references in Standard No. 104. Elsewhere in today's edition of the **Federal Register**, the agency has published an NPRM proposing to amend S3 of Standard No. 104.

In its comments, Mercedes requested revisions of Standards No. 103, 104, 107, and 111 "to permit the use of the Eyellipse and Head Contour Locator Line—Adjustable Seats as described in the newest version of SAE J941, October 1985." These standards all use SAE J941, November 1965 to determine the location for either the 95th or 99th percentile eye range contour (eyellipse). This SAE Recommended Practice requires the seat to be in its rearmost position. Since "seating reference point" is not referenced, NHTSA does not believe that it would be appropriate to address amendment of any of these standards in the rulemaking to amend Standard No. 104.

5. Reference Updated Version of SAE J1100

Volkswagen commented that SAE J1100 JUN84 was presently being updated by the SAE, and recommended that the updated version be substituted if available. NHTSA has contacted the SAE and been informed that the June 1984 version of SAE J1100 is the most recently approved version.

6. Correction of Typographical Error

Volkswagen pointed out that paragraph (b)(4) of the proposed definition inaccurately references "SAE J826" as "SEA J826." This typographical error has been rectified in the final rule.

7. Seat Location of Standard No. 210 Upper Anchorage Requirements

Mercedes also submitted comments concerning the April 30, 1990 amendment of Standard No. 210 (Docket 87-02; Notice 2). These comments were also submitted by Mercedes during the Standard No. 210 rulemaking and were addressed in the preamble to the Final Rule (55 FR 17970; April 30, 1990).

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has examined the impact of this final rule and determined that it is neither major within the meaning of Executive Order 12291, nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The new definition of SgRP will make NHTSA's regulatory definition consistent with existing industry practice in designing vehicles without adversely affecting safety. Therefore, no increase or decrease in cost for manufacturers is anticipated for this rule. Accordingly, NHTSA has not prepared a full regulatory evaluation.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this final rule under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. To the extent that any vehicle manufacturers qualify as small entities, their number would not be substantial. In any event, the agency does not anticipate that any economic impacts will be associated with this rule, as explained above. Accordingly, this new definition will not affect the purchase price of new motor vehicles purchased by small organizations and small governmental units.

National Environmental Policy Act

NHTSA has also analyzed this rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment.

Executive Order 12612 (Federalism)

Finally, NHTSA has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this rule does not have significant federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 571

Imports, Motor Vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA part 571 of title 49 of the Code of Federal Regulations is amended as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. Section 571.3 is amended by revising the definition of "seating reference point" in paragraph (b). The amendment is effective on and after September 1, 1992 and may be used at the manufacturer's option on or after September 11, 1991. As revised, the definition reads as follows:

§ 571.3 Definitions.

* * * * *

(b) *Other definitions.* * * *

Seating reference point (SgRP) means the unique design H-point, as defined in SAE J1100 (June 1984), which:

(a) Establishes the rearmost normal design driving or riding position of each designated seating position, which includes consideration of all modes of adjustment, horizontal, vertical, and tilt, in a vehicle;

(b) Has X, Y, and Z coordinates, as defined in SAE J1100 (June 1984), established relative to the designed vehicle structure;

(c) Simulates the position of the pivot center of the human torso and thigh; and

(d) Is the reference point employed to position the two-dimensional drafting template with the 95th percentile leg described in SAE J826 (May 1987), or, if the drafting template with the 95th percentile leg cannot be positioned in the seating position, is located with the seat in its most rearward adjustment position.

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Issued on: August 6, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91–19015 Filed 8–9–91; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 910498–1098]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: NOAA announces the closure of the recreational salmon fishery in the

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* * * * *

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(b) Has X, Y, and Z coordinates, as defined in SAE J1100 (June 1984), established relative to the designed vehicle structure;

(c) Simulates the position of the pivot center of the human torso and thigh; and

(d) Is the reference point employed to position the two-dimensional drafting template with the 95th percentile leg described in SAE J826 (May 1987), or, if the drafting template with the 95th percentile leg cannot be positioned in the seating position, is located with the seat in its most rearward adjustment position.

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Issued on: August 6, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91–19015 Filed 8–9–91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 910498–1098]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: NOAA announces the closure of the recreational salmon fishery in the exclusive economic zone (EEZ) from Cape Alava to the Queets River, Washington, at midnight, July 30, 1991, to ensure that the coho salmon quota is not exceeded. The Director, Northwest Region, NMFS (Regional Director), has determined that the recreational fishery quota of 4,800 coho salmon for the subarea will be reached by midnight, July 30, 1991. The closure is necessary to conform to the preseason announcement of 1991 management measures. This action is intended to ensure conservation of coho salmon.

DATES: *Effective:* Closure of the EEZ from Cape Alava to the Queets River, Washington, to recreational salmon fishing is effective at 2400 hours local time, July 30, 1991. Actual notice to affected fisherman was given prior to that time through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.20, 661.21, and 661.23.

Comments: Public comments are invited until August 27, 1991.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115–0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: Joe Scordino at 206–526–6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR part 661 specify at § 661.21(a)(1) that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by notice issued under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

In its preseason notice of 1991 management measures (56 FR 21311, May 8, 1991), NOAA announced that the 1991 recreational fishery for all salmon species in the subarea from Cape Alava to the Queets River, Washington, would begin on July 1 and continue through the earliest of September 26 or the attainment of either a subarea quota of 4,800 coho salmon or the overall recreational quota of 40,000 chinook salmon north of Cape Falcon, Oregon. Based on the best available information on July 25, the recreational fishery catch in the subarea from Cape Alava to the Queets River, Washington, is projected to reach the 4,800 coho salmon quota by midnight, July 30, 1991. Therefore, the fishery in this subarea is closed to further recreational fishing effective 2400 hours local time, July 30, 1991.

In accordance with the inseason notice procedures of 50 CFR 661.20, 661.21, and 661.23, actual notice to fishermen of this closure was given prior to 2400 hours local time, July 30, 1991, by telephone hotline number (206) 526–6667 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 KHz. NOAA issues this notice to closure of the recreational salmon fishery in the EEZ from Cape Alava and the Queets River, Washington, which is effective 2400 hours local time, July 30, 1991.

The Regional Director consulted with representatives of the Pacific Fishery Management Council and the Washington Department of Fisheries regarding a closure of the recreational fishery between Cape Alava and the Queets River, Washington. The State of Washington will manage the recreational fishery in State waters adjecent to this area of the EEZ in accordance with this Federal action. This notice does not apply to treaty Indian fisheries or to other fisheries that may be operating in other areas.

Because of the need for immediate action, NOAA has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted through August 27, 1991.

Other Matters

This action is authorized by 50 CFR 661.21 and 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 6, 1991.

Joe Clem,

Acting Director of Office Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–19066 Filed 8–7–91; 12:25 pm]

BILLING CODE 3510-22-M

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50 CFR Part 661

[Docket No. 910498–1098]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closures.

SUMMARY: NOAA announces the closure of the recreational salmon fishery in the exclusive economic zone (EEZ) from Cape Falcon to Humbug Mountain, Oregon, at midnight, July 28, 1991, for the remainder of the season to ensure that the coho salmon quota is not exceeded. The Director, Northwest Region, NMFS (Regional Director), has determined that the overall recreational fishery catch quota of 259,000 coho salmon from Cape Falcon, Oregon, to the U.S.-Mexico border was reached by July 28, 1991. The closure is necessary to conform to the preseason announcement of 1991 management measures. This action is intended to ensure conservation of coho salmon.

NOAA also announces the closure of the recreational salmon fishery in the EEZ from Humbug Mountain, Oregon, to Horse Mountain, California, for the period from July 29 through August 30, 1991.

This fishery will reopen on August 31 through September 2, 1991. Beginning September 3, the previously announced inseason adjustment closing this area on Mondays through Thrusdays of each week will be in effect for the remainder of the scheduled season. The Regional Director has determined that due to high catch rates of chinook salmon and the need to maintain total catch level near the harvest guideline of 20,000 chinook salmon, this fishery should be closed from July 29 through August 30, reopen for the 3-day period from August 31 through September 2 and then, beginning September 3 continue with the Monday through Thursday closure. This action is intended to ensure conservation of chinook salmon.

DATES: *Effective:* Closure of the EEZ between Cape Falcon and Humbug Mountain, Oregon, to recreational salmon fishing was effective at 2400 hours local time, July 28, 1991. Closure of the EEZ between Humbug Mountain, Oregon, and Horse Mountain, California, to recreational salmon fishing is effective at 2400 hours local time, July 28, 1991, through 2400 hours local time, August 30, 1991. The recreational fishing week is closed Mondays through Thursdays in the EEZ from Humbug Mountain, Oregon, to Horse Mountain, California, effective at 0001 hours local time, September 3, 1991. Actual notice to affected fishermen was given prior to those times through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.20, 661.21, and 661.23. *Comments:* Public comments are invited until August 27, 1991.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115-0070; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal, Island, California 90731-7415. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: Joe Scordino at 206-526-6140, or Rodney R. McInnis at 213-514-6199.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR part 661 specify at § 661.21(a)(1) that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by notice issued under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

In its preseason notice of 1991 management measures (56 FR 21311, May 8, 1991), NOAA announced that the 1991 recreational fishery for all salmon species in the subarea from Cape Falcon to Humbug Mountain, Oregon, would begin on May 27 and continue through the earlier of September 15 or the attainment of the overall recreational fishery catch quota of 259,000 coho salmon from Cape Falcon, Oregon, to the U.S.-Mexico border. Based on the best available information on July 22, the recreational fishery catch from Cape Falcon, Oregon, to the U.S.-Mexico border was estimated to be about 214,000 coho salmon through July 22 and was projected to reach the 259,000 coho salmon quota by midnight, July 28, 1991. Therefore, the recreational fishery in the subarea from Cape Falcon to Humbug Mountain, Oregon, was closed for the remainder of the Season effective 2400 hours local time, July 28, 1991.

The preseason notice of 1991 management measures provides that the recreational fishery south of Humbug Mountain, Oregon, will remain open, with a 20,000 chinook harvest guideline between Humbug Mountain, Oregon, and Horse Mountain, California, after the recreational coho quota is reached. However, resource concerns over chinook salmon require temporary closure of the subarea from Humbug Mountain, Oregon, to Horse Mountain, California, as described below. The recreational fishery from Horse Mountain, California, to the U.S.-Mexico border continues as announced in the preseason notice of 1991 management measures.

The 1991 recreational fishery from Humbug Mountain, Oregon, to Horse Mountain, California, opened on May 25 and is scheduled to continue through September 30. When the season opened, Tuesdays and Wednesdays of each week were closed. An in season adjustment was implemented on July 23 to close two additional days of the week (Mondays and Thursdays) in order to dampen catch rates and keep the total catch in this fishery close to the 20,000 chinook guideline (56 FR 34031, July 25, 1991). However, the additional closures were not sufficient to prevent the guideline from being exceeded in July. Based on the best available information on July 22, the recreational catch was estimated to be about 18,300 chinook salmon through July 21. Of this total cumulative catch, about 2,400 chinook salmon were caught during the calendar week of July 15–21 when the fishery was open for 5 days. With the implementation of the additional days of closure, the next calendar week of July 22–28 would be open for 4 days. Projected catches through July 28 would exceed the guideline of 20,000 chinook salmon. Therefore, the recreational fishery in the subarea from Humbug Mountain, Oregon, to Horse Mountain, California, is closed from July 29 through August 30, 1991.

Unlike fisheries managed under quotas that require closure upon the projected attainment of the quota, fisheries managed under harvest guidelines do not require closure upon the projected attainment of the guideline. To provide recreational fishing opportunity during the Labor Day weekend and in September, the fishery from Humbug Mountain, Oregon, to Horse Mountain, California, will be reopened on August 31 and September 1–2, 1991. Then, beginning September 3, Mondays through Thursdays of each week will be closed for the remainder of the season, which is scheduled to end September 30. Fishery impacts on Klamath River fall chinook salmon, the stock of concern, during September 1991 are not included in the impacts for the 1991 fishing season, but will be applied to the 1992 fishing season (through August 1992). Fishery impacts on Klamath River fall chinook salmon are also greatly reduced during the month of September relative to the earlier months.

In accordance with the inseason notice procedures of 50 CFR 661.20, 661.21, and 661.23, actual notice to fishermen of these closures was given prior to those times listed above by telephone hotline number (206) 526-6667 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 KHz.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Oregon Department of Fish and Wildlife, and the California Department of Fish and Game regarding closure of the two recreational fisheries between Cape Falcon, Oregon, and Horse Mountain, California. The States of Oregon and California will manage the recreational fisheries in State waters adjacent to this area of the EEZ in accordance with this Federal action. This notice does not apply to other fisheries that may be operating in other areas.

Because of the need for immediate action, NOAA has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted through August 22, 1991.

Other Matters

This action is authorized by 50 CFR 661.21 and 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 7, 1991.

Joe P. Clem,

Acting Director of Office Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-19087 Filed 8-7-91; 12:36 pm]

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In accordance with the inseason notice procedures of 50 CFR 661.20, 661.21, and 661.23, actual notice to fishermen of these closures was given prior to those times listed above by telephone hotline number (206) 526–6667 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 KHz.

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Because of the need for immediate action, NOAA has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted through August 22, 1991.

Other Matters

This action is authorized by 50 CFR 661.21 and 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 7, 1991.

Joe P. Clem,

Acting Director of Office Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–19067 Filed 8–7–91; 12:36 pm]

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Proposed Rules

Federal Register

Vol. 56, No. 155

Monday, August 12, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

10 CFR Part 1705

[Docket No. RM-91-2]

Rules Implementing the Privacy Act

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Proposed rule.

SUMMARY: Each Federal agency is required by the Privacy Act of 1974, 5 U.S.C. 552a, to promulgate rules which set forth procedures by which individuals can examine and request correction of agency records containing personal information. In this notice the Board proposes a rule to satisfy that requirement.

DATES: Comment period expires September 11, 1991.

ADDRESSES: Mail comments to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Washington, DC 20004. Attention: Office of the General Counsel.

FOR FURTHER INFORMATION CONTACT: Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004, (202) 208–6387.

SUPPLEMENTARY INFORMATION:

Section (f) of the Privacy Act of 1974, 5 U.S.C. 552a(f), requires each Federal agency to promulgate rules which, in the main, set forth procedures by which individuals can examine and request correction of agency records containing personal information. The Board, a Federal agency established by the National Defense Authorization Act, Fiscal Year 1989 (Public Law 100–456), is therefore obligated to publish such regulations. The Board has previously published notices in the **Federal Register** regarding its systems of records covered by the Privacy Act.

Because Privacy Act regulations are intended for use by the general public, the Board has tried to keep its proposed rule simple and straightforward. Some aspects of the Privacy Act dealing solely with the Board's internal procedures and safeguards will be dealt with by directive to the Board's staff rather than by rule. The Board sees no need to elaborate upon the Act's penalty sections in the rule, as those sections are self-executing.

The proposed rule is largely self-explanatory, and is fairly typical of other Federal agency rules in this area. The Board would particularly appreciate public comment on four aspects of the rule:

(1) Is the rule consistent with the Privacy Act?

(2) Is the rule complete as regards public access to records and record correction?

(3) Is the rule clear and understandable?

(4) Is the fee provision reasonable?

Paperwork Reduction Act Statement

The proposed rule is not subject to the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*) because it does not contain any information collection requirements within the meaning of 44 U.S.C. 3502(4).

Regulatory Flexibility Act Certification

As required by the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–12), the Board certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities and that, therefore, a regulatory flexibility analysis need not be prepared. 5 U.S.C. 605(b).

List of Subjects in 10 CFR Part 1705

Privacy Act.

The Proposed Regulations

Accordingly, chapter XVII of title 10 of the Code of Federal Regulations is proposed to be amended by adding a part 1705 to read as follows:

Chapter XVII—Defense Nuclear Facilities Safety Board

PART 1705—PRIVACY ACT

Sec.
1705.01 Scope.
1705.02 Definitions.
1705.03 Systems of records notification.
1705.04 Requests by persons for access to their own records.
1705.05 Processing of requests.
1705.06 Appeals from access denials.
1705.07 Requests for correction of records.
1705.08 Appeals from correction denials.
1705.09 Disclosure of records to third parties.
1705.10 Fees.
1705.11 Exemptions.

Authority: 5 U.S.C. 552a(f).

§ 1705.01 Scope.

This part contains the Board's regulations implementing the Privacy Act of 1974, Public Law 93–579, 5 U.S.C. 552a.

§ 1705.02 Definitions.

The following terms used in these regulations are defined in the Privacy Act, 5 U.S.C. 552a(a): "agency," "individual," "maintain," "record," "system of records," "statistical record," and "routine use." The Board's use of these terms conforms with the statutory definitions. References in this part to "the Act" refer to the Privacy Act of 1974.

§ 1705.03 Systems of records notification.

(a) *Public notice.* The Board has published in the **Federal Register** its systems of records. The Office of the Federal Register biennually compiles and publishes all systems of records maintained by Federal agencies, including the Board.

(b) *Requests regarding record systems.* Any person who wishes to know whether a system of records contains a record pertaining to him or her may file a request in person or in writing. Written requests should be directed to: Privacy Act Officer, Defen Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004. Telephone requests should be made by calling the Board at 202–208–6400, and asking to speak to the Privacy Act Officer.

§ 1705.04 Requests by persons for access to their own records.

(a) *Requests in writing.* A person may request access to his or her own records in writing by addressing a letter to: Privacy Act Officer, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004. The request should contain the following information:

(1) Full name, address, and telephone number of requester.

(2) Proof of identification, which should be a copy of one of the following:

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Valid driver's license, valid passport, or other current identification which contains both an address and picture of the requester,

(3) The system of records in which the desired information is contained, and

(4) At the requester's option, authorization for copying expenses (see § 1705.10 below).

(b) *Requests in person.* Any person may examine his or her own records on the Board's premises. To do so, the person should call the Board's offices at 202-208-6400 and ask to speak to the Privacy Act Officer. This call should be made at least two weeks prior to the time the requester would like to see the records. During this call, the requester should be prepared to provide the same information as that listed in paragraph (a) of this section except for proof of identification.

§ 1705.05 Processing of requests.

(a) *Requests in writing.* The Privacy Act Officer will acknowledge receipt of the request within five working days of its receipt in the Board's offices. The acknowledgment will advise the requester if any additional information is needed to process the request. Within fifteen working days of receipt of the request, the Privacy Act Officer will provide the requested information or will explain to the requester why additional time is needed for response.

(b) *Requests in person.* Following the initial call from the requester, the Privacy Act Officer will determine (1) whether the records identified by the requester exist, and (2) whether they are subject to any exemption under § 1705.11 below. If the records exist and are not subject to exemption, the Privacy Act Officer will call the requester and arrange an appointment at a mutually agreeable time when the records can be examined. The requester may be accompanied by one person of his or her own choosing, and should state during this call whether or not a second individual will be present at the appointment. At the appointment, the requester will be asked to present identification as stated in § 1705.04(a)(2).

(c) *Excluded information.* If a request is received for information compiled in reasonable anticipation of litigation, the Privacy Act Officer will inform the requester that this information is not subject to release under the Privacy Act (*see* 5 U.S.C. 552a(d)(5)).

§ 1705.06 Appeals from access denials.

When access to records has been denied by the Privacy Act Officer, the requester may file an appeal in writing. This appeal should be directed to the Chairman, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004. The appeal letter must (a) specify those denied records which are still sought, and (b) state why the denial by the Privacy Act Officer is erroneous. The Chairman or his designee will respond to such appeals within twenty working days after the appeal letter has been received in the Board's offices. The appeal determination will explain the basis for continuing to deny access to any requested records.

§ 1705.07 Requests for correction of records.

(a) *Correction requests.* Any person is entitled to request correction of a record pertaining to him or her. This request must be made in writing and should be addressed to Privacy Act Officer, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004. The letter should clearly identify the corrections desired. An edited copy of the record wil usually be acceptable for this purpose.

(b) *Initial response.* Receipt of a correction request will be acknowledged by the Privacy Act Officer in writing within five working days of receipt of the request. The Privacy Act Officer will endeavor to provide a letter to the requester within thirty working days stating whether or not the request for correction has been granted or denied. If the Privacy Act Officer decides to deny any portion of the correction request, the reasons for the denial will be provided to the requester.

§ 1705.08 Appeals from correction denials.

(a) When amendment of records has been denied by the Privacy Act Officer, the requester may file an appeal in writing. This appeal should be directed to the Chairman, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004. The appeal letter must (1) specify the records subject to the appeal, and (2) state why the denial of amendment by the Privacy Act Officer is erroneous. The Chairman or his designee will respond to such appeals within thirty working days (subject to extension by the Chairman for good cause) after the appeal letter has been received in the Board's offices.

(b) The appeal determination, if adverse to the requester in any respect, will: (1) Explain the basis for denying amendment of the specified records, (2) inform the requester that he or she may file a concise statement setting forth reasons for disagreeing with the Chairman's determination, and (3) inform the requester of his or her right to pursue a judicial remedy under 5 U.S.C. 552a(g)(1)(A).

§ 1705.09 Disclosure of records to third parties.

Records subject to the Privacy Act that are requested by any person other than the individual to whom they pertain will not be made available except in the following circumstances:

(a) Their release is required under the Freedom of Information Act in accordance with the Board's FOIA regulations, 10 CFR part 1703;

(b) Prior consent for disclosure is obtained in writing from the individual to whom the records pertain; or

(c) Release is authorized by 5 U.S.C. 552a(b)(1) or (3) through (11).

§ 1705.10 Fees.

A fee will not be charged for search or review of requested records, or for correction of records. When a request is made for copies of records, a copying fee will be charged at the same rate established for FOIA requests. *See* 10 CFR 1703.107. However, the first 100 pages of copying will be free of charge.

§ 1705.11 Exemptions.

The Board has not invoked any of the Privacy Act exemptions. Should it do so in the future, this section will be amended.

Dated: August 6, 1991.

John T. Conway,

Chairman.

[FR Doc. 91-18987 Filed 8-9-91; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-ANE-26]

Airworthiness Directives; General Electric Company (GE) CF6-45/-50 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to GE CF6-45/-50 series turbofan engines, which currently requires repetitive visual inspections of the left-hand side seventh stage low pressure turbine (LPT) cooling air manifold tubes and attachment hardware for distress, and replacement

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§ 1705.09 Disclosure of records to third parties.

Records subject to the Privacy Act that are requested by any person other than the individual to whom they pertain will not be made available except in the following circumstances:

(a) Their release is required under the Freedom of Information Act in accordance with the Board's FOIA regulations, 10 CFR part 1703;

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§ 1705.11 Exemptions.

The Board has not invoked any of the Privacy Act exemptions. Should it do so in the future, this section will be amended.

Dated: August 6, 1991.

John T. Conway,

Chairman.

[FR Doc. 91-18987 Filed 8-9-91; 8:45 am]

BILLING CODE 4820-KD

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-ANE-26]

Airworthiness Directives; General Electric Company (GE) CF6–45/–50 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to GE CF6–45/–50 series turbofan engines, which currently requires repetitive visual inspections of the left-hand side seventh stage low pressure turbine (LPT) cooling air manifold tubes and attachment hardware for distress, and replacement as required. This proposed action includes the repetitive visual inspections of the AD being superseded, and also requires the incorporation of check valves in the seventh stage air tubes as a terminating action to the inspection program. This proposal is prompted by the availability of check valves which eliminates the need for mandatory repetitive inspections of the left-hand side stage LPT cooling air system. This condition, if not corrected, could result in left-hand side seventh stage LPT cooling air manifold tube failures, which could result in an LPT overtemperature condition and subsequent uncontained LPT stage 1 disk rupture.

DATES: Comments must be received no later than September 26, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the FAA, New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 91–ANE–26, 12 New England Executive Park, Burlington, Massachusetts 01803–5299, or deliver in duplicate to room 311, at the above address.

Comments may be inspected at the above location in room 311, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service information may be obtained from General Electric Company, Technical Publications Department, 1 Neumann Way, Cincinnati, Ohio 45215, or may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Robert Ganley, Engine Certification Office, ANE–140, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone (617) 273–7082.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91–ANE–26." The postcard will be date/time stamped and returned to the commenter.

Discussion

On December 11, 1986, the FAA issued AD 85–25–56R1, Amendment 39–5495 (52 FR 1318, January 13, 1987), to require repetitive visual inspections on the left-hand side seventh stage LPT cooling air manifold on GE CF6–45/–50 series turbofan engines. That action was prompted by an uncontained LPT stage 1 disk failure due to loss of cooling air from a failed left-hand side seventh stage cooling air manifold tube. The FAA determined that the failure of the cooling air manifold tube was caused by loose, broken, improperly installed, or missing attachment hardware. It was found that a loosely secured tube could enter into an adverse vibratory mode and fail due to high cycle fatigue. This condition, if not corrected, could result in failure of the cooling air manifold tube which could result in an LPT overtemperature condition and subsequent uncontained LPT stage 1 disk rupture.

Since the issuance of the AD, the FAA has determined that in addition to properly securing the seventh stage cooling air manifold tubes to reduce vibration, check valves could be installed into the seventh stage cooling air manifold which would prevent loss of LPT cooling air following tube failure. This would improve the reliability and durability of the seventh stage LPT cooling air system. The incorporation of these check valves relieves the necessity to inspect seventh stage cooling manifolds at shorter intervals than prescribed by the appropriate maintenance manuals, and provides a terminating action to the inspection program.

The FAA has reviewed and approved the technical contents of GE CF6–50/–45 Service Bulletin (SB) 75–063, dated July 5, 1990, which describes the incorporation procedure of the check valves.

Since this condition is likely to exist or develop on other engines of this same type design, an AD is proposed which would supersede AD 85–25–56R1, to require the incorporation of the check valves in the seventh stage air tubes, as a terminating action to the inspection program.

There are approximately 321 GE CF6–45/–50 series engines of the affected design installed on aircraft of U.S. registry which would be affected by this AD. It is estimated that it would take approximately 4 manhours per engine to accomplish the required reinspection requirement, and 11 manhours per engine to incorporate the check valves. The average labor cost would be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $264,825.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

THE PROPOSED AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes to amend 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

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§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment number 39–5495 (52 FR 1318, January 13, 1987), and adding the following new airworthiness directive (AD):

General Electric Company: (Docket No. 91–ANE–26).

Applicability: General Electric Company (GE) CF6–45/–50 series turbofan engines, installed on, but not limited to, McDonnell Douglas DC–10–15 series, DC–10–30 series, Airbus A300 series, Boeing 747–200 series, and 747–300 series aircraft.

Compliance: Required as indicated, unless previously accomplished.

To prevent failure of the left-hand side seventh stage low pressure turbine (LPT) cooling air manifold tube, which could result in an LPT overtemperature condition and subsequent uncontained LPT stage 1 disk rupture, accomplish the following:

(a) For those engines not in compliance with the requirements of GE CF6–50/–45 Service Bulletin (SB) 75–54, dated July 19, 1985 (AD 85–25–56R1), or paragraph 2.A. or 2.B. of GE CF6–50/–45 SB 75–46, Revision 3, dated June 8, 1982 (AD 85–25–56R1), comply with paragraph (a)(1), then paragraph (a)(2) of this AD.

(1) Accomplish the requirements of paragraph 2.A.1. and 2.A.2. of GE CF6–50/–45 SB 75–55, dated September 13, 1985 (AD 85–25–56R1), concurrently with the requirements of paragraph 2.A. of GE CF6–50/–45 SB 75–54, dated July 19, 1985, within the next 10 flight cycles after the effective date of this AD.

(2) Accomplish the requirements of paragraph 2. of GE CF6–50/–45 SB 75–55, dated September 13, 1985, within 60 calendar days of complying with paragraph (a)(1) of this AD.

(b) For engines already in compliance with the requirements of GE CF6–50/–45 SB 75–54, dated July 19, 1985, or paragraph 2.A. or 2.B. of GE CF6–50/–45 SB 75–46, Revision 3, accomplish the requirements of paragraph 2. of GE CF6–50/–45 SB 75–55, dated September 13, 1985, within 60 calendar days after the effective date of this AD.

(c) Replace cracked, broken or ruptured left-hand side seventh stage LPT cooling air manifold tube and attachment hardware, found during accomplishment of paragraph (a) or (b) of this AD, prior to further flight.

(d) Inspect the left-hand side seventh stage LPT cooling air manifold tubes and attachment hardware in accordance with the requirements of paragraph 2.A., 2.B., 2.C. and 2.D.(4)(b) of GE CF6–50/–45 SB 75–58, dated April 14, 1986 (AD 85–25–56R1), within the next 250 flight cycles after the effective date of this AD, and thereafter, at intervals not to exceed 250 flight cycles from the last inspection.

(e) Replace or tighten, in accordance with paragraph 2.D. of GE CF6–50/–45 SB 75–58, dated April 14, 1986, left-hand side seventh stage LPT cooling air system hardware found worn, loose, cracked or broken during accomplishment of paragraph (d) of this AD, prior to further flight.

(f) Install check valves for the seventh stage LPT cooling air manifold tubes in accordance with GE CF6–50/–45 SB 75–063, dated July 5, 1990, prior to July 30, 1993. Repetitive inspection of the left-hand side seventh stage LPT cooling air manifold tubes and attachment hardware in accordance with paragraph (d) of this AD is no longer required once the check valves are incorporated.

(g) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(h) Upon submission of substantiating data by an owner or operator through an FAA Inspector (maintenance, avionics, operations, as appropriate) an alternate method of compliance with the requirements of this AD or adjustments to the compliance schedule specified in this AD may be approved by the Manager, Engine Certification Office, Engine & Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5299. (i) All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to General Electric Aircraft Engines, CF6 Distribution Clerk, room 132, 111 Merchant Street, Cincinnati, Ohio 45246. These documents may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts.

Issued in Burlington, Massachusetts, on July 23, 1991.

Jack A. Sain,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR 91–19058 Filed 8–9–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 91–ASW–8]

Proposed Alteration of VOR Federal Airways; LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of several Federal airways located in the vicinity of Lafayette, LA. The Lafayette VOR is being relocated to the Lafayette Regional Airport. This action would realign all airways affected by the relocation of the Lafayette navigational aid.

DATES: Comments must be received on or before September 20, 1991.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASW–500, Docket No. 91–ASW–8, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91–ASW–8." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence

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Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to realign three VOR Federal airways located in the vicinity of Lafayette, LA. The Lafayette, LA, VOR is being relocated January 9, 1992, to lat. 30°11′37″N., long. 91°59′32″W., at the Lafayette Regional Airport. Section 71.123 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. § 71.123 is amended as follows:

V-194 [Amended]

By removing the words "Sabine Pass, TX; INT Sabine Pass 077° and Lafayette, LA, 254° radials; Lafayette; Baton Rouge, LA;" and substituting the words "Sabine Pass, TX; Lafayette, LA; Baton Rouge, LA;".

V-552 [Amended]

By removing the words "INT Lake Charles 064° and Lafayette, LA, 285° radials;" and substituting the words "INT Lake Charles 064°T(057°M) and Lafayette, LA, 281°T(278°M) radials;".

V-559 [Revised]

From Lafayette, LA, INT Lafayette 016°T(013°M) and Baton Rouge, LA, 264°T(261°) radials; to Baton Rouge.

Issued in Washington, DC, on July 29, 1991.

Jerry W. Ball,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 91-19059 Filed 8-9-91; 8:45 am]

BILLING CODE 4910-13-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Requirements for the Special Packaging of Household Substances; Opportunity for Oral Comment on Proposed Rule

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of opportunity for oral comment on proposed rule.

SUMMARY: On October 5, 1990, the Commission proposed to amend its requirements under the Poison Prevention Packaging Act of 1970, as amended, for child-resistant packaging. 55 FR 40856. These amendments would change the child and adult tests under which child-resistant packaging is evaluated. In response to several requests from members of the affected industry, the date by which written comments on the proposal should be received was extended to July 1, 1991. 56 FR 9161 (March 5, 1991). In the notice announcing the extension of the comment period, the Commission also solicited comment on a change to the adult test protocol that was suggested during the original comment period, which ended on January 3, 1991.

In this notice, the Commission announces that it has scheduled an opportunity for members of the public to present oral comments on the proposal.

DATES: An opportunity for the presentation of oral comments will be provided at 10 a.m. on September 12, 1991. Persons who wish to present oral comments to the Commission on this proposal must contact Sheldon Butts in the Office of the Secretary by August 29, 1991.

Summaries of the oral comments should be submitted to the Office of the Secretary by August 29, 1991.

ADDRESS: Summaries of oral comments should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207 or delivered to Room 420, 5401 Westbard Avenue, Bethesda, MD 20816 (telephone 301-492-6800).

FOR FURTHER INFORMATION CONTACT: Concerning the arrangements for oral comments: Sheldon Butts, Deputy Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 492-6800; Concerning the proposed rule: Virginia White, Project Manager, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6477.

Dated: August 7, 1991.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 91-19093 Filed 8-9-91; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD11-91-07]

Anchorage Regulations; San Francisco Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing a rule change to the anchorage grounds of San Francisco Bay encompassing the waters known as Anchorage No. 8. Loading of any dangerous cargoes or combustible liquids in Anchorage No. 8 will be prohibited, unless authorized by the Captain of the Port.

The small size of this anchorage and its proximity to the Oakland Inner Harbor Entrance Channel and the Naval Air Station make it unsafe for operations involving the transfer of dangerous cargoes or combustible liquids. It is best suited as a temporary anchorage for vessels awaiting pier facilities or other anchorage areas. This change is needed to safeguard San Francisco Bay, the environment, vessels and cargo against accidents, pollution,

destruction, loss, or other incidents of a similar nature.

DATES: Comments must be received on or before September 26, 1991.

ADDRESSES: Comments should be mailed to Commanding Officer, U.S. Coast Guard Marine Safety Office, Bldg. 14 Coast Guard Island, Alameda, CA 94501-5100. The comments and other materials referenced in this notice will be available for inspection and copying at the Marine Safety Office, Bldg. 14 Coast Guard Island, Alameda, CA. Normal office hours are between 7:30 a.m. and 3:30 p.m. Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant M.F. Thurber, Coast Guard Marine Safety Office, San Francisco Bay, CA, 415-437-3073.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD11-91-07) and the specific section of the proposal to which their comments apply, and give reasons for each comment. The regulation may be changed in light of comments received.

All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid this rulemaking process.

Drafting Information

The drafters of this proposed regulation are Lieutenant M.F. Thurber, Project Officer for the Captain of the Port, and Lieutenant Commander Allen Lotz, Project Attorney, Eleventh Coast Guard District Legal Office.

Discussion of Proposed Regulation

This regulation is needed to eliminate the risk of accidents that could be caused by vessels bunkering in the vicinity of a main shipping channel and at the end of an active runway at the Naval Air Station. This additional restriction will provide the Captain of the Port with the authority necessary to help prevent situations where significant economic and environmental assets of the general public, industry, and the United States may come to harm. The safety of these assets is in the public interest and a restriction of specific operations within Anchorage No. 8 is justified to assist in protecting against these situations. This proposed change will make an existing "specific regulation" applicable to Anchorage No. 8, and will not affect regulations pertaining to any other anchorage grounds in San Francisco Bay. The waters of San Francisco Bay known as Anchorage No. 8 are not frequently used by vessels to conduct loading of cargoes or combustible liquids. The waters known as Anchorage No. 9, adjacent to Anchorage No. 8, are more suitable in that Anchorage No. 9 encompasses a larger area and is in an area transited by fewer vessels underway on major shipping channels.

Regulatory Evaluation

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulations and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Because the impact of this proposal is expected to minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposal contains no information collection or recordkeeping requirements.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, it will have no significant environmental impact and it is categorically excluded from further environmental documentation.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 110

Special anchorage areas, Anchorage grounds.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend subpart B of part 110 of title 33, Code of Federal Regulations, as follows:

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05-1(g). Section 110.1a and each section listed in 110.1a is also issued under 33 U.S.C. 1223 and 1231.

2. In § 110.224 Table 110.224(d)(1) is amended by revising lines 8 and 9 to read as follows:

Anchorage No.	General location	Purpose	Specific regulations
*	*	*	* *
8	do	do	Notes a,b,c.
9	do	do	Notes a,b.
*	*	*	* *

Dated: July 30, 1991.

M.E. Gilbert,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 91-19105 Filed 8-9-91; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 233

RIN 0970-AA94

Aid to Families with Dependent Children; Require Recoupment of Overpayments from Current Recipients

AGENCY: Office of Family Assistance, ACF, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the regulations to require States to use recoupment from the assistance payment to collect outstanding overpayments from current recipients. Regulations currently permit States to recover such overpayments through recoupment from the assistance payment, repayment directly from the family, or a combination of both recoupment and repayment. Under these proposed rules, repayment, as a method to collect overpayments would continue to be permitted as a supplement to a recoupment.

This proposed rule would also amend regulations to permit States to recover an amount in excess of the current 10 percent limitation at the recipient's written request.

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Anchorage No.	General location	Purpose	Specific regulations
* * * * *			
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9	do	do	Notes a,b.
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Dated: July 30, 1991.

M.E. Gilbert,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 91–19105 Filed 8–9–91; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 233

RIN 0970–AA94

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This proposed rule would also amend regulations to permit States to recover an amount in excess of the current 10 percent limitation at the recipient's written request.

DATES: Interested persons and agencies are invited to submit written comments concerning these regulations no later than October 11, 1991.

ADDRESSES: Comments should be submitted in writing to the Director, OFA, Attention: Mr. Mack A. Storrs, Director, Division of Policy, 5th Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447 or delivered to the Administration for Children and Families, Office of Family Assistance, between 8 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Mack A. Storrs, Administration for Children and Families, Office of Family Assistance, 5th Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447, Telephone (202) 401–9289.

SUPPLEMENTARY INFORMATION:

Background

Current regulations permit States the option of selecting the method for recovering overpayments from current recipients. States may recover overpayments through recoupment from each assistance payment (i.e., grant reduction), repayment (i.e., payment in full or by installments), or a combination of both recoupment and repayment. A March 1986 General Accounting Office (GAO) report (GAO/RCED–86–17) on AFDC overpayment collections found that recovering overpayments through recoupment from the AFDC grant was more effective, less expensive and required less monitoring and accounting than recovering these incorrect payments through repayment methods. The GAO interviewed AFDC officials in 11 states and these officials indicated that their overpayment collections increased after they began using recoupment.

The legislative history of section 402(a)(22) of the Social Security Act, the section that sets forth the provisions regarding recovery of overpayments, indicates that Congress considered the correctness of payments as crucial to maintaining continued public support for the AFDC program (Sen. Rep. No. 97–139, 97th Cong, 1st Sess. 519 (1981)). By requiring the prompt correction of all overpayments, Congress believed that recipients and welfare agencies would be encouraged to take greater responsibility for assuring payment accuracy. As a result, States were given the option in the implementing regulations to select at least one of two recovery methods. The first, which applies to current and former recipients, is repayment (i.e., the individual pays off the overpayment in full or by installment). The second method, applicable to current recipients only, including recipients whose overpayments occurred during a prior period of eligibility, is recoupment from the AFDC grant of the AFDC unit of which the overpaid individual is a member. Although the statute does not address the relationship between these two recovery methods, States' experiences as shown in the above cited GAO report, indicate that recoupment is more effective and requires less monitoring than over recovery methods. Accordingly, it is reasonable to expect and require States to use the recoupment method.

Therefore, the proposed regulations would amend § 233.20(a)(13)(i)(A)(1) to require States to use recoupment as the method of recovering overpayments from all current recipients. However, the repayment would continue to be permitted if the recipient elects to repay all or part of the overpayment either before recoupment from the grant is implemented or as an addition to the amount being recouped from the grant. The proposed regulations will lead to recovery systems that are more efficient, prompt, and effective.

Further, in response to questions we have received as to whether a State may recover an amount in excess of the 10 percent limitation on recoupment when a recipient voluntarily requests such an arrangement, regulations at § 233.20(a)(13)(i)(A)(2) are being clarified to specifically enunciate policy on this issue. The 10 percent limit on recoupment applies only to an AFDC family with no assets and no income. For example, where an overpaid individual has other income and/or resources, a State may recoup above the 10 percent limit as long as the recipient retains 90 percent of the combined assistance payment, income and resources. Section 402(a)(22)(A) of the Act states that recovery "* * * shall not result in the reduction of aid payable for any month, such that the aid, when added to such family's liquid resources and to its income * * * is less than 90 percent of the amount payable under the State Plan to a family of the same composition with no other income * * *." The legislative history of this provision indicates that Congress did not intend recipients to suffer undue hardship because of recovery (Sen. Rep. No. 97–139, 97th Cong. 1st Sess. 519 (1981)). Therefore, clearly, a State is permitted to recover from a current recipient with no assets and no income, an amount up to 10 percent of the AFDC assistance payment payable to that recipient for the month. However, since the statute does not prevent a recipient from returning to the State agency any portion of the overpayment received, be believe that a State may recoup in excess of the 10 percent limitation as long as the recipient voluntarily requests such an arrangement in writing. Recovering an amount in excess of 10 percent has the advantage of relieving the recipient from a long-term recoupment burden while enabling a State to collect the overpayment over a shorter period. Therefore, the proposed regulations would permit a State, at the recipient's written request, to recover a monthly amount above the 10 percent limitation. Since recovery above the 10 percent limit is voluntary, the recipient may terminate the arrangement of recoupment above this limit at any time. In such cases, the State must resume or continue recoupment at the rate prescribed by its otherwise applicable recoupment procedures.

We are also clarifying § 233.20(a)(13)(i)(A)(1) to make it compatible with the statutory language at section 402(a)(22)(A) by adding the word "future" to indicate that recoupment shall be made from any future aid payable.

In addition, we continue to receive questions as to whether a State can recover an amount in excess of the total AFDC overpayment, such as costs related to collections or penalties. We are taking this opportunity to restate the Federal policy on this issue. Neither the statute (section 402(a)(22)) nor the regulations permit a State to recover from the recipient an amount above the actual overpayment. The regulation at § 233.20(a)(13)(i) defines an overpayment as "* * * a financial assistance payment received by or for an assistance unit * * * which exceeds the amount for which that unit was eligible." Since collection fees and such similar costs are not part of the overpayment amount received by the assistance unit, the State cannot require an AFDC recipient to pay it. Federal financial participation is available for any costs related to the collection of an overpayment.

Also, for clarity, we are deleting the language that refers to recovery of overpayments under State law (a recovery method) at § 233.20(a)(13)(i)(B), revising it to indicate that repayment is no longer a recovery option and adding it to § 233.20(a)(13)(i)(A)(1) which addresses methods of recovery.

Finally, to promote prompt recovery of overpayments, including overpayments that occurred during a prior period of eligibility, we are revising

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§ 233.20(a)(13)(i)(E) to require that the specific overpayment recovery action be taken by the end of the month following the month in which the overpayment amount is determined pursuant to § 205.10, or by the end of the month following the month the recipient returns to the rolls, rather than the end of the quarter following the quarter; and we are revising § 233.20(a)(13)(i)(E)(3) to indicate that the recovery action for a current recipient is recoupment.

Child care recoupment rules will be published in a separate regulatory package at a later date.

Regulatory Procedures

Executive Order 12291

These regulations do not meet any of the three criteria which require a regulatory impact analysis under Executive Order 12291. Specifically, the regulations will not have an annual effect on the economy of more than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not have significant effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We estimate a nominal savings from the provision as a result of quicker collections of overpayments from those who, before recoupment from the grant is completed would die, move from the State and not be located, or become ineligible for AFDC (and the State elects not to recover because the overpayment is less than $35 or determines that collection would not be cost-effective).

Paperwork Reduction Act

There will be no new reporting or recordkeeping requirements imposed on the public or the States which would require clearance by the Office of Management and Budget.

Regulatory Flexibility Act

We certify that these regulations will not have significant impact on a substantial number of small entities because they primarily effect State governments and individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Catalog of Federal Domestic Assistance Program 13.808, Public Assistance Maintenance Assistance (State Aid)

List of Subjects in 45 CFR Part 233

Aid to families with dependent children, Aliens, Grant programs/social programs, Public assistance programs, Reporting and recordkeeping requirements.

Dated: May 9, 1991.

Jo Anne B. Barnhart,

Assistant Secretary for Children and Families.

Approved: June 27, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

Accordingly, chapter II, title 45, Code of Federal Regulations is proposed to be amended as set forth below:

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

1. The authority citation for part 233 continues to read as follows:

Authority: Secs. 1, 402, 406, 407, 1002, 1102, 1402 and 1602, Social Security Act (42 U.S.C. 301, 602, 606, 607, 1202, 1302, 1602, and 1382 note); and sec. 6, Pub. L. 94–114, 89 Stat. 579 and part XXIII of Pub. L. 97–35, 95 Stat. 843, and Pub. L. 97–248, 96 Stat. 324, and Pub. L. 99–603, 100 Stat. 3359, sec. 221, Pub. L. 98–181, as amended by sec. 102, Pub. L. 98–479 (42 U.S.C. 602 note) and sec. 202, Pub. L. 100–485, 102 Stat. 2377.

§ 233.20 [Amended]

2. Section 233.20 is amended by revising paragraph (a)(13)(i)(A)(*1*), (*2*), (B), (E) introductory text and (E) (*3*) to read as follows:

(a) * * *

(13) * * *

(i) * * *

(A) * * *

(*1*) Any recovery of an overpayment from a current assistance unit, including a current assistance unit or recipient whose overpayment occurred during a prior period of eligibility, must be recovered by reducing the amount of any future aid payable to the assistance unit of which the overpaid individual is a member. The repayment method of recovery (payment in full or by installments) may also be applied provided that it is used prior to or concurrent with grant reduction. For individuals who are no longer recipients who refuse to repay the overpayment, recovery shall be made by appropriate action under State law against their income and resources.

(*2*) For a current assistance unit, including a recipient whose overpayment occurred during a prior period of eligibility, such recoupment shall result in the assistance unit retaining, for any payment month from the combined aid, income and liquid resources (without application of section 402(a)(8) of the Act), not less than 90 percent of the amount payable under the State plan to a family of the same composition with no other income. Where a State chooses to recoup at a rate less than the maximum, it must recover promptly. Where a recipient voluntarily requests in writing recoupment at a rate in excess of the maximum for a certain period, the State may recover for this period at the requested rate. If the recipient subsequently elects to terminate the arrangement to recover an amount in excess of the 10 percent limitation on recoupment, the State will apply its otherwise applicable recoupment procedures.

(B) The State shall recover an overpayment from.

(*1*) the assistance unit which was overpaid, or

(*2*) any assistance unit of which a member of the overpaid assistance unit has subsequently become a member, or

(*3*) any individual member(s) of the overpaid assistance unit whether or not currently a recipient.

(C) * * *

(D) * * *

(E) Prompt recovery of an overpayment: A State must take one of the following three actions (after notice and hearing requirements are met pursuant to § 205.10) by the end of the month following the month in which the overpayment amount is determined, and in the case of the recipient whose overpayment occurred during a prior period of eligibility, by the end of the month following the month the recipient returns to the rolls:

(*1*) * * *

(*2*) * * *

(*3*) Initiate recoupment from a current recipient's grant.

* * * * *

[FR Doc. 91–18955 Filed 8–9–91; 8:45 am]

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DEPARTMENT OF ENERGY

48 CFR Parts 922, 937, 952 and 970

Acquisition Regulation; Arbitration in Collective Bargaining Agreements for Protective Services and Management and Operating Contracts

AGENCY: Department of Energy

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department is proposing to amend the Department of Energy Acquisition Regulation (DEAR) to add a new section 922.103–5 to implement the Federal Acquisition Regulation (FAR)

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citation for part 233
as follows:

402, 406, 407, 1002, 1102,
l Security Act (42 U.S.C.
92, 1302, 1602, and 1382
o. L. 94–114, 89 Stat. 579
o. L. 97–35, 95 Stat. 843,
6 Stat. 324, and Pub. L.
9, sec. 221, Pub. L. 98–181,
102, Pub. L. 98–479 (42
sec. 202, Pub. L. 100–485,

d]
) is amended by
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402(a)(8) of the Act), not less than 90 percent of the amount payable under the State plan to a family of the same composition with no other income. Where a State chooses to recoup at a rate less than the maximum, it must recover promptly. Where a recipient voluntarily requests in writing recoupment at a rate in excess of the maximum for a certain period, the State may recover for this period at the requested rate. If the recipient subsequently elects to terminate the arrangement to recover an amount in excess of the 10 percent limitation on recoupment, the State will apply its otherwise applicable recoupment procedures.

(B) The State shall recover an overpayment from.

(*1*) the assistance unit which was overpaid, or

(*2*) any assistance unit of which a member of the overpaid assistance unit has subsequently become a member, or

(*3*) any individual member(s) of the overpaid assistance unit whether or not currently a recipient.

(C) * * *

(D) * * *

(E) Prompt recovery of an overpayment: A State must take one of the following three actions (after notice and hearing requirements are met pursuant to § 205.10) by the end of the month following the month in which the overpayment amount is determined, and in the case of the recipient whose overpayment occurred during a prior period of eligibility, by the end of the month following the month the recipient returns to the rolls:

(*1*) * * *

(*2*) * * *

(*3*) Initiate recoupment from a current recipient's grant.

* * * * *

[FR Doc. 91–18955 Filed 8–9–91; 8:45 am]

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DEPARTMENT OF ENERGY

48 CFR Parts 922, 937, 952 and 970

Acquisition Regulation; Arbitration in Collective Bargaining Agreements for Protective Services and Management and Operating Contracts

AGENCY: Department of Energy

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department is proposing to amend the Department of Energy Acquisition Regulation (DEAR) to add a new section 922.103–5 to implement the Federal Acquisition Regulation (FAR) 22.103–5 (48 CFR 22.103–5), both entitled Contract Clauses. The new section designates contracts for protective services as contracts requiring use of the clause at FAR 52.222–1, Notice to the Government of Labor Disputes. A new entitled Protection Services Contracting, is also added at 937.70. the amendment would require labor and management to resolve disputes by means other than lockouts, strikes, or other interruptions of normal operations for protective services contracts having collective bargaining agreements. The DOE proposes that these collective bargaining agreements should provide an effective grievance procedure with arbitration as the final step. The DOE believes that this change is necessary to maintain operational continuity at its facilities, especially in consideration of the public safety, property and national security interests at these sites. Part 952 is amended to include a contract clause for this purpose. Part 970 is also amended to adopt a similar clause for use in management and operating contracts consistent with long standing policy found at 970.2201(b)(5)(ii).

DATES: Written comments should be submitted no later than September 11, 1991.

ADDRESSES: Comments should be addressed to the Department of Energy, Procurement Policy Division, Procurement and Assistance Management PR–121, 1000 Independence Avenue, SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Richard B. Langston, Procurement, Assistance and Program Management (PR–121) Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–8247.

Laura Fullerton, Office of the Assistant General Counsel for Procurement and Finance (GC–34), Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–1900.

SUPPLEMENTARY INFORMATION:

I. Background
II. Procedural Requirements
  A. Review Under Executive Order 12291
  B. Review Under the Regulatory Flexibility Act
  C. Review Under the Paperwork Reduction Act
  D. Review Under Executive Order 12612
  E. National Environmental Policy Act
  F. Public Hearing
III. Public Comments

I. Background

Under section 644 of the Department of Energy Organization Act, Public Law 95–91 (42 U.S.C. 7254), the Secretary of Energy is authorization to prescribe such procedural rules and regulations as may be deemed necessary or appropriate to accomplish the functions vested in the position. Accordingly, the DEAR was promulgated with an effective date of April 1, 1984 (49 FR 11922, March 28, 1984), 48 CFR chapter 9.

The Department is proposing to amend the DEAR to specify a clause at 970.5204–57, Collective Bargaining Agreements, to be used in management and operating contracts, or subcontracts thereunder, for which continuity of services is imperative. A new final sentence is added to paragraph (b)(5)(ii) of 970.2201 to require use of the clause being added at 970.5204–57. Section 952.237–70, Collective Bargaining Agreements—protection services, is added to specify a clause to be used in contracts, other than management and operating contracts, calling for protective services at DOE-owned facilities. Also proposed is the addition of a new subpart 937.70, Protective Services Contracting, which will describe DOE policy and prescribe the use of the clause. A new subsection 922.103–5 is also added to implement FAR 22.103–5 to designate contracts for protective services at DOE-owned facilities as contracts requiring use of the clause entitled Notice to the Government of Labor Disputes at FAR 52.222–1.

II. Procedural Requirements

A. Review Under Executive Order 12291

This Executive Order, entitled "Federal Regulation," requires that certain regulations be reviewed by the Office of Management and Budget, (OMB) prior to their promulgation. The Director, OMB, by memorandum dated December 14, 1984, exempted certain agency procurement regulations for Executive Order 12291. The exemption applies to this rulemaking action.

B. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this proposed rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

D. Review Under Executive Order 12612

Executive Order 12612, entitled "Federalism," 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. Today's proposed rule, when finalized, will revise certain policy and procedural requirements. DOE has determined that none of the revisions will have a direct effect on the institutional interests or traditional functions of the States.

E. National Environmental Policy Act

DOE has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmntal Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*) (1976), the Council on Environmental Quality Regulations (40 CFR part 1500 1508), or the DOE Guidelines (10 CFR part 1021) and, therefore, does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

F. Public Hearing

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law and that the rule should not have a substantial impact on the nation's economy or large numbers of individuals or businesses. Therefore, pursuant to Public Law 95–91, the DOE Organization Act, and the Administrative Procedures Act (5 U.S.C. 553), the Department does not plan to hold a public hearing on this proposed rule.

III. Public Comments

Interested persons are invited to participate by submitting data, views or arguments with respect to the proposed DEAR amendments set forth in this notice. Three copies of written comments should be submitted to the address indicated in the "ADDRESS" section of this notice. All comments received will be available for public inspection in the DOE Reading Room,

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1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

All written comments received September 11, 1991 will be carefully assessed and fully considered prior to publication of the proposed amendment as a final rule. Any person submitting information which that person believes to be confidential and which may be exempt from public disclosure should submit one complete copy, as well as an additional copy from which the information claimed to be confidential has been deleted. DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination. DOE's generally applicable procedures for handling information, which has been submitted in a document and may be exempt from public disclosure, are set forth in 10 CFR 1004.11.

List of Subjects in 48 CFR Parts 922, 937, 952 and 970

Government procedure.

For reasons set out in the preamble, chapter 9 of title 48 of the Code of Federal Regulations is proposed to be amended as set forth below.

Issued in Washington, DC, on July 29, 1991.

Berton J. Roth,

Acting Director, Office of Procurement, Assistance and Program Management.

1. The authority citation for parts 922, 937 and 952 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

PART 922—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

2. Section 922.103–5 is added to read as follows:

922.103–5 Contract clauses.

In accordance with FAR 22.101–1(e) and FAR 22.103–5, the contracting officer shall insert the clause at FAR 52.222–1, Notice to the Government of Labor Disputes, in all solicitations and contracts for protective services at DOE owned facilities requiring continuity of services for public safety and national security reasons. The contracting officer may insert this clause in other solicitations and contracts where a significant need for continuity in contract performance exists. See 937.70, Protective Services Contracting, for policy guidance.

PART 937—SERVICE CONTRACTING

3. A new subpart 937.70, consisting of 937.7010 through 970.7040, is added to read as follows:

Subpart 937.70—Protective Services Contracting

970.7010	Scope of subpart.
970.7020	Policy.
970.7030	Procedures.
970.7040	Contract clauses.

Subpart 937.70 Protective Services Contracting

937.7010 Scope of subpart.

This subpart is applicable to contracts for the acquisition of protective services for DOE owned facilities requiring continuity of services for public safety and national security reasons.

937.7020 Policy.

Continuity of protective services at DOE owned facilities is vital to the safety of DOE and contractor personnel, public safety, the preservation of DOE property and national security. DOE policy is that contractors providing protective services, their employees, groups representing such employees, the Department, and DOE personnel shall cooperate to the maximum practical extent to assure continuity of such services.

937.7030 Procedures.

The importance of operational continuity at DOE owned facilities dictates that protective service contractors, when negotiating collective bargaining agreements with their personnel, provide that grievances and disputes involving the interpretation or application of the agreement be settled without resort to strike, lockout, or other interruption of normal operations. For this purpose, each collective bargaining agreement shall provide an effective grievance procedure with arbitration as its final step, unless the parties agree upon some other method of assuring continuity of operations for the term of the agreement. DOE expects its protective services employees and the unions representing contractor employees to cooperate fully with the Federal Mediation and Conciliation Service.

937.7040 Contract clauses.

The contracting officer shall insert the clause at 952.237–70, entitled *Collective Bargaining Agreements—Protective Services*, in all protective services solicitations and contracts involving DOE owned facilities. See also, 922.103–5, Contract Clauses, which prescribes use of the clause at FAR 52.222–1, Notice to the Government of Labor Disputes.

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 952.237–70 is added to read as follows:

952.237–70 Collective bargaining agreements—protective services.

As prescribed in 937.7040, insert the following clause:

Collective Bargaining Agreements—Protective Services (xxx 1991)

When negotiating collective bargaining agreements covering protective services under this contract, the Contractor shall use its best efforts to ensure such agreements contain provisions designed to assure continuity of services during the contract period of performance. All such agreements should provide that grievances and disputes involving the interpretation or application of the agreement will be settled without resorting to strike, lockout, or other interruption of normal operations. For this purpose, each collective bargaining agreement should provide an effective grievance procedure with arbitration as its final step, unless the parties mutually agree upon some other method of assuring continuity of operations for the period of performance of the contract. As part of such agreements, management and labor shall agree to cooperate fully with the Federal Mediation and Conciliation Service. The contractor shall include the substance of this clause in any subcontracts for protective services.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

5. The authority citation for part 970 continues to read:

Authority. Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254), sec. 201 of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (41 U.S.C. 420), and sec. 1534 of the Department of Defense Authorization Act, 1986, Pub. L. 99–145 (42 U.S.C. 7256a), as amended.

6. Section 970.2201 is amended by revising paragraph (b)(5)(ii) as follows:

970.2201 Basic labor policies.

* * * * *

(b) * * *

(5) * * *

Bargaining Agreements—Protective Services, in all protective services solicitations and contracts involving DOE owned facilities. See also, 922.103–5, Contract Clauses, which prescribes use of the clause at FAR 52.222–1, Notice to the Government of Labor Disputes.

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 952.237–70 is added to read as follows:

952.237-70 Collective bargaining agreements—protective services.

As prescribed in 937.7040, insert the following clause:

Collective Bargaining Agreements—Protective Services (xxx 1991)

When negotiating collective bargaining agreements covering protective services under this contract, the Contractor shall use its best efforts to ensure such agreements contain provisions designed to assure continuity of services during the contract period of performance. All such agreements should provide that grievances and disputes involving the interpretation or application of the agreement will be settled without resorting to strike, lockout, or other interruption of normal operations. For this purpose, each collective bargaining agreement should provide an effective grievance procedure with arbitration as its final step, unless the parties mutually agree upon some other method of assuring continuity of operations for the period of performance of the contract. As part of such agreements, management and labor shall agree to cooperate fully with the Federal Mediation and Conciliation Service. The contractor shall include the substance of this clause in any subcontracts for protective services.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

5. The authority citation for part 970 continues to read:

Authority. Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254), sec. 201 of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (41 U.S.C. 420), and sec. 1534 of the Department of Defense Authorization Act, 1986, Pub. L. 99–145 (42 U.S.C. 7256a), as amended.

6. Section 970.2201 is amended by revising paragraph (b)(5)(ii) as follows:

970.2201 Basic labor policies.

* * * * *

(b) * * *

(5) * * *

(ii) In line with the policy of assuring continuity of operation of vital facilities, all collective bargaining agreements at Government-owned energy installations should provide that grievances and disputes involving the interpretation or application of the agreement will be settled without resorting to strike, lockout, or other interruption of normal operations. For this purpose, each collective bargaining agreement should provide an effective grievance procedure with arbitration as its final step, unless the parties mutually agree upon some other method of assuring continuity of operation for the term of the agreement. The contracting officer shall insert the clauses at FAR 52.222–1, Notice to the Government of Labor Disputes, and 970.5204–57, Collective bargaining agreements—management and operating contracts, in all management and operating contracts, and subcontracts thereunder, which require continuity of operation at a DOE-owned facility.

* * * * *

7. Section 970.5204–57 is added as follows:

970.5204–57 Collective bargaining agreements—management and operating contracts.

As prescribed in 970.2201(b)(5)(ii), insert the following clause:

Collective Bargaining Agreements—Management and Operating Contracts (XXX 1991)

When negotiating collective bargaining agreements under this contract, the Contractor shall use its best efforts to ensure such agreements contain provisions designed to assure continuity of services during the contract period of performance. All such agreements should provide that grievances and disputes involving the interpretation or application of the agreement will be settled without resorting to strike, lockout, or other interruption of normal operations. For this purpose, each collective bargaining agreement should provide an effective grievance procedure with arbitration as its final step, unless the parties mutually agree upon some other method of assuring continuity of operations for the period of performance of the contract. As part of such agreements, management and labor shall agree to cooperate fully with the Federal Mediation and Conciliation Service. The contractor shall include the substance of this clause in any subcontracts for protective services or other services performed on the DOE owned site which will affect the continuity or operation of the facility.

[FR Doc. 91–18389 Filed 8–9–91; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 91–39; Notice 1]

RIN 2127–AE11

Federal Motor Vehicle Safety Standards; Windshield Wiping and Washing Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Standard No. 104, Windshield Wiping and Washing Systems, to substitute the term "seating reference point" for the terms "manikin H point", "manikin H point with seat in rearmost position" and "H point" wherever any of these terms appear in any SAE Standard or Recommended Practice as that SAE document is incorporated by reference in the standard. Currently, the term "seating reference point" is substituted in Standard No. 104 for the terms "manikin H point" and "H point", but not "manikin H point with seat in rearmost position."

Elsewhere in today's edition of the **Federal Register**, NHTSA has published a final rule amending the definition of "seating reference point." The new definition clarifies that the "seating reference point" is not necessarily the absolute rearmost point to which a seat can be adjusted. Substitution of the term "seating reference point," as required by Standard No. 104, results in references in the incorporated SAE documents to "seating reference point with seat in rearmost position." That reference is contradictory under the new definition of SgRP when that point is other than the rearmost position of the seat. This proposal would eliminate such potentially contradictory references.

DATES: Comments must be received by October 11, 1991. If adopted, the proposed amendment would become effective on September 1, 1992.

ADDRESSES: Comments should refer to Docket No. 91–39; Notice 1 and submitted to: NHTSA Docket Section, room 5109, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Jere Medlin, Crash Avoidance Division, NRM–11, room 5307, NHTSA, 400 Seventh Street, SW., Washington, DC 20590 (202–366–5276).

SUPPLEMENTARY INFORMATION: Standard No. 104, Windshield Wiping and Washing Systems, specifies requirements for windshield wiping and washing systems. Standard No. 104 references a variety of SAE Recommended Practices and Standards. In particular, the standard references Figure 1 of SAE J903a to establish the minimum windshield area(s) which must be wiped or washed in meeting the requirements of the standard. Standard No. 103, Windshield Defrosting and Defogging Systems, references this section of Standard No. 104 in establishing the minimum windshield area(s) which must be defrosted or defogged. These minimum areas are determined using the location of the seating reference point.

Elsewhere in today's edition of the **Federal Register**, NHTSA has published a final rule amending the definition of "seating reference point" (SgRP). "Seating reference point" identifies a single adjustment point for each seating position. The seating reference point for a particular seating position in a vehicle is used to determine whether that vehicle complies with requirements set forth in several of the safety standards. The final rule makes it clear in the definition that "seating reference point" is not necessarily the absolute rearmost point to which a seat can be adjusted.

In their comments submitted in response to the supplemental notice of proposed rulemaking (SNPRM) to amend the definition of "seating reference point," General Motors (GM) states:

> FMVSS No. 104 and, by reference, FMVSS No. 103 substitute the term "seating reference point" for the terms "manikin H point" and "H point" wherever either of those terms appears in any SAE Standard or Recommended Practice referred to in the standard. This substitution of terms results in references to "seating reference point with seat in rearmost position" (SAE Recommended Practice J903a, Figure 1). This terminology is potentially internally contradictory when the "seating reference point" is defined to permit a location at some point other than the rearmost position of the seat.

NHTSA agrees with GM that the amended definition of SgRP will create potentially contradictory references in Standard No. 104, and by reference Standard No. 103. To avoid any confusion this may cause, the agency is proposing to amend Standard No. 104 so that "seating reference point" is substituted for the terms "manikin H point", "manikin H point with seat in rearmost position" and "H point." The agency believes that this amendment will prevent the change in the SgRP definition from changing the areas of a vehicle subject to Standards No. 103 and 104, and should have no affect upon the safety benefits which either standard provides. The agency also believes that this should not result in any increased or decreased cost for manufacturers as it is consistent with industry practice.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has examined the impact of this rulemaking action and determined that it is neither major within the meaning of E.O. 12291, nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The agency believes that this amendment would prevent the change in the SgRP definition from changing the areas of a vehicle subject to Standards No. 103 and 104, and should not result in any increased or decreased cost for manufacturers as it is consistent with industry practice.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this proposal under the Regulatory Flexibility Act. I hereby certify that this rule would not have a significant economic impact on a substantial number of small entities. To the extent that any vehicle manufacturers qualify as small entities, their number would not be substantial. In any event, the agency does not anticipate any economic impacts from this rule, as explained above. Because of the lack of economic impacts of this rule, this new definition would not affect the purchase price of new motor vehicles purchased by small organizations and small governmental units.

National Environmental Policy Act

NHTSA has also analyzed this proposal under the National Environmental Policy Act and determined that it would not have a significant impact on the human environment.

Executive Order 12612 (Federalism)

Finally, NHTSA has analyzed this proposal in accordance with the principles and criteria contained in E.O. 12612, and has determined that this rule would not have significant federalism implications to warrant the preparation of a Federalism Assessment.

Submission of Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulations. 49 CFR part 12.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after the date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA proposes to amend part 571 of title 49 of the Code of Federal Regulations as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.104 [Amended]

2. S3 would be amended to read as follows:

S3. *Definitions.*

The terms *seating reference point* is substituted for the terms *manikin H point, manikin H point with seat in rearmost position* and *H point* wherever any of these terms appears in any SAE Standard or SAE Recommended Practice referred to in this standard.

* * * * *

Issued on: August 6, 1991.

Stanley R. Scheiner,

Acting Associate Administrator for Rulemaking.

[FR Doc. 91-19017 Filed 8-9-91; 8:45 am]

BILLING CODE 4910-59-M

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49 CFR Part 571

[Docket No. 87-6; Notice 4]

RIN 2127-AD94

Federal Motor Vehicle Safety Standards Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice reopens rulemaking which would allow daytime running lamps (DRLs) as an item of optional motor vehicle lighting equipment. This action is taken in implementation of the grant of a petition for rulemaking submitted by General Motors Corporation, which wants to offer DRLs as a customer option, and which believes that certain State laws may inadvertently prevent it from doing so. The purpose of NHTSA's proposal is to ensure that manufacturers may offer DRLs, and that specifications are adopted so that DRLs do not reduce the current level of highway safety. Accordingly, NHTSA is proposing to amend Standard No. 108 so that any lamp on the front of a vehicle, whether or not required by Standard No. 108, could perform as a DRL by automatically operating during daylight providing that its maximum candela output does not exceed 2,600, and that steps are taken to prevent its light from masking turn and hazard warning signals.

DATES: Comment closing date for the proposal is October 11, 1991. Effective date of the final rule would be 30 days after publication of the final rule in the **Federal Register.**

ADDRESSES: Comments should refer to the docket number and the notice number, and be submitted to: Docket Section, room 5109, Nassif Building, 400 Seventh Street SW., Washington, DC

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20590. Docket Hours are from 9:30 to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Rulemaking, NHTSA, Washington, DC (202-366-5276).

SUPPLEMENTARY INFORMATION: On March 24, 1987, NHTSA opened Docket 87-6, to receive comments on a notice of proposed rulemaking under which Motor Vehicle Safety Standard No. 108 would be amended to permit daytime running lights (DRLs) as optional front lighting equipment on passenger cars, multipurpose passenger vehicles, trucks, and buses (Notice 1). The following year, NHTSA announced that it was terminating rulemaking on the subject without an amendment (Notice 2), and it subsequently denied a petition for reconsideration of the termination (published without docket or notice number, but referred to as Notice 3). The reader is referred to these notices for background information on this topic (52 FR 8316, 53 FR 23673, and 53 FR 40921).

New Rulemaking Petition for DRLs

On November 19, 1990, General Motors Corporation (GM) filed a petition asking the agency to propose an amendment of Standard No. 108 to allow motor vehicles to be equipped with DRLs. The purpose of its request was that such an amendment "would allow manufacturers to install DRLs on new vehicles without being in violation of the multitude of state laws which currently have the unintended effect of prohibiting them." Having supported the termination of rulemaking in 1988, GM had in the interim received requests from prospective truck fleet purchasers that it bid on fleet vehicles equipped with DRLs. Reluctant to be in possible violation of State laws, GM did not make DRLs available as a special equipment option. In the meantime, discussions are underway within GM to evaluate offering DRLs as either special equipment or regular production options for U.S. trucks and at least some passenger car models.

However, GM does not believe that DRLs are justified as standard equipment because there is not yet evidence of a "national safety need" in the United States, and because their use results in a penalty on fuel economy. Because DRLs are more effective in Northern latitudes where ambient daytime light levels differ from those of the South, they would appear to have a greater likelihood of assisting in crash prevention in Alaska or Maine, rather than Florida or Hawaii. Further, as GM had noted in 1987, fuel economy may be lessened by up to a quarter mile per gallon when some DRLs are used. The petitioner argued that the ability to test DRLs on vehicles in the U.S. could enable it to assess the potential safety benefits of DRLs in this country, and at the same time, their limited use would minimize the penalty of overall fleet fuel economy.

For the reasons discussed below, NHTSA is granting this petition for rulemaking, and is issuing this proposal in implementation of the grant.

Events Since the 1988 Termination of Rulemaking

The agency's primary justification for termination of rulemaking three years ago was that manufacturers tended to oppose, rather than support, the proposal, and that none of the manufacturers and trade organizations that NHTSA contacted planned to offer DRLs. That situation has obviously changed when the largest domestic manufacturer of motor vehicles has petitioned the agency for rulemaking to allow DRLs. If DRLs are allowed and GM takes advantage of the opportunity to offer them, other manufacturers are likely to follow. In fact, NHTSA understands that Saab is already offering DRLs as an option in the United States in the absence of any specific amendment to Standard No. 108.

Existing State Laws That Could Prohibit DRLs

NHTSA is not aware of any State laws that prohibit DRLs *per se*. However, GM is concerned that frontal lighting laws might inadvertently prohibit their use. GM brings to the agency's attention State laws requiring pre-approval of supplemental lighting devices, and the fact that there is currently no SAE standard for DRLs on which such approval could be based. As a further example, GM has found 35 States with regulations prohibiting supplemental lighting from projecting light that strikes the roadway at a specified distance in front of the vehicle. There are State laws which prohibit the use of lights in tunnels, the use of the parking lamps without headlamps when the car is being driven, and the illumination of fog lamps without the headlamps. GM has found it impossible to determine whether a particular DRL design that it uses in Canada would be prohibited under certain State laws. It concludes that DRLs are potentially affected by the laws of 40 to 45 States.

Having identified potential problem areas, GM claims that it is not a viable option to work for change through State regulatory officials. In some States, amendments are the prerogative of State motor vehicle officials, while in others, only the legislatures can change lighting requirements. GM believes that it would be virtually impossible to get all States to separately agree on standardized requirements for DRLs. Although the American Association of Motor Vehicle Administrators (AAMVA) has adopted a resolution in favor of DRLs, GM claims that no State has responded by amending its lighting requirements.

GM also argues that the trend in State lighting laws is towards increasing the daytime conspicuity of vehicles, and that the allowance of DRLs would be consistent with this trend. Several jurisdictions (Cape Cod and the State of Washington are referenced) now require 24-hour a day headlamp use on some roads. Connecticut has introduced legislation to mandate DRLs. California now specifically provides for optionally installed DRLs. Thus, GM argues that a DRL provision in Standard No. 108 would not contravene the spirit of Executive Order 12612 (Federalism).

NHTSA has reviewed these arguments. In the notice of termination (Notice 2), NHTSA stated that it had taken the Executive Order into consideration. The purpose of the Executive Order was to "limit Federal preemption of State laws unless preemption is necessary to address a national safety need." Notice 2 found no national safety need that warranted mandating DRLs, and that "an amendment would have a preemptive effect". Thus, NHTSA found a "further reason" in 1988 not to adopt the proposal.

In issuing the present proposal, NHTSA has reconsidered its position on this matter. It believes that manufacturers who wish to offer this option should not be precluded from doing so, provided that their DRLs do not derogate from existing levels of highway safety. For example, the agency believes that it is necessary to act to prevent States from allowing DRLs which have an intensity that may cause excessive glare. Thus, NHTSA has tentatively concluded that it can amend Standard No. 108 in a manner that ensures the maintenance of safety.

The Executive Order on Federalism recognizes the right of a Federal agency to preempt a State where Congress has provided express preemption authority, such as exists in 15 U.S.C. 1392(d). Nonetheless, NHTSA has taken care to minimize, to the extent consistent with safety, the preemptive effect of its regulations in accordance with the regulatory philosophy behind the Executive Order. It believes that the Executive Order on Federalism is primarily concerned with Federal preemption of State laws that differ in a fundamental manner from Federal requirements. In this instance, there is no State law that prohibits DRLs *per se*. Thus, a Federal standard whose effect is to allow DRLs would not be directly preemptive of existing State laws, since there is no State standard that expressly prohibits DRLs.

The regulatory philosophy of the Executive Order requires NHTSA to examine the indirect preemptive effect of its regulations as well. NHTSA has also considered the issue whether an amendment allowing DRLs would, as a matter of law, preempt State laws that do not deal with DRLs, but whose provisions might be construed to prohibit them. The agency finds that its preemption authority appears to address this possibility as well. Under section 1592(d), NHTSA's safety standards preempt those State standards covering "the same aspect of performance". This is a broad phrase, and to be interpreted broadly in the fulfillment of the agency's mission. Therefore, to the extent that any State standard might affect the operation and performance of front lamps used as DRLs, NHTSA considers that, to the same extent, such a State standard may be viewed as covering the same aspect of performance as NHTSA's DRL specifications. For example, if Standard No. 108 allows lamps to be wired to operate automatically as DRLs, and to be specifically marked "DRL", the performance of that lamp is no longer subject to State restrictions on daytime use. As a further example, if the DRL is provided by a new lamp, and not one of the existing lamps required by Standard No. 108, NHTSA believes that such a lamp would be covered by Standard No. 108, rather than be considered a supplementary lighting device subject to state approval programs for supplemental equipment. Given the apparent trend in the States toward greater daytime conspicuity for motor vehicles, NHTSA believes that preempting the indirect effects of State regulations would be acceptable under the regulatory philosophy of Executive Order 12612.

However, NHTSA does not wish to proceed to a final rule without offering States an opportunity to comment on the safety rationale of statutes and regulations that might be preempted by NHTSA action. For example, comments are invited on the effects that might be attendant on overriding the prohibition against headlight use in tunnels, or use of parking lamps alone.

Front Lamps Likely to be Used as DRLs

On some vehicles, the DRL may be optically combined with a headlamp, *i.e.*, provided by the lower headlamp beam in a reduced intensity mode, and, on others, by the upper headlamp beam in a reduced intensity mode. On a few vehicles, DRLs may be optically combined with the turn signal lamps and used at the same operational intensity. Others may use DRLs optically combined with original-equipment fog lamps at operational or reduced intensity to provide the DRL. In this instance, fog lamps, otherwise unregulated by Standard No. 108, would be regulated for their DRL function. DRLs could also be provided by a pair of front lamps specifically designed for this purpose.

Appropriate Performance Requirements for DRLs—GM's Recommendation

GM calls the agency's attention to three possible sources of DRL requirements. These are the ones adopted by Canada, those proposed by NHTSA in Notice 1, and those currently under consideration by the SAE in its draft Recommended Practice J2087 Daytime Running Lamps for Use on Motor Vehicles. GM strongly supports adoption of the Canadian requirements on the basis that it would facilitate transfer of existing DRL designs to U.S. production with minimum cost and delay, and that the U.S. standard should harmonize with the Canadian one. With respect to the agency's proposal contained in Notice 1, GM asks NHTSA to consider the remarks it made in response to the notice, as it continues to have reservations about the proposal. Finally, it has no fundamental objections to the SAE document and believes that the design criteria it contains are sufficiently flexible to accommodate many of the DRL designs presently used in Canada.

The agency believes that GM has not fully recognized safety issues that both the Canadian and the SAE specifications present. Canada allows a maximum upper intensity limit of 7,000 candela. The SAE is interested in increasing its recommended upper limit from 5,000 to 7,000 candela (draft SAE Recommended Practice J2087). NHTSA believes that these intensities have the potential for creating glare. In addition, the SAE specification addresses lamp performance without regard to lamp location; thus, a lamp utilizing SAE DRL intensity values and which is located in proximity to a turn lamp could mask the turn signal lamp's signal.

NHTSA's 1991 Proposal

NHTSA's new proposal is based upon several considerations. First, a large manufacturer wishes to offer DRLs, and a smaller manufacturer may already be offering them. It is only a matter of time before other manufacturers are likely to want to offer them. Since DRLs are coming on stream, some regulation of them appears necessary to ensure that they perform in a manner that does not detract from existing levels of highway safety. The two chief considerations in this regard are that the lamps not create excessive glare, and that their use not mask the ability of the front turn signal to send its message. Thus, the new proposal is very simple. It would establish a maximum candela limitation, a minimum spacing requirement affecting the distance of a DRL from the turn signal lamp, and a requirement that the lens of any lamp used as a DRL, other than a headlamp, be marked "DRL". It would also specify a range of permissible colors, and that DRLs be provided in pairs, instead of as a single lamp. The specific characteristics of a DRL system are discussed below.

A. Number of DRLs

For some years, the single headlamp with which the great majority of motorcycles are equipped has been wired to turn on when the ignition is on. This has provided a DRL for motorcycles. In order to avoid possible misidentification of four-wheeled vehicles as motorcycles, NHTSA has tentatively concluded that the DRL "signature" for vehicles other than motorcycles should be comprised of two symmetrically located lamps. However, it seeks comments from interested persons on whether the provision of a single DRL on four-wheeled vehicles would decrease the effectiveness of motorcycle conspicuity that is provided by the daytime operation of their headlamps.

B. Lamp Color

Required lighting equipment under Standard No. 108 may be red, white, or yellow (paragraph S5.1.5) as defined by SAE Standard J578c, February 1977. Standard No. 108 reserves the use of red to rear lighting devices. In addition, red (and blue) are used by States to denote emergency, police, or towing vehicles. Green is a color that is unfamiliar to the public as a motor vehicle light. NHTSA has tentatively concluded that the color of a DRL should be one that the motoring public associates with the front of a vehicle, that is to say, either white or yellow. Thus, if a headlamp, parking lamp, or turn signal lamp is used

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as a DRL, the light from the DRL would be the same color as the light from the lamp. If a front lamp other than one of these is used as a DRL, the agency is proposing that manufacturers choose among the following color range: white, white to yellow, white to selective yellow, yellow, or selective yellow, as defined in SAE Standard J587 MAY88. The agency is suggesting the latest version of the SAE standard because it includes light colors for fog lamps.

C. Lamp Intensity

The effectiveness of interior and exterior rear view mirrors is essential for safe vehicle operation in traffic during daylight, the time that the DRL is in operation. NHTSA has completed three research programs to determine acceptable limits of intensity. The most recent, "Evaluation of Glare from Daytime Running Lights", October 1989 (DOT–HS–807–502), is the basis for NHTSA's proposal. (See also "Evaluation of the Conspicuity of Daytime Running Lights", April 1990 (DOT–HS–807–613), and "A Study of Daytime Running Light Design Factors", August 1987 (DOT–HS–807–193). Copies of the three Reports are available in NHTSA's Technical Reference Library). The 1989 Report indicates that the probability of mirror adjustment by a driver to eliminate perceived glare increases as the intensity of a DRL increases, and that there is a 50 percent probability that a driver will adjust the interior rearview mirror if the DRL has an intensity of 2,600 candela. Further, there is a 50 percent probability of adjustment of the side mirror in response to a DRL intensity of 3,600 candela. These percentages are based upon data derived from passenger car mirrors reflecting headlamps of passenger cars behind; the higher mounted front lamps on trucks would only increase the glare. Separate experiments covered by this Report provided subjective data which indicated that approximately 2,800 candela can be tolerated before the "Just Acceptable" De Boer glare rating is exceeded. Above this value, vehicle operators would be distracted from the driving task for the time required to adjust their mirrors to eliminate or lessen the glare. Under Standard No. 108, the maximum allowable intensity of a complying lower beam is 2,700 candela, and the effect of the proposal is that a lower beam that provides the maximum allowable candela could not function as a DRL. Thus, NHTSA has tentatively concluded that 2,600 candela appears to be an appropriate value regardless of whether the DRL is provided by the lower beam of a headlamp, or other front lamp. It should be noted that some European countries have or are proposing an upper limit of 1,200 candela because of their concern for preventing glare. NHTSA is also concerned about glare, but is willing to set a somewhat higher maximum because U.S. drivers are more accustomed to higher glare levels than Europeans. Thus, an upper limit compatible with the U.S. lower beam should be acceptable to U.S. drivers.

Photometry would be tested in accordance with SAE J575 DEC88, when a test voltage of 12.8 +/– 0.20 mV is applied to the input terminals of the DRL lamp switch module or voltage-reducing equipment, whichever is closer to the electrical source on the vehicle. The test distance from the DRL to the photometer would be not less than 60 feet if the DRL is optically combined with a headlamp, or 10 feet if the DRL is a lamp, or is optically combined with a lamp other than a headlamp.

D. Turn Signal Masking Effect

The 1987 proposal prohibited operation of a DRL when a turn signal or hazard warning signal is activated if the distance from the lighted edge of the DRL to the optical axis of the turn signal lamp were less than 4 inches. NHTSA continues to be concerned about the potential of a DRL to "mask" the turn or hazard warning signal. Under the new proposal, the distance from the lighted edge of the DRL to the optical axis (filament center) of the front turn signal lamp must be not less than 4 inches, except if the turn signal lamp complies with the increased intensity specifications of S5.3.1.7 of Standard No. 108, or, alternatively, if the DRL is deactivated when the turn or hazard warning signal is on.

E. Lens Marking

Under the 1987 proposal, there would have been no requirement to identify the lamps used as DRLs. However, in commenting on that proposal, States asked for a lens marking requirement. In their view, State enforcement and vehicle inspection officials would be unable to distinguish between legal and illegal lamps and lamp combinations in the absence of marking. States such as Nebraska and South Dakota, which do not allow use of parking lamps alone, may penalize vehicle operators if parking lamps are used as DRLs. NHTSA has tentatively concluded that these arguments have merit, and, further, that resolution of preemption questions would be assisted by a clear designation of the lamps used as DRLs. These lamps would be marked "DRL" in letters not less than 4mm high. A lamp that optically combines a DRL with a headlamp would be exempt from this requirement.

Other Issues on Which Comment is Requested

Standard No. 108 presently requires the taillamps and side marker lamps to be activated simultaneously with the headlamps. The question arises whether, when a DRL is optically combined with a headlamp, the taillamps and side marker lamps must also be activated. Because there is a fuel economy penalty associated with side and rear lamp use, it is possible that manufacturers combining DRLs with headlamps will not wish to activate simultaneously the side and rear lamps. Furthermore, data exist from some studies conducted on high mounted stop lamps that indicate a negative safety effect can exist when the taillamps are activated. This occurred because the stop lamps were not as readily perceived on some cars when the taillamps were on. NHTSA requests comments on whether a prohibition against activation of the taillamps and side marker lamps is appropriate when a DRL is optically combined with a headlamp.

NHTSA is concerned about the possible increases in rear crashes from the effect of daytime taillamp operation upon the efficacy of the stop lamp signal. The presence of the CHMSL ought to provide an unmistakable signal, even if the taillamps and other stop lamps are combined in the same lamp housing. However, the NHTSA Report "An Evaluation of Center High Mounted Stoplamps" (DOT–HS–807442) showed that the greatest accident reduction benefit occurred during daylight (a 20 percent reduction, compared with an 8 percent reduction during dusk, nighttime, and dawn). The CHMSL may provide greater benefits when the taillamps are off. Thus, NHTSA requests that commenters address the issue of whether daytime taillamp operation could also lessen the effectiveness of the center stop lamp.

One intent of this rulemaking action is that a final rule would assist the States in adopting their own laws regarding use of DRLs, so that State and Federal standards would be identical. If and when there are data to prove DRLs have significant safety benefits, NHTSA will set a minimum performance level for them. NHTSA's research shows that 1600 candela is required to provide a significant improvement in peripheral detection at the high ambient light levels found in the U.S. NHTSA remains concerned over State laws that may inadvertently preempt DRLs, and is interested in receiving comments from States which may disagree with the tentative preemption conclusions expressed by NHTSA in this notice.

This proposed regulation indirectly affects States which now have or are considering enacting laws to require operation of the headlamps when the windshield wipers are activated. The intent of these laws is to improve vehicle detection in low light levels, an intent that may be fulfilled by DRLs. NHTSA wants to encourage States to allow DRLs as an alternative to headlamps in their wiper use laws. States are requested to comment on the impact of DRLs on such laws.

Finally, a rule based upon this proposal would allow DRLs on vehicles throughout the United States. As GM mentioned, this would afford an opportunity to evaluate DRL performance under the broad geographic and road conditions throughout the country. However, past DRL studies indicate that unless evaluation studies are carefully controlled, the results are likely to be misleading or inconclusive. NHTSA is interested in evaluating the effectiveness of DRLs in the U.S. and requests that commenters submit suggestions as to how this might best be accomplished.

Rulemaking Analyses

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has preliminarily considered the economic impacts of this proposal and has made a tentative determination that it is not major within the meaning of E.O. 12291 nor significant under Department of Transportation policies and procedures. The regulation proposed is not mandatory upon persons otherwise regulated by Standard No. 108, therefore there is no cost impact upon any manufacturer who does not choose to offer a DRL. NHTSA has no information on whether other manufacturers would avail themselves of the option, but believes that the simple modifications required to wire existing front lamps for use as DRLs would be slight. Therefore, preparation of a full regulatory evaluation is not warranted.

National Environmental Policy Act

NHTSA has analyzed this proposal for the purposes of the National Environmental Policy Act. It is not anticipated that a rule based on the proposal would have a significant effect upon the environment, because there is no requirement that a manufacturer provide DRLs. As noted previously in this notice, there could be a fuel economy penalty of up to one quarter mile per gallon, depending on the type of DRL.

Regulatory Flexibility Act

The agency has also considered the impacts of this proposal in relation to the Regulatory Flexibility Act. I certify that this proposal would not have a significant economic impact upon a substantial number of small entities, because its adoption would not establish a mandatory requirement on regulated persons. Accordingly, no initial regulatory flexibility analysis has been prepared.

Executive Order 12612 (Federalism)

This proposal has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Request for Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted. All comments must be limited not to exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the docket section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR part 512).

All comments received before the close of business on the closing date indicated above, will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571 [AMENDED]

In consideration of the foregoing, it is proposed that 49 CFR 571.108 Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment* be amended as follows:

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.108 [Amended]

2. Paragraph S5.5.3 would be revised to read:

S5.5.3 The tail lamps on each vehicle shall be activated when the headlamps are activated in a steady-burning state, but need not be activated if the headlamps are activated at less than full intensity as permitted by paragraph S5.5.11(a).

3. New paragraph S5.5.11 would be added to read:

S5.5.11 (a) Any pair of lamps on the front of a passenger car, multipurpose passenger vehicle, truck, or bus, whether or not required by this standard, may be wired to be activated in a steady burning state as daytime running lamps (DRLs) when the transmission is in any position other than park or neutral, and to be deactivated when the headlamp control is in the "headlamp on" position, provided that each such lamp:

(1) Does not have a beam intensity that exceeds 2,600 candela when tested in accordance with Section S11 of this standard;

(2) Is permanently marked "DRL" on its lens in letters not less than 4mm high, unless optically combined with a headlamp;

(3) Is designed to provide the same color, and that it is one of the following colors as defined in SAE Standard J578 MAY88: white, white to yellow, white to

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2612 (Federalism)

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Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

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3. New paragraph S5.5.11 would be added to read:

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(1) Does not have a beam intensity that exceeds 2,600 candela when tested in accordance with Section S11 of this standard;

(2) Is permanently marked "DRL" on its lens in letters not less than 4mm high, unless optically combined with a headlamp;

(3) Is designed to provide the same color, and that it is one of the following colors as defined in SAE Standard J578 MAY88: white, white to yellow, white to selective yellow, selective yellow, or yellow;

(4) If other than optically combined with a turn signal lamp, is located so that the distance from the edge of the illuminated surface of its lens to the optical axis (filament center) of the turn signal lamp is not less than 4 inches (100 mm), unless the lamp is deactivated when the turn signal lamp is activated or unless the turn signal lamp conforms to paragraph S5.3.1.7 of this standard; and

(5) If optically combined with a turn signal lamp, performs in accordance with requirements for a turn signal lamp or hazard warning system lamp when the turn signal switch or hazard warning switch is activated.

(b) Any pair of lamps that are not required by this standard but are used to fulfill the specifications of subparagraph (a) of this paragraph shall be mounted at the same height, which shall be not more than 83 inches above the road surface measured from the center of the lamp on the vehicle at curb weight, and shall be symmetrically disposed about the vertical centerline of the vehicle.

5. New Section S11 would be added to read:

S11. *Photometric Test Specified in Paragraph S5.5.11(b).* A lamp that is wired in accordance with paragraph S5.5.11 of this standard, shall be tested for compliance with subparagraph (b) of that paragraph in accordance with SAE Standard J575 DEC88 when a test voltage of 12.8 +/− 0.20 mV is applied to the input terminals of the lamp switch module or voltage-reducing equipment, whichever is closer to the electrical source on the vehicle. The test distance from the lamp to the photometer shall be not less than 18.3 meters, if the lamp is optically combined with a headlamp, or is a separate lamp, and not less than 3 meters, if the lamp is optically combined with a lamp, other than a headlamp, that is required by this standard.

Issued on: August 6, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-19016 Filed 8-9-91; 8:45 am]

BILLING CODE 4910-59-M

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49 CFR Part 571

[Docket No. 74-09; Notice 23]

RIN 2127-AD45

Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend Standard 213, *Child Restraint Systems*. The standard currently does not require that a child restraint comply with its occupant excursion and seat inversion limits in a particular adjustment position if the restraint's manufacturer warns consumers that the restraint is not intended for use in motor vehicles or aircraft when it is in that position. NHTSA would amend the standard so that a warning could no longer be used to exclude an adjustment position from the occupant excursion and seat inversion limits. To clarify the effect of removing the exclusion, the agency proposes also to add language expressly requiring restraint systems for use in motor vehicles or aircraft to meet the requirements of the standard while adjusted to any adjustment position (including seat back angle adjustment positions and restraint belt anchorage and routing positions). These amendments would improve safety by removing the possibility that child restraints adjusted to positions inappropriate for use in motor vehicles or aircraft are used in those positions when transporting children.

DATES: Comments on this notice must be received by the agency no later than September 26, 1991. The proposed effective date is 180 days after the date of publication of the final rule.

ADDRESSES: Comments should refer to the docket number and notice number and be submitted in writing to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC, 20590. Telephone: (202) 366-5267. Docket hours are 9:30 a.m. to 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. George Mouchahoir, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590. Telephone: (202) 366-4919.

SUPPLEMENTARY INFORMATION: This notice proposes to amend the occupant excursion (S5.1.3) and seat inversion (S8.2) requirements of Standard 213, Child Restraint Systems, which currently do not apply to any seat adjustment position that the restraint's manufacturer warns consumers against using in motor vehicles or aircraft. NHTSA would amend the standard so that such a warning would not exclude an adjustment position from the occupant excursion and seat inversion limits. Additionally, this notice proposes to remove the provision that specifies how such a warning is to be provided. In addition, to clarify the effect of removing the exclusion, the agency would amend S5 to expressly require child restraint systems for use in motor vehicles or aircraft or both to meet the requirements of the standard while adjusted to any adjustment position.

The agency is issuing this notice in response to a petition for rulemaking from Consumer Action (CA) and the Center for Auto Safety (CAS).

Background

This rulemaking highlights the relationship between the test procedures specified in Standard 213 and the performance required of a safety seat. The National Traffic and Motor Vehicle Safety Act requires child safety seat manufacturers to certify each seat as complying with Standard 213. NHTSA checks the validity of the certification by evaluating the seat's performance when tested in accordance with the procedures (S6, S8) specified in the standard. The procedures for the dynamic sled and seat inversion test generally specify that NHTSA will install the child seat on a simulated car or aircraft passenger seat "in accordance with the manufacturer's instructions" provided to the consumer. The consumer instructions provide languge and diagrams on installing the seat in motor vehicles or aircraft, positioning a child in the seat and adjusting the seat to fit the child. The child safety seat must be capable of meeting Standard 213's requirements at all adjustment positions that the manufacturer intends for use in motor vehicles or aircraft, as evidenced by the manufacturer's instructions to the consumer.

A manufacturer is permitted to manufacture a child safety seat with adjustable positions that may be suitable for use in a place such as a home, but not inside a motor vehicle or aircraft. Such a child safety seat will not be subjected to the occupant excursion limit or the inversion test while adjusted to those positions if the child safety seat is accompanied by appropriate warnings.

With regard to motor vehicle use, the following warning is required by S5.5.2(i) of the standard to appear on the child safety seat's label:

> In the case of each child restraint system which is not intended for use in motor vehicles at certain adjustment positions, (label the restraint with) the following statement, inserting the manufacturer's adjustment restrictions.

> DO NOT USE THE ______ ADJUSTMENT POSITION(S) OF THIS CHILD RESTRAINT IN A MOTOR VEHICLE.

A similar warning is required by S8.1 for aircraft. That section states:

> In the case of child restraint which is not intended for use in aircraft at certain adjustment positions, the following statement, with the manufacturer's restrictions inserted, shall be included in the instructions.
>
> DO NOT USE THE ______ ADJUSTMENT POSITION(S) OF THIS CHILD RESTRAINT IN AIRCRAFT.

The Petition

CA and CAS petitioned to remove S5.5.2(i) from the standard. They sought the amendment because the petitioners believed that the warning label required by S5.5.2(i) is insufficient to ensure that a child restraint system will not be used in the restricted positions in a motor vehicle. The petitioners believed that warning labels generally "do not produce desired consumer behavior" for a variety of reasons: Consumers may believe that the warning does not apply to them; the warning may lose its effectiveness over time; the warning may not impart sufficient information on safety risks; or a consumer may not notice or read the warning. Also, the petitioners believed that S5.5.2(i) provides a "loophole" that permits manufacturers to limit the application of the standard by means of a warning label.

The agency granted the petition in March 1990 to further evaluate the issues raised by the petition.

Agency Decision

Motor Vehicle Use

NHTSA has tentatively decided to remove S5.1.3's exclusion of restricted adjustment positions from the occupant excursion requirements, and to remove paragraph S5.5.2(i) regarding the warning against motor vehicle use. Since amending S5.1.3 and removing S5.5.2(i) alone may not clearly indicate what performance is required of each adjustment position, NHTSA has also tentatively decided to clarify the introductory paragraph of S5 to state that each child restraint shall meet the requirements of Standard 213 "at all adjustment positions (including, but not limited to each seat back angle adjustment position and each restraint belt anchorage and routine position), when tested in accordance with S6.1." The effect of this amendment to S5 would be to ensure that each adjustment position is capable of providing an acceptable level of occupant safety.

When the agency upgraded Standard 213 in 1979 to specify 30-mph sled testing of child safety seats, the agency permitted manufacturers to warn consumers that a child seat may have a particular position to which it should not be adjusted and used in a motor vehicle. At the same time, NHTSA urged manufacturers, in the preamble to the 1979 rule, not to include any adjustment positions for their restraints which should not be used in a motor vehicle. 44 FR 72133 (December 13, 1979). The agency believed it was unnecessary to specify that a child seat is to be tested in all adjustment positions, regardless of whether the manufacturer intended that all of those positions be used when the seat is in a motor vehicle because NHTSA believed manufacturers would take voluntary steps to eliminate those positions.

Based on available information, the agency believes that most manufacturers have eliminated adjustment positions that are not intended for motor vehicle use. In an informal survey of 15 child safety seats, the agency did not find any seat currently being manufactured that is labeled with a warning not to use an adjustment position (e.g., the fully reclined position) in a motor vehicle.

Although the seats currently in production are being manufactured to meet Standard 213 in all adjustment positions, the agency believes the amendments proposed in this NPRM are needed to ensure that no restricted position will be included in future seats. NHTSA is especially concerned that, in the past, some seats were manufactured with the fully reclined position designated as a restricted position. Some parents are likely to conclude that that position is the one most confortable for the child (especially if the child is sleepy or asleep) and the most convenient for the parent. A parent might therefore choose to use the restricted position without realizing that the position was not intended to provide occupant protection in a crash or even if the parent knows about the limitation on that position. The agency is unaware of a justification for the restricted adjustment positions that sufficiently outweighs the likelihood that the seat will be misused and the risk to safety unacceptably increased.

Aircraft

Similarly, the agency tentatively concludes that adjustment positions that are not intended to be used in aircraft should not be allowed, because these positions seem to be ones likely to be used. NHTSA believes that most manufacturers have eliminated adjustment positions that are not intended for aircraft use. Nevertheless, the agency seeks to ensure that no child seats with a restricted position will be manufactured in the future. Thus, NHTSA proposes to amend S8.1 and 8.2 of Standard 213.

Need For Warnings

However, the agency does not agree with the petitioners' belief that warning labels are generally insufficient to produce desired behaviors in the persons to whom the labels are addressed. Labels and instructional manuals that impart safety warnings and other information are required by Standard 213 to inform consumers how they can obtain the maximum level of safety from the seat. Labels and manuals help inform users about aspects of child safety seats that may not be known to the consumer or evident from the configuration of the seats, and help remind users about the correct use of the seat. The agency believes consumers will use the information to their and their children's benefit.

Further, warning labels and instructional manuals help facilitate the manufacture of a wide variety of child safety seat designs, such as the "convertible" child safety seat, which satisfies a consumer demand for the seats. A convertible seat is one designed for use by both infants and toddlers. Many consumers prefer to purchase a convertible child safety seat for the cost savings; one seat (a convertible child seat) need be purchased instead of two (an infant restraint and a toddler seat). For most convertible seats, certain adjustment positions on the seat are designed only for toddlers, while others of its adjustment positions are suitable only for infants. Manufacturers are able to produce convertible seats because they can label the seat with information about which positions are intended for use with children of different ages. (As stated above, NHTSA considers these instructions in determining how the agency will test the seat.) Due to the popularity of convertible seats with consumers, NHTSA believes the usage rate for child safety seats in general is as high as it is (80 percent for infants and toddlers under 5 year old) bcause of the availability of covertible seats.

NHTSA emphasizes that, by amending S5, S5.1.3, S8.1 and S8.2 and removing S5.5.2(i), the agency intends to prohibit the manufacture of child safety seats with adjustment positions that should not be used by any child in a motor vehicle or aircraft. The agency does not intend to prohibit the manufacture of convertible seats, and the agency does not believe the proposed amendment would have that

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Need For Warnings

However, the agency does not agree with the petitioners' belief that warning labels are generally insufficient to produce desired behaviors in the persons to whom the labels are addressed. Labels and instructional manuals that impart safety warnings and other information are required by Standard 213 to inform consumers how they can obtain the maximum level of safety from the seat. Labels and manuals help inform users about aspects of child safety seats that may not be known to the consumer or evident from the configuration of the seats, and help remind users about the correct use of the seat. The agency believes consumers will use the information to their and their children's benefit.

Further, warning labels and instructional manuals help facilitate the manufacture of a wide variety of child safety seat designs, such as the "convertible" child safety seat, which satisfies a consumer demand for the seats. A convertible seat is one designed for use by both infants and toddlers. Many consumers prefer to purchase a convertible child safety seat for the cost savings; one seat (a convertible child seat) need be purchased instead of two (an infant restraint and a toddler seat). For most convertible seats, certain adjustment positions on the seat are designed only for toddlers, while others of its adjustment positions are suitable only for infants. Manufacturers are able to produce convertible seats because they can label the seat with information about which positions are intended for use with children of different ages. (As stated above, NHTSA considers these instructions in determining how the agency will test the seat.) Due to the popularity of convertible seats with consumers, NHTSA believes the usage rate for child safety seats in general is as high as it is (80 percent for infants and toddlers under 5 year old) bcause of the availability of covertible seats.

NHTSA emphasizes that, by amending S5, S5.1.3, S8.1 and S8.2 and removing S5.5.2(i), the agency intends to prohibit the manufacture of child safety seats with adjustment positions that should not be used by any child in a motor vehicle or aircraft. The agency does not intend to prohibit the manufacture of convertible seats, and the agency does not believe the proposed amendment would have that

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result. This is because the proosed amendment of S5 would continue to allow a manufacturer to specify in the installation instructions how the seat should be installed for children of different sizes and how the child occupant should be positioned, as long as each position to which the seat can be adjusted is intended for use in a motor vehicle. The agency does not believe convertible seats should be prohibited. While a convertible seat may have restrictions on the use of an adjustment position with children of certain ages, the restrictions do not prohibit the use of the position for all children. Thus, the position serves a motor vehicle safety need for a population of children, unlike a position that is designed without such safety in mind for any population.

Typographical Correction

NHTSA would correct S5.3.1 of Standard 213. That paragraph states: "Each add-on child restraint system shall have no means designed for attaching the system to a vehicle *seat cushion and vehicle seat back* and no component (except belts) that is designed to be inserted between the vehicle seat cushion and vehicle seat back." (Emphasis added.)

The language emphasized above should read: "seat cushion or vehicle seat back." The word "and" was submitted for "or" by the **Federal Register** in a January 22, 1988 amendment of Standard 213 (53 FR 1783). Until that amendment, the standard had used "or," and the agency's intent was to continue to use "or." The corrected paragraph would read: "Each add-on child restraint system shall have no means designed for attaching the system to a vehicle seat cushion or vehicle seat back and no component (except belts) that is designed to be inserted between the vehicle seat cushion and vehicle seat back."

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has examined the impact of this rulemaking action and determined that it is not major within the meaning of Executive Order 12291 or significant within the meaning of the Department of Transportation's regulatory policies and procedures. NHTSA has further determined that the effects of this rulemaking are minor and that preparation of a full preliminary regulatory evaluation is not warranted. The agency does not anticipate that manufacturers would be significantly affected. Based on available data, NHTSA believes that all child safety seats currently in production are being manufactured to meet the requirements of Standard 213 in all adjustment positions. Thus, the agency estimates that no additional costs would be incurred by manufacturers if the proposed amendment were adopted.

Because all currently manufactured safety seats already meet the proposed requirements, the agency does not anticipate a potential reduction in injuries or fatalities if the proposal is adopted. However, NHTSA believes amending S5, S5.1.3, S8.1 and S8.2, and removing S5.52(i) would ensure that the current level of safety provided by seats is maintained by preventing the manufacture of adjustment positions that are incapable of providing proper protection in a motor vehicle or aircraft.

Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities. Six of the eight manufacturers currently producing child safety seats are not small businesses. Regardless of the number of small entities, NHTSA believes the economic impact on them would not be significant, since the agency believes that currently, all child safety seats are being manufactured to meet the proposed amendments. The agency believes that there would not be any impact on the cost of most child seats, and that small organizations and governmental jurisdictions that purchase these seats would not be significantly affected by the proposals. In view of the above, the agency has not prepared an initial regulatory flexibility analysis.

Executive Order 12612

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and the agency has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

Comments on the Proposal

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—[AMENDED]

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 571 as set forth below.

DO NOT USE THE _______
ADJUSTMENT POSITION(S) OF THIS
CHILD RESTRAINT IN A MOTOR VEHICLE.

A similar warning is required by S8.1 for aircraft. That section states:

> In the case of child restraint which is not intended for use in aircraft at certain adjustment positions, the following statement, with the manufacturer's restrictions inserted, shall be included in the instructions.
>
> DO NOT USE THE _______
> ADJUSTMENT POSITION(S) OF THIS
> CHILD RESTRAINT IN AIRCRAFT.

The Petition

CA and CAS petitioned to remove S5.5.2(i) from the standard. They sought the amendment because the petitioners believed that the warning label required by S5.5.2(i) is insufficient to ensure that a child restraint system will not be used in the restricted positions in a motor vehicle. The petitioners believed that warning labels generally "do not produce desired consumer behavior" for a variety of reasons: Consumers may believe that the warning does not apply to them; the warning may lose its effectiveness over time; the warning may not impart sufficient information on safety risks; or a consumer may not notice or read the warning. Also, the petitioners believed that S5.5.2(i) provides a "loophole" that permits manufacturers to limit the application of the standard by means of a warning label.

The agency granted the petition in March 1990 to further evaluate the issues raised by the petition.

Agency Decision

Motor Vehicle Use

NHTSA has tentatively decided to remove S5.1.3's exclusion of restricted adjustment positions from the occupant excursion requirements, and to remove paragraph S5.5.2(i) regarding the warning against motor vehicle use. Since amending S5.1.3 and removing S5.5.2(i) alone may not clearly indicate what performance is required of each adjustment position, NHTSA has also tentatively decided to clarify the introductory paragraph of S5 to state that each child restraint shall meet the requirements of Standard 213 "at all adjustment positions (including, but not limited to each seat back angle adjustment position and each restraint belt anchorage and routine position), when tested in accordance with S6.1." The effect of this amendment to S5 would be to ensure that each adjustment position is capable of providing an acceptable level of occupant safety.

When the agency upgraded Standard 213 in 1979 to specify 30-mph sled testing of child safety seats, the agency permitted manufacturers to warn consumers that a child seat may have a particular position to which it should not be adjusted and used in a motor vehicle. At the same time, NHTSA urged manufacturers, in the preamble to the 1979 rule, not to include any adjustment positions for their restraints which should not be used in a motor vehicle. 44 FR 72133 (December 13, 1979). The agency believed it was unnecessary to specify that a child seat is to be tested in all adjustment positions, regardless of whether the manufacturer intended that all of those positions be used when the seat is in a motor vehicle because NHTSA believed manufacturers would take voluntary steps to eliminate those positions.

Based on available information, the agency believes that most manufacturers have eliminated adjustment positions that are not intended for motor vehicle use. In an informal survey of 15 child safety seats, the agency did not find any seat currently being manufactured that is labeled with a warning not to use an adjustment position (e.g., the fully reclined position) in a motor vehicle.

Although the seats currently in production are being manufactured to meet Standard 213 in all adjustment positions, the agency believes the amendments proposed in this NPRM are needed to ensure that no restricted position will be included in future seats. NHTSA is especially concerned that, in the past, some seats were manufactured with the fully reclined position designated as a restricted position. Some parents are likely to conclude that that position is the one most confortable for the child (especially if the child is sleepy or asleep) and the most convenient for the parent. A parent might therefore choose to use the restricted position without realizing that the position was not intended to provide occupant protection in a crash or even if the parent knows about the limitation on that position. The agency is unaware of a justification for the restricted adjustment positions that sufficiently outweighs the likelihood that the seat will be misused and the risk to safety unacceptably increased.

Aircraft

Similarly, the agency tentatively concludes that adjustment positions that are not intended to be used in aircraft should not be allowed, because these positions seem to be ones likely to be used. NHTSA believes that most manufacturers have eliminated adjustment positions that are not intended for aircraft use. Nevertheless, the agency seeks to ensure that no child seats with a restricted position will be manufactured in the future. Thus, NHTSA proposes to amend S8.1 and 8.2 of Standard 213.

Need For Warnings

However, the agency does not agree with the petitioners' belief that warning labels are generally insufficient to produce desired behaviors in the persons to whom the labels are addressed. Labels and instructional manuals that impart safety warnings and other information are required by Standard 213 to inform consumers how they can obtain the maximum level of safety from the seat. Labels and manuals help inform users about aspects of child safety seats that may not be known to the consumer or evident from the configuration of the seats, and help remind users about the correct use of the seat. The agency believes consumers will use the information to their and their children's benefit.

Further, warning labels and instructional manuals help facilitate the manufacture of a wide variety of child safety seat designs, such as the "convertible" child safety seat, which satisfies a consumer demand for the seats. A convertible seat is one designed for use by both infants and toddlers. Many consumers prefer to purchase a convertible child safety seat for the cost savings; one seat (a convertible child seat) need be purchased instead of two (an infant restraint and a toddler seat). For most convertible seats, certain adjustment positions on the seat are designed only for toddlers, while others of its adjustment positions are suitable only for infants. Manufacturers are able to produce convertible seats because they can label the seat with information about which positions are intended for use with children of different ages. (As stated above, NHTSA considers these instructions in determining how the agency will test the seat.) Due to the popularity of convertible seats with consumers, NHTSA believes the usage rate for child safety seats in general is as high as it is (80 percent for infants and toddlers under 5 year old) bcause of the availability of covertible seats.

NHTSA emphasizes that, by amending S5, S5.1.3, S8.1 and S8.2 and removing S5.5.2(i), the agency intends to prohibit the manufacture of child safety seats with adjustment positions that should not be used by any child in a motor vehicle or aircraft. The agency does not intend to prohibit the manufacture of convertible seats, and the agency does not believe the proposed amendment would have that

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NHTSA emphasizes that, by amending S5, S5.1.3, S8.1 and S8.2 and removing S5.5.2(i), the agency intends to prohibit the manufacture of child safety seats with adjustment positions that should not be used by any child in a motor vehicle or aircraft. The agency does not intend to prohibit the manufacture of convertible seats, and the agency does not believe the proposed amendment would have that result. This is because the proosed amendment of S5 would continue to allow a manufacturer to specify in the installation instructions how the seat should be installed for children of different sizes and how the child occupant should be positioned, as long as each position to which the seat can be adjusted is intended for use in a motor vehicle. The agency does not believe convertible seats should be prohibited. While a convertible seat may have restrictions on the use of an adjustment position with children of certain ages, the restrictions do not prohibit the use of the position for all children. Thus, the position serves a motor vehicle safety need for a population of children, unlike a position that is designed without such safety in mind for any population.

Typographical Correction

NHTSA would correct S5.3.1 of Standard 213. That paragraph states: "Each add-on child restraint system shall have no means designed for attaching the system to a vehicle *seat cushion and vehicle seat back* and no component (except belts) that is designed to be inserted between the vehicle seat cushion and vehicle seat back." (Emphasis added.)

The language emphasized above should read: "seat cushion or vehicle seat back." The word "and" was submitted for "or" by the **Federal Register** in a January 22, 1988 amendment of Standard 213 (53 FR 1783). Until that amendment, the standard had used "or," and the agency's intent was to continue to use "or." The corrected paragraph would read: "Each add-on child restraint system shall have no means designed for attaching the system to a vehicle seat cushion or vehicle seat back and no component (except belts) that is designed to be inserted between the vehicle seat cushion and vehicle seat back."

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has examined the impact of this rulemaking action and determined that it is not major within the meaning of Executive Order 12291 or significant within the meaning of the Department of Transportation's regulatory policies and procedures. NHTSA has further determined that the effects of this rulemaking are minor and that preparation of a full preliminary regulatory evaluation is not warranted. The agency does not anticipate that manufacturers would be significantly affected. Based on available data, NHTSA believes that all child safety seats currently in production are being manufactured to meet the requirements of Standard 213 in all adjustment positions. Thus, the agency estimates that no additional costs would be incurred by manufacturers if the proposed amendment were adopted.

Because all currently manufactured safety seats already meet the proposed requirements, the agency does not anticipate a potential reduction in injuries or fatalities if the proposal is adopted. However, NHTSA believes amending S5, S5.1.3, S8.1 and S8.2, and removing S5.52(i) would ensure that the current level of safety provided by seats is maintained by preventing the manufacture of adjustment positions that are incapable of providing proper protection in a motor vehicle or aircraft.

Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities. Six of the eight manufacturers currently producing child safety seats are not small businesses. Regardless of the number of small entities, NHTSA believes the economic impact on them would not be significant, since the agency believes that currently, all child safety seats are being manufactured to meet the proposed amendments. The agency believes that there would not be any impact on the cost of most child seats, and that small organizations and governmental jurisdictions that purchase these seats would not be significantly affected by the proposals. In view of the above, the agency has not prepared an initial regulatory flexibility analysis.

Executive Order 12612

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and the agency has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

Comments on the Proposal

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—[AMENDED]

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 571 as set forth below.

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8.

§ 571.213 [Amended]

2. Standard No. 213 would be amended by revising S5 (introductory text), S5.1.3, S5.3.1, S8.1, and S8.2, and by removing and reserving S5.5.2(i), to read as follows:

* * * * *

S5. *Requirements for child restraint systems certified for use in motor vehicles.* Each child restraint system certified for use in motor vehicles shall meet the requirements in this section at all adjustment positions (including, but not limited to each seat back angle adjustment position and each restraint belt anchorage and routing position), when tested in accordance with S6.1.

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S5.1.3 *Occupant excursion.* When tested in accordance with S6.1, each child restraint system shall meet the applicable excursion limit requirements specified in S5.1.3.1–S5.1.3.3.

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S5.3.1 Each add-on child restraint system shall have no means designed for attaching the system to a vehicle seat cushion or vehicle seat back and no component (except belts) that is designed to be inserted between the vehicle seat cushion and vehicle seat back.

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S5.5.2(i) [Reserved].

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S8. *Requirements, test conditions, and procedures for child restraint systems manufactured for use in aircraft.*

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S8.1 *Installation instructions.* Each child restraint system manufactured for use in aircraft shall be accompanied by printed instructions in the English language that provide a step-by-step procedure, including diagrams, for installing the system in aircraft passenger seats, securing the system to the seat, positioning a child in the system when it is installed in aircraft, and adjusting the system to fit the child.

S8.2 *Inversion test.* When tested in accordance with S8.2.1 through S8.2.5, each child restraint system manufactured for use in aircraft shall meet the requirements of S8.2.1 through S8.2.6. The manufacturer may, at its option, use any seat which is a representative aircraft passenger seat within the meaning of S4.

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Issued on: August 6, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-19020 Filed 8-9-91; 8:45 am]

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49 CFR Part 572

[Docket No. 91-27; Notice 01]

RIN 2127-AC87

Anthropomorphic Test Dummies, Infant Test Dummy

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes specifications for a newborn infant test dummy to be used in testing infant restraints. NHTSA believes that standardizing the dummy used to represent newborn infants in testing infant restraints would enable NHTSA and the child passenger safety community to evaluate those restraints in a fuller and more uniform manner. Adding the dummy to part 572 would be the first step toward using the dummy to test the compliance of infant restraints with the Federal motor vehicle safety standards (FMVSS) for child restraint systems (FMVSS 213). The issue of using the dummy in FMVSS 213 testing will be explored in future rulemaking.

DATES: Comments on this proposal must be received by NHTSA no later than September 26, 1991. If adopted in a final rule, these amendments would take effect 180 days after publication of the final rule in the **Federal Register**.

ADDRESSES: Comments should refer to the docket number and notice number and be submitted to: Docket Section, room 5109, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. The docket section is open from 9:30 am to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Daniel, Pedestrian, Heavy Truck, and Child Crash Protection Division, NRM-15, room 5320, NHTSA, 400 Seventh Street SW., Washington, DC 20590 (202-366-4921).

SUPPLEMENTARY INFORMATION: This notice proposes to amend part 572, Anthropomorphic Test Dummies, to establish specifications for a test dummy representing a newborn infant. (49 CFR part 572). Child test dummies enable NHTSA to dynamically test child restraint systems in a manner that is both measurable and repeatable. The proposed newborn infant dummy would encourage testing of infant restraint systems in a standardized manner.

On July 14, 1988, Mr. D. Friedman petitioned the agency to amend Standard No. 213, *Child Restraint Systems* (49 CFR 571.213), and part 572 to specify the use of a dummy representing a newborn infant in conducting compliance testing of newborn infant restraint systems. Currently, these regulations specify the use of a dummy representing a six-month-old infant in testing the restraint systems. Mr. Friedman has developed two child restraint systems designed for newborn infants which cannot, he contends, be effectively tested for compliance using the part 572 six-month-old infant test dummy (49 CFR 572.25) because that dummy cannot be physically accommodated by his restraint systems.

The agency granted the petition by letter dated June 7, 1989. The agency stated that it would "consider revising FMVSS No. 213 and part 572 to allow use of the 'newborn' dummy in the compliance testing of child safety restraints designed for newborn and low weight infants."

The subject of developing a new infant test dummy for infant restrains was among the issues discussed at two public meetings on child passenger protection NHTSA sponsored in 1988. Several participants in the meetings, including Mr. Friedman, expressed concerns that the part 572 six-month-old infant test dummy was too large for use in evaluating restraint systems designed for newborn infants. Participants suggested that these systems could be more accurately evaluated using a dummy weighing from seven to 10 pounds, instead of the six-month-old dummy which weighs 17.4 pounds.

In response to the Friedman petition and the comments received at the public meetings, the agency is today proposing an infant test dummy for use in evaluating the performance of infant restraints. The proposed dummy is 20 inches in length and weighs 7.5 pounds. The dummy would be specified by descriptive design specifications that assure that each dummy would vary little from other dummies in its construction and performance. The dummy would be used as an inertial loading device in tests of infant restraint systems. It would not be instrumented to record either load or acceleration data during a crash simulation, because the dummy is not large enough for installation of the instrumentation.

Detailed design drawings for the proposed newborn infant dummy are available for examination in the NHTSA

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Detailed design drawings for the proposed newborn infant dummy are available for examination in the NHTSA

Docket Section. Copies of those materials can be obtained from Rowley-Scher Reprographics, Inc., 1111 14th Street, NW., Washington, DC, 20005, telephone (202) 628-6667 or (202) 408-8789. The construction methods for the proposed newborn infant dummy would be identical to those for the six-month-old dummy.

The purpose of today's notice is to seek comment on standardized specifications for a test dummy representing a newborn child. Adopting the specifications would enable NHTSA and the child passenger safety community to test infant restraints in a fuller and more uniform manner. If today's proposal is adopted, NHTSA would subsequently initiate rulemaking to consider whether to amend FMVSS 213 to specify the use of the dummy in compliance test of infant restraint systems.

Selection of the Proposed Newborn Infant Dummy

In developing the proposal for an infant dummy, the agency obtained and tested two newborn infant dummies that were available in the marketplace to determine whether they were suitable for adoption in part 572. The two dummies were the "P-O" dummy developed by Institute Voor Wegtransportmiddelen (TNO), of the Netherlands and the "Baby Anne," which is a dummy used for training obstetric nurses in the care and feeding of newborns. The agency's evaluation of the dummies is discussed in NHTSA's report "Newborn Infant Dummy Development and Evaluation," VRTC-80-0168, March 1991. The report is available from the National Technical Information Service, Springfield, Virginia, 22161.

NHTSA determined that the P-O dummy would be unsuitable as a test dummy because its legs are fixed in a seated position, which prevents placing the dummy in a supine position. Since newborn infants cannot set up by themselves some restraint systems are designed to position the infant in a supine position. The inability of the P-O dummy to lie flat like an infant in the restraint prevents the dummy from adequately representing an infant in dynamic testing of car bed type infant restraints.

The Baby Anne dummy was unsuitable for a variety of reasons. First, the dummy is not built to exacting engineering standards, which are needed to assure testing repeatability. Moreover, at 6.05 pounds the dummy is 1.3 pounds lighter than a 50th percentile newborn, which raises some question about its biofidelity. (Biofidelity is a measure of how human-like a test dummy would be in an impact.) The Baby Anne was also undesirable as a test instrument because it lacks the durability necessary for repeated use in crash testing, and it is not designed to be repaired. Importantly also, the Baby Anne dummy is not readily available because its manufacturer has ceased its production.

Because neither of the two available newborn dummies was suitable, the agency developed a newborn infant dummy by scaling down the design of the six-month-old test dummy currently specified in part 572. The six-month-old dummy, developed by the Federal Aviation Administration's Civil Aeromedical Institute, has been used successfully to test child restraint systems since the mid-1970's.

The agency believes the new dummy has acceptable biofidelity for use as a test dummy. The dummy has accurate anthropometry and mass distribution representative of a 50th percentile newborn infant. These features are necessary to simulate the inertial and kinematic responses of an infant during sled testing of a child restraint. Although the dummy has stiffer joints and less joint articulation (to improve its durability for repeated testing) than a new born infant, NHTSA believes the difference is of minimal importance. The dummy would be used to assess the child restraint's ability to retain the head and torso of an infant, to maintain its structural integrity, and to provide adequate back support. NHTSA believes that the measurement of these features of a child restraint would not be affected by the dummy's joint articulation.

Since the construction methods for the proposed newborn dummy would be identical to those for the six-mont-hold dummy, NHTSA believes the six-month-old dummy construction manual could be used for the newborn dummy. The agency specifically requests comments on the necessity for a separate construction manual for the newborn dummy.

The agency has tentatively determined that the newborn dummy's Kinematic responses in a dynamic test are repeatable and reproducible. (Repeatability refers to the degree to which the dummy's responses vary for the same dummy would be build to exacting engineering standards that would be almost identical to those for the part 572 six-month-old dummy. The six-month-old dummy has shown repeatable and reproducible results in child restraint testing. Because the newborn and six-month-old dummies would be very similar material and construction, the agency believes the newborn dummy's Kinematic responses would be repeatable and reproducible. Also, the repeatability of the dummy was demonstrated in NHTSA's crash simulation tests. The dummy was tested twice in two child restraints, a rear-facing infant restraint and a car bed, where maximum seat belt load, child restraint seat back angle and child seat excursion data were recorded. The data showed that the dummy's performance did not vary by more than 11.5 percent between tests, which the agency believes is acceptable.

The agency tested the dummy's ability to fit various seat designs by placing it in six different restraint systems. The six restraints were Kolcraft's Rock-N-Ride, Cosco's TLC Infant Seat and Dreamride Car Bed (both the car bed and rear-facing seat modes), Evenflo's Joyride, the Century 580 and Fisher Price's Infant Seat. The dummy appeared to adequately fit the seats and showed no indication of positioning problems.

NHTSA believes current infant restraints would be able to meet the requirements of Standard 213 when tested with the new dummy. The agency conducted two 30 mile per hour crash tests with the dummy in a rearward facing seat (in a Fisher Price Infant Seat) and a car bed (in a Cosco Dreamride Infant Car Bed). Both restraint systems appeared to adequately restrain the dummy and experience no structural damage in the impact.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures.

The agency has analyzed the economic and other effects of this proposal and tentatively determined that they are neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The proposed specifications for the newborn dummy are intended to facilitate the evaluation of crash protection for newborn children for research purposes only. The proposal would not require any manufacturer to produce or use the dummy. The dummy would not be used in Standard 213 compliance testing unless the agency decided to do so after thoroughly evaluating and discussing such use and its costs and other impacts in a separate rulemaking.

The agency estimates that the proposed newborn test dummy could be manufactured for $2,500 to $5,000 per

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unit, depending on the manufacturer. Since the dummy is designed to be reusable, its cost can be amortized over a number of tests. The materials used in the dummy are commercially obtainable and are similar to the material used in the six-month-old dummy described in subpart D of part 572. For these reasons, the agency has tentatively determined that the economic effects of the proposed amendments are so minimal that a full regulatory evaluation is not required.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act NHTSA has evaluated the effects of this proposed action on small entities. There is only one anthropomorphic test device manufacturer currently operating in this county. The manufacturer does not produce dummies of the type and size of the one proposed in this notice. This notice neither requires newborn dummies to comply with the proposed specifications, nor requires the use of the proposed dummy in child restraint testing. However, the agency anticipates that the existence of the specifications would cause purchasers to select only those newborn dummies that meet those specifications. NHTSA believes that use of the proposed dummy would not affect the sales or use of other currently-specified part 572 child dummies, since those dummies would continue to be used in testing child restraint systems.

Small organizations and small governmental jurisdictions that deal with automotive child safety should not be significantly affected since the potential cost increments associated with this proposed action should have negligible effects on the purchase price of applicable child restraint systems, if at all. Based upon this evaluation, I certify that the proposed amendment to part 572 would not have a significant economic impact on a substantial number of small entities. Accordingly, no preliminary regulatory flexibility analysis has been prepared.

Executive Order 12612

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been tentatively determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

The agency has also analyzed this proposed rule for the purpose of the National Environmental Policy Act, and tentatively determined that it would not have any significant impact on the quality of the human environment.

Procedures for Filing Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted. All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Regulatory Information Number (RIN)

A RIN is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 572

Motor vehicle safety.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 572 as follows:

PART 572—[AMENDED]

1. The authority citation for part 572 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. A new subpart K consisting of §§ 572.90 through 572.91 would be added to read as follows:

Subpart K—Newborn Infant

572.90 Incorporated materials
572.91 General description

Subpart K—Newborn Infant

§ 572.90 Incorporated materials.

The drawings and specifications referred to in this regulation that are not set forth in full are hereby incorporated in this party by reference. These materials are thereby made part of this regulation. The Director of the Federal Register approved the materials incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the materials may be obtained from Rowley-Scher Reprographics, Inc., 1216 K Street, NW., Washington, DC 20002, telephone (202) 628–6667. Copies are available for inspection in the general reference section of Docket 91–27, Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW. Washington, DC, or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

§ 572.91 General description.

(a) The newborn infant dummy is specified in its entirety by means of 26 drawings designated NBI 126, 5 assembly drawings designated SA 1001, and a construction manual dated July 2, 1974, which describes in detail the procedures involved in the manufacture of this dummy.

(b) The structural properties of the dummy are such that the dummy conforms to this Part in every respect both before and after being used in dynamic tests specified in Standard No. 213 of this Chapter (§ 571.213).

Issued on: August 6, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91–19019 Filed 8–9–91; 8:45 am]

BILLING CODE 4910-59-M

Notices

This section of the FEDERAL
contains documents other than
proposed rules that are applica
public. Notices of hearings and
investigations, committee meetin
decisions and rulings, delegatio
authority, filing of petitions and
applications and agency statem
organization and functions are
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DEPARTMENT OF COMMERC

Agency Form Under Review
Office of Management and B
(OMB)

DOC has submitted to OMB
clearance the following propo
collection of information unde
provisions of the Paperwork R
Act (44 U.S.C. chapter 35).

Agency: Bureau of the Cens

Title: 1991 Company Organ
Survey.

Form Number(s): NC–9901,

Agency Approval Number:

Type of Request: Extension
expiration date of a currently
collection without any change
substance or in the method of

Burden: 76,899 hours.

Number of Respondents: 93

Avg Hours Per Response: 5

Needs and Uses: The Burea
the Company Organization Su
(COS) annually to update and
the Standard Statistical Estab
List (SSEL). The SSEL is a co
list of companies containing s
information as name, address
location, Standard Industrial
Classification (SIC) code, em
size code, and company affili
provides a single universe for
selection and maintenance of
samples of establishments, le
or enterprises; provides a sta
for assigning SIC codes; and
establishment level data from
establishment companies tha
summarized and published in
County Business Patterns ser
reports. The updated SSEL pr
current directory of business
for use in economic current s
economic censuses.

Affected Public: Businesse
for–profit organizations; Non-
institutions; Small businesses
organizations.

Frequency: Annually.

Respondent's Obligation: N

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g Comments

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List of Subjects in 49 CFR Part 572

Motor vehicle safety.

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PART 572—[AMENDED]

1. The authority citation for part 572 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

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Subpart K—Newborn Infant

§ 572.90 Incorporated materials.

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§ 572.91 General description.

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(b) The structural properties of the dummy are such that the dummy conforms to this Part in every respect both before and after being used in dynamic tests specified in Standard No. 213 of this Chapter (§ 571.213).

Issued on: August 6, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91–19019 Filed 8–9–91; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 56, No. 155
Monday, August 12, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1991 Company Organization Survey.

Form Number(s): NC–9901, NC–9907.

Agency Approval Number: 0607–0444.

Type of Request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Burden: 76,899 hours.

Number of Respondents: 93,000.

Avg Hours Per Response: 50 minutes.

Needs and Uses: The Bureau conducts the Company Organization Survey (COS) annually to update and maintain the Standard Statistical Establishment List (SSEL). The SSEL is a computerized list of companies containing such information as name, address, physical location, Standard Industrial Classification (SIC) code, employment size code, and company affiliation. It provides a single universe for the selection and maintenance of statistical samples of establishments, legal entities, or enterprises; provides a standard basis for assigning SIC codes; and provides establishment level data from multi–establishment companies that are summarized and published in the annual County Business Patterns series of reports. The updated SSEL provides a current directory of business locations for use in economic current surveys and economic censuses.

Affected Public: Businesses or other for–profit organizations; Non–profit institutions; Small businesses or organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 7, 1991.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 91–19107 Filed 8–9–91; 8:45 am]

BILLING CODE 3510-07-F

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Questionnaire Pretesting Research.

Form Number(s): Will vary by survey.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 3,000 hours.

Number of Respondents: 3,000.

Avg Hours Per Response: 1 hour.

Needs and Uses: This is a request for a generic clearance to conduct extended cognitive and questionnaire design research as part of testing for the Census Bureau's censuses and surveys. This submission will provide a vehicle for testing questionnaires and procedures using state–of–the–art methods, including administration of respondent debriefing forms, split ballot experiments, and small–scale field tests involving behavior coding of respondent/ interviewer interaction.

Affected Public: Individuals or households; Farms; Businesses or other for–profit organizations; Small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 7, 1991.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 91–19108 Filed 8–9–91; 8:45 am]

BILLING CODE 3510-07-F

International Conference on Environmental Technologies

AGENCY: Office of Technology Commercialization, U.S. Department of Energy, Environmental Protection Agency.

ACTION: Notice of conference.

SUMMARY: The Department of Commerce will conduct a conference on environmental technologies on September 5–6, 1991. The conference, entitled "Protecting the Environment: New Technologies * * * New Markets," will be held at the Sheraton Reston in Reston, Virginia, close to the Dulles International Airport. The agenda will focus on new markets for selling environmental technologies in Poland, Czechoslovakia, and Hungary, and on opportunities for commercializing federal environmental research. Representatives of the Department of Energy and the Environmental Protection Agency, along with industry co-sponsors, will participate.

FOR FURTHER INFORMATION CONTACT: Office of Technology Commercialization, room 4418, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230, (202) 377–8100.

SUPPLEMENTARY INFORMATION: The conference will inform participants of the opportunities for collaboration in commercially important environmental research in progress in the laboratories of the Department of Commerce (the National Oceanic and Atmospheric

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Administration and the National Institute of Standards and Technology), the Department of Energy with its system of national laboratories, and the Environmental Protection Agency.

The conference will also provide the audience with detailed information concerning trade and investment opportunities, as well as financing options, for environmental products and services in Eastern Europe.

The National Association of Manufacturers, the U.S. Chamber of Commerce, the Industrial Research Institute, the American Petroleum Institute, and five other trade associations are co-sponsors of the event. The agenda for the event is intended to address concerns of U.S. industry in this critically important area. The conference will provide a unique opportunity for industry representatives to learn about two complementary aspects of the environmental field:

- Opportunities for commercializing environmental research under way in the federal laboratories, and
- Opportunities for selling environmental products and services in Poland, Hungary, and Czechoslovakia.

A fee to cover costs will be required for participation in this event.

Deborah L. Wince-Smith,

Assistant Secretary for Technology Policy.

[FR Doc. 91-19109 Filed 8-9-91; 8:45 am]

BILLING CODE 3510-18-M

Foreign-Trade Zones Board

[Docket 27-91]

Foreign-Trade Zone 56—Oakland, CA; Amendment of Application To Include Request for Manufacturing Authority, Advanced Blending Corp., Food Products Operation

The application submitted to the Foreign-Trade Zones Board (the Board) by the City of Oakland, California, grantee of FTZ 56, for expansion of FTZ 56 (Docket 27-91, 56 FR 22842, 05-17-91) has been amended to include a request for authority on behalf of Advanced Blending Corporation (ABC), to manufacture milk-based infant formula for export under zone procedures within FTZ 56. The request was amended on July 8, 1991.

ABC plans to lease some 15,000 square feet of space within the Oakland Commerce Center complex, located at 9401 San Leandro Street in Oakland. The complex is within the proposed new site for FTZ 56. ABC will produce infant formula at the site by the cold-process blending of ex-quota foreign sugar and ex-quota foreign non-fat dry milk with domestic protein and whey powder. The finished product would be exported to Asian markets. ABC produces infant formula for the domestic market at other sites (Modesto, CA).

Zone procedures would allow ABC to purchase world-price sugar and milk for use in products that are exported. They would also exempt the company from Customs duty payments on the foreign materials used in export production. The applicant indicates that zone procedures are important in its efforts to compete in foreign markets.

Comments concerning the manufacturing proposal are invited from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before September 9, 1991.

A copy of the application is available for public inspection at the following locations:

U.S. Department of Commerce, District Office, Box 6013, Federal Building, room 15205, 450 Golden Gate Avenue, San Francisco, California 94102.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Dated: August 5, 1991.

John J. Da Ponte, Jr.

Executive Secretary.

[FR Doc. 91-19110 Filed 8-9-91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-588-019]

Termination of Antidumping Administrative Review on Dichloro Isocyanurates from Japan

AGENCY: International Trade Administration/Import Administration/Department of Commerce.

EFFECTIVE DATES: August 12, 1991.

FOR FURTHER INFORMATION CONTACT: Kristal A. Eldredge or Rick Herring, Office of Countervailing Investigations, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-0631 or 377-3530, respectively.

Termination of Review

On May 24, 1989, we published a notice initiating the administrative review of the antidumping duty order on Cyanuric Acid from Japan for the period April 1, 1988 through March 31, 1989 and its Chlorinated Derivatives for the period April 1, 1988 through November 20, 1988 (54 FR 22465). On June 1, 1990, we published the notice initiating the review of Cyanuric Acid and its Chlorinated Derivatives covering Nissan Chemical Industries, Ltd., and Shikoku Chemicals Corp., Ltd., for the period April 1, 1989 through March 31, 1990 (55 FR 22366).

We subsequently published a notice of "Final Results of Antidumping Administrative Reviews and Revocation on Trichloro Isocyanuric Acid, and Revocation, in Part, on Dichloro Isocyanurates" (56 FR 19338, April 26, 1991). The revocation was effective November 21, 1988. As a result, on June 26, 1991, we published a notice of "Termination of Antidumping Administrative Review on Trichloro Isocyanuric Acid, and Termination, in Part, on Dichloro Isocyanurates" (56 FR 29215). This termination did not affect the reviews for Shikoku Chemicals Corporation and Mitsubishi Corporation (trading company), but did terminate the reviews with respect to Nissan Chemical Industries, Ltd.

On July 26 and July 29, 1991, we received letters from Shikoku Chemicals Corporation and Mitsubishi Corporation, and Monsanto Company, respectively, withdrawing their request for review for the periods November 22, 1988 through March 31, 1989 and April 1, 1989 through March 31, 1990 and requesting that the Department terminate the review of these periods.

Therefore, we are terminating the review for all companies with respect to dichloro isocyanurates for the periods November 22, 1988 through March 31, 1989 and April 1, 1989 through March 31, 1990.

This termination of review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(a)(5).

Dated: August 6, 1991.

Francis J. Sailer,

Deputy Assistant Secretary for Investigations, Import Administration.

[FR Doc. 91-19111 Filed 8-9-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-428-037]

Drycleaning Machinery From Germany; Preliminary Results of Antidumping Duty Administrative Review.

AGENCY: Import Administration/International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

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view on Dichloro
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August 12, 1991.

RMATION CONTACT:
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view

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Dated: August 6, 1991.

Francis J. Sailer,

Deputy Assistant Secretary for Investigations, Import Administration.

[FR Doc. 91–19111 Filed 8–9–91; 8:45 am]

BILLING CODE 3510-DS-M

[A-428-037]

Drycleaning Machinery From Germany; Preliminary Results of Antidumping Duty Administrative Review.

AGENCY: Import Administration/International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request from the petitioner, the Department of Commerce has conducted an administrative review of the antidumping finding on drycleaning machinery from Germany. The review covers two manufacturers/exporters of this merchandise to the United States and the period November 1, 1989 through October 31, 1990. One of the companies, Seco Maschinenbau & Co. GmbH (Seco), failed to respond to our questionnaire. For Seco we used the best information available (BIA).

In this review we preliminarily found margins of 6.00 percent for Boewe Passat Reinigungs und Waschereitechnik GmbH (Boewe) and for Seco.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATES: August 12, 1991.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or John R. Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377–8312/3601.

SUPPLEMENTARY INFORMATION:

Background

On November 13, 1990, the Department of Commerce (the Department) published a notice of "Opportunity to Request an Administrative Review" (56 FR 47370) of the antidumping finding on drycleaning machinery from Germany (37 FR 23715, November 8, 1972). On November 30, 1990, the petitioner, Vic Division of Waltron, Inc., requested an administrative review of the antidumping finding. We initiated the review, covering November 1, 1989 through October 31, 1990, on December 12, 1990 (56 FR 51742). The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act). The final results of the last administrative review in this case were published in the Federal Register on January 25, 1991 (56 FR 2901).

Scope of the Review

Imports covered by the review are shipments of drycleaning machinery currently classifiable under item number 8451.10.10 of the Harmonized Tariff Schedule (HTS). HTS item numbers are provided for convenience and for Customs purposes. The written descriptions remain dispositive.

The review covers two German manufacturers/exporters of this merchandise to the United States and the period November 1, 1989 through October 31, 1990. Since one of the companies, Seco, failed to respond to our questionnaire, for Seco we used 6.00 percent as BIA, the highest rate in this review, which is higher than any of Seco's prior rates.

United States Price

In calculating United States price, we used purchase price (PP) or exporter's sales price (ESP), both as defined in section 772 of the Tariff Act, as appropriate. PP and ESP were based on the delivered, packed price to unrelated purchasers in the United States. We made adjustments for foreign inland freight, ocean freight and marine insurance, U.S. inland freight, U.S. customs duties, brokerage charges, and when applicable for commissions to unrelated parties, and the U.S. subsidiary's direct and indirect selling expenses. In accordance with section 772(e)(2) of the Tariff Act, we made further deductions, where appropriate, for packing expenses incurred in the United States. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used either home market price (when sufficient quantities of such or similar merchandise were sold in the home market) or constructed value, as defined in section 773 of the Tariff Act.

Constructed value was calculated as the sum of materials and fabrication costs, general expenses, profit, and U.S. packing. Because U.S. packing was not provided, we used data on U.S. packing from the previous review as BIA. For general expenses the Department used actual general expenses because they were higher than the statutory minimum of ten percent of the sum of materials and fabrication costs. Because actual profit was less than eight percent, the Department used the statutory minimum of eight percent of the sum of materials, fabrication costs, and general expenses.

Home market price was based on the packed ex-factory or delivered price to unrelated purchasers. We made adjustments, where appropriate, for foreign inland freight, early payment discounts where actually taken, guarantees, certain directly-related sales office expenses, technical service expenses, and certain miscellaneous expenses incurred on behalf of the customer. We also made adjustments for differences in credit expenses, commissions to unrelated parties, differences in packing costs, and, where appropriate in the case of ESP calculations, for indirect selling expenses to offset U.S. indirect selling expenses.

When there were no identical products in the home market with which to compare products sold to the United States, we made adjustments to similar merchandise to account for options or other differences in the physical characteristics of the merchandise. These adjustments were based on the costs of direct materials, direct labor, and direct factory overhead.

We allowed bad debt and indirect sales office expenses as level-of-trade (LOT) adjustments. We disallowed trade-in losses, indirect warranty, order entry and control, and headquarters sales office expenses as LOT expenses because we do not believe them to be a measure of LOT differences in this case.

We disallowed Boewe's claim for direct circumstance-of-sale (COS) adjustments for advertising, traffic department, management, order entry and control, technical publications, headquarters sales department, research and development, and general and administrative expenses because these claimed adjustments either were not directly related to the sales used for comparison purposes or were not selling expenses.

We allowed advertising, order entry and control, headquarters sales department, technical publications, and indirect warranty expenses as indirect selling expenses to the extent that they did not exceed indirect selling expenses to the extent that they did not exceed indirect selling expenses for ESP sales. We disallowed research and development, traffic department, management, and general and administrative expenses, as indirect selling expenses because they are not selling expenses.

We disallowed claimed adjustments for "trade-in losses" as price reductions. We do not consider the amounts deducted from the price of a new machine for a trade-in to be a discount. We also denied trade-in losses as a COS adjustment, as an indirect selling expense, or as a LOT adjustment.

No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our review, we preliminarily found the following margins:

Manufacturer/exporter	Time period	Margin (percent)
Boewe	11/1/89–10/31/90	6.00
Seco	11/1/89–10/31/90	6.00

Interested parties may submit written comments on these preliminary results

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within 30 days of the date of publication of this notice, may request disclosure within 5 days of the date of publication, and may request a hearing within 10 days of the date of publication. Any hearing, if requested, will be held as early as convenient for the parties but not later than 44 days after the date of publication or the first workday thereafter. Pre-hearing briefs from interested parties may be submitted not later than 14 days before the date of the hearing or the first workday thereafter. Rebuttal briefs and rebuttal comments, limited to issues raised in the initial round of comments, may be filed not later than 7 days after submission of the initial round of comments. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of our final results of review for all shipments of this merchandise from Germany entered, or withdrawn from warehouse, for consumption on or after that publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for any shipment of this merchandise exported by any of the reviewed companies will be that established in the final results of this review; (2) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer in the final results of this review; (3) the cash deposit rate for all other manufacturers/exporters shall be 6.00 percent. This is the highest non-BIA rate in this review.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(1991).

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-19112 Filed 8-9-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-601]

Certain Stainless Steel Cooking Ware from the Republic of Korea; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of final results of antidumping Duty Administrative Review.

SUMMARY: On March 5, 1991, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on certain stainless steel cooking ware from the Republic of Korea. The review covers one manufacturer/exporter of the subject merchandise to the United States, Namil Ltd., and the review period January 1, 1989 through December 31, 1989. We have now completed that review and determine the weighted average dumping margin to be 1.69 percent *ad valorem.*

EFFECTIVE DATE: August 12, 1991.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Anne D'Alauro, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 5, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 9195) the preliminary results of its administrative review of the antidumping duty order on certain stainless steel cooking ware from the Republic of Korea (52 FR 2139; January 20, 1987). We have now completed that review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by this review are shipments of certain Korean stainless steel cooking ware. Such merchandise is classifiable under Harmonized Tariff Schedule (HTS) item number 7323.93.000. The products covered by this order are skillets, frying pans, omelette pans, saucepans, double boilers, stock pots, dutch ovens, casseroles, steamers, and other stainless steel vessels, all for cooking on stove top burners, except tea kettles and fish poachers. Excluded from the scope are stainless steel kitchen ware. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter of the subject merchandise to the United States, Namil Ltd., and the period January 1, 1989 through December 31, 1989.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received case and rebuttal briefs from the petitioner, Fair Trade Committee of the Cookware Manufacturers Association, and the respondent, Namil Ltd.

Comment 1: The petitioner states that many of the comparisons between similar third country merchandise and U.S. merchandise had substantial differences in merchandise (difmer) adjustments, in excess of 20 percent of the cost of manufacturing the U.S. merchandise. Pursuant to 19 U.S.C. 1677(16)(C)(iii), the Department has adopted a guideline to identify similar merchandise which may reasonably be compared to the subject merchandise sold in the United States. Any merchandise that requires a difmer adjustment above 20 percent of the cost of manufacturing the U.S. product is not considered a reasonable comparison. In Final Determination of Sales At Less Than Fair Value; Certain Small Business Telephone Systems and Subassemblies Thereof from Korea, (54 FR 53145; December 27, 1989), the Department stated that it found it necessary to adopt a 20 percent guideline in order to minimize the effect of certain distortions created in calculations caused by making a difmer adjustment of that magnitude.

The petitioner argues that the Department should follow its normal practice and limit the use of similar merchandise in making fair value comparisons to those comparisons where the difmer adjustment is less than or equal to 20 percent of the cost of manufacturing the U.S. merchandise. See, e.g., Tapered Roller Bearings Four Inches or Less in Outside Diameter and Certain Components Thereof from Japan; Final Results of Antidumping Duty Administrative Review, (55 FR 38720; September 20, 1990) and Cellular Mobile Telephones and Subassemblies from Japan; Final Results of Antidumping Duty Administrative Review, (55 FR 29395; July 19, 1990). For those comparisons where the difmer adjustment exceeds 20 percent of the cost of manufacturing the U.S. merchandise, the Department should use constructed value (CV) as the basis for

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The petitioner argues that the Department should follow its normal practice and limit the use of similar merchandise in making fair value comparisons to those comparisons where the difmer adjustment is less than or equal to 20 percent of the cost of manufacturing the U.S. merchandise. See, e.g., Tapered Roller Bearings Four Inches or Less in Outside Diameter and Certain Components Thereof from Japan; Final Results of Antidumping Duty Administrative Review, (55 FR 38720; September 20, 1990) and Cellular Mobile Telephones and Subassemblies from Japan; Final Results of Antidumping Duty Administrative Review, (55 FR 29395; July 19, 1990). For those comparisons where the difmer adjustment exceeds 20 percent of the cost of manufacturing the U.S. merchandise, the Department should use constructed value (CV) as the basis for

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determining foreign market value (FMV) for the fair value comparison.

Namil replies that the Department used 811 difmer comparisons. Only 154 of these were greater than 20 percent. Of these 154, exactly half (77) are attributable solely to the use of high value copper bottom inserts rather than aluminum. Of the remaining 77, 54 are the result of other material differences resulting from differences in the diameter of the vessel, its height, the thickness of the bottom or different handles and knobs. Of the remaining 23, 12 involve comparisons of a vessel with a cover to a vessel without a cover or with a glass (rather than a steel) cover. Namil argues that, in the cases cited by the petitioner, the Department utilized a 20 percent limit on difmers due to the type of products being compared. However, because of the nature of the subject merchandise in this review, the guideline is inappropriate. Here, the Department is dealing with a fairly simple product, with relatively straightforward manufacturing operations, where the cost of alternative materials for the bottom "sandwich," or for handles and knobs is extremely significant. Therefore, the Department should use the verified difmers, even if they exceed 20 percent.

Department's Position: We disagree with the petitioner that the 20 percent guideline should be strictly followed in this case. At verification, we visually examined the comparison products and found them to be reasonably similar. As noted by Namil, in many of the cases where the difmer was greater than 20 percent, there were clearly identifiable and easily quantifiable material cost differences between otherwise identical or nearly identical products. Therefore, it is logical that these products are reasonably compared in spite of having a difmer higher than 20 percent. See, e.g., Final Determination of Sales at Less Than Fair Value; Certain Small Business Telephone Systems and Subassemblies Thereof from Taiwan, (54 FR 42543; October 17, 1989).

Comment 2: The petitioner argues that, in the event that difmer adjustments are permitted for CV comparisons, best information available (BIA) should be used where the proposed difmer adjustment to CV is more than 20 percent of the cost of manufacturing the U.S. merchandise. The BIA should be the highest final margin determined for any product.

Department's Position: We disagree. As discussed in the Department's Position in response to Comment 1, we have determined that because of the nature of the subject merchandise, these products are reasonably comparable in spite of difmers higher than 20 percent.

Comment 3: The petitioner states that in calculating SG&A and profit, the Department understated the profit adjustment. Instead of first multiplying by ten percent to account for SG&A and then multiplying the result by eight percent to account for profit, the Department simply multiplied cost of manufacturing by 18 percent (10 percent for general expenses and 8 percent for profit).

Department's Position: We agree with the petitioner and have adjusted our calculations accordingly.

Comment 4: The petitioner asserts that the Department should use BIA to determine the margins on the sale of woks to the United States. The Department discovered at verification that Namil sold woks to the United States during the review period, but these wok sales were not reported in its questionnaire response. Namil also did not report data for sales of woks in the home market or to third countries. Because of Namil's failure to provide the sales or CV information necessary for making fair value comparisons, the Department should use, as BIA in its final margin calculations, the highest margin that it calculates for any U.S. sale.

Namil replies that the omission of the sale of woks to the United States from the questionnaire response was inadvertent. The Department's use of the weighted average of all other products as BIA is acceptable given this unintentional omission.

Department's Position: We agree with the petitioner. Because the respondent did not provide sales information on the sale of woks to the United States in its questionnaire response, we used BIA. As BIA, we have applied the highest margin found on any U.S. sale to the total net value of all sales of woks to the United States during the review period. We have used the highest margin found on any U.S. sale rather than the weighted-average margin because the omission encompassed all sales to all markets of a particular type of stainless steel cookware, and not just one or two transactions in one of Namil's markets.

Comment 5: The petitioner states that the Department should not use any of the reported non-operating income as an offset to general and administrative expenses (G&A). Income unrelated to the production of the merchandise subject to review should not be used to offset G&A expenses.

Namil replies that the Department should be consistent and if it were to include on-operating items in the G&A, then it should offset G&A upon the sale of the non-operating items.

Department's Position: We did not include non-operating income in G&A. We did not offset G&A expenses with non-operating income since it was unrelated to the production of the subject merchandise.

Comment 6: The petitioner states that it is illegal and unfair for the Department to change the cash deposit rate established in the original order for unnamed or new manufacturers/exporters based on a review of only one of the five manufacturers investigated during the original investigation. It is particularly unfair in this case where the single manufacturer had the lowest rate in the original investigation and the fact that the manufacturer had very little impact on the weighted-average calculation of the "all others" rate in the original order. The review of Namil was requested because petitioner believed that the low rate established for Namil in the original investigation was not representative of the actual dumping margin for the firm.

The petitioner further states that the Department's position is unjust because the increase in Namil's rate still results in decreasing the rate for new manufacturers/exporters and all other manufacturers/exporters not named in the original investigation.

Given the Department's current position, it would have been better if a review of a company with a higher rate in the original investigation had been requested because it is more likely that the new "all others" rate would have been much higher than 8.10 percent.

Namil replies that the "all others" rate determined in the investigation stands a a surrogate for non-investigated companies involved in the trade at that time. The rationale is that the weighted average of investigated companies is a reasonable estimate of the situation for other manufacturers/exporters as it exists during the period of investigation.

Department's Position: We disagree with the petitioner. The petitioner had the option to request reviews of any of the exporters of the subject merchandise to the United States but only chose to request a review of one exporter. Therefore, the rate that will be applied to any new manufacturers/exporters whose first shipments occurred after December 31, 1989 (i.e., "new shippers") will be the highest calculated rate in this review, which is the rate calculated for the single respondent. This new shipper rate is not applicable to companies which have a previously assigned rate from the investigation or which shipped to the United States prior to December 31, 1989.

Although the Department recently modified its policy to the calculation and application of the "new shippers" rate (see, Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany; Preliminary Results of Antidumping Duty Administrative Reviews) (56 FR 11200, March 5, 1991), this modification was made subsequent to the issuance of the preliminary results of this review. As such, it would be inappropriate to apply the revised methodology in these final results because the interested parties did not have the opportunity between the issuance of the preliminary and final results to assess the implications of the revised policy in the context of this review.

Final Results of Review

As a result of our review, we determine the weighted-average dumping margin to be:

Manufacturer/exporter	Time period	Margin (percent)
Namil Ltd.	1/1/89–12/31/89	1.69

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, the cash deposit of estimated antidumping duties based on the above margin will be required for Namil Ltd. For any shipments of this merchandise manufactured or exported by the remaining known manufacturers and/or exporters not covered by this review, the cash deposit rates will continue to be at the latest rate applicable to each of these firms.

For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments of certain stainless steel cooking ware occurred after December 31, 1989, and who is unrelated to the reviewed firm or any previously reviewed firm, a cash deposit of 1.69 shall be required. These deposit requirements are effective for all shipments of certain Korean stainless steel cooking ware entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with sections 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: August 1, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–19113 Filed 8–9–91; 8:45 am]

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[C–357–403]

Oil Country Tubular Goods from Argentina; Final Results of Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative reviews.

SUMMARY: On January 24, 1991, the Department of Commerce published the preliminary results of its administrative reviews of the countervailing duty order on oil country tubular goods from Argentina. We have now completed the reviews and determine the total bounty or grant to be 0.09 percent *ad valorem* for the period January 1, 1987 through December 31, 1987, and 0.93 percent *ad valorem* for the period January 1, 1988 through December 31, 1988. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

EFFECTIVE DATE: August 12, 1991.

FOR FURTHER INFORMATION CONTACT: Laurie Goldman or Barbara Tillman, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On January 24, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 2752) the preliminary results of its administrative reviews of the countervailing duty order on oil country tubular goods from Argentina (49 FR 46564; November 27, 1984). The Department has now completed these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by these reviews are shipments of Argentine oil country tubular goods. These products include finished or unfinished oil country tubular goods, which are hollow steel products of circular cross section intended for use in the drilling of oil or gas, and oil well casing, tubing and drill pipe of carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) or proprietary specifications. During the review periods this merchandise was classifiable under item numbers 610.3216, 610.3219, 610.3233, 610.3234, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4210, 610.4220, 610.4230, 610.4240, 610.4310, 610.4320, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243 and 610.5244 of the Tariff Schedules of the United States Annotated (TSUSA).

Such merchandise is currently classifiable under the following item numbers of the Harmonized Tariff Schedule (HTS): 7304.20.20, 7304.20.40, 7304.20.50, 7304.20.60, 7304.20.70, 7304.20.80, 7304.39.00, 7304.51.50, 7304.59.60, 7304.59.80, 7304.90.70, 7305.20.40, 7305.20.60, 7305.20.80, 7305.31.40, 7305.31.60, 7305.39.10, 7305.39.50, 7305.90.10, 7305.90.50, 7306.20.20, 7306.20.30, 7306.20.40, 7306.20.60, 7306.20.80, 7306.30.50, 7306.50.50, 7306.60.70 and 7306.90.10.

While the TSUSA and HTS numbers are provided for convenience and Customs purposes, the written description remains dispositive.

The reviews cover the periods January 1, 1987 through December 31, 1987, and January 1, 1988 through December 31, 1988, and twelve programs.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments and rebuttals to comments from North Star Steel Ohio and Lone Star Steel Company, both petitioners, and Siderca S.A., a respondent. We also received rebuttal to petitioners' comments from the Government of Argentina.

Comment 1: Siderca states that, although loans were reported to the Department by invoice number, this was done only to facilitate the Department's identification of sales of subject merchandise to the United States. Siderca contends that loan calculations should correspond with loan reference numbers, and that such calculations

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While the TSUSA and HTS numbers are provided for convenience and Customs purposes, the written description remains dispositive.

The reviews cover the periods January 1, 1987 through December 31, 1987, and January 1, 1988 through December 31, 1988, and twelve programs.

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Comment 1: Siderca states that, although loans were reported to the Department by invoice number, this was done only to facilitate the Department's identification of sales of subject merchandise to the United States. Siderca contends that loan calculations should correspond with loan reference numbers, and that such calculations

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should not be analyzed according to subgroups of those reference numbers. Siderca further maintains that, because pre-export financing finances production, as opposed to specific sales, of the subject merchandise, there is no way to tie specific invoices to actual financing.

Siderca also claims that the Department's loan-by-loan analysis overstates the benefits received by Siderca. Siderca urges the Department to look at the totality of its financing arrangements to determine whether benefits were conferred. Because of the extreme volatility of interest rates in Argentina during 1987 and 1988, and the consequent difficulty in forecasting whether RF–153 or regular commercial loans would be more beneficial, Siderca negotiated a mixed package of financing in order to hedge against devaluation. Siderca states that it negotiated loans in 1987 and 1988 with two banks and was granted a line of credit from each bank from which they could draw down funds, as needed. Respondent argues that the Department should not treat each draw-down as a separate loan, but should treat the entire package of loans from each bank as a single line of credit. Benchmark interest rates should reflect the rate in effect at the time each draw-down and repayment occurred. Siderca states that, throughout both the 1987 and 1988 periods of review, the total cost of RF–153 financing was more expensive than comparable commercial financing. Therefore, the Department should find that there was no benefit conferred from RF–153 loans.

Petitioners contend that the Department should reject Siderca's argument that RF–153 loans be repackaged into "reference numbers" and credit lines. The repackaging proposed by Siderca only serves to include "negative" benefits in the Department's calculations and thus reduce the overall benefit calculated. The Department should remain consistent in its methodology and not consider the less favorable terms of one loan as an offset to another, preferential loan. Furthermore, petitioners maintain that it is clear that, in order to secure pre-export financing, the company must present proof of future export. The verification report for the 1987 review confirms this point and the fact that the Government of Argentina grants loans based on proof of export, not on the basis of production cycles.

Department's Position: We agree with petitioners. While the funds received from RF–153 loans may be used to finance production, it is clear that the financing is contingent on specific export sales. Siderca was required to present proof of sale and an irrevocable letter of credit for each loan received. At verification, we saw that specific loans accounted for 70 percent of actual invoice values. Therefore, because the evidence clearly shows that RF–153 loans are tied to specific exports, the Department has determined that it would be inappropriate to treat "subgroups" that are tied to specific invoice numbers as one loan.

Additionally, the Department only examines loans received under programs that may potentially be counteravailable if the interest rate is preferential when compared with the benchmark interest rate. We do not consolidate these preferential loans with non-counteravailable commercial loans to examine whether the aggregate interest rate paid on a series of loans is preferential. It is not the Department's practice to offset the less favorable terms of one loan as an offset to another, preferential loan. The Department will continue to analyze each individual loan in the RF–153 pre-export loan program separately.

Comment 2: Petitioners claim that the Department failed to select an appropriate benchmark to calculate the benefit from the RF–153 loan program. Petitioners argue that, because it neglected to find the predominant alternative source of short-term financing, (*i.e.,* the source of commercial loans that would represent the most likely commercial alternative and best mirror the RF–153 program), the Department did not follow its standard methodology. Petitioners claim that the Department should have first considered a benchmark that comprised at least 50 percent of total short-term financing in local currency prior to constructing a composite benchmark interest rate. Specifically, the Department should have examined commercially available 180-day, dollar-indexed, pre-export loans as it did in Leather from Argentina; Final Determination and Countervailing Duty Order (55 FR 40212; October 2, 1990). This methodology should have been used consistently in both the 1987 and 1988 periods of review as it was in Argentina during the 1989 investigative period.

Siderca contends that petitioners' argument is incorrect and that the benchmark used by the Department need not be a "mirror" of the actual loan, but must be a commercial alternative available to the exporter. Siderca cites Standard Pipe, Line Pipe, Light-Walled Rectangular Tubing and Heavy-Walled Rectangular Tubing from Malaysia; Final Negative Countervailing Duty Determination (53 FR 46904; November 21, 1988), wherein the Department stated its practice of using, as a benchmark rate, "the most comparable, predominent commercial rate for short-term financing." Petitioners' suggestion that the Department use dollar-indexed, 180-day financing should not be accepted by the Department because it was not a commercially viable alternative in 1987 and 1988, as verified by the Department.

Siderca states that, the dollar benchmark used in Leather from Argentina was used for the 1989 investigative period. During that time, austral financing practically disappeared and exporters began to obtain dollar-based financing. These changes in the economic situation in Argentina necessitated a deviation from the Department's longstanding methodology. Moreover, in 1989, the RF–153 program itself was modified to allow exporters to seek dollar-based financing These conditions, Siderca claims, were not applicable during 1987 and 1988, the periods covered by the current reviews.

Department's Position: We disagree with petitioners that the Department should use a 180-day, dollar-indexed benchmark. At verification, we examined the lending situation in Argentina. We are satisfied that the Central Bank information provided by the Fundacion de Investigaciones Economicas Latinoamericanas (FIEL), a private research organization, is the appropriate benchmark to use. We have used Central Bank information on commercial interest rates in other administrative reviews of Argentine cases; See, generally, Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina (1987 and 1988). Central Bank and commercial bank sources demonstrated that these rates represented the predominent alternative short-term commercial financing rates during the review period. Leather from Argentina does not speak to the conditions that existed in 1987 and 1988, but only to the 1989 period when the lending situation in Argentina changed dramatically, and different sources and types of short-term commercial financing prevailed. We have, therefore, used as our benchmark the published average unregulated commercial rate. This information was part of the Government of Argentina's questionnaire response for the 1987 period of review and was independently obtained by the Department for the 1988 period of review.

Comment 3: Siderca contends that the Department erred by using an interest rate provided by one state-owned bank as its benchmark rate for the 1988 period of review. Siderca states that it was in error in providing rates from the Banco de la Nacion Argentina in the 1988 questionnaire response, and that Central Bank rates, as published by the FIEL, should have been provided as they were for the 1987 review period. The Central Bank rates are based on the average lending rates of major banks. Siderca argues that the rate provided by the Banco de la Nacion Argentina for 180-day discounts of commercial paper is not an average commercial rate, but is an index provided by only one source. Further, respondent claims that the Department should not use a 180-day rate but a 30-day interest rate, since loans in Argentina require payment of interest every 30 days, even though principal may be rolled over.

Siderca also disagrees with petitioners' argument that a two percent spread should be added to the Central Bank rates used by the Department. Siderca contends that petitioners' argument misinterprets the verification report, which describes how the Central Bank arrives at financing rates by adding a spread to either its cost of funds or interest rates on deposits. The rates published by the Central Bank are actual average commercial lending rates and not the cost of funds to the bank or the rates charged to commercial banks by the Central Bank; therefore, it is precisely those rates that should be used by the Department.

Petitioners contend that the Department should continue to use the Banco de la Nacion Argentina rate for 180-day loans as the 1988 benchmark. This was the rate provided by respondent in the questionnaire response. Petitioners state that respondent had ample time, prior to publication of the preliminary results of review, to submit new information correcting the original submission. Therefore, the Department should disregard Siderca's submission of new information on Central Bank rates and continue to use the Banco de la Nacion Argentina rates provided by respondent for the 1988 period of review.

Petitioners also contend that whereas FIEL rates averaged 9.51 percent in 1987, the more appropriate Central Bank rate was 10.34 percent, plus a two percent spread.

Department's Positions: We agree with respondent. The Department has consistently used Central Bank rates provided by FIEL and will change the benchmark for 1988 to reflect those rates. Using a rate charged by a single bank as the benchmark rate would be inappropriate because it does not reflect the predominant commercial alternative source of credit. Since FIEL information is public, the Department independently obtained the 1988 rates and, therefore, did not use the information submitted by respondent on FIEL rates that was untimely.

We also agree with respondent that a two percent spread should not be added to the Central Bank rates. The information contained in the verification report merely explained the manner in which the Central Bank determined lending rates. The information disseminated by the Central Bank and published by FIEL reflects actual lending rates which already include a spread above the cost of funds.

Comment 4: Petitioners claim that the Department used an inappropriate benchmark for the 1987 review period. The Department used a simple average of the regulated and unregulated rates available in Argentina in 1987, but since the regulated rate was not available to commercial enterprises, it should not have been used as part of the benchmark calculation. The Department should only have used a monthly average of the rates published by the Central Bank of Argentina.

Department's Positions: We agree with petitioners that the Central Bank regulated rate was not available to businesses in 1987, as indicated in our verification report. We have, therefore, recalculated the 1987 benchmark rate to exclude that rate from the semi-annual averages. The total bounty or grant from this program remains *de minimis* for the 1987 review period and has been adjusted to 0.93 percent *ad valorem* for the 1988 review period.

Comment 5: Siderca contends that the Department should not have used single average annual interest rates for the 1987 and 1988 periods of review. Siderca argues that because short-term interest rates in Argentina fluctuated greatly in 1987 and 1988, use of a single average rate is distortive. The Department has previously used semi-annual averages in the 1987 investigation of Certain Welded Carbon-Steel Pipe and Tube Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order (Pipe and Tube) (53 FR 37619; September 27, 1988). Siderca claims that because the loans in the instant reviews are clustered in the two halves of the year, and are short-term loans of less than 180 days, they fit the same conditions as in the Pipe and Tube investigation. Thus, the Department should apply the same methodology in the present reviews.

Department's Position: The Department agrees with respondent that semi-annual average benchmark rates should be used. During both the 1987 and 1988, the average short-term monthly interest rate varied significantly between the first and second halves of the year. Although we generally use an average annual rate for our benchmark, we are using the semi-annual averages as our benchmark in these reviews because: (1) The loans are clustered (in terms of total amount received) within either the first or second half of 1987 and 1988; (2) RF–153 loans are generally extended for 180 days or less; and (3) an average annual rate would have been distorted by the compounding of very high monthly interest rates which varied widely from the first to the second half of the year in question. As noted by respondent, this is consistent with the methodology previously employed by the Department in Pipe and Tube.

Comment 6: Petitioners claim that the Department erred in determining that Siderca did not receive price premiums on its sales of OCTG to the Government of Argentina. Petitioners argue that the Department's original determination was in error because the Department examined comparable prices in the domestic market instead of world market prices.

Petitioners claim that prices in Argentina are an inappropriate basis for comparison as they are distorted and, therefore, inconsistent with commercial considerations. In support of their claim, petitioners assert that the internal market in Argentina is characterized by artificially high domestic prices. Import barriers, the "Buy Argentina" law, and exchange controls allowed prices in the domestic market to remain at levels 30 to 50 percent higher than prices in the United States, in addition to being higher than world market prices generally. In support of this point, petitioners cite Industrial Nitrocellulose from France; Final Affirmative Countervailing Duty Determination (48 FR 11971; March 22, 1983) wherein, petitioners claim, it was determined that the French military was effectively subsidizing a company by paying a higher price than the company would have obtained in the world market.

To further support the use of world market prices as a commercial standard, petitioners cite the dominance of the state-owned oil company, YPF, in the domestic marketplace. Insofar as YPF is the principal purchaser of OCTG in Argentina, and Siderca is the sole Argentina OCTG producer, both companies effectively were able to set the price of OCTG in the domestic market in a manner which would benefit Siderca.

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been around since the original investigation in 1984. Siderca insists that the Department should continue to use the methodology established in the original investigation and used in other cases (Certain Steel Products from the Republic of Korea; Final Affirmative Countervailing Duty Determination (47 FR 57535; December 27, 1982)). Siderca claims that to evaluate whether price premiums are being received from government purchases of OCTG, the Department must compare the prices paid by the government to prices paid by private, unrelated companies in arm's length transactions. The Department performed and verified those price comparisons, concluding that price premiums were not being provided. Since there are commercial prices available for comparison within Argentina, the Department need not make a comparison to world market prices. Siderca also distinguishes petitioners' reference to Nitrocellulose from France on the grounds that the Department in that case never called for a comparison to world market prices, but merely concluded that excessive prices paid by the government constituted a countervailable benefit (Industrial Nitrocellulose from France; Final Affirmative Countervailing Duty Determination (48 FR 11971; October 2, 1983)).

Department's Position: We concur with respondent. The Department continues to use the same methodology in this review as that used in the original investigation. A government cannot be found to be providing a subsidy when independent, arm's length prices within the same jurisdiction are actually higher. The Department undertook a thorough analysis, including verification of price documentation, which showed that the Government of Argentina actually paid a lower price for OCTG than did private companies.

Furthermore, petitioners' reference to Nitrocellulose from France is inapposite because the methodology employed in that case did not involve a comparison to world market prices. The determination in Nitrocellulose from France was based on the "best information available" because of the failure of the French government to cooperate and provide the Department with the information necessary to evaluate the program. In the subsequent administrative review (Industrial Nitrocellulose from France; Final Results of Countervailing Duty Administrative Review (52 FR 833; January 9, 1987)), the Department received more complete information and analyzed the prices paid by the government in relation to the cost of producing the product, not world market prices. As a result of its analysis, the Department found that there was an insufficient basis to conclude that excessive prices were being paid by the government.

Comment 7: Petitioners contend that the administrative record is insufficient because the Department failed to include certain invoices requested by petitioners. By excluding certain documents from the record, the Department has denied petitioners an opportunity to comment on all the information contained in the record. The Department did not verify enough information to conclude that price premiums were not being paid by the Argentine government. The Department only looked at invoices of sales to three private companies, which were based on sales of much smaller quantities than purchases made by YPF. Further, there is no evidence that the Department verified receipt of payment for these sales.

Petitioners also contend that they were unable to analyze the record adequately because the Department denied them access to invoices requested by petitioner. Petitioners cite Acetylsalicylic Acid from Turkey; Final Affirmative Countervailing Duty Determination (52 FR 24494; July 1, 1987), wherein the Department noted that "the statutory and regulatory scheme of a countervailing duty investigation requires that petitioner be provided with an opportunity to comment on all information submitted to the Department."

Siderca objects to petitioners' request that the Department include verified invoices as exhibits to the verification report. Siderca states that the Department uses its discretion in determining which documents to take back and use as exhibits. Furthermore, the Department provided a complete verification report detailing exactly which documents were examined and evaluated. The Departmeent is under no legal obligation to provide petitioners with each and every document verified.

Department's Position: We concur with respondent regarding the sufficiency of the administrative record. The Department has maintained a complete and open administrative record in this case. Verification is a process in which the Department examines programs and eligibility requirements, respondent's use of the programs, and government and company accounting records (including ledgers, invoices, purchase orders, etc.), as well as other documents in order to determine the accuracy of the questionnaire response. We do not request verification exhibits on every item or program that is verified. Exhibits that are collected serve to clarify or further explain the text of the verification report. Documents, such as invoices, which are self-explanatory, are usually not included as exhibits. The documents cited by petitioners were thoroughly examined by the Department and complete information concerning these documents was included in the verification report. All exhibits collected by the Department are included in the record.

Comment 8: Petitioners claim that a counterguarantee provided by the Ministry of Economy on an internationally-funded loan from the Inter-American Development Bank (IADB) under the "BANADE" loan program conferred a countervailable benefit that was ignored by the Department. According to petitioners, there is no evidence that any company other than Siderca obtained such a counterguarantee. Petitioners argue further that, since this loan was obtained after the period covered by the last administrative review, there was no prior opportunity for the Department to review the terms of the project for which the IADB loan provided funding. Petitioners mention that neither the questionnaire, nor the verification report, nor the preliminary results of review contained any reference to either the BANADE guarantee or the Ministry of Economy's counterguarantee of the IADB loan. While acknowledging that the Department found the BANADE loan guarantee program not countervailable in the original investigation, petitioners suggest that there could have been substantial changes in the years since the investigation. Without any facts on the record of these reviews regarding the guarantee and the counterguarantee of the IADB loan, petitioners assert that the Department cannot properly determine that there is no countervailable benefit arising from the counterguarantee.

Petitioners further contend that the counterguarantee provided to Siderca by the Ministry of Economy was granted in order to procure financing aimed at expanding exports, and thus provides a countervailable export subsidy. Although admitting that they had not uncovered any explicit export requirement for obtaining the BANADE guarantee and the Ministry of Economy counterguarantee, petitioners cite X-Radial Steel Belted Tires from Canada; Liquidation of Duties (38 FR 1018; January 8, 1973) in support of their position. Petitioners maintain that in that case the Treasury Department determined that benefits to Michelin for locating a plant in Nova Scotia primarily to serve the U.S. market amounted to an export subsidy, despite the absence of any provision in the program explicitly linking the subsidies to increased exports. Petitioners argue that there is substantial evidence indicatint that the Government of Argentina approved the dual guarantees because the modernization project would significantly increase exports. They further maintain that anticipated exports was the determinative factor in the government's granting these guarantees.

Siderca and the Government of Argentina reply that the BANADE guarantee and the Ministry of Economy counterguarantee programs were thoroughly investigated in the original investigation, and in the 1985 administrative review. In both instances the Department determined that these programs were not counteravailable because they were not provided to a specific enterprise or industry, or group of enterprises or industries. Respondents assert that petitioners have not provided any substantive basis for the Department to reinvestigate its earlier determinations with respect to these programs.

Department's Position: We disagree with petitioners. The Department thoroughly examined the BANADE program in the original investigation and in the 1985 administrative review. In both instances, the Department determined that the program did not provide a countervailable benefit because BANADE financing was made available to all industries in every province of Argentina, and none of the criteria laid out in BANADE regulations was industry- or region-specific. (Oil Country Tubular Goods from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order (49 FR 46564; November 27, 1984). In addition, the verification report from the original investigation states specifically that "the vast majority of BANADE loan guarantees were accompanied by a counterguarantee of the Secretariat of Finance." It is the Department's practice not to reinvestigate a program absent specific information indicating that there were changes in the program sufficient to warrant reinvestigation (See, *e.g., PPG Industries, Inc.* v. *United States,* 745 F. Supp. 119 (Ct. of Int'l Trade 1990)). Petitioners have provided no such information in this case, but claim merely that the counterguarantee is unique to Siderca and speculate, without any supporting evidence, that the BANADE program may have changed with the passage of time.

As for their argument that the counterguarantee provides an export subsidy, petitioners extrapolate from their claim that the program is unique to Siderca to conclude that a non-explicit requirement (the expansion of exports) of the program was the determinative factor in Siderca's receipt of the counterguarantee. Such a misunderstanding of the record and unsupported claims cannot provide the basis for the Department to reinvestigate a program that has already twice been determined to be non-countervailable.

Comment 9: Petitioners claim that tax exemptions authorized under Laws 21.608 and 23.614 provided a countervailable benefit to Siderca because the regulations governing import duty and tax exemptions were applied inconsistently from year to year. Petitioners contend that, because the rules governing tax exemptions were restrictive during some periods and more lax during others, the criteria governing the program were not administered uniformly. Moreover, petitioners maintain that the tax exemptions were limited to certain companies. Petitioners also argue that the fact that 2,400 companies used the program does not in itself preclude a determination that countervailable benefits were conferred. Petitioners cite *Roses, Inc.* v. *United States,* 743 F. Supp. 870, 881 (Ct. of Int'l Trade 1990), wherein the Court of International Trade ruled that the number of grantees is not determinative of the countervailability of a program. Rather, the court in that case indicated that the focus must be on "whether an advantage in international commerce has been bestowed on a discrete class of grantees." According to petitioners, because companies were granted benefits on a differential basis, the program provided a competitive benefit to a discrete class of beneficiaries and, therefore, must be countervailed.

Siderca and the Government of Argentina assert that the Department's verification of this program was not merely head-counting. The Department obtained complete information regarding the operation of the program and verified that the program provided benefits throughout many regions and sectors. Siderca argues that the reduction of the level of overall benefits during certain periods was not done on a selective basis, but rather on a general basis for fiscal reasons.

Department's Position: Petitioners have not substantiated their allegation that tax exemptions under Laws 21.608 and 23.614 conferred a countervailable benefit upon a discrete class of beneficiaries. In any given year, the Government of Argentina adhered to the guidelines of the program, which included periodic audits of companies claiming benefits under the program as well as cost and technical viability studies for approved projects under which companies could claim certain of the tax and duty exemptions.

The Department verified that the tax exemptions under this program were widely used in Argentina by many industries and across various regions of the country. Reductions in the amount of exemptions, as a result of fiscal exigencies, occurred uniformly across industries and regions. Moreover, the Department has previously determined that certain tax exemptions granted under Laws 21.608 and 23.614 do not provide bounties or grants. See, e.g., Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order (49 FR 18006; April 26, 1984). because petitioners' arguments on this point do not present any new evidence, we have not reconsidered our position.

Comment 10: Siderca claims that indirect and final stage taxes on refractory bricks should be included in the allowable tax incidence on OCTG because refractory bricks are physically incorporated into OCTG. Siderca states that the Department allows indirect taxes on products that are worn away so long as they are incorporated into the final product. Siderca further maintains that the Department accepted refractory bricks as items which are physically incorporated into OCTG in the 1985 administrative review.

Petitioners concur with the Department decision in the preliminary results of administrative review that refractory bricks are not physically incorporated into OCTG. The production process is designed to remove impurities, including refractory brick particles, so that they do not become physically incorporated into OCTG. Refractory bricks erode during the production process and the particles are deposited in slag (the refuse from melting metals) that is designed specifically to flush such impurities from the molten steel. Any silicon from refractory bricks contained in the finished product would make it more brittle and unusable as OCTG.

Department's Position: We agree with petitioners. Although refractory bricks are consumed in the production process, they are not physically incorporated into

OCTG. Therefore, the rebate of indirect taxes on refractory bricks is not allowable.

Comment 11. Petitioners assert that natural gas is not physically incorporated in OCTG and argue that the Department should not have considered indirect taxes on natural gas as allowable for rebate under the reembolso. Petitioners cite Ferroalloys from Spain, Notice of Countervailing Duty Order (Ferroalloys I) (45 FR 25; January 2, 1980) wherein the Department rules that the indirect taxes on coal were not allowable because carbon from coal, although present in the final product, was incidental to the manufacture of ferroalloys and did not add to their value. Petitioners, likewise, regard the carbon from natural gas as a catalyst, and not physically incorporated into OCTG, and assert that there is absolutely no evidence on the record of physical incorporation of natural gas into Siderca's OCTG.

Siderca points out that this issue was previously addressed in this case, as well as in other cases, and the Department accepted the physical incorporation of natural gas resulting from the Midrex process. See, *e.g.*, Carbon Steel Wire Rod from Argentina; Preliminary Affirmative Countervailing Duty Determination (47 FR 30539; July 14, 1982) and Final Affimative Countervailing Duty Determination and countervailing Duty Order; Oil Country Tubular Goods from Argentina (OCTG Final Determination) (46 FR 46564; November 27, 1984). Siderca claims that it is well documented that, in the Midrex production process, carbon from natural gas becomes physically incorporated into OCTG. Furthermore, at verification, a technical engineer from Siderca explained the relevant details of the Midrex process to Department of Commerce officials: natural gas used for carburization in the Midrex process is physically incorporated and is not a catalyst.

Department's Position: We agree with respondent. In the OCTG Final Determination, the Department determined that natural gas used in the Midrex process is physcially incorporated into OCTG. The Department made a distinction between natural gas used in the Midrex process and natural gas used as energy to fuel the production process. In the Midrex process, carbon from natural gas becomes physically incorporated and, as such, any indirect taxes paid on the natural gas used in that process may be rebated; the Department has not allowed the rebate of taxes on natural gas used as fuel.

In citing Ferroalloys I, petitioners neglect to mention the Department's further elaboration of its position in Ferroalloys from Spain; Final Results of Administrative Review of Countervailing Duty Order (Ferroalloys II) (48 FR 34493; July 29, 1983). The Department determined that carbon from coal was used as a reducing agent, *i.e.*, as a catalyst in the manufacturing process, and not as an element to by physically incorporated. Moreover, exporters of ferroalloys did not provide the Department with evidence to distinguish carbon used as a reducing agent and carbon serving as "necessary waste." Since the Department could not determine how much carbon was used as a reducing agent, and how much was physically incorporated, the Department did not consider any of the taxes on coal as an allowable rebate.

With OCTG, a clear distinction can be made between natural gas that is consumed in the production process, and that which is physically incorporated. The carbon derived from natural gas in the production of OCTG is neither a catalyst in the manufacturing process, nor an incidental element in the final product; it is necessarily incorporated in the finished carbon steel product. Therefore, the facts in this case are distinguishable from the decision in Ferroalloys I.

Comment 12: Petitioners contend that the 1986 tax incidence study provided by Siderca, which is the basis for determining the amount of allowable indirect taxes rebated under the reembolso program, is seriously flawed and significantly overstates the indirect tax incidence on OCTG. Petitioners point out that the profit margin shown in the study is significantly lower than that shown in Siderca's income statement for March 31, 1986. Thus, not only is the study suspect of 1986, but the application of the 1986 study to subsequent years is entirely inappropriate. A comparison of the profit margin in the 1986 study to Siderca's profit margins reported in 1987 and 1988 reveals similar discrepancies.

According to petitioners, the discrepancy in the profit margins is important because it highlights the fact that an understated profit margin would increase the percentage of f.o.b. value attributed to other cost elements and thus overstate the tax incidence. Use of a higher profit margin would reduce the rate of tax incidence and show that Siderca had received an excessive rebate.

Siderca claims that petitioners' argument regarding the profit margins is erroneous. According to Siderca, it should not be expected that the information in the financial statements and in the tax incidence study will coincide because they were prepared in completely different ways for different purposes. The Department fully verified each element of the tax incidence study and established that it reflected Siderca's actual costs, f.o.b. values, and taxes paid.

Department's Position: We agree with Siderca. Our verification of the tax incidence study consisted of a thorough analysis of the source documents used in its preparation, including monthly mill reports, invoices, import documents and export documents, to ensure that the study was based on the actual cost of each input into the final product and the f.o.b. value of the exported merchandise. We also verified the rates of prior stage and final stage taxes, and that the amount rebated to Siderca did not exceed the amount of indirect taxes that it had actually paid. The verification process for the tax incidence study was explained in detail in the verification report. Because the study calculates actual costs and expenses as a percentage of the f.o.b. value of exports, the figure for profit in the study represents the difference between the actual costs and the f.o.b. invoice price of exports of seamless tube. The profit margin shown in the study is, therefore, a specifically derived figure for this merchandise and has no necessary relationship to the profit figure reported in the financial statements, which includes profit from the domestic and export sales of all products produced by Siderca as well as other plant income. Thus, there is no reason to expect the profit figure from the tax incidence study and the profit figure from the financial statement to match.

Comment 13: Petitioners argue that use of the 1986 study for subsequent periods completely ignores the significant changes in the Argentine economy. Because there is no evidence on the record supporting an assumption that a 1986 study is valid for 1987 and 1988, the Government of Argentina has failed the linkage test requiring periodic examinations of the tax incidence.

Siderca claims that the Department does not require a study to be conducted yearly, but does ask for updated information to ensure that the tax rebate remains at or below the levels allowed. That updated information was supplied to the Department and verified.

Department's Position: The petitioners' contention that the linkage test is not met because the 1986 tax incidence study is not valid for subsequent periods is without merit. We are applying the 1986 study, in this case, to 1987 and 1988, a period not exceeding two years from the time frame of the study. Moreover, petitioners have not given us any reason to believe that significant changes in cost structure have occurred since that time. We determined in Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Oil Country Tubular Goods from Argentina (49 FR 46564; November 27, 1984) that the reembolso for OCTG met the three requirements of the linkage test: (1) The system is intended to operate as a rebate of both indirect taxes and import duties; (2) the government properly ascertained the level of the rebate; and (3) the rebate schedules are revised periodically in order to determine if the rebate amount reflects the amount of actual duties and indirect taxes paid. Therefore, the only issue pertinent to these reviews is whether there was an overdue of indirect taxes.

In order to make that determination, we verified the 1986 tax incidence study and all changes that have occurred since its completion. Because each cost element of the tax incidence study was calculated as a percentage of the total f.o.b. value of seamless tube, inflation and other volatilities in the economy would have no significant impact on the results of the study unless the cost ratios of these inputs changed dramatically from one year to the next. We verified that increases in tax rates were the only significant changes in the cost structure, and increases in the percentage of indirect taxes would only serve to increase the amount of the allowable rebate. Thus, we have no reason to believe that the 1986 study is invalid for 1987 and 1988.

Comment 14: Petitioners claim that because the tax incidence study was prepared by Siderca, and not the Government of Argentina, the study is self-serving and not a neutral analysis. Therefore, it should not be accepted by the Department. Petitioners also argue that the study is not valid because it is not confined to an analysis of OCTG; but is based on an analysis of all seamless tubes. Since OCTG is at the higher end of the pipe market in price terms, the study overstates the tax incidence on OCTG.

Siderca and the Government of Argentina reply that the petitioners' arguments show a fundamental misunderstanding of the reembolso program and the Department's requirements for ensuring that there is no overrebate of indirect taxes. Contrary to the petitioners' claim, the Government of Argentina does not normally prepare these studies, but requires, in accordance with Decree 1555, that the industries involved prepare the studies as a precondition to receiving any reembolso payment. The Government reviews the studies to ensure their accuracy and to establish appropriate rebate rates. The Department's responsibility is to ensure that the Government of Argentina acted reasonably and that the level of rebate of indirect taxes does not exceed actual taxes paid.

Department's Position: We agree with the respondents. Petitioners' claim, that the study prepared by Siderca is not objective and does not follow standard procedures, misinterprets the requirements of the countervailing duty law with respect to the Department's linkage test.

The Department does not require that tax incidence studies be conducted by the government, only that a verifiable industry study be completed which meets acceptable norms established by the government. The Government of Argentina's procedures for determining the rate of reembolso satisfy the Department's requirements for linkage because they meet the criteria discussed in Comment 13. However, to ensure objectivity, the Government of Argentina retained an independent consulting firm to verify independently the accuracy of Siderca's study. We verified both Siderca's study and the independent study performed by the Steel Industry Chamber and determined that the rate of indirect tax incidence was reasonably calculated.

Finally, we disagree with petitioners' argument that a study on seamless tube is not valid for OCTG. The Department has always considered sectoral studies as a valid yardstick by which to measure indirect tax rebate programs. The only requirement of the Department's linkage test is that the government establish an adequate methodology for ascertaining indirect tax incidence and rebate levels. We do not require that a study be prepared for each and every exported product.

Comment 15: Petitioners contend that the differential between the 12 percent tax rate on freight costs for imports and the 2 percent tax rate on freight costs for exports creates a countervailable subsidy. To support this contention, petitioners cite Ferrochrome from the Republic of South Africa; Notice of Countervailing Duty Order (46 FR 21155; April 9, 1981) and *Macalloy Corp* v. *United States,* 1 CIT 199 (1981), and item (c) of the Illustrative List of Export Subsidies, which establish that government creation of such rate differentials may constitute a countervailable benefit. Petitioners further claim that they only became aware of this program through the verification report and assert that the Department should gather more information to make a proper determination of the amount of the benefit.

Siderca contends that petitioners have misapplied the relevant standard by claiming that disparities in taxes on freight rates for imports and exports provided countervailable benefits. Item (c) of the Illustrative List states that an export subsidy arises when internal transport and freight charges are provided on more favorable terms for export shipments than for domestic shipments. The Department's determination in Ferrochrome was consistent with item (c), because the government of South Africa had established lower freight rates for shipments destined for export. Furthermore, *Macalloy Corp* v. *United States* merely upheld the Department's decision in the Ferrochrome proceeding. Because the Govenrment of Argentina is taxing export and import freight charges at different rates, and is not providing lower freight rates for shipments destined for export, respondents claim that the instant case is not comparable to Ferrochrome. The appropriate standard is whether the government is giving preferential treatment based on whether an export or sale is involved; the fact that freight taxes on exports are lower than on imports is irrelevant.

Department's Position: We agree with respondent. Item (c) of the Illustrative List considers preferential freight rates provided for the export of a product to be an export subsidy. This case, however, does not involve a situation in which there is a differential freight rate, but merely a differential tax rate. Nowhere does item (c) speak to issues involving differential tax rates. Additionally, in Argentina, the higher tax on freight applies to imports irrespective of whether such imports are used to produce merchandise for domestic consumption or for export. Furthermore, because the Illustrative List allows the non-excessive rebate of indirect taxes on physically-incorporated inputs as well as on indirect final stage taxes, a tax rate differential would not provide a countervailable benefit because it does not, *per se,* create an incentive to export.

Finally, the difference in these tax rates did not first become apparent at verification, as petitioners contend. This information was part of the reembolso study provided in the Argentine

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differentials may constitute a countervailable benefit. Petitioners further claim that they only became aware of this program through the verification report and assert that the Department should gather more information to make a proper determination of the amount of the benefit.

Siderca contends that petitioners have misapplied the relevant standard by claiming that disparities in taxes on freight rates for imports and exports provided countervailable benefits. Item (c) of the Illustrative List states that an export subsidy arises when internal transport and freight charges are provided on more favorable terms for export shipments than for domestic shipments. The Department's determination in Ferrochrome was consistent with item (c), because the government of South Africa had established lower freight rates for shipments destined for export. Furthermore, *Macalloy Corp* v. *United States* merely upheld the Department's decision in the Ferrochrome proceeding. Because the Govenrment of Argentina is taxing export and import freight charges at different rates, and is not providing lower freight rates for shipments destined for export, respondents claim that the instant case is not comparable to Ferrochrome. The appropriate standard is whether the government is giving preferential treatment based on whether an export or sale is involved; the fact that freight taxes on exports are lower than on imports is irrelevant.

Department's Position: We agree with respondent. Item (c) of the Illustrative List considers preferential freight rates provided for the export of a product to be an export subsidy. This case, however, does not involve a situation in which there is a differential freight rate, but merely a differential tax rate. Nowhere does item (c) speak to issues involving differential tax rates. Additionally, in Argentina, the higher tax on freight applies to imports irrespective of whether such imports are used to produce merchandise for domestic consumption or for export. Furthermore, because the Illustrative List allows the non-excessive rebate of indirect taxes on physically-incorporated inputs as well as on indirect final stage taxes, a tax rate differential would not provide a countervailable benefit because it does not, *per se*, create an incentive to export.

Finally, the difference in these tax rates did not first become apparent at verification, as petitioners contend. This information was part of the reembolso study provided in the Argentine

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government's questionnaire response, which listed the rates and types of all indirect taxes and their rate of incidence on OCTG. Under the circumstances, the Department did not need to elicit further information.

Final Results of Review

As a result of our review, we determine the total bounty or grant to be 0.09 percent *ad valorem* for the period January 1, 1987 through December 31, 1987, and 0.93 percent *ad valorem* for the period January 1, 1988 through December 31, 1988. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is considered to be *de minimis*. After reviewing all of the comments received, we recommend changing the rate from the preliminary results of review because of recalculations in the RF–153 program.

The Department will instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of this merchandise exported on or after January 1, 1987 and on or before December 31, 1987, and to assess countervailing duties of 0.93 percent of the f.o.b. invoice price on all shipments of this merchandise exported on or after January 1, 1988, and on or before December 31, 1988.

Further, the Department will instruct the Customs Service to collect cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 0.93 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results of administrative review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: August 6, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–19114 Filed 8–9–91; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will hold a public meeting on August 15, 1991, at the Ramada Inn (telephone: 617–569–5250), 225 McClellan Highway, East Boston, MA. The meeting will begin at 10 a.m.

The purpose of the meeting is to develop an industry consensus recommendation on an amendment to the American Lobster Fishery Management Plan. The discussion will address long-term management issues in the lobster fishery.

The Lobster Committee Chairman Philip Coates has invited a small group of lobster industry leaders to participate in preliminary discussions on future lobster management. It is not the council's intent to control or influence industry input, but it is seeking a consensus recommendation on lobster management. The timetable for completion of a consensus recommendation is six months after implementation of the amendment to delay the further gauge increases.

For more information contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906; telephone: (617) 231–0422.

Dated: August 6, 1991.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–19037 Filed 8–9–91; 8:45 am]

BILLING CODE 3510-22-M

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will hold a public meeting on August 13–14, 1991, at the King's Grant Inn (telephone: 508–774–6800), route 128 at Trask Lane, Danvers, MA. The meeting will begin at 10 a.m., on August 13. The meeting will reconvene on August 14 at 9 a.m.

On the first day, there will be announcements and an election of new officers. Next, there will be a presentation on the most recent Stock Assessment Workshop by Dr. Andrew Rosenberg of the Northeast Fisheries Center, Woods Hole, MA. The Groundfish and Sea Scallop Committees will report just prior to and after the lunch break.

On the second day, the agenda will begin with reports from the past year Council Chairman; the Council Executive Director; the Regional Director, Northeast Fisheries Center; the Department of State; the Coast Guard; the Fish and Wildlife Service; the Atlantic States Marine Fisheries Commission; and the Mid-Atlantic Council liaison. Next, there will be a review of the Mid-Atlantic Council's proposed Summer Flounder Fishery Management Plan (FMP), followed by a status report on Amendment #4 to the Lobster FMP. Additionally, there will be a discussion of the upcoming August 15 lobster industry management meeting.

Just prior to lunch, the staff will give a presentation on technical fisheries management terminology and methods. The Habitat and Herring Committees will then report during the final afternoon of the meeting.

For more information contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906; telephone: (617) 231–0422.

Dated: August 6, 1991.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–19038 Filed 8–9–91; 8:45 am]

BILLING CODE 3510-22-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Proposed Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Chicago Board of Trade (CBT or Exchange) has applied for designation as a contract market in homeowners insurance futures. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before September 11, 1991.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CBT homeowners insurance futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact Joseph Storer of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, at (202) 254-7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions of the proposed contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the CBT in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or argument on the terms and conditions of the proposed contract, or with respect to other materials submitted by the CBT in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC on August 6, 1991.

Gerald Gay,

Director.

[FR Doc. 91-19049 Filed 8-9-91; 8:45 am]

BILLING CODE 6351-01-M

Chicago Board of Trade Proposed Option Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures option contract.

SUMMARY: The Chicago Board of Trade (CBT or Exchange) has applied for designation as a contract market in major market index (MMI) futures options. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before September 11, 1991.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CBT major market index futures option contract.

FOR FURTHER INFORMATION CONTACT: Please contact Stephen Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone 202-254-7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions of the proposed contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the CBT in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the terms and conditions of the proposed contract, or with respect to other materials submitted by the CBT in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on August 6, 1991.

Gerald Gay,

Director.

[FR Doc. 91-19050 Filed 8-9-91; 8:45 am]

BILLING CODE 6351-01-M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 91-C0007]

Black & Decker (U.S.), Inc., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional Acceptance of a Settlement Agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the FEDERAL REGISTER in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Black & Decker (U.S.), Inc., a corporation.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by August 27, 1991.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 91-C0007, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Melissa V. Hampshire, Attorney, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6980.

SUPPLEMENTARY INFORMATION: (Attached).

Dated: August 6, 1991.

Sadye E. Dunn,

Secretary, Office of the Secretary.

Settlement Agreement

1. This Settlement Agreement entered into between Black & Decker (U.S.), Inc. ("Black & Decker"), a corporation, and the staff of the Consumer Product Safety Commission ("Commission" or "CPSC"), is a compromise resolution of the matter described herein, without a hearing or determination of any issues of law or fact.

2. The provisions of this Settlement Agreement shall apply to Black & Decker and to each of its successors or assigns.

I. The Parties

3. The "staff" is the staff of the Consumer Product Safety Commission, an independent regulatory agency of the

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8-9-91; 8:45 am]

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SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the FEDERAL REGISTER in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Black & Decker (U.S.), Inc., a corporation.

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2. The provisions of this Settlement Agreement shall apply to Black & Decker and to each of its successors or assigns.

I. The Parties

3. The "staff" is the staff of the Consumer Product Safety Commission, an independent regulatory agency of the

United States of America, established by Congress pursuant to section 4 of the Consumer Product Safety Act ("CSPA"), 15 U.S.C. 2053, as amended.

4. Black & Decker is a corporation organized and existing under the laws of Maryland, with its principal place of business located at 701 East Joppa Road, Towson, Maryland.

II. The Product

5. Black & Decker manufactured and distributed in interstate commerce model 82209 types 1 and 2, and model 82210 types 1 and 2 electric weed trimmers ("weed trimmers").

III. Jurisdiction

6. Black & Decker distributed two models of weed trimmers (a) for sale to a consumer for use in or around a permanent or temporary household or residence, in reaction or otherwise or (b) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, in recreation or otherwise. The weed trimmers are consumer products within the meaning of section 3(a)(1) of the CPSA, 15 U.S.C. 2052(a)(1).

7. Black & Decker manufactured the weed trimmers for sale to consumers throughout the United States. Black & Decker therefore, is a "manufacturer" of a "consumer product" which is "distributed in commerce," as those terms are defined in sections 3(a)(1), (4), and (11) of the CPSA, 15 U.S.C. 2052(a)(1), (4) and (11).

IV. Staff Allegations

8. In October 1986, Black & Decker completed an engineering analysis on a model 82209 electric week trimmer which was allegedly involved in an incident of electric shock on July 14, 1986. The report stated: "[A]pparently a lead wire was misplaced during manufacture with the result that one of the internal conductors touched the metal handle tube. This condition could account for the reported electric shock received."

9. By or before January 1987, Black & Decker learned of a second alleged electric shock received incident received from a model 82209 electric weed trimmer, which occurred on June 20, 1986.

10. By or before August 1987, Black & Decker received notice of a third alleged electric shock incident received from a model 82210 electric weed trimmer, which occurred on August 3, 1987.

11. By or before August 1987, Black & Decker received notice of a fourth alleged electric shock incident received from a model 82210 electric weed trimmer, which occurred on or before September 3, 1987.

12. By or before September 11, 1987, Black & Decker had learned of a total of four incidents involving alleged electric shock from use of the model 82209 or 82210 electric weed trimmers.

13. Black & Decker had received sufficient information by October 1986 to reasonably support the conclusion that the weed trimmers may contain a defect which could create a substantial product hazard. Black & Decker did not report such information to the Commission, as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b), in violation of section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4), until September 11, 1987.

V. Response of Black & Decker

14. Black & Decker denies each and all of the staff allegations with respect to its weed trimmers. It further and specifically denies that its products may contain a defect which creates or which could create a substantial product hazard within the meaning of section 15(a) of the CPSA, 15 U.S.C. 2064(a), and further specifically denies an obligation to report under section 15(b) of the CPSA, 15 U.S.C. 2064(b), with respect to the subject weed trimmers earlier than September 11, 1987, the date when Black & Decker had received and inspected the trimmers involved in the second and third incidents previously described.

VI. Agreement of the Parties

15. The staff and Black & Decker agree that the Commission has jurisdiction in this matter for purposes of entry and enforcement of this Settlement Agreement.

16. Black & Decker agrees to pay the Commission the amount of one hundred twenty-five thousand dollars ($125,000) within 20 days after service of the Final Order of the Commission accepting this Settlement Agreement. This payment is made in settlement of allegations by the staff that Black & Decker violated the reporting requirements of section 15(b) of the CPSA, 15 U.S.C. 2064(b), with respect to the subject weed trimmers manufactured and sold by Black & Decker between 1984 and 1986.

17. Black & Decker further agrees to continue through December 31, 1991 its previously implemented corrective action of placing a conspicuous and legible label on weed trimmer replacement string it manufactures or has in inventory for the corrected model 82209 weed trimmers following final acceptance of this agreement. The label shall state:

WARNING!!

The following Weed Trimmers were recalled in November 1987 due to an electric shock hazard: #82209 Type 1 and 2 and #82210 Type 1 and 2. If you have one of these models that has not been corrected, contact your nearest B & D Service Center for Authorized Service Center.

18. Black & Decker makes no admission of any fault, liability or statutory violation. The Commission staff does not make any determination that the weed trimmers described in the preceding paragraphs contain a defect which creates or could create a substantial product hazard or that a violation of the CPSA has occurred.

19. This Settlement Agreement constitutes a settlement of the disputed allegations of violations of the reporting requirements of section 15(b) of the CPSA, 15 U.S.C. 2064(b), based on information the Commission staff possesses currently concerning the electrical problem the weed trimmers are alleged to contain.

20. Upon provisional acceptance of the Settlement Agreement by the Commission, the Settlement Agreement shall be placed on the public record and in the **Federal Register** in accordance with the procedures of 16 CFR 1118.20(e). If the Commission fails to receive a written request not to accept the Settlement Agreement within 15 days, the Settlement Agreement will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

21. Upon final acceptance of this Settlement Agreement by the Commission, Black & Decker knowingly, voluntarily and completely waives any rights it may have (1) to an administrative or judicial hearing with respect to the staff allegations cited herein, (2) to judicial review or to challenge or contest of the validity of the Commission's action with regard to the staff allegations cited herein, (3) to a determination by the Commission as to whether a violation of section 15(b) of the CPSA, 15 U.S.C. 2064(b), has occurred, and (4) to a statement of findings of fact and conclusions of law with regard to staff claims cited herein.

22. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a Complaint had issued and the Settlement Agreement and Order will be made available to the public.

23. This Settlement Agreement is binding upon the Commission and Black & Decker, its successors or assigns.

24. The parties to this action further agree that the accompanying Order be

issued under the CPSA, 15 U.S.C. 2051 *et seq.*, and that a violation of the Order will subject Black & Decker to appropriate legal action.

25. This Settlement Agreement and accompanying Order contain the entire agreement, understanding, representation, or interpretation of the parties herein, and nothing else may by used to vary or contradict their terms.

For Black & Decker (U.S.), Inc.

By:

Charles Fenton,

Vice President and General Counsel.

By:

Richard P. Kidwell,

Miles and Stockbridge, Attorney for Black & Decker.

For the U.S. Consumer Product Safety Commission.

By:

David Schmeltzer,

Assistant Executive Director for Compliance and Enforcement.

By:

Alan H. Schoem,

Director, Division of Administrative Litigation.

By:

Melvin Kramer,

Trial Attorney, Division of Administrative Litigation.

By:

Alan Shakin,

Acting General Counsel.

By:

Melissa V. Hampshire,

Attorney.

Order

Upon consideration of the Settlement Agreement entered into between Black & Decker (U.S.), Inc., a corporation, and the staff of the Consumer Product Safety Commission, and the Commission having jurisdiction over the subject matter and over Black & Decker (U.S.), Inc.; and it appearing that the Settlement Agreement and Condition of Settlement is in the public interest, it is

Ordered, That the Settlement Agreement be and hereby is accepted, as indicated below: and it is

Further ordered, That upon final acceptance of the Settlement Agreement, Black & Decker (U.S.), Inc., shall pay to the Order of the Consumer Product Safety Commission a civil penalty in the amount of one hundred twenty-five thousands dollars ($125,000), within twenty (20) days after service of the Final Order in this matter, and it is

Further ordered, That upon final acceptance of the Settlement Agreement, Black & Decker (U.S.), Inc., through December 31, 1991, will place a legible and conspicuous label on every weed trimmer replacement string it manufactures or has in inventory, for its corrected model 82209 and 82210 weed trimmers, following final acceptance of this Order. The label shall state:

> WARNING!
>
> The following Weed Trimmers were recalled in November 1987 due to an electric shock hazard: #82209 Type 1 and 2 and #82210 Type 1 and 2. If you have one of these models that has not been corrected, contact your nearest B & D Service Center or Authorized Service Center.

Provisionally accepted and Provisional Order issued on the 6th day of August, 1991.

By Order of the Commission

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 91-19094 Filed 8-9-91; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Lessons Learned During Operation Desert Shield/Desert Storm

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Lessons Learned During Operation Desert Shield/Desert Storm will meet in closed session on September 5–6 and October 16–17, 1991 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will examine the lessons learned during Operation Desert Shield/Desert Storm that may have potential impacts on future weapons acquisition decisions and approaches, technology, development, operational concepts, and U.S. qualitative combat advantages.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: August 7, 1991.

Linda M. Bynum,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-19071 Filed 8-9-91; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Anti-Submarine Warfare; Meeting

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Anti-Submarine Warfare will meet in closed session on 19 and 20 September, 1991, at the Center for Naval Analyses, Alexandria, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Task Force will discuss current and planned ASW programs.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: August 7, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-19072 Filed 8-9-91; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by August 20, 1991.

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Linda M. Bynum,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-19071 Filed 8-9-91; 8:45 am]

BILLING CODE 3810-01-M

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ACTION: Notice of advisory committee meeting.

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The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Task Force will discuss current and planned ASW programs.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: August 7, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–19072 Filed 8-9-91; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by August 20, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: August 7, 1991.

Mary P. Liggett,

Acting Director, Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: Expedited.

Title: Fast Response Survey System—Office for Civil Rights Feasibility.

Abstract: The purpose of the OCR Feasibility Survey is to examine the availability of information for new data items for their biennial Elementary and Secondary School Civil Rights Survey. The questionnaire request data relating to civil rights issues raised during oversight hearings and budget deliberations; to the National Education Goals; and to the Assistant Secretary for Civil Rights' National Enforcement Strategy for 1991 to 1992.

Additional Information: The Office of Educational Research and Improvement/National Center for Education Statistics is requesting an expedited review for the OCR Feasibility Survey in order to meet the schedule in a timely fashion.

Frequency: One-time, non-recurring.

Affected Public: State or Local Governments.

Reporting Burden: Responses: 800. *Burden Hours:* 400.

Recordkeeping Burden: Recordkeepers: 0. *Burden Hours:* 0.

BILLING CODE 4000-01-M

DRAFT

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE ASSISTANT SECRETARY
FOR EDUCATIONAL RESEARCH AND IMPROVEMENT

September 1991

Dear Superintendent:

On behalf of the National Center for Education Statistics (NCES), we request your participation in the national OCR Feasibility Survey of school districts. The survey is designed to be completed by the person most knowledgeable about your district's student record systems.

The Office for Civil Rights (OCR) conducts the Elementary and Secondary School Civil Rights Survey, commonly called the E&S Survey, to provide OCR's regional offices with current data regarding compliance with civil rights laws. The E&S Survey is conducted on a biennial basis, and revisions to the 1992 and 1994 forms (ED101 and 102) are currently being considered.

New items are being considered in response to the National Goals for Education and to civil rights issues raised during oversight hearings and budget deliberations. The purpose of the enclosed FRSS Civil Rights Feasibility Survey is to inform the E&S Survey revision process by examining the availability of information for new items under consideration. It also will obtain information regarding the availability of information systems necessary to implement alternative data collection methods also under consideration for future E&S Surveys.

The survey has been approved by the Office of Management and Budget (OMB) and coordinated with the Council of Chief State School Officers through its Education Information Advisory Committee (EIAC).

Your participation in this survey, while voluntary, is vital to the development of national estimates. Data collected in the survey will be published in aggregate form only and will not identify individual districts. The survey is being conducted by our contractor, Westat, a research firm in Rockville, Maryland using the Fast Response Survey System (FRSS). In accordance with FRSS practice, Westat will send you a report of the survey findings when they are available.

We ask that you complete and return the enclosed questionnaire within three weeks, and that you keep a copy of the completed questionnaire for your files. If you have any questions about this survey, please call survey manager Wendy Mansfield at Westat's toll-free number, (800) 937-8281, or Judi Carpenter, the NCES Project Officer for FRSS, at (202) 219-1333.

Thank you very much for your assistance.

Sincerely,

Emerson J. Elliott
Acting Commissioner

DRAFT

U.S. DEPARTMENT OF EDUCATION NATIONAL CENTER FOR EDUCATION STATISTICS WASHINGTON, D.C. 20208-5651 OFFICE FOR CIVIL RIGHTS FEASIBILITY SURVEY FAST RESPONSE SURVEY SYSTEM	FORM APPROVED: O.M.B. No.: EXPIRATION DATE:

This survey is authorized by law (20 U.S.C. 1221e-1). While you are not required to respond, your cooperation is needed to make the results of this survey comprehensive, accurate, and timely.

Background and Purpose of the Study

The Office for Civil Rights (OCR) is charged with ensuring compliance with civil rights laws prohibiting discrimination in federally assisted education programs on the basis of race (Title VI of the Civil Rights Act of 1964), handicap (Section 504 of the Rehabilitation Act of 1973), sex (Title IX of the Education Amendments of 1972), and age (Age Discrimination Act of 1975).

OCR conducts the Elementary and Secondary School Civil Rights Survey, commonly called the E&S Survey, to provide OCR's regional offices with current data regarding compliance with civil rights laws. The E&S Survey is conducted on a biennial basis and revisions to the forms (ED101 and 102) for 1992 and 1994 are currently under consideration.

The purpose of this FRSS Civil Rights Feasibility Survey is to inform the E&S Survey revision process by examining the availability of:

- information for new items being considered for the 1994 E&S Survey; and
- information systems necessary to implement alternative data collection methods for the 1992 E&S Survey.

If you have any questions please call survey manager Wendy Mansfield at Westat's toll-free number (800) 937-8281, or Judi Carpenter, the NCES Project Officer for FRSS at (202) 219-1333.

AFFIX LABEL HERE

IF ABOVE INFORMATION IS INCORRECT, PLEASE UPDATE DIRECTLY ON LABEL.

Name of Person Completing This Form:__________________ Telephone Number:__________

Title/position:________________________________

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1850-New, Washington, D.C. 20503.

NCES Form No.

I. Information Systems

1a. Does your district have an automated student record system with access to individual student records?

☐ Yes, currently operational ☐ Planned operational by 1992 ☐ No

1b. Do your student records have a unique student identifier for each student (e.g., student ID, Social Security number, etc.)?

☐ Yes ☐ No

2. Does your district maintain the following types of individual student information on automated systems, on paper files, or not at all?

Information:	Automated systems	Paper files	Not at all
a. Race/ethnicity	1	2	3
b. Limited English proficiency status	1	2	3
c. Sex	1	2	3
d. Disability (handicap) category	1	2	3
e. Instructional setting for pregnant students	1	2	3
f. Participation in interscholastic athletic activities	1	2	3
g. Disciplinary actions	1	2	3
h. Reason for disciplinary actions (e.g., fighting, possession of drugs)	1	2	3

3. If given the option, how would your district prefer to provide data currently reported on OCR E&S Survey forms ED101 and ED102? *(Check all that apply)*

☐ Paper questionnaire ☐ Magnetic tape ☐ Diskette (specify type)____________________

☐ Other (specify)____________________

4. In order to report OCR information on diskettes or other automated means what kind(s) of assistance would your district require? *(Check all that apply)*

☐ Telephone hotline
☐ Written instructions
☐ Edit specifications
☐ Computer file specifications
☐ Other (specify)____________________
☐ Reporting by automated means not possible in foreseeable future

II. School Discipline Data

5. In Column A, indicate whether your district administers each of the following disciplinary actions.

In Column B, for each action that is administered by your district, circle the number indicating the ease or difficulty for your district to report the frequency (number of times) the action was taken.

In Column C, for each action that is administered by your district, circle the number indicating the ease or difficulty for your district to report the unduplicated count of students disciplined.

For Columns B and C, use the following scale:
1 = Very easy; 2 = Somewhat easy; 3 = Somewhat difficult; 4 = Very difficult; UR = Unable to report.

	A. Action administered?		B. Ease of reporting frequency of action?					C. Ease of reporting unduplicated count of students?				
a. Corporal punishment	☐ Yes	☐ No	1	2	3	4	UR	1	2	3	4	UR
b. In-school suspension	☐ Yes	☐ No	1	2	3	4	UR	1	2	3	4	UR
c. Out-of-school suspension	☐ Yes	☐ No	1	2	3	4	UR	1	2	3	4	UR
d. Expulsion	☐ Yes	☐ No	1	2	3	4	UR	1	2	3	4	UR

em with access to individual student records?

nal by 1992 ☐ No

for each student (e.g., student ID, Social Security number, etc.)?

ual student information on automated systems, on paper files, or

	Automated systems	Paper files	Not at all
	1	2	3
	1	2	3
	1	2	3
	1	2	3
	1	2	3
	1	2	3
	1	2	3
session	1	2	3

ovide data currently reported on OCR E&S Survey forms ED101

e (specify type)______

automated means what kind(s) of assistance would your district

ter file specifications

specify)______

ng by automated means not possible in foreseeable future

each of the following disciplinary actions.

our district, circle the number indicating the ease or difficulty for
he action was taken.

our district, circle the number indicating the ease or difficulty for
s disciplined.

cult; 4 = Very difficult; UR = Unable to report.

B. Ease of reporting frequency of action?					C. Ease of reporting unduplicated count of students?				
1	2	3	4	UR	1	2	3	4	UR
1	2	3	4	UR	1	2	3	4	UR
1	2	3	4	UR	1	2	3	4	UR
1	2	3	4	UR	1	2	3	4	UR

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6. Can your district provide student discipline information resulting in actions such as out-of-school suspension, expulsion, and corporal punishment by:

a. Name of student or individual identifier such as student number, etc. ☐ Yes ☐ No
b. Race/ethnicity ☐ Yes ☐ No
c. Limited English proficiency status ☐ Yes ☐ No
d. Sex ☐ Yes ☐ No
e. Disability (handicap) ☐ Yes ☐ No

III. Special Academic Programs

7. Which of the following academic programs are available in your district? (*Check all that apply*)

☐ Magnet programs; ☐ Gifted and talented programs; ☐ Advanced Placement programs (AP);
☐ Honors programs; ☐ None (*If none, skip to Q9*)

8. For each program available in your district, please indicate whether your district can report enrollment by the following student characteristics. (*Check all that apply*)

Student category	Magnet programs	Gifted and talented programs	Advanced Placement programs	Honors programs
a. Enrollment by race/ethnicity	____	____	____	____
b. Enrollment by sex	____	____	____	____
c. Enrollment by disability (handicap)	____	____	____	____
d. Limited English proficient student enrollment	____	____	____	____

IV. Data For Special Populations

9. Can your district report information on the number of children with disabilities (handicaps) who are homeless?

☐ Yes ☐ No

10a. Do you classify your bi-racial students for district records as one race (i.e., using the 5 standard federal race categories: white, not of Hispanic origin; black, not of Hispanic origin; Asian or Pacific Islander; American Indian or Alaskan Native; Hispanic)?

☐ Yes ☐ No

10b. If no, check the primary method currently used to classify bi-racial students for district records. (*Check only one*)

☐ Separately as "Bi-racial" ☐ Another method (*specify*)______
☐ Separately as "Other" ☐ No bi-racial students

11a. Is it possible to identify the disabled (handicapped) children enrolled in your district whose mothers were alcohol dependent during their pregnancy?

☐ Yes ☐ No

11b. Is it possible to identify the disabled (handicapped) children enrolled in your district whose mothers used illegal drugs during their pregnancy?

☐ Yes ☐ No

RETURN COMPLETED FORM
TO:
WESTAT, INC.
1650 Research Boulevard
Rockville, Maryland 20850

[CFDA No.: 84.004C]

Desegregation of Public Education Program for State Educational Agencies

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On July 25, 1991, a notice establishing the closing date for new awards under the Desegregation of Public Education Program for State Educational Agencies was published in the **Federal Register**. On page 34057, in the first column, the deadline for transmittal of applications should read October 1, 1991 instead of October 30, 1991, and the deadline for intergovernmental review should read November 30, 1991 instead of December 29, 1991.

FOR APPLICATIONS OR INFORMATION CONTACT: Sylvia Wright, U.S. Department of Education, 400 Maryland Avenue SW., room 2059, Washington, DC 20202–6246. Telephone: (202) 401–0358. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

PROGRAM AUTHORITY: 42 U.S.C. 2000c–2000c–2, 2000c–5.

Dated: August 6, 1991.

John T. MacDonald,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 91–19013 Filed 8–9–91; 8:45 am]

BILLING CODE 4000-01-M

National Council on Education Standards and Testing; Amendment to Notice of Meeting

AGENCY: National Council on Education Standards and Testing; Education.

ACTION: Amendment to notice of meeting:

SUMMARY: This is an amendment to the notice of the August 15, 1991 meeting of the National Council on Education Standards and Testing that appeared in the **Federal Register** on Thursday, August 1, 1991, vol. 56, p. 36781. The meeting will begin at 9:30 instead of 10 a.m. There are no other changes.

Diane Ravitch,

Assistant Secretary and Counselor to the Secretary, Educational Research and Improvement.

[FR Doc. 91–19007 Filed 8–9–91; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Senior Executive Service; Performance Review Board

AGENCY: Department of Energy.

ACTION: SES Performance Review Board Standing Register.

SUMMARY: This notice provides the Performance Review Board Standing Register for the Department of Energy. This listing supersedes all previously published lists of PRB members.

EFFECTIVE DATE: These appointments are effective as of July 31, 1991.

Acharya, Sarbeswar
Adams, William D.
Adler, Ira M.
Ailshie, Stephen A.
Alessi, Victor E.
Allen, Grover L.
Amick, Richard C.
Andersen, Arthur T.
Annan, Robert H.
Anttonen, John H.
Aquilina, Nick C.
Baca, Frank A.
Bacher, Stephen E.
Bamberger, Craig S.
Barber, Robert W.
Barker, William L., Jr.
Barrett, Lake H.
Barrow, Raymond S.
Barry, John H.
Bartholomew, John W.
Bartley, William C.
Baublitz, John E.
Bay, Frank R.
Beach, Rebecca S.
Bean, Earl W.
Bechtel, Thomas F.
Beecy, David J.
Bell, George E.
Bellows, Jerry L.
Benedict, George W.
Bennett, John W.
Bergholz, Warren E., Jr.
Bernard, Peter A.
Berniklau, Vladimir V.
Berube, Raymond P.
Bibb, William R.
Bickel, James E.
Bingham, Carlton D.
Bishop, Yvonne M.
Bixby, Willis W.
Blackwood, Edward B.
Blush, Steven M.
Bobb, Sharon
Borgstrom, Howard G.
Borgstrom, Carol M.
Bradley, Theron M., Jr.
Bray, Donald L.
Bresee, James C.
Breznay, George
Brice, James F.
Brodman, John R.
Brogan, John J.
Broughton, James M.
Brown, Richard W.
Brown, Charles H., Jr.
Brown, Frederick R.
Brush, Peter N.
Bryant, McKinley E.
Buffum, Elizabeth
Carlson, Lynda T.
Caruso, Guy F.
Chapman, Naomi R.
Chappell, Gerald F.
Chaput, Ernest S.
Chesnes, Albert A.
Chiogioji, Melvin H.
Christensen, William J.
Christopher, Robert K.
Chun, Sun W.
Church, Bruce W.
Cipriano, Joseph R.
Clafin, Alan B.
Clagett, IV, William H.
Clark, Charles F.
Clausen, Max Jon
Coleman, Howard S.
Coleman, James S.
Coleman, David G.
Cone, Ronald E.
Constant, Richard E.
Cook, John S.
Cornwell, Thomas F.
Cowan, Stephen P.
Crandall, David H.
Crawford, Timothy S.
Cross, Robert J.
Culpepper, James W.
Cumesty, Edward G.
Curtis, David I.
DAgostino, Thomas S.
Daniel, Robert W., Jr.
Davies, James D.
Davies, Nelia A.
Davis, James T.
De Planque, E. Gail
Decker, James F.
DeHanas, Thomas W.
Dennison, William J.
Der, Victor K.
Detchon, Bryan
Diebold, Robert E.
Dieckhoner, James E.
Dienes, Nicholas S.
Difiglio, Carmen
Divone, Louis V.
Doane, E. David, III
Doherty, Donald P.
Dorsey, William A.
Dowling, Robert J.
Duffy, Leo P.
Dufour, Peggy
Durham, David C.
Durnan, Denis D.
Ebbecke, Charles W.
Edmondson, John J.
Egli, Richard
Elasasser, Thomas C.
Engel, Walter P.
Eppelmann, Andrew D.
Erb, Donald E.
Erdahl, Arlen I.
Esvelt, Terence G.
Fausett, Stephen A.
Feibus, Howard
Fisher, Silas B.
Fitzgerald, Joseph E., Jr.
Fitzsimmons, Allan R.
Fleming, Gene K.
Ford, John A.
Forsythe, Larry A.
Foster, Thomas L.
Frank, Clyde W.
Franklin, John R.
Frei, Mark W.
Frye, Keith N.
Furiga, Richard D.
Fygi, Eric J.
Gaddis, Carl K.
Garson, Henry K.
Gault, Polly L.
Geidl, John C.
Geisbush, Jon C.
Gertz, Carl P.
Gibbs, Garry W.
Gibson, William C., Jr.
Gilbert, Francis C.
Goldberg, Edward S.
Goldenberg, Neal
Goldenberg, Ralph D.
Goldman, David T.
Goldsmith, Robert
Gollomp, Lawrence A.
Graham, A. Diane
Greeves, Robert E.
Greiner, Lloyd M.
Griffith, Jerry D.
Grimm, Paul D.
Grundy, Thad, Jr.
Guidice, Carl W.
Guidice, Stephen J.
Guyer, Arthur E.
Haberman, Norton
Hacskaylo, Michael S.
Hahn, Richard D.
Hale, Douglas R.
Hall, James C.
Halstead, Charles G., Jr.
Hamric, Jon P.
Hanessian, Souren
Hanson, Ronald D.
Hardin, Michael G.
Haspel, Abraham E.
Haymond, George R.
Heath, Charles C.
Heenan, Thomas F.
Heitman, Thomas H.
Helland, George A., Jr.
Henderson, Lynwood H.
Hendrickson, Thomas
Hendrie, David L.
Hess, Wilmot N.
Heusser, Roger K.
Hickey, Sue F.
Hickok, Steven G.
Hine, Thomas A.
Hirahara, James S.
Hoffman, Alan R.
Hogan, Danny A.
Hopkins, T. J.
Hunt, Arlen E.
Hunter, Ray A.
Hunter, John R.
Hutzler, Mary Jean
Ianneillo, Louis C.
Inge, Edwin F., Jr.
Inlow, Rush O.
Isaacs, Thomas H.
Jaffe, Harold
Jameson, Mary Joy
Jamison, Warren L.
Jewett, David S.
Jicha, John J., Jr.
Johnson, Milton D.
Johnson, Owen B.
Johnston, Marc
Jones, C. Rick
Jones, James L.
Jones, David A.
Jordy, George Y.
Joseph, Antionette G.
Juckett, Donald A.
Jura, James J.
Kahalas, Sheldon L.
Kaiser, Ronald Lee
Karol, Michael S.
Karpinski, Joseph L.
Kaspar, Paul W.
Keating, John J.
Keheley, Wayne E.
Kennedy, John P.
Kessler, Roland R.
Key, William P.
Kight, Gene K.
Kilgore, Webster C.
Kingsbury, Robert L.
Klein, Keith A.
Knight, Gary
Knight, James P.
Knuth, Donald F.
Koontz, Max A.
Krenz, Dennis L.
Lagrone, Joe B.
Landers, James C.
Lane, Anthony R.
Lanes, Stephen J.
Langefeld, Cherri J.
Larson, Victor R., Jr.
Laughon, Kermit O.
Leclaire, David B.
Lee, Wayne R.
Lewis, Howard E., Jr.
Lewis, Lenora J.
Lightner, Ralph G.
Lique, E. Diane W.
Little, Leo E.
Longton, Joseph N.
Loose, Ronald R.
Lorenz, Milton C.
Louison, Deborah
Lowe, Owen W.
Lynch, Oliver D.T., Jr.
Lytle, Jill E.
Magruder, James K.
Maher, Joseph R.
Mangeno, James J.
Mann, Thomas O.
Manning, William F.
Marchese, Andrew R.
Marianelli, Robert S.
Marlay, Robert C.
Maroldo, James H.
Marquess, Paul T.
Marquez, Richard A.
Martin, Charles F.
Mason, Charles C.
May, Stephen L.
Mayhew, Delmar D.
McAllister, John A., Jr.
McCallum, Edward J.
McCammon, Helen M.
McCoy, Frank R., III
McGoff, David J.
Michelsen, Stephen J.
Miller, Clarence L.
Millhone, John P.
Miranda, Leonel V.
Mock, John E.
Monetta, Dominic J.
Moody, Marlene A.
Morris, Marcia L.
Mournighan, Stephen D.
Mravca, Andrew E.
Neilsen, Finn K.
Nelson, David B.
Nelson, Robert M., Jr.
Nelson, Rodney R.
Nettles, John J., Jr.
Newhouse, Alan R.
Newman, David G.
Nichols, Clayton R.
Nicks, James R.
Nolan, Elizabeth A.
Nulton, John D.
O'Brien, Robert A., Jr.
O'Donnell, Claire M.
O'Fallon, John R.
Oliver, Lawrence R.
Olson, Gary C.
Paoule, Alvin H.
Patrinos, Aristides A.

Patterson, John R., II
Patton, Gloria S.
Pearman, Donald W., Jr
Pearson, John D.
Perin, Stephen G.
Peters, Franklin G.
Petersen, Jimmie
Pettengill, Harry J.
Pettis, Lawrence A.
Pitrolo, Augustine A.
Plaisance, Paul J., Jr.
Podonsky, Glenn S.
Pollock, Walter E., III
Price, Robert S., Jr.
Pride, E. Engene
Prudom, Gerald H.
Pye, David B.
Rabben, Robert G.
Rader, Robert G.
Raiken, Howard H.
Ramey, Prince M.
Reddick, William C.
Redenius, Richard D.
Reid, James E.
Repke, Wolfgang C.
Resendez, Ignacio
Richardson, Steven D.
Roberts, Michael
Robertson, John S.
Robertson, Lawrence V
Rock, Bernard J.
Rodeheaver, Thomas N.
Rodekohr, Mark A.
Rollow, Thomas A.
Rooney, John M.
Rosen, Sol
Rosselli, Robert M.
Roth, Berton J.
Rousso, Samuel
Rudins George
Rudolph, John E.
Sabre, Randolph E.
Salm, Philip B.
Saltzman, Jerome D.
Salvador, Louis A.
Samber, Martin
San Martin, Robert L.
Scarborough, Muriel L.
Scheetz, Karl G.
Schmitt, Carl H.
Schmitt, William A.
Schmoker, Daniel N.
Schnapp, Robert
Schroeder, Mark C.
Schueler, Domer T., Jr.
Scott, Randal
Scott, Donald E.
Scott, David G.
Season, Harry T., Jr.
Sewell, Phillip G.
Shafer, John M.
Shelor, Dwight E.
Shirley, Sr., John W.
Siebert, Arlie B., Jr.
Siegel, Jack S.
Sienkiewicz, E. W., Jr.
Silverman, Mark N.
Simon, Robert M.
Simonson, David P.
Singer, Marvin I.
Sjostrom, Leonard C.
Smedley, Elizabeth E.
Smith, Linda M.
Smithwick, Grover A.
Sohinki, Stephen M.
Spence, David R.
Spigal, Harvard P
Stagliano, Vito A.
Stallman, Robert M.
Starostecki, Richard W
Stello, Victor, Jr.
Stephens, Richard E.
Stevenson, F Dee
Stewart, John B.
Stewart, Frank M., Jr.
Stone, John C.
Stone, Philip M.
Stout, James A.
Strakey, Joseph P., Jr.
Streb, Alan J.
Stumbaugh, David C.
Stuntz, Linda G.
Swink, Denise F
Taboas, Anibal L.
Taillie, Dennis K.
Teclaw, Charles E.
Tedrow, Richard T
Thomas, Iran L.
Thompson, Jerry F
Tierney, Charles R.
Tiller, Robert E., Jr.
Tillman, Luther J.
Tseng, John C.
Tucker, William E.
Turner, James M.
Tuttle, Edward H., III
Twining, Bruce G.
Uhre, Lea J.
Upchurch, Tony Coleman
Uthus, Douglas B.
Vaeth, Terry A.
Vagts, Kenneth A.
Van Orman, Chandler
Voelker, Gary E.
Volpe, Frederick J.
Wagenhoffer, Thomas V.
Wagoner, John D.
Walsh, Robert J.
Walsh, Jeremiah E.
Walter, Donald K.
Walton, Howard L.
Warnick, Walter L.
Weaver, Thomas L.
Weiner, Lawrence A.
Weller, Robert L.
Westerbeck, Gerald W.
White, James K.
Whiteman, Albert E.
Whitfield, Roger P.
Wieker, Thomas L.
Wilcynski, John M.
Wilken, Daniel H.
Williams, Edward R.
Williams, Mark H.
Williamson, Richard H.
Willis, John W.
Wilmot, Edwin L.
Wilson, John S.
Witherill, Vern F.
Wolicki, Nancy F.
Wood, Robert W.
Wright, Julian M., Jr.
Yaffe, Barry

Issued in Washington, DC, on August 6, 1991.

John J. Nettles, Jr.,

Director of Administration and Human Resource Management.

[FR Doc. 91-19090 Filed 8-9-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project Nos. 2711-001, et al.]

Hydroelectric Applications (Northern States Power Co., et al.); Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application:* License Subsequent.

b. *Project No.:* 2711-001.

c. *Date filed:* March 27, 1991.

d. *Applicant:* Northern States Power Company.

e. *Name of Project:* Trego Hydro Project.

f. *Location:* On the Namekagan River, Washburn County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791 (a)-825(r).

h. *Applicant Contact:* Mr. Anthony G. Schuster, Northern States Power Company, 100 North Barstow Street, P.O. Box 8, Eau Claire, WI 54702, (715) 839-2401.

i. *FERC Contact:* Mary C. Golato (202) 219-2804.

j. *Comment Date:* August 30, 1991.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D2.

l. *Description of Project:* The license project consists of the following facilities: (1) A northeastern earth embankment section 380 feet long and about 30 feet in maximum height; (2) a southwestern earth embankment section 110 feet long and about 25 feet in maximum height; (3) a reinforced concrete hollow gravity spillway structure of the Ambursen type, 92 feet long, 53 feet wide at the base, and 26 feet high, surmounted with 3 tainter gates, each 25.5 feet long and 10 feet high, and a 6-foot-wide trashgate and sluiceway; (4) a reservoir about 6 miles long, with a surface area of 470 acres and a storage capacity of 4,700 acre-feet; (5) a reinforced concrete, steel and brick powerhouse 59.5 feet long, 58 feet wide, and 74 feet high above the foundation, located adjacent to the southwest end of the spillway structure; (6) generating equipment consisting of two open flume, vertical-axis Francis turbine-generator units, No. 1 rated 700 kilowatts (kW), and No. 2 rated 500 kW, for a total capacity of 1,200 kW; (7) a concrete stilling basin apron about 53 feet long and 150 feet wide; (8) transmission facilities; and (9) appurtenant facilities. The applicant proposes no new construction. The dam is owned by the Northern States Power Company The average annual generation is 7,575,898 kilowatthours.

m. *Purpose of Project:* All project energy generated would be utilized by the Applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: B1 and D2.

o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208-1371. A copy is also available for inspection and reproduction at the address of Mr. Anthony G. Schuster, Northern States Power Company, 100 North Barstow Street, P.O. Box 8, Eau Claire, WI 54702, (715) 839-2401.

2 a. *Type of Filing:* Major License.

b. *Project No.:* 7802-005.

c. *Date Filed:* July 30, 1987.

d. *Applicant:* Natural Energy Resources Company.

e. *Name of Project:* Rocky Point Pumped Storage Project.

f. *Location:* Occupies lands within the Gunnison National Forest and lands administered by the Bureau of Land Management, on the Taylor River, near the town of Gunnison, in Gunnison and Chaffee Counties, Colorado.

g. *Filed pursuant:* Federal Power Act, 16 U.S.C., section 791(a)-825(r).

h. *Applicant Contacts:* David M. Lefebvre, Black & Veatch, Engineers Architects, P.O. Box 8405, Kansas City, MO 64114, (913) 339-2164. Glen Rockwell, EBASCO Services, Inc., 143 Union Blvd., Suite 1010, Lakewood, CO 80228, (303) 988-2202.

i. *FERC Contact:* Héctor M. Pérez, (202) 219-2843, or Kathleen Sherman, (202) 219-2834.

j. *Comment Date:* September 23, 1991

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached paragraph E.

l. *Description of the Project:* The proposed pumped storage project would utilize the existing U.S. Bureau of Reclamation's Taylor Park Reservoir as the lower reservoir, and would consist of: (1) The proposed Rocky Point Reservoir as upper reservoir with a maximum surface area of 50 acres at a maximum operating level of 11,658 feet mean sea level (MSL), a total storage capacity of 4,750 acre-feet, and an active storage capacity of 3,900 acre-feet impounded by; (2) a 122-foot-high, 5,600-foot-long asphalt-faced rockfill oval dam with a crest elevation of 11,666 feet msl having a 150-foot-wide emergency concrete lined spillway with a crest elevation of 11,660 feet msl; (3) a 3,900-foot-long, 17.5-foot-diameter steel-lined tunnel leading to: (4) an 82-foot-wide by 455-foot-long buried powerhouse containing four generating units with a total installed capacity of 1,000 megawatts; (5) a 6,000-foot-long, 23-foot-diameter concrete-lined tailrace tunnel discharging water into Taylor Park Reservoir; (6) a 27-mile-long, 345-kilovolt double circuit transmission line; and (7) appurtenant facilities. The applicant estimates an average annual generation of 1,051,000 megawatthours.

Access to the upper reservoir would be by a new 30-foot-wide, 5.1-mile-long crushed rock road. Also, access to the buried powerhouse will be by a 7,400-foot-long horseshoe-shaped tunnel from the western shore of Taylor Park Reservoir.

m. *Purpose of the Project:* Applicant would sell project power for use within the Rocky Mountain Power Area.

n. This notice also consists of the following standard paragraphs: A2, A9, B2, and E.

o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. Copies are also available for inspection and reproduction at the Gunnison Public Library, the Western State College Library, and at the locations stated in item h above.

a. *Type of Application:* Major License.

b. *Project No.:* 8864–007.

c. *Date filed:* June 10, 1991.

d. *Applicant:* Weyerhaeuser Company.

e. *Name of Project:* Calligan Creek Hydroelectric.

f. *Location:* On Calligan Creek, in King County, Washington; Sections 31 and 32, Township 25 North, Range 9 East, Willamette Meridian.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mr. Michael S. Wright, Permit/Engineering Inc., 1300–114th Avenue, SE, Suite 220, Bellevue, WA 98004, (206) 451–7371.

i. *FERC Contact:* Mr. Surender M. Yepuri, (202) 219–2847.

j. *Deadline Date:* October 4, 1991.

k. *Status of Environmental Analysis:* This application is not ready for an environmental analysis at this time—see attached paragraph E.

l. *Description of Project:* The proposed project would consist of: (1) A 8-foot-high, 60-foot-long diversion dam with crest elevation at 2,221.0 feet; (2) a 23-foot-wide, 48-foot-long intake structure with fish screens; (3) a 42-inch diameter, 1,400-foot-long steel siphon which is filled with water at start-up times by an 18-inch-diameter, 1400-foot-long force main; (4) a 40-inch-diameter, 4,925-foot-long steel penstock; (5) a 42-foot-wide by 44-foot-long powerhouse containing a generating unit with a rated capacity of 5.4 MW; (6) a 148-foot-long tailrace returning the discharge into the creek; (7) a 4.25-mile-long, 35–kV transmission line tying into the substation of the Black Creek Project No. 6221; and (8) related facilities.

The project would have an estimated annual output of 21.68 Gwh and would cost $8,997,600 in 1990 dollars to construct.

m. *Purpose of Project:* Power generated would be sold to a local utility.

n. This notice also consists of the following standard paragraphs: A2, A9, B2, and E.

o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at (1) Weyerhaeuser Company, Tacoma, Washington 98477; Telephone No. (206) 924–2932; and (2) King County Public Library, 126 East Fourth, North bend, WA 98045.

4 a. *Type of Application:* Major License.

b. *Project No.:* 9025–005.

c. *Date filed:* March 27, 1991.

d. *Applicant:* Weyerhaeuser Company.

e. *Name of Project:* Hancock Creek Hydroelectric.

f. *Location:* On Hancock Creek, in King County, Washington; Sections 7 and 8, Township 24 North, Range 9 East, Willamette Meridian.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mr. Michael S. Wright, Permit/Engineering Inc., 1300–114th Avenue, SE, Suite 220, Bellevue, WA 98004, (206) 451–7371.

i. *FERC Contact:* Mr. Surender M. Yepuri, (202) 219–2847.

j. *Comment Date:* September 24, 1991.

k. *Status of Environmental Analysis:* This application is not ready for an environmental analysis at this time—see attached paragraph E.

l. *Description of Project:* The proposed project would consist of: (1) A 7-foot-high, 62-foot-long diversion dam with crest elevation at 2,171.0 feet; (2) a 20-foot-wide, 12-foot-high, and 53-foot-long intake structure with fish screens; (3) a 45-inch diameter, 2,460-foot-long steel siphon which is filled with water at start-up times by an 18-inch-diameter, 2,460-foot-long force main; (4) a 40-inch-diameter, 5,060-foot-long steel penstock; (5) a 38-foot-wide by 40-foot-long powerhouse containing a generating unit with a rated capacity of 6.3 MW; (6) a 125-foot-long tailrace returning the discharge into the creek; (7) a 2.0-mile-long, 35–kV transmission line tying into the substation of the Black Creek Project No. 6221; and (8) related facilities.

The project would have an estimated annual output of 22.91 GWh and would cost $10,438,000 in 1990 dollars to construct.

m. *Purpose of Project:* Power generated would be sold to a local utility.

n. This notice also consists of the following standard paragraphs: A2, A9, B2, and E.

o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at (1) Weyerhaeuser Company, Tacoma, Washington 98477; Telephone No. (206) 924–2932; and (2) King County Public Library, 126 East Fourth, North Bend, WA 98045.

5 a. *Type of Application:* Minor License.

b. *Project No.:* 11055–000.

c. *Date filed:* November 26, 1990.

d. *Applicant:* Wilton Hydro Electric Company, Inc.

e. *Name of Project:* Wilton.

f. *Location:* At the existing Abbott Machine Dam on the Souhegan River near Wilton in Hillsborough County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Mr. Jason M. Hines, P.O. Box 76, Amherst, NH 03031, (603) 654–2678.

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–7371.

i. *FERC Contact:* Mr. Surender M. Yepuri, (202) 219–2847.

j. *Comment Date:* September 24, 1991.

k. *Status of Environmental Analysis:* This application is not ready for an environmental analysis at this time—see attached paragraph E.

l. *Description of Project:* The proposed project would consist of: (1) A 7-foot-high, 62-foot-long diversion dam with crest elevation at 2,171.0 feet; (2) a 20-foot-wide, 12-foot-high, and 53-foot-long intake structure with fish screens; (3) a 45-inch diameter, 2,460-foot-long steel siphon which is filled with water at start-up times by an 18-inch-diameter, 2,460-foot-long force main; (4) a 40-inch-diameter, 5,060-foot-long steel penstock; (5) a 38-foot-wide by 40-foot-long powerhouse containing a generating unit with a rated capacity of 6.3 MW; (6) a 125-foot-long tailrace returning the discharge into the creek; (7) a 2.0-mile-long, 35–kV transmission line tying into the substation of the Black Creek Project No. 6221; and (8) related facilities.

The project would have an estimated annual output of 22.91 GWh and would cost $10,438,000 in 1990 dollars to construct.

m. *Purpose of Project:* Power generated would be sold to a local utility.

n. This notice also consists of the following standard paragraphs: A2, A9, B2, and E.

o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at (1) Weyerhaeuser Company, Tacoma, Washington 98477; Telephone No. (206) 924–2932; and (2) King County Public Library, 126 East Fourth, North Bend, WA 98045.

5 a. *Type of Application:* Minor License.

b. *Project No.:* 11055–000.

c. *Date filed:* November 26, 1990.

d. *Applicant:* Wilton Hydro Electric Company, Inc.

e. *Name of Project:* Wilton.

f. *Location:* At the existing Abbott Machine Dam on the Souhegan River near Wilton in Hillsborough County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Mr. Jason M. Hines, P.O. Box 76, Amherst, NH 03031, (603) 654–2678.

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i. *FERC Contact:* Ms. Julie Bernt, (202) 219–2814.

j. *Deadline Date:* September 20, 1991.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached paragraph E.

l. *Description of Project:* The existing run-of-river project would consist of: (1) An existing 17-foot-high concrete capped, split-stone gravity dam owned by the Gould Leetch Trust; (2) an existing reservoir with a normal surface elevation of 337.7 msl, a surface area of 4 acres and a storage area of 14 acre-feet with no usable storage capacity; (3) an existing 110-foot-long spillway; (4) an existing powerhouse containing one generating unit with an installed capacity of 150 kW; (5) a 175-foot-long transmission line; and (6) appurtenant facilities. The average annual energy generation is estimated to be 500,000 kWh which would be sold to a local power company. The estimated cost for the renovation of these facilities is $180,300.

m. *Purpose of Project:* Power produced would be sold to a local power company.

n. This notice also consists of the following standard paragraphs: A2, A9, B2, and E.

o. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction from Wilton Hydro Electric Company, Inc., RFD #1, Wilson Road, Wilton, New Hampshire 03086, or by calling (603) 654–2678.

a. *Type of Application:* Minor License.

b. *Project No.:* 11143–000.

c. *Date Filed:* May 6, 1991.

d. *Applicant:* Summit Hydropower.

e. *Name of Project:* Glen Falls.

f. *Location:* On the Moosup River, in Windham County, Connecticut.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791 (a)—825(r).

h. *Applicant Contact:* Duncan Broatch, Summit Hydropower, 92 Rocky Hill Road, Woodstock, CT 06281, (203) 974–1620.

i. *FERC Contact:* Mary C. Golato (202) 219–2804.

j. *Comment Date:* September 19, 1991.

k. *Status of Environmental Analysis* : This application is ready for environmental analysis at this time—see attached paragraph D3.

l. *Description of Project:* The project would consist of: (1) An existing 150-foot-long and 15-foot-high granite masonry gravity overflow dam; (2) a 43-acre reservoir with a pond elevation of 270.7 feet mean sea level; (3) a 70-foot-long and 7-foot-diameter penstock; (4) an 18.9-foot-wide and 23.2-foot-long powerhouse; (5) a 250-kilowatt Francis turbine connected to a generator operating at a hydraulic capacity of 222 cubic feet per second and 17.5 feet of head; (6) a 35-foot-long and 18-foot-wide tailrace; (7) a 135-foot-long ceiling mounted conduit; and (8) appurtenances. The owner of the dam is Summit Hydropower. The project would operate in a run-of-river mode and would generate approximately 839,000 kilowatthours per year.

m. *Purpose of Project:* Power generated would be sold to a local utility.

n. This notice also consists of the following standard paragraphs: A3, A9, B1, and D3.

o. *Available Locations of Applications:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the address of Mr. Duncan Broatch, Summit Hydropower, 92 Rocky Hill Road, Woodstock, CT 06281, (203) 974–1620, and at Aldrich Free Public Library, 299 Main Street, Moosup, CT 06354, (203) 564–8760.

a. *Type of Application:* Minor License.

b. *Project No.:* 11150–000.

c. *Date filed:* May 24, 1991.

d. *Applicant:* Cameron Gas and Electric, Inc.

e. *Name of Project:* Smithville and Mix Projects.

f. *Location:* On the Grand River, near Eaton Rapids, in Eaton County, Michigan.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791 (a)—825(r).

h. *Applicant Contact:* Ms. Jan Marie Evans, Cameron Gas and Electric, Inc., 4572 Sequoia Trail, Okemos, MI 48864, (517) 351–5400.

i. *FERC Contact:* Mary C. Golato (202) 219–2804.

j. *Comment Date:* September 26, 1991.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached paragraph E.

l. *Description of Project:* The proposed project would consist of: The Mix Development comprising (1) an existing dam 188 feet long; (2) an existing reservoir that has a surface area of 150 acres, a storage capacity of 500 acre-feet and an elevation of 184 feet mean sea level; (3) a powerhouse containing 2 units at a total installed capacity of 202 kilowatts; (4) an existing transmission line 100 yards long at 15 kilovolts; and (5) appurtenant facilities.

The Smithville Development comprising: (1) An existing dam 167 feet long; (2) an existing reservoir that has a surface area of 80 feet, a storage capacity of 300 acre-feet, and an elevation of 883.3 feet mean sea level; (3) a powerhouse containing 5 units at a total installed capacity of 500 kilowatts; (4) an existing transmission line 100 yards long at 15 kilovolts; and (5) appurtenant facilities..

The applicant estimates that the average annual generation would be approximately 3 million kilowatthours. The dams are owned by Cameron Gas and Electric, Inc. The application was filed under UL–87–11–12.

m. *Purpose of Project:* Power generated would be sold to a local utility.

n. This notice also consists of the following standard paragraphs: A2, A9, B2, and E.

o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE, room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Mrs. Jan Marie Evans, Cameron Gas and Electric, Inc., 4572 Sequoia Trail, Okemas, MI 48864 (517) 351–5400.

8a. *Type of Application:* Major License.

b. *Project No.:* 11151–000.

c. *Date Filed:* May 28, 1991.

d. *Applicant:* Energy Alternatives of North America, Inc.

e. *Name of Project:* Williams Dam.

f. *Location:* On the East Fork of the White River near Bedford in Lawrence County, Indiana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Mr. C. Scott Hitchcock, P.O. Box 21, Kohler, WI 53044, (414) 452–2824.

i. *FERC Contact:* Ms. Julie Bernt, (202) 219–2814.

j. *Deadline Date:* September 26, 1991.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached paragraph E.

l. *Description of Project:* The proposed project would consist of: (1) An existing 25-foot-high concrete dam owned by the State of Indiana; (2) a reservoir with a surface area of 200 acres at a surface elevation of 475 feet m.s.l. and a storage capacity of 1,000 acre-feet; (3) a new powerhouse with intake openings at an existing powerhouse substructure containing four generating units each rated at 470 kW; (4) a 1¾-mile long transmission line; and (5) appurtenant facilities. The project would have an estimated annual output of 10,660 MWh and would cost $2,800,000 to construct.

m. *Purpose of Project:* The power produced would be sold to a local power company.

n. This notice also consists of the following standard paragraphs: A2, A9, B2, and E.

o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NW., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction from Mr. Hitchcock at P.O. Box 21, Kohler, WI or by calling (414) 452–2624.

Standard Paragraphs

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, the competing development application or a notice of intent to file such an application. Submitting a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for a preliminary permit will not be accepted in response to this notice.

A3. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular applications, the competing development application or a notice of intent to file such an application. Submitting a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for a preliminary permit will not be accepted in response to this notice.

A9. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

B1. Protests for Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedures, 18 CFR sections 385.210, .211 .214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified comment date for the particular application.

B2. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedures, 18 CFR sections 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceedings. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

D2. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 Fed. Reg. 23108 (May 20, 1991)), that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the date of this notice. All reply comments must be filled with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title "PROTEST," "MOTION TO INTERVENE," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), 385.2010.

D3. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR23108 (May 20, 1991)), that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title "PROTEST," "MOTION TO INTERVENE," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and

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the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), 385.2010.

D3. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR23108 (May 20, 1991)), that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title "PROTEST," "MOTION TO INTERVENE," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and

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the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), 385.2010.

E. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

The Commission will notify all persons on the service list and affected resource agencies and Indian tribes when the application is ready for an environmental analysis. If any person wishes to be placed on the service list, a motion to intervene must be filed by the specified deadline date herein for such motions. All resource agencies and Indian tribes that have official responsibilities that may be affected by the issues addressed in this proceeding, and persons on the service list will be able to file comments, terms and conditions, and prescriptions within 60 days of the date the Commission issues a notification letter that the application is ready for an environmental analysis. All reply comments must be filed with the Commission within 105 days from the date of that letter.

All filings must: (1) Bear in all capital letters the title "PROTEST," or "MOTION TO INTERVENE," (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: August 6, 1991, Washington, DC.

Lois D. Cashell,
Secretary.

[FR Doc. 91-19025 Filed 8-9-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-11-20-000]

Algonquin Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

August 5, 1991.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on August 1, 1991, tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, as set forth in the revised tariff sheets:

Proposed to be effective May 1, 1991
  Second Revised Sheet No. 41
  Second Revised Sheet No. 42
Proposed to be effective August 1, 1991
  Third Revised Sheet No. 42
  First Revised Sheet No. 63

Algonquin states that the revised tariff sheets listed above are being filed to flow through changes in the rates underlying Algonquin's Rate Schedules STB, SS–III and ATAP. Texas Eastern Transmission Corporation's ("Texas Eastern") Rate Schedules SS–2, SS–3 and FT–1 underlie these rate schedules. Pursuant to section 10 of Rate Schedule STB, section 9 of Rate Schedule SS–III and Section 4 of Rate Schedule ATAP in Algonquin's FERC Gas Tariff, Third Revised Volume No. 1, Algonquin is hereby filing the above sheets to track the latest changes proposed by Texas Eastern.

Algonquin states that Texas Eastern filed changes to its SS–II and SS–III rates on June 20, 1991 in Docket No. TM91–8–17–000 to be effective May 1, 1991. However, due to a clerical oversight this filing did not arrive at Algonquin until recently and was not tracked until the instant filing. On June 30, 1991, Texas Eastern filed its regularly scheduled Quarterly PGA in Docekt No. TQ91–4–17–000. to become effective August 1, 1991.

Algonquin states that pursuant to sections 10.3, 9.3 and 4.2 of Rate Schedules STB, SS–III and ATAP, respectively, the proposed effective dates for the listed revised tariff sheets are May 1, 1991 and August 1, 1991.

Algonquin further states that the effect of the May 1, 1991 change in Rate Schedules STB and SS–III is to decrease the injection charge by 0.03¢ per MMBtu. The August 1, 1991 changes decrease the SS–III Non-FDDQ withdrawal rate by 1.05¢ per MMBtu and the ATAP commodity rate by 1.61¢ per MMBtu.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 12, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 91-19029 Filed 8-9-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-12-20-000]

Algonquin Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

August 5, 1991.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on August 1, 1991, filed proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, as set forth in the revised tariff sheets, to be effective August 31, 1991.

Third Revised Sheet No. 91
Third Revised Sheet No. 92
Second Revised Sheet No. 93
Second Revised Sheet No. 674A
Third Revised Sheet No. 674D
Second Revised Sheet No. 674G
Second Revised Sheet No. 674K
Second Revised Sheet No. 674L

Second Revised Sheet No. 674M
Second Revised Sheet No. 674N
Second Revised Sheet No. 674O

Algonquin states that the purpose of this filing is to update the amount of take-or-pay charges to be billed to Algonquin by Texas Eastern Transmission Corporation, CNG Transmission Corporation, and National Fuel Gas Supply to be recovered by Algonquin by operation of section 33.7 of the General Terms and Conditions to Algonquin's FERC Gas Tariff, Third Revised Volume No. 1. Algonquin also states that the revised take-or-pay surcharges are the result of revised allocation methods imposed by its pipeline suppliers in response to the Commission's Order No. 528 and 528–A.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 12, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91–19030 Filed 8–9–91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-204-000]

East Tennessee Natural Gas Co.; Proposed Changes in FERC Gas Tariff

August 5, 1991.

Take notice that on August 1, 1991, East Tennessee Natural Gas Company ("East Tennessee") tendered for filing revisions to the following tariff sheets of its FERC Gas Tariff to be effective September 1, 1991:

First Revised Volume No. 1

Eighth Revised Sheet Nos. 4 and 5
First Revised Sheet Nos. 30 Through 32
First Revised Sheet No. 33
Original Sheet Nos. 34 and 35
Original Sheet Nos. 36 Through 39
First Revised Sheet Nos. 97 and 98
Original Sheet No. 97A
First Revised Sheet Nos. 117 Through 119
First/Sheet Nos. 120 Through 129

Original Volume No. 1A

Second Revised Sheet Nos. 6 and 7
Third Revised Sheet No. 20
First Revised Sheet No. 25
First Revised Sheet No. 44
Second Revised Sheet No. 131
First Revised Sheet No. 132
First Revised Sheet No. 133
First Revised Sheet No. 134
First/Sheet Nos. 135 Through 149

East Tennessee states that the purpose of the filing is to reflect increased costs necessitated by, *inter alia,* an expansion of gas plant and related expenses pursuant to the certificate of public convenience and necessity issued on June 27, 1991 in Docket No. CP90–1111–000, an increase in general operating costs, an increase in non-gas costs to be assessed East Tennessee by Tennessee Gas Pipeline Company ("Tennessee") under Tennessee's new contract storage service contained in the Stipulation and Agreement in Docket No. RP88–228, *et al.,* and increased costs arising as a result of FASB Standard No. 106. The proposed rates reflect an increase in East Tennessee's overall annual revenue level of $16.9 million.

East Tennessee states that the proposed tariff sheets implement sales and transportation rates which effectuate the objectives expressed in the Commission's Policy Statement on Rate Design in Docket No. PL89–2–000. Among other matters, the rate design methods underlying the filing utilize the fixed variable method with one-part demand rates, allocate demand costs on the basis of customer maximum daily quantities for firm services, maintain mileage sensitive rates, allocate demand costs to Rate Schedule SMS on a 100 percent loan factor basis and to Rate Schedule IT on a 100 percent load factor basis for the winter season and a 150 percent load factor basis for the summer season, and design rates under Rate Schedule AOS on the basis of the applicable commodity rate.

East Tennessee states that the tariff sheets also provide for transportation and storage cost rate adjustments; revise the PGA to eliminate any uncertainty as to recovery as demand costs, for PGA purposes, of certain fixed purchased gas transitional costs and demand charges associated with a Gas Inventory Charge that may be billed to East Tennessee by Tennessee Gas Pipeline Company; impose a reconciliation charge for firm sales customers converting to firm transportation service; clarify an ambiguity between §§ 2.2 and 5.2 of East Tennessee's firm and interruptible transportation rate schedules with regard to the construction of facilities; and provide small general service customers with the option of receiving service under the historical one-part rate structure or under a two-part rate structure not subject to a full requirements obligation.

East Tennessee states that copies of the filing were served upon East Tennessee's affected customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 12, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,
Secretary.

[FR Doc. 91–19035 Filed 8–9–91, 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-7-24-000]

Equitrans Inc.; Notice of Proposed Change in FERC Gas Tariff

August 5, 1991.

Take notice that Equitrans, Inc. (Equitrans) on July 31, 1991, tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to become effective August 1, 1991:

First Revised Twenty-Seventh Revised Sheet No. 10
First Revised Eighteenth Revised Sheet No. 34

Equitrans states that the purpose of the filing is to reflect changes in Equitrans' rates and services that became effective on August 1, 1991 pursuant to the Commission's Order approving the March 22, 1991 "Joint Stipulation and Agreement" filed in Docket Nos. RP90–70, *et al.*

Equitrans further states that the changes proposed in the filing to the purchased gas adjustment under Rate Schedule PLS is an increase in the demand cost of $0.8787 per dekatherm (dth) and a decrease in the commodity cost of $0.381 per dth. Equitrans notes that the purchased gas cost adjustment to Rate Schedule ISS is a decrease of $0.2193 per dth for the winter period and $0.3505 per dth for the base period.

Equitrans states that a copy of its filing has been served upon its affected

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East Tennessee states that copies of the filing were served upon East Tennessee's affected customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 12, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,
Secretary.

[FR Doc. 91–19035 Filed 8–9–91, 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91–7–24–000]

Equitrans Inc.; Notice of Proposed Change in FERC Gas Tariff

August 5, 1991.

Take notice that Equitrans, Inc. (Equitrans) on July 31, 1991, tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to become effective August 1, 1991:

First Revised Twenty-Seventh Revised Sheet No. 10
First Revised Eighteenth Revised Sheet No. 34

Equitrans states that the purpose of the filing is to reflect changes in Equitrans' rates and services that became effective on August 1, 1991 pursuant to the Commission's Order approving the March 22, 1991 "Joint Stipulation and Agreement" filed in Docket Nos. RP90–70, *et al.*

Equitrans further states that the changes proposed in the filing to the purchased gas adjustment under Rate Schedule PLS is an increase in the demand cost of $0.8787 per dekatherm (dth) and a decrease in the commodity cost of $0.381 per dth. Equitrans notes that the purchased gas cost adjustment to Rate Schedule ISS is a decrease of $0.2193 per dth for the winter period and $0.3505 per dth for the base period.

Equitrans states that a copy of its filing has been served upon its affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 12, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,
Secretary.

[FR Doc. 91–19028 Filed 8–9–91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91–3–53–000]

K N Energy, Inc.; Notice of Proposed Changes in FERC Gas Tariff

August 5, 1991

Take notice that K N Energy, Inc. ("K N") on August 1, 1991 tendered for filing proposed changes in its FERC Gas Tariff to adjust the rates charged to its jurisdictional customers pursuant to the Purchased Gas Adjustment provision (Section 19) of the General Terms and Conditions of K N's FERC Gas Tariff, First Revised Volume No. 1–B to reflect changes in the Current adjustment. K N states that the filing proposes increases (decreases) to K N's rates per Mcf as set forth in the table below:

	Zone 1	Zone 2
CD, SF and WPS Commodity	$(0.0281)	$(0.0281)
D1 Demand	(0.0053)	(0.0073)
D2 Demand	(0.0050)	(0.0070)
WPS Demand	(0.0107)	(0.0147)
IOR Commodity	(0.0400)	(0.0424)

K N states that the filing reflects revision to its base tariff rates to reflect projected weighted average gas costs for the quarter ending November 30, 1991. The proposed effective date for the rate changes is September 1, 1991.

K N states that copies of the filing were served upon K N's jurisdictional customers, and interested public bodies.

Any person desiring to be heard or to make any protest with reference to this filing should, on or before August 12, 1991, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a petition to intervene or a protest in accordance with Rules 211 and 214 of the Commission's Rules of Practive and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91–19027 Filed 8–9–91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91–5–25–000]

Mississippi River Transmission Corp.; Notice of Rate Change Filing

August 5, 1991

Take notice that on August 1, 1991 Mississippi River Transmission Corporation (MRT) tendered for filing the Sixty-Third Revised Sheet No. 4, Twenty-Second Revised Sheet No. 4.1, and Twenty-Second Revised Sheet No. 4.2 to its FERC Gas Tariff, Second Revised Volume No. 1, to be effective September 1, 1991.

MRT states that the instant filing reflects its quarterly purchased gas cost adjustment (PGA), submitted pursuant to § 154.308 of the Commission's Regulations and paragraph 17.2 of MRT's FERC Gas Tariff. MRT states that the impact of the instant filing on its Rate Schedule CD–1 rates is an increase of $.001 per MMBtu in the demand charge, and an increase of 13.91 cents per MMBtu in the commodity charge. The single part rate under Rate Schedule SGS–1 reflects an increase of 13.92 cents per MMBtu.

MRT states that a copy of the revised tariff sheets is being mailed to each of MRT's jurisdictional sales customers and to the State Commissions of Arkansas, Missouri, and Illinois.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 12, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91–19026 Filed 8–9–91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91–202–000]

Paiute Pipeline Co.; Change in Rates

August 5, 1991.

Take notice that on August 1, 1991, Paiute Pipeline Company (Paiute), pursuant to section 4 of the Natural Gas Act and part 154 of the Commission's regulations thereunder, submitted for filing a notice of change in rates for natural gas service rendered to jurisdictional customers served under all rate schedules contained in First Revised Volume No. 1–A of Paiute's FERC Gas Tariff. In order to implement the notice of change in rates, Paiute tendered for filing and acceptance the following tariff sheets to be a part of First Revised Volume No. 1–A:

First Revised Sheet No. 10
First Revised Sheet No. 130

Paiute proposes to make the tendered tariff sheets and the change in rates effective on September 1, 1991.

Paiute states that based upon the test period cost of service and the projected throughput quantities employed in its filing, Paiute projects a deficiency of approximately $1,029,946 in annual revenues from jurisdictional transportation and storage services at current rates. Paiute is therefore proposing to increase rates for its jurisdictional transportation and storage services in an amount that is sufficient to eliminate the revenue deficiency and recover the full cost of service reflected in its filing.

Paiute states that it has served copies of its filing on all affected customers and all interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 384.214). All such motions or protests should be filed on or before August 12, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary

[FR Doc. 91-19036 Filed 8-9-91, 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-203-000]

Tennessee Gas Pipeline Co; Filing of Changes in Rates

August 5, 1991

Take notice that on August 1, 1991, Tennessee Gas Pipeline Company (Tennessee) tendered for filing changes in its FERC Gas Tariff to be effective September 1, 1991, consisting of the following revised tariff sheets:

Third Revised Volume No. 1

Sixth Revised Sheet No. 20
Original Sheet No. 20A
Sixth Revised Sheet No. 21
Original Sheet No. 21A
Sixth Revised Sheet No. 22
Fourth Revised Sheet No. 23
Third Revised Sheet No. 24
Original Sheet No. 24A
Fourth Revised Sheet No. 25
Original Sheet No. 25A
Fourth Revised Sheet No. 26
Original Sheet No. 26A
Second Revised Sheet No. 28
Original Sheet Nos. 28A, 28B
Second Revised Sheet No. 29
Original Sheet No. 29A
First Revised Sheet Nos. 57, 63, 69, 71, 74, 78, 79, 80
First Revised Sheet Nos. 82, 86, 87, 88, 89, 90, 92
Second Revised Sheet Nos. 97, 101, 102
First Revised Sheet Nos. 106, 111
Second Revised Sheet No. 116
First Revised Sheet Nos. 130, 132, 133, 138, 141, 142
First Revised Sheet Nos. 222, 231, 232, 233, [illegible]
Original Sheet No. 239A
First Revised Sheet Nos. 246, 247, 248, 249, 250, 251, 252
Second Revised Sheet No. 253
First Revised Sheet Nos. 253A, 268, 272, 273, 274, 467

Original Volume No. 2

Twenty-fifth Revised Sheet No. 5
Original Sheet No. 5A
Twenty-fourth Revised Sheet No. 6
Original Sheet No. 6A
Eighth Revised Sheet No. 7
Original Sheet No. 7A
Ninth Revised Sheet No. 8
Original Sheet No. 8A
Eighth Revised Sheet No. 9
Original Sheet No. 9A
Thirteenth Revised Sheet No. 10

Tennessee states that the changes will increase revenues from jurisdictional sales and services by $343 million. Tennessee also states that this rate increase is necessitated by, among other things, an increase in gas plant and related expenses and an increase in costs to operate and maintain its pipeline. Tennessee also states that its filing institutes the cost allocation and rate design changes and new or expended services provided for in the "Cosmic Settlement" filed June 25, 1991 in Docket Nos. RP86-119, *et al.*, that is currently pending before the Commission, a change from the Modified Fixed Variable (MFV) to Enhanced Fixed Variable (EFV) methodology for cost classification purposes, and various other tariff changes as explained in the filing.

Tennessee states that it has served copies of the filing on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protests with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's rules and regulations. All such motions or protests should be filed on or before August 12, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-19034 Filed 8-9-91, 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA92-1-11-000]

United Gas Pipe Line Co.; Filing of Revised Tariff Sheets

August 5, 1991.

Take notice that on August 1, 1991 United Gas Pipe Line Company (United) tendered for filing tariff sheets:

Fourth Revised Volume 1

First Revised Sheet No. 4
First Revised Sheet No. 4A
First Revised Sheet No. 4B
First Revised Sheet No. 4C
First Revised Sheet No. 4E

The proposed effective date of the above referenced tariff sheets in this docket is October 1, 1991. United states that the above referenced tariff sheets are being filed pursuant to Section 154.305 of the Commission's regulations to reflect changes in United's purchased gas cost adjustment as provided in section 22 of United's FERC Gas Tariff, Fourth Revised Volume No. 1.

United states that it has filed tariff sheets which implement a $2.2940 per MMBtu commodity gas cost rate excluding nongas cost, ACA and GRI. This rate reflects a $2.1262 per MMBtu gas commodity cost, a surcharge of <$.0040> per MMBtu and a Settlement Surcharge of $.1718 per MMBtu.

United states that the revised tariff sheets and supporting data are being mailed to its jurisdictional sales customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in such accordance with §§ 385.214 and 385.211 of the Commission's regulations: All such petitions of protest should be filed on or before August 26, 1991.

Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a Motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 91-19032 Filed 8-9-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA92-1-35-000]

West Texas Gas, Inc.; Notice of Filing

August 5, 1991.

Take notice that on August 1, 1991, West Texas Gas, Inc. ("WTG") filed Twenty-Fifth Revised Sheet No 3a to its FERC Gas Tariff, Original Volume No. 1, proposed to be effective October 1, 1991. Twenty-Fifth Revised Sheet No. 3a and the accompanying explanatory schedules constitute WTG's annual PGA filing submitted in accordance with the Commission's purchased gas adjustment regulations.

WTG states that copies of the filing were served upon WTG's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington,

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8-9-91, 8:45 am]

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are being filed pursuant to Section 154.305 of the Commission's regulations to reflect changes in United's purchased gas cost adjustment as provided in section 22 of United's FERC Gas Tariff, Fourth Revised Volume No. 1.

United states that it has filed tariff sheets which implement a $2.2940 per MMBtu commodity gas cost rate excluding nongas cost, ACA and GRI. This rate reflects a $2.1262 per MMBtu gas commodity cost, a surcharge of <$.0040> per MMBtu and a Settlement Surcharge of $.1718 per MMBtu.

United states that the revised tariff sheets and supporting data are being mailed to its jurisdictional sales customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in such accordance with §§ 385.214 and 385.211 of the Commission's regulations. All such petitions of protest should be filed on or before August 26, 1991.

Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a Motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 91-19032 Filed 8-9-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA92-1-35-000]

West Texas Gas, Inc.; Notice of Filing

August 5, 1991.

Take notice that on August 1, 1991, West Texas Gas, Inc. ("WTG") filed Twenty-Fifth Revised Sheet No 3a to its FERC Gas Tariff, Original Volume No. 1, proposed to be effective October 1, 1991. Twenty-Fifth Revised Sheet No. 3a and the accompanying explanatory schedules constitute WTG's annual PGA filing submitted in accordance with the Commission's purchased gas adjustment regulations.

WTG states that copies of the filing were served upon WTG's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington,

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DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's rules and regulations. All such motions or protests should be filed on or before August 26, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-19033 Filed 8-9-91; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL COMMUNICATIONS COMMISSION

Travel Reimbursement Program; April 1, 1991-June 30, 1991

Summary Report

Total Number of Sponsored Events	12
Total Number of Sponsoring Organizations	11
Total Number of Different Commissioners/Employees Attending	24

Total Amount of Reimbursement Expected:

Transportation	$7,847.09
Subsistence	10,185.71
Other Expenses	2,193.55
Total	20,226.35

Individual Event Reports Attached.

Amount of Reimbursement Shown May Be Estimated.

Individual Event Report

Sponsoring Organization: National Association of Broadcasters, 1771 N Street NW., Washington, DC 20036.

Date of the Event: April 15-18, 1991.

Description of the Event: NAB 69th Annual Convention and International Exposition, Las Vegas, Nevada.

Commissioners Attending: Chairman Alfred C. Sikes, Commissioner James H. Quello, Commissioner Ervin S. Duggan, Commissioner Andrew C. Barrett.

Other Employees Attending: Robert Branson, Advisor to Com. Barrett, Robert Corn-Revere, Advisor to Com. Quello, Terry Haines, Chief of Staff, Office of the Chairman, Roy Stewart, Chief, Mass Media Bureau, Robert Pettit, General Counsel, Walda Roseman, Director, Office of International Communication, William Hassinger, Electronics Engineer, Mass Media Bureau, Charles Kelly, Chief, Enforcement Division, Larry Eads, Chief, Audio Services Division, Richard Smith, Chief, Field Operations Bureau, Thomas Stanley, Chief Engineer; Chief, Office of Engineering and Technology, Linda Solheim, Chief, Office of Legislative Affairs, Lorrie Secrest, Chief, Office of Public Affairs.

Amount of Reimbursement:

Transportation	$5,672.00
Subsistence	7,581.97
Other Expenses	1,385.39
Total	14,639.36

Sponsoring Organization: Federal Communications Bar Association, 1150 Connecticut Avenue NW., Suite 1050, Washington, DC 20036.

Date of the Event: May 3-5, 1991.

Description of the Event: Federal Communications Bar Association, Williamsburg, Virginia.

Commissioners Attending: None.

Other Employees Attending: Lauren Belvin, Legal Advisor to Chairman Sikes, Robert Branson, Legal Advisor to Commissioner Barrett, Diane Cornell, Legal Advisor to Commissioner Marshall, William Harris, Legal Advisor to Commissioner Quello.

Amount of Reimbursement:

Transportation	$0.00
Subsistence	621.20
Other Expenses	236.55
Total	857.75

Sponsoring Organization: Variety and Wertheim Schroder & Co., Inc., 475 Park Avenue South, New York, New York.

Date of the Event: April 11, 1991.

Description of the Event: The Business of Entertainment Conference, New York, New York.

Commissioners Attending: Commissioner James H. Quello.

Other Employees Attending: None.

Amount of Reimbursement:

Transportation	$118.00
Subsistence	159.50
Other Expenses	36.91
Total	314.41

Sponsoring Organization: Broadcast Cable Financial Management Association, 701 Lee Street, Suite 1010, Des Plaines, Illinois 60016.

Date of the Event: April 21-23, 1991.

Description of the Event: BCFM's Annual Conference.

Commissioners Attending: Commissioner Ervin S. Duggan.

Other Employees Attending: None.

Amount of Reimbursement:

Transportation	$0.00
Subsistence	360.38
Other Expenses	56.56
Total	416.94

Sponsoring Organization: Society of Cable Television Engineers, Inc., 669 Exton Commons, Exton, Pennsylvania 19341.

Date of the Event: June 14-15, 1991.

Description of the Event: SCTE's Annual Cable-Tec Expo.

Commissioners Attending: None.

Other Employees Attending: John Wong, Supervisory Engineer, Mass Media Bureau.

Amount of Reimbursement:

Transportation	$322.00
Subsistence	313.58
Other Expenses	68.54
Total	$704.12

Sponsoring Organization: University of Ottawa, Department of Electrical Engineers, Ottawa, Ontario KIN 6N5.

Date of the Event: May 22-23, 1991.

Description of the Event: Workshop.

Commissioners Attending: None.

Other Employees Attending: Michael Marcus, Assistant Bureau Chief, Office of Engineering and Technology.

Amount of Reimbursement:

Transportation	$369.09
Subsistence	127.57
Other Expenses	42.10
Total	$538.76

Sponsoring Organization: American Public Communication Council, 2000 M Street, NW., suite 550, Washington, DC 20036.

Date of the Event: April 2-4, 1991.

Description of the Event: 25 Alive 1991—Western Exposition and Conference, Las Vegas, Nevada.

Commissioners Attending: Commissioner Andrew C. Barrett.

Other Employees Attending: None.

Amount of Reimbursement:

Transportation	$439.00
Subsistence	133.86
Other Expenses	45.20
Total	$618.06

Sponsoring Organization: New York State Telephone Association, Inc., 111 Washington Avenue, Albany, New York 12210.

Date of the Event: June 9-12, 1991.

Description of the Event: Convention.
Commissioners Attending: None.
Other Employees Attending: James Schlichting, Chief, Policy and Planning Division, Mass Media Bureau.
Amount of Reimbursement:

Transportation	$353.00
Subsistence	164.00
Other Expenses	80.00
Total	597.00

Sponsoring Organization: KMB Video Journal, Box 825, Lakeside Drive, Block Island, Rhode Island 08807.
Date of the Event: June 19, 1991.
Description of the Event: Taping of 900 Information Services Program.
Commissioners Attending: None.
Other Employees Attending: Mary E. Richards, Supervisory General Attorney, Common Carrier Bureau.
Amount of Reimbursement:

Transportation	$188.00
Subsistence	25.50
Other Expenses	44.45
Total	257.95

Sponsoring Organization: 3M, 3M Center, St. Paul, Minnesota 55144.
Date of the Event: June 23–27, 1991.
Description of the Event: Professional Audio/Video Symposium, St. Paul, Minnesota.
Commissioners Attending: None.
Other Employees Attending: William Hassinger, Electronics Engineer, Mass Media Bureau.
Amount of Reimbursement:

Transportation	$328.00
Subsistence	425.00
Other Expenses	50.00
Total	803.00

Sponsoring Organization: Maryland, DC, Delaware Broadcaster's Association, Inc., One East Chase Street, suite 1128, Baltimore, Maryland 21202.
Date of the Event: June 29, 1991.
Description of the Event: Association's Annual Convention.
Commissioners Attending: None.
Other Employees Attending: Roy Stewart, Chief, Mass Media Bureau.
Amount of Reimbursement:

Transportation	$0.00
Subsistence	160.00
Other Expenses	109.00
Total	269.00

Sponsoring Organization: American Public Communications Council, 2000 M Street NW., suite 550, Washington, DC 20036.
Date of the Event: June 13–14, 1991.
Description of the Event: Eastern Regional Public Communications Council Conference, Atlantic City, New Jersey.
Commissioners Attending: None.
Other Employees Attending: Robert Spangler, Supervisory General Attorney, Common Carrier Bureau.
Amount of Reimbursement:

Transportation	$58.00
Subsistence	113.15
Other Expenses	38.85
Total	210.00

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–19116 Filed 8–9–91; 8:45 am]

BILLING CODE 6712-01-M

Lion's Share Broadcasting, et al.; Applications

1. The Commission has before it the following mutually exclusive applications for two new FM stations:

Applicant, City and State	File No.	MM Docket No.
	I	
A. Robert D. Janecek d/b/a Lion's Share Broadcasting; Lompoc, CA.	BPH-900504MD	91-210
B. Great Scott Broadcasting; Lompoc, CA.	BPH-900518MM	
C. Lompoc Minority Broadcasters Partnership; Lompoc, CA.	BPH-900518MO	
D. John Walton Smith, Jr. d/b/a NOE-WAL Broadcasting; Lompoc, CA.	BPH-900522MH	
E. Radio Lompoc Limited Partnership; Lompoc, CA.	BPH-900516MS, (Previously Dismissed)	

Issue Heading and Applicants
1. Air Hazard, B, D
2. Contingent Environmental, A, D
3. Comparative, A, B, C, D
4. Ultimate, A, B, C, D

Applicant, City and State	File No.	MM Docket No.
	II	
A. Atlantic Radio Communications, Inc.; Manahawkin, N.J.	BPH-900116MS	91-205
B. Great American Communications Corp.; Manahawkin, N.J.	BPH-900117MN	
C. Coastal Broadcasting Systems, Inc.; Manahawkin, N.J.	BPH-900117MO	
D. John Senior Broadcasting Company; Manahawkin, N.J.	BPH-900117MP	
E. Jersey Devil Broadcasting Company; Manahawkin, N.J.	BPH-900117MT	
F. Seaira, Inc.; Manahawkin, N.J.	BPH-900117MU	
G. Southern Ocean Broadcasting Company; Manahawkin, N.J.	BPH-900117MX	
H. LD Broadcasting Limited Partnership; Manahawkin, N.J.	BPH-900117NA	
I. Great Scott Broadcasting; Manahawkin, N.J.	BPH-900117ML (Dismissed Herein)	
J. Sage Broadcasting Corporation of New Jersey; Manahawkin, N.J.	BPH-900117MM (Dismissed Herein)	
K. Jersey Shore Broadcasting Corporation; Manahawkin, N.J.	BPH-900117MY (Dismissed Herein)	
L. Press Broadcasting Company; Manahawkin, N.J.	BPH-900117NC (Dismissed Herein)	

Issue Heading and Applicants
1. Air Hazard, F
2. Comparative, All
3. Ultimate, All

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription

Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 91–19003 Filed 8–9–91; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and state	File No.	MM docket No.
A. David T. Murray and Martha R. Murray d/b/a Murray Communications; Colonial Heights, TN.	BPH-900220MM	91-189
B. Evelyn Holt Parker; Colonial Heights, TN.	BPH-900220MN	
C. Sullivan County Broadcasting; Colonial Heights, TN.	BPH-900220MO	
D. Colonial Broadcast Systems, Inc.; Colonial Heights, TN.	BPH-900220MP	
E. Radio Reading Services Corporation; Colonial Heights, TN.	BPED-900220MC (herein dismissed)	

Issued Heading and Applicants

1. Environmental, A–D
2. City Coverage, A–D
3. Air Hazard, A, C
4. Comparative, A–D
5. Ultimate, A–D

II

Applicant, city and state	File No.	MM docket No.
A. Judith O. and Larry R. Orkus; Port Matilda, PA.	BPH-900510MF	91-190
B. Sage Broadcasting Corporation of Ohio; Port Matilda, PA.	BPH-900510MG	
C. PAC Broadcasting Partnership; Port Matilda, PA.	BPH-900510MJ	
D. Port Matilda FM Limited Partnership; Port Matilda, PA.	BPH-900510MO	
E. Port Matilda Broadcasting Limited; Port Matilda, PA.	BPH-900510MR	
F. Phyllis J. Thaler; Port Matilda, PA.	BPH-900509MJ (herein dismissed)	

Issue Heading and Applicant

1. Alien Ownership, A
2. Air Hazard, B
3. Comparative, A, B, C, D, E
4. Ultimate, A, B, C, D, E

III

Applicant, city and state	File No.	MM docket No.
A. Cereus Broadcasting Company; Hubbard, Ohio.	BPH-900119ML	91-188
B. Gayle Communications; Hubbard, Ohio.	BPH-900122MV	
C. Stop 26-Riverbend Productions, Inc.; Hubbard, Ohio.	BPH-900122NA	
D. Kathleen De Capua; Hubbard, Ohio.	BPH-900122NJ	
E. Robert McCracken & Samuel Shirey, A General Partnership; Hubbard, Ohio.	BPH-900122NU	
F. Paul J. Dolan; Hubbard, Ohio.	BPH-900122NX	
G. WN Broadcasting Inc.; Hubbard, Ohio.	BPH-900122NZ	
H. Sage Broadcasting Corporation of Ohio; Hubbard, Ohio.	BPH-900122NH (dismissed herein)	

Issue Heading and Applicants

1. Site Availability, B
2. Environmental, A, B, C, D, E, G
3. Air Hazard, A, F
4. Comparative, A–G
5. Ultimate, A–G

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, 1114 21st Street NW., Washington, DC 20036 (Telephone 202–452–1422).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 91–19004 Filed 8–9–91; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for four new FM stations:

Applicant, city and state	File No.	MM docket No.
A. Radio Lake Geneva Corporation; Lake Geneva, WI.	BPH-900611MG	91-205
B. Tom Kwiatkowski; Lake Geneva, WI.	BPH-900613MA	
C. David A. Nelson; Lake Geneva, WI.	BPH-900613MB	
D. Lake Geneva Broadcasting, Inc.; Lake Geneva, WI.	BPH-900614MA	
E. Northwest Broadcasting Company; Lake Geneva, WI.	BPH-900606MG (herein dismissed)	
F. State Long Distance Telephone Company, Lake Geneva, WI.	BPH-900612MB (herein dismissed)	

Issue Heading and Applicants

1. Air Hazard, B
2. Environmental, A–D
3. Comparative, A–D
4. Ultimate, A–D

II

Applicant, city and state	File No.	MM docket No.
A. Sacred Heart University, Inc., Shirley, New York.	BPED-891215MD	91-205
B. Long Island Educational TV Council, Inc., Ridge, New York.	BPED-900522MA	
C. Long Island University; Southampton New York.	BPED-900522MI	

Issue Heading and Applicants

1. Financial Qualifications, A,B
2. Environmental, A, B, C
3. 307(b), Noncommercial Educational A, B, C
4. Contingent Comparative Noncommercial Educational, FM, A, B, C
5. Ultimate, A, B, C

III

Applicant, city and state	File No.	MM docket No.
A. Carmen Diaz; Sun City, CA.	BPH-900122MT	91-209
B. Ramona Broadcasting Company; Sun City, CA.	BPH-900122MW	
C. Ann McCullom and Duane Davis d/b/a Sun City Broadcasters; Sun City, CA.	BPH-900122NB	

Applicant, city and state	File No.	MM docket No.
D. Dennis L. Martin; Sun City, CA.	BPH-900122ND	
E. Sun City Wireless, Ltd., L.P.; Sun City, CA.	BPH-900122NG	
F. Sun City Communications, A California Limited Partnership; Sun City, CA.	BPH-900122NK	
G. Sun City Communications, Inc.; Sun City, CA.	BPH-900122NO	
H. Molezion Communications, Inc.; Sun City, CA.	BPH-900122NP	
I. Vineyard Communications, Inc.; Sun City, CA.	BPH-900122NV	
J. Sun City Broadcasting Co., Limited Partnership; Sun City, CA.	BPH-900122NE (dismissed)	

Issue Heading and Applicants

1. Site Availability, F
2. Contingent Environmental, A, B, E, F, G, H, I
3. Comparative, A, B, C, D, E, F, G, H, I
4. Ultimate, A, B, C, D, E, F, G, H, I

IV

A. Lynn Ketelsen; Rapid City, SD.	BPH-900510MM	91-207
B. Crystal Broadcast Partners; Rapid City, SD.	BPH-900510MQ	

Issue Heading and Applicants

1. Alien Ownership/Control (SEE APPENDIX), A
2. Air Hazard, A
2. Comparative, A, B
3. Ultimate, A, B

Appendix

1. To determine whether Ketelsen's application violates 47 U.S.C. 310, and, if so, whether Ketelsen is legally qualified to be a licensees.

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in appropriate appendixes. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division Mass Media Bureau.

[FR Doc. 91-19006 Filed 8-9-91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Columbus/Alianca Agreement; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-011334-001.
Title: Columbus/Alianca Agreement.
Parties:

Hamburg-Sudamerikanische Dampfschifffahrts-Gesellschaft Eggert & Amsinck
Empresa de Navegacao Alianca S/A.

Synopsis: The proposed amendment would modify the Agreement to provide that the parties will respect the law, rules and regulations issued by the authorities of the countries included in the geographic scope of the Agreement.

Dated: August 6, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-19024 Filed 8-9-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Bruce Canfield; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than August 30, 1991.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Bruce Canfield, Waskom, Texas; to acquire an additional 12.79 percent of the voting shares of Waskom Bancshares, Inc., Waskom, Texas, for a total of 15.5 percent, and thereby indirectly acquire First State Bank, Waskom, Texas.

Board of Governors of the Federal Reserve System, August 6, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-19066 Filed 8-9-91; 8:45 am]

BILLING CODE 6210-01-F

Century Bancorp, Inc., Medford, Massachusetts; Application to Engage in Combined Securities Brokerage and Investment Advisory Activities for the Account of Institutional and Retail Customers

Century Bancorp, Inc., Medford, Massachusetts ("Century"), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and section 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)), through its wholly-owned subsidiary, Century Financial Services, Inc., Medford, Massachusetts ("Company"), to engage *de novo* in the provision of securities brokerage and investment advisory services on a combined basis for institutional and retail customers. Company proposes to engage in these activities throughout the United States.

Company is currently authorized to engage in the provision of securities brokerage services according to the limitations set forth in and pursuant to § 225.25(b)(15) of the Board's Regulation Y (12 CFR 225.25(b)(15)).

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board, after due

37. (Telephone (202) 857–

lio Services Division

led 8–9–91; 8:45 am]

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225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than August 30, 1991.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Bruce Canfield, Waskom, Texas; to acquire an additional 12.79 percent of the voting shares of Waskom Bancshares, Inc., Waskom, Texas, for a total of 15.5 percent, and thereby indirectly acquire First State Bank, Waskom, Texas.

Board of Governors of the Federal Reserve System, August 6, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-19066 Filed 8-9-91; 8:45 am]

BILLING CODE 6210-01-F

Century Bancorp, Inc., Medford, Massachusetts; Application to Engage in Combined Securities Brokerage and Investment Advisory Activities for the Account of Institutional and Retail Customers

Century Bancorp, Inc., Medford, Massachusetts ("Century"), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and section 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)), through its wholly-owned subsidiary, Century Financial Services, Inc., Medford, Massachusetts ("Company"), to engage *de novo* in the provision of securities brokerage and investment advisory services on a combined basis for institutional and retail customers. Company proposes to engage in these activities throughout the United States.

Company is currently authorized to engage in the provision of securities brokerage services according to the limitations set forth in and pursuant to § 225.25(b)(15) of the Board's Regulation Y (12 CFR 225.25(b)(15)).

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board, after due

notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." Century believes that these proposed activities are "so closely related to banking or managing or controlling banks as to be a proper incident thereto."

The Board has previously determined that, subject to certain conditions, the provision of securities brokerage and investment advisory services on a combined basis for institutional and retail customers is a permissible nonbanking activity for bank holding companies and does not violate the Glass-Steagall Act. *See, e.g., National Westminster Bank PLC*, 72 Federal Reserve Bulletin 584 (1986); *Manufacturers Hanover Corporation*, 73 Federal Reserve Bulletin 930 (1987); *Bank of New England Corporation*, 74 Federal Reserve Bulletin 700 (1988). Century proposes that Company conduct these activities in accordance with substantially all of the prudential limitations relied upon by the Board in these orders.

Century states that the proposed activities will benefit the public. It believes that they will promote competition and provide gains in efficiency and added convenience to customers. Moreover, Century believes that the proposed activities will not result in any unsound banking practices.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than August 26, 1991. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Boston.

Board of Governors of the Federal Reserve System, August 6, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-19067 Filed 8-9-91; 8:45 am]

BILLING CODE 6210-1-F

First State Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than August 30, 1991.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. First State Corporation, Albany, Georgia; to acquire Randolph County Federal Savings & Loan Association, Cuthbert, Georgia, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Monroe Agency, Inc., Monroe, Nebraska; to acquire Nebraskaland Insurance Agency, Genoa, Nebraska, and thereby engage in the sale of general insurance, excluding life insurance and annuities, permitted for bank holding companies with total consolidated assets of $50 million or less pursuant to § 225.25(b)(8)(vi) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 28, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-19068 Filed 8-9-91; 8:45 am]

BILLING CODE 6210-01-F

Miners National Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 30, 1991.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Miners National Bancorp, Inc., Pottsville, Pennsylvania; to acquire 19.9 percent of the voting shares of East Penn Bank, Emmaus, Pennsylvania, a *de novo* bank.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Michigan Bank Corporation*, Holland, Michigan; to acquire 100 percent of the voting shares of FMB-Trust and Financial Services, National Association, Holland, Michigan, a *de novo* bank.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Cecilian Bancorp, Inc.*, Cecilia, Kentucky; to become a bank holding company by acquiring at least 80 percent of the voting shares of The Cecilian Bank, Cecilia, Kentucky.

2. *Golden Financial Corporation*, Elizabethtown, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Fort Knox National Bank, Radcliff, Kentucky.

3. *Teutopolis Holding Co.*, Teutopolis, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Teutopolis State Bank, Teutopolis, Illinois.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Beulah Bancorporation, Inc.*, Beulah, North Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of D&B Holding Company, Inc., Beulah, North Dakota, and thereby indirectly acquire Bank of Beulah, Beulah, North Dakota.

E. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Henderson Citizens Bancshares, Inc.*, Henderson, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Henderson Citizens Delaware Bancshares, Inc., Dover, Delaware; Enterprise Bancshares, Inc., Mount Enterprise, Texas; Citizens National Bank of Henderson, Henderson, Texas; and Merchants State Bank, Mount Enterprise, Texas. Comments on this application must be received by August 26, 1991.

Board of Governors of the Federal Reserve System, August 6, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-19069 Filed 8-9-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Program Announcement Number 157]

Cooperative Agreements To Advance The Understanding of the Health of Racial and Ethnic Populations or Subpopulations

Introduction

The Centers for Disease Control (CDC), announces the availability of funds in Fiscal Year 1991 for cooperative agreements to the Asian American Health Forum (AAHF) and the National Coalition of Hispanic Health and Human Services Organizations (COSSMHO) to advance the understanding of the health of racial and ethnic populations and subpopulations. There are two areas of study: (1) Analysis of previously collected health data and (2) improvements in existing research methodologies or testing of innovative methodological techniques used to gather information on such groups.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Surveillance and Data Systems which focuses on developing and implementing a national process to identify significant gaps in the Nation's disease prevention and health promotion data. (For ordering a copy of Healthy People 2000, see the section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under Public Health Service Act (PHS Act), section 306 (42 U.S.C. 242k).

Eligible Applicants

Cooperative agreements to address the CDC priorities outlined above will be awarded only to the Asian American Health Forum (AAHF) and the National Coalition of Hispanic Health and Human Services Organizations (COSSMHO). No other applications are solicited. CDC plans to support one-year cooperative agreements to these two national membership organizations to (1) analyze existing data on the health of racial and ethnic populations or subpopulations and (2) improve methodological approaches for the collection of information on the health of racial and ethnic populations or subpopulations. These activities are pursuant to fulfilling the provisions of the Disadvantaged Minority Health Improvement Act of 1990 (Pub. L. 101-527) and the need for improved data to monitor objectives of Healthy People 2000.

These two membership organizations are in a unique position to identify data gaps in health status among constituencies and to identify appropriate and qualified health investigators who can develop and conduct projects that address priority needs for data and improvements in methodologies. Both organizations have participated with the PHS's Office of Disease Prevention and Health Promotion to stimulate the development and implementation of long-range strategies for meeting the health promotion/disease prevention targets set for their respective populations in Healthy People 2000. The lack of adequate data to measure and track the health status of special populations is a major concern of Healthy People 2000, and improvement of data on racial and ethnic minorities is an explicit objective of the process.

AAHF was established in 1986 to foster the health needs of Asians and Pacific Islanders in the U.S. It is the primary national nonprofit membership organization focused on (1) Assisting in the development of government health policies and programs for the Asian American community; (2) promoting and performing the collection, analysis and dissemination of information on the morbidity and mortality of Asians and Pacific Islanders in the U.S.; and (3) advancing health services research. The AAHF, through its data development committee, has already initiated efforts to systematically assess data sources and gaps on Asians and Pacific Islanders. The third biennial national conference sponsored by the Forum in November 1990, in collaboration with the Asian Advisor Committee of the National Institutes of Health, focused on data collection and research with the goal of "Dispelling the Myth of a Healthy Minority." The product of these efforts will provide an invaluable "head start" in identifying priority research to be addressed through this cooperative agreement.

COSSMHO was founded in 1974 and is a not-for-profit organization with a membership of over 700 individuals and institutions, entirely Hispanic-focused, working in a wide variety of health-related fields. In the past several years, COSSMHO has implemented national demonstration programs in the fields of chronic disease prevention, adolescent

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pregnancy prevention, and health promotion, administering over $2.4 million in subcontracts benefiting local communities.

In 1986 COSSMHO entered into an agreement with the Office of the Assistant Secretary for Health and NCHS to establish the Hispanic Health Research Consortium To facilitate analysis of the Hispanic Health an Nutrition Examination Survey (HHANES) conducted by NCHS from 1982–1984. Two rounds of competitive grants were awarded by COSSMHO to establish a network of eight university and community-based research teams. COSSMHO coordinated the research of this network, provided technical assistance, convened meetings of the researchers and disseminated information nationally to researchers interested in conducting HHANES analyses. A special supplement to the American Journal of Public Health, published in December 1990, contained 11 articles from this research.

AAHF and COSSMHO should document in their proposals that they meet all of the following requirements:

1. Are national, private, nonprofit organizations;
2. Have a national membership, state/local chapters, and/or otherwise well-defined affiliate structures;
3. Possess an understanding of the current and potential role of the membership in data analysis and methodological research;
4. Have in place a variety of communication channels that are appropriate for informing member and other representative investigators about how to become involved in meeting the objectives of the cooperative agreement;
5. Can obtain top level support within the organization for the project and, where appropriate, demonstrate similar support from the membership; and
6. Have experience in working with researchers within their respective communities.

Availability of Funds

Approximately $900,000 will be available in Fiscal Year 1991 to fund these cooperative agreements. It is anticipated that each award will be for approximately $450,000. This estimate may vary and is subject to change. The award will begin on or about September 30, 1991, and will be for a project period of one year.

Purpose

The purpose of this program is to increase the quality and quantity of available information on the health of racial and ethnic populations or subpopulations. Funds will be awarded for the purpose of conducting and coordinating 1) analysis of previously collected health data and 2) improvements in existing research methodologies or development of innovative methodological techniques used to gather information on such groups. Primary data collection is not authorized under this cooperative agreement.

Examples of interest areas include:

Data Analysis: Analysis of existing data where known gaps exist regarding health status, health care needs, access to care issues, barriers to care, relationships between socioeconomic status and health among subgroups, network and support systems influence on health, and acculturation and generational differences between/within subgroups.

Methodological Research: Improve or develop innovative methodological approaches to: (1) Estimate small group denominator data; (2) develop sampling techniques for small, difficult-to-study populations; (3) develop culturally sensitive techniques to elicit comparable information from different groups or subgroups; (4) determine how responses to questionnaires differ by race; and (5) determine how best to phrase race/ethnicity questions on questionnaires.

Program Requirements

In conducting activities to achieve the purpose of the program, the recipient shall be responsible for conducting activities under A., below, and CDC will be responsible for conducting activities under B., below:

A. Recipient Activities

1. Establish a process to identify individual topic areas for data analysis and methodological research, involving the membership community and other research communities (e.g., universities, state health departments, non-profit survey research organizations, and community organizations).

2. Develop analytic and research plans for the conduct of individual analytic and research projects, including the identification of qualified investigators. For the conduct of these analysis and research activities, it is understood that the recipients may rely on analysts and researchers in academic and other institutions, and the applicants may enter into contracts (including consortia agreements) with such individuals and institutions as necessary to meet the requirements of the program.

3. Execute the analytic and research plans identified above, relying on the use of contracts with individual investigators to the extent necessary. In the event that contracts are used, the recipient will assure that proposals undergo an objective review based on an assessment of scientific merit and avoidance of conflict of interest.

4. Evaluate the products of individual analytic and research activities, including the work of contractors, on how well they accomplish the objectives of the program.

B. CDC Activities

1. Provides technical assistance in the identification of analytic and research priorities.

2. Assist in the refinement of analytic and research plans, and in the technical review of proposals from prospective contractors. For the conduct of these analysis and research activities, it is understood that the recipients may rely on analysts and researchers in academic and other institutions, and the applicants may enter into contracts (including consortia agreements) with such individuals and institutions as necessary to meet the requirements of the program.

3. Make available other information and technical assistance from government sources as appropriate.

4. Provide liaison with other government agencies as appropriate.

5. Provide technical assistance on individual analytic and research projects, including those conducted by contractors, as appropriate.

Review and Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. Understanding the technical and substantive issues and the research priorities the project proposes to address; clarity, feasibility, and practicality of the goals and objectives of the project as well as the plan to meet them; (20 points)

2. Soundness, practicality, and feasibility of the technical approach to the work, including how the tasks are to be carried out, anticipated problems and proposed solutions; potential for the awardee to make an innovative, significant impact and contribution to improving the quantity and quality of health data on racial and ethnic populations or subpopulations; feasibility and appropriateness of the proposed evaluation plan and mechanism; (30 points)

3. Commitment of management and members to the project, as demonstrated by relevant experience of the organization in conducting similar

projects; adequacy of project management to keep project on track and on schedule; demonstrated capacity for reaching a wide and varied number of key audiences to the project; (25 points)

4. Management plan, advisory and supervisory structure, and qualifications and relevant experience of the proposed staff both in the content and execution of the proposed project; relevant experience could include, but would not be limited to, communications and marketing of the availability of research grants to diverse constituent members and groups. (25 points)

Executive Order 12372 Review

Applications are not subject to review under Executive Order 12372, Intergovernmental Review for Federal Programs.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.283.

Application Submission and Deadline

AAHF and COSSMHO must submit a signed original and two copies of the application, Form PHS-5161-1, to Candice Nowicki, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., room 300, Atlanta, Georgia 30305, on or about August 31, 1991. Applications shall be considered as meeting the deadline if they are received at the above address on or before the stated deadline date or if they bear a postmark of August 31, 1991, and are received in time for submission to the independent review group. Applicants should request a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be accepted as proof of timely mailing.

Applications which do not meet the above criteria will be considered late applications, will not considered in the current cycle, and will be returned to the applicant.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding these projects, please refer to Announcement 157 and contact the following: Business Management Technical Assistance may be obtained from Gordon R. Clapp, Grants Management Specialist, Centers for Disease Control, Procurement and Grants Office, 255 East Paces Ferry Road NE., Mailstop E14, Atlanta, Georgia 30305, telephone (404) 842-6801 of FTS 236-6801.

Programmatic technical assistance may be obtained from Edward L. Hunter or Marjorie S. Greenberg, National Center for Health Statistics, at (301) 436-7142.

A copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock No. 017-001-00473-1) referenced in the INTRODUCTION may be obtained through the Superintendent of Documents. Government Printing Office, Washington, DC 20402-9325 (Telephone 202-783-3238).

Dated: August 6, 1991.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 91-19057 Filed 8-9-91; 8:45 am]

BILLING CODE 4160-18-M

[Announcement No. 165]

Infant Health Initiative Cooperative Agreements

Introduction

The Centers for Disease Control (CDC) announces the availability of new competing cooperative agreement funds in Fiscal Year (FY) 1991 for the following programs to build capacity in states to: reduce adverse pregnancy outcomes, identify maternal behavioral risk factors during pregnancy and early infancy, and develop and implement prenatal smoking cessation interventions.

Cooperative agreements will be awarded for three programs:

A. Prenatal Smoking Cessation Programs (PSC)

B. Pregnancy Risk Assessment Monitoring Systems (PRAMS)
  1. Maintenance of existing programs
  2. Development of new programs

C. Centers for Healthy Infants and Pregnancies Surveillance (CHIPS)

Applications may be submitted for PSC only, for PRAMS only, or for both PSC and PRAMS. However, applications for CHIPS must also include proposals for PSC and PRAMS. Applicants who submit proposals for CHIPS must indicate whether they wish to be considered for PSC and/or PRAMS if their CHIPS proposal is not funded.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Health People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the prior areas of Maternal and Infant Health and Surveillance and Data Systems. (For ordering a copy of Healthy People 2000, see the Section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**)

Authority

This program is authorized under section 301(a) (42 U.S.C. 241(a)) and section 317(k)(3) (42 U.S.C. 247b(k)(3)) of the Public Health Service Act, as amended.

Eligible Applicants

For this announcement, the term "state" also includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, the Northern Mariana Islands, Guam, the Republic of the Marshall Islands, and the Republic of Palau.

A. PSC Programs

Eligible applicants are the city of New York (the only city public health agency designated as a registration area for vital statistics) and the official state public health agencies excluding Colorado, Maryland, and Missouri, which previously received CDC funds and have implemented this program under a prior announcement for Smoking Cessation In Pregnancy (SCIP) Research and Demonstration projects.

B. PRAMS Programs (2 Categories)

1. Maintenance of Existing Programs

Eligible applicants are the six official public health agencies designated as vital statistics registration areas with an approved project period for PRAMS that expired in FY 1990: Indiana, Maine, Michigan, Oklahoma, West Virginia, and the District of Columbia.

2. Development of New PRAMS Programs

Eligible applicants are the city of New York (the only city public health agency designated as a registration area for vital statistics) and the official state public health agencies designated as registration areas for vital statistics, excluding those eligible under Category 1 above.

C. CHIPS Programs

Eligible applicants are the city of New York, and the official state public health agencies designated as registration areas for vital statistics. Applications for CHIPS must include PRAMS and PSC proposals. Although not eligible for PSC funding, Colorado, Maryland, and Missouri must include a description of their PSC program when applying for CHIPS.

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Authority

This program is authorized under section 301(a) (42 U.S.C. 241(a)) and section 317(k)(3) (42 U.S.C. 247b(k)(3)) of the Public Health Service Act, as amended.

Eligible Applicants

For this announcement, the term "state" also includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, the Northern Mariana Islands, Guam, the Republic of the Marshall Islands, and the Republic of Palau.

A. PSC Programs

Eligible applicants are the city of New York (the only city public health agency designated as a registration area for vital statistics) and the official state public health agencies excluding Colorado, Maryland, and Missouri, which previously received CDC funds and have implemented this program under a prior announcement for Smoking Cessation In Pregnancy (SCIP) Research and Demonstration projects.

B. PRAMS Programs (2 Categories)

1. Maintenance of Existing Programs

Eligible applicants are the six official public health agencies designated as vital statistics registration areas with an approved project period for PRAMS that expired in FY 1990: Indiana, Maine, Michigan, Oklahoma, West Virginia, and the District of Columbia.

2. Development of New PRAMS Programs

Eligible applicants are the city of New York (the only city public health agency designated as a registration area for vital statistics) and the official state public health agencies designated as registration areas for vital statistics, excluding those eligible under Category 1 above.

C. CHIPS Programs

Eligible applicants are the city of New York, and the official state public health agencies designated as registration areas for vital statistics. Applications for CHIPS must include PRAMS and PSC proposals. Although not eligible for PSC funding, Colorado, Maryland, and Missouri must include a description of their PSC program when applying for CHIPS.

Availability of Funds

Awards are expected to begin on or before September 27, 1991, and are intended for major support of the operational cost of implementing these programs.

A. PSC Programs

Approximately $400,000 will be available in FY 1991 to fund approximately eight PSC awards for a 12-month budget period within a project period of up to 2 years. The average award is expected to be $50,000, ranging from $40,000 to $60,000.

B. PRAMS Programs

Approximately $1,160,000 will be available in FY 1991 to fund approximately six maintenance and six new PRAMS awards for a 12-month budget period within a project period of up to 5 years. The average award for recipients developing only mail/telephone surveillance systems is expected to be $65,000, ranging from $40,000 to $75,000. The average award for recipients who must supplement the basic approach with hospital-based data collection is expected to be $120,000, ranging from $100,000 to $125,000.

C. CHIPS Programs

Approximately $900,000 will be available in FY 1991 to fund approximately two CHIPS Programs for a 12-month budget period within a project period of up to 5 years. The average award is expected to be $400,000 including both the PSC and the PRAMS components. Awards are expected to range from $300,000 to $450,000 including both PSC and PRAMS components. Requests for direct assistance for a lead epidemiologist for CHIPS are encouraged.

Continuation awards for PSC, PRAMS, and CHIPS within the project period will be made on the basis of satisfactory performance and the availability of funds. Funding estimates may vary and are subject to change.

Purpose

The purposes of these cooperative agreements are:

A. PSC Programs

Assist public health agencies in the design, development, implementation, and evaluation of prenatal smoking cessation programs that are integrated into currently existing material and infant health programs in an effort to reduce state and national low birth-weight (LBW) rates.

B. PRAMS Programs

Assist public health agencies in: (1) Establishing and maintaining state-specific, population-based surveillance of selected material behaviors that occur during pregnancy and the child's early infancy and (2) generating state-specific data for planning and evaluating perinatal health programs.

C. CHIPS Programs

Provide the means to develop a multidisciplinary team of individuals dedicated to building the recipient's analytic capacity to use epidemiologic and surveillance data to address the health problems that affect its women, infants, and children.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting specified activities under section A. below, and CDC shall be responsible for conducting activities under section B. The applications should be presented in a manner that demonstrates the applicant's ability to address the proposed activities in a collaborative manner with CDC.

A. Recipient Activities

1. Infrastructure Development—Develop a plan that defines how the proposed programs will be integrated into the appropriate organizational structure, and how cooperation with the appropriate units within the organization will be attained including the coordination of data development and analysis activities with other Federal Maternal and Child Health (MCH) data requirements, specifically MCH Block Grant and Year 2000 Objectives and Healthy Start activities. If the applicant or a community within the applicant's jurisdiction has applied for Healthy Start Initiative funds, the plan for CHIPS or PRAMS should describe how CHIPS and, in particular, PRAMS will be used to assist with the evaluation of Healthy Start activities. If the applicant or a community within the applicant's jurisdiction has applied for Healthy Start Initiative funds applies for PSC, the plan should describe, at a minimum, how PSC will enhance Healthy Start activities to decrease infant mortality.

2. Program Plan Development—Develop and maintain a program plan for the major components of each program for which assistance is requested.

3. Program Implementation—Develop and maintain an implementation plan for the major components of each program for which assistance is requested.

4. Program Evaluation and Quality Assurance—Develop and maintain an evaluation and quality assurance plan for the major components of each program for which assistance is requested. Plans for data development and analysis will be designed to assure coordination with the responsiveness to other reporting requirements including Title V.

B. CDC Activities

For each of the programs under this announcement, CDC will collaborate in the development of operational procedures and written protocols, the evaluation of progress toward stated objectives, and the exchange of information among recipient agencies.

1. PSC Program

a. Assist in the selection of appropriate state-specific interventions and in the development of protocols for intervention delivery.

b. Assist states in the identification of appropriate training methods and resources necessary for providing training to staff responsible for implementation of the intervention.

c. Assist states in identifying data needs for program evaluation, designing data collection instruments, and in selecting appropriate methods and software for program evaluation.

d. Facilitate the exchange of information among SCIP and PSC states, and assist states in program monitoring and problem resolution activities.

2. PRAMS

a. Assist in the preparation and revision of state-specific questions and the common questions at agreed upon intervals and the development of computer programs for sampling.

b. Provide specific variable descriptions and format layouts of all data files, written guidelines and technical assistance for data cleaning and editing; develop statistical weights for the analysis of PRAMS data; install program software and provide documentation for operations management, questionnaire data entry, and the development of an analysis database.

c. Assist in monitoring and provide technical assistance to resolve problems regarding data collection procedures, response rates, unbiased and estimate omissions sampling procedures, and the completeness of database files.

d. Provide training for recipient agency staff in epidemiologic analytic

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techniques and the use of program and sample survey analysis software.

3. CHIPS

a. Collaborate in the post-award development of a 5-year plan of activities.

b. Assist in the implementation of PSC and the design and implementation of other intervention programs to reduce behavioral risk factors for poor pregnancy outcome.

c. Assist in the design and implementation of PRAMS and other surveillance systems and the development of protocols for special studies and other epidemiological research.

d. Assist in the analysis and interpretation of existing data and provide technical support in the areas of vital record linkage.

e. Develop and provide a sample protocol for evaluating state-based CHIPS programs.

Evaluation Criteria

Applications will be reviewed, evaluated, and scored individually by program-specific (PSC, PRAMS, and CHIPS) objective review committees on the basis of the following criteria:

A. Background and Need

The extent to which the application describes and presents appropriate data indicating an understanding of the problem, the program for which assistance is requested, and the purpose of these cooperative agreements. (Maximum scores: PSC 15 Points, PRAMS Maintenance 35 Points, PRAMS New 30 Points, and CHIPS 10 Points)

B. Plan of Operation

Part I

The degree to which the plan addresses the stated needs, is likely to achieve the purposes of these cooperative agreements, and describes the specific roles and responsibilities of participating organizational units and program personnel. (Maximum scores: PSC 60 Points, PRAMS Maintenance 30 Points, PRAMS New 35 Points, and CHIPS 40 Points)

Part II (PRAMS only)

The degree to which the application describes the process for registering births in the state. (Maximum scores: PRAMS Maintenance 20 Points and PRAMS New 25 Points)

C. Timetable

The degree to which the application provides a complete and achievable timetable of appropriate events. (Maximum scores: PSC 10 Points, PRAMS Maintenance 10 Points, PRAMS New 5 Points, and CHIPS 10 Points)

D. Evaluation

The adequacy of the plan to monitor progress toward the stated objectives. (Maximum scores: PSC 15 Points, PRAMS Maintenance 5 Points, PRAMS New 5 Points, and CHIPS 10 Points)

E. Budget

The degree to which the proposed budget is reasonable, consistent with the problems identified and the scope of the program proposed to address those problems, and the intended use of cooperative agreement funds; and clearly reflects the applicant's intent to commit non-federal resources to support the operational costs of these programs. (Not Scored)

F. CHIPS Applications Will Receive Weighted Scores for Their PSC and PRAMS Components Determined by the Program-Specific Objective Review Committee

1. PSC Weighted Evaluation Score (Maximum 10 points) The applicant's total PSC score (as determined by the PSC Objective Review Committee) times a factor of 0.10.

2. PRAMS Weighted Evaluation Score (Maximum 20 points) The applicant's total PRAMS score (as determined by the PRAMS Objective Review Committee) times a factor of 0.20.

Funding Priorities

Priority will be given to eligible applicants that have communities with the highest infant mortality and low birthweight rates.

Priority for PSC funding will be given to applicant states with higher rates of smoking prevalence. Higher statewide, community, or subgroup rates could be the basis of determining this priority.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. This Order establishes a system for state and local government review of proposed Federal assistance applications. Applicants should contact their state Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOCs is included in the application kit. The due date for state process recommendations will be 30 days after the application deadline date for new and competing continuation awards (the appropriations for these financial assistance awards were received late in the fiscal year and would not allow for an application receipt date which would accommodate the 60 day state recommendation process within fiscal year 1991). If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to the Centers for Disease Control, Procurement and Grants Office, Grants Management Branch, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305. The granting agency does not guarantee to "accommodate or explain" for state process recommendations it receives after that date.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance Number is 93.283.

Other Requirements

Paperwork Reduction Act

Projects involving the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects (PRAMS)

Applicants must identify and obtain review and approval from an Institutional Review Board (IRB). No data collection involving human subjects may begin until these regulations (45 CFR 46, Protection of Human Subjects) have been met.

Application Submission and Deadline

The original and two copies of the application (Form PHS 5161-1) must be submitted to Candice Nowicki, Grants Management Officer, Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 300, Mailstop E14, Atlanta, Georgia 30305, on or before August 16, 1991.

A. Deadline: Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to the independent review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

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2. Sent on or before the deadline date and received in time for submission to the independent review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

B. Late Applications: Applications that do not meet the criteria in A(1) or A(2) are considered late applications. Late applications will not be considered in the competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description, a copy of the Guidelines for Establishment and Maintenance of Programs, an application package, and business management technical assistance may be obtained from Leah D. Simpson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., room 300, Mailstop E14, Atlanta GA 30305; (404) 842-6594 or FTS 236-6594.

Please refer to Announcement Number 165 when requesting information and submitting any application in response to this announcement.

Programmatic technical assistance may be obtained from:

PSC: R. Louise Floyd, R.N., D.S.N., Project Officer, Program Services and Development Branch, Division of Reproductive Health, Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, 1600 Clifton Road NE., Mailstop K22, Atlanta, GA 30333; (404) 488-5227 or FTS 236-5227.

PRAMS: Eileen P. Gunter, R.N., M.P.H., Project Officer, Program Services and Development Branch, Division of Reproductive Health, Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, 1600 Clifton Road NE., Mailstop K22, Atlanta, GA 30333; (404) 488-5227 or FTS 236-5227.

CHIPS: Dan Sadler, M.P.A., Project Officer, Pregnancy and Infant Health Branch, Division of Reproductive Health, Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, 1600 Clifton Road NE., Mailstop K23, Atlanta, GA 30333; (404) 488-5187 or FTS 236-5187.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock No. 017-001-00473-1) through: Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, Telephone (202) 783-3238.

Dated: August 6, 1991

Robert L. Foster,

Acting Director, Office of Program Support Centers for Disease Control.

[FR Doc. 91-19056 Filed 8-9-91; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 91E-0225]

Determination of Regulatory Review Period for Purposes of Patent Extension; Monopril®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Monopril® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nancy E. Pirt, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-607) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Monopril®. Monopril® (fosinopril sodium) is indicated for the treatment of hypertension. It may be used alone or in combination with thiazide diuretics. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Monopril® (U.S. Patent No. 4,337,201) from E.R. Squibb and Sons, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated July 2, 1991, advised the Patent and Trademark office that this human drug product had undergone a regulatory review period and that the approval of Monopril® represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the regulatory review period for Monopril® is 2,710 days. Of this time, 1,797 days occurred during the testing phase of the regulatory review period, while 913 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective: December 16, 1983. The applicant claims December 14, 1983, as the date the investigational new drug application (IND) for Monopril® became effective. However, FDA records indicate that the IND effective date was December 16, 1983.

2. The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act: November 15, 1988. FDA has verified the applicant's claim that the new drug application (NDA) for Monopril® (NDA 19-915) was filed on November 15, 1988.

3. The date the application was approved: May 16, 1991. FDA has

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verified the applicant's claim that NDA 19–915 was approved on May 16, 1991.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 2 years of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before October 11, 1991, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before February 8, 1991, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 6, 1991.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 91–19118 Filed 8–9–91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91E-0224]

Determination of Regulatory Review Period for Purposes of Patent Extension; Orcolon®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Orcolon® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nancy E. Pirt, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved for marketing the medical device Orcolon®. Orcolon® is indicated for use as a surgical aid in anterior segment surgery, including cataract extraction and intraocular lens implantation. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Orcolon® (U.S. Patent No. Re. 32,969) from Seymour F. Trager and Victoria S. Chylinski. The Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated July 2, 1991, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of Orcolon® represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Orcolon® is 1,551 days. Of this time, 1,141 days occurred during the testing phase of the regulatory review period, while 410 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date a clinical investigation involving this device was begun: December 31, 1986. The applicant claims October 13, 1986, as the date the investigational device exemption (IDE) became effective. However, FDA records indicate that the IDE was conditionally approved on December 31, 1986.

2. The date an application was initially submitted with respect to the device under section 515 of the Federal Food, Drug, and Cosmetic Act: February 13, 1990. The applicant claims July 29, 1987, as the date the premarket approval application (PMA) for Orcolon® (PMA No. P870044) was submitted. However, FDA records indicate that PMA No. P870044 was declared not fileable three times by FDA before being withdrawn by the applicant on June 27, 1988. A second application (PMA No. P900010) was submitted on February 13, 1990 and was accepted by FDA.

3. The date the application was approved: March 29, 1991. FDA has verified the applicant's claim that PMA No. P900010 was approved by FDA on March 29, 1991.

The determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension In its application for patent extension, this applicant seeks 888 days of patent term extension.

Anyone with knowledge that any of the dates are published is incorrect may, on or before October 11, 1991, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before February 8, 1992, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

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FDA has determined that the applicable regulatory review period for Orcolon® is 1,551 days. Of this time, 1,141 days occurred during the testing phase of the regulatory review period, while 410 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date a clinical investigation involving this device was begun: December 31, 1986. The applicant claims October 13, 1986, as the date the investigational device exemption (IDE) became effective. However, FDA records indicate that the IDE was conditionally approved on December 31, 1986.

2. The date an application was initially submitted with respect to the device under section 515 of the Federal Food, Drug, and Cosmetic Act: February 13, 1990. The applicant claims July 29, 1987, as the date the premarket approval application (PMA) for Orcolon® (PMA No. P870044) was submitted. However, FDA records indicate that PMA No. P870044 was declared not fileable three times by FDA before being withdrawn by the applicant on June 27, 1988. A second application (PMA No. P900010) was submitted on February 13, 1990 and was accepted by FDA.

3. The date the application was approved: March 29, 1991. FDA has verified the applicant's claim that PMA No. P900010 was approved by FDA on March 29, 1991.

The determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension In its application for patent extension, this applicant seeks 888 days of patent term extension.

Anyone with knowledge that any of the dates are published is incorrect may, on or before October 11, 1991, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before February 8, 1992, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 2, 1991.

Allen B. Duncan,

Acting Associate Commissioner for Health Affairs.

[FR Doc. 91–19119 Filed 8–9–91; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting, National Diabetes Advisory Board

Pursuant to Public Law 92–463, notice is hereby given of the National Diabetes Advisory Board's meeting date which will be September 22–24, 1991. The Advisory Board meeting will be in conjunction with the Technical Advisory Committee. The meeting will begin at 7 p.m. on September 22, 1991, and recess at 9:30 p.m. The meeting will reconvene at 8 a.m. on September 23, 1991, and recess at 4:30 p.m. The meeting will reconvene at 8 a.m. on September 24, 1991, and adjourn approximately 4:30 p.m. The Board will meet at the Center for Disease Control, Atlanta, Georgia. The purpose of the meeting is to sponsor a workshop on Diabetes Translation from 1 p.m. to 5 p.m. on September 23, 1991 and from 8 a.m. to noon on September 24, 1991. The Board's current and future activities will be discussed from 1:15 p.m. until approximately 4:30 p.m. on September 24, 1991. Although the entire meeting will be open to the public, attendance will be limited to space available.

For any further information, please contact Mr. Raymond M. Kuehne, Executive Director, National Diabetes Advisory Board, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 496–6045. His office will provide, for example, a membership roster of the Board and an agenda and summaries of the actual meetings.

Dated: July 29, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91–19012 Filed 8–9–91; 8:45 am]

BILLING CODE 4140-01-M

Consensus Development Conference on The Treatment of Panic Disorder

Notice is hereby given of the NIH Consensus Development Conference on "The Treatment of Panic Disorder," which will be held September 25–27, 1991 in the Masur Auditorium of the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. This conference is sponsored by the National Institute of Mental Health and the NIH Office of Medical Applications of Research.

Panic disorder with and without agoraphobia is a debilitating disorder that may afflict as many as 12 million people in the course of a lifetime. It is characterized by panic attacks, which are bursts of terror that seem to come out of the blue. People suffering from a panic attack often feel like they are having a heart attack, or, alternatively, like they are losing their minds. Panic sufferers often develop agoraphobia secondary to the occurrence of these unexpected panic attacks, and they begin to avoid places where they fear a panic attack may reoccur. If the agoraphobia becomes severe enough, a person may become housebound.

In recent years, a gathering body of research information indicates that selected psychopharmacological and psychosocial treatments are effective with panic disorder with or without a history of agoraphobia. Much controversy has surfaced with respect to the nature of, as well as the most efficacious treatment for, panic disorder.

The conference will bring together experts from both the psychological and psychopharmacological camps and other health care professionals as well as representatives of the public to explore the data and evaluate the treatment technology for panic disorder.

Following a day and half of presentations by experts and discussion by the audience, an independent non-Federal consensus panel will weigh the scientific evidence and write a draft statement in response to the following questions:

- What is the diagnosis, epidemiology, natural history and current practices in panic disorder with and without agoraphobia?
- What are the short-term and long-term effects of acute and extended treatment of this disorder?
- What are the short-term and long-term effects of these treatments? How should these be managed?
- What are the considerations for treatment planning?
- What are the significant questions for future research?

On the third day of the conference, following deliberation of new findings or evidence that might have been presented during the meeting, the panel will present its final consensus statement.

Information on the program may be obtained from: Carol Sadler, Prospect Associates, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, 301–468–6338.

Dated: August 5, 1991.

Bernadine P. Healy,

Director.

[FR Doc. 91–19084 Filed 8–9–91; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Receipt of Conveyance of Mineral Interest Application

ACTION: Notice of Receipt of Conveyance of Mineral Interest Application AZA–25276.

Notice is hereby given that pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, Douglas Land Corporation has applied for conveyance of the federal mineral estate described as follows:

Gila and Salt River Meridian

Parcel 1

T.4N., R.4W.,
  Sec. 7, lots 1 thru 4, inclusive, E½W½, E½;
  Sec. 18, lots 1 thru 4, inclusive, E½W½, E½E½/
T.3N., R.5W.,
  Sec. 3, lots 1 thru 4, inclusive, S½N½, S½;
  Sec. 4, lots 1 thru 4, inclusive, S½N½, S½;
  Sec. 5, lots 1 thru 4, inclusive, S½N½, S½;
  Sec. 6, lots 1 thru 7, inclusive, SE¼NW¼, S½NE¼, E½SW¼, SE¼;
  Sec. 7, lots 1 thru 4, inclusive, E½W½, E½;
  Sec. 8, all, except CAP portion;
  Sec. 9, all, except CAP portion;
  Sec. 10, all;
  Sec. 11, W½;
  Sec. 14, W½;
  Sec. 15, all;
  Sec. 23, E½NE¼, W½NW¼.
T.4N., R.5W.,
  Sec. 1, lots 1 thru 4, inclusive, S½N½, S½;
  Sec. 3, lots 1 thru 4, inclusive, S½N½, S½;
  Sec. 4, lots 1 thru 4, inclusive, S½N½, S½;
  Sec. 5, lots 1 thru 4, inclusive, S½N½, S½;
  Sec. 6, lots 1 thru 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
  Sec. 7, lots 1 thru 4, inclusive, E½W½, E½;
  Sec. 8, all;
  Sec. 9, all;
  Sec. 10, all;
  Sec. 11, all;
  Sec. 12, all;
  Sec. 13, all;
  Sec. 14, all;

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Sec. 15, all;
Sec. 17, all;
Sec. 18, lots 1 thru 4, inclusive, E½W½, E½;
Sec. 19, lots 1 thru 4, inclusive, E½W½, E½;
Sec. 20, all;
Sec. 21, all;
Sec. 22, all;
Sec. 23, all;
Sec. 24, all;
Sec. 25. W½. W½NE¼. SE¼SE¼;
Sec. 26, all;
Sec. 27, all;
Sec. 28, all;
Sec. 29, all;
Sec. 30, lots 1 thru 4, inclusive, E½W½, E½;
Sec. 31, lots 1 thru 4, inclusive, E½W½, E½;
Sec. 34, all;
Sec. 35, all;

T.3., R.6W.,
Sec. 1, lots 1 thru 4, inclusive, S½N½, S½;
Sec. 3, lots 1 thru 2, inclusive, S½NE¼, SE¼;
Sec. 11, E½
Sec. 12, all;

T.4N., R.6W.,
Sec. 25, NE¼, NE¼NW¼, S½NW¼, S½;
Sec. 26, all;
Sec. 27, E½;
Sec. 34, E½;
Sec. 35, all;
Sec. 36, N½, SE¼.

Parcel 2

T.5N., R.4W.,
Sec. 33, S½SW¼NW¼SE¼.

Parcel 3

T.3N., R.5W.,
Sec. 14, W½SE¼.

Parcel 4

T.3N., R.5W.,
Sec. 23, W½NE¼, E½NW¼.

Parcel 5

T.4N., R.4W.,
Sec. 8, E½.

Parcel 6

T.5N., R.4W.,
Sec. 4, SE¼.

Parcel 7

T.5N., R.4W.,
Sec. 9, E½.

Parcel 8

T.5N., R.4W.,
Sec. 10, SW¼NE¼, NW¼SE¼.

Parcel 9

T.5N., R.4W.,
Sec. 33, N½NW¼SW¼SE¼.

Parcel 10

T.5N, R.4W.,
Sec. 4, lot 1
T.6N, R.4W.,
Sec. 33, E½ except west 1100 ft. thereof.

Consisting of 23,540 acres, more or less.

The federal mineral interests may be conveyed in whole or in part. The purpose is to allow consolidation of surface and subsurface ownership for the lands described above, where there are no known mineral values or in those instances where the reservation of ownership of the mineral interest in the United States interferes with or precludes appropriate non-mineral development of the lands and such development would be a more beneficial use of the lands than its mineral development.

Additional information concerning this application may be obtained from the Area Manager, Lower Gila Resource Area, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date of this publication, whichever occurs first.

Dated: August 6, 1991.

Charles R. Frost,

Associate District Manager.

[FR Doc. 91–19055 Filed 8–9–91; 8:45 am]

BILLING CODE 4310-03-M

[NM-030-01-4212-11; NMNM77534]

Recreation and Public Purpose Act Classification, Dona Ana County, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; Recreation and Public Purposes (R&PP) Act classification.

SUMMARY: The following public land in Dona Ana County, New Mexico has been examined and found suitable for classification for lease or conveyance to the Las Cruces Public School District under the provisions of the R&PP Act, as amended (43 U.S.C. 869 et seq.):

T. 22 S., R. 2 E., NMPM
Section 23, N½N½NW¼SW¼, SW¼NW¼

Containing 50.00 acres, more or less.

The school district proposes to use the subject land for the Onate High School site. The subject land has been identified for disposal in the BLM's Record of Decision for the Southern Rio Grande Plan Amendment (December 1986).

EFFECTIVE DATES: Comments on the proposed lease/conveyance or classification of public land must be submitted on or before September 26, 1991.

ADDRESSES: Comments should be sent to the Bureau of Land Management, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Marvin M. James at the address above or at (505) 525–8228.

SUPPLEMENTARY INFORMATION: The lease/patent, when issued, will be subject to the following terms, conditions, and reservations:

1. All valid existing rights of record.
2. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.
3. A right-of-way for ditches and canals constructed by the authority of the United States.
4. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

Upon publication of this notice in the **Federal Register** the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the District Manager, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Dated: Augsut 1, 1991.

C.D. Sykes,

Acting District Manager.

[FR Doc. 91–19096 Filed 8–9–91; 8:45 am]

BILLING CODE 4310-FB-M

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Review of Draft Recovery Plan for the Black-capped Vireo

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Document availability; reopening of comment period.

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District Office, 2015 West
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Manager.

Filed 8–9–91; 8:45 am]

3-M

2–11; NMNM77534]

Public Purpose Act
Dona Ana County, New

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Public Purposes (R&PP)
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N½NW¼SW¼,

acres, more or less.

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land has been
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on for the Southern Rio
endment (December

EFFECTIVE DATES: Comments on the proposed lease/conveyance or classification of public land must be submitted on or before September 26, 1991.

ADDRESSES: Comments should be sent to the Bureau of Land Management, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Marvin M. James at the address above or at (505) 525–8228.

SUPPLEMENTARY INFORMATION: The lease/patent, when issued, will be subject to the following terms, conditions, and reservations:

1. All valid existing rights of record.
2. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.
3. A right-of-way for ditches and canals constructed by the authority of the United States.
4. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

Upon publication of this notice in the **Federal Register** the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the District Manager, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Dated: Augsut 1, 1991.

C.D. Sykes,

Acting District Manager.

[FR Doc. 91–19096 Filed 8–9–91; 8:45 am]

BILLING CODE 4310-FB-M

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Review of Draft Recovery Plan for the Black-capped Vireo

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Document availability; reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that the comment period is reopened for review of the draft recovery plan for the Black-capped Vireo (*Vireo atricapillus*). The reopening of the comment period will allow all interested parties to submit comments on the draft recovery plan.

DATES: The comment period for this draft recovery plan will be reopened August 12, 1991, and will close August 27, 1991. Comments must be received by the closing date. Any comments that are received after the closing date may not be considered in the final decision on this draft recovery plan.

ADDRESSES: Comments and materials should be sent to Robert M. Short, U.S. Fish and Wildlife Service, 711 Stadium Drive East, suite 252, Arlington, Texas 76011. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert Short, Field Supervisor (see address above).

SUPPLEMENTARY INFORMATION:

Background

The black-capped vireo was listed by the Service as an endangered species in 1987. The species is threatened by the brown-headed cowbird (*Molothrus ater*) which parasitizes vireo nests, and habitat loss due to urbanization, range management, overbrowsing, and succession. The current breeding range extends from a few areas in west-central Oklahoma, through central Texas to northern Mexico (Coahuila). A notice of the availability of the draft recovery plan for this species was published in the **Federal Register** (56 FR 26693) on June 10, 1991.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) provides for the development of recovery plans for listed species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided prior to final approval of a new or revised plan. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Service will consider all information presented during the public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The comment period on the draft recovery plan originally closed on July 15, 1991. The Service is reopening the comment period from August 12, 1991, to August 27, 1991. Written comments should be submitted to the Service office listed in the **ADDRESSES** section above.

Author

The primary authority of this notice is Lorena Wada, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, (505) 766–2914 or FTS 474–2914.

Authority: The authority for this action is the Endangered Species Act (16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted).

Dated: August 2, 1991.

James A. Young,

Acting Regional Director.

[FR Doc. 91–18821 Filed 8–9–91; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Outer Continental Shelf; Locations and Dates of Public Hearings Regarding the Draft Environmental Impact Statement for the Proposed Comprehensive Outer Continental Shelf Natural Gas and Oil Resource Management Program for 1992–1997

On August 1, 1991, a **Federal Register** Notice 56 FR 36843 announced the availability of the draft Environmental Impact Statement (EIS) for the Comprehensive Outer Continental Shelf Natural Gas and Oil Resource Management Program for 1992–1997 indicating that the exact dates, times, and locations of public hearings on the draft EIS would be announced at a later date. This notice provides that information.

The purpose of these hearings is to receive specific comments on the adequacy of the draft EIS and to provide the Secretary of the Interior with additional information from both public and private sectors to help evaluate fully the potential environmental effects of the proposed program.

The public hearings are scheduled for the following dates and times at the following locations:

September 10, 1991, Minerals Management Service, Sixth Floor Conference Room, 949 East 36th Avenue, Anchorage, Alaska, 9 a.m. to 1 p.m., Contact: Michael Baffrey, (907) 271–6677.

September 10, 1991, Wilmington Hilton Hotel, 301 North Water Street, Wilmington, North Caroline, 1 p.m. to 4 p.m. and 6 p.m. to 9 p.m., Contact: Keith Good, (703) 787–1052.

September 11, 1991, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana, 2 p.m. to 4 p.m., Contact: Janet Diaz, (504) 736–2540.

September 12, 1991, Marriott International Airport Hotel, 18700 John F. Kennedy Boulevard, Houston, Texas, 7 p.m. to 10 p.m., Contact: Janet Diaz, (504) 736–2540.

September 17, 1991, Gulf Coast Research Laboratory, Ocean Springs Campus, Caylor Building Auditorium, 703 East Beach Drive, Ocean Springs, Mississippi, 7 p.m. to 10 p.m., Contact: Janet Diaz, (504) 736–2540.

September 18, 1991, Ramada Resort, 600 South Beltline Highway, Mobile, Alabama, 7 p.m. to 10 p.m., Contact: Janet Diaz, (504) 736–2540.

September 18, 1991, Santa Maria Hilton Hotel, 3455 Skyway Drive, Santa Maria, California, 1 p.m. to 4 p.m. and 6 p.m. to 9 p.m., Contact: Mike McCrary, (805) 389–7865.

September 19, 1991, Holiday Inn Bay Beach, 51 Gulf Breeze Parkway, Gulf Breeze, Florida, 7 p.m. to 10 p.m., Contact: Janet Diaz, (504) 736–2540.

Interested individuals, representatives of organizations, and public officials who wish to testify at the hearings are requested to contact the person listed above for the particular location at least 5 days prior to the hearings. Time limitations may make it necessary to limit the length of each oral presentation to 5 minutes or less. An oral statement may be supplemented, however, by a more complete statement which should be submitted to the hearing officer at the time of the oral presentation. After the presentation of oral statements by those who have preregistered, if time is still available during the period of time listed for the hearings, other individuals will be given an opportunity to be heard.

Written comments on the draft EIS, including comments from individuals unable to present oral statements or to attend the hearings, will be accepted until October 29, 1991. All written comments should be mailed to the Director, Minerals Management Service, 381 Elden Street, Mail Stop 4320, Herndon, Virginia 22070–4817, Attention: Debra Purvis. Hand deliveries to the Department of the Interior may be made to room 4230, 1849 C Street, NW., Washington, DC 20240. Specify on the envelope or package "Comprehensive Program draft EIS." Both the oral and written statements will be given equal consideration. After all the public hearing testimony and written comments on the draft EIS have been reviewed and analyzed, a final EIS will be prepared.

Dated: August 7, 1991.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 91–19080 Filed 8–9–91; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Meetings; National Park System Advisory Board's History Areas Committee, and National Park System Advisory Board

AGENCY: National Park Service, Interior.

ACTION: Notice of meetings of the National Park System Advisory Board and of the Board's History Areas Committee.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. appendix (1988), that meetings of the National Park System Advisory Board and of its History Areas Committee will be held in early October, 1991 in Estes Park, Colorado.

The Board's History Areas Committee will convene at 9 a.m., Saturday, October 5, 1991 in McLaren Hall, which is in the headquarters complex of Rocky Mountain National Park, along route 36 on the west side of Estes Park. Adjournment will be at about 5:30 p.m. A primary purpose of the Committee's meeting will be to evaluate studies of historic properties in order to advise the full National Park System Advisory Board at their meeting on the qualifications of properties being proposed for National Historic Landmark designation, and to recommend to the full Board those properties that the Committee finds meet the criteria of the National Historic Landmarks program. Also to be discussed will be five properties proposed for study as potential additions to the National Park System; for these properties the Committee will determine from existing information on hand whether to urge that the full Board recommend that the properties be studied. The Committee is chaired by Dr. Holly Anglin Robinson of Alpharetta, Georgia.

Presentations and discussions will include the following properties being nominated for National Historic Landmark designation: 10 maritime properties located in Connecticut, Florida, Maine and New York; 18 women's history properties located in Alabama, California, the District of Columbia, Florida, Kentucky, Maryland, Massachusetts, Michigan, New Jersey, New Mexico, New York, Pennsylvania and West Virginia; a German theater in Wisconsin; a presidential site in Texas; and an addition to a site in Kansas relating to the Constitution theme study. The five properties being reviewed for possible study as potential additions to the National Park System are located in Florida, Montana, South Dakota and Alaska (2).

The meeting of the full National Park System Advisory Board will convene at 1 p.m., Sunday, October 6, 1991 in the Trail Ridge Room of the Holiday Inn of Estes Park, 101 South Saint Vrain Street, Estes Park, Colorado (junction of routes 36 and 7), continuing until about 5:30 p.m. The Board will reconvene at 8 a.m. the next morning, Monday, October 7, and conclude its meeting at about noon. In addition to receiving reports and/or recommendations from its History Areas Committee as indicated above, the Board will also receive reports and/or recommendations from its other committees:

—Natural Areas Committee (three natural areas that may be studied for potential inclusion in the National Park System (located in North Carolina, New Jersey and New Mexico), and the status of the National Natural Landmark program);

—Special Projects Committee (Columbus Quincentennial, park-related tourism and perhaps other topics); and

—Secretarial Initiatives Committee (Park education, volunteerism, urban park issues, partnership parks and perhaps other topics).

The Board will also be addressed by senior personnel of the Department of the Interior and the National Park Service. Board members will tour Rocky Mountain National Park on October 5 and 6. The Board is chaired by Mr. Bryan Wagner of New Orleans, Louisiana.

The business meetings of both the Board and its History Areas Committee will be open to the public. Space and facilities to accommodate members of the public are limited and persons will be accommodated on a first-come, first-served basis. Anyone may file with the Board or its History Areas Committee a written statement concerning matters to be discussed. The Chairmen may also permit attendees to address the Committee or Board, but may restrict the length of presentations as necessary to allow the Committee and the Board to complete their agendas within the allotted times.

This is also to notify all concerned and interested parties that because the Federal Government's Fiscal Year 1992 begins on October 1, 1991, there is a possibility that budget authority may not be available in time to allow these meetings to occur. If no appropriation or continuing resolution has been passed, or if budget authority is for any other reason not available, the meetings may be canceled on very short notice. Those planning to attend may telephone Mr. David L. Jervis, Office of Policy, National Park Service, (P.O. Box 37127, Washington, DC 20013–7127) at 202–208–4030 on October 1 or 2 to ascertain whether the meetings will occur.

Persons wishing further information on the October 6–7 Board meeting may also contact Mr. Jervis. Anyone wishing further detail on the potential National Historic Landmarks to be discussed at the October 4 History Areas Committee meeting may contact Mr. Ben Levy or Ms. Patty Henry, History Division, National Park Service, P.O. Box 37127, Washington, DC 20013–7127 (telephone 202–343–8164). Persons wishing further detail on either the natural or historic properties being reviewed for possible study as potential additions to the National Park System may contact Mr. Warren Brown, Park Planning and Protection Division, National Park Service, Washington, DC 20013–7127 (telephone 202–208–4285).

Draft summary minutes of the meetings will be available for inspection about 12 weeks after the meetings, in room 1220, Main Interior Building, 18th and C Streets NW., Washington, DC.

Herbert S. Cables, Jr.,

Deputy Director.

[FR Doc. 91–19006 Filed 8–9–91; 8:45 am]

BILLING CODE 4310-70-M

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in the office of the Martin E. Segal Company, Conference Room 7A, One Park Avenue, New York, New York, on September 20, 1991, beginning at 8:30 a.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in title 29 U.S. Code, section 1242(a)(1)(B).

A determination as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) has been

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Draft summary minutes of the meetings will be available for inspection about 12 weeks after the meetings, in room 1220, Main Interior Building, 18th and C Streets NW., Washington, DC.

Herbert S. Cables, Jr.,

Deputy Director.

[FR Doc. 91–19006 Filed 8–9–91; 8:45 am]

BILLING CODE 4310-70-M

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Meeting

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The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in title 29 U.S. Code, section 1242(a)(1)(B).

A determination as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) has been

made that the subject of the meeting falls within the exception to the open meeting requirement set forth in title 5 U.S. Code, section 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: August 7, 1991.

Leslie S. Shapiro,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 91–19115 Filed 8–9–91; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 49–91]

Privacy Act of 1974; New System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that the Department of Justice proposes to establish a new system of records to be maintained by the Immigration and Naturalization Service (INS).

The Secondary Verification Automated Log (SVAL), JUSTICE/INS–016, is a new off-line personal computer system of records for which no public notice consistent with the provisions of 5 U.S.C. 552a(e) (4) and (11) has been published.

5 U.S.C. 552a(e) (4) and (11) provide that the public be given a 30-day period in which to comment on the new routine uses of a proposed system of records. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 60-day period in which to conclude its review of the system. Therefore, please submit any comment by September 11, 1991. This public, OMB and the Congress are invited to submit any comments to Patricia E. Neely, Staff Assistant, Systems Policy Staff, Justice Management Division, Department of Justice, Washington, DC 20536, (Room 1103 CAB Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report on this system to OMB and the Congress.

The system description is printed below.

Dated: July 29, 1991.

Harry H. Flickinger,

Assistant Attorney General for Administration.

JUSTICE/INS–016

SYSTEM NAME:

Secondary Verification Automated Log (SVAL).

SYSTEM LOCATION:

Central, Regional, District, and other offices of the Immigration and Naturalization Service (INS) in the United States as detailed in JUSTICE/INS–999.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Immigrant aliens apply for Federal entitlements for whom INS receives a Form G–845, Document Verification request, which is submitted by Federal and State entitlements agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Temporary paper records include Form GF–854 as submitted by the entitlement agencies and contain the following data: Alien name and identifying number, name of the entitlement agency, and immigration status as reported by the alien applicant. INS will update Form G–845 with immigration status information and return it to the entitlement agency. However, identical data, together with Form G-845 disposition data, will be recorded and maintained by INS on hard and floppy disks as a record of secondary verifications made by the entitlement agencies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

8 U.S.C. 1255a, 8 U.S.C. 1324a, 8 U.S.C. 1360 and 42 U.S.C. 1320b–7.

PURPOSE(S):

The SVAL, JUSTICE/INS–016 system is used to maintain records of a second attempt by entitlement agencies to verify immigration status by comparing paper documents (known as the "secondary verification"). Secondary verification is conducted where eligibility for certain benefits was not or could not be confirmed through direct access to an INS automated database entitled "Alien Status Verification Index" (ASVI), JUSTICE/INS–009 (known as the "primary verification"). Specifically, INS is asked to compare the entitlement agency's paper record, Form G–845 (which contains information provided by the immigrant aliens applying for Federal entitlements), with INS paper records; complete the Form relative to immigration status; and return it to the entitlement agency. The SVAL, JUSTICE/INS–016 system is maintained to track the interim and final disposition of the second request to verify eligibility which may require referral to an INS district office.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant information contained in this system of records may be disclosed to the following:

A. To a Federal, State, or local government agency in response to a request for information on the status and/or disposition of a document verification request submitted by that agency.

B. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

C. To the General Services Administration and the National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Until they have been processed and returned to the entitlement agency, Forms G–845 are kept in a card index file. Data extracted from the form is stored in personal computers on hard and floppy disks.

RETRIEVABILITY:

These records are retrieved by serial number, A-file number and/or name of immigrant applicant.

SAFEGUARDS:

INS offices are located in buildings under guard and access to the premises is by official identification. Access to personal computers is limited to INS employees and access to records in this system is further restricted through user identification and discrete password functions to assure that accessibility is limited.

RETENTION AND DISPOSAL:

Form G–845 is retained long enough to complete the verification, at which time the form is returned to the entitlement agency. Completed verifications are archived on to a storage disk monthly and destroyed five (5) years after the last month contained on the disk. Disposition authority is INS Disposition Schedule NI–85–90–3.

SYSTEM MANAGER AND ADDRESS:

Director, Records Management Branch, Records Systems Division, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536.

NOTIFICATION PROCEDURES:

Address your inquiries about the system in writing to the system manager identified above.

RECORDS ACCESS PROCEDURES:

Make all requests for access in writing to the Freedom of Information Act/Privacy Act (FOIA/PA) Officer at the nearest INS Office, or in the INS office maintaining the desired records (if known) by using the List of Principal Offices of the Immigration and Naturalization Service Appendix, JUSTICE/INS-999, published in the **Federal Register**. Clearly mark the envelope and letter "Privacy Act Request." Provide the A-file number and/or the full name and date of birth, with a notarized signature of the individual who is the subject of the records, and a return address.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information in the record to the FOIA/PA Officer at one of the addresses identified above. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment thereof. Clearly mark the envelope and letter "Privacy Act Request." Provide the A-file number and/or the full name and date of birth, with a notarized signature of the individual who is subject of the record, and a return address.

RECORD SOURCE CATEGORIES:

Form G-845, Request for Document Verification (furnished by entitlement agencies) and INS immigration status records.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 91-18840 Filed 8-9-91; 8:45 am]

BILLING CODE 4410-10

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 91-71]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agent Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by September 11, 1991. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Mr. D. A. Gerstner, NASA Agency Clearance Officer, Code NTD, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700-0048), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (703) 271-5542.

Reports

Title: Patents.
OMB Number: 2700-0048.
Type of Request: Revision.
Frequency of Report: Annually.
Type of Respondent: Non-Profit.
Number of Respondents: 3019.
Responses per Respondent: 1.0.
Annual Responses: 3019.
Hours per Response: 1.0.
Annual Burden Hours: 3019.
Abstract-Need/Uses: Reports and records regarding patents are required to comply with statutes and the OMB and NASA implementing regulations.

August 6, 1991.

D. A. Gerstner,

Director, IRM Policy Division.

[FR Doc. 91-19073 Filed 8-9-91; 8:45 am]

BILLING CODE 7510-01-M

Notice (91-72)

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by September 11, 1991. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Mr. D. A. Gerstner, NASA Agency Clearance Officer, Code NTD, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700-0052), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (703) 271-5542.

Reports

Title: NASA FAR Supplement , part 18-27, Patents, Data and Copyrights.
OMB Number: 2700-0052.
Type of Request: Extension.
Frequency of Report: As reportable action occurs.
Type of Respondent: State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.
Number of Respondents: 1822
Responses per Respondent: 1.2.
Annual Responses: 2186.
Hours per Response: 8.
Annual Burden Hours: 17491.
Abstract-Need/Uses: Records and reports regarding patents and data are required to comply with statutes and the OMB and NASA implementing regulations.

Dated: August 6, 1991.

D. A. Gerstner,

Director, IRM Policy Division.

[FR Doc. 91-19074 Filed 8-9-91; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL COMMISSION ON SEVERELY DISTRESSED PUBLIC HOUSING

Meeting

AGENCY: National Commission on Severely Distressed Public Housing.

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Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by September 11, 1991. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Mr. D. A. Gerstner, NASA Agency Clearance Officer, Code NTD, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700–0052), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (703) 271-5542.

Reports

Title: NASA FAR Supplement , part 18-27, Patents, Data and Copyrights.
OMB Number: 2700-0052.
Type of Request: Extension.
Frequency of Report: As reportable action occurs.
Type of Respondent: State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.
Number of Respondents: 1822
Responses per Respondent: 1.2.
Annual Responses: 2186.
Hours per Response: 8.
Annual Burden Hours: 17491.
Abstract-Need/Uses: Records and reports regarding patents and data are required to comply with statutes and the OMB and NASA implementing regulations.

Dated: August 6, 1991.

D. A. Gerstner,

Director, IRM Policy Division.

[FR Doc. 91–19074 Filed 8–9–91; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL COMMISSION ON SEVERELY DISTRESSED PUBLIC HOUSING

Meeting

AGENCY: National Commission on Severely Distressed Public Housing.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Commission on Severely Distressed Public Housing announces a forthcoming meeting of the Commission.

DATES: Thursday, August 15, 1991 9:30–3 (Public Hearing).

ADDRESSES: Hearing Location: 9201 Rainier Avenue South, Seattle Washington.

FOR FURTHER INFORMATION CONTACT: Carmelita Pratt, Administrative Officer, The National Commission on Severely Distressed Public Housing, 1100 L Street NW., room 7121, Washington, DC 20005 (202) 275–6933.

TYPE OF MEETING: Open.

Due to scheduling difficulties, this notice could not be published 15 days prior to this meeting as required by Federal Advisory Committee Act.

Carmelita R. Pratt,

Administrative Officer.

[FR Doc. 91–19054 Filed 8–9–91; 8:45 am]

BILLING CODE 6820-07-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–333–OM, ASLBP No. 91–645–02–OM, Facility Operating License No. DPR–59, EA 91–053; Docket No. 55–8615–SC, ASLBP No. 91–646–02–SC, Senior Reactor Operator License No. SOP–10561–1, EA 91–054]

New York Power Authority (James A. FitzPatrick Nuclear Power Plant) and David M. Manning, Senior Reactor Operator; Memorandum and Order (Setting Prehearing Conference)

August 5, 1991.

The Board will conduct a prehearing conference in these proceedings beginning at 9 a.m. on September 5, 1991 at room 1221, Federal Building, 100 South Clinton Street, Syracuse, New York. All parties or their legal counsel are directed to attend.

The purpose of the conference is to identify issues for hearing; to discuss any need for discovery; to explore settlement possibilities;[1] and to set a schedule for any other prehearing business.

Bethesda, Maryland, August 5, 1991.

For the Atomic Safety and Licensing Board.

Ivan W. Smith,

Chairman, Administrative Law Judge.

[FR Doc. 91–19088 Filed 8–9–91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–312]

Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station); Exemption

I

By letter of December 28, 1989, and supplements of March 30, 1990 and June 24, 1991, the Sacramento Municipal Utility District (SMUD, the licensee), owner and operator of the Rancho Seco Nuclear Generating Station, requested an exemption concerning requirements of several sections of part 55 of title 10 of the Code of Federal Regulations (10 CFR part 55) concerning operator written examinations, operating tests, conditions of licenses, and requalification program requirements. The facility is a pressurized water reactor located in Sacramento County, California, and is currently defueled.

Sections 55.41, 55.43, 55.45, and 55.59 of 10 CFR part 55 pertain to the content required in written examinations and operating tests and the requirements for requalifying operators and senior operators. Sections 55.53(e) and 55.53(f)(2) delineate the requirements for operators to maintain active proficiency.

The 10 CFR part 50 licensee (SMUD) is requesting this exemption from 10 CFR part 55 (Operators' Licenses) because part 55 delineates the operator training and requalification requirements that the part 50 licensee must follow in the course of granting and maintaining operators' licenses.

II

The licensee's proposed action includes exemptions to §§ 55.41, 55.43, 55.45, and 55.59 of 10 CFR part 55 only to the extent that these regulations pertaining to power operations of a nuclear facility in the course of granting and maintaining of operators' licenses for operating power reactors. In addition, the proposed action includes an exemption to § 55.53(e) to the extent that the regulation applies to an operating facility and that it requires that "the licensee shall actively perform the functions of an operator or senior operator on a minimum of seven 8-hour or five 12-hour shifts per calendar quarter." The licensee's proposed action would reduce the requirement for actively performing operator and senior operator functions to 4-hours per calendar quarter. As well, the proposed action includes an exemption to § 55.53(f)(2) to allow the completion of one shift (instead of 40 hours) under the direction of an operator or senior operator to regain an active status.

The licensee's request for exemption from these regulations is based on (1) the cessation of power operation at Rancho Seco on June 7, 1989, (2) the completion of defueling the reactor on December 8, 1989, and (3) the Commission's issuance of a Confirmatory Order on May 2, 1990, prohibiting refueling at Rancho Seco without first receiving approval from the NRC. Defueling the reactor was the last major action associated with a normal operational nuclear facility. The requirements of 10 CFR part 55 for granting and maintaining operators' licenses are designed for operating power reactors. With Rancho Seco in a defueled condition and unable to refuel without NRC approval, the facility is in a static condition with little or no change in daily operating activities. Additionally, the knowledge required of operators and senior operators in a defueled status is far less than that required for an operating facility; therefore, far less time actively performing operator functions would be required each calendar quarter in order to maintain a proficient status for the more limited, non-operating duties to be performed. Likewise, far less time would be required for an operator to regain his proficiency for such limited duties if he failed to meet the minimum proficiency time.

The proposed exemption does not affect the risk of facility accidents because of the defueled condition of the plant. With the reactor vessel defueled and the licensee not intending to resume power operation at Rancho Seco, there are no longer any credible design basis accidents associated with an operating plant from start-up through full-power operation. The design basis accidents for a nuclear facility in a defueled condition are all associated with the loss of the pool water inventory or with fuel handling. Because of the geometric storage arrangement of the fuel assemblies under water, a criticality accident is not considered credible. In addition, the Confirmatory Order of May 2, 1990, prohibiting movement of the fuel to the reactor further diminishes the possibility for a fuel handling accident.

With the reactor defueled, the operators will primarily monitor and maintain the spent fuel pool storage facility to ensure that the special nuclear material continues to be safely stored to ensure that the public health and safety is not compromised. This exemption would enable the licensee to continue to train operators for their principal activities in the defueled condition without expending excessive resources and time training on unrelated power activities. The training which remains relevant to the defueled status, and a requirement to perform operator and senior operator functions for 4 hours each calendar quarter to maintain active proficiency, ensure the protection of the public health and safety and are consistent with the defueled condition of the facility.

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[1] By letter of this date, counsel for the NRC Staff informed members of the Licensing Board that a possible settlement between the Staff and New York Power Authority is under discussion. We infer from Staff's letter that Mr. Manning is not participating in settlement discussions.

The NRC promulgated the requirements of 10 CFR part 55 on the assumption that the operators licensed would be controlling an operating facility which would experience transients and malfunctions from routine start-up through full-power operation. Requiring operator training in areas that would benefit them only during power operations and requiring an inordinate amount of active performance of functions in a defueled status to maintain proficiency as well as to regain proficiency will not significantly enhance or increase the capability needed by licensed operators at Rancho Seco to maintain safety under permanently defueled plant conditions. A special circumstances, as defined in 10 CFR 50.12(a)(2)(ii), exists in that application of the regulations that pertain to power operations would not serve the underlying purpose of the rules.

For these reasons, the staff finds the licensee has provided an acceptable basis to authorize the granting of an exemption in accordance with the provisions of 10 CFR 55.11.

III

Accordingly, the Commission has determined that in accordance with 10 CFR 55.11, this exemption is authorized by law and will not endanger life or property and is in the public interest. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present to justify the exemption. The referenced special circumstances pertain to exemptions to regulations which do not alter the underlying purpose of the regulations.

Based on the foregoing, the Commission hereby grants an exemption as described in Section II above from §§ 55.41, 55.43, 55.45, 55.53(e), 55.53(f)(2), and 55.59 of 10 CFR part 55, only to the extent that these regulations pertain to power operations of a nuclear facility; in the case of §55.53(e) that the regulation requires seven 8-hour shifts or five 12-hour shifts per calendar quarter to maintain active operator and senior operator proficiency; and in the case of § 55.53(f)(2) that the regulation requires 40 hours of shift functions under the direction of an operator or senior operator to regain an active status.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (56 FR 37242, August 5, 1991).

This exemption is effective upon issuance and shall continue in effect so long as the Confirmatory Order to License No. DPR-54 dated May 2, 1990, remains in effect. Removing the Order by the NRC shall nullify the exemption and require full compliance with 10 CFR part 55 in its entirety, unless a further exemption is requested and subsequently granted.

Dated at Rockville, Maryland this 5th day of August 1991.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Director, Division of Advanced Reactors and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 91-19089 Filed 8-9-91; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29524; File No. SR-CSE-91-03]

Self-Regulatory Organizations; Order Granting Partial Accelerated Approval of Proposed Rule Change and Filing of Amendment by the Cincinnati Stock Exchange Relating to the Extension of a Pilot for Preferencing of Public Agency Market and Marketable Limit Orders by Approved Dealers and Other Proprietary Members

August 5, 1991.

I. Introduction

On July 15, 1991, the Cincinnati Stock Exchange, Inc. ("CSE") submitted a proposed rule change to the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), and rule 19b-4 thereunder, and an amendment thereto on July 29, 1991.[1] The CSE requests accelerated approval of a six-month extension of paragraphs (u), (l) and (m) of Exchange Rule 11.9, which modify the Exchange's time priority rules, establishing a six-month pilot preferencing rule.[2] In addition, the CSE requested approval for an amendment to rule 11.9 to remove the limit on the number of issues a Designated Dealer can preference during the pilot period.

The preferencing rule modifies the Exchange's time priority rules to permit a market maker to act as Dealer of the Day and have priority over same-priced market maker or professional agency interest entered prior in time to his bid or offer when the market maker is interacting with public agency market and marketable limit orders that he or she represents as agent. The CSE intended the original proposal to provide market makers with the ability to retain and execute their internal order flow at the best bid or offer, provided the public limit orders on the book have been executed at that price. The time priority rule was designed to create incentives for a market maker/dealer to direct his or her own retail order flow to the Exchange, permitting the market maker/dealer to preference itself over other professionals with respect to order flow that the market maker/dealer is directing to the Exchange.

Originally, as a condition of Commission approval of the preferencing rule, the CSE agreed to propose the rule on a six-month pilot basis and amend the proposal to address Commission concerns regarding: (1) Short-sale arbitrage programs; (2) payment for order flow; (3) the number of issues that a Designated Dealer could preference during the period of the pilot; and (4) length of service as a Designated Dealer. To prevent the use of preferencing to facilitate program trading, the CSE agreed to limit to 60 the number of issues that a Designated Dealer could Preference. The CSE, however, has requested approval of an amendment to the preferencing rule that would remove the limit on the number of issues a Designated Dealer may preference for the remainder of the pilot period. Although the CSE originally requested accelerated approval of this aspect of the proposal, the exchange amended its filing to request accelerated approval only for the extension of the pilot period.[3]

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[1] *See* letter from Kevin S. Fogarty, Vice President, Market Regulation, CSE, to Christine Sakach, Branch Chief, National Market System Branch, Division of Market Regulation, Securities and Exchange Commission, dated July 29, 1991 ("July Letter").

[2] *See* Securities Exchange Act Release No. 28866 (February 7, 1991), 56 FR 5854.

[3] *See* July Letter.

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EXCHANGE

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The CSE requests accelerated approval of a six-month extension of paragraphs (u), (l) and (m) of Exchange Rule 11.9, which modify the Exchange's time priority rules, establishing a six-month pilot preferencing rule.[2] In addition, the CSE requested approval for an amendment to rule 11.9 to remove the limit on the number of issues a Designated Dealer can preference during the pilot period.

The preferencing rule modifies the Exchange's time priority rules to permit a market maker to act as Dealer of the Day and have priority over same-priced market maker or professional agency interest entered prior in time to his bid or offer when the market maker is interacting with public agency market and marketable limit orders that he or she represents as agent. The CSE intended the original proposal to provide market makers with the ability to retain and execute their internal order flow at the best bid or offer, provided the public limit orders on the book have been executed at that price. The time priority rule was designed to create incentives for a market maker/dealer to direct his or her own retail order flow to the Exchange, permitting the market maker/dealer to preference itself over other professionals with respect to order flow that the market maker/dealer is directing to the Exchange.

Originally, as a condition of Commission approval of the preferencing rule, the CSE agreed to propose the rule on a six-month pilot basis and amend the proposal to address Commission concerns regarding: (1) Short-sale arbitrage programs; (2) payment for order flow; (3) the number of issues that a Designated Dealer could preference during the period of the pilot; and (4) length of service as a Designated Dealer. To prevent the use of preferencing to facilitate program trading, the CSE agreed to limit to 60 the number of issues that a Designated Dealer could Preference. The CSE, however, has requested approval of an amendment to the preferencing rule that would remove the limit on the number of issues a Designated Dealer may preference for the remainder of the pilot period. Although the CSE originally requested accelerated approval of this aspect of the proposal, the exchange amended its filing to request accelerated approval only for the extension of the pilot period.[3]

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[2] *See* Securities Exchange Act Release No. 28866 (February 7, 1991), 56 FR 5854.

[3] *See* July Letter.

II. Description of the Proposal and Exchange Rationale

The purpose of the proposed rule change is to extend for six months the original six-month pilot for CSE's preferencing rule. The CSE states that it has sought to increase the amount of retail business transacted on the Exchange. The CSE's preferencing proposal is an attempt to attract more business, with attendant improvements in efficiency and liquidity, to the Exchange. In addition, the CSE states that, although preferenced trading has been growing since its introduction in April, preferenced trading for the month of June still accounted for less than 5% of the Exchange's average daily trading volume. Therefore the Exchange believes that it may be useful for the Commission to extend the pilot period and defer final judgment on the rule until more experience has been obtained with its operation.

Finally, as stated above, the CSE agreed to limit to sixty the number of issues that a Designated Dealer could preference during the original pilot period. The pilot is ending, and the CSE states that no dealer has preferenced anything approaching 60 issues. Nonetheless, the CSE states that interest has been expressed in preferencing issues in numbers greater than this. Therefore, the CSE has requested that, if it is not possible to provide accelerated approval for SR-CSE-91-03 as filed, the Commission give partial accelerated approval, reserving decision on the sixty-issues cap until the comment period has ended, so that as soon as possible during the extension of the pilot, it be allowed to determine, in light of the circumstances as they arise, the number of issues a Designated Dealer can preference. As a condition of removing the sixty-issues limitation, the CSE has agreed to provide the Commission with the following information during the extension of the pilot to aid the Commission in evaluating the effect of lifting the six-issue cap: (1) a list indicating how many Designated Dealers are preferencing in more than sixty issues; (2) a list identifying, in each such case, the issues being preferenced; and (3) reports indicating the volume preferenced in each issue. Further, the CSE has stated that, if the Commission requests it, it would provide available information relating to specific intervals of time.[4]

III. Discussion

The Commission finds that the extension of the pilot is consistent with the Act and the rules and regulations thereunder applicable to the Exchange. Specifically, the proposal is consistent with section 6(b)(5) because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Commission believes that the proposal addresses the CSE's legitimate desire to attract additional business to the exchange.

The Commission finds good cause for approving the extension of the pilot for an additional six months effective upon termination of the original pilot of August 7, 1991, which is prior to the thirtieth day after the date of publication of the notice of filing. The Commission believes that accelerated approval will help the CSE continue its preferencing program without interruption to participating dealers.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the original and amended proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principle office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and be submitted by September 3, 1991.

VI. Conclusion

Based on the foregoing, the Commission has concluded that the extension of the pilot, as it is the same as the original pilot approved on February 7, 1991, is consistent with the requirements of the Act and that it is appropriate to approve the proposal.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the extension of the pilot for an additional six-month period, commencing upon termination of the original pilot on August 7, 1991, be, and hereby is, approved until February 7, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-19039 Filed 8-9-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Application for Unlisted Trading Privileges in an Over-the-Counter Issue and to Withdraw Unlisted Trading Privileges in an Over-the-Counter Issue

August 6, 1991.

On July 15, 1991, the Midwest Stock Exchange, Inc. submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") security, *i.e.*, a security not registered under section 12(b) of the Act.

File No.	Symbol	Issuer
7-7110	SMLS	Scimed Life Systems, Inc., Common Stock, $.05 par value.

The MSE stated that, upon approval of this application, the security will be assigned to a Specialist/Odd Lot Dealer, pursuant to the rules of the Exchange.

The MSE also applied to withdraw UTP pursuant to section 12(f)(4) of the Act on the following issue:

File No.	Symbol	Issuer
7-7111	RTRSY	Reuters Holdings PLC, American Depositary Receipts, No par value.

The Exchange requests that Reuters Holdings PLC be removed from the program due to trading inactivity.

Comments

Interested persons are invited to submit, on or before August 21, 1991, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

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[4] The CSE stated in its July Letter that it will request confidential treatment on all information furnished with regard to the sixty-issue cap.

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Commentators are asked to address whether they believe the requested grant of UTP would be consistent with section 12(f)(2), which requires that, in considering an application for extension of UTP in an OTC security, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such security, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–19043 Filed 8–9–91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

August 6, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

IMCO Recycling, Inc.
  Common Stock, $.10 Par Value (File No. 7–7138)
NutMeg Industries
  Common Stock, $.01 Par Value (File No. 7–7139)
READICARE, Inc.
  Common Stock, $.01 Par Value (File No. 7–7140)
Singer Co., N.V.
  Common Stock, $.01 Par Value (File No. 7–7141)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 27, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-19044 Filed 8-9-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–29523; File No. SR-MSRB-91–05]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Statutory Disqualifications

On June 17, 1991, the Municipal Securities Rulemaking Board ("MSRB" or "Board") submitted a proposed rule change (File No. SR–MSRB–91–05) with the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1) which amends the cross-reference to section 3(a)(39) of the Act contained within MSRB Rule G–4 to correspond with the recently enacted amendments to the Act. The proposed rule change also contains technical word changes.

Notice of the proposed rule change was given in Securities Exchange Act Release No. 29370 (June 26, 1991), 56 FR 30603. The Commission received no comments on the proposal. This order approves the proposal.

In its filing with the Commission, the MSRB stated that rule G–4(a), on statutory disqualifications, disqualifies firms and individuals from participating in the municipal securities business if they are barred or suspended from membership in an exchange or in the National Association of Securities Dealers, Inc. ("NASD") by reason of certain "statutory disqualifications" as defined in the Act or for a violation of NASD or exchange rules concerning just and equitable principles of trade.

In November 1990, President Bush signed into law the Securities Acts Amendments of 1990 ("the 1990 Amendments"). Among other things, the 1990 Amendments amend section 3(a)(39) of the Act, concerning statutory disqualification from self-regulatory organizations, and expand, by incorporation, the list of findings that result in the statutory disqualification. The 1990 Amendments re-letter subparagraphs (D) and (E) of section 3(a)(390 of the Act as subparagraphs (E) and (F), respectively, and add new subparagraph (D), which includes among the conditions that result in statutory disqualification findings by certain foreign entities. In addition, subparagraph (F), which by cross-reference to section 15(b)(4)(G) of the Act makes persons convicted of specified felonies and misdemeanors related to financial matters subject to statutory disqualification, adds "any other felony" to the list of crimes that warrant special review.

The proposed rule change amends the cross-reference to section 3(a)(39) of the Act contained within MSRB rule G–4 to correspond with the recently enacted amendments to the Act and makes some technical word changes.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB. In particular, the Commission finds that the proposal is consistent with section 15B(b)(2)(C) of the Act, which requires in pertinent part that the Board's rules be designed "to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles to trade, to foster cooperation and coordination with persons engaged in regulating * * * transactions in municipal securities * * * and, in general, to protect investors and the public interest."

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that File No. SR–MSRB–91–05 be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 91–19042 Filed 8–9–91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–29522; File No. SR–NASD-91–35]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Pre-Opening Application in the Intermarket Trading System

August 5, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 31, 1991, the National Association of Securities Dealers, Inc.

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The proposed rule change amends the cross-reference to section 3(a)(39) of the Act contained within MSRB rule G–4 to correspond with the recently enacted amendments to the Act and makes some technical word changes.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB. In particular, the Commission finds that the proposal is consistent with section 15B(b)(2)(C) of the Act, which requires in pertinent part that the Board's rules be designed "to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles to trade, to foster cooperation and coordination with persons engaged in regulating * * * transactions in municipal securities * * * and, in general, to protect investors and the public interest."

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that File No. SR–MSRB–91–05 be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 91–19042 Filed 8–9–91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–29522; File No. SR–NASD–91–35]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Pre-Opening Application in the Intermarket Trading System

August 5, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 31, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this release to solicit comments on the proposed rule change from interested persons and simultaneously granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing amendments to the Rules of Practice and Procedure for the Intermarket Trading System/Computer Assisted Execution System Automated Interface ("ITS/CAES Rules"), and Schedules D and G to the NASD By-Laws with respect to the ITS pre-opening application and trading halts. The purpose of the rule change is to conform the NASD Rules with the ITS Plan.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Association is proposing to amend the Rules of Practice and Procedure for the Intermarket Trading System/Computer Assisted Execution System Automated Interface ("ITS/CAES Rules") and Schedules D and G to the NASD By-Laws to comport the language of the NASD rules with the amendments to the ITS Plan recently approved by the Commission.[1] The amendments pertain to the ITS pre-opening application and trading halts and the purpose of the proposed rule change is to codify the approved changes to the ITS Plan in the ITS/CAES Rules.

In addition, the NASD is amending Schedules D and G to clarify that when the NASD acknowledges an exchange trading halt, the NASD trading halt will apply only to those market makers designated as ITS/CAES market makers. NASD trading halts called in response to an exchange operational halt will not be applicable to third market makers in listed stocks that are not participants in the ITS/CAES linkage. Current rules allow the NASD to withdraw quotations and halt trading in listed securities traded through ITS/CAES in recognition of a primary market operational halt, thereby enabling ITS/CAES market makers to receive and respond to pre-opening indications. If all ITS/CAES market makers remain closed during the primary market's operational halt, all will be permitted to participate in the pre-opening application; if, however, one or more ITS/CAES market makers reopen prior to the primary market's reopening, this action will preclude all ITS/CAES market makers from participating in the pre-opening application, unless the primary market specialist elects to accept pre-opening responses. The NASD notes that trading effected by market makers that are not ITS/CAES market makers will not jeopardize the ITS/CAES market makers' ability to respond to pre-opening applications.

The NASD believes the proposed rule change is consistent with sections 15A(b)(6) and 11A(a)(D) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to "foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market," and section 11A calls for the linking of all markets for qualified securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find good cause, pursuant to section 19(b)(2) of the Act, for approving the proposed rule change prior to the 30th day after publication in the **Federal Register** and, in any event, on or before August 5, 1991, the date on which the ITS Pre-Opening Plan Amendments are scheduled to take effect. The NASD makes this request because conforming the NASD rules to the provisions of the ITS Plan amendments already approved by the Commission is necessary for consistent implementation of the new procedures among ITS participants.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof. The Commission believes that accelerated approval is appropriate to ensure the consistent implementation of the ITS Plan amendments regarding new procedures for pre-opening applications and indications of interest following all trading halts. The Commission also finds that approval of the proposed amendments is consistent with and furthers the objectives of sections 15A(b)(6) and 11A(a)(1)(D) of the Act in that the amendments are designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and the ITS system is designed to link all markets for qualified securities through communications and data processing facilities.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by September 3, 1991.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed amendments to the ITS/CAES

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[1] Release No. 34–29193 (May 15, 1991).

Rules and Schedules D and G to the NASD By-Laws be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-19041 Filed 8-9-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29521; File No. SR-NASD-91-32]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Filing and Immediate Effectiveness of Proposed Rule Change Relating to Assessments and Fees

August 5, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 16, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one establishing or changing a fee under section 19(b)(3)(A)(ii) of the Act, which renders the fee effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule amendment to sections 2(c) and 2(e) of Schedule A of the NASD's By-Laws is being made so that these sections reference new section 2(j) of Schedule A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose and bases for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The proposed rule amendment to section 2 of Schedule A is in response to the comments of Commission staff which requested that conforming changes be made to sections 2(c) and 2(e) of Schedule A to reference new section 2(j). Section 2(j) allows the NASD to keep examination fees collected from persons who are granted examination waivers. The NASD made section 2(j) effective on February 8, 1991 and the Commission published this change in the **Federal Register** on March 8, 1991 in Release No. 34-28931; File No. SR-NASD-91-7.

(b) The NASD believes that the proposed rule change is consistent with section 15A(b)(5) of the Act, which requires that the rules of the Association provide for the equitable allocation of reasonable fees and other charges among members and other persons using any facility or system which the Association operates or controls, in that it allows the NASD to partially recover the substantial costs involved in the waiver review process.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The rule change is effective upon filing, pursuant to section 19(b)(3)(A) of the Act in that it affects assessments and fees imposed by the Association exclusively upon its members. At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by September 3, 1991.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-19040 Filed 8-9-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

August 6, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Diasonics, Inc.
  Common Stock, $0.01 Par Value (File No. 7-7134)
READICARE, Inc.
  Common Stock, $0.01 Par Value (File No. 7-7135)
NutMeg Industries
  Common Stock, $0.01 Par Value (File No. 7-7136)
IMCO Recycling, Inc.
  Common Stock, $0.10 Par Value (File No. 7-7137)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 27, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the

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Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by September 3, 1991.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–19040 Filed 8–9–91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

August 6, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Diasonics, Inc.
  Common Stock, $0.01 Par Value (File No. 7–7134)
READICARE, Inc.
  Common Stock, $0.01 Par Value (File No. 7–7135)
NutMeg Industries
  Common Stock, $0.01 Par Value (File No. 7–7136)
IMCO Recycling, Inc.
  Common Stock, $0.10 Par Value (File No. 7–7137)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 27, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–19045 Filed 8–9–91; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Areas #2518 and #2529]

Minnesota (With Contiguous Counties in Wisconsin) Declaration of Disaster Loan Area

Winona County and the contiguous counties of Fillmore, Houston, Olmsted, and Wabasha in the State of Minnesota, and Buffalo, La Crosse, and Trempleale au Counties in the State of Wisconsin constitute a disaster area as a result of damages caused by flash flooding which occurred on the evening of July 21, 1991 in the Town of Stockton. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 3, 1991 and for economic injury until the close of business on May 4, 1992 at the address listed below: Disaster Area 2 Office, Small Business Administration, One Baltimore Place, suite 300, Atlanta, GA 30308, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage	
Homeowners with Credit Available Elsewhere	8.000
Homeowners without Credit Available Elsewhere	4.000
Businesses with Credit Available Elsewhere	8.000
Businesses and non-profit Organizations without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) with Credit Available Elsewhere	9.125
For Economic Injury:	
Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000

The numbers assigned to this disaster for physical damage are 251806 for Minnesota and 251906 for Wisconsin. For economic injury the numbers are 736300 for Minnesota and 736400 for Wisconsin.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 2, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 91–19078 Filed 8–9–91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 1447]

Determination Under Section 4(a) of the International Narcotics Control Act of 1990

Pursuant to the authority vested in me by section 4(a) of the International Narcotics Control Act of 1990 and Presidential Determination No. 91–20, dated January 25, 1991, I hereby determine the following:

(1) Peru is implementing programs to reduce the flow of cocaine to the United States in accordance with a bilateral or multilateral agreement, to which the United States is a party, that contains specific, quantitative and qualitative performance criteria with respect to those programs;

(2) The armed forces and law enforcement agencies of Peru are not engaged in a consistent pattern of gross violations of internationally recognized human rights, and the Government of Peru has made significant progress in protecting internationally recognized human rights, particularly in:

(A) Ensuring that torture, cruel, inhuman, or degrading treatment or punishment, incommunicado detention or detention without charges and trial, disappearances, and other flagrant denials of the right to life, liberty or security of the person are not practiced; and

(B) Permitting an unimpeded investigation of alleged violations of internationally recognized human rights, including providing access to places of detention, by appropriate international organizations (including nongovernmental organizations such as the International Committee of the Red Cross) or groups acting under the authority of the United Nations or the Organization of American States; and

(3) The Government of Peru has effective control over police and military operations related to counter-narcotics and counterinsurgency activities.

Lawrence S. Eagleburger,

Acting Secretary.

[FR Doc. 91–19098 Filed 8–9–91; 8:45 am]

BILLING CODE 4710-10-M

[Public Notice 1449]

Shipping Coordinating Committee; Meeting Sub-Committee on Safety of Life at Sea Working Group on Lifesaving, Search and Rescue

The Working Group on Lifesaving, Search and Rescue of the Sub-Committee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 9:30 a.m. on August 29, 1991 in room 4315 at Coast Guard Headquarters, 2100 Second Street SW., Washington, DC.

The purpose of the meeting is to review the agenda items and to prepare U.S. positions for the 23rd Session of the International Maritime Organization (IMO) Sub-Committee on Lifesaving, Search and Rescue, scheduled for January 13–17, 1992, at the IMO Headquarters in London. Among other things, the items of particular interest are:

—Review and amendment of SOLAS Chapter III, to clarify the intent of the chapter and to cover more specifically various lifesaving arrangements (such as freefall lifeboats and marine evacuation systems) which are recently gaining wider application.
—406 MHz satellite Emergency Position Indicating Radio Beacon (EPIRB) coding and registration.
—Method and content of safety instruction of passengers on ships.
—Role of the human element in maritime casualties (including on board communication problems).
—Differences in safety standards between "new" and "existing" ships.
—Location of symbols relating to the lifesaving appliances and arrangements.

Members of the public may attend the meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Kurt J. Heinz, U.S. Coast Guard Headquarters (G–MVI–3/1404), 2100 Second Street SW., Washington, DC 20593–0001 or by calling: (202) 267–1444.

Dated: July 31, 1991.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 91–19099 Filed 8–9–91; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice 1450]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea Working Group on Radiocommunications; Meetings

The Working Group on Radiocommunications of the Subcommittee on Safety of Life at Sea will conduct open meetings at 9:30 a.m. on September 19, 1991 and November 21, 1991. These meetings will be held in the Department of Transportation Headquarters Building, 400 Seventh Street, SW., Washington, DC 20950.

The purpose of these meetings is to prepare for the 38th Session of the International Maritime Organization (IMO) Subcommittee on Radiocommunications which is scheduled for July 1992 at the IMO headquarters in London, England.

Agenda items included preparation for the 38th Session, primarily related to the implementation of the Global Maritime Distress and Safety System (GMDSS).

Members of the public may attend these meetings up to the seating capacity of the room.

For further information and meeting room number, contact Mr. Ronald J. Grandmaison, U.S. Coast Guard Headquarters (G-TTM), 2100 Second Street SW., Washington, DC 20593-0001. Telephone: (202) 267-1389.

Dated: July 29, 1991.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 91-19100 Filed 8-9-91; 8:45 am]

BILLING CODE 4710-7-M

Bureau of Intelligence and Research

[Public Notice 1451]

Announcement of Supplemental FY 1991 Soviet-East European Studies Grant Recipients

On April 27, 1991, the U.S. Department of State approved the April 8, 1991, recommendations of the Soviet-Eastern European Studies Advisory Committee for awards in the competition which ended February 15, 1991.

1. American Council of Learned Societies

Grant: $200,948.

Purpose: Fellowships for German-American collaborative research in East European and Soviet studies.

Contact: Jason H. Parker, or Steven C. Wheatley, ACLS, 228 East 45th Street, New York, New York 10017-3398 (212) 697-1505, Fax (212) 949-8058.

2. American Council of Teachers of Russian/American Council for Collaboration in Education and Language Study

Grant: $25,000.

Purpose: To award research/language training fellowships in non-Russian areas of the USSR.

Contact: Dan E. Davidson, Director, USSR Program Group, ACTR/ACCELS, Fifth Floor, 1619 Massachusetts Avenue NW., Washington, DC 20036 (202) 328-2287, Fax (202) 328-8068.

3. Council on International Educational Exchange

Grant: $100,000.

Purpose: To award fellowships for "Social Sciences Program for Advanced Students of Russian" at Leningrad State University.

Contact: Damon B. Smith, Deputy Executive Director, Cooperative Russian Language Program/ CIEE, 205 East 42nd Street, New York, NY 10017 (212) 661-1414, Fax (212) 972-3231.

4. Center on East-West Trade, Investment, and Communications at Duke University

Grant: $225,000.

Purpose: To support Mid-Career Training Program to increase U.S. understanding of the Soviet Republics: the first year on Soviet Central Asia.

Contact: Jerry F. Hough, Center on East-West Trade, Investment, and Communications, Duke University, 2114 Campus Drive, Durham, NC 27706 (919) 684-5551, Fax (919) 684-8749.

5. Institute on International Education

Grant: $200,000.

Purpose: To award grants to advanced graduate students for policy-related research on East Central Europe.

Contact: Mary E. Kirk, Program Manager, East Central Europe and Soviet Union, Institute on International Education, 809 United Nations Plaza, New York, NY 10017-3580 (212) 883-8200, Fax (212) 984-5452.

6. International Research and Exchange Board

Grant: $927,771.

Purpose: To facilitate access for Americans to the USSR and Eastern Europe through: Short-term research grants; special projects; developmental fellowships; predeparture orientation; individual research exchanges; dissemination of research findings; and Union Republics research residents.

Contact: Barbara Sassone, IREX, 126 Alexander Street, Princeton, NJ 08540-7102 (609) 683-9500, Fax (609) 683-1511.

7. Joint Committee on Soviet Studies

Grant: $531,245.

Purpose: To support a national program for grants to Slavic libraries, and maintenance of the American Bibliography of Slavic and East European Studies.

Contact: Robert Huber, Staff Associate, JCSS/Social Science Research Council, 605 Third Avenue, New York, NY 10158 (212) 661-0280, Fax (212) 370-7896.

8. National Academy of Sciences

Grant: $225,000.

Purpose: To support training for young researchers in Energy and Environmental Sciences to Poland, Romania, and USSR.

Contact: Gary R. Waxmonsky, Associate Director, Office of Soviet and East European Affairs, NAS, 2101 Constitution Avenue, NW.—HA-166, Washington, DC 20418 (202) 334-2644, Fax (202) 334-2614.

9. National Council for Soviet and East European Research

Grant: $759,123.

Purpose: To support a national competition among American institutions of higher education and non-profit corporations for postdoctoral research projects on the USSR and Eastern Europe.

Contact: Robert Randolph, Executive Director, NCSEER, 1755 Massachusetts, Avenue, NW., suite 304, Washington, DC 20036 (202) 387-0168, Fax (202) 234-5068.

Dated: August 1, 1991.

Kenneth E. Roberts,

Executive Director, Soviet-Eastern European Studies Advisory Committee.

[FR Doc. 91-19097 Filed 8-9-91; 8:45 am]

BILLING CODE 4710-33-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended August 2, 1991

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47663
Date filed: July 30, 1991
Parties: Members of the International Air Transport Association
Subject: SNATC/2040 dated July 24, 1991, R-1 to R-4, US-Europe Reso No. 19 (UK-US and Washington-Madrid fares)

7. Joint Committee on Soviet Studies

Grant: $531,245.

Purpose: To support a national program for grants to Slavic libraries, and maintenance of the American Bibliography of Slavic and East European Studies.

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Purpose: To support a national competition among American institutions of higher education and non-profit corporations for postdoctoral research projects on the USSR and Eastern Europe.

Contact: Robert Randolph, Executive Director, NCSEER, 1755 Massachusetts, Avenue, NW., suite 304, Washington, DC 20036 (202) 387–0168, Fax (202) 234–5066.

Dated: August 1, 1991.

Kenneth E. Roberts,

Executive Director, Soviet-Eastern European Studies Advisory Committee.

[FR Doc. 91–19097 Filed 8-9-91; 8:45 am]

BILLING CODE 4710-32-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended August 2, 1991

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47663

Date filed: July 30, 1991

Parties: Members of the International Air Transport Association

Subject: SNATC/2040 dated July 24, 1991, R–1 to R–4, US-Europe Reso No. 19 (UK–US and Washington-Madrid fares)

Proposed Effective Date: September 1, 1991

Docket Number: 47664

Date filed: July 30, 1991

Parties: Members of the International Air Transport Association

Subject: SNATC/2041 dated August 1, 1991, R–1, Resolution No. 19

Proposed Effective Date: December 31, 1991

Docket Number: 47672

Date filed: August 2, 1991

Parties: Members of the International Air Transport Association

Subject: TC2 MV/P 0455 dated July 5, 1991, Mail Vote 504 (Fares from Algeria), R–1 to R–11

Proposed Effective Date: August 15, 1991

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91–19046 Filed 8-9-91; 8:45 am]

BILLING CODE 4910-62-M

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended August 2, 1991

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 47674

Date filed: August 2, 1991

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 3, 1991

Description: Application of Caribbean Airways Jamaica Limited, pursuant to section 402 of the Act and subpart Q of the Regulations, applies for a foreign air carrier permit to enable it to engage in non-scheduled and charter foreign air transportation of persons, property and mail between a point or points in Jamaica to Miami or Fort Lauderdale, Florida.

Docket Number: 47675

Date filed: August 2, 1991

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 30, 1991

Description: Joint Application of Delta Air Lines, Inc. and Pan American World Airways, Inc., pursuant to section 401(h) of the Act and subpart Q of the Regulations, apply to the Department of Transportation for approval of the transfer to Delta of certain Pan American Certificate and Exemption Authorities.

Docket Number: 46532

Date filed: August 2, 1991

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 30, 1991

Description: Second Amendment to Application of LTU Lufttransport-Unternehmen GmbH. & Co. KG, for Amendment of its Foreign Air Carrier Permit, requests addition of Atlanta, Georgia as a coterminal point for service to the United States.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91–19047 Filed 8-9-91; 8:45 am]

BILLING CODE 4910-62-M

Office of the Secretary

[Notice 91–12]

Senior Executive Service Performance Review Boards (PRB) Membership

AGENCY: Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: DOT publishes the names of the persons selected to serve on the various Departmental Performance Review Boards (PRB) established by DOT under the Civil Service Reform Act.

FOR FURTHER INFORMATION CONTACT: Glenda M. Tate, Director of Personnel, and Executive Secretary, DOT Executive Resources Board, (202) 366–4088.

SUPPLEMENTARY INFORMATION: Title 5 U.S.C. 4312 requires that each agency implement a performance appraisal system making senior executives accountable for organizational and individual goal accomplishment. As part of this system, 5 U.S.C. 4314(c) requires each agency to establish one or more PRBs, the function of which is to review and evaluate the initial appraisal of a senior executive's performance by the supervisor and to make recommendations to the final rating authority relative to the performance of the senior executive.

The persons named below have been selected to serve on one or more Departmental PRBs.

Issued in Washington, DC, on August 5, 1991.

Jon H. Seymour,

Assistant Secretary for Administration.

Department of Transportation Senior Executive Service Performance Review Boards

Office of the Secretary

Samuel Podberesky, Assistant General Counsel for Aviation Enforcement and Proceedings
Thomas Herlihy, Assistant General Counsel for Legislation
Neil R. Eisner, Assistant General Counsel for Regulation and Enforcement
Arnold Levine, Director, Office of International Transportation and Trade
Richard F. Walsh, Director, Office of Economics
Patricia Parrish, Director, Office of Management Planning
Linda Higgins, Director, Office of Acquisition and Grant Management
James M. Craun, Deputy Director, Office of Aviation Analysis
Richard B. Chapman, Deputy Director, Office of Information Resource Management
Marilyn S. Richmond, Deputy Assistant Secretary for Governmental Affairs
Elizabeth Monro, Special Assistant for Aviation Policy
Stephanie Lee-Miller, Director, Office of Commercial Space Transportation
Leon C. Watkins, Assistant Administrator for Civil Rights, Federal Aviation Administration
John E. Turner, Associate Administrator for National Airspace System Development Federal Aviation Administration
Nan K. Harllee, Deputy Associate Administrator for Policy and International Affairs, Maritime Administration

United States Coast Guard

Glenda M. Tate, Director, Office of Personnel Office of the Secretary
Katherine E. Collins, Director, Office of Budget, Office of the Secretary
John P. Eicher, Director, Office of Program Management Support, Federal Highway Administration
Leon C. Watkins, Assistant Administrator for Civil Rights, Federal Aviation Administration
RADM G.D. Passmore, Chief, Office of Personnel and Training
RADM A.E. Henn, Chief, Office of Marine Safety, Security and Environmental Protection
RADM W.P. Leahy, Jr., Chief, Office of Law Enforcement and Defense Operations
RADM R.M. Polant, Chief, Office of Command, Control and Communications
RADM K.H. Williams, Resource Director/Comptroller
Elizabeth R. Monro, Special Assistant for Aviation Policy, Office of the Secretary

Federal Aviation Administration

Arnold Aquilano, Associate Administrator for Airway Facilities
Joan W. Bauerlein, Director, Office of International Aviation

Theodore R. Beckloff, Regional Administrator, Alaskan Region
Monte R. Belger, Associate Administrator for Aviation Standards
Dorothy H. Berry, Deputy Associate Administrator for Human Resource Management
Carolyn C. Blum, Director, Logistics Service
Anthony J. Broderick, Associate Administrator for Regulation and Certification
Garland P. Castleberry, Regional Administrator, Southern Region
Clyde M. DeHart, Jr., Regional Administrator, Southwest Region
Arlene B. Feldman, Regional Administrator, New England Region
Darlene Freeman, Deputy Associate Administrator for Aviation Standards
Margaret Gilligan, Chief of Staff
Brooks C. Goldman, Associate Administrator for Administration
Theron A. Gray, Deputy Associate Administrator for Appraisal
Leonard L. Griggs, Assistant Administrator for Airports
Charles H. Huettner, Deputy Assistant Administrator for Aviation Safety
Frederick M. Isaac, Regional Administrator, Northwest Mountain Region
Homer C. McClure, Director, Aeronautical Center
Herbert R. McLure, Associate Administrator for Human Resource Management
Michael C. Moffet, Assistant Administrator for Policy, Planning, and International Aviation
Hugh L. O'Neill, Assistant Administrator for Public Affairs
Daniel J. Peterson, Regional Administrator, Eastern Region
Edward J. Phillips, Regional Administrator, Great Lakes Region
William H. Pollard, Associate Administrator for Air Traffic
Martin Pozesky, Associate Administrator for System Engineering and Development
Kenneth P. Quinn, Chief Counsel
Stanley Rivers, Regional Administrator, Central Region
Raymond A. Salazar, Manager, Center for Management Development
Carl B. Shellenburg, Regional Administrator, Western-Pacific Region
Jacqueline L. Smith, Deputy Regional Administrator, Great Lakes Region
Orlo K. Steele, Assistant Administrator for Civil Aviation Security
Quentin S. Taylor, Deputy Associate Administrator for Airports
John E. Turner, Associate Administrator for National Airspace System Development
Leon C. Watkins, Assistant Administrator for Civil Rights
Brenda Yager, Assistant Administrator for Government and Industry Affairs
Nan K. Harllee, Deputy Associate Administrator for Policy and International Affairs, Maritime Administration
Earnest Hawkins, Associate Administrator for Administration, Maritime Administration
William T Hudson, Director, Office of Civil Rights, Office of the Secretary
Elizabeth R. Monro, Special Assistant for Aviation Policy, Office of the Secretary
George S. Moore, Jr., Associate Administrator for Administration, Federal Highway Administration

Federal Highway Administration

George S. Moore, Jr., Associate Administrator for Administration
Anthony R. Kane, Associate Administrator for Program Development
Leon N. Larson, Regional Administrator, Georgia
Richard P. Landis, Associate Administrator for Motor Carriers
Dennis C. Judycki, Associate Administrator for Safety and System Applications
Madeleine S. Bloom, Director, Office of Policy Development
Earnest Hawkins, Associate Administrator for Administration, Maritime Administration
William J. Watt, Associate Administrator for Policy, Federal Railroad Administration

Federal Railroad Administration

S. Mark Lindsey, Chief Counsel
Raymond J. Rogers, Associate Administrator for Administration
Philip Olekszyk, Deputy Associate Administrator for Safety
James T. McQueen, Associate Administrator for Railroad Development
William J. Watt, Associate Administrator for Policy
Rosalind A. Knapp, Deputy General Counsel, Office of the Secretary
William T. Hudson, Director, Office of Civil Rights, Office of the Secretary

National Highway Traffic Safety Administration

Barry I. Felrice, Associate Administrator for Rulemaking
Adele L. Derby, Associate Administrator for Regional Operations
George L. Parker, Associate Administrator for Research and Development
P. Jackson Rice, Chief Counsel
Alicia Casanova, Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary

Urban Mass Transportation Administration

Nancy M. Butler, Director of Communications and External Affairs
Earnest Hawkins, Associate Administrator for Administration, Maritime Administration
Kevin E. Heanue, Director, Office of Environment and Planning, Federal Highway Administration
Rosalind A. Knapp, Deputy General Counsel, Office of the Secretary
Rose A. McMurray, Associate Administrator for Management and Administration, Research and Special Programs Administration
Philip Olekszyk, Deputy Associate Administrator for Safety, Federal Railroad Administration

Maritime Administration

Reginald A. Bourdon, Associate Administrator for Policy and International Affairs
Richard E. Bowman, Associate Administrator for Maritime Aids
Harlan T Haller, Associate Administrator for Shipbuilding and Ship Operations
Earnest Hawkins, Associate Administrator for Administration
Nan K. Harllee, Deputy Associate Administrator for Policy and International Affairs
W. Patrick Morris, Chief Counsel
William T. Hudson, Director, Office of Civil Rights, Office of the Secretary

Research and Special Programs Administration

Wallace D. Burnett, Deputy Assistant Secretary for Budget and Programs, Office of the Secretary
Katherine E. Collins, Director, Office of Budget, Office of the Secretary
Franz K. Gimmler, Deputy Associate Administrator for Safety, Urban Mass Transportation Administration
Frank L. Hassler, Assistant Director, Office of Information Resources
Robert A. Knisely, Special Assistant and Director for Drug Enforcement and Program Compliance, Office of the Secretary
Arnold Levine, Director, Office of International Transportation and Trade, Office of the Secretary
Rose A. McMurray, Associate Administrator for Management and Administration
Elizabeth R. Monro, Special Assistant for Aviation Policy, Office of the Secretary
Alan I. Roberts, Associate Administrator for Hazardous Materials Safety
George W. Tenley, Jr., Associate Administrator for Pipeline Safety
Frank F.C. Tung, Deputy Director, Volpe National Transportation Systems Center

Office of the Inspector General

Melissa J. Allen, Deputy Assistant Secretary for Administration, Office of the Secretary
William D. Colvin, Inspector General, National Aeronautics and Space Administration
Theron Gray, Deputy Associate Administrator for Appraisal, Federal Aviation Administration
Chris Greer, Assistant Inspector General for Audits, Department of Housing and Urban Development
Edward Hefferon, Deputy Inspector General, General Services Administration
Jacquelyn K. Howard, Assistant Inspector General for Management and Policy, Department of Housing and Urban Development
Steve McNamara, Acting Assistant Inspector General for Auditing, Department of Education
Everett Mosely, Deputy Assistant Inspector General for Auditing, Department of Agriculture
Thomas Roslewicz, Deputy Inspector General for Audit Services, Department of Health and Human Services
Walter R. Somerville, Director, Office of Civil Rights, United States Coast Guard
Steven Switzer, Deputy Inspector General, Resolution Trust Fund
Leon C. Watkins, Assistant Administrator for Civil Rights, Federal Aviation Administration

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Policy and International

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Earnest Hawkins, Associate Administrator for Administration
Nan K. Harllee, Deputy Associate Administrator for Policy and International Affairs
W. Patrick Morris, Chief Counsel
William T. Hudson, Director, Office of Civil Rights, Office of the Secretary

Research and Special Programs Administration

Wallace D. Burnett, Deputy Assistant Secretary for Budget and Programs, Office of the Secretary
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Arnold Levine, Director, Office of International Transportation and Trade, Office of the Secretary
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Frank F.C. Tung, Deputy Director, Volpe National Transportation Systems Center

Office of the Inspector General

Melissa J. Allen, Deputy Assistant Secretary for Administration, Office of the Secretary
William D. Colvin, Inspector General, National Aeronautics and Space Administration
Theron Gray, Deputy Associate Administrator for Appraisal, Federal Aviation Administration
Chris Greer, Assistant Inspector General for Audits, Department of Housing and Urban Development
Edward Hefferon, Deputy Inspector General, General Services Administration
Jacquelyn K. Howard, Assistant Inspector General for Management and Policy, Department of Housing and Urban Development
Steve McNamara, Acting Assistant Inspector General for Auditing, Department of Education
Everett Mosely, Deputy Assistant Inspector General for Auditing, Department of Agriculture
Thomas Roslewicz, Deputy Inspector General for Audit Services, Department of Health and Human Services
Walter R. Somerville, Director, Office of Civil Rights, United States Coast Guard
Steven Switzer, Deputy Inspector General, Resolution Trust Fund
Leon C. Watkins, Assistant Administrator for Civil Rights, Federal Aviation Administration

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Michael Zimmerman, Deputy Inspector General, Department of Commerce

[FR Doc. 91-19048 Filed 8-9-91; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review for Lanai Airport, Lanai City, Lanai, Hawaii

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for Lanai Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96-193) (hereinafter referred to as "the Act") and 14 CFR part 150 by the State of Hawaii, Department of Transportation. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR part 150 for Lanai Airport were in compliance with applicable requirements effective February 1, 1990. The proposed noise compatibility program will be approved or disapproved on or before January 28, 1992.

EFFECTIVE DATE: The effective date of the start of FAA's review of the noise compatibility program is August 1, 1991. The public comment period ends September 30, 1991.

FOR FURTHER INFORMATION CONTACT: David J. Welhouse, Airport Engineer/Planner, Honolulu Airports District Office, Federal Aviation Administration, P.O. Box 50244, Honolulu, Hawaii 96850. Telephone 808/541-1243. Street Address: 300 Ala Moana Boulevard, room 7116, Honolulu, Hawaii 96813. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for Lanai Airport which will be approved or disapproved on or before January 28, 1992. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program for Lanai Airport, effective on August 1, 1991. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before January 28, 1992.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., room 617, Washington, DC 20591
Federal Aviation Administration, Western-Pacific Region Office, 15000 Aviation Boulevard, room 3E24, Hawthorne, California 90261
Federal Aviation Administration, Honolulu Airports District Office, 300 Ala Moana Boulevard, room 7116, Honolulu, Hawaii 96813
State of Hawaii, Department of Transportation, Airports Division, Honolulu International Airport, Gate 31, Honolulu, Hawaii 96819
State of Hawaii, Department of Transportation, Airport District Office, Lanai Airport, Lanai City, Lanai, Hawaii

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California on August 1, 1991.

Herman C. Bliss,

Manager, Airport Division, Western-Pacific Region.

[FR Doc. 91-19062 Filed 8-9-91; 8:45 am]

BILLING CODE 4910-13-M

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review for Lihue Airport, Lihue, Kauai, Hawaii

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for Lihue Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96-193) (hereinafter referred to as "the Act") and 14 CFR part 150 by State of Hawaii, Department of Transportation. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR part 150 for Lihue Airport were in compliance with applicable requirements effective May 17, 1990. The proposed noise compatibility program will be approved or disapproved on or before January 28, 1992.

EFFECTIVE DATE: The effective date of the start of FAA's review of the noise compatibility program is August 1, 1991. The public comment period ends September 30, 1991.

FOR FURTHER INFORMATION CONTACT: David J. Welhouse, Airport Engineer/Planner, Honolulu Airports District Office, Federal Aviation Administration, P.O. Box 50244, Honolulu, Hawaii 96850. Telephone 808/541-1243. Street Address: 300 Ala Moana Boulevard, room 7116, Honolulu, Hawaii 96813. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for Lihue Airport which will be approved or disapproved on or before January 28, 1992. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program for Lihue Airport, effective on August 1, 1991. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal period, limited by law to a maximum of 180 days, will be completed on or before January 28, 1992.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration,
800 Independence Avenue, SW., room 617,
Washington, DC 20591

Federal Aviation Administration,
Western-Pacific Region Office,
15000 Aviation Boulevard, room 3E24,
Hawthorne, California 90261

Federal Aviation Administration,
Honolulu Airports District Office,
300 Ala Moana Boulevard, room 7116,
Honolulu, Hawaii 96813

State of Hawaii,
Department of Transportation,
Airport Division,
Honolulu International Airport, Gate 31,
Honolulu, Hawaii 96819

State of Hawaii,
Department of Transportation,
Airport Division,
District Office Manager,
Lihue Airport, Lihue, Kauai, Hawaii 96766

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California on August 1, 1991.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 91-19060 Filed 8-9-91; 8:45 am]

BILLING CODE 4910-13-M

Acceptance Noise Exposure Maps for Kahului Airport, Kahului, Maui, HI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the State of Hawaii, Department of Transportation for Kahului Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is July 31, 1991.

FOR FURTHER INFORMATION CONTACT: David J. Welhouse, Airport Engineer/Planner, HNL-621, Federal Aviation Administration, Honolulu Airports District Office, P.O. Box 50244, Honolulu, Hawaii 96850-0001, Telephone (808) 541-1243.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Kahului Airport are in compliance with applicable requirements of part 150 effective July 31, 1991.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the State of Hawaii, Department of Transportation. The specific maps under consideration are Figures 4-1 and 6-1 in the submission. The FAA has determined that these maps for Kahului Airport are in compliance with applicable requirements. This determination is effective on July 31, 1991. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the maps depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section

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in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the State of Hawaii, Department of Transportation. The specific maps under consideration are Figures 4–1 and 6–1 in the submission. The FAA has determined that these maps for Kahului Airport are in compliance with applicable requirements. This determination is effective on July 31, 1991. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the maps depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section

103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., room 617, Washington, DC 20591
Federal Aviation Administration, Western-Pacific Region, Airports Division, room 3E24, 15000 Aviation Boulevard, Hawthorne, California 90261
Federal Aviation Administration, Honolulu Airports District Office, 300 Ala Moana Boulevard, room 7116, Honolulu, Hawaii 96813
State of Hawaii, Department of Transportation, Airports Division, Honolulu International Airport, Gate 31, Honolulu, Hawaii 96819
State of Hawaii, Department of Transportation, Airports Division, District Office Manager, Kahului Airport, Kahului, Maui, Hawaii 96732

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California on July 31, 1991.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 91–19061 Filed 8–9–91; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Frederick County, VA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project to be located in Frederick County, Virginia.

FOR FURTHER INFORMATION CONTACT: Robert B. Welton, District Engineer, Federal Highway Administration, P.O. Box 10045, Richmond, VA 23240–0045, Telephone 804/771–2682.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Virginia Department of Transportation (VDOT), and the County of Frederick, will prepare a draft environmental impact statement (DEIS) on a proposal to extend Route 37 in Frederick County. The proposed improvement would involve construction of a multi-lane, limited access, bypass, east of the City of Winchester, VA. The proposed southern terminus is Interstate 81 and existing Route 37; the northern terminus is also Interstate 81 and existing Route 37. The length for the proposed roadway is approximately 14.0 miles.

Improvements to the existing corridor are considered necessary to provide for the efficient movement of existing and projected traffic and provide relief from heavy congestion on the existing Route 37, U.S. Routes 11, 522 and 17/50, Virginia Route 7, and Interstate 81. This proposal will include new interchanges and connector routes for U.S. Routes 522, 17/50, Interstate 81 and other arterials in Frederick County. The proposed improvements will extend existing Route 37 on the west side of the City of Winchester to the east side, thereby completing a circumferential roadway around the City of Winchester.

Alternatives under consideration include: (1) Taking no action (no build); (2) transportation system management improvements (improve existing roadway network); (3) mass transit; (4) constructing a mult-lane, limited access bypass on new location. The various build alternatives will incorporate variations of vertical and horizontal grade alignment.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public informational meetings and a public hearing will be held in the future.

Public notice will be given indicating the time and place of the meetings and hearing. The DEIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the DEIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The provisions of Executive Order 12372 regarding State and local review of Federal and Federally assisted programs and projects apply to this project.)

Issued on: August 5, 1991.

Robert B. Welton,

District Engineer, Richmond, Virginia.

[FR Doc. 91–19101 Filed 8–9–91; 8:45 am]

BILLING CODE 4910–22–M

Federal Railroad Administration

[Docket No. H–91–3]

Petition for Test of New Technologies; CSX Transportation, Inc.

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that CSX Transportation, Inc. (CSXT) has petitioned the Federal Railroad Administration (FRA) for authorization to establish a test program on CSXT's Atlanta and Mobile Divisions that evaluates if a computerized system of recording Hours of Duty information will meet the requirements of §§ 228.9 and 228.11 of FRA's regulations as set forth in "Subpart B–Records and Reporting."

Section 228.9, entitled "Railroad records; general," requires (1) that the record be signed by the employee whose time on duty is being recorded or, in the case of train and engine crews, signed by the ranking crewmember. CSXT states that it seeks a demonstration project of the records signature requirement of the "Hours of Service of Railroad Employees" in order to modernize recordkeeping. CSXT proposed that each employee will have his or her own personal identification number ("pin"), which will remain confidential to the employee. When accessing the computer for input of the hours of service record, required by § 228.11, the pin number will not appear on the computer screen when the employee enters his or her number.

Instead of the employee physically signing the duty record pursuant to § 228.9(a)(1), the employee's pin will serve as "signature."

FRA anticipates a test period of six months from September 1, 1991 through March 1, 1992, at which time results of the test will be reviewed for further consideration. During the test period, the CSXT will not be relieved from maintaining a written signed record by the employee or the ranking employee as required by § 228.9.

During the test period FRA will be able to access the computer screen locations to ensure compliance in reporting the necessary information required by FRA for the Hours of Service recordkeeping regulation. The petitioner requests that this test application, pursuant to 49 CFR 228.9, be approved. Upon completion of the test program period, CSXT will present full documentation in support of the results. CSXT believes that this proposal will comply with the spirit and purpose of the regulation.

Interested persons are invited to participate in this proceeding by submitting written views and comments. FRA has not scheduled a public hearing since the facts do no appear to so warrant. If any interested party desires an opportunity for oral comment, he or she should notify FRA in writing before the end of the comment period and specify the basis for his or her request.

Communications concerning this proceeding should identify the appropriate Waiver Petition Docket No. H–91–3 and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Communications received before September 6, 1991, will be considered by FRA before final action is taken. Comments received after that will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours (9 a.m. to 5 p.m.) in room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC on August 5, 1991.

Grady C. Cothen, Jr.,

Associate Administrator for Safety.

[FR Doc. 91–19022 Filed 8–9–91; 8:45 am]

BILLING CODE 4910–06–M

[Waiver Petition Docket Number H–91–4]

Petition for a Waiver of Compliance; Metro-North Commuter Railroad Co.

In accordance with 49 CFR § 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received from Metro-North Commuter Railroad Company a request for exemptions from or waivers of compliance with a requirement of Federal rail safety standards. The petition is described below, including the regulatory provisions involved, and the nature of the relief being requested.

Metro-North Commuter Railroad Company

Metro-North Commuter Railroad Company (MNCW) is seeking a 3-year test waiver of compliance from § 229.29(a) of the Railroad Locomotive Safety Standards, 49 CFR part 229. MNCW is requesting that it be permitted to extend the clean, oil, test and stencil (COT&S) period from 24 months to 36 months on 110 test cars equipped with RT5A and GRB–1 Type Brake Equipments. The test cars are part of the 616 "M" Series electric railcar fleet built between 1971 and 1987. Cars will be placed into the test as they receive their present biennial inspection and test. Each valve portion will be painted for identification as a test valve. The performance of the test cars will be monitored during the test and at the conclusion of the 36 month period, an operational inspection will be made on each car. Rack tests will be performed on each set of equipment and all valves including brake units will be disassembled and inspected. All data pertinent to the brake equipment on each car will be recorded during the 3-year period. If conditions so justify, MNCW will petition for a permanent extension for all "M" series cars at that time.

In addition, 10 of the test cars will be equipped with state of the art air filtration systems. At the conclusion of the 3-year test period, the brake equipment on these cars will be compared to that on the other 100 cars to determine if the special filters can justify a longer cleaning period. At that time, FRA will determine if a 4-year test is warranted for the 10 cars.

The railroad reports that due to improved maintenance procedures, they have reduced the number of train delays by 1/3 during each of the last 3 years. The installation of dryers/filters in the air system along with long life rubber products have contributed to a highly reliable brake system. By extending the car overhaul and brake maintenance from 2 to 3 years, the projected availability will be increased by almost 400 car days per year.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number H–91–4) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Communications received before September 23, 1991, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m. to 5 p.m.) in room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC on August 5, 1991.

Grady C. Cothen, Jr.,

Associate Administrator for Safety.

[FR Doc. 91–19023 Filed 8–9–91; 8:45 am]

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Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number H–91–4) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Communications received before September 23, 1991, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m. to 5 p.m.) in room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC on August 5, 1991.

Grady C. Cothen, Jr.,

Associate Administrator for Safety.

[FR Doc. 91–19023 Filed 8–9–91; 8:45 am]

BILLING CODE 4910-06-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 155
Monday, August 12, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

August 6, 1991.

TIME AND DATE: 10:00 a.m., Thursday, August 1, 1991.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Closed (Pursuant to 5 U.S.C. § 552b(c)(10)).

MATTERS TO BE CONSIDERED: In addition to the previously announced items, the Commission also considered the following item:

2. *Lancashire Coal Company,* Docket No. PENN 89–147–R, etc. Issues included Lancashire Coal Company's petition for reconsideration of the Commission's June 11, 1991, decision.

It was determined by a unanimous vote of Commissioners that this item be included and no earlier announcement of the addition was possible.

CONTACT PERSON FOR MORE INFORMATION: Sandra G. Farrow (202) 653–5629.

Sandra G. Farrow.

[FR Doc. 91–19256 Filed 8–9–91; 3:54 pm]

BILLING CODE 6735-01-M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 10:00 a.m., August 19, 1991.

PLACE: 5th Floor, Conference Room, 805 Fifteenth Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the last meeting.
2. Thrift Savings Plan activities report by the Executive Director.
3. Quarterly review of investment policy.
4. Review of KPMG Peat Marwick audit report entitled "Comments and Recommendations to the TIB Staff Arising from Full and Limited Scope Fiduciary Compliance Audits of Selected Federal Agencies' Implementation and Maintenance of Systems and Records Supporting the FERSA Thrift Savings Plan."
5. Review of Arthur Andersen & Co. review of June 30, 1991, interim financial statements of the Thrift Savings Fund.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 523–5660.

Dated: August 7, 1991.

Francis X. Cavanaugh,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 91–19137 Filed 8–7–91; 4:42 pm]

BILLING CODE 6760-01-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:18 p.m. on Tuesday, August 6, 1991, the Board of Directors of the Resolution Trust Corporation met in closed session to consider: (1) the resolution of failed thrift institutions; (2) contracting matters relating to local area network procurement; (3) the sale of assets; (4) recommendations regarding the early termination of a FSLIC Assistance Agreement; and (5) certain litigation matters.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Robert L. Clarke (Comptroller of the Currency), and concurred in by Director C.C. Hope (Appointive) and Director T. Timothy Ryan Jr. (Director of Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(9)(A)(ii), (c)(9)(B) and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b).

The meeting was held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550—17th Street, N.W., Washington, DC.

Dated: August 7, 1991.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 91–19177 Filed 8–8–91; 10:32 am]

BILLING CODE 6714-01-M

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Corrections

Federal Register
Vol. 56, No. 155
Monday, August 12, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1191

[Docket No. 90-2]

RIN 3014-AA09

Americans With Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities

Correction

In rule document 91-17481 beginning on page 35408 in the issue of Friday, July 26, 1991, make the following correction:

§ 1191.1 [Corrected]

On page 35453, in the third column, in the tenth line from the bottom of the page, the section heading now reading "§ 1191.11 Accessibility guidelines." should read "§ 1191.1 Accessibility guidelines.".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 910527-1127]

RIN 0693-AA85

Proposed Federal Information Processing Standard (FIPS) for Government Network Management Profile (GNMP)

Correction

In notice document 91-18020 beginning on page 36136 in the issue of Wednesday, July 31, 1991, make the following correction:

On page 36137, in the third column, in paragraph 11., in the second line, "January 31, 1992" should read "(six months after date of publication of final document in the **Federal Register**).

BILLING CODE 1505-01-D

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 3

Adverse Registration Actions and Other Registration Matters

Correction

In proposed rule document 91-18022 beginning on page 37026 in the issue of Friday, August 2, 1991, make the following corrections:

1. On page 37026, in the third column, under the "DATES" caption, the date should read "October 1, 1991".

§ 3.12 [Corrected]

2. On page 37041, in the third column, in § 3.12(i)(2), in the eighth line, "(i)(1)(ii)(iv)" should read "(i)(1)(ii)-(iv)".

§ 3.32 [Corrected]

3. On page 37044, in the first column, in § 3.32(e)(1), in the first line, "reqistrant" should read "registrant".

4. On the same page, in the second column, in § 3.32(h), in the tenth line from the end of the paragraph, "§ 3.21(c)" should read "§ 3.211(c)".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

48 CFR Parts 232 and 252

Department of Defense Federal Acquisition Regulation Supplement; Contract Financing

Correction

In rule document 91-16405 beginning on page 31341 in the issue of Wednesday, July 10, 1991, make the following corrections:

1. On the same page, in the second column, in the first full paragraph, in the eighth line from the bottom "related" should read "relate".

2. In the same column, in the table at the bottom, in the heading, in the first column of the table "interstrate" should read "interest".

3. On the same page, in the third column, in the first paragraph, in the fourth line from the bottom "of" should read "for".

4. In the same column, in the second paragraph, in the fourth line, "232.501-1(S-71)." should read "232.502-1(S-71)."

5. On page 31342, in the first column, in the second full paragraph, in the first line insert "does" following "rule".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

48 CFR Parts 915, 917, 950 and 970

Acquisition Regulation

Correction

In rule document 91-14086 beginning on page 28099 in the issue of Wednesday, June 19, 1991, make the following corrections:

1. On page 28103, in the second column, in the table, above entry "85" insert "Satisfactory".

2. On the same page, in the same column, in the same table, after entry "81" remove the rule.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

[Social Security Ruling SSR 91-6]

Child's Insurance Benefits—Effect of a Second Adoption on an Adopted Child's Continued Entitlement to Benefits—West Virginia

Correction

In notice document 91-15580 beginning on page 29970 in the issue of Monday, July 1, 1991, make the following correction:

On page 29970, in the first column, in the SUMMARY:, in the ninth line, "of" should read "on".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-060-4212-14;WYW81452]

Realty Action; Direct Sale of Public Lands; Wyoming

Correction

In notice document 91-15373 beginning on page 29709 in the issue of Friday, June 28, 1991, make the following corrections:

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BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

48 CFR Parts 915, 917, 950 and 970

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BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

[Social Security Ruling SSR 91-6]

Child's Insurance Benefits—Effect of a Second Adoption on an Adopted Child's Continued Entitlement to Benefits—West Virginia

Correction

In notice document 91-15580 beginning on page 29970 in the issue of Monday, July 1, 1991, make the following correction:

On page 29970, in the first column, in the **SUMMARY:**, in the ninth line, "of " should read "on".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-060-4212-14;WYW81452]

Realty Action; Direct Sale of Public Lands; Wyoming

Correction

In notice document 91-15373 beginning on page 29709 in the issue of Friday, June 28, 1991, make the following corrections:

1. On page 29709, in the second column, in the **SUMMARY:**, in the last line, "1917" should read "1719"

2. On the same page, in the third column, in paragraph 1., in the last line, "1990" should read "1890"

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 740, 761, and 772

RIN 1029-AB42

Federal Lands Program; Areas Unsuitable for Mining; Areas Designated by Act of Congress; Requirements for Coal Exploration

Correction

In rule document 91-17097 beginning on page 33152 in the issue of Thursday, July 18, 1991, make the following corrections:

1. On page 33162, in the second column, in the second line "permitted" should read "pertinent"

2. In the same column, in the 2d paragraph, in the 12th line "family" should read "facility"

§ 761.12 [Corrected]

3. On page 33164, in the third column, in § 761.12(a)(1)(ii) in the seventh line from the bottom "Federal" was misspelled.

4. On the same page, in the same paragraph, in the fifth line from the bottom "little" should read "title".

BILLING CODE 1505-01-D

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1152

Abandonment and Discontinuance of Rail Lines and Rail TransportationUnder 49 U.S.C. 10903

Correction

In rule document 91-17929 beginning on page 35834 in the issue of Monday, July 29, 1991, make the following correction:

§ 1152.20 [Corrected]

On page 35835, in the first column, in § 1152.20(a), in the second line "(b) * * *" should read "(2) * * *".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-25338]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

Correction

In notice document 91-16100 appearing on page 30958 in the issue of Monday, July 8, 1991, the Release Number should appear as shown above.

BILLING CODE 1505-01-D

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federal register

Monday
August 12, 1991

Part II

Department of Housing and Urban Development

Office of Administration

Submission of Proposed Information Collection to OMB; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-91-3298]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Wendy Swire, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–0050.

This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). It is also requested that OMB complete its review within ten days.

The Notice lists the following information:

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submissions will be required;

(7) An estimate of the total numbers of hours need to prepare the information submission including number of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 2, 1991.

Marcia K. Dodge,

Deputy Director, Office of Urban Rehabilitation.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Comprehensive Housing Affordability Strategy.

Office: Community Planning and Development.

Description of the Need for the Information and Its Proposed Use: The heart of a Comprehensive Housing Affordability Strategy (CHAS) is the jurisdiction's narrative of its needs, priorities and goals. The tabular formats are an integral part of a jurisdiction's CHAS. They display a jurisdiction's housing needs and inventory and are summarized by housing activity, income group, family size and tenure type. They also display a jurisdiction's investment plan and goals. The data will be used both by a jurisdiction in formulating its CHAS and by HUD in reviewing and approving that CHAS.

Form Number: HUD–40090 and HUD–40091.

Respondents: State and Local Governments.

Frequency of Submission: Annual.

Reporting Burden:

	No. of respondents	×	Frequency of response	×	Hour per response	=	Burden hours
Initial CHAS	1,078		1		288		310,464
Annual Updates (following 4 years)	1,078		1		128		137,984
Annual Records Keeping	1,078		1		80		86,240
Total Burden	1,078		1		496		534,688

Total Estimated Burden Hours: 534,688.

Status: Revision.

Contact: Larry Gould, HUD, (202) 401–2001, Wendy Swire, OMB, (202) 395–6880.

Dated: August 2, 1991.

Justification

1. The Following Circumstances Make the Collection of Information Necessary

Title I of the National Affordable Housing Act of 1990 requires that jurisdictions develop and implement a Comprehensive Housing Affordability Strategy (CHAS), consisting of 15 elements, as a condition for receiving funds made available under title II of this Act, specific programs under the United States Housing Act of 1937, the Housing and Community Development Act of 1974, and the Stewart B. McKinney Homeless Assistance Act. For the purposes of title I, a jurisdiction may be a State, including the District of Columbia and the Commonwealth of Puerto Rico, a unit of general local government or an authorized consortium of geographically contiguous units of general local governments.

In meeting this title I requirement, the jurisdiction must provide in its CHAS the following information, if appropriate, for review by HUD:

1. Its 5-year housing needs;
2. The nature and extent of its homelessness and the strategy for meeting the need;
3. The characteristics of its housing market;
4. How public policies affect its ability to provide affordable housing;
5. The institutional structure through which it will carry out its housing strategy;
6. Its available private and non-Federal resources to carry the purposes of the Act;
7. Its plan for investment or other use of housing funds made available under the HOME Investment Partnership Act, the United States Housing Act of 1937, the Housing and Community Development Act of 1974, and the Stewart B. McKinney Homeless Assistance Act;
8. Its means of cooperation among the State and any units of general local government;
9. The number, condition and needs of Public Housing units. (Only applies to units of general local government);
10. Its strategy to coordinate Low-Income Tax Credit with the development of affordable housing. (Only applies to States);
11. Its activities to encourage Public Housing residents to become involved in management and participate in homeownership;

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8. Its means of cooperation among the State and any units of general local government;

9. The number, condition and needs of Public Housing units. (Only applies to units of general local government);

10. Its strategy to coordinate Low-Income Tax Credit with the development of affordable housing. (Only applies to States);

11. Its activities to encourage Public Housing residents to become involved in management and participate in homeownership;

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12. Its standards for monitoring activities;

13. A certification that it is in compliance with an antidisplacement and relocation plan;

14. A certification that it will affirmatively further fair housing; and

15. The number of families to whom the jurisdiction will provide affordable housing.

All jurisdictions would be expected to address the above elements except for elements 9, which applies only to units of general local government, and 10, which applies only to States. In some cases, HUD will permit an abbreviated CHAS when a jurisdiction's project would involve such a limited amount of funds and housing units that the information required in certain elements would be inappropriate to that project. In addition, jurisdictions must submit to HUD for approval an annual update of their CHAS for a period of four consecutive years. There is also a statutory provision that would permit jurisdictions to amend, within a specific time frame, a CHAS that HUD disapproved.

Title I also requires participating jurisdictions to submit, annually, for HUD review, a performance report on the progress they have made in carrying out their housing strategy and in meeting the goal identified in element 15 of their CHAS. This report will require additional records that must now be maintained on the new information needed to accommodate the statutory requirements of the annual report. Such information is not available under the current record systems of the established HUD programs that now require a CHAS as a condition of funding.

For example, information involving an increase in record keeping would include an identification of persons benefiting from the jurisdiction's housing activities by the different statutory categories, such as income levels, size of families, the elderly, families participating in programs to achieve economic dependence and persons with AIDS.

Title I also mandates that jurisdictions meet certain presubmission requirements involving citizen participation. Before the submission of their CHAS, jurisdictions are statutorily directed to publish their proposed CHAS in order to give their citizens, public agencies and other interested parties the opportunity for comment and to hold at least one public hearing in order to obtain the forenamed groups' views on the jurisdiction's housing needs.

2. Purpose and Use of Information

The Act's Conference language states that the CHAS will serve as a "working guide for each jurisdiction's use of federal and other housing resources." The conferees express the concern that in the past, housing assistance plans and other planning documents required of recipients as a condition of receiving HUD funds, were often burdensome exercises that did not further efficient management or the effective achievement of key housing goals. They emphasize that in replacing these plans, the CHAS as a single, action-oriented, housing strategy, will serve not only as an effective monitoring tool for HUD, but also as an efficient and productive management tool for States and units of general local government.

The CHAS performance report provides a methodical and analytical approach for measuring, on an annual basis, the jurisdiction's accomplishments and progress in carrying out its housing strategy and, like the CHAS, it will serve as a HUD monitoring tool. This annual review of progress will also enable the jurisdiction to quickly correct deficiencies that retard or thwart a jurisdiction's performance in meeting its housing goals. Such self-imposed corrections protect the jurisdiction against possible HUD funding sanctions when deficiencies are unresolved.

The information involving the comments and views received from citizens and other interested groups during the citizen participation process will be considered by jurisdictions and to the extent possible incorporated into their housing strategy. Title I requires that jurisdictions attach a summary of such comments and views as part of their CHAS submission to HUD.

3. Use of Improved Information Technology to Reduce Burden

Development of computer software for jurisdictions' use would not be cost effective. The information needed in the data elements of the CHAS would be based on Census data and on local surveys and data collection relating exclusively to the jurisdiction. The information needed to complete the remaining CHAS elements would be provided through narratives and, like the data elements, would be unique to the housing needs and conditions of each participating jurisdiction.

4. Describe the Efforts To Identify Duplication

Much of the duplication that may have resulted from the requirements of the CHAS has been statutorily eliminated under this Act by replacing the Housing Assistance Plan and the Comprehensive Housing Assistance Plan with the CHAS. Both plans were required submissions as a condition for funding under the Community Development Block Grant (CDBG) program and the McKinney Homeless Assistance programs. The jurisdictions required to submit a CHAS are, with few exceptions, the same recipients now receiving funds under current HUD programs, such as the CDBG and McKinney programs.

Furthermore, in developing the pending form for the annual performance report of the CHAS, HUD will closely compare this report with other performance reports required under HUD programs to avoid any duplication of efforts by the jurisdictions in the collection of data and related housing information.

5. Why Similar Information Already Available Cannot Be Used or Modified

The information collected for the CHAS is unique to each individual jurisdiction. It is the type of information, particularly the statistical data, that cannot be fixed, but rather continually changed from one time period to another. To accommodate these changes in information, title I requires jurisdictions to update their CHAS annually.

6. Small Business Involvement

Not applicable.

7. Consequence of Less Frequent Information Collection

Title I precludes a less frequent collection. Importantly, the information being collected is the minimum required by this title.

8. Inconsistency with 5 CFR 1320.6

Not applicable. This information collection is being conducted in a manner consistent with the guidelines of 5 CFR 1320.6.

9. Consultation With Jurisdictions

The information collected is limited only to that which is statutorily required in order for a jurisdiction to address each of the 15 elements of its CHAS. Nevertheless, public comment is being solicited on all aspects of this proposed rule, including the paperwork requirements. All comments received will be thoroughly considered before the final rule is published.

10. Not Applicable

11 Not Applicable

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12a. Annual Cost Estimates for Initial Submission Year Only

Jurisdictions

[States and Units of General Local Government]

	No. of resp.	X	Estim. hours	X	Aver hrly rt.	Cost
Initial CHAS	1078		240		$15.00	$3,880,800
Citizen Participation 4 hrs.[1]	1078		8		$15,00	129,360
Publication Costs—$100	1078					107,800
Annual Performance Report	1078		40		$15,00	646,800
Total Annual Cost to Jurisdictions						$4,764,760

[1] It is anticipated that jurisdictions that are CDBG recipients will hold their CHAS public hearings in conjunction with their CDBG public hearings.

12b.

ANNUAL AND BURDEN HOURS FOR ANNUAL UPDATE SUBMISSIONS

[Years 2 through 5]

[Annual]

Description	No. of Resp.	X	Estimate hours per year or annually	X	Aver hourly rt	Cost for 1 year or annually
Annual update	1078		80		$15	1,293,600
Citizen participation	1078		8		15	129,360
Publication Costs—$100 per year	1078					107,800
Annual Performance Report	1078		40		15	646,800
Total Annual Cost to Jurisdiction						$2,177,560

13a

ESTIMATE OF BURDEN OF INFORMATION COLLECTION FOR INITIAL SUBMISSION YEAR JURISDICTIONS

[States and Units of General Local Government]

Description of information collection	Section rule affected	No. of respondents	No. of response per respondence	Total annual responses	Hours per response	Total hour
Initial CHAS.[1]	91.15, 20, 55	1,078	1	1,078	240	258,720
Citizen participation process	91 40, 45, 50	1,078	1	1,078	8	8,624
Annual performance report.[2]	91 75, 80	1,078	1	1,078	40	43,120
Total annual burden hours						310,464

Note: [1] The above hours per respondent are based in part on past experience concerning the collection of information by CDBG and McKinney recipients in their development and submission of the Housing Assistance Plan and Comprehensive Housing Assistance Plan which have now been replaced by the CHAS. Much of the information required in these two documents has been consolidated into the requirements of the CHAS. Also factored into these hours is the reduction for those exceptions where jurisdictions submit an abbreviated CHAS.

[2] Included in the burden hours is the time that jurisdictions will need to provide substantive responses to HUD recommendations on the annual performance report.

13b

ANNUAL AND COMBINED ESTIMATE OF BURDEN OF INFORMATION COLLECTION FOR YEARS 2 THROUGH 5 JURISDICTIONS

[States and Units of General Local Government; Annual]

Description of information	Section of rules	Annual No. of	No. of response per response	Total annual responses	Annual hrs. per response	Total hrs. annually
Annual update	91 55(b)	1,078	1	1,078	80	86,240
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OR ANNUAL UPDATE SUBMISSIONS

2 through 5]

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	No. of Resp.	X	Estimate hours per year or annually	X	Aver hourly rt	Cost for 1 year or annually
....	1078		80		$15	1,293,600
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ANNUAL AND COMBINED ESTIMATE OF BURDEN OF INFORMATION COLLECTION FOR YEARS 2 THROUGH 5 JURISDICTIONS—Continued

[States and Units of General Local Government; Annual]

Description of information	Section of rules	Annual No. of	No. of response per response	Total annual responses	Annual hrs. per response	Total hrs. annually
Annual performance report	91.75, 80	1,078	1	1,078	40	43,120
Total annual burden hours						137,984

14. Changes in Burden

As previously stated in the justification section, the CHAS is a new requirement authorized under title I of the National Affordable Housing Act of 1990. The burden hours are compiled on the basis of a jurisdiction meeting this requirement. Since the CHAS replaces the CHAP and HAP, the burden hours relating to these latter documents have been eliminated. Thus, the burden hours needed in meeting the initial first year CHAS requirements are, balanced out by the elimination of the CHAP and HAP. The figures reflected on Line 19—2 also represent a reduced number of grantees.

15. The Results of This Collection of Information Are Not Planned for Statistical Use

August 2, 1991.

Addendum to Information Collection Submission of February 1, 1991

Regulatory Basis for the Comprehensive Housing Affordability Strategy Tables

The Department's intent to include tabular formats as part of the CHAS formulation was stated in the February 4, interim rule. Reference background, page 4481, first full paragraph which states "The CHAS document will consist of five components, each with tabular summaries and supporting narrative, that integrate the fifteen statutory items described in more detail in this rule * * *. Beginning in FY 1993, HUD will provide special tabulations of decennial census data from the U.S. Census Bureau as the basis for the tabular summaries of need and market and inventory condition integral to the first two components."

However, in consideration of the anticipated difficulties that States may encounter in accumulating the data needed to fill out the tabular formats consisting of tables 1 and 2, the Department has made these tables optional for FY 1992. In addition, States are not required to fill out Table 3. In the case of local jurisdictions, much of the data required for tables 1 and 2 is already available from a jurisdiction's latest Housing Assistance Plan (HAP). Importantly, if a jurisdiction has never developed a HAP, it is required to submit only that data available from the 1980 or 1990 Census.

The following are the regulatory citations that support each of the required Tables. The citation for jurisdictions involving units of general local government is 91.15 and 91.20 for jurisdictions involving States.

Table	Citation
1A "Housing Assistance Needs of Low and Moderate Income Households" (Optional for States).	91.15(a) and 91.20(a) "Needs data".
1B "Other Special Needs Population" (Optional for States).	91.15(a) and 91.20(a) "Needs data".
2A "Population and Minority Data" (Optional for States).	91.15(c) and 91.20(c) "Market characteristics".
2B "Market and Inventory Conditions Housing Stock Inventory" (Optional for States).	91.15(c) and 91.20(c) "Market characteristics".
2C "Assisted Housing Inventory" (Optional for States).	91.15(c) and 91.20(c) "Market characteristics".
3 "Priorities for Assistance 5-Year Plan" (Optional for States).	91.15(g) and 91.20(g) "Plan".
4/5A "Anticipated Resources & Plan for Investment".	91.15(f) and 91.20(f) "Resources".
5B "Goals for Families to be Assisted with Housing".	91.15(n) and 91.20(n) "Goals".

Summary of HUD Notice to Field Offices Transmitting CHAS Instructions

I. Background

Title I of the National Affordable Housing Act established the requirement that States and local governments that apply for direct assistance under certain HUD programs have a housing strategy that has been approved by HUD. For certain other applicants, the Act requires that an application for funding include a certification of consistency with an approved housing strategy for the jurisdiction in which the proposed project will be located. The Department published an interim rule implementing the CHAS requirements in the **Federal Register** on February 4, 1991.

These requirements may change when the Department publishes a final rule on the CHAS in early 1992. Consequently, HUD invites jurisdictions to comment on the CHAS requirements and to suggest ways in which the CHAS can be made a more useful State and local planning instrument. HUD especially encourages jurisdictions to comment on the required tables and to identify areas of the instructions for the tables and narratives that need clarification. The Department hopes to draw upon the initial experiences of jurisdictions in developing the CHAS to ensure that it becomes a valuable planning tool for jurisdictions.

The Department recognizes that the CHAS imposes new requirements and that many jurisdictions lack experience in developing and implementing comprehensive housing plans. For this reason, HUD considers the first year or two to be a time for capacity building within jurisdictions. This first CHAS submission is an opportunity for the Department to gather feedback and make adjustments that will enhance the usefulness of the CHAS as both a planning instrument for jurisdictions and a monitoring tool for HUD.

II. Purpose

The CHAS is a comprehensive planning document that identifies a jurisdiction's overall needs for affordable and supportive housing and outlines a strategy to address those needs. The Act requires each jurisdiction's CHAS to contain fourteen elements that describe the jurisdiction's housing needs and market conditions, set out a 5-year strategy that establishes priorities for meeting those needs, identify resources anticipated to be available for the provision of affordable and supportive housing, and establish a short-term investment plan that outlines the intended uses of resources. The CHAS replaces the Housing Assistance Plan (HAP) required for Community Development Block Grant (CDBG) Program funding and the Comprehensive Homeless Assistance Plan (CHAP) required by the McKinney Homeless Assistance Programs.

The CHAS is much more than a prerequisite for funding or a monitoring tool for HUD's own use. The major purpose of the CHAS is to encourage jurisdictions to develop a comprehensive, long-term strategy for addressing their needs for affordable and supportive housing. Thus, the CHAS is a comprehensive planning document. The CHAS development process represents an opportunity to involve citizens and community groups in the process of assessing a jurisdiction's overall housing needs, establishing strategic priorities and developing a plan to meet the jurisdiction's identified housing goals. Once in place, the CHAS will serve as a useful management tool to guide the jurisdiction's housing investment decisions.

While data on housing needs and conditions are an integral part of the CHAS, it should be stressed that the CHAS is not an exercise in data collection and presentation. The 5-year narrative strategy is the centerpiece of the CHAS. Use of current and reliable data in assessing its needs will enable a jurisdiction to develop the most responsive and effective strategy possible. Jurisdictions should consider the required data as a means to assess the housing needs and resources that will shape their strategies, not as the driving force behind the CHAS.

Although HUD intends to provide the data on housing needs and conditions in future years, this data is not currently available in the tabular formats shown. Therefore, the instructions identify where inclusion of this data is optional for the FY 1992 submission.

(End of Summary)

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BILLING CODE 4210-01-M

PREPARING A

COMPREHENSIVE HOUSING AFFORDABILITY STRATEGY

FOR FISCAL YEAR 1992

INSTRUCTIONS FOR STATES

NOTICE: THESE FORMS AND INSTRUCTIONS ARE BASED ON THE INTERIM RULE PUBLISHED FOR EFFECT ON FEBRUARY 4, 1991, AND ARE FOR USE IN SUBMITTING THE CHAS FOR FY 1992 ONLY. THE RULE IS SUBJECT TO CHANGE WHEN PUBLISHED AS A FINAL RULE. PLEASE SEND YOUR COMMENTS ON THE INSTRUCTIONS AND FORMS TO BOTH THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND TO THE OFFICE OF MANAGEMENT AND BUDGET AT THE ADDRESSES LISTED BELOW SO THEY MAY BE CONSIDERED IN FORMULATING THE CHAS REQUIREMENTS FOR FUTURE YEARS.

Public reporting burden for this collection of information is estimated to average 248 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2506-XXXX), Washington, D.C. 20503.

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Comprehensive Housing Affordability Strategy (CHAS)

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General Information

As specified in the Interim Rule, 24 CFR part 91, published February 4, 1991, States must formulate a Comprehensive Housing Affordability Strategy (CHAS) which includes information covering all areas within the State, both metropolitan and nonmetropolitan. However, the Interim Rule further provides a State the option of incorporating into its CHAS the CHASs prepared by local jurisdictions. Whether or not a State exercises this option, HUD will still receive an individual CHAS from each CDBG Entitlement Community in the State which will provide detailed descriptions of the affordable and supportive housing needs of those metropolitan communities.

The Department has therefore determined that the State CHAS should, with only a few exceptions (discussed in other sections of these instructions), cover only those portions of the State for which the State has not incorporated local CHASs. Moreover, even those CDBG Entitlement Communities whose local CHASs have not been incorporated will be covered only (again with limited exceptions) in the narrative portions of the State CHAS.

Accordingly, the State CHAS should focus primarily on the nonentitled (for CDBG) portions of the State. Nonentitled local jurisdictions will not normally be submitting full CHASs (unless part of multijurisdiction HOME consortia), or even abbreviated strategies, and will typically receive HUD financial assistance in major HUD formula programs such as CDBG and HOME only through the State. The State CHAS is thus the only comprehensive planning document for those nonentitled communities.

As specified in the Interim Rule, the State CHAS will consist of five parts. These parts integrate the 14 elements of information required by the statute and described in detail in the regulations.

The prescribed format described in these instructions further groups the five parts of the CHAS into three major sections. These three sections and their component parts are:

- State Profile
  1. Needs Assessment.
  2. Market and Inventory Conditions.
- 5-year Strategy
  3. Strategies.
- 1-Year Plan/Annual Update
  4. Resources.
  5. Implementation.

Since a State may choose to incorporate local CHASs into its CHAS and is required by the Interim Rule to break down information for parts 1 and 2 by geographic area within the State, the State CHAS must also include an Introduction, which describes the options the State has chosen, and how it has presented the required information.

Each of the five main parts of the State CHAS contains narrative discussions of affordable housing and supportive housing for homeless persons and others with special needs, supported by tables and other documentation. For parts 1 and 2, the State has the option of providing data using the tables furnished by HUD or providing the same data in an alternative tabular format at least as detailed.

The State CHAS shall cover both Entitlement and nonentitlement communities (minus any jurisdictions whose CHASs have been incorporated in the State CHAS) in its narrative sections. Tabular data for parts 1 and 2 shall cover only the nonentitled portions of the State, broken down by nonentitled metropolitan areas and nonmetropolitan areas. Tabular data for the remaining three parts of the State CHAS shall be consolidated for the entire State, to the extent the State plans to invest funds under its control in those areas, including those whose local CHASs have been incorporated into the State CHAS.

Tables and instructions for filling out the tables are located in appendix A. Definitions for terms used in these instructions may also be found in appendix A under the section entitled "General Definitions Used With The CHAS."

The related tables and documentation for each part are to be attached at the back of the narrative for that part. The cover sheet included as appendix B shall be completed and placed at the front of the CHAS package. The State must also provide a table of contents at the beginning of the CHAS indicating the location of the narrative and tables and other supporting documentation for each part of its submission. The format for the table of contents may be found in appendices C and D of these instructions.

The tables contained in appendix A have been designed for use beyond Fiscal Year 1992. However, the instructions for each of the tables are for the Fiscal Year 1992 submission only. The instructions will be revised for future submissions.

For the Fiscal Year 1992 CHAS, HUD cannot provide to States a break-down of Census data by entitled/nonentitled areas, and, within the nonentitled portion, by metropolitan and nonmetropolitan area. HUD also does not expect States to conduct special surveys to collect such data. Accordingly, needs assessment and market and inventory conditions data are not required to be submitted.

Where estimates for nonentitled areas can be provided from data derived from the U.S. Census or from readily available State sources, States are encouraged to provide such estimates. The estimates may be provided for either all nonentitled areas, or, if possible, between nonentitled metropolitan areas and nonmetropolitan areas. The instructions for each of the applicable tables include specific guidance on which U.S. Census publications contain the data requested. However, these publications do not break out the data for entitled metropolitan areas, nonentitled metropolitan areas and nonmetropolitan areas.

The CHAS represents a State's assessment of its needs for affordable housing and supportive housing for homeless and other persons, and its strategy and action plan for addressing those needs. Therefore, States are free to expand the contents of their CHAS beyond what is minimally required to be submitted for HUD review and approval.

Introduction

In this section the State identifies the local jurisdictions, if any, whose individual CHASs have been incorporated into the State CHAS, and indicates the geographic sub-State areas by which information in the State CHAS is provided.

Incorporation of Local Jurisdictions' CHASs

The State shall provide in this section a list of all local jurisdictions—including metropolitan cities, other cities, urban counties, counties, and HOME

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Introduction

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Incorporation of Local Jurisdictions' CHASs

The State shall provide in this section a list of all local jurisdictions—including metropolitan cities, other cities, urban counties, counties, and HOME

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consortia—whose CHASs are incorporated in the State CHAS. Signature of the cover sheet of the State CHAS shall constitute acceptance by the State of any local CHAS on this list as part of the State's overall affordable and supportive housing strategy and as the basis for investment of State or State-administered HUD resources in that jurisdiction.

The State need not append a copy of any incorporated local CHAS to the State CHAS since HUD will have received, or will ultimately receive, a copy from the jurisdiction.

States which are considering incorporating local CHASs should review copies of those jurisdictions' draft CHASs published for public review and comment, and then copies of those jurisdictions' final CHASs as ultimately revised and submitted, following the citizen participation process, to HUD. If at the time the State is ready to submit its State CHAS to HUD it has not yet received or reviewed a jurisdiction's final CHAS, it must make a preliminary decision on incorporation of that CHAS on the basis of the draft version.

If a draft local CHAS is the version incorporated, the State shall note in parentheses following that jurisdiction's name on the list: "Draft CHAS published for public comment on [provide date]." Once the final versions of all such draft local CHASs have been received and reviewed, the State shall submit a (revised) list of all jurisdictions whose final local CHASs have been incorporated in the State CHAS.

The letter transmitting the final list should note whether, as a result of changes in the final versions, any of the draft CHASs originally incorporated are no longer incorporated, or whether any CHASs not previously incorporated are now incorporated. Based on such changes, the State should submit any necessary amendments to its CHAS. Such amendments will not be considered to be substantial amendments and, therefore, will not subject the State to any further citizen participation requirements.

Where the State has chosen not to incorporate one or more local CHASs, the State shall indicate, in general terms, the reasons why. The State need not identify such jurisdictions by name, particularly if most local CHASs have not been incorporated, nor provide more than a brief description of its basic approach to the issue.

Sub-State Geographic Areas

The State shall identify in this section the geographic areas by which information in the State's CHAS is presented. As noted in the interim rule, the State has a wide variety of options, although at the very least, it must break out information between entitled and nonentitled areas, and within the latter, between metropolitan and nonmetropolitan areas.

Jurisdictions whose CHASs are incorporated

Where a local jurisdiction's CHAS has been incorporated in the State CHAS, that jurisdiction should not be included in either the narrative or tabular presentations of parts 1 or 2 of the State CHAS. The State need only include the jurisdiction in the presentations in Parts 3 (Strategies), 4 (Resources) and 5 (Implementation), to the extent the State plans to invest resources in that jurisdiction.

Entitled Areas (whose CHASs are not incorporated)

For the narratives of parts 1 and 2 of the CHAS, the State has a choice of consolidating all such areas in a single presentation, or may break out information for such areas by city, county, metropolitan area, planning district, or other sub-State region. For the narratives of parts 3, 4 and 5 of the CHAS, the State shall consolidate all such areas in a single presentation. No tabular data will be provided for entitled areas in parts 1 or 2 of the CHAS. Entitled areas will be included in the tables for parts 3 (table 3 is optional for States), 4, and 5 to the extent the State plans to invest resources in such areas.

Nonentitled Areas (whose CHASs are not incorporated)

For the narratives of parts 1 and 2 of the CHAS, the State must, at a minimum, break down the presentations for nonentitled areas by metropolitan and nonmetropolitan areas. Within the metropolitan and nonmetropolitan categories, the State has a choice of further breaking the information down by city, county, metropolitan area (if applicable), planning district, or other sub-State region. For the narratives of parts 3, 4 and 5 of the CHAS, the State is only required to break out the presentations by metropolitan and nonmetropolitan areas.

For parts 1 and 2 of the CHAS, if the State wishes to provide tabular data, then it must, at a minimum, provide the tabular data for all (CDBG) nonentitled areas of the State in the tables provided by HUD or provide that data in an alternative State format at least as detailed. The State is encouraged to break down the tabular data for all nonentitled areas of the State, if possible, into separate tables for metropolitan and nonmetropolitan areas. As in the narratives, the State has a choice of further breaking the data down by other sub-State categories, i.e., a separate table for each such category. For parts 3 (If the State chooses to complete Optional table 3), 4, and 5 of the CHAS, the State shall submit consolidated tables for all entitled and nonentitled (both metropolitan and nonmetropolitan) areas of the State.

Section I. State Profile

Part 1. Needs Assessment

This part summarizes available data on the most significant current housing needs of very low-income, low-income, and moderate-income families, and projects those needs over the five-year CHAS period. This part also summarizes the most significant current supportive housing needs of homeless persons and others with special needs.

General Instructions

The narrative should describe the State's assessment of the most significant current and projected needs for entitled areas (minus those whose CHASs have been incorporated) and, as presented in the tables, for nonentitled areas. The State shall also discuss those needs or issues which are not or cannot be qualified or presented in tabular form even for nonentitled areas.

In future years, States shall be required to quantify their current needs utilizing tables 1A, and (on an optional basis) 1B, or they may quantify specified needs data using other tabular formats at least as detailed. For the FY 1992 submission, States are not required to complete needs data for tables 1A. Although States are encouraged to complete all or a portion of this (or an alternative) table to the extent they can from available Census or State data sources, they should not undertake special surveys solely for this purpose.

Table 1B is an optional table which will not be required even in future years, but may be used to organize data. The table can serve as a resource in developing the narrative on the estimated needs for supportive housing and/or services for people with special needs other than homeless persons.

Projected 5-year affordable housing needs may be described in narrative form, or, if the 5-year projected needs are significantly different in several categories of need, on a second table 1A.

A 5-year projection of supportive housing needs of homeless persons or others with special needs is not required. However, where the State anticipates there will be a significant change in supportive housing needs in the foreseeable future, it should discuss those future needs in the narrative sections which address current needs.

Narratives

The outline provided below must be followed separately for each geographic area which the State has identified in the Introduction, including at least (1) entitled areas, (2) nonentitled metropolitan areas, and (3) nonmetropolitan areas, but excluding any jurisdictions whose CHASs have been incorporated in the State CHAS.

Housing Needs—Current Estimates.

The narrative is to discuss the State's estimate of current needs for housing assistance for very low-income, low-income, and moderate-income families and households for the various categories called for in table 1A. Where supporting data are not available, the narrative is to describe to the best possible extent the significant needs which exist.

The narrative must identify the source(s) of the family and household needs data presented in table 1A (if used) or the narrative. Where modified or expanded data other than Census data are provided in table 1A or the narrative as the basis of current estimates, the State must indicate in the narrative the source of additional data or the projection techniques and assumptions applied in developing the modified data.

The narrative shall include a discussion of the estimated extent to which cost burden and severe cost burden are being experienced by low- and moderate-income persons in the State, as well as a discussion of the estimated extent to which families already receive housing assistance. In particular, the narrative shall describe the number and family type of households who meet the Federal preferences for priority in admission to rental assistance programs ("worst case" needs).

Those with "worst case" needs for assistance are unassisted very low-income renter households who pay more than half of their income for rent, live in seriously substandard housing (which includes homeless people) or have been involuntarily displaced. If the State has established its own preferences for admission to public housing or rental assistance programs, these also should be described.

The narrative shall also discuss the housing needs of the elderly and persons with disabilities who do not require supportive housing services.

Five-Year Projections. A State must consider whether and how its current housing needs will change over the five-year CHAS period. If the State does not believe there will be significant changes in its current estimate of needs, it should so indicate in the narrative. If it believes there will be significant changes in its current estimate of needs, and it has presented its current estimates in either table 1A or an alternative tabular format, it should present those five-year projected needs in another table 1A or alternative tabular format. The State should describe in its narrative the projected changes of the years covered by the CHAS, as appropriate.

In developing its five-year projection, the State must consider and discuss any foreseeable changes in housing needs that may result from those employed or expected to be employed in the State but not currently residing there.

Supportive Housing Needs of Homeless Persons

Note: The FY 1992 Submission for the Supportive Needs of Homeless has been Revised from Previous Draft Instructions.

For the fiscal year 1992 CHAS submission, States are required to provide ONLY a narrative description of their homeless population. For the fiscal year 1993 CHAS submission, HUD intends to provide States with guidance on acceptable methodologies and definitions to estimate the size of their homeless populations. HUD is currently developing this guidance.

States are required to provide the following on Supportive Housing Needs of Homeless Persons:

Current needs estimates. To the extent reliable information is available, the State shall describe in its narrative the nature and extent of homelessness within the State. The description may contain an estimated total number of homeless persons living in shelters in the State, although this information is not required. The State shall briefly describe the source of these estimates and the methods. However, States are not required to submit the complete data source or study to HUD. The source of the number must be made available to citizens upon request.

Note: State are not required for this year to break down total number of homeless persons by component (i.e. family versus single) or provide an estimate of the number of unsheltered. States need only describe the nature and extent of their unsheltered population and homeless families.

Special and Supportive Needs Population: States shall provide a description of the special needs population. If available, this description may include an estimated proportion of the total number of homeless persons who have special needs (i.e. persons who are mentally ill, alcohol or drug abusers, runaway or abandoned youth, victims of domestic violence and other categories that the State may specify).

If available, the racial and ethnic status of homeless population and of the special needs populations may be provided.

The narrative shall include a description of special needs of homeless persons (e.g. need for supportive housing, drug treatment, mental health counseling), if the information is available.

Supportive Housing Needs for Others with Special Needs—Current Estimates—The State shall describe in the narrative the characteristics and special housing needs of persons other than the homeless, including the elderly, frail elderly, persons with disabilities (mental, physical, developmental), persons with AIDS, and any other categories which the State specifies. This description must include those persons returning to the community from mental and physical health care institutions, as well as low-income families who could benefit from participating in an organized program to achieve economic independence and self-sufficiency, as identified in a Public Housing Agency's (PHA) Family Self-Sufficiency Program Plan.

Supportive housing is defined as housing with a supportive environment, such as group homes, single room occupancy, (SRO), or other housing that includes a planned services component. In addition, the narrative should consider the supportive service needs of persons in other home settings, whether in assisted housing or the general community, such as PHA Self-Sufficiency Program services.

This discussion should indicate the extent of existing supportive services and the documented need, summarized as appropriate from the plan of the State agency on aging, or equivalent plans from agencies serving the non-elderly handicapped populations, with appropriate references to any approved State plans.

Part 2. Market and Inventory Conditions

This part summarizes housing market and inventory characteristics, including trends in population, household formation, and housing, as well as information on the assisted housing and public housing stock. It also summarizes the facilities and services available for

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If available, the racial and ethnic status of homeless population and of the special needs populations may be provided.

The narrative shall include a description of special needs of homeless persons (e.g. need for supportive housing, drug treatment, mental health counseling), if the information is available.

Supportive Housing Needs for Others with Special Needs—Current Estimates—The State shall describe in the narrative the characteristics and special housing needs of persons other than the homeless, including the elderly, frail elderly, persons with disabilities (mental, physical, developmental), persons with AIDS, and any other categories which the State specifies. This description must include those persons returning to the community from mental and physical health care institutions, as well as low-income families who could benefit from participating in an organized program to achieve economic independence and self-sufficiency, as identified in a Public Housing Agency's (PHA) Family Self-Sufficiency Program Plan.

Supportive housing is defined as housing with a supportive environment, such as group homes, single room occupancy, (SRO), or other housing that includes a planned services component. In addition, the narrative should consider the supportive service needs of persons in other home settings, whether in assisted housing or the general community, such as PHA Self-Sufficiency Program services.

This discussion should indicate the extent of existing supportive services and the documented need, summarized as appropriate from the plan of the State agency on aging, or equivalent plans from agencies serving the non-elderly handicapped populations, with appropriate references to any approved State plans.

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This part summarizes housing market and inventory characteristics, including trends in population, household formation, and housing, as well as information on the assisted housing and public housing stock. It also summarizes the facilities and services available for

homeless persons and other persons with special needs.

General Instructions

The Market and Inventory Conditions narrative must describe the State's assessment of the significant characteristics of housing markets within the State as they relate to housing and supportive housing for homeless persons and others with special needs. The narrative should discuss any significant trends in total population, household population, and total housing inventory, or in the provision of supportive housing facilities and services, which may influence the development of the State's overall strategy.

States are responsible for providing sufficient information in the narrative and, as required, in the tables for this part to serve as a basis for the "Strategies" and "Implementation" sections of their submissions.

In future years, States shall be required to quantify their housing market and inventory conditions utilizing tables 2A, 2B, and 2C, or may present the required data utilizing other tabular formats at least as detailed. For the FY 1992 submission, States are not required to complete these tables. Although States are encouraged to complete all or a portion of these (or alternative) tables to the extent they can from available Census or State data sources, they should not undertake special surveys solely for this purpose.

In future years, HUD will provide 1990 Census data to States for use with tables 2A and 2B. The instructions for each table identify the appropriate Census publications containing some of the data elements on these tables.

For Fiscal Year 1992, States need only submit table 2C data relative to its inventory of assisted housing which is readily available from State sources. HUD cannot provide data on assisted housing in a readily usable format for each State in time for the October 1991 submission. While HUD maintains data on assisted housing, much of the coding is done at the county level, so that separating out such data by entitled and nonentitled areas may be difficult. However, HUD does expect to provide States with data on their assisted housing inventory for use with table 2C in future years.

Tabular data are not required for supportive housing for the homeless or for other persons with special needs.

Narratives

The outline provided below must be followed separately for each geographic area which the State has identified in the Introduction, including at least (1) entitled areas, (2) nonentitled metropolitan areas, and (3) nonmetroplitan areas, but excluding any jurisdictions whose CHASs have been incorporated in the State CHAS.

Housing Conditions. Based on the analysis of data and information available to the State, the narrative must include a description of the most significant market and inventory conditions. The narrative must also describe the nature and extent of the cost burden and severe cost burden experienced by renters.

The narrative shall include a discussion of housing markets in terms of supply, demand and cost of housing. The narrative shall highlight any adverse effects these market conditions have on producing rental housing, promoting new homeownership opportunities, alleviating overcrowding, and meeting the needs of under-served population groups, such as large families.

The discussion of the overall housing inventory shall include an assessment of whether any rental housing is expected to be lost from the assisted housing inventory for any reason, including losses through public housing demolition or conversion to homeownership, or through prepayment or voluntary termination of a Federally-assisted mortgage.

The State must also identify and describe in the narrative any neighborhoods within nonentitled localities with concentrations of racial/ethnic minorities and low-income families. The location and degree of these concentrations must be identified. (Degree of concentration can be shown in terms of percentages). Concentrations must be considered and addressed in the Five-Year Strategy.

The narrative shall indicate how current and anticipated conditions can be expected to influence the use of funds made available for rental assistance, production of new units, rehabilitation of existing units (including needs for modifications necessary to enable elderly and disabled people to remain in their homes), and acquisition of existing units.

Inventory of Facilities and Services for Homeless Persons. The State shall describe in the narrative the facilities and services that assist homeless persons and persons at imminent risk of becoming homeless. The description must include the following:

a. Estimates, to the extent that data are available, of the number of emergency shelters, transitional housing facilities, permanent housing for the handicapped homeless, and of the total overnight sleeping capacity of those types of facilities;

b. The availability of day shelters, soup kitchens, and other facilities providing assistance to homeless persons on less than an overnight basis;

c. The nature and extent of programs providing vouchers to assist homeless persons in obtaining shelter, meals, services, etc.

d. The nature and extent of social service programs that assist the homeless; and

e. The nature and extent of programs to prevent individuals and families at imminent risk of homelessness from becoming homeless.

Inventory of Facilities and Services for Persons with Other Special Needs. The State must describe the facilities and services that assist persons with other special needs, as identified in part 1.

Supporting Documentation

The State must identify the location of concentrations of minority and low-income residents in the nonentitled portions of the State. It may do so by using clearly marked maps, by describing the geographic boundaries of the areas, or by stating in which census division (enumeration districts, tracts, or block groups) the concentrations are located.

Section II. Five-Year Strategy

Part 3. Strategies

This part states the State's general plans and priorities to be pursued over the five-year period of the CHAS. It flows from the State's overall analysis of needs and market and inventory conditions, as described in parts 1 and 2.

General Instructions

The five-year strategy describes the State's action plan for addressing imbalances between its needs for housing assistance and its affordable and supportive housing inventory by:

1. Determining general priorities for allocating investment among the types of affordable and supportive housing needs and interventions covered by the CHAS;

2. Analyzing likely effects of relevant public policies on the success of efforts to develop, maintain, or improve affordable and supportive housing;

3. Implementing programs, providing services, and undertaking special initiatives;

4. Identifying the institutional structure through which the action plan will be implemented; and

5. Coordinating public and private funding resources, programs, services,

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and special initiatives in an integrated manner to achieve its strategic goals.

The State may summarize its investment priorities for very low-income and other low-income in table 3. Table 3 is not required for States, but States may wish to utilize table 3 as a convenient way to display their relative priorities. If the State chooses to utilize table 3, it is to be prepared on a consolidated basis for entitled and nonentitled areas. However, more than in any other part of the CHAS, the narrative is the most critical portion of the strategy.

Narratives

The outline provided below must be followed separately for (1) entitled areas, (2) nonentitled metropolitan areas, and (3) nonmetropolitan areas.

Priorities for Allocation Investment. The State shall discuss the reasoning behind the general priorities it has established for allocating available Federal and State resources within the State, and which, at its option, it may summarize in table 3. This discussion shall address the basis for assigning relative priorities:

1. Among different categories of very-low and low-income households with needs for housing assistance, as identified in part 1, including type and size of family;
2. Among the activity types appropriate for meeting these identified needs in the context of the housing market and inventory conditions and the costs of different activities; and
3. Among the various geographical areas within the State.

The narrative should describe how the housing problems of households with "worst case" needs for housing assistance and of other households meeting Federal or State preferences for assistance, and the alternatives available for addressing such needs, were considered in developing the State's investment priorities.

The State shall consider the needs for housing assistance of various racial and ethnic low-income groups in determining its priorities for allocating investment.

The State shall identify the geographic areas it has selected for investments and the nature of the impact it hopes to achieve through such investment.

The determination of priorities should flow logically from analysis of how the size, distribution, condition, and cost of the housing inventory matches up with the needs and types of housing problems of various income, racial, family, and tenure groups. For example, there may be a sufficient housing stock in standard condition or suitable for rehabilitation available for small families, but at rent levels above 30 percent of their income.

This situation might suggest a priority on rental assistance and/or moderate levels of rehabilitation to meet the needs of those households. On the other hand, acquisition or substantial rehabilitation of existing larger units, or new construction where necessary, might be given priority to provide affordable units needed by large families.

While rehabilitation would normally be a reasonable strategy in low-income neighborhoods with older housing, for areas with very high concentration of minorities higher priority to acquisition of standard housing and/or rental assistance in non-impacted neighborhoods might be appropriate. Similarly, the analysis of homeowners may indicate that access to ownership has been constrained among certain family sizes or racial groups, contributing to pressure on the rental market in certain size categories, neighborhoods, or jurisdictions. This might lead to placing a high priority on promoting homeownership opportunities for such groups, possibly through conversion of portions of the public or assisted housing stock to homeownership.

Finally, when considering allocation of priorities, attention should be paid to the extent to which certain groups are already in assisted housing; while their needs may not be wholly met, other portions of the low-income community may have more pressing needs and have received less assistance.

A State receiving HOME program funds may use those funds for new construction of certain types of affordable housing (in areas of the State not already designated through the HOME program as new construction eligible), under certain circumstances, provided that the State presents objective data in this portion of the narrative that demonstrate a high priority need for such housing. The types of housing, and the circumstances under which HOME funds may be utilized for new construction of such housing are contained in the HOME program regulations.

In this portion of the narrative, the State shall also describe its strategy for coordinating the Low-Income Tax Credit with the development of housing for which rents are affordable to very low-income and low-income families, as determined in accordance with the U.S. tax laws.

Relevant Public Policies. The narrative shall explain the extent to which the costs or incentives to develop, maintain, or improve affordable housing in the State are affected by State public policies, as embodied in the State constitution, State enabling legislation, statutes, ordinances, regulations, or administrative procedures and processes.

The narrative shall specifically identify and address any excessive exclusionary, discriminatory, or duplicatory policies, rules, and regulations that may constitute barriers to affordability, including the tax policies affecting land and other property, land use controls, zoning ordinances, building codes, code enforcement, fees and charges, growth limits, and policies that affect the return on residential (including supportive housing) investment. This discussion should include an analysis of how State laws and policies permit local jurisdictions to develop or maintain excessive exclusionary, discriminatory or duplicative policies.

The State shall describe its strategy to remove or ameliorate any negative effects of these policies, rules, and regulations, including any effects contributing to concentration of racial/ethnic minorities. Such strategy should include specific proposals for reforms of policies to be undertaken in the next five years.

Programs, Services, and Special Initiative Strategies. The State shall describe the Federal, State, and, to the extent made available to the State, private programs and services to be provided, and the special initiatives to be undertaken with resources under the State's control to implement its five-year strategy.

This discussion shall identify the specific elements or portions of the strategy to which each of these programs and initiatives will be directed, in terms of the affordable and supportive housing needs to be addressed. Specific strategies to be implemented through programs, services, and special initiatives, and which are to be discussed in the narrative include:

Affordable Housing

- Increasing the supply of standard, affordable housing through the acquisition and/or rehabilitation of existing housing units, and, if appropriate, the construction of new units;
- Providing rental assistance to alleviate rental cost burden, including severe cost burden, experienced by lower income families and individuals;
- Promoting homeownership opportunities;

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policies, as embodied in the State constitution, State enabling legislation, statutes, ordinances, regulations, or administrative procedures and processes.

The narrative shall specifically identify and address any excessive exclusionary, discriminatory, or duplicatory policies, rules, and regulations that may constitute barriers to affordability, including the tax policies affecting land and other property, land use controls, zoning ordinances, building codes, code enforcement, fees and charges, growth limits, and policies that affect the return on residential (including supportive housing) investment. This discussion should include an analysis of how State laws and policies permit local jurisdictions to develop or maintain excessive exclusionary, discriminatory or duplicative policies.

The State shall describe its strategy to remove or ameliorate any negative effects of these policies, rules, and regulations, including any effects contributing to concentration of racial/ethnic minorities. Such strategy should include specific proposals for reforms of policies to be undertaken in the next five years.

Programs, Services, and Special Initiative Strategies. The State shall describe the Federal, State, and, to the extent made available to the State, private programs and services to be provided, and the special initiatives to be undertaken with resources under the State's control to implement its five-year strategy.

This discussion shall identify the specific elements or portions of the strategy to which each of these programs and initiatives will be directed, in terms of the affordable and supportive housing needs to be addressed. Specific strategies to be implemented through programs, services, and special initiatives, and which are to be discussed in the narrative include:

Affordable Housing

- Increasing the supply of standard, affordable housing through the acquisition and/or rehabilitation of existing housing units, and, if appropriate, the construction of new units;
- Providing rental assistance to alleviate rental cost burden, including severe cost burden, experienced by lower income families and individuals;
- Promoting homeownership opportunities;

- Meeting the housing needs of large families, elderly persons, and persons with disabilities;
- Evaluating the energy efficiency of housing for lower income households and implementing programs and/or special initiatives to achieve lower overall housing costs by reducing energy costs.
- Alleviating overcrowding;
- Removing directly or ameliorating any negative effects, as well as to work with the units of general local government involved to remove or ameliorate any negative effects, including effects of local policies contributing to concentration of racial/ethnic minorities;
- Minimizing involuntary displacement;
- Ensuring no net loss in the assisted housing inventory as a result of public housing demolition or conversion to homeownership, prepayment or voluntary termination of a Federally-assisted mortgage, or any other actions;
- Encouraging public housing residents to become more involved in the management of public housing;
- Assisting public housing residents to become owners of their public housing units and/or developing other homeownership opportunities for these residents.

Supportive Housing for Homeless Persons

- Addressing the needs of various populations for emergency shelter and services, housing and services for transition to permanent housing and independent living, and housing and supportive services for those not capable of achieving independent living;
- Ensuring permanent affordable housing opportunities for persons who successfully complete a transitional housing program.
- Serving low-income families and individuals in imminent danger of residing in shelters or being unsheltered because they lack access to permanent housing and/or have an inadequate support network;

Supportive Housing and/or Services for Other Persons With Special Needs

- Addressing the unmet needs of persons with disabilities (mental, physical, developmental), the elderly, persons with AIDS, low income families who could benefit from participation in an organized program to achieve economic independence and self-sufficiency, and any other categories that the State specifies.

Institutional Structure. The State shall identify the institutional structure through which it will carry out its affordable and supportive housing strategy. Private industry, nonprofit organizations, and public institutions should be included in the discussion.

Each organization comprising the institutional structure shall be identified by type (public, private, nonprofit) and purpose (e.g., financial institution, State planning agency, State or local housing/community development agency, State public housing agency, social services agency, mental health agency, etc.). The State should identify each organization's respective role in carrying out affordable housing and supportive housing for homeless persons and other persons with special needs, and discuss the interrelationships among organizations in carrying out the strategy.

In describing the institutional structure for carrying out the State CHAS, the State shall specifically address the relationship between the State and local jurisdictions, their respective roles, and the extent to which the State plans to delegate responsibilities and subassign Federal funds (if permitted) or State funds to local jurisdictions.

The State shall provide an assessment of the institutional structure for carrying out its five-year strategy. This assessment shall discuss the existing strengths and gaps in the delivery of programs and services, including efforts to make use of available housing, social service, and mental and other health care resources, and shall identify proposed actions to strengthen, coordinate, and integrate those institutions and delivery systems. This assessment should also discuss the gaps in program and service delivery that result in persons becoming homeless (e.g., slow processing of public assistance payments, or release from institutions without housing resources identified).

Coordination of Resources. The State shall describe its plan for using available program, service, and special initiative resources under its control in a coordinated and integrated manner to achieve its affordable and supportive housing goals. This discussion should distinguish between programs for which the State may have an entitlement (e.g., CDBG, ESG, or HOME) and those for which it or State agencies may apply on a competitive basis.

The State should include in its discussion not only Federal programs administered through HUD, but also resources made available through other Federal agencies, such as resources available to support residential energy efficiency, or the supportive needs of the homeless and others with special needs. The State should also address the use of resources for activities intended to support housing, homeless assistance, or special needs programs, such as construction of water and sewer systems, public facilities, community centers, and parks.

Supporting Documentation

Supporting documentation in this part may include maps identifying concentrations of racial/ethnic or outlining the State's geographic resource allocation plan.

Section III. One-Year Plan/Annual Update

The two parts in section III, which constitutes the Annual Plan of a new five-year CHAS or the Annual Update in the subsequent four years, must be submitted every year. These two parts describe: (1) The resources the State reasonably expects will be available for the coming Federal fiscal year that will be used to address the needs and conditions described in section I (parts 1 and 2); and (2) the State's specific action plans and goals for that year toward carrying out the five-year strategy described in section II (part 3).

Part 4. Resources

General Instructions

The State shall quantify the resources it anticipates will be available and which it intends to commit during the year in the first two columns of table 4/5A. (The remaining columns of the table will be used to support part 5, Implementation). Resources to be invested in all entitled and unentitled areas, including any jurisdictions whose CHASs have been incorporated in the State CHAS, are to be consolidated in table 4/5A. Worksheet 4, which is not a required form, is provided to assist States in calculating the amounts to enter on table 4/5A. If the Worksheet is used, it should not be submitted as part of the State's CHAS.

The narrative portion of this part shall explain how these resources will be obtained, how it was determined which amounts would be committed, and actions to be taken to maximize resources.

Narratives

The narrative shall be divided into three sections, for: (1) Entitled areas; (2) nonentitled metropolitan areas; and (3) nonmetropolitan areas.

The State shall identify in the narrative all of the sources of funds for affordable and supportive housing that may reasonably be expected to be available, and that it reasonably expects to commit—either directly to projects and activities, or, if funds are subassigned, by obligating funds to local jurisdictions—during the fiscal year covered to carry out its strategy. For States, commitment means the first level of obligation. For State program funds that are subassigned, this means the obligation of funds to a State Recipient. For State program funds directly administered by a State, this means the obligation or commitment of funds to a specific identifiable project. The sources of funds available for commitment is to include public resources that are awarded directly to the State and any related private resources.

It should be noted that the State is generally expected to plan to take actions leading to commitment of all such resources. Therefore, where the plan does not reflect the commitment of a particular public resource identified as available for commitment, the narrative must provide an explanation for such omission.

In some programs (such as the State Community Development Block Grant Program) funds provided or to be provided to the State may be used for a variety of activities, only some of which would be appropriate to meet CHAS needs. The grant awards made for specific activities under the State CDBG program would be determined by the State's method of distribution for a given fiscal year, and by the types of activities for which applications were submitted by eligible units of general local government. The narrative should explain how it was determined what portion of such funds should be used to address affordable and supportive housing objectives.

When a State is in doubt concerning the level of funding that may be available to it for a particular program, the agency responsible for administering that program should be contacted for advice.

The Interim Rule requires that if a State plans (or is required by law) to distribute its funds competitively among local jurisdictions, it should describe its priorities and procedures for distribution. The discussion should be based on the State's expected distribution plan. HUD recognizes that the distribution plan will be subject to possible changes as a result of the citizen's participation process.

The narrative must specifically describe how assistance will be distributed to nonmetropolitan areas in amounts that take into account the nonmetropolitan share of the State's total population.

The State shall address specifically any matching requirements of the various resources to be utilized, and how it expects those requirements to be met. It shall also specifically describe its strategy for leveraging private and non-Federal funds by the use of Federal funds.

The State shall specifically identify any court orders or consent decrees imposed on jurisdictions within the State that affect the provision of assisted housing or fair housing remedies in the State and address how that order or decree will impact on the distribution of the State's resources and the determination of its goals.

Part 5. Implementation

This part translates the State's Five-Year Strategy and anticipated available resources into a one-year action plan and goals which will guide the State's resource allocation and investment decisions during the coming year.

General Instructions

The State shall complete the remaining columns of table 4/5A to specify its investment plan for the covered Federal fiscal year. It will also complete table 5B to specify goals for individuals and families to be served through such investment plans. Like table 4/5A, table 5B consolidates goals for all entitled and nonentitled areas, including goals to be achieved by investment of State-controlled resources in jurisdictions whose CHASs have been incorporated in the State CHAS.

The State shall describe in its narrative the investment plan and goals specified in the two tables, and the specific actions it will take to achieve those commitment levels and goals. The State shall also describe actions to be taken to remove or ameliorate the negative effects on affordability of public policies.

Additionally, the State must include in the narrative a description of how it will monitor its programs for compliance with its strategy.

Narratives

The narrative shall consist of two parts: (1) A one-year action plan for providing affordable housing and supportive housing for homeless persons and others with special needs, and (2) a monitoring plan.

Action Plan. The action plan shall be divided into three sections for: (1) Entitled areas; (2) nonentitled metropolitan areas; and (3) nonmetropolitan areas. Each section of the plan shall outline responsibilities, financial resources, and timetables, including:

1. How the goals are consistent with the State's five-year strategy;

2. The geographic areas in which the State plans to target assistance;

3. The governmental or other entities responsibile for delivering and managing the assistance; and

4. The time required for the assistance provided to each type of activity in table 4/5a to reasonably be expected to result in benefits to program beneficiaries.

Affordable Housing. The narrative shall explicitly discuss the actions that will be taken in the coming year to assist those very low-income renters meeting Federal preferences for housing assistance and thus reduce unmet "worst case" needs.

The narrative shall also include a description of the actions the State will undertake in the coming year to carry out its strategy to remove or ameliorate the negatve effects of State policies impacting affordability, as described in part 3. The narrative should include specific proposals for reforms of such public policies that the State will implement within the coming year.

Supportive Housing for the Homeless. The State shall describe the goals, programs, and policy initiatives the community expects to accomplish during the coming year to address the unmet needs of:

a. Homeless families and individuals, including those who are mentally ill, alcohol and drug abusers, victims of domestic violence, runaway and abandoned youth, and other categories the State specifies for (1) emergency shelter and services, (2) housing and services for transition to permanent housing and independent living, and (3) housing and supportive services to those not capable of achieving independent living; and

b. Low-income families and individuals who are in imminent danger of becoming homeless and do not have permanent housing and an adequate support network.

Supportive Housing for Other Persons with Special Needs. The State shall describe the goals, programs, and policy initiatives the State expects to accomplish during the next year to address the unmet needs of persons with disabilities (mental, physical, developmental), the elderly, persons with AIDS, low-income families who could benefit from participation in an organized program to achieve economic independence and self-sufficiency, and any other categories which the State specifies.

Monitoring Plan. The monitoring plan shall describe how the State intends to conduct monitoring reviews to determine whether its programs are being carried out in accordance with its

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The narrative shall also include a description of the actions the State will undertake in the coming year to carry out its strategy to remove or ameliorate the negatve effects of State policies impacting affordability, as described in part 3. The narrative should include specific proposals for reforms of such public policies that the State will implement within the coming year.

Supportive Housing for the Homeless. The State shall describe the goals, programs, and policy initiatives the community expects to accomplish during the coming year to address the unmet needs of:

a. Homeless families and individuals, including those who are mentally ill, alcohol and drug abusers, victims of domestic violence, runaway and abandoned youth, and other categories the State specifies for (1) emergency shelter and services, (2) housing and services for transition to permanent housing and independent living, and (3) housing and supportive services to those not capable of achieving independent living; and

b. Low-income families and individuals who are in imminent danger of becoming homeless and do not have permanent housing and an adequate support network.

Supportive Housing for Other Persons with Special Needs. The State shall describe the goals, programs, and policy initiatives the State expects to accomplish during the next year to address the unmet needs of persons with disabilities (mental, physical, developmental), the elderly, persons with AIDS, low-income families who could benefit from participation in an organized program to achieve economic independence and self-sufficiency, and any other categories which the State specifies.

Monitoring Plan. The monitoring plan shall describe how the State intends to conduct monitoring reviews to determine whether its programs are being carried out in accordance with its

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CHAS, and in a timely manner. Such descriptions must provide for monitoring to be carried out on a regular basis to ensure thet statutory and regulatory requirements are being met and that, where appropriate, information that is being submitted to a HUD cash and management information system is correct and complete.

Supporting Documentation

States must certify that they will affirmatively further fair housing, and that they are in compliance with a residential anti-displacement and relocation assistance plan. Those certifications are attached as appendix E.

Appendix A—Comprehensive Housing Affordability Strategy (CHAS)

Required State Chas Tables and Instructions

For 1992 CHAS (October, 1991 Submission) Only

General Definitions Used With the CHAS

Table 1A.* Housing Assistance Needs of Low and Moderate Income Households.
Table 1B.** Other Special Needs Population.
Table 2A.* Market and Inventory Conditions-Population and Minority Data.
Table 2B.* Market and Inventory Conditions—Housing Stock Inventory.
Table 2C.* Assisted Housing Inventory.
Table 3.** Summary of Priorities for Assistance-5-year Priorities for Very Low Income and Other Low Income Persons.
Table 4/5A. Anticipated Resources and Plan for Investment.
Worksheet 4.*** Anticipated Resources.
Table 5B. Goals for All Families to be Assisted with Housing.

*States are not required to submit these tables for the 1992 CHAS.

**States are not required to complete table 1B or table 3 for any CHAS submission, but may elect to do so.

***Worksheet 4 is not to be submitted with the CHAS.

General Definitions Used with the CHAS

Affordable Housing: Affordable housing is generally defined as housing where the occupant is paying no more than 30 percent of gross income for gross housing costs, including utility costs.

Affordable housing has a more specific definition for purposes of completing table 5B. That definition is included in the instructions for table 5B.

Committed: Generally means there has been a legally binding commitment of funds to a specific project to undertake specific activities, or an obligation of funds to a State recipient.

Expanded definitions for completing table 4/5A are included in the instructions for table 4/5A.

Cost Burden >30%: The extent to which gross housing costs, including utility costs, exceed 30 percent of gross income, based on data published by the U.S. Census Bureau.

Cost Burden >50% (Severe Cost Burden): The extent to which gross housing costs, including utility costs, exceed 50 percent of gross income, based on data published by the U.S. Census Bureau.

Disabled Household: A household composed of one or more persons at least one of whom is an adult (a person of at least 18 years of age) who has a disability. A person shall be considered to have a disability if the person is determined to have a physical, mental or emotional impairment that: (1) Is expected to be of long-continued and indefinite duration, (2) substantially impedes his or her ability to live independently, and (3) is of such a nature that the ability could be improved by more suitable housing conditions. A person shall also be considered to have a disability if he or she has a developmental disability as defined in the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001–6006). The term also includes the surviving member or members of any household described in the first sentence of this paragraph who were living in an assisted unit with the deceased member of the household at the time of his or her death.

Economic Independence and Self-Sufficiency Programs: Programs undertaken by Public Housing Agencies (PHAs) to promote economic independence and self-sufficiency for participating families. Such programs may include Project Self-Sufficiency and Operation Bootstrap programs that originated under earlier section 8 rental certificate and rental voucher initiatives, as well as the Family Self-Sufficiency program. In addition, PHAs may operate locally-developed programs or conduct a variety of special projects designed to promote economic independence and self-sufficiency.

Elderly Household: A family in which the head of the household or spouse is at least 62 years of age.

Existing Homeowner: An owner-occupant of residential property who holds legal title to the property and who uses the property as his/her principal residence.

Family: A household comprised of one or more individuals.

Family Self-Sufficiency (FSS) Program: A program enacted by section 554 of the National Affordable Housing Act which directs Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs) to use section 8 assistance under the rental certificate and rental voucher programs, together with public and private resources to provide supportive services, to enable participating families to achieve economic independence and self-sufficiency.

First Time Homebuyer: An individual or family who has not owned a home during the three-year period preceding the HUD-assisted purchase of a home that must be used as the principal residence of the homebuyer.

FmHA: The Farmers Home Administration, or programs it administers.

For Rent: Year round housing units which are vacant and offered/available for rent. (U.S. Census definition)

For Sale: Year round housing units which are vacant and offered/available for sale only. (U.S. Census definition)

Group Quarters: Facilities providing living quarters that are not classified as housing units. (U.S. Census definition). Examples include: prisons, nursing homes, dormitories, military barracks, and shelters.

HOME: The HOME Investment Partnerships Act, which is title II of the National Affordable Housing Act.

HOPE 1: The HOPE for Public and Indian Housing Homeownership Program, which is title IV, subtitle A of the National Affordable Housing Act.

HOPE 2: The HOPE for Homeownership of Multifamily Units Program, which is title IV, subtitle B of the National Affordable Housing Act.

HOPE 3: The HOPE for Homeownership of Single Family Homes Program, which is title IV, subtitle C of the National Affordable Housing Act.

Household: One or more persons occupying a housing unit. (U.S. Census definition).

Note: A special definition of household is used for table 1D, Supportive Housing and Services Population.

Table 1D Instructions provide a special definition of "household" as it is used in table 1D.

Housing Problems: Households with housing problems include those that: (1) Occupy units meeting the definition of Physical Defects; (2) meet the definition of Overcrowded; or (3) meet the definition of Cost Burde > 30%. Table 1A requests nonduplicative counts of households that meet one or more of these criteria.

Housing Unit: An occupied or vacant house, apartment, or a single room (SRO housing) that is intended as separate living quarters. (U.S. Census definition)

Institutions/Institutional: Group quarters for persons under care or custody. (U.S. Census definition)

Large Related: A household of 5 or more persons which includes at least 2 related persons.

LIHTC: (Federal) Low Income Housing Tax Credit.

Low Income: Households whose incomes do not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

Note: HUD income limits are updated annually and are available from local HUD offices for the appropriate jurisdictions.

Middle Income: Households whose incomes are from 96 to 120 percent of the median income for the area, as determined by HUD, with adjustments for smaller or larger families, except that HUD may establish income ceilings higher or lower than 120 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

If income adjustments are made by HUD and the low income limit for the area is set at higher or lower than 80 percent of median income, the middle income limits must be adjusted by multiplying the adjusted low income limit by 1.5. **Example:** With a median income for the area of $10,000 and a low income limit adjusted by HUD to $7,500, the adjusted middle income limit would be computed as follows: $7,500 x 1.5=$11,250 adjusted middle income limit.

Moderate Income: Households whose incomes are between 81 percent and 95 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 95 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

If income adjustments are made by HUD and the low income limit for the area is set at higher or lower than 80 percent of median income, the moderate income limits must be adjusted by multiplying the adjusted low income limit by 1.1875. **Example:** With a median income for the area of $10,000 and a low income limit adjusted by HUD to $7,500, the adjusted moderate income limit would be computed as follows: $7,500 x 1.1875=$8,906 adjusted moderate income limit.

Moderate Rehabilitation: Rehabilitation of residential property at an average cost for the project not in excess of $25,000 per dwelling unit.

Needing Rehab: Dwelling units that do not meet standard conditions but are both financially and structurally feasible for rehabilitation. This does not include units that require only cosmetic work, correction of minor livability problems or maintenance work.

Non-Elderly Household: A household which does not meet the definition of "Elderly Household," as defined above.

Non-institutional: Group quarters for persons not under care or custody. (U.S. Census definition used in table 2A.)

Not Rehabbable: Dwelling units that are determined to be in such poor condition as to be neither structurally nor financially feasible for rehabilitation.

Occupied Housing Unit: A housing unit that is the usual place of residence of the occupant(s).

Other Household: A household of one or more persons that does not meet the definition of a Small Related household or a Large Related household, or is an elderly household comprised of 3 or more persons.

Other Income: Families or households whose incomes exceed 80 percent of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families.

Other Low Income: Households whose incomes are between 51 percent and 80 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

Other Persons with Special Needs: Includes frail elderly persons, persons with AIDS, disabled families, and families participating in organized programs to achieve economic self-sufficiency. This category does not include homeless.

Other Vacant: Vacant year round housing units that are not For Sale, For Rent, or Vacant Awaiting Occupancy or Held. (U.S. Census definition)

Overcrowded: A housing unit containing more than one person per room. (U.S. Census definition used in table 1A.)

Owner: A household that owns the housing unit it occupies. (U.S. Census definition)

Physical Defects: A housing unit lacking complete kitchen, bathroom, or electricity (U.S. Census definition used in table 1A.). Jurisdictions may expand upon the Census definition.

Project-Based (Rental) Assistance: Rental Assistance provided for a project, not for a specific tenant. Tenants receiving project-based rental assistance give up the right to that assistance upon moving from the project.

Public Housing CIAP: Public Housing Comprehensive Improvement Assistance Program.

Public Housing MROP: Public Housing Major Reconstruction of Obsolete Projects.

Rent Burden > 30% (Cost Burden): The extent to which gross rents, including utility costs, exceed 30 percent of gross income, based on data published by the U.S. Census Bureau.

Rent Burden > 50% (Severe Cost Burden): The extent to which gross rents, including utility costs, exceed 50 percent of gross income, based on data published by the U.S. Census Bureau.

Renter: A household that rents the housing unit it occupies, including both units rented for cash and units occupied without cash payment of rent. (U.S. Census definition)

Renter Occupied Unit: Any occupied housing unit that is not owner occupied, including units rented for cash and those occupied without payment of cash rent.

Section 215: Section 215 of title II of the National Affordable Housing Act. Section 215 defines what constitutes "affordable" housing projects under the title II HOME program.

Service Needs: The particular services identified for special needs populations, which typically may include transportation, personal care, housekeeping, counseling, meals, case management, personal emergency response, and other services to prevent premature institutionalization and assist individuals to continue living independently..

Severe Cost Burden: See Cost Burden > 50%.

Sheltered: Families and persons whose primary nighttime residence is a supervised publicly or privately operated shelter (e.g., emergency, transitional, battered women, and homeless youth shelters; and commercial hotels or motels used to

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Renter: A household that rents the housing unit it occupies, including both units rented for cash and units occupied without cash payment of rent. (U.S. Census definition)

Renter Occupied Unit: Any occupied housing unit that is not owner occupied, including units rented for cash and those occupied without payment of cash rent.

Section 215: Section 215 of title II of the National Affordable Housing Act. Section 215 defines what constitutes "affordable" housing projects under the title II HOME program.

Service Needs: The particular services identified for special needs populations, which typically may include transportation, personal care, housekeeping, counseling, meals, case management, personal emergency response, and other services to prevent premature institutionalization and assist individuals to continue living independently..

Severe Cost Burden: See Cost Burden > 50%.

Sheltered: Families and persons whose primary nighttime residence is a supervised publicly or privately operated shelter (e.g., emergency, transitional, battered women, and homeless youth shelters; and commercial hotels or motels used to

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house the homeless). Sheltered homeless does not include any individual imprisoned or otherwise detained pursuant to an Act of Congress or State law.

Small Related: A household of 2 to 4 persons which includes at least two related persons.

Substantial Rehabilitation: Rehabilitation of residential property at an average cost for the project in excess of $25,000 per dwelling unit.

Supportive Housing: Housing, including Housing Units and Group Quarters, that has a supportive environment and includes a planned service component.

Supportive Service Need in FSS Plan: The plan that PHAs administering a Family Self-Sufficiency program are required to develop to identify the services they will provide to participating families and the source of funding for those services. The supportive services may include child care; transportation; remedial education; education for completion of secondary or post secondary schooling; job training, preparation and counseling; substance abuse treatment and counseling; training in homemaking and parenting skills; money management, and household management; counseling in homeownership; job development and placement; follow-up assistance after job placement; and other appropriate services.

Supportive Services: Services provided to residents of supportive housing for the purpose of facilitating the independence of residents. Some examples are case management, medical or psychological counseling and supervision, child care, transportation, and job training.

Tenant Assistance: Rental assistance payments provided as either project-based rental assistance or tenant-based rental assistance.

Tenant-Based (Rental) Assistance: A form of rental assistance in which the assisted tenant may move from a dwelling unit with a right to continued assistance. The assistance is provided for the tenant, not for the project.

Total Vacant Housing Units: Unoccupied year round housing units. (U.S. Census definition)

Unsheltered: Families and individuals whose primary nighttime residence is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings (e.g., the street, sidewalks, cars, vacant and abandoned buildings).

Vacant Awaiting Occupancy or Held: Vacant year round housing units that have been rented or sold and are currently awaiting occupancy, and vacant year round housing units that are held by owners or renters for occasional use. (U.S. Census definition)

Vacant Housing Unit: Unoccupied year-round housing units that are available or intended for occupancy at any time during the year.

Very Low Income: Households whose incomes do not exceed 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, and for areas with unusually high or low incomes or where needed because of prevailing levels of construction costs or fair market rents.

Year Round Housing Units: Occupied and vacant housing units intended for year round use. (U.S. Census definition). Housing units for seasonal or migratory use are excluded.

Note: Terms not defined above may be defined in the specific instructions for each table. If a term is not defined, the jurisdiction is to provide its own definition.

Table Instructions—General Information

The instructions for each table to be submitted with the State CHAS are instructions for the Fiscal Year 1992 submission only. On each table, a space is provided to enter the name of the submitting State. It is important that this space be filled in on all of the tables. Tables associated with parts 1, 2, and 3 of the CHAS (i.e. tables 1A, and 1B; tables 2A, 2B, 2C; and table 3) provide a space for identifying the five-year period the CHAS is to cover. For Fiscal Year 1992, States should enter "1992" through "1996." Similarly, tables 4/5A and 5B, which are to be submitted annually, has a space for the fiscal year the tables are covering.

Tables 1A and 1B, and tables 2A, 2B, and 2C are not required to be completed for Fiscal Year 1992 if the State does not have ready access to the data needed to complete those tables. (See the specific instructions for each table). Nonetheless, to avoid confusion, States are requested to submit all the series 1 (A and B) and series 2 (A through C) tables, even those tables where no numerical information is presented. Where data are not available for a table, write "NO DATA AVAILABLE" across the table and include those tables with the CHAS submission. This will help avoid a CHAS being disapproved because it is thought to be an incomplete CHAS submission.

BILLING CODE 4210-01-M

State CHAS Table 1A

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Housing Assistance Needs of Low & Moderate Income Households

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

Comprehensive Housing Affordability Strategy (CHAS)

Name of State

Mark one
☐ Nonentitled-Metro ☐ Other (Specify)
☐ NonMetro

Five Year Period
FY through FY

Mark one
☐ Current Estimate as of (enter date)
☐ Five-Year Projected Estimate as of (enter date)

Mark one
☐ All Households
☐ Racial/Ethnic Group Households (specify)[1]

Household by Type, Income, & Housing Problems	Renters					Owners				
	Elderly 1 & 2 Member Households (A)	Small Related (2 to 4) (B)	Large Related (5 or more) (C)	All Other Households (D)	Total Renters (E)	Elderly 1 & 2 Member Households (F)	Small Related (2 to 4) (G)	Large Related (5 or more) (H)	All Other Households (I)	All Owners (J)
1 **Very Low Income (0 to 50%)** *										
2 With Housing Problems										
3 Physical Defects										
4 Overcrowded										
5 Cost Burden > 30%										
6 Cost Burden > 50%										
7 **Other Low Income (51 to 80%)** *										
8 With Housing Problems										
9 Physical Defects										
10 Overcrowded										
11 Cost Burden > 30%										
12 Cost Burden > 50%										
13 **Total Low Income**										
14 **Moderate Income (81 to 95%)***										
15 With Housing Problems										
16 Physical Defects										
17 Overcrowded										
18 Cost Burden > 30%										
19 Cost Burden > 50%										
20 **Middle Income Hshlds.(96 to 120%)***										
21 **All Households**										

[1] See Table 2A for listing of Racial/Ethnic Groups

*Or, if appropriate, based on HUD income limits with required statutory adjustments

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BILLING CODE 4210-01-C

Instructions for Table 1A—Housing Assistance Needs of Low and Moderate Income Households

Refer to Appendix A, General Definitions Used with the CHAS, for definitions of terms used in this table.

General Instructions

For Fiscal Year 1992, States are not required to submit table 1A. However, they are encouraged to review State and Census data sources and submit, to the extent feasible, estimates based on available information. If a State elects to submit table 1A, but is unable to break out the date between (CDBG) nonentitled-metropolitan and nonmetropolitan areas, it is encouraged to complete the table on a consolidated basis for all nonentitled areas rather than submit no tabular data at all.

In future years, based on the Census data HUD will provide to States, a State will prepare a minimum of 12 versions of table 1A: One for all households in nonentitled/metropolitan areas; one for all households in nonmetropolitan areas; and for each of these two geographic categories of the nonentitled portion of the State, a separate table for each of five racial/ethnic groups. These groups are: (1) White (Non-Hispanic), (2) Black (Non-Hispanic), (3) Hispanic (All Races), (4) Native, American, and (5) Asian and Pacific Islanders.

If the State expects the needs of low income households to change significantly over the 5-year CHAS period, the State may also choose to submit two additional versions of table 1A to indicate these 5-year projections of needs, one for nonentitled/metropolitan areas and one for nonmetropolitan areas.

Finally, if the State elects to break out its needs data for additional sub-State geographic categories beyond the two required by HUD, additional versions of table 1A would be prepared for each of these categories.

Specific Instructions (For Fiscal Year 1992 Submission Only)

The State shall indicate whether the data presented in table 1A are for nonentitled-metropolitan areas, nonmetropolitian areas, or (at the State's option) other sub-State geographic category by placing an "x" in the appropriate box provided at the top of the table. If the State presents consolidated data for all (CDBG) nonentitled areas, it should place an "x" in the "Other" box and specify "consolidated nonentitled data," in the space provided. If data are presented for additional geographic areas, place an "x" in the "Other" box and specify the geographic category in the space provided.

The State will also indicate whether the data are for all households or for a particular racial/ethnic group by placing an "x" in the appropriate box at the top of the table. If the "Racial/Ethnic Group" box is marked, specify which of the five racial/ethnic groups the data are for.

For total household data for both nonentitled-metropolitan areas and nonmetropolitan areas the State shall indicate whether the data in table 1A represent its current estimate of need or its 5-year projection of needs by placing an "x" in the appropriate box.

For the current estimate enter "October 1, 1991" in the space provided for current estimate. For projected needs (if the State opts to prepare a separate table 1A to present projected needs), enter "September 30, 1996" in the space provided for 5-year projected estimate.

For Column A, enter data only for elderly households consisting of 1 or 2 members. Elderly households consisting of more than 2 members should be included in Column B, C or D, as appropriate.

BILLING CODE 4210-01-M

State CHAS Table 1B (Optional)

Other Special Needs Population

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

Comprehensive Housing Affordability Strategy (CHAS)

Name of State	Mark one: ☐ Nonentitled-Metro ☐ NonMetro ☐ Other (Specify)	Five Year Period. (enter fiscal yrs.) FY through FY

Category	Households			
	Persons with Disabilities (A)	Elderly with Special Needs (B)	Persons with AIDS (C)	Participants in Economic Independence and Self Sufficiency Programs (D)
1 Number of Households				▨
2 Supportive Housing Need				▨
3 Service Needs				▨
4 Supportive Service Need Identified in FSS Plan	▨	▨	▨	

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Instructions for Table 1B—Supportive Housing and Services Population

Special Definition

Number of Households: The total of households (including those with individuals and 2 or more persons who are sharing living quarters) plus persons living in group quarters.

Refer to Appendix A, General Definitions Used With The CHAS, for additional definitions of terms used, or programs cited in this table.

General Instructions

States are not required to submit Optional table 1B for any CHAS submission. However, should they elect to do so, Optional table 1B provides a format for estimating the need for supportive housing and services for the population with special needs.

If a State elects to submit table 1B, but is unable to break out the data between (CDBG) nonentitled-metropolitan and nonmetropolitan areas, it may complete the table on a consolidated basis for all nonentitled areas.

If a State elects to break out its supportive housing and services population data for additional sub-State geographic categories, additional versions of table 1B would be prepared for each of these categories.

For the categories of persons with disabilities, elderly with special needs, and persons with AIDS, the table calls for the estimated number of individuals in each category, and for the number of individuals with need for either supportive housing or services, or both. For participants in Family Self-Sufficiency (FSS) and similar economic independence programs operated by Public Housing Agencies, the table would provide an estimate of the number of individuals needing supportive services as identified in the PHA's FSS plan.

Some potential resource agencies and the client groups they serve include:

- State mental health agencies for persons with chronic mental illness;
- State agencies of mental retardation or State developmental disabilities councils for people with developmental disabilities;
- State rehabilitation agencies or State or local Centers for Independent Living for people with physical disabilities;
- State or area agencies on aging for elderly people;
- The Public Health Service's Center for Disease Control for persons with AIDS; and
- Public Housing Agencies for families eligible to participate in Family Self Sufficiency programs.

Specific Instructions

The State shall indicate whether the data presented in table 1B are for nonentitled-metropolitan areas, nonmetropolitan areas, or (at the State's option) other sub-State geographic category by placing an "x" in the appropriate box provided at the top of the table. If the State presents consolidated data for all (CDBG) nonentitled areas, it should place an "x" in the "Other" box and specify "consolidated nonentitled data," in the space provided. If data are presented for additional geographic areas, place an "x" in the "Other" box and specify the geographic category in the space provided.

Line 1—Enter the estimated number of households (as defined above) for each of the categories under columns A, B, and C.

Lines 2 and 3—Enter under each of the columns the estimated number of households from line 1 which have supportive housing needs or service needs, respectively, under Columns A, B, and C.

Line 4—Enter the number of participants in Economic Independence and Self-Sufficiency programs administered by the PHA(s) serving the State who will be provided services identified in the PHA's Family Self-Sufficiency (FSS) Plan.

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State CHAS Table 2A

Population and Minority Data

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

Comprehensive Housing Affordability Strategy (CHAS)

Name of State

Mark one
☐ Nonentitled-Metro
☐ NonMetro
☐ Other (Specify)

Five Year Period (enter fiscal yrs.)
FY: through FY

Category	1980 Census Data (A)	1990 Census Data or Current Estimate (B)
1. Total Population		
2. White (Non-Hispanic)		
3. Black (Non-Hispanic)		
4. Hispanic (All races)		
5. Native American		
6. Asian and Pacific Islanders		
7. Group Quarters		
8. Institutional		
9. Non-Institutional		
10. Household Population		

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.S. Department of Housing and Urban Development
ffice of Community Planning and Development

Comprehensive Housing Affordability Strategy (CHAS)

Metro ☐ Other (Specify)

Five Year Period (enter fiscal yrs.)
FY: through FY

nsus Data A)	1990 Census Data or Current Estimate (B)

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Instructions for Table 2A—Market Inventory and Conditions—Population and Minority Data

Refer to Appendix A, General Definitions Used With The CHAS, for definitions of terms used in this table.

General Instructions

For Fiscal Year 1992, States are not required to submit table 2A. However, they are encouraged to review State and Census data sources and submit, to the extent feasible, estimates based on available information. If a State elects to submit table 2A, but is unable to break out the data between (CDBG) nonentitled-metropolitan and nonmetropolitan areas, it is encouraged to complete the table on a consolidated basis for all nonentitled areas rather than submit no tabular data at all.

The 1990 U.S. Census will ultimately provide all the information needed to complete Column B of this Table. Until HUD is able to provide that data, States that are completing table 2A may only be able to complete Column A data, which are currently available from 1980 U.S. Census data sources, as specified below. To the extent that States can provide U.S. Census data, or current estimates based on local data, States are encouraged to provide Column B data.

Specific Instructions

The State shall indicate whether the data presented in table 2A are for nonentitled-metropolitan areas, nonmetropolitan areas, or (at the State's option) other sub-State geographic category by placing an "x" in the appropriate box provided at the top of the table. If the State presents consolidated data for all (CDBG) nonentitled areas, it should place an "x" in the "Other" box and specify "consolidated nonentitled data," in the space provided. If data are presented for additional geographic areas, place an "x" in the "Other" box and specify the geographic category in the space provided.

The following instructions cite readily available 1980 Census resource publications where information for Column A may be found. Cited Census publication titles and publication numbers are generally published separately for each State.

Column A. Lines 1 and 10—Total Population (Line 1), and Household Population (Line 10), for States, for places of 1,000 or more and for counties may be found in U.S. Census publication "General Population Characteristics (PC80–1–B)," table 14.

Lines 2 through 6—Use the data provided for the non-Hispanic portions of White, Black, Native American, and Asian Pacific Islanders, as well as the data for Persons of Spanish Origin, as found for States, for places of 2,500 or more and for counties in U.S. Census publication "General Social and Economic Characteristics (PC80–1–C)," table 59.

Lines 7 through 9—Census data at the Statewide level is not reported.

Note: 1990 U.S. Census population data for racial/ethnic groups, group quarters (institutional and non-institutional) and households are being released on a State-by-State basis in tape form in STF 1A. Tables P1, P9, P10 and P15 contain these data. Where the data are available in tape form, and the State can gain access to the data, it may use those data to complete Column B.

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State CHAS Table 2B
Market and Inventory Conditions Housing Stock Inventory

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

Comprehensive Housing Affordability Strategy (CHAS)

Name of State

Mark one
☐ Nonentitled-Metro ☐ Other (Specify)
☐ NonMetro

Five Year Period (enter fiscal yrs.)
FY through FY

Mark one
☐ 19_____ Census
☐ Current Estimate as of (enter date)

Category	Total (A)	0 or 1 bedrooms (B)	2 bedrooms (C)	3 or more bedrooms (D)
1. **Total Year-Round Housing**				
2. Total Occupied Units				
3 Renter Occupied Units				
4 Needing Rehab				
5 Not Rehabbable				
6 Owner Occupied Units				
7 Needing Rehab				
8. Not Rehabbable				
9 Total Vacant Units				
10 For Rent				
11 Needing Rehab				
12 Not Rehabbable				
13 For Sale				
14 Needing Rehab				
15 Not Rehabbable				
16 Awaiting Occupancy or Held				
17 Other				

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BILLING CODE 4210-01-C

Instructions for Table 2B—M
Inventory Conditions—Hous
Inventory

Refer to Appendix A, Gen
Definitions Used With The C
definitions of terms used in t

General Instructions

For Fiscal Year 1992, State
required to submit table 2B.
they are encouraged to revie
Census data sources and sub
extent feasible, estimates ba
available information. If a St

. Department of Housing and Urban Development
ice of Community Planning and Development

mprehensive Housing Affordability Strategy (CHAS)

ther (Specify)	Five Year Period (enter fiscal yrs.) FY through FY
	Mark one ☐ 19_____ Census ☐ Current Estimate as of (enter date)

1 bedrooms (B)	2 bedrooms (C)	3 or more bedrooms (D)

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Instructions for Table 2B—Market and Inventory Conditions—Housing Stock Inventory

Refer to Appendix A, General Definitions Used With The CHAS, for definitions of terms used in this table.

General Instructions

For Fiscal Year 1992, States are not required to submit table 2B. However, they are encouraged to review State and Census data sources and submit, to the extent feasible, estimates based on available information. If a State elects to submit table 2B, but is unable to break out the data between (CDBG) nonentitled-metropolitan and nonmetropolitan areas, it is encouraged to complete the table on a consolidated basis for all nonentitled areas rather than submit no tabular data at all.

Specific Instructions (For Fiscal Year 1992 Submission Only)

The State shall indicate whether the data presented in table 2B are for nonentitled-metropolitan areas, nonmetropolitan areas, or (at the State's option) other sub-State geographic category by placing an "x" in the appropriate box provided at the top of the table. If the State presents consolidated data for all (CDBG) nonentitled areas, it should place an "x" in the "Other" box and specify "consolidated nonentitled data," in the space provided. If data are presented for additional geographic areas, place an "x" in the "Other" box and specify the geographic category in the space provided.

BILLING CODE 4210-01-M

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State CHAS Table 2C

Assisted Housing Inventory

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

Comprehensive Housing Affordability Strategy (CHAS)

Name of State

Mark one:
☐ Nonentitled-Metro
☐ NonMetro
☐ Other (Specify)

Five Year Period (enter fiscal yrs.)
FY through FY

Current Estimate as of (enter date)

	Total Stock and Inventory				
Category	Total (A)	SRO (B)	0 or 1 bedrooms (C)	2 bedrooms (D)	3 or more bedrooms (E)
1. **Project Based Tenant Assistance**					
2. Public Housing					
3 Section 202					
4 Section 8					
5 Other HUD					
6. FmHA					
7. **Tenant Based Tenant Assistance**					
8. Section 8					
9 Other State/Local					
10. **Homeowner Assistance**					

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BILLING CODE 4210-01-C

Instructions for Table 2C—A
Housing Inventory

Refer to Appendix A, Gen
Definitions Used With The C
definitions of terms used in

General Instructions

For Fiscal Year 1992, State
required to submit table 2C.
Data on existing housing
State are currently being ref
HUD and will be provided b
future years. Such data will
available by HUD in time fo
use in preparing the Fiscal Y
CHAS. To the extent data or
housing units can be readily
States are asked to provide
table 2C.
If a State elects to submit
but is unable to break out th
between (CDBG) nonentitled
metropolitan and nonmetrop
areas, it is encouraged to co
table on a consolidated basi
nonentitled areas rather tha
tabular data at all.

Specific Instructions

The State shall indicate w
data presented in table 2C a
nonentitled-metropolitan ar
nonmetropolitan areas, or (a
option) other sub-State geog
category by placing an "x" i
appropriate box provided at
the table. If the State presen
consolidated data for all (CI
nonentitled areas, it should

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

Comprehensive Housing Affordability Strategy (CHAS)

☐ Other (Specify)	Five Year Period (enter fiscal yrs.) FY through FY	Current Estimate as of (enter date)

Total Stock and Inventory		
0 or 1 bedrooms (C)	2 bedrooms (D)	3 or more bedrooms (E)

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Instructions for Table 2C—Assisted Housing Inventory

Refer to Appendix A, General Definitions Used With The CHAS, for definitions of terms used in this table.

General Instructions

For Fiscal Year 1992, States are not required to submit table 2C.

Data on existing housing units in a State are currently being refined by HUD and will be provided by HUD in future years. Such data will not be made available by HUD in time for a State's use in preparing the Fiscal Year 1992 CHAS. To the extent data on assisted housing units can be readily obtained, States are asked to provide that data in table 2C.

If a State elects to submit table 2C, but is unable to break out the data between (CDBG) nonentitled-metropolitan and nonmetropolitan areas, it is encouraged to complete the table on a consolidated basis for all nonentitled areas rather than submit no tabular data at all.

Specific Instructions

The State shall indicate whether the data presented in table 2C are for nonentitled-metropolitan areas, nonmetropolitan areas, or (at the State's option) other sub-State geographic category by placing an "x" in the appropriate box provided at the top of the table. If the State presents consolidated data for all (CDBG) nonentitled areas, it should place an "x" in the "Other" box and specify "consolidated nonentitled data," in the space provided. If data are presented for additional geographic areas, place an "x" in the "Other" box and specify the geographic category in the space provided.

Begin by completing lines 2 through 6 for each of the columns. (Line 1 is the sum of lines 2 through 6 for each of the columns.)

Line 2—Public Housing. Enter under the appropriate columns the number of housing units assisted through low income public housing programs under the U.S. Housing Act of 1937.

Line 3—Section 202. Enter the number of units assisted through non-profit sponsors and made available to elderly and handicapped individuals under section 202 of the U.S. Housing Act of 1959. Also include assisted units provided under section 811 of the National Affordable Housing Act.

Line 4—Section 8. Enter the number of units assisted through housing developed under the section 8 New Construction, Substantial Rehabilitation, Moderate Rehabilitation and project-based certificate programs. Do not include section 8 rental assistance provided in section 202 projects; section 8 certificate or voucher assistance; or section 8 rental assistance provided through other HUD programs (see line 5).

Line 5—Other HUD. Enter the number of units assisted through housing developed under the section 236 and section 221(d)(3) Below Market Interest Rate (BMIR) programs, and under the Rent Supplement program.

Line 6—FmHA. Enter the number of units assisted through housing developed under the section 515 program of the Farmers Home Adminstration.

Line 1—Project-Based Tenant Assistance. Sum lines 2 through 6 for each of the columns.

Next complete lines 8 and 9. (Line 7 is the sum of lines 8 and 9 for each of the columns).

Line 8—Section 8. Enter the number of families currently receiving tenant-based rental assistance under the section 8 certificate and voucher programs. Do not include project-based certificates.

Line 9—Other. Enter the number of families currently receiving tenant-based rental assistance through housing programs other than section 8 (e.g., State-funded programs that offer assistance comparable to that of section 8 certificates or vouchers).

Line 7—Tenant-Based Tenant Assistance. Sum lines 8 and 9 for each of the columns.

Line 10—Homeowner Assistance. Enter the number of homeowners with current assistance being provided through interest subsidies or other comparable subsidies under HUD's section 235 program, or under the section 502 program administered through the Farmers Home Administration.

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State CHAS Table 3 (Optional)
Priorities for Assistance
5-Year Plan

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

Comprehensive Housing Affordability Strategy (CHAS)

Name of State:	Five Year Period (enter fiscal yrs.) FY through FY

	Activity	Renters				Owners				
							First-Time Homebuyers			
		Elderly 1 & 2 Member Households (A)	Small Related (2 to 4) (B)	Large Related (5 or more) (C)	All Other Households (D)	Existing Homeowners (E)	With Children (F)	All Others (G)	Homeless Persons (H)	Other Persons with Special Needs (I)
Very Low Income Persons	1. Moderate Rehabilitation / Acquisition									
	2. New Construction, Substantial Rehabilitation, Related Infrastructure									
	3. Rental Assistance					▨	▨	▨		
	4. Homebuyers Assistance	▨	▨	▨	▨	▨			▨	▨
	5. Support Facilities and Services									
Other Low Income Persons	6. Moderate Rehabilitation / Acquisition									
	7. New Construction, Substantial Rehabilitation, Related Infrastructure									
	8. Rental Assistance					▨	▨	▨		
	9. Homebuyers Assistance	▨	▨	▨	▨	▨			▨	▨
	10. Support Facilities and Services									

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BILLING CODE 4210-01-C

Instructions for Table 3—5-Year Priorities for Assistance to Very and Other Low-Income Persons for FY 1992

Refer to appendix A, General Definitions Used With The CHAS, for definitions of terms used in this table.

In determining the categories of very low income (0 to 50 percent of median income) and other low income (51 to 80 percent of median income), States should use the following basis:

- For metropolitan areas, use the HUD income limits for the appropriate metropolitan area;
- For nonmetropolitan areas, use either State-wide median income figures or the HUD income limits for the appropriate County, whichever is higher.

General Instructions

States are not required to submit Optional Table 3 for any CHAS submission. If they elect to do so, however, the following instructions apply.

The State's relative priorities are to be developed by weighing the severity of needs for assistance among all groups and subgroups, including the relative need between very low-income and other low-income persons. Priorities are not to be established separately for very low-income and other low-income persons. The establishment of priorities will emerge based on many considerations, among them the State's analysis of its housing stock and market conditions, its analysis of the relative housing needs of its very low and other low income families, and its assessment of the resources likely to be available over the five year period.

Based on the State's overall priorities, it is to identify on table 3 the relative priority ("first," "second," or "third") it will give in providing various types of assistance to renters, homeowners, homeless persons and other persons with special needs over the five year CHAS period. In establishing its five year priorities, the State must consider not only who among the various categories of low income households are most in need of these housing activities, but also determine which of these activities will best meet the housing needs of the identified households.

Because the purpose of the table is to be used to distinguish relative priorities, it is not acceptable to assign "first" priority consideration to every group.

The State's narrative is to thoroughly discuss the assignment of priorities.

Specific Instructions

For table 3, lines 1 through 10, enter the relative priority to be given over the 5-year CHAS period to each of the household types and persons designated in Columns A through H. Enter under the appropriate column the number "1" for "first priority consideration," the number "2" for "second priority consideration," or "3" for "third priority consideration." The number "0" should be entered in the appropriate box(es) where the State does not anticipate providing assistance to fund one or more of the activities listed and/or one or more of the household types displayed. The narrative must discuss the basis for not assigning a priority to any of the categories for which a "0" is entered.

The State may include modifications to housing to accommodate special needs of elderly or people with disabilities as moderate rehabilitation (line 1).

No entries are to be made in shaded areas.

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State CHAS Table 4/5A

Anticipated Resources & Plan for Investment

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

Comprehensive Housing Affordability Strategy (CHAS)

Name of State:

FY

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Funding Source Federal Funds Awarded or to be Awarded to State	Anticipate to be Available (A)	Expect to Commit (B)	Anticipated resources expected to be committed to projects/activities during FY ($000's) Rehabilitation (C)	Acquisition (D)	Tenant Assistance (E)	New Construction (F)	Home Buyer Assistance (G)	Planning Grants (H)	Support Services (I)	Operating Costs (J)
1. Home								▨	▨	▨
2. Hope 1						▨				▨
3. Hope 2						▨				▨
4. Hope 3					▨	▨				▨
5. CDBG								▨		▨
6. DOE/Other Energy Prg.				▨	▨		▨	▨	▨	
7. LIHTC										▨
8. Other (Specify)										
9. **Subtotal - Housing**										
10. CDBG (Homeless)	▨							▨		▨
11. ESG				▨		▨	▨	▨		
12. Perm. Housing for Handicapped					▨		▨	▨		
13. Transitional Housing					▨		▨	▨		
14. Shelter Plus Care			▨	▨		▨	▨	▨	▨	▨
15. Other (Specify)										
16.										
17.										
18. **Subtotal - Homeless**										
19. **Total Federal**										

Funding Source Non-Federal Funds	Anticipate to be Available (A)	Expect to Commit (B)	Anticipated resources expected to be committed to projects/activities during FY ($000's)							
			Rehabilitation (C)	Acquisition (D)	Tenant Assistance (E)	New Construction (F)	Home Buyer Assistance (G)	Planning Grants (H)	Support Services (I)	Operating Costs (J)
20. Total State Funds										
21. Total Private Funds to State										
22. Total - Non-Federal Funds										
23. Grand Total All Funds										
24. Entitlement Jurisdictions	▨		▨	▨	▨	▨	▨	▨	▨	▨
25. Nonentitlement MetroJurisdictions	▨		▨	▨	▨	▨	▨	▨	▨	▨
26. Nonentitlement NonmetroJurisdictions	▨		▨	▨	▨	▨	▨	▨	▨	▨

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Instructions for Table 4/5A—Anticipated Resources and Plan for Investment

Note: The FY 1992 CHAS Submission Table 4/5A for Anticipated Resources and Plan for Investment has been Revised from Previous Draft Instructions.

Special Definitions

Acquisition: (Column D) For purposes of completing table 4/5A, acquisition means acquisition of housing not in need of rehabilitation, with no expectation of other listed activities being carried out in conjunction with the acquisition. Where acquisition is intended to be carried out in conjunction with another activity (e.g., rehabilitation), the amount expected to be committed for the acquisition should be included under the activity column of the associated other activity. For example, a property is expected to be acquired and rehabilitated; the amount of funds expected to be committed for both acquisition and rehabilitation should be entered under Column C—Rehabilitation.

Committed: For table 4/5A purposes, this means, the first level of obligation. For States that subassign funds, this is the obligation of funds to a State recipient.

For States that directly administer programs, this is funds that are set aside for a specific project usually through a binding legal agreement. The instructions below elaborate on what is meant by committed for the various activities for which funding commitments are expected to be made.

Operating Costs: (Column J) Costs to carry out the actual operations of a project, such as electricity, rent and utilities. Funds expected to be committed for operating costs are only to be provided for those listed programs which are unshaded under Column J—Operating Costs.

General Instructions

For table 4/5A, "resources anticipated to be committed during the fiscal year" means (1) The anticipated commitment of funds to a state recipient, where the State subassigns funds, or (2) the anticipated commitment of funds to a specific identifiable project, where the State directly administers a program. Further, "project" may refer to a multifamily project or a single family home. Following are some examples to help clarify what "committed" means for different types of projects or activities:

(a) Rehabilitation or new construction of a privately owned project: A written legally binding agreement is signed between the State and the owner under which the State agrees to provide assistance to the owner of an identifiable project that can be expected to start construction within a reasonable period of time.

(b) Rehabilitation or new construction of a publicly owned project: The Project Set-Up Report is submitted under a HUD Cash and Management Information (C/MI) system which identifies a specific project that will start construction within 6 months of receipt of the Project Set-Up Report. If Project Set-Up Reports are not required, such other public document or action is completed that identifies an amount of funds to be provided for the rehabilitation or construction of the project.

(c) Acquisition: A written legally binding agreement (i.e., a contract for sale) is signed between the State and the project owner under which the State agrees to provide funds to the owner for the purchase of the project that can be expected to be accomplished within a reasonable period of time and the owner agrees to transfer title within a reasonable period.

(d) Tenant-based rental assistance: The State has entered into a rental assistance contract with the owner or the tenant to provide the assistance.

(e) First-time home buyer assistance: A written legally binding agreement (i.e., a contract for sale) is signed between the State and the proposed home buyer under which the State agrees to provide assistance to the home buyer for the purchase (whether conditional or otherwise) of the property that can be expected to be accomplished within a reasonable period of time.

All dollar amounts should be rounded to the nearest thousand dollars for this table. Thus, $829,247 would be reported as 829.

Cells have been shaded for individual Federal programs where information is not desired, or where the general funding activity is not an eligible activity for the specific program listed. For State and private funding sources, if an activity is not an eligible activity under the specified program, enter "N/A" in the cell. For all other unshaded cells, enter "0" where no funds will be committed for a particular activity.

Optional Worksheet 4 may be used by the State in deriving the figures to be entered under Columns A and B. Worksheet 4 is not to be submitted to HUD.

Specific Instructions—Funding Source. This column lists various funds available to a State by category. The first category, "Federal funds awarded or to be awarded to State," is broken down into housing programs and homeless programs. On line 8, "Other," the State is to specify any funds available for affordable housing through programs other than those listed. Especially in the early years of completing this form, States may have funds available from other programs that have been terminated, such as the Rental Rehabilitation Program (RRP). States with funds available from a prior year RRP or other terminated programs should include them in the spaces provided for "other" programs. If there is not sufficient space to list all other programs, the State should list the additional programs at the bottom of the last page of the table or append a separate page.

For line 9, "Subtotal, Housing," sum the amounts for lines 1 through 8 for each column. Remember to add in funds from any other programs that may have been listed at the bottom of the last page or appended on a separate page.

For line 18, enter the sum of lines 10 through 17 for each column. For line 19, enter the sum of lines 9 and 18 for each column.

Identify in lines 20 and 21 the total amount of funds from State and private funding sources available for affordable housing under "Funding Source/Non-Federal Funds" on page 2 of table 4/5A. Enter in the appropriate columns the funds for each such funding source. For line 22 enter the sum of lines 20 and 21 for each column. For line 23, enter the sum of lines 19 and 22 for each column.

Column A. Enter the amount of funds that are expected to be available during the Federal fiscal year for each program under the Funding Source column. This amount is the sum of what was available and not committed as of October 1 of the latest Federal fiscal year and what is anticipated to become available during the current Federal fiscal year (October 1 through September 30). This should include anticipated appropriated funds as well as any anticipated program income. For example, for the CHAS to be submitted October 31, 1991, add the amount of funds available and not committed as of October 1, 1991 and the amount anticipated to be made available between October 1, 1991 and September 30, 1992. If Worksheet 4 is used, the amounts in column C of Worksheet 4 should be entered in column A of table 4/5A.

For CDBG (line 5), indicate the total amount of all funds (not just those allocated for housing activities) that are available and not committed to specific local projects.

For line 6, DOE and Other Energy Programs, enter the amount of funds available through the Department of

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receipt of the Project
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under which the State
unds to the owner for
project that can be
omplished within a
of time and the owner
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with the owner or
de the assistance.
ne buyer assistance:
inding agreement (i.e.,
is signed between
roposed home buyer
ate agrees to provide
ome buyer for the
conditional or
roperty that can be
omplished within a
of time.
ts should be rounded
sand dollars for this
37 would be reported

shaded for individual
where information is
ere the general
not an eligible
cific program listed.
te funding sources, if
n eligible activity
program, enter "N/
all other unshaded
ere no funds will be
rticular activity.
heet 4 may be used by
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. On line 8, "Other,"

the State is to specify any funds available for affordable housing through programs other than those listed. Especially in the early years of completing this form, States may have funds available from other programs that have been terminated, such as the Rental Rehabilitation Program (RRP). States with funds available from a prior year RRP or other terminated programs should include them in the spaces provided for "other" programs. If there is not sufficient space to list all other programs, the State should list the additional programs at the bottom of the last page of the table or append a separate page.

For line 9, "Subtotal, Housing," sum the amounts for lines 1 through 8 for each column. Remember to add in funds from any other programs that may have been listed at the bottom of the last page or appended on a separate page.

For line 18, enter the sum of lines 10 through 17 for each column. For line 19, enter the sum of lines 9 and 18 for each column.

Identify in lines 20 and 21 the total amount of funds from State and private funding sources available for affordable housing under "Funding Source/Non-Federal Funds" on page 2 of table 4/5A. Enter in the appropriate columns the funds for each such funding source. For line 22 enter the sum of lines 20 and 21 for each column. For line 23, enter the sum of lines 19 and 22 for each column.

Column A. Enter the amount of funds that are expected to be available during the Federal fiscal year for each program under the Funding Source column. This amount is the sum of what was available and not committed as of October 1 of the latest Federal fiscal year and what is anticipated to become available during the current Federal fiscal year (October 1 through September 30). This should include anticipated appropriated funds as well as any anticipated program income. For example, for the CHAS to be submitted October 31, 1991, add the amount of funds available and not committed as of October 1, 1991 and the amount anticipated to be made available between October 1, 1991 and September 30, 1992. If Worksheet 4 is used, the amounts in column C of Worksheet 4 should be entered in column A of table 4/5A.

For CDBG (line 5), indicate the total amount of all funds (not just those allocated for housing activities) that are available and not committed to specific local projects.

For line 6, DOE and Other Energy Programs, enter the amount of funds available through the Department of

---

Energy or other Federal program funding sources expected to be committed to improve energy efficiency of housing.

For line 10, CDBG (Homeless), enter only the amount of CDBG funds expected to be committed to assist the homeless.

Column B. Of the amounts available in Column A, indicate by program, the amount of funds estimated to be committed to specific projects during the current Federal fiscal year. If no funds will be committed, enter "0."

For CDBG (line 5), enter the amount estimated to be committed for all affordable housing except for homeless programs or activities. The amount of CDBG funds to be committed for homeless activities is to be entered on line 10.

For line 6, DOE and Other Energy Programs, enter the amount of funds available through the Department of Energy or other Federal program funding sources expected to be committed to improve energy efficiency of housing.

For line 10, CDBG (Homeless), enter only the amount of CDBG funds expected to be committed to assist the homeless.

For lines 24, 25, and 26 of Column B should total line 23, Column B.

For line 24, this should be the portion of line 23, Column B, that is expected to be committed to entitlement jurisdictions.

For line 25, this should be the portion of line 23, Column B, that is expected to be committed to nonentitlement metropolitan jurisdictions.

For line 26, this should be the portion of line 23, Column B, that is expected to be committed to nonmetropolitan jurisdictions.

Columns C Through J.—Enter in each unshaded column, for each funding source for which there is an entry in Column B, a specific dollar amount, "0," or "N/A," as appropriate. Leave no unshaded cell blank (unless there is no entry, or a "0" in Column B). The sum of all entries in Column C through J should equal the amount in Column B.

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State Worksheet 4

Anticipated Resources

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

Comprehensive Housing Affordability Strategy (CHAS)

Funding Source **Federal Funds Awarded or to be Awarded to State**	On Hand but not Committed at Start of Fiscal Year (A)	Anticipated to be Received During Fiscal Year (B)	Total Anticipated to be Available for Commitment (A + B) (C)	Anticipated to be Committed from Total Available (D)
1. Home				
2. Hope 1				
3. Hope 2				
4. Hope 3				
5. CDBG				
6. DOE/Other Energy Prg.				
7. LIHTC				
8. Other (Specify)				
9. **Subtotal - Housing**				
10. CDBG (Homeless)	▨	▨	▨	
11. ESG				
12. Perm. Housing for Handicapped				
13. Transitional Housing				
14. Shelter Plus Care				
15. Other (Specify)				
16.				
17.				
18. **Subtotal - Homeless**				
19. **Total Federal**				

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Funding Source Non-Federal Funds
State Funds (Specify)
20
21
22
23
24 **Subtotal - State Funds**
Private Funds to State (Specify)
25
26
27
28
29 **Subtotal - Private Funds**
30 **Total Non-Federal Funds**
31 **Grand Total (All Funds)**

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e Housing Affordability Strategy (CHAS)

d to be During ear	Total Anticipated to be Available for Commitment (A + B) (C)	Anticipated to be Committed from Total Available (D)
▨	▨	

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Funding Source Non-Federal Funds	On Hand but not Committed at Start of Fiscal Year (A)	Anticipated to be Received During Fiscal Year (B)	Total Anticipated to be Available for Commitment (A + B) (C)	Anticipated to be Committed from Total Available (D)
State Funds (Specify)	▨	▨	▨	▨
20				
21				
22				
23				
24 Subtotal - State Funds				
Private Funds to State (Specify)	▨	▨	▨	▨
25				
26				
27				
28				
29 Subtotal - Private Funds				
30 Total Non-Federal Funds				
31 Grand Total (All Funds)				

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Optional Worksheet 4—Anticipated Resources

Optional Worksheet 4 is not to be provided to HUD. It is provided for those States that wish to use it to help them complete table 4/5A. Instruction for table 4/5A may be referred to in using this Worksheet.

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State CHAS Table 5B

Goals for Families to be Assisted with Housing

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U.S. Department of Housing and Urban Development
Office of Community Planning and Development

Comprehensive Housing Affordability Strategy (CHAS)

Name of State:

FY

Assistance Provided by Income Group	Total Section 215 Goals (A)	Total Goals (B)	Renters					Owners			
			Elderly 1 & 2 Member Households (C)	Small Related (2 to 4) (D)	Large Related (5 or more) (E)	All Other Households (F)	Total Renters (G)	Existing Homeowners (H)	First-Time Homebuyers		Total Homeowners (K)
									With Children (I)	All Others (J)	
1. Very Low Income (0 to 50% of MFI)*											
2. Mod Rehab & Acquisition											
3 New Const, Sub Rehab, Related Infrastructure											
4. Rental Assistance								▨	▨	▨	▨
5. Homebuyer Assistance			▨	▨	▨	▨	▨	▨			
6. Support Services	▨										
7. Other Low Income (51% to 80% of MFI)*											
8. Mod Rehab & Acquisition											
9 New Const, Sub Rehab, Related Infrastructure											
10 Rental Assistance								▨	▨	▨	▨
11 Homebuyer Assistance			▨	▨	▨	▨	▨	▨			
12 Support Services	▨										
13. Total Low Income (Lines 1 and 7)											
14. Other Income (More than 80% of MFI)*	▨										
15. Grand Total (Lines 13 and 14)	▨										

*Or, if appropriate, based on HUD income limits with required statutory adjustments.

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Instructions for Table 5B—Annual Goals for all Families to be Assisted

Special Definitions

Section 215 Goals (Affordable Housing):

1. *Rental Housing:* A rental housing unit is considered to be an affordable housing unit if it is occupied by a low income household and bears a rent that is the lesser of (1) the Existing Section 8 Fair Market Rent (FMR) for comparable units in the area or, (2) 30 percent of the adjusted income of a family whose income equals 65 percent of the median income for the area. An exception is for those cases where, depending on the prevailing market conditions, HUD specifically establishes higher or lower FMRs for a jurisdiction.

2. *Homeownership:*

(a) Housing that is for purchase (with or without rehabilitation) qualifies as affordable housing if it (1) is purchased by a low-income, first-time homebuyer who will make the housing his/her principal residence; and (2) has a sale price which does not exceed the mortgage limit for the type of single family housing for the area under HUD's single family insuring authority under the National Housing Act.

(b) Housing that is to be rehabilitated, but is already owned by a family when assistance is provided, qualifies as affordable if the housing (1) is occupied by a low-income family which uses the housing as its principal residence, and (2) has a value, after rehabilitation, that does not exceed the mortgage limit for the type of single family housing for the area, as described in 2(a) above.

Note: These definitions apply for CHAS purposes, regardless of the Federal, State or local funding source, i.e., even if the unit is not assisted with HOME funds. Rental and homeownership projects assisted with title II, HOME program funds are subject to "affordable housing" requirements, as contained in § 92.252 (rental housing) and § 92.254 (homeownership housing) of 24 CFR part 92, which define "affordable housing" for purposes of the HOME program.

Refer to appendix A, General Definitions Used With The CHAS, for definitions of additional terms used in this table. It is particularly important to refer to the definitions provided for the different types of households (i.e., "elderly," "small related," "large related," and "other households").

General Instructions

The State shall enter on table 5B the estimated number of families to be assisted through the provision of housing or supportive services. Of those families, the State shall estimate the number to be provided housing that will meet the above definition of "affordable housing" (section 215 goals).

Estimates of the number of families assisted should be limited to those families who are either homeowners or renters, and who will be assisted with HUD funds (alone or in combination with other funds) made available to the State, and which can reasonably be expected to be committed in the coming Federal fiscal year. Federal funds expected to be committed during the year are those Federal funds identified in table 4/5A, Column B "Expect to Commit."

The State shall include families that will receive assistance as a result of projects or activities for which commitments are expected to be made during the covered year, even though the project/activity may not be completed (and actual assistance provided to the family) until after the end of the Federal fiscal year. Conversely, the State should not include families to be assisted by activities for which funding commitments were made prior to the beginning of the covered fiscal year, and which are not shown in Column B of table 4/5A.

The total number of families expected to be assisted is to be provided by:

- Income group (i.e., very low income—line 1, other low income—line 7, and other income—line 14); and
- Housing type (i.e., renters—Column C through Column F; and homeowners, both existing homeowners—Column H, and first-time homebuyers—Columns I and J).

For all families expected to be assisted (Column B) the State must estimate in Column A the number of "very low income" and "other low income" families which, based on family income and housing cost, will meet the section 215 "affordable housing" criteria.

All goals for low income renters and homeowners in lines 2 through 6 (very low income) and lines 8 through 12 (other low income) are to be broken out by the type of assistance expected to be provided.

Shaded areas are not to be filled in.

The sum of the numbers entered on each line under Column G (Total Renters) and Column K (Total Homeowners) should always equal the number entered under Column B (Total Goals). However, since some families assisted may receive more than one kind of assistance, the sum of lines 2 through 6, or 8 through 12, may often exceed the amount on lines 1 or 7, respectively, under any column.

Specific Instructions

Goals

Column A—Total Section 215 Goals. Line 1—Enter the number of very low income families (incomes at or below 50% of median family income) for which the State expects to provide assistance, either directly or through State recipients, and for whom section 215 "affordable housing" goals are expected to be achieved.

Lines 2 through 5—For each of lines 2, 3, 4 and 5, enter the number of very low income families from line 1 who will be provided the type of assistance specified. The total number of families entered for lines 2, 3, 4 and 5 will exceed the number of families listed on line 1 if more than one type of assistance is provided to one or more families. For example, if a family's rental unit receives a moderate level of rehabilitation, and the family receives tenant-based rental assistance, then the family should be included in both the number entered on line 2 and the number entered on line 4.

Line 6—Do not enter a number.

Line 7—Enter the number of other low income families (incomes between 51% and 80% of median family income) for which the State expects to provide assistance, either directly or through State recipients, and for whom section 215 "affordable housing" goals are expected to be achieved.

Lines 8 through 10, Line 12—For each of lines 8, 9, 10 and 11, enter the number of other low income families from line 7 who will be provided the type of assistance specified. The toal number of families entered on lines 8 through 11 may exceed the number entered on line 7, if one or more families receive more than one type of assistance. Do not enter a number for line 11.

Line 13—Enter the sum of the numbers entered on lines 1 and 7.

Lines 14 and 15—Do not enter numbers.

Column B—Total Goals. Line 1—Enter the total number of very low income families for which the State expects to provide assistance, either directly or through State recipients. The total number entered on line 1 is to include both the number of families for whom section 215 "affordable housing" goals are expected to be achieved and the number of families assisted, but for which the State does not expect to achieve "affordable housing" goals.

Lines 2 through 6—For each of lines 2, 3, 4, 5 and 6, enter the number of very low income families from line 1 who will be provided the type of assistance specified.

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5 goals).
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Specific Instructions

Goals

Column A—Total Section 215 Goals. Line 1—Enter the number of very low income families (incomes at or below 50% of median family income) for which the State expects to provide assistance, either directly or through State recipients, and for whom section 215 "affordable housing" goals are expected to be achieved.

Lines 2 through 5—For each of lines 2, 3, 4 and 5, enter the number of very low income families from line 1 who will be provided the type of assistance specified. The total number of families entered for lines 2, 3, 4 and 5 will exceed the number of families listed on line 1 if more than one type of assistance is provided to one or more families. For example, if a family's rental unit receives a moderate level of rehabilitation, and the family receives tenant-based rental assistance, then the family should be included in both the number entered on line 2 and the number entered on line 4.

Line 6—Do not enter a number.

Line 7—Enter the number of other low income families (incomes between 51% and 80% of median family income) for which the State expects to provide assistance, either directly or through State recipients, and for whom section 215 "affordable housing" goals are expected to be achieved.

Lines 8 through 10, Line 12—For each of lines 8, 9, 10 and 11, enter the number of other low income families from line 7 who will be provided the type of assistance specified. The toal number of families entered on lines 8 through 11 may exceed the number entered on line 7, if one or more families receive more than one type of assistance. Do not enter a number for line 11.

Line 13—Enter the sum of the numbers entered on lines 1 and 7.

Lines 14 and 15—Do not enter numbers.

Column B—Total Goals. Line 1—Enter the total number of very low income families for which the State expects to provide assistance, either directly or through State recipients. The total number entered on line 1 is to include both the number of families for whom section 215 "affordable housing" goals are expected to be achieved and the number of families assisted, but for which the State does not expect to achieve "affordable housing" goals.

Lines 2 through 6—For each of lines 2, 3, 4, 5 and 6, enter the number of very low income families from line 1 who will be provided the type of assistance specified.

Line 7—Enter the total number of other low income families for which the State expects to provide assistance, either directly or through State recipients. Include the number of families for whom section 215 "affordable housing" goals are expected to be achieved and the number of families for which the State does not expect to achieve "affordable housing" goals.

Lines 8 through 12—For each of lines 8, 9, 10, 11 and 12, enter the number of other low income families from line 7 who will be provided the type of assistance specified.

Line 13—Enter the sum of the numbers entered on lines 1 and 7.

Line 14—Enter the number of other income families (incomes which exceed 80% of median family income) for which the State expects to provide assistance.

Line 15—Enter the sum of lines 13 and 14.

Renter Goals

Column C—Elderly Households. Line 1 and 7—Of the total number entered under Column B enter the number of elderly renter households (1 or 2 persons elderly households only; elderly households consisting of more than 2 members should be entered under Columns D, E, or F, as appropriate).

Lines 2, 3, 4 and 6; Lines 8, 9, 10 and 12—Enter the number of elderly households (1 or 2 person elderly households only) from lines 1 and 7, respectively, who will be provided the type of assistance specified.

Line 13—Enter the sum of lines 1 and 7.

Line 14—Of the total number entered under Column B enter the number of other income elderly renter households (1 or 2 person elderly households only).

Line 15—Enter the sum of lines 13 and 14.

Columns D, E and F. Columns D through F are to be filled out in the same manner as Column C. Columns D and E pertain to renter households which have at least 2 members related by blood, marriage or adoption, and excludes 1 or 2 person elderly households. Column F includes all households not included in Columns C, D, or E.

Column G—Total Renters. Enter for each line the sums of Columns C, D, E and F.

Homeowner Goals

Column H—Existing Homeowners. Column H goals for existing owners are to be filled out in the same manner as preceding columns.

Column I and J—First-time Homebuyers. For Column I enter goals for first-time homebuyers with minor children residing with the family. For Column J enter goals for first-time homebuyers without minor children residing with the family.

Column K—Total Homeowners. Enter for each line the sum of Columns H, I, and J.

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State Comprehensive Housing Affordability Strategy (CHAS)

U.S. Department of Housing
and Urban Development
Office of Community Planning
and Development

APPENDIX B

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Name of State ______ Name of Agency ______

Contact Person ______ Telephone Number ______

Address ______

Type of Submission: (mark one)
☐ New Five Year CHAS For Fiscal Year________ through Fiscal Year________.
☐ Annual Update * For Fiscal Year________

(mark one)
☐ Initial Submission
☐ Resubmission
☐ Amendment **

* If an Annual Update, mark one:
☐ Parts 4 (Resources) & 5 (Implementation) Only

☐ Parts 4 & 5, plus minor changes: (mark all those which apply)

Part 1 - Needs Assessment	__ Narrative	__ Tables
Part 2 - Market & Inventory Conditions	__ Narrative	__ Tables
Part 3 - Strategies	__ Narrative	__ Tables

** For all amendments, specify the nature of the amendment below and attach amended portions to this cover sheet.

State	**HUD Approval**
Name of Authorized Official:	Name of Authorized Official:
Signature & Date:	Signature & Date:
X	X

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Appendix C—Comprehensive H
Affordability Strategy (CHAS)

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Transmittal Letter
Summary of CHAS Development Pr
Introduction
Section I. State Profile
  Part 1. Needs Assessment
  Table 1A (or equivalent)
  Table 1B (or equivalent)
  Other Supporting Documentation
  Part 2. Market and Inventory Con
  Table 2A (or equivalent)
  Table 2B (or equivalent)
  Table 2C (or equivalent)
  Other Supporting Documentation
Section II. Five-Year Strategy
  Part 3. Strategies
  Table 3
  Other Supporting Documentation
Section III. One-Year Plan
  Part 4. Resources
  Table 4/5A
  Part 5. Implementation
  Table 5B
  Monitoring Plan
  Certifications
Summary of Citizen Comments

Appendix D—Comprehensive
Affordability Strategy (CHAS)

(For States Submitting Existing
Strategy in Place of New CHAS
1992)

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Transmittal Letter

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APPENDIX B

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below and attach amended portions to this cover sheet.

HUD Approval

Name of Authorized Official:

Signature & Date:

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Appendix C—Comprehensive Housing Affordability Strategy (CHAS)

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Introduction
Section I. State Profile
  Part 1. Needs Assessment
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(For States Submitting Existing Housing Strategy in Place of New CHAS for FY 1992)

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Monitoring Plan (91.20(k)).
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Summary of Citizen Comments.

Appendix E—Comprehensive Housing Affordability Strategy (CHAS)

Certification

The State hereby certifies that it will affirmatively further fair housing.

Signature (Certifying Official) ————

Certification

The State hereby certifies that it will comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, implementing regulations at 49 CFR 24, and the requirements at 24 CFR 570.496a(C) governing the residential antidisplacement and relocation assistance plan under section 104(d) of the Housing and Community Development Act of 1974 (including a certification that the State is following such a plan).

Signature (Certifying Official) ————

Note: The State's execution of these certifications acknowledges that it will maintain supporting evidence, which shall be kept available for inspection by the Secretary, the Comptroller General of the United States or its designees, the Inspector General or its designees, and the public.

BILLING CODE 4210-01-M

PREPARING A

COMPREHENSIVE HOUSING AFFORDABILITY STRATEGY

FOR FISCAL YEAR 1992

INSTRUCTIONS FOR

UNITS OF GENERAL LOCAL GOVERNMENT

NOTICE: THESE FORMS AND INSTRUCTIONS ARE BASED ON THE INTERIM RULE PUBLISHED FOR EFFECT ON FEBRUARY 4, 1991, AND ARE FOR USE IN SUBMITTING THE CHAS FOR FY 1992 ONLY. THE RULE IS SUBJECT TO CHANGE WHEN PUBLISHED AS A FINAL RULE. PLEASE SEND YOUR COMMENTS ON THE INSTRUCTIONS AND FORMS TO BOTH THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND TO THE OFFICE OF MANAGEMENT AND BUDGET AT THE ADDRESSES LISTED BELOW SO THEY MAY BE CONSIDERED IN FORMULATING THE CHAS REQUIREMENTS FOR FUTURE YEARS.

Public reporting burden for this collection of information is estimated to average 248 hours per response, including the time for reviewing instructions, searching existing data resources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2506-XXXX), Washington, D.C. 20503.

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Washington, D.C. 20410-3600 and to the Office of
), Washington, D.C. 20503.

Comprehensive Housing Affordability Strategy (CHAS)

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General Information

As specified in Interim Rule, 24 CFR part 91, published February 4, 1991, the Comprehensive Housing Affordability Strategy (CHAS) will consist of five parts. These parts integrate the 14 elements of information required by the statute and described in detail in the regulations.

The prescribed format described in these instructions further groups the five parts of the CHAS into three major sections. These three sections and their component parts are:

- *Community Profile*
  1. Needs Assessment.
  2. Market and Inventory Conditions.
- *5-Year Strategy*
  3. Strategies.
- *1-Year Plan/Annual Update*
  4. Resources.
  5. Implementation.

Each part contains narrative discussions of affordable housing and supportive housing for homeless persons and others with special needs, supported by tables and other documentation. Tables and instructions for filling out the tables are located in appendix A. Definitions for terms used in these instructions may also be found in appendix A under the Section entitled "General Definitions Used With The CHAS." Where a term is not defined, in either the general definitions or in the instructions for specific tables, jurisdictions are to provide their own definition.

The related tables and documentation for each part are to be attached at the back of the narrative for that part. The cover sheet included as appendix B shall be completed and placed at the front of the CHAS package. The jurisdiction must also provide a table of contents at the beginning of the CHAS indicating the location of the narrative and tables and other supporting documentation for each part of its submission. The format for the table of contents may be found in appendices C and D of these instructions.

The tables contained in appendix A have been designed for use beyond Fiscal Year 1992. However, the instructions for each of the tables are for the Fiscal Year 1992 submission only. The instructions will be revised for future submissions. For the Fiscal Year 1992 CHAS, a relatively small amount of supporting needs assessment and market and inventory conditions data are required to be submitted. Most of the data that are required can be obtained from the Housing Assistance Plans (HAP) submitted by CDBG Entitlement grantees or from U.S. Census Bureau data publications which are readily available. The instructions for each of the applicable tables include specific guidance on which portions of the HAP or which U.S. Census publications contain the required data. HAP data are not required to be submitted by new CDBG Entitlement grantees, or smaller units of local government, which have never constructed a HAP, but which must submit a CHAS to receive direct funding from HUD.

The CHAS represents a jurisdiction's assessment of its needs for affordable housing and supportive housing for homeless and other persons and its strategy and action plan for addressing those needs. Therefore, jurisdictions are free to expand the contents of their CHAS beyond what is minimally required to be submitted for HUD review and approval.

Section I. Community Profile

Part 1. Needs Assessment

This part summarizes available data on the most significant current housing needs of very low income, low income and moderate income families and projects those needs over the five-year CHAS period. This part also summarizes the most significant current supportive housing needs of homeless persons and others with special needs.

General Instructions

The narrative should describe the jurisdiction's assessment of the most significant current needs as presented in the tables, as well as its projected needs. It is also where the jurisdiction will discuss those needs or issues which are not or cannot be quantified or presented in tabular form.

Jurisdictions shall quantify their current needs utilizing tables 1A and 1B, or provide required data using other tabular formats at least as detailed. Projected 5-year affordable housing needs may be described in narrative form, or, if the 5-year projected needs are significantly different in several categories of need, on a second table 1A.

A 5-year projection of supportive housing needs of homeless persons or others with special needs is not required. However, where the jurisdiction anticipates there will be a significant change in supportive housing needs in the foreseeable future, it should discuss those future needs in the narrative sections which address current needs.

In some cases, the Census Bureau can only provide a minimum estimate of need. Jurisdictions should make reasonable efforts to go beyond the minimally required data by providing updated estimates or more complete information than what is available from Census. However, jurisdictions should not undertake unplanned special surveys. Jurisdictions are not required to complete those cells in tables 1A that are not already available from the Census, their most recent HAP or State/local sources.

Table 1B is an optional table which may be used to organize data. The table can serve as a resource in developing the narrative on the estimated needs for supportive housing and/or services for people with special needs other than homeless persons. Table 1B is not required to be submitted, but may be submitted as supporting documentation at the jurisdiction's option.

Narratives

Housing Needs. Current Estimates—The narrative is to discuss the jurisdiction's estimate of current needs for housing assistance for very low income, low income and moderate income families and households for the various categories described in table 1A. Where supporting data are not available, the narrative is to describe to the best possible extent the significant needs which exist. The narrative must identify the source(s) of the family and household needs data presented in table 1A or as discussed in the narrative. Where modified or expanded data other than HAP data or Census data are provided in table 1A as the basis of current estimates, the jurisdiction must indicate in the narrative the source of additional data or the projection techniques and assumptions applied in developing the modified data.

The narrative shall include a discussion of the estimated extent to which cost burden and severe cost burden are being experienced by low and moderate income persons in the jurisdiction, as well as a discussion of the estimated extent to which families already receive housing assistance. In particular, the narrative shall describe the number and family type of households who meet the Federal preferences for priority admission to rental assistance programs. Those with "worst case" needs for assistance are unassisted very low income renter households who pay more than half of their income for rent, live in seriously substandard housing (which includes homeless people) or have been involuntarily displaced. If the jurisdiction has established its own preferences for admission to public housing or rental assistance programs, these also should be described.

The narrative shall also discuss the housing needs of the elderly and persons with disabilities who do not require supportive housing services.

Five-Year Projections—A jurisdiction must consider whether and how its current housing needs will change over the five-year CHAS period. If the jurisdiction does not believe there will be significant changes in its current estimate of needs, it should so indicate in the narrative. If it believes there will be significant changes in its current estimate of needs, it should present those five-year projected needs in another table 1A, or present that data in a tabular format at least as detailed. The jurisdiction should describe in its narrative the projected changes for some or all of the years covered by the CHAS, as appropriate.

In developing its five-year projection, the jurisdiction must consider and discuss any foreseeable changes in housing needs that may result from those employed or expected to be employed in the jurisdiction but not currently residing there.

Supportive Housing Needs of Homeless Persons

Note: The FY 1992 Submission for the Supportive Needs of Homeless has been Revised from Previous Draft Instructions.

For the fiscal year 1992 CHAS submission, localities are required to provide ONLY a narrative description of their homeless population. For the fiscal year 1993 CHAS submission, HUD intends to provide localities with guidance on acceptable methodologies and definitions to estimate the size or their homeless populations. HUD is currently developing this guidance.

Localities are required to provide the following on Supportive Housing Needs of Homeless Persons:

Current needs estimates. To the extent reliable information is available, the unit of general local government shall describe in its narrative the nature and extent of homelessness within the jurisdiction. The description may contain an estimated total number of homeless persons living in shelters in the locality, although this information is not required. The locality shall briefly describe the source of these estimates and the methods. However, localities are not required to submit the complete data source or study to HUD. The source of the numbers must be made available to citizens upon request.

Note: Localities are not required for this year to break down total number of homeless persons by component (i.e. family versus single) or provide an estimate of the number of unsheltered. Localities need only describe the nature and extent of their unsheltered population and homeless families.

Special and Supportive Needs Population: Localities shall provide a description of the special needs population. If available, this description may include an estimated proportion of the total number of homeless persons who have special needs (i.e. persons who are mentally ill, alcohol or drug abusers, runaway or abandoned youth, victims of domestic violence and other categories that the jurisdiction may specify).

If available, the racial and ethnic status of homeless population and of the special needs populations may be provided.

The narrative shall include a description of special needs of homeless persons (e.g. need for supportive housing, drug treatment, mental health counseling), if the information is available.

Supportive Housing Needs for Others With Special Needs

Current Estimates. The jurisdiction shall describe in the narrative the characteristics, services and special housing needs of persons requiring special services other than the homeless, including the elderly, frail elderly, persons with disabilities (mental, physical, developmental), persons with AIDS, and any other categories which the jurisdiction specifies. This description must include those persons returning to the community from mental and physical health care institutions, as well as low income families who could benefit from participating in an organized program to achieve economic independence and self-sufficiency, as identified in the Public Housing Agency's (PHA) Family Self-Sufficiency Program Plan.

Supportive housing is defined as housing with a supportive environment, including intermediate care facilities, group homes single room occupancy (SRO) housing and other housing that includes a planned services component. In addition, the narrative should consider the supportive service needs of persons in other home settings, whether in assisted housing or the general community, such as PHA Self-Sufficiency Program services.

This discussion should indicate the extent of existing supportive services and the documented need, summarized as appropriate from the plan of the jurisdiction's area agency on aging, or equivalent plans from agencies serving the non-elderly handicapped populations, with appropriate references to any approved local and State plans.

Part 2. Market and Inventory Conditions

This part summarizes local housing market and inventory characteristics, including trends in population, household formation and housing, as well as information on the assisted housing and public housing stock. It also summarizes the facilities and services available for homeless persons and other persons with special needs.

General Instructions

The Market and Inventory Conditions narrative must describe the jurisdiction's assessment of the significant characteristics of its market as it relates to housing and supportive housing for homeless persons and others with special needs. The narrative should discuss any significant trends in total population, household population, and total housing inventory or in the provision of supportive housing facilities and services, which may influence the development of the jurisdiction's overall strategy.

Jurisdictions are responsible for providing sufficient information in the narrative and in the tables for this part to serve as a basis for the "Strategies" and "Implementation" sections of their submissions. Jurisdictions shall quantify their housing market and inventory conditions utilizing tables 2A, 2B, and 2C or provide the required data utilizing other tabular formats at least as detailed.

For the October 1991 submission, data to be used in tables 2A and 2B will be based on 1980 Census data or data now presented in the HAP. Data from the 1990 U.S. Census may be used, if available, for table 2A. In future years, HUD will provide 1990 Census data to jurisdictions for use in these tables. The instructions for each table identify the required data elements and the appropriate HAP tables and Census

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This discussion should indicate the extent of existing supportive services and the documented need, summarized as appropriate from the plan of the jurisdiction's area agency on aging, or equivalent plans from agencies serving the non-elderly handicapped populations, with appropriate references to any approved local and State plans.

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Jurisdictions are responsible for providing sufficient information in the narrative and in the tables for this part to serve as a basis for the "Strategies" and "Implementation" sections of their submissions. Jurisdictions shall quantify their housing market and inventory conditions utilizing tables 2A, 2B, and 2C or provide the required data utilizing other tabular formats at least as detailed.

For the October 1991 submission, data to be used in tables 2A and 2B will be based on 1980 Census data or data now presented in the HAP. Data from the 1990 U.S. Census may be used, if available, for table 2A. In future years, HUD will provide 1990 Census data to jurisdictions for use in these tables. The instructions for each table identify the required data elements and the appropriate HAP tables and Census

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publications containing those data elements.

Jurisdictions should make reasonable efforts to provide additional data beyond that minimally required, but should not undertake special surveys.

For Fiscal Year 1991, jurisdictions need only submit Table 2C data relative to their inventory of assisted housing that is readily available from local sources. HUD cannot provide data on assisted housing in a readily usable format for each jurisdiction in time for the October 1991 submission. While HUD maintains data on assisted housing, much of the coding is done at the county level, rather than at the jurisdictional level. However, HUD does expect to provide jurisdictions with data on their assisted housing inventory for use with table 2C in future years. Tabular data are not required for supportive housing for the homeless or for other persons with special needs.

Narratives

Housing Conditions. Based on the analysis of data and information available to the jurisdiction, the narrative must include a description of the most significant market and inventory conditions in the jurisdiction. The narrative must also describe the nature and extent of the cost burden and severe cost burden experienced by renters within the jurisdiction.

The narrative shall include a discussion of the jurisdiction's housing market in terms of supply, demand and cost of housing. The narrative shall highlight any adverse effects these market conditions have on producing rental housing, promoting new homeownership opportunities, alleviating overcrowding and meeting the needs of underserved population groups, such as large families.

The discussion of the overall housing inventory shall include an estimate of the number of public housing units in the jurisdiction, and the condition and rehabilitation needs of those units. It shall also include an assessment of whether any rental housing is expected to be lost from the assisted housing inventory for any reason, including losses through public housing demolition or conversion to homeownership or through prepayment or voluntary termination of a Federally-assisted mortgage.

The jurisdiction must also identify and describe in the narrative any areas within the jurisdiction with concentrations of racial/ethnic minorities and low income families. The location and degree of these concentrations must be identified. (Degree of concentration can be shown in terms of percentages.) Concentrations must be considered and addressed in the Five-Year Strategy.

The narrative shall indicate how the current and anticipated conditions in the area can be expected to influence the use of funds made available for rental assistance, production of new units, rehabilitation of existing units (including needs for modifications necessary to enable elderly and disabled people to remain in their homes) and acquisition of existing units.

Inventory of Facilities and Services for Homeless Persons. The jurisdiction shall describe in the narrative the facilities and services that assist homeless persons and persons at imminent risk of becoming homeless. The description must include the following:

a. Estimates, to the extent that data are available, of the number of emergency shelters, transitional housing facilities, permanent housing for the handicapped homeless and of the total overnight sleeping capacity of those types of facilities;

b. The availability of day shelters, soup kitchens, and other facilities providing assistance to homeless persons on less than an overnight basis;

c. The nature and extent of programs providing vouchers to assist homeless persons in obtaining shelter, meals, services, etc;

d. The nature and extent of social service programs that assist the homeless; and

e. The nature and extent of programs and services to prevent individuals and families at imminent risk of homelessness from becoming homeless.

Inventory of Facilities and Services for Persons with Other Special Needs. The jurisdiction must describe the facilities and services that assist persons with other special needs, as identified in part 1.

Supporting Documentation

The jurisdiction must identify the location of concentrations of minority and low income residents. It may do so by using clearly marked local maps, by describing the geographic boundaries of the area or by stating in which census division (enumeration districts, tracts, or block groups) the concentrations are located.

Section II. Five-Year Strategy

Part 3. Strategies

This part states the jurisdiction's general plans and priorities to be pursued over the five-year period of the CHAS. It flows from the jurisdiction's overall analysis of needs and market and inventory conditions, as described in parts 1 and 2.

General Instructions

The five-year strategy describes the jurisdiction's action plan for addressing imbalances between its needs for housing assistance and its affordable housing and supportive housing and services inventory by:

1. Determining general priorities for allocating investment among the types of affordable housing and supportive housing needs and interventions covered by the CHAS;

2. Analyzing likely effects of relevant public policies on the success of efforts to develop, maintain or improve affordable and supportive housing;

3. Implementing programs, providing services and undertaking special initiatives to carry out the strategy;

4. Identifying the institutional structure through which the action plan will be implemented; and

5. Coordinating public and private funding resources, services and special initiatives in an integrated manner to achieve its strategic goals.

The jurisdiction shall summarize its investment priorities for very low-income and other low income in table 3. However, more than in any other part of the CHAS, the narrative is the most critical portion of the strategy.

Narratives

Priorities for Allocating Investment. The jurisdiction shall discuss the reasoning behind the general priorities it has established for allocating available Federal, State and local resources within the jurisdiction, as summarized in table 3. This discussion shall address the basis for assigning relative priortities:

1. Among different categories of very low and low income households with needs for housing assistance, as identified in table 1A, including type and size of family;

2. Among the activity types appropriate for meeting these identified needs in the context of the local housing market and inventory conditions and the costs of different activities; and

3. Among the various geographical areas within the jurisdiction.

The narative should describe how the housing problems of households with "worst case" needs for housing assistance and of other households meeting Federal or local preferences for assistance, and the alternatives available for addressing such needs, were considered in developing the jurisdiction's investment priorities.

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The jurisdiction shall consider the needs for housing assistance of various racial and ethnic low income groups in determining its priorities for allocating investment.

The jurisdiction shall identify the geographic areas it has selected for investments and the nature of the impact it hopes to achieve through such investment.

The determination of priorities should flow logically from analysis of how the size, distribution, condition and cost of the housing inventory matches up with the needs and types of housing problems of various income, racial, family, and tenure groups. For example, there may be a sufficient housing stock in standard condition or suitable for rehabilitation available for small families, but at rent levels above 30% of their income. This situation might suggest a priority on rental assistance and/or moderate levels of rehabilitation to meet the needs of those households. On the other hand, acquisition or substantial rehabilitation of existing larger units, or new construction where necessary, might be given priority to provide afforadable units needed by large families.

While rehabilitation would normally be a reasonable strategy in low income neighborhoods with older housing, for areas with very high concentration of minorities higher priority to acquisition of standard housing and/or rental assistance in non-impacted neighborhoods might be appropriate. Similarly, the analysis of homeowners may indicate that access to ownership has been constrained among certain family sizes or racial groups, contributing to pressure on the rental market in certain size categories or neighborhoods. This might lead to placing a high priority on promoting homeownership opportunities for such groups, possible through conversion of portions of the public or assisted housing stock to homeownship.

Finally, when considering allocation of priorities, attention should be paid to the extent to which certain groups are already in assisted housing; while their needs may not be wholly met, other portions of the low income community may have more pressing needs and have received less assistance.

A Jurisdiction receiving HOME program funds, but not receiving a new construction set-aside, may still use HOME funds for new construction of certain types of affordable housing, under certain circumstances, provided that the Jurisdiction presents objective data in this portion of the narrative that demonstrates a high priority need for such housing. The types of housing, and the circumstances under which HOME funds may be utilized for new construction of such housing are contained in the HOME program regulations.

Relevant Public Policies. The narrative shall explain the extent to which the costs or incentives to develop, maintain or improve affordable housing in the jurisdiction are affected by State or local public policies, as embodied in statutes, ordinances, regulations, or administrative procedures and processes. The narrative shall specifically identify and address any excessive, exclusionary, discriminatory or duplicatory policies, rules and regulations that may constitute barriers to affordability, including the jurisdiction's tax policies affecting land and other property, land use controls, zoning ordinances, building codes, code enforcement, fees and charges, growth limits, and policies that affect the return on residential (including supportive housing) investment.

The jurisdiction shall describe its strategy to remove or ameliorate any negative effects of these policies, rules, and regulations, including any effects contributing to concentration of racial/ethnic minorities. Such strategy should include specific proposals for reforms of policies to be undertaken in the next five years, and the jurisdiction should explain how these reforms relate to current relevant State policies.

Programs, Services, and Special Initiative Strategies. The jurisdiction shall describe the Federal, State, local and private programs and services to be provided, and the special initiatives to be undertaken, to implement its five-year strategy. This discussion shall identify the specific elements or portions of the strategy to which each of these programs and initiatives will be directed, in terms of the affordable and supportive housing needs to be addressed. Specific strategies to be implemented through programs, services and special initiatives, and which are to be discussed in the narrative include:

Affordable Housing

- Increasing the supply of standard, affordable housing through the acquisition and/or rehabilitation of existing housing units and, if appropriate, the construction of new units;
- Providing rental assistance to alleviate rental cost burden, including severe cost burden, experienced by lower income families and individuals;
- Promoting homeownership opportunities;
- Meeting the housing needs of large families, elderly persons and persons with disabilities;
- Evaluating the energy efficiency of housing for lower income households and implementing programs and/or special initiatives to achieve lower overall housing costs by reducing energy costs;
- Alleviating overcrowding;
- Removing or ameliorating any negative effects of policies contributing to concentration of racial/ethnic minorities;
- Minimizing involuntary displacement;
- Ensuring no net loss in the assisted housing inventory as a result of public housing demolition or conversion to homeownership, prepayment or voluntary termination of a Federally-assisted mortgage, or any other actions;
- Improving, in coordination with the local public housing agency, the management of public housing and the living environment of public housing residents;
- Encouraging public housing residents to become more involved in the management of public housing; and
- Assisting public housing residents to become owners of their public housing units and/or developing other homeownership opportunities for these residents.

Supportive Housing for Homeless Persons

- Addressing the needs of various populations for emergency shelter and services, housing and services for transition to permanent housing and independent living and housing and supportive services for those not capable of achieving independent living;
- Ensuring permanent affordable housing opportunities for persons who successfully complete a transitional housing program; and
- Serving low-income families and individuals in imminent danger of residing in shelters or being unsheltered because they lack access to permanent housing and/or have an inadequate support network.

Supportive Housing for Other Persons with Special Needs

- Addressing the unmet housing and service needs of persons with disabilities (mental, physical, developmental), the elderly, persons with AIDS, low income families who could benefit from participation in an organized program to achieve economic independence and self-sufficiency, and any other categories that the jurisdiction specifies.

Institutional Structure. The jurisdiction shall identify the institutional structure through which it

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- Evaluating the energy efficiency of housing for lower income households and implementing programs and/or special initiatives to achieve lower overall housing costs by reducing energy costs;
- Alleviating overcrowding;
- Removing or ameliorating any negative effects of policies contributing to concentration of racial/ethnic minorities;
- Minimizing involuntary displacement;
- Ensuring no net loss in the assisted housing inventory as a result of public housing demolition or conversion to homeownership, prepayment or voluntary termination of a Federally-assisted mortgage, or any other actions;
- Improving, in coordination with the local public housing agency, the management of public housing and the living environment of public housing residents;
- Encouraging public housing residents to become more involved in the management of public housing; and
- Assisting public housing residents to become owners of their public housing units and/or developing other homeownership opportunities for these residents.

Supportive Housing for Homeless Persons

- Addressing the needs of various populations for emergency shelter and services, housing and services for transition to permanent housing and independent living and housing and supportive services for those not capable of achieving independent living;
- Ensuring permanent affordable housing opportunities for persons who successfully complete a transitional housing program; and
- Serving low-income families and individuals in imminent danger of residing in shelters or being unsheltered because they lack access to permanent housing and/or have an inadequate support network.

Supportive Housing for Other Persons with Special Needs

- Addressing the unmet housing and service needs of persons with disabilities (mental, physical, developmental), the elderly, persons with AIDS, low income families who could benefit from participation in an organized program to achieve economic independence and self-sufficiency, and any other categories that the jurisdiction specifies.

Institutional Structure. The jurisdiction shall identify the institutional structure through which it

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will carry out its affordable and supportive housing strategy. Private industry, nonprofit organizations and public institutions should be included in the discussion. Each organization comprising the institutional structure should be identified by type (public, private, nonprofit) and purpose (e.g., financial institution, planning agency, housing/community development agency, public housing agency, social services agency, mental health agency, etc.). The jurisdiction should identify each organization's respective role in carrying out affordable housing and supportive housing for homeless persons and other persons with special needs, and discuss the interrelationships among organizations in carrying out the strategy.

The jurisdiction shall provide an assessment of the institutional structure for carrying out its five-year strategy. This assessment shall discuss the existing strengths and gaps in the delivery of programs and services, including efforts to make use of available housing, social service and mental and other health care resources and shall identify proposed actions to strengthen, coordinate and integrate those institutions and delivery systems. This assessment should also discuss the gaps in program and service delivery that result in persons becoming homeless (e.g., slow processing of public assistance payments, or release from institutions without housing resources identified).

Coordination of Resources. The jurisdiction shall describe its plan for using available program, service and special initiative resources in a coordinated and integrated manner to achieve its affordable and supportive housing goals. This discussion should distinguish between programs for which the jurisdiction may have an entitlement (e.g., CDBG, ESG or HOME), those for which it may apply itself, and those for which others (e.g., PHAs, developers, private or nonprofit organizations) may reasonably be expected to apply. The jurisdiction should include in its discussion not only programs administered through HUD, but also resources made available through other Federal, State and local agencies, such as resources available to support residential energy efficiency, or the supportive needs of the homeless and others with special needs. The jurisdiction should also address the use of resources for activities intended to support housing, homeless assistance or special needs programs, such as construction of water and sewer systems, public facilities, community centers and parks.

Supporting Documentation

Supporting documentation in this part may include maps identifying concentrations of racial/ethnic minorities or outlining the jurisdiction's geographic resource allocation plan.

Section III. One-Year Plan/Annual Update

The two parts in section III, which constitute the Annual Plan of a new five-year CHAS or the Annual Update in the subsequent four years, must be submitted every year. These two parts describe: (1) The resources the jurisdiction reasonably expects to be available for the coming Federal fiscal year that will be used to address the needs and conditions described in section I (parts 1 and 2); and (2) the jurisdiction's specific action plans and goals for that year toward carrying out the five-year strategy described in section II (part 3).

Part 4. Resources

General Instructions

The jurisdiction shall quantify the resources it anticipates will be available and which it intends to commit during the year in the first two columns of table 4/5A. (The remaining columns of the table will be used to support part 5, Implementation.) Worksheet 4, which is not a required form, is provided to assist jurisdictions in calculating the amounts to enter on table 4/5A. If the Worksheet is used, it should not be submitted as part of the CHAS.

The narrative portion of this part shall explain how these resources will be obtained, how it was determined which amounts would be committed and the actions to be taken to maximize resources.

Narratives

The jurisdiction shall identify in the narrative all of the sources of funds for affordable and supportive housing that may reasonably be expected to be available, and that it reasonably expects to commit, during the fiscal year covered to carry out its strategy. This is to include both public and private resources.

It should be noted that the jurisdiction is generally expected to plan to take actions leading to commitment of all such resources. Therefore, where the plan does not reflect the commitment of a particular public resource identified as available for commitment, the narrative must provide a reasonable justification for such omission.

In some programs (such as the Entitlement Community Development Block Grant Program) funds provided or to be provided to the jurisdiction may be used for a variety of activities, only some of which would be appropriate to meet CHAS needs. The narrative should explain how it was determined what portion of such funds should be used to address affordable and supportive housing objectives.

When a jurisdiction is in doubt concerning the level of funding that may be available for a particular program for use by, or within, the jurisdiction, the agency responsible for administering that program should be contacted for advice.

The jurisdiction shall describe the actions it will take to influence other entities to apply for and/or make use of funds for affordable and supportive housing under programs for which it is not itself eligible to apply, or for which it elects to have others apply.

The jurisdiction shall address specifically any matching requirements of the various resources to be utilized, and how it expects those requirements to be met. It shall also specifically describe its strategy for leveraging private and non-Federal funds by the use of Federal funds.

The jurisdiction shall specifically identify any court orders or consent decrees that affect the provision of assisted housing or fair housing remedies in that jurisdiction, and address how that order or decree will impact resources and goals of the jurisdiction.

Part 5. Implementation

This part translates the jurisdiction's five-year strategy and anticipated available resources into a one-year action plan and goals which will guide the jurisdiction's resource allocation and investment decisions during the coming year.

General Instructions

The jurisdiction shall complete the remaining columns of table 4/5A to specify its investment plan for the covered Federal fiscal year. It will also complete table 5B to specify its goals for individuals and families to be served through such investment plans.

The jurisdiction shall describe in its narrative the investment plans and goals specified in the two tables and the specific actions it will take to achieve those commitment levels and goals. The jurisdiction shall also describe actions to be taken to remove or ameliorate the negative effects on affordability of public policies.

Additionally, all jurisdictions must include in the narrative a description of how they will monitor their programs for compliance with their strategy.

Narratives

The narrative shall consist of two parts: (1) A one-year action plan for providing affordable housing and supportive housing for homeless persons and others with special needs, and (2) a monitoring plan.

Action Plan. The action plan shall outline responsibilities, financial resources and timetables, including:

1. How the goals are consistent with the jurisdiction's five-year strategy;
2. The geographic areas in which the jurisdiction plans to target assistance;
3. The governments or other entities responsible for delivering and managing the assistance; and
4. The time required for the assistance provided to each type of activity in table 4/5a to reasonably be expected to result in benefits to program beneficiaries.

Affordable Housing. The narrative shall explicitly discuss the actions that will be taken in the coming year to assist those very low income renters meeting Federal preferences for housing assistance and thus reduce unmet "worst case" needs.

The narrative shall also include a description of the actions the jurisdiction will undertake in the coming year to carry out its strategy to remove or ameliorate the negative effects of local policies impacting affordability, as described in part 3. The narrative should include specific proposals for reforms of such public policies that the jurisdiction will implement within the coming year. In each subsequent year, the jurisdiction shall also discuss its progress in implementing such reforms.

Supportive Housing for the Homeless. The jurisdiction shall describe the goals, programs and policy initiatives the community expects to accomplish during the coming year to address the unmet needs of:

a. Homeless families and individuals, including those who are mentally ill, alcohol and drug abusers, victims of domestic violence, runaway and abandoned youth and other categories the jurisdiction specifies for (1) emergency shelter and services, (2) housing and services for transition to permanent housing and independent living, and (3) housing and supportive services to those not capable of achieving independent living; and

b. Low income families and individuals, especially those with incomes below 30 percent of the median, who are in imminent danger of becoming homeless and do not have permanent housing and an adequate support network.

Supportive Housing for Other Persons with Special Needs. The jurisdiction shall describe the goals, programs and policy initiatives the community expects to accomplish during the next year to address the unmet needs of persons with disabilities (mental, physical, developmental), the elderly, persons with AIDS, low income families who could benefit from participation in an organized program to achieve economic independence and self-sufficiency, and any other categories which the jurisdiction specifies.

Monitoring Plan. The monitoring plan shall describe how the jurisdiction intends to conduct monitoring reviews to determine whether its programs are being carried out in accordance with its CHAS and in a timely manner. Such descriptions must provide for monitoring to be carried out on a regular basis to ensure that statutory and regulatory requirements are being met and that, where appropriate, information that is being submitted to a HUD cash and management information system is correct and complete.

Supporting Documentation

Jurisdictions must certify that they will affirmatively further fair housing, and that they are in compliance with a residential anti-displacement and relocation assistance plan. Those certifications are attached as appendix E.

Appendix A—Comprehensive Housing Affordability Strategy (CHAS)

Required CHAS Tables and Instructions

For 1992 CHAS (October, 1991 Submission) Only

General Defintions Used with the CHAS

Table 1A. Housing Assistance Needs of Low and Moderate Income Households.
Table 1B.* Other Special Needs Population.
Table 2A. Market and Inventory Conditions—Population and Minority Data.
Table 2B. Market and Inventory Conditions—Housing Stock Inventory.
Table 2C. Assisted Housing Inventory.
Table 3. Summary of Priorities for Assistance—5-Year Priorities for Very Low Income and Other Low Income Persons.
Table 4/5A. Anticipated Resources and Plan for Investment.
Worksheet 4.** Anticipated Resources.
Table 5B. Goals for All Families to be Assisted with Housing.

General Definitions Used With the CHAS

Affordable Housing: Affordable housing is generally defined as housing where the occupant is paying no more than 30 percent of gross income for gross housing costs, including utility costs.

Affordable housing has a more specific definition for purposes of completing table 5B. That definition is included in the instructions for table 5B.

Committed: Generally means there has been a legally binding commitment of funds to a specific project to undertake specific activities.

Expanded definitions for completing table 4/5A are included in the instructions for table 4/5A.

Cost Burden > 30%: The extent to which gross housing costs, including utility costs, exceed 30 percent of gross income, based on data published by the U.S. Census Bureau.

Cost Burden > 50% (Severe Cost Burden): The extent to which gross housing costs, including utility costs, exceed 50 percent of gross income, based on data published by the U.S. Census Bureau.

Disabled Household: A household composed of one or more persons at least one of whom is an adult (a person of at least 18 years of age) who has a disability. A person shall be considered to have a disability if the person is determined to have a physical, mental or emotional impairment that: (1) Is expected to be of long-continued and indefinite duration, (2) substantially impeded his or her ability to live independently, and (3) is of such a nature that the ability could be improved by more suitable housing conditions. A person shall also be considered to have a disability if he or she has a developmental disability as defined in the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001–6006). The term also includes the surviving member or members of any household described in the first sentence of this paragraph who were living in an assisted unit with the deceased member of the household at the time of his or her death.

Economic Independence and Self-Sufficiency Programs: Programs undertaken by Public Housing Agencies (PHAs) to promote economic independence and self-sufficiency for participating families. Such programs may include Project Self-Sufficiency and Operation Bootstrap programs that originated under earlier section 8 rental certificate and rental voucher initiatives, as well as the Family Self-Sufficiency program. In addition, PHAs may operate

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* Table 1B is not required to be submitted, but may be submitted.

** Worksheet 4 is not to be submitted with CHAS.

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General Definitions Used With the CHAS

Affordable Housing: Affordable housing is generally defined as housing where the occupant is paying no more than 30 percent of gross income for gross housing costs, including utility costs.

Affordable housing has a more specific definition for purposes of completing table 5B. That definition is included in the instructions for table 5B.

Committed: Generally means there has been a legally binding commitment of funds to a specific project to undertake specific activities.

Expanded definitions for completing table 4/5A are included in the instructions for table 4/5A.

Cost Burden > 30%: The extent to which gross housing costs, including utility costs, exceed 30 percent of gross income, based on data published by the U.S. Census Bureau.

Cost Burden > 50% (Severe Cost Burden): The extent to which gross housing costs, including utility costs, exceed 50 percent of gross income, based on data published by the U.S. Census Bureau.

Disabled Household: A household composed of one or more persons at least one of whom is an adult (a person of at least 18 years of age) who has a disability. A person shall be considered to have a disability if the person is determined to have a physical, mental or emotional impairment that: (1) Is expected to be of long-continued and indefinite duration, (2) substantially impeded his or her ability to live independently, and (3) is of such a nature that the ability could be improved by more suitable housing conditions. A person shall also be considered to have a disability if he or she has a developmental disability as defined in the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001–6006). The term also includes the surviving member or members of any household described in the first sentence of this paragraph who were living in an assisted unit with the deceased member of the household at the time of his or her death.

Economic Independence and Self-Sufficiency Programs: Programs undertaken by Public Housing Agencies (PHAs) to promote economic independence and self-sufficiency for participating families. Such programs may include Project Self-Sufficiency and Operation Bootstrap programs that originated under earlier section 8 rental certificate and rental voucher initiatives, as well as the Family Self-Sufficiency program. In addition, PHAs may operate

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locally-developed programs or conduct a variety of special projects designed to promote economic independence and self sufficiency.

Elderly Household: A family in which the head of the household or spouse is at least 62 years of age.

Existing Homeowner: An owner-occupant of residential property who holds legal title to the property and who uses the property as his/her principal residence.

Family: A household comprised of one or more individuals.

Family Self-Sufficiency (FSS) Program: A program enacted by section 554 of the National Affordable Housing Act which directs Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs) to use section 8 assistance undr the rental certificate and rental voucher programs, together with public and private resources to provide supportive services, to enable participating families to achieve economic independence and self-sufficiency.

First Time Homebuyer: An individual or family who has not owned a home during the three-year period preceding the HUD-assisted purchase of a home that must be used as the principal residence of the homebuyer.

FmHA: The Farmers Home Administration, or programs it administers.

For Rent: Year round housing units which are vacant and offered/available for rent. (U.S. Census definition)

For Sale: Year round housing units which are vacant and offered/available for sale only. (U.S. Census definition)

Group Quarters: Facilities providing living quarters that are not classified as housing units. (U.S. Census definition). Examples include: prisons, nursing homes, dormitories, military barracks, and shelters.

HOME: The HOME Investment Partnerships Act, which is title II of the National Affordable Housing Act.

HOPE 1: The HOPE for Public and Indian Housing Homeownership Program, which is title IV, subtitle A of the National Affordable Housing Act.

HOPE 2: The HOPE for Homeownership of Multifamily Units Program, which is title IV, subtitle B of the National Affordable Housing Act.

HOPE 3: The HOPE for Homeownership of Single Family Homes Program, which is title IV, subtitle C of the National Affordable Housing Act.

Household: One or more persons occupying a housing unit. (U.S. Census definition).

Note: A special definition of household is used for table 1D, Supportive Housing and Services Population. Table 1D instructions provide a special definition of "household" as it is used in table 1D.

Housing Problems: Households with housing problems include those that: (1) Occupy units meeting the definition of Physical Defects; (2) meet the definition of overcrowded; and (3) meet the definition of cost burden > 30%. Table 1A requests nonduplicative counts of households that meet one or more of these criteria.

Housing Unit: An occupied or vacant house, apartment, or a single room (SRO housing) that is intended as separate living quarters. (U.S. Census definition)

Institutions/Institutional: Group quarters for persons under care or custody. (U.S. Census definition)

Large Related: A household of 5 or more persons which includes at least 2 related persons.

LIHTC: (Federal) Low Income Housing Tax Credit.

Low Income: Households whose incomes do not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes. NOTE: HUD income limits are updated annually and are available from local HUD offices for the appropriate jurisdictions.

Middle Income: Households whose incomes are from 96 to 120 percent of the median income for the area, as determined by HUD, with adjustments for smaller or larger families, except that HUD may establish income ceilings higher or lower than 120 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

If income adjustments are made by HUD and the low income limit for the area is set at higher or lower than 80 percent of median income, the middle income limits must be adjusted by multiplying the adjusted low income limit by 1.5. **Example:** With a median income for the area of $10,000 and a low income limit adjusted by HUD to $7,500, the adjusted middle income limit would be computed as follows: $7,500 × 1.5 = $11,250 adjusted middle income limit.

Moderate Income: Households whose incomes are between 81 percent and 95 percent of the median income for the area, as determined by HUD, with adjustments for smaller or larger families, except that HUD may establish income ceilings higher or lower than 95 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

If income adjustments are made by HUD and the low income limit for the area is set at higher or lower than 80 percent of median income, the moderate income limits must be adjusted by multiplying the adjusted low income limit by 1.1875. Example: With a median income for the area of $10,000 and a low income limit adjusted by HUD to $7,500, the adjusted moderate income limit would be computed as follows: $7,500 × 1.1875 = $8,906 adjusted moderate income limit.

Needing Rehab: Dwelling units that do not meet standard conditions but are both financially and structurally feasible for rehabilitation. This does not include units that require only cosmetic work, correction or minor livability problems or maintenance work.

Non-Elderly Household: A household which does not meet the definition of "Elderly Household," as defined above.

Non-institutional: Group quarters for persons not under care or custody. (U.S. Census definition used in table 2A.)

Not Rehabbable: Dwelling units that are determined to be in such poor condition as to be neither structurally nor financially feasible for rehabilitation.

Occupied Housing Unit: A housing unit that is the usual place of residence of the occupant(s).

Other Household: A household of one or more persons that does not meet the definition of a Small Related household or a Large Related household, or is an elderly household comprised of 3 or more persons.

Other Income: Households whose incomes exceed 80 percent of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families.

Other Low Income: Households whose incomes are between 51 percent and 80 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

Other Persons with Special Needs: Includes frail elderly persons, persons with AIDS, disabled families, and families participating in organized programs to achieve economic self-sufficiency. This category does not include homeless.

Other Vacant: Vacant year round housing units that are not For Rent, For Sale, or Vacant Awaiting Occupancy or Held. (U.S. Census definition)

Overcrowded: A housing unit containing more than one person per room. (U.S. Census definition used in table 1A.)

Owner: A household that owns the housing unit it occupies. (U.S. Census definition)

Physical Defects: A housing unit lacking complete kitchen, bathroom, or electricity (U.S. Census definition used in table 1A.). Jurisdictions may expand upon the Census definition.

Project-Based (Rental) Assistance: Rental Assistance provided for a project, not for a specific tenant. Tenants receiving project-based rental assistance give up the right to that assistance upon moving from the project.

Public Housing CIAP: Public Housing Comprehensive Improvement Assistance Program.

Public Housing MROP: Public Housing Major Reconstruction of Obsolete Projects.

Rent Burden > 30% (Cost Burden): The extent to which gross rents, including utility costs, exceed 30 percent of gross income, based on data published by the U.S. Census Bureau.

Rent Burden > 50% (Severe Cost burden): The extent to which gross rents, including utility costs, exceed 50 percent of gross income, based on data published by the U.S. Census Bureau.

Renter: A household that rents the housing unit it occupies, including both units rented for cash and units occupied without cash payment of rent. (U.S. Census definition)

Renter Occupied Unit: Any occupied housing unit that is not owner occupied, including units rented for cash and those occupied without payment of cash rent.

Section 215: Section 215 of title II of the National Affordable Housing Act. Section 215 defines what constitutes "affordable" housing projects under the title II HOME program.

Service Needs: The particular services identified for special needs populations, which typically may include transportation, personal care, housekeeping, counseling, meals, case management, personal emergency response, and other services to prevent premature institutionalization and assist individuals to continue living independently.

Severe Cost Burden: See Cost Burden > 50 %.

Sheltered: Families and persons whose primary nightime residence is a supervised publicly or privately operated shelter (e.g., emergency, transitional, battered women, and homeless youth shelters; and commercial hotels or motels used to house the homeless). Sheltered homeless does not include any individual imprisoned or otherwise detained pursuant to an Act of Congress or State law.

Small Related: A household of 2 to 4 persons which includes at least two related persons.

Substantial Rehabilitation: Rehabilitation of residential property at an average cost for the project in excess of $25,000 per dwelling unit.

Supportive Housing: Housing, including Housing Units and Group Quarters, that have a supportive environment and includes a planned service component.

Supportive Service Need in FSS Plan: The plan that PHAs administering a Family Self-Sufficiency program are required to develop to identify the services they will provide to participating families and the source of funding for those services. The supportive services may include child care; transportation; remedial education; education for completion of secondary or post secondary schooling; job training, preparation and counseling; substance abuse treatment and counseling; training in homemaking and parenting skills; money management, and household management; counseling in homeownership; job development and placement; follow-up assistance after job placement; and other appropriate services.

Supportive Services: Services provided to residents of supportive housing for the purpose of facilitating the independence of residents. Some examples are case management, medical or psychological counseling and supervision, child care, transportation, and job training.

Tenant Assistance: Rental assistance payments provided as either project-based rental assistance or tenant-based rental assistance.

Tenant-Based (Rental) Assistance: A form of rental assistance in which the assisted tenant may move from a dwelling unit with a right to continued assistance. The assistance is provided for the tenant, not for the project.

Total Vacant Housing Units: Unoccupied year round housing units. (U.S. Census definition)

Unsheltered: Families and individuals whose primary nighttime residence is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings (e.g., the street, sidewalks, cars, vacant and abandoned buildings).

Vacant Awaiting Occupancy or Held: Vacant year round housing units that have been rented or sold and are currently awaiting occupancy, and vacant year round housing units that are held by owners or renters for occasional use. (U.S. Census definition)

Vacant Housing Unit: Unoccupied year-round housing units that are available or intended for occupancy at any time during the year.

Very Low Income: Households whose incomes do not exceed 50 percent of the median area income for the area, as determined by HUD, with adjustments for smaller and larger families and for areas with unusually high or low incomes or where needed because of prevailing levels of construction costs or fair market rents.

Year Round Housing Units: Occupied and vacant housing units intended for year round use. (U.S. Census definition). Housing units for seasonal or migratory use are excluded.

Note: Terms not defined above may be defined in the specific instructions for each table. If a term is not defined, the jurisdiction is to provide its own definition.

Table Instructions—General Information

The instructions for each table to be submitted with the CHAS are instructions for the Fiscal Year 1992 submission only. On each table, a space is provided to enter the name of the submitting jurisdiction(s) or consortium. It is important that this space be filled in on all of the tables. Tables associated with parts 1, 2, and 3 of the CHAS (i.e. tables 1A, and 1B; tables 2A, 2B, 2C; and table 3) provide a space for identifying the five-year period the CHAS is to cover. For Fiscal Year 1992, jurisdictions should enter "1992" through "1996." Similarly, tables 4/5A and 5B, which are to be submitted annually, has a space for the fiscal year the tables are covering.

Some of the tables are not required to be completed for Fiscal Year 1992 if a jurisdiction does not have ready access to the data needed to complete those tables. (See the specific instructions for each table). Nonetheless, to avoid confusion, jurisdictions are to submit all tables, even those tables where no numerical information is presented. Where data are not available for a table, write "NO DATA AVAILABLE" across the table and include those tables with ontinue living

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Unsheltered: Families and individuals whose primary nighttime residence is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings (e.g., the street, sidewalks, cars, vacant and abandoned buildings).

Vacant Awaiting Occupancy or Held: Vacant year round housing units that have been rented or sold and are currently awaiting occupancy, and vacant year round housing units that are held by owners or renters for occasional use. (U.S. Census definition)

Vacant Housing Unit: Unoccupied year-round housing units that are available or intended for occupancy at any time during the year.

Very Low Income: Households whose incomes do not exceed 50 percent of the median area income for the area, as determined by HUD, with adjustments for smaller and larger families and for areas with unusually high or low incomes or where needed because of prevailing levels of construction costs or fair market rents.

Year Round Housing Units: Occupied and vacant housing units intended for year round use. (U.S. Census definition). Housing units for seasonal or migratory use are excluded.

Note: Terms not defined above may be defined in the specific instructions for each table. If a term is not defined, the jurisdiction is to provide its own definition.

Table Instructions—General Information

The instructions for each table to be submitted with the CHAS are instructions for the Fiscal Year 1992 submission only. On each table, a space is provided to enter the name of the submitting jurisdiction(s) or consortium. It is important that this space be filled in on all of the tables. Tables associated with parts 1, 2, and 3 of the CHAS (i.e. tables 1A, and 1B; tables 2A, 2B, 2C; and table 3) provide a space for identifying the five-year period the CHAS is to cover. For Fiscal Year 1992, jurisdictions should enter "1992" through "1996." Similarly, tables 4/5A and 5B, which are to be submitted annually, has a space for the fiscal year the tables are covering.

Some of the tables are not required to be completed for Fiscal Year 1992 if a jurisdiction does not have ready access to the data needed to complete those tables. (See the specific instructions for each table). Nonetheless, to avoid confusion, jurisdictions are to submit all tables, even those tables where no numerical information is presented. Where data are not available for a table, write "NO DATA AVAILABLE" across the table and include those tables with

the CHAS submission. This will help avoid a CHAS being disapproved because it is thought to be an incomplete CHAS submission.

BILLING CODE 4210-01-M

CHAS Table 1A

Housing Assistance Needs of Low & Moderate Income Households

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

Comprehensive Housing Affordability Strategy (CHAS)

JUN 15 1991

Name of Jurisdiction(s) or Consortium:

Five Year Period
FY: through FY:

Mark one:
☐ Current Estimate as of: (enter date)
☐ Five-Year Projected Estimate as of: (enter date)

Mark one:
☐ All Households
☐ Racial/Ethnic Group Households: (specify) [1]

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Household by Type, Income, & Housing Problems	Renters					Owners				
	Elderly 1 & 2 Member Households (A)	Small Related (2 to 4) (B)	Large Related (5 or more) (C)	All Other Households (D)	Total Renters (E)	Elderly 1 & 2 Member Households (F)	Small Related (2 to 4) (G)	Large Related (5 or more) (H)	All Other Households (I)	All Owners (J)
1. **Very Low Income (0 to 50%)***										
2. With Housing Problems										
3. Physical Defects										
4. Overcrowded										
5. Cost Burden > 30%										
6. Cost Burden > 50%										
7. **Other Low-Income (51 to 80%)***										
8. With Housing Problems										
9. Physical Defects										
10. Overcrowded										
11. Cost Burden > 30%										
12. Cost Burden > 50%										
13. **Total Low-Income**										
14 **Moderate Income (81 to 95%)***										
15. With Housing Problems										
16. Physical Defects										
17. Overcrowded										
18. Cost Burden > 30%										
19. Cost Burden > 50%										
20. **Middle-Income Hshlds.(96 to 120%)***										
21 **All Households**										

[1] See Table 2A for listing of Racial/Ethnic Groups

* Or, if appropriate, based on HUD income limits with required statutory adjustments.

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Instructions for Table 1A—Housing Assistance Needs of Low and Moderate Income Households

Refer to Appendix A, General Definitions Used With The CHAS, for definitions of terms used in this table.

General Instructions

For Fiscal Year 1992, jurisdictions are required to submit only a minimal amount of data for their current estimate of need. Five versions of table 1A will be required, one for total low income renter households and one for each of four racial/ethnic groups. A sixth table 1A may be needed for the 5-year projection of needs, if the needs of total low income renter households are expected to change significantly.

For jurisdictions which have HAPs, table 1A data for lines 1, 7 and 13 under columns A, B, C and E must be provided for all low-income renter households. (Column D—All Other Households totals are included in the HAP totals to be transferred to table 1A, Columns B and C, and thus it is not necessary to complete table 1A, Column D.) In addition, separate table 1A data for line 13, columns A, B, C and E must be provided for all racial/ethnic renter households. Data for all low income renter households may be obtained from renter data for all very low income and other low income by family type contained in Table II—Rental Subsidy Needs of Lower Income Households, of their most recent Housing Assistance Plan (HAP) submission; Data for each of four low income racial/ethnic groups by family type may be obtained from the HAP "Housing Assistance Needs" narrative section.

Jurisdictions which have never developed a HAP are not required to submit any household needs data, although they are encouraged to provide estimates.

Data contained in a HAP does not always parallel data sought in table 1A but may, nonetheless, serve as estimates of need for Fiscal Year 1992. To the extent that jurisdictions have the capability to provide additional data sought in table 1A, they are encouraged to do so.

Specific Instructions (For Fiscal Year 1992 Submission Only)

The jurisdiction is to indicate whether the data presented on table 1A is for all households or for a racial/ethnic group by placing an "x" in the appropriate box provided at the top of the table. If the data is for a racial/ethnic group, place an "x" in the box labeled "Racial/Ethnic Group" and specify the applicable racial/ethnic group in the space provided. The four racial/ethnic groups for which data must be provided are: (1) Black, Non-Hispanic; (2) American Indians or Alaskan Native; (3) Hispanic; and (4) Asian or Pacific Islanders. (In future years, data will be provided by HUD, and reported by jurisdictions, for each of 5 racial/ethnic groups.)

For data presented for all households the jurisdiction is to indicate whether the figures presented on table 1A represent its current estimate of need or its 5-year projection of needs by placing an "x" in the appropriate box provided. For the current estimate enter "October 1, 1991" in the space provided for current estimate. If using another table 1A to present projected needs, enter "September 30, 1996" in the space provided for five-year projected estimate. (5-year projected needs may be presented in the narrative, or, if significantly different in several categories of need, may be presented using a separate table 1A.)

If using the most recently submitted HAP table II—Rental Subsidy Needs of Lower Income Households data as the jurisdiction's current estimate of need, then take the HAP table II figures from the reference columns and lines below, and use those figures for the CHAS table 1A columns and lines referenced below.

HAP table II	CHAS table 1A
Column, H, Line 8	Column A, Line 1.
Column, I, Line 8	Column B, Line 1.
Column, J, Line 8	Column C, Line 1.
Column, K, Line 8	Column E, Line 1.
Column, H, Line 10	Column A, Line 7.
Column, I, Line 10	Column B, Line 7.
Column, J, Line 10	Column C, Line 7.
Column, K, Line 10	Column E, Line 7.
Column, H, Line 8+10	Column A, Line 13.
Column, I, Line 8+10	Column B, Line 13.
Column, J, Line 8+10	Column C, Line 13.
Column, K, Line 8+10	Column E, Line 13.

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CHAS Table 1B (Optional)

Other Special Needs Population

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

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Comprehensive Housing Affordability Strategy (CHAS)

Name of Jurisdiction(s) or Consortium

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Five Year Period (enter fiscal yrs.)
FY through FY

Category	Households			
	Persons with Disabilities (A)	Elderly with Special Needs (B)	Persons with AIDS (C)	Participants in Economic Independence and Self Sufficiency Programs (D)
1. Number of Households				▨
2. Supportive Housing Need				▨
3. Service Needs				▨
4. Supportive Service Need Identified in FSS Plan	▨	▨	▨	

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U.S. Department of Housing and Urban Development
Office of Community Planning and Development

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Comprehensive Housing Affordability Strategy (CHAS)

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Five Year Period (enter fiscal yrs.)
FY
through FY

Households

derly with cial Needs (B)	Persons with AIDS (C)	Participants in Economic Independence and Self Sufficiency Programs (D)

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Instructions for Table 1B—Supportive Housing and Services Population

Special Definition

Number of Households: The total of households (including those with individuals and 2 or more persons who are sharing living quarters) plus persons living in group quarters.

Refer to Appendix A, General Definitions Used With The CHAS, for additional definitions of terms used, or programs cited in this table.

General Instructions

Optional Table 1B provides a format for estimating the need for supportive housing and services for the population with special needs. For the categories of people with disabilities, elderly with special needs, and persons with AIDS, the table calls for the estimated number of individuals in each category, and for the number of individuals with need for either supportive housing or services, or both. For participants in Family Self-Sufficiency (FSS) and similar economic independence programs operated by Public Housing Agencies, the table would provide an estimate of the number of individuals needing supportive services as identified in the PHA's FSS plan.

Some potential resource agencies and the client groups they serve include:

- State mental health agencies for persons with chronic mental illness;
- State agencies of mental retardation or State developmental disabilities councils for people with developmental disabilities;
- State rehabilitation agencies or State or local Centers for Independent Living for people with physical disabilities;
- State or area agencies on aging for elderly people;
- The Public Health Service's Center for Disease Control for persons with AIDS; and
- Public Housing Agencies for families eligible to participate in Family Self Sufficiency programs.

Specific Instructions

Line 1—Enter the estimated number of households (as defined above) for each of the categories under columns A, B, and C.

Lines 2 and 3—Enter under each of the columns the estimated number of households from line 1 which have supportive housing needs or service needs, respectively, under Columns A, B, and C.

Line 4—Enter the number of participants in Economic Independence and Self-Sufficiency programs administered by the PHA(s) serving the jurisdiction who will be provided services identified in the PHA's Family Self-Sufficiency (FSS) Plan.

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CHAS Table 2A

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U.S. Department of Housing and Urban Development
Office of Community Planning and Development

Population and Minority Data

Comprehensive Housing Affordability Strategy (CHAS)

Name of Jurisdiction(s) or Consortium

Five Year Period: (enter fiscal yrs.)
FY: through FY:

DRAFT

Category	1980 Census Data (A)	1990 Census Data or Current Estimate (B)
1. **Total Population**		
2. White (Non-Hispanic)		
3. Black (Non-Hispanic)		
4. Hispanic (All races)		
5. Native American		
6. Asian and Pacific Islanders		
7. **Group Quarters**		
8. Institutional		
9 Non-Institutional		
10. **Household Population**		

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U.S. Department of Housing and Urban Development
Office of Community Planning and Development

Comprehensive Housing Affordability Strategy (CHAS)

	Five Year Period: (enter fiscal yrs.) FY: through FY:
nsus Data (A)	1990 Census Data or Current Estimate (B)

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Instructions for table 2A—Market Inventory and Conditions-Population and Minority Data

Refer to Appendix A, General Definitions Used With The CHAS, for definitions of terms used in this table.

General Instructions

The 1990 U.S. Census will ultimately provide all the information needed to complete Column B of this Table. Until HUD is able to provide that data, jurisdictions need only complete Column A data, which is currently available from 1980 U.S. Census data sources, as specified below. The provision of Column B data is optional for Fiscal Year 1992. To the extent that jurisdictions can provide 1990 U.S. Census data, or current estimates based on local data, jurisdictions are encouraged to provide Column B data.

Specific Instructions

The following instructions provide readily available 1980 Census resource publications where required information may be found. Cited Census publication titles and publication numbers are generally published separately for each State.

Column A. Lines 1 and 10—Total Population (Line 1), and Household Population (Line 10), for places of 1,000 or more and for counties may be found in U.S. Census publication "General Population Characteristics (PC80–1–B)," table 14.

Lines 2 through 6—Use the data provided for the non-Hispanic portions of White, Black, Native American, and Asian Pacific Islanders, as well as the data for Persons of Spanish Origin, as found for places of 2,500 or more and for counties in U.S. Census publication "General Social and Economic Characteristics (PC80–1–C)," table 59.

Lines 7, 8, and 9—The U.S. Census report "Persons in Institutions and Other Group Quarters" (PC80–2–4D), provides data for persons in group quarters by institutional and non-institutional population. Table 41 in that report identifies the number of inmates of institutions and non-institutional persons for counties, and places and towns of 2,500 or more (with 1,000 or more in group quarters).

Note: 1990 U.S. Census population data for racial/ethnic groups, group quarters (institutional and non-institutional) and households are being released on a State-by-State basis in tape form in STF 1A. Tables P1, P9, P10 and P15 contain these data. Where the data are available in tape form, and the jurisdiction can gain access to the data, it may use those data to complete Column B.

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U.S. Department of Housing and Urban Development
Office of Community Planning and Development

CHAS Table 2B

Market and Inventory Conditions
Housing Stock Inventory

Comprehensive Housing Affordability Strategy (CHAS)

Name of Jurisdiction(s) or Consortium:

Five Year Period (enter fiscal yrs.)
FV: through FY

Check one
☐ 19_____ Census
☐ Current Estimate as of: (enter date)

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Category	Total (A)	0 or 1 bedrooms (B)	2 bedrooms (C)	3 or more bedrooms (D)
1. Total Year-Round Housing				
2. Total Occupied Units				
3. Renter Occupied Units				
4. Needing Rehab				
5 Not Rehabbable				
6 Owner Occupied Units				
7. Needing Rehab				
8. Not Rehabbable				
9. Total Vacant Units				
10. For Rent				
11. Needing Rehab				
12. Not Rehabbable				
13 For Sale				
14 Needing Rehab				
15 Not Rehabbable				
16 Awaiting Occupancy or Held				
17 Other				

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Department of Housing and Urban Development
ce of Community Planning and Development

mprehensive Housing Affordability Strategy (CHAS)

Five Year Period (enter fiscal yrs.)
FY: through FY

Check one
☐ 19_____ Census
☐ Current Estimate as of: (enter date)

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1 bedrooms (B)	2 bedrooms (C)	3 or more bedrooms (D)

Instructions for Table 2B—Market and Inventory Conditions—Housing Stock Inventory

Refer to Appendix A, General Definitions Used With the CHAS, for definitions of terms used in this table.

General Instructions

For the Fiscal Year 1992, jurisdictions are only required to complete Column A for their estimate of current housing stock conditions. Most of the information needed to complete Column A can be obtained from the jurisdiction's most recently submitted HAP. Column A, Lines 5, 8, 12 and 15 should be completed based on best estimates of the number of units which are in such poor condition they cannot possibly be rehabilitated. Lines 16 and 17 are not to be filled in. The data required are data contained in part I, Table I—Housing Stock Conditions, of the HAP. The HAP can be used to estimate total housing stock, even though the HAP does not contain data which can be used to complete lines 16 and 17, which in future years will be included in total housing unit counts. Those figures will be provided to jurisdictions when 1990 Census data is provided.

Jurisdictions are encouraged to provide data by bedroom size (Columns B, C & D) if such data are available to them.

Specific Instructions

If using the most recently submitted HAP part I, Table I—Housing Stock Conditions data as the jurisdiction's current estimate of housing stock inventory, then take the HAP table I figures and utilize those figures for the CHAS table 2B, Column A, as referenced below.

CHAS Table 2B	HAP Table 1
Line 7, Column A	> Line 6, Column E
Line 14, Column A	> Line 6, Column G
Line 4, Column A	> Line 7, Column E
Line 11, Column A	> Line 7, Column G

Line 3, Column A, enter the sum of Line 7, Columns A, and C.
Line 6, Column A, enter the sum of Line 6, Columns A and C.
Line 10, Column A, enter the sum of Line 7, Columns B and D.
Line 13, Column A, enter the sum of Line 6, Columns B and D.
Once the above figures have been "transferred" from the HAP to CHAS Table 2B, complete the following lines under Column A of CHAS Table 2B:

CHAS Table 2B, Column A

Line 1—Enter the sum of lines 2 and 9.
Line 2—Enter the sum of lines 3 and 6.
Line 9—Enter the sum of lines 10 and 13.
Lines 16 and 17—Do not enter a number.

Note: To the extent feasible, jurisdictions are requested to provide the information for Column A, Lines 5, 8, 12 and 15.

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CHAS Table 2C

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Assisted Housing Inventory

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

Comprehensive Housing Affordability Strategy (CHAS)

Name of Jurisdiction(s) or Consortium

Five Year Period (enter fiscal yrs.)
FY through FY

Current Estimate as of (enter date)

Category	Total Stock and Inventory				
	Total (A)	SRO (B)	0 or 1 bedrooms (C)	2 bedrooms (D)	3 or more bedrooms (E)
1. **Project Based Tenant Assistance**					
2 Public Housing					
3 Section 202					
4 Section 8					
5 Other HUD					
6 FmHA					
7. **Tenant Based Tenant Assistance**					
8 Section 8					
9 Other State/Local					
10. Homeowner Assistance					

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. Department of Housing and Urban Development
ce of Community Planning and Development

mprehensive Housing Affordability Strategy (CHAS)

Five Year Period (enter fiscal yrs.)
FY through FY

Current Estimate as of (enter date)

l Stock and Inventory

0 or 1 bedrooms (C)	2 bedrooms (D)	3 or more bedrooms (E)

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Instructions for Table 2C—Assisted Housing Inventory

Refer to Appendix A, General Definitions Used With The CHAS, for definitions of terms used in this table.

General Instructions

Data on existing assisted housing units in a jurisdiction is currently being refined by HUD and will be provided by HUD in future years. It is unlikely such data will be made available by HUD in time for a jurisdiction's use in preparing the Fiscal Year 1992 CHAS. To the extent data on assisted housing units can be readily obtained from local sources, such as from the local PHA serving the jurisdiction, jurisdictions are asked to provide that data in table 2C.

Specific Instructions

Begin by completing lines 2 through 6 for each of the columns. (Line 1 is the sum of lines 2 through 6 for each of the columns.)

Line 2—Public Housing. Enter under the appropriate columns the number of housing units assisted through low income public housing programs under the U.S. Housing Act of 1937.

Line 3—Section 202. Enter the number of units assisted through non-profit sponsors and made available to elderly and handicapped individuals under section 202 of the U.S. Housing Act of 1959. Also include assisted units provided under section 811 of the National Affordable Housing Act.

Line 4—Section 8. Enter the number of units assisted through housing developed under the section 8 New Construction, Substantial Rehabilitation, Moderate Rehabilitation and project-based certificate programs. Do not include section 8 rental assistance provided in section 202 projects; section 8 certificate or voucher assistance; or section 8 rental assistance provided through other HUD programs (see line 5).

Line 5—Other HUD. Enter the number of units assisted through housing developed under the section 236 and section 221(d)(3) Below Market Interest Rate (BMIR) programs, and under the Rent Supplement program.

Line 6—FmHA. Enter the number of units assisted through housing developed under the section 515 program of the Farmers Home Administration.

Line 1—Project-Based Tenant Assistance. Sum lines 2 through 6 for each of the columns.

Next complete lines 8 and 9. (Line 7 is the sum of lines 8 and 9 for each of the columns.)

Line 8—Section 8. Enter the number of families currently receiving tenaent-based rental assistance under the section 8 certificate and voucher programs. Do not include project-based certificates.

Line 9—Other. Enter the number of families currently receiving tenant-based rental assistance through housing programs other than section 8 (e.g., State-funded programs that offer assistance comparable to that of section 8 certificates or vouchers).

Line 7—Tenant-Based Tenant Assistance. Sum lines 8 and 9 for each of the columns.

Line 10—Homeowner Assistance. Enter the number of homeowners with current assistance being provided through interest subsidies or other comparable subsidies under HUD's section 235 program, or under the section 502 program administered through the Farmers Home Administration.

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CHAS Table 3

Priorities for Assistance
5-Year Plan

JUN 15 1991

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

Comprehensive Housing Affordability Strategy (CHAS)

Name of Jurisdiction(s) or Consortium

Five Year Period (enter fiscal yrs.)

FY through FY

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	Activity	Renters				Owners				
							First-Time Homebuyers			
		Elderly 1 & 2 Member Households (A)	Small Related (2 to 4) (B)	Large Related (5 or more) (C)	All Other Households (D)	Existing Homeowners (E)	With Children (F)	All Others (G)	Homeless Persons (H)	Other Persons with Special Needs (I)
Very Low-Income Persons	1. Moderate Rehabilitation / Acquisition									
	2. New Construction, Substantial Rehabilitation, Related Infrastructure									
	3. Rental Assistance					▨	▨	▨		
	4. Homebuyers Assistance	▨	▨	▨	▨	▨			▨	▨
	5. Support Facilities and Services									
Other Low-Income Persons	6. Moderate Rehabilitation / Acquisition									
	7. New Construction, Substantial Rehabilitation, Related Infrastructure									
	8. Rental Assistance					▨	▨	▨		
	9. Homebuyers Assistance	▨	▨	▨	▨	▨			▨	▨
	10. Support Facilities and Services									

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Instructions for Table 3–5-year Priorities for Assistance to Very and Other Low-Income Persons for FY 1992

Refer to Appendix A, General Definitions Used With The CHAS, for definitions of terms used in this table.

General Instructions

The jurisdiction's relative priorities are to be developed by weighing the severity of needs for assistance among all groups and subgroups, including the relative need between very low-income and other low-income persons. Priorities are not to be established separately for very low-income and other low-income persons. The establishment of priorities will emerge based on many considerations, among them the jurisdiction's analysis of its housing stock and market conditions, its analysis of the relative housing needs of its very low and other low-income families, and its assessment of the resources likely to be available over the five year period.

Based on the jurisdiction's overall priorities, it is to identify on table 3 the relative priority ("first" "second," or "third") it will give in providing various types of assistance to renters, homeowners, homeless persons and other persons with special needs over the five year CHAS period. In establishing its five year priorities, the jurisdiction must consider not only who among the various categories of low-income households are most in need of these housing activities, but also determine which of these activities will best meet the housing needs of the identified households.

Because the purpose of the table is to be used to distinguish relative priorities, it is not acceptable to assign "first" priority consideration to every group.

The jurisdiction's narrative is to thoroughly discuss the assignment of priorities.

Specific Instructions

For table 3, lines 1 through 10, enter the relative priority to be given over the 5-year CHAS period to each of the household types and persons designated in Columns A through H. Enter under the appropriate column the number "1" for "first priority consideration," the number "2" for "second priority consideration," or "3" for "third priority consideration." The number "0" should be entered in the appropriate box(es) where the jurisdiction does not anticipate providing assistance to fund one or more of the activities listed and/ or one or more of the family types displayed. The narrative must discuss the basis for not assigning a priority to any of the categories for which a "0" is entered.

The jurisdiction may include modifications to housing to accommodate special needs of elderly or people with disabilities as moderate rehabilitation (line 1).

No entries are to be made in shaded areas.

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CHAS Table 4/5A

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

Anticipated Resources & Plan for Investment

Comprehensive Housing Affordability Strategy (CHAS)

Name of Jurisdiction(s) or Consortium

FY

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JUL 30 1991

Funding Source Federal Funds Awarded or to be Awarded to Jurisdiction	Anticipate to be Available (A)	Expect to Commit (B)	Anticipated resources expected to be committed to projects/activities during FY ($000's) Rehabilitation (C)	Acquisition (D)	Tenant Assistance (E)	New Construction (F)	Home Buyer Assistance (G)	Planning Grants (H)	Support Services (I)	Operating Costs (J)
1. Home								▨	▨	▨
2. Hope 1						▨				▨
3. Hope 2						▨				▨
4. Hope 3					▨	▨				▨
5. CDBG								▨		▨
6. DOE/Other Energy Prg.				▨	▨		▨	▨	▨	
7. Other (Specify)										
8.										
9. **Subtotal - Housing**										
10. CDBG (Homeless)	▨							▨		▨
11. ESG				▨		▨	▨	▨		
12. Perm. Housing for Handicapped					▨		▨	▨		
13. Transitional Housing					▨		▨	▨		
14. Shelter Plus Care			▨	▨		▨	▨	▨	▨	▨
15. Other (Specify)										
16.										
17.										
18. **Subtotal - Homeless**										
19. **Total to Jurisdiction**										

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Funding Source Federal Funds Awarded or to be Awarded to Other Entities	Anticipate to be Available (A)	Expect to Commit (B)	Anticipated resources expected to be committed to projects/activities during FY ($000's)							
			Rehabilitation (C)	Acquisition (D)	Tenant Assistance (E)	New Construction (F)	Home Buyer Assistance (G)	Planning Grants (H)	Support Services (I)	Operating Costs (J)
20. Hope 1						▨				▨
21. Hope 2						▨				▨
22. Hope 3					▨	▨				▨
23. Section 202 Elderly							▨	▨		▨
24. Section 811 Handicapped							▨	▨	▨	▨
25. Rental Certificates			▨	▨		▨	▨		▨	▨
26. Rental Vouchers			▨	▨		▨	▨		▨	▨
27. Mod Rehab SROs Proj.			▨	▨		▨	▨	▨	▨	▨
28. Perm. Housing for Handicapped					▨		▨			
29. Transitional Housing					▨		▨	▨		
30. LIHTC										▨
31. Public Housing MROP				▨	▨	▨	▨	▨	▨	▨
32. Public Housing Develop.					▨				▨	▨
33. Public Housing CIAP					▨	▨	▨		▨	▨
34. Public Housing Comprehensive Grant Program								▨	▨	▨
35. FmHA								▨	▨	▨
36. Other (Specify)										
37.										
38.										
39. Total - Other Entities										
40. Total - Federal										

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Funding Source **Non-Federal Funds**	Anticipate to be Available (A)	Expect to Commit (B)	Anticipated resources expected to be committed to projects/activities during FY ($000's)							
			Rehabilitation (C)	Acquisition (D)	Tenant Assistance (E)	New Construction (F)	Home Buyer Assistance (G)	Planning Grants (H)	Support Services (I)	Operating Costs (J)
41. Total State Funds										
42. Total Local Funds										
43. Total Private Funds										
44. Total - Non-Federal Funds										
45. Grand Total All Funds										

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BILLING CODE 4210-01-C

Instructions for Table 4/5A—Anticipated Resources and Plan for Investment

Note: The FY 1992 CHAS Submission Table 4/5A for Anticipated Resources and Plan for Investment has been Revised from Previous Draft Instructions.

Special Definitions

Acquisition: (Column D) For purposes of completing table 3, acquisition means acquisition of standard housing only, with no expectation of other listed activities being carried out in conjunction with the acquisition. Where acquisition is intended to be carried out in conjunction with another activity (e.g., rehabilitation), the amount expected to be committed for the acquisition should be included under the activity column of the associated other activity. For example, a property is expected to be acquired and rehabilitated; the amount of funds expected to be committed for both acquisition and rehabilitation should be entered under Column C—Rehabilitation.

Committed: Funds that are set aside for a specific project usually through a binding legal agreement. The instructions below elaborate on what is meant by committed for the various activities for which funding commitments are expected to be made.

Operating Costs: (Column J) Costs to carry out the actual operations of a project, such as electricity, rent and utilities. Funds expected to be committed for operating costs are only to be provided for those listed programs which are unshaded under Column J—Operating Costs.

General Instructions

For table 4/5A, "resources anticipated to be committed during the fiscal year" means the anticipated commitment of funds to a specific identifiable project and not just a block of funds that have been committed or obligated to a subrecipient, which will, in turn, provide those funds to individual owners for specific projects. Further, "project" may refer to a multifamily project or a single family home. Following are some examples to help clarify what "committed" means for different types of projects or activities:

(a) *Rehabilitation or new construction of a privately owned project:* A written legally binding agreement is signed between the jurisdiction (or other administering entity) and the owner under which the jurisdiction (or other entity) agrees to provide assistance to the owner of an identifiable project that can be expected to start construction within a reasonable period of time.

(b) *Rehabilitation or new construction of a publicly owned project:* The Project Set-Up Report is submitted under a HUD Cash and Management Information (C/MI) system which identifies a specific project that will start construction within 6 months of receipt of the Project Set-Up Report. If Project Set-Up Reports are not required, such other public document or action is completed that identifies an amount of funds to be provided for the rehabilitation or construction of the project.

(c) *Acquisition:* A written legally binding agreement (i.e., a contract for sale) is signed between the jurisdiction (or other administering entity) and the project owner under which the jurisdiction (or other entity) agrees to provide funds to the owner for the purchase of the project that can be expected to be accomplished within a reasonable period of time and the owner agrees to transfer title within a reasonable period.

(d) *Tenant-based rental assistance:* The jurisdiction (or other administering entity) has entered into a rental assistance contract with the owner or the tenant to provide the assistance.

(e) *First-time home buyer assistance:* A written legally binding agreement (i.e., a contract for sale) is signed between the jurisdiction or other administering entity and the proposed home buyer under which the jurisdiction (or other entity) agrees to provide assistance to the home buyer for the purchase (whether conditional or otherwise) of the property that can be expected to be accomplished within a reasonable period of time.

All dollar amounts should be rounded to the nearest thousand dollars for this table. Thus, $829,247 would be reported as 829.

Cells have been shaded for individual Federal programs where information is not desired, or where the general funding activity is not an eligible activity for the specific program listed. For State, local and private funding sources, if an activity is not an eligible activity under the specified program, enter "N/A" in the cell. For all other unshaded cells, enter "0" where no funds will be committed for a particular activity.

Optinal Worksheet 4 may be used by the jurisdiction in deriving the figures to be entered under Columns A and B. Worksheet 4 is not to be submitted to HUD.

Specific Instructions—Funding Source. This column lists various funds available to a jurisdiction by category. The first category, "Federal funds awarded or to be awarded to jurisdiction," is broken down into housing programs and homeless programs. On lines 7 and 8, "Other," the jurisdiction is to specify any funds available for affordable housing through programs other than those listed. Especially in the early years of completing this form, jurisdictions may have funds available from other programs that have been terminated, such as the Rental Rehabilitation Program (RRP). Jurisdictions with funds available from a prior year RRP or other terminated programs should include them in the spaces provided for "other" programs. If there is not sufficient space to list all other programs, the jurisdiction should list the additional programs at the bottom of the last page of the table or append a separate page.

For line 9, "Subtotal, Housing," sum the amounts for lines 1 through 8 for each column. Remember to add in funds from any other programs that may have been listed at the bottom of the last page or appended on a separate page.

For line 18, enter the sum of lines 10 through 17 for each column. For line 19, enter the sum of lines 9 and 18 for each column.

The second category of Federal funds, on page 2 of table 4/5A, is for funds that are "awarded or to be awarded to other entities." Most of the line items are self-explanatory and/or are well known programs. However, there are a few that are abbreviated. These are defined in appendix A, General Definitions Used With The CHAS. For line 39, enter the sum of line 20 through 38. For line 40, enter the sum of lines 19 and 39.

Identify in lines 41, 42, and 43 the total amount of funds from State, local and private funding sources available for affordable housing under "FUNDING SOURCE/NON-FEDERAL FUNDS" on page 3 of table 4/5A. Enter in the appropriate columns the funds for each such funding source. For line 44, enter the sum of lines 41, 42, and 43 for each column. For line 45, enter the sum of lines 40 and 44 for each column.

Column A. Enter the amount of funds that are expected to be available during the Federal fiscal year for each program under the FUNDING SOURCE column. This amount is the sum of what was available and not committed as of October 1 of the latest Federal fiscal year and what is anticipated to become available during the current Federal fiscal year (October 1 through September 30). This should include anticipated appropriated funds as well as any anticipated program income. For example, for the CHAS to be submitted October 31, 1991, add the amount of funds available and not committed as of October 1, 1991 and the amount

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anticipated to be made available between October 1, 1991 and September 30, 1992. If Worksheet 4 is used, the amounts in column C of Worksheet 4 should be entered in column A of table 4/5A.

For CDBG (line 5), indicate the total amount of all funds (not just those allocated for housing activities) that are available and not committed to specific local projects.

For line 6, DOE and Other Energy Programs, enter the amount of funds available through the Department of Energy or other Federal program funding sources expected to be committed to improve energy efficiency of housing.

For line 10, CDBG (Homeless), enter only the amount of CDBG funds expected to be committed to assist the homeless.

Column B. Of the amounts available in Column A, indicate by program, the amount of funds estimated to be committed to specific projects during the current Federal fiscal year. If no funds will be committed, enter "0."

For CDBG (line 5), enter the amount estimated to be committed for all affordable housing except for homeless programs or activities. The amount of CDBG funds to be committed for homeless activities is to be entered on line 10.

For line 6, DOE and Other Energy Programs, enter the amount of funds available through the Department of Energy or other Federal program funding sources expected to be committed to improve energy efficiency of housing.

For line 10, CDBG (Homeless), enter only the amount of CDBG funds expected to be committed to assist the homeless.

Columns C Through J. Enter in each unshaded column, for each funding source for which there is an entry in Column B, a specific dollar amount, "0," or "N/A," as appropriate. Leave no unshaded cell blank (unless there is no entry, or a "0" in Column B). The sum of all entries in Column C through J should equal the amount in Column B.

BILLING CODE 4210-01-M

Worksheet 4

Anticipated Resour

Funding Source Federal Funds Awarded or to be Awarded to Jurisdiction
1 Home
2 Hope 1
3. Hope 2
4 Hope 3
5 CDBG
6. DOE/Other Energy Prg.
7 Other (Specify)
8
9. Subtotal - Housing
10 CDBG (Homeless)
11. ESG
12. Perm. Housing for Handicapped
13. Transitional Housing
14. Shelter Plus Care
15 Other (Specify)
16.
17
18. Subtotal - Homeless
19. Total to Jurisdiction

mitted to assist the

amounts available
ate by program, the
timated to be
fic projects during the
al year. If no funds
enter "0."
), enter the amount
mitted for all
except for homeless
ies. The amount of
committed for
is to be entered on

nd Other Energy
amount of funds
he Department of
deral program funding sources expected to be committed to improve energy efficiency of housing.

For line 10, CDBG (Homeless), enter only the amount of CDBG funds expected to be committed to assist the homeless.

Columns C Through J. Enter in each unshaded column, for each funding source for which there is an entry in Column B, a specific dollar amount, "0," or "N/A," as appropriate. Leave no unshaded cell blank (unless there is no entry, or a "0" in Column B). The sum of all entries in Column C through J should equal the amount in Column B.

BILLING CODE 4210-01-M

Worksheet 4

Anticipated Resources

JUN 15 1991

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

Comprehensive Housing Affordability Strategy (CHAS)

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Funding Source Federal Funds Awarded or to be Awarded to Jurisdiction	On Hand but not Committed at Start of Fiscal Year (A)	Anticipated to be Received During Fiscal Year (B)	Total Anticipated to be Available for Commitment (A + B) (C)	Anticipated to be Committed from Total Available (D)
1 Home				
2 Hope 1				
3. Hope 2				
4 Hope 3				
5 CDBG				
6. DOE/Other Energy Prg.				
7 Other (Specify)				
8				
9. **Subtotal - Housing**				
10 CDBG (Homeless)	▨	▨	▨	
11. ESG				
12. Perm. Housing for Handicapped				
13. Transitional Housing				
14. Shelter Plus Care				
15 Other (Specify)				
16.				
17				
18. **Subtotal - Homeless**				
19. **Total to Jurisdiction**				

Funding Source Federal Funds Awarded or to be Awarded to Entities	On Hand but not Committed at Start of Fiscal Year (A)	Anticipated to be Received During Fiscal Year (B)	Total Anticipated to be Available for Commitment (A + B) (C)	Anticipated to be Committed from Total Available (D)
20. Hope 1				
21. Hope 2				
22. Hope 3		JUN 15 1991		
23. Section 202 Elderly				
24. Section 811				
25. Rental Certificates				
26. Rental Vouchers				
27. Mod Rehab SROs				
28. Perm. Housing for Handicapped				
29. Transitional Housing				
30. LIHTC				
31. Public Housing MROP				
32. Public Housing Development				
33. Public Housing CIAP				
34. Public Housing Comprehensive Grant Program				
35. FmHA				
36. Other (Specify)				
37				
38				
39. Total - Other Entities				
40. Total - Federal				

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form HUD-400

Funding Source Non-Federal Funds
State Funds (Specify)
41
42.
43.
44.
45. **Subtotal - State Funds**
Local Funds (Specify)
46
47
48
49
50. **Subtotal - Local Funds**
Private Funds (Specify)
51
52
53
54
55. **Subtotal - Private Funds**
56. **Total - Non-Federal Funds**
57. **Grand Total (All Funds)**

BILLING CODE 4210-01-C

Funding Source Non-Federal Funds	On Hand but not Committed at Start of Fiscal Year (A)	Anticipated to be Received During Fiscal Year (B)	Total Anticipated to be Available for Commitment (A + B) (C)	Anticipated to be Committed from Total Available (D)
State Funds (Specify)				
41				
42.				
43.				
44.				
45 **Subtotal - State Funds**				
Local Funds (Specify)				
46				
47				
48				
49				
50. **Subtotal - Local Funds**				
Private Funds (Specify)				
51				
52				
53				
54				
55. **Subtotal - Private Funds**				
56 **Total - Non-Federal Funds**				
57 **Grand Total (All Funds)**				

JUN 15 1991

DRAFT

form HUD-40090

BILLING CODE 4210-01-C

Optional Worksheet 4—Anticipated Resources

Optional Worksheet 4 is not to be provided to HUD. It is provided for those jurisdictions which wish to use it to help them complete table 4/5A. Instruction for table 4/5A may be referred to in using this Worksheet.

BILLING CODE 4210-01-M

CHAS Table 5B

Goals for Families to be Assisted with Housing

JUN 15 1991

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

Comprehensive Housing Affordability Strategy (CHAS)

Name of Jurisdiction(s) or Consortium:

FY:

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Assistance Provided by Income Group	Total Section 215 Goals (A)	Total Goals (B)	Renters					Owners			
			Elderly 1 & 2 Member Households (C)	Small Related (2 to 4) (D)	Large Related (5 or more) (E)	All Other Households (F)	Total Renters (G)	Existing Homeowners (H)	First-Time Homebuyers With Children (I)	First-Time Homebuyers All Others (J)	Total Homeowners (K)
1. Very Low-Income (0 to 50% of MFI)*											
2. Mod Rehab & Acquisition											
3. New Const, Sub Rehab, Related Infrastructure											
4. Rental Assistance								▨	▨	▨	▨
5. Homebuyer Assistance			▨	▨	▨	▨	▨	▨			
6. Support Services	▨										
7. Other Low-Income (51% to 80% of MFI)*											
8. Mod Rehab & Acquisition											
9. New Const, Sub Rehab, Related Infrastructure											
10. Rental Assistance								▨	▨	▨	▨
11. Homebuyer Assistance			▨	▨	▨	▨	▨	▨			
12. Support Services	▨										
13. Total Low-Income (Lines 1 and 7)											
14. Other Income (More than 80% of MFI)*	▨										
15. Grand Total (Lines 13 and 14)	▨										

*Or, if appropriate, based on HUD income limits with required statutory adjustments.

form HUD-40090 (6/14/91)

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Instructions for Table 5B—Annual Goals for All Families To Be Assisted

Special Definitions

Section 215 Goals (Affordable Housing)

1. *Rental Housing:* A rental housing unit is considered to be an affordable housing unit if it is occupied by a low income family or individual and bears a rent that is the lesser of (1) the Existing Section 8 Fair Market Rent (FMR) for comparable units in the area or, (2) 30 percent of the adjusted income of a family whose income equals 65 percent of the median income for the area. An exception is for those cases where, depending on the prevailing market conditions, HUD specifically establishes higher or lower FMRs for a jurisdiction.

2. *Homeownership:*

(a) Housing that is for purchase (with or without rehabilitation) qualifies as affordable housing if it (1) is purchased by a low-income, first-time homebuyer who will make the housing his/her principal residence; and (2) has a sale price which does not exceed the mortgage limit for the type of single family housing for the area under HUD's single family insuring authority under the National Housing Act.

(b) Housing that is to be rehabilitated, but is already owned by a family when assistance is provided, qualifies as affordable if the housing (1) is occupied by a low-income family which uses the housing as its principal residence, and (2) has a value, after rehabilitation, that does not exceed the mortgage limit for the type of single family housing for the area, as described in 2(a) above.

Note: These definitions apply for CHAS purposes, regardless of the Federal, State or local funding source, i.e., even if the unit is not assisted with HOME funds. Rental and homeownership projects assisted with title II, HOME program funds are subject to "affordable housing" requirements, as contained in § 92.252 (rental housing) and § 92.254 (homeownership housing) of 24 CFR part 92, which define "affordable housing" for purposes of the HOME program.

Refer to Appendix A, General Definitions Used With the CHAS, for definitions of additional terms used in this table. It is particularly important to refer to the definitions provided for the different types of households (i.e., "elderly," "small-related," and "large-related households").

General Instructions

The jurisdiction shall enter on table 5B the estimated number of families to be assisted through the provision of housing or supportive services. Of those families, the jurisdiction shall estimate the number to be provided housing that will meet the above definition of "affordable housing" (section 215 goals).

Estimates of the number of families assisted should be limited to those families who are either homeowners or renters, and who will be assisted with HUD funds (alone or in combination with other funds) which can reasonably be expected to be committed in the coming Federal fiscal year. Federal funds expected to be committed during the year are those Federal funds identified in table 4/5A, Column B "Expect to Commit."

The jurisdiction shall include families that will receive assistance as a result of projects or activities for which commitments are expected to be made during the covered year, even though the project/activity may not be completed (and actual assistance provided to the family) until after the end of the Federal fiscal year. Conversely, the jurisdiction should not include families to be assisted by activities for which funding commitments were made prior to the beginning of the covered fiscal year, and which are not shown in Column B of table 4/5A.

The total number of families expected to be assisted is to be provided by:

- Income group (i.e., very low-income—line 1, other low-income— 7, and other income—line 14); and
- Housing type (i.e., renters—Column C through Column F; and homeowners, both existing homeowners—Column H, and first-time homebuyers—Columns I and J).

For all families expected to be assisted (Column B) the jurisdiction must estimate in Column A the number of "very low-income" and "other low-income" families which, based on family income and housing cost, will meet the section 215 "affordable housing" criteria.

All goals for low-income renters and homeowners in lines 2 through 6 (very low-income) and lines 8 through 12 (other low-income) are to be broken out by the type of assistance expected to be provided.

Shaded areas are not to be filled in.

The sum of the numbers entered on each line under Column G (Total Renters) and Column K (Total Homeowners) should always equal the number entered under Column B (Total Goals). However, since some families assisted may receive more than one kind of assistance, the sum of lines 2 through 6, or 8 through 12, may often exceed the amount on lines 1 or 7, respectively, under any column.

Specific Instructions

Goals

Column A—Total Section 215 Goals. Line 1—Enter the number of very low-income families (incomes at or below 50% of median family income) for which the jurisdiction expects to provide assistance, and for whom Section 215 "affordable housing" goals are expected to be achieved.

Lines 2 through 5—For each of lines 2, 3, 4 and 5, enter the number of very low-income families from line 1 who will be provided the type of assistance specified. The total number of families entered for lines 2, 3, 4 and 5 will exceed the number of families listed on line 1 if more than one type of assistance is provided to one or more families. For example, if a family's rental unit receives a moderate level of rehabilitation, and the family receives tenant-based rental assistance, then the family should be included in both the number entered on line 2 and the number entered on line 4.

Line 6—Do not enter a number.

Line 7—Enter the number of other low-income families (incomes between 51% and 80% of median family income) for which the jurisdiction expects to provide assistance, and for whom Section 215 "affordable housing" goals are expected to be achieved.

Lines 8 through 10, Line 12—For each of lines 8, 9, 10 and 11, enter the number of other low-income families from line 7 who will be provided the type of assistance specified. The total number of families entered on lines 8 through 11 may exceed the number entered on line 7, if one or more families receive more than one type of assistance. Do not enter a number for line 11.

Line 13—Enter the sum of the numbers entered on lines 1 and 7.

Lines 14 and 15—Do not enter numbers.

Line Column B—Total Goals.—Line 1—Enter the total number of very low-income families for which the jurisdiction expects to provide assistance. The total number entered on line 1 is to include both the number of families for whom section 215 "affordable housing" goals are expected to be achieved and the number of families assisted, but for which the jurisdiction does not expect to achieve "affordable housing" goals.

Lines 2 through 6—For each of lines 2, 3, 4, 5 and 6, enter the number of very low-income families from line 1 who will be provided the type of assistance specified.

Line 7—Enter the total number of other low-income families for which the

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Specific Instructions

Goals

Column A—Total Section 215 Goals. Line 1—Enter the number of very low-income families (incomes at or below 50% of median family income) for which the jurisdiction expects to provide assistance, and for whom Section 215 "affordable housing" goals are expected to be achieved.

Lines 2 through 5—For each of lines 2, 3, 4 and 5, enter the number of very low-income families from line 1 who will be provided the type of assistance specified. The total number of families entered for lines 2, 3, 4 and 5 will exceed the number of families listed on line 1 if more than one type of assistance is provided to one or more families. For example, if a family's rental unit receives a moderate level of rehabilitation, and the family receives tenant-based rental assistance, then the family should be included in both the number entered on line 2 and the number entered on line 4.

Line 6—Do not enter a number.

Line 7—Enter the number of other low-income families (incomes between 51% and 80% of median family income) for which the jurisdiction expects to provide assistance, and for whom Section 215 "affordable housing" goals are expected to be achieved.

Lines 8 through 10, Line 12—For each of lines 8, 9, 10 and 11, enter the number of other low-income families from line 7 who will be provided the type of assistance specified. The total number of families entered on lines 8 through 11 may exceed the number entered on line 7, if one or more families receive more than one type of assistance. Do not enter a number for line 11.

Line 13—Enter the sum of the numbers entered on lines 1 and 7.

Lines 14 and 15—Do not enter numbers.

Line Column B—Total Goals.—Line 1—Enter the total number of very low-income families for which the jurisdiction expects to provide assistance. The total number entered on line 1 is to include both the number of families for whom section 215 "affordable housing" goals are expected to be achieved and the number of families assisted, but for which the jurisdiction does not expect to achieve "affordable housing" goals.

Lines 2 through 6—For each of lines 2, 3, 4, 5 and 6, enter the number of very low-income families from line 1 who will be provided the type of assistance specified.

Line 7—Enter the total number of other low-income families for which the jurisdiction expects to provide assistance. Include the number of families for whom Section 215 "affordable housing" goals are expected to be achieved and the number of families for which the jurisdiction does not expect to achieve "affordable housing" goals.

Lines 8 through 12—For each of lines 8, 9, 10, 11 and 12, enter the number of other low-income families from line 7 who will be provided the type of assistance specified.

Line 13—Enter the sum of the numbers entered on lines 1 and 7.

Line 14—Enter the number of other income families (incomes which exceed 80% of median family income) for which the jurisdiction expects to provide assistance.

Line 15—Enter the sum of lines 13 and 14.

Renter Goals

Column C—Elderly 1 or 2 Member Households—Line 1 and 7—Of the total number entered under Column B enter the number of elderly renter households (1 or 2 person elderly households only; elderly households with more than 2 members should be entered under Columns D, E, or F, as appropriate).

Lines 2, 3, 4 and 6; Lines 8, 9, 10 and 12—Enter the number of elderly households (1 or 2 person households only) from lines 1 and 7, respectively, who will be provided the type of assistance specified.

Line 13—Enter the sum of lines 1 and 7.

Line 14—Of the total number entered under Column B enter the number of other income elderly renter households (1 or 2 person households only).

Line 15—Enter the sum of lines 13 and 14.

Columns D, E and F. Columns D through F are to be filled out in the same manner as Column C. Columns D and E pertain to renter households with 2 or more members of the household related by blood, marriage, or adoption, and excludes 1 or 2 person elderly households. Column F is for all households not entered under Columns C through E.

Column G—Total Renters. Enter for each line the sums of Columns C, D, E and F.

Homeowner Goals

Column H—Existing Homeowners. Column H goals for existing owners are to be filled out in the same manner as preceding columns.

Columns I and J—First-time Homebuyers. For Column I enter goals for first-time homebuyers who have minor children residing with the family. For Column J enter goals for first-time homebuyers *without* minor children residing with the family.

Column K—Total Homeowners. Enter for each line the sum of Columns H, I, and J.

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Comprehensive Housing Affordability Strategy (CHAS)

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

APPENDIX B

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Name of Jurisdiction(s) or Consortium:

Contact Person   Telephone Number:

Address

Type of Submission:
(mark one):
☐ New Five Year CHAS   For Fiscal Year__________ through Fiscal Year__________.
☐ Annual Update *   For Fiscal Year__________.

(mark one)
☐ Initial Submission
☐ Resubmission
☐ Amendment **

* If an Annual Update, mark one:
☐ Parts 4 (Resources) & 5 (Implementation) Only

☐ Parts 4 & 5, plus minor changes: (mark all those which apply)

Part 1 - Needs Assessment	☐ Narrative	☐ Tables
Part 2 - Market & Inventory Conditions	☐ Narrative	☐ Tables
Part 3 - Strategies	☐ Narrative	☐ Tables

** For all amendments, specify the nature of the amendment below and attach amended portions to this cover sheet.

Jurisdiction	**HUD Approval**
Name of Authorized Official:	Name of Authorized Official:
Signature & Date: X	Signature & Date: X

BILLING CODE 4210-01-C   form HUD-40090 (6/14/91

Appendix C—Comprehensive Affordability Strategy (CHAS

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Table 1B (or equivalent).
Other Supporting Documentatio
Part 2. Market and Inventory C
Table 2A (or equivalent).
Table 2B (or equivalent).
Table 2C (or equivalent).
Other Supporting Documentatio
Section II. Five-Year Strategy.
Part 3. Strategies.
Table 3.
Other Supporting Documentatio
Section III. One-Year Plan.
Part 4. Resources.
Table 4/5A.
Part 5. Implementation.
Table 5B.
Monitoring Plan.
Certifications.
Summary of Citizen Comments.

Appendix D—Comprehensive Affordability Strategy (CHAS

(For Jurisdictions Submitting Housing Strategy in Place of for FY 1992)

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Appendix C—Comprehensive Housing Affordability Strategy (CHAS)

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  Table 1B (or equivalent).
  Other Supporting Documentation.
  Part 2. Market and Inventory Conditions.
  Table 2A (or equivalent).
  Table 2B (or equivalent).
  Table 2C (or equivalent).
  Other Supporting Documentation.
Section II. Five-Year Strategy.
  Part 3. Strategies.
  Table 3.
  Other Supporting Documentation.
Section III. One-Year Plan.
  Part 4. Resources.
  Table 4/5A.
  Part 5. Implementation.
  Table 5B.
  Monitoring Plan.
  Certifications.
Summary of Citizen Comments.

Appendix D—Comprehensive Housing Affordability Strategy (CHAS)

(For Jurisdictions Submitting Existing Housing Strategy in Place of New CHAS for FY 1992)

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  91.15(b). Homeless Assistance Needs and Strategy.
  91.15(c). Market Characteristics.
  91.15(d). Relevant Public Policies.
  91.15(e). Institutional Structure.
  91.15(f). Resources.
  91.15(g). Plan.
  91.15(h). Intergovernmental Cooperation.
  91.15(i). Public Housing Stock.
  91.15(j). Puplic Housing Homeownership.
  91.15(n). Goals.
Tables and Supporting Documentation.
  Table 1A (or equivalent).
  Table 1B (or equivalent).
  Table 2A (or equivalent).
  Table 2B (or equivalent).
  Table 2C (or equivalent).
  Table 3.
  Table 4/5A.
  Table 5B.
  Other Supporting Documentation.
Monitoring Plan (91.15(k)).
Certifications (91.15 (l) amd (m)).
Summary of Citizen Comments.

Appendix E—Comprehensive Housing Affordability Strategy (CHAS)

Certification

The jurisdiction hereby certifies that it will affirmatively further fair housing.

Signature (Certifying Official) ———

Certification

The jurisdiction hereby certifies that it will comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, implementing regulations at 49 CFR 24, and the requirements governing the residential antidisplacement and relocation assistance plan under section 104(d) of the Housing and Community Development Act of 1974 (including a certification that the jurisdiction is following such a plan).

Signature (Certifying Official) ———

Note: The jurisdiction's execution of these certifications acknowledges that it will maintain supporting evidence, which shall be kept available for inspection by the Secretary, the Comptroller General of the United States or its designees, the Inspector General or its designees, and the public.

[FR Doc. 91-18790 Filed 8-9-91; 8:45 am]

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Monday
August 12, 1991

Part III

Department of Transportation

Urban Mass Transportation Administration

49 CFR Part 630
Uniform System of Accounts and Records and Reporting System; Proposed Rule

VOL 56 ISS 155 AG 12 1991 UMI

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

49 CFR Part 630

[Docket No. 90-B]

RIN 2132-A36

Uniform System of Accounts and Records and Reporting System

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Urban Mass Transportation Administration evaluated the Uniform System of Accounts and Records and Reporting System, (the Section 15 program), to determine its future direction. This Notice of Proposed Rulemaking lists proposed changes to the "Section 15 program", based upon this evaluation. These changes are intended to reduce the burden of reporting and improve the value of the reported data for analysis.

DATES: Comments must be submitted by October 11, 1991.

ADDRESSES: Comments may be mailed to the Office of the Chief Counsel, Legislation and Regulations Division, UCC-10, Urban Mass Transportation Administration, Department of Transportation, room 9316, Docket 90-B, 400 Seventh St., SW., Washington, DC 20590. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., Monday through Friday. Receipt of comments will be acknowledged by UMTA if a self-addressed, stamped post card is included with the comment.

FOR FURTHER INFORMATION CONTACT: Susan Brown, Urban Mass Transportation Administration, Office of Capital and Formula Assistance, (202) 366-1645, 400 Seventh Street, SW., Washington, DC 20590.

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  Appendix to Part 630—Explanation of the Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System.

Overview

This Notice of Proposed Rulemaking lists several proposed changes to UMTA's Uniform System of Accounts and Records and Reporting System (the Section 15 program). These proposed changes are intended to reduce the burden of reporting and improve the value of the reported data for analysis.

The proposed changes are the result of an extensive evaluation undertaken by UMTA into the future direction of the section 15 program. The evaluation considered trade-offs between the usefulness of the data base and the burden of reporting. In its review, UMTA considered comments and recommendations from all constituencies of the transit industry. UMTA also considered the 59 public comments in response to an Advanced Notice of Proposed Rulemaking requesting comments on the direction of the section 15 program and proposals to change the structure and content of the Uniform System of Accounts and Records and Reporting System.

Major proposed changes are as follows.

- The basic reporting structure will be simplified. Three voluntary and one required report level will be replaced with one minimum and one expanded report level.
- Voluntary level financial details, the most complex component of the Systems, will be reduced by over half.
- The threshold for complete reports on purchased transportation service will be raised from the current 50 or more vehicles to 100 or more vehicles. This will decrease reporting burden by allowing a larger amount of contract service to be reported using a basic subset of forms.
- Security and ticketing costs will be moved from the administration to the operations grouping. This responds to industry concern that the Systems exaggerate administrative costs. The trade-off for this more logical alignment is a reduction in the historical continuity of summary expenses for most reporters.
- Capital reporting will be revised by the addition of sources and uses of capital in place of the balance sheet. This proposal overcomes a major weakness in the application of section 15 data. The absence of capital costs has encouraged an over-emphasis on operating rather than capital costs. This can distort comparisons between modes or operators with different labor or capital intensity.
- Accounts will be redefined and employee contributions will be eliminated on the fringe benefits schedule. This revision simplifies reporting with only a minor loss in data.
- Labor equivalents will be redefined. Measuring labor in terms of hours instead of an arbitrary national standard for a labor year will increase data consistency without increasing burden.
- Fleet inventory information from three different forms will be consolidated onto a single form.
- Reports of operators' work time will be restructured. This proposal greatly simplifies reporting with only a minor loss in data.
- The option of indicating percentage of paid hours by part-time operators will be added. These data will be valuable in assessments of the effect of part-time labor on performance.
- The following required reports will be eliminated because their reporting burden out-weighs the value of the data to analysts.

Statement from the local Metropolitan Planning Organization of service area and population.

Pension plans. These data are inapplicable to many operators, difficult to compile, and seldom used in analysis.

Balance sheet. These object classes are inconsistently reported and of minimal value to analysts.

I. Introduction

The Uniform System of Accounts and Records and Reporting System were authorized in 1974 under section 15 of the Urban Mass Transportation Act of 1964, as amended, and prescribed in January, 1977, as called for in the law. Section 15 requires the Secretary of Transportation to establish a uniform system of accounts and records and a reporting system to collect and disseminate public mass transportation financial and operating data. Over 500 public transit operators use the section

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15 Systems to record summary information in annual reports to UMTA. UMTA applies quality checks to the reported data, works with reporters to correct errors, and publicly distributes data in reports and on computer media.

Section 15 information is used for management and planning by transit systems, and policy analysis and investment decision-making at all levels of government. It provides a resource for consultants, researchers, and industry suppliers. In addition, the section 9 formula grant program apportions approximately $1.5 billion in UMTA grant funds annually based on a statutory formula which in part uses section 15 data. No grant may be made under section 9 unless the applicant and any person or organization to receive benefits directly from the grant are each subject to both the Reporting System and the Uniform System of Accounts and Records prescribed by section 15.

UMTA has considered fundamental questions about the objectives of the program and its strengths and weaknesses from the perspective of production of ten annual reports. Several potential improvements were identified based on an extensive evaluation of the section 15 program. In deciding whether to modify the Systems, UMTA balanced the benefits of the data to a broad range of constituent groups that currently or potentially might use the data, against the costs to operators of reporting and to UMTA of developing the annual data bases.

As part of its review to determine future directions of the section 15 program, UMTA solicited comments and recommendations from experts representing operators, public agencies, and other constituencies of the public transit industry. Detailed recommendations and proposals were received from the UMTA section 15 Reporting System Advisory Committee, the American Public Transit Association (APTA) section 15 Committee, and the Transportation Research Board. Comments were also received from other representatives of the public and private sectors and academia.

Based on industry comments and proposals and those in response to the Advanced Notice of Proposed Rulemaking (ANPRM), UMTA now proposes modifications to the program in this Notice of Proposed Rulemaking (NPRM). References in the NPRM to comments refer to those received in response to the ANPRM. UMTA will review comments on the NPRM, develop and publish a Final Rule, and make program changes, as required. The proposed Rule, which incorporates major improvements to the Uniform System of Accounts and Records and Reporting System, represents a major stage in the fourteen year evolution of the section 15 program. UMTA plans to publish the Final Rule by the end of calendar year 1991. Program changes and any structural changes described in the Rule would then be effective for the 1992 report year.

UMTA intends to continue to make annual improvements to the program, as required, which will be formally announced in the annual Reporting Manual or regulatory amendments, as appropriate. Any reference documents issued by UMTA are procedural only. Substantive changes to the Rule will be announced in the Federal Register and will be open for public comment.

II. Major Issues

As part of its review, UMTA considered the fundamental purpose of the section 15 Systems, and whether the Systems should continue or be significantly modified in the future. The questions framed and issues identified in this section are intended to focus and encourage comments, and are not exhaustive. The evaluation will consider all concerns related to the Systems. Additional issues and proposals related to the specific forms referred to in this section are discussed in section III.

A. General Issues

(1) Does the section 15 program satisfy legislative intent? How successfully does the program serve the requirements of a broad range of current and potential data users?

As stated in section 15 of the Act, the Uniform System of Accounts and Records and the Reporting System were to be designed to provide information on which to base planning for public transportation services and public sector investment decisions at all levels of government.

The ANPRM asked how effectively section 15 provides information for the overall transit industry, including Federal, state, and regional policy-makers, local transit operators, consultants, suppliers, and academic researchers. Considering the impossibility of satisfying all needs of all data users, while limiting the costs and burden of reporting, does the current structure, format, and content represent a successful compromise among competing interests, or are changes necessary?

In general, industry commenters found section 15 to have a broad range of applications, including: As a source of standardized definitions; as a resource for academic research; and for local management use (six responses). Four commenters expressed the view that section 15 is most useful for national policy analysis. Twelve commenters found section 15 unsuited for local management and planning and six described it as unsuited for small systems, while eleven found it useful for local applications.

Comments indicate that in general the program satisfies legislative intent. Thirteen comments suggested operational improvements or streamlining to improve the balance between reporting burden and the value of the data.

(2) What should be the future direction of the Systems? Should they continue?

All comments from the transit industry and public supported continuing the section 15 program. UMTA also received numerous comments requesting a reduction in the level of required details, particularly for smaller operators, and operational improvements to stream-line reporting and improve data access.

Proposal—In response to these comments, UMTA proposes to do the following:

- Develop software for the 1991 report year that will allow interested reporters to perform basic validation checks before the section 15 report is filed with UMTA. The report may be filed in machine-readable form. This capability was supported by 28 commenters.
- Raise the requirement for a full section 15 report for contract service from 50 to 100 vehicles in maximum service. This will substantially reduce the burden for reporting information on the growing number of contract services. Three comments advocated reducing the level of detail for purchased service. Additional details are provided in section III.A.
- UMTA will continue to waive specific reporting requirements that are particularly burdensome for small reporters. Reporters with 25 or fewer revenue vehicles operated in maximum service are currently not required to provide data on operators wages (Form 321), Fringe Benefits (Form 331), and Pension Plans (Form 332). In addition, sampling or other procedures that meet prescribed precision and confidence levels need only be applied every third year by reporters: (1) That serve urbanized areas of less than 500,000 population; (2) that directly operate fewer than 100 revenue vehicles for all modes in maximum service; or (3) that utilize purchased transportation service (i.e., private or public carriers providing transit service under contract to a public agency except those purchased

transportation services submitting separate section 15 reports).

B. Structural Issues

This section focuses on proposed changes to fundamental aspects of the structure of the section 15 Systems. These proposals and related issues cut across several components of the Systems or address areas identified by commenters as major weaknesses. Proposals to modify specific components of the Systems, including data reported on many of the forms mentioned in this section, are elaborated upon in section III.

(1) How many reporting levels should there be, and should the level of reporting be voluntary or required?

A major characteristic of the current Reporting System structure is the use of different reporting formats. The required (R) level applies to all operators and specifies the minimum data that must be reported by all beneficiaries of UMTA section 9 funds. Currently, operators have the option of reporting additional details at any of three voluntary (A, B, or C) levels. In order of detail, the A level requires the most information, followed by B, C, and R levels.

The only difference between the required and voluntary levels of reporting is in the amount of detail provided for operating expenses and revenues. All other information is required of all reporters and is filed on the same forms. Voluntary levels of expense and revenues have the same basic structure as the required level, but expand into greater detail. There is no difference in the underlying Uniform System of Accounts and Records.

Although UMTA suggests that operators with certain fleet sizes report at specific voluntary levels, this is not a requirement. Several of the largest operators report at the required level, while some small operators report at voluntary levels. Operators that received UMTA grants for Management Information Systems (MIS) have been obligated to report at voluntary levels. Beginning with the 1991 report year, reporters who received MIS grants will be able to report at either the Expanded or Minimum level (see section III.D).

The ANPRM asked whether voluntary reporting should continue, considering the usefulness of a data base that provides different levels of financial details for different operators. Is a subset of the national data base with more detailed information of value for important analysis or does it encourage biased results? Is the current system unnecessarily burdensome or excessively detailed? And how many levels should there be, whether required or voluntary?

There were a great range of views on voluntary reporting and number of reporting levels. Six commenters supported voluntary reporting, with three in favor of the current approach. Of the 22 comments advocating required reporting only, ten supported one level only, ten supported two levels, and one each supported three and four levels. In addition, two comments supported establishing a new less detailed level for small operators. Comments on the number of details proposed for different reporting levels are described in sections III.C and D.

In its evaluation of proposals to change the current approach to reporting expenses and revenues, UMTA has reached the following conclusions:

(1) The current structure is unnecessarily complex; the value of a large number of voluntary expense and revenue details to analysts is insufficient to justify their continued reporting.

(2) The current required level alone does not provide enough details on costs and revenues to meet section 15 program objectives of providing data to support management, policy, and investment analysis.

(3) Assuming there is no need for data to support management, policy and investment analysis, UMTA will strive to limit net increases in financial reporting requirements for the large number of operators reporting at the minimum level who have increased requirements under any proposals for two or more required levels. This is because UMTA does not want to burden these reporters with requirements for data, if these data are not absolutely necessary.

(4) Most large operators have internal accounting systems, based on the section 15 Accounting System, with a greater level of detail than the current required level.

(5) Forms or data cells that are inapplicable to most operators do not create a reporting burden for those operators. For example, the existence of expense details or maintenance of roadway and track or communications systems do not create a burden to the majority of operators who can ignore costs items.

(6) Data reported for some but not all operators can have valid and important applications. Valuable and undistorted analysis can be performed using an incomplete data set, if sources are identified and no universal conclusions are attempted without statistically valid methods. For example, voluntary costs such as fare collection, maintenance of roadway and track and passenger stations, and security could be useful in deriving unit costs of analysis of investments in alternative modes.

The following proposal is based on the above conclusions.

Proposal—Reporting levels will be reduced from three voluntary and one required to one required and one voluntary level. The current required level will be retained but will be renamed "Minimum (M) level" and the current three voluntary levels will be consolidated into one voluntary level renamed "Expanded (E) level". The proposed new structure, which is described in section III.D and detailed in section VII, the Revision to 49 CFR part 63, will reduce the number of voluntary functions (A level), expense object classes, and revenue object classes by over half in the new Level E.

Proposal—Reporters who received UMTA MIS grants will be able to report at either the Expanded or Minimum level, beginning in the 1991 report year. UMTA will continue to encourage expanded reporting for large operators and will make these additional details easily accessible as an incentive for operators to contribute to the national data base.

(2) How frequently should reports be made?

Eighteen commenters supported continuation of annual reporting, while eight proposed less frequent reporting—three for reports every second year and five for reports every three to five years. In addition, three commenters suggested less frequent reports from operators with small fleets.

Proposal—In response to this clear consensus, UMTA will continue annual reporting. The burden of annual reporting will be eased through overall reduction in required forms, as proposed in this NPRM.

(3) Should reports be made for the overall operations of a transit system or should some details be separated by mode?

Operating expenses, operators' wages, labor years, ridership, and service operated are reported separately by mode in the case of multi-mode operators. Operating expenses reported separately by function (operations, vehicle and non-vehicle maintenance, and administration) are reported by mode. However, operating expenses that are reported by object class (for example, wages, contracts, and fuel) are not reported separately by mode.

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report by mode. Four comments endorsed the current level of modal reporting, with eight advocating additional modal details. Six comments requested a modal split of fare revenue, one requested modal allocation of capital grants, and one operator requested modal allocation of object class expenses.

Proposal—UMTA will maintain the current structure of modal separation.

(4) Should demographic data be revised or expanded?

At the time of the ANPRM, each reporting agency was required to submit a statement from the local Metropolitan Planning Organization (MPO) stating the agency's service area and population, and describing the planning methods used to determine service area. UMTA is eliminating the MPO statement.

UMTA assigns a single Census-defined urbanized area code (UZA), with population and surface area, to each reporter. This code, which is used to apportion section 9 funds, can be an inexact measure of service area and population.

The ANPRM asked whether the demographic data in the MPO statement should be retained, redefined, or expanded to permit better matches between service outputs and ridership and population served, service area, population density, or other demographic factors.

Commenters generally supported continuing to report or expanding demographic data. Twelve comments requested additional demographic information, two proposed continuing current information, and two requested that service area definitions be standardized. Ten commenters opposed adding new demographic data to the MPO statement.

Proposal—Consistent with the general objective of simplifying reporting, UMTA would prefer to eliminate the requirement for a summary from the MPO of the operating agency's service area and population. However, given that Census data provides an inexact measure of service area and population; and the general support among commenters for the continued reporting of demographic data, service area and population will be added to the transit system identification form and will continue to be collected.

(5) Should the current means of access to the data base be modified?

All data submitted to UMTA by section 15 reporters are currently stored on magnetic tapes available for public use. A subset of the complete data base, containing some but not all required level data, is published in the Annual Report and distributed on diskettes for use in spreadsheets on IBM compatible microcomputers. For example, much of the revenue and financial details provided by voluntary level reporters are available only on tape for use with mainframe computers. Some required level details, including operators' time and fleet inventories, are also only available on tape.

UMTA received comments that analysts find access to the tapes to be too difficult. Three commenters requested better automated access to the data base through new computer formats or on-line access.

Proposal—UMTA proposes to take several steps to improve access to the data base. The entire data base described in this NPRM will be accessible to the public for use on microcomputers running standard spreadsheet and data base software. Beginning with the 1990 data base, all operating expense and revenue data, including that which has in the past only been available on tape, will be available for microcomputer applications. Beginning with the 1991 report year, UMTA will improve the ease of access to and application of important data by developing three products: summary reports for individual reporters, with key data items, performance measures, and graphic displays; a new annual report of national transportation trends; and an analysis data base of key information for use with standard data base management software.

III. Proposals to Change the Detailed Structure of the Section 15 Systems, With Related Issues

Section II.B focused on proposals to change fundamental aspects of the Systems. These aspects cut across several forms or components of the Systems. In contrast, this section presents proposals to modify specific components of the Systems and formulates related issues to encourage public comment.

General comments on reducing voluntary level details. UMTA's proposal to replace three voluntary and one required level with one required and one simplified voluntary level was described in section II.B.1. In restructuring and simplifying the number of voluntarily reported expense and revenue details, the intent is to carefully balance reporting burdens against any losses of valuable detail for analysis and in historical continuity. UMTA used the following criteria to consolidate the number of voluntary details to the proposed number in the new single expanded (E) level.

a. Consolidate minor cost items (in terms of dollars and reporters providing that item);

b. Disaggregate large items;

c. Retain easy-to-collect items;

d. Avoid irrelevant or analytically meaningless items;

e. Retain items that are key decision variables;

f. Avoid realignments from one category to another in the interests of preserving the continuity of twelve years of historical data.

A. Basic Information

Purchased Transportation Services

Transportation service provided under contract is described on several reporting forms. Form 002 describes contractual relationships. Costs of contracts are reported as expenses on the 300-series forms. Complete reports must be filed by or for contractors providing over 50 revenue vehicles. A public agency contracting for under 50 revenue vehicles also describes contract service on separate Forms 004 and 408 for vehicles operated, 403 for transit way mileage, and 406/407 for service supplied and ridership.

The ANPRM asked whether the information on service provided under purchased service contracts to public agencies should be increased or decreased by changing the fleet size level at which a complete section 15 report must be filed. One comment suggested raising the level for a full report from 50 to 200 vehicles, another opposed any increase in purchased service reporting, and two proposed reducing specific items to be reported for contract service. No comments proposed decreasing the fleet level threshold for a complete report.

Proposal—The threshold for submission of a separate section 15 report by a purchased transportation provider is being raised from 50 to 100 vehicles in maximum service. This change is consistent with UMTA's objective of easing the reporting burden for small transit agencies and operators.

B. Capital Expenses

The Reporting System collects a limited amount of information on capital expenses relative to the detail provided on operating expenses. Capital expense information includes a balance sheet (Form 101) with basic financial information on assets, liabilities, and capital at the end of the financial year. Rolling stock, facilities, and equipment are combined into a single category. Unlike operating expenses, which are structured to allow modal separation of

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costs, capital accounts are not separated by mode.

In addition, a single depreciation figure for all modes combined is reported on the expense forms (300 series), with no separations to identify depreciation of vehicles or other asset categories or assets by mode. The Accounting System does not provide or recommend standardized approaches to depreciation or require reporters to identify the approaches they use. The amount and source of public assistance funds dedicated to capital are also identified for all modes.

It is likely that the lack of capital cost data encourages over-emphasis on operating costs in analysis of performance and alternative investments, and limits thorough evaluation of all expenses, revenues, and outputs. Capital expense data can include purchases and depreciation of capital assets, including rolling stock, plant, or other equipment.

The ANPRM comments generally recognized the importance of capital information in the national Reporting System, and of adding annual sources and uses of capital to improve the usefulness of the data base. Of the fifteen commenters requesting an expansion of capital information, nine supported addition of sources and uses of capital. Seven commenters requested that the balance sheet be eliminated as inconsistent and of little value. Of the seven for eliminating the balance sheet, four also proposed adding sources and uses of capital.

Eight commenters supported the status quo for capital data, while only three proposed eliminating all capital expense information.

Proposal—UMTA will make revisions to the capital data form similar to those proposed by APTA to report sources and uses of capital. The form will combine current information on private and public sources of revenues for capital with new information on uses of capital. Uses of capital will identify purchases of rolling stock; transit way, structures and equipment; passenger facilities; land; and other assets. This new information, which was supported by industry and ANPRM comments, should provide some valuable information for analysis without adding significantly to the reporting burden. All major categories for use of capital will be identified by mode.

To compensate for any additional effort to report uses of capital, UMTA will eliminate the balance sheet. Although there is some support in the industry to retain the balance sheet, it is felt that this information does not provide a useful description of capital expenses, is often inconsistent, and is of limited value for analysis. In the interest of limiting the information in the national data base to that which is most useful for analysis, UMTA believes that sources and uses of capital should replace the balance sheet.

C. Revenues

Information on revenues is reported in several different categories. The required level Form 201 contains information on fares, other earnings, and Federal, state, and local grants, with identification of total subsidies for handicapped, senior, or student passengers combined. Form 202, used by all voluntary level reporters, expands the Form 201 structure into greater detail. For example, Form 202 expands the single fare total on 201 into seven categories. Forms 201 and 202 identify revenues for publicly operated but not contracted service. Multi-mode operators only provide system-wide totals on Forms 201 and 202, although all reporters have the option of separating fares by mode.

Voluntary revenues details are consolidated to the required level in the Annual Report and on the section 15 diskettes. Complete revenue information is available only on computer tape.

Forms 103 and 203 describe revenues by governmental source (Federal, state, and local) and by means used to collect revenues (for example, sales, income, and gasoline taxes and tolls) for revenues for operating and capital assistance.

Proposal—Consistent with the proposed approach to reporting expanded details described in section II.B.1, UMTA proposes to retain Form 202 as a simplified but voluntary form. The proposed new structure, which is described in the Revision to 49 CFR part 630 in section VII, is the result of applying the criteria described in the introduction to section III. The proposal replaces the current voluntary structure, which has 67 revenue object classes, with a simplified structure of 31 revenue object classes, for a reduction of 54%.

Six commenters proposed adding modal separation of fare revenues, while only one commenter opposed this separation. Although voluntary or required level reporters have had the option of allocating fares by mode since the 1984 report, few have done so despite the fact that most operators collect this information for their own use. Few analysts have used modal fares primarily because it is available only on tapes.

Proposal—UMTA proposes to encourage a greater degree of reporting of modal fares by highlighting this option in the Reporters' Manual, published annually, and improving access to modal fares through published reports and microcomputer files. UMTA recognizes the high level of interest by analysts in modal splits of fares, which would allow section 15 data to be used to analyze a broad range of valuable modal performance measures, including farebox recovery rates, and average fares and subsidies per rider. UMTA will not require modal fares because of the difficulty this would present for operators with large numbers of transfers and monthly or other passes.

D. Operating Expenses

Transit systems use the 300-series Forms to report operating expenses in function (operations, vehicle and non-vehicle maintenance, and general administration) and object class (wages, fringe benefit, and other) categories. A reporter at the minimum or required (R) level uses the basic four functions and 14 object classes. This detail expands for operators at any of the three voluntary levels up to 44 functions and 47 object classes at the most detailed A level. Voluntary expense details are consolidated to the required level in the Annual Report and on the section 15 diskettes. Complete expense information is available only on computer tape.

Functions and object classes can be cross-classified, allowing, for example, fringe benefits paid to vehicle operators to be identified. There is, however, limited ability to separate modal costs for multi-mode operators. Modal costs can be separated by function (for example, light rail vehicle maintenance), but usually not by object class (for example, light rail wages) or by function and object class (for example, light rail operators' wages).

There was a great range of views on voluntary reporting, the number of reporting levels, and the number of details in each level. Of the six commenters supporting voluntary reporting, three supported retaining the current system, and two proposed a reduced level of voluntary details. Of the 22 commenters supporting all required reporting, nine supported use of the current required level alone, one recommended that the current B level be used for all reporters, ten proposed two required levels, and one each supported three and four required levels.

The ten commenters proposing two required levels all supported a minimum level that approximates the current required level; proposals for the second more detailed level are as follows:

Three favored a second level with details similar to those in the current B level.

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D. Operating Expenses

Transit systems use the 300-series Forms to report operating expenses in function (operations, vehicle and non-vehicle maintenance, and general administration) and object class (wages, fringe benefit, and other) categories. A reporter at the minimum or required (R) level uses the basic four functions and 14 object classes. This detail expands for operators at any of the three voluntary levels up to 44 functions and 47 object classes at the most detailed A level. Voluntary expense details are consolidated to the required level in the Annual Report and on the section 15 diskettes. Complete expense information is available only on computer tape.

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There was a great range of views on voluntary reporting, the number of reporting levels, and the number of details in each level. Of the six commenters supporting voluntary reporting, three supported retaining the current system, and two proposed a reduced level of voluntary details. Of the 22 commenters supporting all required reporting, nine supported use of the current required level alone, one recommended that the current B level be used for all reporters, ten proposed two required levels, and one each supported three and four required levels.

The ten commenters proposing two required levels all supported a minimum level that approximates the current required level; proposals for the second more detailed level are as follows:

Three favored a second level with details similar to those in the current B level.

Four proposed a second level that would add five functions to the current four functions; all reporters would use 17 object codes which would be an increase from 14 to 17 for current required level reporters, and a decrease for current voluntary reporters from 47 to 17.

Proposal—Establish two reporting levels. The current required level will be retained (the "Minimum (M) level"), and the current three voluntary levels will be consolidated and simplified into a single voluntary level (the new "Expanded (E) level"). Level E will have 21 functions, a reduction of 52% in the number of current A level functions, and the same number as the current B level. The specific Level E functions will be slightly different from those in the current B level. Level E will have 26 expense object classes, a 45% reduction from the 47 currently used in all three voluntary levels. The proposed revisions to the Uniform System of Accounts and Records and Reporting System are described in the Revision to 49 CFR part 630 in section VII.

As stated in section II.B.1, reporters who received UMTA MIS grants will be able to report at either the Expanded or Minimum level. UMTA will, however, encourage large operators and others that have the data available to satisfy the expanded level to report at that level. UMTA will also make all expanded data easily accessible as an incentive for operators to contribute to the national data base.

Proposal—Realign the Uniform System of Accounts to move Ticketing & Fare Collection (151) and System Security (161) from the General Administration to the Operations category. These functions are major cost items for the current A level reporters, representing the fourth and fifth largest cost items of the 44 reported. Realigning these costs will be disruptive to the continuity of twelve years of historical costs, since the definitions and value of Operations and General Administration will change. However, there is a logic to moving these items into operations. Also, the proposed Level E will allow these costs to be disaggregated in historical cost analysis for the large operators, although this will not be possible for the Minimum Level reporters.

E. Other Financial Data

Operators Wages and Hours Schedule

The current Form 321 provides a detailed breakdown of the hours and wages paid to revenue vehicle operators, including major categories of dollars and hours for operating and non-operating paid work.

Seven commenters requested that the Operators Wages and Hours Schedule either be eliminated or that the detailed categories be consolidated. One commenter suggested that this information be voluntary.

Proposal—UMTA will simplify the Operators Wages and Hours Schedule by consolidating details.

Fringe Benefit Contributions

Fringe benefit contributions of both employers and employees are reported on Form 331.

Of five commenters proposing a revision to fringe benefit reporting, four suggested eliminating employee contributions. One commenter proposed eliminating all reports of fringe benefit contributions, while one supported retaining all fringe benefit contributions for accurate comparisons of benefits.

Proposal—UMTA will eliminate reports of employee contributions to fringe benefits. This change is consistent with specific comments on fringe benefits and general support for simplifying reporting.

Pension Plans

Information on the cost components of the various pension plans that reporters provide for their employees are reported on Form 332. Pension plan data are not published.

Commenters universally supported elimination of the pension plan data. While 20 supported eliminating Form 332, one commenter supported consolidation with the fringe benefit schedule, and no other commenters defended the data for analysis. Employee contributions to fringe benefits are proposed to be eliminated because employee contributions come out of wages, which are already reported by the operators. Consequently, the inclusion of employee contributions would result in double counting. In addition, these data are not useful for analysis because the data involve plan specific details.

Proposal—UMTA is eliminating Form 332, Pension Plan Questionnaire. This change is consistent with the comments on the minimal value of pension data and general support for simplifying reporting and reducing the number of forms. Total cost of pension plan will continue to be a part of, and included with, fringe benefit cost.

F. Non-Financial Operating Data

The Reporting System uses several forms to collect information on a broad range of non-financial characteristics of transit service, including maintenance of vehicles, fleet inventories, infrastructure, labor resources, safety, service supplied, and ridership.

Fleet inventory

The reporting system records several types of fleet information on several different forms. Forms 003 and 004 contain the number and type of vehicles required and available to meet peak or maximum service requirements measured at the time of year when maximum service occurs. Forms 406 and 407 record the number of vehicles in operation during average daily time periods, Form 408 measures all vehicles in the total fleet, including vehicles that are active, stored, and awaiting sale.

Proposal—Consistent with numerous ANPRM responses requesting simplification of reporting and reduction in the number of forms, UMTA is eliminating Forms 003 and 004 by incorporating the information from those forms onto Forms 406 and 407.

Service Periods

Time periods of transit service for each mode, including a.m. and p.m. peaks, midday, and hours of service for weekdays, Saturdays, and Sundays are reported on Form 401. These data are not published in the Annual Report.

Ten commenters recommended eliminating Form 401, while one proposed revising it.

Proposal—Consistent with numerous ANPRM requests to simplify reporting and reduce the number of forms, UMTA is eliminating Form 401. Information on service period schedules will be incorporated onto Forms 406 and 407.

Service Reliability—Roadcalls

Data on roadcalls for mechanical failure and other reasons are reported on Form 402.

The ANPRM asked whether reports of roadcalls are of value, whether definitions should be revised to make the data more useful, or whether alternative data items should be substituted to measure reliability.

Taken as a group, the comments expressed a high level of dissatisfaction with the current approach to reporting roadcalls—16 commenters proposed eliminating roadcalls or revising the definition of roadcalls.

Proposal—Because roadcalls are a crucial aspect of performance, the current definition of roadcalls will be retained until UMTA and the industry are able to develop a superior measure of reliability.

Transit System Employee Counts

System-wide hours worked are categorized by different functions on Form 404. For simplicity, these hours are divided by 2080 and reported as full-time equivalents (FTE's); there are no distinctions between labor of full- and part-time employees.

Five commenters supported reporting work hours instead of annual full-time equivalents, arguing that use of the 2080 hours per labor year is arbitrary and confusing. Two commenters opposed this view, supporting the current use of an annual full-time equivalent. Three commenters proposed abandoning the entire employee count form. Two commenters supported use of percentage of hours worked by part-time employees as a useful indicator of the extent to which part-time employees are utilized.

Proposal—The Transit System Employee Count Schedule will report work hours instead of equivalent work years. This change will avoid the arbitrariness of the current definition of full-time equivalent employees.

A check-off box will be added to Form 404 to indicate use of part-time operators. In addition, on a trial basis, all reporters will have the option of indicating the percentage of paid hours for revenue vehicle operations provided by part-time operators on Form 404. The local definition of part-time will be summarized on Form 005. UMTA believes that this data will be of value in assessments of the effect of part-time labor on performance, including costs, service, safety, and other factors.

Service Supplied and Consumed

Service supplied and consumed information is reported on Form 406 for non-rail modes and on Form 407 for rail modes. Information includes measures of the quantity of service supplied, including vehicle miles and hours, actual and scheduled vehicle revenue miles, and capacity miles; and unlinked passenger trips and passenger miles. Most items on these forms are reported by time-of-day.

Two comments opposed and no comments supported development of new measures of service quality.

Proposal—Although UMTA will not add measures of service quality, it will improve access to reports of actual and scheduled vehicle revenue miles, which are currently reported. Scheduled vehicle revenue miles are currently available only on tape. Comparisons of actual and schedule vehicle revenue miles can provide a measure of one aspect of service reliability.

IV. Bibliography

Reference documents for the Uniform System of Accounts and Records and Reporting System are as follows.

Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System.

Volume I—General Description (January 1977).

Volume II—Uniform System of Accounts and Records (January 1977)

Reporting Manual and Sample Forms (All Reporting Levels) (April 1991)

Data User's Guide to the UMTA Section 15 Reporting System, Volpe National Transportation Systems Center, June 1, 1990.

National Urban Mass Transportation Statistics: 1989 Section 15 Annual Report (November 1990), from U.S. Government Printing Office, (202) 783-3238.

UMTA Circular 2710.1A, Sampling Procedures for Obtaining Fixed Route Bus Operating Data Required Under the Section 15 Reporting System, July, 1988.

UMTA Circular 2710.2A, Sampling Procedures for Obtaining Demand Responsive Bus System Operating Data Required Under the Section 15 Reporting System, July, 1988.

UMTA Circular 2710.4A, Revenue Based Sampling Procedures for Obtaining Fixed Route Bus Operating Data Required Under the Section 15 Reporting System, July, 1988.

UMTA Circular 2710.6, Section 15 Accounting and Reporting Release #1, July, 1988. (Questions and answers on Section 15).

UMTA Circular 2710.7, Section 15 Accounting and Reporting Release #2, July, 1988. (Questions and answers on Section 15).

Uniform System of Accounts and Records and Reporting System; Clarification of Procedures for Addressing Noncompliance with Reporting Requirements; Final Rule. Changes to Section 15; Notice (52 FR 36182) September 25, 1987 (49 CFR Part 630).

Transit Profiles for Thirty Large Agencies for the 1989 Section 15 Report Year, Audit Review and Analysis Division, Office of Capital and Formula Assistance, Urban Mass Transportation Administration, February 19, 1991.

V. Appendix

Attached to the proposed revised part 630 is an Appendix which explains the overall structure of the section 15 Uniform System of Accounts and Records and Reporting System. This Appendix provides a general overview of the Systems. It is important to emphasize that in the actual preparation of a report, reporters must use part 630, the Reporting Manual, and any other materials provided by UMTA. The Appendix describes the two levels of reporting and recordkeeping used in the Reporting and the Accounts and Records Systems, and the use and structure of the Systems. Finally, the Appendix provides a list of reporting forms in table 3.

VI. Regulatory Analyses and Notices

A. Executive Order 12291

This action has been reviewed under Executive Order 12291, and it has been determined that it is not a major rule. It will not result in an annual effect on the economy of $100 million or more. This regulation is not significant under the Department's Regulatory Policies and Procedures. UMTA finds that the economic impact of this regulation is so minimal that a full regulatory evaluation is not required.

B. Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Public Law 96-354, UMTA certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Act. To the extent the new regulation would be more easily understood and more clearly states the basic reporting procedures, it may save small entities time in determining their rights and responsibilities.

C. Environmental Impacts

This final regulation would not adversely affect the environment.

D. Paperwork Reduction Act

The collection of information requirements in the present rule are subject to the Paperwork Reduction Act, Public Law 96-511, 44 U.S.C. chapter 35.

The paperwork requirements associated with this NPRM are being forwarded to the Office of Management and Budget (OMB) for review.

List of Subjects in 49 CFR Part 630

Mass transportation, Reporting and recordkeeping requirements, Uniform system of accounts.

VII. Revision of 49 CFR Part 630

Based on the foregoing, UMTA proposes to revise 49 CFR part 630 as follows:

PART 630—UNIFORM SYSTEM OF ACCOUNTS AND RECORDS AND REPORTING SYSTEM

Section
630.1 Purpose.
630.3 Scope.
630.5 Definitions.
630.7 Requirements.
630.9 Failure to report data.
630.11 Late and incomplete reports.
630.13 Inaccurate data.
630.15 Negative certification findings.
630.17 Waiver of reporting requirements.
630.19 Data adjustments.
630.21 Display of OMB control numbers.

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July, 1988.
10.2A, Sampling
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Section 15 Reporting

10.4A, Revenue Based
for Obtaining Fixed
Data Required Under
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10.6, Section 15
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answers on Section 15).
10.7, Section 15
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630.15 Negative certification findings.
630.17 Waiver of reporting requirements.
630.19 Data adjustments.
630.21 Display of OMB control numbers.

Appendix to Part 630—Overview and Explanation of the Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System.

Authority: Sec. 111, Pub. L. 93–503, 88 Stat. 1573 (49 U.S.C 1611); Secs. 303(a) and 304(c), Pub. L. 97–424, 96 Stat. 2141 (49 U.S.C. 1607); and 49 CFR 1.51.

§ 630.1 Purpose.

The purpose of this part is to prescribe requirements and procedures necessary for compliance with the Uniform System of Accounts and Records and Reporting System mandated by section 15 of the Urban Mass Transportation Act of 1964 (UMT Act), as amended, 49 U.S.C. 1611, and to set forth the procedures for addressing a reporting agency's failure to comply with these requirements.

§ 630.3 Scope.

This part applies to all applicants and beneficiaries of Federal financial assistance under section 9 of the UMT Act (49 U.S.C. 1604 and 1607).

§ 630.5 Definitions.

(a) Except as otherwise provided, terms defined in the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1601 et seq.), are used in this part as so defined.

(b) Terms defined in the January 10, 1977 Edition of the Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System, as updated in the annual Reporting Manual, are used in this part as so defined.

(c) For purposes of this part:

Administrator means the Urban Mass Transportation Administrator or the Administrator's designee.

Applicant means an applicant for assistance under section 9 of the UMT Act.

Assistance means Federal financial assistance for the acquisition, construction, or operation of public mass transportation services.

Beneficiary means any organization operating and delivering urban transit services that directly receives benefits from assistance under section 9 of the UMT Act.

Chief Executive Officer (CEO) means the principal executive in charge of and responsible for the transit or reporting agency.

Current edition of the Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System means the most recently issued edition of the Reference Volumes, as modified by any Circulars or other written modifications about which the reporting agency has received reasonable notice. For the Reference Volumes, "reasonable notice" is given for the applicable report if the most recent edition is mailed to the reporting agency at least 120 days before the agency's reporting deadline. For Circulars and other written modifications, "reasonable notice" is given if the reporting agency is mailed the modifications at least 30 days before a reporting deadline. However, UMTA reserves the right to waive these notice requirements in unique cases that require immediate implementation (such as a change in the statute).

Days means calendar days.

Deadhead miles means the miles a vehicle travels when out of service, i.e., returning to the garage, changing routes, etc., or when there is no reasonable expectation of carrying revenue passengers. The total miles traveled by revenue vehicles consist of miles traveled when in revenue service and these deadhead miles.

Mass Transportation Agency or *transit agency* means an agency authorized to transport people by bus, rail, or other conveyance, either publicly or privately owned, and which provides to the public general or special service (but not including school, charter, or sightseeing service) on a regular and continuing, scheduled or unscheduled, basis. Transit agencies are classified according to the mode of transit service operated. A multimode transit agency operates two or more modes, which are defined in the current edition of the Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System.

Reference Volume(s) means the current edition of the Urban Mass Transportation Industry Uniform System of Accounts and Records, which is composed of Volume I-General Description; Volume II-Uniform System of Accounts and Records; and Reporting Manual and Sample Forms (All Reporting Levels). These volumes are subject to periodic revision. Beneficiaries and applicants are responsible for using the current edition of the reference volumes.

Reporting agency is the agency required to submit a report under section 15.

The UMT Act means the Urban Transportation Act of 1964, as amended. (49 U.S.C. 1601 et seq.)

Vehicle revenue miles means the miles a vehicle travels when in revenue service. A transit vehicle is in revenue service only when the vehicle is available to the public and there is reasonable expectation of carrying passengers that either directly pay fares, are subsidized by public policy, or provide payment through some contract arrangement.

§ 630.7 Requirements.

(a) *Uniform System of Accounts and Records.* Each applicant for and direct beneficiary of Federal financial assistance under sections 5 or 9 of the UMT Act must comply with the applicable procedural requirements of the section 15 Uniform System of Accounts and Records, as set forth in the current edition of the "Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System," Circulars, and other reference documentation.

(b) *Reporting System.* Each applicant for and direct beneficiary of Federal financial assistance under sections 5 or 9 of the UMT Act must comply with the applicable procedural requirements of the section 15 Reporting System, as set forth in the current edition of the "Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System," Circulars, and other reference documentation.

(c) *Copies.* Copies of the referenced documents are available from the Urban Mass Transportation Administration, Audit, Review and Analysis Division (UGM–13), 400 7th Street, SW., room 9305, Washington, DC 20590. These materials are subject to periodic revision. Revisions of these documents will be mailed to all persons required to comply and a notice of any significant changes in these procedures will be published in the **Federal Register**.

§ 630.9 Failure to report data.

Failure to report data in accordance with this Part and the current edition of the Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System will result in the reporting agency being ineligible to directly or indirectly receive (e.g., a public agency receiving UMTA funds through another public agency rather than directly from UMTA) any section 9 grants. This ineligibility applies to all reporting agencies without regard to the size of the urbanized area served by the reporting agency.

§ 630.11 Late and incomplete reports.

(a) *Late Reports.* A report is to be received by UMTA no later than the 120th day following the last day of the reporting agency's fiscal year.

(1) An extension of 30 days after the due date provided for in § 630.11(a) may be requested by a reporting agency.

(2) Failure to submit the required report by the due date will be treated under § 630.9 as failure to report data.

(3) A second 30-day extension after the due date provided for in § 630.11(a) will be granted only where

unforeseeable circumstances beyond the reporting agency's control have made it impossible to meet the due date. No second extension will be granted if it would delay the apportionment of formula grants to other grantees.

(b) *Incomplete Reports.* (1) Report submissions which do not contain all the necessary reporting forms, data, or certifications for services directly operated by the reporting agency in substantial conformance with the definitions, procedures, and format requirements set out in the section 15 Uniform System of Accounts and Records and Reporting System shall be treated under § 630.9 as failure to report data.

(2) Submission of a report with incomplete data or missing forms for services provided under contract to the reporting agency by private or public carriers shall not be treated under § 630.9 as failure to report data provided that the reporting agency has exhausted all possibilities for obtaining this information.

§ 630.13 Inaccurate data.

Failure to respond to data validation questions. UMTA, either directly or through a contractor, will review each section 15 report to verify the reasonableness of the data submitted. If any of the data do not appear reasonable, UMTA or its contractor will notify the reporting agency of this fact and request justification to document the accuracy of the questioned data. Failure of a reporting agency to make a good faith response to this request will be treated under § 630.9 as failure to report data.

§ 630.15 Negative certification findings.

UMTA will enter a zero for use in computing the section 9 apportionment for any questionable data item(s) in a reporting agency's section 15 Report if the independent auditor's section 9 data certification for that report indicates that any of the data do not appear accurate or have not been collected and reported in accordance with UMTA's definitions and/or confidence and precision levels, or expresses any other negative finding, such as the lack of adequate documentation or a reliable recordkeeping system.

§ 630.17 Waiver of reporting requirements.

(a) Request for waivers of reporting requirements must be received 60 days before the due date in order to receive consideration.

(b) The Administrator may, at the Administrator's discretion, consider a waiver request or grant a waiver on the Administrator's own initiative not received 60 days in advance if good cause is shown by the requesting party.

(c) Waivers of one or more sections of the reporting requirements may be granted at the discretion of the Administrator on a showing that the party seeking the waiver cannot furnish the required data without unreasonable expense and inconvenience.

§ 630.19 Data adjustments.

Errors in the data used in making the apportionment may be discovered after any particular year's apportionment is completed. If so, UMTA shall make adjustments to correct these errors in a subsequent year's apportionment to the extent feasible.

§ 630.21 Display of OMB control numbers.

All of the information collection requests in this part have been approved by the Office of Management and Budget under control number 2132–0008.

Appendix to Part 630—Overview and Explanation of the Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System

A. Introduction

Section 15 of the Urban Mass Transportation Act of 1964, as amended (UMT Act), provides for establishment of two information-gathering analytic systems: A Uniform System of Accounts and Records, and a Reporting System for the collection and dissemination of public mass transportation financial and operating data by uniform categories. The purpose of these two Systems is to provide information on which to base public transportation planning and public sector investment decisions. The section 15 program is administered by the Urban Mass Transportation Administration (UMTA).

The Uniform System of Accounts and Records consists of:

- Various categories of accounts and records for classifying financial and operating data;
- Precise definitions as to what data elements are to be included in these categories; and
- Definitions of practices for systematic collection and recording of such information.

While a specific accounting system is recommended for this recordkeeping, it is possible to make a translation from most existing accounting systems to comply with the Section 15 Reporting System, which consists of forms and procedures:

- For transmitting data from transit agencies to UMTA;
- For editing and storing the data; and
- For UMTA to report information to various groups.

Under the terms of section 15 of the UMT Act, all applicants for and beneficiaries of Federal assistance under section 9 of the Act (i.e., under the formula grant programs) must comply with the Reporting System and the Uniform System of Accounts and Records in order to be eligible for Federal grants. It should be noted that separate and complete section 15 reports must be submitted by or for each purchased transportation service provider that operates 100 or more revenue vehicles for the purchased service during the maximum service period.

B. Purpose of This Appendix

This Appendix presents a general introduction to the structure and operation of the two Systems. It is not a detailed set of instructions for completion of a section 15 report or establishment of a System of Accounts and Records. Persons in need of more information should refer to the current edition of the Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System, available from: Urban Mass Transportation Administration, Office of Capital and Formula Assistance, Audit, Review & Analysis Division (UGM–13), 400 Seventh Street, SW., room 9305, Washington, DC 20590 (202) 366–1610.

The current edition of the Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System is composed of: Volume I—General Description (January 10, 1977), Volume II—Uniform System of Accounts and Records (January 10, 1977), Reporting Manual and Sample Forms (All Reporting Levels) (April 1991).

UMTA periodically updates these reference documents or supplements them to revise or clarify section 15 definitions and reporting forms and instructions. Section 630.7 makes clear that reporting agencies must use the most recent edition of the reference documents and reporting forms to comply with the section 15 requirements. UMTA therefore urges local officials to check with UMTA before completing a section 15 report to avoid unnecessary efforts and delays.

C. Special (Reduced) Reporting Requirements

Certain information collection and recording requirements were tailored to accommodate the unique characteristics of certain transportation modes. Reduced requirements were permitted during limited time periods to ease transition to complete reporting for these modes. Reduced reporting requirements for commuter rail systems and vanpool services ended in the 1987 report year. In addition, the reduced reporting requirements for private subscription and private noncontract conventional bus service will be eliminated in the 1992 report year.

D. Two Levels of Section 15 Reporting and Recordkeeping

UMTA, in cooperation with experts representing operators, public agencies, and other constituencies of the transit industry, developed two different reporting formats to be adaptable to the varying sizes of transit agencies. The Systems also provide for the varying levels of recordkeeping specificity and complexity that are necessary to accommodate variations in size, local laws, and modes of transport. A basic level of detail is reported under the Minimum (M) reporting level.

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B. Purpose of This Appendix

This Appendix presents a general introduction to the structure and operation of the two Systems. It is not a detailed set of instructions for completion of a section 15 report or establishment of a System of Accounts and Records. Persons in need of more information should refer to the current edition of the Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System, available from: Urban Mass Transportation Administration, Office of Capital and Formula Assistance, Audit, Review & Analysis Division (UGM–13), 400 Seventh Street, SW., room 9305, Washington, DC 20590 (202) 366–1610.

The current edition of the Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System is composed of: Volume I—General Description (January 10, 1977), Volume II—Uniform System of Accounts and Records (January 10, 1977), Reporting Manual and Sample Forms (All Reporting Levels) (April 1991).

UMTA periodically updates these reference documents or supplements them to revise or clarify section 15 definitions and reporting forms and instructions. Section 630.7 makes clear that reporting agencies must use the most recent edition of the reference documents and reporting forms to comply with the section 15 requirements. UMTA therefore urges local officials to check with UMTA before completing a section 15 report to avoid unnecessary efforts and delays.

C. Special (Reduced) Reporting Requirements

Certain information collection and recording requirements were tailored to accommodate the unique characteristics of certain transportation modes. Reduced requirements were permitted during limited time periods to ease transition to complete reporting for these modes. Reduced reporting requirements for commuter rail systems and vanpool services ended in the 1987 report year. In addition, the reduced reporting requirements for private subscription and private noncontract conventional bus service will be eliminated in the 1992 report year.

D. Two Levels of Section 15 Reporting and Recordkeeping

UMTA, in cooperation with experts representing operators, public agencies, and other constituencies of the transit industry, developed two different reporting formats to be adaptable to the varying sizes of transit agencies. The Systems also provide for the varying levels of recordkeeping specificity and complexity that are necessary to accommodate variations in size, local laws, and modes of transport. A basic level of detail is reported under the Minimum (M) reporting level.

The Uniform Systems also contain an Expanded (E) reporting level for submitting more detailed revenue and expense data. The Expanded (E) level is voluntary and contains subcategories of data that should be aggregated to record each object class or expense function at the minimum level and thus serves to define the more aggregated data. The definitions for data reported at the Minimum (M) level are consistent with and summarized from those for the more detailed Expanded (E) level data.

E. The Uniform System of Accounts and Records

The Uniform System of Accounts and Records consists of a financial accounting and operational recordkeeping system designed for mass transportation managers and planners. Its uniformity permits more thorough and accurate comparisons and analyses of different transit agencies' operating costs and efficiencies than if each had a unique recordkeeping and accounting system. The System establishes various categories of accounts and records for classifying mass transportation operating and financial data, and includes precise definitions of transportation terminology to ensure that all users share a common understanding of how to use and interpret the data collected.

(1) Use of the Accounts and Records System

Beneficiaries of and applicants for Federal assistance are not required to use the Uniform System of Accounts and Records in keeping their own records. If an applicant or beneficiary chooses not to use the System, however, it must nevertheless be able to translate its accounts and records system to the accounts prescribed in the System. The accounting system that the reporter uses must permit preparation of financial and operating data that conform to the Uniform System directly from its records at the end of the fiscal year, and must be consistent with the following:

(i) The data must have been developed using the accrual method of accounting. Those transit systems that use cash-basis accounting, in whole or in part, must make work sheet adjustments in their account books to record the data on the accrual basis.

(ii) Reporting agencies must follow or be able to directly translate their system to the accounting treatment specified in the publication "Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System."

(iii) The reporting agency's accounting categories (chart of accounts) must be correctly related, via a clear audit trail, to the accounting agencies prescribed in the Uniform System of Accounts and Records and Reporting System.

(2) General Structure of Uniform Accounts and Records System

In the section 15 System, operating expenses incurred by the transit system are classified by mode. The expenses of each mode are recorded in two dimensions:

(i) The type of expenditure (expense object class); and

(ii) The function or activity performed.

The expense object classes are typical of those of most transit accounting systems. Table 1 is a list of the expense object classes to be reported under the Minimum (M) reporting level for section 15.

TABLE 1.—MINIMUM (M) LEVEL EXPENSE OBJECT CLASSES

501. Labor
  01 Operators' Salaries and Wages
  02 Other Salaries and Wages
502. Fringe Benefits
503. Services
504. Materials and Supplies
  01 Fuel and Lubricants
  02 Tires and Tubes
  99 Other Materials and Supplies
505. Utilities
506. Casualty and Liability Costs
507. Taxes
508. Purchased Transportation
  01 Less Than 100 Vehicles
  02 100 or More Vehicles
509. Miscellaneous Expense
510. Expense Transfers
511. Interest Expenses
512. Leases and Rentals
513. Depreciation
  13 Amortization of Intangibles
514. Purchase Lease Payments
515. Related Parties Lease Agreement
516. Other Reconciling Items

Table 2 presents the more detailed Expanded (E) level expense object classes and Minimum (M) level object class expenses and how they relate to each other. Within each object class, the Uniform System categorizes expenditures by four basic functions: Vehicle operations, vehicle maintenance, nonvehicle maintenance, and general administration. UMTA developed the four standard functional classifications for uniformity and to enhance the usefulness of the data collected under section 15.

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AGGREGATION OF EXPENSE OBJECT CLASSES

EXPANDED LEVEL E EXPENSE OBJECT CLASSES	MINIMUM LEVEL M EXPENSE OBJECT CLASSES
501.01 Operators Salaries & Wages	501.01 Operators Salaries & Wages
501.02 Other Salaries & Wages	501.02 Other Salaries & Wages
502.15 Fringe Benefits	502.00 Fringe Benefits
503.03 Professional & Technical Services	503.00 Services
503.05 Contract Maintenance Services	
503.90 Other Services	
504.01 Fuel & Lubricants	504.01 Fuel & Lubricants
504.02 Tires & Tubes	504.02 Tires & Tubes
504.99 Other Materials & Supplies	504.99 Other Materials & Supplies
505.01 Propulsion Power	505.00 Utilities
505.02 Utilities Other than Propulsion Power	
506.91 Premiums - PL&PD Insurance	506.00 Casualty & Liability Costs
506.92 Recoveries - PL&PD Losses, Settlements	
506.93 Payouts - Insured/Uninsured PD&PL Settlements	
506.05 Provisions - Uninsured PL&PD Settlements	
506.94 Premiums, Recoveries & Other Corporate Losses	
507.05 Fuel & Lubricant Taxes	507.00 Taxes
507.90 Other Taxes	
508.01 Purchased Transportation (<100 Vehicles)	508.01 Purchased Transportation (<100 Vehicles)
508.02 Purchased Transportation (>100 Vehicles)	508.02 Purchased Transportation (>100 Vehicles)
509.90 Other Miscellaneous Expense	509.00 Miscellaneous Expense
509.08 Advertising/Promotion Media	
510.01 Function Reclassification	510.00 Expense Transfers
510.02 Expense Reclassification	
510.03 Capitalization of Nonoperating Costs	

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ENSE OBJECT CLASSES

MINIMUM LEVEL M
EXPENSE OBJECT CLASSES

501.01 Operators Salaries & Wages

501.02 Other Salaries & Wages

502.00 Fringe Benefits

503.00 Services

504.01 Fuel & Lubricants

504.02 Tires & Tubes

504.99 Other Materials & Supplies

505.00 Utilities

506.00 Casualty & Liability Costs

507.00 Taxes

508.01 Purchased Transportation (<100 Vehicles)

508.02 Purchased Transportation (>100 Vehicles)

509.00 Miscellaneous Expense

510.00 Expense Transfers

The four functional classifications are used for recordkeeping and reporting of Level M data. Level E uses a more detailed breakdown of each function. Table 3 shows the expanded and minimum levels of functional classifications and how they relate to each other.

BILLING CODE 4910-57-M

AGGREGATION OF EXPENSE FUNCTIONS

EXPANDED LEVEL E	MINIMUM LEVEL M
VEHICLE OPERATIONS	VEHICLE OPERATIONS
2011 Transportation Administration	010 Vehicle Operations
2031 Revenue Vehicle Operations	
2151 Ticketing & Fare Collection	
2161 System Security	
2000 Other Operations	
VEHICLE MAINTENANCE	VEHICLE MAINTENANCE
3041 Maintenance Administration - Vehicles	041 Vehicle Maintenance
3000 Servicing & Repair - Revenue Vehicles	
3061 Inspection & Maintenance of Revenue Vehicles	
3001 Service & Maintenance - Revenue Vehicles	
NON-VEHICLE MAINTENANCE	NON-VEHICLE MAINTENANCE
4042 Maint. Administration - Non-Vehicle	042 Non-Vehicle Maintenance
4101 Maint. of Vehicle Movement Control	
4111 Maint. of Fare Collection & Counting Equip	
4121 Maint. of Roadway and Track	
4122 Maint. of Structures, Tunnels & Subways	
4123 Maint. of Passenger Stations	
4000 Maint. of Other Bldgs. Grounds & Equip	
4001 Accident & Vandalism Repairs Of Bldgs Grounds, & Equipment	
GENERAL ADMINISTRATION	GENERAL ADMINISTRATION
5000 General Administration	160 General Administration
5001 Marketing & Customer Service	
5177 Planning	
5181 General Functions	

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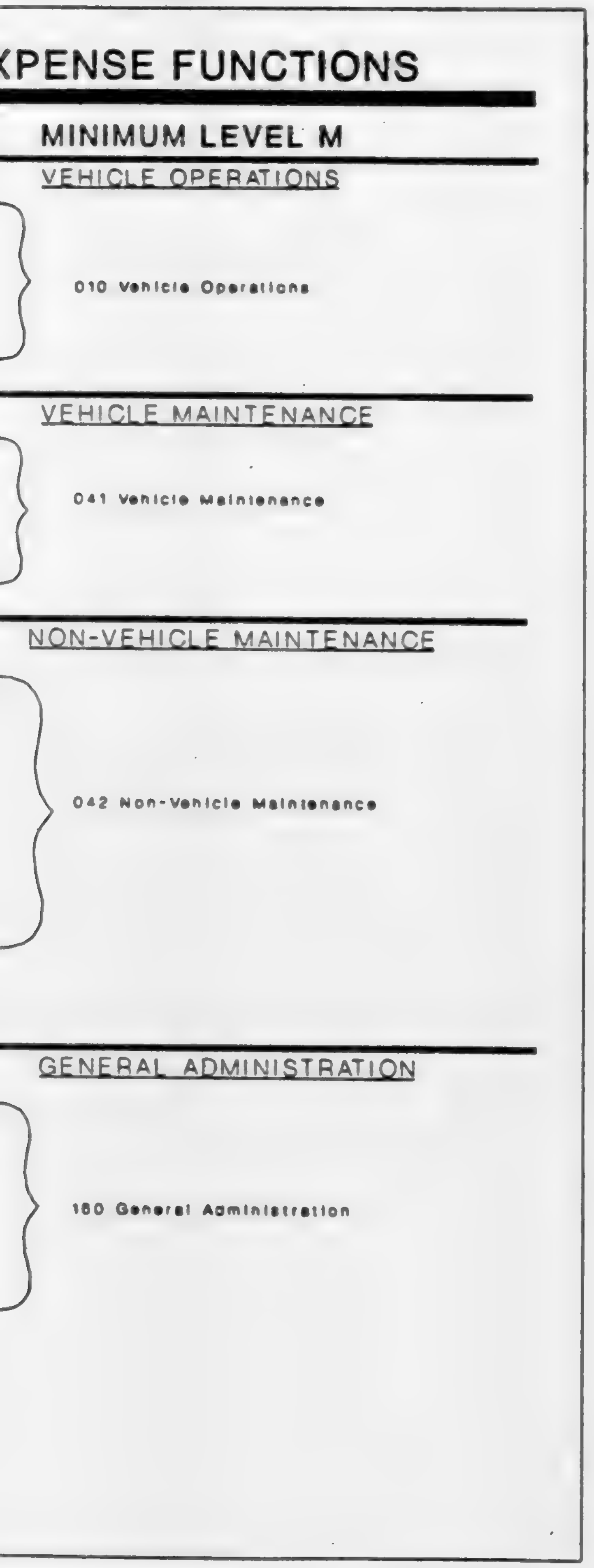
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MINIMUM LEVEL M
VEHICLE OPERATIONS
010 Vehicle Operations
VEHICLE MAINTENANCE
041 Vehicle Maintenance
NON-VEHICLE MAINTENANCE
042 Non-Vehicle Maintenance
GENERAL ADMINISTRATION
160 General Administration

Table 4 is a list of the revenue object classes for the Minimum (M) level under Section 15. Table 5 presents the more detailed Expanded (E) level revenue object classes as well as the Minimum (M) level revenue object classes and how the two levels relate to each other.

TABLE 4.—MINIMUM (M) LEVEL REVENUE OBJECT CLASSES

401. Passenger Fares for Transit Service
402. Special Transit Fares
403. School Bus Service Revenues
404. Freight Tariffs
405. Charter Service Revenues
406. Auxiliary Transportation Revenues
407. Nontransportation Revenues
408. Taxes Levied Directly by Transit System
409. Local Cash Grants and Reimbursements
410. Local Special Fare Assistance
411. State Cash Grants and Reimbursements
412. State Special Fare Assistance
413. Federal Cash Grants and Reimbursements
430. Contributed Services
440. Subsidy From Other Sectors of Operations

BILLING CODE 4910-57-M

AGGREGATION OF REVENUE OBJECT CLASSES

EXPANDED LEVEL E REVENUE OBJECT CLASSES	MINIMUM LEVEL M REVENUE OBJECT CLASSES
401 PASSENGER FARES FOR TRANSIT SERVICE (FORM 202)	
401.01 Full Adult Fares 401.02 Senior Citizen Fares 401 03 Student Fares 401 06 "Park & Ride" - Parking Revenue Only 401 90 Other Special Ride Fares	401 Passenger Fares For Transit Service
402 SPECIAL TRANSIT FARES	
402 90 Contract & Special Service Fares	402 Special Transit Fares
403 SCHOOL BUS SERVICE REVENUES	
403 01 Fares From School Bus Service	403 School Bus Service Revenues
404 FREIGHT TARRIFFS	
404 01 Hauling Freight	404 Freight Tarriffs
405 CHARTER SERVICE REVENUES	
405 01 Fares from Charter Services	405 Charter Service Revenues
406 AUXILIARY TRANSPORTATION REVENUES	
406 90 Station & Vehicle Concessions 406.03 Advertising Services 406 04 Automotive Vehicle Ferriage 406 91 Other Auxiliary Revenues	406 Auxiliary Transportation Revenues
407 NON - TRANSPORTATION REVENUES	
407 04 Investment Income 407 90 Other Non-Transportation Revenues	407 Non-Transportation Revenues
408 TAXES LEVIED BY TRANSIT SYSTEM	
408 01 Property Tax Revenue 408 02 Sales Tax Revenue 408 90 Other Tax Revenue	408 Taxes Levied By Transit System
409 LOCAL CASH GRANTS AND REIMBURSEMENTS	
409.01 General Operating Assistance 409 91 Special Demonstration Project Assistance - Local 409.92 Other Local Financial Assistance	409 Local Cash Grants and Reimbursements
410 LOCAL SPECIAL FARE ASSISTANCE	
410 90 Local Special Fare Assistance	410 Local Special Fare Assistance

NUE OBJECT CLASSES

MINIMUM LEVEL M
REVENUE OBJECT CLASSES

ERVICE (FORM 202)

401 Passenger Fares For Transit Service

402 Special Transit Fares

403 School Bus Service Revenues

404 Freight Tarriffs

405 Charter Service Revenues

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406 Auxiliary Transportation Revenues

407 Non-Transportation Revenues

408 Taxes Levied By Transit System

RSEMENTS

409 Local Cash Grants and Reimbursements

410 Local Special Fare Assistance

AGGREGATION OF REVENUE OBJECT CLASSES

EXPANDED LEVEL E REVENUE OBJECT CLASSES	MINIMUM LEVEL M REVENUE OBJECT CLASSES
411 STATE CASH GRANTS ASSISTANCE	
411.01 General Operating Assistance	411 State Cash Grant Assistance
411.91 Special Demonstration Project Assistance - State	
411.92 Other State Financial Assistance	
412 STATE SPECIAL FARE ASSISTANCE	
412.90 State Special Fare Assistance	412 State Special Fare Assistance
413 FEDERAL CASH GRANTS AND REIMBURSEMENTS	
413.01 General Operating Assistance	413 Federal Cash Grants & Reimbursements
413.04 Special Demonstration Project Assistance	
413.99 Other Financial Assistance	
430 CONTRIBUTED SERVICES	
430.01 State and Local Governments	430.01 State and Local Governments
430.02 Contra Account for Expenses Net Contributed Services	430.02 Contra Account for Expenses Net Contributed Services
440 SUBSIDY FROM OTHER SECTORS OF OPERATION	
440.90 Other Subsidies	440 Subsidy from Other Sectors of Operation
OPTIONAL INFORMATION	
Passenger Fares for Transit Services by Mode	Passenger Fares for Transit Services by Mode

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Table 6 presents the classification for sources and uses of capital required under Section 15. These classifications replace capital information previously required on the balance sheet and capital subsidiary schedule.

TABLE 6.—CAPITAL FUNDING

- Sources of Capital
  - Federal Funds
  - State Funds
  - Local Funds
  - Transit Agency Funds
- Uses of Capital
  - Revenue Vehicles
  - Transit Way and Facilities
  - Other Capital Expenses

The Uniform System of Accounts and Records also includes collecting and recording of certain operating data elements. The basic operating data elements are listed in Table 7.

TABLE 7.—OPERATING DATA ELEMENTS

- Revenue Vehicles Maintenance Performance and Energy Consumption
  - Roadcalls for Mechanical Failure
  - Roadcalls for Other Reasons
  - Labor Hours for Inspection and Maintenance
  - Number of Light Maintenance Facilities
  - Energy Consumption
- Transit Way Mileage
  - Fixed Guideway Classifications for Rail and Non-rail Modes
  - Directional Route Miles
  - Miles of Track
  - Number of Crossings
  - Number of Stations
  - Average Monthly Directional Route Miles
- Employee Equivalents
  - Operating and Capital Employee Equivalents for Labor
  - Classifications
  - Part-time Labor
- Transit System Accidents
  - Collisions
  - Non-Collisions
  - Station Accidents
- Service Supplied
  - Number of Vehicles, Trains, and Passenger Cars in Operation
  - Total Actual Vehicle, and Passenger Car Revenue Miles
  - Total Scheduled Vehicle, and Passenger Car Revenue Miles
  - Total Actual Vehicle, Train, and Passenger Car Revenue Miles
  - Miles of Charter and School Bus Service
  - Total Actual Vehicle, Train, and Passenger Car Revenue Hours
  - Total Actual Vehicle, Train, and Passenger Car Hours
  - Hours of Charter and School Bus Service
- Service Consumed
  - Unlinked Passenger Trips
  - Passenger Miles [1]
- Service Personnel Classifications
- Service Operated and Nonoperated (Days) Classifications
- Revenue Vehicle Inventory

The definitions for the above expense object classes, functions, revenue object classes, balance sheet object classes, and operating data elements are contained in the reference volumes.

F. The Reporting System

(1) The section 15 Reporting System consists of forms and procedures for transmitting data from transit agencies to UMTA. All beneficiaries of Federal financial assistance must submit the required forms and information in order to allow UMTA to: (1) Store and generate information on the Nation's mass transportation systems; and (2) calculate apportionment allocations for the section 9 formula grant program (for urbanized areas of 200,000 or more inhabitants). Agencies submitting Section 15 reports may only submit data for transit services which they directly operate and purchase under contract from public agencies and/or private carriers.

Separate and complete Section 15 reports must be submitted by or for each purchased transportation service provider that operates 100 or more revenue vehicles for the purchased service during the maximum service period. The reporting requirements include the following major segments, which are based on information assembled through the Uniform System of Accounts and Records:

1. Capital report.
2. Revenue report.
3. Expense report.
4. Nonfinancial operating data reports.
5. Miscellaneous auxiliary questionnaires and subsidiary schedules.
6. Data certifications.

(2) The following Table 8 lists all reporting forms to be filed by all reporting agencies:

TABLE 8.—MINIMUM (M) LEVEL REPORTING FORMS

- *Basic Information Forms:*
  - Transit System Identification
  - Contractual Relationship Identification
  - Supplemental Information
- *Capital Report Forms:*
  - Capital Funding
- *Revenue Report Forms:*
  - Revenue Summary
  - Sources of Funding for Operations
- *Expense Report Forms:*
  - Expenses Classified by Function
  - Operators' Wages
  - Fringe Benefits
- *Nonfinancial Operating Data Report Forms:*
  - Revenue Vehicle Maintenance Performance and Energy Consumption
  - Transit Way Mileage
  - Transit System Employee Equivalents
  - Transit System Safety
  - Transit System Service
  - Revenue Vehicle Inventory
- *Summary Form:*
  - Section 9 Statistics

(3) The section 15 Reporting System includes several data certification requirements.

(a) Financial Data Certification

Reporting agencies must submit with their section 15 report a letter or report signed by an independent public accountant or other responsible independent entity such as a state audit agency. This statement must attest to the conformity, in all material respects of the financial data reporting forms in the Section 15 report with the Uniform System of Accounts and Records and Reporting System. The letter or report shall also state whether any of the reporting forms do not conform to the Section 15 requirements, and describe the discrepancies.

(b) Section 9 Data Certification

Certification of the data used to apportion section 9 funds is required for section 15 reports covering 100 or more vehicles operated in maximum service by all modes that are in or serve urbanized areas with populations of 200,000 or more. All section 9 data (directly operated as well as purchased service) in the report will be certified. This section 9 data certification must be signed by an independent auditor. The data used to apportion section 9 funds are: Directional route miles, vehicle revenue miles, passenger miles, and operating cost.

(c) The Chief Executive Officer (CEO) Certification

The CEO of each reporting agency is required to submit a certification with each annual section 15 report. The certification must attest:

—To the accuracy of all data contained in the section 15 report;

—That all data submitted in the section 15 report are in accord with Section 15 definitions;

—If applicable, that the reporting agency's accounting system used to derive all data submitted in the section 15 report is the section 15 Uniform System of Accounts and Records and that a section 15 report using this system was certified by an independent auditor in a previous report year;

—If applicable, the fact that the reporting agency's internal accounting system is other than the Uniform System of Accounts and Records, and that its: (i) Accounting system uses the accrual basis of accounting, (ii) accounting system is directly translated, via a clear audit trail, to the accounting treatment and categories specified by the section 15 Uniform System of Accounts and Records, and (iii) accounting system and direct translation to the Uniform System of Accounts and Records are the same as those certified by an independent auditor in a previous reporting year; and

—That a 100% count of passenger mile data was conducted or that the sampling method used to collect passenger mile data for each mode/type of service meets UMTA requirements.

Issued On: August 1, 1991.

Brian W. Clymer,

Administrator.

[FR Doc. 91–18723 Filed 8–9–91; 8:45 am]

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[1] Sampling or other procedures that meet prescribed precision and confidence levels need only be applied every third year by reporters who meet the following criteria: (a) Operate in urbanized areas of less than 500,000 population; (b) Directly operate less than 100 revenue vehicles for all modes in maximum service; or (c) Operate purchased transportation service and do not submit a separate Section 15 report.

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(a) Financial Data Certification

Reporting agencies must submit with their section 15 report a letter or report signed by an independent public accountant or other responsible independent entity such as a state audit agency. This statement must attest to the conformity, in all material respects of the financial data reporting forms in the Section 15 report with the Uniform System of Accounts and Records and Reporting System. The letter or report shall also state whether any of the reporting forms do not conform to the Section 15 requirements, and describe the discrepancies.

(b) Section 9 Data Certification

Certification of the data used to apportion section 9 funds is required for section 15 reports covering 100 or more vehicles operated in maximum service by all modes that are in or serve urbanized areas with populations of 200,000 or more. All section 9 data (directly operated as well as purchased service) in the report will be certified. This section 9 data certification must be signed by an independent auditor. The data used to apportion section 9 funds are: Directional route miles, vehicle revenue miles, passenger miles, and operating cost.

(c) The Chief Executive Officer (CEO) Certification

The CEO of each reporting agency is required to submit a certification with each annual section 15 report. The certification must attest:

—To the accuracy of all data contained in the section 15 report;

—That all data submitted in the section 15 report are in accord with Section 15 definitions;

—If applicable, that the reporting agency's accounting system used to derive all data submitted in the section 15 report is the section 15 Uniform System of Accounts and Records and that a section 15 report using this system was certified by an independent auditor in a previous report year;

—If applicable, the fact that the reporting agency's internal accounting system is other than the Uniform System of Accounts and Records, and that its: (i) Accounting system uses the accrual basis of accounting, (ii) accounting system is directly translated, via a clear audit trail, to the accounting treatment and categories specified by the section 15 Uniform System of Accounts and Records, and (iii) accounting system and direct translation to the Uniform System of Accounts and Records are the same as those certified by an independent auditor in a previous reporting year; and

—That a 100% count of passenger mile data was conducted or that the sampling method used to collect passenger mile data for each mode/type of service meets UMTA requirements.

Issued On: August 1, 1991.

Brian W. Clymer,
Administrator.

[FR Doc. 91–18723 Filed 8–9–91; 8:45 am]

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federal register

Monday
August 12, 1991

Part IV

Department of Education

Commercial Drivers Education Program; Applications for New Awards for Fiscal Year 1992; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.247]

Commercial Drivers Education Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1992

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: To increase the literacy skills of eligible commercial drivers so that those drivers may successfully complete the knowledge test requirements under the Commercial Motor Vehicle Safety Act of 1986. The term eligible commercial driver means a commercial driver licensed prior to the requirements of the commercial Motor Vehicle Safety Act of 1986.

Eligible Applicants: The following entities are eligible for an award under this program:

(a) Private employers employing commercial drivers in partnership with local educational agencies, State educational agencies, colleges, universities, or community colleges.

(b) Local educational agencies, State educational agencies, colleges, universities, or community colleges.

(c) Approved apprentice training programs. The term "approved apprentice training programs" has the meaning given this term in the National Apprenticeship Act of 1937.

(d) Labor organizations, the memberships, of which include commercial drivers.

Cost Sharing is required by the statute authorizing this program. The non-Federal share required refers to 50 percent of the total project cost including both Federal and non-Federal funds.

Grantees shall refer to appropriate adult education programs authorized under other portions of the Adult Education Act those individuals who are identified as having literacy skill problems beyond those which prevent them from successfully completing the knowledge test requirements under the Commercial Motor Vehicle Safety Act of 1986.

Deadline for Transmittal of Applications: 10/11/91.

Deadline for Intergovernmental Review: 12/11/91.

Available Funds: $1,951,975.

Estimated Range of Awards: $150,000–$200,000.

Estimated Average Size of Awards: $195,000.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 18 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations), part 75 (Direct Grant Programs), part 77 (Definitions that Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 81 (General Education Provisions Act—Enforcement), part 82 (New Restrictions on Lobbying), part 85 (Government-Wide Debarment and Suspension (Nonprocurement) and Government-Wide Requirements for Drug-Free Workplace (Grants), and part 86 (Drug-Free Schools and Campuses).

Selection Criteria

(a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

(2) The maximum total score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

The Secretary assigns the fifteen points, reserved in 34 CFR 75.210(c), as follows: 10 points to selection criterion (3)—Plan of Operation—in 34 CFR 75.210(b)(3) for a total of 25 points for that criterion; and 5 points to selection criterion (4)—Quality of key personnel—in 34 CFR 75.210(b)(4) for a total of 12 points for that criterion.

(b) *The criteria*—(1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purpose of the Adult Education Act, including consideration of:

(i) The objective of the project; and

(ii) How the objectives of the project further the purposes of the Adult Education Act.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the Adult Education Act, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of Operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(4) *Quality of key personnel.* (12 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraph (b)(4)(i) (A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i) (A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent

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(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of Operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(4) *Quality of key personnel.* (12 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraph (b)(4)(i) (A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i) (A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent

to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee)

(7) *Adequacy of resources.* (3 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Intergovernmental Review of Federal Programs: This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive Order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financal assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive Order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on September 17, 1990, pages 38210–38211.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, Executive Order 12372—CFDA# 84.247, U.S. Department of Education, room 4161, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please Note that the Above Address is not the Same Address as the One to Which the Applicant Submits its Completed Application. *Do Not Send Applications to the Above Address.*

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.247), Washington, DC 20202–4725.

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control center, Attention: (CFDA# 84.247), room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC 20202–4725.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the application for Federal Assistance (Standard Form 424) the CFDA number of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this notice is divided into four parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Part IV: Partners' Agreement Form

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters, and Drug-Free Workplace Requirements (ED Form 80–0013) and instructions.

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and instructions. (NOTE: ED Form 80–0014 is intended for the use of grantees and should not be transmitted to the Department).

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions, and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

All forms and instructions are included in the Appendix to this notice.

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, the certifications and Partners' agreement form. However, the application form, the assurances, the certifications and Partners' agreement form must each include an original ink signature. No grant may be awarded unless a complete application form has been received.

All applicants must submit ONE original signed application, and at least two copies of the application. Please mark each application as original or copy. No grant may be awarded unless a complete application form has been received.

FOR FURTHER INFORMATION CONTACT: Marian Banfield, Special Programs Branch, Division of National Programs, Office of Vocational and Adult Education, U.S. Department of Education, room 4512–MES, 400 Maryland Avenue SW., Washington, DC 20202–7327. Telephone (202) 732–1838. Or Carroll Towey, Program Services Branch, Division of Adult Education and Literacy, Office of Vocational and Adult Education, U.S. Department of Education, room 4425–MES, 400 Maryland Avenue SW., Washington, DC 20202–7320. Telephone (202) 732–2391. Deaf and hearing impaired individuals may call the Federal Dual Party Relay

Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 1211(b).

Dated: August 5, 1991.

Betsy Brand,

Assistant Secretary, Office of Vocational and Adult Education.

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APPENDIX

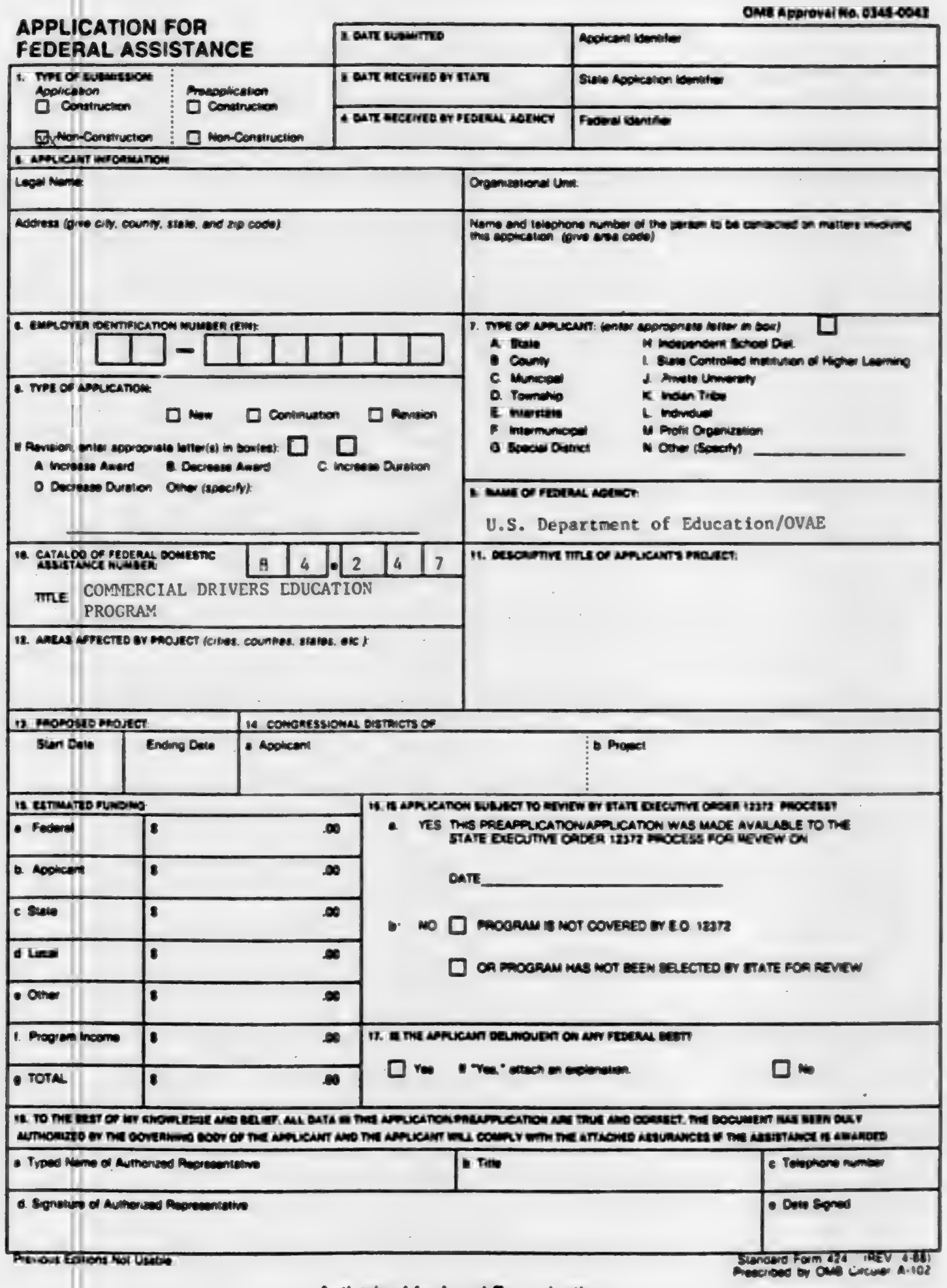

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED
Applicant Identifier

1. TYPE OF SUBMISSION:
Application
☐ Construction
☑ Non-Construction
Preapplication
☐ Construction
☐ Non-Construction

3. DATE RECEIVED BY STATE
State Application Identifier

4. DATE RECEIVED BY FEDERAL AGENCY
Federal Identifier

5. APPLICANT INFORMATION

Legal Name:
Organizational Unit:

Address (*give city, county, state, and zip code*)
Name and telephone number of the person to be contacted on matters involving this application (*give area code*)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (*enter appropriate letter in box*) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) ____________

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (*specify*):

9. NAME OF FEDERAL AGENCY:
U.S. Department of Education/OVAE

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 84.247
TITLE: COMMERCIAL DRIVERS EDUCATION PROGRAM

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (*cities, counties, states, etc.*):

13. PROPOSED PROJECT:
Start Date
Ending Date

14. CONGRESSIONAL DISTRICTS OF:
a. Applicant
b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE ____________

b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative
b. Title
c. Telephone number
d. Signature of Authorized Representative
e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
    - —"New" means a new assistance award.
    - —"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
    - —"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds Federal (c)	Estimated Unobligated Funds Non-Federal (d)	New or Revised Budget Federal (e)	New or Revised Budget Non-Federal (f)	New or Revised Budget Total (g)
1. COMMERCIAL DR.	84.247	$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$

7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

BILLING CODE 4000-01-C

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8. COMMERCIAL DRIVERS EDUCATION PROGRAM	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21 Direct Charges:	22. Indirect Charges:
23 Remarks	

SF 424A (4-88) Page 2
Prescribed by OMB Circular A-102

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Part II—Budget Information Instructions for the SF-424A

General Instructions

This form is designed so that application can be made for funds from any one of the grant programs funded by the U.S. Department of Education. For the Commercial Drivers Education Program (CFDA No. 84.247) sections A, B, and C should include budget estimates for the entire project period.

Note: Sections D and E need not be completed to apply for this program.

All applications should contain a breakdown by the object class categories shown in sections, B, Lines 6a through 6j.

Section A. Budget Summary

Line 1. Columns (a) through (g)—Enter on Line 1 the catalog program title in Column (a) and the catalog program number in Column (b). Leave Columns (c) and (d) blank. Enter in Columns (e), (f) and (g), the appropriate amounts of funds needed to support the project for the entire project period.

Note: Grant recipients under the Commercial Drivers Education Program (CFDA No. 84.247) are required to provide 50 percent of the total cost of a project conducted under the program. In other words, the amount shown on Line 1, Column (f) must be 50 percent of the amount shown on Line 1, Column (g).

Note: Lines 2, 3, 4, and 5 of section A need not be completed to apply for this program.

Section B. Budget Categories

Lines 6a through 6i—Fill in the total requirements for Federal funds by object class categories for the entire project period in Column (1).

Note: Columns (2), (3), (4), and (5) of section B need not be completed to apply for this program.

Line 6a—Personnel: Show salaries and wages to be paid to personnel employed in the project. Fees and expenses for consultants must be included in Line 6f.

Line 6b—Fringe Benefits: Include contributions for Social Security, employee insurance, pension plans, etc. Leave blank if fringe benefits to personnel are treated as part of the indirect cost rate.

Line 6c—Travel: Indicate the amount requested for travel of employees.

Line 6d—Equipment: Applicants who are institutions of higher education, hospitals, or nonprofit organizations must indicate the cost of nonexpendable personal property which has a useful life of more than one year and an acquisition cost of $300 or more per unit. Applicants who are State or local governments must indicate the cost of nonexpendable personal property which has a useful life of more than one year and an acquisition cost of $5000 or more per unit.

Line 6e—Supplies: Include the cost of consumable supplies to be used in this project. These should be items which cost less than $300 per unit with a useful life of less than one year if an applicant is an institution of higher education, a hospital, or a nonprofit organization. If the applicant is a State or local government, list consumable items which cost less than $5000 per unit with a useful life of less than one year.

Line 6f—Contractual: Show the amount to be used for: (a) Procurement contracts (except those which belong on other lines such as supplies and equipment listed above); and (b) payments for consultants.

Line 6g—Construction: Construction expenses are not allowable under the Commercial Drivers Education Program (CFDA No. 84.247).

Line 6h—Other: Indicate all direct costs not clearly covered by Lines 6a through 6g. Trainee costs or stipends are not allowable.

Line 6i—Total Direct Charges: Show total of Lines 6a through 6h.

Line 6j—Show the amount of indirect cost to be charged to the project.

Line 6k—Enter the total of the amounts on Lines 6i and 6j.

Note: Line 7 of Section B need not be completed to apply for this program.

Section C. Non-Federal Resources

Note: Cost sharing is required by the statute authorizing this program. The non-Federal share required refers to 50 percent of the total project cost, including both Federal and non-Federal funds.

Line 8—Enter any amounts of non-Federal resources that will be used on the grant. Contributions may be in the form of cash or in-kind contributions. If any in-kind contributions are included, provide a brief explanation of each contributioin on a separate sheet.

Column (a)—Enter the catalog program title.

Column (b)—Enter the contribution to be made by the applicant. If an application is filed on behalf of a partnership, include the contributions of all partners—not merely those of the partner designated as the applicant on the Partners' Agreement Form and the SF 424. If an applicant is a State agency, the applicant's contribution should be included in column (b), rather than in column (c).

Column (c)—Enter the contribution of any State agency that is neither an applicant nor a partner in an application in which another partner has been designated as the applicant.

Column (d)—Enter the contribution to be made from all other sources.

Column (e)—Enter the totals of Columns (b), (c), and (d).

Note: The amount shown on Line 8, Column (e), should be the same as the figure shown on Section A, Line 1, Column (f).

Note: Lines 9, 10, 11, and 12 of Section C need be completed to apply for this program.

Section D. Forecasted Cash Needs

Note: This section does not apply to the Commercial Drivers Education Program.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Note: This section does not apply to the Commercial Drivers Education Program.

Section F. Other Budget Information

Prepare a detailed Budget Narrative that explains, justifies, and/or clarifies the budget figures shown in section A, B, and C. Explain:

1. The basis used to estimate certain costs (professional personnel), consultants, travel, indirect costs) and any other cost that may appear unusual;
2. How the major cost items relate to the proposed project activities;
3. The costs of the project's evaluation component; and
4. What non-Federal funds will be used in each budget category.

Instructions for Part III—Application Narrative

Before preparing the Application Narrative, an applicant should read carefully the description of the program and the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested, describe when the applicant plans to meet each objective of the project, and should—

1. Begin with the Abstract; that is, a summary of the proposed project;
2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application package; and
3. Include any other pertinent information that might assist the Secretary in reviewing the application.

The Secretary strongly requests the applicant to limit the Application Narrative to no more than 30 double-spaced, typed, 8½"×11" pages (on one side only), although the Secretary will consider applications of greater length. Be sure that each page of your application is numbered consecutively.

Include as an appendix to the Application Narrative supporting

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1991
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documentation, also on 8½"×11" paper, (e.g., letters of support, footnotes, resumes, etc) or any other pertinent information that might assist the Secretary in reviewing the application.

Applicants are advised that:

(1) Under § 75.217 of the Education Department General Administrative Regulations (EDGAR), the Department considers only information contained in the application in ranking applications for funding consideration. Letters of support sent separately from the formal application package are not considered in the review by the technical review panels.

(2) In reviewing applications, the technical review panel evaluates each application solely on the basis of the established technical review criteria. Letters of support contained in the application will strengthen the application only insofar as they contain commitments which pertain to the established technical review criteria.

Include any other pertinent information that might assist the Secretary in reviewing the application under the statute authorizing this program.

Instructions for Part IV—Partners' Agreement Form

Instructions: As previously indicated, there are four categories of entites that are eligible for an award under this program. See the list of categories (a)–(d) in the description of ELIGIBLE APPLICANTS near the beginning of this Notice. Only entities in category (a) must submit a signed Partners' Agreement Form and enclose it with the application. Category (a) includes private employers employing commercial drivers in partnership with local educational agencies, State educational agencies, colleges, universities, or community colleges. The partners may designate either the private employer employing commercial drivers or the educational partner as the applicant on behalf of the partnership, however, both the designated applicant and the other partner must sign the Agreement Form. If the Form is not signed by both partners and submitted with the application, the Secretary will return the application without further consideration for funding pursuant to 34 CFR 75.216.

BILLING CODE 4000-01-M

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Agreement Form and enclose it with the application. Category (a) includes private employers employing commercial drivers in partnership with local educational agencies, State educational agencies, colleges, universities, or community colleges. The partners may designate either the private employer employing commercial drivers or the educational partner as the applicant on behalf of the partnership, however, both the designated applicant and the other partner must sign the Agreement Form. If the Form is not signed by both partners and submitted with the application, the Secretary will return the application without further consideration for funding pursuant to 34 CFR 75.216.

BILLING CODE 4000-01-M

PART IV - PARTNERS' AGREEMENT FORM FOR COMMERCIAL DRIVERS EDUCATION PROGRAM

INSTRUCTIONS: Applicants who apply as private employers employing commercial drivers in partnership with local educational agencies, State educational agencies, colleges, universities, or community colleges (category (a) in the description of Eligible Applicants near the beginning of this notice) must submit a signed Partners' Agreement Form and enclose it with the application. It is essential that both partners sign and submit this document in order for their application to be considered complete. If the document is not signed by both partners and submitted with the application, the Secretary will return the application without further consideration for funding pursuant to 34 CFR 75.216.

Applicants applying under category (b) (Local education agencies, State educational agencies, colleges, universities or community colleges); category (c) (Approved apprentice training programs); or category (d) (Labor organizations, the memberships of which include commercial drivers); as described under Eligible Applicants are not required to submit a partnership agreement as they are not required to apply in partnership with any other entity. Only applicants in category (a) must submit a Partnership Agreement Form.

Any questions concerning forming a valid partnership and properly completing the Partners' Agreement Form may be referred to one of the program officers listed as an information contact in this notice.

Partners' Agreement

As authorized representatives of our organizations, we agree on their behalf to the following terms with respect to our application number V247A________ as a condition of applying for and receiving a grant from the Commercial Drivers Education Program. We:

- designate partner ______________ as the applicant on behalf of the partnership;
- are willing to be partners in this project;
- will perform the role detailed for each of us in the application;
- will be bound by every statement and assurance made in the application.

Partner One (business partner)	Partner Two (educational partner)
__________________ Original Ink Signature	__________________ Original Ink Signature
__________________ Name (Typed)	__________________ Name (Typed)
__________________ Title (Typed)	__________________ Title (Typed)
__________________ Organization (Typed)	__________________ Organization (Typed)
__________________ Date (Typed)	__________________ Date (Typed)

BILLING CODE 4000-01-C

Any questions about forming a valid partnership and properly completing the Partners' Agreement Form may be referred to one of the program officers listed as an information contact in this Notice. Remember, entities in categories (b)–(d) do not need to submit a Partners' Agreement Form because they are not required to enter into a partnership as a condition of filing an application. For example, category (b) includes local educational agencies, State educational agencies, colleges, universities, or community colleges that are applying individually rather than in partnership with a private employer under category (a); since no partnership has been established, it is not necessary for entities applying under category (b) to submit a Form.

Instructions for Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project, OMB 1830–0013, Washington, DC 20503.

(Information collection approved under OMB control number 1830–0013. Expiration Date: 7/31/92.)

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(Information collection approved under OMB control number 1830–0013. Expiration Date: 7/31/92.)

BILLING CODE 4000-01-M

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
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18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

ITLE

DATE SUBMITTED

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

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Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

____

____

____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610—

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

at the applicant will comply with the above certifications.

PR/AWARD NUMBER AND/OR PROJECT NAME
DATE

. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion–Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

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DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	**2. Status of Federal Action:** ☐ a. bid/offer/application b. initial award c. post-award	**3. Report Type:** ☐ a. initial filing b. material change **For Material Change Only:** year _______ quarter _____ date of last report _________

4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, *if known*: Congressional District, *if known*:	**5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:** Congressional District, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: ____________
8. Federal Action Number, *if known*:	**9. Award Amount,** *if known*: $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI)*:	**b. Individuals Performing Services** *(including address if different from No. 10a)* *(last name, first name, MI)*:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*: $ _______________ ☐ actual ☐ planned	**13. Type of Payment** *(check all that apply)*: ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _______________
12. Form of Payment *(check all that apply)*: ☐ a. cash ☐ b. in-kind; specify: nature _______________ value _______________	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	**Signature:** _______________ **Print Name:** _______________ **Title:** _______________ **Telephone No.:** ___________ **Date:** ___________
Federal Use Only:	Authorized for Local Reproduction Standard Form - LLL

INSTRUCTIONS FOR

This disclosure form shall be co
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(b) Enter the full names
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INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

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federal register

Monday
August 12, 1991

Part V

Department of Transportation

Research and Special Programs Administration

National Solid Wastes Management Association; Application for Preemption Determination; Notice

VOL 56 ISS 155 AUG 12 1991 UMI

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. PDA-1]

National Solid Wastes Management Association; Application for Preemption Determination Concerning Regulations of the States of Maryland and Massachusetts and a Statute of the State of Pennsylvania

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Public notice and invitation to comment.

SUMMARY: The National Solid Wastes Management Association has applied for an administrative determination whether Maryland, Massachusetts and Pennsylvania requirements for bonds for hazardous-waste-carrying vehicles are preempted by the Hazardous Materials Transportation Act (HMTA).

DATES: Comments received on or before October 1, 1991, and rebuttal comments received on or before November 15, 1991, will be considered before an administrative ruling is issued by the Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The application and any comments received may be reviewed in the Dockets Unit, Research and Special Programs Administration, room 8421, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590-0001. Comments and rebuttal comments on the application may be submitted to the Dockets Unit at the above address, and should include the Docket Number (PDA-1). Three copies are requested. A copy of each comment and rebuttal comment must also be sent to John H. Turner, Esq., Association Counsel, National Solid Wastes Management Association, 1730 Rhode Island Avenue NW., suite 1000, Washington, DC 20036; Mr. James P. Snyder, Director, Bureau of Waste Management, Department of Environmental Resources, Commonwealth of Pennsylvania, P.O. Box 2093, Fulton Building, Harrisburg, PA 17120; Mr. Richard Collins, Director, Hazardous & Solid Waste Management Administration, State of Maryland, 2500 Broening Highway, Baltimore, MD 21224; and Mr. William F. Cass, Director, Division of Hazardous Waste, Department of Environmental Quality Engineering, Commonwealth of Massachusetts, One Winter Street, 5th Floor, Boston, MA 02108. A certification that a copy has been sent to each person must also be included with the comment. (The following format is suggested: "I certify that copies of this comment have been sent to Messrs. Turner, Snyder, Collins and Cass at the addresses specified in the Federal Register.")

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper, III, Assistant Chief Counsel for Hazardous Materials Safety, Office of the Chief Counsel, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590-0001, telephone number 202-366-4400.

SUPPLEMENTARY INFORMATION:

1. Background

The preemption provisions of the Hazardous Materials Transportation Act (HMTA), 49 App. U.S.C. 1801 *et seq.*, were modified by the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), Public Law 101-615. The Research and Special Programs Administration's (RSPA's) regulations have been revised to reflect these changes. 56 FR 8616 (Feb. 28, 1991); 56 FR 15510 (Apr. 17, 1991).

Section 105(a)(4) of the HMTA (49 U.S.C. 1811(a)(4)) preempts "any law, regulation, order, ruling, provision, or other requirement of a State or political subdivision thereof or an Indian tribe" which concerns a "covered subject" and "is not substantively the same" as any provision of the HMTA or any regulation under that provision concerning that subject. The "covered subjects" are defined in section 105(a)(4) as:

> (i) The designation, description, and classification of hazardous materials.
>
> (ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials.
>
> (iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents.
>
> (iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials.
>
> (v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

RSPA has issued a notice of proposed rulemaking proposing a specific definition for the term "substantively the same." 56 FR 36992 (Aug. 1, 1991). (However, no "covered subject" is at issue in this matter.)

In addition, section 105(b)(4) of the HMTA, 49 App. U.S.C. 1804(b)(4), addresses the preemption standards for hazardous materials highway routing requirements. No routing issues are involved in this matter, and the Secretary of Transportation has delegated responsibility for those highway routing issues, including the issuance of preemption determinations on highway routing issues to the Federal Highway Administration. 56 FR 31343 (July 10, 1991).

Finally, section 112(a) of the HMTA, 49 App. U.S.C. 1811(a), provides that State, political subdivision and Indian tribe requirements not covered by those section 105 (a) or (b) provisions are preempted if—(1) Compliance with both the State or political subdivision or Indian Tribe requirement and any requirement of [the HMTA] or of a regulation issued under [the HMTA] is not possible, [or] (2) The State or political subdivision or Indian tribe requirement as applied or enforced creates an obstacle to the accomplishment and execution of [the HMTA] or the regulations issued under [the HMTA] * * *.

As indicated in the preamble to the final regulation implementing the HMTUSA preemption provisions, 56 FR at 8617 (Feb. 28, 1991), Congress, in section 112, codified the "dual compliance" and "obstacle" standards which RSPA previously had adopted by regulation and used in issuing its advisory inconsistency rulings.

All of the above-described preemption standards are in RSPA's regulations at 49 CFR 107.202.

Congress also provided for issuance of binding preemption determinations to replace the advisory inconsistency ruling process previously utilized by RSPA. Any person directly affected by such a requirement may apply for a determination whether a State, political subdivision or Indian tribe requirement is preempted by the HMTA. Notice of the application must be published in the Federal Register, and then the applicant is precluded from seeking judicial relief on that issue for 180 days after the application or until the preemption determination is issued, whichever occurs first. A party to a preemption determination proceeding may seek judicial review of the determination in U.S. district court within 60 days after the determination becomes final. Section 112(c) of the HMTA, 49 App. U.S.C. 1811(c).

The Secretary of Transportation has delegated authority to issue preemption determinations, except for those concerning highway routing issues, to

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RSPA. 49 CFR 1.53; 56 FR 31343 (July 10, 1991). RSPA's Associate Administrator for Hazardous Materials Safety will issue those determinations. RSPA's regulations concerning preemption determinations were issued on February 28, 1991 (56 FR 8616), and are at 49 CFR 107.203–211 and 107.227.

Preemption determinations do not address issues of preemption arising under the Commerce Clause of the Constitution or under statutes other than the HMTA.

In issuing its preemption determinations under the HMTA, RSPA is guided by the principles enunciated in Executive Order No. 12612 entitled "Federalism" (52 FR 41685, Oct. 30, 1987). Section 4(a) of that Executive Order authorizes preemption of state laws only when the statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of state authority directly conflicts with the exercise of Federal authority. The HMTA, of course, contains several express preemption provisions, which RSPA has implemented through regulations.

2. The Application for a Preemption Determination

On July 17, 1991, the National Solid Wastes Management Association submitted the application for a preemption determination which is reproduced as appendix A to this notice.

(Copies of the three States' bond requirements were enclosed with the application and are available at no cost from the Dockets Unit, Research and Special Programs Administration, room 8421, Nassif Building, 400 Seventh Street SW. 20590–0001, telephone 202–366–4453)

3. Public Comment

Comments should be limited to the issue of whether the cited Maryland, Massachusetts and Pennsylvania bonding requirements are preempted by the HMTA. Comments should specifically address the "dual compliance" and "obstacle" tests described in the "Background" section. Because no "covered subject" is at issue in this matter, the "substantively the same" standard is not relevant.

Persons intending to comment on the application should review the standards and procedures governing the Department's consideration of applications for preemption determinations found at 49 CFR 107.201–107.211.

Issued in Washington, DC on August 6, 1991.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

Appendix A—Petition of National Solid Wastes Management Association to Initiate a Proceeding to Determine that Maryland, Massachusetts and Pennsylvania Provisions Requiring Bonds for Hazardous Waste-Carrying Vehicles Are Preempted by the Hazardous Materials Transportation Act (as amended)

I. Introduction and Authority for a Determination of Preemption

The National Solid Wastes Management Association ("NSWMA"), on behalf of its Chemical Waste Transportation Institute ("CWTI"), hereby petitions the Department of Transportation ("DOT") to institute an administrative proceeding leading to a binding inconsistency ruling invalidating hazardous waste transportation bonding requirements imposed by Maryland, Massachusetts and Pennsylvania. Petitioner calls on the Department to determine that the bond requirements are inconsistent with, and hence preempted, by the Hazardous Materials Transportation Act ("HMTA"), as amended by the Hazardous Materials Transportation Uniform Safety Act of 1990 ("HMTUSA"), and the Hazardous Materials Regulations ("HMR") promulgated by DOT.

The Department has previously held that non-Federal bonding requirements are flatly inconsistent with and preempted by the HMTA. In Inconsistency Ruling No. IR–25, 54 FR 16,308 (April 21, 1989), a local ordinance requiring the posting of a $1,000.00 bond for the highway transportation of hazardous waste was deemed inconsistent with the Act. DOT advanced the following rationale for its premise that non-Federal financial responsibility requirements imposed upon carriers of hazardous waste present a substantial risk of interference with the uniform system of regulation envisioned by Congress:

> [I]f any one State may use [such measures] to deflect interstate carriers of hazardous materials into other jurisdictions, than all States may do so. The logical result would be, if not a total cessation of a Congressionally recognized form of interstate transportation, than the very pagework of varying and conflicting state and local regulations which Congress sought to preclude.

Id. at 16,310 (citing Inconsistency Ruling No. 10, 49 FR 46,656, 46,657).

DOT also noted that non-Federal bonding, insurance and indemnity requirements for hazardous materials transportation in all instances fail the "obstacle" preemption test and are, accordingly, inconsistent with the HMTA and the HMR:

> If OHMT later determines that a bonding, insurance, or indemnity requirement is necessary under the HMTA for the transportation of non-radioactive hazardous materials, it will amend the HMR accordingly. Until such time, the absence of such a requirement of the HMR is a reflection of the OHMT's determination that no such requirement is necessary and that any such requirement imposed at the state or local level is inconsistent with the HMR.
>
> The subject of bonding, insurance and indemnity requirements for hazardous materials transportation is exclusively Federal. The existence in the U.S. of more than 30,000 local jurisdictions, each having the potential to impose such requirements, demonstrates the havoc which could be created if even a small percentage of them were to impose such requirements (with their inevitable differences). It would be extremely difficult for carriers to learn about, let alone comply with, such local requirements.

Id. at 16,311.

Despite the clear, unambiguous finding of the DOT, three jurisdictions—Maryland, Massachusetts and Pennsylvania—continue to impose inconsistent, parochial bonding requirements upon motor carriers of hazardous waste. Such measures have been flatly rejected, by the DOT and the Congress, and cannot be permitted to stand.

II. The Need and Justification for a Finding of Inconsistency

A. Interest of Petitioner

Petitioner, NSWMA, is a non-profit trade association made up of approximately 2,500 private firms whose primary concern is the collection, transport, management and disposal of hazardous, solid and infectious waste and refuse. NSWMA members own and operate hazardous waste treatment, storage and disposal facilities and solid waste landfills throughout the United States. The Association's Chemical Waste Transportation Institute ("CWTI") consists of members who transport in interstate commerce hazardous waste from generators to disposal sites, either by truck or rail. These firms provide a vital service by handling and transporting this waste in an environmentally protective manner. A number of the Institute's members operate in Maryland, Massachusetts and Pennsylvania.

B. The Maryland, Massachusetts and Pennsylvania Bonding Requirements are Flatly Contrary to the Mandate of the HMTA

In contravention of the prior inconsistency rulings of this Department and the terms of the HMTA, as amended, Maryland, Massachusetts and Pennsylvania have imposed bonding requirements applicable only to motor carriers of hazardous waste. The state provisions, moreover, cannot be reconciled with and are not reciprocally recognized by each other. If these bonding requirements are permitted to stand, members of NSWMA which operate motor vehicles in interstate commerce will be faced with the need to comply with financial responsibility mandates in Maryland, Massachusetts and Pennsylvania that differ from the comprehensive federal program. It was this reason—the possibility that the states might enforce conflicting requirements—that prompted Congress to enact the HMTA and led to the imposition of more stringent preemption requirements in the HMTUSA. See, e.g., H.R. Rep. No. 444, Pt. 1, 101st Cong., 2d Sess. 34 (1990) ("Conflicting Federal, State and local requirements pose potentially serious threats to the safe transportation of hazardous materials."). Moreover, unless these non-Federal bonding requirements are invalidated, other states may be encouraged to adopt disparate bonding, insurance and indemnification mandates. The mere *possibility* that numerous requirements could be imposed by states mandates a finding of preemption. See, e.g., Inconsistency Ruling 15, 49 FR 46,660 (1984); Inconsistency Ruling 14, 49 FR 46,656 (1984); Inconsistency Ruling 5, 47 FR 51,991 (1982).

(1) The Maryland Requirement

Maryland requires motor carriers of hazardous waste to secure "a bond of not less than $50,000" as a condition of securing a permit. Md. Regs. Code tit., 26, subtit. 13, § 4.04 (copy attached). The bond must be executed by the permittee and a corporate surety licensed to do business within the state. In lieu of a corporate surety, the permittee may deposit cash or negotiable bonds of the U.S. government in an amount at least equal "to the required sum of the bond." Alternatively, a certificate of deposit may be utilized, if it is "equivalent to the required bond, issued by a bank within the State, and accompanied by [a] written agreement of the bank to pay on demand to the State upon a finding of forfeit by the Secretary."

(2) The Massachusetts Requirement

The Massachusetts regulations provide that "no new or revised license to transport hazardous wastes shall be issued by the Department until the applicant for such license has filed a bond payable to the Department on a form provided by the Department, and such bond has been approved by the Department." Mass. Regs. Code tit. 310, § 30:411 (copy attached). The amount of the bond must be "$10,000 at a minimum" and "in an amount sufficient to assure that the licensee shall faithfully perform all of the requirements of [Massachusetts hazardous materials transportation regulations], the terms and conditions of the license and any Department order issued to the licensee." The "bond" may consist of a surety or performance bond, a "collateral indemnity agreement in a certain sum payable to the Department in cash or in negotiable bonds of the United States of America, the Commonwealth of Massachusetts or any city, town or body politic of the Commonwealth", or "irrevocable letter of credit of any bank organized or authorized to transact business in the Commonwealth or in the United States of America", or "any other collateral deemed satisfactory to the Department, provided that all such collateral shall be deposited in an escrow account in a bank authorized to transact in the Commonwealth, or may be held by the Department, and shall in all cases be in favor of the Department."

(3) The Pennsylvania Requirement

Pennsylvania law requires that a bond of "$10,000 at a minimum" (the Commonwealth typically requires bonds in amounts up to $60,000) be deposited "to ensure that the licensee faithfully performs the requirements of the act, the rules and regulations promulgated thereunder, the terms and conditions of the license and any Department order issued to the licensee." 25 Pa. Code § 283.32 (copy attached). The amount of the bond apparently depends upon the type of material and the volumes transported.

III. The State-Mandated Bonding Requirements Cannot Satisfy the "Obstacle" Test Set Forth in Section 112(a) of the HMTUSA

Congress revised section 112(a) of the HMTA by including the "obstacle" standard, previously used as a regulatory standard for determining preemption, as an explicit statutory ground for a binding finding of preemption. As the RSPA noted in its February 28, 1991 interpretive rule, 56 FR 8,616 (Feb. 28, 1991), the original HMTA "did not define 'inconsistent' or provide any standards for determining what requirements were 'inconsistent'." *Id.* at 8,617.

Accordingly, the Department previously set forth by regulation, see 49 CFR 107.209(c), two criteria for determining "whether a non-Federal requirement was inconsistent with the HMTA or the regulations * * *" *Id.* The "obstacle" criterion was, of course, "originally established by Supreme Court decisions determining whether a conflict exists between a State and Federal statute in areas where Congress has not completely foreclosed State regulation." *Id.*

In the HMTUSA, Congress merely "adopted" these standards proposed by the Department. The "two standards [adopted] are the same requirements that are current codified in regulations relating to inconsistency rulings." H.R. Rep. No. 441, Pt. 1, 101st Cong., 2d Sess. 49 (1990). Congress stated its intention to clarify the current preemption process "by more 'clearly identifying the standards against which a determination of preemption is made. Those standards are now reflected in court decisions and they are documented in the precedents established in the administrative rulings by the Department.' H.R. Rep. No. 444, Pt. 2, 101st Cong., 2d Sess. at 25 (1990)." *Id.*

As the Department has emphasized, while the scope of the "obstacle" test has not changed, Congress clearly provided for "an affirmative statement of preemption", *id.*, in cases in which the test is not met by state or local requirements. Accordingly, while all previous inconsistency rulings issued by the RSPA were merely advisory, the same tests must now be utilized, both by the RSPA and the courts, in making legally binding preemption determinations.

That the state bonding requirements at issue here constitute an obstacle to the accomplishment and execution of the federal legislation, in violation of section 112(a)(2) of the HMTUSA, is clear. The Department, as noted above, in a prior inconsistency ruling flatly rejected non-Federal bonding requirements. The Department's rationale for condemning the Maryland Heights, Missouri ordinance requiring bonds for hazardous waste-transporting vehicles is equally applicable here—federal regulations already require insurance or bonds for motor carriers transporting hazardous wastes, hazardous substances and other hazardous materials. See 54 FR at 16,311. By determining that "the subject is bonding" is "exclusively Federal", *id.*, the Department recognized that the *very existence* of local or state bonding schemes stands as an obstacle to the Congressional intent that a "multiplicity of state and local regulations and the potential for varying as well as conflicting regulations" be precluded. S. Rep. No. 1192, 93rd Cong., 2d Sess. 37–38 (1974).

In a variety of contexts, the DOT has warned that unless such state requirements are invalidated, other states surely will adopt similar provisions, resulting in multiplicity and hindering the accomplishment of the objectives of the HMTA. See, e.g., Inconsistency Ruling No. 15, 49 FR 46,660, 46,664 (possibility that other states can replicate Vermont user fee, resulting in multiplicity, necessitated finding of inconsistency); Inconsistency Ruling No. 14, 49 FR 46,656, 46,659 (1984); Inconsistency Ruling No. 10, 49 FR 46,665 (1984), correction, 50 FR 1,939 (1985); Inconsistency Ruling No. 8, 49 FR 46,637, 46,661 (1984); Inconsistency Ruling No. 6, 48 FR 760, 765 (1983). Maryland, Massachusetts and Pennsylvania are not, of course, precluded by federal law from assuming any role in the regulation of hazardous materials transport. Their role is, however, strictly confined to the narrow scope permitted by the preemption provisions of the HMTA and HMTUSA. Statewide bonding requirements, like ones imposed by municipalities or counties, exceed the scope of proper non-Federal authority and frustrate the fundamental goals of Congress.

Finally, NSWMA notes that a finding of preemption is totally consistent, not only with the provisions of the HMTA/HMTUSA, but also with basic principles of American federalism. On several occasions, the Supreme Court has found excessive state-imposed transportation requirements given the need for federal uniformity and in light of the potential for multiplicity. In *Bibb* v. *Navajo Freight Lines, Inc.*, 359 U.S. 520 (1959), for example, the Court held invalid a Illinois mudguard requirement for trucks that used the state's highways. Although a unanimous Court recognized the state's authority to regulate the use of its highways was "broad and pervasive", *id.* at 523, it nevertheless held that the impact of the measure upon commerce—especially on "interlining"—was significant and that the safety benefit to the state was "too inconclusive", given the demonstrated burden on commerce. Similarly, in *Kassel* v. *Consolidated Freightways Corp.*, 450 U.S. 662 (1981), the Court rejected a state's argument that a restriction prohibiting certain vehicles from engaging in interstate transport made the state's routes safer. In *City of Burbank* v. *Lockheed Air Terminal*, 411 U.S. 624, 639 (1973), the Court likewise struck down a local ordinance restricting the use of a private airport on the ground that similar restrictions throughout the nation would cripple transportation. Congress has gone further, by setting forth in the HMTA (as amended) specific federal requirements for the demonstration by hazardous materials transporters of financial responsibility. Intervention by the Department is now essential in order to preserve and protect the uniform regulatory system which is essential

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to the safe and efficient transportation of hazardous materials.

IV. Conclusion

For the reasons stated above, NSWMA requests that the Department of Transportation expeditiously grant the relief requested in this Petition. A copy of this Petition has been forwarded to the following by U.S. mail, first-class, return receipt requested:

James P. Snyder, Director, Bureau of Waste Management, Department of Environmental Resources, P.O. Box 2093, Fulton Building, Harrisburg, PA 17120.

Richard Collins, Director, Hazardous & Solid Waste Management Administration, 2500 Broening Highway, Baltimore, MD 21224.

William F. Cass, Director, Division of Hazardous Waste, Department of Environmental Quality Engineering, One Winter Street, 5th Floor, Boston, MA 02108.

Respectively submitted,

John H. Turner,

Association Counsel, National Solid Wastes Management Association (NSWMA), 1730 Rhode Island Ave., NW., suite 1000, Washington, DC 20036, (202) 659–4613.

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Part VI

Department of Education

National Institute on Disability and Rehabilitation Research; State Grants Program for Technology-Related Assistance; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; State Grants Program for Technology-Related Assistance

AGENCY: Department of Education.

Notice Inviting Applications for New Awards Under the State Grants Program for Technology-Related Assistance for Individuals With Disabilities for Fiscal Year 1992

Purpose of Program: This program provides financial assistance to States to assist them in developing and implementing a consumer-responsive, comprehensive statewide program of technology-related assistance for individuals with disabilities.

Deadline For Transmittal of Applications: October 15, 1991.

Applications Available: August 22, 1991.

Eligible Applicants: State entities designated by the Governor as the lead agency.

Available Funds: $5,000,000.

Estimated Average Size of Awards: $500,000.

Estimated Number of Awards: 10.

Project Period: Up to 36 months, with the possibility of a 24 month extension.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), in 34 CFR parts 74, 75 (except § 75.618), 77, 79, 80, 81, 82, 85, 86; and (b) the regulations for this program is 34 CFR part 345.

For Applications Contact: National Institute on Disability and Rehabilitation Research, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202-2601. Attention: Peer Review Unit. Telephone: (202) 732-1141; Deaf or hearing-impaired individuals may call (202) 732-5373 for TDD services.

FOR FURTHER INFORMATION CONTACT: Carol Cohen, National Institute on Disability and Rehabilitation Research, Telephone: (202) 732-5066.

Program Authority: 29 U.S.C. 2201-2271.

Dated: August 7, 1991.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 91-19076 Filed 8-9-91; 8:45 am]

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[FR Doc. 91-19076 Filed 8-9-91; 8:45 am]

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federal register

Monday
August 12, 1991

Part VII

Department of the Treasury

Office of Thrift Supervision

12 CFR Parts 508, 509, 512 and 513
Rules of Practice and Procedure in Adjudicatory Proceedings; Rule

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 508, 509, 512 and 513

[No. 91-464]

RIN 1550-AA35

Rules of Practice and Procedure in Adjudicatory Proceedings

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (the OTS), pursuant to and in accordance with section 916 of the Financial Institution Reform, Recovery and Enforcement Act of 1989, Public Law No. 101-73, 103 Stat. 183, 486 (Section 916) is amending its regulations pertaining to the conduct of administrative hearings. Section 916 requires the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board of Governors), the Federal Deposit Insurance Corporation (FDIC), OTS, and the National Credit Union Administration (NCUA) (collectively referred to herein as the Agencies) to develop a set of uniform rules and procedures for administrative proceedings (Uniform Rules). Section 916 further requires that the Agencies promulgate provisions for summary judgment rulings where no dispute as to the material facts of a case exist.

In compliance with the mandate of Section 916, this final rule promulgates a uniform set of rules for formal enforcement actions common to at least four of the listed agencies. In addition, this final rule promulgates additional regulations to supplement the Uniform Rules (the Local Rules) and makes certain other conforming amendments.

EFFECTIVE DATE: August 12, 1991.

FOR FURTHER INFORMATION CONTACT: C. Dawn Causey, Attorney, Enforcement, (202) 906-7157; Carolyn B. Lieberman, Senior Deputy Chief Counsel, (202) 906-6251; Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

A. General Discussion

Section 916 requires that the Agencies develop a set of uniform rules and procedures for administrative hearings. By including this provision in the Financial Institution Reform, Recovery and Enforcement Act of 1989 (FIRREA), Congress intended that the Agencies, by promulgating uniform procedures, would improve and expedite their administrative proceedings. The statutory provision is a reflection of "recent recommendations of the Administrative Conference of the United States and the House Government Operations Committee." H.R. Rep. No. 54, 101st Cong., 1st Sess., pt. 1, at 396. The Administrative Conference of the United States found in its December 30, 1987, recommendation that "(g)iven the similar statutory bases for these enforcement actions, the five agencies jointly should be able to develop substantially similar rules of procedure and practice for formal enforcement proceedings." 1 CFR 305.87-12.

To comply with the requirements of section 916, the Agencies issued for comment a Joint Notice of Proposed Rulemaking on June 17, 1991 (56 FR 27790). The proposed rule contained one set of Uniform Rules applicable to all the Agencies and separate Local Rules applicable to each agency.

The OTS has received comments on the joint proposed rule and its own Local Rules and is now issuing a final rule. This final rule is intended to standardize procedures for formal administrative actions and to facilitate administrative practice before the Agencies.

Subpart A of OTS's final rule, the "Uniform Rules," sets forth the rules of practice and procedure for those formal enforcement actions that are required by statute to be determined on the record after an opportunity for an administrative hearing and generally replace the procedures governing formal adjudications in 12 CFR part 509, subpart A. Each agency is adopting substantially similar Uniform Rules. The Local Rules in subpart B generally replace the procedures for civil money penalties found in 12 CFR part 509, subpart B, and add further provisions. Civil money penalties and other OTS-specific proceedings are subject to the provisions in both subparts.

The OTS Local Rules address civil money penalties, deposition discovery and additional procedures for the post-hearing process.

B. Summary and Discussion of Uniform and Local Rules

Subpart A. Uniform Rules of Practice and Procedure

This subpart sets forth rules of practice and procedure governing formal administrative actions, includes rules on the commencement of enforcement proceedings, filing and service of papers, motions, discovery, depositions, prehearing conferences, public hearings, hearing subpoenas, conflicts of interest, ex parte communications, rules of evidence, and post-hearing procedures.

Subpart B. Local Rules

There are four basic parts to the OTS Local Rules: An expansion of the scope provisions to include additional OTS proceedings, deposition discovery, civil money penalties and additional clarifying procedures. The appointment of the Office of Financial Institution Adjudication to hear OTS's APA proceedings implements the other statutory directive contained in section 916.

In particular, included in this subpart are the rules for taking the deposition of an expert or of another person, including another party, who has direct knowledge of matters that are non-privileged, relevant and material to the proceeding and where there is a need for the deposition. OTS is adding a demonstration of need in order to make the OTS rule consistent with the rule promulgated by the Office of the Comptroller of the Currency. This uniformity will encourage consistent interpretation of the rules governing deposition discovery.

This provision is not intended to allow unlimited deposition discovery or the taking of senior OTS official's depositions, unless those individuals have personal knowledge about the facts of the case. Rather, it is intended to permit limited deposition discovery of experts and persons having direct knowledge of the facts who may be called on to testify at the administrative hearing.

This subpart also provides that at the request of a party, the administrative law judge shall issue a subpoena requiring the attendance of a witness at a deposition. The party requesting the subpoena is responsible for serving it on the person named therein, or on that person's counsel. The person named in the subpoena or any other party to the proceeding may file a motion to quash or modify the subpoena within the time for compliance set forth in the subpoena, but in no case later than ten days after the date of service.

Also included in the OTS Local Rules is a provision on the presence of cameras and other recording devices in administrative proceedings. As proposed, the provision would have allowed the Director to consider petitions to allow electronic media to be present during administrative hearings. Upon further consideration, OTS has determined that it is inappropriate to allow cameras and other recording devices (other than those used by the court reporter) to be used during administrative hearings and the provision has been modified accordingly. See, 1 CFR 305.72–1 (1991). This provision codifies recent OTS procedures in several administrative proceedings. See, OTS Order No. 90–1714, dated September 18, 1990, concerning the use of cameras in the Neil M. Bush administrative hearing. However, § 509.4 would allow the Director to waive this prohibition if the Director determined that circumstances presently unforeseen so warrant.

C. Response to Comments

1. Uniform Rules

In response to the June 17, 1991, joint notice of proposed rulemaking, the Agencies received three comments: 2 from law firms and 1 from a trade association. The Agencies have jointly reviewed the portions of the comments concerning the Uniform Rules.

One of the commenters criticized the proposed rule for failing to accommodate default situations where good cause could be shown for the failure to file an answer (§ 509.19(c)(1)). This comment reflects a misunderstanding of the proposal. The rulemaking empowers the administrative law judge to extend time limits for good cause (§ 509.13), and requires that default judgments be entered only upon a motion for default filed by Enforcement Counsel (§ 509.19). This latter proceeding provides respondents with an opportunity to oppose the motion. Because of the confusion evidenced by the comment, the final rule has been amended to make the motion for default process more explicit.

Another issue raised by a commenter concerned the differences in procedures for formal investigations, Equal Access to Justice Act implementation, sanctions and a number of other procedures. The lack of uniformity in these areas is based on the scope of section 916. As noted above, the purpose behind Section 916 was the improvement and expedition of administrative APA proceedings. *Cf.* H.R. Conf. Rep. No. 222, 101st Cong., 1st Sess. 442 (1989). The statutory mandate for the promulgation of these regulations is coupled with the requirement for the several Agencies to create a "pool" of administrative law judges. The clear Congressional intent is that these Uniform Rules be developed for use by the Agencies in actions before the "pool" or "OFIA" as that entity is referred to in this rulemaking. Accordingly, the inclusion of non-APA proceedings would exceed the statutory mandate of Section 916 and presents practical implementation problems as well.

For example, the Uniform Rules do not contain provisions governing formal investigations. This is because such an investigation is not an APA proceeding. In addition, the statutory authority for formal investigations arises in several statutes, not just the Federal Deposit Insurance Act, and the Agencies have differing policies concerning the frequency, length and procedures for formal investigations. This diversity in statutory authority is reflected in the independent and separate procedures of each agency. OTS's rules governing formal investigations, for example, are found in an entirely different part of its regulations, 12 CFR part 512, and were not republished as part of the promulgation of this rulemaking.

Likewise, the Uniform Rules do not contain provisions addressing the Equal Access to Justice Act. Again, the diversity of agency structure is a determining factor here. Both the OCC and the OTS are bureaus of the U.S. Department of Treasury. As such, they are subject to Treasury's Equal Access to Justice Act regulatory provisions found at 31 CFR part 6.

Another issue raised by two of the commenters concerned the different positions taken by the Agencies on discovery depositions. The commenters noted that the use of discovery depositions would encourage settlements and would result in the increased use of summary judgment by establishing the absence of disagreement as to material facts.

The scope of discovery in the Uniform Rules was considered at length. It was determined that broad document discovery would be permitted generally; however, it was recognized that there is no constitutional right to prehearing discovery, including deposition discovery. See, *Sims* v. *Nat'l Transp. Safety Bd.*, 662 F.2d 668, 671 (10th Cir. 1981); *P.S.C. Resources, Inc.* v. *NLRB*, 576 F.2d 380, 386 (1st Cir. 1978); *Silverman* v. *Commodity Futures Trading Comm'n*, 549 F2d 28, 33 (7th Cir. 1977). Further, the Administrative Procedure Act contains no provisions for prehearing discovery, and the discovery provisions of the Federal Rules of Civil Procedure are inapplicable to administrative proceedings. *Frillette* v. *Kimberlin*, 508 F.2d 205 (3rd Cir. 1974), *cert. denied*, 421 U.S. 980 (1975). Rather, each agency determines the extent and nature of discovery to which a party in an administrative hearing is entitled. *McClelland* v. *Andrus*, 606 F.2d 1278, 1285 (D.C. Cir. 1979).

The Agencies attempted to strike a balance between the interests of respondents in obtaining pretrial disclosure, including discovery depositions, and the Agencies' need for swift adjudication while preserving limited resources. This process included taking into account the various interests and concerns of both the industry and the general public that each Agency serves, as well as each Agency's own institutional interests and concerns. The contrasting interests and concerns are reflected in the types, complexity and quantity of enforcement actions brought by each agency; the methods of litigation; the structure of each regulator; and the supervisory procedures developed internally by each agency. This process resulted in divergent provisions on the use of discovery depositions.

Thus, the experiences of the OCC, the Board of Governors and the OTS resulted in a finding that limited discovery depositions served a useful purpose by promoting fact finding and in resolving cases expeditiously. However, discovery depositions for the OCC, the Board of Governors and the OTS are limited to witnesses that have factual, direct personal knowledge of the matters at issue. The FDIC and the NCUA have determined that the interests of respondents in further pretrial disclosures in their respective proceedings were mitigated by the availability of extensive document discovery that complements the document intensive nature of their proceedings.

A further comment suggested that the definition of "Decisional employee" in proposed § 509.3(e) be expanded to preclude from service in a decisional capacity any employee of the Agencies who had served within the previous twelve months on the enforcement staff of any of the Agencies. The commenter suggested that this expansion would protect against bias and conflicting interests.

This suggestion is not adopted as the final rule incorporates the formulation of the Administrative Procedure Act (APA). The APA forbids an employee from acting in a decisional capacity in a specific case where the employee has acted in an investigative or prosecutorial function in that same case or in a factually related case. 5 U.S.C. 554(d). Accordingly, Congress has already drawn the line defining conflicts of interest in this context, and the Agencies find no basis for modification.

Another recommendation was made that § 509.18(b) should be modified to require that an agency set forth in a notice not only facts showing that the agency is entitled to relief of some kind but also those facts required for the particular relief requested. The Agencies believe that § 509.18(b) meets those standards for notice pleading set forth in Rule 8 of the Federal Rules of Civil Procedure. The Agencies have determined that this standard for pleadings is sufficient for administrative proceedings. See, *First Nat'l Monetary Corp.* v. *Weinberger*, 819 F.2d 1334, 1339 (6th Cir. 1987); *Boise Cascade Corp.* v. *Fed. Trade Comm'n*, 498 F. Supp. 772, 780 (D. Del. 1980).

One commenter suggested that the proposed rule concerning the severance of proceedings be modified as it was unduly stringent in light of the severity of the sanctions and penalties that the Agencies may impose as part of an administrative enforcement action. The commenter argued that any inconsistency or conflict in the positions of respondents should warrant severance of the proceeding without the necessity of weighing any countervailing interests. The commenter further urged that concerns regarding administrative economy are not entitled to weight in light of the small number of cases that have been adjudicated by the Agencies historically.

This amendment is not adopted in the final rule. A similar weighing test for severance is applied by federal courts in criminal cases. See, *e.g., U.S.* v. *Walton*, 552 F.2d 1354, 1362, (10th Cir.), *cert. denied*, 431 U.S. 959 (1977) (demonstrating that the weighing test appropriately may be applied in cases involving substantial sanctions and penalties). In addition, the general interest in economy and efficiency in resolving an administrative adjudication exists independently of the total volume of adjudications at any particular time. Hence, the historical volume has little impact on the calculation of adjudicatory economy and efficiency.

Another commenter urged modification of § 509.24(c) concerning the nondiscoverability of privileged documents. This commenter objected to the ability of Enforcement Counsel to assert the deliberative process privilege on the ground that, in some cases, it is subject to abuse by Enforcement Counsel seeking to prevent disclosure of relevant and probative material. The commenter suggests, instead, that all material for which the deliberative process privilege is claimed should be produced pursuant to a protective order barring public disclosure, and that § 509.24 should provide for *in camera* inspection of disputed privileged material by the administrative law judge.

The Agencies have concluded that Enforcement Counsel should retain the right to assert the deliberative process privilege at the outset. Ample means to challenge an improper assertion of privilege are available to respondents without modifying § 509.24 to permit a challenge to the assertion of the privilege before the administrative law judge. Confronted with such a challenge, an administrative law judge would need no further specific authority by rule to inquire of Enforcement Counsel as to the basis of the assertion of privilege, to conduct an inspection of the purported privileged material *in camera*, and then to rule whether the privilege can be maintained.

Another of the comments suggested that the determination to seal a document pursuant to § 509.33(b) should be subject to review by an administrative law judge under an abuse of discretion standard. It was further suggested that a respondent should be able to request that certain information such as confidential personal information be filed under seal.

The Uniform Rules accommodate this last concern by permitting a respondent to file a motion to seal a document containing confidential personal information. However, the statutory language of 12 U.S.C. 1818(u)(6) vests the Agencies with exclusive authority to seal all or part of a document if disclosure would be contrary to the public interest. Accordingly, the Agencies disagree with the commenter that this determination should be subject to review by an administrative law judge.

A further comment urged the deletion of § 509.36(c)(2), which provides that any document prepared by a Federal financial institutions regulatory agency or by a state regulatory agency is admissible with or without a sponsoring witness. The commenter argued that the provision violates normal evidentiary standards and raises due process concerns.

The Agencies disagree. The first sentence of § 509.36(c)(2) cross-references § 509.36(a), which makes agency prepared documents subject to the same evidentiary standards as those applicable to non-agency prepared documents. Moreover, the same types of agency prepared documents tend to be introduced into evidence in every case. These documents, such as examination reports, rarely give rise to authentication issues, and the Agencies are of the opinion that requiring a sponsoring witness for such documents needlessly consumes judicial resources and impedes the hearing process.

Yet another comment urged that § 509.39(b)(2) be modified to allow a party to raise new legal arguments in exceptions filed to the administrative law judge's recommended decision and that the Agency Head not be precluded from considering such an argument.

The Agencies agree. The Director, as the Agency Head of OTS, should have the discretion to determine whether a new argument that is raised for the first time in the exceptions should be considered, even if the party had a prior opportunity to make the argument. For example, the Director should have the discretion to consider whether a new argument has important legal and policy implications that warrant further consideration. Accordingly, the language of § 509.39(b)(2) is amended to read that "No exception *need* be considered * * *." (emphasis added).

The Agencies do not agree that the Agency Head should, in effect, be required to consider new arguments raised for the first time in the exceptions. Such a provision may encourage careless or even deceptive pleading. Generally, a party should be permitted to submit a new argument only if there was no previous opportunity to present the argument, *e.g.*, a relevant court decision has been issued in the interim since the filing of the recommended decision.

Another suggestion forwarded by a commenter concerned the publication of enforcement orders and actions. Indeed, Congress has already addressed this concern when it amended 12 U.S.C. 1818(u) in title XXV, the "Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990" of the Crime Control Act of 1990, Public Law No. 101–647, 104 Stat. 4789. The Agencies are required by statute to publish all final orders and other documents subject to enforcement action. Each of the Agencies has procedures implementing this statutory directive and most, if not all, enforcement decisions may be found by consulting the Public Reading Rooms or libraries of each agency. In addition, Agencies frequently issues press releases concerning recent cases and decisions.

2. OTS Local Rules

One commenter urged deletion of § 509.103(a), expressing the view that its rationale was unclear in light of the characterization of civil money penalties as a "penal sanction" in *First National Bank of Gordon* v. *Dept. of the Treasury*, 911 F.2d 64 (8th Cir. 1990). It is evident from the language of the civil money penalty provisions in FIRREA, as well as from the legislative history, that civil money penalties are intended both to remedy wrongful conduct and to deter such conduct in the future and, accordingly, do not constitute penal sanctions. In these circumstances, OTS does not believe it is necessary to provide a description of civil money penalties and subsection (a) of proposed § 509.103 has been deleted.

Similarly, OTS has deleted subsection (d) to proposed § 509.103 because it merely restates the statutory considerations of FIRREA. Both FIRREA and its legislative history are clear as to the various factors that OTS must consider when assessing civil money penalties. See, H. Rept. No. 54, 101st Cong. 1st Sess., pt. 1, at 469, reprinted in 1989 U.S. Code Cong. & Admin. News 265, citing with approval the 13 factors contained in the 1980 interagency policy issued by the Federal Financial Institution's Examination Council. The remaining subsections of § 509.103 have been redesignated as subparagraphs (a) and (b).

The commenter further noted that the assessment order for civil money penalties should contain sufficient grounds properly pleaded in the notice. OTS agrees with the commenter. However, the standard for a notice of assessment enumerated is sufficient as explained in the OTS's response to the comment on the sufficiency of notices in the Uniform Rules. For this reason, OTS is not implementing the commenter's suggestion.

This commenter also disagreed with proposed § 509.104(e) concerning extensions of time to render decisions by the Director. The commenter misreads the cited case, *Saratoga Savings & Loan Ass'n* v. *Fed, Home Loan Bank Board,* 879 F.2d 689 (9th Cir. 1989), and OTS is adopting as final the rule as proposed.

The commenter also suggested that OTS adopt rules for sanctions against parties who engage in improper conduct during agency proceedings. OTS directs the commener's attention to 12 CFR part 513. That part allows the OTS to suspend or debar, either temporarily or permanently, attorneys and others from practicing before the Office if the OTS makes a determination that the individual: (i) Lacks the necessary qualifications to represent others; (ii) is lacking in character or professional integrity; (iii) has engaged in dilatory, obstructionist, egregious, contemptuous, contumacious or other unethical or improper professional conduct; or (iv) has willfully violated or willfully aided or abetted the violation of any laws or regulations for which the OTS has jurisdiction. 12 CFR 513.4(a). A recommendation for such a suspension or debarment proceedings against obstructionist counsel may be made by the administrative law judge to OTS under § 509.6(b). As OTS is not making any substantive changes to the provisions of part 513, there was no need to republish those rules as part of this rulemaking.

D. Additional Modifications to the Rule

In conjunction with the other Agencies, the OTS is amending the Uniform Rules to replace generic definitional terms with terms specifically applicable to the OTS. Thus, the OTS is replacing the term "Agency Head" and "Agency" with "Director" and "Office" and is restricting the "scope" provision to those statutes applicable to OTS. Further conforming changes have been made to the definitions of Local Rules, Uniform Rules and OFIA. Each of the other Agencies has made similar changes.

The purpose of these changes is to make the Uniform Rules easier to understand and use. These changes do not affect the substance of the Uniform Rules.

In addition to the changes already noted, the OTS is also making various other minor technical and conforming changes to the Uniform and Local Rules to improve the clarity and consistency of the rules, including the correction of additional out-of-date cross references.

E. Administrative Procedure Act

The Director is adopting this regulation effective upon publication in the **Federal Register**, without the usual 30-day delay of effectiveness provided for in 5 U.S.C. 553 of the APA. While the APA requires publication of a substantive regulation not less than thirty days before its effective date, the delayed effective date requirement may be waived for "good cause."

Good cause for the waiver of the 30-day requirement may be found if the delayed effective date is "impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b). *See Central Lincoln Peoples' Utility Distr.* v. *Johnson,* 735 F.2d 1101 (9th Cir. 1984). The necessity for compliance with a statutorily prescribed time limit can also contribute to a finding of good cause. *See Philadelphia Citizens in Action* v. *Schweiker,* 669 F.2d 877, 888 (3d Cir. 1982). In the present case, the implementation of a delayed effective date would impair the ability of the Agencies to comply with the statutory mandate in Section 916 and would be contrary to the public interest.

Section 916 contains a dual mandate from Congress to the Agencies to (1) establish their own pool of administrative law judges (OFIA), and (2) develop Uniform Rules and procedures for administrative hearings "[b]efore the close of the 24-month period beginning on the date of the enactment of this Act (August 9, 1989)." In order to address properly these two mandates, the Uniform Rules and the establishment of OFIA should be implemented in a coordinated and synchronized manner. If OFIA is established prior to the effective date of this rulemaking, OFIA would be required to adjudicate some cases under the prior, divergent rules of each Agency. As the proceedings filed with OFIA will be primarily new actions, use of the new Uniform Rules rather than the prior versions will reduce significantly the potential for confusion and more appropriately fulfill the mandate of section 916. It would, therefore, be contrary to the public interest to delay the effective date for implementation of this rulemaking.

F. Applicability of Rules to Enforcement Proceedings

Part 509, as revised by this final rule, applies to any proceeding that is commenced by the issuance of a notice on or after August 12, 1991. The former version of part 509 applies to any proceeding commenced prior to August 12, 1991 unless, with the consent of the administrative law judge, the parties agree to have the proceeding governed by revised part 509.

G. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is certified that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

H. Executive Order 12291

The OTS has determined that this rule does not constitute a "major rule" and, therefore, does not require the preparation of a regulatory impact analysis.

List of Subjects

12 CFR Part 508

Administrative practice and procedure, Crime, Savings associations.

12 CFR Part 509

Administrative practice and procedure, Penalties.

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12 CFR Part 512

Administrative practice and procedure, Investigations.

12 CFR Part 513

Accountants, Administrative practice and procedure, Lawyers.

Accordingly, the OTS hereby amends parts 508, 509, 512, and 513, subchapter A, chapter V, title 12, Code of Federal Regulations, as set forth below:

SUBCHAPTER A—ORGANIZATION AND PROCEDURES

PART 508—[AMENDED]

1. The authority citation for part 508 continues to read as follows:

Authority: Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 2, 64 Stat. 879, as amended (12 U.S.C. 1818).

2. Section 508.4(b) is amended by removing the number "§ 509.9" and substituting in lieu thereof the number "§ 509.11".

3. Section 508.6(c) is amended by removing the number "§ 509.5" and substituting in lieu thereof the number "§ 509.6".

4. Section 508.7(a) is amended by removing the number "§ 509.4" and substituting in lieu thereof the number "§ 509.5".

5. Section 508.13(b) is amended by removing "§ 509.27(b) and substituting in lieu thereof the number "§ 509.39".

6. Section 508.14 is amended by removing the phrase "§§ 509.9, 509.10, 509.11, 509.12, and" and substituting in lieu thereof the phrase "§§ 509.10, 509.11, and 509.12".

7. Part 509 is revised to read as follows:

PART 509—RULES OF PRACTICE AND PROCEDURE IN ADJUDICATORY PROCEEDINGS

Subpart A—Uniform Rules of Practice and Procedure

Sec.
509.1 Scope.
509.2 Rules of construction.
509.3 Definitions.
509.4 Authority of Director.
509.5 Authority of the administrative law judge.
509.6 Appearance and practice in adjudicatory proceedings.
509.7 Good faith certification.
509.8 Conflicts of interest.
509.9 Ex parte communications.
509.10 Filing of papers.
509.11 Service of papers.
509.12 Construction of time limits.
509.13 Change of time limits.
509.14 Witness fees and expenses.
509.15 Opportunity for informal settlement.
509.16 Office's right to conduct examination.
509.17 Collateral attacks on adjudicatory proceeding.
509.18 Commencement of proceeding and contents of notice.
509.19 Answer.
509.20 Amended pleadings.
509.21 Failure to appear.
509.22 Consolidation and severance of actions.
509.23 Motions.
509.24 Scope of document discovery.
509.25 Request for document discovery from parties.
509.26 Document subpoenas to nonparties.
509.27 Deposition of witness unavailable for hearing.
509.28 Interlocutory review.
509.29 Summary disposition.
509.30 Partial summary disposition.
509.31 Scheduling and prehearing conferences.
509.32 Prehearing submissions.
509.33 Public hearings.
509.34 Hearing subpoenas.
509.35 Conduct of hearings.
509.36 Evidence.
509.37 Proposed findings and conclusions.
509.38 Recommended decision and filing of record.
509.39 Exceptions to recommended decision.
509.40 Review by Director.
509.41 Stays pending judicial review.

Subpart B—Local Rules

Sec.
509.100 Scope.
509.101 Appointment of Office of Financial Institution Adjudication.
509.102 Discovery.
509.103 Civil money penalties.
509.104 Additional procedures.

Authority: 5 U.S.C. 556; 12 U.S.C. 1464, 1467, 1467a, 1813; 15 U.S.C. 78*l*.

Subpart A—Uniform Rules of Practice and Procedure

§ 509.1 Scope.

This subpart prescribes Uniform Rules of practice and procedure applicable to adjudicatory proceedings as to which hearings on the record are provided for by the following statutory provisions:

(a) Cease-and-desist proceedings under section 8(b) of the Federal Deposit Insurance Act (FDIA) (12 U.S.C. 1818(b));

(b) Removal and prohibition proceedings under section 8(e) of the FDIA (12 U.S.C. 1818(e));

(c) Change-in-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)) to determine whether the or the Office should issue an order to approve or disapprove a person's proposed acquisition of an institution and/or institution holding company;

(d) Proceedings under section 15C(c)(2) of the Securities Exchange Act of 1934 (Exchange Act) (15 U.S.C. 78o-5), to impose sanctions upon any government securities broker or dealer or upon any person associated or seeking to become associated with a government securities broker or dealer for which the Office is the appropriate Office;

(e) Assessment of civil money penalties by the Office against institutions, institution-affiliated parties, and certain other persons for which it is the appropriate Office for any violation of:

(1) Section 5 of the Home Owners' Loan Act (HOLA) or any regulation or order issued thereunder, pursuant to 12 U.S.C. 1464 (d), (s) and (v);

(2) Section 9 of the HOLA or any regulation or order issued thereunder, pursuant to 12 U.S.C. 1467(d);

(3) Section 10 of the HOLA, pursuant to 12 U.S.C. 1467a (i) and (r);

(4) Any provisions of the Change in Bank Control Act, any regulation or order issued thereunder or certain unsafe or unsound practices or breaches of fiduciary duty, pursuant to 12 U.S.C. 1817(j)(16);

(5) Sections 22(h) and 23 of the Federal Reserve Act, or any regulation issued thereunder or certain unsafe or unsound practices or breaches of fiduciary duty, pursuant to 12 U.S.C. 1468;

(6) Certain provisions of the Exchange Act, pursuant to section 21B of the Exchange Act (15 U.S.C. 78u-2);

(7) Section 1120 of Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. 3349), or any order or regulation issued thereunder; and

(8) The terms of any final or temporary order issued or enforceable pursuant to section 8 of the FDIA or of any written agreement executed by the Office, the terms of any conditions imposed in writing by the Office in connection with the grant of an application or request, certain unsafe or unsound practices or breaches of fiduciary duty, or any law or regulation not otherwise provided herein pursuant to 12 U.S.C. 1818(i)(2);

(f) This subpart also applies to all other adjudications required by statute to be determined on the record after opportunity for an agency hearing, unless otherwise specifically provided for in the Office's Local Rules.

§ 509.2 Rules of construction.

For purposes of this subpart:

(a) Any term in the singular includes the plural, and the plural includes the singular, if such use would be appropriate;

(b) Any use of a masculine, feminine, or neuter gender encompasses all three, if such use would be appropriate;

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(e) Assessment of civil money penalties by the Office against institutions, institution-affiliated parties, and certain other persons for which it is the appropriate Office for any violation of:

(1) Section 5 of the Home Owners' Loan Act (HOLA) or any regulation or order issued thereunder, pursuant to 12 U.S.C. 1464 (d), (s) and (v);

(2) Section 9 of the HOLA or any regulation or order issued thereunder, pursuant to 12 U.S.C. 1467(d);

(3) Section 10 of the HOLA, pursuant to 12 U.S.C. 1467a (i) and (r);

(4) Any provisions of the Change in Bank Control Act, any regulation or order issued thereunder or certain unsafe or unsound practices or breaches of fiduciary duty, pursuant to 12 U.S.C. 1817(j)(16);

(5) Sections 22(h) and 23 of the Federal Reserve Act, or any regulation issued thereunder or certain unsafe or unsound practices or breaches of fiduciary duty, pursuant to 12 U.S.C. 1468;

(6) Certain provisions of the Exchange Act, pursuant to section 21B of the Exchange Act (15 U.S.C. 78u–2);

(7) Section 1120 of Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. 3349), or any order or regulation issued thereunder; and

(8) The terms of any final or temporary order issued or enforceable pursuant to section 8 of the FDIA or of any written agreement executed by the Office, the terms of any conditions imposed in writing by the Office in connection with the grant of an application or request, certain unsafe or unsound practices or breaches of fiduciary duty, or any law or regulation not otherwise provided herein pursuant to 12 U.S.C. 1818(i)(2);

(f) This subpart also applies to all other adjudications required by statute to be determined on the record after opportunity for an agency hearing, unless otherwise specifically provided for in the Office's Local Rules.

§ 509.2 Rules of construction.

For purposes of this subpart:

(a) Any term in the singular includes the plural, and the plural includes the singular, if such use would be appropriate;

(b) Any use of a masculine, feminine, or neuter gender encompasses all three, if such use would be appropriate;

(c) The term *counsel* includes a non-attorney representative; and

(d) Unless the context requires otherwise, a party's counsel of record, if any, may, on behalf of that party, take any action required to be taken by the party.

§ 509.3 Definitions.

For purposes of this subpart, unless explicitly stated to the contrary:

(a) *Administrative law judge* means one who presides at an administrative hearing under authority set forth at 5 U.S.C. 556.

(b) *Adjudicatory proceeding* means a proceeding conducted pursuant to these rules and leading to the formulation of a final order other than a regulation.

(c) *Decisional employee* means any member of the Office's or administrative law judge's staff who has not engaged in an investigative or prosecutorial role in a proceeding and who may assist the Office or the administrative law judge, respectively, in preparing orders, recommended decisions, decisions, and other documents under the Uniform Rules.

(d) *Director* means the Director of the Office of Thrift Supervision or his or her designee.

(e) *Enforcement Counsel* means any individual who files a notice of appearance as counsel on behalf of the Office in an adjudicatory proceeding.

(f) *Final order* means an order issued by the Office with or without the consent of the affected institution or the institution-affiliated party, that has become final, without regard to the pendency of any petition for reconsideration or review.

(g) *Institution* includes any savings association as that term is defined in section 3(b) of the FDIA (12 U.S.C. 1813(b)), any savings and loan holding company or any subsidiary thereof whether wholly or partly owned (other than a bank) as those terms are defined in section 10(a) of the HOLA (12 U.S.C. 1467(a)).

(h) *Institution-affiliated party* means any institution-affiliated party as that term is defined in section 3(u) of the FDIA (12 U.S.C. 1813(u)).

(i) *Local Rules* means those rules found in subpart B of this part.

(j) *Office* means the Office of Thrift Supervision in the case of any savings association or any savings and loan holding company, and subsidiary (other than a bank or subsidiary of that bank) of a savings and loan holding company, any service corporation of a savings association, and any subsidiary of such service corporation, whether wholly or partly owned.

(k) *Office of Financial Institution Adjudication* (OFIA) means the executive body charged with overseeing the administration of administrative enforcement proceedings for the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve Board, the Federal Deposit Insurance Corporation, the National Credit Union Administration and the Office.

(l) *Party* means the Office and any person named as a party in any notice.

(m) *Person* means an individual, sole proprietor, partnership, corporation, unincorporated association, trust, joint venture, pool, syndicate, agency or other entity or organization, including an institution as defined in paragraph (g) of this section.

(n) *Respondent* means any party other than the Office.

(o) *Uniform Rules* means those rules in subpart A of this part.

(p) *Violation* includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

§ 509.4 Authority of Director.

The Director may, at any time during the pendency of a proceeding perform, direct the performance of, or waive performance of, any act which could be done or ordered by the administrative law judge.

§ 509.5 Authority of the administrative law judge.

(a) *General rule.* All proceedings governed by this part shall be conducted in accordance with the provisions of chapter 5 of title 5 of the United States Code. The administrative law judge shall have all powers necessary to conduct a proceeding in a fair and impartial manner and to avoid unnecessary delay.

(b) *Powers.* The administrative law judge shall have all powers necessary to conduct the proceeding in accordance with paragraph (a) of this section, including the following powers:

(1) To administer oaths and affirmations;

(2) To issue subpoenas, subpoenas duces tecum, and protective orders, as authorized by this part, and to quash or modify any such subpoenas and orders;

(3) To receive relevant evidence and to rule upon the admission of evidence and offers of proof;

(4) To take or cause depositions to be taken as authorized by this subpart;

(5) To regulate the course of the hearing and the conduct of the parties and their counsel;

(6) To hold scheduling and/or pre-hearing conferences as set forth in § 509.31 of this subpart;

(7) To consider and rule upon all procedural and other motions appropriate in an adjudicatory proceeding, provided that only the Director shall have the power to grant any motion to dismiss the proceeding or to decide any other motion that results in a final determination of the merits of the proceeding;

(8) to prepare and present to the Director a recommended decision as provided herein;

(9) To recuse himself or herself by motion made by a party or on his or her own motion;

(10) To establish time, place and manner limitations on the attendance of the public and the media for any public hearing; and

(11) To do all other things necessary and appropriate to discharge the duties of a presiding officer.

§ 509.6 Appearance and practice in adjudicatory proceedings.

(a) *Appearance before an Office or an administrative law judge.*—(1) *By attorneys.* Any member in good standing of the bar of the highest court of any state, commonwealth, possession, territory of the United States, or the District of Columbia may represent others before the Office if such attorney is not currently suspended or debarred from practice before the Office.

(2) *By non-attorneys.* An individual may appear on his or her own behalf; a member of a partnership may represent the partnership; a duly authorized officer, director, or employee of any government unit, agency, institution, corporation or authority may represent that unit, agency, institution, corporation or authority if such officer, director, or employee is not currently suspended or debarred from practice before the Office.

(3) *Notice of appearance.* Any individual acting as counsel on behalf of a party, including the Office, shall file a notice of appearance with the OFIA at or before the time that individual submits papers or otherwise appears on behalf of a party in the adjudicatory proceeding. Such notice of appearance shall include a written declaration that the individual is currently qualified as provided in paragraph (a)(1) or (a)(2) of this section and is authorized to represent the particular party. By filing a notice of appearance on behalf of a party in an adjudicatory proceeding, the counsel thereby agrees, and represents that he or she is authorized, to accept

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service on behalf of the represented party.

(b) *Sanctions.* Dilatory, obstructionist, egregious, contemptuous or contumacious conduct at any phase of any adjudicatory proceeding may be grounds for exclusion or suspension of counsel from the proceeding.

§ 509.7 Good faith certification.

(a) *General requirement.* Every filing or submission of record following the issuance of a notice shall be signed by at least one counsel of record in his or her individual name and shall state that counsel's address and telephone number. A party who acts as his or her own counsel shall sign his or her individual name and state his or her address and telephone number on every filing or submission of record.

(b) *Effect of signature.* (1) The signature of counsel or a party shall constitute a certification that: the counsel or party has read the filing or submission of record; to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the filing or submission of record is well-grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and the filing or submission of record is not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) If a filing or submission of record is not signed, the administrative law judge shall strike the filing or submission of record, unless it is signed promptly after the omission is called to the attention of the pleader or movant.

(c) *Effect of making oral motion or argument.* The act of making any oral motion or oral argument by any counsel or party constitutes a certification that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, his or her statements are well-grounded in fact and are warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and are not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

§ 509.8 Conflicts of interest.

(a) *Conflict of interest in representation.* No person shall appear as counsel for another person in an adjudicatory proceeding if it reasonably appears that such representation may be materially limited by that counsel's responsibilities to a third person or by the counsel's own interests. The administrative law judge may take corrective measures at any stage of a proceeding to cure a conflict of interest in representation, including the issuance of an order limiting the scope of representation or disqualifying an individual from appearing in a representative capacity for the duration of the proceeding.

(b) *Certification and waiver.* If any person appearing as counsel represents two or more parties to an adjudicatory proceeding or a party and an institution to which notice of the proceeding must be given, counsel must certify in writing at the time of filing the notice of appearance required by § 509.6(a) of this subpart:

(1) That the counsel has personally and fully discussed the possibility of conflicts of interest with each such party or institution;

(2) That each such party or institution has advised its counsel that to its knowledge there is no existing or anticipated material conflict between its interests and the interests of others represented by the same counsel or his or her firm; and

(3) That each such party or institution waives any right it might otherwise have had to assert any known conflicts of interest or to assert any non-material conflicts of interest during the course of the proceeding.

§ 509.9 Ex parte communications.

(a) *Definition*—(1) *Ex parte communication* means any material or oral or written communication concerning the merits of an adjudicatory proceeding that was neither on the record nor on reasonable prior notice to all parties that takes place between:

(i) A party, his or her counsel, or another person interested in the proceeding; and

(ii) The administrative law judge handling that proceeding, the Director or a decisional employee.

(2) *Exception.* A request for status of the proceeding does not constitute an ex parte communication.

(b) *Prohibition of ex parte communications.* From the time the notice is issued by the Director until the date that the Director issues its final decision pursuant to § 509.40(c) of this subpart, no party, interested person or counsel therefor shall knowingly make or cause to be made an ex parte communication concerning the merits of the proceeding to the Director, the administrative law judge, or a decisional employee. The Director, administrative law judge, or decisional employee shall not knowingly make or cause to be made to a party, or any interested person or counsel therefor, an ex parte communication relevant to the merits of a proceeding.

(c) *Procedure upon occurrence of ex parte communication.* If an ex parte communication is received by the administrative law judge, the Director or other person identified in paragraph (a) of this section, that person shall cause all such written communications (or, if the communication is oral, a memorandum stating the substance of the communication) to be placed on the record of the proceeding and served on all parties. All other parties to the proceeding shall have an opportunity, within ten days of receipt of service of the ex parte communication to file responses thereto and to recommend any sanctions, in accordance with paragraph (d) of this section, that they believe to be appropriate under the circumstances.

(d) *Sanctions.* Any party or his or her counsel who makes a prohibited ex parte communication, or who encourages or solicits another to make any such communication, may be subject to any appropriate sanction or sanctions imposed by the Director or the administrative law judge including, but not limited to, exclusion from the proceedings and an adverse ruling on the issue which is the subject of the prohibited communication.

§ 509.10 Filing of papers.

(a) *Filing.* Any papers required to be filed, excluding documents produced in response to a discovery request pursuant to §§ 509.25 and 509.26 of this subpart, shall be filed with the OFIA, except as otherwise provided.

(b) *Manner of filing.* Unless otherwise specified by the Director or the administrative law judge, filing may be accomplished by:

(1) Personal service;

(2) Delivering the papers to a reliable commercial courier service, overnight delivery service, or to the U.S. Post Office for Express Mail delivery;

(3) Mailing the papers by first class, registered, or certified mail; or

(4) Transmission by electronic media, only if expressly authorized, and upon any conditions specified, by the Director or the administrative law judge. All papers filed by electronic media shall also concurrently be filed in accordance with paragraph (c) of this section as to form.

(c) *Formal requirements as to papers filed*—(1) *Form.* All papers filed must set forth the name, address, and telephone number of the counsel or party making the filing and must be accompanied by a certification setting forth when and how service has been

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(c) *Procedure upon occurrence of ex parte communication.* If an ex parte communication is received by the administrative law judge, the Director or other person identified in paragraph (a) of this section, that person shall cause all such written communications (or, if the communication is oral, a memorandum stating the substance of the communication) to be placed on the record of the proceeding and served on all parties. All other parties to the proceeding shall have an opportunity, within ten days of receipt of service of the ex parte communication to file responses thereto and to recommend any sanctions, in accordance with paragraph (d) of this section, that they believe to be appropriate under the circumstances.

(d) *Sanctions.* Any party or his or her counsel who makes a prohibited ex parte communication, or who encourages or solicits another to make any such communication, may be subject to any appropriate sanction or sanctions imposed by the Director or the administrative law judge including, but not limited to, exclusion from the proceedings and an adverse ruling on the issue which is the subject of the prohibited communication.

§ 509.10 Filing of papers.

(a) *Filing.* Any papers required to be filed, excluding documents produced in response to a discovery request pursuant to §§ 509.25 and 509.26 of this subpart, shall be filed with the OFIA, except as otherwise provided.

(b) *Manner of filing.* Unless otherwise specified by the Director or the administrative law judge, filing may be accomplished by:

(1) Personal service;

(2) Delivering the papers to a reliable commercial courier service, overnight delivery service, or to the U.S. Post Office for Express Mail delivery;

(3) Mailing the papers by first class, registered, or certified mail; or

(4) Transmission by electronic media, only if expressly authorized, and upon any conditions specified, by the Director or the administrative law judge. All papers filed by electronic media shall also concurrently be filed in accordance with paragraph (c) of this section as to form.

(c) *Formal requirements as to papers filed*—(1) *Form.* All papers filed must set forth the name, address, and telephone number of the counsel or party making the filing and must be accompanied by a certification setting forth when and how service has been made on all other parties. All papers filed must be double-spaced and printed or typewritten on 8½ x 11 inch paper, and must be clear and legible.

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(2) *Signature.* All papers must be dated and signed as provided in § 509.7 of this subpart.

(3) *Caption.* All papers filed must include at the head thereof, or on a title page, the name of the Office and of the filing party, the title and docket number of the proceeding, and the subject of the particular paper.

(4) *Number of copies.* Unless otherwise specified by the Director, or the administrative law judge, an original and one copy of all documents and papers shall be filed, except that only one copy of transcripts of testimony and exhibits shall be filed.

§ 509.11 Service of papers.

(a) *By the parties.* Except as otherwise provided, a party filing papers shall serve a copy upon the counsel of record for all other parties to the proceeding so represented, and upon any party not so represented.

(b) *Method of service.* Except as provided in paragraphs (c)(2) and (d) of this section, a serving party shall use one or more of the following methods of service:

(1) Personal service;

(2) Delivering the papers to a reliable commercial courier service, overnight delivery service, or to the U.S. Post Office for Express Mail delivery;

(3) Mailing the papers by first class, registered, or certified mail; or

(4) Transmission by electronic media, only if the parties mutually agree. Any papers served by electronic media shall also concurrently be served in accordance with the requirements of § 509.10(c) of this subpart as to form.

(c) *By the Director or the administrative law judge.* (1) All papers required to be served by the Director or the administrative law judge upon a party who has appeared in the proceeding through a counsel of record, shall be served by any means specified in paragraph (b) of this section.

(2) If a party has not appeared in the proceeding in accordance with § 509.6 of this subpart, the Director or the administrative law judge shall make service by any of the following methods:

(i) By personal service;

(ii) By delivery to a person of suitable age and discretion at the party's residence;

(iii) By registered or certified mail addressed to the party's last known address; or

(iv) By any other method reasonably calculated to give actual notice.

(d) *Subpoenas.* Service of a subpoena may be made by personal service, by delivery to an agent, by delivery to a person of suitable age and discretion at the subpoenaed person's residence, by registered or certified mail addressed to the person's last known address, or in such other manner as is reasonably calculated to give actual notice.

(e) *Area of service.* Service in any state, territory, possession of the United States, or the District of Columbia, on any person or company doing business in any state, territory, possession of the United States, or the District of Columbia, or on any person as otherwise provided by law, is effective without regard to the place where the hearing is held, provided that if service is made on a foreign bank in connection with an action or proceeding involving one or more of its branches or agencies located in any state, territory, possession of the United States, or the District of Columbia, service shall be made on at least one branch or agency so involved.

§ 509.12 Construction of time limits.

(a) *General rule.* In computing any period of time prescribed by this subpart, the date of the act or event from which the designated period of time begins to run is not included. The last day so computed is included unless it is a Saturday, Sunday, or Federal holiday. When the last day is a Saturday, Sunday, or Federal holiday, the period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Intermediate Saturdays, Sundays, and Federal holidays are included in the computation of time, except that, when the time period within which an act is to be performed is ten days or less, intermediate Saturdays, Sundays, and Federal holidays are not included.

(b) *When papers are deemed to be filed or served.* (1) Filing and service are deemed to be effective:

(i) In the case of personal service or same day commercial courier delivery, upon actual service;

(ii) In the case of overnight commercial delivery service, U.S. Express mail delivery, or first class, registered, or certified mail, upon deposit in or delivery to an appropriate point of collection; or

(iii) In the case of transmission by electronic media, as specified by the authority receiving the filing, in the case of filing, and as agreed among the parties, in the case of service.

(2) The effective filing and service dates specified in paragraph (b)(1) of this section may be modified by the Director or administrative law judge in the case of filing or by agreement of the parties in the case of service.

(c) *Calculation of time for service and filing of responsive papers.* Whenever a time limit is measured by a prescribed period from the service of any notice or paper, the applicable time limits are calculated as follows:

(1) If service is made by first class, registered or certified mail, add three days to the prescribed period;

(2) If service is made by express mail or overnight delivery service, add one day to the prescribed period; or

(3) If service is made by electronic media transmission, add one day to the prescribed period, unless otherwise determined by the Director or the administrative law judge in the case of filing, or by agreement among the parties in the case of service.

§ 509.13 Change of time limits.

Except as otherwise provided by law, the administrative law judge may, for good cause shown, extend the time limits prescribed by the Uniform Rules or any notice or order issued in the proceedings. After the referral of the case to the Director pursuant to § 509.38 of this subpart, the Director may grant extensions of the time limits for good cause shown. Extensions may be granted at the motion of a party or on the Director's or the administrative law judge's own motion after notice and opportunity to respond is afforded all non-moving parties.

§ 509.14 Witness fees and expenses.

Witnesses subpoenaed for testimony or deposition shall be paid the same fees for attendance and mileage as are paid in the United States district courts in proceedings in which the United States is a party, provided that, in the case of a discovery subpoena addressed to a party, no witness fees or mileage need be paid. Fees for witnesses shall be tendered in advance by the party requesting the subpoena, except that fees and mileage need not be tendered in advance where the Office is the party requesting the subpoena. The Office shall not be required to pay any fees to, or expenses of, any witness not subpoenaed by the Office.

§ 509.15 Opportunity for informal settlement.

Any respondent may, at any time in the proceeding, unilaterally submit to Enforcement Counsel written offers or proposals for settlement of a proceeding, without prejudice to the rights of any of the parties. No such offer or proposal shall be made to any Office representative other than Enforcement

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Counsel. Submission of a written settlement offer does not provide a basis for adjourning or otherwise delaying all or any portion of a proceeding under this part. No settlement offer or proposal, or any subsequent negotiation or resolution, is admissible as evidence in any proceeding.

§ 509.16 Office's right to conduct examination.

Nothing contained in this subpart limits in any manner the right of the Office to conduct any examination, inspection, or visitation of any institution or institution-affiliated party, or the right of the Office to conduct or continue any form of investigation authorized by law.

§ 509.17 Collateral attacks on adjudicatory proceeding.

If an interlocutory appeal or collateral attack is brought in any court concerning all or any part of an adjudicatory proceeding, the challenged adjudicatory proceeding shall continue without regard to the pendency of that court proceeding. No default or other failure to act as directed in the adjudicatory proceeding within the times prescribed in this subpart shall be excused based on the pendency before any court of any interlocutory appeal or collateral attack.

§ 509.18 Commencement of proceeding and contents of notice.

(a) *Commencement of proceeding.* (1)(i) Except for change-in-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)), a proceeding governed by this subpart is commenced by issuance of a notice by the Director.

(ii) The notice must be served by the Director upon the respondent and given to any other appropriate financial institution supervisory authority where required by law.

(iii) The notice must be filed with the OFIA.

(2) Change-in control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)) commence with the issuance of an order by the Director.

(b) *Contents of notice.* The notice must set forth:

(1) The legal authority for the proceeding and for the Office's jurisdiction over the proceeding;

(2) A statement of the matters of fact or law showing that the Office is entitled to relief;

(3) A proposed order or prayer for an order granting the requested relief;

(4) The time, place, and nature of the hearing as required by law or regulation;

(5) The time within which to file an answer as required by law or regulation;

(6) The time within which to request a hearing as required by law or regulation; and

(7) The answer and/or request for a hearing shall be filed with OFIA.

§ 509.19 Answer.

(a) *When.* Within 20 days of service of the notice, respondent shall file an answer as designated in the notice. In a civil money penalty proceeding, respondent shall also file a request for a hearing within 20 days of service of the notice.

(b) *Content of answer.* An answer must specifically respond to each paragraph or allegation of fact contained in the notice and must admit, deny, or state that the party lacks sufficient information to admit or deny each allegation of fact. A statement of lack of information has the effect of a denial. Denials must fairly meet the substance of each allegation of fact denied; general denials are not permitted. When a respondent denies part of an allegation, that part must be denied and the remainder specifically admitted. Any allegation of fact in the notice which is not denied in the answer must be deemed admitted for purposes of the proceeding. A respondent is not required to respond to the portion of a notice that constitutes the prayer for relief or proposed order. The answer must set forth affirmative defenses, if any, asserted by the respondent.

(c) *Default*—(1) *Effect of failure to answer.* Failure of a respondent to file an answer required by this section within the time provided constitutes a waiver of his or her right to appear and contest the allegations in the notice. If no timely answer is filed, the administrative law judge, upon motion of the Enforcement Counsel, shall file with the Director a recommended decision containing the findings and the relief sought in the notice. Any final order issued by the Director based upon a respondent's failure to answer is deemed to be an order issued upon consent.

(2) *Effect of failure to request a hearing in civil money penalty proceedings.* If respondent fails to request a hearing as required by law within the time provided, the notice of assessment constitutes a final and unappealable order.

§ 509.20 Amended pleadings.

(a) *Amendments.* The notice or answer may be amended or supplemented at any stage of the proceeding by leave of the administrative law judge. Such leave will be freely given. The respondent shall answer an amended notice within the time remaining for the respondent's answer to the original notice, or within ten days after service of the amended notice, whichever period is longer, unless the Director or administrative law judge orders otherwise for good cause shown.

(b) *Amendments to conform to the evidence.* When issues not raised in the notice or answer are tried at the hearing by express or implied consent of the parties, they will be treated in all respects as if they had been raised in the notice or answer, and no formal amendments are required. If evidence is objected to at the hearing on the ground that it is not within the issues raised by the notice or answer, the administrative law judge may allow the notice or answer to be amended and will do so freely when the determination of the merits of the action is served thereby and the objecting party fails to satisfy the administrative law judge that the admission of such evidence would unfairly prejudice the party's action or defense upon the merits. The administrative law judge may grant a continuance to enable the objecting party to meet such evidence.

§ 509.21 Failure to appear.

Failure of a respondent to appear in person at the hearing or by a duly authorized counsel constitutes a waiver of respondent's right to a hearing and is deemed an admission of the facts as alleged and consent to the relief sought in the notice. Without further proceedings or notice to the respondent, the administrative law judge shall file with the Director a recommended decision containing the findings and the relief sought in the notice.

§ 509.22 Consolidation and severance of actions.

(a) *Consolidation.* (1) On the motion of any party, or on the administrative law judge's own motion, the administrative law judge may consolidate, for some or all purposes, any two or more proceedings, if each such proceeding involves or arises out of the same transaction, occurrence or series of transactions or occurrences, or involves at least one common respondent or a material common question of law or fact, unless such consolidation would cause unreasonable delay or injustice.

(2) In the event of consolidation under paragraph (a)(1) of this section, appropriate adjustment to the prehearing schedule must be made to avoid unnecessary expense, inconvenience, or delay.

(b) *Severance.* The administrative law judge may, upon the motion of any

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the time remaining for the respondent's answer to the original notice, or within ten days after service of the amended notice, whichever period is longer, unless the Director or administrative law judge orders otherwise for good cause shown.

(b) *Amendments to conform to the evidence.* When issues not raised in the notice or answer are tried at the hearing by express or implied consent of the parties, they will be treated in all respects as if they had been raised in the notice or answer, and no formal amendments are required. If evidence is objected to at the hearing on the ground that it is not within the issues raised by the notice or answer, the administrative law judge may allow the notice or answer to be amended and will do so freely when the determination of the merits of the action is served thereby and the objecting party fails to satisfy the administrative law judge that the admission of such evidence would unfairly prejudice the party's action or defense upon the merits. The administrative law judge may grant a continuance to enable the objecting party to meet such evidence.

§ 509.21 Failure to appear.

Failure of a respondent to appear in person at the hearing or by a duly authorized counsel constitutes a waiver of respondent's right to a hearing and is deemed an admission of the facts as alleged and consent to the relief sought in the notice. Without further proceedings or notice to the respondent, the administrative law judge shall file with the Director a recommended decision containing the findings and the relief sought in the notice.

§ 509.22 Consolidation and severance of actions.

(a) *Consolidation.* (1) On the motion of any party, or on the administrative law judge's own motion, the administrative law judge may consolidate, for some or all purposes, any two or more proceedings, if each such proceeding involves or arises out of the same transaction, occurrence or series of transactions or occurrences, or involves at least one common respondent or a material common question of law or fact, unless such consolidation would cause unreasonable delay or injustice.

(2) In the event of consolidation under paragraph (a)(1) of this section, appropriate adjustment to the prehearing schedule must be made to avoid unnecessary expense, inconvenience, or delay.

(b) *Severance.* The administrative law judge may, upon the motion of any

party, sever the proceeding for separate resolution of the matter as to any respondent only if the administrative law judge finds that:

(1) Undue prejudice or injustice to the moving party would result from not severing the proceeding; and

(2) Such undue prejudice or injustice would outweigh the interests of judicial economy and expedition in the complete and final resolution of the proceeding.

§ 509.23 Motions.

(a) *In writing.* (1) Except as otherwise provided herein, an application or request for an order or ruling must be made by written motion.

(2) All written motions must state with particularity the relief sought and must be accompanied by a proposed order.

(3) No oral argument may be held on written motions except as otherwise directed by the administrative law judge. Written memoranda, briefs, affidavits or other relevant material or documents may be filed in support of or in opposition to a motion.

(b) *Oral motions.* A motion may be made orally on the record unless the administrative law judge directs that such motion be reduced to writing.

(c) *Filing of motions.* Motions must be filed with the administrative law judge, but upon the filing of the recommended decision, motions must be filed with the Director.

(d) *Responses.* (1) Except as otherwise provided herein, within ten days after service of any written motion, or within such other period of time as may be established by the administrative law judge or the Director, any party may file a written response to a motion. The administrative law judge shall not rule on any oral or written motion before each party has had an opportunity to file a response.

(2) The failure of a party to oppose a written motion or an oral motion made on the record is deemed a consent by that party to the entry of an order substantially in the form of the order accompanying the motion.

(e) *Dilatory motions.* Frivolous, dilatory or repetitive motions are prohibited. The filing of such motions may form the basis for sanctions.

(f) *Dispositive motions.* Dispositive motions are governed by §§ 509.29 and 509.30 of this subpart.

§ 509.24 Scope of document discovery.

(a) *Limits on discovery.* (1) Parties to proceedings under this subpart may obtain document discovery through the production of documents, including writings, drawings, graphs, charts, photographs, recordings, and other data compilations from which information can be obtained, or translated, if necessary, by the parties through detection devices into reasonably usable form.

(2) Discovery by use of deposition is governed by § 509.102 of this part.

(b) *Relevance.* Parties may obtain document discovery regarding any matter, not privileged, which has material relevance to the merits of the pending action. It is not a ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to discovery of admissible evidence. The request may not be unreasonable, oppressive, excessive in scope or unduly burdensome.

(c) *Privileged matter.* Privileged documents are not discoverable. Privileges include the attorney-client privilege, work-product privilege, any government's or government agency's deliberative-process privilege, and any other privileges the Constitution, any applicable act of Congress, or the principles of common law provide.

(d) *Time limits.* All discovery, including all responses to discovery requests, shall be completed at least 20 days prior to the date scheduled for the commencement of the hearing, except as provided in the Local Rules. No exceptions to this time limit shall be permitted, unless the administrative law judge finds on the record that good cause exists for waiving the requirements of this paragraph.

§ 509.25 Request for document discovery from parties.

(a) *General rule.* Any party may serve on any other party a request to produce for inspection any discoverable documents which are in the possession, custody, or control of the party upon whom the request is served. The request must identify the documents to be produced either by individual item or by category, and must describe each item and category with reasonable particularity. Documents must be produced as they are kept in the usual course of business and shall be organized to correspond with the categories in the request.

(b) *Production or copying.* The request must specify a reasonable time, place, and manner for production and performing any related acts. In lieu of inspecting the documents the requesting party may specify that all or some of the responsive documents are to be copied and the copies delivered to the requesting party. If copying of fewer than 250 pages is requested, the party to whom the request is addressed shall bear the cost of copying and shipping charges. If more than 250 pages of copying is requested, the requesting party shall pay for copying, unless the parties agree otherwise, at the current per-page copying rate imposed by the Office's rules at 12 CFR part 505 implementing the Freedom of Information Act (5 U.S.C. 552a) plus the cost of shipping.

(c) *Obligation to update responses.* A party who has responded to a discovery request with a response that was complete when made is not required to supplement the response to include documents thereafter acquired, unless the responding party learns that:

(1) The response was materially incorrect when made; or

(2) The response, though correct when made, is no longer true and a failure to amend the response is, in substance, a knowing concealment.

(d) *Motions to limit discovery.* (1) Any party that objects to a discovery request may, within ten days of being served with such request, file a motion in accordance with the provisions of § 509.23 of this subpart to revoke or otherwise limit the request. If an objection is made to only a portion of an item or category in a request, the portion objected to shall be specified. Any objections not made in accordance with this paragraph and § 509.23 of this subpart are waived.

(2) The party who served the request that is the subject of a motion to revoke or limit may file a written response within five days of service of the motion. No other party may file a response.

(e) *Privilege.* At the time other documents are produced, all documents withheld on the grounds of privilege must be reasonably identified, together with a statement of the basis for the assertion of privilege.

(f) *Motions to compel production.* (1) If a party withholds any documents as privileged or fails to comply fully with a discovery request, the requesting party may, within ten days of the assertion of privilege or of the time the failure to comply becomes known to the requesting party, file a motion in accordance with the provisions of § 509.23 of this subpart for the issuance of a subpoena compelling production.

(2) The party who asserted the privilege or failed to comply with the request may file a written response to a motion to compel within five days of service of the motion. No other party may file a response.

(g) *Ruling on motions.* After the time for filing responses pursuant to this section has expired, the administrative law judge shall rule promptly on all motions filed pursuant to this section. If the administrative law judge determines that a discovery request, or any of its terms, is unreasonable, unduly burdensome, excessive in scope, repetitive of previous requests or seeks to obtain privileged documents, he or she may modify the request, and may issue appropriate protective orders, upon such conditions as justice may require. The pendency of a motion to revoke or limit discovery or to compel production shall not be a basis for staying or continuing the proceeding, unless otherwise ordered by the administrative law judge.

(h) *Enforcing discovery subpoenas.* If the administrative law judge issues a subpoena compelling production of documents by a party, the subpoenaing party may, in the event of noncompliance and to the extent authorized by applicable law, apply to any appropriate United States district court for an order requiring compliance with the subpoena. A party's right to seek court enforcement of a subpoena shall not in any manner limit the sanctions that may be imposed by the administrative law judge against a party who fails to produce subpoenaed documents.

§ 509.26 Document subpoenas to nonparties.

(a) *General rules.* (1) Any party may apply to the administrative law judge for the issuance of a document discovery subpoena addressed to any person who is not a party to the proceeding. The application must contain a proposed document subpoena and a brief statement showing the general relevance and reasonableness of the scope of documents sought. The subpoenaing party shall specify a reasonable time, place, and manner for making production in response to the document subpoena.

(2) A party shall only apply for a document subpoena under this section within the time period during which such party could serve a discovery request under § 509.24(d) of this subpart. The party obtaining the document subpoena is responsible for serving it on the subpoenaed person and for serving copies on all parties. Document subpoenas may be served in any state, territory, or possession of the United States, the District of Columbia, or as otherwise provided by law.

(3) The administrative law judge shall promptly issue any document subpoena requested pursuant to this section. If the administrative law judge determines that the application does not set forth a valid basis for the issuance of the subpoena, or that any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may refuse to issue the subpoena or may issue it in a modified form upon such conditions as may be consistent with the Uniform Rules.

(b) *Motion to quash or modify.* (1) Any person to whom a document subpoena is directed may file a motion to quash or modify such subpoena, accompanied by a statement of the basis for quashing or modifying the subpoena. The movant shall serve the motion on all parties, and any party may respond to such motion within ten days of service of the motion.

(2) Any motion to quash or modify a document subpoena must be filed on the same basis, including the assertion of privilege, upon which a party could object to a discovery request under § 509.25(d) of this subpart, and during the same time limits during which such an objection could be filed.

(c) *Enforcing document subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or any order of the administrative law judge which directs compliance with all or any portion of a document subpoena, the subpoenaing party or any other aggrieved party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with so much of the document subpoena as the administrative law judge has not quashed or modified. A party's right to seek court enforcement of a document subpoena shall in no way limit the sanctions that may be imposed by the administrative law judge on a party who induces a failure to comply with subpoenas issued under this section.

§ 509.27 Deposition of witness unavailable for hearing.

(a) *General rules.* (1) If a witness will not be available for the hearing, a party may apply in accordance with the procedures set forth in paragraph (a)(2) of this section, to the administrative law judge for the issuance of a subpoena, including a subpoena duces tecum, requiring the attendance of the witness at a deposition. The administrative law judge may issue a deposition subpoena under this section upon showing that:

(i) The witness will be unable to attend or may be prevented from attending the hearing because of age, sickness or infirmity, or will otherwise be unavailable;

(ii) The witness' unavailability was not procured or caused by the subpoenaing party;

(iii) The testimony is reasonably expected to be material; and

(iv) Taking the deposition will not result in any undue burden to any other party and will not cause undue delay of the proceeding.

(2) The application must contain a proposed deposition subpoena and a brief statement of the reasons for the issuance of the subpoena. The subpoena must name the witness whose deposition is to be taken and specify the time and place for taking the deposition. A deposition subpoena may require the witness to be deposed at any place within the country in which that witness resides or has a regular place of employment or such other convenient place as the administrative law judge shall fix.

(3) Any requested subpoena that sets forth a valid basis for its issuance must be promptly issued, unless the administrative law judge on his or her own motion, requires a written response or requires attendance at a conference concerning whether the requested subpoena should be issued.

(4) The party obtaining a deposition subpoena is responsible for serving it on the witness and for serving copies on all parties. Unless the administrative law judge orders otherwise, no deposition under this section shall be taken on fewer than ten days' notice to the witness and all parties. Deposition subpoenas may be served in any state, territory, possession of the United States, or the District of Columbia, on any person or company doing business in any state, territory, possession of the United States, or the District of Columbia, or as otherwise permitted by law.

(b) *Objections to deposition subpoenas.* (1) The witness and any party who has not had an opportunity to oppose a deposition subpoena issued under this section may file a motion with the administrative law judge to quash or modify the subpoena prior to the time for compliance specified in the subpoena, but not more than ten days after service of the subpoena.

(2) A statement of the basis for the motion to quash or modify a subpoena issued under this section must accompany the motion. The motion must be served on all parties.

(c) *Procedure upon deposition.* (1) Each witness testifying pursuant to a deposition subpoena must be duly sworn, and each party shall have the right to examine the witness. Objections to questions or documents must be in short form, stating the grounds for the objection. Failure to object to questions or documents is not deemed a waiver except where the ground for the objection might have been avoided if the

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(iv) Taking the deposition will not result in any undue burden to any other party and will not cause undue delay of the proceeding.

(2) The application must contain a proposed deposition subpoena and a brief statement of the reasons for the issuance of the subpoena. The subpoena must name the witness whose deposition is to be taken and specify the time and place for taking the deposition. A deposition subpoena may require the witness to be deposed at any place within the country in which that witness resides or has a regular place of employment or such other convenient place as the administrative law judge shall fix.

(3) Any requested subpoena that sets forth a valid basis for its issuance must be promptly issued, unless the administrative law judge on his or her own motion, requires a written response or requires attendance at a conference concerning whether the requested subpoena should be issued.

(4) The party obtaining a deposition subpoena is responsible for serving it on the witness and for serving copies on all parties. Unless the administrative law judge orders otherwise, no deposition under this section shall be taken on fewer than ten days' notice to the witness and all parties. Deposition subpoenas may be served in any state, territory, possession of the United States, or the District of Columbia, on any person or company doing business in any state, territory, possession of the United States, or the District of Columbia, or as otherwise permitted by law.

(b) *Objections to deposition subpoenas.* (1) The witness and any party who has not had an opportunity to oppose a deposition subpoena issued under this section may file a motion with the administrative law judge to quash or modify the subpoena prior to the time for compliance specified in the subpoena, but not more than ten days after service of the subpoena.

(2) A statement of the basis for the motion to quash or modify a subpoena issued under this section must accompany the motion. The motion must be served on all parties.

(c) *Procedure upon deposition.* (1) Each witness testifying pursuant to a deposition subpoena must be duly sworn, and each party shall have the right to examine the witness. Objections to questions or documents must be in short form, stating the grounds for the objection. Failure to object to questions or documents is not deemed a waiver except where the ground for the objection might have been avoided if the

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objection had been timely presented. All questions, answers, and objections must be recorded.

(2) Any party may move before the administrative law judge for an order compelling the witness to answer any questions the witness has refused to answer or submit any evidence the witness has refused to submit during the deposition.

(3) The deposition must be subscribed by the witness, unless the parties and the witness, by stipulation, have waived the signing, or the witness is ill, cannot be found, or has refused to sign. If the deposition is not subscribed by the witness, the court reporter taking the deposition shall certify that the transcript is a true and complete transcript of the deposition.

(d) *Enforcing subpoenas.* If a subpoenaed person fails to comply with any order of the administrative law judge which directs compliance with all or any portion of a deposition subpoena under paragraph (b) or (c)(2) of this section, the subpoenaing party or other aggrieved party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with the portions of the subpoena that the administrative law judge has ordered enforced. A party's right to seek court enforcement of a deposition subpoena in no way limits the sanctions that may be imposed by the administrative law judge on a party who fails to comply with or procures a failure to comply with, a subpoena issued under this section.

§ 509.28 Interlocutory review.

(a) *General rule.* The Director may review a ruling of the administrative law judge prior to the certification of the record to the Director only in accordance with the procedures set forth in this section and § 509.23 of this subpart.

(b) *Scope of review.* The Director may exercise interlocutory review of a ruling of the administrative law judge if the Director finds that:

(1) The ruling involves a controlling question of law or policy as to which substantial grounds exist for a difference of opinion;

(2) Immediate review of the ruling may materially advance the ultimate termination of the proceeding;

(3) Subsequent modification of the ruling at the conclusion of the proceeding would be an inadequate remedy; or

(4) Subsequent modification of the ruling would cause unusual delay or expense.

(c) *Procedure.* Any request for interlocutory review shall be filed by a party with the administrative law judge within ten days of his or her ruling and shall otherwise comply with § 509.23 of this subpart. Any party may file a response to a request for interlocutory review in accordance with § 509.23(d) of this subpart. Upon the expiration of the time for filing all responses, the administrative law judge shall refer the matter to the Director for final disposition.

(d) *Suspension of proceeding.* Neither a request for interlocutory review nor any disposition of such a request by the Director under this section suspends or stays the proceeding unless otherwise ordered by the administrative law judge or the Director.

§ 509.29 Summary disposition.

(a) *In general.* The administrative law judge shall recommend that the Director issue a final order granting a motion for summary disposition if the undisputed pleaded facts, admissions, affidavits, stipulations, documentary evidence, matters as to which official notice may be taken, and any other evidentiary materials properly submitted in connection with a motion for summary disposition show that:

(1) There is no genuine issue as to any material fact; and

(2) The moving party is entitled to a decision in its favor as a matter of law.

(b) *Biling of motions and responses.* (1) Any party who believes that there is no genuine issue of material fact to be determined and that he or she is entitled to a decision as a matter of law may move at any time for summary disposition in its favor of all or any part of the proceeding. Any party, within 20 days after service of such a motion, or within such time period as allowed by the administrative law judge, may file a response to such motion.

(2) A motion for summary disposition must be accompanied by a statement of the material facts as to which the moving party contends there is no genuine issue. Such motion must be supported by documentary evidence, which may take the form of admissions in pleadings, stipulations, depositions, investigatory depositions, transcripts, affidavits and any other evidentiary materials that the moving party contends support his or her position. The motion must also be accompanied by a brief containing the points and authorities in support of the contention of the moving party. Any party opposing a motion for summary disposition must file a statement setting forth those material facts as to which he or she contends a genuine dispute exists. Such opposition must be supported by evidence of the same type as that submitted with the motion for summary disposition and a brief containing the points and authorities in support of the contention that summary disposition would be inappropriate.

(c) *Hearing on motion.* At the request of any party or on his or her own motion, the administrative law judge may hear oral argument on the motion for summary disposition.

(d) *Decision on motion.* Following receipt of a motion for summary disposition and all responses thereto, the administrative law judge shall determine whether the moving party is entitled to summary disposition. If the administrative law judge determines that summary disposition is warranted, the administrative law judge shall submit a recommended decision to that effect to the Director. If the administrative law judge finds that no party is entitled to summary disposition, he or she shall make a ruling denying the motion.

§ 509.30 Partial summary disposition.

If the administrative law judge determines that a party is entitled to summary disposition as to certain claims only, he or she shall defer submitting a recommended decision as to those claims. A hearing on the remaining issues must be ordered. Those claims for which the administrative law judge has determined that summary disposition is warranted will be addressed in the recommended decision filed at the conclusion of the hearing.

§ 509.31 Scheduling and prehearing conferences.

(a) *Scheduling conference.* Within 30 days of service of the notice or order commencing a proceeding or such other time as parties may agree, the administrative law judge shall direct counsel for all parties to meet with him or her in person at a specified time and place prior to the hearing or to confer by telephone for the purpose of scheduling the course and conduct of the proceeding. This meeting or telephone conference is called a "scheduling conference." The identification of potential witnesses, the time for and manner of discovery, and the exchange of any prehearing materials including witness lists, statements of issues, stipulations, exhibits and any other materials may also be determined at the scheduling conference.

(b) *Prehearing conferences.* The administrative law judge may, in addition to the scheduling conference, on his or her own motion or at the request of any party, direct counsel for the parties to meet with him or her (in person or by telephone) at a prehearing conference to address any or all of the following:

(1) Simplification and clarification of the issues;

(2) Stipulations, admissions of fact, and the contents, authenticity and admissibility into evidence of documents;

(3) Matters of which office notice may be taken;

(4) Limitation of the number of witnesses;

(5) Summary disposition of any or all issues;

(6) Resolution of discovery issues or disputes;

(7) Amendments to pleadings; and

(8) Such other matters as may aid in the orderly disposition of the proceeding.

(c) *Transcript.* The administrative law judge, in his or her discretion, may require that a scheduling or prehearing conference be recorded by a court reporter. A transcript of the conference and any materials filed, including orders, becomes part of the record of the proceeding. A party may obtain a copy of the transcript at its expense.

(d) *Scheduling or prehearing orders.* At or within a reasonable time following the conclusion of the scheduling conference or any prehearing conference, the administrative law judge shall serve on each party an order setting forth any agreements reached and any procedural determinations made.

§ 509.32 Prehearing submissions.

(a) Within the time set by the administrative law judge, but in no case later than 14 days before the start of the hearing, each party shall serve on every other party, his or her:

(1) Prehearing statement;

(2) Final list of witnesses to be called to testify at the hearing, including name and address of each witness and a short summary of the expected testimony of each witness;

(3) List of the exhibits to be introduced at the hearing along with a copy of each exhibit; and

(4) Stipulations of fact, if any.

(b) *Effect of failure to comply.* No witness may testify and no exhibits may be introduced at the hearing if such witness or exhibit is not listed in the prehearing submissions pursuant to paragraph (a) of this section, except for good cause shown.

§ 509.33 Public hearings.

(a) *General rule.* All hearings shall be open to the public, unless the Office, in its discretion, determines that holding an open hearing would be contrary to the public interest. Within 20 days of service of the notice or, in the case of change-in-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)), within 20 days from service of the hearing order, any respondent may file with the Director a request for a private hearing, and any party may file a pleading in reply to such a request. Such requests and replies are governed by § 509.23 of this subpart. Failure to file a request or a reply is deemed a waiver of any objections regarding whether the hearing will be public or private.

(b) *Filing document under seal.* Enforcement Counsel, in his or her discretion, may file any document or part of a document under seal if disclosure of the document would be contrary to the public interest. The administrative law judge shall take all appropriate steps to preserve the confidentiality of such documents or parts thereof, including closing portions of the hearing to the public.

§ 509.34 Hearing subpoenas.

(a) *Issuance.* (1) Upon application of a party showing general relevance and reasonableness of scope of the testimony or other evidence sought, the administrative law judge may issue a subpoena or a subpoena duces tecum requiring the attendance of a witness at the hearing or the production of documentary or physical evidence at such hearing. The application for a hearing subpoena must also contain a proposed subpoena specifying the attendance of a witness or the production of evidence from any state, territory, or possession of the United States, the District of Columbia or as otherwise provided by law at any designated place where the hearing is being conducted.

(2) A party may apply for a hearing subpoena at any time before the commencement of a hearing. The party making the application shall serve a copy of the application and the proposed subpoena on every other party to the proceeding. During a hearing, such applications may be made orally on the record before the administrative law judge.

(3) The administrative law judge shall promptly issue any hearing subpoena requested pursuant to this section. If the administrative law judge determines that the application does not set forth a valid basis for the issuance of the subpoena, or that any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may refuse to issue the subpoena or may issue it in a modified form upon any conditions consistent with this subpart.

(b) *Motion to quash or modify.* (1) Any person to whom a hearing subpoena is directed may file a motion to quash or modify such subpoena, accompanied by a statement of the basis for quashing or modifying the subpoena. The movant shall serve the motion on all parties, and any party may respond to such motion within ten days of service of the motion.

(2) Any motion to quash or modify a hearing subpoena must be filed prior to the time specified in the subpoena for compliance, but not more than ten days after the date of service of the subpoena upon the movant.

(c) *Enforcing subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or any order of the administrative law judge which directs compliance with all or any portion of a document subpoena, the subpoenaing party or any other aggrieved party may seek enforcement of the subpoena pursuant to section § 509.26(c) of this subpart.

§ 509.35 Conduct of hearings.

(a) *General rules.* (1) Hearings shall be conducted so as to provide a fair and expeditious presentation of the relevant disputed issues. Each party has the right to present its case or defense by oral and documentary evidence and to conduct such cross examination as may be required for full disclosure of the facts.

(2) *Order of hearing.* Enforcement Counsel shall present its case-in-chief first, unless otherwise ordered by the administrative law judge, or unless otherwise expressly specified by law or regulation. Enforcement Counsel shall be the first party to present an opening statement and a closing statement, and may make a rebuttal statement after the respondent's closing statement. If there are multiple respondents, respondents may agree among themselves as to their order of presentation of their cases, but if they do not agree the administrative law judge shall fix the order.

(3) *Stipulations.* Unless the administrative law judge directs otherwise, all stipulations of fact and law previously agreed upon by the parties, and all documents, the admissibility of which have been previously stipulated, will be admitted into evidence upon commencement of the hearing.

(b) *Transcript.* The hearing must be recorded and transcribed. The transcript shall be made available to any party upon payment of the cost thereof. The administrative law judge shall have

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issue it in a modified form upon any conditions consistent with this subpart.

(b) *Motion to quash or modify.* (1) Any person to whom a hearing subpoena is directed may file a motion to quash or modify such subpoena, accompanied by a statement of the basis for quashing or modifying the subpoena. The movant shall serve the motion on all parties, and any party may respond to such motion within ten days of service of the motion.

(2) Any motion to quash or modify a hearing subpoena must be filed prior to the time specified in the subpoena for compliance, but not more than ten days after the date of service of the subpoena upon the movant.

(c) *Enforcing subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or any order of the administrative law judge which directs compliance with all or any portion of a document subpoena, the subpoenaing party or any other aggrieved party may seek enforcement of the subpoena pursuant to section § 509.26(c) of this subpart.

§ 509.35 Conduct of hearings.

(a) *General rules.* (1) Hearings shall be conducted so as to provide a fair and expeditious presentation of the relevant disputed issues. Each party has the right to present its case or defense by oral and documentary evidence and to conduct such cross examination as may be required for full disclosure of the facts.

(2) *Order of hearing.* Enforcement Counsel shall present its case-in-chief first, unless otherwise ordered by the administrative law judge, or unless otherwise expressly specified by law or regulation. Enforcement Counsel shall be the first party to present an opening statement and a closing statement, and may make a rebuttal statement after the respondent's closing statement. If there are multiple respondents, respondents may agree among themselves as to their order of presentation of their cases, but if they do not agree the administrative law judge shall fix the order.

(3) *Stipulations.* Unless the administrative law judge directs otherwise, all stipulations of fact and law previously agreed upon by the parties, and all documents, the admissibility of which have been previously stipulated, will be admitted into evidence upon commencement of the hearing.

(b) *Transcript.* The hearing must be recorded and transcribed. The transcript shall be made available to any party upon payment of the cost thereof. The administrative law judge shall have

authority to order the record corrected, either upon motion to correct, upon stipulation of the parties, or following notice to the parties upon the administrative law judge's own motion. The administrative law judge shall serve notice upon all parties that the certified transcript, together with all hearing exhibits and exhibits introduced but not admitted into evidence at the hearing, has been filed.

§ 509.36 Evidence.

(a) *Admissibility.* (1) Except as is otherwise set forth in this section, relevant, material, and reliable evidence that is not unduly repetitive is admissible to the fullest extent authorized by the APA and other applicable law.

(2) Evidence that would be admissible under the Federal Rules of Evidence is admissible in a proceeding conducted pursuant to this subpart.

(3) Evidence that would be inadmissible under the Federal Rules of Evidence may not deemed or ruled to be inadmissible in a proceeding conducted pursuant to this subpart if such evidence is relevant, material, reliable and not unduly repetitive.

(b) *Official notice.* (1) Official notice may be taken of any material fact which may be judicially noticed by a United States district court and any material information in the official public records of any Federal or state government agency.

(2) All matters officially noticed by the administrative law judge or Director shall appear on the record.

(3) If official notice is requested or taken of any material fact, the parties, upon timely request, shall be afforded an opportunity to object.

(c) *Documents.* (1) A duplicate copy of a document is admissible to the same extent as the original, unless a genuine issue is raised as to whether the copy is in some material respect not a true and legible copy of the original.

(2) Subject to the requirements of paragraph (a) of this section, any document, including a report of examination, supervisory activity, inspection or visitation, prepared by the appropriate Office or state regulatory agency, is admissible either with or without a sponsoring witness.

(3) Witnesses may use existing or newly created charts, exhibits, calendars, calculations, outlines or other graphic material to summarize, illustrate, or simplify the presentation of testimony. Such materials may, subject to the administrative law judge's discretion, be used with or without being admitted into evidence.

(d) *Objections.* (1) Objections to the admissibility of evidence must be timely made and rulings on all objections must appear on the record.

(2) When an objection to a question or line of questioning propounded to a witness is sustained, the examining counsel may make a specific proffer on the record of what he or she expected to prove by the expected testimony of the witness, either by representation of counsel or by direct interrogation of the witness.

(3) The administrative law judge shall retain rejected exhibits, adequately marked for identification, for the record, and transmit such exhibits to the Director.

(4) Failure to object to admission of evidence or to any ruling constitutes a waiver of the objection.

(e) *Stipulations.* The parties may stipulate as to any relevant matters of fact or the authentication of any relevant documents. Such stipulations must be received in evidence at a hearing, and are binding on the parties with respect to the matters therein stipulated.

(f) *Depositions of unavailable witnesses.* (1) If a witness is unavailable to testify at a hearing, and that witness has testified in a deposition to which all parties in a proceeding had notice and an opportunity to participate, a party may offer as evidence all or any part of the transcript of the deposition, including deposition exhibits, if any.

(2) Such deposition transcript is admissible to the same extent that testimony would have been admissible had that person testified at the hearing, provided that if a witness refused to answer proper questions during the depositions, the administrative law judge may, on that basis, limit the admissibility of the deposition in any manner that justice requires.

(3) Only those portions of a deposition received in evidence at the hearing constitute a part of the record.

§ 509.37 Proposed findings and conclusions.

(a) *Proposed findings and conclusions and supporting briefs.* (1) Any party may file with the administrative law judge proposed findings of fact, proposed conclusions of law, and a proposed order within 30 days after the parties have received notice that the transcript has been filed with the administrative law judge, unless otherwise ordered by the administrative law judge.

(2) Proposed findings and conclusions must be supported by citation to any relevant authorities and by page references to any relevant portions of the record. A post-hearing brief may be filed in support of proposed findings and conclusions, either as part of the same document or in a separate document. Any party who fails to file timely with the administrative law judge any proposed finding or conclusion is deemed to have waived the right to raise in any subsequent filing or submission any issue not addressed in such party's proposed finding or conclusion.

(b) *Reply briefs.* Reply briefs may be filed within 15 days after the date on which the parties' proposed findings, conclusions, and order are due. Reply briefs must be strictly limited to responding to new matters, issues, or arguments raised in another party's papers. A party who has not filed proposed findings of fact and conclusions of law or a post-hearing brief may not file a reply brief.

(c) *Simultaneous filing required.* The administrative law judge shall not order the filing by any party of any brief or reply brief in advance of the other party's filing of its brief.

§ 509.38 Recommended decision and filing of record.

Within 45 days after expiration of the time allowed for filing reply briefs under § 509.37(b) of this subpart, the administrative law judge shall file with and certify to the Director for decision the record of the proceeding. The record must include the administrative law judge's recommended decision, recommended findings of fact, recommended conclusions of law and proposed order; all prehearing and hearing transcripts, exhibits, and rulings; and the motions, briefs, memoranda, and other supporting papers filed in connection with the hearing. The administrative law judge shall serve upon each party the recommended decision, findings, conclusions and proposed order.

§ 509.39 Exceptions to recommended decision.

(a) *Filing exceptions.* Within 30 days after service of the recommended decision, findings, conclusions, and proposed order under § 509.38 of this subpart, a party may file with the Director written exceptions to the administrative law judge's recommended decision, findings, conclusions or proposed order, to the admission or exclusion of evidence, or to the failure of the administrative law judge to make a ruling proposed by a party. A supporting brief may be filed at the time the exceptions are filed, either as part of the same document or in a separate document.

(b) *Effect of failure to file or raise exceptions.* (1) Failure of a party to file exceptions to those matters specified in paragraph (a) of this section within the time prescribed is deemed a waiver of objection thereto.

(2) No exception need be considered by the Director if the party taking exception had an opportunity to raise the same objection, issue, or argument before the administrative law judge and failed to do so.

(c) *Contents.* (1) All exceptions and briefs in support of such exceptions must be confined to the particular matters in, or omissions from, the administrative law judge's recommendations to which that party takes exception. (2) All exceptions and briefs in support of exceptions must set forth page or paragraph references to the specific parts of the administrative law judge's recommendations to which exception is taken, the page or paragraph references to those portions of the record relied upon to support each exception, and the legal authority relied upon to support each exception.

§ 509.40 Review by the Director.

(a) *Notice of submission to the Director.* When the Director determines that the record in the proceeding is complete, the Director shall serve notice upon the parties that the proceeding has been submitted to the Director for final decision.

(b) *Oral argument before the Director.* Upon the initiative of the Director or on the written request of any party filed with the Director within the time for filing exceptions, the Director may order and hear oral argument on the recommended findings, conclusions, decision, and order of the administrative law judge. A written request by a party must show good cause for oral argument and state reasons why arguments cannot be presented adequately in writing. A denial of a request for oral argument may be set forth in the Director's final decision. Oral argument before the Director must be on the record.

(c) *Director's final decision.* (1) Decisional employees may advise and assist the Director in the consideration and disposition of the case. The final decision of the Director will be based upon review of the entire record of the proceeding, except that the director may limit the issues to be reviewed to those findings and conclusions to which opposing arguments or exceptions have been filed by the parties.

(2) The Director shall render a final decision within 90 days after notification of the parties that the case has been submitted for final decision, or 90 days after oral argument, whichever is later, unless the Director orders that the action or any aspect thereof be remanded to the administrative law judge for further proceedings. Copies of the final decision and order of the Director shall be served upon each party to the proceeding, upon other persons required by statute, and, if directed by the Director or required by statute, upon any appropriate state or Federal supervisory authority.

§ 509.41 Stays pending judicial review.

The commencement of proceedings for judicial review of a final decision and order of the Office may not, unless specifically ordered by the Director or a reviewing court, operate as a stay of any order issued by the Director. The Director may, in its discretion, and on such terms as it finds just, stay the effectiveness of all or any part of its order pending a final decision on a petition for review of the order.

Subpart B—Local Rules

§ 509.100 Scope.

The rules and procedures in this subpart B shall apply to those proceedings covered by subpart A of this part. In addition, subpart A of this part and this subpart shall apply to adjudicatory proceedings for which hearings on the record are provided for by the following statutory provisions:

(a) Proceedings under section 10(a)(2)(D) of the HOLA (12 U.S.C. 1467a(a)(2)(D)) to determine whether any person directly or indirectly exercises a controlling influence over the management or policies of a savings association or any other company;

(b) Proceedings under section 10(g)(5)(A) of the HOLA (12 U.S.C. 1467a(g)(5)(A)) to determine whether to terminate certain activities by savings and loan holding companies or to terminate ownership or control of a non-insured savings and loan holding company subsidiary; and

(c) Proceedings under section 15(c)(4) of the Securities and Exchange Act of 1934 (15 U.S.C. 78o(c)(4)) (Exchange Act) to determine whether any association or person subject to the jurisdiction of the Office pursuant to section 12(i) of the Exchange Act (15 U.S.C. 78*l*(i)) has failed to comply with the provisions of sections 12, 13, 14(a), 14(c), 14(d) or 14(f) of the Exchange Act.

§ 509.101 Appointment of Office of Financial Institution Adjudication.

Unless otherwise directed by the Office, all hearings under subpart A of this part and this subpart shall be conducted by administrative law judges under the direction of the Office of Financial Institution Adjudication, 1700 G Street NW., Washington, DC 20552.

§ 509.102 Discovery.

(a) *In general.* A party may take the deposition of an expert, or of a person, including another party, who has direct knowledge of matters that are non-privileged, relevant and material to the proceeding and where there is a need for the deposition. The deposition of experts shall be limited to those experts who are expected to testify at the hearing.

(b) *Notice.* A party desiring to take a deposition shall give reasonable notice in writing to the deponent and to every other party to the proceeding. The notice must state the time and place for taking the deposition and the name and address of the person to be deposed.

(c) *Time limits.* A party may take depositions at any time after the commencement of the proceeding, but no later than ten days before the scheduled hearing date, except with permission of the administrative law judge for good cause shown.

(d) *Conduct of the deposition.* The witness must be duly sworn, and each party shall have the right to examine the witness with respect to all non-privileged, relevant and material matters of which the witness has factual, direct and personal knowledge. Objections to questions or exhibits shall be in short form, stating the grounds for objection. Failure to object to questions or exhibits is not a waiver except where the grounds for the objection might have been avoided if the objection had been timely presented. The court reporter shall transcribe or otherwise record the witness's testimony, as agreed among the parties.

(e) *Protective orders.* At any time after notice of a deposition has been given, a party may file a motion for the issuance of a protective order. Such protective order may prohibit, terminate, or limit the scope or manner of the taking of a deposition. The administrative law judge shall grant such protective order upon a showing of sufficient grounds, including that the deposition:

(1) Is unreasonable, oppressive, excessive in scope, or unduly burdensome;

(2) Involves privileged, investigative, trial preparation, irrelevant or immaterial matters; or

(3) Is being conducted in bad faith or in such manner as to unreasonably annoy, embarrass, or oppress the deponent.

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(b) *Notice.* A party desiring to take a deposition shall give reasonable notice in writing to the deponent and to every other party to the proceeding. The notice must state the time and place for taking the deposition and the name and address of the person to be deposed.

(c) *Time limits.* A party may take depositions at any time after the commencement of the proceeding, but no later than ten days before the scheduled hearing date, except with permission of the administrative law judge for good cause shown.

(d) *Conduct of the deposition.* The witness must be duly sworn, and each party shall have the right to examine the witness with respect to all non-privileged, relevant and material matters of which the witness has factual, direct and personal knowledge. Objections to questions or exhibits shall be in short form, stating the grounds for objection. Failure to object to questions or exhibits is not a waiver except where the grounds for the objection might have been avoided if the objection had been timely presented. The court reporter shall transcribe or otherwise record the witness's testimony, as agreed among the parties.

(e) *Protective orders.* At any time after notice of a deposition has been given, a party may file a motion for the issuance of a protective order. Such protective order may prohibit, terminate, or limit the scope or manner of the taking of a deposition. The administrative law judge shall grant such protective order upon a showing of sufficient grounds, including that the deposition:

(1) Is unreasonable, oppressive, excessive in scope, or unduly burdensome;

(2) Involves privileged, investigative, trial preparation, irrelevant or immaterial matters; or

(3) Is being conducted in bad faith or in such manner as to unreasonably annoy, embarrass, or oppress the deponent.

(f) *Fees.* Deposition witnesses, including expert witnesses, shall be paid the same expenses in the same manner as are paid witnesses in the district courts of the United States in proceedings in which the United States Government is a party. Expenses in accordance with this paragraph shall be paid by the party seeking to take the deposition.

(g) *Deposition subpoenas*—(1) *Issuance.* At the request of a party, the administrative law judge shall issue a subpoena requiring the attendance of a witness at a deposition. The attendance of a witness may be required from any place in any state or territory that is subject to the jurisdiction of the United States or as otherwise permitted by law.

(2) *Service.* The party requesting the subpoena shall serve it on the person named therein and a copy on that person's counsel, or on that person's counsel, by personal service, certified mail, or overnight delivery service. The party serving the subpoena shall file proof of service with the administrative law judge.

(3) *Motion to quash.* A person named in the subpoena or a party may file a motion to quash or modify the subpoena. A statement of the reasons for the motion must accompany it and a copy of the motion must be served on the party that requested the subpoena. The motion must be made prior to the time for compliance specified in the subpoena and not more than ten days after the date of service of the subpoena, or if the subpoena is served within 15 days of the hearing, within five days after the date of service.

(4) *Enforcement of deposition subpoena.* Enforcement of a deposition subpoena shall be in accordance with the procedures of § 509.27(d) of this part.

§ 509.103 Civil money penalties.

(a) *Assessment.* In the event of consent, or if upon the record developed at the hearing the Office finds that any of the grounds specified in the notice issued pursuant to section 509.18 of this part have been established, the Office may serve an order of assessment of civil money penalty upon the party concerned. The assessment order shall be effective immediately upon service or upon such other date as may be specified therein and shall remain effective and enforceable until it is stayed, modified, terminated, or set aside by the Office or by a reviewing court.

(b) *Payment.* (1) Civil penalties assessed pursuant to subpart A of this part and this subpart B are payable and to be collected within 60 days after the issuance of the notice of assessment, unless the Office fixes a different time for payment where it determines that the purpose of the civil money penalty would be better served thereby; however, if a party has made a timely request for a hearing to challenge the assessment of the penalty, the party may not be required to pay such penalty until the Office has issued a final order of assessment following the hearing. In such instances, the penalty shall be paid within 60 days of service of such order unless the Office fixes a different time for payment. Notwithstanding the foregoing, the Office may seek to attach the party's assets or to have a receiver appointed to secure payment of the potential civil money penalty or other obligation in advance of the hearing in accordance with section 8(i)(4) of the FDIA (12 U.S.C. 1818(i)(4)).

(2) Checks in payment of civil penalties shall be made payable to the Treasurer of the United States and sent to the Controller's Division of the Office. Upon receipt, the Office shall forward the check to the Treasury of the United States.

§ 509.104 Additional procedures.

(a) *Replies to exceptions.* Replies to written exceptions to the administrative law judge's recommended decision, findings, conclusions or proposed order pursuant to § 509.39 of this part shall be filed within 10 days of the date such written exceptions were required to be filed.

(b) *Motions.* All motions shall be filed with the administrative law judge; provided however, once the administrative law judge has certified the record to the Director pursuant § 509.39 of this part, all motions must be filed with the Director within the 10 day period allowed for the filing of replies to exceptions. Responses to such motions timely filed before the Director, other than motions for oral argument before the Director, shall be allowed pursuant to the procedures as § 509.23(d) of this part. No response is required for the Director to make a determination on a motion for oral argument.

(c) *Authority of administrative law judge.* In addition to the powers listed in § 509.5 of this part, the administrative law judge shall have the authority to deny any dispositive motion and shall follow the procedures set forth for motions for summary disposition at § 509.29 of this part and partial summary disposition at § 509.30 of this part in making determinations on such motions.

(d) *Notification of submission of proceeding to the Director.* Upon the expiration of the time for filing any exceptions, any replies to such exceptions or any motions and any ruling thereon, and after receipt of certified record, the Office shall notify the parties within ten days of the submission of the proceeding to the Director for final determination.

(e) *Extensions of time for final determination.* The Director may, *sua sponte*, extend the time for final determination by signing an order of extension of time within the 90 day time period and notifying the parties of such extension thereafter.

(f) *Service upon the Office.* Service of any document upon the Office or the Director shall be made by filing with the individuals and/or offices designated by the Office in its Notice issued pursuant to paragraph (d) of this section, § 509.18 of this part or such other means reasonably suited to provide notice of the person and/or office designated to receive filings.

(g) *Presence of cameras and other recording devices.* The use of cameras and other recording devices, other than those used by the court reporter, shall be prohibited and excluded from the proceedings.

PART 512—[AMENDED]

8. The authority citation for part 512 continues to read as follows:

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 9, as added by sec. 301, 103 Stat. 316 (12 U.S.C. 1467); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 3, 64 Stat. 873, as amended by sec. 204, 103 Stat. 190 (12 U.S.C. 1813); sec. 12, 48 Stat. 892, as amended (15 U.S.C. 78*l*)

§ 512.7 [Amended]

9. Section 512.7(b) is amended by removing the phrases "Director or any Deputy Director of Enforcement", "Director or the Deputy Director", and "Director or Deputy Director" each place they appear and substituting in lieu thereof the phrase "Chief Counsel or his designee".

PART 513—[AMENDED]

10. The authority citation for part 513 continues to read as follows:

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 12, sec. 3, 64 Stat. 873, as amended by sec. 204, 103 Stat. 190 (12 U.S.C. 1813); 48 Stat. 892, as amended (15 U.S.C. 78*l*).

§ 513.1 [Amended]

11. Section 513.1 is amended in the last sentence by removing the number

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"§ 509.5(a)(2)" and substituting in lieu thereof, the number "§ 509.6(a)(1)".

§ 513.5 [Amended]

12. Section 513.5(b) is amended by removing "§ 509a.3" and "§ 509a.7", and substituting in lieu thereof, "§ 508.3" and "§ 508.7" respectively.

Dated: August 6, 1991.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Deputy Director for Washington Operations.

[FR Doc. 91-19091 Filed 8-9-91; 8:45 am]

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By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Deputy Director for Washington Operations.

[FR Doc. 91-19091 Filed 8-9-91; 8:45 am]

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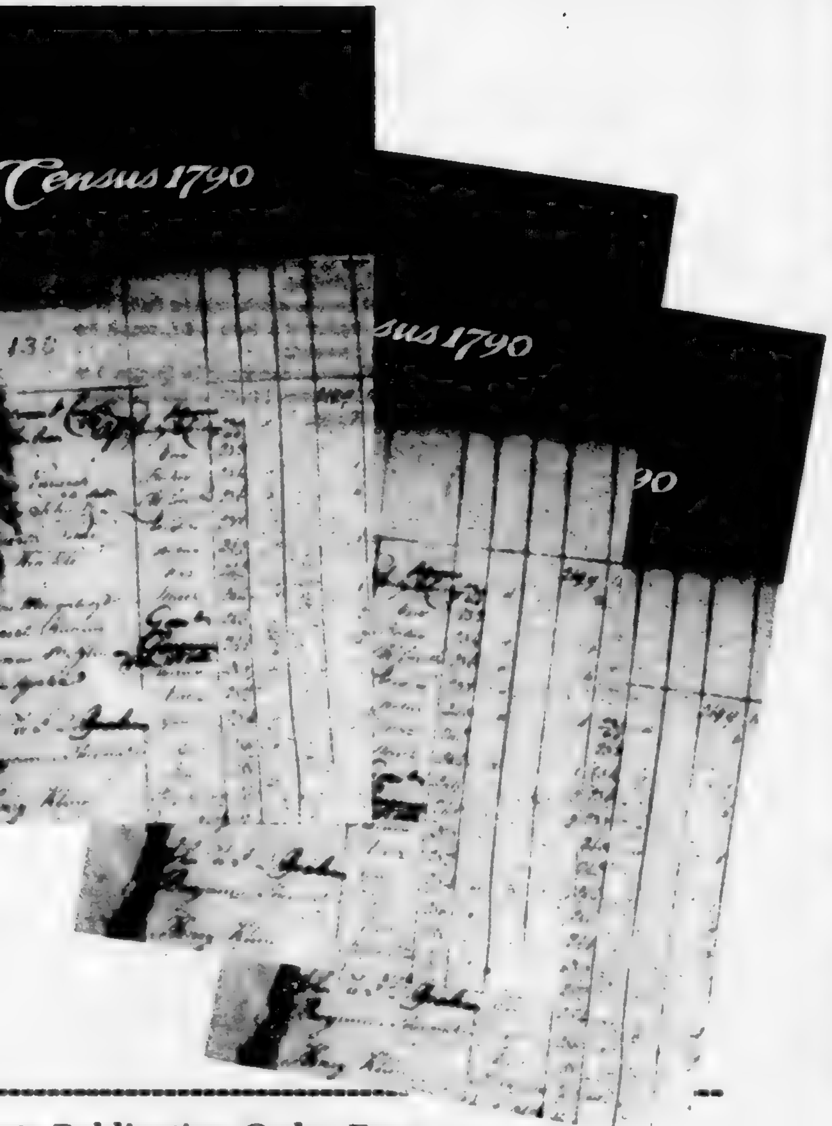

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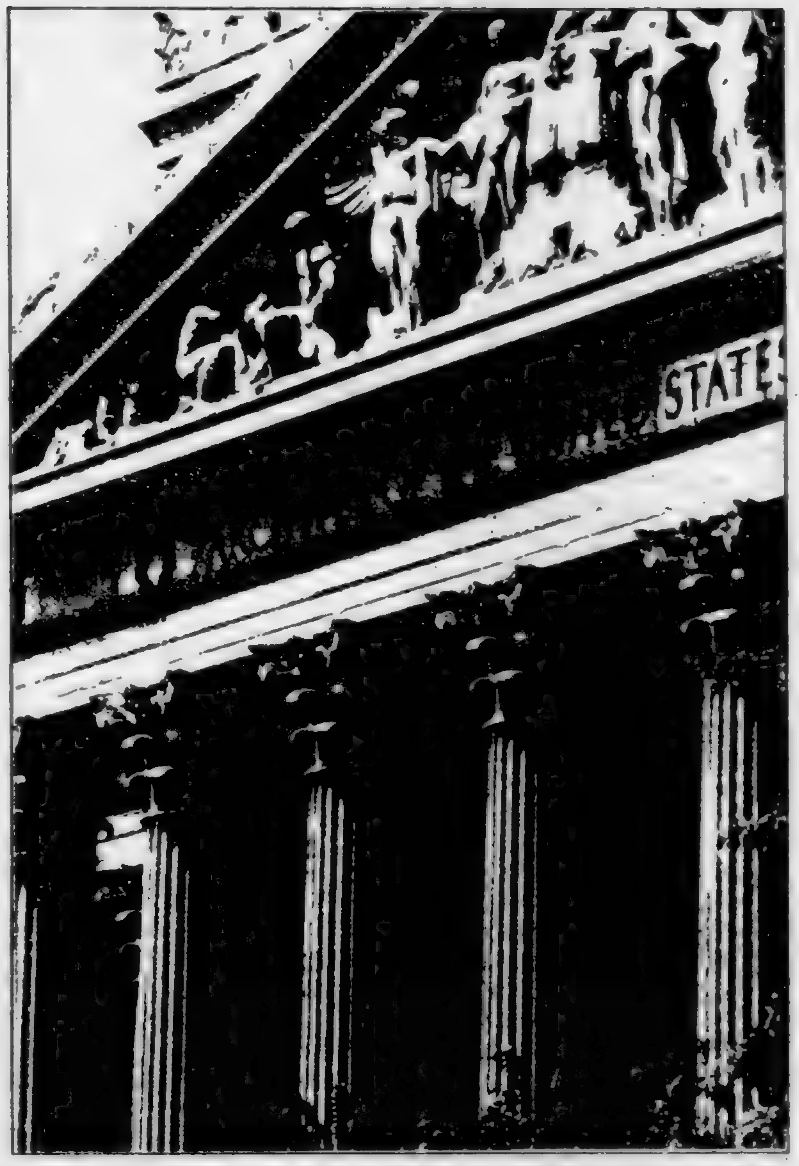

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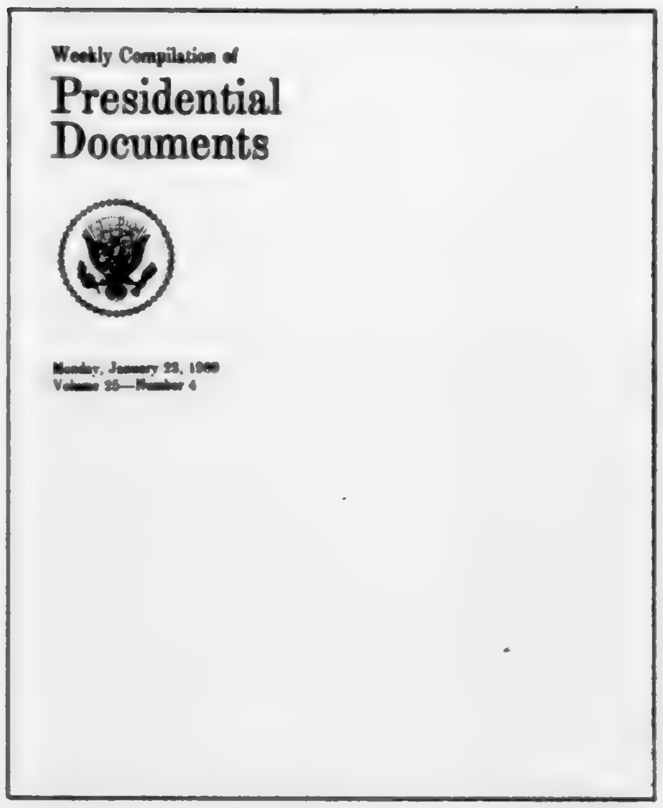

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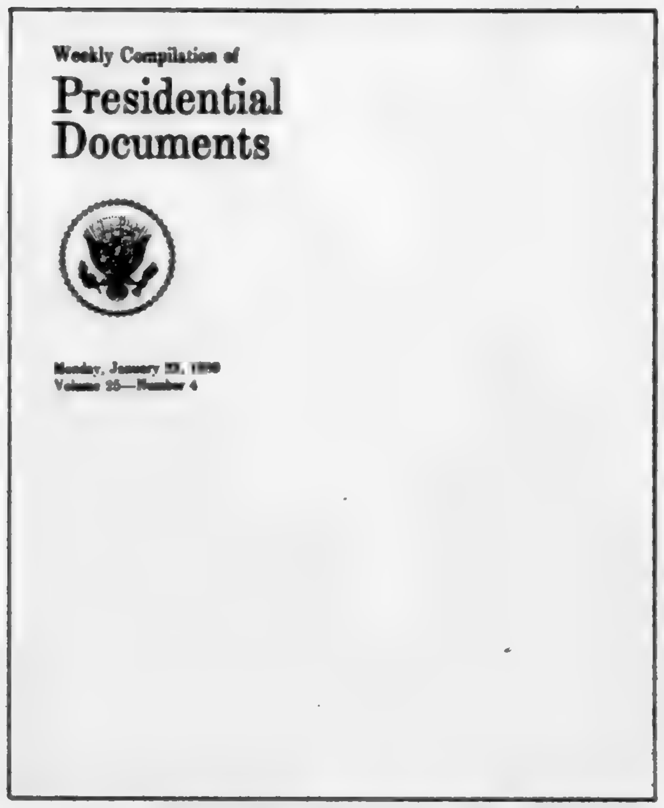

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DEPARTMENT OF AGRICUL

Agricultural Stabilization and
Conservation Service

Commodity Credit Corporati

7 CFR Parts 729 and 1446

Peanuts

AGENCY: Agricultural Stabiliz
Conservation Service, and Co
Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule adopts wi
modification the interim rules
in the **Federal Register** on Apr
(56 FR 16206 and 56 FR 16227),
forth regulations governing the
poundage quota and price sup
programs for peanuts and pea
handler operations to be codi
CFR parts 729 and 1446.

More specifically, this final
forth regulations to implemen
provisions of the Food, Agricu
Conservation, and Trade Act
(the "1990 Act") with respect
through 1995 crops of peanuts
collection of marketing asses
peanuts, as required for the 1
1995 crops by Section 1105 of
Omnibus Budget Reconciliati
1990 (the "1990 Budget Act").
respect to part 729, the amend
the interim rules adopted in t
rule principally involve: (1)
Apportionment of the nationa
quota to Oklahoma and New
and (2) reallocation in Texas
increased State quota, quota
nonproduction, and permane
released quota. With respect
1446, the principal modificati
involve: (1) Settlement of loa
Valencia peanuts produced in
Mexico and (2) the terms and
governing the contracting of
peanuts for export or crushin

Rules and Regulations

Federal Register
Vol. 56, No. 156
Tuesday, August 13, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

7 CFR Parts 729 and 1446

Peanuts

AGENCY: Agricultural Stabilization and Conservation Service, and Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule adopts with certain modification the interim rules published in the **Federal Register** on April 19, 1991 (56 FR 16206 and 56 FR 16227), which set forth regulations governing the federal poundage quota and price support programs for peanuts and peanut handler operations to be codified in 7 CFR parts 729 and 1446.

More specifically, this final rule sets forth regulations to implement the provisions of the Food, Agriculture, Conservation, and Trade Act of 1990 (the "1990 Act") with respect to the 1991 through 1995 crops of peanuts, and the collection of marketing assessments for peanuts, as required for the 1991 through 1995 crops by Section 1105 of the Omnibus Budget Reconciliation Act of 1990 (the "1990 Budget Act"). With respect to part 729, the amendments to the interim rules adopted in this final rule principally involve: (1) Apportionment of the national poundage quota to Oklahoma and New Mexico, and (2) reallocation in Texas of any increased State quota, quota reduced for nonproduction, and permanently released quota. With respect to part 1446, the principal modifications involve: (1) Settlement of loan pools for Valencia peanuts produced in New Mexico and (2) the terms and conditions governing the contracting of additional peanuts for export or crushing.

These regulations are required by provisions of the Agricultural Adjustment Act of 1938, as amended (the "1938 Act"), and the Agricultural Act of 1949, as amended (the "1949 Act").

The modifications made in the final rule have been made after consideration of the public comments. In some instances, the modifications are technical changes made for purposes of clarity.

EFFECTIVE DATE: This final rule is effective August 13, 1991.

FOR FURTHER INFORMATION CONTACT: Jack S. Forlines, Deputy Director, Tobacco and Peanuts Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013, telephone (202) 382–0156.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and has been classified "not major." It has been determined that this action will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical regions. Furthermore, it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this final rule applies are: Commodity Loans and Purchases; 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the Commodity Credit Corporation (CCC) and the Agricultural Stabilization and Conservation Service (ASCS) are not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Except with respect to § 729.205, the information collection requirements contained in the regulations of 7 CFR parts 729 and 1446 for the peanut poundage quota program and the price support program were approved by the Office of Management and Budget (OMB), as required by 44 U.S.C. chapter 35, and assigned OMB control numbers 0560–0006, 0560–0014, and 0560–0133. OMB has approved the collection requirements through May 31, 1992. This final rule does not change the information collection as approved by OMB. The information collection required by § 729.205 will not be applicable to the 1991 crop of peanuts because there has not been an increase in any State's poundage quota for the 1991 crop. The information collection requirements for § 729.205 will be submitted for OMB approval not later than October 15, 1991. The public reporting burden for this collection of information is estimated to vary from 9 to 30 minutes per response, with an average of 14 minutes per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB# 0560–0006), Washington, DC 20503.

Statutory Background

Title VIII of the 1990 Act which was enacted on November 28, 1990, amended the 1938 Act and the 1949 Act to provide, for the 1991 through 1995 crops, for the peanut poundage quota and peanut price support programs.

In addition, section 1105 of the 1990 Budget Act which was enacted on November 5, 1990, provided for a marketing assessment equal to one percent of the national average quota or additional price support rate per pound, as applicable, for the applicable crop, to be collected with respect to all marketings of the 1991 through 1995 crops of peanuts.

Many of the statutory provisions for peanuts contained in the 1990 Act and 1990 Budget Act were described in the supplementary information published with the interim rules.

1. Summary of Comments to Part 729

A total of 11 comments were received with respect to the interim rule for Part 729 that was published in the **Federal Register** on April 19, 1991. Most of the comments related to the 1990 Act provision that permits a tenant to share with the farm owner in any quota increase that is allocated to the farm, from any increase in a State's poundage quota, as a result of the tenant's production of additional peanuts on the farm. Other comments related to the special Texas provision for allocating quota to farms in certain Texas counties and the provision relating to marketing assessments. There were single comments submitted on other issues as well. Although the comment period ended on May 20, 1991, the Department continued to consider comments received through close of business on July 15, 1991.

Section 729.205—Allocation of Increased Quota to Tenants

There were 5 comments received relating to the provision that the tenant share equally with the farm owner, on a farm that was leased to the tenant for peanut production, in any increase in the farm poundage quota that results from the tenant's production of additional peanuts, if the poundage quota allocated to the State was greater than the poundage allocated to the State for the preceding year.

One respondent suggested that the tenant should not share in any increase in poundage quota allocated to a farm as a result of the tenant's production of additional peanuts on the farm. The respondent recommended that any quota allocated to the farm should remain on the farm on which the peanuts were produced. Adopting this suggestion would be contrary to the plain language of the 1990 Act.

Other respondents felt that tenants should share in the quota increase without regard to whether the tenant received a 100 percent share of the peanuts or a lesser share. Their view was that the words "leased to a tenant for peanut production" as in section 358–1(b)(2)(D) of the 1938 Act, by the 1990 Act, should be read to include within its coverage, tenants with a "share lease" arrangement as well as tenants with a "cash lease" arrangement. The term "leased to a tenant for peanut production" was interpreted in § 729.205 of the interim rule to apply only to those tenants who leased part or all of a farm and had a 100 percent producer interest in one or more fields where peanuts were produced on the farm during the base period. That interpretation is maintained in this final rule to be consistent with the provision that limits this special grant to where the quota is derived from the tenants' own production rather than where the owner of the farm is in fact a producer of the peanuts. In addition, a tenant with a share lease may not have full control of management decisions in the farm's operation and may not in that sense be considered a lessee but may instead be in a position of a farm manager or employee.

Section 729.204—Allocating Quota Increase or Decrease

There were two comments on the general method for allocating the quota increase or decrease to farms. One respondent stated that allocating the quota increase on the basis of farm's production history unduly benefits large farmers. Since the quota decrease is based on the size of farm's quota, the respondent suggested that the quota increase should also be based on the farm's quota. However, use of the production history is explicitly required by section 358–1(b)(2)(a) of the 1938 Act.

Another respondent recommended that the quota decrease should be based on the farm's production history because the quota increase is based on the farm's production history. Section 358–1(b)(2)(B) of the 1938 Act provides that in the event the poundage quota apportioned to a State for any of the 1991 through 1995 marketing years is decreased from the poundage quota apportioned to farms in the State for the immediately preceding year, the decrease shall be allocated among all the farms in the State for each of which a farm poundage quota was established for the marketing year immediately preceding the marketing year for which the allocation is being made. The 1938 Act does not specify how the quota decrease in the national quota shall be allocated to States. However, if the production history were used to allocate the quota decrease, the greater amount of quota would move away from producing farms, which is contrary to the preference in the current poundage quota legislation to place the quota on farms that are actually producing peanuts.

Accordingly, the method for allocating the quota increase to farms and for determming the quota decrease on farms shall remain as provided in the interim rule.

Section 729.103—Considered Produced Credit

One respondent suggested that considered produced credit should be granted on a farm for failure to produce peanuts because of a disaster. No modification in the regulations is needed to accommodate this suggestion. The interim rule in § 729.103 provides for granting considered produced credit if peanuts are not produced because of drought, flood, or any other natural disaster or any other condition beyond the control of the producer.

Section 729.212—Considered Produced Credit for Temporary Owner or Operator Transfer

One respondent stated that a producer who temporarily transfers quota by an owner or operator transfer under the transfer provisions in § 729.212, should receive considered produced credit on the transferring farm if the transferred quota is not produced on the receiving farm because of conditions beyond the control of the operator on the receiving farm. Section 358b(a)(2) of the 1938 Act provides in part, with respect to owner or operator transfers of quota to a self-owned or operated farm, that "any farm poundage quota transferred * * * shall not result in any reduction in the farm poundage quota for the transferring farm if the transferred quota is produced or considered produced on the receiving farm." Historically, considered produced credit has been granted for all farms only up to an amount not to exceed the basic quota for the farm. Modifying the historical definition and granting considered produced credit for owner and operator transfers in excess at the farm's basic quota, would significantly modify the method of allocating quota increases or reallocating quota reduced for nonproduction, would create inequities in the administration of the program, and would thereby be contrary to the provisions of the statute. Accordingly, no change has been made in this provision of the regulations.

Another respondent recommended that considered produced credit should be granted to all farms for 1991, because of the planting decisions that had to be made before the interim rule was issued. Although the interim rule was not published until April 19, 1991, producers had sufficient time after receipt of their initial notice of quota to plant the peanut acreage. In order to avoid a reduction in quota in such circumstances, the producer only has to plant sufficient acres to produce the basic quota, and from the previously

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Section 729.103—Considered Produced Credit

One respondent suggested that considered produced credit should be granted on a farm for failure to produce peanuts because of a disaster. No modification in the regulations is needed to accommodate this suggestion. The interim rule in § 729.103 provides for granting considered produced credit if peanuts are not produced because of drought, flood, or any other natural disaster or any other condition beyond the control of the producer.

Section 729.212—Considered Produced Credit for Temporary Owner or Operator Transfer

One respondent stated that a producer who temporarily transfers quota by an owner or operator transfer under the transfer provisions in § 729.212, should receive considered produced credit on the transferring farm if the transferred quota is not produced on the receiving farm because of conditions beyond the control of the operator on the receiving farm. Section 358b(a)(2) of the 1938 Act provides in part, with respect to owner or operator transfers of quota to a self-owned or operated farm, that "any farm poundage quota transferred * * * shall not result in any reduction in the farm poundage quota for the transferring farm if the transferred quota is produced or considered produced on the receiving farm." Historically, considered produced credit has been granted for all farms only up to an amount not to exceed the basic quota for the farm. Modifying the historical definition and granting considered produced credit for owner and operator transfers in excess at the farm's basic quota, would significantly modify the method of allocating quota increases or reallocating quota reduced for nonproduction, would create inequities in the administration of the program, and would thereby be contrary to the provisions of the statute. Accordingly, no change has been made in this provision of the regulations.

Another respondent recommended that considered produced credit should be granted to all farms for 1991, because of the planting decisions that had to be made before the interim rule was issued. Although the interim rule was not published until April 19, 1991, producers had sufficient time after receipt of their initial notice of quota to plant the peanut acreage. In order to avoid a reduction in quota in such circumstances, the producer only has to plant sufficient acres to produce the basic quota, and from the previously

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announced national poundage quota most producers could determine the acreage of peanuts that would be required to produce the farm's basic quota. Further, there were provisions in the interim rule for granting considered produced credit for leasing and releasing quota.

Section 729.204—Reallocation of Increased Quota, Quota Reduced for Nonproduction, and Permanently Released Quota in Texas

There were 2 comments that related to the method used in the interim rule to determine the eligibility of counties in Texas to participate in the special quota allocation. Both of the respondents indicated that the basic quota, rather than the effective quota, should have been used to determine counties eligible for the special provision. Section 358–1(b)(2)(B) of the 1938 Act provides that in the event the poundage quota apportioned to Texas for any of the 1991 through 1995 marketing years exceeds the poundage quota apportioned to farms in the State for the immediately preceding year, 33 percent of the increased quota shall be allocated to farms having poundage quotas for the 1990 marketing years in any Texas county in which the production of additional peanuts in 1989 exceeded the total quota allocated to the county for the 1989 marketing year. The 1938 Act also provides that quota voluntarily released or reduced for nonproduction on all Texas farms, shall be reallocated to farms in any Texas county in which the production of additional peanuts in 1989 exceeded the total quota allocated to the county for the 1989 marketing year. The interim rule interpreted the legislative language "total quota allocated to the county for the 1989 marketing year" to mean the 1989 effective quota rather than the 1989 basic quota since the effective quota includes temporary adjustments to the quota. By using the 1989 effective quota, two counties (Hidalgo and Bailey) that would have qualified, if the basic quota had been used, were excluded. On review of the comments and the statute, it has been determined that the term "allocated" is more correctly read to refer to "basic" quota rather than the "effective" quota, particularly as this portion of the statute appears to be designed to provide for increases in counties with low established quota compared to actual production. The regulations have been modified accordingly. Therefore, Hidalgo and Bailey counties will be eligible to receive a share of any "bonus" quota increase that is granted to eligible Texas counties. This change will have no effect on any other State and there will be no budgetary or regulatory change in the impact of the peanut program at the national level.

Section 729.206—Experimental and Research Programs

Two comments related to the quota allocated to experimental and research farms. One respondent suggested that the research institutions be permitted, in cooperation with the State ASC committee, to assign a portion of quotas allocated to them to any farm in the State for purposes of on farm research when under the supervision of the institution. Another respondent suggested that additional quota, or a percent of the quota allocated to the research institutions under § 729.206 of the interim rule, be made available to privately owned farms for experimental and research purposes. The 1938 Act is very specific as to the description of the institutions that qualify under this provision. It provides that the Secretary may permit a portion of the poundage quota established in the State for the 1991 crop to be allocated to each land-grant institution identified in the Act of May 8, 1914 (38 Stat. 372, chapter 79; 7 U.S.C. 341 *et seq.*), colleges eligible to receive funds under the Act of August 30, 1890 (26 Stat. 419 chapter 841; 7 U.S.C. 321 *et seq.*), including Tuskegee Institute and, as appropriate, the Agricultural Research Service of the Department of Agriculture, if such institution possessed a quota for the 1985 crop year or was authorized under this part at that time to market peanuts from the 1985 crop for quota purposes without incurring marketing penalties. Section 729.311 of the interim rule provides that peanuts grown for experimental or research purposes shall not be subject to penalty on the marketing of any peanuts that are grown only for experimental or research purposes, which will include seed determined to be breeder or foundation seed or grown on land owned or leased by a publicly-owned agricultural experiment station, which will include State-operated seed organizations. Accordingly, peanuts grown for experimentation and research purposes on land owned or leased by a publicly-owned experiment station are not subject to penalty if the peanuts are retained for further experimentation and the peanuts are not used for food, feed or seed to produce another crop.

Section 729.212—Transfers

There was one comment that appeared to recommend that the regulations permit, in all States, transfers of quota to contiguous counties within the State for purposes of crop rotation and management practices. The interim rule, in accordance with the statute, provided that transfers to a contiguous county within the same State are generally only permitted in cases for an "owner transfer" or "operator transfer" where the two farms have the same owner or operator and only where the receiving farm had a basic quota established for the preceding year's crop. However, the 1938 Act provides in the case of any State for which the poundage quota allocated to a State is less than 10,000 tons for the previous year's crop, that all or any part of the farm poundage quota may be transferred by sale cr lease from a farm in the county to a farm in any other county in the same State. The statute does not permit the transfer of quota by sale or lease to contiguous counties except under these conditions. As the interim rule accurately reflected the provisions of the statute, no change was adopted.

Section 729.303—Designing Category of Marketings

There was one comment received regarding the designation of the peanut marketing category by the producer. The respondent suggested that 7 workdays after inspection instead of 3 workdays after inspection be provided for the producer to designate the category of marketings (i.e., whether the peanuts will be marketed as quota peanuts or as additional peanuts). The three-day period appears to be duly sufficient for the producer to make the marketing decision and the shorter period will facilitate the orderly marketing of the crop during harvest season. Peanuts cannot, in most cases, be unloaded from a producer's vehicle until the producer designates the category of sale and the identity of the purchaser has been determined. Long delays in marketing decisions would cause peanuts to sit at the buying point unattended, encourage confusion, and subject peanuts to loss or damage. Accordingly, no change in this provision of the regulations has been made. Producers wishing to have more time to make a marketing decision can hold the peanuts on the farm for a longer period.

Section 729.315—Segregation 3 Peanuts

There was one comment relating to the provision contained in § 729.315 of the interim rule for the supervision of Segregation 3 peanuts. The respondent suggested that handlers who are members of the Peanut Administrative Committee (PAC) already have Segregation 3 supervision by the PAC and any further instructions for supervision is not required. The provisions in § 729.315 were implemented to control producer marketings of Segregation 3 peanuts. Producers as individuals are not signers of the marketing agreement. Further, this provision of the interim rule permits the sale of Segregation 3 peanuts for seed use to handlers who are not signers of the marketing agreement. Accordingly, no change was adopted.

Section 729.301—Identification of Producer by Name on Producer Identification Card

There was one comment relating to protecting the producer's identity at time of grading the peanuts by not identifying the producer on the producer identification card because of discriminatory and preferential treatment a producer may or may not receive at the grading process. No change has been adopted. The 1938 Act provides that all peanuts that are harvested and delivered to market from a farm must be properly identified to the farm of production. This is necessary to determine whether the peanuts are eligible for the category of marketing in which they are being sold. Use of all identifying information assures that inspections will properly be matched with the correct peanuts. Because of the requirement to identify the farm of production and the severe penalties that may be imposed for false identification of peanuts, the producer identification card is considered essential to the marketing process. Further, there are administrative procedures already available for contesting inspection results.

Section 729.316—Marketing Assessments

Two comments addressed the time for submitting the marketing assessments that are collected by the handler for peanuts marketed through the handler and that are paid by the producer for uninspected peanuts marketed by the producer. One respondent suggested that the time provided in § 729.316 for remitting the assessment is not realistic. Section 729.316 of the interim rule provides that the marketing assessment shall be remitted during the 5 days that follow the week in which the data from the applicable form ASCS–1007 was transmitted to ASCS. Under this provision a handler could have from 5 to 12 days to remit the marketing assessment, depending on the date of transmittal of the data. The postmark on the envelope in which such marketing assessment is remitted shall be the basis for determining whether the marketing assessment was remitted timely. For a producer, the interim rule provides that the marketing assessment shall be remitted, within 7 days after the date such peanuts were marketed, to the county ASCS office that serves the county in which the farm is administratively located. USDA believes that the time prescribed in the regulations for remitting the assessments is more than reasonable. Further delay would unduly prejudice the public's financial interest in expeditious collection of the assessment.

Another respondent recommended that the interim rule should be amended to require that the producer "shall" pay one-half of the marketing assessment. The final rule was amended to provide that the handler shall collect one-half of the marketing assessment from the proceeds that otherwise will be due the producer.

Corrections to Interim Rule for Part 729

The final rule makes the following corrections and change to the interim rule for part 729:

1. Under the definitions contained in § 729.103, the quantity marketed or considered marketed as "Noninspected peanuts" under definition for "Peanut quantity marketed or considered marketed" is defined in the final rule as the gross weight instead of the net weight for determining the weight of the lot of peanuts that is not inspected by the Federal-State Inspection Service at the time of marketing.

2. The definition for "Considered produced credit" is changed in the final rule to prohibit the granting of considered produced credit for peanut poundage quota that was leased and transferred for the current year after July 31. This was to clarify the intent that considered produced credit was not to be granted for a fall transfer of quota.

3. The quota allocation factors in § 729.201 have been recalculated for New Mexico and Oklahoma. In New Mexico, a farm permanently transferred quota from one county to another and the quota inadvertently was duplicated in both counties. However, the error was not discovered before the interim rule was issued. In Oklahoma, as a result of an appeal, additional quota was granted after the preliminary quotas had been determined.

4. Section 729.204 has been amended, with respect to cases involving farm reconstitutions in qualifying Texas counties, to provide that: (1) If a farm is divided after the 1990 crop year, the resulting farms will, with respect to the requirement that the farm had a 1990 basic quota, be considered eligible to receive a share of any "bonus" quota that is allocated to eligible Texas counties in a year subsequent to the division and (2) if a farm is combined after 1990 with another farm, the resulting farm will not be considered to meet the 1990 basic quota requirement unless, prior to the combination, each farm that is involved in the combination had a 1990 basic quota.

2. Summary of Comments to Part 1446

In response to the interim rule for Part 1446 that was published on April 19, 1991, a total of 17 respondents submitted 19 comments which addressed more than 75 separate issues. Respondents addressed many minor issues such as technical changes and clarifications. Some respondents addressed issues that are beyond the scope of this rulemaking or requested procedural clarifications that do not involve adjusting the terms of the regulations. These comments are not addressed in the final rule. Although the comment period ended on May 20, 1991, the Department continued to consider comments received through the close of business on July 15, 1991. The more important issues germane to the rulemaking, are the following:

Section 1446.102—Administration

Three respondents commented on the provisions of the interim rule that allow the Administrator, Agricultural Stabilization and Conservation Service (ASCS) or the Executive Vice President, CCC, to change a determination made by a designee of the Administrator or Executive Vice President. The respondents suggested that a person acting on a determination or action taken by an ASCS employee or representative should be exempt from any liability for actions taken on such information if the Administrator or Executive Vice President or designee modifies or rescinds any determination or action taken by the employee or representative.

Part 790 of this title, in accordance with section 326 of the Food and Agriculture Act of 1962 (7 U.S.C. 1339c), is incorporated into the regulations in Part 1446 only and provides the authority for the Administrator, ASCS (Executive Vice President, CCC), to grant benefits in certain instances when the incomplete performance was based entirely upon action or advice of an authorized representative of the Secretary. However, with respect to penalties, even though a person may have relied in good faith on the advice of an employee, if the advice was in fact erroneous, relief under this statutory provision is not possible since the

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2. Summary of Comments to Part 1446

In response to the interim rule for Part 1446 that was published on April 19, 1991, a total of 17 respondents submitted 19 comments which addressed more than 75 separate issues. Respondents addressed many minor issues such as technical changes and clarifications. Some respondents addressed issues that are beyond the scope of this rulemaking or requested procedural clarifications that do not involve adjusting the terms of the regulations. These comments are not addressed in the final rule. Although the comment period ended on May 20, 1991, the Department continued to consider comments received through the close of business on July 15, 1991. The more important issues germane to the rulemaking, are the following:

Section 1446.102—Administration

Three respondents commented on the provisions of the interim rule that allow the Administrator, Agricultural Stabilization and Conservation Service (ASCS) or the Executive Vice President, CCC, to change a determination made by a designee of the Administrator or Executive Vice President. The respondents suggested that a person acting on a determination or action taken by an ASCS employee or representative should be exempt from any liability for actions taken on such information if the Administrator or Executive Vice President or designee modifies or rescinds any determination or action taken by the employee or representative.

Part 790 of this title, in accordance with section 326 of the Food and Agriculture Act of 1962 (7 U.S.C. 1339c), is incorporated into the regulations in Part 1446 only and provides the authority for the Administrator, ASCS (Executive Vice President, CCC), to grant benefits in certain instances when the incomplete performance was based entirely upon action or advice of an authorized representative of the Secretary. However, with respect to penalties, even though a person may have relied in good faith on the advice of an employee, if the advice was in fact erroneous, relief under this statutory provision is not possible since the

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statute does not extend to the assessment of penalties.

One respondent stated that allowing export credit for peanut products that are exported to Canada or Mexico should be allowed for the 1991 crop as a means of expanding U.S. exports and increasing the market for U.S. peanuts.

Due to the complexity of this issue, further study will be undertaken and comments sought with respect to the 1992 through 1995 crops of peanuts. However, the interim rule will remain in effect for the 1991 crop of peanuts.

Section 1446.103—Definitions

Seven respondents requested that several definitions which were excluded from the interim rule be added to the regulations. Also, respondents requested changes to several definitions that appeared in the interim rule.

It was determined to add into the final rule definitions for "additional peanuts", "bright hull Valencia peanuts", "dark hull Valencia peanuts", "fragmented peanuts", "treated seed peanuts", and "Valencia peanuts produced in the Southwest suitable for roasting." Also, it was determined that the final rule adopt the suggested changes in the definition of "eligible peanuts" to include peanuts to be delivered in bags for price support loan in the Southwest area (as defined in the regulations).

Section 1446.201—General Handler Requirements

Two respondents requested that the regulations list the specific requirements which must be met for handler approval. It was determined that the regulations accurately set out the statutory requirements for handler approval while providing adequate flexibility for handling unusual cases.

Section 1446.302—Eligibility of Peanuts for Price Support at the Additional Loan Rate

Seven respondents addressed the eligibility of peanuts for loan. Suggestions include: (1) Requiring the same moisture requirements for seed peanuts as for non-seed peanuts, (2) requiring that peanuts must contain not more than 10 percent foreign material unless the peanuts are bought back by the handler and stored separately, and (3) changing the provisions regarding Segregation 2 and Segregation 3 peanuts.

No change in the regulations was found to be necessary. It was determined that these suggestions are procedural in nature and are not appropriate matters for coverage in the regulations. In addition, such items are applicable to peanut quality and are subject to the quality program administered by PAC and by the Agricultural Marketing Service.

Section 1446.307—Disaster Transfer of Segregation 2 or Segregation 3 Peanuts From Additional Loan to Quota Loan

Six respondents addressed the disaster transfer provision. Five of the comments wanted technical changes to assure accurate calculations. One respondent asked that the regulations clarify the options of using the disaster transfer provision where crop insurance indemnification may also be offered by the Federal Crop Insurance Corporation (FCIC).

It was determined that the regulations adequately set forth the requirements for disaster transfers and that step-by-step instructions for making calculations are more suitable for inclusion in a directive handbook.

Also, since the provisions of the crop insurance program are not addressed by the regulations of part 1446, suggestions regarding the handling of such claims were beyond the scope of this rulemaking and were not adopted.

Section 1446.308—Loan Pools

Ten respondents commented on the provisions of the interim rule which addressed pools for Valencia peanuts produced in New Mexico. The respondents suggested continuation of the same method of cross compliance between pools that had been used with respect to the 1986 through 1990 crop of peanuts. As the statutory language which applied to these crops was adopted intact in the 1990 Act and the method of accounting for these pools was well known, these comments have been adopted in the final rule. This will mean that gains in pools in other areas will not be used to offset losses in the pools for Valencia peanuts produced in New Mexico. Also, it exempts the New Mexico pools for bright hull and dark hull Valencia peanuts from offsetting losses in dark hull Valencia peanuts from gains in bright hull Valencia peanuts, and vice versa.

Section 1446.309—Immediate Buyback and Sale of Loan Peanuts to the Storing Handler

Seven respondents objected to the provision of the interim rule which allows the purchase of additional peanuts for domestic edible uses under the "immediate buyback" provision.

Five respondents wanted the same language that was applicable for the 1986–1990 peanut crops which prohibited immediate buyback purchases until all contract additional peanuts were delivered from the farm. One respondent wanted some form of restriction but suggested such restrictions should apply by peanut type. It was determined not to change the interim rule as contracting parties may agree to contract provisions to restrict "immediate buyback" without the need for the regulations to impose such restrictions on all producers and handlers. However, this issue will be further reviewed and public comments on the matter solicited at a later date for the 1992 and subsequent crops.

Section 1446.401—Contracts for Additional Peanuts for Crushing or Export

Ten respondents commented on the provisions that apply to contracting additional peanuts for export or crushing.

Eight respondents commented about the contract form required for contracting additional peanuts. One respondent opposed the contract form on the basis it is not necessary and suggested that a list of requirements for approval should be included in the regulations rather than in a specified form. Requiring regularity in the contract complies with the statutory requirement that the contract be submitted "on a form" specified by the Secretary. In addition, this will avoid administrative confusion and unnecessary review with little imposition on handlers.

Respondents raised questions concerning contracts entered into before the interim regulations were issued, and contracts reproduced on legal sized paper. These questions relate to procedure and it was determined not to amend the regulations with respect to the issues addressed by the questions. CCC did not intend Form CCC–1005 for mass distribution but rather to be used as a template by handlers and producers. One respondent questioned whether any addendum to the contract should be filed with the contract and this prompted the determination to include in the final rule a provision that any addendum must accompany the contract when it is filed at the county ASCS office. Further, to provide for the orderly contracting and marketing of 1991-crop peanuts and to facilitate marketing of that crop, the final rule also provides that a contract form of the handler's own design will be considered an approved form for that crop, but only if the provisions of such contract otherwise meet the requirements for contract approval. However, for 1992 and subsequent crops, a form using CCC–1005 as a template and containing all requirements as set out in the regulations must be used for contracting purposes.

Other respondents commented on the language content of the contract, including the statement that peanuts covered by the contract could not be disposed of by the handler directly for domestic edible or seed use. The respondent maintained that such statement would conflict with the provisions of the regulations that allow the use of contracted additional peanuts for domestic edible use whenever the President suspends the import quota imposed under section 22 of the Agricultural Adjustment Act of 1933.

In such cases, should they occur, an appropriate announcement will be made, and at such time the handler and producer could, by mutual consent and in accordance with the regulations, agree to a different use of the peanuts. Therefore, no change in the regulations was found to be needed.

One respondent requested that weather at time of planting be considered a basis for extending the contract deadline since this would affect the yield. It was determined that the language in the interim rule appropriately sets forth the provisions of the statute. Therefore, the suggestion was not adopted.

Four respondents requested modification of the provisions of the interim rule applicable to the final contract price to allow some type of "formula" pricing as was permitted by the regulations applicable to the 1986 through 1990 crops. The final rule clarifies that the final contract price must be established in such a manner that a third party may determine such price without the need for further negotiation.

Section 1446.402—Approval as Handler of Contract Additional Peanuts

Six respondents addressed the provisions on handler approval. One respondent alleged that billing for supervision is nonconsistently applied to all handlers. This comment addresses a program administration issue and not a regulatory one. The billing procedures will be reviewed to assure that billing for supervision costs is made to the appropriate person and in appropriate amounts.

Five respondents suggested that the regulations include a provision prohibiting substitution of facilities after an entity has been approved as a handler. The suggestion is adopted in the final rule to help assure, as provided by Congress, that the facilities used to handle peanuts be approved by July 1. However, the regulations permit the Executive Vice President, CCC, in certain specified cases, to approve the substitution of facilities in order to avoid undue hardship for the handler and producers. Also, the respondents requested that the regulations applicable to extension of the letter of credit in an amount to cover the penalty for prior crop years include a statement that the amount of the letter of credit would be supplied to the association by the Tobacco and Peanuts Division of ASCS. It was determined that the interim rule provided adequate regulatory authority for extending the letter of credit. Accordingly, this suggestion was not adopted.

Section 1446.403—Letter of Credit

Three respondents objected to the letter of credit amount as being excessive and suggested that a handler be allowed to increase the letter of credit at a later time if the posted letter of credit was insufficient. It was determined that, a letter of credit based on the potential penalty on 8 percent of the amount of peanuts contracted does not represent an unreasonable amount of financial guarantee to assure that contract additional peanuts will be exported or crushed, especially in view of the potential harm to the peanut program for a failure to properly dispose of additional peanuts.

Three respondents requested that the handler be allowed to voluntarily increase the letter of credit at a later time if such handler realized the posted letter of credit is insufficient. It was determined that, if a handler could increase the letter of credit as suggested, the requirement for an adequate initial letter of credit would be a moot point. Handlers would have no reason to post an adequate letter of credit before contracts were approved and this would interfere accordingly with the efficient administration of the program.

Two respondents requested that the term "associated with" in this portion of the regulations be defined or clarified since the term makes obtaining a letter of credit more difficult. Financial institutions may have reservations about extending credit when it is not plainly clear what the term encompasses. The paragraph containing the term "associated with" is expanded in the final rule to provide further clarification of the use of this term.

Three respondents addressed the section on increased letter of credit due to violation history. The respondents suggested that the violations listed in § 1446.403(c) were so minor in nature that no increase in the letter of credit is necessary. Also, the respondents objected to the inclusion of penalties under appeal as part of the violation history requiring an increase in the letter of credit.

It was determined that all program violations should have some bearing upon the violation history of a handler and the letter of credit requirements in subsequent years. Certain violations may not be as serious as others but the existence of such violations will raise the concern that similar or more serious violations will occur. Also, the existence of an administrative appeal will not remove the obligation for an increased letter of credit amount since it would not be possible to assume that the increased amount would be collected after the appeal was resolved and since this would encourage appeals that may be frivolous.

Section 1446.404—Transfer of Contracts Prior to Delivery

Eight respondents commented on the provisions which allow contracts to be transferred to another handler whenever the original contracting handler is unable to perform under the contract due to circumstances beyond the handler's control.

Two respondents requested that the regulations permit the contract price to be changed if the contract is transferred The respondents stated that handlers might be unwilling to assume the original handler's contract at the original contract price. It has been determined that changing the contract price or the amount of peanuts contracted after the final contracting deadline would amount to contracting after the statutory deadline. The statute does not provide exceptions for contracting after the final date for filing contracts for approval. Accordingly, the suggestion is not adopted and the provisions for contract transfer prior to delivery as set forth in the interim rule are adopted as a final rule without change.

Four respondents suggested including language to assure that the receiving handler's letter of credit was sufficient to cover the amount of peanuts such handler contracted plus the amount of peanuts transferred. This was believed to comport with the intent of the regulations to assure adequate protection of CCC's financial interest and was adopted.

One respondent requested that two handler-to-handler transfers of lots of additional peanuts be allowed after delivery, but before export or crushing; provided each transfer is to a manufacturer. This suggestion, if adopted, would unduly discriminate against handlers who were not manufacturers. In addition, the current

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It was determined that all program violations should have some bearing upon the violation history of a handler and the letter of credit requirements in subsequent years. Certain violations may not be as serious as others but the existence of such violations will raise the concern that similar or more serious violations will occur. Also, the existence of an administrative appeal will not remove the obligation for an increased letter of credit amount since it would not be possible to assume that the increased amount would be collected after the appeal was resolved and since this would encourage appeals that may be frivolous.

Section 1446.404—Transfer of Contracts Prior to Delivery

Eight respondents commented on the provisions which allow contracts to be transferred to another handler whenever the original contracting handler is unable to perform under the contract due to circumstances beyond the handler's control.

Two respondents requested that the regulations permit the contract price to be changed if the contract is transferred The respondents stated that handlers might be unwilling to assume the original handler's contract at the original contract price. It has been determined that changing the contract price or the amount of peanuts contracted after the final contracting deadline would amount to contracting after the statutory deadline. The statute does not provide exceptions for contracting after the final date for filing contracts for approval. Accordingly, the suggestion is not adopted and the provisions for contract transfer prior to delivery as set forth in the interim rule are adopted as a final rule without change.

Four respondents suggested including language to assure that the receiving handler's letter of credit was sufficient to cover the amount of peanuts such handler contracted plus the amount of peanuts transferred. This was believed to comport with the intent of the regulations to assure adequate protection of CCC's financial interest and was adopted.

One respondent requested that two handler-to-handler transfers of lots of additional peanuts be allowed after delivery, but before export or crushing; provided each transfer is to a manufacturer. This suggestion, if adopted, would unduly discriminate against handlers who were not manufacturers. In addition, the current

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procedure whereby the original handler may disclaim export credits on a lot of peanuts has been shown to be a satisfactory and efficient method for the otherwise difficult task of tracking export obligations and credits. Accordingly, the suggestion is not adopted.

Section 1446.407—Handler Transfer of Contract Additional Peanuts or Transfer of Disposition Credit

Six respondents commented on the issue of transfer of peanuts or disposition credit.

Five respondents stated that the bill of sale should not be required as part of the documentation for proof of export. The respondents expressed concern that requiring a bill of sale when the peanuts had been involved in multiple sales would place undue burden on handlers, and also stated that CCC's interests are adequately protected without including the bill of sale as documenting proof of export. It has been determined that this comment has merit and that the administration of the peanut price support program will not be adversely affected by not requiring the bill of sale as part of the export documentation. Accordingly, the interim rule is revised by the final rule to reflect that the bill of sale will not be required for proof of export.

Section 1446.408—Decreasing or Drawing Upon a Letter of Credit

Seven respondents addressed the issue of reduction of the letter of credit and extension of the deadline for filing export documentation.

One respondent suggested that a handler be allowed to reduce the posted letter of credit prior to January 31 if weather was obviously affecting deliveries or if the final deliveries were determined prior to this date. Accordingly, the final rule provides that the letter of credit may be reduced prior to January 31 if the Deputy Administrator, State and County Operations approves such reduction.

Three respondents opposed the phrase "may reduce" on the basis it gave the area marketing association discretionary power to reduce the letter of credit and recommended using the phrase "shall reduce" instead. This suggestion was determined to have merit. Accordingly, the interim rule is amended by the final rule with respect to reducing the letter of credit after January 31 to state that the association "shall, upon request of the handler" reduce the letter of credit when the regulatory conditions are met.

Three respondents requested that the March 31 and May 31 dates for reducing the letter of credit be removed. This comment was found to have merit and regulations applicable to reducing the letter of credit subsequent to January 31 have been revised by the final rule to remove these dates. This will permit monthly reductions of letters of credit after January.

Two respondents requested that an extension of the time to file documentation when the handler could show that such delay is due to conditions beyond the handler's control. A determination was made to adopt this request in the final rule.

Section 1446.410—Extension of Final Disposition Date

Seven respondents commented on the provision for extending the final date for export or disposition.

Three respondents expressed concern that handlers could not request an extension as a matter of choice, and should not be required to supply a reason for the request. The interim rule requires that, in order to be approved for an extension, a handler must explain why the handler will be unable to meet the final disposition date.

In order that the actual deadline be maintained to assure expeditious resolution of the crop on the part of all parties, it has been determined that the extension to allow a handler additional time to complete exportation or crushing of additional peanuts should be granted only when completion of the export or crushing has been delayed beyond the normal disposition deadline of the applicable year for reasons beyond the control of the handler, such as equipment failures, strikes, natural disasters, and other similar reasons. For purposes of granting an extension of time to export or crush peanuts, failure to secure an export market will not be considered as a reason beyond the handler's control. The final date for exporting or crushing, once established, should apply to all handlers on an equitable basis. If an extension could be granted on the sole basis of allowing more time to secure an export market, the established final export date virtually becomes a meaningless provision. However, to provide partial relief for these concerns, the final date for exporting is changed to October 15 and the final date for requesting an extension is changed to September 15.

Two respondents objected to the requirement that a request to extend the final export date must be made a month in advance. The respondent stated that unwary handlers will be put into a penalty situation and that handlers should be allowed until the final disposition date to request an extension. The reason for providing a period of time between the date for requesting an extension and the final extension date was to allow a handler, whose extension is denied, ample time to avoid a penalty by disposing of the handler's remaining contract additional peanut obligation by crushing if export cannot be accomplished. If the final date for requesting an extension and the final date for disposing of contract additional peanuts were the same date, the handler would be subject immediately to penalty for failure to export or crush contract additional peanuts. Accordingly, the final rule continues to require that any request for an extension to export or crush must be made in advance of the final date for export or crush. However, as noted, the date for requesting the extension and the final date for exporting have been changed.

One respondent requested that the provision for extension include language that would: (1) Require that the handler specify the kernel type (i.e., SMK, SS, and AO kernels) for which the extension was being requested, (2) require that the handler increase the letter of credit to cover 140 percent of the quota support rate on the remaining obligation, (3) require the handler to dispose of the entire quantity of peanuts for which an extension has been granted, (4) require the handler to agree to pay supervision costs, and (5) make the handler subject to penalty assessment for failure to comply with provisions of the regulations. It was determined that the regulations in the interim rule provided adequate regulatory provisions for adequate disposition of contract additional peanuts where an extension is granted.

Section 1446.412—Evidence of Export

Five respondents requested that the required documentation of export by water be the original or carbon copy of the on-board ocean bill of lading. The respondent noted that this would prevent alterations to the document. This comment was found to have merit and, accordingly, the final rule requires that the on-board ocean bill of lading be either the original or an original duplicate (not a machine made copy) of the original bill of lading.

Section 1446.416—Suspension of Restrictions on Imported Peanuts

Eight respondents commented on the provisions that are applicable to the suspension of restrictions on imported peanuts.

Five of these suggested that the regulations be amended to provide that additional peanuts that are purchased for domestic edible use in such cases must be purchased only through the immediate buyback provision. This is not consistent with the statute and has not been adopted.

Three respondents objected to the provision that limits the purchase of contract additional peanuts from a producer by the contracting handler for sale for domestic edible use to those cases in which import restrictions under section 22 are temporarily suspended. The respondents stated that such interpretation, in effect negates the statute, since it is highly unlikely that import quotas would be suspended to allow an unlimited quantity of peanuts to be imported. The suggestion was not adopted because the statute explicitly applies only in cases of a "suspension."

Two respondents objected to the restriction that limits, to undelivered additional peanuts, the purchase of contract additional peanuts from a producer for domestic edible use. The respondents stated that U.S. produced additional peanuts should be able to compete with foreign peanuts for the domestic market and some type of pooling, among those producers that agree to sell their additional peanuts for domestic use, should be devised without regard to whether or not the peanuts had been delivered. It was determined that the statutory language allowing a handler "to purchase" additional peanuts from a producer would require that the producer own such peanuts and thereby exclude peanuts which the producer had marketed previously. The ownership of delivered contract additional peanuts has passed to the handler and additional peanuts placed under loan have been pledged as loan collateral and are no longer under control of the producer. In addition, such peanuts have been commingled with peanuts produced by other growers, thereby losing any identity with respect to a particular producer as the peanuts delivered by the producer. Accordingly, this suggestion was not adopted.

Section 1446.601—Disposition Requirements Under Nonphysical Supervision

Seven respondents commented on the disposition requirement for handlers operating under nonphysical supervision.

Four respondents requested that the provisions include language that a lower "shrink" amount be allowed for handlers who fail to comply with restrictions on the use of peanuts as may be specified by CCC. Similar language was contained in the regulations applicable to the 1986 through 1990 peanut crops. It was determined that such language is no longer necessary due to the implementation of the regulations at 7 CFR part 997 that apply to handlers who are not operating under the standards and handling procedures established by PAC. Therefore, with respect to such language, the interim rule is adopted as a final rule without change.

Six respondents addressed the amount of shrink permitted for handlers operating under nonphysical supervision. Five respondents requested that the shrink be set at 4 percent, the minimum shrink permitted by statute. One respondent supported the 4.5 percent shrink amount as set by the interim rule which continued the shrink allowance previously in place.

USDA is currently conducting a study of the shrink experience for warehouse-stored peanuts. The study will be concluded with the completion of the 1991 crop year. Congress was aware of the study and it would be premature and disruptive to adjust the shrink allowance at this time.

Seven respondents suggested that the term "transshipped" is not needed in the provision that denied credit for peanuts that are diverted or "transshipped" to an ineligible country, or that, in the alternative, the term "transshipped" should be defined. The term "transshipped" has been removed from §§ 1446.503 and 1446.601 in the final rule. The term did not add to the clarity or coverage of the provisions in which the term appeared.

Section 1446.602—Disposition Credits Under Nonphysical Supervision

Seven respondents commented on the provisions concerning disposition requirements under nonphysical supervision.

Two respondents requested that the term "may" should read "shall" in the provision applicable to granting disposition credits. This suggestion has been adopted in the final rule.

Five respondents requested clarification of the interim rule with respect to disposition credit for farmers stock peanuts in order to assure that farmers stock peanuts must meet the PAC incoming quality standards for Segregation 1 peanuts to be eligible for disposition credit. This comment was determined to have merit. A determination was made that the provisions applicable to disposition credits for exported farmers stock peanuts should require such peanuts to meet the PAC incoming quality standards for Segregation 1 peanuts. The PAC indemnification program is available to handlers for farmers stock peanuts which do not grade out of warehouse storage as Segregation 1 peanuts. Accordingly, the suggestion was adopted and the interim rule is amended by the final rule to reflect the suggested change.

Five respondents requested an adjustment in the credit for crushing farmers stock peanuts when the average dollar value graded out of warehouse storage is less than the average dollar value of the contract additional peanuts purchased by the handler. This suggestion has been adopted in the final rule in order to ensure that handlers do not unduly achieve, without compensation to producers and to the disadvantage of other handlers, an enhancement of the quality of the handler's peanuts available for marketing as quota peanuts.

Two respondents suggested removal of the provision of the interim regulations which limits the credit for crushing positive aflatoxin peanuts to the percentage of contract additional purchased relative to the total peanuts purchased. The respondents stated that such a provision does not encourage improvement of peanut quality. Adoption of this comment could provide an undue advantage to some handlers and diminish producer returns. Therefore, the suggestion was not adopted and the provision of the interim rule applicable to this disposition credit limitation is adopted as a final rule without change.

Five respondents suggested adding a provision that would address the issuance of disposition credits for AO kernels. Upon review of the interim regulations it was determined that the suggested provision was necessary for establishing TKC disposition credit. Accordingly, the suggestion was adopted by adding a provision that addresses AO disposition credits.

Five respondents suggested removing the reference to AO peanuts with respect to disposition credits for in-shell Virginia peanuts. The respondents stated that AO kernels are not considered to be part of in-shell peanuts. The suggestion was not adopted because inclusion of AO kernels in the rule will not have any impact if AO kernels are not determined in the official grades of in-shell Virginia peanuts. However, should the grade determination be changed, the rule will be in place to grant export credit accordingly.

Section 1446.603—Disposition Credit for Peanuts in Exported Products Made from Quota Peanuts

Six respondents suggested that the term "AO kernels" be removed in

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Five respondents requested an adjustment in the credit for crushing farmers stock peanuts when the average dollar value graded out of warehouse storage is less than the average dollar value of the contract additional peanuts purchased by the handler. This suggestion has been adopted in the final rule in order to ensure that handlers do not unduly achieve, without compensation to producers and to the disadvantage of other handlers, an enhancement of the quality of the handler's peanuts available for marketing as quota peanuts.

Two respondents suggested removal of the provision of the interim regulations which limits the credit for crushing positive aflatoxin peanuts to the percentage of contract additional purchased relative to the total peanuts purchased. The respondents stated that such a provision does not encourage improvement of peanut quality. Adoption of this comment could provide an undue advantage to some handlers and diminish producer returns. Therefore, the suggestion was not adopted and the provision of the interim rule applicable to this disposition credit limitation is adopted as a final rule without change.

Five respondents suggested adding a provision that would address the issuance of disposition credits for AO kernels. Upon review of the interim regulations it was determined that the suggested provision was necessary for establishing TKC disposition credit. Accordingly, the suggestion was adopted by adding a provision that addresses AO disposition credits.

Five respondents suggested removing the reference to AO peanuts with respect to disposition credits for in-shell Virginia peanuts. The respondents stated that AO kernels are not considered to be part of in-shell peanuts. The suggestion was not adopted because inclusion of AO kernels in the rule will not have any impact if AO kernels are not determined in the official grades of in-shell Virginia peanuts. However, should the grade determination be changed, the rule will be in place to grant export credit accordingly.

Section 1446.603—Disposition Credit for Peanuts in Exported Products Made from Quota Peanuts

Six respondents suggested that the term "AO kernels" be removed in

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paragraph (b)(2)(iii) and suggested that credit be granted for disposition of rejects. As before, the suggestion is not adopted because the reference to "AO kernels", while it may not be necessary and of no effect at this time, will be available without further amendment if a need should arise. Also, since this section involves peanuts in exported products, no reference to rejects is needed since rejects will not be in the exported product.

Section 1446.703—Assessment of Penalties Against Handlers

Two respondents commented on the penalty provision of the interim regulations. The respondents pointed out that the penalty assessed under § 1446.703(a)(10) for failure to timely remit the marketing assessment was also addressed under § 729.316. In addition, the respondents believed a penalty of 140 percent of the quota support rate was excessive.

Upon review of the separate regulations at 7 CFR parts 729 and 1446 it was determined that the reference to this particular penalty was adequately covered in Part 729 and accordingly the reference was removed in § 1446.703.

Having violations be subject to a penalty of 10 percent of the quota support rate was determined not to be excessive. Accordingly, the penalty assessment for failure to timely remit marketing assessments as appears in § 729.316 is adopted as a final rule.

Section 1446.704—Reduction of Marketing Penalties

Two respondents suggested that the final rule clarify the language in the interim rule that is applicable to reducing the marketing penalties. The respondents suggested changing the language "including a full reduction of the entire penalty." It was determined not to adopt this suggestion because the suggestion would not change the dollar effect of the penalty proceedings but could cause some confusion about the effect of the reduction on the application of the letter of credit requirements in the regulations as they apply to instances where the handler has a history of program violations.

In addition, the respondents suggested clarification of § 1446.704(b)(3)(ii) with respect to limiting the amount of reduction to an amount equal to 40 percent. This provision is clarified in the final rule.

Section 1446.801—Recordkeeping Requirements

Three respondents commented on the cost of recordkeeping that is required for the peanut price support program. The statute, as a condition of participating in the price support program or for handling contract additional peanuts, requires that the handler keep and submit records and other information in accordance with regulations as the Secretary may prescribe. The recordkeeping requirements as set forth in the interim rule are necessary to the fair and efficient operation of the program and are adopted without change.

Pre-regulatory Comments

Five respondents objected to only being able to comment on published rules and not being involved in the development of the rules prior to publication.

These comments do not directly address provisions of the interim rule. The publication of the rules provides for full and fair comment and accommodates all suggestions for change. Additional procedures are not required, would be unwieldy, would delay implementation of the regulations, and would not be of any additional material value.

Quality Improvements

Two respondents commented on the issue of quality improvements. One respondent questioned why the regulations did not provide that producers be compensated for quality improvements. One respondent suggested that a new section should be added to the regulations to address the quality improvement program. The respondent suggested that, specifically, the regulation could be revised to: (1) Promote the crushing of peanuts at greater risk of deterioration before peanuts of lesser risk, (2) ensure that CCC stocks sold for domestic use are inspected as farmers stock and as shelled or in-shell peanuts, (3) operate the peanut program in coordination with PAC to improve the quality of domestic peanuts, (4) adjust loan schedules upward to reflect additional handling and production cost required of producers to improve quality, and (5) assure all peanuts used domestically comply with quality standards of PAC.

CCC's policy is, and will continue to be, to endeavor to crush peanuts that are considered at greater risk of deterioration before crushing other CCC peanut stocks and to operate the peanut price support program in coordination with PAC to improve the quality of domestic peanuts. With respect to adjustment in the loan schedule, the loan schedule is based on historic peanut marketing patterns, values and use by type. With respect to inspection of peanuts, CCC stocks under the warehouse-stored loan program must be inspected as farmers stock peanuts.

It was determined that regulatory changes were not needed to address these comments, as the regulations are adequate to administer the peanut price support program in an efficient and cost effective manner.

Request for Further Comment

One respondent requested the opportunity to comment further on any new regulatory interpretations that differed from the regulations applicable to the 1986 through 1991 crops. CCC and ASCS believes that the rulemaking procedures provide adequate opportunity for public participation in rulemaking. Also, comments and suggestions for improving program administration are always welcome.

Administrative Hearings

One respondent recommended annual hearings on the terms and conditions of the peanut program. The statute does not require hearings concerning the peanut program and, as indicated above, such a formalized method of making suggestions for changes does not appear to be of material value. Accordingly, the suggestion is not adopted and the interim rule is published as a final rule without change.

List of Subjects

7 CFR Part 729

Poundage quotas, Peanuts, Penalties, Reporting and recordkeeping requirements.

7 CFR Part 1446

Loan programs—Agriculture, Peanuts, Price support programs, Reporting and recordkeeping requirements, Warehouses.

Accordingly, the regulations set forth in chapters VII and XIV of title 7 are amended as follows:

PART 729—[AMENDED]

1. In chapter VII, the regulations at 7 CFR part 729 were published in the **Federal Register** on April 19, 1991 (56 FR 16206), as an interim rule. The interim rule is adopted as the final rule, except as follows:

a. The authority citation for 7 CFR part 729 continues to read as follows:

Authority: 7 U.S.C. 1301, 1357 et seq., 1372, 1373, 1375; 7 U.S.C. 1445c–3.

b. In § 729.103, paragraph (b) is amended by: (1) Revising the introductory paragraph of paragraph (ii) of the definition "Considered produced credit," and (2) by revising paragraph (ii) of the definition for "Peanut quantity marketed or considered marketed." to read as follows:

§ 729.103 Definitions.

* * * * *

(b) * * *

Considered produced credit. * * *

(ii) Peanut poundage quota that was voluntarily released for the current year, or was leased and transferred by a transfer agreement that was filed before August 1 of the current year, if neither of the following are applicable:

* * * * *

Peanut quantity marketed or considered marketed. * * *

(ii) *Noninspected peanuts.* For peanuts not inspected by the Federal-State Inspection Service at the time of marketing, the gross weight of the lot.

* * * * *

§ 729.201 [Amended]

c. Section 729.201 is amended by removing the words "New Mexico—0.00583210" and inserting in their place "New Mexico—0.00580694" and removing the words "Oklahoma—0.06675097" and inserting in their place "Oklahoma—0.06677613".

d. Section 729.204 is amended by revising paragraphs (f) (1), (2) and (4)(i) to read as follows:

§ 729.204 Determining a farm's basic quota.

* * * * *

(f) *Reallocation in Texas of increased quota, quota reduced for nonproduction, and permanently released quota.*—(1) *Special provisions for certain Texas Counties.* Notwithstanding the provisions in paragraphs (b) and (e) of this section, 33 percent of any increase in the Texas peanut poundage quota resulting from an increase in the national quota and all of the quota reduced for nonproduction on all Texas farms, except that portion reallocated to nonquota farms in accordance with paragraph (e) of this section, shall be reallocated to farms having 1990-crop basic quotas in any Texas county in which the production of additional peanuts in 1989 exceeded the total of 1989-crop basic quotas on all farms in such county. The production of additional peanuts in 1989 exceeded the total of 1989-crop basic quotas on all farms in each of the following Texas counties: Andrews, Bailey, Briscoe, Childress, Collingsworth, Dickens, Donley, Gaines, Hale, Hall, Hardeman, Haskell, Hidalgo, Hockley, Knox, Lamb, Terry, Wheeler, Wilbarger, and Yoakum counties.

(2) *Allocation to counties.* Any quota to be allocated to eligible Texas counties in accordance with paragraph (f)(1) of this section shall be apportioned to the eligible counties on the basis of the total production of additional peanuts in the respective counties for the 1988 crop. Accordingly, based on the production of additional peanuts in 1988, such quota shall be apportioned to eligible counties according to the following factors: Andrews—0.005342, Bailey—0.003007, Briscoe— 0.016039, Childress—0.008190, Collingsworth—0.184498, Dickens—0.000000, Donley—0.03 1981, Gaines—0.413627, Hale—0.000647, Hall—0.063101, Hardeman—0.010278, Haskell—0.137459, Hidalgo—0.026700, Hockley—0.000679, Knox—0.002818, Lamb—0.026475, Terry—0.009885, Wheeler—0.003102, Wilbarger—0.000000, and Yoakum—0.056172.

* * * * *

(4) *Determining factor for reallocation of quota.*—(i) To receive a share of any quota allocated to eligible Texas counties under paragraph (f)(2) of this section, a farm must have had a basic quota greater than zero for the 1990 crop of peanuts. If a farm that had a basic quota greater than zero in 1990 is reconstituted subsequent to 1990:

(A) By division, the resulting farms will be considered to have had a basic quota greater than zero in 1990 for purposes of determining eligibility to receive a share of any quota allocated to eligible Texas counties under paragraph (f)(2) of this section.

(B) By combination, the resulting farm will not be considered to have had a basic quota greater than zero in 1990 for purposes of determining eligibility to receive a share of any quota allocated to eligible Texas counties under paragraph (f)(2) of this section unless, prior to the combination, each farm that is involved in the combination was considered to have had a basic quota greater than zero in 1990 for purposes of determining eligibility to receive an increased quota under paragraph (f)(2) of this section.

* * * * *

§ 729.316 [Amended]

e. Section 729.316 is amended in paragraph (b)(1) by removing the word "may" in the second sentence and inserting in its place the word "shall".

PART 1446—[AMENDED]

2. In chapter XIV, the regulations at 7 CFR part 1446 were published in the **Federal Register** on April 19, 1991 (56 FR 16227) as an interim rule. The interim rule is adopted as the final rule, except as follows:

a. The authority citation for 7 CFR part 1446 continues to read as follows:

Authority: 7 U.S.C. 1359a, 1375, 1421 *et seq.;* 15 U.S.C. 714b and 714c.

b. Section 1446.103 is amended as follows: (1) by revising the introductory text, (2) by revising the definition of "Eligible country"; by, for the definition of "Eligible peanuts", revising paragraphs (5) and (6) and by adding a new paragraph (7); by revising the definition of "Peanut product", and (3) by adding, as new definitions, definitions for "Additional peanuts", "Bright hull Valencia peanuts", "Dark hull Valencia peanuts", "Fragmented peanuts", "Treated seed peanuts", and "Valencia type peanuts produced in the Southwest that are suitable for cleaning and roasting":

§ 1446.103 Definitions.

For purposes of this part, the definitions and provisions of parts 718, 719, 729, 780, 790, 791, 793, 1402, 1403, 1407, 1421, 1422 and 1498 of this title are incorporated and shall apply except where the context or subject matter or provisions of the regulations in this part otherwise requires or provides. References contained in this subpart to other parts of this chapter or title include any subsequent amendments to those referenced parts. Unless the context indicates otherwise, any reference to the Executive Vice President of CCC shall also be read to mean to any persons designated by the Executive Vice President. Unless the context or subject matter otherwise requires, the following words and phrases as used in this part and in all related instructions and documents shall have the following meanings:

* * * * *

Additional peanuts. Any peanuts which are marketed from a farm other than peanuts marketed or considered marketed as quota peanuts.

* * * * *

Bright hull Valencia peanuts. Valencia type peanut produced in the Southwest for which not more than 25 percent of the shells are damaged by:

(1) Discoloration;

(2) Cracks or broken ends; or

(3) Both discoloration and cracks or broken ends.

* * * * *

Dark hull Valencia peanuts. Valencia type peanuts that are produced in the Southwest and that do not meet the requirements for bright hull Valencia peanuts.

* * * * *

Eligible country. With respect to credit for exportation of additional peanuts, any destination outside the United States for which an export

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Authority: 7 U.S.C. 1359a, 1375, 1421 *et seq.*; 15 U.S.C. 714b and 714c.

b. Section 1446.103 is amended as follows: (1) by revising the introductory text, (2) by revising the definition of "Eligible country"; by, for the definition of "Eligible peanuts", revising paragraphs (5) and (6) and by adding a new paragraph (7); by revising the definition of "Peanut product", and (3) by adding, as new definitions, definitions for "Additional peanuts", "Bright hull Valencia peanuts", "Dark hull Valencia peanuts", "Fragmented peanuts", "Treated seed peanuts", and "Valencia type peanuts produced in the Southwest that are suitable for cleaning and roasting":

§ 1446.103 Definitions.

For purposes of this part, the definitions and provisions of parts 718, 719, 729, 780, 790, 791, 793, 1402, 1403, 1407, 1421, 1422 and 1498 of this title are incorporated and shall apply except where the context or subject matter or provisions of the regulations in this part otherwise requires or provides. References contained in this subpart to other parts of this chapter or title include any subsequent amendments to those referenced parts. Unless the context indicates otherwise, any reference to the Executive Vice President of CCC shall also be read to mean to any persons designated by the Executive Vice President. Unless the context or subject matter otherwise requires, the following words and phrases as used in this part and in all related instructions and documents shall have the following meanings:

* * * * *

Additional peanuts. Any peanuts which are marketed from a farm other than peanuts marketed or considered marketed as quota peanuts.

* * * * *

Bright hull Valencia peanuts. Valencia type peanut produced in the Southwest for which not more than 25 percent of the shells are damaged by:

(1) Discoloration;

(2) Cracks or broken ends; or

(3) Both discoloration and cracks or broken ends.

* * * * *

Dark hull Valencia peanuts. Valencia type peanuts that are produced in the Southwest and that do not meet the requirements for bright hull Valencia peanuts.

* * * * *

Eligible country. With respect to credit for exportation of additional peanuts, any destination outside the United States for which an export

license may be acquired, except that with respect to the 1991 crop, neither Canada nor Mexico shall be considered an eligible country for the purpose of exporting peanut products other than treated seed peanuts.

Eligible peanuts. * * *

(5)Were not produced on land owned by the Federal Government if such land is occupied without a lease permit or other right of possession;

(6) Have been inspected and have an official grade determined by a Federal or Federal-State inspector; and

(7) Must, if delivered to the association in bags in the Southwestern area, be in new or thoroughly cleaned used bags which:

(i) Are made of material other than mesh or net, weighing not less than 7½ ounces nor more than 10 ounces per square yard and containing no sisal fibers;

(ii) Are free from holes;

(iii) Are finished at the top with either the selvage edge of the material, a binding, or a hem; and

(iv) Are uniform in size with approximately a 2 bushel capacity.

* * * * *

Fragmented peanuts. Peanuts meeting the qualifications for fragmented peanuts as defined in the outgoing quality regulations of the Peanut Marketing Agreement (No. 146) applicable to the crop year in which the peanuts were produced.

* * * * *

Peanut product. Any product, other than peanut oil or peanut meal, that is manufactured or derived from peanuts including, but not limited to, peanut candy, peanut butter, treated seed peanuts, roasted peanuts (either shelled or in-shell), pressed peanuts, and peanut granules.

* * * * *

Treated seed peanuts. Shelled peanuts that have been modified from their original shelled state by a treatment to make them suitable for seed purposes.

* * * * *

Valencia type peanuts produced in the Southwest that are suitable for cleaning and roasting. Peanuts that are identified, determined and classified by the Federal-State Inspection Service as bright hull Valencia peanuts.

c. In § 1446.308, paragraph (d)(2) is revised to read as follows:

§ 1446.308 Loan pools.

* * * * *

(d) * * *

(2) With respect to loan pools for Valencia peanuts produced in New Mexico, if the loan indebtedness on the peanuts in a Segregation 1 quota pool:

(i) For dark hull peanuts, exceeds the proceeds from the sale of the peanuts in such pool, such excess shall be recovered from any net gains on Segregation 1, 2 and 3 loan pools for New Mexico dark hull additional peanuts, proportionately to net gains in each pool.

(ii) For bright hull peanuts, exceeds the proceeds from the sale of the peanuts in such pool, such excess shall be recovered from any net gains on Segregation 1, 2 and 3 loan pools for New Mexico bright hull additional peanuts, proportionately to net gains in each pool.

* * * * *

d. In § 1446.401, paragraphs (a) and (c)(2)(vi) are revised to read as follows:

§ 1446.401 Contracts for additional peanuts for crushing or export.

* * * * *

(a) *Contract form and addendum.*—(1) *Contract form.* In order to be approved by the county committee:

(i) *1991-crop peanuts.* With respect to 1991-crop peanuts, the contract may be on:

(A) Form CCC–1005, Handler Contract With Producers for Purchase of Additional Peanuts for Crushing or Export, or

(B) A form of the respective handler's design if such form meets all of the substantive requirements of paragraph (c)(2) of this section.

(ii) *1992 through 1995 crops of peanuts.* With respect to the 1992 through 1995 crop of peanuts, the contract must be completed on form CCC–1005, Handler Contract With Producers for Purchase of Additional Peanuts for Crushing or Export, or on a form approved by the Executive Vice President which follows the organization of the CCC–1005 and contains as a minimum all of the requirements provided for in paragraph (c)(2) of this section.

(2) *Availability of CCC–1005.* The marketing association shall make available a form CCC–1005 to each approved handler and to any producer upon request.

(3) *Addenda.* The handler may use an addendum to a contract form if such addendum neither negates nor conflicts with any provision in this part. Any existing addendum to the contract which relates to the marketing of additional peanuts must accompany the contract at the time the contract is filed with the county committee.

* * * * *

(c) * * *

(2) * * *

(vi) The final contract price to be paid by the handler and shown as a set percentage of the loan rate for quota peanuts of the type indicated on the contract; except that such final contract price shall not be less than the additional loan rate for the type of peanut indicated on the contract. A contract or an addendum to a contract that provides for a conditional supplemental payment to the producer will not be considered to negate the final contract price only if the supplemental payment to be made is expressed in a manner that a third party may determine the amount of the supplemental payment without a need for additional negotiations;

* * * * *

e. Section 1446.402 is amended by redesignating paragraph (c) as paragraph (d), revising paragraphs (a)(3) and (b)(4) and inserting new paragraph (c), to read as follows:

§ 1446.402 Approval as handler of contract additional peanuts.

(a) * * *

(3) *Letter of credit for prior crop years.* Establish an irrevocable letter of credit, or increase any existing letter of credit applicable for a previous crop year, in an amount necessary to cover any outstanding marketing penalties on peanuts produced in such crop year which are still under administrative appeal or are unpaid. This requirement is in addition to any letter of credit requirement for the current year.

(b) * * *

(4) Has complied with the requirements of paragraph (a)(3) of this section.

(c) *Rescission of approval.* Unless the Executive Vice President, CCC, shall otherwise agree in writing, a handler's previous approval to contract for the purchase of additional peanuts for exporting or crushing and to receive and handle such peanuts shall be considered to be rescinded upon such handler's use of facilities, other than those on which the approval was based, to receive, store, process, or ship contract additional peanuts. However, a rescission will not apply if substituted facilities are approved by the association, in accordance with instructions issued by CCC, when the handler can show, as determined by the association subject to review by the Executive Vice President, that the original facilities are no longer available for use due to circumstances beyond the handler's control such as, but not limited to, fire, flood, wind damage, or mechanical failure. In the event of rescission of a handler's approval, any purchases of peanuts from producers by such handler subsequent to the rescission will be considered as purchases of quota peanuts and will subject the handlers and producers to penalties, as prescribed by this part and in 7 CFR Part 729 for marketing excess quota peanuts unless such peanuts are recorded on the producer's marketing card as a marketing of quota peanuts.

* * * * *

f. Section 1446.403 is amended by revising paragraph (b)(1)(ii) to read as follows:

§ 1446.403 Letter of credit.

* * * * *

(b)(1) * * *

(ii) Who, for purposes of handling peanuts is, as determined by CCC, a partnership, merger, joint venture, or other similar business relationship having officials who were officials of an organization having such a record or is composed in whole or in part by merger, succession, consolidation, association or assimilation, of entities with such a record; or

* * * * *

g. Section 1446.404 is amended by adding a new paragraph (a)(3) to read as follows:

§ 1446.404 Transfer of contracts prior to delivery.

* * * * *

(a) * * *

(3) If the receiving handler:

(i) Has an existing letter of credit, such handler may increase the existing letter of credit to cover the total amount of farmers stock peanuts that is to be transferred. However, any increase must be made within 14 days after the transfer is approved, otherwise any increased letter of credit will not be considered for purposes of determining whether an increase will be required in the next year's letter of credit because of a deficiency in the letter of credit.

(ii) Does not have an existing letter of credit, the transfer shall not be approved unless such handler secures an acceptable letter of credit to cover the amount of farmers stock peanuts that is to be transferred.

* * * * *

h. Section 1446.407 is amended by revising paragraph (d) to read as follows:

§ 1446.407 Handler transfer of contract additional peanuts or transfer of disposition credit.

* * * * *

(d) *Transfer of export credit for peanuts which have been exported.* Credit for peanuts that have been exported under the provisions of this part will be given to the applicant shown on the form FV–184–9 for the lot of peanuts that has been exported. However, if a disclaimer to the credit for export is submitted with the applicable form FV–184–9, the export credit will be transferred to the person to whom the credit was assigned.

* * * * *

i. Section 1446.408 is amended by: (1) in paragraph (b) in the second sentence, by removing the word "may" and inserting in its place the word "shall" and by removing the words "and on March 31, May 31,", and (2) by revising paragraphs (a) and (c)(1) to read as follows:

§ 1446.408 Decreasing or drawing upon a letter of credit.

(a) *Decreasing the letter of credit to reflect TKC obligation.* Any existing irrevocable letter of credit that has been presented by a handler may be decreased after January 31 of the calendar year following the year in which the peanuts were produced, or such earlier date as may be authorized by the Deputy Administrator, State and County Operations, if the final TKC obligation determined for such handler, when converted to a farmers stock peanuts basis by dividing the TKC pounds by 0.795 for runner peanuts; 0.75 for Spanish peanuts; 0.735 for Virginia peanuts; or 0.77 for Valencia peanuts, is less than the amount that would be applicable for such handler and for such amount of farmers stock peanuts as determined in accordance with § 1446.403 of this part. The letter of credit may be decreased to the amount so determined.

* * * * *

(c) *Drawing against the letter of credit.*—(1) If less than 16 days remain before the expiration of a handler's letter of credit, and upon authorization by CCC, the marketing association may draw against the letter of credit and apply the amount toward any penalty due for failure to properly dispose of, or account for, contract additional peanuts in accordance with this part if:

(i) By the final disposition date required in this part, a deficiency remained in the handler's obligation to crush or export contract additional peanuts;

(ii) By the date required in this part, the handler did not provide satisfactory documentary evidence of the full export of peanuts or peanut products; or

(iii) The handler has committed another violation of this part with respect to such peanuts.

* * * * *

§ 1446.410 [Amended]

j. In § 1446.410, paragraph (a) is amended by removing the word "September" and inserting in its place the word "October" and paragraph (b) is amended by removing the word "August" and inserting in its place the word "September".

k. Section 1446.412 is amended by: (1) In the introductory paragraphs for paragraphs (b)(2) and (b)(3), inserting the words "and peanut products" after the word "peanuts" and (2) by revising (b) introductory text and (b)(1) introductory text to read as follows:

§ 1446.412 Evidence of export.

* * * * *

(b) *Documentation.* Not later than 45 days after the final disposition date provided in this part, or a later date established by the Director, TPD, for cases where the Director finds that the handler has made a good faith effort to furnish documentation in a timely manner and that the failure to do so was due to conditions beyond the control of the handler, furnish to the marketing association or CCC the following documentary evidence of the export of peanuts or peanut products:

(1) *Export by water.* For peanuts or peanut products and peanut products that were exported by water, a nonnegotiable original or original duplicate copy (not a machine made copy) of an on-board ocean bill of lading. Such bill of lading must have been signed on behalf of the carrier and must include:

* * * * *

§ 1446.503 [Amended]

l. Section 1446.503 is amended in paragraph (b) by removing the words "or transshipped" in both the paragraph heading and in the text.

§ 1446.601 [Amended]

m. Section 1446.601 is amended in paragraph (f) by removing the words "or transshipped" in both the paragraph heading and in the text.

n. Section 1446.602 is amended: (1) in paragraph (a) introductory text by removing in the third sentence the word "may" and inserting in its place the words "shall, subject to the provisions of this part,"; (2) in paragraph (e) introductory text by removing in the first sentence the word "blancher" and by inserting in its place the word "handler"; (3) in paragraph (f) introductory text by, in the first sentence before the word "quality", inserting the word "outgoing"; and (4) by revising paragraphs (a) (3), (4) and (6); (b) introductory text; and paragraph (d) to read as follows:

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"September" and inserting in its place the word "October" and paragraph (b) is amended by removing the word "August" and inserting in its place the word "September".

k. Section 1446.412 is amended by: (1) In the introductory paragraphs for paragraphs (b)(2) and (b)(3), inserting the words "and peanut products" after the word "peanuts" and (2) by revising (b) introductory text and (b)(1) introductory text to read as follows:

§ 1446.412 Evidence of export.

* * * * *

(b) *Documentation.* Not later than 45 days after the final disposition date provided in this part, or a later date established by the Director, TPD, for cases where the Director finds that the handler has made a good faith effort to furnish documentation in a timely manner and that the failure to do so was due to conditions beyond the control of the handler, furnish to the marketing association or CCC the following documentary evidence of the export of peanuts or peanut products:

(1) *Export by water.* For peanuts or peanut products and peanut products that were exported by water, a nonnegotiable original or original duplicate copy (not a machine made copy) of an on-board ocean bill of lading. Such bill of lading must have been signed on behalf of the carrier and must include:

* * * * *

§ 1446.503 [Amended]

l. Section 1446.503 is amended in paragraph (b) by removing the words "or transshipped" in both the paragraph heading and in the text.

§ 1446.601 [Amended]

m. Section 1446.601 is amended in paragraph (f) by removing the words "or transshipped" in both the paragraph heading and in the text.

n. Section 1446.602 is amended: (1) in paragraph (a) introductory text by removing in the third sentence the word "may" and inserting in its place the words "shall, subject to the provisions of this part,"; (2) in paragraph (e) introductory text by removing in the first sentence the word "blancher" and by inserting in its place the word "handler"; (3) in paragraph (f) introductory text by, in the first sentence before the word "quality", inserting the word "outgoing"; and (4) by revising paragraphs (a) (3), (4) and (6); (b) introductory text; and paragraph (d) to read as follows:

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§ 1446.602 Disposition credit for peanuts under nonphysical supervision.

(a) * * *

(3) Exported kernels that meet PAC outgoing quality standards for domestic edible use; or

(4) Peanuts that are exported as farmers stock peanuts, provided that such peanuts meet PAC incoming quality standards for Segregation 1 peanuts and are positive lot identified; or

* * * * *

(6) Peanuts that are exported as milled or in-shell peanuts if they meet PAC outgoing quality standards for domestic edible peanuts; or

* * * * *

(b) *Requesting physical supervision of crushing for disposition credit.* Prior to the disposition date for contract additional peanuts, as provided in this part, a handler operating under the provisions of this part with respect to nonphysical supervision may request and arrange for the marketing association to supervise the crushing of SMK, SS and AO peanuts for disposition credit for the applicable kernel type by obtaining physical supervision of the peanuts under the following conditions:

* * * * *

(d) *Application of crushing credits to disposition obligation.*—(1) *Milled peanuts.*—Milled peanuts that are crushed under physical supervision for disposition credit may receive credit as follows:

(i) If such peanuts meet PAC outgoing quality standards for domestic edible peanuts, disposition credit may apply pound-for-pound toward meeting the respective SMK, SS, or AO kernel obligations for the respective like peanut type and for like kernel type.

(ii) If such peanuts fail to meet PAC outgoing quality standards for domestic edible use due to aflatoxin contamination, disposition credit may apply to the SMK, SS or AO kernel obligations for the respective like peanut type and for like kernel type; except that, the percentage of such peanuts to which such credit will be allowed for each peanut type and kernel type shall not exceed the percentage of the total quantity of the respective type of peanuts that was purchased by the handler for the marketing year as contract additional peanuts.

(iii) If such peanuts fail to meet PAC outgoing quality standards for reasons other than aflatoxin contamination, disposition credit must be applied exclusively as AO kernels.

(2) *Farmers stock peanuts.*—Farmers stock peanuts that are crushed under physical supervision for disposition credit may receive credit as follows:

(i) If such peanuts meet PAC incoming quality standards for Segregation 1 peanuts, disposition credit may apply pound-for-pound toward meeting the respective SMK, SS, or AO kernel obligations for the respective like peanut type and for like kernel type.

(ii) If such peanuts fail to meet PAC incoming quality standards for Segregation 1 peanuts, disposition credit may apply to the SMK, SS or AO kernel obligations for the respective like peanut type and for like kernel type; except that, the percentage of such peanuts to which such credit will be allowed for each peanut type and kernel type shall not exceed the percentage of the total quantity of the respective type of peanuts that was purchased by the handler for the marketing year as contract additional peanuts.

(iii) If such peanuts do not meet PAC incoming quality standards for Segregation 1 peanuts for any reason other than the presence of A. flavus mold, disposition credit must be applied exclusively as AO kernels.

(3) *Adjusting export credit for average dollar value of farmers stock peanuts.* If CCC determines that the average dollar value of edible farmers stock peanuts graded out of commingled storage and crushed for export credit under the provisions of this section is less than the average dollar value of all like type peanuts purchased by the handler as contract additional peanuts, the amount of export credit for each kernel type determined under paragraph (b)(2) of this section shall be adjusted by multiplying each quantity for each kernel type by a factor to be determined by dividing:

(i) The average dollar value per ton of peanuts graded out of the handler's commingled storage, accounted for as set forth in this part, and crushed for export credit under the provisions of this section; by

(ii) The average dollar value per ton of all peanuts purchased by the handler as contract additional peanuts.

* * * * *

§ 1446.703 [Amended]

o. Section 1446.703 is amended in paragraph (a)(8) by placing the word "or" after the semicolon, in paragraph (a)(9) by changing the semicolon to a period and by removing the word "or", by removing paragraph (a)(10), in paragraph (b)(9) by inserting the word "or" after the semicolon, by removing paragraph (b)(10), and by redesignating paragraph (b)(11) as (b)(10).

p. Section 1446.704 is amended by revising paragraph (b)(3)(ii) to read as follows:

§ 1446.704 Appeals and requests for reconsideration and reduction.

* * * * *

(b) * * *

(3) * * *

(ii) If one of the criteria in paragraphs (b)(2) (i) and (ii) of this section has not been satisfied and the remaining criteria has been satisfied, the penalty shall not be reduced to less than an amount which is equal to 40 percent of the national average quota support rate for the applicable crop year times the quantity of peanuts involved in the violation.

* * * * *

q. Section 1446.807 is revised to read as follows:

§ 1446.807 Paperwork Reduction Act assigned numbers.

The information collection requirements contained in these regulations (7 CFR part 1446) have been approved by the Office of Management and Budget (OMB) in accordance with 44 U.S.C. Chapter 35 and have been assigned OMB control numbers 0560–0006, 0560–0014 and 0560–0133.

Signed at Washington, DC on August 7, 1991.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91–19092 Filed 8–7–91; 4:53 pm]

BILLING CODE 3410-05-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 210a, 214, 241 and 242

[INS No. 1438–91; AG Order No. 1519–91]

Revision of Grounds for Deportation; Conforming Regulations

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends 8 CFR parts 210a, 214, 241 and 242 by providing technical amendments to conform with section 241 of the Immigration and Nationality Act, as amended by section 602 of the Immigration Act of 1990 (IMMACT). This interim rule is necessary to ensure implementation of

and regulatory compliance with IMMACT.

DATES: This interim rule is effective March 1, 1991. Written comments must be submitted on or before September 27, 1991.

ADDRESSES: Written comments should be submitted in triplicate to the Records Systems Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., room 5304, Washington, DC 20536. To ensure proper and timely handling please include INS number 1438-91 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Gale David, Detention and Deportation Officer, Immigration and Naturalization Service, 425 I Street NW., room 1102, Washington, DC 20536, telephone (202) 514-1954.

SUPPLEMENTARY INFORMATION:

General Comments

The majority of the amendments made to section 241 of the Immigration and Nationality Act, ch. 477, 66 Stat. 163 (1952), as amended (Act), by section 602 of the Immigration Act of 1990, Public Law 101-649, are technical in nature, relating in large part to citation changes. These do not substantively affect the rights of those bound by this section. Consequently, the regulatory changes to 8 CFR necessitated by enactment of section 602 are also primarily technical in nature. Those regulatory changes which do alter the substantive rights of those who are bound by this title have been so identified in the sections below.

In addition, to those changes necessitated by IMMACT, grammatical and technical errors in 8 CFR have also been corrected.

Changes to 8 CFR

Section 210a.8(b)(3) is amended to revise the reference to section 241(a)(20) of the Act to read "241(a)(1)(F)";

Section 214.1(e) is amended to revise the reference to section 241(a)(9) of the Act to read "241(a)(1)(C)(i)";

Section 214.1(f) is amended to revise the reference to section 241(a)(9) of the Act to read "241(a)(1)(C)(i)";

Section 214.1(g) is amended to revise the reference to section 241(a)(9) of the Act to read "241(a)(1)(C)(i)";

Section 241.2(a)(10) is amended to revise the reference to section 241(a)(9) of the Act to read "241(a)(1)(C)(i)" in each of the two sentences within that paragraph

Section 214.2(e)(1) is amended to revise the reference to section 241(a)(9) of the Act to read "241(a)(1)(C)(i)". This paragraph is also amended to correct typographical errors by correcting the spelling of "nomimmigrant"; by adding an apostrophe in "alien's place of residence", and by changing the phrase "Service offices" to "Service officers".

Section 214.2(f)(12)(i)(E) is amended to revise the reference to section 241(a) (2) or (9) of the Act to read "241(a)(1) (B), (C), or (D)".

Section 214.2(g)(10) is amended to revise all references to 241(a)(9)(A) of the Act to read "241(a)(1)(C)(i)".

Section 214.2(m)(16)(i)(E) is amended to revise the reference to section 241(a) (2) or (9) of the Act to read "241(a)(1) (B), (C), or (D)".

Section 241.1 is amended to revise the reference to section 241(a)(11) of the Act to read "241(a)(2)(B)".

Section 242.7a is amended to revise the reference to section 241(f) of the Act to read "241(a)(1)(H)". The phrase "a special inquiry officer" in the last sentence of this section is also changed to "the Immigration Judge".

Section 242.8(a) is amended by revising an erroneous reference to section 241(a)(11) of the Act because no application was provided for under that section. The reference to section 241(f) of the Act is revised to read "241(a)(1)(H)". Finally, a reference to section 241(a)(1)(E)(ii) of the Act is added to authorize the Immigration Judge to determine applications for waivers of deportability for smuggling violations, as set forth in section 241(a)(1)(E) of the Act, as amended by section 602 of IMMACT. While the statutory amendment might substantively affect the rights of those regulated, this regulatory language merely tracks the statute, and, therefore, is deemed technical for regulatory purposes.

Section 242.17(d) is amended in both the heading and the text to revise the reference to section 241(f) of the Act to read "241(a)(1)(H) and 241(a)(1)(E)(ii)". The word "section" was also made plural to comport with the amendment. The reference to section 241(a)(1)(E)(ii) has been added to the interim rule to effectuate the alien respondent's ability to apply for relief from deportation for smuggling violations, as set forth in section 241(a)(1)(E) of the Act, as amended by IMMACT. While the statutory amendment might substantively affect the rights of those regulated, this regulatory language merely tracks the statute, and, therefore, is deemed technical for regulatory purposes.

Section 242.23(c) is amended to revise the reference to paragraphs (4), (5), (6), (7), (11), (12), (14), (15), (16), (17) or (18) of section 241(a) of the Act to read "paragraphs (2), (3), or (4) of section 241(a)". The changed citations coincide with the changes set forth in sections 242 (e) and (f) of the Act, as amended by section 602 of IMMACT. In addition, the term "special inquiry officer" in paragraph (d) is changed to "the Immigration Judge".

Table of citation changes to section 241 of the Act, as mandated by section 602 of the Immigration Act of 1990:

Former citation	New citation (effective 3/1/91)
241(a)(1)	241(a)(1)(A).
241(a)(2)	241(a)(1)(B).
241(a)(3)	Removed.
241(a)(4)	241(a)(2)(A) (i), (ii), (iii).
241(a)(5)	241(a)(3) (A), (B) [Note: Some parts of 241(a)(5) removed].
241(a)(6)	Removed.
241(a)(7)	241(a)(4)(A).
241(a)(8)	241(a)(5).
241(a)(9)(A)	241(a)(1)(C)(i).
241(a)(9)(B)	241(a)(1)(D)(i).
241(a)(10)	Removed.
241(a)(11)	241(a)(2)(B).
241(a)(12)	Removed.
241(a)(13)	241(a)(1)(E)(i).
241(a)(14)	241(a)(2)(C).
241(a)(15)	Removed.
241(a)(16)	Removed.
241(a)(17)	241(a)(2)(D) (i), (ii), (iii).
241(a)(18)	241(a)(2)(D)(iv).
241(a)(19)	241(a)(4)(D).
241(a)(20)	241(a)(1)(F).
241(a)(21)	Removed.
241(b)(1)	241(a)(2)(A)(iv).
241(b)(2)	Removed.
241(c)(1)	241(a)(1)(G)(i).
241(c)(2)	241(a)(1)(G)(ii).
241(d)	241(c).
241(e)	241(b).
241(f)(1)	241(a)(1)(H).
241(f)(2)	Removed.
241(g)	241(a)(1)(D)(ii).
None	241(a)(1)(C)(ii).
None	241(a)(1)(E)(ii).
None	241(a)(4)(B).
None	241(a)(4)(C)(i).

The Attorney General's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the "good cause" exception found in 5 U.S.C. 553(d). The reasons and necessity for immediate implementation of this interim rule are as follows: The statutory requirements upon which this rule is based became effective on March 1, 1991, and this rule implements predominantly technical changes to align 8 CFR with these statutory requirements.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation

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241(a)". The changed citations coincide with the changes set forth in sections 242 (e) and (f) of the Act, as amended by section 602 of IMMACT. In addition, the term "special inquiry officer" in paragraph (d) is changed to "the Immigration Judge".

Table of citation changes to section 241 of the Act, as mandated by section 602 of the Immigration Act of 1990:

Former citation	New citation (effective 3/1/91)
241(a)(1)	241(a)(1)(A).
241(a)(2)	241(a)(1)(B).
241(a)(3)	Removed.
241(a)(4)	241(a)(2)(A) (i), (ii), (iii).
241(a)(5)	241(a)(3) (A), (B) [Note: Some parts of 241(a)(5) removed].
241(a)(6)	Removed.
241(a)(7)	241(a)(4)(A).
241(a)(8)	241(a)(5).
241(a)(9)(A)	241(a)(1)(C)(i).
241(a)(9)(B)	241(a)(1)(D)(i).
241(a)(10)	Removed.
241(a)(11)	241(a)(2)(B).
241(a)(12)	Removed.
241(a)(13)	241(a)(1)(E)(i).
241(a)(14)	241(a)(2)(C).
241(a)(15)	Removed.
241(a)(16)	Removed.
241(a)(17)	241(a)(2)(D) (i), (ii), (iii).
241(a)(18)	241(a)(2)(D)(iv).
241(a)(19)	241(a)(4)(D).
241(a)(20)	241(a)(1)(F).
241(a)(21)	Removed.
241(b)(1)	241(a)(2)(A)(iv).
241(b)(2)	Removed.
241(c)(1)	241(a)(1)(G)(i).
241(c)(2)	241(a)(1)(G)(ii).
241(d)	241(c).
241(e)	241(b).
241(f)(1)	241(a)(1)(H).
241(f)(2)	Removed.
241(g)	241(a)(1)(D)(ii).
None	241(a)(1)(C)(ii).
None	241(a)(1)(E)(iii).
None	241(a)(4)(B).
None	241(a)(4)(C)(ii).

The Attorney General's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the "good cause" exception found in 5 U.S.C. 553(d). The reasons and necessity for immediate implementation of this interim rule are as follows: The statutory requirements upon which this rule is based became effective on March 1, 1991, and this rule implements predominantly technical changes to align 8 CFR with these statutory requirements.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation

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of a Federal Assessment in accordance with E.O. 12612.

List of Subjects

8 CFR Part 210a

Administrative practice and procedure, Aliens, Migrant labor, Reporting and recordkeeping requirements.

8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

8 CFR Part 241

Administrative practice and procedure, Aliens, Courts, Crime, Deportation.

8 CFR Part 242

Administrative practice and procedure, Aliens, Apprehension, Crime, Custody, Detention.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 210a—REPLENISHMENT AGRICULTURAL WORKERS

1. The authority citation for part 210a continues to read as follows:

Authority: 8 U.S.C. 1103; 8 CFR part 2.

§ 210a.8 [Amended]

2. Section 210a.8 paragraph (b)(3) is amended by revising the reference to "section 241(a)(20)" to read "section 241(a)(1)(F)".

PART 214—NONIMMIGRANT CLASSES

3. The authority citation for part 214 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1184; 8 CFR part 2.

§ 214.1 [Amended]

4. Section 214.1 paragraph (e) is amended by revising the reference to "section 241(a)(9)" to read "241(a)(1)(C)(i)".

5. Section 214.1 paragraph (f) is amended by revising the reference to "section 241(a)(9)" to read "section 241(a)(1)(C)(i)".

6. Section 214.1 paragraph (g) is amended by revising the reference to "section 241(a)(9)" to read "section 241(a)(1)(C)(i)".

§ 214.2 [Amended]

7. Section 214.2 paragraph (a)(10) is amended by revising the reference to "section 241(a)(9)(A)" to read "section 241(a)(1)(C)(i)" wherever it appears in the paragraph.

8. Section 214.2 paragraph (e)(1) is amended by:

a. Revising, in the second sentence, the word "nonimmigrant" to read "nonimmigrant";

b. Revising, in the second sentence, the word "aliens" to read "alien's";

c. Revising, in the fifth sentence, the term "Service offices" to read "Service officers"; and

d. Revising, in the last sentence, the reference to "section 241(a)(9)" to read "241(a)(1)(C)(i)".

9. Section 214.2 paragraph (f)(12)(i)(E) is amended by revising the reference to "section 241(a) (2) or (9)" to read "section 241(a)(1) (B), (C), or (D)".

10. Section 214.2 paragraph (g)(10) is amended by revising the reference to "section 241(a)(9)(A)" to read "section 241(a)(1)(C)(i)" wherever it appears in the paragraph.

11. Section 214.2 paragraph (m)(16)(i)(E) is amended by revising the reference to "section 241(a) (2) or (9)" to read "section 241(a)(1) (B), (C), or (D)".

PART 241—CONTROLLED SUBSTANCE VIOLATIONS

12. The authority citation for part 241 continues to read as follows:

Authority: 8 U.S.C. 1103, 1251, 1252, 1357; 8 CFR part 2.

§ 241.1 [Amended]

13. Section 241.1 is amended by revising the reference to "section 241(a)(11)" to read "section 241(a)(2)(B)(i)".

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

14. The authority citation for part 242 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1252; 8 CFR part 2.

§ 241.7a [Amended]

15. Section 242.7a is amended by:

a. Revising, at the end of the first sentence, the reference to "section 241(f)" to read "section 241(a)(1)(H)"; and

b. Revising, in the last sentence, the phrase "a special inquiry officer" to the phrase "the Immigration Judge".

§ 242.8 [Amended]

16. Section 242.8 paragraph (a) is amended by revising the reference to "sections 208, 212(k), 241(a)(11), 241(f), 244, 245 and 249 of the Act;" to read "sections 208, 212(k), 241(a)(1)(E)(ii), 241(a)(1)(H), 244, 245 and 249 of the Act;".

§ 242.17 [Amended]

17. Section 242.17 paragraph (d) heading and text are amended by revising the reference to "section 241(f)" to read "sections 241(a)(1)(H) and 241(a)(1)(E)(ii)".

§ 242.23 [Amended]

18. Section 242.23 paragraph (c) is amended by revising the reference to "paragraph (4), (5), (6), (7), (11), (12), (14), (15), (16), (17), or (18) of section 241(a)" to read "paragraph (2), (3) or (4) of section 241(a)".

19. Section 242.23 paragraph (d) is amended by revising the term "the special inquiry officer shall" to "the Immigration Judge shall".

Dated: August 2, 1991.

Dick Thornburgh,

Attorney General.

[FR Doc. 91-19189 Filed 8-12-91; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 327

[Docket No. 89-010F]

RIN 0583-AA65

Importation of Livestock Carcasses With Tissues Removed

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat inspection regulations by removing the requirements contained in § 327.3(d) which prohibit the importation into the United States of carcasses or parts of carcasses of certain livestock from which the pleura, peritoneum, or body or portal lymph nodes are removed. This action is in response to a petition submitted by Cloverdale Foods Company, Minot, North Dakota.

EFFECTIVE DATE: September 12, 1991.

FOR FURTHER INFORMATION CONTACT: William O. James, DVM, Director, Slaughter Inspection Standards and Procedures Division, Science and Technology, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3219.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined that this final rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices to consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This final rule will allow certain livestock carcasses and parts from countries eligible to ship product to the United States to be imported and transported in commerce under the same provisions as those carcasses and parts that are inspected and passed in the United States. Additionally, the Agency believes that the final rule will ease the inspection burden on the Agency and the importing industry, ease congestion of loading docks, and reduce inspection time at the port of entry. Inspectors will not be required to specifically determine whether certain tissues have been removed from carcasses or parts, but will assure that products are from countries eligible to import meat products into the United States and are wholesome, not adulterated, and properly marked and labeled.

Effect on Small Entities

The Administrator of the Food Safety and Inspection Service has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). This rule will not impose any new requirements on the meat industry; rather, it will permit this industry to use more imported livestock carcasses or parts. The carcasses and parts will be further processed in the United States; thus, there will be less importation of processed products.

Background

On January 17, 1989, FSIS published a proposed rule in the **Federal Register** (54 FR 1724) to amend the Federal meat inspection regulations by deleting the requirements contained in § 327.3(d) (9 CFR 327.3(d)). The proposal was a result of a petition from Cloverdale Foods Company, Minot, North Dakota, to amend the Federal meat inspection regulations by removing the requirements which prohibit the importation into the United States of carcasses or parts of carcasses of certain livestock from which naturally associated tissues are removed. The tissues specifically addressed by the petitioner are the pleura, peritoneum, or body or portal lymph nodes.

The Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) requires, among other provisions, that the Secretary of Agriculture, through appointed inspectors, carry out a post-mortem inspection of carcasses and parts of cattle, sheep, swine, goats, horses, mules or other equines, when they are slaughtered in an establishment that is subject to inspection under the FMIA.

Post-mortem inspection involves a series of routine and special examinations by one or more veterinary medical officers, or trained food inspectors under veterinary supervision, of the head, viscera, and other parts of the carcass of each animal slaughtered to detect diseases or abnormalities that could cause the carcass or any part to be adulterated. Routine post-mortem inspection is divided into three phases: Head inspection, viscera inspection and carcass inspection. During each phase, FSIS inspectors perform specific tasks which involve a sequence of observing, palpating, and incising certain tissues and lymph nodes. During inspection of the viscera, the inspectors examine all organs and corresponding lymph nodes, including the portal lymph nodes; and during inspection of the carcass, they examine all carcass surfaces including the pleura, peritoneum, and body lymph nodes. When carcasses are affected by diseases or abnormalities, such carcasses are retained for a special examination by FSIS veterinary medical officers who, depending upon the diseases or abnormalities, perform thorough and expanded examinations by observing, palpating and incising tissues and lymph nodes. These tasks have been tested and have proved to be effective and efficient methods of inspection. It is during all these tasks that, if any abnormalities, such as localized adhesions, small encapsulated abscesses, localized bruises, and so forth, are found on the pleura, peritoneum or lymph nodes, these abnormalities are removed with the surrounding tissues, destroyed or denatured, and not saved for human food. The removal or absence of the pleura, peritoneum, or some lymph nodes does not mean that the remaining parts of the carcass are adulterated and not fit for human consumption. As stated above, the conditions causing removal of the tissues are localized conditions which would not affect the wholesomeness of the remainder of the carcass.

Under section 20 of the FMIA (21 U.S.C. 620), FSIS is responsible for assuring that imported carcasses and parts of cattle, sheep, swine, goats, horses, mules or other equines and their products meet the same standards as those applied in the United States. FSIS carries out this responsibility by reviewing the inspection system of each country that wishes to import such carcasses, parts or other products into the United States, by determining whether the foreign country's laws and inspection program are "at least equal to" those of the U.S. system, and by reinspecting imported products at the port of entry.

For a country's inspection system to be considered "at least equal to" that of the United States, that country must provide documentary proof that it has an "at least equal" operating inspection system. If the review of the documents demonstrates that the country has such a system, FSIS personnel conduct on-site reviews of the country's system. If all requirements of the FMIA are met, the country is considered to be "eligible" to import products into the United States. In addition to the documents' review and on-site reviews of each foreign country system, FSIS carefully reinspects the product at the port of entry in the United States and assures that the foreign country system continues to produce product that conforms to the standards for product produced in the United States.

The present requirements of 9 CFR 327.3(d) have been part of the Federal meat inspection regulations for many years and were promulgated in response to foreign countries' exporting practices in existence at that time.

Response to Comments

The Agency received four comments which addressed several issues regarding the proposed rule. The following is a discussion of the comments and the Agency's responses.

Comment: The American Veterinary Medical Association (AVMA) stated that it supports the proposal. It stated that it believes there is no need for naturally associated tissues such as lymph nodes to be present when product arrives in the United States, provided that product has been inspected under an inspection program that is at least equal to that of the United States.

Response: FSIS agrees with this comment. Under section 20 of the Federal Meat Inspection Act (21 U.S.C. 620), FSIS is responsible for assuring that imported carcasses and parts of carcasses meet standards "at least equal to" those applied to carcasses and parts of carcasses produced in the United States. FSIS carries out this

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assuring that imported carcasses and parts of cattle, sheep, swine, goats, horses, mules or other equines and their products meet the same standards as those applied in the United States. FSIS carries out this responsibility by reviewing the inspection system of each country that wishes to import such carcasses, parts or other products into the United States, by determining whether the foreign country's laws and inspection program are "at least equal to" those of the U.S. system, and by reinspecting imported products at the port of entry.

For a country's inspection system to be considered "at least equal to" that of the United States, that country must provide documentary proof that it has an "at least equal" operating inspection system. If the review of the documents demonstrates that the country has such a system, FSIS personnel conduct on-site reviews of the country's system. If all requirements of the FMIA are met, the country is considered to be "eligible" to import products into the United States. In addition to the documents' review and on-site reviews of each foreign country system, FSIS carefully reinspects the product at the port of entry in the United States and assures that the foreign country system continues to produce product that conforms to the standards for product produced in the United States.

The present requirements of 9 CFR 327.3(d) have been part of the Federal meat inspection regulations for many years and were promulgated in response to foreign countries' exporting practices in existence at that time.

Response to Comments

The Agency received four comments which addressed several issues regarding the proposed rule. The following is a discussion of the comments and the Agency's responses.

Comment: The American Veterinary Medical Association (AVMA) stated that it supports the proposal. It stated that it believes there is no need for naturally associated tissues such as lymph nodes to be present when product arrives in the United States, provided that product has been inspected under an inspection program that is at least equal to that of the United States.

Response: FSIS agrees with this comment. Under section 20 of the Federal Meat Inspection Act (21 U.S.C. 620), FSIS is responsible for assuring that imported carcasses and parts of carcasses meet standards "at least equal to" those applied to carcasses and parts of carcasses produced in the United States. FSIS carries out this

responsibility by reviewing the inspection system of each country that wishes to import carcasses or parts of carcasses into the United States. A foreign country's laws and inspection programs must be determined to be "at least equal to" those of the United States before products may be imported into the United States. In addition, such imported products are reinspected at the port of entry.

Comment: Two comments from individuals indicated that they believed the regulations should not be changed. They stated that inspection of certain tissues help inspectors to detect disease or residues, and, therefore, it should be required that these tissues remain in the carcass.

Response: FSIS disagrees with these comments. The rule will not adversely affect the inspection of carcasses and parts by the United States or other countries. If during post-mortem inspection, any minor abnormality (an abnormality that would not cause total carcass condemnation) is found, the abnormality and surrounding tissue is removed. For example, if scar tissue or a small abscess is found on the lining (pleura) of the thoracic cavity or lungs, the lesion and some or all of the pleura will be removed. The removal or absence of the pleura, peritoneum, or some lymph nodes does not mean that the remaining parts of the carcass are adulterated and not fit for human consumption. Because this inspection procedure applies to both domestic and foreign establishments, application of the "at least equal to" provision would support removal of such diseased or abnormal tissues before export. The absence of those tissues does not render reinspection of imported product less effective. Such tissues are not needed for the inspector to perform proper reinspection and to detemine whether or not the carcass is wholesome, unadulterated, and fit for human consumption.

Deleting the requirements contained in section 327.3(d) of the regulations allows carcasses and parts which have been inspected under a system that is "at least equal to" the U.S. system to be imported into the United States when abnormal tissues have been removed.

Comment: A trade association, the National Lamb Feeders Association, stated that the regulations should not be changed. They are concerned about the monitoring of livestock additives and drugs. They are also concerned that the proposed rule would lower the safety requirements and allow more product to enter the country.

Response: FSIS disagrees with this comment. Existing requirements relating to pesticides and other livestock additives and drugs are not changed by this regulation.

The Agency believes that the change to the regulations will not appreciably alter the number of carcasses or parts of carcasses eligible for importation into the United States. As stated above, the safety requirements that the United States presently imposes on carcasses and parts of carcasses imported into the United States will not be changed by deleting the requirements contained in § 327.3(d) (9 CFR 327.3(d)).

Final Rule

For the reasons set out in the preamble, § 327.3 of the Federal meat inspection regulations is amended as set forth below:

List of Subjects in 9 CFR Part 327

Meat inspection; Imported products.

PART 327—[AMENDED]

1. The authority citation for part 327 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

§ 327.3 [Amended]

2. Section 327.3 (9 CFR 327.3) is amended by removing and reserving paragraph (d).

Done at Washington, DC, on June 21, 1991.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 91–19306 Filed 8–12–91; 8:45 am]

BILLING CODE 3410-DM-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 110

RIN 3150–AD99

Imports From South Africa

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations pertaining to the import of source material or special nuclear material from South Africa to permit uranium manufactured or produced in South Africa to be imported into the United States under general license. This action is being taken to conform the Commission's regulations to Executive Order 12769, issued by the President on July 10, 1991, which among other things, terminates the prohibition on nuclear trade with South Africa in section 309 and 311 of the Comprehensive Anti-Apartheid Act of 1986.

EFFECTIVE DATE: August 13, 1991.

FOR FURTHER INFORMATION CONTACT: Ronald D. Hauber, Assistant Director for Exports, Security and Safety Cooperation, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone (301) 492–0344.

SUPPLEMENTARY INFORMATION:

Background

The Comprehensive Anti-Apartheid Act of 1986 (the Act), Public Law 99–440, was enacted on October 2, 1986 to establish a framework to guide the efforts of the United States to help end the apartheid system in South Africa and to assist in the establishment of a nonracial, democratic form of government in that country. The Act imposed a wide range of measures against South Africa to undermine apartheid, including a ban on the importation of uranium ore and oxide "produced or manufactured" in South Africa. Section 309(a) of the Act (22 U.S.C. 5059) prohibited the importation into the United States of uranium ore and uranium oxide that is produced or manufactured in South Africa.

The NRC, which has independent regulatory authority under the Atomic Energy Act over the import of uranium, amended its regulations in 1986 to conform with the requirements of the Act and to ensure that its regulations were consistent with the provisions of the regulations of the Treasury Department (51 FR 47207; Dec. 31, 1986), which was delegated authority in the Executive Branch to implement the Act's provisions on the importation of uranium (section 309(a)). The amendment deleted the Commission's general license in 10 CFR 110.27 with respect to the import of any uranium of South African origin. Before the amendment, NRC's import regulations in § 110.27 had permitted a person to import byproduct material or unirradiated source or special nuclear material, including uranium ore and uranium oxide, from any country under general license if the consignee in the United States was authorized to possess the material.

Section 311 of the Act (22 U.S.C. 5061) provides that the conditions specified in title 3 (i.e., the ban on imports of uranium from South Africa) shall terminate when the President determines, and so reports to the Speaker of the House of Representatives and the Chairman of the Committee on

Foreign Relations of the Senate that the Government of South Africa has taken all of the actions specified in section 311(a) of the Act, namely:

(1) Released all persons persecuted for their political beliefs or detained unduly without trial and Nelson Mandela from prison;

(2) Repealed the state of emergency in effect on the date of enactment of the Act and released all detainees held under such state of emergency;

(3) Unbanned democratic political parties and permitted the free exercise by South Africans of all races of the right to form political parties, express political opinions and otherwise participate in the political process;

(4) Repealed the Group Areas Act and the Population Registration Act and instituted no other measures with the same purposes; and

(5) Agreed to enter into good faith negotiations with truly representative members of the black majority without preconditions.

The President, by Executive Order 12769 dated July 10, 1991, has concluded that the Government of South Africa has taken all of the steps described, thus satisfying the specified conditions in section 311 of the Act. Therefore, title 3 of the Act has been terminated, including the ban on the import of uranium from South Africa. The President has directed all agencies affected by this determination to take all necessary steps to comply with the Executive Order, effective immediately.

Commission Action on the Executive Order

To conform with the President's determination, the Commission has reinstated the pre-1986 formulation of its regulations in § 110.27 to permit a person to import byproduct material, or unirradiated source or special nuclear material including uranium ore and uranium oxide, from any country under general license if the consignee in the United States is authorized to possess the material. Accordingly, uranium manufactured or produced in South Africa may now be imported into the United States under general license.

Because this rulemaking involves a foreign affairs function of the United States and since the President has directed affected agencies to take all necessary steps to comply with the Executive Order 12769, effective immediately, notice of proposed rulemaking and public procedure thereon are not required by the Administrative Procedure Act (5 U.S.C. 553(a)(1)), and the final rule may be made effective upon publication in the **Federal Register**.

Environmental Impact: Categorical Exclusion

The NRC has determined that the final rule in part 110 is the type of action described in 10 CFR 51.10 and 51.22(c)(1) of this chapter. Therefore, neither an environmental impact statement nor an environmental assessment has been prepared.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget under approval number 3150–0036.

Regulatory Analysis

NRC already controls the import of uranium of South-African origin. Currently, the NRC's import regulations in part 110 require a specific license to import this material into the United States. NRC's sole objective in developing the revision is to conform with the President's Executive order of July 10, 1991, by amending NRC's import regulations in § 110.27 to permit uranium manufactured or produced in South Africa to be imported into the United States under general license. There are no alternatives for achieving the stated objective. The consequences of the specific NRC rulemaking action will have a minor but positive impact on the public. It will mean that those persons previously submitting specific license applications to import South African origin uranium for NRC consideration would now be allowed to use the general license provision in § 110.27 as their licensing authority. In this respect, NRC believes that no persons will be adversely affected by this rule. The rule will become effective immediately.

Backfit Analysis

The NRC determined that the backfit analysis provisions in 10 CFR 50.109 do not apply to this final rule, and, therefore, a backfit analyses is not required.

List of Subjects in 10 CFR Part 110

Administrative practice and procedure, Classified information, Criminal penalty, Export, Import, Incorporation by reference, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Scientific equipment.

Pursuant to Executive Order 12769, sections 309(a) and 311 of Public Law 99–440, the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR part 110.

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

1. The authority citation for part 110 is revised to read as follows:

Authority: Sections. 51, 53, 54, 57, 63, 64, 65, 81, 82, 103, 104, 109, 111, 126, 127, 128, 129, 161, 181, 182, 183, 187, 189, 68 Stat. 929, 930, 931, 932, 933, 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2071, 2073, 2074, 2077, 2092–2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154–2158, 2201, 2231–2233, 2237, 2239); Section 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 110.1(b)(2) also issued under Pub. L. 96–92, 93 Stat. 710 (22 U.S.C. 2403). Section 110.11 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152) and secs. 54c and 57d, 88 Stat. 473, 475, (42 U.S.C. 2074). Section 110.27 also issued under sec. 309(a), Pub. L. 99–440. Section 110.50(b)(3) also issued under sec. 123, 92 Stat. 142 (42 U.S.C. 2153). Section 110.51 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 110.52 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236). Sections 110.80–110.113 also issued under 5 U.S.C. 552, 554. Sections 110.30–110.35 also issued under 5 U.S.C. 553.

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 110.20–110.29, 110.50, and 110.120–110.129 also issued under sections. 161 b and i, 68 Stat. 948, 949, as amended (42 U.S.C. 2201 (b) and (i)); and §§ 110.7a and 110.53 are also issued under sections 161(o), 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 110.27, paragraph (b) is revised to read as follows:

§ 110.27 Imports.

* * * * *

(b) The general license in paragraph (a) of this section does not authorize the import of source or special nuclear material in the form of irradiated fuel that exceeds 100 kilograms per shipment.

* * * * *

Dated at Rockville, Maryland, this 1st day of August 1991.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 91–19217 Filed 8–12–91; 8:45 am]

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* * * * *

Dated at Rockville, Maryland, this 1st day of August 1991.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 91–19217 Filed 8–12–91; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–NM–152–AD; Amendment 39–8000; AD 91–17–02]

Airworthiness Directives; Canadair, Ltd., Model CL–600–2A12 and CL–600–2B16 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Canadair Model CL–600–2A12 and CL–600–2B16 series airplanes, which requires repetitive visual inspections of the sensing line in the aft equipment bay to detect damage or deformations, and replacement of the sensing line or drainage of the tail cone fuel tank, if necessary. This amendment is prompted by recent reports of broken level control valve sensing lines. This condition, if not corrected, could result in the presence of fuel vapors in the aft equipment bay, resulting in a potential risk of an in-flight fire in the event of a lightning strike or other ignition source in the area.

DATES: Effective August 28, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 28, 1991.

ADDRESSES: The applicable service information may be obtained from Bombardier, Inc., Canadair, Division Challenger, P.O. Box 6087, Station A, Montreal, Quebec, Canada H3C 3G9. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, New England Region, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Fiesel, Propulsion Branch, ANE–174, telephone (516) 791–7421. Mailing address: FAA, New England Region, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581.

SUPPLEMENTARY INFORMATION: Transport Canada, which is the airworthiness authority of Canada, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Canadair Model CL–600–2A12 and CL–600–2B16 series airplanes. There have been two recent reports of sensing lines to the tail cone fuel tank level control valves breaking as a result of damage caused by maintenance in the aft equipment bays. In both cases, the break was at the forward end of the sensing line at the shrouded refuel/defuel line connection boss. The resultant fuel spillage was contained by the shroud and drained overboard through the shroud drain. If the sensing line breaks at any other location, the fuel in the tail cone fuel tank will empty into the aft equipment bay via the refuel/defuel line. However, the leakage rate will be slowed due to the 0.052-inch diameter flow restrictor located in the refuel/defuel line between the sensing line connection and the tail cone fuel tank. This condition, if not corrected, could result in the presence of fuel vapors in the aft equipment bay, resulting in a potential risk of an in-flight fire in the event of a lightning strike or other ignition source in the area.

Bombardier, Inc., Canadair, Division Challenger has issued Alert Wire TA601–0381–003, dated June 11, 1991, which describes procedures to perform repetitive visual inspections of the sensing line in the aft equipment bay to detect damage or deformations, and replacement of the sensing line or drainage of the tail cone fuel tank, if necessary. Transport Canada has classified this alert wire as mandatory, and has issued Canadian Emergency Airworthiness Directive CF–91–22 addressing this subject.

This airplane model is manufactured in Canada and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires repetitive visual inspections of the sensing line in the aft equipment bay to detect damage or deformations, and replacement of the sensing line or drainage of the tail cone fuel tank, if necessary, in accordance with the alert wire previously described.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91–17–02. Canadair, Ltd.: Amendment 39–8000. Docket No. 91–NM–152–AD. Applicability: Model CL–600–2A12 and CL–600–2B16 series airplanes equipped with a tail cone fuel tank.

Compliance: Required as indicated, unless previously accomplished.

To prevent the presence of fuel vapors in the aft equipment bay, resulting in a potential risk of an in-flight fire in the event of a lightning strike or other ignition source in the area, accomplish the following:

(a) Within 5 days after the effective date of this AD or prior to refuelling of the tail cone fuel tank, which ever occurs later, perform a visual inspection of the unshrouded portion of the sensing line in the aft equipment bay to detect any damage or deformation, in accordance with Canadair Alert Wire TA601–0381–003, dated June 11, 1991. Thereafter, repeat the inspection prior to each refuelling. If damage or deformation of the sensing line is found as a result of the visual inspection, accomplish either subparagraph (a)(1) or (a)(2) of this AD, in accordance with the alert wire:

(1) Prior to further flight, drain the tail cone fuel tank, and continue flight operations with *no* fuel in the tail cone fuel tank; or

(2) Prior to further flight, drain the tail cone fuel tank, replace the level control valve sensing line, and continue flight operations with fuel in the tail cone fuel tank.

(b) After each refuelling of the tail cone fuel tank, inspect for any signs of leakage from the fuel sensing line in the aft equipment bay and at the fuel shroud drain in accordance with Canadair Alert Wire TA601–0381–003, dated June 11, 1991. If leakage is found, prior to further flight, either drain the tail cone fuel tank, or replace the tail cone fuel tank level control valve sensing line, in accordance with the alert wire.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(e) The inspection and replacement requirements shall be done in accordance with Canadair Alert Wire TA601–0381–003, dated June 11, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Bombardier, Inc., Canadair, Division Challenger, P.O. Box 6087, Station A, Montreal, Quebec, Canada H3C 3G9. Copies may be inspected at the FAA, Transport Airplane Directorate, Renton, Washington; or at the FAA, Engine and Propeller Directorate, Valley Stream, New York; or at the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

This amendment (39–8000, AD 91–17–02) becomes effective August 28, 1991.

Issued in Renton, Washington, on July 31, 1991.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–19158 Filed 8–12–91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91–NM–125–AD; Amendment 39–7076; AD 91–12–51]

Airworthiness Directives; Boeing of Canada, Ltd., de Havilland Division, Model DHC–8–300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting Airworthiness Directive (AD) 91–12–51, which was previously made effective as to all known U.S. owners and operators of certain de Havilland Model DHC–8–300 series airplanes by individual telegrams. This AD requires repetitive visual inspections of the dry bay area, and repair, if necessary. This action is prompted by recent reports of fuel leaking into the dry bays inboard of the wing fuel tanks. This condition, if not corrected, could result in accumulation of fuel vapors in the dry bay areas, presenting a potential risk of an in-flight explosion in the event of a lightning strike.

DATES: Effective August 26, 1991, as to all persons except those persons to whom it was made immediately effective by telegraphic AD T91–12–51, issued June 6, 1991, which contained this amendment.

ADDRESSES: The applicable service information may be obtained from Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Fiesel, Propulsion Branch, ANE–174, telephone (516) 791–7421. Mailing address: FAA, New England Region, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581.

SUPPLEMENTARY INFORMATION: On June 6, 1991, the FAA issued telegraphic AD 91–12–51, applicable to certain de Havilland Model DHC–8–300 series airplanes, which requires repetitive visual inspections of the dry bay areas, and repair, if necessary. That action was prompted by recent reports of fuel leaking into the dry bays inboard of the wing fuel tanks. These leaks are caused by inadequate sealing material at the sealed end rib. This condition, if not corrected, could result in accumulation of fuel vapors in the dry bay area, presenting a potential risk of an in-flight explosion in the event of a lightning strike.

Boeing of Canada, Ltd., de Havilland Division has issued Alert Service Bulletin A8–28–16, Dated May 30, 1991, which describes procedures to perform repetitive visual inspections of the dry bay area, and repair, if necessary. Transport Canada has issued emergency Airworthiness Directive CF–91–15 addressing this subject.

This airplane model is manufactured in Canada and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of this same type design registered in the United States, this airworthiness directive is issued to require repetitive visual inspections of the dry bay area, and repair, if necessary.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on June 6, 1991, to all known U.S. owners and operators of certain de Havilland Model DHC–8–300 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective as to all persons.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Federal Aviation Administration has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been

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determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation Safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-12-51. **Boeing of Canada, LTD, De Havilland Division:** Amendment 39-7076. Docket No. 91-NM-125-AD.

Applicability: Model DHC-8-300 series airplanes, as listed in de Havilland Alert Service Bulletin A8-28-16, dated May 30, 1991, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent accumulation of fuel vapors in the dry bay area, presenting a potential risk of an in-flight explosion in the event of a lightning strike, accomplish the following:

(a) Within 24 hours after the effective date of this AD, and thereafter at intervals not to exceed 300 hours time-in-service or 30 days, whichever occurs first, perform an external visual inspection of the wing dry bay drains for blockage in accordance with de Havilland Alert Service Bulletin A8-28-16, dated May 30, 1991. If drain blockage is found, prior to further flight, repair in accordance with paragraph B.1. of the accomplishment instructions of the service bulletin.

(b) Within 24 hours after the effective date of this AD, and thereafter at daily intervals, perform an external visual inspection of the wing dry bay drains to detect evidence of fuel leaks in accordance with de Havilland Alert Service Bulletin A8-28-16, dated May 30, 1991.

(c) Within 7 days after the effective date of this AD, unless accomplished within the previous 14 days; or prior to further flight if evidence of fuel leaks is detected at the wing dry bay drains as a result of the inspection required by paragraph (b) of this AD; perform an internal visual inspection of the wing dry bay in accordance with de Havilland Alert Service Bulletin A8-28-16, dated May 30, 1991.

(1) If no leakage is found as a result of the inspection required by paragraph (c) of this AD, repeat the internal visual inspection of the wing dry bay required by paragraph (c) of this AD at intervals not to exceed 14 days.

(2) If the leakage is within the limits specified in the service bulletin, within 14 days, perform the local re-sealing repair procedure described in paragraph C.7. of the accomplishment instructions of the service bulletin. The airplane may be returned to service within this 14-day period, subject to the following conditions:

(i) Perform the internal visual inspection of the wing dry bay required by paragraph (c) of this AD at intervals not to exceed 7 days to ensure that the leakage remains within the specified limit; and

(ii) Prior to further flight, incorporate the following into the Limitations Section of the Airplane Flight Manual (AFM), which may be accomplished by including a copy of this airworthiness directive in the AFM: "Flight is prohibited in areas where lightning or thunderstorms are observed or reported within 5 nautical miles of the flight path, or when the existing weather conditions may reasonably be expected to result in a lightning strike."

(3) If leakage exceeds the limit specified in the service bulletin, prior to further flight, repair in accordance with paragraph C.7. of the accomplishment instructions of the service bulletin.

(4) Application of fuel vapor barrier coating in accordance with paragraph D. of the accomplishment instructions of the service bulletin constitutes terminating action for the repetitive internal visual inspections required by paragraph (c)(1) of this AD.

(d) Accomplishment of the repair described in paragraph E. of the accomplishment instructions of de Havilland Alert Service Bulletin A8-28-16, dated May 30, 1991, constitutes terminating action for the requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, ANE-170.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, New York Aircraft Certification Office, ANE-170.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

This amendment (39-7076, AD 91-12-51) becomes effective August 26, 1991, as to all persons, except those persons to whom it was made immediately effective by telegraphic AD T91-12-51, issued June 6, 1991, which contained this amendment.

Issued in Renton, Washington, on August 1, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-19219 Filed 8-12-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8358]

RIN 1545-AH75

Treatment of Certain Stripped Bonds and Stripped Coupons

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary income tax regulations that apply to taxpayers holding stripped bonds and stripped coupons under section 1286 of the Internal Revenue Code. The regulations are needed to provide guidance on the treatment of original issue discount (OID) that arises under Code section 1286(a). This guidance is intended to simplify the tax treatment of certain stripped bonds and stripped coupons. The text of the temporary regulations contained in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the proposed rules section of this issue of the **Federal Register**.

EFFECTIVE DATE: These regulations are effective on and after August 8, 1991.

FOR FURTHER INFORMATION CONTACT: Mark S. Smith, telephone 202-566-3297 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Code section 1286(a) provides that a stripped bond or stripped coupon purchased after July 1, 1982, is treated by the purchaser as a bond originally issued on the purchase date and having OID equal to the excess of (1) the stated redemption price at maturity (or, in the case of a coupon, the amount payable on the due date of the coupon), over (2) the bond's or coupon's ratable share of the purchase price. Code section 1273(a)(3) provides that if a debt instrument has only a de minimis amount of OID, then the OID shall be treated as zero. However, the statute does not specifically apply this de minimis rule to stripped bonds and

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stripped coupons that have OID pursuant to section 1286(a). The regulations make it clear that the de minimis rule applies to stripped bonds and stripped coupons.

Additional simplified treatment of stripped bonds also may be appropriate in some situations. For example, mortgage loans become stripped bonds when they are sold if the seller retains a right to receive mortgage interest other than as compensation for servicing the mortgages. See Rev. Rul. 91–46, 1991–34 I.R.B. (August 26, 1991). The regulations authorize the Internal Revenue Service to publish guidance in the Internal Revenue Bulletin treating certain stripped bonds as market discount bonds under section 1278, provided that certain criteria are met.

Explanation of Provisions

The regulations contained in this document add new § 1.1286–1T. Paragraph (a) of new § 1.1286–1T provides that if the OID determined under section 1286(a) with respect to the purchase of a stripped bond or stripped coupon is less than the amount computed under the OID de minimis rule of section 1273(a)(3), then the amount of OID is considered to be zero. Special definitions are provided for applying section 1273(a)(3) to stripped bonds and stripped coupons.

Paragraph (b) of new § 1.1286–1T provides that the Internal Revenue Service, by publication in the Internal Revenue Bulletin, may provide that certain mortgage loans that are stripped bonds are to be treated as market discount bonds under section 1278. This authority is subject to a limitation provided by new paragraph (b)(2).

The temporary regulations added by this document are effective on and after August 8, 1991.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Need for Immediate Guidance

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. It is therefore found impractical and contrary to the public interest to issue this Treasury decision with notice and procedure under section 553(b) of title 5, United States Code, or subject to the effective date limitation of section 553(d) of title 5, United States Code.

Drafting Information

The principal author of these temporary regulations is Mark S. Smith, Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, personnel from other offices of the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR 1.1231–1 through 1.1297–3

Income taxes, Capital gain and losses, Original issue discount, Applicable Federal rate, Market discount, Short-term obligations, Stripped bonds and stripped coupons, Tax-exempt obligations.

Amendment to the Regulations

Accordingly, title 26, chapter I, part 1 of the Code of Federal Regulations is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

PARAGRAPH 1. The authority citation for part 1 is amended by adding the following citation:

Authority: Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805 * * * § 1.1286–1T also issued under 26 U.S.C. 1275(d) and 1286(f).

PAR. 2. New § 1.1286–1T is added to read as follows:

§ 1.1286–1T Tax treatment of certain stripped bonds and stripped coupons.

(a) *De minimis OID.* If the original issue discount determined under section 1286(a) with respect to the purchase of a stripped bond or stripped coupon is less than the amount computed under subparagraphs (A) and (B) of section 1273(a)(3) and the regulations thereunder, then the amount of original issue discount with respect to that purchase shall be considered to be zero. For purposes of this computation—

(1) The term "stated redemption price at maturity," when applied to a bond, has the meaning given to this term by section 1273(a)(2) and, when applied to a coupon, means the amount payable on the due date of the coupon; and

(2) The number of complete years to maturity is the number of full years from the date the stripped bond or stripped coupon is purchased to final maturity.

(b) *Treatment of certain stripped bonds as market discount bonds*—(1) *In general.* By publication in the Internal Revenue Bulletin, the Internal Revenue Service may (subject to the limitation of paragraph (b)(2) of this section) provide that certain mortgage loans that are stripped bonds are to be treated as market discount bonds under section 1278. Thus, any purchaser of such a bond is to account for any discount on the bond as market discount rather than original issue discount.

(2) *Limitation.* This treatment may be provided for a stripped bond only if, immediately after the most recent disposition referred to in section 1286(b)—

(i) The amount of original issue discount with respect to the stripped bond is considered to be zero under paragraph (a) of this section, or

(ii) The annual stated rate of interest payable on the stripped bond is no more than 100 basis points lower than the annual stated rate of interest payable on the original bond from which it and any other stripped bond or bonds and any stripped coupon or coupons were stripped.

(c) *Effective date.* This regulation is effective on and after August 8, 1991.

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

Approved: July 29, 1991.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 91–19229 Filed 8–8–91; 3:16 pm]

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 91–7]

General Provisions—Registry of Visual Art Incorporated in Buildings

AGENCY: Library of Congress, Copyright Office.

ACTION: Final regulation.

SUMMARY: The Copyright Office of the Library of Congress is issuing a regulation establishing a Visual Arts Registry for the filing of statements and documentation relating to works of visual art incorporated in buildings. The Judicial Improvements Act of 1990, Public Law 101–650, amends the

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(2) The number of complete years to maturity is the number of full years from the date the stripped bond or stripped coupon is purchased to final maturity.

(b) *Treatment of certain stripped bonds as market discount bonds*—(1) *In general*. By publication in the Internal Revenue Bulletin, the Internal Revenue Service may (subject to the limitation of paragraph (b)(2) of this section) provide that certain mortgage loans that are stripped bonds are to be treated as market discount bonds under section 1278. Thus, any purchaser of such a bond is to account for any discount on the bond as market discount rather than original issue discount.

(2) *Limitation*. This treatment may be provided for a stripped bond only if, immediately after the most recent disposition referred to in section 1286(b)—

(i) The amount of original issue discount with respect to the stripped bond is considered to be zero under paragraph (a) of this section, or

(ii) The annual stated rate of interest payable on the stripped bond is no more than 100 basis points lower than the annual stated rate of interest payable on the original bond from which it and any other stripped bond or bonds and any stripped coupon or coupons were stripped.

(c) *Effective date*. This regulation is effective on and after August 8, 1991.

Michael J. Murphy,
Acting Commissioner of Internal Revenue.

Approved: July 29, 1991.

Kenneth W. Gideon,
Assistant Secretary of the Treasury.

[FR Doc. 91–19229 Filed 8–8–91; 3:16 pm]

BILLING CODE 4830-01-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 91-7]

General Provisions—Registry of Visual Art Incorporated in Buildings

AGENCY: Library of Congress, Copyright Office.

ACTION: Final regulation.

SUMMARY: The Copyright Office of the Library of Congress is issuing a regulation establishing a Visual Arts Registry for the filing of statements and documentation relating to works of visual art incorporated in buildings. The Judicial Improvements Act of 1990, Public Law 101–650, amends the Copyright Act, title 17 of the U.S. Code and establishes rights of attribution and integrity in certain works of visual art. For works of visual art that are incorporated in buildings, the Act directs the Copyright Office to establish a registry to assist the owner of a building in notifying the artist of a work of visual art that the owner intends to remove the artwork from the building. The regulation establishes the Registry and sets forth the content of statements and the recordation procedures.

EFFECTIVE DATE: August 13, 1991.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, DC 20559, (202) 707–8380.

SUPPLEMENTARY INFORMATION: On December 1, 1990, the President signed into law the Judicial Improvements Act of 1990, Pub. L. 101–650, which amends the Copyright Act of 1976, title 17 of the United States Code. Title VI of the Act is known as the Visual Artists Rights Act of 1990. It vests in artists rights of attribution and integrity in certain works of visual art, which take effect June 1, 1991. The right of attribution ensures that artists are correctly identified with the works of art they create, and that they are not identified with works created by others. The right of integrity allows artists to protect their works against modifications and destructions that are prejudicial to their honor or reputations.

The newly created rights for artists are analogous to those protected by Article 6*bis* of the Berne Convention, and are commonly known as "moral rights."

In enforcing these rights, special considerations apply where a work of visual art is incorporated in a building, and the owner of the building decides to have the work removed. To cover these cases, section 113 of title 17 of the United States Code was amended creating special rules. Under the amended provisions, the rights of attribution and integrity apply to any effort of the building owner to remove the work, subject to two important exceptions. First, if the building owner makes a diligent, good faith effort to notify the author in writing of the pending removal, but is unsuccessful in his efforts, he may undertake removal himself. Second, if the owner successfully notifies the author in writing, but the author fails to respond within 90 days to arrange for removing the work or to pay for its removal, the building owner is allowed to proceed with removal. The statute creates a presumption that an attempt to notify the author by registered mail constitutes a diligent, good faith effort.

In order to assist owners of buildings in locating authors, the Copyright Office is directed to establish a system of records permitting authors of works of visual art to record their identities and addresses. The system is intended to benefit the interests of authors seeking to protect their rights and of building owners attempting diligently, and in good faith, to notify these authors of proposed removals.

Statements submitted for recordation should be as complete as possible in disclosing the pertinent information. Incomplete statements may be found by a court to be insufficient to protect the rights of the party submitting the statement. The Copyright Office will not, however, examine the statements or verify their accuracy or completeness.

After recordation, the sender will receive a certificate of record from the Copyright Office. Photographs accompanying a statement will be retained by the Copyright Office, and may be selected by the Library of Congress for retention in the general collections of the Library.

Recordation of a Statement in the Visual Arts Registry is, of course, not a substitute for registration of a claim to copyright in the work of art. Information about registration of a claim to copyright may be obtained by contacting the Public Information Office of the Copyright Office, Washington, DC 20559.

The Library of Congress and the Copyright Office considered but decided against issuance of a rule that would establish mandatory archival quality standards regarding accompanying photographs and documentation. Artists and others authors are nevertheless encouraged voluntarily to submit good quality, durable photographs disclosing their works of art and the location in buildings. The Library of Congress will be more inclined to select the photographs and documentation for retention in its collections if they are durable and of good quality. The Library reserves the right to determine which deposits will be added to the collections. Those deposits that are selected for the collections may become part of future Library of Congress exhibits that highlight and exemplify the cultural heritage of the United States.

The regulation governing the Visual Arts Registry is issued in final form without public comment since we have tracked the existing procedure regarding recordation of documents and have encouraged the submission of particular information and photographs rather than mandated their form and content as a condition of filing in the Registry. Also, the immediate implementation of the Visual Arts Registry is beneficial to the public.

Regulatory Flexibility Act

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress, and is a part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5, chapter 5 of the U.S. Code, subchapter II and chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.[1]

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined and hereby certifies that this regulation will have no significant impact on small businesses.

List of Subjects in 37 CFR Part 201

Visual Arts Registry.

Final Regulations

In consideration of the foregoing, the Copyright Office amends part 201 of 37 CFR, chapter II in the manner set forth below.

1. The authority citation for part 201 is revised to read as follows:

Authority: Sec. 702, 90 Stat. 2541; 17 U.S.C. 702. § 201.25 is also issued under Public Law 101–650, 104 Stat. 5089, 5130–31.

2. New § 201.25 is added as follows:

§ 201.25 Visual Arts Registry.

(a) *General*. This section prescribes the procedures relating to the submission of Visual Arts Registry Statements by visual artists and owners of buildings, or their duly authorized representatives, for recordation in the Copyright Office under section 113(d)(3) of Title 17 of the United States Code, as

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[1] The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act (i.e. "all actions taken by the Register of Copyrights under this title (17)," except with respect to the making of copies of copyrights deposits). (17 U.S.C. 706(b)). The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA–FOIA requirements.

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amended by Public Law 101–650, effective June 1, 1991. Statements recorded in the Copyright Office under this regulation will establish a public record of information relevant to an artist's integrity right to prevent destruction or injury to works of visual art incorporated in or made part of a building.

(b) *Forms.* The Copyright Office does not provide forms for the use of persons recording statements regarding works of visual art that have been incorporated in or made part of a building.

(c) *Recordable statements*—(1) *General.* Any statement designated as a "Visual Arts Regulatory Statement" and which pertains to a work of visual art that has been incorporated in or made part of a building may be recorded in the Copyright Office provided the statement is accompanied by the fee for recordation of documents specified in section 708(a)(4) of title 17 of the United States Code. Upon their submission, the statements and an accompanying documentation or photographs become the property of the United States Government and will not be returned. Photocopies are acceptable if they are clear and legible. Information contained in the Visual Arts Registry Statement should be as complete as possible since the information may affect the enforceability of valuable rights under the copyright law. Visual Arts Registry Statements which are illegible or fall outside of the scope of section 113(d)(3) of title 17 may be refused recordation by the Copyright Office.

(2) *Statements by artists.* Statements by artists regarding a work of visual art incorporated or made part of a building should be filed in a document containing the head: "Registry of Visual Art Incorporated in a Building—Artist's Statement." The statement should contain the following information:

(i) Identification of the artist, including name, current address, age, and telephone number, if publicly listed.

(ii) Identification of the work or works, including the title, dimensions, and physical description of the work and the copyright registration number, if known. Additionally, it is recommended that one or more 8 x 10 photographs of the work on good quality photographic paper be included in the submission; the images should be clear and in focus.

(iii) Identification of the building, including its name and address. This identification may additionally include 8 x 10 photographs of the building and the location of the artist's work in the building.

(iv) Identification of the owner of the building, if known.

(3) *Statements by the owner of the building.* Statements of owners of a building which incorporates a work of visual art should be filed in a document containing the heading: "Registry of Visual Art Incorporated in a Building—Building Owner's Statement." The statement should contain the following information:

(i) Identification of the ownership of the building, the name of a person who represents the owner, and a telephone number, if publicly listed.

(ii) Identification of the building, including the building's name and address. This identification may additionally include 8 x 10 photographs of the building and of the works of visual art which are incorporated in the building.

(iii) Identification of the work or works of visual art incorporated in the building, including the works' title(s), if known, and the dimensions and physical description of the work(s). This identification may include one or more 8 x 10 photographs of the work(s) on high quality photographic paper; the images should be clear and in focus.

(iv) Identification of the artist(s) who have works incorporated in the building, including the current address of each artist, if known.

(v) Photocopy of contracts, if any, between the artist and owners of the building regarding the rights of attribution and integrity.

(vi) Statement as to the measures taken by the owner to notify the artist(s) of the removal or pending removal of the work of visual art, and photocopies of any accompanying documents.

(4) *Updating statements.* Either the artist or owner of the building or both may record statements updating previously recorded information by submitting an updated statement and paying the recording fee specified in paragraph (d) of this section. Such statements should repeat the information disclosed in the previous filing as regarding the name of the artist(s), the name of the work(s) of visual art, the name and address of the building, and the name of the owner(s) of the building. The remaining portion of the statement should correct or supplement the information disclosed in the previously recorded statement.

(d) *Fee.* For a statement covering no more than one title, the basic recording fee is $20. An additional charge of $10.00 is made for each group of not more than 10 titles. For these purposes the term "title" refers to an identification of the work of visual art which is covered by the statement.

(e) *Date of recordation.* The date of recordation is the date when all of the elements required for recordation, including the prescribed fee have been received in the Copyright Office. After recordation of the statement, the sender will receive a certificate of record from the Copyright Office. Any documentation or photographs accompanying any submission will be retained and filed by the Copyright Office. They may also be transferred to the Library of Congress, or destroyed after preparing suitable copies, in accordance with usual procedures.

(f) The Copyright Office will record statements in the Visual Arts Registry without examination or verification of the accuracy or completeness of the statement, if the statement is designated as a "Visual Arts Registry Statement" and pertains to a work of visual art incorporated in or made part of a building. Recordation of the statement and payment of the recording fee shall establish only the fact of recordation in the official record. Acceptance for recordation shall not be considered a determination that the statement is accurate, complete, and otherwise in compliance with section 113(d), title 17, U.S. Code. The accuracy and completeness of the statement is the responsibility of the artist or building owner who submits it for recordation. Artists and building owners are encouraged to submit accurate and complete statements. Omission of any information, however, shall not itself invalidate the recordation, unless a court of competent jurisdiction finds the statement is materially deficient and fails to meet the minimum requirements of section 113(d) of title 17, U.S. Code.

Dated: July 26, 1991.

Ralph Oman,

Register of Copyrights.

Approved:

James H. Billington,

The Librarian of Congress.

[FR Doc. 91–19179 Filed 8–12–91; 8:45 am]

BILLING CODE 1410-07-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 280

[FRL-3951-9]

Underground Storage Tanks; Technical Requirements

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This document by the Environmental Protection Agency finalizes a technical amendment to the underground storage tank regulations.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 280

[FRL–3951–9]

Underground Storage Tanks; Technical Requirements

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This document by the Environmental Protection Agency finalizes a technical amendment to the underground storage tank regulations. The Agency is adding to overfill design standards that require the use of overfill prevention equipment by allowing alternative uses of equipment located closer to the tops of larger tanks if it can be done in a manner that achieves certain minimum levels of performance. This technical amendment is issued to complete EPA's response to a petition for rulemaking.

DATES: *Effective Date:* September 12, 1991.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424–9346 (toll free) or 382–3000 (in Washington, DC).

SUPPLEMENTARY INFORMATION:

I. Background

On September 23, 1988 (53 FR 37082) EPA promulgated technical requirements under subtitle I of the Resource Conservation and Recovery Act (RCRA) for underground storage tanks containing petroleum or substances defined as hazardous under the Comprehensive Response, Compensation, and Liability Act of 1980 (CERCLA), except for substances regulated as hazardous waste under subtitle C of RCRA. Those rules went into effect 90 days later on December 22, 1988. Today's document finalizes a technical addition to § 280.20 of those final regulations where they address design requirements for overfill prevention equipment.

In a letter dated December 8, 1988, the American Petroleum Institute submitted a petition under section 7004(a) of RCRA requesting technical amendments to the final regulations. On April 27, 1990 the Agency published its decision to deny the petition for rulemaking in 5 issue areas (55 FR 17763). On that date the Agency also proposed to grant the petitioner's request in one technical issue area, and accordingly solicited public comment on a proposed technical amendment to the regulations in the design requirements for overfill equipment (55 FR 17767). In sum, the issue raised by API was whether or not the Agency should allow alternative environmentally protective ways for locating overfill prevention equipment on new and existing tanks not allowed under the final rules: Particularly by allowing the use of some equipment located closer to the top of larger tanks (those greater than 4,000 gallons). EPA proposed to add a performance standard to the spill and overfill requirements in § 280.20(c)(1)(ii) to address these technical questions.

Today, the Agency is finalizing the proposed performance standard to enable the use of numerous types of overfill equipment closer to the tops of larger tanks, as long as the equipment achieves the minimum standards of performance required to prevent overfills.

II. Amendment of Spill and Overfill Prevention Requirements (Section 280.20(c)(1)(ii)(C))

Overfilling UST systems is a common source of petroleum and hazardous substance USTs releases onto the surface of the ground. EPA studies have found that UST owners and operators without overfill prevention equipment on their USTs often inadvertently force product into the environment through tank bung holes, vent lines, or fill ports when the volume of liquid delivered exceeds the tank's storage capacity. Sections 280.20(c) and 280.30 of the final regulations provide requirements for spill and overfill prevention that mandate UST owners and operators use prevention equipment as well as follow procedures for preventing spillage and overfills into the environment during each tank in-filling operation. More specifically, § 280.20(c)(1)(ii) of the existing rules requires that owners and operators prevent overfills by installing equipment with a design that will either: (1) Alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering an alarm, or (2) automatically shut off flow into the tank when the tank is no more than 95 percent full.

On December 8, 1988, the American Petroleum Institute submitted a rulemaking petition requesting, in part, that EPA review and change the technical requirements for overfill prevention equipment. This petition identified a technical oversight in an assumption used to develop the rule's final design standards for where to locate overfill prevention equipment at the top of tanks, particularly as they are applied to larger tanks. In calculating the percent of tank capacity at which flow restrictors, alarms, or shut off devices should be triggered (see previous paragraph above), the final design standard was based on an assumed average tank size of 4,000 gallons. As pointed out by API in its petition, new tank sizes are likely to increase over time, particularly in the retail motor fuel sector. Therefore, under the design standard alternatives allowed under the existing regulation, the maximum tank capacity of larger tanks (i.e., 10,000 gallons) is needlessly restricted from the standpoint of protecting the environment. For example, under the existing rules, a 10,000 gallon tank equipped with a flow restrictor overfill prevention device can be filled only to 90% capacity (and necessitates 1000 gallon of ullage be left in the tank) to enable the operator sufficient time to respond and safely prevent an overfill by shutting off the product delivery after the on-set of the flow restrictor. In response to the petition, EPA proposed performance criteria for what constitutes a safe response time (see 55 FR 17767) using various types of equipment, and the Agency requested public comments on whether such additional standards allowing larger tanks to be filled to a much higher capacity would still be protective of human health and the environment.

The April 27, 1990 proposal consisted of an additional set of performance standards that could be used as another alternative to the existing overfill prevention design standards. The proposed overfill performance standards would allow use of equipment capable of:

- Restricting flow 30 minutes prior to overfill;
- Alerting the operator with a high level alarm one minute before overfilling, or
- Automatically shutting off flow into the tank so that none of the fittings located on top of the tank are exposed to product due to overfilling.

The Agency chose these alternative performance criteria to present the minimum response times necessary to prevent overfills with the major types of available equipment and thereby protect human health and the environment. The proposed performance standards were intended to enable the location of the different types of overfill equipment sometimes even closer to the tops of the larger tanks, as long as the use of the equipment achieves one of these proposed minimum levels of performance.

EPA received public comments concerning these proposed alternative performance standards. Some specific technical concerns received on the overfill performance criteria included such items as the potential for spillage from larger tanks that may be tilted, and the insufficient time a one-minute alarm allows for the operator to shut off the inflow of product before it reaches the top of the tank. All these technical issues addressed by the commenters were previously raised and considered when devising the existing overfill design standards promulgated September 23, 1988. Because the Agency did not solicit more comment on these technical questions (such as the adequacy of flow restrictor methods of overfill prevention), they were not considered in finalizing today's amendment. No new evidence or data were provided by commenters that called into question the basic design assumptions used by the Agency to guide the development of the overfill equipment standards.

One commenter believed the performance standard for flow restrictors was unnecessarily strict because the requirment to begin flow restriction 30 minutes prior to overfilling would unduly add time and expense to a delivery. EPA does not agree and believes the commenter does not understand the intent and effect of this rule. The requirement for a flow restrictor (or some other type of equipment) is intended to simply serve as a warning device to the operator that the filling process is to stop and the remaining product in the delivery hose should be emptied into the tank. The equipment is not intended to alert the deliverers that it will take 30 minutes longer to completely fill the remaining ullage. The requirement grants a deliverer using flow restrictor equipment 30 minutes reaction time as a margin of safety. Within this 30 minute period, the delivery process must cease in order to prevent overfills.

EPA agrees with those commenters who support the proposed performance standards as an environmentally protective option for spill and overfill requirements. Several commenters recognized that adopting a time-based performance standard for overfill equipment provides the advantages of more efficient utilization of tank capacities. For example, some commenters identified that fuller use of tanks decreases petroleum product transportation and associated delivery hazards (i.e., spillage through hose connections and disconnections), thereby increasing efficient supply to the American consumer. They also pointed out that time-based performance standards also eliminate various expenditures, including those associated with more frequent deliveries, installation of otherwise unnecessarily larger-sized tanks to compensate for the excessive ullage requirement, and retrofitting tanks with alternative overfill protection systems.

EPA expects that the existing overfill design standards will continue to be the requirement of choice by owners and operators of tanks smaller than 4,000 gallons. However, today's added performance standard alternatives address the petitioner's concerns that the September 23, 1988 regulation in several cases unnecessarily reduced maximum tank storage capacity for larger tanks, and will allow additional options for owners and operators, and equipment providers. EPA has concluded that today's amendment provides some additional flexibility in the use of overfill equipment with no reduction in protection of human health and the environment. The full comment response document is available in the UST Docket. Call (202) 475–9720 to make an appointment with the docket clerk.

III. Economic and Regulatory Impacts

A. Regulatory Impact Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. Since this amendment simply increases the regulated community's flexibility of implementation by adding some equally protective minimum performance standard alternatives to the existing overfill design standards, the amendment does not require a Regulatory Impact Analysis.

This document was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the Agency to prepare and make available for public comment a regulatory flexibility analysis that describes the impact of a proposed or final rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have significant impact on a substantial number of small entities. EPA believes that this rule will not have a significant economic impact on a substantial number of small entities. The rule will provide additional flexibility in complying with the standards for preventing the overfilling of USTs. Accordingly, the Agency has concluded that the law does not require a Regulatory Flexibility Analysis and certifies that this rule will not have a significant economic impact on a substantial number of small entities.

C. Federalism Assessment

Executive Order 12612 requires the Agency to perform a federalism assessment on proposed and final rules. The Executive Order specifies that Federal agencies should refrain from limiting State policy options, consult with States prior to taking any actions that would restrict State policy options, and take such actions only when there is a clear constitutional authority and the presence of a problem of national scope. The Executive order provides for a preemption of State law only if there is a clear Congressional intent for the Agency to do so. Any such preemption is to be limited to the extent possible.

The Agency has revised today's rule and concluded that a federalism assessment, as defined by Executive Order 12612, is not required. Today's rule merely adds another option for meeting the Federal overfill prevention standards; the overfill protection objective for State programs approval has not changed.

D. Paperwork Reduction Act

This final rule contains no new information collection requirements and thus will not increase the paperwork burden on the regulated community in contravention of the purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 280

Hazardous materials, Petroleum, Underground storage tanks.

Dated: August 5, 1991.

William K. Reilly,
Administrator.

For the reasons set out in the preamble, 40 CFR 280 is amended as set forth below:

PART 280—TECHNICAL STANDARDS AND CORRECTIVE ACTION REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS (UST)

1. The authority citation for part 280 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991, 6991(a), 6991(b), 6991(c), 6991(d), 6991(e), 6991(f), 6991(h).

2. Section 280.20 is amended by revising paragraph (c)(1)(ii)(B) and by adding paragraph (c)(1)(ii)(C) to read as follows:

§ 280.20 Performance standards for new UST systems.

* * * * *

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(B) Alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high-level alarm; or

(C) Restrict flow 30 minutes prior to overfilling, alert the operator with a high level alarm one minute before overfilling, or automatically shut off flow into the tank so that none of the

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(C) Restrict flow 30 minutes prior to overfilling, alert the operator with a high level alarm one minute before overfilling, or automatically shut off flow into the tank so that none of the fittings located on top of the tank are exposed to product due to overfilling.

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[FR Doc. 91-19204 Filed 8-12-91; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 97

Consolidation of Grants to the Insular Areas

AGENCY: Office of the Secretary, HHS.

ACTION: Final rule with comment period.

SUMMARY: This technical rule adds five programs to the list of Department of Health and Human Services formula and block grant programs which may be consolidated by the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands (Republic of Palau) and continues to permit consolidation of certain Public Health Service programs to the Federated States of Micronesia and the Republic of the Marshall Islands.

DATES: Effective date: This final rule with comment period is effective August 13, 1991. Comments on this rule must be received October 15, 1991.

ADDRESSES: Please submit written comments to: Mr. Jim Mason, Office of the Deputy Under Secretary for Intergovernmental Affairs, Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Ave. SW., room 614E, Washington, DC 20201.

Comments received in response to this rule may be reviewed in room 614E between the hours of 9 a.m. and 5:30 p.m., Monday through Friday, except Federal holidays, beginning one week after the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Jim Mason, (202) 245–6036 or Frank Burns, (202) 245–2892.

SUPPLEMENTARY INFORMATION:

I. Background

Section 501 of Public Law 95–134, commonly referred to as the Omnibus Territories Act of 1977, as amended (48 U.S.C. 1469a), authorizes Federal agencies to consolidate grants to certain "insular areas", i.e., the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

Specifically, section 501 permits: (a) A Federal agency to consolidate any or all grants to each of these insular areas except those grants used to make direct payments to individuals;

(b) A Federal agency to waive requirements for matching funds, applications, and reports with respect to the consolidated grants;

(c) An insular area to use the consolidated grant funds for any purpose or purposes authorized under any of the grant programs that have been consolidated;

(d) An insular area to determine the amount of funds to allocate to each program or purpose authorized under the consolidated grant;

(e) An insular area to tailor Federal assistance to its needs and to reduce the application, reporting and administrative requirements; and

(f) An insular area to use Federal assistance derived from one program for purposes authorized by another, and determine how funds will be allocated among the programs consolidated. It, however, must meet all the statutory and regulatory requirements of the program(s) under which the application for a consolidated grant is submitted.

The Department published regulations authorizing the consolidation of certain formula and block grants to insular areas on January 19, 1981 (46 FR 4921), December 16, 1982 (47 FR 56466), March 25, 1987 (52 FR 9494), and October 28, 1987 (52 FR 41431). Since that time, all eligible insular areas have submitted consolidated grant applications. For fiscal year 1990, all of the insular areas submitted consolidated grant applications, ranging from one insular area consolidating six programs to another consolidating thirteen programs.

II. Provisions of the Final Rule

The technical amendments to 45 CFR part 97, at § 97.12, will add two programs administered by the Administration for Children and Families (ACF) and three programs administered by Public Health Service (PHS) to the list of formula and block grant programs which may be consolidated. Specifically, we are adding the following block grant program to the list:

Community Youth Activity, 42 U.S.C. 11841. (PHS).

Additionally, we are adding the following other formula grant programs:

(1) Emergency Community Services Homeless, 42 U.S.C. 11301. (ACF);

(2) Community Food and Nutrition, 42 U.S.C. 9910a. (ACF);

(3) Protection and Advocacy for Mentally Ill Individuals, 42 U.S.C. 9501. (PHS); and

(4) Projects for Assistance in Transition from Homelessness, 42 U.S.C. 290 (cc–21) et seq. (PHS).

In addition, in order to accommodate additional program(s) which the Secretary may determine are available for consolidation, we are revising the first paragraph of § 97.12 to read as follows:

(a) These regulations apply to the consolidation of grants under the programs listed in paragraphs (b) and (c) of this section and to any additional program(s) as determined by the Secretary. This list of programs will be periodically updated in the Code of Federal Regulations through publication in the Federal Register.

Finally, in § 97.11 we have deleted the specific jurisdictional entities that make up the Trust Territory of the Pacific Islands (TTPI) since only the Republic of Palau is still a territory. The Federated States of Micronesia and the Republic of the Marshall Islands were previously part of the TTPI but they have entered into Compacts of Free Association with the United States and remain eligible for certain health programs.

III. Waiver of Notice and Comment Procedures

A final rule is being published as this action is a technical change which will afford the insular areas maximum flexibility in the operation/administration of their programs. Accordingly, the Secretary has determined that it would be impracticable, unnecessary, and contrary to the public interest to use notice and comment procedures in issuing these regulations. All comments received will be considered, and the rules will be revised, if appropriate.

IV. Impact Analysis

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules, which are defined in the order as any rule that has an annual effect on the national economy of $100 million or more or certain other specified effects. The Department has determined that this technical rule is not a major rule within the meaning of the Executive order because it will not have any effect on the economy of $100 million or more or otherwise meet the threshold criteria.

Regulatory Flexibility Act of 1980

Consistent with the Regulatory Flexibility Act of 1980 5 U.S.C. chapter 6), the Department tries to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities" an analysis is prepared describing the rule's impact on small entities. Small entities are defined in the Act to include small businesses, small not for profit organizations and small governmental entities.

The primary impact of these regulations is on the insular areas which are not "small entities" within the meaning of the Act. For these reasons, the Secretary certifies that these rules will not have significant impact on a substantial number of small entities.

Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980 (Pub. L. 96–511), all Departments are required to submit to the Office of Management and Budget for review and approval any reporting or record keeping requirements in a proposed or final rule. This rule does not contain information collection requirements or increase Federal paperwork burden on the public or private sector.

V. List of Subjects in 45 CFR Part 97

Administrative practice and procedures, Aged, Alcoholism, Child welfare, Community action programs, Dependent care planning, Drug abuse, Energy, Family violence prevention, Grant programs-energy, Grant programs-health, Grant programs-social programs, Health care, Maternal and child health, Mental health programs, Public health.

For the reasons set forth in the preamble, title 45 part 97 of the Code of Federal Regulations is amended as follows:

PART 97—CONSOLIDATION OF GRANTS TO THE INSULAR AREAS

1. The authority citation for part 97 is revised to read as follows:

Authority: Sec. 501, Pub. L. 95–134, as amended, 48 U.S.C. 1469a.

2. Section 97.11 is revised to read as follows:

§ 97.11 Which jurisdictions may apply for a consolidated grant?

The following jurisdictions (insular areas), as appropriate with respect to each block and formula grant program, may apply for a consolidated grant under this Part: the Virgin Islands; Guam; American Samoa, the Commonwealth of the Northern Mariana Islands; and the Trust Territory of the Pacific Islands (the Republic of Palau). In addition, the Federated States of Micronesia and the Republic of the Marshall Islands may apply for a consolidated grant for certain PHS programs as indicated in § 97.12.

3. Section 97.12 is revised to read as follows:

§ 97.12 Which grants may be consolidated?

(a) These regulations apply to the consolidation of grants under the programs listed in paragraphs (b) and (c) of this section and to any additional program(s) as determined by the Secretary. The list of programs will be periodically updated in the Code of Federal Regulations through publication in the **Federal Register**.

(b) Block Grants.

(1) Preventive Health and Health Services, 42 U.S.C. 300w–300w–10.[1]

(2) Alcohol and Drug Abuse and Mental Health Services, 42 U.S.C. 300x–300x–9.[2]

(3) Maternal and Child Health Services, 42 U.S.C. 701–709.[3]

(4) Social Services, 42 U.S.C. 1397–1397f.

(5) Community Services, 42 U.S.C. 9901–9912.

(6) Low-Income Home Energy Assistance, 42 U.S.C. 8621–8629.

(7) Community Youth Activity, 42 U.S.C. 11841.[4]

(c) Other Grants.

(1) Child Welfare Services, 42 U.S.C. 620, et seq.

(2) Developmental Disabilities, 42 U.S.C. 6021–6030.

(3) Aging Supportive Services and Senior Centers, 42 U.S.C. 3030d.

(4) Congregate Meals for the Elderly, 42 U.S.C. 3030e.

(5) Home Delivered Meals for the Elderly, 42 U.S.C. 3030f.

(6) Child Abuse and Neglect State Grants, 42 U.S.C. 5103(b).

(7) Dependent Care Planning and Development State Grants, 42 U.S.C. 9871, et. seq.

(8) Family Violence Prevention and Services, 42 U.S.C. 10401, et seq.

(9) Children's Justice Act, 42 U.S.C. 5101, et seq.

(10) Child Development Associate Scholarship Assistance Act, 42 U.S.C. 10901, et seq.

(11) Emergency Community Services Homeless, 42 U.S.C. 11301.

(12) Community Food and Nutrition, 42 U.S.C. 9910a.

(13) Protection and Advocacy for Mentally Ill Individuals, 42 U.S.C. 9501.

(14) Projects for Assistance in Transition from Homelessness, 42 U.S.C. 290 (cc–21) *et seq.*

Approved: June 27, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91–19180 Filed 8–12–91; 8:45 am]

BILLING CODE 4130-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 910899–1199]

Groundfish of the Gulf of Alaska; and the Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule.

SUMMARY: NMFS has determined that an emergency exists in groundfish fisheries being conducted in the Gulf of Alaska (GOA) and in the Bering Sea and Aleutian Islands area (BSAI). Current management measures applicable to the GOA and BSAI could result in unnecessarily high bycatches of halibut in trawl fisheries. Therefore, the Secretary of Commerce (Secretary) is implementing new measures to constrain halibut bycatch rates. This action is necessary to constrain Pacific halibut bycatch amounts and facilitate enforcement. It is intended to further the goals and objectives in the Fishery Management Plans (FMPs) for Groundfish of the Gulf of Alaska and for the Groundfish Fishery of the Bering Sea and Aleutian Islands area.

DATES: Effective August 7, 1991 through November 12, 1991. Comments particularly are invited on the Environmental Assessment (EA) prepared for this action.

ADDRESSES: Copies of the EA may be obtained from Dale R. Evans, Chief, Fisheries Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802. Comments should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fisheries Management Division, NMFS), 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the Exclusive Economic Zone (EEZ) of the GOA and the BSAI are managed by the Secretary under the FMPs. The FMPs were prepared by the North Pacific Fishery Management

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[1] Certain Public Health Service programs for which the Federated States of Micronesia and the Republic of the Marshall Islands may apply for a consolidated grant.

[2] See footnote 1 in § 97.12(a)(1).

[3] See footnote 1 in § 97.12(a)(1).

[4] See footnote 1 in § 97.12(a)(1).

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Approved: June 27, 1991.

Louis W. Sullivan,
Secretary.

[FR Doc. 91-19180 Filed 8-12-91; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 910899-1199]

Groundfish of the Gulf of Alaska; and the Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule.

SUMMARY: NMFS has determined that an emergency exists in groundfish fisheries being conducted in the Gulf of Alaska (GOA) and in the Bering Sea and Aleutian Islands area (BSAI). Current management measures applicable to the GOA and BSAI could result in unnecessarily high bycatches of halibut in trawl fisheries. Therefore, the Secretary of Commerce (Secretary) is implementing new measures to constrain halibut bycatch rates. This action is necessary to constrain Pacific halibut bycatch amounts and facilitate enforcement. It is intended to further the goals and objectives in the Fishery Management Plans (FMPs) for Groundfish of the Gulf of Alaska and for the Groundfish Fishery of the Bering Sea and Aleutian Islands area.

DATES: Effective August 7, 1991 through November 12, 1991. Comments particularly are invited on the Environmental Assessment (EA) prepared for this action.

ADDRESSES: Copies of the EA may be obtained from Dale R. Evans, Chief, Fisheries Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802. Comments should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fisheries Management Division, NMFS), 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the Exclusive Economic Zone (EEZ) of the GOA and the BSAI are managed by the Secretary under the FMPs. The FMPs were prepared by the North Pacific Fishery Management

Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and are implemented by respective regulations for the foreign fishery at 50 CFR 611.92 and 611.93 and for the U.S. fishery at 50 CFR parts 672 and 675. General regulations that also pertain to the U.S. fishery appear at 50 CFR part 620.

At times, amendments to the FMPs and/or their implementing regulations are necessary to respond to fishery conservation and management issues that cannot be addressed under normal procedures within a timeframe provided for by the Magnuson Act. Section 305(c) of the Magnuson Act provides for issuance of an emergency rule to resolve conservation and management issues for up to 90 days with a possible 90-day extension.

The Council recommended at its April 23–26, 1991, meeting that an emergency rule be issued that would (1) amend GOA regulations at 50 CFR 672.20(f) to prohibit trawling for groundfish in the GOA once the bycatch allowance for Pacific halibut is reached, except that trawling for pollock with pelagic trawls would be allowed, and (2) amend GOA and BSAI regulations at 50 CFR 672.20(g) and 50 CFR 675.20(h), respectively, by reducing the directed fishing standards for Pacific cod and for groundfish other than pollock in the BSAI and GOA pollock fisheries conducted with pelagic trawls.

In addition, NMFS has determined that two other changes are necessary. First, an amendment to the definition of a fishing trip in BSAI regulations at 50 CFR 675.20(i)(2) is necessary to relieve a burden on fishermen, and second, amendments to GOA and BSAI regulations at 50 CFR 672.20(f)(1) and 675.21(c)(2), respectively, are necessary to enforce closures to fishing by vessels using nonpelagic trawls.

Therefore, this emergency rule implements the following measures:

(1) All trawling for groundfish in the GOA is prohibited when the halibut prohibited species catch (PSC) limit or seasonal allowance thereof is reached, except that directed fishing for pollock by vessels using pelagic trawls will be allowed;

(2) Directed fishing standards are reduced for BSAI Pacific cod and for all GOA groundfish other than pollock that are caught while fishing for pollock with pelagic trawl gear;

(3) The definition of a fishing trip in the BSAI for purposes of calculating directed fishing standards is amended such that a vessel starts a new trip when it enters or leaves a subarea or reporting area to which a directed fishing prohibition applies; and

(4) Vessels must render non-pelagic trawls unusable for fishing when conducting fishing operations in areas closed to the use of non-pelagic trawls for a particular target species category if that vessel retains proportions of that target species category equal to or greater than the applicable directed fishing standard.

Restrictions on the Use of Trawls in the Gulf of Alaska

In the GOA, Pacific halibut are caught in the groundfish fisheries as bycatch. Halibut bycatch is controlled through the use of PSC limits. For the 1991 fishing year, 2,000 metric tons (mt) of Pacific halibut mortality are apportioned to trawl gear. This amount is seasonally apportioned into bycatch allowances for each of the four calendar quarters. The allowances are: 600 mt for each of the first and second calendar quarters and 400 mt for each of the third and fourth calendar quarters.

Gulf of Alaska regulations at 50 CFR 672.20(f) require the Regional Director, NMFS, to prohibit fishing with non-pelagic trawl gear for the remainder of a season or for the remainder of the fishing year if the trawl bycatch allowance or the trawl PSC limit is reached. Pelagic trawl gear is defined at 50 CFR 672.2.

As currently defined in BSAI and GOA regulations, the wide mesh configuration of the forward portion of a pelagic trawl is intended to release bycatches of halibut that are susceptible to capture by a pelagic trawl while fishing for groundfish species, such as pollock. NMFS has learned that when closures to nonpelagic trawls were instituted in the BSAI during the first quarter of 1991, some fishermen reconfigured conventional bottom trawls to meet the pelagic trawl definition by adding a wide-mesh section to the forward portion of the net. When trawling with non-pelagic trawls was prohibited as a result of the halibut seasonal bycatch allowance being reached, fishermen continued to fish with a reconfigured trawl for the same species. NMFS reviewed BSAI observed bycatch data that demonstrated halibut bycatch rates achieved with reconfigured trawls to be the same as those achieved with bottom trawls. The reconfiguration complied with the technical definition of a pelagic trawl and, therefore, could not be prohibited in areas open to the use of a pelagic trawl.

The continued use of a reconfigured trawl once the seasonal halibut allowance has been reached resulted in additional halibut bycatch, thereby frustrating the intent of the Council to minimize halibut bycatch. To allow continuing halibut bycatch after a closure that is intended to limit halibut bycatch amounts is inconsistent with the goals and objectives of the FMP. In response to this problem, NMFS amended BSAI regulations at 50 CFR 675.21(c)(2)(iii)–(iv) by prohibiting all trawling for Pacific cod when the seasonal allowance of the Pacific halibut PSC apportioned to the "other fishery" is reached (56 FR 21619; May 10, 1991).

The Council anticipates that the problem experienced in the BSAI also will occur in the GOA. When the Pacific halibut seasonal PSC allowance is reached, and all trawling with non-pelagic trawls is closed, fishermen simply can use reconfigured trawls and resume fishing on the sea bed for the same species for which the fishermen were fishing prior to the closure. Subsequent Pacific halibut bycatches would be expected to continue, probably at the same rate experienced with bottom trawls. Although any bycatches would be counted against the next quarter's allowance, the Council's intent to promote trawling opportunity through the year would be thwarted. When the entire 2,000 mt of Pacific halibut mortality is reached, halibut bycatch could still continue, thwarting the Council's intent to limit the amount of trawl-caught mortality to 2,000 mt.

The Council recommended that the Secretary implement an emergency rule to amend existing GOA regulations by prohibiting all trawling for groundfish, except pollock, once the halibut bycatch allowance apportioned to trawl gear is reached. Trawling for pollock with pelagic trawls will still be allowed.

The Secretary concurs in the Council's recommendation, and hereby prohibits all trawling for groundfish in the GOA, except pollock, once the halibut PSC limit, or seasonal allowance thereof, is reached. Trawling for pollock with pelagic trawl gear will be allowed.

Directed Fishing Standards

Based on advice from NMFS, the Council considered the extent to which vessels might fish for pollock with pelagic gear and then top off their BSAI catches of pollock with Pacific cod, and their GOA catches of pollock with other bottom dwelling groundfish, resulting in high bycatch rates of halibut. Existing standards for directed fishing at 50 CFR 672.20(g) and 50 CFR 675.20(h) allow retained amounts of Pacific cod to comprise up to 20 percent of all other fish or fish products retained on board a vessel during a trip. A pelagic trawl as defined normally is not used to fish for

Pacific cod, and the pelagic trawl fishery for pollock normally intercepts only small amounts of Pacific cod as bycatch. A vessel could use other trawl gear to target on Pacific cod, topping off the amounts of retained pollock onboard with up to 20 percent Pacific cod. Because the value of trawl-caught Pacific cod that has been frozen at sea is relatively high, the economic incentive to top off with Pacific cod exists. Trawling for Pacific cod with reconfigured pelagic trawls would result in additional catches of Pacific halibut, worsening the problem of halibut bycatch in areas where the seasonal or annual halibut bycatch allowance to trawl gear has been reached.

To resolve this problem, the Council recommended reduction of certain directed fishing standards that are used to govern retention of various groundfish species for which directed fisheries have been closed. The BSAI and GOA directed fishing standards are found at 50 CFR 675.20(h) and 50 CFR 672.20(g), respectively.

In the BSAI, retained amounts of Pacific cod that are 20 percent or more of the aggregate catch of other fish retained on board at the same time during the same trip are considered to have occurred as a result of directed fishing. Amounts of Pacific cod less than 20 percent would be considered to have been incidentally caught (see 50 CFR 675.20(h)(i)). In the GOA, retained amounts of any groundfish other than sablefish that are 20 percent or more of the aggregate catch amounts retained on board at the same time during the same trip are considered to have occurred as a result of directed fishing (see 50 CFR 672.20(g)(3)). Amounts of any groundfish other than sablefish less than 20 percent would be considered to have been incidentally caught.

However, in the BSAI and GOA, if the directed fishery for Pacific cod has been closed, but pollock directed fishing with pelagic trawls is still ongoing, then amounts of Pacific cod up to 20 percent of the amount of pollock retained onboard would be permissible. This percentage of Pacific cod measured against pollock caught with non-pelagic trawls would be appropriate. In a pelagic trawl fishery for pollock, a substantially smaller proportion of Pacific cod would suffice to accommodate incidental catch.

For the BSAI, the Council recommended that the directed fishing standard for Pacific cod caught in a pollock fishery with pelagic gear be reduced so that Pacific cod must comprise less than 7 percent of the amount of pollock retained on board. In fisheries still open to all trawl gear, the directed fishing standard for Pacific cod would remain unchanged at 20 percent. For the GOA, the Council adopted a NMFS recommendation that the directed fishing standard for all groundfish caught in a pollock fishery with pelagic gear be 7 percent of the amount of pollock. A directed fishing standard for just Pacific cod in the BSAI and not all groundfish is appropriate because other directed trawl fisheries, such as flatfish, would still be open under other provisions of 50 CFR part 675.

The Secretary concurs in the Council's recommendation, and hereby reduces the BSAI directed fishing standard for Pacific cod to 7 percent when only pelagic trawls for pollock are allowed. The Secretary also reduces the GOA directed fishing standard for groundfish, other than pollock, to 7 percent in a directed pollock fishery when only pelagic trawls are allowed. Reducing the directed fishing standard will remove the economic incentive to fish non-pelagic trawls to top off pollock catches.

Definition of a Trip for Purposes of Calculating Directed Fishing Standards in the BSAI

In the BSAI, the amount of a groundfish species that may be retained on board when directed fishing is closed is measured on the basis of a fishing trip. As applied, the definition of a trip at § 675.20(i)(2) prevents fishermen from being able to start new trips for bycatch accounting purposes when moving into areas subject to inseason bycatch restrictions. These restrictions, found at § 675.21, constrain amounts of Pacific halibut, red king crab, and Tanner crab that may be taken as bycatch in various trawl fisheries.

As an example, § 675.21(c)(1)(iii) illustrates a bycatch restriction that is linked to the definition of a trip at § 675.20(i)(2), using rock sole as a target species. Section 675.21(c)(1)(iii) requires the Secretary to publish a notice in the **Federal Register** closing Zones 1 and 2H to vessels engaging in the directed rock sole fishery for the remainder of the fishing year or for the remainder of the season if, during the fishing year, the Regional Director determines that U.S. fishing vessels using trawl gear will catch the primary PSC allowance or seasonal apportionment of the PSC allowance of Pacific halibut in the BSAI management area while participating in the domestic annual processing rock sole fishery. In 1991, Zones 1 and 2H were actually closed on March 15 (56 FR 11697; March 20, 1991). The definition of directed fishing for rock sole is found at § 675.20(h)(1) which, in turn, references the definition of a trip in § 675.20(i)(2).

As stated at § 675.20(i)(2), the operator of a vessel is engaged in a single fishing trip from the commencement of or continuation of fishing after the effective date of a notice prohibiting directed fishing under § 675.20(a)(8) until any offload or transfer of any fish or fish product from that vessel or until the vessel leaves the subarea where fishing activities commenced, whichever occurs first. Two subareas in the BSAI are defined at § 675.2 as the Bering Sea subarea and the Aleutian Islands subarea.

When the directed fishery for rock sole is closed in Zones 1 and 2H as described above, the directed rock sole fishery elsewhere in the Bering Sea subarea could still be open. A vessel could have rock sole on board that was caught legally within the Bering Sea subarea but outside Zones 1 and 2H as a result of a directed fishery. The vessel could then move into either Zone 1 or Zone 2H and immediately be in violation, because the "fishing trip" has not ended under the existing trip definition, thus preventing the vessel from beginning a new count of how much rock sole the vessel is allowed to have on board. To be legal, the vessel operator would have to discard rock sole, or otherwise offload the rock sole products, until the remaining proportion of rock sole on board was consistent with the directed fishing definition.

This situation imposes unnecessary burdens on fishing vessels. Vessels should be able to move into areas where a directed fishing prohibition applies even though vessels have the legally harvested prohibited species on board.

For reasons given above, the Secretary is amending the definition of a trip in the BSAI regulations such that a vessel starts a new trip from the date that directed fishing prohibitions apply until the vessel enters or leaves a subarea or reporting area to which a directed fishing prohibition applies. As with other directed fishing prohibitions, vessel operators will need to maintain logbooks required by existing recordkeeping and reporting regulations at § 675.5 to substantiate amounts of groundfish species on board in areas otherwise closed to directed fishing.

Rendering Non-Pelagic Trawls Unusable for Fishing

In the GOA and BSAI, regulations at 50 CFR 672.20(f) and 675.21(c)(2) authorize continued trawling for groundfish or pollock, respectively, by vessels using pelagic trawls after certain bycatch allowances have been reached. Such authorized trawling could occur in reporting areas that simultaneously are

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When the directed fishery for rock sole is closed in Zones 1 and 2H as described above, the directed rock sole fishery elsewhere in the Bering Sea subarea could still be open. A vessel could have rock sole on board that was caught legally within the Bering Sea subarea but outside Zones 1 and 2H as a result of a directed fishery. The vessel could then move into either Zone 1 or Zone 2H and immediately be in violation, because the "fishing trip" has not ended under the existing trip definition, thus preventing the vessel from beginning a new count of how much rock sole the vessel is allowed to have on board. To be legal, the vessel operator would have to discard rock sole, or otherwise offload the rock sole products, until the remaining proportion of rock sole on board was consistent with the directed fishing definition.

This situation imposes unnecessary burdens on fishing vessels. Vessels should be able to move into areas where a directed fishing prohibition applies even though vessels have the legally harvested prohibited species on board.

For reasons given above, the Secretary is amending the definition of a trip in the BSAI regulations such that a vessel starts a new trip from the date that directed fishing prohibitions apply until the vessel enters or leaves a subarea or reporting area to which a directed fishing prohibition applies. As with other directed fishing prohibitions, vessel operators will need to maintain logbooks required by existing recordkeeping and reporting regulations at § 675.5 to substantiate amounts of groundfish species on board in areas otherwise closed to directed fishing.

Rendering Non-Pelagic Trawls Unusable for Fishing

In the GOA and BSAI, regulations at 50 CFR 672.20(f) and 675.21(c)(2) authorize continued trawling for groundfish or pollock, respectively, by vessels using pelagic trawls after certain bycatch allowances have been reached. Such authorized trawling could occur in reporting areas that simultaneously are

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open to directed fishing for other groundfish species. A vessel operator could have both pelagic and non-pelagic trawls on board the vessel. Without a constant enforcement presence, a vessel operator could target on BSAI pollock or GOA groundfish with a non-pelagic trawl in areas closed to directed fishing with such gear. The vessel operator could then record all retained BSAI pollock or GOA groundfish as having been caught with pelagic trawls. NMFS has no practical way to enforce against this loophole.

NMFS has determined that regulations at 50 CFR 672.20(f)(1)(i) and 675.21(c)(2) are not enforceable without substantial commitments in manpower and funding. Therefore, the Secretary amends 672.20(f)(1) and 675.21 by requiring vessels to render each non-pelagic trawl unusable for fishing if the vessel is fishing in reporting areas closed to directed fishing with non-pelagic trawls for a particular target species category but the use of pelagic trawls for that target species category is still allowed. This requirement will only apply to vessels that have a proportion of that target species category on board equal to or greater than the applicable directed fishing standard. To be unusable for fishing means that the non-pelagic trawl must be detached from trawl reels and towing lines, and it must be removed from the trawl alley and stored either below deck, or otherwise secured.

A definition of trawl alley is added to 50 CFR 672.2 and 675.2 as being necessary to implement the intent of this regulation. A definition of non-pelagic trawl also is added to §§ 672.2 and 675.2 to clarify this regulation and other regulations.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary to respond to an emergency situation and that it is consistent with the Magnuson Act and other applicable law.

The Assistant Adminstrator finds that reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide notice and opportunity for prior comment or to delay for 30 days its effective date under sections 553 (b) and (d) of the Administrative Procedure Act. Based on BSAI data from the first quarter of 1991, fishing with reconfigured pelagic trawls on the seabed, resulting in unacceptable bycatches of Pacific halibut, occurred and will continue thereby undercutting the intent to limit bycatch and extend fishing through the year; topping off groundfish catches with Pacific cod will result in even more bycatches of halibut; the definition of a fishing trip used for BSAI bycatch monitoring purposes will cause some fishermen to forego fishing opportunities to avoid being in violation of a regulation that is unnecessarily burdensome; and existing closures to non-pelagic trawl gear will continue to be unenforceable and present opportunities to violate regulations important for conservation and management of the groundfish fisheries.

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. This determination has been submitted for review by the responsible State agency under section 307 of the Coastal Zone Management Act.

The Assistant Administrator prepared an EA for this rule and concluded that there will be no significant impact on the human environment. A copy of the EA is available from the Regional Director at the above address.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget with an explanation of why following the usual procedures of that order is not possible.

This rule is exempt from the procedures of the Regulatory Flexibility Act, because it is issued without opportunity for prior public comment.

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

The rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Fishing vessels.

Dated: August 5, 1991.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.2, definitions of non-pelagic trawl and trawl alley are added in alphabetical order from August 7, 1991 until November 12, 1991 to read as follows:

§ 672.2 Definitions.

* * * * *

Non-pelagic trawl means a trawl which has discs, bobbins, rollers, or other chafe protection gear attached to the foot rope, or which does not otherwise conform with the definition of a pelagic trawl contained in this paragraph.

* * * * *

Trawl alley means that part of the trawl deck forward of the stern of the vessel and aft of the location where trawl reels may be located and where the trawl is placed after retrieval during fishing operations for purposes of emptying the trawl of fish.

* * * * *

3. In § 672.20, paragraphs (f)(1) and (g)(3) are suspended from August 7, 1991 until November 12, 1991 and new paragraphs (f)(3), (g)(4), and (g)(5) are added from August 7, 1991 until November 12, 1991 to read as follows:

§ 672.20 General limitations.

* * * * *

(f) * * *

(3)(i) Trawl gear. If, during the fishing year, the Regional Director determines that the catch of halibut by operators of vessels using trawl gear and delivering their catch to foreign vessels (JVP vessels) or operators of vessels using trawl gear and delivering their catch to U.S. fish processors or processing their catch on board (DAP vessels) will reach their proportional share of the seasonal allocation of the halibut PSC limit provided for under paragraph (f)(2) of this section, the Regional Director will publish a notice in the **Federal Register** prohibiting directed fishing for:

(A) Pollock by JVP or DAP vessels using non-pelagic trawl gear for the remainder of the season to which the PSC allocation applies; and

(B) Groundfish, except for pollock, by JVP or DAP vessels using any trawl gear for the remainder of the season to which the PSC allocation applies.

(ii) In reporting areas where directed fishing with nonpelagic trawls for a target species category is closed, if the amount of that target species category retained on board a vessel is equal to or greater than the applicable directed fishing standard as defined by paragraph (g) of this section, the operator of that vessel must detach all

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non-pelagic trawls from trawl reels and towing lines, remove non-pelagic trawls from the trawl alley and store all non-pelagic trawls either below deck, or secure them in an area so that they are rendered unusable for fishing.

(iii) Hook-and-line gear. If, during the year, the Regional Director determines that the catch of halibut by operators of vessels using hook-and-line gear and delivering their catch to foreign vessels (JVP vessels) or operators of vessels using hook-and-line gear and delivering their catch to U.S. fish processors or processing their catch on board (DAP vessels) will reach their proportional share of the seasonal allocation of the halibut PSC limit provided for under paragraph (f)(2) of this section, the Regional Director will publish a notice in the **Federal Register** prohibiting fishing by JVP or DAP vessels, as appropriate, with hook-and-line gear for the remainder of the season to which the PSC allocation applies.

(iv) Pot gear. If during the year, the Regional Director determines that the catch of halibut by operators of vessels using pot gear and delivering their catch to foreign vessels (JVP vessels) or operators of vessels using pot gear and delivering their catch to U.S. fish processors or processing their catch on board (DAP vessels) will reach their proportional share of the seasonal allocation of the halibut PSC limit provided for under paragraph (f)(2) of this section, the Regional Director will publish a notice in the **Federal Register** prohibiting fishing by JVP or DAP vessels, as appropriate with pot gear for the remainder of the season to which the PSC allocation applies.

(v) Unused PSC allocated to JVP trawl, hook-and-line, or pot gear, or to DAP trawl, hook-and-line, or pot gear will be added to its respective PSC allocation for the next season during a current fishing year.

(vi) If a seasonal allocation to JVP trawl, hook-and-line, or pot gear, or to DAP trawl, hook-and-line, or pot gear is exceeded, the amount by which the seasonal allocation is exceeded will be deducted from its respective allocation for the next season during a current fishing year.

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(g) * * *

(4) The operator of a vessel is engaged in directed fishing for groundfish other than pollock with pelagic trawl gear if he retains at any time during a trip an amount of groundfish other than pollock equal to or greater than 7 percent of the aggregate amount of pollock retained at the same time by the vessel during the same trip.

(5) *Other.* Except as provided under paragraphs (g)(1), (g)(2), and (g)(4) of this section, the operator of a vessel is engaged in the directed fishing for a specific species or species group if he retains at any particular time during a trip that species or species group in an amount equal to or greater than 20 percent of the amount of all other fish species retained at the same time by the vessel during the same trip.

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

4. In § 675.2, definition of non-pelagic trawl and trawl alley are added in alphabetical order from August 7, 1991 until November 12, 1991 to read as follows:

§ 672.5 Definitions.

* * * * *

Non-pelagic trawl means a trawl which has discs, bobbins, rollers, or other chafe protection gear attached to the foot rope, or which does not otherwise conform with the definition of a pelagic trawl contained in this paragraph.

* * * * *

Trawl alley means that part of the trawl deck forward of the stern of the vessel and aft of the location where trawl reels may be located and where the trawl is placed after retrieval during fishing operations for purposes of emptying the trawl of fish.

* * * * *

5. Section 675.20, paragraphs (h)(1) and (h)(2) are suspended from August 7, 1991 until November 12, 1991 and new paragraphs (h)(7) and (i)(3) are added from August 7, 1991 until November 12, 1991 to read as follows:

§ 675.20 General limitations.

* * * * *

(h) * * *

(7) Pelagic trawl gear for Pacific cod. The operator of a vessel is engaged in directed fishing for Pacific cod with pelagic trawl gear if he retains at any time during a trip an amount of Pacific cod equal to or greater than 7 percent of the aggregate amount of other fish retained on the vessel at the same time during the same trip.

* * * * *

(i) * * *

(3) *Trip.* For purposes of this paragraph, the operator of a vessel is engaged in a single fishing trip from the commencement of or continuation of fishing after the effective date of a notice prohibiting directed fishing under paragraph (a)(8) of this section, or under § 675.21(c), until the vessel enters or leaves a subarea or reporting area to which a directed fishing prohibition applies, or until any offload or transfer of any fish or fish product from that vessel, whichever occurs first.

6. In § 675.21, paragraph (c)(2)(v) is added from August 7, 1991 until November 12, 1991 to read as follows:

§ 675.21 Prohibited species catch (PSC) limitations.

* * * * *

(c) * * *

(2) * * *

(v) In reporting areas where directed fishing with non-pelagic trawls for a target species category is closed, if the amount of that target species category retained on board a vessel is equal to or greater than the applicable directed fishing standard as defined by paragraph (h) of this section, the operator of that vessel must detach all non-pelagic trawls from trawl reels and towing lines, remove non-pelagic trawls from the trawl alley and store all non-pelagic trawls either below deck, or secure them in an area so that they are rendered unusable for fishing.

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[FR Doc. 91-18953 Filed 8-7-91; 3:17 pm]

BILLING CODE 3510-22-M

Proposed Rule

This section of the FEDERAL RE
contains notices to the public of
proposed issuance of rules and
regulations. The purpose of these
is to give interested persons an
opportunity to participate in the r
making prior to the adoption of
rules.

DEPARTMENT OF AGRICULTU

Animal and Plant Health Inspe
Service

7 CFR Part 318

[Docket No. 91-077]

Papayas From Hawaii

AGENCY: Animal and Plant Heal
Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to
the "Hawaiian Fruits and Veget
regulations to remove the "doub
water dip" as an approved quar
treatment for papayas intended
movement from the State of Hav
other parts of the United States.
believe this action is necessary
reduce the risk of the spread of
that are new or not widely preva
distributed within and througho
United States.

DATES: Consideration will be gi
to comments received on or bef
September 12, 1991.

ADDRESSES: To help ensure that
comments are considered, send
original and three copies to Chi
Regulatory Analysis and Develo
PPD, APHIS, USDA, room 804, F
Building, 6505 Belcrest Road,
Hyattsville, MD 20782. Please st
your comments refer to Docket
91-077. Comments received ma
inspected at USDA, room 1141,
Building, 14th Street and Indepe
Avenue SW., Washington, DC,
8 a.m. and 4:30 p.m., Monday th
Friday, except holidays.

FOR FURTHER INFORMATION CON
David R. Reeves, Operations Of
Port Operations, PPQ, APHIS, U
room 635, Federal Building, 650
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(3) *Trip.* For purposes of this paragraph, the operator of a vessel is engaged in a single fishing trip from the commencement of or continuation of fishing after the effective date of a notice prohibiting directed fishing under paragraph (a)(8) of this section, or under § 675.21(c), until the vessel enters or leaves a subarea or reporting area to which a directed fishing prohibition applies, or until any offload or transfer of any fish or fish product from that vessel, whichever occurs first.

6. In § 675.21, paragraph (c)(2)(v) is added from August 7, 1991 until November 12, 1991 to read as follows:

§ 675.21 Prohibited species catch (PSC) limitations.

* * * * *

(c) * * *

(2) * * *

(v) In reporting areas where directed fishing with non-pelagic trawls for a target species category is closed, if the amount of that target species category retained on board a vessel is equal to or greater than the applicable directed fishing standard as defined by paragraph (h) of this section, the operator of that vessel must detach all non-pelagic trawls from trawl reels and towing lines, remove non-pelagic trawls from the trawl alley and store all non-pelagic trawls either below deck, or secure them in an area so that they are rendered unusable for fishing.

* * * * *

[FR Doc. 91–18953 Filed 8–7–91; 3:17 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 156
Tuesday, August 13, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 318

[Docket No. 91-077]

Papayas From Hawaii

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the "Hawaiian Fruits and Vegetables" regulations to remove the "double hot water dip" as an approved quarantine treatment for papayas intended for movement from the State of Hawaii to other parts of the United States. We believe this action is necessary to reduce the risk of the spread of pests that are new or not widely prevalent or distributed within and throughout the United States.

DATES: Consideration will be given only to comments received on or before September 12, 1991.

ADDRESSES: To help ensure that your comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 91-077. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: David R. Reeves, Operations Officer, Port Operations, PPQ, APHIS, USDA, room 635, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8295.

SUPPLEMENTARY INFORMATION:

Background

The regulations regarding fruits and vegetables from Hawaii (contained in 7 CFR 318.13 through 318.13–16 and referred to below as the regulations), quarantine the State of Hawaii and regulate the interstate movement from Hawaii of, among other things, papayas in a raw or unprocessed state. The regulations require, as a condition of interstate movement from Hawaii, that papayas be treated with an approved treatment specified in the regulations. The approved treatments destroy the life stages of the Mediterranean fruit fly (*Ceratitis capitata* (Wied.)), the melon fly (*Dacus cucurbitae* (Coq.)), and the Oriental fruit fly (*Dacus dorsalis* (Hendel)). These fruit flies, commonly referred to as "Trifly," infest Hawaii but not the rest of the United States.

Removal of Double Hot Water Dip as an Approved Treatment

The current regulations is § 318.13–4f set forth, as one of the approved treatments for papayas from Hawaii, a process called the "double hot water dip." The regulations provide that this treatment may be used only for papayas of a certain ripeness, and only if completed within 18 hours of the papayas being picked. Additionally, the ambient temperature surrounding the papayas must not fall below a specified temperature from the time the fruit is picked until it is treated. The dipping itself must be carried out according to precise time/temperature combinations that require close monitoring of the dipping process.

Although research conducted by the Department of Agriculture demonstrates that the double hot water dip is effective when carried out as approved, we have found that we frequently have insufficient personnel to monitor each step of the treatment to ensure that all safeguards are maintained. It is particularly difficult to ensure that no more than 18 hours elapses between the picking of the fruit and its treatment. We believe that our inability to carry out comprehensive monitoring may be creating an unacceptable risk of the interstate spread of dangerous plant pests from Hawaii. On two occasions, quality control inspections have discovered Triflies that appear to have survived the treatment, possibly due to our inability to monitor each step of the process.

Alternatives to the use of the double hot water dip treatment exist, and offer advantages to both the Animal and Plant Health Inspection Service and the papaya industry over the double hot water dip. For instance, the industry has indicated that the double hot water dip treatment, which prohibits the processing of fruit that is more than ¼ ripe, affects the ripening of papayas and often results in undesirable hard spots. The other approved treatments do not affect the ripening of the fruit. Additionally, these alternative treatments require no pre-treatment monitoring and include no ripeness requirements, thereby posing less risk of treatment failure. We are therefore proposing to remove the double hot water dip treatment as an approved treatment for papayas from Hawaii.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In 1990, approximately 19.8 million pounds of fresh papayas, valued at approximately $4.9 million, were shipped from Hawaii to the mainland United States. This represented approximately 34.2 percent of Hawaiian production.

Seven companies currently operate papaya quarantine facilities in Hawaii. Three of these companies do not use the double hot water dip treatment and would not be impacted by the proposed rule change. The remaining four companies currently use the double hot water dip treatment method, two of them exclusively. We expect that these companies would replace their double hot water dip facilities with units that have the capability to treat papayas with both the vapor heat treatment specified in 7 CFR 318.13–4b and the high temperature forced air treatment specified in the PPQ Treatment Manual. Having access to a unit with vapor heat capabilities is an added advantage, because vapor heat is the only quarantine treatment approved by Japan for fresh papaya shipments to that country. The dual units are less costly to construct and more cost efficient to operate than units for irradiation, the other approved treatment, specified in 7 FR 318.13–4g, for papayas from Hawaii.

The estimated cost of constructing a new dual facility would range between $200,000 and $300,000. The actual price would vary depending on location and treatment capacity. Therefore, the total cost of construction would range between approximately $0.8 million and $1.2 million for the Hawaiian papaya industry.

Conversely, in the long run the Hawaiian papaya industry would benefit from lower treatment costs, including lower labor expenditures for inspection, by converting to dual facilities. Only papayas ¼ or less ripe may be treated with the double hot water dip method. This requires that labor be hired to sort papayas into groups according to a "ripeness index." At present, State inspectors monitor industry compliance with the ripeness index. With the elimination of the double hot water dip method, State inspection and fruit sorting would no longer be necessary before treating papayas in a dual facility. However, Federal inspection and monitoring would still be required during and after treatment and prior to shipment to the mainland. We estimate that each company that converts to a dual facility would realize an annual savings of between $106,950 and $191,800 over the use of the "double hot water dip" treatment. Assuming a discount rate to 10 percent to perpetuity, the companies we would expect to convert to a dual facility would be expected ultimately to save between $1,069,500 and $1,918,000 over their current treatment costs.

The cost of the proposed rule change would be approximately $8,200 to $193,050 in the first year per company that builds a dual facility. This would represent the construction costs of new quarantine treatment facilities, minus approximately $106,950 to $191,800 in first year treatment savings due to lower per unit treatment costs. In the long-run, construction costs for new quarantine treatment facilities would be offset by savings generated by the reduced per unit cost of quarantine treatment.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 7 CFR Part 318

Agricultural commodities, Guam, Hawaii, Plant diseases, Plant pests, Plants (Agriculture), Puerto Rico, Quarantine, Transportation, Virgin Islands.

Accordingly, we are proposing to amend 7 CFR part 318 as follows:

PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

1. The authority citation for part 318 would continue to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, 164a, 167; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(c).

§ 318.13 [Amended]

2. In part 318, subpart—Hawaiian Fruits and Vegetables, § 318.13–1, the definition of "Compliance agreement," the references to "§ 318.13.4g" and "§ 318.13–4h" would be removed and references to "§ 318.13–4f" and "§ 318.13–4g", respectively, would be added in their place.

§ 318.13–4f [Removed]

§§ 318.13–4g and 318.13h [Redesignated §§ 318.13–4f and 318.13–4g]

3. In part 318, subpart—Hawaiian Fruits and Vegetables, § 318.13–4f would be removed and §§ 318.13–4g and 318.13–4h would be redesignated as §§ 318.13–4f and 318.13–4g, respectively.

Done in Washington, DC, this 8th day of August 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–19209 Filed 8–12–91; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Parts 101, 112, and 113

[Docket No. 90–146]

Viruses, Serums, Toxins, and Analogous Products; Autogenous Biologics

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Reproposed rule.

SUMMARY: This reproposed rule revises the proposed rule concerning autogenous biologics that was published in the **Federal Register** on April 23, 1990 (55 FR 15233). The original proposed rule would have amended the regulations by: (1) Specifying data that would be required to be submitted to the Animal and Plant Health Inspection Service in support of a request to use an autogenous biologic in a herd that is adjacent to the herd of origin; (2) specifying data that would be required to use such autogenous biologics in herds which are not adjacent to the herd of origin; and (3) specifying data that would be required to be submitted in support of a request to use organisms for the production of an additional serial of an autogenous biologic from cultures which are older than 12 months from the date of isolation. In this revision, we are deleting proposal (3) and adding the following reproposed amendments: (3) specifying data that would be required to be submitted in support of a request to use organisms for the production of additional serials of an autogenous biologic from cultures which are older than 15 months from the date of isolation, or 12 months from the date of harvest of the first serial of product, whichever comes first; (4) removing the limitation that autogenous products be used only in emergency situations; (5) specifying that the use of autogenous biologics would be restricted to a veterinarian-client-patient relationship; and (6) specifying additional testing that would be required after production of the first serial of product in order to continue producing subsequent serials of an autogenous biologic. The reproposed rule reflects our consideration of 15 oral comments from a public hearing and 18 written comments that were received in response to the proposal.

This action would ensure that persons seeking approval to use an autogenous biologic or an isolate under the circumstances described above are apprised of the data that must be submitted in support of their request, and that the Agency is provided sufficient information to properly evaluate and approve the use of

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**AIIAN AND
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, 167; 31 U.S.C. 9701; 7
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**18.13h [Redesignated
18.13–4g]**

ubpart—Hawaiian
ables, § 318.13–4f would
§§ 318.13–4g and
be redesignated as
318.13–4g, respectively.

ton, DC, this 8th day of

mal and Plant Health

Filed 8–12–91; 8:45 am]
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9 CFR Parts 101, 112, and 113

[Docket No. 90–146]

Viruses, Serums, Toxins, and Analogous Products; Autogenous Biologics

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Reproposed rule.

SUMMARY: This reproposed rule revises the proposed rule concerning autogenous biologics that was published in the **Federal Register** on April 23, 1990 (55 FR 15233). The original proposed rule would have amended the regulations by: (1) Specifying data that would be required to be submitted to the Animal and Plant Health Inspection Service in support of a request to use an autogenous biologic in a herd that is adjacent to the herd of origin; (2) specifying data that would be required to use such autogenous biologics in herds which are not adjacent to the herd of origin; and (3) specifying data that would be required to be submitted in support of a request to use organisms for the production of an additional serial of an autogenous biologic from cultures which are older than 12 months from the date of isolation. In this revision, we are deleting proposal (3) and adding the following reproposed amendments: (3) specifying data that would be required to be submitted in support of a request to use organisms for the production of additional serials of an autogenous biologic from cultures which are older than 15 months from the date of isolation, or 12 months from the date of harvest of the first serial of product, whichever comes first; (4) removing the limitation that autogenous products be used only in emergency situations; (5) specifying that the use of autogenous biologics would be restricted to a veterinarian-client-patient relationship; and (6) specifying additional testing that would be required after production of the first serial of product in order to continue producing subsequent serials of an autogenous biologic. The reproposed rule reflects our consideration of 15 oral comments from a public hearing and 18 written comments that were received in response to the proposal.

This action would ensure that persons seeking approval to use an autogenous biologic or an isolate under the circumstances described above are apprised of the data that must be submitted in support of their request, and that the Agency is provided sufficient information to properly evaluate and approve the use of autogenous biologics in a herd other than the herd of origin. It would also provide additional safeguards concerning autogenous biologics.

DATES: Consideration will be given only to comments received on or before October 15, 1991.

ADDRESSES: To help ensure that your written comments are considered, send an original and two copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 90–146. Comments received may be inspected at the Public Reading Room, room 1141, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Espeseth, Deputy Director, Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8245.

SUPPLEMENTARY INFORMATION:

I. Background

Autogenous biologics (vaccines, bacterins, and toxoids) are prepared from cultures of microorganisms which are inactivated and non-toxic. The seed organisms used to produce such autogenous biologics are isolated from sick or dead animals which are judged to be the causative agents of the diseases affecting such animals. On April 23, 1990, a proposed rule was published in the **Federal Register** (55 FR 15233–15236, Docket No. 89–200) proposing to amend the regulations pertaining to the production of autogenous biologics as found in 9 CFR 113.113 (formerly 9 CFR 113.98).

We solicited comments for 60 days with the comment period ending on June 22, 1990. On June 22, 1990, a Notice was published in the **Federal Register** (55 FR 25669–25670, Docket No. 90–123) that extended the comment period to July 23, 1990, in response to a request from a trade association. On August 8, 1990, a second Notice was published in the **Federal Register** (55 FR 32264, Docket No. 90–159) that announced a public hearing in Ames, Iowa, on August 23, 1990, and a reopening and extension of the comment period for Docket No. 89–200 until September 21, 1990.

The Animal and Plant Health Inspection Service (APHIS) received 15 oral comments at the public hearing and 18 written comments regarding the proposed rule. Comments were received from businesses engaged in the production of autogenous biologics, private individuals/consultants, trade associations, professional organizations, a state diagnostic facility, and a state livestock and poultry commission. APHIS has carefully considered all of the comments relating to the proposed rule.

Based on the comments received concerning the initial proposal and on further analysis of the present regulations, APHIS has determined that the proposal should be revised. The reason for the revision is the agency's conclusion that the present restrictions concerning autogenous biologics may no longer be appropriate, and that certain regulatory provisions need to be added. One of the restrictions which may no longer be necessary is the limitation on the use of such products to emergency situations only, unless otherwise authorized by the Administrator. Upon further reflection, the agency has concluded that autogenous products may often be needed for disease situations that may not be considered emergencies such as when licensed products with established efficacy are not available, or when there is evidence that such products have not been effective in treating a specific disease situation. Several additional changes that are being made to the original proposed rule include the addition of definitions and testing requirements. This revised proposal allows interested persons to consider fully the changes to the rule as originally proposed and its impact on consumers, manufacturers, and other affected entities. Based on the rationale set forth in this document, APHIS is issuing this reproposed rule as a revision of the proposed rule that was published on April 23, 1990.

II. Public Meeting

A public meeting on veterinary biologics in Ames, Iowa, on August 15, 1991, was announced in 56 FR 31368 (July 10, 1991). The agenda for this public meeting includes Autogenous biologics. Assuming that this reproposal (Docket No. 90–146) is published, the docket will be discussed at the public meeting on August 15, 1991, between 1 p.m. and 2:30 p.m. in the Scheman Building, Iowa State Center, Ames, Iowa. Any comments made regarding the reproposal will be made part of the record for the public meeting. Anyone who has a comment to make at the public meeting regarding the reproposal should also submit a written copy of the comment to the person listed in this document under **ADDRESSES**.

III. Contents of the Reproposal

In this reproposed rule, APHIS proposes to codify in redesignated § 113.113 of the regulations information that an applicant is required to submit to APHIS in support of an application to: (1) Use an autogenous biologic in a herd that is adjacent to the herd of origin; (2) use an autogenous biologic in a herd that is not adjacent to the herd of origin; (3) use organisms for the production of additional serials of an autogenous biologic from cultures which are older than 15 months from the date of isolation, or 12 months from the date of harvest of the first serial of product, whichever comes first. The current regulations do not specify what type of information needs to be submitted in support of various applications. The reproposed rule also provides that autogenous biologics are to be administered only under a veterinarian-client-patient relationship. In addition, it provides that further testing is required for the production of autogenous products after the first serial. In the reproposed rule, we are also deleting the restriction that autogenous products are only to be used in emergency situations. In addition, we are proposing the following new definitions in § 101.2: Administrator, Animal and Plant Health Inspection Service, Herd, Herd of Origin, Adjacent Herd, and Nonadjacent Herd. Finally, we propose to amend § 112.7(m) to specify that labeling of autogenous products shall indicate that potency and efficacy have not been established.

APHIS is reproposing to amend redesignated § 113.113 "Autogenous biologics" (formerly § 113.98) by revising the introductory text, making nonsubstantive editorial changes to § 113.113(a) (1) and (2), adding § 113.113 (a)(3)(iii) to initially proposed § 113.98(a)(3), redesignating initially proposed § 113.98(a)(4) as reproposed § 113.113(b)(1), deleting initially proposed § 113.98(b)(1), redesignating initially proposed § 113.98(b)(2) as reproposed § 113.113(a)(4) and revising it, redesignating initially proposed § 113.98(b)(3) as reproposed § 113.113(b)(2), and adding new § 113.113 (c)(1)(i) and (c)(2)(i)–(iv). In addition, APHIS is reproposing amendments to § 101.2 "Definitions" and adding new § 112.7 "Labeling of autogenous biologics". These amendments, as reproposed, are referenced in the accompanying table below.

TABLE 1

Recodification	Proposal	Reproposal
113.113(a)	113.98(a)	113.113(a).
113.113(a)(1)	113.98(a)(1)	113.113(a)(1).
113.113(a)(2)	113.98(a)(2) and (3).	113.113(a)(2) and (3).
113.113(a)(3)	113.98(a)(4)	113.113(b)(1).
113.113(b)(1)	113.98(b)(1)	Deleted.
	113.98(b)(2)	113.113(a)(4).
113.113(b)(2)	113.98(b)(3)	113.113(b)(2).
113.113(c)	113.98(c)	113.113(c)(1).
113.113(c)(1)	113.98(c0(1)	113.113(c)(1)(ii).
113.113(c)(2)	113.98(c)(2)	113.113(c)(1)(iii).
		New Sections
		113.113(a)(3)(iii)
		113.113(c)(1)(i)
		113.113(c)(2)
		113.113(c)(2)(i)-(iv)
		101.2
		112.7(m)

IV. Summary and Analysis of Comments

The comments received regarding the proposed rule fall into the following general areas: The need for an expedited response to a request to use autogenous biologics under the conditions set forth in the reproposal; use of autogenous biologics in the poultry industry; the determination of efficacy and reisolation of the organism; the 12-month limitation on the use of the original isolate; APHIS' efforts to increase uniformity in the regulation of autogenous biologics; comments received at the public hearing. We address each of the comments received in the order of the subject areas listed above.

One comment was received indicating a need in the regulations for a reduction in the response time to a request to use an autogenous biologic. Use of electronic mail or a telphone response by APHIS followed by a written response was requested. The rationale for this request was that the need and the use of autogenous biologics may involve an emergency action. APHIS agrees with this comment that a telephone or facsimile response followed by a written response may be utilized in requesting and granting authorization to use autogenous products in an emergency situation. Such procedures regarding the technical aspects of program operations, however, are often included in program memoranda which are intended to provide guidance in the application of regulatory provisions. Therefore, no change to the regulations is proposed in response to this comment.

One comment was received citing the burdensome nature of paperwork, especially for small manufacturers unable to afford paperwork specialists. APHIS is aware of the time required to comply with this regulation and has attempted to require minimum data needed to properly evaluate and approve the use of autogenous biologics. APHIS, however, does not believe that the cost of complying with this regulation should be significant. The purpose of the rule is to specify in the regulations the data which are currently required to be produced in support of a request to use autogenous biologics in certain circumstances. Thus, there should be little if any additional expense in generating such data. Therefore, no change has been made in response to this comment.

Three commenters made comments regarding the use of autogenous biologics in the poultry industry. One commenter suggested that in calculating the period of use of an isolate one should begin from the date of identification rather than the date of isolation of the organism. This would allow for a longer useful life for the isolate since the identification of a virus may take more than a month to complete. It was recommended by the same commenter that a "fast track" system be developed to obtain a conditional license for a product being produced as an autogenous vaccine. The commenter further recommended that more than one additional serial of an autogenous biologic be allowed to be prepared from an extended isolate because of the limitation in the size of the serial and the large size of today's poultry flocks. The commenter also requested that applications for the production of additional serials of autogenous biologics (after the first serial) be supported by a letter from the poultry producer indicating a continue need for the autogenous product and that the need for continued use of the product be based on the professional judgment of the producer's veterinarian.

APHIS does not agree that the period of use of the isolate should being with the date of identification rather than the date of isolation of the organism. The reason is that identification of the microorganism beyond genus and species may not be completed until several months after the date of isolation. Moreover, identification of the organism is not a requirement for initial use of the autogenous biologic. In response to the comment regarding conditional licenses, it should be noted that § 102.6 of the regulations provides that, under certain circumstances, a conditional license may be granted under an expedited procedure upon such conditions as are necessary to assure purity, safety, and a reasonable expectation of efficacy. It should be further noted that APHIS no longer places a limitation on the size of the serial to be produced.

After considering the comment concerning the calculation of the dating period for isolates, APHIS proposes to delete the requirement under proposed § 113.98(b)(2) (redesignated as § 113.113(b)(2)) that the 12-month dating period begin from the date of isolation and proposes to amend the regulations in § 113.113(a0(4) as follows:

> Under normal circumstances, microorganisms used for the production of autogenous biologics may not be older than 15 months from the date of isolation, or 12 months from the date of harvest of the first serial of product produced from the microorganism, whichever comes first.

The microorganisms used for making the autogenous product shall be used no longer than 15 months from the date of isolation, or 12 months from the date of harvest of the first serial of product, whichever comes first. Because the two time periods start from different reference points (one from the date of isolation, the other from the date of harvest), either time period may end first. In this rule, whichever of the two time periods ends first would be used in determining when the isolate can no longer be used for making product, unless authorized by the Administrator.

One of the commenters further requested that continued production of an autogenous biologic beyond 12 months be allowed. This issue has been addressed in the discussion concerning proposed § 113.113(a).

A second commenter discussing the use of autogenous biologics in the poultry industry requested that the autogenous product be allowed to be made without reisolation of the causative organism so long as there is a disease problem in the area. APHIS notes, however, that the current regulations on the preparation and use of autogenous biologics are based on the fact that, unless otherwise authorized, autogenous biologics are to be prepared only for emergency use. Continued use of the product derived from the original isolate is limited because efficacy of the autogenous biologic has not been established. In order to ensure that the autogenous product continues to bear some relationship to the disease in the herd, a good faith effort to reisolate is currently required by the proposed rule published on April 23, 1990.

In this reproposal, APHIS proposes to delete the reisolation requirement under § 113.98(b)(2)(iii), as initially proposed, and add to the regulations reproposed § 113.113(c) requiring some additional tests in order to use the original isolate

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> Under normal circumstances, microorganisms used for the production of autogenous biologics may not be older than 15 months from the date of isolation, or 12 months from the date of harvest of the first serial of product produced from the microorganism, whichever comes first.

The microorganisms used for making the autogenous product shall be used no longer than 15 months from the date of isolation, or 12 months from the date of harvest of the first serial of product, whichever comes first. Because the two time periods start from different reference points (one from the date of isolation, the other from the date of harvest), either time period may end first. In this rule, whichever of the two time periods ends first would be used in determining when the isolate can no longer be used for making product, unless authorized by the Administrator.

One of the commenters further requested that continued production of an autogenous biologic beyond 12 months be allowed. This issue has been addressed in the discussion concerning proposed § 113.113(a).

A second commenter discussing the use of autogenous biologics in the poultry industry requested that the autogenous product be allowed to be made without reisolation of the causative organism so long as there is a disease problem in the area. APHIS notes, however, that the current regulations on the preparation and use of autogenous biologics are based on the fact that, unless otherwise authorized, autogenous biologics are to be prepared only for emergency use. Continued use of the product derived from the original isolate is limited because efficacy of the autogenous biologic has not been established. In order to ensure that the autogenous product continues to bear some relationship to the disease in the herd, a good faith effort to reisolate is currently required by the proposed rule published on April 23, 1990.

In this reproposal, APHIS proposes to delete the reisolation requirement under § 113.98(b)(2)(iii), as initially proposed, and add to the regulations reproposed § 113.113(c) requiring some additional tests in order to use the original isolate

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beyond the first serial or subserial of product without reisolation of the organism. APHIS also proposes to delete the requirement under current § 113.113(b)(1) "that autogenous products be prepared for emergency use only." Reproposed § 113.113(c) would require, after production of the first serial or subserial of product full sterility, full safety, identification of the microorganism to genus and species of bacteria, fungi, or mycoplasma and at least to family if a virus, and the compliance with the applicable general requirements of § 113.100 for an autogenous bacterial product and § 113.200 for an autogenous viral product. Presently, the rule does not specify that identification of the microorganism must be made. In the reproposed rule, microorganisms older than 15 months from the date of isolation, or 12 months from the date of harvest of the first serial of product produced from the microorganism, whichever comes first, would have to be identified as to strain and/or serotype. Such microorganisms would also have to be tested for immunogenicity or antigenicity, and potency in order to establish a reasonable expectation of efficacy.

In proposing additional testing, it is APHIS' rationale that after initial production of a product, justification no longer exists to continue abbreviated testing (such as that which is conducted for an early release of the product). In order to be more consistent with the intent of the Virus-Serum-Toxin Act (hereinafter, the Act), a product which is older than 15 months from the date of isolation, or 12 months from harvest of the first serial produced, whichever comes first, would be tested to determine immunogenicity or antigenicity and potency in an effort to demonstrate a reasonable expectation of efficacy. The current regulations do not provide for a reasonable expectation of efficacy for autogenous biologics since they are intended for emergency use only.

As an accommodation for small serials of product, the reproposal would require that a producer use only two samples for sterility testing for serials or subserials of 50 or less final containers under reproposed § 113.113(c)(1)(i).

A third commenter discussing the use of autogenous biologics in the poultry industry introduced the concept of "subsequent flocks" whereby several flocks would pass sequentially through the same facility. These flocks would thus be exposed to a facility which was potentially contaminated with the offending species for which the autogenous product is intended. Because these facilities could not be completely sterilized despite high levels of biosecurity and between-flock sanitation, subsequent flocks would be exposed to the offending organism even after the initial flock had left. The commenter recommended that, in this situation, the use of the autogenous product be allowed to continue under the supervision of the attending veterinarian and not be limited to one additional serial of autogenous vaccine.

APHIS believes that the concept of "subsequent flocks" is analogous to that of herd of origin as that term is used in the proposed rule. Thus the requirements for herd of origin would apply to "subsequent flocks". Firms with such flocks would be allowed to continue to use an isolate that is older than 15 months from the date of isolation, or 12 months from the date of harvest of the first serial, whichever comes first, provided that the additional testing requirements under §§ 113.113 (a)(4) and (c) are met. These requirements are intended to establish minimum data showing a reasonable expectation of efficacy for continued use of the product.

Four commenters addressed the issues of reisolation of the causative organism, the measure of efficacy of the product, and the 12-month limitation on the use of the isolate. The first commenter stated that reisolation of the organism was not a reliable means to determine the continued use of the autogenous product. The commenter argued that the continued use of the autogenous product should be left to the professional judgment of the herd/flock veterinarian and that risk/benefit and cost/benefit decisions between licensed autogenous biologicals and other licensed biologicals should be left to the licensed veterinarian. Moreover, extension of the use of the isolate beyond 12 months would allow for an annual booster vaccination not otherwise possible with the 12-months limitation. Dating should begin with the date of receipt of the culture by the licensed facility or the date of first production.

APHIS agrees that subject to certain controls, autogenous products may be used beyond 12 months without reisolation. The time period that an isolate would be permitted for use in production would be limited in this reproposed rule to 15 months from the date of isolation, or 12 months from the date of harvest of the first serial of product, whichever comes first, unless authorized by the Administrator. The important criteria here are the requirement for information from the attending veterinarian under reproposed § 113.113(a)(4) and additional tests for identity, antigenicity or immunogenicity and potency under proposed § 113.113(c) before such authorization is granted.

The second commenter stated that there are advantages and disadvantages for liberalizing autogenous requirements. The removal of the emergency basis requirement would allow firms to produce "private label" autogenous products. The commenter argued that the danger is that autogenous products are a way for anyone to duplicate a federally licensed product without proving efficacy. On the other hand, autogenous products may provide greater antigen specificity than licensed products. The commenter recommended that autogenous product for an antigen be produced only by facilities with a Federal license for that antigen as a commercial product. This would assure that the laboratory has the technology to produce an effective antigen for a specific disease.

Although this reproposal removes the emergency requirement for the use of autogenous products, it adds certain safeguards and requirements. One of these requirements is that if there is a similar licensed product on the market, the veterinarian is required to provide justification to use the autogenous product in its place. APHIS believes that by proposing additional testing safeguards, the concerns of the commenter will be addressed.

The third commenter recommended that autogenous products not be used for emergencies only and that instead, they be allowed to be used on a nonemergency basis under the direction of a licensed veterinarian in the context of a veterinarian/client/patient relationship. The commenter argued, moreover, that: (1) Written documentation to use an autogenous vaccine in adjacent herds should be waived for the parent herd or the herd with direct progeny; (2) the period of time for the use of the original isolate should be changed from 12 to 24 months; and (3) the demonstration of need to use the biologic should be deleted as should the preference of one class of licensed products over another. Finally, the commenter argued that the language in proposed § 113.98(b)(2)(ii) is contradictory as autogenous products are themselves licensed products.

Based on all of the comments received, APHIS has concluded that autogenous biologics may often be used for disease situations that may not be considered emergencies such as when licensed products with established efficacy are not available or when evidence exists that such products have not been effective in treating a specific disease situation. The reproposal therefore permits such nonemergency use with the restriction that use be permitted only by or under the direction of a licensed veterinarian in the context of a veterinarian/client/patient relationship. This added restriction is considered appropriate to assure that the use of autogenous products is based on the professional judgment of a veterinarian who is personally acquainted with the management and care of the animal(s), who makes appropriate and timely visits to the premises where the animals are kept, and who is readily available for followup in case of adverse reaction or failure of the treatment regimen. Such conditions for use are considered necessary to assure that an emergency disease condition exists in the herd, that products with established efficacy are in fact not available for the prevention or treatment of the current disease condition in the herd, that products with established efficacy have been used in the herd previously and found not to be effective in preventing or treating the current disease in the herd, or that other medically sound rationale are considered prior to the use of an autogenous biologic. APHIS believes that restriction of autogenous biologics to use by or under the direction of a veterinarian would provide greater assurance that such products are used in a manner consistent with the intent of the Act and good veterinary medical practice. APHIS thus reproposes to amend the regulations in § 113.113 to provide that such products shall be prepared only for use by or under the direction of a veterinarian under a veterinarian-client-patient relationship.

Several other provisions of proposed § 113.113 require the use of professional medical knowledge and/or judgment to assure compliance with the regulations. Paragraph (a) requires that microorganisms used as seed shall be judged to be the causative agent of the current disease affecting such domestic animals. Paragraphs (a)(2) (ii) and (v) concerning use in adjacent herds require the attending veterinarian's name, address, and phone number and the diagnosis and clinical signs of the disease observed. Paragraph (a)(2)(x) requires the attending veterinarian's assessment of the involvement of the adjacent herd(s) with the disease observed. Provisions in paragraph (a)(3)(iii) concerning use in non-adjacent herds requires a summary of the epidemiology of the disease situation that links the designated geographic areas with the herd of origin. Paragraphs (a)(4) (i), (ii), and (iii), which concern the use of microorganisms for production beyond 12 months from the date of harvest of the first serial of product produced from the microorganism, or 15 months from the date of isolation, whichever comes first, require the attending veterinarian's current assessment of the continued involvement of a herd with the originally isolated microorganism(s) including a summary of the diagnostic work that has been done to support this assessment, evidence of satisfactory protection from the previous use of the autogenous biologic produced from the microorganism involved, and any other information the Administrator may require in order to determine the need to use the microorganism to make additional serials. APHIS believes that accurate and reliable information to assure compliance with these provisions and to ascertain that these products have at least a reasonable expectation of efficacy can only be obtained when the product is restricted to use by or under the direction of a veterinarian in the context of a veterinarian/client/patient relationship.

In further response to the third commenter, the removal of the time limit for the use of the isolate raises the issue of the continued preparation of a product based on minimal information and data regarding the product. The Act requires that, unless otherwise exempted, all veterinary biological products must be prepared in accordance with the regulations. APHIS is thus reproposing §§ 113.113 (a)(4) and (c) in response to the comment. With regard to the comment that written documentation be required for adjacent herds, the definition of "herd" under reproposed § 101.2 distinguishes between the parent herd and progeny in the determination of what constitutes the "herd of origin". Thus, no change in the regulations is made in response to this part of the comment. Finally, APHIS agrees that the language in proposed § 113.98(b)(2)(ii) may create ambiguity and is deleting that section from the reproposed rule in response to the comment.

Another comment stated that autogenous vaccines are a valid clinical approach when there is no licensed vaccine with established efficacy available. The comment continued that efficacy should be indicated by the ability of the autogenous product to prevent clinical symptoms before an extension of its use is granted. The comment further stated that selection of the vaccine of choice is not possible unless the causative agent of the current disease has been identified at least as to species. If the species of the isolate is not known, it is not possible to determine whether there is a licensed (non-autogenous) effective vaccine.

APHIS agrees with the comment that continued diagnostic monitoring of the herd needs to be done to determine the continued involvement of the herd with the originally isolated seed organism(s) (*See* reproposed § 113.113(a)(4))(i).) Use of the isolate older than 15 months from the date of isolation, or 12 months from the date of harvest of the first serial, whichever comes first, may be justified upon a showing of such continued involvement of the herd with the originally isolated seed organism(s). By this time, identification of the organism as to strain or serotype under reproposed § 113.113(c)(2)(iii) should allow an informed decision to be made as to the continued use of the original isolate. Thus §§ 113.113 (a)(4)(i) and (c)(2)(iii) of the regulations are reproposed to be amended in response to this comment.

Another comment argued that the requirements concerning the use of an autogenous vaccine in adjacent and non-adjacent herds or flocks would raise costs to the swine producer, the consumer, Federal and State agencies, the State Veterinary Diagnostic Laboratory, and private biologics companies. The commenter also argued that the requirements should decrease the time the veterinarian has to respond to an emergency disease situation and imply that the local veterinarian is not competent to assess the disease risk. Finally, the commenter argued that the 12 month dating of the isolate is not consistent with (1) the three-year life of a swine herd and (2) the difficulty and expense of isolating bacteria used in an autogenous vaccine. If the bacterin is generally effective, it is extremely difficult to isolate when the problem is under control.

APHIS is proposing to specify the data that is necessary in order for the agency to properly evaluate a request to use an autogenous biologic in herds adjacent and non-adjacent to the herd of origin. For this reason, APHIS is asking only for that data which should normally be available to the herd owner and which APHIS has traditionally required but has not codified in the regulations. APHIS is also proposing to restrict the preparation of autogenous biologics to use by or under the direction of a veterinarian in a veterinarian-client-patient relationship (*See* proposed § 113.113, introductory paragraph). The prohibition against

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using a microorganism beyond 12 months from isolation has been deleted and new procedures established in reproposed §§ 113.113 (a)(4) and (c).

With regard to the commenter's assertion that the requirements in §§ 113.113(a) (2) and (3) would decrease the time a veterinarian has to respond to an emergency disease situation, APHIS will carefully consider the recommendation of the attending veterinarian in any decision that APHIS makes regarding the use of the autogenous product in herds other than the herd of origin. APHIS requires, however, that before allowing the use of autogenous bacterins in other than the herd of origin, some assessment of the involvement of the adjacent or non-adjacent herd with the microorganism isolated from the herd of origin must be made. In order to allow the use of an autogenous produce in herds adjacent to the herd of origin, APHIS proposes to require, under proposed § 113.113(a)(2)(x), the attending veterinarian's assessment of the involvement of the adjacent herd(s) with the disease observed.

Applying the same rationale as discussed above concerning the need to demonstrate a relationship between the originally isolated microorganism and the herd not adjacent to the herd of origin. APHIS reproposes to require under § 113.113(a)(3)(iii) a summary of the epidemiology of the disease situation that links the designated geographic areas with the herd from which the microorganism is isolated.

Another comment was received supporting APHIS' efforts to improve the uniformity of the regulation of autogenous biologics. The comment indicated, in most respects, full agreement with the proposed rule. It stated that the proposal generally reflects the primary principle of assuring pure, safe, potent and effective veterinary biologics. The comment indicated several areas of concern with the proposal as written. These are as follows. The commenter stated that autogenous products are needed not only in an "emergency" situation in a time sense, but also when an appropriate product is not available at an appropriate time, or when a unique animal health problems exists. Moreover, the commenter argued that the "herd or flock of origin" is not necessarily the herd or flock where the most advantageous use of autogenous biologic would occur. For example, it would be better to vaccinate weanling animals before shipment to a diseased finishing herd, but the proposed rule did not allow for such vaccination.

APHIS has reproposed amendments in §§ 113.113 (a)(4)(i) and (c)(iii) in response to this comment. Under both the proposed and reproposed rules, an autogenous product may be administered at any time to the recipient animals even though the animals may be moved to the infected herd at a later time.

The next concern suggested by the comment was that use of the isolate be allowed for 24 rather than 12 months. The comment argued that a 12-month period does not allow for adequate time to produce the biologic and also allow for implementation and evaluation of a new vaccination program, nor does it recognize the needs of the producer to administer a booster at 12 months. APHIS has explained its position on this issue previously. (*See* reproposed §§ 113.113 (a)(4) and (c).)

The commenter further requested that the dating of the isolate be linked either to the date of first harvest or the date of receipt of the organism into the licensed facility rather than the date of original isolation. APHIS has previously stated its position on this issue. (*See* § 113.113 (a)(4)).

The commenter also suggested that the requirement for a good faith effort to reisolate the organism, as initially proposed in § 113.98(b)(2)(ii), be reexamined. The comment suggests that reisolation of the vaccine strain from vaccinates is not a reliable means to predict continued need for the autogenous product. The continued need for the product is better determined by the professional judgment of the herd or flock veterinarian. We have also addressed this issue previously. The continued use of an autogenous product without reisolation would be allowed under reproposed §§ 113.113 (a)(4) and (c).

The comment further indicated that § 113.98(b)(2)(ii), as initially proposed, leads to confusion with respect to "licensed products" since autogenous products are themselves licensed products. APHIS acknowledges this confusion and has deleted § 113.98(b)(2)(ii), as initially proposed, in response to this comment.

The comment also raised the question concerning how the lack of effectiveness of other licensed non-autogenous products could be demonstrated in order to continue to use an autogenous biologic. In response to this comment APHIS proposes to allow for the continued use of autogenous biologics provided additionally data and testing requirements are met under reproposed §§ 113.113 (a)(4) and (c).

The comment further objected to the mandatory preference of a nonautogenous biologic over an autogenous biologic required by proposed § 113.98(b)(2)(ii). The commenter argued that risk/benefit and cost/benefit analyses regarding the use of a particular biological product in a disease situation are normally left to the biologics producer, the livestock producer, and his or her veterinarian.

APHIS agrees partially with this comment and has deleted § 113.98(b)(2)(ii), as initially proposed.

Finally, the comment noted that the implicit philosophy of the autogenous biologic proposal is that these are products for a limited situation. The comment suggests that some parameters are needed in order to avoid "perpetual" autogenous products in the absence of efficacy data. Some established framework needs to be used for developing the data on potency and efficacy which are lacking at the time that the autogenous license is issued. If these data are successfully generated and adequately documented, they may provide much of the foundation for the regular licensing of the product. The commenter further stated that if the data are not satisfactory, the manufacturer and the customers will not continue production of the autogenous product. In this way, a mechanism may be found to allow for the use of autogenous products as an interim step in the process of regular licensure.

In response to this comment, APHIS has included in the reproposal, provisions that would require that additional tests be performed after production of the first serial of product to determine purity, safety, and identification. After 15 months from the date of isolation, or 12 months from the date of harvest of the first serial of product, whichever comes first, such product would have to be tested for identification as to strain and/or serotype, antigenicity or immunogenicity, and potency under reproposed § 113.113(c). Moreover, since autogenous products are used in limited situations and are not subject to the same testing requirements as other licensed biologics, proposed § 112.7(m) is added to require that:

(m) All labels are autogenous biologics shall bear one of the following statements as appropriate:

(1) "Potency and efficacy of this product have not been established";

(2) "Potency of this product has not been established"; or

(3) "Efficacy of this product has not been established". APHIS believes that the inclusion of such information on the

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labels would provide full disclosure of relevant information to potential users. It should be noted that these proposed labeling requirements are consistent with the requirements for the labeling of a conditionally licensed product.

Five additional comments requested that the time limit for use of the isolate be eliminated or increased from 12 to 24 or 30 months. In response to these comments, APHIS has reproposed § 113.113(c) which requires additional testing for use of the isolate after 15 months from the date of isolation, or 12 months from the date of harvest of the first serial of product, whichever comes first.

Another comment requested that endemic bacterins be considered for licensure as autogenous biologics. The comment referred to such products as bacterins and killed vaccines made from old and new seeds isolated from the continuously changing fauna of animal pathogens. Such products are included under the reproposed autogenous regulations which no longer restrict use of the isolate to a finite length of time. Thus no change to the regulations is made in response to this comment.

Another comment requested that the isolate used for the preparation of autogenous biologics be identified as to genus and species; that the isolate be shown to be the causative agent of the disease symptoms; and that the firm demonstrate reasonable efficacy with the isolate. The comment stated that when a licensed product is ineffective, animal models are available for minimum efficacy testing. Further, the comment requested that data on efficacy be generated with controls; that uniform production of the autogenous product be established; and a conditional license be required for use of the product in non-adjacent herds and for use of an isolate after 12 months. Finally, the comment indicated that autogenous products are licensed for emergency use only and that products used to mitigate the effect of an infectious disease need to provide some indication that they will provide some degree of relief.

In response to this comment, APHIS has reproposed § 113.113(c)(2)(iii) requiring that microorganism(s) be identified to genus and species, in the case of bacteria, fungi, and mycoplasma or, in the case of viruses, at least to family after preparation of the first serial of product, if subsequent serials are to be produced. APHIS has also included in reproposed § 113.113(c)(2)(iv) a requirement of a reasonable expectation of efficacy in order to use an isolate older than 15 months from the date of isolation, or 12 months after the date of harvest of the first serial of product, whichever comes first. APHIS does not agree that a conditional license should be required for use of an autogenous product in nonadjacent herds. For such use, APHIS is requiring the data that is reproposed in § 113.113(a)(3). The new reproposed § 113.113(a)(3)(iii) requiring a summary of the epidemiology of the disease situation that links the designated geographic area with the herd of origin should establish the nexus to justify treating the nonadjacent herd with a product derived from the original microorganism. Additional testing of the isolate is required after the first serial of product as described above.

Fifteen oral comments were received at the public hearing that was held in Ames, Iowa, on August 23, 1990, to discuss the original proposed rule (Docket No. 89-200). Five of these comments were not incorporated into written comments that were received by APHIS. These five oral comments requested that the time limit on the use of an isolate be eliminated or extended to 24 months. The comments recommended that the emergency requirement for the use of autogenous products be eliminated when a disease is not being adequately controlled or when there is no substitute product available from a licensed facility. The comments also recommended that reisolation of the organism be eliminated because this will cause a disease outbreak in the herd. The comments further recommended that continued use of the isolate should be allowed if there is continued presence of the disease in the herd. Periodic updates would be made on a sound medical basis at the local level.

In response to these oral comments, APHIS reproposes § 113.113(a)(4) in which continued use of an isolate is permitted after 15 months from the date of isolation, or 12 months from the date of harvest of the first serial of product, whichever comes first, without reisolation provided that additional data requirements are met. These additional data requirements include the attending veterinarian's assessment of the continued involvement of a herd with the originally isolated microorganism(s), including a summary of the diagnostic work that has been done to support this assessment; evidence of satisfactory protection from the previous use of the autogenous biologic produced from the microorganism involved; and any other information that the Administrator may require in order to determine the need to use the microorganism to make additional serials.

Definitions

APHIS proposes the following definitions to be added to § 101.2: Administrator, Animal and Plant Health Inspection Service, Herd, Herd of Origin, Adjacent Herd, and Nonadjacent Herd.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this reproposed rule in conformance with Executive Order 12291 and have determined that it is not a "major rule". Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individuals, Federal, State, or local government agencies, or geographic regions, and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Currently, the regulations provide than when authorization is obtained from the Administrator, an autogenous biologic can be used in an adjacent or non-adjacent herd, and organisms that are older than 12 months can be used to make an additional serial of an autogenous biologic. The regulations, however, do not specify the data that is required to be submitted in support of such authorization. The changes that are proposed in this document would codify the data that APHIS has been requiring when the Agency receives requests to use an autogenous biologic in an adjacent or non-adjacent herd. They would also specify that the use of autogenous biologics would be restricted to a veterinarian-client-patient relationship, and that additional testing would be required after production of the first serial of product in order to continue producing subsequent serials. The requirements in the reproposed rule to use organisms older than 15 months from the date of isolation, or 12 months from the date of harvest, whichever comes first, are intended to make the regulations for continued use of an autogenous biologic consistent with the requirements under the Virus-Serum-Toxin Act.

Thus, the effect of the reproposed rule is to codify in the regulations the type of data that the Agency requires in support of the above referenced requests by practitioners and licensees. The data that would be required to be submitted in support of such requests to use

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Paperwork Reduction Act

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APHIS, Washington, DC 205
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Executive Order 12372

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List of Subjects

9 CFR Part 101

Animal Biologics

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Definitions

APHIS proposes the following definitions to be added to § 101.2: Administrator, Animal and Plant Health Inspection Service, Herd, Herd of Origin, Adjacent Herd, and Nonadjacent Herd.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this reproposed rule in conformance with Executive Order 12291 and have determined that it is not a "major rule". Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individuals, Federal, State, or local government agencies, or geographic regions, and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Currently, the regulations provide than when authorization is obtained from the Administrator, an autogenous biologic can be used in an adjacent or non-adjacent herd, and organisms that are older than 12 months can be used to make an additional serial of an autogenous biologic. The regulations, however, do not specify the data that is required to be submitted in support of such authorization. The changes that are proposed in this document would codify the data that APHIS has been requiring when the Agency receives requests to use an autogenous biologic in an adjacent or non-adjacent herd. They would also specify that the use of autogenous biologics would be restricted to a veterinarian-client-patient relationship, and that additional testing would be required after production of the first serial of product in order to continue producing subsequent serials. The requirements in the reproposed rule to use organisms older than 15 months from the date of isolation, or 12 months from the date of harvest, whichever comes first, are intended to make the regulations for continued use of an autogenous biologic consistent with the requirements under the Virus-Serum-Toxin Act.

Thus, the effect of the reproposed rule is to codify in the regulations the type of data that the Agency requires in support of the above referenced requests by practitioners and licensees. The data that would be required to be submitted in support of such requests to use

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autogenous biologics in herds other than the herd of origin are data that an applicant should already have readily available. Thus, there should be no additional cost in generating such data. For continued use of an isolate beyond 15 months from the date of isolation, or 12 months from the date of harvest of the first serial of product, whichever comes first, a firm would be required to generate data and information similar to that which is currently required for veterinary biological products when one is applying for a conditional license. Based on information supplied by APHIS' Veterinary Biologics Field Operations in Ames, Iowa, the current number of requests to produce an autogenous product beyond 12 months from isolation of the microorganism have been relatively few. Only about 20 out of some 8000 autogenous products produced each year are subject to such requests.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the information collection provisions that are included in the reproposed rule will be submitted for approval to the Office of Management and Budget (OMB). Written comments concerning any information collection provisions should be submitted to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. A duplicate copy of such comments should be submitted to: (1) Chief, Regulatory Analysis and Developmental Staff, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 and (2) Clearance Officer, ORIM, USDA, Room 404–W, 14th Street and Independence Avenue, SW, Washington, DC 20250.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials (See 7 CFR part 3015, subpart V).

List of Subjects

9 CFR Part 101

Animal Biologics

9 CFR Part 112

Animal Biologics

9 CFR Part 113

Animal Biologics

PART 101—DEFINITIONS

1. The authority citation for part 101 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 101.2, all paragraph designations are removed and the definitions are arranged in alphabetical order. To reflect organizational changes within APHIS, the following definitions are added in alphabetical order to read as follows:

§ 101.2 Administrative terminology.

* * * * *

Administrator. The Administrator, Animal and Plant Health Inspection Service of the United States Department of Agriculture.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

Herd. Any group of animals, including birds, fish, and reptiles, maintained at a common location (e.g. lot, farm or ranch) for any purpose. The herd (or flock) includes all animals subsequently housed at the common location. If the principal animals of a group are moved to a different location, the group is still considered the same herd.

Herd of origin. The herd from which the microorganism used as seed for production of an autogenous biologic is isolated. Offspring and excess breeding stock (not the principal animals) moved or sold from one group of animals to another have changed herds and are no longer considered part of the herd they originated from. Groups of animals under the same ownership but at different locations are separate herds.

Adjacent herd. Adjacent herds are herds physically contiguous to the herd of origin, that is, there are no herds between an adjacent herd and the herd of origin.

Nonadjacent herd. Nonadjacent herds are all herds other than the herd of origin and other than herds adjacent to the herd of origin. Herds adjacent to the herd of origin but in a different State from the herd of origin are also considered nonadjacent herds.

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PART 112—PACKAGING AND LABELING

3. The authority citation for 9 CFR part 112 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

4. Section 112.7, paragraph (m) is added to read as follows:

§ 112.7 Special additional requirements.

* * * * *

(m) All labels for autogenous biologics shall bear one of the following statements as appropriate:

(1) "Potency and efficacy of this product have not been established",

(2) "Potency of this product has not been established", or

(3) "Efficacy of this product has not been established".

PART 113—STANDARD REQUIREMENTS

5. The authority citation for 9 CFR part 113 is revised to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

6. Section 113.113, is revised to read as follows:

§ 113.113 Autogenous biologics.

Autogenous biologics shall be prepared from cultures of microorganisms which have been inactivated and are nontoxic. Such products shall be prepared only for use by or under the direction of a veterinarian under a veterinarian-client-patient relationship. Each serial of autogenous biologic shall meet the requirements in this section, and if found unsatisfactory by any prescribed test shall not be used.

(a) *Seed requirements.* The microorganisms used as seed for cultures used to prepare autogenous biologics shall be microorganisms which are isolated from sick or dead animals and which are judged to be the causative agent(s) of the disease effecting such animals.

(1) More than one microorganism isolated from the same herd may be used as seed.

(2) Under normal circumstances, microorganisms from one herd shall not be used to prepare an autogenous biologic for another herd. The Administrator, however, may authorize preparation of such autogenous biologic for use in herds adjacent to the herd of origin, when adjacent herds are considered to be at risk. The following information must be submitted to the Administrator (in c/o the Deputy Director, Veterinary Biologics Field Operations, 223 South Walnut Avenue, Ames, Iowa 50010) to request authorization to prepare a product for use in herds adjacent to the herd of origin. (If any of the data are available,

the applicant should indicate that such data are unavailable and why.)

(i) Name, address, and phone number of the owner of the herd of origin.

(ii) Attending veterinarian's name, address, and phone number.

(iii) Animal species and number in herd of origin.

(iv) Identification of microorganism(s), at last to genus.

(v) Diagnosis or clinical signs of the disease observed.

(vi) Name and address of the person who isolated the microorganism(s) and the date of isolation.

(vii) Number of doses of autogenous biologic requested and vaccination schedule.

(viii) Each adjacent herd owner's name, address, and phone number.

(ix) Number of animals and species in each adjacent herd.

(x) The attending veterinarian's assessment of the involvement of the adjacent herd(s) with the disease observed.

The applicant shall give notice to the State Veterinarian or other appropriate State Official in writing when an autogenous biologic is to be used in adjacent herds.

(3) The Administrator may authorize preparation of an autogenous biologic for use in herds which are not adjacent to the herd of origin, but which he or she considers to be at risk of infection with the same organism(s). Except as provided below, the same information which is required for preparation of such product for use in herds adjacent to the herd of origin must be submitted to the Administrator (in c/o the Deputy Director, Veterinary Biologics Field Operations, 223 South Walnut Avenue, Ames, Iowa 50010) for authorization to prepare a product for use in herds not adjacent to the herd of origin. Because the recipient herd involved may not be known when autogenous biologics are to be used in other geographic areas, the following data may be used in place of the data required in paragraphs (a)(2)(viii) and (a)(2)(ix) of this section.

(i) Names and addresses of practitioners in the area in place of the name, address, and phone number of the adjacent herd owner.

(ii) The geographic designations of the area involved.

(iii) A summary of the epidemiology of the disease situation that links the designated geographic areas with the herd of origin.

In addition, an applicant for authorization under this paragraph shall provide written approval from the State veterinarian or other appropriate State official in the State in which the autogenous biologic is to be used in nonadjacent herds.

(4) Under normal circumstances microorganism used for the production of autogenous biologics may not be older than 15 months from the date of isolation, or 12 months from the date of harvest of the first serial of product produced from the microorganism, whichever comes first. The Administrator, however, may authorize production of additional serials from such microorganisms, *Provided*, That, the person requesting such authorization submits the following supporting information:

(i) The attending veterinarian's current assessment of the continued involvement of a herd with the originally isolated microorganism(s), including a summary of the diagnostic work that has been done to support this assessment.

(ii) Evidence of satisfactory protection from the previous use of the autogenous biologic produced from the microorganism involved.

(iii) Any other information the Administrator may require in order to determine the need to use the microorganism to make additional serials.

(b) *Restrictions.* Unless otherwise authorized by the Administrator, each serial of an autogenous biologic shall be subject to the following restrictions:

(1) Microorganisms used to prepare autogenous biologics shall not be maintained in the licensed establishment beyond the time authorized for use in production.

(2) The expiration date shall not exceed 18 months from the date of harvest.

(c) *Testing requirements for autogenous biologics.* (1) Final container samples of completed product from the first serial or subserial of an autogenous biologic produced from an isolate shall be tested for purity as prescribed in § 113.26, and for safety as prescribed in § 113.33(b) or § 113.38 except that:

(i) When the number of final containers in a serial or subserial is 50 or less, two sample containers from each serial and subserial shall be tested as prescribed in § 113.26(b): *Provided*, That, 1 ml aliquots from each sample may be inoculated into five corresponding individual test vessels of each of the test media required.

(ii) Serials which are satisfactory after the third day of observation of purity test cultures and of safety test animals may be released for shipment to the customer and the tests continued throughout the required period; and

(iii) Serials released on the basis of satisfactory results of third day observations shall be immediately recalled if evidence of contamination occurs in test cultures or if any of the test animals used to demonstrate product safety sicken or die during the observation period.

(iv) Summaries of tests shall be submitted to APHIS in accordance with § 116.7 within 4 days after the completion of required testing.

(2) Each serial or subserial of autogenous bacterial product other than the first serial or subserial produced from an isolate shall meet the applicable general requirements prescribed in § 113.100 and the special requirements prescribed in this section. Each serial or subserial of autogenous viral product other than the first serial or subserial produced from an isolate shall meet the applicable general requirements prescribed in § 113.200 and the special requirements prescribed in this section. A serial or subserial found unsatisfactory by any prescribed test shall not be released.

(i) *Purity test.* Final container samples of completed product from each serial and subserial shall be tested for viable bacteria and fungi as provided in § 113.26. When the number of final containers in a serial or subserial is 50 or less, two final container samples from each serial and subserial shall be tested as prescribed in § 113.26(b): *Provided*, That, 1 ml aliquots from each sample may be inoculated into five corresponding individual test vessels of each of the test media required.

(ii) *Safety test.* Bulk or final container samples of completed product from each serial shall be tested for safety as provided in § 113.33(b) or § 113.38.

(iii) *Identification.* All microorganisms used for the production of autogenous biologics shall be identified as follows: Bacteria, fungi, and mycoplasma shall be identified at least to genus and species and viruses shall be identified at least to family. After 15 months from the date of isolation, or 12 months from the harvest date of the first serial of autogenous product produced from a microorganism, whichever comes first, characterization and identification shall be completed to strain and/or serotype before such microorganism may be used for production.

(iv) *Antigenicity or immunogenicity and potency.* Autogenous biologics

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(iii) Serials released on the basis of satisfactory results of third day observations shall be immediately recalled if evidence of contamination occurs in test cultures or if any of the test animals used to demonstrate product safety sicken or die during the observation period.

(iv) Summaries of tests shall be submitted to APHIS in accordance with § 116.7 within 4 days after the completion of required testing.

(2) Each serial or subserial of autogenous bacterial product other than the first serial or subserial produced from an isolate shall meet the applicable general requirements prescribed in § 113.100 and the special requirements prescribed in this section. Each serial or subserial of autogenous viral product other than the first serial or subserial produced from an isolate shall meet the applicable general requirements prescribed in § 113.200 and the special requirements prescribed in this section. A serial or subserial found unsatisfactory by any prescribed test shall not be released.

(i) *Purity test.* Final container samples of completed product from each serial and subserial shall be tested for viable bacteria and fungi as provided in § 113.26. When the number of final containers in a serial or subserial is 50 or less, two final container samples from each serial and subserial shall be tested as prescribed in § 113.26(b): *Provided,* That, 1 ml aliquots from each sample may be inoculated into five corresponding individual test vessels of each of the test media required.

(ii) *Safety test.* Bulk or final container samples of completed product from each serial shall be tested for safety as provided in § 113.33(b) or § 113.38.

(iii) *Identification.* All microorganisms used for the production of autogenous biologics shall be identified as follows: Bacteria, fungi, and mycoplasma shall be identified at least to genus and species and viruses shall be identified at least to family. After 15 months from the date of isolation, or 12 months from the harvest date of the first serial of autogenous product produced from a microorganism, whichever comes first, characterization and identification shall be completed to strain and/or serotype before such microorganism may be used for production.

(iv) *Antigenicity or immunogenicity and potency.* Autogenous biologics

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permitted to be prepared as prescribed in paragraph (a)(4) of this section, from cultures of microorganisms that are older than 15 months from the date of isolation, or 12 months from the date of harvest of the first autogenous serial produced from such cultures, whichever comes first, shall be tested as follows:

(A) Completed product shall be tested for antigenicity or immunogenicity in the species for which the product is recommended or in another animal species whose immunological response has been shown in the scientific literature to correlate with the response of the species for which the product is recommended. Such tests shall be conducted in accordance with a protocol developed by the licensee and approved by the Administrator and the results submitted to the Deputy Director, Veterinary Biologics, BBEP, APHIS, 6505 Belcrest Road, Hyattsville, MD 20782 for review. Microorganisms not shown to be antigenic or immunogenic by such approved tests shall not be used for the preparation of such product.

(B) Bulk or final container samples of completed product from each serial of such autogenous biologics containing fractions for which standard requirement potency test procedures have been established shall be tested for potency in accordance with applicable standard requirement potency tests provided in 9 CFR part 113. If the culture of microorganisms used to produce such fractions is shown to be of a different strain or serotype than the reagent or challenge microorganisms used in the standard requirement potency test, reagents or challenges of the same strain or serotype as the microorganism used for production may be used.

(C) If no standard requirement potency test procedures have been established for a fraction(s) in the autogenous biologic, such fraction(s) of each serial of product shall be tested for potency using a developmental potency test described in the filed outline of production or shall at least be standardized to contain an antigenic mass for such fraction(s) that has been shown to be antigenic or immunogenic in accordance with paragraph (c)(2)(iv)(A) of this section.

Done in Washington, DC, this 8th day of August 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-19208 Filed 8-12-91; 8:45 am]

BILLING CODE 3410-34-M

Food Safety and Inspection Service

9 CFR Part 327

[Docket No. 90-007P]

RIN No. 0583-AB31

Removal of Piece Size Requirements and Packaging Limitations of Imported Fresh or Cured Meat and Meat Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat inspection regulations by removing the restrictions that prohibit the importation into the United States of individual pieces or trimmings of fresh or cured meat smaller than 2-inch cubes or pieces of comparable size. Specifically, FSIS proposes to delete 9 CFR 327.3(b) (1), (2), (3), and (4) which contain the requirements for piece size restrictions and net weight limitations for packages of imported fresh or cured meat trimmings. FSIS also proposes to delete the reference to the 2-inch cube requirement in 9 CFR 327.21(a)(1), which states "Individual pieces or trimmings must not be smaller than a 2-inch cube or a piece comparable in size." Thus, this proposed amendment would allow meat products such as ground, diced and comminuted meats, meat patties and loaves, chopped steaks, sausages and other fresh or cured meat products in less than 2-inch cubes to be imported into the United States without any net weight restrictions. FSIS would continue to conduct all reinspection activities necessary to ensure that the imported meat products are wholesome, unadulterated, and properly labeled. In addition, the proposal would have no effect on Animal and Plant Health Inspection Service's requirements concerning meat products from disease-restricted countries.

DATES: Comments must be received on or before October 15, 1991.

ADDRESSES: Written comments to: Policy Office, ATTN: Linda Carey, FSIS Hearing Clerk, room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Mr. G. Edward McEvoy, Director, Program, Development Division, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-8435.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

During 1989, the United States imported approximately 2 billion pounds of fresh meat (exclusive of head meat, tongue, and other edible organs) of which 1.4 billion pounds was beef/veal and 0.6 billion pounds were pork and lamb/mutton. Of the 2 billion pounds, 60 percent was manufacturing meat used in the production of products such as ground and diced meat and sausage items, while the remaining 40 percent consisted of products such as carcasses and wholesale/retail cuts. Due to increasing complexity of international trade and the many factors that could affect the domestic meat market, it is difficult to determine what meat products, if any, would enter U.S. commerce as a direct result of this proposed rule. Thus, it is difficult to accurately assess the economic impact. Accordingly, FSIS seeks comments from interested parties on what type of meat products would enter the United States as well as data on the economic impact of this proposed change. However, the Administrator has examined some of the key factors concerning meat imports and the U.S. meat industry, and has initially determined that the proposal is not a "major rule" under Executive Order 12291 and will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in foreign or domestic markets. This determination was based on the following:

Share of the U.S. Meat Market by Imports is Small

In 1989, U.S. imports of fresh meat totaled 2 billion pounds and U.S. meat production consisted of 39.6 billion pounds. With a total U.S. meat supply of 41.6 billion pounds, imports represented about 4.8 percent of this amount; a figure that has increased by only 1.7 percent since 1974.

Quantitative Limits on Imports of Fresh Meat

The U.S. government imposes access barriers on imported fresh meats through the Meat Import Act of 1964, as amended in 1979 (Pub. L. 96-177). This Act subjects beef, veal, mutton and goat imports to tariffs, an annual import

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quota and, when necessary, voluntary restraint agreements. In addition to the Meat Import Act, the U.S. government imposes countervailing duties on imported products when it is determined that such product is subsidized by the exporting country. Countervailing duties, which usually are equal to the subsidy funded by the exporting country, are currently assessed on pork from Canada and lamb from New Zealand. As a result of the Meat Import Act and U.S. countervailing duties, the U.S. meat industry becomes more competitive with imported meat products, thus possibly minimizing any potential economic impact that may be caused by the proposed rule.

Increase in Imports of Fresh Meat Would Appear to be Insignificant

A. During 1989, imports of fresh beef (1.4 billion pounds) constituted nearly 70 percent of the 2 billion pounds of fresh and cured meat imported into the United States. Ninety-eight percent of the beef imports originated in five countries and was primarily grass-fed, boneless beef which usually has a narrow, well-defined U.S. market and is not competitive with U.S. grain-fed, high quality beef. This marketing constraint centers around the limited utility of grass-fed lean meat, which requires further processing to produce a product which would be considered marketable in the United States. For example, the adding of grain-fed beef to raise the fat level of grass-fed beef is usually necessary to produce an acceptable ground beef product. Even though Australia, which represents nearly 50 percent of U.S.'s imported fresh beef, has increased production of the grain-fed beef from 120,000 head in 1981 to about 600,000 in 1990, none of this product has been marketed or is intended to be marketed in United States.[1]

B. An increase in imports of boneless beef would be possible as smaller pieces of meat, e.g., wizard knife trimmings, would be acceptable under the proposed rule. However, considering that trimmings of this nature usually amount to a negligible percentage of the total carcass weight, this additional product would seem to have little impact on the U.S. meat industry.

C. Of the three major types of meat imported into the United States (beef, pork, and lamb), it could be argued that an increase in U.S. imports of fresh pork and lamb is more likely than an increase in beef imports since these products are not subject to the Meat Import Act and they are comparable to U.S. products in quality and market acceptability. However, imports of fresh/cured pork (571.1 million pounds) and fresh lamb/mutton (44.9 million pounds) during 1989 represented only 31 percent of the 2 billion pounds of U.S. fresh/cured meat imports and only 1.5 percent of the total U.S. meat supply (41.6 billion pounds). Furthermore, 80 percent of the fresh/cured pork and 32 percent of the fresh lamb/mutton were imported into the United States from countries (Canada and new Zealand, respectively) currently subject to U.S. countervailing duties.

D. Ground meat appears to be the most likely type of fresh meat product to be imported into the United States as a result of the proposed rule. This assumption is based on the size of the U.S. market for ground beef (over 40 percent of the total beef consumption) and past requests to waive packaging size limitations for imported ground meat. However, the duty is higher on processed products (e.g., ground beef) than on boneless meat. In addition, ground beef accounts for only 12.6 percent (5 billion pounds divided by 39.6 billion pounds) of the total U.S. meat production.

E. Coarse ground beef from Australia, New Zealand and other grass-fed beef producers could be seen by some importers as a higher value item; i.e., a more homogeneous product commanding a few cents more per pound than boneless beef. However, (1) the utility of coarse ground beef produced from these countries is similar to that of boneless beef, i.e., dependent upon being mixed with fat beef trimmings to produce a marketable ground beef product; (2) there is a higher duty on processed meat than boneless meat; and (3) coarse ground meat usually has a limited end-item usage and a shorter shelf life than boneless meat. Therefore, any potential market of foreign coarse ground beef in the United States, due to the proposed rule, would probably be negated by these deterrents.

The proposed rule would allow certified establishments in countries eligible to export meat products to the United States to ship, in any size package, fresh or cured meat products of less than 2-inch cubes into U.S. commerce. While the Agency believes that this action could lead to an increase in the share of the U.S. meat market held by foreign producers, it also could be an effective means of encouraging competition and assuring fair prices for U.S. consumers.

The proposed rule would also ease the reinspection burden on the Agency and importing industry by reducing the reinspection time at U.S. ports-of-entry because import inspectors would not be required to determine whether certain imported meat products meet specific piece size and net weight requirements. It should be stressed that the proposed rule will in no way diminish or compromise FSIS's role in ensuring that imported product complies with all other U.S. inspection requirements.

Effect on Small Entities

In examining the small entities in the U.S. meat industry, it appears that one group which may be affected by this proposed rule would be the ground beef processors who depend upon imported manufacturing meat for their grinding operations. Accordingly, this proposal could decrease the amount of manufacturing meat imported into the United States if the U.S. market demands imported ground beef and the import quota levels remained the same. However, because of the marketing constraints and higher duty applicable to imported ground beef, it is unlikely that there would be a decrease in manufacturing meat, thus resulting in a negative effect on U.S. ground beef processors. In addition, the Agency believes that the proposed rule could have a positive effect on U.S. companies if other countries follow the United States' lead on this restriction and remove the 2-inch cube requirement. This could result in an increase in the export market for U.S. produced ground beef and other processed meat products.

Therefore, the Administrator has made an initial determination that the proposed rule would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601).

Comments

Interested persons are invited to submit written comments concerning the proposal. Written comments should be sent to the FSIS Hearing Clerk and should refer to Docket Number 90–007P. All comments submitted in response to the proposal will be available for public inspection in the Policy Office, Room 3171, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC, between 9 a.m. to 12:30 p.m. and 1:30 p.m. to 4 p.m., Monday through Friday.

Background

Pursuant to the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et*

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[1] Farmline; U.S. Department of Agriculture, ERS; Volume XI, Number 10, October 1990.

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Background

Pursuant to the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et*

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seq.), the Secretary of Agriculture is responsible for administering the programs which ensure that meat and meat food products (including imports) distributed to consumers are wholesome, not adulterated, and properly marked, labeled and packaged. The Secretary of Agriculture has delegated to the Administrator of FSIS the authority to issue regulations which will ensure compliance with the requirements of the FMIA. Accordingly, the Federal meat inspection regulations contain requirements applicable to the importation of meat and meat food products into the United States (9 CFR part 327).

Section 9 CFR 327.3(b) of the Federal meat inspection regulations prohibits the importation into the United States of ground, diced, and comminuted meats; meat patties and loaves; sausages and other fresh or cured meat products or trimmings that consist of components smaller than 2-inch cubes or pieces comparable in size. However, such processed products may be imported provided they are in packages meeting certain net weight requirements, i.e., not more than 3 pounds net weight for ground, diced, and comminuted meats; not more than 10 pounds net weight for patties, loaves, chopped steaks and similar type products; and suitable retail size packages for sausages and canned meat.

The FSIS proposes to amend 9 CFR part 327 of the Federal meat inspection regulations to remove these restrictions in response to petitions submitted by Alsmeyer Food Consulting, Potomac, Maryland, in 1988 and 1989, and requests made by the Australian government at meetings with FSIS in September 1989, and April 1990. Alsmeyer Food Consulting requested that the regulations be amended to allow the importation of ground lamb packaged in 5-pound and 25-pound containers and diced lamb meat in 5-pound containers. The Australian government requested that the regulations be amended to remove the restrictions to import meat food products described in 9 CFR 327.3(b). The Australian government stated that it maintains an inspection system using "equal to" quality assurance programs to ensure that small pieces of meat meet U.S. standards regardless of the size of the package. Since these meat food products are inspected in Australia and data are available to verify that these products meet U.S. standards, the present restrictions on importation constitute a non-tariff trade barrier because there are no similar restrictions on these products produced in the United States.

Piece size restrictions for imported meat products were enacted as early as 1922 when the Federal meat inspection regulations stated in part that, "no meat trimmings in pieces too small to permit of adequate inspection upon arrival shall be admitted into the United States." (BAI order 211 rev., September 1, 1922.) It is believed that inspection procedures at the time were lacking the sophistication needed to detect unwholesome or unadulterated product if the meat pieces were too small. In 1970, the regulations were revised by retaining the 1922 requirement and adding the limitation that pieces or trimmings of imported meat could not be smaller than 2-inch cubes or pieces comparable in size (35 FR 15610). The 1970 rule change also added exceptions to the rule which permitted the importation of pieces of meat smaller than 2-inch cubes provided they were packaged in sizes suitable for retail sale. Because these exceptions have been in effect since 1970 without incident, FSIS believes that removing the 2-inch cube rule will not provide the U.S. meat industry or consumers any basis for concern about the safety or integrity of imported meat products.

In 1979, regulations were implemented which changed the basic principles of the import inspection program. Prior to this regulatory change, the import inspection program focused on the performance of individual foreign plants. The current program employs the "systems approach" which assesses the effectiveness of a foreign government's inspection system and holds that government primarily responsible for assuring that establishments exporting product to the United States fully comply with inspection standards and controls "at least equal to" those of the United States. This is accomplished through two major activities: (1) A review of documentary information which provides initial determination of a foreign country's eligibility to export product to the United States, and (2) continual oversight to assure that a country maintains a system of inspection controls at least equal to that of the United States. FSIS examines the laws and regulations governing the country's inspection system for equivalency to U.S. standards and requires a foreign country to respond to a series of questionnaires which focus on its inspection system in five major risk areas (residue control, prevention of diseased meat, processing, contamination, and compliance/economic fraud). If the information proves to be satisfactory, FSIS performs an on-site review to evaluate all aspects of the country's inspection operations. When this review is satisfactorily concluded, rulemaking is undertaken to certify that the country is eligible to import meat and/or poultry products into the United States. The country's meat inspection officials then may certify individual plants as meeting U.S. standards. Only after such certification is received by FSIS may these plants export product to the United States.

Once a country is certified, FSIS monitors its import inspection program through a continuing oversight function to assure that the foreign inspection system maintains the "at least equal to" requirements. This includes quarterly or semiannual on-site reviews of the foreign inspection system, and reinspections of a sample of foreign meat products at U.S. port-of-entry locations. The latter function is directed by a computerized system (Automated Import Information System) which stores daily reinspection results and uses the data to establish a performance-based sampling frequency for products presented for importation. A country's eligibility status may be revoked whenever the Administrator determines that the foreign inspection system does assure compliance with "at least equal to" requirements. At that point, rulemaking is again undertaken to withdraw the country's eligibility to import meat into the United States. With the implementation of the "systems approach," FSIS has been able to operate a more effective import inspection program by emphasizing that foreign governments and producers have primary responsibility for ensuring product to be exported to the United States complies with U.S. requirements.

In the last decade, technological advancements in meat inspection, such as analytical testing, have further increased the efficiency and effectiveness of the import inspection program. For example, the species identification field test (SIFT) has provided the Agency with a rapid means to screen ground, comminuted and similar types of fresh meat products for economic adulteration. As a result, SIFT has been highly successful in verifying the effectiveness of foreign inspection systems as well as safeguarding consumers from incorrectly labeled meat products.

Partial quality control (PQC) programs have also proven to be beneficial in verifying the effectiveness of foreign inspection systems. As part of FSIS's label approval process, a foreign establishment must have an approved

PQC program in place before certain meat products (e.g., mechanically separated products) can enter U.S. commerce (9 CFR 319.5(c)(2)). PQC programs, which are systematic procedures describing the stages of preparation of a product, are designed to hold processors accountable for the compliance of that product with the requirements of the Federal Meat Inspection Act and the regulations promulgated thereunder. Similar programs are used to ensure that boneless meat complies with U.S. requirements before grinding. These PQC programs allow FSIS to operate a more effective import inspection program by placing more responsibility on foreign governments and producers.

FSIS concludes that with the implementation of the "systems approach", the modernization of inspection techniques, and the effectiveness of PQC programs, there is no longer a need to restrict the importation of pieces of meat smaller than 2-inch cubes into the United States. Therefore, FSIS is proposing to amend 9 CFR part 327 of the Federal meat inspection regulations by deleting the piece size and packaging size limitations applicable to imported fresh or cured meat products.

List of Subjects in 9 CFR Part 327

Imported products; Meat inspection; Packaging and containers.

For the reasons set forth in the preamble, part 327 of the Federal meat inspection regulations would be amended as set forth below:

PART 327—IMPORTED PRODUCTS

1. The authority citation for part 327 would continue to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

§ 327.3 [Amended]

2. Section 327.3 would be amended by requiring paragraph (b) and redesignating paragraph (c) as (b).

§ 327.21 [Amended]

3. Section 327.21 would be amended by removing the second sentence of paragraph (a)(1).

Done at Washington, DC, on June 28, 1991.

R.J. Prucha,

Acting Administrator, Food Safety and Inspection Service.

[FR Doc. 91–19207 Filed 8–12–91; 8:45 am]

BILLING CODE 3410-DM-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Computer Programming, Data Processing and Other Computer Related Services

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) is proposing to increase to a uniform level, the size standards for all industries in industry group, "Computer Programming, Data Processing, and Other Computer Related Services Industries." There are nine industries in this group, and they are proposed to have a common size standard of $14.5 million in average annual receipts or, as an alternative 150 employees. The current size standard is $7 million for six of these industries and $12.5 million for the three others. This action is being proposed to establish the same size standard for all industries in the group and to better define small business.

DATES: Comments must be submitted on or before October 15, 1991.

ADDRESSES: Send Comments to: Gary M. Jackson, Director, Size Standards Staff, U.S. Small Business Administration, 409 3rd Street, SW.—5th Flr., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Robert N. Ray or Harvey D. Bronstein, Economist, Size Standards Staff, tel. (202) 205–6618.

SUPPLEMENTARY INFORMATION: The structure of SBA's size standards in the Computer Programming, Data Processing and Other Computer Related Services Industry Group (Standard Industrial Classification (SIC) Industry Group 737 composed of SIC codes 7371–7379) has been a subject of increased concern in recent years as a greater number of Federal purchases have been awarded in this category. At the same time that the Federal government has expanded its contracting in these areas, new industries have been created which have resulted in classification uncertainties. The following table illustrates these changes; it lists revisions in industry group 737 (hereafter referred to as the computer service industries) that occurred in the 1987 SIC revision that took into account technological and institutional changes in industry structure since 1977.

TABLE 1.—RELATION OF 1977 TO 1987 COMPUTER SERVICES INDUSTRIES

1977 Industry		1987 Industry	
SIC code	Short title	SIC code	Short title
7373	Computer Programming and Software ($7.0M)	7371	Custom Computer Programming Svs. ($7.0M).
		7372	Prepackaged Software ($7.0M).
		7373	Computer Integrated Systems Design ($7.0M).
7374	Data Processing Services ($7.0M)	7374	Data Processing and Preparation ($7.0M).
		7375	Information Retrieval Services ($7.0M).
		7376	Computer Facilities Management ($7.0M).
7379	Computer Related Services, NEC. ($12.5M)	7377	Computer Rental & Leasing ($12.5M).
		7378	Computer Maintenance & Repair ($12.5M).
		7379	Computer Related Services, NEC ($12.5M).

NOTE: Size standards in parenthesis.
SOURCE: Standard Industrial Classification Manual, 1987.

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7373	Computer Integrated Systems Design ($7.0M).
7374	Data Processing and Preparation ($7.0M).
7375	Information Retrieval Services ($7.0M).
7376	Computer Facilities Management ($7.0M).
7377	Computer Rental & Leasing ($12.5M).
7378	Computer Maintenance & Repair ($12.5M).
7379	Computer Related Services, NEC ($12.5M).

Instead of three computer service industries, there are now nine industries with much expanded descriptions and numbers of subcategories for each new industry. The expansion in codes has been associated with increased uncertainty in the classification of contracts, and therefore, with the size standards associated with these contracts. This is because multiple services associated with a single Government contract receives one SIC designation (and one size standard) which best matches the principal purpose of the procurement and the industry description. With two size standards ($7.0 million and $12.5 million) commonly covering the various services procured in a single government contract, classification problems commonly arise for computer services.

As can be seen from this table, firms in the computer services industries are subject to varying small business definitions, either $7.0 million or $12.5 million depending on the specific industry in which they engage. This situation has led to confusion for small businesses in terms of their eligibility for SBA assistance. This occurs because it is common for a computer services firm to operate in more than one industry. For example, a firm may be active in programming (SIC code 7371), data processing (SIC code 7374), and computer consulting (SIC code 7379). The first two industries have a $7.0 million size standard; the last is $12.5 million. A firm of $10 million in revenues would be eligible to bid on a set-aside procurement in computer consulting, but would be ineligible because of the lower size standard of $7.0 million to bid on a set-aside procurement in either programming or data processing services. It has come to SBA's attention that this is a problem for firms in these industries. For these reasons, SBA is reexamining the appropriateness of having different size standards for industries within the entire computer services industry group as well as reexamining the appropriate level of these industries' size standards.

Factors Influencing the Size Standard Decision Process

When examining a size standard, SBA considers a number of specific factors characterizing industry structure, such as: industry competition, average firm size, entry barriers related to start-up costs, distribution of firms by size and impact on SBA's programs. A brief review of each factor and its relationship to SBA's size standards follows:

As an indicator of industry competition, SBA first looks at competition within the industry as measured by the share of industry sales controlled by the producers above a certain size. If an industry's output is controlled by relatively large firms, especially when compared to other similar industries, the influence of this factor is to move the size standard upward. The result is to provide assistance to firms in a broad range of sizes that are competing with dominant firms in an industry. If an industry's output is more evenly distributed, however, SBA tends to set a lower size standard to assist relatively small firms.

Average firm size is the second factor considered by SBA. For equity reasons, SBA tends to set high size standards in industries with high average firm size and low size standards in industries with low average firm size. Average firm size can be expressed in terms of receipts or employees, but the usual pattern is to compare industries by average receipts per firm if a receipts-based size standard is being evaluated and average employment per firm if an employee based size standard is under review. For the computer services industries, therefore, average receipts will be the unit of comparison for average firm size since their size standard(s) are expressed in receipts.

Indexes of start-up costs are the third factor to evaluate size standards. High start-up costs act as an entry barrier to new entrants into an industry, because potential entrants must have sufficient capital to start a business. These costs often extend beyond expenditures on production equipment and the physical establishment itself, to include overhead equipment, marketing, research, distribution and follow-up services. High average start-up costs within an industry suggest the need for a relatively high size standard, while low average start-up costs are usually associated with low size standards.

The fourth factor—firm size distribution—evaluates the proportion of industry sales, employment and other economic activity accounted for by firms of different sizes within an industry. For example, if the preponderance of an industry's output is by the smaller firms, that is, those at the low end of the distribution, this would tend to support a lower size standard. The opposite would be the case for an industry in which firm size distribution indicates that a significant portion of industry output is controlled by large firms.

The fifth factor considers the impact on SBA's programs of a size standard revision. While virtually all of SBA's programs can be affected by changes in a size standard, the greatest impact usually occurs to the two preference programs relating to the procurement of prime contracts—the small business set-aside program and the SBA's 8(a) program for minority small businesses. Size standard revisions impact on these programs by affecting the eligibility of firms and their ability to expand output without losing eligibility.

Evaluation of Factors

Tables 2 through 5 present data on the five factors discussed above. The implications of industry structure on the computer services industries' size standard are also presented.

Table 2 compares the computer services industries with other service industries based on two factors—economic competition (measured here by the share of industry sales generated by firms with $25.0 million or more in receipts) and average firm size within the industry (measured by average annual sales per firm). This table specifically compares the computer services industries with all other industries in Major Group 73 (Business Services) and those service industries in the two-digit major group with a 7 prefix aggregated together. The SIC codes in the 7371–7376 group of industries are set off from SIC codes 7377–7379 group, since the first group of industries has a lower size standard ($7.0 million) than the second group of industries ($12.5 million) and performs activities more closely related to programming and software.

TABLE 2.—COMPUTER SERVICES CONTRASTED WITH OTHER SERVICE INDUSTRIES BY COMPETITION AND AVERAGE FIRM SIZE

SIC	Description	Percent of receipts by firms with $25.0 million or more in sales (measure of competition)	Average firm size in annual receipts 1987 data (in millions of dollars)
737(all)	Computer programming, data processing Svs. and other computer related services.	56.8	$1.4
7371–7376	Computer programming, software, design and data processing Svs	53.9	1.7
7377–7379	Computer rental and leasing, maintenance and related service, NEC	65.1	1.3
7371	Computer programming services	43.2	1.0
7372	Prepackaged software	61.9	2.0
7373	Computer integrated systems design	51.0	2.3
7374–7375	Computer processing, information retrieval	63.1	2.5
7376	Computer facilities management	46.5	2.4
7377	Computer rental and leasing	55.1	2.3
7378	Computer maintenance and repair	76.0	2.4
7379	Computer related services, NEC	34.0	.6
All SIC 73 industries, except 737 group	Business services	29.6	.7
All SIC 70–79 industries, except 737 group	Primarily business, personal, entertainment, and repair services	29.1	.5

Source: 1987 Census of Service Industries, U.S. Bureau of the Census.

It is clear from Table 2 that economic activity in the computer service industries is more concentrated than in most service industries. Every computer services industry has a higher share of sales by firms of $25.0 million or more in sales than either the 73 industry group or all of the service industries with a 7 prefix averaged together. In general, these percentages are very high, ranging from 43 percent to 76 percent among the specific industries. These market share figures suggest, in isolation, the need for relatively high size standards in the computer services industries.

Table 2 also compares the computer services industries by average firm size. It is clear that the computer services industries are comprised of larger firms on average than most business service industries, as well as the personal, repair and entertainment service industries. In general, the computer services industries average about 3 or 4 times the size of other service-related industries, a factor which argues for relatively high size standards in the computer services industries.

Both of the indexes related to average firm size and concentration listed in Table 2 suggest the need for relatively high size standards in the computer services industries. However, there are three other key factors which SBA reviews when appraising size standards. These include entry barriers related to start-up costs, the distribution of firms and their output by size of firm, and the overall effect of SBA's programs of changing the size standard.

Table 3 compares computer services industries with business services and all industries in Division I (Services) for start-up costs using estimated capital requirements based on the Internal Revenue Service's depreciation data. Table 3 indicates that computer services industries have greater capital requirements relative to sales than most business service industries, as well as all service industries aggregated together.

TABLE 3.—CAPITALIZATION INDEXES FOR COMPUTER SERVICES CONTRASTED WITH BUSINESS SERVICES AND ALL SERVICES (SOLE PROPRIETORS)

Receipts	Business receipts (000)	Depreciation (000)	Ratio of business receipts to depreciation	Average size in receipts	Estimated capital requirement per firm (1981 dollars)[1]
Computer Services	$417,626	$35,749	11.7	$1.60M	$1.38M
Business Services	14,158,263	801,168	17.7	.70M	.40M
Services (All)	$83,269,965	4,017,261	20.7	.50M	.24M

Source: Internal Revenue Service 1981 Business Proprietorship: Business Receipts, Selected Deductions, and Net Income by Industry.

[1] Assumes depreciated assets are 10 percent of total.

These differences in capital requirements become even greater when size of firms is considered. For computer services firms in general, the combination of greater output levels and a higher capital component relative to output, results in estimated capital requirements for the computer services firms of about 3 to 4 times the level of business services in general and almost six times the level of all services. Thus start-up cost requirements for the computer services industries tend to reinforce the two previous indicators suggestion that a higher size standard is needed.

The fourth factor to be considered in setting size standards is the distribution of receipts bases on size of firm. Table 4 lists the percent of receipts within computer services and other service industries for two size breaks—$3.5 million (the anchor size standard for the service and retail trade industries) and $14.5 million (the proposed size standard). This table shows a much lower percentage of computer services sales falling under these breaks than among other service industry groups. Even at a $14.5 million size standard break, the proportion of sales attributed to firms under the size standard for computer services is less than the proportion of sales at the $3.5 million size standard break for noncomputer related service industries. Findings such

SERVICE INDUSTRIES BY COMPETITION AND AVERAGE FIRM SIZE

Description	Percent of receipts by firms with $25.0 million or more in sales (measure of competition)	Average firm size in annual receipts 1987 data (in millions of dollars)
ng, data processing Svs. and other commuter	56.8	$1.6
g, software, design and data processing Svs	53.9	1.7
easing, maintenance and related service, NEC	65.1	1.3
services	43.2	1.0
	51.9	2.0
ystems design	51.0	2.3
information retrieval	63.1	2.5
nagement	46.5	2.4
easing	55.1	2.3
e and repair	76.0	2.4
ices, NEC	34.0	.6
	29.6	.7
sonal, entertainment, and repair services	28.1	.5

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start-up costs, the distribution of firms and their output by size of firm, and the overall effect of SBA's programs of changing the size standard.

Table 3 compares computer services industries with business services and all industries in Division I (Services) for start-up costs using estimated capital requirements based on the Internal Revenue Service's depreciation data. Table 3 indicates that computer services industries have greater capital requirements relative to sales than most business service industries, as well as all service industries aggregated together.

CONTRASTED WITH BUSINESS SERVICES AND ALL SERVICES (SOLE
RIETORS)

	Business receipts (000)	Depreciation (000)	Ratio of business receipts to depreciation	Average size in receipts	Estimated capital requirement per firm (1981 dollars)[1]
	$417,626	$35,749	11.7	$1.60M	$1.36M
	14,156,253	801,168	17.7	.70M	.46M
	83,269,966	4,017,261	20.7	.50M	.24M

ceipts, Selected Deductions, and Net Income by Industry.

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as these reinforce the argument for relatively high size standards for computer services.

TABLE 4.—COMPUTER SERVICE INDUSTRIES CONTRASTED WITH OTHER SERVICE INDUSTRIES BY SHARE OF SALES BELOW SELECTED SIZE BREAKS

SIC CODE	Percent of receipts for firms below selected size standard breaks	
	Size receipts	
	$3.5M	$14.5M
737 (All)	19.5%	35.9%
7371–7376	20.0	36.6
7377–7379	15.5	33.1
7371	25.7	43.6
7372	20.4	39.6
7373	20.8	38.9
7374–7375	14.3	27.7
7376	18.0	38.9
7377	14.6	32.1
7378	12.3	19.7
7379	46.7	73.4
All 73 industries, except the 737 group	43.4	61.1
All SIC 70–79 industries, except 737 group	40.3	63.2

Source: 1987 Census of Service Industries, U.S. Bureau of the Census.

The fifth and final factor to be considered is the impact of the proposed size standard revision on SBA's programs, particularly the preference programs relating to Federal procurement. In the case of computer services, it is claimed that there has been a broad-based pattern in which contracting agencies have included in computer service contracts products that, viewed in isolation, would be listed under other industries. Some examples of these items include: Computer hardware, computer peripherals, communication equipment, construction-related activities and telephone communications. The size standards for these activities vary from $17.0 million for general contracting to the 500 to 1,500-employee range for the manufactured products industries and telephone communications—size standards much higher in real terms than the present size standard range of $7.0 million to $12.5 million for the computer services industries. SBA has attempted to monitor closely the industry classification of computer services procurements to forestall the misclassifying of computer services procurement solicitations into industries with higher size standards, but this effort, in turn, limits contracting agencies to size standards that often are viewed as too small for the size and sophisticated technology associated with computer services contracts.

Table 5 lists prime contracts during FY 1989 by computer services industries and by the major service groups for all contracts and those in excess of $500,000 and $1,000,000. This table confirms the general perception that contracts in the computer services industries are usually larger than contracts for other services. Both the percent of contracts which exceed $500,000 and $1.0 million are appreciably higher in the computer services industries than for other business services as well as the aggregation of other business, personal, repair, and entertainment services under Major Groups 70 to 79. Of significance, larger contracts are most common in the SIC codes 7371–7376 group of computer services industries in which contracting and SIC classification problems have been most in evidence. This argues for a relatively high size standard since firms of more modest size are likely to be unable to satisfy Federal contracting requirements.

TABLE 5.—FEDERAL PRIME CONTRACTS BY SIZE OF CONTRACT FOR THE COMPUTER SERVICES INDUSTRIES

[Fiscal year 1989]

Code	Description	Total prime contracts	Contracts in excess of $500,000		Contracts in excess of $1.0 million	
		Number	Number	Percent	Number	Percent
7371	Computer programming svs.	1,983	281	14.2	127	6.4
7372	Prepackaged software	2,408	183	7.6	87	3.6
7373	Computer integrated systems design	961	154	16.0	88	9.2
7374	Data processing and preparation	1,428	156	11.1	75	5.3
7375	Information retrieval services	177	11	6.2	3	1.7
7376	Computer facilities management	428	81	18.9	49	11.4
7377	Computer rental and leasing	860	62	7.2	34	4.0
7378	Computer maintenance and repair	4,515	205	4.5	81	1.8
7379	Computer-related service, NEC	4,792	495	10.3	216	4.5
737 (All)	Computer and data processing	17,552	1,650	9.4	758	4.3
7371–7376	Computer programming, software, design and data processing svs.	7,385	868	11.8	429	5.8
7377–7379	Computer rental and leasing, maintenance and relates svs., NEC.	10,167	762	7.5	330	3.2
All SIC 73 industries, except the 737 group.	Business services	8,253	658	8.0	282	3.4
All SIC industries 70 to 79, except the 737 group.	Primarily business, personal, repair and entertainment svs.	12,652	851	6.7	381	3.0

Source: Federal Procurement Data System.

Review of Factors

Five factors affecting industry structure and SBA programs were evaluated for this rule. These included: (1) Industry competition (measured by the percent of receipts in an industry) (2) Average firm size in receipts in an industry, (3) start-up costs (measured by depreciation), (4) distribution of receipts by size of firm (measured by sales share within an industry of firms below certain size thresholds), and (5) program impact (measured by the percent of Federal contracts larger than $5 million and $1.0 million). The relationship of the compute services industries to business services and other service industries using these factors is summarized in Table 6.

TABLE 6.—SUMMATION OF FACTORS

Factor	Finding	Implication
Degree of competition in the industry as measured by the percent of receipts to firms of $25.0 million or more in receipts.	The computer service industries are dominated by large firms to a much greater extent than either the business service industries or the service industries in the "70" Group of SIC codes.	A higher size standard is warranted for the computer service industries than for most service industries.
Average firm size in an industry as measured in receipts.	Average firm size in the computer service industries is twice that of other business services and three times that of all services in the "70s" group.	High average firm size suggests that a relatively high size standard is warranted for the computer service industries.
Start-up costs measured by average capital requirements per firm in an industry.	The computer service industries have significantly higher capital requirements than most service industries.	High start-up of costs indicate, in isolation, that the computer service industries should have relatively high size standards.
Distribution of receipts by size in an industry as measured by the percent of sales by firms below certain size thresholds.	The computer service industries have significantly lower proportions of sales by firms below certain standardized size thresholds than most service industries.	A low proportion of receipts among smaller firms suggests the need for a higher size standard for the computer services industries.
Program impact as measured by the proportion of Federal contracts in industries that exceed $0.5 million and $1.0 million in size.	The computer service industries generally have higher proportions of large contracts than most service industries.	High contract size argues for a relatively high size standard for the computer service industries.

Determination of Size Standard

The prior discussion has indicated the need for a higher size standard for the computer services industries. A number of factors argue specifically for a $14.5 million average annual receipts size standard.

First, as shown in Table 2, average firm size in computer services is as much as five times higher than it is in services in general. Within the service sector, the computer services industries have some of the highest average firm sizes. Compared to business services, it is as much as 3½ times higher. Specifically, for Computer Facilities Management, average firm size is five times greater than for all services; for Computer Integrated Systems it is four times greater. These data are reproduced below in Table 7.

TABLE 7.—AVERAGE FIRM SIZE

SIC	Industry	Size standard	Average firm size
I	All Services	$3.5M	$0.5M
73	Business Svs.	3.5M	0.7M
737	Computer Svs.	7.0M or 12.5M	1.6M
7373	Comp. Integr. Sys	7.0M	2.3M
7374	Data Processing	7.0M	2.5M
7376	Computer Facil. Mgmt.	7.0M	2.4M

The most common size standard for the service industries is $3.5 million, the anchor size standard for the service industry division. However, since average firm size in computer services is significantly greater than it is in comparable industries, a higher size standard seems appropriate. A five-fold increase in the size standard, based on the $3.5 million anchor, would suggest a $17.5 million size standard. A three to four times increase equates to about $12 million. As the average firm size in the computer services industries is nearly four times that of other services industries, a size standard in this range—$12 million to $17.5 million—would achieve comparability between computer services and other services for this factor.

Second as can be seen in Table 2, a higher percentage of industry sales is accounted for by larger firms in computer services than in services in general or in business services. Using $25 million as a measure to evaluate the degree of concentration in the service industry, 29% of sales in all services are accounted for by firms with annual sales of more than $25 million. By contrast in computer services 59 percent of industry sales are by firms above $25 million.

In some computer services industries, the share of sales by large firms is even greater. For example in computer maintenance and repair, 76 percent of sales are by large firms; in computer processing the figure is 63 percent. Because of the level of concentration of sales by larger firms in computer services, a higher size standard appears justifiable.

Third, start-up costs also indicate the need for a higher size standard. As shown in Table 3, the estimated capital requirement for computer services is much higher than for business services or for all services. Compared to business services, computer services start-up costs are more than twice as great. Compared to all services, they are more than five times as great. Viewed in isolation, this factor would indicate a size standard range of between $7 million (twice as great as the anchor) to $17.5 million (five times as great).

Fourth, data on Federal contract size show that in the computer services industries, there is a higher proportion of large-size contracts that in business services or in all services. This is detailed in Table 5. It shows that in some computer services industries, there are twice as many large-size contracts. In part this is due to the requirement that equipment must often be supplied in conjunction with the provision of computer services, a factor which has

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ERAGE FIRM SIZE

	Size standard	Average firm size
	$3.5M	$0.5M
	3.5M	0.7M
	7.0M or 12.5M	1.6M
	7.0M	2.3M
	7.0M	2.5M
	7.0M	2.4M

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become more common over time in Federal procurement.

For example, while only 6 percent of business services contracts are greater than $500,000 in value, 18 percent of computer integrated systems contracts fall in this range. Almost 19 percent of computer facilities management contracts exceed $500,000. This factor indicates that a higher size standard is warranted in computer services. A higher size standard would also lessen the likelihood of a firm exceeding the size standard because of a single large contract. Fifth, another aspect of firm size distribution is the percent of sales which fall within an existing or proposed size standard.

While not a goal in itself, these coverage rates can be used as a guide in selecting a proposed size standard and in considering the impact of a size standard.

As a general rule, similar industries should be roughly comparable in terms of the percent of sales generated by firms below the size standard. For both business services and for small business as a whole, 38 percent of industry sales are covered under the size standards. [see Chart A] . For computer services, however, the coverage under the existing size standards is only 29 percent of industry sales. A higher size standard for computer services provides closer comparability with other industries. Some alternatives and their respective sales coverage rates are presented in Chart B.

CHART A
Small Business Coverage Under
Current Size Standards

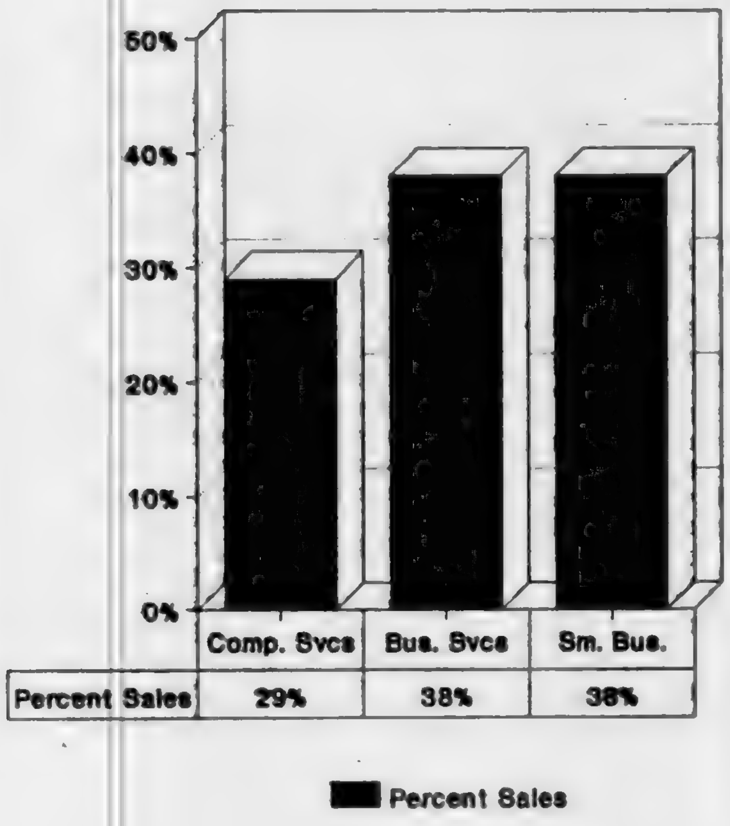

Chart B
Computer Services Industries
Cumulative Distribution of Sales by Size

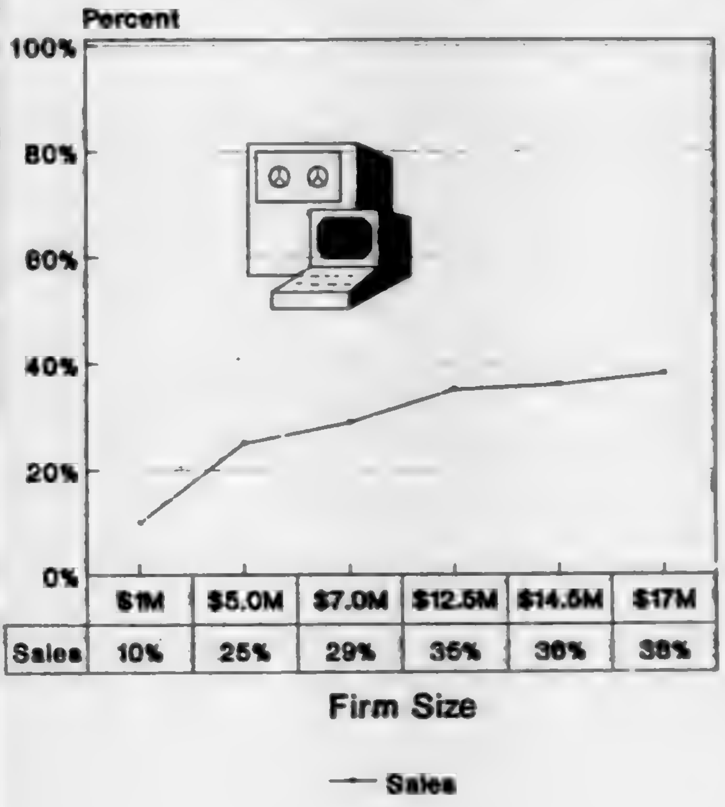

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To sum up, SBA is proposing a $14.5 million size standard to better reflect the industry's structure of the computer services industries and to reflect program needs. SBA is also proposing a 150-employee size standard as an alternative size standard as discussed below.

Employee-Based Size Standard

SBA is considering a 150-employee standard as an alternative to a $14.5 million size standard. (A receipts-based size standard would not be used.) In part this would be desirable because a computer service firm's size is sometimes distorted by passing-through equipment from manufacturers for the convenience of their customers. This is thought to be a very common practice in Federal procurement.

For example, consider two computer service firms, each with 50 employees. On average, both firms normally generate $5 million in annual sales. However if one firm were also required in a contract to furnish computer equipment, this would increase its size if measured in dollars with little associated increase in work performed. In effect the firm is acting as a wholesaler as well as a service firm and the wholesale component of its activities inflates its receipts.

Table 8 shows how the proposed $14.5 million size standard equates to 150 employees using an average receipt per employee level of $96,890.

TABLE 8.—CONVERSION OF RECEIPTS TO EMPLOYEES COMPUTER SERVICE SIZE STANDARD

A. Industry Receipts 1987 (millions).	$54,099,096.
B. Inflation 1987–90	14.1%.
C. Receipts in 1990 dollars A* (1+.141).	$61,727,069.
D. Employees	637,409.
E. Receipts per employee in 1990 dollars (A÷D).	$96,840.
F. Proposed standard in dollars.	$14,500,000.
G. Conversion to employees (F÷E).	$14,5M/$96,840.
H. Size standard equivalent in employees (line G).	149.7 employees.

Source: Receipts and employees for SIC code 737: 1987 Census of Services, U.S. Bureau of the Census, Table 4a, p. 1–160. Implicit Price Deflator for GNP, Table B–3, p. 290: Economic Report of the President, February 1991.

(The analysis included in this proposed rule is based on the $14.5 million proposal. Should SBA adopt as final the 150 employees size standard, the estimated impact of this change is approximately the same as for a change of $14.5 million.) SBA invites comments on the proposed size standard and whether a receipts or employee-based size standard is preferable. Some questions to consider are:

(1) Would a receipts-based size standard have a different impact than an employee-based size standard?

(2) How would contract eligibility be affected?

(3) Would one measure be preferable to the other for purposes of performing a size determination?

SBA specifically invites comment on the appropriateness of this standard and on alternative standards (either higher or lower). Comments suggesting other standards should address the questions of: (1) The interaction of this size standard with SBA's programs; (2) the relative levels of participation at different size standards; (3) the effect of the proposed size standard or other alternative size standard on the businesses within this industry; and (4) the prospect of significant new entries into these businesses in response to this program.

Compliance With Regulatory Flexibility Act, Executive Order 12291 and 12612, and the Paperwork Reduction Act

General

SBA considers that this proposed rule, if promulgated in final form, will have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq*). In addition, this proposed rule, if promulgated in final form, would constitute a major rule for the purpose of Executive Order 12291. Immediately below SBA has set forth a preliminary regulatory impact analysis and an initial regulatory eligibility analysis of this proposal.

(1) Description of Entities to Which the Rule Applies

SBA estimates that 336 additional firms out of a total of 33,000 firms active in the computer service industries will be considered small as a result of this proposed rule. These firms would become eligible to seek assistance offered by SBA programs, provided they meet other program requirements for assistance. The proposed size standards would not impose a regulatory burden because they do not regulate or control business behavior.

(2) Description of Potential Benefits of the Rule

Firms which would be newly considered small business if the proposed rules became final would be eligible for a variety of business development, financial assistance and procurement assistance programs offered by SBA. The benefits of the business development program help a small business to improve its competitiveness in the market. While it is difficult to precisely quantify the benefits of this proposed rule, based upon previous statistics, estimates of the beneficial effect on SBA's financial and procurement programs can be made.

During the 1989 fiscal year, there were a total of 123 guaranteed business loans totalling $29.7 million made to firms in the computer services industries under the 7(a) Loan Program. Since only slightly more than 1 percent of firms in the industry will become newly eligible under the proposed $14.5 million size standards, proportionately the number of business loans should increase by about one percent, or only by two or perhaps three loans. Based on the average loan amount of $241,000 to firms in this industry, approximately $500,000 to $750,000 more in loans may be guaranteed to computer service firms by SBA.

A greater impact is anticipated in the Government contracting programs set aside for small business. In fiscal year 1989, the Federal government purchased $4 billion in computer services of which $1.2 billion (31 percent) was from small business. Data derived from the 1987 Census of Service Industries indicate that firms ranging from $7 million to $14.5 million in gross receipts (the area of the size standard increase) account for 8 percent of computer service sales. If the newly designated small firms are as successful in Federal contracting as they are in the industry in general, they would be awarded 8 percent of $4 billion in Federal computer services contracts, equal to about $320 million in additional total Federal outlays to firms defined as small by the SBA. This figure, while significant and clearly meriting the classification of the rule as a major rule requires some additional clarification for proper perspective.

Probably the greatest impact of most size standard increases is entirely passive; it involves the reclassification of unrestricted dollar awards from formerly nonsmall firms to newly defined small firms. SBA estimates that 8 percent of sales revenues in the computer services industries are generated by firms that would be newly considered small under the proposed size standard of $14.5 million. Since 75 percent of Federal contracting for computer services is presently unrestricted, most of the $320 million projected impact would involve a reclassification of awarded unrestricted contract dollars from nonsmall to small firms. SBA estimates that approximately two-thirds of the $320 million projected

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impact (or more than $200 million) would involve this shift with perhaps an additional $100 million increase in total set-aside and 8(a) contracting.

(3) Description of Potential Costs of the Rule

The potential costs of these size standard changes are expected to be minimal. With respect to SBA's loan program, its lending authority is fixed by Congress, and the total dollar amounts loaned or guaranteed cannot exceed certain statutory limits. Once these lending limits are enacted, no additional costs to program administration is, therefore, incurred by the newly eligible small firms. The costs on Federal procurement would also be expected to be minimal for two reasons: First, competition between two or more small firms must exist before a contract may be set aside for small business. Second, set-asides are expected to be awarded at reasonable prices. If competition and reasonable pricing do not exist on the proposed set-asides, the procuring agencies are expected to issue unrestricted procurement. Thus losses in the form of increased costs to the Government are not expected to be significant. In addition, the proposed size standards are not expected to have significant adverse effects on competition, employment, investment, price, productivity, innovation, or on the ability of U.S.-based businesses to compete with foreign-based businesses in domestic or export markets.

The competitive effects of size standard revisions differ from those normally associated with regulations affecting key economic factors such as the price of goods and services, costs profits, growth, innovation, mergers, and foreign trade. Size standards are not anticipated to have any appreciable effect on any of these factors.

(4) Description of the Potential Net Benefit to the Rule

From the above discussion, SBA believes that, because the potential costs of this proposed rule are minimal, the potential net benefits would equally approximately the potential benefits. The impact of the proposed size standard, would, if adopted, be concentrated in the Federal procurement arena.

(5) Description of Reasons Why This Action is Being Considered and Objectives of Rule

SBA has provided above in the supplementary information a description of the reasons why this action is being considered and a statement of the reasons for and objectives of this proposal.

(6) Legal Basis for Proposed Rules

The legal basis for the proposal is sections 3(a) and 5(b) of the Small Business Act, 15 U.S.C. 632(a) and 634(b), and Public Law 100-656, 102 Stat. 3853 (1988).

(7) Federal Rules

There are no Federal rules which duplicate, overlap or conflict with this final rule. SBA has statutorily been given exclusive jurisdiction in establishing size standards.

(8) Significant Alternatives to Proposed Rule

The proposed changes set forth in this rule from the current size standard attempt to establish the most appropriate definition of small businesses eligible for SBA's assistance programs. There are no significant alternatives to defining a small business other than developing an alternative size standard, as discussed in the supplementary information.

SBA certifies that this rule will not have federalisms implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612. SBA certifies that this proposed rule, if promulgated in final will not add any new reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

List of Subjects in 13 CFR Part 121

Government procurement, Government property, Grant programs—business, Loan programs—business, small business.

Accordingly, part 121 of 13 CFR is proposed to be amended as follows:

PART 121—[AMENDED]

(1) The authority citation for part 121 continues to read as follows:

Authority: Sections 3(a) and 5(b)(6) of the Small Business Act, 15 U.S.C. 632(a) and 634 (b)(6) and Public Law 100-656, 102 stat. 3853 (1988).

§ 121.601 [Amended]

(2) In § 121.610 for Major Group 73, SIC codes 7371-7397, are proposed to be revised to read as follows (EITHER a receipts size standard or employee size standard pursuant to one of the following alternatives):

§ 121.601 [AMENDED]

* * * * * *

ALTERNATIVE 1

SIC (*-New SIC Code in 1987, not used in 1972)	Description (N.E.C.-Not Elsewhere Classified	Size [1]
7371*	Computer Programming Services.	$14.5
7372	Prepackaged Software	14.5
7373*	Computer Integrated Systems Design.	14.5
7374	Data Processing and Preparation Processing Service.	14.5
7375*	Information Retrieval Services.	14.5
7376*	Computer Facilities Management Services.	14.5
7377*	Computer Rental and Leasing.	14.5
7378*	Computer Maintenance and Repair.	14.5
7379	Computer Related Services, N.E.C.	14.5

[1] Size standards in number of employees or millions of dollars.

ALTERNATIVE 2

SIC (*-New SIC Code in 1987, not used in 1972)	Description (N.E.C.-Not Elsewhere Classified	Size [1]
7371*	Computer Programming Services.	$150
7372	Prepackaged Software	150
7373*	Computer Integrated Systems Design.	150
7374	Data Processing and Preparation Processing Service.	150
7375*	Information Retrieval Services.	150
7376*	Computer Facilities Management Services.	150
7377*	Computer Rental and Leasing.	150
7378*	Computer Maintenance and Repair.	150
7379	Computer Related Services, N.E.C.	150

[1] Size standards in number of employees or millions of dollars.

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Dated: June 20, 1991.

Patricia Saiki,

Administrator, U.S. Small Business Administration.

[FR Doc. 91-19077 Filed 8-12-91; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM91-11-000]

Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation

July 31, 1991.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing changes to its regulations to restructure both the sales and transportation services provided by interstate natural gas pipelines. The proposed changes are intended to ensure that transportation service offered by pipelines is comparable in quality for all gas supplies, whether the customer purchases the gas from the pipeline or from another supplier. This should maximize the consumer benefits of the competitive wellhead gas market by allowing buyers of natural gas to reach as many sellers as possible, thereby ensuring that the most efficient and beneficial transactions take place.

DATES: Comments are due on or before September 30, 1991. Reply comments are due on or before October 30, 1991.

ADDRESSES: An original and 14 copies of the written comments on this proposed rule must be filed in Docket No. RM91-11-000. All filings should refer to Docket No. RM91-11-000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Jeffrey A. Braunstein, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, (202) 208-2114.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this notice of proposed rulemaking will be available on CIPS 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

I. Introduction

On May 10, 1991, the Federal Energy Regulatory Commission (Commission) held a public conference which afforded members of the natural gas industry an opportunity to discuss with the Commission the role of interstate natural gas pipelines in today's natural gas markets. In addition, in connection with the conference, the Commission received over ninety written comments from entities representing all segments of the natural gas industry. Those comments addressed a wide variety of topics in response to the Commission staff paper attached to the Notice of Public Conference.[1]

The written and oral comments, the Commission's own experience since the implementation of open access transportation in 1985,[2] and the passage of the Natural Gas Wellhead Decontrol Act of 1989[3] to eliminate price controls on wellhead and field sales of natural gas have led the Commission to conclude that the structure of interstate pipeline sales services may no longer be well suited to the present economic environment of the natural gas industry. In addition, the Commission believes that it is necessary to take action to improve the competitive structure of the pipeline industry to maximize the consumer benefits of the competitive wellhead gas market. This will be accomplished by amending the Commission's open access transportation regulations. The goal, simply put, is to recognize the current characteristics of the natural gas industry—which is now dominated by pipeline transportation, not by traditional merchant service—and to create a regulatory framework that will accommodate the meeting of as many gas sellers and gas buyers as possible.

For these reasons, the Commission proposes to amend and adopt regulations governing interstate pipelines that perform self-implementing, open access transportation under either the Natural Gas Act[4] or the Natural Gas Policy Act of 1978.[5] Among other features, the Commission proposes generally to require pipelines to eliminate their bundled city gate sales services by unbundling (*i.e.*, separating) their sales services from their transportation services. This unbundling of services, if adopted, would affect significantly the way that pipelines sell natural gas and would require a major restructuring of the pipeline/firm customer relationship.

In addition, in connection with the restructuring of pipeline services, it is necessary to take action to ensure that pipelines and their customers know what will happen to their contractual sales and transportation arrangements upon expiration of their contracts. Only with this knowledge will the pipelines and their customers be able to enter into meaningful discussions in order to restructure their service relationships in light of the Final Rule adopted by the Commission. Hence, the Commission proposes in part VI: of this Notice of Proposed Rulemaking (NOPR) to revise § 284.221(d) of the Commission's regulations in further response to the remand of the U.S. Court of Appeals for the District of Columbia Circuit in *American Gas Association* v. *FERC*, 912 F.2d 1496 (D.C. Cir. 1990) ("*AGA-II*"),[6] and to take other action with respect to issues concerning pregranted abandonment.

The Commission also proposes to adopt several rules to ensure that a pipeline subject to part 284 of the Commission's regulations provides

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[1] The conference notice was issued in three dockets: In Re Pipeline Service Obligations, Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, Revisions to the Purchased Gas Adjustment Regulations, Docket Nos. RM91-11-000, RM91-3-000, and RM90-15-000, respectively, 56 F.R. 15,532 (April 17, 1991). The Commission is issuing this Notice of Proposed Rulemaking only in Docket No. RP91-11-000. Docket No. RM91-3-000 is terminated.

[2] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 50 F.R. 42,408 (Oct. 18, 1985), FERC Stats. & Regs. [Regulations Preambles 1982-1985] ¶ 30,665 (1985), vacated and remanded, *Associated Gas Distributors* v. *FERC*, 824 F.2d 981 (D.C. Cir. 1987), readopted on an interim basis, Order No. 500, 52 F.R. 30,334 (Aug. 14, 1987), III FERC Stats. & Regs. ¶ 30,762 (1987), remanded, American Gas Association v. FERC, 888 F.2d 136 (D.C. Cir. 1989), readopted, Order No. 500-H, 54 F.R. 52,344 (Dec. 21, 1989), III FERC Stats. & Regs. § 30,867 (1989), reh'g granted in part and denied in part, Order No. 500-I, 55 Fed. Reg. 6605 (Feb. 26, 1990), III FERC Stats. & Regs. ¶ 30,880 (1990), aff'd *in part and remanded in part*, American Gas Association v. FERC, 912 F.2d 1496 (D.C. Cir. 1990).

[3] Pub. L. No. 101-60, 103 Stat. 157 (1989).

[4] Section 7, 15 U.S.C. 717f (1988).

[5] Section 311, U.S.C. 3371 (1988).

[6] As discussed below, on February 13, 1991, the Commission's initial response to the AGA II remand was to issue an order staying in part Section 284.221(d). Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 56 F.R. 6962 (Feb. 21, 1991); III FERC Stats. & Regs. ¶ 30,915 (Feb. 13, 1991) (Order No. 500-J).

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The Commission also proposes to adopt several rules to ensure that a pipeline subject to part 284 of the Commission's regulations provides comparable transportation services with respect to all gas supplies, whether purchased from the pipeline or from other merchants.[7] The proposed regulations would apply to all interstate pipelines providing transportation services under part 284, independent of their gas pricing mechanism for their sales services.[8] The proposed regulations would not apply to intrastate pipelines.

The restructuring of pipeline services required by the Final Rule will not be a simple matter. Among other things, this restructuring will require the reworking of current bundled sales services into unbundled sales and transportation services in the context of the requirements of the Final Rule. Shortly after issuance of the Final Rule, the Commission will institute restructuring proceedings for each pipeline, with a new docket number, for use as the forum within which the issue of how the pipeline is to comply with the Final Rule can be decided. In addition, in the Final Rule, the Commission will direct the pipelines to initiate discussions with their customers, other shippers, producers, marketers, end-users, and other interested participants about the terms and conditions of new services in the context of the restructuring proceedings. These discussions must be initiated no later than 30 days after the effective date of a Final Rule in this proceeding. The Commission will encourage all participants to enter into voluntary settlements to implement expeditiously the Final Rule. The results of these restructuring discussions must be completed in time for the pipeline to file on or before the date set forth in the filing schedule for implementing the Final Rule set forth below in proposed § 284.8(f)(4)(i). Pipelines will file their tariff sheets on a staggered basis beginning October 1, 1992, as discussed below. Anyone who does not intervene in the restructuring proceeding discussions will be precluded from intervening in the filing phase of the restructuring proceeding.[9]

II. Public Reporting Requirements

The Commission estimates the public reporting burden for the collection of information in the proposed rule to average 4,810 hours per response. The total reporting burden associated with the proposed rule is estimated to be 408,850 hours. The estimate includes time for reviewing the requirements proposed by this NOPR, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information and filing this information with the Commission. Interested persons may send comments regarding this burden estimate or other aspects of this collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426 (Attention: Michael Miller, (202) 208–1415); and to the Office of Management and Budget, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

III. Background

The natural gas industry has changed significantly since the passage of the Natural Gas Act (NGA) in 1938.[10] Congress adopted the NGA because it "considered that the natural gas industry was heavily concentrated and that monopolistic forces were distorting the market price for natural gas." [11] Congress' "primary aim * * * was to protect consumers against exploitation at the hands of natural gas companies" [12] to ensure consumers "access to an adequate supply of gas at a reasonable price." [13]

Three significant, interrelated changes have occurred in the natural gas industry in recent years.

First, in 1978, Congress enacted the Natural Gas Policy Act.[14] The NGPA began the process of decontrolling wellhead prices of natural gas. Equally important, with passage of Section 311 it began to break down historic barriers between the intrastate and interstate markets for natural gas. Section 601 also removed much of the nation's natural gas supplies from the Commission's regulatory jurisdiction upon decontrol.[15]

Second, in 1985, the Commission adopted Order No. 436 [16] to institute open access transportation in furtherance of the NGPA's purpose to permit a competitive wellhead market where market forces play a "more significant role in determining the supply, the demand, and the price of natural gas." [17] As a result of Order No. 436, the role of pipelines changed from primarily a merchant of natural gas in the distribution area to both a merchant of natural gas and a transporter of natural gas, owned by others, on a nondiscriminatory basis.[18] Indeed, pipeline transportation now accounts for about 80 percent of total interstate pipeline throughput.[19] This reverses the historical function of pipleines, which, prior to Order No. 436 acted primarily as gas merchants. Today, gas transported on behalf of non-pipeline shippers plays a major role in providing service to customers, including base load service during the winter heating season. Thus, the Commission must recognize this service transformation and take steps to ensure that its regulations and policies reflect current market realities.

Third, Congress enacted the Natural Gas Wellhead Decontrol Act of 1989, [20] "to repeal all remaining price controls on wellhead or 'field' sales of natural gas." [21] The House Committee Report described the importance of the Commission's open access transportation as follows:

> The Committee stresses that these new rules, and especially the wide adoption of blanket certificates for non-discriminatory open access interstate transportation of non-pipeline gas, are essential to its decision to complete the decontrol process. All sellers must be able to reasonably reach the highest-bidding buyer in an increasingly national market. All buyers must be free to reach the

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[5] Section 311, U.S.C. 3371 (1988).

[6] As discussed below, on February 13, 1991, the Commission's initial response to the AGA II remand was to issue an order staying in part Section 284.221(d). Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 56 F.R. 6962 (Feb. 21, 1991); III FERC Stats. & Regs. ¶ 30,915 (Feb. 13, 1991) (Order No. 500–J).

[7] 18 CFR part 284 (1991). Unless otherwise indicated, all references to firm and interruptible transportation service and to firm and interruptible shippers are to firm and interruptible transportation service provided under part 284 of the Commission's regulations and to firm and interruptible shippers receiving firm or interruptible transportation service under part 284 of the Commission's regulations.

[8] The Commission is not proposing here to amend the purchased gas adjustment (PGA) regulations. This is because the proposals set forth in this Notice of Proposed Rulemaking, if adopted, make it unnecessary to revise the PGA regulations with respect to Account No. 858 (transmission and compression by others) or standby charges as discussed in the Commission staff paper, *supra* n.1. The Commission requests comments on whether this assumption—that the changes here moot the need to amend the PGA regulations—is correct.

[9] See also part XI on implementation.

[10] 15 U.S.C. 717 (1988).

[11] FPC v. Texaco Inc., 417 U.S. 380, 397–98 (1974).

[12] FPC v. Hope Natural Gas Co., 320 U.S. 591, 610 (1944).

[13] Tejas Power Corp. v. FERC, 908 F.2d 998, 1003 (D.C. Cir. 1990).

[14] 15 U.S.C. 3301 (1988).

[15] See Pennzoil Co. v. FERC, 645 F. 2d 360, 380–383 (5th Cir. 1981), *cert. den.*, 454 U.S. 1145 (1982). See also III FERC Stats. & Regs. ¶ 30,867 at p. 31,537 (1989).

[16] See n.2, *supra*.

[17] *Transcontinental Gas Pipe Line Corp.* v. *State Oil and Gas Board of Miss.*, 474 U.S. 409, 422 (1986). As discussed below, Congress reaffirmed this policy by enacting the Natural Gas Wellhead Decontrol Act in 1989. Pub. L. No. 101–60, 103 Stat. 157 (1989).

[18] 18 CFR 284.8(b) and 284.9(b) (1991).

[19] EIA/Natural Gas Monthly (June, 1991); DOE/EIA—0130 (91/106), From: Table 15. Natural and Other Gas Produced and Purchased by Major Interstate Natural Gas Pipeline Companies (around 80 percent transportation); Interstate Natural Gas Association of America, Issue Analysis: Carriage Through 1990 (July 1991), From: Table A–1, Carriage for Distributors, End-Users, and Marketers and Sales Summary (79 percent transportation).

[20] Pub. L. No. 101–60, 103 Stat. 157 (1989).

[21] H.R. Rep. No. 29, 101st Cong., 1st Sess., at p. 2 (1989).

lowest-selling producer, and obtain shipment of its gas to them on even terms with other supplies.

Both the FERC and the courts are strongly urged to retain and improve this competitive structure in order to maximize the benefits of decontrol.[22]

This legislation, relying on Order No. 436, effectively changes the Commission's mission under the NGA. The Commission must still protect the consumers of natural gas from the exercise of monopoly power by pipelines. However, in light of the decontrolled gas commodity market, and the dominance of transportation services, the Commission must regulate pipelines in a manner that promotes competition in light of market realities. The Commission must regulate pipelines as merchants and as open access transporters in ways that achieve the goal of a national gas market where a buyer can reach many sellers, by meaningful access to the pipeline transportation grid. In the Commission's judgment this will ensure that the most efficient and beneficial transactions take place. This will facilitate deals where the seller can meet the buyer that best meets the needs of the seller, and conversely, where the buyer can meet the seller that best meets the needs of the buyer. For in the final analysis, the competitive marketplace—not the Commission's regulations—should be the primary incentive that determines which transactions take place between willing buyers and sellers. Regulation which biases these decisions on a non-market basis must be eliminated.

IV. Future Structure of the Pipeline Merchant Service

The threshold issue before the Commission is the appropriate future structure of the pipeline when it performs a merchant service. At present, most pipelines still provide some level of traditional bundled, city gate, sales services. In addition, the pipelines are transporting gas sold by others which may compete with the pipeline's own sales. As noted earlier, the historical mix of sales to transportation has been reversed. Based upon experience to date, the Commission finds that, owing to different regulatory treatment between pipeline sales and third party sales and transportation, competition between pipelines and other gas merchants is not occurring on an equal basis.

The first problem is that open access shippers are not receiving transportation services comparable in quality to the transportation services embedded within a pipeline's bundled, city gate, sales services. For example, on many pipelines, shippers have no right to contract storage on an open access basis.[23] This limits their ability to aggregate supplies for future use and therefore provides an advantage to the pipeline as merchant where it has access to and control of storage. This impedes the implementation of the goal that a purchaser of gas supplies should make its purchasing decision without regard to the identity of the seller.

Achieving comparability raises more than tactical complexities in securing comparability between bundled sales services and open access transportation services. The comparability problem raises the question of the appropriate structure of the pipelines' merchant services. In their present merchant capacity, pipelines offer sales services that differ from those of their competitors (producers and marketers and brokers). The pipeline offers regulated sales services that include transportation. Producers and marketers offer unregulated sales services that often do not include transportation. Indeed, producers and marketers do not have direct access to contract for firm transportation capacity in most markets. They must instead rely on another entity's control over capacity—such as the LDC—to gain access to firm capacity. This difference in the nature of pipeline and producer/marketer/broker sales services is a structural difference which not only raises complex comparability problems, but also prevents regulated pipelines and their unregulated merchant competitors from competing on a head to head, level, basis.

There are, therefore, two main problems as a result of the current regulatory and structural regime. The first is that of comparability. The Commission must adopt measures so that the gas sellers and purchasers can sell and purchase third party gas supplies and use open access transportation on a meaningful and timely basis, in the same manner as a pipeline's bundled, city gate, sales service.

The second is that, on many systems, pipelines and the unregulated competitors are not selling the same product. The pipelines are selling a regulated bundled sales and transportation service. Their competitors are generally selling decontrolled gas only.

Based upon this analysis, the Commission finds that the present structure of the remaining pipeline merchant service (*i.e.*, bundled city gate sales service) may be anticompetitive and inhibits full realization of an efficiently-operating national wellhead market. Hence, it is appropriate to restructure the regulations governing the pipelines' remaining sales services by requiring that pipeline sales be separated (*i.e.*, unbundled) from transportation, consistent with reliability and operational concerns. The extent to which unbundling should be mandated, as proposed below, and therefore the future role of the traditional pipeline merchant service, is one of the main issues on which the Commission requests comments.

V. Proposed Action in a Nutshell

The Commission proposes to adopt several rules in order to further competition for natural gas at the wellhead. First, a new Subpart J would be added to part 284 of the Commission's regulations. Subpart J would issue by rule a blanket sales certificate to all interstate pipelines offering transportation service certificated under § 284.221 of the Commission's regulations. Those pipelines that choose to sell gas would be required to do so on an unbundled basis. This would be subject to one exception under which a pipeline may continue bundled city gate firm sales service for certain, generally smaller, customers.

Second, in light of the proposed unbundling of sales and transportation services, the Commission will take a fresh look at the pipeline service obligation issue as it pertains to both transportation and sales services. In brief, the Commission proposes to retain pregranted abandonment for interruptible and short-term (one year or less) firm transportation. The Commission, however, proposes to permit pregranted abandonment for long-term (over one year) firm transportation only when the customer does not exercise a right of first refusal as described below in part VI. In addition, the Commission proposes pregranted abandonment in connection with unbundled sales services.

Third, the Commission proposes new §§ 284.8(f)(1) and 284.9(f)(1), which would provide that a pipeline that offers firm and interruptible transportation services under Part 284 must provide such services on a basis that is comparable in quality for all gas supplies whether purchased from the pipeline or elsewhere. This comparability

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[22] *Id.* at p. 6.

[23] The Commission has not required open access to storage on a contract basis. Order No. 436, *supra* n.2 at p. 31,507.

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requirement would ensure that the pipeline's reasonable operational conditions imposed on its transportation services under §§ 284.8(c) and 284.9(c) of the Commission's regulations result in no undue preference in service for any source of gas, consistent with reliability concerns.[24] If a pipeline is permitted to impose unreasonable restrictions on the firm shippers' ability to be served by third party gas as opposed to pipeline gas, the pipelines' firm sales service would have a preference. This would render the firm transportation service inferior in quality. The Commission finds this preference to be undue under sections 4 and 5 of the NGA. The comparability principle will ensure that availability and quality of a pipeline's transportation services are a neutral factor in influencing the gas purchaser's decision whether to purchase gas from the pipeline or from another gas merchant.

Fourth, the Commission, as discussed below, proposes to amend part 284 to define transportation as including storage and to amend part 284 to authorize and require open access pipelines to provide firm shippers on downstream pipelines with access to upstream pipelines. These amendments would ensure that pipeline shippers have access to sources of gas in the same manner as pipelines as merchants. Moreover, as an additional measure to make firm capacity available, the Commission proposes to amend part 284 to institute a voluntary capacity reallocation program for the permanent and temporary release of firm capacity.

Fifth, the Commission will partially modify the Rate Design Policy Statement.[25] The Commission proposes to use its authority under section 5 of the NGA to amend part 284 to require pipelines to derive transportation rates using a Straight Fixed Variable (SFV) (as opposed to Modified Fixed Variable) rate design method [26] unless the parties (the pipeline, its customers, interested state commissions, producers, marketers, brokers and end-users) otherwise agree as set forth below. This will allow the Commission to ensure that competition at the wellhead and in the field is not adversely affected by transportation rates that were developed when pipelines were dominant gas suppliers. At the same time, this approach will not preclude flexibility should the parties agree that a different approach is warranted.

Sixth, the Commission intends to permit flexibility and staggered compliance in implementing the Final Rule so long as the pipelines make their restructuring filings no later than the dates indicated in the proposed regulations. As stated above, the Commission will launch restructuring proceedings for each pipeline shortly after issuance of the Final Rule. A pipeline will be permitted to consolidate the new proceeding with an existing or a later proceeding to use as the vehicle for its restructuring proceeding. As discussed above, the Commission will direct the pipelines, their customers, and other interested parties (*i.e.*, producers, brokers, marketers, end-users, state commissions, *etc.*) to hold discussions and negotiations in order to facilitate their entering into and complying with the new service relationships created by the Final Rule in an expeditious manner.[27]

VI. Pipeline Service Obligation

A. Introduction

This NOPR is concerned with the role that pipelines should play in the competitive natural gas industry. In particular, this NOPR addresses the pipelines' dual functions as merchants and transporters of natural gas and has concluded that the pipelines should generally perform those roles on an unbundled basis. This restructuring of pipelines' sales requires a fresh look at the pipeline service obligation for both its sales and transportation services. The Commission believes that in the first instance the service obligations should be determined by contract. As a part of this reexamination, the Commission is examining what should occur when the parties' contract term expires. In addition, the Commission considers it appropriate to reexamine the role of LDCs as holders of firm capacity on pipelines and whether the pipeline or firm capacity holders should administer the permanent and temporary release of interstate pipeline capacity rights.

B. Pregrant of Abandonment of Capacity Rights

On August 24, 1990, the United States Court of Appeals for the District of Columbia Circuit affirmed in most part the Commission's Final Rule with respect to open-access transportation under part 284 of the Commission's regulations.[28] This part of the NOPR deals with the court's limited remand or the issue of pregranted abandonment of transportation service under § 284.221(d) of the Commission's regulations.[29]

As adopted in the Final Rule, § 284.221(d) provided for the abandonment of all transportation services upon the expiration of the contractual term of each individual transportation arrangement authorized under a blanket transportation certificate.[30]

On February 13, 1991, the Commission issued Order No. 500–J.[31] Order No. 500–J stayed the "operation of Section § 284.221(d) of the Commission's regulations where a customer converts firm sales service to firm transportation service whether under § 284.10 of the Commission's regulations or as a result of separate agreement (to the extent of conversion of pre-existing sales volumes)" after February 13, 1991.[32] These converted transportation arrangements will never be subject to pregranted abandonment and may only be abandoned by the pipeline upon receipt of Commission approval under section 7(b) of the Natural Gas Act.[33]

At the outset, there is no question that the Commission has the legal authority to permit the pregranted abandonment of transportation under blanket certificates. The D.C. Circuit held this in its decision.[34] Moreover, subsequently, in *Mobil Oil Exploration & Producing Southeast Inc.* v. *United Distribution Companies,*[35] the Supreme Court has held that the Commission has the authority under section 7(b) of the Natural Gas Act to give advance, generic approval to the abandonment of service.[36]

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[24] 18 CFR 284.8(b) and 284.9(b) prohibit undue preferences in the quality of service provided. United Gas Pipe Line Co., 55 FERC ¶ 61,330 at p. 61,974 (1991).

[25] Interstate Natural Gas Pipeline Rate Design, 47 FERC ¶ 61,295, *order on reh'g*, 48 FERC ¶ 61,122 (1989). The Rate Design Policy Statement set forth Commission policies for designing transportation rates. To the extent not discussed here, all other aspects of the Rate Design Policy Statement remain effective.

[26] Under SFV, all fixed transmission and storage costs are recovered in the demand charge.

[27] See part XI for details about implementation of the Final Rule.

[28] American Gas Association v. FERC, 912 F.2d 1496 (D.C. Cir. 1990); Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 500–H, 54 FR 52,344 (Dec. 21, 1989), III FERC Stats and Regs. ¶ 30,867 (1989), *reh'g granted in part and denied in part*, Order No. 500–I, 55 FR 6605 (Feb. 26, 1990), III FERC Stats & Regs. ¶ 30,880 (1990).

[29] 18 CFR 284.221(d) (1991).

[30] Section 284.221(d) provides: (d) *Pre-grant of abandonment.* Pursuant to section 7(b) of the Natural Gas Act abandonment of transportation services is authorized upon the expiration of the contractual term of each individual transportation arrangement authorized under a certificate granted under this section.

[31] 56 FR 6962 (Feb. 21, 1991); III FERC Stats. & Regs. ¶ 30,915. On March 18, 1991, the court denied the motion of a Gas Marketer, *et al.*, for an order to vacate Section 284.221(d) and direct compliance. The court ordered the Commission to "file a progress report with the court no later than ninety days from the date of [ital order." *American Gas Association* v. *FERC*, No. 87–1585 (D.C.C. Mar. 15, 1991). The Commission made this filing on May 21, 1991.

[32] III FERC Stats. & Regs. at p. 31,918.

[33] The Commission will require all customers to notify the Commission of all transportation arrangements subject to this stay in each pipeline proceeding implementing the Final Rule.

[34] American Gas Association v. FERC, 912 F.2d 1496, 1515, *citing* FPC v. Moss, 424 U.S. 494 (1976).

The question is, rather, how the Commission should exercise its authority to allow pregranted abandonment of the pipeline's transportation for individual customers under a blanket certificate.[37] Said another way, the Commission's task here is to define the criteria under which pregranted abandonment will be generically permitted under this authority.

The Commission has discussed above the restructuring of the role that it believes pipelines should take in the natural gas industry. That role would mainly be as the provider of an unbundled sales service in competition with producers and marketers at upstream points of sale and the provider of an open access transportation service to move gas from those upstream points of sale to the market areas. Seen in this light, it is necessary to distinguish between an upstream, unbundled sales service operated in competition with sellers of gas that are not subject to statutory service obligations and the traditional certificated downstream merchant function which includes a transportation service. The pipeline's provision of an open access firm transportation service is comparable to the transportation service provided as part of the traditional bundled firm sales service. The Commission has in the past required a pipeline to secure individual abandonment of its bundled firm sales service under section 7(b) of the NGA. This is because of the need to address the LDC's concern about the continuity of service. The key to the continuity of service is the right to capacity, which is why the LDC pays a demand charge. This assurance of service is needed when firm transportation is provided for gas acquired upstream from whatever source. Hence, the Commission concludes that the present pregrant of abandonment rule is not appropriate for firm transportation for any shippers of a term of over one year. Long term firm transportation differs from short-term firm transportation because a contractual short-term arrangement by its very nature indicates that continuity of service is not a concern.

Accordingly, the Commission proposes to retain pregrant of abandonment of interruptible transportation and of firm transportation with a contractual term of one year or less. The Commission believes that the nature if interruptible and short-term firm transportation, joined with the avoiding of the administrative burden of dealing with a large number of abandonment filings for those transportation arrangements under NGA section 7(b), justifies pregrant of abandonment as in the present or future public interest or necessity.

As noted, the Commission's policy for pregranted abandonment has different implications in connection with long-term (over one year) firm transportation. That is, the current pregrant of abandonment regulation is not appropriate in connection with long term (over one year) firm transportation service. The Commission will, however, adopt pregranted abandonment for longterm firm transportation contracts when the customer does not exercise a right of first refusal for its capacity by giving appropriate notice to the pipeline that it wants to continue its transportation arrangement and agreeing to match and pay any greater rate up to the maximum rate under § 284.7 and to match the most favorable contract term offered to the pipeline by other customers desiring the capacity when the long-term contract's fixed term expires.[38] This pregrant of abandonment will promote administrative and economic efficiency without harm to the customer's need for continuity of service and is in the present or future public interest or necessity.[39] If the firm capacity holder does not want to retain some or all or its capacity upon expiration of its contractual term, the pipeline would be entitled automatically to abandon the service arrangement with the firm capacity holder. Hence, the pipeline will have capacity which it must put on the market.

The Commission proposes to require firm capacity holders during each restructuring proceeding to exercise a right of first refusal to retain their capacity by agreeing to match and pay any greater rate up to the maximum rate under § 284.7 and to match the most favorable contract term offered by other persons seeking firm capacity. If the capacity holder exercises its right of first refusal as described above, it may retain its capacity. If the capacity holder does not exercise its right of first refusal as described above, it would lose its firm capacity to other persons seeking capacity. However, if there are no other persons seeking firm capacity at such rates and terms during the restructuring proceeding, the firm capacity holder must retain capacity until the termination of its contract with the pipeline unless the customer and pipeline are able to negotiate a reasonable exit fee. If the firm capacity holder does not exercise its right of first refusal or negotiates a reasonable exit fee or some other modification or termination of its agreements, the pipeline will be entitled to pregranted abandonment.

Last, the Commission proposes that revised 18 CFR 284.221(d), with respect to pregranted abandonment, will become effective on the effective date of the Final Rule rather than under the staggered implementation procedure set forth in Part X.

C. Capacity Brokering and Reallocation

The proposed new treatment of long-term transportation raises an important matter. This occurs when the firm capacity holder elects to continue service by exercising its right of first refusal for long-term capacity either during the restructuring proceeding or later when the contract expires. The Commission will view this exercise of the right of first refusal as conclusive evidence that the firm capacity holder needs the retained firm interstate capacity to meet its own needs and service obligations. The Commission believes it is necessary that this interstate transportation capacity remain under exclusive federal jurisdiction to maximize the benefits of the decontrol of wellhead or field prices of natural gas through nondiscriminatory open-access transportation. An unlimited capacity brokering program coupled with the right of first refusal granted to LDCs could have the effect or shifting the control and the allocation of interstate pipeline capacity from the FERC to the

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[35] 59 U.S.L.W. 4054 (Jan. 8, 1991).

[36] Slip op. at 13–16.

[37] The Commission notes that the proposal to amend part 284 to define transportation as including storage would subject open access contract storage to pregranted abandonment under § 284.221(d) as revised.

[38] The prudence of the LDC's decision to match and pay any greater rate up to the maximum rate under § 284.7 and to match the most favorable contract term offered to the pipeline by other customers to retain firm service would be subject to review by its state regulatory commission. *Pike County Light & Power Co.* v. *Pennsylvania Public Utility Comm'n,* 77 Pa. Commw. 268, 465 A.2d 735 (1983).

[39] Order No. 500–J made all transportation converted from pre-existing sales during the period the stay is in effect subject to abandonment approval under NGA section 7(b). See n.31, *supra.* That result would not be changed by this proposed rule.

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state commissions in their oversight of the LDCs. Therefore, the Commission is not proposing in this NOPR to mandate unlimited capacity brokering. We announce our intention to terminate all certificated capacity brokering services, if we determine after reviewing the comments here that the proposed capacity reallocation programs discussed below are appropriate alternatives to the current capacity brokering program and can be operated without some of the perceived problems associated with unlimited capacity brokering. The Commission believes that the benefits of capacity brokering—the making available of unneeded firm capacity—can and should be achieved by other means. In that vein, as discussed below, the Commission is proposing in this NOPR to require open access pipelines to (1) provide firm shippers on downstream pipelines with capacity on upstream pipelines and (2) institute a capacity reallocation program so that potential shippers can obtain capacity from current capacity holders willing to surrender capacity on a permanent or temporary basis. Moreover, the Commission encourages pipelines to offer a wide menu of services. An example is Columbia Gas Transmission Corporation's off-peak firm transportation service.[40]

Interested commenters should address the Commission's intention to terminate unlimited capacity brokering. The Commission is especially interested in comments on: (1) Whether unlimited capacity brokering can be accomplished in a manner consistent with the Commission's open access regulations; (2) whether other aspects of the Commission's proposals here will achieve many of the same benefits of unlimited capacity brokering without running afoul of the Commission's part 284 regulations; (3) whether termination of capacity brokering will have a negative impact on independent power producers or qualifying facilities who may be receiving gas service for electric generating purposes through, so-called, "buy/sell" arrangements. If so, should the Commission provide some form of grandfathering of existing transactions as part of the transitional phase contemplated under the Final Rule? For example, should the Commission provide a one-time conversion right to capacity releasing for the "buy/sell" or similar arrangements?

D. Pregranted Abandonment of Unbundled Sales Obligations

The next issue is whether there should be pregranted abandonment in connection with sales services. As discussed above, pipelines as merchants may compete with producers and marketers upstream. This competition should be on an even or level basis. Producers and marketers are not subject to a certificated service obligation under the NGA. Their service obligation is determined by contracts negotiated in a competitive environment. Hence, it follows that the pipeline as merchant of an unbundled sales service should be subject only to a contractually-determined service obligation. Accordingly, the Commission proposes to pregrant abandonment for unbundled sales services because it is in the present or future public interest or necessity. To the extent bundled sales service still exists, a pipeline would still be required to receive individual abandonment authority for bundled sales pursuant to NGA section 7(b).

VII. Matters Related to Unbundling

A. General

The Commission proposes to require pipelines to unbundle their sales and transportation services at a place or places upstream. The Commission realizes that there may be certain customers, especially small sales customers, that may want to retain their bundled, city gate, sales service and that they and other sales customers may want some form of an unbundled service that still provides the equivalent of one-stop shopping. Accordingly, the Commission will exempt from the proposed unbundling requirement the provision of a bundled sales service for customers purchasing under a small customer rate schedule on the date a Final Rule is effective. Currently, most pipelines have such a rate schedule on file, usually labelled a G, SG, or SGS tariff.

The Commission recognizes that this is a significant shift in its regulation. However, this change reflects the current service and forseeable service status of the pipeline industry. The Commission, therefore, requests comments on the following matters with respect to unbundling. Is it appropriate to mandate unbundling? Conversely, can the Commission's goal regarding open access be achieved without mandating unbundling? Are there customers other than small customers who want to retain some elements of traditional merchant service as part of their overall mix of supply services? Should providing a traditional, city gate bundled service remain an option on each pipeline? Are any efficiencies lost by elimination of the traditional bundled sales service? Are there adequate substitutes for complete unbundling such as the sales customer rebundling by appointing the pipeline to act as the sales customers' agent in arranging transportation?[41] Can the pipeline's providing of both a bundled and unbundled service be reconciled from a system operation basis and market perspective? Does it make sense from a market perspective if one pipeline into a market provides a totally unbundled service while another pipeline into that market performs a partially unbundled service? With respect to the exception proposed for small customers, the Commission is interested in receiving comments on the extent to which unbundling should be mandated without this exception. Conversely, the Commission solicits comments on whether the small customer rate schedule is the appropriate cut-off for the exemption to unbundling to apply. Should the exemption occur at some other threshold? Should the Commission mandate the appropriate threshold? In addition, can the Commission and industry practically mandate and implement full unbundling for all customers and services, and exempt some customers from full unbundling? Can these two policies be reconciled and implemented for rate design purposes? Last, should the Commission take action to prevent manipulation aimed at obtaining bundled service under the small customer exception?

In providing this bundled service to small customers, the proposed regulations will require the pipeline to consider itself as a shipper in all respects (see discussion *infra*). In addition, as a matter of policy, we will consider and approve reasonable agreements where a pipeline will be able to make all arrangements for transportation on behalf of any sales customer which wants this package service. The pipeline must, however, permit other merchants to market similar services and must not favor its own packaged service over other

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[40] Columbia Gas Transmission Corp., 54 FERC ¶ 61,220, *reh'g* granted in part and denied in part, 55 FERC ¶ 61,366 (1991). See also Columbia Gas Transmission Corp., 55 FERC ¶ 61,167 (1991) (compliance order).

[41] See Transcontinental Gas Pipe Line Corp., 55 FERC ¶ 61,446 (1991). Under Transco's program, its sales customers under their contracts with Transco will appoint Transco as their agent for arranging transportation on Transco of the sales volumes purchased from Transco to the buyer's downstream delivery point. To do that, Transco will be able to nominate and schedule transportation under the sales customers' transportation agreements. This program therefore provides sales customers with services that *in toto* are similar to the traditional bundled sales service. Interested commenters should discuss any other similar proposals.

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shippers. For example, if the pipeline agrees to assume responsibility for penalties, it must actually penalize itself and credit those penalties to its customers.[42] Finally, nothing proposed here is intended to prohibit or discourage the pipeline from continuing to serve as a gas merchant after it unbundles.

B. Place of Unbundling

Where should unbundling occur? There are several possibilities. For example, unbundling could occur at the wellhead, at production area receipt points into mainline facilities, at receipt points at the intersection of separate mainline systems,[43] or at several of those places. For example, if operationally feasible, pipelines may use pooling areas to facilitate the aggregation of supplies by all merchants. Pooling areas may be places where title passes from the gas merchant to the shipper or they may be places where aggregation and balancing and penalties are determined ("paper" pooling areas). Another possibility is the development of downstream hubs or market centers for the meeting of gas purchasers and sellers. The Commission requests comments on these unbundling related issues. In addition, we encourage all parties in the restructuring case to discuss and develop these types of novel proposals. The Commission believes that issues about places of unbundling and potential pooling areas and market centers should be determined on a case-specific basis in light of the particular operations and configurations of the pipelines and their attached sources of supplies. Hence, under the proposed regulations, the principle requirement will be that all gas, whatever the source, be given equal treatment in gaining access to the pipeline, consistent with reliable and efficient services.

C. Pricing of Unbundled Firm Sales

While we are interested in receiving comments on the extent to which unbundling should be mandated for all customers and services, the Commission is proposing (with one exception) to mandate the unbundling of sales and transportation services. How should an unbundled firm sales service be priced where the transportation will be separately provided under the pipeline's open access transportation service (as amended by this proposed rule) for gas purchased from the pipeline or from other merchants?

As a general matter, the Commission believes that a pipeline should be allowed to adopt a market-based sales pricing or gas inventory mechanism for its unbundled firm sales. The pipeline could therefore earn a profit or suffer a loss on its gas sales based on its performance in a competitive market place. The Commission has previously concluded that it has the legal authority to approve market-based, unbundled, sales rates upon a finding that a pipeline's sales market is sufficiently competitive to prevent a pipeline from exercising significant market power.[44] The Commission has found that a pipeline's sales are made in a sufficiently competitive market when the pipeline provides comparable transportation service with respect to all gas supplies from whomever purchased and when adequate divertible gas supplies exist. Commission is proposing in this NOPR to establish comparable transportation service by amending Part 284 of the Commission's regulations. Further, the Commission proposes to conclude that adequate divertible gas supplies exist in all pipeline gas markets. Accordingly, a pipeline would be able to establish a market-based pricing mechanism as part of its unbundled sales service.[45]

The Commission's proposed conclusion that adequate divertible gas supplies exist is grounded in the first place on Congress' passage of the Natural Gas Wellhead Decontrol Act of 1989.[46] As the Commission has stated:

> That act reflects Congress's finding that the natural gas sales market is competitive * * *. The sale of pipeline gas which is * * * unbundled from any transportation service is now part of the same natural gas market which Congress deregulated, and is competing directly against the producers and marketers whose gas sales Congress deregulated.[47]

In short, Congress has determined that gas sales at the wellhead or in the field are sufficiently competitive to justify decontrol of all first sales of gas supplies.[48] It is true that Congress did not decontrol or deregulate gas pipelines or gas pipeline sales. However, Congress had before it the traditional bundled sales environment and not the unbundled sales environment proposed by this NOPR. The Commission believes that the Congressional finding of a competitive wellhead or field market applies to all sellers in that market and that it is reasonable to infer that Congress believed that the market for natural gas is competitive on a national level without regard to the status of a particular gas merchant as first seller or non-first seller.

It is important to note that the Commission is not proposing the deregulation of pipeline sales. Rather, the Commission proposes to institute light-handed regulation relying upon decontrolled market forces at the wellhead or in the field to constrain pipeline sale for resale gas prices within the NGA's "just and reasonable" standard. Moreover, the Commission's proposal is premised on the implementation of comparable transportation service for all gas regardless of the seller's identity.

In addition, the Commission now finds that the issue of whether sufficient divertible gas supplies exist should not be part of its analysis to determine whether a pipeline possesses market power over sales. Throughout the country, there is a significant amount of uncommitted supplies available at extremely competitive rates. In many areas, uncommitted supplies exceed the largest amount of gas controlled by any pipeline connected to the areas. Indeed, our experience with pipeline/producer contract renegotiation in the past few years demonstrates that uncommitted gas supplies are available throughout North America. This means that sellers of uncommitted supplies could replace pipeline sales, and that it will not be profitable for a pipeline to attempt to exercise market power over the sale of natural gas.

Given this assumption we conclude that sellers of long-term firm gas supplies (whether they be individual pipelines or other sellers) will not have market power over the sale of natural gas. There is no doubt, as Congress

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[42] Transcontinental Gas Pipe Line Corp., 55 FERC ¶ 61,446 (1991).

[43] See also the discussion of third party pipeline capacity, *infra.*

[44] Transcontinental Gas Pipe Line Corp., 55 FERC ¶ 61,446 (1991); El Paso Natural Gas Co., 54 FERC ¶ 61,316 (1991); Transwestern Pipeline Co., 53 FERC ¶ 61,296 at pp. 62,114–15 (1990); Transcontinental Gas Pipe Line Corp., 48 FERC ¶ 61,199 at p 61,753 (1989); Transwestern Pipeline Co., 43 FERC ¶ 61,240 at p. 61,650 (1988), reh'g granted in part, 44 FERC ¶ 61,164 (1988), remanded on other grounds, 897 F.2d 570 (D.C. Cir. 1990). Such market-based rates are consistent with the Commission's obligation to determine just and reasonable rates under the NGA and are consistent with the Natural Gas Wellhead Decontrol Act. See Transwestern Pipeline Co., 53 FERC ¶ 61,296 at pp. 62,114–15 (1990).

[45] A market-based pricing mechanism under the blanket sales certificate would allow gas inventory charges and as-billed recovery of producer demand charges.

[46] See *supra.* n.20.

[47] Transwestern Pipeline Co., 53 FERC ¶ 61,296 at p. 61,115 (1990).

[48] S. Rep. No. 39, 101st Cong, 1st Sess. at p. 3 (1989) ("* * * partial wellhead decontrol under the NGPA has helped to create an environment in which competition, not public utility-type regulation, is the dominant force in determining prices and supplies in the natural gas sales markets * * *.")

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expressly found and confirmed, that a competitive market exists for gas at the wellhead and in the field. The Commission requests comments on whether this proposed finding is correct. If so, the Commission will eliminate its divertible supply study from its market power analysis from individual cases.

The Commission proposes to implement the market-based gas pricing by amending part 284 to include a blanket certificate for both firm and interruptible unbundled sales to all on or off system sales customers. The blanket sales certificate would provide for the pregrant of abandonment of the unbundled sales services provided under the blanket sales certificates.[49]

D. Blanket Interruptible Sales Service

The Commission's proposals to require upstream unbundling of sales services and to conclude that unbundled pipelines do not possess significant market power raise the question of whether there should be any limitations or restrictions on pipeline interruptible sales services (other than standards of conduct, see *infra.*) The Commission concludes that there should be no additional restraints on interruptible sales. The unbundling of pipeline sales services should enable producers/marketers and pipelines to compete for long-term sales on an even basis. There is no reason why the Commission should prohibit pipelines from competing on an even basis with producers/marketers for short-term (spot) sales.

The Commission's adoption of the proposals in this NOPR in a Final Rule may render moot the Interruptible Sales Service issues considered during the May 2, 1990 technical conference in *Arkla Energy Resources, Inc., et al.*, 50 FERC ¶ 61,366 (1990). Parties who participated in the May 2, 1990 technical conference are specifically asked to comment on whether the adoption of the proposals in this NOPR will cause the ISS issues they raised at the technical conference to be moot.

E. Standards of Conduct

Order No. 497 [50] adopted standards of conduct and reporting requirements for interstate pipelines with marketing affiliates.[51] In brief, the pipeline is prohibited from preferring its marketing affiliate over nonaffiliated shippers with respect to transportation matters, access to information, and transportation discounts.[52] In addition, pipelines are required to establish and file with the Commission procedures to enable shippers and the Commission to determine how the pipeline is complying with the standards of conduct.

The Commission proposes to continue Order No. 497's standards of conduct and reporting requirements for interstate pipelines with marketing affiliates even though the pipelines will be providing sales on an unbundled basis with transportation separately provided. This is because there is no change in the competitive relationship between the marketing affiliate and other shippers and the need to protect nonaffiliated customers from preferences that could be given to affiliated shippers.

The Commission also believes that Order No. 497's standards of conduct and reporting requirements should apply to the pipeline as provider of unbundled sales services. The pipeline as merchant would be the functional equivalent of a marketing affiliate. Therefore, it is self-evident that the non-pipeline suppliers and other customers need protection from preferences that could be given to the pipeline as merchant just as much as protection is needed from potential preferences that could be given to marketing affiliates. Accordingly, the Commission proposes to include standards of conduct and reporting requirements as part of the regulations with respect to blanket sales certificates for unbundled pipeline sales.

Pipelines offering unbundled blanket sales services would be required to organize their sales and transportation operating emloyees so that they function to comply with § 161.3 (a), (b), (d), and (l) and to comply with (e), (f), (h), and (i) by considering their sales operating employees as an operational unit which is the functional equivalent of a marketing affiliate.[53] In addition, those pipelines would be required to conduct their businesses in conformity with the comparability requirements of §§ 284.8(f) (1) and (4) and 284.9(f)(1) by not giving shippers of gas sold by the pipeline any preference over shippers of gas sold by any other merchant in matters relating to Part 284 transportation.[54] Moreover, the pipelines would be required to file procedures [55] and to comply with Section 250.16 by considering their sales operating employees as an operational unit which is the functional equivalent of a marketing affiliate.[56]

VIII. Comparable Matters

A. General

The Commission's aim in adopting Order No. 436 was to prevent pipelines from discriminating in their selection of transportation customers in order to prefer their own sales.[57] In codifyinq the open access transportation program, the Commission required pipelines to offer their transportation services without undue discrimination or preference in the quality of service provided.[58] Since 1985, when Order No. 436 was adopted, the Commission has grappled with complex problems associated with approving reasonable operational conditions for pipelines [59] in light of the need to guard against undue discrimination. In addition, this task was thrust to the forefront in gas inventory charge proceedings where it was vital to ensure that the pipeline's transportation services were provided on a basis comparable in quality to the quality of the transportation service provided as part of, or embedded within, the pipeline's sales services.[60] In essence, this comparability principle implements the Congressional aim that all gas supplies must be shipped on even terms under open access transportation.[61]

The Commission proposes to amend part 284 of the Commission's regulations in several ways as discussed below in order to implement comparability.

B. The Comparability Principle

The Commission first proposes to amend part 284 to codify the comparability principle. The usual formulation of comparability has been that pipelines' transportation services must be comparable in quality to the transportation services provided as part of, or embedded within, their sales services. However, this definition of comparability assumes a bundled sales service. As stated above, the Commission, with one exception, and subject to the comments specifically requested on this issue, is proposing to mandate the unbundling of sales from transportation. Hence, the commission's proposed amended Part 284 would require an open access pipeline that offers transportation to provide transportation services on a basis that is comparable in quality for all gas supplies, whether purchased from the pipeline or elsewhere. This definition would cover both bundled and unbundled pipeline sales and would ensure that the pipeline's reasonable operational conditions imposed on its transportation services under §§ 284.8(c) and 284.9(c) result in non-discriminatory services for pipeline sales gas or for third party sales gas.[62] This principle would govern all of a pipeline's terms and conditions for open access service which have any meaningful impact on a decision to purchase pipeline sales gas versus third party sales gas. Those terms and conditions should be a neutral factor in influencing the gas purchaser's decision about whether to purchase gas from the pipeline or from another gas merchant.

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[49] See parts X (Blanket Sales Certificates) and VI (Pregranted Abandonment of Unbundled Sales Obligations).

[50] Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines, 53 FR 22,139 (June 14, 1988), III FERC Stats. and Regs. ¶ 30,820 (1988), order on reh'g, Order No. 497–A, 54 Fed. Reg. 52,781 (Dec. 22 1989), III FERC Stats. and Regs. ¶ 30,868 (1989), order extending sunset date, Order No. 497–B, 55 FR 53,291 (Dec. 28, 1990), III FERC Stats. and Regs. ¶ 30,908 (1990).

[51] 18 CFR parts 161 and 250 (1990). See also Algonquin Gas Transmission Co., *et al.*, 55 FERC ¶ 61,261 (1991) with respect to pipeline compliance with the reporting requirements of § 250.16 of the Commission's regulations.

[52] 18 CFR 161.3 (1991).

[53] This requirement would be similar to that of 18 CFR 161.3(g).

[54] This requirement would be in lieu of 18 CFR 161.3(c).

[55] This requirement would be similar to that of 18 CFR 161.3(j).

[56] Section 250.16 sets forth reporting requirements.

[57] Order No. 436, *supra* n.2 at p. 31,495 ("Examples of discrimination that the Commission finds to be undue or preferential within the context of self-implementing authorizations are refusals to transport for existing sales or non-fuel switchable customers and preference for affiliates.")

[58] 18 CFR 284.8(b) and 284.9(b) (1991).

[59] 18 CFR 284.8(c) and 284.9(c) (1991).

[60] *E.g.*, Transcontinental Gas Pipe Line Corp., 55 FERC ¶ 61,446 (1991).

[61] See text at n.22, *supra*. The Commission notes that comparable may be defined as either similar or the same. Here, in light of Congress' aim, comparable means the same to the maximum extent feasible.

At this stage, the Commission will not prescribe uniform terms and conditions to implement comparability because it recognizes that pipeline systems differ in many respects.[63] However, the comparability principle must be addressed and implemented in each pipeline restructuring proceeding initiated by the Final Rule to ensure that all gas is afforded equal treatment. The Commission finds that at a minimum this will require that the pipeline, in its capacity as a firm seller of gas, or a shipper that purchased gas from a pipeline, or from an affiliate of the pipeline,[64] must be given no preference over other shippers with respect to matters relating to Part 284 transportation. Therefore, in the restructuring proceedings, the parties must address aggregate receipt point capacity,[65] individual receipt point capacity,[66] receipt point flexibility,[67] mainline segment capacity,[68] storage capacity,[69] the scheduling of gas injections into the pipeline, the scheduling of gas deliveries from the pipeline, the imposition and assessment of penalties including balancing rights (such as through system storage and line pack), and the right to firm delivery points, and the instantaneous receipt and delivery of gas for all shippers.[70]

C. Capacity Reallocation

Although the Commission proposes to eliminate capacity brokering, the Commission proposes two capacity reallocation requirements as discussed below. The Commission believes that these new, capacity reallocation programs will be adequate substitutes for capacity brokering. However, the Commission will terminate capacity brokering only if it determines, after reviewing the comments here, that the proposed reallocation programs are appropriate alternatives to the current capacity brokering program and can be operated without some of the perceived problems currently associated with unlimited capacity brokering.

1. Third Party Pipeline Capacity

Many downstream mainlines are fed not only by the upstream segments owned the same pipeline but by upstream pipelines owned by other pipelines. The first question is whether firm shippers on a downstream pipeline need capacity rights on the upstream or third party pipelines to achieve comparability. The second question is, if so, what should be the extent of those capacity rights? The Commission requests comments on its discussion of these issues.

Firm shippers should have access to the same production areas as the pipeline, in order to prevent any exercise of market power by the pipeline over supplies.[71] This is true whether the downstream pipeline sells gas on a bundled or unbundled basis because unbundling at the intersection of an upstream and downstream pipeline without capacity on the upstream pipeline for customers of the downstream pipeline can give an advantage to the pipeline as merchant because of its superior access to upstream supplies. This means that a downstream pipeline's capacity on an upstream pipeline should be considered as if that capacity were a mainline segment of the downstream pipeline.

The proposed regulations therefore provide that an open access upstream pipeline must permit a downstream pipeline to assign its transportation capacity on the upstream pipeline on a non-discriminatory basis to its firm shippers. In addition, the downstream pipeline would be required to exercise its conversion rights on the upstream pipeline and to assign its upstream firm transportation capacity (both conversion and nonconversion firm transportation) and its upstream firm contract storage capacity to its firm transportation customers to the extent necessary to provide capacity to those shippers that desire upstream capacity. The downstream shippers' rights to capacity would be determined under the method used by the downstream pipeline to allocate capacity on mainline segments, with the upstream pipeline considered as if it were a mainline segment of the downstream pipeline. The upstream pipeline would charge the downstream pipeline's customers the same rates that it would have charged the downstream pipeline had there been no assignment. In addition, the downstream pipeline would not be able to charge a fee in connection with the

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[62] 18 CFR 284.8(b) and 284.9(b). United Gas Pipe Line Co., 55 FERC ¶ 61.330 at p. 61,974 (1991).

[63] *E.g.*, pipelines vary dramatically in the number of mainline receipt points.

[64] Affiliate is defined in 18 CFR 161.2 (1991).

[65] For example, the parties may choose to allocate aggregate firm receipt point capacity on the basis of each shipper's daily reservation (or contract demand) quantity and the pipeline's bundled daily firm sales service obligation. The Commission requests comments on this and other portential methods to allocate aggregate receipt point capacity.

[66] For example, the parties may choose to allocate individual firm receipt point capacity on a first-come, first-served basis. However, if there are more nominations or designations in the same place in the queue than available capacity, remaining capacity could be allocated on a pro rata basis according to the ratio of individual nominations or designations at the receipt point to total nominations or designations at the receipt point. The Commission requests comments on this and other potential methods to allocate individual receipt point capacity. The Commission has approved pipeline use of an iterative nomination process to allocate capacity when more requests for capacity are received than can be accommodated at those particular receipt points. Equitrans v. Texas Eastern Transmission Co., 40 FERC ¶ 61.307 at p. 62.469 (1989). In addition, the Commission requests comments on whether the pipelines should use an electronic bulletin board or other method to make known in advance the availability of capacity at particular receipt points. *Id.*

[67] Firm shippers must have flexibility in changing firm receipt points and in using all available receipt points on an interruptible basis.

[68] For example, the parties may choose to allocate firm mainline segment capacity on a pro rata basis. Any change in the method for allocating any capacity should address obligations incurred by firm shippers and the pipeline prior to the change (*i.e.*, should rights to capacity be grandfathered?).

[69] See discussion of storage, *infra.*

[70] As stated above, the Commission continues to support the implementation of innovative transportation services such as Columbia Gas Transmission Corporation's off-peak firm transportation service. Columbia Gas Transmission Corp., 54 FERC ¶ 61,228, reh'g granted in part and denied in part, 55 FERC ¶ 61,306 (1991). See also Columbia Gas Transmission Corp., 55 FERC ¶ 61.167 (1991) (compliance order).

[71] See text at n.22 where the House Committee emphasized the need for buyers to reach producers.

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2. Voluntary Reallocation of Firm Transportation Capacity

A pipeline may have requests for firm capacity in excess of available firm capacity. Hence, it will not be able to fill those requests and a service queue will develop. This will occur even though some firm shippers under contract with the pipeline may no longer need all or part of their firm capacity under their contract with the pipeline. Capacity brokering permits those firm shippers to broker their firm capacity to entities who might otherwise be able to obtain only interruptible capacity from the pipeline.

The Commission continues to believe that it is essential to permit the reallocation of firm capacity as part of open access transportation. However, the Commission is proposing to replace capacity brokering with a capacity releasing mechanism because it believes that capacity releasing will be an adequate substitute for capacity brokering and is more compatible with nondiscriminatory, open access transportation and this NOPR's comparability objective. Among other things, the alternative vehicle would provide for more uniformity. The proposed program would be required under Part 284 for interstate pipelines and would, therefore, eliminate the need for a plethora of capacity brokering certificates. Also, because the pipelines would be operating the proposed program, the Commission will be in a better position to ensure that the pipelines have similar requirements with respect to the reallocation of capacity.

The capacity releasing program would provide many, if not all, of the same benefits as capacity brokering. For instance, LDCs book a certain amount of firm service all year round to guarantee service continuity for peak periods. This may be only a few months per year. The LDC may be willing to relinquish capacity for a portion of remaining periods. This serves both efficiency and load management purposes. Those points indicate that the proposed capacity releasing alternative may be the better way for achieving the essential need for a system of capacity reallocation in a manner consistent with the goals of nondiscriminatory, open access transportation and the decontrol of natural gas at the wellhead and in the field. Accordingly, the Commission proposes to amend part 284 to require that all interstate open access pipelines must provide a capacity releasing mechanism through which existing shippers can voluntarily reallocate all or a part of their firm transportation capacity rights to any person who wants to obtain that capacity by contracting with the pipeline.[73]

The Commission's proposed capacity releasing mechanism would allow firm capacity holders to permanently release some or all of their capacity and to temporarily, for any shorter period of time, release some or all of their capacity on an annual or seasonal basis. Capacity releasing would operate as follows. After the restructuring is accomplished (including the firm capacity holder's exercise of the right of first refusal as described in part VI), the firm capacity holder would inform the pipeline that it wants to release capacity on a permanent or temporary basis, the specific quantity to be released, and the period of time. The pipeline would then make this information available on its electronic bulletin board and would hold a seven business day open season. The pipeline would be required to resell that capacity under part 284 to the applicant offering the highest price not to exceed the pipeline's maximum rate. If more than one applicant offers the same top price, the pipeline would allocate the capacity among those top bidders on either a pro rata basis, or a present value of the reservation fee per unit basis, or a first-come, first-served basis.[74] Unless the pipeline otherwise agrees (such as where there is a permanent reallocation of annual capacity), the releasing customer would remain liable on its contract but would receive an offset against its bill of the resale.[75] The pipeline itself should be indifferent to the substitution because its total contract demand will remain unchanged. The details of capacity releasing, including the pipeline's recompense and operational procedures, would be determined in the individual restructuring proceedings.[76] Interested commenters should discuss whether capacity releasing is a good alternative to capacity brokering and if so, why, and if not, why not. In other words, is capacity releasing workable? The Commission also requests comments on whether it should continue to require the maximum rate for the released capacity to be limited to the rate paid by the releasing customer. For example, if a sufficient number of shippers bid for the released capacity, should the Commission consider the rate to be restrained adequately by the operation of a robust secondary transportation market? If so, are there economic benefits that may result if the price charged for released capacity is not constrained by the Part 284 maximum rate? How would such a market based rate affect each segment of the industry? Finally, the Commission is aware in some circumstances that one problem with capacity brokering is that certain customers are unable to broker capacity. This is because those customers, because of the loads that they serve, do not have any customers behind their systems who need to acquire firm capacity. The question is would a capacity releasing program address this problem any better and if not what solutions would address this problem?

D. Storage

Many pipelines have storage facilities which are an integral part of their systems. The pipelines use their storage facilities for a variety of functions. First, the pipelines utilize storage for balancing purposes. That is, a pipeline can maintain a constant flow of gas on a daily basis by diverting supplies to storage. Second, a pipeline can use storage to implement seasonal supply management. That is, a pipeline can purchase gas during off-peak periods and store it for sale during peak periods. Third, a pipeline can use storage as a supplement to transmission capacity. This occurs when mainline transmission capacity is less than the pipeline's firm obligations, with the difference delivered out of downstream (delivery area) storage. At times, storage may perform all three functions. At present, part 284 of the Commission's regulations does not require that an open access pipeline make storage available on an open access contract basis so that shippers may store their own gas. An open access pipeline, of course, may apply for a blanket certificate to provide firm and interruptible open access contract storage services.[77] However, the Commission requires that an open access pipeline must make system storage available to firm shippers on a nondiscriminatory basis to assure open access firm transportation service.[78]

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[71] See text at n.22 where the House Committee emphasized the need for buyers to reach producers.

[72] See *infra* for a discussion of transition costs associated with upstream capacity rights.

[73] In addition to capacity releasing, the Commission is proposing to require pipelines to conduct some form of open season where during the restructuring process LDCs must exercise a right of first refusal as discussed in Part VI. That first refusal process and the proposed capacity releasing rule may play an important role in future capacity allocation in light of the elimination of unlimited capacity brokering. For instance, should an LDC not be willing to exercise its right of first refusal, then some portion of previously booked capacity will be available to new customers.

[74] See Kern River Gas Transmission Co., *et al.*, 51 FERC ¶ 61,195 at pp. 61,542–43.

[75] If the pipeline has uncommitted firm capacity available, it may, if it so chooses, assign part or all of that uncommitted capacity to the shipper or shippers who desire such capacity before it reallocates the firm capacity of existing shippers. Presumably, such assignment of the pipeline's own uncommitted firm capacity would occur as soon as a new shipper inquired about obtaining new capacity. Indeed, the blanket certificate itself requires the pipeline to provide transportation on a nondiscriminatory basis to all who request it to the full extent of its available capacity (including firm capacity).

[76] See Florida Gas Transmission Co., 51 FERC ¶ 61,309 at p. 62,013–014 (1990) and 53 FERC ¶ 61,396 at p. 62,380 (1990) for an example of a program for permanently or temporarily releasing firm capacity. ("Allowing Florida Gas Customers with excess capacity to relinquish it for use by others who are experiencing a shortage should promote maximization of throughput and efficient allocation of capacity consistent with our policies." 51 FERC at p. 62,013.)

As discussed above, the Commission is requiring pipelines to unbundle most of their sales at an upstream point. Hence, the pipeline should no longer need downstream storage to fulfill most of its firm sales obligations. It should only need downstream storage for load balancing and system management and to fulfill its proposed limited bundled firm sales obligations. Hence, unbundling should require, if the Commission adopts it as proposed, the pipelines to sell downstream storage to transportation customers. The Commission believes that these storage sales must be on a non-discriminatory, open access basis without regard to the identity of the upstream seller of the gas.

The pipeline may need to use its upstream production area storage to satisfy its unbundled firm sales obligations. However, the Commission believes that shipper access to upstream storage is an important comparability issue. Indeed, access to this storage illustrates the need for comparability. For example, a pipeline may have available storage capacity that is not needed to serve maximum firm requirements. However, this storage is nonetheless valuable in that the pipeline is able to buy gas off peak at cheaper prices and store it for later sale. Preventing access to storage may give the pipeline a competitive advantage over other gas merchants and may conflict with the goal of open access to maximize the benefits of competition by requiring the shipment of all gas supplies on comparable terms.

The Commission proposes to amend part 284 so that an interstate pipeline must offer firm and interruptible open access storage as part of its open access transportation program. This would be accomplished by amending § 284.1(a) of the Commission's regulations to define transportation as including storage, except for pipelines offering transportation under 18 CFR part 284, subpart C (Certain Transportation by Intrastate Pipelines). As amended, § 28.1(a) would read: " 'Transportation' includes storage (except for pipelines offering transportation under part 284 subpart C), exchange, backhaul, displacement or other methods of transportation." Storage, therefore, would be included within the other requirements of part 284 for interstate pipelines.[79] Pipelines would have to provide access to storage on a firm and interruptible basis for all shipper gas without regard to the seller in a manner that is not unduly discriminatory. The pipeline would be required to offer the open access storage on a basis that is not in any way tied to the storage customers' purchase of a particular type of transportation.

Because storage capacity (*i.e.*, daily deliveries out of storage) is less than aggregate contract demand, the pipeline would be permitted to allocate firm storage capacity under the method used to allocate mainline segment capacity. Customers currently holding firm storage rights, however, would retain those rights unless they voluntarily release them. The pipeline would be entitled to retain capacity for its limited bundled firm sales program [80] and for load balancing purposes and system management.[81] Firm shippers, whether or not they elect open access storage service, should have the same degree of balancing flexibility as the pipeline possesses when providing its sales services. Firm shippers should be able to use both storage on a non-contract basis and line pack for balancing.[82]

Finally, the unbundling of sales and the provision of open access storage would mean that a shipper would no longer be entitled to rely on pipeline system storage to assure firm transportation service where storage is used in lieu of transmission facilities.[83] It would be up to the shipper to put its own gas in its firm storage space. Last, because the proposed regulations would define transportation to include storage, open access contract storage capacity would be subject to pregranted abandonment under 18 CFR 284.221(d) as revised.

E. Curtailment

A pipeline may have to curtail deliveries to customers because of either supply or capacity constraints. NGPA Title IV requires that end users be protected when pipeline gas supplies are scarce.[84] However, the NGPA system of curtailment priorities does not apply to curtailments that result from a shortage of transportation capacity.[85] As the Commission stated in Order No. 436:

> [G]as being transported normally should not be subject to curtailment at all, because it would be the pipeline's system supply, not the shippers' gas, that would be curtailed.[86]

Accordingly, when a pipeline's gas supplies are scarce, the pipeline should curtail its sales customers without affecting its transportation customers. This is a logical extension of the Commission's proposal to mandate generally the unbundling of sales from transportation and should make it easier for the pipeline to curtail its sales customers in a supply curtailment situation without affecting its transportation customers.

With respect to capacity curtailments, the Commission has routinely authorized pipelines to have transportation curtailment plans which differ from their sales curtailment plans, and has specifically approved transportation curtailment plans which are based on *pro rata* allocations of capacity.[87] The Commission has, however, permitted parties to agree to an end-use specific transportation capacity curtailment plan.[88]

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[77] *E.g.*, Texas Eastern Transmission Corp. 52 FERC ¶ 61,424 (1990); Northwest Pipeline Corp. 50 FERC ¶ 61,341 (1990) and ANR Pipeline Co., 46 FERC ¶ 61,339 (1989), reh'g and clarification granted in part and denied in part, 49 FERC ¶ 61,046 (1989).

[78] Order No. 436, *supra* n.2, at p. 31,507. System storage includes facilities owned and used by the pipeline to store its own gas for operational reasons such as for balancing or for use in lieu of transportation capacity.

[79] *E.g.*, storage rates would be designed pursuant to Section 284.7. See n.77, *supra* for an examples of previously certificated open access storage services.

[80] *Id.* Of course, the unbundling of sales upstream of storage facilities would eliminate the pipeline's need to use this storage for unbundled sales.

[81] See Northwest Pipeline Corp. 50 FERC ¶ 61,341 at p. 62,013 (1990).

[82] Of course, if the pipeline charges its sales customers for balancing then transportation customers should likewise be charged.

[83] See text at n.78 and Order No. 436, *supra* n.2, at p. 31,507.

[84] 15 U.S.C. 3391–4 (1988); El Paso Natural Gas Co., 54 FERC ¶ 61,316 at p. 61,954 (1991).

[85] Sebring Utilities Com'n v. FERC, 591 F.2d 1003 (5th Cir.), *cert. denied*, 444 U.S. 879 (1979).

[86] Order No. 436, *supra* n.2, at p. 31,515; Order No. 436–A, *supra* n.2 at pp. 31,652–53.

[87] See Texas Eastern Transmission Corp., 37 FERC ¶ 61,260 (1986); Northern Natural Gas Co., 37 FERC ¶ 61,272 (1986); Southern Natural Gas Co., 41 FERC ¶ 61,218 (1987); Columbia Gas Transportation Corp., 41 FERC ¶ 61,122 (1987).

[88] Florida Gas Transmission Co., 51 FERC ¶ 61,309 (1990); United Gas Pipe Line Co., 46 FERC ¶ 61,314, *reh'g*, 49 FERC ¶ 61,086 (1989). Those cases involved settlements where the parties agreed to the curtailment plan. In United, the Commission did find that the capacity curtailment provision was in compliance with the requirements of Title IV of the

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[88] Florida Gas Transmission Co., 51 FERC ¶ 61,309 (1990); United Gas Pipe Line Co., 46 FERC ¶ 61,314, *reh'g*, 49 FERC ¶ 61,096 (1989). Those cases involved settlements where the parties agreed to the curtailment plan. In United, the Commission did find that the capacity curtailment provision was in compliance with the requirements of Title IV of the

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The Commission believes that the above requirements and policies with respect to supply and capacity curtailment that have been developed on a case-by-case basis are generally sufficient. In addition, the Commission believes that market-based gas pricing should greatly decrease, if not eliminate, shortages of gas. However, the Commission believes that as a general matter, curtailment is part of comparability. A curtailment plan should not favor the pipeline's sales over third party sales and transportation. The Commission will require parties to design and implement plans that meet this general objective in the restructuring proceeding.

The Commission is aware of allegations that pipelines have diverted transportation gas to sales customers.[89] The Commission is concerned about those allegations. Unbundling should ameliorate concerns about gas diversion because most customers will be transportation customers. The Commission requests comments on how this will impact comparability for curtailment purposes. In addition, the Commission expects pipelines to install appropriate equipment to enable them to know on a timely basis whose gas is in the system so that there is no diversion of gas from one shipper to another and especially to a shipper that purchases its gas from the pipeline or an affiliate of the pipeline.

F. Rate Matters

1. Rate Design

Currently, section 284.7(c) of the Commission's regulations sets forth the Commission's rate objectives in designing maximum rates for both peak and off peak periods. As here pertinent, "[r]ates for firm service during peak periods should ration capacity" and "[r]ates for firm service during off peak periods and for interruptible service during all periods should maximize throughput." [90] In addition, the reservation fee for firm transportation service "may not recover any variable costs or any fixed costs in excess of those costs that would be recovered by using the same methodology used for determining the demand charge in the pipeline's sales rates." [91]

The Rate Design Policy Statement raised the question of whether the modified fixed variable (MFV) rate design method is outdated "in light of the significant changes in the pipeline industry since the adoption of Order No. 436 in 1985 and the * * * decontrol of gas under the NGPA." [92]

The MFV method recovers all fixed production and gathering costs, all variable costs, and return on equity and related taxes in the commodity component. The remaining fixed costs are recovered in the demand component.[93] The MFV demand component typically consists of two demand charges. The first, or D–1 charge, reflects peak considerations. The second, or D–2 charge, reflects annual considerations. The costs assigned to the demand component have been assigned to the D–1 and D–2 charges on a 50–50 basis. The Rate Design Policy Statement's particular concern was whether the current D–1 charges appropriately reflected the demand for firm capacity. The Rate Design Policy Statement provided:

> The central question is whether the costs assigned to the D–1 charge are appropriate in amount to ration peak capacity to those who value it the most. The answer may depend on whether there is a waiting list for firm capacity. Such a queue may indicate that the present D–1 (peak) charge is not rationing capacity. If capacity is consistently underbooked, it may be that the D–1 (peak) charge is excessive. In either event, the price is not appropriate because it produces an inefficient allocation of capacity on the pipeline.[94]

Since the Rate Design Policy Statement, the Commission has been constantly reevaluating § 284.7, the Policy Statement, and rate design in the context of the evolving natural gas industry environment. As discussed above, Congress has repealed the remaining price controls on the wellhead or field sales of natural gas in order to create a competitive national market for the sale of gas. Congress has indicated that all gas should be shipped on even terms under non-discriminatory open access transportation and that this Commission should "improve this competitive structure in order to maximize the benefits of decontrol." [95]

The Commission has concluded as a general matter that gas sales should be unbundled from gas transportation in order to improve the competitive structure of the natural gas industry by, among other things, creating direct, head-to-head competition among pipelines as merchants and other merchants and making transportation a neutral factor in the gas purchaser's choice of merchants. In light of the changes that have occurred since the Rate Design Policy Statement was issued, how does MFV comport with the Congressional mandate for a national gas market with shipment on even terms and with the Commission's proposals in this Notice to implement that mandate? [96]

MFV was devised to design bundled city gate sales rates [97] to help pipelines sell gas by shifting costs from the commodity charge to the demand charge.[98] However, the Commission did not move all costs to the demand charge, in order to promote operational efficiency by keeping the pipelines at risk in their sale of gas. Here, the Commission proposes to move the point of sale for pipeline gas upstream to the production areas. Pipeline gas sales will be priced on a market basis. Hence, MFV's original rationale of creating a more competitive city gate bundled gas price appears to be no longer relevant. Rather, a primary concern is whether MFV is inhibiting gas-on-gas competition at the wellhead or in the field by distorting the delivered price by loading up pipeline transportation usage charges with fixed transmission costs.[99]

The Commission now finds that MFV under most circumstances distorts the gas purchaser's decision by subjecting the wellhead or field prices of gas merchants (net backs) to differing pipeline equity ratios.[100] This hinders

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NGPA. However, the effect of that order was to approve a specific settlement agreement, any inference that the NGPA mandates end-use specific curtailment plans is misplaced.

[89] See the Staff Summary of December 1990 Curtailment Survey Responses, Docket No. TC90-6-000, Nov. 1, 1990.

[90] 18 CFR 284.7(c)(1) and (2) (1990).

[91] 18 CFR 284.8(d) (1990).

[92] Interstate Natural Gas Pipeline Rate Design, 47 FERC ¶ 61,295 at p. 62,055, order on reh'g, 48 FERC ¶ 61,122 (1989).

[93] These include the rate of return on debt (interest expense), depreciation expense, and administrative and general expense.

[94] 47 FERC ¶ 61,295 at p. 62,055 (footnote omitted).

[95] See text at n.22, *supra*.

[96] At times, the issue is framed in the context of competition between Canadian and domestic gas. See Opinion No. 357, Iroquois Gas Transmission System, L.P., *et. al.*, 53 FERC ¶ 61,194 at pp. 61,711–12, n.91 (1990) and Tennessee Gas Pipeline Co., 51 FERC ¶ 61,113 (1990) (NIPPS II).

[97] MFV was first adopted in 1983 in Natural Gas Pipeline Company of America, 25 FERC ¶ 61,178 (1983), order on reh'g, 28 FERC ¶ 61,203 (1984), aff'd in relevant part, Northern Indiana Public Service Co. v. FERC, 782 F.2d 730 (7th Cir. 1986).

[98] MFV changed the recovery of fixed costs in the commodity charge from either the United method's 75 percent or the Seaboard method's 50 percent. In almost all cases, this reduced the share of fixed costs in the commodity charge.

[99] Storage will be unbundled and seperately charged except for balancing costs.

[100] In addition, pipelines might have different fixed costs (equity return and relates taxes) in their usage charge owing to the size of their depreciated rate bases.

gas-on-gas competition at the wellhead or in the field because producer competition is not based on the producers' own costs. Rather, producer competition for downstream customers is influenced by the fixed costs in the pipeline usage charges. For example, producers in different fields competing for the same market via different pipelines may have their competitive positions in that market determined by the amount of fixed costs in the pipelines' respective usage charges and not by the producers' own costs. The Commission requests comments on whether this proposed determination is correct. Accordingly, this shipment of gas on uneven rate terms may be inhibiting the development of a national gas market and does not comport with Congress' goals in enacting the Natural Gas Wellhead Decontrol Act of 1989. Under section 5 of the NGA, the Commission proposes to conclude that MFV is anticompetitive and unjust and unreasonable.

The next question is what rate design should replace the MFV rate design's assignment of fixed transmission costs between the pipeline demand and usage charges. The Commission proposes to amend § 284.8(d) of the regulations to require pipelines to design their transportation rates under the straight fixed variable (SFV) (as opposed to MFV) method of assigning all fixed transmission and any fixed storage costs related to transmission[101] to the demand charge unless the parties to a proceeding otherwise agree to a different rate design method. The Commission will not rigidly preclude the pipeline, its customers, and interested state commissions, producers, marketers, brokers, end-users, and others from agreeing to an alternative rate design that deviates from SFV and may be appropriate to that particular pipeline system.[102]

The Commission believes that SFV comports with and promotes Congress' goal of a national gas market and goes hand-in-hand with the Commission's proposal to unbundle pipeline sales. Under SFV, all gas merchants would be able to compete in a national market without regard to transportation costs.[103] This rate design parity is just as essential as comparability in the quality of service with respect to the transportation of gas. SFV would, therefore, maximize the benefits of decontrol by increasing the nationwide competition among gas merchants. This should result in head-to-head, gas-on-gas competition and in a single, decontrolled market price for gas which will achieve Congress' intent in passing the Natural Gas Wellhead Decontrol Act of 1989 to "over time force the evolution of a set of lowest-cost producers."[104] This "will yield lower prices and more abundant supplies" and benefit all consumers of gas.[105] Last, the Commission will not have to engage in the difficult and speculative task of determining exactly what portion of fixed transmission costs belong in the usage rate for each pipeline or the pipeline industry without inhibiting the fruition of Congress' goal of a national gas market.

The Commission realizes that pipelines would no longer be subject to risk for their firm service with respect to their equity return and related taxes which have been recovered in the commodity charge under MFV. In addition, the issue of cost shifting among types of customers must be addressed.

To date, when an SFV rate design has been adopted, the Commission has imposed a 25 basis point reduction in the approved rate of return on equity to reflect the possibility of lower risk.[106] In the nine recent Northeast expansion orders, the Commission committed itself to explore the impact of shifting from a MFV to a SFV approach on the cost of capital.[107] Accordingly, in the context of move to SFV, we solicit comments on the need to lower the rate of return. The Commission requests comments on whether this assumption about a decrease in risk is accurate. In addition, if the Commission moves forward with some form of incentive regulation—as is currently being examined by a Commission task force—will this provide a more reasonable recognition of the risks and rewards pipelines will face if the NOPR is adopted?

At the same time, the Commission recognizes that any change in rate design could benefit some customers and hurt other customers. Indeed, the Rate Design Policy Statement recognizes the possible need for pragmatic adjustments in the event a particular method leads to undesirable or inequitable results, and required ALJs to "consider and articulate the impacts (benefits and detriments) of the various rate design proposals on the participants, on the various segments of the industry, and on classes of customers."[108] The questions are whether the cost shift is undue and, if so, how to mitigate it.[109]

This issue must be addressed in the restructuring proceeding where the pipeline will file to comply with the changes mandated by the Final Rule adopted by the Commission. The pipeline should consider estimating annual customer bills both as they would be if costs were allocated der traditional ttFV and if allocated under SFV. Account should be taken of the benefit to firm sales customers who, absent this rule, would have used interruptible transportation, but now will be able to ship on a firm basis. If an adjustment is warranted, one possibility would be to allocate costs among classes of customers under an MFV type method and to use the SFV method to design bills. Under this approach, fixed costs would be allocated along traditional lines. Allocation would be based on contract demand volumes for D-1 costs and actual usage for D-2 and commodity charge costs.[110] After that allocation, each class' one-part demand charge under SFV would be designed by dividing the fixed costs assigned to each class by the contract billing determinants of the class. This combined MFV and SFV approach would assign fewer fixed costs to low load factor customers than would be assigned using only SFV for cost allocation and rate design.[111]

This method will serve to mitigate the cost shifts to customer classes but may still result in cost shifts for individual customers. This is because costs would be allocated based on the average load factor of the customer class. If a customer is significantly below the average load factor of the class, its costs will increase. This type of problem could be examined on a case by case basis in each restructuring proceeding to determine the appropriate classes. Our expectation is that classes may need to be redefined to be more homogeneous by load factor.

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[101] See note 99, *supra*.

[102] The Commission recognizes that there is a difference between the restructuring of rates for services provided using current facilities and for services provided using new facilities. For example, the former case involves considering the impact of a change in rate design as described above. In addition, the Commission has allowed, and will under certain circumstances continue to consider, the shippers involved in new pipeline construction agreeing to a particular rate design that reflects risk allocation between the pipeline and the shippers. See, *e.g.*, Tennessee Gas Pipeline Co., 55 FERC ¶ 61,460 (1991).

[103] Only variable costs (such as fuel) would be in the firm transportation commodity charge. Interruptible transportation rates will continue to be examined under the Rate Design Policy Statement.

[104] See n.21, *supra* at 7.

[105] *Id.*

[106] See, *e.g.*, Transcontinental Gas Pipe Line Corp., 56 FERC ¶ 61,037 (1991), slip op. at 7.

[107] See, *e.g.*, Tennessee Gas Pipeline Co., 55 FERC ¶ 61,460 (1991).

[108] Interstate Natural Gas Pipeline Rate Design, 47 FERC ¶ 61,295 at p. 62,054 (1989).

[109] *Id.* at p. 62,055.

[110] Throughput would include all of a customer's volumes. This would combine a firm customer's interruptible transportation volumes with firm transportation volumes to obtain an accurate allocation based on load. This use of total volume figures would be a change from using D-2 nominations.

[111] In addition, small customers previously billed on a one-part charge with an imputed load factor could continue to be billed that way.

Another possibility is to recognize that on some systems there is no correlation between load factor and customer size based on contract demand. As such, a measure of annual volumes could be used to allocate certain demand costs and design rates in an attempt to mitigate the cost shift created under the SFV method. Under this mitigation measure demand costs would be allocated on a peak and annual basis. The usage charge would only contain variable costs. On other pipeline systems other mitigation measures may be used depending on the load factor characteristics of the customers. We believe that by tailoring the mitigation measures, we can mitigate the cost shifts on all pipeline systems.[112]

As stated above, the Commission proposes to use its NGA section 5 authority and § 284.8(d) to require pipelines to recover fixed costs under SFV unless the parties to a proceeding otherwise agree. This amendment should not be construed as foreclosing transitional adjustments in allocations as discussed above.

In the restructuring proceedings, the pipeline, its customers, marketers, producers, and other interested parties must discuss rate design, including, as discussed above, the need for, and type of, mitigation measures. As described earlier, unless the parties otherwise agree, the Commission is proposing that the pipeline must design its rates in its restructuring filing under SFV.

2. Transition Costs

Pipelines may incur different types of transition costs in complying with the proposals set forth in this NOPR. The Commission believes that these potential costs should be addressed here as part of, and not after, a significant alteration of the pipeline's functions in the gas industry.

The Commission foresees three potential types of costs. The first type consists of costs associated with physically implementing the proposed rules (*e.g.*, more or better meters, electronic data interchange). The pipeline should file to recover those costs as part of a NGA section 4 filing to the extent costs are not otherwise borne by the parties to specific transactions. The second type of costs are those associated with the move to unbundling and market based rates. For example, the pipeline would no longer have a PGA and therefore may have unrecovered gas costs in its Account No. 191.[113] The Commission will permit pipelines to direct bill those costs.

In addition, where the pipeline retains upstream pipeline capacity even after assignment of that capacity to its customers, it might incur costs associated with that capacity beyond its needs to serve its remaining bundled sales customers. The Commission intends to allow pipelines to charge these Account No. 858 costs to all customers to the extent costs are not otherwise borne by parties to specific transactions. Similarly, the Commission intends to permit pipelines to charge unbooked open access contract storage to all customers to the extent costs are not otherwise borne by parties to specific transactions. The Account No. 858 and storage costs may be billed as a fixed charge to firm customers.

The third type of cost involves pipeline/producer contracts. The pipelines may incur take-or-pay costs or buyout or buydown costs with producers. The pipelines should continue to recover those kinds of incurred costs under Commission Order No. 528 until the effective date of a market-based pricing mechanism under the blanket sales certificate.[114] After the effective date of a market-based pricing mechanism, future costs should be recovered only pursuant to that mechanism. The pipeline may institute a market-based pricing mechanism under its blanket certificate for unbundled sales services. The pipeline's blanket certificate for unbundled sales services would be effective on the effective date of the pipeline's filing to implement the Final Rule. As stated, once the market-based pricing mechanism becomes effective, the pipeline may recover its take-or-pay costs and buyout or buydown costs only under the market-based pricing mechanism and not under Order No. 528. Of course, the pipeline may continue to recover any costs previously filed under an Order No. 528 recovery mechanism prior to the effective date of a market-based pricing mechanism.

Under the proposal, a pipeline will be granted a blanket sales certificate by operation of subpart J of part 284 of the Commission's regulations. Under that certificate the pipeline may use either a market-based pricing mechanism [115] or a cost-based pricing mechanism. In other words, the Commission is not proposing to mandate a market-based pricing mechanism. Consequently, a pipeline which uses a cost-based pricing mechanism could seek to recover take-or-pay costs and buyout and buydown costs under Order No. 528. Accordingly, this proposal does not establish a sunset date for the use of the Order No. 528 procedures. However, if the pipeline chooses to price its sales services under a market-based mechanism, it will be precluded from using those procedures because of the possibility of double recovering take-or-pay costs.

Under current Commission policy in Order No. 528–A, pipelines may file for recovery of new take or pay costs and buyout and buydown costs for which recovery was not previously sought under Order No. 500. For such new costs, the pipeline may utilize a volumetric surcharge of up to 75%, if it agrees to absorb at least 25% of the new costs. However, in light of the proposal here, the Commission requests comments on whether, during the restructuring proceeding, the pipeline and the parties should develop an appropriate mechanism for the pipeline to recover with or without an absorption requirement its prudently incurred take-or-pay costs and buyout and buydown costs that result from compliance with the Final Rule. This could include an appropriate mechanism such as an exit fee, demand charge, direct bill, or absorption.

Pipeline customers will be expected in future rates to pay the above-described costs associated with pipeline implementation of the Final Rule, and this NOPR constitutes notice of such future billing.[116]

The Commission recognizes that some LDCs have alleged that they are unreasonably incurring take-or-pay charges in the circumstance where industrial customers bypass the LDC by taking service from the pipeline. In several instances, the Commission has approved pipeline agreements to make future adjustments to their take-or-pay cost recovery mechanisms to cover the bypass situation.[117] Interested

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[112] The Commission will issue in the near future an appendix prepared by the staff illustrating some potential mitigation measures.

[113] A pipeline might retain a limited PGA for its small sales customers.

[114] 53 FERC ¶ 61,163 (1990).

[115] Of course, the right to institute a market-based pricing mechanism is predicated on the pipeline's compliance with all of the requirements of the Final Rule.

[116] See *Columbia Gas Transmission Corp.* v. *FERC*, 831 F.2d 1135 (D.C. Cir. 1987), modified on reh'g, 844 F.2d 879 (1988) (court implied that required notice could be given in a rulemaking.)

[117] *E.g.*, Natural Gas Pipeline Company of America, 56 FERC ¶ 61,142 (1991), slip op. at 8;

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commenters should discuss whether the Commission should adopt specific provisions for these kinds of adjustments.

The Commission recognizes that pipelines cannot predict whether transition costs will be incurred. In their comments to the NOPR, the pipelines should provide estimates of their transition costs, if any, that they expect to incur as a result of the proposed rules. In addition, the pipeline will be required to provide estimates for potential transition costs during the restructuring proceeding and with their restructuring filing.

3. Production Area Facility Rates

As discussed above, the Commission has been constantly reevaluating the designing of rates in the context of the evolving natural gas industry. In that vein, in PL 91–2–000, the Commission has issued a policy statement with respect to the recovery of gathering costs incurred in connection with jurisdictional transportation.[118]

The Commission reviewed its long-standing usual policy of categorizing production area facilities as either jurisdictional transportation or nonjurisdictional gathering in order to determine the appropriate recovery of production area costs in the interstate pipeline's rates. If the production area facilities were jurisdictional, the pipeline would be entitled to recover those costs through its demand and commodity components. However, if the production area facilities were nonjurisdictional, the pipeline would be required to recover those costs only through the commodity charge. The Commission concluded that this jurisdictional/nonjurisdictional approach was no longer appropriate for purposes of designing rates to determine how production area costs would be recovered.[119]

The Commission perceives two matters that warrant discussion in this NOPR. The first is the unbundling of production area charges from mainline transportation charges. Section 284.7(d) of the Commission's regulations requires that a "rate * * * separately identify cost components attributable to transportation, storage, and gathering costs."[120] In addition, § 284.7(d)7(4)(i) requires that rates "recover * * * solely those costs which are properly attributable to the service to which the rate applies." [121] The Rate Design Policy Statement stated the Commission's preference for "fully unbundled services." [122] The Commission reiterates its preference that pipelines separately charge customers for production area services.

The issue remains about how the pipeline should recover its production area costs. Therefore, the second matter is the impact of this NOPR's proposals on that issue. Interested commenters should address the matters of unbundling and cost recovery *vis a vis* production area facilities. In particular, interested commenters should discuss whether SFV should be used in the designing of production area rates so that all production area fixed costs would be recovered in a demand-type charge.[123]

IX. Remaining Bundled Sales

The Commission is proposing that pipelines may continue providing a bundled, city gate, firm sales service for certain customers, especially for small customers defined as such in a pipeline rate schedule as of the date of the Final Rule. For example, GS rate schedule customers would qualify. Any pipeline that continues bundled sales would be subject to the comparability principle and would have to allocate capacity to itself as a shipper at receipt points, on mainline segments, to upstream capacity, and to storage. The pipeline should do this by considering itself as a firm shipper using the small customers' aggregate firm entitlement rights to determine the pipeline's share of capacity. In addition, the pipeline must subject itself to all tariff terms and conditions applicable to firm shippers such as scheduling, nominating, delivering, and all penalties.

X. Blanket Sales Certificate

The Commission is proposing to issue to any pipeline holding a certificate under § 284.221(d) of the Commission's regulations a blanket certificate covering firm and interruptible sales services. Except for continuing bundled firm sales (see *supra*, part IX), all rights to firm and interruptible sales services would be automatically converted to unbundled service under the blanket certificate. Those sales services would be afforded pregranted abandonment (see *supra*, part VI).[124] However, the pipeline's unbundled firm sales customers will have the right to reduce their firm sales entitlements in whole or in part as part of the restructuring proceeding to implement the final rules the Commission adopts (see part XI, *infra*) effective on the effective date of the filing. This will enable the pipeline's firm sales customers to negotiate market-based gas pricing mechanisms and take advantage of other opportunities for long-term sales contracts in the competitive wellhead and field market. In addition, the Commission proposes to include standards of conduct and reporting requirements as part of the regulations with respect to blanket sales certificates for pipeline sales. To conclude, the Commission believes that the proposed blanket sales certificates will be in the present or future public convenience and necessity because they will convert pipelines to substantially unbundled sales in a competitive wellhead or field market in furtherance of Congress' aims in enacting the Natural Gas Wellhead Decontrol Act of 1989.[125]

XI. Legal Basis and Implementation

The Commission proposes to find in the Final Rule that pipeline services, terms and conditions of service, and rates that do not comport with the regulations adopted by the Final Rule are unduly anticompetitive and therefore unjust and unreasonable and unduly discriminatory.

The Commission recognizes that the restructuring filings and proceedings will not be simple affairs. The NOPR's proposals, if adopted, will require the renegotiating of all pipeline services provided to customers in light of the restructured pipeline service obligations and comparability requirements. Shortly after issuance of the Final Rule the Commission will start restructuring proceedings, with new docket number [126] for each pipeline subject to the Final Rule for use as the vehicle for complying with the Final Rule. The Commission intends to require each pipeline to inform the Commission in writing within 15 days after the effective date of the Final Rule if it intends to comply with the Final Rule in the new restructuring proceeding only or in a

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Northern Natural Gas Co., 55 FERC ¶ 61,442 (1991); Southern Natural Gas Co., 48 FERC ¶ 61,336 at pp. 62,017 and 62,025-6 (1989).

[118] Interstate Natural Gas Pipeline Rate Design, 56 FERC ¶ 61,086 (1991).

[119] The Commission "may regulate rates charged for transportation on the pipeline's own gathering facilities performed in connection with jurisdictional interstate transportation." Northern Natural Gas Co., Div. of Enron, v. FERC, 829 F.2d 1261, 1263 (8th Cir. 1991), petition for cert. filed, July 2, 1991 (No. 91–14).

[120] 18 CFR 284.7(d) (1991).

[121] 18 CFR 284.7(d)(4)(i) (1991).

[122] Interstate Natural Gas Pipeline Rate Design, 47 FERC ¶ 61,295 at p. 62,059 (1989), order on reh'g, 48 FERC ¶ 61,122 at pp. 61,451–2 (1989).

[123] One-part rates for interruptible production area services would still be appropriate.

[124] Continuing bundled sales services would not be subject to pregranted abandonment.

[125] See n. 20, *supra*.

[126] The Commission will create a new prefix (RS) for the restructuring proceedings.

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[124] Continuing bundled sales services would not be subject to pregranted abandonment.

[125] See n. 20, *supra*.

[126] The Commission will create a new prefix (RS) for the restructuring proceedings.

existing proceeding consolidated with the new proceeding.[127] If the pipeline believes that its existing tariffs or settlements already filed with the Commission achieve the Final Rule's objectives, the pipeline should inform the Commission of this and why with the filing described in the previous sentence. The pipeline's customers and other interested parties will then be able to respond. The Commission will thereafter act as soon as possible on a case-by-case basis to decide whether it should honor in whole or in part omnibus settlements. For example, the Commission believes that as a general matter rate moratoriums which were negotiated as part of a settlement agreement should be honored.

In addition, the Commission will require the pipelines, within 30 days after the Final Rule's effective date, to initiate discussions with their customers with respect to all details of the future service restructuring. The Commission will also require the pipelines to report on a regular basis about the status of the negotiations. The Commission expects those discussions to result in settlements which will ease the transition from the traditional to the new restructured services.

In addition, as discussed above, the Commission intends to require holders of firm capacity to exercise rights of first refusal by the effective dates of pipeline restructuring filings in order to retain their firm capacity. In that vein, the Commission intends to find in the Final Rule that all existing long-term firm transportation contracts are unjust and reasonable to the extent there is demand for firm capacity and the existing firm capacity holders do not exercise their rights of first refusal. Hence, this finding will be made only to the extent necessary to effectuate the reallocation of firm capacity from an existing firm capacity holder not exercising its right of first refusal to a new firm capacity holder. This will allow the restructuring proceeding to serve as the forum for an initial reallocation of capacity from existing holders who may not need or want it, to those who do want firm capacity. As stated in part VI, if there are no persons seeking firm capacity as described in part VI, the firm capacity holder must retain its capacity until termination of its contract unless the customer and the pipeline are able to negotiate a reasonable exit fee.

Moreover, during the restructuring proceedings, each pipeline and its customers and other interested parties will be expected to negotiate the details concerning the pipeline's conversion from a bundled sales to an unbundled sales service. Under the proposed regulations, the pipeline would be granted a blanket certificate for unbundled firm and interruptible sales to be effective on the effective date of the pipeline's filing to implement the Final Rule. On the effective date of that filing, each customer's bundled sales service would be converted to a like amount of unbundled sales service and a like amount of unbundled transportation service. However, a pipeline's unbundled firm sales customers may reduce their firm sales entitlements in whole or in part effective on the effective date of the implementation filing. The proposed regulations would not permit a customer to reduce its firm transportation quantity apart from the reallocation provisions. The restructuring proceeding is where the pipeline, its customers, and other interested parties should negotiate the pipeline's market-based pricing mechanism with respect to its unbundled sales services and the appropriate pricing of its bundled sales service for small customers.

Except for 18 CFR 284.221(d),[128] the Commission will require that each pipeline implement the Final Rule by making appropriate tariff filings in the restructuring proceeding on or before the date set forth in the regulations. Those filings should reflect the results of the negotiations begun after issuance of the Final Rule. Anyone who does not intervene in the restructuring proceeding discussions will be precluded from intervening in the consideration of the restructuring filings made in the proceedings. To intervene at the filing stage would be late in the proceeding and disruptive.[129] Pipelines that have implemented permanent market based, unbundled sales services prior to the effective date of the Final Rule may not need to make many changes to comply with the Final Rule.[130]

The implementation schedule will not force a pipeline to make more than one filing to implement the required changes. For example, if a pipeline's next scheduled rate case is due prior to the filing required by the Final Rule, it may, at its option, also file to implement the required changes or it may defer its implementation filing so long as it files no later than the required date. In the meantime, the pipeline's terms and conditions of service will remain in effect until changed by a pipeline's rate filing or, if unchanged in the filing, until Commission action, if necessary, under Section 5 of the Natural Gas Act. The NOPR should not be construed by anyone involved in an ongoing proceeding to mean that progress in individual cases should be delayed. Instead, it should be viewed as a stronger commitment to comparability by the Commission.

XII. Environmental Analysis

The Commission concludes that promulgating the proposed rule would not represent a major federal action having a significant adverse impact on the human environment under the Commission's regulations implementing the Natural Environmental Policy Act.[131] The proposed rule falls within the categorical exemption provided in the Commission's regulations for the review of rates for the transportation and sale of natural gas under sections 4 and 5 of the Natural Gas Act [132] and for the sale, exchange, and transportation of natural gas under sections 4, 5 and 7 of the Natural Gas Act that requires no construction of facilities.[133] Consequently, neither an environmental assessment nor an environmental impact statement is required.

XIII. Regulatory Flexibility Certification

The Regulatory Flexibility Act (RFA) [134] generally requires a description and analysis of rules that will have a significant economic impact on a substantial number of small entities. Pursuant to section 605(b) of the RFA, the Commission certifies that the proposed regulations, if promulgated, will not have a significant impact on a substantial number of small entities.

XIV. Information Collection Requirements

The Office of Management and Budget's (OMB) regulations require that OMB approve certain information collection requirements imposed by agency rules.[135]

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[127] If the pipeline elects to proceed only in the restructuring proceeding, it may later petition to consolidate that proceeding and a subsequently filed proceeding.

[128] As stated above, revised 18 CFR 284.221(d) will become effective on the effective date of the Final Rule. Pipelines should make a limited NGA section 4 filing to implement 18 CFR 284.221(d).

[129] The Commission previously has required pipeline restructuring to be accomplished in an NGA section 7 proceeding. Natural Gas Pipeline Company of America, 41 FERC ¶ 61,358 (1987). However, because the Commission is issuing blanket sales certificates effective on the restructuring filing effective dates, these filings will not be under NGA section 7.

[130] For example, El Paso Natural Gas Company, and Transcontinental Gas Pipe Line Corporation may be in this posture.

[131] 18 CFR part 380 (1991).

[132] 18 CFR 380.4(a)(25) (1991).

[133] 18 CFR 380.4(a)(27) (1991).

[134] 5 U.S.C. 601–612 (1988).

The information collection form affected by the proposed rule is FERC-544, Gas Pipeline Rates: Rate Change (Formal). This information collection is required in order for the Commission to carry out its legislative mandate under the NGA and the NGPA. The information required by the proposed rule would allow the Commission to ensure that firm transportation service provided under part 284 of the Commission's regulations [136] is comparable to transportation service provided as a part of, or embedded within, a pipeline's firm sales service.

An estimated 85 respondents would be affected by the proposed rule. The respondents would consist of pipeline companies subject to the Commission's jurisdiction that perform self-implementing transportation under either the NGA or the NGPA. The Commission estimates that: (a) The public reporting burden will average 4,810 hours per response and that the total reporting burden will be 408,850 hours; (b) the frequency of response will be a one-time filing by respondents; and (c) the total annual number of likely responses will vary depending on when the pipelines decide to file the modified tariff sheets required in the proposed rule. The Commission anticipates that the public reporting burden and the number of respondents will decrease within three years since many pipelines subject to the Commission's jurisdiction are required to make a new rate filing at least once every three years.

XV. Comment Procedures

The Commission invites interested persons to submit written comments on the matters proposed in this NOPR, including any related matters or alternative proposals that commenters may wish to discuss. As much as possible, the comments should be keyed to the topic headings of this NOPR. In addition, comments must include an executive summary not exceeding five (5) pages in length. An original and 14 copies of the initial written comments must be filed with the Commission no later than September 30, 1991. An original and 14 copies of the reply comments must be filed with the Commission no later than October 30, 1991. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should refer to Docket No. RM91-11-000.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 941 North Capitol Street, NE., Washington, DC 20426, during regular business hours.

List of Subjects 18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission proposes to amend part 284, chapter I, title 18, Code of Federal Regulations, as set forth below.

By direction of the Commission. Commissioner Moler concurred with a separate statement to be issued later. Commissioner Langdon concurred with a separate statement to be issued later.

Linwood A. Watson, Jr.,

Acting Secretary.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w; 15 U.S.C. 3301–3432; 43 U.S.C. 1331–1356; 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 1978 Comp., p. 142.

2. In § 284.1, paragraph (a) is revised to read as follows:

§ 284.1 Definitions.

(a) *Transportation* includes storage (except for pipelines offering transportation under subpart C of this part), exchange, backhaul, displacement or other methods of transportation.

* * * * *

3. In § 284.8, paragraph (d) is revised and a new paragraph (f) is added to read as follows:

§ 284.8 Firm transportation service.

* * * * *

(d) *Reservation fee.* Where the customer purchases firm service, a pipeline may impose a reservation fee or charge on a shipper as a condition for providing such service. Except for pipelines subject to subpart C and unless parties otherwise agree, the reservation fee will recover all fixed transmission and storage costs attributable to the firm transportation service and may not recover any variable costs or fixed costs not attributable to the firm transportation service. Except as provided in this paragraph, the pipeline may not include in a rate for any transportation service provided under subpart B, C, or G of this part any minimum bill or minimum take provision, or any other provision that has the effect of guaranteeing revenue.

* * * * *

(f)(1) *Comparability of service.* An interstate pipeline or that offers transportation service on a firm basis under subpart B or G of this part must provide such service on a basis that is comparable in quality for all gas supplies whether purchased from the pipeline or another seller.

(2) *Upstream pipeline assignment of capacity.*

(i) An interstate pipeline that offers transportation service on a firm basis under subpart B or G of this part must exercise its conversion rights on upstream pipelines that offer a transportation service under subpart B or G of this part, and must assign its upstream firm transportation capacity, including contract storage, to its shippers for which it provides firm transportation service under subpart B or G of this part, to the extent necessary to provide capacity to those firm shippers under the pipeline's method for allocating capacity on its mainline segments.

(ii) The upstream pipelines are authorized and required to permit the downstream pipelines to assign their capacity to their firm shippers.

(3) *Firm capacity releasing.* (i) An interstate pipeline that offers transportation service on a firm basis under subpart B or G of this part must have a mechanism for firm shippers to release firm capacity to the pipeline for resale by the pipeline on a firm basis.

(ii) The firm shippers may release their capacity in whole, or in part, on a permanent or short-term basis, without restriction on the duration of the release.

(iii) The pipeline's resale of the released capacity is subject to §§ 284.7 and 284.8(b) and (c).

(iv) If the pipeline has uncommitted firm capacity available, it may sell part or all of that capacity before resale of the released capacity.

(v) After a firm shipper notifies the pipeline in writing that it desires to release firm capacity for a particular period, the pipeline must make this information available on an electronic bulletin board and hold a seven business day open season.

(vi) The pipeline must allocate released capacity to the person offering the highest rate (not over the maximum rate). If more than one person offers the highest rate, the released capacity may be allocated on a prorata basis, or on a present value of the reservation fee ald refer to Docket

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[135] 5 CFR part 1320 (1991).

[136] 18 CFR part 284 (1991).

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* * * * *

(f)(1) *Comparability of service.* An interstate pipeline or that offers transportation service on a firm basis under subpart B or G of this part must provide such service on a basis that is comparable in quality for all gas supplies whether purchased from the pipeline or another seller.

(2) *Upstream pipeline assignment of capacity.*

(i) An interstate pipeline that offers transportation service on a firm basis under subpart B or G of this part must exercise its conversion rights on upstream pipelines that offer a transportation service under subpart B or G of this part, and must assign its upstream firm transportation capacity, including contract storage, to its shippers for which it provides firm transportation service under subpart B or G of this part, to the extent necessary to provide capacity to those firm shippers under the pipeline's method for allocating capacity on its mainline segments.

(ii) The upstream pipelines are authorized and required to permit the downstream pipelines to assign their capacity to their firm shippers.

(3) *Firm capacity releasing.* (i) An interstate pipeline that offers transportation service on a firm basis under subpart B or G of this part must have a mechanism for firm shippers to release firm capacity to the pipeline for resale by the pipeline on a firm basis.

(ii) The firm shippers may release their capacity in whole, or in part, on a permanent or short-term basis, without restriction on the duration of the release.

(iii) The pipeline's resale of the released capacity is subject to §§ 284.7 and 284.8(b) and (c).

(iv) If the pipeline has uncommitted firm capacity available, it may sell part or all of that capacity before resale of the released capacity.

(v) After a firm shipper notifies the pipeline in writing that it desires to release firm capacity for a particular period, the pipeline must make this information available on an electronic bulletin board and hold a seven business day open season.

(vi) The pipeline must allocate released capacity to the person offering the highest rate (not over the maximum rate). If more than one person offers the highest rate, the released capacity may be allocated on a prorata basis, or on a present value of the reservation fee

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basis, or on a first-come, first-served basis.

(vii) Unless otherwise agreed to by the pipeline, the contract of the shipper releasing capacity will remain in full force and effect with the proceeds of any resale (minus expenses of the pipeline) credited to the releasing shipper's obligation to the pipeline.

(4) *Implementation.* (i) A pipeline must file revised tariff sheets to implement open access storage and paragraphs (d), (f) (1), (2), and (3) of this section on or before the dates set forth below.

Date: October 1, 1992
  Panhandle Eastern Pipeline Company
  Trunkline Gas Company
  Williston Basin Interstate Pipeline Company
  Williams Natural Gas Company
  Colorado Interstate Gas Company
  ANR Storage Company
  KN Energy, Inc.
  Mississippi River Transmission Corp.
  Arkla Energy Resources
  Questar Pipeline Company
  Texas Eastern Transmission Corp.
  Southern Natural Gas Company
  Michigan Gas Storage
Date: November 1, 1992
  Columbia Gas Transmission Corp.
  Columbia Gulf Transmission Corp.
  Florida Gas Transmission Corp.
  ANR Pipeline Company
  Tennessee Gas Pipeline Company
  Texas Gas Transmission Corporation
  United Gas Pipe Line Company
  National Fuel Gas Supply Corp.
  Equitrans, Inc.
  CNG Transmission Corporation
  Kentucky West Virginia Gas Company
  Mid Louisiana Gas Company
Date: December 1, 1992
  Northern Border Pipeline Company
  Great Lakes Gas Transmission Company
  Trailblazer Pipeline Company
  Wyoming Interstate Company, Ltd.
  Overthrust Pipeline Company
  Canyon Creek Compression Company
  Paiute Pipeline Company
  Pacific Gas Transmission Company
  Valero Interstate Transmission Company
  Natural Gas Pipeline Company of America
  El Paso Natural Gas Company
  Northwest Pipeline Corporation
  Northern Natural Gas Company
  Transwestern Pipeline Company
  Transcontinental Gas Pipe Line Corporation
Date: January 1, 1993
  Alabama-Tennessee Natural Gas Company
  South Georgia Natural Gas Company
  Midwestern Gas Transmission Company
  Viking Gas Transmission Company
  East Tennessee Natural Gas Company
  Carnegie Natural Gas Company
  Algonquin Gas Transmission Company
  Tarpon Transmission Company
  Superior Offshore Pipeline Company
  Seagull Interstate Corp.
  Sabine Pipe Line Company
  Blue Dolphin Pipeline Company
  Black Marlin Pipeline Company
  Sea Robin Pipeline Company
  Stingray Pipeline Company
  Texas Sea Rim Pipe Line, Inc.
  Chandelur Pipeline Company
  Freeport Interstate Pipeline Company
  Gasdel Pipeline System, Inc.
  High Island Offshore System
  Pacific Interstate Offshore Company
  Pacific Offshore Pipeline Company
  Pelican Interstate Gas System
  Point Arguello Natural Gas Line Company
  U–T Offshore System
  All Other Pipelines Under § 284.302(b)
  Gas Gathering Corp.
  Green Canyon Pipe Line Company
  Gulf States Transmission Corp.
  Inland Gas Company, Inc.
  Moraine Pipeline Company
  Delta Pipeline Company
  Gas Transport Inc.
  Ringwood Gathering Company
  Western Gas Interstate Company
  Phillips Gas Pipeline Company
  Valley Gas Transmission, Inc.
  Western Transmission Corporation
  Louisiana Nevada Transit Company
  MIGC, Inc.
  Riverside Pipeline Corp.
  Other part 284 subpart B and G pipelines

(ii) The pipeline's filing which implements paragraph (f)(l) of this section must, at least, include terms and conditions that provide that all firm shippers whatever the source of their gas and the pipeline in its capacity as a firm seller of gas:

(A) Have equal firm capacity rights at receipt points and equal flexibility in changing receipt points and using receipt points on an interruptible basis.

(B) Have equal firm capacity rights at pooling points, on mainline segments, and on mainlines.

(C) Have equal capacity rights to firm storage, subject to the pipeline's reservation of storage capacity necessary for load balancing and system management and firm shippers' reservation of capacity for load balancing.

(D) Are subject to the same requirements with respect to curtailment, the scheduling of deliveries, the imposition of penalties, including balancing rights (such as through system storage and line pack), and the right to firm delivery points, and provide that there be instantaneous receipt and delivery of gas for firm shippers.

(iii) Within thirty (30) days of [insert effective date of Final Rule], the pipeline must initiate formal discussions with its customers and all interested participants with respect to all details of implementing the revisions to part 284 adopted in the Final Rule.

(iv) The pipeline must file quarterly reports with the Commission with respect to the status of the negotiations required by paragraph (f)(4)(iii) of this section.

(v) Pursuant to section 7(b) the Natural Gas Act, abandonment of transportation services is authorized for each individual firm transportation arrangement authorized under a certificate granted under § 284.221 for a term over one-year if prior to the effective date of the filing required by paragraph (f)(4)(i) of this section, the recipient of the firm transportation service does not give notice that it wants to continue the transportation arrangement and agrees to match and pay any greater rate up to the maximum rate under § 284.7 and match the most favorable contract term offered to the pipeline by other persons desiring firm capacity, provided, however, that this abandonment authorization is only to the extent the pipeline resells the capacity on a firm basis to any such other person or persons.

4. In § 284.9, a new paragraph (f) is added to read as follows:

§ 284.9 Interruptible transportation service.

* * * * *

(f)(1) *Comparability of service.* An interstate pipeline or that offers transportation service on an interruptible basis under subparts B or G must provide such service on a basis that is comparable in quality for all gas supplies whether purchased from the pipeline or elsewhere.

(2) *Implementation.* A pipeline must file revised tariff sheets to implement paragraph (f)(1) of this section with its filing under § 284.8(f)(4).

5. In § 284.221, paragraph (d) is revised to read as follows:

§ 284.221 General rule; transportation by interstate pipelines on behalf of others.

* * * * *

(d) *Pre-grant of abandonment.* (1) Pursuant to section 7(b) of the Natural Gas Act, abandonment of transportation services is authorized upon the expiration of the contractual term of each individual transportation arrangement authorized under a certificate granted under this section, except that, if the individual transportation arrangement is for firm transportation under a contract with a term of more than one-year, the abandonment of service is only authorized if the recipient of the firm transportation service does not give notice that it wants to continue its transportation arrangement and agrees to match and pay any greater rate up to the maximum rate under § 284.7 and match the most favorable contract term offered to the pipeline by other persons desiring firm capacity when the contractual term expires.

(2) Within 60 days of (insert effective date of final rule), a pipeline must file revised tariff sheets to implement this section with respect to firm transportation as set forth in paragraph (d)(1) of this section.

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6. A new subpart J is added to read as follows:

Subpart J—Blanket Certificates Authorizing Certain Natural Gas Sales by Interstate Pipelines

Sec.
284.281 Applicability.
284.282 Definitions.
284.283 Sales services.
284.284 Point of unbundling.
284.285 Blanket certificates for unbundled sales services.

Subpart J—Blanket Certificates Authorizing Certain Natural Gas Sales by Interstate Pipelines

§ 284.281 Applicability.

This subpart applies to interstate pipelines that offer transportation services certificated under § 284.221(d).

§ 284.282 Definitions.

(a) *Bundled sales services* are gas sales services that are not sold separately from transportation services.

(b) *Sales Service* includes firm, interruptible or any other kinds of gas sales.

(c) *Unbundled sales services* are gas sales services that are sold separately from transportation services.

§ 284.283 Sales services.

An interstate pipeline that offers transportation service certificated under § 284.221 must offer all of its sales services on an unbundled basis except as provided below.

§ 284.284 Point of unbundling.

A sales service is unbundled when gas is sold at a point before it enters a mainline system, or at an entry point to a mainline system from a production area or intersection with an unrelated mainline system, or a reasonable distance after an entry point into the mainline when it is reasonable to unbundle at a pooling point on the mainline system.

§ 284.285 Blanket certificates for unbundled sales services.

(a) *General Rule.* An interstate pipeline granted a certificate under § 284.221 is granted a blanket certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act authorizing the providing of unbundled sales services in accordance with this section.

(b) *General condition.* Any pipeline issued a blanket certificate under this section may provide only unbundled sales services, except as provided in paragraph (f) of this section.

(c) *Conversion of bundled firm sales services to unbundled firm sales services.* (1) On the effective date of the pipeline's blanket certificate for unbundled sales services as set forth in paragraph (i) of this section firm sales entitlements under any firm sales service agreement for a bundled sales service (except those continuing with bundled service as provided in paragraph f of this section) are converted to an equivalent amount of unbundled firm sales service and an equivalent amount of unbundled firm transportation service, provided, however, that a pipeline's unbundled firm sales customers may reduce their firm sales entitlements in whole or in part at any time effective on the effective date of a filing as provided in paragraph (i) of this section.

(2) *Reservation fee.* When a customer under this section has been converted to firm transportation service, the pipeline may impose a reservation fee as provided in § 284.8(d).

(d) *Conversion of bundled interruptible sales services to unbundled interruptible sales services.* On the effective date of the pipeline's blanket certificate for unbundled sales services as set forth in paragraph (i) of this section interruptible sales volumes under any interruptible sales service agreement for a bundled sales service are converted to an equivalent amount of unbundled interruptible sales service and an equivalent amount of unbundled interruptible transportation service.

(e) *Abandonment of bundled sales service.* (1) On the effective date of the pipeline's blanket certificate for unbundled sales services as set forth in paragraph (i) of this section, the pipeline's existing bundled sales service obligations converted pursuant to paragraphs (c) and (d) of this section are amended by authorizing abandonment of the sales services to the extent they are bundled.

(2) Abandonment of bundled sales services under this paragraph is permitted by the present or future public convenience and necessity.

(f) *Continued bundled sales service.* Any pipeline issued a blanket certificate under this section may continue to provide a bundled firm sales service only for customers which are receiving a bundled firm sales service under a small customer rate schedule on the date the pipeline files to implement this subpart J. Fixed costs must be recovered under the same ratemaking methodology used for determining the reservation charge under § 284.8(d), except that a pipeline may charge a one-part volumetric rate which is computed using an imputed load factor.

(g) *Pregrant of abandonment of unbundled sales services.* Pursuant to section 7(b) of the Natural Gas Act, abandonment of unbundled sales services is authorized upon the expiration of the contractual term of each individual sales arrangement authorized under this section.

(h) *Standards of conduct for unbundled sales service.* (1) To the maximum extent practicable giving due consideration to the continuation of bundled firm sales services, the pipeline must organize its unbundled sales and transportation operating employees so that they function independently of each other.

(2) The pipeline must conduct its business to conform to the requirements set forth in §§ 284.8(f) (1) and (4) and § 284.9(f)(1) with respect to comparability of service by not giving shippers of gas sold by the pipeline any preference over shippers of gas sold by any other merchant in matters relating to part 284 transportation.

(3) The pipeline must comply with § 161.3 (a), (b), (d) and (l) of this chapter and comply with § 161.3 (e), (f), (h), and (i) of this chapter by considering its unbundled sales operating employees as an operational unit which is the functional equivalent of a marketing affiliate.

(4) With its filing to implement this subpart J, the pipeline must file procedures that will enable shippers and the Commission to determine how the pipeline is to comply with the standards of this section.

(5) The pipeline must comply with § 250.16 of this chapter by considering its unbundled sales operating employees as an operational unit which is the functional equivalent of a marketing affiliate.

(i) *Implementation and effective date.* (1) Except as provided in paragraph (i)(2) of this section, a pipeline certificated under § 284.221(d) must file revised tariff sheets to implement this subpart J in a filing no later than the date indicated in § 284.8(f)(4)(i).

(2) A pipeline certificated under § 284.221(d) that is only providing transportation services as of the date of its required filing under § 284.8(f)(4) need not file to implement this subpart J with its filing under § 284.8(f)(4), but prior to offering any sales service such a

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this subpart J. Fixed costs must be recovered under the same ratemaking methodology used for determining the reservation charge under § 284.8(d), except that a pipeline may charge a one-part volumetric rate which is computed using an imputed load factor.

(g) *Pregrant of abandonment of unbundled sales services.* Pursuant to section 7(b) of the Natural Gas Act, abandonment of unbundled sales services is authorized upon the expiration of the contractual term of each individual sales arrangement authorized under this section.

(h) *Standards of conduct for unbundled sales service.* (1) To the maximum extent practicable giving due consideration to the continuation of bundled firm sales services, the pipeline must organize its unbundled sales and transportation operating employees so that they function independently of each other.

(2) The pipeline must conduct its business to conform to the requirements set forth in §§ 284.8(f) (1) and (4) and § 284.9(f)(1) with respect to comparability of service by not giving shippers of gas sold by the pipeline any preference over shippers of gas sold by any other merchant in matters relating to part 284 transportation.

(3) The pipeline must comply with § 161.3 (a), (b), (d) and (l) of this chapter and comply with § 161.3 (e), (f), (h), and (i) of this chapter by considering its unbundled sales operating employees as an operational unit which is the functional equivalent of a marketing affiliate.

(4) With its filing to implement this subpart J, the pipeline must file procedures that will enable shippers and the Commission to determine how the pipeline is to comply with the standards of this section.

(5) The pipeline must comply with § 250.16 of this chapter by considering its unbundled sales operating employees as an operational unit which is the functional equivalent of a marketing affiliate.

(i) *Implementation and effective date.* (1) Except as provided in paragraph (i)(2) of this section, a pipeline certificated under § 284.221(d) must file revised tariff sheets to implement this subpart J in a filing no later than the date indicated in § 284.8(f)(4)(i).

(2) A pipeline certificated under § 284.221(d) that is only providing transportation services as of the date of its required filing under § 284.8(f)(4) need not file to implement this subpart J with its filing under § 284.8(f)(4), but prior to offering any sales service such a pipeline must file revised tariff sheets to implement this subpart J.

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(3) The effective date of a blanket certificate issued under this section will be the effective date of a pipeline's filing to implement this subpart J.

(j) *Reporting requirements.* An interstate pipeline that engages in a sales transaction under a certificate granted by this section is subject to the reporting requirements of § 284.223(f), except for § 284.223(f)(1) (iii) and (iv), with the words "sales" and "sold" substituted for the words "transportation" and "transported" in § 284.223(f).

[FR Doc. 91-18771 Filed 8-12-91; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 357

[Docket No. 81N-0022]

RIN 0905-AA06

Phenylpropanolamine Hydrochloride for Over-the-Counter Weight Control Use; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening to September 6, 1991, the comment period on the safety and effectiveness of phenylpropanolamine hydrochloride for over-the-counter (OTC) weight control use. FDA is taking this action in response to a request to reopen the comment period to allow additional time to submit new data and information on the safety and effectiveness of phenylpropanolamine hydrochloride for OTC weight control use subsequent to the May 9, 1991 public meeting and reopening of the administrative record (April 1, 1991 (56 FR 13295)).

DATES: Written comments by September 6, 1991.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 1, 1991 (56 FR 13295), FDA published a notice of the reopening of the administrative record for OTC weight control drug products and announced a public meeting to be held on May 9, 1991 to discuss the safety and effectiveness of phenylpropanolamine hydrochloride for OTC weight control use. The notice contained a detailed list of questions related to phenylpropanolamine hydrochloride for OTC weight control use and requested data and comments on these issues. The agency considers it necessary to resolve these issues before publishing its tentative final monograph for OTC weight control drug products in the **Federal Register**. Interested persons were given until August 7, 1991 to submit comments regarding matters raised at the public meeting.

On July 26, 1991, the Nonprescription Drug Manufacturers Association (NDMA), a trade association, requested a 45-day extension of time beyond the August 7, 1991 deadline for the submission of data. NDMA contended that the database supporting the safety and effectiveness of phenylpropanolamine hydrochloride is quite extensive and, in relation to the questions asked by FDA, covers virtually every aspect of phenylpropanolamine hydrochloride's safety and effectiveness profile. In addition, NDMA member companies have had to generate new data, analyze these data, and prepare written reports concerning these data. More importantly, NDMA mentioned an FDA request made at a July 23, 1991 meeting (Ref. 1), for industry to reanalyze certain data in multiple ways. That meeting included a discussion of hospital discharge data to determine the background rate of cerebrovascular accidents in the general population and specifically as a result of ingestion of phenylpropanolamine hydrochloride in OTC drug products (Ref. 1). NDMA stated that reanalysis of the data will require substantial additional efforts in order to assure a full development of the database. NDMA contended that because of the short notice for this additional analysis, it is difficult to reschedule the calendars of certain key consultants to NDMA member companies as well as prepare new tabulations of data suitable for submission to the agency.

FDA has carefully considered the request and believes that an extension of time for 30 days is an appropriate time period and in the public interest. The agency notes that NDMA intends to answer questions raised by FDA in the **Federal Register** of April 1, 1991 and at the July 23, 1991 meeting, and the agency believes that additional time will allow for more useful comments and data analysis to be developed. Thus, the agency considers a limited extension of the comment period to be appropriate.

Interested persons may, on or before September 6, 1991, submit to the Dockets Management Branch (address above) written comments and new data and information regarding the safety and effectiveness of phenylpropanolamine hydrochloride for OTC weight control use. Three copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments received may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Reference

(1) Minutes of meeting between FDA and NDMA, July 23, 1991, coded MM9, Docket No. 81N-0022, Dockets Management Branch.

Dated: August 7, 1991.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 91-19170 Filed 8-12-91; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS-4-73]

RIN 1545-AC37

One Class of Stock Requirement

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the requirement that a small business corporation have only one class of stock. Changes to the applicable law were made by the Subchapter S Revision Act of 1982. These regulations affect corporations and their shareholders and are necessary to provide them with guidance needed to comply with the applicable tax law.

DATES: Written comments and requests to appear at a public hearing scheduled for October 31, 1991, at 10 a.m. must be received by October 17, 1991. Outlines of oral comments must be recieved by October 17, 1991. See the notice of hearing published elsewhere in this issue of the **Federal Register**.

ADDRESSES: Send comments, requests to appear at the public hearing, and outlines to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, attn: CC:CORP:T:R (PS-4-73), room 5228, Washington, DC 20044. The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the hearing, Carol Savage, Regulations Unit (202) 566-3935 (not a toll-free number); concerning a particular regulation section, Scott Carlson (202) 343-8459 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On October 5, 1990, the **Federal Register** published a notice of proposed rulemaking (55 FR 40870) amending the Income Tax Regulations (26 CFR part 1) under section 1361 of the Internal Revenue Code. These amendments were proposed to implement section 1361(b)(1)(D) and (C) and (c) (4) and (5) as added by the Subchapter S Revision Act of 1982. The notice provided rules relating to the one class of stock requirement for small business corporations electing S status under section 1362 of the Code.

Comments responding to the notice were received, and a public hearing was held on February 15, 1991. This notice of proposed rulemaking amends the Income Tax Regulations (26 CFR part 1) under section 1361 of the Code and replaces the proposed regulations issued on October 5, 1990. The new proposed regulations set forth in this document are discussed below.

Only a small business corporation is eligible to elect S status. Section 1361(b) defines a small business corporation as a domestic corporation that is not an ineligible corporation and that does not have (i) more than 35 shareholders, (ii) as a shareholder a person (other than an estate and certain types of trusts) who is not an individual, (iii) a nonresident alien as a shareholder, and (iv) more than one class of stock. The proposed regulations set forth in this document generally provide rules relating to the one class of stock requirement. Certain provisions relating to the other requirements under section 1361 are reserved in this document. See the notice of proposed rulemaking published in the **Federal Register** (51 FR 35659) on October 7, 1986, with respect to those provisions.

Explanation of Provisions

General Rules

Under the proposed regulations, a corporation is treated as having only one class of stock if all outstanding shares of stock of the corporation confer identical rights to distribution and liquidation proceeds and if the corporation has not issued any instrument or obligation, or entered into any arrangement, that is treated as a second class of stock.

The determination of whether all outstanding shares of stock confer identical rights to distribution and liquidation proceeds is based on the corporate charter, articles of incorporation, bylaws, applicable State law, and any binding agreements relating to distribution or liquidation proceeds (collectively, the "governing provisions"). It is the rights conferred by the governing provisions that are taken into account in determining whether the corporation has more than one class of stock. A routine commercial contractual arrangement such as a lease, employment agreement, or loan agreement is not a "binding agreement relating to distribution and liquidation proceeds" and thus is not a governing provision, unless such an agreement is entered into to circumvent the one class of stock requirement of section 1361(b)(1)(D) and this regulation.

Although a corporation is not treated as having more than one class of stock if the governing provisions provide for identical distribution and liquidation rights, any distributions (including actual, constructive, or deemed distributions) that differ in timing or amount are to be given appropriate tax effect in accordance with the facts and circumstances. For example, a payment of excessive compensation may be recharacterized as a distribution by the corporation for which no deduction is allowed; however, neither the payment nor the distribution created by the recharacterization results in a second class of stock. Similarly, a distribution may be recharacterized in whole or in part as deductible compensation (on which FICA and FUTA taxes may be due), but any difference in distribution rights resulting from such a recharacterization will not result in a second class of stock.

Exceptions to General Rules

The proposed regulations provide that certain types of state laws and binding agreements are disregarded in determining all of a corporation's outstanding shares of stock confer identical rights to distribution and liquidation proceeds. State laws that require a corporation to pay or withhold state income taxes on behalf of some or all of the corporation's shareholders are disregarded, provided that, when the constructive distributions resulting from the payment or withholding of taxes by the corporation are taken into account, the outstanding shares confer identical rights to the distribution and liquidation proceeds. The difference in timing between the constructive distributions and the actual distributions to the other shareholders does not create a second class of stock.

Agreements to redeem or purchase stock at the time of death, disability, or termination of employment are disregarded in determining whether a corporation's outstanding shares of stock confer identical distribution and liquidation rights. In addition, bona fide buy-sell agreements among shareholders, agreements to restrict the transferability of stock, and certain redemption agreements are disregarded in determining whether a corporation's outstanding shares of stock confer identical distribution and liquidation rights unless (i) the agreement is entered into to circumvent the one class of stock requirement of section 1361(b)(1)(D) and the proposed regulations and (ii) the agreement establishes a redemption or purchase price that, at the time the agreement is entered into, is significantly in excess of or below the fair market value of the stock. Under the proposed regulations, agreements described in the preceding sentence that provide for the purchase or redemption of stock at book value or at a price between fair market value and book value are disregarded.

The proposed regulations also address situations in which there has been a change of stock ownership and the corporation determines the amount of its post-change distributions to its shareholders based on the allocation of income in the immediately preceding year. Agreements that provide for distributions in this manner do not result in a second class of stock. If distributions pursuant to the agreement are not made within a reasonable time after the close of the taxable year in which the ownership change occurs, however, the distributions may be recharacterized depending on the facts and circumstances.

Shares Taken into Account

Under the proposed regulations, all outstanding shares of stock are taken into account in determining whether a corporation has a second class of stock. The proposed regulations provide that, for purposes of subchapter S, stock that

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Agreements to redeem or purchase stock at the time of death, disability, or termination of employment are disregarded in determining whether a corporation's outstanding shares of stock confer identical distribution and liquidation rights. In addition, bona fide buy-sell agreements among shareholders, agreements to restrict the transferability of stock, and certain redemption agreements are disregarded in determining whether a corporation's outstanding shares of stock confer identical distribution and liquidation rights unless (i) the agreement is entered into to circumvent the one class of stock requirement of section 1361(b)(1)(D) and the proposed regulations and (ii) the agreement establishes a redemption or purchase price that, at the time the agreement is entered into, is significantly in excess of or below the fair market value of the stock. Under the proposed regulations, agreements described in the preceding sentence that provide for the purchase or redemption of stock at book value or at a price between fair market value and book value are disregarded.

The proposed regulations also address situations in which there has been a change of stock ownership and the corporation determines the amount of its post-change distributions to its shareholders based on the allocation of income in the immediately preceding year. Agreements that provide for distributions in this manner do not result in a second class of stock. If distributions pursuant to the agreement are not made within a reasonable time after the close of the taxable year in which the ownership change occurs, however, the distributions may be recharacterized depending on the facts and circumstances.

Shares Taken into Account

Under the proposed regulations, all outstanding shares of stock are taken into account in determining whether a corporation has a second class of stock. The proposed regulations provide that, for purposes of subchapter S, stock that

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is substantially nonvested within the meaning of § 1.83–3(b) is not treated as outstanding stock unless the holder makes an election with respect to the stock under section 83(b). Substantially nonvested stock with respect to which an election under section 83(b) has been made, however, is taken into account in determining whether a corporation has a second class of stock. Such stock is not treated as a second class of stock if the stock confers rights to distribution and liquidation proceeds that are identical to rights conferred by the other outstanding shares of stock.

Some S corporations have treated substantially nonvested stock for which no section 83(b) election has been made as outstanding stock for purposes of the income allocation provisions. Although the proposed regulations are proposed to be effective for corporate taxable years beginning on or after January 1, 1992, existing stock that has been treated as outstanding by the corporation (even though it is substantially nonvested) is treated as outstanding for purposes of subchapter S, and the fact that it is substantially nonvested and no section 83(b) election has been made with respect to it will not cause the stock to be treated as a second class of stock.

The proposed regulations also provide that deferred compensation arrangements that do not involve property subject to section 83 are ordinarily not treated as outstanding stock for purposes of subchapter S.

Rules Relating to Debt Obligations, Call Options, and Similar Instruments

In General

Under the proposed regulations, instruments, obligations, or arrangements may be treated as a second class of stock in certain circumstances. The proposed regulations provide a number of safe harbors or exceptions for certain ordinary business arrangements entered into by S corporations and their shareholders.

Obligations Designated as Debt

The proposed regulations generally provide that an obligation (whether or not designated as debt) is not treated as a second class of stock unless two conditions are met: (1) The obligation constitutes equity or otherwise results in the holder being treated as the owner of stock under general principles of Federal tax law, and (2) the obligation is used to contravene the rights conferred by the corporation's outstanding stock with regard to distribution or liquidation proceeds or to contravene the limitation on eligible shareholders contained in this subchapter. This rule is consistent with case law holding that purported debt which would ordinarily be recharacterized as equity does not always constitute a second class of stock for purposes of subchapter S.

Certain Safe Harbors for Obligations Designated as Debt

The proposed regulations also set forth certain safe harbors for obligations issued by a corporation. First, unwritten advances from a shareholder that do not exceed $10,000 in the aggregate at any time, are treated as debt by the parties, and are expected to be repaid within a reasonable time are not treated as a second class of stock, even if the advances are considered equity under general principles of Federal tax law. Second, proportionately-held obligations are not treated as a second class of stock. Proportionately-held obligations are any class of obligations that are considered equity under general principles of Federal tax law, but are owned solely by the owners of, and in the same proportion as, the outstanding stock of the corporation. Obligations owned by the sole shareholder of a corporation are always held proportionately to the corporation's outstanding stock.

The failure of an obligation to meet either of these safe harbors will not necessarily result in a second class of stock. As stated above, an unwritten advance or another obligation will not be treated as a second class of stock unless it is considered equity under general principles of Federal tax law and is used to contravene the rights conferred by the outstanding stock or the limitation on eligible shareholders.

Call Options

The proposed regulations also provide that a call option (or similar instrument) is not treated as a second class of stock unless, taking into account all the facts and circumstances, the call option is substantially certain to be exercised end has a strike price substantially below the fair market value of the underlying stock on the date that the call option is issued, transferred to a person who is not an eligible shareholder, or materially modified. For purposes of this rule, if an option is issued in connection with a loan and the time period in which the option may be exercised is extended in connection with (and consistent with) a modification of that loan, the extension of the time period in which the option may be exercised is not a material modification. The determination of whether an option is substantially certain to be exercised takes into account not only the likelihood that the holder may exercise the option, but also the likelihood that a subsequent transferee may exercise the option. For example, a corporate holder may be unlikely (or unable) to exercise an option, but the option would still be substantially certain to be exercised if it could be transferred to an individual who would be substantially certain to exercise the option. A call option does not have a strike price substantially below fair market value if the price at the time of exercise cannot, pursuant to the terms of the instrument, be substantially below the fair market value of the underlying stock at that time.

If a convertible debt instrument embodies rights equivalent to those of a call option, it is evaluated both as debt and as a call option under the proposed regulations.

Exceptions for Certain Call Options

The proposed regulations set forth two exceptions for call options. First, a call option is not treated as a second class of stock if it is issued by a corporation to a person that is actively and regularly engaged in the business of lending and is issued in connection with a loan to the corporation that is commercially reasonable. Second, a call option that is issued to an individual who is an employee or an independent contractor in connection with the performance of services (and that is not excessive by reference to the services performed) is not treated as a second class of stock if the call option is nontransferable within the meaning of § 1.83–3(d) and the call option does not have a readily ascertainable fair market value as defined in §1.83–7(b) at the time the option is issued. If the call option becomes transferable, however, the exception ceases to apply. In this event, the option is tested under the general option rule if and when it is transferred to a person who is not an eligible shareholder or is materially modified.

Safe Harbor for Call Options

The proposed regulations also provide a safe harbor for certain call options issued by a corporation. A call option is not treated as a second class of stock if, on the date the call option is issued, transferred to a person who is not an eligible shareholder, or materially modified, the strike price of the call option is at least 90 percent of the fair market value of the underlying stock on that date. For purposes of this safe harbor, a good faith determination of fair market value by the corporation will ordinarily be respected.

Straight Debt Safe Harbor

Straight debt is not treated as a second class of stock even if it would otherwise be treated as equity under general principles of Federal tax law. The regulations follow the definition of straight debt provided by section 1361(c)(5)(B) of the Code.

The proposed regulations also address certain issues relating to straight debt in the case of conversion of a C corporation to S status. If a C corporation has outstanding an obligation that satisfies the definition of straight debt but that may be considered equity under general principles of Federal tax law, the obligation is not treated as a second class of stock if the C corporation converts to S status. In addition, the conversion from C corporation status to S corporation status is not treated as an exchange of debt for stock with respect to such an instrument.

Availability of Inadvertent Termination Relief

A corporation that has elected S status and subsequently is treated as having more than one class of stock loses its S corporation status. In such a case, the corporation's S election terminates on the date the corporation is treated as having more than one class of stock. Inadvertent termination relief pursuant to section 1362(f) will be available in appropriate cases. In general, a corporation that qualifies under section 1362(f) will have its S status restored retroactive to the date the S election was terminated.

Effective Date

The proposed regulations are proposed to be effective for taxable years of corporations beginning on or after January 1, 1992. However, paragraph (l)(4) of § 1.1361–1 does not apply to instruments, obligations, or arrangements issued or entered into on or before August 8, 1991. In addition, as noted above, a grandfather rule is provided for existing stock that has been treated as outstanding even though it is substantially nonvested and no section 83(b) election has been made with respect to it.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests to Appear at Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. Written comments and requests to appear at a public hearing scheduled for October 31, 1991, at 10 a.m. must be received by October 17, 1991. Also, outlines of oral comments must be received by October 17, 1991. The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Ave., NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604 Ben Franklin Station, attn: CC:CORP:T:R (PS–4–73), room 5228, Washington, DC 20044. See the notice of hearing published elsewhere in this issue of the **Federal Register.**

Drafting Information

The principal authors of these proposed regulations are David R. Haglund and Scott Carlson of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects in 26 CFR 1.1361–OA through 1.1378–3

Income taxes, Reporting and recordkeeping requirements, Small businesses.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR part 1 are as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by adding the following citation:

Authority: Sec. 7805, 685A Stat. 917; 26 U.S.C. 7805 * * * Section 1.1361–1 (l) also issued under 26 U.S.C. 1361(c)(5)(C).

Par. 2. New 1.1361–1 is added to read as follows:

§ 1.1361–1 S corporation defined.

(a) [Reserved]

(b) *Small business corporation defined*—(1) *In general.* For purposes of subchapter S, chapter 1 of the Internal Revenue Code and the regulations thereunder, the term "small business corporation" means a domestic corporation that is not an ineligible corporation (as defined in paragraph (d) of this section) and that does not have—

(i) More than 35 shareholders,

(ii) As a shareholder, a person (other than an estate and other than certain trusts described in paragraph (h)(1) of this section) who is not an individual,

(iii) A nonresident alien as a shareholder, or

(iv) More than one class of stock.

(2) *Estate in bankruptcy.* The term "estate," for purposes of this paragraph, includes the estate of an individual in a case under title 11 of the United States Code.

(3) *Treatment of restricted stock.* For purposes of subchapter S, stock that is issued in connection with the performance of services for the corporation and that is substantially nonvested (within the meaning of § 1.83–3(b)) is not treated as outstanding stock of the corporation, and the holder of that stock is not treated as a shareholder solely by reason of holding the stock, unless the holder makes an election with respect to the stock under section 83(b). In the event of such an election, the stock is treated as outstanding stock of the corporation, and the holder of the stock is treated as a shareholder for purposes of subchapter S. See paragraphs (l) (1) and (3) of this section for rules for determining whether substantially nonvested stock with respect to which an election under section 83 (b) has been made is treated as a second class of stock.

(4) *Treatment of deferred compensation plans.* For purposes of subchapter S, an instrument, obligation, or arrangement is not outstanding stock if it—

(i) Does not convey the right to vote,

(ii) Is not property under § 1.83–3 of the regulations, and

(iii) Is issued to an individual who is an employee in connection with the performance of services for the corporation or to an individual who is an independent contractor in connection with and commensurate with the performance of services for the

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Authority: Sec. 7805, 685A Stat. 917; 26 U.S.C. 7805 * * * Section 1.1361–1 (l) also issued under 26 U.S.C. 1361(c)(5)(C).

Par. 2. New 1.1361–1 is added to read as follows:

§ 1.1361–1 S corporation defined.

(a) [Reserved]

(b) *Small business corporation defined*—(1) *In general.* For purposes of subchapter S, chapter 1 of the Internal Revenue Code and the regulations thereunder, the term "small business corporation" means a domestic corporation that is not an ineligible corporation (as defined in paragraph (d) of this section) and that does not have—

(i) More than 35 shareholders,

(ii) As a shareholder, a person (other than an estate and other than certain trusts described in paragraph (h)(1) of this section) who is not an individual,

(iii) A nonresident alien as a shareholder, or

(iv) More than one class of stock.

(2) *Estate in bankruptcy.* The term "estate," for purposes of this paragraph, includes the estate of an individual in a case under title 11 of the United States Code.

(3) *Treatment of restricted stock.* For purposes of subchapter S, stock that is issued in connection with the performance of services for the corporation and that is substantially nonvested (within the meaning of § 1.83–3(b)) is not treated as outstanding stock of the corporation, and the holder of that stock is not treated as a shareholder solely by reason of holding the stock, unless the holder makes an election with respect to the stock under section 83(b). In the event of such an election, the stock is treated as outstanding stock of the corporation, and the holder of the stock is treated as a shareholder for purposes of subchapter S. See paragraphs (l) (1) and (3) of this section for rules for determining whether substantially nonvested stock with respect to which an election under section 83 (b) has been made is treated as a second class of stock.

(4) *Treatment of deferred compensation plans.* For purposes of subchapter S, an instrument, obligation, or arrangement is not outstanding stock if it—

(i) Does not convey the right to vote,

(ii) Is not property under § 1.83–3 of the regulations, and

(iii) Is issued to an individual who is an employee in connection with the performance of services for the corporation or to an individual who is an independent contractor in connection with and commensurate with the performance of services for the

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corporation under a plan with respect to which the employee or independent contractor is not taxed currently on income.

(5) *Treatment of straight debt.* For purposes of subchapter S, an instrument or obligation that satisfies the definition of straight debt in paragraph (l)(5) of this section is not treated as outstanding stock.

(6) *Special effective date provisions.* Paragraphs (b) (3), (4), and (5) of this section (relating to the treatment of restricted stock, deferred compensation plans, and straight debt) generally apply to taxable years of a corporation beginning on or after January 1, 1992. However, stock issued on or before August 8, 1991, that has been treated as outstanding by the corporation (even though it is substantially nonvested) is treated as outstanding for purposes of subchapter S, and the fact that it is substantially nonvested and no section 83(b) election has been made with respect to it will not cause the stock to be treated as a second class of stock.

(c) through (k) [Reserved]

(l) *Classes of stock*—(1) *General rule.* A corporation that has more than one class of stock does not qualify as a small business corporation. Except as provided in paragraph (l)(4) of this section (relating to instruments, obligations, or arrangements treated as a second class of stock), a corporation is treated as having only one class of stock if all outstanding shares of stock of the corporation confer identical rights to distribution and liquidation proceeds. Differences in voting rights among shares of stock of a corporation are disregarded in determining whether a corporation has more than one class of stock. Thus, if all shares of stock of an S corporation have identical rights to distribution and liquidation proceeds, the corporation may have voting and nonvoting common stock, a "class" of stock that may vote only in certain issues, irrevocable proxy agreements, or groups of shares that differ with respect to rights to elect members of the board of directors.

(2) *Determination of whether stock confers identical rights to distribution and liquidation proceeds*—(i) *In general.* The determination of whether all outstanding shares of stock confer identical rights to distribution and liquidation proceeds is made based on the corporate charter, articles of incorporation, bylaws, applicable state law, and binding agreements relating to distribution and liquidation proceeds (collectively, the "governing provisions"). A routine commercial contractual arrangement, such as a lease, employment agreement, or loan agreement, is not a "binding agreement relating to distribution and liquidation proceeds" and thus is not a governing provision unless such an agreement is entered into to circumvent the one class of stock requirement of section 1361(b)(1)(D) and this paragraph (l). Although a corporation is not treated as having more than one class of stock so long as the governing provisions provide for identical distribution and liquidation rights, any distributions (including actual, constructive, or deemed distributions) that differ in timing or amount are to be given appropriate tax effect in accordance with the facts and circumstances.

(ii) *State law requirements for payment and withholding of income tax.* State laws may require a corporation to pay or withhold state income taxes on behalf of some or all of the corporation's shareholders. Such laws are disregarded in determining whether all outstanding shares of stock of the corporation confer identical rights to distribution and liquidation proceeds, within the meaning of paragraph (l)(1) of this section, provided that, when the constructive distributions resulting from the payment or withholding of taxes by the corporation are taken into account, the outstanding shares confer identical rights to distribution and liquidation proceeds. A difference in timing between the constructive distributions and the actual distributions to the other shareholders does not cause the corporation to be treated as having more than one class of stock.

(iii) *Buy-sell and redemption agreements.* Bona fide agreements to redeem or purchase stock at the time of death, disability, or termination of employment are disregarded in determining whether a corporation's shares of stock confer identical rights. In addition, bona fide buy-sell agreements among shareholders, agreements restricting the transferability of stock (but not providing for redemption by the corporation), and "general" redemption agreements are also disregarded in determining whether a corporation's outstanding shares of stock confer identical distribution and liquidation rights unless—

(A) The agreement is entered into to circumvent the one class of stock requirement of section 1361(b)(1)(D) and this paragraph (l), and

(B) The agreement establishes a purchase price that, at the time the agreement is entered into, is significantly in excess of or below the fair market value of the stock.

Redemption agreements that are not "general" redemption agreements are disregarded unless the agreement establishes a purchase price that, at the time the agreement is entered into is significantly in excess of or below the fair market value of the stock. Agreements described in the preceding two sentences that provide for the purchase or redemption of stock at book value or at a price between fair market value and book value are not considered to establish a price that is significantly in excess of or below the fair market value of the stock and, thus, are disregarded in determining whether the outstanding shares of stock confer identical rights. For purposes of this paragraph (l)(2)(iii), a good faith determination of fair market value will be respected unless it can be shown that the value was substantially in error or the determination of the value was not performed with reasonable diligence. For purposes of this paragraph (l)(2)(iii), a "general" redemption agreement is an agreement that applies to substantially all the outstanding shares of the corporation and that provides that, upon the occurrence of an event that triggers redemption, substantially all the shares of a shareholder will be redeemed at a price that is uniform for all shares subject to the agreement. Although an agreement may be disregarded in determining whether shares of stock confer identical distribution and liquidation rights, payments pursuant to the agreement may have income or transfer tax consequences.

(iv) *Distributions that take into account varying interests in stock during a taxable year.* An agreement does not, within the meaning of paragraph (l)(2)(i) of this section, alter the rights to liquidation and distribution proceeds conferred by an S corporation's stock merely because the agreement provides that, as a result of a change in stock ownership, distributions in one taxable year are to be made on the basis of the shareholders' varying interests in the S corporation's income in the immediately preceding taxable year. If distributions pursuant to the agreement are not made within a reasonable time after the close of the taxable year in which the varying interests occur, the distributions may be recharacterized depending on the facts and circumstances, but will not result in a second class of stock.

(v) *Examples.* The application of paragraph (l)(2) of this section may be illustrated by the following examples. In each of the examples, the S corporation requirements of section 1361 are satisfied except as otherwise stated, the corporation has in effect an S election under section 1362, and the corporation has only the shareholders described.

Example 1. Determination of whether stock confers identical rights to distribution and liquidation proceeds. (i) The law of State A requires that permission be obtained from the State Commissioner of Corporations before stock may be issued by a corporation. The Commissioner grants permission to S, a corporation, to issue its stock subject to the restriction that any person who is issued stock in exchange for property, and not cash, must waive all rights to receive distributions until the shareholders who contributed cash for stock have received distributions in the amount of their cash contributions.

(ii) The condition imposed by the Commissioner pursuant to state law alters the rights to distribution and liquidation proceeds conferred by the outstanding stock of S so that those rights are not identical. Accordingly, under paragraph (l)(2)(i) of this section, S is treated as having more than one class of stock and does not qualify as a small business corporation.

Example 2. Distributions that differ in timing. (i) S, a corporation, has two equal shareholders, A and B. Under S's bylaws A and B are entitled to equal distributions. S distributes $50,000 to A in the current year, but does not distribute $50,000 to B until one year later. The circumstances indicate that the difference in timing did not occur by reason of a binding agreement relating to distribution or liquidation proceeds.

(ii) Under paragraph (l)(2)(i) of this section, the difference in timing of the distributions to A and B does not cause S to be treated as having more than one class of stock. However, section 7872 or other recharacterization principles may apply to determine the appropriate tax consequences.

Example 3. Treatment of excessive compensation. (i) S, a corporation, has two equal shareholders, C and D, who are each employed by S and have binding employment agreements with S. The compensation paid by S to C under C's employment agreement is reasonable. The compensation paid by S to D under D's employment agreement, however, is found to be excessive. S and D did not enter into D's employment agreement to circumvent the one class of stock requirement of section 1361(b)(1)(D).

(ii) Under paragraph (l)(2)(i) of this section, the employment agreements are not governing provisions. Accordingly, S is not treated as having more than one class of stock by reason of the employment agreements, even though S is not allowed a deduction for the excessive compensation paid to D.

Example 4. Agreement to pay fringe benefits. (i) S, a corporation, is required under binding agreements to pay accident and health insurance premiums on behalf of certain of its employees who are also shareholders. Different premium amounts are paid by S for each employee-shareholders. The agreements were not entered into to circumvent the one class of stock requirement of section 1361(b)(1)(D).

(ii) Under paragraph (l)(2)(i) of this section, the agreements are not governing provisions. Accordingly, S is not treated as having more than one class of stock by reason of the agreements. In addition, S is not treated as having more than one class of stock by reason of the payment of fringe benefits.

Example 5. Below-market corporation-shareholder loan. (i) E is a shareholder of S, a corporation. S makes a below-market loan to E that is a corporation-shareholder loan to which section 7872 applies. Under section 7872, E is deemed to receive a distribution with respect to S stock by reason of the loan. The loan was not entered into to circumvent the one class of stock requirement of section 1361(b)(1)(D).

(ii) Under paragraph (l)(2)(i) of this section, the loan agreement is not a governing provision. Accordingly, S is not treated as having more than one class of stock by reason of the below-market loan to E.

Example 6. Agreement to adjust distributions for state tax burdens. (i) S, a corporation, executes a binding agreement with its shareholders to modify its normal distribution policy by making upward adjustments of its distributions to those shareholders who bear heavier state tax burdens. The adjustments are based on a formula that will give the shareholders equal after-tax distributions.

(ii) The binding agreement relates to distribution or liquidation proceeds. The agreement is thus a governing provision that alters the rights conferred by the outstanding stock of S to distribution proceeds so that those rights are not identical. Therefore, under paragraph (l)(2)(i) of this section, S is treated as having more than one class of stock.

Example 7. State law requirements for payment and withholding of income tax. (i) The law of State X requires corporations to pay state income taxes on behalf of nonresident shareholders. The law of State X does not require corporations to pay state income taxes on behalf of resident shareholders. S is incorporated in State X. S's resident shareholders have the right (for example, under the law of State X or pursuant to S's bylaws or a binding agreement) to distributions that take into account the payments S makes on behalf of its nonresident shareholders.

(ii) The payment by S of state income taxes on behalf of its nonresident shareholders result in constructive distributions to those shareholders. Because S's resident shareholders have the right to equal distributions, taking into account the constructive distributions to the nonresident shareholders, S's shares confer identical rights to distribution proceeds. Accordingly, under paragraph (l)(2)(ii) of this section, the state law requiring S to pay state income taxes on behalf of its nonresident shareholders is disregarded in determining whether S has more than one class of stock.

Example 8. Redemption agreements. (i) F, G, and H are shareholders of S, a corporation. F is also an employee of S. By agreement, S is to redeem F's shares on the termination of F's employment. The redemption price is book value.

(ii) On these facts, under paragraph (l)(2)(iii) of this section, the agreement is disregarded in determining whether all outstanding shares of S's stock confer identical rights to distribution and liquidation proceeds.

(3) *Stock taken into account.* Except as provided in paragraphs (b) (3), (4), and (5) of this section (relating to restricted stock, deferred compensation plans, and straight debt), in determining whether all outstanding shares of stock confer identical rights to distribution and liquidation proceeds, all outstanding shres of stock of a corporation are taken into account. For example, substantially nonvested stock with respect to which an election under section 83(b) has been made is taken into account in determining whether a corporation has a second class of stock, and such stock is not treated as a second class of stock if the stock confers rights to distribution and liquidation proceeds that are identical, within the meaning of paragraph (l)(1), to the rights conferred by the other outstanding shares of stock.

(4) *Other instruments, obligations, or arrangements treated as a second class of stock*—(i) *In general.* Instruments, obligations, or arrangments are not treated as a second class of stock for purposes of this paragraph (l) unless they are described in paragraphs (l)(4)(ii) or (iii) of this section. However, in no event are instruments, obligations, or arrangements described in paragraph (b)(4) of this section (relating to deferred compensation plans), paragraphs (l)(4)(iii)(B) and (C) of this section (relating to the exceptions and safe harbor for options), paragraph (l)(4)(ii)(B) of this section (relating to the safe harbor for straight debt), treated as a second class of stock for purposes of this paragraph (l).

(ii) *Instruments, obligations, or arrangements treated as equity under general principles—(A) In general.* Except as provided in paragraph (l)(4)(i) of this section, any instrument, obligation, or arrangement issued by a corporation (other than outstanding shares of stock described in paragraph (l)(3) of this section), regardless of whether designated as debt, is treated as a second class of stock of the corporaiton if the instrument, obligation, or arrangement—

(*1*) Constitutes equity or otherwise results in the holder being treated as the owner of stock under general principles of Federal tax law, and

(*2*) Is used to contravene the rights to distribution or liquidation proceeds conferred by the outstanding shares of stock or to contravene the limitation on eligible shareholder contained in paragraph (b)(1) of this section.

(B) *Safe harbor for certain short-term unwritten advances and proportionately held obligations—(1) Short-term unwritten advances.* Unwritten

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(3) *Stock taken into account.* Except as provided in paragraphs (b) (3), (4), and (5) of this section (relating to restricted stock, deferred compensation plans, and straight debt), in determining whether all outstanding shares of stock confer identical rights to distribution and liquidation proceeds, all outstanding shres of stock of a corporation are taken into account. For example, substantially nonvested stock with respect to which an election under section 83(b) has been made is taken into account in determining whether a corporation has a second class of stock, and such stock is not treated as a second class of stock if the stock confers rights to distribution and liquidation proceeds that are identical, within the meaning of paragraph (l)(1), to the rights conferred by the other outstanding shares of stock.

(4) *Other instruments, obligations, or arrangements treated as a second class of stock*—(i) *In general.* Instruments, obligations, or arrangments are not treated as a second class of stock for purposes of this paragraph (l) unless they are described in paragraphs (l)(4)(ii) or (iii) of this section. However, in no event are instruments, obligations, or arrangements described in paragraph (b)(4) of this section (relating to deferred compensation plans), paragraphs (l)(4)(iii)(B) and (C) of this section (relating to the exceptions and safe harbor for options), paragraph (l)(4)(ii)(B) of this section (relating to the safe harbor for straight debt), treated as a second class of stock for purposes of this paragraph (l).

(ii) *Instruments, obligations, or arrangements treated as equity under general principles—(A) In general.* Except as provided in paragraph (l)(4)(i) of this section, any instrument, obligation, or arrangement issued by a corporation (other than outstanding shares of stock described in paragraph (l)(3) of this section), regardless of whether designated as debt, is treated as a second class of stock of the corporaiton if the instrument, obligation, or arrangement—

(*1*) Constitutes equity or otherwise results in the holder being treated as the owner of stock under general principles of Federal tax law, and

(*2*) Is used to contravene the rights to distribution or liquidation proceeds conferred by the outstanding shares of stock or to contravene the limitation on eligible shareholder contained in paragraph (b)(1) of this section.

(B) *Safe harbor for certain short-term unwritten advances and proportionately held obligations—(1) Short-term unwritten advances.* Unwritten

advances from a shareholder that do not exceed $10,000 in the aggregate at any time, are treated as debt by the parties, and are expected to be repaid within a reasonable time are not treated as a second class of stock, even if the advances are considered equity under general principles of Federal tax law. The failure of an unwritten advance to meet this safe harbor will not result in a second class of stock unless the advance is considered equity under paragraph (l)(4)(ii)(A)(*1*) of this section and is used to contravene the rights of the outstanding shares of stock or the limitation on eligible shareholders under paragraph (l)(4)(ii)(A)(*2*) of this section.

(*2*) *Proportionately-held obligations.* Obligations of the same class that are considered equity under general principles of Federal tax law, but are owned solely by the owners of, and in the same proportion as, the outstanding stock of the corporation, are not treated as as second class of stock. Furthermore, an obligation or obligations owned by the sole shareholder of a corporation are always held proportionately to the corporation's outstanding stock. The obligations that are considered equity that do not meet this safe harbor will not result in a second class of stock unless they are used to contravene the rights of the outstanding shares of stock or the limitation on eligible shareholders under paragraph (l)(4)(ii)(A)(*2*) of this section.

(iii) *Certain call options, warrants or similar instruments*—(A) *In general.* Except as otherwise provided in this paragraph (l)(4)(iii), a call option, warrant, or similar instrument (collectively "call option") issued by a corporation is treated as a second class of stock of the corporation if, taking into account all the facts and circumstances, the call option is substantially certain to be exercised (by the holder or a potential transferee) and has a strike price substantially below the fair market value of the underlying stock on the date that the call option is issued, transferred to a person who is not an eligible shareholder under paragraph (b)(1) of this section, or materially modified. For purposes of this paragraph (l)(4)(iii), if an option is issued in connection with a loan and the time period in which the option can be exercised is extended in connection with (and consistent with) a modification of the terms of the loan, the extension of the time period in which the option may be exercised is not considered a material modification. In addition, a call option does not have a strike price substantially below fair market value if the price at the time of exercise cannot, pursuant to the terms of the instrument, be substantially below the fair market value of the underlying stock at the time of exercise.

(B) *Certain exceptions. (1)* A call option is not treated as a second class of stock for purposes of this paragraph (l) if it is issued by a corporation to a person that is actively and regularly engaged in the business of lending and is issued in connection with a loan to the corporation that is commercially reasonable.

(2) A call option that is issued to an individual who is an employee or an independent contractor in connection with the performance of services (and that is not excessive by reference to the services performed) is not treated as a second class of stock if—

(i) The call option is nontransferable within the meaning of § 1.83–3 (d), and

(ii) The call option does not have a readily ascertainable fair market value as defined in § 1.83–7 (b) at the time the option is issued.

If the call option becomes transferable, this paragraph (l)(4)(iii)(B)(*2*) ceases to apply.

(C) *Safe harbor for certain options.*—A call option is not treated as a second class of stock if, on the date the call option is issued, transferred to a person who is not an eligible shareholder under paragraph (b)(1) of this section, or materially modified, the strike price of the call option is at least 90 percent of the fair market value of the underlying stock on that date. For purposes of this paragraph (l)(4)(iii)(C), a good faith determination of fair market value by the corporation will be respected unless it can be shown that the value was substantially in error or the determination of the value was not performed with reasonable diligence to obtain a fair value. Failure of an option to meet this safe harbor will not necessarily result in the option being treated as a second class of stock.

(iv) *Convertible debt.* A convertible debt instrument is considered a second class of stock if—

(A) It is treated as equity under general principles of Federal tax law governing the distinction between debt and equity and is used to contravene the rights to distribution or liquidation proceeds conferred by the outstanding shares of stock or to contravene the limitation on eligible shareholders contained in paragraph (b)(1) of this section, or

(B) It embodies rights equivalent to those of a call option that is substantially certain to be exercised, and it has a conversion price that is substantially below the fair market value of the underlying stock on the date of issuance, transfer to a person who is not an eligible shareholder under paragraph (b)(1) of this section, or material modification within the meaning of paragraph (l)(4)(iii).

(v) *Examples.* The application of this paragraph (l)(4) may be illustrated by the following examples. In each of the examples, the S corporation requirements of section 1361 are satisfied except as otherwise stated, the corporation has in effect an S election under section 1362, and the corporation has only the shareholders described.

Example 1. Transfer of call option to ineligible shareholder. (i) S, a corporation, has 35 shareholders. S issues call options to A, B, and C, who are not shareholders, employees, or independent contractors of S. The options have a strike price of $40 and are issued on a date when the fair market value of S stock is also $40. A year later, D purchases A's option. On the date of transfer, the fair market value of S stock is $80.

(ii) On the date the call option is issued, its strike price is not substantially below the fair market value of S stock. Under paragraph (l)(4)(iii)(A) of this section, however, whether the call option is a second class of stock must be redetermined if the call option is transferred to a person who is not an eligible shareholder of S. D is not an eligible shareholder of S because S already has 35 shareholders. Because on the date the call option is transferred to D its strike price is 50% of the fair market value, the strike price is substantially below the fair market value of the S stock. Accordingly, the call option is treated as a second class of stock as of the date it is transferred to D if, at that time, it is determined that the option is substantially certain to be exercised. The determination of whether the option is substantially certain to be exercised is made on the basis of all the facts and circumstances.

Example 2. Call option issued in connection with the performance of services. (i) E is a bona fide employee of S, a corporation. S issues to E a call option in connection with E's performance of services. At the time the call option is issued, it is not transferable and does not have a readily ascertainable fair market value. However, the call option becomes transferable before it is exercised by E.

(ii) While the option is not transferable, under paragraph (l)(4)(iii)(B)(*2*) of this section if it not treated as a second class of stock, regardless of its strike price. When the option becomes transferable, that paragraph ceases to apply, and the general rule of paragraph (l)(4)(iii)(A) of this section applies. Accordingly, if the option is materially modified or is transferred to a person who is not an eligible shareholder under paragraph (b)(1) of this section, and on the date of such modification or transfer, the option is substantially certain to be exercised and has a strike price substantially below the fair market value of the underlying stock, the option is treated as a second class of stock.

(5) *Straight debt safe harbor*—(i) *In general.* Notwithstanding paragraph

(l)(4) of this section, straight debt is not treated as a second class of stock. For purposes of section 1361(c)(5) and this section, the term "straight debt" means a written unconditional obligation, regardless of whether embodied in a formal note, to pay a sum certain on demand, or on a specified due date, which—

(A) Does not provide for an interest rate or payment dates that are contingent on profits, the borrower's discretion, the payment of dividends with respect to common stock, or similar factors;

(B) Is not convertible (directly or indirectly) into stock or any other equity interest of the S corporation; and

(C) is held by an individual (other than a nonresident alien), an estate, or a trust described in section 1361(C)(2).

(ii) *Subordination.* The fact that an obligation is subordinated to other debt of the corporation does not prevent the obligation from qualifying as straight debt.

(iii) *Modification or transfer.* An obligation that originally qualifies as straight debt ceases to so qualify if the obligation—

(A) Is materially modified so that it no longer satisfies the definition of straight debt, or

(B) Is transferred to a third party who is not an eligible shareholder under paragraph (b)(1) of this section.

(iv) *Treatment of straight debt for other purposes.* An obligation of an S corporation that satisfies the definition of straight debt in paragraph (l)(5)(i) of this section is not treated as a second class of stock even if it is considered equity under general principles of Federal tax law. Such an obligation is generally treated as debt and when so treated is subject to the applicable rules governing indebtedness for other purposes of the Internal Revenue Code. Accordingly, interest paid or accrued with respect to a straight debt obligation is generally treated as interest by the corporation and the recipient and does not constitute a distribution to which section 1368 applies. However, if a straight debt obligation bears a rate of interest that is unreasonably high, an appropriate portion of the interest may be recharacterized and treated as a payment that is not interest. Such a recharacterization does not result in a second class of stock.

(v) *Treatment of C corporation "debt" upon conversion to S status.* If a C corporation has outstanding an obligation that satisfies the definition of straight debt in paragraph (l)(5)(i) of this section, but that is considered equity under general principles of Federal tax law, the obligation is not treated as a second class of stock for purpose of this section if the C corporation converts to S status. In addition, the conversion from C corporation status to S corporation status is not treated as an exchange of debt for stock with respect to such an instrument.

(6) *Inadvertent terminations.* See section 1362(f) and the regulations thereunder for rules relating to inadvertent terminations in cases where the one class of stock requirement has been inadvertently breached.

(7) *Effective date.* Section 1.1361–1 (l) generally applies to taxable years of a corporation beginning on or after January 1, 1992. However, paragraph (l)(4) of this section does not apply to instruments, obligations, or arrangements issued or entered into on or before August 8, 1991.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91–19185 Filed 8–8–91; 12:44 pm]

BILLING CODE 4830-01-M

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26 CFR Part 1

[PS–4–73]

RIN 1545–AC37

One Class of Stock Requirement; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of public hearing on proposed regulations relating to the requirement that a small business corporation have only one class of stock.

DATES: The public hearing will be held on Thursday, October 31, 1991, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Thursday, October 17, 1991.

ADDRESSES: The public hearing will be held in the Internal Revenue Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (PS–4–73), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–377–9236 or (202) 566–3935 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 1361 of the Internal Revenue Code of 1986. The proposed regulations appear elsewhere in this issue of the **Federal Register**.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Thursday, October 17, 1991, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91–19186 Filed 8–8–91; 12:44 pm]

BILLING CODE 4830-01-M

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26 CFR Part 1

[FI–19–85]

RIN 1545–AO03

Treatment of Certain Stripped Bonds and Stripped Coupons

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the rules and regulations section of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations on the treatment of original issue discount (OID) that arises under section 1286(a) of the Internal Revenue Code. The text of these temporary regulations also service as the comment document for this notice of proposed rulemaking.

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regulations under section 1361 of the Internal Revenue Code of 1986. The proposed regulations appear elsewhere in this issue of the **Federal Register**.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Thursday, October 17, 1991, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

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By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91–19186 Filed 8–8–91; 12:44 pm]

BILLING CODE 4830-01-M

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26 CFR Part 1

[FI–19–85]

RIN 1545–AQ03

Treatment of Certain Stripped Bonds and Stripped Coupons

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the rules and regulations section of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations on the treatment of original issue discount (OID) that arises under section 1286(a) of the Internal Revenue Code. The text of these temporary regulations also service as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests to speak at a public hearing (with outlines of oral comments) must be received by Thursday, October 24, 1991. The public hearing is scheduled for Thursday, November 7, 1991, at 10 a.m. See the notice of public hearing published elsewhere in this issue of the **Federal Register**.

ADDRESSES: Send written comments and requests to speak at the public hearing (with outlines of oral comments) to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (FI–19–85), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Mark S. Smith, telephone 202–566–3297 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations published in the rules and regulations section of this issue of the **Federal Register** add new § 1.1286–1T to part 1 of title 26 of the Code of Federal Regulations. These temporary regulations provide guidance on the treatment of OID that arises under Code section 1286(a). For the text of the new temporary regulations, see T.D. 8358, published in the rules and regulations section of this issue of the **Federal Register**. The preamble to the temporary regulations explains the regulations.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing on these proposed regulations will be held on November 7, 1991, at 10 a.m. See the notice of public hearing published elsewhere in this issue of the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Mark S. Smith, Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, personnel from other offices of the IRS and Treasury Department participated in their development.

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

[FR Doc. 91–19230 Filed 8–8–91; 3:16 pm]

BILLING CODE 4830-01-M

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26 CFR Part 1

[FI–19–85]

RIN 1545–AQ03

Treatment of Certain Stripped Bonds and Stripped Coupons; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed Income Tax Regulations that apply to taxpayers holding stripped bonds and stripped coupons under section 1286 of the Internal Revenue Code.

DATES: The public hearing will be held on Thursday, November 7, 1991, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Thursday, October 24, 1991.

ADDRESSES: The public hearing will be held in the IRS Commissioner's Conference Room, room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R [FI–19–85], room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Bob Boyer of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–377–9231, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations that provide guidance on the treatment of original issue discount (OID) that arises under Code section 1286(a). The guidance is needed to simplify the tax treatment of certain stripped bonds and stripped coupons. These regulations appear in the proposed rules section of this issue of the **Federal Register**.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Thursday, October 24, 1991, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue:

Dale D. Goode,

Federal Register Liaison Officer Assistant Chief Counsel (Corporate).

[FR Doc. 91–19231 Filed 8–8–91; 3:19 pm]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AD–FRL–3983–9]

Approval and Promulgation of Implementation Plans: Revision of the Visibility FIP for Arizona

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Supplemental notice requesting comment.

SUMMARY: On February 8, 1991, EPA proposed to require the Navajo Generating Station (NGS) in Page, Arizona, to meet new emission limitations to address visibility impairment in the Grand Canyon National Park (GCNP) (55 FR 5173). Over 380 comments were received during the initial comment period. Since the close of the comment period, many meetings have taken place among representatives of Salt River Project (SRP) acting on behalf of the NGS owners, and representatives of the

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Grand Canyon Trust (GCT) and the Environmental Defense Fund (EDF) acting on behalf of their organizations. Representatives of the State of Arizona and EPA also have participated in most of the meetings. Very recently, representatives of the NGS owners and the environmental groups have agreed on a sulfur dioxide (SO_2) control strategy for NGS and have recommended that it be adopted by EPA. That strategy includes a 0.10 pounds per million British thermal units SO_2 emission limitation for the NGS (approximate to a 90 percent control level) based on a rolling annual average and phased in by unit in 1997, 1998, and 1999. In addition, NGS would shift its maintenance schedule such that six unit-weeks of planned maintenance would occur between November 1 and March 15 each year. They have entered into a memorandum of understanding (MOU) memorializing their agreement which they have submitted (together with associated documents) to EPA and which is printed in the appendix to this notice. In today's notice, EPA is announcing that it has reopened the public comment period on this rulemaking to solicit comments on this new information.

DATES: Comments must be received by no later than September 9, 1991. The EPA is providing a 30-day public comment period, extending 30 days from the date of signature on this notice. In order to facilitate public participation, EPA is providing actual notice of this action to persons commenting on the February 8, 1991, proposal, where addresses are available.

ADDRESSES:

Comments

Send comments to EPA's Central Docket Section, Office of the General Counsel, ATTN: A–89–02A, room 1500, 401 M Street, Washington, DC 20460.

Docket

Pursuant to section 307(d)(1)(B) of the Clean Air Act (Act), 42 U.S.C. 7607(d)(1)(B), this rulemaking is subject to the procedural requirements of section 307(d). Therefore, EPA established Docket A–89–02A for this rulemaking. Further, materials related to the development of this notice, including summaries of the meetings EPA has participated in with the outside parties and information exchanged, have been placed in this docket. All dockets are available for public inspection and copying between 8:30 a.m. to 12 noon and 1:30 p.m. to 3:30 p.m., Monday through Friday, at EPA's Central Docket Section, Office of the General Counsel, room 1500, 401 M Street, S.W., Washington, DC. A reasonable fee may be charged for copies.

FOR FURTHER INFORMATION CONTACT: Mr. David H. Stonefield, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards (MD–15), Research Triangle Park, North Carolina 27711, (919) 541–5350 or FTS 629–5350.

SUPPLEMENTARY INFORMATION:

Background

Section 169A of the Act, 42 U.S.C. 7491, sets as a national goal "the prevention of any future, and the remedying of any existing, impairment of visibility" in certain national parks and wildernesses, including the GCNP. On December 2, 1980, EPA promulgated regulations (45 FR 80084, codified at 40 CFR 51.300 et seq.) to implement section 169A. The regulations required 36 affected States to revise their State implementation plans (SIP's) to implement the various elements of the visibility protection program. Among these provisions is the requirement that each affected State include in its SIP such emission limitations, schedules of compliance, and other measures as may be necessary, to make reasonable progress toward the national visibility goal (see 40 CFR 51.302(c), section 169A(b)(2)). Measures for achieving reasonable progress include best available retrofit technology (BART) and a long-term strategy (see 40 CFR 51.302(c) (1) and (2), section 169A(b)(2) (A) and (B)). Where a State fails to submit the SIP revisions necessary to meet its obligations under the visibility protection program, EPA may act in place of the State pursuant to a Federal implementation plan (FIP) under section 110(c) of the Act, 42 U.S.C. 7410(c).

The State of Arizona was among several States which failed to adopt and submit the SIP's required by those regulations. The EDF and other environmental groups filed a citizen's suit alleging that EPA had failed to perform a nondiscretionary duty under section 110(c) of the Act to promulgate visibility FIP's for the States that had failed to submit SIP's to EPA as called for by the 1980 visibility regulations (*EDF* v. *Reilly*, No. C826850 RPA (N.C. Cal.)). The EPA and the plaintiffs negotiated a court-approved (and subsequently revised) settlement agreement and EPA initiated a program to promulgate FIP's for the States failing to submit the required visibility SIP's. As part of that program, on September 5, 1989, EPA published a notice (54 FR 36948) announcing a preliminary decision to attribute a significant portion of wintertime visibility impairment of the GCNP to emissions from the NGS. Then on February 8, 1991, EPA proposed to revise the visibility FIP for Arizona to include an emission limit for NGS to address the visibility impairment observed in the GCNP (55 FR 5173). The EPA requested comment on several control options including but not limited to the following rule elements and specific regulatory alternatives: (1) Emission limitations, including limitations ranging between 0.50 and 0.10 lbs/MMBtu; (2) averaging times, including a 3-hour, 30-day, and annual periods; and (3) implementation schedules, including one providing for plantwide compliance by the year 2000. Based on the information available to it at the time, EPA proposed to adopt an emission limitation of 0.30 lbs/MMBtu with compliance determined on a 30-day rolling average basis. The EPA proposed that the limits would be phased in by unit in 1995, 1997, and 1999.

In addition to soliciting written comments during the comment period, EPA also held a public hearing on March 18 and 19, 1991, in Phoenix, Arizona. A copy of the transcript of the hearing is in Docket A–89–02A.

A more extensive discussion of the background for this rulemaking was provided in EPA's February 8, 1991 notice of proposed rulemaking. Generally, readers should refer to that notice since only an abbreviated background has been reiterated here.

New Information After the Close of the Comment Period

After the comment period closed on April 19, 1991, at the recommendation of EPA, representatives of SRP, GCT, and EDF have had many meetings discussing alternative approaches to EPA's February 8 proposal. Very recently, the outside parties have agreed to recommend that EPA adopt an alternative which calls for promulgation of a 0.10 lb/MMBtu SO_2 emission limitation for the NGS (approximate to a 90 percent control level) based on a rolling annual average and phased in by unit in 1997, 1998, and 1999. In addition, under the agreement, NGS would shift its maintenance schedule such that a full six unit-weeks of planned maintenance would occur between November 1 and March 15 each year. Under specific conditions, less than a full six unit-weeks of maintenance between November 1 and March 15 may be allowed.

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the parties, and provided technical assistance. Representatives of the State of Arizona also attended several of the meetings and provided some technical support. New technical materials and cost information, including adjustment of the potential control costs to 1992 dollars, were exchanged between the parties and EPA. Summaries of the meetings and significant conversations in which EPA was involved and copies of the new material and information which were submitted to or developed by EPA have been included in Docket A–89–02A.

The outside parties memorialized their agreement in the MOU which they have submitted to EPA along with recommended regulatory requirements for the final rulemaking action. The SRP has estimated the total levelized annual cost (in 1992 dollars) for this alternative as $89.8 million and for the alternative EPA proposed in February 1991 as $106 million. The EPA notes that the alternative incorporated in the MOU would provide more visibility protection for the GCNP at a lower cost for NGS and its customers than the February 8, 1991 proposal. Thus, EPA is giving serious consideration to the control option recommended by the outside parties.

The text of the MOU and its attachment are reprinted as appendix A to this notice. The first attachment to the MOU sets forth the regulatory requirements to address visibility impairment that the parties to the MOU have recommended that EPA adopt as a final rule.

Legal Rationale

On July 30, 1991, attorneys for the parties wrote to EPA to provide a legal rationale that they believed would justify EPA's adoption of the control alternative eventually recommended by the parties. A letter from Patrick M. Raher, Hogan and Hartson for Grand Canyon Trust and Environmental Defense Fund, and Henry Nickel, Hunton and Williams for Salt River Project, dated July 30, 1991, is an attachment to the MOU and is set forth in appendix a to this notice. Briefly, it asserts that the regulatory alternative that SRP, EDF, and GCT have recommended to EPA meets the requirements in section 169A(b)(2) of the Act that implementation plan revisions addressing visibility impairment achieve "reasonable progress" toward the national visibility goal. The EPA's Office of General Counsel reviewed the Raher/Nickel letter and concurred in a memorandum stating that, subject to any significant points that may be raised in the reopened comment period, the "reasonable progress" argument would provide the core of a defensible rationale in support of the rulemaking alternative in question under the specific circumstances of this case. A memorandum entitled "Legal Rationale for Rulemaking Alternative in Grad Canyon Visibility Proceeding," from Gregory B. Foote, Assistant General Counsel to William G. Rosenberg, Assistant Administrator, dated August 2, 1991, is reprinted as appendix B to this notice.

EPA Discretion

Throughout the meetings with the representatives of the EDF, GCT, SRP, and the State of Arizona, EPA staff have noticed that the parties discussion in no way infringed upon the Agency's unfettered rulemaking discretion. In an August 2, 1991 letter to representatives of SRP, GCT, and EDF, EPA's General Counsel restated this explaining, in part, that while he commended the parties' efforts to reach common ground, "EPA at all times retains complete and unfettered discretion over both the substantive provisions of any final regulations and the legal rationale supporting that regulation." [1]

Solicitation of Comments

The EPA believes that the parties' agreement and associated recommendation to EPA, the underlying technical materials and cost information which has been exchanged, and the Agency's commitment to public participation constitute good cause for reopening the comment period. Accordingly, EPA requests comments on all aspects of the rulemaking alternative that is the subject of the MOU, including the regulatory terms and the legal rationale. That alternative is set forth in appendix A (and associated attachments) to this notice. Where addresses are available, commenters on the February 8, 1991 proposal will be notified by mail of this notice in order to facilitate their ability to comment on this notice.

List of Subjects in 40 CFR Part 52

Air pollution control, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 8, 1991.

William B. Rosenberg,

Assistant Administrator for Air and Radiation.

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[1] Letter from E. Donald Elliott, General Counsel, to Patrick Raher and Henry Nickel, August 2, 1991.

Appendix A—Arizona Visibility Implementation Plan Memorandum of Understanding

The undersigned recommend that EPA take final action on the Navajo Generating Station ("NGS") visibility rulemaking consistent with the August 7, 1991, "Recommended Regulatory Requirements for the NGS Visibility Rulemaking," and the Raher/Nickel July 30, 1991, letter to Thomas C. Kiernan, which are attached to this memorandum and incorporated by reference.

The undersigned agree to recommend to the managements of their respective organizations [1] that their Governing or Policy-Making Bodies or Office commit not to appeal a final regulation that implements the recommendations set forth in the attachments to this memorandum nor support in any way the efforts of another interested party in such an appeal. The commitments adopted by the Governing or Policy-Making Bodies or Office of these organizations, after action on these recommendations, to abide by the terms of this memorandum will be expressed in an exchange of letters of agreement—as soon as possible and with the expectation that this will occur no later than 30 days after publication of the final rule in the Federal Register—to:

John McNamara, Salt River Project, 1521 Project Drive, Phoenix, Arizona 85281
Edward Norton, Grand Canyon Trust, suite 300, 1400 16th Street NW., Washington, DC 20036

Once EPA promulgates the final rule, EDF and the NGS participants will petition (a) the United States Circuit Court of Appeals for the Ninth Circuit to vacate the judgement below and remand the matter pending in *EDF* v. *Reilly*, No. 90–15264 to the court below with instructions to dismiss and (b) the United States District Court for the Northern District of California to dismiss *EDR* v. *Reilly*, C–6850 RPA.

John McNamara,

Authorized Representative for and Chairman of the Coordinating Committee for the Participants in NGS.

Edward Norton,

President, Grand Canyon Trust.

Robert Yuhnke,

Senior Attorney, Environmental Defense Fund.

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[1] The respective organizations for John McNamara are the participants in NGS, Salt River Project Agricultural Improvement and Power District, Arizona Public Service Company, Tucson Electric Power Company, Department of Water and Power of the City of Los Angeles, Nevada Power Company, and the United States Department of the Interior; for Edward Norton are the Grand Canyon Trust, The Wilderness Society, the National Wildlife Federation, and the Sierra Club; and for Robert Yunke is the Environmental Defense Fund.

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First Attachment to the MOU

Recommended Regulatory Requirements for the Navajo Generating Station Visibility Rulemaking

August 7, 1991

1. Applicable to the fossil fuel-fired, steam-generating equipment designated as Units 1, 2, and 3 at the Navajo Generating Station (NGS).

2. Consistent with the terms of this document, the sulfur oxides emission limitation for NGS is 0.10 lbs SO_2/MMBtu of heat input on an annual rolling average basis. Emission controls will be installed and operated on the following schedule:

—One unit by November 19, 1997;
—Two units by November 19, 1998;
—All units by August 19, 1999.

The emissions from all units subject to this emission limitation will be averaged to determine compliance.

3. Schedule of compliance—interim deadlines:

Date of binding contract for A/E firm to design and procure the control system needed for compliance.	6/92
Start of on-site construction of control system for the first unit	1/95
Initiation of start-up testing:	
First unit	5/97
Second unit	5/98
Third unit	2/99

The interim deadlines will be extended if it can be demonstrated to the Administrator that compliance with the deadlines in paragraph 2 would not be affected.

4. Continuous emission monitors will be installed to determine compliance with the emission limitations. This equipment will meet the specifications listed in appendix B of 40 CFR part 60 and the quality assurance procedures found in appendix F of 40 CFR part 60.

5. Recordkeeping and reporting requirements:

—Report to EPA emissions as required by the procedures found in 40 CFR 60.7;
—Maintain records according to the procedures found in 40 CFR 60.7;
—FGD unit outages must be reported to EPA by the next business day; and
—A follow-up written report must be filed within 30 days of the repair stating how the repair was accomplished and justifying the amount of time taken for the repair.

6a. Compliance with the annual rolling average shall be determined on a daily basis by dividing the total sulfur dioxide emitted by the total energy of the fuel consumed during the previous 365 boiler-operating days.

b. For each unit, in determining compliance with the annual average emission limitation during the first year of operation of the control equipment installed to comply with this emission limitation, periods during which one of the following conditions are met shall be excluded:

i. Equipment or systems do not meet designer's or manufacturer's performance expectations.

ii. Field installation including engineering or construction precludes equipment or systems from performing as designed.

The periods to be excluded shall be determined by the Administrator based on the periodic reports of compliance with this emission limitation which shall identify the times proposed for exclusion and provide the reasons for the exclusion, including the reasons for the FGD outage. The report also shall describe the actions taken to avoid the outage, to minimize its duration, and to reduce SO_2 emissions at the plant to the extent practicable while the FGD unit was not fully operational. Whenever the time to be excluded exceeds a cumulative total of 30 days for any FGD unit, the NGS owner or operator shall file a report within 15 days addressing the history of and prognosis for the performance of the control equipment.

c. In addition to the foregoing, the Administrator of EPA shall exclude from the compliance determination any periods for which the Administrator finds that the control equipment is out of service because of catastrophic failure of any FGD unit which occurred for reasons beyond the control of the NGS owners and operators and could not have been prevented by good engineering practice, including appropriate maintenance.

d. All equipment needed to comply with this emission limitation will be operated consistent with good engineering practice to reduce emissions and outages and to return the FGD system to full operation as expeditiously as practicable.

7. On 3/16/93 and every year thereafter, the NGS owner or operator will prepare a long-term maintenance plan for the grid that NGS serves covering the period from the date of the filing to 3/15 of the next year showing at least six unit-weeks of maintenance for NGS in the 11/1 to 3/15 period, except as provided below, to further reduce SO_2 emissions during the winter. This plan will be developed consistent with the criteria established by the Western States Coordinating Council of the North American Electric Reliability Council to ensure adequate reserve margin. The full six-unit weeks of winter maintenance need not occur if any of the following circumstances arise:

a. There is no need for six-unit weeks of scheduled periodic maintenance in the year covered by the plan.

b. The reserve margin on any electrical system served by NGS would fall to an inadequate level, as defined by the criteria referred to in paragraph 7 above. In such case, the scheduled maintenance may be moved out of the 11/1 to 3/15 period.

c. The cost of compliance with this provision would be excessive. Costs of compliance would be excessive when the economic savings to the owners of moving NGS' maintenance out of the 11/1 to 3/15 period exceeds $50,000 per unit-day of maintenance moved.

d. A major forced outage at a unit occurs outside the winter months, and necessary periodic maintenance occurs during the period of forced outage.

The NGS owner or operator must demonstrate to the satisfaction of the Administrator that such an event precluded the need for a full six-unit weeks of scheduled maintenance during the period specified. Where six unit-weeks of scheduled maintenance is precluded, the NGS owner or operator shall nevertheless make best efforts to conduct as much scheduled maintenance as practicable during the winter period.

8. EPA and the Arizona Department of Environmental Quality reviewed the need to reheat the exhaust gases to ensure appropriate plume rise with the lower gas exit temperatures associated with a 0.10 lb/MBtu emission limitation and found that reheating of the exhaust gas is not necessary to prevent a violation of national ambient air quality standard. Moreover, discussions with the State of Arizona indicate that the visible, water vapor plume that would be present with a scrubber without reheat, instead of the clear stacks that NGS now has, does not pose a condition that requires regulatory attention under State or federal law. The elimination of the need to reheat the exhaust gas will result in a significant reduction in capital and operational costs.

Second Attachment to the MOU

Hogan & Hartson,
Columbia Square,
555 Thirteenth Street, NW.
Washington, DC 20004–1109

July 30, 1991

Thomas C. Kiernan,
Chief of Staff to the Assistant, Administrator for Air and Radiation,
Environmental Protection Agency,
401 M Street, SW.,
Washington, DC 20460

Re: *Timing Issues in Arizona Visibility SIP*

Dear Tom: The purpose of this letter is to present our views on the legal rationale for a visibility-related emission limitation that would contain different compliance deadlines than the EPA proposal. As you know, our clients are discussing a recommendation to the Agency on an alternative to EPA's proposed rule. Specifically, EPA's proposed 0.30 lbs./MMBtu, 30-day average limitation, to be achieved on a phased basis beginning in 1995, has been compared to various 0.10 lbs./MMBtu limitations using different averaging periods and different schedules for phasing in this limitation. Among these alternatives, a 0.10 lbs./MMBtu emission limitation on a rolling annual average, phased in by unit in 1997, 1998, and 1999, achieves greater reductions at less cost than the EPA proposal.

If the Agency were to adopt such a limitation, the parties believe that the legal rationale for the final rule should be that this limitation represents "reasonable progress toward meeting the national goal [of the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas]." 40 CFR 51.300(a); 42 U.S.C. 169A(b)(2) & 169A(a)(1). The parties jointly believe that this legal

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rationale is in accord with section 169A(b)(2) of the Clean Air Act. In explaining the basis for this final rule, we would hope that the Agency indicates in the preamble that the 0.10 lbs./MMBtu limitation offers a higher level of controls at a lower cost than would be provided by EPA's BART guidelines, which focus on NSPS levels of control, although the BART guidelines do provide the methodology employed in deciding the level of SO$_2$ reductions. Finally, we also hope that the preamble notes that by imposing a 0.10 lbs./MMBtu emission limitation, which requires the installation of a state-of-the-art SO$_x$ scrubber, no other sulfur oxide emission controls should be required at NGS under section 169A.

Thank you for considering this matter in the development of the final rule. Please contact us if you have any questions.

Sincerely,

Patrick M. Raher,
Hogan & Hartson for Grand Canyon Trust and Environmental Defense Fund.

Henry V. Nickel,
Hunton & Williams for Salt River Project.

Appendix B

United States Environmental Protection Agency,
Washington, DC 20460,
Office of General Counsel

Memorandum

Subject: Legal Rationale for Rulemaking Alternative in Grand Canyon Visibility Proceeding
From: Gregory B. Foote, Assistant General Counsel
To: William G. Rosenberg, Assistant Administrator for Air and Radiation

Introduction

You have requested my opinion regarding a possible legal rationale in support of a rulemaking alternative for the February 1991 proposal to establish, under section 169A of the Clean Air Act, sulfur dioxide emission limitations at the Navajo Generating Station (NGS) in order to remedy visibility impairment at Grand Canyon National Park. In particular, you have asked that I review a joint letter dated July 30, 1991, from Patrick M. Raher, representing the Grand Canyon Trust and the Environmental Defense Fund (GCT/EDF), and Henry V. Nickel, representing the Salt River Project (SRP). The Raher/Nickel letter recommends that, in the event EPA adopts a final rule for NGS requiring a 0.10 lbs./mmbtu emission limitation on a rolling annual average, phased in by unit in 1997, 1998, and 1999, EPA should also adopt the legal rationale described in the July 30 letter in support of such a final rule.

At the outset, I note that General Counsel Don Elliott recently responded to Messrs. Raher and Nickel by letter dated August 2, 1991 (copy attached). Don Elliott's letter reminded those parties that EPA must at all times retain full discretion in deciding on both the substantive content of and legal rationale for its final rulemaking actions. Thus, although the General Counsel assured Raher and Nickel that EPA would carefully consider their views, he made it clear that EPA could give no assurance that those views would be adopted. The General Counsel's letter did not address the merits of the Raher/Nickel letter, a subject that I will address below.

Brief Answer

In brief, the Raher/Nickel letter would focus on the "reasonable progress" requirement in section 169A(B)(2) as the basis for EPA's final action on the NGS rulemaking. That general approach is basically sound and could, in my opinon, provide the core of a defensible rationale in support of the prospective final rule in question. My views on this rulemaking alternative are set forth in greater detail below. Please note that I have not yet discussed those views in detail with the General Counsel. Once he has reviewed them, however, this memorandum could form part of the basis for a supplemental notice advising the public that EPA is considering the specific regulatory option in question, and soliciting comment on that option.

Discussion

Section 169A(b)(2) of the Clean Air Act requires that visibility implementation plans contain such emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward the national visibility goal. These plan provisions include, as appropriate, BART (section 169A(b)(2)(A)), and a long-term strategy (section 169A(b)(2)(B)). Thus, "reasonable progress" is the overarching requirement that implementation plan revisions under section 169A(b)(2) must address, while subparagraphs (A) and (B) are more specific expressions of rulemaking authority that are incorporated into the parent subsection (b)(2). In crafting the visibility reasonable progress requirements, Congress did not explicitly address, and apparently did not even consider, whether there could be greater visibility improvement at a lower cost in furtherance of the national goal through an implementation plan provision that relied more generally on subsection (b)(2), rather than on the specific provisions of subparagraph (A) and/or subparagraph (B). Where Congress has not directly spoken to the precise question at issue, EPA may make a reasonable construction of the statute that is appropriate in the context of the particular program at issue. *Chevron, U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842–45 (1984).

In the notice of proposed rulemaking published in the *Federal Register* on February 8, 1991 (56 Fed. Reg. 5173), EPA proposed a 0.30 lbs/MMBtu emission limitation for NGS, to be determined on a 30-day rolling average and to be phased in by unit in 1995, 1997 and 1999. EPA explicitly requested comment on other control options permitted under the Act including, *inter alia*, the following rule elements and specific regulatory alternatives:

(1) Emission limitations, including a limitation of 0.10;

(2) Averaging times, including an annual averaging period; and

(3) Implementation schedules, including a schedule that extended to 2000. EPA also solicited comment generally on regulatory issues raised by interested parties. In my opinion, the specific rulemaking alternative now under consideration is within the scope of the February 1991 proposal. However, in order to insure full public consideration of this alternative, I strongly recommend that EPA issue a supplemental notice providing a further opportunity for public comment.

As you know, the staff of the Office of Air and Radiation has considered the rulemaking alternative consisting of a 0.10 lbs/MMBtu emission limitation, to be determined on a rolling annual average and phased in by unit in 1997, 1998 and 1999, and has reviewed supporting technical and cost information. I understand that the staff has concluded that greater visibility improvement at less cost can be achieved by this alternative, as compared to the rule proposed in the February 1991 notice, which applied the BART Guidelines focusing on NSPS levels of control to the facts of this case. I understand that the staff also referred to the BART guidelines to provide the methodology employed in developing the level of sulfur dioxide reductions in the alternative presently under consideration. See sections 169A(g) (1) and (2).

Based on the staff conclusions regarding the factual circumstances of this case, EPA could reasonably find that the present alternative, with its higher expected visibility improvement and lower expected costs (in comparison to the February 1991 proposed rule), best fulfills the overarching statutory requirement in section 169A(b)(2) (which incorporates the more specific provisions of subparagraphs (A) and (B)) that implementation plan revisions adopted under section 169A make "reasonable progress" toward the national visibility goal.

Conclusion

In sum, subject to any significant points that may be raised in the reopened comment period, I believe that under the specific circumstances of this case EPA could rely on the provisions of section 169A(b)(2) as the source of delegated rulemaking authority for the present alternative. The Agency has weighed the relevant factors and could appropriately conclude that this alternative reasonably interprets and harmonizes the statutory provisions in a way that best furthers the overarching legislative purpose to achieve reasonable progress toward the national visibility goal. *See, e.g., Public Citizen* v. *Department of Justice*, 109 S.Ct. 2558, 2566 (1989); *Church of the Holy Trinity* v. *United States*, 143 U.S. 457, 459, (1896); *see also Citizens to Save Spencer County* v. *EPA*, 600 F.2d 844 (D.C. Cir. 1979).

Finally, I note that by promulgating a 0.10 lbs/MMBtu emission limitation which requires installation of state-of-the-art SO$_x$ scrubber technology, the staff expects that no other federal implementation plan revisions requiring SO$_x$ control should be necessary at NGS under section 169A. I express no view on this essentially technical and policy matter.

Attachment.

Attachment to Appendix B

United States Environmental Protection Agency
Washington, DC 20460
Office of General Counsel

August 2, 1991

Mr. Patrick M. Raher,
Hogan & Hartson for Grand Canyon Trust and Environmental Defense Fund,
Columbia Square,
555 Thirteenth Street, NW.,
Washington, DC 20004–1109

Mr. Henry V. Nickel,
Hunton & Williams for Salt River Project,
2000 Pennsylvania Ave., NW.,
Washington, DC 20036

RE: *Timing Issues in Arizona Visibility FIP*

Dear Mr. Raher and Mr. Nickel: This is in response to your letter of July 30, 1991 to Tom Kiernan, Chief of Staff to Assistant Administrator Bill Rosenberg.

I note with interest your views on a possible legal rationale for a final rule addressing visibility-related emission limitations for Navajo generating Station. EPA applauds your efforts to find common ground that may lead to an amicable conclusion to this important rulemaking. The Agency is giving your views careful consideration as it moves toward final action. I want to remind you, however, that of course EPA at all times retains complete and unfettered discretion over both the substantive provisions of any final regulation and the legal rationale supporting that final action.

President Bush reiterated this important principle in the Statement by the president accompanying the signing of the Negotiated Rulemaking Act of 1990, 104 Stat. 4969, 5 U.S.C. 581 (1990). A copy of the Statement is enclosed for your reference.[1] The Statement noted that under the Appointments Clause of the Constitution, Article II, Sec. 2, Cl. 2, governmental authority may be exercised only by officers of the United States. In particular, the President emphasized that "Federal officials will retain their full statutory and constitutional responsibility to make all administrative determinations on regulatory matters." Clearly, this responsibility extends to all material aspects of a final regulation under section 169A of the Clean Air Act. Accordingly, while we appreciate the views you have placed before us, EPA can give no assurances nor negotiate any binding commitments that it will ultimately adopt the regulatory approach or the legal rationale you have recommended.

Sincerely,

E. Donald Elliott,

Assistant Administrator and General Counsel.

[FR Doc. 91–19272 Filed 8–12–91; 8:45 am]

BILLING CODE 6560-50-M

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[1] The President's signing statement was published in the Weekly Compilation of Presidential Documents (Vol. 26, no. 48, page 1945) December 3, 1990, and is not republished in this Federal Register document.

FEDERAL MARITIME COMMISSION

46 CFR Part 586

[Docket No. 91–24]

Actions To Adjust or Meet Conditions Unfavorable to Shipping in the United States/Korea Trade

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking; extension of time to comment.

SUMMARY: The Federal Maritime Commission, in response to apparent unfavorable conditions in the foreign oceanborne trade between the United States and Korea, has proposed the imposition of fees on Korean-flag vessels calling at United States ports (56 FR 26361; June 7, 1991). Korean law and regulations preclude U.S. carriers operating in the U.S./Korea trade from engaging in trucking activities and directly contracting for rail services in Korea. The effect of the proposed rule will be to adjust or meet unfavorable conditions created by those laws and regulations by imposing countervailing burdens on the Korean-flag carriers. American President Lines, Ltd. now requests a 45 day extension of time for filing comments, citing discussions held in Seoul, July 8–9, 1991, between delegations of the United States and Republic of Korea and uncertainty over the scope of the understanding reached at those discussions. The extension is requested to provide time to obtain an interpretation from appropriate officials. The Commission grants the request for a 45 day extension. Parties who have already filed comments will be allowed to supplement those comments on or before the new due date.

DATES: Comments due on or before September 16, 1991.

ADDRESSES: Send comments (original and fifteen copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001, (202) 523–5740.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–19178 Filed 8–12–91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[Gen. Docket No. 84–1234]

Mobile-Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Tentative decision.

SUMMARY: The Commission has issued a Tentative Decision reconsidering several decisions related to the licensing of a domestic mobile satellite service (MSS) provider in the 1545–1559 MHz and 1646.5–1660.5 MHz frequency bands. This action is promptly by the decision of the Court of Appeals for the District of Columbia, which remanded of the Commission for further consideration two aspects of its decisions. (See *Aeronautical Radio, Inc.* v. *FCC*, No. 88–1009, slip op. (March 19, 1991).) This Tentative Decision concludes that the Commission possesses statutory authority to adopt a rule to require that the MSS licensee shall be a consortium comprised of qualified applicants. Further, the Commission tentatively concludes that a consortium requirement is a reasonable exercise of the Commission's rulemaking authority and compelling factors unique to this proceeding require that a consortium approach, rather than comparative hearings, be adopted. Additionally, the decision tentatively concludes that the financial requirements previously imposed for participation in the consortium should be modified and the three entities whose applications were reinstated by the court should be provided an opportunity to join the consortium at this time.

DATES: Comments may be filed on or before September 4, 1991. Reply Comments may be filed on or before September 23, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Fern Jarmulnek, Satellite Radio Branch, Common Carrier Bureau (202) 634–1624, or Kathleen Abernathy, Office of General Counsel (202) 632–7020.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Tentative Decision regarding the Court of Appeals remand in the mobile-satellite service proceeding, adopted July 30, 1991 and released August 2, 1991.

The full text of this Commission decision is available for inspection and copying during the normal business hours in the FCC Dockets Branch (room

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Filed 8-12-91; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[Gen. Docket No. 84-1234]

Mobile-Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Tentative decision.

SUMMARY: The Commission has issued a Tentative Decision reconsidering several decisions related to the licensing of a domestic mobile satellite service (MSS) provider in the 1545–1559 MHz and 1646.5–1660.5 MHz frequency bands. This action is promptly by the decision of the Court of Appeals for the District of Columbia, which remanded of the Commission for further consideration two aspects of its decisions. (See *Aeronautical Radio, Inc.* v. *FCC,* No. 88-1009, slip op. (March 19, 1991).) This Tentative Decision concludes that the Commission possesses statutory authority to adopt a rule to require that the MSS licensee shall be a consortium comprised of qualified applicants. Further, the Commission tentatively concludes that a consortium requirement is a reasonable exercise of the Commission's rulemaking authority and compelling factors unique to this proceeding require that a consortium approach, rather than comparative hearings, be adopted. Additionally, the decision tentatively concludes that the financial requirements previously imposed for participation in the consortium should be modified and the three entities whose applications were reinstated by the court should be provided an opportunity to join the consortium at this time.

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SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Tentative Decision regarding the Court of Appeals remand in the mobile-satellite service proceeding, adopted July 30, 1991 and released August 2, 1991.

The full text of this Commission decision is available for inspection and copying during the normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC and in the Domestic Facilities Public Reference Room, room 6220, 2025 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center (202) 452-1422, 21st Street, NW., Washington, DC 20036.

Summary of Tentative Decision

1. The Commission has issued a Tentative Decision reconsidering several orders related to the licensing of a domestic mobile satellite service (MSS) provider in the 1545–1559 MHz and 1646.5–1660.5 MHz frequency bands. This action is prompted by the decision of the Court of Appeals for the District of Columbia, which remanded to the Commission for further consideration two aspects of the orders reating to the licensing of a domestic mobile-satellite service provider. See *Aeronautical Radio, Inc.* v. *FCC,* No. 88-1009, slip op. (March 19, 1991). First, the court found the manner in which the Commission imposed the requirement that applicants demonstrate their financial qualifications through a cash contribution to be arbitrary and capricious. Second, the court vacated the Commission's consortium rules, holding that the Commission had not provided adequate justification for its decision to forego comparative hearings on the competing applications. The court also reversed the dismissal of the applications submitted by Global Land Mobile Satellite, Inc., Globesat Express and Mobile Satellite Service, Inc. (MSSI).

2. The Commission concludes that it possesses statutory authority to adopt a rule that requires that the MSS licensee shall be a consortium comprised of qualified applicants. Further, the Commission tentatively concludes that a consortium requirement is a reasonable exercise of the Commission's rulemaking authority and compelling factors unique to this proceeding require that a mandatory consortium approach, rather than comparative hearings, be adopted. Additionally, the financial requirements previously imposed for participation in the consortium should be modified and the three entities whose applications were reinstated by the court should be provided an opportunity to join the consortium at this time.

Legal Authority

3. The Communications Act does not specifically reference comparative hearings as a means of selecting a licensee. Rather it provides that the Commission may not deny an application without affording an opportunity for hearing. 47 U.S.C. 309(e). The concept of the statutory entitlement for comparative hearings stems from the Supreme's Court decison in *Ashbacker Radio Corp.* v. *FCC,* 326 U.S. 327 (1945). In *Ashbacker,* the Court determined that where two *bona fide* applications are mutually exclusive, the grant of one without a hearing to both deprives the loser of the right to a hearing set forth in section 309. However, there are well-established exceptions to the entitlement in *Ashbacker.* In *U.S.* v. *Storer Broadcasting Co.,* 351 U.S. 192 (1956), the Supreme Court clarified that the opportunity for hearing afforded in section 309 does not withdraw from the Commission its rulemaking authority. Thus, the *Storer* decision establishes that the Commission need not hold a full adjudicatory hearing prior to denial of an application that is inconsistent with rules enacted under the broad public interest standard. Additionally, as noted in a recent court of appeals decision, the *Ashbacker* Court also implied that the Commission could, without a hearing, grant one of two competing applications for permanent license "if it found that public interest demanded such urgency." *La Star Cellular Telephone Co.* v. *FCC,* 899 F.2d 1233, 1235 (DC Cir. 1990), citing *Ashbacker,* 326 U.S. at 333.

4. Section 303 of the Act provides that the Commission shall perform its rulemaking functions "as public convenience, interest, or necessity requires," and may "make such regulations not inconsistent with law" as necessary to carry out the provisions of the Act. 47 U.S.C. 303, 303(f), 303(r). In this instance, the Commission exercised its rulemaking authority when it determined in the MSS proceeding, after notice and full opportunity for public comment, that the public interest would best be served by licensing a consortium of all qualified, willing MSS applicants rather than selecting one applicant as a licensee from among the twelve individual applicants by comparative hearing or lottery. This procedure appears fully consistent with the *Storer* decision and thus appears to satisfy established legal requirements for denying any MSS applications that do not meet the consortium requirement. The rule itself obviates the need to hold full section 309(e) hearings, comparative or otherwise.

5. The Commission determined that under section 303's broad public interest standard it was authorized to adopt a consortium licensing rule, rather than comparative hearings or a lottery. Citing its historical process of licensing other domestic satellite services and the circumstances unique to authorizing MSS, the Commission concluded that the consortium rule was a permissible and reasonable exercise of its rulemaking authority.

Public Interest Considerations

6. The Commission set forth compelling public interest reasons for promptly authorizing an MSS licensee without the necessity of further time consuming administrative proceedings. International considerations render it very unlikely that a domestic mobile-satellite service would be implemented in the upper L-band unless the Commission is prepared to go forward with an authorizing in the very near future. In order to ensure sufficient spectrum for a domestic MSS system, the United States must successfully complete the ongoing international frequency assignments and coordination process. Effective United States participation in this coordination process is not possible without the active assistance and presence of a U.S. authorized licensee at coordination meetings. If the United States does not continue its participation, assisted by a licensee, the United States would, in all likelihood, be prevented from obtaining sufficient spectrum after other countries pursuing the coordination of their own systems continue the coordination process without the United States.

Reinstated Applicants

7. Having tentatively concluded that adoption of a mandatory consortium rule is in the public interest, the Commission next considers entry criteria. The court vacated the cash contribution requirement set forth in the Second Report and Order, 2 FCC Rcd 485 (1987), and reinstated the three applications dismissed for failure to meet this requirement. With regard to the $5 million financial eligibility standard resources for the venture to get underway and an adequate capitalization base for attracting additional financing. These goals have been met. Therefore, the Commission tentatively concludes that no minimum contribution will be required of the reinstated applicants as a condition of participation in the consortium. Rather, each applicant will have 60 days from the release of the Final Decision in the proceeding to provide AMSC with an unconditional letter of credit, performance bond or cash in the amount it wishes to invest. AMSC will be required to either modify its Stockholders Agreement or to authorize an additional subscription offer to accommodate these additional contributions within 60 days of the date

by which the intended contributions must be committed. The applicants will then have 60 days to covert their funds into investment shares. Each of the three reinstated applications will be conditioned upon each party individually providing the Commission with certification of its completed stock purchase. AMSC must certify within 10 days after the date on which the stock purchase is made that each of the new members have made an initial investment. The ownership share of each of the participating members is to be proportional to its contribution.

Conclusion

13. By this Tentative Decision, the Commission seeks to resolve the licensing issues that have been remanded to it in a manner that will best ensure the implementation of a U.S. domestic MSS system in the upper L-band. The Commission has fully considered the alternative of holding comparative hearings, but has concluded that the exigencies of the international coordination process require that it proceed immediately with a domestic licensee. If any other course is pursued, the United States will likely be unable to secure enough spectrum in the upper L-band to support a viable domestic system.

14. Pursuant to the procedures set out in § 1.415 of the Commission's rules, 47 CFR 1.415, interested parties may file comments on this Tentative Decision on or before September 4, 1991 and reply comments on or before September 23, 1991. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information is placed in the public file, and provided that the fact of the Commission's reliance is noted in the Final Decision to follow.

15. In accordance with the provisions of § 1.419 of the Commission's rules, 47 CFR 1.419, formal participants shall file an original and five copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and ten copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. Comments and reply comments should be sent to: Office of the Secretary, Federal Communications Commission, Washington, DC 20554. All documents will be available for public inspection during regular business hours at the Domestic Facilities Division Public Reference Room, room 6220, 2025 M Street NW., Washington, DC. For general information on how to file comments, please contact the FCC Consumer Assistance and Information Division at (202) 632-7000.

16. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a tentative decision until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of the presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation on the day of oral presentation. That written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also take by docket number the proceeding to which it relates. See generally 47 CFR 1.1231.[1]

Ordering Clauses

17. Accordingly, pursuant to sections 4(i), 4(j), 214(c), 303(r), and 309 of the Communications Act of 1934, as amended, 47 U.S.C. 4(i), 4(j), 214(c), 303(r) and 309, we hereby give notice that the policies set forth in this document are adopted as a Tentative Decision.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-19366 Filed 8-12-91; 8:45 am]

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[1] Any communications regarding specific pending applications or the grant of temporary authority authorized herein are subject to the *ex parte* rules for restricted proceedings. See 47 CFR 1.1208.

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Federal Communications Commission.

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[FR Doc. 91–19366 Filed 8–12–91; 8:45 am]

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Notices

Federal Register
Vol. 56, No. 156
Tuesday, August 13, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Committee of Nine; Meeting

In accordance with the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92–463, 86 Stat. 770–776), the Cooperative State Research Service announces the following meeting:

Name: Committee of Nine.

Dates: September 11–13, 1991.

Time: 8:30 a.m.–5 p.m..

Place: Cornell University, Roberts Hall Conference Room 170, Ithaca, NY.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person listed below.

Purpose: To evaluate and recommend proposals for cooperative research on problems that concern agriculture in two or more States, and to make recommendations for allocation of regional research funds appropriated by Congress under the Hatch Act for research at the State Agriculture Experiment Stations.

Contact Person for Agenda and More Information: Dr. Edward M. Wilson, Executive Secretary, U.S. Department of Agriculture, Cooperative State Research Service, room 328, Aerospace Building, Washington, DC 20250, Telephone: 202–401–6040.

Done at Washington, DC this 2nd day of August, 1991.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 91–19210 Filed 8–12–91; 8:45 am]

BILLING CODE 3410-22-M

Forest Service

Beartooth Mountains Oil and Gas Leasing EIS

AGENCY: Forest Service, USDA.

ACTION: Extension of scoping comment date.

Due to a variety of reasons numerous parties have requested that the public scoping comment for the Beartooth Mountains Oil and Gas Leasing EIS be extended. Therefore, in response to these requests, I have extended the scoping period to September 30, 1991.

The Notice of Intent to prepare an Environmental Impact Statement (EIS), published in the **Federal Register** of June 27, 1991, (56 FR 29456) is hereby amended.

FOR FURTHER INFORMATION CONTACT: David Hatfield, Interdisciplinary Team Leader, Custer National Forest, Beartooth Ranger District, Rt. 2, Box 3420, Red Lodge, Montana 59068, (406) 446–2103.

John W. Mumma,

Regional Forester.

[FR Doc. 91–19182 Filed 8–12–91; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1992 Census of Wholesale Trade.

Form Number(s): Various.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 659,100 hours.

Number of Respondents: 520,000.

Avg Hours Per Response: One hour and fifteen minutes.

Needs and Uses: The Census Bureau will conduct the census of wholesale trade as part of the 1992 Economic Censuses. The economic censuses are the primary source of facts about the structure and functioning of the Nation's economy. They provide essential information for government, business, and the public. In particular, census results serve as part of the framework for the national accounts; furnish sampling frames and benchmarks for economic surveys; and provide detailed, comprehensive information for use in policy making, planning, and program administration.The 1992 Census of Wholesale Trade will use a mail canvass, supplemented by data from Federal administrative records, to measure the economic activity of approximately one–half million business establishments classified in Standard Industrial Classification Division F. This sector is comprised mainly of establishments engaged in selling merchandise to retailers; to industrial, commercial, institutional, farm, or professional business users; to construction contractors; or to other wholesalers.

Affected Public: Businesses or other for–profit organizations, Small businesses or organizations, Non–profit institutions, State or local governments.

Frequency: Every five years.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 8, 1991.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 91–19232 Filed 8–12–91; 8:45 am]

BILLING CODE 3510-07-F

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration

Title: Marine Mammals: General Incidental Take Permits, Small Take Exemptions, and Certificates of Inclusion

Form Number: None; OMB—0648–0083

Type of Request: Revision of a currently approved collection

Burden: 25 respondents; 25 reporting hours; average hours per response—1 hour.

Needs and Uses: The only valid general permit, issued to the American Tunaboat Association, has less than ten certificates of inclusion active under it. Although no other general permit applications are expected, the information collection is required to accommodate it and any additional requests for permits or certificates of inclusion.

Affected Public: Businesses or other for profit, small businesses or organizations.

Frequency: Annual, tri-annual.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Ronald Minsk, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Ronald Minsk, OMB Desk Officer, room 3208 New Executive Office Building, Washington, DC 20503.

Dated: August 7, 1991.

Edward Michals,

Department Clearance Officer, Office of Management and Organization.

[FR Doc. 91–19168 Filed 8–12–91; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under provision of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Institute of Standards and Technology.

Title: Advanced Technology Program.

Form Number: NIST–1262 & 1263, OMB# 0693–0009.

Type of Request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Burden: 500 respondents; 20,000 reporting hours. Average 40 hours.

Needs and Uses: The National Institute of Standards and Technology has established and the Advanced Technology Program (ATP) to accelerate the commercialization of technological innovations and refinement of manufacturing technologies by U.S. businesses. The information requested is necessary to assure a fair and equitable process to evaluate and fund proposals submitted to the program.

Affected Public: businesses, Federal agencies, small businesses, non-profit institutions, and state or local governments.

Frequency: One-time response.

Respondent's Obligation: Required for Benefits.

OMB Desk Officer: Maya A. Bernstein, (202) 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maya A. Bernstein, OMB Desk Officer, room 3235, New Executive Office Building, Washington, DC 20503.

Dated: August 8, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91–19233 Filed 8–12–91; 8:45 am]

BILLING CODE 3510-13-M

International Trade Administration

[A–122–601]

Amendment of Notice of Preliminary Results of Antidumping Duty Administrative Review of Brass Sheet and Strip From Canada To Announce an Intent To Revoke, In Part, the Antidumping Order

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: August 13, 1991.

FOR FURTHER INFORMATION CONTACT: Erik Warga, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377–8922.

Preliminary Determination To Revoke, in Part, the Antidumping Order

Background

On January 30, 1990, Ratcliffs/Severn Limited (Ratcliffs) requested revocation in part of the antidumping order on brass sheet and strip from Canada.

On July 1, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 29938) the preliminary results of the antidumping duty review for the period January 1 through December 31, 1989. The preliminary results indicated the existence of a *de minimis* margin of sales at less than fair value for the manufacturer/exporter Ratcliffs. This was the third consecutive administrative review in which the margin for Ratcliffs was *de minimis* or zero.

On the basis of Ratcliffs' having sold merchandise covered by the antidumping order at not less than foreign market value for a period of at least three consecutive years and because there is no information indicating that Ratcliffs is likely to sell the merchandise at less than fair value in the future, the Department has made a preliminary determination that there is a reasonable basis to believe that the requirements of 19 CFR 353.25 have been met for revocation of the order with respect to Ratcliffs.

Interested parties are invited to submit written comments on the Department's intent to revoke the antidumping order with respect to Ratcliffs. Any such comments must be submitted in at least ten copies to the Assistant Secretary for Import Administration, room B099; 14th Street & Constitution Avenue NW.; Washington, DC 20230. Comments must be filed no later than August 23, 1991.

This notice is in accordance with section 751 of the Tariff Act (19 U.S.C. 1675) and 19 CFR 353.25.

Dated: August 7, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–19234 Filed 8–12–91; 8:45 am]

BILLING CODE 3510-DS-M

[A–122–506]

Final Results of Antidumping Duty Administrative Reviews Oil Country Tubular Goods From Canada

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

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Preliminary Determination To Revoke, in Part, the Antidumping Order

Background

On January 30, 1990, Ratcliffs/Severn Limited (Ratcliffs) requested revocation in part of the antidumping order on brass sheet and strip from Canada.

On July 1, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 29938) the preliminary results of the antidumping duty review for the period January 1 through December 31, 1989. The preliminary results indicated the existence of a *de minimis* margin of sales at less than fair value for the manufacturer/exporter Ratcliffs. This was the third consecutive administrative review in which the margin for Ratcliffs was *de minimis* or zero.

On the basis of Ratcliffs' having sold merchandise covered by the antidumping order at not less than foreign market value for a period of at least three consecutive years and because there is no information indicating that Ratcliffs is likely to sell the merchandise at less than fair value in the future, the Department has made a preliminary determination that there is a reasonable basis to believe that the requirements of 19 CFR 353.25 have been met for revocation of the order with respect to Ratcliffs.

Interested parties are invited to submit written comments on the Department's intent to revoke the antidumping order with respect to Ratcliffs. Any such comments must be submitted in at least ten copies to the Assistant Secretary for Import Administration, room B099; 14th Street & Constitution Avenue NW.; Washington, DC 20230. Comments must be filed no later than August 23, 1991.

This notice is in accordance with section 751 of the Tariff Act (19 U.S.C. 1675) and 19 CFR 353.25.

Dated: August 7, 1991.

Eric I. Garfinkel,
Assistant Secretary for Import Administration.

[FR Doc. 91–19234 Filed 8–12–91; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-506]

Final Results of Antidumping Duty Administrative Reviews Oil Country Tubular Goods From Canada

AGENCY: Inernational Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative reviews.

SUMMARY: On December 26, 1990 and May 10, 1991, the Department of Commerce ("the Department") published in the **Federal Register** (55 FR 53026 and 56 FR 21659, respectively) the preliminary results of its administrative reviews of the antidumping duty order on oil country tubular goods ("OCTG") from Canada (51 FR 21782 (June 16, 1986)). One review covers Christianson Pipe Ltd. ("Christianson"), an exporter of this merchandise to the United States, and the period June 1, 1988 through May 31, 1989. The other review covers Christianson and Prudential Steel Ltd. ("Prudential"), a producer and exporter of this merchandise to the United States, and the period June 1, 1989 through May 31, 1990. We preliminarily found dumping margins in both reviews.

We gave interested parties an opportunity to comment on the preliminary results. We held a hearing on February 8, 1991 for Christianson and the period June 1, 1988 through May 31, 1989. No hearing was held for the period June 1, 1989 through May 31, 1990. Based on the analysis of the comments received, we have changed the margins from those presented in our preliminary results.

EFFECTIVE DATE: August 13, 1991.

FOR FURTHER INFORMATION CONTACT: Joseph B. Kaesshaefer, Jr. or Robin Gray, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–3793.

SUPPLEMENTARY INFORMATION:

Background

On December 26, 1990 and May 10, 1991, the Department published in the **Federal Register** (55 FR 53026 (December 26, 1990) and 56 FR 21659 (May 10, 1991)) the preliminary results of its administrative reviews of the antidumping duty order on OCTG from Canada (51 FR 21782 (June 16, 1986)). The Department has now completed the administrative reviews in accordance with section 751 of the Tariff Act of 1930, a amended ("the Act").

Scope of Review

Imports covered by these reviews are shipments of OCTG from Canada. This includes American Petroleum Institute ("API")-specification OCTG and all other pipe with the following characteristics except entries which the Department determined through its end use certification procedure were not used in OCTG applications: Length of at least 16 feet; outside diameter of standard sizes published in the API or proprietary specifications for OCTG with tolerances of plus ⅛ inch for diameters less than or equal to 8⅝ inches and plus ⅛ inch for diameters greater than 8⅝ inches, minimum wall thickness as identified for a given outer diameter as published in the API or proprietary specifications for OCTG; a minimum of 40,000 PSI yield strength and a minimum 60,000 PSI tensile strength; and if with seams, must be electric resistance welded. Furthermore, imports covered by this review include OCTG with non-standard size wall thickeness greater than the minimum identified for a given outer diameter as published in the API or proprietary specifications for OCTG, with surface scabs or slivers, irregularly cut ends, ID or OD weld flash, or open seams; OCTG may be bent, flattened or oval, and may lack certification because the pipe has not been mechanically tested or has failed those tests. During the periods of review, these shipments were provided for in Tariff Schedules of the United States Annotated (TSUSA) items 610.3216, 610.3219, 610.3233, 610.3234, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3295, 610.3935, 610.4025, 610.4035, 610.4210, 610.4220, 610.4225, 610.4230, 610.4235, 610.4240, 610.4310, 610.4320, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, and 610.5244. The Corresponding Harmonized Tariff Schedule (HTS) numbers are 7304.20, 7305.20, and 7306.20. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

One review covers one exporter of OCTG from Canada, Christianson, and the period June 1, 1988 through May 31, 1989. The other review covers Christianson end a producer and exporter, Prudential, and the period June 1, 1989 through May 31, 1990.

Cost of Production Issues

As noted in the preliminary determination for both the review period June 1, 1988 through May 31, 1989 ("the third review") and June 1, 1989 through May 31, 1990 ("the fourth review"), the Department had reasonable grounds to believe or suspect that Christianson made sales during the periods of review below the cost of production. Thus, the Department conducted cost investigations in both reviews.

In both the third and fourth reviews, petitioners alleged that Christianson, the reseller under review, sold non-prime pipe at prices below the cost of production of the unrelated producer, Prudential. The Department analyzed both allegations in accordance with section 773(b) of the Act which provides:

> Whenever the administering authority has reasonable grounds to believe or suspect that sales in the home market of the country of exportation, or, as appropriate, to countries other than the United States, have been made at prices which represent less than the *cost of producing* the merchandise in question, it shall determine whether, in fact, such sales were made at less than the *cost of producing* the merchandise." [emphasis added]

In reviewing the allegations in this statutory context, the Department first needed to determine the accuracy of the cost information for non-prime pipe supplied by petitioners. In *Ipsco, Inc. and Ipsco Steel, Inc.* v. *United States,* 714 F. Supp. 1211, 1214, (1989) (*"IPSCO"*) (currently on appeal to the Court of Appeals for the Federal Circuit), the Court of International Trade ("CIT") directed the Department to "find a reasonable means of allocating the combined cost of production between [prime and non-prime OCTG] which takes into account differences in value." The Department thus conducted its cost analyses in these reviews consistent with this decision.

1. The Third Review

On November 22, 1989, petitioners submitted a cost allegation which provided the Department with reasonable grounds to believe or suspect that Christianson's home market sales were made at prices below the cost of production. The Department therefore initiated a sales below cost investigation. Because petitioners alleged that Christianson had sold non-prime pipe below the cost of production, and Prudential, a party whose sales are not subject to the third review, produced the subject merchandise, the Department sent a cost questionnaire to Prudential on September 14, 1990. However, Prudential notified the Department on November 27, 1990 that it would not respond to the cost questionnaire. Thus the Department lacked the actual cost information from the producer and had to rely upon the best information available ("BIA") in accordance with section 776(c) of the Act. Because cost of production information was not within the control of Christianson, the Department decided that rather than disregard Christianson's full cooperation in this review and apply total BIA (*i.e.*, disregard Christianson's response in calculating dumping margins, and instead assign Christianson an overall dumping rate), it was more appropriate to use BIA to estimate Prudential's cost of producing non-prime pipe. Thus, the Department used as BIA petitioner's cost information, supplemented, where necessary to remain consistent with *IPSCO*, with limited sales information provided by Prudential.

In the preliminary results of the third review, to determine the cost of producing non-prime pipe, based on BIA, in a manner consistent with *IPSCO*, the Department multiplied petitioners' cost of producing prime OCTG by 35 percent. The Department derived this value ratio from sales information reported in an appendix to the public summary of the November 30, 1990 supplemental questionnaire response submitted by Prudential in the fourth review. This information demonstrated that the sales value of non-prime OCTG was 35 percent of the sales value of prime OCTG. See Preliminary Results of Antidumping Administrative Review, 55 FR 53026 (December 26, 1990). The Department compared petitioners' revised cost of production of non-prime pipe to Christianson's home market sales prices and found that 100 percent of the home market sales were made at prices above the cost of production.

2. The Fourth Review

On November 21, 1990, petitioners alleged that Christianson's home market sales were made at prices below the cost of production. On January 30, 1991, the Department requested that petitioners revise the below cost allegation to be consistent with the CIT's direction in *IPSCO* to account for the respective costs of production for prime and non-prime pipe. On February 15, 1991, petitioners submitted a revised cost allegation. Based no the revised allegation, the Department determined that reasonable grounds existed to believe or suspect that Christianson's home market sales were priced below the cost of production. The Department issued a cost questionnaire to the producer of Christianson's OCTG, Prudential. On March 26, 1991, Prudential notified the Department that it would not respond to the questionnaire.

Because Prudential did not respond, the Department again had to use BIA to estimate Prudential's cost of producing non-prime pipe. In following *IPSCO* in the preliminary results of the fourth review, the Department used petitioners' revised allegation as BIA. However, the Department modified the relative value ratio for prime and non-prime pipe provided in the allegation with the average of the relative value ratios derived from the sales information submitted by both Prudential and petitioners. See Preliminary Results of Antidumping Administrative Review, 56 FR 21659, 21660 (May 10, 1991).

The Department then compared the cost of producing non-prime pipe with Christianson's home market sales prices and found that a substantial quantity of the merchandise was sold at prices below the cost of production.

3. The Final Cost of Production Methodology for the Third and Fourth Reviews

In response to comments from the parties and after further consideration and review, the Department has revised the cost methodologies used in the third and fourth reviews in these final determinations. For the final results of the third and fourth reviews, the Department's cost methodology incorporates the following components of petitioners' Februrary 15, 1991 revised cost allegation and Prudential's November 30, 1990 supplemental questionnaire response as BIA to determine the cost of producing non-prime pipe in the home market:

1. Petitioners' unit cost of prime pipe for two sizes of tubing and four sizes of casing;
2. Petitioner's volume of prime and volume of non-prime production tonnages for the two sizes of tubing and the four sizes of casing;
3. Petitioners' average relative value of sales in the United States of non-prime to prime pipe for the two sizes of tubing and the four sizes of casing; and
4. Prudential's relative value of sales in the home market of non-prime to prime pipe, adjusted for costs incurred to process further Prudential's prime OCTG.

The information used was submitted on the record in the fourth review; for the third review, the Department used information from the public summaries of those submissions, which it placed on the record of the third review.

In accordance with *IPSCO*, to allocate reasonably the combined cost of production between non-prime and prime pipe, the Department sought a relative value ratio derived from the greatest possible number of products sharing common costs and the largest universe of sales experience. The Department thus averaged petitioners' and Prudential's relative value ratios to calculate a more accurate relative value ration, as that relative value ratio would be based on a greater number of products sharing common costs and incorporate the wider sales experience of both the United States and home markets than using either petitioners' or Prudential's information exclusively.

Thus, the Department was able to calculate a simple average of the relative U.S. and home market value ratios. This simple average was used to allocate the total manufacturing costs among non-prime and prime products. To the calculated per ton cost of manufacture, the Department added SG&A to obtain the cost of production for the six sizes of tubing or casing.

The two sizes of tubing and the four sizes of casing for which the Department calculated cost of production were all sold in the home market. Thus, in conducting the cost test, the Department compared the calculated cost of production of each specific size of tubing to its respective home market sales price charged by Christianson. For other sizes of tubing sold in the home market, the Department averaged the cost of production calculated for the two sizes of tubing and compared that average cost of production to the home market sales prices charged by Christianson for the respective sizes of tubing. For other sizes of casing sold in the home market, the Department averaged the cost of production calculated for the four sizes of casing and compared that average cost of production to the home market sales prices for the respective sizes of casing. As a result of these cost tests, the Department found in both reviews that a substantial number of sales of non-prime pipe in the home market were made at prices below the cost of producing non-prime pipe. Those below cost sales were disregarded in its final analyses.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. At the request of the petitioners, Lone Star Steel Company and CF&I Steel Corporation, we held a public hearing on February 8, 1991 for the period June 1, 1988 through May 31, 1989. A public hearing was not held for the period June 1, 1989 through May 31, 1990. We received comments and rebuttal comments from the petitioners and respondents for both review periods.

Analysis of Petitioners' and Christianson's Cost Comments

Comment 1: Petitioners argue that because Prudential failed to respond to the Department's cost of production questionnaires in both reviews, the Department should have rejected Christianson's questionnaire responses in their entirety and used the highest margin previously assigned in the less than fair value investigation as BIA for Christianson. Petitioners believe that since Prudential failed to respond to the Department's cost of production questionnaires, the Department should not reward Christianson because of non-cooperation from Prudential in these reviews, and, thus, a punitive BIA should be employed.

In the alternative, petitioners argue that their cost of production information submitted in their November 22, 1989 cost allegation for the third review and their November 21, 1990 cost allegation for the fourth review, should have been used unaltered as BIA.

Christianson objects to the Department's decision to investigate its unrelated supplier's (Prudential) cost of production in determining whether its Canadian sales are below the cost of production. Christianson contends that Prudential's cost of production is irrelevant for purposes of determining whether Christianson's home market sales are below the cost of production, and that Christianson's cost of production should be based on its acquisition costs. However, Christianson believes that the Department has broad discretion to determine how and when to use BIA, and that the BIA methodologies employed in the two reviews were reasonable.

Department's Position:

We disagree with Christianson's argument that the Department should not have investigated Prudential's cost of production in determining whether its Canadian sales are below the cost of production. As noted above, section 773(b) of the Act is clear in its direction that the relevant cost involved in a below cost investigation is "the cost of producing the merchandise in question." Here, Prudential is clearly the producer of the merchandise, not Christianson. Christianson's acquisition costs would be relevant only if it were alleged that Christianson, a reseller, is selling below those acquisition costs. Because based on petitioners allegation the Department had reasonable grounds to believe or suspect that Christianson as selling below the cost of production, the statute required the Department to request cost information from the producer of the merchandise in question. See Final Determination of Sales at Less Than Fair Value: Fresh and Chilled Atlantic Salmon from Norway, 56 FR 7661 (February 25, 1991) (hereinafter "Salmon").

We disagree with petitioners that the Department should have used total BIA for Christianson in these reviews, or used their cost allegations unaltered as BIA. As noted in the "Cost of Production Issues" section of this notice, the Department attempted to obtain cost of production information from the producer of the subject merchandise, Prudential. However, Prudential refused to respond in both reviews to the cost of production questionnaires sent by the Department, and thus the Department had to rely upon BIA.

It is well established that the Department possesses wide discretion in determining what constitutes BIA. *See Chemical Prods. Corp.* v. *United States,* 645 F. Supp. 289, 295 (CIT 1986). Section 353.37(b) of the Act provides that the Department may take into account whether a party refuses to provide requested information. See Antifriction Bearings and Parts Thereof from the Federal Republic of Germany, et al.: Final Results of Antidumping Duty Administrative Review, 56 FR 31692, 31704–05 (July 11, 1991) (hereinafter "*Bearings*"). In the exercise of its discretion, the Department could have simply used total BIA for Christianson's sales. However, because the relevant cost information was outside the control of Christianson, and in light of Christianson's full cooperation in both reviews, the Department determined it more reasonable to use BIA to calculate cost of production. *Cf. Chevron Standard Ltd.* v. *United States,* 563 F. Supp. 1387, 1389 (CIT 1983).

In thus applying BIA, the Department based its cost of production calculation on cost information submitted by petitioners. In order to follow the CIT's direction in *IPSCO* to reasonably allocate costs of production among products sharing the same pool of common costs, the Department supplemented that information with limited sales information provided by Prudential in the fourth review. See "Cost of Production Issues" section of this notice.

Comment 2: Petitioners disagree with the Department's calculation in the third review of a relative home market value for the non-prime pipe sold by Christianson based on sales information from Prudential's supplemental questionnaire response from the fourth review.

Christianson responds that in using BIA the Department has wide discretion in its choice of the information it uses.

Department's Position:

We agree with Christianson that the Department has wide discretion in its choice of the information used as BIA; however, we also agree with petitioners that the cost methodology employed in the third review preliminary determination needed improvement. Thus, we revised the cost methodology for the final determination as noted above.

Comment 3: Petitioners comment that for the fourth review if the Department insisted on employing a methodology consistent with *IPSCO,* it should not have adjusted a portion of petitioners' February 15, 1991 allegation. Adjusting petitioners' cost allegation, according to petitioners, arbitrarily benefits Prudential and Christianson.

Department's Position:

We disagree with petitioners. The portion of petitioners' allegation which the Department adjusted was the relative value of sales of non-prime and prime pipe. In its allegation, petitioners submitted data that supported a relative value ratio of non-prime and pipe derived from petitioners' average U.S. prices for a portion of its prime pipe sales and a U.S. distributor's prices for a portion of its non-prime pipe sales.

Though the Department agrees that the data submitted by petitioners provides a relative value indicative of its experience for some OCTG products produced and sold in the United States, it does not provide a complete or reasonable relative value for all of a producer's pipe products sharing common costs.

In its sales questionnaire response for the fourth review, Prudential provided sales information for a portion of its prime and non-prime pipe sales in Canada. Using the quantity and value data of OCTG produced by Prudential, the Department calculated a relative value indicative of a producer's experience for some OCTG products in Canada. This relative value, like that provided by petitioners, does not provide a comprehensive relative value for all of Prudential's products sharing common costs which are then sold in various markets, but rather provides just a portion of that relative value. Therefore, the Department determined that using both parties' sales information would result in a more accurate relative value, as that relative value derived from sales information from both petitioners and Prudential would be based on a greater number of products sharing common costs.

Comment 4: Petitioners comment that for the fourth review, the Department erred in calculating the relative Canadian market value ratio by comparing aggregate Canadian values of non-comparable products (threaded and coupled prime pipe vs. plain-end prime pipe) and ignoring certain Canadian sales information reported by Prudential on its plain-end prime products. Further, petitioners comment that Prudential made no sales of non-prime pipe in the home market during the period of review so the calculation the Department seeks to make is impossible.

Christianson responds that the Department need not adjust for the differences between the circumstances surrounding sales of the prime and non-prime products or the physical differences between the two qualities of merchandise because it adds an unreasonable level of complexity to the Department's BIA analysis.

Department's Position:

We disagree with Christianson. After further review and consideration of this matter, the Department determined that it must adjust Prudential's relative value ratio to account for the extra costs incurred to thread and couple prime OCTG in order to make a more accurate comparison of comparable products. Threading and coupling adds cost to pipe, and not adjusting for those added costs distorts the relative value between prime and non-prime pipe with different end finishes. In addition, the Department agrees with petitioners that the Department should not ignore Prudential's Canadian sales of plain-end pipe. The amounts reported by Prudential for its plain-end pipe are used in the final analysis and the value of prime OCTG is adjusted to account for threading and coupling costs.

We disagree with petitioners, however, in their assertion that the Department's Canadian relative value ratio is inaccurate because Prudential made no sales of non-prime pipe during the period of review. In order to derive a relative value ratio, the Department used as BIA information on the record concerning Prudential's sales of non-prime pipe. Though these sales were not made during the period of review, prime and non-prime pipe share a common pool of costs. Therefore, to allocate costs among those two products, a relative value ratio based upon sales value relationship of both products was required.

Comment 5: Petitioners comment that for the fourth review the Department should not have used a simple average of U.S. and Canadian relative values, and suggest methods to calculate relative values for varying sizes and grades in both markets.

Department's Position:

We disagree. We have reviewed the methods suggested by petitioners and have determined that they do not achieve a more accurate result. In producing various sizes and grades of OCTG, numerous common costs are shared; thus, a simple average of the relative values provides a reasonable approximation of the relative values in both markets.

Comment 6: Christianson comments that for the fourth review the Department should not have used petitioners' SG&A expenses in its BIA calculations, and instead should have used Prudential's reported SG&A.

Petitioners respond that the Department acted reasonably in using petitioners' data since Prudential did not respond to the Department's cost questionnaire.

Department's Position:

We agree with petitioners. As noted above, Prudential refused to respond to the Department's cost questionnaires in both reviews, whereas petitioners complied with the Department's request to revise their cost information consistent with *IPSCO*. Thus, the Department decided to use BIA to construct the cost of production for the subject merchandise. As BIA, the Department used the cost information, including SG&A, submitted by petitioners, in a manner which takes into account the differences in value of prime and non-prime pipe. However, this allocation required sales information concerning the home market which was not contained in petitioners' submissions. Therefore, the Department supplemented petitioners' information with limited sales information from Prudential's fourth review sales response.

While Prudential's fourth review sales response contains some SG&A information, the Department again notes that when asked directly in the third and fourth reviews to submit such information in response to a cost questionnaire, Prudential refused to cooperate. Due to this repeated refusal to provide cost information, the Department continued in the final results of these reviews to use only petitioners' cost information in its BIA calculation.

Comment 7: Christianson comments that for the fourth review the Department made methodological errors which overstated Christianson's sales below cost. First, Christianson argues that the Department should not have used the highest cost of production for both tubing and casing sizes, and instead should have calculated a weighted average of the cost of production for casing and tubing cost of productions. Second, Christianson argues that the Department should not have used a simple average of petitioners' and Prudential's data to calculate a relative value ratio, and instead should have used a weighted average.

Petitioners respond that the Department correctly used the highest cost of production for tubing and casing, and though they disagree with using Prudential's data to calculate a home market relative value ratio, using a simple average is more reasonable than using a weighted average one.

Department's Position:

The Department agrees in part with both petitioners and Christianson. Concerning the Department's use of the highest costs for tubing and casing, the Department agrees with Christianson that it should not have used the highest cost of production for both tubing and casing to test all sales in the home market, and therefore use average costs of production, except where cost of production information existed for a particular size of tubing or casing, as noted in the "Cost of Production Issues" section of this notice.

The Department does not agree with Christianson that the Department should take a weighted or simple average of the tubing and casing costs and compare them to the home market sales. Instead, the Department finds it more reasonable to compare the cost of production of a specific size to the same sized Canadian sale when available. Where there are no exact size comparisons, the Department finds it reasonable to compare the simple average of the cost of production of all tubing sizes or all casing sizes to the relevant Canadian sale.

Concerning the use of a simple average of the relative ratios, the Department agrees with petitioners that using a simple average is more reasonable than using a weighted average. The ratios derived from both petitioners' and Prudential's partial sales information for different grades, types, and sizes of pipe, represent a reasonable approximation of the relative values in both markets. Because this information is only partial, the Department could not accurately determine the proper weight to assign to the relative ratios. While weight averaging might have been desirable if the sales information provided by both parties was complete, in the absence of

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used the highest cost of production for both tubing and casing sizes, and instead should have calculated a weighted average of the cost of production for casing and tubing cost of productions. Second, Christianson argues that the Department should not have used a simple average of petitioners' and Prudential's data to calculate a relative value ratio, and instead should have used a weighted average.

Petitioners respond that the Department correctly used the highest cost of production for tubing and casing, and though they disagree with using Prudential's data to calculate a home market relative value ratio, using a simple average is more reasonable than using a weighted average one.

Department's Position:

The Department agrees in part with both petitioners and Christianson. Concerning the Department's use of the highest costs for tubing and casing, the Department agrees with Christianson that it should not have used the highest cost of production for both tubing and casing to test all sales in the home market, and therefore use average costs of production, except where cost of production information existed for a particular size of tubing or casing, as noted in the "Cost of Production Issues" section of this notice.

The Department does not agree with Christianson that the Department should take a weighted or simple average of the tubing and casing costs and compare them to the home market sales. Instead, the Department finds it more reasonable to compare the cost of production of a specific size to the same sized Canadian sale when available. Where there are no exact size comparisons, the Department finds it reasonable to compare the simple average of the cost of production of all tubing sizes or all casing sizes to the relevant Canadian sale.

Concerning the use of a simple average of the relative ratios, the Department agrees with petitioners that using a simple average is more reasonable than using a weighted average. The ratios derived from both petitioners' and Prudential's partial sales information for different grades, types, and sizes of pipe, represent a reasonable approximation of the relative values in both markets. Because this information is only partial, the Department could not accurately determine the proper weight to assign to the relative ratios. While weight averaging might have been desirable if the sales information provided by both parties was complete, in the absence of

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such complete information, a simple average of those ratios better achieves the result of basing the ratio on the greatest number of products sharing common costs.

Comment 8: Christianson comments that for the fourth review the Department erred in disregarding in its analysis those Christianson home market sales which were made at prices below the cost of production. In order to disregard those sales, Christianson contends that the Department must prove that such sales were made at less than cost in substantial quantities over an extended period of time and at prices which do not permit the recovery of all costs within a reasonable period of time in the normal course of trade.

Petitioners respond that the Department correctly disregarded those sales by applying its standard 10/90 rule.

Department's Position:

We agree with petitioners. According to section 773(b) of the Act, if the Department determines that sales made at less than cost of production have been made in substantial quantities, the Department shall disregard such sales in its determination of FMV. Consistent with long-standing Department practice, because we determined that more than ten percent of Christianso's home market sales were made at prices below the cost of production, those sales constituted substantial quantities of below cost sales, and thus were disregarded. This practice has been upheld by the CIT in *Timken Co.* versus *United States*, 673 F. Supp. 495, 514 (1987).

Concerning Christianson's argument that the Department must prove that Christianson below cost sales were made over an extended period of time, the Department notes that sales below cost were made in each month during the review periods. Further, we note that Christianson submitted no data indicating that any of its below cost sales were at prices that would have permitted "recovery of all costs within a reasonable period of time in the normal course of trade." Accordingly, we have concluded that all below cost sales did not recover such costs. See Bearings, 56 FR 31730, Salmon, 56 FR 7661.

Analysis of Petitioners' Other Comment—The Third Review

Comment 1: For the third review petitioners claim that the Department erred in using information submitted by Christianson in its preliminary analysis because the data contained in Christianson's response was unverifiable. Petitioners argue further that the Department never received a response to its cost of production questionnaire, and therefore, the Department should disregard Christianson's response completely, and rely instead on BIA. Petitioners recommend for use as BIA the highest rate for a producer previously investigated during its fair value investigation.

Department's Position:

We disagree. The data received in Christianson's response was substantially complete and was verified. Christianson brought certain calculation or programming errors to the Department's attention, and when the Department found other discrepancies and errors, Christianson corrected them and the Department verified the amended data. Therefore, the Department uses Christianson's sales data in its final analysis. When the unrelated producer of Christianson's merchandise, Prudential, failed to respond to the Department's cost of production questionnaire, the Department determined, in accordance with section 776(c) of the Act, to use BIA for the cost of production of the non-prime pipe sold by Prudential to Christianson. See "Cost of Production Issues" section of this notice.

Comment 2: Petitioners claim that the Department failed to deduct inland freight charges on eleven U.S. sales, and that the Department should deduct the highest freight charge reported by Christianson as BIA.

Christianson responds that of the 11 U.S. sales identified by petitioners, they confirm that nine incurred no freight charges and that Christianson inadvertently omitted the per unit freight charges on two of the sales. Christianson provides the actual freight charge for the two sales.

Department's Position:

The Department agrees with petitioners that the Department should deduct the highest freight charge reported by Christianson as BIA, but only on the two sales for which Christianson claims it incurred the freight charges. The Department regards Christianson's new freight claims as untimely filed because this information was provided for the first time in its rebuttal brief.

Comment 3: Petitioners claim that the Department failed to deduct a brokerage charge on one U.S. sale, and that the Department should deduct the highest brokerage charge reported by Christianson as BIA. Petitioners argue that it is inconceivable that Christianson did not incur brokerage charges on a sale which incurred U.S.Customs duty and U.S. Customs user fee charges.

Department's Position:

The Department agrees with petitioners. Christianson did not explain why this one sale would not have incurred a brokerage charge, and did not respond to petitioners' comment. Thus, the Department deducted the highest brokerage charge reported by Christianson as BIA for the one sale.

Comment 4: Petitioners argue that the preliminary dumping margin and cash deposit rates established for Christianson and new exporters are unreasonable and undermine proper enforcement of the antidumping order. Petitioners request that the Department establish a deposit rate for the manufacturer/exporter combination of Prudential/Christianson which would only apply to Christianson's exports of Prudential's product. This way, petitioners argue, the manufacturer cannot take advantage of the lower rate and export directly to the United States.

Christianson argues that the Department denied this argument in the final results of review for the periods of review January 1, 1986 through May 31, 1987 and June 1, 1987 through May 31, 1988, and should continue to do so.

Department's Position:

We agree with Christianson. The Department has determined that Prudential does not know the ultimate disposition of commercial grade pipe a the time of its sales to Christianson. Since there is no relationship between Christianson and Prudential and Christianson's pricing practices are the ones reflected in our fair value finding. Consistent with past practice, we have not reported the result of this review as a Prudential/Christianson rate solely for Prudential-made products.

Comment 5: Petitioners argue that the cash deposit rate for new exporters is unreasonable because the rate does not reflect the selling practices of Canadian OCTG producers and that the "all other" rate from the less than fair value investigation should apply to new exporters. Petitioners contend that if the new rate applies to all new exporters, OCTG producers with higher dumping margins will export their product through new unrelated exporters to take advantage of the lower cash deposit rate.

Department's Position:

The Department now applies an "all other" rate to new shippers and all non-reviewed firms. See Bearings. if petitioners believe that exporters with low cash deposit rates are acting as a conduit for producers with a higher rate, petitioners can request an administrative review of those exporters.

Comment 6: Petitioners argue that the Department erred in its adjustment for provincial taxes, specifically the amount of taxes deducted from FMV. Petitioners cite an example where more than the reported amount of provincial tax based on a rate of six percent was deducted from FMV, and, therefore, petitioners believe that the Department should make no downward adjustment to FMV.

Department's Position:

We agree in part. The example which petitioners cite does contradict the verified six percent tax rate. However, the Department has altered the way it will treat this adjustment for this review period consistent with the methodology used in the fourth review. The Department has determined that the provincial tax is essentially the same as the federal tax in that only certain home market sales incur the tax (only those sold to purchasers in British Columbia) and that none of the sales which incur the tax are made to the United States. Therefore, the methodology employed to calculate the federal tax is used to calculate the provincial tax. (See Analysis of Petitioners' Other Comment 9 for an explanation of the methodology.)

Analysis of Petitioners' Other Comments—The Third and Fourth Reviews

Comment 7: For the third and fourth reviews, petitioners contend that the Department erred in not calculating U.S. price on the basis of Prudential's sales prices to Christianson because Prudential knew or should have known that some of its merchandise was destined for the United States. Petitioners maintain that Christianson is at best a broker for Prudential and that Prudential was involved in Christianson's resale process. Petitioners claim that this is further supported by the fact that Christianson never inventories the pipe. For these reasons, petitioners believe Prudential's prices to Christianson should have been used as the price to the United States.

Christianson argues that Prudential had no knowledge at the time of sale that the commercial grade pipe would be exported to the United States and that the relationship between Christianson and Prudential is strictly arms-length. Therefore, the Department was correct in comparing Christianson's home market sales with Christianson's sales to the United States.

Department's Position

We agree with Christianson. Christianson negotiates annually to purchase all commercial grade pipe generated by Prudential. The company sells this pipe to the Untied States as well as in Canada. Prudential, however, does not know the ultimate disposition of the merchandise it sells to Christianson at the time of its sales agreement with Christianson. Furthermore, Christianson's invoicing, shipping, and payment records indicate that the pipe is marketed solely by Christianson. The Department verified that Christianson takes title to the goods while they are on Prudential's premises and that Prudential is not involved in establishing Christianson's selling prices. Under these circumstances, the Department therefore believes it appropriate to base Untied States price on Christianson's sales to its unrelated U.S. customers.

Comment 8: Petitioners contend that the Department erred in calculating FMV based on home market sales instead of constructed value because the merchandise sold by Christianson in the home market is not such or similar to the merchandise sold to the United States. Petitioners argue that because there is a wide range of defects in commercial grade pipe, the Department should use a difference in merchandise adjustment through constructed value to account for the variety of defects. Further, petitioners state that the pipe sold by Christianson in the home market is not OCTG because it cannot be used for drilling in Canadian wells. Petitioners argue that the Department recognized that commercial grade pipe could be used in other than OCTG applications so it expressly limited the scope of the order by eliminating pipe which was not used in OCTG applications in the United States as determined by the Department's end use certification procedure.

Christianson contends that the merchandise it sells in Canada is commercially identical to the merchandise it sells in the United States, and that the Department correctly based its comparison on merchandise sold by Christianson in the home market.

Department's Position

We disagree with petitioners. The Department believes that the commercial grade pipe sold by Christianson in the home market is such or similar to the commercial grade pipe it sells in the United States within the statutory definition of "such or similar" merchandise found at section 771(16) of the Act. The merchandise Christianson sells in both markets consists of pipe possessing the same range of defects which causes all of that pipe to be classified as commercial grade pipe. Christianson sells its commercial grade pipe in both Canada and the United States without regard to the individual differences in defects between different pipe; Christianson merely sorts the pipe by size and sells it on an "as is," non-warranted basis to distributors and end users in both markets. The purchaser in both markets purchases a variety of defective pipe of the same size.

Petitioners argue that the commercial grade pipe sold by Christianson in the United States is not "such or similar" to that sold in Canada because Canadian regulations prohibit using defective pipe as OCTG without first sufficiently upgrading that pipe, whereas no such regulations exist in the United States for pipe similarly defective. At the time Christianson sells the commercial pipe in both markets, however, that pipe potentially can be applied to the same variety of uses in both markets. While sections 771(16) (B) and (C) of the Act ("such or similar merchandise") mention use, they do not indicate at what point in time use is to be taken into account. According to section 773(a)(1) of the Act, however, the foreign market value of the imported merchandise depends on the price charged for that merchandise "at the time such merchandise is first sold within the United States." Thus, if use is a factor in determining whether merchandise is "such or similar" for foreign market value purposes, the relevant uses the Department must consider are those at the time of that first sale in the United States.

As noted above, at the time of that first sale of commercial pipe in the United States, that pipe potentially can be used in the United States for the same variety of purposes as in Canada. For merchandise such as commercial grade pipe, which at the time of importation can be used in a variety of ways, the ultimate use of that merchandise cannot drive the initial determination of whether that merchandise is "such or similar" for foreign market value purposes, particularly when ultimate use may be decided in the future by a subsequent purchaser.

The Department's end use certification procedure merely provided domestic parties the opportunity to certify that certain pipe was not used in OCTG applications and, therefore, was not subject ultimately to the antidumping duty order. This procedure did not change the fact that when Christianson sold commercial grade pipe in both markets, the variety of possible uses for that pipe was the same.

Additionally, petitioners assert that range of defects in commercial grade pipe should lead the Department to adjust for differences in merchandise. According to section 353.57 of the Department's regulations, however, the Department will adjust for differences in physical characteristics only when the Department is satisfied that "the amount of any price differential is wholly or partly due to such differences." Because Christianson did not sort or sell the various types of commercial grade pipe according to defects, the Department concluded that no price differentials existed between the various types of commercial grade pipe. Therefore, the Department did not make adjustments for physical differences.

Comment 9: Petitioners argue that the Department's adjustments for federal taxes on home market sales are incorrect.

Petitioners contend that the Department erred in its assumption that all export sales would have been subject to the tax and should not make upward adjustments to United States price on all sales.

Department's Position

We agree in part. Information on the record indicates that Canadian federal taxes are not uniformly applied to all home market sales. While Prudential states that only those sales made to end users that do not use that pipe in OCTG applications, or those sales made to resellers that do not have a federal sales tax exemption from the Canadian government, have a federal tax imposed upon them, Christianson contends that all pipe produced and sold in Canada ultimately has a federal tax imposed upon it which is paid by some party in Canada. Neither party submitted documentation on the record supporting their respective claim. However, Christianson's questionnaire response indicated that federal tax was paid on a substantial number of Christianson sales of the subject merchandise.

Pursuant to section 772(d)(1)(C) of the Act, the Department must increase United States prices by the amount of taxes imposed in the home market which is not collected on sales of OCTG to the United States. Because none of the sales to the United States had Canadian tax imposed on them, the Department must make this adjustment. In order to adjust accurately the United States price for federal taxes, the Department employed the following revised methodology for the final results for the third and fourth reviews. First, we determined an average tax per sale in the home market by deducting from the gross price of each sale in the home market upon which a tax was imposed the amount of that tax. We then calculated an average federal tax for each home market sale by dividing the total tax paid in each month by the total of all gross prices, less all adjustments (except handling in the fourth review). Next, the rate was multiplied by the gross price, less adjustments, of each sale in the U.S. market and the result was added to FMV before the margin was calculated. Pursuant to section 772(d)(1)(C) of the Act, this amount was then added to the gross price of each sale in the United States. This adjustment is needed to avoid artificially inflating or deflating margins that can result from the fact that tax amounts attributable to foreign products differ from those associated with U.S. products.

Analysis of Petitioners' Other Comments—The Fourth Review

Comment 10: Petitioners comment that the Department failed to deduct antidumping duty cash deposits from U.S. price for both Christianson's and Prudential's sales. Petitioners contend that the payment of these duties is a sales rebate benefitting the customer as a reduction in the U.S. sales price.

Department's Position

We do not consider estimated antidumping duties to be expenses related to the sales under consideration. Given the tenuous nature of these estimated rates and the possibility that they could be zero, we do not consider them to be expenses within the meaning of section 772(d)(2)(A) of the Act for the purposes of determining United States price. Thus, the Department does not deduct from United States price any estimated duties paid on behalf of, or reimbursed to, an importer. (See, *e.g.*, Color Television Receivers from Korea. 55 Fed. Reg. 26225 (1990); Anhydrous Sodium Metasilicate from France, 49 FR 43733 (1984)).

Comment 11: Petitioners comment that the Department should have made a difference in merchandise adjustment for extra costs incurred in producing the subject merchandise Prudential sold to the United States. Petitioners note that products sold to the United States are cut to lengths specified by Prudential's customers, and that products sold in the home market used for comparison purposes were not cut to lengths specified by Prudential's customers.

Prudential responds that a difference in merchandise adjustment should not be made because it always incurs the same expense in both markets.

Department's Position

The Department agrees with Prudential. The subject merchandise sold in both markets is always either cut to customer specification or to standard, industry-accepted lengths. The record indicates that for the pipe which is subject to this review, plain end pipe, the expense involved in this process is the same whichever market the pipe is sold in, so no adjustment is made.

Comment 12: Petitioners comment that Prudential included in its home market freight claim amounts associated with return of merchandise. Petitioners believe that since Prudential failed to isolate the freight amounts less return of merchandise costs attributed to the Canadian sales, the Department should not allow any home market freight claims.

Prudential responds that only one sale incurred return of merchandise costs, and the additional charges incurred on that sale were directly related to that sale. Therefore, the Department properly allowed the full amount of the freight claim.

Department's Position

We agree in part with petitioners. Movement expenses are those costs incurred by Prudential in moving the merchandise from the factory to the point of delivery and not costs incurred in moving the merchandise back to the factory. The Departmnet believes, as does Prudential, that the additional return freight charge is a warranty expense because, as Prudential states, it arose under the explicit warranty in the sales agreement. If Prudential had wanted the extra costs incurred on this sale to be adjusted for return of merchandise, then Prudential should have claimed the costs as a warranty expense. Therefore, the Department reduced Prudential's reported amount of freight for this sale by the amount of the additional charge incurred on the return of the merchandise. The Department disagrees with petitioners that all freight claims by Prudential should be disallowed. Prudential reports that only this one sale incurred this extra expense.

Comment 13: Petitioners comment that the Department should not have allowed Prudential's home market inland freight expenses to warehouse stocking points because Prudential failed to establish that the specific amounts claimed for movement were tied to specific sales of the subject merchandise.

Prudential responds that the claimed amounts are accurate and the Department properly allowed this movement expense.

Department's Position

We agree with Prudential. Prudential states that it is impossible to provide documentation which ties a specific delivery to a stocking point to a sale made to a Canadian customer because delivery to the stocking point normally occurs before the sale is made. The Department found that Prudential's reported amount of stocking point freight was based on the actual cost for shipping pipe for the mill to the stocking point and then allocated to the respective products under review.

Comment 14: Petitioners comment that the Department erred in calculating the period of time in which credit was extended to Prudential in the home market by counting the number of days from the date of the sale to the date of payment instead of the number of days from the date of shipment to the date of payment. Petitioners argue that Prudential would have extended credit at or about the time of the date of shipment.

Department's Position

Comment 15: Petitioners argue that the new cash deposit rate for Prudential is unreasonable because the products under review are not OCTG. Petitioners believe that Prudential should be assigned the "all other" cash deposit rate from the less than fair value investigation until Prudential's exports are further reviewed.

Department's Position

The Department disagrees. The physical characteristics of the pipe which Prudential sold to the United States qualifies it as merchandise subject to the antidumping order. As such, antidumping cash deposits were properly collected on the entries of this merchandise and duties will be assessed on this merchandise in accordance with the results of these reviews. Furthermore, it is appropriate to assign a new cash deposit rate for Prudential based on the results of this review.

Comment 16: Petitioners comment that the Department improperly applied BIA for FMV is its analysis of two Christianson casing sales because the Department compared sales of the less-expensive casing to sales of the more-expensive tubing. Petitioners suggest that the Department assign a FMV of a contemporaneous sale of similar casing at the same level of trade.

Department's position

We agree with petitioners and have amended the BIA applied in the final analysis. In addition to this correction, the Department made a clerical error in the preliminary results in assigning the wrong FMV to a sale of tubing. For the final results, the Department assigned a FMV of a contemporaneous sale of tubing at the next level of trade.

Analysis of Respondent's Other Comments—The Third and Fourth Reviews

Comment 1: Christianson argues that the Department erred in comparing Christianson's Canadian distributor sales solely with its U.S. distributor sales and Christianson's Canadian end user sales solely with it U.S. end user sales. Christianson believes that its Canadian prices do not differentiate between distributor and end user customers, and, therefore, if such differences do not exist, then the Department cannot make a level of trade comparison. Christianson demonstrates that in certain cases its average monthly distributor prices are actually consistently higher than its average monthly end user prices.

Christianson comments further that for one U.S. distributor sale in the third review, the Department incorrectly compared it to a Canadian sale involving a significantly lower quantity. Therefore, this small isolated sale is sufficient in quantity and the Department should make a comparison to a sale of a more sufficient quantity at the next level of trade.

Petitioners argue that the Department consistently makes sales comparisons at the same commercial level of trade when they exist in the U.S. and foreign market and that the Department correctly made such a comparison in Christianson's case. For the one sale which Christianson claims is in sufficient in quantity to be based at the same level of trade, petitioners argue that sufficiency of sales is based on number of sales, not the quantity of a particular sale, and that the Department compared one sale in the Canadian market to one sale in the U.S. market in accordance with Department practice.

Department's Position

We agree with petitioners. According to § 353.58 of the Department's regulations, we "normally will calculate foreign market value and United States price based on sales of the same commercial level of trade." The Department only considers difference in prices between levels of trade if, because "sales at the same commercial level of trade are insufficient in number to permit an adequate comparison," the Department calculates FMV based upon different levels of trade. *Id.* The authorities cited by Christianson in support of its argument relate to instances in which the Department, because sales at the same level of trade were found to be insufficient, had to consider adjusting FMV due to differences in prices between levels of trade.

We also agree with petitioners that the Department properly compared one sale in the Canadian market to one sale in the U.S. market. According to § 353.58 of the Department's regulations, the Department will calculate FMV based on different levels of trade only if "sales at the same commercial level of trade are *insufficient in number* to permit an adequate comparison." [emphasis added] The size of the sales within the level of trade is not relevant to the analysis.

Analysis of Respondents' Other Comments—The Fourth Review

Comment 2: Christianson and Prudential comment that the Department should use U.S. dollar interest rates to calculate respondents' U.S. imputed credit costs instead of Canadian dollar interest rates. Prudential suggests that if the Department choose not to use U.S. dollar interests rates, it should use a weighted average of the rates, and not a simple average, in effect during the review period.

Petitioners argue that the Department properly calculated the interest expense based on Canadian interest rates, but petitioners would not object to a weighted average of those rates instead of a simple average.

Department's Position

The Department generally uses a home market interest rate in its imputed credit expense calculations for purchase price transactions when a company has not actually borrowed any funds since short term financing is generally made in the funds of the country where the company is located. We calculated a simple average of the home market interest rates in effect over the annual review period by Christianson's and Prudential's Canadian bank, to approximate the rate Christianson and Prudential would have paid had it borrowed money. The Department maintains that the use of a simple average is reasonable in calculating respondents' imputed credit costs since neither Christianson nor Prudential ever actually had short-term borrowings during the periods of review.

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We also agree with petitioners that the Department properly compared one sale in the Canadian market to one sale in the U.S. market. According to § 353.58 of the Department's regulations, the Department will calculate FMV based on different levels of trade only if "sales at the same commercial level of trade are *insufficient in number* to permit an adequate comparison." [emphasis added] The size of the sales within the level of trade is not relevant to the analysis.

Analysis of Respondents' Other Comments—The Fourth Review

Comment 2: Christianson and Prudential comment that the Department should use U.S. dollar interest rates to calculate respondents' U.S. imputed credit costs instead of Canadian dollar interest rates. Prudential suggests that if the Department choose not to use U.S. dollar interests rates, it should use a weighted average of the rates, and not a simple average, in effect during the review period.

Petitioners argue that the Department properly calculated the interest expense based on Canadian interest rates, but petitioners would not object to a weighted average of those rates instead of a simple average.

Department's Position

The Department generally uses a home market interest rate in its imputed credit expense calculations for purchase price transactions when a company has not actually borrowed any funds since short term financing is generally made in the funds of the country where the company is located. We calculated a simple average of the home market interest rates in effect over the annual review period by Christianson's and Prudential's Canadian bank, to approximate the rate Christianson and Prudential would have paid had it borrowed money. The Department maintains that the use of a simple average is reasonable in calculating respondents' imputed credit costs since neither Christianson nor Prudential ever actually had short-term borrowings during the periods of review.

Comment 3: Prudential comments that the Canadian credit expense should be calculated before deducting the difference in merchandise adjustments from the gross price.

Department's Position

We agree. The Department normally adjusts for differences in merchandise after the credit expense has been calculated, and corrects this adjustment for the final results.

Comment 4: Prudential notes that the Department made a clerical error in applying the credit period it had calculated to determine the credit expense for one Canadian sale.

Department's Position

We agree. For the final analysis, the correct number of days between date of shipment and date of payment is used to calculate the credit expense for this sale.

Final Results of the Review

As a result of our reviews, we determine that the following dumping margins exist:

Manufacturer/exporter	Period of review	Margin
Christianson Pipe Ltd.	6/1/88–5/31/89	11.06
	6/1/89–5/31/90	15.51
Prudential Steel Ltd.	6/1/89–5/31/90	9.48

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the U.S. Customs Service.

The following deposit requirements will be effective upon publication of this notice for all shipments of the subject merchandise from Canada, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be that established in the final results of the fourth review covering the period June 1, 1989 through May 31, 1990; (2) For merchandise exported by manufacturers or exporters not covered in this review but covered in prior reviews or the final determination of sales at less than fair value (the original investigation), the cash deposit rate will continue to be the rate published in those reviews or that determination; (3) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review or the original investigation, whichever is the most recent; (4) For any future entries of this merchandise from any other exporter or manufacturer, not covered in this or prior administrative reviews, whose first shipments occurred after May 31, 1990 and who is unrelated to the reviewed firm or any previously reviewed firm, the cash deposit rate shall be equal to the highest margin calculated in the fourth review covering the period June 1, 1989 through May 31, 1990.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 CFR 353.22 (1990)).

Dated: August 6, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-19235 Filed 8-12-91; 8:45 am]

BILLING CODE 3510-DA-M

[A-588-015]

Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration/International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On April 19, 1991, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on television receivers, monochrome and color, from Japan. The Review covers one manufacturer/exporter of this merchandise to the United States and the period March 1, 1988, through February 28, 1989.

We gave interested parties an opportunity to comment on our preliminary results. At the request of the respondent, we held a hearing on June 3, 1991.

Based on our analysis of the comments received, and the correction of a clerical error, we have changed the preliminary results of this review. The final margin is *77.79* percent

EFFECTIVE DATE: August 13, 1991.

FOR FURTHER INFORMATION CONTACT: Orlando Velez, David Mason, or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923.

SUPPLEMENTARY INFORMATION:

Background

On April 19, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 16072) the preliminary results of its administrative review of the antidumping finding on television receivers, monochrome and color, from Japan (36 FR 4597, March 10, 1971). We have now completed the administrative review in accordance with § 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of the Review

Imports covered by this review are shipments of television receivers, monochrome and color, from Japan. Television receivers include, but are not limited to, units known as projection televisions, receiver monitors, and kits (containing all parts necessary to receive a broadcast television signal and produce a video image). Not included are certain monitors not capable of receiving a broadcast signal, certain combination units, and certain subassemblies not containing the components essential for receiving a broadcast television signal and producing a video image. Prior to January 1, 1989, television receivers, monochrome and color, were classifiable under item numbers 684.9230, 684.9232, 684.9234, 684.9236, 684.9238, 684.9240, 684.9245, 684.9246, 684.9248, 684.9250, 684.9252, 684.9253, 684.9255, 684.9256, 684.9258, 684.9262, 684.9263, 684.9265, 684.9270, 684.9275, 684.9400, and 684.9655 of the Tariff Schedules of the United States Annotated (TSUSA). As of January 1, 1989, this merchandise is classifiable under Harmonized Tariff Schedules (HTS) item numbers 8528.10.80, 8528.11.60, and 8528.20.00. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This review covers one manufacturer and/or exporter of Japanese television receivers, Fujitsu General Limited (FGL), for the period March 1, 1988, through February 28, 1989.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. At the request of FGL, we held a public hearing on June 3, 1991. We received case briefs and rebuttal comments from one domestic party to the proceeding, Zenith Electronics Corporation (Zenith), and from the respondent, FGL.

During disclosure with FGL, the Department noted that the rate used for Teknika's short term interest was incorrect. for the final results, we revised the rate to reflect the correct percentage as submitted in FGL's Section C response.

Comment 1: FGL submitted comments concerning certain mathematical and clerical errors in the Department's preliminary results analysis.

Department's Position: Pursuant to FGL's comments in its case brief, we have made the following corrections to the program in our final results calculations for FGL: (1) The difference in merchandise adjustment for model 21V–M2B was amended to reflect the correct figure that was illegible in FGL's original submission; (2) the final analysis memorandum was amended to indicate that total transportation costs are in thousands of yen (we note that this was only an error in the analysis memorandum, and not in the calculation); (3) the U.S. commodity tax base was adjusted to include packing costs; (4) the U.S. commodity tax base was recalculated without the deduction for foreign inland freight, since this expense was already deducted from the transfer price; and (5) entered value used to determine commodity taxes was recalculated to exclude warehousing expense.

Comment 2: Zenith contends that the Department's treatment of Japanese commodity taxes rebated or not collected by reason of exportation was unlawful. According to Zenith, the Department added the full amount of the tax to U.S. price and made a circumstance-of-sale (COS) adjustment to foreign market value (FMV) for the difference between the amount of Japanese and U.S. tax. Zenith argues that the Department should impose a tax cap on the amount of the tax determined to have been forgiven by reason of export and that no adjustment should be made to the FMV for the difference between the two tax amounts. In support of its contention, Zenith cites *Zenith Electronics Corp.* v. *United States,* 633 F. Supp. 1382 (CIT 1986), *appeals dismissed,* 975 F.2d 291 (Fed. Cir. 1989) (*Zenith*); *Daewoo Electronics Co.* v. *United States,* 712 F. Supp. 931 (CIT 1989) (*Daewoo*); and *Zenith Electronics Corp.* v. *United States,* 755 F. Supp. 397 (CIT 1990) (as clarified by order dated Feb. 20, 1991).

FGL argues that to create a fair comparison between markets, it is necessary to add the full amount of tax to the U.S. price and then adjust for the difference in the tax amounts. FGL goes on to point out that the General Agreement on Tariffs and Trade obligates the United States to calculate dumping margins in such a way that the tax exemption for export models cannot be the cause of a dumping finding.

Department's Position: We do not agree with the Court of International Trade (CIT) in *Zenith* or *Daewoo,* but have not had an opportunity to appeal the issue on its merits. Because we believe that dumping margins should neither be inflated nor deflated by differences between Japanese taxes and constructed taxes applied to U.S. price, we do not agree with the CIT's position on adjustments for differences in commodity taxes. After calculating the amount of commodity tax and adding it to U.S. price, we make an adjustment to FMV for the differences in taxes by deducting the Japanese commodity tax from FMV and replacing it with the constructed U.S. commodity tax. This method has the same effect on the absolute margin calculated as would capping the amount of U.S. tax added to U.S. price. See our response to *Comment 1* in *Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Review* (56 FR 12702, March 27, 1991) and our response to Comment 4 in Color Television Receivers, Except for Video Monitors, from Taiwan; Final Results of Antidumping Duty Administrative Review (56 FR 31380, July 10, 1991).

Comment 3: FGL contends that the Department's method of calculating the U.S. tax base for commodity tax purposes understates the amount of commodity tax. FGL argues that the Department must examine how the law is actually applied in Japan. According to FGL, the normal tax base in Japan is the freely offered selling price of the merchandise in the place of manufacture. However, FGL claims that different rules apply to "special selling organizations," and that, under Japanese law, a wholly owned subsidiary is, by definition, a special selling organization. Accordingly, FGL concludes that its wholly owned subsidiary, Teknika, meets the definitional requirement and, therefore, the Department must calculate commodity tax consistent with the CIT's determination in *Zenith Electronics Corp.* v. *United States,* (755 F. Supp 397) (CIT 1990). According to FGL, the Court in Zenith held that since the tax base is the special selling organization's price to its customers less an amount for profit, which would be 5 percent under Japanese law, the tax base should, therefore, be 95 percent of the wholly owned subsidiary's prices to its customers. FGL states this is directly applicable to Teknika and adds that the current methodology yields disparate results because the U.S. tax is based upon prices to the distributor, whereas the home market tax is based upon prices to retailers. FGL urges the Department to recalculate the U.S. tax base consistent with the CIT's holding in Zenith.

Department's Position: We disagree with FGL. The tax base used for determining the amount of tax which Japanese taxing authorities would have imposed on exports of merchandise to the United States is the price which is analogous to the home market tax base. The tax base used to calculate the commodity tax was the constructed ex-factory price, the tax base comparable to that used in the home market.

Moreover, whatever difference may have been introduced into the margin equation through the calculation of the imputed tax on U.S. sales, it was calculated out by the commodity tax COS adjustment to FMV described in Comment 2 above. This adjustment equalized the commodity taxes in the two markets. If the addition to U.S. price was either greater or less than the home market tax, the amount of the COS adjustment rose or fell correspondingly to offset whatever minor difference might otherwise have appeared in the margin. When the COS adjustment is taken into account, no part of FGL's absolute margin is attributable to the commodity tax.

Comment 4: Zenith argues that the Department should deduct antidumping-related legal expenses from exporter's sales price (ESP). According to Zenith, these expenses are selling expenses because they are incurred as a result of a respondent selling the merchandise under review in the United States at prices below FMV. Moreover, Zenith argues that there is no basis for retaining in ESP legal expenses incurred as a result of an antidumping proceeding when all other legal expenses incurred by a foreign company's U.S. subsidiary are deducted from ESP.

FGL states that legal expenses are not selling expenses, and that they are incurred many years after the sales under review. FGL states that its sales are not costed, priced, or otherwise affected by the fact that legal fees may eventually be incurred, and that the same cannot be said for true selling expenses. FGL argues that any deduction for antidumping-related legal expenses would be unreasonable and arbitrary.

FGL notes further that if the Department were to deduct such expenses, petitioner would, in effect, gain control over the margin calculation inasmuch as it could draw respondents into unavoidable legal skirmishes , thus creating legal expenses, and deductions from U.S. price. To avoid a dumping finding under these circumstances, FGL

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argues it would be placed in the unusual position of having to capitulate to petitioner's allegations and arguments in order to avoid legal fees. FGL concludes that Zenith's position is contrary to the principles of fundamental fairness and public policy (*Daewoo Electronics Company, Ltd.* v. *United States*, 712 F. Supp. 931 (1989)).

Department's Position: We disagree with Zenith. As we have stated in previous reviews of this order, and of the antidumping duty orders on color television receivers from the Republic of Korea and Taiwan, we do not consider legal expenses incurred in defending against an allegation of dumping to be expenses incurred in selling the merchandise in the United States. As a result, we have not deducted these expenses from ESP in these final results. Also, see our response to Comment 4 in Television Receivers, Monochrome and Color From Japan; Final Results of Antidumping Duty Administrative Reviews (54 FR 13919, April 6, 1989). We note, moreover, that whereas Zenith criticized the Department in Comment 2 for failing to follow the CIT opinion in Zenith in this instance, it is urging the Department to disregard the CIT opinion regarding this issue in Daewoo.

Comment 5: Zenith argues that the Department should deduct from U.S. price, payments of estimated antidumping duties and any expenses related to such payments. According to Zenith, these items should be deducted from U.S. price along with the estimated ordinary duties paid because the statute specifically requires that "United States import duties" be deducted from U.S. price.

FGL claims that Zenith's proposal has an illogical, illegal, and unfair implication. To illustrate, FGL states that in a given situation the Department may find that no dumping occurred during the period of review. However, while the company's pricing practices would have been vindicated, the Department might still find a dumping margin based upon the deduction to U.S. price for payments of the deposit amounts.

Department's Position: We disagree with Zenith. As we have stated in previous reviews of this finding, we believe that using estimated amounts of antidumping duties in our calculations would result in inaccurate margins. We do not consider payments of estimated antidumping duties to be expenses related to sales of merchandise under consideration for this review period. Further, given the possibility that these estimated duties could vary significantly from duties that may be assessed, we do not consider them to qualify as "expenses" within the meaning of section 772(d)(2)(A) of the Tariff Act for purposes of determining U.S. price. Finally, estimated duties and duties assessed are paid by the importer, which in some cases, is unrelated to the party whose sales are under review. As a result, we have not deducted them from U.S. price in these final results. *See* our response to Comment 5 in Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Administrative Review (55 FR 35916, September 4, 1990), our response to Comment 6 in Color Television Receivers From the Republic of Korea; Final Results of Antidumping Administrative Review (56 FR 12701, March 27, 1991), and our response to Comment 8 in Color Television Receivers, Except for Video Monitors, From Taiwan; Final Results of Antidumping Administrative Review (56 FR 31380, July 10, 1991).

Comment 6: FGL asserts that the Department erroneously included packing material and packing labor costs in calculating the cost of manufacture (COM) for constructed value (CV). FGL claims that the net effect of this error is an overstatement of selling, general, and administrative (SG&A) expenses because the SG&A ratio is multiplied against a COM which is overstated by the amount of packing costs. FGL notes that the Department deducted packing prior to calculating profit, in order to avoid overstating profit, and urges the Department to treat SG&A similarly.

Department's Position: We disagree. FGL presented COM information for CV models inclusive of packing costs. It then deducted packing costs to arrive at its COM figure presented in the CV questionnaire response. However, during the hearing, FGL stated that the packing charge in question is consumer packaging which occurs at the end of the assembly line, and does not represent containerization for purposes of shipment (See hearing transcript, June 3, 1991, at 43). Accordingly, we have used the COM inclusive of packing since we previously determined that consumer packaging costs (as opposed to containerization for shipment) should be considered part of the product when that cost is included in the price of the finished product (see Certain Stainless Steel Cooking Ware From Korea, Final Determination of Sales at Less Than Fair Value, (51 FR 42873, 42879, November 26, 1986).

Comment 7: FGL asserts that COM used to derive CV was calculated inclusive of royalties. FGL cites a home market sales verification report from the eight administrative review period in support of its contention that royalty expense is incurred when models are sold, not when models are produced. FGL claims that the inclusion of royalty expense in COM results in double counting because royalty is also a component of SG&A.

Department's Position: We agree in part. In FGL's June 20, 1991 response to clarification questions posed at the hearing, FGL explained that the royalties for the models in question were incurred by an independent contractor who manufactured television receivers for FGL. Because all items included in FGL's acquisition cost, including royalties, become part of FGL's COM, the royalties paid by the contractor have already been counted in acquisition costs. For these final results, we have deducted FGL's royalty fee from our calculation of SG&A, since this cost was incurred by FGL's independent contractor, and is thus not a FGL selling expense.

Comment 8: FGL claims that the Department improperly treated certain non-operating and extraordinary loss items in building up the total SG&A figure for purposes of establishing an SG&A ratio. FGL claims that certain items in non-operating loss and extraordinary loss represent company-wide expenses that are not related to the production of the merchandise under review. Therefore, FGL requests that the Department consider its April 12, 1991 submission, which was submitted for the purpose of clarifying the portion of non-operating and extraordinary items that are related to the production of the merchandise under review.

Department's Position: We agree. We requested and received clarifications which were submitted by FGL on April 12, 1991. Based on FGL's response, the Department has revised its buildup of SG&A for the purpose of calculating an SG&A ratio.

Comment 9: FGL claims that the Department should use total sales as a basis for determining the SG&A ratio for CV calculation. FGL claims that the Department was in error in calculating the SG&A ratio based upon cost of goods sold (COGS). FGL states that the Department should not make a distinction between the SG&A ratio, which was based on COGS, and the deduction made for transportation, which was based on total sales.

Department's Position: In accordance with Department practice, we calculated SG&A by multiplying the ratio of reported company-wide SG&A to reported company-wide COGS by the model-specific COM. Use of a ratio based on total sales would be incorrect because the denominator would include an element of profit, thus creating incongruous results when multiplied by COM. By contrast, the Department determined per-unit transportation costs using the ratio of company-wide transportation costs to company-wide sales, since that ratio is applied to a CV which includes profit.

Comment 10: FGL claims that the Department should not have deducted the income statement commodity tax amount from COGS. FGL contends that the deduction does not achieve the Department's stated intent of preserving tax neutrality in the commodity tax calculations. Instead, the deduction increases FMV, which in turn exacerbates the imbalance that the Department seeks to address in making CV tax neutral.

Department's Position: We disagree. It is the Department policy to strip all commodity tax expenses, wherever they are reported, from the calculation of CV. The increase in CV caused by deducting commodity tax expense from the SG&A ratio is best understood in the following context. Where commodity tax expense is accounted for as a part of COM as opposed to a selling expense, the Department's adjustment is a two-step process. First, the Department eliminates any commodity tax expense from the reported COM. Second, it eliminates commodity tax expense from the SG&A ratio (specifically from the denominator—COGS) before applying the ratio to COM when calculating an SG&A amount to add to the CV buildup.

The effect of this adjustment is similarly two-fold. First, it decreases the COGS portion of CV, because COM is lowered by the per-unit commodity tax amount. Second, it increases the relative portion of CV which is attributable to SG&A because the SG&A ratio increases due to the deduction of commodity tax from the denominator. FGL reported COM information for CV models net of a per-unit commodity tax amount. FGL's income statement, however, indicates that commodity tax expense is charged to COGS and not to SG&A. Moreover, FGL states in its case brief that commodity tax is a *bona fide* element of cost. Since FGL reported COM for CV models net of a per-unit commodity tax charge, it was not necessary for the Department to perform the first part of the calculation which, as stated earlier, has the effect of decreasing the COGS portion of CV. The Department, however, did perform the second part of its calculation, which involved removing commodity tax expense from the SG&A ratio denominator (COGS).

Comment 11: FGL contends that with regard to adjustments to CV, the Department did not meet one of the fundamental requirements of the antidumping law, namely, that U.S. price be compared to an economically equivalent FMV, regardless of whether home market, third country, or CV is used to calculate FMV. In support of its position, FGL cites *Asociacion Colombiana De Exportadores* versus *United States* (704 F. Supp. 1114 (1989)). FGL points out that, while the Department adjusted U.S. price downward to an ex-factory price, it failed to adjust CV, which included direct and indirect selling expenses. FGL urges the Department to adjust both CV and U.S. price in order to arrive at a specific common point in the chain of commerce, and cites *Smith-Corona Group* versus *United States* (713 F.2d 1568 (Fed. Cir. 1983), cert. denied 465 U.S. 1022 (1984)) in support of its position. FGL contends that the Department is required to find that common point by way of adjustments to CV including an ESP offset.

FGL points out that the Department finds itself in the unusual situation of not having any adjustments to make to CV specifically because the Department selected CV as its model match. FGL claims that this selection resulted in the Department's not receiving cost and expense data associated with home market models. FGL concludes that the Department was, therefore, unable to reduce CV by model-specific selling expenses, as the Department would have preferred. FGL points out that the company did not cause this situation, nor did it fail to provide full and complete responses to the Department's requests.

To remedy this situation, FGL suggests that the Department implement one of three alternatives devised by FGL. In the first alternative, FGL suggests deducting all the U.S. selling expenses from CV. FGL claims the Department previously employed this method in Certain Fresh Cut Flowers from Colombia (52 FR 6842, March 5, 1987). FGL argues that the CIT held this method to be not only reasonable, but necessary under 19 U.S.C. 1677(b)(a)(4). (*Asociacion Colombiana De Exportadores* versus *United States* (704 F. Supp. 1114 (CIT 1989).)

As a second alternative, FGL suggests that the Department refrain from making any circumstance of sales adjustment to U.S. price. Alternatively, FGL requests that the Department use data previously submitted in the eighth and ninth administrative reviews. In addition, FGL specifically requests that the Department use such data for the home market costs and expenses which were not provided in this review.

In response, Zenith opposes application of each methodology and argues that FGL's position suffers from a false premise, namely that adjustments to FMV must be made. Zenith contends that adjustments should be granted only after such adjustments are satisfactorily identified and quantified by the claiming respondent. Thus, Zenith concludes, if FGL provided no quantification of home market claims, none should be made. Moreover, Zenith asserts that each alternative method set forth by FGL would be unlawful.

As to the first alternative, Zenith claims that applying U.S. sales adjustments would be divorced from the statutory requirement that adjustments be for differences, not "identicalities." With respect to the second alternative, Zenith asserts that a failure to make adjustments to U.S. price would be unlawful, since the expenses are established on record and the statute requires that they be taken into account in the dumping calculation. As for the third alternative, Zenith argues it is too late in this review for FGL to provide data submissions as support for new adjustment claims. Zenith concludes that no adjustments may be made.

Department's Position: For these final results, we did not employ and of the alternatives suggested by FGL. With respect to FGL's first suggested alternative, there is no provision in the statute instructing us to use U.S. selling expenses as a surrogate (see Color Television Receivers From Taiwan; Final Results of Antidumping Duty Administrative Review (56 FR 31378, July 10, 1991, Comment 32). With respect to the second alternative, as Zenith points out, we are required by law to deduct U.S. selling expenses from U.S. price (section 772(e)(2) of the Tariff Act). We cannot apply FGL's final suggestion, to use data previously submitted for the eighth and ninth administrative reviews, because such data is not on the record of this proceeding. Further, use of such data would be less appropriate than current period data that is on the record.

For these final results, we have adjusted FGL's home market sales prices for selling expenses, using the ratio of selling expense to total sales based upon the company's consolidated financial statements. In addition, we derived the selling expense adjustment for CV by applying the ratio of company-wide selling expense to company-wide COGS to the COM of the models used for CV. We then deducted the calculated amount from CV.

Comment 12: FGL argues that the Department should have rejected Zenith's allegation of below-cost sales in the home market as untimely. FGL claims the Department did not address this objection when it was originally raised by FGL, and requests that the Department address it at this time.

FGL also argues that, pursuant to section 1677b(b), before the Department can disregard any below-cost sales, it must first determine that such sales were made over an extended period of time, in substantial quantities, and at prices which do not permit recovery of all costs within a reasonable period of time in the normal course of trade. FGL claims that the Department only conducted a cost test for two months, March and April 1988, rather than for the entire period of review. FGL states that two months does not constitute an extended period of time, and thus the Department has failed to satisfy the first stated requirement.

Second, FGL claims that since only a small quantity of home market sales of this model occurred during the period of review, the Department has also failed to meet the requisite substantial quantity of sales below cost test.

Finally, while FGL admits that home market sales of model 21VM2B were made at prices lower than usual due to the company's close-out of the model, FGL claims that these lower prices do not prove that overall sales of the model were made below cost over an extended period of time. Therefore, FGL claims the Department should recalculate the FMV inclusive of all sales of the home market model.

Department's Position: As a procedural matter, the Department examines an allegation of sales below cost to determine whether a cost investigation is warranted. Each allegation stands or falls on its own merits. In this case, Zenith submitted its allegation in a timely manner and provided sufficient reason to believe or suspect that FGL made sales below cost of production.

Furthermore, contrary to FGL's claim that the cost test was only conducted for two months of the period, we found sales below cost in every month of the review period. Moreover, we note that there were substantial quantities of below cost sales in each month of the period. We consider the number to constitute a "substantial quantity," when more than 10 percent of the sale of a given model were sold at prices below the cost of production. Finally, with respect to FGL's argument that the model 21VM2B was an obsolete model, although the legislative history of section 1677b(b) recognizes that obsolescence may justify using infrequent sales below cost, the fact of obsolescence does not justify using systematic sales below cost as a basis for FMV. In this case, below cost sales of model 21VM2B were substantial and occurred over an extended period of time. Moreover, given the fact that the model has been discontinued, costs for this model never will be recovered. Therefore, we have disregarded below cost sales of this model.

Comment 13: FGL claims it is the Department's policy to exclude from the margin calculation those U.S. sales that are not representative of the seller's behavior. Citing *Ipsco, Inc.* v. *United States,* 714 F. Supp. 1211, in support of its position, FGL advocates application of this policy to model TF–2085 in the present review, because that model was at the very end of its sales life and was sold in insignificant quantities as compared to the television market as a whole. FGL states that, to clear out its inventory, Teknika sold this model at prices lower than the weighted average selling price from the prior review period. FGL asserts that this circumstance is a clear indication that such sales of model TF–2085 represent an aberration and should be excluded from margin calculations.

Department's Position: We disagree. The Department does not ignore U.S. sales on the basis of obsolescence (*see* Portable Electric Typewriters From Japan; Final Results of Antidumping Duty Administrative Review (56 FR 14072, April 5, 1991, Comment 27). Additionally, there is no provision in the statute to exclude U.S. sales in an administrative review, except in cases of sampling. FGL's reference to *Ipsco* is misplaced since that case involved a less than fair value investigation.

Moreover, FGL has not demonstrated that the sales at issue were not representative of the seller's behavior. FGL indicates it sold a close-out model in fewer quantities than usual. However, we do not find it unusual for a television manufacturer to close out certain older models and develop new models. Inasmuch as the development and marketing of new models and new technologies is an inherent part of the television industry, the obsolescence of older models must also be viewed as a normal part of the television business. In short, selling models which are rapidly approaching the end of their sales lives should not be construed as conduct unrepresentative of the seller's behavior in the television industry. Moreover, FGL has not demonstrated that inclusion of model TF–2085 sales would undermine the fairness of the comparison of foreign and domestic sales.

Comment 14: FGL contends that the Department incorrectly calculated FMV based on home market sales. FGL states the Department only adjusted FMV for physical differences in merchandise, differences in commodity tax amounts, royalties, and packing. FGL claims the Department failed to adjust for direct selling expenses and any ESP offset. FGL suggests the Department apply the relevant data from FGL's December 29, 1989 submission which covers this review period. Alternatively, FGL suggests applying data from its supplementary response of September 5, 1990. FGL contends that appropriate ratios can be derived by dividing these expense figures by total domestic sales. To support its claim, FGL reminds the Department that it applied this method in the previous administrative review.

In response, Zenith restates its contention that FGL's argument suffers from an erroneous premise that the Department must make adjustments to price-based FMV. Zenith contends that FGL failed to provide adjustment-specific quantification data, and thus, no adjustments are required and none should be made.

Department's Position: We requested and received additional information to determine whether FGL's reported selling expenses constituted direct or indirect expenses. Pursuant to FGL's June 26, 1991 response, which clarified the nature of the previously reported expenses, we adjusted the FMV for selling expenses, which were allocated on the basis of total sales, as reflected in the consolidated financial statements.

Comment 15: FGL contends that the Department's U.S. warranty expense adjustment is artificially inflated. FGL points out that the warranty expenses reported by Teknika are all after-sale expenses, and thus, pertain not only to sales made during the period of review, but also to sales made during earlier review periods. FGL insists that inclusion of warranty expenses pertaining to sales not under review resulted in excessive warranty expenses attributed to model TF–2085, which is in the process of being phased out. FGL contends that it defies economic logic to attribute close to half of sales value to warranty expense for a mass-produced and commercially sold television model. FGL adds that a similar situation exists for model TC–1923. To create a realistic adjustment ratio, FGL requests that the Department base the warranty expense ratio on FGL's historical warranty experience for the five years preceding the review period.

In response, Zenith argues that the excessive amounts for warranty expense in this review are irrelevant given the Department's practice of using contemporaneous warranty expenses to quantify the adjustment in the review period. Zenith asserts that the Department cannot now refuse to use that methodology merely because, in this instance, it is adverse to a respondent. Zenith claims that the current adversity for FGL is merely indicative of the fact that in prior reviews the Department undercounted the warranty expense for these models, and that the actual expenses are now catching up with FGL. Zenith concludes that the remaining warranty expense must be charged against these current period sales.

Department's Position: Although we generally use warranty expenses incurred during the period of the review, the Department will consider longer historical periods to provide a more accurate estimate of the eventual warranty expenses for the merchandise under review. Although we recognize that the current period warranty expense methodology also captures expenses pertaining to merchandise sold prior to the review period, this is normally counterbalanced, since some warranty expenses pertaining to the subject merchandise will be incurred after the review period (see Color Television Receivers From Korea; Final Results of the Antidumping Duty Administrative Review (56 FR 12701, March 27, 1991, Comment 38). In the case of FGL, the company experienced a precipitous drop in sales from one review period to the next. In effect, substantial warranty expenses pertaining largely to sales from previous periods accumulated on the small number of sales in the current review period, resulting in excessive per unit warranty expenses. In view of the unusual circumstances, some change in methodology is warranted in order to maintain the integrity of the estimate, and to avoid overstating the warranty expenses that would result if our normal methodology were applied (see Color Television Receivers From Korea; Final Results of the Antidumping Duty Administrative Review (53 FR 24975, July 1, 1988, Comment 58). Accordingly, we have changed our methodology to include the historical warranty experience of the company for the models in question. Specifically, we allocated combined warranty expenses from the previous three years and the current review period over combined sales for the same time periods.

Comment 16: FGL contends that the inventory carrying costs should be calculated based upon the price Teknika pays for the merchandise, rather than the price it charges to its customers. FGL argues that since the expense relates to the opportunity cost of tying up money spent on inventory, the true opportunity cost to be imputed to Teknika is Teknika's cost of purchasing televisions from FGL, not the prices it eventually charges to its customers. Accordingly, FGL contends that the Department should recalculate imputed interest based upon the value of the merchandise as it entered the United States, as was done in the case of calculating the imputed cost of time-on-the-water.

Department's Position: U.S. inventory carrying costs should be calculated on the landed costs of the merchandise, rather than the transfer prices or the unit resale prices, because the merchandise is valued while in inventory based upon landed costs (see Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Reviews (56 FR 24370, May 30, 1991, Comment 4)). Landed costs include the transfer price plus foreign inland freight, brokerage and handling, foreign inland insurance, ocean freight, marine insurance, and U.S. duty. Accordingly, we have recalculated inventory carrying costs using the landed costs of the merchandise as a basis for the calculation.

Comment 17: FGL contends that an interest expense adjustment based upon imputed inventory carrying costs is generally unnecessary, and should not be made for FGL in this case. Specifically, FGL admits that the company experienced an overall decline in the price of one of its models during the period of review. However, FGL represents that this price decline is due largely to the company's recognition that the value of the merchandise decreases the longer it sits in inventory. Thus, FGL argues that Teknika's pricing already contains an imputed cost element.

In response, Zenith claims that FGL's argument is an attempt to excuse dumping. Zenith claims FGL essentially admitted that it could not sell the merchandise unless it greatly reduced its prices. Zenith argues that the combination of a long inventory period and reduced prices helps to account for the dumping margin found. Zenith states that the combination of factors was created by FGL's commercial decisions, and that FGL should not be excused from the consequences of those decisions in the dumping calculations.

Department's Position: The Department imputes an interest expense for time in inventory in order to adjust for the opportunity cost of holding the merchandise in inventory. An opportunity cost arises because funds expended therefor could have been invested in alternative financial arrangements yielding interest during the inventory period. Since the interest expense associated with time in inventory cannot be isolated from other interest expenses, the Department must impute this expense amount. However, the Department's long-standing policy is to treat the opportunity cost of holding inventory as a real expense (see Portable Electric Typewriters From Japan; Final Results of Antidumping Duty Administration Review (52 FR 1504, January 14, 1987, Comment 5)).

Second, we view FGL's incremental price reduction not as a measure of inventory carrying cost, but as a measure of the value of merchandise affected by the nature of the television business, including the company's need to turn over its inventory. Accordingly, we have made an interest expense adjustment based upon imputed inventory carrying costs.

Comment 18: FGL objects to the calculation of U.S. inventory carrying cost based on actual transaction-specific inventory periods, as opposed to a calculation based on the average length of time in inventory. FGL insists that the Department made exceedingly large imputed interest deductions to U.S. price as a result of its inventory carrying cost calculations. The company claims that, as a result, it is being penalized for its U.S. subsidiary's inability to sell the merchandise "as soon as it would choose." By imputing an interest expense, FGL contends that the Department is creating dumping margins based upon circumstances which neither FGL nor Teknika can control. As a result, FGL asserts that the Department's method of imputing interest in inherently unfair and unreasonable. In support, FGL cites *Melamine Chemicals, Inc.* v. *United States,* (732 F.2d. 924 (Fed. Cir. 1984)), where the Court specifically stated that "[a] finding of LTFV sales based on a margin resulting solely from a factor beyond the control of the exporter would be unreal, unreasonable, and unfair."

FGL adds that the Department's methodology ignores the fact that businesses, including Teknika, do not account for costs in this way. FGL contends the adjustment in a theoretical, not an actual expense, and should thus be calculated based upon a theoretical standard which comports with practices in the normal course of businesses. Accordingly, FGL concludes that the Department should adjust for imputed interest based upon the median length of

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time for televisions in inventory rather than the actual transaction-specific inventory periods which have potential for ridiculous results.

Department's Position: We disagree. Whenever possible, we prefer using data for individual transactions rather than weight-averaged data because these more accurately reflect actual costs. Since FGL was able to provide the actual inventory period for each individual transaction, we used that data to determine FGL's U.S. inventory carrying cost (see Television Receivers, Monochrome and Color, From Japan: Final Results of Antidumping Administrative Reviews (56 FR 5395, February 11, 1991, Comment 12).

Comment 19: Citing *Timken Co.* v. *United States,* (11 CIT 786, 673 F. Supp. 495 (1987)) and *Smith-Corona Group* v. *United States,* (713 F.2d 1568 (Fed. Cir. 1983), cert. denied, 405 U.S. 1022 (1984)), FGL requests that the Department perform all adjustments for direct U.S. selling expenses as additions to FMV, instead of as deductions to U.S. price.

Department's Position: We disagree. As stated in the previous administrative reviews, we are not following the CIT's decisions in Timken or Smith-Corona (see our response to Comment 2 above). We continue to maintain that section 773 of the Tariff Act does not prohibit us from deducting direct selling expenses from ESP. Consequently, our long-standing practice of making adjustments for direct selling expenses under either section 772 or section 773 of the Tariff Act is still in effect (see Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Reviews (56 FR 5392, February 11, 1991, Comment 11)).

Comment 20: Zenith argues that the general expenses component of CV should include commodity tax, rebates, and discounts. Zenith contends that these items must be included in CV in order for the Department to be in conformity with 19 USC 1677b(e)(1)(B), which requires that general expenses include what is usually reflected in sales. Zenith adds that not only does FGL claim that discounts, rebates, and taxes are reflected in the price of the receivers when sold, but that the Department itself insists that such items are proper subjects for adjustment under its authority to adjust for differences in circumstances of sale.

FGL counters that 19 USC 1677b(e) enumerates specific items to be included within CV and that commodity tax is not one of these items. FGL argues that commodity tax is recognized elsewhere in the statute, and that if Congress intended CV to include commodity tax, it would have been included in the CV section of the statute. FGL concludes that there is no legal basis to include commodity tax in CV.

With respect to discounts and rebates, FGL claims that these items were included in CV, according to the company's September 5, 1991 supplemental response. However, FGL claims that these items should be deducted from CV because the Department considers discounts and rebates to be adjustments to price rather than selling expenses. FGL contends that adjustments to price are not permissible elements of cost-based CV, and cites Television Receivers, Monochrome and Color, from Japan; Final Results of Antidumping Administrative Review (56 FR 16069, April 19, 1991, Comment 8). Accordingly, FGL advocates removal of discounts and rebates from CV.

Department's Position: We disagree with Zenith. Commodity taxes should not be included in CV. Pursuant to section 773(e) of the statute, the Department constructs an ex-factory value comprised of the costs of manufacturing, general expenses (i.e., SG&A expenses), profit on home market sales, and the cost of packing the merchandise for shipment to the United States. To make an appropriate "apples-to-apples" comparison of this surrogate FMV to USP, all commodity taxes are removed from USP, and no commodity tax is added thereto. Thus, contrary to Zenith's assertions, when CV is used to determine FMV, there is no basis in the statute, or otherwise, for including home market commodity taxes. (See Color Television Receivers From the Republic of Korea; Final Results of the Antidumping Administrative Review (56 FR 12701, March 27, 1991, Comment 9.)

With respect to inclusion of rebates and discounts in CV, we do not agree with Zenith. As we stated in the previous administrative review for FGL, we consider discounts and rebates to be adjustments to price rather than selling expenses. As a result, we have deducted such items from SG&A for CV. (See Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Reviews (56 FR 5392; February 11, 1991, Comment 20).)

Final Results of the Review

As a result of the comments received and the correction of certain clerical errors, we have revised our preliminary results for FGL, and we determine the margin to be:

Manufacturer/exporter	Margin (percent)
Fujitsu General Limited	77.79

The Department will instruct the U.S. Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated dumping duties of 35.40 percent, based upon the margin for FGL in the March 1, 1989, through February 28, 1990 review period, will be required for FGL. For any future entries of this merchandise from a new exporter not covered in this or in prior reviews, and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of 17.07 percent shall be required. (See Television Receivers, Monochrome and Color, from Japan; Final Results of Antidumping Duty Administrative Review (56 FR 34180, July 26, 1991).) These deposit requirements are effective for all shipments of Japanese television receivers, monochrome and color, withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This administrative review and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Commerce regulations (19 CFR 353.22) (1990).

Dated: August 7, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-19236 Filed 8-12-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-614-503]

Lamb Meat from New Zealand; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On June 13, 1991, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on lamb meat from New Zealand. We have now completed that review and determine the total bounty or grant to be 10.17 percent *ad valorem* for Melville Development Ltd. (Lamb Gourmet), 0.41 percent *ad valorem* for Fortex, 0.30 percent *ad valorem* for Weddel New Zealand, 0.26 percent *ad valorem* for Alive Exports, 0.28 percent *ad valorem* for Lowe Walker, and 1.48 percent *ad valorem* for all other firms during the period April 1, 1989 through March 31, 1990. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

EFFECTIVE DATE: August 13, 1991.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Barbara Tillman, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On June 13, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 27243) the preliminary results of its administrative review of the countervailing duty order on lamb meat from New Zealand (50 FR 37708; September 17, 1985). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of lamb meat, other than prepared, preserved or processed, from New Zealand. During the review period, such merchandise was classifiable under items 106.3000 of the Tariff Schedules of the United States Annotated (TSUSA). Such merchandise is currently classifiable under items 0204.10.0000, 0204.22.2000, 0204.23.2000, 0204.30.0000, 0204.42.2000 and 0204.43.2000 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period April 1, 1989 through March 31, 1990 and two programs: (1) Export Market Development Taxation Incentive (EMDTI) and (2) Livestock Incentive Scheme (LIS).

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

Final Results of Review

As a result of our review, we determine the total bounty or grant to be 10.17 percent *ad valorem* for Melville Development Ltd. (Lamb Gourmet), 0.41 percent *ad valorem* for Fortex, 0.30 percent *ad valorem* for Weddle New Zealand, 0.26 percent *ad valorem* for Alive Exports, 0.28 percent *ad valorem* for Lowe Walker, and 1.48 percent *ad valorem* for all other firms during the period April 1, 1989 through March 31, 1990. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

Therefore, the Department will instruct the Customs Service to assess countervailing duties of 10.17 percent *ad valorem* for Melville Development Ltd. (Lamb Gourmet), and 1.48 percent *ad valorem* for all firms, except Alive Exports, Fortex, Lowe Walker, and Weddel New Zealand, on all shipments of this merchandise exported on or after April 1, 1989 and on or before March 31, 1990. For Alive Exports, Fortex, Lowe Walker, and Weddel New Zealand, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of this merchandise exported in or after April 1, 1989 and on or before March 31, 1990.

The termination of the EMDTI program reduces the total bounty or grant for cash deposit purposes to 0.26 percent *ad valorem* for all firms, a rate which is *de minimis*. Therefore, the Department will instruct the Customs Service to waive cash deposits of estimated countervailing duties on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: August 6, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–19237 Filed 8–12–91; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Endangered and Threatened Wildlife and Plants: Draft Recovery Plan for the Kemp's Ridley Sea Turtle

AGENCY: National Marine Fisheries Service, NOAA, Commerce, U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of availability and request for comments.

SUMMARY: A draft Recovery Plan for the Kemp's Ridley (*Lepidochelys kempi*) is now available for review and comment by interested parties prior to final approval and adoption by the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS). The plan was developed by the Kemp's Ridley Recovery Team which was appointed in 1989 by NMFS and USFWS. The recovery team is jointly supported by the USFWS and NMFS. These agencies share the responsibility for sea turtle recovery under the authority of the Endangered Species Act of 1973. Recovery team membership includes biologists and resource managers from the Texas A&M University, the Universidad de Michoacan, Mexico, the Instituto National de Pesca, Mexico, the Florida Audubon Society, NMFS, and USFWS.

DATES: Comments on the draft recovery plans must be received on or before September 27, 1991.

ADDRESSES: Comments should be addressed to Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, Silver Spring, MD 20910. Copies of the Draft Kemp's Ridley recovery plan are available upon request from Jack Woody, U.S. Fish and Wildlife Service, Post Office Box 1306, Albuquerque, New Mexico 87103, or Phil Williams, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Room 8256, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Jack Woody at USFWS, 505/766–8062, or, Phil Williams at NMFS, 301/427–2322.

SUPPLEMENTARY INFORMATION: The Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 et seq.) requires that the agencies responsible for listed species develop and implement recovery plans for the conservation and survival of threatened and endangered species, unless it is determined that such plans will not promote the conservation of the species. Accordingly, NMFS and USFWS appointed a Kemp's Ridley Turtle Recovery Team to assist in the ents Received

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ACTION: Notice of availability and request for comments.

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Dated: August 6, 1991.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 91-19122 Filed 8-12-91; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Public Display Permit No. 746

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Issuance of Public Display Permit No. 746.

SUMMARY: On Wednesday, May 29, 1991, notice was published in the Federal Register (56 FR 24178) that an application (P486) had been filed by the Jenkinson Seaquarium Corporation, 3 Broadway, Point Pleasant Beach, NJ 08742. A public display permit was requested to obtain four harbor seals (*Phoca vitulina*) from captive or stranded stock for public display purposes.

Notice is hereby given that on August 6, 1991, as authorized by the provisions of the Marine Mammal Protection Act, the National Marine Fisheries Service issued a permit for the above activities subject to the special conditions set forth therein.

The permit is available for review by appointment by interested persons in the following offices:

Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Room 7330, SSMC1, Silver Spring, Maryland 20910, (301) 427-2289; and

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, Massachusetts 01930, (508) 281-9300.

Dated: August 6, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91-19120 Filed 8-12-91; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Scientific Research Permit No. 745

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of Scientific Research Permit No. 745.

SUMMARY: On Thursday, June 6, 1991, notice was published in the Federal Register (56 FR 26071) that an application (P463) had been filed by Mr. James D. Gilardi, University of California, 641 G Street #D, Davis, California 95616, to take an undetermined number of a small population of Hawaiian spinner dolphins (*Stenella longirostris*) for a period of three months for the study of low impact, non-invasive monitoring and cataloguing using above- and below-water still and video photography.

Notice is hereby given that on August 6, 1991, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the National Marine Fisheries Service issued a Permit for the above research activities subject to the Special and General Conditions set forth therein.

The Permit is available for review by appointment by interested persons in the following offices:

Office of Protected Resources, NMFS, NOAA, 1335 East-West Highway, SSMC1, Room 7320, Silver Spring, Maryland 20910, (301) 427-2289;

Director, Southwest Region, NMFS, NOAA, 300 South Ferry Street, Terminal Island, California 90731-7415; (213) 514-6196; and

Pacific Area Office, NMFS, NOAA, 2570 Dole Street, room 106, Honolulu, Hawaii 96822-2396, (808) 541-2927.

Dated: August 6, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91-19121 Filed 8-12-91; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit; Dr. Thomas Ford (P481A)

Notice is hereby given that the Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

1. *Applicant:* Dr. Thomas J. Ford, Jr., 209 Harvard Street, Brookline, MA 02146
2. *Type of Permit:* Import for scientific research
3. *Name and Number of Marine Mammals:* One pygmy right whale *Caperea marginata*
4. *Type of Take:* The applicant proposes to import tissue samples taken from a dead stranded pygmy right whale to study and analyze the macro and micro structure of the tissue found in the upper jaw of pygmy right whales. This organ helps the animal regulate its internal temperature and quite possibly specifically protects the brain from hyperthermia.
5. *Location and Duration of Activity:* The animal stranded and was found dead in South Australia in April 1991.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., Room 7234, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

By appointment: Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 7324, Silver Spring, Maryland 20910 (301/427-2289); and

Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930 (508/281-9200).

Dated: August 5, 1991.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 91-19123 Filed 8-12-91; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

New Transshipment Charges for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

August 8, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs charging transsshipments to 1990 and 1991 limits.

EFFECTIVE DATE: August 15, 1991.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a notice published in the **Federal Register** on May 9, 1991 (56 FR 21473), CITA announced that Customs would be conducting other investigations of transshipments of textiles produced in China and exported to the United States. Based on these investigations, the U.S. Customs Service has determined that cotton, wool and man-made fiber textile products in various categories, produced or manufactured in China were transshipped in circumvention of the U.S.-China Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 2, 1988, as amended, and entered into the United States with the incorrect country of origin during 1990 and 1991. Consultations were held between the Governments of the United States and the People's Republic of China on this matter in March, May and August of this year. Accordingly, in the letter published below, the Chairman of CITA directs the Commissioner of Customs to charge the following amounts to the categories listed below:

Category	Amount transshipped in 1990	Amount transshipped in 1991
313	2,250 square meters..	–0–.
335	262 dozen.	–0–.
336	138 dozen.	–0–.
339	41,813 dozen.	24,040 dozen.
339–S [1]	99,519 dozen.	–0–.
340	411 dozen.	–0–.
341	10,420 dozen.	–0–.
342	124 dozen.	416 dozen.
347	984 dozen.	–0–.
348	6,137 dozen.	659 dozen.
359–C	78 kilograms.	–0–.
359–V	46 kilograms.	–0–.
359–O	9 kilograms.	–0–.
369–S	56,171 kilograms.	–0–.
438	50 dozen.	–0–.
635	80 dozen.	–0–.
636	79 dozen.	–0–.
639	1,112 dozen.	–0–.
640	314 dozen.	–0–.
641	27,533 dozen.	3,813 dozen.
642	51 dozen.	–0–.
647	28 dozen.	–0–.
648	53 dozen.	–0–.

[1] Charges to Category 339–S are in addition to those charges being made to Category 339.

According to standard Customs procedures, when the 1990 quotas have been completely utilized, as is the case with Categories 335, 336, 338–S/339–S, 340, 341, 342, 347/348, 359–C, 369–S, 635, 638/639, 640, 641, 642 and 648, the transshipment charges will be moved forward to 1991. Therefore, the charges that will be applied against the 1991 quotas are listed below:

Category	Charges applied to 1991 limits
335	262 dozen.
336	138 dozen.
338/339	24,040 dozen.
338–S/339–S	99,519 dozen.
340	411 dozen.
341	10,420 dozen.
342	540 dozen.
347/348	7,780 dozen.
359–C	78 kilograms.
369–S	56,171 kilograms.
635	80 dozen.
638/639	1,112 dozen.
640	314 dozen.
641	31,346 dozen.
642	51 dozen.
648	53 dozen.

When the 1991 quotas have been completely utilized, as is the case with Categories 359–C and 369–S, the charges will be treated as overshipments of the 1991 quota and charged to the 1992 quota upon opening on January 1, 1992.

U.S. Customs continues to conduct other investigations of such transshipments of textiles produced in China and exported to the United States. The charges resulting from these investigations will be published in the **Federal Register**.

The U.S. Government is taking this action pursuant to the U.S. diplomatic note dated June 24, 1991, the U.S.-China bilateral textile agreement of February 2, 1988, as amended, and in conformity with Paragraph 16 of the Protocol of Extension and Article 8 of the Arrangement Regarding International Trade in Textiles, done at Geneva on December 20, 1973 and extended on December 14, 1977, December 22, 1981 and July 31, 1986.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 8, 1991.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: To facilitate implementation of the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetble Fiber Textile Agreement of February 2, 1988, as amended, between the Governments of the United States and the People's Republic of China, I request that, effective on August 15, 1991, you charge the following amounts to the following categories for 1990 and 1991:

Category	Amount to be charged to 1990	Amount to be charged to 1991 limit
313	2,250 square meters..	–0–.
335	262 dozen.	–0–.
336	138 dozen.	–0–.
339	41,813 dozen.	24,040 dozen.
339–S [1]	99,519 dozen.	–0–.
340	411 dozen.	–0–.
341	10,420 dozen.	–0–.
342	124 dozen.	416 dozen.
347	984 dozen.	–0–.
348	6,137 dozen.	659 dozen.
359–C [2]	78 kilograms.	–0–.
359–V [3]	46 kilograms.	–0–.
359–O [4]	9 kilograms.	–0–.
369–S [5]	56,171 kilograms.	–0–.
438	50 dozen.	–0–.
635	80 dozen.	–0–.
636	79 dozen.	–0–.
639	1,112 dozen.	–0–.
640	314 dozen.	–0–.
641	27,533 dozen.	3,813 dozen.
642	51 dozen.	–0–.
647	28 dozen.	–0–.
648	53 dozen.	–0–.

[1] Category 339–S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[3] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.4030, 6104.12.0040, 6104.19.2040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.0044, 6110.90.0046, 6201.92.2010, 6202.92.2020,

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	416 dozen.
	-0-.
	659 dozen.
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	3,813 dozen.
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	-0-.
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Charges applied to 1991 limits
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Extension and Article 8 of the Arrangement Regarding International Trade in Textiles, done at Geneva on December 20, 1973 and extended on December 14, 1977, December 22, 1981 and July 31, 1986.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 8, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: To facilitate implementation of the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetble Fiber Textile Agreement of February 2, 1988, as amended, between the Governments of the United States and the People's Republic of China, I request that, effective on August 15, 1991, you charge the following amounts to the following categories for 1990 and 1991:

Category	Amount to be charged to 1990	Amount to be charged to 1991 limit
313	2,250 square meters.	-0-.
335	262 dozen.	-0-.
336	138 dozen.	-0-.
339	41,813 dozen.	24,040 dozen.
339–S [1]	99,519 dozen.	-0-.
340	411 dozen.	-0-.
341	10,420 dozen.	-0-.
342	124 dozen.	416 dozen.
347	984 dozen.	-0-.
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359–C [2]	78 kilograms.	-0-.
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359–O [4]	9 kilograms.	-0-.
369–S [5]	56,171 kilograms.	-0-.
438	50 dozen.	-0-.
635	80 dozen.	-0-.
636	79 dozen.	-0-.
639	1,112 dozen.	-0-.
640	314 dozen.	-0-.
641	27,533 dozen.	3,813 dozen.
642	51 dozen.	-0-.
647	28 dozen.	-0-.
648	53 dozen.	-0-.

[1] Category 339–S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[3] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.4030, 6104.12.0040, 6104.19.2040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.0044, 6110.90.0046, 6201.92.2010, 6202.92.2020,

6203.19.1030, 6203.19.4030, 6204.12.0040, 6204.19.3040, 6211.32.0070 and 6211.42.0070.

[4] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6103.19.2030, 6103.19.4030, 6104.12.0040, 6104.19.2040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.0044, 6110.90.0046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.4030, 6204.12.0040, 6204.19.3040, 6211.32.0070 and 6211.42.0070 (359–V).

[5] Category 369–S: only HTS number 6307.10.2005.

This letter will be published in the **Federal Register**.

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc 91–19167; Filed 8–12–91; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Air Force

Performance Review Boards; List of Members

Below is a list of additional individuals who are eligible to serve on the Performance Review Boards for the Department of the Air Force in accordance with the Air Force Senior Executive Appraisal and Award System.

Air Staff
  Brig Gen Frank K. Martin
  Mr. John M. Gilligan
Air Force Logistics Command
  Lt Gen Charles J. Searock, Jr.
  Maj Gen Dale W. Thompson, Jr.
  Mr. Ronald L. Orr
Air Force Systems Command
  Lt Gen David J. Teal
  Mr. Frank O. Tuck

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91–19124 Filed 8–12–91; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER91–563–000]

Madison Gas and Electric Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

August 5, 1991.

Take notice that the following filings have been made with the Commission:

1. Madison Gas and Electric Company

[Docket No. ER91–563–000]

Take notice that on July 31, 1991, Madison Gas and Electric Company (MGE) tendered for filing with the Federal Energy Regulatory Commission an Agreement between it and Wisconsin Public Service Corporation (WPS). MGE and WPS request waiver of the notice requirements to permit the agreement to become effective August 1, 1991.

MGE states that a copy of the filing has been provided to WPS and also to the Public Service Commission of Wisconsin.

Comment date: August 19, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Indiana Michigan Power Company

[Docket Nos. ER90–269–003, ER90–270–002, ER90–271–002, ER90–272–002, ER90–273–000, ER90–594–001, EL90–32-001, EL90–37–001 and EL90–41–001]

Take notice that on August 1, 1991, Indiana Michigan Power Company tendered for filing its Compliance Refund Report in compliance with the Commission's order issued on June 18, 1991.

Comment date: August 19, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Dravo Energy Resources of Montgomery County, Inc.

[Docket No. QF88–142–002]

On July 26, 1991, Dravo Energy Resources of Montgomery County, Inc. (Applicant), a Delaware corporation with its principal offices at c/o Montenay Power Corporation, 300 Old Country Road, suite 301, Mineola, New York 11501, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Plymouth Township, Montgomery County, Commonwealth of Pennsylvania. The original certification to Dravo Operations of Montgomery County, Inc. was issued on February 23, 1988, (42 FERC ¶ 62,144 (1988)). The instant recertification is requested due to an increase in the net electric power production capacity from 23 MW to 29 MW and a change in the ownership structure. ESI Energy, Inc., an indirect wholly-owned subsidiary of FPL Group, Inc., an electric utility holding company, will have an ownership interest in the facility.

Comment date: September 12, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. New England Power Company

[Docket No. ER91–565–000]

Take notice that on August 1, 1991, New England Power Company (NEP) tendered for filing amendments to its FERC Electric Tariff, Orginal Volume No. 1, Primary Service for Resale, constituting a new rate, referred to as the W-92 rate. NEP states that the new rate would increase revenues by approximately $61.7 million on the basis of a calendar year 1992 test year. NEP requests an effective date of October 1, 1991, with a three month suspension to January 1, 1992.

NEP states that almost one half of the increase represents NEP payments for purchased power expense related to the commercial operation of Unit II of the Ocean State Power Project. NEP further states that the remainder of the proposed increase is attributable to a continuation of declining sales in the region, inflation in operating and maintenance expense, and certain one time adjustments to reflect cost previously deducted from proposed rates as part of settlements and deferred for future collection.

Comment date: August 19, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Virginia Electric Power Company

[Docket No. ER91–562–000]

Take notice that on July 31, 1991 Virginia Electric Power Company (the Company) tendered for filing proposed changes in its electric wholesale rate schedules presently on file with the Federal Energy Regulatory Commission (Commission) that are applicable to Rural Electric Cooperatives, wholesale Municipalities, and Old Dominion Electric Cooperative (ODEC). The proposed changes would increase revenues from jurisdictional sales and service by $16.5 million, based on conditions existing during the test period, 12 months ending December 31, 1992. In addition, revenues from Old Dominion Electric Cooperative for Reserve Sales would increase by $0.9 million.

The Company states that the increase in wholesale rates is necessary to reflect projected cost increases in rate base, labor, materials, supplies, services and purchased power since its filing in Docket No. ER90–540–000, its last general rate case, and to achieve a reasonable overall rate of return.

Copies of the filing were served upon all the Company's jurisdictional Wholesale Customers, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: August 19, 1991, in accordance with standard Paragraph E at the end of this notice.

6. New England Power Company

[Docket No. ER91-566-000]

Take notice that on August 1, 1991 New England Power Company (NEP) tendered for filing a proposed change in its Service Agreement for Primary Service for Resale with The Narragansett Electric Company (Narragansett). According to NEP, the proposed change would increase the fixed credits allowed Narragansett on its purchased power billing by NEP in the amount of $7,171,600 annually based on the 12-month period ending December 31, 1992. NEP requests an effective date of October 1, 1991, but that the credit be allowed to become effective coincident with the effective date of its Rate W-92 filed simultaneously with the G&T credit filing.

NEP states that copies of the filing were served upon the affected state regulatory Commissions and Narragansett.

Comment date: August 19, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. Duke Power Company

[Docket No. ER91-567-000]

Take notice that on August 1, 1991, Duke Power Company (Duke) tendered for filing with the Commission a revised Supplement No. 4 to Supplement No. 24 to the Interchange Agreement between Duke and Carolina Power & Light Company (CP&L) dated June 1, 1961, as amended (Interchange Agreement). The revised Supplement No. 4 changes Duke's monthly transmission capacity rate under the Interchange Agreement from $1.1154 per KW per month to $1.1415 per KW per month. Duke has proposed an effective date of July 1, 1991 for the revised charge.

Copies of this filing were mailed to Carolina Power & Light Company, the North Carolina Utilities Commission, and the South Carolina Public Service Commission.

Comment date: August 19, 1991 in accordance with Standard Paragraph E at the end of this notice.

8. The Kansas Power and Light Company

[Docket No. ER91-564-000]

Take notice that on August 1, 1991, The Kansas Power and Light Company (KPL) tendered for filing a proposed change to its Federal Energy Regulatory Commission Electric Service Tariff No. 218. KPL states that it proposes to add a new point of delivery to its existing contract with Kaw Valley Electric Cooperative, Inc. The change is proposed to become effective June 1, 1991.

Copies of the filing were served upon Kaw Valley Electric Cooperative, Inc. and the Kansas Corporation Commission.

Comment date: August 19, 1991, in accordance with Standard Paragraph E at the end of this notice.

9. Allegheny Power Service Corporation on behalf of West Penn Power Company and Duquesne Light Company

[Docket No. ER91-560-000]

Take notice that on July 31, 1991, West Penn Power Company (West Penn), and Duquesne Light Company (Duquesne), filed Amendment No. 14 to the Interchange Agreement between West Penn and Duquesne, which Amendment revises Schedules F and G to that Interchange Agreement. The proposed effective date for the Amendment No. 14 is January 1, 1991.

The proposed revised Schedules A, B, and C would change the rates charged by all parties under those Schedules for Emergency Service and Energy, Interchange Power and Energy, and Short Term Power and Energy under the Interchange Agreement between West Penn and Duquesne. The proposed new Schedules F and G for Diversity Power and Energy and Limited Term Power and Energy, would be added to the Interconnection Agreement. This Amendment would also reorganize, standardize and update the language used in those Schedules.

The proposed Schedules are for the purpose of allowing the Parties thereto more flexibility in the rates that they charge so as to remain competitive in the power sales market. The parties request waiver of notice to permit an effective date of January 1991 for Amendment No. 14.

Copies of the filing have been served upon the Pennsylvania Public Utility Commission.

Comment date: August 19, 1991, in accordance with Standard Paragraph E end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-19135 Filed 8-12-91; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7802-005]

Natural Energy Resources Co., Notice of Locations and Times of Scoping Meetings for Environmental Impact Statement

August 6, 1991.

The staff of the Federal Energy Regulation Commission (staff) has previously notified interested parties and the public that it intends to prepare an environmental impact statement (EIS) dealing with the proposed Rocky Point Pumped Storage Project, FERC No. 7802-005, on the Taylor River in Gunnison and Chaffee Counties, Colorado.

The major issues to be evaluated in this EIS will be discussed at two scoping meetings, both scheduled to be held on Wednesday, September 25, 1991. Prior to this date, a scoping document (Scoping Document I) will be mailed to all recipients of this notice; copies will also be available at the scoping meetings. Scoping Document I will subsequently be revised to reflect any new information provided at the scoping meetings (Scoping Document II), which will be mailed to all interested parties.

All interested individuals, organizations, and agencies are invited to attend the scoping meetings and assist the staff in identifying the scope of environmental issues that should be analyzed in the EIS.

The first meeting will be held from 1 p.m. to 4 p.m. at the Aspinall-Wilson Center, 909 Escalante Drive, Western State College, Gunnison, Colorado 81231. This meeting will focus on resource agency concerns.

The second meeting will be held from 7 p.m. to 10 p.m. at the Gunnison High School Auditorium, 800 W. Ohio Avenue, Gunnison, Colorado 81230. This meeting is primarily for public input, and participants are asked to keep oral comments to five minutes.

Both scoping meetings will be recorded by a stenographer, and all statements (oral and written) will become part of the Commission's public record for Project No. 7802-005. Interested persons who are unable to e effective June 1,

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protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–19135 Filed 8–12–91; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 7802–005]

Natural Energy Resources Co., Notice of Locations and Times of Scoping Meetings for Environmental Impact Statement

August 6, 1991.

The staff of the Federal Energy Regulation Commission (staff) has previously notified interested parties and the public that it intends to prepare an environmental impact statement (EIS) dealing with the proposed Rocky Point Pumped Storage Project, FERC No. 7802–005, on the Taylor River in Gunnison and Chaffee Counties, Colorado.

The major issues to be evaluated in this EIS will be discussed at two scoping meetings, both scheduled to be held on Wednesday, September 25, 1991. Prior to this date, a scoping document (Scoping Document I) will be mailed to all recipients of this notice; copies will also be available at the scoping meetings. Scoping Document I will subsequently be revised to reflect any new information provided at the scoping meetings (Scoping Document II), which will be mailed to all interested parties.

All interested individuals, organizations, and agencies are invited to attend the scoping meetings and assist the staff in identifying the scope of environmental issues that should be analyzed in the EIS.

The first meeting will be held from 1 p.m. to 4 p.m. at the Aspinall-Wilson Center, 909 Escalante Drive, Western State College, Gunnison, Colorado 81231. This meeting will focus on resource agency concerns.

The second meeting will be held from 7 p.m. to 10 p.m. at the Gunnison High School Auditorium, 800 W. Ohio Avenue, Gunnison, Colorado 81230. This meeting is primarily for public input, and participants are asked to keep oral comments to five minutes.

Both scoping meetings will be recorded by a stenographer, and all statements (oral and written) will become part of the Commission's public record for Project No. 7802–005. Interested persons who are unable to

attend, or do not choose to speak at the scoping meetings, may provide written statements for the public record.

All correspondence regarding the subject EIS should be filed with the Commission on or before November 1, 1991, and should be addressed to Lois D. Cashell, Secretary Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426. All correspondence should clearly show the following caption on the first page: Rocky Point Pumped Storage Project, Colorado, Project No. 7802-005.

For further information, please contact the FERC EIS Coordinator, Kathleen Sherman at (202) 219–2834.

Lois D. Cashell,

Secretary.

[FR Doc. 91–19146 Filed 8–12–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD91–08475T Kansas–1 Amendment]

State of Kansas; Notice of Determination Designating Tight Formation

August 7, 1991.

Take notice that on August 5, 1991, the Kansas Corporation Commission (Kansas) submitted the above-referenced notice of determination to the Commission, pursuant to § 271.703(c)(3) of the Commission's regulations, that the Niobrara Formation underlying Cheyenne County and a portion of Sherman County, Kansas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The notice of determination covers all of Cheyenne County, plus T6S, R39W–R42W, and T7S, R39W–R42W, in Sherman County, Kansas. Kansas originally submitted a 4-county area determination for the Niobrara that included both Cheyenne and Sherman Counties. The Commission remanded the original determination to Kansas on May 22, 1985. The August 5, 1991 notice of determination also contains Kansas' findings that the referenced portion of the Niobrara Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR, §§ 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 91–19136 Filed 8–12–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ91–6–20–000]

Algonquin Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

August 6, 1991.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on August 1, 1991, tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, as set forth in the revised tariff sheets:

Proposed to be effective September 1, 1991

Fifth Revised Sheet No. 21
Fifth Revised Sheet No. 22
Fifth Revised Sheet No. 25
Fifth Revised Sheet No. 26
Fifth Revised Sheet No. 27
Fifth Revised Sheet No. 28
Fifth Revised Sheet No. 29

Algonquin states that the revised tariff sheets listed above are being filed as part of Algonquin's regularly scheduled quarterly Purchased Gas Adjustment ("PGA") pursuant to Sections 17 and 39 of the General Terms and Conditions of Algonquin's FERC Gas Tariff, Third Revised Volume No. 1 to reflect the standby service costs to be charged by Texas Eastern Transmission Corporation ("Texas Eastern"), transmission and compression by others costs ("T & C Costs") from Texas Eastern and Transcontinental Gas Pipeline Corporation and purchased gas costs to be charged by its various suppliers.

Algonquin states that the instant filing reflects the purchases and sales projected to be made for the three month period beginning September 1, 1991 as well as the underlying costs of standby and transportation services.

Algonquin states that the proposed effective date for the listed revised tariff sheets is September 1, 1991.

Algonquin further states that the effect of the change in rates is to increase the demand charge by 22.80 cents per MMBtu and to increase the commodity charge by 62.03 cents per MMBtu under all of Algonquin's firm sales rate schedules from those rates contained in Algonquin's last PGA filed July 1, 1991 in Docket No. TF91–4–20–000.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Panhandle states that copies of its filing have been served on all jurisdictional sales customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with such motions 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–19142 Filed 8–12–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90–22–013]

Algonquin Gas Transmission Co., Notice of Proposed Changes in FERC Gas Tariff

August 6, 1991.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on August 1, 1991, tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, as set forth in the tariff sheets:

Algonquin states that it is making the instant filing pursuant to Article II of the Stipulation and Agreement in Docket No. RP90–22–000 as filed on December 14, 1990 and approved, as modified, by the Commission's Order of April 19, 1991. Algonquin states the instant filing contains appropriate revised tariff sheets reflecting rates equivalent to the Settlement Base Rates under its rate schedules, adjusted as appropriate to reflect authorized changes as provided by Algonquin's FERC Gas Tariff.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before August 13, 1991. Protests

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will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-19150 Filed 8-12-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-206-000]

Columbia Gas Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

August 6, 1991.

Take notice that Columbia Gas Transmission Corporation (Columbia) on August 1, 1991, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective September 1, 1991:

Second Revised Eleventh Revised Sheet No. 26
  Original Sheet No. 26.1
Second Revised Eleventh Revised Sheet No. 26A
  Original Sheet No. 26A.1
Second Revised Eleventh Revised Sheet No. 26B
  Original Sheet No. 26B.1

Columbia states that the sales rates set forth on Second Revised Eleventh Revised Sheet No. 26 and Original Sheet No. 26.1 reflect a maximum WACOG surcharge of 20¢ per Dth in the Commodity rate.

Any person desiring to be heard or to protect said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 384.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-19149 Filed 8-12-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA91-1-24-002, TA91-1-24-003]

Equitrans, Inc., Notice of Revision To Proposed Tariff Changes

August 6, 1991.

Take notice that Equitrans, Inc., ("Equitrans") on July 31, 1991, tendered for filing with the Federal Energy Regulatory Commission ("Commission") the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to become effective on September 1, 1991:

Substitute Twenty-Eighth Revised Sheet No. 10
Substitute Nineteenth Revised Sheet No. 34

As alternative tariff sheets, Equitrans submits the following, also to be effective September 1, 1991:

Alternate Substitute Twenty-Eighth Revised Sheet No. 10
Alternate Substitute Nineteenth Revised Sheet No. 34

As with the Annual PGA Filing of July 2, 1991, the primary sheets reflect "as-billed" recovery of producer purchased gas costs; the alternative sheets reflect reclassification of producer demand payments back to the commodity component of the sales rate.

Equitrans requests that Substitute Nineteenth Revised Sheet No. 34 (both primary and alternate versions) be made effective instead of Twentieth Revised Sheet No. 34 (both primary and alternate versions) which were contained in its July 2, 1991 annual filing because the newly filed sheet reflects both the winter and summer rates for Rate Schedule ISS whereas the previously submitted sheet only reflected the winter period rate.

Equitrans states that it submitted this filing pursuant to § 154.305(c)(4) of the Commission PGA Regulations, 18 CFR § 154.305(c)(4), in order to revise the current adjustment filed with its Annual PGA on June 31, 1991. The changes proposed in this filing to the purchased gas cost adjustment under Rate Schedule PLS is an increase in the demand cost of $0.2093 per dth and a decrease in the commodity cost of $0.5129 per dth. The purchased gas cost adjustment to Rate Schedule ISS is a decrease of $0.5075 per dth.

The proposed changes reflect, among other things, the service restructuring and rate design changes that were contained in a March 22, 1991 "Joint Stipulation and Agreement" approved by Commission order issued on July 25, 1991 in Docket Nos. RP90-70, *et al.*, effective August 1, 1991.

Equitrans states that a copy of its filing has been served upon its purchasers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before August 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-19145 Filed 8-12-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-70-003]

Equitrans, Inc.; Notice of Compliance Filing To Implement Order Approving Settlement

August 6, 1991.

Take notice that on July 31, 1991, Equitrans, Inc. ("Equitrans") filed the following sets of revised tariff sheets to its FERC Gas Tariff (as shown on appendix A of the filing):

I. Refund Rates (July 1, 1990 through July 31, 1991)

Effective July 1, 1990

Volume 1

Second Sub 15 Revised Sheet No. 10
Substitute First Revised Sheet No. 22
Second Sub 7 Revised Sheet No. 34

Effective September 1, 1990

Volume 1

Second Sub 16 Revised Sheet No. 10
Second Sub Eighth Rev Sheet No. 34

Effective October 1, 1990

Volume 1

Second Sub 17 Revised Sheet No. 10

Effective December 1, 1990

Volume 1

Sub Twentieth Rev Sheet No. 10
Substitute Eleventh Rev Sheet No. 34

Effective January 1, 1991

Volume 1

Second Sub 22 Revised Sheet No. 10

Effective February 1, 1991

Volume 1

Second Sub 23 Rev Sheet No. 10
Second Sub 13 Revised Sheet No. 34

Effective March 1, 1991

Volume 1

Second Sub Twenty-Fifth Rev She
Second Sub 14 Revised Sheet No.

Effective April 1, 1991

Volume 1

Sub Twenty-Sixth Rev Sheet No. 1
Sub Seventeenth Rev Sheet No. 34

Effective June 1, 1991

Volume 1

Sub Twenty-Seventh Rev Sheet No
Sub Eighteenth Rev Sheet No. 34

Effective July 1, 1990

Volume 3

Substitute Fourth Revised Sheet N
Substitute Fourth Revised Sheet N

Effective October 1, 1990

Volume 3

Substitute Fifth Revised Sheet No.
Substitute Fifth Revised Sheet No.

Effective January 1, 1990

Volume 3

Substitute Seventh Revised Sheet
Substitute Seventh Revised Sheet

II. Rates Effective August 1, 19

Volume 1

Second Revised Sheet No. 22
Eighth Revised Sheet No. 23

Volume 3

Eighth Revised Sheet No. 4
Eighth Revised Sheet No. 8

III. Miscellaneous Tariff Chan Effective August 1, 1991

Volume 1

Second Revised Sheet No. 7
Second Revised Sheet No. 8
Second Revised Sheet No. 9
Second Revised Sheet No. 78
First Revised Sheet No. 144
First Revised Sheet No. 170
First Revised Sheet No. 171
  Original Sheet No. 177D
  Original Sheet No. 177E

Volume 3

Second Revised Sheet No. 2
Second Revised Sheet No. 3
  Original Sheet No. 3A
Second Revised Sheet No. 5
Second Revised Sheet No. 6
Second Revised Sheet No. 7
Second Revised Sheet No. 10
First Revised Sheet No. 11
First Revised Sheet No. 12
Second Revised Sheet No. 14

Equitrans states that the pur these revisions is to implemen base tariff rates effective July (refund rates) and August 1, 1 (prospective rates) pursuant t March 22, 1991 Joint Stipulatio Agreement, which was approv Commission by order issued o 1991.

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Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before August 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-19145 Filed 8-12-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-70-003]

Equitrans, Inc.; Notice of Compliance Filing To Implement Order Approving Settlement

August 6, 1991.

Take notice that on July 31, 1991, Equitrans, Inc. ("Equitrans") filed the following sets of revised tariff sheets to its FERC Gas Tariff (as shown on appendix A of the filing):

I. Refund Rates (July 1, 1990 through July 31, 1991)

Effective July 1, 1990

Volume 1

Second Sub 15 Revised Sheet No. 10
Substitute First Revised Sheet No. 22
Second Sub 7 Revised Sheet No. 34

Effective September 1, 1990

Volume 1

Second Sub 16 Revised Sheet No. 10
Second Sub Eighth Rev Sheet No. 34

Effective October 1, 1990

Volume 1

Second Sub 17 Revised Sheet No. 10

Effective December 1, 1990

Volume 1

Sub Twentieth Rev Sheet No. 10
Substitute Eleventh Rev Sheet No. 34

Effective January 1, 1991

Volume 1

Second Sub 22 Revised Sheet No. 10

Effective February 1, 1991

Volume 1

Second Sub 23 Rev Sheet No. 10
Second Sub 13 Revised Sheet No. 34

Effective March 1, 1991

Volume 1

Second Sub Twenty-Fifth Rev Sheet No. 10
Second Sub 14 Revised Sheet No. 34

Effective April 1, 1991

Volume 1

Sub Twenty-Sixth Rev Sheet No. 10
Sub Seventeenth Rev Sheet No. 34

Effective June 1, 1991

Volume 1

Sub Twenty-Seventh Rev Sheet No. 10
Sub Eighteenth Rev Sheet No. 34

Effective July 1, 1990

Volume 3

Substitute Fourth Revised Sheet No. 4
Substitute Fourth Revised Sheet No. 8

Effective October 1, 1990

Volume 3

Substitute Fifth Revised Sheet No. 4
Substitute Fifth Revised Sheet No. 8

Effective January 1, 1990

Volume 3

Substitute Seventh Revised Sheet No. 4
Substitute Seventh Revised Sheet No. 8

II. Rates Effective August 1, 1991

Volume 1

Second Revised Sheet No. 22
Eighth Revised Sheet No. 23

Volume 3

Eighth Revised Sheet No. 4
Eighth Revised Sheet No. 8

III. Miscellaneous Tariff Changes Effective August 1, 1991

Volume 1

Second Revised Sheet No. 7
Second Revised Sheet No. 8
Second Revised Sheet No. 9
Second Revised Sheet No. 78
First Revised Sheet No. 144
First Revised Sheet No. 170
First Revised Sheet No. 171
  Original Sheet No. 177D
  Original Sheet No. 177E

Volume 3

Second Revised Sheet No. 2
Second Revised Sheet No. 3
  Original Sheet No. 3A
Second Revised Sheet No. 5
Second Revised Sheet No. 6
Second Revised Sheet No. 7
Second Revised Sheet No. 10
First Revised Sheet No. 11
First Revised Sheet No. 12
Second Revised Sheet No. 14

Equitrans states that the purpose of these revisions is to implement new base tariff rates effective July 1, 1990 (refund rates) and August 1, 1991 (prospective rates) pursuant to the March 22, 1991 Joint Stipulation and Agreement, which was approved by the Commission by order issued on July 25, 1991.

Equitrans states that copies of the filing have been mailed to all of its jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before August 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-19147 Filed 8-12-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-6-15-000]

Mid Louisiana Gas Co.; Notice of Tariff Filing

August 6, 1991.

Take notice that on August 2, 1991, Mid Louisiana Gas Company (Mid Louisiana), tendered for filing Eighty-Fifth Revised Sheet No. 3a, which Mid Louisiana requests to be permitted to become effective September 1, 1991.

Mid Louisiana states that such tariff sheet is filed together with a request for waivers of § 154.305(c)(4) of the Commission's Regulations, 18 CFR 154.305(4) and Section 19 of Mid Louisiana's FERC Gas Tariff. Mid Louisiana states that such waivers, together with implementation of Eighty-Fifth Revised Sheet No. 3a, would allow Mid Louisiana to use revised pricing provisions in the calculation of the cost of purchased and produced gas for resale to jurisdictional customers.

Mid Louisiana states that the revised pricing provision would be implemented by means of a Commodity Gas Component Cap that would establish a ceiling on the level of purchased and produced gas costs (excluding storage, exchange and gas used, lost and unaccounted for) that Mid Louisiana would be permitted to collect from jurisdictional customers.

Mid Louisiana states that copies of the filing have been sent to the customers and the state commissions shown on the official service list.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-19144 Filed 8-12-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-3-27-000]

North Penn Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

August 6, 1991.

Take notice that North Penn Gas Company (North Penn) on August 2, 1991, tendered for filing Seventh Revised Sheet No. 3A to its FERC Gas Tariff, First Revised Volume No. 1.

North Penn states that the revised tariff sheet is being filed pursuant to Section 14 (PGA Clause) of the General Terms and Conditions of North Penn's FERC Gas Tariff to reflect changes in the cost of gas for the period September 1, 1991 through November 30, 1991 and is proposed to be effective September 1, 1991. North Penn states that the proposed change reflects an increase in the average cost of gas for the G-1 Rate Schedule of $2.32213 per Mcf.

While North Penn believes that no other waivers are necessary in order to permit this filing to become effective September 1, 1991, as proposed, North Penn respectfully requests waiver of any of the Commission's Rules and Regulations as may be required to permit this filing to become effective September 1, 1991.

North Penn states that copies of this letter of transmittal and all enclosures are being mailed to each of North Penn's jurisdictional customers and state commissions shown on the attached service list.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91-19143 Filed 8-12-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-208-000]

Ozark Gas Transmission System; Notice of Filing

August 8, 1991

Take notice that on August 2, 1991, Ozark Gas Transmission System ("Ozark"), 1700 Pacific Avenue, Dallas, Texas 75201, filed with the Commission its FERC Gas Tariff, First Revised Volume No. 1. Ozark proposes that this filing become effective September 3, 1991.

Ozark states that the purpose of this filing is to establish the rates, terms and conditions for open-access transportation under proposed Rate Schedules FTS and ITS, and to revise its existing Rate Schedule T-1 and General Terms and Conditions to accommodate Ozark's provision of open-access transportation. Ozark states that a request for authority to provide open-access transportation is pending in Docket No. CP91-945-000, and requests that the Commission grant Ozark a part 284 blanket transportation certificate in that docket concurrently with the Commission's acceptance for filing of the tariff sheets proposed in this proceeding.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 13, 1991. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91-19152 Filed 8-12-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-4-28-000 and TM91-10-28-000]

Panhandle Eastern Pipe Line Co., Notice of Proposed Changes in FERC Gas Tariff

August 6, 1991

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on August 1, 1991, tendered for filing the following revised tariff sheets listed to its FERC Gas Tariff, Original Volume No. 1:

Eighty-Seventh Revised Sheet No. 3-A
First Revised Sheet No. 3-A.1
Sixty-Fourth Revised No. 3-b
Eleventh Revised Sheet No. 3-B.1

The proposed effective date of these revised tariff sheets is September 1, 1991.

Panhandle states that these revised tariff sheets filed herewith reflect a commodity rate increase of 23.79¢ per Dt. This increase includes:

(1) A 26.82¢ per Dt. increase in the projected purchased gas cost component computed in accordance with § 18.2 of the General Terms and Conditions of Panhandle's tariff; and

(2) A (3.03¢) per Dt. decrease pursuant to Section 22 of the General Terms and Conditions of Panhandle's tariff (ANGTS tracking mechanism).

Panhandle further states that these revised tariff sheets filed herewith also reflect the following changes to Panhandle's D1 and D2 demand rates:

(1) An increase of $0.44 for D1 pursuant to section 22 of the General Terms and Conditions of Panhandle's tariff (ANGTS tracking mechanism); and

(2) An increase of $1.28 for D1 and no change for D2 to reflect an increase in the § 18.4 of the General Terms and Conditions of Panhandle's tariff (pipeline suppliers' demand costs).

Panhandle states the above referenced tariff sheets are being filed in accordance with § 154.308 (Quarterly PGA Filing) of the Commission's Regulations and pursuant to § 18.1 and 18.4 (Purchased Gas Demand Rate Adjustments by Pipeline Suppliers) and section 22 (ANGTS tracking mechanism) of Panhandle's FERC Gas Tariff, Original Volume No. 1 to reflect the changes in Panhandle's jurisdictional sales rates effective September 1, 1991.

Panhandle states that copies of its filing have been served on all jurisdictional sales customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with such motions 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 91-19141 Filed 8-12-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP78-85-007]

Panhandle Eastern Pipe Line Co., Notice of Proposed Changes in FERC Gas Tariff

August 6, 1991.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on August 1, 1991 tendered for filing the tariff sheets listed on Appendix A to its FERC Gas Tariff, Original Volume No. 1-A.

Panhandle proposes that the tariff sheets listed on Appendix A become effective September 1, 1991.

Panhandle states that on February 8, 1980 the Commission approved a Stipulation and Agreement (Agreement) in the proceedings entitled *Village of Pawnee, Illinois, et al.* vs. *Panhandle Eastern Pipe Line Company,* in the subject docket. Under the terms of the Agreement, certain Small Customers as defined in Article II of the Agreement, are permitted to add new Priority 1 requirements up to 10 percent of their original annual base period volumes during the first twelve-month period and up to 8 percent of their original annual base period volumes in each succeeding twelve-month period that the Agreement is in effect. Article V of the Agreement requires the Small Customers to report to Panhandle changes in their estimated monthly and annual volumes, which changes are to be reflected as adjustments to the monthly base period volumes for each Small Customer. The tariff sheets listed on Appendix A are available for public

Filed 8–12–91; 8:45 am]
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Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with such motions 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 91–19141 Filed 8–12–91; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP78–85–007]

Panhandle Eastern Pipe Line Co., Notice of Proposed Changes in FERC Gas Tariff

August 6, 1991.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on August 1, 1991 tendered for filing the tariff sheets listed on Appendix A to its FERC Gas Tariff, Original Volume No. 1–A.

Panhandle proposes that the tariff sheets listed on Appendix A become effective September 1, 1991.

Panhandle states that on February 8, 1980 the Commission approved a Stipulation and Agreement (Agreement) in the proceedings entitled *Village of Pawnee, Illinois, et al.* vs. *Panhandle Eastern Pipe Line Company*, in the subject docket. Under the terms of the Agreement, certain Small Customers as defined in Article II of the Agreement, are permitted to add new Priority 1 requirements up to 10 percent of their original annual base period volumes during the first twelve-month period and up to 8 percent of their original annual base period volumes in each succeeding twelve-month period that the Agreement is in effect. Article V of the Agreement requires the Small Customers to report to Panhandle changes in their estimated monthly and annual volumes, which changes are to be reflected as adjustments to the monthly base period volumes for each Small Customer. The tariff sheets listed on Appendix A reflect these adjustments in the monthly base period for each Small Customer. These tariff sheets also reflect modifications and abandonments of firm sales service authorized by the Commission and name changes for certain customers, as more fully described in the filing.

Panhandle states that copies of this filing have been forwarded to all customers subject to the tariff sheets and the respective state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before August 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91–19151 Filed 8–12–91; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP91–207–000]

Ringwood Gathering Co., Notice of Waiver

August 6, 1991.

Take notice that on August 1, 1991, Ringwood Gathering Company (Ringwood), filed with the Federal Energy Regulatory Commission (Commission) a request for waiver of all PGA filing requirement in § 154.301 through 154.310. Ringwood also requests a waiver to maintain the existing rates in Ringwood's previous filing (TQ91–3–38–000 excluding the surcharge adjustment which was effective through September 30, 1991.

Ringwood submits for filing Seventh Revised Sheet No. 4C Superseding Sixth Revised Sheet No. 4C to maintain its prior rates excluding the surcharge adjustment.

Ringwood states that copies of the filing have been mailed to Williams Natural Gas Company, Oklahoma Natural Gas Company, and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,
Secretary.

[FR Doc. 91–19148 Filed 8–12–91; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP91–206–000]

Texas Eastern Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

August 6, 1991

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on August 1, 1991 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies each of the following tariff sheets:

Second Revised Sheet No. 410
First Revised Sheet No. 410A

Texas Eastern states that the tariff sheets referenced above are being filed to include new provision in Texas Eastern's gas quality specifications in the General Terms and Conditions of its FERC Gas Tariff. This provision would allow Texas Eastern to accept gas for its transportation customers' account on its offshore systems when the gas does not comply with the quality specifications because producers of such gas have no processing facilities at the wellhead. Texas Eastern states that absent the inclusion of this provision Texas Eastern has no tariff authorization to transport such gas, even though such gas would be processed downstream and the overall quality of the commingled gas stream after processing would meet existing specifications.

Texas Eastern states that the submission of this tariff provision will allow acceptance into its pipeline system gas supplies for transportation which otherwise would not be compatible with existing quality specifications. Texas Eastern submits that this change is beneficial to its transportation customers because it will allow greater access to gas supplies and enable them to further diversify their gas supply portfolios. Texas Eastern submits that this is consistent with the Commission's policy of increasing competition in the natural gas market.

The proposed effective date of the tariff sheets listed above is September 1, 1991.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions. Texas Eastern also states that copies of this filing are also being mailed to all Rate Schedules FT–1 and IT–1 Shippers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91–19153 Filed 8–12–91; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 2394–006—Wisconsin/Michigan]

August 7, 1991.

Wisconsin Electric Power Co.; Notice Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

The license for the Chalk Hill Hydro Project No. 2394, located on the Menominee River in Marinette County, Wisconsin and Menominee County, Michigan, expires on June 30, 1993. The statutory deadline for filing an application for new license was June 30, 1991. An application for new license has been filed as follows:

Project No.	Applicant	Contact
P–2394–006	Wisconsin Electric Power Company, 231 W. Michigan Street, P.O. Box 2046, Milwaukee, WI 53201.	Richard G. Fuller, Superintendent, Hydroelectric Operations, Wisconsin Electric Power Company, 1401 South Carpenter Ave., Iron Mountain, MI 49801.

The following is an approximate schedule and procedures that will be followed in processing the application:

Date	Action
August 10, 1991	Commission notifies applicant that its application has been accepted. The notification of acceptance will specify the need for additional information and the date information is due.
August 20, 1991	Commission issues public notice of the accepted application establishing dates for filing motions to intervene and protests.
October 30, 1991	Commission's deadline for applicant for filing a final amendment, if any, to its application.
December 15, 1991	Commission notifies all parties and agencies that the application is ready for environmental analysis.

Upon receipt of all additional information and the information filed in response to the public notice of the acceptance of the application, the Commission will evaluate the application in accordance with applicable statutory requirements and take appropriate action on the application.

Any questions concerning this notice should be directed to Charles T. Raabe at 202–219–2811.

Lois D. Cashell,

Secretary.

[FR Doc. 91–19138 Filed 8–12–91; 8:45 am]

BILLING CODE 6717-01-M

Morgantown Energy Technology Center

Grant; Financial Assistance Award to Syracuse University

AGENCY: Morgantown Energy Technology Center, Department of Energy (DOE).

ACTION: Notice of acceptance of an unsolicited financial assistance application for a grant award.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.14(e)(1) the DOE, Morgantown Energy Technology Center gives notice of its plans to award a 24-month grant to Syracuse University, Office of Sponsored Programs, 113 Bowne Hall, Syracuse, New York 13244–1200, with an associated budget of approximately $319,000, including cost-sharing of $29,142 by Syracuse University.

FOR FURTHER INFORMATION CONTACT: Beverly J. Harness, I–07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507–0880, Telephone: (304) 291–4089, Procurement Request No. 21–91MC28072.000.

SUPPLEMENTARY INFORMATION: The pending award is based on an unsolicited application for a research project to evaluate the various membrane separation processes utilized today for the upgrading of low-quality natural gas to pipeline quality and advance the technology. The University proposes to "tailor-make" uniquely configured polyamide membranes for the separation of specified gas mixtures. The results of the research project could provide the information required for the design and optimization of large-scale processes for the removal of the non-hydrocarbons (i.e., CO_2, H_2S, H_20 vapor) from natural gas and for the economic evaluations of these processes. If these gas separation technologies to upgrade low-quality natural gas to pipeline quality were developed, it would provide new market areas for low-quality natural gas and would provide the means for transporting an untapped natural resource to the market at acceptable costs. It could be used to offset imported oil to this country and to utilize a currently underused valuable natural resource found throughout the U.S.

In view of the unique natural of the work to be performed and the well-equipped laboratories and expertise of the personnel at Syracuse University to be allocated to this research project, it has been determined that it is appropriate to award this grant to Syracuse University on an unsolicited basis.

Issued: July 31, 1991.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 91–19228 Filed 8–12–91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AMS–FRL–3983–3]

Regulation of Fuels and Fuel Additives: Standards for Reformulated Gasoline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Application for Extension of the Reformulated Gasoline Program to Rhode Island.

SUMMARY: This notice publishes the application of the Governor of the State of Rhode Island to have the prohibition set forth in section 211(k)(5) of the Clean Air Act as amended by Public Law 101–549 (the Act) applied in Rhode Island beginning January 1, 1995. Under section 211(k)(6) the Administrator of EPA shall apply the prohibition against the sale of gasoline which has not been reformulated to be less polluting in an ozone nonattainment area upon the application of the Governor of the State in which the nonattainment area is located.

DATES: The effective date of the prohibition described herein is January 1, 1995 (see the Supplementary Information section of today's notice for a discussion of the possible delay of this date).

ADDRESSES: Materials relevant to this notice are contained in Public Docket No. A–91–02. This docket is located in room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket may be inspected from 8:30 a.m. until 12 noon and from 1:30 p.m. until 3 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Joanne I. Goldhand, U.S. EPA (SDSB–12), Motor Vehicle Emission Laboratory, 2565 Plymouth Road, Ann Arbor, MI 48105, telephone (313) 668–4504.

SUPPLEMENTARY INFORMATION:

I. Background

As part of the Clean Air Act Amendments of 1990, Congress added a new subsection (k) to section 211 of the Clean Air Act. Subsection (k) prohibits the sale of gasoline that EPA has not certified as reformulated ("conventional gasoline") in the nine worst ozone nonattainment areas beginning January 1, 1995. To be certified as reformulated a gasoline must comply with the following formula requirements: Oxygen content of at least 2.0 percent by weight; benzene content of no more than 1.0 percent by volume; no heavy metals (with a possible waiver for metals other than lead); and the inclusion of deposit preventing additives. The gasoline must also achieve toxic and volatile organic compound emissions reductions equal to or exceeding the more stringent of a specified formula fuel or a performance standard.

by Syracuse

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led 8-12-91; 8:45 am]

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ACTION: Notice of Application for Extension of the Reformulated Gasoline Program to Rhode Island.

SUMMARY: This notice publishes the application of the Governor of the State of Rhode Island to have the prohibition set forth in section 211(k)(5) of the Clean Air Act as amended by Public Law 101-549 (the Act) applied in Rhode Island beginning January 1, 1995. Under section 211(k)(6) the Administrator of EPA shall apply the prohibition against the sale of gasoline which has not been reformulated to be less polluting in an ozone nonattainment area upon the application of the Governor of the State in which the nonattainment area is located.

DATES: The effective date of the prohibition described herein is January 1, 1995 (see the Supplementary Information section of today's notice for a discussion of the possible delay of this date).

ADDRESSES: Materials relevant to this notice are contained in Public Docket No. A-91-02. This docket is located in room M-1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket may be inspected from 8:30 a.m. until 12 noon and from 1:30 p.m. until 3 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Joanne I. Goldhand, U.S. EPA (SDSB-12), Motor Vehicle Emission Laboratory, 2565 Plymouth Road, Ann Arbor, MI 48105, telephone (313) 668-4504.

SUPPLEMENTARY INFORMATION:

I. Background

As part of the Clean Air Act Amendments of 1990, Congress added a new subsection (k) to section 211 of the Clean Air Act. Subsection (k) prohibits the sale of gasoline that EPA has not certified as reformulated ("conventional gasoline") in the nine worst ozone nonattainment areas beginning January 1, 1995. To be certified as reformulated a gasoline must comply with the following formula requirements: Oxygen content of at least 2.0 percent by weight; benzene content of no more than 1.0 percent by volume; no heavy metals (with a possible waiver for metals other than lead); and the inclusion of deposit preventing additives. The gasoline must also achieve toxic and volatile organic compound emissions reductions equal to or exceeding the more stringent of a specified formula fuel or a performance standard.

Section 211(k)(10)(D) defines the areas covered by the reformulated gasoline program as the nine ozone nonattainment areas having a 1980 population in excess of 250,000 and having the highest ozone design value during the period 1987 through 1989. Applying those criteria, EPA has determined the nine covered areas to be the metropolitan areas including Los Angeles, Houston, New York City, Baltimore, Chicago, San Diego, Philadelphia, Hartford and Milwaukee. Under section 211(k)(10)(D) any area reclassified as a severe ozone nonattainment area under section 181(b) is also to be included in the reformulated gasoline program.

Any other ozone nonattainment area may be included in the program at the request of the Governor of the State in which the area is located. Section 211(k)(6)(A) provides that upon the application of a governor, EPA shall apply the prohibition against selling conventional gasoline in any area in the Governor's State which has been classified as not attaining the ozone ambient air quality standard. That subparagraph further provides that EPA is to apply the prohibition as of the date he "deems appropriate, not later than January 1, 1995, or 1 year after such application is received, whichever is later." In some cases the effective date may be extended for such an area as provided in section 211(k)(6)(B) based on a determination by EPA that there is "insufficient domestic capacity to produce" reformulated gasoline. Finally, EPA is to publish a Governor's application in the **Federal Register**.

EPA will promulgate the requirements for reformulated gasoline in accordance with the statutory deadline of November 15, 1991. These requirements are being developed through regulatory negotiation and were published in proposed form July 9, 1991 (56 FR 31176). The proposed regulations describe the certification program for reformulated gasolines, the credits program for exceeding certain requirements and the enforcement program, among other elements.

II. Rhode Island's Request

EPA received an application from the Hon. Bruce Sundlun, Governor of Rhode Island, for that State to be included in the reformulated gasoline program. His application is set out in full below.

[State of Rhode Island letterhead]

March 14, 1991

William Reilly, Administrator,
U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Dear Mr. Reilly: This is my application under section 211(k)(6) of the Clean Air Act that you apply the prohibition of paragraph (5) of that section to the Rhode Island ozone nonattainment area. The entire State of Rhode Island is classified as a Serious nonattainment area. By application of the prohibition only reformulated gasoline may be sold or dispensed in Rhode Island beginning January 1, 1995.

Best personal wishes.

Sincerely,

s/Bruce G. Sundlun

III. Action

Pursuant to the Governor's letter and the provisions of section 211(k)(6), the prohibitions of subsection 211(k)(5) will be applied to the entire State of Rhode Island beginning January 1, 1995 (except as provided above). The application of the prohibitions to Rhode Island cannot take effect any earlier than January 1, 1995 under section 211(k)(5) and cannot take effect any later than January 1, 1995, under section 211(k)(6)(A), unless the Administrator extends the effective date by rule under section 211(k)(6)(B).

Dated: August 5, 1991.

William K. Reilly,
Administrator.

[FR Doc. 91-19065 Filed 8-12-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3984-2]

Acid Rain Advisory Committee; Subcommittee on No$_x$; Open Meeting

SUMMARY: In August of 1990, the U.S. Environmental Protection Agency gave notice of the establishment of an Acid Rain Advisory Committee (ARAC) which would provide advice to the Agency on issues related to the development and implementation of the requirements of the acid deposition control title of the Clean Air Act Amendments of 1990.

At its July 15-16 meeting, ARAC established a Subcommittee on No$_x$ to provide advice on issues related to the development of regulations for reducing No$_x$ emissions from certain types of existing coal-fired boilers at electric power plants. Specifically, this subcommittee will focus on issues related to No$_x$ emissions from tangentially-fired boilers and dry bottom wallfired boilers affected in Phase I of title IV of the Clean Air Act Amendments of 1990.

OPEN MEETING DATES AND ADDITIONAL INFORMATION: Notice is hereby given that the ARAC Subcommittee on No$_x$ will hold its second open meeting on August 27 from 9 a.m. to 5 p.m.; August 28 from 8:30 a.m. to 5 p.m.; and August 29 from 8:30 a.m. to 4 p.m. at the Ramada Renaissance Hotel, Washington, Dulles, 13869 Park Center Road, Herndon, VA 22071 (703) 478-2900. The meeting agenda will include further discussions of the definition of low No$_x$ burner technology, the emission rates specified in the legislation, procedure and conditions for extension applications, and alternative emission limitation procedures.

INSPECTION OF COMMITTEE DOCUMENTS: All documents for this meeting including a more detailed meeting agenda will be publicly available in limited numbers at the meeting. Thereafter, these documents will be available in EPA Air Docket Number A-90-39 in room 1500 of EPA headquarters, 401 M Street SW., Washington, DC. Hours of inspection are 8:30 a.m. to 12 noon and 1:30 to 3:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Concerning the Subcommittee on No$_x$ or its activities, contact Doris Price, at (202) 475-6783; fax (202) 252-0892), or by mail at USEPA, Acid Rain Division (ANR 445), Office of Air and Radiation, Washington, DC 20460.

Dated: August 9, 1991.

Eileen B. Claussen,
Director, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation.

[FR Doc. 91-19346 Filed 8-12-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3983-6]

Open Meeting of the Policy Dialogue Committee on Mining Wastes.

AGENCY: Environmental Protection Agency.

ACTION: FACA Committee Meeting—Policy Dialogue Committee on Mining Wastes.

SUMMARY: As required by Section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), we are giving notice of the date and location of the September meeting of the Policy Dialogue Committee on Mining Waste. The purpose of the meeting is to discuss the key elements of a mine waste program. The meetings are open to the public without advance registration. An opportunity for public comment will be offered at the end of each day of meeting.

DATES: The September meeting will be held on September 5, 1991 from 8:30 a.m. to 5 p.m. The October meeting will be held October 22 and 23, 1991.

ADDRESSES: The September meeting will be held at the Washington Light Infantry Building, 267 Meeting Street, Charleston, South Carolina. The October meeting will be held in Tucson, Arizona. A specific meeting location will be announced shortly.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on substantive aspects of the mining waste program should call Steve Hoffman, Office of Solid Waste, U.S. EPA, (703) 308-8413. Summaries of previous meetings will be made available upon written request to Patricia Whiting, Office of Solid Waste, (OS-323W), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Persons needing further information on administrative matters such as committee arrangements or procedures should contact Deborah Dalton, EPA Regulatory Negotiation Project, (202) 382-5495 or the Committee's facilitator, John Ehrman, The Keystone Center, (303) 468-5822.

Dated: August 7, 1991.

Deborah Dalton,

Designated Federal Official, Deputy Director, Negotiation and Dispute Resolution Project, Office of Policy, Planning and Evaluation.

[FR Doc. 91-19202 Filed 8-12-91; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59298A; FRL-3940-4]

Certain Chemical; Approval of Modification to Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of modifications of the test marketing periods for three test marketing exemptions (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA designated the original test marketing applications as TME-91-16, TME-91-17, and TME-91-18. The test marketing conditions are described below.

EFFECTIVE DATE: August 5, 1991.

FOR FURTHER INFORMATION CONTACT: Rick Keigwin, New Chemicals Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, rm. E-611, 401 M St. SW., Washington, DC 20460, (202) 382-2440. A public version of the record, without any confidential business information, is available in the TSCA Public Docket Office from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located in rm. NE-G004, 401 M St., SW., Washington, DC.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to human health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves the modifications of the test marketing periods for TME-91-16, TME-91-17, and TME-91-18. EPA has determined that test marketing of the new chemical substances described below, under the conditions set out in the TME applications and modification request, and for the modified time periods specified below, will not present an unreasonable risk of injury to human health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the original Notice of Approval of Test Marketing Application must be met.

T-91-16

Notice of Approval of Original Application: May 31, 1991 (56 FR 24813).

Modified Test Marketing Period: 15-day extension from the original 30 days.

T-91-17

Notice of Approval of Original Application: May 31, 1991 (56 FR 24813).

Modified Test Marketing Period: 15-day extension from the original 30 days.

T-91-18

Notice of Approval of Original Application: May 31, 1991 (56 FR 24813).

Modified Test Marketing Period: 15-day extension from the original 30 days.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury to human health or the environment.

Dated: August 5, 1991.

Lawrence E. Culleen,

Acting Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc. 91-19199 Filed 8-12-91; 8:45 am]

BILLING CODE 6560-50-F

[OPTS-51767; FRL 3941-2]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 73 such PMNs and provides a summary of each.

DATES: Close of review periods:

P 91-1168, 91-1169, September 23, 1991.

P 91-1170, 91-1171, 91-1172, September 24, 1991.

P 91-1173, 91-1174, September 25, 1991.

P 91-1205, 91-1206, 91-1207, October 6, 1991.

P 91-1208, 91-1209, 91-1210, October 7, 1991.

P 91-1211, 91-1212, 91-1213, 91-1214, October 8, 1991.

P 91-1215, 91-1216, October 9, 1991.

P 91-1218, 91-1219, 91-1220, 91-1221, October 12, 1991.

P 91-1222, October 15, 1991.

P 91-1223, 91-1224, 91-1225, 91-1226, October 12, 1991.

P 91-1227, 91-1228, 91-1231, 91-1232, 91-1233, 91-1234, 91-1235, 91-1236, 91-1237, October 13, 1991.

P 91-1238, October 14, 1991.

P 91-1239, 91-1240, October 15, 1991.

P 91-1241, 91-1243, 91-1244, October 16, 1991.

P 91-1245, 91-1246, 91-1247, 91-1248, 91-1249, 91-1250, October 19, 1991.

P 91-1251, 91-1252, 91-1253, 91-1254, October 20, 1991.

P 91-1255, 91-1256, 91-1257, October 21, 1991.

P 91-1258, October 22, 1991.

P 91-1259, 91-1260, October 23, 1991.

P 91-1261, October 27, 1991.

P 91-1262, October 21, 1991.

–G004, 401 M St., SW.,

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Dated: August 5, 1991.

Lawrence E. Culleen,

Acting Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc. 91–19199 Filed 8–12–91; 8:45 am]

BILLING CODE 6560–50–F

[OPTS–51767; FRL 3941–2]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 73 such PMNs and provides a summary of each.

DATES: Close of review periods:

P 91–1168, 91–1169, September 23, 1991.

P 91–1170, 91–1171, 91–1172, September 24, 1991.

P 91–1173, 91–1174, September 25, 1991.

P 91–1205, 91–1206, 91–1207, October 6, 1991.

P 91–1208, 91–1209, 91–1210, October 7, 1991.

P 91–1211, 91–1212, 91–1213, 91–1214, October 8, 1991.

P 91–1215, 91–1216, October 9, 1991.

P 91–1218, 91–1219, 91–1220, 91–1221, October 12, 1991.

P 91–1222, October 15, 1991.

P 91–1223, 91–1224, 91–1225, 91–1226, October 12, 1991.

P 91–1227, 91–1228, 91–1231, 91–1232, 91–1233, 91–1234, 91–1235, 91–1236, 91–1237, October 13, 1991.

P 91–1238, October 14, 1991.

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P 91–1241, 91–1243, 91–1244, October 16, 1991.

P 91–1245, 91–1246, 91–1247, 91–1248, 91–1249, 91–1250, October 19, 1991.

P 91–1251, 91–1252, 91–1253, 91–1254, October 20, 1991.

P 91–1255, 91–1256, 91–1257, October 21, 1991.

P 91–1258, October 22, 1991.

P 91–1259, 91–1260, October 23, 1991.

P 91–1261, October 27, 1991.

P 91–1262, October 21, 1991.

P 91–1263, 91–1264, October 23, 1991.

P 91–1265, September 26, 1991.

P 91–1266, October 26, 1991.

P 91–1267, September 26, 1991.

P 91–1268, 91–1269, 91–1270, 91–1271, 91–1272, 91–1273, 91–1274, October 27, 1991.

Written comments by:

P 91–1168, 91–1169, August 24, 1991.

P 91–1170, 91–1171. 91–1172, August 25, 1991.

P 91–1173, 91–1174, August 26, 1991.

P 91–1205, 91–1206, 91–1207, September 6, 1991.

P 91–1208, 91–1209, 91–1210, September 7, 1991.

P 91–1211, 91–1212, 91–1213, 91–1214, September 8, 1991.

P 91–1215, 91–1216, September 9, 1991.

P 91–1218, 91–1219, 91–1220, 91–1221, September 12, 1991.

P 91–1222, September 15, 1991.

P 91–1223, 91–1224, 91–1225, 91–1226, September 12, 1991.

P 91–1227, 91–1228, 91–1231, 91–1232, 91–1233, 91–1234, 91–1235, 91–1236, 91–1237, September 13, 1991.

P 91–1238, September 14, 1991.

P 91–1239, 91–1240, September 15, 1991.

P 91–1241, 91–1243, 91–1244, September 16, 1991.

P 91–1245, 91–1246, 91–1247, 91–1248, 91–1249, 91–1250, September 19, 1991.

P 91–1251, 91–1252, 91–1253, 91–1254, September 20, 1991.

P 91–1255, 91–1256, 91–1257, September 21, 1991.

P 91–1258, September 22, 1991.

P 91–1259, 91–1260, September 23, 1991.

P 91–1261, September 27, 1991.

P 91–1262, September 21, 1991.

P 91–1263, 91–1264, September 23, 1991.

P 91–1265, August 27, 1991.

P 91–1266, September 26, 1991.

P 91–1267, August 27, 1991.

P 91–1268, 91–1269, 91–1270, 91–1271, 91–1272, 91–1273, 91–1274, September 27, 1991.

ADDRESSES: Written comments, identified by the document control number "(OPTS–51767)" and the specific PMN number should be sent to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., rm L–100, Washington, DC, 20460, (202) 382–3532.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, rm EB–44, 401 M St., SW., Washington, DC 20460 (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office NE–G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

P 91–1168

Importer. Confidential.

Chemical. (G) Substituted-substituted-substituted-benzene polymer.

Use/Import. (S) Adhesive. Import range: Confidential

P 91–1169

Manufacturer. H.B. Fuller Company.

Chemical. (G) Hydrogenated dimerized C_{18}, unsaturated fatty acid, hexamethylene diamine, alkane diamine, acid functional hydroocarbon, sebasic acid polymer.

Use/Production. (S) Adhesive. Prod. range: Confidential.

P 91–1170

Manufacturer. Confidential.

Chemical. (G) Siloxanes and silicones, di me aryl stopped.

Use/Production. (G) Plastic modifier. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Eye irritation: slight species (rabbit). Skin irritation: negligible species (rabbit). Mutagenicity: negative.

P 91–1171

Manufacturer. GE Silicones.

Chemical. (G) Polysiloxane bisphenol-A-copolycarbonate.

Use/Production. (S) Enclosure for electrical devices. Prod. range: Confidential.

P 91–1172

Manufacturer. Confidential.

Chemical. (G) Alpha alkene copolymer with alpha alkene.

Use/Production. (G) Crude oil additive. Prod. range: Confidential.

P 91–1173

Manufacturer. ICI Americas Inc.

Chemical. (G) Ethoxylated sorbitol lanolin derivative.

Use/Production. (G) Emulsifier. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 39.8 g/kg species (rat). Eye irritation: slight species (rabbit). Skin irritation: negligible species (rabbit). Skin sensitization: negative species (guinea pig).

P 91–1174

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Polyurethane resin.

Use/Production. (G) Hot melt adhesive. Prod. range: Confidential.

P 91–1205

Manufacturer. Milliken & Company.

Chemical. (G) Substituted polyoxyalkylated aromatic amine methylium salt.

Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 91–1206

Manufacturer. Milliken & Company.

Chemical. (G) Alkoxylated alcohol.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 91–1207

Importer. Confidential.

Chemical. (S) 1,3-Benzenedisulfonic acid, 4-amino-5-chloro.

Use/Import. (G) Intermediate. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat).

P 91–1208

Manufacturer. Allied-Signal, Inc.

Chemical. (G) Vinyl ether terminated urethane.

Use/Production. (S) Coatings/inks/adhesives. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (rat). Acute dermal toxicity: LD50 > 2 g/kg species (rabbit). Eye irritation: moderate species (rabbit). Skin irritation: negligible species (rabbit). Skin sensitization: positive species (guinea pig).

P 91–1209

Manufacturer. Allied-Signal, Inc.

Chemical. (G) Viny ether terminated urethane.

Use/Production. (S) Coatings/inks/adhesives. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (rat). Acute dermal toxicity: LD50 > 2 g/kg species (rabbit). Eye irritation: moderate species (rabbit). Skin irritation: negligible species (rabbit). Skin sensitization: positive species (guinea pig).

P 91–1210

Manufacturer. Confidential.

Chemical. (G) Aliphatic polyisocyanate.

Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

VOL 56 SS 156 AG 13 991 UMI

P 91-1211

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Disubstituted benzene sulfonic acid salt.

Use/Production. (S) Dye intermediate. Prod. range: Confidential.

P 91-1212

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Disubstituted benzene sulfonic acid salt.

Use/Production. (S) Dye intermediate. Prod. range: Confidential.

P 91-1213

Manufacturer. Confidential.

Chemical. (G) Reaction product of alkyl thio alcohol, and substituted phospate.

Use/Production. (G) Petroleum additive. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 2. g/kg species (rat). Skin irritation: strong species (rabbit). Mutagenicity: negative.

P 91-1214

Manufacturer. Confidential.

Chemical. (G) Lithium nickel oxide.

Use/Production. (S) Dry cell battery elastrode. Prod. range: 100–2,000 kg/yr.

P 91-1215

Manufacturer. Confidential.

Chemical. (G) Trialkylboron amine complex.

Use/Production. (G) Polymerization imitiator. Prod. range: Confidential.

P 91-1216

Manufacturer. Confidential.

Chemical. (G) Acrylic copolymer.

Use/Production. (G) Adhesive binder. Prod. range: Confidential.

P 91-1218

Manufacturer. Confidential.

Chemical. (G) Modified maleated rosin.

Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 91-1219

Manufacturer. Confidential.

Chemical. (G) Modified maleated rosin.

Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 91-1220

Manufacturer. Confidential.

Chemical. (G) Modified maleated rosin.

Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 91-1221

Manufacturer. Confidential.

Chemical. (G) Modified maleated rosin, calcium, magnesium and zinc salts.

Use/Production. (S) Binder in printing inks. Prod. range: Confidential.

P 91-1222

Manufacturer. Confidential.

Chemical. (G) Modified maleated rosin, calcium magnesium and zinc salts.

Use/Production. (S) Binder in printing inks. Prod. range: Confidential.

P 91-1223

Manufacturer. Confidential.

Chemical. (G) Modified maleated rosin, calcium magnesium and zinc salts.

Use/Production. (S) Binder in printing inks. Prod. range: Confidential.

P 91-1224

Manufacturer. Confidential.

Chemical. (G) Modified maleated rosin, calcium magnesium and zinc salts.

Use/Production. (S) Binder in printing inks. Prod. range: Confidential.

P 91-1225

Manufacturer. Confidential.

Chemical. (G) Modified maleated rosin, calcium magnesium and zinc salts.

Use/Production. (S) Binder in printing inks. Prod. range: Confidential.

P 91-1226

Importer. Unichema North America.

Chemical. (G) Fatty diol, C_{36} branched, saturated.

Use/Import. (G) Open, nondispersive. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5000 mg/kg species (rat). Eye irritation: minimal species (rabbit). Skin irritation: slight species (rabbit).

P 91-1227

Manufacturer. Confidential.

Chemical. (G) Isocyanate containing polyesterpolyurethane.

Use/Production. (S) Adhesive. Prod. range: Confidential.

P 91-1228

Manufacturer. Confidential.

Chemical. (G) Dihydroheterpolycycle.

Use/Production. (S) Site-limited intermediate. Prod. range: Confidential.

P 91-1231

Manufacturer. Confidential.

Chemical. (G) Reaction product of fatty acid oils and a phenolicpentaerythritol tetraester.

Use/Production. (S) Lubricant finish on nylon tire yarn. Prod. range: Confidential.

P 91-1232

Manufacturer. Confidential.

Chemical. (G) Reaction product of fatty acid oils and a phenolicpentacrythritol tetraester.

Use/Production. (S) Lubricant finish on nylon tire yarn. Prod. range: Confidential.

P 91-1233

Manufacturer. Confidential.

Chemical. (G) Reaction product of fatty acid oils and a phenolicpentacrythritol tetraester.

Use/Production. (S) Lubricant finish on nylon tire yarn. Prod. range: Confidential.

P 91-1234

Manufacturer. Confidential.

Chemical. (G) Reaction product of fatty acid oils and a phenolicpentacrythritol tetraester.

Use/Production. (S) Lubricant finish on nylon tire yarn. Prod. range: Confidential.

P 91-1235

Manufacturer. Confidential.

Chemical. (G) Reaction product of fatty acid oils and a phenolicpentacrythritol tetraester.

Use/Production. (S) Lubricant finish on nylon tire yarn. Prod. range: Confidential.

P 91-1236

Manufacturer. Confidential.

Chemical. (G) Unsaturated urethane modified tall oil fatty acid alkydrythritol tetraester.

Use/Production. (G) Component of paint formulations. Prod. range: Confidential.

P 91-1237

Manufacturer. Akzo - Lanchem.

Chemical. (G) Alkyd/acrylic copolymer.

Use/Production. (S) Resin used to manufacture industrial coatings. Prod. range: Confidential.

P 91-1238

Manufacturer. Bedoukian Research, Inc.

Chemical. (S) Bicyclo(3.3.1)HEPT-3-EN-2-OL, 4,6,6-trimethyl.

Use/Production. (S) Fragrance component. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5.0 g/kg species (rat). Skin irritation: slight species (rabbit).

P 91-1239

Importer. Confidential.

Chemical. (G) Acetamide, 2-alkoxy-*N*-((chloro-cyano-substituted heteromonocycle)azo)-(dialkyamino)phenyl)-.

lodified maleated
gnesium and zinc

. (S) Binder in printing
Confidential.

Confidential.
lodified maleated
gnesium and zinc salts.
. (S) Binder in printing
Confidential.

Confidential.
lodified maleated
gnesium and zinc salts.
. (S) Binder in printing
Confidential.

Confidential.
lodified maleated
gnesium and zinc salts.
. (S) Binder in printing
Confidential.

Confidential.
lodified maleated
gnesium and zinc salts.
. (S) Binder in printing
Confidential.

ema North America.
atty diol, C_{36}
ed.
Open, nondispersive.
fidential.
Acute oral toxicity:
kg species (rat). Eye
species (rabbit). Skin
ecies (rabbit).

Confidential.
socyanate containing
hane.
. (S) Adhesive. Prod.
al.

Confidential.
Dihydroheterpolycycle.
. (S) Site-limited
l. range: Confidential.

Confidential.
Leaction product of
a
hritol tetraester.
. (S) Lubricant finish
. Prod. range:

Confidential.

Chemical. (G) Reaction product of fatty acid oils and a phenolicpentacrythritol tetraester.

Use/Production. (S) Lubricant finish on nylon tire yarn. Prod. range: Confidential.

P 91-1233

Manufacturer. Confidential.

Chemical. (G) Reaction product of fatty acid oils and a phenolicpentacrythritol tetraester.

Use/Production. (S) Lubricant finish on nylon tire yarn. Prod. range: Confidential.

P 91-1234

Manufacturer. Confidential.

Chemical. (G) Reaction product of fatty acid oils and a phenolicpentacrythritol tetraester.

Use/Production. (S) Lubricant finish on nylon tire yarn. Prod. range: Confidential.

P 91-1235

Manufacturer. Confidential.

Chemical. (G) Reaction product of fatty acid oils and a phenolicpentacrythritol tetraester.

Use/Production. (S) Lubricant finish on nylon tire yarn. Prod. range: Confidential.

P 91-1236

Manufacturer. Confidential.

Chemical. (G) Unsaturated urethane modified tall oil fatty acid alkydrythritol tetraester.

Use/Production. (G) Component of paint formulations. Prod. range: Confidential.

P 91-1237

Manufacturer. Akzo - Lanchem.

Chemical. (G) Alkyd/acrylic copolymer.

Use/Production. (S) Resin used to manufacture industrial coatings. Prod. range: Confidential.

P 91-1238

Manufacturer. Bedoukian Research, Inc.

Chemical. (S) Bicyclo(3.3.1)HEPT-3-EN-2-OL, 4,6,6-trimethyl.

Use/Production. (S) Fragrance component. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5.0 g/kg species (rat). Skin irritation: slight species (rabbit).

P 91-1239

Importer. Confidential.

Chemical. (G) Acetamide, 2-alkoxy-*N*-((chloro-cyano-substituted heteromonocycle)azo)-(dialkyamino)phenyl)-.

Use/Import. (S) Dye for fiber. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (rabbit). Static acute toxicity: time LC50 96H > 180 mg/l species (carp). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit). Skin sensitization: positive species (guinea pig).

P 91-1240

Importer. Confidential.

Chemical. (G) Acetamide, *N*-((chloro-cyano-substituted heteromonocycle)azo)-(dialkylamino)phenyl)-.

Use/Import. (S) Dye for fiber. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (rabbit). Static acute toxicity: time LC50 96H > 180 mg/l species (carp). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit). Skin sensitization: positive species (guinea pig).

P 91-1241

Manufacturer. Confidential.

Chemical. (G) Rosin, substituted alkyl benzene, dieneophile modified zinc salt reaction product with unsaturated hydrocarbon resin.

Use/Production. (S) Resin binder for printing ink. Prod. range: Confidential.

P 91-1243

Importer. Confidential.

Chemical. (G) Amino functional reactive thinner.

Use/Import. (G) Open, nondispersive use. Import range: Confidential.

P 91-1244

Importer. Confidential.

Chemical. (G) Acrylic-silicone: graft polymer.

Use/Import. (S) Paint. Import range: Confidential.

P 91-1245

Manufacturer. Rhone-Poulenc, Performance Resins Div.

Chemical. (G) Diphenol dicyanate homopolymer.

Use/Production. (S) Thermoset resin for use in fiber reinforced structural and electrical composits; heat curable adhesives. Prod. range: Confidential.

P 91-1246

Importer. Confidential.

Chemical. (G) Acrylic acid esters/acrylonitrile copolymer.

Use/Import. (S) Paint dispersion. Import range: Confidential.

P 91-1247

Manufacturer. Confidential.

Chemical. (S) Polymer of 2,2,4-trimethyl-1,3-pentanediol; isophthalic acid; adipic acid; and tert-butyl acetoacetate.

Use/Production. (S) A polymer for enamel paint. Prod. range: 100,000–250,000 kg/yr.

P 91-1248

Manufacturer. The Dow Chemical Company.

Chemical. (G) Modified butadiene-vinylidene chloride polymer.

Use/Production. (S) Carpet backing adhesive. Prod. range: Confidential.

P 91-1249

Manufacturer. The Dow Chemical Company.

Chemical. (G) Modified butadiene-vinylidene chloride polymer.

Use/Production. (S) Carpet backing adhesive. Prod. range: Confidential.

P 91-1250

Importer. Confidential.

Chemical. (G) Polyol ester.

Use/Import. (G) Lubricant. Import range: Confidential.

P 91-1251

Manufacturer. Estron Chemical, Inc.

Chemical. (G) Polyester.

Use/Production. (G) Lubricant. Prod. range: Confidential.

P 91-1252

Importer. Confidential.

Chemical. (G) Acrylic Polyol.

Use/Import. (G) Raw material resin for paint. Import range: 5,000–30,000 kg/yr.

P 91-1253

Importer. Confidential.

Chemical. (G) Acrylic polyol.

Use/Import. (G) Raw material resin for paint. Import range: 5,000–30,000 kg/yr.

P 91-1254

Manufacturer. Confidential.

Chemical. (G) Crosslinked rubber.

Use/Production. (G) Thermoplastic resin for molded/extruded parts. Prod. range: Confidential.

P 91-1255

Manufacturer. Minnesota Mining & Manufacturing (3M).

Chemical. (G) Silicone polymer.

Use/Production. (S) Polymeric low surface energy coating for tape. Prod. range: Confidential.

P 91-1256

Manufacturer. Confidential.

Chemical. (G) Water dispersed polyether polyurethane.

Use/Production. (S) Textile finish. Prod. range: 5,000 kg/yr.

P 91-1257

Importer. Confidential.

Chemical. (G) Polyimide resin.

Use/Import. (G) Coating. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 3.8 g/kg species (rabbit).

P 91-1258

Manufacturer. Confidential.

Chemical. (G) Modified acrylic polymer.

Use/Production. (S) Polymeric component of caulks and adhesives. Prod. range: Confidential.

P 91-1259

Manufacturer. Cape Industries.

Chemical. (G) Aromatic polyureter polyol.

Use/Production. (G) Destructive use, chemical intermediate. Prod. range: Confidential.

P 91-1260

Manufacturer. Confidential.

Chemical. (G) Orhanic salt.

Use/Production. (G) Polymer intermediate. Prod. range: Confidential.

P 91-1261

Manufacturer. Confidential.

Chemical. (G) Acrylic copolymer.

Use/Production. (G) Pressure sensitive adhesive. Prod. range: Confidential.

P 91-1262

Manufacturer. Eastman Chemical Company.

Chemical. (G) Ester of poly functional carbomonocyclic acid.

Use/Production. (G) Polymer intermediate. Prod. range: Confidential.

P 91-1263

Manufacturer. Dow Corning Corporation.

Chemical. (G) Organosilyl-functional silica.

Use/Production. (S) Abrasion resistant radiation cure coating. Prod. range: Confidential.

P 91-1264

Manufacturer. Dow Corning Corporation.

Chemical. (G) Organosilyl-functional silica.

Use/Production. (S) Abrasion resistant radiation cure coating. Prod. range: Confidential.

P 91-1265

Manufacturer. Henkel Corporation.

Chemical. (G) Napthalene sulfonate condensate salt.

Use/Production. (S) Concrete admixture. Prod. range: Confidential.

P 91-1266

Manufacturer. Henkel Corporation.

Chemical. (G) Napthalene sulfonate condensate salt.

Use/Production. (S) Concrete admixture. Prod. range: Confidential.

P 91-1267

Manufacturer. Henkel Corporation.

Chemical. (G) Napthalene sulfonate condensate salt.

Use/Production. (S) Concrete admixture. Prod. range: Confidential.

P 91-1268

Manufacturer. Confidential.

Chemical. (G) Tall oil fatty acids, aliphatic dicarboxylic acid, aliphatic polyol, oxyalkylene alkyd.

Use/Production. (G) Water soluble resin for coatings (protective and decorative). Prod. range: Confidential.

P 91-1269

Manufacturer. Confidential.

Chemical. (G) Polyester.

Use/Production. (S) Baked finishes for metal objects. Prod. range: Confidential.

P 91-1270

Manufacturer. Metre-General, Inc.

Chemical. (G) Silica-gel-immobilized amine-bound nitrogen containing ligand.

Use/Production. (G) An immobilized ligand for removing poisonous materials from water and waste water. Prod. range: Confidential.

P 91-1271

Manufacturer. Metre-General, Inc.

Chemical. (G) Silica-gel-immobilized amine-bound nitrogen containing ligand.

Use/Production. (G) An immobilized ligand for removing poisonous materials from water and waste water. Prod. range: Confidential.

P 91-1272

Manufacturer. Metre-General.

Chemical. (G) Silica-gel-immobilized-amine-bound nitrogen-containing ligand.

Use/Production. (G) An immobilized ligand for removing poisonous materials from water and waste water. Prod. range: Confidential.

P 91-1273

Manufacturer. Metre-General, Inc.

Chemical. (G) Silica-gel-immobilized amine-bound nitrogen containing ligand.

Use/Production. (G) An immobilized ligand for removing poisonous materials from water and waste water. Prod. range: Confidential.

P 91-1274

Manufacturer. Metre-General, Inc.

Chemical. (G) Silica-gel-immobilized-amine-bound nitrogen-containing ligand.

Use/Production. (G) An immobilized ligand for removing poisonous materials from water and waste water. Prod. range: Confidential.

Dated: August 6, 1991.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 91-19200, Filed 8-12-91; 8:45 am]

BILLING CODE 6560-50-F

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33 U.S.C. Section 1319(g), Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity to Comment regarding Parker Hannifin Corporation, Red Oak, IA

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Notice of Proposed Administrative Penalty Assessment and Opportunity to Comment regarding Parker Hannifin Corporation, Red Oak, Iowa.

SUMMARY: EPA is providing notice of a proposed administrative penalty assessment for alleged violations of the Clean Water Act ("Act"). EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g)(4)(A).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR part 22. The procedures by which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty (30) days after issuance of this public notice.

On July 31, 1991, EPA commenced the following Class II proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551-7630, the following Complaint: In the Matter of Parker Hannifin Corporation, EPA Docket No. VII-91-W-0072.

The Complaint proposed a penalty of $125,000.00 for discharging pollutants into East Nishnabotna River, a water of the United States, from the company's facility near Red Oak, Montgomery County, Iowa, in violation of the effluent limitations and conditions of National Pollutant Discharge Elimination System Permit IA-0004693.

FOR FURTHER INFORMATION: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding, should contact the Regional Hearing Clerk identified above.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by Parker Hannifin Corporation is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding prior to thirty (30) days from the date of this notice.

Dated: July 30, 1991.

Morris Kay,

Regional Administrator.

[FR Doc. 91-19164 Filed 8-12-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Issuance of Powers of Attorney

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Public notice.

SUMMARY: In order to facilitate the discharge of its responsibilities as a conservator and liquidator of insured depository institutions in the State of Oklahoma, the Federal Deposit Insurance Corporation ("FDIC") publishes the following notice. The publication of this notice is intended to comply with title 16, section 20 of the Oklahoma Statutes (16 O.S. 20) which, in part, declares Federal agencies that publish notices in the **Federal Register** concerning their promulgation of powers of attorney, to be exempt from the statutory requirement of having to record such powers of attorney in every county of Oklahoma in which the

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1319(g), Clean Water
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Oak, IA

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Proposed
nalty Assessment and
nment regarding
orporation, Red Oak,

providing notice of a
rative penalty
eged violations of the
"Act"). EPA is also
opportunity to
oposed assessment.
1319(g), EPA is
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EPA commenced the
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as 66101, (913) 551–
Complaint: In the
annifin Corporation,
I–91–W–0072.

The Complaint proposed a penalty of $125,000.00 for discharging pollutants into East Nishnabotna River, a water of the United States, from the company's facility near Red Oak, Montgomery County, Iowa, in violation of the effluent limitations and conditions of National Pollutant Discharge Elimination System Permit IA–0004693.

FOR FURTHER INFORMATION: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding, should contact the Regional Hearing Clerk identified above.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by Parker Hannifin Corporation is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding prior to thirty (30) days from the date of this notice.

Dated: July 30, 1991.

Morris Kay,

Regional Administrator.

[FR Doc. 91–19164 Filed 8–12–91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Issuance of Powers of Attorney

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Public notice.

SUMMARY: In order to facilitate the discharge of its responsibilities as a conservator and liquidator of insured depository institutions in the State of Oklahoma, the Federal Deposit Insurance Corporation ("FDIC") publishes the following notice. The publication of this notice is intended to comply with title 16, section 20 of the Oklahoma Statutes (16 O.S. 20) which, in part, declares Federal agencies that publish notices in the **Federal Register** concerning their promulgation of powers of attorney, to be exempt from the statutory requirement of having to record such powers of attorney in every county of Oklahoma in which the agencies wish to effect the conveyance or release of interests in land.

NOTICE: Pursuant to section 11 of the Federal Deposit Insurance ("FDI") Act (12 U.S.C. 1821), as amended by section 212 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), the FDIC is empowered to act as conservator or receiver of any state or federally chartered depository institution which it insures. Furthermore, under Section 11A of the FDI Act (12 U.S.C. 1821a), as enacted under Section 215 of FIRREA, the FDIC is also appointed to manage the FSLIC Resolution Fund.

Upon appointment as a conservator or receiver, the FDIC by operation of law becomes successor in title to the assets of the depository institutions on behalf of which it is appointed. As Manager of the FSLIC Resolution Fund, the FDIC became successor in title to both the corporate assets formerly owned by the now defunct Federal Savings and Loan Insurance Corporation ("FSLIC"), as well as to the assets of the depository institutions for which the FSLIC was appointed receiver prior to January 1, 1989. In addition, pursuant to section 13(c) of the FDC Act (12 U.S.C. 1823(c)) The FDIC also acquires legal title in its corporate capacity to assets acquired in furthermore of providing monetary assistance to prevent the closing of insured depository institutions or to expedite the acquisition by assuming depository institutions of assets and liabilities from closed depository institutions of which the FDIC is receiver.

In order to facilitate the conservation and liquidation of assets held by the FDIC in its aforementioned capacities, the FDIC has provided powers of attorney to the following individual:

Robert G. Miller

Each employee to whom a power of attorney has been issued is authorized and empowered to: sign, seal and deliver as the act and deed of the FDIC any instrument in writing, and to do every other thing necessary and proper for the collection and recovery of any and all monies and properties of every kind and nature whatsoever for and on behalf of the FDIC and to give proper receipts and acquittances therefor in the name and on behalf of the FDIC; release, discharge or assign any and all judgments, mortgages on real estate or personal property (including the release and discharge of the same of record in the office of any Prothonotary or Register of Deeds wherever located where payments on account of the same in redemption or otherwise may have been made by the debtor(s)), and to endorse receipt of such payment upon the records in any appropriate public office; receipt, collect and give all proper acquittances for any other sums of money owing to the FDIC for any acquired asset which the attorney-in-fact may sell or dispose of; execute any and all transfers and assignments as may be necessary to assign any securities or other choses in action; sign, seal, acknowledge and deliver any and all agreements as shall be deemed necessary or proper by the attorney-in-fact in the care and management of acquired asserts; sign, seal, acknowledge and deliver indemnity agreements and surety bonds in the name of and on behalf of the FDIC; sign receipts for the payment of all rents and profits due or to become due on acquired assets; execute, acknowledge and deliver deeds of real property in the name of the FDIC; extend, postpone, release and satisfy or take such other action regarding any mortgage lien held in the name of the FDIC; execute, acknowledge and deliver in the name of the FDIC a power of attorney wherever necessary or required by law to any attorney employed by the FDIC; foreclose any mortgage or other lien on either real or personal property, wherever located; do and perform every act necessary for the use, liquidation or collection of acquired assets held in the name of the FDIC; and sign, seal, acknowledge and deliver any and all documents as may be necessary to settle any action(s) or claim(s) asserted against the FDIC, either in its Receivership or Corporate capacity, or as Manager of the FSLIC Resolution Fund.

Dated: August 7, 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91–19154 Filed 8–12–91; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Lykes Bros. Steamship Co., Inc., et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–011259–001.

Title: United States/Southern Africa Conference Agreement.

Parties: Empresa de Navegacao International, Lykes Bros. Steamship Co., Inc., Safbank Line, Ltd.

Synopsis: The proposed amendment would modify the service contract provisions to permit members to agree upon the allocation of monies collected or owed by the Conference with regard to rerating charges and liquidated damages for failure by the shipper or the carrier to meet the minimum cargo commitment or service commitment.

Agreement No.: 202–011260–002.

Title: United States/East Africa Conference Agreement.

Parties: Bank Line East Africa Limited, Lykes Bros. Steamship Co., Inc.

Synopsis: The proposed amendment would modify the service contract provisions to permit members to agree upon the allocation of monies collected or owed by the Conference with regard to rerating charges and liquidated damages for failure by the shipper or the carrier to meet the minimum cargo commitment or service commitment.

Dated: August 7, 1991.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 91–19139 Filed 8–12–91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Heartland Bancshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the

VOL 56 ISS 156 AG 13 1991 UMI

application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than September 3, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois [illegible]

1. Heartland Bancshares, Inc., Lenox, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of First Community National Bank, Corning, Iowa.

Board of Governors of the Federal Reserve System, August 7, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-19161 Filed 8-12-91; 8:45 am]

BILLING CODE 6210-01-F

H.D. Reynolds, Jr., et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 3, 1991.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. H.D. Reynolds, Jr., El Dorado, Arkansas; El Dorado and Wesson Railway Company, Union County, Arkansas; Natural Resources, Inc., El Dorado, Arkansas; and Triangle Industries, Inc., El Dorado, Arkansas; collectively to acquire an additional 12.25 percent (for a total of 20.0 percent) of the voting shares of NBC Bank Corp, El Dorado, Arkansas, and thereby indirectly acquire National Bank of Commerce of El Dorado, El Dorado, Arkansas.

Board of Governors of the Federal Reserve System, August 7, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-19162 Filed 8-12-91; 8:45 am]

BILLING CODE 6210-01-F

Signet Banking Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 3, 1991.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Signet Banking Corporation, Richmond, Virginia; to acquire 29.72 percent of Credit Systems Incorporated, St. Louis, Missouri; and thereby engage in the issuance and servicing of bank credit cards and related cardholder accounts pursuant to § 225.25(b)(1) of the Board's Regulation Y, and providing to financial institutions all facilities and processing services necessary for them to offer bank card services to their merchant customers pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 7, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-19163 Filed 8-12-91; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

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Board of Governors of the Federal Reserve System, August 7, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-19163 Filed 8-12-91; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

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The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 072291 AND 080291

Name of Acquiring Person, Name of Acquiring Person, Name of Acquiring Entity	PMN No.	Date Terminated
W.D. Company, Inc., Maison Blanche, Inc., MB I Acquisition Corp	91-1153	07/22/91
Handleman Co., LIVE Entertainment, Inc., Lieberman Enterprises Inc.	91-1129	07/24/91
Jan Bell Marketing, Inc., Michael Anthony Jewelers, Inc., Michael Anthony Jewelers, Inc	91-1160	07/24/91
Eleni Acquisition, Inc., Jack Kent Cooke, Cooke CableVision Inc.	91-1184	07/24/91
Windmill Holdings Corp., Grand Metropolitan Public Limited Company, The Pillsbury Co.	91-1102	07/25/91
Bechtel Investments, Inc., Gilchrist Timber Co., Gilchrist Timber Co.	91-1113	07/26/91
Carrefour, Costco Wholesale Corp., Costco Wholesale Corp.	91-1137	07/26/91
Gerald W. Schwartz, Bethlehem Steel Corp., Bethlehem Steel Corp.	91-1141	07/26/91
Homestake Mining Co., Galactic Resources Ltd., Galactic Resources Ltd.	91-1190	07/26/91
Walsh, Carson, Anderson & Stowe V, L.P., Incarnate Word Health Services, St. John's Hospital and Health Centers, Inc.	91-1197	07/26/91
Metropolitan Life Insurance Co., James C. Fissell, Western Relocation Management, Inc.	91-1200	07/26/91
GranCare, Inc., The ARA Group, Inc., ARA Living Centers—Pacific, Inc.	91-1165	07/29/91
Citicorp, Inspiration Resources Corp., Inspiration Leasing Inc.	91-1182	07/29/91
Folksam General Mutual Insurance Society, The Mutual Life Insurance Company of New York, MONY Reinsurance Corp.	91-1191	07/29/91
First Reserve Gas Storage Inc., Endevco, Inc., Endevco Industrial Gas Sales Co.	91-1216	07/29/91
Hampton Investment Co., Boise Cascade Corp., Boise Cascade Corp.	91-1203	07/30/91
Vulcan Materials Co., Southdown, Inc., Florida Mining & Minerals Division	91-1171	08/02/91
Empresas ICA, Sociedad Controladora, S.A. de C.V., Southdown, Inc., Florida Mining & Minerals Division	91-1172	08/02/91
Barry Baker, James F. Goodmon, WTTV, Inc.	91-1201	08/02/91
VIAG Aktiengesellschaft, Peter Kiewit Sons', Inc., Continental White Cap, Inc.	91-1202	08/02/91
The Edward W. Scripps Trust, R. E. Turner, Turner Broadcasting System, Inc.	91-1224	08/02/91
Bell Attlantic Corp., MNC Financial, Inc., American Financial Service Group, Inc.	91-1233	08/02/91
John B. Poindexter, Steven R. Lowy, Lowy Enterprises, Inc.	91-1235	08/02/91

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 91-19216 Filed 8-12-91; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3338]

Audio Communications Incorporated; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Nevada corporation, that markets "900" number information services to children, from making misrepresentations regarding free gifts or the number of calls required to receive a premium; requires a clear statement, or preamble, at the beginning of each children's message giving the child a chance to hand up without charge; and requires the company to provide a means for parents to prevent, or not be charged for, unauthorized calls by their children.

DATES: Complaint and Order issued July 24, 1991.[1]

FOR FURTHER INFORMATION CONTACT: Toby M. Levin, FTC/S-4002, Washington, DC 20580. (202) 326-3156.

SUPPLEMENTARY INFORMATION: On Wednesday, May 15, 1991, there was published in the **Federal Register**, 56 FR 22432 a proposed consent agreement with analysis In the Matter of Audio Communications Incorporated, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 91-19215 Filed 8-12-91; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. 6487]

Firestone Tire & Rubber Co., et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Set aside order.

SUMMARY: The Federal Trade Commission has set aside a 1961 order with the Firestone Tire & Rubber Co. and Shell Oil Co., thus terminating provisions, as to Shell Oil, that prohibited the use of certain sales commission agreements and related practices with Firestone and other suppliers of tires, batteries, and accessories. The Commission concluded that significant changes of law since the entry of the final order warranted reopening and setting aside the entire order as it applies to Shell.

DATES: Final Order issued March 9, 1961. Set Aside Order issued August 2, 1991.

FOR FURTHER INFORMATION CONTACT: Kenneth Davidson, FTC/S-2115, Washington, DC 20508. (202) 326-2863.

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[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: In the Matter of Firestone Tire & Rubber Co., et al. The prohibited trade practices and/or corrective actions as set forth at 28 FR 4886, are removed, as to Shell Oil Co.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

[Docket No. 6487]

Order Reopening and Setting Aside Final Order Issued on March 9, 1961

On April 4, 1991, the Shell Oil Company ("Shell") filed a request to reopen and set aside (request) the Final Order that was entered in Docket No. 6487 on March 9, 1961 ("order"). 58 F.T.C. 371 (1961). The Request was filed pursuant to section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b) and § 2.51 of the Federal Trade Commission Procedures and Rules of Practice, 16 CFR 2.51 (1991). The request was on the public record for thirty days. No comments were received.

The order Shell seeks to have set aside was based on a finding by the Commission that agreements between Shell and the Firestone Tire and Rubber Company (Firestone) and between Shell and the Goodyear Tire and Rubber Company (Goodyear) constituted unfair methods of competition in violation of section 5 of the Federal Trade Commission Act. Under the agreements, Shell received commissions on the sale of Firestone and Goodyear "TBA products" [1] to designated Shell franchisees.

The order prohibits Shell from continuing the sales commission agreements and related business practices with Firestone or other Shell suppliers. The order also prohibits Firestone from maintaining such agreements with Shell or any other marketing oil company. Goodyear was prohibited from engaging in such practices in a similar order that was entered in a companion case, Docket No. 6486, brought against Goodyear and the Atlantic Refining Company ("Atlantic").[2]

Docket No. 6487 was fully litigated. The Commission's order was modified in part by the Court of Appeals in 1966. *Shell Oil Company* v. *FTC*, 360 F.2d 470 (5th Cir. 1966), *cert. denied*, 385 U.S. 1002 (1967).

Shell asserts that, since the adjudication of the Commission's order, there have been changes of law and of fact that warrant reopening the order and setting it aside.

Previously, the Commission reopened and set aside the order in the companion case, both as to Atlantic, 111 F.T.C. 662 (1989), and as to Goodyear, F.T.C. (August 21, 1990), on the grounds that there have been relevant changes of law and there is no longer any need for that order.

Shell argues that its order ought to be set aside as well. It does not advance any arguments that were not urged on behalf of Atlantic and Goodyear; rather, its arguments include the grounds articulated by the Commission in setting aside the order in Docket No. 6486 as to Atlantic and Goodyear.

The Commission has considered Shell's request and has concluded that Shell has made a satisfactory showing of changed conditions of law that warrants setting aside the entire order in Docket No. 6487 as it applies to Shell. Significant changes of law since the entry of the order in this matter warrant reopening and setting aside the order.

Background

The Commission issued its complaint on January 11, 1956, alleging that the sales commission agreement concerning tires, batteries and other automotive accessories (TBA) between Shell and Firestone constituted an unfair method of competition in violation of section 5 of the Federal Trade Commission Act. The sales commission agreement provided that, in return for Shell's efforts to promote Firestone's TBA, Firestone would pay Shell a commission of ten percent on gross sales made by Firestone to Shell franchisees. The initial decision of the hearing examiner was issued on October 23, 1959. The Commission's opinion, issued on March 9, 1961, found "Shell has sufficient economic power over its wholesale and retail distributors to cause them to purchase substantial amounts of sponsored TBA even without the use of overt coercive tactics" and concluded "the use of the sales commission plan in favor of Firestone constitutes an unfair method of competition." 58 F.T.C. 371, 385. The Commission supported its conclusion by finding that the agreements unlawfully restricted competition in TBA products at the manufacturing, wholesale and retail levels and denied consumers the benefits of competition. 58 F.T.C. at 385, 414–15.

The Commission ordered Shell to cease:

1. All agreements under which Shell would receive anything of value from vendors of TBA for sales to Shell franchisees;
2. Accepting anything of value for promoting the sale of any vendor's TBA products;
3. Using contracts or other means to encourage its franchisees to acquire any vendor's TBA products (other than Shell TBA products);
4. Monitoring the sale of any vendor's TBA products other than its own;
5. Coercing Shell franchisees to acquire TBA products;
6. Preventing Shell franchisees from acquiring the TBA products of their choice.

The Court of Appeals upheld the Commission's finding that the sales commission agreement constituted an unfair method of competition.[3] The court found that Shell had economic power over its dealers, which it derived from its control of the dealers' supplies of petroleum products, short-term leases and equipment loan contracts, financing arrangements and housekeeping requirements for dealers. See 360 F. 2d at 479–481. The court of appeals affirmed the Commission's conclusions that Shell used its economic leverage over its dealers in carrying out the sales commission plan, causing adverse competitive effects in the TBA market in violation of Section 5. 360 F. 2d at 486–87; see also *Atlantic Refining Co.*, 381 U.S. at 368 (Atlantic "exerted the persuasion that is a natural incident of its economic power.")[4] Although the court spoke of Shell's "dominant economic power over its dealers," 360 F. 2d at 479, it did not make any findings concerning the firm's market power in an interbrand market. But, the court of appeals also determined that Shell had not coerced its franchisees and, therefore, declined to enforce paragraphs 5 and 6, described above, that ordered Shell to cease coercing its dealers. 360 F. 2d at 486.

The court of appeals viewed the commission sales agreements as similar to tying arrangements. 360 F. 2d at 477. But the court recognized that the agreements were not tying arrangements and declined to apply a *per se* rule. 360

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[1] TBA products are tires, batteries, and other automotive accessories.

[2] *Atlantic Refining Co.*, Docket 6486, 58 F.T.C. 309 (1961), *aff'd*, 331 F.2d 394 (7th Cir. 1964), *aff'd*, 381 U.S. 357, *reh'g denied*, 382 U.S. 873 (1965), *order set aside*, 111 F.T.C. 662 (1989) (as to Atlantic) and F.T.C. (August 21, 1990) (as to Goodyear); An additional case involved sales commission agreements between petroleum product and TBA product companies. *B.F. Goodrich Co.*, 62 F.T.C. 1172 (1963), *rev'd*, 336 F.2d 754 (D.C. Cir. 1964), *vacated & remanded*, 381 U.S. 739 (1965), *Opinion on remand*, 60 F.T.C. 22 (1966), *rev'd*, 383 F.2d 942 (D.C. cir. 1967), *rev'd & remanded*, 393 U.S. 223 (1968), *Order modified*, 75 F.T.C. 410 (1969).

[3] *Shell Oil Co.* v. *F.T.C.*, 360 F. 2d 470 (5th Cir. 1966), *cert. den.*, 385 U.S. 1002 (1967).

[4] *See also Simpson* v. *Union Oil Co.*, 377 U.S. 13 (1964) (fear of nonrenewal of short-term leases used to enforce resale prices).

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The Commission ordered Shell to cease:

1. All agreements under which Shell would receive anything of value from vendors of TBA for sales to Shell franchisees;
2. Accepting anything of value for promoting the sale of any vendor's TBA products;
3. Using contracts or other means to encourage its franchisees to acquire any vendor's TBA products (other than Shell TBA products);
4. Monitoring the sale of any vendor's TBA products other than its own;
5. Coercing Shell franchisees to acquire TBA products;
6. Preventing Shell franchisees from acquiring the TBA products of their choice.

The Court of Appeals upheld the Commission's finding that the sales commission agreement constituted an unfair method of competition.[3] The court found that Shell had economic power over its dealers, which it derived from its control of the dealers' supplies of petroleum products, short-term leases and equipment loan contracts, financing arrangements and housekeeping requirements for dealers. See 360 F. 2d at 479–481. The court of appeals affirmed the Commission's conclusions that Shell used its economic leverage over its dealers in carrying out the sales commission plan, causing adverse competitive effects in the TBA market in violation of Section 5. 360 F. 2d at 486–87; see also *Atlantic Refining Co.,* 381 U.S. at 368 (Atlantic "exerted the persuasion that is a natural incident of its economic power.")[4] Although the court spoke of Shell's "dominant economic power over its dealers," 360 F. 2d at 479, it did not make any findings concerning the firm's market power in an interbrand market. But, the court of appeals also determined that Shell had not coerced its franchisees and, therefore, declined to enforce paragraphs 5 and 6, described above, that ordered Shell to cease coercing its dealers. 360 F. 2d at 486.

The court of appeals viewed the commission sales agreements as similar to tying arrangements. 360 F. 2d at 477. But the court recognized that the agreements were not tying arrangements and declined to apply a *per se* rule. 360

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[3] *Shell Oil Co.* v. *F.T.C.,* 360 F. 2d 470 (5th Cir. 1966), *cert. den.,* 385 U.S. 1002 (1967).

[4] *See also Simpson* v. *Union Oil Co.,* 377 U.S. 13 (1964) (fear of nonrenewal of short-term leases used to enforce resale prices).

F. 2d at 477, 487. See also *Atlantic Refining Co.,* 381 U.S. at 369 ("We recognize that the * * * contract is not a tying arrangement."). Instead, the anticompetitive effects of the commission sales agreements in the TBA market, especially the "destructive effects" on competitors of Firestone and Goodyear, were examined. 360 F. 2d at 484. At the same time, however, consistent with the opinion of the Supreme Court in *Atlantic Refining Co.,* the court said that "extensive (full scale) economic analysis of the competitive effect" was unnecessary. 360 F. 2d at 483 (alteration in original), *quoting* 381 U.S. at 371. Instead, it was sufficient to find that a not insubstantial portion of the TBA market was foreclosed. *Id.;* 381 U.S. at 371. The Supreme Court also said that the Commission need not consider "evidence of economic justification" for the sale commission agreements: "While these contracts may provide (Shell) with an economical method of assuring efficient product distribution among its dealers they also amount to a device that permits [TBA] suppliers * * * through the use of oil company power, to effectively sew up large markets." 381 U.S. at 371. Thus, while the court did not apply a *per se* standard, the standard it applied was similar to a *per se* standard, in that it did not include a detailed explanation of the competitive effects of the agreements. Any deviation from a *per se* standard rested on the court's insistence of evidence of Shell's possession of some "dominant power" over its dealers, its exercise of that power, and the effect of that power over a not insubstantial amount of commerce. See 360 F. 2d at 487 (summarizing evidence).

Standard for Reopening a Final Order of the Commission

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), provides that the Commission shall reopen an order to consider whether it should be altered, modified, or set aside if the respondent "makes a satisfactory showing that changed conditions of law or fact" so require.[5] A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of the order inequitable or harmful to competition. *Louisiana Pacific Corp.,* docket No. C–2956, Letter to John C. Hart (June 5, 1986) at 4. *See,* S. Rep. No. 96th Cong., 2d Sess. 9 (1979) (significant changes or changes causing unfair disadvantage); *see Phillips Petroleum Co.,* Docket No. C–1088, 78 F.T.C. 1573, 1575 (1971) (modification not required for changes reasonably foreseeable at time of consent negotiations); *Pay Less Drugstores Northwest, Inc.,* Docket No. C–3039, Letter to H.B. Hummelt (Jan. 22, 1982) (changed conditions must be unforeseeable, create severe competitive hardship and eliminate dangers order sought to remedy) (unpublished); *see also United States* v. *Swift & Co.,* 286 U.S. 106, 119 (1932) ("clear showing" of changes that eliminate reasons for order or such that order causes unanticipated hardship).

The language of section 5(b) plainly anticipates that the burden is on the requester to make "a satisfactory showing" of changed conditions to obtain reopening of the order. *See also Gautreaux* v. *Pierce,* 535 F. Supp. 423, 426, (N.D. Ill. 1982) (requester must show "exceptional circumstances, new, changed or unforeseen at the time the decree was entered"). The legislative history also makes clear that the requester has the burden of showing, by means other than conclusory statements, why an order should be modified.[6] If the Commission determines that the requester has made the necessary showing, the Commission must reopen the order to determine whether modification is required and, if so, the nature and extent of the modification. The Commission is not required to reopen the order, however, if the requester fails to meet its burden of making the satisfactory showing of changed conditions required by the statute. The requester's burden is not a light one in view of the public interest in repose and the finality of Commission orders. *See Federated Department Stores, Inc.* v. *Moitie,* 425 U.S. 394 (1981) (strong public interest considerations support repose and finality); *Bowman Transportation, Inc.* v. *Arkansas-Best Freight System, Inc.,* 419 U.S. 281, 296 (1974) ("sound basis for * * * (not reopening) except in the most extraordinary circumstances"); *RSR Corp.* v. *FTC,* 656 F.2d 718; 731–22 (D.C. Cir. 1981) (applying *Bowman Transportation* standard to FTC order).

Shell has requested that the Commission reopen and set aside the order because changed conditions of fact and of law require such action. For the reasons described below, changes of law warrant reopening and setting aside the order against Shell. Having reopened and set aside the order on the basis of changes of law, the Commission does not reach the issue of whether the changes of fact warrant reopening.

Changed Conditions of Law Warrant Reopening the Order

A change in law that is sufficient to require reopening is one that has the effect of bringing the terms of the order in conflict with existing law. See *Louisiana-Pacific Corp.,* docket C–2956, slip op. at 20 (Nov. 15, 1989); *Lenox, Inc.,* Docket 8718, 111 F.T.C. 612, 614 (1989). Shell claims that, since the order was entered, the law applicable to tying arrangements and nonprice vertical restraints has changed significantly, requiring consideration of issues that were not considered when the order was entered. Shell asserts that the decisions in *United States* v. *Fortner Enterprises, Inc.,* 429 U.S. 610 (1977) and *Jefferson Parish Hospital District No. 2* v. *Hyde,* 466 U.S. 2, 17–18 (1984), require a showing that "the Commission in 1961 did not require, that Shell had market power in the tying product—retail gasoline sales." Request at 11. Shell also asserts that the Commission did not in 1961 consider the possible justifications for the sales commission agreements, as required by the decision in *Continental T.V., Inc.* v. *GTE Sylvania, Inc.,* 433 U.S. 36 (1977). Request at 10–15.

The Commission has concluded that the order in this matter should be reopened for two reasons. First, because the earlier analysis that formed the basis for the Commission's 1961 order did not rest on a determination regarding the market power of the respondents—a determination that would be an integral part of such an analysis under *Fortner* and *Hyde*—the Commission has concluded that the legal standard for liability has changed.

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[5] Section 5(b) provides, in part:

> [T]he Commission shall reopen any such order to consider whether such order (including any affirmative relief provision contained in such order) should be altered, modified, or set aside, in whole or in part, if the person, partnership, or corporation involved files a request with the Commission which makes a satisfactory showing that changed conditions of law or fact require such order to be altered, modified, or set aside, in whole or in part.

The 1980 amendment to section 5(b) did not change the standard for order reopening and modification, but "codifie[d] existing Commission procedures by requiring the Commission to reopen an order if the specified showing is made," S. Rep. No. 96–500, 96th Cong., 2d Sess. 9–10 (1979), and added the requirement that the Commission act on petitions to reopen within 120 days of filing.

[6] The legislative history of amended section 5(b), S. Rep. No. 96–500, 96th Cong., 2d Sess. 9–10 (1979), states:

> Unmeritorious, time-consuming and dilatory requests are not to be condoned. A mere facial demonstration of changed facts or circumstances is not sufficient * * * The Commission, to reemphasize, may properly decline to reopen an order if a request is merely conclusory or otherwise fails to set forth specific facts demonstrating in detail the nature of the changed conditions and the reasons why these changed conditions require the requested modification of the order.

Second, the Commission did not consider "evidence of economic justification" for the sales commission agreements. This was consistent with the opinion of the Supreme Court in *Atlantic Refining Co.*, 381 U.S. 357, 371 (1965), even though, the Court said, the agreements "may provide * * * an economical method of assuring efficient product distribution." *Id.* at 369. To the extent that this case involved nonprice vertical restraints by a supplier, inquiry into economic justifications has been required since the decision of the Supreme Court in *Continental T.V., Inc.* v. *GTE Sylvania, Inc.*, 433 U.S. 36 (1977). These conclusions are consistent with the Commission's actions vacating the orders in *Atlantic* and *B.F. Goodrich.*

The Order Should be Set Aside

The question remains whether modification of the order is appropriate. An order is not automatically set aside on the ground that the law has changed, unless the petitioner also shows that there is no need for the order or continued application of the order is inequitable or harmful to competition. *See Lenox, Inc.*, Docket 8718, 111 F.T.C. 612, 614 (1989); *Bulova Watch Co., Inc.*, 102 F.T.C. 1834 (1983). *See also Louisiana Pacific Corp.*, Docket C-2956, slip. op. at 6–7 (Nov. 27, 1989).

Shell has satisfied the standard to have the order set aside. As in the companion case involving Atlantic and Goodyear, the Commission never had evidence that Shell, the oil marketing company, possessed "economic power" as that term has been understood since *Fortner*, supra.[7] Furthermore, since 1961, the influence of gas station franchisors over franchisees has been limited by enactment of the Petroleum Marketing Practices Act, 15 U.S.C. 2801 et seq., in 1978.

Shell has also shown that there is no need for the order by citing evidence that gas stations as a group currently have too small a market share to produce substantial competitive effects on TBA distribution. Gas stations nationwide sold only 3 percent of replacement batteries and 8 percent of replacement tires in 1987, compared, respectively, to 44 percent and 37 percent of such replacement sales in 1961. 58 F.T.C. at 325–26; Request at 18. Specialty stores and mass merchandisers have become more important suppliers of these products. Request at 18–19. As a result, distribution arrangements like those at issue in this case would not likely have the same adverse foreclosure and entry deterring effects on competition in the TBA market that the Commission found in 1961.

Accordingly, *It is Ordered* That this matter be reopened and that the Commission's order in Docket No. 6487 issued on March 9, 1961, be set aside as to Shell Oil Co. as of the date of this order.

By the Commission, Commissioner Yao not participating.

Donald S. Clark,

Secretary.

[FR Doc. 91-19213 Filed 8-12-91; 8:45 am]

BILLING CODE 6750-01-M

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[7] The Commission's 1961 opinion in Docket 6487 suggests that Shell's share of national gasoline sales was on the order of 5 percent. 58 F.T.C. at 407.

[Dkt. 9233]

Harold Honickman, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a major Pepsi bottler for the New York metropolitan area and his beverage corporation, for a ten year period, to seek prior Commission approval before making certain soft drink acquisitions in the New York metropolitan area; or else hold the newly acquired assets separate and apart from ongoing bottling operations. However, the addendum to the agreement allows Mr. Honickman to distribute and sell the products of Seven-Up Brooklyn to another bottler for a limited time period.

DATES: Complaint issued November 2, 1989. Order issued July 25, 1991.[1]

FOR FURTHER INFORMATION CONTACT: Constance Salemi, FTC/S-3302, Washington, DC 20580. (202) 326-2643.

SUPPLEMENTARY INFORMATION: On Tuesday, April 30, 1991, there was published in the **Federal Register**, 56 FR 19859, a proposed consent agreement with analysis in the Matter of Harold Honickman, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 91-19212 Filed 8-12-91; 8:45 am]

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[1] Copies of the Complaint, the Decision and Order, and the dissenting statement of Commissioner Owen are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[Dkt. C-3337]

Teleline, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a California corporation, that markets "900" number information services to children, from making misrepresentations regarding free gifts or the number of calls required to receive a premium; requires a clear statement, or preamble, at the beginning of each children's message giving the child a chance to hang up without charge; and requires the company to provide a means for parents to prevent, or not be charged for, unauthorized calls by their children.

DATES: Complaint and Order issued July 24, 1991.[1]

FOR FURTHER INFORMATION CONTACT: Toby M. Levin, FTC/S-4002, Washington, DC 20580. (202) 326-3156.

SUPPLEMENTARY INFORMATION: On Wednesday, May 15, 1991, there was published in the **Federal Register**, 56 FR 22432, a proposed consent agreement with analysis In the Matter of Teleline, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the

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[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

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(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 91-19212 Filed 8-12-91; 8:45 am]

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[Dkt. C-3337]

Teleline, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a California corporation, that markets "900" number information services to children, from making misrepresentations regarding free gifts or the number of calls required to receive a premium; requires a clear statement, or preamble, at the beginning of each children's message giving the child a chance to hang up without charge; and requires the company to provide a means for parents to prevent, or not be charged for, unauthorized calls by their children.

DATES: Complaint and Order issued July 24, 1991.[1]

FOR FURTHER INFORMATION CONTACT: Toby M. Levin, FTC/S-4002, Washington, DC 20580. (202) 326-3156.

SUPPLEMENTARY INFORMATION: On Wednesday, May 15, 1991, there was published in the **Federal Register**, 56 FR 22432, a proposed consent agreement with analysis In the Matter of Teleline, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 91-19214 Filed 8-12-91; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

National Institute of Mental Health; Meetings

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the advisory committees of the National Institute of Mental Health for September 1991.

The National Advisory Mental Health will be performing review of applications for Federal assistance; therefore, a portion of this meeting will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. 2 10(d).

The meeting of the Advisory Committee of the Task Force on Homelessness and Severe Mental Illiness will include discussion of issues relevant to the homeless mentally ill population. This meeting will be open, however, attendance by the public will be limited to space available.

Summaries of the meetings and rosters of committee members may be obtained from: Ms. Joanna Kieffer, NIMH Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration, Parklawn Building, room 9-105, 5600 Fishers Lane, Rockville, MD 20857 (telephone 301-443-4333).

Substantive program information may be obtained from the contacts whose names, room numbers, and telephone numbers are listed below.

Committee Name: Advisory Committee of the Task Force on Homelessness and Severe Mental Illiness.

Meeting Date: September 13, 1991.

Place: Stonehenge, room 615F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC.

Open: September 13, 9 a.m.—5 p.m.

Contact: Jane Steinberg, Ph.D., room 11C-05, Parklawn Building, telephone (301) 443-0000.

Committee Name: National Advisory Mental Health Council.

Meeting Dates: September 16-17, 1991.

Place: September 16—Conference Rooms G and H, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. September 17—Building 31, Conference Room 6, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

Open: September 17, 9 a.m.—5 p.m.

Closed: Otherwise.

Contact: Carolyn Strete, Ph.D., room 9-105, Parklawn Building, telephone (301) 443-3367.

Dated; August 7, 1991.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 91-19169 Filed 8-12-91; 8:45 am]

BILLING CODE 4160-20-M

Centers for Disease Control

[Program Announcement 178]

Availability of Funds for Fiscal Year 1991 Investigation of the Risk of Nosocomial Transmission of Human Immunodeficiency Virus from Infected Health Care Workers to Patients who have Undergone Invasive Procedures

Introduction

The Centers for Disease Control (CDC) announces availability of funds for cooperative agreements to evaluate the risk of transmission of human immunodeficiency virus (HIV) to patients who have undergone an invasive procedure performed by a health-care worker (HCW) who was infected with HIV when the procedure was performed; to identify possible risk factors for HCW-to-patient transmission; and to develop specific prevention control measures to reduce the risk of HCW-to-patient transmission.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of HIV Infection, Clinical Preventive Services, and Surveillance and Data Systems. (For ordering a copy of Healthy People 2000, see the Section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**)

AUTHORITY

These cooperative agreements are authorized under sections 301(a) (42 U.S.C. 241(a)), 311 (42 U.S.C. 243), and 317(k)(3) (42 U.S.C. 247b (k)(3)) of the Public Health Service Act, as amended.

Eligible Applicants

Eligible applicants are official state and local health agencies that are current recipients of HIV/AIDS Surveillance Cooperative Agreements.

Availability of Funds

Approximately $400,000 will be available in FY 1991 to provide funding to 10 to 30 cooperative agreements. Awards are expected to range from $15,000 to $50,000. Funding estimates may vary and are subject to change. Funding is available for a 12-month budget period within a 1 year project period. Cooperative agreement funds shall not be used for the delivery of clinical/therapeutic services. This program has no statutory formula. No specific matching funds are required.

Purpose

The purposes of this cooperative agreement is to provide support to health departments which elect to evaluate patients who have undergone invasive procedures performed by HCWs subsequently found to have been infected with HIV at the time of the procedures and to facilitate the collection of data required to analyze and evaluate the risk of transmission of HIV from an infected health-care worker to patients.

The objectives of this cooperative agreement are:

a. To evaluate the risk of transmission of HIV to patients who have undergone an invasive procedure performed by a HCW who was infected with HIV when the procedure was performed.

b. To identify possible risk factors for HCW-to-patient transmission such as: infection control practices, sterilization and disinfection techniques, HCW's stage of illness, and type(s) of procedure(s) performed.

c. To develop specific prevention and control measures to reduce the risk of HCW-to-patient transmission.

For the purposes of this document, invasive procedures are defined as (1) surgical entry into tissues, cavities, or organs or repair of major traumatic injuries in an operating or delivery room, emergency department, or outpatient setting, including both physicians' and dentists' offices; (2) cardiac catheterization and angiographic procedures; (3) a vaginal or cesarean delivery or other invasive

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[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

obstetric procedure during which bleeding may occur; or (4) the manipulation, cutting, or removal of any oral or perioral tissues, including tooth structure, during which bleeding occurs or the potential for bleeding exists.

Program Requirements

In conducting activities to achieve the purposes of this program, the recipient shall be responsible for conducting activities under A. below and CDE will be responsible for conducting activities under B. below. The application should be presented in a manner that demonstrates the applicant's ability to address the proposed activities in a collaborative manner with CDC.

A. Recipient Activities

1. Documentation of an investigation of patients exposed to an HIV-infected HCW during the performance of invasive procedures must be in progress or implemented on or before August 15, 1991.
2. Procurement of information consent as required by State and local laws and regulations regarding collection of information and activities listed below.
3. Collection of occupational and medical history data from the HIV-infected HCW through review of records and/or interview of the HCW and/or his/her health-care provider(s).
4. Collection of serum and lymphocytes from the HCW.
5. Evaluation of the HCW's work and infection control practices and, for office settings, review of sterilization/disinfection and reprocessing practices.
6. Identification and notification of patients who have undergone invasive procedures (as defined above) performed by the HIV-infected HCW.
7. Performance of HIV counseling and serologic testing of patients.
8. For persons who choose to be tested outside the health department, collection of HIV test result by questionnaire or other mechanism.
9. Delineation of the type and number of invasive procedures performed by the HIV-infected HCW.
10. Interview, followup investigation and collection of serum and lymphocytes from any HIV-infected patients.
11. Development of data management systems to assure strict confidentiality of all medical records, surveillance registries, data collection forms and computer files.
12. Collaboration with CDC in the design and implementation of the investigation to facilitate aggregation of the results of multiple investigations. In addition, data collected from such investigation must be provided to CDC, which will aggregate the results of multiple investigations and analyze and disseminate aggregate results. However, recipients may report or publish the results of their investigations individually.

B. CDC Activities

1. Provision of consultation and scientific and technical assistance to state and local health departments in the conduct of these investigations (e.g., review of sterilization/disinfection practices).
2. Coordination of the collection, analysis and dissemination of aggregate data from these investigations to provide a more precise and quantifiable measure of risk to patients (e.g., assistance with interviews of HWC's health-care provider, staff, co-workers, seropositive patients, etc.).
3. Performance of additional laboratory evaluation (e.g., HIV DNA sequencing), as appropriate, if seropositive patients are identified and specimens are available and analyzable from the infected HCW.

Evaluation Criteria

Eligible applications submitted under this annoucement will be evaluated according to the following criteria:

1. The feasibility of conducting the investigation and the quality of the data to be collected taking into consideration the following factors:

a. The availability of serum, whole blood, or tissue samples from the HIV-infected HCW and any seropositive patients for possible laboratory studies as needed;

b. The nature of the patient population served, i.e., whether or not it includes a high percentage of patients with known risk factors for HIV infection;

c. The availability of patient rcords, logs, appointment books, billing or insurance records, personnel records, etc., to facilitate identification of patients and staff in the HCW practice;

d. The period of time which has elapsed since the HCW last practiced, which will influence the availability of records, office staff and associates, access to the practice, and ability to locate patients.

e. Coordination of the investigation with other institutions and agencies, as required. (30 Points)

2. The applicant's understanding of the objectives of the cooperative agreement and willingness to cooperate with CDC in the design, implementation and analysis of the investigation, including the provision of data collected to CDC. (15 Points)

3. The quality of the plans to conduct an investigation including a description of techniques for data collection, data management, counseling and testing, and maintenance of confidentiality of all data. (25 Points)

4. The applicant's legal authority and ability to conduct the investigation including data collection and patient notification and procurement of informed consent as required. (15 Points)

5. How the project will be administered, including the size, qualifications, duties and responsibilities, and time allocation of the proposed staff; the availability of the facilities to be used during the investigation; and a schedule for accomplishing the activities of the investigation, including time frames. (15 Points)

6. The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of the funds.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. Executive Order 12372 sets up a system for state and local review of proposed Federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact their state Single Point of Contact (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOCs is included in the application kit.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.118.

Application Submission and Deadline

The original and two copies of the completed application Form PHS–5161–1 must be submitted to Candice Nowicki-Lehnherr, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E-14, Atlanta, Georgia 30305, on or before August 30, 1991.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date or

b. Sent on or before the deadline date and received in time for submission to the independent review group.

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4. The applicant's legal authority and ability to conduct the investigation including data collection and patient notification and procurement of informed consent as required. (15 Points)

5. How the project will be administered, including the size, qualifications, duties and responsibilities, and time allocation of the proposed staff; the availability of the facilities to be used during the investigation; and a schedule for accomplishing the activities of the investigation, including time frames. (15 Points)

6. The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of the funds.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. Executive Order 12372 sets up a system for state and local review of proposed Federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact their state Single Point of Contact (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOCs is included in the application kit.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.118.

Application Submission and Deadline

The original and two copies of the completed application Form PHS-5161-1 must be submitted to Candice Nowicki-Lehnherr, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E-14, Atlanta, Georgia 30305, on or before August 30, 1991.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date or

b. Sent on or before the deadline date and received in time for submission to the independent review group.

(Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks will not be accepted as proof of timely mailing.

2. *Late Applications:* Applications which do not meet the criteria in either 1a. or 1b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Nealean Austin, Grants Management Specialist, Grants Management Branch, Mailstop E-14, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305, telephone (404) 842-6512 or FTS 236-6512.

Programmatic technical assistance may be obtained from Mary E. Chamberland, M.D., M.P.H. or Ruthanne Marcus, M.P.H. AIDS Activity, Hospital Infections Program, Mailstop A-07, Center for Infectious Diseases, Centers for Disease Control, Atlanta, GA 30333, telephone (404) 639-1547 or FTS 236-1547.

Please refer to Announcement Number 178 when requesting information and submitting any application on the Request for Assistance.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock No. 17-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone 202-783-3238).

Dated: August 6, 1991.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 91-19159 Filed 8-12-91; 8:45 am]

BILLING CODE 4160-18-M

Health Resources and Services Administration

Title I—HIV Emergency Relief Grant Program

AGENCY: Health Resources and Services Administration, PHS, HHS.

ACTION: Notice of grants made to eligible metropolitan areas..

SUMMARY: The Health Resources and Services Administration (HRSA) announces that fiscal year 1991 funds have been awarded to 16 eligible metropolitan areas (EMs) that have been the most severely affected by the HIV epidemic. Although these funds have already been awarded to the EMAs, HRSA is publishing this notice to inform the general public of the existence of the funds. In addition, HRSA determined that it would be useful for the general public to be aware of the structure of the HIV Emergency Relief Grant Program and he statutory requirements governing the use of the funds.

The purposes of these funds are to deliver or enhance HIV-related (1) outpatient and ambulatory health and support services including case management and comprehensive treatment services, for individuals and families with HIV disease; and (2) inpatient case management services that prevent unnecessary hospitalization or that expedite discharge, as medically appropriate, from inpatient facilities. The HIV Emergency Relief Grant Program was authorized by title I of the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990, Public Law 101-381, which amended title XXVI of the Public Health Service Act. Funds were appropriated under public Law 101-517.

SUPPLEMENTARY INFORMATION:

Availability of Funds

A total of $86,083,000 was made available for the Title I HIV Emergency Relief Grant Program. Of the amount available, 50 percent was allocated to other 16 EMAs according to a formula based on the number and incidence of AIDS cases reported to the Centers for Disease Control (CDC) as of June 30, 1990. The other 50 percent was awarded competitively to the EMAs as supplemental grants. Below is a distribution of grants made to the 16 EMAs.

EMA	Total awards
Atlanta, GA	2,123,775
Boston, MA	2,236,267
Chicago, IL	3,229,799
Dallas, TX	1,379,434
District of Columbia	3,392,784
Ft. Lauderdale, FL	1,807,299
Houston, TX	3,710,210
Hudson, Co., NJ	1,562,726
Los Angeles, CA	7,848,314
Miami, FL	3,044,301
Newark, NJ	4,111,603
New York, NY	33,457,519
Philadelphia, PA	2,323,650
San Diego, CA	1,460,205
San Francisco, CA	12,713,831
San Juan, PR	1,681,061

Eligible Grantees

Metropolitan areas which were eligible for grant awards under title I were those areas for which, as of June 30, 1990, there had been reported to and confirmed by the CDC a cumulative total of more than 2,000 cases of AIDS; or, for which the per capita incidence of cumulative cases of AIDS was not less than 0.0025, as computed on the basis of the most recently available data for the population in the area.

Grants were awarded to the chief elected official (CEO) of the city or urban county that administers the public health agency providing outpatient and ambulatory services to the greatest number of individuals with AIDS.

To be eligible for assistance under title I, the CEO was required to establish or designate an HIV health services planning council to: (1) Establish priorities for the allocation of funds within the eligible area; (2) develop a comprehensive plan for the organization and delivery of health services described in the statute that is compatible with any State or local plan regarding the provision of health services to individuals with HIV disease; and (3) assess the efficiency of the administrative mechanism in rapidly allocating funds to the areas of greatest need within the eligible area. The planning council must include representatives of: Health care providers; community-based and AIDS service organizations; social service providers; mental health care providers; local public health agencies; hospital planning agencies or health care planning agencies; affected communities, including individuals with HIV disease; non-elected community leaders; State government; grantees receiving categorical grants for early intervention services under title III of the CARE Act; and the lead agency of any HRSA adult and pediatric HIV-related care demonstration project operating in the area to be served. The allocation of funds and services within the EMA must be made in accordance with the priorities established by the planning council.

To be eligible to receive a grant under title I, the EMAs were required to submit an application containing such information as the Secretary required.

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including assurances adequate to ensure:

- That funds received would be utilized to supplement not supplant State funds provided for HIV-related services;
- That the political subdivisions within the EMA would maintain HIV-related expenditures at a level equal to that expended for the 1-year period preceding the first fiscal year for which the grant was received. Funds received under title I may not be used in maintaining the required level of expenditures;
- That the EMA has an HIV health services planning council and has entered into intergovernmental agreements with the political subdivisions and has developed or will develop a comprehensive plan for the organization and delivery of health services, in accordance with the legislation;
- That entities within the EMA that received title I funds will participate in an established HIV community-based continuum of care if such continuum exists within the EMA;
- The title I funds will not be utilized to make payments for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to that item or service (1) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program, or (2) by an entity that provides health services on a prepaid basis; and
- To the maximum extent practicable, that HIV health care and support services provided with title I assistance will be provided without regard to the ability of the individual to pay for such services, and without regard to the current or past health condition of the individual. Such services will be provided in a setting that is accessible to low-income individuals with HIV disease, and a program of outreach will be provided to inform such individuals of such services.

General Use of Grant Funds

EMAs must use the title I HIV Emergency Relief grants to provide financial assistance to public or non-profit entities, for the purpose of delivering or enhancing—

- HIV-related outpatient and ambulatory health and support services, including case management and comprehensive treatment services, for individuals and families with HIV disease; and
- HIV-related inpatient case management services that prevent unnecessary hospitalization or that expedite discharge, as medically appropriate, form inpatient facilities.

Services supported by the title I grant funds must be accessible to low-income individuals and families, including women and children with HIV infection, minorities, the homeless, and persons affected by chemical dependency.

FOR FURTHER INFORMATION CONTACT: Individuals interested in the Title I HIV Emergency Relief Grant Program should contact the Office of the CEO in their locality, and may obtain information on their CEO contact by calling Ms. June Horner, Acting Director, Division of HIV Services, at (301) 443-6745.

Executive Order 12372

Grants awarded for the Title I HIV Emergency Relief Grant Program are subject to the provisions of Executive Order 12372, as implemented under 45 CFR part 100, which allows States the option of setting up a system for reviewing applications within their States for assistance under certain Federal programs. The application packages made available by HRSA to the EMAs contained a listing of States which have chosen to set up such a review system and provided a point of contact in the States for the review.

(The catalog of Federal Domestic Assistance Numbers are: Formula Grants—93.915; Supplemental Grants—93.914.

Dated: August 7, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91-19238 Filed 8-12-91; 8:45 am]

BILLING CODE 4160-15-M

Title II—HIV Care Grant Program

AGENCY: Health Resources and Services Administration, PHS, HHS.

ACTION: Notice of grants made to States and Territories.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that fiscal year 1991 funds have been awarded to States and Territories (hereinafter States) for the HIV Care Grant Program. Although these funds have already been awarded to the States, HRSA is publishing this notice to inform the general public of the existence of the funds. In addition, HRSA determined that it would be useful for the general public to be aware of the structure of the HIV Care Grant Program and the statutory requirements governing the use of the funds.

Funds will be used by the States to improve the quality, availability and organization of health care and support services for individuals and families with HIV infection. The HIV Care Grant Program was authorized by title II of the Ryan White Comprehensive AIDS Resources Emergency Act of 1990, Public Law 101-381, which amended title XXVI of the Public Health Service Act. Funds were appropriated under Public Law 101-517.

SUPPLEMENTARY INFORMATION:

Availability of Funds

A total of $77,474,015 was made available for the Title II HIV Care Grant Program. These funds have been allotted to the States according to a formula based on the number of AIDS cases reported to the Centers for Disease Control for the 24 months ending September 30, 1990, and a per capita income factor, Below is the distribution of funds by State.

	Total allotment
Alabama	483,388
Alaska*	100,000
Arizona*	653,285
Arkansas*	276,192
California*	12,953,753
Colorado	727,458
Connecticut*	763,464
DC*	1,094,364
Delaware*	151,960
Florida*	7,397,516
Georgia*	2,366,100
Hawaii*	329,429
Idaho*	100,000
Illinois*	2,289,116
Indiana*	621,522
Iowa	110,588
Kansas*	245,985
Kentucky*	299,587
Louisiana*	1,308,109
Maine*	118,205
Maryland*	1,554,569
Massachusetts	1,454,614
Michigan	1,046,092
Minnesota*	357,781
Mississippi*	488,542
Missouri*	1,043,394
Montana	100,000
Nebraska*	100,000
Nevada*	330,545
New Hampshire*	100,000
New Jersey*	4,215,417
New Mexico	203,312
New York*	13,802,740
North Carolina*	986,337
North Dakota	100,000
Ohio*	1,117,823
Oklahoma*	393,509
Oregon*	513,063
Pennsylvania*	2,241,191
Rhode Island*	173,200
South Carolina*	688,747
South Dakota	100,000
Tennessee*	605,992
Texas	5,731,924
Utah*	199,022
Vermont*	100,000
Virginia	970,120
W. Virginia*	127,669
Washington*	1,025,356
Wisconsin	354,601
Wyoming*	100,000
Puerto Rico*	4,716,952
Guam	2,954
Virgin Islands*	38,397

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Arkansas*	276,192
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DC*	1,094,364
Delaware*	151,980
Florida*	7,397,516
Georgia*	2,366,100
Hawaii*	329,429
Idaho*	100,000
Illinois*	2,289,116
Indiana*	621,522
Iowa	110,588
Kansas*	245,985
Kentucky*	299,587
Louisiana*	1,308,109
Maine*	118,205
Maryland*	1,554,569
Massachusetts	1,454,614
Michigan	1,046,092
Minnesota*	357,781
Mississippi*	488,542
Missouri*	1,043,394
Montana	100,000
Nebraska*	100,000
Nevada*	330,545
New Hampshire*	100,000
New Jersey*	4,215,417
New Mexico	203,312
New York*	13,802,740
North Carolina*	986,337
North Dakota	100,000
Ohio*	1,117,823
Oklahoma*	393,509
Oregon*	513,063
Pennsylvania*	2,241,191
Rhode Island*	173,200
South Carolina*	688,747
South Dakota	100,000
Tennessee*	605,992
Texas	5,731,924
Utah*	199,022
Vermont*	100,000
Virginia	970,120
W. Virginia*	127,669
Washington*	1,025,356
Wisconsin	354,601
Wyoming*	100,000
Puerto Rico*	4,716,952
Guam	2,954
Virgin Islands*	38,397

The States with an asterisk received funding advances to provide drug treatments for low-income individuals with HIV disease.

These advances, totalling $17.5 million, were deducted from the States' total allotment and were made in accordance with congressional authority to prevent disruptions in drug treatment services in this transition year.

Eligibility Criteria

In order to receive funding under title II, States were required to submit an application containing such agreements, assurances, and information as the Secretary determined to be necessary to carry out this program, including:

(1) A detailed description of the HIV-related services provided in the States to individuals and families with HIV disease during the year preceding the year for which the grant was requested, and the number of individuals and families receiving such services;

(2) A comprehensive plan for the organization and delivery of HIV health care and support services to be funded with the title II grant, including a description of the purposes for which the State intends to use such assistance; and

(3) An assurance by the State that:

- The public health agency that is administering the grant for the State will conduct public hearings concerning the proposed use and distribution of the title II grant assistance;
- The State will, to the maximum extent practicable, ensure that HIV-related health care and support services delivered with title II assistance will be provided without regard to the ability of the individual to pay for such services and without regard to the current or past health condition of the individual; ensure that such services will be provided in a setting that is accessible to low-income individuals with HIV disease, and provide outreach to inform such individuals of the services available; and, in the case of a State that intends to use grant funds for the continuum of health care coverage, submit a plan to the Secretary that demonstrates that the State has established a program that assures that such amounts will be targeted to individuals who would not otherwise be able to afford health care coverage, that income, assets, and medical expense criteria will be established and applied by the State to identify those individuals who qualify for assistance; and that information concerning such criteria will be made available to the public.
- The State will provide for periodic independent peer review to assess the quality and appropriateness of health and support services provided by entities that receive title II funds from the State;
- the State will permit and cooperate with any Federal investigations undertaken regarding programs conducted under title II;
- the State will maintain HIV-related activities at a level that is equal to not less than the level of such expenditures by the State for the 1-year period preceding the fiscal year for which the State applied to receive a grant under title II; and
- the State will ensure that grant funds are not utilized to make payments for any items or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to that item or service (1) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program, or (2) by an entity that provides health services on a prepaid basis.

General Use of Grant Funds

States may use the HIV Care Grant dollars to:

- Establish and operate HIV care consortia within areas most affected by HIV. The statute defines a consortium as an association of one or more public, and one or more nonprofit private, health care and support service providers and community-based organizations operating within areas determined by the State to be most affected by HIV disease. Priority funding must be given to consortia that are receiving assistance from HRSA for adult and pediatric HIV-related care demonstration projects, and then to any other existing HIV care consortia.
- Provide home- and community-based care services for individuals with HIV disease. Funding priorities must be given to entities that provide assurances to the State that they will participate in HIV care consortia if such consortia exist within the State, and will utilize the funds for the provision of home- and community-based services to low-income individuals with HIV disease.
- Provide assistance to assure the continuity of health insurance coverage for low-income (as defined by the State) individuals with HIV disease. The State must establish a program that assures that (1) funds will be targeted to individuals who would not otherwise be able to afford health insurance coverage, and (2) income, asset, and medical expense criteria will be established and applied by the State to identify those individuals who qualify for assistance, and information concerning such criteria shall be made available to the public.
- Provides treatment that have been determined to prolong life or prevent serious deterioration of health for low-income individuals with HIV disease.

A State must use at least 15 percent of its grant funds to provide health and support services to infants, children, women and families with HIV disease.

At least 75 percent of the FY 1991 title II grant awarded to a State must be obligated to specific programs and projects and made available for expenditure not later than 150 days after the receipt of the grant by the State.

FOR FURTHER INFORMATION CONTACT: Individuals interested in the HIV Care Grant Program should contact the appropriate office in their State, and may obtain information on their State contact by calling Ms. June Horner, Acting Director, Division of HIV Services, at (301) 443-6745.

Executive Order 12372

It has been determined that the Title II HIV Care Grant Program is not subject to the provisions of Executive Order 12372 concerning inter-governmental review of Federal programs.

The Catalog of Federal Domestic Assistance Number is 93.917.

Dated: August 7, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91–19239 Filed 8–12–91; 8:45 am]

BILLING CODE 4160-15-M

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of September 1991:

Name: National Advisory Council on Migrant Health.

Date and Time: September 6–9, 1991—2 p.m.

Place: Hyatt Regency Denver, 1750 Welton Street, Denver, Colorado.

The meeting is open to the public.

Purpose

The Council is charged with advising, consulting with, and making recommendations to the Secretary and the Administrator, Health Resources and Services Administration, concerning the organization, operation, selection, and funding of Migrant Health Centers and other entities under grants and contracts under section 329 of the Public Health Service Act.

Agenda

The agenda will cover an overview of Council 1990 recommendations. September 7, the Council will visit Sunrise Community Health Center in Greeley and Plan de Salud Del Valle, Inc. in Ft. Lupton. A public hearing is scheduled from 1:30 p.m. to 6 p.m. at La Familia Restaurant in Ft. Lupton. The Council will solicit oral and written comments from farmworkers, clinic staff, invited guests and the public, specific to migrant/seasonal farmworker and migrant health program issues. The Council will resume meeting at the Hyatt Regency Denver on September 8, and will request from invited guests solutions specific to migrant/seasonal farmworker and migrant health program issues. The Council will also be formulating new 1991 recommendation that will be presented to the Secretary of the Department of Health and Human Services.

Anyone requiring information regarding the subject Council should contact Mr. Jack Egan, Acting Executive Secretary, National Advisory Council on Migrant Health, room 7A-55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443-1153.

Agenda Items are subject to change as priorities dictate.

Dated: August 8, 1991.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 91-19241 Filed 8-12-91; 8:45 am]

BILLING CODE 4160-15-M

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Public Health Service (PHS) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program ("the Program"), as required by section 2112(b)(2) of the PHS Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Claims Court is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program generally, contact the Clerk, United States Claims Court, 717 Madison Place NW., Washington, DC 20005, (202) 633-7257. For information on the Public Health Service's role in the Program, contact the Administrator, Vaccine Injury Compensation Program, 6001 Montrose Road, room 702, Rockville, MD 20852, (301) 443-6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of title XXI of the PHS Act, 42 U.S.C. 300aa-10 *et seq.*, provides that those seeking compensation are to file a petition with the U.S. Claims Court and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to PHS. The Claims Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table set forth at section 2114 of the PHS Act. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa-12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a partial list of petitions received by PHS on September 28, 1990. Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following:

1. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition," and

2. Any allegation in a petition that the petitioner either:

(a) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table (see section 2114 of the PHS Act) but which was caused by" one of the vaccines referred to in the table, or

(b) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Claims Court at the address listed above (under the heading "For Further Information Contact"), with a copy to PHS addressed to Director, Bureau of Health Professions, 5600 Fishers Lane, room 8-05, Rockville, Maryland 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions

1. Phyllis Yates on behalf Eddie Yates, Memphis, Tennessee, Claims Court Number 90-1618 V.

2. Louise Brewster, Huntington, New York, Claims Court Number 90-1619 V.

3. Richard Bryd, Houston, Texas, Claims Court Number 90-1620 V.

4. Don and Sharon Schumacher on behalf of Donald Schumacher Jr., Leominster, Massachusetts, Claims Court Number 90-1621 V.

5. Michael Allen on behalf of Anna Allen, Landover, Maryland, Claims Court Number 90-1622 V.

6. Michon Trail, St. Paul, Minnesota, Claims Court Number 90-1623 V.

7. Helen Tucker, Raleigh, North Carolina, Claims Court Number 90-1624 V.

8. Myrtle Emery on behalf of Mark Emery, Oklahoma City, Oklahoma, Claims Court Number 90-1625 V.

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2) of the PHS Act, 42
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to factors unrelated to
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n in a petition that the

(a) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table (see section 2114 of the PHS Act) but which was caused by" one of the vaccines referred to in the table, or

(b) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Claims Court at the address listed above (under the heading "For Further Information Contact"), with a copy to PHS addressed to Director, Bureau of Health Professions, 5600 Fishers Lane, room 8–05, Rockville, Maryland 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions

1. Phyllis Yates on behalf Eddie Yates, Memphis, Tennessee, Claims Court Number 90–1618 V.
2. Louise Brewster, Huntington, New York, Claims Court Number 90–1619 V.
3. Richard Bryd, Houston, Texas, Claims Court Number 90–1620 V.
4. Don and Sharon Schumacher on behalf of Donald Schumacher Jr., Leominster, Massachusetts, Claims Court Number 90–1621 V.
5. Michael Allen on behalf of Anna Allen, Landover, Maryland, Claims Court Number 90–1622 V.
6. Michon Trail, St. Paul, Minnesota, Claims Court Number 90–1623 V.
7. Helen Tucker, Raleigh, North Carolina, Claims Court Number 90–1624 V.
8. Myrtle Emery on behalf of Mark Emery, Oklahoma City, Oklahoma, Claims Court Number 90–1625 V.

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9. Pravin Mehta on behalf of Marc Mehta, Bridgeport, Connecticut, Claims Court Number 90–1626 V.
10. Bruce and Mary Caro on behalf of Adam Caro, Binghamton, New York, Claims Court Number 90–1627 V.
11. Darlene Fields on behalf of Brittany Fields, Pittsburgh, Pennsylvania, Claims Court Number 90–1628 V.
12. Melissa Doe on behalf of Katie Doe, Watertown, Massachusetts, Claims Court Number 90–1629 V.
13. Rita Lord on behalf of Charles Lord, Cleveland, New York, Claims Court Number 90–1630 V.
14. Charles Melvin on behalf of Mathew Melvin, Watertown, New York, Claims Court Number 90–1631 V.
15. Danny Graham, Anderson, Indiana, Claims Court Number 90–1632 V.
16. Humberto Mojica on behalf of Jennica Mojica, La Grange, Illinois, Claims Court Number 90–1633 V.
17. John and Maureen Morrissey on behalf of Kathleen Morrissey, Evanston, Illinois, Claims Court Number 90–1634 V.
18. Ronald Tressler on behalf of Troy Tressler, Gretna, Louisiana, Claims Court Number 90–1635 V.
19. Patrick Wucherpfennig on behalf of Jennifer Wucherpfennig, Phillips Ranch, California, Claims Court Number 90–1636 V.
20. Ruth Cosette Abbott on behalf of David Bradley White, Tucson, Arizona, Claims Court Number 90–1637 V.
21. Silvester Gray on behalf of Akeem Gray, Colorado Springs, Colorado, Claims Court Number 90–1638 V.
22. Margaret Scheuer on behalf of William Morton, Fairbanks, Alaska, Claims Court Number 90–1639 V.
23. Victoria Davis on behalf of Matthew Davis, Phoenix, Arizona, Claims Court Number 90–1640 V.
24. Stephani Vitale, Tucson, Arizona, Claims Court Number 90–1641 V.
25. Verna Lewis on behalf of Lynelle Lewis, Mesa, Arizona, Claims Court Number 90–1642 V.
26. Curtis and Julia Satchell on behalf of Gretchen Satchell, Easton, Maryland, Claims Court Number 90–1643 V.
27. Barry Depew on behalf of Joshua Depew, Kingsport, Tennessee, Claims Court Number 90–1644 V.
28. Leland Ruegsegger on behalf of Jeremy Ruegsegger, Boulder, Colorado, Claims Court Number 90–1645 V.
29. Nicki West on behalf of James McKenzie, Terrell, Texas, Claims Court Number 90–1646 V.
30. Charlene Stephens on behalf of Carla Stephens, Ansonia, Connecticut, Claims Court Number 90–1647 V.
31. Nancy Screen on behalf of Brian Screen, Frostburg, Maryland, Claims Court Number 90–1648 V.
32. Pamela Craven on behalf of Brian Stuart, Omaha, Nebraska, Claims Court Number 90–1649 V.
33. Reginald Jarrett on behalf of Aza Jarrett, Chicago, Illinois, Claims Court Number 90–1650 V.
34. Mary Thompson on behalf of Amy Dunning, Borger, Texas, Claims Court Number 90–1651 V.
35. Robert Carbajal, Odessa, Texas, Claims Court Number 90–1652 V.
36. William and Helene Dykstra on behalf of Sara Dykstra, Willmar, Minnesota, Claims Court Number 90–1653 V.
37. Lorelei Schelhaas on behalf of Michele Schelhaas, Pipestone, Minnesota, Claims Court Number 90–1654 V.
38. Daniel Lara on behalf of Julia Lara, Litchfield, Minnesota, Claims Court Number 90–1655 V.
39. Juanita Gandia on behalf of Bennie Gandia, Staten Island, New York, Claims Court Number 90–1656 V.
40. Madelyn Grandjean on behalf of James Grandjean, Reno, Nevada, Claims Court Number 90–1657 V.
41. William Pigott on behalf of Kaitlin Pigott, Pittsfield, Massachusetts, Claims Court Number 90–1658 V.
42. John and Apatricia Bellacera on behalf of Brenen Bellacera, Auburn, California, Claims Court Number 90–1659 V.
43. Jerome Abbadessa on behalf of Anne Abbadessa, Brooklyn, New York, Claims Court Number 90–1660 V.
44. Roger and Patricia LaFreniere on behalf of Shelley LaFreniere, Hinesburg, Vermont, Claims Court Number 90–1661 V.
45. Brent Clarke on behalf of Steven Clarke, Great Bend, Kansas, Claims Court Number 90–1662 V.
46. Susan Capretti on behalf of Justin Capretti, Greenbelt, Maryland, Claims Court Number 90–1663 V.
47. Robin Rink on behalf of Roxann Capps, Bellflower, California, Claims Court Number 90–1664 V.
48. Judy Kane, Chicago, Illinois, Claims Court Number 90–1665 V.
49. Stephen Koules on behalf of Peter Koules, Lajolla, California, Claims Court Number 90–1666 V.
50. Dan Marsh on behalf of Gabriel Marsh, Snohomish, Washington, Claims Court Number 90–16677 V.
51. Anna Klinedinst, York, Pennsylvania, Claims Court Number 90–1669 V.
52. Dawna Sinisi, Altoona, Pennsylvania, Claims Court Number 90–1670 V.
53. Timothy Chestnut on behalf of Jason Chestnut, Charleston, South Carolina, Claims Court Number 90–1671 V.
54. Ileana Gonzalez on behalf of Kathryn Gonzalez, San Jose, California, Claims Court Number 90–1672 V.
55. Troy Cox on behalf of Rory Cox, Denver, Colorado, Claims Court Number 90–1673 V.
56. Helen and Gregory Sykes on behalf of Adalee Sykes, Warwick, Rhode Island, Claims Court Number 90–1674 V.
57. Leona Piper on behalf of Patricia Piper, Kalamath Falls, Oregon, Claims Court Number 90–1675 V.
58. Thomas Matkovich, on behalf of Tammi Matkovich, Davenport, Iowa, Claims Court Number 90–1676 V.
59. David Geopfert on behalf of Erica Goepfert, Vernal, Utah, Claims Court Number 90–1677 V.
60. Katherine Geitner on behalf of Erick Geitner, Bridgewater, New Jersey, Claims Court Number 90–1678 V.
61. Teresa Luttrell on behalf of Brandon Luttrell, Indianapolis, Indiana, Claims Court Number 90–1679 V.
62. Laura Graf, Fort Campbell, Kentucky, Claims Court Number 90–1680 V.
63. Lawrence Capra on behalf of Anthony Capra, Belle Fourche, South Dakota, Claims Court Number 90–1681 V.
64. Reginia Fields on behalf of John Fields, Kansas City, Kansas, Claims Court Number 90–1682 V.
65. Jean and Deborah Ormechea on behalf of John M. Ormechea, Clarkston, Michigan, Claims Court Number 90–1983 V.
66. James Grant on behalf of Alex Grant, White Bear Lake, Minnesota, Claims Court Number 90–1684 V.
67. John Schunk on behalf of Christopher Schunk, Chaska, Minnesota, Claims Court Number 90–1685 V.
68. Luanne Beal on behalf of Danielle Beal, Hammond, Indiana, Claims Court Number 90–1686 V.
69. William Scholl on behalf of Thomas Scholl, Tucson, Arizona, Claims Court Number 90–1687 V.
70. Leon Peters, Johnson City, Indiana, Claims Court Number 90–1688 V.
71. Judith McNerny on behalf of Christine McNerny, Cincinnati, Ohio, Claims Court Number 90–1989 V.
72. Kamell Putnam, Hacienda Heights, California, Claims Court Number 90–1690 V.
73. Barbara Shenberger on behalf of Kenneth Jackson, Randallstown, Maryland, Claims Court Number 90–1691 V.

74. Barbara Shenberger on behalf of Thomas Morris, Randallstown, Maryland, Claims Court Number 90–1692 V.

75. Barbara Shenberger on behalf of Tammy Morris, Randallstown, Maryland, Claims Court Number 90–1693 V.

76. Roy Seacor on behalf of Brittany Seacor, Mount Kisco, New York, Claims Court Number 90–1694 V.

77. Maude Dieudonne on behalf of Shirley Dieudonne, Brooklyn, New York, Claims Court Number 90–1695 V.

78. Brian Adams on behalf of Ross Adams, Hollywood, Florida, Claims Court Number 90–1696 V.

79. Cynettie Sanders on behalf of Nartisa Sanders, Warner Robins, Georgia, Claims Court Number 90–1697 & 90–1698 V.

80. Louise Miraglia on behalf of Gary Miraglia, Deceased, New York City, New York, Claims Court Number 90–1699 V.

81. Louise Miraglia on behalf of Donald Miraglia, Deceased, New York City, New York, Claims Court Number 90–1700 V.

82. Minas Karras on behalf of Ourania Karras, Jackson Heights, New York, Claims Court Number 90–1701 V.

83. Minas Karras on behalf of Anastasia Karras, Jackson Heights, New York, Claims Court Number 90–1702 V.

84. John Lurtz on behalf of Paul Lurtz, Mansfield, Ohio, Claims Court Number 90–1703 V.

85. Stamos Liossis on behalf of Dino Liossis, Prospect Heights, Illinois, Claims Court Number 90–1704 V.

86. Sharon Elaine Douglas, Nashville, Tennessee, Claims Court Number 90–1705 V.

87. David and Barbara Mowen on behalf of Jesse Mowen, Flagstaff, Arizona, Claims Court Number 90–1706 V.

88. Roy Arnold, Washington, D.C., Claims Court Number 90–1707 V.

89. Daniel and Dora Martin on behalf of Monica Martin, Reno, Nevada, Claims Court Number 90–1708 V.

90. Joyce Connone, Lorain, Ohio, Claims Court Number 90–1709 V.

91. David and Betty Housch on behalf of Jon W. Housch, Shelbyville, Indiana, Claims Court Number 90–1710 V.

92. Linda C. Jones on behalf of Shon Jones, Hammond, Indiana, Claims Court Number 90–1711 V.

93. Ralph and Carol Cox on behalf of Ralph D. Cox, Irvine, Kentucky, Claims Court Number 90–1712 V.

94. Stacey Sabol, Belle Vernon, Pennsylvania, Claims Court Number 90–1713 V.

95. Shannon Dixon, Houston, Texas, Claims Court Number 90–1714 V.

96. Maureen Sima on behalf of Wayne Sima, Denver, Colorado, Claims Court Number 90–1715 V.

97. Rose Sebetka, Rockledge, Florida, Claims Court Number 90–1716 V.

98. Deborah Betts, Summerville, South Carolina, Claims Court Number 90–1717 V.

99. Marvin and Shawna Martin on behalf of Bradley Martin, Centerville, Iowa, Claims Court Number 90–1718 V.

100. Bruce Cooper on behalf of Melissa Cooper, Morristown, New Jersey, Claims Court Number 90–1719 V.

101. Ralph Cox on behalf of Joseph Cox, Irvine, Kentucky, Claims Court Number 90–1720 V.

102. Anna Hearod on behalf of David Hearod, Irvine, Kentucky, Claims Court Number 90–1721 V.

103. Mary Therneau on behalf of Dyane Therneau, Grand Rapids, Minnesota, Claims Court Number 90–1722 V.

104. Christine Fawkes, Chicago, Illinois, Claims Court Number 90–1723 V.

105. James and Darla Ross on behalf of Ryan Ross, Brookings, South Dakota, Claims Court Number 90–1725 V.

106. Incoronato Stasi on behalf of Alugina Stasi, Glen Cove, New York, Claims Court Number 90–1726 V.

107. Paul Larson on behalf of Erik Larson, Westlake, Ohio, Claims Court Number 90–1727 V.

108. Dean McMillan on behalf of Daniel McMillan, Redondo Beach, California, Claims Court Number 90–1728 V.

109. John Kevin O'Leary, San Diego, California, Claims Court Number 90–1729 V.

110. Walter Guest on behalf of Sanford Guest, Hamilton, Ohio, Claims Court Number 90–1730 V.

111. Toy Duvall on behalf of Kelly Duvall, St. Louis, Missouri, Claims Court Number 90–1731 V.

112. Jacqueline Behr, St. Paul, Minnesota, Claims Court Number 90–1732 V.

113. Marcia Williams on behalf of Stacey Williams, Hamilton, Ohio, Claims Court Number 90–1733 V.

114. Barbara Fisher on behalf of Christian Fisher, Alexandria, Virginia, Claims Court Number 90–1734 V.

115. Ronald Cullum on behalf of Brandon Cullum, Islip, New York, Claims Court Number 90–1735 V.

116. Lynn Lockwood on behalf of Ryan Lockwood, Rochester, New York, Claims Court Number 90–1736 V.

117. Patricia Williams on behalf of David Williams, Bellflower, California, Claims Court Number 90–1737 V.

118. Karen Matney, Paducah, Texas, Claims Court Number 90–1738 V.

119. Dyana Arbuthnott on behalf of John Arbuthnott, San Bernardino, California, Claims Court Number 90–1739 V.

120. Marlene Stackpoole on behalf of Meghan Stackpoole, Detroit, Michigan, Claims Court Number 90–1740 V.

121. Alice Shelton on behalf of Joseph Shelton, Washington, D.C., Claims Court Number 90–1741 V.

122. Leonard Burke, White Plains, New York, Claims Court Number 90–1742 V.

123. Scott Barrett on behalf of Jessica Barrett, Las Vegas, Nevada, Claims Court Number 90–1743 V.

124. Melissa Hughes, Alexandria, Virginia, Claims Court Number 90–1744 V.

125. Winnie Stevens, Fort Worth, Texas, Claims Court Number 90–1745 V.

126. Kevin Vire on behalf of Cassundra Vire, Deceased, Tulsa, Oklahoma, Claims Court Number 90–1746 V.

127. Alice Murnane, New York City, New York, Claims Court Number 90–1747 V.

128. Melville Morris on behalf of Marc Morris, Nuremberg, Germany, Claims Court Number 90–1748 V.

129. Evelyn Murphy on behalf of Richard Murphy, Paterson, New Jersey, Claims Court Number 90–1749 V.

130. Patricia Turner on behalf of Bryant Hodge, Ocilla, Georgia, Claims Court Number 90–1750 V.

131. Kaidi Depelchin, Redwood City, California, Claims Court Number 90–1751 V.

132. Virgil and Gerry Brock on behalf of Cynthia Brock, Delphos, Ohio, Claims Court Number 90–1752 V.

133. James B. Bailey, Kingston, New York, Claims Court Number 90–1753 V.

134. Stephen and Anne Eng on behalf of Elizabeth Eng, Nashville, Tennessee, Claims Court Number 90–1754 V.

135. Constance Petreikis, Chicago, Illinois, Claims Court Number 90–1755 V.

136. Joanne Hatem, Manhasset, New York, Claims Court Number 90–1756 V.

137. John and Diane Bazley on behalf of Jesse Bazley, Phoenix, Arizona, Claims Court Number 90–1757 V.

138. Alesia Allen on behalf of Cortez Strong, St. Louis, Missouri, Claims Court Number 90–1758 V.

139. William Arrington on behalf of James Arrington, Midland, Texas, Claims Court Number 90–1759 V.

140. Arun Agarwal on behalf of Anju Agarwal, Ruston, Louisiana, Claims Court Number 90–1760 V.

141. Leonard Burke, White Plains, New York, Claims Court Number 90–1761 V.

a on behalf of Wayne
rado, Claims Court

, Rockledge, Florida,
oer 90–1716 V.
s, Summerville, South
ourt Number 90–1717

hawna Martin on
Martin, Centerville,
Number 90–1718 V.
r on behalf of
orristown, New
rt Number 90–1719 V.
n behalf of Joseph
ky, Claims Court

d on behalf of David
ntucky, Claims Court

eau on behalf of
rand Rapids,
Court Number 90–

wkes, Chicago,
urt Number 90–1723

arla Ross on behalf
kings, South Dakota,
oer 90–1725 V.
tasi on behalf of
Cove, New York,
oer 90–1726 V.
on behalf of Erik
Ohio, Claims Court

lan on behalf of
edondo Beach,
Court Number 90–

O'Leary, San Diego,
Court Number 90–

t on behalf of
milton, Ohio, Claims
730 V.
n behalf of Kelly
issouri, Claims Court

ehr, St. Paul,
Court Number 90–

ams on behalf of
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ey, Paducah, Texas,
oer 90–1738 V.

119. Dyana Arbuthnott on behalf of John Arbuthnott, San Bernardino, California, Claims Court Number 90–1739 V.

120. Marlene Stackpoole on behalf of Meghan Stackpoole, Detroit, Michigan, Claims Court Number 90–1740 V.

121. Alice Shelton on behalf of Joseph Shelton, Washington, D.C., Claims Court Number 90–1741 V.

122. Leonard Burke, White Plains, New York, Claims Court Number 90–1742 V.

123. Scott Barrett on behalf of Jessica Barrett, Las Vegas, Nevada, Claims Court Number 90–1743 V.

124. Melissa Hughes, Alexandria, Virginia, Claims Court Number 90–1744 V.

125. Winnie Stevens, Fort Worth, Texas, Claims Court Number 90–1745 V.

126. Kevin Vire on behalf of Cassundra Vire, Deceased, Tulsa, Oklahoma, Claims Court Number 90–1746 V.

127. Alice Murnane, New York City, New York, Claims Court Number 90–1747 V.

128. Melville Morris on behalf of Marc Morris, Nuremberg, Germany, Claims Court Number 90–1748 V.

129. Evelyn Murphy on behalf of Richard Murphy, Paterson, New Jersey, Claims Court Number 90–1749 V.

130. Patricia Turner on behalf of Bryant Hodge, Ocilla, Georgia, Claims Court Number 90–1750 V.

131. Kaidi Depelchin, Redwood City, California, Claims Court Number 90–1751 V.

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133. James B. Bailey, Kingston, New York, Claims Court Number 90–1753 V.

134. Stephen and Anne Eng on behalf of Elizabeth Eng, Nashville, Tennessee, Claims Court Number 90–1754 V.

135. Constance Petreikis, Chicago, Illinois, Claims Court Number 90–1755 V.

136. Joanne Hatem, Manhasset, New York, Claims Court Number 90–1756 V.

137. John and Diane Bazley on behalf of Jesse Bazley, Phoenix, Arizona, Claims Court Number 90–1757 V.

138. Alesia Allen on behalf of Cortez Strong, St. Louis, Missouri, Claims Court Number 90–1758 V.

139. William Arrington on behalf of James Arrington, Midland, Texas, Claims Court Number 90–1759 V.

140. Arun Agarwal on behalf of Anju Agarwal, Ruston, Louisiana, Claims Court Number 90–1760 V.

141. Leonard Burke, White Plains, New York, Claims Court Number 90–1761 V.

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142. Donald Rowlett on behalf of Delores Rowlett, Henderson, Tennessee, Claims Court Number 90–1764 V.

143. Bennie Pittman on behalf of Jesse Pittman, Muskogee, Oklahoma, Claims Court Number 90–1765 V.

144. Elizabeth and Robert Rollick on behalf of Richard Rollick, Suffolk County, New York, Claims Court Number 90–1766 V.

145. Marni Salit on behalf of Alex Salit, Mill Valley, California, Claims Court Number 90–1767 V.

146. Lige Tatone on behalf of Timothy Tatone, San Juan, Puerto Rico, Claims Court Number 90–1768 V.

147. Judy Brown on behalf of Leslie Brown, Zachary, Louisiana, Claims Court Number 90–1769 V.

148. Barbara Falotico on behalf of Stephen Falotico, New Brunswick, New Jersey, Claims Court Number 90–1770 V.

149. Mary Taylor on behalf of Russell Taylor, Houston, Texas, Claims Court Number 90–1771 V.

150. Jeffrey Collen on behalf of Gregory Collen, Naperville, Illinois, Claims Court Number 90–1772 V.

151. Jack and Terry Riley on behalf of Melissa Riley, Bellaire, Ohio, Claims Court Number 90–1773 V.

152. Dona Card, Ashtabula, Ohio, Claims Court Number 90–1774 V.

153. Robert and Elizabeth Rollick on behalf of Elizabeth Rollick, Suffolk County, New York, Claims Court Number 90–1775 V.

154. Patricia and Melvin Shute on behalf of Claudia Shute, Gibbstown, New Jersey, Claims Court Number 90–1776 V.

155. Jeanne Forcillo on behalf of Danielle Forcillo, Bakersfield, California, Claims Court Number 90–1777 V.

156. Barry and Elizabeth Satanek on behalf of Sabrina Satanek, Uniontown, Pennsylvania, Claims Court Number 90–1778 V.

157. Rebecca Pekarovic, Warren, Ohio, Claims Court Number 90–1779 V.

158. Estellar H. Young on behalf of Courtney L. Young, Deceased, Chicago, Illinois, Claims Court Number 90–1780 V.

159. Melissa Spratling, Houston, Texas, Claims Court Number 90–1781 V.

160. Tiffany Reynolds, Little Rock, Arkansas, Claims Court Number 90–1782 V.

161. Lee and Eula Kroll on behalf of Michael Lacy, Tecumseh, Nebraska, Claims Court Number 90–1783 V.

162. Charles and Shirley Fair on behalf of Kathy Fair, Johnson City, Tennessee, Claims Court Number 90–1784 V.

163. Donna Bergsten on behalf of Joshua Benson, Apple Valley, Minnesota, Claims Court Number 90–1785 V.

164. Elaine Murray on behalf of Thomas Murray, Deceased, Cresco, Iowa, Claims Court Number 90–1786 V.

165. Murvil Crawford on behalf of Catherine Crawford, Mansfield, Ohio, Claims Court Number 90–1787 V.

166. Lisa Graham on behalf of Zachary Graham, Delaware, Ohio, Claims Court Number 90–1788 V.

167. Katherine Korst, Anoka, Minnesota, Claims Court Number 90–1789 V.

168. Bruce Thomas on behalf of Sarah Thomas, Helena, Montana, Claims Court Number 90–1790 V.

169. Ronald Heaston on behalf of Maria Heaston, Reno, Nevada, Claims Court Number 90–1791 V.

170. Silvano Flores on behalf of Davis Flores, Pasadena, Texas, Claims Court Number 90–1792 V.

171. Jonathan Guerin on behalf of Jordan Guerin, Charlotte, North Carolina, Claims Court Number 90–1793 V.

172. Martin Doran on behalf of Andrew Doran, Deceased, Bad Cannstatt, Germany, Claims Court Number 90–1794 V.

173. Cindy Harris on behalf of Capri Harris, Atlanta, Georgia, Claims Court Number 90–1795 V.

174. Walter Kurgan on behalf of Michele Kurgan, Syracuse, New York, Claims Court Number 90–1796 V.

175. David Trevino on behalf of Catherine Trevino, Robstown, Texas, Claims Court Number 90–1797 V.

176. George Chavez on behalf of Cassandra Chavez, Sherman Oaks, California, Claims Court Number 90–1798 V.

177. Susan and Rodney Downs on behalf of Elizabeth Downs, Dearborn, Michigan, Claims Court Number 90–1799 V.

178. Karen Barron on behalf of Matthew Barron, Akron, Ohio, Claims Court Number 90–1801 V.

179. Karla Kirklano on behalf of Bjorn Kirklano, Claremont, New Hampshire, Claims Court Number 90–1802 V.

180. Sandy Gibson on behalf of James Schoning, Deceased, Denver, Colorado, Claims Court Number 90–1803 V.

181. Paula Massonova on behalf of Tony Massonova, Kingston, Pennsylvania, Claims Court Number 90–1804 V.

182. Bradley Weaver, Morrison, Illinois, Claims Court Number 90–1805 V.

183. Eddia Bricker on behalf of Aaron Bricker, Fresno, California, Claims Court Number 90–1806 V.

184. Richard Lange on behalf of Janean Lange, St Louis, Missouri, Claims Court Number 90–1808 V.

185. Mitchell Steen, Hudson, Wisconsin, Claims Court Number 90–1809 V.

186. Douglas Snyder on behalf of Derek Snyder, Cincinnati, Ohio, Claims Court Number 90–1810 V.

187. Marcia Buchner on behalf of Marine Knowlton, Wileyville, West Virginia, Claims Court Number 90–1811 V.

188. Gilbert Roblez on behalf of Derika Roblez, Denver City, Texas, Claims Court Number 90–1812 V.

189. Gene Holloway and Peggy Swihart on behalf of Marc Holloway, Marion, Indiana, Claims Court Number 90–1813 V.

190. Barbara Shimek on behalf of Laurie Shimek, Brooklyn, New York, Claims Court Number 90–1814 V.

191. Gregory Moore on behalf of Kristi Morre, New Richmond, Wisconsin, Claims Court Number 90–1815 V.

192. Barbara Wehrman on behalf of Melissa Wehrman, Munster, Indiana, Claims Court Number 90–1816 V.

193. George McCutchen on behalf of Timothy McCutchen, Denver, Colorado, Claims Court Number 90–1817 V.

194. Patricia Velat on behalf of Richard Velat, Pikeville, Kentucky, Claims Court Number 90–1818 V.

195. Paul DeLange Jr. on behalf of Paul DeLange III, Norfolk, Virginia, Claims Court Number 90–1819 V.

196. Kathy Jones on behalf of Leah Jones, Barrington, Illinois, Claims Court Number 90–1821 V.

197. Justin Guckin, New Haven, Connecticut, Claims Court Number 90–1822 V.

Dated: August 7, 1991.

Robert G. Harmon,
Administrator.

[FR Doc. 91–19240 Field 8–12–91; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-01-4212-13; CACA 28304]

California Desert District, Realty Action, Exchange of Public and Private Lands in San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action CACA 28304, Exchange of Public and Private Lands.

SUMMARY: The following described public lands in San Bernardino County have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976; 43 U.S.C. 1716:

San Bernardino Meridian, California

T. 5 N., R. 3 W.
Sec. 6,
  lots 13 and 14;
T. 6 N., R. 3 W.
Sec. 31,
  W½NE¼NW¼SE¼,
  E½NW¼NW¼SE¼,
  NE¼SW¼NW¼SE¼,
  SE¼SW¼NW¼SE¼,
  NW¼SE¼NW¼SE¼,
  SW¼SE¼NW¼SE¼,
  W½NE¼SW¼SE¼,
  NE¼NW¼SW¼SE¼,
  S½NW¼SW¼SE¼,
  E½SW¼SW¼SE¼,
  and W½SE¼SW¼SE¼;
T. 6 N., R. 4 W.
Sec. 20,
  lots 5, 6, 7 and 8; and SE¼SW¼;
Sec. 21,
  lots 10 and 11;
Sec. 28,
  N½NW¼, and SW¼NW¼;
T. 8 N., R. 4 W.
Sec. 19,
  W½NE¼, and lot 1 of NW¼;

The selected public lands aggregate 609.49 acres.

In exchange for all or a portion of these lands, John R. Cooley has offered the following non-Federal lands in San Bernardino County:

Mount Diablo Meridian, California

T. 31 S., R. 45 E.
Sec. 31,
  lots 1, 2, 3 and 4, E½W½, and E½;

San Bernardino Meridian, California

T. 11 N., R. 7 E.
Sec. 2,
  E½SE¼;
Sec. 11,
  N½NE¼;
T. 12 N., R. 8 E.
Sec. 26,
  SW¼SW¼;
Sec. 27,
  SE¼SE¼;
Sec. 34,
  NE¼NE¼;
Sec. 35,
  NW¼NW¼;

The offered non-Federal lands aggregate 986.64 acres.

The purpose of this exchange is to acquire non-Federal lands within the Black Mountain Cultural Area and Area of Critical Environmental Concern, the Western Mojave Land Tenure Adjustment Project Area Consolidation Zone, the Rasor Off-Highway Vehicle Area, and the East Mojave National Scenic Area. Acquisition of the offered parcels is specified in adopted and draft specific plans for these areas as prescribed in the California Desert Conservation Area Plan, as amended.

Disposal of the isolated and fragmented selected land parcels is consistent with the land tenure adjustment objectives of the California Desert Conservation Area Plan, as amended. The exchange would benefit the general public and the private sector. The public interest would be well served by completing the exchange.

The public lands to be conveyed will be subject to the following terms and conditions:

A. Reservations to the United States

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

2. The right to itself, its permittees or licensees to enter upon, occupy and use any part or all of lot 7 and the SE¼SW¼, Section 20 and the SW¼NW¼, section 28, T. 6 N., R. 4 W., SBM lying within 20 feet of the centerline of transmission line right-of-way of the Southern California Edison Company, Serial No. CALA 023184, for the purposes described in Power Site Classification 241 (November 11, 1929), and set forth in and subject to the limitations of section 24 of the Federal Power Act of June 10, 1920, as amended (43 U.S.C. 818).

3. There will be no mineral reservation to the United States. All minerals will be conveyed in the exchange patent(s). The mineral estate to be conveyed has no known value.

B. Third Party Rights

The public lands would be patented subject to: 1. A right-of-way not to exceed 33 feet in width to be located along the north, south, east and west boundaries of said land for roadway and public utility purposes, as to each selected public land parcel patented within section 6, T. 5 N., R. 3 W., SBM and section 31, T. 6 N., R. 3 W., SBM. 2. Those rights for construction, operation and maintenance of the 33kV Victor-Oro Grande electric distribution line granted to the Southern California Edison Company, its successors or assigns, by right-of-way Serial No. CALA 023184, pursuant to the Act of March 4, 1911, as amended (43 U.S.C. 961), as to portions of lot 7 and the SE¼,SW¼, section 20 and the SW¼, NW¼, section 28, T. 6 N., R. 4 W., SBM.

3. Those rights for construction, operation and maintenance of the 500 kV DC Intermountain Power Project electric transmission line granted to the Intermountain Power Agency, its successors or assigns, by right-of-way Serial No. CACA 8294, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761), as to portions of lots 7 and 8, section 20 and lots 9, 10 and 11, section 21, T. 6 N., R. 4 W., SBM.

4. Those rights for construction, operation and maintenance of an access roadway, underground water pipeline and electric line granted to John R. Cooley by right-of-way Serial No. CACA 13783 as to portions of lots 13 and 14, section 6, T. 5 N., R. 3 W., SBM and the E½SW¼SW¼SE¼, section 31, T. 6 N., R. 3 W., SBM would merge with the title when the exchange patent issues.

The offered title to be acquired by the United States is fee simple, surface and all minerals.

On June 6, 1991 all of the selected public lands described above within sections 20, 21 and 28, T. 6 N., R. 4 W., SBM and section 19, T. 8 N., R. 4 W., SBM were segregated from appropriation under the public land laws and the mining laws, but not the mineral leasing laws, by publication of the exchange base segregation notice for the Western Mojave Land Tenure Adjustment Project (56 FR 109, pp. 26137–26139). The period of segregation is for a two year period ending June 5, 1993.

As provided in 43 CFR 2201.1(b), the publication of this notice in the **Federal Register** shall segregate, subject to existing valid rights, the selected public lands described above within section 6, T. 5 N., R. 3. W., SBM and section 31, T. 6 N., R. 3 W., SBM from all other forms of appropriation under the public land laws including the mining laws but not the mineral leasing laws. The segregative effect will terminate upon issuance of a conveyance document(s), upon publication in the **Federal Register** of a termination of the segregation, or two years from the date of this publication, whichever occurs first.

The exchange will be on an equal value basis. The exchange will be equalized by acreage adjustment, by cash payment by John R. Cooley in an amount not to exceed 25 percent of the fair market value of the selected public lands to be patented, or by waiver of excess value owed by the United States.

Additional information about this exchange is available at the Barstow Resource Area Office, 150 Coolwater Lane, Barstow, CA 92311 (619) 256–3591, and the California Desert District Office, 6221 Box Springs Blvd., Riverside, CA 92507–0714.

For a period of forty-five (45) days from the date of publication of this notice in the **Federal Register** interested parties may submit comments to the District Manager, California Desert

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For a period of forty-five (45) days from the date of publication of this notice in the **Federal Register** interested parties may submit comments to the District Manager, California Desert

District at the above address. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: August 6, 1991.

James L. Williams,

Acting District Manager.

[FR Doc. 91–19160 Filed 8–12–91; 8:45 am]

BILLING CODE 4310-40-M

National Park Service

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 31, 1991. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by August 28, 1991.

Carol D. Shull,

Chief of Registration, National Register.

GEORGIA

Bartow County

First Presbyterian Church, 183 W. Main St., Cartersville, 91001157

Morgan County

O'Flaherty, John, House, 1000 Oconee Rd., Buckhead, 91001155

Pulaski County

Merritt—Ragan House, 316 Merritt St., Hawkinsville, 91001156

Thomas County

Beutell, Joe M., House, 101 Montrose Dr., Thomasville, 91001158

INDIANA

Brown County

Grandview Church, Grandview Ridge Rd. SE of New Bellsville, Van Buren Township, New Bellsville vicinity, 91001160

Daviess County

Carnahan, Magnus, J., House, 511 E. Main St., Washington, 91001167

Elkhart County

Bristol—Washington Township School, 304 W. Vistula St., Bristol, 91001164

Jackson County

Wheeler, Frank, Hotel, Jct. of Second and Main Sts., Freetown, 91001161

Madison County

Paramount Theater Building, 1124 Meridian St., Anderson, 91001165

Marion County

Golden Hill Historic District, Roughly bounded by 36th St., 337th St., Governors Rd., the rear lot lines behind Golden Hill Dr., and Central Canal, Indianapolis, 91001163

St. Joseph County

Lakeville High School, 601 N. Michigan St., Lakeville, 91001166

Scott County

Scottsburg Depot, 43 S. Railroad St., Scottsburg, 91001162

KANSAS

Lincoln County

Danske Evangelist Lutheran Kirke, Between Trail and Timber Creeks due E of Denmark, Grant Township, Denmark vicinity, 91001154

LOUISIANA

St. Mary Parish

Southwest Reef Lighthouse, Jct. of Bellevue Front and Canton Sts., Berwick, 91001152

TEXAS

Rusk County

Hudnall—Pirtle Site, Address Restricted, Easton vicinity, 91001159

Taylor County

Parramore Historic District, Bounded by Orange, N. 8th, alley between Grape and Mulberry, and N. 7th Sts., Abilene, 91001153.

[FR Doc. 91–19140 Filed 8–12–91; 8:45 am]

BILLING CODE 4310-70-M

JUDICIAL CONFERENCE OF THE UNITED STATES

Draft Report on Proposed Standard Electronic Citation System

AGENCY: Judicial Conference of the United States.

ACTION: Request for comments and notice of hearing.

SUMMARY: The Library Program Subcommittee of the Judicial Conference Committee on Automation and Technology developed a draft report on proposals and recommendations for a standard electronic citation system for the electronic dissemination of federal court opinions. Interested parties are requested to submit written comments to the Article III Judges Division.

The Library Program Subcommittee plans to hold a hearing on the proposal in Washington, DC, on September 12 and 13, 1991. Those interested in appearing before the Subcommittee in person, should submit a written request to the Article III Judges Division stating the name, address, and telephone number of the witness and the particular topic(s) to be addressed. The Subcommittee will select representative witnesses to testify.

A final report will be prepared in November for presentation to the Committee on Automation and Technology when it meets in January 1992.

DATES: Written comments on the report should be received on or before August 28, 1991. Written requests to appear at the hearing should be received no later than September 3, 1991. The hearing will be held in the Ceremonial Courtroom (#20), U.S. Courthouse, 3rd & Constitution Avenue NW., Washington, DC, at 9 a.m. on September 12, 1991.

ADDRESSES: Comments and requests to appear should be mailed to the Article III Judges Division, Administrative Office of the U.S. Courts, Washington, DC 20544.

FOR FURTHER INFORMATION CONTACT: Joan Countryman, Article III Judges Division, Administrative Office of the U.S. Courts, Washington, DC 20544, telephone: FTS/202 633–8350.

SUPPLEMENTARY INFORMATION:

I. Background

This is a report of the Library Program Subcommittee of the Judicial Conference Committee on Automation & Technology. The Judicial Conference is the policy-making body of the federal courts.[1] The Conference operates through a network of committees created to address and advise on a wide variety of subjects such as automation, personnel, probation and sentencing, procurement, space, security, and judicial salaries and benefits. The Judicial Conference and its committees are staffed by the Administrative Office of the United States Courts (the AO), which assisted in the preparation of this report.

At its March 1990 session, the Judicial Conference agreed to encourage courts to allow the use of parallel electronic citations to federal court opinions. In February of 1991 a proposal on electronic citations was circulated to circuit court librarians, appellate court clerks, and some computer assisted legal research (CALR) publishers. In June 1991, the Automation & Technology Committee referred this matter to its Library Program Subcommittee and requested that the Subcommittee develop a proposed electronic citation format and solicit comment on it from the courts, CALR publishers, other publishers, and representatives of the Blue Book and Maroon Book.

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[1] The Chief Justice of the United States is the presiding officer. Membership is comprised of the Chief Judge of each judicial circuit, the Chief Judge of the Court of International Trade, and a district judge from each regional judicial circuit who is elected for a term of three years by the circuit and district judges of the circuit represented.

The Subcommittee developed the proposals and recommendations contained herein and authorized distribution of this document for comment. The Subcommittee will review the comments received and will present its conclusions and recommendations to the full Committee at its January 1992 meeting.

II. Introduction

The purpose of a parallel electronic citation is to allow persons doing legal research electronically to locate easily the opinion being cited. The electronic citation is not meant to replace the citation to the printed opinion.

The issue of parallel electronic citations arose as the AO was developing a system to disseminate appellate court opinions electronically. The system, known as EDOS (Electronic Dissemination of Opinions System), uses an electronic bulletin board to provide public access to court opinions. Users of the system would include print and electronic publishers, the media, government and private attorneys, and anyone interested in a particular court opinion. The issues related to electronic citations are closely tied to EDOS issues, and consequently the approach to implementing EDOS is also discussed in this report.

EDOS was originally envisioned as a central dissemination system. Electronic versions of opinions were to be uploaded to a central system, and publishers would receive high speed transmissions of opinions from the central system. Initially, however, individual courts of appeals began using electronic bulletin boards. The AO developed software called the Appeals Court Electronic Service (ACES), which is currently installed in the Fourth and Ninth circuits. An alternative electronic bulletin board program called Court Information Transmitted Electronically (CITE) is installed in the Sixth Circuit. Based on this experience, it was decided that a decentralized approach to electronic dissemination was more appropriate than a centralized system. EDOS is the umbrella name for an electronic bulletin board used to disseminate opinions.

The full text of opinions is available on EDOS for a limited period of time, and anyone with a computer and modem can obtain an electronic copy of the opinion. A cross reference by case number and case name is available in the EDOS systems currently implemented in the circuits but full text searching is not. Implementation of EDOS in all the courts of appeals should be completed by October 1, 1991. [2]

A standard form of citation to electronically obtained opinions is being proposed to facilitate their use in research and writing. Although EDOS software is available and a standardized approach to naming the electronic versions of the opinions has been proposed, implementation procedures at the courts of appeals are still being developed. Expansion to district and bankruptcy courts is being considered.

III. Current Forms for Citing Electronic Opinions

There are two primary CALR publishers—Mead Data Central (publisher of the LEXIS legal research data base) and West Publishing Company (publisher of the WESTLAW legal research data base). Each company assigns a unique document number to each opinion on its data base, but the number assigned to any particular opinion on WESTLAW is different from the number on LEXIS. The LEXIS and WESTLAW numbers are sequential numbers that have no intrinsic meaning.[3]

Guidance to citing electronic opinions is given in the Harvard Blue Book and the University of Chicago Maroon Book. The Harvard Blue Book states: "If an unreported case is available on a computerized legal research service, indicate that fact parenthetically: *Ostegaard* v. *DeMarco*, No. 91–127 (D. Wyo. Aug. 7, 1992) (LEXIS, Genfed library, Dist. file)." [4]

The University of Chicago Maroon Book identifies both LEXIS and WESTLAW formats as acceptable electronic citations: "For computer research service citations, follow the form used by the service. For example,

Gioda v. *Saipan Stevedoring Company, Inc.*, 1988 US App LEXIS 11248, *16 (9th Cir).

Gioda v. *Saipan Stevedoring Company, Inc.*, 1988 WL 8494, 13 (9th Cir)." [5]

Each LEXIS cite indicates the year of the decision, the jurisdiction or forum of the decision, and a LEXIS document number. Each WESTLAW cite indicates the year of the decision, the document number, and the jurisdiction. When the print citation becomes available, this citation is suppressed but still available for retrieval.

Thus, three citation formats are currently used for citing to electronically available documents: (1) Identification by case number, jurisdiction, and date, plus electronic data base publisher and file; (2) year, jurisdiction, and WESTLAW document number; and (3) year, jurisdiction, and LEXIS document number. Such citations are used principally for identifying unreported decisions, because under current practices the citation to a printed opinion is the only citation to be used after an opinion is published.

All three electronic citation formats identify the court issuing the opinion and the year the opinion was issued. These are important because they help identify the extent to which the cited opinion has precedential value. Beyond that, the variations in format from the Blue Book to the Maroon Book reflect various approaches to locating the precise document being referenced.

The Harvard Blue Book format requires both case number and precise date to pinpoint the decision being cited, because several different opinions can be related to the same case number. Both CALR publishers have settled upon a unique document number as the best way to identify an opinion.

The University of Chicago's Maroon Book approach uses the CALR publisher document numbers; however, each major publisher uses a different number for the same opinion. Citing to both LEXIS and WESTLAW document numbers is cumbersome and leaves open the possibility that citations to additional publishers, unique numbers may be necessary if new publishers enter the CALR field.

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[2] The Supreme Court of the United States currently disseminates opinions to a limited number of organizations via HERMES, a separate computer system not part of EDOS. The organizations with access to HERMES then are responsible for broad distribution to the public.

[3] Beginning at 1 with each new year, Mead assigns a unique sequential number to each opinion as it is added to a particular library. The primary LEXIS federal libraries are US, USAPP, DIST, and CLCT. Thus, LEXIS electronic citations are:

1990 US LEXIS 1
1990 USAPP LEXIS 1
1990 DIST LEXIS 1
1990 CLCT LEXIS 1

West also assigns a sequential number to all opinions loaded on WESTLAW, beginning at 1 again with each new year. However, West does not need a combination of the file name and sequence number to identify uniquely a particular opinion. West just assigns a sequential number regardless of whether the opinion is U.S. Supreme Court, U.S. appellate court, U.S. district court, or a state court. A West customer service representative said the West electronic citation numbers go up into the hundreds of thousands each year.

[4] *A Uniform System of Citation*, 14th Edition, Harvard Law Review Association, 1986, Sec. 10.7.2, p. 51.

[5] *The Universty of Chicago Manual of Legal Citation*, The Lawyers Co-operative Publishing Co., Bancroft-Whitney Co., and Mead Data Central, Inc., 1989, Rule 4.2 (b), p.17.

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[5] *The Universty of Chicago Manual of Legal Citation,* The Lawyers Co-operative Publishing Co., Bancroft-Whitney Co., and Mead Data Central, Inc., 1989, Rule 4.2 (b), p.17.

If a unique identifier is assigned by a court to each opinion which is made available on the electronic bulletin board, that identifier could be used to cite to the electronic record without reference to a CALR publisher.

IV. Proposed Recommendations

The Library Program Subcommittee met on June 14, 1991 and agreed upon the following proposals for consideration in developing and implementing parallel electronic citations:

A. Standard electronic citations should be permanent, parallel and not interim citations.

B. EDOS and standard electronic citations should be designed broadly enough so they can be used for district and bankruptcy courts, and even for state and other courts if they wish to follow the same approach. An assessment of expanding electronic citation to district and bankruptcy courts should be made after full implementation and subsequent evaluation of EDOS in the courts of appeals.

C. Electronic citations should use the letters ECS (for "electronic citation system") to identify electronic document numbers.

D. The standard electronic citation should be based on the EDOS file name, because an electronic citation based on case number, court, and date is not guaranteed to be unique.

E. The following proposed EDOS file naming structure should be considered for implementation. The recommended format is YYTSSSSP.XXX, where YY = Year of Opinion, T = Type of Court, SSSS = Sequence Number, P = Published and Amended Indicator, and XXX = Court Identifier. Arabic numbers for the sequence number portion of the name should be used until the number of opinions exceeds 9,999, at which time the first digit of the sequence number should become an alphanumeric code.

F. The actual format of the standard electronic citation should be the same as the EDOS file name. If the opinion is printed in the official reporter, the electronic citation should be used with the official print citation, e.g., *Ostegaard* v. *DeMarco,* ECS 90A0322P.05, 369 F.2d 976 (5th Cir. 1990). If the opinion is not available in the official reporter, the electronic citation should be used with the case name, e.g., *Ostegaard* v. *DeMarco,* ECS 90A0322P.05. If there are amendments to the opinion, the electronic citation should be shown with all amending file names included, e.g., *Ostegaard* v. *DeMarco,* ECS 90A0322P.05 as amended by 90A0322A.05, 90A0322B.05, 369 F.2d 976 (5th Cir. 1990).

G. Fixed page breaks and numbers within the electronic document should be used as pinpoint citations in electronic citations. Fixed page breaks and numbers should be inserted when an opinion is completed and ready to be filed.

H. Standard electronic citations should be linked to EDOS and implemented in conjunction with the electronic dissemination of opinions by the federal courts. This means that implementation of electronic citations for appellate court opinions would begin immediately upon approval by the Judicial Conference. In other courts, implementation of electronic citations would depend upon the availability of their opinions on EDOS.

I. All opinions plus any amending orders should be posted on EDOS. Thus, EDOS would contain all court opinions, and any amendments to them, rather than just published opinions.

J. An opinion should remain posted on EDOS for at least one month. Beyond that, the length of time opinions remain on EDOS should be determined by each court. Notice of the court's policy for length of time an opinion remains on EDOS should be provided when the user signs on to that court's EDOS bulletin board. Each month an archival copy of the EDOS data base should be made before any opinions are purged from the data base. The monthly archives of electronic opinions should be retained by the court for two to three years.

K. Documents should be offered in the court's word processing format and any other formats a court chooses to provide. The format(s) offered by a court should be listed in the introductory information presented on the electronic bulletin board.

Background and analysis supporting the recommendations for implementing standard parallel electronic citations are presented on the following pages of this report.

V. Discussion and Analysis

A. Parallel Citations

Standard electronic citations should be permanent, parallel and not interim citations.

Currently the two primary CALR publishers are Mead Data Central and West Publishing Company. However, it is likely that more publishers will enter the legal electronic publishing market in years to come as the cost barriers to market entry drop. Other publishers probably will assign their own unique opinion identifier numbers if a standard electronic citation is not established.

An interim citation would be used until a print citation became available. A parallel electronic citation would be used concurrently with a print citation and would remain as a permanent part of the opinion.

Some courts and law offices are reducing their print collections and partially replacing them with subscriptions to online legal research data bases and/or compact disk (optical disk) publications. While it is important that citation to printed reports of court decisions continue, so that persons who only have access to printed reporters can find copies of referenced decisions, it is also important for the judiciary to establish a uniform reference to electronic versions of court decisions before additional versions of electronic citations are begun. A standard parallel electronic citation would allow the increasing number of persons who use electronic searching to identify and locate the electronic version of an opinion readily without regard for which company publishes the opinion or provides the electronic data base of opinions.

B. Expansion to Other Courts

EDOS and standard electronic citations should be designed broadly enough so they can be used for district and bankruptcy courts, and even for state and other courts if they wish to follow the same approach. An assessment of expanding electronic citation to district and bankruptcy courts should be made after full implementation and subsequent evaluation of EDOS in the courts of appeals.

In establishing a standard electronic citation and encouraging parallel use of the citation with the print citation, the federal judiciary should devise a standard citation that is as broad as possible. It should be appropriate for not only the federal appellate courts but also the district and bankruptcy courts.

EDOS was originally conceived as a means of disseminating appellate opinions. It is currently being implemented in the courts of appeals. In most courts of appeals, opinions are funneled to a central person, known as an "opinions clerk," who releases the court's opinions for publication. Actual publication is done under contract in most circuits. After the judge completes an opinion, it is sent to the printer. In some circuits, the printer proofs the opinion and provides cite checking services. The opinion is printed within a relatively short period (two days to two weeks), and after the judge approves the slip opinion for release, the printer produces sufficient copies to mail to the clerk, the judges in the circuit, and a list of subscribers. In some circuits the subscriber list varies depending on whether the opinion is "published" or not. Two circuits already use electronic communications to send opinions to the printer.

In most district and bankruptcy courts, the judge determines that an opinion should be published and sends the opinion directly to the publishers in pre-addressed envelopes provided by the publishers. A copy of each opinion is sent to the clerk's office and filed in the case file, but in most district and bankruptcy clerks offices, no one person is responsible for dissemination of opinions to publishers.

If EDOS is expanded to the district and bankruptcy courts, it will be necessary to change current procedures to involve the clerk's office. The clerk's office would be responsible for inserting the date filed, assigning the sequence number and creating the related EDOS file name, inserting the EDOS file name and/or electronic citation at the beginning of the document, checking to see that pages are properly defined and numbered, converting the document to any additional ASCII or word processing formats necessary, updating the cross reference list with the case name and new opinion file name, and uploading [6] the renamed file to the EDOS bulletin board.

Most district and bankruptcy courts have fewer than 25 published opinions per month, according to a survey conducted in May of 1991. The survey indicated that the average number of unreleased opinions is 70 per month in district courts and 10 per month in bankruptcy courts. It is likely that opinions from district and bankruptcy courts can be uploaded to the appellate court's EDOS system.

While the Judicial Conference has no policy-making role for the United States Tax Court, United States Court of Veterans Appeals, United States Court of Military Appeals, or state courts, if a broad perspective is used when the standard federal electronic citation format is designed, it would be easy for other courts to adopt a similar format. Such standardization probably would be appreciated by members of the bar.

As many as 26 appellate state courts now distribute opinions electronically to West and/or Mead. Colorado, New York, and California are publishing their state court opinions on compact disk, and in the near future, Virginia and Utah plan to publish state opinions on compact disk. The New Mexico bar has posted state appellate court opinions since 1987 on LegalNet, which is part of a larger statewide fiber optic network containing a variety of state information that can be accessed and searched for $.60 per minute. State and bankruptcy docketing data is also available on LegalNet. Federal courts are given free access to the New Mexico system in return for supplying electronic versions of their opinions, which date back to 1989.

C. Electronic Citation System Name

Electronic citations should use the letters ECS (for "electronic citation system") to identify electronic document numbers.

Some responses to the February 1991 proposal suggested that the citation name should identify the opinion source as a federal court. The electronic citation system has been designed very broadly, however, so that it can be adopted by state as well as federal courts. Therefore, ECS is recommended to facilitate use by state and other courts.

D. Electronic Citation Based on EDOS File Name

The standard electronic citation should be based on the EDOS file name, because an electronic citation based on case number, court, and date is not guaranteed to be unique.

Some who commented on the February 1991 proposal to base the electronic citation on the EDOS file name saw no need to create a new numbering system. They suggested continuing to use the case number, as provided in the Blue Book. However, multiple opinions can be issued for one case number. For a case number to identify an opinion uniquely, it must include the date the opinion was issued, the court, and in bankruptcy courts, an adversarial number. Examples of citations using case number for appellate, district, and bankruptcy courts are shown below:

Court of appeals citation example: No. 89-16372 (3d Cir. Feb. 28, 1991)
District court example: No. CV-89-2076-EFL (E.D. Pa. Feb. 28, 1991)
Bankruptcy court example: No. 89-00396, Adv. No. 89-0084 (Bankr. E.D. Pa. Feb. 28, 1991)

If the electronic citation is based on case number and date of issue, those items are already available on the first page of the opinion. Currently, a docket clerk updates the word processing document with the date of filing. If an electronic citation is based on the EDOS file name, the clerk who assigns the file name for EDOS would also be required to add that citation to the first page of the opinion.

There is an argument that long case numbers will lead to more typographical errors. While it is unlikely that a court would issue two opinions for the same case number on the same date, since it is within the realm of possibility, case number and date are not unique identifiers. From time to time bankruptcy courts issue two opinions for the same case on the same day. An opinion citation requires a unique identifier. Mead and West do not include the case number in the file name when assigning electronic citation numbers to opinions on LEXIS and WESTLAW.

E. Structure of EDOS File Name

The following proposed EDOS file naming structure should be considered for implementation. The recommended format is YYTSSSSP.XXX, where YY=Year of Opinion, T=Type of Court, SSSS=Sequence Number, P=Published and Amended Indicator, and XXX=Court Identifier. Arabic numbers for the sequence number portion of the name should be used until the number of opinions exceeds 9,999, at which time the first digit of the sequence number should become an alphanumeric code.

It is recommended that a unique file name be assigned to each opinion issued by a court and posted on the EDOS bulletin board. The name contains "codes" for the year issued, the type of court issuing the opinion (S=supreme, A=appellate, P=bankruptcy appellate panel, B=bankruptcy, C=Claims Court, I=Court of International Trade, and D=district),[7] a four-digit sequence number, a published and amended indicator, and an abbreviation identifying the issuing court. The format is YYTSSSSP.XXX, where YY=Year, T=Type of Court, SSSS=Sequence Number, P=Published and Amended Indicator, and XXX=Court Identifier. For example, 90A0322P.05 would be assigned to a published opinion issued in 1990 by an appellate court. The file name shows that this is the 322nd opinion filed by the court in 1990. The "P" following 322 means it is a published opinion; a "U" would indicate an unpublished opinion. A code of "A" through "N" indicates the level of amendment to a published opinion; a

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[6] "Uploading" means transmitting a copy of a file over telephone lines to another computer system and leaving the copy on the remote computer.

[7] Other courts, such as the U.S. Tax Court, U.S. Court of Veterans Appeals, U.S. Court of Military Appeals, and state courts, can choose other court type indicators to identify opinions from their courts, if they choose to adopt this file naming convention and the related electronic citation system.

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[7] Other courts, such as the U.S. Tax Court, U.S. Court of Veterans Appeals, U.S. Court of Military Appeals, and state courts, can choose other court type indicators to identify opinions from their courts, if they choose to adopt this file naming convention and the related electronic citation system.

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code of "V" through "Z" indicates the level of amendment to an unpublished opinion. The issuing court is the appellate court of the 5th Circuit (shown as "05" in the code). Attachment 1 shows a list of the court identifier codes.

EDOS systems use either the UNIX or DOS operating systems.[8] Most users who download [9] opinions from EDOS will be using PC's with DOS operating systems. Although UNIX system file names are not limited to 11 characters, DOS file names are. If EDOS users download a file with more than 11 characters to a personal computer, the file name will be truncated after 11 characters.[10] This is not a major concern, but if it is possible to create a file name within the 11-character DOS constraint, this approach will accommodate the most users and will allow all users to have the same file name for any given document. The opinion file name need not exceed the 11-character DOS limit, unless the case number is to be included as part of the file name.

The primary issue with the proposed EDOS file name is whether a sequence number of four digits is sufficient to accommodate all opinions issued by any court in a year. With a four-digit sequence number, the maximum opinions per year per court would be 9,999. A search of LEXIS showed 2,660 opinions in 1990 for the Southern District of New York District Court [11] and 178 opinions for the Southern District of New York Bankruptcy Court. Since the Southern District of New York is the largest district court, a four-digit limit appears to be sufficient. If it is subsequently determined that all orders, as well as all opinions, issued by a district and/or bankruptcy court are to be posted on EDOS and available for electronic citation, then four Arabic number digits would not suffice. However, it would be possible to use the same proposed structure for the file name if the alphabet, instead of numbers, were used for one or more of the four digits in the sequence code.[12]

F. Format of Electronic Citation

The actual format of the standard electronic citation should be the same as the EDOS file name. If the opinion is printed in the official reporter, the electronic citation should be used with the official print citation, e.g., *Ostegaard* v. *DeMarco*, ECS 90A0322P.05, 369 F.2d 976, (5th Cir. 1990). If the opinion is not available in the official reporter, the electronic citation should be used with the case name, e.g., *Ostegaard* v. *DeMarco*, ECS 90A0322P.05. If there are amendments to the opinion, the electronic citation should be shown with all amending file names included, e.g., *Ostegaard* v. *DeMarco*, ECS 90A0322P.05 as amended by 90A0322A.05, 90A0322B.05, 369 F.2d 976 (5th Cir. 1990).

If the EDOS file name is used as the basis for the citation, the citation could be the EDOS file name itself (e.g., 90A0322P.05).[13] This has the advantage of not requiring any translation by the clerk's office and, if opinions were to remain on EDOS for an extended time, it would allow the public to locate and retrieve documents easily.

Other electronic citation formats were considered, such as the general format used for LEXIS and WESTLAW citations, with the year preceding the identifying source name and the document number following the source name, as shown in the example below:

Ostegaard v. *DeMarco*, 1990 5th Cir.
ECS No. 322P, 369 F.2d. 976 (5th Cir. 1990).

For the same opinion, if it were unpublished, the citation would be:

Ostegaard v. *DeMarco*, 1990 5th Cir.
ECS No. 322U

Alternatively, the textual citation could follow a more traditional format:

Ostegaard v. *DeMarco*, ECS No. 322P,
369 F.2d. 976 (5th Cir. 1990)

An unpublished opinion using the more traditional format would be shown as:

Ostegaard v. *DeMarco*, ECS No. 322U
(5th Cir. 1990)

Although these citation formats appear more legible than the file name at first glance, the Subcommittee concluded that cases with precedential value should have both the print and electronic citations. The electronic file name is fairly easy to decipher when it is placed next to the traditional print citation. Therefore, an electronic citation consisting of the file name itself is recommended.

Using the file name is not advantageous when referring to an amended opinion, because the original file name will only allow retrieval of the original (i.e., unamended) opinion. However, if an opinion is revised through an amending order, citation to the amending order will only allow retrieval of the amending order, not the original opinion. Therefore, the Subcommittee agreed that amended opinions should be cited by giving the file name of the original opinion plus the file names of all amendments. The amendments are like pocket parts. In this sense, the electronic opinions are not as "user friendly" as the printed opinions, because the amendments are not integrated into the opinions. Optionally, all amending orders could include the revised opinion, but this would require additional work in the judge's chambers or clerk's office. Such an approach would allow an electronic citation to the latest version only rather than to all versions of the opinion.

G. Pinpoint Citations

Fixed page breaks and numbers within the electronic document should be used as pinpoint citations in electronic citations. Fixed page breaks and numbers should be inserted when an opinion is completed and ready to be filed.

Some comments on the February 1991 electronic citation proposal noted that the proposed format did not contain page numbers. Pinpoint citations probably are necessary. Page numbers vary from publisher to publisher and are appropriate only for citations to a particular case reporter. Moreover, if one wants to print the electronic version of the document and use pinpoint citations to locate a particular passage, a page number could be a misleading pinpoint citation. Page numbering varies depending on the printer used and the defined page size in the word processing document. Therefore, if page numbers are used for pinpoint citation, they must be inserted with fixed ("hard") page breaks and a clear indication of the page number.

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[8] UNIX is a popular, vendor-independent, multi-user operating system. DOS stands for "Disk Operating System;" it is the most widespread operating system in use today for personal computers.

[9] "Downloading" means copying a file electronically, retrieving the copy over telephone wires, and receiving it in one's local computer.

[10] If the person downloading is selecting only a few opinions, truncation should not be a problem, because the person can probably identify the files and will not be apt to overlay one file with another of the same name from a different court. However, those who download all the opinions posted, such as publishers, the Department of Justice, or state attorneys general, would be prone to overlay files if they used a PC for downloading and file names were truncated. Overlaying a file erases the underlying file.

If the file name is used as the citation format (as opposed to a translation of the file name), it is even more important to stay with the 11-character limit. Otherwise, there would be unnecessary confusion with a file name of more than 11 characters. EDOS users would locate a document with a file name identical to the citation they had, but the file name would look different by the time the file was transferred to their computer, because the name would be truncated.

[11] This figure includes U.S. district court judge and magistrate judge opinions.

[12] If the alphabet were used for all four digits, up to 456,975 opinions and orders per year per court could be numbered. The decimal numbering system uses a base of 10, whereas an alphabet numbering system uses a base of 26.

[13] Note that the EDOS file name is not the same as the case file name. No change to the case file numbering scheme is proposed. Instead, a completely separate naming scheme is being proposed for opinions.

Paragraph numbers could be used, but they change the appearance of the opinion and therefore are not desirable. Also, paragraph numbering would require extra work in chambers or the clerk's office to add the numbers.

Theoretically, pinpoint citations should not be a problem. Page numbers are necessary for printed citations, because one must go to a book to look up the case, and it is inefficient to scan the entire opinion to find the cited text. However, a parallel electronic citation is another matter. It is to be used with an electronic search, and the best way to find the quote is to search for the quoted language electronically. When one searches an electronic data base of opinions (whether using an online data base or optical disk system), page numbers are an anachronism. On the other hand, one who uses electronic versions of opinions may want to print the opinions.

While no solution is perfect, fixed page breaks and numbers in the electronic version of the document provide the best solution. A standard electronic citation to a particular quotation on page seven of the electronic file would then be shown as *Ostegaard* v. *DeMarco,* ECS 90A0322P.05, 7, 369 F.2d. 976, 979 (5th Cir. 1990).

H. Timing

Standard electronic citations should be linked to EDOS and implemented in conjunction with the electronic dissemination of opinions by the federal courts. This means that implementation of electronic citations for appellate court opinions would begin immediately upon approval by the Judicial Conference. In other courts, implementation of electronic citations would depend upon the availability of their opinions on EDOS.

A standard electronic citation based on the EDOS file name will only work for cases issued via EDOS (in 1992 and thereafter). This means electronic citations will be phased in gradually. There are no plans to assign electronic citations to older opinions.

I. Items To Be Posted on EDOS

All opinions plus any amending orders should be posted on EDOS. Thus, EDOS would contain all court opinions and any amendments to them, rather than just published opinions.

The Library Program Subcommittee recommends posting all opinions, regardless of publishers' interest, so that the public can access any opinion of the court, at least for a limited period of time.[14] Opinions will be posted on EDOS at the time they are considered final and are released to publishers.

Judges determine which opinions are to be "published," and only published opinions may be cited as precedent in the appellate courts. Some district courts, such as the District Court for the District of Columbia, allow citation to unpublished opinions of the United States Court of Appeals for the District of Columbia. Increasingly, publishers are printing "unpublished" opinions with a notation that the opinions are unpublished and not to be cited as precedent. This happens when the opinion fits the subject matter of a particular publication (e.g., computer law) or when the opinion is about a newsworthy case. Many "unpublished" opinions are available in the LEXIS and WESTLAW data bases. The term "released" identifies the opinions that are available to researchers, whether or not the opinions are officially "published."

The courts could make it easier to obtain published opinions by posting them on EDOS but more difficult to obtain the electronic version of unpublished opinions by not making them available on EDOS. It is unlikely, however, that such an approach will stop publishers from obtaining and releasing unpublished opinions. Therefore, the Subcommittee decided to endorse the posting of all opinions for a limited period of time, but to include as part of the citation itself an indicator showing whether the opinion is considered "published" by the court that issued the opinion.

J. Length of Time Opinions Should Remain on EDOS

An opinion should remain posted on EDOS for at least one month. Beyond that, the length of time opinions remain on EDOS should be determined by each court. Notice of the court's policy for length of time an opinion remains on EDOS should be provided when the user signs on to that court's EDOS bulletin board. Each month an archival copy of the EDOS data base should be made before any opinions are purged from the data base. The monthly archives of electronic opinions should be retained by the court for two to three years.

Federal appellate court opinions are published in printed form within four to six weeks of receipt by the publishers. This is generally true for district and bankruptcy court opinions, too, although some opinions do not appear for six to nine months after they are issued. It may be that such delays occur for opinions released only after someone requests an unpublished opinion. Some lower court opinions are released only after an appellate opinion reviewing the lower court opinion has been issued.

As currently implemented, ACES and CITE are not substitutes for LEXIS and WESTLAW, because full text search software is not available on the electronic bulletin boards. Legal research data bases have an added value in the search software provided by the publishers. Moreover, many researchers will prefer books to printouts of the electronic opinions.

Reviewing an index of an entire year's worth of opinions would be daunting in the larger appellate and district courts for EDOS users who dial in to retrieve a particular opinion. The clerk of the Ninth Circuit Court of Appeals estimated that judges in that court produce approximately 3,000 opinions per year. A search of LEXIS showed approximately 2,660 opinions from the Southern District of New York in 1990.

On the other hand, there were only 76 opinions in LEXIS issued by the Southern District of Texas in 1990. An index with this number of entries would be quite manageable for the public to review, and it would even be possible to maintain two years of opinions at that rate. There were 178 opinions from the Southern District of New York Bankruptcy Court in 1990 and 28 from the Southern District of Texas Bankruptcy Court. The chart below lists the number of opinions shown on LEXIS in 1990 by selected jurisdictions for district and bankruptcy courts.

Jurisdiction	No. of district court opinions	No. of bankruptcy court opinions
Southern District of New York	2,659	178
Eastern District of Pennsylvania	2,312	154
District of the District of Columbia	1,030	33
Southern District of Florida	215	81
Central District of California	108	42
Southern District of Texas	76	28

Based on the variability in number of opinions published in each district, it appears that the time period for keeping opinions on EDOS should be allowed to vary from court to court, but all courts

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[14] When discussions were held with vendors in 1989, only opinions normally released to publishers were to be available on EDOS.

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K. Format of Documents Posted on EDOS

Documents should be offered in a court's word processing format and any other formats the court chooses to provide. The format(s) offered by a court should be listed in the introductory information presented on the electronic bulletin board.

Most courts use WordPerfect word processing software, which is widely available in the legal community, but some courts use Office Power by CCI, a product popular with a number of the larger law firms but not available on PC's. As currently contemplated, there will be separate subdirectories established on EDOS, one for document files in the court's word processing format and one for the same documents in ASCII format.[15] Special characters and formatting commands are stripped out in the ASCII version. A downloaded ASCII document looks considerably different from the word processing version of the document.

The publishers who wish to obtain opinions from EDOS can acquire WordPerfect word processing software and either acquire Office Power or software to convert Office Power documents to a format preferred by the publisher. The public can find businesses to print a WordPerfect document and/or convert it to another format, but they would have more difficulty locating a business that has Office Power. Therefore, the courts with Office Power might consider converting Office Power documents to WordPerfect.

The conversion of documents to ASCII and/or any format other than the court's standard word processing format will require time from a secretary or clerk. Courts may want to assess whether there is a need for multiple formats after they have had some experience in operating EDOS.

William R. Burchill, Jr.,

Acting Director.

ATTACHMENT 1.—COURT IDENTIFIER CODES

Code	Description
US	U.S. Supreme Court.
DC	District of Columbia Circuit.
01	First Circuit.
02	Second Circuit.
03	Third Circuit.
04	Fourth Circuit.
05	Fifth Circuit.
06	Sixth Circuit.
07	Seventh Circuit.
08	Eighth Circuit.
09	Ninth Circuit.
10	Tenth Circuit.
11	Eleventh Circuit.
FC	Federal Circuit.
ALN	Northern District of Alabama.
ALM	Middle District of Alabama.
ALS	Southern District of Alabama.
AK	District of Alaska.
ARE	Eastern District of Arkansas.
ARW	Western District of Arkansas.
AZ	District of Arizona.
CAE	Eastern District of California.
CAC	Central District of California.
CAN	Northern District of California.
CAS	Southern District of California.
CO	District of Colorado.
CT	District of Connecticut.
DE	District of Delaware.
DC	District of Columbia.
FLM	Middle District of Florida.
FLN	Northern District of Florida.
FLS	Southern District of Florida.
GAM	Middle District of Georgia.
GAN	Northern District of Georgia.
GAS	Southern District of Georgia.
GU	District of Guam.
HI	District of Hawaii.
ID	District of Idaho.
ILC	Central District of Illinois.
ILN	Northern District of Illinois.
ILS	Southern District of Illinois.
INN	Northern District of Indiana.
INS	Southern District of Indiana.
IAN	Northern District of Iowa.
IAS	Southern District of Iowa.
KS	District of Kansas.
KYE	Eastern District of Kentucky.
KYW	Western District of Kentucky.
LAE	Eastern District of Louisiana.
LAM	Middle District of Louisiana.
LAW	Western District of Louisiana.
MA	District of Massachusetts.
MD	District of Maryland.
ME	District of Maine.
MIE	Eastern District of Michigan.
MIW	Western District of Michigan.
MN	District of Minnesota.
MOE	Eastern District of Missouri.
MOW	Western District of Missouri.
MP	Northern Mariana Islands.
MSE	Eastern District of Mississippi.
MSN	Northern District of Mississippi.
MSS	Southern District of Mississippi.
MSW	Western District of Mississippi.
MT	District of Montana.
NCE	Eastern District of North Carolina.
NCM	Middle District of North Carolina.
NCW	Western District of North Carolina.
NE	District of Nebraska.
ND	District of North Dakota.
NH	District of New Hampshire.
NJ	District of New Jersey.
NM	District of New Mexico.
NV	District of Nevada.
NYE	Eastern District of New York.
NYN	Northern District of New York.
NYS	Southern District of New York.
NYW	Western District of New York.
OHN	Northern District of Ohio.
OHS	Southern District of Ohio.
OKE	Eastern District of Oklahoma.
OKW	Western District of Oklahoma.
OR	District of Oregon.
PAE	Eastern District of Pennsylvania.
PAM	Middle District of Pennsylvania.
PAW	Western District of Pennsylvania.
PR	District of Puerto Rico.
RI	District of Rhode Island.
SC	District of South Carolina.
SD	District of South Dakota.
TNE	Eastern District of Tennessee.
TNM	Middle District of Tennessee.
TNW	Western District of Tennessee.
TXE	Eastern District of Texas.
TXN	Northern District of Texas.
TXS	Southern District of Texas
TXW	Western District of Texas.
UT	District of Utah.
VAE	Eastern District of Virginia.
VAW	Western District of Virginia.
VI	District of Virgin Islands.
VT	District of Vermont.
WAE	Eastern District of Washington.
WAW	Western District of Washington.
WIE	Eastern District of Wisconsin.
WIW	Western District of Wisconsin.
WVN	Northern District of West Virginia.
WVS	Southern District of West Virginia.
WY	District of Wyoming.

[FR Doc. 91-19128 Filed 8-12-91; 8:45 am]

BILLING CODE 2210-01-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

[Order No. 1521-91]

Certification of Central Address File System

AGENCY: Department of Justice.

ACTION: Notice.

SUMMARY: Notice is hereby given that, pursuant to section 242B(a)(4) of the Immigration and Nationality Act, as amended (the "Act") (8 U.S.C. 1252b), a central address file system has been created to preserve notices of addresses and telephone numbers, and notices of any changes thereto, provided by aliens in deportation proceedings. The Executive Office for Immigration Review shall maintain the central file as part of its automated ANSIR system. The ANSIR system will preserve the addresses and telephone numbers of the aliens in deportation proceedings, as well as those of their attorneys or

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[15] ASCII stands for American Standard Code for Information Interchange. It is a very limited character set and represents the lowest common denominator for word processing programs. ASCII text can be accepted by almost any word processing software. Most word processing software packages use many more codes than are available in ASCII. An ASCII version is usually a stripped-down version of a document; it has the text but lacks many of the formatting features found in a word processing document, such as underlining, bold, and italics. Footnotes are stripped out when some word processing documents are converted to ASCII, but this is not the case when WordPerfect or Office Power documents are converted to ASCII.

representatives who have filed a notice of appearance.

The Immigration and Naturalization Service and the Executive Office for Immigration Review shall have access to the system. Changes to the information shall be made by the Executive Office for Immigration and Naturalization Service.

Ther provisions of subsections (a), (b), (c), and (e)(1) of section 242B of the Act, as amended, shall be effective six months from the date of certification of the central address file system. Subsection (a) requires written notice to an alien in deportation proceedings of, *inter alia,* the nature of the proceedings, the time and place of proceedings and the consequences of the failure to appear at such proceedings. Notices shall be in English and Spanish. The alien will be required to provide the Attorney General with a written record of any address and telephone number, as well as any changes thereto, at which he or she may be contacted respecting proceedings under section 242 of the Act. Subsection (b) provides that the alien will have at least fourteen days from the date of the service of notice under subsection (a) to secure counsel. The Attorney General shall provide for lists of counsel who are available to represent aliens in deportation proceedings. Under subsection (c), an alien who fails to appear at a deportation proceeding after receiving written notice required by subsection (a)(2) may be ordered deported. Subsection (e)(1) provides that an alien against whom a final order of deportation is entered *in absentia* and who was provided oral notice in his or her own language or in a language he or she understands of the time and place of proceedings and the consequences of failing to appear, will not be eligible for relief from deportation as specified in subsection (e)(5) for a period of five years after the date of entry of the final order of deportation.

EFFECTIVE DATE: This certification is effective August 13, 1991.

FOR FURTHER INFORMATION CONTACT: Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, 5107 Leesburg Pike, suite 2400, Falls Church, Virginia 22041 (703) 756-6470.

Pursuant to section 242B(a)(4) of the Immigration and Nationality Act, as amended (8 U.S.C. 1252b), I certify that the central address file system has been established. The system will preserve notices of addresses and telephone numbers of aliens in deportation proceedings, and notices of any changes thereto, and addresses and telephone numbers of their attorneys or representatives who have filed a notice of appearance. The system will be maintained by the Executive Office for Immigration Review for the purpose of facilitating communications to aliens regarding deportation or other proceedings.

The notice-related provisions contained in subsection (a), (b), (c), and (e)(1) of section 242B of the Immigration and Nationality Act, as amended, shall take effect on February 13, 1991.

Dated: August 5, 1991.

Dick Thornburgh,

Attorney General.

[FR Doc. 91-19187 Filed 8-12-91; 8:45 am]

BILLING CODE 4410-10-M

Lodging of Proposed Consent Decree Pursuant to the Clean Water Act

Notice is hereby given that a proposed consent decree in *United States and State of Ohio* v. *City of Wellston, Ohio,* Civil Action No. C2-87-1216 (S.D. Ohio), is available to the public for review and comment. The proposed consent decree resolves litigation in this matter with respect to the alleged violation by the City of Wellston, Ohio ("Wellston") of effluent limitations in its National Pollutant Discharge Elimination System ("NPDES") permit. The permit was issued pursuant to the Clean Water Act, 33 U.S.C. 1342, in connection with operations at the municipal wastewater treatment facility in Wellston, Ohio.

The decree has been lodged with the United States District Court for the Southern District of Ohio, Eastern Division on June 25, 1991. It provides that Wellston will construct modifications of the wastewater treatment facility and undertake a combined sewer overflow compliance program so that it comes into compliance with effluent limits and other aspects of its NPDES permit. The decree also provides for a civil penalty of $17,000, plus interest, to be paid in two installments.

The Department of Justice will receive comments relating to the proposed decree for 30 days from the date of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer the *United States and State of Ohio* v. *City of Wellston,* D.J. Ref. No. 90-5-1-1-2874. The decree may be examined without charge at the office of the United States Attorney for the Southern District of Indiana, Civil Division at 220 United States Courthouse, Columbus, Ohio 43215; at the Region V Office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604; and at the Environmental Enforcement Section Document Center, 1333 F Street NW., suite 600, Washington, DC 20004 [Telephone: (202) 347-2072]. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $6.75 (25 cents per page reproduction costs) payable to "Consent Decree Library."

John C. Cruden

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 91-19195 Filed 8-12-91; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

National Cooperative Research Notifications; Electrically Heated Catalyst Testing

Notice is hereby given that, on July 24, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* "the Act"), written notice was filed by the participants in the Electrically Heated Catalyst Testing Program simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the Program and (2) the nature and objectives of the Program. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the Program and its general areas of planned activity are given below.

The parties to the Program are: ARCO Products Company, BP Oil Company, Chevron U.S.A., Inc., Exxon Company U.S.A., Mobil Oil Corporation, Shell Oil Company, Texaco Refining and Marketing, Tosco Refining Company, Ultramar Inc., Union Oil Company of California, California Air Resources Board (Stationary Source Division), California Air Resources Board (Mobile Source Division), and Western States Petroleum Association.

The objective of the Program is to plan and carry out research and tests designed to measure and evaluate automobile exhaust emissions and the potential improvements in air quality that may be achieved through the use of electrically heated catalysts. The purpose of this study is to provide the

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John C. Cruden

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[FR Doc. 91–19195 Filed 8–12–91; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

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The parties to the Program are: ARCO Products Company, BP Oil Company, Chevron U.S.A., Inc., Exxon Company U.S.A., Mobil Oil Corporation, Shell Oil Company, Texaco Refining and Marketing, Tosco Refining Company, Ultramar Inc., Union Oil Company of California, California Air Resources Board (Stationary Source Division), California Air Resources Board (Mobile Source Division), and Western States Petroleum Association.

The objective of the Program is to plan and carry out research and tests designed to measure and evaluate automobile exhaust emissions and the potential improvements in air quality that may be achieved through the use of electrically heated catalysts. The purpose of this study is to provide the

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State of California with information it may use in its efforts to reduce the total emissions from motor vehicles and thereby improve air quality, as required by the California Clean Air Act, Cal. Health & Safety Code §§ 39000 *et seq.*

Membership in the Program remains open, and the parties intend to file additional written notification disclosing any changes in membership.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91–19190 Filed 8–12–91; 8:45 am]

BILLING CODE 4410–01–M

National Cooperative Research Act Notifications; Hampshire Instruments, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Hampshire Instruments, Inc. ("Hampshire") on July 11, 1991, filed a written notification on behalf of Hampshire and McDonnell Douglas Electronic Systems Company ("MDESC") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to this agreement and (2) the nature and objectives of this agreement. The notification was filed for the purpose of invoking the protections of section 4 of the Act, which limit the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the parties to this agreement and the general areas of planned activity are given below.

Hampshire is a New York corporation with its principal place of business at 10 Carlson Road, P.O. Box 10159, Rochester, New York 14610.

MDESC is a Maryland corporation with its principal place of business at P.O. Box 516, St. Louis, Missouri 63166.

Hampshire and MDESC have agreed to engage in a joint research effort for the application of MDESC's solid state laser technology to Hampshire's point source x-ray lithography. Generic diode-pumped laser technology will be developed which will enable the design, construction, and demonstration of a high performance solid-state laser system which in turn will serve the requirements of very high-throughput advanced x-ray lithography workstations.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91–19193 Filed 8–12–91; 8:45 am]

BILLING CODE 4410–01–M

National Cooperative Research Notifications; National Storage Industry Consortium

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), National Storage Industry Consortium ("NSIC") on June 12, 1991, has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objective of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties, and their general areas of planned activities are given below.

The members of NSIC are:

Applied Magnetics Corp.
Eastman Kodak Co.
Quantum Corp.
Carlisle Memory Products
International Business Machines Corporation
Minnesota Mining & Manufacturing Company
Hewlett-Packard Company
Digital Equipment Corp.
KOMAG Inc.
VISqUS Corp.
Storage Technology Corp.
Maxoptix Corp.
Iomega Corp.

In addition, the following universities are "University Affiliate Members" of NSIC:

University of California at Berkeley (UCB)
University of California at Los Angeles (UCLA)
University of California at San Diego (UCSD)
University of Arizona
University of Alabama
Santa Clara University
University of Minnesota
Carnegie Mellon University
Stanford University
Washington University (St. Louis)
Ohio State University
University of Nebraska

NSIC's area of planned activity is sponsoring research in the area of information storage technology.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91–19194 Filed 8–12–91; 8:45 am]

BILLING CODE 4410–01–M

National Cooperative Research Act Notifications; Petrotechnical Open Software Corp.; Joint Research and Development Venture

Notice is hereby given that, on July 10, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* (the "Act"), Petrotechnical Open Software Corporation ("POSC") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of invoking the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the notification stated that the following additional parties have become new, non-voting members of POSC:

Halliburton Company, 11255 Kirkland Way, suite 300, Kirkland, WA 98033
Hewlett-Packard Company, 19091 Pruneridge Avenue, Cupertino, CA 95014
Digital Equipment Corporation, 4 Results Way, Marlboro, MA 01752
Delft Petroleum Technologies, Inc., 777 N. Eldridge Parkway, suite 700, Houston, TX 77079–4465
TNO Institute of Applied Geoscience, Schoemakerstrat 97, P.O. Box 6012, 2600 JA DELFT, The Netherlands
The Petroleum Science and Technology Institute, Dunedin House, 25 Ravelston Terrace, Edinburgh EH4 3EX, Scotland, UK
Inforama (SA) France, 7 Rue Pasquier, 75008 Paris, France
UK Department of Energy 1 Place Street, London SW1E 5HE, England, UK
AEA Petroleum Services, Winfrith Technology Centre, Dorchester, Dorset DT2 8DH, England, UK
Open Software Foundation, 11 Cambridge Center, Cambridge, MA 02142
Sun Microsystems, Inc., 12 Greenway Plaza, suite 1500, Houston, TX 77046

No other changes have been made in either the membership or planned activity of POSC.

On January 14, 1991, POSC filed simultaneously with the Attorney General and the Federal Trade Commission its original notifications pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(a) of the Act on February 7, 1991 (56 FR 5021).

On April 12, 1991, POSC filed simultaneously with the Attorney General and the Federal Trade Commission notifications of the addition of members pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on May 7, 1991 (56 FR 21176).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-19192 Filed 8-12-91; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Act Notifications; Reid Vapor Pressure & Driveability Index

Notice is hereby given that, on July 24, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), written notice was filed by the participants in the Reid Vapor Pressure & Driveability Index Testing Program simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the Program and (2) the nature and objectives of the Program. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the Program and its general areas of planned activity are given below.

The parties to the Program are: ARCO Products Company, BP Oil Company, Chevron U.S.A., Inc., Exxon Company U.S.A., Mobil Oil Corporation, Shell Oil Company, Texaco Refining and Marketing, Tosco Refining Company, Ultramar Inc., Union Oil Company of California, California Air Resources Board (Stationary Source Division), California Air Resources Board (Mobile Source Division), Western States Petroleum Association, and General Motors Corporation.

The objectives of the Program is to study the effects of varying the Reid Vapor Pressure ("RVP") level of fuels and evaporative emissions. The purpose of this study is to provide the State of California with information it may use in its efforts to reduce the total emissions from motor vehicles and thereby improve air quality, as required by the California Clean Air Act, Cal. Health & Safety Code §§ 39000 *et seq.*

Membership in the Program remains open, and the parties intend to file additional written notification disclosing any changes in membership.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-19191 Filed 8-12-91; 8:45 am]

BILLING CODE 4410-01-M

Federal Bureau of Investigation

Meeting of Uniform Crime Reporting (UCR) Data Providers Advisory Policy Board (APB)

The UCR APB will met on September 3 and 4, 1991, from 9 a.m. until close of business each day at the Sheraton Seattle Hotel and Towers, 1400 Sixth Avenue, Seattle, Washington, 98101, telephone number (206) 621-9000.

The major topics of discussion will be the consideration of individual state agency participation in the National Incident-Based Reporting System (NIBRS); status of the study to determine the future of UCR by the Department of Justice (DOJ); a report by the NIBRS publication subcommittee; redundancy of data submission to the FBI by law enforcement entities; and a report by the UCR staff on the progress of 1990 Hate Crime Data Collection and publications.

The meeting will be open to the public with approximately 25 seats available on a first-come, first-served basis. Any member of the public may file a written statement with the APB before or after the meeting. Anyone wishing to address a session of the meeting should notify the Committee Management Liaison Officer, FBI, at least 24 hours prior to the start of the session. The notification may be by mail, telegram, cable, or hand-delivered note. It should contain their name, corporate or Government designation, and consumer affiliation, along with the capsulized version of the statement an outline of the material to be offered. A person will be allowed not more than 15 minutes to present a topic, except with the special approval of the Chairperson of the Board.

Inquiries may be addressed to Mr. J. Harper Wilson, Committee Management Liaison Officer, Information Management Division, Federal Bureau of Investigation, Washington, DC 20535, telephone number (202) 324-2614.

Dated: August 5, 1991.

William S. Sessions,

Director.

[FR Doc. 91-19184 Filed 8-12-91; 8:45 am]

BILLING CODE 4410-02-M

DEPARTMENT OF LABOR

Office of the Secretary

Substance Abuse Program in the Workplace

AGENCY: Office of the Secretary, Labor.

ACTION: Request for comments and information.

SUMMARY: The Office of the Assistant Secretary for Policy (OASP) is requesting information requesting employee substance abuse programs, including their content, cost and effectiveness. The Department of Labor (DOL) has determined that "comprehensive substance abuse programs" are one of the most effective ways for companies to address the problem of substance abuse in their workplace and seeks this information in order to assist small business in establishing these programs.

OASP is requesting a variety of nonproprietary substance abuse information from such sources as the Federal and State governments, private industry, community groups and national associations. The information requested includes, but is not limited to: Federal and State legislation; regulations and policies arising from legislation and federally mandated programs; model substance abuse programs; model employee assistance programs; drug awareness, education, prevention and training programs; and general training requirements that have been established by small businesses and community-based service organizations.

Information is also requested on currently existing automated substance abuse information systems that can be accessed to disseminate information and the types of substance abuse information on those systems.

DATES: Comments, information and data should be submitted by October 15, 1991.

ADDRESSES: Written submissions in response to this notice should be sent to the attention of Mark Wilson, the Office of the Assistant Secretary for Policy, U.S. Department of Labor, room S-2114, 200 Constitution Avenue NW., Washington, DC 20210; Telephone (202) 523-6054.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Wilson, Office of the Assistant Secretary for Policy, U.S. Department of Labor, Room S-2114, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 523-6054.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Department of Labor, in conjunction with the Office of National Drug Control Policy (ONDCP), has been given a leadership role in addressing the problem of substance abuse in the workplace. With respect to illegal drugs, ONDCP has identified the workplace as one of the key sectors in which a reduction in the demand for drugs is

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SUPPLEMENTARY INFORMATION:

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essential if there is to be overall success in the war on drugs. This need can best be understood with reference to the National Institute on Drug Abuse (NIDA) survey which found that 68% of drug users are employed.

The Department of Labor has very specific interests in reducing the problem of substance abuse in the workplace, independent of the issue of legality. Substance abuse, including the abuse of legal drugs such as alcohol, has a profound impact on the workplace. The costs of substance abuse have been estimated by some to be as high as $200 billion annually. Specifically, substance abuse has been identified as a major factor in the health and safety of workers. It is a major problem contributing to the dramatic rise in health care costs. Sharply rising health care costs, in turn, have become a major problem when collective bargaining agreements are renegotiated. Substance abuse also sharply affects the ability to mount effective employment and training programs. Finally, substance abuse is a major factor in limiting this country's ability to perform up to its full competitive potential.

After careful examination of the problem of substance abuse in the workplace, the Department has concluded that the most effective way for companies to address the problem is to establish a "comprehensive substance abuse program" in their workplaces. Such comprehensive programs typically include five elements:

A written substance abuse policy. A written policy reflects the strong commitment of the employer to a workplace free of illegal drugs and other substance abuse.

An employee education and awareness program. A program of employee education and awareness focuses on the specific dangers of substance abuse. The training builds on the company's substance abuse policy, explaining why the policy was developed and highlighting the dangers of substance abuse on the job. Such training also helps non-abusers understand the problems of addiction and abuse and how the problems of others affect them.

Supervisory training program. A program of management training is needed so that supervisors understand corporate policies on workplace substance abuse and know how to deal with employees abusing or suspected of abusing substances in the workplace.

An employee assistance program. An employee assistance program (EAP), or access to one through a consortium, represents the key building block for employers seeking to assist employees who voluntarily seek as well as those who may be directed to seek assistance in lieu of disciplinary action.

Drug testing, as appropriate. While drug testing is still a highly controversial subject, there is a growing consensus that drug testing in the workplace is an important component of a substance abuse program, particularly when the health and safety of others may be at risk.

The implementation of such comprehensive substance abuse programs in larger companies, given the evidence available, has been identified as an effective way to deal with the problem. While the Department is continuing research in the area of program effectiveness, it has initially set as its goal that every workplace in the country adopt such a comprehensive program, realizing that small businesses may, of necessity, that they are best served by a program comprised of only some of the five elements.

In 1988, the Department's Bureau of Labor Statistics undertook a survey of companies to identify which establishments have adopted substance abuse programs. While the sample was limited, it does provide statistically significant information on establishments with such programs. Specifically, breakdowns are available by broad industry classifications, geographical regions and size of establishment. The most striking finding of the survey was that large firms (those with 500+ employees) have tended to mount such programs, while medium and particularly small establishments (those with 500 or fewer employees) typically have not.

While many firms initially implemented substance abuse programs in order to satisfy legal requirements such as the mandate for all Federal government contractors to have a "Drug Free Workplace," they have, nevertheless, found these programs to be an effective means of combatting drug abuse in the workplace. For example, some firms have found the payoff to cost ratio for substance abuse programs to exceed 8 to 1.

The seriousness of the problem becomes evident when one identified the importance of such smaller establishments in the national economy. Small establishments, defined here as those with 250 or fewer employees, account for over 99 percent of all business establishments in the country and employ two-thirds of all workers. Clearly, the failure to reach this group equates to a failure to reach a majority of the workers in the country.

The problem is exacerbated as large (and increasingly medium-sized) businesses adopt programs, employees with substance abuse problems appear to be moving increasingly to smaller firms. As a result, it is the smaller establishment that suffers increasingly from the adverse impact of workplace substance abuse.

The question, thus, arises as to why smaller firms have not been more aggressive in adopting substance abuse programs? Some of this reluctance can certainly be ascribed to an information lag. Indeed, it has been only relatively recently that many large firms have recognized and addressed the problem of substance abuse. While many larger firms did have some form of an alcohol treatment program, few large firms appear to have had comprehensive substance abuse programs prior to the mid 1970's. Contributing to this information lag effect are the following perceptions among smaller employers:

While acknowledging that substance abuse is an important and critical problem in the workplace, there is the belief among many small employers that their workplace does not have such a problem. For example, one study found that about 90% of small business owners felt that there was an employee drug abuse problem in the nation but only 10% felt that there was such a problem in their firm.

Small employers are quick to see the direct costs of implementing a substance abuse program but may not appreciate the substantial benefits of doing so. In addition to their valuable time, expenditures would be required for consultants, training materials, legal fees, etc. These direct costs must be weighed against hard to quantify benefits such as reduced accidents, increased productivity, improved morale, etc.

Small employers lack specific information as to how to go about implementing such a program. In large firms, this function is generally performed by the director of human resources or personnel. Just obtaining the base information often presents a major obstacle.

Comments and Information Requested

OASP seeks comments and information from the public regarding substance abuse programs. In addition to general information, OASP is specifically interested in the following especially as they relate to small businesses:

1. What were the reasons that the program was established (e.g., to comply with a regulatory program, to help current employees, as part of a collective bargaining agreement, etc.)?

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Before your program was established, were you aware of any studies that provided estimates of the benefits accruing from these programs? If so, what were these studies and what affect did they have on your decision to establish a program?

2. Please comment on the Department's rationale as to why have small businesses tended not to implement substance abuse programs while large businesses have. Provide your reasons for agreeing or disagreeing.

3. How was the program organized? What assistance was obtained to establish the program and from whom? How much did it cost to establish the program (e.g., during the first year)?

4. What is the content of the program? Does it include the five elements recommended by DOL? If not, what does it contain? Please supply any materials available on the program (e.g., the policy statement, training materials, etc.). Is there a procedure to update the program? If so, what is this procedure? If not, why not?

5. What are the direct costs involved in maintaining the program? What are the direct costs per employee? Please provide as much detail as possible by program element (e.g., costs involved in employee training, operating the EAP, drug testing, etc.).

6. What benefits have been found to accrue from the program (e.g., higher productivity, lower accident and turnover rates, lower workers' compensation and insurance costs, etc.)? Please provide as much detail as possible both in quantified terms (e.g., reductions in the number of accidents, workers' compensation claims/rates, absenteeism, and health care costs; increased productivity; etc.) and in other terms (if the benefits have not been quantified)?

7. Which elements of your program have been most successful in eliminating substance abuse among your employees?

8. Based upon your experience with your program, if you had the choice would you recommend that other companies establish similar programs. Please provide your reasons. What advice would you give to companies, especially small businesses, trying to establish their own programs?

9. What can be done at the federal, and local level, either by government or by the private sector, to assist businesses in addressing the problem of workplace substance abuse?

10. Is your firm presently covered by a regulation requiring the establishment of a substance abuse program? If so, what is it? Would additional regulation be useful in this area?

This document was prepared under the direction of Debra R. Bowland, Acting Assistant Secretary for Policy.

Signed at Washington, DC, this 7th day of August, 1991.

Debra R. Bowland,

Acting Assistant Secretary for Policy.

[FR Doc. 91-19220 Filed 8-12-91; 8:45 am]

BILLING CODE 4510-23-M

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determination regarding eligibility to apply for adjustment assistance issued during the period of July 1991.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,845; Kentucky Agricultural Energy Corp., Franklin, KY

TA-W-25,840; Fitzsimons Manufacturing Co., Big Rapids, MI

TA-W-25,734; Bayou Steel Corp., LaPlace, LA

TA-W-25,904; Sara Lee Knitting Products, Floyd, VA

TA-W-25,824; Towne-Robinson, Inc., Dearborn, MI

TA-W-25,885; Seneca Wire & Manufacturing Co., Fostoria, OH

TA-W-25,830; American Sign & Indicator Corp., Spokane, WA

TA-W-25,866; Fayscott Co., Dexter, ME

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-25,967; Label-Tech, Inc., Grand Prairie, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,994; Fina Oil & Chemical Co., Abilene, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,893; Dowell-Schlumberger, Inc., Houston, TX

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-25,918; J & G Shake Co., Forks, WA

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-25,907; Sterling Drug, Inc., Trenton, NJ

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,972; Miss Jamie, Inc., New York, NY

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,927; Union Railroad Co., Monroeville, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,909; Waste Management of North America, Warner Co., Morrisville, PA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,899; Keiber Thompson, Morrisville, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,865; Enserch Exploration, Inc., Midland District, Midland, TX

Investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required certification.

TA-W-25,701; Capitol Circuits Corp., Printer Products, Boston, MA

as prepared under
ra R. Bowland,
cretary for Policy.

on, DC, this 7th day of

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d 8-12-91; 8:45 am]

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TA-W-25,899; Keiber Thompson, Morrisville, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,865; Enserch Exploration, Inc., Midland District, Midland, TX

Investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required certification.

TA-W-25,701; Capitol Circuits Corp., Printer Products, Boston, MA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,702; Capitol Circuits Corp., Westtrex, Fall River, MA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,847; Northern Contracting Co., Philadelphia, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,901; Louis A. Grant, Inc., Pittsburgh, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,915; Fred Stecker Oldsmobile, Inc., Euclid, OH

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,911 & 25,912; BP Oil Pipeline Co., Kirbyville, TX & BP Oil Pipeline Co., Longview, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,899; Heckett, Morrisville, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,867; Fiatallis, North America, Inc., Carol Stream, IL

Increased imports did not contribute importantly to worker separation at the firm.

TA-W-25,868; Fiatallis, North America, Inc., Stone Mountain, GA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,869; Fiatallis, North America, Inc., Irving, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,870; Fiatallis, North American, Inc., Cranbury, NJ

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,871; Fiatallis, North American, Inc., West Sacramento, CA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,872; Fiatallis, North American, Inc., Portsmouth, VA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,873; Fiatallis, North America, Inc., Springfield, IL

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations

TA-W-25,682; Pat Fashions, Inc., Perth Amboy, NJ

A certification was issued covering all workers separated on or after April 3, 1990 and before January 31, 1991.

TA-W-25,862; Dana Corp., Parish Div., Reading, PA

A certification was issued covering all workers separated on or after May 15, 1990.

TA-W-25,852; Tara Knitting Mills, Inc., Brooklyn, NY

A certification was issued covering all workers separated on or after May 6, 1990 and before April 30, 1991.

TA-W-25,835; Corporate Knitting, Inc., Passaic, NJ

A certification was issued covering all workers separated on or after May 3,1990.

TA-W-25,848; Larose RF Systems, Inc., Cohoes, NY

A certification was issued covering all workers separated on or after May 8, 1990 and before July 31, 1991.

TA-W-25,708; G.E. Government Communication Systems (G.E. Aerospace) Camden, NJ

A certification was issued covering all workers separated on or after May 25, 1990.

TA-W-25,879; Keystone Fireworks Manufacturing Co., Inc., Dunbar, PA

A certification was issued covering all workers separated on or after May 20, 1990.

TA-W-25,782; Maytown Shoe Manufacturing Co., Inc, Beale Ave., Altoona, PA

A certification was issued covering all workers separated on or after April 23, 1990.

TA-W-25,783; Maytown Shoe Manufacturing Co., Inc., 8th Ave., Altoona, PA

A certification was issued covering all workers separated on or after April 23, 1990.

TA-W-25,784; Maytown Shoe Manufacturing Co., Inc., Queen and Elizabeth Street, Maytown, PA.

A certification was issued covering all workers separated on or after April 23, 1990.

I hereby certify that the aforementioned determinations were issued during the months of July, 1991. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: August 7, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-19221 Filed 8-12-91; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted by September 12, 1991.

ADDRESSES: Send comments to Mr. Dan Chenok, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., room 3002, Washington, DC 20503; (202-395-7316). In addition, copies of such comments may be sent to Mr. Murray R. Welsh, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401).

FOR FURTHER INFORMATION CONTACT: Mr. Murray R. Welsh, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a revision of a currently approved collection of information. This entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average

burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: State and Regional Program—Arts Projects in Underserved Communities.
Frequency of Collection: Annually.
Respondents: State and local governments.
Use: Guidelines, instructions and applications elicit relevant information from State Arts Agencies and Regional Organizations that apply for funding under the Arts Projects in Underserved Communities category. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the panel review process.
Estimated Number of Respondents: 75.
Average Burden Hours per Responses: 22.
Total Estimated Burden: 1,650.

Bill Williams,

Assistant Director, Administration Services Division, National Endowment for the Arts.

[FR Doc. 91-19224 Filed 8-12-91; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological and Critical Systems; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Biological and Critical Systems.

Dates & Times: August 27, 1991. 8:30 a.m.–5 p.m.

Location: National Science Foundation, 1800 G Street NW., Washington, DC 20550, room 1133.

Type of Meeting: Closed.

Agenda: Review and evaluate research Small Business Innovative Rsearch proposals.

Contact Person: Edward H. Bryan, Ph.D., Program Director, room 1133, National Science Foundation, Washington, DC 20550. Telephone (202) 357-7737.

Dated: August 5, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-19133 Filed 8-12-91; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Chemical and Thermal Systems Committee of Visitors; Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Name: Committee of Visitors Review.

Date and time: August 28–29, 1991.

Place: Room 1115, 1800 G Street NW., Washington, DC

Types of meeting: Closed.

Contact Person: Mihail Roco/Stephen Traugott, Program Directors, Fluid, Particulate and Hydraulic Systems, Room 1115, National Science Foundation, Washington, DC 20550. Telephone: (202) 357-9606.

Purpose of meeting: To provide oversight review of the Fluid, Particulate and Hydraulic Systems Program

Agenda: To carry out Committee of Visitors (COV) review including examination of decisions on proposals, reviewer comments, and other privileged materials.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposals actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552 b. (c) (4) and (6) of the Government in the Sunshine Act would improperly be disclosed.

Dated: August 5, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-19132 Filed 8-12-91; 8:45 am]

BILLING CODE 7555-01-M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, November 07, 1991
Thursday, November 21, 1991
Thursday, December 12, 1991

The meetings will start at 10:45 a.m. and will be held in room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, room 1340, 1900 E Street, NW., Washington, DC 20415 (202) 606-1500.

Dated: August 6, 1991.

Anthony F. Ingrassia,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 91-19155 Filed 8-12-91; 8:45 am]

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Dated: August 6, 1991.

Anthony F. Ingrassia,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 91–19155 Filed 8–12–91; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29528; File No. SR-DGOC-91-02]

August 6, 1991.

Self-Regulatory Organizations; Delta Government Options Corporation; Order Approving a Proposed Rule Change Relating to the Definition of Options Expiration Date

On May 24, 1991, Delta Government Options Corporation ("DGOC") filed a proposed rule change (File No. SR–DGOC–91–02) with the Securities and Exchange Commission ("Commission") pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on June 28, 1991, to solicit comments from interested persons.[2] No comments were received. As discussed below, this order approves the proposal.

I. Description of the Proposal

DGOC's proposed rule change will modify its definition of option "expiration date" in Article I of its Rules. Specifically, the proposal will amend DGOC's rules to: (1) Extend the potential length of an option contract to up to two years from the date of the writing of the option contract; and (2) permit any Friday of the expiration month to serve as an expiration date for options contracts, rather than only the first Friday of the month (short-dated options contracts), or the last Friday of the month (all other option contracts), as provided under existing rules.

DGOC states in its filing that the proposed rule change responds to requests by its participants that expiration dates match more precisely the tenor of other financial contracts in the over-the-counter market and other trading environments. By affording participants a larger spectrum of expiration dates, DGOC believes that it can enable its participants to gravitate naturally toward the expiration dates that each participant deems best suited to its trading needs. In particular, DGOC believes that the proposal will afford its participants the flexibility to adjust option contract durations in relation to their overall U.S. Treasury ("Treasury") security portfolios. Moreover, the proposal will enable participants to submit, for processing at DGOC, over-the-counter Treasury option trades that, prior to this proposal, could not be submitted because their stated expiration date was other than previously available through DGOC.

II. Discussion

Section 17A(a)(1) articulates the Congressional finding that clearance and settlement procedures and processing techniques should be efficient, effective, and safe. Section 17A(b)(3)(F) provides, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that this proposed rule change is consistent with section 17A of the Act, and, more specifically, with sections 17A(a)(1) and 17A(b)(3)(F) of the Act.[3]

As noted above, DGOC's proposal will provide DGOC participants greater flexibility to select the expiration dates that most satisfy their needs. This could increase the number of over-the-counter options cleared through DGOC, whose system offers potentially better safeguards than existing clearance processes for these trades. Moreover, the proposal will not diminish DGOC's existing safeguards. DGOC will continue to calculate and collect, where appropriate, member margin requirements. All other safeguards, including DGOC's maximum potential system exposure safeguard ("MPSE"), will continue to apply.[4]

III. Conclusion

For the reasons stated above, the Commission finds that DTC's proposal is consistent with Section 17A of the Act.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[5] that DGOC's proposed rule change (SR–DGOC–91–02) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–19156 Filed 8–12–91; 8:45 am]

BILLING CODE 8010-01-M

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[1] 15 U.S.C. 78s(b).

[2] Securities Exchange Act Release No. 29307 (June 14, 1991), 56 FR 29296.

[3] 15 U.S.C. 78q–1(a)(1) and (B)(3)(F).

[4] For a description of DGOC's safeguards, including MPSE, see, Securities Exchange Act Release No. 26450 (January 12, 1989), 54 FR 2010 and Securities Exchange Act Release No. 27611 (January 12, 1990), 55 FR 1890.

[5] 15 U.S.C. 78s(b)(2).

[6] 17 C.F.R. 200.30–3(a)(12).

[Rel. No. IC-18260; 812-7678]

Government Securities Equity Trust Series I and Subsequent Series, et al.; Notice of Application

August 6, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an amended order of exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Government Securities Equity Trust, Series I and Subsequent Series (the "Trust") (formerly AIM T.A.R.G.E.T Trust, Series I (Weingarten) and Subsequent Series); AIM Convertible Securities Inc., AIM Equity Funds, Inc., AIM High Yield Securities, Inc., Short-Term Investments Co., Tax-Free Investments Trust, on behalf of themselves and any series or portfolio thereof (other than any of the aforementioned open-end investment companies (or portfolios thereof) which are money market or no-load funds) ("Existing Funds"); AIM advisors, Inc. ("AIM Advisers"), AIM Capital Management, Inc. ("AIM Capital"), AIM Distributors, Inc. ("AIM Distributors") and Prudential Securities, Inc. ("Prudential").

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) that would grant an amendment to an order that exempted applicants from sections 12(d)(1), 14(a), 19(b) of the Act and rule 19b-1 thereunder and that permitted certain affiliated transactions under section 17(d) of the Act and rule 17d-1 thereunder.

SUMMARY OF APPLICATIONS: Applicants seek an order amending an existing order that permitted series of the Trust to invest in shares of certain open-end investment companies and zero coupon obligations. The requested order would delete condition (h) of the prior order, which prohibited any series of the Trust from purchasing shares of certain open-end investment companies that had established multiple classes and prevented these investment companies from establishing additional classes if their shares were held by any of the series of the Trust.

FILING DATE: The application was filed on February 6, 1991 and an amendment was filed on June 20, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 3, 1991, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants (except Prudential Securities Inc.), Eleven Greenway Plaza, suite 1919, Houston, Texas 77046; Prudential Securities, Inc., One Seaport Plaza, 199 Water Street, New York, New York 10292.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, (202) 272–2190, or Jeremy N. Rubenstein, Assistant Director, (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The Trust consists of a series of unit investment trusts, each of which is similar but separate and designated by a different series number ("Trust Series"). Each Trust Series is organized pursuant to a trust indenture which incorporates a master trust agreement between Prudential, the sponsor and depositor for each such Trust Series (the "Sponsor"), and a qualified bank (the "Trustee"). At present, there are two existing Trust series. Statements made in the application apply to both existing and possible future Trust Series unless otherwise noted.

2. The Trust's objective is to protect capital while still providing for capital appreciation through investment in United States Government and other types of zero coupon obligations or contracts, and in shares of one of the Funds (as defined below).

3. Each of the Existing Funds is an open-end management investment company registered under the 1940 Act. Each Existing Fund has entered into an investment advisory or management agreement with AIM Advisors or AIM Capitol and a distribution agreement with AIM Distributors. AIM Advisors, AIM Capitol, and AIM Distributors and subsidiaries of AIM Management Group, Inc. Shares of the Existing Funds (or portfolios thereof) are offered with front-end sales loads. None of the Existing Funds are currently offered with any type of deferred sales charge. Each of the Existing Funds has adopted a rule 12b-1 plan.

4. Applicants request relief extend to the Trust's investment in any open-end investment company (including any portfolios or series thereof), other than a money market or no-load fund, that may in the future be advised by or have as its principal underwriter AIM Advisers, AIM Capital, or AIM Distributors, or any of their affiliates that are under common control with them. (These future open-end investment companies and the Existing Funds are collectively referred to as the "Funds").

5. Pursuant to a previous exemptive order granted by the Commission and later amended (the "Multi-class Order"), the Funds are authorized to establish separate classes of securities within the same investment portfolio. (See Investment Company Act Release Nos. 14656 (August 2, 1985) (notice) and 14695 (August 27, 1985) (order); 15570 (February 6, 1987) (notice) and 15592 (February 27, 1987) (amended order)). Under the Multi-class Order, the classes may differ in that certain classes of shares may be offered in connection with: (a) A 12b–1 plan adopted by the Fund involved pursuant to rule 12b–1; (b) a Shareholder Services Plan adopted by the Funds pursuant to all requirements of rule 12b–1 except those relating to shareholder voting rights and automatic termination of the plan upon its assignment; or (c) no plan. Except for allocating to each class the expenses associated with that class, granting shareholders of a class the right to vote on matters solely concerning that class, and the differing class designations, the classes must be the same.

6. In Investment Company Act Release No. 16959 (May 17, 1989), the Commission issued a conditional order (the "Existing Order") that permitted the Trust Series to invest in portfolios consisting both of shares in one of the Funds and United States Government and other types of zero coupon obligations. The two existing Trust Series hold shares in the AIM Weingarten Fund Series of AIM Equity Funds, Inc. ("Weingarten").

7. Under the terms of the Existing Order, shares of only one of the Funds may be sold for deposit into any one Trust Series at net asset value. The Fund must waive any otherwise applicable sales load with respect to all shares sold or deposited in any Trust Series. In addition, any rule 12b–1 fee received by the Sponsor in connection with the distribution of Fund shares to the Trust must be rebated to the Trustee. Lastly, as a condition to granting relief ("Condition (h)"), applicants agreed that no shares of any Fund that has established more than one class of shares will be deposited in any Trust Series and that no Fund, shares of which have been deposited in any Trust Series, will thereafter establish additional classes of shares.

8. Some of the Funds, including Weingarten, wish to establish additional classes of shares. These shares will be offered to financial institutions for their fiduciary accounts without sales loads or rule 12b–1 fees. Applicants therefore propose to delete Condition (h) from the Existing Order.

9. Any future Trust Series will invest only in one class of Fund shares. No class of shares sold to a future Trust Series will adopt or incur any expenses under a rule 12b–1 plan or shareholder services plan.

10. Applicants do not expect to create new classes without the sales load or 12b–1 fees with respect to the existing Trust Series because of the expense of effecting such a change. Therefore, rule 12b–1 fees would continue to be rebated with respect to existing Trust Series. If Weingarten adopts a shareholder service plan, any expenses incurred with respect to this plan would be rebated in the same manner as the rule 12b–1 fees.

11. In accordance with the Existing Order, the Funds will waive any sales loads on: (a) Reinvestment by unitholders of capital gain distributions received from a Trust Series with respect to a Fund's shares; (b) a transfer of Fund shares held by a Trust Series to unitholders upon termination of the Trust; and (c) reinvestment in Fund shares of the proceeds of zero coupon obligations distributed to a unitholder. Any investor wishing to take advantage of the foregoing would open an account to acquire shares of a class for which such investor otherwise would be eligible. Any materials used to describe the options available to the investor will include information about all classes available to such investor.

12. Applicants acknowledge that all representations in the application for the Existing Order will continue to apply except as expressly described in the present application, and that all conditions to the Existing Order will continue to apply except for the deletion of Condition (h).

13. Applicants believe that the deletion of Condition (h) permitting multiple classes is appropriate in the public interest, and consistent with the protection of investors and the purposes

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12. Applicants acknowledge that all representations in the application for the Existing Order will continue to apply except as expressly described in the present application, and that all conditions to the Existing Order will continue to apply except for the deletion of Condition (h).

13. Applicants believe that the deletion of Condition (h) permitting multiple classes is appropriate in the public interest, and consistent with the protection of investors and the purposes and provisions of the Act, and therefore satisfies the requirements of section 6(c).

14. One major purpose of section 12(d)(1) is the prevention of duplication of fees. Applicants argue that the requirement that the Sponsor rebate rule 12b–1 fees received on shares of the Funds held in a Trust Series is designed to prevent unitholders of a Trust Series from paying duplicative selling expenses. Applicants contend that this objective could be met by establishing a class with no rule 12b–1 fees without resorting to a cumbersome rebate mechanism.

15. Applicants argue that the sales generated by the creation of the new classes for financial institutions would benefit the Funds through economies of scale due to increased Fund size.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–19157 Filed 8–12–91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1443]

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Paperwork Reduction Act of 1980, Public Law 96–511

SUMMARY: Bearers of U.S. Passports may require to: amend the passport for a name change; correct the descriptive data; add visa pages; and extend the validity of a limited passport. The Passport Amendment/Validation Application is provided for this purpose. It is necessary to submit a statement with an application for a new passport when a previous valid or potentially valid passport cannot be presented. The Statement Regarding Lost or Stolen Passport form is provided for this purpose. The following summarizes the information collection proposals submitted to OMB.

1. Type of request—Reinstatement.
   Originating office—Bureau of Consular Affairs.
   Title of informatin collection—Passport Amendment/Validation Application.
   Frequency—On occassion.
   Form No. —DSP–19.
   Respondents—Holders of U.S. Passports.
   Estimated number of respondents—12,510.
   Average hours per response—30 minutes.
   Total estimated burden hours—6,255.
2. Type of request—Reinstatement.
   Originating office—Bureau of Consular Affairs.
   Title of information collection—Statement Regarding Lost or Stolen Passport.
   Frequency—On occasion.
   Form No. —DSP–64.
   Respondents—Passport holders who cannot present a previous valid passport when applying for a new passport.
   Estimated number of respondents—30,000.
   Average hours per response—15 minutes.
   Total estimated burden hours—7,500.

Section 3504(h) of Public Law 96–511 does not apply.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook (202) 647–3538. Comments and questions should be directed to (OMB) Marshall Mills (202) 395–7340.

Dated: July 22, 1991.

Warren E. Littrel,

Acting Assistant Secretary for Diplomatic Security.

[FR Doc. 91–19125 Filed 8–12–91; 8:45 am]

BILLING CODE 4710-22-M

[Public Notice 1444]

Public Information Collection Requirements Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

SUMMARY: The Statement of Identity is used in making a determination of a passport applicant's eligibility to be documented as a citizen of the United States. The collection of this information often eliminates the need for an investigation. The Application for Confidential Verification of Birth is used in cases of suspected fraud and also to determine the nationality of a passport applicant not in the United States. The following summarizes the information collection proposals submitted to OMB.

1. type of request—Reinstatement.
   Originating office—Bureau of Consular Affairs.
   Title of information collection—Statement of Identity.
   Frequency—On occasion.
   Form No.—DSP–10.
   Respondents—Persons acquainted with a particular passport applicant.
   Estimated number of respondents—2,600.
   Average hours per response—15 minutes.
   Total estimated burden hours—650.
2. Type of request—Reinstatement.
   Originating office—Bureau of Consular Affairs.
   Title of information collection—Application for Confidential Verification of Birth.
   Frequency—On occasion.
   Form No.—DSP–16.
   Respondents—State government vital statistics offices.
   Estimated number of respondents—500.
   Average hours per response—30 minutes.
   Total estimated burden hours—250.

Section 3504(h) of Public Law 96–511 does not apply.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook (202) 647–3538. Comments and questions should be directed to (OMB) Marshall Mills (202) 395–7340.

Dated: July 22, 1991.

Warren E. Littrel,

Acting Assistant Secretary for Diplomatic Security.

[FR Doc. 91–19127 Filed 8–12–91; 8:45 am]

BILLING CODE 4710-22-M

[Public Notice 1445]

Public Information Collection Requirements Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1960, 44 U.S.C. chapter 35.

SUMMARY: The Department of State is requesting approval for the collection of information from nonresident aliens seeking to acquire the status of an alien lawfully admitted for permanent residence under the provisions of section 132 of the Immigration Act of 1990, Public Law 101–649, and from employers who agree to offer

employment to such aliens. Section 132 authorizes the issuance of 40,000 immigrant visas per year during fiscal years 1992, 1993, and 1994 to aliens who are natives of certain countries and who submit applications for selection during time periods to be specified by the Department of State. Proposed regulations for the implementation of section 132 were published by the Department of State on June 4, 1991, 56 FR 25386. Collection of the information required is necessary to permit implementation of the provisions of section 132. Without collection of the information, there can be no implementation of the program and, thus, no issuance of the 40,000 immigrant visas authorized by law. The proposed information collection contains the following:

1. *Type of review requested*—new.

Originating officer—Bureau of Consular Affairs

Title of information collection—application for selection for consideration for visa issuance under section 132 of P.L. 101–649.

Frequency—Once a year during each of fiscal years 1991, 1992, and 1993.

Form No.—None. (Applicants will be permitted to provide the required information on paper of their choice. The only requirement is that the information be set forth in the Roman alphabet and be legible.)

Respondents—Nonresident aliens hoping to be selected for immigrant visa issuance under the provisions of section 132 of Public Law 101–649, and U.S. employers who agree to offer such aliens employment.

Estimated number of respondents—unknown. (The Department has no basis for estimating the number of respondents or the number of responses per respondent as there is no limit upon the number of responses per respondent. During the mail-in period for a similar predecessor program, approximately 1.5 million pieces of mail were received from an unknown number of respondents.)

Average hours per response—0.50

Total estimated burden hours—unknown

Section 3504(h) of Public Law 96–511 applies.

Additional information or comments: Comments and questions should be directed to (OMB) Marshall Mills (202) 395–7430.

Dated: July 22, 1991.

Warren E. Littrel,

Acting Assistant Secretary for Diplomatic Security.

[FR Doc. 91–19128 Filed 8–12–91; 8:45 am]

BILLING CODE 4710-22-M

[Public Notice 1446]

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

SUMMARY: A passport waiver is an exception to section 215(b) of the Immigration and Nationality Act, 8 U.S.C. 1185(b), which requires that an American citizen be in possession of a valid U.S. passport when entering or departing from the United States. Passport waivers are granted only when it is impossible for the applicant to obtain a passport prior to her/his departure and she/he possesses alternative citizenship evidence which can be carried with her/him. The following summarizes the information collection proposal submitted to OMB:

Type of request—Reinstatement.

Originating office—Bureau of Consular Affairs.

Title of information collection—Request by U.S. National for and Report of Exception to Section 53.1, Title 22 of the Code of Federal Regulations.

Frequency—On occasion.

Form No.—DS–1423.

Respondents—U.S. citizens requesting a waiver to 22 CFR 53.1.

Estimated number of respondents—2,500.

Average hours per response—15 minutes.

Total estimated burden hours—625

Section 3504(h) of Public Law 96–511 does not apply.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook (202) 647–3538. Comments and questions should be directed to (OMB) Marshall Mills (202) 395–7340.

Dated: July 22, 1991

Warren E. Littrel,

Acting Assistant Secretary for Diplomatic Security.

[FR Doc. 91–19129 Filed 8–12–91; 8:45 am]

BILLING CODE 4710-22-M

Bureau of Diplomatic Security

[Public Notice 1452]

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

SUMMARY: The Retail Price Schedule Survey, which includes the Hotel and Restaurant Report and Living Pattern Questionnaire, is the primary source of information used by the Department of State in establishing and justifying temporary lodging, travel per diem and post (cost of living) allowances for all Federal civilian employees assigned abroad or traveling in foreign areas. It is also used by the Department of Defense to review travel cost data and establish cost of living allowances for Uniformed Services personnel outside the conterminous U.S. The following summarizes the information collection proposal submitted to OMB:

Type of Request—Reinstatement.

Originating Office—Bureau of Administration.

Title of Information Collection—Retail Price Schedule.

Frequency—Quarterly and Annually.

Form No.—DSP–23Y and DSP–23W.

Respondents—Merchants.

Estimated Number of Respondents—684.

Average Hours per Response—7 hours.

Total Estimated Burden Hours—1,817.

Section 3504(h) of Public Law 96–511 does not apply.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook (202) 647–3538. Comments and questions should be directed to (OMB) Marshall Mills (202) 395–7340.

Dated: August 1, 1991.

Sheldon J. Krys,

Assistant Secretary for Diplomatic Security.

[FR Doc. 91–19183 Filed 8–12–91; 8:45 am]

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Bureau of Diplomatic Security

[Public Notice 1452]

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

SUMMARY: The Retail Price Schedule Survey, which includes the Hotel and Restaurant Report and Living Pattern Questionnaire, is the primary source of information used by the Department of State in establishing and justifying temporary lodging, travel per diem and post (cost of living) allowances for all Federal civilian employees assigned abroad or traveling in foreign areas. It is also used by the Department of Defense to review travel cost data and establish cost of living allowances for Uniformed Services personnel outside the conterminous U.S. The following summarizes the information collection proposal submitted to OMB:

Type of Request—Reinstatement.

Originating Office—Bureau of Administration.

Title of Information Collection—Retail Price Schedule.

Frequency—Quarterly and Annually.

Form No.—DSP-23Y and DSP-23W.

Respondents—Merchants.

Estimated Number of Respondents—684.

Average Hours per Response—7 hours.

Total Estimated Burden Hours—1,817.

Section 3504(h) of Public Law 96–511 does not apply.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook (202) 647–3538. Comments and questions should be directed to (OMB) Marshall Mills (202) 395–7340.

Dated: August 1, 1991.

Sheldon J. Krys,
Assistant Secretary for Diplomatic Security.

[FR Doc. 91–19183 Filed 8–12–91; 8:45 am]

BILLING CODE 4710-22-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Acceptance of Noise Exposure Maps and Request for Review of Noise Compatibility Program for Molokai Airport, Kaunakakai, Molokai, HI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announce its determination that the noise exposure maps submitted by the State of Hawaii, Department of Transportation for the Molokai Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Molokai Airport under part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before January 28, 1992.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is August 1, 1991. The public comment period ends September 30, 1991.

FOR FURTHER INFORMATION CONTACT: David J. Welhouse, Airport Engineer/Planner, Honolulu Airports District Office, Federal Aviation Administration, P.O. Box 50244, Honolulu, Hawaii 96850, Telephone: (808) 541–1243. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Molokai Airport are in compliance with applicable requirements of part 150, effective August 1, 1991. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before January 28, 1992. This notice also announces the availability of this program for public review and comment.

Under section 103 of title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as the Act), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The State of Hawaii, Department of Transportation, submitted to the FAA on November 20, 1990 noise exposure maps, descriptions and other documentation which were produced during the preparation of the Molokai Airport Noise Compatibility Study dated December 24, 1990. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the State of Hawaii, Department of Transportation. The specific maps under consideration are Figures 4–1 and 6–4 in the submission. The FAA has determined that these maps for Molokai Airport are in compliance with applicable requirements. This determination is effective on August 1, 1991. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAA part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Molokai Airport, also effective on August 1, 1991. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before January 28, 1992.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., room 617, Washington, DC 20591.

Federal Aviation Administration, Western-Pacific Region, Airports Division, AWP-600, 15000 Aviation Blvd., room 3E24, Hawthorne, California 90261.

Federal Aviation Administration, Honolulu Airports District Office, 300

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Ala Moana Boulevard, room 7116, Honolulu, Hawaii 96813.
State of Hawaii, Department of Transportation, Airports Division, Honolulu International Airport, Gate 31, Honolulu, Hawaii 96819.
State of Hawaii, Department of Transportation, Airports Division, District Office Manager, Kahului Airport, Kahului, Maui, Hawaii 96732.
State of Hawaii, Department of Transportation, Airports Operation and Maintenance, Molokai Airport, Hoolehua, Molokai, Hawaii 96729.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Hawthorne, California on August 1, 1991.

Herman C. Bliss,

Manager, Airports Division, AWP-600 Western-Pacific Region.

[FR Doc. 91-19165 Filed 8-12-91; 8:45 am]

BILLING CODE 4910-13-M

Aviation Rulemaking Advisory Committee; Air Carrier Operations Subcommittee; Airport Noise Assessment Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of Airport Noise Assessment Working Group.

SUMMARY: Notice is given of the establishment of an Airport Noise Assessment Working Group by the Air Carrier Operations Subcommittee of the Aviation Rulemaking Advisory Committee. This notice informs the public of the activities of the Air Carrier Operations Subcommittee of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. David S. Potter, Executive Director, Air Carrier Operations Subcommittee, Flight Standards Service (AFS-201), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267-8166; FAX: (202) 267-5230.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The Air Carrier Operations Subcommittee was established at that meeting to provide advice and recommendations to the Director, FAA Flight Standards Service, on air carrier operations, pertinent regulations, and associated advisory material. At its July 31, 1991, meeting (56 FR 27783, June 17, 1991), the subcommittee established the Airport Noise Assessment Working Group.

Specifically, the working group's task is the following:

> Analyze and evaluate the noise distribution patterns that result from close-in and distant noise abatement departure profiles. Make comparisons between the current national standards, existing non-standard procedures, and proposed national standards and document the effects the noise patterns generated by the proposed standard would have on airport communities.

The Airport Noise Assessment Working Group will be comprised of experts from those organizations having an interest in the task assigned to it. A working group member need not necessarily be a representative of one of the organizations of the parent Air Carrier Operations Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has expertise in the subject matter and wishes to become a member of the working group should write the person listed under the caption "**FOR FURTHER INFORMATION CONTACT**" expressing that desire and describing his or her interest in the task and the expertise he or she would bring to the working group. The request will be reviewed with the subcommittee chair and working group leader, and the individual advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the formation and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the full committee and any subcommittees will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Airport Noise Assessment Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on August 7, 1991.

David S. Potter,

Executive Director, Air Carrier Operations Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 91-19171 Filed 8-12-91; 8:45 am]

BILLING CODE 4910-13-M

Aviation Rulemaking Advisory Committee; Air Carrier Operations Subcommittee; Autopilot Engagement Requirements Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of Autopilot Engagement Requirements Working Group.

SUMMARY: Notice is given of the establishment of an Autopilot Engagement Requirements Working Group by the Air Carrier Operations Subcommittee of the Aviation Rulemaking Advisory Committee. This notice informs the public of the activities of the Air Carrier Operations Subcommittee of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. David S. Potter, Executive Director, Air Carrier Operations Subcommittee, Flight Standards Service (AFS-201), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267-8166; FAX: (202) 267-5230.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The Air Carrier Operations Subcommittee was established at that meeting to provide advice and recommendations to the Director, FAA Flight Standards Service, on air carrier operations, pertinent regulations, and associated advisory material. At its first meeting on May 24, 1991 (56 FR 20492, May 3, 1991), the subcommittee established the Autopilot Engagement Requirements Working Group.

Specifically, the working group's task is the following:

> Determine the criteria for autopilot engagement. The current regulation (§ 121.579) does not address existing autopilot technology. This working group would require the expertise of TERPS specialists, flight test engineers, and air carrier pilots.

The Autopilot Engagement Requirements Working Group will be comprised of experts from those organizations having an interest in the task assigned to it. A working group member need not necessarily be a representative of one of the organizations of the parent Air Carrier Operations Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has expertise in the subject matter and wishes to become a member of the working group should write the person

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Aviation Rulemaking Advisory Committee; Air Carrier Operations Subcommittee; Autopilot Engagement Requirements Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of Autopilot Engagement Requirements Working Group.

SUMMARY: Notice is given of the establishment of an Autopilot Engagement Requirements Working Group by the Air Carrier Operations Subcommittee of the Aviation Rulemaking Advisory Committee. This notice informs the public of the activities of the Air Carrier Operations Subcommittee of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. David S. Potter, Executive Director, Air Carrier Operations Subcommittee, Flight Standards Service (AFS–201), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267–8166; FAX: (202) 267–5230.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The Air Carrier Operations Subcommittee was established at that meeting to provide advice and recommendations to the Director, FAA Flight Standards Service, on air carrier operations, pertinent regulations, and associated advisory material. At its first meeting on May 24, 1991 (56 FR 20492, May 3, 1991), the subcommittee established the Autopilot Engagement Requirements Working Group.

Specifically, the working group's task is the following:

> Determine the criteria for autopilot engagement. The current regulation (§ 121.579) does not address existing autopilot technology. This working group would require the expertise of TERPS specialists, flight test engineers, and air carrier pilots.

The Autopilot Engagement Requirements Working Group will be comprised of experts from those organizations having an interest in the task assigned to it. A working group member need not necessarily be a representative of one of the organizations of the parent Air Carrier Operations Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has expertise in the subject matter and wishes to become a member of the working group should write the person listed under the caption "**FOR FURTHER INFORMATION CONTACT**" expressing that desire and describing his or her interest in the task and the expertise he or she would bring to the working group. The request will be reviewed with the subcommittee chair and working group leader, and the individual advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the formation and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the full committee and any subcommittees will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Autopilot Engagement Requirements Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on August 7, 1991.

David S. Potter,

Executive Director, Air Carrier Operations Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 91–19172 Filed 8–12–91; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee; Air Carrier Operations Subcommittee; Wet Leasing Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of Wet Leasing Working Group.

SUMMARY: Notice is given of the establishment of a Wet Leasing Working Group by the Air Carrier Operations Subcommittee of the Aviation Rulemaking Advisory Committee. This notice informs the public of the activities of the Air Carrier Operations Subcommittee of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. David S. Potter, Executive Director, Air Carrier Operations Subcommittee, Flight Standards Service (AFS–201), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267–8166; FAX: (202) 267–5230.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The Air Carrier Operations Subcommittee was established at that meeting to provide advice and recommendations to the Director, FAA Flight Standards Service, on air carrier operations, pertinent regulations, and associated advisory material. At its first meeting on May 24, 1991 (56 FR 20492, May 3, 1991), the subcommittee established the Wet Leasing Working Group.

Specifically, the working group's task is the following:

> Determine the criteria that parties to lease agreements must meet including operational control criteria, the kinds of operations authorized, and the specific procedures and limitations to be incorporated into Parts 121 and 135 operations specifications.

The Wet Leasing Working Group will be comprised of experts from those organizations having an interest in the task assigned to it. A working group member need not necessarily be a representative of one of the organizations of the parent Air Carrier Operations Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has expertise in the subject matter and wishes to become a member of the working group should write the person listed under the caption "**FOR FURTHER INFORMATION CONTACT**" expressing that desire and describing his or her interest in the task and the expertise he or she would bring to the working group. The request will be reviewed with the subcommittee chair and working group leader, and the individual advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the formation and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the full committee and any subcommittees will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Wet Leasing Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on August 7, 1991.

David S. Potter,

Executive Director, Air Carrier Operations Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 91–19173 Filed 8–12–91; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee; Air Carrier Operations Subcommittee; Fuel Requirements Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of Fuel Requirements Working Group.

SUMMARY: Notice is given of the establishment of a Fuel Requirements Working Group by the Air Carrier Operations Subcommittee of the Aviation Rulemaking Advisory Committee. This notice informs the public of the activities of the Air Carrier Operations Subcommittee of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. David S. Potter, Executive Director, Air Carrier Operations Subcommittee, Flight Standards Service (AFS–201), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267–8166; FAX (202) 267–5230.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The Air Carrier Operations Subcommittee was established at that meeting to provide advice and recommendations to the Director, FAA Flight Standards Service, on air carrier operations, pertinent regulations, and associated advisory material. At its first meeting on May 24, 1991 (56 FR 20492, May 2, 1991), the subcommittee established the Fuel Requirements Working Group.

Specifically, the working group's task is the following:

> Determine fuel supply requirements for international and overseas operations including criteria for minimum fuel, diversion fuel, contingency fuel and alternate fuel. Determine fuel requirements related to redispatching. Develop regulatory language for revision of Parts 121 and 135 and advisory material for publication as one or more advisory circulars.

The Fuel Requirements Working Group will be comprised of experts from those organizations having an interest in

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the task assigned to it. A working group member need not necessarily be a representative of one of the organizations of the parent Air Carrier Operations Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has expertise in the subject matter and wishes to become a member of the working group should write the person listed under the caption "**FOR FURTHER INFORMATION CONTACT**" expressing that desire and describing his or her interest in the task and the expertise he or she would bring to the working group. The request will be reviewed with the subcommittee chair and working group leader, and the individual advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the formation and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the full committee and any subcommittees will be open to the public except as authorized by section (10)(d) of the Federal Advisory Committee Act. Meetings of the Fuel Requirements Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on August 7, 1991.

David S. Potter,

Executive Director, Air Carrier Operations Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 91-19174 Filed 8-12-91; 8:45 am]

BILLING CODE 4910-13-M

Aviation Rulemaking Advisory Committee; Air Carrier Operations Subcommittee; Noise Abatement Takeoff Profiles Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of Noise Abatement Takeoff Profiles Working Group.

SUMMARY: Notice is given of the establishment of a Noise Abatement Takeoff Profiles Working Group by the Air Carrier Operations Subcommittee of the Aviation Rulemaking Advisory Committee. This notice informs the public of the activities of the Air Carrier Operations Subcommittee of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. David S. Potter, Executive Director, Air Carrier Operations Subcommittee, Flight Standards Service (AFS-201), 800 Independence Avenue, SW., Washington, DC 20591, telephone: (202) 267-8166; FAX: (202) 267-5230.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The Air Carrier Operations Subcommittee was established at the meeting to provide advice and recommendations to the Director, FAA Flight Standards Service, on air carrier operations, pertinent regulations, and associated advisory material. At its first meeting on May 24, 1991 (56 FR 20492, May 3, 1991), the subcommittee established the Noise Abatement Takeoff Profiles Working Group.

Specifically, the working group's task is the following:

> Determine close in (flaps down) and distant (flaps up) standard takeoff profiles and prepare the material for incorporation into Advisory Circular 91-53.

The Noise Abatement Takeoff Profiles Working Group will be comprised of experts from those organizations having an interest in the task assigned to it. A working group member need not necessarily be a representative of one of the organizations of the parent Air Carrier Operations Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has expertise in the subject matter and wishes to become a member of the working group should write the person listed under the caption "**FOR FURTHER INFORMATION CONTACT**" expressing that desire and describing his or her interest in the task and the expertise or she would being to the working group. The request will be reviewed with the subcommittee chair and working group leader, and the individual advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the formation and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the full committee and any subcommittees will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Noise Abatement Takeoff Profiles Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on August 7, 1991.

David S. Potter,

Executive Director, Air Carrier Operations Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 91-19175 Filed 8-12-91; 8:45 am]

BILLING CODE 4910-13-M

Aviation Rulemaking Advisory Committee; Air Carrier Operations Subcommittee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of Air Carrier Operations Subcommittee.

SUMMARY: Notice is given of the establishment of an Air Carrier Operations Subcommittee under the FAA Aviation Rulemaking Advisory Committee. This notice informs the public of the activities of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. David S. Potter, Executive Director, Air Carrier Operations Subcommittee, Flight Standards Service (AFS-201), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267-8166; FAX: (202) 267-5230.

SUPPLEMENTARY INFORMATION: On January 14, 1991, the Federal Aviation Administration (FAA) announced the establishment of the Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991). The committee charter became effective on February 5, 1991, when notices of establishment were sent to the appropriate Congressional Committees. The advisory committee provides advice and recommendations to the FAA concerning the full range of the FAA's rulemaking activity with respect to safety-related issues, including aircraft certification. The committee held its first meeting at Baltimore, MD, on May 23, 1991 (56 FR 20492, May 3, 1991). At that meeting, the committee formed several subcommittees and charged them with developing advisory recommendations in different safety-related areas. The subcommittee Chairs and Executive Directors were named, and the member organizations identified. Finally, several specific tasks were assigned to the various subcommittees. At this first meeting, the committee also adopted procedures concerning the operation of the committee, its subcommittees, and their working groups.

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Issued in Washington, DC, on August 7, 1991.

David S. Potter,

Executive Director, Air Carrier Operations Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 91–19175 Filed 8–12–91; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee; Air Carrier Operations Subcommittee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of Air Carrier Operations Subcommittee.

SUMMARY: Notice is given of the establishment of an Air Carrier Operations Subcommittee under the FAA Aviation Rulemaking Advisory Committee. This notice informs the public of the activities of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. David S. Potter, Executive Director, Air Carrier Operations Subcommittee, Flight Standards Service (AFS–201), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267–8166; FAX: (202) 267–5230.

SUPPLEMENTARY INFORMATION: On January 14, 1991, the Federal Aviation Administration (FAA) announced the establishment of the Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991). The committee charter became effective on February 5, 1991, when notices of establishment were sent to the appropriate Congressional Committees. The advisory committee provides advice and recommendations to the FAA concerning the full range of the FAA's rulemaking activity with respect to safety-related issues, including aircraft certification. The committee held its first meeting at Baltimore, MD, on May 23, 1991 (56 FR 20492, May 3, 1991). At that meeting, the committee formed several subcommittees and charged them with developing advisory recommendations in different safety-related areas. The subcommittee Chairs and Executive Directors were named, and the member organizations identified. Finally, several specific tasks were assigned to the various subcommittees. At this first meeting, the committee also adopted procedures concerning the operation of the committee, its subcommittees, and their working groups.

Under the procedures adopted by the full committee, each subcommittee meeting is open to the public, except as authorized in section 10(d) of the Federal Advisory Committee Act. Also, notice is given beforehand of the subcommittee meeting agenda. A subcommittee may form working groups made up of experts from those having an interest in an issue to do tasks assigned to the subcommittee. Working group meetings need not be open to the public. This is because working groups must bring their work product back to the subcommittee for full, open, and substantive discussion, rather than presenting it directly to the FAA. The subcommittee may: (1) Accept a working group work product and send it directly to the FAA; (2) Modify the work product and send it directly to the FAA; or (3) Return the work product to the working group with instructions for further activity. Thus, while the functions of a subcommittee are solely advisory, they create a framework within which interested parties may negotiate proposed or final rules and present their consensus to the FAA for action. The more complete these products, the more likely they are to be accepted by the FAA without change and formally published as proposed or final rules. The activities of the Aviation Rulemaking Advisory Committee, and its subcommittees, are consistent with the newly enacted Negotiated Rulemaking Act of 1990 (P.L. 101–648).

The Air Carrier Operations Subcommittee will provide advice and recommendations to the Director, Flight Standards Service, FAA, on air carrier operations, pertinent regulations, and associated advisory material. The membership of the Air Carrier Operations Subcommittee consists solely of the following members of the Aviation Rulemaking Advisory Committee:

- Aerospace Industries Association (AIA).
- Air Freight Association.
- Air Line Pilots Association (ALPA).
- Air Transport Association of America (ATA).
- Airbus Industrie.
- Airline Passengers Association of North America, Inc. (APANA).
- Airport Operators Council International/American Association of Airport Executives (AOCI/AAAE).
- Alaska Air Carriers Association (AACA).
- Allied Pilots Association (APA).
- Association of Flight Attendants (AFA).
- Aviation Consumer Action Project (ACAP).
- Boeing Commercial Airplane Group.
- Flight Dispatchers, Meteorologists, & Operations Specialists Union.
- Flight Safety Foundation (FSF).
- Helicopter Association International (HAI).
- International Air Transport Association (IATA).
- International Foundation for Airline Passengers.
- Joint Aviation Authority (JAA).
- Joint Council of Flight Attendants.
- McDonnell Douglas Corporation.
- National Air Carrier Association, Inc. (NACA).
- National Air Transportation Association, Inc. (NATA).
- National Association of Trade and Technical Schools (NATTS).
- NOISE.
- Regional Airline Association (RAA).

Notices establishing five Air Carrier Operations Subcommittee working groups (the Noise Abatement Takeoff Profiles, fuel Requirements, Wet Leasing, Autopilot Engagement Requirements, and Airport Noise Assessment Working Groups) are published elsewhere in this issue of the **Federal Register**. The Secretary of Transportation has determined that the formation and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties imposed on the FAA by law.

Issued in Washington, DC, on August 7, 1991.

David S. Potter,

Executive Director, Air Carrier Operations Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 91–19176 Filed 8–12–91; 8:45 am]

BILLING CODE 4910–13–M

International Conference on Aging Aircraft and Structural Airworthiness

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting sponsored jointly by the Federal Aviation Administration and the National Aeronautics and Space Administration (NASA) concerning aging aircraft and structural airworthiness.

DATES: The meeting will be held on November 19–21, 1991, at 8:30 a.m. each day.

ADDRESSES: The meeting will be held at the Hyatt Regency Hotel, 400 New Jersey Avenue NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Mr. Bernard DeAnnuntis, Atlantic Science and Technology Corporation, Cherry Hill, New Jersey, telephone (609) 751–0237.

SUPPLEMENTARY INFORMATION: The FAA and NASA will jointly sponsor an International Conference on Aging Aircraft and Structural Airworthiness on November 19–21, 1991. The purpose of the meeting is to provide the aviation community with information with respect to the progress made by the FAA, NASA, and the world aerospace industry in solving structural related aging aircraft problems. Future concerns will be addressed and technical activities planned. Following the opening morning session on the first day, the conference will include a review of ongoing activities in structural performance, nondestructive evaluation, maintenance and repair, international activities, and commuters. All sessions will include a question and answer period.

Attendance is open to the interested public. There will be a registration fee of $150.000 Interested persons may register in advance by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT,** or during the morning of November 19 at the conference location.

There will be a block of rooms set aside at the Hyatt Regency for attendees desiring accommodations. Please contract the Hyatt Regency Hotel, telephone (202) 737–1234.

Issued in Atlantic City, New Jersey, on July 22, 1991.

Mr. Bruce M. Singer,

Deputy Service Director, Engineering, Research, and Development Service, FAA Technical Center.

[FR Doc. 91–19166 Filed 8–12–91; 8:45 am]

BILLING CODE 4910–13–M

Martime Administration

[Docket S–861]

American President Lines, Ltd.; Application for Amendment of Existing Waiver of Section 804(a) of the Merchant Marine Act, 1936, as Amended

American President Lines, Ltd. (APL), by application dated July 23, 1991, requests amended waiver of the provisions of section 804(a) of the Merchant Marine Act, 1936, as amended, for foreign-flag operations of APL, under Operating-Differential Subsidy Agreement, Contract MA/MSB–417.

APL's Existing Services

APL now performs four subsidized containership services described in appendix A to APL's operating subsidy agreement. Its two transpacific services cover the range of former Trade Route (TR) 29 to/from California for up to 108 annual sailings (Line A) and to/from Oregon-Washington for up to 80 annual sailings (Line B). Former TR 29 includes ports in the Far East on the continent of Asia from the U.S.S.R. to Thailand, inclusive, Japan, Taiwan, and the Philippines. Under active consideration by the Maritime Administration is APL's application to conform its Lines A and B services to new TR 2. APL's two Extension services add authority to serve ports of Southeast and South Asia and the Persian Gulf-Red Sea on up to 28 sailings to/from California (Line A Extension) and up to 80 sailings to/from Oregon-Washington (Line B Extension). APL is permitted by its contract to provide any part of the service by transfer or relay of cargo between subsidized vessels at any foreign port on the authorized services.

APL performs its Line A and Line B services primarily with line-haul vessels making direct calls at most major foreign TR 29 ports, including Yokohama, Kobe, and Okinawa, Japan; Kaohsiung and Chi-lung, Taiwan; and Hong Kong. Korea and the Philippines are served by APL's subsidized feeder vessels

The APL Extension services are currently performed by a feeder network that includes four subsidized U.S.-flag APL owned vessels providing service on a relay basis to Singapore, Colombo, and Fujayrah via Kaohsiung, and a fifth U.S.-flag APL owned vessel serving the Persian Gulf over Fujayrah.

APL also operates chartered foreign-flag feeders in and to Extension areas under authority of a section 804 waiver (Waiver 6 in appendix G to APL's operating subsidy contract, granted June 3, 1988, for a period of five years—Docket S–819). That current waiver authority is to permit APL to own or charter and operate 10 foreign-flag vessels as described:

No. ships	Capacity	Between	Service area
1	350 FEU.	Extension [1] port.	[3] Persian Gulf—Gulf of Oman.
	port coverage:	Fujayrah or Khor al Fakkan.	Dubai, Ad Dammam, Al Kuwayt, Bahrain, Masqat, inducement ports.
2 [2]	450 FEU each.	Extension area port.	Karachi, other ports in India.
	port coverage:	Fujayrah	Krachi, ports in India.
2 [2]	950 FEU each.	Extension area port.	Karachi, other ports in India, Gulf of Oman.
	port coverage:	Colombo.	Karachi, ports in India, Fujayrah, Masqat.
2	400 FEU each.	Extension area port.	[3]west coast India.
	port coverage:	Colombo or Fujayrah, Singapore, or Madras.	Bombay, Mangalore, Porbandar, Cochin, optional Jamnagar/Tuticorin.
3	300 FEU each.	Extension area port.	Bay of Bengal ports.
	port coverage:	Colombo or Singapore.	Calcutta, Chalna, Chittagong, Madras, inducement Vishakhapatnam/Paradip.
1	250 FEU.	Singapore.	mainland Malaysia.
	port coverage:	Singapore.	Port Kelang, Pinang, Pasir Gudang.
1	300 FEU.	Singapore.	Indonesia.
	Port coverage:	Singapore.	Djakarta, optional Surabaya/Semarang.

[1] As described in Appendix A.

[2] Alternative authority; either deployment may be utilized, but not at the same time.

[3] The west coast India feeder vessels may, after a voyage to India, upon return to the relay port, proceed on a voyage to the Persian Gulf-Gulf of Oman, after which, upon return to the relay port, the vessels will commence the next voyage to the west coast of India.

In connection with the unusual cargo capacity demands in connection with Desert Storm, the above described waiver was temporarily modified commencing on January 25, 1991, for a period of 210 days, as follows:

(1) to the extent not already included, the port coverage of APL's three feeder services operating in or to the Arabian Sea, Gulf of Oman, and Persian Gulf—the Persian Gulf-Gulf of Oman service, the Karachi service, and the west coast India service—be expanded to include ports in the Gulf of Oman (principally Fujayrah and Masqat), Oman (principally Mina Raysut), and Karachi;

(2) An increase from one to two in the number of feeder vessels of 700 FEU capacity that APL may operate in its Persian Gulf-Gulf of Oman feeder;

(3) Authority to operate a single feeder vessel of up to 350 FEU capacity between either Colombo or Fujayrah and ports in the Red Sea exclusive of Egypt and Ethiopia;

(4) Authority to operate a three vessel feeder, using vessels of up to 700 FEU capacity, between Singapore and one or more of APL's major extension area ports—Colombo, Madras, Bombay, Cochin, Karachi, Fujayrah, and Dammam; and

(5) In addition to the four specific authorities next above, authority to coordinate all APL feeder services providing capacity to or through the Arabian Sea (i.e., the existing Persian Gulf/Gulf of Oman, Karachi, and the west coast India services, and the added Red Sea and Singapore West Asian services) by combining sailings and/or interchanging vessels operated in those services. Any such combination and interchange authority, as to any individual service area component, would be performed subject to the overall capacity limitation contemplated in that service area's individual authority.

Of those authorities, APL has identified some services which the Operator now requests be included in the waiver, until June 8, 1993.

The requested amendments are (1) to serve the Persian Gulf-Gulf of Oman with two 350 FEU feeders, or, alternatively one 700 FEU feeder, and to include all of Oman in the service area; (2) the Red Sea feeder service, including Gulf of Aden and Oman, but excluding Egypt and Ethiopia, be continued with a single 350 FEU vessel; (3) to serve the Indian subcontinent in the Madras-Colombo-Bombay range with two 350 FEU vessels.

The APL letter application contains an attachment which is a restatement of the entire proposed Waiver 6, including the next above-described amendments. The proposed waiver description is as follows:

Service area
[3] Persian Gulf—Gulf of Oman.
Dubai, Ad Dammam, Al Kuwayt, Bahrain, Masqat, inducement ports.
Karachi, other ports in India.
Krachi, ports in India.
Karachi, other ports in India, Gulf of Oman.
Karachi, ports in India, Fujayrah, Masqat.
[3]west coast India.
Bombay, Mangalore, Porbandar, Cochin, optional Jamnagar/ Tuticorin.
Bay of Bengal ports.
Calcutta, Chalna, Chittagong, Madras, inducement Vishakhapatnam/ Paradip.
mainland Malaysia.
Port Kelang, Pinang, Pasir Gudang.
Indonesia.
Djakarta, optional Surabaya/ Semarang.

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APL's three feeder
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Sea, Gulf of Oman, and Persian Gulf—the Persian Gulf-Gulf of Oman service, the Karachi service, and the west coast India service—be expanded to include ports in the Gulf of Oman (principally Fujayrah and Masqat), Oman (principally Mina Raysut), and Karachi;

(2) An increase from one to two in the number of feeder vessels of 700 FEU capacity that APL may operate in its Persian Gulf-Gulf of Oman feeder;

(3) Authority to operate a single feeder vessel of up to 350 FEU capacity between either Colombo or Fujayrah and ports in the Red Sea exclusive of Egypt and Ethiopia;

(4) Authority to operate a three vessel feeder, using vessels of up to 700 FEU capacity, between Singapore and one or more of APL's major extension area ports—Colombo, Madras, Bombay, Cochin, Karachi, Fujayrah, and Dammam; and

(5) In addition to the four specific authorities next above, authority to coordinate all APL feeder services providing capacity to or through the Arabian Sea (i.e., the existing Persian Gulf/Gulf of Oman, Karachi, and the west coast India services, and the added Red Sea and Singapore West Asian services) by combining sailings and/or interchanging vessels operated in those services. Any such combination and interchange authority, as to any individual service area component, would be performed subject to the overall capacity limitation contemplated in that service area's individual authority.

Of those authorities, APL has identified some services which the Operator now requests be included in the waiver, until June 8, 1993.

The requested amendments are (1) to serve the Persian Gulf-Gulf of Oman with two 350 FEU feeders, or, alternatively one 700 FEU feeder, and to include all of Oman in the service area; (2) the Red Sea feeder service, including Gulf of Aden and Oman, but excluding Egypt and Ethiopia, be continued with a single 350 FEU vessel; (3) to serve the Indian subcontinent in the Madras-Colombo-Bombay range with two 350 FEU vessels.

The APL letter application contains an attachment which is a restatement of the entire proposed Waiver 6, including the next above-described amendments. The proposed waiver description is as follows:

No. ships	Approximate capacity	Between	Service area
2 [1]	350 FEU each	Extension area port	Persian Gulf—Gulf of Oman, Oman.[3]
	Port coverage	Fujayrah or Kher al Fakkan	Dubai, Ad Dammam, Al Kuwayt, Bahrain, Masqat, Mina Raysut, inducement ports.
1 [1]	700 FEU	Extension area port	Persian Gulf—Gulf of Oman, Oman.[3]
	Port coverage	Fujayrah or Khor al Fakkan	Dubai Ad Dammam, Al Kuwayt, Bahrain, Masqat, Mina Raysut, inducement ports.
2 [2]	450 FEU each	Estension area port	Karachi, other ports in India.
	Port coverage	Fujayren	Karachi, ports in India.
2 [2]	950 FEU each	Extension area port	Karachi, other ports in India, Gulf of Oman, Oman.
	Port coverage	Colombo	Karachi, ports in India, Fujayrah, Masqat, Mina Raysut.
2	400 FEU each	Extension area port	west coast India.[3]
	Port coverage	Colombo or Fujayrah, Singapore, or Madras	Bombay, Mangalore, Porbendar, Cochin, optional Jamnagar/ Tuticorin.
3	300 FEU each	Extension port	Bay of Bengal ports.
	Port coverage	Colombo or Singapore	Calcutta, Chalna, Chittagong, Madras, inducement Vishakhapatnam/Paradip.
1	250 FEU	Singapore	mainland Malaysia/
	Port coverage	Singapore	Port Kelang, Pinang, Pasir Gudang.
1	300 FEU	Singapore	Indonesia.
	Port coverage	Singapore	Djakarta, optional Surabaya/Semarang.
1	350 FEU	Extension area port	Red Sea (excluding Egypt and Ethiopia) Gulf of Aden, Oman.
	Port coverage	Colombo or Fujayrah	Juddah, Hudaydah (Al Ahmedi) Port Sudan, Aqaba.
2	350 FEU each	Extension area port	Indian Subcontinent.
	Port coverage	Singapore	Colombo, Madras, Bombay, Cochin.

[1] Alternative authority; either deployment may be utilized, but not at the same time.

[2] Alternative authority; either deployment may be utilized, but not at the same time.

[3] The west coast India feeder vessels may, after a voyage to India, upon return to the relay port, proceed on a voyage to the Persian Gulf-Gulf of Oman, after which, upon return to the relay port, the vessels will commence the next voyage to the west coast India.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request within the meaning of section 804 of the Act and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5 p.m. on August 27, 1991. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies)).

By Order of the Maritime Administrator.

Dated: August 7, 1991.

Joel C. Richard,

Acting Secretary, Maritime Administration.

[FR Doc. 91–19131 Filed 8–12–91; 8:45 am]

BILLING CODE 4910-81-M

Maritime Administration

[Docket S-883]

American President Lines, Ltd.; Application for a Waiver of Section 804(a) of the Merchant Marine Act, 1936, as Amended, To Permit Foreign-Flag Slot Charters

American President Lines, Ltd. (APL), by application dated August 2, 1991, requests waiver of the provisions of section 804 of the Merchant Marine Act, 1936, as amended, (Act), for foreign-flag slot charters by APL on vessels of Orient Overseas Container Line Inc. (OOCL) pursuant to APL's participation in a reciprocal slot exchange and coordinated sailing agreement, designated Federal Maritime Commission (FMS) No. 203–011340, and in a Master Slot Charter Agreement, both between APL and OOCL.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request within the meaning of section 804 of the Act and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC. 20590. Comments must be received no later than 5 p.m. on August 27, 1991. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies)).

By Order of the Maritime Administrator.

Dated: August 8, 1991.

Joel C. Richard,

Acting Secretary, Maritime Administration.

[FR Doc. 91–19181 Filed 8–12–91; 8:45 am]

BILLING CODE 4910-81-M

[Docket S-882]

Lykes Bros. Steamship Co., Ltd.; Application for authorization to act as general agent for a foreign-flag company

By application of July 26, 1991, Lykes Bros. Steamship Co., Inc. (Lykes) requests the Maritime Administration's authority to the extent required to act as general agent for Di Gregorio Navegacao Ltda. (De Gregorio) in the trade between the east coast of South America and the U.S.

Lykes has been approached by Di Gregorio, a Brazilian company, to act as their general agent throughout the United States and appoint on their behalf subagents as necessary in the United States to represent their soon-to-be-initiated services. Di Gregorio has been granted operating authority by the Brazilian Government to initiate a liner service to the United States and has contracted for two RO/RO vessels presently under construction in Brazil. To establish a service and to prepare for introduction upon delivery of the two RO/RO vessels now under construction, Di Gregorio intends to commence this service during the third quarter of 1991 with chartered-in combination breakbulk/container vessels operating on a 42-day voyage.

The service would commence as a combination breakbulk/container service employing vessels of 15–25,000 deadweight tons and a container capacity of 300–700 TEU. This would afford 21-day intervals between sailings. Upon delivery of their first RO/RO, it is anticipated that it would become a three-vessel service with a 14-day frequency and, upon delivery of the second RO/RO vessel, would become a four-vessel service with 10-day frequency between ports on the east coast of South America and the United States. Investigations are also under way for a similar service between the east coast of South America and the gulf coast of the U.S. As general agent for these Di Gregorio services, Lykes would perform sales and solicitation services, equipment management services, husbanding, documentation, advertising, and all other necessary agency functions requisite for a successful Di Gregorio service.

Lykes believes that the special circumstances behind this application are extremely unique. Lykes was selected by Di Gregorio as the company best situated to assist this fledgling operator from a developing country to successfully launch a maritime venture between the east coast of South America and the United States. This proposed relationship between a Brazilian and an American company provides a unique opportunity for mutually beneficial cooperation between citizens of the two trading partners which, in turn, Lykes feels, could strengthen international relations between the U.S. and Brazil.

Lykes asserts that this proposed agency agreement presents a valuable opportunity for Lykes. Denial of a waiver would result in the loss of this business opportunity without any provable gain or benefit to any other U.S.-flag carrier, subsidized or unsubsidized. Lykes maintains that Di Gregorio will enter the U.S./Brazil trade whether or not Lykes is granted a waiver to meet its agency requirements in the U.S. Consequently, Di Gregorio will need to procure agency services from some company whether it be Lykes or another carrier or agent.

Lykes contends that there is substantial good cause for granting a waiver for this agency agreement because the proposed agency agreement is a prudent business opportunity for Lykes to increase the efficiency of its shore side operations and to reduce the overhead costs of those operations to Lykes.

Lykes avers that the additional revenue earned as a result of the agency agreement will contribute to Lykes' overall operating results by allowing it to recover overhead costs that would otherwise have to be shouldered completely by Lykes. This, of course, will strengthen the economic health of Lykes, whether or not the overall financial impact of the agreement is significant from an accounting standpoint in terms of Lykes' balance sheet.

Also, according to Lykes, there is no possibility of subsidy diversion under this agreement, which is a principal concern under section 804.

The principal component of the Di Gregorio service in the initial stages will be the breakbulk component, which Lykes states will not be competing with any American flag services. If service to the gulf is initiated, it will only compete with breakbulk services presently provided by Lykes on an inducement basis. In fact, Lykes views such competition to be beneficial rather than detrimental. An increase in service to the shipping public should have the effect of developing a greater interest in, if not a demand for, liner service. This, in turn, would benefit Lykes' inducement service by providing more opportunities for providing such service.

For containerized cargo, Lykes notes that Di Gregorio's partial containership service will initially compete with the extensive containership service of Crowley Maritime, which presently employs three U.S.-flag container vessels and three foreign-flag container vessels with an approximate voyage length of 42 days between the U.S. east coast and the east coast of South America.

With respect to the RO/RO component of Di Gregorio's service, which will materialize in 1992–93 upon delivery of the two RO/RO vessels currently under construction in Brazil, Lykes states that there is no U.S.-flag RO/RO operator presently in any of the U.S. trades to and from the east coast of South America.

In light of the above, Lykes feels that there is serious doubt that the introduction of this new service will have any adverse effect at all on U.S.-flag service in the U.S./Brazil trade, much less that the provision of agency services by Lykes will have such an effect. To the extent that there were any adverse effect, in Lykes' view, it could only be insignificant.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request within the meaning of section 804 of the Merchant Marine Act, 1936, as amended, and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5 p.m. on August 27, 1991. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies)).

Dated: August 7, 1991.

By Order of the Maritime Administrator

Joel C. Richard,

Acting Secretary, Maritime Administration.

[FR Doc. 91–19130 Filed 8–12–91; 8:45 am]

BILLING CODE 4910-81-M

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This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request within the meaning of section 804 of the Merchant Marine Act, 1936, as amended, and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5 p.m. on August 27, 1991. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies)).

Dated: August 7, 1991.

By Order of the Maritime Administrator

Joel C. Richard,

Acting Secretary, Maritime Administration.

[FR Doc. 91–19130 Filed 8–12–91; 8:45 am]

BILLING CODE 4910-81-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 156
Tuesday, August 13. 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Friday, August 16, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 9, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–19391 Filed 8–9–91; 3:10 pm]

BILLING CODE 6210-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Notice forwarded to Federal Register on August 6, 1991.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, August 14, 1991.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting:

Proposal to revise the Federal Reserve's policy regarding borrowing by examiners.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: August 9, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–19392 Filed 8–9–91; 3:01 pm]

BILLING CODE 6210-01-M

AGENCY HOLDING THE MEETING:

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 12:00 noon, Monday, August 19, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed purchase of check processing equipment within the Federal Reserve System.
2. Proposed acquisition of currency processing equipment within the Federal Reserve System.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 9, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–19389 Filed 8–9–91; 8:45 am]

BILLING CODE 6210-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–91–25]

TIME AND DATE: August 21, 1991 at 2:30 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda of future meetings.
2. Minutes.
3. Ratifications.
4. Petitions and complaints.
5. Inv. 731–TA–525 (Preliminary) (Nepheline Syenite from Canada)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 205–2000.

Dated: August 8, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–19338 Filed 8–9–91; 1:02 pm]

BILLING CODE 7020-02-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–91–24]

TIME AND DATE: August 15, 1991 at 9:30 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

In conformity with 19 C.F.R. § 201.35(c)(1), Commissioners, Brunsdale, Lodwick, Rohr, and Newquist determined that the Commission business required that a meeting be called with less than 10 days' notice and that no earlier announcement of such meeting was possible, and directed the issuance of this notice at the earliest practicable time.

MATTERS TO BE CONSIDERED:

1. Agenda for week of August 26, 1991.
2. Minutes.
3. Ratifications.
4. Petitions and complaints.
5. Inv. 731–TA–469 (Final) (HIC Flat Panel Displays from Japan)—briefing and vote.
6. Inv. 731–TA–485 (Final) (Gene Amplification Thermal Cyclers from the United Kingdom)—briefing and vote.
7. Any items left over from previous agenda.
8. Report of The Secretary of action pursuant to memorandum CO62–0–038.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 205–2000.

Dated: August 8, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–19337 Filed 8–9–91; 12:46 pm]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 5–91, Notice of Meetings, Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral

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hearings for the transaction of Commission business and other matters specified, as follows:

Date, Time and Subject Matter

Thurs., Aug. 22, 1991 at 10:00 a.m.—Consideration of Proposed Decisions on claims against Iran.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 601 D Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 601 D Street, NW., Room 10000, Washington, DC 20579. Telephone: (202) 208–7727.

Dated at Washington, DC on August 9, 1991.

Judith H. Lock,

Administrative Officer.

[FR Doc. 91-19362 Filed 8-9-91; 2:22 pm]

BILLING CODE 4410-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Week of August 12, 19, 26, and September 2, 1991.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of August 12

Friday, August 16

9:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2, 5, & 7)

10:00 a.m.
Briefing on Uncertainties in Implementing the EPA HLW Standards (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Program Fraud Civil Remedies Act (10 CFR Part 13) —Final Rule (Tentative)
b. Appeal of LBP–91–19 (Arizona Public Service Company, et al. (Palo Verde Nuclear Station, Units Nos. 1, 2 and 3)) (Tentative)

Week of August 19—Tentative

Wednesday, August 21

9:30 a.m.
Briefing on Program for Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC) for Advanced Reactors (Public Meeting)

2:00 p.m.
Briefing by NRC Staff on International Programs (Public Meeting)

3:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of August 26—Tentative

Wednesday, August 28

11:30 a.m.
Affirmative/Discussion and Vote (Public Meeting) (if needed)

Week of September 2—Tentative

There are no meetings scheduled for the Week of September 2.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserve basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings Call (Recording)—(301) 492–0292

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

Dated: August 9, 1991.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 91-19376 Filed 8-9-91; 2:23 p.m.

BILLING CODE 7590-01-M

Corrections

This section of the FEDERAL RE
contains editorial corrections of p
published Presidential, Rule, Propo
Rule, and Notice documents. The
corrections are prepared by the
the Federal Register. Agency pre
corrections are issued as signed
documents and appear in the ap
document categories elsewhere in
issue.

DEPARTMENT OF EDUCATION

[CFDA No. 84.031A, CFDA No. 84.0

Notice Inviting Applications fo
Designation as an Eligible Insti
for Fiscal Year 1992 for the
Strengthening Institutions Pro
and the Endowment Challenge
Program

Correction

In notice document 91-18207 b
on page 36780 in the issue of Th
August 1, 1991, make the followi
corrections:

1. On page 36780, in the third
insert the following above the th
table:

"Annual Income Levels (Cont
Alaska"

2. On page 36781, in the first c
insert the following above the ta
"**Hawaii**"

BILLING CODE 1505-01-D

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determin

Correction

In rule document 91-16874 beg
on page 32330 in the issue of Tu
July 16, 1991, make the following
correction:

On pages 32331 and 32332, in
table, remove the heading readi
"Proposed Base (100-year) Floo
Elevations".

BILLING CODE 1505-01-D

ioners' Conference
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ad Closed.

ONSIDERED:

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Standards (Public

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Civil Remedies Act (10
Final Rule (Tentative)
-91–19 (Arizona Public
ny, et al. (Palo Verde
, Units Nos. 1, 2 and 3))

—Tentative

21

m for Inspections, Tests,
Acceptance Criteria
vanced Reactors (Public

Briefing by NRC Staff on International Programs (Public Meeting)

3:00 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of August 26—Tentative

Wednesday, August 28

11:30 a.m.

Affirmative/Discussion and Vote (Public Meeting) (if needed)

Week of September 2—Tentative

There are no meetings scheduled for the Week of September 2.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserve basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings Call (Recording)—(301) 492–0292

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

Dated: August 9, 1991.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 91-19376 Filed 8-9-91; 2:23 p.m.

BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 56, No. 156
Tuesday, August 13, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF EDUCATION

[CFDA No. 84.031A, CFDA No. 84.031G]

Notice Inviting Applications for Designation as an Eligible Institution for Fiscal Year 1992 for the Strengthening Institutions Program and the Endowment Challenge Grant Program

Correction

In notice document 91-18207 beginning on page 36780 in the issue of Thursday, August 1, 1991, make the following corrections:

1. On page 36780, in the third column, insert the following above the third table:

"Annual Income Levels (Continued)
Alaska"

2. On page 36781, in the first column, insert the following above the table:

"Hawaii"

BILLING CODE 1505-01-D

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

Correction

In rule document 91-16874 beginning on page 32330 in the issue of Tuesday, July 16, 1991, make the following correction:

On pages 32331 and 32332, in the table, remove the heading reading "Proposed Base (100-year) Flood Elevations".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 417

[OPH-009-P]

RIN 0938-AE24

Health Maintenance Organizations; Group Specific Ratings

Correction

In proposed rule document 91-16241 beginning on page 31597 in the issue of Thursday, July 11, 1991, make the following correction:

1 On page 31598, in the second column, in the first complete paragraph, in the eighth line, after "group" add "for a contracted benefit period is based on the actual experience of the group".

2. On page 31599, in the second column, in the first complete paragraph, in the 13th line, "following" should read "allowing".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 338

[INS Number: 1267-91]

RIN 1115-AB84

Endorsement of Name Change on Certificate of Naturalization; Electronic Recordkeeping

Correction

In rule document 91-15875 beginning on page 30679 in the issue of Friday, July 5, 1991, make the following correction:

§ 338.12 [Corrected]

On page 30680, in the first column, in § 338.12, in the third line from the end of the paragraph, "recordkeeping" was misspelled.

BILLING CODE 1505-01-D

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1839

RIN 2700-AB09

[NASA FAR Supplement Directive 89-8]

Acquisition Regulation; Miscellaneous Amendments to NASA FAR Supplement

Correction

In rule document 91-16517 beginning on page 32115 in the issue of Monday, July 15, 1991, make the following corrections:

1839.7001 [Corrected]

1. On page 32116, in the first column, in section 1839.7001(b), in the second line, "administrator" should read "Administrator".

1839.7003-2 [Corrected]

2. On the same page, in the third column, in section 1839.7003-2(a) introductory text, in the third line from the bottom, "installation" should read "installations".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

Governors' Designees Receiving Advance Notification of Transportation of Nuclear Waste

Correction

In notice document 91-16527 beginning on page 31973 in the issue of Friday, July 12, 1991, make the following correction:

On page 31975, in the table, in the entry for "Washington", in the second column, in the second line, "586-234" should read "586-2340".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC-18177; S7-7-91]

RIN 3235-AD91

Amendment to Rule 2a-7 Under the Investment Company Act

Correction

In rule document 91-13404 beginning on page 28028 in the issue of Thursday, June 6, 1991, make the following correction:

1. On page 26028, in the third column, under **FOR FURTHER INFORMATION CONTACT**, in the first line, "Council" should read "Counsel".

2. On page 26029, in the second column, in the eighth line from the top, "of" should read "or".

3. On the same page, in the third column, in the first full paragraph, in the third line, "singlerated" should read "single-rated"; and in footnote 11, paragraph (1), in the second line from the bottom, "delegates" should read "delegate".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 24

[T.D. ATF- 312]

Technical Amendments

Correction

In rule document 91- 15562 beginning on page 31076 in the issue of Tuesday, July 9, 1991, make the following correction:

On page 31079, in the second column, in amendatory instruction 37., and in the section heading entitled "General","24.255" should read " 24.225"

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federal register

Tuesday
August 13, 1991

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Revised Proposed Determination of Critical Habitat for the Northern Spotted Owl; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB32

Endangered and Threatened Wildlife and Plants; Revised Proposed Determination of Critical Habitat for the Northern Spotted Owl

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Revised proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) originally proposed designation of critical habitat for the northern spotted owl (*Strix occidentalis caurina*) on May 6, 1991. The Service hereby revises its proposed designation of critical habitat for the northern spotted owl, a subspecies federally listed as threatened under the Endangered Species Act of 1973, as amended (Act). The northern spotted owl, referred to herein as spotted owl or owl, is a forest bird that inhabits coniferous and mixed conifer-hardwood forests. The current range of the northern spotted owl extends from southwestern British Columbia through western Washington, western Oregon, and northwestern California south to San Francisco Bay. Proposed critical habitat units are located primarily on Federal lands and to a lesser extent on State lands. The Service has not included private and tribal lands in this proposal.

This proposed critical habitat designation would result in additional protection requirements under section 7 of the Act with regard to activities that are funded, authorized, or carried out by a Federal agency. Section 4 of the Act requires the Service to consider economic and other relevant costs prior to making a final decision on the size and scope of critical habitat. The Service solicits data and comments from the public on all aspects of this proposal, including additional information on the economic impacts (costs and benefits) of the designation, methods of evaluating costs and benefits accruing from the designation, the amount and distribution of owls and owl habitat (particularly dispersal habitat), and why any particular lands (regardless of ownership) should or should not be designated as critical habitat.

DATES: Comments from all interested parties must by received by October 15, 1991. The Service intends to conduct one public hearing at each of the following locations:

1. Monday, September 9, Redding, California;
2. Wednesday, September 11, Medford, Oregon;
3. Tuesday, September 17, Olympia, Washington;
4. Thursday, September 19, Portland, Oregon.

Each hearing will be held from 1 to 4 and 6 to 9 p.m.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Assistant Regional Director, U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement, 911 Northeast 11th Ave., Portland, Oregon 97232. The complete file for this rule, including comments and materials received, will be available for public inspection, by appointment, during normal business hours at the above address. The public hearings will be held at the following locations:

1. Redding—Holiday Inn, 1900 Hilltop Dr., Redding, Ca.
2. Medford—Nendell's Inn, 2300 Crater Lake Hwy., Medford, Ore.
3. Olympia—Washington Center for the Performing Arts, 512 S. Washington St., Olympia, Wash.
4. Portland—Bonneville Power Administration, Auditorium, 911 N.E. 11th Ave., Portland, Ore.

FOR FURTHER INFORMATION CONTACT: Mr. Dale Hall, Assistant Regional Director for Fish and Wildlife Enhancement at the above address (503/231-6159 or FTS 429-6159); Mr. Barry S. Mulder, Spotted Owl Coordinator, at the above address (503/231-6730 or FTS 429-6730); and Mr. Mel Schamberger, Chief, Terrestrial Branch, U.S. Fish and Wildlife Service, National Ecology Research Center, 4512 McMurray Avenue, Fort Collins, Colorado 80525-3400 (303/226-9409 or FTS 323-5409).

SUPPLEMENTARY INFORMATION:

Background

Previous Federal Actions

On January 28, 1987, the Service received a petition requesting that the northern spotted owl be listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), as amended (Act). A 90-day finding was issued on July 23, 1987, acknowledging that the petition presented substantial information indicating that listing might be warranted. On December 17, 1987, the Service made a 1-year finding that listing the northern spotted owl was not warranted at that time. Notice of this finding was published in the **Federal Register** on December 23, 1987 (52 FR 48552).

On May 5, 1988, several environmental organizations filed suit challenging the Service's finding that listing was not warranted. On November 17, 1988, the court in that suit (*Northern Spotted Owl* v. *Lujan*, No. C88-573Z, Western District, Washington) ordered the Service to reanalyze the evidence and determine whether to issue a revised petition finding.

On April 25, 1989, the Service issued a revised finding indicating that listing the northern spotted owl as a threatened species throughout its entire range was warranted. On June 23, 1989 (54 FR 26666), the Service published a proposal to list the northern spotted owl as a threatened species. After reviewing all applicable information and public comment, the Service published a final rule to list the northern spotted owl as a threatened species on June 26, 1990 (55 FR 26114). The Service did not propose to designate critical habitat for the northern spotted owl within the listing rule because the Service found that critical habitat was not determinable at the time. The Service subsequently began planning an approach to propose critical habitat.

On August 10, 1990, the plaintiffs filed an additional motion seeking to compel the Service to immediately propose critical habitat. On February 26, 1991, the Court ruled that the Service had violated the Act in failing to designate critical habitat concurrently with listing the owl. The Court ordered the Service to propose a rule on critical habitat and to publish a final rule at the earliest possible time permitted under the appropriate regulations.

The Service published a proposed rule to designate critical habitat for the northern spotted owl on May 6, 1991 (56 FR 20816). The May 6 proposal announced the Service's intention to publish a revised critical habitat proposal in early August 1991, to allow for the fullest possible consideration of public comment on the economic and other relevant impacts of a designation and the subsequent completion of the Service's economic analysis. This new proposal supersedes all aspects of the May 6 proposal.

Public comments on this revised proposed rule will be accepted for 60 days from the date of publication in the **Federal Register** (see "**DATES**"). The Service intends to publish a final critical habitat rule within 60 days after close of the public comment period.

Ecological Considerations

The northern spotted owl is one of three subspecies of spotted owls

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this rule, including
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public inspection, by
ring normal business
ve address. The public
held at the following

Holiday Inn, 1900 Hilltop
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Jendell's Inn, 2300
y., Medford, Ore.

Washington Center for
Arts, 512 S. Washington
ash.

onneville Power
Auditorium, 911 N.E.
nd, Ore.

FORMATION CONTACT:
ssistant Regional
and Wildlife
the above address (503/
429–6159); Mr. Barry S.
Owl Coordinator, at the
503/231–6730 or FTS
Ir. Mel Schamberger,
l Branch, U.S. Fish and
National Ecology
, 4512 McMurray
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INFORMATION:

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Ecological Considerations

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recognized by the American Ornithologist's Union. For a complete discussion of the ecology and life history of this subspecies, see the Interagency Scientific Committee's *A Conservation Strategy for the Northern Spotted Owl* (Thomas *et al.* 1990), the Service's three status reviews (USDI 1987, 1989, 1990), and the June 26, 1990, final rule listing the northern spotted owl as a threatened species (55 FR 26114). These documents incorporate the majority of current biological information on the subspecies used to develop this proposed critical habitat rule. Additionally, the Service reviewed biological data from owl studies made available since the summer of 1990. These new references are included in the Service's administrative record. New data are incorporated and cited where relevant. None of the new biological data substantially contradicted previous studies on the ecology of the subspecies summarized in the above documents.

The northern spotted owl is known from most of the major types of coniferous forests in the Northwest. The range of the northern spotted owl is from southwestern British Columbia, through western Washington, western Oregon, and northern California south to San Francisco Bay where forested habitat still exists. The ranges of the northern and California spotted owls adjoin in the Pit River area of Shasta County, California.

The range of the northern spotted owl encompasses five major physiographic provinces that depict local climatic and geological conditions (Franklin and Dyrness 1988). These conditions are responsible for the development of the respective vegetative landscapes within each province. Reference to these provinces provides an artificial method of subdividing owl populations. From north to south, the provinces include the Washington Cascades, Olympic Peninsula, Oregon Coast Ranges, Oregon Cascades, and Klamath Mountains. Thomas *et al.* (1990) divided the owl's range into 10 separate areas to reflect differences in spotted owl numbers, distribution, habitat use patterns, and habitat conditions. The 10 provincial subdivisions described by Thomas *et al.* (1990) include the Washington Cascades East and West, Olympic Peninsula, Southwestern Washington, Oregon Coast Ranges, Oregon Cascades East and West, Klamath Mountains, California Cascades/Modoc, and the Northern California Coast Range.

Populations are not evenly distributed throughout the owl's range due to variation in habitat conditions resulting from human-induced disturbances, often exacerbated by landownership patterns, and to a lesser extent natural disturbances. The greatest numbers of spotted owls are found in the west-central Cascade region of Oregon (based on information obtained during section 7 consultation with the Forest Service and the Bureau of Land Management (Bureau), and information viewed during the congressional mapping effort in June 1991) and the Coast Range of northwestern California (G. Gould, 1991 California Department of Fish and Game, biologist, pers. comm.); the majority of owls are found on Forest Service lands. The owl is uncommon in certain areas, e.g., in southwestern Washington and northwestern Oregon; thus, its distribution is now somewhat discontinuous over its range.

Northern spotted owls have been observed over a wide range of elevations, but avoid high elevation, subalpine forests. The range of elevation in which spotted owls occur extends from 70 feet (21 meters) above sea level in the Olympic Peninsula of Washington to over 6,000 feet (1800 meters) above sea level in California.

Vegetative composition of spotted owl habitat changes from north to south within its range. The spotted owl inhabits forests dominated by Douglas-fir (*Pseudotsuga menziesii*) and western hemlock (*Tsuga heterophylla*) in coastal forests of Washington and Oregon. At higher elevations on the west slope of the Cascades in Washington and Oregon, stands containing Pacific silver fir (*Abies amabilis*) are commonly used by owls. Owls use mixed conifer stands that may include Douglas-fir, grand fir (*Abies grandis*), and ponderosa pine (*Pinus ponderosa*) on the east slope of the Cascades.

In southern interior Oregon, habitat further changes to a drier Douglas-fir/mixed conifer composition with a corresponding shift in the predominant prey base, from northern flying squirrels (*Glauocomys sabrinus*) to woodrats (*Neotoma* spp.). Spotted owls most commonly use Douglas-fir, mixed-conifer, and coastal redwood (*Sequoia sempervirens*) forest types in California, but are also found in mixed conifer-hardwood habitat types and in stands dominated by ponderosa pine in the eastern portion of the range in California. Habitat for the northern spotted owl in parts of southern Oregon and northern California is not continuous, but occurs naturally in a mosaic pattern, especially in the southern interior portions of the bird's range. This type of pattern also occurs to some extent at lower elevations in the eastern Cascades in Oregon and Washington.

Forests in the northwestern United States exhibit natural variation in terms of species composition, stand age, climatic and soil conditions, slope steepness and aspect, and other factors. Forest structure varies in several measurable ways: Canopy closure varies from closed to relatively open, as a function of tree size, stocking density, and species composition; canopy layering ranges from multi-layered stands composed of two or more tree heights to single-layered stands; average tree diameter varies with tree age, species, and soil and climatic conditions; and the amount of decadence (deformed, broken, and rotting trees, standing and down dead material, etc.) varies with factors such as stand age, fire, wind, and forest pest influence. Factors such as rainfall, elevation, slope, and aspect influence microclimatic conditions.

Although spotted owl habitat is variable over its range, some general attributes are common to the subspecies' life-history requirements throughout its range. Timber stands supporting successfully reproducing pairs of northern spotted owls typically feature the following attributes: A moderate to high canopy closure (60 to 80 percent); a multi-layered, multi-species canopy with large >30 inches diameter-at-breast-height (dbh) overstory trees; a high incidence of large trees with various deformities (e.g., large cavities, broken tops, mistletoe infections, and other evidence of decadence); large snags; large accumulations of fallen trees and other woody debris on the ground; and sufficient open space below the canopy for owls to fly. These forest characteristics usually develop with increasing forest age, but their occurrence may vary by location, forest practices, and stand type and condition.

The age of a forest is not as important in determining habitat suitability for owls as are vegetational and structural elements. Northern interior forests typically require 150 to 200 years to attain the attributes of breeding and roosting habitat; however, characteristics of breeding and roosting habitat are sometimes found in younger forests, usually those with significant old-age remnant trees from earlier stands. The remanent old forest attributes are products of fire, wind storms, "sloppy" logging operations, or highgrading (removal of the most economically valuable trees). As one moves south or toward the coast in the species range, these attributes are attained at younger ages due to more favorable growing conditions, site productivity, microclimate, and so forth. The components of breeding habitat are present in relatively young forests (60 or more years of age) in some portions of the subspecies range. However, nearly all nest and roost sites are located in the portions of these stands containing the oldest trees (Thomas *et al.* 1990). Owl survey data indicate that northern spotted owls are disproportionately found in association with older forests (Thomas *et al.* 1990, USDI 1990).

Spotted owls are most often associated with the previously mentioned habitat characteristics for breeding and roosting, but may use a wider array of forest types for foraging and dispersal, including more open and fragmented habitat. In forests that do not provide nesting and roosting attributes, dispersal habitat, at a minimum, consists of forests with adequate tree size and canopy cover to provide at least minimal foraging opportunities and protection from avian predators. Such areas allow juvenile and adult owls to move successfully within and between blocks or islands of nesting and roosting habitat. Habitat sufficient to permit dispersal is essential to connect areas of habitat that support nesting, roosting, and foraging. Current definitions of suitable spotted owl habitat do not contain estimates of the amount of habitat that contributes just the dispersal component.

Owls having an array of habitat types within their home ranges select for older forest >200 years), use mature forest (100-200 years) in proportion to its availability, and tend to avoid younger forest (< 100 years) or use it in relation to its availability (USDI 1989). Different studies over the owl's range demonstrate that owls select older forests for foraging (USDI 1990); roost sites are also strongly associated with older forests.

In the coastal redwoods of California, spotted owls have been observed nesting in stands that had acquired characteristics associated with owl presence in as little as 40–60 years (Pious 1989). Redwood-dominated forests in coastal northern California comprise about 7 percent of the owl's overall range. They develop these habitat characteristics in a shorter time following harvest than other timber-types because of unique characteristics and conditions, such as fast-growth (redwoods are a stump-sprouting species), good soil, high precipitation levels, a long growing season, an understory of other conifers and hardwoods, and an abundant prey base (Thomas *et al.* 1990). Although the forests in this area are younger in age than in other parts of the owl's range, structural habitat characteristics associated with owl presence are similar to those observed elsewhere.

Northern spotted owls have large home ranges and utilize large tracts of land containing significant acreage of older forest to meet their biological needs (USDI 1990). As the quality and quantity of habitat declines, annual home range sizes increase. Thomas *et al.* (1990) indicated median annual pair home range sizes varied from a high of 9,930 acres for the Olympic Peninsula to a low of 2,955 acres for the Oregon Cascades. Actual annual pair home range size varied from 1,035 acres in the Klamath Province to 30,961 acres in the Washington Cascades (USDI 1990).

Forest structure also differs significantly because of varied management practices within the range of the spotted owl. In many areas, management practices have resulted in fragmented patches of older forests, separated by large patches of younger forests that have yet to develop habitat characteristics used by owls. This condition may have led to increased competition with barred owls and predation by great horned owls and other open-forest predators. Barred owls have greatly expanded their range in recent years. The Service knows of three instances of hybridization between barred and spotted owls; the first generation is fertile (Meslow pers. comm. 1991). As habitat becomes more fragmented, the direct effects of increased predation and competition would become more pronounced.

Past forest-management practices also have resulted in a forest age distribution unnaturally skewed toward younger stands. Often, when forests are clearcut, the area is replanted with single or few species of the same age for maximal wood-fiber production. Site-preparation activities, such as prescribed burning, often remove the standing dead or down material. As timber plantations increase in age, timber managers may control competing vegetation, such as hardwoods, through the use of herbicides or mechanical methods. Such silvicultural practices result in timber stands lacking in diversity of the attributes discussed above, and therefore lacking in diversity of the animal species supported.

Historical logging practices in some areas, such as the mixed conifer zone of southern Oregon, along the east side of the Cascades in Oregon and Washington, and in parts of interior northern California, consisted of more selective timber harvesting than in other areas, leaving remnant patches of stands with varying ages and older forest characteristics. Such uneven-age management practices usually result in more ecologically diverse stands. Techniques such as individual tree selection, retention of hardwoods, and retention and/or creation of standing and down dead material seem to replicate more natural forest conditions than do intensive management practices such as clearcutting. In managed stands, spotted owls are more often found in these types of areas than those subject to even-age regeneration following clearcutting. More data are needed to ascertain the compatibility between types of management and long-term spotted owl reproductive success.

As a result, the distribution of current owl habitat is highly variable. Most remaining large tracts of suitable habitat ar found on Federal lands except in the redwood zone of northern California. Remaining suitable habitat on most private lands that the Service is aware of tends to be fairly discontinuous and unevenly distributed; most is associated with small clumps not previously harvested.

Opportunities exist for forest management that is compatible with maintenance of owl habitat and owl populations. For example, forest management practices could provide forest stands of different ages that exhibit appropriate habitat characteristics for the owl to ensure that sufficient younger-aged stands mature at an adequate rate to provide replacement habitat for older stands lost due to logging or natural causes and should provide an adequate quantity and distribution large contiguous blocks of older forest needed for spotted owls.

Management Considerations

Current and historic spotted owl habitat loss is largely attributable to timber harvesting and land conversion practices, although natural disturbances such as forest fires have caused losses as well. Habitat for northern spotted owls has been declining since the arrival of European settlers. Although the extent of suitable habitat before the 1800s is difficult to quantify, estimates of 17.5 million acres in 1800 and 7.5 million acres currently (Thomas *et al.* 1990) suggest a reduction of about 60 percent in the past 190 years. Other estimates suggest that the reported decline in historical habitat may have been as high as 83 to 88 percent (USDI 1990). Historically, habitat reduction has not been uniform throughout the owl's range, but has been concentrated at lower elevations, particularly in the Coast Ranges. Past logging practices have had the greatest impact on the status of the owl in northwestern Oregon and southwestern Washington.

Although timber harvest in the Northwest has a long history, spotted owl habitat over its range has decreased most rapidly since the 1960s. Based on information from the Forest Service (as stated in USDI 1990), the amount of suitable spotted owl habitat (i.e., for nesting, roosting, and foraging) on unprotected Forest Service lands in Washington and Oregon has declined by approximately 3.4 million acres (60 percent) over the last 30 years; there are no estimates on the decline of other dispersal habitat. While future events are difficult to predict, past trends strongly suggest that much of the remaining unprotected spotted owl habitat could disappear within 20 to 30 years, and on some forests, the unprotected habitat could disappear within 10 years (USDI 1990). Additional information can be found in the Service's assessment of spotted owl habitat (USFWS 1991a).

Prior to listing the spotted owl as a threatened species, many different approaches to spotted owl management and research were being implemented by various Federal and State resource agencies. Attempts began in the mid 1970s, often in an uncoordinated and inconsistent fashion, to focus on managing the owl and avoiding conflicts with harvest but were unsuccessful (Thomas *et al.* 1990). In light of growing uncertainty surrounding the status of the spotted owl, an Interagency Agreement was signed by the Bureau, the Service, the Forest Service, and the National Park Service establishing a committee of scientists to re-evaluate the current management status of the subspecies (Thomas *et al.* 1990). The charter commissioning this Interagency Scientific Committee (ISC), mandated in section 318 of Public Law 101–121 in October of 1989, specifically directed the group to develop a scientifically credible conservation strategy for the northern spotted owl.

On April 4, 1990, the ISC released *A Conservation Strategy for the Northern Spotted Owl* (hereafter referred to as the ISC Plan) (Thomas *et al.* 1990). This plan, which focused primarily on Federal lands, used the best available biological information on the subspecies and outlined a strategy to ensure long-term viability for the owl in well-distributed numbers throughout its range. The ISC developed a scientifically credible conservation strategy, applying the principles of conservation biology and population modeling, and utilizing current spotted owl research data. The ISC recommended implementing a system of Habitat Conservation Areas (HCAs) capable of supporting multiple pairs of spotted owls and a standard for the remaining forest matrix to provide dispersal between the HCAs (50–11–40 rule). The 50–11–40 rule was developed to provide dispersal by requiring that 50 percent of the forest matrix outside of the large reserve areas (i.e., HCAs) be maintained in stands with trees averaging 11 inches or more in dbh and with at least 40 percent canopy closure. In addition, the ISC recommended an adaptive management strategy and further research on the owl's biology and management. No individual part of this management plan was designed to stand alone.

The ISC's analysis and conclusion assumed that, if fully implemented by the Forest Service and the Bureau beginning in Fiscal Year 1991 and with continuing adaptive management, the plan should provide for the owl's survival for a 100-year period. Recommendations were also made for owl habitat management on State, private, and tribal lands. The ISC acknowledged a number of population and habitat risk factors associated with the long-term nature of the strategy that may compound over time. Full implementation of the ISC Plan provides protection for a population that is smaller than currently known to inhabit Northwest forests, and, in fact, will probably result in a near-term loss of a "significant portion" of the existing spotted owl population (Thomas *et al.* 1990). The ISC Plan, under a worst-case scenario, may result in a protected population that would be about 50 percent of the currently known number of spotted owl pairs. The projected number was based on the loss of all owl pairs outside of HCAs, although it is expected that some unknown number of pairs would occur in other reserved areas, in forested areas unsuitable for timber harvest, and in older managed forest stands. The surrounding forest matrix would offer marginal foraging and some roosting and nesting opportunities for dispersing owls, but would most importantly promote genetic and demographic exchange among the HCAs and physiographic provinces. The risk associated with the long-term success of this plan on overall owl numbers is based on the expectation that the HCAs would recover sufficiently to support a stable population of owls.

The Forest Service issued a notice on October 3, 1990, (55 FR 4112) which vacated their previous spotted owl management guidelines and established the agency's intent to conduct future timber operations "* * * in a manner not inconsistent with * * *" the ISC Plan. On August 6, 1990, the Bureau released its management guidelines for the northern spotted owl which incorporated parts of the ISC Plan (i.e., HCAs, the 50–11–40 rule only where possible), while emphasizing the Bureau's requirements under the Federal Land Policy and Management Act (FLPMA) and the National Environmental Policy Act (NEPA) to analyze other alternatives during preparation of new resource management plans. The Bureau's guidelines established interim guidance until Fiscal Year 1993 when resource management plans are to be completed.

The ISC Plan was prepared before the owl was listed as threatened and did not explicitly address recovery, critical habitat, or any other aspect of the Endangered Species Act. The Service recognizes the importance of the ISC Plan and acknowledges that it plays an integral role in the owls' conservation; the ISC Plan complements this revised critical habitat proposal by offering protection for all facets of the owls' life history, especially for dispersal outside of critical habitat units. The ISC concept emphasizes the importance of managing large and well-distributed blocks of suitable habitat for owls that are sufficiently connected to maintain a stable population throughout the owls' range.

Relationship to Recovery

Section 2(c)(1) of the Act declares that

> all Federal departments and agencies shall seek to conserve endangered and threatened species and shall utilize their authorities in furtherance of the purposes of this Act.

Section 3(3) of the Act defines conservation to include all measures needed to recover the species and justify its removal from the list of endangered and threatened wildlife and plants. The Act mandates the conservation of listed species through different mechanisms, such as: Section 7 (requiring Federal agencies to further the purposes of the Act by carrying out conservation programs and insuring that Federal actions will not likely jeopardize the continued existence of the listed species or result in the destruction or adverse modification of designated critical habitat); section 9 (prohibition of taking of listed species); section 10 (wildlife research permits and conservation planning on State and private lands); section 6 (cooperative State and Federal grants); land acquisition; and research. Other Federal laws also require conservation of threatened and endangered species: The National Forest Management Act, the Federal Land Policy Management Act, and various other State and Federal laws and regulations.

Recovery planning under section 4(f) of the Act is the "umbrella" that eventually guides all of these activities and promotes a species' conservation and eventual delisting. Recovery plans provide guidance, which may include population goals and identification of areas in need of protection or special management, so that a species can be removed from the list of endangered and threatened wildlife and plants. Recovery plans usually include management recommendations for areas proposed or designated as critical habitat.

The Service considers the conservation of a species in its designation of critical habitat. The designation of critical habitat will not, in itself, lead to the recovery of the species, but is one of several measures available to contribute in the conservation of a species. Critical habitat helps focus conservation activities by identifying areas that contain essential habitat features (primary constituent elements) that require special management. The protection given critical habitat under section 7 also immediately increases the protection given to these primary constituent elements and essential areas and preserves options for the long-term conservation of the species. The protection of these areas may also shorten the time needed to achieve recovery.

Designating critical habitat does not create a management plan; it does not establish numerical population goals, it does not proscribe specific management actions (inside or outside of critical habitat), and it has no direct effect on areas not designated. Specific management recommendations for critical habitat are more appropriately addressed in recovery plans, management plans, and in section 7 consultation. Areas outside of critical habitat also have an important role in the conservation of a listed species that is not addressed through designation of critical habitat.

The designation of critical habitat may be reevaluated and revised at any time that new information indicates that changes are warranted. The Service will reassess proposals for designation of critical habitat if land management plans, recovery plans, or other conservation strategies are developed and fully implemented that may reduce the need for the additional protection provided by any critical habitat designation.

Critical Habitat

Definition

In proposing to designate critical habitat for the northern spotted owl, the Service has reviewed its overall approach to the conservation of the spotted owl undertaken since the proposed listing of the owl in 1989. In addition, the Service has reviewed all available information that pertains to the habitat requirements of this subspecies. The inherent difficulties in designating critical habitat for wide-ranging species, such as the owl, dictate that not all habitat within the range of the species be included in the proposed designation. Based upon the parameters discussed below, the Service made judgments about the appropriateness of including specific areas. The following explanation describes the Service's approach in developing this proposal.

Critical habitat is defined in section 3(5)(A) of the Act as:

> (i) the specific areas within the geographic area occupied by a species * * * on which are found those physical and biological features (I) essential to the conservation of the species, and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species.

The term "conservation," as defined in section 3(3) of the Act, means

> * * *to use and the use of all methods and procedures which are necessary to bring an endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary.

The Service believes that the definition of critical habitat, while explicitly mentioning the features essential to conservation of a species, implicitly requires that the areas themselves be essential to the species' survival and recovery. Not all areas containing those features of a listed species' habitat are necessarily essential to species' conservation. Conversely, areas not currently containing all of the essential features, but with the capability to do so in the future, may still be needed for the long-term recovery of the species, particularly in certain portions of the range, and may be proposed as critical habitat. However, areas not included in critical habitat that contain one or more of the essential features are also important to the species' conservation and would be addressed under other facets of the Act and other conservation laws and regulations (e.g., National Forest Management Act (NFMA)).

For the spotted owl loss of an entire critical habitat unit could, in some cases, preclude recovery or reduce the likelihood of survival of the species. Further, gradual degradation of a critical habitat unit to the point where it no longer fulfills the overall function for which it was proposed (e.g., nesting, foraging, roosting, or dispersal) could preclude the survival and recovery of the species. The level of disturbance a critical habitat unit can withstand and still fulfill its intended purpose is variable throughout the owls' range and will need to be reviewed in the context of its current status, condition, and location; critical habitat units in some areas may not be in as desirable a condition to support healthy local populations of owls as units in other areas.

Primary Constituent Elements

The Service is required to base critical habitat proposals upon the best scientific data available (50 CFR 424.12). In determining what areas are to be proposed as critical habitat, the Service considers those physical and biological attributes that are essential to the conservation of the species and that may require special management considerations or protection. Such requirements, as stated in 50 CFR 424.12, include, but are not limited to, the following:

- Space for individual and population growth, and for normal behavior;
- Food, water, or other nutritional or physiological requirements;
- Cover or shelter,
- Sites for breeding, reproduction, rearing of offspring; and generally;
- Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The Service has determined that the physical and biological habitat features (referred to as the primary constituent elements) that support nesting, foraging, roosting, and dispersal are essential to the conservation of the northern spotted owl. These elements were determined from studies on owl habitat preferences, including habitat structure and use, prey preferences, etc., throughout the range of the species (see Thomas *et al.* 1990 and USDI 1990 for a list of references). These attributes include a moderate to high canopy closure (60 to 80 percent); a multi-layered, multi-species canopy with large >30 inches dbh) overstory trees; a high incidence of large trees with various deformities (e.g., large cavities, broken tops, mistletoe infections, and

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other evidence of decadence); large snags; large accumulations of fallen trees and other woody debris on the ground; and sufficient open space below the canopy for owls to fly. The types and quantity of these characteristics may vary by location, stand type, and condition. Dispersal habitat is more variable (see later discussion under the *Connectivity* subheading of this section).

The proposal focuses on areas of coniferous and mixed coniferous-hardwood forests that contain these elements and conforms with accepted principles of conservation biology. These areas contain both "suitable" and "unsuitable" habitat. Many definitions of "suitable" spotted owl habitat are currently used throughout the species' range; however, the term "suitable" generally refers to habitat which provides the constituent elements of nesting, roosting, and foraging. Current estimates of suitable habitat (i.e., for nesting, roosting, and foraging) do not contain estimates of the additional amount of forested acres that may meet only the dispersal needs of the owl. This critical habitat proposal for the spotted owl is not limited to habitat that meets previous definitions of "suitable," but includes habitat with any of the primary constituent elements (i.e., nesting, roosting, foraging, or dispersal).

Relationship to ISC Plan HCAs

The ISC used principles of conservation biology and attendant guidelines to identify a network of HCAs throughout the range of the owl. The HCAs were selected as the starting point for proposing critical habitat for the following reasons: The ISC conservation strategy is based upon the best available information on spotted owls gathered and analyzed over the past 20 years; the ISC Plan represents the best science on the conservation of the northern spotted owl and has been thoroughly peer-reviewed; the areas selected as HCAs were identified by experts familiar with the species and its habitat, based on the principles of conservation biology; and use of the HCAs is consistent with the Service's other conservation efforts (e.g., it has been the focus in section 7 consultation). Some HCAs were not included in this proposal because they were already protected in wilderness, State parks, or national parks and monuments, or contained little or no suitable owl habitat. Additional areas that contained the primary constituent elements were also identified to comply with the Act and facilitate recovery.

The Service's identification of areas containing the primary constituent elements described above was based on the ISC's five principles of conservation biology associated with spotted owls:

- Development and maintenance of large contiguous blocks of habitat to support multiple reproducing pairs of owls:
- Minimizing fragmentation and edge effect to improve habitat contiguity;
- Minimizing dispersal distance to facilitate interaction between blocks of breeding habitat;
- Maintaining connectivity between habitat blocks to allow movement and dispersal; and
- Maintaining range-wide distribution of habitat to facilitate recovery.

Critical habitat is based on the fundamental framework of the ISC Plan. The success of the ISC Plan in recovery will depend upon the long-term protection of a network of HCAs, composed of large blocks of habitat expected to support multiple pairs of breeding owls, combined with management to maintain dispersal habitat in the remaining forest matrix (50–11–40 rule, discussed under the *"Connectivity"* subheading of this section). All of these components are important to maintaining a stable, well-distributed population of spotted owls that has sufficient connectivity to avoid isolation of individual blocks, segments, or provinces. The ISC Plan further requires that the plan be adapted through time as warranted by research and owl and habitat monitoring data.

HCAs set long-term objectives on development of habitat to support projected owl pair targets. Presently, HCAs include both suitable and unsuitable habitat. An element of risk exists with implementation of this plan because suitable owl habitat and owl pairs outside of the HCAs will continue to be lost through timber harvest in the near-term before habitat 2in the HCAs has recovered to the point that it is capable of supporting the expected future number of pairs. It is possible that, in some cases, the present HCAs will never recover to the extent that the ISC anticipated. The near-term loss of owl habitat and owl pairs prior to full habitat recovery within the HCAs could lead to a significant decline in the owl population which may increase the amount of time it will take to achieve owl recovery.

Adjustments to Legally-described Boundaries

The Act requires the Service to specifically identify, map, and legally describe areas proposed for critical habitat designation. After selecting HCAs as the starting point, the Service made several types of adjustments. To facilitate legal definition, critical habitat unit boundaries were described to adjacent section lines. Lines were adjusted up or down depending upon the amount and quality of habitat within the adjacent sections.

In addition to adjusting the HCA boundaries to meet the Act's requirement of legally definable critical habitat boundaries, the Service made other changes. The HCAs were accepted, as recommended by the ISC, except where new information (e.g., suitable habitat mapping viewed during the June 1991 congressional old-growth mapping effort) indicated that peripheral areas of poor-quality habitat were included. Portions of HCAs were not included in critical habitat if unsuitable habitat was identifiable on available maps and the exclusion would not affect the size and spacing recommendations in the ISC Plan.

Critical Habitat Associated with HCAs

The Service proposed HCAs and in some cases additional adjacent areas as critical habitat. Areas of existing habitat contiguous with some HCAs were included in this proposal for several reasons. For example, suitable nesting habitat, usually supporting known owl pairs, was included along with adjacent HCAs primarily to provide near-term population stability for the spotted owl to reduce the near-term risk associated with the ISC Plan. Such adjustments may shorten the recovery period by increasing habitat protection around existing HCAs that are deficient in suitable habitat or numbers of pairs.

The Service focused on the existing situation in each of the physiographic provinces and primarily on Federal lands where most large tracts of suitable habitat exist. Variations within and between provinces (e.g., habitat quality, numbers of pairs) may result in differences in near- or long-term protection needs. Critical habitat units were often proposed to address specific problems that exist both within and between physiographic provinces. Although forest conditions change over time, most of the problems noted below result from recent human-induced disturbances. Regardless of the existing variation, all of these areas play an important role in maintaining a stable owl population over its range.

The following provides a summary of problems identified by specific area (Thomas *et al.* 1990, USDI 1990):

- Olympic Peninsula: Isolation of owls due to lack of linkage to other provinces; poor distribution and quality of existing habitat; high level of fragmentation; low population size; and variable to low reproductive success;

- Washington Cascades: Poor distribution and quality of existing habitat; high level of natural and manmade fragmentation (e.g., north Cascades); low population size; variable reproductive success; competition with barred owls; and localized deficiencies in habitat connectivity;
- Southwest Washington: Lack of connectivity; little remaining habitat; poor distribution and quality of existing habitat; very low population size; and lack of Federal ownership;
- Oregon Cascades: Localized deficiency in habitat connectivity; poor distribution and quality of existing habitat in some areas; high level of fragmentation in some areas (e.g., areas of concern); and low population size in some areas (e.g., east side);
- Oregon Coast Ranges: Low population size; poor distribution and quality of existing habitat; high level of fragmentation; lack of sufficient linkage to other provinces; low reproductive success; and large areas of land not in Federal ownership;
- Oregon/California Klamath: Poor distribution and quality of existing habitat in some areas; high level of natural and manmade fragmentation; and localized deficiencies in habitat connectivity;
- California Coast Range: High level of human-induced fragmentation; and little land in Federal ownership; and
- California Cascade/Modoc: Low population size; poor distribution and quality of existing habitat; high level of natural and human-induced fragmentation; poor reproductive success; insufficient linkage among provinces and with the range of the California spotted owl; and intermingled landownership.

In addressing the above factors, primary consideration was given to existing suitable habitat and known owl pairs (including resident single owls that may signify the presence of a pair) that were not included in existing HCAs (although some critical habitat units included category 3 HCAs recommended by the ISC) and where the Service believed that additional protection should be considered to reduce the risk to recovery.

However, the focus was on habitat quality and not on population numbers. Enhancement of the existing HCAs occurred primarily in provinces where current habitat conditions are extremely fragmented (e.g., the Oregon Coast Ranges and Shasta/McCloud); where owl populations are far below the ISC pair target for HCAs (e.g., the Olympic Peninsula); and in areas where a large portion of the habitat within the HCAs is presently unsuitable (e.g., the southern portion of the Washington Cascades). When including other areas, the Service considered factors similar to those outlined in the ISC Plan on contiguity, shape, habitat quality, spacing, and so forth. Areas with minimal fragmentation were selected over areas with more extensive fragmentation. The selection of areas adjacent to HCAs included additional pairs of owls and resident singles so as to assist in meeting the pair targets identified in the ISC Plan.

The spotted owl requires relatively large contiguous areas of habitat to meet its life requisites. Logging and other activities have reduced much of the habitat in some areas to small, fragmented, and isolated stands that are not expected to support the remaining pairs over time. In some cases, those types of stands were proposed as critical habitat when they were needed to promote future development of large contiguous habitat areas or serve as key linkage areas with the potential to support future breeding.

Critical Habitat Not Associated with HCAs

When areas unconnected to HCAs were proposed as critical habitat, primary emphasis was given to special areas (identified in the ISC Plan) or areas of concern, as determined through knowledge gained over the past 2 years as stated in the Service's status reviews (USDI 1990) and section 7 biological opinions (USFWS 1991b and c). The Service also considered the condition and suitability of existing habitat, known pairs of owls, and distribution of HCAs. The principles of conservation biology were used to determine whether to propose certain critical habitat units. Such considerations included the type of habitat (e.g., dispersal habitat), spacing (e.g., distance between areas), location of the area, size of the forest stand (e.g., sufficient to support < two pairs), habitat contiguity, and proximity to existing HCAs. The role of different landownerships, the amount of habitat on those ownerships, and the relative role of those areas in contributing to owl conservation were also considered.

Connectivity

In order to achieve recovery, habitat must be available for owls to move throughout their range to provide genetic and demographic exchange between subpopulations, to recolonize formerly-occupied portions of the subspecies' range (linkage), and for juvenile owls to disperse from their natal areas (dispersal). Both functions are types of connectivity. Dispersal habitat must be able to provide protection to owls from avian predators, provide marginal foraging opportunities, and allow juvenile and adult owls to move successfully within and between blocks of nesting habitat.

Random dispersal and movement of spotted owls led to the development of the 50–11–40 rule by the ISC (Thomas *et al.* 1990). Given owl dispersal characteristics and general harvest practices, the ISC suggested that the general forest landscape on Federal lands should be maintained in a condition that would allow successful owl movement between HCAs and other protected areas. A suitable habitat condition in the surrounding forest matrix is important to maintaining linkage between critical habitat units. The 50–11–40 rule also was recommended for non-Federal lands, but on a voluntary basis.

Habitat that meets the species' needs for nesting, roosting, and foraging also provides for dispersal. However, habitat that supports dispersal does not always support the other constituent elements and, thus, may not be classified as "suitable" under current definitions. Habitat that allows for dispersal may currently be marginal or unsuitable for nesting, roosting, or foraging; however, it provides a linkage function that is essential for recovery. Presently, habitat which meets the 50–11–40 rule (Thomas *et al.* 1990) is believed to meet the needs of northern spotted owls for dispersal. However, the 50–11–40 rule prescribes a specific landscape condition to be achieved through land management practices which is beyond the scope of this critical habitat proposal. Although the 50–11–40 rule is not included in critical habitat, it remains an important part of the present overall conservation strategy for the owl.

The Service did identify, in certain locations within the owl's range (i.e., State-owned lands in southwest Washington, northwest Oregon, and the coastal redwood zone of California), critical habitat units that are intended to provide a "stepping stone" linkage function. In some cases, the only constituent element currently supported by these areas is dispersal habitat. These areas should provide sites where owls moving across the landscape can find shelter and prey and may someday provide nesting habitat as well. To be truly successful as stepping stones, these areas must provide some level of nesting habitat to support an adequate distribution of owls. The need to protect linkage throughout the owl's range will increase if habitat conditions (quality and/or quantity) continue to decline.

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Although relatively few owls remain in the area between the Olympic Peninsula of Washington, east to the Washington Cascades, or south to the Siuslaw National Forest of Oregon, linkage within this area is essential to the recovery of the subspecies. Encouraging development of suitable nesting habitat could maintain and improve linkage in portions of the subspecies' range. Current conditions, resulting from natural and human-induced habitat loss, highlight the need for the protection of all spotted owls and their habitat that exist or may develop over time. Other non-Federal, as well as Federal lands, are important in maintaining that linkage.

In its status reviews and in biological opinions addressing the spotted owl, the Service identified other areas of concern where habitat linkage within and between physiographic provinces is at risk due to past management practices. These areas are frequently associated with intermingled (checkerboard) Federal and non-Federal landownership patterns. The areas of concern are the Interstate 90 area within the Washington Cascades province; the Columbia Gorge, which encompasses an extensive zone between the Oregon and Washington Cascades provinces; the Santiam Pass within the Oregon Cascades province; the Interstate 5 area in southern Oregon; and the Shasta-McCloud area within the Klamath province of northern California. The Interstate 5 area consists of three distinct sub-areas: The Southern Willamette-North Umpqua, Rogue-Umpqua, and South Ashland, where linkage between the Oregon Cascades, Oregon Coast Ranges, and Klamath provinces is at risk.

The May 6 proposal included significant amounts of both public and private lands within these areas of concern in order to provide for habitat linkage (see 56 FR 20819). The Service focused on the condition, suitability, and location of existing habitat and distribution of HCAs in addressing this issue in the present proposal. The available information suggests that the private lands in these areas generally lack large amounts of suitable nesting, roosting, and foraging habitat and that most remaining large tracts of suitable habitat are on Federal lands. In contrast to its approach in developing the May 6 proposal, the Service believes it should concentrate on the near-term linkage problem in these areas. The Service, therefore, has focused on existing habitat and on increasing the size of critical habitat units associated with HCAs in these areas in order to reduce near-term risk to the species.

Summary of Critical Habitat Discussion

A variety of factors were considered when identifying areas to be proposed as critical habitat. Primary emphasis was given to HCAs and areas of concern. The condition and suitability of existing habitat and location of known pairs of owls were also considered. The principles of conservation biology (as outlined in the ISC Plan) were used to determine whether to designate areas in addition to those HCAs that are within proposed critical habitat. In making these determinations, the Service considered factors such as the quality of habitat, spacing, location of the area, size of the forest stand, habitat contiguity, and proximity to existing HCAs. The Service also considered the role of different landownerships, the amount of habitat on those ownerships, and the relative role of those areas contributing to owl conservation.

Differences from Previous Proposal

The Service has used more recent information to update the May 6 proposal, but has followed the same approach in proposing critical habitat. The areas that were proposed as critical habitat in the May 6 notice form the basis for the areas proposed for designation in this rule. However, the criteria that were used during the preparation of the May 6 proposal were reviewed to focus on those aspects that were most important to the delineation of critical habitat. These criteria (as explained in the Critical Habitat section) were used to refine boundaries and to make decisions about the inclusion or exclusion of specific areas. Changes in approach were incorporated in the following manner:

(1) Private, tribal, and some State lands were not included;

(2) New information was incorporated to refine previously identified critical habitat units; and

(3) Previously proposed linkage areas within areas of concern were revised. The reasons and basis for changes to the previous proposal are discussed below.

State, Private, and Tribal Lands

The most significant difference between this revised proposal and the previous proposal is that private, tribal, and some State lands are not included in the revision. Except for California, the Service generally lacks comprehensive information on spotted owl habitat quality, forest practices, and owl populations on many private lands. The information that is available suggests that throughout much of the owl's range, particularly in parts of Washington and Oregon, private lands generally lack large amounts of suitable nesting, roosting, and foraging habitat due to past and ongoing forestry practices. The suitable habitat that remains on these lands outside of California is also fairly widely dispersed and in smaller stands in relation to existing habitat on Federal lands. These lands may, however, provide dispersal habitat. Owl dispersal needs are not completely understood and the existence of current habitat on these lands is not well-defined, making identification of specific dispersal areas difficult.

In the previous proposal the Service proposed to include large areas of non-Federal lands as critical habitat in the four areas of concern. In readdressing this issue in the present proposal, the Service now believes the most appropriate approach is to focus on existing suitable habitat in order to reduce the near-term risk in these areas. The Service chose not to propose the private land areas, which have relatively little suitable habitat, and to increase the amount of critical habitat on Federal lands around HCAs where more extensive areas of suitable habitat currently exist.

The Service considered the role of State environmental protection and forest practices laws in determining not to include private and some State lands in this critical habitat proposal. All three States have some form of environmental law regarding threatened and endangered species. Of the three States, California has the most comprehensive State forest practices laws, requiring minimization of impacts to listed species from timber harvest activities. In both California and Washington, the States have incorporated into their forest practices review process the Service's four-step approach for avoiding incidental take of owls during timber harvests on private lands. Oregon has not yet adopted similar review procedures.

The Service expects the three States to play a more active role in the conservation of the owl on State and private lands through the HCP, recovery, and other processes. The Service will continue to review the State laws applicable to these lands before making a final determination on the relative importance of these lands in the owls' conservation.

Although a greater proportion of owls occur on private lands (primarily in the redwood-dominated forests of the coastal region) in California, than in the other States, the Service has reassessed the May 6 proposal and now believes that additional protection through critical habitat is not necessary at this time for those lands. As discussed elsewhere (see Background section), forest growing conditions and an abundant prey base in that part of the subspecies' range lead to the development of suitable nesting, roosting, and foraging habitat in a much shorter time following harvest than in the remaining portion of the owl's range. Although the stability and reproductive success of these owls over time is not well understood, the Service believes that an owl population can be maintained throughout the Redwoods region with some changes in forest management and that designation of only some areas as critical habitat within that region would be inappropriate. In other parts of the owls' range in California, some selective harvest techniques may be compatible with spotted owls. To address these areas, the State and a number of private companies have initiated the section 10 HCP process to develop timber harvest plans that are more compatible with owl conservation. The Service believes that the plans developed through this process may provide a basis for maintaining owls on private lands.

The Yakima Indian Nation in Washington practices predominately selective harvest methods. Similar to the methods in some parts of northern California these methods may also be compatible with maintenance of an owl population. The Yakima Nation is in the process of conducting research on the effect of timber harvest practices on spotted owls to refine an owl management plan for the Reservation. More information is necessary on the compatibility of these types of techniques wherever they are practiced to ascertain whether they are truly compatible with spotted owl presence and maintenance of a stable owl population. The Service has been working with the Bureau of Indian Affairs and some Indian Nations to assist in the development of forest management plans on other tribal lands that are compatible with spotted owls. The Service expects to continue these discussions and believes that this process can provide sufficient protection.

The Service envisions that private and tribal lands have a role in the conservation of the owl (e.g., in providing some level of nesting habitat and in connectivity), but their precise role for spotted owl protection is more appropriately addressed through aspects of the recovery planning and HCP processes than through designation of critical habitat. Private and tribal lands throughout the range were not included for the aforementioned reasons. The Service specifically solicits additional comments and information on this element of the revised proposed rule.

Although State laws provide for potential protection, some State lands are retained in this revised proposal because they have particularly high value for the conservation of the owl. For example, State lands that were identified in the ISC Plan are proposed for critical habitat designation since these lands provide essential "stepping stones" for maintaining nesting habitat in a well-distributed manner throughout the range of the owl. Because of their location within the range of the owl, State lands in southwest Washington, northwest Oregon, and coastal California provide opportunities to maintain linkage between physiographic provinces and other identified areas. In order for these State lands to fulfill the intended steppingstone functions, they must be managed to eventually support adequate levels of nesting, roosting, and foraging habitat. Other State lands included in the May 6 proposal are important, but not essential, for owl conservation and, therefore, are not included in the revised proposal.

Consideration of New Information

The revised proposal is also based on new biological and economic data, and material received during the public comment period and from State and Federal agencies. The Service has met and discussed various aspects of this proposal and related issues with some members of the ISC, the recovery team, and State and Federal agencies. In June 1991, Congress requested most of the original ISC members, as well as other old-growth experts, to oversee various agency biologists in an effort to map and prioritize the importance of old-growth stands on Federal lands within the range of the owl. The Service used the information on suitable habitat and owl locations considered by this group, as well as habitat and owl location information from private entities and the public, to help refine the May 6, 1991, critical habitat proposal. Consideration was also given to the Service's approach to conserve the owl through section 7 and HCP activities conducted for this subspecies over the past 2 years, along with clarification of the roles of critical habitat and different landowners (as previously discussed under the *Definition* subheading of the Critical Habitat section).

In revising the previous proposal, the Service focused on the existing situation within each of the physiographic provinces and in the general vicinity of the critical habitat unit. Variations within and between provinces (e.g., existing habitat quality and quantity, distribution of existing suitable habitat, low numbers of pairs, etc.) led to differences in required near- or long-term protection strategies.

The Service refined the May 6, 1991, proposal to give more consideration to existing suitable habitat and known pairs of spotted owls, especially where the Service felt that additional protection or special management needed to be considered. For example, in the Oregon Coast Ranges province, additional areas were identified as critical habitat due to the extremely fragmented habitat conditions and in response to comments received during the public comment period. In the Olympic Peninsula province, additions to HCAs were identified because the provincial owl population is far below the ISC pair target, and demographic isolation is a major concern. Within the Shasta/McCloud area of California, new areas were identified where the Service determined that existing HCAs did not contain the most suitable habitat.

Boundaries were adjusted to exclude non-habitat areas to the extent possible where new information clearly indicated that peripheral areas of non-habitat were included in the previously proposed critical habitat units, particularly as a result of squaring off HCAs to section lines to facilitate legal descriptions. Exclusion of all such areas via boundary revisions was not possible. In cases where critical habitat units unavoidably contain small towns, farms, man-made structures, or other non-habitat areas, those areas will be unaffected by critical habitat designation because they do not contain any of the primary constituent elements of spotted owl critical habitat. In other words, even though such areas will be included on the maps, they will not be affected by the section 7 no adverse modification requirement because that requirement focuses on protection of the primary constituent elements as required by the Act. Where HCAs contained significant areas of unsuitable habitat, the Service made a few modifications that resulted in excluding areas within an HCA from critical habitat. However, in all cases the proposed critical habitat units retain the size and spacing recommendations contained in the ISC Plan.

Consideration of Areas of Concern

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corridors for movement because owls disperse randomly, not along well-defined corridors, and there are unanswered questions about the biological effectiveness of corridors. In proposing critical habitat in the areas of concern, the Service included both the HCAs and existing adjacent blocks of suitable habitat within its proposal. This process not only focused on the immediate need for suitable habitat blocks (i.e., for nesting, roosting, and foraging), but also resulted in closer blocks of habitat that facilitate movement of owls between critical habitat units and throughout their range. Thus, the revised proposal emphasizes the importance of maintaining suitable habitat for all 4 constituent elements. As described previously, private lands in those areas included in the May 6 proposal were not included because they have relatively little existing suitable habitat that meet the desired criteria.

In the revised proposal, critical habitat designation concentrates on existing suitable spotted owl habitat, which can in turn help improve essential linkage and associated dispersal in the near-term by maintaining well-distributed blocks of currently suitable nesting habitat for owls. That is a difference for Federal lands between the ISC Plan and this revised proposal. The ISC Plan emphasizes the future potential of areas, whereas critical habitat primarily emphasizes current habitat conditions and provides near-term protection for these areas until long-term plans are implemented.

The Service recognizes the importance of all lands within these critical habitat units, but did not propose to incorporate all habitat, especially all dispersal habitat, within critical habitat units. Emphasis was placed on those areas requiring more immediate protection due to habitat conditions within the proposed units, provinces, or in relation to the need for range-wide distribution. Because other means exist for addressing the dispersal/movement habitat needs of the spotted owl in the forest matrix outside of critical habitat units on Federal lands, the Service concluded these areas are not in need of the additional management attention provided by critical habitat. However, the Service does expect that the dispersal needs of the owl on Federal lands will be addressed through maintenance of the 50–11–40 rule or other scientifically acceptable approach. The recovery planning process, currently underway, will address dispersal on a range-wide basis. Reviewing Federal land managers' timber sale programs through section 7 analyses is another method of addressing owl dispersal. The development of HCPs through the section 10 process is also an avenue to address dispersal and other needs (i.e., some level of acceptable nesting) on non-Federal lands.

Effects of the Designation

Total Acres Included in Critical Habitat

The revised proposed rule for the designation of critical habitat for the northern spotted owl identifies 181 areas encompassing a total of approximately 8.2 million acres. The Service has identified 61 critical habitat units totaling 1.8 million acres in California, 77 units totaling 3.8 million acres in Oregon, and 43 units totaling 2.7 million acres in Washington. This includes 6.4 million acres of Forest Service land, 1.3 million acres of Bureau land, 440,000 acres of State land, and about 60,000 acres of military lands (Table 1). The totals in Table 1 include all Federal and State lands within the proposed critical habitat units.

TABLE 1. APPROXIMATE ACREAGE OF PROPOSED CRITICAL HABITAT UNITS (CHUS) FOR THE NORTHERN SPOTTED OWL (ROUNDED TO THE NEAREST THOUSAND ACRES)

	California	Oregon	Washington	Total
U.S. Forest Service	1,570,000	2,510,000	2,370,000	6,450,000
Bureau of Land Management	150,000	1,130,000	160	1,290,160
State	60,000	130,000	250,000	440,000
Military	0	0	60,000	60,000
Total	1,790,000	3,770,000	2,680,160	8,240,160
Number of CHUs	61	77	43	181

Acreage totals for any private or other lands that may be intermingled within the proposed critical habitat units were not included in the totals if the areas were large enough to be identified through the geographic information system (GIS). Developed areas, such as towns, airports, roads, and water bodies are not proposed for designation as critical habitat even if physically situated within the boundaries of proposed critical habitat units because they will never contain primary constituent elements. If possible, the acreage totals were adjusted to reflect their exclusion. However, in some cases it was not possible using the GIS to physically remove these acres from the total acreage figures. They should not make a significant difference in actual total acres; however, the total acreage figures may be slightly overestimated.

A direct one-to-one comparison should not be made with the acreage figures included in the previous May 6 proposal. The acreage figures included in the Service's previous proposal were calculated by hand and included some errors in total acreage, primarily due to previous mapping difficulties and the quality of the existing data at the time of the previous proposal. However, the Service was requested to provide the data for comparative purposes (Table 2).

TABLE 2. COMPARISON OF TOTAL ACREAGE FOR REVISED CRITICAL HABITAT UNITS (CHUS), UNITS PREVIOUSLY PROPOSED (CHAS), AND HABITAT CONSERVATION AREAS (HCAS) (FIGURES ARE APPROXIMATE AND ROUNDED TO THE NEAREST THOUSAND)

	CHU	CHA	HCA[1]
	Total Acres	Total Acres	Total Acres
U.S. Forest Service	6,450,000	6,460,000	5,330,000

TABLE 2. COMPARISON OF TOTAL ACREAGE FOR REVISED CRITICAL HABITAT UNITS (CHUs), UNITS PREVIOUSLY PROPOSED (CHAs), AND HABITAT CONSERVATION AREAS (HCAs) (FIGURES ARE APPROXIMATE AND ROUNDED TO THE NEAREST THOUSAND)—Continued

	CHU	CHA	HCA[1]
Bureau of Land Management	1,290,160	1,390,000	940,000
National Park Service	NA [1]	NA [2]	620,000
State	440,000	500,000	760,000
Military	50,000	60,000	70,000
Private	NA	3,000,000	NA
Tribal	NA	72,000	NA
Total	8,240,160	11,602,000	7,720,000

[1] From ISC Plan; includes wilderness and National Park Service acreage.

[2] Acreage for National Park Service lands (and other lands already in protected status) are not included in critical habitat.

The Service also examined the amount of suitable habitat and number of known pairs within critical habitat units in the preparation of this proposal. Table 3 provides a comparison of the suitable habitat and owl pairs currently located within the HCAs and revised critical habitat units to the total known number of pairs and estimates of suitable habitat throughout the range of the owl. Federal and State agencies assisted the Service in obtaining these numbers. However, in some cases the Service had to hand calculate some of acreage estimates using a dot grid system. Therefore, the numbers are approximations only. However, they provide an example of the amount of existing suitable habitat (that meets current definitions of habitat that supports nesting and roosting) that may be protected in critical habitat, along with the count of the known number of owl pairs (estimated over the past 5 years) currently found in those areas.

TABLE 3. COMPARISON OF ESTIMATES OF SUITABLE HABITAT (TOTALS ARE ROUNDED TO THE NEAREST THOUSAND) AND KNOWN OWL PAIRS

State	Total		HCA		CHU	
	Acres[1]	Pairs	Acres	Pairs	Acres	Pairs
California	1,140,000	721	570,000	293	299,000[2]	251
Oregon	3,610,000	1,667	1,100,000	430	1,710,000	679
Washington	2,420,000	442	990,000	226	1,220,000	364
Total	7,170,000	2,830	2,660,000 [3]	949	3,220,000	1,294

[1] Totals were updated from Thomas *et al.* 1990; acreage figures for private lands were not available (all acreage figures are estimates).

[2] Totals are incomplete for California (totals for two Forests and the Bureau were not provided).

[3] Totals for suitable habitat within national parks are not included (it is assumed that some percentage of the 620,000 acres, but not all, include habitat suitable for spotted owls).

Distribution of Owls and Owl Habitat

To help place the acreage totals (from the above tables) in perspective, the Service has updated the estimates previously identified in the ISC plan and the Service's 1990 status review; further information can be found in the Service's assessment of owl pairs and habitat (USFWS 1991a). The majority of owls and suitable spotted owl habitat (i.e., for nesting, roosting, and foraging) are found on Federal lands, primarily on Forest Service land. A large percentage are also located on Bureau lands in Oregon. There are no current estimates of the amount of additional habitat that contributes to dispersal (e.g., that currently would be managed under the 50–11–40 rule on Federal lands); some of these lands are included in critical habitat (see Critical Habitat section).

Congressionally-designated wilderness and national park systems contain less than 1.8 million acres of suitable habitat spread over the range of the owl and may support fewer than 300 pairs of owls (Thomas *et al.* 1990). These lands are certainly essential to the conservation of the species; however, the Service has not included them in this proposed critical habitat designation because their current designation as wilderness, national park, or national monument already provides adequate protection against potential habitat-altering activities. These lands, by themselves, do not provide adequate protection for spotted owls, nor would they support a viable population.

Management Aspects of Critical Habitat

The Service's intent in proposing critical habitat is to provide habitat that contains constituent elements in sufficient quantities to maintain an abundant and stable population of owls throughout its range. This proposal will help reduce the risk associated with the near-term reduction in owl numbers and cumulative loss of habitat anticipated from the interim implementation of the ISC Plan and other management plans. Critical habitat offers additional protection through section 7, but it does not replace the HCA network and management recommendations for the intervening forest matrix recommended by the ISC. Designation of critical habitat will, however, provide short-term regulatory protection for HCAs, protection in key areas outside of HCAs (e.g., in areas proposed for designation where habitat or pair deficiencies exist or areas of high risk as identified by the ISC), an ecological buffer to HCAs, and/or protection of areas currently in need of additional protection (e.g., areas where linkage problems occur). Critical habitat will help to retain options until long-term conservation plans are accepted and fully implemented.

The Service has not done a risk analysis for critical habitat because there are no numerical goals upon which to evaluate the efficacy of the proposal. That is not its intended purpose. The ISC analysis clearly identifies the short-term risk associated with the implementation of the ISC Plan, especially if all parts of that plan are not fully or adequately implemented. Over the past year, the Service's section 7 analyses have begun to demonstrate the effects of continued timber harvest that in the short-term may increase the risk associated with the ISC Plan. Critical habitat will, through additional protection provided by section 7, help reduce the short-term risk until a long-term conservation plan is implemented.

Although critical habitat is not intended as a management or conservation plan, association with the ISC Plan leaves the perception that critical habitat is a form of that plan. The ISC, critical habitat, and other conservation processes are working with the same land base containing specific locations of older forests; it is therefore inevitable that these processes overlap. Emphasizing large blocks of suitable habitat in all recovery and management processes for the northern spotted owl is essential to local population stability (although without connectivity between them, the blocks themselves will probably not maintain long-term ecosystem stability). Critical habitat uses the ISC Plan as a starting point because it represents the best available data and because it lays out a framework for identifying and evaluating habitat that is founded on scientific principles. Designation of critical habitat does not offer specific direction for managing owl habitat. That type of direction, as well as any change in direction, will come through the administration of other facets of the Act (e.g., section 7, HCP process, and recovery planning) or through the development of land management plans addressing the owl.

The Service expects that Federal and non-Federal agencies will produce biologically sound, long-term land management plans that contribute to the conservation of spotted owls. Biologically credible plans such as the ISC Plan offer opportunities for resolving conflicts between timber management and owl conservation and offer a basis for present and future land management decisions. The Service will revisit its designation of critical habitat if land management plans (e.g., environmental impact statements, forest plans, resource management plans), a recovery plan (if implemented through land management plans), or other conservation strategies are developed and fully implemented in a coordinated and consistent manner throughout the range of the owl.

Biodiversity and Ecosystem Protection

Designation of critical habitat for the northern spotted owl may benefit other forest species, particularly those that depend upon large blocks of older forest and occur within the proposed areas. However, this is a dynamic and complex issue that includes both spatial and temporal components that is not fully addressed by the designation of critical habitat alone. Moreover, it is not a legitimate basis for designating critical habitat for the owl and did not factor into the proposed designation.

In 1990, the Service identified species that were candidates for listing under the Act and were found within the HCAs selected by the ISC. The Service has updated that list to include those species that may benefit from designation of critical habitat for the spotted owl (a list is maintained in the administrative record). About 60 listed, proposed, or candidate species have been observed within areas proposed for designation as critical habitat. Although not all of the known locations of these species are found within critical habitat units, management of these units for the spotted owl pursuant to section 7 of the Act may be of benefit to these species. Further research and evaluation of data will be necessary to determine the interrelationships of these species to older forests and whether management for the spotted owl will adequately provide for their conservation, thereby reducing the need for listing of proposed and candidate species. The Service has not had the opportunity to consider the value of critical habitat to these species in this proposal. Further, many areas that are proposed for designation have not been surveyed for these species.

In addition, the recent congressionally-directed old growth effort has also identified areas that are important to maintaining a late successional forest ecosystem network within the range of the owl. This effort addressed the owl and numerous other forest species and processes, and includes more acreage to accommodate these components of the ecosystem. The Service has not had the opportunity to review the product of this effort to determine its relationship to the spotted owl. However, the Service was able to use the suitable spotted owl habitat maps that were provided for this effort; these are maps that have been updated since the ISC effort in 1990.

The HCA network was derived using maps that identified existing suitable habitat for the northern spotted owl. Critical habitat designations were based on the HCA system along with additional areas that contained suitable habitat and other areas important to distribution or connectivity; updated habitat maps were used. The recent congressionally-directed old growth effort also focused on the owl conservation areas to ensure that owls were adequately protected in any potential old growth reserve system that would also address other forest species and processes. All of these proposals, although created to meet different goals, are based on a habitat base that is diminishing over time. Comparison of the maps that have been developed over the past few years underscores the limitations that exist in trying to identify habitat to be protected or conserved for this or other forest species. There is a limited remaining habitat base; all land management planning exercises will need to focus on this same habitat base.

Designation of critical habitat may contribute to the conservation and management of the Northwest's forests as one component in the management or maintenance of characteristic species and processes. Research is beginning to identify the importance of maintaining ecosystem processes upon which is built the stability of the system and thus the stability of the species and populations that depend on that system. Such functions as hydrology, bank stability, nutrient cycling, predator/prey cycles, fisheries restoration (e.g., salmon), local microclimates, and others are all interdependent. They can benefit from conservation approaches that focus on unity of the ecosystem as opposed to a piecemeal approach that does not take into account the interrelationships of all processes.

Preservation of separate blocks of habitat will not by themselves contribute to ecosystem stability. Linkage between the blocks of habitat is a necessary component. Critical habitat designation may contribute to regional biodiversity by protecting natural ecosystems of sufficient size and quality to support native species. Critical habitat may also help in retaining ecosystem values through a combination of preservation, conservation, and compatible management of forest habitat with emphasis given to older forest values and characteristics, as well as protection of listed, proposed, and candidate species. For example, critical habitat designation may also help maintain important nesting habitat for migrating birds (e.g., neotropical migrants), many of which are seriously declining in numbers. Current international efforts to maintain tropical forest habitat in Central and South America may be enhanced by complimentary efforts to maintain suitable habitat for species that nest in forests of the Northwest.

Conservation of biodiversity will help to retain or maintain ecosystem integrity and complexity for multiple species. To ascertain long-term needs and species interactions, strong emphasis should be given to monitoring and research projects on the richness of the forest ecosystem in the Northwest. These should include the study of human population and development pressures on a regional scale to gain a better understanding of the complex biotic relationships and to help mold a better approach to ecosystem conservation. The Service strongly supports the recent efforts to resolve Northwest issues at the ecosystem level.

Available Conservation Measures

Section 7 Consultation

Section 4(b)(8) of the Act requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) that may adversely modify such habitat or may be affected by such designation. Regulations found at 50 CFR 402.02 define destruction or adverse modification of critical habitat as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.

If critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to destroy or adversely modify critical habitat. This Federal responsibility accompanies, and is in addition to, the requirement in section 7(a)(2) of the Act that Federal agencies ensure their actions do not jeopardize the continued existence of any listed species. As required by 50 CFR 402.14, a Federal agency must consult with the Service if it determines an action may affect a listed species or critical habitat. Thus, the requirement to consider adverse modification of critical habitat is an incremental section 7 consideration above and beyond section 7 review to evaluate jeopardy and incidental take. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Prior to formal designation of critical habitat section 7(a)(4) of the Act and 50 CFR 402.10 of the regulations require Federal agencies to confer with the Service on any action that is likely to result in destruction or adverse modification of proposed critical habitat. The Service expects to confer on some projects for which biological opinions on the effects of Federal actions on the spotted owl have already been issued. Conference reports provide advisory conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are not legally binding.

If an agency requests, and the Service concurs, a formal conference report may be issued. Formal conference reports on proposed critical habitat contain a biological opinion that is prepared according to 50 CFR 402.14 as if the critical habitat were designated, not proposed. Such a formal conference report may be adopted pursuant to 50 CFR 402.10(d) as the biological opinion when the critical habitat is designated if no significant information or changes in the action alter the content of the opinion.

Conference on Current Activities

A number of Federal agencies or departments fund, authorize, or carry out actions that affect lands that the Service proposes to designate as critical habitat. Among these agencies are the Bureau of Land Management (Bureau), Forest Service, Department of Defense, Bureau of Mines, Corps of Engineers, Bureau of Reclamation, Federal Energy Regulatory Commission, and Federal Highway Administration. The Service has identified numerous activities proposed within the range of the northern spotted owl that are currently the subject of formal or informal section 7 consultations. These include the Forest Service's and Bureau's land management planning exercises (e.g., the Forest Service's spotted owl environmental impact process), annual timber sale operations, and other more localized projects, such as hydroelectric developments; road, trail, and powerline construction; land exchanges; resort development; and a number of smaller actions (e.g., campground construction).

Federal agencies are responsible for determining whether or not to confer with the Service on their actions and should consider a number of factors when determining whether any proposed action may destroy or adversely modify proposed critical habitat. Among these factors are impacts of the action on the primary constituent elements of nesting, roosting, foraging, and dispersal habitat; consistency of the proposed action with the intent of the ISC Plan; geographic considerations; the extent of fragmentation or current habitat suitability within the critical habitat unit; the level of incidental take associated with the action; and the extent of the action (e.g., campground maintenance versus a 40-acre clearcut). The Service will review the action agency's determination on a case-by-case basis and will concur whether or not the action is likely to destroy or adversely modify critical habitat. In order to concur, the Service will consider the effect of the proposed action on the above elements along with the reasons why that particular area was proposed to be critical habitat.

Basis for Analysis

The evaluation of actions that may adversely modify northern spotted owl critical habitat should consider a number of factors, such as the present condition of the habitat, the number of current pairs, the reproductive success of breeding pairs, the expected time to regenerate sufficient habitat to support an effective population in a particular area, and local and regional problems. While the Service looked at the entire range of the owl in determining an approach to critical habitat designation, its section 7 analysis of activities affecting owl critical habitat will consider provinces, sub-provinces, and individual critical habitat units, as well as the entire range. All proposed actions should be viewed as to their impacts on all 4 constituent elements relative to the potential for adverse modification on individual critical habitat units.

The range of the owl is subdivided into physiographic provinces as discussed in the Background section of this proposed rule. These subdivisions are not based upon identification of separate populations of owls, but rather on geographical habitat differences. The provinces and local populations of owls are for the most part interrelated and interconnected. The loss of one or more provinces, or even a major part of a province, could lead to genetic and demographic isolation of parts of the owls' range. Potential isolation could have a greater near-term effect on some areas (e.g., Olympic Peninsula, Washington Cascades, Oregon Coast Ranges, California Shasta/Modoc) because of the present status of owls and owl habitat within those areas, than on other areas (e.g., Klamath, Oregon Cascades). In the long-term, however, the concern over population stability would be similar in all areas. Population stability for the owl may depend on the relative location of large stable population reserves (sources) that act as

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Basis for Analysis

The evaluation of actions that may adversely modify northern spotted owl critical habitat should consider a number of factors, such as the present condition of the habitat, the number of current pairs, the reproductive success of breeding pairs, the expected time to regenerate sufficient habitat to support an effective population in a particular area, and local and regional problems. While the Service looked at the entire range of the owl in determining an approach to critical habitat designation, its section 7 analysis of activities affecting owl critical habitat will consider provinces, sub-provinces, and individual critical habitat units, as well as the entire range. All proposed actions should be viewed as to their impacts on all 4 constituent elements relative to the potential for adverse modification on individual critical habitat units.

The range of the owl is subdivided into physiographic provinces as discussed in the Background section of this proposed rule. These subdivisions are not based upon identification of separate populations of owls, but rather on geographical habitat differences. The provinces and local populations of owls are for the most part interrelated and interconnected. The loss of one or more provinces, or even a major part of a province, could lead to genetic and demographic isolation of parts of the owls' range. Potential isolation could have a greater near-term effect on some areas (e.g., Olympic Peninsula, Washington Cascades, Oregon Coast Ranges, California Shasta/Modoc) because of the present status of owls and owl habitat within those areas, than on other areas (e.g., Klamath, Oregon Cascades). In the long-term, however, the concern over population stability would be similar in all areas. Population stability for the owl may depend on the relative location of large stable population reserves (sources) that act as

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sources for areas that have insufficient owl numbers (sinks) or are subject to population fluctuations (Thomas *et al.* 1990).

The loss of a critical habitat unit(s) could have a detrimental effect on the stability of the province or at the least on that portion of the province where the loss occurred. That, in turn, would also have an effect on linkage to other provinces potentially leading to isolation and instability. At the lowest level, each critical habitat unit is related to, and dependent upon, each adjacent unit, just as each province is dependent on each adjacent province. The loss of one unit could result in local instability, affecting dispersal and connectivity and, thus, reducing local population levels. Over time the resulting effect could lead to greater problems at the province level, and ultimately at the species level.

Provinces, sub-provinces, and individual units are all part of a habitat network important to maintaining a stable and well-distributed population over the range of the owl. Present conditions vary throughout the range of the owl with the result that some areas may be less able to sustain continuing impacts than others at any given time (e.g., the Olympic Peninsula). Each project will need to be reviewed as to its impacts at all levels.

Examples of Proposed Actions

Activities that disturb or remove the primary constituent elements within designated critical habitat units may adversely modify the owl's critical habitat. These activities may include actions that would reduce the canopy closure of a timber stand, reduce the average dbh of the trees in the stand, appreciably modify the multi-layered stand structure, reduce the availability of nesting structures and sites; reduce the suitability of the landscape to provide for safe movement, or reduce the abundance or availability of prey species.

In contrast, activities that would have no effect on the critical habitat's primary constituent elements almost certainly would not adversely modify the critical habitat. However, even though an action may not adversely modify critical habitat, it may still affect spotted owls (e.g., through disturbance) and, therefore, be subject to consultation under the jeopardy standard of section 7 of the Act, as determined after consideration of the aforementioned factors.

Areas proposed for designation as critical habitat support a number of existing and proposed commercial and noncommercial activities. Commercial activities that may affect the spotted owl critical habitat include timber harvests, salvage activities, other wood fiber utilization (e.g., paper, firewood), sand and gravel extraction, mining (e.g., open pit), activities associated with oil and gas leases, snag creation/removal, construction of hydroelectric facilities, geothermal development, and construction of alpine ski areas and associated resort facilities.

Commercial activities not likely to destroy or adversely modify critical habitat include limited livestock grazing and various site-specific activities such as scenic tours and cavern exploration. Conducting owl surveys would not be likely to destroy or adversely modify critical habitat. Non-commercial activities are largely associated with recreation and are not considered likely to adversely affect critical habitat. Such activities include hiking, camping, fishing, hunting, cross-country skiing, off-road vehicle use, organized motor-crosses, and various activities associated with nature appreciation. Additional activities include "personal use" commodity production, such as mushroom and plant gathering, Christmas tree cutting, and rock collecting, and are also foreseen as not having any adverse affect on critical habitat.

Examples of Potential Impacts

The Service assumes that HCAs will continue to be managed as recommended by the ISC. Timber harvest within HCAs that are also critical habitat would be inconsistent with the long-term development of large suitable habitat blocks and would, therefore, likely result in destruction or adverse modification of critical habitat. Proposed actions that are consistent with the ISC recommendations for activities within HCAs would not be likely to result in destruction or adverse modification of critical habitat.

Timber harvests proposed in critical habitat units, but outside HCAs, may or may not adversely modify critical habitat, depending on the current condition of the area and the degree of impact anticipated from implementation of the project. The Service envisions that, as habitat within the HCAs begins to recover, increasing levels of harvest will be allowable within the critical habitat portion outside of the HCAs. The potential level of allowable harvest in the non-HCA portions of critical habitat units will vary over time for each unit, depending on local and provincial owl populations and habitat conditions and will be determined on a case-by-case basis during consultation.

For actions that result in moderate impacts, reasonable and prudent alternatives identified by the Service may involve minor modifications to the project's configuration. In the case of a proposed upgrade of a powerline right-of-way corridor, for example, the Service may recommend that the corridor be expanded on one side of the existing corridor versus the other side to avoid impacts to habitat where the primary constituent elements are of higher quality. For projects that may result in more severe impacts, reasonable and prudent alternatives may involve more substantial project changes. In the case of a multiple-unit timber sale, the Service may recommend that certain units be reduced in size, reconfigured, relocated, or dropped altogether to avoid impacts to primary constituent elements. The Service may recommend alternate timber harvest prescriptions in certain forest types.

No reasonable and prudent alternatives may be feasible for some proposed actions. For example, in some areas clearcutting may be the only technologically and economically feasible means of cutting the timber; in these cases, no reasonable and prudent alternatives would exist. In other cases, due to a lack of existing habitat or high levels of fragmentation, no level of harvest may be possible without resulting in the destruction or adverse modification of critical habitat. In both of these situations, the Service would issue an adverse modification biological opinion with no reasonable and prudent alternatives.

Research on silviculture or other types of forest management practices may negatively affect critical habitat. However, the information that may result from such research may offset the perceived impacts of the action. Research on various silvicultural practices may lead to new methods that would shorten the time needed to produce suitable habitat, or timber harvest prescriptions that are more compatible with northern spotted owls. Wherever possible, research should be conducted outside of critical habitat units, coordinated throughout the subspecies' range, and based upon an approved long-term strategy.

Some activities could be considered to be of benefit to spotted owl habitat and, therefore, would not be expected to destroy or adversely modify critical habitat. Examples of activities that could benefit critical habitat in some cases include protective measures such as fire suppression or forest-pest eradication, as well as silvicultural treatments that may improve spotted owl habitat. There is a need for research to gather data that may support or refute any potential benefits from actions such as these. At this time, they should be evaluated on a case-by-case basis.

In general, those activities which do not remove components of habitat for spotted owls or their prey species are not likely to destroy or adversely modify critical habitat. Each proposed action would be examined under section 7 in relation to its site-specific impacts. Thus, proposed actions such as commercial thinning of timber stands and other selective harvest prescriptions may or may not destroy or adversely modify critical habitat, depending on the type and extent of harvest and the pre-project condition of the area in relation to spotted owl habitat needs. The involved Federal agencies can assist the Service in its evaluation of proposed actions by providing detailed information on the habitat configuration of a project area, habitat conditions of surrounding areas, and information on known locations of spotted owls.

Federal activities outside of critical habitat are still subject to review under section 7 for their effect on owls. The Service expects that management activities outside of critical habitat on Federal lands would continue to be managed as recommended by the ISC or another scientifically valid approach.

Other Conservation Measures: Non-Federal Lands

Section 9 of the Act prohibits intentional and nonintentional "take" of listed species and applies to all landowners regardless of whether or not their lands are within critical habitat. Section 10(a)(1)(B) authorizes the Service to issue permits for the taking of listed species incidental to otherwise lawful activities such as timber harvesting. Incidental take permit applications must be supported by a habitat conservation plan (HCP) that identifies conservation measures that the permittee agrees to implement to conserve the species, usually on the permittee's lands. A key element of the Service's review of an HCP is a determination of the plan's effect upon the long-term conservation of the species. An HCP would be approved and a section 10(a) permit issued if it would minimize and mitigate the impacts of the taking and would not appreciably reduce the likelihood of the survival and recovery of that species in the wild.

Due to limited Federal involvement, the Service expects that few if any formal section 7 consultations would be initiated for State lands that are included in proposed critical habitat. The States are still subject to the "take" prohibitions under section 9 of the Act, however, and may enter into the section 10 HCP process where appropriate.

The recommendations provided in the ISC Plan for State lands would form the basis for the Service's recommendations at this time. Examples are such recommendations as changes in harvest patterns and silvicultural techniques that help produce and maintain habitat that supports some level of breeding owls and improve linkages with other areas. The Service has been actively pursuing discussions with the States on these types of issues and expects to work closely with the States to provide guidance as appropriate.

The proposed designation of critical habitat does not imply that lands outside of critical habitat do not play an important role in the conservation of the owl. Lands outside of critical habitat are important to providing nesting, foraging, roosting, and dispersal habitat for owls; they are subject to section 9 prohibitions. The Service envisions that the role of all landownerships in the conservation of the owl outside of critical habitat units will be addressed through section 7, the HCP process, the recovery planning process, and other appropriate State and Federal laws; recommendations for these lands were included in the ISC Plan (Thomas *et al.* 1990). Implementation of these types of recommendations are important to the overall conservation of the owl. The recovery plan will very likely specify some population density or breeding success rate of owls on private, tribal, Federal, and State lands outside of critical habitat. It is expected that recovery goals will be achieved in the future, probably by using other conservation mechanisms available to the Service and other landowners (e.g., land exchanges, conservation and development easements.

Summary of Economic Analysis

Section 4(b)(2) of the Act requires the Service to designate critical habitat on the basis of the best scientific data available and to consider the economic effects and other relevant impacts, of specifying any particular area as critical habitat. The Secretary may exclude areas from critical habitat if he determines that the benefits of such exclusions outweigh the benefits of specifying such areas as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such areas as critical habitat will result in the extinction of the species concerned. The Act thus requires the Service to evaluate those economic and other effects likely to take place due to the designation of critical habitat, and to consider whether to exclude critical habitats based upon those impacts.

The economic effects of designating critical habitat for the spotted owl are the incremental impacts over and above those impacts that occurred as a result of implementation of management plans, such as the ISC Plan, and previous events, including the listing of the spotted owl as a threatened species in June 1990. The economic analysis considers the critical habitat impacts to be those incremental impacts that are expected as a result of the critical habitat proposal. Although not required to do so by law, the Service has included in the economic analysis report (USFWS 1991d) estimates of impacts from listing and from the ISC Plan.

Industry Trends in Impact Area

Forestry in the Pacific Northwest has exerted a significant influence on the economic and cultural development of that region. The timber industry is cyclical and markets in the Northwest were, until recently, more limited by demand than supply. The 1980s brought unprecedented change to the economics of timber-based industries. Competing demands for timber resources increased dramatically, and the declining base of older forests became the focus of political strife. The historical rate of timber harvest on public lands reached historically high levels from 1983–1987, and was seriously challenged through the court system. Federal law was used to challenge agency planning activities; legislation cited included NEPA, NFMA, FLPMA, and the Act. As a result, significant reductions of timber harvest from Federal lands occurred through the mid to late 1980s. These actions were primarily focused on protection of older forests, as well as on the spotted owl and other species. There was a growing public awareness that, once a stand of older trees or native forest was harvested, the intrinsic benefits and values of that stand, including aesthetic, preservation, and ecological values, were essentially lost. As a result, from 1988 to 1989 the timber harvest from Federal lands in Oregon was reduced 7.1% or 990 million board feet (mmbf) (Greber 1991). This occurred prior to the listing of the spotted owl as a threatened species and well before the proposal to designate critical habitat.

Numerous other factors impact the timber industry of the Northwest and nationwide. Increased mechanization is improving worker productivity; the past 10 years have brought a 32 percent increase in productivity, and an additional 7 percent is projected in the

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Numerous other factors impact the timber industry of the Northwest and nationwide. Increased mechanization is improving worker productivity; the past 10 years have brought a 32 percent increase in productivity, and an additional 7 percent is projected in the next decade. This impact has translated into a decrease in the number of workers required to process one million board feet of timber (from 12.09 workers/mmbf in 1980 to 7.33 workers/mmbf in 2000) (Northwest Forest Resource Council 1989).

This job loss is partly due to other related trends in the timber industry that include the declining base of old-growth forests. Without harvest reductions, merchantable old-growth may be depleted in as little as 10 years in some regions and up to 50 years in others. Added protection of critical habitat plus other events that have already affected the timber industry accelerate the impacts, rather than allowing them to occur over a longer period of time. A related factor is the sustainability of previous harvest rates. Sessions *et al.* (1990) noted that the record level of harvest in 1983–1987 is not sustainable on Oregon forest lands; a 14 percent reduction in harvest must occur in the 1990s to reach sustainable harvest levels. Loss and modification of older forest habitat have led to the decline of the spotted owl. The spotted owl is a creature whose existence is closely tied to habitat structure of older forests and, as such, has also become part of the public controversy over how Federal lands are managed. The result will be a further reduction in timber harvest.

The export controversy is yet another source of uncertainty in analyzing the economic effects of the proposed spotted owl critical habitat designation. In 1988, 3.7 billion board feet (bbf) of timber were exported, also exporting some associated processing employment opportunities. The loss of logs due to the proposed critical habitat designation is equivalent to 4.5 percent of annual log exports. The market interactions of price and availability throughout the export market is complex. Some industry analysts have noted that, with naturally decreasing availability of large logs, the export market would be in a decline in the mid-1990s with or without further protection of older forests.

Many of the above factors cannot be subtracted directly from the overall economic effects, yet must be recognized as part of the market environment in which the timber industry operates. The primary impact to the timber industry is the reduction in clearcut harvesting practices within proposed critical habitat units. If industry is able to develop and implement harvest techniques that are compatible with habitat requirements of the owl, recovery of the owl may proceed more rapidly and the negative economic effects of critical habitat may be reduced.

Benefits

The conservation of the spotted owl and its habitat through designation of critical habitat may result in a wide range of benefits. These benefits include preservation of recreation and existence values which will increase the benefits for most affected activities. Scenic beauty contributes to the quality of forest recreational experiences. Aquatic benefits are enhanced by reducing sediment loads and improving water temperature which may lead to higher fishing and water-related recreational values. For example, empirical research on paired watersheds of the South Fork of Casper Creek in northern California (Rice *et al.* 1979) demonstrated that 42 cubic yards (approximately 60 tons of soil) per acre were lost from the watershed following logging and associated road construction. This soil loss was above that of baseline conditions, and the data were based on logging practices in place during the 1970s.

Many of the resource services provided by critical habitat are not marketed. The lack of market prices makes it difficult to value them in dollar terms, as compared to timber harvest and other activities (Peterson and Randall 1984). As a result, this analysis currently focuses on the cost impacts, primarily related to timber harvest. No comprehensive estimate of the benefits of designating critical habitat is feasible with available data. Rather, the analysis provides a discussion of the kinds of benefits that are expected to ensue, with empirical examples as available. For both the spotted owl and its habitat, existence values represent an additional category of non-use benefit, albeit one that remains difficult to measure. Furthermore, there are preservation benefits that society places on endangered species for the option of future recreational use, with the knowledge that the owl's natural ecosystem exists and is protected, and the satisfaction from its bequest to future generations. Many of these benefits are expected to increase in relative value over time. As human activities continue to reduce older forest habitat, the remaining stands will become proportionately less available and more valuable. Habitat protection for the spotted owl clearly benefits other species as well as the human use and enjoyment of these species.

Economic Baseline

In assessing the economic impacts of the proposed critical habitat, the Service has used the expected economic situation consistent with restrictions that were in place at the time of proposing critical habitat. The principal land use restrictions that were already in place were the forest and resource management plans, ISC Plan and its adoption by the Federal land managing agencies, and the listing of the spotted owl. The two major Federal land managers involved, the Forest Service and Bureau, have indicated their intent to implement most of the ISC Plan on an interim basis until they complete new resource management plans. The Bureau expects to implement the Jamison Plan, and the Forest Service stated in the **Federal Register** (55 FR 40412) that it would conduct timber harvest activities in a manner not inconsistent with the ISC Plan. The assumptions are that the HCAs of the ISC Plan would be protected from harvest; the Forest Service will implement the 50–11–40 rule on its lands, and the Bureau will implement 50–11–40 to the extent possible.

The ISC Plan is the most likely and realistic planning framework of which the Service is aware. The Service realizes that the Forest Service and Bureau decisions to adopt the ISC Plan in whole, or in part, are policy decisions subject to change. The Forest Service is currently enjoined by a court order from implementing the ISC Plan. However, the Service believes its assumption of ISC Plan implementation is more realistic then any alternative of which it is aware.

Most critical habitat units established in this proposed rule include a component of the HCAs. Additional lands adjacent to the HCAs were proposed as critical habitat to provide further protection of existing habitat. The Service assumes these adjacent lands would have been managed under the 50–11–40 rule, as per the ISC Plan, and that there will be no harvest in the HCAs as recommended by the ISC Plan.

For the purposes of this analysis, the Service has made two additional assumptions concerning reductions in planned harvest. The first is that, in areas added to the HCAs, 80 percent of the planned 1991 harvest above 50–11–40 rule may be subject to restrictions, allowing 20 percent of harvest planned in critical habitat additions to proceed without restrictions. A second assumption in the economic analysis is that there is a distinction between the effects of listing the species and the incremental effects of designating critical habitat. The listing and critical habitat effects in the additions to critical habitat units were separated as follows:

(1) 70 percent of the impacts are attributed to the listing of the species and application of the jeopardy standard and incidental take guidelines; and

(2) 30 percent of the impacts are attributed to the designation of critical habitat and application of the adverse modification standard.

The Service believes that jeopardy will be reached before adverse modification in the preponderance of consultations. The above assumptions resulted in part from an evaluation of section 7 consultations issued to the Forest Service and Bureau in 1990 and 1991 (USFWS 1991b and c). Each critical habitat unit was evaluated in relation to existing suitable habitat quantities, number of known owl pair sites, and distribution of suitable habitat within the unit. Actual expected impacts will vary by area and will be reviewed on a case-by-case basis. The above should be used for discussion purposes associated only with this analysis.

Affected Agencies

The Service assumes in the economic analysis that the impacts to Federal agencies are related to timber harvest and to other activities such as surface mining that physically alter critical habitat. The Forest Service and Bureau are the primary agencies affected by the proposed critical habitat designation. However, the States, Corps of Engineers, and certain Army installations within proposed critical habitat also may be affected. The Bureau, Forest Service, Corps of Engineers, Bureau of Mines, National Park Service, Fish and Wildlife Service, and Federal Energy Regulatory Commission have permitting responsibilities that may affect activities other than timber harvest. (See section on Available Conservation Measures). If a potential action would be limited or prohibited by another statute or regulation, it is presumed that those impacts are attributable to pre-existing restrictions and not to the ESA.

Economic Effects

The economic effects resulting from adverse modification of critical habitat (effects above those of listing and other land management decisions) are the subject of the economic analysis (USFWS 1991d); it identifies and quantifies, as feasible, the added probable costs and benefits that may result from critical habitat designation for the northern spotted owl. Economic effects are the costs or benefits to society of precluding or limiting specific land uses. Economic costs and benefits to society are defined as the changes in economic rents and consumer surpluses expected to be derived from the land area under consideration, with and without its designation as critical habitat. The economic analysis also considers regional economic impacts. Economic impacts are the employment and revenue consequences of critical habitat designation on local economies.

The Forest Service and Bureau data allow a comparison of their planned 1995 sales with recent harvest levels in the affected area. They show planned sales of 3,021 mmbf for Forest Service and 1,193 mmbf for the Bureau. For the Forest Service, that level is considerably below the average annual sale in the late 1980s, whereas the Bureau planned sale is slightly higher than the 1985–1989 average.

In deriving their estimates, the Forest Service and Bureau made somewhat different assumptions about the effects of the ISC strategy. Both assumed no timber sales in the habitat conservation areas. Forest Service assumed the 50–11–40 rule would apply to areas outside the habitat conservation areas as part of the ISC plan, which would reduce the planned harvest in those areas by about 72 percent, on average. The Bureau assumed only limited adoption of the 50–11–40 rule in its With-ISC volume estimates. Because the critical habitat units currently proposed differ in total area affected from the May 6 proposal, the With-critical habitat areas estimates provided by the Forest Service and Bureau are not directly used in this analysis. Instead, the With-critical habitat units timber volumes were developed based on the currently proposed acreages for the Forest Service and Bureau using productivity factors (BF/Acre) for each forest and Bureau District that are implicit in the timber volume estimates.

An average of 80 percent reduction in planned harvest on critical habitat units, outside the HCAs, is used as the basis for this analysis (as described above). This is consistent with the Forest Service limited harvest alternative which assumed that approximately 28 percent of planned harvest would be permitted in the areas added to the CHAs. Furthermore, for purposes of the analysis, the reduction in planned harvest attributable to the Endangered Species Act is allocated 70 percent to jeopardy and 30 percent to adverse modification, based on the Service's estimate of the likely outcome of the consultations.

Impacts on timber-based revenue, employment, and revenue sharing with affected counties are derived directly from these changes in timber volume. The revenue estimates incorporate the Forest Service rising price assumption whereby prices are projected to rise significantly by 1995 due to reduced Federal timber sales caused by implementation of the ISC strategy and critical habitat designation, the effects of the business cycle on the demand for lumber, and other factors influencing the timber economy, both regionally and nationally.

The gross loss to the U.S. Treasury from the reduced volume of timber sales attributed to critical habitat ($54 million annually) has a potential for two offsetting balances: First, the administrative cost of conducting the timber sales is a cost that will not have to be borne for the reduced volume; and second, road credits associated with the reduced volume will not have to be deducted from the sales value of the timber. Both of these offsetting balances have been estimated ($11 million annually) for each of the National Forests and the administrative costs have been estimated for the Bureau Districts in the Pacific Northwest States. The results of deducting the appropriate administrative costs and road credits shows a net loss to the U.S. Treasury attributable to the designation of critical habitat to be nearly $43 million annually, with full impacts occurring in 1995.

Estimates of timber-based employment effects caused by critical habitat unit designation were derived from IMPLAN input-output models of the regional economies. The IMPLAN modeling system was developed by Forest Service to assess the regional economic effects of changes in the availability of timber. The projected timber-based employment losses used revised job response coefficients that were adjusted to reflect the current productivity estimates for the timber industry and other factors. The reduction of timber sales results in a decrease of 2,458 direct, indirect, and induced jobs attributable to critical habitat impacts.

The potential loss of timber-based employment as a result of designating critical habitat for the northern spotted owl will be more significant in some counties of the three-state area than in others. Two key factors are the degree to which a county's timber industry relies on timber harvests in other counties and how important a part the timber industry plays in the county economy. These are also the counties where the greatest impact to the spotted owl has also occurred due to the degree of habitat loss from the past timber harvesting.

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The county employment coefficients range from 8.77 to 18.47 with an overall

average of 12.87. The coefficients projected direct, indirect and induced employment effects. Designating critical habitat may cause a potential loss of 1,538 direct industry jobs, or 1.4 percent of the total employment (SIC 24). The percent of timber industry jobs lost varies by county and ranges from 0.0 percent to 6 percent. Oregon is the most heavily impacted with 1,201 direct jobs lost out of the total 1,538.

Federal timber-based revenues are shared with the States and counties where the timber is harvested (25 percent of gross revenues for Forest Service and 50 percent for the Bureau). Those payments are expected to be reduced by $20 million when critical habitat is designated. About 25 percent of Bureau land in Oregon are Coos Bay Wagon Road lands for which counties receive 6.5 percent of timber based revenue, based on the State severance tax rate. That lower rate of revenue sharing is not included in the estimates presented here, making the total revenue share lost an overestimate.

Predictions of impacts on either revenues or employment beyond 1995 are highly uncertain because so many important factors are subject to change over a longer period of time. For example, the Forest Service estimates indicate that stumpage prices will decline some 7 percent from their 1995 levels by the year 2000 due to fluctuations in the economy, reducing the critical habitat impact on revenues accordingly. Conversely, the private sector response to higher prices, which tends to offset the impacts of lower Federal timber sales, may not be sustainable over the long term.

A number of factors are expected to offset employment losses as a result of critical habitat designation over the longer term. Advances in silvicultural techniques that may permit timber harvest without adversely modifying spotted owl habitat have the potential to reduce impacts, as they become more widely implemented and more cost effective. The effects of such developments are as yet uncertain but, by allowing some timber harvest in critical habitat, they may reduce the longer term impacts on revenues and employment. Moreover, the Service expects that as second-growth timber stands in critical habitat mature, a portion of the annual yield may eventually be harvestable without adverse effects on spotted owl critical habitat.

There are other considerations which may, over time, affect the relative values society places on conservation of the spotted owl and its habitat versus the timber flow it can produce. A number of studies have shown that the value society places on preservation of unique or irreplaceable natural resources tends to increase as populations and real income levels increase (Krutilla and Fisher 1975). Thus, over the longer term, as increasing numbers of species are threatened or endangered and their habitats become increasingly scarce due to development and other pressures, a wealthier society may find that it places ever higher value on those few species and unique areas that remain.

Effects on Mining and Mineral Exploration

The U.S. Geological Survey has identified three areas (mineral terranes) with the potential for undiscovered deposits within the Medford Quadrangle and one additional terrane throughout the Cascade Mountains. The types of deposits that could be discovered include sulfides, epithermal veins, and porphyry copper.

Effect on State and Private Lands

Impacts of critical habitat designation may occur for timber and non-timber activities on State land where there is a Federal involvement (e.g., Federal funding, permitting, etc.) subject to section 7 of the Act. Impacts on State or private entities may also result if the decision on a proposed action in Federally-owned critical habitat, such as a right-of-way permit, could affect economic activity on adjoining non-Federal land. Each action would be evaluated by the Federal agency under section 7 in relation to its site-specific impact and spotted owl habitat needs.

Balancing Process and Criteria

Congress foresaw the possibility that, in some instances, the designation of critical habitat might have significant economic impacts, and therefore authorized the Secretary to exclude areas if the benefits of exclusion outweigh the benefits of inclusion as long as the exclusion would not lead to the extinction of the species [section 4(b)(2) of the Act]. During the process of developing this proposed rule, the Service adopted a process and set of criteria to use in balancing the economic costs and benefits for designating spotted owl critical habitat. Additional detail related to the balancing process and criteria are found in "Report on the Balancing Process and Criteria for the Northern Spotted Owl" (USFWS 1991e).

The process used to balance the economic costs and benefits of critical habitat designation included several steps. The Service first identified those areas that meet the definition of critical habitat in section 3(5) of the Act. Concurrently, an economic analysis was conducted to ascertain the anticipated economic consequences of designating these areas as critical habitat, using the county as the base level of analysis. Balancing criteria were developed from both the biological and economic perspectives.

The primary biological criteria were based on the availability of the four primary constituent elements (i.e., nesting, roosting, foraging, and dispersal), condition and quality of habitat, biological problems that existed in the local area, and location of the area within the range of the owl.

All counties in the impact area were screened against the economic criteria, and those counties with the highest vulnerability selected for additional review and discussion. The economic screening criteria used to identify the counties with the highest economic impact were:

(1) The 1990 county unemployment rate;
(2) County per capita income;
(3) Percent dependency on federal timber;
(4) Population per square mile;
(5) Percent of timber processed that is over 100 years old; and
(6) The relative size of the timber industry in the county.

Economic factors that were considered during the second level of analysis of the high impact counties included:

(1) Industry trends in the county from 1980–1990, including whether or not the county is becoming more or less dependent on the timber industry for employment;
(2) Human migration into or out of the county;
(3) Log flows into and out of the county; and
(4) Total log supply as compared to dependency on Federal timber supplies.

As a result of this two-tiered analysis, decisions were made to:

(a) Delete the area of critical habitat;
(b) Retain the area of critical habitat as proposed; or
(c) Modify the boundaries of the critical habitat.

The decision and the rationale were documented.

Mining, recreation, and other non-forest product impact areas were individually identified and evaluated to determine whether or not the critical habitat units could be modified to exclude those areas of high impacts. As a result the Service is proposing to exclude from critical habitat units all sold but unharvested timber sales. This affects about 4.7 bbf of timber and results in an avoidance of expenditures

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to the Federal government of about $50 million.

Although the Service did not apply the formal economic analysis/balancing process to the approximately 3 million acres of private lands included in the May 6 proposal, the decision not to include private lands in the revised proposal is partially attributable to a judgment that the costs of including these areas as critical habitat outweigh the few benefits. Therefore, as explained previously (see Difference from Previous Proposal section), private lands were not included in this proposal. A comparison of the relatively small benefits to the potentially significant economic and other costs that might have resulted from designating these lands confirms the Service's judgment that these lands should not be included.

Summary of Comments and Recommendations

In the May 6, 1991, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of this revised proposal. The comment period was open from May 6, 1991, through June 5, 1991. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and asked to comment. On May 7, 8, or 9, the Service published notices in 29 newspapers in California, Oregon, and Washington announcing the publication of the proposed rule, and the locations, dates and times of the public hearings.

The Service conducted four public hearings on this issue: In Eureka, California on May 20, 1991; in Creswell, Oregon on May 22, 1991; in Olympia, Washington on May 23, 1991; and in Portland, Oregon on May 24, 1991. The Service accepted testimony from the public from 1 to 4 p.m. and from 6 to 9 p.m. on each of those days. The Service announced the dates, times, and locations of the public hearings in the **Federal Register** on May 7, 1991 (56 FR 21123).

During the 30-day comment period, the Service received approximately 16,400 written comments. In addition, 364 people testified at the 4 public hearings. The Service received comments from the Forest Service, Bureau of Land Management, Bureau of Indian Affairs (including the Quinalt, Hoopa, Warm Springs, Covelo, and Yakima Indian Nations), the Bonneville Power Administration, California Resources Agency (including the Department of Fish and Game), California State Board of Forestry, California Department of Transportation, Washington Department of Natural Resources, and several state colleges and universities. The Governor's offices of Washington and Oregon and members of legislatures from all three states submitted comments. One U.S. Senator and one member of the House of Representatives also submitted comments. The Service received comments from numerous county and local governments, environmental groups, timber and wood products associations, several law firms, and scientific organizations.

Although many people submitting comments did not state a clear position on the designation of critical habitat, the majority of the comments were concerned over the impact of the designation of critical habitat or over the amount of land being designated, but did not totally oppose designation. The remaining letters were either supportive (6 percent) or failed to state a position on the proposal (12 percent). Many of the letters received were form letters or petitions, or raised more than one issue. Of the letters submitted, 39 percent raised biological issues; 66 percent raised economic issues; 48 percent raised administrative, legal or procedural issues; and 3 percent suggested specific changes to critical habitat boundaries.

The comments received, whether written or oral, have been grouped under issues. The Service's general responses are summarized as follows:

Administrative and Legal Issues

Issue 1: A number of commentors stated that the Service's comment period, notifications on public hearings, and number of public hearings were insufficient for the public to become fully involved with the decisionmaking process. Many were concerned by the lack of decisionmakers present at the hearings. The Service should have personally notified every owner of land within proposed critical habitat.

Service Response: The Service recognizes the controversial nature of this proposal and has an extensive notification process described at the beginning of this section. To ensure the fullest possible consideration of public comments in developing this critical habitat designation, the Service decided to publish a revised proposal following a 30-day comment period on the initial proposed rule of May 6, 1991; four public hearings were held following the initial proposal. After publication of this revised proposal, the Service will hold a second public comment period (60 days) and conduct four additional hearings on this revised proposal (see "**DATES**" and "**ADDRESSES**"). Both written and oral comments received from the public have been and will continue to be considered by the Service in the development of this critical habitat designation. The Service believes that the public will have ample opportunity for their information to be considered in the final decision.

As with all public meetings involving endangered species listing issues, the critical habitat meetings were chaired by a hearings officer, with other Service administrators, managers, biologists, and public affairs specialists present. An information center was available at each meeting to provide written briefing materials and maps. Service biologists were also present to answer questions from the public. Service decisionmakers were present at the public hearings; however, these meetings are solely for the purpose of soliciting information from the public; no decisions are to be made at the public hearings. All information gathered is considered in the decisionmaking process.

Issue 2: Several individuals submitted comments regarding what individual at what governmental level should make the final decision on critical habitat. Some suggested that one person should not make the decision; rather a panel should have that responsibility. Some wanted the people of Washington, Oregon, and California to vote on the issue. Some suggested that people far removed from the Pacific Northwest do not have the personal experience necessary to make the decision.

Service Response: The Act requires the Secretary of the Interior to make decisions with respect to listing species and designating critical habitat. For most issues, the Secretary has delegated this responsibility to the Director of the Fish and Wildlife Service. The Director considers public comments, input from other agencies and governmental departments, and staff recommendations before making these decisions. The Service specifically published a preliminary proposed rule to allow for the fullest possible consideration of public comments. In addition, the Service has taken the unprecedented step to publish another proposal to ensure that the public had a second opportunity to review this issue.

Issue 3: Some commented that members of environmental groups, their attorneys, and the courts should not direct Service policy. Members of the public seemed to feel that the government has been "swindled and taken over by environmental radicals." Alternatively, many felt that the timber

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Issue 3: Some commented that members of environmental groups, their attorneys, and the courts should not direct Service policy. Members of the public seemed to feel that the government has been "swindled and taken over by environmental radicals." Alternatively, many felt that the timber industry had exerted too great an influence on the Service's proposal.

Service Response: The mission of the Service is to conserve, protect, and enhance fish and wildlife and their habitats for the continuing benefit of the American people. Section 2(c)(1) of the Act declares the policy of Congress that all Federal agencies shall seek to conserve all threatened and endangered species and shall utilize their authorities in furtherance of the purposes. The basic purpose of the Act, as stated in section 2(b) is to provide the means for conserving ecosystems upon which endangered and threatened species depend. The Service has proposed a designation of critical habitat that would benefit the northern spotted owl, as required by the Act and in response to an order in *Northern Spotted Owl* v. *Lujan*, No. C88-573Z (W.D. Wash.) (Court), resulting from a suit brought against the Service by several environmental groups. Compliance with both the congressional mandates of the Act and the Court's order is required of the Service. While the Service considered comments of both environmental and industry groups, all written and oral comments were given equal consideration. Neither environmental groups nor forest product companies are directing Service policy.

Issue 4: A number of commentors stated that the Service's decisions to list the owl and to propose critical habitat were political. The Service would not have carried out these actions had they not been sued by environmentalists.

Service Response: The decisions to list the owl and to propose its critical habitat were based on the mandates of the Act. Although there have been many lawsuits affecting this and related issues, the Service has concluded from the evidence that the owl is threatened and that changes to forest management will need to occur to avoid its loss.

Issue 5: Some commented that the Service should prepare an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA) on the proposed designation of critical habitat prior to publishing a final rule.

Service Response: The decision in *Pacific Legal Foundation* v. *Andrus*, 657 F. 2d 829 (6th Cir. 1981), held that as a matter of law an EIS is not required for listings under the Act. The decision noted that preparing EIS's on listing actions does not further the goals of NEPA or the Act. The Service believes that, under the reasoning of this decision, preparing an EIS on the proposed critical habitat designation would not further the goals of NEPA or the Act. NEPA documentation may be done on Forest Service and Bureau management plans and activities that involve critical habitat; section 7 consultation is conducted on those actions.

Issue 6: A few commented that the Service should not finalize a rule of this magnitude because it will become precedent setting. Critical habitat for other wide-ranging species such as the red-cockaded woodpecker could also be proposed.

Service Response: The Act requires the Service to designate critical habitat to the maximum extent prudent and determinable at the time a species is listed as threatened or endangered. In the case of the northern spotted owl, the Service identified areas that contain essential habitat features (primary constituent elements) and areas that require special management. Proposed critical habitat designation for the spotted owl is not a precedent; the Service has designated critical habitat for more than 100 threatened or endangered species nationwide. This includes other wide-ranging species such as the whooping crane, which migrates from its wintering area in Texas to its nesting area in northern Canada. Designation of critical habitat is done according to the biological requirements of the subject species, so critical habitat designation for the spotted owl will not influence such designation for other species.

Issue 7: A number of commentors stated that the Service does not need to designate critical habitat because the species is already listed as threatened and section 7 can be used to protect the species. The guidelines that have been implemented to reduce "take of owls" in the three States adequately protect habitat.

Service Response: Section 9 of the Act refers to "take" of a listed species. The term "take" is defined in the Act and its implementing regulations as "to harm, harass, pursue, hunt, wound, kill, trap, capture, or collect or to attempt to engage in any such conduct." Incidental take is taking that is incidental to, and not the purpose of, an otherwise lawful activity. The Service's guidelines on avoiding incidental take serve to minimize immediate impacts to individual owls, but do not contribute significantly to the species' recovery. The guidelines implemented by the three States are intended only to address take. However, implementation has been variable with only the State of California and some private landowners in California taking an active role in developing habitat conservation plans for owls. Similarly, section 7, in the absence of critical habitat, ensures that Federal actions will not likely jeopardize the continued existence of the species, but does not focus on long-term protection to the species' habitat.

Critical habitat, on the other hand, is an additional protective mechanism mandated for listed species when it is both prudent and determinable. Critical habitat identifies areas essential to species conservation and, thus, contributes to species recovery by protecting habitat whether or not it is currently occupied by the species. This statutory authority was intended by Congress to provide a mechanism to protect areas that will contribute to the long-term recovery of the species.

Issues Related to the Designation Process

Issue 8: Some stated that the Service should have coordinated the proposal with other land management plans such as the ISC Plan, Forest Service Forest Plans, and Bureau Resource Management Plans.

Service Response: The Service did take into consideration other owl planning efforts and has reviewed and discussed these efforts as appropriate. Neither the Forest Service nor the Bureau have yet adopted long-term management plans that provide adequate protection for owl habitat throughout the range of the subspecies. In using the best available scientific and commercial information in its evaluation for proposing critical habitat, the Service, by including the ISC Plan's HCA system, incorporated the foundation of current Forest Service and Bureau interim management plans. The Service discussed with some ISC and recovery team members, the Forest Service, and the Bureau during this effort, to ensure that the most current owl data and other information available was used to revise the critical habitat proposal. However, critical habitat is not a plan. It is an inventory of habitat and areas that contain the features essential to the conservation of the owl. Management of critical habitat will need to be addressed through the recovery and land management planning processes. The Service is assisting in these efforts.

Issue 9: The Service received several comments related to recovery planning. Many individuals believed that the Service should delay the designation of critical habitat for the northern spotted owl until the Department of the Interior has prepared a recovery plan and identified population levels needed before the owl can be removed from the

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list of threatened species. Some suggested that the designation of critical habitat would circumvent the recovery planning process, in that the Service will have decided the specific land areas and management goals necessary to conserve the owl before the recovery team can begin its work. The designation of critical habitat may interfere with the recovery of the owl by precluding management options.

Many suggested that the Service could avoid designating critical habitat altogether by preparing a recovery plan. The recovery plan would not have the same adverse economic effects as would the designation of critical habitat because recovery plans contain no legally binding recommendations.

Service Response: The Act requires the Service to designate critical habitat, to the maximum extent prudent and determinable, at the time a species is listed as endangered or threatened. The Act requires the preparation of a recovery plan for a species following its listing as endangered or threatened. Thus, the Act places the designation of critical habitat earlier in time than the development of a recovery plan.

The Service recognizes the relationship between recovery planning and critical habitat, because the Act joins the two processes through its definition of conservation. However, critical habitat is not a plan or strategy. It does not specify population goals, recovery objectives, nor identify specific management criteria for designated lands. These are to be done through the recovery planning process.

Critical habitat will not, in itself, lead to the recovery of the species. Critical habitat provides one of several measures available to contribute in the conservation of a species. Other measures provided under the Act include sections 7(a)(1) and 7(a)(2) (requiring Federal agencies to further the purposes of the Act by carrying out conservation programs and insuring that Federal actions will not likely jeopardize the continued existence of the listed species); section 9 (prohibition of taking of listed species); section 10 (habitat conservation planning on State and private lands); and section 6 (cooperative State and Federal grants).

Recovery planning is the "umbrella" that guides all of these activities and promotes a species' conservation and eventual delisting. Recovery plans provide guidance, which may include population goals and identification of areas that are in need of protection or special management, so that a species can be removed from the list of endangered and threatened wildlife and plants. Recovery plans also include management recommendations for areas proposed or designated as critical habitat. Critical habitat promotes recovery by highlighting areas that should be given additional consideration in the recovery planning process. Critical habitat helps focus conservation activities by identifying areas that contain essential habitat features (primary constituent elements) and that, by virtue of their location, require special management. Although the recommendations contained in recovery plans are not legally binding, critical habitat provides a regulatory mechanism to increase immediate protection of these primary constituent elements and essential areas and preserve options for the long-term conservation of the species. It is a very important tool. The recovery plan can and should recommend how to manage or change critical habitat. However, specific management actions specified in recovery plans can only be implemented through resource management plans.

In the case of the spotted owl, the recovery team has stated they will use a comparative economic analysis to evaluate the relative economic costs of the various biologically sound recovery alternatives, with the goal of selecting the least costly, biologically acceptable recovery option. The Service's regulations pertaining to critical habitat designation (50 CFR 424) require an economic impact analysis of proposed critical habitat designations and allow the Secretary to exclude areas from the proposed designation if the benefits from exclusion outweigh the benefits in designation, as long as the exclusions would not lead to extinction of the species. Thus, economics will be considered in each process.

Issue 10: The Service received comments that it should not designate critical habitat because land management should be the responsibility of the agencies or companies. Critical habitat is unnecessary because the Bureau of Land Management and Forest Service already consider all wildlife, including the spotted owl, during planning efforts. The timber companies also manage the land for a sustained yield of trees and therefore, provide for wildlife. Existing State and Federal laws and regulations provide adequate protection to owls and, therefore, the added regulatory constraint imposed by the designation of critical habitat is unnecessary.

Service Response: Although numerous State and Federal laws and regulations offer some protection to spotted owls, and to a lesser extent, owl habitat, none would provide the same degree of protection on Federal lands as would critical habitat designation. The Service is unaware of any regulations or laws, other than the Act, that mandate survival and recovery of species. While both the Bureau and the Forest Service consider species conservation in their planning, the Service determined during the listing process for the owl that current management on these lands was inadequate. This was one of the key factors in determining to list the owl.

Issue 11: Some suggested that the Service should only designate areas that require special management.

Service Response: The Act defines critical habitat to include areas containing physical and biological features essential to the species conservation and which may require special management or protection. The areas proposed meet this criterion of the Act.

Issue 12: A few commentors stated that the Service acted in an arbitrary and capricious manner in proposing critical habitat because it did not adequately define the criteria used to select the areas. The Service should clearly define the criteria used to select critical habitat.

Service Response: The Service selected a network of areas within the range of the northern spotted owl to propose as critical habitat, using the HCAs identified in the ISC Plan as the basis for its proposal. In selecting areas beyond those designated as HCAs, the Service focused on areas that supported the physical and biological features that constitute the primary constituent elements of nesting, roosting, foraging, and dispersal habitat. Other factors considered in the selection of critical habitat include habitat quality and condition (e.g., spatial arrangement of habitat blocks and fragmentation); size and spacing; provincial differences in land ownership and management patterns, habitat quality, and owl densities; local owl location data; range-wide demographic considerations; agency management plans; and public comments. The initial May 6, 1991, proposed rule included a discussion of the rationale and criteria used by the Service to propose critical habitat (56 FR 20816). These rationales and criteria are explained in more detail in this revised proposed rule.

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the Service had adopted a management plan rather than identifying areas containing the primary constituent elements as required by the Act. Others felt that the Service violated the intent of Congress when it went beyond the HCAs contained in the ISC Plan. An alternative view was that the original placement of the HCAs was arbitrary and, therefore, the Service should not have started with those areas.

Service Response: The Service's use of HCAs as the basis of its critical habitat proposal reflects the Service's acceptance of the fundamental concepts and principles of ecology and conservation biology used by the ISC to develop the HCA network. This network of reserves represents a scientifically-derived and accepted array of habitat blocks, well distributed throughout the range of the species and spaced closely enough to promote dispersal of owls among them.

The Service's critical habitat proposal did not incorporate the management and research aspects of the ISC Plan, such as the requirement to manage all forest lands not within HCAs to meet the 50–11–40 rule or the suggested research and monitoring program. The Act requires the Service to identify specific areas that contain the essential physical and biological features (primary constituent elements) when it proposes to designate critical habitat. These constituent elements occur both within and outside of HCAs. The Service acknowledges that portions of the HCAs do not contain all essential elements of owl habitat, as the ISC based the HCAs on both current and expected future habitat values. In many cases, areas within HCAs that currently do not contain essential elements were removed from the critical habitat units identified in this revised proposal.

Critical habitat is not a plan as it does not specify population goals or management guidelines. It is the responsibility of a recovery plan or other land management plans to address the management of owl habitat both within and outside of critical habitat.

Issue 14: The Service received several comments regarding the presence of unsuitable habitat within the proposal. Some people believe that critical habitat should not be designated because the intent of the Endangered Species Act is to protect existing populations and habitats and not to create large set-asides for future habitat and populations. In any case, where a need for future habitat is demonstrated, Federal lands should provide for that need. The Service did not have the authority to identify potential habitat areas. The Service has designated too much critical habitat because the Act does not require the conservation of a species throughout its range. Examples of areas that should not be proposed include stands younger than 60 years of age, clearcuts, pastures, golf courses, buildings, towns, airports, and the like. Many felt that these areas should not be included even for the ease of writing legal descriptions. Others suggested that the inclusion of small isolated fragments within critical habitat is inconsistent with the owl's need for large contiguous blocks of habitat. Some suggested that the Service should be selective and only propose old-growth greater than or equal to 250 years of age.

Service Response: The Service identified large contiguous blocks of owl habitat containing the primary constituent elements of nesting, roosting, foraging, and dispersal habitat primarily on Federal lands. Where new information clearly indicated that peripheral areas of non-habitat were included in the previously proposed critical habitat, the Service attempted to adjust boundaries to exclude non-habitat areas to the extent possible. It was not possible to exclude all areas of non-habitat via boundary revisions. In some cases in this revised proposal, critical habitat units contain small towns, farms, or man-made structures. These areas, although physically located within the boundaries of critical habitat, are not included in critical habitat designation. The Service has withdrawn private lands originally proposed as critical habitat, which will eliminate most of the concerns about the inclusion of towns, buildings, golf courses, etc.

Areas not currently containing all of the essential features, but with the capability to do so in the future, may still be needed for the long-term conservation of the subspecies, particularly in certain portions of the range. In the case of the owl, some portions of the subspecies current range have become depleted in numbers of owls and lack sufficient habitat to support strong populations (e.g., the Oregon Coast Ranges, and southwest Washington). Although relatively few owls remain in these areas, these critical habitat units are integral to the recovery of the species throughout its range because they could provide "stepping stones" of nesting habitat linking this portion of the subspecies range.

In the case of forested areas on Federal land that do not currently contain all attributes of suitable habitat, the Service believes that habitat contiguity is important in conserving the spotted owl. The Service agrees that large contiguous blocks of habitat are preferable to small, fragmented, and isolated stands. However, large suitable habitat blocks do not exist over considerable portions of the subspecies' range. The Service has proposed critical habitat designation that would contribute to the maintenance of a well-distributed owl population over time. Where large habitat blocks are lacking, the Service included small parcels of existing owl habitat, often separated by younger forests, which can provide for spotted owl foraging and dispersal. Over time, large, contiguous habitat blocks will develop in these areas, reducing the amount of habitat fragmentation that currently exists. As discussed under the section titled "**AVAILABLE CONSERVATION MEASURES**," projects will be evaluated on a case-by-case basis, focusing upon the habitat conditions of the specific project site. Projects located in areas that lack any of the primary constituent elements may not result in destruction or adverse modification of critical habitat at this time.

Issue 15: Members of the public provided differing viewpoints on linkage areas. Some suggested that the Service should designate all lands capable of meeting the 50–11–40 rule as critical habitat and added that 50–11–40 represented a minimum acceptable habitat condition for dispersal. Others stated that evidence does not exist that indicates linkage areas are essential. Some believed that the inclusion of dispersal habitat as a primary constituent element is arbitrary and capricious because owls can disperse through almost anything.

Service Response: While it is true that spotted owls can fly through or over a variety of habitat types, it is well documented that certain "open" habitats increase the vulnerability of spotted owls to avian predation. The ISC Plan predicted that the 50–11–40 rule, when applied to the forest matrix outside of HCAs, would provide adequate dispersal opportunities between blocks of nesting habitat. However, because of the random dispersal behavior exhibited by owls, the Service has not proposed to designate corridors in this revised proposal. Because dispersal is one of the owl's life requisites, the Service retained dispersal habitat as one of the primary constituent elements within the critical habitat units. The Service believes the section 7, habitat conservation planning, recovery planning, and ongoing land management planning processes will provide for dispersal needs of spotted owls in the forest matrix between the proposed critical habitat units, and these are more appropriate vehicles to address this issue.

Issue 16: Some suggested that rather than designate critical habitat the Service should develop management techniques that would facilitate the more rapid development of habitat. Fire suppression, longer rotation times between harvest, precommercial thinning, and other silvicultural techniques have the potential to improve habitat quality for owls. Other techniques to increase the carrying capacity of an area include management to benefit prey populations and control predators.

Service Response: The designation of critical habitat does not prescribe particular management regimes in designated areas. The Service would favorably review proposed management schemes that would improve the habitat quality for northern spotted owls. Some activities could be considered to be of benefit to spotted owl habitat and, therefore, would not be expected to destroy or adversely modify critical habitat. Examples of activities that could benefit critical habitat in some cases include protective measures such as fire suppression or forest-pest eradication, as well as silvicultural treatments that may improve spotted owl habitat. There is a need for research to gather data that may support or refute any potential benefits from actions such as these. Proposed habitat modifications should be evaluated on a case-by-case basis. The Service expects that the recovery plan will identify adaptive management, research, and monitoring activities to facilitate owl habitat development both within and outside of critical habitat.

Issue 17: A few felt that critical habitat should not be designated because it would increase the degree of threat due to vandalism. If critical habitat is designated, many people will intentionally hunt and kill owls or burn forests.

Service Response: Habitat loss and fragmentation were the main factors that led to the listing of the northern spotted owl as a threatened species, not the direct loss of owls. In addition, the Act and its implementing regulations already prohibit unlawful taking of spotted owls and provide for severe civil and criminal penalties for violations of this prohibition.

Issue 18: Some stated that the designation of critical habitat will make the courts more likely to convict individuals of section 9 violations.

Service Response: Critical habitat is not statutorily linked to the prohibition of take under section 9 of the Act. All entities are still responsible for avoiding take regardless of where it is found.

Issue 19: A number of commentors felt the Service should consider the 66,000 acres protected due to the Dwyer decision.

Service Response: The decision of the U.S. District Court Judge Dwyer on May 23, 1991, enjoined the Forest Service Regions 5 and 6 from auctioning or awarding any additional timber sales . that would log suitable spotted owl habitat until the Forest Service submits and implements a plan to ensure the viability of the northern spotted owl and writes an accompanying environmental impact statement.

Due to this injunction, 66,000 acres of suitable spotted owl habitat are temporarily protected that would otherwise have been logged. However, it is only a temporary injunction and these acres of habitat may be sold in the future. In addition, these acres alone would not be sufficient to ensure the conservation of the species.

Issue 20: Some commented that the Service has disproportionately included State-owned lands.

Service Response: Some State-owned lands included in the May 6 proposal are no longer included. The State-owned portions in this revised proposal have been included to provide "stepping stones" of nesting habitat, thereby improving linkage opportunities for owls. These are essential areas and were also recommended by the ISC. The Service believes that States have a responsibility to conserve species, and considered site-specific needs when determining what areas are essential to the conservation of the species. The proposed designation of State-owned lands highlights those areas deemed essential for the conservation of the subspecies.

Issue 21: Some agencies commented that the Service should use rivers, streams, roads, and ridge lines for critical habitat boundaries and legal descriptions rather than section lines.

Service Response: In the designation of critical habitat, the Service is required to legally define boundaries. In this effort the Service has primarily used section lines, although wilderness boundaries and forest boundaries have also been used. The Service also used named streams and rivers and major roads to legally define some of the critical habitat units. The Service welcomes site-specific recommendations, submitted during the public comment period, that identify legal descriptions using such features that would not compromise the integrity of proposed critical habitat units.

Issue 22: Some stated that the Service violated the Act in its excessive proposal to designate critical habitat. The Service should have concentrated on the areas essential to the conservation of the species, rather than hastily drawing lines on a map that encompass more than the minimum necessary to conserve the owl. By setting potential recovery of the owl as the standard, the Service has encompassed far more habitat than is mandated under the Act.

Service Response: The Act and its regulations do not contain requirements or restrictions regarding the size of critical habitat. The Act defines critical habitat to encompass those areas that contain the physical and biological elements essential to the species' conservation, e.g., nesting areas, feeding sites, roost sites, etc. (50 CFR 424.12). The Act defines conservation to include all actions necessary to bring the species to the point that protection under the Act is no longer required, i.e., the species is recovered (50 CFR 424.02). Highlighting areas that contain the elements considered essential to the conservation of the species through critical habitat designation thus promotes recovery. As discussed in the proposal, critical habitat does not in itself recover the species; it is but one component of the recovery process.

The Service's regulations at 50 CFR 424.12(c) require the Service to specifically identify, map, and legally describe areas proposed for critical habitat designation. A variety of factors were considered when identifying areas to be selected as critical habitat, including those areas essential to recovery. Primary emphasis was given to HCAs (identified in the ISC Plan) or areas of concern (identified in the Service's status reviews or section 7 biological opinions). The condition and suitability of existing habitat and known pairs of owls was also considered. Other factors considered include habitat quality, spacing, location of the area, size of the forest stand, habitat contiguity, and proximity to existing HCAs. The role of different land ownerships, the amount of habitat on those ownerships, and the relative role of those areas in contributing to owl conservation were also considered when identifying critical habitat. Thus, the Service proposed areas deemed essential for the conservation of the subspecies, in accordance with the Act and implementing regulations.

Issue 23: A number of individuals commented that the Service has proposed an extreme amount of critical habitat. No species could possibly need 11.6 million acres. Most people raising this issue stated their belief as an

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intuitively obvious fact. Some stated that 8.4 million acres was enough for the ISC Plan, and that the Service's proposal is clearly excessive. Up to 3,800 acres per pair was seen as too much habitat. The May 6, 1991, proposal was considered too extreme, as it would allow the current population to increase.

Service Response: The comment that 3,800 acres of habitat is too much for a pair of owls is valid for certain portions of the subspecies' range; however, the designation of critical habitat was not based on the need to provide a certain number of acres of habitat for known pairs of spotted owls. The amount of habitat required by a pair of owls depends on the quality and quantity of available habitat, which varies considerably within and between physiographic provinces. Thomas *et al.* (1990) indicated median annual pair home range sizes varied from a high of 9,930 acres for the Olympic Peninsula to a low of 2,955 acres for the Oregon Cascades. Actual annual pair home range size varied from 1,035 acres in the Klamath Province to 30,961 acres in the Washington Cascades. As the quality and quantity of habitat declines, annual home range sizes increase.

Comparisons between acres of proposed critical habitat and acres in the ISC Plan HCAs are misleading, because the ISC Plan included both HCAs (breeding habitat reserves with no harvest allowed) and the requirement to manage all remaining forest lands outside of HCAs for dispersal habitat (i.e, the 50–11–40 rule). The ISC Plan was formulated specifically to address the long-term management of the spotted owl. Critical habitat is only one component of the Act's approach to conserve listed species. It provides an inventory of habitat that is associated with spotted owls and highlights those areas that contain the constituent elements essential to its conservation.

Critical habitat affects only those areas specifically designated as such and has no affect on areas outside of the boundaries that will be delineated in the final rule. Thus, the Service's proposed critical habitat designation affects a much smaller area than the ISC Plan, which affects, to some degree, the entire forest land-base.

The Service does not believe that the critical habitat proposal would cause an immediate increase in the number of spotted owls. There are many owl pairs and territorial singles that do not occur within a proposed critical habitat unit. Even with the protection of all owl pairs and habitat currently and potentially occurring within the proposed critical habitat units, the population likely will decline over time as its habitat continues to decline. The protection of habitat within proposed critical habitat units may allow the owl population to stabilize over time and eventually lead to recovery.

Issue 24: Many individuals submitted comments criticizing the Service's proposal because of a belief that the amount or configuration of habitat was inadequate. Some suggested that all suitable habitat be included in the proposal or that all of the forest matrix be included. Some suggested that using the HCA network as the basis was flawed and led to an inadequate proposal, because some respected scientists believe that the ISC Plan does not have a good chance of succeeding.

Service Response: The Act requires the Service to identify specific areas that contain the essential physical and biological features (primary constituent elements) when it proposes to designate critical habitat. Because the remaining suitable owl habitat containing these essential features occurs in a highly fragmented, disjunct pattern across the landscape, it is not technically feasible to identify, map, and legally describe every specific block of remaining suitable owl habitat. Many remaining patches of owl habitat are of such a small size or are sufficiently isolated from other habitat areas that they have limited, if any, value to owls. The Service therefore used the best available data to identify the most significant, large blocks of habitat that contained the physical and biological features essential to owls and that were well distributed throughout the range of the species.

The Service used the same principles of conservation biology as did the ISC (see Critical Habitat section) as a basis for beginning with HCAs when proposing critical habitat. The HCAs contain large contiguous blocks of suitable habitat and were designed to meet scientifically-accepted distribution and spacing patterns. Many areas of habitat were not included in the HCA system; however, the Service attempted to identify and include those areas with the constituent elements deemed essential for the conservation of the subspecies. Thus, the revised critical habitat proposal consists of the HCAs (excluding some peripheral areas of non-habitat), plus other areas of suitable habitat with the biological features essential to the conservation of the species. Critical habitat is not a substitute for the ISC Plan (HCAs and 50–11–40 rule) or the recovery plan which is currently being developed, nor is critical habitat designation alone intended to recover the species. It is one mechanism provided under the Act to be used in combination with recovery plan guidance, section 7 consultation, and section 10 habitat conservation planning to promote recovery of the species.

Issue 25: Many commenters suggested removing specific areas from the proposal. Such suggestions typically reflected concerns over inclusion of private lands in the proposal or were based in potentially conflicting uses, especially mining and ski areas. A smaller number of comments suggested removing areas which reportedly did not contain habitat for the owl.

Service Response: Most of the concerns regarding private and tribal lands will be alleviated due to the decision to not include these lands in the revised proposal. Areas suggested for deletion on the basis of perceived land use conflicts were deleted if they did not meet the criteria for inclusion, did not provide important benefits to the species, or it was determined that the economic impacts of inclusion outweigh the benefits provided the species. Areas suggested for deletion due to poor habitat were re-examined in terms of value to owls. In some cases, areas were deleted and owl needs were met by addition of nearby areas presenting fewer conflicts or better habitat. In some key areas, habitat currently in poor condition was retained due to its important location, lack of options, and high potential for contribution to recovery.

Issue 26: Many commentors suggested the addition of specific areas to proposed critical habitat. In most cases, the commentors stated that the suggested areas contain important habitat components or provide linkage between areas already proposed.

Service Response: All such requests were examined closely. In some cases, the suggested additions at least partially conformed with additions already under consideration as result of the Service's examination of updated habitat information. Areas were evaluated for addition using the following criteria: Presence of significant suitable habitat contiguous with the existing proposed unit, degree of improvement to the existing proposed unit, and importance to owls known to occur just inside the boundary of the existing proposed unit. Areas suggested to improve connectivity were seldom incorporated because the value of setting aside of travel corridors for owls is not understood nor fully accepted by the conservation community. Areas suggested for the benefit of other species were not included unless they met the above criteria for northern spotted owls. Suggested areas that are in wilderness or other protected status were not added because they are not in need of further protection. Lands in private ownership were not added for a variety of reasons, as explained in the proposed rule.

Biological and Habitat-related Issues

Issue 27: The Service received numerous comments suggesting that a high level of "proof" should be required to justify a designation of critical habitat. These individuals indicated that the Service lacks sufficient information upon which to base a critical habitat determination. For example, new populations are being found all the time. Others suggested that the Service used out-dated information in the proposed designation of critical habitat (i.e., the ISC Plan and status report were prepared using data collected prior to 1989). These people wanted the Service to revise the rule to reflect more accurate information.

Some individuals suggested that the Service complete an inventory of all habitat including second growth, wilderness, and national parks before designating critical habitat. The Service should determine exactly where owls are located prior to designating critical habitat, and areas that do not contain owls should be excluded from critical habitat. Furthermore, it was suggested that the Service prove that its proposal is reasonable by publishing the locations of all known owls.

Service Response: The Service is required to use the "best available" information and to show that the areas proposed contain the primary constituent elements. The Service based its initial critical habitat proposal on the best information available at the time. The initial proposed rule was revised based on review of new information and data acquired from a variety of sources by the Service during the public comment period. New information sources included comment letters and reports submitted in response to the May 6, 1991, proposed rule, as well as revised habitat suitability and owl occurrence information which the Service actively sought from a number of sources during the public comment period to better incorporate updated information.

New information on habitat suitability and owl occurrence was reviewed by the Service and incorporated into this proposed rule during the Congressionally-mandated workshop on late successional forest habitat reserves held in Portland, Oregon, on June 6–10, 1991. The most current map information on owl habitat suitability and owl occurrence for national forests and Bureau of Land Management districts was presented at this workshop.

The Service has modified its original proposal to ensure that it reflects this information. The Service is very confident that its proposal represents a valid and correct product. The Service has reviewed all the information made available over the past year and has not found any substantial differences from the analyses that were provided by the ISC or from the Service's status reviews. The Service agrees that additional surveys can contribute useful information to this process, but conducting such surveys is not the Service's responsibility. The Service has determined that publication of owl location data, or the specific locations of any listed species, could increase the likelihood of illegal take and therefore would be imprudent.

Issue 28: A number felt that critical habitat should not be designated because existing reserved lands such as wilderness and national parks provide sufficient land for the owl. Recent inventories show that owls in some wilderness areas have a higher reproductive rate (e.g., in Washington wilderness areas).

Service Response: The Service concluded that the owl should be listed as a threatened species partly because insufficient habitat is protected within Congressionally-protected areas to adequately contribute to recovery or support a viable population of owls. In its 1990 status review of the northern spotted owl, the Service examined the likelihood that habitat within wilderness and national parks would support the owl. Using data from the Forest Service and National Park Service on the amount of suitable habitat within reserved areas, the Service concluded that the amount of habitat within these areas was not sufficient to ensure the long-term survival of the northern spotted owl. Currently protected habitats are concentrated in about one-third of the owl's current range, are separated by long gaps, and are of lower quality habitat.

Issue 29: Many people challenged the Service's descriptions of the habitat requirements of the owl. Some suggested that old-growth is poorer habitat than younger forests because the trees are rotted and dying. Younger forests have better prey bases than do older forests. For example, slash piles in clearcut areas often contain high densities of woodrats. Others believed that older forest habitat is decadent and dying and should be harvested so that trees can be planted.

Service Response: Timber harvest operations that leave openings in stands, slash piles, and downed logs may occasionally enhance prey habitat and result in higher prey densities, at least in the short-term. However, these are often the types of habitat in which owls cannot successfully forage. Prey abundance (foraging) is but one of the attributes of the subspecies' life-history needs associated with its habitats. For example, nesting structures require deformities such as cavities, snags, broken-topped trees, and mistletoe platforms which occur more frequently in older, more decadent timber stands. In addition, spotted owls forced to forage in open habitat are more vulnerable to predation by other raptors. Studies cited in this proposed rule have shown that owls prefer older forests (and associated structural components).

Newly planted forests take many years to develop the structural and species diversity of spotted owl nesting habitat. While harvest and replanting can sometimes enhance wood-fiber productivity, such forest management as clearcutting is not compatible with maintenance of spotted owl habitat, although some types of selective harvesting may be more compatible.

Issue 30: A few individuals commented that owls occur or nest in a myriad of habitats, including second growth, mixed hardwood forests, sagebrush, and in backyards. The Service should "prove" that the owl is tied to the old-growth ecosystem. Because owls occur in many habitats, designation of critical habitat is not necessary. Furthermore, proposing second growth as critical habitat is inconsistent with stating that owls require old-growth. In Oregon, old-growth can be as young as 42 years of age.

Service Response: As discussed in the Background section of this rule, existing scientific literature shows that spotted owls prefer a specific forest structure commonly associated with older coniferous forests for nesting, roosting, and foraging, and tend to avoid open spaces (i.e., clearcuts) where possible. In certain portions of the subspecies' range, younger forests provide the necessary habitat components. Owls will also use younger forests for dispersal and foraging, which are also constituent elements of the owl's life-history. Therefore, some of these younger forests have been proposed as critical habitat. Including some younger forests will fulfill some of today's needs for spotted owl foraging and dispersal

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Service Response: As discussed in the Background section of this rule, existing scientific literature shows that spotted owls prefer a specific forest structure commonly associated with older coniferous forests for nesting, roosting, and foraging, and tend to avoid open spaces (i.e., clearcuts) where possible. In certain portions of the subspecies' range, younger forests provide the necessary habitat components. Owls will also use younger forests for dispersal and foraging, which are also constituent elements of the owl's life-history. Therefore, some of these younger forests have been proposed as critical habitat. Including some younger forests will fulfill some of today's needs for spotted owl foraging and dispersal

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and will, over time, provide the replacement habitat necessary to remedy the highly fragmented nature of much of the existing owl habitat. The Service is unaware of any studies that consider sagebrush suitable owl habitat or the existence of 42-year-old stands of old-growth.

Issue 31: Some of the public suggested that critical habitat is unnecessary because trees are a renewable resource, and the Federal and State agencies and timber companies replant trees. Many said that more trees are planted than harvested each year and that there are more trees growing today than ever before. Therefore, new maturing forests are always available for spotted owls. Others suggested that those forested lands that have been managed and replanted should not be designated as critical habitat.

Service Response: Forests that are intensively managed for timber production are usually harvested on the shortest planting rotations that are profitable. These managed stands seldom reach 80 years of age, the time generally required for a forest to begin to develop the structural characteristics necessary to produce suitable owl habitat. Moreover, many timber producing forests are managed on an even-aged system, which does not promote the development of multi-species, multi-layered canopies, snags, cavities, etc. Single species stands of fast-growing trees alone do not produce owl habitat, because owls prefer a diversity of stand structure resembling old-growth. The Service only included forests that contain the constituent elements and that are essential to the conservation of the owl.

Issue 32: A number of individuals felt that the Service has no evidence that fragmentation adversely affects the owl and, therefore, should not designate critical habitat.

Service Response: The primary threat to the owl's survival and recovery is habitat loss or modification from timber harvest activities. The resultant habitat destruction has reduced much of the owl's remaining habitat to small, fragmented, and isolated stands.

Habitat fragmentation may have any of several adverse effects on the spotted owl including:

(1) directly eliminating key nesting, roosting, and foraging stands;

(2) indirectly reducing the survival of dispersing juvenile owls;

(3) perhaps increasing competition or avian predation;

(4) reducing population densities and social interactions between individuals;

(5) resulting in habitats that contain more owls than can be supported over time;

(6) increasing habitat suitability for a competing species, the barred owl (*Strix varia*); and

(7) resulting in demographic isolation due to widely spaced small populations. These factors interact to decrease habitat suitability for the spotted owl (Thomas *et al.* 1990).

Issue 33: The Service received numerous comments related to the causes of habitat loss for the owl and, therefore, the implications regarding the need for or the quantity of critical habitat proposed. Such comments included a belief that the Service had not proposed the designation of enough habitat, because fires and wind will continue to destroy some habitat. Such statements often included a view that the Service should propose to designate all habitat that is suitable for the northern spotted owl. Alternatively, some suggested that critical habitat should not be designated because natural factors such as fire and insect infestations are responsible for the degradation and reduction in available owl habitat.

Service Response: The Service agrees that natural events can destroy suitable owl habitat. However, it must be assumed that wildfires and insect infestations occurred throughout history and that the documented decline of the spotted owl throughout much of its range is due to human-induced habitat alteration, which is cumulative to natural events. The Service has little control over natural events and, therefore, must rely on appropriate forest management to achieve spotted owl recovery.

The ISC considered catastrophic events, referred to in their document as environmental stochasticity (Thomas *et al.* 1990), and concluded that the HCAs they recommended would probably withstand stochastic events. Based on the ISC's assessment, the Service is confident that the proposed critical habitat units, which encompass the HCAs and include additions of existing owl habitat for near-term protection, will be similarly adequate to withstand stochastic events.

Issue 34: Some stated the Service should not designate critical habitat for owls because they can fly to different habitat blocks if one of their areas is destroyed.

Service Response: Current data indicate that the population of spotted owls is declining because of habitat loss/degradation and that the rate of population decline is similar to the decline of suitable habitat (Thomas *et al.* 1990). The total amount of suitable habitat has been continually declining over the species range, with an estimated loss of 60 or more percent over the last 190 years (Thomas *et al.* 1990). Current trends indicate an average annual habitat loss of 1 to 2 percent on national forests, where the majority of remaining habitat occurs, although habitat loss in local areas may be higher. Owls use large areas of habitat to breed successfully and there are no presently unoccupied blocks of habitat for owls to colonize as their habitat is reduced. Designation of the northern spotted owl as a threatened species is clearly an indication that special measures are necessary to arrest and eventually reverse current habitat loss trends.

Issue 35: Some felt that critical habitat should not be designated because species like the owl that cannot adapt should be allowed to become extinct.

Service Response: In section 2 of the Act, Findings, Purposes, and Policy, Congress found that numerous species of fish, wildlife, and plants had become extinct and that other species had become so depleted in numbers that these species were in danger of or threatened with extinction. Furthermore, Congress found that these species of fish, wildlife, and plants were intrinsically valuable to the Nation and its people. These findings are the basis of the Endangered Species Act, the purpose of which is to conserve threatened and endangered species and the ecosystems on which they depend. The designation of critical habitat is but one mechanism provided under the Act to facilitate the recovery of listed species. It would be contrary to the Act and the mission of the Service to allow the northern spotted owl to become extinct without taking all reasonable preventative actions.

Issue 36: A couple of commentors felt the Service should use captive breeding in zoos as the preferred method to conserve the owl rather than setting aside habitat. Some suggested that the Service capture juvenile owls, raise them to adulthood, and then release the adults. The expansion of the HCAs and the designation of critical habitat in the areas of concern to facilitate movement is unnecessary because owls could be artificially moved from one area to another.

Service Response: The purpose of the Act is to protect the ecosystems upon which listed species depend. Captive breeding is a conservation measure sometimes used for a species whose population is so low, often down to the last few individuals, that it is necessary to collect them into a captive breeding facility to safeguard the final existing genetic pool for that species. These few individuals would be given maximum protection to survive and breed in that facility. The captive breeding conservation measure is not to be used to release species' habitat for human exploitation. Given protection of the spotted owl's habitat, sufficient owls exist for natural recovery.

The Service has revisited the inclusion of large areas for connectivity within the initial proposal. Only areas which contain primary constituent elements were included in this revised proposal. By making additions, movement between critical habitat units is facilitated by reducing the intervening distance. This is of particular importance in areas of concern where both habitat quality and quantity is often-times minimal. Given that owl movement and dispersal is of a random nature, the Service believes the forest matrix outside of critical habitat units should be managed for dispersal through other means such as section 7 and the development of management, recovery, and HCP plans.

Issue 37: Some commentors wanted to know about the benefits of designating critical habitat as they relate to other environmental concerns (such as watershed protection, soil stability, protection of fisheries, reduction of greenhouse effect).

Service Response: Substantial benefits are anticipated as a result of this proposed critical habitat designation. A reduction in soil erosion and associated stream sedimentation, as well as a retention of water quality is expected in areas that are not logged. (The cessation of logging would, in itself, not increase water quality, but it would prevent further sedimentation and degradation of water quality that result from logging impacts to soil structure and erosion.) These effects should be beneficial to salmon and steelhead runs as well as to resident stream fish. The effect on global warming is difficult to ascertain without extensive studies and the development of predictive models.

Critical habitat for the northern spotted owl supports an ecosystem with unique characteristics. These ecological characteristics provide pleasure and enjoyment to individual users of wildlife, to participants of such outdoor activities as hiking and camping, and to those people who, although they have no plans to participate in on-site activities, obtain satisfaction from the existence of the habitat and its flora and fauna. The designation of critical habitat would significantly increase benefits from the use of the forest for such things as open space, scenic beauty, recreational opportunities, clean water supplies, reduced herbicide use, and the like.

Issue 38: A number of individuals felt that the Service should concentrate on multiple species management rather than proposing critical habitat for the northern spotted owl. Several individuals suggested the addition of specific areas for the benefit of other species. A few noted that designation of critical habitat will harm species that prefer younger forests.

Service Response: Designation of critical habitat for the northern spotted owl may incidentally benefit many other species, particularly those associated with older forest habitats. However, the proposed designation is intended to benefit only the owl and the Service did not add areas that would only benefit other species. The Service has no data indicating that species preferring lower seral stages are in a decline due to habitat shortage. Further, the Service does not anticipate a significant decline in early seral-stage habitat, since much of the land that has been managed for timber production will likely continue to be managed for timber production, including lands outside of critical habitat units and much private land. In addition, natural catastrophic events will continue and likely result in portions of critical habitat units being in early seral stages at a given point in time. Some species which utilize openings in forests, such as deer and elk, are also dependent upon adjacent stands of older forests for hiding and shelter.

Economic and Impact-related Issues

Issue 39: Many people felt that economic impacts needed to be carefully considered in the designation of critical habitat. Conversely, some felt that economics should not be part of the decision to designate critical habitat.

Some individuals used the Act's requirement to complete an economic analysis as a reason to avoid designating critical habitat, because the Service can modify critical habitat boundaries based upon economic impacts, provided that such modifications would not result in the extinction of the species.

Others criticized the Service's baseline in the economic analysis. Some individuals felt that the Service was arbitrary and capricious in conducting an economic analysis that only examined the incremental effects of designating critical habitat. These people felt that the Service should have examined the economic impacts of the initial listing of the owl and any other regulatory mechanisms offering protection to the owl as part of the economic analysis of designating critical habitat.

Service Response: The Act directs the Service to consider the economic and other relevant effects of the designation and to exclude specific areas where the costs outweigh the benefits of such designation, provided that such exclusion would not result in the species' extinction. Therefore, when designating critical habitat, the Service first selects areas using the best available biological information as the basis for the proposal and then has the option to modify boundaries based upon economic and other relevant considerations as long as such modifications do not lead to extinction. Failure to consider biological information in designating critical habitat for the owl would circumvent the process described in the Act. To the extent possible, the designation of critical habitat will reflect the Service's concern and evaluation of the economic and social impacts of the designation.

Section 4(b)(2) of the Act requires the Service to consider the economic and other relevant impacts of designating particular areas as critical habitat. It does not direct the Service to assess the impacts of both listing the species and designating its critical habitat. Moreover, section 4(b)(1)(A) of the Act explicitly precludes the Service from considering the economic impacts of listing a species as threatened or endangered. The congressional intent behind inclusion of this provision was to ensure that only relevant biological criteria are used to assess the ecological status of a species. In addition, prior to the proposed critical habitat designation, protective measures for the owl (e.g., Forest Service determination to be consistent with the ISC Plan, Bureau implementation of the Jamison Plan, and section 7 and 9 regulations as a result of listing) were in place and had created economic impacts not associated with critical habitat designation. Therefore, the Service evaluated the incremental economic effects due to designating critical habitat, over and above those effects of listing the species and of other owl protective measures. To do otherwise would impermissibly attribute to critical habitat designation impacts already caused independently by listing and the other protective measures.

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Issue 40: Many individuals requested information about the employment multipliers used in determining the economic costs of the proposed critical habitat designation and the justification for using these multipliers.

Service Response: The Service used a computer model known as IMPLAN (developed and managed by U.S. Forest Service) to generate the employment multipliers. The IMPLAN model is used by the Federal Emergency Management Agency, Soil Conservation Service, Forest Service, Bureau of Land Management, Corps of Engineers, and National Park Service, as well as the Fish and Wildlife Service, to evaluate the impact of various Federal actions on employment. Productivity and allowable cuts are given by the Service for each forest and BLM district. Direct, indirect, and induced effects are calculated using regional IMPLAN models which incorporate the trade area. Multipliers in regions surrounding Seattle and Portland are adjusted to exclude the influence of these large urban areas.

Issue 41: Some individuals felt that the job loss predicted due to the critical habitat designation might be attributed to other factors such as automation, exports, foreign labor, and so forth. Some commentors projected that "automation, exports, foreign labor, and non-sustainable logging are the real culprits of job loss in the Northwest," and that the owl is being used as a scapegoat by the failing timber industry.

Service Response: Other factors have clearly been responsible for a large part of the decline in timber-related jobs in the Northwest. Factory automation has resulted in a dramatic conversion in the industry from a labor-dependent system to a highly automated system. According to the Northwest Forest Resource Council (1990), which evaluated the economic impacts of timber industry jobs for every mmbf of timber harvested (harvest multiplier), the multiplier has gone from a high of nearly 13 jobs/mmbf in 1981 to 9 jobs/mmbf in 1987, and the 1990 ratio is approximately 8 jobs/mmbf. Mechanization has reduced the number of workers felling trees, transporting logs, handling logs, and milling finished products. In addition, export of unprocessed logs further reduces the number of jobs available locally.

Competition from foreign processors for U.S. logs is a significant cause of the demise of domestic timber processing. Furthermore, a weak housing market has led to a decreased demand for lumber, leading to lower employment in the industry. Indeed, there are numerous factors other than the spotted owl listing and the proposed designation of critical habitat for the owl that have and continue to negatively impact employment opportunities in the forest products industry.

Issue 42: The Service should consider Executive Order 12606 on supporting the family prior to designating critical habitat for the northern spotted owl. The designation of critical habitat will very likely result in increased rates of drug and alcohol abuse, domestic violence, and divorce. For example, the Forks Abuse Program (in Washington State) works with victims of domestic violence and reportedly saw "an increase of 352% in requests for shelter for victims of domestic violence the first 6 months of 1990 as compared with the first 6 months of 1989."

Service Response: The designation of critical habitat for the spotted owl is one of many factors that affect employment in the Pacific Northwest. The Service does realize that job losses from the critical habitat designation may add to unemployment. The Service regrets that this may be an effect of the critical habitat designation and will comply with Executive Order 12606.

Issue 43: The designation of critical habitat will increase the number of drug dealers and marijuana plantations.

Service Response: This comment is speculative. The Service has no information on which to base a judgment.

Issue 44: The effects on public education due to lower tax receipts needs to be considered when designating critical habitat. Several commentors noted that public education services would be drastically reduced to such an extent that County, State, and Federal government assistance would be essential if basic educational services were to be maintained. One commentor questioned if the Service had taken into account that local government depends on tax revenue from timber receipts and wanted to know how many teachers would lose their jobs because the timber receipts were not available to help pay the costs.

Service Response: The actual economic impact on public education is dependent on other factors as well, including mill levy rates and property values. Since private lands are not included in this revised proposal, private land values should not decrease and, in fact, might increase because of the lower availability of Federal timber. Payments in lieu of taxes will decrease in those Counties that contain critical habitat units, with a net anticipated reduction to the Counties and States of $20 million. Fewer public services such as roads and schools are needed when the population migrates to other areas where work is available. The U.S. House of Representatives recently passed legislation increasing (from 25 to 90 percent of historic levels of the mid-1980s) the percentage of timber receipts that Counties can retain. This would lessen the impact of critical habitat designation on County treasuries.

Issue 45: Several people submitted comments asking the government to compensate the timber industry in some manner, suggesting the government should pay loggers and mill workers subsidies similar to those paid to wheat farmers and dairy workers. Others indicated that the government should compensate the timber industry for its loss in revenue due to the reduction in allowable timber harvest (from Forest Service and Bureau of Land Management lands). Some believed that the government should bear the responsibility for communities that have been allowed to cut timber beyond sustainable yield levels.

Service Response: Neither the Act nor any other law administered by the Service authorizes payment of the type of subsidies or compensation suggested by the comments. Consequently, this issue is a matter for other agencies and Congress to consider.

Issue 46: Some individuals inquired about the costs of the deterioration in the distribution of income arising from structural economic changes in timber dependent regions.

Service Response: Changing the distribution could increase or decrease tax revenue depending on whether the tax policies are progressive or regressive and on the direction of the change in the distribution. If deterioration in the distribution of income would lead to a tax revenue loss, it would necessitate a decrease in public services or an increase in taxes. Individual States and Counties determine their own spending/revenue patterns to provide public services. Structural economic changes do not lead to a deterioration in the distribution of income because other sectors of the economy benefit when there is a redistribution of income. Those counties that lose jobs in the timber industry may find that once these persons leave the area the remaining incomes are higher and much more stable since they will not depend as much on resource extraction, housing construction, and other cyclical and depressed industries.

Issue 47: Some commentors stated that the proposal should recognize the economic impacts of forest product industries other than logging and sawmilling and that the economic analysis use not only sawmills but all timber processing and timber-based industries to effectively address the indirect employment effects of the proposal. The economic impact of the critical habitat designation on forest product industries other than logging and sawmilling needs to be addressed.

Service Response: If implemented, the proposed rule would result in logging reductions and would, thus, have an impact on downstream industries to the extent that supply cannot be accommodated by other sources. The economic analysis conducted by the Service took into account SIC (Standard Industrial Classification) groups 24 and 26, which included a large variety of wood-related products. A precise estimate of this logging reduction is difficult because of market factors of price, supply, and log export restrictions. As previously mentioned, IMPLAN was used as the base for the analysis to determine economic impact of the regions involved. Indirect employment effects were measured and include declines in all sectors that will occur because of the reduced timber products activity. The effects of decline in logging, milling, pulp, paper, and related wood products were all considered in the analysis.

Issue 48: A timber company noted that the

> * * * designation of additional areas beyond the Thomas Plan HCAs will result in a shift in recreational activities and probably a total reduction in overall recreational activity. Managed forest lands provide a vast and diversified recreation opportunity * * *. Except for a few old growth dependent species, designation of critical habitat will reduce opportunity for wildlife appreciation, bird watching, hunting, etc., as compared with managed forests.

One commentor remarked that

> * * * it is erroneous to assume that all non-market resource values increase when areas are designated as critical habitat. Critical habitat designation is likely to diminish recreational values, because access to recreational areas will be reduced. In addition, younger forests are beneficial to many species, especially game species. Hunting values generally are higher in forest mosaics that include some harvested areas.

Service Response: Both managed forest lands and old-growth forest lands provide opportunities for recreation. The net quantity and direction of the critical habitat induced change in recreational values is unknown. Managed forest land provides diversified recreational opportunities for a variety of recreationists because of its road system. Critical habitat designation for the spotted owl would not reduce recreation in the short-term because existing roads will remain available. Access for recreationists would not be restricted due to critical habitat designation. Also, the presence of old-growth forest habitat could increase certain *types* of recreational use. Many people enjoy areas that show fewer signs of human activity than a logged area. Further, while hunting participation may be relatively greater in a "forest mosaic," fishing participation may be relatively greater in unlogged areas where better water quality and reduced stream sedimentation promote fish populations. Many activities, road construction, and some logging will be allowed.

Issue 49: The critical habitat units' marginal contribution to owl protection or their marginal importance to timber supply was questioned.

> The analysis of each area should show that area's marginal contribution to owl conservation as well as its marginal importance to timber supply.

Service Response: The Service believes that the critical habitat designation's marginal contribution to owl protection, as defined in this proposed rule, is greater than the marginal contribution to timber supply. This reflects the legal mandate to the Service to provide protection to species designated as threatened or endangered. This designation is not a withdrawal of these acres from the timber base. Timber harvesting will continue, although it is expected at a reduced level.

Issue 50: Some individuals wanted to know whether the proposed critical habitat designation or the pre-existing timber development plan represents the highest-valued use of the affected lands.

Service Response: The Endangered Species Act requires the Service to designate critical habitat. The Act further directs the Service to consider the economic effects of the designation and to exclude specific areas where the costs outweigh the benefits of such designation, provided that such exclusion would not result in the species' extinction. The Service has carried out these mandates in this revised proposal. A redistribution of wealth always occurs if a subsidy is removed and/or a resource constrained.

Issue 51: Some suggested that the potential economic benefits of *not* designating critical habitat might be an important factor that should be considered. One commentor noted that

> * * * the Service has failed to analyze the potential economic benefits associated with *not* designating critical habitat in the areas identified * * *.

Service Response: The benefits of not designating critical habitat for the owl are the costs avoided. Not designating critical habitat for the owl would obviate the economic costs associated with the designation process. One might think of reduced logging costs as "benefits" to mills and increased federal subsidy to local schools as "benefits" to local taxpayers. Not designating would create these "benefits." The analysis considers these factors but designates them as costs since they may be benefits foregone if habitat is declared. In addition, it has been established by the Service that private lands will not be included in the critical habitat designations, which will greatly limit the effects on lands other than public lands.

Issue 52: Private landowners felt that due to the uncertainty of the impact on private lands from the designation of critical habitat, the values of these lands might be depressed. One commentor stated that

> It is extremely important that the agency recognize that even if the designation does not evolve into constraints on private harvest, the designation of critical habitat itself telegraphs a degree of uncertainty and legal risk that will inhibit land exchanges or investments in timber management and harvest plans, all of which will contribute to a substantial decrease in economic value as a consequence of the threat of future intervention.

Service Response: Although the revised proposal for critical habitat designation does not include private land, some indirect effects on private landowners may occur due to their feelings of uncertainty and risk. However, as the supply of timber from Federal land decreases, the Forest Service anticipates that stumpage prices will increase. It follows that the value of timberland will increase, benefiting private landowners. If Federal supply goes down, the remaining private supply would normally be expected to be worth more, not less.

Issue 53: Private landowners requested clarification of the costs involved with harvesting their wood prematurely due to the critical habitat designation.

Service Response: The harvesting of timber prematurely assumes that the landowners are doing so in response to changing stumpage prices. Short rotational periods on private lands have reduced the average size of logs, thus restricting the types and quality of finished products that can be manufactured from those logs. If

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landowners believe that stumpage prices are going to fall, they may delay their woodcutting to minimize financial losses. If stumpage prices are going to increase, as the Forest Service anticipates, the landowners might harvest sooner to take advantage of the higher prices. In this case, the landowners would benefit more from increased stumpage prices than would have occurred without the critical habitat designation.

Issue 54: Some felt the Service should not designate critical habitat because it will increase the harvest pressure on and road construction in adjacent areas that are not designated. The resulting reduction in domestic wood products could lead to increased timber production activities in tropical rainforests. The designation of critical habitat also may encourage activities that are more environmentally damaging by causing a shift to more pollution-causing building materials. Some suggested that landowners would harvest their lands more quickly in advance of the final rule taking effect.

Service Response: The basis for this comment seemed to be an assumption that timber within critical habitat would not be harvested and, therefore, the forests would not provide needed timber supplies. The designation of critical habitat would add a layer to the level of review Federal projects already receive under section 7 of the Act. That added review would most likely result in a reduction of timber harvested or a modification of harvest methods in some cases. However, the designation of critical habitat does not ban all logging activities within critical habitat.

Both the Forest Service and the Bureau anticipate an increase in private harvesting in response to higher stumpage prices, making it profitable for landowners to harvest trees earlier than previously planned. Increased harvest may or may not result in increased road construction depending on the existing road network in the area to be harvested. The Service realizes that this may have a negative effect on future harvest on these lands through shortened rotations and lower quality wood. This is not an effect due solely to critical habitat. This trend has been increasing since before the listing of the owl. While the Service agrees that added pressure for timber production on areas outside critical habitat may occur, those areas would still be subject to scrutiny under State and Federal regulatory mechanisms. Proper timber management in these areas may continue to provide needed forest products.

The purpose of this proposal is to designate critical habitat for the protection of northern spotted owl habitat. Ramifications such as the effect on tropical rainforests are beyond the scope of this proposal and are more appropriately addressed in other forums. The Service is concerned, though, over the impact caused by any shift in resource use from one area to another.

Issue 55: The Department of Transportation questioned the additional costs for infrastructure improvements when roads are delayed or curtailed due to restricted access.

Service Response: Increased delays or costs for road construction are not anticipated as a result of this proposed rule. In exceptional cases, there might be requirements for modifications to alignments if they would impact nest trees.

Issue 56: Some of the public felt the designation of critical habitat would interfere with potential land exchanges.

Service Response: Designating critical habitat for the spotted owl would affect land exchanges where they involve Federal lands or where land exchanges are funded, authorized, or otherwise carried out by a Federal agency. Some Federal agencies, such as the Forest Service, have policies guiding agency action on land exchanges which involve habitat used by listed species. Land exchanges typically would undergo section 7 consultation between the Federal action agency and the Service to assure the proposed exchange would not jeopardize the continued existence of the species or result in the destruction or adverse modification of critical habitat. It is likely that critical habitat in Federal ownership would remain under Federal management to assure that conservation of the species is promoted, in accordance with section 7(a)(1) of the Act. This would not affect land exchanges that are strictly private, as private lands are not included.

Issue 57: Several individuals believed that critical habitat would preclude all land uses and strongly opposed its designation. Others requested that the Service clearly define what activities could and could not take place within every single critical habitat unit. Support for these views came from the public's acceptance of multiple use mandates. Many suggested the continuation of specific activities that were thought to perpetuate habitat conditions needed by owls. Examples of such activities included certain timber harvest prescriptions, such as selective cutting and thinning, to facilitate the development of owl habitat. Even clearcut prescriptions were viewed as being compatible with owls in some cases (because Douglas-fir seedlings grow in full sun and because most clearcut prescriptions include stream buffers). Sometimes this issue was phrased in the form of a specific question, asking if acceptable uses included fishing, mining, bike riding, hiking, rock collecting, camping, firewood collecting, or others.

Service Response: The designation of critical habitat is not synonymous with setting aside wilderness, "locking up" land, or prohibiting all uses. Section 7 of the Act prohibits Federal agencies from authorizing, funding, or carrying out actions that would destroy or adversely modify critical habitat. Many activities would not be restricted in critical habitat units because they would have no effect on the primary constituent elements of the critical habitat. Activities considered not likely to adversely affect critical habitat include hiking, camping, fishing, hunting, bird watching, cross-country skiing, snowmobiling, off-road vehicle use, organized motor-crosses, mushroom and plant gathering, Christmas tree cutting, limited livestock grazing, rock collecting, maintenance of rights-of-way, and underground mining activities.

Activities that would disturb and/or remove spotted owl habitat components within designated critical habitat units may affect the owl and/or its critical habitat. Such activities are discussed in more detail under the section titled "**AVAILABLE CONSERVATION MEASURES**" in this rule. Each proposed project would be examined under section 7 in relation to its site-specific impacts. In most cases, the Service will offer recommendations to help agencies offset the impacts of their actions. These may result in modifications to the project. In some cases, there may be no acceptable alternative. On the other hand, if certain silvicultural practices are proven to enhance or perpetuate owl habitat, the Service could determine that those projects are not likely to destroy or adversely modify critical habitat.

Issue 58: Some individuals suggested that the Service should automatically prohibit certain activities through section 7 consultations. Such prohibitions included the harvest of any timber within critical habitat. Other individuals suggested that specific activities, such as use of existing access roads, construction of new roads, and construction and maintenance of utility corridors, be excluded from the requirement for review under section 7. Some wanted the agencies to maintain the status quo or current harvest rates and continue to evaluate the needs of the owl. Others wanted the Service to prohibit all actions within proposed critical habitat until the final rule is published.

Service Response: The Service does not have the authority to automatically prohibit certain activities through section 7 of the Act or to automatically exempt certain projects from the requirements of section 7 of the Act for either proposed or final critical habitat designation. Section 7 of the Act requires Federal agencies to confer with the Service on actions that are likely to destroy or adversely modify proposed critical habitat and to consult on such actions once critical habitat is designated. The Service's comments and recommendations presented to Federal agencies as a result of proposed critical habitat conferences are advisory. If the Service's biological opinions resulting from consultation on designated critical habitat conclude that destruction or adverse modification would result, the Service provides reasonable and prudent alternatives, where possible, to avoid the destruction or adverse modification of critical habitat. Under the Act, the Service cannot prejudge the outcome of section 7 consultations regarding destruction or adverse modification of critical habitat.

Issue 59: The designation of critical habitat will create an additional layer of environmental surveys that must be completed.

Service Response: Federal agencies authorizing, funding, or carrying out projects that may affect listed species are required to conduct section 7 consultations with the Service. The consultation process normally involves surveys to determine species presence. That is true whether or not critical habitat has been designated for the species. The Act requires the Service to complete its review under section 7 of the Act within 90 days and to issue a biological opinion within 45 additional days. In practice, the Service issues biological opinions within 90 days of receiving the request regardless of whether or not critical habitat has been designated. The Service agrees that an analysis of the effects of a proposed action on critical habitat constitutes an additional level of environmental analysis, but this additional effort is carried out simultaneously with other environmental review processes, including the review under section 7 to determine whether jeopardy to a listed species would be likely to result.

Issue 60: Some noted that the designation of critical habitat would interfere with important cancer research because the designation would prevent the harvesting of yew trees.

Service Response: Where the yew occurs within proposed critical habitat boundaries, it is likely that yew bark could be harvested without adversely modifying the owl's critical habitat.

Issue 61: One commentor wanted to know how much increased lumber costs would decrease consumer surplus.

Service Response: The effect of increased lumber costs on consumer surplus depends on the final wood production unit's incremental change in price, the number of units sold, and the demand elasticity. Prices of lumber are expected to rise in response to the critical habitat designation, but since the reduction in timber harvests due to critical habitat designation in the Pacific Northwest represents only a small portion (.04 percent) of the nation's lumber supply, the price increases and the loss of consumer surplus should be very small.

Issue 62: Several individuals questioned whether the costs of wood products would increase due to a decreased supply.

> The supposition that the price will rise due to supply reduction in the Northwest assumes that the lumber demand is elastic. If the timber supply from the Northwest were the only source of product to a specific region, the normal supply/demand/price parameters would apply.

Service Response: Wood product prices are elastic, and demand for those products will ultimately determine price. Prices have increased by 0.8 percent in the past 6 months (Producer Price Index), but it is impossible to predict whether this trend will continue or reverse. Nationally, the housing market has been in a slump, and demand has not been strong. In addition, other sources of supply such as the Southeast, Northern Midwest, or other locations may in part offset lower production from the Northwest forests.

Issue 63: Several individuals wanted to know the status of Forest Service and the Bureau of Land Management sold but unharvested timber.

Service Response: The Service reviewed the potential for restricting the harvest of sold but unharvested timber from public lands from both a biological and economic perspective. As a result, the Service determined that the economic impacts associated with the potential withdrawal of these sales would outweigh their biological contribution. This was influenced by the order issued by Judge Dwyer on May 23, 1991 (*Seattle Audubon Society et al.* v. *John L. Evans et al.*, No. C89–160WD (W.D. Wash.)).

In that decision, Judge Dwyer prohibited the Forest Service from offering timber sales in northern spotted owl habitat on Forest Service lands for the year 1991 and that portion of 1992 ending March 5 until such time as the Forest Service promulgates rules and guidelines for the protection of the northern spotted owl and writes an accompanying Environmental Impact Statement. In that order, the court stated that:

> 38. The injunction would not prohibit the logging of existing sales, but rather the sale of additional logging rights in owl habitat areas while the Forest Service was in the process of adopting a plan. Thus, timber sale reductions do not translate directly into harvest reductions.

By ordering an injunction against the proposal of new sales pending completion of an owl management plan and Environmental Impact Statement, the Court essentially removed all timber sales from Forest Service lands *except* those that have been sold but unharvested. The plaintiffs agreed not to protest the execution of those sales as reasonable relief for the industry, thereby making 4.778 bbf of timber available to the industry. Therefore, these timber sales constitute the only available timber for harvest from Forest Service lands until March 5, 1992. The removal of all or a portion of these areas from timber harvest would, in the opinion of the Service, create a severe economic impact on the timber industry and rural communities dependent upon that harvest for economic stability.

The Service determined that exclusion of these areas as critical habitat would not lead to the extinction of the northern spotted owl, based upon previous section 7 biological opinions for these sales, which found they would not jeopardize the continued existence of the species. These "no-jeopardy" opinions indicate that extinction will not occur.

Issue 64: One commentor felt that the economic analysis ignored the consequences of critical habitat designation on State law requirements and the resulting impacts on private landowners. According to the commentor, the critical habitat designation would trigger additional environmental review on the State level, which would trigger public interest and challenge additional environmental reviews on the State level, and it also fails to consider access to private lands.

Service Response: The proposed rule does not address the effects of State or other local requirements that result from critical habitat designation because the

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Service has not been able to assess these requirements and their potential effects. The Service requests comments on these requirements and their potential effects.

Issue 65: The Service was asked to consider the economic impact that designating critical habitat for the northern spotted owl could have on private lands.

Service Response: No private lands are being proposed as critical habitat. However, private entities might be affected if they are involved in an activity to be authorized, funded, or carried out by a Federal agency (often referred to as a "Federal nexus"). For instance, if a private landowner required access across Federal critical habitat in order to gain access to his land, the Federal land managing agency's issuance of a right-of-way permit would be subject to compliance with section 7 of the Act. Although the decision on the permit could affect the private land, access has never been denied in the past as a result of section 7 consultation with the Service, although modifications to the proposed action on Federal lands might result (see next issue for further discussion). There should be little impact on private lands as a result of designating critical habitat on Federal lands.

Issue 66: The Service cannot use the granting access to private inholdings as an entry into the consultation process described under section 7, because 16 U.S.C. Sec. 3210a guarantees a private party's access to their land.

Service Response: The consultation process described under section 7 does not result in Service approval or denial of access, but rather an evaluation of the proposed project's impact on a listed species or its habitat. The Federal permitting agency, through consultation with the Service, may modify the location of an access road authorized through this project review process if it would adversely affect spotted owls or critical habitat. If the Service determines that construction of a road may result in destruction or adverse modification of critical habitat, the Service will present reasonable and prudent alternatives, such as route modification, so as to not destroy or adversely modify critical habitat. The Service expects that rarely, if ever, will the designation of critical habitat for the owl result in a Federal agency's denying access.

Issue 67: The Service should prepare a "taking implication assessment" pursuant to Executive Order 12630 prior to making a final decision on this issue.

Service Response: The Service will comply with Executive Order 12630.

Issue 68: Some individuals felt that the Service should examine the consequences of critical habitat designation for the owl on the balance of trade.

Service Response: Log exports from the Pacific Northwest have been, on average, 3,307 mmbf annually for the years 1985–1989, which represents approximately 1 percent of the value of all annual exports of the United States. The Service expects log exports to decrease because of higher stumpage prices resulting from critical habitat designation. Imports of finished wood products may also increase. Thus, the net impact on the balance of trade may be negative but insignificant.

Issue 69: Some questioned the degree to which restricting log exports would alleviate the timber supply shortage if the proposed critical habitat designation was implemented.

Service Response: Governmental export restrictions would increase timber availability for local buyers and would reduce competition for logs in the Pacific Northwest thus reducing costs to local mills. The industry estimates that on average, 3,300 mmbf of logs were exported annually during the late 1980s (17 percent of logs harvested); the proposed critical habitat designation is equivalent to 4.5% of the annual log exports.

If domestic timber were to remain inside the United States, more milling jobs would be available for processing of the logs that would have been exported. The Forest Service reported that they expect decreased exports due to increased stumpage prices. An industry analyst noted that in 5 to 10 years the amount of log exports from the United States may be reduced by 50 percent without imposing export restrictions of any kind. This would result from the increased stumpage prices in the United States and a concurrent significant reduction of the supply of export-quality logs.

Issue 70: The effect of critical habitat designation on the import of foreign wood was noted several times by commentors. Questions centered on whether the U.S. government would now force the American public to buy essential wood and paper products, at higher prices than today, from foreign wood suppliers whose record of environmental stewardship and fiber renewal generally lag far behind that of the U.S. wood products industry.

Service Response: If the domestic demand for wood is high at the same time supply from the Northwest is restricted due to critical habitat designation and exports continue, the need to import more foreign wood might arise. Without importing wood, local mills might not be able to pay the higher prices for logs in the marketplace and be forced to decrease production. The mills that would be able to obtain the higher priced logs would most likely pass the increased cost onto the consumer. However, other parts of the country (i.e., the Southeast and the Great Lakes region) might increase harvest activities in response to the increased stumpage prices. The supply from these alternative sources might compensate for some of the increased prices. Given the huge supply of timber in the U.S., wood product prices are unlikely to rise significantly over time if we maintain a competitive market with free trade.

Issue 71: Some individuals wanted to know what costs would result from lawsuits and court actions due to the Service's failure to specifically state which activities would be allowed on private lands.

Service Response: It is impossible to ascertain in advance the probable costs of court actions resulting from this proposed rule; however, the revised proposal does not include private lands.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and effective as possible. Consequently, the Service used the most current data available to evaluate habitat for consideration as critical habitat. For example, the Service does not have current verified data for private, State, and tribal landowners, making it difficult to completely evaluate existing habitat for northern spotted owls. In many portions of the species' range, landowners (particularly State and private lands) on adjacent lands have not provided equal or comparable amounts of information. Such discrepancies have resulted in a disproportionate emphasis on those private landowners who did provide data whether for this proposal or for other reasons.

These problems exist to greater extent with the Federal agencies (the Bureau, Forest Service, and National Park Service). Disparities among data sets with respect to different Federal (and State) agencies greatly increased the amount of time required to review the information. The data presented in this rule were basically derived using a geographic information system (GIS). Data used in the GIS, including landownership, boundaries of HCAs, wilderness, and the previous critical habitat units, and other data layers were supplied by four Federal and three State agencies. Significant problems were encountered with data compatibility, and the Service has worked diligently to eliminate these errors to the maximum extent possible. This problem coupled with the lack of a common data base continues to hamper efforts to tabulate, track, and compare areas (e.g., spotted owl pairs, acres and condition of habitat). Comments are solicited to help correct remaining problems in the database.

In addition, different definitions of suitable habitat, which do not necessarily reflect biological differences between provinces, continue to be used by the agencies. Finally, a lack of understanding of the effects of various silvicultural prescriptions continues to lead to misinterpretations on the impacts of such harvest applications. The Service would like to reduce these limitations as much as possible and requests assistance in gathering any data or information, or in establishing research projects that would help overcome these deficiencies in the near future.

Therefore, comments or suggestions from the public, governmental agencies, Indian Nations, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Suggestions on how any of the above deficiencies or limitations could be reduced or eliminated;

(2) The reasons why any habitat (either existing or additional areas) should or should not be determined to be critical habitat as provided by section 4 of the Act, particularly in regards to the Service's exclusion of tribal, private, and some State lands;

(3) Information regarding actions that should be considered necessary to achieve recovery of the northern spotted owl and the conditions that might allow it to be removed from the list of endangered and threatened wildlife and plants (the Forest Service and Bureau should include information on the relationship to existing or expected land management plans);

(4) Alternative methods to ensure linkage habitat in the areas of concern, including implementation of the 50–11–40 rule, or other means;

(5) Specific information on the amount and distribution of suitable owl habitat, forest land base, and numbers and distribution of owls by landowner and land designation (the Forest Service, Bureau, and other land managing agencies or affected parties should include updated information and maps);

(6) Specific information on the ability or values of proposed areas to support other listed, proposed, or candidate species and the relationship of this proposal to maintaining biodiversity and ecosystem integrity;

(7) Current or planned activities in the subject area and their possible impacts on proposed critical habitat;

(8) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat;

(9) Economic values associated with benefits of designating critical habitat for the northern spotted owl. Such benefits include those derived from non-consumptive uses (e.g., hiking, camping, bird watching, etc.), watershed protection, air quality, soil retention, fisheries, "existence values," etc.;

(10) The methodology the Service might use, under section 4(b)(2) of the Act, in determining whether the benefits of excluding an area from critical habitat outweigh the benefits of specifying the area as critical habitat;

(11) The scope of timber harvest activities anticipated on Federal lands, or affected by Federal agencies, other than Forest Service and Bureau lands; and

(12) Non-timber related Federal activities (including Federally permitted, authorized, or carried out actions occurring on State and private lands) and economic costs associated with any alternatives being considered.

Public Hearings

Section 4(b)(5)(e) of the Act requires that a public hearing be held, if requested within 45 days of a proposed rule. As indicated under "**DATES**" and "**ADDRESSES**", the Service has scheduled four public hearings on this proposal due to the anticipated number of requests for such hearings.

Parties wishing to make statements for the record should bring a copy of their statement to the hearing. In anticipation of the large number of parties at each hearing, oral statements will be limited to 3 minutes. There are no limits on the length of the written statement presented at the hearing or subsequently submitted for the record. Written comments will be accepted from any party until the close of the comment period (see "**DATES**"). Written submissions will be given the same weight and consideration as oral comments presented at any hearing.

The Service intends to publish a final decision on this issue in early December of 1991. The final decision on this proposed designation of critical habitat will take into consideration the comments and any additional information received by the Service.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that designation of critical habitat for this species will not constitute a major rule under Executive Order 12291 and certifies that this designation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Based on the information discussed in this rule concerning public projects and private activities within critical habitat units, it is not clear whether significant economic impacts will result from the critical habitat designation. Also, no direct costs, enforcement costs, information collection, or recordkeeping requirements are imposed on small entities by this designation. Further, the rule contains no recordkeeping requirements as defined by the Paperwork Reduction Act of 1980.

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Franklin, J.F., and C.T. Dyrness. 1988. Natural vegetation of Oregon and Washington. Oregon State University Press, Corvallis, Oregon. 452 pp.

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Northwest Forest Resource Council. 1989. Spotted owls, old growth, and the economy of the northwest. Northwest Forest Resource Council, Portland, Oregon.

Peterson, G.L., and A. Randall (eds.). 1984. Valuation of wildland resource benefits. Westview Press. Boulder, CO.

Pious, M. 1989. The northern spotted owl in second growth forests of Mendocino County, California—preliminary results. Louisiana Pacific Corporation, Calpella, California. Unpublished ms.

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U.S. Fish and Wildlife Service. 1991d. Economic analysis of designation of critical habitat for the northern spotted owl. U.S. Fish and Wildlife Service, Washington, D.C., August 6, 1991.

U.S. Fish and Wildlife Service. 1991e. Report on the balancing process and criteria for the northern spotted owl. U.S. Fish and Wildlife Service, Fort Collins, Colorado.

Authors

The primary authors of this rule are Karla J. Kramer and Barry S. Mulder, U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement (see "**ADDRESSES**" section); Steve Spangle, U.S. Fish and Wildlife Service, Sacramento Field Station; Michael Tehan, U.S. Fish and Wildlife Service, Olympia Field Station; and Randy G. Tweten, U.S. Fish and Wildlife Service, Portland Field Station.

The economic summary was prepared by John Charbonneau and Michael Hay, U.S. Fish and Wildlife Service, Office of Policy, Budget, and Administration, Washington, DC; and Richard Johnson and Mel Schamberger, U.S. Fish and Wildlife Service (see "**ADDRESSES**" section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

§ 17.11 [Amended]

2. It is proposed to amend § 17.11(h) by revising the "critical habitat" entry for "Owl, northern spotted", under BIRDS, to read "17.95(b)".

3. It is proposed to amend § 17.95(b) by adding critical habitat of the northern spotted owl (*Strix occidentalis caurina*) in the same alphabetical order as the species occurs in 17.11(h).

§ 17.95 Critical habitat—fish and wildlife

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(b) * * *

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NORTHERN SPOTTED OWL: (*Strix occidentalis caurina*)

California. Areas of land and water as follows:

Description of C–1 taken solely from Bureau of Land Management Map; Happy Camp 1983, and Hoopa 1983, California.

Del Norte and Siskiyou Counties

T. 16 N., R. 2 E., Secs. 11, 12, 13, 14, 15, 21, 22, 23, 24, 25, 26, 27, 28, 35, and 36, of the Humboldt Meridian.

T. 16 N., R. 3 E., Secs. 1, 7, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Humboldt Meridian.

T. 17 N., R. 4 E., Unsurveyed Lands, Secs. 1, 2, 3, 9, 10, 11, 12, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 33, 34, and 35, of the Humboldt Meridian.

T. 16 N., R. 4 E., Unsurveyed Lands, Secs. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 20, 21, 22, 27, 28, 29, 32, 33, and 34, of the Humboldt Meridian.

T. 15 N., R. 2 E., Secs. 1, 2, 11, 12, 13, 14, 23, and 24, of the Humboldt Meridian.

T. 15 N., R. 3 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Humboldt Meridian.

T. 15 N., R. 4 E., Unsurveyed Lands, Secs. 4, 5, 6, 8, 9, 16, 17, 20, and 23, of the Humboldt Meridian.

T. 14 N., R. 3 E., Unsurveyed Lands, Secs. 4, 5, 6, 10, 15, 25, 26, 27, 34, 35, and 36, of the Humboldt Meridian.

T. 14 N., R. 4 E., Unsurveyed Lands, Secs. 1, 32, 33, 34, and 35, of the Humboldt Meridian.

T. 13 N., R. 3 E., Unsurveyed Lands, Secs. 3, 25, 26, 34, 35, and 36, of the Humboldt Meridian.

T. 13 N., R. 4 E., Unsurveyed Lands, Secs. 1, 2, 3, 10, 11, 12, 13, 14, 15, 21, 22, 23, 24, 25, 26, ,27, 28, 29, 32, 33, 34, 35, and 36, of the Humboldt Meridian.

T. 13 N., R. 5 E., Unsurveyed Lands, Secs. 6, 7, 8, 17, 18, 19, 20, 29, 30, 31, and 32, of the Humboldt Meridian.

Excluding from the above areas any land within the Siskiyou Wilderness, and any private lands.

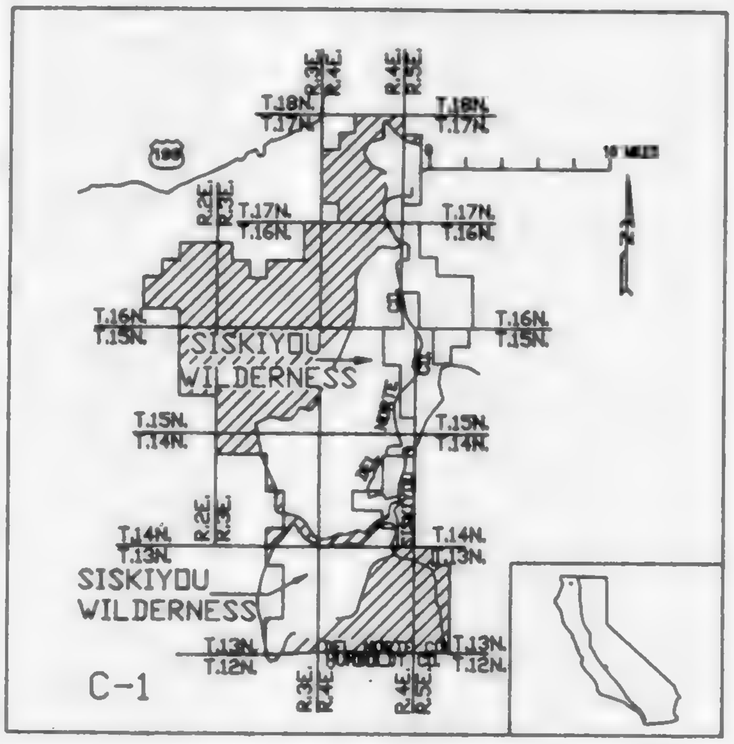
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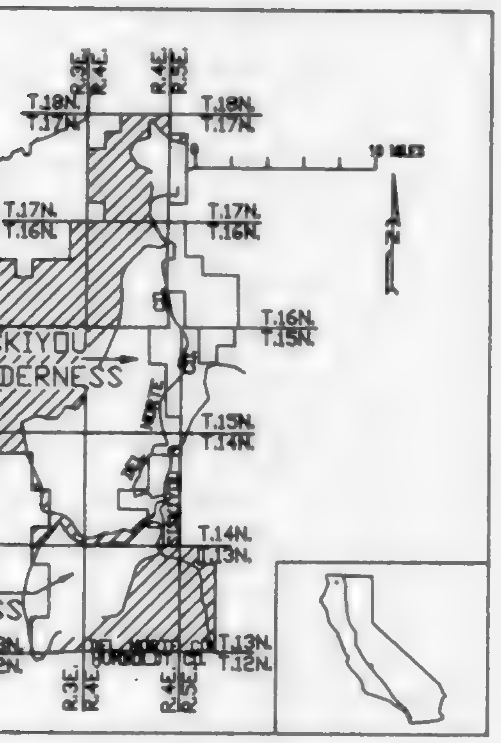
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Description of C–2 taken solely from Bureau of Land Management Map; Hoopa 1983, California.

Del Norte, Humboldt, and Siskiyou Counties

T. 12 N., R. 4 E., Unsurveyed Lands, Sec. 36, of the Humboldt Meridian.

T. 12 N., R. 5 E., Unsurveyed Lands, Secs. 25, 26, 27, 31, 32, 33, 34, 35, and 36, of the Humboldt Meridian.

T. 12 N., R. 6 E., Unsurveyed Lands, Sec. 33, and 34, of the Humboldt Meridian.

T. 11 N., R. 4 E., Unsurveyed Lands, Secs. 1, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 33, 34, 35, and 36, of the Humboldt Meridian.

T. 11 N., R. 5 E., Unsurveyed Lands, Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Humboldt Meridian.

T. 11 N., R. 6 E., Unsurveyed Lands, Secs. 3, 4, 5, 6, 7, 8, 17, and 18, of the Humboldt Meridian.

T. 10 N., R. 4 E., Unsurveyed Lands, Secs. 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, and 27, of the Humboldt Meridian.

T. 10 N., R. 5 E., Unsurveyed Lands, Secs. 3, 4, 5, 6, 7, 8, 9, 10, 16, 17, and 18, of the Humboldt Meridian.

Excluding any private lands within the above area.

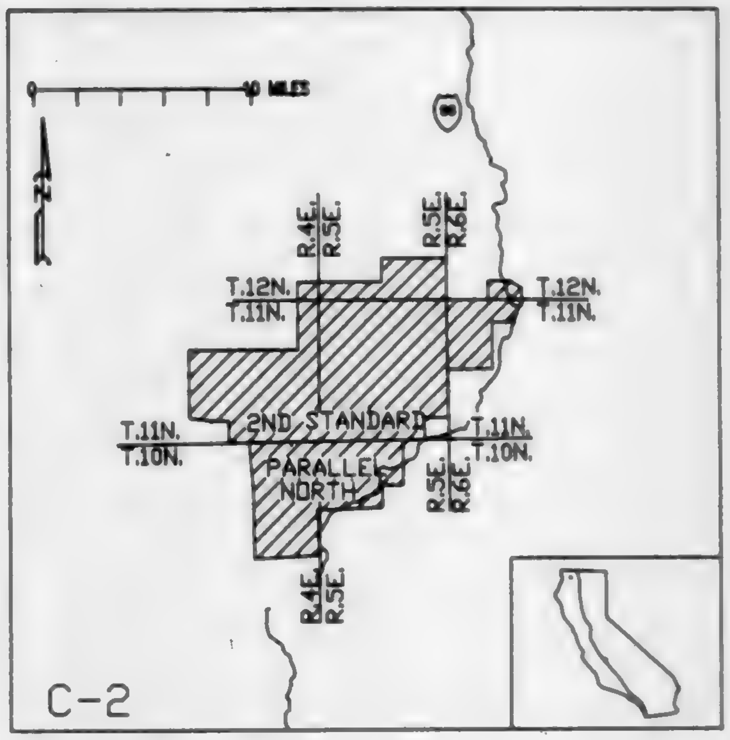
10 MILES
R.4E.
R.5E.
R.5E.
R.6E.
T.12N.
T.11N.
T.12N.
T.11N.
2ND STANDARD
PARALLEL
NORTH
T.11N.
T.10N.
T.11N.
T.10N.
R.5E.
R.6E.
R.4E.
R.5E.
C–2

Description of C–3 taken solely from Bureau of Land Management Map; Hayfork 1982, California.

Trinity and Humboldt Counties

T. 6 N., R. 4 E., Secs. 13, 14, 15, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36, of the Humboldt Meridian.

T. 6 N., R. 5 E., Sec. 18, 19, 30, 31, 32, and 33, of the Humboldt Meridian.

T. 5 N., R. 4 E., Secs. 1, 2, 3, 4, 10, 11, 12, 13, 14, 23, 24, and 25, of the Humboldt Meridian.

T. 5 N., R. 5 E., Secs. 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 22, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Humboldt Meridian.

T. 4 N., R. 5 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, and 26, of the Humboldt Meridian.

T. 4 N., R. 6 E., Secs. 6, and 7, of the Humboldt Meridian.

Excluding any private lands within the above area.

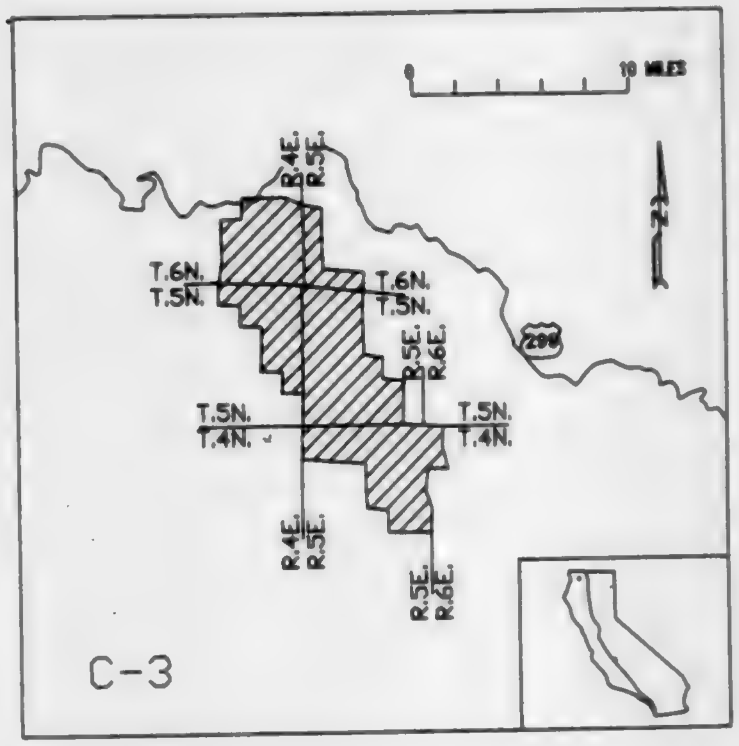
0
10 MILES
R.4E.
R.5E.
T.6N.
T.5N.
T.6N.
T.5N.
299
R.5E.
R.6E.
T.5N.
T.4N.
T.5N.
T.4N.
R.4E.
R.5E.
R.5E.
R.6E.
C–3

Description of C-4 taken solely from Bureau of Land Management Map: Garberville 1979, California.

Trinity and Humboldt Counties

T. 1 N., R. 5 E., Secs. 1, 2, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, and 27, of the Humboldt Meridian.

T. 1 N., R. 6 E., Secs. 5, 6, 7, 8, 18, 19, 29, 30, 31, and 32, of the Humboldt Meridian.

T. 1 S., R. 5 E., Secs. 13, 14, 22, 23, 24, 25, 26, 27, 34, 35, and 36, of the Humboldt Meridian.

T. 1 S., R. 6 E., Secs. 5, 6, 8, 17, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, and 34, of the Humboldt Meridian.

T. 2 S., R. 6 E., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Humboldt Meridian.

T. 2 S., R. 5 E., Secs. 1, 2, 11, 12, 13, 14, 23, and 24, of the Humboldt Meridian.

T. 2 S., R. 7 E., Secs. 19, 30, and 31, of the Humboldt Meridian.

T. 3 S., R. 6 E., Secs. 1, 2, 3, 4, 5, 9, 10, 11, 12, 13, 24, and 25, of the Humboldt Meridian.

T. 3 S., R. 7 E., Secs. 4, 5, 6, 7, 8, 9, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, and 33, of the Humboldt Meridian.

T. 4 S., R. 7 E., Secs. 5, 6, 7, and 8, of the Humboldt Meridian.

Excluding any private lands within the above area.

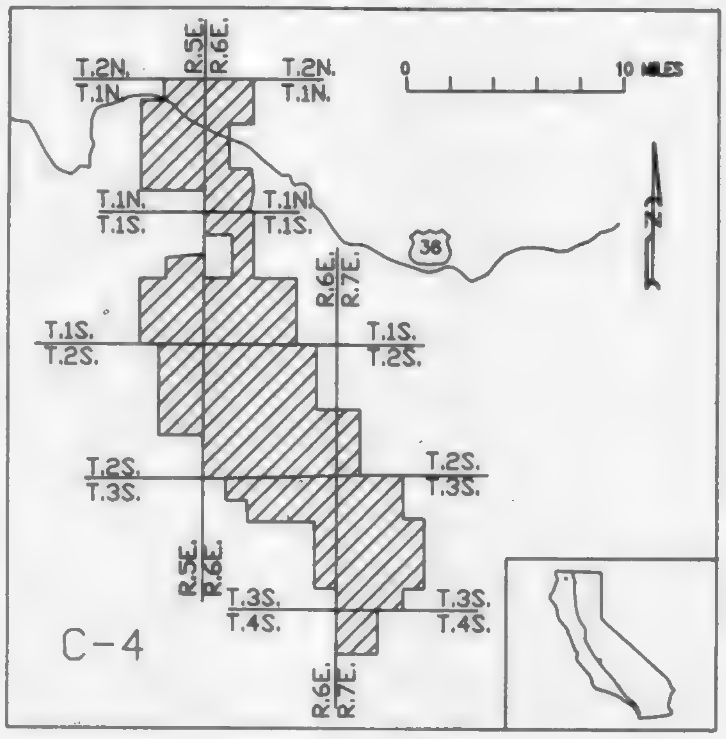
T.2N.
T.1N.
R.5E.
R.6E.
T.2N.
T.1N.
0
10 MILES
N
T.1N.
T.1S.
T.1N.
T.1S.
36
R.6E.
R.7E.
T.1S.
T.2S.
T.1S.
T.2S.
T.2S.
T.3S.
T.2S.
T.3S.
R.5E.
R.6E.
T.3S.
T.4S.
T.3S.
T.4S.
C-4
R.6E.
R.7E.

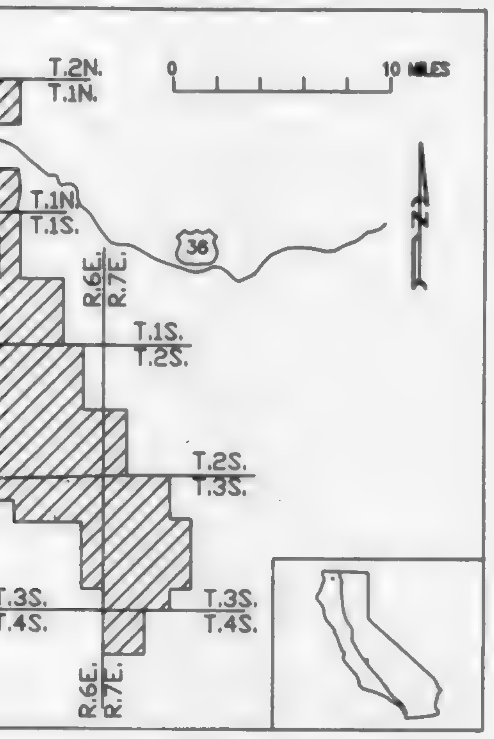
T.2N.
T.1N.
0
10 MILES
T.1N.
T.1S.
36
R.6E.
R.7E.
T.1S.
T.2S.
T.2S.
T.3S.
T.3S.
T.4S.
T.3S.
T.4S.
R.6E.
R.7E.

Description of C–5–C taken solely from Bureau of Land Management Map; Happy Camp 1983, California and Oregon.

Siskiyou County

T. 19 N., R. 7 E., Unsurveyed Lands, Secs. 33, 34, 35, and 36, of the Humboldt Meridian.

T. 18 N., R. 7 E., Unsurveyed Lands, Secs. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Humboldt Meridian.

T. 18 N., R. 7 E., Sec. 36, of the Humboldt Meridian.

T. 17 N., R. 7 E., Secs. 1, 2, and 3, of the Humboldt Meridian.

T. 19 N., R. 8 E., Unsurveyed Lands, Secs. 31, 32, and 33, of the Humboldt Meridian.

T. 18 N., R. 8 E., Unsurveyed Lands, Secs. 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 28 29, 30, and 33, of the Humboldt Meridian.

T. 18 N., R. 8 E., Sec. 31, of the Humboldt Meridian.

T. 17 N., R. 8 E., Secs. 4, and 6, of the Humboldt Meridian.

T. 48 N., R. 12 W., Unsurveyed Lands, Secs. 19, 20, 21, 27, 28, 34, and 35, of the Mt. Diablo Meridian.

T. 48 N., R. 12 W., Sec. 36 of the Mt. Diablo Meridian.

T. 47 N., R. 12 W., Unsurveyed Lands, Secs. 1, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 27, 28, 29, 30, 31, 32, 33, and 34, of the Mt. Diablo Meridian.

T. 46 N., R. 12 W., Secs. 2, and 3, of the Mt. Diablo Meridian.

T. 48 N., R. 11 W., Unsurveyed Lands, Secs. 31, 32, 33, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 47 N., R. 11 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 48 N., R. 10 W., Secs. 31, and 32, of the Mt. Diablo Meridian.

T. 47 N., R. 10 W., Secs. 4, 5, 6, 7, 8, 9, 18, 19, 20, and 30, of the Mt. Diablo Meridian.

Excluding from the above areas any land within the Red Butte Wilderness, and any private lands.

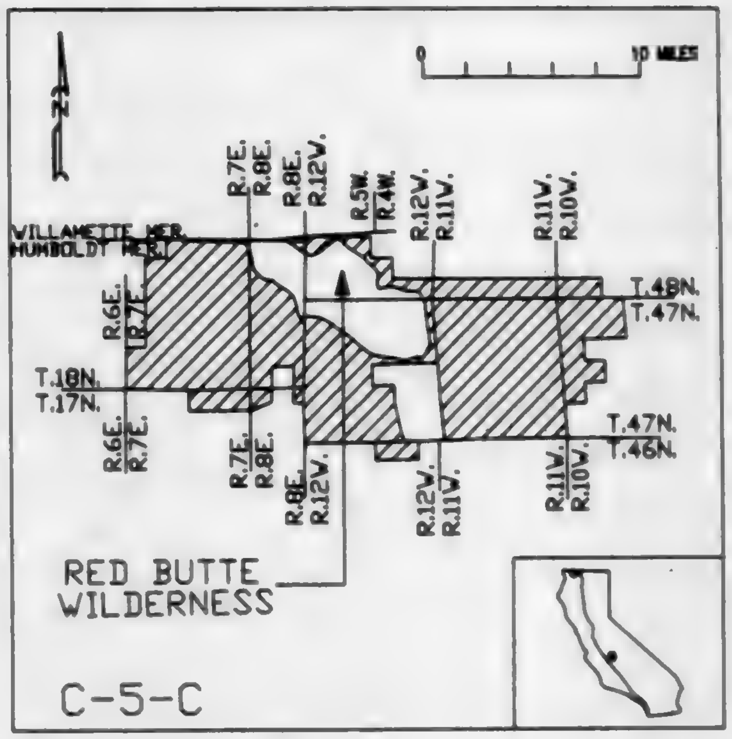
0
10 MILES
R.7E.
R.8E.
R.8E.
R.12V.
R.5W.
R.4W.
R.12V.
R.11V.
R.11V.
R.10V.
WILLAMETTE MER.
HUMBOLDT MER.
R.6E.
R.7E.
T.48N.
T.47N.
T.18N.
T.17N.
T.47N.
T.46N.
R.6E.
R.7E.
R.7E.
R.8E.
R.8E.
R.12V.
R.12V.
R.11V.
R.11V.
R.10V.
RED BUTTE
WILDERNESS
C-5-C

Description of C–6 taken solely from Bureau of Land Management Map; Happy Camp 1983, California and Oregon.

Siskiyou County

T. 16 N., R. 8 E., Unsurveyed Lands, Secs. 9, 15, 21, 22, 27, 28, 33, and 34, of the Humboldt Meridian.

T. 16 N., R. 8 E., Sec. 16 of the Humboldt Meridian.

T. 45 N., R. 12 W., Unsurveyed Lands, Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 46 N., R. 12 W., Secs. 25, 26, 31, 32, 33, 35, and 36, of the Mt. Diablo Meridian.

T. 46 N., R. 11 W., Secs. 27, 28, 29, 30, 31, 32, 33, and 34, of the Mt. Diablo Meridian.

T. 45 N., R. 11 W., Secs. 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Mt. Diablo Meridian.

T. 44 N., R. 11 W., Unsurveyed Lands, Secs. 4, 5, 6, 7, 8, and 9, of the Mt. Diablo Meridian.

T. 44 N., R. 11 W., Secs. 2, and 3, of the Mt. Diablo Meridian.

T. 44 N., R. 12 W., Unsurveyed Lands, Secs. 1, 2, 3, 4, 5, and 12, of the Mt. Diablo Meridian.

T. 15 N., R. 8 E., Unsurveyed Lands, Sec. 3, of the Humboldt Meridian.

Excluding from the above areas any land within the Marble Mountain Wilderness, and any private lands.

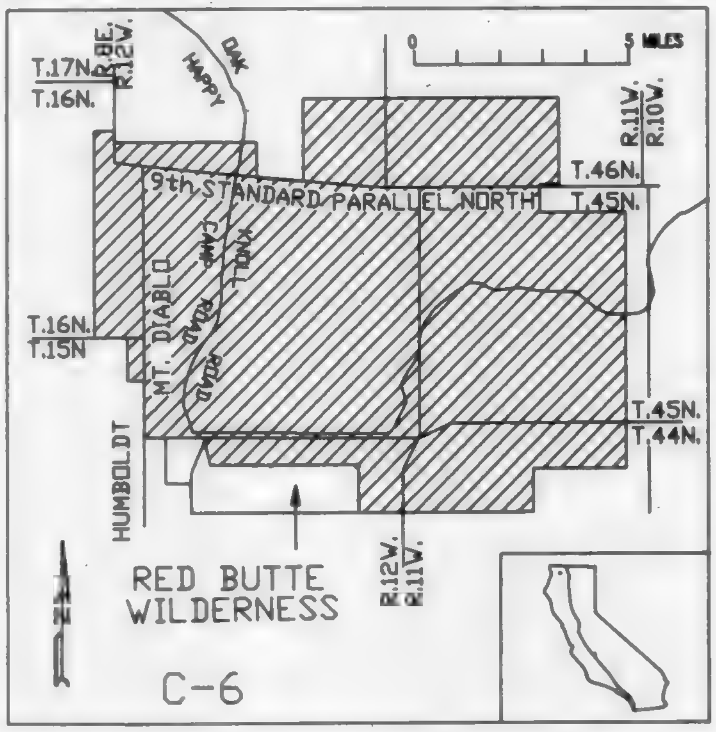
T.17N.
R.8E.
R.12W.
T.16N.
HAPPY
OAK
0
5 MILES
R.11W.
R.10W.
T.46N.
T.45N.
9th STANDARD PARALLEL NORTH
CAMP
KNOLL
ROAD
MT. DIABLO
ROAD
T.16N.
T.15N
T.45N.
T.44N.
HUMBOLDT
RED BUTTE WILDERNESS
R.12W.
R.11W.
C-6

Description of C–7 taken solely from Bureau of Land Management Map; Yreka 1979, and Happy Camp 1983, California and Oregon.

Siskiyou County

T. 44 N., R. 9 W., Secs. 4, 9, and 10, of the Mt. Diablo Meridian. T. 45 N., R. 9 W., Secs. 5, 6, 7, 8, 9, 10, 16, 17, 18, 19, 20, 29, 30, and 32, of the Mt. Diablo Meridian.

T. 45 N., R. 10 W., Secs. 1, 2, 11, 12, 13, 14, 22, 23, 24, and 26., of the Mt. Diablo Meridian.

T. 46 N., R. 9 W., Secs. 20, 29, 30, 31, and 32, of the Mt. Diablo Meridian.

T. 46 N., R. 10 W., Secs. 25, 26, 27, 28, 33, 34, 35, and 36, of the Mt. Diablo Meridian.

Excluding any private lands within the above area.

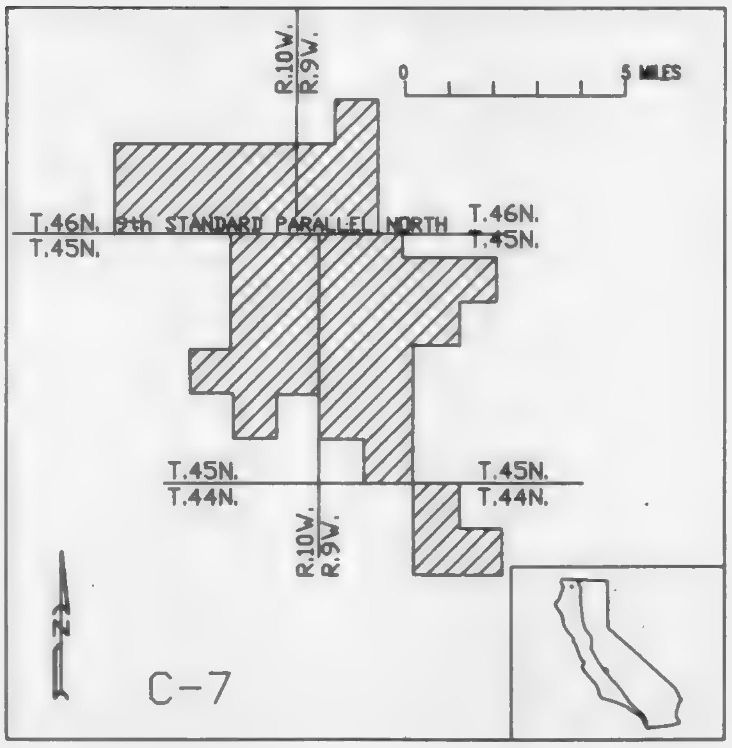
R.10W.
R.9W.
0
5 MILES
T.46N.
T.45N.
9th STANDARD PARALLEL NORTH
T.46N.
T.45N.
T.45N.
T.44N.
T.45N.
T.44N.
R.10W.
R.9W.
C-7

Secs. 2, and 3, of the

Unsurveyed Lands,
12, of the Mt.

T. 15 N., R. 8 E., Unsurveyed Lands, Sec. 3, of the Humboldt Meridian.

Excluding from the above areas any land within the Marble Mountain Wilderness, and any private lands.

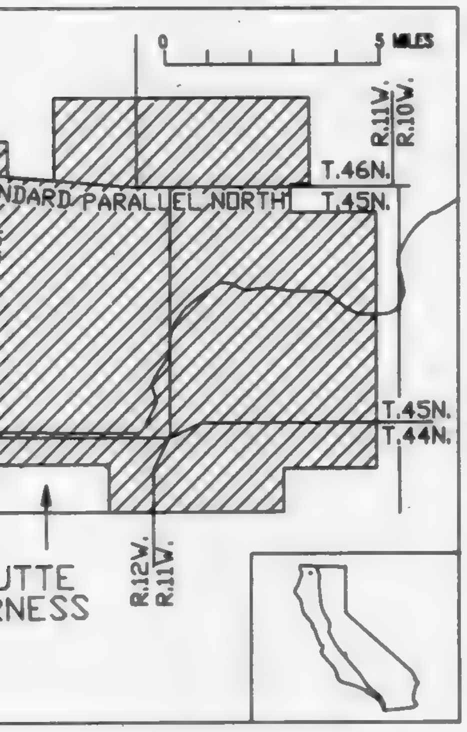
0
5 MILES
R.11W.
R.10W.
T.46N.
NDARD PARALLEL NORTH
T.45N.
T.45N.
T.44N.
R.12W.
R.11W.
UTTE
RNESS

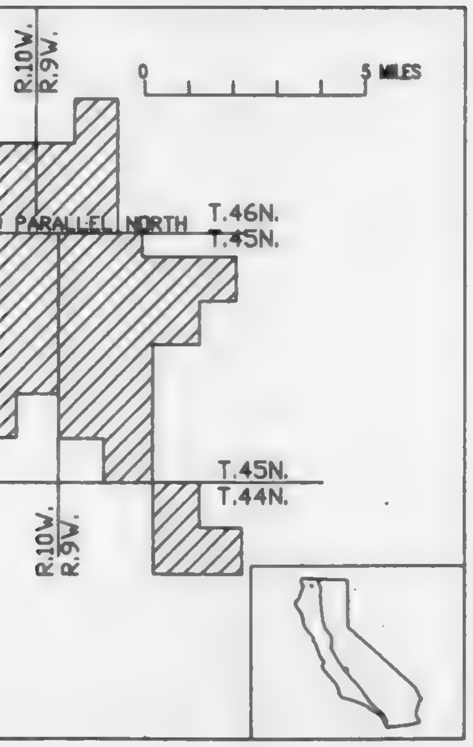
R.10W.
R.9W.
0
5 MILES
PARALLEL NORTH
T.46N.
T.45N.
T.45N.
T.44N.
R.10W.
R.9W.

Description of C–8 taken solely from Bureau of Land Management Map; Hoopa 1983, and Happy Camp 1983, California.

Siskiyou County

T. 15 N., R. 7 E., Unsurveyed Lands, Secs. 14, 15, 16, 21, 22, 23, 26, 27, 28, 33, 34, 35, and 36, of the Humboldt Meridian.

T. 14 N., R. 6 E., Secs. 13, 14, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36, of the Humboldt Meridian.

T. 14 N., R. 7 E., Unsurveyed Lands, Secs. 2, 3, 4, 5, 8, 9, 12, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32, and 33, of the Humboldt Meridian.

T. 14 N., R. 8 E., Unsurveyed Lands, Secs. 7, 8, and 12, of the Humboldt Meridian.

T. 13 N., R. 6 E., Unsurveyed Lands, Secs. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 35, and 36, of the Humboldt Meridian.

T. 13 N., R. 7 E., Unsurveyed Lands, Secs. 4, 5, 6, 7, 8, 9, 31, 32, 33, and 34, of the Humboldt Meridian.

T. 12 N., R. 6 E., Unsurveyed Lands, Secs. 1, 2, 11, 12, 13, 14, 23, and 24, of the Humboldt Meridian.

T. 12 N., R. 7 E., Unsurveyed Lands, Secs. 3, 4, 5, 6, 7, 8, 17, 18, 19, 32, and 33, of the Humboldt Meridian.

T. 11 N., R. 7 E., Unsurveyed Lands, Sec. 1, 2, 3, 4, 5, 10, 11, 12, 13, 14, 22, 23, 24, 26, and 27, of the Humboldt Meridian.

T. 11 N., R. 8 E., Unsurveyed Lands, Secs. 19, 20, 21, 29, and 30, of the Humboldt Meridian.

T. 41 N., R. 12 W., Unsurveyed Lands, Secs. 25, 26, 27, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 41 N., R. 11 W., Unsurveyed Lands, Secs. 30, 31, and 32, of the Mt. Diablo Meridian.

T. 40 N., R. 12 W., Unsurveyed Lands, Secs. 10, 11, 12, 13, 14, 15, 16, 17, 18, 23, and 24, of the Mt. Diablo Meridian.

T. 40 N., R. 11 W., Unsurveyed Lands, Secs. 7, and 8, of the Mt. Diablo Meridian.

Excluding from the above areas any lands within the Marble Mountain Wilderness, and any private lands.

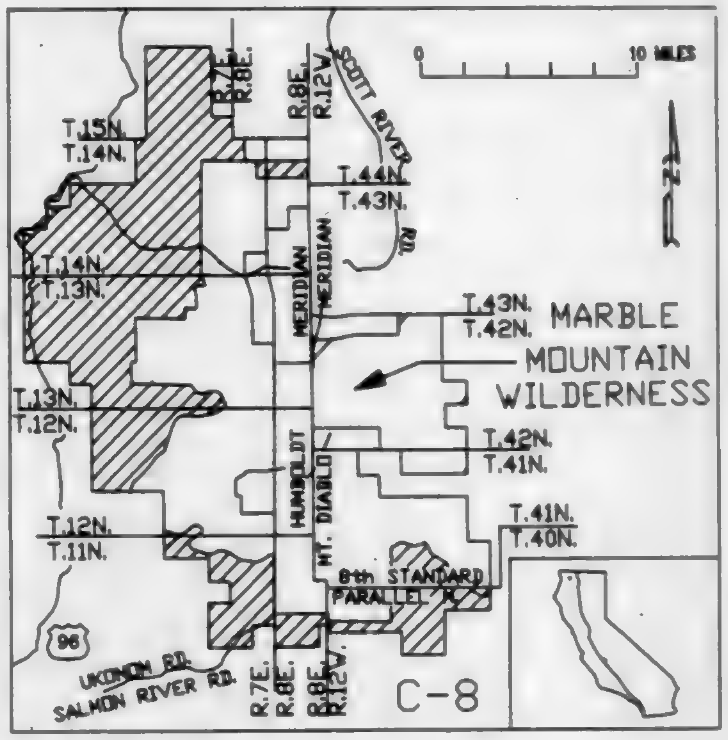
R.7E.
R.8E.
R.8E.
R.12W.
SCOTT RIVER RD.
0
10 MILES
T.15N.
T.14N.
T.44N.
T.43N.
T.14N.
T.13N.
MERIDIAN
MERIDIAN
T.43N.
T.42N.
MARBLE
MOUNTAIN
WILDERNESS
T.13N.
T.12N.
HUMBOLDT
MT. DIABLO
T.42N.
T.41N.
T.12N.
T.11N.
T.41N.
T.40N.
8th STANDARD
PARALLEL N.
96
UKONOM RD.
SALMON RIVER RD.
R.7E.
R.8E.
R.8E.
R.12W.
C-8

Description of C–9 taken solely from Bureau of Land Management Map; Happy Camp 1983, California and Oregon.

Siskiyou County

T. 43 N., R. 11 W., Unsurveyed Lands, Secs. 24, 25, and 36, of the Mt. Diablo Meridian.

T. 42 N., R. 11 W., Secs. 1, and 12, of the Mt. Diablo Meridian.

T. 42 N., R. 10 W., Sec. 6, of the Mt. Diablo Meridian.

Excluding from the above areas any lands within the Marble Mountain Wilderness, and any private lands.

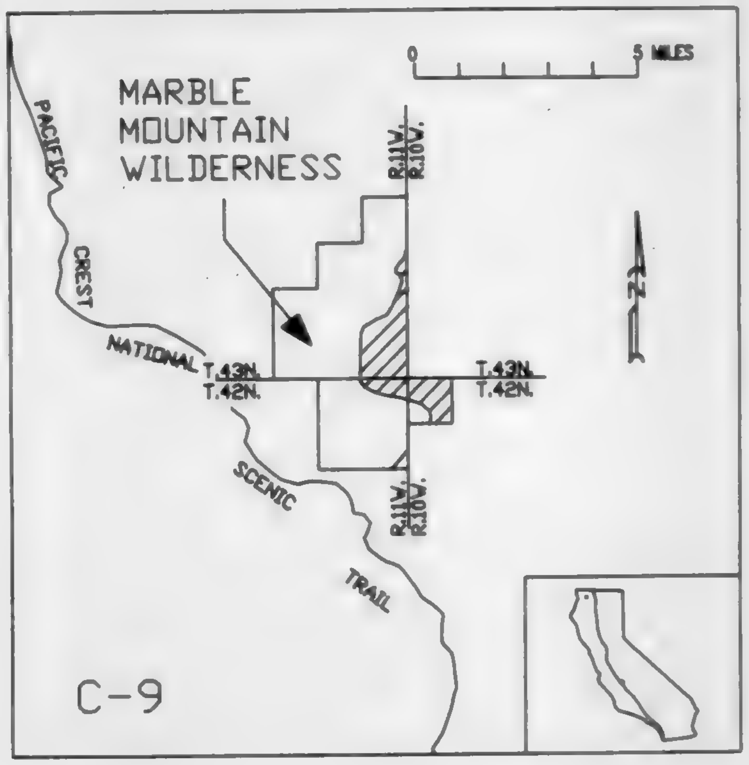
0
5 MILES
MARBLE
MOUNTAIN
WILDERNESS
R.11W.
R.10W.
PACIFIC
CREST
NATIONAL
SCENIC
TRAIL
T.43N.
T.42N.
T.43N.
T.42N.
R.11W.
R.10W.
C-9

Description of C-10 taken solely from Bureau of Land Management Map; Hoopa 1983, Mount Shasta 1973, California

Siskiyou County

T. 42 N., R. 10 W., Unsurveyed Lands, Secs. 33, 34, and 35, of the Mt. Diablo Meridian.

T. 41 N., R. 10 W., Unsurveyed Lands, Secs. 2, 3, 4, 5, 8, 9, 10, 11, 14, 15, 16, 20, 21, 22, 23, 28, 29, 31, 32, and 33, of the Mt. Diablo Meridian.

T. 40 N., R. 11 W., Unsurveyed Lands, Secs. 13, 25, 26, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 40 N., R. 10 W., Unsurveyed Lands, Secs. 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Mt. Diablo Meridian.

T. 39 N., R. 11 W., Unsurveyed Lands, Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 39 N., R. 12 W., Unsurveyed Lands, Secs. 11, 12, 13, 14, 23, 24, 25, and 36, of the Mt. Diablo Meridian.

T. 39 N., R. 10 W., Unsurveyed Lands, Secs. 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 30, 31, and 32, of the Mt. Diablo Meridian.

T. 38 N., R. 12 W., Unsurveyed Lands, Secs. 1, 2, 10, 11, 12, 13, 14, 15, 22, 23, and 24, of the Mt. Diablo Meridian.

T. 38 N., R. 11 W., Unsurveyed Lands, Secs. 3, 4, 5, 8, 9, 17, and 18, of the Mt. Diablo Meridian.

T. 40 N., R. 12 W., Unsurveyed Lands Sec. 31, of the Mt. Diablo Meridian.

Excluding from the above areas any land within the Marble Mountain Wilderness, Russian Wilderness, and any private lands.

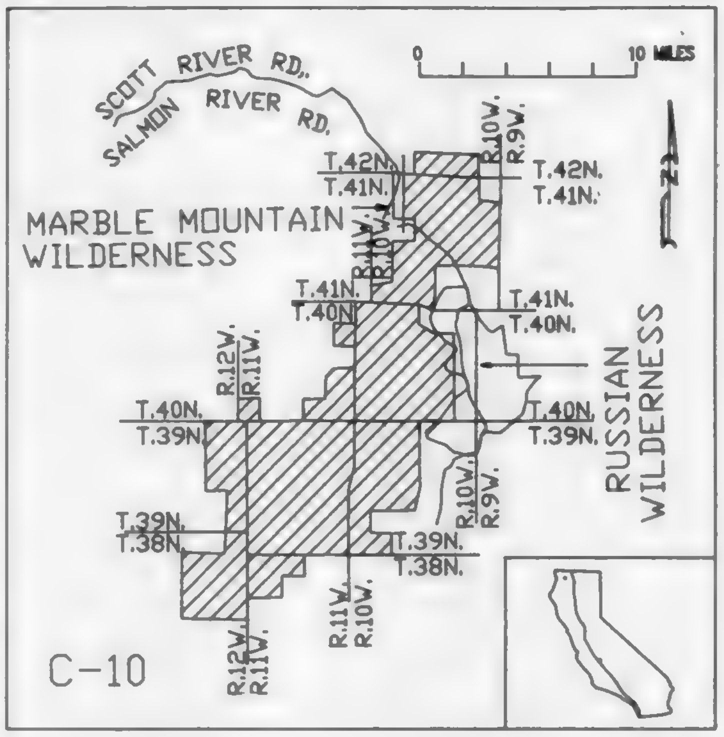
SCOTT RIVER RD.
SALMON RIVER RD.
0
10 MILES
MARBLE MOUNTAIN WILDERNESS
RUSSIAN WILDERNESS
T.42N.
T.41N.
T.40N.
T.39N.
T.38N.
R.12W.
R.11W.
R.10W.
R.9W.
C-10

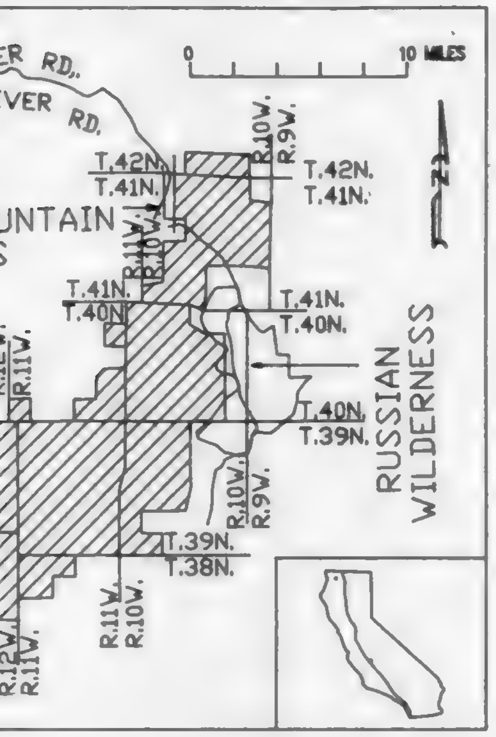
RD.
VER RD.
0
10 MILES
T.42N.
T.41N.
T.42N.
T.41N.
R.10W.
R.9W.
UNTAIN
T.41N.
T.40N.
T.41N.
T.40N.
RUSSIAN
WILDERNESS
T.40N.
T.39N.
R.10W.
R.9W.
T.39N.
T.38N.
R.11W.
R.10W.
R.12W.
R.11W.

Description of C–11 taken solely from Bureau of Land Management Map; Hoopa 1983, and Hayfork 1982, California.

Humboldt and Trinity Counties

T. 9 N., R. 5 E., Unsurveyed Lands, Secs. 1, 11, 12, 13, 14, 23, 24, 25, 26, and 36, of the Humboldt Meridian.

T. 9 N., R. 6 E., Unsurveyed Lands, Secs. 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32, and 33, of the Humboldt Meridian.

T. 8 N., R. 5 E., Unsurveyed Lands, Sec. 1, 12, 13, 25, 26, 34, 35, and 36, of the Humboldt Meridian.

T. 8 N., R. 6 E., Unsurveyed Lands, Secs. 4, 5, 6, 7, 8, 9, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Humboldt Meridian.

T. 7 N., R. 5 E., Unsurveyed Lands, Secs. 1, 2, 3, 10, 11, and 12, of the Humboldt Meridian.

T. 7 N., R. 6 E., Unsurveyed Lands, Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, and 36, of the Humboldt Meridian.

T. 7 N., R. 7 E., Unsurveyed Lands, Secs. 6, 7, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Humboldt Meridian.

T. 7 N., R. 8 E., Unsurveyed Lands, Secs. 17, 18, 19, 20, 29, and 30, of the Humboldt Meridian.

T. 6 N., R. 6 E., Unsurveyed Lands, Secs. 1, 2, 3, 4, 11, 12, 13, 14, 23, and 24, of the Humboldt Meridian.

T. 6 N., R. 7 E., Unsurveyed Lands, Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, and 36, of the Humboldt Meridian.

T. 6 N., R. 8 E., Unsurveyed Lands, Secs. 18, 19, 20, 23, 30, 31, and 32, of the Humboldt Meridian.

T. 5 N., R. 7 E., Secs. 1, 2, 3, 11, and 12, of the Humboldt Meridian.

T. 5 N., R. 8 E., Secs. 5, 6, 9, and 21, of the Humboldt Meridian.

T. 34 N., R. 12 W., Sec. 6, 14, 18, 23, 24, 25, 26, and 27, of the Mt. Diablo Meridian.

T. 36 N., R. 11 W., Unsurveyed Lands, Sec. 29, 30, 31, and 32, of the Mt. Diablo Meridian.

T. 36 N., R. 12 W., Unsurveyed Lands, Secs. 25, and 36, of the Mt. Diablo Meridian.

T. 35 N., R. 11 W., Unsurveyed Lands, Sec. 6, 7, 17, 18, 19, 20, 29, 30, 31, 32, and 33, of the Mt. Diablo Meridian.

T. 35 N., R, 12 W., Unsurveyed Lands, Sec. 12, of the Mt. Diablo Meridian.

T. 34 N., R. 11 W., Sec. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 34, 35 and 36, of the Mt. Diablo Meridian.

T. 34 N., R. 10 W., Sec. 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, 31, and 32, of the Mt. Diablo Meridian.

T. 33 N., R. 11 W., Sec. 1, and 12, of the Mt. Diablo Meridian.

T. 33 N., R. 10 W., Secs. 5, 6, 7, and 8, of the Mt. Diablo Meridian.

Excluding from the above areas any land within the Trinity Alps Wilderness, and any private lands.

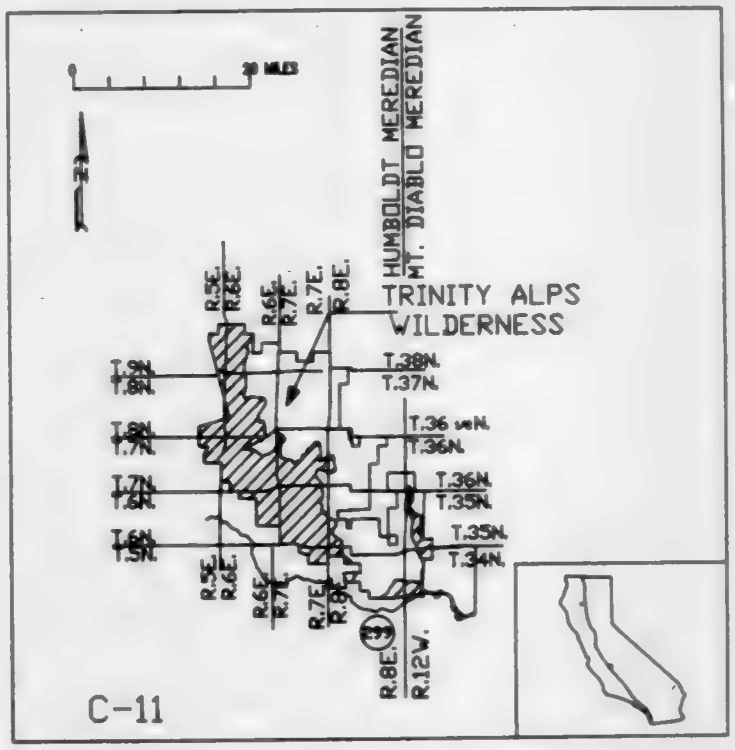
0
20 MILES
HUMBOLDT MEREDIAN
MT. DIABLO MEREDIAN
TRINITY ALPS
WILDERNESS
R.5E.
R.6E.
R.6E.
R.7E.
R.7E.
R.8E.
T.9N.
T.8N.
T.38N.
T.37N.
T.8N.
T.7N.
T.36 N.
T.36N.
T.7N.
T.6N.
T.36N.
T.35N.
T.6N.
T.5N.
T.35N.
T.34N.
R.5E.
R.6E.
R.6E.
R.7E.
R.7E.
R.8E.
299
R.8E.
R.12W.
C–11

Description of C–12 taken solely from Bureau of Land Management Map; Hayfork 1982, California.

Trinity County

T. 5 N., R. 7 E., Secs. 27, 28, 29, 31, 32, 33, and 34, of the Humboldt Meridian.

T. 4 N., R. 7 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 18, 22, 23, 24, 25, 26, 27, 33, 34, 35, and 36, of the Humboldt Meridian.

T. 4 N., R. 6 E., Secs. 12, and 13, of the Humboldt Meridian.

T. 3 N., R. 7 E., Secs. 2, and 3, of the Humboldt Meridian.

T. 4 N., R. 8 E., Secs. 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32, and 33, of the Humboldt Meridian.

T. 3 N., R. 8 E., Secs. 8, 9, 16, and 17, of the Humboldt Meridian.

T. 33 N., R. 12 W., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 32 N., R. 12 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 11, 12, 13, 14, 23, and 24, of the Mt. Diablo Meridian.

T. 33 N., R. 11 W., Secs. 18, 19, 20, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Mt. Diablo Meridian.

T. 32 N., R. 11 W., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 17, 18, and 19, of the Mt. Diablo Meridian.

Excluding any private lands within the above area.

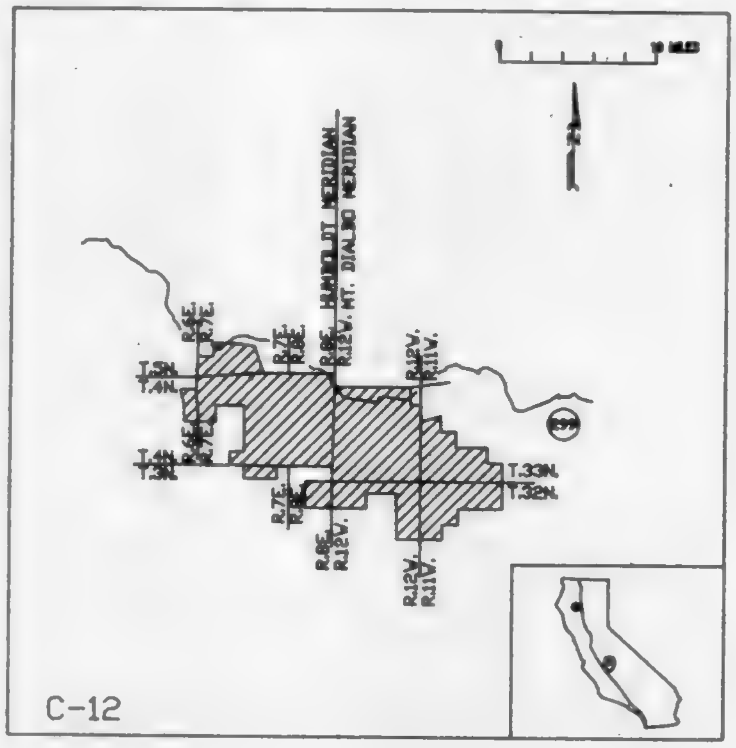
10 MILES
HUMBOLDT MERIDIAN
MT. DIABLO MERIDIAN
R.6E.
R.7E.
R.7E.
R.8E.
R.8E.
R.12W.
R.12W.
R.11W.
T.5N.
T.4N.
R.6E.
R.7E.
T.4N.
T.3N.
T.33N.
T.32N.
R.7E.
R.8E.
R.8E.
R.12W.
R.12W.
R.11W.
C-12

Description of C–14 taken solely from Bureau of Land Management Maps; Garberville 1979, and Red Bluff 1979, California.

Trinity and Shasta Counties

T. 30 N., R. 11 W., Secs. 13, 24, 25, 26, 35, and 36, of the Mt. Diablo Meridian.

T. 30 N., R. 10 W., Secs. 1, 2, 4, 5, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, and 33, of the Mt. Diablo Meridian.

T. 29 N., R. 11 W., Secs. 1, 2, 11, 12, 13, and 24, of the Mt. Diablo Meridian.

T. 29 N., R. 10 W., Secs. 4, 5, 6, 7, 8, 9, 17, 18, 19, and 20, of the Mt. Diablo Meridian.

T. 30 N., R. 9 W., Secs. 7, 17, and 18, of the Mt. Diablo Meridian.

Excluding from the above areas any land within the Chanchelulla Wilderness, and any private lands.

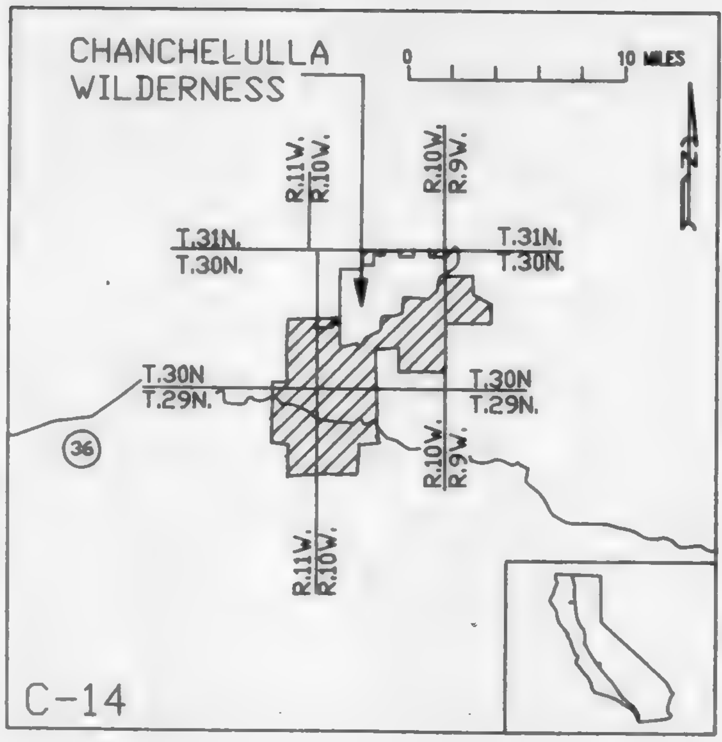
CHANCHELULLA
WILDERNESS
0
10 MILES
R.11W.
R.10W.
R.10W.
R.9W.
T.31N.
T.30N.
T.31N.
T.30N.
T.30N
T.29N.
T.30N
T.29N.
36
R.10W.
R.9W.
R.11W.
R.10W.
C-14

Description of C–18 taken solely from Bureau of Land Management Maps; Lakeport 1975, and Willows 1975, California.

Lake, Glenn, and Mendocino Counties

T. 19 N., R. 7 W., Secs. 4, 5, 6, 7, 8, 9, 17, 18, and 19, of the Mt. Diablo Meridian.

T. 19 N., R. 8 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27, 28, 29, 30, 33, and 34, of the Mt. Diablo Meridian.

T. 19 N., R. 9 W., Secs. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29, of the Mt. Diablo Meridian.

T. 19 N., R. 10 W., Secs. 1, 2, 3, 11, 12, 13, 14, and 24, of the Mt. Diablo Meridian.

T. 20 N., R. 7 W., Secs. 31, and 32, of the Mt. Diablo Meridian.

T. 20 N., R. 8 W., Secs. 28, 31, 32, 33, 34, and 35, of the Mt. Diablo Meridian.

T. 20 N., R. 9 W., Secs. 28, 29, 32, 33, and 34, of the Mt. Diablo Meridian.

T. 20 N., R. 10 W., Secs. 25, 35, and 36, of the Mt. Diablo Meridian.

Excluding any private lands within the above area.

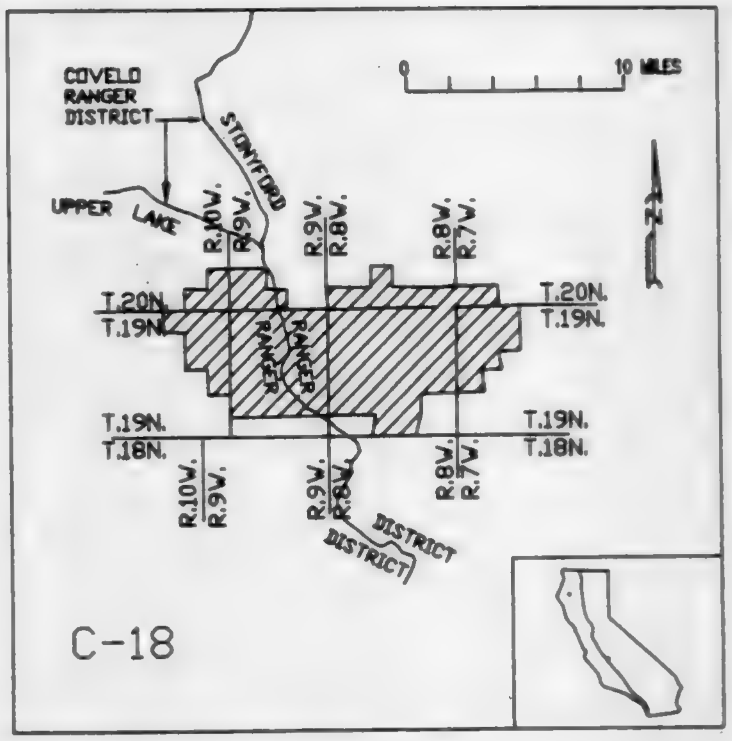
COVELO
RANGER
DISTRICT
STONYFORD
UPPER LAKE
0
10 MILES
N
R.10W.
R.9W.
R.9W.
R.8W.
R.8W.
R.7W.
T.20N.
T.19N.
T.20N.
T.19N.
RANGER
RANGER
T.19N.
T.18N.
T.19N.
T.18N.
R.10W.
R.9W.
R.9W.
R.8W.
R.8W.
R.7W.
DISTRICT
DISTRICT
C-18

Description of C–19 taken solely from Bureau of Land Management Maps; Ukiah 1981, Lakeport 1975, and Covelo 1981, California.

Mendocino and Lake Counties

T. 18 N., R. 10 W., Secs. 4, 5, 8, and 9, of the Mt. Diablo Meridian.

T. 18 N., R. 11 W., Secs. 1, 2, 4, 5, 8, 11, and 12, of the Mt. Diablo Meridian.

T. 19 N., R. 10 W., Secs. 19, 30, and 31, of the Mt. Diablo Meridian.

T. 19 N., R. 11 W., Secs. 6, 7, 8, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 19 N., R. 12 W., Secs. 1, 2, 12, 13, and 25, of the Mt. Diablo Meridian.

T. 20 N., R. 11 W., Secs. 19, 20, 21, 27, 28, 29, 30, 31, and 33, of the Mt. Diablo Meridian.

T. 20 N., R. 12 W., Secs. 24, 25, 35, and 36, of the Mt. Diablo Meridian.

Excluding any private lands within the above area.

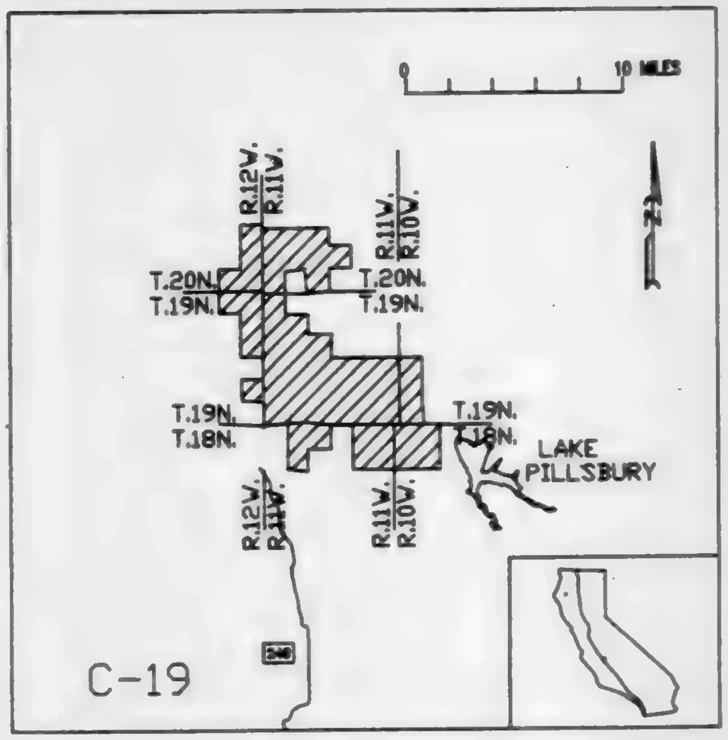
0
10 MILES
N
R.12W.
R.11W.
R.11W.
R.10W.
T.20N.
T.19N.
T.20N.
T.19N.
T.19N.
T.18N.
T.19N.
T.18N.
LAKE
PILLSBURY
R.12W.
R.11W.
R.11W.
R.10W.
C-19

Description of C–20 taken solely from Bureau of Land Managment Maps; Ukiah 1981, and Lakeport 1975, California.

Mendocino and Lake Counties

T. 17 N., R. 10 W., Secs. 2, 3, 4, 5, 8, 9, 16, 17, 20, 21, and 28, of the Mt. Diablo Meridian.

T. 17 N., R. 11 W., Secs. 1, 11, 12, and 14, of the Mt. Diablo Meridian.

T. 18 N., R. 10 W., Secs. 20, 26, 27, 28, 29, 32, 33, 34, and 35, of the Mt. Diablo Meridian.

T. 18 N., R. 11 W., Secs. 24, 25, and 36, of the Mt. Diablo Meridian.

Excluding any private lands within the above area.

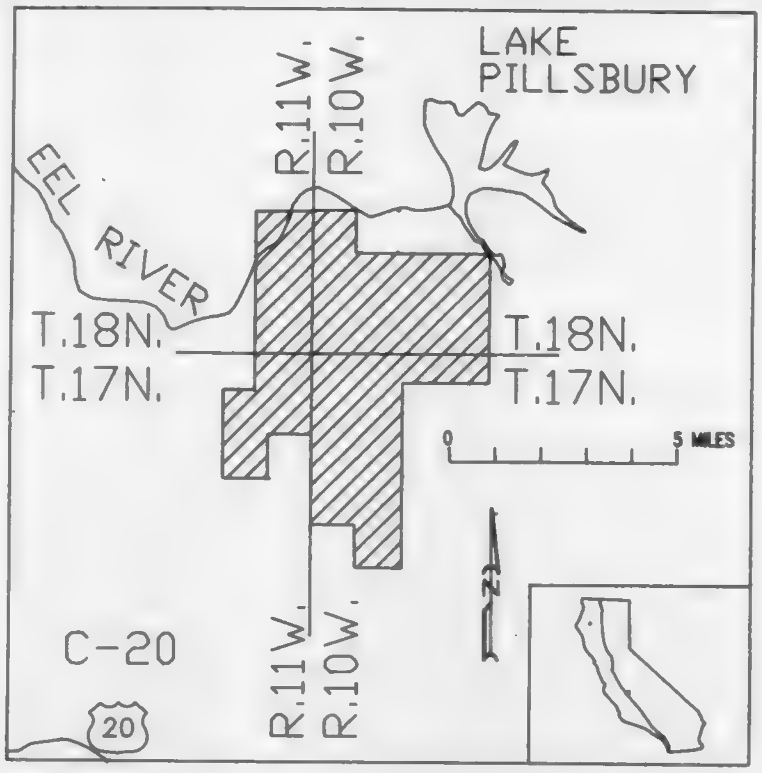
LAKE PILLSBURY
R.11W.
R.10W.
EEL RIVER
T.18N.
T.17N.
T.18N.
T.17N.
0
5 MILES
N
C-20
20
R.11W.
R.10W.

Description of C–23 taken solely from Bureau of Land Management Map; Hoopa 1983, and Mount Shast 1979, California.

Siskiyou County

T. 38 N., R. 11 W., Unsurveyed Lands, Secs. 13, and 25, of the Mt. Diablo Meridian.

T. 38 N., R. 10 W., Unsurveyed Lands, Secs. 8, 9, 15, 16, 17, 18, 19, 20, 21, 22, 25, and 30, of the Mt. Diablo Meridian.

Excluding from the above areas any land within the Trinity Alps Wilderness, and any private lands.

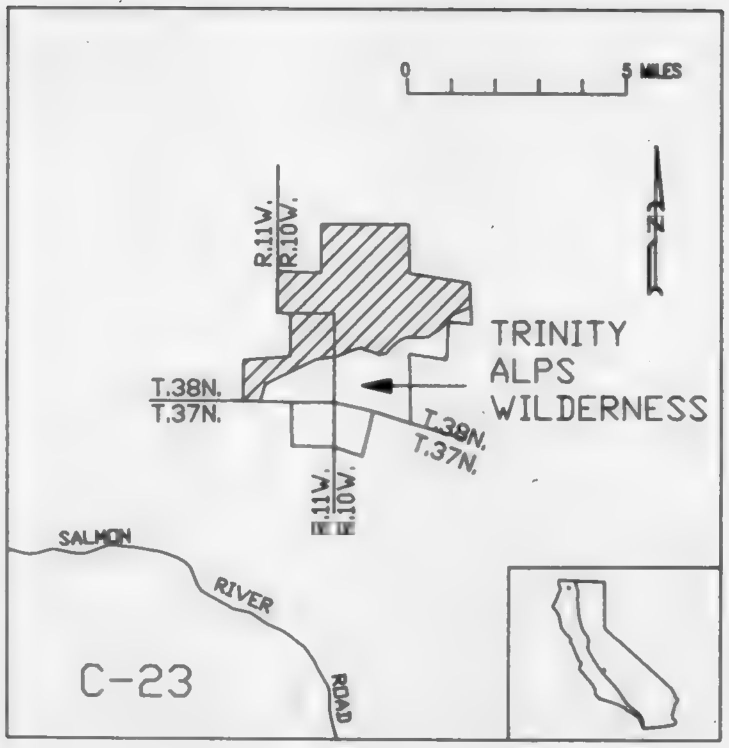
0
5 MILES
N
R.11W.
R.10W.
TRINITY ALPS WILDERNESS
T.38N.
T.37N.
T.39N.
T.37N.
R.11W.
R.10W.
SALMON
RIVER
ROAD
C-23

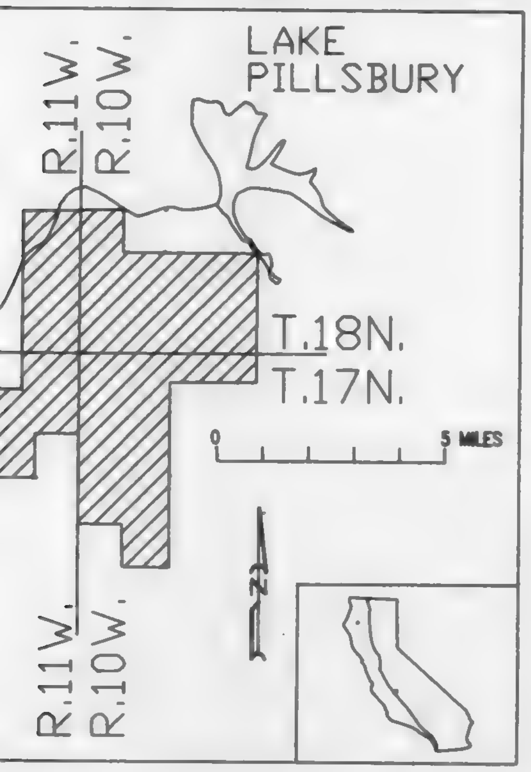
LAKE
PILLSBURY
R.11W.
R.10W.
T.18N.
T.17N.
0
5 MILES
N
R.11W.
R.10W.

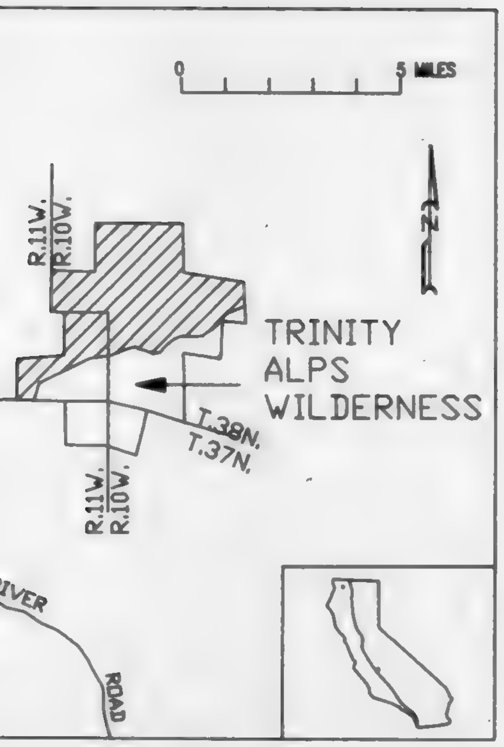
0
5 MILES
N
R.11W.
R.10W.
TRINITY
ALPS
WILDERNESS
T.38N.
T.37N.
R.11W.
R.10W.
IVER
ROAD

Description of C–24 taken solely from Bureau of Land Management Map; Mount Shasta 1979, California.
Siskiyou County

T. 39 N., R. 10 W., Secs. 24, and 25, of the Mt. Diablo Meridian.

T. 39 N., R. 9 W., Secs. 19, 20, 29, and 30, of the Mt. Diablo Meridian.

Excluding from the above areas any land within the Trinity Alps Wilderness, and any private lands.

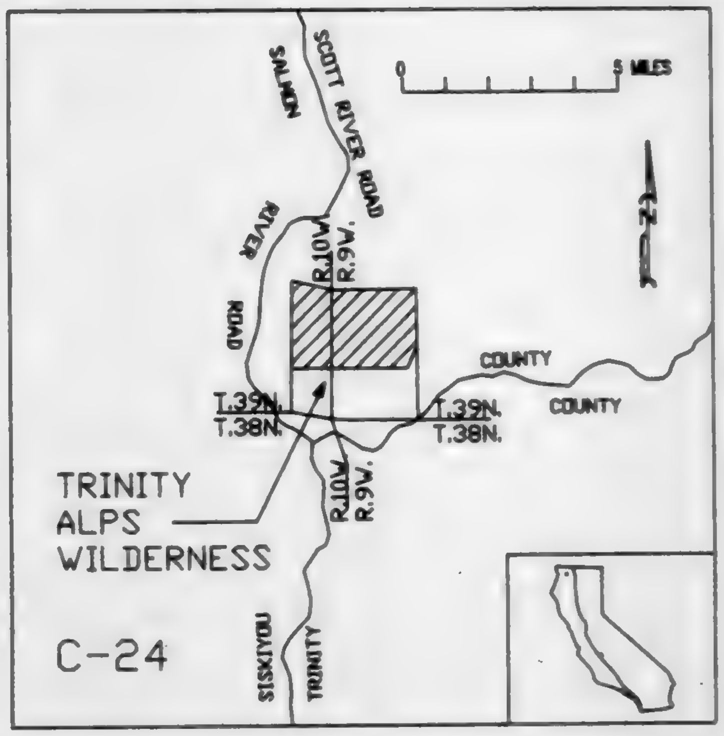
SALMON
SCOTT RIVER ROAD
RIVER
ROAD
0
5 MILES
N
R.10W.
R.9W.
COUNTY
COUNTY
T.39N.
T.38N.
T.39N.
T.38N.
TRINITY
ALPS
WILDERNESS
R.10W.
R.9W.
SISKIYOU
TRINITY
C-24

Description of C–25 taken solely from Bureau of Land Management Map; Mount Shasta 1979, California.
Siskiyou and Trinity Counties

T. 39 N., R. 9 W., Secs. 12, 13, and 23, of the Mt. Diablo Meridian.

T. 39 N., R. 8 W., Secs. 17, and 18, of the Mt. Diablo Meridian.

Excluding from the above areas any land within the Trinity Alps Wilderness, and any private lands.

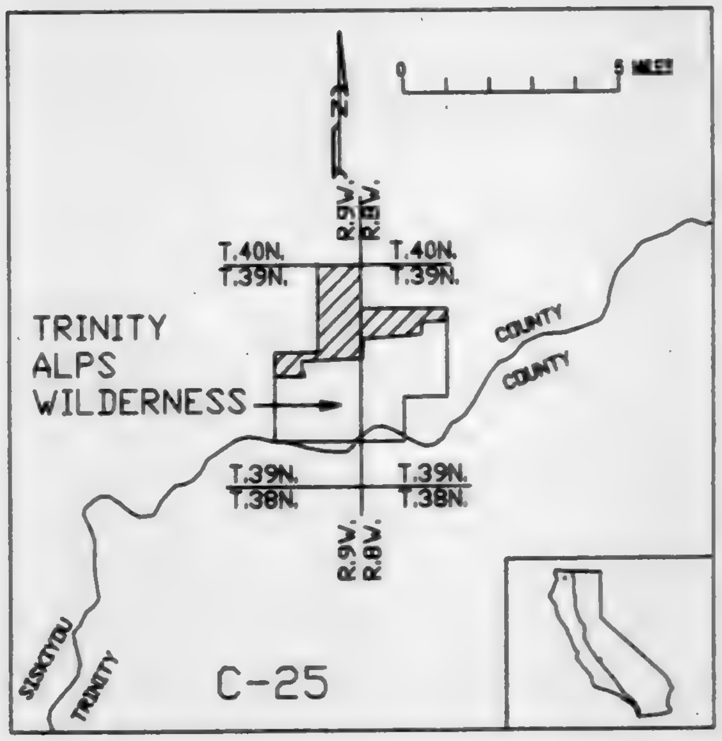
N
0
5 MILES
R.9W.
R.8W.
T.40N.
T.39N.
T.40N.
T.39N.
TRINITY
ALPS
WILDERNESS
COUNTY
COUNTY
T.39N.
T.38N.
T.39N.
T.38N.
R.9W.
R.8W.
SISKIYOU
TRINITY
C-25

Description of C–26 taken solely from Bureau of Land Management Map; Mount Shasta 1979, California.

Siskiyou County

T. 40 N., R. 8 W., Sec. 34, of the Mt. Diablo Meridian.

T. 39 N., R. 8 W., Sec. 9, of the Mt. Diablo Meridian.

Excluding from the above areas any land within the Trinity Alps Wilderness, and any private lands.

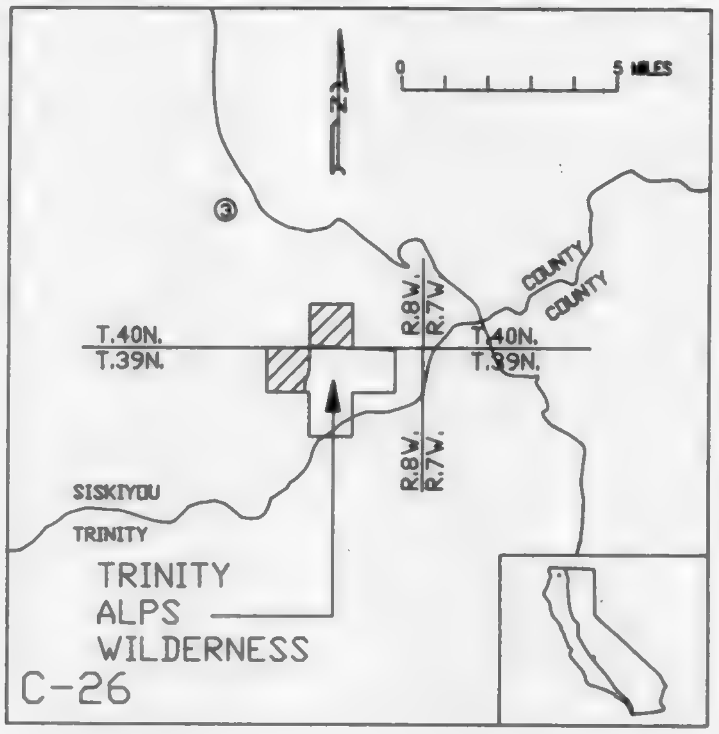
0
5 MILES
N
③
R.8W.
R.7W.
COUNTY
COUNTY
T.40N.
T.39N.
T.40N.
T.39N.
R.8W.
R.7W.
SISKIYOU
TRINITY
TRINITY ALPS WILDERNESS
C-26

Description of C–27 taken solely from Bureau of Land Management Map; Mount Shasta 1979, California.

Siskiyou and Trinity Counties

T. 41 N., R. 7 W., Secs. 32, 33, and 34, of the Mt. Diablo Meridian.

T. 40 N., R. 7 W., Secs. 2, 3, 4, 9, 10, 11, 14, 15, and 16, of the Mt. Diablo Meridian.

Excluding any private lands within the above area.

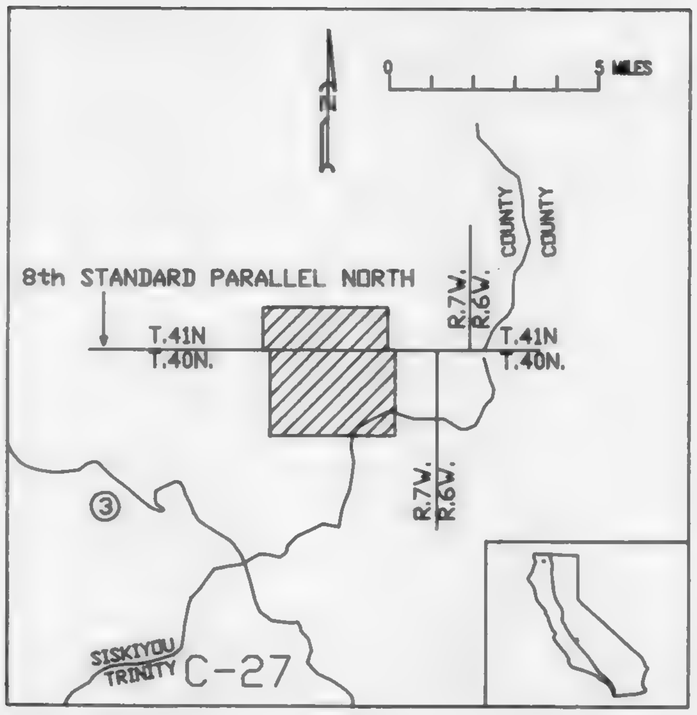
0
5 MILES
N
COUNTY
COUNTY
8th STANDARD PARALLEL NORTH
R.7W.
R.6W.
T.41N
T.40N.
T.41N
T.40N.
R.7W.
R.6W.
③
SISKIYOU
TRINITY
C-27

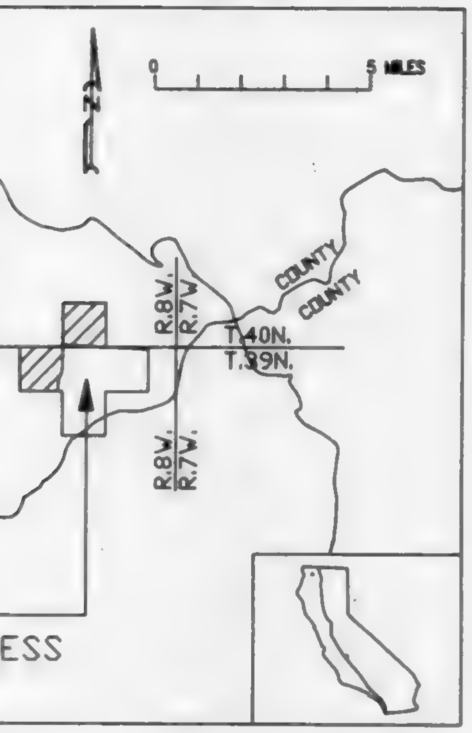
0
5 MILES
N
COUNTY
COUNTY
R.8W.
R.7W.
T.40N.
T.39N.
R.8W.
R.7W.
ESS

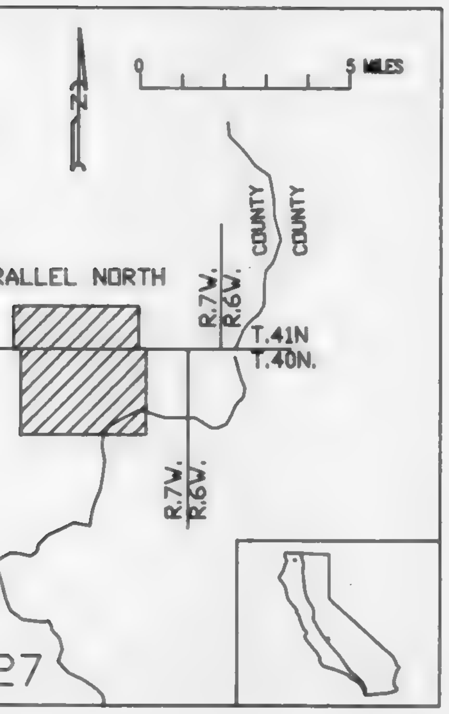
0
5 MILES
N
COUNTY
COUNTY
RALLEL NORTH
R.7W.
R.6W.
T.41N
T.40N.
R.7W.
R.6W.
27

Description of C–28 taken solely from Bureau of Land Management Map; Yreka 1979, California.

Siskiyou County

T. 48 N., R. 3 W., Sec. 32, of the Mt. Diablo Meridian.

T. 47 N., R. 3 W., Secs. 4, 5, 8, 17, 32, and 34, of the Mt. Diablo Meridian.

T. 47 N., R. 4 W., Secs. 13, 23, 24, 25, 26, 33, 35, and 36, of the Mt. Diablo Meridian.

T. 46 N., R. 4 W., Secs. 1, 2, 3, 9, 10, 11, 12, 13, 14, 15, 23, 24, 25, 26, 35, and 36, of the Mt. Diablo Meridian.

T. 46 N., R. 3 W., Secs. 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 46 N., R. 2 W., Secs. 7, 8, 17, 18, 19, 20, 29, 30, 31, and 32, of the Mt. Diablo Meridian.

T. 45 N., R. 3 W., Secs. 2, 3, 4, and 10, of the Mt. Diablo Meridian.

T. 45 N., R. 4 W., Secs. 1, 2, and 12, of the Mt. Diablo Meridian.

Excluding any private lands within the above area.

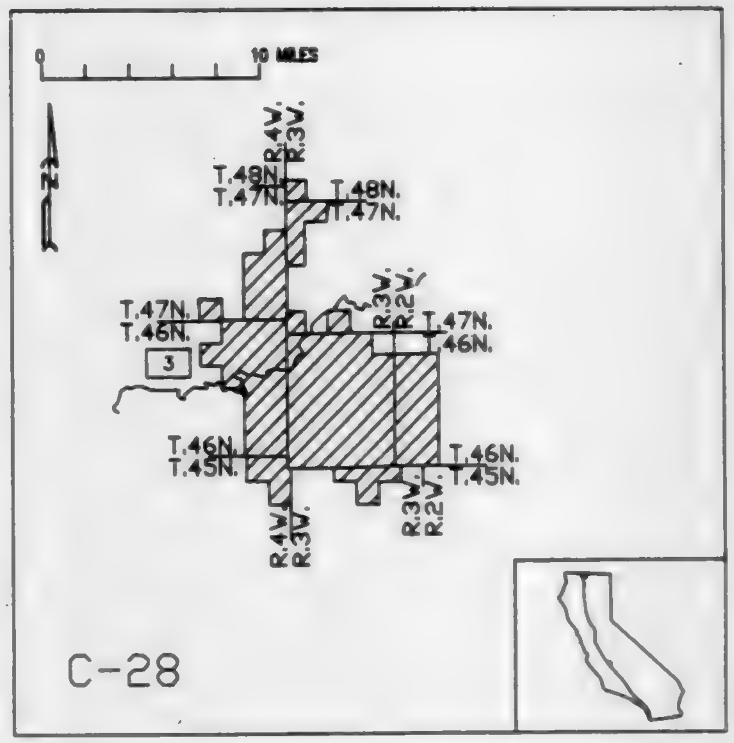
0
10 MILES
N
R.4W.
R.3W.
T.48N.
T.47N.
T.48N.
T.47N.
T.47N.
T.46N.
3
R.3W.
R.2W.
T.47N.
T.46N.
T.46N.
T.45N.
T.46N.
T.45N.
R.4W.
R.3W.
R.3W.
R.2W.
C-28

Description of C–29 taken solely from Bureau of Land Management Map; Redding 1979, California.

Trinity and Shasta Counties

T. 35 N., R. 9 W., Secs. 19, 20, 28, 29, 33, 34, and 35, of the Mt. Diablo Meridian.

T. 34 N., R. 9 W., Secs. 1, 2, 3, 4, 7, 8, 9, 10, 12, 13, 16, and 24, of the Mt. Diablo Meridian.

T. 34 N., R. 8 W., Secs. 5, 6, 7, 8, 9, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Mt. Diablo Meridian.

T. 33 N., R. 8 W., Secs. 2, 3, 4, 5, 10, and 11, of the Mt. Diablo Meridian.

Excluding from the above areas any land within the Clair Engle Lake, the Trinity Alps Wilderness, and any private lands.

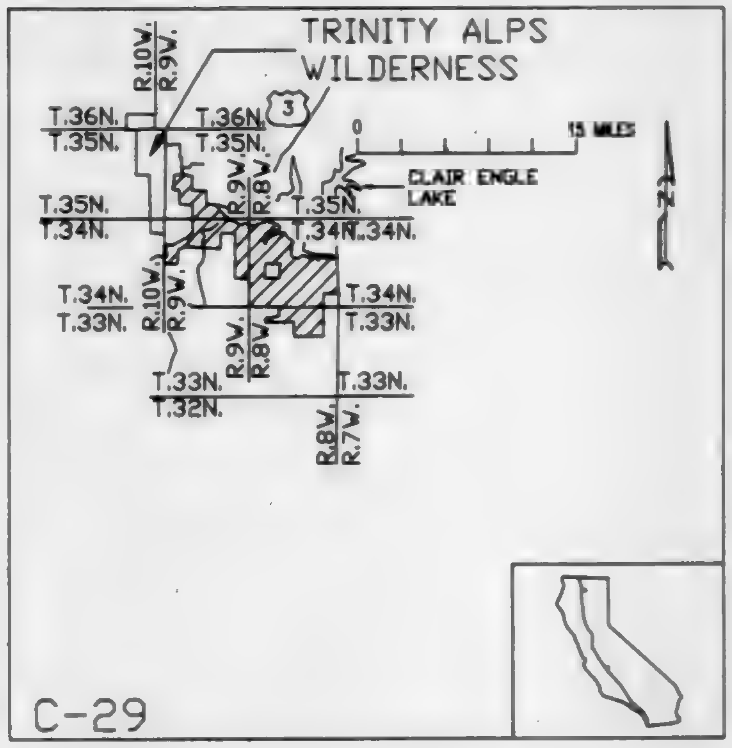
TRINITY ALPS
WILDERNESS
R.10W.
R.9W.
T.36N.
T.35N.
T.36N.
T.35N.
3
0
15 MILES
N
CLAIR ENGLE
LAKE
R.9W.
R.8W.
T.35N.
T.34N.
T.35N.
T.34N.
T.34N.
T.34N.
T.33N.
R.10W.
R.9W.
R.9W.
R.8W.
T.34N.
T.33N.
T.33N.
T.32N.
T.33N.
R.8W.
R.7W.
C-29

Description of C–30 taken solely from Bureau of Land Management Map; Redding 1979, California.

Trinity County

T. 36 N., R. 8 W., Secs. 29, and 32, of the Mt. Diablo Meridian.

T. 35 N., R. 9 W., Secs. 1, 11, 12, 14, and 15, of the Mt. Diablo Meridian.

T. 35 N., R. 8 W., Secs. 1, 2, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, and 24, of the Mt. Diablo Meridian.

T. 35 N., R. 7 W., Secs. 6, 7, and 18, of the Mt. Diablo Meridian.

Excluding from the above areas any land within the Trinity Alps Wilderness, Clair Engle Lake, and any private lands.

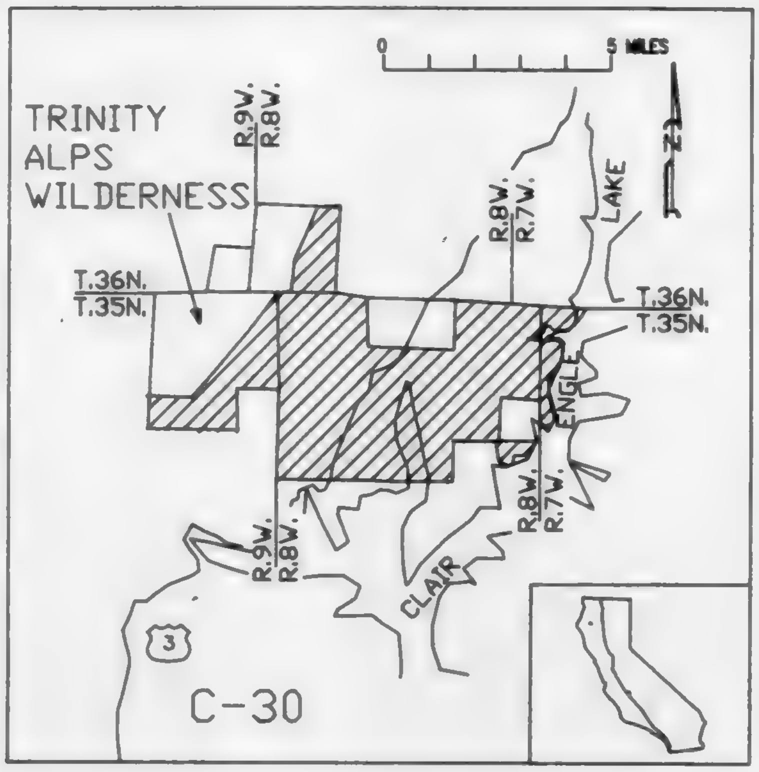
0
5 MILES
TRINITY
ALPS
WILDERNESS
R.9W.
R.8W.
R.8W.
R.7W.
LAKE
T.36N.
T.35N.
T.36N.
T.35N.
ENGLE
R.8W.
R.7W.
R.9W.
R.8W.
CLAIR
3
C–30

Description of C–31 taken solely from Bureau of Land Management Map; Redding 1979, and Mount Shasta 1979, California.

Trinity and Shasta Counties

T. 36 N., R. 7 W., Secs. 1, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 28, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 36 N., R. 6 W., Secs. 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 36 N., R. 5 W., Secs. 5, 6, 7, 8, 17, and 18, of the Mt. Diablo Meridian.

T. 35 N., R. 8 W., Sec. 36, of the Mt. Diablo Meridian.

T. 35 N., R. 7 W., Secs. 1, 2, 3, 4, 5, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 26, 27, 28, 29, 30, 31, 32, and 34, of the Mt. Diablo Meridian.

T. 35 N., R. 6 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 20, 22, and 26, of the Mt. Diablo Meridian.T.35 N., R. 5 W., Secs. 6, 7, and 18, of the Mt. Diablo Meridian.

T. 34 N., R. 7 W., Sec. 6, of the Mt. Diablo Meridian.

Excluding from the above areas any land within Clair Engle Lake, and any private lands.

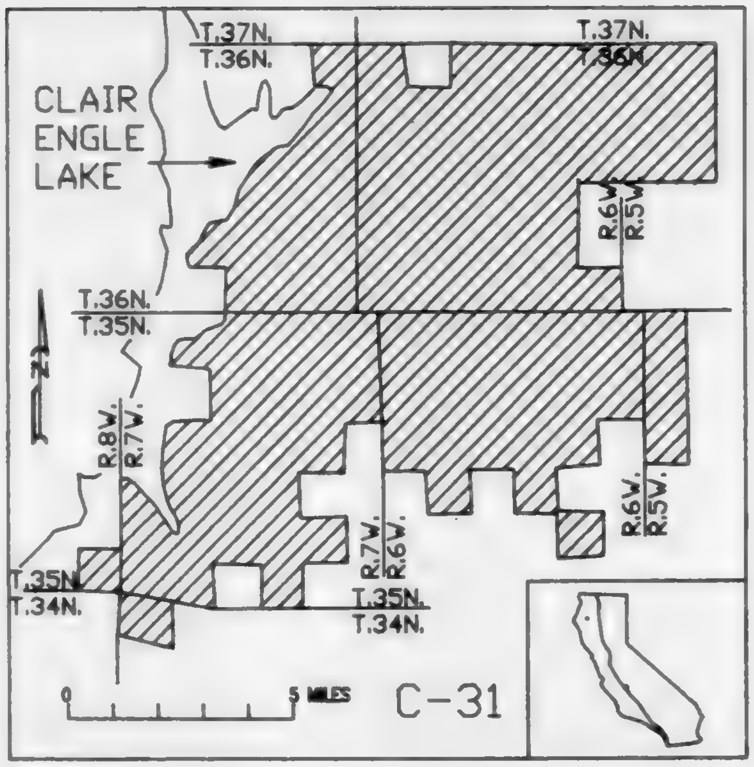
T.37N.
T.36N.
T.37N.
T.36N.
CLAIR
ENGLE
LAKE
R.6W.
R.5W.
T.36N.
T.35N.
R.8W.
R.7W.
R.7W.
R.6W.
R.6W.
R.5W.
T.35N.
T.34N.
T.35N.
T.34N.
0
5 MILES
C–31

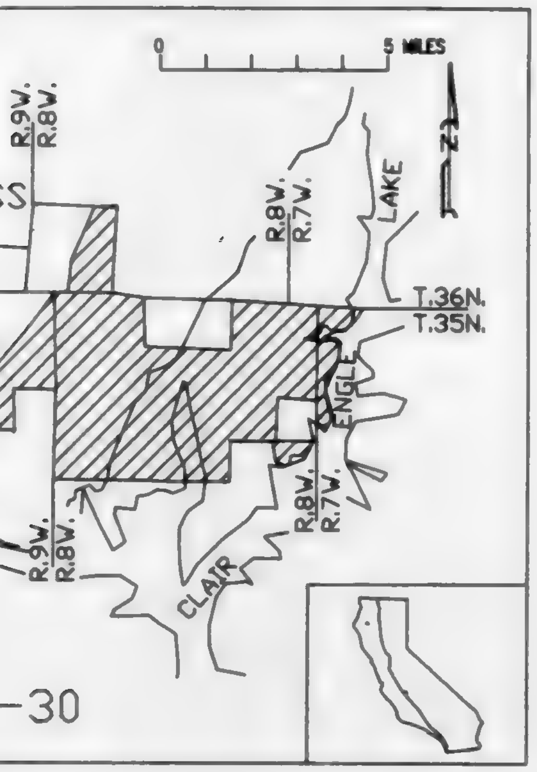
0
5 MILES
R.9W.
R.8W.
SS
R.8W.
R.7W.
LAKE
T.36N.
T.35N.
ENGLE
R.9W.
R.8W.
R.8W.
R.7W.
CLAIR
-30

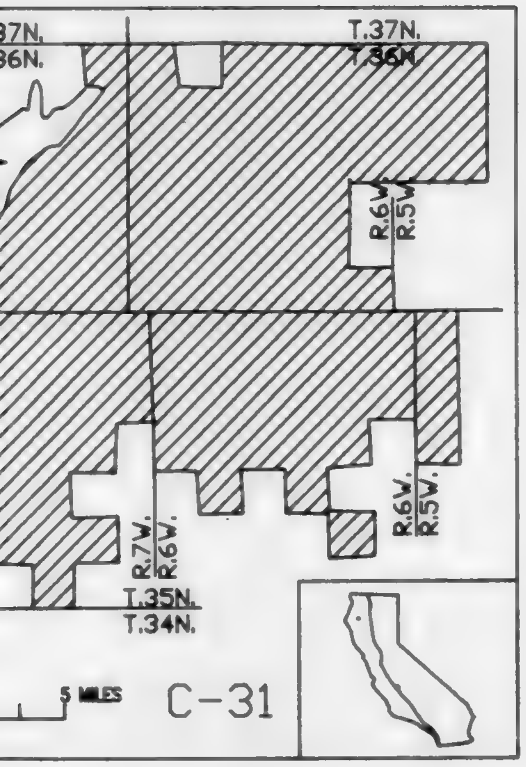
37N.
36N.
T.37N.
T.36N.
R.6W.
R.5W.
R.7W.
R.6W.
R.6W.
R.5W.
T.35N.
T.34N.
5 MILES
C-31

Description of C–32 taken solely from Bureau of Land Management Map; Mount Shasta 1979, California.

Trinity County

T. 37 N., R. 8 W., Secs. 10, 12, 13, 14, 15, 16, 22, 23, 24, and 26, of the Mt. Diablo Meridian.

T. 37 N., R. 7 W., Secs. 7, 18, 19, and 30, of the Mt. Diablo Meridian.

Excluding from the above areas any land within the Trinity Alps Wilderness, and any private lands.

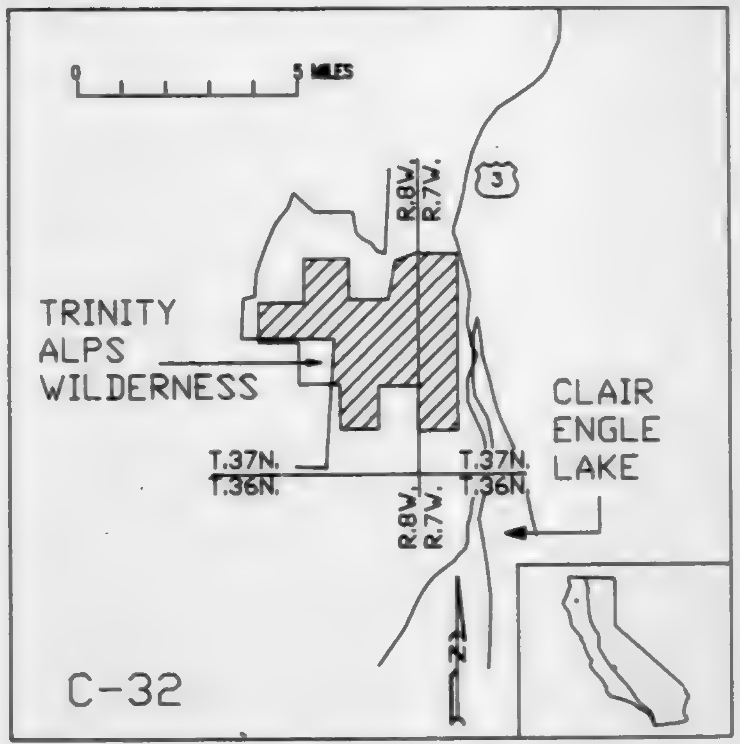
0
5 MILES
R.8W.
R.7W.
3
TRINITY
ALPS
WILDERNESS
CLAIR
ENGLE
LAKE
T.37N.
T.36N.
T.37N.
T.36N.
R.8W.
R.7W.
C-32

Description of C–33 taken solely from Bureau of Land Management Map; Mount Shasta 1979, California.

Trinity County

T. 38 N., R. 8 W., Secs. 24, and 36, of the Mt. Diablo Meridian.

T. 38 N., R. 7 W., Secs. 8, 16, 17, 18, 19, 20, 30, and 31, of the Mt. Diablo Meridian.

Excluding from the above areas any land within the Trinity Alps Wilderness, and any private lands.

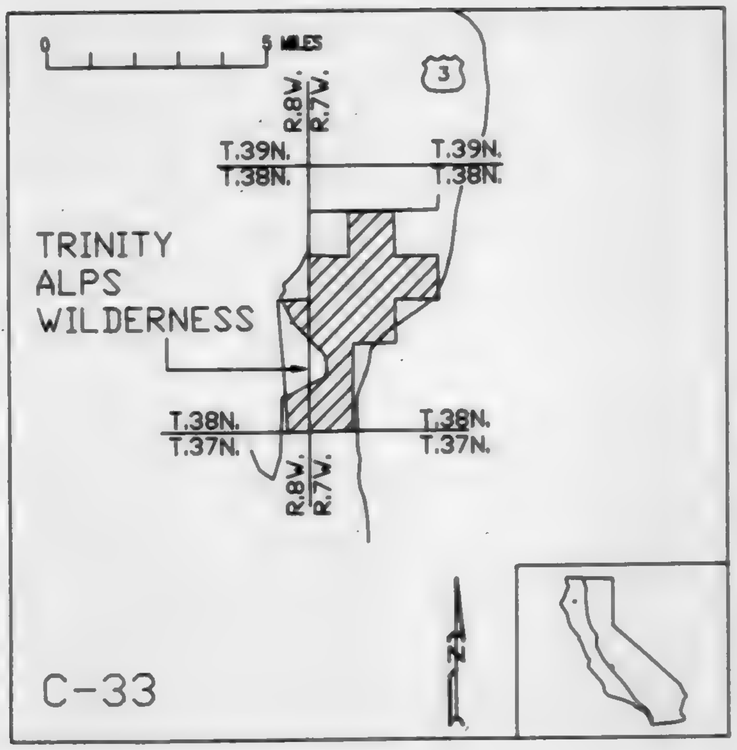
0
5 MILES
3
R.8W.
R.7W.
T.39N.
T.38N.
T.39N.
T.38N.
TRINITY
ALPS
WILDERNESS
T.38N.
T.37N.
T.38N.
T.37N.
R.8W.
R.7W.
C-33

Description of C-34 taken solely from Bureau of Land Management Map; Mount Shasta 1979, California.
Trinity County

T. 40 N., R. 7 W., Secs. 32, and 34, of the Mt. Diablo Meridian.

T. 39 N., R. 7 W., Secs. 4, 5, 6, 8, 9, 10, 16, 17, 20, 21, 22, 26, 35, and 36, of the Mt. Diablo Meridian.

T. 39 N., R. 6 W., Sec. 30, of the Mt. Diablo Meridian.

T. 38 N., R. 7 W., Secs. 2, and 12, of the Mt. Diablo Meridian.

Excluding any private lands within the above area.

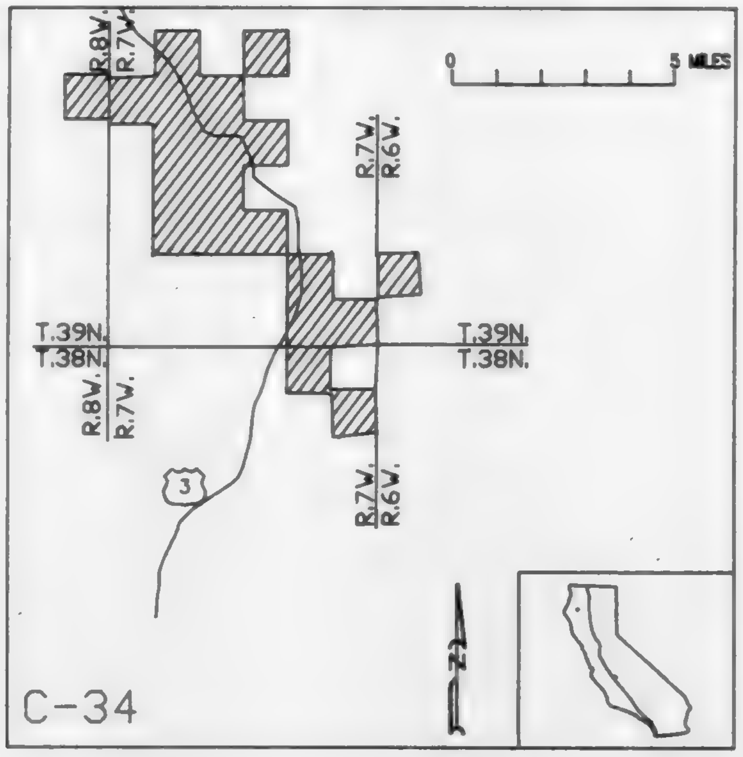
R.8W.
R.7W.
0
5 MILES
R.7W.
R.6W.
T.39N.
T.38N.
T.39N.
T.38N.
R.8W.
R.7W.
3
R.7W.
R.6W.
N
C-34

Description of C-37 taken solely from Bureau of Land Management Map; Mount Shasta 1979, California.
Siskiyou County

T. 40 N., R. 5 W., Secs. 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 39 N., R. 5 W., Secs. 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, and 24, of the Mt. Diablo Meridian.

T. 39 N., R. 4 W., Secs. 6, 7, and 18, of the Mt. Diablo Meridian.

Excluding any private lands within the above areas.

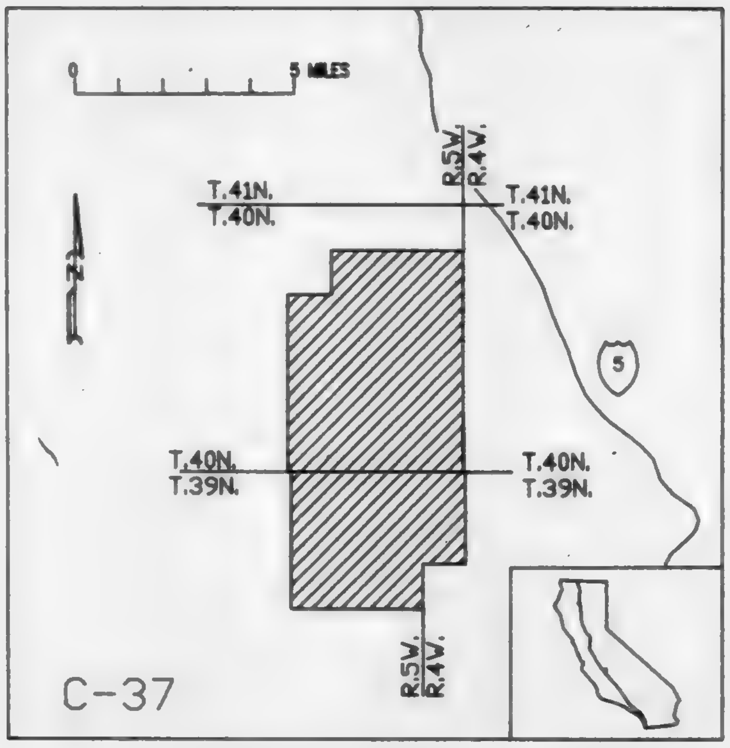
0
5 MILES
R.5W.
R.4W.
T.41N.
T.40N.
T.41N.
T.40N.
N
5
T.40N.
T.39N.
T.40N.
T.39N.
R.5W.
R.4W.
C-37

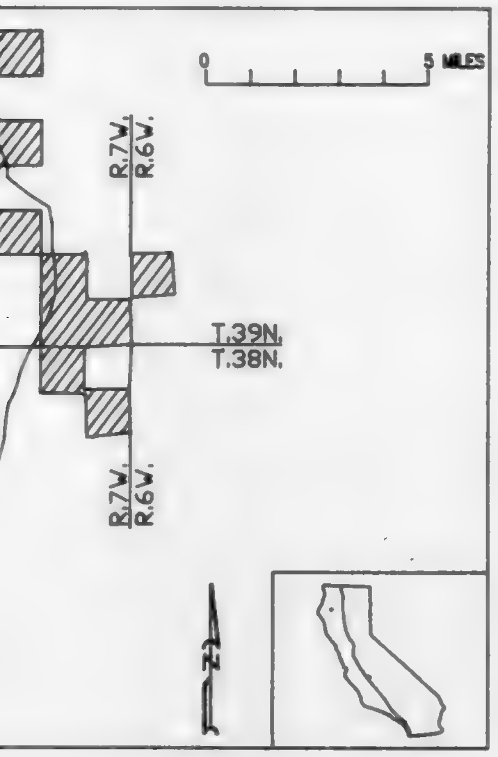
0
5 MILES
R.7W.
R.6W.
T.39N.
T.38N.
R.7W.
R.6W.
N

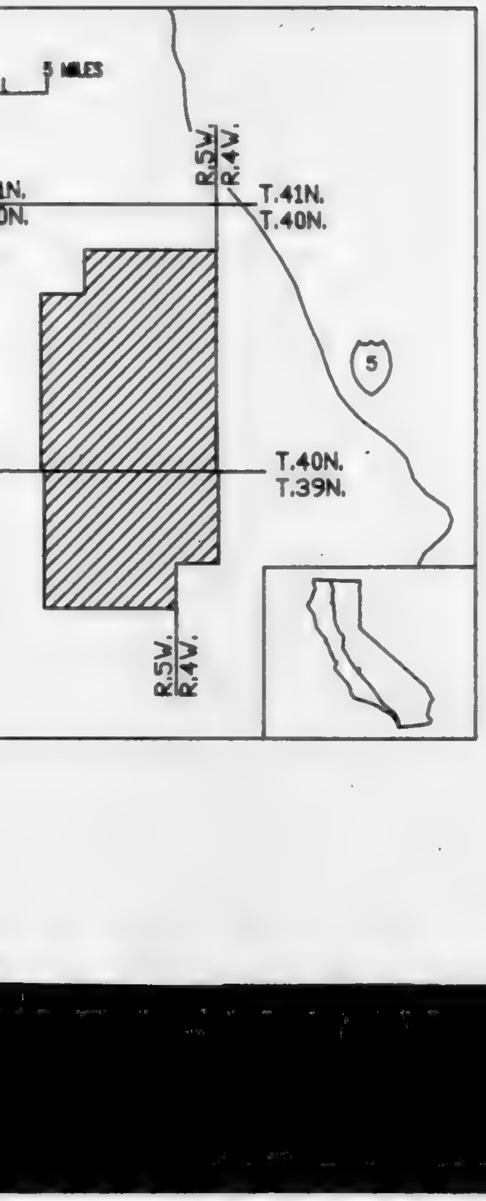
5 MILES
R.5W.
R.4W.
T.41N.
T.40N.
5
T.40N.
T.39N.
R.5W.
R.4W.

Description of C–38 taken solely from Bureau of Land Management Map; Mount Shasta 1979, California.

Shasta County

T. 38 N., R. 4 W., Secs. 18, 20, and 30, of the Mt. Diablo Meridian.

T. 38 N., R. 5 W., Sec. 36, of the Mt. Diablo Meridian.

T. 37 N., R 5 W., Secs. 1, 2, 11, 12, and 13, of the Mt. Diablo Meridian.

T. 37 N., R., 4 W., Secs. 6, 7, 8, 17, and 18, of the Mt. Diablo Meridian.

Excluding any private lands within the above area.

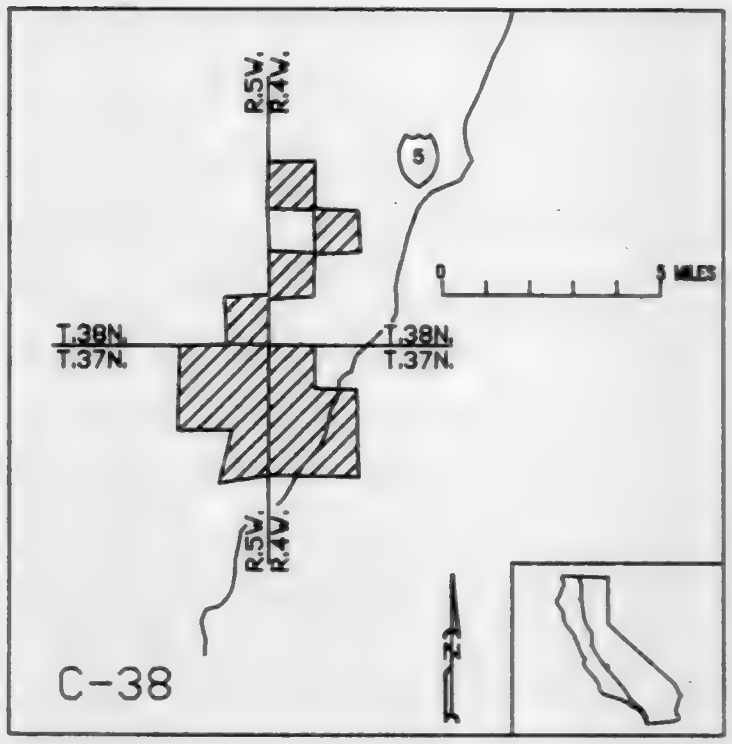
R.5W.
R.4W.
5
0
5 MILES
T.38N.
T.37N.
T.38N.
T.37N.
R.5W.
R.4W.
C-38
N

Description of C–39 taken solely from Bureau of Land Management Map; Mount Shasta 1979, California.

Siskiyou County

T. 41 N., R. 4 W., Secs. 35, and 36, of the Mt. Diablo Meridian.

T. 41 N., R. 3 W., Sec. 31, of the Mt. Diablo Meridian.

T. 40 N., R. 4 W., Secs. 1, 2, 11, 12, and 13, of the Mt. Diablo Meridian.

T. 40 N., R. 3 W., Sec. 6, and 7, of the Mt. Diablo Meridian.

Excluding from the above areas any land within the Mount Shasta Wilderness, and any private lands.

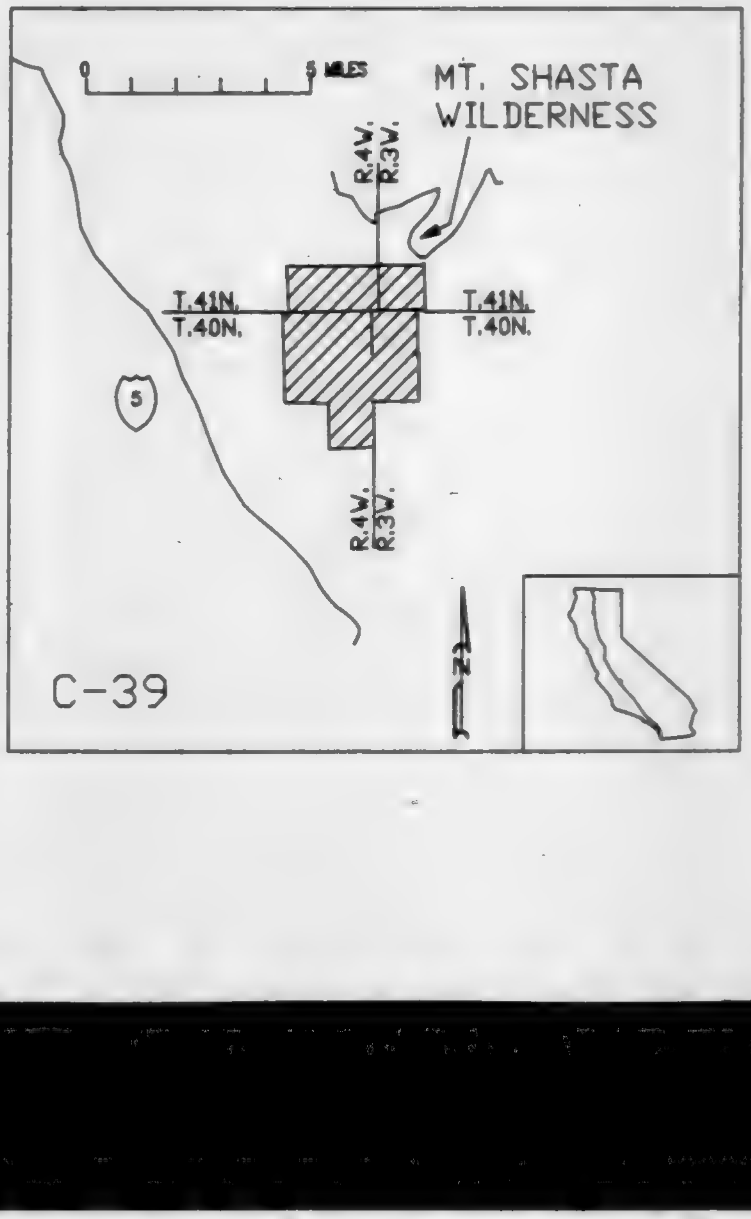
0
5 MILES
MT. SHASTA
WILDERNESS
R.4W.
R.3W.
T.41N.
T.40N.
T.41N.
T.40N.
5
R.4W.
R.3W.
C-39
N

Description of C-42 taken solely from Bureau of Land Management Maps; Mount Shasta 1979, and McArthur 1978, California.

Shasta County

T. 38 N. R. 3 W., Secs. 4, 8, 9, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 38 N., R. 2 W., Secs. 18, 19, 24, 25, 26, 28, 30, 31, 32, 33, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 38 N., R. 1 W., Secs. 14, 15, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 38 N., R. 1 E., Secs. 30, and 31, of the Mt. Diablo Meridian.

T. 37 N., R. 3 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 24, 25, and 36, of the Mt. Diablo Meridian.

T. 37 N., R. 2 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 34, and 36, of the Mt. Diablo Meridian.

T. 37 N., R. 1 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 26, 27, 28, 29, 30, 32, 33, and 34, of the Mt. Diablo Meridian.

T. 37 N., R. 1 E., Secs. 6, 7, and 18, of the Mt. Diablo Meridian.

Excluding any private lands within the above area.

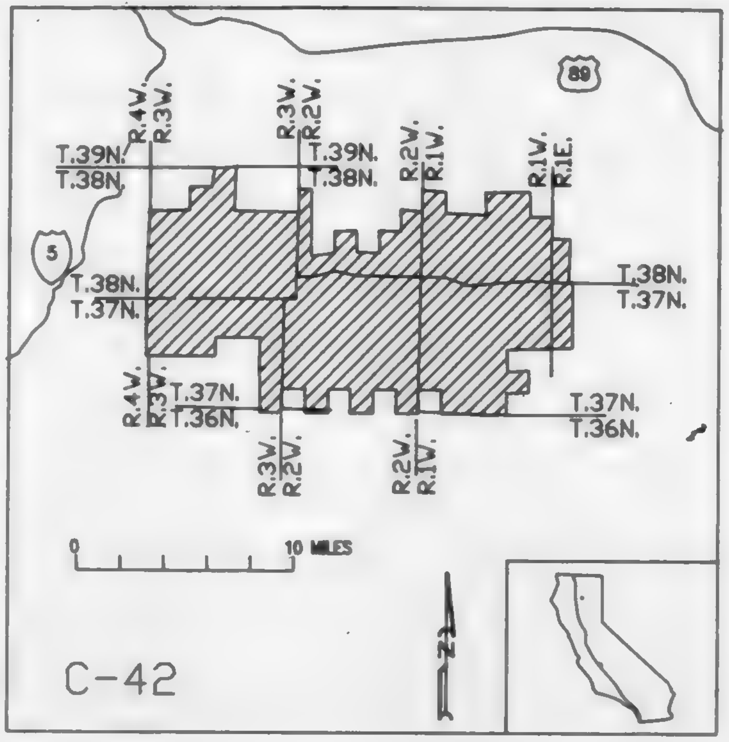
R.4W.
R.3W.
R.3W.
R.2W.
R.2W.
R.1W.
R.1W.
R.1E.
89
T.39N.
T.38N.
T.39N.
T.38N.
5
T.38N.
T.37N.
T.38N.
T.37N.
R.4W.
R.3W.
T.37N.
T.36N.
T.37N.
T.36N.
R.3W.
R.2W.
R.2W.
R.1W.
0
10 MILES
N

C-42

Description of C-45 taken solely from Bureau of Land Management Map; McArthur 1978, and Burney 1976, California.

Shasta County

T. 37 N., R. 1E., Secs. 24, 25, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 37 N., R. 2 E., Secs. 18, 19, 20, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Mt. Diablo Meridian.

T. 36 N., R. 1 E., Secs. 1, 2, 3, 4, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, and 35, of the Mt. Diablo Meridian.

T. 36 N., R. 2 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, and 30, of the Mt. Diablo Meridian.

Excluding any private lands within the above area.

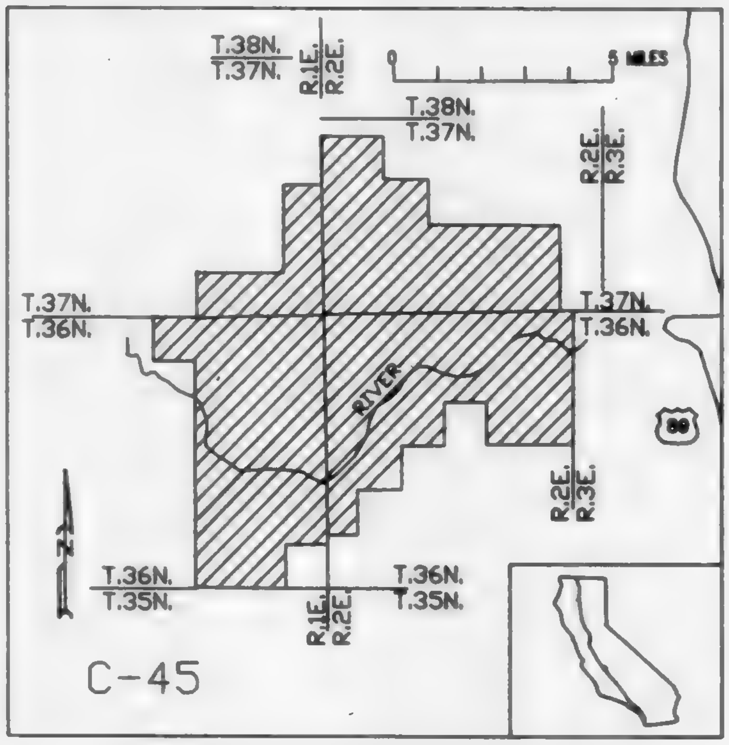
T.38N.
T.37N.
R.1E.
R.2E.
0
5 MILES
T.38N.
T.37N.
R.2E.
R.3E.
T.37N.
T.36N.
T.37N.
T.36N.
RIVER
89
R.2E.
R.3E.
N
T.36N.
T.35N.
R.1E.
R.2E.
T.36N.
T.35N.

C-45

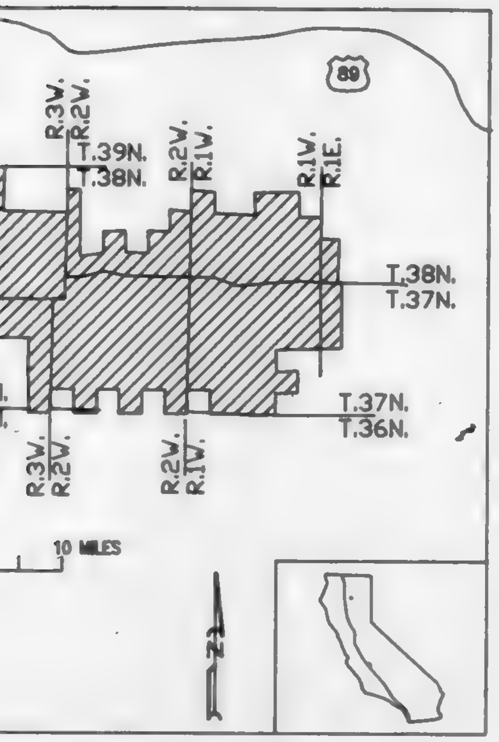

R.3W.
R.2W.
T.39N.
T.38N.
R.2W.
R.1W.
R.1W.
R.1E.
89
T.38N.
T.37N.
T.37N.
T.36N.
R.3W.
R.2W.
R.2W.
R.1W.
10 MILES
N

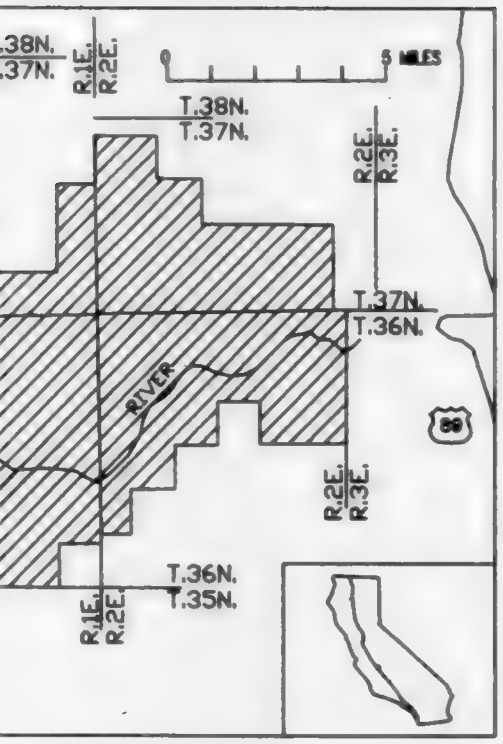

.38N.
.37N.
R.1E.
R.2E.
0
5 MILES
T.38N.
T.37N.
R.2E.
R.3E.
T.37N.
T.36N.
RIVER
89
R.2E.
R.3E.
T.36N.
T.35N.
R.1E.
R.2E.

Description of C–47 taken solely from Bureau of Land Management Surface–Mineral Management Status Map; Crescent City 1983, California.

Del Norte County

T. 14 N., R. 1 E., Secs. 21, 22, 27, 28, and 33, of the Humboldt Meridian.

T. 16 N., R. 1 E., Secs. 23, and 26, of the Humboldt Meridian.

Excluding from the above areas any land within the Redwood National Park, and any private lands.

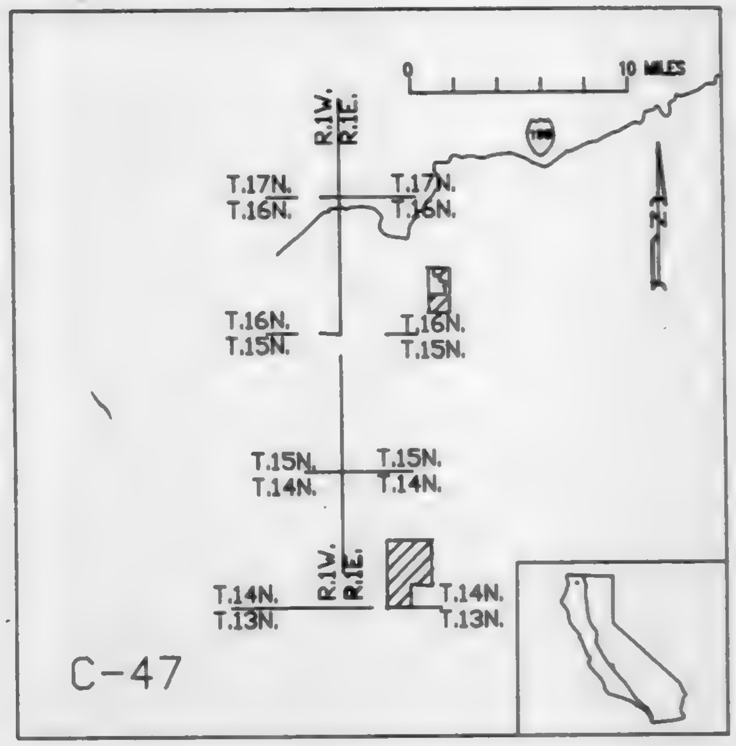

R.1W.
R.1E.
0
10 MILES
199
T.17N.
T.16N.
T.17N.
T.16N.
N
T.16N.
T.15N.
T.16N.
T.15N.
T.15N.
T.14N.
T.15N.
T.14N.
R.1W.
R.1E.
T.14N.
T.13N.
T.14N.
T.13N.
C-47

Description of C–50 taken solely from Bureau of Land Management Maps; Garberville 1979, Cape Mendocino 1979, and Covelo 1981, California.

Humboldt and Mendocino Counties

T. 2 S., R. 3 W., Sec. 13, and 36, of the Humboldt Meridian.

T. 2 S., R. 2 W., Secs. 18, 22, 26, 27, 28, 29, 30, 31, 32, and 33, of the Humboldt Meridian.

T. 3 S., R. 2 W., Secs. 4, 5, 6, 8, 9, 11, 12, 13, 14, 15, 16, 22, 23, 24, 25, and 26, of the Humboldt Meridian.

T. 3 S., R. 1 W., Secs. 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Humboldt Meridian.

T. 3 S., R. 1 E., Secs. 18, 19, 29, 30, 31, and 32, of the Humboldt Meridian.

T. 4 S., R. 1 W., Secs. 1, 2, 3, 4, 5, 9, 10, 11, 12, 13, 14, and 15, of the Humboldt Meridian.

T. 4 S., R. 1 E., Secs. 4, 5, 6, 7, 8, 9, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, and 36, of the Humboldt Meridian.

T. 4 S., R. 2 E., Secs. 30, and 31, of the Humboldt Meridian.

T. 5 S., R. 1 E., Secs. 1, 2, 3, 4, 11, 12, 13, 14, 23, 24, and 25, of the Humboldt Meridian.

T. 5 S., R. 2 E., Secs. 6, 7, 19, 30, and 31, of the Humboldt Meridian.

T. 24 N., R. 19 W., Secs. 3, 4, 5, 9, and 10, of the Mt. Diabalo Meridian.

Excluding any private lands within the above area.

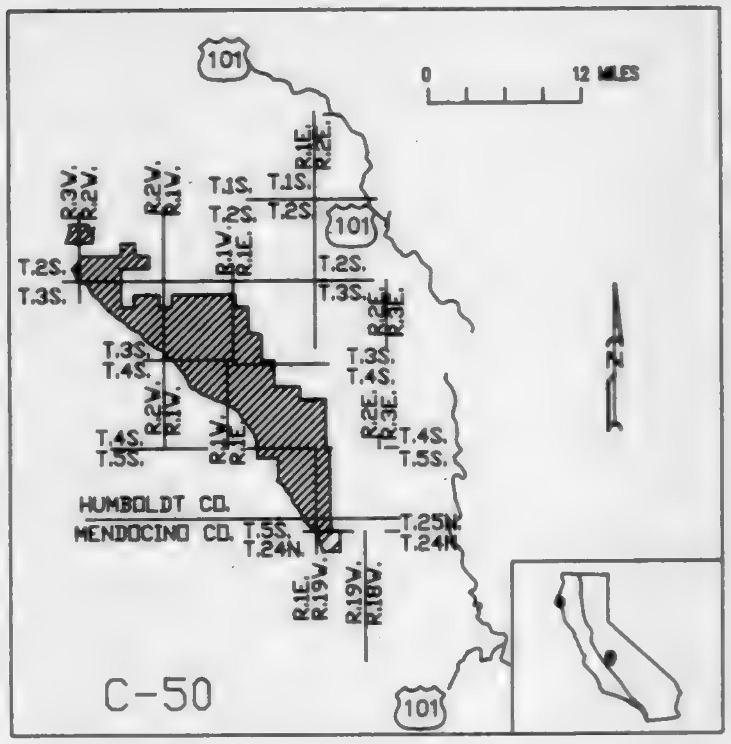

101
0
12 MILES
R.3W.
R.2W.
R.2W.
R.1W.
T.1S.
T.2S.
T.1S.
T.2S.
R.1E.
R.2E.
101
T.2S.
T.3S.
R.1W.
R.1E.
T.2S.
T.3S.
R.2E.
R.3E.
N
T.3S.
T.4S.
T.3S.
T.4S.
R.2W.
R.1W.
R.2E.
R.3E.
T.4S.
T.5S.
R.1W.
R.1E.
T.4S.
T.5S.
HUMBOLDT CO.
MENDOCINO CO.
T.5S.
T.24N.
T.25N.
T.24N.
R.1E.
R.19W.
R.19W.
R.18W.
C-50
101

Description of C–51 taken solely from Bureau of Land Management Map; Ukiah 1981, California.

Mendocino County

T. 18 N., R. 18 W., Secs. 25, and 36, of the Mt. Diablo Meridian.

T. 18 N., R. 17 W., Secs. 13, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 18 N., R. 16 W., Secs. 8, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 18 N., R. 15 W., Secs. 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Mt. Diablo Meridian.

T. 17 N., R. 17 W., Secs. 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 26, 27, and 28, of the Mt. Diablo Meridian.

T. 17 N., R. 16 W., Secs. 1, 3, 4, 5, 6, 7, 8, 9, 10, 18, 19, and 30, of the Mt. Diablo Meridian.

T. 17 N., R. 15 W., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 16, 17, 18, and 20, of the Mt. Diablo Meridian.

T. 17 N., R. 14 W., Secs. 6, and 7, of the Mt. Diablo Meridian.

Excluding any private lands within the above area.

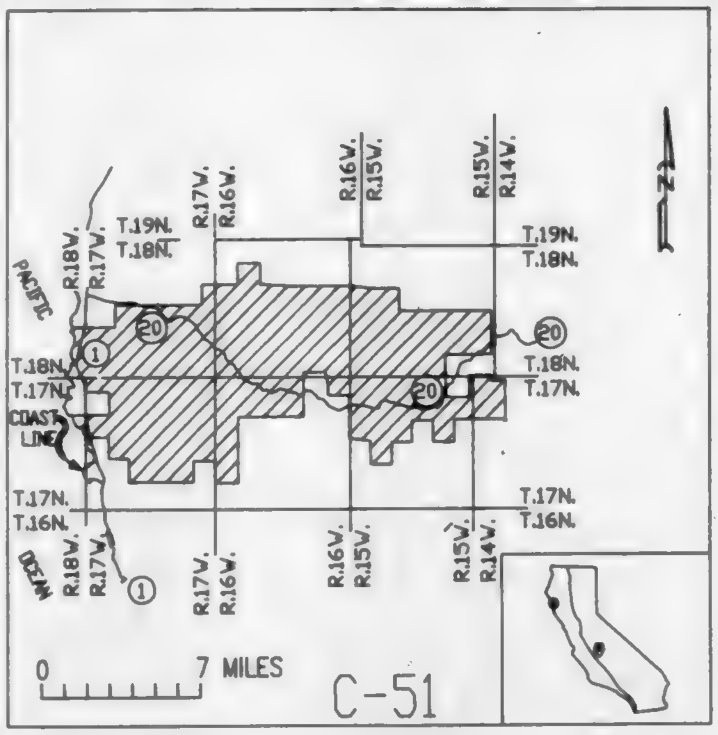
R.18W.
R.17W.
T.19N.
T.18N.
R.17W.
R.16W.
R.16W.
R.15W.
R.15W.
R.14W.
PACIFIC
20
1
T.18N.
T.17N.
COAST LINE
T.17N.
T.16N.
OCEAN
R.18W.
R.17W.
1
0
7 MILES
C-51

Description of C–53 taken solely from Bureau of Land Management Maps; Hoopa 1983, and Hayfork 1982, California.

Humboldt County

T. 8 N., R. 3 E., Secs. 22, 23, 26, 27, 33, 34, and 35, of the Humboldt Meridian.

T. 7 N., R. 3 E., Secs. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, and 24, of the Humboldt Meridian.

T. 7 N., R. 2 E., Sec. 18, of the Humboldt Meridian.

Excluding any private lands within the above area.

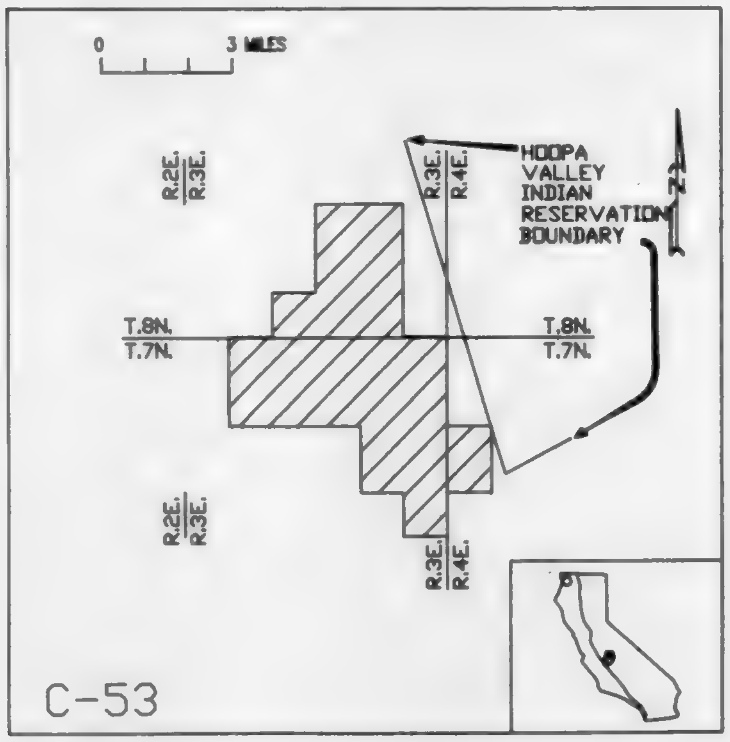
0
3 MILES
R.2E.
R.3E.
R.3E.
R.4E.
HOOPA VALLEY INDIAN RESERVATION BOUNDARY
T.8N.
T.7N.
C-53

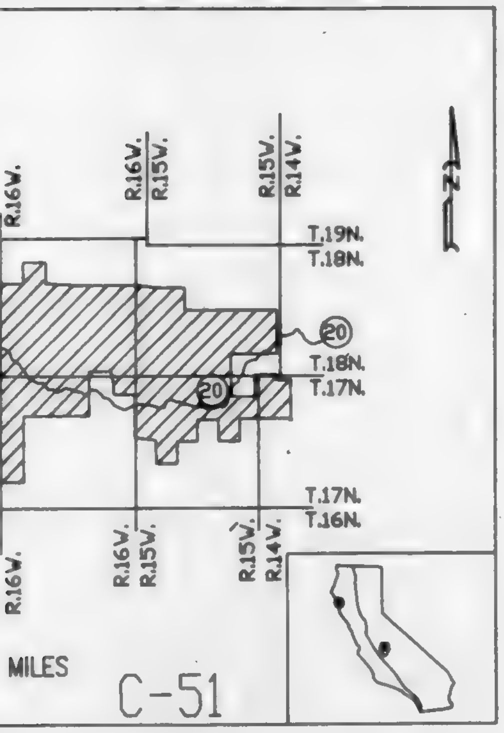
R.16W.
R.16W.
R.15W.
R.15W.
R.14W.
T.19N.
T.18N.
20
T.18N.
T.17N.
T.17N.
T.16N.
R.16W.
R.16W.
R.15W.
R.15W.
R.14W.
MILES
C-51

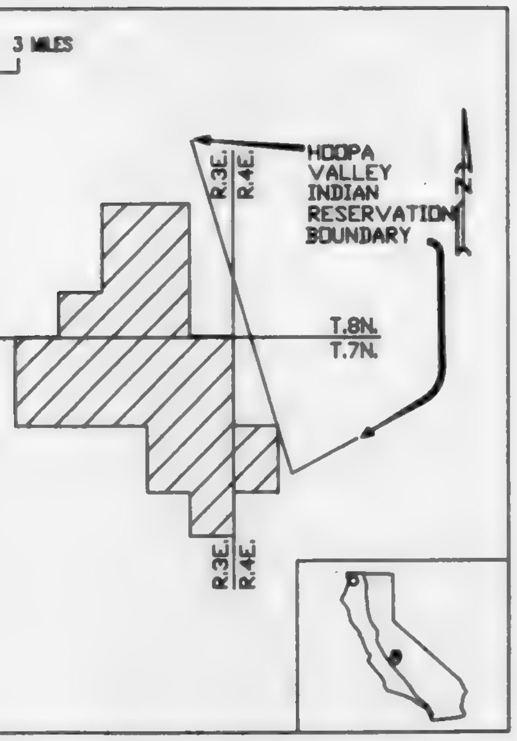
3 MILES
R.3E.
R.4E.
HOOPA
VALLEY
INDIAN
RESERVATION
BOUNDARY
T.8N.
T.7N.
R.3E.
R.4E.

Description of C-54 taken solely from Bureau of Land Management Map; Hayfork 1982, California.
Humboldt County

T. 4 N., R. 2 E., Sec. 25, of the Humboldt Meridian.

T. 3 N., R. 2 E., Secs. 1, and 2, of the Humboldt Meridian.

T. 4 N., R. 3 E., Sec. 31, of the Humboldt Meridian.

T. 3 N., R. 3 E., Sec. 6, of the Humboldt Meridian.

Excluding any private lands within the above area.

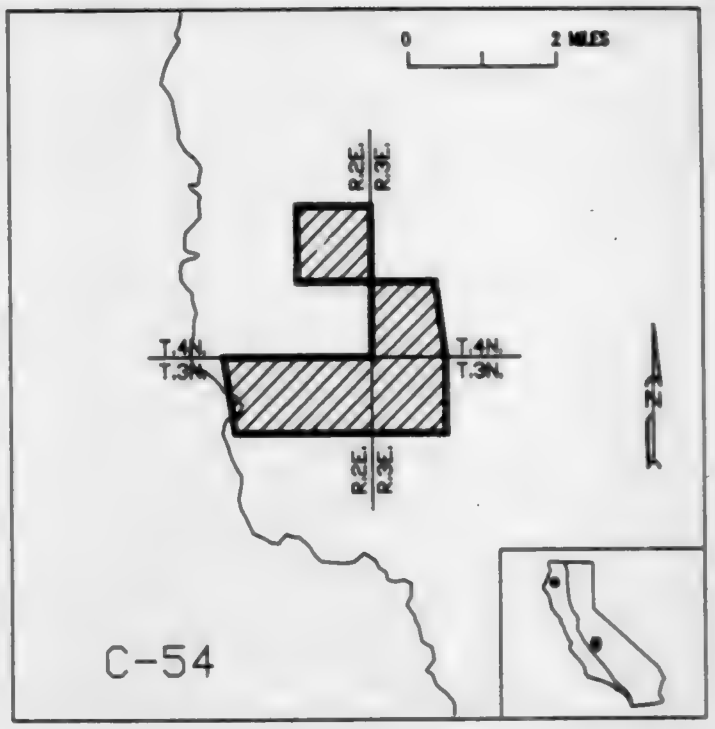
0
2 MILES
R.2E.
R.3E.
T.4N.
T.3N.
T.4N.
T.3N.
R.2E.
R.3E.
C-54

Description of C-55 taken solely from Bureau of Land Management Map; Hayfork 1982, California.
Humboldt County

T. 3 N., R. 3 E., Secs. 10, 14, and 15, of the Humboldt Meridian.

Excluding any private lands within the above area.

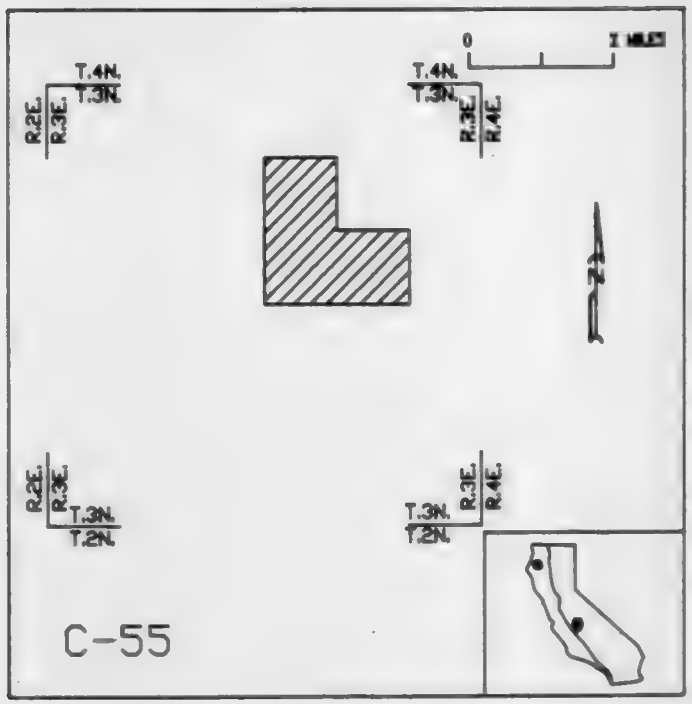
0
2 MILES
T.4N.
T.3N.
R.2E.
R.3E.
T.4N.
T.3N.
R.3E.
R.4E.
R.2E.
R.3E.
T.3N.
T.2N.
T.3N.
T.2N.
R.3E.
R.4E.
C-55

/OL
56
SS
156
AG
13
991
UMI

Description of C-56 taken solely from Bureau of Land Management Maps; Garberville 1979, California.

Humboldt County

T. 1 N., R. 4 E., Secs. 17, 20, 21, 22, 27, 34, and 35, of the Humboldt Meridian.

T. 1 S., R. 4 E., Secs. 1, 2, and 3, of the Humboldt Meridian.

Excluding any private lands within the above area.

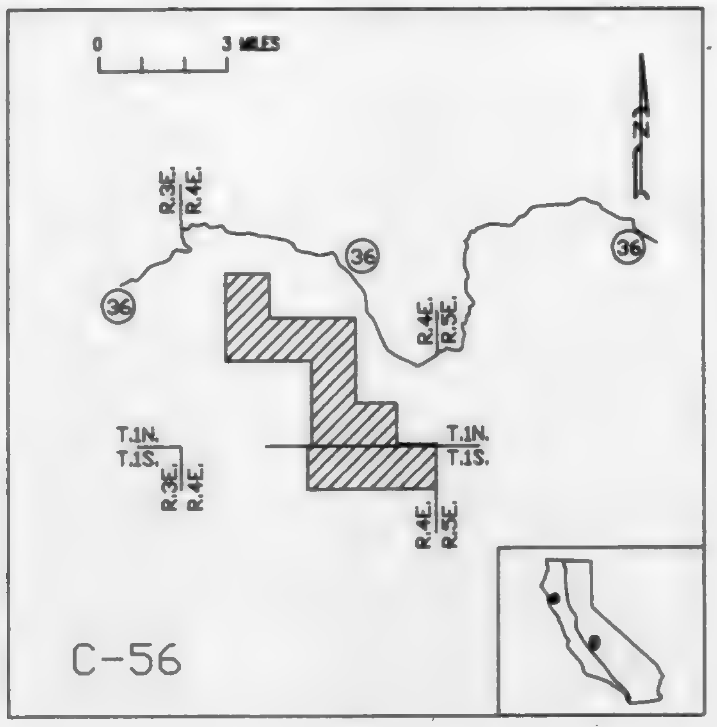
0
3 MILES
R.3E.
R.4E.
36
36
36
R.4E.
R.5E.
T.1N.
T.1S.
T.1N.
T.1S.
R.3E.
R.4E.
R.4E.
R.5E.
N
C-56

Description of C-57 taken solely from Bureau of Land Management Maps; Cape Mendocino 1979, and Garberville 1979, California.

Humboldt County

T. 2 S., R. 2 E., Secs. 31, and 32, of the Humboldt Meridian.

T. 2 S., R. 1 E., Secs. 12, 13, and 24, Humboldt Meridian.

T. 3 S., R. 2 E., Secs. 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 28, 29, and 30, of the Humboldt Meridian.

Excluding any private lands within the above area.

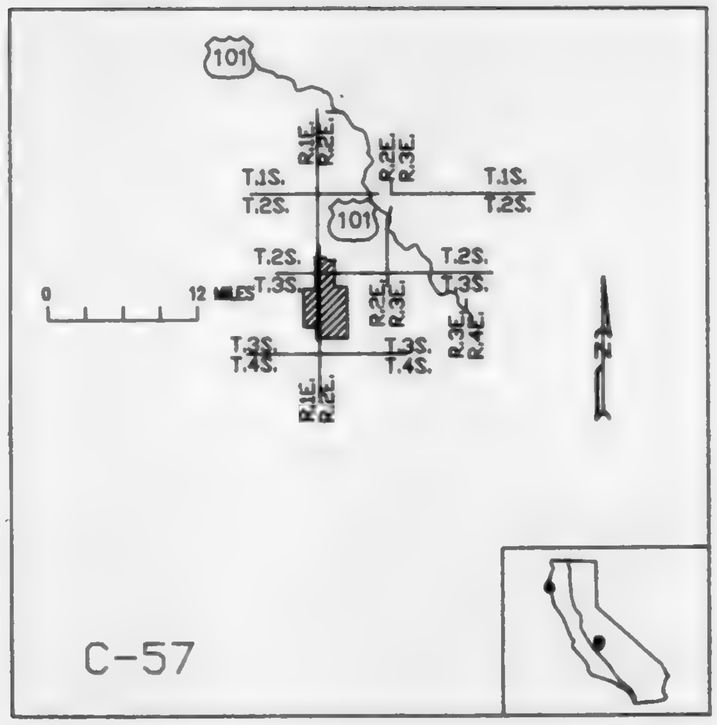
101
R.1E.
R.2E.
R.2E.
R.3E.
T.1S.
T.2S.
T.1S.
T.2S.
101
T.2S.
T.3S.
T.2S.
T.3S.
0
12 MILES
R.2E.
R.3E.
T.3S.
T.4S.
T.3S.
T.4S.
R.3E.
R.4E.
R.1E.
R.2E.
N
C-57

Description of C-58 taken s
Bureau of Land Management
Garberville 1979, California.
Humboldt County
T. 4 S., R. 5 E., Secs. 15, 22,
34, of the Humboldt Meridian.
T. 5 S., R. 6 E., Secs. 2, 3, an
Humboldt Meridian.
Excluding any private land
the above area.

Description of C-62 taken
Bureau of Land Management
Covelo 1961, and Garberville
California.
Trinity County
T. 5 S., R. 7 E., Secs. 23, 24,
and 36, of the Humboldt Mer
T. 5 S., R. 8 E., Secs. 19, an
Humboldt Meridian.
Excluding from the above
land within the Round Valle
Reservation, and any private

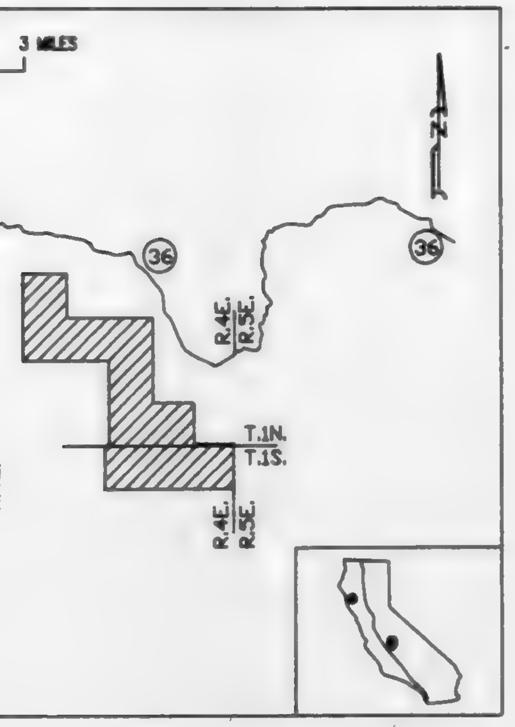
3 MILES
36
36
R.4E.
R.5E.
T.1N.
T.1S.
R.4E.
R.5E.
N

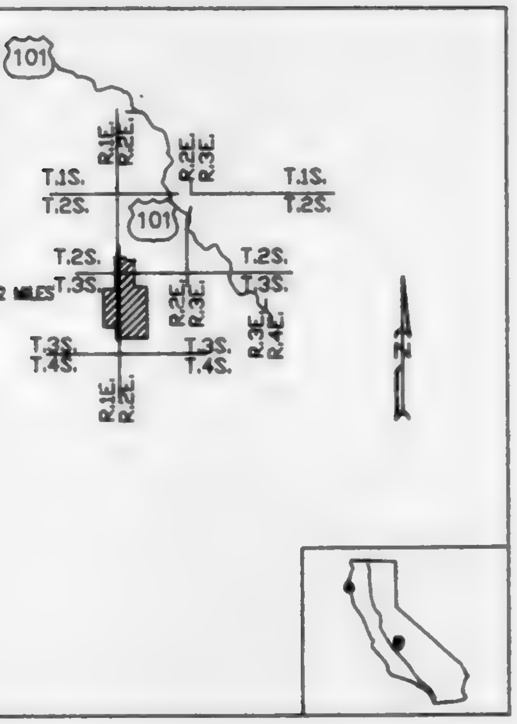
101
101
R.1E.
R.2E.
R.2E.
R.3E.
T.1S.
T.2S.
T.1S.
T.2S.
T.2S.
T.3S.
T.2S.
T.3S.
2 MILES
R.2E.
R.3E.
T.3S.
T.4S.
T.3S.
T.4S.
R.3E.
R.4E.
R.1E.
R.2E.
N

Description of C–58 taken solely from Bureau of Land Management Map; Garberville 1979, California.

Humboldt County

T. 4 S., R. 5 E., Secs. 15, 22, 27, 33, and 34, of the Humboldt Meridian.

T. 5 S., R. 6 E., Secs. 2, 3, and 4, of the Humboldt Meridian.

Excluding any private lands within the above area.

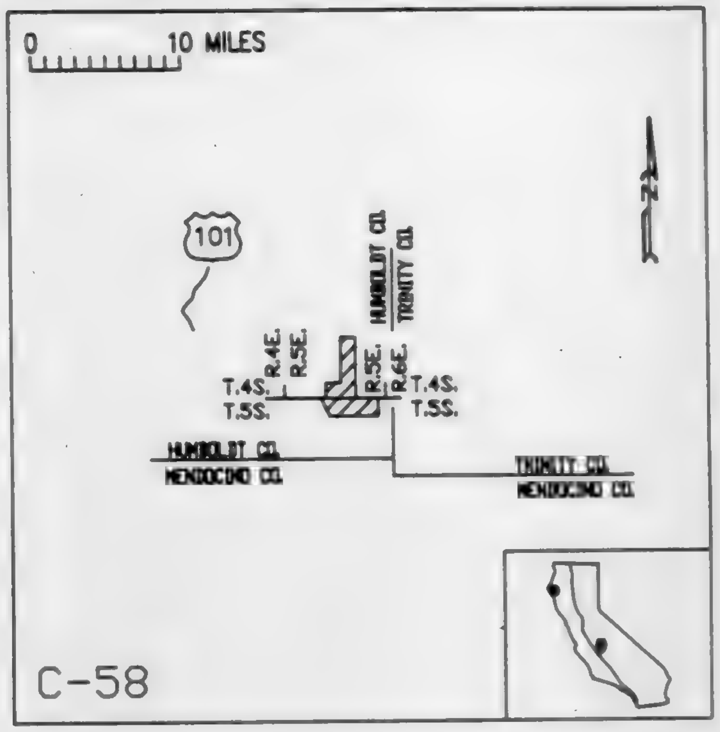
0
10 MILES
N
101
HUMBOLDT CO.
TRINITY CO.
R.4E.
R.5E.
R.5E.
R.6E.
T.4S.
T.5S.
T.4S.
T.5S.
HUMBOLDT CO.
MENDOCINO CO.
TRINITY CO.
MENDOCINO CO.
C-58

Description of C–62 taken solely from Bureau of Land Management Maps; Covelo 1981, and Garberville 1979, California.

Trinity County

T. 5 S., R. 7 E., Secs. 23, 24, 25, 26, 34, and 36, of the Humboldt Meridian.

T. 5 S., R. 8 E., Secs. 19, and 30, of the Humboldt Meridian.

Excluding from the above areas any land within the Round Valley Indian Reservation, and any private lands.

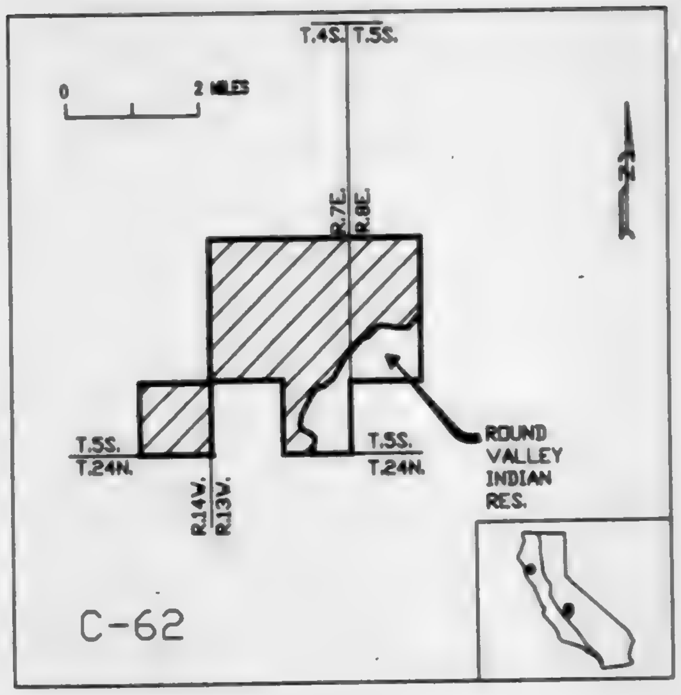
T.4S.
T.5S.
0
2 MILES
N
R.7E.
R.8E.
T.5S.
T.24N.
T.5S.
T.24N.
R.14W.
R.13W.
ROUND VALLEY INDIAN RES.
C-62

VOL 56 ISS 156 AG 13 1991 UMI

Description of C–71 taken solely from Bureau of Land Management Map; Covelo 1981, California.

Mendocino County

T. 22 N., R. 13 W., Sec. 33, of the Mt. Diablo Meridian.

T. 21 S., R. 13 W., Secs. 3, and 4, of the Mt. Diablo Meridian.

Excluding any private lands within the above area.

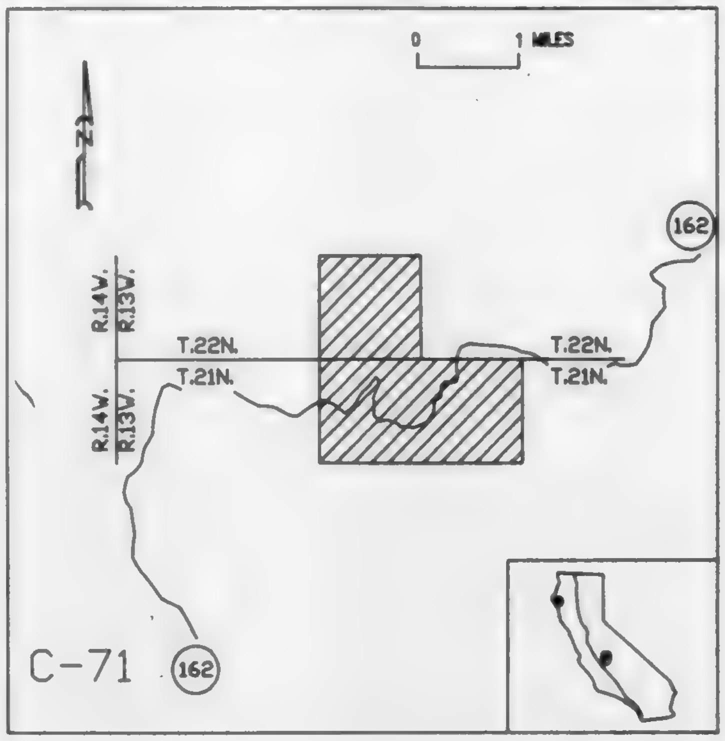
0 1 MILES
N
162
R.14W.
R.13W.
T.22N.
T.21N.
T.22N.
T.21N.
R.14W.
R.13W.
C–71
162

Description of C–73 taken solely from Bureau of Land Management Map; Covelo 1981, California.

Mendocino County

T. 22 N., R. 11 W., Secs. 18, 19, 20, 28, 29, and 30, of the Mt. Diablo Meridian.

T. 22 N., R. 12 W., Secs. 12, 13, 14, 23, 24, and 25, of the Mt. Diablo Meridian.

Excluding any private lands within the above area.

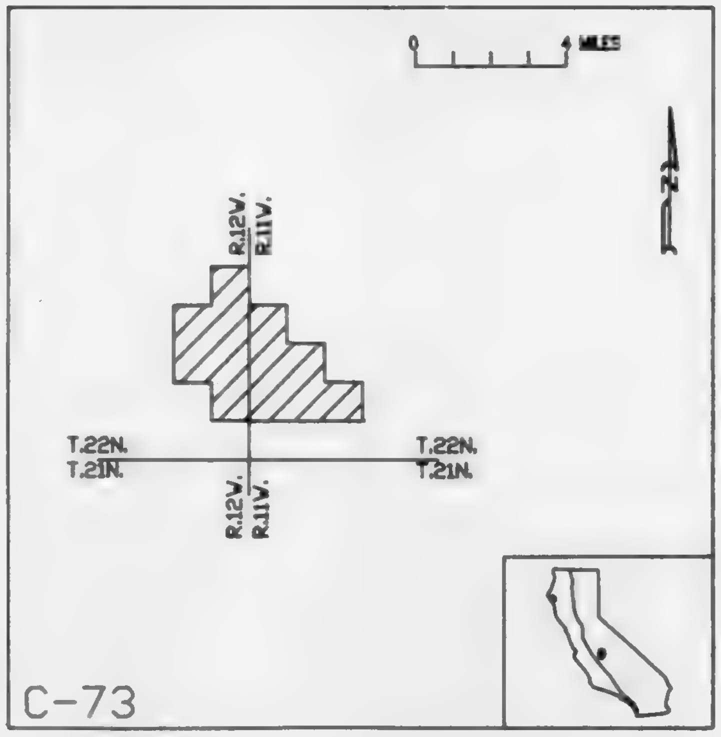
0 4 MILES
N
R.12W.
R.11W.
T.22N.
T.21N.
T.22N.
T.21N.
R.12W.
R.11W.
C–73

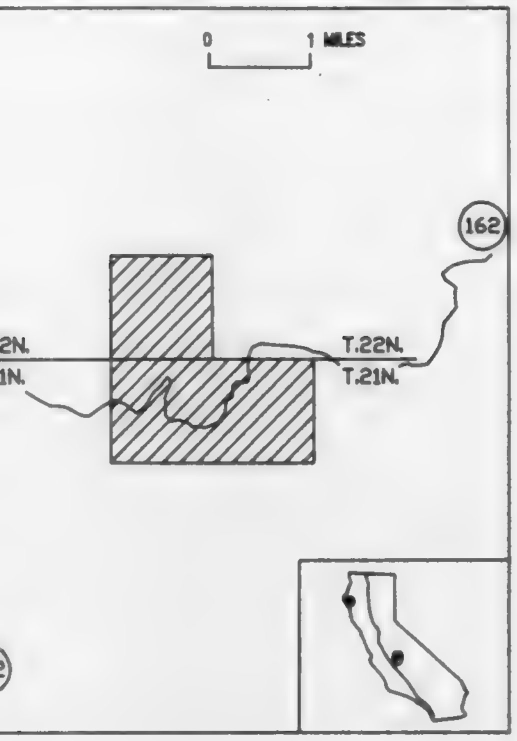
0
1 MILES
162
2N.
IN.
T.22N.
T.21N.

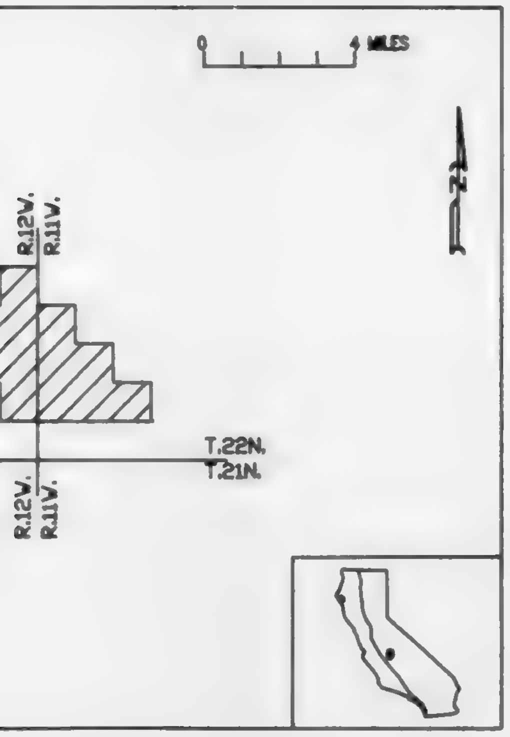
0
4 MILES
R.12W.
R.11W.
T.22N.
T.21N.
R.12W.
R.11W.
N

Description of C–76 taken solely from Bureau of Land Management Map: Ukiah 1981, California.
Mendocino County

T. 18 N., R. 13 W., Secs. 1, 2, 3, and 11, of the Mt. Diablo Meridian.

Excluding any private lands within the above area.

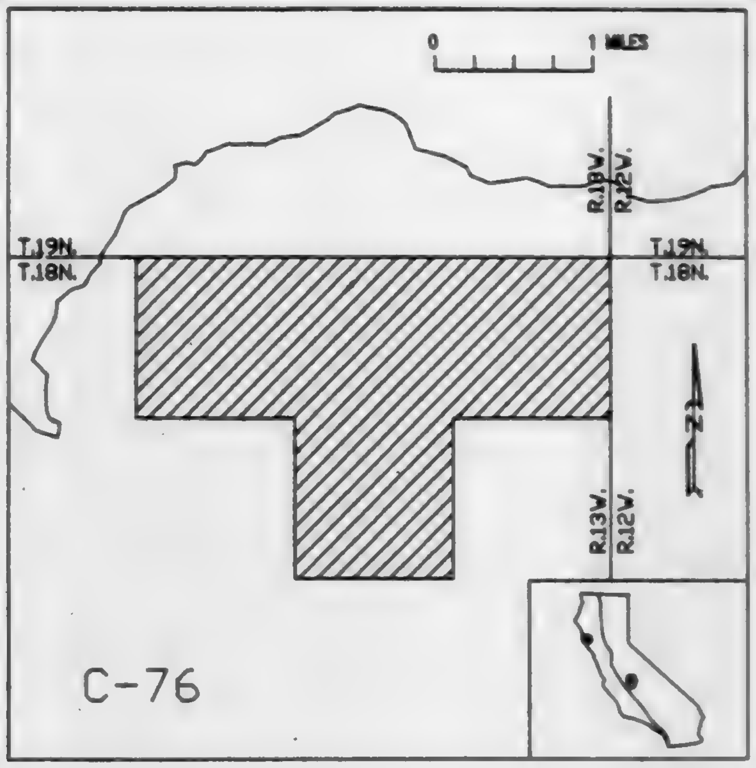
0
1 MILES
R.13W.
R.12W.
T.19N.
T.18N.
T.19N.
T.18N.
N
R.13W.
R.12W.
C-76

Description of C–78 taken solely from Bureau of Land Management Map: Ukiah 1981, California.
Mendocino County

T. 16 N., R. 14 W., Secs. 4, 9, 10, 11, 14, 15, 22, 23, 25, 26, and 27, of the Mt. Diablo Meridian.

Excluding any private lands within the above area.

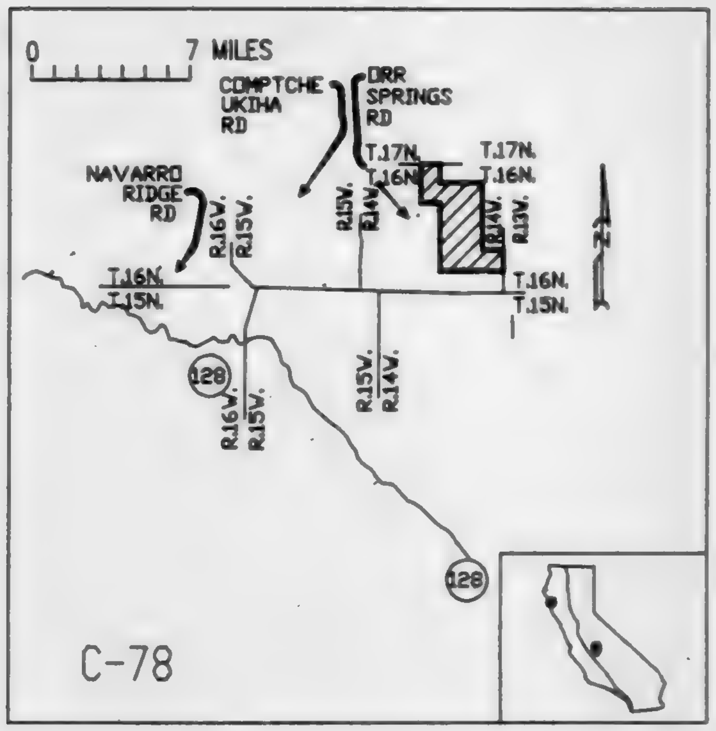
0
7 MILES
COMPTCHE UKIHA RD
ORR SPRINGS RD
NAVARRO RIDGE RD
T.17N.
T.16N.
T.17N.
T.16N.
R.16W.
R.15W.
R.15W.
R.14W.
R.14W.
R.13W.
N
T.16N.
T.15N.
T.16N.
T.15N.
128
R.16W.
R.15W.
R.15W.
R.14W.
128
C-78

Description of C–80 taken solely from Bureau of Land Management Map; Ukiah 1981, California.

Mendocino County

T. 15 N., R. 13 W., Secs. 29, 30, 31, and 32, of the Mt. Diablo Meridian.

T. 14 N., R. 13 W., Secs. 4, 5, 6, 8, and 9, of the Mt. Diablo Meridian.

Excluding any private lands within the above area.

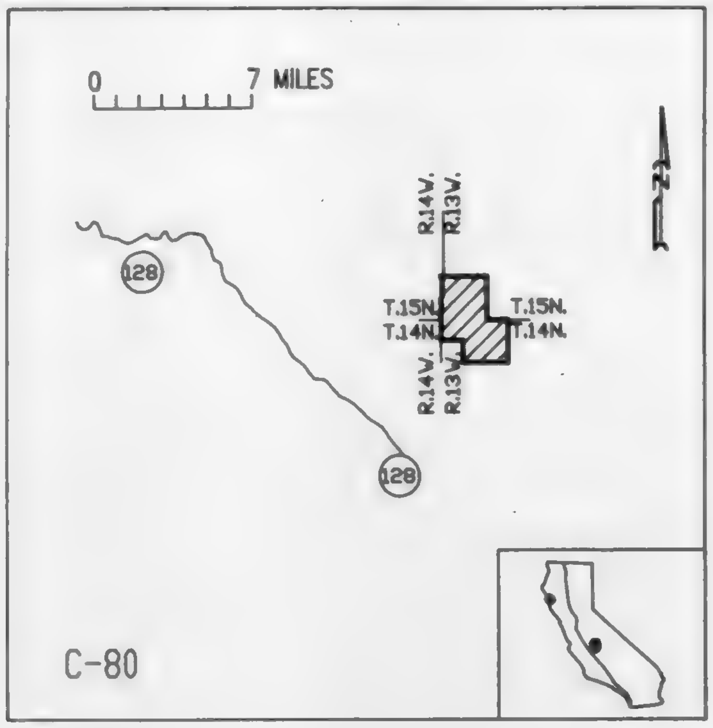
0
7 MILES
R.14W.
R.13W.
128
T.15N.
T.14N.
T.15N.
T.14N.
R.14W.
R.13W.
128
C-80

Description of GAR–1 taken solely from Bureau of Land Management Map; Garberville 1979, and Covelo 1981, California.

Mendocino and Trinity Counties

T. 5 S., R. 8 E., Secs. 9, 10, 11, 14, 15, 22, 23, 26, and 27, of the Humboldt Meridian.

T. 25 N., R. 12 W., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Mt. Diablo Meridian.

T. 24 N., R. 13 E., Secs. 1, 2, 11, and 12, of the Mt. Diablo Meridian.

T. 24 N., R. 12 W., Secs. 1, 2, 3, 4, 5, 6, 10, 11, 12, and 14, of the Mt. Diablo Meridian.

Excluding any private lands within the above area.

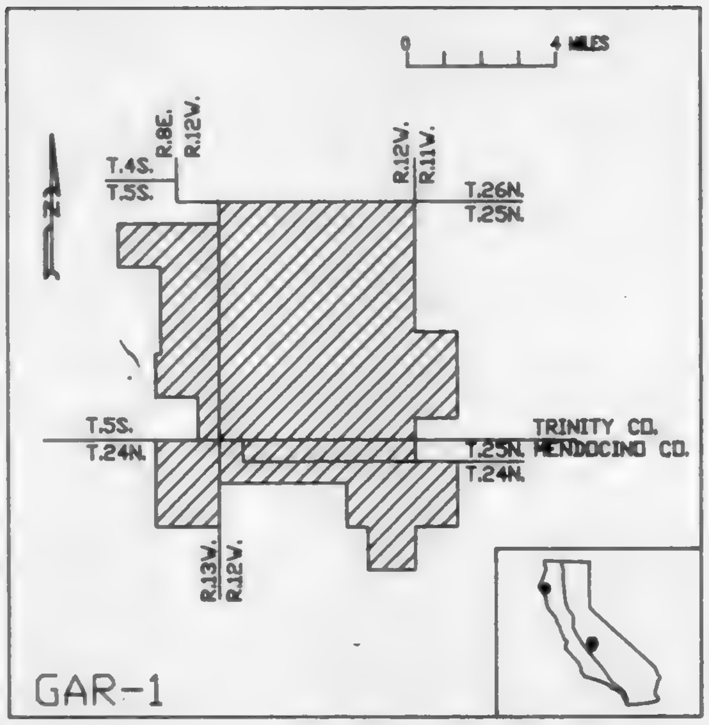
0
4 MILES
T.4S.
T.5S.
R.8E.
R.12W.
R.12W.
R.11W.
T.26N.
T.25N.
T.5S.
T.24N.
TRINITY CO.
T.25N.
MENDOCINO CO.
T.24N.
R.13W.
R.12W.
GAR-1

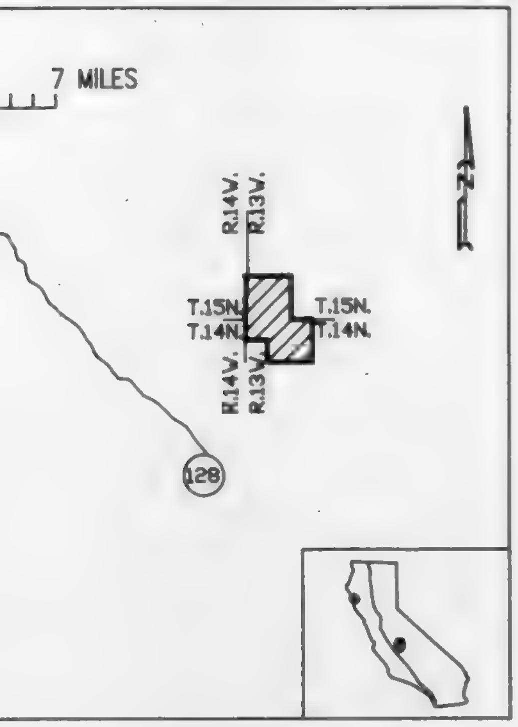
7 MILES
R.14W.
R.13W.
T.15N.
T.14N.
T.15N.
T.14N.
R.14W.
R.13W.
128

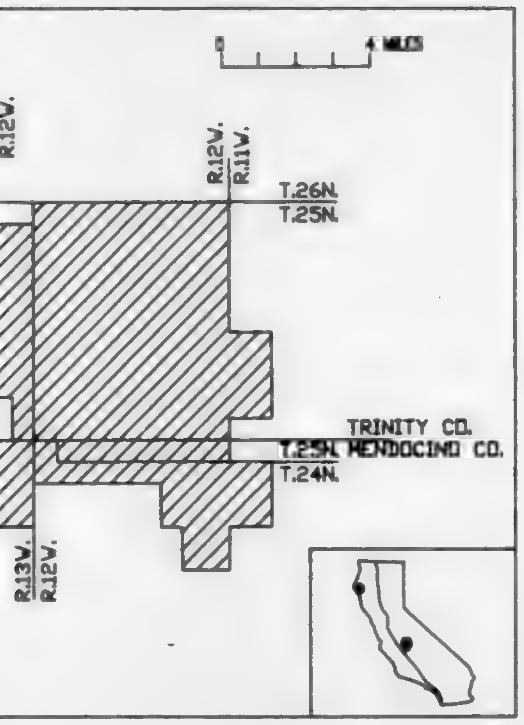
4 MILES
R.12W.
R.12W.
R.11W.
T.26N.
T.25N.
TRINITY CO.
T.25N. MENDOCINO CO.
T.24N.
R.13W.
R.12W.

Description of O–20–C taken solely from Bureau of Land Management Map; Yreka 1979, and Medford 1978, Oregon and California.

Siskiyou County

T. 48 N., R. 9 W., Secs. 13, 14, 15, and 16, of the Mount Diablo Meridian

T. 48 N., R. 8 W., Secs. 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 26, 27, 28, and 29, of the Mount Diablo Meridian.

Excluding any private lands within the above area.

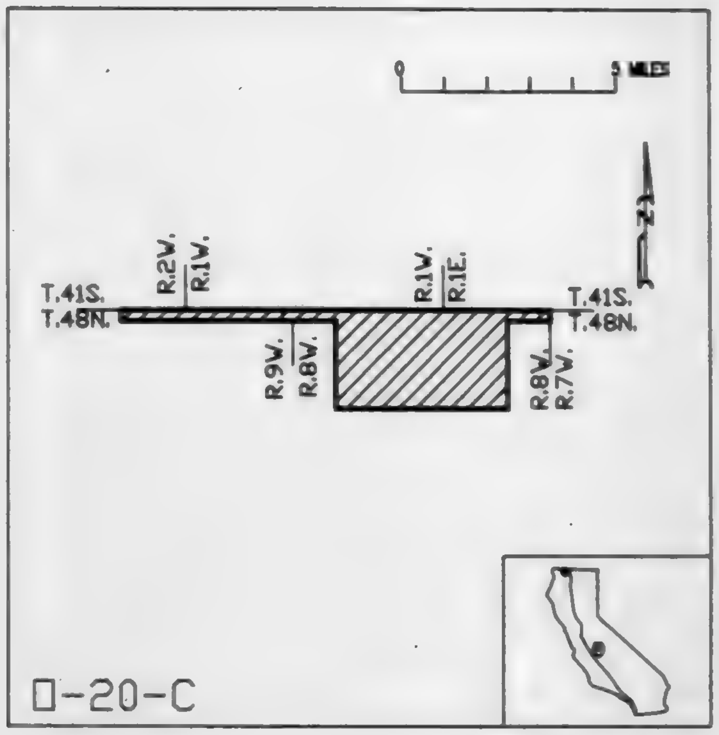
0
5 MILES
R.2W.
R.1W.
R.1W.
R.1E.
T.41S.
T.48N.
T.41S.
T.48N.
R.9W.
R.8W.
R.8W.
R.7W.
O-20-C

Description of O–22–C taken solely from Bureau of Land Management Maps; Happy Camp 1983, and Cresent City 1983, California.

Del Norte County

T. 19 N., R. 1 E., Secs. 33, 34, 35, and 36, of the Humboldt Meridian.

T. 19 N., R. 2 E., Sec. 31, of the Humboldt Meridian.

T. 18 N., R. 1 E., Secs. 1, 2, 3, 4, 10, 11, 12, 14, 15, 22, 23, 26, and 27, of the Humboldt Meridian.

T. 18 N., R. 2 E., Sec. 6, of the Humboldt Meridian.

Excluding any private lands within the above area.

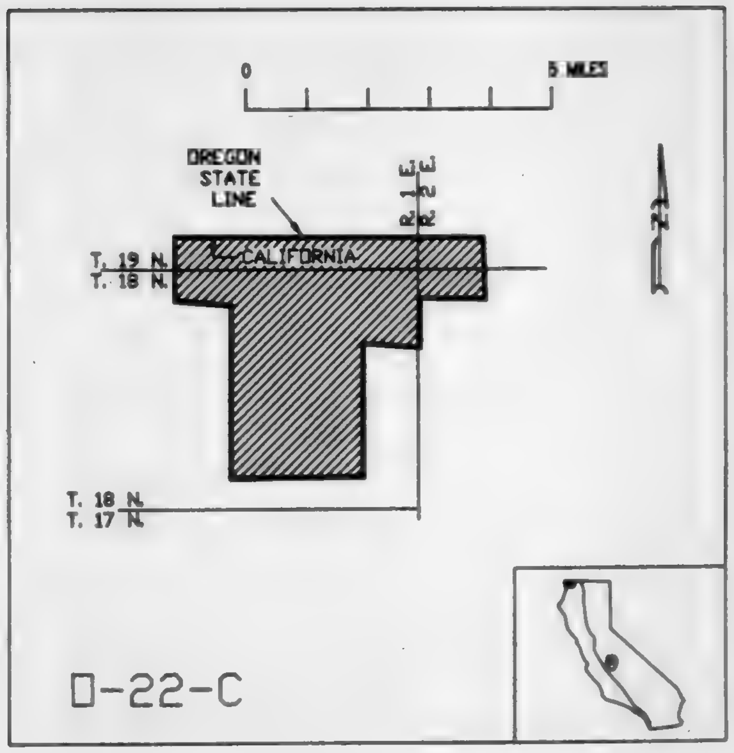
0
5 MILES
OREGON
STATE
LINE
CALIFORNIA
R. 1 E.
R. 2 E.
T. 19 N.
T. 18 N.
T. 18 N.
T. 17 N.
O-22-C

Description of ME–1 taken solely from Bureau of Land Management Maps: Willows 1975, and Covelo 1981, California.

Mendocino, Glenn, and Tehema Counties

T. 20 N., R. 9 W., Secs. 4, and 5, of the Mt. Diablo Meridian.

T. 20 N., R. 10 W., Secs. 1, 2, 3, 4, 5, 6, 10, and 11, of the Mt. Diablo Meridian.

T. 21 N., R. 9 W., Secs. 29, 32, and 33, of the Mt. Diablo Meridian.

T. 21 N., R. 10 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 22 N., R. 8 W., Secs. 7, 18, 19, 20, 29, 30, 31, and 32, of the Mt. Diablo Meridian.

T. 22 N., R. 9 W., Secs. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, and 33, of the Mt. Diablo Meridian.

T. 22 N., R. 10 W., Secs. 1, 2, 13, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 22 N., R. 11 W., Secs. 13, 23, 24, and 25, of the Mt. Diablo Meridian.

T. 23 N., R. 8 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 28, 29, of the Mt. Diablo Meridian.

T. 23 N., R. 9 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Mt. Diablo Meridian.

T. 23 N., R. 10 W., Secs. 1, 2, 10, 11, 12, 13, 14, 15, 23, 24, 25, 26, 35, and 36, of the Mt. Diablo Meridian.

T. 24 N., R. 8 W., Secs. 14, 15, 21, 22, 23, 25, 26, 27, 28, 31, 32, 33, 34, and 35, of the Mt. Diablo Meridian.

T. 24 N., R. 9 W., Secs. 6, 7, 18, 19, 30, 31, 34, and 35, of the Mt. Diablo Meridian.

T. 24 N., R. 10 W., Secs. 1, 11, 12, 13, 14, 24, 25, 26, 35, and 36, of the Mt. Diablo Meridian.

T. 25 N., R. 9 W., Sec. 31, of the Mt. Diablo Meridian.

Excluding any private lands within the above area.

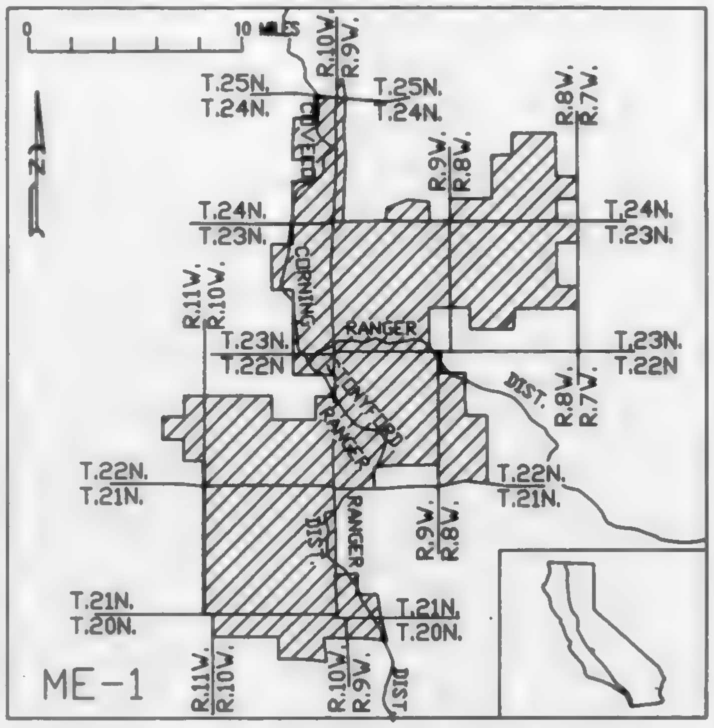
0
10 MILES
R.10W.
R.9W.
T.25N.
T.24N.
T.25N.
T.24N.
R.8W.
R.7W.
COVELO
R.9W.
R.8W.
T.24N.
T.23N.
T.24N.
T.23N.
CORNING
R.11W.
R.10W.
RANGER
T.23N.
T.22N
T.23N.
T.22N
STONYFORD
RANGER
DIST.
R.8W.
R.7W.
T.22N.
T.21N.
T.22N.
T.21N.
RANGER
DIST.
R.9W.
R.8W.
T.21N.
T.20N.
T.21N.
T.20N.
ME–1
R.11W.
R.10W.
R.10W.
R.9W.
DIST.

Description of ME–2 taken solely from Bureau of Land Management Map: Lakeport 1975, California.

Colusa and Lake Counties

T. 16 N., R. 7 W., Sec. 6, of the Mt. Diablo Meridian.

T. 16 N., R. 8 W., Secs. 1, 2, 4, 5, and 6, of the Mt. Diablo Meridian.

T. 16 N., R. 9 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, and 11, of the Mt. Diablo Meridian.

T. 17 N., R. 7 W., Secs. 19, 20, 29, 30, 31, and 32, of the Mt. Diablo Meridian.

T. 17 N., R. 8 W., Secs. 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 17 N., R. 9 W., Secs. 13, 24, 33, 34, and 35, of the Mt. Diablo Meridian.

Excluding any private lands within the above area.

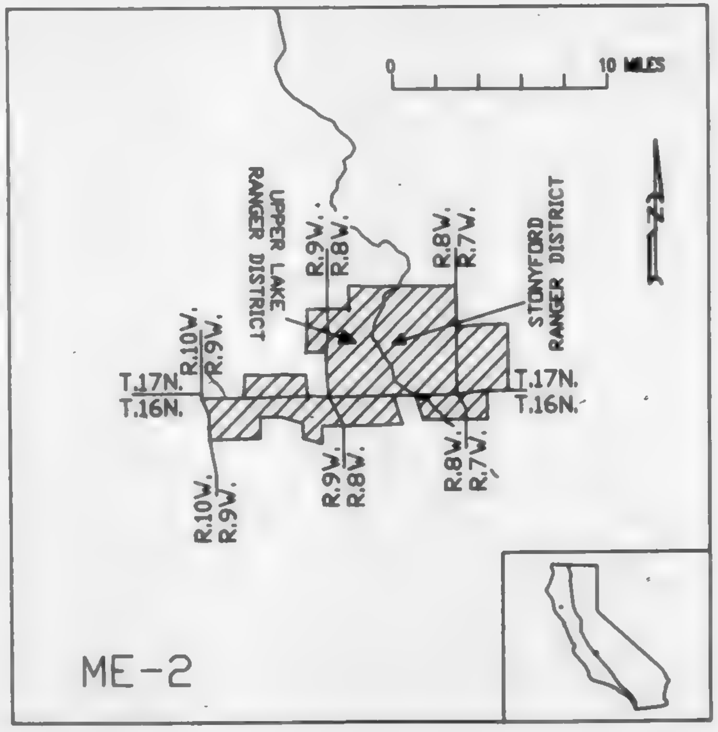
0
10 MILES
UPPER LAKE
RANGER DISTRICT
R.9W.
R.8W.
R.8W.
R.7W.
STONYFORD
RANGER DISTRICT
R.10W.
R.9W.
T.17N.
T.16N.
T.17N.
T.16N.
R.9W.
R.8W.
R.8W.
R.7W.
R.10W.
R.9W.
ME–2

27, 28, 29, 30, 31, 32, 33,
Mt. Diablo Meridian.
W., Secs. 1, 2, 10, 11, 12,
25, 26, 35, and 36, of the
lian.
V., Secs. 14, 15, 21, 22,
31, 32, 33, 34, and 35, of
leridian.
V., Secs. 6, 7, 18, 19, 30,
31, 34, and 35, of the Mt. Diablo Meridian.

T. 24 N., R. 10 W., Secs. 1, 11, 12, 13, 14, 24, 25, 26, 35, and 36, of the Mt. Diablo Meridian.

T. 25 N., R. 9 W., Sec. 31, of the Mt. Diablo Meridian.

Excluding any private lands within the above area.

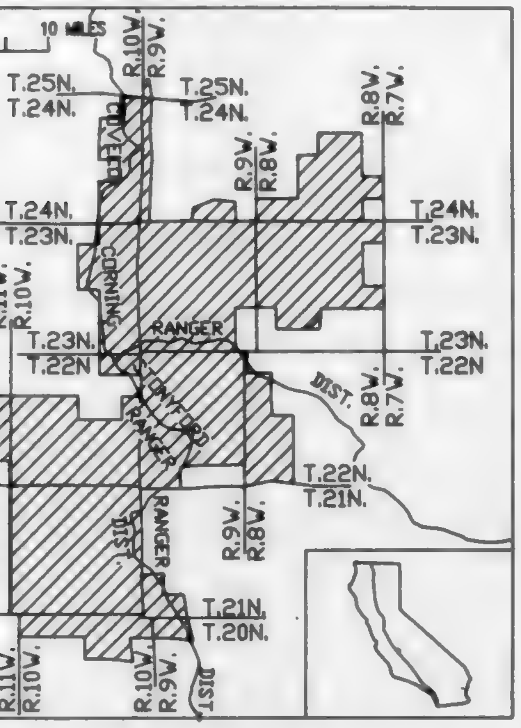
10 MILES
R.10W.
R.9W.
T.25N.
T.24N.
T.25N.
T.24N.
R.8W.
R.7W.
R.9W.
R.8W.
T.24N.
T.23N.
T.24N.
T.23N.
CORNING
R.10W.
RANGER
T.23N.
T.22N
T.23N.
T.22N
DIST.
R.8W.
R.7W.
RANGER
T.22N.
T.21N.
DIST.
RANGER
R.9W.
R.8W.
T.21N.
T.20N.
R.11W.
R.10W.
R.10W.
R.9W.
DIST

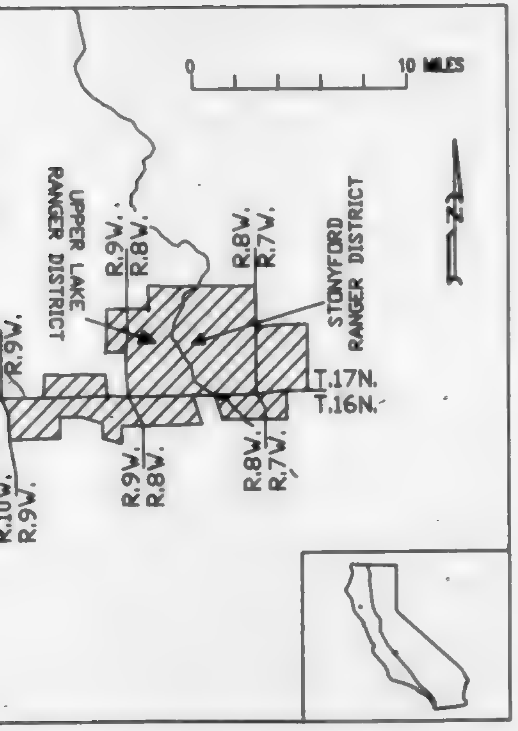
10 MILES
UPPER LAKE RANGER DISTRICT
R.9W.
R.8W.
R.8W.
R.7W.
STONYFORD RANGER DISTRICT
R.9W.
T.17N.
T.16N.
R.10W.
R.9W.
R.9W.
R.8W.
R.8W.
R.7W.

Description of HEA–1 taken solely from Bureau of Land Management Map; Healdsburg 1972, California.

Lake County

T. 11 N., R. 7 W., Secs. 6, 7, and 18, of the Mt. Diablo Meridian.

T. 11 N., R. 8 W., Secs. 1, 2, 3, 11, 12, 13, 14, and 15, of the Mt. Diablo Meridian.

T. 12 N., R. 8 W., Sec. 35, of the Mt. Diablo Meridian.

Excluding any private lands within the above area.

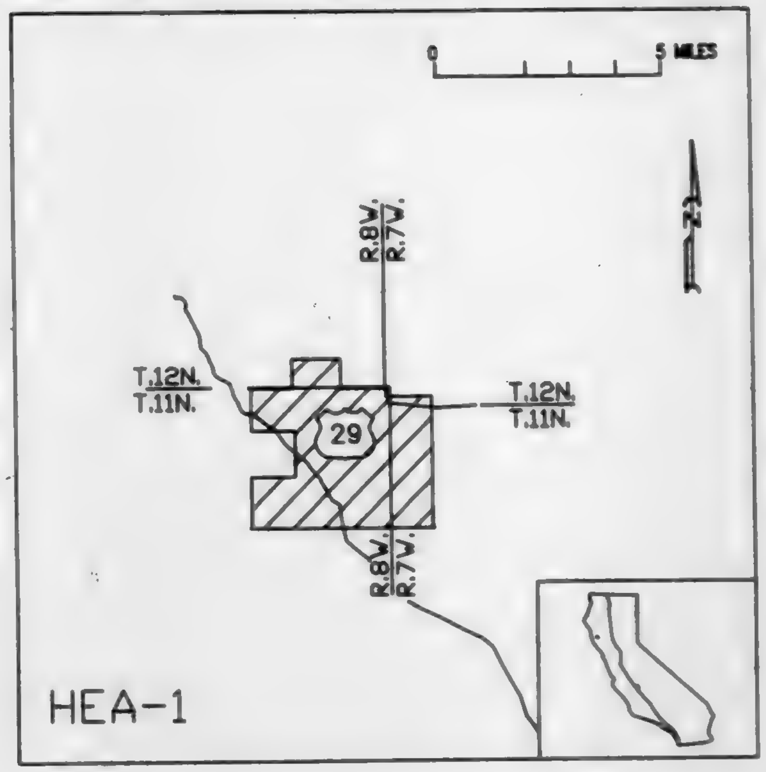
0
5 MILES
R.8W.
R.7W.
T.12N.
T.11N.
29
T.12N.
T.11N.
R.8W.
R.7W.
HEA-1

Description of TRI–2 taken solely from Bureau of Land Management Map; Hayfork 1982, California.

Trinity County

T. 3 N., R. 8 E., Secs. 31, 32, and 33, of the Humboldt Meridian. T. 2 N., R. 8 E., Secs. 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 28, 29, and 30, of the Humboldt Meridian.

T. 31 N., R. 12 W., Secs. 17, 18, 19, and 20, of the Mt. Diablo Meridian.

Excluding any private lands within the above area.

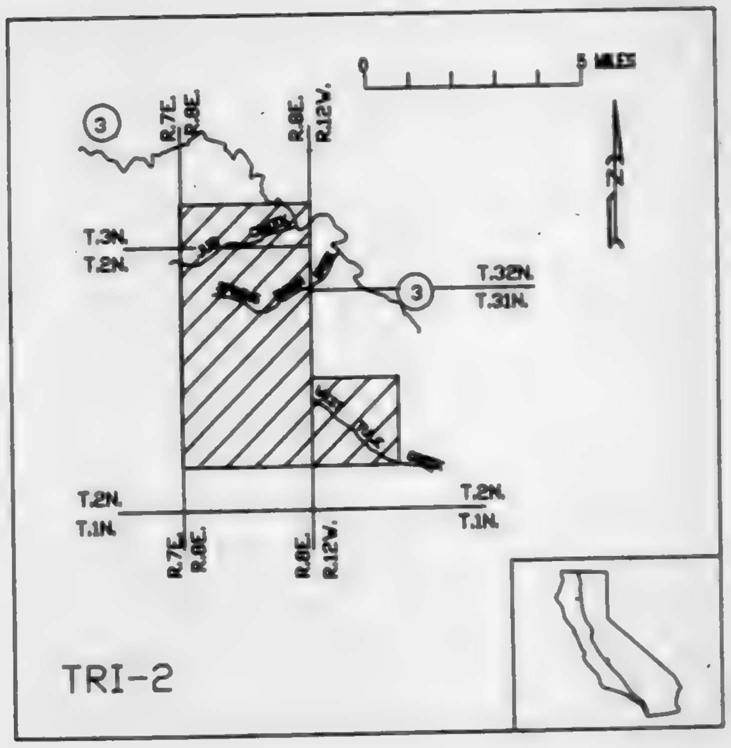
0
5 MILES
3
R.7E.
R.8E.
R.8E.
R.12W.
T.3N.
T.2N.
3
T.32N.
T.31N.
T.2N.
T.1N.
T.2N.
T.1N.
R.7E.
R.8E.
R.8E.
R.12W.
TRI-2

Description of TRI-3 taken solely from Bureau of Land Management Maps; Garberville 1979, California.

Trinity and Mendocino Counties

T. 1 N., R. 6 E., Secs. 12, 13, 14, 23, 24, 25, and, 36, of the Humboldt Meridian.

T. 1 N., R. 7 E., Secs. 7, 8, 15, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, and 32, of the Humboldt Meridian.

T. 1 S., R. 6 E., Sec. 1, of the Humboldt Meridian.

T. 1 S., R. 7 E., Secs. 4, 5, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 35, and 36, of the Humboldt Meridian.

T. 1 S., R. 8 E., Secs. 19, 20, 28, 29, 30, 31, 32, and 33, of the Humboldt Meridian.

T. 2 S., R. 7 E., Sec. 1, of the Humboldt Meridian.

T. 2 S., R. 8 E., Secs. 4, 5, 6, 7, 8, 9, 16, 17, and 21, of the Humboldt Meridian.

T. 29 N., R. 12 W., Secs. 30, 31, 34 and 35, of the Mt. Diablo Meridian.

T. 28 N., R. 12 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 33, 34, and 35, of the Mt. Diablo Meridian.

T. 28 N., R. 11 W., Secs. 7, 18, 19, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 28 N., R. 10 W., Sec. 31, of the Mt. Diablo Meridian.

T. 27 N., R. 12 W., Secs. 1, and 2, of the Mt. Diablo Meridian.

T. 27 N., R. 11 W., Secs. 1, 2, 3, 4, 5, and 6, of the Mt. Diablo Meridian.

T. 27 N., R. 10 W., Secs. 6, 7, 8, 13, 14, 15, 22, 23, 24, 25, 26, 27, 31, 32, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 27 N., R. 9 W., Secs. 19, 20, 21, 28 29, 30, 31, 32, and 33, of the Mt. Diablo Meridian.

T. 26 N., R. 12 W., Secs. 15, 21, 22, 23, 25, 26, 27, 28, 34, and 35, of the Mt. Diablo Meridian.

T. 26 N., R. 11 W., Secs. 5, 7, 20, 29, 30, 31, and 32, of the Mt. Diablo Meridian.

T. 26 N., R. 10 W., Secs. 1, 2, 3, 6, 10, 11, 12, 13, 14, 15, 22, 23, 23, 24, 26, 27, 35, and 36, of the Mt. Diablo Meridian.

T. 26 N., R. 9 W., Secs. 3, 4, 5, 6, 7, 8, 9, 10, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 25 N., R. 12 W., Secs. 1, and 12, of the Mt. Diablo Meridian.

T. 25 N., R. 11 W., Secs. 6, 7, 8, 9, 10, 13, 14, 15, 16, 21, 23, 24, 25, and 36, of the Mt. Diablo Meridian.

T. 25 N., R. 10 W., Secs. 2, 5, 6, 7, 8, 9, 17, 18, 19, 20, 21, 29, 30, 31, and 32, of the Mt. Diablo Meridian.

T. 25 N., R. 9 W., Secs. 4, 5, and 6, of the Mt. Diablo Meridian.

Excluding from the above areas any land within the Yolla Bolly Wilderness, and Middle Eel Wilderness, and any private lands.

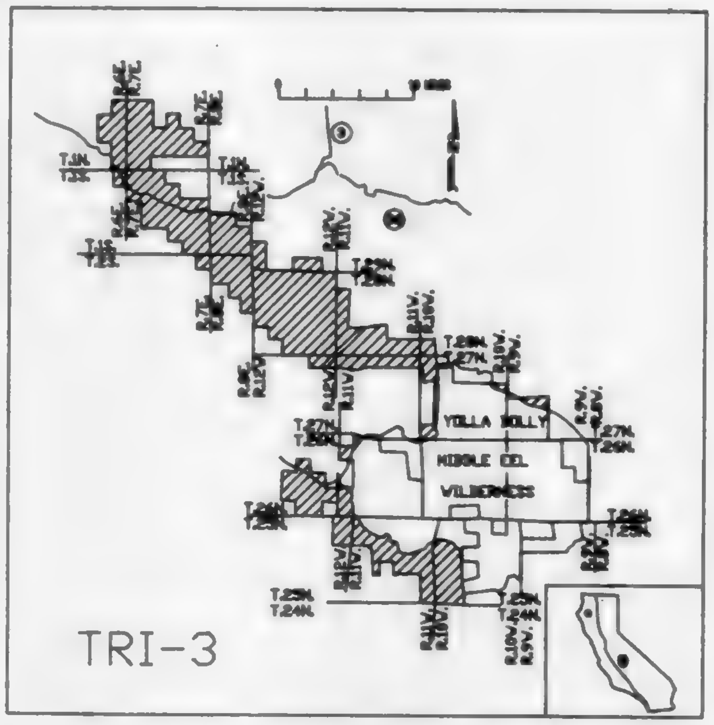

1 W., Secs. 6, 7, 8, 9, 10,
1, 23, 24, 25, and 36, of the
ridian.
0 W., Secs. 2, 5, 6, 7, 8, 9,
1, 29, 30, 31, and 32, of the
ridian.

T. 25 N., R. 9 W., Secs. 4, 5, and 6, of the Mt. Diablo Meridian.

Excluding from the above areas any land within the Yolla Bolly Wilderness, and Middle Eel Wilderness, and any private lands.

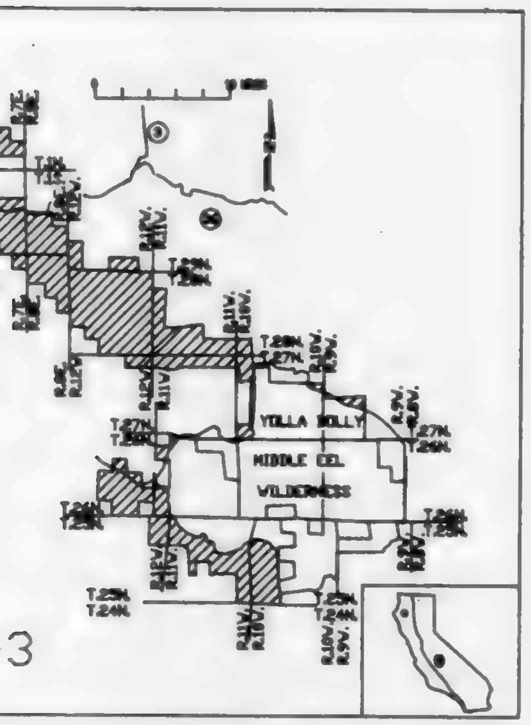

Description of SHA–1 taken solely from Bureau of Land Management Map; Mount Shasta 1979, and McArthur 1978, California.

Siskiyou and Shasta Counties

T. 41 N. R. 1 W., Secs. 19, 20, 21, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 41 N., R. 2 E., Sec. 31, of the Mt. Diablo Meridian.

T. 40 N., R. 3 W., Secs. 12, 13, 14, and 24, of the Mt. Diablo Meridian.

T. 40 N., R. 2 W., Secs. 8, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 32, 33, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 40 N., R. 1 W., Secs. 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 40 N., R. 1 E., Secs. 1, 2, 4, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 29, 30, 31, 32, and 36, of the Mt. Diablo Meridian.T. 40 N., R. 2 E., Secs. 6, 7, 18, 19, 30, and 31, of the Mt. Diablo Meridian.

T. 39 N., R. 2 W., Secs. 1, and 2, north of Highway 89, of the Mt. Diablo Meridian.

T. 39 N., R 1 W., that part of Sections 3, 4, 5, and 6, north of Highway 89; Secs. 1, 2, 11, 12, and 14 of the Mt. Diablo Meridian.

T. 39 N., R. 1 E., Secs. 1, 5, 6, 8, 9, 12, 13, 14, 16, 23, 24, 25, 26, 26, 30, 31, 32, 33, 34, and 35, of the Mt. Diablo Meridian.

T. 39 N., R. 2 E., Secs. 6, 7, 17, 18, 19, and 30, of the Mt. Diablo Meridian.

Excluding any private lands within the above area.

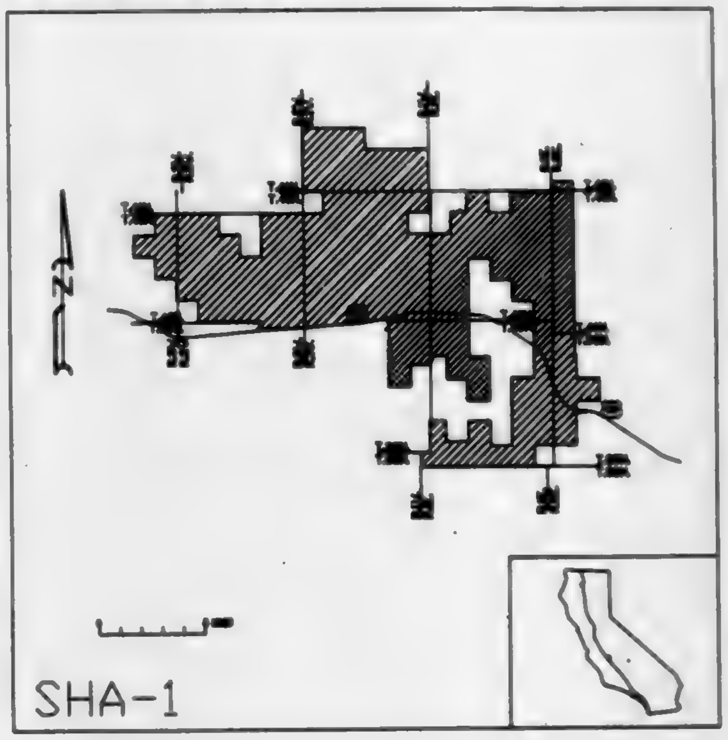

Description of ST–1 taken solely from Bureau of Land Management Map; Mount Shasta 1979, California.

Siskiyou and Trinity Counties

T. 42 N., R. 6 W., Secs. 29, 30, 31, 32, and 33, of the Mt. Diablo Meridian.

T. 41 N., R. 7 W., Secs. 1, 2, and 12, of the Mt. Diablo Meridian.

T. 41 N., R. 6 W., Secs. 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, and 25, of the Mt. Diablo Meridian.

T. 41 N., R. 5 W., Secs. 18, 19, 20, and 30, of the Mt. Diablo Meridian.

Excluding any private lands within the above area.

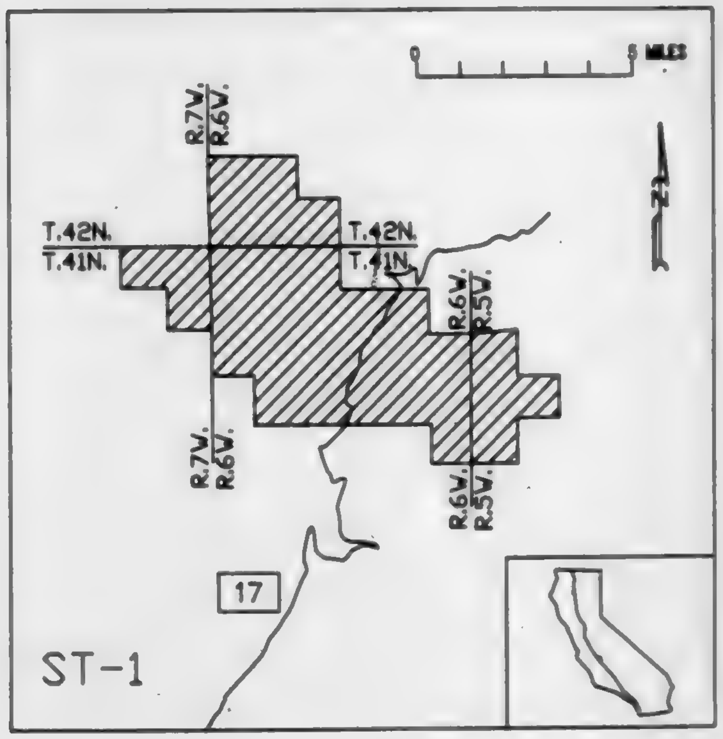

Description of COV–1 taken solely from Bureau of Land Management Maps; Covelo 1981, and Garberville 1979, California.

Mendocino, Humboldt, and Trinity Counties

T. 21 N., R. 15 W., Secs. 5, 6, 7, 8, 17, and 18, of the Mt. Diablo Meridian.

T. 21 N., R. 16 W., Secs. 1, 2, 11, 12, and 13, of the Mt. Diablo Meridian.

T. 22 N., R. 15 W., Secs. 19, 30, and 31, of the Mt. Diablo Meridian.

T. 22 N., R. 16 W., Secs. 3, 4, 5, 6, 7, 8, 9, 10, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 34, and 35, of the Mt. Diablo Meridian.

T. 22 N., R. 17 W., Secs. 1, 12, 13, and 24, of the Mt. Diablo Meridian.

T. 23 N., R. 16 W., Secs. 3, 4, 5, 6, 7, 8, 9, 17, 18, 19, 28, 29, 30, 31, 32, 33, and 34, of the Mt. Diablo Meridian.

T. 23 N., R. 17 W., Secs. 1, 2, and 12, of the Mt. Diablo Meridian.

T. 24 N., R. 15 W., Secs. 3, 4, 5, 6, 9, 10, 11, and 12, of the Mt. Diablo Meridian.

T. 24 N., R. 16 W., Secs. 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, and 34, of the Mt. Diablo Meridian.

T. 24 N., R. 17 W., Secs. 1, 2, 3, 4, 10, 11, 12, 13, 14, 23, 24, 25, 26, 35, and 36, of the Mt. Diablo Meridian.

T. 5 S., R. 4 E., Secs. 25, 26, 27, 32, 33, 34, 35, and 36, of the Humboldt Meridian.

T. 5 S., R. 5 E., Secs. 6, 7, 8, 14, 15, 17, 18, 19, 20, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, and 34, of the Humboldt Meridian.

T. 5 S., R. 6 E., Secs. 30, and 31, of the Humboldt Meridian.

Excluding any private lands within the above area.

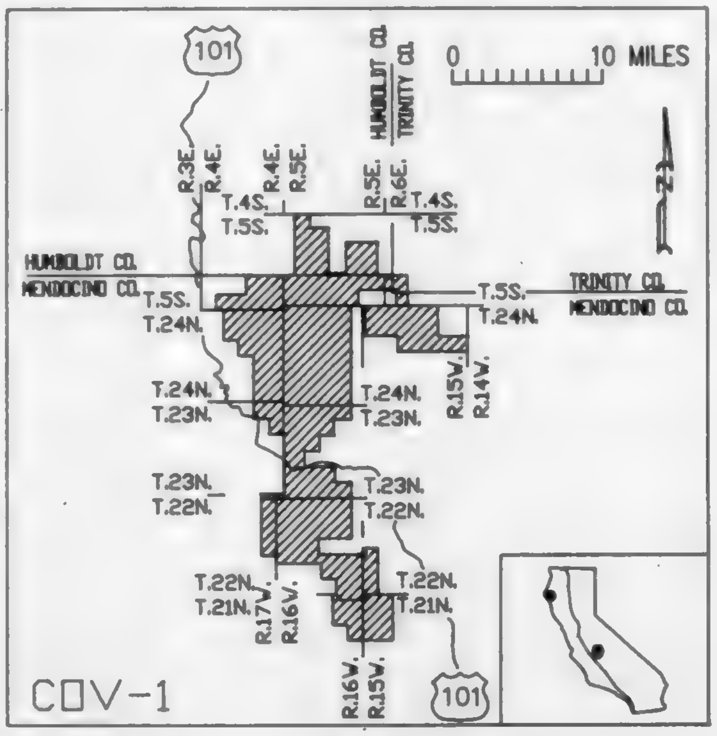
101
R.3E.
R.4E.
R.4E.
R.5E.
HUMBOLDT CO.
TRINITY CO.
R.5E.
R.6E.
0
10 MILES
T.4S.
T.5S.
T.4S.
T.5S.
HUMBOLDT CO.
MENDOCINO CO.
T.5S.
T.24N.
T.5S.
T.24N.
TRINITY CO.
MENDOCINO CO.
T.24N.
T.23N.
T.24N.
T.23N.
R.15W.
R.14W.
T.23N.
T.22N.
T.23N.
T.22N.
T.22N.
T.21N.
R.17W.
R.16W.
T.22N.
T.21N.
R.16W.
R.15W.
101
COV-1

Description of COV–2 taken solely from Bureau of Land Management Map; Covelo 1981, California.

Mendocino County

T. 21 N., R. 14 W., Secs. 4, 5, and 6, of the Mt. Diablo Meridian.

T. 22 N., R. 14 W., Secs. 4, 5, 6, 7, 8, 9, 17, 18, 19, 20, 21, 22, 27, 28, 29, 32, 33, and 34, of the Mt. Diablo Meridian.

T. 22 N., R. 15 W., Secs. 1, 12, 13, and 24, of the Mt. Diablo Meridian.

Excluding any private lands within the above area.

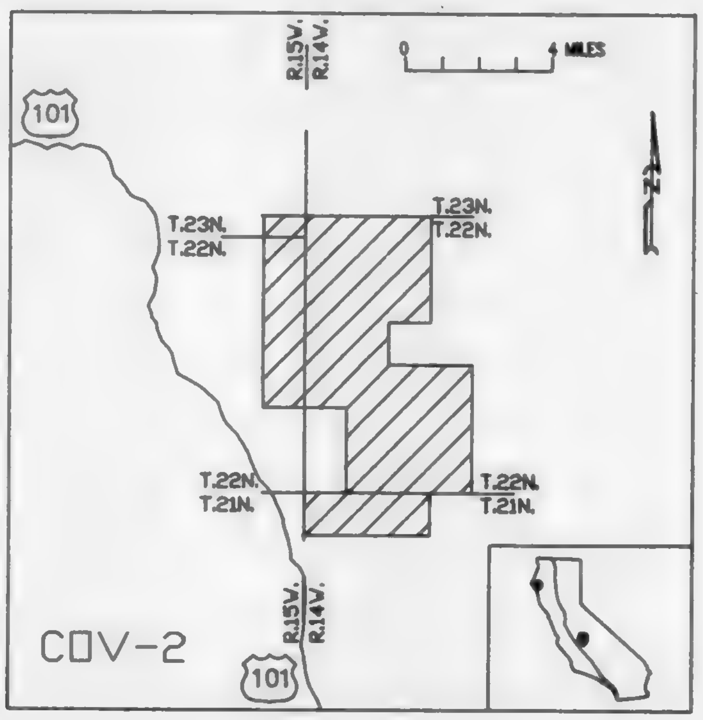
R.15W.
R.14W.
0
4 MILES
101
T.23N.
T.22N.
T.23N.
T.22N.
T.22N.
T.21N.
T.22N.
T.21N.
R.15W.
R.14W.
101
COV-2

E., Secs. 6, 7, 8, 14, 15, 17,
3, 25, 26, 27, 28, 29, 30, 31,
of the Humboldt

T. 5 S., R. 6 E., Secs. 30, and 31, of the Humboldt Meridian.

Excluding any private lands within the above area.

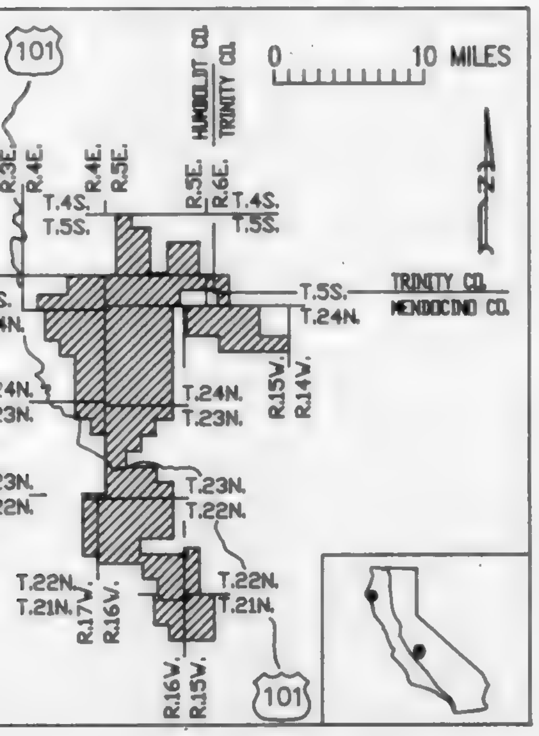
101
HUMBOLDT CO.
TRINITY CO.
0
10 MILES
R.3E.
R.4E.
R.4E.
R.5E.
R.5E.
R.6E.
T.4S.
T.5S.
T.4S.
T.5S.
T.5S.
TRINITY CO.
MENDOCINO CO.
T.24N.
R.15W.
R.14W.
T.24N.
T.23N.
T.23N.
T.22N.
T.22N.
T.21N.
R.17W.
R.16W.
T.22N.
T.21N.
R.16W.
R.15W.
101

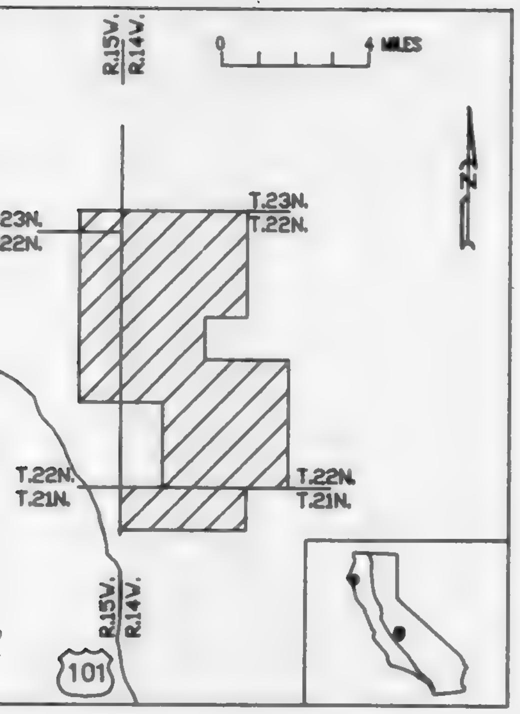
R.15W.
R.14W.
0
4 MILES
T.23N.
T.22N.
T.23N.
T.22N.
T.22N.
T.21N.
T.22N.
T.21N.
R.15W.
R.14W.
101

Description of COV–3 taken solely from Bureau of Land Management Map; Covelo 1981, and Ukiah 1981, California.

Mendocino County

T. 20 N., R. 12 W., Secs. 18, 19, 30, and 31, of the Mt. Diablo Meridian.

T. 20 N., R. 13 W., Secs. 1, 2, 4, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, and 36, of the Mt. Diablo Meridian.

T. 20 N., R. 14 W., Secs. 24, and 25, of the Mt. Diablo Meridian.

T. 19 N., R. 12 W., Sec. 6, of the Mt. Diablo Meridian.

T. 19 N., R. 13 W., Secs. 1, 4, 5, 6, 9, 10, 15, 16, and 22, of the Mt. Diablo Meridian.

Excluding any private lands within the above area.

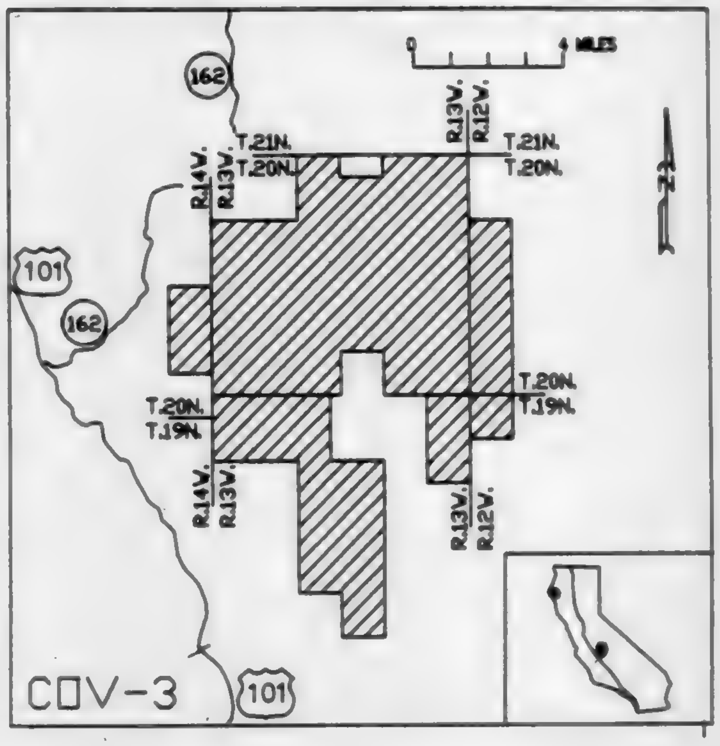
162
0
4 MILES
R.13W.
R.12W.
T.21N.
T.20N.
T.21N.
T.20N.
R.14W.
R.13W.
101
162
T.20N.
T.19N.
T.20N.
T.19N.
R.14W.
R.13W.
R.13W.
R.12W.
COV-3
101

Oregon. Areas of land and water as follows:

Description of C–5–O taken solely from Bureau of Land Management Map; Grants Pass 1978, Oregon and California, and Forest Vistor Map; Siskiyou National Forest 1984.

Josephine County

T. 40 S., R. 6 W., Secs. 11, 12, 13, 14, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 40 S., R. 5 W., Secs. 6, and 7, of the Willamette Meridian.

T. 41 S., R. 6 W., Secs. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 16, and 17, of the Willamette Meridian.

T. 41 S., R. 5 W., Secs. 7, and 8, of the Willamette Meridian.

Excluding from the above areas any land within the Red Butte Wilderness, and any private lands.

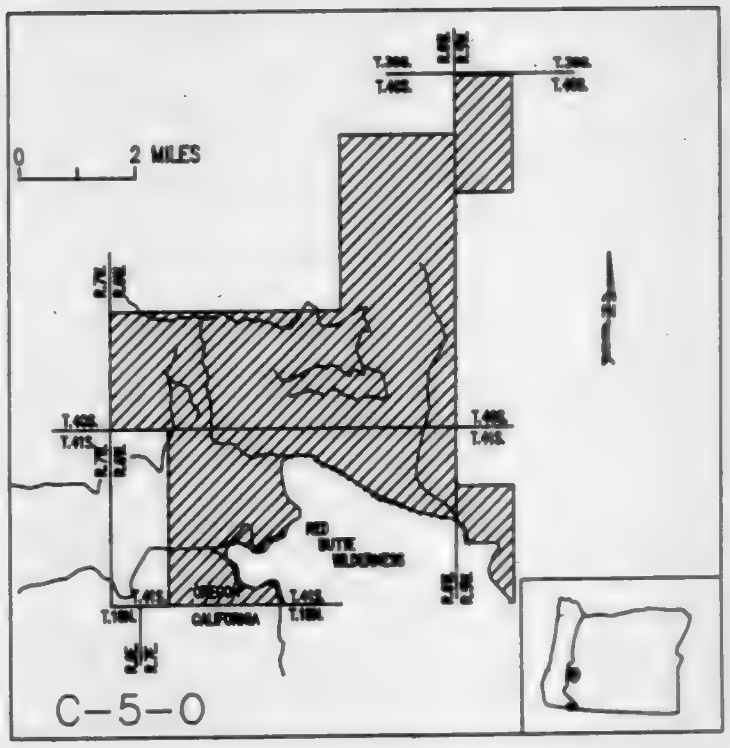
T.39S.
T.40S.
T.39S.
T.40S.
0
2 MILES
T.40S.
T.41S.
T.40S.
T.41S.
RED BUTTE WILDERNESS
T.41S.
OREGON
T.41S.
T.18N.
CALIFORNIA
T.18N.
C-5-O

Description of CG–1 taken solely from Bureau of LandManagement Maps; Eugene 1980, and Cottage Grove 1979, Oregon.

Douglas and Lane County

T. 17 S., R. 8 W., Secs. 25, 35, and 36, of the Willamette Meridian.

T. 18 S., R. 8 W., Secs. 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36, of the Willamette Meridian.

T. 18 S., R. 7 W., Secs. 7, 17, 18, 19, 20, 21, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 18 S., R. 6 W., Sec. 31, of the Willamette Meridian.

T. 19 S., R. 8 W., Secs. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 33, 34, 35, and 36, of the Willamette Meridian.

T. 19 S., R. 7 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 20 S., R. 7 W., Secs. 1, 12, and 13, of the Willamette Meridian.

Excluding any private lands within the above area.

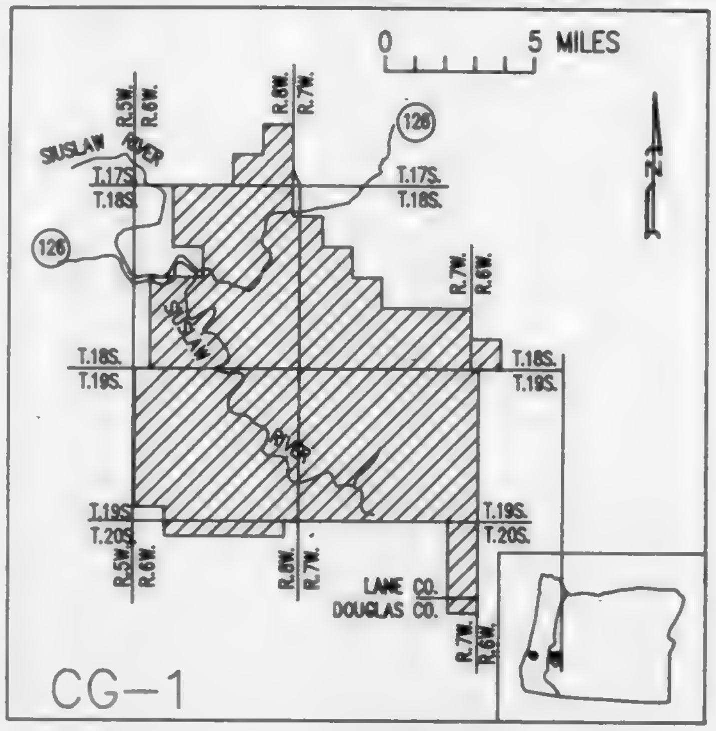
0
5 MILES
R.5W.
R.6W.
R.6W.
R.7W.
126
SIUSLAW RIVER
T.17S.
T.18S.
T.17S.
T.18S.
126
R.7W.
R.6W.
T.18S.
T.19S.
T.18S.
T.19S.
T.19S.
T.20S.
T.19S.
T.20S.
R.5W.
R.6W.
R.6W.
R.7W.
LANE CO.
DOUGLAS CO.
R.7W.
R.6W.
CG—1

Description of CG–2 taken solely from Bureau of Land Management Map; Cottage Grove 1979, and Surface–Mineral Management Map; Roseburg 1979, Oregon.

Douglas County

T. 23 S., R. 4 W., Secs. 23, 27, and 35, of the Willamette Meridian.

T. 24 S., R. 3 W., Secs. 7, 19, and 31, of the Willamette Meridian.

T. 24 S., R. 4 W., Secs. 1, 2, 3, 9, 10, 11, 12, 13, 15, and 25, of the Willamette Meridian.

Excluding any private lands within the above area.

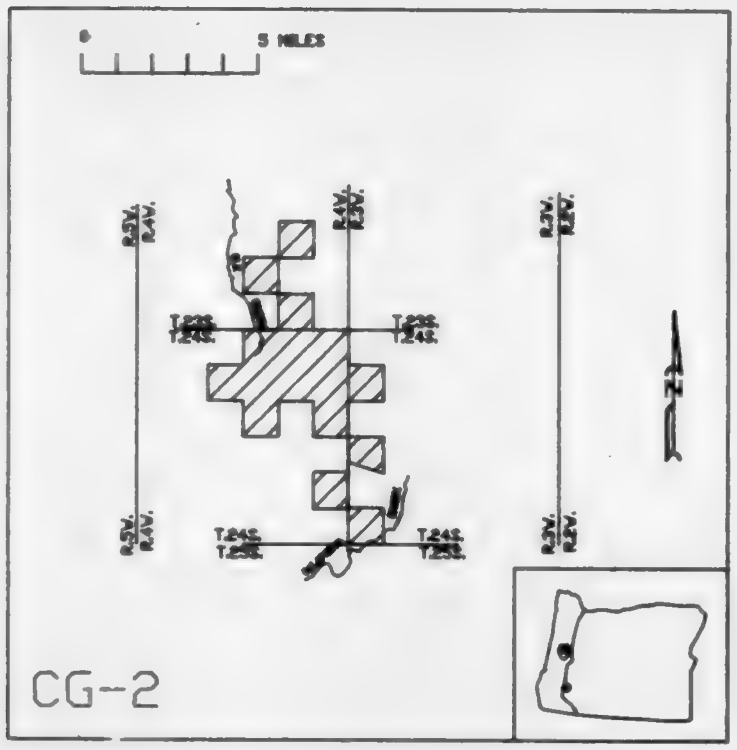
0
5 MILES
R.5W.
R.4W.
R.4W.
R.3W.
R.3W.
R.2W.
T.23S.
T.24S.
T.23S.
T.24S.
R.5W.
R.4W.
T.24S.
T.25S.
T.24S.
T.25S.
R.3W.
R.2W.
CG–2

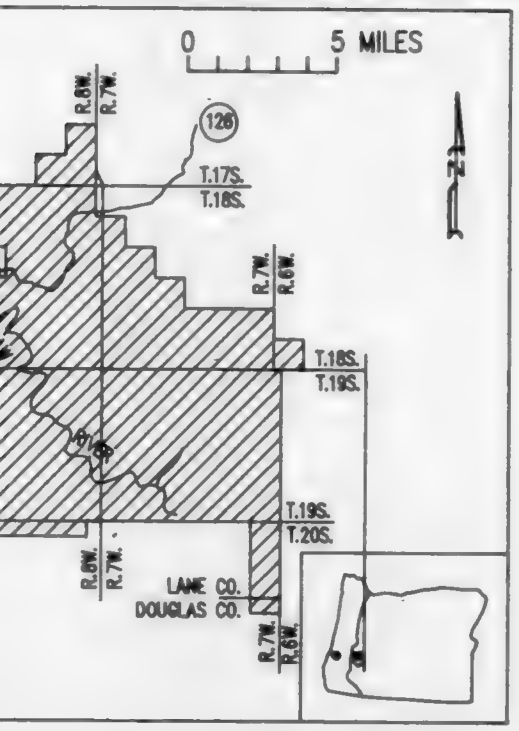
0 5 MILES
R.6W. R.7W.
126
T.17S. T.18S.
R.7W. R.6W.
T.18S. T.19S.
T.19S. T.20S.
R.6W. R.7W.
LANE CO.
DOUGLAS CO.
R.7W. R.6W.

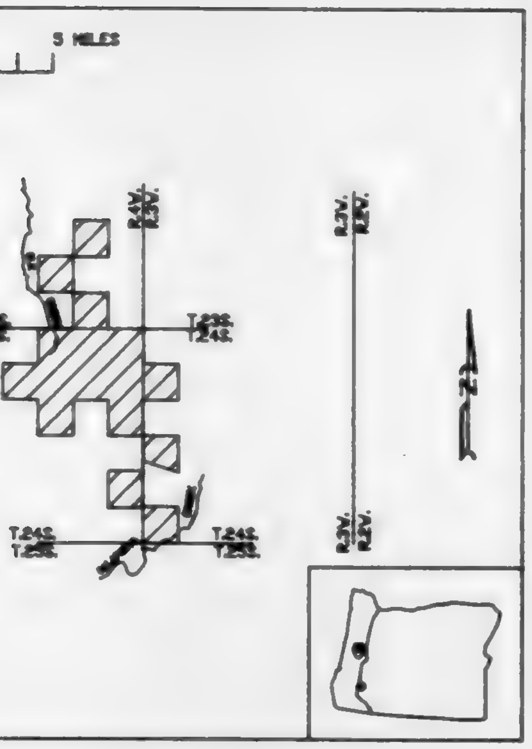

Description of CG–3 taken solely from Bureau of Land Management Map; Cottage Grove 1979, Oregon.

Douglas County

T. 23 S., R. 6 W., Secs. 11, 13, 14, 15, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 23. S., R. 5 W., Sec. 19, of the Willamette Meridian.

T. 24 S., R. 6 W., Secs. 3, 4, and 5, of the Willamette Meridian.

Excluding any private lands within the above area.

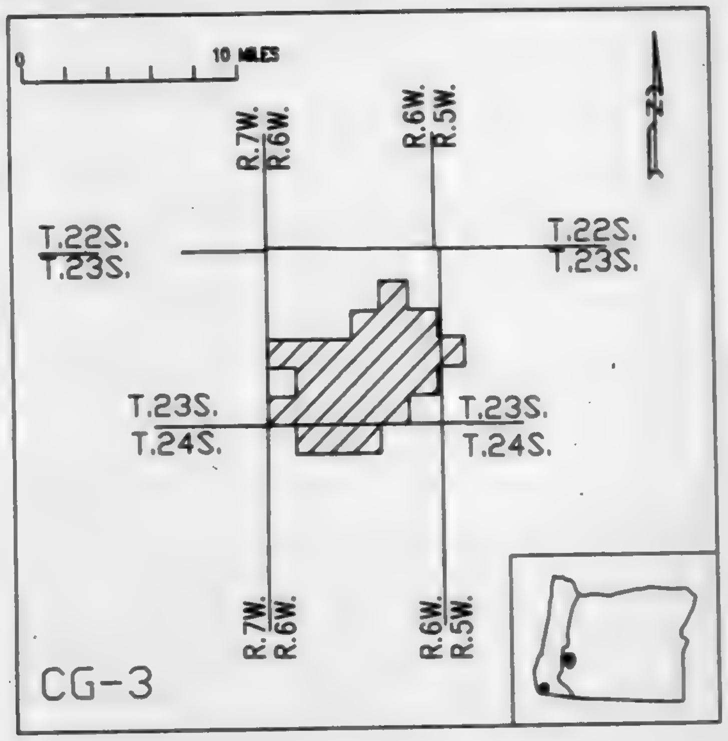
0 10 MILES
R.7W. R.6W.
R.6W. R.5W.
T.22S. T.23S.
T.22S. T.23S.
T.23S. T.24S.
T.23S. T.24S.
R.7W. R.6W.
R.6W. R.5W.
CG-3

Description of CG–4 taken solely from Bureau of Land Management Map; Cottage Grove 1979, Oregon.

Douglas County

T. 23 S., R. 7 W., Sec. 1, of the Willamette Meridian.

T. 22 S., R. 6 W., Secs. 17, 19, 20, 21, 27, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 23 S., R. 6 W., Secs. 5, 6, and 7, of the Willamette Meridian.

Excluding any private lands within the above area.

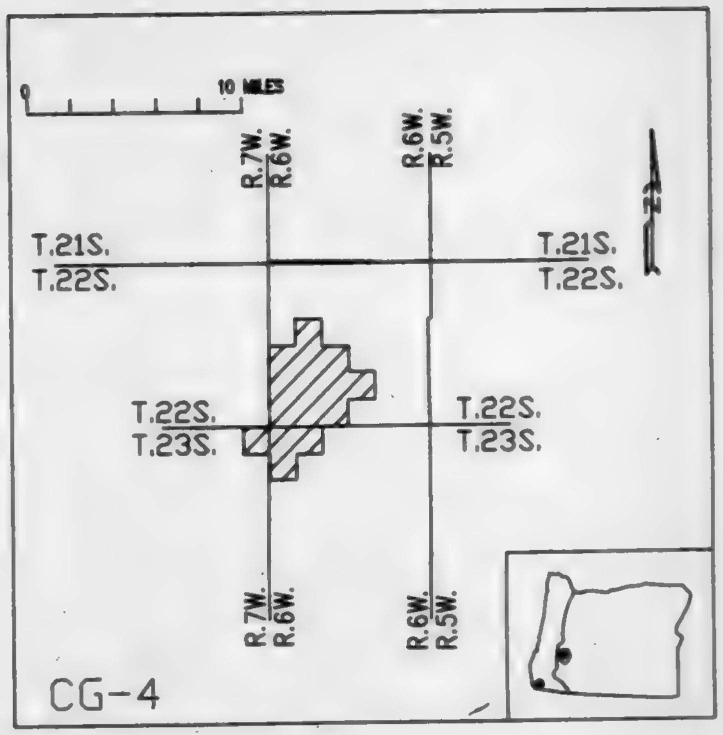
0 10 MILES
R.7W. R.6W.
R.6W. R.5W.
T.21S. T.22S.
T.21S. T.22S.
T.22S. T.23S.
T.22S. T.23S.
R.7W. R.6W.
R.6W. R.5W.
CG-4

Description of CG-5 taken solely from Bureau of Land Management Map; Cottage Grove 1979, Oregon.

Douglas County

T. 21 S., R. 8 W., Secs. 1, 12, 13, 24, and 25, of the Willamette Meridian.

T. 21 S., R. 7 W., Secs. 16, 17, 18, 19, 20, 21, 29, 30, and 31, of the Willamette Meridian.

T. 22 S., R. 8 W., Sec. 1, of the Willamette Meridian.

T. 22 S., R. 7 W., Secs. 5, and 6, of the Willamette Meridian.

Excluding any private lands within the above area.

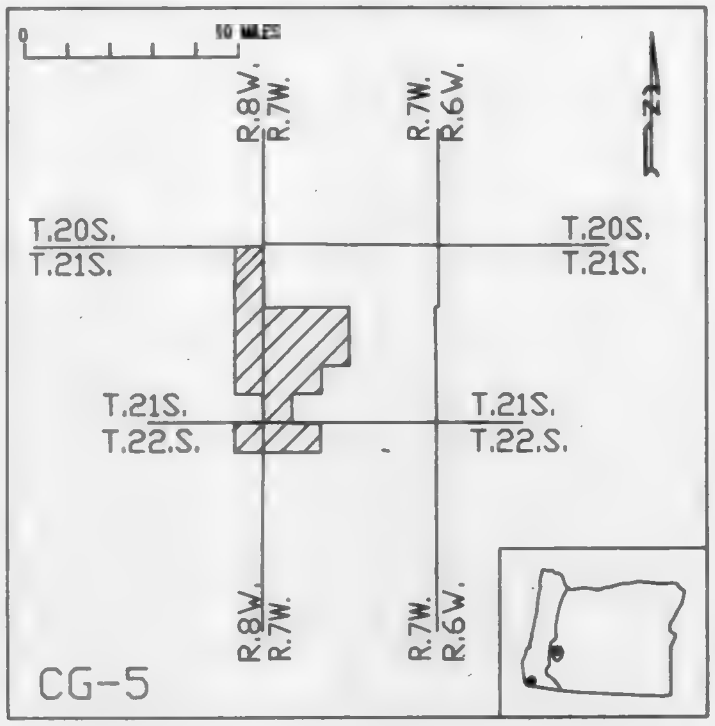
0
10 MILES
R.8W.
R.7W.
R.7W.
R.6W.
T.20S.
T.21S.
T.20S.
T.21S.
T.21S.
T.22.S.
T.21S.
T.22.S.
R.8W.
R.7W.
R.7W.
R.6W.
CG-5

Description of DL-1 taken solely from Bureau of Land Management Map; Diamond Lake 1978, and Roseburg 1979, Oregon.

Douglas County

T. 25 S., R. 2 W., Secs. 31, and 33, of the Willamette Meridian.

T. 26 S., R. 2 W., Secs. 4, 5, 7, 8, 9, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 29, and 30, of the Willamette Meridian.

T. 26 S., R. 3 W., Secs. 11, 13, 23, and 25, of the Willamette Meridian.

Excluding any private lands within the above area.

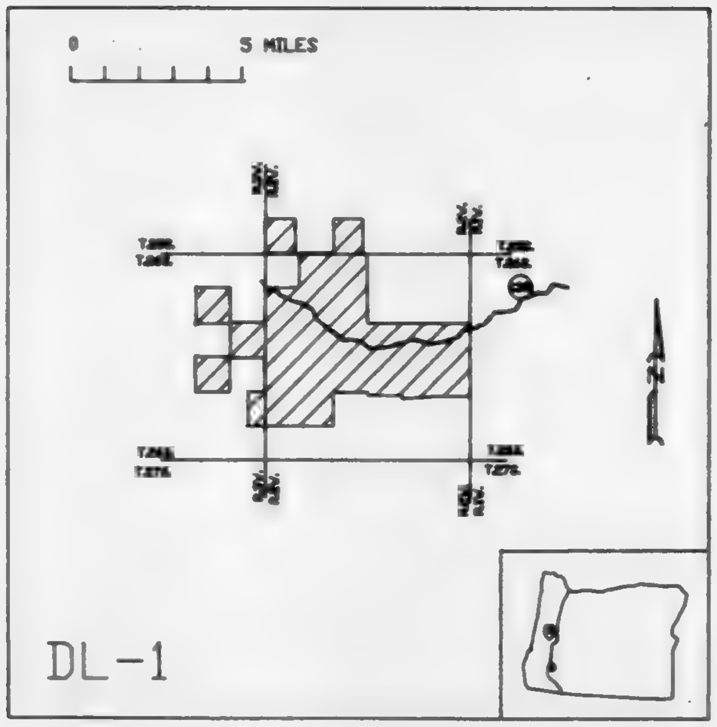
0
5 MILES
DL-1

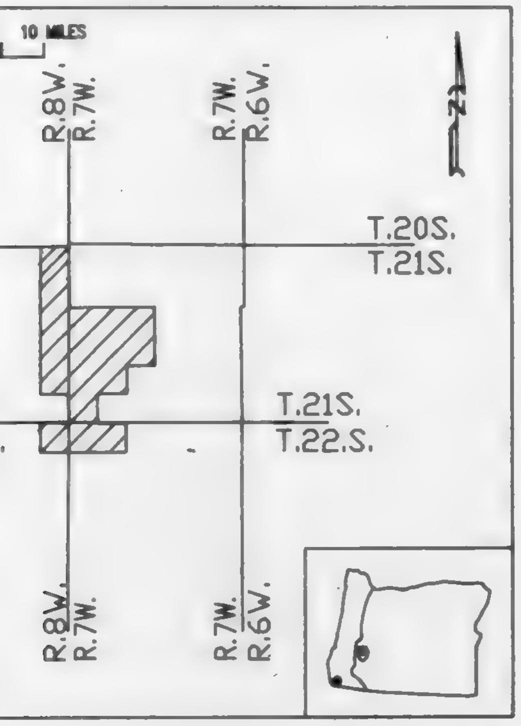
10 MILES
R.8W.
R.7W.
R.7W.
R.6W.
T.20S.
T.21S.
T.21S.
T.22.S.
R.8W.
R.7W.
R.7W.
R.6W.

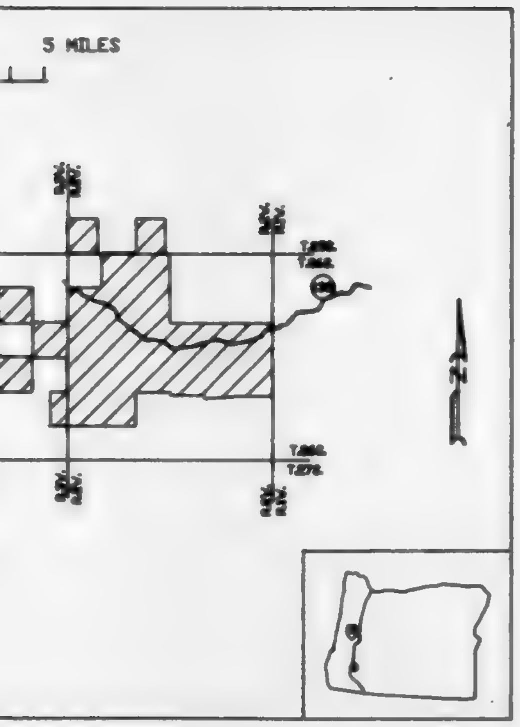

Description of CVL–1 taken solely from Bureau of Land Management Map; Canyonville 1979, Oregon.

Josephine County

T. 33, S., R. 7 W., Secs. 3, 7, 9, 10, 11, 13, 14, 15, 16, 17, 21, and 23, of the Willamette Meridian.

Excluding any private lands within the above area.

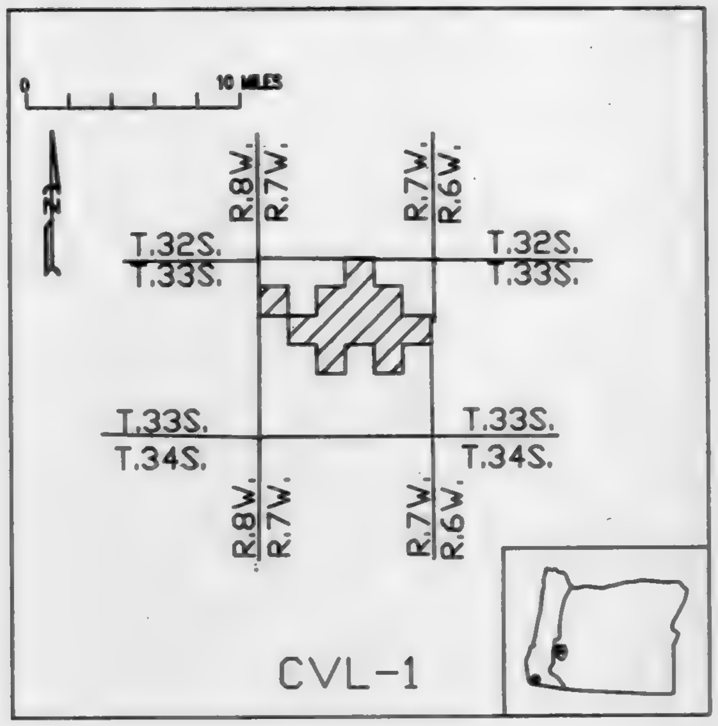
0
10 MILES
R.8W.
R.7W.
R.7W.
R.6W.
T.32S.
T.33S.
T.32S.
T.33S.
T.33S.
T.34S.
T.33S.
T.34S.
R.8W.
R.7W.
R.7W.
R.6W.
CVL-1

Description of DES–1 taken solely from Bureau of Land Management Map, LaPine 1976, Oregon.

Deschutes County

T. 19 S., R. 8 E., Secs. 31, 32, and 33, of the Willamette Meridian.

T. 20 S., R. 7 E., Secs. 13, 14, 15, 22, 23, 24, 25, 26, 27, 33, 34, 35, and 36, of the Willamette Meridian.

T. 20 S., R. 8 E., Secs. 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 30, and 31, of the Willamette Meridian.

T. 21 S., R. 7 E., Secs. 2, 3, and 4, of the Willamette Meridian.

Excluding from the above areas any land within Cultus Lake, Crane Prairie Reservoir, and any private lands.

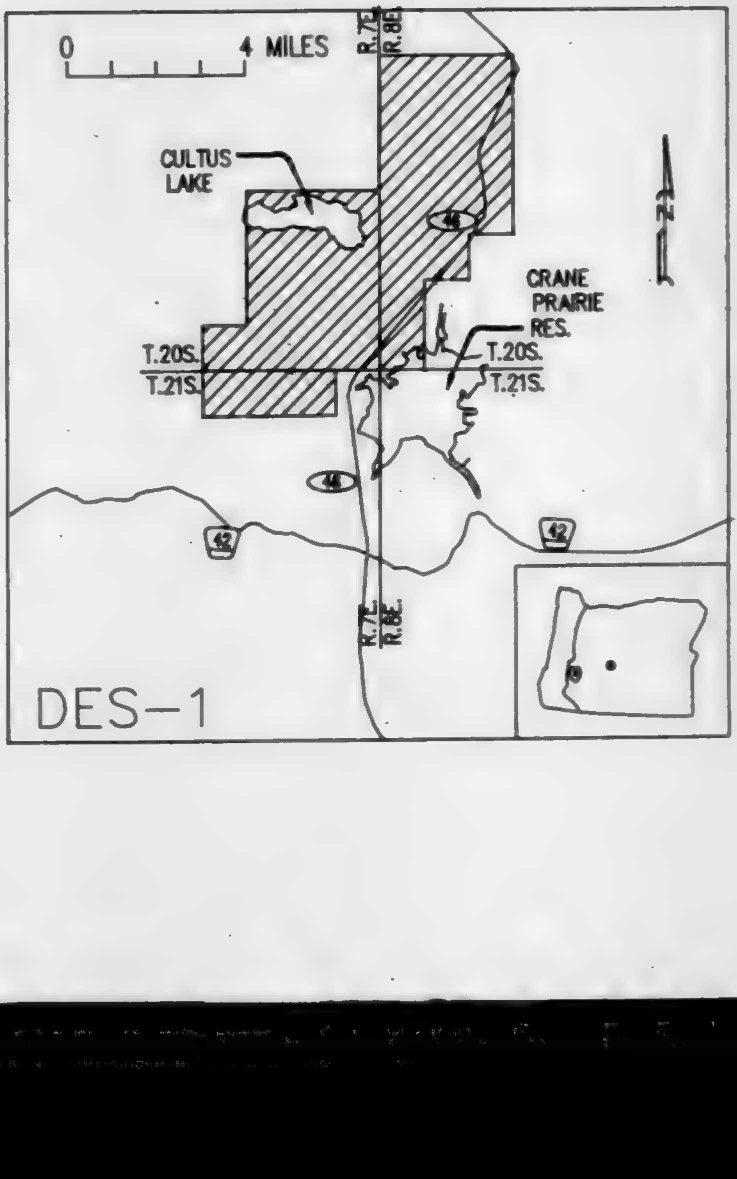
0
4 MILES
R.7E.
R.8E.
CULTUS LAKE
46
CRANE PRAIRIE RES.
T.20S.
T.21S.
T.20S.
T.21S.
46
42
42
R.7E.
R.8E.
DES-1

VOL
56
SS
1
5
6
AG
13
991
UMI

Description of DES–2 taken solely from Bureau of Land Management, LaPine 1976, Oregon.

Deschutes and Klamath Counties

T. 22 S., R. 7 E., Secs. 20, 21, 28, 29, 31, 32, 33, and 36, of the Willamette Meridian.

T. 22 S., R. 8 E., Secs. 31, and 32, of the Willamette Meridian.

T. 23 S., R. 7 E., Secs. 1, 4, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 33, 34, and 35, of the Willamette Meridian.

T. 23 S., R. 8 E., Secs. 4, 5, 6, 7, 8, 9, 16, 17, 18, 20, 21, 27, 28, 29, 32, 33, and 34, of the Willamette Meridian.

T. 24 S., R. 7 E., Secs. 3, 4, 9, 10, of the Willamette Meridian.

Excluding any private lands within the above area.

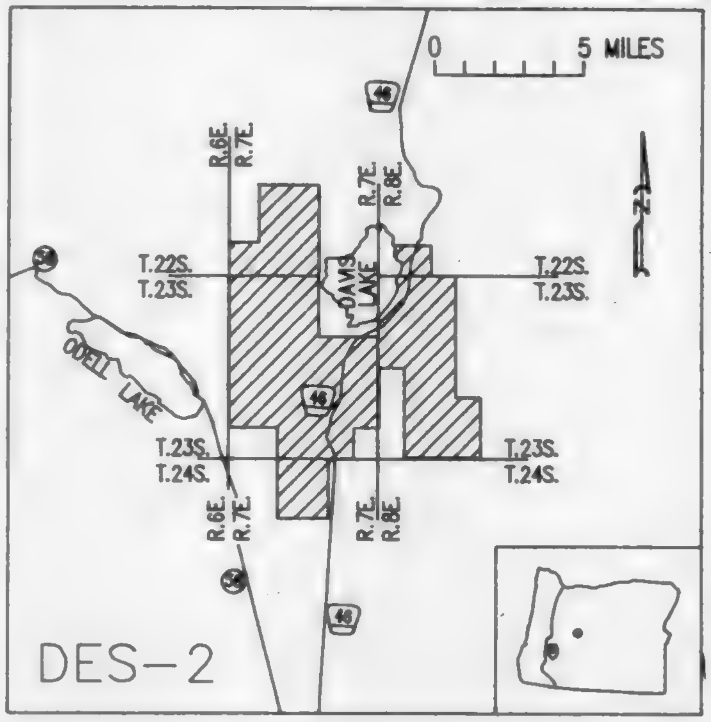

Description of GPQ–1 taken solely from Bureau of Land Management Map: Grants Pass 1978, Oregon and California.

Josephine and Jackson Counties

T. 38 S., R. 4 W., Secs. 33, 34, and 35, of the Willamette Meridian.

T. 38 S., R. 3 W., Secs. 31, and 32, of the Willamette Meridian.

T. 39 S., R. 5 W., Secs. 12, 13, 14, 21, 23, 24, 25, 26, 27, 28, 29, 33, 34, and 35, of the Willamette Meridian.

T. 39 S., R. 4 W., Secs. 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 39 S., R. 3 W., Secs. 5, 6, 7, 8, 17, 18, 19, 20, 29, and 30, of the Willamette Meridian.

T. 40 S., R. 5 W., Secs. 2, and 4, of the Willamette Meridian.

Excluding any private lands within the above area.

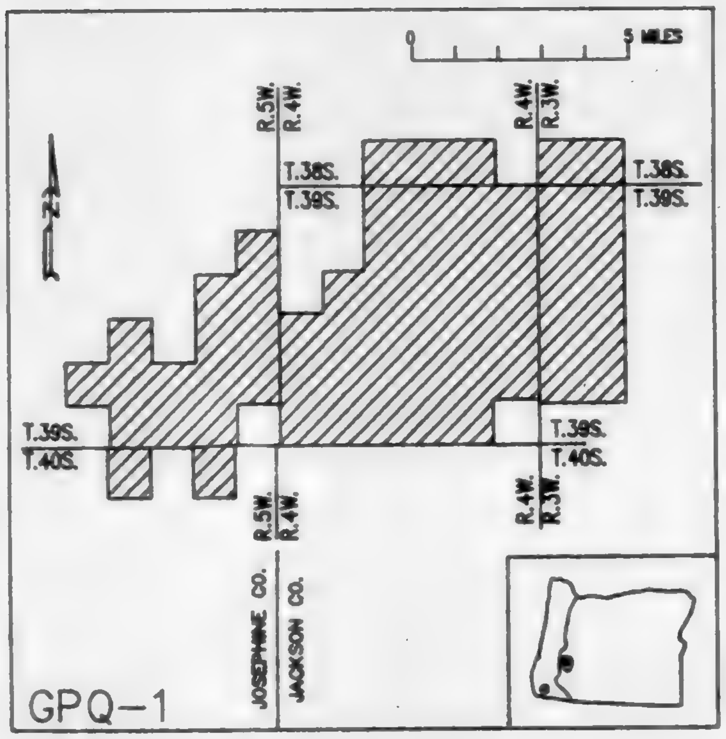

Description of MDF–1 taken sc
from Bureau of Land Managemen
Grants Pass 1978, and Medford 1
Oregon and California.
Jackson County
T. 38 S., R. 2 W., Secs. 34, and
the Willamette Meridian.
T. 39 S., R. 2 W., Secs. 1, 2, 3, 1
14, 15, 21, 22, 23, 25, 26, 27, 28, 30
33, 34, 35, and 36, of the Willame
Meridian.
T. 40 S., R. 2 W., Secs. 2, 3, 4, 5
10, of the Willamette Meridian.
T. 39 S., R. 3 W., Secs. 25, 26, 3
36, of the Willamette Meridian.
T. 40 S., R. 3 W., Secs. 1, and 1
Willamette Meridian.
Excluding any private lands w
the above area.

Description of MH–1 taken sc
Bureau of Land Management M
Hood 1979, Oregon.
Wasco County
T. 4 S., R. 10 E., Secs. 19, 20, 2
24, 25, 26, 27, 28, 29, 30, 31, 32, 3
and 36, of the Willamette Merid
T. 4 S., R. 11 E., Secs. 19, 20, 2
24, 25, 26, 27, 28, 29, 30, 31, 32, 3
and 36, of the Willamette Merid
T. 5 S., R. 10 E., Secs. 1, 2, 3, 4
8, 9, 10, 11, 12, 13, 14, 15, 16, 17,
21, 22, 23, 24, 25, and 26, of the
Willamette Meridian.
T. 5 S., R. 11 E., Secs. 5, 6, 7, 8
19, 20, and 30, of the Willamette
Meridian.
Excluding from the above are
lands within Warm Springs Ind
Reservation, and any private la

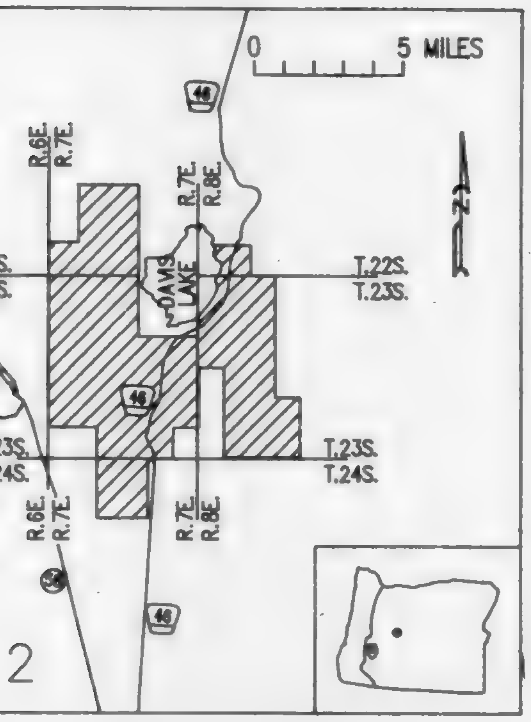
0 5 MILES
R.6E.
R.7E.
R.7E.
R.8E.
46
DAVIS LAKE
T.22S.
T.23S.
46
T.23S.
T.24S.
R.6E.
R.7E.
R.7E.
R.8E.
46
2

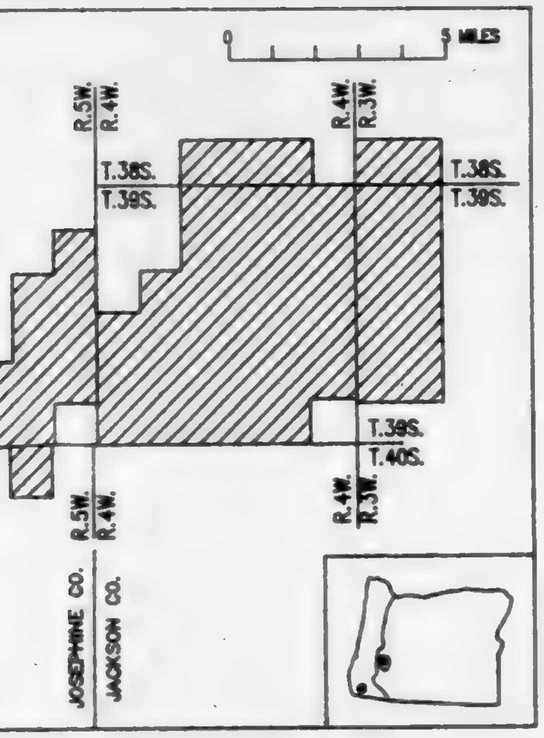
0 5 MILES
R.5W.
R.4W.
R.4W.
R.3W.
T.38S.
T.39S.
T.38S.
T.39S.
T.39S.
T.40S.
R.5W.
R.4W.
R.4W.
R.3W.
JOSEPHINE CO.
JACKSON CO.

Description of MDF–1 taken solely from Bureau of Land Management Map; Grants Pass 1978, and Medford 1978, Oregon and California.

Jackson County

T. 38 S., R. 2 W., Secs. 34, and 35, of the Willamette Meridian.

T. 39 S., R. 2 W., Secs. 1, 2, 3, 10, 11, 12, 14, 15, 21, 22, 23, 25, 26, 27, 28, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 40 S., R. 2 W., Secs. 2, 3, 4, 5, 9, and 10, of the Willamette Meridian.

T. 39 S., R. 3 W., Secs. 25, 26, 35, and 36, of the Willamette Meridian.

T. 40 S., R. 3 W., Secs. 1, and 12, of the Willamette Meridian.

Excluding any private lands within the above area.

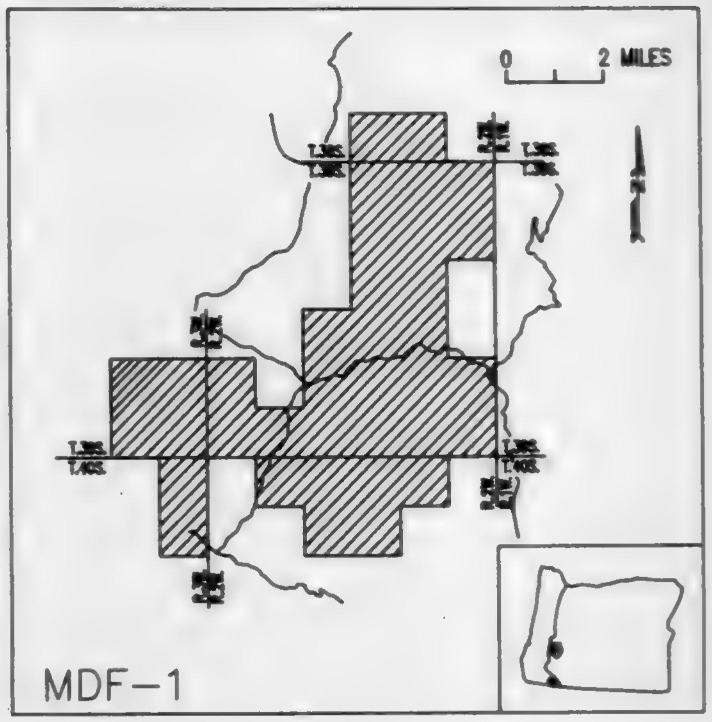
0 2 MILES
T.38S.
T.39S.
T.38S.
T.39S.
T.39S.
T.40S.
T.39S.
T.40S.
MDF–1

Description of MH–1 taken solely from Bureau of Land Management Map; Mt. Hood 1979, Oregon.

Wasco County

T. 4 S., R. 10 E., Secs. 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 4 S., R. 11 E., Secs. 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 5 S., R. 10 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, and 26, of the Willamette Meridian.

T. 5 S., R. 11 E., Secs. 5, 6, 7, 8, 17, 18, 19, 20, and 30, of the Willamette Meridian.

Excluding from the above areas any lands within Warm Springs Indian Reservation, and any private lands.

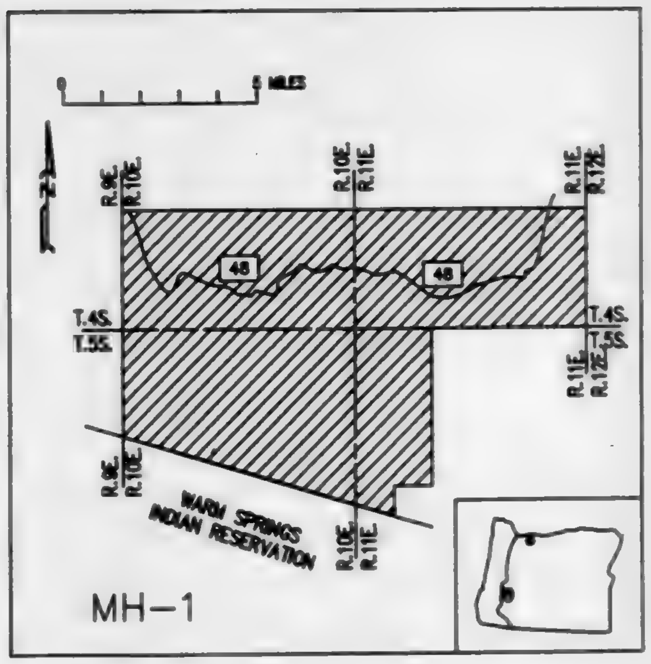
0 5 MILES
R.9E.
R.10E.
R.10E.
R.11E.
R.11E.
R.12E.
48
48
T.4S.
T.5S.
T.4S.
T.5S.
R.11E.
R.12E.
R.9E.
R.10E.
WARM SPRINGS INDIAN RESERVATION
R.10E.
R.11E.
MH–1

Description of MH–2 taken solely from Bureau of Land Management Maps; Mt. Hood 1979, and Madras 1978, Oregon.

Clackamas and Wasco Counties

T. 6 S., R. 7 E., Secs. 25, 26, 35, and 36, of the Willamette Meridian.

T. 6 S., R. 8 E., Secs. 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 6 S., R. 8 ½ E., Secs. 23, 24, 25, 26, 35, and 36, of the Willamette Meridian.

T. 7 S., R. 7 E., Secs. 1, 2, 12, 13, 24, 25, and 36, of the Willamette Meridian.

T. 7 S., R. 8 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 7 S., R. 8 ½ E., Secs. 2, 11, 14, 23, 26, and 35, of the Willamette Meridian.

T. 8 S., R. 7 E., Sec. 1, of the Willamette Meridian.

T. 8 S., R. 8 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11, of the Willamette Meridian.

T. 8 S., R. 8 ½ E., Sec. 2, of the Willamette Meridian.

Excluding from the above areas any lands within Warm Springs Indian Reservation, and any private lands.

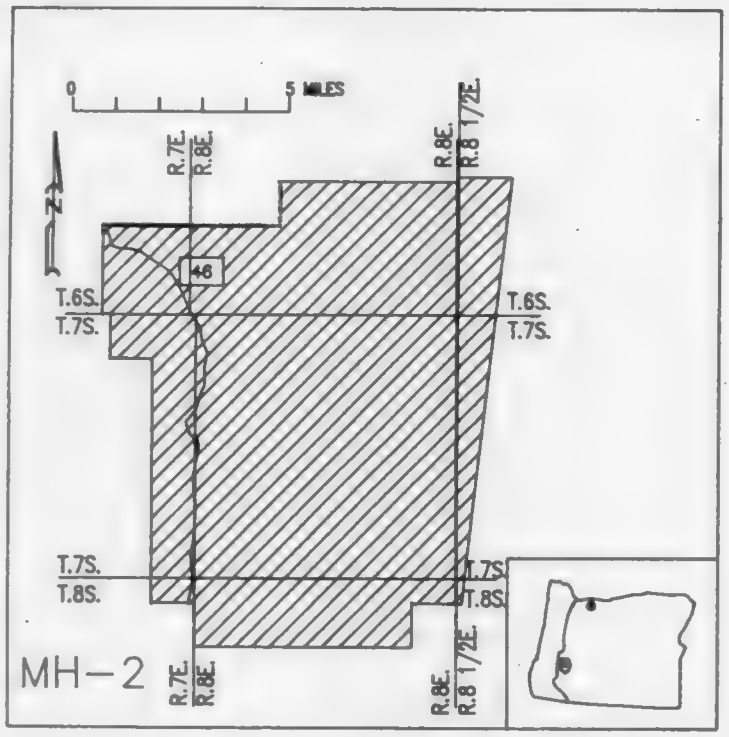

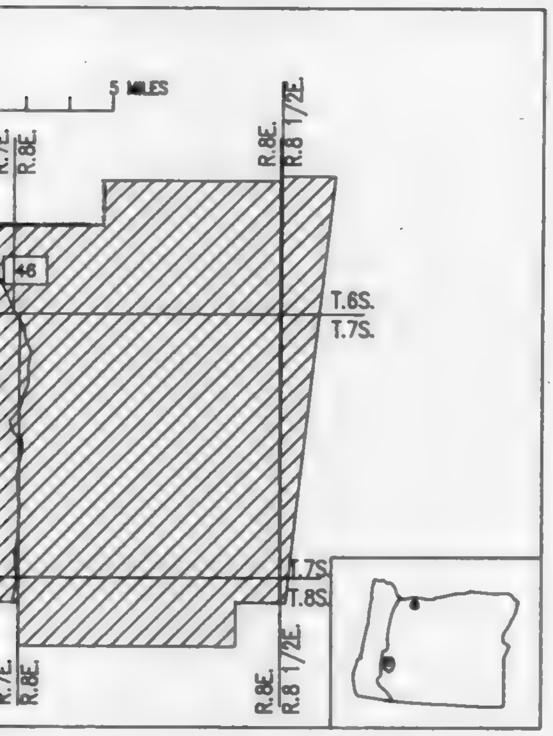
5 MILES
R.8E.
R.8 1/2E.
46
T.6S.
T.7S.
T.7S.
T.8S.
R.8E.
R.8 1/2E.

Description of O–1 taken solely from Bureau of Land Management Maps; Vancouver 1979, Hood River 1979, Oregon-Washington, and Oregon City 1974, Mt. Hood 1979, Oregon. Multnomah, Hood River, and Clackamas Counties

T. 1 N., R. 6 E., Secs. 1, 2, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 1 N., R. 7 E., Secs 1, 3, 4, 5, 6, 7, 8, 9, 17, 18, 19, 20, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 1 N., R. 8 E., Secs. 1, 2, 6, 7, 10, 11, 14, 15, 21, 22, 29, 31, and 32, of the Willamette Meridian.

T. 2 N., R. 7 E., Secs. 13, 14, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 36, of the Willamette Meridian.

T. 2 N., R. 8 E., Secs. 1, 2, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 24, 25, 30, 31, and 36, of the Willamette Meridian.

T. 2 N., R. 9 E., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 16, 17, 18, 19, and 20, of the Willamette Meridian.

T. 3 N., R. 8 E., Secs. 33, 34, 35, and 36, of the Willamette Meridian.

T. 3 N., R. 9 E., Secs. 31, 34, and 35, of the Willamette Meridian.

T. 1 S., R. 5 E., Secs. 25, 26, 35, and 36, of the Willamette Meridian.

T. 1 S., R. 6 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 1 S., R. 7 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 1 S., R. 8 E., Secs. 5, 6, 7, 8, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, and 34, of the Willamette Meridian.

T. 2 S., R. 5 E., Secs. 1, 2, and 3, of the Willamette Meridian.

T. 2 S., R. 6 E., Secs. 1, 2, 5, 6, and 7, of the Willamette Meridian.

T. 2 S., R. 7 E., Secs. 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, and 12, of the Willamette Meridian.

T. 2 S., R. 8 E., Secs. 3, 4, 5, 6, and 7, of the Willamette Meridian.

Excluding from the above areas any land north of the southern shore of the Columbia River, lands within the Columbia Wilderness, and any private lands.

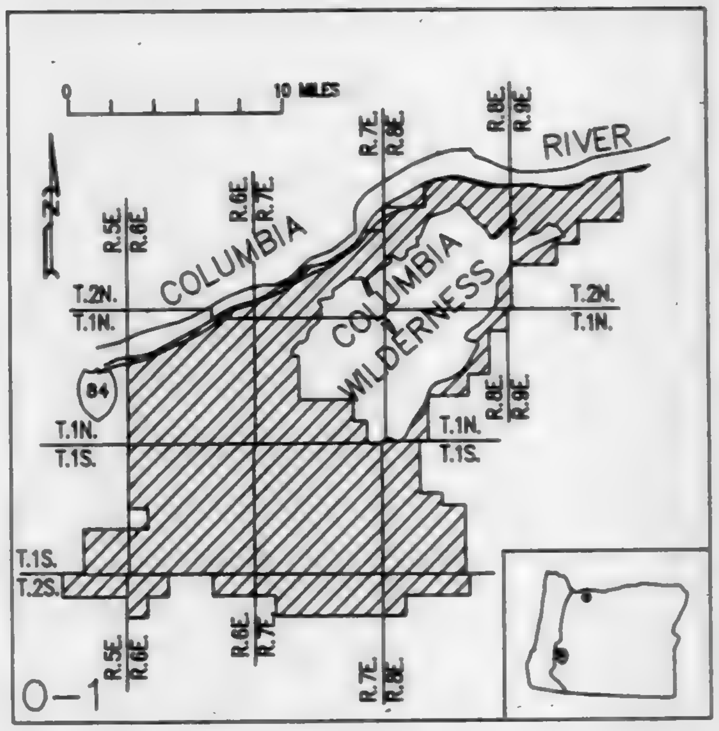
0
10 MILES
R.7E.
R.8E.
R.8E.
R.9E.
RIVER
COLUMBIA
R.5E.
R.6E.
R.6E.
R.7E.
COLUMBIA WILDERNESS
T.2N.
T.1N.
T.2N.
T.1N.
84
T.1N.
T.1S.
T.1N.
T.1S.
R.8E.
R.9E.
T.1S.
T.2S.
R.5E.
R.6E.
R.6E.
R.7E.
R.7E.
R.8E.

O–1

Description of O–2 taken solely from Bureau of Land Management Map; Mt. Hood 1979, Oregon.

Clackamas, Hood River, and Wasco Counties

T. 2 S., R. 9 E., Secs. 12, and 13, of the Willamette Meridian.

T. 2 S., R. 10 E., Secs. 7, 8, 9, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 2 S., R. 11 E., Secs. 13, 14, 15, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 3 S., R. 9 E., Secs. 1, 2, 10, 11, 12, 13, 14, 15, 16, 17,18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, and 30, of the Willamette Meridian.

T. 3 S., R. 10 E., Secs. 1, 3, 4, 5, 6, 7, 8, 9, 12, 15, 16, 17, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, and 34, of the Willamette Meridian.

T. 3 S., R. 11 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 3 S., R., 12 E., Sec. 6, of the Willamette Meridian.

Excluding from the above areas any lands within Mt. Hood Wilderness, Badger Creek Wilderness, and any private lands.

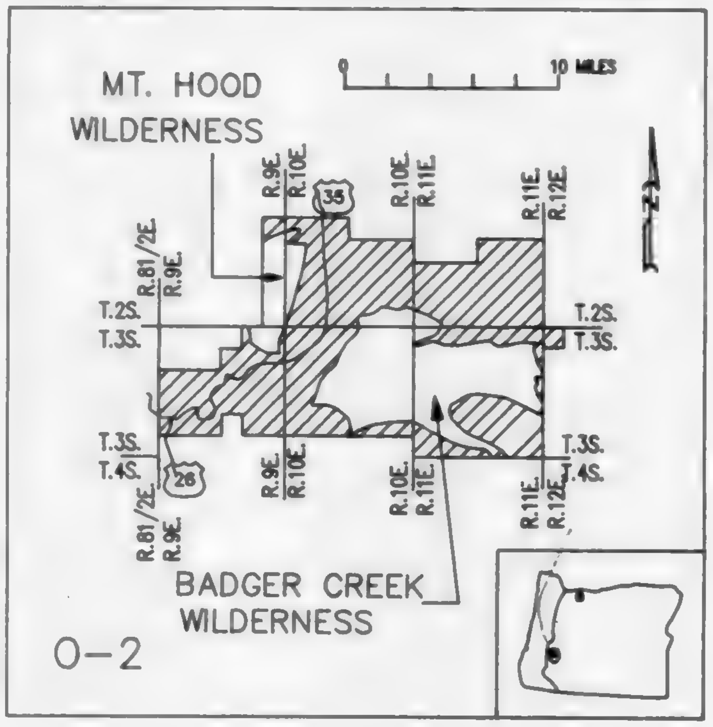
MT. HOOD WILDERNESS
0
10 MILES
N
R.9E.
R.10E.
35
R.10E.
R.11E.
R.11E.
R.12E.
R.8 1/2E.
R.9E.
T.2S.
T.3S.
T.2S.
T.3S.
T.3S.
T.4S.
T.3S.
T.4S.
26
R.8 1/2E.
R.9E.
R.9E.
R.10E.
R.10E.
R.11E.
R.11E.
R.12E.
BADGER CREEK WILDERNESS
O–2

Description of O–3 taken solely from Bureau of Land Managment Maps; Oregon City 1974, and Mt. Hood 1979, Oregon.

Clackamas County

T. 2 ½ S., R. 6 E., Secs. 33, 34, 35, and 36, of the Willamette Meridian.

T. 3 S., R. 6 E., Secs. 2, 3, 4, 9, 10, 11, 14, 15, 16, 20, 21, 22, 23, 28, 29, 33, and 34, of the Willamette Meridian.

T. 3 S., R. 7 E., Secs. 3, 6, 8, 10, 11, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36, of the Willamette Meridian.

T. 3 S., R. 8 E., Secs. 19, 30, and 31, of the Willamette Meridian.

T. 4 S., R. 6 E., Secs. 3, 4, 10, 11, 12, 13, 14, 23, 24, 25, 26, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 4 S., R. 7 E., Secs. 2, 3, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.T. 4 S., R. 8 E., Secs. 2, 3, 4, 5, 6, 8, 9, 10, 11, 14, 15, 16, 19, 20, 29, 30, 31, and 32, of the Willamette Meridian.

T. 5 S., R. 6 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 5 S., R. 7 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 6 S., R. 6 E., Secs. 1, 2, 3, 4, 5, 6, 10, 11, 12, 13, 14, and 15, of the Willamette Meridian.

T. 6 S., R. 7 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 17, and 18, of the Willamette Meridian.

Excluding from the above areas any lands within the Salmon-Huckleberry Wilderness, and any private lands.

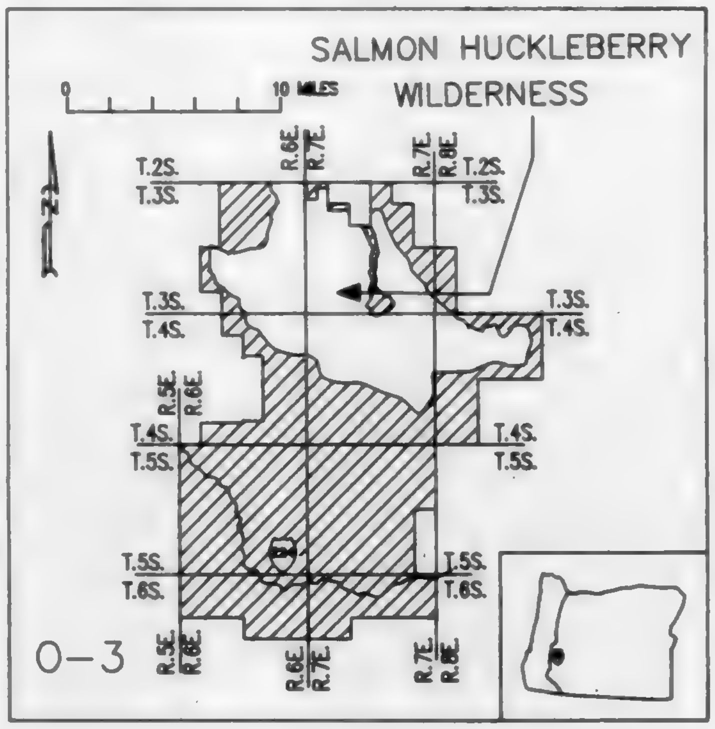
SALMON HUCKLEBERRY WILDERNESS
0
10 MILES
N
R.6E.
R.7E.
R.7E.
R.8E.
T.2S.
T.3S.
T.2S.
T.3S.
T.3S.
T.4S.
T.3S.
T.4S.
R.5E.
R.6E.
T.4S.
T.5S.
T.4S.
T.5S.
224
T.5S.
T.6S.
T.5S.
T.6S.
R.5E.
R.6E.
R.6E.
R.7E.
R.7E.
R.8E.
O–3

Description of O–4 taken solely from Bureau of Land Management Maps; Oregon City 1974, Madras 1978, and North Santiam River 1978, Oregon. Clackamas and Marion Counties

T. 6 S., R. 4 E., Secs. 33, and 34, of the Willamette Meridian.

T. 6 S., R. 5 E., Secs. 31, and 32, of the Willamette Meridian.

T. 7 S., R. 3 E., Secs. 12, 13, 14, 15, 21, 22, 23, 24, 25, 27, and 28, of the Willamette Meridian.

T. 7 S., R. 4 E., Secs. 4, 5, 7, 8, 9, 10, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 35, and 36, of the Willamette Meridian.

T. 7 S., R. 5 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 7 S., R. 6 E., Secs. 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, and 36, of the Willamette Meridian.T. 7 S., R. 7 E., Secs. 30 and 31, of the Willamette Meridian.

T. 8 S., R. 4 E., Secs. 1, 2, 11, and 12, of the Willamette Meridian.

T. 8 S., R. 5 E., Secs. 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 21, 22, 27, 28, 29, 30, 31, 32, 33, and 34, of the Willamette Meridian.

T. 8 S., R. 6 E., Secs. 1, 2, 4, 5, 6, 7, 11, 12, 13, 24, 25, 26, 34, 35, and 36, of the Willamette Meridian.

T. 8 S., R. 7 E., Secs. 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, and 31, of the Willamette Meridian.

T. 9 S., R. 5 E., Secs. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17, of the Willamette Meridian.

T. 9 S., R. 6 E., Secs. 3, 4, 5, 6, 7, 8, 9, 16, 17, and 18, of the Willamette Meridian.

Excluding from the above areas any lands within Bull of the Woods Wilderness, and any private lands.

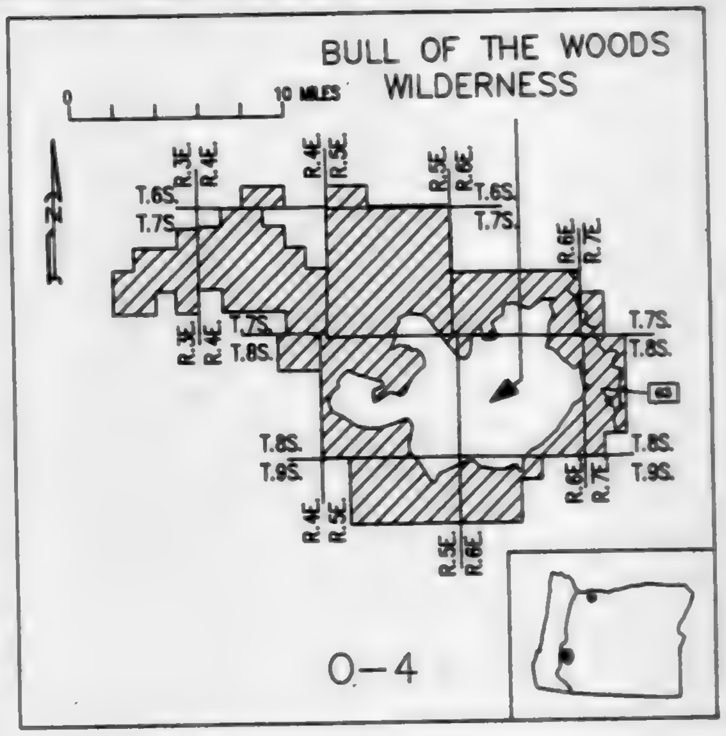

VOL
56
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156
AG
13
1991
UMI

Description of O–5 taken solely from Bureau of Land Managment Maps; North Santiam River 1978, and Madras 1978, Oregon.

Marion, Linn, and Jefferson Counties

T. 8 S., R. 7 E., Sec. 36, of the Willamette Meridian.

T. 8 S., R. 8 E., Secs. 25, 26, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 9 S., R. 6 E., Secs. 24, 25, 26, 27, 28, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 9 S., R. 7 E., Secs. 1, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 9 S., R. 8 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 30, and 31, of the Willamette Meridian.

T. 10 S., R. 6 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 23, 24, 25, and 36, of the Willamette Meridian.T. 10 S., R. 7 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 10 S., R 8 E., Secs. 6, 17, 18, 19, 20, 29, 30, 31, and 32, of the Willamette Meridian.

T. 11 S., R. 6 E., Secs. 1, 12, and 13, of the Willamette Meridian.

T. 11 S., R. 7 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 35, and 36, of the Willamette Meridian.

T. 11 S., R. 7 ½ E., Secs. 3, 22, 23, 26, 27, 34, and 35, of the Willamette Meridian.

Excluding from the above areas any lands within Warm Springs Indian Reservation, and Mt. Jefferson Wilderness, and any private lands.

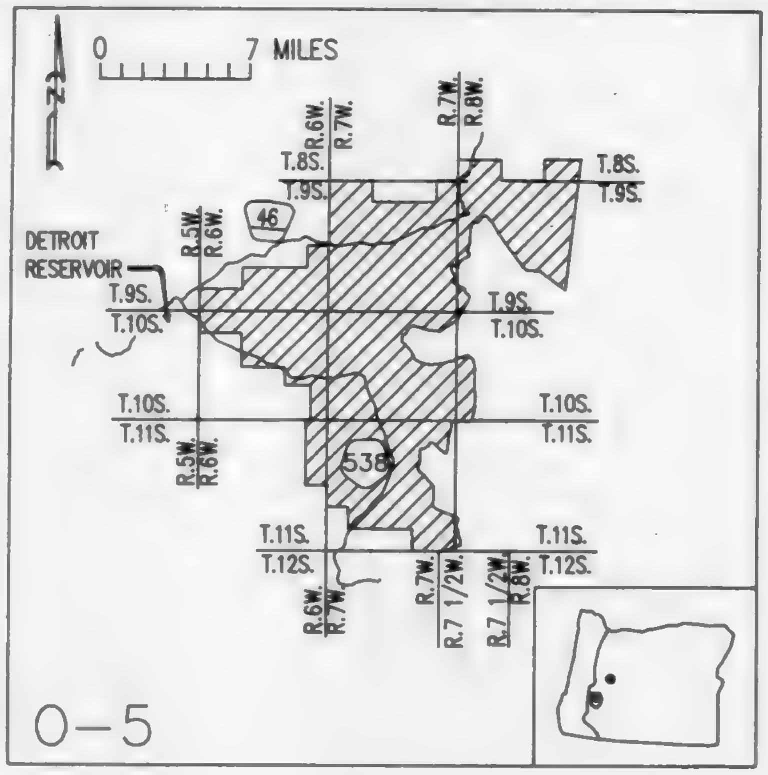
0
7 MILES
N
R.6W.
R.7W.
R.7W.
R.8W.
T.8S.
T.9S.
T.8S.
T.9S.
46
DETROIT
RESERVOIR
R.5W.
R.6W.
T.9S.
T.10S.
T.9S.
T.10S.
T.10S.
T.11S.
T.10S.
T.11S.
R.5W.
R.6W.
538
T.11S.
T.12S.
T.11S.
T.12S.
R.6W.
R.7W.
R.7W.
R.7 1/2W.
R.7 1/2W.
R.8W.
O–5

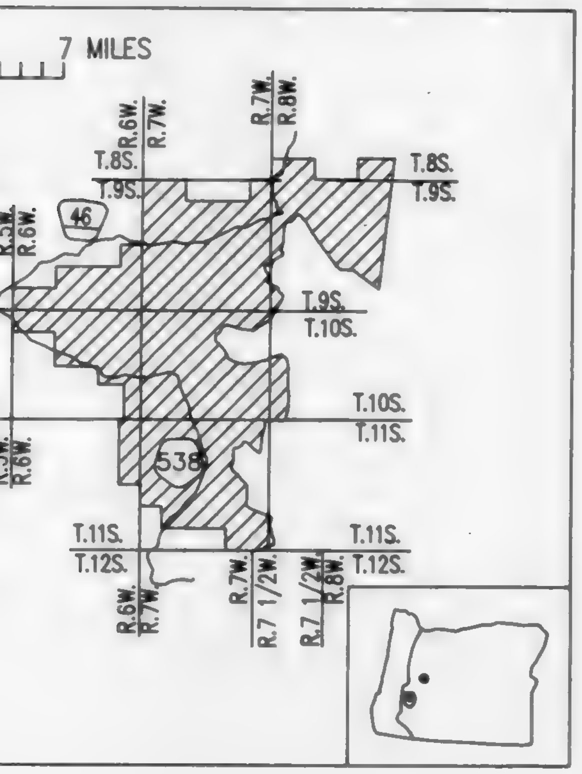
7 MILES
R.6W.
R.7W.
R.7W.
R.8W.
T.8S.
T.9S.
T.8S.
T.9S.
46
R.5W.
R.6W.
T.9S.
T.10S.
T.10S.
T.11S.
R.5W.
R.6W.
538
T.11S.
T.12S.
T.11S.
T.12S.
R.6W.
R.7W.
R.7W.
R.7 1/2W.
R.7 1/2W.
R.8W.

Description of O–6 taken solely from Bureau of Land Management Maps; North Santiam River 1978, and McKenzie River 1973, Oregon.

Linn County

T. 10 S., R. 5 E., Secs. 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 10 S., R. 6 E., Secs. 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 11 S., R. 2 E., Secs. 12, 13, and 24, of the Willamette Meridian.

T. 11 S., R. 3 E., Secs. 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 11 S., R. 4 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 11 S., R. 5 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 11 S., R. 6 E., Secs. 4, 5, and 6, of the Willamette Meridian.

T. 12 S., R. 2 E., Secs. 11, 12, 13, 14, 15, 23, 24, and 27, of the Willamette Meridian.

T. 12 S., R. 3 E., Secs. 1, 2, 3, 9, 10, 11, 15, 16, 17, 19, 20, 21, 28, 29, 30, 31, and 32, of the Willamette Meridian.

T. 12 S., R. 4 E., Secs. 1, and 2, of the Willamette Meridian.

T. 12 S., R. 5 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 32, 34, and 36, of the Willamette Meridian.

Excluding from the above areas any lands within Middle Santiam Wilderness, and any private lands.

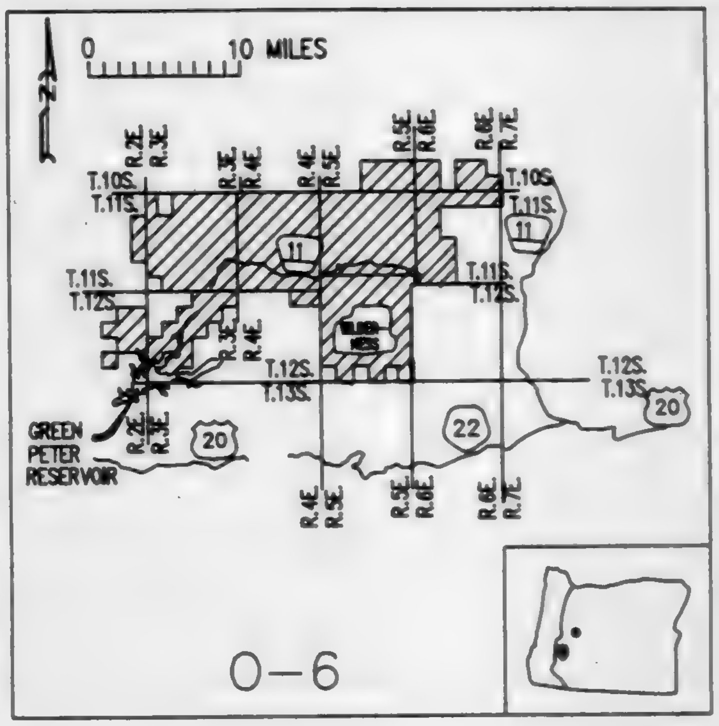
N
0
10 MILES
R.2E.
R.3E.
R.3E.
R.4E.
R.4E.
R.5E.
R.5E.
R.6E.
R.6E.
R.7E.
T.10S.
T.11S.
T.10S.
T.11S.
11
11
T.11S.
T.12S.
T.11S.
T.12S.
R.3E.
R.4E.
T.12S.
T.13S.
T.12S.
T.13S.
20
GREEN
PETER
RESERVOIR
R.2E.
R.3E.
20
22
R.4E.
R.5E.
R.5E.
R.6E.
R.6E.
R.7E.
O–6

VOL
56
SS
1
5
6
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13
991
UMI

Description of O–7 taken solely from Bureau of Land Management Map; McKenzie River 1973, Oregon.

Linn and Lane Counties

T. 13 S., R. 5 E., Secs. 28, 29, 30, 31, 32, 33, and 34, of the Willamette Meridian.

T. 14 S., R. 4 E., Secs. 11, 12, 13, 14, 31, and 32, of the Willamette Meridian.

T. 14 S., R. 5 E., Secs. 3, 4, 5, 6, 7, 8, 9, 10, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 14 S., R. 6 E., Secs. 30, and 31, of the Willamette Meridian.

T. 15 S., R. 4 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 15 S., R. 5 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36 of the Willamette Meridian.

T. 15 S., R. 6 E., Secs. 6, 7, 18, 19, 20, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 16 S., R. 2 E., Sec. 25, of the Willamette Meridian.

T. 16 S., R. 3 E., Secs. 10, 11, 12, 13, 14, 15, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 16 S., R. 4 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20, and 30, of the Willamette Meridian.

T. 16 S., R. 5 E., Secs. 1, 2, 3, 4, 5, and 6, of the Willamette Meridian.

T. 16 S., R. 6 E., Secs. 4, 5, and 6, of the Willamette Meridian.

T. 17 S., R. 2 E., Secs. 1, 11, and 12, of the Willamette Meridian.

T. 17 S., R. 3 E., Secs. 5, 6, 7, 8, 9, 17, and 18, of the Willamette Meridian.

Excluding any private lands within the above area.

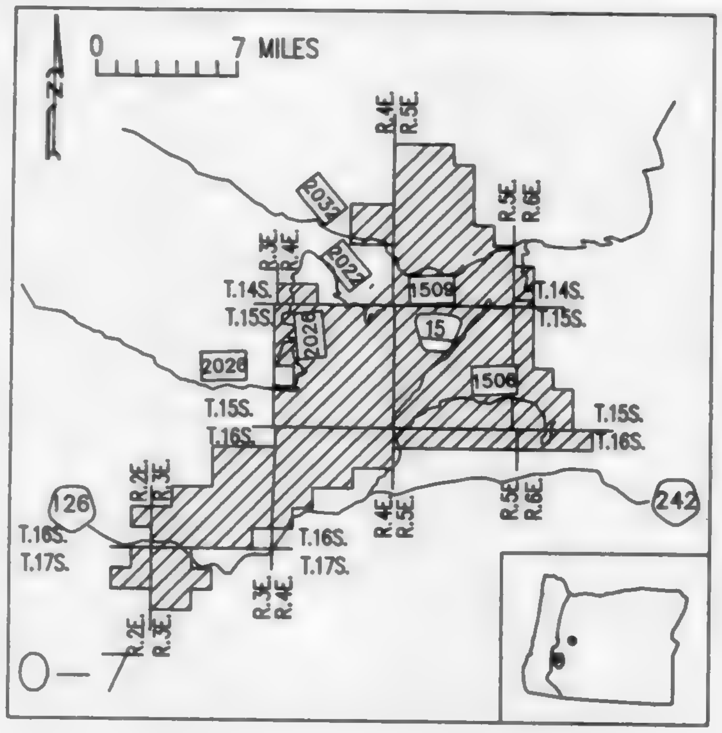

Description of O–8 taken
Bureau of Land Managemen
Bend 1980, McKenzie River
Oakridge 1974, Oregon.
Lane County
T. 16 S., R. 5 E., Secs. 25,
34, 35, and 36, of the Willam
Meridian.
T. 16 S., R. 6 E., Secs. 13,
25, 26, 27, 28, 29, 30, 31, 32,
36, of the Willamette Merid
T. 16 S., R. 7 E., Secs. 13,
20, 21, 22, 23, 27, 28, 29, 30,
34, of the Willamette Merid
T. 17 S., R. 5 E., Secs. 1, 2,
10, 11, 12, 15, 16, 17, 20, 21,
of the Willamette Meridian
T. 17 S., R. 6 E., Secs. 1, 2,
8, 9, 10, 11, 12, 13, 14, 15, 16,
22, 23, 24, 25, 26, 27, 28, 29,
Willamette Meridian.
T. 17 S., R. 7 E., Secs. 9, 1
of the Willamette Meridian
T. 18 S., R. 5 E., Secs. 3, 4
14, 15, 22, 23, 25, 26, and 27,
Willamette Meridian.
T. 18 S., R. 6 E., Secs. 28,
and 36, of the Willamette M
T. 18 S., R 6 ½ E., Sec. 33
Willamette Meridian.
Excluding from the abov
lands within Three Sisters
and any private lands.

Description of O–9 taken
Bureau of Land Managemen
McKenzie River 1973, and O
1974, Oregon.
Lane County
T. 18 S., R. 2 E., Secs. 1, 2,
9, 10, 11, 12, 13, 14, 15, 16, 17
21, 22, 23, 24, 25, 26, 27, 28,
33, 34, 35, and 36, of the Wil
Meridian.
T. 18 S., R. 3 E., Secs. 3, 4,
10, 11, 12, 13, 14, 15, 16, 17,
22, 23, 24, 25, 26, 27, 28, 29,
34, 35, and 36, of the Willam
Meridian.
T. 18 S., R. 4 E., Secs. 1, 2,
8, 9, 10, 11, 12, 15, 16, 17, 18,
25, 26, 27, 28, 29, 30, 31, 32,
36, of the Willamette Merid
T. 19 S., R. 2 E., Secs. 1, 2,
9, 10, 11, 12, 13, 14, 15, 24, a
Willamette Meridian.
T. 19 S., R. 3 E., Secs. 1, 2,
8, 9, 10, 11, 12, 13, 14, 15, 16,
21, 22, 23, 24, 25, 26, 27, 28,
33, 34, 35, and 36, of the Wi
Meridian.
T. 19 S., R. 4 E., Secs. 3, 4
10, 17, 18, 19, 30, and 31, of
Willamette Meridian.

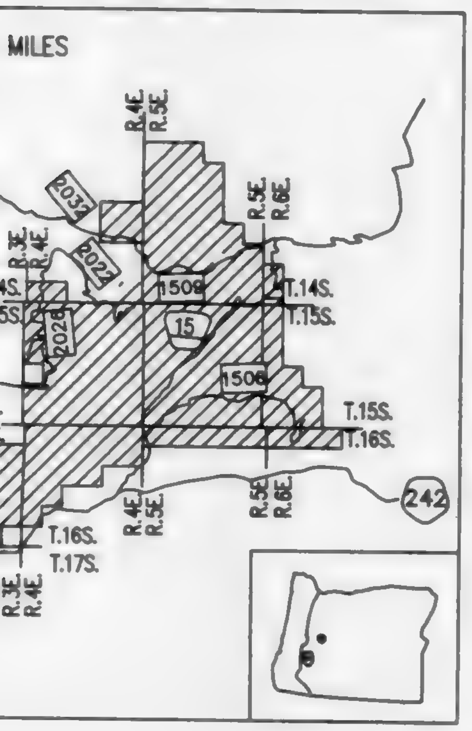
MILES
R.4E. R.5E.
R.5E. R.6E.
T.14S. T.15S.
T.15S. T.16S.
1509
15
1506
2032
2022
2026
242
R.4E. R.5E.
R.5E. R.6E.
T.16S. T.17S.
R.3E. R.4E.

Description of O–8 taken solely from Bureau of Land Management Maps; Bend 1980, McKenzie River 1973, and Oakridge 1974, Oregon.

Lane County

T. 16 S., R. 5 E., Secs. 25, 26, 27, 28, 33, 34, 35, and 36, of the Willamette Meridian.

T. 16 S., R. 6 E., Secs. 13, 14, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 16 S., R. 7 E., Secs. 13, 14, 15, 16, 19, 20, 21, 22, 23, 27, 28, 29, 30, 31, 32, 33, and 34, of the Willamette Meridian.

T. 17 S., R. 5 E., Secs. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 20, 21, 22, 28, and 33, of the Willamette Meridian.

T. 17 S., R. 6 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 33, of the Willamette Meridian.

T. 17 S., R. 7 E., Secs. 9, 16, 21, and 28, of the Willamette Meridian.

T. 18 S., R. 5 E., Secs. 3, 4, 10, 11, 12, 14, 15, 22, 23, 25, 26, and 27, of the Willamette Meridian.

T. 18 S., R. 6 E., Secs. 28, 29, 30, 34, 35, and 36, of the Willamette Meridian.

T. 18 S., R 6 ½ E., Sec. 33, of the Willamette Meridian.

Excluding from the above areas any lands within Three Sisters Wilderness, and any private lands.

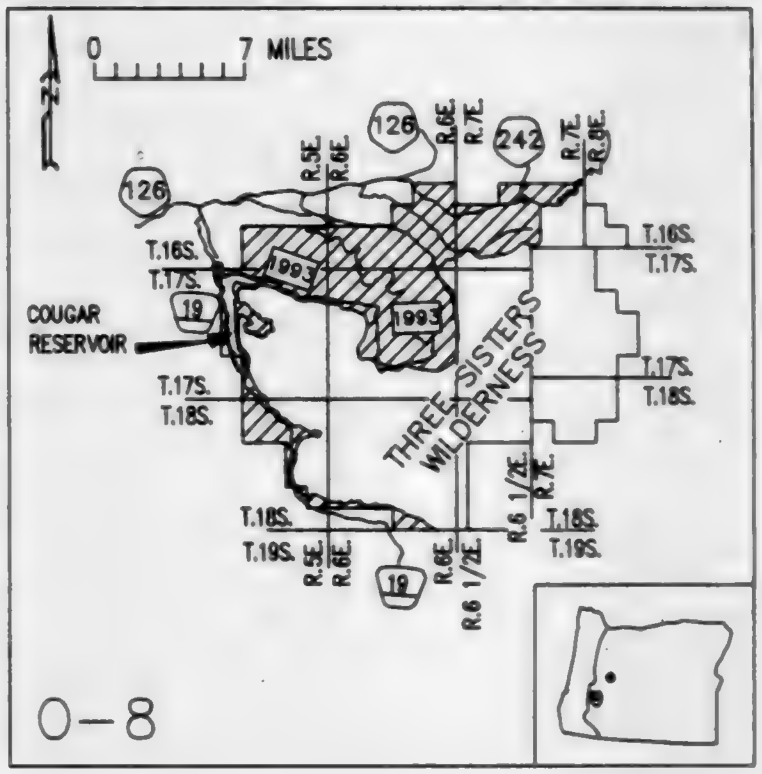
0 7 MILES
N
126
126
242
R.5E. R.6E.
R.6E. R.7E.
R.7E. R.8E.
T.16S. T.17S.
T.16S. T.17S.
T.17S. T.18S.
T.17S. T.18S.
T.18S. T.19S.
T.18S. T.19S.
19
19
1993
1993
COUGAR RESERVOIR
THREE SISTERS WILDERNESS
R.6 1/2E. R.7E.
R.5E. R.6E.
R.6E. R.6 1/2E.
O–8

Description of O–9 taken solely from Bureau of Land Management Maps; McKenzie River 1973, and Oakridge 1974, Oregon.

Lane County

T. 18 S., R. 2 E., Secs. 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 18 S., R. 3 E., Secs. 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 18 S., R. 4 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 19 S., R. 2 E., Secs. 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 24, and 25, of the Willamette Meridian.

T. 19 S., R. 3 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 19 S., R. 4 E., Secs. 3, 4, 5, 6, 7, 8, 9, 10, 17, 18, 19, 30, and 31, of the Willamette Meridian.

T. 20 S., R. 3 E., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 20, 21, 22, 23, 27, 28, 29, 32, and 33, of the Willamette Meridian.

Excluding any private lands within the above area.

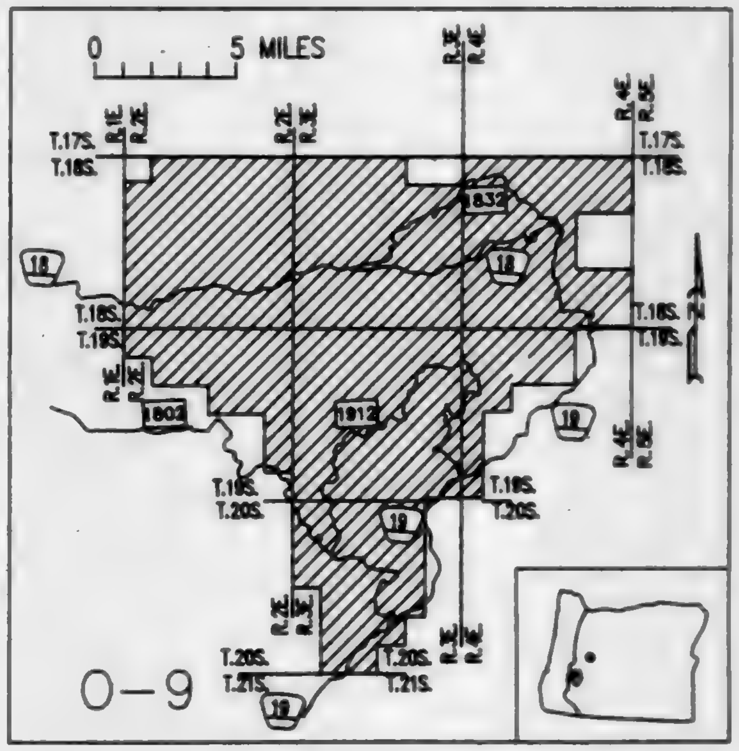
0 5 MILES
R.3E. R.4E.
R.1E. R.2E.
R.2E. R.3E.
R.4E. R.5E.
T.17S. T.18S.
T.17S. T.18S.
1832
18
18
T.18S. T.19S.
T.18S. T.19S.
N
R.1E. R.2E.
1802
1912
19
R.4E. R.5E.
T.19S. T.20S.
T.19S. T.20S.
19
R.2E. R.3E.
R.3E. R.4E.
T.20S. T.21S.
T.20S. T.21S.
19
O–9

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Description of O–10 taken solely from Bureau of Land Management Map: Oakridge 1974, Oregon.

Lane County

T. 19 S., R. 4 E., Secs. 25, and 36, of the Willamette Meridian.

T. 19 S., R. 5 E., Secs. 1, 12, 13, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 19 S., R. 5 ½ E., Secs. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 19 S., R. 6 E., Secs. 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, and 31, of the Willamette Meridian.

T. 20 S., R. 4 E., Secs. 1, 12, 13, 24, 25, and 36, of the Willamette Meridian.

T. 20 S., R. 5 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 20 S., R. 5 ½ E., Secs. 3, 4, 5, 8, 9, 10, 15, 16, 17, 20, 21, 22, 26, 27, 28, 29, 32, 33, and 34, of the Willamette Meridian.

T. 20 S., R. 6 E., Secs. 6, 7, 8, and 9, of the Willamette Meridian.

T. 21 S., R. 4 E., Secs. 1, 2, 11, 12, 13, 14, 22, 23, 24, 25, 26, 26, 27, and 36, of the Willamette Meridian.

T. 21 S., R. 5 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 21 S., R. 5 ½ E., Secs. 3, 4, 5, 8, 9, 10, 16, 17, 20, 21, 22, 23, 26, 27, 28, 29, 32, 33, and 34, of the Willamette Meridian.

T. 22 S., R. 5 E., Secs. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 22 S., R. 5 ½ E., Secs. 3, 4, 5, 20, 28, 29, 32, and 33, of the Willamette Meridian.

T. 23 S., R. 4 E., Secs. 1, 2, 11, 12, 13, and 14, of the Willamette Meridian.

T. 23 S., R. 5 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 17, and 18, of the Willamette Meridian.

T. 23 S., R. 5 ½ E., Secs. 4, 5, 8, and 9, of the Willamette Meridian.

Excluding from the above areas any land within the Diamond Peak Wilderness, Waldo Lake Wilderness, and the Three Sisters Wilderness, and any private lands.

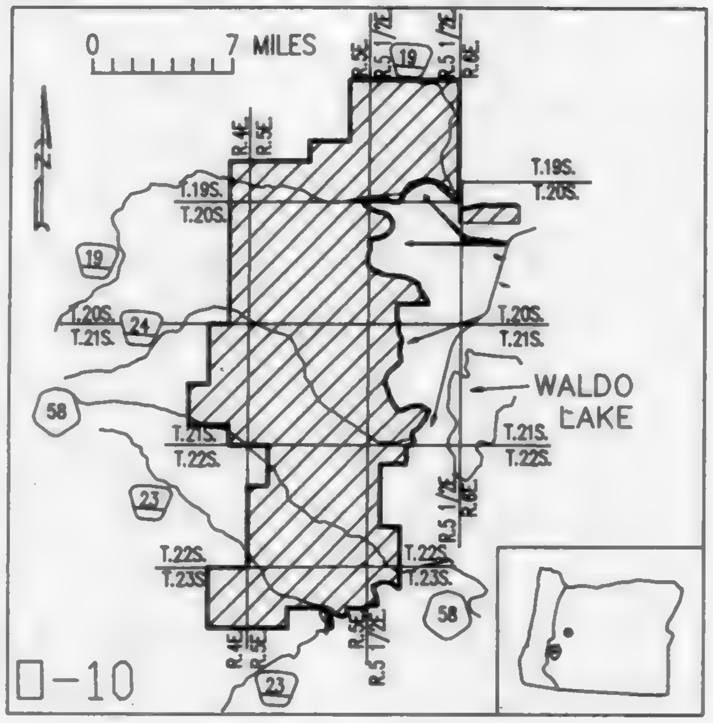

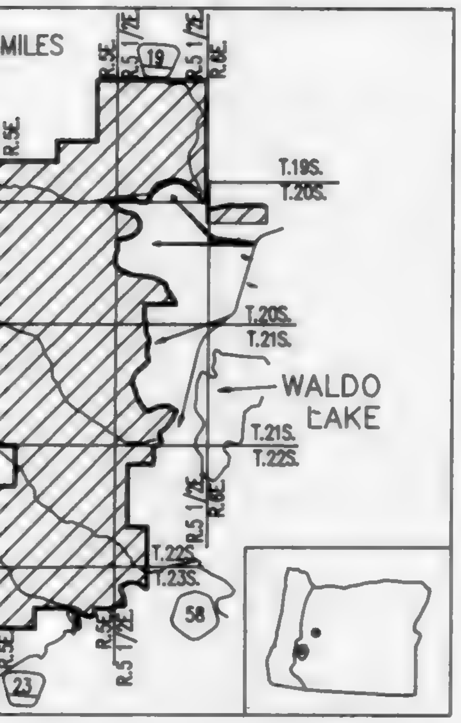
MILES
R.5E.
R.5 1/2E.
19
R.6E.
T.19S.
T.20S.
T.20S.
T.21S.
WALDO LAKE
T.21S.
T.22S.
R.5 1/2E.
R.6E.
T.22S.
T.23S.
58
R.5E.
R.5 1/2E.
23

Description of O–11 taken solely from Bureau of Land Managment Map; Oakridge 1974, Oregon.
Lane County

T. 19 S., R. 1 W., Sec. 35, of the Willamette Meridian.

T. 20 S., R. 1 W., Secs. 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 21, 22, 23, 24, 25, 26, and 27, of the Willamette Meridian.

T. 20 S., R. 1 E., Secs. 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 20 S., R. 2 E., Secs. 16, 19, 20, 21, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 21 S., R 1 E., Secs. 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, and 24, of the Willamette Meridian.

T. 21 S., R. 2 E., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 33, 34, 35, and 36, of the Willamette Meridian.

T. 21 S., R. 3 E., Secs. 19, 20, 21, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 22 S., R. 2 E., Secs. 1, 2, 3, 4, 10, 11, 12, 13, 14, 15, 22, 23, and 24, of the Willamette Meridian.

T. 22 S., R. 3 E., Secs. 3, 4, 5, 6, 7, and 8, of the Willamette Meridian.

Excluding from the above areas any land within the Lookout Point, and Hills Creek Reservoir, and any private land.

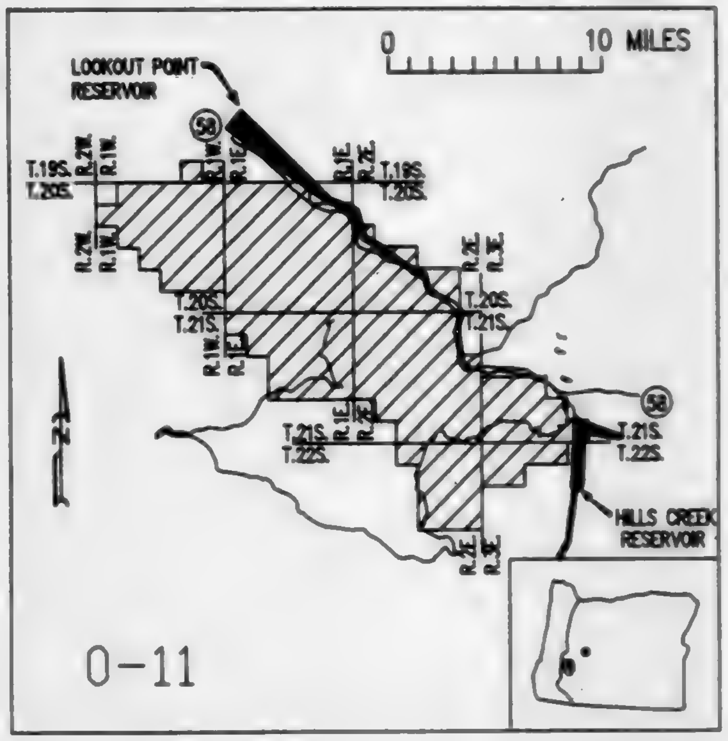
LOOKOUT POINT RESERVOIR
0
10 MILES
58
R.2W.
R.1W.
R.1W.
R.1E.
R.1E.
R.2E.
T.19S.
T.20S.
T.19S.
T.20S.
R.2W.
R.1W.
R.2E.
R.3E.
T.20S.
T.21S.
T.20S.
T.21S.
R.1W.
R.1E.
58
T.21S.
T.22S.
R.1E.
R.2E.
T.21S.
T.22S.
HILLS CREEK RESERVOIR
R.2E.
R.3E.
0–11

Description of O–12 taken solely from Bureau of Land Management Maps; Oakridge 1974, Diamond Lake 1978, and Roseburg 1979, Oregon.
Lane and Douglas Counties

T. 21 S., R. 1 W., Sec. 31, of the Willamette Meridian.

T. 22 S., R. 1 W., Secs. 5, 9, 15, 21, 22, 23, 24, 25, 26, 27, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 22 S., R. 2 W., Secs. 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 23 S., R. 1 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 23 S., R. 2 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 33, 34, 35, and 36, of the Willamette Meridian.

T. 24 S., R. 1 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 24 S., R. 2 W., Secs. 1, 2, 3, 11, 12, 13, 14, 15, 23, 24, 25, 33, 35, and 36, of the Willamette Meridian.

T. 25 S., R. 1 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, and 35, of the Willamette Meridian.

T. 25 S., R. 2 W., Secs. 1, 3, 4, 5, 7, 8, 9, 15, 17, 23, 25, and 27, of the Willamette Meridian.

T. 25 S., R. 3 W., Sec. 13, of the Willamette Meridian.

Excluding any private lands within the above area.

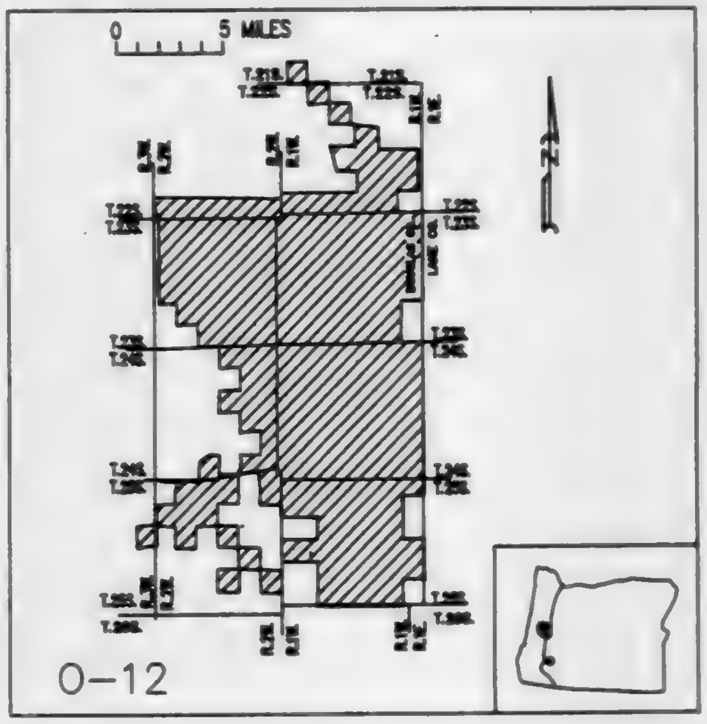
0
5 MILES
0–12

Description of O–13 taken solely from Bureau of Land Management Map; Diamond Lake 1978, Oregon.

Douglas and Lane Counties

T. 24 S., R. 3 E., Secs. 22, 23, 25, 26, 27, 34, 35, and 36, of the Willamette Meridian.

T. 24 S., R. 4 E., Secs. 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 24 S., R. 5 E., Secs. 18, 19, 20, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 25 S., R. 2 E., Secs. 12, 24, 25, 26, and 35, of the Willamette Meridian.

T. 25 S., R. 3 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 27, 34, 35, and 36, of the Willamette Meridian.

T. 25 S., R. 4 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 25 S., R. 5 E., Secs. 4, 5, 6, 7, 8, 9, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, and 34, of the Willamette Meridian.

T. 25 ½ S., R. 2 E., Secs. 32, 33, 34, and 35, of the Willamette Meridian.

T. 25 ½ S., R. 3 E., Secs. 35, and 36, of the Willamette Meridian.

T. 25 ½ S., R. 4 E., Secs. 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 26 S., R 1 E., Sec. 36, of the Willamette Meridian.

T. 26 S., R. 2 E., Secs. 2, 3, 4, 5, 8, 9, 10, 13, 15, 16, 17, 24, 25, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 26 S., R. 3 E., Secs. 1, 2, 3, 4, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 26 S., R. 4 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, and 32, of the Willamette Meridian.

T. 27 S., R. 1 E., Secs. 1, and 12, of the Willamette Meridian.

T. 27 S., R. 2 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29, of the Willamette Meridian.

T. 27 S., R. 3 E., Secs. 3, 4, 5, 6, 7, 8, 9, 17, 18, 19, and 20, of the Willamette Meridian.

Excluding from the above areas any lands within Boulder Creek Wilderness, and any private land.

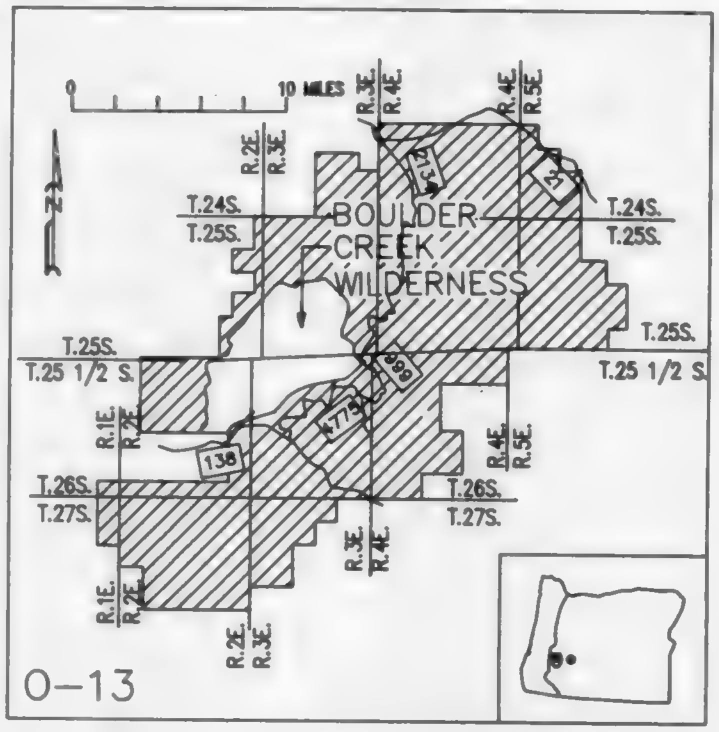
0
10 MILES
N
R.2E.
R.3E.
R.3E.
R.4E.
R.4E.
R.5E.
213
21
T.24S.
T.25S.
T.24S.
T.25S.
BOULDER
CREEK
WILDERNESS
T.25S.
T.25 1/2 S.
T.25S.
T.25 1/2 S.
668
775
138
R.1E.
R.2E.
R.4E.
R.5E.
T.26S.
T.27S.
T.26S.
T.27S.
R.3E.
R.4E.
R.1E.
R.2E.
R.2E.
R.3E.
O–13

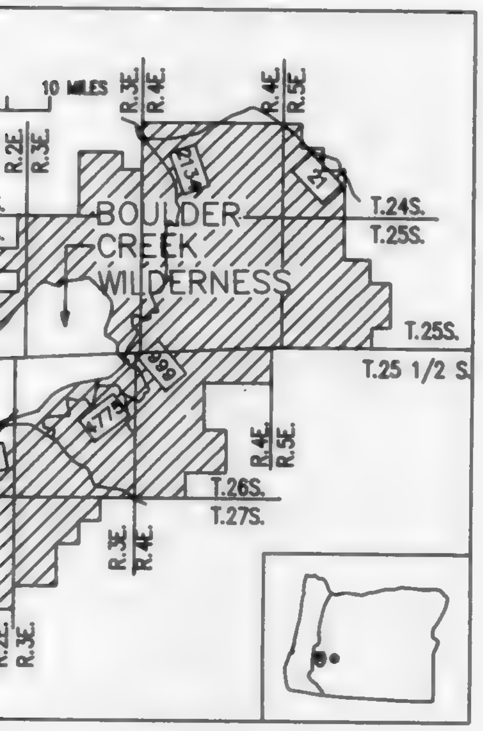
10 MILES
R.3E.
R.4E.
R.4E.
R.5E.
R.2E.
R.3E.
BOULDER
CREEK
WILDERNESS
T.24S.
T.25S.
T.25S.
T.25 1/2 S.
R.4E.
R.5E.
T.26S.
T.27S.
R.3E.
R.4E.
R.2E.
R.3E.

Description of O–14 taken solely from Bureau of Land Management Surface and/or Mineral Management Maps; Diamond Lake 1978, and Roseburg 1979, Oregon.

Douglas County

T. 26 S., R. 1 W., Secs. 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 27 S., R. 1 E., Secs. 31, 32, 33, and 34, of the Willamette Meridian.

T. 27 S., R. 1 W., Secs. 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 27 S., R. 2 W., Sec. 36, of the Willamette Meridian.

T. 28 S., R. 1 E., Secs. 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 28, 29, 30, 31, and 32, of the Willamette Meridian.

T. 28 S., R. 1 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 28 S., R. 2 W., Secs. 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 28 S., R. 3 W., Secs. 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 29 S., R. 1 E., Secs. 5, 6, 7, and 8, of the Willamette Meridian.

T. 29 S., R. 1 W., Secs. 1, 2, 3, 4, 5, 10, 11, and 12, of the Willamette Meridian.

T. 29 S., R. 2 W., Secs. 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 29 S., R. 3 W., Secs 13, and 25, of the Willamette Meridian.

T. 30 S., R. 2 W., Sec. 5, of the Willamette Meridian.

Excluding any private lands within the above area.

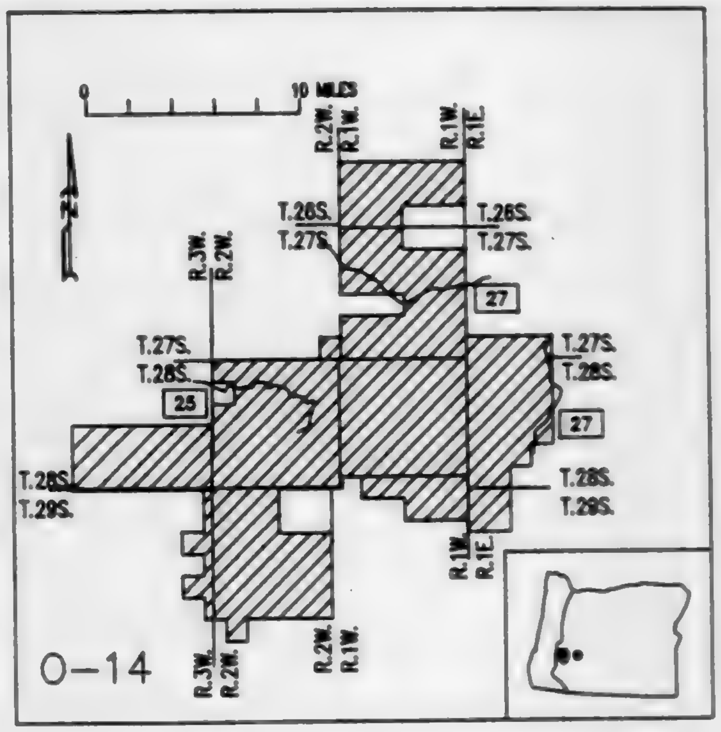
0
10 MILES
R.2W.
R.1W.
R.1W.
R.1E.
T.26S.
T.27S.
T.26S.
T.27S.
R.3W.
R.2W.
27
T.27S.
T.28S.
25
T.27S.
T.28S.
27
T.28S.
T.29S.
T.28S.
T.29S.
R.1W.
R.1E.
O–14
R.3W.
R.2W.
R.2W.
R.1W.

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Description of O–15 taken solely from Bureau of Land Management Map; Diamond Lake 1978, and Crater Lake 1978, Oregon.

Douglas and Jackson Counties

T. 28 S., R. 2 E., Secs., 25, 26, 27, 28, 33, 34, 35, and 36 of the Willamette Meridian.

T. 28 S., R. 3 E., Secs. 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 24, 25, 28, 29, 30, 31, 32, 33, 35, and 36, of the Willamette Meridian.

T. 28 S., R. 4 E., Secs. 6, 7, 17, 18, 19, 20, 29, 30, 31, and 33, of the Willamette Meridian.

T. 29 S., R. 1 E., Secs. 23, 25, and 36, of the Willamette Meridian.

T. 29 S., R. 2 E., Secs. 1, 2, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 29 S., R. 3 E., Secs. 2, 10, 11, 12, 15, 16, 17, 18, 19, 20, 21, 22, 26, 27, 28, 30, 33, 34, and 35, of the Willamette Meridian.

T. 29 S., R. 4 E., Secs. 4, 5, 7, 8, 9, and 18, of the Willamette Meridian.

T. 30 S., R. 1 E., Secs. 1, 12, 13, 22, 23, 24, 25, 26, 27, 34, 35, and 36, of the Willamette Meridian.

T. 30 S., R. 2 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 30 S., R. 3 E., Secs. 3, 4, 6, 7, 8, 9, 16, 17, 19, 20, 21, 29, 30, and 31, of the Willamette Meridian.

T. 31 S., R. 1 E., Secs. 1, 2, 3, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 31 S., R. 2 E., Secs. 4, 5, 6, 7, 8, 17, 18, 19, 30, and 31, of the Willamette Meridian.

T. 32 S., R. 1 E., Sec. 6, of the Willamette Meridian.

Excluding from the above areas any land within the Rogue-Umpqua Divide Wilderness, and any private land.

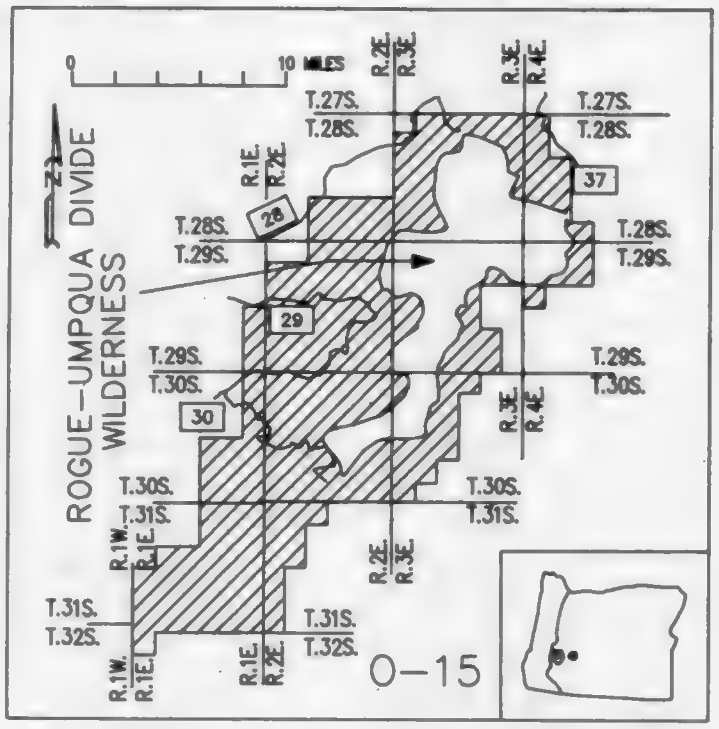

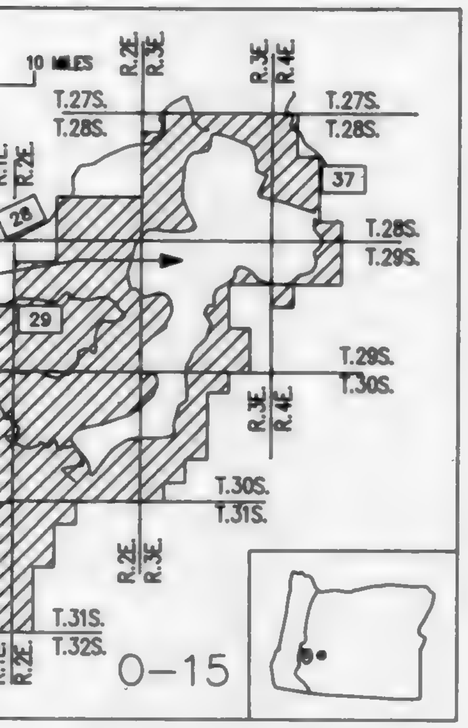
10 MILES
R.2E.
R.3E.
R.3E.
R.4E.
T.27S.
T.28S.
T.27S.
T.28S.
37
28
T.28S.
T.29S.
29
T.29S.
T.30S.
R.3E.
R.4E.
T.30S.
T.31S.
R.2E.
R.3E.
T.31S.
T.32S.
0–15

Description of O–16 taken solely from Bureau of Land Management Map; Canyonville 1979, and Crater Lake 1978, Oregon.
Douglas, Jackson, and Josephine Counties

T. 30 S., R. 2 W., Sec. 31, of the Willamette Meridian.

T. 31 S., R. 2 W., Sec. 6, of the Willamette Meridian.

T. 30 S., R. 3 W., Secs. 1, 11, 12, 13, 14, 15, 20, 21, 22, 24, 26, 27, 31, 33, 34, 35, and 36, of the Willamette Meridian.

T. 31 S., R. 3 W., Secs. 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30, of the Willamette Meridian.

T. 32 S., R. 3 W., Secs. 19, 30, and 31, of the Willamette Meridian.

T. 30 S., R. 4 W., Secs. 25, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 31 S., R. 4 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 32 S., R. 4 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 33 S., R. 4 W., Secs. 5, 6, 7, 17, 18, and 19, of the Willamette Meridian.

T. 30 S., R. 5 W., Sec. 35, of the Willamette Meridian.

T. 31 S., R. 5 W., Secs. 1, 2, 12, 13, 23, 24, 25, 26, 27, 34, 35, and 36, of the Willamette Meridian.

T. 32 S., R. 5 W., Secs. 1, 2, 3, 4, 13, 25, 31, 33, 35, and 36, of the Willamette Meridian.

T. 33 S., R. 5 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 34, and 35, of the Willamette Meridian.

T. 33 S., R. 6 W., Secs. 1, 13, and 24, of the Willamette Meridian.

Excluding any private lands within the above area.

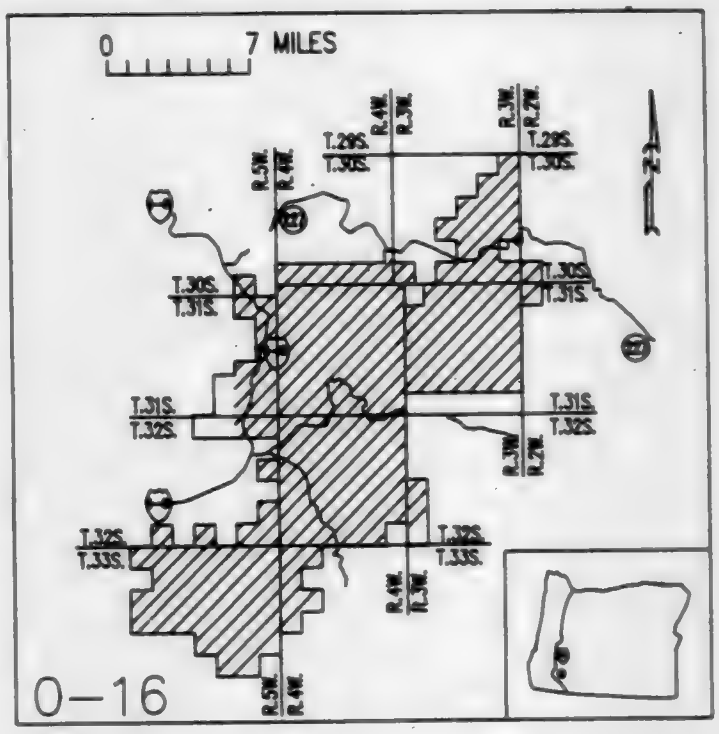
0
7 MILES
R.4W.
R.3W.
R.3W.
R.2W.
T.29S.
T.30S.
T.29S.
T.30S.
R.5W.
R.4W.
T.30S.
T.31S.
T.30S.
T.31S.
T.31S.
T.32S.
T.31S.
T.32S.
R.3W.
R.2W.
T.32S.
T.33S.
T.32S.
T.33S.
R.4W.
R.3W.
R.5W.
R.4W.
0–16

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Description of O–17–A taken solely from Bureau of Land Management Map; Crater Lake 1978, Oregon.

Douglas and Jackson Counties

T. 32 S., R. 1 W., Secs. 1, 11, 12, 13, 14, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 33 S., R. 1 W., Secs. 1, 2, 10, 11, 12, 13, 14, 15, 22, 23, and 24, of the Willamette Meridian.

T. 32 S., R. 1 E., Secs. 3, 4, 5, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 33 S., R. 1 E., Secs. 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, and 19, of the Willamette Meridian.

T. 32 S., R. 2 E., Secs. 31, 32, and 33, of the Willamette Meridian.

T. 33 S., R. 2 E., Secs. 5, 6, 7, and 18, of the Willamette Meridian.

Excluding any private lands within the above area.

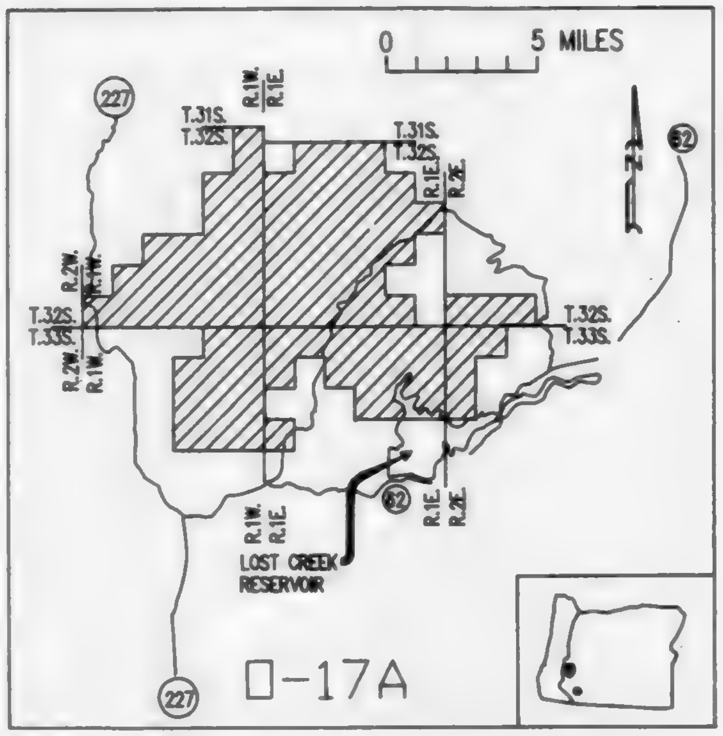

Description of O–17–B taken solely from Bureau of Land Management Map; Crater Lake, Oregon 1978.

Jackson County

T. 33 S., R. 2 E., Secs. 13, 15, 21, 22, 23, 24, 25, 26, 27, 35, and 36, of the Willamette Meridian.

T. 33 S., R. 3 E., Secs. 18, 19, 29, 30, and 31, of the Willamette Meridian.

T. 34 S., R. 2 E., Secs. 1, 2, and 12, of the Willamette Meridian.

T. 34 S., R. 3 E., Sec. 7, of the Willamette Meridian.

Excluding any private lands within the above area.

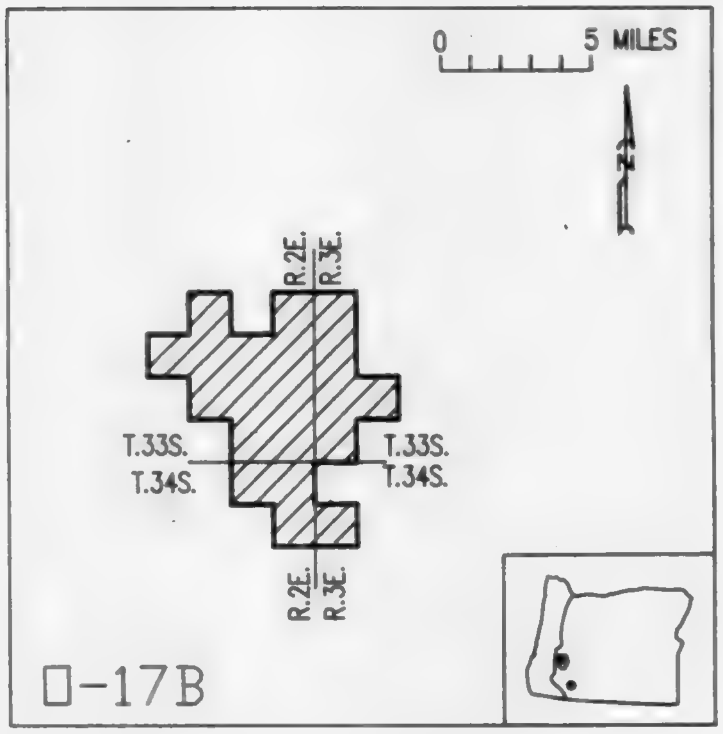

Description of O–18 taken f
Bureau of Land Management
Crater Lake, Oregon 1978.
Jackson and Klamath Countie
T. 31 S., R. 3 E., Secs. 23, 24
and 36, of the Willamette Me
T. 31 S., R. 4 E., Secs. 13, 14
21, 22, 23, 24, 25, 26, 27, 28, 29,
33, 34, 35, and 36, of the Wille
Meridian.
T. 32 S., R. 4 E., Secs. 1, 2, 3
8, 9, 10, 11, 12, 13, 14, 15, 16, 1
21, 22, 23, 24, 25, 26, 27, 28, 29
33, 34, 35, and 36, of the Willa
Meridian.
T. 33 S., R. 4 E., Secs. 1, 2, 3
8, 9, 10, 11, 12, 13, 14, 15, 16, 1
21, 22, 23, 24, 25, 26, 27, 28, 29
33, 34, 35, and 36, of the Wille
Meridian.
T. 34 S., R. 4 E., Secs. 1, 2, 3
11, 12, 13, 14, 15, 16, 21, 22, 23
27, 28, 34, 35, and 36, of the W
Meridian.
T. 31 S., R. 5 E., Secs. 30, an
Willamette Meridian.
T. 32 S., R. 5 E., Secs. 6, 7, a
the Willamette Meridian.
T. 33 S., R. 5 E., Secs. 30, an
Willamette Meridian.

Description of O–19 taken
Bureau of Land Management
Medford 1978, Oregon.
Jackson and Klamath Countie
T. 37 S., R. 3 E., Secs. 1, 2, 3
8, 9, 10, 11, 12, 13, 14, 15, 16, 1
21, 22, 23, 24, 25, 26, 27, 28, 29
33, 34, 35, and 36, of the Wille
Meridian.
T. 38 S., R. 3 E., Secs. 1, 2, 3
10, 11, 12, 13, 14, 15, 16, 17, 20
24, 25, 26, 27, 28, 29, 32, 33, 34
of the Willamette Meridian.
T. 36 S., R. 4 E., Secs. 27, 34
of the Willamette Meridian.
T. 37 S., R. 4 E., Secs. 1, 2, 3
8, 9, 10, 11, 12, 13, 14, 15, 16, 1
21, 22, 23, 24, 25, 26, 27, 28, 29
33, 34, 35, and 36, of the Will
Meridian.
T. 38 S., R. 4 E., Secs. 1, 2, 3
8, 9, 10, 11, 12, 13, 14, 15, 16, 1
21, 22, 23, 24, 25, 26, 27, 28, 29
33, 34, and 35, of the Willame
Meridian.
T. 36 S., R. 5 E., Secs. 20, 2
31, 32, 33, and 34, of the Will
Meridian.
T. 37 S., R. 5 E., Secs. 1, 2, 3
8, 9, 10, 11, 12, 13, 14, 15, 16, 1
21, 22, 23, 24, 25, 26, 27, 28, 29
33, 34, 35, and 36, of the Will
Meridian.
T. 38 S., R. 5 E., Secs. 4, 5,

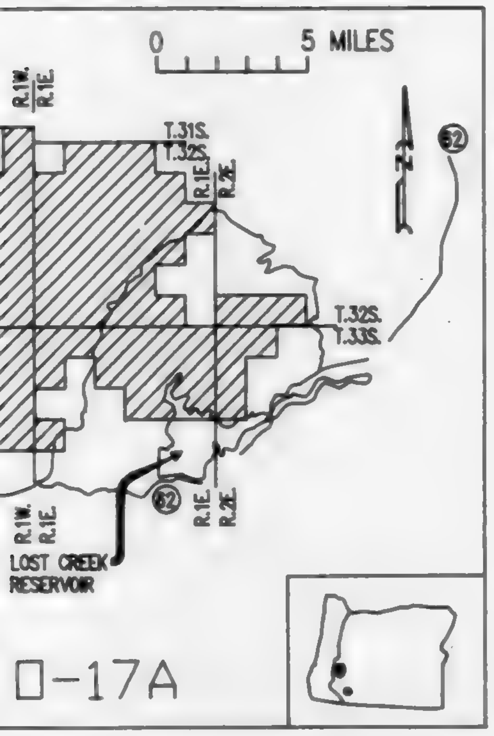
0 5 MILES
R.1W.
R.1E.
T.31S.
T.32S.
R.1E.
R.2E.
62
T.32S.
T.33S.
R.1W.
R.1E.
62
R.1E.
R.2E.
LOST CREEK RESERVOIR
0-17A

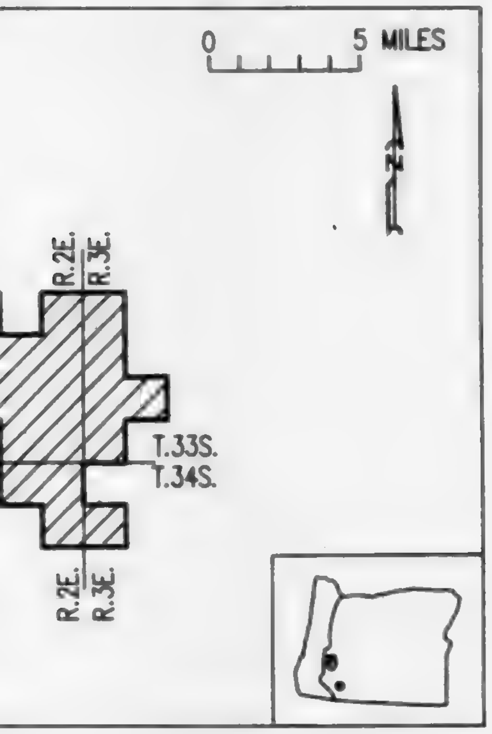
0 5 MILES
R.2E.
R.3E.
T.33S.
T.34S.
R.2E.
R.3E.

Description of O–18 taken from Bureau of Land Management Map; Crater Lake, Oregon 1978.

Jackson and Klamath Counties

T. 31 S., R. 3 E., Secs. 23, 24, 25, 26, 35, and 36, of the Willamette Meridian.

T. 31 S., R. 4 E., Secs. 13, 14, 15, 16, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 32 S., R. 4 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 33 S., R. 4 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 34 S., R. 4 E., Secs. 1, 2, 3, 4, 5, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 34, 35, and 36, of the Willamette Meridian.

T. 31 S., R. 5 E., Secs. 30, and 31, of the Willamette Meridian.

T. 32 S., R. 5 E., Secs. 6, 7, and 18, of the Willamette Meridian.

T. 33 S., R. 5 E., Secs. 30, and 31, of the Willamette Meridian.

T. 34 S., R. 5 E., Sec. 30, of the Willamette Meridian.

Excluding from the above areas any land within Sky Lakes Wilderness, Crater Lake National Park, and any private lands.

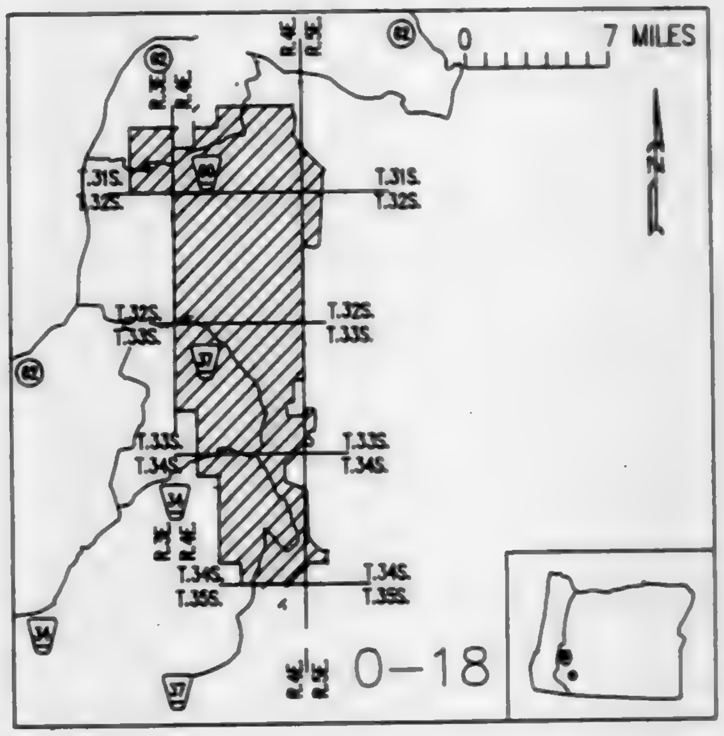
0 7 MILES
62
R.3E.
R.4E.
R.4E.
R.5E.
T.31S.
T.32S.
T.31S.
T.32S.
T.32S.
T.33S.
T.32S.
T.33S.
62
T.33S.
T.34S.
T.33S.
T.34S.
R.3E.
R.4E.
T.34S.
T.35S.
T.34S.
T.35S.
R.4E.
R.5E.
0–18

Description of O–19 taken solely from Bureau of Land Management Map; Medford 1978, Oregon.

Jackson and Klamath Counties

T. 37 S., R. 3 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 38 S., R. 3 E., Secs. 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 36 S., R. 4 E., Secs. 27, 34, 35, and 36, of the Willamette Meridian.

T. 37 S., R. 4 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 38 S., R. 4 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 36 S., R. 5 E., Secs. 20, 21, 28, 29 30, 31, 32, 33, and 34, of the Willamette Meridian.

T. 37 S., R. 5 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 38 S., R. 5 E., Secs. 4, 5, 6, 7, 8, 9 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 33, 34, 35, and 36, of the Willamette Meridian.

T. 39 S., R. 5 E., Secs. 1, 2, 3, 11, 12, and 13, of the Willamette Meridian.

T. 38 S., R. 6 E., Secs. 19, 20, 21, 28, 29, 30, and 31, of the Willamette Meridian.

T. 39 S. R. 6 E., Secs. 5, 6, 7, 17, and 18, of the Willamette Meridian.

Excluding from the above areas any lands within the Sky Lakes Wilderness, and any private lands.

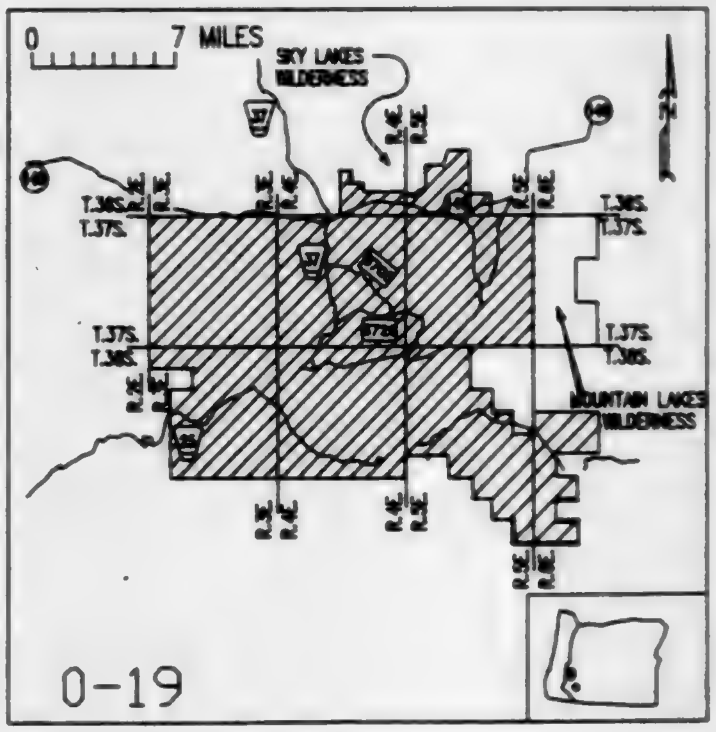
0 7 MILES
SKY LAKES WILDERNESS
T.36S.
T.37S.
T.36S.
T.37S.
T.37S.
T.38S.
T.37S.
T.38S.
MOUNTAIN LAKES WILDERNESS
R.3E.
R.4E.
R.4E.
R.5E.
R.5E.
R.6E.
0-19

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Description of O–20–O taken soley from Bureau of Land Management Map; Medford 1978, Oregon.

Jackson County

T. 41 S., R. 2 W., Secs. 12, 13, and 14, of the Willamette Meridian.

T. 39 S., R. 1 W., Secs. 25, 26, 34, 35, and 36, of the Willamette Meridian.

T. 40 S., R. 1 W., Secs. 1, 2, 3, 10, 11, 12, 13, 14, 15, 21, 22, 23, 24, 25, 26, 27, 28, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 41 S., R. 1 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18, of the Willamette Meridian.

T. 39 S., R. 1 E., Secs. 17, 19, 20, 21, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 40 S., R. 1 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 41 S., R. 1 E., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, and 18, of the Willamette Meridian.

Excluding any private lands within the above area.

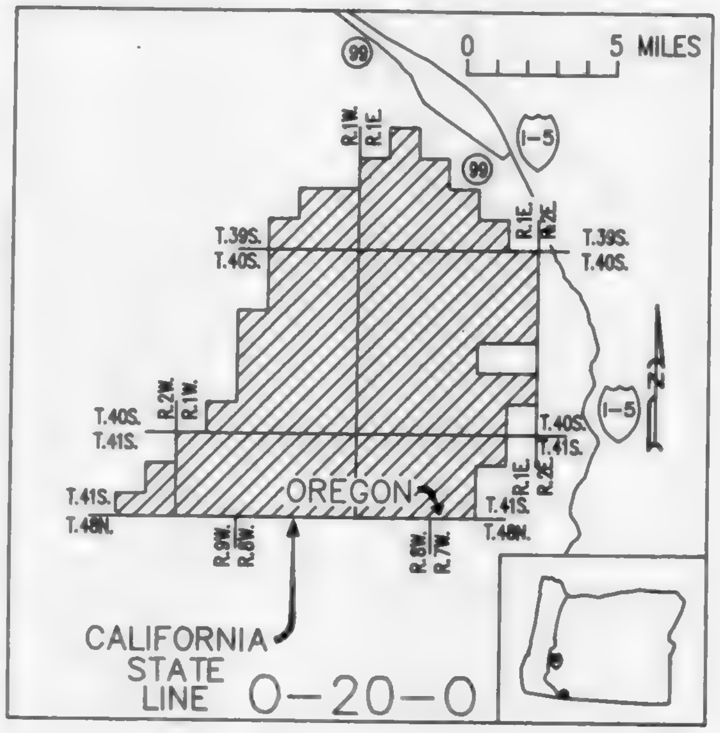
99
0 5 MILES
R.1W.
R.1E.
I-5
99
T.39S.
T.40S.
R.1E.
R.2E.
T.39S.
T.40S.
N
T.40S.
T.41S.
R.2W.
R.1W.
T.40S.
T.41S.
I-5
T.41S.
T.48N.
OREGON
R.1E.
R.2E.
T.41S.
T.48N.
R.9W.
R.8W.
R.8W.
R.7W.
CALIFORNIA
STATE
LINE
O–20–O

Description of O–21 taken solely from Bureau of Land Management Map; Grants Pass 1978, Oregon and California.

Josephine County

T. 37 S., R. 7 W., Secs. 21, 25, 26, 27, 28, 29, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 37 S., R. 6 W., Secs. 21, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 37 S., R. 5 W., Sec. 31, of the Willamette Meridian.

T. 38 S., R. 7 W., Secs. 1, 2, 3, 11, 12, 13, 14, 22, 23, 24, 25, 26, 27, 35, and 36, of the Willamette Meridian.

T. 38 S., R. 6 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 38 S., R. 5 W., Secs. 3, 4, 5, 6, 7, 8, 9, 17, 18, 19, 20, 21, 29, 30, and 31, of the Willamette Meridian.

T. 39 S., R. 7 W., Secs. 1, 12, 13, 24, and 25, of the Willamette Meridian.

T. 39 S., R. 6 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30, of the Willamette Meridian.

Excluding any private lands within the above area.

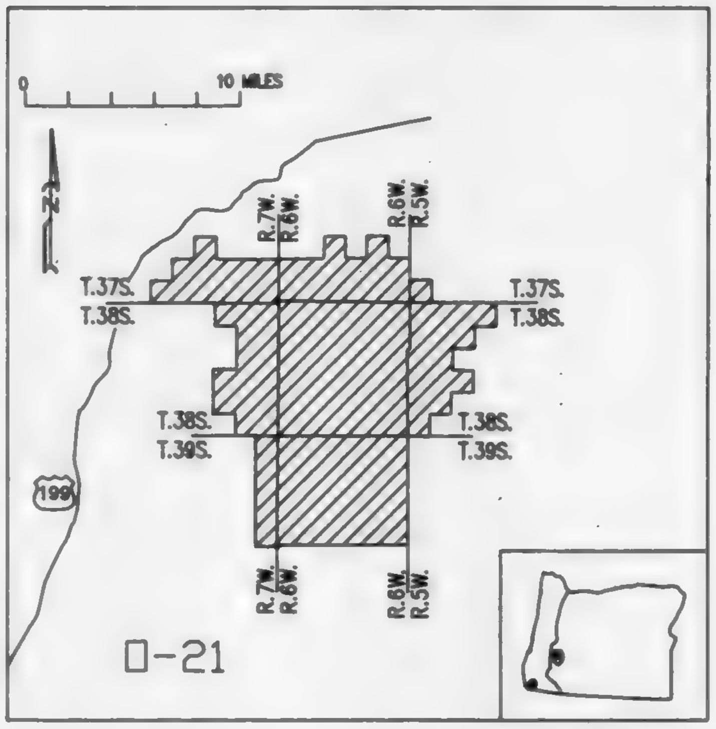
0 10 MILES
N
R.7W.
R.6W.
R.6W.
R.5W.
T.37S.
T.38S.
T.37S.
T.38S.
T.38S.
T.39S.
T.38S.
T.39S.
199
R.7W.
R.6W.
R.6W.
R.5W.
O-21

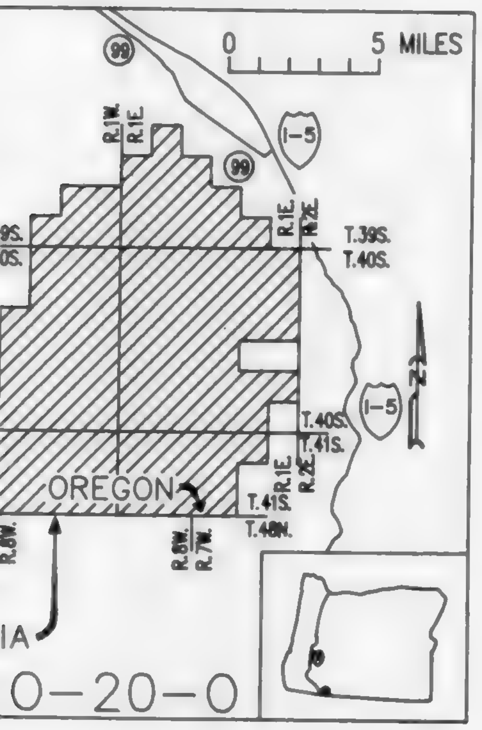
0
5 MILES
99
R.1W.
R.1E.
I-5
99
R.1E.
R.2E.
T.39S.
T.40S.
I-5
T.40S.
T.41S.
R.1E.
R.2E.
OREGON
T.41S.
T.48N.
R.8W.
R.6W.
R.7W.
IA
0-20-0

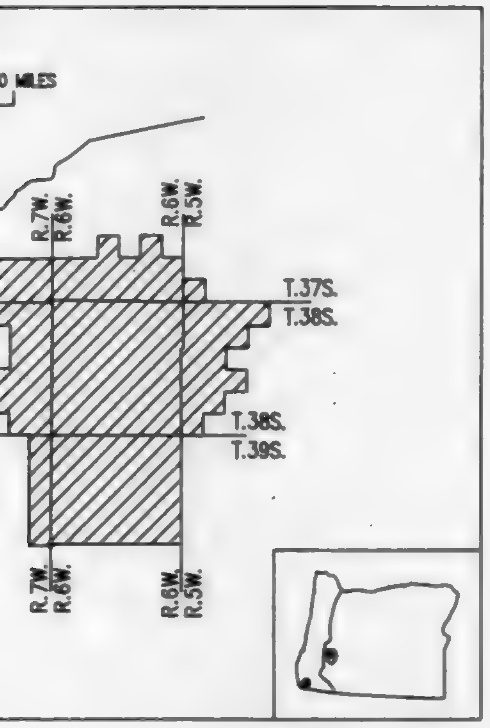
MILES
R.7W.
R.6W.
R.6W.
R.5W.
T.37S.
T.38S.
T.38S.
T.39S.
R.7W.
R.6W.
R.6W.
R.5W.

Description of O–22–O taken solely from Bureau of Land Management Maps; Gold Beach 1976, and Grants Pass 1976, Oregon and California, and Forest Vistor Map; Siskiyou National Forest 1984.

Curry County

T. 39 S., R. 12 W., Secs. 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 39 S., R. 11 W., Secs. 19, 20, 21, 22, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 40 S., R. 12 W., Secs. 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 40 S., R. 11 W., Secs. 4, 5, 6, 7, 8, 9, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, and 34, of the Willamette Meridian.

T. 41 S., R. 12 W., Secs. 1, 2, 3, 4, 5, 9, 10, 11, 12, 13, 14, and 15, of the Willamette Meridian.

T. 41 S., R. 11 W., Secs. 4, 5, 6, 7, 8, 9, 17, and 18, of the Willamette Meridian.

Excluding from the above areas any lands within the Kalmiopsis Wilderness, and any private lands.

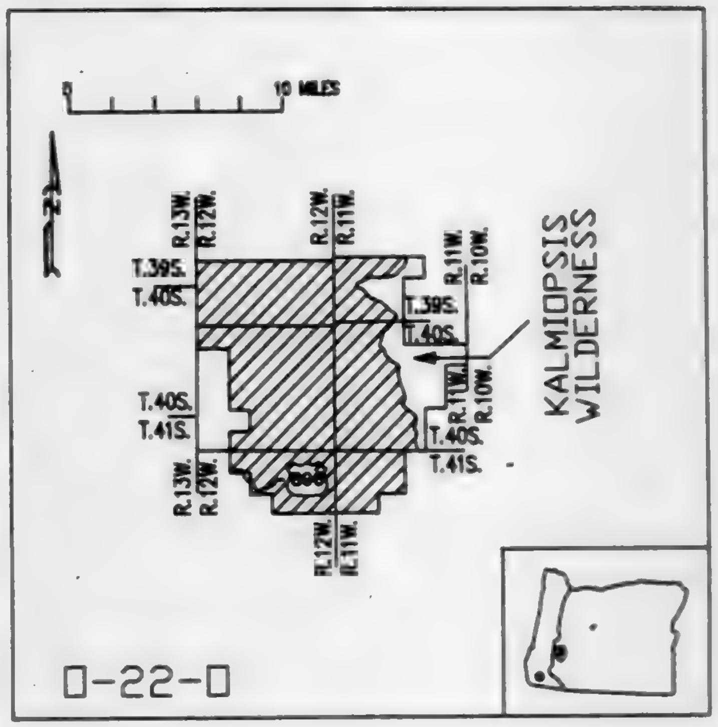
0
10 MILES
N
R.13W.
R.12W.
R.12W.
R.11W.
R.11W.
R.10W.
T.39S.
T.40S.
T.39S.
T.40S.
KALMIOPSIS
WILDERNESS
T.40S.
T.41S.
R.11W.
R.10W.
T.40S.
T.41S.
R.13W.
R.12W.
R.12W.
R.11W.
0-22-0

Description of O–23 taken solely from Bureau of Land Management Maps; Port Orford 1976, Gold Beach 1976, Canyonville 1979, and Grants Pass 1976, Oregon and California.

Josephine and Curry Counties

T. 35 S., R. 12 W., Sec. 36, of the Willamette Meridian.

T. 35 S., R. 11 W., Secs. 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 36 S., R. 12 W., Secs. 1, 2, 3, 10, 11, 12, 13, 14, 15, 23, 24, 25, 26, 35, and 36, of the Willamette Meridian.

T. 36 S., R. 11 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, and 27, of the Willamette Meridian.

T. 36 S., R. 10 W., Secs. 5, 6, 7, 8, 17, 18, 20, 21, 22, 23, 25, and 36, of the Willamette Meridian.

T. 36 S., R. 9 W., Secs. 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 36 S., R. 8 W., Secs. 19, 20, 29, 30, 31, and 32, of the Willamette Meridian.

T. 37 S., R. 12 W., Secs. 1, 2, 3, 9, 10, 13, 17, 20, 21, 24, 26, 27, 28, 34, and 35, of the Willamette Meridian.

T. 37 S., R. 11 W., Sec. 29, of the Willamette Meridian.

T. 37 S., R. 10 W., Secs. 1, 12, 13, and 24, of the Willamette Meridian.

T. 37 S., R. 9 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36, of the Willamette Meridian.

T. 37 S., R. 8 W., Secs. 27, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 38 S., R. 9 W., Secs. 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, and 16, of the Willamette Meridian.

Excluding from the above areas any lands within the Kalmiopsis Wilderness, and any private lands.

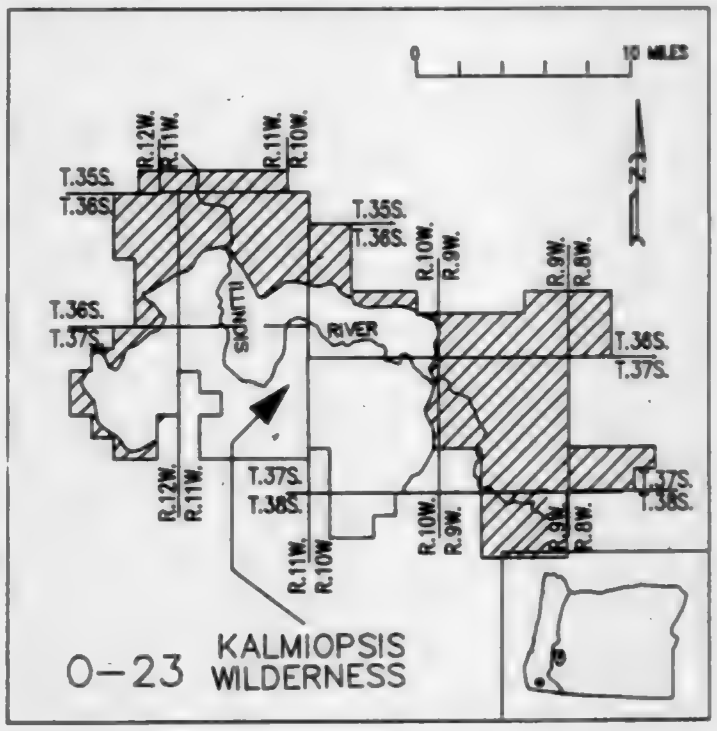
0
10 MILES
N
R.12W.
R.11W.
R.11W.
R.10W.
T.35S.
T.36S.
T.35S.
T.36S.
R.10W.
R.9W.
R.9W.
R.8W.
T.36S.
T.37S.
ILLINOIS
RIVER
T.36S.
T.37S.
T.37S.
T.38S.
R.12W.
R.11W.
T.37S.
T.38S.
R.10W.
R.9W.
R.9W.
R.8W.
R.11W.
R.10W.
KALMIOPSIS
WILDERNESS
0-23

Description of O–24 taken solely from Bureau of Land Management Map; Canyonville 1979, Oregon.

Curry and Josephine Counties

T. 34 S., R. 7 W., Secs. 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, 31, and 32, of the Willamette Meridian.

T. 35 S., R. 7 W., Secs. 5, and 6, of the Willamette Meridian.

T. 33 S., R. 8 W., Secs. 4, 5, 6, 7, 8, 9, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 33, 34, 35, and 36, of the Willamette Meridian.

T. 34 S., R. 8 W., Secs., 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 35 S., R. 8 W., Secs. 1, 2, 3, 4, 5, 6, and 7, of the Willamette Meridian.

T. 33 S., R. 9 W., Secs. 1, 12, 13, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 34 S., R. 9 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 35 S., R. 9 W., Secs. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, and 24, of the Willamette Meridian.

T. 33 S., R. 10 W., Secs. 13, 14, 23, 24, 25, and 36, of the Willamette Meridian.

T. 34 S. R. 10 W., Secs. 1, and 12, of the Willamette Meridian.

Excluding any private lands within the above area.

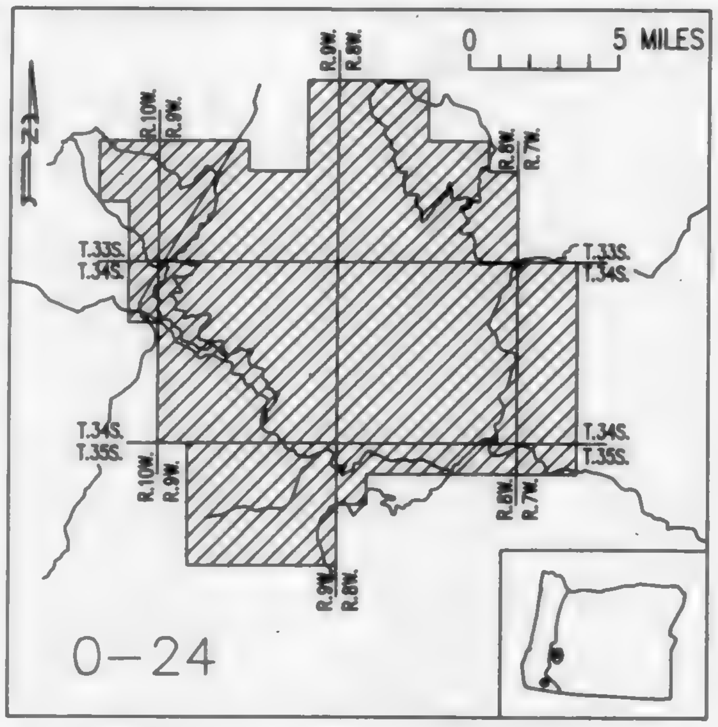

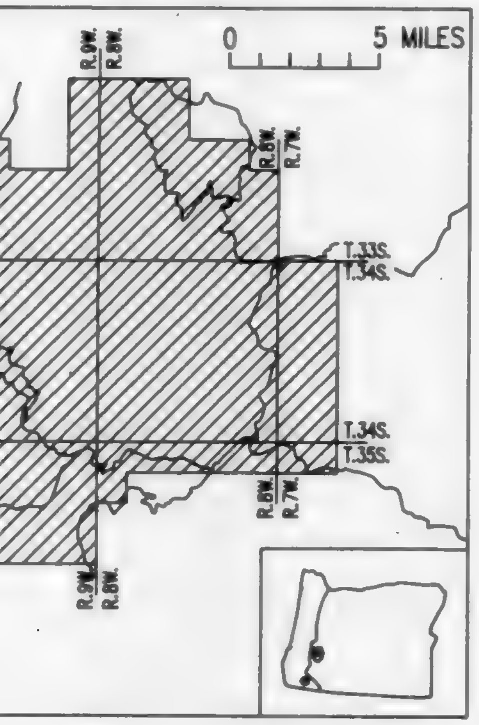
R.9W.
R.8W.
0
5 MILES
R.8W.
R.7W.
T.33S.
T.34S.
T.34S.
T.35S.
R.8W.
R.7W.
R.9W.
R.8W.

Description of O–25 taken solely from Bureau of Land Management Maps; Port Orford 1978, and Canyonville 1979, Oregon.

Coos, Curry, and Douglas Counties

T. 31 S., R. 9 W., Secs. 31, and 33, of the Willamette Meridian.

T. 32 S., R. 9 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, and 21, of the Willamette Meridian.

T. 32 S., R. 10 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 33 S., R. 10 W., Secs. 2, 3, 4, 9, 10, 15, 16, 21, 22, 26, 27 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 34 S., R. 10 W., Secs. 3, 4, 5, and 6, of the Willamette Meridian.

T. 34 S., R. 10 ½ W., Secs. 6, 7, and 18, of the Willamette Meridian.

T. 32 S., R. 11 W., Secs. 8, 9, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 33 S., R. 11 W., Secs. 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 34 S., R. 11 W., Secs. 1, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 17, 18, 19, 21, 22, 23, 24, 27, 28, 30, 31, and 32, of the Willamette Meridian.

T. 32 S., R. 12 W., Secs. 25, 26, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 33 S., R. 12 W., Secs. 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 34 S., R. 12 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 20, and 21, of the Willamette Meridian.

T. 33 S., R. 13 W., Secs. 24, 25, and 36, of the Willamette Meridian.

T. 34 S., R. 13 W., Secs. 1, 2, 11, 12, 13, and 14, of the Willamette Meridian.

Excluding from the above areas any land within the Wild Rogue Wilderness, and any private lands.

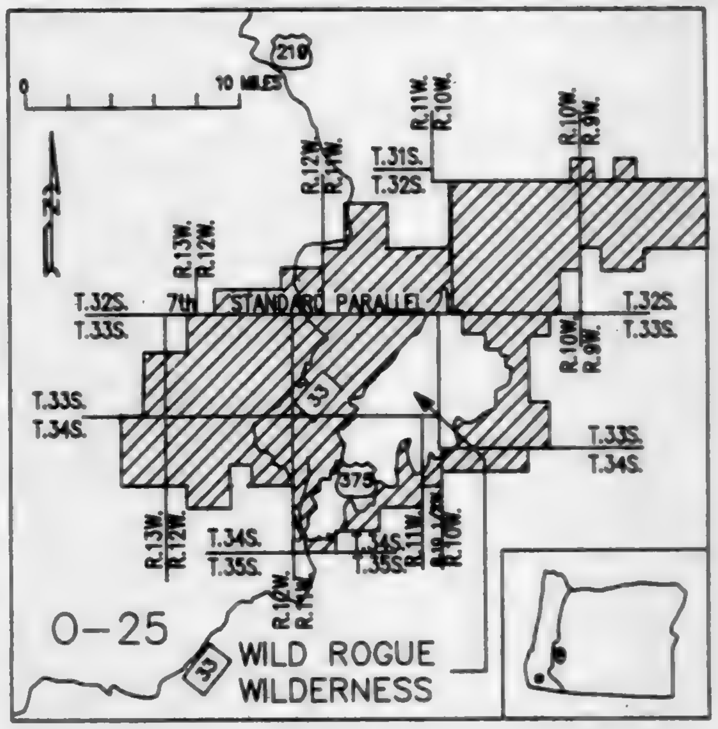
219
0
10 MILES
N
R.11W.
R.10W.
R.10W.
R.9W.
R.12W.
R.11W.
T.31S.
T.32S.
R.13W.
R.12W.
T.32S.
T.33S.
7th
STANDARD PARALLEL
T.32S.
T.33S.
R.10W.
R.9W.
33
T.33S.
T.34S.
T.33S.
T.34S.
375
R.13W.
R.12W.
T.34S.
T.35S.
T.34S.
T.35S.
R.11W.
R.10 1/2W.
R.10W.
R.12W.
R.11W.
O–25
33
WILD ROGUE
WILDERNESS

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Description of O–26 taken solely from Bureau of Land Management Map: Roseburg 1979, and Canyonville 1979, Oregon.

Douglas, Jackson, and Josephine Counties

T. 29 S., R. 7 W., Secs. 15, 19, 21, 22, 23, 27, and 33, of the Willamette Meridian.

T. 29 S., R. 8 W., Secs. 11, 13, 14, 15, 23, 24, 25, 26, 27, 33, 34, and 35, of the Willamette Meridian.

T. 29 ½ S., R. 7 W., Secs. 33, and 34, of the Willamette Meridian.

T. 30 S., R. 7 W., Secs. 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 30 S., R. 8 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 30 S., R. 9 W., Secs. 25, and 36, of the Willamette Meridian.

T. 31 S., R. 5 W., Secs. 3, 5, 6, 7, 8, 9, 10, 11, 14, 15, 17, and 18, of the Willamette Meridian.

T. 31 S., R. 6 W., Secs. 1, 7, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, and 23, of the Willamette Meridian.

T. 31 S., R. 7 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 31 S., R. 8 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 33, 34, 35, and 36, of the Willamette Meridian.

T. 31 S., R. 9 W., Sec. 1, of the Willamette Meridian.

T. 32 S., R. 6 W., Secs. 15, 17, 18, 19, 20, 21, and 29, of the Willamette Meridian.

T. 32 S., R. 7 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 23, 29, 30, and 31, of the Willamette Meridian.T. 32 S., R. 8 W., Sec. 25, of the Willamette Meridian.

Excluding any private lands within the above area.

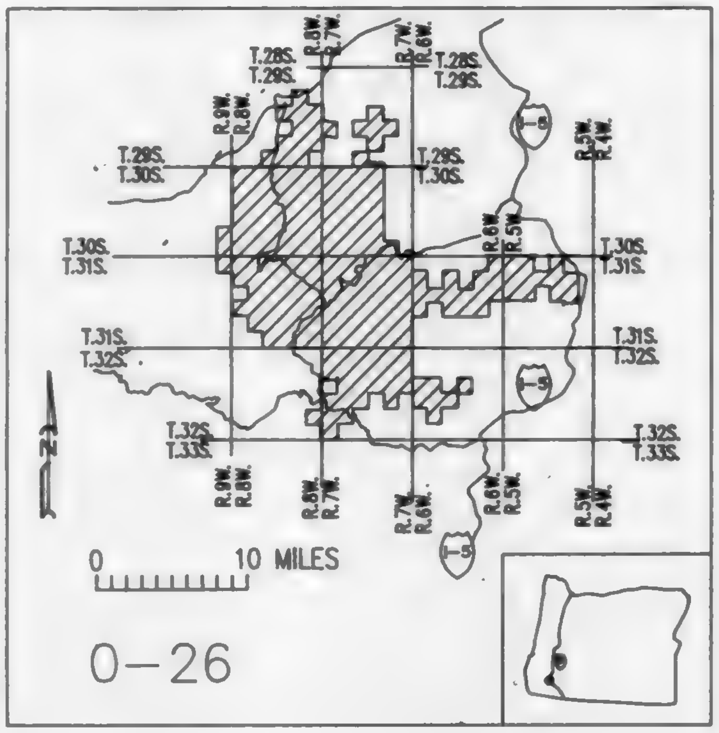

Description of O–27 taken so
Bureau of Land Management S
Mineral Management Map; Ro
1983, Oregon.
Coos County
T. 25 S., R. 10 W., Secs. 31, 3
of the Willamette Meridian.
T. 26 S., R. 9 W., Secs. 17, 18,
28, 29, 30, 31, 32, and 33, of the
Willamette Meridian.
T. 26 S., R. 10 W., Secs. 3, 4,
10, 11, 13, 14, 15, 16, 17, 18, 19,
23, 24, 25, 26, 27, 28, 29, 30, 31,
35, and 36, of the Willamette M
T. 27 S., R. 9 W., Secs. 4, 5, 6
17, 18, 19, 20, 21, 22, 23, 24, 25,
29, 30, 31, 32, and 33, of the Wi
Meridian.
T. 27 S., R. 10 W., Secs. 1, 2,
8, 9, 10, 11, 12, 13, 14, 15, 16, 17,
21, 22, 23, 24, 25, 26, 27, 28, 29,
33, 34, 35, and 36, of the Willa
Meridian.
T. 28 S., R. 9 W., Secs. 4, 5, 6
14, 15, 16, 17, 18, 19, 20, 21, 22,
27, 28, 29, 30, 31, 32, and 33, of
Willamette Meridian.
T. 28 S., R. 10 W., Secs. 1, 2,
8, 9, 10, 11, 12, 13, 14, 15, 16, 17
21, 22, 23, 24, 25, 26, 27, 28, 29,
35, and 36, of the Willamette M

Description of O–28 taken so
Bureau of Land Management M
Cottage Grove 1979, and Roseb
Oregon.
Douglas County
T. 23 S., R. 8 W., Secs. 3, 4, 5,
10, 11, 13, 14, 15, 16, 17, 18, 19,
23, 26, 27, 28, 29, 30, 31, 32, 33,
of the Willamette Meridian.
T. 23 S., R. 9 W., Secs. 6, 7, 8,
16, 17, 20, 21, 22, 23, 24, 25, 26,
29, of the Willamette Meridian
T. 23 S., R. 10 W., Sec. 1, of t
Willamette Meridian.
T. 24 S., R. 7 W., Secs. 6, 7, 1
of the Willamette Meridian.
T. 24 S., R. 8 W., Secs. 1, 2, 3
12, 13, 14, 15, 16, 17, 20, 21, 22,
26, 27, 28, 29, 33, 34, 35, and 36,
Willamette Meridian.
T. 25 S., R. 7 W., Secs. 17, 18
27, 28, 29, 30, 31, 32, and 33, of
Willamette Meridian.
T. 25 S., R. 8 W., Secs. 1, 2, 3
10, 11, 13, 14, 15, 16, 23, 24, 25,
the Willamette Meridian.
T. 26 S., R. 7 W., Secs. 4, 5, 6
9, of the Willamette Meridian.
T. 26 S., R. 8 W., Secs. 1, and
Willamette Meridian.
Excluding any private lands
the above area.

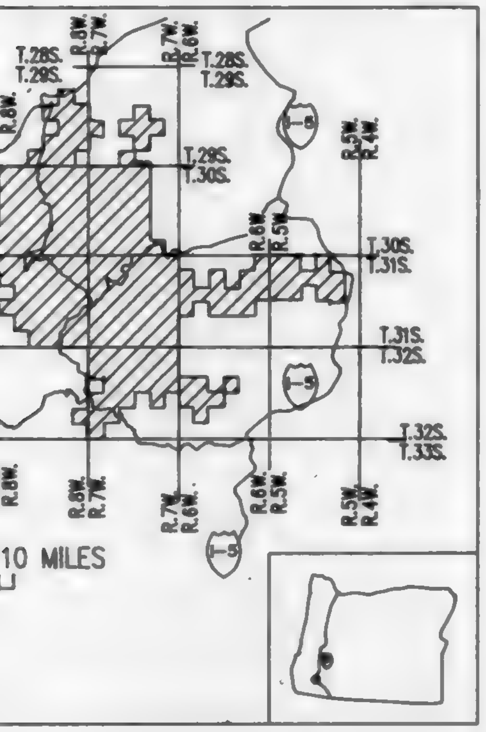
T.28S.
T.29S.
T.29S.
T.30S.
T.30S.
T.31S.
T.31S.
T.32S.
T.32S.
T.33S.
R.8W.
R.7W.
R.6W.
R.5W.
R.4W.
I-5
10 MILES

Description of O–27 taken solely from Bureau of Land Management Surface-Mineral Management Map; Roseburg 1983, Oregon.

Coos County

T. 25 S., R. 10 W., Secs. 31, 32, and 33, of the Willamette Meridian.

T. 26 S., R. 9 W., Secs. 17, 18, 19, 20, 21, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 26 S., R. 10 W., Secs. 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 27 S., R. 9 W., Secs. 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 27 S., R. 10 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 28 S., R. 9 W., Secs. 4, 5, 6, 7, 8, 9, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 28 S., R. 10 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 33, 34, 35, and 36, of the Willamette Meridian.

T. 28 S., R. 11 W., Secs. 25, and 36, of the Willamette Meridian.

T. 29 S., R. 9 W., Sec. 5, of the Willamette Meridian.

T. 29 S., R. 10 W., Secs. 1, 2, and 3, of the Willamette Meridian.

Excluding any private lands within the above area.

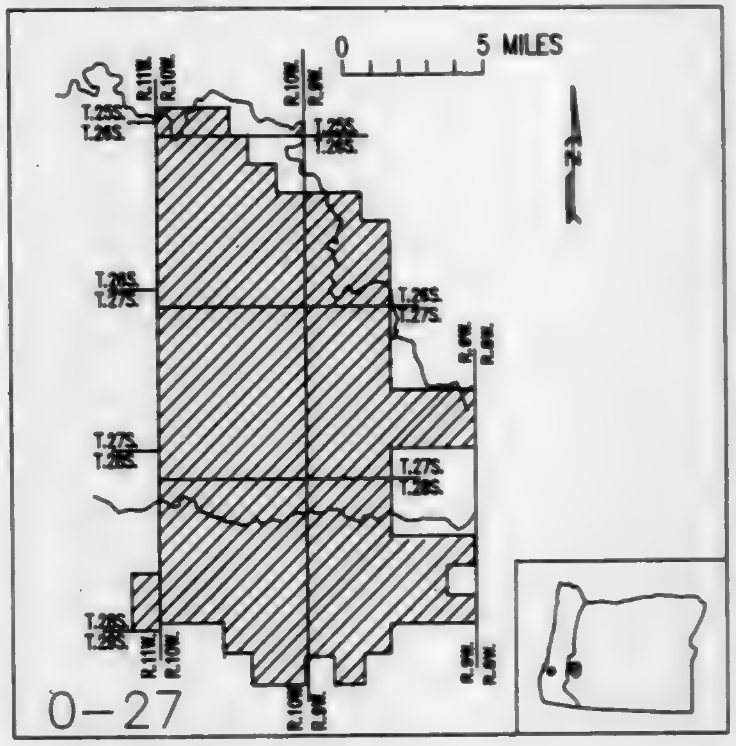
0 5 MILES
R.11W.
R.10W.
R.10W.
R.9W.
T.25S.
T.26S.
T.26S.
T.27S.
T.27S.
T.28S.
T.28S.
T.29S.
R.9W.
R.8W.
R.11W.
R.10W.
R.10W.
R.9W.
N
0–27

Description of O–28 taken solely from Bureau of Land Management Map; Cottage Grove 1979, and Roseburg 1979, Oregon.

Douglas County

T. 23 S., R. 8 W., Secs. 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 23 S., R. 9 W., Secs. 6, 7, 8, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29, of the Willamette Meridian.

T. 23 S., R. 10 W., Sec. 1, of the Willamette Meridian.

T. 24 S., R. 7 W., Secs. 6, 7, 18, and 19, of the Willamette Meridian.

T. 24 S., R. 8 W., Secs. 1, 2, 3, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 33, 34, 35, and 36, of the Willamette Meridian.

T. 25 S., R. 7 W., Secs. 17, 18, 19, 20, 21, 27, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 25 S., R. 8 W., Secs. 1, 2, 3, 4, 5, 8, 9, 10, 11, 13, 14, 15, 16, 23, 24, 25, and 36, of the Willamette Meridian.

T. 26 S., R. 7 W., Secs. 4, 5, 6, 7, 8, and 9, of the Willamette Meridian.

T. 26 S., R. 8 W., Secs. 1, and 12, of the Willamette Meridian.

Excluding any private lands within the above area.

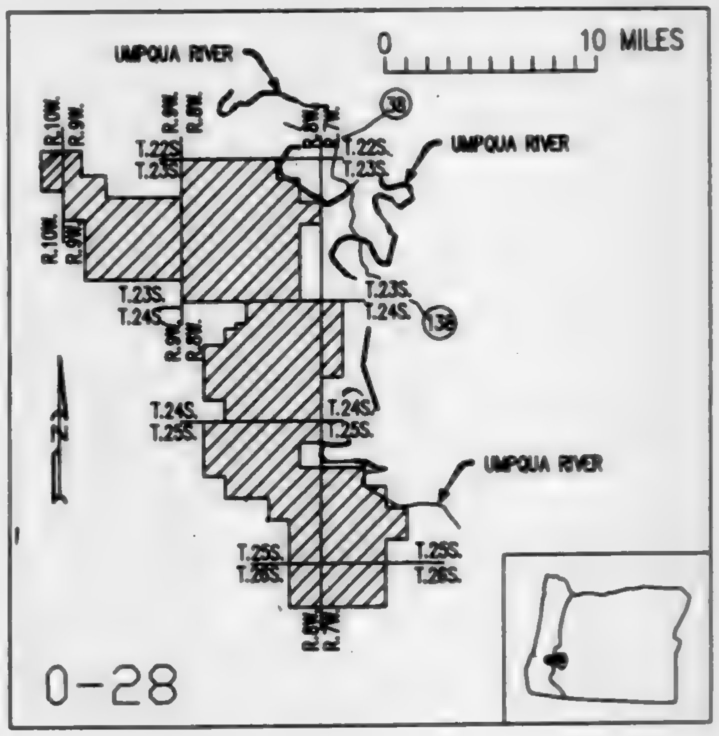
UMPQUA RIVER
0 10 MILES
R.10W.
R.9W.
R.9W.
R.8W.
R.8W.
R.7W.
38
T.22S.
T.23S.
UMPQUA RIVER
R.10W.
R.9W.
T.23S.
T.24S.
138
T.24S.
T.25S.
UMPQUA RIVER
T.25S.
T.26S.
R.8W.
R.7W.
N
0–28

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Description of O–29 taken solely from Bureau of Land Management Maps; Cottage Grove 1979, and Reedsport 1980, Oregon.

Douglas County

T. 20 S., R. 10 W., Secs. 35, and 36, of the Willamette Meridian.

T. 20 S., R. 9 W., Secs. 31, 32, and 33, of the Willamette Meridian.

T. 21 S., R. 11 W., Secs. 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36, of the Willamette Meridian.

T. 21 S., R. 10 W., Secs. 1, 2, 3, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 21 S., R. 9 W., Secs. 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21,, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 22 S., R. 10 W., Secs. 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, and 12, of the Willamette Meridian.

T. 22 S., R. 9 W., Secs. 4, 5, 6, 7, 8, and 9, of the Willamette Meridian.

Excluding any private lands within the above area.

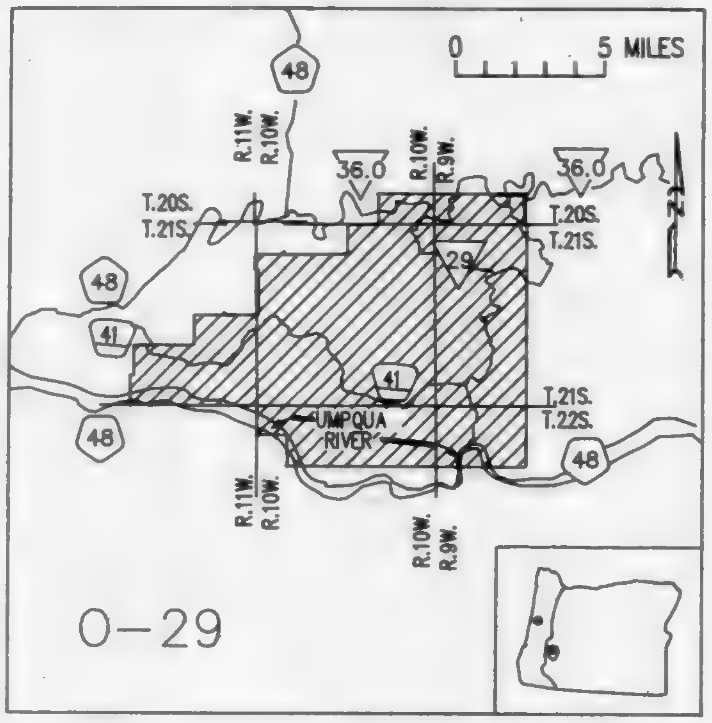

Description of O–30 taken solely from Bureau of Land Management Map; Cottage Grove 1979, Oregon.

Douglas and Lane Counties

T. 19 S., R. 6. W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 19 S., R. 5 W., Secs. 7, 17, 18, 19, 20, 21, 27, 28, 29, 30, 31, 32, 33, and 34, of the Willamette Meridian.

T. 20 S., R. 6 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 20 S., R. 5 W., Secs. 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 21 S., R. 7 W., Secs. 1, 13, 25, 35, and 36, of the Willamette Meridian.

T. 21 S., R. 6 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 21. S., R. 5 W., Secs. 7, and 19, of the Willamette Meridian.

T. 22 S., R. 7 W., Secs. 1, 11, and 12, of the Willamette Meridian.

T. 22 S., R. 6 W., Secs. 5, and 6, of the Willamette Meridian.

Excluding any private lands in the above area.

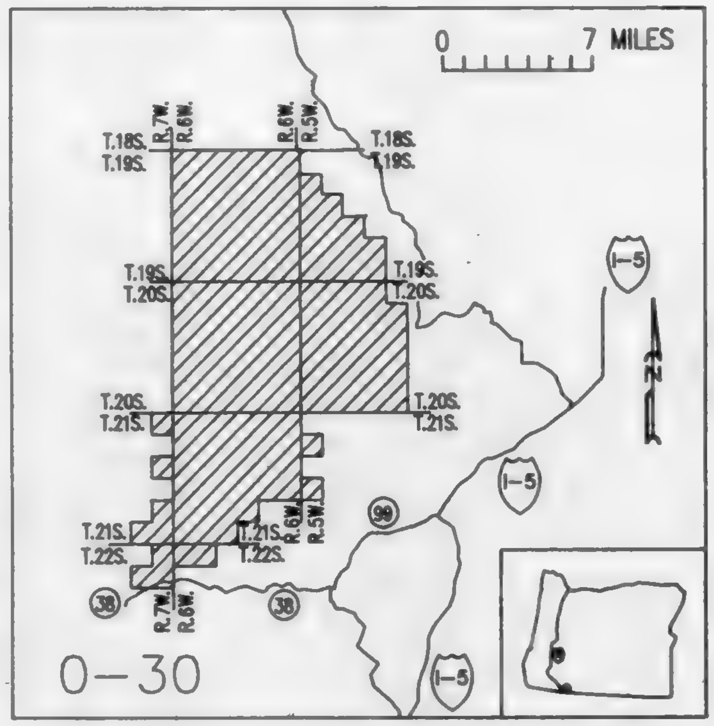

Description of O–31 taken s
Bureau of Land Management
Cottage Grove 1979, and Reed
and Eugene 1980, Oregon.
Lane and Douglas Counties
T. 18 S., R. 11 W., Secs. 13, 2
33, 34, 35, and 36, of
the Willamette Meridian.
T. 18 S., R. 10 W., Secs. 15, 1
19, 20, 21, 22, 23, 25, 26, 27, 28,
32, 33, 34, and 35, of the Willa
Meridian.
T. 18 S., R. 9 W., Secs. 25, 26
33, 34, 35, and 36, of the Willa
Meridian.
T. 18 S., R. 8 W., Secs. 19, 29,
and 32, of the Willamette Meri
T. 19 S., R. 11 W., Secs. 1, 2,
24, and 25, of the Willamette M
T. 19 S., R. 10 W., Secs. 1, 2,
8, 9, 10, 11, 12, 13, 14, 15, 16, 17,
21, 22, 23, 24, 25, 26, 27, 28, 29,
35, and 36, of the Willamette M
T. 19 S., R. 9 W., Secs. 1, 2, 3,
8, 9, 10, 11, 12, 13, 14, 15, 16, 17,
21, 22, 23, 24, 25, 26, 27, 28, 29,
33, 34, 35, and 36, of the Willa
Meridian.
T. 19 S., R. 8 W., Secs. 6, 7, 1
and 31, of the Willamette Meri
T. 20 S., R. 10 W., Secs. 1, 11,
23, 24, 25, and 26, of the Willa
Meridian.
T. 20 S., R. 9 W., Secs. 1, 2, 3
8, and 9, of the Willamette Me
Excluding any private lands
the above area.

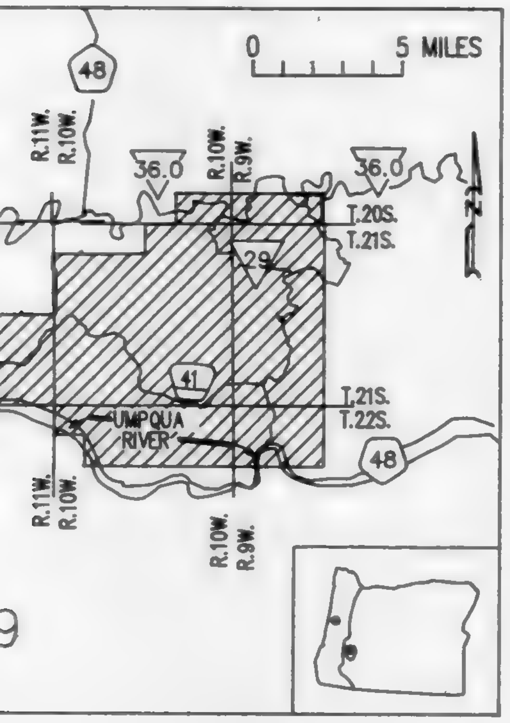
0 5 MILES
48
R.11W.
R.10W.
36.0
R.10W.
R.9W.
36.0
T.20S.
T.21S.
29
41
T.21S.
T.22S.
UMPQUA
RIVER
48
R.11W.
R.10W.
R.10W.
R.9W.
9

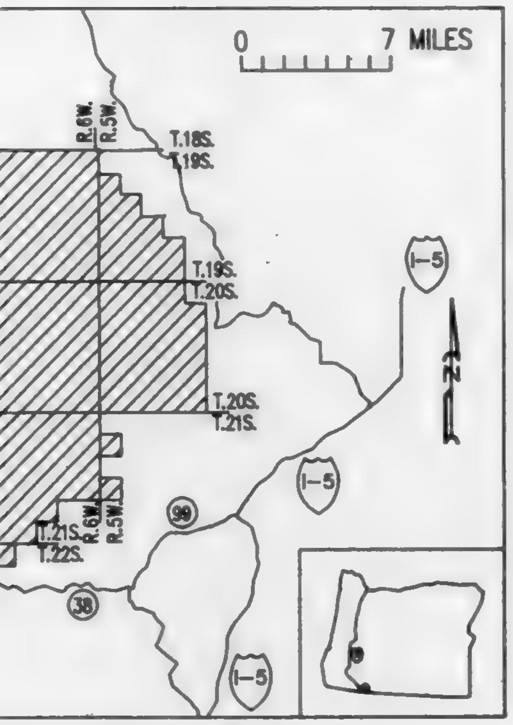
0 7 MILES
R.6W.
R.5W.
T.18S.
T.19S.
T.19S.
T.20S.
I-5
T.20S.
T.21S.
I-5
99
T.21S.
T.22S.
R.6W.
R.5W.
38
I-5

Description of O–31 taken solely from Bureau of Land Management Maps; Cottage Grove 1979, and Reedsport 1980, and Eugene 1980, Oregon.

Lane and Douglas Counties

T. 18 S., R. 11 W., Secs. 13, 24, 25, 26, 33, 34, 35, and 36, of the Willamette Meridian.

T. 18 S., R. 10 W., Secs. 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 18 S., R. 9 W., Secs. 25, 26, 27, 28, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 18 S., R. 8 W., Secs. 19, 29, 30, 31, and 32, of the Willamette Meridian.

T. 19 S., R. 11 W., Secs. 1, 2, 3, 4, 12, 13, 24, and 25, of the Willamette Meridian.

T. 19 S., R. 10 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 33, 34, 35, and 36, of the Willamette Meridian.

T. 19 S., R. 9 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 19 S., R. 8 W., Secs. 6, 7, 18, 19, 30, and 31, of the Willamette Meridian.

T. 20 S., R. 10 W., Secs. 1, 11, 12, 13, 14, 23, 24, 25, and 26, of the Willamette Meridian.

T. 20 S., R. 9 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, and 9, of the Willamette Meridian.

Excluding any private lands within the above area.

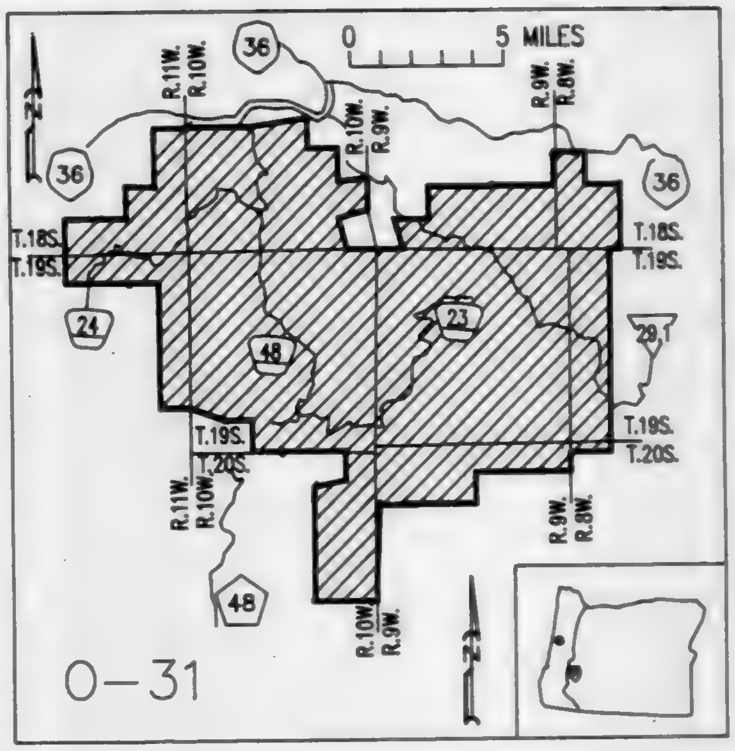
R.11W.
R.10W.
36
0 5 MILES
R.9W.
R.8W.
R.10W.
R.9W.
36
36
T.18S.
T.19S.
T.18S.
T.19S.
24
23
48
29.1
T.19S.
T.20S.
T.19S.
T.20S.
R.11W.
R.10W.
R.9W.
R.8W.
48
R.10W.
R.9W.
O–31

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Description of O–32 taken solely from Bureau of Land Management Map; Eugene 1980, Oregon.

Lincoln, Benton, and Lane Counties

T. 14 S., R. 9 W., Sec. 25, of the Willamette Meridian.

T. 14 S., R. 8 W., Secs. 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, and 34, of the Willamette Meridian.

T. 14 S., R. 7 W., Secs. 13, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 15 S., R. 9 W., Secs. 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36, of the Willamette Meridian.

T. 15 S., R. 8 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 15 S., R. 7 W., Secs. 3, 4, 5, and 6, of the Willamette Meridian.

T. 16 S., R. 9 W., Secs. 1, 2, 3, 4, 7, 8, 9, 10, 11, 12, 13,14,15,16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 33, 34, 35, and 36, of the Willamette Meridian.

T. 16 S., R. 8 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 17 S., R. 10 W., Secs. 12, 13, and 24, of the Willamette Meridian.

T. 17 S., R. 9 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 17, 18, 19, and 20, of the Willamette Meridian.

T. 17 S., R. 8 W., Secs. 5, and 6, of the Willamette Meridian.

Excluding any private lands within the above area.

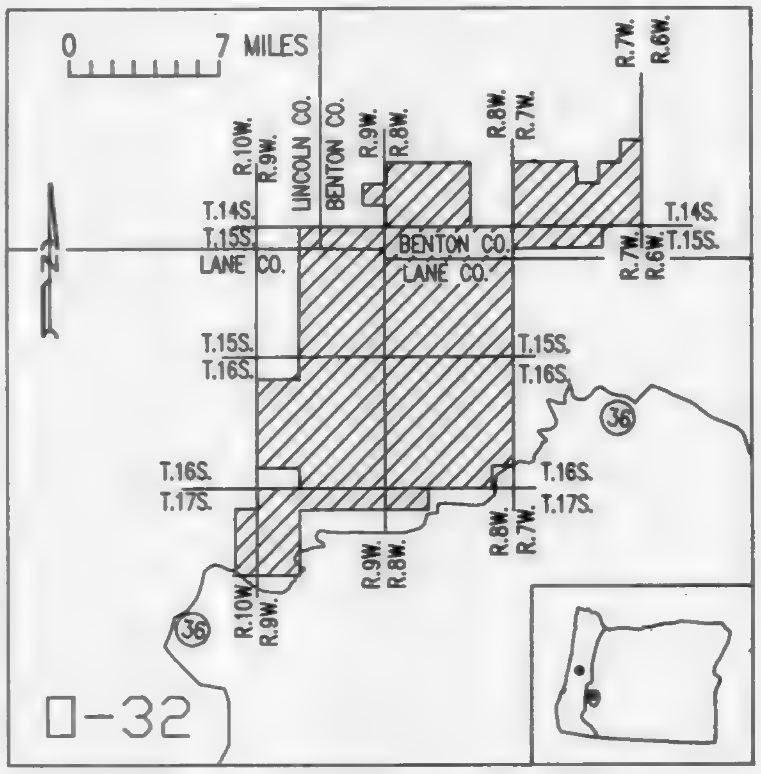
0
7 MILES
N
R.10W.
R.9W.
LINCOLN CO.
BENTON CO.
R.9W.
R.8W.
R.8W.
R.7W.
R.7W.
R.6W.
T.14S.
T.15S.
LANE CO.
BENTON CO.
LANE CO.
T.14S.
T.15S.
R.7W.
R.6W.
T.15S.
T.16S.
T.15S.
T.16S.
36
T.16S.
T.17S.
T.16S.
T.17S.
R.8W.
R.7W.
R.9W.
R.8W.
R.10W.
R.9W.
36
O–32

Description of O–33 taken solely from Bureau of Land Management Maps; Corvallis 1980, and Eugene 1980, Oregon.

Lincoln and Benton Counties

T. 12 S., R. 8 W., Secs. 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 12 S., R. 7 W., Secs. 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 13 S., R. 8 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 13 S., R. 7 W., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 15, 16, 17, 18, 19, 20, and 21, of the Willamette Meridian.

T. 14 S., R. 8 W., Sec. 5, of the Willamette Meridian.

Excluding any private lands within the above area.

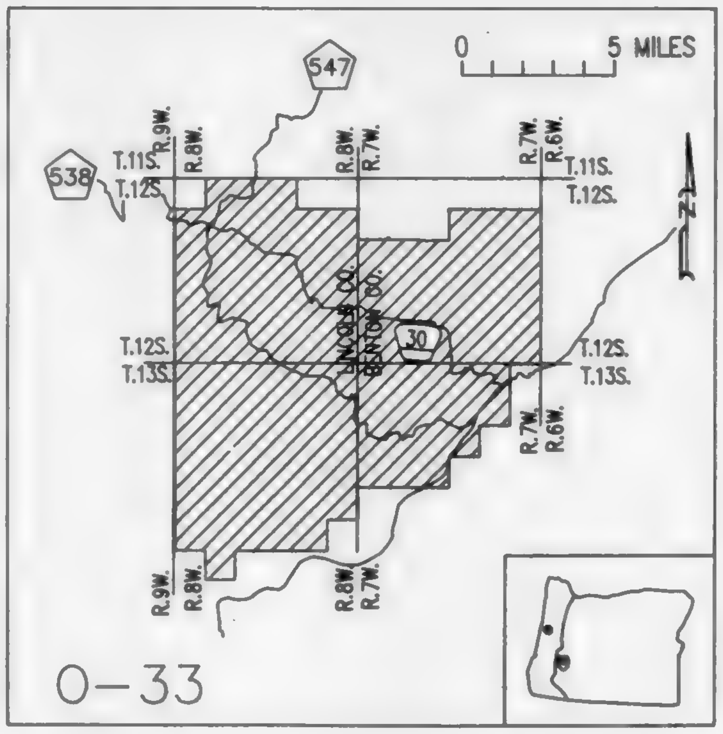
547
0
5 MILES
538
T.11S.
T.12S.
R.9W.
R.8W.
R.8W.
R.7W.
R.7W.
R.6W.
T.11S.
T.12S.
N
LINCOLN CO.
BENTON CO.
30
T.12S.
T.13S.
T.12S.
T.13S.
R.7W.
R.6W.
R.9W.
R.8W.
R.8W.
R.7W.
O–33

Description of O–34 taken solely from U.S. Geological Survey Map; Waldport 1980, Bureau of Land Management Map; Eugene 1980, and Corvallis 1980, Oregon.

Lincoln and Benton Counties

T. 12 S., R. 11 W., Secs. 12, 13, 14, 23, 24, 25, 26, 35, and 36, of the Willamette Meridian.

T. 12 S., R. 10 W., Secs. 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 13 S., R. 11 W., Secs. 1, 2, 11, 12, 13, 14, 15, 23, 24, 25, 26, 35, and 36, of the Willamette Meridian.

T. 13 S., R. 10 ½ W., Secs. 6 and 7, of the Willamette Meridian.

T. 13 S., R. 10 W., Secs. 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 13 S., R. 9 W., Secs. 6, 7, 18, 19, 20, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 14 S., R. 11 W., Secs. 1, 2, 11, and 12, of the Willamette Meridian.

T. 14 S., R. 10 W., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, and 18, of the Willamette Meridian.

Excluding from the above areas any lands within the Drift Creek Wilderness, and any private lands.

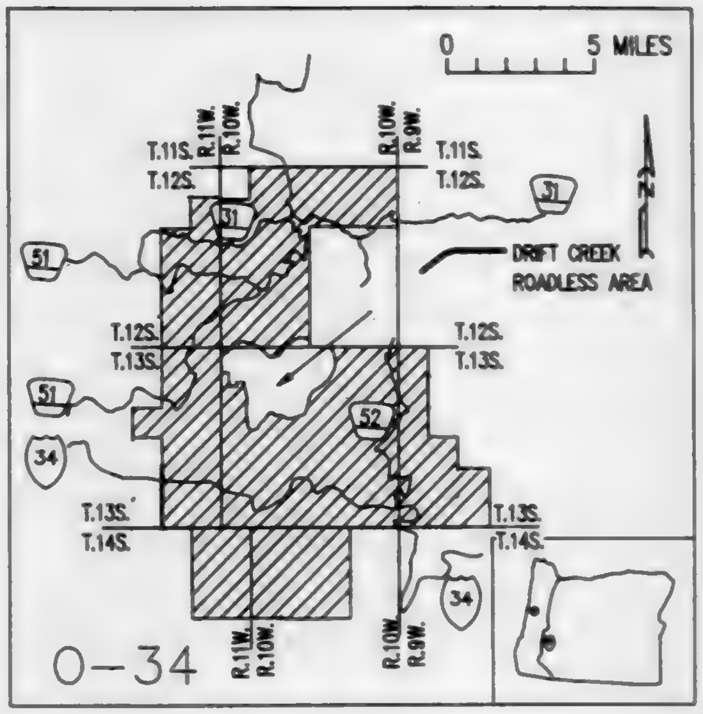
0 5 MILES
R.11W.
R.10W.
R.10W.
R.9W.
T.11S.
T.12S.
T.11S.
T.12S.
31
31
51
DRIFT CREEK ROADLESS AREA
T.12S.
T.13S.
T.12S.
T.13S.
51
52
34
T.13S.
T.14S.
T.13S.
T.14S.
34
R.11W.
R.10W.
R.10W.
R.9W.
O–34

Description of O–35 taken solely from Bureau of Land Management Maps; Yamhill River 1980, and Corvallis 1980, Oregon.

Lincoln and Tillamook Counties

T. 5 S., R. 10 W., Secs. 32, 33, 34, and 35, of the Willamette Meridian.

T. 6 S., R. 11 W., Secs. 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, and 24, of the Willamette Meridian.

T. 6 S., R. 10 W., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, and 32, of the Willamette Meridian.

T. 7 S., R. 10 W., Secs. 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 7 S., R. 9 W., Sec. 19, of the Willamette Meridian.

T. 8 S., R. 10 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 23, 24, and 26, of the Willamette Meridian.

Excluding any private lands within the above area.

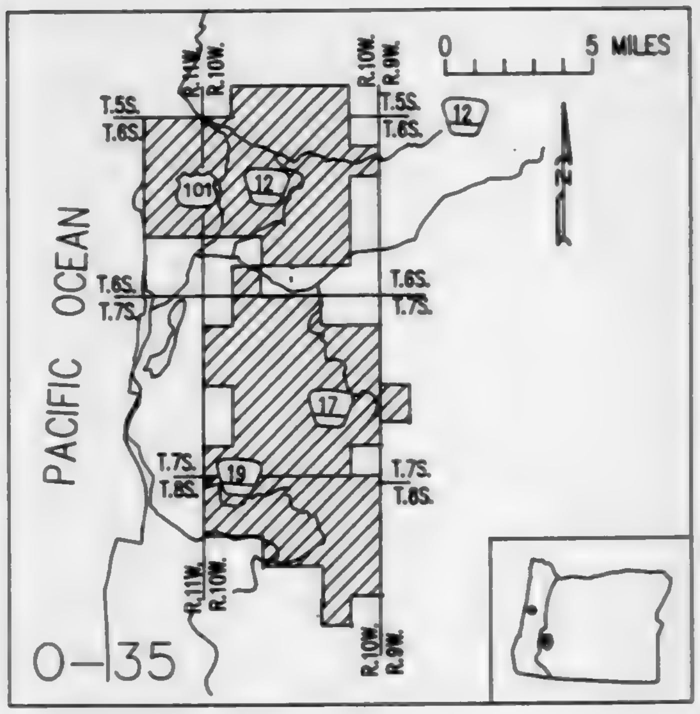
R.11W.
R.10W.
R.10W.
R.9W.
0 5 MILES
T.5S.
T.6S.
T.5S.
T.6S.
12
101
12
PACIFIC OCEAN
T.6S.
T.7S.
T.6S.
T.7S.
17
T.7S.
T.8S.
19
T.7S.
T.8S.
R.11W.
R.10W.
R.10W.
R.9W.
O–35

Description of O-36 taken solely from Bureau of Land Management Map; Yamhill River 1980, Oregon.

Tillamook and Yamhill Counties

T. 2 S., R. 8 W., Secs. 30, 31, 32, 33, and 34, of the Willamette Meridian.

T. 3 S., R. 9 W., Secs. 1, and 12, of the Willamette Meridian.

T. 3 S., R. 8 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 3 S., R. 7 W., Secs. 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 3 S., R. 6 W., Secs. 7, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 4 S., R. 9 W., Secs. 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 22, 23, 24, 25, 26, 27, and 36 Willamette Meridian.

T. 4 S., R. 8 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 4 S., R. 7 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18, of the Willamette Meridian.

T. 4 S., R. 6 W., Secs. 5, 6, 7, and 18, of the Willamette Meridian.

T. 5 S., R. 9 W., Secs. 1, 2, 10, 11, 12, 13, 14, 15, 22, 23, and 24, of the Willamette Meridian.

Excluding any private lands within the above area.

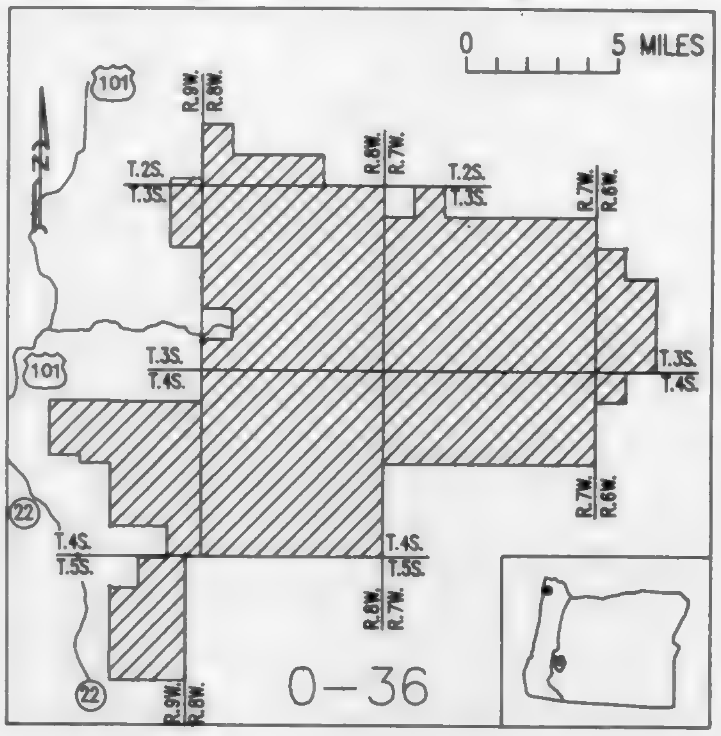

Description of O-37 taken solely from Bureau of Land Management Map; Corvallis 1980, Oregon.

Polk County

T. 7 S., R. 8 W., Secs. 1, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 7 S., R. 7 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, and 34, of the Willamette Meridian.

T. 7 S., R. 6 W., Secs. 4, 5, 6, 7, 8, 9, 17, and 18, of the Willamette Meridian.

T. 8 S., R. 8 W., Secs. 1, 2, 3, and 11, of the Willamette Meridian.

T. 8 S., R. 7 W., Secs. 3, 4, 5, and 6, of the Willamette Meridian.

Excluding any private lands within the above area.

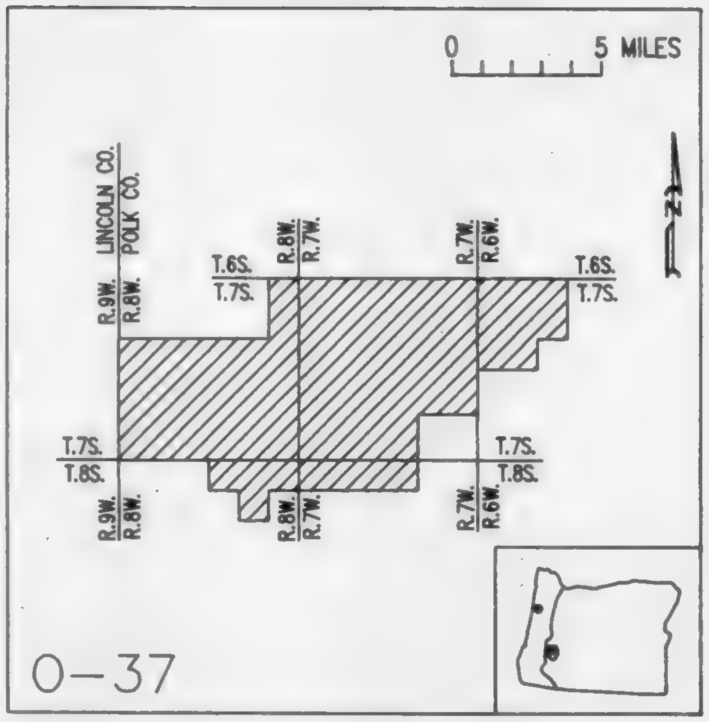

, Secs. 1, 2, 3, 4, 5, 6, 7, , 14, 15, 16, 17, and 18, of Meridian.

, Secs. 5, 6, 7, and 18, of Meridian.

T. 5 S., R. 9 W., Secs. 1, 2, 10, 11, 12, 13, 14, 15, 22, 23, and 24, of the Willamette Meridian.

Excluding any private lands within the above area.

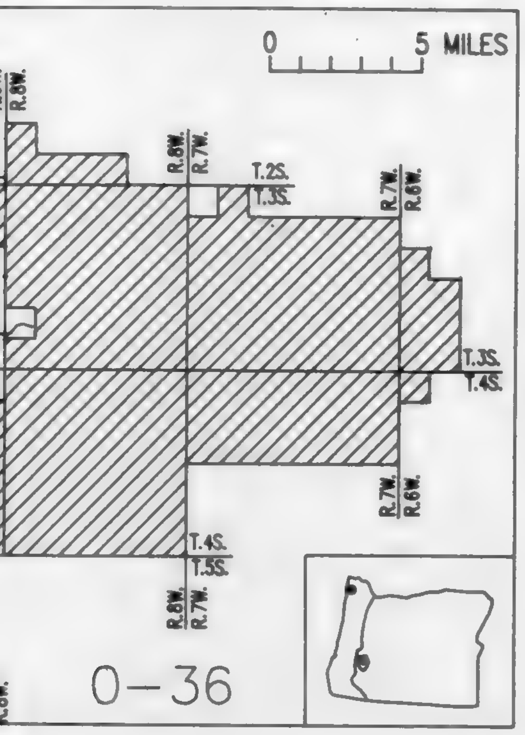
0 5 MILES
R.8W.
R.8W.
R.7W.
T.2S.
T.3S.
R.7W.
R.6W.
T.3S.
T.4S.
R.7W.
R.6W.
T.4S.
T.5S.
R.6W.
R.7W.
0–36

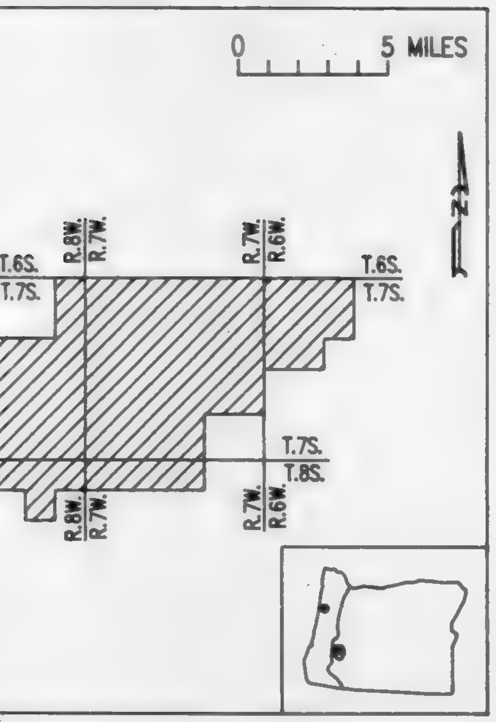
0 5 MILES
R.8W.
R.7W.
R.7W.
R.6W.
T.6S.
T.7S.
T.6S.
T.7S.
T.7S.
T.8S.
R.8W.
R.7W.
R.7W.
R.6W.

Description of O–38 taken solely from Bureau of Land Management Map; Corvallis 1980, Oregon.

Polk County

T. 8 S., R. 6 W., Sec. 31, of the Willamette Meridian.

T. 9 S., R. 6 W., Secs. 5, 6, and 7, of the Willamette Meridian.

T. 9 S., R. 7 W., Secs. 1, 2, 3, 9, 10, 11, 12, 13, 14, 15, 16,

17, 21, 22, 23, 26, and 35, of the Willamette Meridian.

Excluding any private lands within the above area.

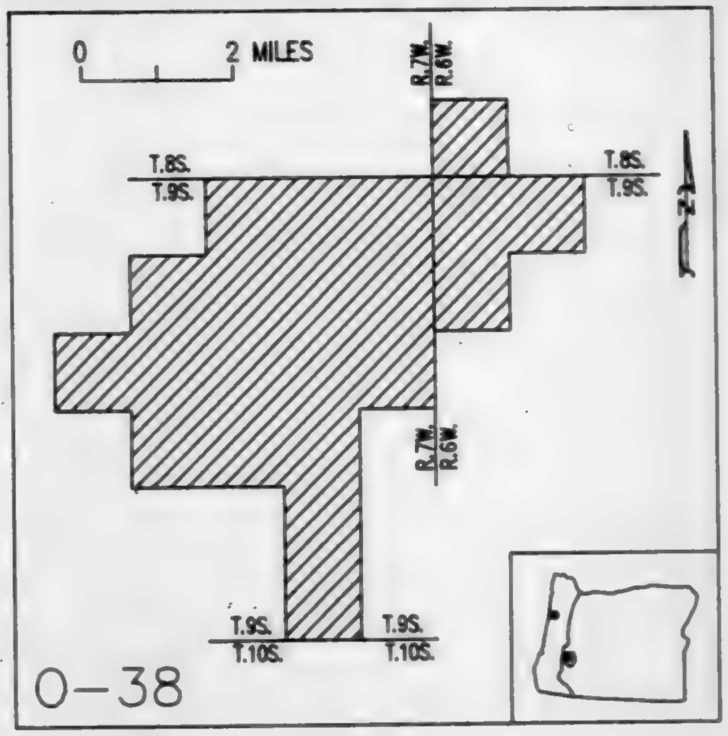
0 2 MILES
R.7W.
R.6W.
T.8S.
T.9S.
T.8S.
T.9S.
R.7W.
R.6W.
T.9S.
T.10S.
T.9S.
T.10S.
0–38

Description of O–39 taken solely from Bureau of Land Management Map; Cottage Grove 1979, Oregon.

Douglas and Lane Counties

T. 21 S., R. 4 W., Secs. 23, 24, 25, 26, 27, 35, and 36, of the Willamette Meridian.

T. 22 S., R. 4 W., Secs. 1, 2, 3, 9, 10, 11, 12, 13, 14, 15, 21, 22, 23, 24, 25, 26, 27, 35, and 36, of the Willamette Meridian.

T. 22 S., R. 3 W., Sec. 31, of the Willamette Meridian.

T. 23 S., R. 4 W., Sec. 1, of the Willamette Meridian.

Excluding any private lands within the above area.

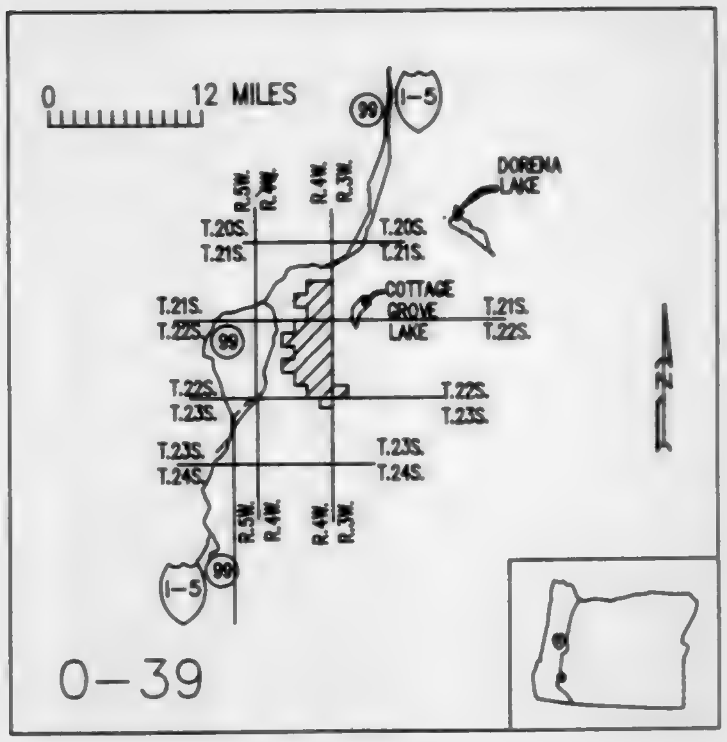
0 12 MILES
99
I–5
DORENA LAKE
R.5W.
R.4W.
R.4W.
R.3W.
T.20S.
T.21S.
T.20S.
T.21S.
COTTAGE GROVE LAKE
T.21S.
T.22S.
99
T.21S.
T.22S.
T.22S.
T.23S.
T.22S.
T.23S.
T.23S.
T.24S.
T.23S.
T.24S.
R.5W.
R.4W.
R.4W.
R.3W.
99
I–5
0–39

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Description of O–40 taken solely from Bureau of Land Management Map; Medford 1978, Oregon.
Jackson County

T. 41 S., R. 1 E., Secs. 12, and 13, of the Willamette Meridian.

T. 40 S., R. 2 E., Secs. 11, 12, 13, 14, 23, 24, 25, 26, 35, and 36, of the Willamette Meridian.

T. 41 S., R. 2 E., Secs. 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18, of the Willamette Meridian.

T. 39 S., R. 3 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 31, 34, 35, and 36, of the Willamette Meridian.

T. 40 S., R. 3 E., Secs. 1, 2, 3, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 41 S., R. 3 E., Secs. 4, and 5, of the Willamette Meridian.

T. 39 S., R. 4 E., Secs. 3, 4, 5, 6, 7, 8, 9, 15, 16, 17, 18, 19, 21, 22, 23, 27, and 31, of the Willamette Meridian.

T. 40 S., R. 4 E., Secs. 7, 8, 9, 17, 18, 19, 20, 21, and 29, of the Willamette Meridian.

Excluding any private lands within the above area.

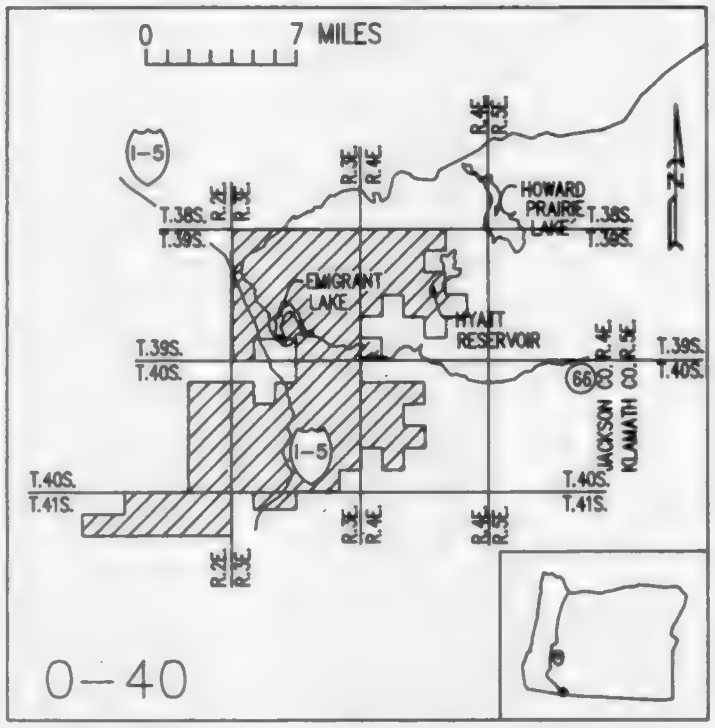

Description of O–41 taken solely from Bureau of Land Management Map; Madras 1978, Oregon.
Jefferson County

T. 10 S., R. 9 E., Sec. 36, of the Willamette Meridian.

T. 10 S., R. 10 E., Secs. 27, 28, 29, 31, 32, 33, and 34, of the Willamette Meridian.

T. 11 S., R. 9 E., Secs. 1, 12, 13, 24, and 25, of the Willamette Meridian.

T. 11 S., R. 10 E., Secs. 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 29, and 30, of the Willamette Meridian.

Excluding from the above areas any lands within Warm Springs Indian Reservation, and any private lands.

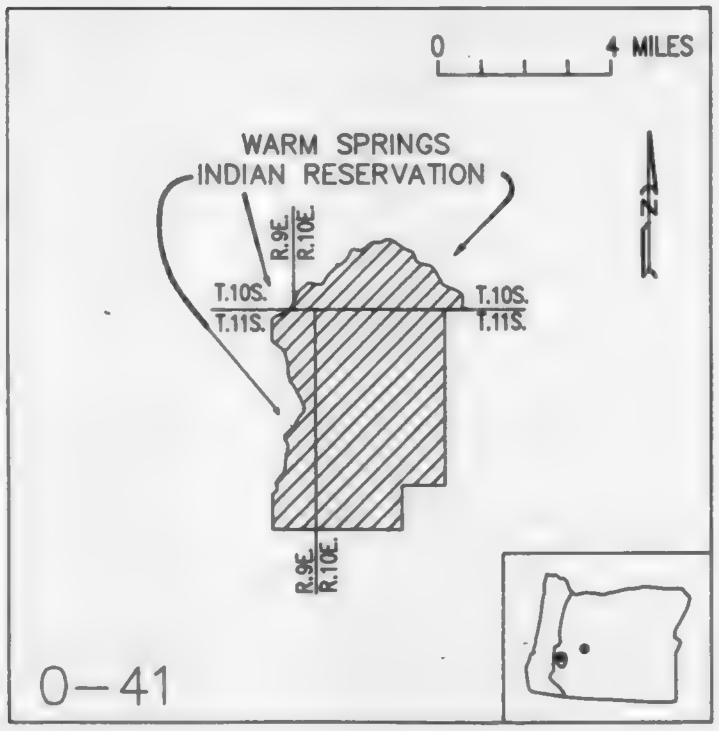

Description of O–42 taken s
Bureau of Land Management M
Madras 1978, Oregon.
Jefferson County
T. 11 S., R. 8 E., Secs. 35, and
Willamette Meridian.
T. 11 S., R. 9 E., Secs. 26, 28,
33, 34, 35, and 36, of the Willam
Meridian.
T. 12 S., R. 8 E., Secs. 1, 2, 11
of the Willamette
Meridian.
T. 12 S., R. 9 E., Secs. 1, 2, 3,
8, 9, 10, 11, and 12, of the Will
Meridian.
Excluding from the above a
lands within Warm Springs In
Reservation, and Mt. Jefferson
Wilderness, and any private l

Description of O–44 taken s
Bureau of Land Management
1980, Oregon.
Jefferson, Deschutes, and Linn
T. 13 S., R. 7 ½ E., Secs. 24,
of the Willamette Meridian.
T. 13 S., R. 8 E., Secs. 2, 3, 4,
14, 15, 16, 19, 20, 21, 22, 28, 29,
32, of the Willamette Meridia
T. 14 S., R. 7 ½ E., Secs. 1, a
the Willamette Meridian.
T. 14 S., R. 8 E., Secs. 2, 3, 4,
9, 10, 14, 15, 16, 21, 22, and 23,
Willamette Meridian.
Excluding from the above a
lands within Mt. Jefferson Wi
Mt. Washington Wilderness,
private lands.

UMI

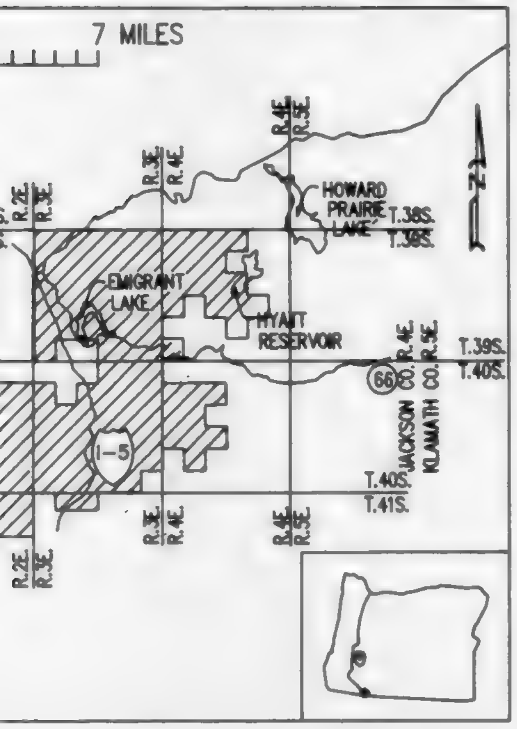
7 MILES
R.4E. R.5E.
R.3E. R.4E.
HOWARD PRAIRIE LAKE
T.38S. T.39S.
R.2E. R.3E.
EMIGRANT LAKE
HYATT RESERVOIR
R.4E. R.5E.
T.39S. T.40S.
66
JACKSON CO. KLAMATH CO.
I-5
T.40S. T.41S.
R.3E. R.4E.
R.4E. R.5E.
R.2E. R.3E.

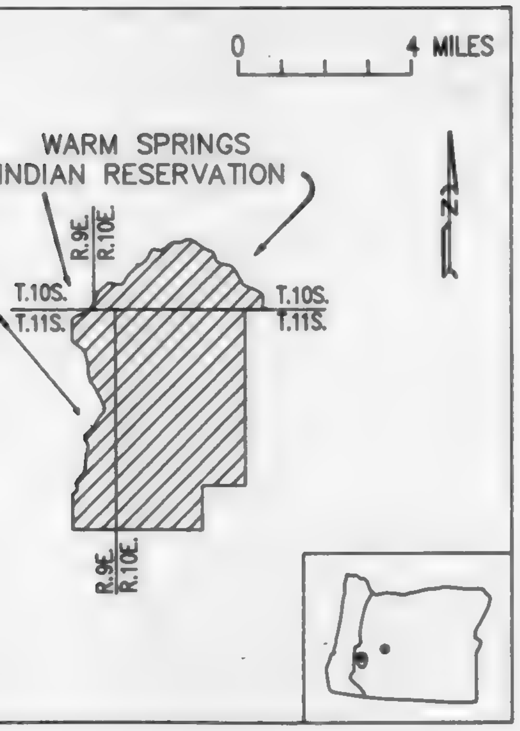
0 4 MILES
WARM SPRINGS INDIAN RESERVATION
R.9E. R.10E.
T.10S. T.11S.
T.10S. T.11S.
R.9E. R.10E.

Description of O–42 taken solely from Bureau of Land Management Map; Madras 1978, Oregon.

Jefferson County

T. 11 S., R. 8 E., Secs. 35, and 36, of the Willamette Meridian.

T. 11 S., R. 9 E., Secs. 26, 28, 29, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 12 S., R. 8 E., Secs. 1, 2, 11, and 12, of the Willamette Meridian.

T. 12 S., R. 9 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12, of the Willamette Meridian.

Excluding from the above areas any lands within Warm Springs Indian Reservation, and Mt. Jefferson Wilderness, and any private lands.

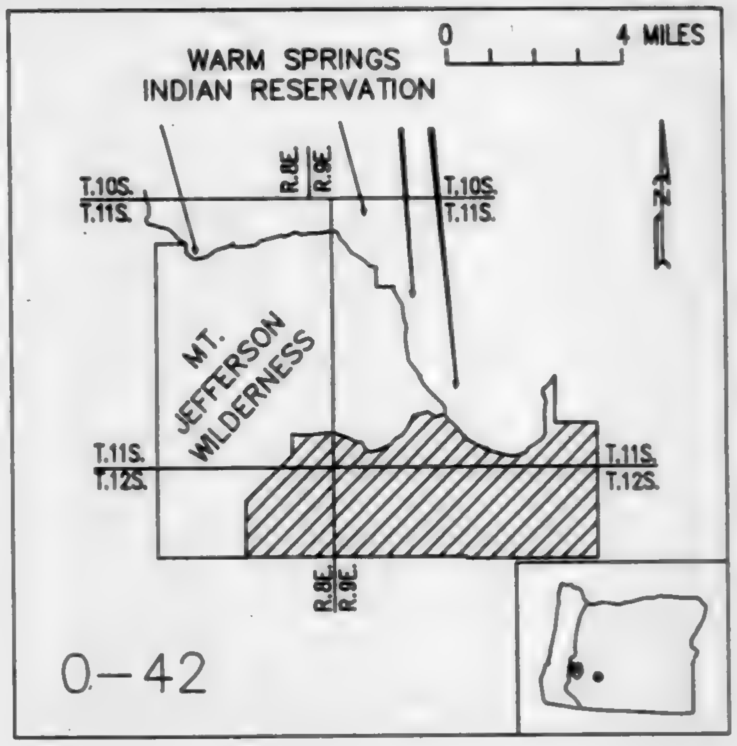
WARM SPRINGS INDIAN RESERVATION
0 4 MILES
R.8E. R.9E.
T.10S. T.11S.
T.10S. T.11S.
MT. JEFFERSON WILDERNESS
T.11S. T.12S.
T.11S. T.12S.
R.8E. R.9E.
O–42

Description of O–44 taken solely from Bureau of Land Management Map; Bend 1980, Oregon.

Jefferson, Deschutes, and Linn Counties

T. 13 S., R. 7 ½ E., Secs. 24, 25, and 36, of the Willamette Meridian.

T. 13 S., R. 8 E., Secs. 2, 3, 4, 9, 10, 11, 14, 15, 16, 19, 20, 21, 22, 28, 29, 30, 31, and 32, of the Willamette Meridian.

T. 14 S., R. 7 ½ E., Secs. 1, and 12, of the Willamette Meridian.

T. 14 S., R. 8 E., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 14, 15, 16, 21, 22, and 23, of the Willamette Meridian.

Excluding from the above areas any lands within Mt. Jefferson Wilderness, Mt. Washington Wilderness, and any private lands.

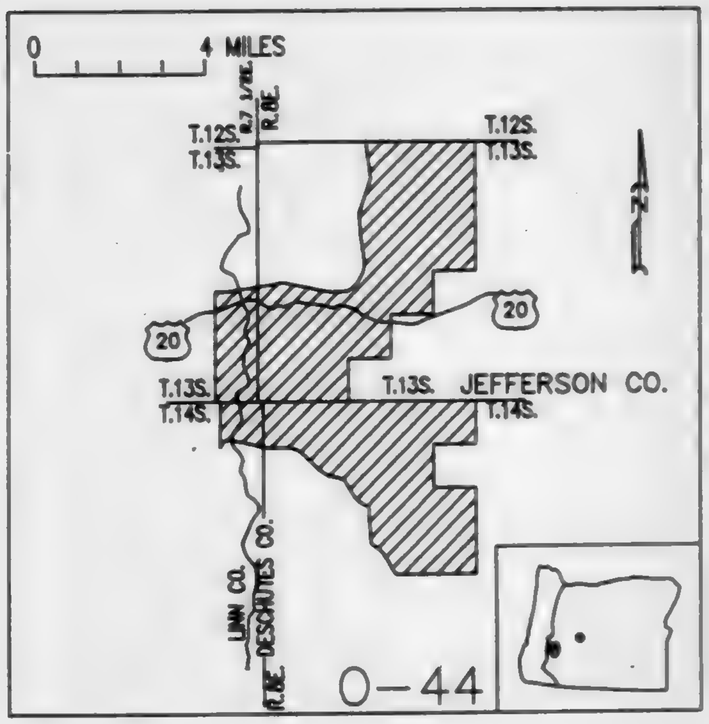
0 4 MILES
R.7 1/2E. R.8E.
T.12S. T.13S.
T.12S. T.13S.
20
20
T.13S. T.14S.
T.13S. JEFFERSON CO.
T.14S.
LINN CO.
DESCHUTES CO.
R.8E.
O–44

Description of O-45 taken solely from Bureau of Land Management Map; Bend 1980, Oregon.

Deschutes County

T. 15 S., R. 8 E., Secs. 1, 2, 12, 13, 24, 25, and 36, of the Willamette Meridian.

T. 15 S., R. 9 E., Secs. 18, 19, 20, 21, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

Excluding from the above areas any lands within Mt. Washington Wilderness and Three Sisters Wilderness, and any private lands.

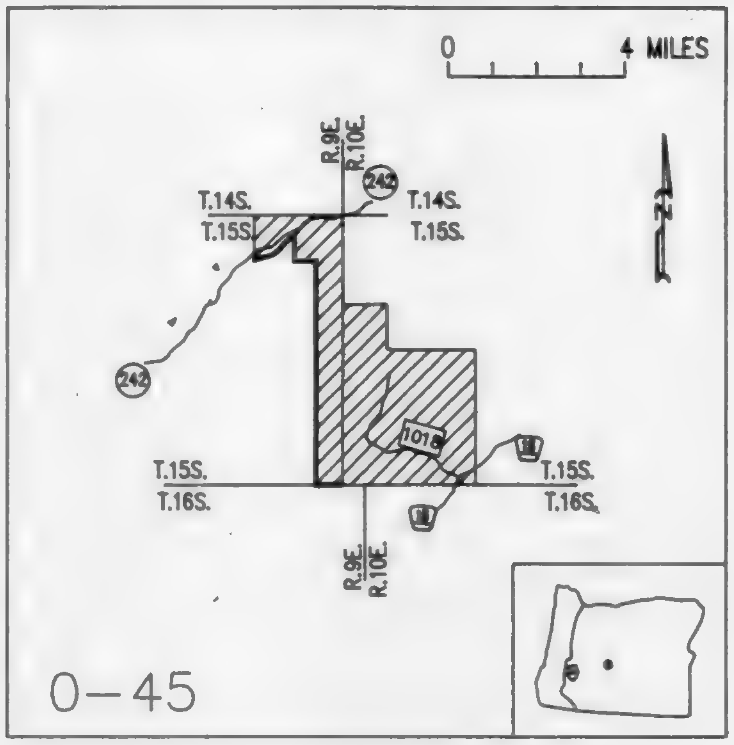
0
4 MILES
N
R.9E.
R.10E.
242
T.14S.
T.15S.
T.14S.
T.15S.
242
101
T.15S.
T.16S.
T.15S.
T.16S.
R.9E.
R.10E.
O-45

Description of O-46 taken solely from Bureau of Land Management Map; Nehalem River 1979, Oregon.

Tillamook County

T. 3 N., R. 9 W., Secs. 34, 35, and 36, of the Willamette Meridian.

T. 3 N., R. 8 W., Secs. 31, and 32, of the Willamette Meridian.

T. 2 N., R. 10 W., Secs. 13, 24, 25, and 36, of the Willamette Meridian.

T. 2 N., R. 9 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 2 N., R. 8 W., Secs. 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, 31, and 32, of the Willamette Meridian.

T. 1 N., R. 9 W., Secs. 1, 2, 3, 4, 5, 9, 10, 11, 12, 13, 14, 15, and 16, of the Willamette Meridian.

T. 1 N., R. 8 W., Secs. 5, 6, 7, 8, 17, and 18, of the Willamette Meridian.

Excluding any private lands within the above area.

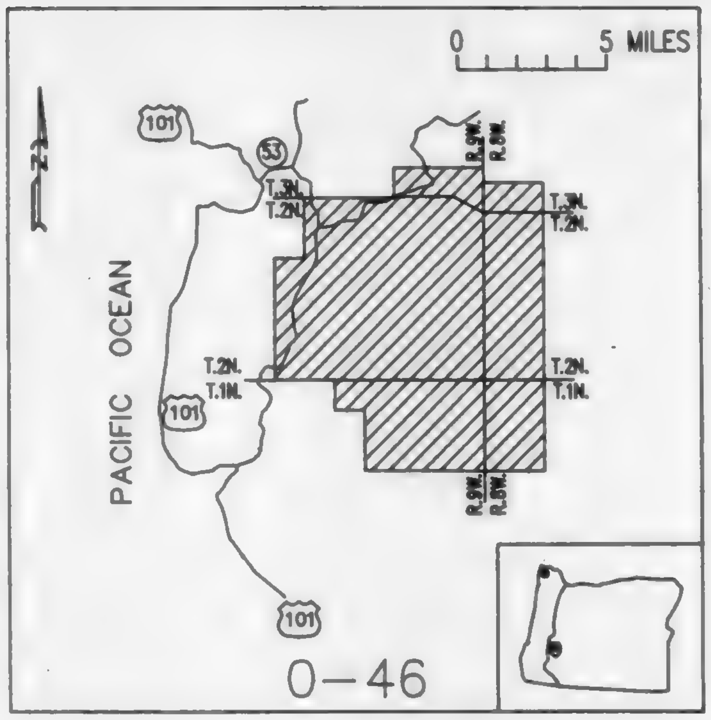
0
5 MILES
N
101
53
R.9W.
R.8W.
T.3N.
T.2N.
T.3N.
T.2N.
PACIFIC OCEAN
T.2N.
T.1N.
T.2N.
T.1N.
101
R.9W.
R.8W.
101
O-46

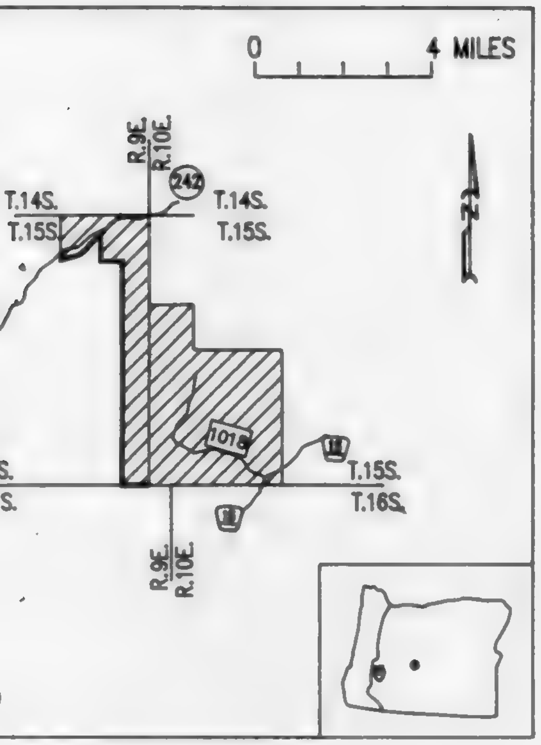
0
4 MILES
R.9E.
R.10E.
242
T.14S.
T.15S.
T.14S.
T.15S.
101B
T.15S.
T.16S.
R.9E.
R.10E.

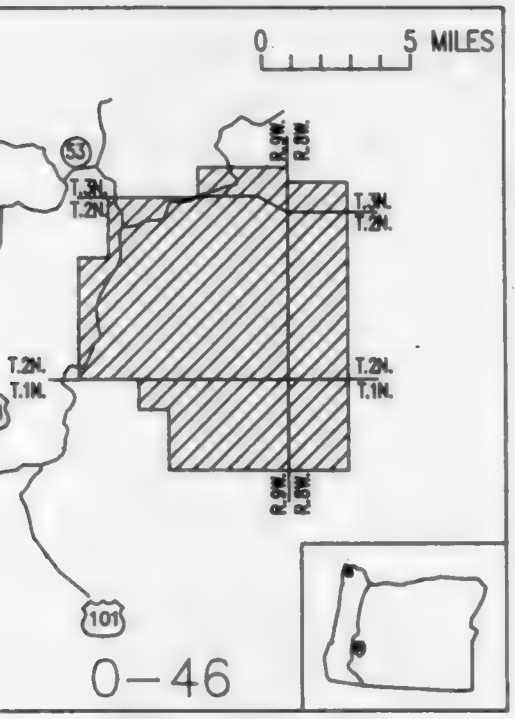
0
5 MILES
53
T.3N.
T.2N.
R.9W.
R.8W.
T.3N.
T.2N.
T.2N.
T.1N.
T.2N.
T.1N.
R.9W.
R.8W.
101
0–46

Description of O–47 taken solely from Bureau of Land Management Map; Nehalem River 1979, Oregon.
Columbia, Washington, Clatsop, and Tillamook Counties

T. 4 N., R. 6 W., Secs. 12, 13, 14, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36, of the Willamette Meridian.

T. 4 N., R. 5 W., Secs. 17, and 18, of the Willamette Meridian.

T. 3 N., R. 6 W., Secs. 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 2 N., R. 6 W., Secs. 1, 2, 3, 4, 5, and 6, of the Willamette Meridian.

T. 3 N., R. 5 W., Secs. 7, 8, 9, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 2 N., R. 5 W., Secs. 4, 5, and 6, of the Willamette Meridian.

Excluding any private lands within the above area.

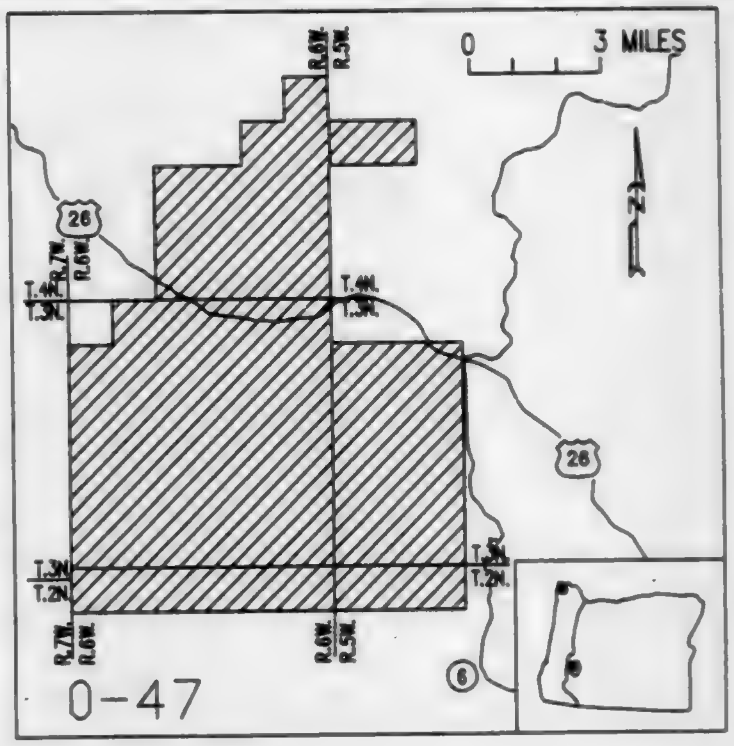
R.6W.
R.5W.
0
3 MILES
26
R.7W.
R.6W.
T.4N.
T.3N.
T.4N.
T.3N.
26
T.3N.
T.2N.
T.3N.
T.2N.
R.7W.
R.6W.
R.6W.
R.5W.
6
0–47

Description of O–48 taken solely from Bureau of Land Management Map; Astoria 1981, Oregon.
Clatsop County

T. 9 N., R. 7 W., Secs. 25, and 36, of the Willamette Meridian.

T. 9 N., R. 6 W., Sec. 31, of the Willamette Meridian.

T. 8 N., R. 7 W., Secs. 1, 2, 11, 12, 13, 14, 23, 24, 25, 26, and 36, of the Willamette Meridian.

T. 8 N., R. 6 W., Secs. 5, 6, 7, 8, 17, 18, 19, 20, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 7 N., R. 7 W., Secs. 1, 2, and 13, of the Willamette Meridian.

T. 7 N., R. 6 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

Excluding from the above areas any land within the Julia Butler Hansen Refuge for the Columbian White Tail Deer area, the Columbia River, and any private lands.

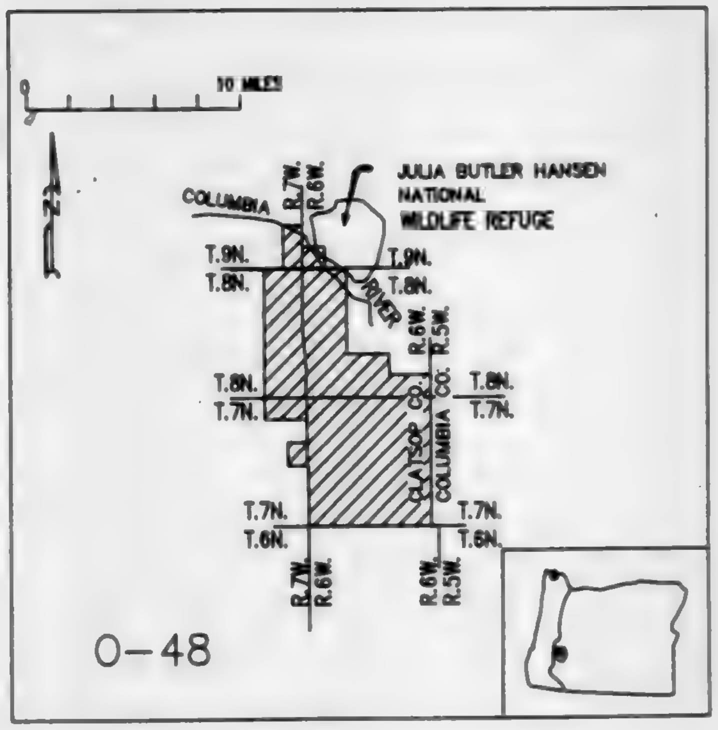
0
10 MILES
COLUMBIA
RIVER
R.7W.
R.6W.
JULIA BUTLER HANSEN
NATIONAL
WILDLIFE REFUGE
T.9N.
T.8N.
T.9N.
T.8N.
R.6W.
R.5W.
T.8N.
T.7N.
T.8N.
T.7N.
CLATSOP CO.
COLUMBIA CO.
T.7N.
T.6N.
T.7N.
T.6N.
R.7W.
R.6W.
R.6W.
R.5W.
0–48

Description of O–49 taken solely from Bureau of Land Management Map; Corvallis 1980, Oregon.

Polk, Lincoln, and Benton Counties

T. 9 S., R. 8 W., Secs. 27, 28, 29 30, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 9 S., R. 7 W., Secs. 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 10 S., R. 8 W., Secs. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, and 24, of the Willamette Meridian.

T. 10 S., R. 7 W., Secs. 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 21, 22, 27, and 28, of the Willamette Meridian.

Excluding any private lands within the above area.

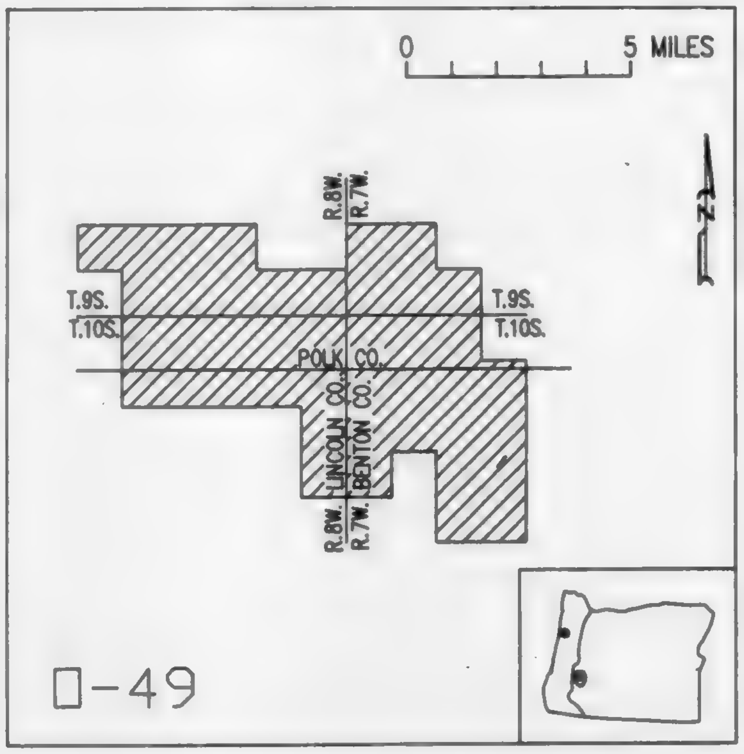
0
5 MILES
N
R.8W.
R.7W.
T.9S.
T.10S.
T.9S.
T.10S.
POLK CO.
LINCOLN CO.
BENTON CO.
R.8W.
R.7W.
O-49

Description of SIS–1 taken solely from Bureau of Land Management Map; Port Orford 1978, Oregon.

Curry County

T. 32 S., R. 13 W., Secs. 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, and 34, of the Willamette Meridian.

T. 32 S., R. 14 W., Secs. 22, 23, 24, and 25, of the Willamette Meridian.

Excluding from the above areas any land within the Grassy Knob Wilderness, and any private lands.

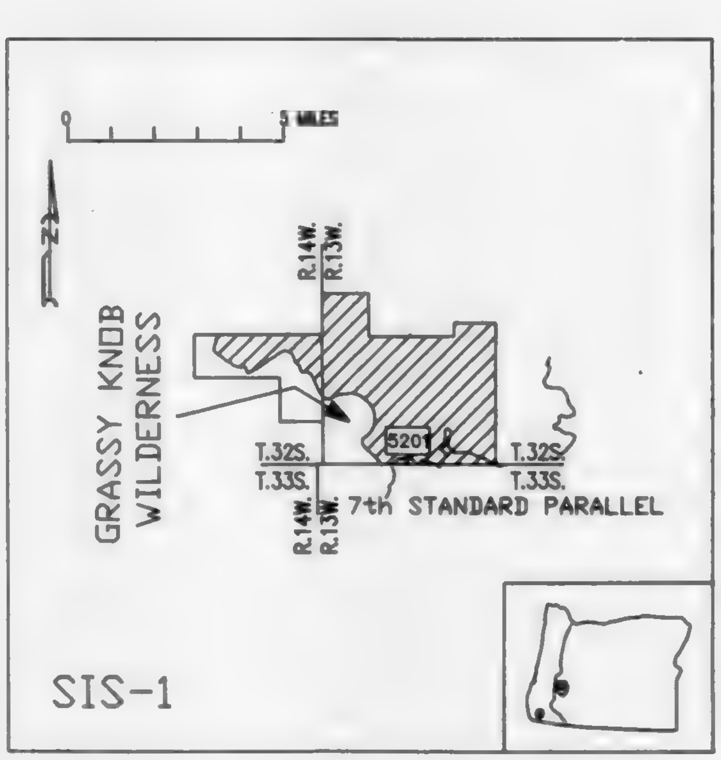
0
5 MILES
N
R.14W.
R.13W.
GRASSY KNOB WILDERNESS
5201
T.32S.
T.33S.
T.32S.
T.33S.
R.14W.
R.13W.
7th STANDARD PARALLEL
SIS-1

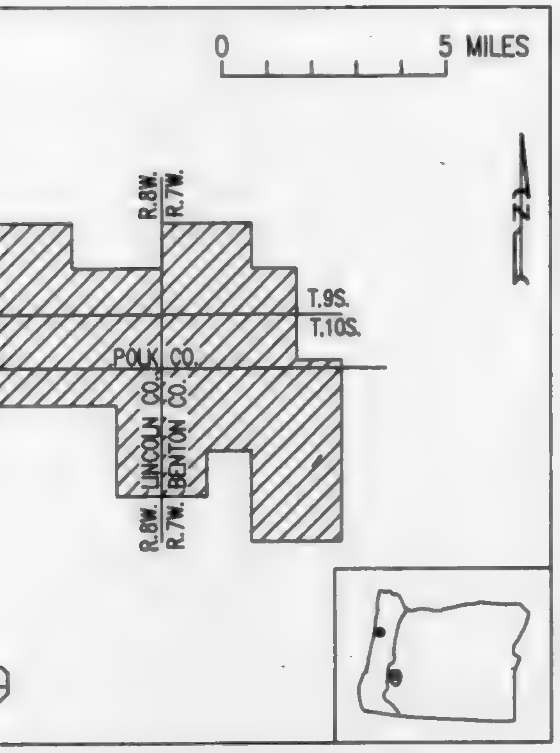
0
5 MILES
R.8W.
R.7W.
T.9S.
T.10S.
POLK CO.
LINCOLN CO.
BENTON CO.
R.8W.
R.7W.

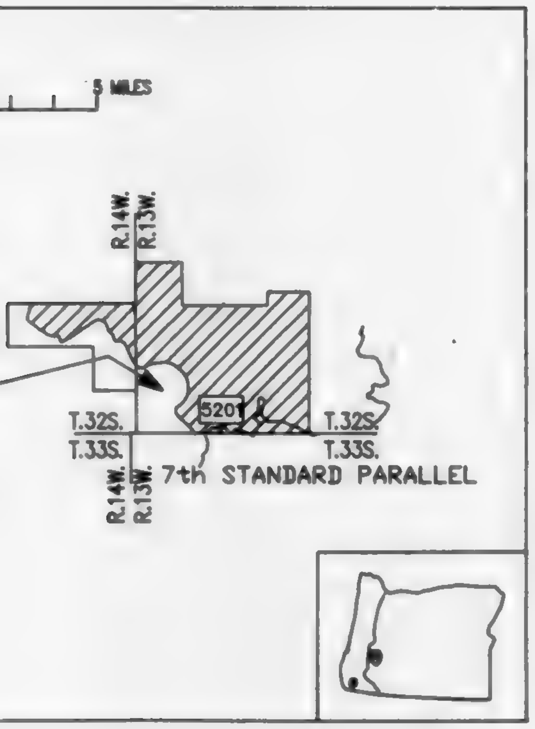
5 MILES
R.14W.
R.13W.
T.32S.
T.33S.
5201
T.32S.
T.33S.
R.14W.
R.13W.
7th STANDARD PARALLEL

Description of SIS–2 taken solely from Bureau of Land Management Map; Canyonville 1979, Oregon.

Curry County

T. 34 S., R. 11 W., Secs. 25, 26, 35, and 36, of the Willamette Meridian.

T. 34 S., R. 10 ½ W., Secs. 19, 30, and 31, of the Willamette Meridian.

T. 34 S., R. 10 W., Secs. 7, 18, 19, 30, and 31, of the Willamette Meridian.

T. 35 S., R. 11 W., Secs. 1, 2, 11, 12, 13, 14, 23, 24, 25, and 26, of the Willamette Meridian.

T. 35 S., R. 10 ½ W., Secs. 6, 7, 12, 25, and 36, of the Willamette Meridian.

T. 35 S., R. 10 W., Secs. 6, 7, and 18, of the Willamette Meridian.

Excluding any private lands in the above area.

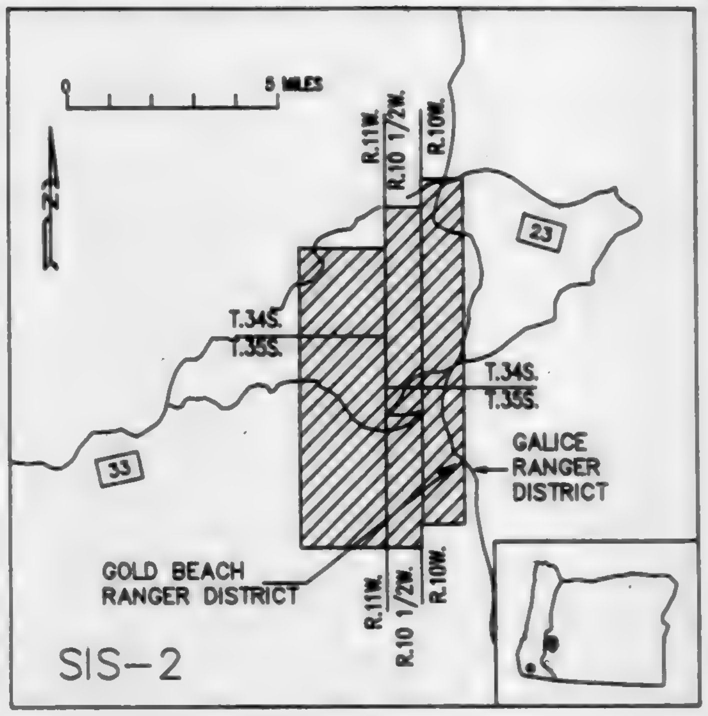
0
5 MILES
R.11W.
R.10 1/2W.
R.10W.
23
T.34S.
T.35S.
T.34S.
T.35S.
33
GALICE RANGER DISTRICT
GOLD BEACH RANGER DISTRICT
R.11W.
R.10 1/2W.
R.10W.
SIS–2

Description of SNF–1 taken solely from U.S. Geological Survey Map; Waldport 1980, and Bureau of Land Management Map; Eugene 1980, Oregon.

Lincoln and Lane Counties

T. 14 S., R. 12 W., Sec. 36, of the Willamette Meridian.

T. 14 S., R. 11 W., Secs. 29, 30, 31, and 32, of the Willamette Meridian.

T. 15 S., R. 12 W., Secs. 1, 2, 11, 12, 25, and 36, of the Willamette Meridian.

T. 15 S., R. 11 W., Secs. 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 15 S., R. 10 W., Secs. 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, and 34, of the Willamette Meridian.

T. 16 S., R. 12 W., Secs. 1, 10, 11, 13, 14, 15, 23, 24, 25, and 36, of the Willamette Meridian.

T. 16 S., R. 11 W., Secs. 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 16 S., R. 10 W., Secs. 4, 5, 6, 7, 8, 9, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 17 S., R. 12 W., Secs. 1, and 12, of the Willamette Meridian.

T. 17 S., R. 11 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, and 9, of the Willamette Meridian.

T. 17 S., R. 10 W., Secs. 4, 5, and 6, of the Willamette Meridian.

Excluding any of the above area within the Siuslaw Wilderness, and any private lands.

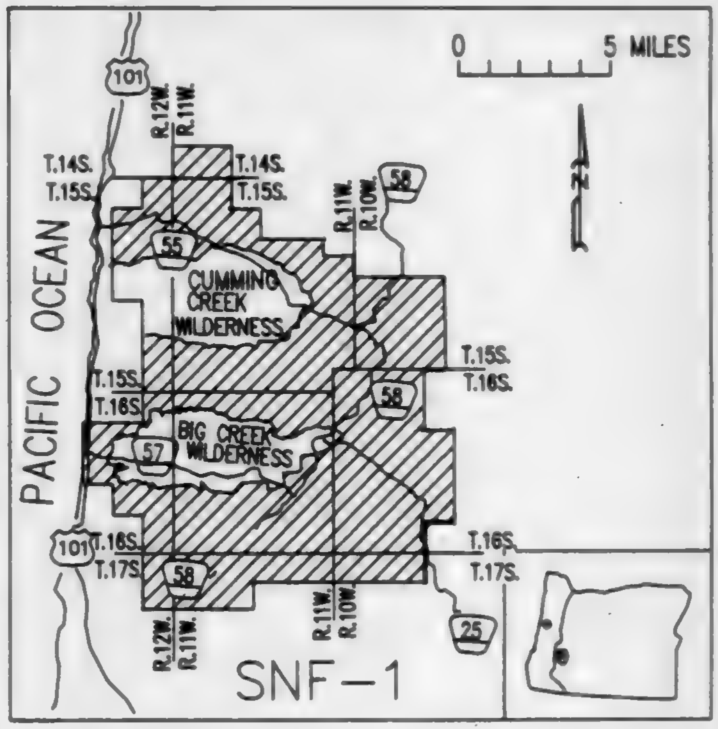
0
5 MILES
101
R.12W.
R.11W.
T.14S.
T.15S.
T.14S.
T.15S.
R.11W.
R.10W.
58
55
CUMMING CREEK WILDERNESS
PACIFIC OCEAN
T.15S.
T.16S.
T.15S.
T.16S.
58
BIG CREEK WILDERNESS
57
101
T.16S.
T.17S.
58
T.16S.
T.17S.
R.12W.
R.11W.
R.11W.
R.10W.
25
SNF–1

Description of SNF–3 taken solely from Bureau of Land Management Map; Yamhill River 1980, Oregon.

Tillamook County

T. 5 S., R. 9 W., Secs. 31, 32, and 33, of the Willamette Meridian.

T. 6 S., R. 9 W., Secs. 4, and 5, of the Willamette Meridian.

Excluding any private lands within the above area.

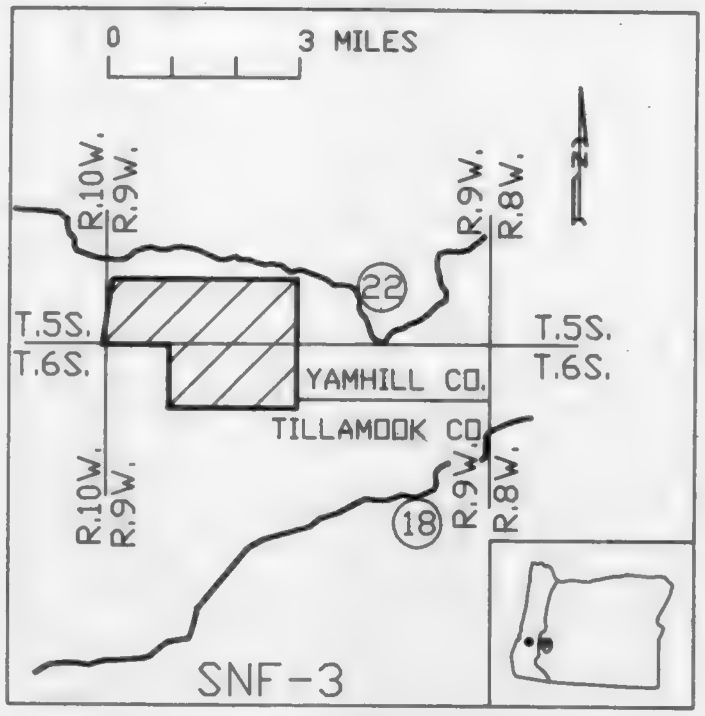
0
3 MILES
R.10W.
R.9W.
R.9W.
R.8W.
22
T.5S.
T.6S.
T.5S.
T.6S.
YAMHILL CO.
TILLAMOOK CO.
R.10W.
R.9W.
R.9W.
R.8W.
18
SNF-3

Description of OAK–1 taken solely from Bureau of Land Management Map; Oakridge 1974, Oregon.

Lane County

T. 20 S., R. 2 W., Sec. 35, of the Willamette Meridian.

T. 20 S., R. 1 W., Sec. 31, of the Willamette Meridian.

T. 21 S., R. 2 W., Sec. 1, of the Willamette Meridian.

T. 21 S., R. 1 W., Secs. 5, 6, and 7, of the Willamette Meridian.

Excluding any private lands within the above area.

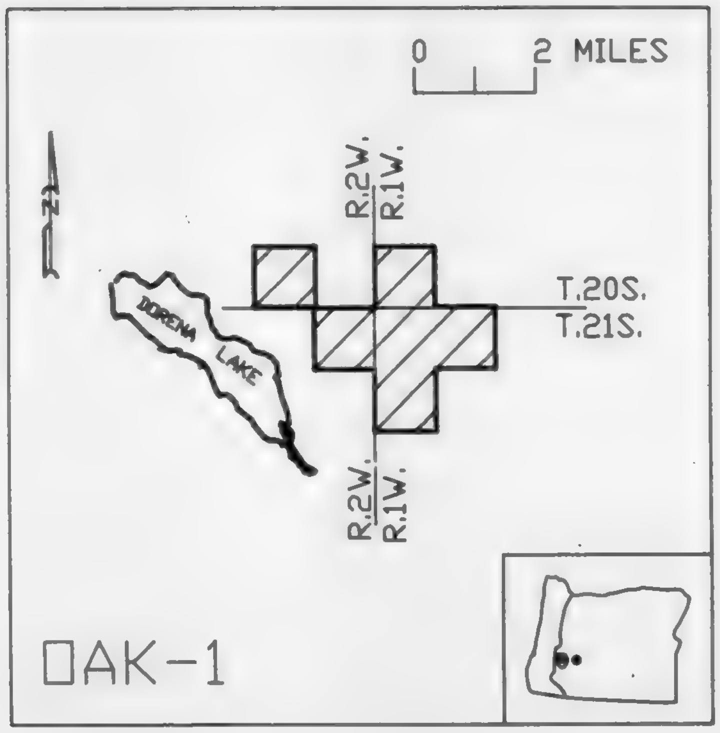
0
2 MILES
R.2W.
R.1W.
T.20S.
T.21S.
DORENA LAKE
R.2W.
R.1W.
OAK-1

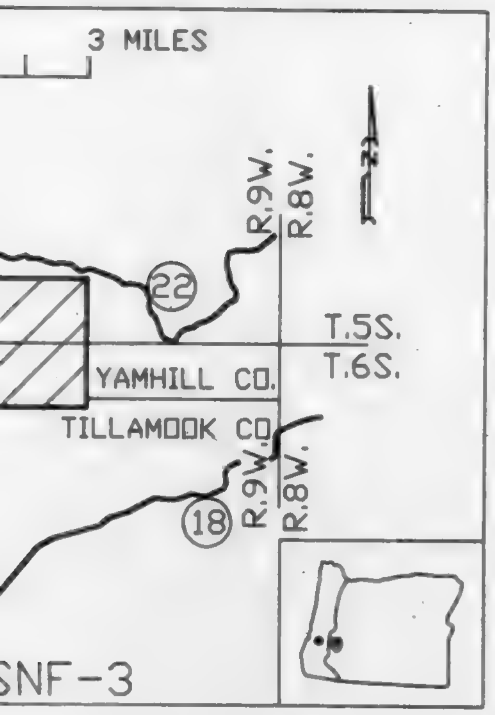
3 MILES
R.9W.
R.8W.
22
T.5S.
T.6S.
YAMHILL CO.
TILLAMOOK CO.
R.9W.
R.8W.
18
SNF-3

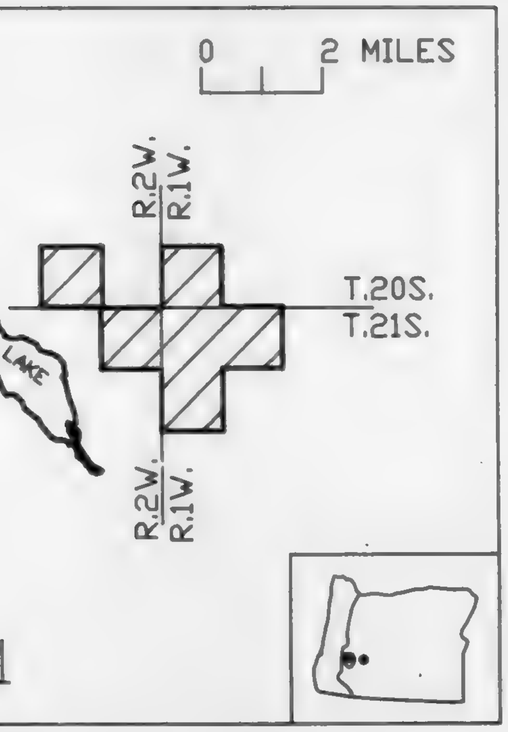
0
2 MILES
R.2W.
R.1W.
T.20S.
T.21S.
LAKE
R.2W.
R.1W.
1

Description of OAK–2 taken solely from Bureau of Land Management Map; Oakridge 1974, Oregon.

Lane County

T. 21 S., R. 2 W., Secs. 27, 29, 33, 34, and 35, of the Willamette Meridian.

T. 22 S., R. 2 W., Secs. 1, 2, 3, and 11, of the Willamette Meridian.

Excluding any private lands within the above area.

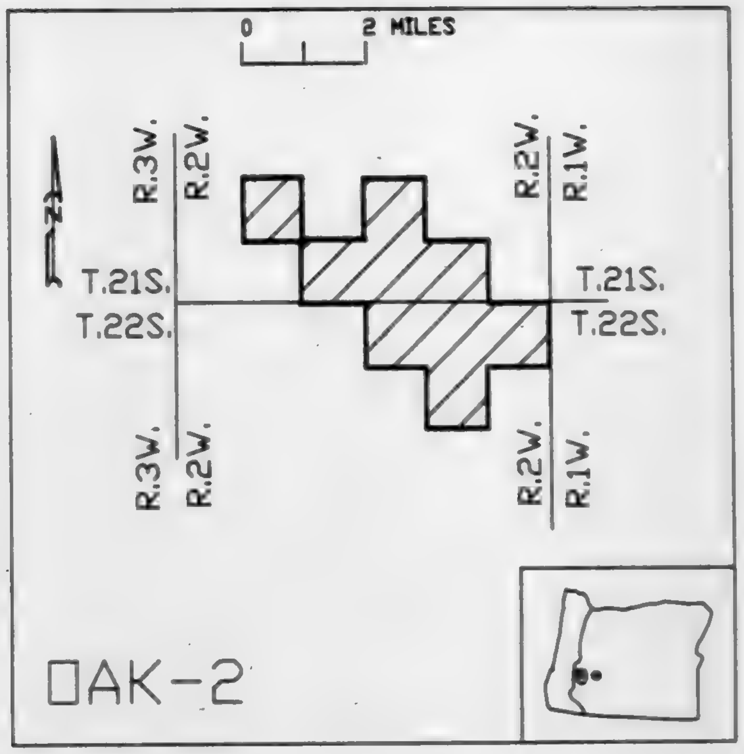
0
2 MILES
N
R.3W.
R.2W.
R.2W.
R.1W.
T.21S.
T.22S.
T.21S.
T.22S.
R.3W.
R.2W.
R.2W.
R.1W.
OAK-2

Description of RBG–1 taken solely from Bureau of Land Management Surface-Mineral Management Map; Roseburg 1979, Oregon.

Douglas County

T. 24 S., R. 6 W., Sec. 31, of the Willamette Meridian.

T. 24 S., R. 7 W., Secs. 23, 25, 26, 27, 35, and 36, of the Willamette Meridian.

T. 25 S., R. 7 W., Secs. 1, 2, 3, and 11, of the Willamette Meridian.

Excluding any private lands within the above area.

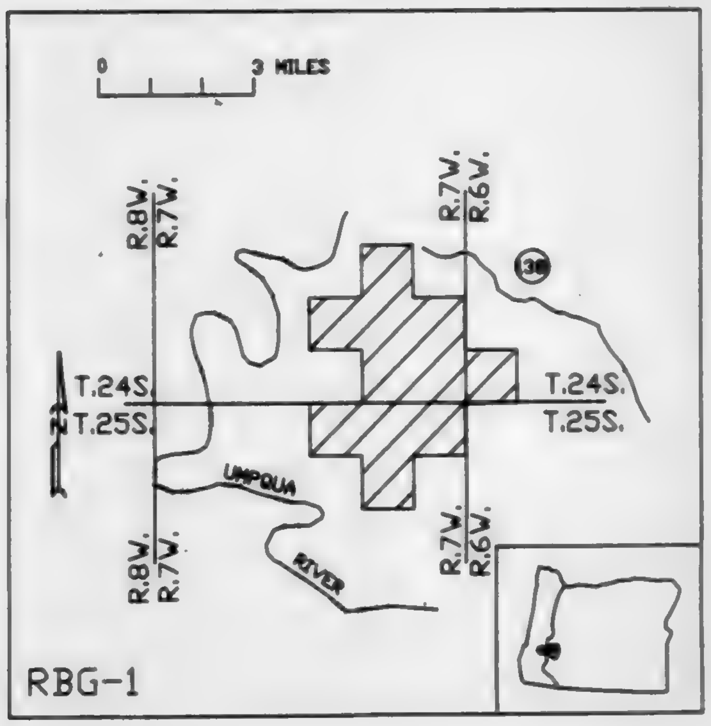
0
3 MILES
R.8W.
R.7W.
R.7W.
R.6W.
38
N
T.24S.
T.25S.
T.24S.
T.25S.
UMPQUA
RIVER
R.8W.
R.7W.
R.7W.
R.6W.
RBG-1

Description for RBG–2 taken solely from Bureau of Land Management Map; Roseburg 1979, Oregon.

Douglas County

T. 28 S., R. 8 W., Secs. 3, 4, 5, 8, 9, and 17, of the Willamette Meridian.

Excluding any private lands within the above area.

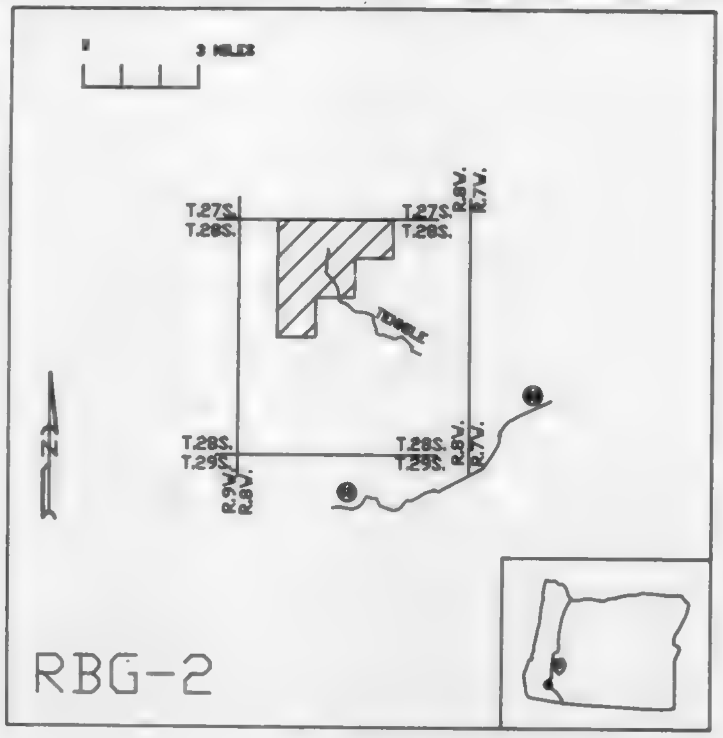
0
3 MILES
N
T.27S.
T.28S.
R.8W.
R.7W.
T.28S.
T.29S.
R.9W.
R.8W.
RBG-2

Description of UNF–1 taken solely from Bureau of Land Management Map; Oakridge 1974, and Diamond Lake 1978, Oregon.

Douglas and Lane Counties

T. 22 S., R. 1 E., Secs. 23, 24, 25, 26, 34, 35, and 36, of the Willamette Meridian.

T. 22 S., R. 2 E., Secs. 19, 30, and 31 of the Willamette Meridian.

T. 23 S., R. 1 E., Secs. 1, 2, 3, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 22, 23, 24, 25, 26, 27, 33, 34, 35, and 36, of the Willamette Meridian.

T. 23 S., R. 2 E., Secs. 6, 7, 16, 17, 18, 19, 20, 21, 28, 29, 30, and 31, of the Willamette Meridian.

T. 24 S., R. 2 E., Secs. 5, and 6, of the Willamette Meridian.

T. 24 S., R. 1 E., Secs. 1, 2, 3, 4, 5, 8, 9, 10, 11, 14, 15, 16, 17, 19, 20, 21, 22, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 25 S., R. 1 E., Secs. 4, 5, 6, and 7, of the Willamette Meridian.

Excluding any private lands within the above area.

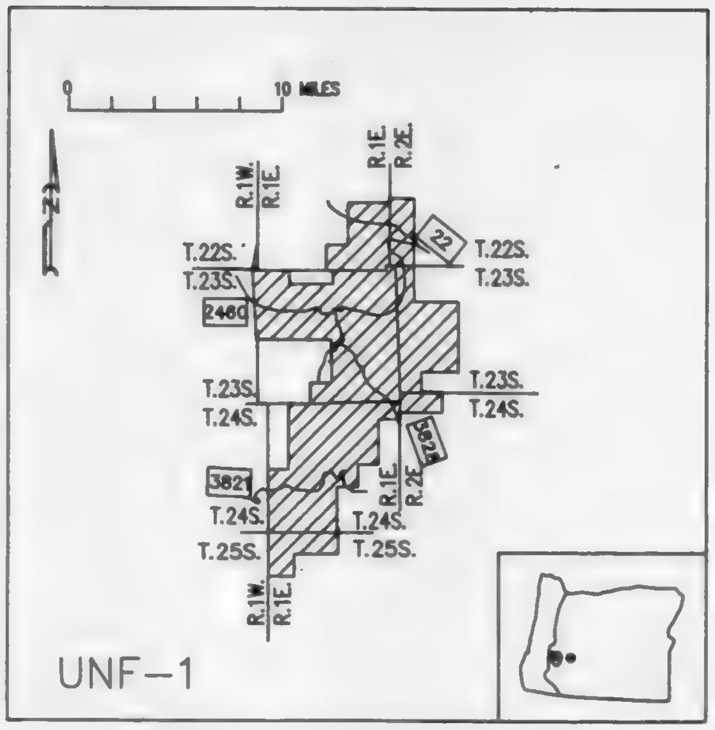
0
10 MILES
N
R.1W.
R.1E.
R.1E.
R.2E.
22
T.22S.
T.23S.
T.22S.
T.23S.
2460
T.23S.
T.24S.
T.23S.
T.24S.
3821
R.1E.
R.2E.
T.24S.
T.25S.
T.24S.
T.25S.
R.1W.
R.1E.
UNF-1

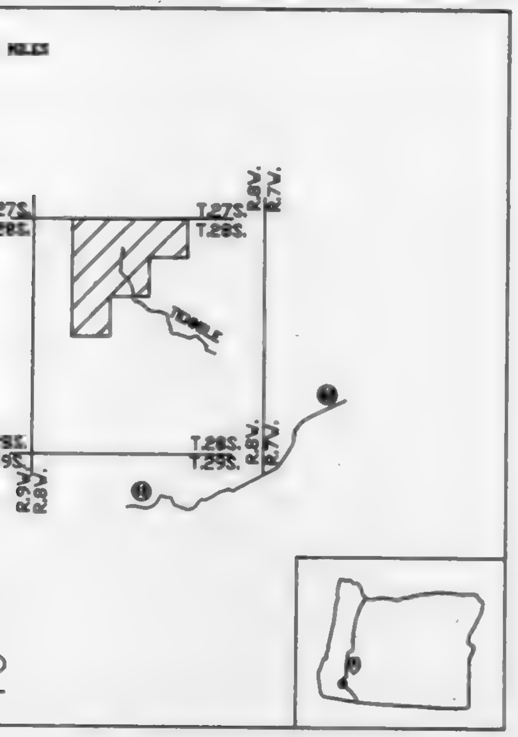
MILES
T.27S.
T.28S.
R.8W.
R.7W.
T.28S.
T.29S.
R.9W.
R.8W.

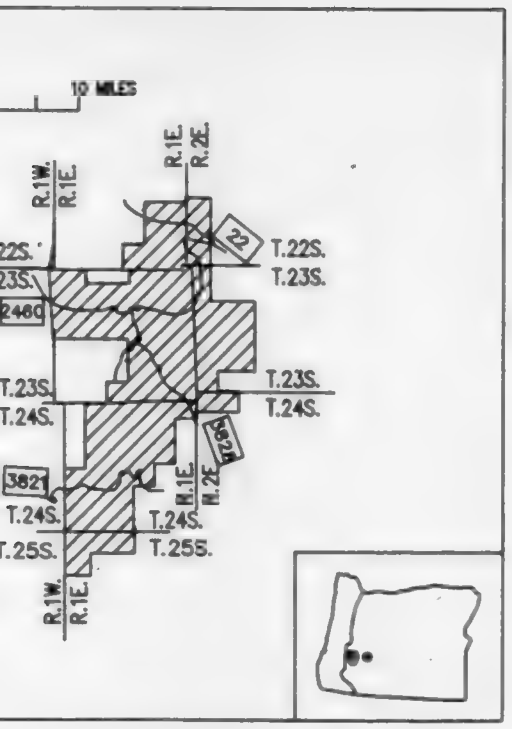
10 MILES
R.1W.
R.1E.
R.1E.
R.2E.
T.22S.
T.23S.
2460
T.23S.
T.24S.
3821
T.24S.
T.25S.
R.1E.
R.2E.
R.1W.
R.1E.

Description of UNF–2 taken solely from Bureau of Land Management Maps; Canyonville 1979, and Crater Lake 1978, Oregon.

Douglas and Jackson Counties

T. 31 S., R. 2 W., Secs. 5, 7, 8, 17, 18, 19, 20, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 32 S., R. 2 W., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 18, 19, and 30, of the Willamette Meridian.

T. 32 S., R. 3 W., Secs. 13, 24, and 25, of the Willamette Meridian.

Excluding any private lands within the above area.

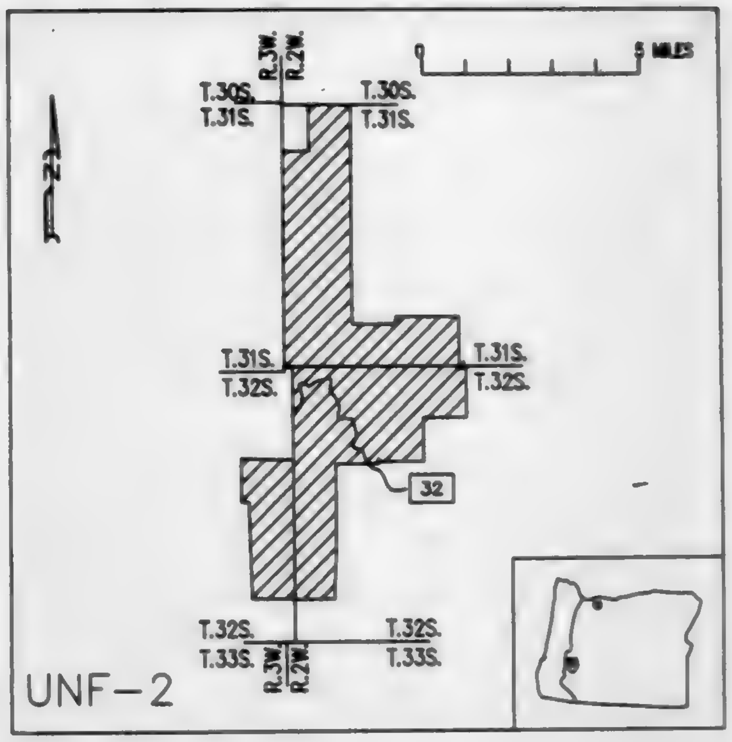
0
5 MILES
R.3W.
R.2W.
T.30S.
T.31S.
T.30S.
T.31S.
T.31S.
T.32S.
T.31S.
T.32S.
32
T.32S.
T.33S.
T.32S.
T.33S.
R.3W.
R.2W.
UNF–2

Description of WIN–1 taken solely from Bureau of Land Management Maps; Crater Lake 1978 and Medford 1978, Oregon.

Klamath County

T. 34 S., R. 6 E., Secs. 19, 21, 22, 27, 28, 29, 30, 31, 32, 33,and 34, of the Willamette Meridian.

T. 35 S., R. 5 E., Secs. 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 35, and 36, of the Willamette Meridian.

T. 35 S., R. 6 E., Secs. 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, and 34, of the Willamette Meridian.

T. 36 S., R. 5 E., Secs. 1, 2, 9, 10, 11, 12, 13, 14, 15, 22, 23, and 24, of the Willamette Meridian.

T. 36 S., R. 6 E., Secs. 4, 5, 6, 7, and 18, of the Willamette Meridian.

Excluding any private lands within the above area.

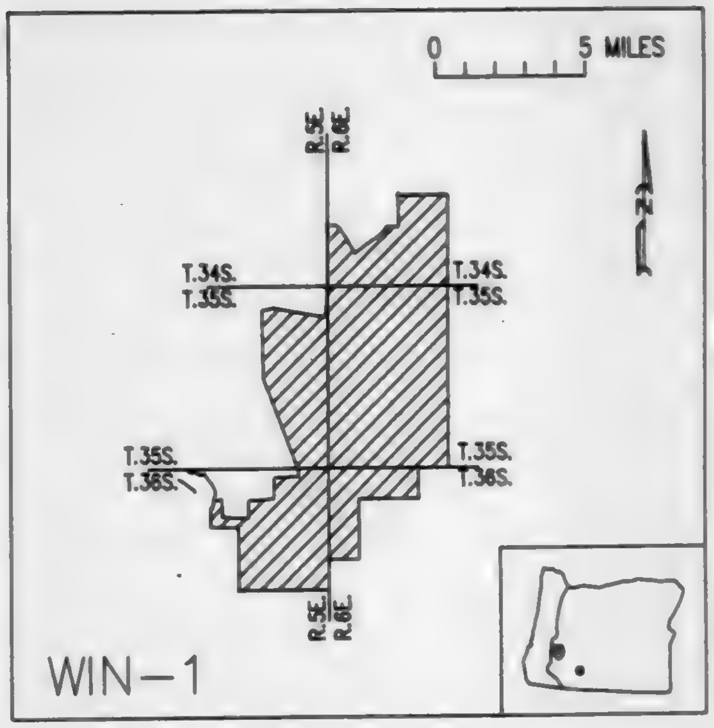
0
5 MILES
R.5E.
R.6E.
T.34S.
T.35S.
T.34S.
T.35S.
T.35S.
T.36S.
T.35S.
T.36S.
R.5E.
R.6E.
WIN–1

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Description of WIL-2 taken solely from Bureau of Land Management Maps; North Santiam River 1978, McKenzie River 1973, Madras 1978, and Bend 1982, Oregon.

Linn County

T. 12 S., R. 6 E., Secs. 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36, of the Willamette Meridian.

T. 12 S., R. 7 E., Secs. 19, 20, 21, 22, 23, 27, 28, 29, 30, 31, 32, 33, and 34, of the Willamette Meridian.

T. 13 S., R. 6 E., Secs. 1, 2, 3, 4, 8, 9, 10, 11, 12, 13, 14, 15, 16, 20, 21, 22, 23, and 24, of the Willamette Meridian.

T. 13 S., R. 7 E., Secs. 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, and 30, of the Willamette Meridian.

T. 13 S., R. 7 ½ E., Secs. 15, 16, 21, and 22, of the Willamette Meridian.

Excluding from the above areas any lands within Mt. Jefferson Wilderness, and any private lands.

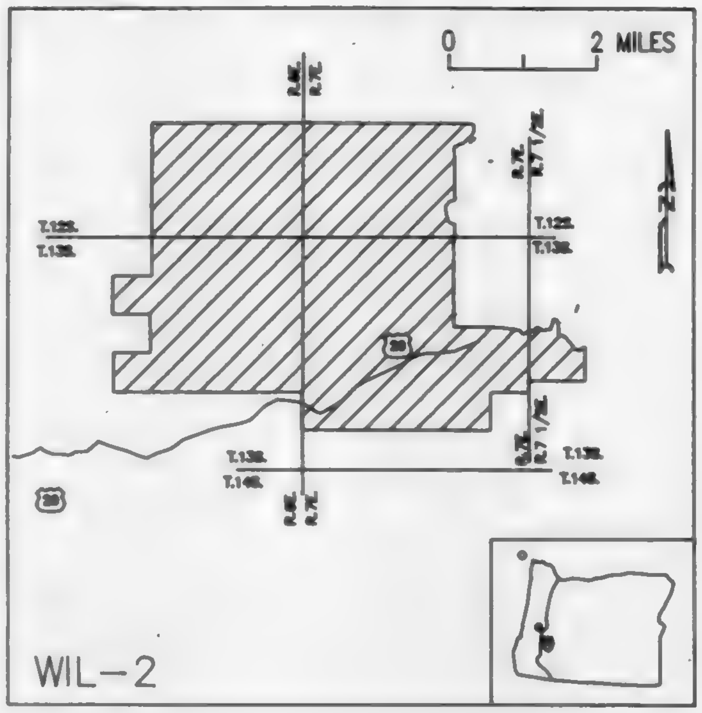

Description of YR-1 taken solely from Bureau of Land Management Map; Yamhill River 1980, Oregon.

Tillamook County

T. 3 S., R. 10 W., Secs. 22, 23, 24, 26, 27, 28, 32, 33, 34, and 35, of the Willamette Meridian.

T. 3 S., R. 9 W., Sec. 19, of the Willamette Meridian.

T. 4 S. R. 10 W., Secs. 3, 4, and 5, of the Willamette Meridian.

Excluding any private lands within the above area.

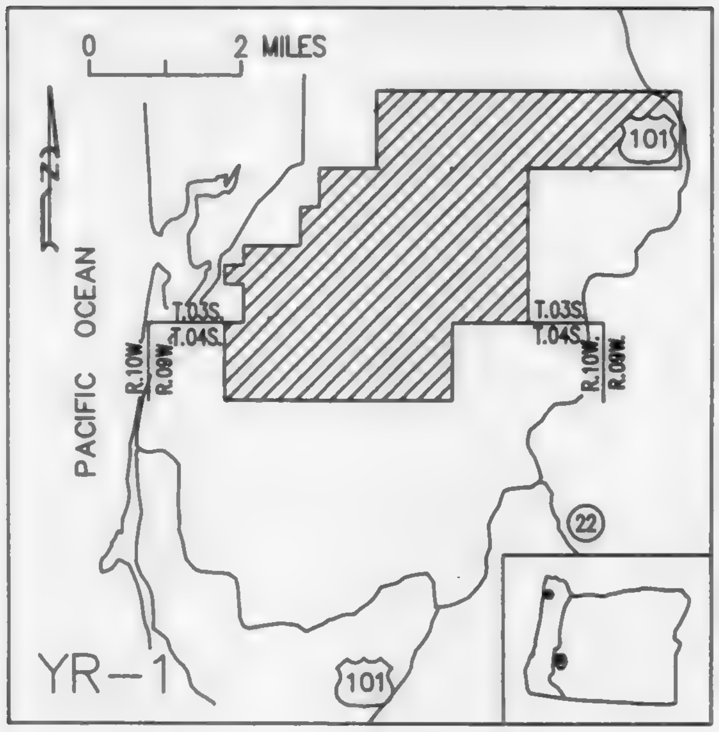

Description of YR-2 take
Bureau of Land Manageme
Nehalem River 1979, and Y
1980, Oregon.
Tillamook County
T. 1 N., R. 9 W., Secs. 34,
Willamette Meridian.
T. 1 S., R. 9 W., Secs. 1, 2
12, 13, 14, 15, 16, 23, 24, 25,
Willamette Meridian.
T. 1 S., R. 8 W., Secs. 7, 8
21, 22, 27, 28, 29, and 30, of
Willamette Meridian.
Excluding any private la
the above area.

Washington. Areas of la
as follows:
Description of SQN-1 tak
from Bureau of Land Mana
Mount Baker 1979, Washin
British Columbia.
Whatcom County
T. 39 N., R. 7 E., Secs. 1, 2
10, 11, 12, 14, 15, and 16, of
Willamette Meridian.
T. 39 N., R. 8 E., Secs. 1, 2
8, 9, 10, 11, 12, 15, 16, 17, 18,
22, of the Willamette Merid
T. 39 N., R. 9 E., Secs. 3, 4
10, 11, 14, 15, 16, and 17, of
Willamette Meridian.
T. 40 N., R. 7 E., Secs. 13,
22, 23, 24, 25, 26, 27, 28, 29,
and 36, of the Willamette N
T. 40 N., R. 8 E., Secs. 15,
20, 21, 29, 30, 31, 32, 33, 34,
the Willamette Meridian.
T. 40 N., R. 9 E., Secs. 15,
29, 30, 31, 32, 33, and 34, of
Willamette Meridian.
Excluding from the abov
lands within the Mount Ba
Wilderness, the North Cas
National Park, and any pri

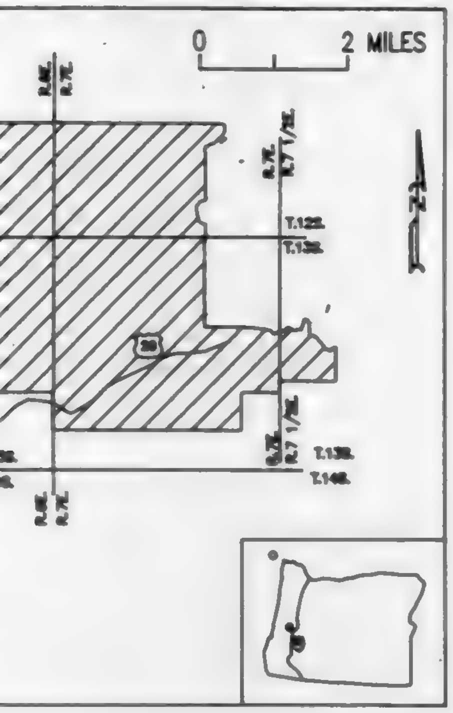
0 2 MILES
T.12S.
T.13S.
T.13S.
T.14S.

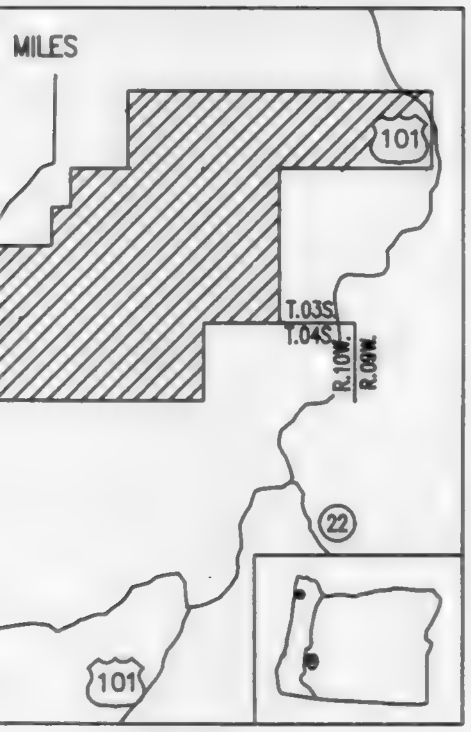
MILES
101
T.03S.
T.04S.
R.10W.
R.09W.
22
101

Description of YR–2 taken solely from Bureau of Land Management Maps; Nehalem River 1979, and Yamhill River 1980, Oregon.

Tillamook County

T. 1 N., R. 9 W., Secs. 34, and 35, of the Willamette Meridian.

T. 1 S., R. 9 W., Secs. 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 23, 24, 25, and 36, of the Willamette Meridian.

T. 1 S., R. 8 W., Secs. 7, 8, 17, 18, 19, 20, 21, 22, 27, 28, 29, and 30, of the Willamette Meridian.

Excluding any private lands within the above area.

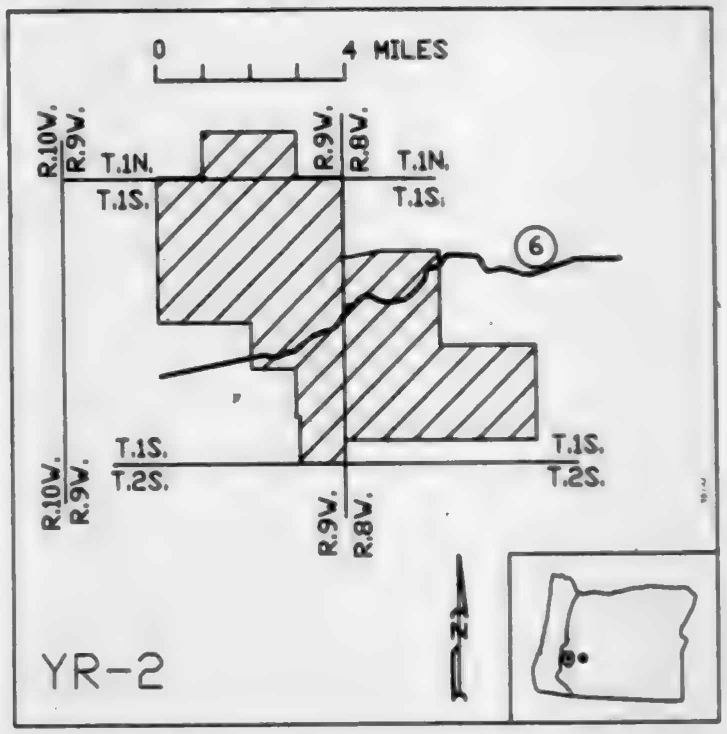
0 4 MILES
R.10W.
R.9W.
T.1N.
T.1S.
R.9W.
R.8W.
T.1N.
T.1S.
6
T.1S.
T.2S.
R.10W.
R.9W.
T.1S.
T.2S.
R.9W.
R.8W.
N
YR-2

Washington. Areas of land and water as follows:

Description of SQN–1 taken solely from Bureau of Land Management Map; Mount Baker 1979, Washington and British Columbia.

Whatcom County

T. 39 N., R. 7 E., Secs. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 14, 15, and 16, of the Willamette Meridian.

T. 39 N., R. 8 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 15, 16, 17, 18, 20, 21, and 22, of the Willamette Meridian.

T. 39 N., R. 9 E., Secs. 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, and 17, of the Willamette Meridian.

T. 40 N., R. 7 E., Secs. 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 40 N., R. 8 E., Secs. 15, 16, 17, 18, 19, 20, 21, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 40 N., R. 9 E., Secs. 15, 16, 19, 20, 21, 29, 30, 31, 32, 33, and 34, of the Willamette Meridian.

Excluding from the above areas any lands within the Mount Baker Wilderness, the North Cascades National Park, and any private lands.

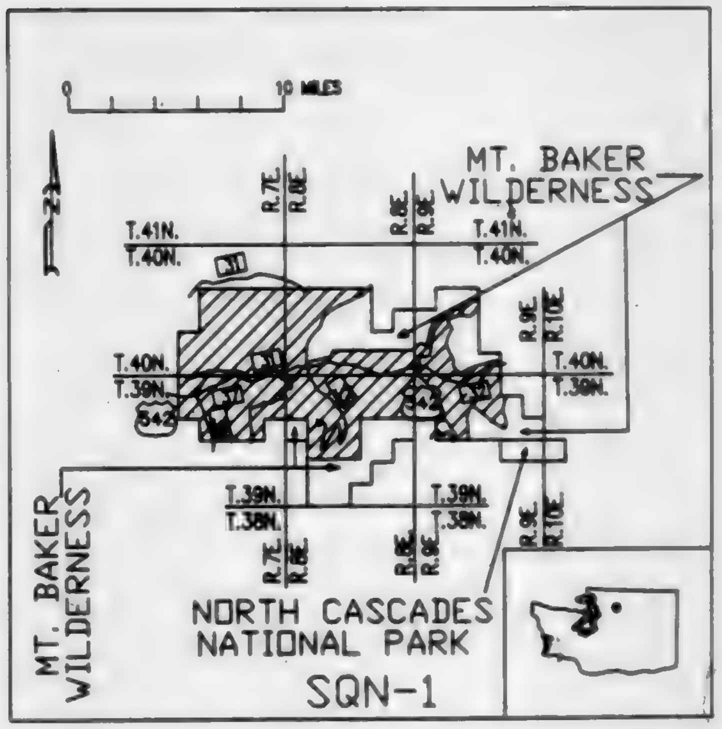
0 10 MILES
N
MT. BAKER WILDERNESS
R.7E.
R.8E.
R.8E.
R.9E.
T.41N.
T.40N.
T.41N.
T.40N.
31
R.9E.
R.10E.
T.40N.
T.39N.
T.40N.
T.39N.
542
542
T.39N.
T.38N.
T.39N.
T.38N.
R.9E.
R.10E.
R.7E.
R.8E.
R.8E.
R.9E.
MT. BAKER WILDERNESS
NORTH CASCADES NATIONAL PARK
SQN-1

Description of SQN-2 taken solely from Bureau of Land Management Map: Mount Baker 1979, Washington and British Columbia.

Whatcom and Skagit Counties

T. 36 N., R. 7 E., Secs. 1, 2, and 3, of the Willamette Meridian.

T. 36 N., R. 8 E., Sec. 5, of the Willamette Meridian.

T. 36 N., R. 9 E., Secs. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 22, 23, and 24, of the Willamette Meridian.

T. 36 N., R. 10 E., Secs. 4, 5, 6, 7, 8, 17, 18, 19, 20, 21, 27, 28, 29, and 30, of the Willamette Meridian.

T. 37 N., R. 6 E., Sec. 1, of the Willamette Meridian.

T. 37 N., R. 7 E., Secs. 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36, of the Willamette Meridian.

T. 37 N., R. 8 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 37 N., R. 9 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 37 N., R. 10 E., Secs. 6, and 7, of the Willamette Meridian.

T. 38 N., R. 6 E., Secs. 1, 12, 13, and 36, of the Willamette Meridian.

T. 38 N., R. 7 E., Secs. 6, 7, 16, 17, 18, 19, 20, 28, 30, 31, 32, 33, and 34, of the Willamette Meridian.

T. 38 N., R. 8 E., Secs. 23, 24, 25, 26, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 38 N., R. 9 E., Secs. 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 38 N., R. 10 E., Secs. 18, 19, 30, and 31, of the Willamette Meridian.

T. 39 N., R. 6 E., Sec. 36, of the Willamette Meridian.

T. 39 N., R. 7 E., Sec. 31, of the Willamette Meridian.

Excluding from the above areas any lands within the Mt. Baker Wilderness. North Cascades National Park, Noisy-Diobsud Wilderness, and any private lands.

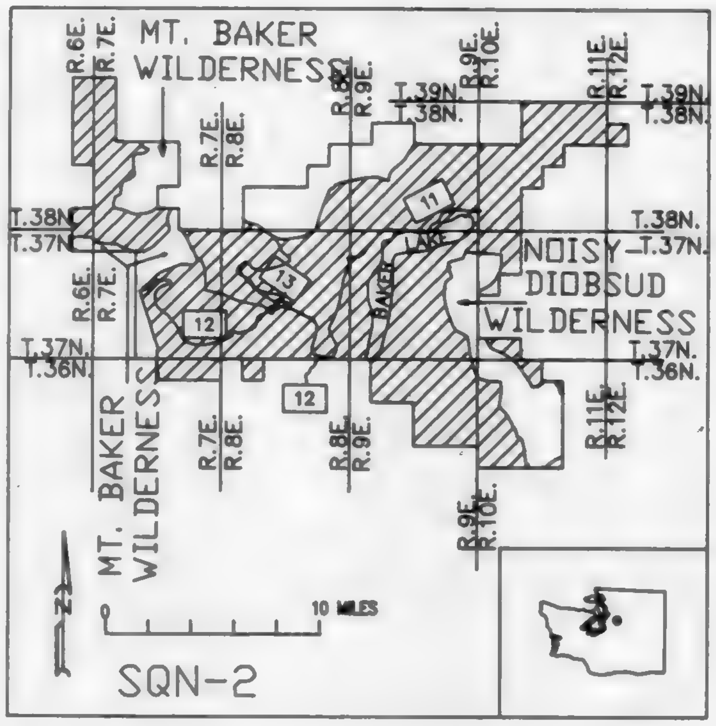

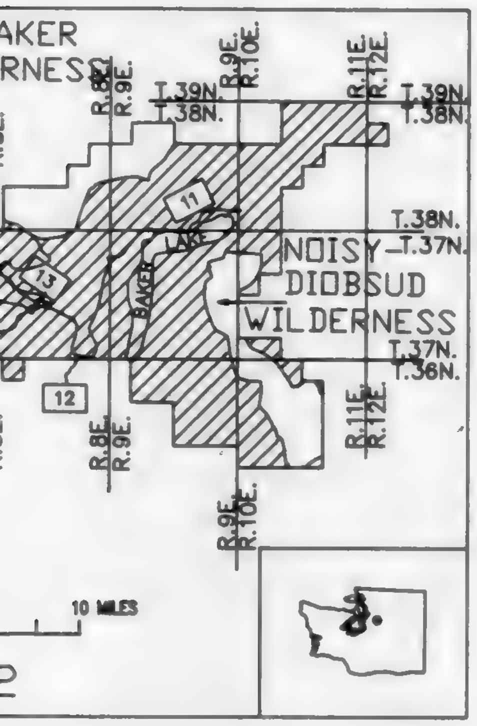
AKER
RNESS
NOISY-DIOBSUD WILDERNESS
BAKER
T.39N.
T.38N.
T.37N.
T.36N.
R.9E.
R.10E.
R.11E.
R.12E.
11
12
13
10 MILES

Description of SQN-3 taken solely from Bureau of Land Management Maps; Sauk River 1978, Washington, and Mount Baker 1979, Washington and British Columbia.

Skagit County

T. 33 N., R. 10 E., Sec. 1, of the Willamette Meridian.

T. 33 N., R. 11 E., Secs. 4, 5, and 6, of the Willamette Meridian.

T. 34 N., R. 10 E., Secs. 12, 13, 22, 23, 24, 25, 26, 27, 34, 35, and 36, of the Willamette Meridian.

T. 34 N., R. 11 E., Secs. 5, 6, 7, 8, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 34 N., R. 12 E., Secs. 1, 2, 3, 4, 10, 11, and 12, of the Willamette Meridian.

T. 34 N., R. 13 E., Secs. 4, 5, 6, 7, 8, and 9, of the Willamette Meridian.

T. 35 N., R. 12 E., Secs. 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 35 N., R. 13 E., Secs. 30, 31, 32, and 33, of the Willamette Meridian.

T. 36 N., R. 11 E., Secs. 25, 26, 27, 33, 34, 35, and 36, of the Willamette Meridian.

Excluding from the above areas any lands within North Cascades National Park, Glacier Peak Wilderness, and any private lands.

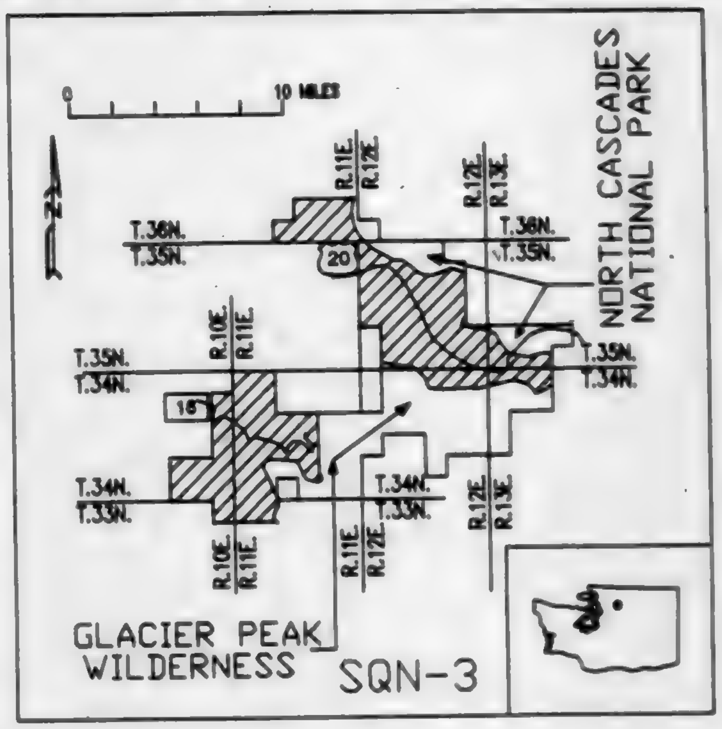
0
10 MILES
NORTH CASCADES NATIONAL PARK
GLACIER PEAK WILDERNESS
SQN-3
T.36N.
T.35N.
T.34N.
T.33N.
R.10E.
R.11E.
R.12E.
R.13E.
20
16

Description of SQN-4 taken solely from Bureau of Land Management Maps; Sauk River 1978, and Mount Baker 1979, Washington and British Columbia.

Skagit and Snohomish Counties

T. 32 N., R. 8 E., Secs. 1, N ½ of 3, N ½ of 4, N ½ of 5, and N ½ of 6, of the Willamette Meridian.

T. 33 N., R. 8 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 33 N., R. 9 E., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 30, and 31, of the Willamette Meridian.

T. 34 N., R. 7 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, and 34, of the Willamette Meridian.

T. 34 N., R. 8 E., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 34 N., R. 9 E., Secs. 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, and 34, of the Willamette Meridian.

T. 35 N., R. 7 E., Secs. 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

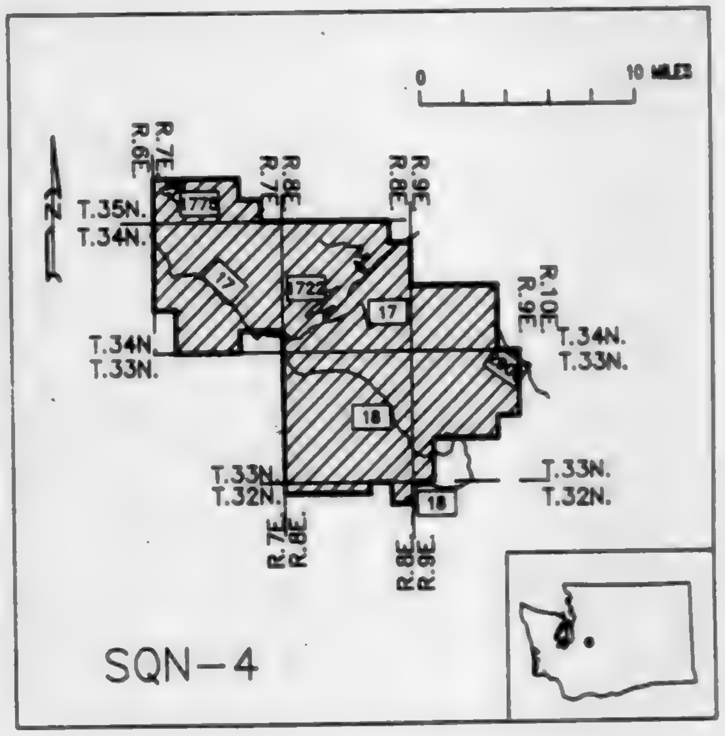
0
10 MILES
SQN-4
T.35N.
T.34N.
T.33N.
T.32N.
R.6E.
R.7E.
R.8E.
R.9E.
R.10E.
17
1776
1722
18

Excluding any private lands within the above area.

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Description of SQN-5 taken solely from Bureau of Land Management Map; Sauk River 1978, Washington.
Skagit and Snohomish Counties

T. 31 N., R. 11 E., Secs. 1, 2, 3, 4, 10, 11, and 12, of the Willamette Meridian.

T. 31 N., R. 12 E., Secs. 4 and 5, of the Willamette Meridian.

T. 32 N., R. 10 E., Secs. 1, 2, 3, 10, 11, 12, 13, 14, 23, 24, 25, and 26, of the Willamette Meridian.

T. 32 N., R. 11 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 33, 34, 35, and 36, of the Willamette Meridian.

T. 32 N., R. 12 R., Secs. 7, 8, 9, 10, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 33 N., R. 11 E., Secs. 25, 26, 27, 34, 35, and 36, of the Willamette Meridian.

Excluding from the above areas any lands within Glacier Peak Wilderness, and any private lands.

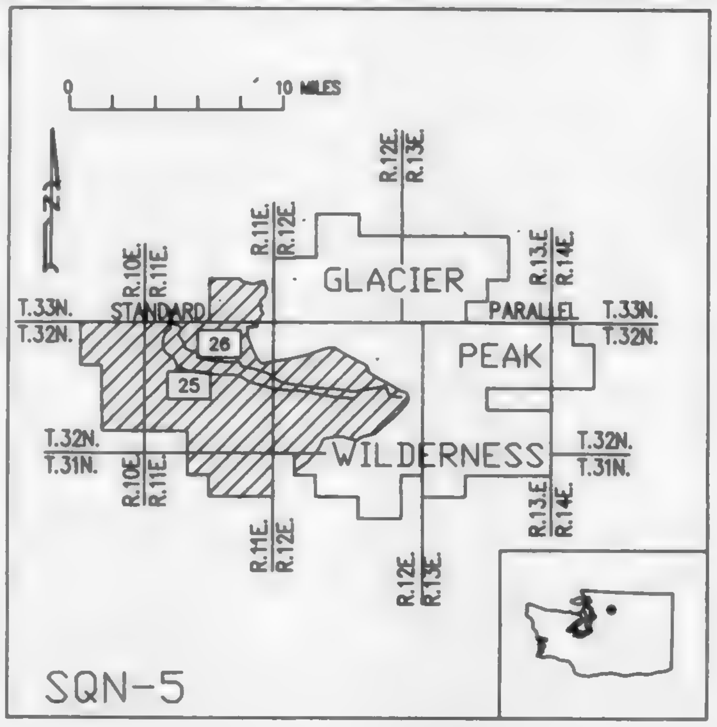
0
10 MILES
R.12E.
R.13E.
R.11E.
R.12E.
R.10E.
R.11E.
GLACIER
R.13E.
R.14E.
T.33N.
T.32N.
STANDARD
PARALLEL
T.33N.
T.32N.
26
PEAK
25
T.32N.
T.31N.
WILDERNESS
T.32N.
T.31N.
R.10E.
R.11E.
R.13E.
R.14E.
R.11E.
R.12E.
R.12E.
R.13E.
SQN-5

Description of SQN-6 taken solely from Bureau of Land Management Map; Sauk River 1978, Washington.
Snohomish County

T. 30 N., R. 8 E., Secs. 2, 3, 4, and 5, of the Willamette Meridian.

T. 31 N., R. 7 E., Secs. 1, 12, and 13, of the Willamette Meridian.

T. 31 N., R. 8 E., Secs. 3, 4, 5, 6, 7, 8, 9, 10, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 32 N., R. 8 E., Secs. 19, 20, 21, 27, 28, 34, 35, and 36, of the Willamette Meridian.

Excluding from the above areas any lands within the Boulder River Wilderness, and any private lands.

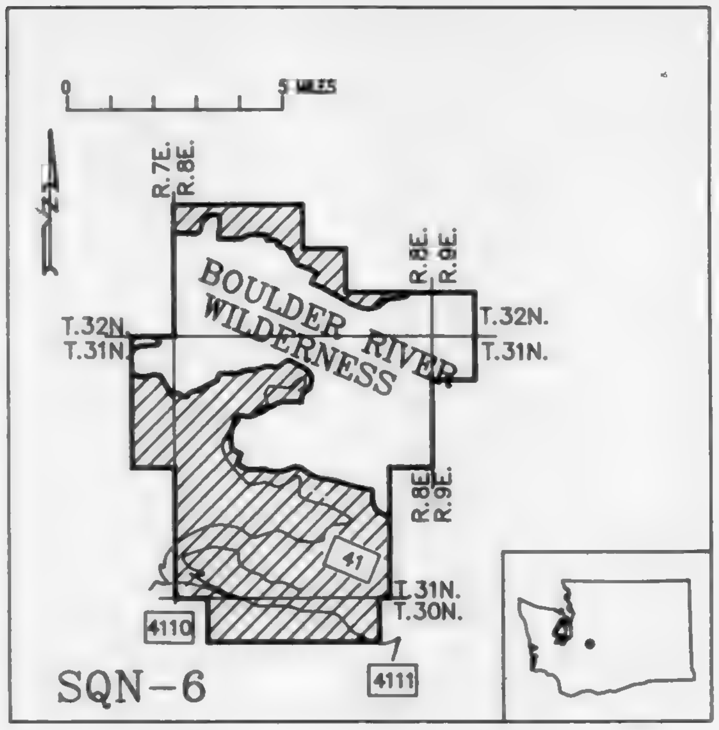
0
5 MILES
R.7E.
R.8E.
BOULDER RIVER
WILDERNESS
R.8E.
R.9E.
T.32N.
T.31N.
T.32N.
T.31N.
R.8E.
R.9E.
41
T.31N.
T.30N.
4110
4111
SQN-6

Description of SQN-7 tak
from Bureau of Land Manag
Sauk River 1978, Washingto
Snohomish County
T. 30 N., R. 9 E., Secs. 1, 2
the Willamette Meridian.
T. 30 N., R. 10 E., Secs. 6,
Willamette Meridian.
T. 31 N., R. 9 E., Secs. 1, 2
23, 24, 25, 26, 27, 28, 35, and
Willamette Meridian.
T. 31 N., R. 10 E., Secs. 5,
19, 20, 21, 28, 29, 30, 31, 32, a
Willamette Meridian.
T. 32 N., R. 9 E., Secs. 26,
and 36, of the Willamette M
Excluding from the above
lands within the Boulder Ri
Wilderness, and any privat

Description of SQN-8 tak
from Bureau of Land Manag
Sauk River 1978, and Depar
Natural Resources Quadran
Skykomish River 1973, Was
Snohomish County
T. 29 N., R. 10 E., Secs. 1,
Willamette Meridian.
T. 29 N., R. 11 E., Secs. 6,
the Willamette Meridian.
T. 29 N., R. 12 E., Secs. 3,
10, 11, 13, 14, 15, 16, 17, 18, 2
23, of the Willamette Merid
T. 30 N., R. 10 E., Secs. 25
and 36, of the Willamette M
T. 30 N., R. 11 E., Secs. 1,
13, 14, 15, 16, 20, 21, 22, 27, 2
32, 33, 34, and 35, of the Wi
Meridian.
T. 30 N., R. 12 E., Secs. 6,
18, 19, 20, 21, 29, 32, and 33,
Willamette Meridian.
Excluding from the above
lands within Glacier Peak W
Henry M. Jackson Wilderne
private lands.

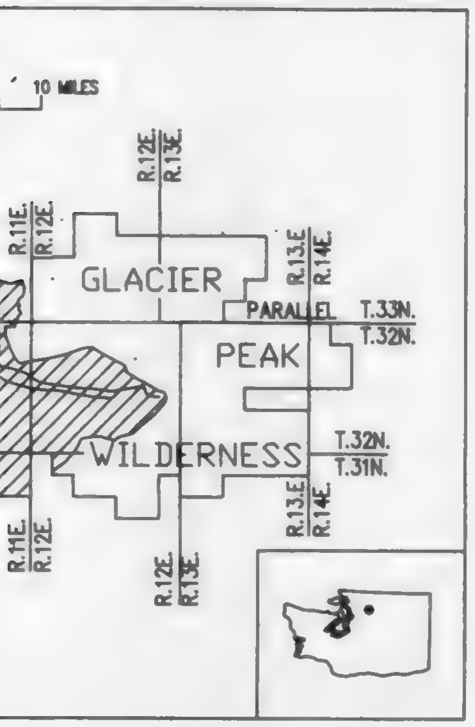
10 MILES
GLACIER
PEAK
WILDERNESS
PARALLEL
T.33N.
T.32N.
T.31N.
R.11E.
R.12E.
R.13E.
R.14E.

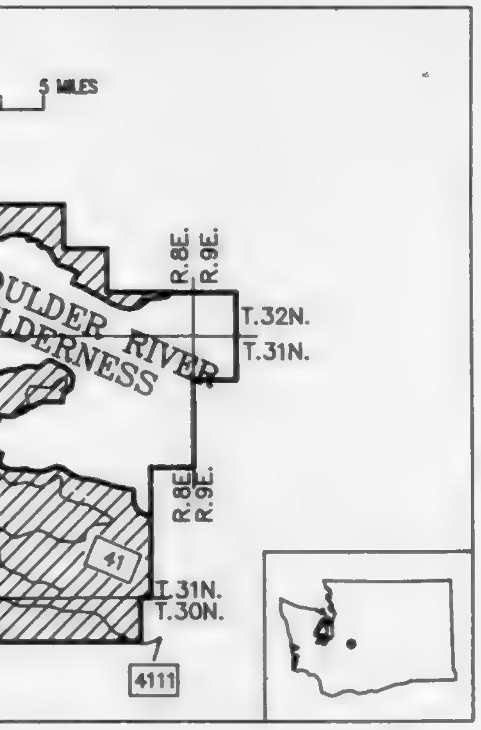
5 MILES
ULDER RIVER
LDERNESS
R.8E.
R.9E.
T.32N.
T.31N.
T.30N.
41
4111

Description of SQN–7 taken solely from Bureau of Land Management Map; Sauk River 1978, Washington.
Snohomish County

T. 30 N., R. 9 E., Secs. 1, 2, and 12, of the Willamette Meridian.

T. 30 N., R. 10 E., Secs. 6, and 7, of the Willamette Meridian.

T. 31 N., R. 9 E., Secs. 1, 2, 3, 10, 12, 13, 23, 24, 25, 26, 27, 28, 35, and 36, of the Willamette Meridian.

T. 31 N., R. 10 E., Secs. 5, 6, 7, 8, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 32 N., R. 9 E., Secs. 26, 27, 34, 35, and 36, of the Willamette Meridian.

Excluding from the above areas any lands within the Boulder River Wilderness, and any private lands.

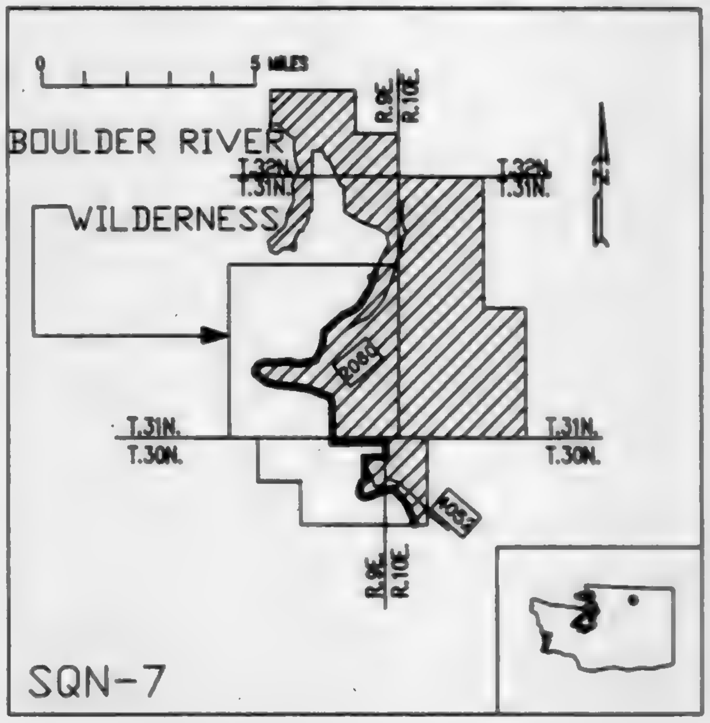
0
5 MILES
BOULDER RIVER
WILDERNESS
R.9E.
R.10E.
T.32N.
T.31N.
T.30N.
2060
N
SQN-7

Description of SQN–8 taken solely from Bureau of Land Management Map; Sauk River 1978, and Department of Natural Resources Quadrangle; Skykomish River 1973, Washington.
Snohomish County

T. 29 N., R. 10 E., Secs. 1, and 12, of the Willamette Meridian.

T. 29 N., R. 11 E., Secs. 6, 7, and 18, of the Willamette Meridian.

T. 29 N., R. 12 E., Secs. 3, 4, 5, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 20, 21, 22, and 23, of the Willamette Meridian.

T. 30 N., R. 10 E., Secs. 25, 26, 27, 35, and 36, of the Willamette Meridian.

T. 30 N., R. 11 E., Secs. 1, 2, 10, 11, 12, 13, 14, 15, 16, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 30 N., R. 12 E., Secs. 6, 7, 8, 16, 17, 18, 19, 20, 21, 29, 32, and 33, of the Willamette Meridian.

Excluding from the above areas any lands within Glacier Peak Wilderness, Henry M. Jackson Wilderness, and any private lands.

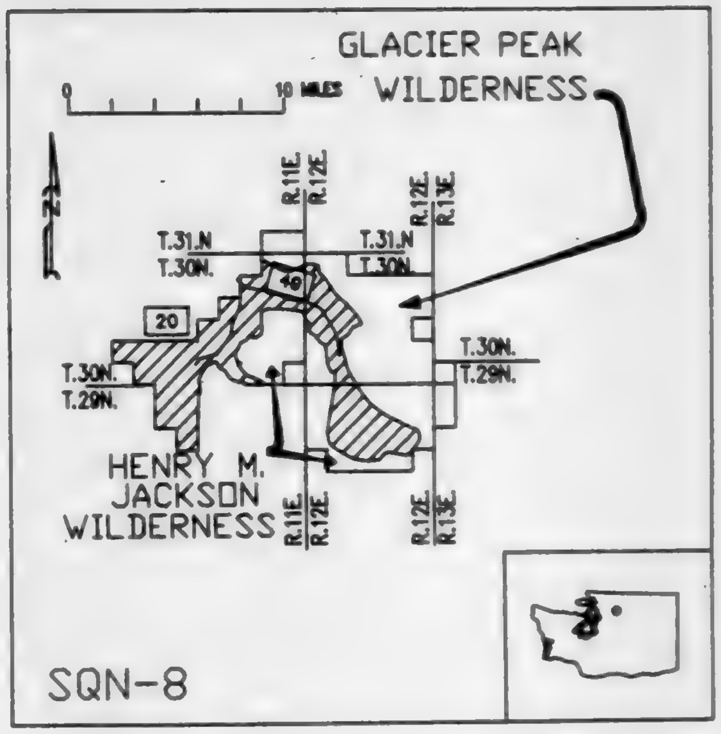
GLACIER PEAK
WILDERNESS
0
10 MILES
N
R.11E.
R.12E.
R.13E.
T.31.N
T.30N.
T.29N.
20
49
HENRY M.
JACKSON
WILDERNESS
SQN-8

VOL
56
ISS
156
AG
13
1991
UMI

Description of SQS–1 taken solely from Department of Natural Resources Quadrangle; Skykomish River 1973, Washington.

Surveyed and Unsurveyed Lands in Snohomish and King Counties

T. 24 N., R. 11 E., Secs. 2, and 3, of the Willamette Meridian.

T. 24 ½ N., R. 11 E., Secs. 34, and 35, of the Willamette Meridian.

T. 25 N., R. 10 E., Secs. 3, 4, 7, 8, 9, 16, 17, 18, 20, 21, 22, 23, 25, 26, and 27, of the Willamette Meridian.

T. 25 N., R. 11 E., Secs. 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 26, 27, 30, 33, and 34, of the Willamette Meridian.

T. 25 N., R. 12 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 28, 29, and 30, of the Willamette Meridian.

T. 25 N., R. 13 E., Secs. 6, 7, 18, and 19, of the Willamette Meridian.

T. 26 N., R. 11 E., Secs. 4, 5, 6, 7, 8, 9, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 26 N., R. 12 E., Secs. 1, 2, 3, 5, 8, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 26 N., R. 13 E., Secs. 18, 19, 30, 31, and 32, of the Willamette Meridian.

T. 27 N., R. 10 E., Sec. 36, of the Willamette Meridian.

T. 27 N., R. 11 E., Secs. 1, 12, 13, 30, 31, 32, and 33, of the Willamette Meridian.

T. 27 N., R. 12 E., Secs. 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 23, 24, 25, 26, 27, 34, 35, and 36, of the Willamette Meridian.

T. 28 N., R. 10 E., Secs. 23, 24, 25, 26, 27, 34, 35, and 36, of the Willamette Meridian.

T. 28 N., R. 11 E., Secs. 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, and 36, of the Willamette Meridian.

T. 28 N., R. 12 E., Secs. 3, 4, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

Excluding from the above areas any lands within the Henry M. Jackson Wilderness, Alpine Lakes Wilderness, and any private lands.

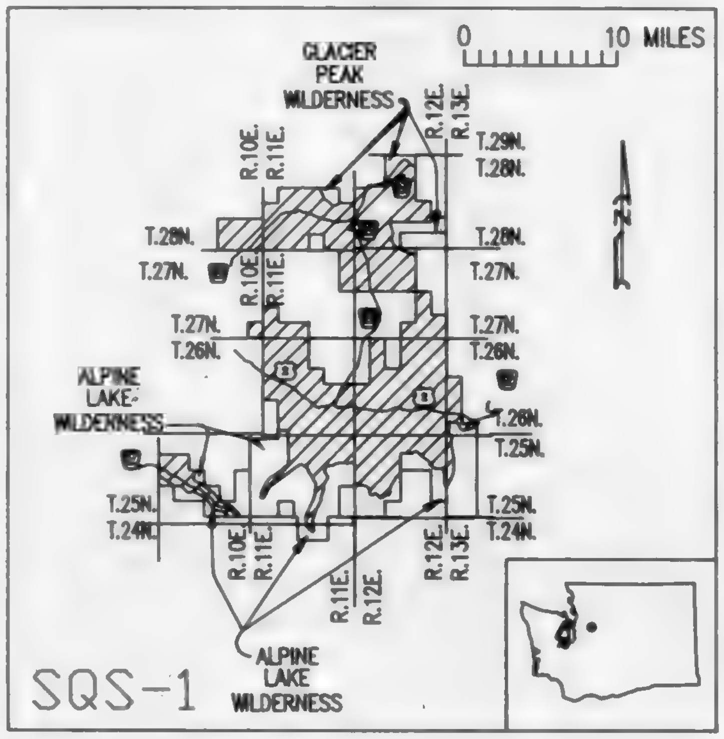
GLACIER PEAK WILDERNESS
0
10 MILES
R.10E.
R.11E.
R.12E.
R.13E.
T.29N.
T.28N.
T.28N.
T.27N.
T.28N.
T.27N.
T.27N.
T.26N.
T.27N.
T.26N.
ALPINE LAKE WILDERNESS
T.26N.
T.25N.
T.25N.
T.24N.
T.25N.
T.24N.
R.10E.
R.11E.
R.11E.
R.12E.
R.12E.
R.13E.
ALPINE LAKE WILDERNESS
SQS-1

Description of SQS–2 taken solely from Department of Natural Resources; Skykomish River 1973, and Snoqualmie Pass 1973, Washington.

King County

T. 24 N., R. 10 E., Secs. 16, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 24 N., R. 11 E., Sec. 31, of the Willamette Meridian.

T. 23 N., R. 10 E., Secs. 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, and 30, of the Willamette Meridian.

T. 23 N., R. 11 E., Secs. 6, 7, and 18, of the Willamette Meridian.

Excluding from the above areas any lands within the Alpine Lakes Wilderness, and any private lands.

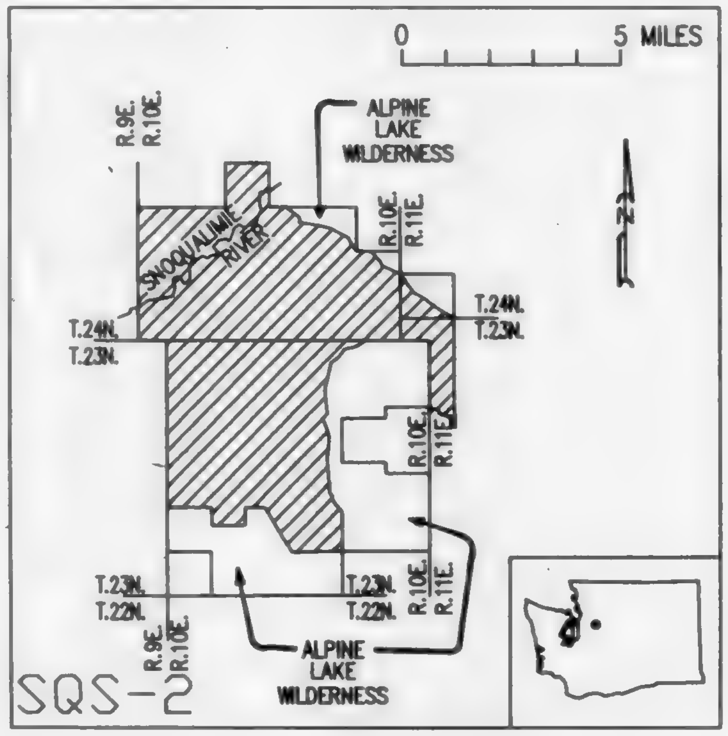
0
5 MILES
R.9E.
R.10E.
ALPINE LAKE WILDERNESS
SNOQUALMIE RIVER
R.10E.
R.11E.
T.24N.
T.23N.
T.24N.
T.23N.
R.10E.
R.11E.
T.23N.
T.22N.
T.23N.
T.22N.
R.10E.
R.11E.
R.9E.
R.10E.
ALPINE LAKE WILDERNESS
SQS-2

Description of SQS–3 take
from Washington Departme
Resources Map; Snoqualmie
Washington.

King and Kittitas Counties

T. 22 N., R. 9 E., Sec. 36, of
Willamette Meridian.

T. 22 N., R. 10 E., Secs. 13,
24, 25, 26, 27, 28, 31, 32, 33, 3
of the Willamette Meridian.

T. 22 N., R. 11 E., Secs. 18,
28, 29, 30, 31, 32, 33, and 34,
Willamette Meridian.

T. 21 N., R. 9 E., Secs. 1, 1
23, and 24, of the Willamett

T. 21 N., R. 10 E., Secs. 1,
8, 9, 10, 11, 12, 13, 14, 15, 16,
21, 22, 23, and 24, of the Wil
Meridian.

T. 21 N., R. 11 E., Secs. 3,
18, and 19, of the Willamett

Excluding from the above
lands within the Keechelus
any private lands.

Description of SQS–4 take
from Bureau of Land Manag
Snoqualmie Pass 1978, and
Rainier 1978, Washington.

King, Pierce, Yakima and Ki
Counties

T. 17 N., R. 10 E., Secs. 2,
23, and 26, of the Willamett

T. 18 N., R. 8 E., Secs. 1, 2,
12, 13, 14, 15, 22, 23, 24, 25, 2
30, 31, 32, 33, 34, 35, and 36,
Willamette Meridian.

T. 18 N., R. 9 E., Secs. 1, 2,
8, 9, 10, 11, 12, 13, 14, 15, 16,
21, 22, 23, 24, 25, 26, 27, 28, 2
33, 34, 35, and 36, of the Wil
Meridian.

T. 18 N., R. 10 E., Secs. 1,
8, 9, 10, 11, 12, 13, 14, 15, 16,
21, 22, 23, 24, 25, 26, 27, 28, 2
33, 34, 35, and 36, of the Wil
Meridian.

T. 18 N., R. 11 E., Secs. 1,
12, 18, 19, 30, and 31, of the
Meridian.

T. 18 N., R. 12 E., Secs. 2,
and 15, of the Willamette M

T. 19 N., R. 10 E., Secs. 1,
8, 9, 10, 11, 12, 13, 14, 15, 16,
21, 22, 23, 24, 25, 26, 27, 28,
34, 35, and 36, of the Willam
Meridian.

T. 19 N., R. 11 E., Secs. 1,
8, 9, 10, 11, 12, 13, 14, 15, 16,
21, 22, 23, 24, 26, 27, 28, 29,
34, 35, and 36, of the Willam
Meridian.

, Secs. 3, 4, 5, 6, 7, 8, 9,
3, 24, 25, 26, 27, 34, 35,
amette Meridian.
, Secs. 23, 24, 25, 26,
of the Willamette

, Secs. 14, 15, 16, 17,
, 25, 26, 27, 28, 29, 30,
36, of the Willamette

Meridian.

T. 28 N., R. 12 E., Secs. 3, 4, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

Excluding from the above areas any lands within the Henry M. Jackson Wilderness, Alpine Lakes Wilderness, and any private lands.

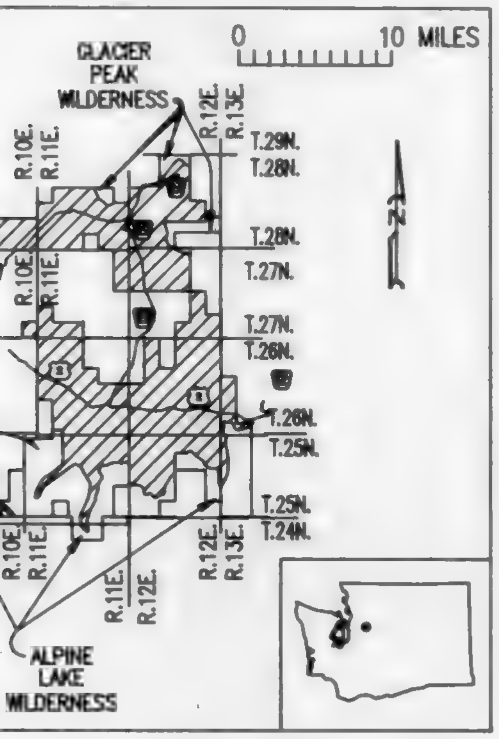
GLACIER PEAK WILDERNESS
0 10 MILES
R.10E.
R.11E.
R.12E.
R.13E.
T.29N.
T.28N.
T.27N.
T.26N.
T.25N.
T.24N.
ALPINE LAKE WILDERNESS

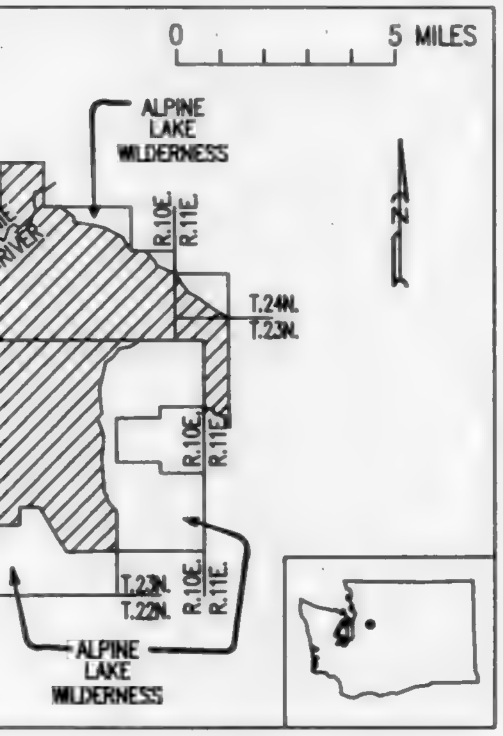
0 5 MILES
ALPINE LAKE WILDERNESS
R.10E.
R.11E.
T.24N.
T.23N.
T.22N.
ALPINE LAKE WILDERNESS

Description of SQS–3 taken solely from Washington Department of Natural Resources Map; Snoqualmie Pass 1973, Washington.

King and Kittitas Counties

T. 22 N., R. 9 E., Sec. 36, of the Willamette Meridian.

T. 22 N., R. 10 E., Secs. 13, 14, 22, 23, 24, 25, 26, 27, 28, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 22 N., R. 11 E., Secs. 18, 19, 20, 27, 28, 29, 30, 31, 32, 33, and 34, of the Willamette Meridian.

T. 21 N., R. 9 E., Secs. 1, 12, 13, 14, 22, 23, and 24, of the Willamette Meridian.

T. 21 N., R. 10 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24, of the Willamette Meridian.

T. 21 N., R. 11 E., Secs. 3, 4, 5, 6, 7, 8, 18, and 19, of the Willamette Meridian.

Excluding from the above areas any lands within the Keechelus Lake, and any private lands.

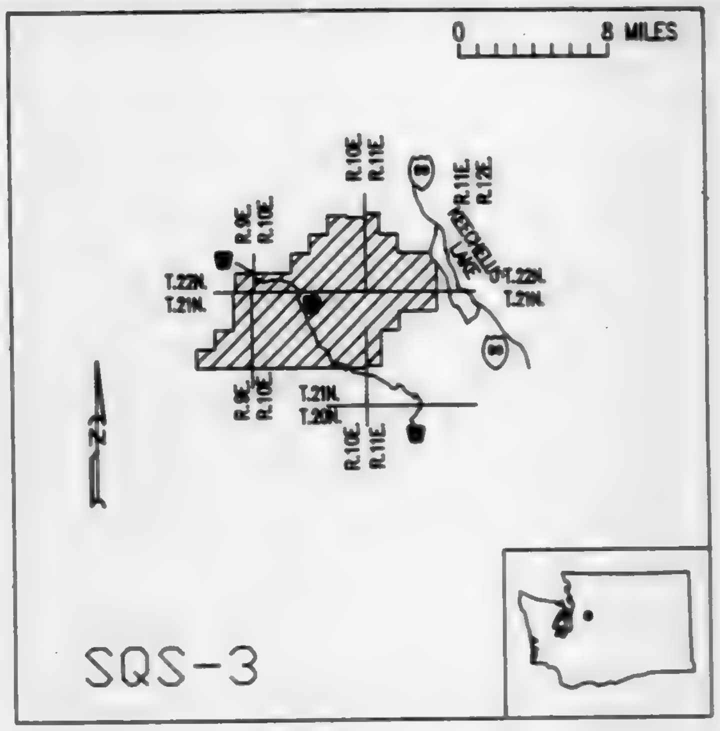
0 8 MILES
R.10E.
R.11E.
R.11E.
R.12E.
R.9E.
R.10E.
KEECHELUS LAKE
T.22N.
T.21N.
T.22N.
T.21N.
T.21N.
T.20N.
R.9E.
R.10E.
R.10E.
R.11E.
SQS-3

Description of SQS–4 taken solely from Bureau of Land Management Maps; Snoqualmie Pass 1978, and Mount Rainier 1978, Washington.

King, Pierce, Yakima and Kittitas Counties

T. 17 N., R. 10 E., Secs. 2, 3, 10, 11, 14, 23, and 26, of the Willamette Meridian.

T. 18 N., R. 8 E., Secs. 1, 2, 3, 4, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 18 N., R. 9 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 18 N., R. 10 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 18 N., R. 11 E., Secs. 1, 2, 3, 4, 5, 6, 7, 12, 18, 19, 30, and 31, of the Willamette Meridian.

T. 18 N., R. 12 E., Secs. 2, 3, 4, 9, 10, 11, and 15, of the Willamette Meridian.

T. 19 N., R. 10 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 19 N., R. 11 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 19 N., R. 12 E., Secs. 3, 10, 15, 22, and 34, of the Willamette Meridian.

T. 20 N., R. 10 E., Secs. 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 20 N., R. 11 E., Secs. 7, 8, 9, 10, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 20 N., R. 12 E., Sec. 34, of the Willamette Meridian.

Excluding from the above areas any lands within Clearwater Wilderness, Norse Peak Wilderness, Mt. Rainier National Park, and any private lands.

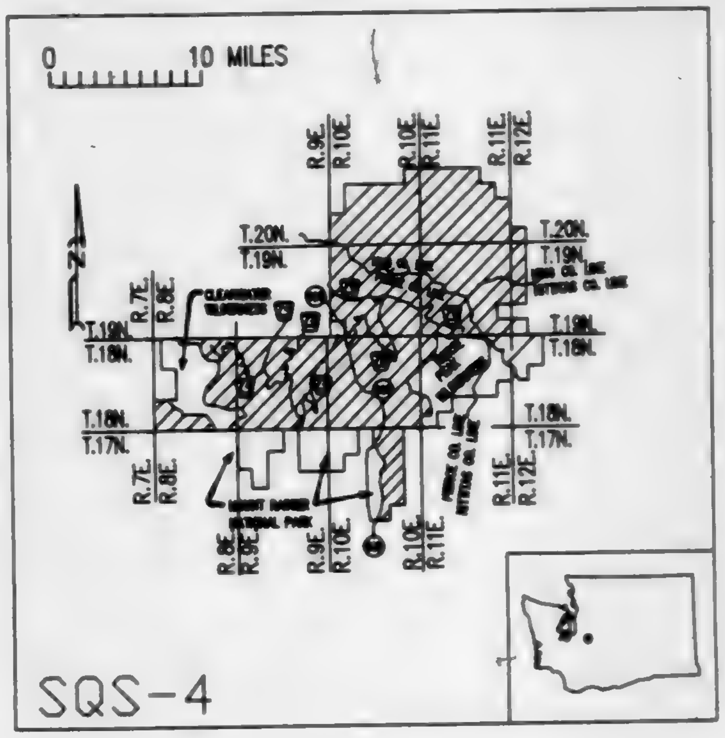
0 10 MILES
R.9E.
R.10E.
R.10E.
R.11E.
R.11E.
R.12E.
T.20N.
T.19N.
T.20N.
T.19N.
R.7E.
R.8E.
CLEARWATER WILDERNESS
T.19N.
T.18N.
T.19N.
T.18N.
T.18N.
T.17N.
T.18N.
T.17N.
R.7E.
R.8E.
MOUNT RAINIER NATIONAL PARK
R.8E.
R.9E.
R.9E.
R.10E.
R.10E.
R.11E.
R.11E.
R.12E.
SQS-4

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Description of SQS-5 taken solely from Department of Natural Resources Quadrangle; Snoqualmie Pass 1973, , Washington.

Pierce County

T. 18 N., R. 7 E., Secs. 12, 13, 14, 22, and 23, of the Willamette Meridian.

Excluding from the above areas any lands within the Clearwater Wilderness, and any private lands.

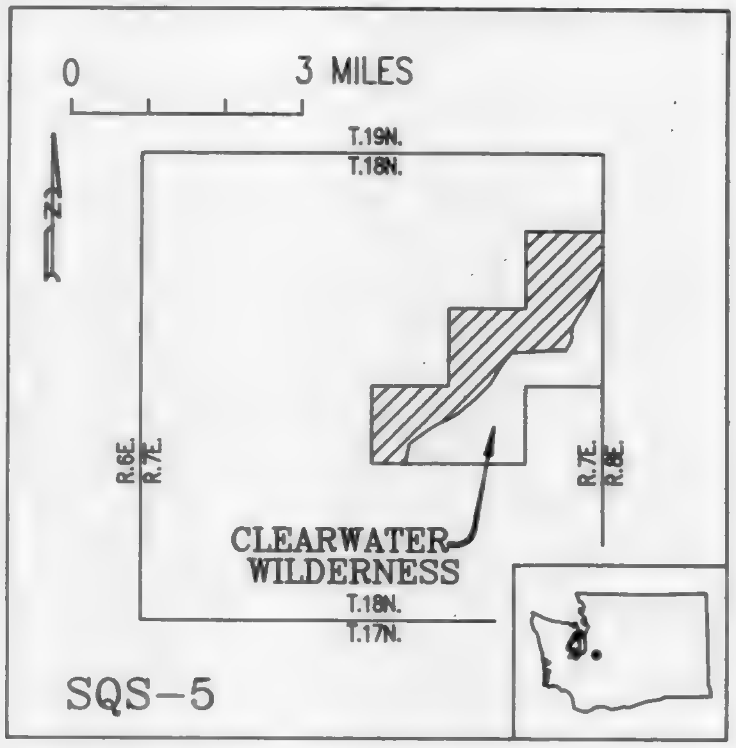

Description of OK-1 taken solely from Bureau of Land Management Map; Robinson Mtn. 1979, Washington.

Whatcom County

T. 38 N., R. 14 E., Sec 36, of the Willamette Meridian.

T. 38 N., R. 16 E., Secs. 35, and 36, of the Willamette Meridian.

T. 38 N., R. 17 E., Secs. 17, 19, 20, 21, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 37 N., R. 14 E., Secs. 1, 12, and 13, of the Willamette Meridian.

T. 37 N., R. 16 E., Secs. 1, 2, 3, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 27, 28, and 29, of the Willamette Meridian.

T. 37 N., R. 17 E., Secs. 5, 6, 7, and 18, of the Willamette Meridian.

Excluding from the above areas any lands within the Pasayten Wilderness, and any private lands.

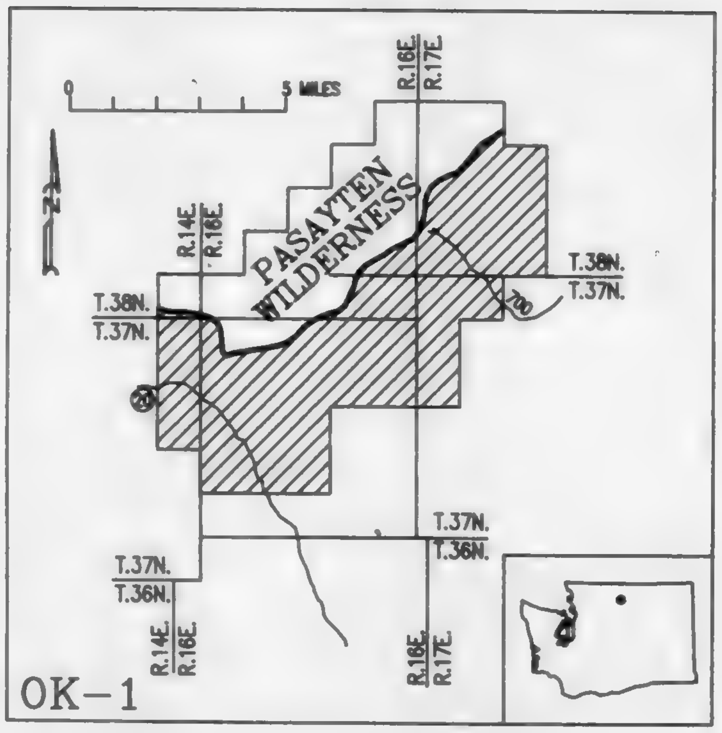

Description of OK-3 taken
Bureau of Land Management
Robinson Mountain 1979, Wa
Okanogan County

T. 35 N., R. 18 E., Secs. 1, 2,
the Willamette Meridian.

T. 35 N., R. 19 E., Secs. 1, 2,
8, 9, 10, 11, and 12, of the Wil
Meridian.

T. 36 N., R. 18 E., Secs. 1, 2,
11, 12, 13, 24, 25, 26, 35, and 3
Willamette Meridian.

T. 36 N., R. 19 E., Secs. 4, 5,
17, 18, 19, 20, 21, 22, 26, 27, 28
32, 33, 34, 35, and 36, of the W
Meridian.

T. 37 N., R. 18 E., Sec. 25, 3
and 36, of the Willamette Me

T. 37 N., R. 19 E., Secs. 19,
27, 28, 29, 30, 31, 32, 33, and 3
Willamette Meridian.

Excluding from the above
lands within the Pasayten W
and any private lands.

Description of OK-4 taken
Bureau of Land Managemen
Twisp 1978, Washington.
Okanogan County

T. 33 N., R. 19 E., Secs. 1, 2
13, 14, 15, 23, 24, and 25, of th
Willamette Meridian.

T. 33 N., R. 20 E., Secs. 6, 7
18, 19, 20, 21, 29, and 30, of th
Willamette Meridian.

Excluding from the above
lands within the Lake Chela
Wilderness, and any private

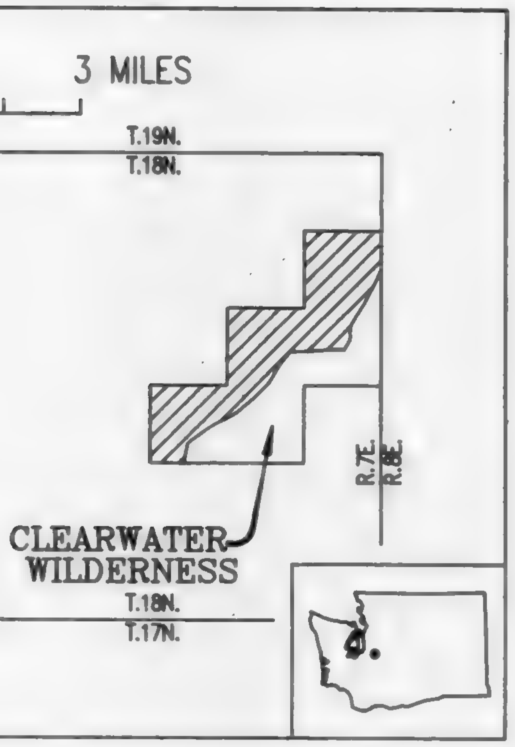
3 MILES
T.19N.
T.18N.
R.7E.
R.8E.
CLEARWATER WILDERNESS
T.18N.
T.17N.

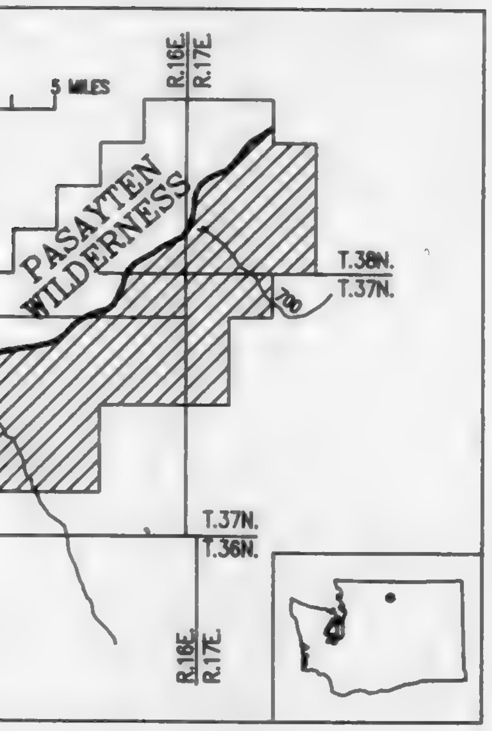
5 MILES
R.16E.
R.17E.
PASAYTEN WILDERNESS
T.38N.
T.37N.
T.37N.
T.36N.
R.16E.
R.17E.

Description of OK-3 taken solely from Bureau of Land Management Map; Robinson Mountain 1979, Washington.

Okanogan County

T. 35 N., R. 18 E., Secs. 1, 2, and 12, of the Willamette Meridian.

T. 35 N., R. 19 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12, of the Willamette Meridian.

T. 36 N., R. 18 E., Secs. 1, 2, 3, 4, 9, 10, 11, 12, 13, 24, 25, 26, 35, and 36, of the Willamette Meridian.

T. 36 N., R. 19 E., Secs. 4, 5, 6, 7, 8, 16, 17, 18, 19, 20, 21, 22, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 37 N., R. 18 E., Sec. 25, 33, 34, 35, and 36, of the Willamette Meridian.

T. 37 N., R. 19 E., Secs. 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, and 34, of the Willamette Meridian.

Excluding from the above areas any lands within the Pasayten Wilderness, and any private lands.

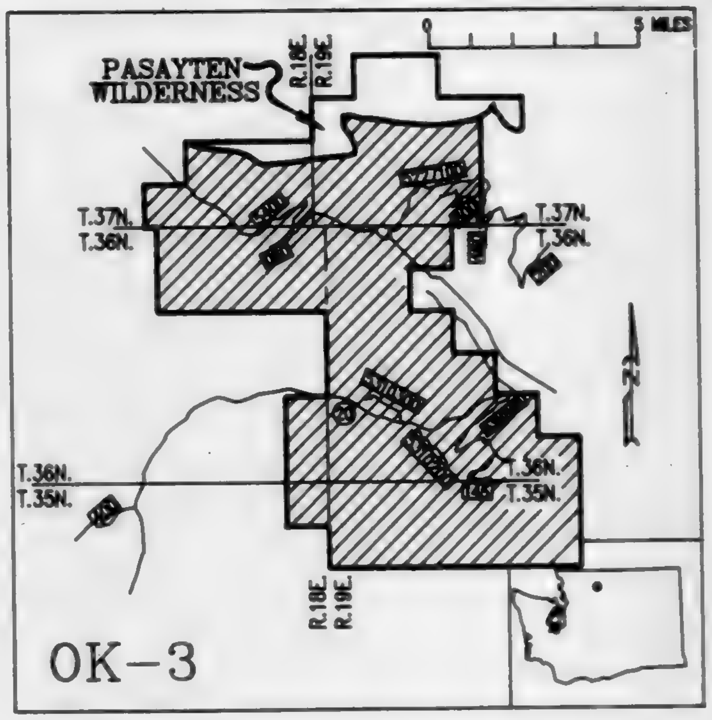
0
5 MILES
PASAYTEN WILDERNESS
R.18E.
R.19E.
T.37N.
T.36N.
T.37N.
T.36N.
T.36N.
T.35N.
T.36N.
T.35N.
R.18E.
R.19E.
OK-3

Description of OK-4 taken solely from Bureau of Land Management Map; Twisp 1978, Washington.

Okanogan County

T. 33 N., R. 19 E., Secs. 1, 2, 10, 11, 12, 13, 14, 15, 23, 24, and 25, of the Willamette Meridian.

T. 33 N., R. 20 E., Secs. 6, 7, 8, 16, 17, 18, 19, 20, 21, 29, and 30, of the Willamette Meridian.

Excluding from the above areas any lands within the Lake Chelan-Sawtooth Wilderness, and any private lands.

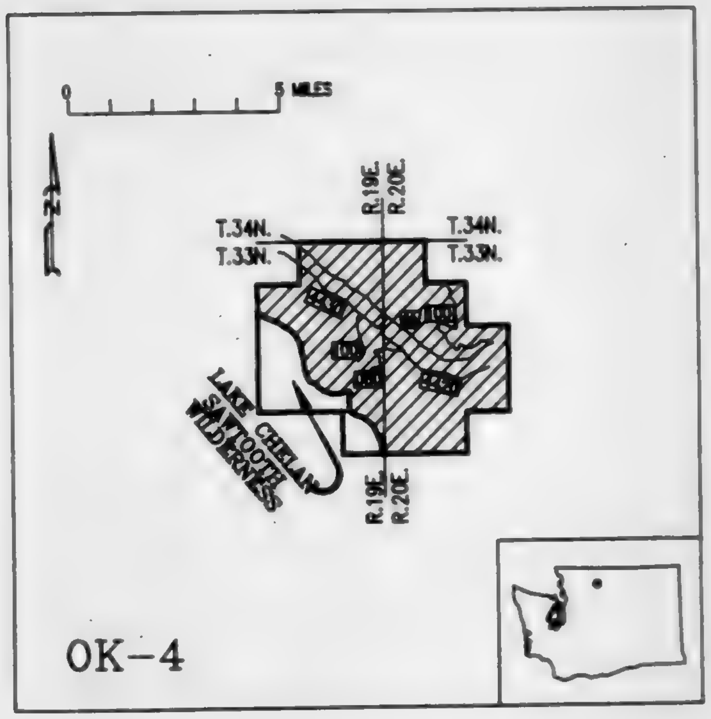
0
5 MILES
R.19E.
R.20E.
T.34N.
T.33N.
T.34N.
T.33N.
LAKE CHELAN SAWTOOTH WILDERNESS
R.19E.
R.20E.
OK-4

Description of OLY–1 taken solely from Department of Natural Resources Quadrangles; Cape Flattery 1983, Forks 1981, Port Angeles 1988, Shelton 1990, Seattle 1990 and Mount Olympus 1983, Washington.

Clallam, Jefferson, Grays Harbor and Mason Counties

T. 30 N., R. 11 W., Secs. 1, 2, 3, 4, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 26, 27, 28, and 29, of the Willamette Meridian.

T. 30 N., R. 10 W., Secs. 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18, of the Willamette Meridian.

T. 30 N., R. 8 W., Secs. 25, 26, 27, 28, 29, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 30 N., R. 7 W., Secs. 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 29 N., R. 11 W., Secs. 13, 22, 23, 24, 25, 26, 27, 33, 34, 35, and 36, of the Willamette Meridian.

T. 29 N., R. 10 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridan.

T. 29 N., R. 4 W., Secs. 19, 20, 21, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 29 N., R. 3 W., Secs. 19, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 29 N., R. 2 W., Secs. 19, 30, 31, and 32, of the Willamette Meridian.

T. 28 N. R. 13 W., Secs. 22, 23, 24, 25, 26, 27, and 36, of the Willamette Meridian.

T. 28 N., R. 12 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 28 N., R. 11 W., Secs. 1, 2, 3, 4, 5; 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18, of the Willamette Meridian.

T. 28 N., R. 10 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12, of the Willamette Meridian.

T. 28 N., R. 4 W., Secs. 1, 4, 5, 8, 9, 12, 13, 23, 24, 25, 26, 35, and 36, of the Willamette Meridian.

T. 28 N., R. 3 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 26, 27, 28, 29, 30, 32, 33, 34, and 35, of the Willamette Meridian.

T. 28 N., R. 2 W., Secs. 5, 6, 7, and 18, of the Willamette Meridian.

T. 27 N., R. 12 W., Secs. 4, 5, 6, 8, 9, 10, 11, 13, 14, 15, 16, 22, 23, 24, 25, and 26, of the Willamette Meridian.

T. 27 N., R. 11 W., Secs. 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 27 N., R. 10 W., Secs. 19, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 27 N., R. 4 W., Sec. 2, of the Willamette Meridian.

T. 27 N., R. 3 W., Secs. 2, 3, 11, 14, 15, 22, 23, 24, 25, 26, 27, 28, 29, 33, 34, 35, and 36, of the Willamette Meridian.

T. 27 N., R. 2 W., Secs. 19, 20, 21, 28, 29, 30, 31, 32, 33, and 34, of the Willamette Meridian.

T. 26 N., R. 11 W., Secs. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 26 N., R. 10 W., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 26 N., R. 9 W., Secs. 19, 29, 30, 31, and 32, of the Willamette Meridian.

T. 26 N., R. 4 W., Secs. 13, and 24, of the Willamette Meridian.

T. 26 N., R. 3 W., Secs. 1, 2, 3, 4, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 33, 34, and 35, of the Willamette Meridian.

T. 26 N., R. 2 W., Secs. 3, 4, 5, 6, 7, 8, 9, 10, 17, 18, 19, and 20, of the Willamette Meridian.

T. 25 N., R. 11 W., Secs. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 25 N., R. 10 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 29, 30, 31, 32, 34, 35, and 36, of the Willamette Meridian.

T. 25 N., R. 9 W., Secs. 6, 31, 32, and 33, of the Willamette Meridian.

T. 25 N., R. 4 W., Secs. 24, 25, 26, 27, 28, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 25 N., R. 3 W., Secs. 2, 3, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 24 N., R. 12 W., Sec. 24, of the Willamette Meridian.

T. 24 N., R. 11 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 16, 17, 18, and 19, of the Willamette Meridian.

T. 24 N., R. 10 ½ W., Secs. 12, 13, 14, 23, 24, 25, and 26, of the Willamette Meridian.

T. 24 ½ N., R. 10 W., Secs. 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 24 ½ N., R. 9 W., Secs. 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 24 N., R 10 W., Secs. 1; 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 24 N., R. 9 W., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32, 33, 35, and 36, of the Willamette Meridian.

T. 24 N., R. 8 W., Secs. 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 24 N., R. 4 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 23 N., R. 10 W., Secs. 1, 2, 3, 10, 11, 15, 23, and 24, of the Willamette Meridian.

T. 23 N., R. 9 W., Secs. 1, 2, 6, 8, 9, 10, 11, 12, 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 23 N., R. 8 W., Secs. 6, 11, 12, 13, 14, 15, 16, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 23 N., R. 7 W., Secs. 1, 2, 3, 4, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 23 N., R. 6 W., Secs. 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 23 N., R. 5 W., Secs. 3, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 23 N., R. 4 W., Secs. 3, 4, 5, 6, 7, and 8, of the Willamette Meridian.

T. 22 N., R. 10 W., Secs. 24, 25, and 36, of the Willamette Meridian.

T. 22 N., R. 9 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 22 N., R. 8 W., Secs.3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, and 34, of the Willamette Meridian.

T. 22 N., R. 7 W., Secs 1, 4, 5, and 6, of the Willamette Meridian.

T. 22 N., R. 6 W., Secs. 1, 3, 4, 5, 6, 9, 10, 15, 16, 21, 22, 27, 28, 29, 32, 33, and 34, of the Willamette Meridian.

T. 22 N., R 5 W., Secs. 1, 2, 3, 4, 5, and 6, of the Willamette Meridian.

T. 21 N., R. 9 W., Secs. 1, 2, 3, and 4, of the Willamette Meridian.

T. 21 N., R. 8 W., Secs. 4, 5, 6, 7, 8, 9, 16, 17, and 18, of the Willamette Meridian.

T. 21 N., R. 6 W., Secs. 3, 4, 5, and 9, of the Willamette Meridian.

Excluding from the above areas any lands within the Colonel Bob Wilderness, Buckhorn Wilderness, The Brothers Wilderness, Mt. Skokomish Wilderness, Wonder Mountain Wilderness, Olympic National Park, and any private lands.

., Secs. 19, 27, 28, 29,
d 35, of the
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Sec. 2, of the
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Secs. 2, 3, 11, 14, 15,
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Secs. 19, 20, 21, 28,
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, Secs. 2, 3, 4, 5, 6, 7,
6, 17, 18, 19, 20, 21, 22,
29, 30, 31, 32, 33, 34,
illamette Meridian.
Secs. 19, 29, 30, 31,
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Secs. 13, and 24, of
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Secs. 1, 2, 3, 4, 10, 11,
18, 19, 20, 21, 22, 23,
5, of the Willamette

Secs. 3, 4, 5, 6, 7, 8, 9,
, of the Willamette

, Secs. 1, 2, 3, 4, 5, 8,
15, 16, 17, 20, 21, 22,
29, 32, 33, 34, 35, and
e Meridian.
, Secs. 1, 2, 3, 4, 5, 6,
15, 16, 17, 18, 19, 20,
35, and 36, of the
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Secs. 6, 31, 32, and
e Meridian.
Secs. 24, 25, 26, 27,
36, of the
n.
Secs. 2, 3, 9, 10, 11,
18, 19, 20, 21, 22, 28,
, of the Willamette

Sec. 24, of the
n.
Secs. 1, 2, 3, 4, 5, 6,
and 19, of the
n.
W., Secs. 12, 13, 14,
the Willamette

W., Secs. 32, 33, 34,
illamette Meridian.
., Secs. 31, 32, 33, 34,
mette Meridian.
Secs. 1, 2, 3, 4, 5, 6, 7,
, 15, 16, 17, 18, 19, 20,
27, 28, 29, 30, 31, 32,
the Willamette

Secs. 2, 3, 4, 5, 6, 7, 8,
9, 20, 21, 28, 29, 30,

31, 32, 33, 35, and 36, of the Willamette Meridian.

T. 24 N., R. 8 W., Secs. 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 24 N., R. 4 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 23 N., R. 10 W., Secs. 1, 2, 3, 10, 11, 15, 23, and 24, of the Willamette Meridian.

T. 23 N., R. 9 W., Secs. 1, 2, 6, 8, 9, 10, 11, 12, 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 23 N., R. 8 W., Secs. 6, 11, 12, 13, 14, 15, 16, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 23 N., R. 7 W., Secs. 1, 2, 3, 4, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 23 N., R. 6 W., Secs. 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 23 N., R. 5 W., Secs. 3, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 23 N., R. 4 W., Secs. 3, 4, 5, 6, 7, and 8, of the Willamette Meridian.

T. 22 N., R. 10 W., Secs. 24, 25, and 36, of the Willamette Meridian.

T. 22 N., R. 9 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 22 N., R. 8 W., Secs.3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, and 34, of the Willamette Meridian.

T. 22 N., R. 7 W., Secs 1, 4, 5, and 6, of the Willamette Meridian.

T. 22 N., R. 6 W., Secs. 1, 3, 4, 5, 6, 9, 10, 15, 16, 21, 22, 27, 28, 29, 32, 33, and 34, of the Willamette Meridian.

T. 22 N., R 5 W., Secs. 1, 2, 3, 4, 5, and 6, of the Willamette Meridian.

T. 21 N., R. 9 W., Secs. 1, 2, 3, and 4, of the Willamette Meridian.

T. 21 N., R. 8 W., Secs. 4, 5, 6, 7, 8, 9, 16, 17, and 18, of the Willamette Meridian.

T. 21 N., R. 6 W., Secs. 3, 4, 5, and 9, of the Willamette Meridian.

Excluding from the above areas any lands within the Colonel Bob Wilderness, Buckhorn Wilderness, The Brothers Wilderness, Mt. Skokomish Wilderness, Wonder Mountain Wilderness, Olympic National Park, and any private lands.

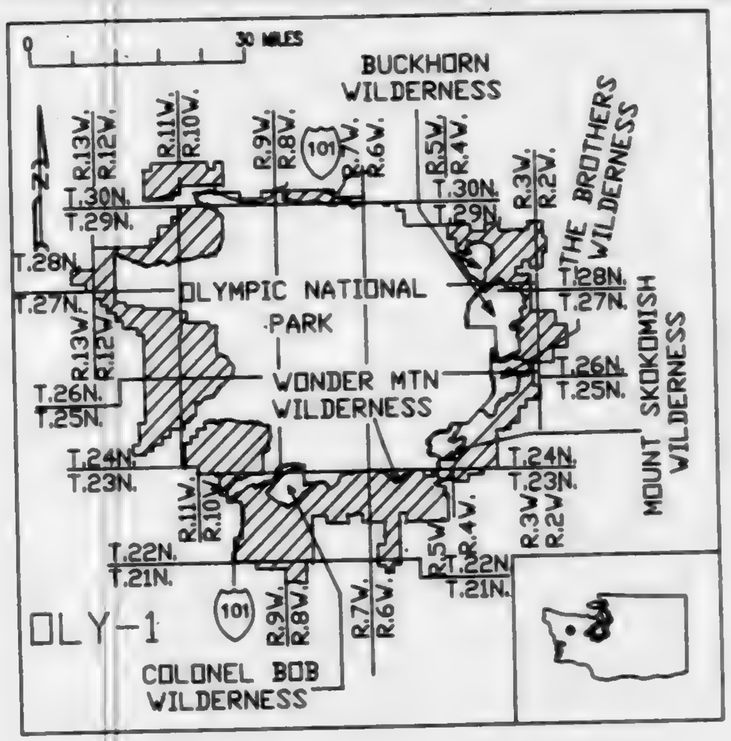

Description of OLY-2 taken solely from Department of Natural Resources Quadrangle; Cape Flattery 1983, Washington.

Clallam County

T. 31 N., R. 12 W., Secs. 31, 32, and 33, of the Willamette Meridian.

T. 30 N., R. 12 W., Secs. 4, 5, 6, 7, 8, 9, 17, and 18, of the Willamette Meridian.

Excluding any private lands within the above area.

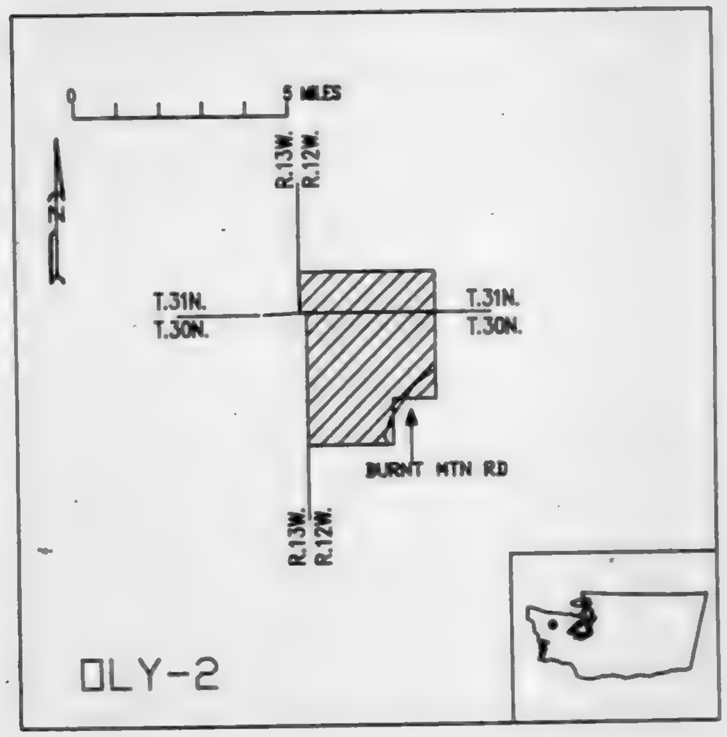

/OL
56
SS
156
AG
13
991
UMI

Description of OLY–3 taken solely from Department of Natural Resources Quadrangles; Cape Flattery 1983, and Forks 1988, Washington.
Clallam County

T. 29 N., R. 13 W., Secs. 12, 13, 23, 24, 25, and 26 of the Willamette Meridian.

T. 29 N., R. 12 W., Secs. 7, 8, 17, 18, 19, 20, and 30 of the Willamette Meridian. Excluding any private lands within the above area.

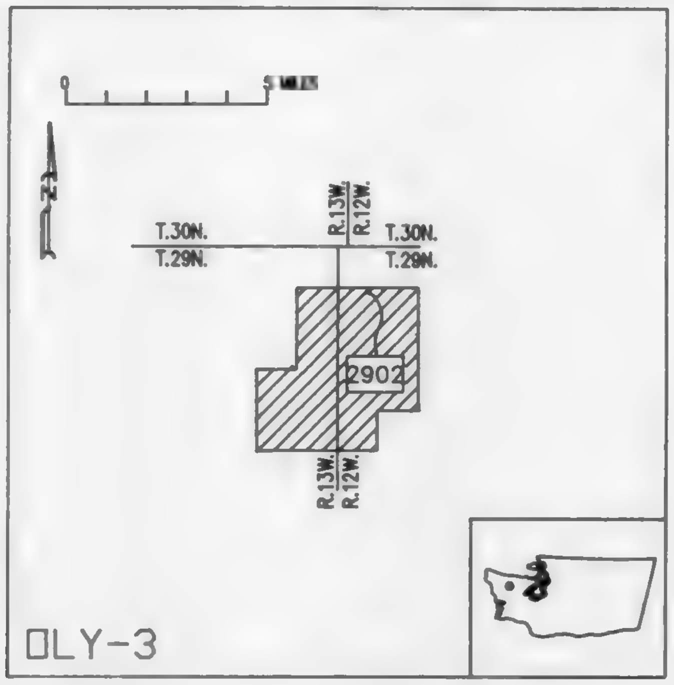
0
5 MILES
N
R.13W.
R.12W.
T.30N.
T.29N.
T.30N.
T.29N.
2902
R.13W.
R.12W.
OLY-3

Description of WN–1 taken solely from Bureau of Land Management Maps; Twisp 1978, and Chelan 1973, Washington.
Chelan County

T. 30 N., R. 16 E., Secs. 11, 14, 15, 16, 21, 22, 23, 26, 27, 28, 33, 34, and 35, of the Willamette Meridian.

T. 30 N., R. 17 E., Secs. 29, 30, 31, and 32, of the Willamette Meridian.

T. 29 N., R. 16 E., Secs. 1, 2, 3, 4, 10, 11, 12, 13, 14, 15, 21, 22, 23, 24, 25, 26, 27, 28, 34, 35, and 36, of the Willamette Meridian.

T. 29 N., R. 17 E., Secs. 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 22, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 28 N., R. 16 E., Secs. 1, 2, 12, 13, 24, 25, and 36, of the Willamette Meridian.

T. 28 N., R. 17 E., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 28 N., R. 18 E., Secs. 30, and 31, of the Willamette Meridian.

T. 27 N., R. 17 E., Secs. 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 35, and 36, of the Willamette Meridian.

T. 27 N., R. 18 E., Secs. 4, 5, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 33, 34, 35, and 36, of the Willamette Meridian.

T. 27 N., R. 19 E., Secs. 30, 31, 32, and 33, of the Willamette Meridian.

T. 26 N., R. 18 E., Secs. 1, 2, 3, 4, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 22, 23, 24, 25, 26, 27, 35, and 36, of the Willamette Meridian.

T. 26 N., R. 19 E., Secs. 4, 5, 6, 7, 30, and 31, of the Willamette Meridian.

T. 25 N., R. 18 E., Secs. 1, and 2, of the Willamette Meridian.

Excluding from the above areas any lands within the Glacier Peak Wilderness, and any private lands.

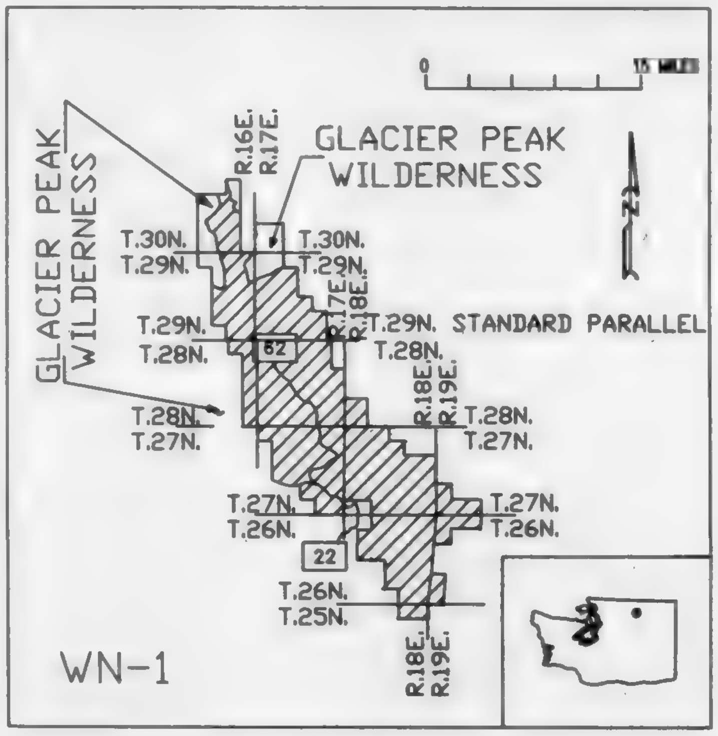
0
15 MILES
N
GLACIER PEAK WILDERNESS
GLACIER PEAK WILDERNESS
R.16E.
R.17E.
T.30N.
T.29N.
T.30N.
T.29N.
R.17E.
R.18E.
T.29N.
T.28N.
T.29N. STANDARD PARALLEL
T.28N.
62
R.18E.
R.19E.
T.28N.
T.27N.
T.28N.
T.27N.
T.27N.
T.26N.
T.27N.
T.26N.
22
T.26N.
T.25N.
R.18E.
R.19E.
WN-1

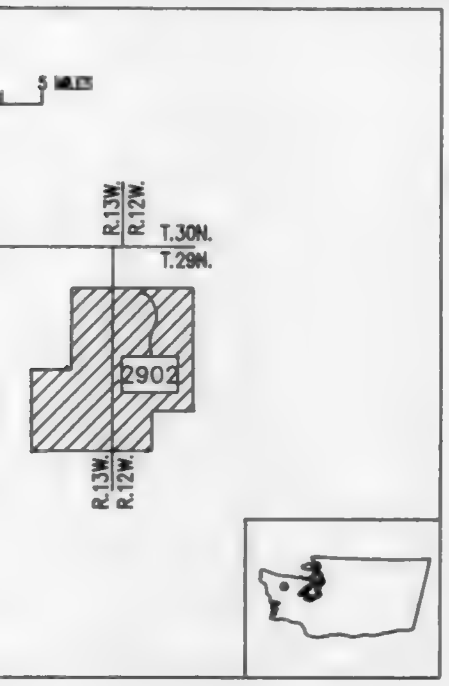
5 MILES
R.13W.
R.12W.
T.30N.
T.29N.
2902
R.13W.
R.12W.

, 30, 33, 34, 35, and 36,
Meridian.
Secs. 30, 31, 32, and
te Meridian.
Secs. 1, 2, 3, 4, 8, 9,
16, 17, 22, 23, 24, 25,
f the Willamette

T. 26 N., R. 19 E., Secs. 4, 5, 6, 7, 30, and 31, of the Willamette Meridian.

T. 25 N., R. 18 E., Secs. 1, and 2, of the Willamette Meridian.

Excluding from the above areas any lands within the Glacier Peak Wilderness, and any private lands.

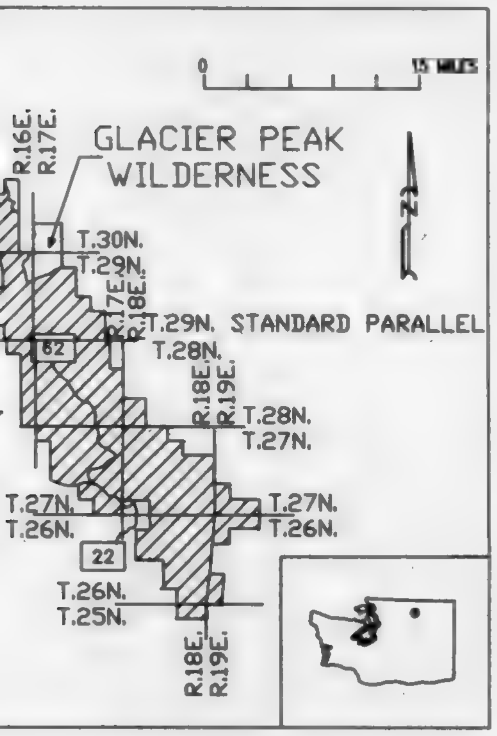
0
15 MILES
R.16E.
R.17E.
GLACIER PEAK WILDERNESS
T.30N.
T.29N.
R.17E.
R.18E.
T.29N. STANDARD PARALLEL
T.28N.
62
R.18E.
R.19E.
T.28N.
T.27N.
T.27N.
T.26N.
T.27N.
T.26N.
22
T.26N.
T.25N.
R.18E.
R.19E.

Description of WN–2 taken solely from Bureau of Land Management Maps; Twisp 1978, and Chelan 1973, Washington.

Chelan County

T. 30 N., R. 17 E., Sec. 35, of the Willamette Meridian.

T. 30 N., R. 18 E., Sec. 33, of the Willamette Meridian.

T. 29 N., R. 17 E., Secs. 1, 2, and 12, of the Willamette Meridian.

T. 29 N., R. 18 E., Secs. 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, 20, 21, 22, 23, 25, 26, 27, 35, and 36, of the Willamette Meridian.

T. 29 N., R. 19 E., Sec. 31, of the Willamette Meridian.

T. 28 N., R. 18 E., Secs. 1, 2, 11, and 12, of the Willamette Meridian.

Excluding any private lands within the above area.

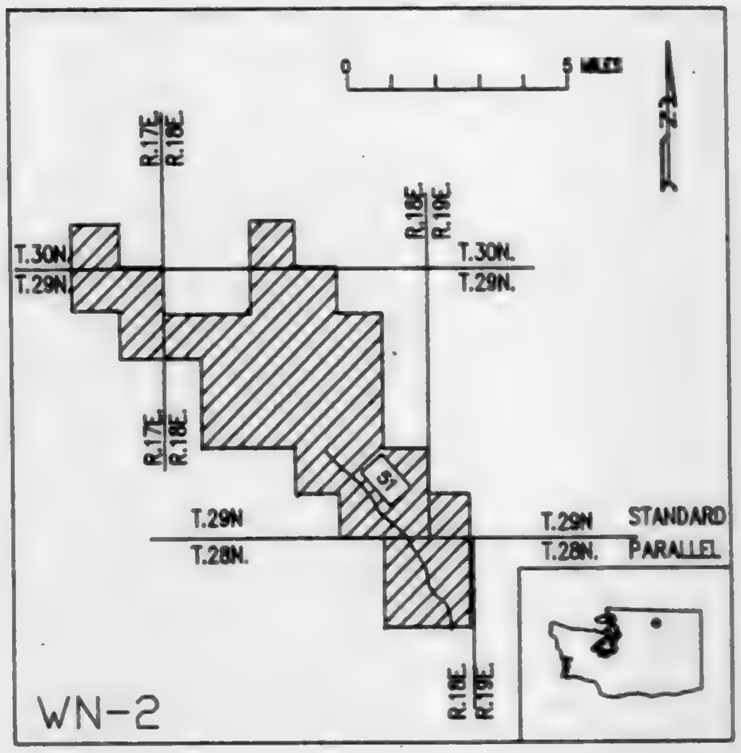
0
5 MILES
N
R.17E.
R.18E.
R.18E.
R.19E.
T.30N.
T.29N.
T.30N.
T.29N.
R.17E.
R.18E.
51
T.29N
T.28N.
T.29N
T.28N.
STANDARD PARALLEL
R.18E.
R.19E.
WN-2

Description of WN–3 taken solely from Bureau of Land Management Maps; Twisp 1978, and Chelan 1973, Washington.

Chelan County

T. 29 N., R. 20 E., Secs. 19, 20, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 28 N., R. 20 E., Secs. 2, 3, 4, 5, 9, 10, and 11, of the Willamette Meridian.

Excluding any private lands within the above area.

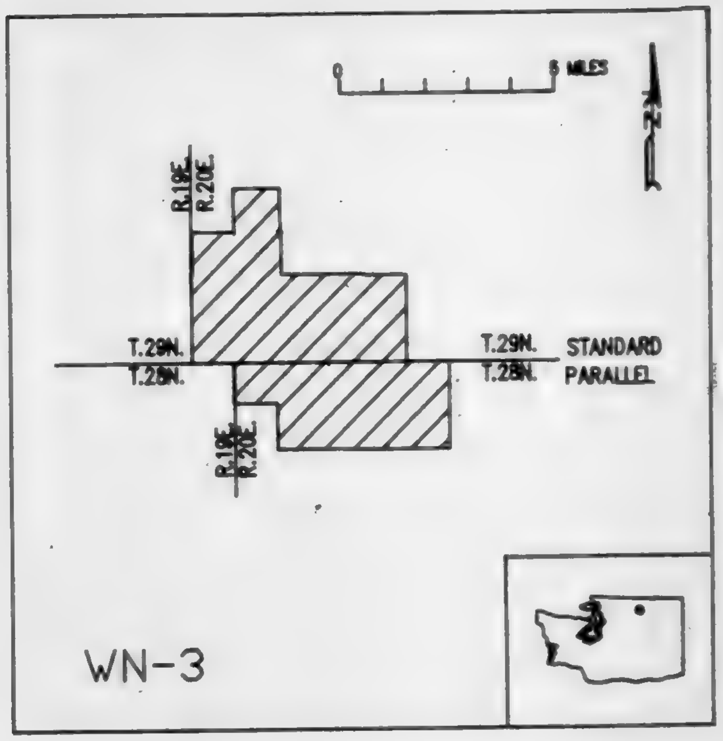
0
5 MILES
N
R.19E.
R.20E.
T.29N.
T.28N.
T.29N.
T.28N.
STANDARD PARALLEL
R.19E.
R.20E.
WN-3

Description of WN-4 taken solely from Bureau of Land Management Maps; Chelan 1973, and Sauk River 1978, and Department of Natural Resources Quadrangle; Skykomish River 1973, Washington.

Chelan and Snohomish Counties

T. 28 N., R. 13 E., Secs. 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 34, 35, and 36, of the Willamette Meridian.

T. 28 N., R. 14 E., Secs. 23, 24, 25, 26, 35, and 36, of the Willamette Meridian.

T. 28 N., R. 15 E., Secs. 2, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 28 N., R. 16 E., Secs. 18, 19, 30, and 31, of the Willamette Meridian.

T. 27 N., R. 13 E., Secs. 1, and 2, of the Willamette Meridian.

T. 27 N., R. 14 E., Secs. 1, 2, and 11, of the Willamette Meridian.

T. 27 N., R. 15 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 21, 22, 23, 24, and 25, of the Willamette Meridian.

T. 27 N., R. 16 E., Secs. 6, 7, 18, 19, and 30, of the Willamette Meridian.

Excluding from the above areas any lands within the Glacier Peak, Henry M. Jackson Wilderness, and any private lands.

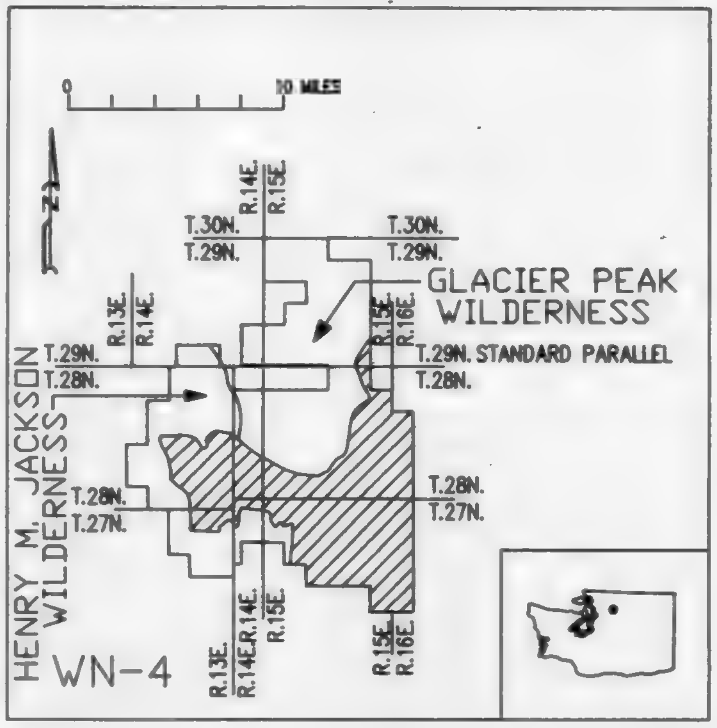
0
10 MILES
N
R.14E.
R.15E.
T.30N.
T.29N.
T.30N.
T.29N.
GLACIER PEAK
WILDERNESS
R.13E.
R.14E.
R.15E.
R.16E.
T.29N.
T.28N.
T.29N. STANDARD PARALLEL
T.28N.
HENRY M. JACKSON
WILDERNESS
T.28N.
T.27N.
T.28N.
T.27N.
R.13E.
R.14E.
R.14E.
R.15E.
R.15E.
R.16E.
WN-4

Description of WN-5 taken solely from Bureau of Land Management Maps; Chelan 1973, and Department of Natural Resources Quadrangle; Skykomish River 1973, Washington.

Chelan and King Counties

T. 26 N., R. 14 E., Secs. 24, and 25, of the Willamette Meridian.

T. 26 N., R. 15 E., Secs. 1, 2, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20, 21, and 30, of the Willamette Meridian.

T. 26 N., R. 16 E., Secs. 6, and 17, of the Willamette Meridian.

T. 25 N., R. 15 E., Secs. 35, and 36, of the Willamette Meridian.

T. 25 N., R. 16 E., Sec. 32, of the Willamette Meridian.

T. 24 N., R. 15 E., Secs. 1, 2, and 3, of the Willamette Meridian.

T. 24 N., R. 16 E., Secs. 3, 4, 5, 6, 7, and 8, of the Willamette Meridian.

Excluding from the above areas any lands within the Alpine Lakes Wilderness, and any private lands.

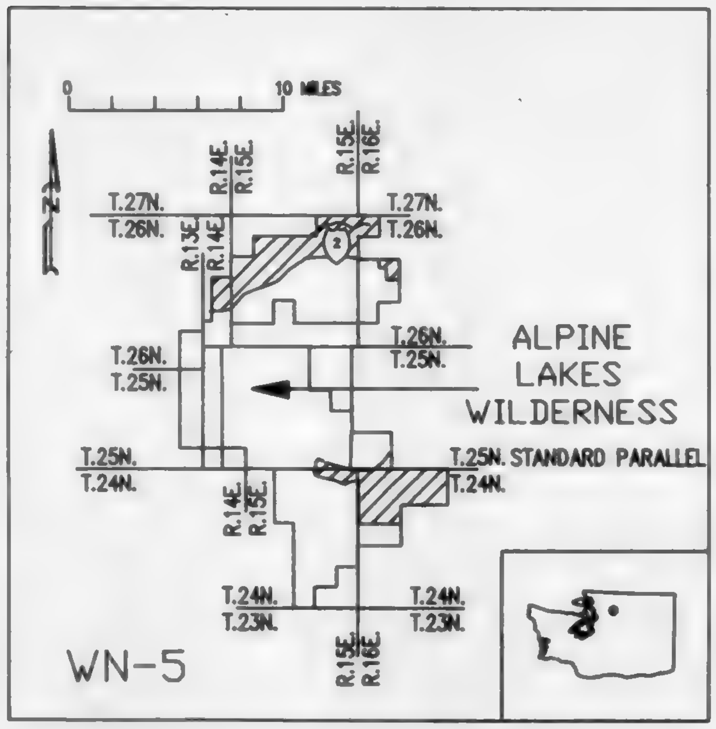
0
10 MILES
N
R.14E.
R.15E.
R.15E.
R.16E.
T.27N.
T.26N.
T.27N.
T.26N.
R.13E.
R.14E.
T.26N.
T.25N.
ALPINE
LAKES
WILDERNESS
T.26N.
T.25N.
T.25N.
T.24N.
T.25N. STANDARD PARALLEL
T.24N.
R.14E.
R.15E.
T.24N.
T.23N.
T.24N.
T.23N.
R.15E.
R.16E.
WN-5

Description of WN-6 taken from Bureau of Land Manag Chelan 1973, Washington.

Chelan County

T. 26 N., R. 16 E., Secs. 25, the Willamette Meridian.

T. 26 N., R. 17 E., Secs. 19, 27, 28, 29, 30, 31, 32, 33, and Willamette Meridian.

T. 25 N., R. 17 E., Secs. 1, 9, 10, 11, 12, 14, 15, 16, 17, 18 22, 27, 28, 29, 32, 33, and 34, Willamette Meridian.

T. 24 N., R. 17 E., Secs. 3, Willamette Meridian.

Excluding from the above lands within the Alpine Lak Wilderness, and any privat

Description of WN-7 tak from Bureau of Land Mana Chelan 1973, and Wenatch Washington.

Chelan County

T. 24 N., R. 17 E., Secs. 2 28, 32, 33, 34, 35, and 36, of Willamette Meridian.

T. 24 N., R. 18 E., Secs. 3 the Willamette Meridian.

T. 23 N., R. 17 E., Secs. 1, 12, 13, 14, 15, 22, 23, and 27 Willamette Meridian.

Excluding from the abov lands within the Alpine La Wilderness, and any priva

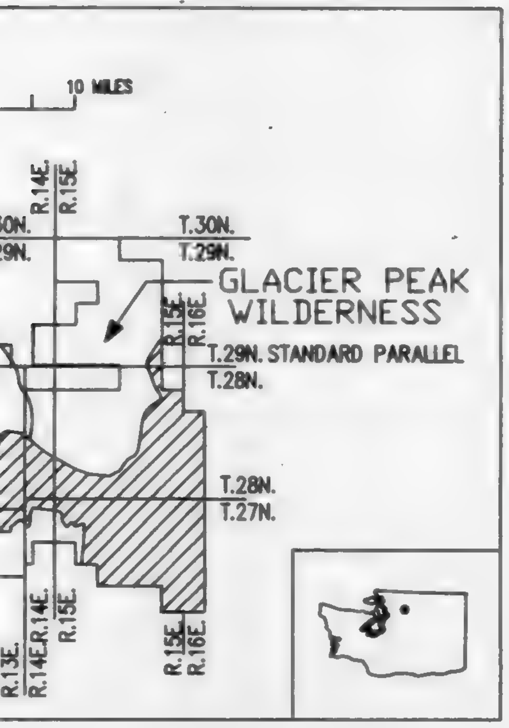
10 MILES
R.14E.
R.15E.
T.30N.
T.29N.
GLACIER PEAK
WILDERNESS
R.15E.
R.16E.
T.29N. STANDARD PARALLEL
T.28N.
T.28N.
T.27N.
R.13E.
R.14E.
R.14E.
R.15E.
R.15E.
R.16E.

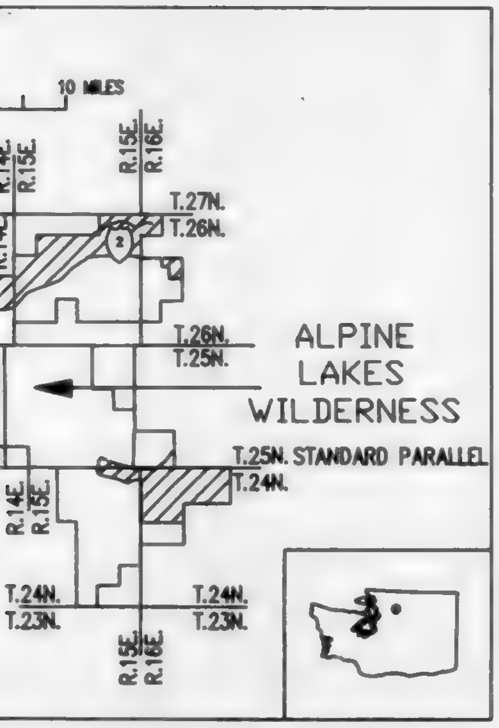
10 MILES
R.14E.
R.15E.
R.15E.
R.16E.
T.27N.
T.26N.
2
T.26N.
T.25N.
ALPINE
LAKES
WILDERNESS
T.25N. STANDARD PARALLEL
T.24N.
R.14E.
R.15E.
T.24N.
T.23N.
T.24N.
T.23N.
R.15E.
R.16E.

Description of WN–6 taken solely from Bureau of Land Management Map; Chelan 1973, Washington.

Chelan County

T. 26 N., R. 16 E., Secs. 25, and 36, of the Willamette Meridian.

T. 26 N., R. 17 E., Secs. 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, and 34, of the Willamette Meridian.

T. 25 N., R. 17 E., Secs. 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 32, 33, and 34, of the Willamette Meridian.

T. 24 N., R. 17 E., Secs. 3, and 4, of the Willamette Meridian.

Excluding from the above areas any lands within the Alpine Lakes Wilderness, and any private lands.

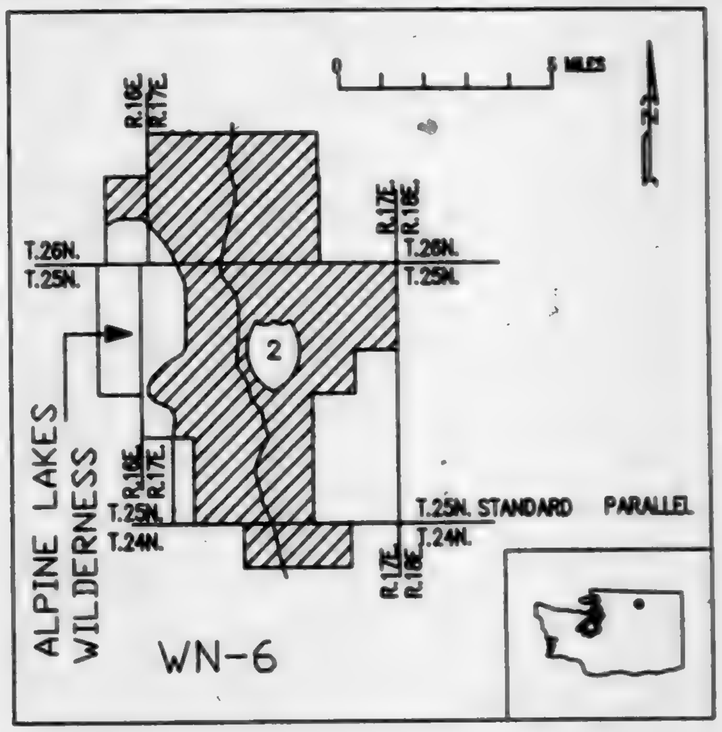
0
5 MILES
N
R.16E.
R.17E.
R.17E.
R.18E.
T.26N.
T.25N.
T.26N.
T.25N.
2
ALPINE LAKES
WILDERNESS
R.16E.
R.17E.
T.25N.
T.24N.
T.25N. STANDARD PARALLEL
T.24N.
R.17E.
R.18E.
WN-6

Description of WN–7 taken solely from Bureau of Land Management Maps; Chelan 1973, and Wenatchee 1978, Washington.

Chelan County

T. 24 N., R. 17 E., Secs. 22, 25, 26, 27, 28, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 24 N., R. 18 E., Secs. 30, and 31, of the Willamette Meridian.

T. 23 N., R. 17 E., Secs. 1, 2, 3, 9, 10, 11, 12, 13, 14, 15, 22, 23, and 27, of the Willamette Meridian.

Excluding from the above areas any lands within the Alpine Lakes Wilderness, and any private lands.

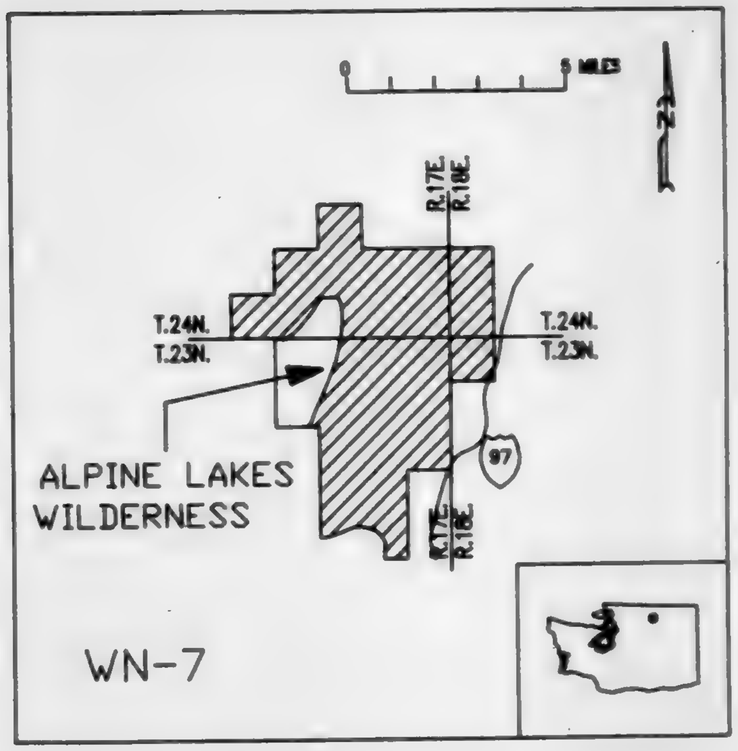
0
5 MILES
N
R.17E.
R.18E.
T.24N.
T.23N.
T.24N.
T.23N.
ALPINE LAKES
WILDERNESS
97
R.17E.
R.18E.
WN-7

VOL 56 ISS 156 AG 13 1991 UMI

Description of WS–1 taken solely from Department of Natural Resources Map; Snoqualmie Pass 1973, and Bureau of Land Management Map; Wenatchee 1978, Washington.

Chelan and Kittitas Counties

T. 23 N., R. 13 E., Secs. 21, 22, 23, 26, 27, 28, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 23 N., R. 17 E., Secs. 26, 34, 35, and 36, of the Willamette Meridian.

T. 22 N., R. 12 E., Secs. 13, 14, 23, and 25, of the Willamette Meridian.

T. 22 N., R. 13 E., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 33, 34, 35, and 36, of the Willamette Meridian.

T. 22 N., R. 14 E., Secs. 2, 3, 4, 5, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 22 N., R. 15 E., Secs. 25, 26, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 22 N., R. 16 E., Secs. 11, 12, 13, 14, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, and 36, of the Willamette Meridian.

T. 22 N., R. 17 E., Secs. 1, 2, 3, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 22 N., R. 18 E., Secs. 1, 2, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 22 N., R. 19 E., Secs. 6, 7, 18, 19, 29, 30, 31, 32, 33, and 34, of the Willamette Meridian.

T. 21 N., R. 13 E., Secs. 1, 2, 3, 4, 8, 9, 10, 11, 12, 13, 14, 15, 16, 22, 23, 24, 25, 26, and 36, of the Willamette Meridian.

T. 21 N., R. 14 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 21 N., R. 15 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 17, and 18, of the Willamette Meridian.

T. 21 N., R. 16 E., Secs. 1, 12, 13, 24, 25, and 36, of the Willamette Meridian.

T. 21 N., R. 17 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 21 N., R. 18 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, and 32, of the Willamette Meridian.

T. 21 N., R. 19 E., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, and 22, of the Willamette Meridian.

T. 20 N., R. 14 E., Secs. 3, 4, 5, 6, and 8, of the Willamette Meridian.

T. 20 N., R. 17 E., Secs. 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, and 15, of the Willamette Meridian.

T. 20 N., R. 18 E., Secs. 5, 6, 7, 8, 17, 18, 19, 20, 21, 28, 29, 30, 32, and 33, of the Willamette Meridian.

Excluding from the above areas any lands within the Alpine Lakes Wilderness, and any private lands.

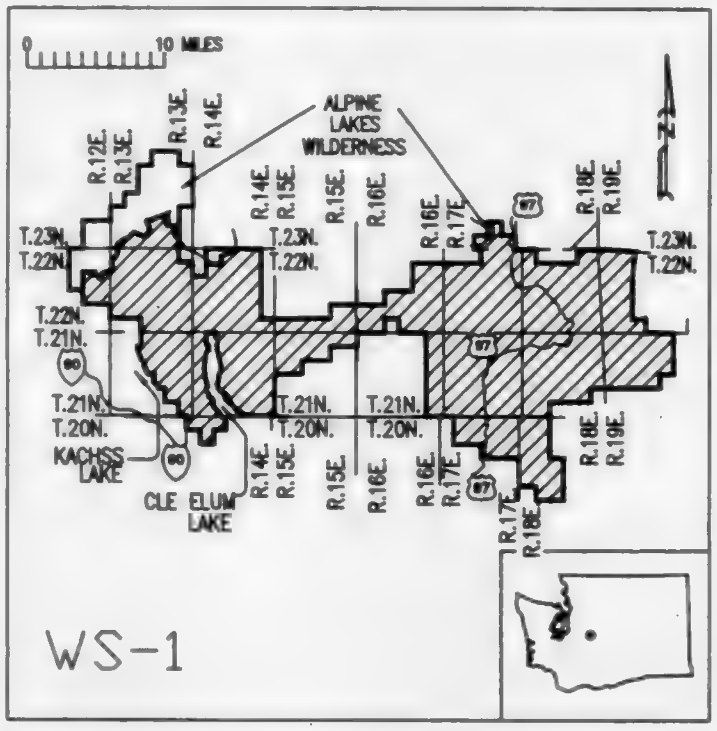

Description of WS–2 taken
Department of Natural Reso
Snoqualmie Pass 1973, and
Land Management Map; We
1978, Washington.
Kittitas and Yakima Counti
T. 20 N., R. 14 E., Secs. 30,
of the Willamette Meridian.
T. 19 N., R. 12 E., Secs. 1,
24, of the Willamette Merid
T. 19 N., R. 13 E., Secs. 1,
8, 9, 10, 11, 12, 13, 14, 15, 16,
21, 22, 23, 24, 25, 26, 27, 28,
36, of the Willamette Merid
T. 19 N., R. 14 E., Secs. 4,
10, 11, 12, 13, 14, 15, 16, 17,
22, 23, 24, 25, 26, 27, 28, 29,
34, 35, and 36, of the Willam
Meridian.
T. 19 N. R. 15 E., Secs. 13,
18, 19, 20, 21, 22, 23, 24, 25,
30, 31, 32, 33, 34, 35, and 36,
Willamette Meridian.
T. 18 N., R. 13 E., Secs. 1,
and 24, of the Willamette M
T. 18 N., R. 14 E., Secs. 1,

Description of WS–3 take
Bureau of Land Managemen
Mount Rainier 1978, Washi
Yakima County
T. 17 N., R. 13 E., Secs. 10
14, 15, 21, 22, 23, 24, 27, 28,
of the Willamette Meridian
T. 16 N., R. 11 E., Secs. 25
the Willamette Meridian.
T. 16 N., R. 12 E., Secs. 1,
15, 22, 23, 24, 26, 27, 28, 29,
35, of the Willamette Meric
T. 16 N., R. 13 E., Secs. 5,
Willamette Meridian.
T. 15 N., R. 11 E., Secs. 12
and 36, of the Willamette M
T. 15 N., R. 12 E., Secs. 2,
10, 11, 15, 16, 17, 20, 21, 29,
Willamette Meridian.
Excluding from the abov
lands within the William O
Wilderness, and any priva

Description of WS–2 taken solely from Department of Natural Resources Map; Snoqualmie Pass 1973, and Bureau of Land Management Map; Wenatchee 1978, Washington.

Kittitas and Yakima Counties

T. 20 N., R. 14 E., Secs. 30, 31, and 32, of the Willamette Meridian.

T. 19 N., R. 12 E., Secs. 1, 12, 13, and 24, of the Willamette Meridian.

T. 19 N., R. 13 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36, of the Willamette Meridian.

T. 19 N., R. 14 E., Secs. 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 19 N. R. 15 E., Secs. 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 18 N., R. 13 E., Secs. 1, 2, 3, 4, 12, 13, and 24, of the Willamette Meridian.

T. 18 N., R. 14 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30, of the Willamette Meridian.

T. 18 N. R. 15 E., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 29, and 30, of the Willamette Meridian.

Excluding any private lands within the above area.

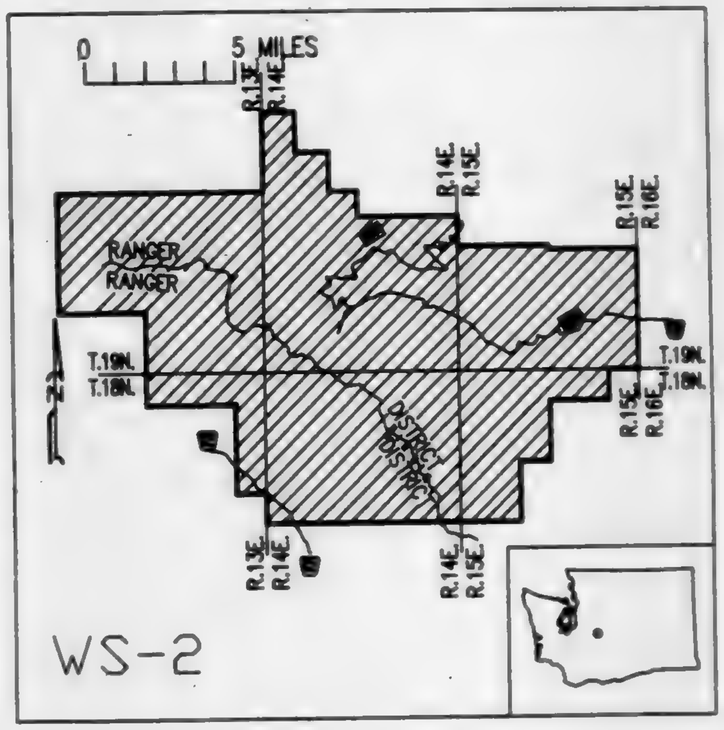
0
5 MILES
R.13E.
R.14E.
R.14E.
R.15E.
R.15E.
R.16E.
RANGER
RANGER
DISTRICT
DISTRICT
T.19N.
T.18N.
T.19N.
T.18N.
R.15E.
R.16E.
R.13E.
R.14E.
R.14E.
R.15E.
WS-2

Description of WS–3 taken solely from Bureau of Land Management Map; Mount Rainier 1978, Washington.

Yakima County

T. 17 N., R. 13 E., Secs. 10, 11, 12, 13, 14, 15, 21, 22, 23, 24, 27, 28, 32, 33, and 34, of the Willamette Meridian.

T. 16 N., R. 11 E., Secs. 25, and 36, of the Willamette Meridian.

T. 16 N., R. 12 E., Secs. 1, 11, 12, 13, 14, 15, 22, 23, 24, 26, 27, 28, 29, 32, 33, 34, and 35, of the Willamette Meridian.

T. 16 N., R. 13 E., Secs. 5, and 6, of the Willamette Meridian.

T. 15 N., R. 11 E., Secs. 12, 13, 24, 25, and 36, of the Willamette Meridian.

T. 15 N., R. 12 E., Secs. 2, 3, 4, 5, 8, 9, 10, 11, 15, 16, 17, 20, 21, 29, and 32, of the Willamette Meridian.

Excluding from the above areas any lands within the William O. Douglas Wilderness, and any private lands.

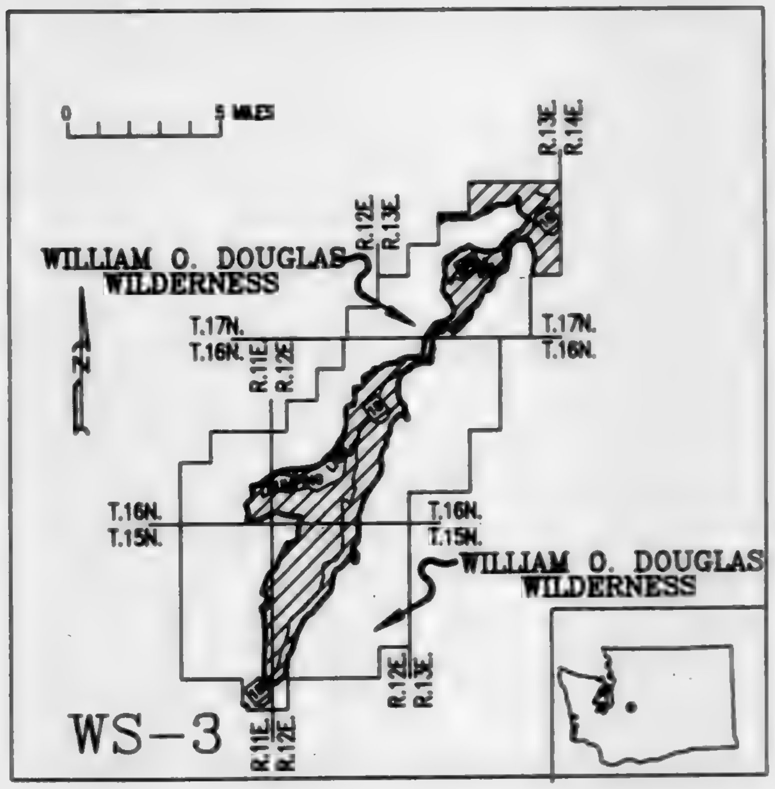
0
5 MILES
R.13E.
R.14E.
R.12E.
R.13E.
WILLIAM O. DOUGLAS
WILDERNESS
T.17N.
T.16N.
T.17N.
T.16N.
R.11E.
R.12E.
T.16N.
T.15N.
T.16N.
T.15N.
WILLIAM O. DOUGLAS
WILDERNESS
R.12E.
R.13E.
WS-3
R.11E.
R.12E.

Description of WS-4 taken solely from Bureau of Land Management Map; Mount Rainier 1978, Washington.
Yakima County

T. 15 N., R. 13 E., Secs. 25, and 36, of the Willamette Meridian.

T. 15 N., R. 14 E., Secs. 20, 21, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 14 N., R. 13 E., Sec. 1, of the Willamette Meridian.

T. 14 N., R. 14 E., Secs. 4, 5, and 6, of the Willamette Meridian.

Excluding any private lands within the above area.

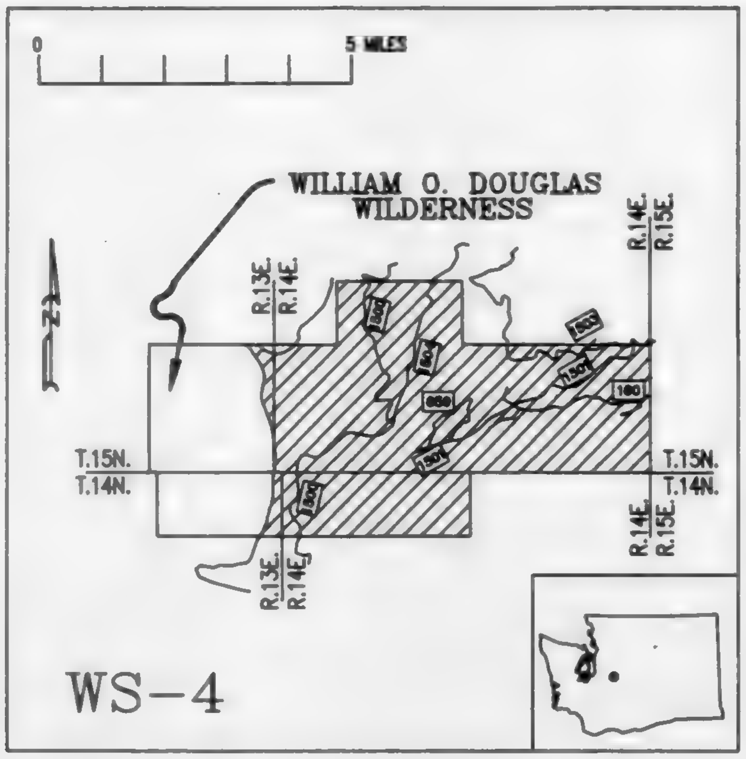
0
5 MILES
WILLIAM O. DOUGLAS WILDERNESS
N
R.13E.
R.14E.
R.14E.
R.15E.
160
T.15N.
T.14N.
T.15N.
T.14N.
R.14E.
R.15E.
R.13E.
R.14E.
WS-4

Description of WS-5 taken solely from Bureau of Land Management Map; Mount Ranier 1978, Washington.
Lewis and Yakima Counties

T. 14 N., R. 11 E., Secs 35, and 36, of the Willamette Meridian.

T. 14 N., R. 12 E., Secs. 25, 32, 34, 35, and 36, of the Willamette Meridian.

T. 14 N., R. 13 E., Secs. 30, 31, and 32, of the Willamette Meridian.

T. 13 N., R. 11 E., Secs. 1, 2, 3, 11, 12, and 25, of the Willamette Meridian.

T. 13 N., R. 12 E., Secs. 1, 2, 3, 4, 5, 9, 12, 13, 14, 15, 16, 20, 21, 22, 23, 29, 32, and 34, of the Willamette Meridian.

T. 13 N., R. 13 E., Secs. 5, and 6, of the Willamette Meridian.

T. 12 N., R. 12 E., Sec. 4, of the Willamette Meridian.

Excluding from the above areas any lands within the Goat Rocks, William O. Douglas Wilderness, and any private lands.

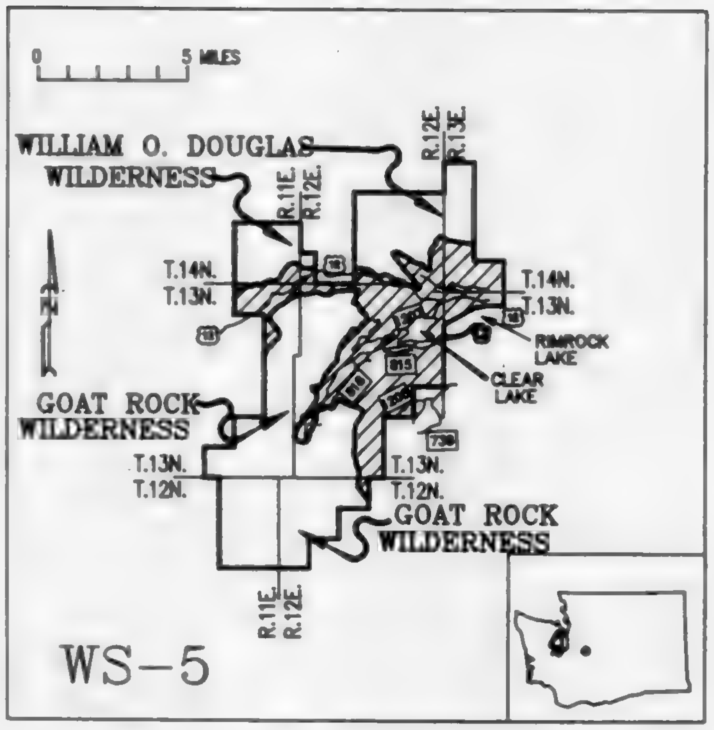
0
5 MILES
WILLIAM O. DOUGLAS WILDERNESS
R.11E.
R.12E.
R.12E.
R.13E.
N
T.14N.
T.13N.
12
T.14N.
T.13N.
12
RIMROCK LAKE
815
CLEAR LAKE
GOAT ROCK WILDERNESS
738
T.13N.
T.12N.
T.13N.
T.12N.
GOAT ROCK WILDERNESS
R.11E.
R.12E.
WS-5

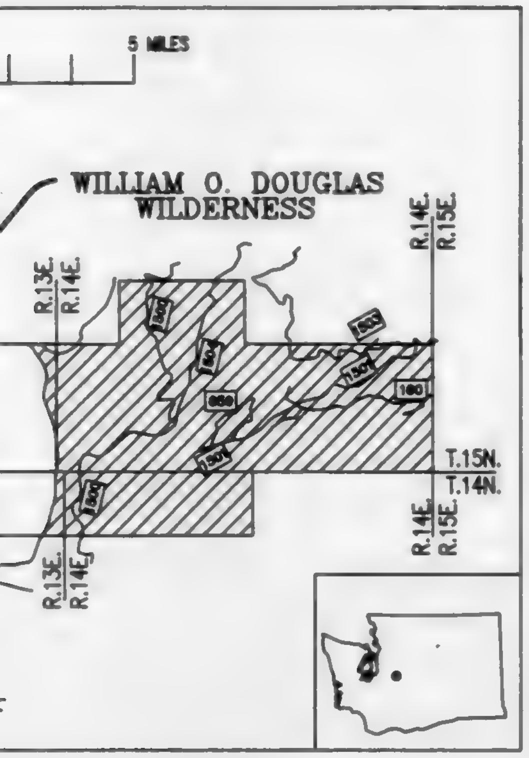
5 MILES
WILLIAM O. DOUGLAS WILDERNESS
R.13E. R.14E.
R.14E. R.15E.
T.15N.
T.14N.
R.14E. R.15E.
R.13E. R.14E.

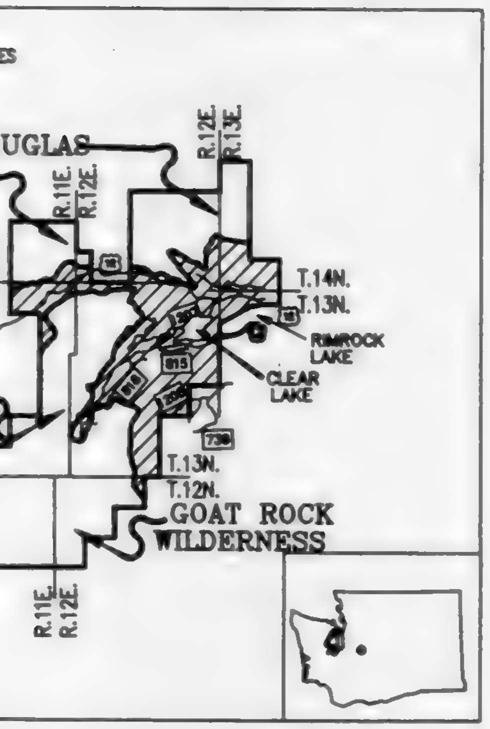
UGLAS
R.12E. R.13E.
R.11E. R.12E.
T.14N.
T.13N.
RIMROCK LAKE
CLEAR LAKE
T.13N.
T.12N.
GOAT ROCK WILDERNESS
R.11E. R.12E.

Description of WS–6 taken solely from Bureau of Land Management Map; Mount Rainier 1978, Washington.

Yakima County

T. 14 N., R. 14 E., Secs. 25, 26, 34, 35, and 36, of the Willamette Meridian.

T. 13 N., R. 13 E., Secs. 11, 12, 13, 14, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, and 34, of the Willamette Meridian.

T. 13 N., R. 14 E., Secs. 2, 3, 4, 7, 8, 9, 10, 11, 15, 16, 17, 18, 19, 20, 29, and 30, of the Willamette Meridian.

T. 12 N., R. 12 E., Sec. 1, of the Willamette Meridian.

Excluding any private lands within the above area.

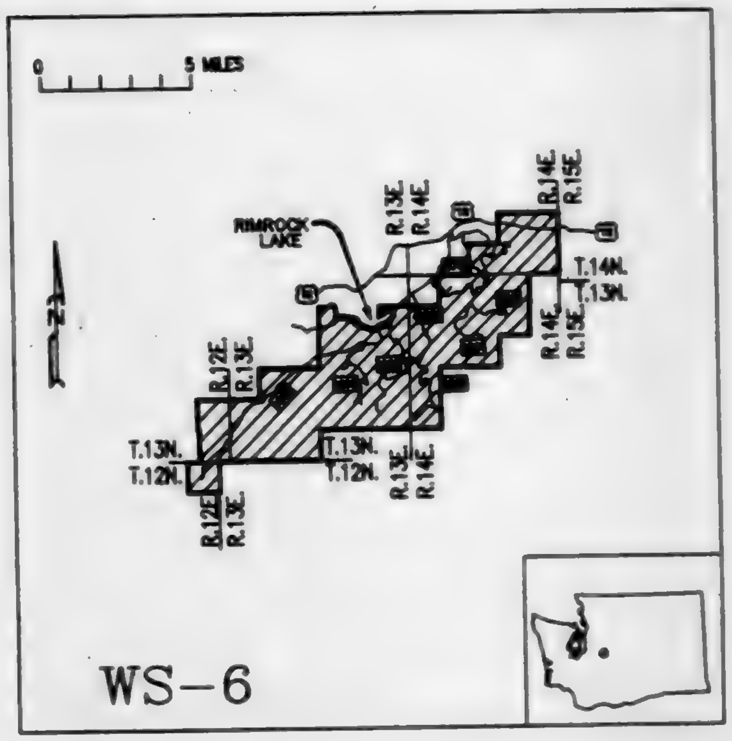
0
5 MILES
N
RIMROCK LAKE
R.13E. R.14E.
R.14E. R.15E.
T.14N.
T.13N.
R.14E. R.15E.
R.12E. R.13E.
T.13N.
T.12N.
T.13N.
T.12N.
R.13E. R.14E.
R.12E. R.13E.
WS–6

Description of W–39 taken solely from Bureau of Land Management Map; Chehalis River 1979, and Department of Natural Resources Quadrangle; Shelton 1987, Washington.

Grays Harbor and Thurston Counties

T. 16 N., R. 3 W., Secs. 4, 5, 6, and 7, of the Willamette Meridian.

T. 16 N., R. 4 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 26, 27, and 28, of the Willamette Meridian.

T. 16 N., R. 5 W., Secs. 1, 2, 11, 12, and 13, of the Willamette Meridian.

T. 17 N., R. 3 W., Secs. 3, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 17 N., R. 4 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 17 N., R. 5 W., Secs. 1, 2, 10, 11, 12, 13, 14, 15, 24, 25, 26, 35, and 36, of the Willamette Meridian.

T. 18 N., R. 3 W., Secs. 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, and 34, of the Willamette Meridian.

T. 18 N., R. 4 W., Secs. 14, 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 18 N., R. 5 W., Sec. 36, of the Willamette Meridian.

Excluding any private lands within the above area.

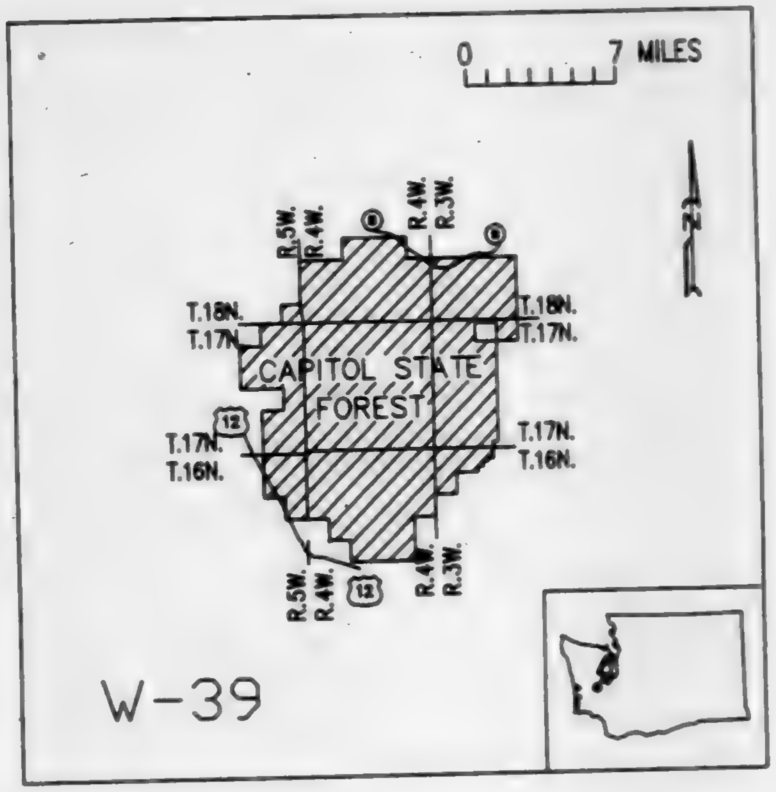
0
7 MILES
N
R.5W. R.4W.
R.4W. R.3W.
T.18N.
T.17N.
T.18N.
T.17N.
CAPITOL STATE FOREST
12
T.17N.
T.16N.
T.17N.
T.16N.
R.5W. R.4W.
12
R.4W. R.3W.
W–39

Description of W–40 taken solely from Bureau of Land Management Map; Chehalis River 1988, Washington.
Pacific and Lewis Counties

T. 13 N., R. 5 W., Secs. 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 29, 30, 31, and 32, of the Willamette Meridian.

T. 13 N., R. 6 W., Secs. 6, 7, 14, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 13 N., R. 7 W., Secs. 1, 2, 3, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27, 29, 30, and 36, of the Willamette Meridian.

T. 13 N., R. 8 W., Secs. 5, 6, 7, 8, 12, 15, 16, 17, 18, 19, 20, 21, 22, 28, 29, 30, 32, and 33, of the Willamette Meridian.

T. 13 N., R. 9 W., Secs. 12, 24, and 36, of the Willamette Meridian.

T. 14 N., R. 5 W., Secs. 2, 3, 4, 9, 10, 11, 14, 15, 16, 21, 22, 23, 26, 27, 28, 32, 33, and 34, of the Willamette Meridian.

T. 14 N., R. 7 W., Sec. 36, of the Willamette Meridian.

T. 14 N., R. 9 W., Sec. 36, of the Willamette Meridian.

T. 15 N., R. 4 W., Sec. 31, of the Willamette Meridian.

T. 15 N., R. 5 W., Sec. 36, of the Willamette Meridian.

Excluding any private lands within the above area.

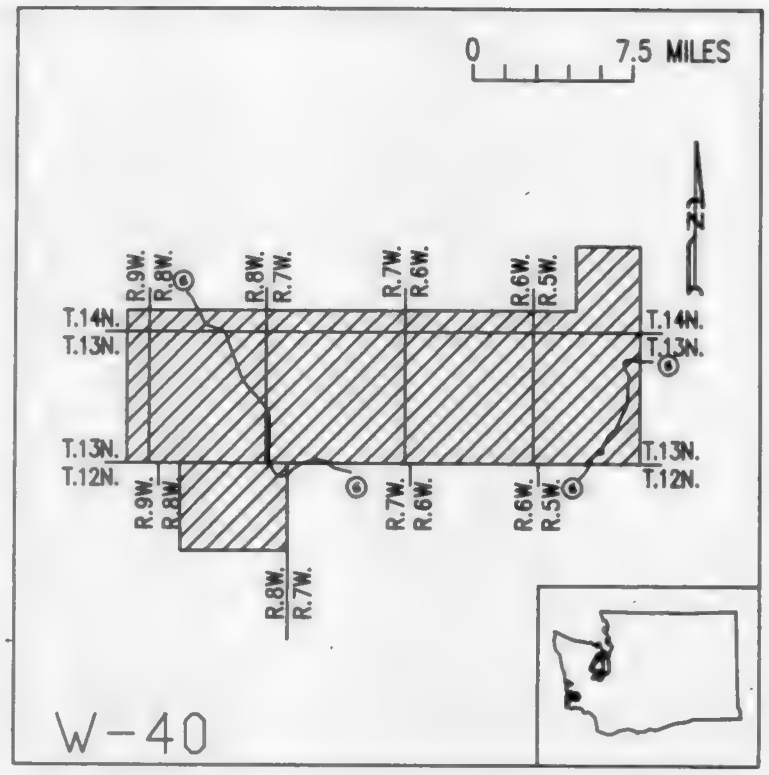
0
7.5 MILES
R.9W.
R.8W.
R.8W.
R.7W.
R.7W.
R.6W.
R.6W.
R.5W.
T.14N.
T.13N.
T.14N.
T.13N.
T.13N.
T.12N.
T.13N.
T.12N.
R.9W.
R.8W.
R.7W.
R.6W.
R.6W.
R.5W.
R.8W.
R.7W.
W-40

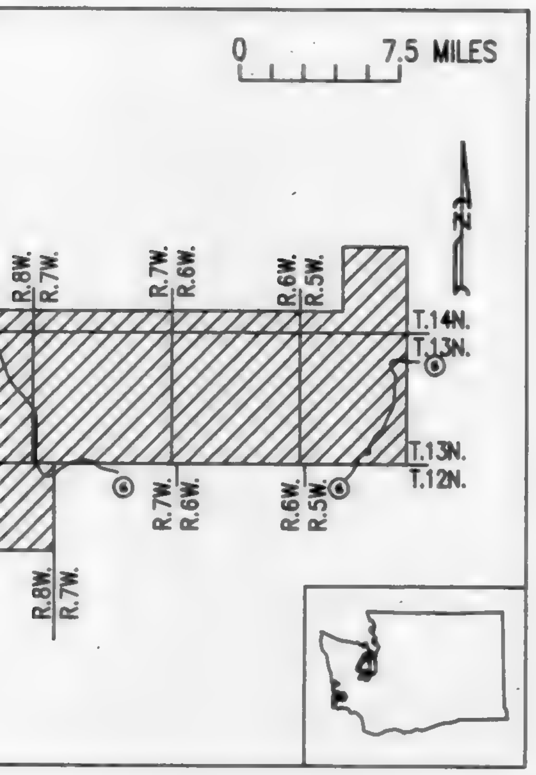

0
7.5 MILES
N
R.8W.
R.7W.
R.7W.
R.6W.
R.6W.
R.5W.
T.14N.
T.13N.
T.13N.
T.12N.
R.7W.
R.6W.
R.6W.
R.5W.
R.8W.
R.7W.

Description of W–41 taken solely from Department of Public Resources Map; Astoria 1987, Washington.

Wahkiakum and Cowlitz Counties

T. 8 N., R. 4 W., Secs. 6, and 7, of the Willamette Meridian.

T. 8 N., R. 5 W., Secs. 1, 3, 4, 9, 10, 12, 16, and 21, of the Willamette Meridian.

T. 9 N., R. 4 W., Secs. 7, 16, 17, 18, 19, 20, 29, 30, 31, and 32, of the Willamette Meridian.

T. 9 N., R. 5 W., Secs. 1, 2, 10, 11, 12, 13, 14, 15, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36, of the Willamette Meridian.

T. 10 N., R. 4 W., Secs. 6, 7, 18, 19, 30, and 31, of the Willamette Meridian.

T. 10 N., R. 5 W., Secs. 24, 25, 26, 35, and 36, of the Willamette Meridian.

T. 10 N., R. 6 W., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 33, 34, 35, and 36, of the Willamette Meridian.

Excluding from the above areas any lands within the Columbia River, and any private lands.

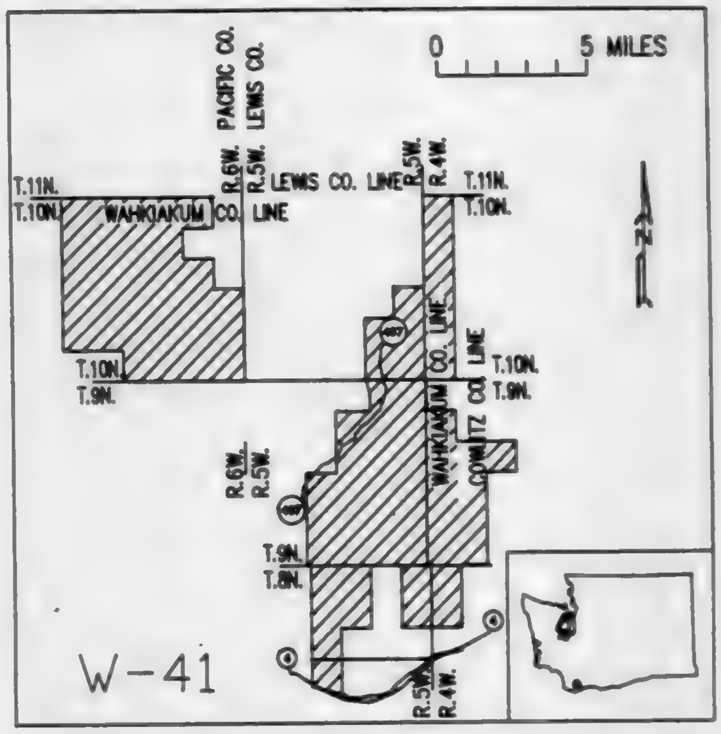

0
5 MILES
PACIFIC CO.
LEWIS CO.
R.6W.
R.5W.
LEWIS CO. LINE
R.5W.
R.4W.
T.11N.
T.10N.
T.11N.
T.10N.
WAHKIAKUM CO. LINE
N
T.10N.
T.9N.
WAHKIAKUM CO. LINE
COWLITZ CO. LINE
T.10N.
T.9N.
R.6W.
R.5W.
T.9N.
T.8N.
R.5W.
R.4W.
W-41

Description of W–42 taken solely from Department of Natural Resources Quadrangle; Vancouver 1983, and Bureau of Land Management Map; Hood River 1978, Washington.

Skamania County

T. 2 N., R. 6 E., Secs. 4, 5, 6, 7, 8, 9, 16, and 17, of the Willamette Meridian.

T. 3 N., R. 5 E., Secs. 1, 2, 11, 12, 13, 14, 23, 24, 25, 26, and 36, of the Willamette Meridian.

T. 3 N., R. 6 E., Secs. 6, 7, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, and 36, of the Willamette Meridian.

T. 3 N., R. 7 E., Secs. 7, 17, 18, 19, 20, 21, 22, 27, 28, and 29, of the Willamette Meridian.

Excluding any private lands within the above area.

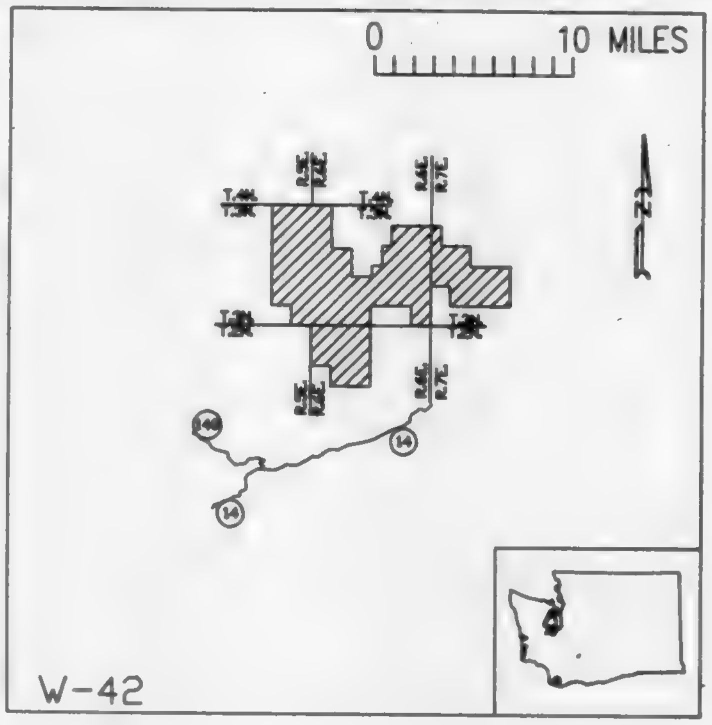

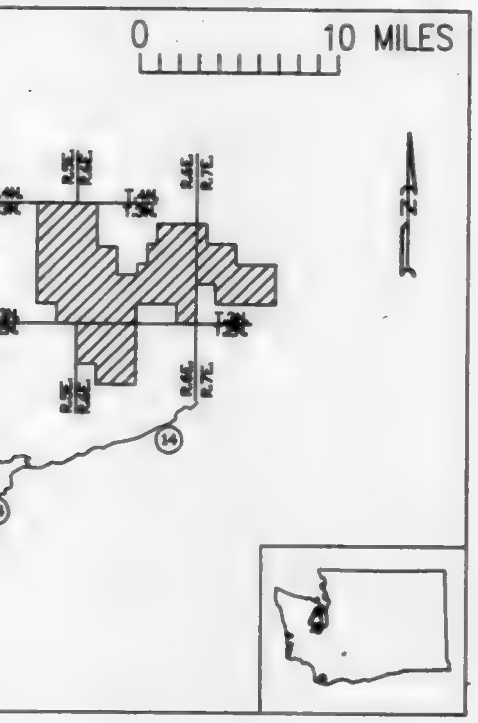
0
10 MILES
14

Description of FL–WA taken solely from Department of Natural Resources Quadrangle; Centralia 1980, and Tacoma 1975, Washington.

Thurston and Pierce Counties

T. 18 N., R. 1 E., Secs. 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36, of the Willamette Meridian.

T. 18 N., R. 2 E., Secs. 1, 2, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, and 36, of the Willamette Meridian.

T. 18 N., R. 3 E., Secs. 7, 8, 9, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 17 N., R. 1 W., Secs. 22, 23, 24, 25, 26, 27, 34, 35, and 36, of the Willamette Meridian.

T. 17 N., R. 1 E., Secs. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20, 21, 22, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 17 N., R. 2 E., Secs. 4, 5, 6, 7, 8, 9, 16, and 17, of the Willamette Meridian.

T. 16 N., R. 1 W., Sec. 1, of the Willamette Meridian.

T. 16 N., R. 1 E., Sec. 6, of the Willamette Meridian.

Excluding from the above areas any lands within Sections 16 or 17 south of the Nisqually River, any tribal or private lands.

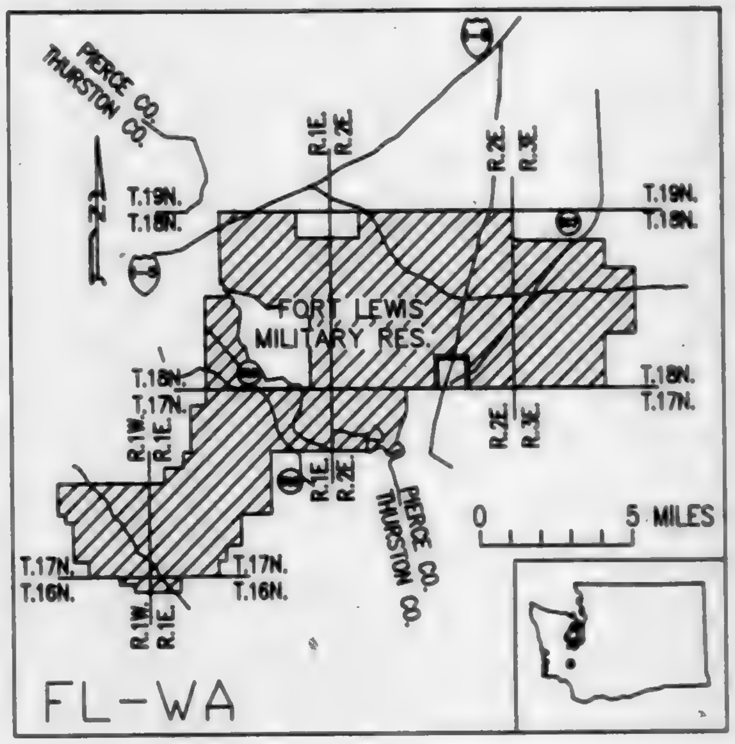
PIERCE CO.
THURSTON CO.
R.1E.
R.2E.
R.2E.
R.3E.
T.19N.
T.18N.
T.19N.
T.18N.
FORT LEWIS MILITARY RES.
T.18N.
T.17N.
T.18N.
T.17N.
R.1W.
R.1E.
R.1E.
R.2E.
R.2E.
R.3E.
PIERCE CO.
THURSTON CO.
0
5 MILES
T.17N.
T.16N.
T.17N.
T.16N.
R.1W.
R.1E.
FL-WA

VOL
5 6
SS
1 5 6
AG
1 3
991
UMI

Description of GP–1 taken solely from Bureau of Land Management Maps; Mount Rainier 1978, and Mount Adams 1978, Washington.

Lewis and Pierce Counties

T. 15 N., R. 7 E., Secs. 20, 28, 29, 32, and 33, of the Willamette Meridian.

T. 15 N., R. 10 E., Secs. 35, and 36, of the Willamette Meridian.

T. 14 N., R. 7 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 22, 23, 24, 25, and 36, of the Willamette Meridian.

T. 14 N., R. 8 E., Secs. 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 14 N., R. 9 E., Secs. 7, 8, 17, 18, 19, 20, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 14 N., R. 10 E., Secs. 1, 2, 3, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 14 N., R. 11 E., Secs. 6, 7, 8, 18, 19, 20, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 13 N., R. 7 E., Secs. 1, 12, 13, 24, 25, and 36, of the Willamette Meridian.

T. 13 N., R. 8 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 13 N., R. 9 E., Secs. 5, 6, 7, 8, 12, 13, 18, 19, 23, 24, 25, 26, 27, 34, 35, and 36, of the Willamette Meridian.

T. 13 N., R. 10 E., Secs. 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 27, 28, 29, 30, 31, and 32, of the Willamette Meridian.

T. 13 N., R. 11 E., Secs. 4, 5, 6, 8, 9, and 16 of the Willamette Meridian.

T. 12 N., R. 7 E., Sec. 1, of the Willamette Meridian.

T. 12 N., R. 8 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 13, 23, 24, 25, 26, 27, 34, 35, 36, SE ¼ Sec.14, E ½ NE ¼ Sec. 14, SW ¼ NE ¼ Sec. 14, S ½ Sec. 22, and NE ¼ Sec. 22, of the Willamette Meridian.

T. 12 N., R. 9 E., Secs. 1, 2, 3, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 12 N., R. 10 E., Secs. 5, 6, 7, 8, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 11 N., R. 8 E., Secs. 1, 2, 11, and 12, of the Willamette Meridian.

T. 11 N., R. 9 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16, of the Willamette Meridian.

Excluding from the above area any lands within Glacier View, William O. Douglas, Goat Rocks and Tatoosh Wilderness, and any private lands.

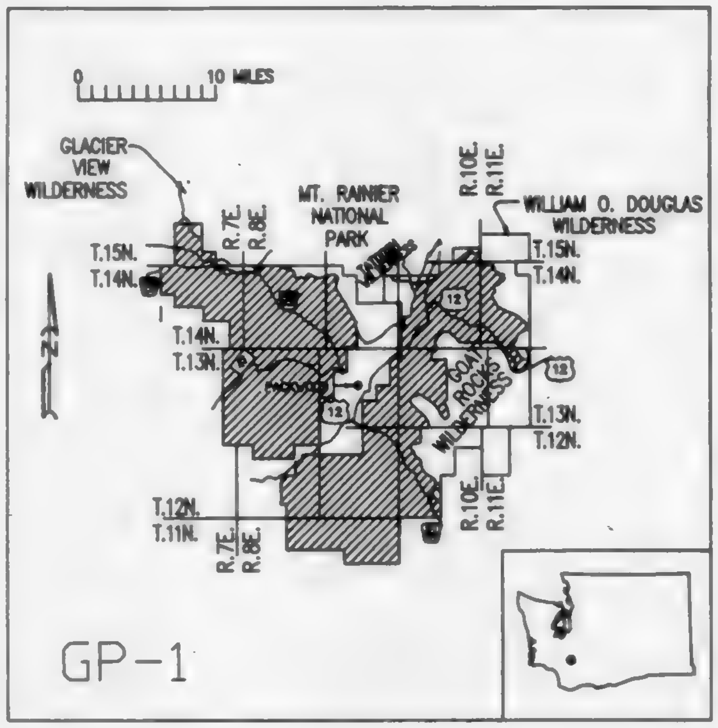

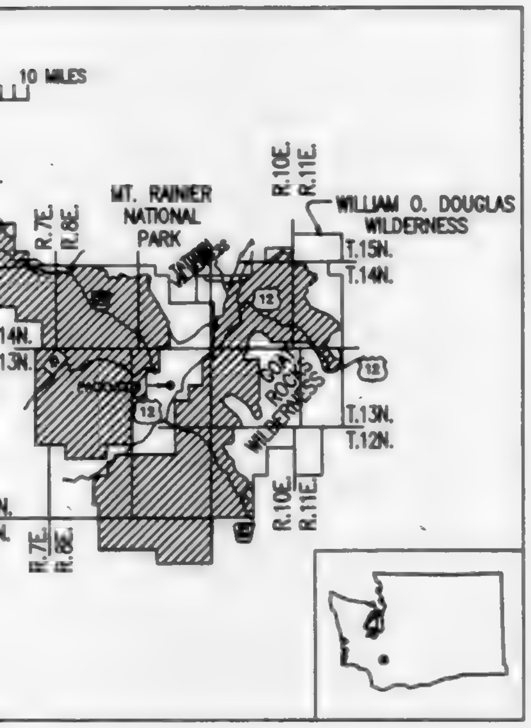
10 MILES
MT. RAINIER NATIONAL PARK
WILLIAM O. DOUGLAS WILDERNESS
R.7E.
R.8E.
R.10E.
R.11E.
T.15N.
T.14N.
T.13N.
T.12N.
GOAT ROCKS WILDERNESS
12

Description of GP-2 taken solely from Department of Natural Resources Quadrangle: Mount Adams 1978, and Mount St. Helens 1978, Washington. Lewis and Skamania Counties

T. 12 N., R. 7 E., Secs. 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 11 N., R. 7 E., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 10 N., R. 7 E., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 17, 18, 19, 20, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 11 N., R. 6 E., Secs. 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 10 N., R. 6 E., Secs. 1, 2, 3, 4, 5, 11, 12, 13, 14, 22, 23, 24, 25, 26, 27, 34, 35, and 36, of the Willamette Meridian.

T. 9 N., R. 6 E., Secs. 1, 2, 3, 13, 24, 25, 35, and 36, of the Willamette Meridian.

T. 8 N., R. 6 E., Secs. 1, 2, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 35, and 36, of the Willamette Meridian.

T. 7 N., R. 6 E., Secs. 1, 2, 11, 12, 13, and 14, of the Willamette Meridian.

T. 9 N., R. 7 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 9 N., R. 8 E., Secs. 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 9 N., R. 9 E., Secs. 18, 19, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 8 N., R. 7 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 8 N., R. 7 ½ E., Secs. 1, 12, 13, 24, 25, and 36, of the Willamette Meridian.

T. 8 N., R. 8 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 27, 28, 29, 30, 31, and 32, of the Willamette Meridian.

T. 7 N., R. 7 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 7 N., R. 7 ½ E., Secs. 1, 12, 13, 24, and 25, of the Willamette Meridian.

T. 7 N., R. 8 E., Secs. 5, 6, 7, and 8, of the Willamette Meridian.

T. 6 N., R. 7 E., Secs. 3, 4, 5, 6, 7, 8, 9, and 10, of the Willamette Meridian.

Excluding from the above areas any lands within the Mount St. Helens National Volcanic Monument, and any private lands.

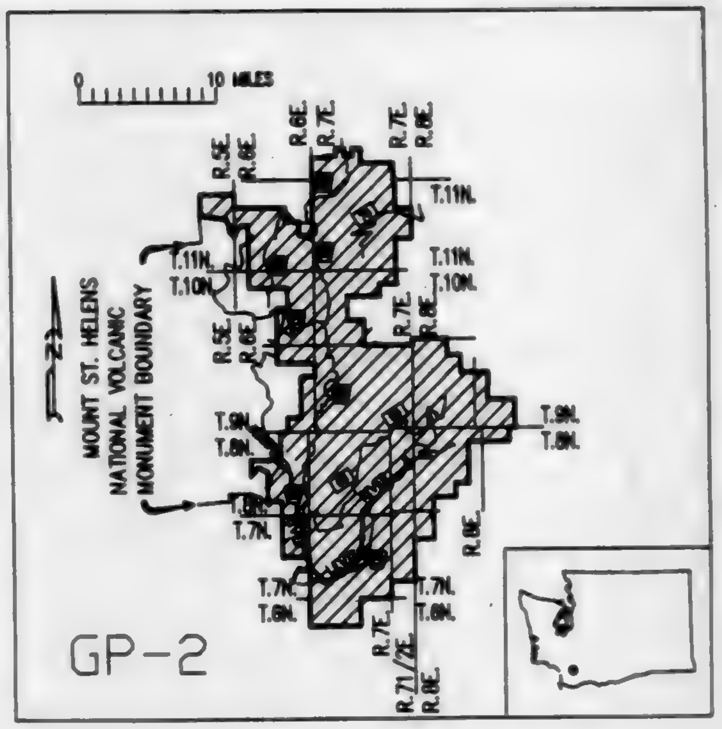
0
10 MILES
N
MOUNT ST. HELENS NATIONAL VOLCANIC MONUMENT BOUNDARY
R.5E.
R.6E.
R.7E.
R.8E.
T.11N.
T.10N.
T.9N.
T.8N.
T.7N.
T.6N.
R.7 1/2E.
GP-2

/OL
56
SS
1
5
6
AG
13
991
UMI

Description of GP-3 taken solely from Department Natural Resources Quadrangle; Mount Adams 1978, Washington.

Skamania and Klickitat Counties

T. 7 W., R. 9 E., Secs. 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36, of the Willamette Meridian.

T. 7 N., 10 E., Secs. 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 7 N., R. 11 E., Secs. 4, 5, 8, 9, 16, 17, 19, 20, 21, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

Excluding from the above areas any lands within the Mt. Adams Wilderness, and any tribal or private lands.

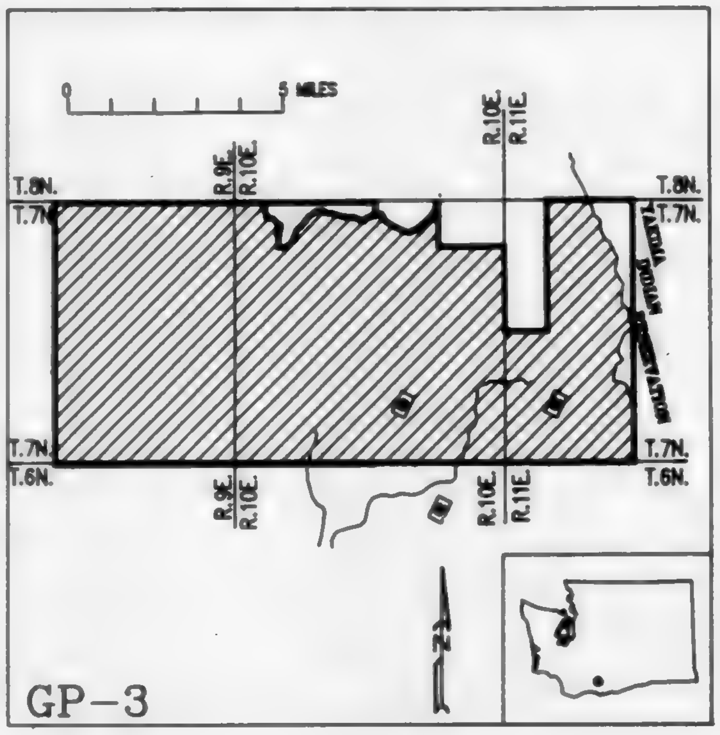

GP-3

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Mount St. Helens 1978, and Var
1979, Washington.
Skamania and Klickitat Countie
T. 3 N., R. 8 E., Secs. 1, 2, 3, 4,
10, 11, and 12, of the Willamette
Meridian.
T. 3 N., R. 9 E., Secs. 6, and 7,
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T. 4 N., R. 6 E., Secs. 1, 2, 3, 4,
10, 11, 12, 13, 14, 15, 16, 17, 20, 2
and 24, of the Willamette Meri
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9, 10, 11, 12, 13, 14, 15, 16, 17, 18
21, 22, 23, 24, 25, 26, 27, 28, 29, 3
and 34, of the Willamette Meri
T. 4 N., R. 7 ½ E., Secs. 1, 12,
and 36, of the Willamette Meri
T. 4 N., R. 8 E., Secs. 2, 3, 4, 5
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23, 24, 25, 26, 27, 28, 29, 30, 31, 3
35, and 36, of the Willamette M
T. 4 N., R. 9 E., Secs. 1, 2, 3, 4
10, 15, 16, 17, 18, 19, 20, 21, 22, 2
29, 30, 31, 32, 33, 34, and 35, of
Willamette Meridian.
T. 5 N., R. 5 E., Secs. 1, 2, 3,
9, 10, 11, 12, 13, 14, 23, 24, 25, 2
36, of the Willamette Meridian
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35, and 36, of the Willamette
T. 5 N., R. 7 E., Secs. 1, 2, 3,
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T. 5 N., R. 8 E., Secs. 1, 2, 3,
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T. 5 N., R. 9 E., Secs. 1, 2, 3,
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T. 5 N., R. 10 E., Secs. 5, 6, 7
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T. 6 N., R. 8 E., Secs. 23, 24,

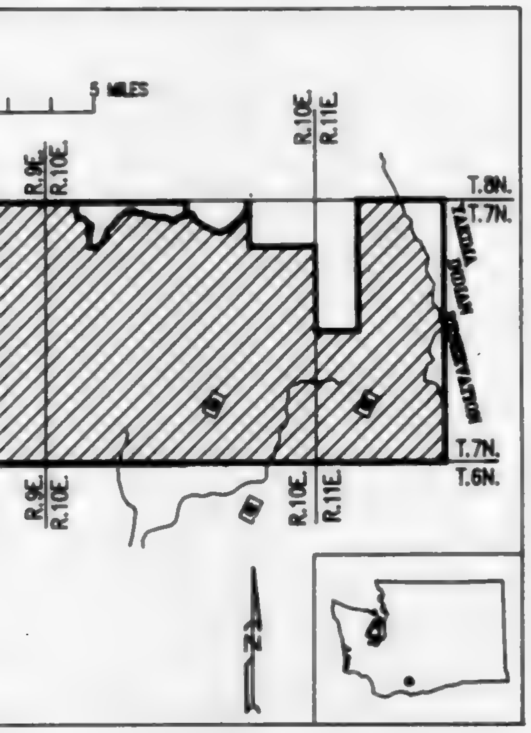
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R.10E.
R.10E.
R.11E.
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T.7N.
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R.10E.
R.10E.
R.11E.

Description of GP-4 taken solely from Bureau of Land Management Maps; Hood River 1978, Mount Adams 1978, Mount St. Helens 1978, and Vancouver 1979, Washington.

Skamania and Klickitat Counties

T. 3 N., R. 8 E., Secs. 1, 2, 3, 4, 5, 6, 9, 10, 11, and 12, of the Willamette Meridian.

T. 3 N., R. 9 E., Secs. 6, and 7, of the Willamette Meridian.

T. 4 N., R. 6 E., Secs. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, and 24, of the Willamette Meridian.

T. 4 N., R. 7 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, and 34, of the Willamette Meridian.

T. 4 N., R. 7 ½ E., Secs. 1, 12, 13, 24, 25, and 36, of the Willamette Meridian.

T. 4 N., R. 8 E., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 4 N., R. 9 E., Secs. 1, 2, 3, 4, 5, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 5 N., R. 5 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 23, 24, 25, 26, 35, and 36, of the Willamette Meridian.

T. 5 N., R. 6 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 5 N., R. 7 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 5 N., R. 7 ½ E., Secs. 1, 12, 13, 24, 25, and 36, of the Willamette Meridian.

T. 5 N., R. 8 E., Secs. 1, 2, 3, 6, 7, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20, 21, 22, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 5 N., R. 9 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 5 N., R. 10 E., Secs. 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, and 32, of the Willamette Meridian.

T. 6 N., R. 5 E., Secs. 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 6 N., R. 6 E., Secs. 17, 18, 19, 20, 29, 30, 31, and 32, of the Willamette Meridian.

T. 6 N., R. 8 E., Secs. 23, 24, 25, 26, 34, 35, and 36, of the Willamette Meridian.

T. 6 N., R. 9 E., Secs. 1, 2, 3, 4, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

Excluding from the above areas any lands within the Indian Heaven Wilderness, Trapper Creek Wilderness, the Columbia River, and any private lands.

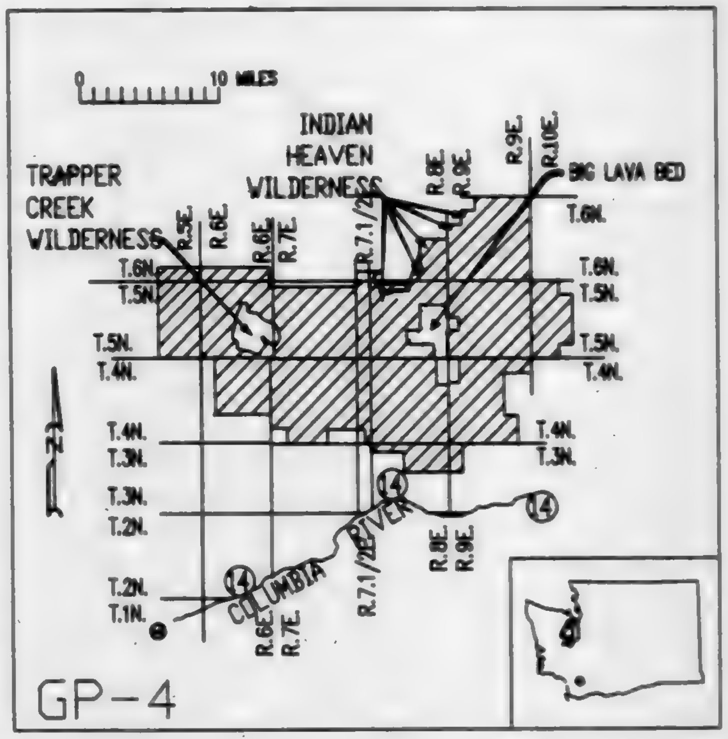
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TRAPPER CREEK WILDERNESS
BIG LAVA BED
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R.7E.
R.7.1/2E.
R.8E.
R.9E.
R.9E.
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T.6N.
T.5N.
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T.5N.
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T.2N.
T.1N.
14
14
14
COLUMBIA RIVER
R.6E.
R.7E.
R.7.1/2E.
R.8E.
R.9E.
N
GP-4

Description of the GP-6 taken solely from Bureau of Land Management Map; Mount St. Helens 1978, Washington.
Cowlitz and Skamania Counties

T. 7 N., R. 4 E., Secs. 1, 2, 11, 12, 14, and 23, of the Willamette Meridian.

T. 8 N., R. 4 E., Secs. 11, 14, 15, 16, 17, 18, 19, 20, 21, 28, 33, 34, 35, and 36, of the Willamette Meridian.

T. 8 N., R. 5 E., Sec. 31, of the Willamette Meridian.

Excluding from the above areas any lands within Mount St. Helens National Volcanic Monument, and any private lands.

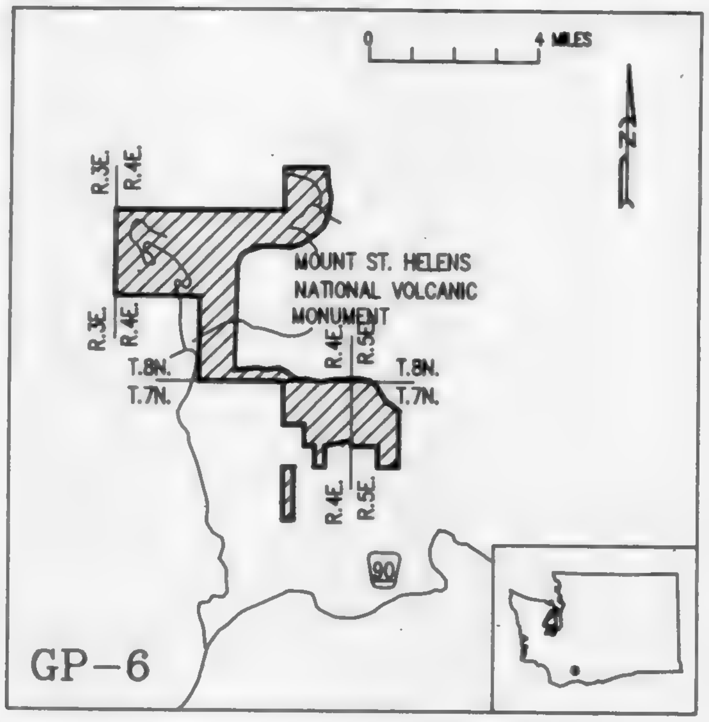
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4 MILES
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T.8N.
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T.8N.
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GP-6

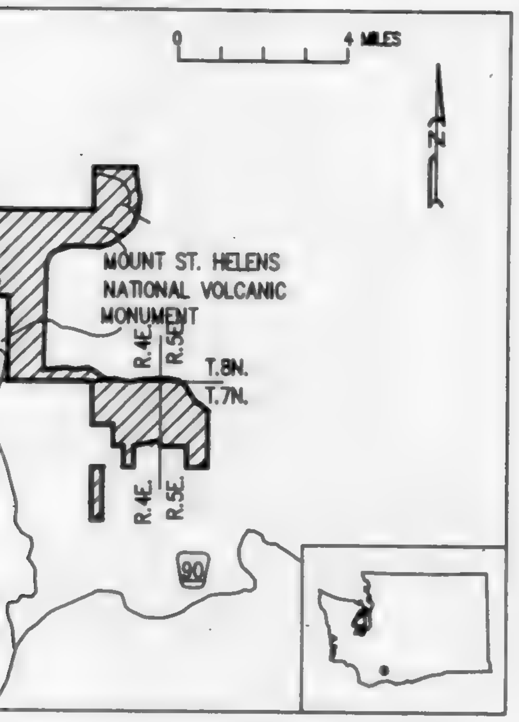
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NATIONAL VOLCANIC
MONUMENT
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90

Description of GP–7 taken solely from Bureau of Land Management Map; Centralia 1980, Washington.

Thurston, Pierce, and Lewis Counties

T. 13 N., R. 3 E., Secs. 1, 2, 3, 4, 8, 9, 10, 11, 12, 13, 14, 15, 16, 22, 23, and 24, of the Willamette Meridian.

T. 13 N., R. 4 E., Secs. 4, 5, 6, 7, 8, 9, 16, 17, 18, 20, 21, and 28, of the Willamette Meridian.

T. 14 N., R. 3 E., Secs. 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 14 N., R. 4 E., Secs. 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 15 N., R. 4 E., Secs. 21, 22, 26, 27, 28, 29, 32, 33, 34, and 35, of the Willamette Meridian.

Excluding any private lands within the above area.

Primary constituent elements: forested lands that are used or potentially used by the northern spotted owl for nesting, roosting, foraging, or dispersing.

Dated: July 31, 1991

John F. Turner

Director, U.S. Fish and Wildlife Service

[FR Doc. 91–18889 Filed 8–5–91; 5:14 pm]

BILLING CODE 4310-55-M

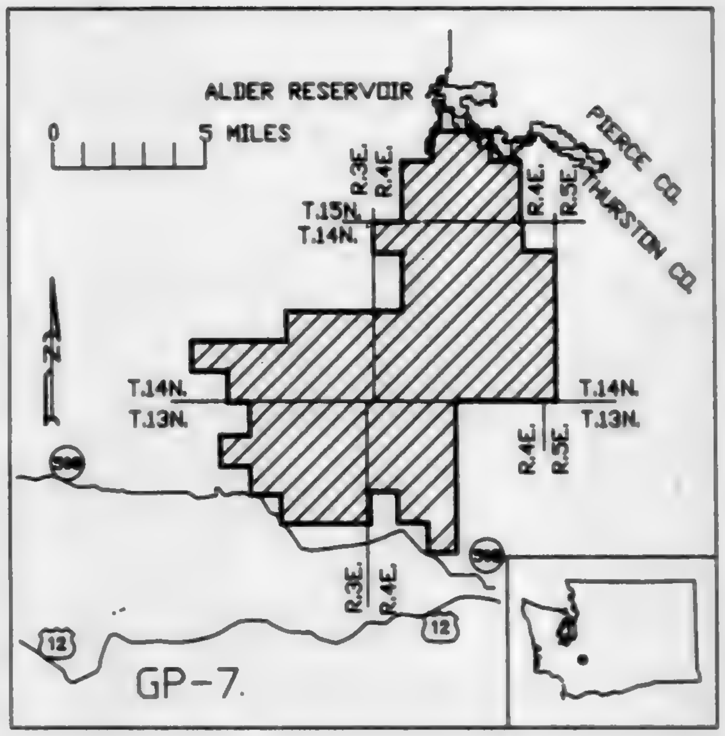
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federal register

Tuesday
August 13, 1991

Part III

Department of Agriculture

Food and Nutrition Service

7 CFR Parts 271, 273, 274 and 280

Three Proposed Regulations Addressing Certain Food Stamp Program Provisions of the Mickey Leland Domestic Hunger Relief Act of 1990; Proposed Rules

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271 and 273

[Amendment No. 336]

Food Stamp Program; Monthly Reporting and Retrospective Budgeting Amendments and Mass Changes

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to implement the monthly reporting and retrospective budgeting (MRRB) provisions of the Mickey Leland Memorial Domestic Hunger Relief Act (title XVII, Pub. L. 101–624, 104 Stat. 3359, November 28, 1990). These provisions include the State agency option to budget retrospectively households not subject to monthly reporting, the addition of households residing on Indian reservations to the categories of households exempt from monthly reporting, and the elimination of the requirement that the Secretary of Agriculture prescribe the standards for report forms. The rule also proposes numerous technical changes to the Food Stamp Program MRRB system and revisions and clarifications of the procedures for handling mass changes. These technical changes include a clarification of procedures for handling prorated or annualized income; revised procedures for budgeting certain new household members; clarification of procedures for handling certain mass changes for retrospectively-budgeted households; procedures for handling income received in the form of a single monthly payment or deductions paid in a monthly sum; revised procedures for handling the income of new household members; redefinition of the information required on the monthly report; optional prospective or retrospective suspension; more flexible procedures regarding the mailing of recertification forms; and changes in the current reinstatement policy. This rule also clarifies procedures for implementing regulatory changes for households subject to MRRB.

DATES: Comments must be received on or before September 12, 1991 to be assured of consideration.

ADDRESSES: Comments should be submitted to Judith M. Seymour, Supervisor, Eligibility and Certification Regulations Section, Certification Policy Branch, Program Development Division, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302 (Datafax number (703) 756–4354). All written comments will be open to public inspection at the offices of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) in room 708 at 3101 Park Center Drive, Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: Judith M. Seymour, Supervisor, Eligibility and Certification Regulations Section, at the above address or at (703) 756–3496.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Department has reviewed this rule under Executive Order 12291 and Secretary's Memorandum No. 1512–1. This proposed rule would affect the economy by less than $100 million a year. The rule would not significantly raise costs or prices for consumers, industries, government agencies or geographic regions. There would be no significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, the Department has classified this rule as "nonmajor".

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related Notice(s) to 7 CFR part 3105, subpart V (48 FR 29115, June 24, 1983; or 48 FR 54317, December 1, 1983, as appropriate), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This proposed rule has also been reviewed with respect to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). Betty Jo Nelsen, Administrator of the Food and Nutrition Service (FNS), has certified that this proposal would not have a significant economic impact on a substantial number of small entities. The changes would affect food stamp applicants and recipients and State and local agencies which administer the Food Stamp Program.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping requirements associated with MRRB have been approved by the Office of Management and Budget (OMB) under OMB No. 0584–0064. The provisions in this proposed rule are related to certification and MRRB but they do not impose additional reporting or recordkeeping requirements.

Background

This proposed rule has four primary objectives. First, the Department is proposing to implement the provisions of sections 1718, 1723 and 1724 of the Mickey Leland Memorial Domestic Hunger Relief Act (title XVII, Pub. L. 101–624, 104 Stat. 3359, November 28, 1990) (Leland Act). Second, the Department is proposing to clarify and simplify procedures regarding the handling of mass changes in the administration of the Food Stamp Program. Third, the Department is proposing numerous changes to the procedures governing the operation of the MRRB system. These proposed changes are the result of a review of current procedures and waivers and are intended to improve administration of the Program and more closely align MRRB procedures in the Food Stamp and Aid to Families with Dependent Children (AFDC) Programs. The fourth objective of this rule is to incorporate several indexed policy memoranda into the regulations. Although these memoranda represent clarifications rather than new policy, the Department believes that the proposed incorporation of these policy memoranda would simplify administration of the Program.

The procedures governing MRRB were first published in an interim rule on May 25, 1982 at 47 FR 22684 and through a final rule published on December 8, 1983 at 48 FR 54951. The Food Security Act of 1985 (Pub. L. 99–198, December 23, 1985) amended the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.) by requiring State agencies to apply MRRB to households with earnings or a recent work history. State agencies were allowed to apply MRRB to other categories, with the exception of migrant farmworker households in the migrant job stream and households with no earned income in which all adult members were elderly or disabled. The statutory MRRB provisions were amended by the Hunger Prevention Act of 1988 (Pub. L. 100–435, September 19, 1988). Under the Hunger Prevention Act, MRRB became a State agency option; the categories of households statutorily exempt from MRRB were expanded to include all seasonal or migrant farmworker households and homeless households; prospective budgeting was mandated for

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, Supervisor,
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all households in the beginning months of participation in the Program; and prospective budgeting was mandated for all households not subject to monthly reporting. The MRRB provisions of the Hunger Prevention Act were effective October 1, 1988 and were implemented retroactively through a final rule published June 6, 1989 at 54 FR 24149. On November 28, 1990, the Leland Act made several changes to the MRRB provisions. Section 1718 of the Leland Act gave State agencies the option of using retrospective budgeting for nonmonthly reporting households, except for those which are statutorily exempt from MRRB. Section 1723 of the Leland Act added households residing on Indian reservations to the categories of households excluded from MRRB, and section 1724 eliminated the requirement that report forms conform to standards prescribed by the Secretary. The elimination of this report applies solely to the monthly report form of households and not to any information collection requirement whereby the States report to FNS.

Retrospective Budgeting of Nonmonthly Reporting Households—7 CFR 273.21(b)

Under the current provision of 7 CFR 273.21(b), State agencies are required to use prospective budgeting for all households not subject to monthly reporting. Prior to enactment of the Hunger Prevention Act, State agencies could determine the benefits of households not subject to monthly reporting either prospectively or retrospectively. The Hunger Prevention Act amended section 5(f)(2) of the Food Stamp Act to require State agencies to use prospective budgeting for all households not subject to monthly reporting. Many State agencies objected to the requirement to budget prospectively all households not subject to monthly reporting and requested that the provision be changed. The State agencies believed that retrospective budgeting provided more time to adjust a household's food stamp allotment to reflect changes in income and deductions. Further, for State agencies that wanted to budget households retrospectively, mandatory monthly reporting increased the paperwork burden. In order to provide greater flexibility to the State agencies, section 1718 of the Leland Act amended section (5)(f)(2) of the Food Stamp Act to give State agencies the option of retrospectively budgeting nonmonthly reporting households. Accordingly, the Department proposes to amend 7 CFR 273.21(b) to give State agencies the option of using retrospective budgeting for nonmonthly reporting households other than those households exempt from monthly reporting under the provisions of section 6(c)(1)(A) of the Food Stamp Act.

The Leland Act made two changes in the area of quality control relating to budgeting and monthly reporting. First, the prospective budgeting requirement of the Hunger Prevention Act, which was never implemented in some states, was rescinded by section 1718(b) of the Leland Act retroactive to October 1, 1988 so that State agencies that either implemented late or did not implement the prospective budgeting provisions at all, are held harmless for their failure to implement on time. Second, section 1718(b)(2) of the Leland Act holds State agencies harmless for errors that were committed solely because of implementation of the Hunger Prevention Act's budgeting and reporting changes. The Department will be working with the affected State agencies to help them revise their case findings and payment error rates.

Households Residing on Indian Reservations—7 CFR 273.21(b)

Under current rules at 7 CFR 273.21(b), three categories of households are exempt from MRRB. This exemption is based on section 6(c)(5) of the Food Stamp Act. These categories include migrant or seasonal farmworker households; households in which all members are homeless individuals; and households with no earned income in which all adult members are elderly or disabled. Section 1723 of the Leland Act added a fourth category to households exempt from MRRB, households residing on Indian reservations. To implement this provision, the Department is proposing to add a new § 273.21(b)(4) which will add households residing on Indian reservations to those households exempt from MRRB.

Section 1781 of the Leland Act provides that the implementation date for section 1723 of the Leland Act is the first day of the month beginning 120 days after publication of implementing regulations. The implementing regulations must be published no later than October 1, 1991. However, section 1718 of the Leland Act incorporates a change to be made by section 1723 of the Leland Act to section 6(c)(1)(A) of the Food Stamp Act excluding all households residing on Indian reservations from MRRB. Section 1781 of the Leland Act also provides that section 1718 was to be effective at enactment. Thus, there are two different and conflicting implementing dates for the mandatory prospective budgeting of households residing on Indian reservations. We believe that Congress intended that implementation occur at the later date. We recognize the impossibility of retroactively requiring State agencies to budget prospectively these households. Further, section 1723 is the specific legislative section mandating the prospective budgeting of these households. Therefore, in this rulemaking we are proposing to implement the provision to budget prospectively households residing on Indian reservations in accordance with the implementation date provided for section 1723. We encourage State agencies to implement these provisions sooner, if possible. For example, as such households come in to be recertified or as new households apply, these households should be prospectively budgeted.

The Monthly Report Form—7 CFR 273.21(h)

Under Section 1724 of the Leland Act, the State agency is delegated the responsibility for design of the monthly report form and the determination of the information regarding eligibility and benefits which will be included in the form. Under the prior statutory provisions, State agency monthly report forms were required to conform to standards prescribed by the Secretary.

Currently, 7 CFR 273.21(h)(3) mandates several items which must be included in the monthly report form. In accordance with the Leland Act, the Department proposes to amend 7 CFR 273.21(h)(3) to eliminate the mandatory list of items which must be included on the monthly report. The information and warnings currently mandated at 7 CFR 273.21(h)(2) remain unchanged since they are not directly related to the determination of eligibility and/or benefits and are either directly or implicitly mandated by statute. These include the requirements that the form: (1) be written in clear, simple language; (2) meet the bilingual requirements in 7 CFR 272.4(b); (3) specify the date by which the State agency must receive the form and the consequences of a late or incomplete form; (4) specify the verification which must be submitted with the form; (5) specify the individual or agency unit available to assist in completing the form; (6) include a statement to be signed by a member of the household, indicating his or her understanding that the provided information may result in changes in the level of benefits; (7) include a description of the civil and criminal penalties for fraud under the Food Stamp Act; and (8) include the statement of the State agency's authority to require Social Security numbers, if the form requests Social Security numbers and certain other information about the use of such numbers.

Mass Changes—7 CFR 273.12(e)

Three clarifications relating to the mass change provisions at 7 CFR 273.12(e) are being proposed in this rulemaking. These clarifications relate to how mass changes are implemented in the following situations: (1) At a specific point in time for households subject to retrospective budgeting; (2) in the annual and seasonal adjustments to the standard utility allowance (SUA) for households subject to retrospective budgeting; and (3) in public assistance (PA) grants for households subject to retrospective budgeting. All three clarifications reflect current policy. The Department is also proposing to provide State agencies with an additional option regarding seasonal adjustments to the SUA.

Current rules at 7 CFR 273.12(e)(1) require that Federal adjustments to eligibility standards, allotments and deductions, and State adjustments to the SUA are effective at the same point in time for all households (i.e., in effect as of the same issuance month). This has been interpreted to mean that the State agency must implement mass changes prospectively even if the household is otherwise subject to retrospective budgeting. If mass changes in the Federal adjustments were permitted to be implemented retrospectively, adjustments in effect as of July 1 would not be reflected in the household's allotment until August or September, depending on the State agency's retrospective budgeting system.

In order to avoid the possibility of implementation of mass changes in Federal adjustments over several months, the Department is proposing to clarify the current provisions by adding a statement at 7 CFR 273.12(e)(1) to require State agencies to implement all changes in adjustments to eligibility standards, allotments, and deductions, and State adjustments to the SUA prospectively in the same month for all households regardless of the budgeting system.

One current exception to the requirement that all mass changes be implemented at the same time for all households concerns implementation of seasonal adjustments to the SUA. Under Policy Memorandum 84-4 (October 18, 1983), which addresses 7 CFR 273.21(j)(1), annual adjustments to the State SUA are implemented prospectively in the same month for all households. Seasonal adjustments, however, are implemented prospectively for prospectively-budgeted households and retrospectively for households subject to retrospective budgeting. FNS has granted one waiver which allowed a State agency to budget prospectively seasonal changes in the SUA for retrospectively-budgeted households. As a result of this waiver, the Department reviewed the issue of implementation of seasonal changes in the SUA for retrospectively-budgeted households and is proposing to amend the rules at 7 CFR 273.12(e)(1) to require State agencies to implement such changes prospectively for all households. The proposed procedure would benefit participating households by ensuring that seasonal adjustments to the SUA occur concurrently with seasonal changes in utility costs rather than one or two months later as would be the case if such adjustments were implemented retrospectively. The Department believes that this procedure will simplify State administrative procedures by requiring that all mass changes be implemented at the same time for retrospectively and prospectively budgeted households.

Finally, this proposed rule clarifies procedures for handling mass changes in PA grants when households are subject to retrospective budgeting. Current procedures at 7 CFR 273.21(j)(1)(vii)(B) allow the State agencies the option of budgeting the PA grant either prospectively or retrospectively when the household is subject to MRRB. The Department is proposing to add a new sentence to 7 CFR 273.21(j)(1)(vii)(B) to clarify that State agencies which choose to budget the PA grant prospectively, i.e., use the issuance month PA grant, would be required to follow the procedures at 7 CFR 273.12(e)(2) for implementing mass changes. When the State agency has at least 30 days advance knowledge of the amount of the PA adjustment, the State agency shall make the change in benefits effective in the same month as the PA change. If the State agency does not have sufficient notice, the food stamp change shall be effective no later than the month following the month in which the PA change was made. In general assistance (GA) programs which are administered by the same State agency that administers the PA programs, mass changes are handled the same as PA mass changes. In GA programs where GA and PA are not administered by the same State agency, GA mass changes would be budgeted under the procedures at 7 CFR 273.12(e)(3), which require implementing the GA mass changes in the same manner that mass changes are made for Federal programs such as Retirement, Disability, and Survivors' Insurance and SSI.

Additional MRRB Changes

Since implementation of MRRB commenced in 1983, the Department has received numerous requests for waivers and policy clarifications. As a result of the waivers, the policy clarifications, the legislative changes mandated by the Leland Act, and the Department's goal of achieving greater consistency with the procedures in the AFDC Program, the Department is proposing several additional changes to the rules governing the MRRB system.

One- and Two-Month Systems—7 CFR 273.21(d)

Under 7 CFR 273.21(d) State agencies are required to use one beginning month in a one-month MRRB system and two beginning months in a two-month system. Under section 5(f)(2)(B) of the Food Stamp Act, State agencies have the option of using either one or two beginning months in which eligibility and benefits must be determined prospectively. The State agency option of using either one or two beginning months was added to the Food Stamp Act by the Hunger Prevention Act. The Leland Act amended section 5(f)(2)(B) to conform section 5(f)(2)(B) to other changes made by the Leland Act, making no modification to the State agency option provision. To conform to the statutory requirements, the Department is proposing to amend 7 CFR 273.21(d) to give State agencies the option of using either one or two beginning months in a one-month MRRB system. State agencies which opt to use a two-month system shall continue to use two beginning months. The choice of a two-month system necessitates two beginning months in order to preclude going back to the month before the household's month of application to determine benefits.

Budgeting the Income of a New Household Member Who Had Been Previously Providing Income to the Household—7 CFR 273.21(f)(1)

It has come to the Department's attention that in certain circumstances, income received in two different months can be counted in determining a household's eligibility and benefits for a single month. This situation occurs when an individual who is providing income to the household while not a household member later joins the household. The income provided prior to the month the individual joined the household is budgeted retrospectively. When the person becomes a household member his income is counted prospectively under the provisions of 7 CFR 273.21(f)(2) which require the State

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Budgeting the Income of a New Household Member Who Has Received Income From a Terminated Source—7 CFR 273.21(f)(1)(iii)

It has come to the Department's attention that in certain cases, the income of a new member, which terminated before the member joined the household, could be attributed to the household if the new member had been participating in the Program as a member of another household. For example, an individual was certified as a one-person household prior to becoming a member of the current household. While participating as a one-person household the individual was receiving GA as a sole source of income. When the new member joins the current household the GA is terminated. Under current procedures at 7 CFR 273.21(f)(1)(iii)(C), the GA would be attributed to the current household even though the household never had the benefit of the GA and the GA is no longer being received by the new member. To eliminate the situation in which income which was not and will not be received by the household is counted in determining benefits, the Department is proposing to amend 7 CFR 273.21(f)(1)(iii)(C) to require the disregard of budget month income previously received by a new household member from a terminated source.

Adding New Household Members—7 CFR 273.21(f)(1)

The Department is proposing to provide State agencies with the option of adding new household members to ongoing MRRB households using the same procedures that the State agency uses to add new household members in its AFDC Program. Under current policy, the household's entitlement to benefits for a new member commences in the month following the month the new member joins the household unless the new member is reported prior to the household's normal issuance and the State agency can adjust the household's issuance to reflect the addition of the new member. In several AFDC retrospective budgeting systems the household is entitled to benefits for a new member beginning from the date the new member joins the household. For example, in a food stamp MRRB system if a household gains a new member on July 15 the household's benefits for August are adjusted to reflect the addition of the new member. The household is entitled to no benefits on behalf of the new member for the month of July. In an AFDC system, the household is entitled to benefits from the date the new member is added to the household, which in this example would be July 15. To provide greater consistency between food stamp and AFDC MRRB systems, the Department is proposing to add a new paragraph (D) to 7 CFR 273.21(f)(1)(iii) to give State agencies the option of prorating benefits for the new member from the date the new member joins the household if the State agency uses a similar system in its AFDC Program.

The Department has granted waivers allowing State agencies to align food stamp and AFDC procedures for adding new members. The Department believes that providing State agencies with this option is consistent with the intent of Congress expressed in section 5(f)(4) of the Food Stamp Act (7 U.S.C. 2014(f)(4)) which directs the Secretary, in promulgating regulations regarding budgeting, to assure that the income of households receiving benefits in the AFDC and Food Stamp Programs is calculated on a comparable basis. Providing this option would also improve administration of the Program by providing State agencies with greater flexibility.

Prorated Income and Deductions—7 CFR 273.21(f)(2)

In response to waiver requests and inquiries, the Department is proposing to clarify provisions regarding the handling of certain types of income which are prorated over a period of time. This income includes self-employment income prorated over a period of less than one year; income received by contract; and nonexcluded educational income such as scholarships, deferred student loans, and other educational grants which are prorated over the period which they are intended to cover. Instead of providing specific procedures for the handling of such income in an MRRB system, 7 CFR 273.21(f)(2) requires such income to be handled in accordance with procedures at 7 CFR 273.11(a) and 273.10(c) which provide that such income is to be prorated over the period which it is intended to cover. In a strict retrospective budgeting system with two beginning months it is possible to count such income for more months than it is intended to cover. For example, a $900 student loan intended to cover a nine-month academic year from September through May would be prorated at $100 per month. In an MRRB system the loan could result in $1,100 being attributed to the household as the result of counting income received in the beginning months twice (first, while the household is subject to prospective budgeting and again when the household becomes subject to retrospective budgeting).

The Department is proposing in 7 CFR 273.21(f)(2) (ii) and (iii) to require State agencies to budget prospectively all prorated income over the period which it is intended to cover. If income intended to be prorated over a period of time is received later than the beginning of the period which it is intended to cover, the monthly amount is determined by beginning with the first month the income was intended to cover rather than the month in which it was actually received. Using the example of the scholarship intended to cover a nine-month academic year, if the funds are received in November rather than September the monthly amount would be determined by prorating the income over the nine month period beginning in September. This rule also proposes to amend 7 CFR 273.21(f)(2)(iv) to require that deductible expenses prorated over more than one month, such as heating oil, not be deducted over more months than they are intended to cover.

Budgeting Income Received in the Form of a Single Monthly Payment—7 CFR 273.21(f)(2)

Another situation which has come to the Department's attention through the waiver process concerns the budgeting of income which is normally received in the form of a single monthly payment, but as the result of a temporary change in the mailing or payment cycle is received immediately prior to or subsequent to the month which it is intended to cover. An example of such income would be a social security payment for January which is directly-deposited to the household's account on

December 30. Under a strict application of the budgeting procedures at 7 CFR 273.21(f)(2) the amount deposited into the household's account on December 30 would be counted as income for December along with the social security payment deposited into the account at the beginning of December. Although the amount and flow of income is unchanged the household could be ineligible for benefits one month and eligible for a maximum allotment the following month. The Department is proposing to amend 7 CFR 273.21(f)(2) by adding a new paragraph (v) to provide that unearned income and stable earned income received in the form of a single monthly payment be counted for the month it is intended to cover. Unstable or fluctuating earned income, even if received on a monthly basis, would continue to be budgeted for the month in which it is received.

The Department is also proposing to budget stable deductible expenses paid monthly, such as rent, for the month they are intended to cover rather than for the month in which they are paid. The Department is not proposing to apply this method of budgeting to income or expenses received or paid more frequently than monthly since fluctuations in the household's benefits would be smaller and would not justify a deviation from the integrity of the MRRB system.

Interest Income—7 CFR 273.21(f)(2)

This rule proposes to give State agencies three options with respect to the handling of interest income. Under current procedures, interest earned on savings accounts or from similar sources is counted as income in the month received. Under this proposed rule State agencies would have three options regarding the budgeting of interest income for MRRB households. These options are: actual budget month interest income; a prorated amount obtained by dividing the total anticipated interest by the number of months during which the interest will be received; or an averaged amount adjusted for any known differences from the average. The Department is proposing to add these options in a new paragraph (vi) to 7 CFR 273.21(f)(2). These options reflect approved waivers and align procedures for budgeting interest income in the Food Stamp Program with procedures in the AFDC Program.

Terminated Income Received in Beginning Months—7 CFR 273.21(g)

The Department is proposing that terminated income received in either or both of the beginning months be disregarded when the household switches from prospective to retrospective budgeting. Under current procedures at 7 CFR 273.21(g)(3), terminated income is only disregarded for one month. The proposed procedure is more consistent with procedures in the AFDC Program and would more accurately reflect household circumstances.

The Department is also proposing to amend 7 CFR 273.21(g)(3) to redefine terminated income. Currently, income is considered terminated if the household no longer receives income from the same source. Under this proposal income would be considered terminated only if it is not replaced with a similar type of income within 30 days. For example, if a household member obtains new employment within 30 days following the loss of a job, the income from the previous employment would not be considered terminated. This proposed procedure is also more consistent with the procedure used in the AFDC Program. Accordingly, the Department is proposing to amend § 273.21(g)(3) to consider income as terminated only if the household no longer receives income from a source that is not replaced with a similar type of income. In order to be considered a similar type of income, the household must receive income from the new source within 30 days of the date of the last receipt of income from the former source and the estimated monthly amount of income from the new source must be within $25 of the monthly income from the former source. The proposal to use an estimated monthly amount of within $25 of the former income source is analogous to the requirement in prospective budgeting to report changes in income amount that are greater than $25.

Converting and Averaging Income—7 CFR 273.21 (g) and (j)

This proposal would give State agencies the option of converting income received on a weekly or biweekly basis to a monthly sum during the beginning months when the household is prospectively budgeted and using income actually received when the household becomes subject to retrospective budgeting. Although State agencies currently have the option of using either a conversion factor or income actually received during the budget month, the current regulatory provisions at 7 CFR 273.21(j)(1)(vii)(A) do not specifically address whether a State agency may convert income during the beginning months when the household is subject to prospective budgeting and use income actually received when the household becomes subject to retrospective budgeting. The Department is proposing to provide State agencies with such an option since some State agencies may consider conversion to be more appropriate when benefits are determined prospectively (based on a projection), whereas calculating benefits using income actually received may be more appropriate when benefits are determined retrospectively. The Department is also proposing to allow State agencies the option of averaging fluctuating income during the beginning months as is currently done for ongoing prospectively budgeted households under 7 CFR 273.10(c)(3). When the household becomes subject to retrospective budgeting the State agency would be required to use the actual amount of income received during the budget month as currently required under 7 CFR 273.21(f)(2). Accordingly, the Department is proposing to amend 7 CFR 273.21(j)(1)(vii)(A) and 7 CFR 273.21(g)(3) to allow State agencies to convert and/or average income in the beginning months and switch to the use of actual budget month income following the beginning months.

Verification—7 CFR 273.21(i)

To conform verification requirements to the proposed changes in the monthly report the Department is proposing changes to the verification requirements associated with the monthly report.

Currently, the provisions of 7 CFR 273.21(i) require the State agency to verify monthly gross nonexempt income, except for unearned income which has not changed since the last monthly report; monthly utility expenses, unless the household is using the SUA; monthly medical expenses; and any questionable information. The State agency is further required to verify alien status, social security numbers, residency, and citizenship if these items have changed since the last monthly report. Since the State agency would have the option to determine the elements of eligibility included in the monthly report, the Department is proposing to amend 7 CFR 273.21(i) to mandate verification be provided only for those items designated by the State agency which have changed since the last monthly report was submitted. The State agency may require verification of any additional items included in the report that it considers questionable. Procedures at 7 CFR 273.21(j)(3)(iii) regarding missing verification remain unchanged.

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State Action on Reports—7 CFR 273.21(j)(1)(vii)(B)

The Department is proposing to clarify how State agencies must handle terminated sources of income which result in an increase in the household's PA grant. Current rules at 7 CFR 273.21(j)(1)(vii)(B) require that terminated sources of income which would otherwise be budgeted retrospectively be disregarded in the food stamp budget when the State agency prospectively budgets the PA grant to be paid in the issuance month. The Department's policy is intended to prevent the situation in which food stamps are significantly decreased because the increased PA grant, reflecting the loss of income, is added to the terminated income from the budget month.

The Department has received several comments which indicate the need to specify that the terminated income would be disregarded only when the issuance month PA grant increases as a result of the terminated source of income. If the PA grant was unaffected, reduced, or terminated, the source of terminating income from the budget month must be included in the food stamp computation. The Department is proposing to include this clarification at 7 CFR 273.21(j)(1)(vii)(B) in the regulations in order to ensure that the current regulatory provisions are followed as intended.

Deductions—7 CFR 273.21(j)(1)(vii)(C)

The Department is proposing two changes in the procedures for handling deductions in the MRRB system. Under the first proposed change, previously discussed, prorated deductible expenses would not be deducted over more months than they are intended to cover. Under the second proposed change, 7 CFR 273.21(j)(1)(vii)(C) would be amended to provide that expenses regularly billed more frequently than monthly could not be averaged. The amount of the deduction would always be equal to the actual expenses billed to the household during the month. Bills for monthly utility expenses received twice in one month as the result of billing cycles would not be affected by this proposed change. The Department is proposing the above changes to ensure that income and deductions are budgeted in the same manner.

Notices of Missing or Incomplete Reports—7 CFR 273.21(j)(3)(ii)

Under the current provisions of 7 CFR 273.21(j)(3)(ii), if the household fails to file a monthly report or files an incomplete report, the State agency is required to provide the household with a notice of incomplete filing within five days of the filing date. Under 7 CFR 273.21(m), if the household fails to submit a complete report by the extended filing date, the State agency is required to provide the household with a notice of termination. On the basis of consistency with similar procedures in the AFDC Program and to reduce the administrative burden of State agencies, the Department has approved several waivers allowing State agencies to combine the notice of incomplete filing with the notice of termination. The Department is proposing to add a new paragraph (G) to 7 CFR 273.21(j)(3)(ii) to provide State agencies with the option of either separate notices of incomplete filing and termination or a combined notice advising the household that its participation will be terminated if it fails to submit a completed report by the extended filing date. Under this proposal, the combined notice would be subject to the requirements of both 7 CFR 273.21(j)(3)(ii), which contains the criteria for the notice of incomplete filing, and 7 CFR 273.21(m)(2), which contains the criteria for the notice of termination. This proposed rule also specifies that the combined notice may only be used if the household will be terminated for failure to submit a complete monthly report. If the household's participation is being terminated for any other reason, the State agency will be required to provide the household with a separate notice of termination.

Reinstatement and Proration of Benefits—7 CFR 273.21(k)

This rule contains a technical correction regarding procedures for determining the benefits of MRRB households following termination and reinstatement. Under current procedures at 7 CFR 273.21(k)(2)(ii), a MRRB household which files a late monthly report in the issuance month is entitled to benefits for the entire issuance month. Current procedures at 7 CFR 273.10(a)(1)(ii) require the State agency to prorate benefits following a lapse in participation by non-MRRB households. To conform current MRRB procedures to the procedures for food stamp households in general, and to be consistent with the procedures used in the AFDC Program, the Department is proposing to amend 7 CFR 273.21(k)(2)(ii) to provide that benefits be prorated for households which submit a report in the issuance month and are reinstated following termination for failure to submit a complete monthly report.

The following example may be helpful for understanding the proposed rule's effect in a two-month MRRB system. A household's monthly report for September is due on October 5. Benefits for November are based on the report. When the household fails to submit a complete monthly report on the due date, the State agency notifies the household that the report is overdue or incomplete and gives the household an extended filing date of October 20. The household again fails to submit a complete report and is terminated. The household submits a complete monthly report on November 18 and is eligible for reinstatement (the State agency has elected to reinstate households which submit late monthly reports). Under current rules, the household would receive a full November issuance. Under the proposed procedure, the household would be entitled to benefits from November 18 through the end of the month. The proposed procedures are consistent with the statute, which requires proration following any break in participation, and treats all households equally, whether or not the State agency has adopted a reinstatement policy.

Other Reporting Requirements—7 CFR 273.21(l)(1)

The Department is proposing to amend 7 CFR 273.21(l)(1) to clarify that the monthly report is the sole reporting requirement for items required to be reported on the monthly report. Currently, 7 CFR 273.21(l)(1) provides that the monthly report is the sole reporting requirement for households required to submit monthly reports. This proposed change reflects Section 4 of Pub. L. 98–204 (December 2, 1983), which provided State agencies more discretion with respect to items included on the monthly report, but specifically prohibits duplicate reporting of items required to be included in the monthly report. This prohibition against dual reporting is found at section 6(c)(3) of the Food Stamp Act (7 U.S.C. 2015(c)(3)). To eliminate redundancy, the reference to the prohibition against dual reporting is being removed from 7 CFR 273.21(a).

Information Reported Outside of the Monthly Report—New § 273.21(o)

The Department is proposing to redesignate the current provisions of 7 CFR 273.21(o) as 273.21(n)(5) and to add a new § 273.21(o) describing procedures for handling information reported outside of the monthly report. This information includes factors of eligibility not included on the monthly report which are required to be reported by the household pursuant to the change reporting requirement of 7 CFR 273.12(a) and items which are included in the monthly report, but may have been reported voluntarily by the household outside of the report (since the monthly report is the sole reporting requirement for items included in the report, the State agency may not require the household to report information which should be included in the report).

Under proposed § 273.21(o), information reported outside the monthly report would be handled as if it were included in the report, i.e., budget month changes would be reflected in the household's allotment for the appropriate issuance month. For example, a change affecting benefits which occurred on June 22 would be reflected in the household's August allotment (in a two-month MRRB system) whether the change was reported in June or July. This proposed procedure represents a modification of the procedures contained in Policy Memorandum 84–35.

Continuation of Benefits—7 CFR 273.21(p)(2) and 273.21(m)

Under current rules at 7 CFR 273.21(p)(2), an MRRB household which requests a fair hearing is entitled to continuation of benefits during its certification period unless that household expressly waives its right to continued benefits. A household is not entitled to continued benefits if it is terminated for failure to submit a monthly report and admits that the monthly report was not submitted. The regulatory provision prohibiting continued benefits to households which have been terminated for failure to submit complete monthly reports is based on section 6(c)(4) of the Food Stamp Act which provides that "* * * [a]ny household that fails to submit periodic reports * * * shall not receive an allotment for the payment period to which the unsubmitted report applies until such report is submitted".

In response to several inquiries and to resolve an apparent inconsistency between section 6(c)(4) and section 11(e)(10) of the Food Stamp Act, which provides for a right to continued benefits during a household's certification period pending a hearing, the Department is proposing to change 7 CFR 273.21(p)(2) (i) and (iii) so that, in cases in which the submission of a monthly report is at issue and the household has made a timely request for fair hearing, the household would receive continued benefits, provided that a completed report is submitted no later than the last day of the issuance month. This proposal remains in accordance with the requirement of section 6(c)(4) which conditions continued eligibility upon the submission of a complete monthly report while ensuring that the household's right to continued benefits pursuant to section 11(e)(10) is protected. Since the household would be receiving benefits on the basis of its request for a fair hearing, the provisions of 7 CFR 273.21(k) requiring proration of benefits for reinstated households would not be applicable. If the hearing official determines that a report was not submitted in a timely manner, the household's benefits would be recalculated under the proration provisions and a claim would be established in accordance with 7 CFR 273.15 and 273.18. The Department is also proposing to amend 7 CFR 273.21(m)(2)(iv) to provide that the notice of termination shall advise the household that it may receive benefits pending the hearing if the sole issue is the submission of the report and the household submits a complete report.

Recertification—7 CFR 273.21(q)

Under current rules, State agencies have three options for handling the recertification of MRRB households. These options are described at 7 CFR 273.21(q)(3), 273.21(q)(4), and 273.21(q)(5), respectively. Under the first option, described at 7 CFR 273.21(q)(3), the State agency is required to provide the household with the notice of expiration and the recertification form in lieu of the monthly report. The notice of expiration and the recertification form must be mailed together. Under the second option, described at 7 CFR 273.21(q)(4), the State agency is required to provide the household with a notice of expiration, monthly report form, and a recertification addendum, which contains the additional information necessary for recertification. All the requisite forms must be mailed together. Under the third option, described at 7 CFR 273.21(q)(5), the State agency may recertify the household on the basis of the monthly report and the recertification interview. Under this option, the State agency is required to obtain information not provided in the monthly report through the recertification interview. The State agency is also required to obtain a written statement from the household indicating that the household has applied for recertification.

The Department has granted several waivers which allow State agencies to mail the required recertification form, notice of expiration, and monthly report or addenda specified in 7 CFR 273.21(q) (3) and (4) separately rather than together. The State agencies noted that the requirement that the forms be mailed together may be administratively burdensome since the required forms are generated and mailed by automated systems. In some cases the requirement that the forms be mailed together may require manual rather than automated procedures.

The Department is proposing to amend 7 CFR 273.21(q) (3) and (4) to allow State agencies to mail the applicable forms separately as long as they are mailed at the same time.

The Department has also approved waivers allowing State agencies to combine the notice of expiration with the monthly report form. The Department is also proposing to incorporate this procedure into the regulatory provisions at 7 CFR 273.21(q)(3) and 273.21(q)(4). The Department feels that these changes provide more flexibility and would enable State agencies to operate their programs more efficiently.

Changes in Reporting/Budgeting Status—Addition of 273.21(r)

As the result of changes in household circumstances, a household can move in or out of the MRRB system. For example, in a State in which households with earned income are subject to monthly reporting, a previously unemployed household member could obtain employment, thus making the household subject to MRRB. Conversely, in a household in which all adult members are over the age of 60, the only employed member of the household could retire, thereby rendering the household statutorily exempt from MRRB. Current regulatory provisions do not contain procedures for changing the reporting/budgeting status of households. The Department is proposing to add a new paragraph (r) to 7 CFR 273.21 containing procedures for handling households in transition between different reporting and budgeting systems.

The Department is proposing at § 273.21(r)(1) to provide State agencies with broad discretion regarding the handling of prospectively-budgeted households which the State agency elects to move into the MRRB system. Since section 6(c) of the Food Stamp Act and 7 CFR 273.21(b) delegate to State agencies broad discretion (subject only to the exception applicable to those categories of households exempt from monthly reporting under section 6(c)(1)(A) of the Food Stamp Act) to determine which categories of households may be included in a State agency's MRRB system, the Department believes it would also be appropriate to

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delegate similar discretion to State agencies to determine procedures for moving households not subject to MRRB into a State agency's MRRB system. The Department is proposing two conditions applicable to changing the status of households from nonmonthly reporting to monthly reporting. First, the Department is specifically proposing that State agencies may not require the submission of a monthly report for any budget month during which the household was required to report all changes under the change reporting requirements of 7 CFR 273.12. This proposed prohibition is based on section 6(c)(3) which specifically provides that the monthly report shall be the sole reporting requirement for subject matter included in the report. Secondly, the Department is proposing to require that State agencies provide all households which become subject to MRRB with the information mandated at 7 CFR 273.21(c), except that an oral explanation of the MRRB system would not be required if the State agency elects to implement the change during the certification period.

The Department is proposing two alternative procedures for handling households which are being shifted from an MRRB system to a change reporting prospective budgeting system and one procedure for households moving from monthly reporting to change reporting in a retrospectively-budgeted system. The first procedure applies to categories of households which become exempt from monthly reporting and/or retrospective budgeting, under the provisions of 7 CFR 273.21(b). These categories include migrant or seasonal farmworker households, homeless households, households with no earned income in which all adult members are elderly or disabled, and households residing on Indian reservations. Under this procedure the household would be notified within 10 days of the date the State agency becomes aware of the change that the household is no longer subject to monthly reporting. Beginning with the month following the month the State agency became aware of the change, all changes would be implemented prospectively, including those changes which may have been reported on the monthly report submitted for that month. The second procedure applies to all households for whom the change from MRRB to prospective budgeting is not mandatory. The State agency may change the household's budgeting/reporting status at any time following the date the State agency receives notice of the change. Households whose status is changed during the certification period shall be notified of the change and of the new reporting requirements. The State agency must use the same time frames for moving all such households. The third procedure applies to households being moved from monthly reporting to change reporting while continuing to be retrospectively budgeted. The State agency may change the household's reporting status at any time following the date the State agency becomes aware of the change. Households whose status is changed during the certification period shall be notified of the new reporting requirements.

Implementation of Regulatory Changes for MRRB Households—Addition of § 273.21(s)

Current regulatory provisions do not provide specific procedures for the handling of regulatory changes affecting MRRB households. The Department has considered three alternatives with respect to implementing changes to procedures affecting eligibility and benefit levels. Under the first alternative, implementation of regulatory changes would be based on the State agency's MRRB system. In a prospective eligibility/retrospective budgeting system, changes affecting eligibility would be implemented prospectively with changes affecting benefit levels being implemented retrospectively. In a retrospective eligibility/retrospective budgeting system, all changes would be implemented retrospectively. The second alternative would require the implementation of all regulatory changes prospectively based on the implementation time frame in the rule. For example, if a rule is published on May 2 and specifies an implementation time frame of 60 days, the State agency would be required to implement the provisions of the rule effective with the July issuance. The third alternative considered by the Department would specify implementation time frames for MRRB households on a rule-by-rule basis with the time frame specified in the rule.

The Department proposes to adopt the second alternative and require implementation prospectively based on the effective date provided in the rule, and is proposing to add a new paragraph, § 273.21(s), containing the applicable procedures. This procedure is analogous to the procedure for implementing mass changes in Federal or State assistance payments and would ensure that all regulatory changes are implemented uniformly for all households in the State agency's caseload regardless of the budgeting system.

MRRB Policy Memoranda

The Department is proposing to clarify several regulatory provisions governing the MRRB system. These clarifications were previously made in indexed policy memoranda and do not reflect new policy.

The introductory provisions of 7 CFR 273.21(g) and the definition of "Beginning month(s)" in 7 CFR 271.2 would be amended to specify that households terminated as the result of a one-month change, such as an extra paycheck, are not eligible for beginning month procedures following the month of ineligibility. (Policy Memorandum 82–27)

7 CFR 273.21(j)(1)(vii)(A) would be amended to specify that the State agency shall count the budget month earned income of a student only if that student is eighteen years of age or older at the beginning of the budget month. (Policy Memorandum 84–6)

Procedures for handling certain nonfinancial eligibility criteria in an MRRB system in which eligibility is determined retrospectively would be incorporated into 7 CFR 273.21(e)(2). These procedures would specifically provide that residency and compliance with requirements regarding social security numbers, work registration, or voluntary quit provisions are to be applied for the issuance month or month of application rather than for the budget month. (Policy Memorandum 84–19)

Procedures for handling excluded household members who lose their exclusion would be incorporated into a new paragraph (E) at 7 CFR 273.21(f)(1)(iii). These persons, including individuals disqualified for intentional program violations and workfare and work requirement noncompliance would be added to the household the month after the disqualification ends. (Policy Memorandum 87–04).

Implementation

The provisions in this rule which require action by State agencies would be implemented no later than the first day of the month 120 days after publication of the final rule.

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food stamps, Grant programs-social programs.

7 CFR Part 273

Administrative practice and procedures, Aliens, Claims, Food

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stamps, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

Accordingly, 7 CFR parts 271 and 273 are proposed to be amended as follows:

1. The authority citation of parts 271 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2031.

PART 271—GENERAL INFORMATION AND DEFINITIONS

2. In § 271.2, the definition of "Beginning month(s)" is amended by adding at the end of the definition, the sentence "The month following the month of termination resulting from a one-month temporary change in household circumstances shall not be considered a beginning month."

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. In § 273.12, the introductory text of paragraph (e)(1)(i) is revised to read as follows:

§ 273.12 Reporting changes.

* * * * *

(e) *Mass changes.* * * *

(1) *Federal adjustments to eligibility standards, allotments, and deductions, and State adjustments to utility standards.* (i) State agencies shall implement these changes for all households at a specific point in time. Adjustments to Federal standards shall be implemented prospectively regardless of the household's budgeting system. Annual and seasonal adjustments in State utility standards shall also be implemented prospectively for all households.

* * * * *

§ 273.21 [Amended]

4. In § 273.21:

a. the fourth and fifth sentences of the introductory text of paragraph (a) are removed.

b. the second sentence of the introductory text of paragraph (b) is removed and a new sentence is added in its place.

c. a new paragraph (b)(4) is added.

d. the second sentence of the introductory text of paragraph (d) is revised.

e. the second and third sentences of paragraph (d)(1) are removed.

f. paragraph (e)(2) is revised.

g. paragraphs (f)(1)(iii) (B) and (C) are amended by adding a new sentence to the end of each paragraph.

h. new paragraphs (f)(1)(iii) (D) and (E) are added.

i. paragraphs (f)(2)(ii) and (f)(2)(iii) are revised.

j. paragraphs (f)(2)(iv) and (f)(2)(v) are redesignated (f)(2)(vii) and (f)(2)(viii), respectively, and three new paragraphs (f)(2)(iv), (v) and (vi) are added.

k. the introductory text of paragraph (g) is amended by adding at the end of the paragraph the sentence "The State agency shall not apply the procedures of this paragraph to the month(s) following the month of termination resulting from a temporary one-month change."

l. the last two sentences of paragraph (g)(3) are removed and three new sentences are added in their place.

m. paragraph (h)(3) is revised.

n. paragraph (i) is revised.

o. paragraph (j)(1)(vii)(A) is amended by adding the words ", including the earned income of a student only if the student is eighteen years of age or older at the beginning of the budget month," after the first appearance of the word "month" in the first sentence and by adding two new sentences to the end of the paragraph.

p. paragraph (j)(1)(vii)(B)(*2*) is amended by adding the words "which results in an increase in the PA grant" after the word, "source" and by adding a new sentence to the end of the paragraph.

q. paragraph (j)(1)(vii)(C) is revised.

r. a new paragraph (j)(3)(ii)(G) is added.

s. paragraph (k)(2)(ii) is amended by adding three new sentences to the end of the paragraph.

t. paragraph (l)(1) is revised.

u. paragraph (m)(2)(iv) is amended by adding a new sentence to the end of the paragraph.

v. paragraph (o) is redesignated paragraph (n)(5) and a new paragraph (o) is added.

w. paragraphs (p)(2) (i) and (iii) are amended by removing the last sentence of each paragraph and adding a new one in its place.

x. paragraph (q)(3)(ii) is amended by adding a new sentence to the end of the paragraph.

y. paragraph (q)(4)(ii) is revised.

z. new paragraphs (r) and (s) are added.

The revisions and additions read as follows:

§ 273.21 Monthly Reporting and Retrospective Budgeting (MRRB).

* * * * *

(b) *Included and excluded households.* * * * Except for the categories of households described in paragraphs (b)(1) through (b)(4) below, households not required to submit monthly reports may have their benefits determined on either a prospective or retrospective basis at the State agency's option. * * *

* * * * *

(4) Households residing on Indian reservations.

* * * * *

(d) *One and two-month systems.* * * * A one-month system shall have either one or two beginning months in the certification period and a two-month system shall have two beginning months. * * *

* * * * *

(e) *Determining eligibility for households not certified under the beginning months' procedures of § 273.21(g).* * * *

(2) *Retrospective eligibility.* The State agency shall determine eligibility by considering all factors of eligibility retrospectively using the appropriate budget month except for residency and compliance with the requirements regarding social security numbers. Compliance with work registration provisions shall be considered as of the issuance month or month of application. The 60-day time frame for determining the applicability of the voluntary quit provision of § 273.7(n) shall be measured by the State agency from the date of application.

(f) *Calculating allotments for households following the beginning months.*

(1) * * *

(iii) * * *

(B) * * * If the new member had been providing income to the household on an ongoing basis prior to becoming a member of the household, the State agency shall exclude the previously provided income in determining the household's issuance month benefits and eligibility.

(C) * * * In determining the issuance month eligibility and benefit level of the household into which the individual has moved, the State agency shall disregard budget month income received by the new member from a terminated source.

(D) The State agency may add new members to the household effective the first day of the issuance month following the month the household gains the new member, or may add the new member using the same method that the State agency uses in its AFDC Program.

(E) The State agency shall add a previously excluded member who was disqualified for an intentional program violation or failure to comply with workfare or work requirements, was ineligible because of failure to comply with the social security number requirement, or was previously an ineligible alien to the household the

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(f) *Calculating allotments for households following the beginning months.*

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(iii) * * *

(B) * * * If the new member had been providing income to the household on an ongoing basis prior to becoming a member of the household, the State agency shall exclude the previously provided income in determining the household's issuance month benefits and eligibility.

(C) * * * In determining the issuance month eligibility and benefit level of the household into which the individual has moved, the State agency shall disregard budget month income received by the new member from a terminated source.

(D) The State agency may add new members to the household effective the first day of the issuance month following the month the household gains the new member, or may add the new member using the same method that the State agency uses in its AFDC Program.

(E) The State agency shall add a previously excluded member who was disqualified for an intentional program violation or failure to comply with workfare or work requirements, was ineligible because of failure to comply with the social security number requirement, or was previously an ineligible alien to the household the month after the disqualification period ends. All other previously excluded members shall be added in accordance with the procedures in paragraph (f)(1)(iii)(B) above, using the new member's issuance month income and expenses.

(2) * * *

(ii) The State agency shall prorate contract income received over a period of less than one year and prospectively budget such income over the period it is intended to cover.

(iii) The State agency shall prorate and budget prospectively over the period they are intended to cover any nonexcluded scholarships, deferred educational loans, and other educational grants.

(iv) The State agency shall budget deductible expenses prorated over two or more months retrospectively, *provided* that such deductions are not budgeted over more months than they are intended to cover, and the total amount deducted does not exceed the total amount of the expenses.

(v) The State agency shall budget stable income and deductions regularly received or paid as a single monthly payment for the month such income or deduction is intended to cover.

(vi) The State agency, at its option, shall budget interest income using one of the following methods:

(A) Actual interest income received in the budget month.

(B) Prorated interest income calculated by dividing the amount of interest anticipated during the certification period by the number of months in the certification period.

(C) An averaged amount adjusted for anticipated changes.

* * * * *

(g) *Determining eligibility and allotments in the beginning months.* * * *

* * * * *

(3) *The first months of retrospective budgeting following the beginning months.* * * * If the State agency had been averaging income or converting weekly or biweekly income to a monthly amount in the beginning months, it may begin using the household's actual budget month income when the household becomes subject to retrospective budgeting. For purposes of this paragraph, any income received in either or both of the beginning months from a source which no longer provides income to the household (terminated income), which was included in the household's prospective budget, shall be disregarded when the beginning month becomes the budget month, provided it is not replaced by income from a similar source. In order to be considered a similar source, the household must receive income from the new source within 30 days of the date of the last receipt of income from the former source and the estimated monthly amount of income from the new source must be within $25 of the monthly income from the former source.

(h) *The monthly report form.* * * *

(3) *Reported information.* The State agency may determine the information relevant to eligibility and benefit determination to be included on the monthly report form.

* * * * *

(i) *Verification.* Each month the household shall verify information which has changed since the last monthly report for those items designated by the State agency. The State agency may require verification of any additional items included in the monthly report that appear questionable.

(j) *State agency action on reports.*

(1) *Processing.* * * *

(vii) * * *

(A) * * * If the State agency elects to convert weekly or biweekly income for MRRB households, it shall do so for all households in its MRRB caseload. The State agency may convert or average income in the beginning months and use actual earned or unearned income received in the budget month following the beginning months of participation.

(B) * * *

(2) * * *

A State agency which elects to use the PA grant to be paid in the issuance month shall implement mass changes in accordance with the procedures at § 273.12(e)(2).

(C) Deductions as billed or which otherwise come due during the corresponding budget month including those shelter costs billed less often than monthly which the household has chosen to average. Deductions billed more frequently than monthly shall not be averaged.

* * * * *

(3) *Incomplete filing.* * * *

(ii) * * *

(G) The notice may also advise the household that its food stamp program participation will be terminated if a complete report is not submitted by the extended filing date. If the State agency is using a combined notice of incomplete filing and termination the notice shall also conform to the criteria required by paragraph (m)(2) of this section. The State agency may use the combined notice only if termination is for failure to submit a complete monthly report.

* * * * *

(k) *Issuance of benefits.* * * *

(2) *Delayed issuance.* * * *

(ii) * * * If the household is reinstated based on a monthly report submitted after the extended filing date, but during the issuance month, the allotment for the issuance month shall be prorated in accordance with § 273.10(a) from the date the report is received. If the household has requested a fair hearing on the basis that a complete monthly report was filed, the State agency shall reinstate the household if a completed monthly report is filed before the end of the issuance month. The proration requirement does not apply to a household reinstated based on a fair hearing request.

* * * * *

(l) *Other reporting requirements.*

(1) *Information reported on the monthly report.* The monthly report shall be the sole reporting requirement for information required to be included in the monthly report. Changes in household circumstances not subject to monthly reporting shall be reported in accordance with § 273.12.

* * * * *

(m) *Termination.* * * *

(2) * * *

(iv) * * * If termination is for failure to submit a monthly report and the household states that a monthly report has been filed, the notice must advise the household that a completed monthly report must be filed prior to the end of the issuance month as a condition for continued receipt of benefits.

* * * * *

(o) *Information reported outside of the monthly report.* Except for the addition of a new member, the State agency shall handle all changes reported outside of the monthly report in the same manner that such changes would be handled if they were included in the monthly report. The State agency shall reflect budget month changes in the issuance month allotment. Changes affecting household eligibility shall be handled in accordance with paragraph (e) of this section. The State agency shall handle changes in household composition in accordance with paragraph (f) of this section.

(p) *Fair hearings.* * * *

(2) *Continuation of benefits.* (i) * * * If the State agency did not receive a monthly report from the household by the extended filing date and the household states that a monthly report was submitted, the household is entitled to continued benefits, *provided* that a completed report is submitted no later than the last day of the issuance month.

* * * * *

(iii) * * * If the fair hearing is with regard to termination for nonreceipt of the monthly report by the State agency, a completed monthly report for the month in question shall be submitted by the household no later than the last day of the issuance month.

* * * * *

(q) *Recertification.* * * *

(3) *Option One: Recertification form.* * * *

(ii) * * * The State agency may mail the recertification form and notice of expiration separately provided that both forms are mailed at the same time.

* * * * *

(4) *Option Two: Monthly report and addendum.* * * *

(ii) The State agency shall either: mail the monthly report form along with the notice of expiration; use a monthly report form which contains a notice of expiration; or mail the monthly report form and the notice of expiration separately, as long as the forms are mailed at the same time.

* * * * *

(r) *Procedures for households that change their reporting and budgeting status.* The State agency shall use one of the following procedures for households subject to change in reporting/budgeting status.

(1) *Households which become subject to MRRB.* The State agency may change the reporting/budgeting status of households which become subject to monthly reporting at any time following the change in household circumstances which results in the change in the household's reporting/budgeting status, subject to the following conditions:

(i) The State agency shall provide the household with information provided to MRRB households under paragraph (c) of this section. If the State agency elects to implement the change during the certification period, it may omit the oral explanation of MRRB required under paragraph (c)(1).

(ii) The State agency shall not require the household to submit a monthly report during any month in which the household was subject to the change reporting requirements of § 273.12.

(2) *Households which are no longer subject to MRRB.* The agency shall use one of the following procedures to remove households from the MRRB system.

(i) *Procedures for households exempt from MRRB.* For any household which becomes exempt from MRRB under paragraph (b) of this section, the State agency shall notify the household within 10 days of the date the State agency becomes aware of the change which results in the exclusion of the household from monthly reporting. The State agency shall begin determining the household's benefits prospectively in the month following the month the State agency becomes aware of the change. All future reported changes, including changes contained in a monthly report which the household may have submitted, shall be implemented prospectively beginning with the month following the month in which the change which affected the reporting status occurred.

(ii) *Other households moving from MRRB to change reporting and prospective budgeting.* When a household is no longer subject to MRRB under a State agency's system, the State agency may begin determining the household's benefits prospectively in any month following the month the State agency becomes aware of the changed circumstances which necessitate the need to change the household's reporting/budgeting status. If the State agency elects to change the household's reporting/budgeting status prior to recertification it shall provide the household with a notice explaining the change in the month prior to the month the change is effective. If the State agency elects to change the household's status at recertification it shall advise the household at the recertification interview that its reporting/budgeting status is being changed.

(iii) *Households moving from MRRB to retrospective budgeting and change reporting.* If a household's status necessitates changing it from a monthly reporter to a change reporter while continuing to be budgeted retrospectively, the State agency may change the household's status at any time. If the State agency elects to change the household immediately, the State agency shall provide the household with a notice that it is no longer subject to monthly reporting. The notice shall include information about the household's reporting requirements under § 273.12.

(s) *Implementation of Regulatory Changes.* The State agency shall implement changes in regulatory provisions for households subject to MRRB prospectively based on the effective date and implementation time frame published in the **Federal Register**. Rules are effective as of the same date for all households regardless of the budgeting system.

Dated: August 2, 1991.

Betty Jo Nelsen,

Administrator.

[FR Doc. 91-18904 Filed 8-8-91; 11:07 am]

BILLING CODE 3410-30-M

DEPARTMENT OF AGRICULTURE

7 CFR Part 273

[Amendment No. 337]

Food Stamp Program; Categorical Eligibility and Application Provisions of the Mickey Leland Memorial Domestic Hunger Relief Act

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed Rule with request for comments.

SUMMARY: This action would amend Food Stamp Program (FSP) regulations to implement three provisions of the Mickey Leland Memorial Domestic Hunger Relief Act (Title XVII, Pub. L. 101-624, enacted November 28, 1990). These provisions revise requirements for the placement of certain information on the food stamp application, require a combined food stamp and general assistance (GA) application in States that have a Statewide GA application, and extend categorical eligibility to households in which all members receive assistance from a State or local GA program which meets certain requirements. These provisions would assist State agencies and applicants by simplifying the design of the food stamp application and reducing the application processing requirements for GA/food stamp applicants.

DATES: Comments must be received on or before September 12, 1991 to be assured of consideration.

ADDRESSES: Comments should be submitted to Judith M. Seymour, Supervisor, Eligibility and Certification Regulations Section, Certification Policy Branch, Program Development Division, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302. They may be datafaxed to (703) 756-3494. All written comments will be open to public inspection during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) in room 708, 3101 Park Center Drive, Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: Judith M. Seymour at the above address, telephone (703) 756-3496.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291 and Secretary's Memorandum 1512-1

This rule has been reviewed under Executive Order 12291 and the Secretary of Agriculture's Memorandum No. 1512-1. The Department has classified this

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DEPARTMENT OF AGRICULTURE

7 CFR Part 273

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FOR FURTHER INFORMATION CONTACT: Judith M. Seymour at the above address, telephone (703) 756–3496.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291 and Secretary's Memorandum 1512–1

This rule has been reviewed under Executive Order 12291 and the Secretary of Agriculture's Memorandum No. 1512–1. The Department has classified this action as nonmajor. The rule's effect on the economy will be less than $100 million, and it will have no effect on costs or prices. Competition, employment, investment, productivity, and innovation will remain unaffected. There will be no effect on the ability of United States-based enterprises to compete with foreign-based enterprises.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related Notice of 7 CFR 3015, subpart V (48 FR 29115), this Program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This proposed rule has been reviewed in relation to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). Betty Jo Nelsen, Administrator of the Food and Nutrition Service (FNS), has certified that this rule would not have a significant economic impact on a substantial number of small entities. The requirements would affect food stamp applicants and recipients and the State and local agencies that administer the Program. The application and certification process would be simplified for households containing members who receive assistance from certain GA programs.

Paperwork Reduction Act

The requirement of the Hunger Prevention Act of 1988 (Pub. L. 100–435, 102 Stat. 1645, September 19, 1988) that certain statements be placed on the front cover of the food stamp application was implemented in regulations issued June 7, 1989 (54 FR 24518). At that time, the Office of Management and Budget (OMB) approved the requirement under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511). The requirement had no effect on the approved burden estimates. Therefore, changes that may be made in the food stamp application as a result of the provisions of this proposed rule would not significantly alter the methodologies used to determine the burden estimates currently approved for the application under OMB No. 0584–0064. The remaining provisions of this proposed rule do not contain new or additional reporting or recordkeeping requirements subject to OMB approval.

Background

The Mickey Leland Memorial Domestic Hunger Relief Act (Title XVII, Public Law 101–624, 104 Stat. 3359, November 28, 1990) (Leland Act) made a number of changes in the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.). This proposed rulemaking pertains to provisions of the Leland Act which revise requirements for the food stamp application, require that the GA and food stamp applications be combined in States that have a single Statewide GA application, and extend categorical eligibility to households in which all members receive benefits from certain GA programs. These provisions are discussed below.

Food Stamp Program Application Requirements—7 CFR 273.2(b)

Current regulations at 7 CFR 273.2(b)(1) require that the application contain "on the front page" notification of the household's right to immediately file the application as long as it contains the applicant's name, address and signature, a description of the expedited service provisions, and notification that benefits are provided only from the date of application. These provisions created an administrative problem for State agencies whose applications contained the required information on the back of the first page or in the first few pages of the application.

To give State agencies more flexibility in designing their food stamp applications, paragraph one of section 1736 of the Leland Act amends section 11(e) of the Food Stamp Act to require that explanations of these application rights be contained "on or near" the front cover of the application. According to the discussion of section 1736 in the Conference Report (H.R. 101–916, p. 1096), the amendment to require that explanations of recipients' rights and responsibilities be "on or near" rather than "on" the front cover of an application was intended "* * * to facilitate combined applications for more than one public assistance program. The provision was not intended to diminish the responsibility of State agencies to provide prominent notice to the recipients of their rights and responsibilities." The legislative language does not define "near." The Department believes the common usage of the term is intended, and therefore it is unnecessary to define it in the regulations.

This rulemaking proposes to amend 7 CFR 273.2(b)(1) to require that information about the application process be located "on or near" the front page of the application. In addition, the Department is proposing a conforming amendment to 7 CFR 273.2(b)(3) to change the heading of the paragraph to "Design" instead of "Deviations" and to include reference to FNS approval of combined GA/food stamp applications. The Department is also taking this opportunity to amend 7 CFR 273.2(b)(3) to clarify that on-line application forms used in connection with automated systems are considered deviations from the national form and are subject to FNS approval.

Combined Application for General Assistance (GA) and Food Stamps—7 CFR 273.2(j)

Current regulations at 7 CFR 273.2(j) and (j)(1)(i) require State agencies to combine the food stamp application with the public assistance (PA) or GA application and to notify applicants for Aid to Families with Dependent Children (AFDC) of their right to file a joint application. Regulations at 7 CFR 273.2(j)(1)(v) require that the State agency certify a household whose PA or GA application is denied or whose PA or GA eligibility is terminated on the basis of available information from the PA/GA casefile (provided the information is sufficient for food stamp purposes).

The requirement for a combined GA/food stamp application created significant administrative problems for State agencies in States with more than one GA program and application. Some States have a Statewide GA program and an application for GA that is used Statewide. However, in many States, GA programs are locally operated and local jurisdictions may not use a common application. Combining the food stamp and GA applications in these local jurisdictions could result in multiple food stamp applications in one State.

To assist State agencies in combining the food stamp and GA applications, section 1740 of the Leland Act modifies the combined application requirement in section 11(i)(3) of the Food Stamp Act to require a combined GA/food stamp application only in States that have one Statewide GA application. Section 1740 also requires that if there is more than one GA application in a State, offices which administer both GA and the Food Stamp Program shall provide households a food stamp application at the time of their application for GA, along with information concerning how to apply for food stamp benefits. According to information in the Conference Report on Section 1740 of the Leland Act, (H.R. 101–916, p. 1097), if separate offices provide the GA and food stamp benefits, there is no requirement to combine or provide both applications.

This action proposes to amend the introductory text of 7 CFR 273.2(j) and revise 7 CFR 273.2(j)(3)(iii) to provide that in States with a single Statewide GA application, the food stamp application shall be included in the GA application. If the State has more than one GA application, offices that administer both GA and food stamps would be required to provide households applying for GA with a food stamp application and information concerning how to apply for food stamps. They would also be required to advise GA applicants of their potential categorical eligibility for food stamps. In States in which GA and the Food Stamp Program are administered by separate offices, the State agency would be required to inform GA applicants about their potential categorical eligibility for food stamps and to encourage the agencies administering GA to provide food stamp applications to GA applicants. If the GA agency allows GA applicant households to leave a signed food stamp application at the GA office, the GA agency would be responsible for forwarding the application to the food stamp office the same day. The GA office may advise households that they may receive faster service if they take the application directly to the food stamp office. Provisions of current 7 CFR 273.2(j)(3)(iv) concerning areas in which GA programs are administered by agencies such as the Bureau of Indian Affairs are incorporated in the revised § 273.2(j)(3)(iii). A conforming amendment is proposed in the heading of 7 CFR 273.2(j)(3) to specify that the paragraph concerns applicant GA households.

Categorical Eligibility for GA Households—§ 273.2(j)(4)

Current regulations at 7 CFR 273.2(j)(2) provide that households in which all members are recipients of PA and/or Supplemental Security Income (SSI) are categorically eligible for food stamps, with certain restrictions. There is no comparable provision for households in which all members receive GA benefits. Prior to enactment of the Food Stamp Act of 1977, households receiving PA, GA or SSI were categorically eligible for food stamps. The 1977 Act eliminated categorical eligibility for these households. The Omnibus Reconciliation Act of 1982 (Pub. L. 97–253) gave State agencies the option to consider households in which all members received AFDC to have satisfied the Food Stamp Program's resource test. However, households certified as categorically eligible on the basis of resourcees still had to meet the income eligibility test. Section 1507 of the Food Security Act of 1985 (Pub. L. 99–198, enacted December 23, 1985) made categorical eligibility mandatory for households consisting solely of recipients of PA and/or SSI and included waivers of the income eligibility limits as well as the resource limits. The provision was originally to be tested through September 30, 1989; however, the Hunger Prevention Act of 1988 (Pub. L. 100–485) eliminated the expiration date, making PA/SSI categorical eligibility a permanent part of the Program. The Department issued interim regulations on August 5, 1986 (51 FR 28196) implementing the categorical eligibility provisions of the Food Security Act and issued final regulations on June 7, 1989 (54 FR 24510).

Section 1714 of the Leland Act amends section 5(a) of the Food Stamp Act to require that households in which each member receives benefits under a State or local GA program shall be eligible for food stamps if the program complies with standards established by the Secretary for ensuring that the program is appropriate for categorical treatment. These households would be eligible for food stamps based on their receipt of GA, except that the provisions of section 6, section 16(e)(1), and the third sentence of section 3(i) of the Food Stamp Act would continue to apply. These sections prohibit participation by certain disqualified and ineligible households and individuals, household members who do not provide their social security numbers (SSNs), and institutionalized individuals.

The Department considered several factors in developing this proposed rulemaking for implementing the GA categorical eligibility provision. These include the appropriateness of a GA program for categorical eligibility and the application of the exemptions to categorical eligibility specified in the Leland Act for GA households. In addition, the Department reviewed the rulemaking for PA/SSI categorical eligibility to determine how the policies already established for categorical eligibility for recipients of benefits from those programs would apply to categorical eligibility for recipients of GA. Those policies are discussed below.

Appropriate Programs

The legislative history of section 1714 of Public Law 101–624 indicates that Congress intended programs considered appropriate for categorical eligibility to be means-tested (House Report 101–569, page 430). According to the Agriculture Committee Report, "To ensure that a State general assistance program is indeed a true means-tested program, USDA is required to certify that the program serves a population appropriate for categorical eligibility." The Report indicates that once the Secretary has determined that a GA program is indeed needs-based and serves a population appropriate for food stamp categorical eligibility, "* * * the State agency will not be required to submit additional material on the program to USDA unless the character of the program is changed."

A study of GA programs prepared for the Office of the Assistant Secretary for Planning and Evaluation of the Department of Health and Human Services discusses various types of GA programs operated by State and local governments. The study, "Characteristics of General Assistance Programs—1989," published in August 1990 by Lewin/ICF and James Bell Associates, indicates that most GA programs do not have income eligibility standards that are separate from the calculation for determining the amount of the grant. Generally, GA programs have a maximum amount that can be received by a family or individual; this maximum is called the payment standard. Grants may be less than the standard, depending on the formula used to calculate the amount of assistance. In many GA programs, the payment standard is also the figure used to determine eligibility for the program. In these programs, an applicant's monthly income (after allowable deductions have been subtracted from gross income) must be below the standard. The remaining income is deducted from the standard to determine the grant. According to the study, in GA programs that have formal standards, the limits on assets are usually comparable to or less than those for AFDC and less than those for SSI. In States without formal limits, assets are subtracted from the payment standard to determine the amount of the grant. Exclusions typically include a home, a car and miscellaneous personal items.

Under this rulemaking, the Department proposes to establish specific income and resource limits that GA program must include in order to be considered appropriate for conferring categorical food stamp eligibility on the GA recipients. The standards may be included in or separate from the payment standard. The proposed standards are:

1. The program must not serve a population whose gross income exceeds 130 percent of the poverty level, based

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Under this rulemaking, the Department proposes to establish specific income and resource limits that GA program must include in order to be considered appropriate for conferring categorical food stamp eligibility on the GA recipients. The standards may be included in or separate from the payment standard. The proposed standards are:

1. The program must not serve a population whose gross income exceeds 130 percent of the poverty level, based on the Federal income poverty levels established as provided in section 672(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2).

2. The program must not serve a population whose resources, as determined by the program, exceed $2,000, including liquid resources and a portion of the value of automobiles (excluding, at the option of the GA program, the value of low-cost automobiles).

In addition to the requirement that GA programs be means-tested, the Department proposes to establish two other criteria for GA programs that confer categorical eligibility on recipients. First, the program must meet the definition of GA in 7 CFR 271.2. As defined, GA means "cash, or another form of assistance, excluding in-kind assistance, financed by State or local funds as part of a program which provides assistance to cover living expenses or other basic needs intended to promote the health or well-being of recipients." Therefore, a program that provides only in-kind benefits, for example, does not meet the definition of GA and is not appropriate for categorical eligibility.

Second, among the GA programs that provide cash assistance and third-party payments, some provide ongoing assistance with no durational limits on participation as long as recipients meet the program eligibility criteria. Other programs provide short-term assistance for periods of three, four, six, or twelve months. There are also programs that provide one-time payments or vendor reimbursements for crisis situations and emergency needs. The Department believes that programs providing emergency assistance limited to one or two months are not appropriate for conferring categorical eligibility on recipients of the assistance because these programs may not have a formal application process, verification requirements, and eligibility criteria similar to those of the Food Stamp Program, which provides benefits on an ongoing basis as long as the household reapplies and is eligible.

For ease of administration, the Department proposes that GA programs meeting the following criteria will be considered certified as programs appropriate for categorical eligibility. Proposed criteria for an appropriate program are: (1) The program must be means-tested; (2) the program must provide benefits that meet the definition of GA in 7 CFR 271.2; and (3) the program must provide benefits, in cash or as vendor payments, for at least three consecutive months based on one application. However, State agencies may submit to FNS requests for certification of programs that do not meet all the criteria. State agencies would be required to provide a description of each GA program for which they request certification. The request must include the following information: The type of assistance provided (e.g., cash, voucher, third-party payment, or in-kind); income and resource eligibility limits; and the period for which GA is provided.

The Department proposes to add a new paragraph § 273.2(j)(4) to the regulations to implement requirements for GA categorical eligibility. Proposed § 273.2(j)(4)(i) would contain criteria a GA program would have to meet in order to be considered a program appropriate for categorical eligibility. A conforming amendment is proposed to be made in the heading of 7 CFR 273.2(j)(2) to specify that the paragraph concerns categorical eligibility for PA and SSI households.

Current regulations at 7 CFR 273.2(j)(3) (i) and (ii) provide that in State agencies where certain criteria are met, the joint processing procedures of 7 CFR 273.2(j)(1) are applied to GA households. The regulations include an exception for the categorical eligibility procedures in 7 CFR 273.2(j)(1) which do not currently apply to GA households. With the implementation of GA categorical eligibility, the exception is no longer needed. Therefore, the Department proposes to remove the exception in 7 CFR 273.2(j)(3) (i) and (ii) and replace it with a reference to the effective date of categorical eligibility for GA households.

Legislative Restrictions

Current regulations for categorically eligible PA/SSI households at 7 CFR 273.2(j)(2)(iii) identify certain households that cannot gain eligibility through receipt of benefits from PA and/or SSI. The households are those that contain a member disqualified for intentional program violation or failure to comply with the monthly reporting requirements and households disqualified because a member fails to comply with a workfare requirement of 7 CFR 273.22 or the head of household fails to comply with a work requirement of 7 CFR 273.7. In addition, 7 CFR 273.2(j)(2)(v) provides that certain individuals may not participate as a member of an otherwise categorically eligible household. These are ineligible aliens, ineligible students, SSI recipients in cash-out States as defined in 7 CFR 273.20, and individuals institutionalized in a nonexempt facility as defined in 7 CFR 273.1(e). The disqualifications from PA/SSI categorical eligibility in 7 CFR 273.2(j)(2) (iii) and (v) have their basis in the provisions of the Food Security Act of 1985 (Pub. L. 99–198). Section 1507 of Public Law 99–198 amended section 5(a) of the Food Stamp Act to provide that "Notwithstanding any other provisions of this Act, except sections 6(b), 6(d)(2), and 6(g) and the third sentence of section 3(i)" recipients of benefits from the Aid to Families with Dependent Children program and SSI are eligible for food stamp participation. The interim PA/SSI categorical eligibility rule published August 5, 1986 (51 FR 28196) contains a full description of the rationale for the regulatory provisions.

In authorizing categorical eligibility for certain GA households, Congress specified in section 1714 of the Leland Act that the provisions of section 6, the third sentence of section 3(i), and section 16(e)(1) of the Food Stamp Act would continue to apply to GA households that would otherwise be categorically eligible. These sections differ from those cited in the Food Stamp Act as exceptions to PA/SSI categorical eligibility. Therefore, the regulatory provisions cannot be consistent for all categorically eligible households.

In accordance with the provisions of the Leland Act, the Department proposes in § 273.2(j)(4)(iv) that the following individuals may not participate as a member of a categorically eligible household: an individual disqualified for intentional program violation; an individual (not the head of household) disqualified for failure to comply with the work requirements of 7 CFR 273.7; an individual who fails to provide or apply for an SSN; and individuals who are ineligible aliens, ineligible students, SSI recipients in a cashout State, or institutionalized in a nonexempt facility. The Department proposes in § 273.2(j)(4)(v) that the disqualifications for households that refuse to cooperate, transfer resources, or contain a striking member will apply to GA households who would otherwise be categorically eligible. In addition, households in which the head of household fails to comply with a work requirement of 7 CFR 273.7 cannot be categorically eligible.

Combination Households

Some households may consist entirely of a combination of recipients of PA, SSI, or GA. The Department proposes that these households be categorically eligible, unless one of the restrictions in 7 CFR 273.2(j)(2) or proposed § 273.2(j)(4) applies. As indicated above, the statutory restrictions on categorical eligibility for PA and SSI households differ from those for households consisting of GA recipients. An issue could arise concerning the eligibility of a combination household in which a Program violation occurs that would disqualify the entire household. For example, a PA recipient in a combination household is on strike. Under the legislation for PA/SSI categorical eligibility and rules at 7 CFR 273.2(j)(2), this action would not cause the household to be ineligible. Under the legislation for GA categorical eligibility and the proposed rules, the household would be ineligible.

The Department considered two options for addressing the eligibility of combination households: (1) Applying the GA categorical eligibility rules to any categorically eligible household that includes a recipient of GA from an appropriate program and (2) applying the categorical eligibility rules for the program from which the member who violates Program rules receives benefits. In the example of a combination household containing a PA recipient who is on strike, the household would be ineligible if option (1) were used. However, the household would be eligible if option (2) were used (and requirements of the PA program did not cause ineligibility) because there is no provision regarding strikers in the PA categorical eligibility rules.

The Department proposes in § 273.2(j)(4)(vi) to adopt option 2. In a combination PA/SSI/GA household, the PA categorical eligibility rules will apply to the PA and SSI recipients; the GA categorical eligibility rules will apply to the GA recipients. This means that whether a household member commits a violation which disqualifies only the violating member or the entire household, the categorical eligibility provisions for the program from which the member receives benefits will apply. Only a small number of households will contain recipients from all three programs. Therefore, the Department does not believe this issue will be a significant one for State agencies in administering categorical eligibility.

Verification and Deemed Food Stamp Requirements

The regulations for PA/SSI categorical eligibility at 7 CFR 273.2(j)(2)(i) identify specific factors of eligibility that are deemed and do not have to be verified for categorically eligible households. These are resources, gross and net income amounts, SSNs, residency, and sponsored alien information. State agencies have to verify other information in accordance with food stamp requirements contained in 7 CFR 273.2(f). They must also verify that the household qualifies for categorical eligibility if the information is questionable. The Department proposes to specify in § 273.2(j)(4)(ii) that in determining GA categorical eligibility, the State agency must verify that each household member receives GA from a program that meets the criteria for a program appropriate for categorical treatment or that the household contains only recipients of PA, SSI, and/or GA from an appropriate program. The State agency must also verify that the household includes no individuals who have been disqualified as provided in 7 CFR 273.2(j)(2)(v) or proposed § 273.2(j)(4)(iv). If household composition is questionable, it must be verified in accordance with 7 CFR 273.2(f). The Department proposes to identify in § 273.2(j)(4)(iii) those factors of eligibility that are deemed for categorically eligible GA households. Those factors are: resources (except in the case of transferred resources), gross and net income limits, residency, and sponsored alien information. All other Program requirements, including the requirement to provide or apply for an SSN, apply to categorically eligible GA households. Because GA programs may not routinely require or verify SSNs, GA household members must provide their SSNs in accordance with 7 CFR 273.6. The State agency must verify the numbers by submitting them to the Social Security Administration, as required at 7 CFR 273.2(f)(1)(v)

The Department proposes to make conforming amendments at 7 CFR 273.8(a) and 7 CFR 273.9(a) to provide that households categorically eligible as defined in proposed § 273.2(j)(4) do not have to meet the resource limits and definitions or the gross and net income eligibility standards. This rule also proposes a conforming amendment at 7 CFR 273.10(g)(1)(ii) to provide that a potentially eligible household whose food stamp case is denied shall be asked to inform the State agency if it is approved to receive PA and/or SSI benefits or benefits from a GA program. The State agency will determine if the GA program meets the criteria for a program appropriate for conferring categorical eligibility on the household.

Recipients

Section 1714 of the Leland Act provides that households in which each member receives benefits under an appropriate State or local GA program shall be eligible for food stamps, with the exceptions noted above. The Department is proposing that "recipients" include individuals whose benefits are suspended or recouped, who are authorized to receive GA but have not yet received payment, and who are entitled to GA benefits but who are not paid such benefits because the grant is less than a specified minimum payment.

Reactivation of Denied Cases

A major issue in the development of regulations for PA/SSI categorical eligibility was the treatment of households that are ineligible as non-PA/SSI households and whose PA/SSI eligibility has not been determined within the 30 day food stamp application processing period. Current regulations at 7 CFR 273.2(j)(1)(iv) require State agencies to deny the food stamp application on the 30th day, but reactivate the application if the household is subsequently approved for PA and/or SSI. The State agency must use available information to update the application and/or make mail or phone contact with the household or an authorized representative to determine any changes in circumstances. The household must initial changes and sign and date the application again, unless the household does not supply new information or information supplied by the household does not deviate from the available information obtained by the State agency.

In the interest of consistency, the Department proposes to adopt the procedures at 7 CFR 273.2(j)(1)(iv) for categorically eligible GA households when GA is authorized after the initial 30-day period. A provision is proposed to be added to 7 CFR 273.2(j)(3)(i) and 7 CFR 273.2(j)(3)(ii) to provide that a categorically eligible GA household will be entitled to food stamp benefits from the date of the original application, the beginning of the period for which GA benefits are authorized, or the effective date of the provision authorizing GA categorical eligibility, whichever is later. Benefits shall be considered authorized when they are paid, suspended, recouped, and when no benefits are issued because they are less than a minimum amount. In no event shall food stamps be issued under categorical eligibility for a month in which the household has been determined to be ineligible for receipt of any GA benefits for that month, unless the household is eligible for food stamp benefits as a non-GA case.

Suspension of Cases Entitled to Zero Benefits

Regulations at 7 CFR 273.2(j)(2)(vii)(F) require State agencies to suspend a PA/SSI case that is categorically eligible but entitled to no food stamp benefits (zero

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In the interest of consistency, the Department proposes to adopt the procedures at 7 CFR 273.2(j)(1)(iv) for categorically eligible GA households when GA is authorized after the initial 30-day period. A provision is proposed to be added to 7 CFR 273.2(j)(3)(i) and 7 CFR 273.2(j)(3)(ii) to provide that a categorically eligible GA household will be entitled to food stamp benefits from the date of the original application, the beginning of the period for which GA benefits are authorized, or the effective date of the provision authorizing GA categorical eligibility, whichever is later. Benefits shall be considered authorized when they are paid, suspended, recouped, and when no benefits are issued because they are less than a minimum amount. In no event shall food stamps be issued under categorical eligibility for a month in which the household has been determined to be ineligible for receipt of any GA benefits for that month, unless the household is eligible for food stamp benefits as a non-GA case.

Suspension of Cases Entitled to Zero Benefits

Regulations at 7 CFR 273.2(j)(2)(vii)(F) require State agencies to suspend a PA/SSI case that is categorically eligible but entitled to no food stamp benefits (zero

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benefit cases). The Department proposes to adopt the same provision for categorically eligible GA households. Because Congress specified that households in which all members receive GA from an appropriate program "shall be eligible to participate in the Food Stamp Program," the Department has no authority to allow denial of the applications of eligible households entitled to zero benefits. These households must be treated the same as PA/SSI zero benefit households. Therefore, the Department proposes to provide in § 273.2(j)(4)(iii) of this rule that the option given State agencies in 7 CFR 273.10(e)(2)(iii)(A) to deny a zero benefit case does not apply to categorically eligible GA households.

Claims

Another issue considered in development of the PA/SSI categorical eligibility provision was the effect on claims in the event a household certified on the basis of categorical eligibility was subsequently found to have been ineligible for PA or SSI. The preamble to the June 7, 1989 final regulations (54 FR 24513), explains that categorical eligibility cannot be rescinded retroactively. As long as everyone in the household received PA or SSI during a given period, the household would have been properly eligible for food stamps even if its PA or SSI eligibility later were determined to be incorrect. Therefore, no claim would be established on the basis of ineligibility.

Current rules at 7 CFR 273.18(c)(1)(ii) provide that for categorically eligible households, a claim will be established only when it can be computed on the basis of changed household net income and/or household size. Current regulations at 7 CFR 273.18(a)(1)(ii) provide that such a claim will be considered an inadvertent household error claim if the household made an unintentional error. In addition, 7 CFR 273.18(a)(1)(iii) provides that a claim calculated on the basis of net income or household size will also be considered an inadvertent household error claim if Social Security Administration action or failure to take action resulted in the household's categorical eligibility. Regulations at 7 CFR 273.18(b)(1) (iv) and (v) concerning criteria for establishing inadvertent household error claims contain similar provisions.

Regulations at 7 CFR 273.18 (a)(2) and (b)(2)(vi) provide that a claim will be handled as an administrative error claim if the overissuance was caused by State agency action or failure to take action which resulted in an incorrect determination of eligibility for PA, provided a claim can be calculated based on a change in net income and/or household size. The Department proposes to adopt the same policy for households categorically eligible because of receipt of GA, and proposes to amend 7 CFR 273.18(a)(2), 7 CFR 273.18(b)(1)(iv) and 7 CFR 273.18(b)(2)(vi) to include references to GA categorical eligibility.

Quality Control (QC)

The preamble to the final categorical eligibility rule for PA/SSI households (54 FR 24514) clarified that a QC variance would be cited if a household received an incorrect food stamp allotment based on incorrect information from the State agency's AFDC program. The same policy applies to GA benefit amounts provided by State or local GA offices. QC reviewers are responsible for verifying the earned and unearned income the household actually received, including the amount of GA benefits, even if the income has already been verified by the GA worker. If the agency providing the GA benefits provides incorrect information which results in an incorrect allotment, a variance will be cited. However, variances are not cited if incorrect information is provided by a Federal agency. Regulations at 7 CFR 275.12(d)(2)(v) provide that a variance resulting from State agency use of information concerning households or individuals received from any Federal source is excluded from the error determination, provided the information is correctly processed by the State agency.

Technical Amendments—§ 273.2(j)

Regulations for PA/SSI households at 7 CFR 273.2(j)(2)(v) do not address the case of a household member in a categorically eligible household who violates a work requirement but is not the head of household. The preamble to the final PA/SSI categorical eligibility rule dated June 7, 1989 (54 FR 24511) indicates that the interim rule had to be revised to take into account the change in procedures for handling the disqualification of households containing members who fail to comply with the work requirements of 7 CFR 273.7. Under the provisions of that section, if the head of household does not comply, the entire household is disqualified.

If the violation is committed by a member who is not the head of household, only the member is disqualified. The final regulation amended 7 CFR 273.2(j)(2) to clarify that households disqualified because the "head of the household" failed to comply with the work requirement of 7 CFR 273.7 shall not be considered categorically eligible. However, the rule did not amend 7 CFR 273.2(j)(2)(v) to provide that a person (not the head of household) disqualified for failure to comply with a requirement of 7 CFR 273.7 shall not be included as a member in any household that is otherwise categorically eligible. Therefore, this action proposes a technical amendment to add a paragraph § 273.2(j)(2)(v)(E) to 7 CFR 273.2(j)(2)(v) to address the disqualification of a household member for failure to comply with a work requirement. The Department also proposes to amend 7 CFR 273.2(j)(2)(v)(D) to correct an error in the reference. The correct citation is § 273.1(e), not § 273.2.

The Department's attention has been called to conflicting provisions of 7 CFR 273.2(j)(1)(iv) and 273.2(j)(1)(v). The last three sentences of 7 CFR 273.2(j)(1)(iv) relate to households that are jointly processed but not categorically eligible. These three sentences should have been removed in regulations implementing the provision of the Hunger Prevention Act reinstating mandatory joint processing of households that apply for PA and food stamps. The regulations, dated June 7, 1989 (54 FR 24522), added a new paragraph § 273.2(j)(1)(v) to specify that households whose PA/GA applications are denied or PA/GA eligibility terminated shall not be required to file a new application, but shall have their food stamp eligibility and benefits determined by available information from the PA/GA casefile, provided the information is sufficient for food stamp purposes. At that time, the last three sentences of paragraph § 273.2(j)(1)(iv) should have been removed. The Department proposes to correct that oversight in this rule.

Implementation

Section 1781 of the Leland Act requires that the provisions of this rulemaking be effective and implemented the first day of the month beginning 120 days after publication of implementing regulations and requires that regulations be published by specified dates. The law provides that implementing regulations for changes in the food stamp application and requiring combined food stamp/GA applications for certain households be published not later than October 1, 1991. The law also requires that regulations implementing the categorical eligibility requirement for recipients of State GA be issued not later than October 1, 1991 and for recipients of local GA not later than April 1, 1992, with implementation by State agencies the first day of the month beginning 120 days after publication of the regulation. In accordance with the Administrative Procedures Act, the Department is issuing this Notice of Proposed Rulemaking so that State agencies and other interested parties may comment on the proposed procedures for implementing provisions of the Leland Act.

List of Subjects in 7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food Stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

Accordingly, 7 CFR part 273 is amended as follows:

1. The authority citation for part 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2031.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

2. In § 273.2:

a. Paragraphs (b)(1)(v), (b)(1)(vi), and (b)(1)(vii) are amended by adding the words "or near" between the word "on" and the words "the front page" in each paragraph;

b. The heading of paragraph (b)(3) is amended by removing the word "Deviations" and adding "Design" in its place;

c. The second sentence of paragraph (b)(3) is amended by removing the words "PA/food stamp" and adding in their place "PA and/or GA and food stamp" and by adding after "computer system" the parenthetical phase "(including the use of on-line applications)";

d. The second through the ninth sentences of the introductory text of paragraph (j) are revised;

e. Paragraph (j)(1)(iv) is amended by removing the last three sentences;

f. The heading of paragraph (j)(2) is revised;

g. Paragraph (j)(2)(v)(D) is amended by removing the regulatory citation "§ 273.2" and adding in its place the citation "§ 273.1(e)" and by adding a new paragraph (j)(2)(v)(E);

h. The heading of paragraph (j)(3) is revised;

i. The introductory text of paragraph (j)(3)(i) and paragraphs (j)(3)(ii) and (j)(3)(iii) are revised.

j. Paragraph (j)(3)(iv) is removed; and paragraph (j)(4) is redesignated as paragraph (j)(5), and a new paragraph (j)(4) is added.

The revisions and additions read as follows:

§ 273.2 Application processing.

* * * * *

(j) PA, GA and Categorically Eligible Households. * * * The applications of these households shall be processed in accordance with the requirements of paragraph (j)(1) of this section, and their eligibility shall be based solely on food stamp eligibility criteria unless the household is categorically eligible, as provided in paragraph (j)(2) of this section. If a State has a single Statewide GA application, households in which all members are included in a State or local GA grant shall have their application for food stamps included in the GA application. State agencies shall use the joint application processing procedures described in paragraph (j)(1) of this section for GA recipients in accordance with paragraph (j)(3) of this section. The eligibility of jointly processed GA households shall be based solely on food stamp eligibility criteria unless the household is categorically eligible as provided in paragraph (j)(4) of this section. Individuals authorized to receive PA, SSI, or GA benefits but who have not yet received payment are considered recipients of benefits from those programs. In addition, persons are considered recipients of PA, SSI, or GA if their PA, SSI, or GA benefits are suspended or recouped. Persons entitled to PA, SSI, or GA benefits but who are not paid such benefits because the grant is less than a minimum benefit are also considered recipients. Persons not receiving GA, PA or SSI benefits who are entitled to Medicaid only shall not be considered recipients. The benefit levels of all households shall be based solely on food stamp criteria. Jointly processed and categorically eligible households shall be certified in accordance with Food Stamp Program procedural, timeliness, and notice requirements.

* * * * *

(2) *Categorically eligible PA and SSI households.* * * *

(v) * * *

(E) Ineligible because of failure to comply with a work requirement of § 273.7.

* * * * *

(3) *Applicant GA households.*

(i) State agencies shall use the joint application processing procedures in paragraph (j)(1) of this section for GA households, except for the effective date of categorical eligibility, when the criteria in paragraphs (j)(3)(i) (A) and (B) are met. Benefits for GA households that are categorically eligible, as provided in paragraphs (j)(1) and (j)(4) of this section, shall be provided from the date of the original food stamp application, the beginning of the period for which GA benefits are authorized, or the effective date of GA categorical eligibility in § 272.1(g), whichever is later:

* * * * *

(ii) State agencies in which the same eligibility workers do not process applications for GA benefits and PA or food stamp benefits, but otherwise meet the criteria in paragraph (j)(3)(i) of this section may, with FNS approval, jointly process GA and food stamp applications. If approved, State agencies shall adhere to the joint application processing procedures in paragraph (j)(1) of this section, except for the effective date of categorical eligibility for GA households. Benefits shall be provided to GA households that are categorically eligible, as provided in paragraph (j)(4) of this section, from the date of the original food stamp application, the beginning of the period for which GA benefits are authorized, or the effective date of GA categorical eligibility in § 272.1(g), whichever is later.

(iii) Requirements for combining the GA and food stamp applications or providing food stamp applications to GA applicant households depend on the extent to which applications and administration of the GA and food stamp programs are integrated.

(A) State agencies that have a single Statewide GA application shall include the food stamp application in the GA application and shall inform GA applicant households that they may be categorically eligible for food stamps. The joint GA/food stamp application shall clearly indicate that the household is providing information for both programs, is subject to the criminal penalties of both programs for making false statements, and waives the notice of adverse action as specified in § 273.13(b)(6). With FNS approval, the joint GA/food stamp application may be used for households applying only for food stamps.

(B) State agencies that do not have a single Statewide GA application but have local offices in which the same agency administers both GA and food stamps shall provide households applying for a local GA grant with a food stamp application at the time of their application for GA, along with information concerning how to apply for food stamps, and information about possible categorical eligibility.

(C) State agencies in States in which GA and the Food Stamp Program are administered by separate offices must advise all GA applicant households that they may be categorically eligible for food stamps. The State agency shall encourage the agencies administering

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(ii) State agencies in which the same eligibility workers do not process applications for GA benefits and PA or food stamp benefits, but otherwise meet the criteria in paragraph (j)(3)(i) of this section may, with FNS approval, jointly process GA and food stamp applications. If approved, State agencies shall adhere to the joint application processing procedures in paragraph (j)(1) of this section, except for the effective date of categorical eligibility for GA households. Benefits shall be provided to GA households that are categorically eligible, as provided in paragraph (j)(4) of this section, from the date of the original food stamp application, the beginning of the period for which GA benefits are authorized, or the effective date of GA categorical eligibility in § 272.1(g), whichever is later.

(iii) Requirements for combining the GA and food stamp applications or providing food stamp applications to GA applicant households depend on the extent to which applications and administration of the GA and food stamp programs are integrated.

(A) State agencies that have a single Statewide GA application shall include the food stamp application in the GA application and shall inform GA applicant households that they may be categorically eligible for food stamps. The joint GA/food stamp application shall clearly indicate that the household is providing information for both programs, is subject to the criminal penalties of both programs for making false statements, and waives the notice of adverse action as specified in § 273.13(b)(6). With FNS approval, the joint GA/food stamp application may be used for households applying only for food stamps.

(B) State agencies that do not have a single Statewide GA application but have local offices in which the same agency administers both GA and food stamps shall provide households applying for a local GA grant with a food stamp application at the time of their application for GA, along with information concerning how to apply for food stamps, and information about possible categorical eligibility.

(C) State agencies in States in which GA and the Food Stamp Program are administered by separate offices must advise all GA applicant households that they may be categorically eligible for food stamps. The State agency shall encourage the agencies administering

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GA to provide applicant households with food stamp applications. State agencies may allow GA applicants to leave a food stamp application at the GA office which contains, at a minimum, the applicant's name, address and signature. If the GA office accepts a food stamp application, it is responsible for forwarding the application the same day to the appropriate food stamp office for processing. The procedural and timeliness requirements that apply to the application process shall begin when the food stamp office receives the application. The GA office may advise households that they may receive faster service if they take the application directly to the food stamp office.

(D) In areas where GA programs are administered by agencies such as the Department of the Interior's Bureau of Indian Affairs, the State agency shall endeavor to gain their cooperation in referring GA applicants to the food stamp program. Where possible, this referral should consist of informing the GA applicants of their potential eligibility for food stamp benefits, providing them with food stamp applications and directing them to the local food stamp offices.

(4) *Categorically eligible GA households.* Households in which each member receives benefits from a State or local GA program which meets the criteria for conferring categorical eligibility in paragraph (j)(4)(i) of this section shall be categorically eligible for food stamps unless the individual or household is ineligible as specified in paragraph (j)(4)(iv) and (j)(4)(v) of this section.

(i) *Certification of appropriate programs.* Programs that meet the criteria in paragraphs (j)(4)(i) (A) through (E) shall be considered appropriate for conferring categorical eligibility upon recipients of benefits from the programs. If a program does not meet all of these criteria, the State agency may request certification of the program by FNS as one that is appropriate for categorical eligibility. In requesting certification, the State agency shall submit to the appropriate FNS regional office a description of the program containing, at a minimum, the following information: The type of assistance provided, income and resource eligibility limits, and the period for which GA is provided.

(A) The program must have income and resource eligibility standards which may be separate from or included in the benefit computation;

(B) The program must not serve a population whose gross income exceeds 130 percent of the poverty level, based on the Federal income poverty levels established as provided in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2);

(C) The program must not serve a population whose resources (as determined by the program) exceed $2,000, including liquid resources and a portion of the value of automobiles (excluding, at the option of the GA program, the value of low-cost automobiles);

(D) The program must provide GA benefits as defined in § 271.2 of this part; and

(E) The program must provide benefits for at least three consecutive months without reapplication.

(ii) *Verification requirements.* In determining whether a household is categorically eligible, the State agency shall verify that each member receives PA, SSI, or GA benefits from a program that meets the criteria in paragraph (j)(4)(i) or that has been certified by FNS as an appropriate program and that it includes no individuals who have been disqualified as provided in paragraph (j)(4)(iv) or (j)(2)(v) of this section. The State agency shall also verify household composition if it is questionable, in accordance with § 273.2(f), in order to determine that the household meets the definition of a household in § 273.1(a).

(iii) *Deemed eligibility factors.* When determining eligibility for a categorically eligible household, all Food Stamp Program requirements apply except the following:

(A) Resources. None of the provisions of § 273.8 apply to categorically eligible households except the second sentence of § 273.8(a) pertaining to categorical eligibility and § 273.8(i) concerning transfer of resources. The provision in § 273.10(b) regarding resources available the time of the interview does not apply to categorically eligible households.

(B) Gross and net income limits. None of the provisions in § 273.9(a) relating to income eligibility standards apply to categorically eligible households, except the fourth sentence pertaining to categorical eligibility. The provisions in § 273.10(a)(1)(i) and § 273.10(c) relating to the income eligibility determination also do not apply to categorically eligible households.

(C) Zero benefit households. The provision of § 273.10(e)(2)(iii)(A) which allows a State agency to deny the application of a household with three or more members entitled to no benefits because its net income exceeds the level at which benefits are issued does not apply to categorically eligible households. All eligible households of one or two persons must be provided the minimum benefit, as required by § 273.10(e)(2)(ii)(C).

(D) Residency.

(E) Sponsored alien information.

(iv) *Ineligible household members.* No person shall be included as a member of an otherwise categorically eligible household if that person is:

(A) An ineligible alien, as defined in § 273.4;

(B) An ineligible student, as defined in § 273.5;

(C) Disqualified for failure to provide or apply for an SSN, as required by § 273.6;

(D) A household member, not the head of household, disqualified for failure to comply with a work requirement of § 273.7;

(E) Disqualified for intentional program violation, as required by § 273.16;

(F) An SSI recipient in a cash-out State, as defined in § 273.20; or

(G) An individual who is institutionalized in a nonexempt facility, as defined in § 273.1(e).

(v) *Ineligible households.* A household shall not be considered categorically eligible if:

(A) It refuses to cooperate in providing information to the State agency that is necessary for making a determination of its eligibility or for completing any subsequent review of its eligibility, as described in § 273.2(d) and § 273.21(m)(1)(ii);

(B) The household is disqualified because the head of household fails to comply with a work requirement of § 273.7;

(C) The household is ineligible under the striker provisions of § 273.1(g); or

(D) The household is ineligible because it knowingly transferred resources for the purpose of qualifying or attempting to qualify for the Program, as provided in § 273.8(i).

(vi) *Combination households.* Households consisting entirely of recipients of PA, SSI and/or GA from a program that meets the requirements of § 273.2(j)(4)(i) shall be categorically eligible in accordance with the provisions of paragraphs (j)(2)(iii) and (j)(2)(v) of this section for members receiving PA or SSI and provisions of paragraphs (j)(4) (iv) and (v) of this section for members receiving GA.

* * * * *

§ 273.8 [Amended]

3. In § 273.8, the second sentence of paragraph (a) is amended by adding the words "or § 273.2(j)(4)" after the regulatory citation "§ 273.2(j)(2)".

§ 273.9 [Amended]

4. In § 273.9, the fourth sentence of the introductory text of paragraph (a) is

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amended by adding the words "or § 273.2(j)(4)" after the regulatory citation "§ 273.2(j)(2)".

§ 273.10 [Amended]

5. In § 273.10, the third sentence of paragraph (g)(1)(ii) is amended by removing the words "NPA food stamps are" and adding in their place the words "food stamp application is" and by adding the words "or benefits from a State or local GA program" after the words "PA and/or SSI benefits".

§ 273.18 [Amended]

6. In § 273.18:

a. paragraph (a)(2) is amended by adding the words "or general assistance" after "public assistance";

b. paragraph (b)(1)(iv) is amended by adding ", or GA" after "PA"; and

c. paragraph (b)(2)(vi) is amended by adding the words "or GA" after "PA".

Dated: August 2, 1991.

Betty Jo Nelsen,

Administrator.

[FR Doc. 91-18903 Filed 8-8-91; 11:08 am]

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7 CFR Parts 273, 274, and 280

[Amendment No. 338]

Food Stamp Program: Income, Deduction and Disaster Provisions From the Mickey Leland Memorial Domestic Hunger Relief Act

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Food Stamp Program regulations to implement three Program provisions contained in the Mickey Leland Memorial Domestic Hunger Relief Act. The provisions of the Leland Act which are addressed in this proposed rule are: (1) Simplifying resource and eligibility determinations by expanding the criteria by which a resource can be considered inaccessible; (2) using a standard shelter expense estimate in lieu of verification for homeless households with shelter costs; and (3) providing for issuance of food stamp benefits in disasters. The proposed rule should simplify administration of the Food Stamp Program by State and local agencies.

DATES: Comments must be received on or before September 12, 1991 to be assured of consideration.

ADDRESSES: Comments should be submitted to Judith M. Seymour, Eligibility and Certification Regulation Section, Certification Policy Branch, Program Development Division, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302. Comments can also be sent via fax to Ms. Seymour at (703) 756-4354. All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, room 720.

FOR FURTHER INFORMATION CONTACT: Questions regarding this proposed rulemaking should be addressed to Ms. Seymour at the above address or by telephone at (703) 756-3496.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291/Secretary's Memorandum 1521-1

This proposed rule has been reviewed under Executive Order 12291 and the Secretary of Agriculture Memorandum No. 1521-1. The Department has classified this rule as nonmajor. The rule will not have an annual effect on the economy of $100 million or more. The rule will have little or no effect on costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions. Further, the rule will not have significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the proposed rule and related notice(s) to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601-612). Betty Jo Nelsen, Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. State and local agencies that administer the Program will be the most affected. Food Stamp applicants and recipients will be affected due to changes in shelter deductions, allowable resource limits, and the exclusion of certain payments previously counted as income for Food Stamp Program purposes.

Paperwork Reduction Act

This action does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Background

The Mickey Leland Domestic Hunger Relief Act (title XVII, Public Law 101-624, 104 Stat. 3783) made several changes to the Food Stamp Act of 1977, as amended (7 U.S.C. 2011 et seq.). This proposed rulemaking pertains to several provisions of the Leland Act which affect homeless families. It also simplifies certain eligibility determination procedures to improve the administration of the Food Stamp Program, and addresses issuance of food stamps to replace food destroyed in a disaster. These provisions are discussed below.

Simplifying Resource and Eligibility Determinations—7 CFR 273.8

Currently, regulations at 7 CFR 273.8(c) describe both liquid and non-liquid resources that are counted when determining a household's eligibility for food stamps. Nonliquid resources, such as land, buildings, and licensed and unlicensed vehicles, are included as resources because they can be converted to cash. However, not all resources can be easily sold. An example of such property is "heir property" where heirs inherit undivided fractional interests in a decedent's property and the value of the fractional interest in the property is less than the cost of selling the property.

At the present time, property of this kind poses significant problems for both State agencies administering the Food Stamp Program and households applying for benefits. State agencies may be compelled to seek verification that the household's interest in the property has no fair market value. Moreover, the State agencies may be faced with questions of state property and probate law. Current regulations do not address heir property specifically; rather the regulations focus in general on the accessibility/inaccessibility of resources.

Section 1719 of the Leland Act amends section 5(g) of the Food Stamp Act to address the problem of resource determination. Section 1719 requires the Department to promulgate regulations by which State agencies shall establish standards for excluding resources that,

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as a practical matter, the household is unlikely to be able to sell for any significant return because the household's interest is relatively slight or because the cost of selling the household's interest would be relatively great. Resources so identified would be excluded as inaccessible resources for Food Stamp Program purposes.

The House Committee report on the Leland Act suggests that State agencies may wish to consult with legal or other experts who can provide the best general guidance in identifying types of resources that are unlikely to produce a significant cash return after sales and legal charges. Further, the House report instructs the Department to promulgate regulations that would ensure that the State agencies' standards are clear and, to the extent practicable, are applied uniformly throughout the State. (House Report No. 101–569 part 1, 101st Cong., 2nd Sess., July 3, 1990, p. 430.)

In order to comply with section 1719 of the Leland Act, the Department is proposing to amend 7 CFR 273.8(e) to require State agencies to develop standards for identifying those kinds of resources that, as a practical matter, can be considered inaccessible as the household is unlikely to be able to sell them for any significant return because the household's interest is relatively slight or because the cost of selling the household's interest would be greater than the value of the resource. The Department is proposing to exclude a resource if it cannot be sold for $2,000 or more and the cost of selling the resource is at least 75% or more of the possible sale price. This definition of "significant return" seeks to meet the legislative intent to simplify resource determination. The new standards set by each State must be clear and, to the extent practical, applied uniformly throughout the State.

Estimates in Lieu of Verification for Homeless Households With Shelter Costs—7 CFR 273.9

Present rules regarding the determination of allowable shelter costs are routinely applied to households in a fixed living situation but may pose problems when determining allowable shelter costs of homeless households. While some homeless households often have little or no shelter costs, others can incur significant shelter expenses. If the household is living in a homeless shelter, either public or private, they may or may not be paying a fee to stay there. Some homeless households may be "doubling up" with family and friends until they can find permanent accommodations. In such situations, they may be allowed to stay at no cost or charged for part of the rent and/or utility costs. When they do pay for part of the rent and/or utility costs, the household may have little or no documentation to verify shelter payments. Determining shelter costs for homeless households is further complicated by the fact that their expenses may vary month-to-month. For example, a household may be in a relative's home for part of a month, and in a homeless shelter for the other part.

Section 1737 of the Leland Act amends section 11(e)(3)(E) of the Food Stamp Act to require the Secretary to prescribe rules requiring State agencies to develop standard estimates of the shelter expenses that may reasonably be expected to be incurred by households in which all members are homeless but which are not receiving free shelter throughout the month. Section 1737 also provides that the Secretary may issue regulations to preclude the use of the standard shelter estimate for homeless households with extremely low shelter costs. A State agency would use the estimates in determining the Food Stamp allotments to the households, unless a household verifies higher expenses.

Upon reviewing section 1737 in preparing the proposed rule, the Department believes it should provide specific regulatory guidelines for State agencies in this area as it could be difficult for each State agency to gather the data necessary to obtain shelter cost estimates and the number of homeless households eligible for food stamps in its State which would enable State agencies to develop standard shelter estimates. Under the proposed regulation State agencies may opt to gather the data necessary to obtain shelter cost estimates for homeless households. The maximum shelter cap will be an amount equal to 50% percent of the FY 1991 maximum shelter deduction for non-disabled/non-elderly households applicable for use in a State. The Department is interested in obtaining data or survey information from State agencies on shelter costs for homeless households.

Accordingly, the Department is proposing to amend 7 CFR 273.9(d)(5) by adding a new paragraph (B) that provides for a standard shelter expense estimate that is equal to 50 percent of the Food Stamp Program's FY 1991 maximum shelter cap for non-disabled/non-elderly households ($93). The standard shelter expense estimate would apply only to those households which do incur a shelter-related expense during the month. Households which receive free housing and utilities throughout the month shall not be eligible for the standard shelter expense estimate deduction. Moreover, homeless households with shelter costs higher than the standard shelter expense estimate will need to verify these shelter costs if they want to have such costs used in calculating their entitlement to an excess shelter deduction. If there is no such verification, the standard shelter expense estimate will be used.

Section 1737 of the Leland Act also presents the Department with the option of developing rules that would preclude homeless households with low shelter costs from claiming the standard shelter expense estimate. The House Committee report on the Leland Act states that the homeless population is often ill-equipped to deal with the complexity of the food stamp application process. Thus, one of the purposes of section 1737 is to reduce the paperwork for homeless households in relation to shelter expenses. (House Report No.101–569 part 1, 101st Cong., 2nd Sess., July 3, 1990, p.425). For this reason, the Department has decided not to issue regulations to preclude homeless households with extremely low shelter costs from claiming the standard shelter expense estimate. Homeless households claiming higher shelter expenses will be given the standard shelter expense estimate unless the household verifies the higher shelter expenses. By using the standard shelter expense estimate for all homeless households with shelter expenses, the Department believes Program administration would be simplified and the paperwork requirements for the affected homeless households would be lessened.

Disaster Provision of the Leland Act

Section 1720 of the Leland Act amended section 5(h) of the Food Stamp Act to require the Secretary to issue regulations providing emergency food stamp benefits to eligible households to replace food destroyed in a disaster. The emergency allotments would be equal to the value of food actually lost in a disaster up to a limit approved by the Secretary not greater than the applicable maximum monthly allotment for the household size. Section 1720 also provides that the Secretary shall adjust reporting and other application requirements to be consistent with what is practicable under actual conditions in an affected area, taking into consideration the availability of the State agency's offices and personnel and any damage to or disruption of transportation and communication facilities. These requirements are consistent with current policy and, by their nature, can only be implemented through evaluation of the circumstances associated with a specific disaster. Therefore, no new regulatory language is being proposed to implement section 5(h)(3)(B) of the Food Stamp Act.

Accordingly, the Department is proposing to add a new paragraph to 7 CFR 280.1 to provide for emergency allotments to eligible households to replace food destroyed in a disaster. The value of the emergency allotments would be equal to the value of food actually lost and shall not be greater than the applicable maximum monthly food stamp allotment for the household size. Conforming language is also being added to 7 CFR 274.6(b)(3).

List of Subjects:

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs-social programs, Penalties, Records, Reporting and recordkeeping requirements, Social security, Students.

7 CFR Part 274

Administrative practice and procedure, Food stamps, Fraud, Grant program-social programs, Reporting and recordkeeping requirements.

7 CFR Part 280

Disaster assistance, Food stamps, Grant programs-social programs, Indians.

Accordingly, 7 CFR parts 273, 274, and 280 are proposed to be amended as follows:

(1) The authority citation of parts 273, 274 and 280 continues to read as follows:

Authority: 7 U.S.C. 2011–2031.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

2. In § 273.8, a new paragraph (e)(18) is added to read as follows:

§ 273.8 Resource eligibility standards.

* * * * *

(e) *Exclusions from resources.* * * *

(18) Resources that households are unable to sell for any significant return because the household's interest is relatively slight or because the cost of selling the resource would be relatively great. These excluded resources are those with an expected sale price of $2,000 or less where the cost of selling the resource exceeds 75% of the expected sale price. State agencies shall develop clear and uniform standards for identifying the costs likely to be associated with the sale of various types of resources and the likely gross value of such resources as a guide for recipients and certification workers to follow in determining whether or not a resource is accessible.

* * * * *

3. In § 273.9 paragraph (d)(5), introductory text and paragraphs (d)(5) (i)–(v) are redesignated as paragraph (d)(5) (i) introductory text and paragraphs (d)(5)(i) (A)–(E) and a new paragraph (d)(5)(ii) is added.

The addition reads as follows:

§ 273.9 Income and deductions.

* * * * *

(d) *Income deductions.* * * *

(5) *Shelter costs.* * * *

(ii) State agencies shall use a standard shelter expense estimate for homeless households where all members are homeless and are not receiving free shelter throughout the calendar month. If State agencies opt to develop their own standard shelter expense estimate, the estimate must be consistent with area shelter costs. If the State agency does not develop its own standard shelter expense estimate, then the standard shelter expense estimate shall be an amount equal to 50 percent of the Food Stamp Program's FY 1991 maximum shelter cap for non-elderly, non-disabled households ($93). All homeless households which incur shelter costs shall be eligible for the standard shelter expense estimate. The standard shelter expense estimate shall be used in calculating the shelter deduction for homeless households. Homeless households claiming shelter costs higher than the standard shelter expense estimate shall be given the shelter estimate as the shelter deduction unless the higher shelter costs are verified. Homeless households which incur no shelter costs throughout the month shall not be eligible for the standard shelter expense estimate.

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PART 274—ISSUANCE AND USE OF COUPONS

4. In § 274.6, paragraph (b)(3) is amended by adding the words "Except for households certified under 7 CFR 280," to the beginning of the first sentence.

PART 280—EMERGENCY FOOD ASSISTANCE FOR VICTIMS OF DISASTERS

5. Section 280.1 is amended by adding two new sentences to the end of the section to read as follows:

§ 280.1 Interim disaster procedures.

* * * In addition to establishing temporary emergency standards of eligibility, the Secretary shall provide for emergency allotments to eligible households to replace food destroyed in a disaster. Such emergency allotments would be equal to the value of the food actually lost in such disaster but not greater than the applicable maximum monthly allotment for the household size.

Dated: August 2, 1991.

Betty Jo Nelsen,

Administrator.

[FR Doc. 91-18902 Filed 8-8-91; 11:09 am]

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PART 274—ISSUANCE AND USE OF COUPONS

4. In § 274.6, paragraph (b)(3) is amended by adding the words "Except for households certified under 7 CFR 280," to the beginning of the first sentence.

PART 280—EMERGENCY FOOD ASSISTANCE FOR VICTIMS OF DISASTERS

5. Section 280.1 is amended by adding two new sentences to the end of the section to read as follows:

§ 280.1 Interim disaster procedures.

* * * In addition to establishing temporary emergency standards of eligibility, the Secretary shall provide for emergency allotments to eligible households to replace food destroyed in a disaster. Such emergency allotments would be equal to the value of the food actually lost in such disaster but not greater than the applicable maximum monthly allotment for the household size.

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[FR Doc. 91-18902 Filed 8-8-91; 11:09 am]

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federal register

Tuesday
August 13, 1991

Part IV

Department of Education

Final Priorities for the National Institute on Disability and Rehabilitation Research; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Final Priorities

AGENCY: Department of Education.

ACTION: Notice of final priorities for the National Institute on Disability and Rehabilitation Research.

SUMMARY: The Secretary of Education announces final funding priorities under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1991–1992 for a program of activities to support the implementation of the Americans With Disabilities Act (ADA).

EFFECTIVE DATE: These priorities take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: David Esquith, National Institute on Disability and Rehabilitation Research (Telephone: (202) 732–5801). Deaf and hearing-impaired individuals may call (202) 732–5316 for TDD services.

SUPPLEMENTARY INFORMATION: Authority for the dissemination of information that will assist in improving the lives of individuals with disabilities is contained in sections 202 and 204 of the Rehabilitation Act of 1973, as amended. The specific provisions regarding the establishment of the projects that will assist in the implementation of the ADA are included in the House and Senate Reports accompanying the Appropriations bills for the Departments of Labor, Health and Human Services, and Education for Fiscal Year 1991.

On May 21, 1991, the Secretary published proposed priorities for this program in the **Federal Register** at 56 FR 23336. The Department received thirty-nine comments, most of which were supportive of the proposed priorities. Several commenters made suggestions for the operation of the program that NIDRR will implement through the administration of the program. A summary of these comments, and the Secretary's responses to them, are included as an appendix to this notice. No changes were made to the priorities as published.

NIDRR announces the priorities for projects and the special selection criteria for these awards in this notice. The projects will be supported under the Knowledge Dissemination and Utilization Program. Under this program, awards are made to public and private nonprofit and for-profit agencies and organizations, including institutions of higher education, Indian tribes, and tribal organizations. NIDRR may make awards for up to 60 months, through grants or cooperative agreements. NIDRR regulations authorize the Secretary to establish priorities by reserving funds to support particular activities (see 34 CFR 355.32). NIDRR announces the following absolute priorities, as authorized by the Education Department General Administrative Regulations (EDGAR) in § 75.105(c)(3). Only applications that are responsive to these priorities can be funded. The publication of these funding priorities does not bind the Department of Education to fund projects under any or all of these priorities, except as otherwise provided by statute. Funding of particular projects depends on the quality of the applications received and the funds available.

In this notice, NIDRR announces priorities for three types of projects. There are two priorities to establish national peer training projects to enhance the capacity of persons with disabilities and their organizations to facilitate the implementation of the ADA; there are three priorities for projects to develop and test technical assistance and training programs in three areas of the Act; and a priority that proposes ten Regional Disability and Business Accommodation Centers (RDBACs) that would focus on providing information and technical assistance to employers and other covered entities to facilitate appropriate implementation of the ADA, successful employment outcomes for individuals with disabilities, and greater accessibility in public accommodations.

Final Priorities

Background

Since its establishment in 1978, the National Institute on Disability and Rehabilitation Research (NIDRR; formerly the National Institute of Handicapped Research) has supported research to improve the employment status and promote the independence of persons with disabilities. Along with other research initiatives, NIDRR has supported research addressing accessible environments, assistive technology, job accommodation strategies, worksite modifications, information dissemination and utilization techniques, independent living, empowerment and self-representation, and the nature of various specific disabilities.

Public Law 101–336, the Americans with Disabilities Act (ADA), was enacted on July 26, 1990, and prohibits discrimination against individuals with disabilities in employment, public accommodations, transportation, State and local government services, and telecommunications. The ADA requires a number of Federal agencies to issue regulations and undertake technical assistance efforts. In most cases, the ADA requires responsible agencies to issue their final regulations within one year of the date of enactment and develop technical assistance manuals and make them available no later than 180 days after the final regulations have been published. Because of NIDRR's experience in supporting information dissemination and technical assistance on issues related to disability, and its information base of knowledge resulting from NIDRR-supported research and demonstration efforts, Congress provided additional funds to NIDRR for FY 1991 to support a technical assistance initiative related to the implementation of the ADA.

The Senate Report accompanying the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriation Bill, 1991 (Senate Report No. 101–516) frames NIDRR's task in broad terms, referring to funding for "technical assistance related to implementation of the Americans with Disabilities Act." The House Appropriations Report (H.R. 101–591) is more specific and oriented to employment, directing NIDRR to fund "* * * up to ten new regional centers on disability. The primary focus of this new program is to ensure that information and expertise are available on how to make reasonable accommodations for disabled employees in the work setting." The Conference Report did not discuss the issue.

As suggested by the House in its 1991 Appropriations Report, NIDRR has consulted with a range of relevant Federal agencies, including the Department of Justice, the Equal Employment Opportunity Commission, the President's Committee on the Employment of People with Disabilities, and the National Council on Disability, as well as with representatives from business and disability organizations, to develop a responsive and meaningful program that will complement the planned efforts of other public and private agencies. These priorities were developed on the basis of these consultations along with references to NIDRR's existing knowledge base of disability-related information. NIDRR intends to continue to coordinate

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As suggested by the House in its 1991 Appropriations Report, NIDRR has consulted with a range of relevant Federal agencies, including the Department of Justice, the Equal Employment Opportunity Commission, the President's Committee on the Employment of People with Disabilities, and the National Council on Disability, as well as with representatives from business and disability organizations, to develop a responsive and meaningful program that will complement the planned efforts of other public and private agencies. These priorities were developed on the basis of these consultations along with references to NIDRR's existing knowledge base of disability-related information. NIDRR intends to continue to coordinate activities under this program with other Federal agencies and with other public and private initiatives to implement the ADA.

In response to the Congressional directives and the needs expressed by the representatives of disability and business organizations that NIDRR has consulted, NIDRR will establish a program of regional centers—the Regional Disability and Business Accommodation Centers (RDBACs)—that will address a wide range of issues related to implementation of the ADA, but will place particular emphasis on employment and public accommodation issues. At the same time, NIDRR will support three projects to produce a core set of training materials, resources, and references that will be used by the centers in their technical assistance efforts and by others providing training and technical assistance related to the employment, public accommodations, and telecommunications requirements of the ADA. In addition, NIDRR will support two national peer training projects aimed at enhancing the knowledge of the ADA and, thereby, the capacity of organizations of and for persons with disabilities, as well as the capacities of individuals with disabilities, to facilitate the implementation of the ADA.

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  Peer and Family Training Network
Materials Development Projects
  Accessibility/Public Accommodation
  Employment
  Communication and Telecommunication
Regional Disability and Business Accommodation Centers

Priorities for National Peer Training Projects

NIDRR believes that the full potential of the ADA can be realized only if the individuals who are protected under the Act are aware of the provisions of the law and of their rights and responsibilities under the Act. Further, persons with disabilities and organizations of and for individuals with disabilities have both an incentive to see the law successfully implemented and the experience and knowledge to facilitate that implementation.

Applicants for peer training projects must present a plan that describes a national target population, equitably dispersed geographically throughout the nation, for the training, presents a method for reaching a diverse target population, describes types of training approaches, which may include training-the-trainers, multimedia designs, providing training at national, State, or regional meetings of organizations representing the target population, or other approaches that maximize impact with the available resources. Applicants must detail their plans for dissemination and utilization of their products as well as evaluation. Applicants for these projects must provide evidence that they include individuals with disabilities or their family members or representatives in all aspects of the planning, management, implementation, and evaluation of the training activity. Applicants must identify key staff that are available and will be assigned as project staff. Grantees will be expected to submit reports and materials to NIDRR, the National Rehabilitation Information Center and other appropriate clearinghouses.

Peer Training for Local Capacity-Building in Independent Living Centers

It is imperative that we take advantage of existing resources in local communities and develop their capacity to facilitate the smooth implementation of the ADA. There are over 400 Independent Living centers (ILCs) in the United States that emphasize consumer control and peer services. These ILCs are natural resources that will have an awareness of the ADA and a strong incentive to promote its full implementation. However, ILC staff, peer associates, and volunteers can be more effective in these ADA facilitation roles if they develop a solid expertise.

Applicants for funding under this priority must provide a plan for peer training that maximizes the roles of individuals with disabilities in the planning and operation of the training program. Applicants must provide evidence of their ability to have a nationwide scope, and must demonstrate the availability of staff and facilities to begin immediately to implement the grant activities. The project must develop training materials and curricula that applies to all individuals with disabilities who are covered under the ADA and which can be used by all ILCs.

A project to be funded under this priority will:

- Provide training to ILC staff, associates, and volunteers on the requirements of the ADA;
- Provide the ILC staff, associates, and volunteers with general awareness training on types of accommodations that can be made, innovative approaches to accommodations, and low cost accommodations;
- Provide training and technical assistance to ILC staff, associates, and volunteers to enhance their capacity to deliver training, information, publicity, and educational programs in their communities about the ADA:
- Provide follow-up and reinforcement of training, consultation, or technical assistance to ILC staff, associates, and volunteers as needed by trainees;
- Assist ILC staff, associates, and volunteers as needed by trainees to select and maintain resource files of instructional materials for various types of audiences, such as individuals with various types of disabilities and their families or representatives and service providers from various service systems, including in these resource files videotapes, audiocassettes, visual presentations, posters, brochures, computer demonstrations, and other media presentations;
- Provide training to ILC staff, associates, and volunteers in various methods to promote awareness and implementation of the ADA, such as displays of model accommodations in malls or at fairs, recognition and award ceremonies, use of local media presentations, and poster or essay contests;
- Provide training to ILC staff, associates, and volunteers on ways to use existing community facilities and resources, such as community colleges, voluntary associations, or public access channels to promote implementation of the ADA;
- Begin training of ILC staff, associates, and volunteers within three months of the grant award and have trained an adequate number of ILCs that can respond to community needs at the effective dates of specific titles of the Act; and
- Coordinate their technical assistance and training activities with those of other agencies that provide technical assistance on the ADA, such as the Equal Employment Opportunity Commission and the Department of Justice, the Architectural and Transportation Barriers Compliance Board (ATBCB) and with the Peer and Family Training Network project, the Materials Development Projects, and the RDBACs to be funded under these priorities.

Peer and Family Training Network

In order for the potential benefits of the ADA to be fully realized, the intended beneficiaries must be aware of the provisions of the statute, the practical interpretation of those provisions, methods to facilitate implementation of the statute, and sources of assistance. This priority is intended to accomplish those objectives

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by developing a peer and family training network in which individuals with disabilities or their parents or other family members will provide training to their peers throughout the country to enhance their awareness of: (1) The provisions of the ADA; (2) their rights and responsibilities under the Act; (3) effective ways in which the employment, public accommodations, and telecommunication provisions of the Act can be implemented; and (4) local and national resources available for expert assistance in resolving issues such as interpretation, reasonable accommodations, or technical aspects of compliance, that may arise concerning the implementation of the provisions of the ADA.

This training network must apply innovative approaches to the delivery of training, including training-the-trainers, training the target population in such settings as organization meetings and conventions, supported employment programs, school transition programs, parent and advisory groups involved in special education programs, parent outreach projects, and similar programs that reach the target population. The project shall prepare individuals with disabilities and their family members or representatives to develop their own skills and awareness, and also prepare them to train other groups in the community, including peers and covered entities. The training may include developing the capacity of local disability organizations to serve as community resources.

Applicants for support under this project must demonstrate representation of and an ability to reach individuals with various types of disabilities—including developmental, cognitive, emotional, physical, and sensory impairments—and their families. Applicants may propose various effective means of delivering the training, including through subcontracts that are made with organizations that also represent individuals with disabilities and their families. The training provided for under this priority must begin within three months of the grant award and additional training and related activities will be phased in over the three year period of the grant.

A project to be funded under this priority will:

- Provide training to individuals with disabilities and their families, by individuals with disabilities or family members, on the provisions of the ADA and on methods to facilitate the implementation of the ADA;
- Train individuals with disabilities and their family members to become trainers of their peers and of other key individuals in their communities, including employers and public or private service providers and administrators;
- Develop the capacity of organizations of and for individuals with disabilities to provide information, training, technical assistance, and education about the ADA within their communities, particularly to persons with disabilities and their families, or to organizations representing individuals with disabilities or those who provide services to them;
- Coordinate and cooperate with the Peer Training for Local Capacity-Building in Independent Living Centers project, the Materials Development Projects, and the RDBACs described in this notice, and share information with these and other relevant entities; and
- Coordinate their technical assistance and training activities with those of other agencies that provide technical assistance on the ADA, such as the Equal Employment Opportunity Commission, the Department of Justice, and the Architectural and Transportation Barriers Compliance Board.

Selection Criteria

The regulations that apply to the Knowledge Dissemination and Utilization program, 34 CFR 355, apply to these priorities. However, because of the specialized nature of these activities and the potential importance of these projects to the successful implementation of the Americans with Disabilities Act, NIDRR has added several factors to the selection criteria in 34 CFR 350.34 by which applications under these priorities will be evaluated. NIDRR has added 60 points to the selection criteria for these projects, so that the maximum possible score for an application in § 350.33(e) is increased to 160 points. NIDRR has distributed the additional points as follows:

(1) The applicant demonstrates that individuals with disabilities, or where appropriate, their family members will plan, manage, implement, and evaluate the project. (Weight: 4; Total Points: 20)

(2) The applicant proposes an effective approach to the timely delivery of training in formats and styles that are accessible to individuals with a range of sensory, communication, cognitive, and learning disabilities. (Weight: 4; Total Points: 20)

(3) The applicant demonstrates an ability to begin immediate project operations, demonstrates that key staff and facilities are currently available, and demonstrates an ability to achieve a comprehensive nationwide program within the three year period of the project. (Weight: 4; Total Points: 20)

(Approved by the Office of Management and Budget under Control No. 1820–0027)

Priorities for Materials Development Projects

In order to ensure that the RDBACs have high quality, uniform materials to distribute and to make accessible training materials available to various segments of the population that need to know about the ADA, NIDRR announces priorities for projects to develop and test new informational and instructional materials.

NIDRR expects that the target audiences for the RDBACs, as well as the other populations likely to make use of these materials, will have a wide range of information processing styles and interests. As a result, the materials that the RDBACs distribute and the training that they provide must cover a broad range of topics, use a number of different visual, auditory, and experiential media, be available in a variety of accessible formats, and be presented so as to be understandable to a range of target audiences with cognitive or linguistic differences. In order to ensure the usefulness and appropriateness of the materials developed by these projects, NIDRR requires that persons with disabilities and their families must be involved in the development of these materials and resources to the maximum extent feasible.

NIDRR will support three two-year grants or cooperative agreements for materials and resource development and testing. These materials and resources will be available to the RDBACs and to the national peer training projects for reproduction to be distributed and disseminated regionally and nationally. They will also be available for use in further public information, technical assistance, and training activities conducted by the grantees or by other interested entities. Grantees will be expected to submit reports and materials to NIDRR, the National Rehabilitation Information Center and other appropriate clearinghouses.

Using a variety of media, these grantees will develop materials and resources for use by, and with, employers, disability organizations, commercial establishments, labor unions, State and local government agencies, service providers, voluntary organizations, and the general public. In addition, the grantees will develop training materials that can be used by trainers, employers, and disability groups. These materials and resources

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NIDRR will support three two-year grants or cooperative agreements for materials and resource development and testing. These materials and resources will be available to the RDBACs and to the national peer training projects for reproduction to be distributed and disseminated regionally and nationally. They will also be available for use in further public information, technical assistance, and training activities conducted by the grantees or by other interested entities. Grantees will be expected to submit reports and materials to NIDRR, the National Rehabilitation Information Center and other appropriate clearinghouses.

Using a variety of media, these grantees will develop materials and resources for use by, and with, employers, disability organizations, commercial establishments, labor unions, State and local government agencies, service providers, voluntary organizations, and the general public. In addition, the grantees will develop training materials that can be used by trainers, employers, and disability groups. These materials and resources

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will include, but not be limited to: Checklists, self-assessment guides, videotapes, audiotapes, self-guided instructional materials, information guides, manuals, curricula, and reference lists. The products of the grants must be developed in a variety of media and formats so as to be understandable by a wide audience with varying information processing styles and abilities. Each of the materials developed by the grants must be field-tested prior to final production. In order for these materials to have maximum impact on the implementation of the ADA, NIDRR requires that grantees be capable of producing high quality materials in a short time period, and be able to complete initial materials in the first three months of the projects.

NIDRR announces three priority areas for materials development projects and intends to make one award in each of the three areas: (1) Accessibility and public accommodation; (2) employment; and (3) communication and telecommunication. NIDRR has identified four primary target audiences for the materials and resources grants and recognizes that numerous secondary target audiences exist. These four principal audiences are: Persons with disabilities and their families; employers; public and private entities that operate public accommodations; and public and private service providers. Some of the secondary target populations include health care providers, educators, journalists, and the general public. Each of the grantees must ensure that its products are tailored to the primary target audiences identified by NIDRR.

1. Accessibility and Public Accommodation

The concepts of accessibility and public accommodation must be viewed within the context of implementing the ADA. Examples of issues that are likely to emerge include: the accessibility of places of public accommodation—e.g., stores, restaurants, hotels; the accessibility of public facilities owned and operated by State and local governments—e.g., parks, museums, office buildings; and the adaptation of equipment, instructions, guidelines, and informational materials used by health care providers. The primary target audiences for this material are the general business community and State and local governments.

The project to be funded under this priority will:

- Develop or identify and adapt self-administered survey guides, checklists, and other instruments that can be used by the target audiences to evaluate the accessibility of a facility to individuals of all ages with disabilities and have these materials in trial application within three months of the date of the award;
- Develop or adapt training materials and resources that will enhance the skills and ability of the recipients of the technical assistance or training to make an environment, function, or service accessible to persons of all ages with disabilities, and place at least some of these materials into trial applications within six months of the date of the award;
- Develop or package information on design alternatives for renovations, refurbishing, refurnishing, or construction, including low-cost options, and begin trial application of these materials within nine months of the date of the award;
- Pilot test the materials developed on appropriate target audiences, which in all cases must include individuals with various types of disabilities and representatives of covered entities, evaluate their effectiveness, and modify the materials as needed;
- Coordinate the development, repackaging, and dissemination of materials with the Architectural and Transportation Barriers Compliance Board, the Department of Justice, and other agencies that provide technical assistance on the public accommodations provisions of the ADA;
- Assure that all materials are developed in more than one format to accommodate various individual communication modes;
- Provide copies of all materials along with a final report to NIDRR and file the final report with the National Rehabilitation Information Center (NARIC); and
- Coordinate their technical assistance and training activities with those of other agencies that provide technical assistance on the ADA, such as the Equal Employment Opportunity Commission and the Department of Justice.

(2) Employment

The ADA establishes a number of important safeguards regarding the employment of a person with a disability. These provisions affect the entire continuum of employment, from initial activities such as job development, recruitment and interviewing, through all aspects of employment, including the use of reasonable accommodations, employee benefits, and job structure and retention. In order for these safeguards to promote opportunities for employment, employers and persons with disabilities need information, training, and materials that will enable them to transform the ADA's safeguards into routine business practices. To meet the requirements of the ADA, employers will need to be flexible and resourceful regarding job accommodations that do not result in undue hardship; must be familiar with the array of job and employment strategies and have a readily available pool of expertise and information about existing technology and strategies for individuals of all ages.

The ADA is expected to lead to increased employment among persons with disabilities, and as a result a wider audience of employers will need information addressing workplace issues relating to employees with disabilities. These include, among others, issues of employee benefits, insurance coverage, labor relations, tax incentives, promotions, job retention, and physical accommodations at the workplace.

The principal target populations for these materials are individual employers and employer organizations, individuals with disabilities and their organizations, vocational rehabilitation agencies, insurance providers, and State and local governments.

The project to be funded under this priority will:

- Develop training programs, materials and resources, or repackage appropriate existing materials, that address job structuring, advertising, job recruitment, interviewing, testing, drug testing, medical examinations, assessing job qualifications and hiring in order to attract and retain qualified persons with disabilities, emphasizing low-cost options, and begin the trial application of some of these materials within three months of the award;
- Develop training programs that include model interview guides and job descriptions as well as a model process for developing job descriptions and establishing job qualifications, and begin trial application of some of these materials within three months of the award;
- Develop training programs, materials, resources, strategies and models addressing work schedules, job analysis, job restructuring, and job reassignment, and begin trial applications within six months of the award;
- Develop training programs, materials, and resources addressing retooling, specialized equipment, auxiliary aids, assistive devices, and assistive services, with emphasis on low-cost options and funding resources, and place these materials into trial

applications within nine months of the award;

- Develop training programs, materials, and resources that address workers' compensation, tax incentives, liability insurance, health insurance, medication at the workplace, employee benefits, and labor relations as they relate to employees with disabilities, and begin trial applications of these materials within nine months of the award;
- Pilot test the materials developed on appropriate target audiences, which in all cases must include individuals with various types of disabilities and representatives of covered entities, evaluate their effectiveness, and modify the materials as needed;
- Assure that all materials are developed in more than one format to accommodate various individual communication modes;
- Provide copies of all materials along with its final report and file the final report with the National Rehabilitation Information Center (NARIC); and
- Coordinate with the Equal Employment Opportunity Commission, the Rehabilitation Services Administration, the President's Committee on Employment of People With Disabilities, the Job Accommodations Network (JAN) and the Architectural and Transportation Barriers Compliance Board in the development and repackaging of materials.

3. Accessibility in Communications

The relationship between opportunity and communication is clearly recognized in the ADA. While our potential ability to overcome barriers to communication is substantial, the successful implementation of the communication requirements of the ADA will depend on the extent to which the public is educated as to not only the communication problems facing persons with disabilities, but also the variety of strategies and technologies available to solve those problems. The target audiences for this project will be public and private operators of public accommodations, individuals with disabilities and their families, State and local governments, and public and private service providers.

The project to be funded under this priority will:

- Develop training programs, materials, resources, and strategies addressing telecommunication (including telephone relay systems), sensory aids, safety/emergency communication systems, signage, alternative methods of communication, and assistive technology, with emphasis on low-cost options;
- Pilot test the materials developed on appropriate target audiences, which in all cases must include individuals with various types of disabilities, including auditory and visual disabilities, evaluate their effectiveness, and modify the materials as needed;
- Assure that all materials are developed in more than one format to accommodate various individual communication modes;
- Coordinate with the Federal Communications Commission and other relevant agencies in the development and dissemination of materials; and
- Provide copies of all materials along with its final report and file the final report with the National Rehabilitation Information Center (NARIC)

Selection Criteria

The regulations that apply to the Knowledge Dissemination and Utilization program, 34 CFR 355, apply to these priorities. However, because of the specialized nature of these activities and the potential importance of these projects to the successful implementation of the Americans with Disabilities Act, NIDRR has added several factors to the selection criteria in 34 CFR 350.34 by which applications under these priorities will be evaluated. NIDRR has added 60 points to the selection criteria for these projects, so that the maximum possible score for an application in § 350.33(e) is increased to 160 points. NIDRR has distributed the additional points as follows:

(1) The applicant proposes an effective approach to the timely development and production of materials and instructional content in formats and styles that are accessible to individuals with a range of sensory, communication, cognitive, and learning disabilities. (Weight: 4; Total Points: 20)

(2) The applicant presents an effective plan to pilot test, and evaluate and modify as needed, materials and training programs on appropriate target audiences, including individuals who have various types of disabilities and parents of individuals with disabilities, employers with various sized work forces, and appropriate representatives of service providers, business, labor, State and local governments, and the general public. (Weight: 4; Total Points: 20)

(3) The applicant involves individuals with disabilities, parents or other family members of individuals with disabilities, as well as representatives of the covered entities and other target populations, in the design and delivery of the informational and instructional content and format. (Weight: 4; Total Points: 20) (Approved by the Office of Management and Budget under Control No. 1820–0027)

Priority for Regional Disability and Business Accommodation Centers (RDBACs)

The ADA is expected to provide a new impetus to current efforts to improve the employment status and independence of persons with disabilities. However, the full realization of the potential impact of the ADA on the lives of persons with disabilities will require both education and technical expertise. For example, the implementation of the employment provisions of the ADA (title I) in an efficient and cost-effective manner is a goal that NIDRR shares with the business community, individuals with disabilities, and others. Implementation of the employment provisions of the ADA could be a complex process, since the ADA not only prohibits policies, procedures, and activities that discriminate against persons with disabilities but also requires employers to make "reasonable accommodations" to permit individuals with disabilities to perform the "essential functions" of a job. Similarly, the implementation of other titles of the ADA is likely to require an understanding of the types of changes that are needed and knowledge of the range of options available to make those changes. Implementation of the accessibility aspects of the legislation will require a variety of public and private entities to take actions to make their facilities and services accessible. The RDBACs are one vehicle to facilitate the implementation process.

A regional center approach to providing technical assistance has a number of advantages. This approach attempts to make an equitable distribution of resources to all parts of the country and promotes the adaptation of the content and format of technical assistance to the unique needs and characteristics of a region.

NIDRR intends to exploit the advantages of the regional center approach while maintaining consistency and quality by providing all of the centers with a core set of technical assistance materials, resources, and references and establishing a national coordinating body (the Technical Assistance Coordinator, or TAC) whose function it will be to identify and address issues, needs, and expertise that emerge in a number of regions.

NIDRR expects that the RDBACs will perform four basic functions:

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NIDRR intends to exploit the advantages of the regional center approach while maintaining consistency and quality by providing all of the centers with a core set of technical assistance materials, resources, and references and establishing a national coordinating body (the Technical Assistance Coordinator, or TAC) whose function it will be to identify and address issues, needs, and expertise that emerge in a number of regions.

NIDRR expects that the RDBACs will perform four basic functions:

disseminate information; provide direct technical assistance; where appropriate, provide referrals for specialized information and technical assistance; and conduct training for interested and affected parties. The RDBAC will carry out these functions at the request of a potential client as well as on a proactive basis depending upon the needs of a locality or region.

NIDRR believes that in order for the RDBACs to be successful they must establish networks involving the business and disability communities in their activities, as well as linkages to State and local governments, service providers, and other relevant populations of potential information users. NIDRR believes that the operation of a successful RDBAC is likely to require the cooperation and collaboration of both organizations of and for persons with disabilities and covered entities, or organizations representing covered entities. Potential applicants are encouraged to consider forming consortia or other joint efforts.

This funding priority will establish, by grant or cooperative agreement, one Regional Disability and Business Accommodation Center in each of the ten Federal regions. The RDBAC may be located anywhere within the region, but must provide evidence that the entire region will be covered by the Center's activities. Each RDBAC is encouraged to develop programs geared specifically to the needs of employers, other covered entities, and individuals with disabilities within its region, but each RDBAC must provide a common core of functions. In providing information and technical assistance, the RDBAC and the experts to whom it makes referrals for specialized technical assistance, will provide the client with a range of options and will act only in an advisory capacity; the advice will not be considered a formal policy directive of any Federal agency, including NIDRR.

Each RDBAC will cooperate with the materials development projects to be funded under this program in providing information about needs for materials and in helping to test informational and instructional materials. Each RDBAC will cooperate with the technical assistance coordinator (TAC) that NIDRR intends to establish through grant or contract, that will provide technical information to the RDBACs, establish a network for coordination and information sharing among the RDBACs, and respond to the RDBACs' needs for information. Each RDBAC will be expected to disseminate accurate and current information as provided through the TAC. Grantees will be expected to submit reports and materials to NIDRR, the National Rehabilitation Information Center and other appropriate clearinghouses.

The RDBACs will be dynamic organizations, with a changing and expanding scope of responsibilities over the five-year life of the centers. The centers initially will disseminate existing information, provide general training to organizations in their regions about the requirements of the ADA, and promote the concepts and a general awareness of ADA. They will develop local and regional networks and establish a viable system for the delivery of Center activities throughout the region. Each RDBAC will develop a local resource pool, including experts in public accommodations and job accommodations. These expert pools will include rehabilitation engineers, representatives of independent living programs, architects, representatives of organizations of and for individuals with disabilities, management analysts, designers and engineers, and service providers. The RDBACS will continue throughout their five-year spans to provide general education and information, and will also provide, either directly or through referrals or brokerage, hands-on technical assistance to covered entities that must make accommodations for employees or the public.

Each center to be funded under this proposed priority will:

- Provide general education and distribute information about the ADA and disseminate informational materials that have been developed by various Federal and private agencies, including the Architectural and Transportation Barriers Compliance Board, or by the materials development projects and the peer training projects, beginning this activity within three months of the award of the grant;
- Provide information, using a variety of media, including materials developed by the materials development projects in this program, and such techniques as public speeches, graphic and audio materials, media announcements, telecommunications, hotlines, or computer databanks, to employers, the business community, individuals with disabilities and organizations that represent them, State and local government, and other target populations in the region, on the topics of: Disability awareness; the provisions of the ADA; public accessibility; ADA's impact on the hiring process; job accommodations, accessibility and accommodation in communications; and empowerment for individuals with disabilities in successful implementation of the ADA beginning these services within three months of the award of the grant;
- Provide and distribute information about the existence and future plans of the RDBAC, orient disability, business, and other groups in the region to the ADA and its general implications, and provide information as requested by the various target audiences in the region within three months of the award of the grant;
- Develop linkages to business organizations, disability organizations, State and local governments, service providers, labor organizations, educational institutions, regional and local media, voluntary organizations, and others that will be potential outlets or conduits for the dissemination of information, and develop a plan for marketing the RDBAC services to the primary target populations in the region within six months of the award of the grant;
- Conduct an assessment of the informational needs and preferred information conduits of employers and commercial establishments, and of the disability, public agency, labor, and service provider communities within the region within six months of the award of the grant;
- Provide training to organizations or employers, disability organizations, State and local governments, service providers, commercial establishments, labor organizations, voluntary associations, educators, and other appropriate target groups, on general issues of disability, provisions of the ADA, accessibility, hiring, early intervention in disability at the workplace, job accommodations, communications accessibility, and empowerment for individuals with disabilities in implementing the provisions of the ADA, beginning this activity within six months of the award of the grant;
- Develop information resources, databanks, reference guides, and expert pools that will serve as resources within the region for the implementation of the technical assistance program;
- Provide referrals immediately, if appropriate, to any of the target populations for additional specialized information or for expert assistance;
- Provide technical assistance, or arrange for technical assistance, directly to employers on issues of hiring, early intervention in disability at the workplace, and job accommodation and to business on accessibility and public accommodations, ensuring that inquirers

will be offered a range of options wherever feasible; and

- Apply materials developed by the materials development projects, the coordinating entity, the RDBAC itself, or other sources that are presented in a variety of accessible media and formats.

Selection Criteria

The regulations that apply to the Knowledge Dissemination and Utilization program, 34 CFR 355, apply to these priorities. However, because of the specialized nature of these activities and the potential importance of these projects to the successful implementation of the Americans with Disabilities Act, NIDRR has added several factors to the selection criteria in 34 CFR 350.34 by which applications under these priorities will be evaluated. NIDRR has supplemented those criteria by adding an additional possible 60 points to the score for each application. Each application may thus receive a maximum of 160 points under § 350.33(e). NIDRR will award the additional 60 points as follows:

(1) Demonstrates the capacity of the applicant entity in the delivery of technical assistance and training to each of the primary target populations. (Weight: 4, Total Points: 20)

(2) Demonstrates the capacity of the applicant entity to reach the range of covered entities in the region in a timely manner. (Weight: 4; Total Points: 20)

(3) Proposes a collaboration of organizations of or for people with disabilities that have knowledge of the provisions of the ADA with entities, or associations representing such entities that are covered by the provisions of the Act, particularly the employment, public accessibility, and telecommunications provisions of the Act. (Weight: 4; Total Points: 20)

(Approved by the Office of Management and Budget under Control No. 1820–0027.)

(Authority: 29 U.S.C. 760–762.)

(Catalog of Federal Domestic Number 84.133D; National Institute on Disability and Rehabilitation Research)

Dated: August 2, 1991.

Lamar Alexander,

Secretary of Education.

Appendix—Analysis of Comments and Responses

The Secretary received 39 comments on the proposed priorities. Most of the comments were supportive of the proposed priorities, while several made suggestions for changes.

Comment: One commenter recommended that eligible entities for all grants be required to limit indirect costs to ten percent.

Discussion: The Education Department General and Administrative Regulations (EDGAR) set the indirect cost rate for training programs at eight percent. This rate applies to the National Peer Training Projects. The recipients' negotiated indirect cost rates will apply to awards for Materials Development Projects and Regional Disability and Business Accomodation Centers.

Changes: None.

Comment: One commenter was concerned that children with disabilities would be neglected by the grantees.

Discussion: The Secretary expects that the grantees will address the needs of all persons with disabilities who are covered under the ADA, regardless of their ages.

Changes: None.

Comment: One commenter recommended that "supported employment" be specifically included in the priority on employment for a Materials Development Project.

Discussion: The Secretary expects all forms of employment, including supported employment, to be addressed by the Employment Materials Development Projects.

Changes: None.

Comment: One commenter recommended that NIDRR provide less support to the Employment Materials Development Project than to the Public Accommodation and Accessibility, and the Communication Materials Development Project because of the employment-related technical assistance efforts of the Equal Employment Opportunity Commission (EEOC) and the Rehabilitation Services Administration (RSA).

Discussion: NIDRR is coordinating its technical assistance efforts with a number of other Federal agencies, including the EEOC and RSA, in order to avoid any duplication of effort and to address the wide range of employment-related issues that are expected to be generated by the ADA. Congress expected NIDRR to establish regional Centers to facilitate the employment provisions of the ADA.

Changes: None.

Comment: A number of commenters expressed concern that certain groups of persons with disabilities (i.e., persons with severe disabilities, persons with mental disabilities, children with disabilities, persons with HIV/AIDS, families of persons with disabilities) would not benefit from the technical assistance activities of the grantees.

Discussion: The Secretary expects grantees to provide technical assistance to all persons with rights or duties under the ADA.

Changes: None.

Comment: One commenter suggested that innovative approaches be taken to establish linkages between the business and disability communities as well as to communicate with persons within the disability community.

Discussion: By establishing additional selection criteria that encourage collaboration between the business and disability communities, the Secretary is encouraging innovative approaches to the technical assistance activities that RDBACs will undertake.

Changes: None.

Comment: A number of commenters suggested that the projects funded under the priorities be awarded to specific entities, i.e., Independent Living Centers, University Affiliated Programs, State Vocational Rehabilitation agencies, or business associations.

Discussion: It is the policy of the Department to award grants on a competitive basis through the peer review process.

Changes: None.

Comment: One commenter urged the Secretary to stress the development of ADA implementation videotapes under the Materials Development Projects Priority.

Discussion: The Secretary expects the Materials Development Projects to use a variety of media, including videotapes.

Changes: None.

Comment: One commenter suggested that the National Peer Training Projects include information about currently existing anti-discrimination protections (e.g., section 504 of the Rehabilitation Act of 1973) in addition to those protections provided by the ADA.

Discussion: The Secretary expects that grantees will include other civil rights protections for persons with disabilities in their technical assistance efforts if appropriate.

Changes: None.

Comment: One commenter suggested that additional assurances be required from applicants in order to ensure the appropriate participation by persons with disabilities in all aspects and levels of the priorities.

Discussion: Selection criteria that promote the inclusion of persons with disabilities in the planning, management, and implementation of the grants have been added for these priorities. The Secretary believes that additional assurances are unnecessary.

Changes: None.

Comment: A number of commenters commended the Secretary for promoting

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Discussion: The Secretary believes that it is of significant benefit to all affected parties to promote the establishment of meaningful roles for persons with disabilities in all aspects of this technical assistance effort.

Changes: None.

Comment: A number of commenters were concerned with the various timelines regarding submission of proposals and the carrying out of grant activities.

Discussion: The Secretary recognizes the demanding schedule that is being placed upon those who will submit proposals and operate the grants. The Secretary is maintaining the proposed timelines in order to respond in a timely manner to the technical assistance demands of the ADA.

Changes: None.

Comment: A number of commenters were concerned about the need to control the quality of the technical assistance provided and the need for the grantees to coordinate their efforts among themselves and with other public (e.g., the Department of Justice and the Equal Employment Opportunity Commission ADA technical assistance initiatives) and private agencies.

Discussion: The Secretary recognizes the importance of quality control and coordination. Through a technical assistance coordination contract, the Secretary will take the necessary steps to ensure the quality of the materials produced and the technical assistance provided, as well as the coordination of activities, in order to avoid duplication and utilize fully the information that currently exists.

Changes: None.

Comment: A number of commenters questioned the equity of the distribution of resources for the RDBACs in light of the expected differences in demands that will be placed on the RDBACs across regions of the country.

Discussion: The Secretary will retain the regional structure set forth in the proposed priority statement. However, the Secretary expects the size of the awards to vary across regions depending on the needs of individual applicants.

Changes: None.

Comment: A number of commenters stressed the need for the formats of the materials developed by the grantees to be accessible.

Discussion: The Secretary agrees and retains the requirement included in the proposed priority that materials be developed in a variety of accessible formats.

Changes: None.

Comment: One commenter suggested that journalists be identified as a "top priority" target population for the Materials Development Projects.

Discussion: Because the Secretary recognizes the importance of the press in disseminating information, the MDPs are expected to share their products with journalists to the maximum extent feasible.

Changes: None.

Comment: One commenter suggested that public schools be identified as a traget population for the Materials Development Projects.

Discussion: The Secretary expects the MDPs to provide information and materials to public schools as appropriate and feasible.

Changes: None.

Comment: One commenter recommended that applicants be required to demonstrate "cross-disability representation" in project activities.

Discussion: The Secretary expects that project activities will address the needs of all persons with disabilities who are covered under the ADA.

Changes: None.

Comment: One commenter suggested that the concept of "training the trainers" referred to in the priority for Peer Training Projects may be an inefficient means of reaching the goal and suggested some change in the wording.

Discussion: The Secretary believes that training trainers is one strategy, although not the only strategy, that applicants may propose to adopt to address the problem of training a large number of individuals and organizations quickly.

Changes: None.

Comment: One commenter suggested eliminating the Peer and Family Training Network project and focusing all training funding on independent living centers.

Discussion: The Secretary believes that the Peer and Family Training Network Project will serve a necessary and unique purpose related to the ADA, by reaching additional populations and involving family members.

Changes: None.

Comment: One commenter suggested that there may be too many Material Development Projects.

Discussion: The Secretary believes that the three MDPs will contribute significantly to the success of the RDBACs and the NPTPs. The elimination of any of the three MDPs would result in a gap in the information and materials base of the RDBACs and the NPTPs.

Changes: None.

Comment: One commenter suggested changing the name of the Regional Business and Disability Accommodation Centers to ADA Technical Assistance Centers.

Discussion: The Secretary believes that the name Regional Business and Disability Accommodation Centers accurately communicates the nature and scope of the work of the Centers.

Changes: None.

Comment: One commenter suggested increasing the length of all of the projects to five years.

Discussion: The Secretary believes that the length of time alloted for the Materials Development Projects (2 years) and the National Peer Training Projects (3 years) is sufficient to accomplish their purposes.

Changes: None.

Comment: One commenter suggested that the Secretary provide more guidance regarding the expectations that would be placed on the RDBACs during the first three months after the awards are made.

Discussion: The Secretary recognizes that the early stages of all of the projects are certain to be demanding in light of the effective dates of the ADA and the need for grantees to become operational immediately. The Secretary has set forth some expectations for the initial stages of the projects and plans to implement these expectations in negotiations with successful applicants.

Changes: None.

Comment: One commenter suggested concentrating the funds available for ADA technical assistance on the Materials Development Projects and using currently existing clearinghouses for dissemination.

Discussion: The Secretary believes that currently existing clearinghouses do not have the technical expertise and resources to perform the functions of the RDBACs and the NPTPs, including the direct technical assistance and outreach functions.

Changes: None.

Comment: One commenter noted that NIDRR's technical assistance grantees should be sensitive to the wide range of communication needs of persons with deafness or hearing loss.

Discussion: The Secretary fully expects the grantees to design and implement their technical assistance efforts based on a necessarily broad understanding of the communication needs of persons with deafness or hearing loss.

Changes: None.

[FR Doc. 91-19196 Filed 8-12-91; 8:45 am]

BILLING CODE 4000-01-M

federal register

Tuesday
August 13, 1991

Part V

Nuclear Regulatory Commission

10 CFR Part 50

Emergency Response Data System; Final Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150—AD32

Emergency Response Data System

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to require licensees of all operating nuclear power facilities except Big Rock Point to participate in the Emergency Response Data System (ERDS) program. This action requires licensees to submit to the NRC timely and accurate data on a limited set of parameters whose values indicate the condition of the plant during a declaration of an alert or higher emergency classification. This action will ensure that all licensees establish a definite schedule for implementation of the ERDS program.

EFFECTIVE DATE: September 12, 1991.

ADDRESSES: Copies of all NRC documents are available for public inspection and copying for a fee at the NRC Public Document Room at 2120 L Street NW., Lower Level of the Gelman Building, Washington, DC. Copies of NUREG documents may be purchased from the Superintendent of Documents, U.S. Government Printing Office by calling (202) 275–2060 or by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

FOR FURTHER INFORMATION CONTACT: M.L. Au, P.E., Office of Nuclear Regulatory Research, Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492–3749.

SUPPLEMENTARY INFORMATION:

Background

On October 9, 1990 (55 FR 41095) the Commission published a proposed rule in the **Federal Register** that would require licensees to participate in the Emergency Response Data System (ERDS) Program and to set a schedule for its implementation. ERDS is a direct electronic data link between computer data systems used by licensees of operating reactors and the NRC Operations Center (NRCOC) during the declaration of an alert or higher emergency classification. The ERDS supplements the voice transmission of information over the currently installed Emergency Notification System (ENS), and is activated by a licensee when an alert or higher emergency occurs at a licensed nuclear power facility.

This rule applies to all licensed nuclear power reactor facilities, except Big Rock Point and those that are permanently or indefinitely shut down. However, units shut down for maintenance, or authorized for fuel loading only, or low power operations, are required to report under ERDS. Big Rock Point is exempt because configuration of the facility does not make available as transmittable data a sufficient number of parameters for effective participation in the ERDS program.

The objective of the final rule is to ensure timely and effective implementation of ERDS to provide NRC increased assurance that a reliable and effective communication system that will allow the NRC to monitor critical parameters during an emergency is in place at operating power reactors.

Many of the elements of the rule are currently implemented under the ERDS voluntary program in which over half of the licensed units have volunteered to participate. The ERDS program is not expected to require any advancements in the state of the art, and the configuration of most power reactors is such that the relevant parameter values are available as transmittable data. Therefore, there should be no cause for delay in timely implementation of this rule.

Public Comments

Interested parties were invited to submit comments on the proposed rule. There were 113 comments made by 31 commenters on the proposed rule: Two from interested individuals, one from a citizens' group, one from a former Senior Reactor Operator and Emergency Director at a utility, one from the Nuclear Management and Resources Council (NUMARC), one from the Nuclear Utility Backfitting and Reform Group (NUBARG), 20 from power reactor licensees, one from a non-power reactor licensee, and four from State authorities. Many of the letters contained comments that were similar in nature. These comments were grouped and addressed as one issue. The NRC identified 21 separate issues that cover the significant points raised by commenters. Public comments received on the proposed rule were docketed and may be examined at the Commission's Public Document Room located at 2120 L Street NW. (Lower Level), Washington, DC. Upon consideration of the comments received, the Nuclear Regulatory Commission has adopted the proposed regulations, with certain modifications as set forth below.

Analysis of Public Comments

1. *Comment.* The ERDS data would be subject to distortion by terrorists or computer hackers which could cause the NRC to respond improperly in their recommendations to the licensee, Federal agencies, and State and local governments. If the ERDS were hardened, or essential data elements were verified by voice communication, this potential problem would be eliminated.

Response. It is highly unlikely that a computer hacker would be able to locate ERDS transmissions in the NRC's communications network because of the limited access to this system. Also, the communication protocol incorporated for ERDS transmission would make the data unintelligible without knowledge of the specific site link configuration. Error detection/correction has been incorporated into the transmission protocol which would, in all probability, detect any alteration in the data. And finally, as stated in NUREG–1394, "Emergency Response Data System (ERDS) Implementation," and in this final rule, the NRC will continue the requirement for the licensee to maintain voice communication with the NRC during emergencies. Any data indicating rapid unrealistic changes or unexpected conditions would be immediately suspect and subject to verbal corroboration. Therefore, the NRC does not believe the probability for intentional data distortion is sufficiently large to justify resources for further countermeasures.

2. *Comment.* There is inadequate justification that implementing the ERDS would substantially increase the overall protection of the public health and safety. This contention was made by nine commenters, in addition to the seven commenters who endorsed the consolidated comments from NUMARC and NUBARG without further elaboration. The commenters stated that if there was a substantial increase this should be quantitatively demonstrable. They also stated that the utility is solely responsible for the protection of the public health. They argued that because this rule does not improve the manner in which the emergency director makes decisions, the claim of "unquantifiable but significant increase" in the protection of the public is invalid. One commenter stated the ERDS is an improvement to a system that has been deemed "adequate," and therefore is not necessary.

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Response. Many have argued, as the commenters have, that the NRC Backfit Rule (10 CFR 50.109) requires quantitative evidence that new NRC requirements will result in a substantial increase in the overall protection of the public health and safety or the common defense and security. The NRC does not agree with this interpretation and believes that the safety enhancement justification for a backfit can also be met on the basis of qualitative considerations. In such cases, the NRC believes that the evidence that a substantial increase in overall protection would occur must be clearly defensible and meaningful. The NRC has used this test in its assessment of the ERDS requirements.

The Commission has previously determined that there exists both a regulatory and statutory basis for having emergency planning as a critical element in the protection of public health and safety. In its July 17, 1979, Advance Notice of Rulemaking, the following statement is made: "The Nuclear Regulatory Commission, in discharging its statutory responsibilities to protect the public health and safety, has given its primary attention to aspects of the reactor site and the facility design. In this regard, emergency planning, including evacuation planning, has been conceived of as a measure that adds to the level of public protection * * *"

The NRC, in its mandated role to protect public health and safety, has a responsibility in the event of a reactor accident to monitor the actions of the licensee, who has the primary continuing responsibility for limiting the consequences of the accident. The NRC also has an important role in assuring the flow of accurate information to affected offsite officials and the public regarding the status of the emergency and, as requested or needed, giving advisory support or assistance in diagnosing the situation, isolating critical problems and determining what remedial actions are appropriate. The NRC must be capable of providing to State and local authorities, and to other Federal agencies, an independent assessment of protective actions recommended by the licensee.

Given the regulatory and statutory basis, and given the importance of emergency planning and response in the defense-in-depth context, when an accident has occurred, the NRC believes that a significant increase in its ability to perform its role would constitute a substantial increase to the overall protection of the public health and safety.

Since the principal effect of ERDS will be a marked improvement in the availability, timeliness, and reliability of key information about what is taking place at the reactor during an accident, particularly during the critical early hours before the NRC Site Team arrives, it is the judgment of the NRC that the implementation of ERDS will provide a significant improvement in the NRC's ability to accurately and promptly assess the situation at the site.

In emergency drills conducted by the NRC and power reactor licensees, the information on the status of the reactor is typically 15–30 minutes old by the time it is received at the NRC Operations Center when transmitted via the existing Emergency Notification System (ENS). Moreover, inaccuracies and errors have been found in that information which in some cases has led to confusion and misunderstanding of the situation.

In drills which have employed a prototype of the ERDS, there has been profound improvement in the availability, timeliness, and reliability of the information transmitted. The actual experience of the NRC using the existing ENS alone contrasted with drills where both ENS and a prototype ERDS were used is the basis for its conclusion, that ERDS will provide significant improvements in the NRC's ability to understand what is taking place during an emergency, and thereby more effectively perform its role of monitoring and advising the licensee. More importantly, the improvement in assessment performance significantly improved the NRC's ability to provide appropriate recommendations and advice to the State and local officials who are required to make the decisions regarding the offsite protective actions which are necessary to protect the public.

Because the decision made by the State and local authorities with regard to offsite protective actions could significantly affect the public health consequences of a reactor accident, it is the judgment of the NRC that a significant improvement in the NRC's ability to provide the right recommendation at the right time provides a substantial improvement in the overall protection to the public. An effective emergency response capability in the event of a reactor accident is an essential element of the defense-in-depth approach to protection of the public health and safety. The NRC's role during an emergency is part of that capability. Because the ERDS will provide a significant improvement in the NRC's ability to perform that role in an emergency, the proposed ERDS improvements are therefore justified, and the costs of implementing those improvements are modest.

3. *Comment.* One commenter believed that the limited group of reactor parameters monitored through ERDS would be inadequate to provide a sound basis for NRC recommendations and therefore requested modifications to ERDS. One commenter urged the NRC to consider a continuous monitoring system, e.g., the Nuclear Data Link considered by the Commission following the Three Mile Island accident. Other commenters stated that the ERDS design uses cumbersome hardware and software, that NRC's communication hardware should be able to accept data from a multiple unit plant through one modem, and allow state-of-the art hardware.

Response. Although the ERDS data does not portray every detail of a nuclear power reactor in an emergency situation, the Commission believes it does provide the data required by the NRC to perform its role during an emergency. The ERDS parameter list was selected based on the information the NRC Technical Teams need to perform their emergency response functions. Moreover, the set of ERDS data will not be the only input to the NRC. The Emergency Notification System (ENS), a voice communication system, will still be available to transmit data and any other relevant information that is not available through ERDS. In combination, the NRC will receive the necessary information to develop timely and appropriate evaluations of the event and to develop the necessary support actions to ensure protection to public health and safety.

The ERDS is designed to transfer needed reactor data from a nuclear power plant only during emergencies. It is not a system to constantly monitor any licensee. The concept of constant monitoring, such as the Nuclear Data Link, was considered after the Three Mile Island accident in 1979. But after much evaluation and deliberation, Congress did not approve the concept for funding.

The current protocol is already in use at several reactors under the volunteer program and is in the process of being implemented at other facilities. The NRC is not requiring additional redesign and retest costs on voluntary licensees who already have an acceptable system inplace or have submitted an acceptable implementation plan.

The ERDS was designed to use commercially available (off-the-shelf) computers which could effectively handle the data requirements, establishing a single link with each unit.

To group several units into a single link would result in a data base size incompatible with the ERDS configuration. The ERDS design has been frozen in order to maintain configuration control and standardization in implementing the ERDS volunteer program.

4. *Comment.* Submittal of an ERDS implementation plan should not be required of licensees that have implemented ERDS under the voluntary program. Similarly, licensees that have submitted the information required by the voluntary program along with a proposed implementation schedule should also be exempt from the schedule and system requirements contained in 10 CFR part 50, paragraphs VI.1, VI.2 and VI.4 of appendix E of the proposed rule.

Response. The NRC agrees that it is unnecessary for licensees that have implemented the ERDS in an acceptable manner to submit an implementation plan. The final rule (appendix E to part 50, section VI, paragraphs 4.c and d) has been modified so that licensees who have submitted all information consistent with the timetable set in paragraph 4.b of appendix E to part 50, section VI, are not required to submit an implementation plan.

5. *Comment.* (a) Nineteen of the commenters, including three that endorsed the NUMARC comments, were concerned that implementing the ERDS would increase the operators' labor burden because the NRC, as well as State or local government agencies receiving the ERDS data, would not be staffed by personnel with sufficient system specific knowledge to understand the data. This would result in extensive inquiries to the licensees to explain the data, thereby distracting the operating staff from their primary functions of accident response and emergency management.

(b) Some of these commenters urged the NRC to limit the data provided to States and local government and direct them regarding the use of the ERDS information to preclude the improper use or release of the data.

(c) Other commenters stated that with the availability of ERDS parametric reactor data, the NRC would modify its oversight role into one of more active participation in event management, a function, the commenters claimed, is solely the responsibility of the licensee.

Response. (a) The NRC does not believe that ERDS will impose an additional burden on licensees during an emergency. Rather, the reduction in the potential for miscommunication and misunderstanding afforded by ERDS should enhance the licensee's efficient use of its resources in dealing with an emergency. The NRC acknowledges that ERDS will impose small additional burdens on licensee resources during periods of non-emergency and typically involving non-operator personnel. These impacts are discussed in the regulatory analysis that accompanies this rule and include incremental licensee person-hours for development of the ERDS program and necessary software, periodic testing, and the preparation of configuration control reports. These incremental costs are judged commensurate with the enhanced protection of the public attributable to ERDS. Concern over the capability of NRC staff to understand the ERDS data are unfounded. The NRC Operations Center staff are experienced professionals with extensive knowledge of reactors, sufficient to allow them to use the data provided by the ERDS to follow the course of the emergency, chart and analyze trends, and support appropriate recommendations relating to the health and safety of the public. Further, the NRC is aware that while not all States have the technical knowledge required to interpret raw ERDS data, some have developed significant expertise in responding to emergencies at nuclear power plants. The NRC believes that since the States are responsible for protective actions to ensure the health and safety of their citizens, they should have available sufficient data upon which to base decisions.

(b) The ERDS link will be established with a State government through a Memorandum of Understanding (MOU) with the NRC. The proper use, control, and dissemination of the ERDS data is one of the subjects addressed by the MOU. Under the MOU, the NRC will provide a liaison to the State at the NRCOC for ERDS data interpretation if such help is requested.

(c) The implementation of ERDS will not alter the respective responsibilities of the utilities and the NRC with respect to emergency management. The utility will retain primary responsibility for emergency management activities at the site locations. The NRC will continue to monitor, inform, and upon request, advise licensees and other local, State and Federal authorities who are responsible for the safety of their citizens, as well as to provide timely advice to the licensees as needed.

6. *Comment.* States may require the licensee to pay for equipment required to receive and process the ERDS data. Furthermore, providing ERDS data to the States and local governments would increase NRC costs beyond that estimated in the Backfit Analysis.

Response. The NRC has no control or authority over the State governments regarding their funding of ERDS receiving equipment. Each individual State government should determine its equipment and data requirements. However, through a Memorandum of Understanding (MOU) between the State and the NRC regarding the ERDS link, the ERDS data can be made available to a State. One of the functions of the NRC is to provide appropriate support to the States during a nuclear power plant emergency. This responsibility exists independent of the ERDS, and in the staff's view, the ERDS interface between the NRC and the States should not result in additional costs to the NRC.

7. *Comment.* Implementing the ERDS seems to imply some general concern that the NRC neither trusts its abilities nor those of the licensees to respond correctly to emergencies using current practices.

Response. ERDS is an enhancement of existing procedures that provides a superior method of assembling and transmitting to the NRC near real time data from a licensee during an alert or higher emergency classification. Accurate and timely data assists the NRC in conducting informed analyses of the plant condition, and facilitates NRC consultation with State or local governments regarding action to ensure protection of public health and safety.

8. *Comment.* Will the time in the header of the ERDS data packet be some standard time such as GMT, EST, etc.?

Response. The time from the licensee's plant computer will be used with ERDS data. Included in each licensee's ERDS implementation plan will be the time standards used in their computers. This practice will ensure that the particular licensee and all monitors of ERDS data relating to a particular emergency or test are using the same time. There is no requirement for all licensees to adhere to a common standard time.

9. *Comment.* Non-power reactors should be explicitly exempt from the ERDS requirements.

Response. Since 10 CFR 50.72 of the regulations applies only to nuclear power reactors, it is not necessary to explicitly exempt non-power reactors in the rule.

10. *Comment.* Licensees are requested by Generic Letter 89–89 to transmit a significant number of data sheets to the NRC during emergencies. With the implementation of ERDS, this should be relieved to allow better use of licensee resources to support ERDS.

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Response. The NRC has no control or authority over the State governments regarding their funding of ERDS receiving equipment. Each individual State government should determine its equipment and data requirements. However, through a Memorandum of Understanding (MOU) between the State and the NRC regarding the ERDS link, the ERDS data can be made available to a State. One of the functions of the NRC is to provide appropriate support to the States during a nuclear power plant emergency. This responsibility exists independent of the ERDS, and in the staff's view, the ERDS interface between the NRC and the States should not result in additional costs to the NRC.

7. *Comment.* Implementing the ERDS seems to imply some general concern that the NRC neither trusts its abilities nor those of the licensees to respond correctly to emergencies using current practices.

Response. ERDS is an enhancement of existing procedures that provides a superior method of assembling and transmitting to the NRC near real time data from a licensee during an alert or higher emergency classification. Accurate and timely data assists the NRC in conducting informed analyses of the plant condition, and facilitates NRC consultation with State or local governments regarding action to ensure protection of public health and safety.

8. *Comment.* Will the time in the header of the ERDS data packet be some standard time such as GMT, EST, etc.?

Response. The time from the licensee's plant computer will be used with ERDS data. Included in each licensee's ERDS implementation plan will be the time standards used in their computers. This practice will ensure that the particular licensee and all monitors of ERDS data relating to a particular emergency or test are using the same time. There is no requirement for all licensees to adhere to a common standard time.

9. *Comment.* Non-power reactors should be explicitly exempt from the ERDS requirements.

Response. Since 10 CFR 50.72 of the regulations applies only to nuclear power reactors, it is not necessary to explicitly exempt non-power reactors in the rule.

10. *Comment.* Licensees are requested by Generic Letter 89–89 to transmit a significant number of data sheets to the NRC during emergencies. With the implementation of ERDS, this should be relieved to allow better use of licensee resources to support ERDS.

Response. The information cited is an Information Notice (IN), and as such, it requires no action on the part of the licensee. The form contained in IN 89–89 is a copy of the work sheet used by NRC Headquarters Operations Center officers in recording routine Event Reports over the ENS. IN 89–89 was provided as information to licensees to aid in structuring their normal event report.

11. *Comment.* The NRC should provide the software required for ERDS communications to the utilities.

Response. The NRC will develop software which may be used in a utility provided personal computer (PC) interface for ERDS. The NRC will provide software and source code for a program that will perform ERDS communications protocol and data transmission functions.

12. *Comment.* There were several concerns regarding the configuration control of ERDS hardware and software. Five commenters stated the requirement to notify the NRC within 30 days following changes in individual parameters is overly prescriptive, and they proposed extending the maximum allowable notification period to 90 days, annually, or during Final Safety Analysis Report (FSAR) updates. Two commenters believed the time estimated to perform the configuration control functions was low by a factor of two or three, and therefore the ERDS would be more costly to the utilities than estimated. One commenter stated there should be specific guidance provided for the configuration control requirements of the utility/ERDS interface; and two were concerned that if the NRC changes its format the licensees are automatically required to change their transmission of data. They recommended that the data should be limited to an initial format with no later changes.

Response. In establishing the current reporting requirement for changes in the ERDS Data Point Library, the staff balanced the time needed by the licensees for its design change control and review processes against the staff's need to know based on safety considerations. The staff views the 30 days as reasonable for the licensees to prepare such a report, and given that such changes can influence the NRC's interpretation of ERDS data does not view any further delay as warranted.

For some licensees, plant to plant variation could result in a greater labor burden associated with configuration control tasks than the 5-person days per reactor year used in the regulatory analysis. However, that value represents an average that, considering the entire nuclear power industry, appears substantially correct. There is an economy of scale for those utilities that can combine submissions from multiple reactor units that reduce the industry average.

The basic guidance information for configuration control of the ERDS is contained in NUREG–1394. Based on the experience of the utilities that have implemented ERDS voluntarily, the configuration control requirements appear to be appropriate.

The proposed rule would require the licensee to change its data transmission if the NRC changes its format, and the staff agrees that this is an unreasonable requirement on the licensees. Therefore the final rule has been revised to require all data transmission to conform to the initial format. As the ERDS matures, or as technical advances increase capabilities, there may be some modifications. However, any such changes will be coordinated with the licensees.

13. *Comment.* The ERDS rulemaking should clearly state that the ERDS is available to the States; and that all future State and local government requests for on-line data should be made through the NRC. Furthermore, the licensees should have access to the same screens as those available to the NRC.

Response. It is not within the authority of the Commission to specify to the States what data they may or may not receive. However, the NRC does recommend that States desiring an emergency data link to nuclear power plants within their jurisdiction use an ERDS connection from the NRC Operations Center. A Memorandum of Understanding with the NRC will provide the State with ERDS data. A provision allowing States to receive ERDS data should not be part of the rule since there is no NRC requirement imposed upon licensees to establish a data link with a State. The concept of providing each licensee with the same work stations as the NRC was considered. However, it was not deemed cost beneficial to expend in excess of $900,000 for the sole purpose of sending back to the licensees that data which they originally sent to the NRC. Any licensee desiring to do so may establish their own work station based on NRC design.

14. *Comment.* The requirement for the reactor parametric data to be transmitted to the NRC Operations Center at time intervals of not less than 15 seconds or more than 60 seconds is too prescriptive and may eliminate the use of some existing computer systems currently supporting the licensee's Technical Support Center (TSC)/Emergency Operating Facility (EOF), etc. One commenter suggested that data update frequency should be plant specific. Others argued that the wording in the proposed rule puts the licensee in jeopardy of non-compliance in the event of system or telecommunications line failure, and that considering the conditions, the proper descriptor for the data is "near real time" instead of "real time."

Response. Originally the desired update frequency for ERDS data was 15 seconds, but to minimize the use and impact on the central processing unit (CPU), the minimum frequency was reduced by a factor of four, i.e., to at least every 60 seconds. Based upon the experience of those manning the NRCOC, the staff believes that less frequent data collection would diminish the NRC monitors' ability to adequately follow the course of the emergency. Furthermore, allowing update frequencies to range between 15 seconds and 60 seconds should provide sufficient latitude to allow most licensees to use their existing computer systems. Exceptions to this requirement will be considered on a case by case basis by the NRC.

Consistent with the NRC's enforcement policy, licensees are not cited for matters beyond their control, such as equipment failures that are not avoidable by reasonable licensee quality assurance measures or management controls. Nonetheless, in the wording of the final rule, the term "near real time" has been used to describe the ERDS data.

15. *Comment.* The requirement to activate the ERDS at the time the NRC is notified of the declaration of an alert or higher emergency classification should be relaxed because it places a heavy labor burden on the plant operators at this critical time. Several commenters suggested a delay of one hour in order to allow actuation from the Technical Support Center, thus removing the burden from control room personnel. Four commenters stated the ERDS should not be operated from an on-site computer, and two suggested the rule should allow the ERDS to be activated by computer operations personnel or a software switch. One commenter stated the licensee should be the only entity to activate or deactivate the ERDS for a given plant.

Response. There is no requirement for the ERDS to be activated from the control room or by control room personnel. The use of computer operations personnel or a software switch is acceptable to activate the

ERDS. The only requirement is to initiate ERDS data transmission as soon as possible but not later than one hour after declaring an emergency class of alert, site area emergency, or general emergency. This change is reflected in the final rule. The specific methods selected to achieve this requirement should be fully described in each licensee's ERDS implementation plan. The notification requirement is valid in order for NRC to fulfill its mandated role to monitor the licensee during an emergency. A delay of one hour or more could deprive the NRC of vital information necessary to perform its advisory and monitoring role. The licensee is currently required in 10 CFR 50.72 to have a shift communicator maintain continuous contact with the NRC Operations Center. This request is not being changed, and this person could be responsible for initiating the ERDS link.

Similarly, the requirement to use an on-site computer does not mean this equipment must be located in the control room. Any on-site location, such as the Technical Support Center or a computer facility, which is capable of meeting the requirement for notification is an acceptable location. However, off-site computers, e.g., at some central location used to service more than one plant site could be prone to additional commercial link vulnerability. This could potentially decrease the ERDS availability and reliability beyond acceptable limits.

The ERDS link will be activated or deactivated by the licensee to transmit the ERDS data to the NRC Operations Center via the NRC-provided telephone lines. In the event that NRC perceives the need to disconnect a plant from the NRC Operations Center to allow another plant onto the system, for example, terminating the transmission of exercise data to allow a unit with a real emergency to access the system, this capability must be available to the NRC.

16. *Comment.* The 18 month ERDS implementation schedule does not provide adequate flexibility for all utilities to install the system. Adhering to that schedule will cause serious operational and cost impacts to some utilities because the system requires extensive hardware modifications.

Response. The voluntary program demonstrated that an implementation period of 18 months is generally adequate. However, the NRC realizes there are plant to plant variations which, in certain cases, may require more extensive and time consuming modifications. Utilities that experience exceptional difficulties in meeting the 18 month implementation schedule should request an extension from the NRC. Extension requests will be reviewed on a case-by-case basis. Extensions will not be granted in the absence of reasonable and good faith efforts to meet the schedule.

17. *Comment.* The requirement in the proposed rule contained in appendix E to part 50, section VI .2, should be clarified to indicate that the licensee will provide data from each unit via an output port on the appropriate data system and necessary software to assemble the data to be transmitted.

Response. The staff agrees with this clarification. This section of the final rule will be modified appropriately.

18. *Comment,* Quarterly testing of the ERDS is too frequent. Testing on a semi-annual or periodic but unspecified schedule should be sufficient. One commenter noted that the rule does not address reporting requirements for system failures during testing. Also for consistency between the discussion section and the rule, the following statement regarding the use of ERDS during emergency training exercises should be added to 10 CFR 50.72(a)(4) of the rule. Although there is no requirement, the ERDS may also be activated by the licensee during emergency drills or exercises if the licensee's computer system has the capability to transmit the data.

Response. Quarterly testing during the initial year or 18 months of the ERDS program is necessary for both the licensees and the NRC monitors to gain experience and confidence with the system, as well as prove the availability and reliability of the system. An established schedule allows both the NRC and licensees to plan and allocate time and resources for testing rather than trying to accommodate testing on an unregimented basis. After a period of approximately one year of demonstrated system performance, i.e., proper functioning during quarterly testing, the test frequency may be relaxed to semi-annually.

There are no explicit reporting requirements for failures during testing because the quarterly testing will be conducted with NRC. If there are failures during these tests, the NRC, because of its participation in the tests, will be aware of them. It is unlikely there will be any system testing of which the NRC is unaware, e.g., with State or local governments, since the State links will most probably be through the NRC Operations Center. The recommended additional statement regarding use of ERDS during emergency training exercises has been included in the final rule.

19. *Comment.* Three commenters stated that this rule should impose no new isolation requirements, and suggested that references should be deleted to a potential requirement for additional isolation requirements.

Response. The reference to the potential need for isolation devices is not a new requirement. It is intended merely to serve to reinforce requirements as a design control mechanism in 10 CFR 50.55a and adds emphasis for adequate protection against spurious electrical signals. More recently constructed nuclear power reactors have adequate isolation of their computer interfaces, but in some older reactors it is conceivable the computer assembling the ERDS data may not be fully buffered, and as such, could require appropriate isolation devices. The statement alerts the licensees to the potential need for additional isolation devices.

20. *Comment.* There should be more flexibility in acceptable quality indicators (tags) for the ERDS data, thus allowing greater use of existing plant methodologies. Requiring the utilities to use the quality tags prescribed by the NRC would force major software changes and added costs for some licensees.

Response. Using the data quality indicators prescribed by the NRC should necessitate, at the most, only very minor licensee software changes. A simple translation matrix that converts the quality tags used by the licensee to the form to be used by the NRC Operations Center is sufficient. This can be applied to the ERDS data prior to transmission.

There is no requirement for the utilities to change the quality tags used at their facility. However, if each utility transmits ERDS data to the NRC Operations Center using their own quality tags, variation from licensee to licensee could cause confusion to the NRC monitors, thereby necessitating additional telephonic consultation with the licensee.

21. *Comment:* Four commenters stated that when ERDS is implemented the requirement for full time manning of the Emergency Notification System (ENS) should be relaxed. Without this relaxation the affected utility will not be able to redirect its efforts as claimed.

Response: It is not the intent to replace the ENS with ERDS; rather, ERDS is a supplemental system specialized in automatic collection and transmission in near real time of a selected set of parametric reactor data required by the NRC in its emergency monitoring role. Although implementing ERDS will diminish the current ENS

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Response: It is not the intent to replace the ENS with ERDS; rather, ERDS is a supplemental system specialized in automatic collection and transmission in near real time of a selected set of parametric reactor data required by the NRC in its emergency monitoring role. Although implementing ERDS will diminish the current ENS

burden, not all functions of the ENS will be subsumed into the ERDS. Therefore, telephone contact will still be required via the ENS. Nevertheless, the effort required by the licensee's personnel to gather the data for periodic relay to the NRC will be reduced, thus permitting their use of personnel in other emergency functions.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(3)(iii). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final regulation.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget under approval number 3150–0011.

Public reporting burden for this collection of information is estimated to average 115 hours per response the first year and 38 hours per response thereafter, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB–7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019 (3150–0011), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The NRC has prepared a regulatory analysis for the final rulemaking on this subject. The analysis examined the costs and benefits of the alternatives considered by the NRC. The NRC requested public comments on the preliminary regulatory analysis. Comments received were considered, but no changes to the regulatory analysis are considered necessary. Therefore, the preliminary regulatory analysis is adopted as the final regulatory analysis without change.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This final rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

As required by 10 CFR 50.109, the Commission has completed a backfit analysis for this rule. The Commission concluded that the rule will provide a substantial increase in the overall protection of the public health and safety by ensuring far more accurate and timely flow of data for the NRC to fulfill its role during an alert or higher emergency. The direct and indirect costs estimated for the implementation of this rule are justified in view of this increased protection. Further, the implementation and maintenance requirements of the rule will have no effect on occupational radiological exposure. The backfit analysis on which this determination is based is as follows:

Item 1: Statement of the specific objective that the backfit is designed to achieve.

Response: The objective of this rulemaking is the timely and effective implementation of ERDS so as to provide increased assurance that a reliable and effective communications system, that will allow the NRC to monitor available critical parameters during an emergency, is in place. The availability of accurate, near real-time data depicting what is taking place at a reactor facility during an alert or higher emergency will improve the NRC's understanding of the event as it is happening, and thereby better enable the NRC to perform its role of (i) providing State and local authorities recommmendations and advice on offsite action that they may need to take to protect their citizenry; (ii) supporting the licensees efforts to manage the accident by providing technical analysis and logistic support; (iii) keeping other Federal agencies and entities informed of the status of the incident; and (iv) keeping the media informed of the NRC's knowledge of the status of the incident.

Item 2: General description of the activity that would be required of the licensee or applicant in order to complete the backfit.

Response: All licensees or applicants would be required to install an NRC-supplied communication link, provide the necessary hardware from the in-plant computer to interface with the NRC-supplied communication link, provide support for periodic testing of the ERDS, and report any configuration changes to the licensee's ERDS-related hardware and software. Initially, the ERDS will be tested quarterly, unless otherwise determined by NRC based on demonstrated system performance.

Item 3: Potential change in the risk to the public from the accidental offsite release of radioactive material.

Response: The principal effect of ERDS will be a marked improvement in the availability, timeliness, and reliability of key information about what is taking place at the reactor during an accident, particularly during the critical early hours before the NRC Site Team arrives. Hence, ERDS will provide significant improvements in the NRC's ability to understand what is taking place during an emergency, and thereby more effectively perform its role of monitoring and advising the licensee. More importantly, the improvement in assessment performance will improve the NRC's ability to provide appropriate recommendations and advice to the State and local officials who are required to make the decisions regarding offsite protective actions which are necessary to protect the public.

Because the decisions made by the State and local authorities with regard to offsite protective actions could so significantly affect the public health consequences of a reactor accident, it is the judgment of the NRC that a significant improvement in the NRC's ability to provide the right recommendation at the right time provides a substantial improvement in the overall protection to the public. Because the ERDS will provide that significant improvement in the NRC's ability to provide the right recommendation at the right time, the proposed ERDS requirements are justified.

Item 4: Potential impact on radiological exposure of facility employees.

Response: The implementation of the proposed ERDS rule would have no effect on routine occupational radiological exposure and would not result in increased radiological exposure of facility employees.

Item 5: Installation and continuing costs associated with the backfit, including the cost of facility downtime or the cost of construction delay.

Response: The cost impact of the rule was estimated to be approximately $153,000 for one nuclear power reactor

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(one unit). This figure, expressed in 1990 dollars, represents the incremental worth of installing and operating ERDS for 30 years using a 5 percent discount rate. The overall industry cost of implementing the rule for 118 nuclear power reactor units was estimated at approximately $18 million. No downtime costs were considered in the cost impact estimates because the installation and operation of the ERDS should have no impact on the operation of a nuclear power plant.

Item 6: The potential safety impact of changes in plant or operational complexity, including the relationship to proposed and existing regulatory requirements.

Response: The ERDS rule should have little or no impact on the operational complexity of the nuclear power reactor units since the required modifications to the hardware and software are minor. The redirection in the labor burden provided by the automatic collection and transmission of selected reactor data would increase the efficiency and effectiveness of nuclear power plant operating personnel during an emergency. This rule is closely associated with Generic Letter 89-15 and complements the ENS that exists at every nuclear power reactor.

Item 7: The estimated resource burden on the NRC associated with the backfit and availability of such resources.

Response: The impact on the NRC resulting from the implementation of the ERDS rule is anticipated to be a one-time cost of about $200,000 for the current population of operational/licensed nuclear reactor units. This figure provides for initial reviews of licensees' implementation plan submittals. After implementation, the NRC cost is estimated to be approximately $4.4 million for 118 nuclear power reactor units. This figure represents the costs for periodic testing and configuration control expressed as the present worth in 1990 dollars and uses a 5 percent discount rate over 30 years.

Item 8: The potential impact of the differences in facility type, design, or age on the relevancy and practicality of the backfit.

Response: The rule is independent of the facility's type, design, or age. There are considerable variations in the instrumentation systems of the nuclear power plants, and the estimated cost impacts were based on an average value for current nuclear power plants to implement the ERDS. There will be no differences, however, in potential impacts between the various facilities on a yearly basis. The rule does not require that licensees monitor more parameters than are presently monitored at each facility.

Item 9: Whether the proposed backfit is interim or final and, if interim, the justification for imposing the proposed backfit on an interim basis.

Response: Implementation of the ERDS in accordance with the final rule will require that all licensees develop and submit an ERDS implementation plan to the NRC within 75 days of the publication of the final rule in the **Federal Register**. The implementation plan should provide a schedule which identifies the earliest possible time frame for ERDS implementation by the licensee as well as proposed alternate implementation dates. The NRC will establish an industry-wide ERDS implementation schedule which will take into account such factors as planned computer modifications and scheduled outages. The ERDS must be implemented within 18 months of the publication of the final rule in the **Federal Register**. Licensees that have submitted the required information under the voluntary implementation program will not be required to resubmit this information. However, they will be required to meet the implementation schedule of 18 months after the effective date of the final rule or before initial escalation to full power, whichever comes later. Licensees with currently operational ERDS interfaces approved under the voluntary ERDS implementation program will not be required to submit another implementation plan and will be considered to have met the requirements under this rule.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalty, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for part 50 continues to read as follows:

Authority: Sections. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246, (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, and 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a, and appendix Q also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844) Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 112, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80 through 50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.46 (a) and (b), and 50.54(c) are issued under secs. 161b, 161i and 161o, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.7(a), 50.10(a)-(c), 50.34 (a) and (e), 50.44(a)-(c), 50.46 (a) and (b), 50.47(b), 50.48 (a), (c), (d), and (e), 50.49(a), 50.54(a), (i) , (i)(1), (l)-(n), (p), (q), (t), (v), and (y), 50.55(f), 50.55a (a), (c)-(e), (g), and (h), 50.59(c), 50.60(a), 50.62(c), 50.64(b), and 50.80 (a) and (b) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.49 (d), (h), and (j), 50.54 (w), (z), (bb), (cc), and (dd), 50.55(e), 50.59(b), 50.61(b), 50.62(b), 50.70(a), 50.71 (a)-(c) and (e), 50.72(a), 50.73 (a) and (b), 50.74, 50.78, and 50.90 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 50.72, paragraph (a) (4) is redesignated as paragraph (a) (5) and a new paragraph (a) (4) is added to read as follows:

§ 50.72 Immediate notification requirements for operating nuclear power reactors.

(a) * * *

(4) The licensee shall activate the Emergency Response Data System (ERDS)[8] as soon as possible but not later than one hour after declaring an emergency class of alert, site area emergency, or general emergency. The ERDS may also be activated by the licensee during emergency drills or exercises if the licensee's computer system has the capability to transmit the exercise data.

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3. Appendix E to part 50 is amended by adding a new section VI, Emergency

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[8] Requirements for ERDS are addressed in Appendix E, Section VI.

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Stat. 936, 937, 938, 948,
amended, sec. 234, 83

Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246, (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, and 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a, and appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844) Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 112, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80 through 50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.46 (a) and (b), and 50.54(c) are issued under secs. 161b, 161i and 161o, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.7(a), 50.10(a)–(c), 50.34 (a) and (e), 50.44(a)–(c), 50.46 (a) and (b), 50.47(b), 50.48 (a), (c), (d), and (e), 50.49(a), 50.54(a), (i) , (i)(1), (l)–(n), (p), (q), (t), (v), and (y), 50.55(f), 50.55a (a), (c)–(e), (g), and (h), 50.59(c), 50.60(a), 50.62(c), 50.64(b), and 50.80 (a) and (b) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.49 (d), (h), and (j), 50.54 (w), (z), (bb), (cc), and (dd), 50.55(e), 50.59(b), 50.61(b), 50.62(b), 50.70(a), 50.71 (a)–(c) and (e), 50.72(a), 50.73 (a) and (b), 50.74, 50.78, and 50.90 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 50.72, paragraph (a) (4) is redesignated as paragraph (a) (5) and a new paragraph (a) (4) is added to read as follows:

§ 50.72 Immediate notification requirements for operating nuclear power reactors.

(a) * * *

(4) The licensee shall activate the Emergency Response Data System (ERDS) [5] as soon as possible but not later than one hour after declaring an emergency class of alert, site area emergency, or general emergency. The ERDS may also be activated by the licensee during emergency drills or exercises if the licensee's computer system has the capability to transmit the exercise data.

* * * * *

3. Appendix E to part 50 is amended by adding a new section VI, Emergency

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[5] Requirements for ERDS are addressed in Appendix E, Section VI.

Response Data System, to read as follows:

Appendix E to Part 50—Emergency Planning and Preparedness for Production and Utilization Facilities

* * * * *

VI. Emergency Response Data System

1. The Emergency Response Data System (ERDS) is a direct near real-time electronic data link between the licensee's onsite computer system and the NRC Operations Center that provides for the automated transmission of a limited data set of selected parameters. The ERDS supplements the existing voice transmission over the Emergency Notification System (ENS) by providing the NRC Operations Center with timely and accurate updates of a limited set of parameters from the licensee's installed onsite computer system in the event of an emergency. When selected plant data are not available on the licensee's onsite computer system, retrofitting of data points is not required. The licensee shall test the ERDS periodically to verify system availability and operability. The frequency of ERDS testing will be quarterly unless otherwise set by NRC based on demonstrated system performance.

2. Except for Big Rock Point and all nuclear power facilities that are shut down permanently or indefinitely, onsite hardware shall be provided at each unit by the licensee to interface with the NRC receiving system. Software, which will be made available by the NRC, will assemble the data to be transmitted and transmit data from each unit via an output port on the appropriate data system. The hardware and software must have the following characteristics:

a. Data points, if resident in the in-plant computer systems, must be transmitted for four selected types of plant conditions: Reactor core and coolant system conditions; reactor containment conditions; radioactivity release rates; and plant meteorological tower data. A separate data feed is required for each reactor unit. While it is recognized that ERDS is not a safety system, it is conceivable that a licensee's ERDS interface could communicate with a safety system. In this case, appropriate isolation devices would be required at these interfaces.[6] The data points, identified in the following parameters will be transmitted:

(i) For pressurized water reactors (PWRs), the selected plant parameters are: (1) Primary coolant system: pressure, temperatures (hot leg, cold leg, and core exit thermocouples), subcooling margin, pressurizer level, reactor coolant charging/makeup flow, reactor vessel level, reactor coolant flow, and reactor power; (2) Secondary coolant system: Steam generator levels and pressures, main feedwater flows, and auxiliary and emergency feedwater flows; (3) Safety injection: High- and low-pressure safety injection flows, safety injection flows (Westinghouse), and borated water storage tank level; (4) Containment: pressure, temperatures, hydrogen concentration, and sump levels; (5) Radiation monitoring system: Reactor coolant radioactivity, containment radiation level, condenser air removal radiation level, effluent radiation monitors, and process radiation monitor levels; and (6) Meteorological data: wind speed, wind direction, and atmospheric stability.

(ii) For boiling water reactors (BWRs), the selected parameters are: (1) Reactor coolant system: Reactor pressure, reactor vessel level, feedwater flow, and reactor power; (2) Safety injection: Reactor core isolation cooling flow, high-pressure coolant injection/high-pressure core spray flow, core spray flow, low-pressure coolant injection flow, and condensate storage tank level; (3) Containment: drywell pressure, drywell temperatures, drywell sump levels, hydrogen and oxygen concentrations, suppression pool temperature, and suppression pool level; (4) Radiation monitoring system: Reactor coolant radioactivity level, primary containment radiation level, condenser off-gas radiation level, effluent radiation monitor, and process radiation levels; and (5) Meteorological data: Wind speed, wind direction, and atmospheric stability.

b. The system must be capable of transmitting all available ERDS parameters at time intervals of not less than 15 seconds or more than 60 seconds. Exceptions to this requirement will be considered on a case by case basis.

c. All link control and data transmission must be established in a format compatible with the NRC receiving system [7] as configured at the time of licensee implementation.

3. Maintaining Emergency Response Data System:

a. Any hardware and software changes that affect the transmitted data points identified in the ERDS Data Point Library [8] (site specific data base residing on the ERDS computer) must be submitted to the NRC within 30 days after the changes are completed.

b. Hardware and software changes, with the exception of data point modifications, that could affect the transmission format and computer communication protocol to the ERDS must be provided to the NRC as soon as practicable and at least 30 days prior to the modification.

c. In the event of a failure of the NRC supplied onsite modem, a replacement unit will be furnished by the NRC for licensee installation.

4. Implementing the Emergency Response Data System Program:

a. Each licensee shall develop and submit an ERDS implementation program plan to the NRC by October 28, 1991. To ensure compatibility with the guidance provided for the ERDS, the ERDS implementation program plan,[9] must include, but not be limited to, information on the licensee's computer system configuration (i.e., hardware and software), interface, and procedures.

b. Licensees must comply with appendix E to part 50, section V.

c. Licensees that have submitted the required information under the voluntary ERDS implementation program will not be required to resubmit this information. The licensee shall meet the implementation schedule of appendix E to Part 50, Section VI.4d.

d. Each licensee shall complete implementation of the ERDS by February 13, 1993, or before initial escalation to full power, whichever comes later. Licensees with currently operational ERDS interfaces approved under the voluntary ERDS implementation program [10] will not be required to submit another implementation plan and will be considered to have met the requirements for ERDS under appendix E to part 50, section VI.1 and 2 of this part.

Dated at Rockville, Maryland, this 23rd day of July, 1991.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 91–17895 Filed 8–12–91; 8:45 am]

BILLING CODE 7590-01-M

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[6] See 10 CFR 50.55a(h) Protection Systems.

[7] Guidance is provided in NUREG–1394, Revision 1.

[8] See NUREG–1394, Revision 1, appendix C, Data Point Library.

[9] See NUREG–1394, Revision 1, section 3.

[10] See NUREG–1394, Revision 1.

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federal register

Tuesday
August 13, 1991

Part VI

Department of Education

Rehabilitation Services Administration

Rehabilitation Short-Term Training; Final Priorities for FY 1991: Notice

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DEPARTMENT OF EDUCATION

Rehabilitation Services Administration

Rehabilitation Short-Term Training

AGENCY: Department of Education.

ACTION: Notice of final priorities for fiscal year 1991.

SUMMARY: The Secretary of Education announces final priorities for fiscal year 1991 for training activities to be supported under the Short-Term Training program of the Rehabilitation Services Administration (RSA).

EFFECTIVE DATES: These priorities take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Richard Melia, Office of Developmental Programs, Rehabilitation Services Administration, Department of Education, 400 Maryland Avenue SW., room 3324 Switzer, Washington, DC 20202–2649. Telephone: (202) 732–1400. TDD users may contact the Program Specialist via the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m. Eastern time.

SUPPLEMENTARY INFORMATION: The Short-Term Training program is authorized by title III, section 304 of the Rehabilitation Act of 1973, as amended. Under this discretionary grant program, Federal support may be provided for special seminars, institutes, workshops, and other short-term courses in technical matters relating to the delivery of vocational, medical, social, and psychological rehabilitation services.

Eligible Applicants

State agencies and other public or nonprofit agencies and organizations, including institutions of higher education, are eligible to apply for assistance under the Rehabilitation Short-Term Training program.

On May 13, 1991, the Secretary published a notice of proposed priorities for this program in the **Federal Register** (56 FR 22065). As a result of public comment, six changes have made been made in Priority 1. No changes were made to Priority 2.

Analysis of Comments and Changes

In response to the Secretary's invitation to comment in the notice of proposed priorities, 20 parties submitted comments. An analysis of the comments and of the changes in the notice of proposed priorities follows.

Priority 1—Rehabilitation Short-Term Training—Implementation of the Americans With Disabilities Act (ADA)

Comments: One commenter suggested that the training include a focus on the legislative and philosophic history of the independent living and civil rights movement for people with disabilities. Other commenters suggested that the training include a focus on the independent living philosophy and the attitudinal variables that prompted the passage of the ADA.

Discussion: The Secretary agrees that it is important for the training to include a focus on the legislative and philosophic history of the independent living and civil rights movement for people with disabilities. This will provide background regarding the impetus for the ADA.

Changes: A change has been made to the priority to require that the training include information on the legislative and philosophic history of the independent living and civil rights movement for people with disabilities.

Comments: A commenter suggested that the priority include the requirement that persons with disabilities be involved in the development of this training.

Discussion: The Secretary agrees that the involvement of persons with disabilities in the development and provision of this training is an important factor.

Changes: A requirement has been added to the priority that individuals with disabilities be involved in the development and delivery of training under this priority.

Comments: One commenter suggested that it is confusing to require that the training address the legal and professional liabilities of vocational rehabilitation and independent living professionals in the provision of services and information regarding compliance with the requirements of the ADA.

Discussion. The Secretary agrees that this requirement may be confusing and misinterpreted. The intent was to provide training on the limits imposed by the ADA regarding the disclosure of information to a potential employer about an individual's disability. This information can be provided under the general training regarding the ADA and its implementing regulations.

Changes: This requirement has been removed from the priority.

Comments: Three commenters suggested that the audience for this training be expanded to include employers and trainers of employer personnel, and that the training address employers' skills in hiring, accommodating, and supervising employees with disabilities. Another commenter suggested that the intended audience include personnel from independent living centers. Other comments were received relating to the inclusion of personnel from rehabilitation facilities in the training audience.

Discussion: Rehabilitation Short-Term Training funds can only be used to train personnel that provide vocational, medical, social, and psychological rehabilitation services. The U.S. Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Justice (DOJ) are required to train and provide technical assistance to employers on the employment-related and public accommodation provisions of the ADA. In addition, the National Institute on Disability and Rehabilitation Research (NIDRR) is planning training for employers on the ADA. This priority requires that the short-term training be coordinated with the ADA-related training to be funded by NIDRR. The training audience includes personnel from independent living centers, rehabilitation facilities, and other community-based rehabilitation programs.

Changes: None.

Comments: One commenter suggested that the training be conducted in a specific State since out-of-State travel may not be possible. Another commenter suggested that the training include a "network" approach so that national organizations can replicate the training for State chapters. A third commenter suggested that the project include a specific dissemination plan for the course material and outline. One commenter disagreed with the "train-the-trainer" approach and suggested that the priority include training of direct service providers and individuals with disabilities. The same commenters suggested that the training be competency-based and that participants be required to demonstrate their mastery in all training areas.

Discussion: The intent of the priority is a "train-the-trainer" approach so that the training can be replicated at the State and local levels. The Secretary believes that this approach is the most effective mechanism given the limited amount of funds available for this project. While the training may be conducted in one central location, training materials must be made available for dissemination to undergraduate and graduate

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Discussion: Rehabilitation Short-Term Training funds can only be used to train personnel that provide vocational, medical, social, and psychological rehabilitation services. The U.S. Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Justice (DOJ) are required to train and provide technical assistance to employers on the employment-related and public accommodation provisions of the ADA. In addition, the National Institute on Disability and Rehabilitation Research (NIDRR) is planning training for employers on the ADA. This priority requires that the short-term training be coordinated with the ADA-related training to be funded by NIDRR. The training audience includes personnel from independent living centers, rehabilitation facilities, and other community-based rehabilitation programs.

Changes: None.

Comments: One commenter suggested that the training be conducted in a specific State since out-of-State travel may not be possible. Another commenter suggested that the training include a "network" approach so that national organizations can replicate the training for State chapters. A third commenter suggested that the project include a specific dissemination plan for the course material and outline. One commenter disagreed with the "train-the-trainer" approach and suggested that the priority include training of direct service providers and individuals with disabilities. The same commenters suggested that the training be competency-based and that participants be required to demonstrate their mastery in all training areas.

Discussion: The intent of the priority is a "train-the-trainer" approach so that the training can be replicated at the State and local levels. The Secretary believes that this approach is the most effective mechanism given the limited amount of funds available for this project. While the training may be conducted in one central location, training materials must be made available for dissemination to undergraduate and graduate

rehabilitation education programs and in-service and post-employment training programs funded under the Rehabilitation Act (Act) of 1973, as amended, for replication. A specific dissemination plan is not needed as the Department will disseminate the course material and outline to State vocational rehabilitation in-service programs, regional rehabilitation continuing education programs, and certain long-term training projects funded under section 304 of the Act. While no changes have been made to the priority concerning competency-based training, all projects under this priority will be required to submit an evaluation plan to assess the effectiveness of their training.

Changes: The priority has been revised to more clearly state that the project must produce a course outline and sample course materials for replication purposes.

Comments: A commenter suggested that the training on skills needed to assist employers in complying with the ADA include information on the use of rehabiliation technology and that the training focus on the capacities of individuals with disabilities.

Discussion: The Secretary agrees that the training can be enhanced by the inclusion of information on rehabilitation technology and the assessment of the capacities of individuals with disabilities.

Changes: Two changes have been made to the priority based upon these comments. First, the training must provide rehabilitation professionals with skills in the use of rehabilitation technology to assist employers in complying with the provisions of the ADA. Secondly, the training must provide vocational rehabilitation and independent living professionals with skills to assess the capacities, as well as the functional limitations, of individuals with disabilities in order to better assist employers to comply with the ADA.

Comments: One commenter suggested that the training provide information on the application of the ADA to specific disability groups.

Discussion: The training is intended to be national in scope. The inclusion of a focus on a specific disability group or groups would limit the applicability of this training at the national level.

Changes: None.

Comments: A commenter suggested that the priority include the requirement that the project develop and disseminate a listing of resources for trainees and others to utilize in the provision of technical assistance on the ADA.

Discussion: Both the EEOC and the DOJ are required to produce technical assistance manuals and other resource materials under section 506 of the ADA. The Department is working with both of these Federal agencies in the development of the resource materials that will become available to the public shortly after the publication of final regulations implementing the ADA. Including the development of resource listings in this priority would be a duplication of the requirement under the ADA.

Changes: None.

Priority 2—Rehabilitation Short-Term Training—Improving the Competency of Vocational Rehabilitation Counselors in Marketing of Vocational Rehabilitation Services, Providing Job Placement, and Assessing a Client's Job Skills That May Be Transferred to Other Occupational Opportunities

Comments: One commenter suggested the elimination of this priority. Another commenter suggested that this priority be replaced with one that focuses on rehabilitation technology.

Discussion: The 1989 National Survey of Personnel Shortages and Training Needs in Vocational Rehabilitation by Pelavin Associates substantiates the need for this type of training for vocational rehabilitation counselors. In addition, several other comments received on the proposed priority noted the need for this type of training. The Secretary funds other long-term training projects that provide training at both the pre-service and post-employment levels regarding rehabilitation engineering and technology services.

Changes: None.

Comments: Several commenters suggested increasing the emphasis on marketing and encouraging employers to hire people with disabilities. One commenter suggested that the training include outreach to business and industry, the development of brochures and videos, and efforts to improve the placement skills of vocational rehabilitation counselors.

Discussion: The Secretary believes that the priority includes sufficient emphasis on the use of marketing strategies to increase competitive employment opportunities for individuals with disabilities. The priority is sufficiently broad to allow a project to address the areas suggested regarding outreach, materials development, and placement skills.

Changes: None.

Comments: One commenter suggested that the priority conflicts with the intent of the ADA by supporting training to match an individual's skills with employer demands.

Discussion: The Secretary believes that matching an individual's skills with employer demands is consistent with a marketing approach to job development and job placement and does not conflict with the tenets of the ADA. As stated in the priority, marketing strategies have proven to be quite successful in assisting individuals with disabilities to access competitive employment opportunities.

Changes: None.

Comments: One commenter suggested a regional-oriented training focus. Other commenters suggested revisions in the intended training audience to include rehabilitation facility personnel and upper management personnel.

Discussion: The priority does not specify the geographic focus of the training. Projects can address national, regional, State, or local areas. However, the priority requires that a manual and training protocol be developed so that the training can be replicated in other locations. The training is intended for vocational rehabilitation counselors and other rehabilitation professionals. This intended training audience is broad enough to include facility personnel and upper management personnel.

Changes: None.

Comments: Two commenters suggested that the proposed training is too ambitious and cannot be addressed in a short-term training format. On the other hand, several other commenters supported the short-term training approach.

Discussion: The Secretary believes that the short-term training approach is appropriate to upgrade the skills of vocational rehabilitation counselors and other personnel involved in the placement of individuals with disabilities into competitive employment. The Secretary also funds long-term training projects that provide more intensive skill development in the areas of job development and job placement services for individuals with disabilities.

Changes: None.

Comments: One commenter suggested that the training provide information that is tailored to the special needs of certain disability groups.

Discussion: The Secretary does not support focusing on a specific disability group or groups for this training. Marketing strategies and the assessment of job skills are generic in nature and should not be limited to a specific disability group or groups.

Changes: None.

Comments: A commenter suggested that the Department develop innovative project grants for replication of model programs that incorporate a marketing strategy.

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Discussion: The Rehabilitation Short-Term Training program cannot be used to fund projects that provide direct services. The Secretary funds other categories of grants that provide direct services to individuals with disabilities. The Department has also identified exemplary programs and projects that increase competitive employment opportunities for individuals with disabilities and has disseminated information on these exemplary programs to encourage replication in other locations.

Changes: None.

Priorities: In accordance with the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.105(c)(3), the Secretary sets aside funds and gives an absolute preference to applications that respond to these final priorities described in this notice for fiscal year 1991. An absolute priority is one that permits the Secretary to select for funding only those applications proposing a project or projects that meet the priorities.

Priority 1—Rehabilitation Short-Term Training—Implementation of the Americans with Disabilities Act (ADA)

The purpose of the Rehabilitation Act of 1973, as amended, is to develop and implement, through research, training, and services, comprehensive and coordinated programs of vocational rehabilitation and independent living for individuals with disabilities in order to maximize their employability, independence, and integration into the workplace and the community. The Americans with Disabilities Act (P.L. 101–336), signed into law on July 26, 1990, guarantees equal opportunity for individuals with disabilities in employment, public accommodations, transportation, State and local government services, and telecommunications.

In order to assist in the implementation of the national policy of equal opportunity for individuals with disabilities mandated by the ADA in a manner consistent with Rehabilitation Act of 1973, as amended, priority will be given to projects that provide a short-term training course for pre-service educators and post-employment trainers of personnel working in State vocational rehabilitation agencies, centers for independent living, client assistance programs, rehabilitation facilities, and community-based programs for individuals with disabilities. Projects must include individuals with disabilities in the development and delivery of training under this priority.

The short-term training must be national in scope and conducted after the publication of final regulations to implement the employment and public accommodation provisions under Titles I and III of the ADA. These regulations were promulgated by the Equal Employment Opportunity Commission and the Department of Justice and were scheduled to be published by July 26, 1991.

The short-term training must provide educators and trainers with the following: (1) The legislative and philosophic background of the independent living and civil rights movements for people with disabilities. (2) An understanding of the ADA and any regulations implementing the ADA. (3) Specific vocational rehabilitation and independent living skills and knowledge of services needed for assisting employers in complying with the requirements of the ADA, including, but not limited to, accessibility surveys, job accommodation, worksite modifications, reasonable accommodations, the use of rehabilitation technology at the worksite, and assessment of functional limitations and the capacities of individuals with disabilities to perform the job. (4) A course outline and sample course materials that can be incorporated into undergraduate and graduate rehabilitation education programs and in-service training programs for rehabilitation agencies or programs, including regional rehabilitation continuing education programs (RRCEP), State vocational rehabilitation agency in-service training programs, and long-term training programs under section 304 of the Rehabilitation Act.

To avoid duplication, the project must coordinate training efforts with those activities to be funded by the National Institute on Disability and Rehabilitation Research that relate to training and technical assistance for the Americans with Disabilities Act.

Priority 2—Rehabilitation Short-Term Training—Improving the Competency of Vocational Rehabilitation Counselors in Marketing of Vocational Rehabilitation Services, Providing Job Placement, and Assessing a Client's Job Skills That May Be Transferred to Other Occupational Opportunities

Survey research findings published by the University of Wisconsin-Stout Research and Training Center (Inservice and Continuing Education Needs of Rehabilitation Facility Personnel, 1990), as well as the 1989 National Survey of Personnel Shortages and Training Needs in Vocational Rehabilitation by Pelavin Associates (September, 1989), indicate a significant shortage of qualified personnel with rehabilitation job development and job placement skills. In addition, the Secretary wishes to emphasize marketing strategies as a mechanism to encourage employers to hire and retain employees with disabilities. The impact of the Americans with Disabilities Act on business and industry will also create the need for job development and placement staff to provide technical assistance to employers on hiring and retaining employees with disabilities.

The Secretary believes that these specialized needs for staff development in the areas of job development and job placement may be met through a concentrated training program of short duration that focuses on placement, marketing, and transferability of job skills.

The training must be designed to provide personnel in State vocational rehabilitation agencies and other rehabilitation professionals with—(1) The ability to better match client skills with employer demands in order to increase placements; (2) The knowledge to assess an individual's job skills that may be transferred to other occupational opportunities; (3) The skills to apply national and State occupational information, e.g., the information from the National Occupational Information Coordinating Council (NOICC) and State Occupational Information Coordinating Councils (SOICC), to facilitate competitive employment opportunities for individuals with disabilities; (4) The skills to develop marketing programs for the services of vocational rehabilitation agencies that will lead to improved placement outcomes of individuals with disabilities in private industry; and (5) The ability to assist private industries in the initiation of disability management programs.

The project must demonstrate potential for replication in other locations through the dissemination of training materials and protocols. After a project is funded, a manual must be produced that contains a course outline and training materials focused on the five areas listed above.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

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Dated: August 2, 1991.

Lamar Alexander,

Secretary of Education.

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The Secretary believes that these specialized needs for staff development in the areas of job development and job placement may be met through a concentrated training program of short duration that focuses on placement, marketing, and transferability of job skills.

The training must be designed to provide personnel in State vocational rehabilitation agencies and other rehabilitation professionals with—(1) The ability to better match client skills with employer demands in order to increase placements; (2) The knowledge to assess an individual's job skills that may be transferred to other occupational opportunities; (3) The skills to apply national and State occupational information, e.g., the information from the National Occupational Information Coordinating Council (NOICC) and State Occupational Information Coordinating Councils (SOICC), to facilitate competitive employment opportunities for individuals with disabilities; (4) The skills to develop marketing programs for the services of vocational rehabilitation agencies that will lead to improved placement outcomes of individuals with disabilities in private industry; and (5) The ability to assist private industries in the initiation of disability management programs.

The project must demonstrate potential for replication in other locations through the dissemination of training materials and protocols. After a project is funded, a manual must be produced that contains a course outline and training materials focused on the five areas listed above.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

(Authority: 29 U.S.C. 774)

(Catalog of Federal Domestic Assistance No. 84.246, Rehabiltation Short-Term Training)

Dated: August 2, 1991.

Lamar Alexander,

Secretary of Education.

[FR Doc. 91-19198 Filed 8-12-91; 8:45 am]

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August 13, 1991

Part VII

Department of Education

34 CFR Part 347

Technology-Related Assistance for Individuals With Disabilities: Training and Public Awareness Projects of National Significance; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 347

RIN 1820–AA93

Technology-Related Assistance for Individuals with Disabilities: Training and Public Awareness Projects of National Significance

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary announces final regulations to implement the Training and Public Awareness Projects of National Significance under the Technology-Related Assistance for Individuals with Disabilities Program. The regulations implement part C of title II of the Technology-Related Assistance for Individuals with Disabilities Act of 1988 (Pub. L. 100–407). The regulations describe the purposes of the program, the types of activities that may be supported, how the Secretary establishes priorities under the program, application requirements, the selection criteria by which the Secretary evaluates applications, and the requirements that must be met by those applicants that receive awards under the program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Carol Cohen; Telephone: (202) 732–5607; deaf or hearing-impaired persons who use telecommunication devices for the deaf (TDD) may call (202) 732–5316.

SUPPLEMENTARY INFORMATION: The Technology-Related Assistance for Individuals with Disabilities Act of 1988 (Pub. L. 100–407) was enacted on August 19, 1988. In the Act, the Congress noted that there have been major advances in technology during the past decade. The Congress found that the provision of assistive technology devices and services can enable some persons with disabilities to have greater control over their own lives, increase their participation in education, employment, family, and community activities, interact to a greater extent with individuals who do not have disabilities, and otherwise benefit from opportunities that are commonly available to individuals who do not have disabilities. On August 9, 1989, the Secretary published final regulations to implement title I of the Act, the State Grants Program for Technology-Related Assistance for Individuals with Disabilities. That program provides funds to States, on a competitive basis, to develop consumer-responsive comprehensive statewide programs of technology-related assistance for individuals of all ages who have disabilities. On August 23, 1990, the Secretary published final regulations to implement part D of title II of the Act—Demonstration and Innovation Projects. These regulations implement part C of title II of the Act.

These regulations describe the activities that may be supported under each of the three project types and state the priorities that may be applied to each of them. From time to time, the Secretary will publish a notice in the **Federal Register** requesting applications for awards under this program; the notice may specify particular priorities under one or more of the project types.

In the Act, the Congress specified that the Secretary should seek public input in the development of the priorities under this program, and should publish in the **Federal Register** a description of how the priorities were derived. In order to develop these priorities, NIDRR held a public hearing on September 28, 1990 in Washington, DC. This meeting was announced in the **Federal Register** and NIDRR mailed copies of the meeting announcement along with invitations to testify to an extensive list of organizations and individuals who had expressed interest in technology assistance in the past. Thirty-three organizations presented oral testimony. NIDRR also accepted and considered written comments, for one month after the hearing. In all, over one hundred comments and letters of recommendation were received. On the basis of an analysis of the testimony and written comments, NIDRR developed the priorities contained in this document. As provided by § 75.102 of the Education Department General Administrative Regulations (EDGAR), the Secretary may elect to establish other priorities in the future by proposing additional priorities for public comment.

On May 21, 1991, the Secretary published a notice of proposed rulemaking (NPRM) for this part in the **Federal Register** at 56 FR 23352. After careful review of the public comments, the Secretary decided that, while many of them contained helpful suggestions to the Department for the operation of the program, none of the comments required substantive changes in the regulations that would affect the fiscal year 1991 competition. However, on the basis of public comments, the Secretary has made five changes in the final regulations. These changes revise § 347.2(a) to include the same target populations specified in § 347.1(a); add the development, evaluation, implementation, and dissemination of in-service training programs on assistive technology for special education professionals (§ 347.11(a)(15)) and for therapeutic recreation specialists and other recreation professionals (§ 347.11(a)(16); and add the development of curricula to ensure competency in the provision of assistive technology for both special education professionals (§ 347.12(a)(5)) and therapeutic recreation specialists and other recreation professionals (§ 347.12(a)(6)).

Analysis of Comments and Responses

In response to the Secretary's invitation in the NPRM, fourteen parties submitted comments on the proposed regulations. An analysis of the comments and the responses follows:

Comments: Six commenters requested that special educators be added as one of the specific professions for which annual training priorities could be announced.

Discussion: The Secretary agrees that it is important to train special education professionals in the use of assistive technology.

Changes: Special education professionals have been added as a possible priority target for training in § 347.11(a)(15) and for curriculum development in § 347.12(a)(5).

Comment: One of these commenters suggested that the term "assistive technology" be defined to include all instructional and rehabilitation uses.

Discussion: The definition for the term "Technology-Related Assistance" is included in the statute for Technology-Related Assistance for Persons with Disabilities Act of 1988.

Changes: None.

Comment: One commenter suggested that as there are limited funds available for Public Awareness projects that the successful grantees be familiar with Public Awareness projects.

Discussion: The Secretary agrees that potential grantees should have the expertise needed to implement these types of campaigns. Thus the selection criteria for grants in § 347.33(d)(6) include the resources, experiences, and capabilities of the institution or organization.

Changes: None.

Comment: One commenter suggested that the priorities should include

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Analysis of Comments and Responses

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Changes: Special education professionals have been added as a possible priority target for training in § 347.11(a)(15) and for curriculum development in § 347.12(a)(5).

Comment: One of these commenters suggested that the term "assistive technology" be defined to include all instructional and rehabilitation uses.

Discussion: The definition for the term "Technology-Related Assistance" is included in the statute for Technology-Related Assistance for Persons with Disabilities Act of 1988.

Changes: None.

Comment: One commenter suggested that as there are limited funds available for Public Awareness projects that the successful grantees be familiar with Public Awareness projects.

Discussion: The Secretary agrees that potential grantees should have the expertise needed to implement these types of campaigns. Thus the selection criteria for grants in § 347.33(d)(6) include the resources, experiences, and capabilities of the institution or organization.

Changes: None.

Comment: One commenter suggested that the priorities should include

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training for therapeutic recreation specialists and other recreation professionals.

Changes: The Secretary has added a priority in § 347.11(a)(16) to address the development, evaluation, implementation, and dissemination of in-service training programs for therapeutic recreation specialists and other recreation professionals in assistive technology. The Secretary also has added a priority under § 347.12(a)(6) to address the development of curricula to ensure competency in assistive technology for therapeutic recreation specialists and other recreation professionals.

Comment: One commenter noted that § 347.1(a) and § 347.2(a) do not include the same target populations for training and recommended that § 347.2(a) be revised to include the broader spectrum of trainees.

Discussion: The Secretary agrees that the two categories should be identical.

Changes: The Secretary has amended § 347.2(a) to include the training of individuals with disabilities, their family members, or representatives, employers, insurers, and persons providing services to or otherwise having contact with persons with disabilities, regarding the provision of technology-related assistance.

Comment: One commenter noted the need to stimulate private-sector support and involvement with individuals with disabilities, State agencies, and providers to improve access to assistive technology.

Discussion: The Secretary agrees that private-sector involvement is important and believes that this program will facilitate that involvement through making awards to private nonprofit and for-profit agencies and through priorities that involve manufacturers, insurers, adaptations of mass market technologies, market analysis, public awareness, and training for community-based organizations.

Changes: None.

Comment: One commenter stressed the importance of not duplicating personnel training and career development efforts of the Rehabilitation Services Administration.

Discussion: The Secretary agrees that this program must be coordinated with the programs of the Rehabilitation Services Administration and the Office of Special Education Programs.

Changes: None.

Comment: A commenter suggested that eligibility for awards under § 347.1 (a) and (c) should not be limited to private for-profit and nonprofit entities.

Discussion: The eligibility requirements for this program are established by statute.

Changes: None.

Comment: One commenter recommended a new priority for technology training programs addressing the Americans With Disabilities Act (ADA).

Discussion: NIDRR is establishing a technical assistance initiative to facilitate the implementation of the ADA, and the Secretary believes that a new training priority addressing the ADA would duplicate the activities under that initiative, which will include training and technical assistance on a broad range of issues, including assistive technology.

Changes: None.

Comment: Several commenters suggested that the Secretary select certain priorities for funding this year.

Discussion: The Secretary has selected priorities for funding based upon the needs of the field and the interests of individuals with disabilities, as expressed at the NIDRR public hearings on the subject in September, 1990, and other input from the field over the course of the past two years.

Changes: None.

Comment: One commenter suggested that potential grantees be allowed to seek additional funding sources to supplement Federal funds.

Discussion: The Secretary agrees and encourages prospective grantees to seek additional sources of funding to enhance their activities. There is no restriction on this practice under the statute or regulations.

Changes: None.

Comment: One commenter recommended adding "and technologists" after "and other engineers" in § 347.11(a)(14).

Discussion: The Secretary believes that the term "technologists" is not defined and is too broad to be meaningful.

Changes: None.

Executive Order

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program excluded from the intergovernmental review provisions of section 204 of the Demonstration Cities and Metropolitan Development Act because these are demonstration projects of national significance and do not directly affect State and local governments.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Only a small number of discretionary awards would be made under this program. Although small entities could apply for these grants, the grants would not have a significant economic impact on the recipients nor any impact on most small entities. (44 U.S.C. 3504(h))

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 347

Administrative practice and procedure, Education, Educational research, Grant programs—education, Handicapped, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.236, National Institute on Disability and Rehabilitation Research)

Dated: August 2, 1991.

Lamar Alexander,
Secretary of Education.

The Secretary amends title 34 of the Code of Federal Regulations by adding a new part 347 to read as follows:

PART 347—TRAINING AND PUBLIC AWARENESS PROJECTS OF NATIONAL SIGNIFICANCE IN TECHNOLOGY-RELATED ASSISTANCE FOR INDIVIDUALS WITH DISABILITIES

Subpart A—General

Sec.
347.1 What is the training and public awareness projects program?
347.2 What are the purposes of the training and public awareness projects program?
347.3 Who is eligible for assistance under this program?
347.4 What regulations apply to this program?
347.5 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department Support Under This Program?

347.10 What types of projects may be supported under this program?
347.11 What are the priorities under the technology training program?
347.12 What are the priorities under the technology careers program?
347.13 What are the priorities under the public awareness program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

347.30 How does the Secretary evaluate applications under this program?
347.31 What selection criteria are used to evaluate applications for technology training projects under this program?
347.32 What selection criteria are used to evaluate applications for technology career development projects under this program?
347.33 What selection criteria are used to evaluate applications for public awareness projects under this program?

Subpart E—What Conditions Must Be Met After an Award?

347.40 What are the requirements of a grantee for coordination and information sharing?
347.41 What are the reporting requirements for a grantee?

Authority: 29 U.S.C. 2201–2271, unless otherwise noted.

Subpart A—General

§ 347.1 What is the training and public awareness projects program?

(a) The technology training program provides awards to nonprofit or for-profit entities to develop, demonstrate, disseminate, and evaluate curricula, materials, and methods used to train individuals with disabilities, their family members or representatives, employers, insurers, and persons providing services to or otherwise having contact with persons with disabilities, regarding the provision of technology-related assistance. This program also supports the conduct of training sessions related to technology-related assistance for these entities.

(b) The technology careers program provides support to institutions of higher education to prepare personnel for careers relating to the provision of technology-related assistance to individuals with disabilities.

(c) The public awareness program provides awards to for-profit and nonprofit entities, to carry out national projects that recognize and build awareness of the importance and efficacy of assistive technology devices and assistive technology services for individuals of all ages with disabilities functioning in various settings in daily life.

(Authority: 29 U.S.C. 2251 and 2252)

§ 347.2 What are the purposes of the training and public awareness projects program?

(a) The purposes of technology training projects are to develop and test curricula, materials, and techniques, and to conduct projects to train individuals with disabilities, their family members or representatives, employers, insurers, and persons providing services to or otherwise having contact with persons with disabilities, on the uses and benefits of technology-related assistance.

(b) The purpose of technology careers projects is to prepare individuals for careers relating to the provision of technology-related assistance to individuals with disabilities through undergraduate and graduate level education, continuing education, and in-service training.

(c) The purpose of public awareness projects is to build awareness of the importance and efficacy of assistive technology devices and services for individuals of all ages with disabilities functioning in various settings of daily life.

(Authority: 29 U.S.C. 2251–2252)

§ 347.3 Who is eligible for assistance under this program?

(a) Nonprofit and for-profit entities are eligible to receive awards under the technology training program. Public agencies are not eligible to receive awards under the technology training program.

(b) Institutions of higher education are eligible to receive awards under the technology careers program.

(c) Nonprofit and for-profit entities are eligible to receive awards under the public awareness projects program. Public agencies are not eligible to receive awards under the public awareness projects program.

(Authority: 29 U.S.C. 2251 and 2252)

§ 347.4 What regulations apply to this program?

The following regulations apply to the Training and Public Awareness Projects program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), part 75 (Direct Grant Programs), part 77 (Definitions that Apply to Department Regulations), part 81 (General Education Provisions Act—Enforcement), part 82 (New Restrictions on Lobbying), part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for a Drug-Free Workplace (Grants)), and part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 347.

(Authority: 29 U.S.C. 2201–2253)

§ 347.5 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Department
EDGAR
Fiscal year
Grant
Grant period
Nonprofit
Nonpublic
Private
Project
Project Period
Public

(b) *Definitions in the Technology-Related Assistance for Individuals with Disabilities Act of 1988.* The following terms used in this part are defined in section 3 of the Act.

Assistive technology device
Assistive technology service
Individual with disabilities
Institution of higher education
Secretary
Technology-related assistance
Underserved group

(c) *Other Definitions.* As used in this part, *Act* means the Technology-Related Assistance for Individuals with Disabilities Act of 1988 (Pub. L. 100–407).

(Authority: 29 U.S.C. 2201–2271)

Subpart B—What Kinds of Activities Does the Department Support Under This Program?

§ 347.10 What types of projects may be supported under this program?

Under this program, the Secretary awards funds to support the following types of projects:

(a) Technology training projects that may include—

(1) Development, demonstration, delivery, evaluation, or dissemination of training modules on the use of technology-related assistance for consumer organizations, individuals with disabilities or their families or representatives, and advocates;

(2) In-service training for individuals who provide services to or representation for individuals with disabilities, including in-service training for health care workers, teachers, rehabilitation engineers, and other rehabilitation workers;

(3) Training for policymakers and administrators in public and private agencies that have contact with or impact on individuals with disabilities; and

(4) Training regarding the provision of technology-related assistance for employers, manufacturers, and insurers,

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Restrictions on Lobbying), part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for a Drug-Free Workplace (Grants)), and part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 347.

(Authority: 29 U.S.C. 2201–2253)

§ 347.5 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Department
EDGAR
Fiscal year
Grant
Grant period
Nonprofit
Nonpublic
Private
Project
Project Period
Public

(b) *Definitions in the Technology-Related Assistance for Individuals with Disabilities Act of 1988.* The following terms used in this part are defined in section 3 of the Act.

Assistive technology device
Assistive technology service
Individual with disabilities
Institution of higher education
Secretary
Technology-related assistance
Underserved group

(c) *Other Definitions.* As used in this part, *Act* means the Technology-Related Assistance for Individuals with Disabilities Act of 1988 (Pub. L. 100–407).

(Authority: 29 U.S.C. 2201–2271)

Subpart B—What Kinds of Activities Does the Department Support Under This Program?

§ 347.10 What types of projects may be supported under this program?

Under this program, the Secretary awards funds to support the following types of projects:

(a) Technology training projects that may include—

(1) Development, demonstration, delivery, evaluation, or dissemination of training modules on the use of technology-related assistance for consumer organizations, individuals with disabilities or their families or representatives, and advocates;

(2) In-service training for individuals who provide services to or representation for individuals with disabilities, including in-service training for health care workers, teachers, rehabilitation engineers, and other rehabilitation workers;

(3) Training for policymakers and administrators in public and private agencies that have contact with or impact on individuals with disabilities; and

(4) Training regarding the provision of technology-related assistance for employers, manufacturers, and insurers,

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including training related to product use, financing, and marketing.

(b) Technology career development projects that may include undergraduate and graduate level instructional courses, curriculum development, traineeships, or fellowships and other educational stipends or allowances to prepare personnel for careers relating to the provision of technology-related assistance to individuals with disabilities, especially projects that will train individuals who will provide technical assistance, administer programs, or prepare personnel necessary to support the development and implementation of consumer-responsive, statewide programs of technology-related assistance for individuals with disabilities.

(c) Public awareness projects of a national scope that use: general or specialized media to disseminate information on the benefits and availability of technology-related assistance; techniques to prepare and disseminate analyses of the efficacy of technology-related assistance; national or regional conferences to promote knowledge and interest in technology-related assistance; and award and recognition programs to promote public credit for sustained outstanding effort in the development and use of technology-related assistance.

(Authority: 29 U.S.C. 2251–2253)

§ 347.11 What are the priorities under the technology training program?

(a) Each year the Secretary may establish priorities to support training for individuals with disabilities, their families or representatives, service providers, and other relevant parties, including projects in one or more of the following areas:

(1) Development and implementation of training programs for the purpose of informing consumers and their families about assistive technology services and devices, including training in self-advocacy, funding sources, and policy development.

(2) Development and dissemination of instructional materials for consumers and their families, including self-instruction and multimedia materials, on a range of available technologies and technology information resources, using a variety of accessible formats.

(3) Development and evaluation of training programs that include use of telecommunications, TDD, computer conferences, and other available technologies to instruct consumers and their families about assistive technology.

(4) Development, testing, and dissemination of models for consumers to evaluate different approaches to assistive technology training, including consumer training.

(5) Development, evaluation, and dissemination of models using consumers and their families to train other consumers and their families about the availability and utility of assistive technology.

(6) Development and implementation of approaches to involve manufacturers of assistive technology in improved training of consumers and their families in the use of assistive technology.

(7) Development and implementation of methods for training consumers in rural areas in the use of assistive technology.

(8) Conduct of in-service training for rehabilitation counselors in the provision of assistive technology.

(9) Development, evaluation, implementation, and dissemination of training for representatives of business, industry, and employers on the availability and value of assistive technology for persons with disabilities in employment and in work settings.

(10) Development and implementation of training programs for private insurers and other third party payment representatives on the availability and benefits of assistive technology.

(11) Development, evaluation, implementation, and dissemination of in-service training programs on assistive technology for persons with disabilities for physical therapists.

(12) Development, evaluation, implementation, and dissemination of in-service training programs on assistive technology for persons with disabilities for speech-language pathologists.

(13) Development, evaluation, implementation, and dissemination of in-service training programs on assistive technology for persons with disabilities for occupational therapists.

(14) Development, evaluation, implementation, and dissemination of in-service training programs on assistive technology and application of technology for persons with disabilities for rehabilitation engineers and other engineers who have contact with persons with disabilities in the provision of assistive technology.

(15) Development, evaluation, implementation, and dissemination of in-service training programs on assistive technology for individuals with disabilities for special education professionals.

(16) Development, evaluation, implementation, and dissemination of in-service training programs on assistive technology for individuals with disabilities for therapeutic recreation specialists and other recreation professionals.

(17) Development, evaluation, implementation, and dissemination of models for training low-incidence disability groups on the uses and benefits of assistive technology.

(18) Development, evaluation, implementation, and dissemination of training programs for underserved populations, including economically disadvantaged populations, in the uses of assistive technology.

(19) Development, evaluation, implementation, and dissemination of training modules for older Americans with disabilities who can benefit from assistive technology.

(20) Development, evaluation, implementation, and dissemination of training programs on the use and adaption of commercially available, mass-marketed technologies that have application for persons with disabilities.

(21) Development, evaluation, implementation, and dissemination of training programs about assistive technologies with special application for employment specifically for persons with disabilities who are preparing to enter the job market.

(b) The Secretary will announce the priorities, if any, in an application notice in the **Federal Register**.

(Authority: 29 U.S.C. 2201–2271)

§ 347.12 What are the priorities under the technology careers program?

(a) Each year the Secretary may establish priorities to support training for individuals with disabilities, their families or representatives, service providers, and other relevant parties, with special emphasis on training individuals who will administer programs, provide technical assistance to, or prepare personnel necessary to support the consumer-responsive, statewide programs of technology-related assistance for individuals with disabilities, including projects in one or more of the following areas:

(1) Development of curricula that will ensure competency in rehabilitation technology for engineers.

(2) Development of curricula for speech-language pathologists to ensure competency in the provision of assistive technology.

(3) Development of curricula for occupational therapists to ensure competency in the provision of assistive technology.

(4) Development of curricula for career training programs for physical therapists to ensure competency in the provision of assistive technology.

(5) Development of curricula for special education professionals to ensure competency in the provision of assistive technology.

(6) Development of curricula for therapeutic recreation specialists and other recreation professionals to ensure competency in the provision of assistive technology.

(7) Development of curricula to prepare personnel for assistive technology careers, including careers in program administration.

(8) Development of training curricula that focus on funding, policy, and advocacy of persons training to be involved in direct service delivery.

(9) Implementation of curricula involving classroom instruction and clinical experience in community-based and at-home settings for either physical therapists, occupational therapists, nurses, physicians in specialties relevant to disability, rehabilitation counselors, speech-language-hearing pathologists, or rehabilitation engineers.

(10) Development and implementation of technology career training programs for students from underserved population groups, including minorities, who are preparing to become service delivery professionals.

(11) Conduct of training programs for individuals preparing to become administrators of programs that provide technology-related assistance.

(12) Implementation of training programs for individuals who will prepare personnel for work in programs that provide technology-related assistance.

(13) Implementation of scholarships, fellowships, and traineeships for undergraduate or graduate students preparing for careers in the management or delivery of technology-related assistance to individuals with disabilities.

(b) The Secretary will announce the priorities, if any, in an application notice in the **Federal Register**.

(Authority: 29 U.S.C. 2201–2271)

§ 347.13 What are the priorities under the public awareness program?

(a) The Secretary may establish annual priorities for public awareness projects, including projects in one or more of the following areas:

(1) Development and implementation, with consumer involvement, of a multimedia public awareness campaign using national media such as radio, TV, newspapers, and other publications.

(2) Development and implementation of a model public awareness campaign using specialized media, including minority media, to reach previously underserved populations.

(3) Conduct of national or regional conferences that focus on public awareness of the benefits of assistive technology and that include manufacturers, industry representatives, and employers.

(4) Conduct of national or regional conferences for third party payers and private insurance representatives that focus on awareness of the benefits of assistive technology.

(5) Development and dissemination of useful marketing strategies to increase public awareness of assistive technology.

(6) Development of a series of videotapes on assistive technology designed to inform and change attitudes that could be used by medical practitioners and other clinical service providers.

(7) Development and dissemination of a course for training service providers and consumers to improve and foster public awareness.

(8) Development and dissemination of a public awareness campaign for use by general service organizations, professional associations, and other representational and information groups to increase public awareness of techniques for the provision of assistive technology.

(b) The Secretary will announce the priorities, if any, in an application notice in the **Federal Register**.

(Authority: 29 U.S.C. 2201–2271)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 347.30 How does the Secretary evaluate applications under this program?

(a) The Secretary evaluates each application—

(1) For a technology training project according to the selection criteria in § 347.31;

(2) For a technology careers project according to the criteria in § 347.32;

(3) For a public awareness project according to the criteria in § 347.33.

(b) The Secretary awards each application a value of zero to five (0–5) for each of the criteria listed in §§ 347.31, 347.32, and 347.33 respectively. These values are based on how well the application addresses each criterion, as follows: Outstanding (5); Superior (4); Satisfactory (3); Marginal (2); Poor (1); or not addressed in the application (0). In this way, each criterion is judged according to a uniform scale.

(c) Because the Secretary considers certain criteria to be more important than others, the Secretary has weighted each criterion as indicated in §§ 347.31, 347.32, and 347.33 respectively. The value awarded to each criterion in an application is multiplied by the standard weight accorded to that criterion in §§ 347.31, 347.32, or 347.33 as appropriate.

(d) The final score for each application is determined by totaling the scores computed for each criterion.

(e) The maximum score for each application is 100 points.

(Authority: 29 U.S.C. 2251)

§ 347.31 What selection criteria are used to evaluate applications for technology training projects under this program?

The Secretary reviews each application for a model technology training project award to determine the degree to which—

(a) *Importance and significance of proposed activity* (Weight: 3; Total Points; 15)

(1) The project responds adequately to all of the requirements of the announced priority, if any;

(2) The proposed activity addresses a significant need in the provision of technology-related training, and the development, dissemination, and evaluation of curricula, materials, and methods used to train individuals with disabilities, their families, and the professionals who work with persons with disabilities;

(3) The proposed project is likely to result in new, improved, and useful techniques for training individuals about assistive technology services, devices, and information resources;

(b) *Plan of activities* (Weight: 4; Total Points: 20)

(1) Indicates a likelihood that the proposed activities will accomplish the goals and objectives of the project;

(2) Is based on a sound conceptual and instructional model;

(3) Uses appropriate materials and populations;

(4) Provides appropriate review of literature and related activities and indicates a familiarity with state-of-the-art in assistive technology services, devices, and information; and

(5) Uses appropriate methodology for measurement and analysis of the effectiveness of the training program;

(c) *Inclusion of individuals with disabilities and their families or representatives* (Weight: 4; Total Points: 20)

(1) In the development of the project, including the assessment of problems and needs;

(2) In the establishment of goals and objectives for the project;

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(d) The final score for each application is determined by totaling the scores computed for each criterion.

(e) The maximum score for each application is 100 points.

(Authority: 29 U.S.C. 2251)

§ 347.31 What selection criteria are used to evaluate applications for technology training projects under this program?

The Secretary reviews each application for a model technology training project award to determine the degree to which—

(a) *Importance and significance of proposed activity* (Weight: 3; Total Points; 15)

(1) The project responds adequately to all of the requirements of the announced priority, if any;

(2) The proposed activity addresses a significant need in the provision of technology-related training, and the development, dissemination, and evaluation of curricula, materials, and methods used to train individuals with disabilities, their families, and the professionals who work with persons with disabilities;

(3) The proposed project is likely to result in new, improved, and useful techniques for training individuals about assistive technology services, devices, and information resources;

(b) *Plan of activities* (Weight: 4; Total Points: 20)

(1) Indicates a likelihood that the proposed activities will accomplish the goals and objectives of the project;

(2) Is based on a sound conceptual and instructional model;

(3) Uses appropriate materials and populations;

(4) Provides appropriate review of literature and related activities and indicates a familiarity with state-of-the-art in assistive technology services, devices, and information; and

(5) Uses appropriate methodology for measurement and analysis of the effectiveness of the training program;

(c) *Inclusion of individuals with disabilities and their families or representatives* (Weight: 4; Total Points: 20)

(1) In the development of the project, including the assessment of problems and needs;

(2) In the establishment of goals and objectives for the project;

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(3) In the planning and implementation of the functions and activities to be carried out under the project grant;

(4) In the evaluation of activities under the grant and the assessment of the training program; and

(5) In the dissemination of training models and curricula;

(d) *Management plan* (Weight: 4; Total Points: 20)

(1) Includes an adequate number of staff qualified by training and experience to implement the proposed activities;

(2) Appropriately manages and accounts for the fiscal resources of the project;

(3) Details internal procedures for the management of the resources under the grant, including specification of responsibilities and administrative authority, and provisions for internal monitoring of progress;

(4) Includes realistic timelines for the implementation of project activities so as to ensure accomplishment of proposed goals and objectives within the time period proposed in the application;

(5) Allots sufficient and appropriate resources from the grant or other sources for the accomplishment of the proposed project activities; and

(6) Details resources, experience, and capabilities of the institution or organization to accomplish the goals and objectives proposed in the application;

(e) *Dissemination plan* (Weight: 2; Total Points: 10)

(1) Provides for the dissemination of findings and the documentation of the project for replication purposes;

(2) Provides indications that the model curricula, training programs, and informational materials, if successful, are likely to be replicable in other settings involving training in the use of technology-related assistance;

(3) Indicates with appropriate analysis and support the potential for program expansion, enhancement, and replication of any special strategies or materials developed; and

(4) Provides mechanisms to assure the likely adoption and use of the curricula;

(f) *Evaluation plan* (Weight: 3; Total Points: 15)

(1) Specifies adequate indicators of accomplishment for each of the goals and objectives;

(2) Specifies appropriate measures to be used and the data elements needed for these measures;

(3) Specifies appropriate and feasible data sources and data collection methods;

(4) Specifies appropriate methods of data analysis that are likely to yield objective and meaningful evaluation results; and

(5) Allocates sufficient resources including personnel, funds, and administrative priority, to the evaluation.

(Approved by the Office of Management and Budget under Control No. 1820–0585)

(Authority: 29 U.S.C. 2201–2271)

§ 347.32 What selection criteria are used to evaluate applications for technology career development projects under this program?

The Secretary reviews each application for a technology career development project award to determine the degree to which—

(a) *Importance and significance of proposed activities* (Weight: 3, Total Points: 15)

(1) The project responds adequately to all of the requirements of the announced priority, if any;

(2) The applicant proposes to develop or provide career training in an assistive-technology-related discipline or in an area of study in which there is a shortage of qualified and trained personnel, or to provide training to a trainee population in which there is a need for more qualified personnel; and

(3) The proposed project is likely to result in new, improved and useful programs for preparing personnel for careers relating to the provision of technology-related assistance for persons with disabilities;

(b) *Plan of activities* (Weight: 4; Total Points: 20)

(1) Indicates a likelihood that the proposed activities will accomplish the goals and objectives of the project;

(2) Is based on a sound conceptual and instructional model;

(3) Uses appropriate materials and populations; and

(4) Provides appropriate review of literature and related activities and indicates a familiarity with state-of-the-art in assistive technology, services, information, and related studies.

(c) *Inclusion of individuals with disabilities and their families or representatives* (Weight: 4; Total Points: 20)

(1) In the development of the project, including the assessment of problems and needs;

(2) In the establishment of goals and objectives for the project;

(3) In the planning and implementation of the functions and activities to be carried out under the project grant;

(4) In the evaluation of activities under the grant and the assessment of the demonstration model; and

(5) In the dissemination of project findings and of replicable models;

(d) *Management plan* (Weight: 4; Total Points: 20)

(1) Includes an adequate number of staff qualified by training and experience to implement the proposed activities.

(2) Appropriately manages and accounts for the fiscal resources of the project;

(3) Details internal procedures for the management of the resources under the grant, including specification of responsibilities and administrative authority, and provisions for internal monitoring of progress;

(4) Includes realistic timelines for the implementation of project activities so as to ensure accomplishment of proposed goals and objectives within the time period proposed in the application;

(5) Allots sufficient and appropriate resources from the grant or other sources for the accomplishment of the proposed project activities; and

(6) Details resources experience, and capabilities of the institution to accomplish the goals and objectives proposed in the application;

(e) *Dissemination plan* (Weight: 2; Total Points: 10)

(1) Provides for the dissemination of findings and the documentation of the project for replication purposes;

(2) Provides indications that the model, if successful, is likely to be replicable in other settings involving training for careers in the provision of assistive technology services to persons with disabilities;

(3) Indicates with appropriate analysis and support the potential for program expansion, enhancement, and replication of any special strategies or materials developed; and

(4) Provides mechanisms to assure the likely adoption and use of the curricula;

(f) *Evaluation plan* (Weight: 3; Total Points: 15)

(1) Specifies adequate indicators of accomplishment for each of the goals and objectives;

(2) Specifies appropriate measures to be used and the data elements needed for these measures;

(3) Specifies appropriate and feasible data sources and data collection methods;

(4) Specifies appropriate methods of data analysis that are likely to yield objective and meaningful evaluation results; and

(5) Allocates sufficient resources including personnel, funds, and administrative priority, to the evaluation.

(Approved by the Office of Management and Budget under Control No. 1820–0585)

(Authority: 29 U.S.C. 2201–2271)

§ 347.33 What selection criteria are used to evaluate applications for public awareness projects under this program?

The Secretary reviews each application for a public awareness project award to determine the degree to which—

(a) *Importance and significance of proposed activities* (Weight: 3; Total Points: 15)

(1) The project responds adequately to all of the requirements of the announced priority, if any;

(2) The proposed activity addresses a significant problem not now being addressed or addresses problems in a new and different way;

(3) The applicant proposes to carry out projects that recognize and build awareness of the importance and efficacy of assistive technology devices and assistive technology services for individuals with disabilities; and

(4) The proposed project is likely to result in new, improved, and useful programs for informing individuals about assistive technology.

(b) *Plan of activities* (Weight: 4; Total Points: 20)

(1) Indicates a likelihood that the proposed activities will accomplish the goals and objectives of the project;

(2) Uses appropriate media and materials and addresses appropriate target populations;

(3) Demonstrates a thorough knowledge of the statute and of the literature and related activities, and indicates a familiarity with state-of-the-art in consumer needs, assistive technology services, information, and related activities;

(4) Demonstrates familiarity with needs assessment research as it relates to public awareness about assistive technology services, devices, and information; and

(5) Indicates an awareness of and familiarity with various general and specialized media necessary to achieve the project's public awareness objectives;

(c) *Inclusion of individuals with disabilities and their families or representatives* (Weight: 4; total Points: 20)

(1) In the development of the project, including the assessment of problems and needs;

(2) In the establishment of goals and objectives for the project;

(3) In the planning and implementation of the functions and activities to be carried out under the project grant;

(4) In the evaluation of activities under the grant and the assessment of the demonstration model; and

(5) In the dissemination of project findings and of replicable models;

(d) *Management Plan* (Weight: 4; Total Points: 20)

(1) Includes an adequate number of staff qualified by training and experience to implement the proposed activities;

(2) Appropriately manages and accounts for the fiscal resources of the project;

(3) Details internal procedures for the management of the resources under the grant, including specification of responsibilities and administrative authority, and provisions for internal monitoring of progress;

(4) Includes realistic timelines for the implementation of project activities so as to ensure accomplishment of proposed goals and objectives within the time period proposed in the application;

(5) Allots sufficient and appropriate resources from the grant or other sources for the accomplishment of the proposed project activities; and

(6) Details resources experience, and capabilities of the institution or organization to accomplish the goals and objectives proposed in the application;

(e) *Dissemination plan* (Weight: 2; Total Points: 10)

(1) Provides for the dissemination of findings and the documentation of the project for replication purposes;

(2) Provides indications that the model, if successful, is likely to be replicable or adaptable in other settings involving the provision of assistive technology services to persons with disabilities;

(3) Indicates, with appropriate analysis and support, the potential for program expansion, enhancement and replication of any special strategies or materials developed; and

(4) Provides mechanisms to assure the likely adoption and use of the model;

(f) *Evaluation plan* (Weight 3; Total Points: 15)

(1) Specifies adequate indicators of accomplishment for each of the goals and objectives;

(2) Specifies appropriate measures to be used and the data elements needed for these measures;

(3) Specifies appropriate and feasible data sources and data collection methods;

(4) Specifies appropriate methods of data analysis that are likely to yield objective and meaningful evaluation results; and

(5) Allocates sufficient resources including personnel, funds, and administrative priority, to the evaluation.

(Authority: 29 U.S.C. 2201–2271)

(Approved by the Office of Management and Budget under Control No. 1820–0585)

Subpart E—What Conditions Must Be Met After an Award?

§ 347.40 What are the requirements of a grantee for coordination and information sharing?

(a) The Secretary may require each grantee under this program to provide information, including data about program activities and results, to—

(1) Grantees under the State Grants for Technology-Related Assistance for Individuals with Disabilities Program;

(2) The entity providing technical assistance to the State Grants for Technology-Related Assistance for Individuals with Disabilities program as prescribed in section 106(b)(1) of the Act;

(3) Agencies designated by Governors to make application under the State Grants for Technology-Related Assistance for Individuals with Disabilities program;

(4) Entities conducting evaluations of the State Grants for Technology-Related Assistance for Individuals with Disabilities program for the Secretary;

(5) The Secretary; and

(6) Any other entity designated by the Secretary.

(b) Grantees receiving assistance under this program that are located in States with State Grants for Technology-Related Assistance for Individuals with Disabilities shall provide evidence of their efforts to coordinate activities with those grantees.

(c) Grantees must share information on project activities and findings with any technical assistance and information network designated by the Secretary if such a network is established.

(Approved by the Office of Management and Budget under Control No. 1820–0585)

(Authority: 29 U.S.C. 2211–2271)

§ 347.41 What are the reporting requirements for a grantee?

(a) Each grantee shall submit a copy of its final report to the National Rehabilitation Information Center.

(b) Each grantee shall submit to the Department a copy of any curriculum or training program that is developed or

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(5) Allocates sufficient resources including personnel, funds, and administrative priority, to the evaluation.

(Authority: 29 U.S.C. 2201–2271)

(Approved by the Office of Management and Budget under Control No. 1820–0585)

Subpart E—What Conditions Must Be Met After an Award?

§ 347.40 What are the requirements of a grantee for coordination and information sharing?

(a) The Secretary may require each grantee under this program to provide information, including data about program activities and results, to—

(1) Grantees under the State Grants for Technology-Related Assistance for Individuals with Disabilities Program;

(2) The entity providing technical assistance to the State Grants for Technology-Related Assistance for Individuals with Disabilities program as prescribed in section 106(b)(1) of the Act;

(3) Agencies designated by Governors to make application under the State Grants for Technology-Related Assistance for Individuals with Disabilities program;

(4) Entities conducting evaluations of the State Grants for Technology-Related Assistance for Individuals with Disabilities program for the Secretary;

(5) The Secretary; and

(6) Any other entity designated by the Secretary.

(b) Grantees receiving assistance under this program that are located in States with State Grants for Technology-Related Assistance for Individuals with Disabilities shall provide evidence of their efforts to coordinate activities with those grantees.

(c) Grantees must share information on project activities and findings with any technical assistance and information network designated by the Secretary if such a network is established.

(Approved by the Office of Management and Budget under Control No. 1820–0585)

(Authority: 29 U.S.C. 2211–2271)

§ 347.41 What are the reporting requirements for a grantee?

(a) Each grantee shall submit a copy of its final report to the National Rehabilitation Information Center.

(b) Each grantee shall submit to the Department a copy of any curriculum or training program that is developed or

implemented, as well as copies of any media materials, videotapes, audio-visual materials, scripts, or other training and public awareness materials developed under the grant.

(Approved by the Office of Management and Budget under Control No. 1820–0585)

(Authority: 29 U.S.C. 2211-2271)

[FR Doc. 91-19197 Filed 8-12-91; 8:45 am]

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Part VIII

Environmental Protection Agency

40 CFR Part 721

Significant New Uses of Certain Chemical Substances; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPTS-50592; FRL-3884-3]

RIN 2070-AB27

Significant New Uses of Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for several chemical substances which were the subject of premanufacture notices (PMNs) and subject to TSCA section 5(e) consent orders issued by EPA. Today's action requires certain persons who intend to manufacture, import, or process these substances for a significant new use to notify EPA at least 90 days before commencing the manufacturing or processing of the substance for a use designated by this SNUR as a significant new use. The required notice will provide EPA with the opportunity to evaluate the intended use, and if necessary, to prohibit or limit that activity before it occurs. EPA is promulgating this SNUR using direct final procedures.

EFFECTIVE DATES: This rule shall be promulgated for purposes of judicial review at 1 p.m. e.s.t. on August 27, 1991. The effective date of this rule is October 15, 1991. If EPA receives notice before September 12, 1991, that someone wishes to submit adverse or critical comments on EPA's action in establishing a SNUR for one or more of the chemical substances subject to this rule, EPA will withdraw the SNUR for the substance for which the notice of intent to comment is received and will issue a proposed SNUR providing a 30-day period for public comment.

ADDRESSES: Each comment or notice of intent to submit adverse or critical comment must bear the docket control number OPTS-50592 and the name(s) of the chemical substance(s) subject to the comment. Since some comments may contain confidential business information (CBI), all comments should be sent in triplicate to: TSCA Document Receipt Office (TS-790), Office of Toxic Substances, Environmental Protection Agency, rm. E-105, 401 M St., SW., Washington, DC 20460. Nonconfidential versions of comments on this rule will be placed in the rulemaking record and will be available for public inspection. Unit X. of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, rm. E-543-B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: This SNUR will require persons to notify EPA at least 90 days before commencing manufacturing or processing of a substance for any activity designated by this SNUR as a significant new use. The supporting rationale and background to this rule are more fully set out in the preamble to EPA's first direct final SNURs at 55 FR 17376 on April 24, 1990. Consult that preamble for further information on the objectives, rationale, and procedures for the rules and on the basis for significant new use designations including provisions for developing test data.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 721.10.

II. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Rules on user fees appear at 40 CFR part 700. Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and 5(d)(1), the exemptions authorized by section 5(h)(1), (2), (3), and (5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUR notice. If EPA does not take action, EPA is required under section 5(g) to explain in the **Federal Register** its reasons for not taking action. Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707. Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28 and must certify that they are in compliance with the SNUR requirements. The EPA policy in support of the import certification appears at 40 CFR part 707.

III. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for the following chemical substances under 40 CFR part 721 subpart E. In this unit, EPA provides a brief description for each substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned), basis for the action taken by EPA in the section 5(e) consent order or as a non-section 5(e) SNUR for the substance (including the statutory citation and specific finding), toxicity concerns, and the CFR citation assigned in the regulatory text section of this rule. The specific uses which are designated as significant new uses are cited in the regulatory text section of the rule by reference to 40 CFR part 721 subpart B where the significant new uses are described in detail. Certain new uses, including production limits and other uses designated in the rule are claimed as CBI. The procedure for obtaining confidential information is set out in Unit VII.

Where the underlying section 5(e) order prohibits the PMN submitter from exceeding a specified production limit without performing specific tests to determine the health or environmental effects of a substance, the tests are described in this unit. As explained further in Unit VI., the SNUR for such substances contains the same production limit, and exceeding the production limit is defined as a significant new use. Persons who intend to exceed the production limit must notify the Agency by submitting a significant new use notice at least 90 days in advance. Data on potential exposures or releases of the substances, testing other than that specified in the section 5(e) order for the substances, or

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the activities on which it has received the SNUR notice. If EPA does not take action, EPA is required under section 5(g) to explain in the **Federal Register** its reasons for not taking action. Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707. Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28 and must certify that they are in compliance with the SNUR requirements. The EPA policy in support of the import certification appears at 40 CFR part 707.

III. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for the following chemical substances under 40 CFR part 721 subpart E. In this unit, EPA provides a brief description for each substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned), basis for the action taken by EPA in the section 5(e) consent order or as a non-section 5(e) SNUR for the substance (including the statutory citation and specific finding), toxicity concerns, and the CFR citation assigned in the regulatory text section of this rule. The specific uses which are designated as significant new uses are cited in the regulatory text section of the rule by reference to 40 CFR part 721 subpart B where the significant new uses are described in detail. Certain new uses, including production limits and other uses designated in the rule are claimed as CBI. The procedure for obtaining confidential information is set out in Unit VII.

Where the underlying section 5(e) order prohibits the PMN submitter from exceeding a specified production limit without performing specific tests to determine the health or environmental effects of a substance, the tests are described in this unit. As explained further in Unit VI., the SNUR for such substances contains the same production limit, and exceeding the production limit is defined as a significant new use. Persons who intend to exceed the production limit must notify the Agency by submitting a significant new use notice at least 90 days in advance. Data on potential exposures or releases of the substances, testing other than that specified in the section 5(e) order for the substances, or

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studies on analogous substances, which may demonstrate that the significant new uses being reported do not present an unreasonable risk, may be included with significant new use notification. In addition, this unit describes tests that are recommended by EPA to provide sufficient information to evaluate the substance, but for which no production limit has been established in the section 5(e) order. Descriptions of recommended tests are provided for informational purposes.

The SNURs for the following PMN substances, P–90–1357, P–90–1454, P–90–1565, P–90–1635, and P–90–1642 through P–90–1649, regulate chemical substances subject to section 5(e) orders where the finding under TSCA is based solely on substantial production volume and significant or substantial human exposure or release to the environment in substantial quantities. In each of these cases there was limited or no toxicity data available for the PMN substance. In such cases EPA regulates new chemical substances under section 5(e) by requiring certain toxicity tests. For instance, chemical substances with potentially substantial releases to surface waters would be subject to toxicity testing of aquatic organisms and chemicals with potentially substantial human exposures would be subject to health effects testing for mutagenicity, acute effects, and subchronic effects.

PMN Number P–86–1602

Chemical name: 2-Propenamide, *N*-[3-dimethylamino)propyl]-.
CAS number: Not available.
Effective date of section 5(e) consent order: February 13, 1991.
Basis for section 5(e) consent order. The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: The PMN substance has been shown to cause neurotoxicity in test animals. Similar substances have been shown to cause carcinogenicity, genotoxicity, reproductive toxicity, and developmental toxicity in test animals. The PMN substance may be chronically toxic to fish at concentrations greater than 300 ppb.
Recommended testing: EPA has determined that glove permeability testing according to the American Society for Testing and Materials (ASTM) F739–85 "Standard Test Method for Resistance of Protective Clothing Materials to Permeation by Liquids or Gases", a 90–day dermal subchronic (40 CFR 798.2250), and a dominant lethal assay (40 CFR 798.5450) on the chemical substance are needed to help characterize the health effects of the substance. The consent order contains two production limits. The PMN submitter has agreed not to exceed the first production volume limit without performing a glove permeability test. The material used to make the gloves must subject them to the expected conditions of exposure, including the likely combinations of chemical substances to which the gloves may be exposed in the work area. There must be no permeation of the chemical substance greater than 10 $\mu g/cm^2$ after 8 hours of testing in accordance with ASTM F739–85. Gloves may not be used for a time period longer than they are actually tested and must be replaced at the end of each work shift. The PMN submitter has also agreed not to exceed the second higher production limit without performing a 90–day subchronic and dominant lethal assay.
CFR citation: 40 CFR 721.1796.

PMN Number P–87–1553

Chemical name: (generic) Substituted triphenylmethane.
Basis for action: The PMN substance will be used as a water colorant in industrial, commercial, and consumer applications. Test data on analogues of the PMN substance indicated that it may cause cancer and developmental effects in humans. EPA determined that manufacture and use of the substance in a wet slurry form did not present an unreasonable risk because no inhalation exposures would result. EPA has determined that potential manufacture and processing in powder form could result in an unreasonable risk to human health. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(1)(i)(C) and (b)(3)(ii).
Recommended testing: The Agency has determined that the results of the following toxicity testing would help characterize possible health effects of the substance: A two-species developmental toxicity study (40 CFR 798.4900) and a two-species rodent bioassay (40 CFR 798.3300).
CFR citation: 40 CFR 721.2196.

PMN Number P–88–0063

Chemical name: (generic) Bis(2,2,6,6-tetramethylpiperidinyl) ester of cycloalkyl spiroketal.
CAS number: Not available.
Effective date of section 5(e) consent order: February 13, 1991.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: The PMN substance has been shown in submitted test data to have the predominant adverse effect of a reduction in body weight gain in rats. From the data it was not clear whether the effect was attributable to the poor palatability of the test substance or the intrinsic toxicity of the substance. In addition, structurally similar substances have been shown to have adverse effects to the liver, blood, immune system, male reproductive system, and the gastrointestinal tract in test animals. Based on TSCA section 8(e) data on structurally analogous substances, the PMN substance may also cause toxicity to aquatic organisms.
Recommended testing: The Agency believes that the results of the following testing would help characterize possible health and environmental effects of the substance: A 90–day subchronic study (40 CFR 798.2650), administered by the gavage route, would allow EPA to better characterize health effects of the test substance. The study should place special emphasis on the hematology, lymphoid organ weights (spleen, thymus), and histology as well as the cellularity of the bone marrow, thymus, and spleen. In addition, the study should also include a histopathologic examination of the testes plus staging of sperm. The following studies would allow EPA to better characterize the aquatic toxicity effects of the PMN substance: Acute algal (40 CFR 797.1050) (static/nominal conditions), acute daphnid (40 CFR 797.1300) (flow-through/measured conditions), acute fish (40 CFR 797.1400) (flow-through/measured conditions). The PMN submitter is not required to submit the above information at any specified time or production volume.
CFR citation: 40 CFR 721.1890.

PMN Number P–88–894

Chemical name: Benzene, (1-methylethyl)(2-phenylethyl)-.
CAS number: 77851–17–3.
Effective date of section 5(e) consent order: October 10, 1990.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and both (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health and the environment, and section 5(e)(1)(A)(ii)(II) of TSCA based on a finding that the PMN substance will be produced in substantial quantities and may reasonably be anticipated to enter the environment in substantial quantities, and there may be significant or substantial human exposure to the substance.

Toxicity concerns: Similar chemicals have been shown to cause toxicity to aquatic organiams at concentrations as low as 1 ppb. The PMN substance itself has shown liver and kidney effects in test animals.
Recommended testing: EPA has determined that the results of a chronic 60–day early life stage toxicity test in rainbow trout (40 CFR 797.1600), a 21–day chronic daphnid toxicity test (40 CFR 797.1330), and a 96–h bioassay in algae (40 CFR 797.1050) would help characterize possible environmental effects of the substance. EPA has determined that the results of an *in vivo* mouse micronucleus test by the intraperitoneal route (40 CFR 798.5395) would help characterize possible human effects of the substance. The PMN submitter has agreed not to exceed the production volume limit without performing these four studies.
CFR citation: 40 CFR 721.466.

PMN Number P–90–142

Chemical name: (generic) Tris(disubstituted alkyl) heterocycle.
CAS number: Not available.
Effective date of section 5(e) consent order: February 19, 1991.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Similar substances have been shown to cause liver toxicity, male reproductive effects, and carcinogenicity in test animals.
Recommended testing: EPA has determined that a two-generation oral reproductive study (40 CFR 798.4700) on the substance is needed to help characterize the possible reproductive effects of the substance. The PMN submitter has agreed not to exceed the production volume limit without performing this test. In addition, a 2–year, two-species bioassay (40 CFR 798.3300) would help characterize the possible carcinogenic effect of the substance.
CFR citation: 40 CFR 721.1140.

PMN Number P–90–0226

Chemical name: Titanate $[\mathrm{Ti}_6\mathrm{O}_{13}\ (2-)]$, dipotassium.
CAS number: 12056–51–8.
Effective date of section 5(e) consent order: February 20, 1991.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Similar chemicals have been shown to cause lung cancer, mesothelioma, other cancers, and fibrosis in humans.
Recommended testing: EPA has determined that a 90–day subchronic toxicity test via inhalation in rats (40 CFR 798.2450) and a 2–year, two-species bioassay via inhalation (40 CFR 798.3300) will help characterize the potential for the PMN substance to cause lung cancer, mesothelioma, other cancers, and fibrosis in humans. The consent order contains two production volume limits. The PMN submitter has agreed not to exceed the first production volume limit without performing a 90–day subchronic toxicity test via inhalation in rats (40 CFR 798.2450). The PMN submitter has also agreed not to exceed the second higher production volume limit without performing a 2–year, two-species bioassay via inhalation (40 CFR 798.3300) which may be required dependent on the results of the 90–day subchronic study.
CFR citation: 40 CFR 721.2184.

PMN Numbers P–90–404, P–90–405, and P–90–406.

Chemical name: (generic) Isocyanate terminated polyols.
CAS numbers: Not available.
Effective date of section 5(e) consent order: February 20, 1991.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that these substances may present an unreasonable risk of injury to health.
Toxicity concerns: Test data on a monomer contained in the PMN substances and test data on substances similar in structure to the PMN substances indicate that the PMN substances may cause skin and eye irritation, dermal and pulmonary sensitization, cross-sensitization responses, lung and other respiratory effects, and systemic effects in laboratory animals.
Recommended testing: EPA has determined that a dermal sensitization study (40 CFR 798.4100) and a pulmonary sensitization study (Karol method or equivalent) on P–90–406 will help characterize the sensitization potential of the PMN substances. The Agency has also determined that a 90–day inhalation subchronic study (40 CFR 798.2450) on P–90–406 will help characterize the lung effects and systemic toxicity of the PMN substances. The PMN submitter has agreed not to exceed the production limit without performing the two sensitization studies.
CFR citation: 40 CFR 721.1711.

PMN Number P–90–594

Chemical name: (generic) Substituted hydrazine.
CAS number: Not available.
Effective date of section 5(e) consent order: December 17, 1990.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health and the environment.
Toxicity concerns: Similar substances have been shown to be carcinogenic and mutagenic and to cause chronic effects to liver, kidney, and blood in test animals. Similar substances have also been shown to be toxic to aquatic species.
Recommended testing: A 90–day subchronic rat oral study (40 CFR 798.2650) and a 2–year, two-species oral bioassay (40 CFR 798.3300) are recommended to help characterize human health effects. In addition, acute aquatic toxicity tests (algae [40 CFR 797.1050], *Daphnia* [40 CFR 797.1300], and fish [40 CFR 797.1400]), conducted with flow-through conditions and measured concentrations are recommended to help characterize environmental effects.
CFR citation: 40 CFR 721.1233.

PMN Number P–90–1357

Chemical name: (generic) Glycol monobenzoate.
CAS number: Not available.
Effective date of section 5(e) consent order: November 28, 1990.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be significant or substantial human exposure.
Recommended testing: EPA has determined that the results of an acute oral toxicity test (40 CFR 798.1175), an Ames assay (40 CFR 798.5265), a mouse micronucleus assay by the intraperitoneal route (40 CFR 798.5395), and a 28–day repeated dose oral study in rats (OECD Guideline No. 407), and a developmental toxicity study (40 CFR 798.4900) would help characterize possible effects of the substance. The PMN submitter has agreed not to exceed the production limit without performing these tests.
CFR citation: 40 CFR 721.1100.

PMN Number P–90–1366

Chemical name: Benzenediazonium, 4-(dimethylamino)-, salt with
2-hydroxy-5-sulfobenzoic acid (1:1).
CAS number: 124737–31–1.

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R 721.1711.

PMN Number P-90-594

Chemical name: (generic) Substituted hydrazine.
CAS number: Not available.
Effective date of section 5(e) consent order: December 17, 1990.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health and the environment.
Toxicity concerns: Similar substances have been shown to be carcinogenic and mutagenic and to cause chronic effects to liver, kidney, and blood in test animals. Similar substances have also been shown to be toxic to aquatic species.
Recommended testing: A 90-day subchronic rat oral study (40 CFR 798.2650) and a 2-year, two-species oral bioassay (40 CFR 798.3300) are recommended to help characterize human health effects. In addition, acute aquatic toxicity tests (algae [40 CFR 797.1050], *Daphnia* [40 CFR 797.1300], and fish [40 CFR 797.1400]), conducted with flow-through conditions and measured concentrations are recommended to help characterize environmental effects.
CFR citation: 40 CFR 721.1233.

PMN Number P-90-1357

Chemical name: (generic) Glycol monobenzoate.
CAS number: Not available.
Effective date of section 5(e) consent order: November 26, 1990.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be significant or substantial human exposure.
Recommended testing: EPA has determined that the results of an acute oral toxicity test (40 CFR 798.1175), an Ames assay (40 CFR 798.5265), a mouse micronucleus assay by the intraperitoneal route (40 CFR 798.5395), and a 28-day repeated dose oral study in rats (OECD Guideline No. 407), and a developmental toxicity study (40 CFR 798.4900) would help characterize possible effects of the substance. The PMN submitter has agreed not to exceed the production limit without performing these tests.
CFR citation: 40 CFR 721.1100.

PMN Number P-90-1366

Chemical name: Benzenediazonium, 4-(dimethylamino)-, salt with 2-hydroxy-5-sulfobenzoic acid (1:1).
CAS number: 124737-31-1.

Effective date of section 5(e) consent order: February 8, 1991.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health and the environment.
Toxicity concerns: Test data on the PMN substance and test data on chemicals similar in structure to the PMN substance indicate that the PMN substance causes lethality via ocular exposure in laboratory animals. Similar substances have also been shown to cause toxicity in aquatic organisms. Specifically, based on QSAR on similar phenols, EPA predicts acute toxicity to aquatic organisms to occur at 80 ppb PMN substance in surface waters.
Recommended testing: EPA has determined that an acute oral study in rats (40 CFR 798.1175), an acute dermal study in rabbits (40 CFR 798.1100), an algae skeletoma study (40 CFR 797.1050), a mysid shrimp study (40 CFR 797.1930), and an acute fish study (40 CFR 797.1400) will help characterize the acute toxicity effects of the PMN substance to human health and to the environment. The PMN submitter has agreed not to exceed the production limit without performing these tests.
CFR citation: 40 CFR 721.490.

PMN Number P-90-1454

Chemical name: (generic) Hydrogenated arylated polydecene.
CAS number: Not available.
Effective date of section 5(e) consent order: January 17, 1991.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be significant or substantial human exposure.
Recommended testing: EPA has determined that the results of a mouse micronucleus assay by the intraperitoneal route (40 CFR 798.5395), and a 28-day repeated dose oral study in rats (OECD Guideline No. 407) would help characterize possible effects of the substance. The 28-day study shall include, for all test doses, a neurotoxicity functional observational battery (40 CFR 798.6050) with the highest dose set at 1,000 mg/kg. For the highest test dose group only, a histopathologic examination shall be extended to include testes/ovaries and lungs. The PMN submitter has agreed not to exceed the production limit without performing these tests.
CFR citation: 40 CFR 721.1620.

PMN Number P-90-1535

Chemical name: Methanol, trichloro-, carbonate (2:1).
CAS number: 32315-10-9.
Effective date of section 5(e) consent order: December 28, 1990.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Phosgene gas, a hydrolysis product of the PMN substance, has been shown to cause neurotoxicity, irritation, and lung effects in test animals. Based on potential acylating activity, the PMN substance may also pose a risk of cancer.
Recommended testing: A 2-year, two-species bioassay (40 CFR 798.3300) to help characterize the potential irritation, respiratory, neurotoxicity, and cancer effects of the PMN substance.
CFR citation: 40 CFR 721.1298.

PMN Number P-90-1565

Chemical name: Glycol, polyethylene-, 3-sulfo-2-hydroxypropyl-*p*-(1,1,3,3,-tetramethylbutyl)phenyl ether, sodium salt.
CAS number: Not available.
Effective date of section 5(e) consent order: November 22, 1990.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance will be produced in substantial quantities, that there may be significant or substantial human exposures to the substance, and that the PMN substance may be anticipated to enter the environment in substantial quantities.
Recommended testing: EPA has determined that the results of an acute oral toxicity test (40 CFR 798.1175), an Ames assay (40 CFR 798.5265), a mouse micronucleus assay by the intraperitoneal route (40 CFR 798.5395), a 28-day repeated dose oral study in rats (OECD Guideline No. 407), a 96-h bioassay in algae (40 CFR 797.1050), a 48-h LC50 test in *Daphnia* (40 CFR 797.1300), and a 96-h LC50 test in fish (40 CFR 797.1400) would help characterize possible effects of the substance. The PMN submitter has agreed not to exceed the production volume limit without performing these tests.
CFR citation: 40 CFR 721.1105.

PMN Number P-90-1624

Chemical name: (generic) Heterocyclic aldehyde imine.
CAS number: Not available.
Effective date of section 5(e) consent order: February 15, 1991.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health and the environment.
Toxicity concerns: Similar chemicals have been shown to cause acute and subchronic systemic toxicity, mutagenicity, and cancer in test animals. Similar substances have also been shown to be toxic to aquatic organisms.
Recommended testing: A concurrent set of two rodent 28-day subchronic studies by the oral (gavage) and dermal routes to help characterize the systemic effects and a 2-year, two-species rodent bioassay to help characterize the carcinogenic effects. The PMN submitter has agreed not to exceed the production volume limits without performing these tests. The consent order contains two production volume limits. The PMN submitter has agreed not to exceed the first production volume limit without performing the concurrent set of two 28-day subchronic studies (OECD Guideline 407 with histopathology). The PMN submitter has also agreed not to exceed the second higher production volume limit without performing the 2-year, two-species rodent bioassay (40 CFR 798.3300). Further, the submitter has agreed not to release the PMN substance to water pending aquatic toxicity testing. The tests required to determine the substance's aquatic toxicity include a 96-h bioassay in algae (40 CFR 797.1050), a 48-h LC50 test in *Daphnia* (40 CFR 797.1300), and a 96-h LC50 test in fish (40 CFR 797.1400).
CFR citation: 40 CFR 721.1245.

PMN Number P-90-1635

Chemical name: Benzenepropanoic acid, 3-(2*H*-benzotriazol-2-yl)-5-(1,1-dimethylethyl)-4-hydroxy-, C_{7-9} branched and linear alkyl esters.
CAS number: 127519-17-9e.
Effective date of section 5(e) consent order: January 2, 1991.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be significant or substantial human exposure.
Recommended testing: EPA has determined that the results of an acute oral toxicity test (40 CFR 798.1175), an Ames assay (40 CFR 798.5265), a mouse micronucleus assay by the intraperitoneal route (40 CFR 798.5395), and a 28-day repeated dose oral study

in rats (OECD Guideline No. 407) would help characterize possible effects of the substance. The PMN submitter has agreed not to exceed the production limit without performing these tests.

CFR citation: 40 CFR 721.500.

PMN Number P-90-1636

Chemical name: Hexanedioic acid, polymer with 1,2-ethanediol and 1,6-diisocyanato-2,2,4(or 2,4,4)-trimethylhexane, 2-hydroxyethyl-acrylate-blocked.

CAS number: Not available.

Effective date of section 5(e) consent order: January 30, 1991.

Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.

Toxicity concerns: Similar chemicals have been shown to cause cancer in test animals.

Recommended testing: EPA has determined that a 2-year, two-species rodent bioassay (40 CFR 798.3300) would help characterize the possible carcinogenicity of the substance.

CFR citation: 40 CFR 721.1204.

PMN Number P-90-1642 through 1649

Chemical name: (generic) Dialkyl phosphorodithioate phosphate compounds..2-Propenamide, *N*-[3-dimethylamino)propyl]-

CAS number: Not available.

Effective date of section 5(e) consent order: November 26, 1990.

Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that these substances will be produced in substantial quantities and there may be significant and substantial human exposures.

Recommended testing: EPA has determined that the results of an Ames assay (40 CFR 798.5265), a mouse micronucleus assay by the intraperitoneal route (40 CFR 798.5395), and a 28-day repeated dose oral study in rats (OECD Guideline No. 407) would help characterize possible effects of the substances. The 28-day study shall include, for all test doses, a neurotoxicity functional observational battery (40 CFR 798.6050) with the highest dose set in accordance with the results of a 5-10 day range finding study and not to exceed 1,000 mg/kg. For the highest test dose group only, histopathologic examination shall be extended to include testes/ovaries and lungs, plus neuropathology (40 CFR 798.6400). The PMN submitter has agreed not to exceed the aggregate production volume limit for the combined volumes of PMNs P-90-1642 through P-90-1649 without performing these tests.

CFR citation: 40 CFR 721.1582.

PMN Number P-91-11

Chemical name: (generic) Polymer of isophorone diisocyanate, trimethylolpropane, polyalkylenepolyol, disubstituted alkanes and hydroxyethyl acrylate.

CAS number: Not available.

Effective date of section 5(e) consent order: February 16, 1991.

Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.

Toxicity concerns: Similar chemicals have been shown to cause cancer in test animals.

Recommended testing: A 2-year, two-species bioassay to help characterize cancer effects (40 CFR 798.3300).

CFR citation: 40 CFR 721.1643.

PMN Number P-91-100

Chemical name: (generic) α-Olefin sulfonate, potassium salt.

Basis for action: The PMN substance will be used as an additive in energy production. Its production volume is confidential. QSAR suggest that the PMN substance may be toxic to aquatic organisms. Based on this analysis EPA expects toxicity to aquatic organisms to occur at a concentration of 3 ppb of the PMN substance in surface waters. EPA determined that use of the substance as an additive in energy production described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters. EPA has determined that potential use of the PMN substance as a detergent could result in releases to surface waters where the concentration of the PMN substance in surface waters could exceed 3 ppb. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(4)(ii).

Recommended testing: The Agency has determined that the results of the following acute aquatic toxicity testing would help characterize possible environmental effects of the substance: Algal (40 CFR 797.1050), daphnid (40 CFR 797.1300), and fish (40 CFR 797.1400). The algal test should be conducted under static, measured conditions, whereas the daphnid and fish tests should be conducted with flow-through conditions and measured concentrations.

CFR citation: 40 CFR 721.1898.

PMN Number P-91-151

Chemical name: (generic) Alcohol, alkali metal salt.

Basis for action: The PMN substance will be used as an alkoxylation catalyst. Test data on structurally similar linear alkyl sulfonates indicate that the PMN substance may cause toxicity to aquatic organisms. Based on these data, EPA expects toxicity to aquatic organisms to occur at a concentration of 5 ppb of the PMN substance in surface waters. EPA determined that use of the substance as an alkoxylation catalyst in the manner described in the PMN did not present an unreasonable risk because releases of the PMN substance to surface waters would not exceed the concentration of concern. EPA has determined that manufacture at alternative sites or potential other uses for the substance could result in releases to surface waters where the concentration of the PMN substance could be greater than 5 ppb, thereby creating an unreasonable risk of injury to aquatic organisms. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(4)(ii).

Recommended testing: The Agency has determined that the results of the following acute aquatic toxicity testing would help characterize possible environmental effects of the substance: Algal (40 CFR 797.1050), daphnid (40 CFR 797.1300), and fish (40 CFR 797.1400). These tests should be conducted with flow-through conditions and measured concentrations.

CFR citation: 40 CFR 721.1261.

IV. Objectives and Rationale of the Rule

During review of the PMNs submitted for the chemical substances that are subject to this SNUR, EPA concluded that for all but three of the substances regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the substances. The bases for such findings are outlined in Unit III. of this preamble. Based on these findings, section 5(e) consent orders requiring the use of appropriate controls were negotiated with the PMN submitters; the SNUR provisions for these substances designated herein are consistent with the provisions of the section 5(e) orders.

In each of the cases for which the proposed uses are not regulated under a section 5(e) order, EPA determined that one or more of the criteria of concern established at § 721.170 were met.

EPA is issuing this SNUR for specific chemical substances which have

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FR 721.1582.

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FR 721.1898.

PMN Number P–91–151

Chemical name: (generic) Alcohol, alkali metal salt.

Basis for action: The PMN substance will be used as an alkoxylation catalyst. Test data on structurally similar linear alkyl sulfonates indicate that the PMN substance may cause toxicity to aquatic organisms. Based on these data, EPA expects toxicity to aquatic organisms to occur at a concentration of 5 ppb of the PMN substance in surface waters. EPA determined that use of the substance as an alkoxylation catalyst in the manner described in the PMN did not present an unreasonable risk because releases of the PMN substance to surface waters would not exceed the concentration of concern. EPA has determined that manufacture at alternative sites or potential other uses for the substance could result in releases to surface waters where the concentration of the PMN substance could be greater than 5 ppb, thereby creating an unreasonable risk of injury to aquatic organisms. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(4)(ii).

Recommended testing: The Agency has determined that the results of the following acute aquatic toxicity testing would help characterize possible environmental effects of the substance: Algal (40 CFR 797.1050), daphnid (40 CFR 797.1300), and fish (40 CFR 797.1400). These tests should be conducted with flow-through conditions and measured concentrations.

CFR citation: 40 CFR 721.1261.

IV. Objectives and Rationale of the Rule

During review of the PMNs submitted for the chemical substances that are subject to this SNUR, EPA concluded that for all but three of the substances regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the substances. The bases for such findings are outlined in Unit III. of this preamble. Based on these findings, section 5(e) consent orders requiring the use of appropriate controls were negotiated with the PMN submitters; the SNUR provisions for these substances designated herein are consistent with the provisions of the section 5(e) orders.

In each of the cases for which the proposed uses are not regulated under a section 5(e) order, EPA determined that one or more of the criteria of concern established at § 721.170 were met.

EPA is issuing this SNUR for specific chemical substances which have

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undergone premanufacture review to ensure the following objectives: That EPA will receive notice of any company's intent to manufacture, import, or process a listed chemical substance for a significant new use before that activity begins; that EPA will have an opportunity to review and evaluate data submitted in a SNUR notice before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for a significant new use; that, when necessary to prevent unreasonable risks, EPA will be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before a significant new use of that substance occurs; and that all manufacturers, importers, and processors of the same chemical substance which is subject to a section 5(e) order are subject to similar requirements.

V. Direct Final Procedure

EPA is issuing these SNURs as direct final rules, as described in § § 721.160(c)(3) and 721.170(d)(4). In accordance with § 721.160(c)(3)(ii), this rule will be effective October 15, 1991, unless EPA receives a written notice by September 12, 1991, that someone wishes to make adverse or critical comments on EPA's action. If EPA receives such a notice, EPA will publish a notice to withdraw the direct final SNUR(s) for the specific substance(s) to which the adverse or critical comments apply. EPA will then propose a SNUR for the specific substance(s) providing a 30–day comment period. This action establishes SNURs for several chemical substances. Any person who submits a notice of intent to submit adverse or critical comments must identify the substance and the new use to which it applies. EPA will not withdraw a SNUR for a substance not identified in a notice.

VI. Test Data and Other Information

EPA recognizes that section 5 of TSCA does not require developing any particular test data before submission of a SNUR notice. Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. In cases where a section 5(e) order requires or recommends certain testing, Unit III. of this preamble lists those recommended tests. However, EPA has established production limits in the section 5(e) orders for several of the substances regulated under this rule in view of the lack of data on the potential health and environmental risks that may be posed by the significant new uses or increased exposure to the substances. These production limits cannot be exceeded unless the PMN submitter first submits the results of toxicity tests which would permit a reasoned evaluation of the potential risks posed by these substances. Under recent consent orders, each PMN submitter is required to submit each study at least 14 weeks (earlier orders required submissions at least 12 weeks) before reaching the specified production limit. Listings of the tests specified in the section 5(e) orders are included in Unit III. of this preamble. The SNURs contain the same production volume limits as the consent orders. Exceeding these production limits is defined as a significant new use. The recommended studies may not be the only means of addressing the potential risks of the substance. However, SNUR notices submitted for significant new uses without any test data may increase the likelihood that EPA will take action under section 5(e), particularly if satisfactory test results have not been obtained from a prior submitter. EPA recommends that potential SNUR notice submitters contact EPA early enough so that they will be able to conduct the appropriate tests before exceeding the production limit. SNUR notice submitters should be aware that EPA will be better able to evaluate SNUR notices which provide detailed information on:

(1) Human exposure and environmental release that may result from the significant new use of the chemical substances.

(2) Potential benefits of the substances.

(3) Information on risks posed by the substances compared to risks posed by potential substitutes.

VII. Procedural Determinations

EPA is establishing through this rule some significant new uses which have been claimed as CBI. EPA has decided it is appropriate to keep this information confidential to protect the interest of the original PMN submitter. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI. This procedure appears in § 721.575(b)(1) and is similar to that in § 721.11 for situations where the chemical identity of the substance subject to a SNUR is CBI. This procedure is cross-referenced in each of these SNURs.

A manufacturer or importer may request EPA to determine whether a proposed use would be a significant new use under this rule. Under the procedure incorporated from § 721.575(b)(1), a manufacturer or importer must show that it has a *bona fide* intent to manufacture or import the substance and must identify the specific use for which it intends to manufacture or import the substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or import the substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in § 721.575(b)(1) with that under § 721.11 into a single step.

If a manufacturer or importer is told that the production volume identified in the *bona fide* submission would not be a significant new use, i.e. it is below the level that would be a significant new use, that person can manufacture or import the substance as long as the aggregate amount does not exceed that identified in the *bona fide* submission to EPA. If the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use. EPA is considering whether to adopt a special procedure for use when CBI production volume is designated as a significant new use. Under such a procedure, a person showing a *bona fide* intent to manufacture or import the substance, under the procedure described in § 721.11, would automatically be informed of the production volume that would be a significant new use. Thus the person would not have to make multiple *bona fide* submissions to EPA for the same substance to remain in compliance with the SNUR, as could be the case under the procedures in § 721.575(b)(1).

VIII. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

To establish a significant "new" use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have recently undergone premanufacture review. Section 5(e) orders have been issued in all but three cases and notice submitters are prohibited by the section 5(e) orders from undertaking activities which EPA is designating as significant new uses. In cases where EPA has not received a Notice of Commencement (NOC) and the substance has not been added to the Inventory, no other person may commence such activities without first submitting a PMN. For substances for which an NOC has not been submitted at this time, EPA has concluded that the uses are not ongoing. However, EPA recognizes in cases when chemical substances identified in this SNUR are added to the Inventory prior to the effective date of the rule, the substances may be manufactured, imported, or processed by other persons for a significant new use as defined in this rule before the effective date of the rule. However, 22 of the 29 substances contained in this rule have CBI chemical identities, and since EPA has received a limited number of post-PMN *bona fide* submissions, the Agency believes that it is highly unlikely that many, if any, of the significant new uses described in the following regulatory text are ongoing.As discussed at 55 FR 17376 (April 24, 1990), EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of this date of publication rather than as of the effective date of the rule. Thus, persons who begin commercial manufacture, import, or processing of the substances regulated through this SNUR will have to cease any such activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

EPA has promulgated provisions to allow persons to comply with this SNUR before the effective date. If a person were to meet the conditions of advance compliance in § 721.45(h) (53 FR 28354, July 17, 1988), the person will be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between publication and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

IX. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substance subject to this rule. EPA's complete economic analysis is available in the public record for this rule (OPTS-50592).

X. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS-50592). The record includes information considered by EPA in developing this rule. A public version of the record without any confidential business information is available in the TSCA Public Docket Office from 8 a.m. until noon and from 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located at rm. NE–G004, 401 M St., SW., Washington, DC.

Any person who submits comments claimed as CBI must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any persons submitting comments claimed as confidential must prepare and submit a public version of the comments that EPA can place in the public file.

XI. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule will not be a "major" rule because it will not have an effect on the economy of $100 million or more, and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this rule, EPA estimates that the cost for submitting a significant new use notice would be approximately $4,500 to $11,000, including a $2,500 user fee payable to EPA to offset EPA costs in processing the notice. EPA believes that, because of the nature of the rule and the substances involved, there will be few SNUR notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact will be limited because such factors are unlikely to discourage an innovation that has high potential value.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small businesses. However, EPA expects to receive few SNUR notices for the substances. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act.

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and have been assigned OMB control number 2070–0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Management and Budget, Paperwork Reduction Project (2070–0012), Washington, DC 20503.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: August 5, 1991.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR part 721, subpart E is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

2. By adding new § 721.466 to read as follows:

§ 721.466 Benzene, (1-methylethyl)(2-phenylethyl)-.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified as benzene, (1-methylethyl)(2-phenylethyl)-, (PMN P–88–894) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii),

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List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: August 5, 1991.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR part 721, subpart E is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

2. By adding new § 721.466 to read as follows:

§ 721.466 Benzene, (1-methylethyl)(2-phenylethyl)-.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified as benzene, (1-methylethyl)(2-phenylethyl)-, (PMN P–88–894) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii),

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(a)(2)(iv), (a)(3), (b) (concentration set at 1.0 percent), and (c). However, the personal protective clothing required in paragraph (a)(2)(iv) must be tested or evaluated under the requirements of paragraph (a)(3). Furthermore, the imperviousness of gloves required under paragraph (a)(2)(i) may not be demonstrated according paragraph (a)(3)(ii), but rather must be tested according to paragraph (a)(3)(i) with the following additional requirements: There must be no permeation of the PMN substance greater than 16 ppb after 8 hours of testing in accordance with the American Society for Testing and Materials (ASTM) F739–85 "Standard Test Method for Resistance of Protective Clothing Materials to Permeation by Liquids or Gases." Gloves may not be used for a time period longer than they are actually tested and must be replaced at the end of each work shift.

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(iv), (g)(2)(i), (g)(2)(iii), (g)(2)(v), (g)(3)(ii), (g)(4)(i) and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q). In addition, a significant use of the substance is any manner or method of manufacturing, processing, or use other than as an insulating oil for capacitors or transformers.

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (b)(1), (c)(1), (a)(2), (b)(2), (c)(2), (a)(3), (b)(3), and (c)(3).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under control number 2070–0012)

3. By adding new § 721.490 to read as follows:

§ 721.490 Benzenediazonium, 4-(dimethylamino)-, salt with 2-hydroxy-5-sulfobenzoic acid (1:1).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as benzenediazonium, 4-(dimethylamino)-, salt with 2-hydroxy-5-sulfobenzoic acid (1:1) (CAS No. 124737–31–1) (P–90–1366) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(i), (a)(5)(ii), (a)(5)(iii), (a)(5)(iv), (a)(5)(v), (a)(5)(vi), (a)(5)(vii), (a)(6)(i), (a)(6)(ii), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (f), (g)(2)(iii), (g)(2)(iv), (g)(2)(v), (g)(3)(ii), and (g)(5). In addition, the following human health hazard statement shall appear on each label as specified at § 721.72(b) and the MSDS as specified at § 721.72(c). Additional statements may be included as long as they are true and do not alter the meaning of the required statement. Human health hazard statements: This substance may cause severe acute toxicity and death or serious neurotoxic effects.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(p) (volume set at 31,000 kg).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N = 80 ppb).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance as specified in § 721.125(a) through (i), and (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under control number 2070–0012)

4. By adding new § 721.500 to read as follows:

§ 721.500 Benzenepropanoic acid, 3-(2H-benzotriazol-2-yl)-5-(1,1-dimethylethyl)-4-hydroxy-, C_{7-9}-branched and linear alkyl esters.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as benzenepropanoic acid, 3-(2*H*-benzotriazol-2-yl)-5-(1,1-dimethylethyl)-4-hydroxy-, C_{7-9}-branched and linear alkyl esters (CAS No. 127519–17–9) (P–90–1635) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture, import, or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health, the employer must incorporate this new information, and any information on methods for protecting against such risk, into an MSDS as described at § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to an MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who have received, or will receive, this substance from the employer are provided an MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (c), (h), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB Control Number 2070–0012)

5. By adding new § 721.1100 to read as follows:

§ 721.1100 Glycol monobenzoate.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as generically as glycol monobenzoate (P–90–1357) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture, import, or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health, the employer must incorporate this new information, and any information on methods for protecting against such risk, into an MSDS as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to an MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who have received, or will receive, this substance from the employer are provided an MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (c), (h), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB Control Number 2070-0012)

6. By adding new § 721.1105 to read as follows:

§ 721.1105 Glycols, polyethylene-, 3-sulfo-2-hydroxypropyl-p-(1,1,3,3-tetramethylbutyl)phenyl ether, sodium salt.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as glycols, polyethylene-, 3-sulfo-2-hydroxypropyl-*p*-(1,1,3,3-tetramethyl butyl)phenyl ether, sodium salt (P–90–1565) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture, import, or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health or the environment, the employer must incorporate this new information, and any information on methods for protecting against such risk, into an MSDS as described at § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to an MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who have received, or will receive, this substance from the employer are provided an MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(p) (volume set at 1,115,000 kg).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (c), (h), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under control number 2070–0012)

7. By adding new § 721.1140 to read as follows:

§ 721.1140 Tris(disubstituted alkyl) heterocycle.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as tris(disubstituted alkyl) heterocycle (P–90–142) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4), (a)(5)(iv), (a)(6)(i), (b) (concentration set at 0.1 percent) and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iv), (g)(1)(vi), (g)(1)(vii), (g)(2)(iv), (g)(5). The hazard communication requirements do not apply when the chemical substance is present in a plastic, an elastomer, a rubber matrix, or in a solution.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q). Any amount of the PMN substance imported in a plastic, an elastomer, a rubber matrix, or in a solution, such that inhalation is precluded, shall not be included in the production limit calculations.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (d), (f), (g), (h), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under control number 2070–0012)

8. By adding new § 721.1204 to read as follows:

§ 721.1204 Hexanedioic acid, polymer with 1,2-ethanediol and 1,6-diisocyanato-2,2,4(or 2,4,4)-trimethylhexane, 2-hydroxyethyl-acrylate-blocked.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified specifically as hexanedioic acid, polymer with 1,2-ethanediol and 1,6-diisocyanato-2,2,4(or 2,4,4)-trimethylhexane, 2-hydroxyethyl-acrylate-blocked (PMN P–90–1636) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(i),

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(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4), (a)(5)(iv), (a)(6)(i), (b) (concentration set at 0.1 percent) and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iv), (g)(1)(vi), (g)(1)(vii), (g)(2)(iv), (g)(5). The hazard communication requirements do not apply when the chemical substance is present in a plastic, an elastomer, a rubber matrix, or in a solution.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q). Any amount of the PMN substance imported in a plastic, an elastomer, a rubber matrix, or in a solution, such that inhalation is precluded, shall not be included in the production limit calculations.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (d), (f), (g), (h), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under control number 2070–0012)

8. By adding new § 721.1204 to read as follows:

§ 721.1204 Hexanedioic acid, polymer with 1,2-ethanediol and 1,6-diisocyanato-2,2,4(or 2,4,4)-trimethylhexane, 2-hydroxyethyl-acrylate-blocked.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified specifically as hexanedioic acid, polymer with 1,2-ethanediol and 1,6-diisocyanato-2,2,4(or 2,4,4)-trimethylhexane, 2-hydroxyethyl-acrylate-blocked (PMN P–90–1636) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(i),

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(a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (h)(1)(i)(A), (h)(1)(i)(B), (h)(1)(i)(C), (h)(1)(vi), (h)(2)(i)(B), (h)(2)(i)(C), (h)(2)(i)(D), and (h)(2)(iii)(A).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB Control Number 2070–0012)

9. By adding new § 721.1233 to read as follows:

§ 721.1233 Substituted hydrazine.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted hydrazine (PMN P–90–594) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(i), (a)(6)(i), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iv), (g)(1)(vii), (g)(2), (g)(3), (g)(4)(i), (g)(4)(iii), and (g)(5). In addition, the human health hazard statement shall include mutagenicity.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(l).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (b)(1), and (c)(1).

(v) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under control number 2070–0012)

10. By adding new § 721.1245 to read as follows:

§ 721.1245 Heterocyclic aldehyde imine.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a heterocyclic aldehyde imine (P–90–1624) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iv), (g)(1)(vii), (g)(2)(i), (g)(2)(iii), (g)(2)(v), (g)(3)(ii), (g)(4)(iii), (g)(5). Health hazard warnings shall also include "mutagenicity".

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(l) and (q).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (i), and (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB Control Number 2070–0012)

11. By adding new § 721.1261 to read as follows:

§ 721.1261 Alcohol, alkali metal salt.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as alcohol, alkali metal salt (PMN P–91–151) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N = 5 ppb).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), and (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB Control Number 2070–0012)

12. By adding new § 721.1298 to read as follows:

§ 721.1298 Methanol, trichloro-, carbonate (2:1).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as methanol, trichloro-, carbonate (2:1) (CAS No. 32315–10–9) (PMN P–90–1535) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(i), (g)(1)(ii), (g)(1)(iii), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(5). The following additional human hazard precautionary statement shall appear on the label: This substance may react to form phosgene gas. When using this substance, handle with extreme caution.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (f), (g), and (h).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under control number 2070–0012)

13. By adding new § 721.1582 to read as follows:

§ 721.1582 Dialkyl phosphorodithioate phosphate compounds.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as dialkyl phosphorodithioate phosphate compounds (P–90–1642 through 1649) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of these substances is any manner or method of manufacture, import, or processing associated with any use of these substances without providing risk notification as follows:

(A) If as a result of the test data required under the section 5(e) consent order for these substances, the employer becomes aware that any of these substances may present a risk of injury to human health, the employer must incorporate this new information, and any information on methods for protecting against such risk, into an MSDS as described at § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If these substances are not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to an MSDS before these substances are reintroduced into the workplace.

(B) The employer must ensure that persons who have received, or will receive, these substances from the employer are provided an MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of these substances, as specified in § 721.125(a), (c), (h), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB Control Number 2070–0012)

14. By adding new § 721.1620 to read as follows:

§ 721.1620 Hydrogenated arylated polydecene.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as hydrogenated arylated polydecene (P–90–1454) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture, import, or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health, the employer must incorporate this new information, and any information on methods for protecting against such risk, into an MSDS as described at § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to an MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who have received, or will receive, this substance from the employer are provided an MSDS as described at § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (c), (h), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under control number 2070–0012)

15. By adding new § 721.1643 to read as follows:

§ 721.1643 Polymer of isophorone diisocyanate, trimethylolpropane, polyalkylenepolyol, disubstituted alkanes and hydroxyethyl acrylate.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as polymer of isophorone diisocyanate, trimethylolpropane, polyalkylenepolyol, disubstituted alkanes and hydroxyethyl acrylate (PMN P–91–11) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (h)(1)(i)(A), (h)(1)(i)(B), (h)(1)(i)(C), (h)(1)(vi), (h)(2)(i)(B), (h)(2)(i)(C), (h)(2)(i)(D), and (h)(2)(iii)(A).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance as specified in § 721.125(a) through (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB Control Number 2070–0012)

16. By adding new § 721.1711 to read as follows:

§ 721.1711 Isocyanate terminated polyols.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified generically as isocyanate terminated polyols (P–90–404, P–90–405, and P–90–406) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(i), (a)(5)(ii), (a)(5)(iii), (a)(6)(ii), (b)

§ 721.1620 to read

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15. By adding new § 721.1643 to read as follows:

§ 721.1643 Polymer of isophorone diisocyanate, trimethylolpropane, polyalkylenepolyol, disubstituted alkanes and hydroxyethyl acrylate.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as polymer of isophorone diisocyanate, trimethylolpropane, polyalkylenepolyol, disubstituted alkanes and hydroxyethyl acrylate (PMN P–91–11) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (h)(1)(i)(A), (h)(1)(i)(B), (h)(1)(i)(C), (h)(1)(vi), (h)(2)(i)(B), (h)(2)(i)(C), (h)(2)(i)(D), and (h)(2)(iii)(A).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance as specified in § 721.125(a) through (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB Control Number 2070–0012)

16. By adding new § 721.1711 to read as follows:

§ 721.1711 Isocyanate terminated polyols.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified generically as isocyanate terminated polyols (P–90–404, P–90–405, and P–90–406) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(i), (a)(5)(ii), (a)(5)(iii), (a)(6)(ii), (b)

(concentration set at 1.0 percent) and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(i), (g)(1)(ii), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), (g)(2)(v), and (g)(5). The following additional human health hazard statements shall appear on each label and MSDS required by this paragraph: The substance may cause eye irritation, lung effects, dermal sensitization, pulmonary sensitization, or systemic effects.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(p) (volume set at 245,000 kg; aggregate manufacture and import volume for PMNs P–90–404, P–90–405, and P–90–406 combined).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance as specified in § 721.125(a) through (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under control number 2070–0012)

17. By adding new § 721.1796 to read as follows:

§ 721.1796 2-Propenamide, N-[3-dimethylamino)propyl]-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 2-propenamide, *N*-[3-dimethylamino)propyl]- (PMN P–86–1602) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(3), (a)(6)(ii), (b) (concentration set at 0.1 percent) and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iii), (g)(1)(v), (g)(1)(vi), (g)(1)(vii), (g)(1)(ix), (g)(2)(v), (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o) and (q).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (where N = 300 ppb).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (i) and (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under control number 2070–0012)

18. By adding new § 721.1896 to read as follows:

§ 721.1896 Bis(2,2,6,6-tetramethylpiperidinyl) ester of cycloalkyl spiroketal.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as bis(2,2,6,6-tetramethyl piperidinyl) ester of cycloalkyl spiroketal (PMN P–88–0063) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* For the manufacturing workers only, requirements as specified in § 721.63(a)(4), (a)(5)(i), (a)(6)(i), and (b) (concentration set at 1.0 percent). For the processing/use workers only, requirements as specified in § 721.63 (a)(4), (a)(5)(iv), (a)(5)(v), (a)(5)(vi), (a)(5)(vii), (a)(6)(i), (b) (concentration set at 1.0 per cent) and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(vi), (g)(1)(viii), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), (g)(3)(ii), (g)(4)(iii), and (g)(5). The following additional human health hazard statements shall appear on each label and MSDS required by this paragraph: This substance may cause: systemic effects, eye irritation.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(l).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (d), (f), (g), (h), (i), and (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under control number 2070–0012)

19. By adding new § 721.1898 to read as follows:

§ 721.1898 α-Olefin sulfonate, potassium salts.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as an α-olefin sulfonate, potassium salt (PMN P–91–100) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), and (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB Control Number 2070–0012)

20. By adding new § 721.2184 to read as follows:

§ 721.2184 Titanate [Ti_6O_{13} (2-)], dipotassium.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as titanate [Ti_6O_{13} (2-)], dipotassium (CAS No. 12056–51–8) (PMN P–90–0226) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (f), (g)(1)(ii), (g)(1)(vii), (g)(2)(ii), and (g)(5).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (l), and (q). In addition, a significant new use of the substance is importation of the PMN substance if:

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(A) Manufactured by other than the method described in premanufacture notice P–90–226.

(B) The bulk density measurements of the PMN substance in the pure form are less than 0.4 g/cm^3 or greater than 0.6 g/cm^3. The bulk density of each shipment must be verified, by lot, prior to clearing U.S. customs.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance as specified in § 721.125(a), (b), (c), (f), (g), (h), and (i). In addition, records shall be kept identifying the foreign supplier and documenting, by lot, for each shipment, the method of manufacture and bulk density measurements.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under control number 2070–0012)

21. By adding new § 721.2198 to subpart E to read as follows:

§ 721.2198 Substituted triphenylmethane.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a substituted triphenylmethane (PMN P–87–1553) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(v)(1), (w)(1), (x)(1) and (y)(2).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under control number 2070–0012)

[FR Doc. 91–19201 Filed 8–12–91; 8:45 am]

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(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(v)(1), (w)(1), (x)(1) and (y)(2).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under control number 2070-0012)

[FR Doc. 91-19201 Filed 8-12-91; 8:45 am]

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federal register

Tuesday
August 13, 1991

Part IX

Office of the United States Trade Representative

Negotiation of a North American Free Trade Agreement; Notice of Public Hearings

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OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Negotiation of a North American Free Trade Agreement (NAFTA)

AGENCY: Office of the U.S. Trade Representative.

ACTION: Trade Policy Staff Committee (TPSC) Public Hearings: Notification of locations and times.

SUMMARY: A Notice was published in the **Federal Register** on July 16, 1991 (Vol. 56, No. 136, page 32454) announcing TPSC public hearings to be held in San Diego, CA; Houston, TX; Atlanta, GA; Washington, DC; Cleveland, OH; and Boston, MA. That notice invited oral testimony and/or written comments of interested parties on the desirability, the scope, and the economic effects of a North American Free Trade Agreement (NAFTA). This notice announces the specific times and locations for the hearings in each city.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments and/or public hearings contact Carolyn Frank, Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, (202) 395-7210. All other questions concerning the negotiations should be directed to Robert Fisher, Director of Mexican Affairs, Office of North American Affairs, Office of the United States Trade Representative, (202-395-3412).

SUPPLEMENTARY INFORMATION: All hearings will begin at 9:30 a.m.

Following receipt of requests to testify, witnesses will be notified directly of their scheduled date and time to appear. The exact locations of the hearings are as follows:

San Diego, August 21 (and 22, if necessary):
San Diego City Administration Building, City Council Chamber, 12th Floor, 202 "C" Street, San Diego, CA.

Houston, August 26 (and 27, if necessary):
Julia Ideson Building (Auditorium), Houston Public Library, 500 McKinney Street, Houston, TX.

Atlanta, August 29 (and 30, if necessary):
Georgia State University, Veterans Memorial Conference Center, Alumni Hall, 30 Courtland Avenue, Atlanta, GA.

Washington, September 3 (through 6 if necessary):
U.S. International Trade Commission, 500 E Street SW., Washington, DC.

Cleveland, September 9 (and 10, if necessary):
Location of hearing will be announced at a later date.

Boston, September 11 (and 12, if necessary):
Gardner Auditorium, State House, Bowdoin or Beacon Street Entrance, Boston, MA.

All deadlines remain the same as stated in the previous notice.

David A. Weiss,
Chairman, Trade Policy Staff Committee.

[FR Doc. 91-19393 Filed 8-12-91; 10:55 am]

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[FR Doc. 91–19393 Filed 8–12–91; 10:55 am]

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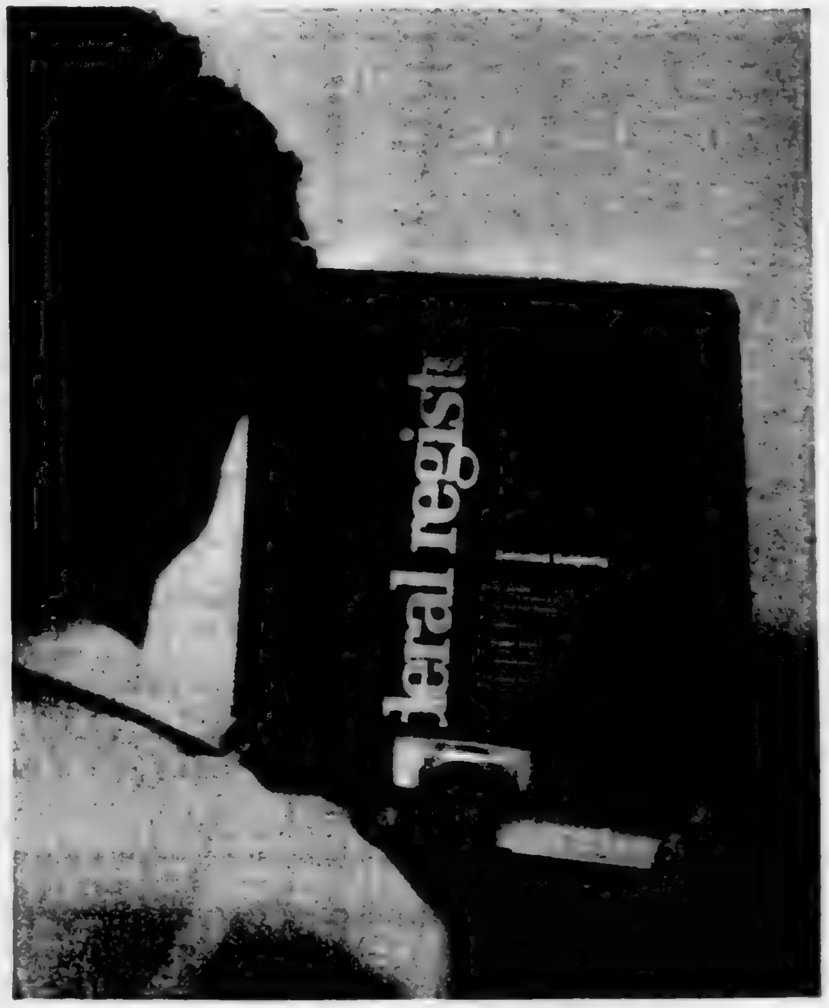

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102d Congress, 1st Session, 1991

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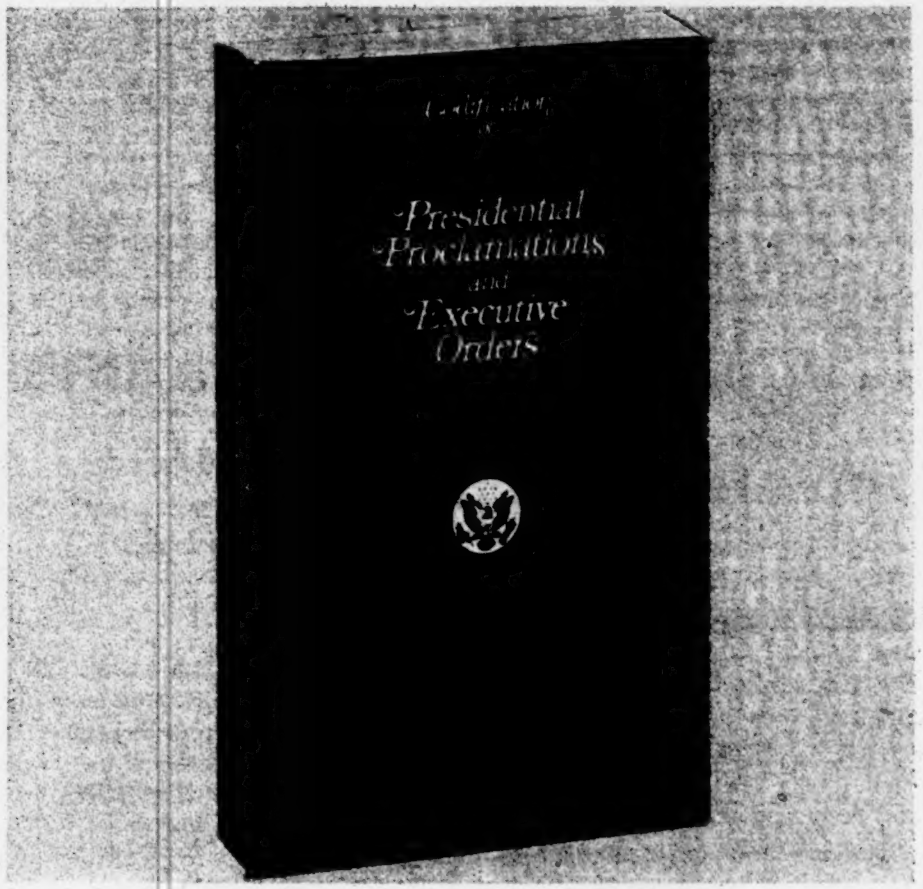
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